

VOLUME I of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JAN 06 2021

S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

CHRISTOPHER MANNING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000831

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

TAYLOR Z. SMITH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Suite 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 11-13, 2010	1
APPLICATION FOR POST-CONVICTION RELIEF (2014-CP-32-03075)	695
RETURN (2014-CP-32-03075).....	702
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED APRIL 18, 2016 (2014-CP-32-3075).....	709
ORDER OF DISMISSAL.....	829
APPLICATION FOR POST-CONVICTION RELIEF (2018-CP-32-02208)	839
RETURN AND PARTIAL MOTION TO DISMISS (2018-CP-32-02208)	850
PCR HEARING TRANSCRIPT DATED APRIL 1, 2019 (2018-CO-32-02208)	860
ORDER OF DISMISSAL (2018-CP-32-02208)	879
INDICTMENT	888

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA
-vs-
CHRISTOPHER D. MANNING,
Defendant.

)
)
)
)
)
TRANSCRIPT OF RECORD
09-GS-32-2855

May 11-13, 2010
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, Judge; and a jury.

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

DERRICK E. MOBLEY, Asst. Solicitor
J. ANGELA GARRICK, Asst. Solicitor
ALTON H. EARGLE, JR., Asst. Solicitor
Attorneys for the State

ROBERT M. MADSEN, Public Defender
BENNETT E. CASTO, Asst. Public Defender
Attorneys for the Defendant

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

INDEX

1	Jury Impaneled	49
2	Jury Sworn	181
3	Opening Statement by Mr. Mobley	191
4	Opening Statement by Mr. Madsen	197
5	State Rests	616
6	Directed Verdict by Mr. Madsen	617
7	Questioning of the Defendant	621
8	Defense Rests	633
9	Closing Argument by Mr. Mobley	635
10	Closing Argument by Mr. Madsen	642
11	Jury Charge	651
12	Verdict	670
13	New Trial Motion by Mr. Madsen	673
14	Sentence of the Court	692
15	Certificate	694

INDEX OF WITNESSES

16	<u>WITNESSES:</u>	<u>PAGE</u>
17	ELIZABETH GRAYSON SIMMONS	
18	In Camera Examination By Mr. Mobley	88
19	In Camera Examination By Mr. Madsen	96
20	NATHAN ANDREW PROUSE	
21	In Camera Examination By Mr. Mobley	103
22	In Camera Examination By Mr. Madsen	114

1	JERRY WISE	
2	In Camera Examination By Mr. Mobley	.120
3	In Camera Examination By Mr. Madsen	.129
4	In Camera Examination By Mr. Mobley	.131
5	VICTOR TOMAINO	
6	In Camera Examination By Mr. Mobley	.132
7	In Camera Examination By Mr. Madsen	.136
8	QUEST HALLMAN	
9	In Camera Examination By Mr. Mobley	.149
10	In Camera Examination By Mr. Madsen	.156
11	In Camera Examination By Mr. Mobley	.162
12	HEATHER FAIRCHILD	
13	Direct By Mr. Mobley	.201
14	Cross By Mr. Madsen	.214
15	Direct By Mr. Mobley	.220
16	In Camera Examination By Mr. Madsen	.221
17	In Camera Examination By Mr. Mobley	.222
18	Cross By Mr. Madsen	.223
19	Redirect By Mr. Mobley	.228
20	ELIZABETH GRAYSON SIMMONS	
21	Direct By Mr. Mobley	.231
22	Cross By Mr. Madsen	.248
23	NATHAN PROUSE	
24	Direct By Mr. Mobley	.265
25	Cross By Mr. Madsen	.277

1	VICTOR TOMAINO	
2	Direct By Mr. Mobley	.288
3	Cross By Mr. Madsen	.293
4	WILLIAM F. ZEIGLER	
5	Direct By Mr. Mobley	.303
6	Cross By Mr. Madsen	.308
7	QUEST HALLMAN	
8	Direct By Mr. Mobley	.313
9	Cross By Mr. Madsen	.339
10	JEFFREY BRIAN BAKER	
11	Direct By Mr. Mobley	.351
12	In Camera Examination By Mr. Mobley	.363
13	Direct By Mr. Mobley	.368
14	Cross By Mr. Madsen	.379
15	NANCY CHENAU SKY	
16	Direct By Mr. Mobley	.385
17	Cross By Mr. Madsen	.391
18	DANIEL RYAN DODSON	
19	Direct By Mr. Mobley	.394
20	Cross By Mr. Madsen	.398
21	CHRISTOPHER SHELTON	
22	Direct By Mr. Mobley	.400
23	Cross By Mr. Madsen	.405
24	RODNEY ALLEN FRICK	
25	Direct By Mr. Mobley	.407

1	RODNEY ALLEN FRICK	
2	Cross By Mr. Madsen	.412
3	Redirect By Mr. Mobley	.414
4	JEFFREY BRIAN BAKER	
5	In Camera Examination By Mr. Madsen	.425
6	In Camera Examination By Mr. Mobley	.427
7	In Camera Examination By Mr. Madsen	.428
8	MARIE WEARING	
9	Direct By Mr. Mobley	.443
10	SHARON MADISON	
11	Direct By Mr. Mobley	.446
12	AMY STEPHENS	
13	Direct By Mr. Mobley	.450
14	Cross By Mr. Madsen	.455
15	PATRICIA CROOKS	
16	Direct By Mr. Mobley	.457
17	Cross By Mr. Madsen	.460
18	BRANDON WILLIAMS	
19	Direct By Mr. Mobley	.462
20	Cross By Mr. Madsen	.466
21	BRANDON JAMEL LANDRUM	
22	Direct By Mr. Mobley	.468
23	Cross By Mr. Madsen	.482
24	JENNIFER MICHELLE BROWN	
25	Direct By Mr. Mobley	.490

1 JENNIFER MICHELLE BROWN

2 In Camera Examination By Mr. Mobley 501

3 Direct By Mr. Madsen 505

4 Cross By Mr. Madsen 560

5 JAMES R. O'DONNELL, JR.

6 Direct By Mr. Mobley 563

7 Cross By Mr. Madsen 605

8 Redirect By Mr. Mobley 615

9

10 STATE'S EXHIBITS

11	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
12	1	Photograph		235
13	2	Photograph		235
14	3	Photograph		235
15	4	Death certificate		307
16	5	Photograph		329
17	6	Photograph		329
18	7	Photograph		329
19	8	Photograph		329
20	9	Implied consent warnings		370
21	10	Urine/blood collection report		375
22	11	Chain of custody	378	
23	12	Chain of custody (S.L.E.D.)	454	
24	13	Driving record	445	
25	14	D.M.V. current plate	447	448

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	15	S.L.E.D. lab report	500	552
4	16	Photograph	575	576
5	17	Photograph	575	576
6	18	Photograph		587
7	19	Photograph		587
8	20	Photograph		587
9	21	Photograph	588	589
10	22	Photograph	588	589
11	23	Photograph	588	589
12	24	Photograph	588	589
13	25	Photograph	588	589
14	26	Diagram		598

15				
16	COURT'S EXHIBITS			
17	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
18	1	Brady disclosures	58	
19	2	Collision report	86	
20	3	Discovery materials	86	
21	4	Discovery materials	86	
22	5	Toxicology report (Hill)	534	

23

24

25

1 (The following proceedings are reported on May
2 11, 2010).

3 THE COURT: Solicitor, you may call your first
4 case for trial.

5 MR. MOBLEY: Thank you, Your Honor.
6 Indictment Number 2009-GS-32-02861, possession of a
7 controlled substance, the State v. Christopher Manning.
8 Indictment Number 2009-GS-32-02855, felony D.U.I. with
9 death, the State versus Christopher D. Manning.

10 (Hands to Court.)

11 THE COURT: Ladies and gentlemen of the jury
12 panel, if you would please give me your complete and
13 undivided attention. We are going to begin a process
14 whereby we select a jury for the case, the first case
15 that has been called for trial.

16 Please remember that you are still under oath
17 for purposes of these proceedings, and your answers
18 should be full, complete, and accurate. As a part of
19 this process, I'm going to publish or read to you the
20 indictments in this case.

21 There are two indictments. The indictments
22 are not evidence. The indictments are the formal
23 charging documents by which an individual is placed on
24 notice of the charge or charges that have been brought
25 against him or her. They contain mere allegations, and

1 in no way are they evidence of any of the allegations
2 contained therein.

3 I read you these indictments because it may
4 become necessary or it is necessary for me to ask you
5 certain questions about whether or not you have any
6 knowledge concerning the facts of this case, you've
7 heard anything about it, read anything about it.
8 There's absolutely nothing wrong whatsoever with that,
9 but, please, again, make your responses full, complete,
10 and accurate.

11 The first indictment is 2009-GS-32-2855. It
12 reads that Christopher D. Manning did in Lexington
13 County, South Carolina, on or about August 1st of 2009,
14 while driving a vehicle under the influence of alcohol
15 and/or drugs, the Defendant, Christopher D. Manning, did
16 an act forbidden by law or neglected a duty imposed by
17 law in the driving of said vehicle, to wit, failed to
18 exercise due care by failing to maintain his proper lane
19 of travel, and such act proximately caused the death of
20 Jacob Hill, all in violation of Section 56-5-2945 of the
21 Code of Laws of South Carolina. That is an indictment
22 for felony D.U.I./death.

23 The next indictment, 2009-GS-32-02861, reads
24 that Christopher D. Manning did in Lexington County,
25 South Carolina, on or about August 1st, 2009, did

1 unlawfully and knowingly or intentionally possess a
2 quantity of Hydrocodone and Acetaminophen, a schedule
3 three controlled substance, all in violation of
4 Section 44-53-370(d)(2) of the Code of Laws of South
5 Carolina, 1976 as amended. That is a true bill
6 indictment for possession of a controlled substance.

7 The State in the case is represented by
8 Assistant Solicitors Derrick E. Mobley and Angela
9 Garrick. If you'd please stand and introduce yourself
10 to the jury panel and any other members of the
11 Solicitor's office that will be assisting you during the
12 prosecution of this case.

13 MR. MOBLEY: Thank you, Your Honor. My name
14 is Derrick Mobley. I'm an assistant solicitor here in
15 Lexington County. Today I will be trying the case along
16 with my co-counsel, Ms. Angela Garrick. We have
17 Assistant Solicitor Al Eargle who will be trying the
18 case along with me as well, and I have my investigator,
19 Ms. Jill Smith, who will be assisting me along with this
20 trial as well. Thank you.

21 THE COURT: Thank you. Thank you very much.
22 Is any member of the jury panel related by blood or
23 marriage or close personal friends of either Assistant
24 Solicitors Mobley, Garrick or Eargle or any employee of
25 the Lexington County Solicitor's office? If so, please

1 stand.

2 (There is no response.)

3 THE COURT: The Defendant in the case is
4 represented by Mr. Rob Madsen. Mr. Madsen, if you'd
5 please stand and introduce yourself, any co-counsel, and
6 your client to the jury panel, please.

7 MR. MADSEN: My name is Rob Madsen. I
8 work for the Public Defender's office. I represent
9 Christopher Manning, along with Bennett Casto who also
10 works at the Public Defender's office, and this is
11 Christopher Manning.

12 THE COURT: Thank you. Thank you very much.
13 Is any member of the jury panel related by blood or
14 marriage or close personal friends of either Mr. Madsen
15 or Mr. Casto? If so, please stand.

16 (There is no response.)

17 THE COURT: Has any member of the jury panel
18 or any member of your immediate family or close personal
19 friend ever been prosecuted by or represented by
20 Mr. Mobley, Ms. Garrick, Mr. Eargle or any employee
21 of the Lexington County Solicitor's office? If so,
22 please stand.

23 (There is no response.)

24 THE COURT: Has any member of the jury panel
25 or any member of your immediate family or close personal

1 friend ever been represented by Mr. Madsen, Mr. Casto
2 or any employee of the Lexington County Public
3 Defender's office? If so, please stand.

4 (There is no response.)

5 THE COURT: Is any member of the jury panel
6 related by blood or marriage or close personal friends
7 with the Defendant in the case, Mr. Christopher D.
8 Manning, or the deceased, Mr. Jacob Hill? If so, please
9 stand.

10 (There is no response.)

11 THE COURT: The indictment alleges an incident
12 which occurred on or about August 1st of 2009, in
13 Lexington County resulting in the death of Jacob Hill.
14 Does any member of the jury panel have any knowledge
15 about the case? If so, please stand.

16 (Juror stands.)

17 THE COURT: Yes, sir, your number and name,
18 please?

19 PROSPECTIVE JUROR: Number 34, Michael
20 Collins.

21 THE COURT: All right. If you'd come forward
22 for me, please.

23 (The following bench conference with the
24 Court, counsel, and the juror is reported.)

25 THE COURT: You're Number 34?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: And your last name?

3 PROSPECTIVE JUROR: Collins.

4 THE COURT: Yes, Mr. Collins?

5 PROSPECTIVE JUROR: I believe it was the
6 question prior.

7 THE COURT: All right.

8 PROSPECTIVE JUROR: You had asked if anybody
9 in my immediate family had ever been prosecuted by the
10 Lexington County Solicitor's office.

11 THE COURT: Prosecuted or represented by?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Yes, sir.

14 PROSPECTIVE JUROR: Yes, my son, my young son.

15 THE COURT: Your son?

16 PROSPECTIVE JUROR: My young son, yes.

17 THE COURT: All right. What age is he?

18 PROSPECTIVE JUROR: Right now, he's -- I'm
19 trying to think -- 27.

20 THE COURT: All right. And what time frame
21 are we talking about?

22 PROSPECTIVE JUROR: Approximately ten years
23 ago.

24 THE COURT: All right. He would have been 17?

25 PROSPECTIVE JUROR: He was 17 -- turned 18.

1 THE COURT: And what was his name?

2 PROSPECTIVE JUROR: Michael Collins.

3 THE COURT: Michael Collins?

4 PROSPECTIVE JUROR: Same as mine.

5 THE COURT: All right. The fact that your
6 son, about ten years ago, was prosecuted by an employee
7 of the Lexington County Solicitor's office, could you
8 still be a fair and impartial juror to both the State
9 and the defense in this case?

10 PROSPECTIVE JUROR: Oh, yes, sir.

11 THE COURT: Do you recall who the prosecutor
12 was?

13 PROSPECTIVE JUROR: I'm sorry. I can't
14 recall.

15 THE COURT: Do you know who the defense
16 attorney was?

17 PROSPECTIVE JUROR: Brett Salley.

18 THE COURT: All right. Thank you. Thank you
19 very much. I believe you can stay with us.

20 PROSPECTIVE JUROR: All right.

21 THE COURT: Do not say anything to your fellow
22 jurors.

23 PROSPECTIVE JUROR: Yes, sir.

24 MR. MOBLEY: Can we ask what type of charge?

25 THE COURT: Can you tell us what it was?

1 PROSPECTIVE JUROR: It was an assault charge.

2 THE COURT: Assault?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: All right. Thank you very much.

5 (The bench conference is concluded.)

6 THE COURT: Does any member of the jury panel
7 have any bias or prejudice towards the parties, that
8 being the State or Mr. Manning, or the subject matter
9 involved in the case? If so, please stand.

10 (There is no response.)

11 THE COURT: Has any member of the jury panel
12 heard anything or know anything about the case from any
13 source whatsoever? If so, please stand.

14 (Juror stands.)

15 THE COURT: Yes, sir, your number and name,
16 please?

17 PROSPECTIVE JUROR: One-fifteen, Archie
18 Maddox.

19 THE COURT: All right. Would you step down
20 here for me, please.

21 (The following bench conference with the
22 Court, counsel, and the juror is reported.)

23 THE COURT: Tell me your number and name
24 again.

25 PROSPECTIVE JUROR: One-fifteen, Archie

1 Maddox.

2 THE COURT: All right. Mr. Maddox, tell me
3 your situation.

4 PROSPECTIVE JUROR: I don't know if it's a
5 conflict of interest or not. I own my own mortuary
6 transport company. It's under contract with Lexington
7 County. I may have been on the scene. I don't know. I
8 wrote the name down. I don't have any way of checking
9 it, so I don't know if I have knowledge of it or not.

10 THE COURT: If I tell you where the scene was,
11 would that jog your memory?

12 PROSPECTIVE JUROR: We pick up --

13 COURT REPORTER: I'm sorry?

14 PROSPECTIVE JUROR: We pick up a lot.

15 THE COURT: Let me ask the question, where did
16 this occur?.

17 MR. MOBLEY: Highway 378, close to the Saluda
18 County line.

19 PROSPECTIVE JUROR: Even if I wasn't on the
20 scene, my employees brief me on just about everything.
21 So I don't know if I would know.

22 THE COURT: But you have no memory of it?

23 PROSPECTIVE JUROR: No sir.

24 THE COURT: All right. The fact that you are
25 so employed, could you still be a fair and impartial

1 juror to both the State and the defense?

2 PROSPECTIVE JUROR: Sure.

3 THE COURT: All right.

4 PROSPECTIVE JUROR: I also wanted to bring
5 this up. I understand you asked earlier about whether
6 or not any of us ever had dealings with the solicitors.
7 I did work with Mr. Madsen at one point as a youth
8 advocate.

9 THE COURT: All right. And the fact that you
10 worked with Mr. Madsen when he was employed with the
11 Solicitor's office, is that what you are saying?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Could you still be a fair and
14 impartial juror to both the State and the defense?

15 PROSPECTIVE JUROR: I just wanted to disclose
16 that information. Sure.

17 THE COURT: All right. I think you can stay
18 with us. All right. Thank you very much. If anything
19 jogs your memory, just let me know.

20 PROSPECTIVE JUROR: I will.

21 (The bench conference is concluded.)

22 THE COURT: Has any member of the jury panel,
23 any member of your immediate family or close personal
24 friend ever been employed with the South Carolina
25 Highway Patrol or the State Law Enforcement Division?

1 If so, please stand.

2 (Jurors stand.)

3 THE COURT: All right. Yes, sir, your number
4 and name, please?

5 PROSPECTIVE JUROR: Eighty-three, Brian
6 Hendrix.

7 THE COURT: And were you so employed,
8 Mr. Hendrix, or was it a family or friend?

9 PROSPECTIVE JUROR: Friend.

10 THE COURT: And what agency?

11 PROSPECTIVE JUROR: A State trooper, Highway
12 Department.

13 THE COURT: Is he still -- he or she -- still
14 so employed?

15 PROSPECTIVE JUROR: Yes, he is.

16 THE COURT: How long have you been friends?

17 PROSPECTIVE JUROR: Five years, six years.

18 THE COURT: All right. The fact you have a
19 friend so employed, could you still be a fair and
20 impartial juror to both the State and the defense in
21 this case?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Thank you. You may be seated,
24 Mr. Hendrix. Let me start back here on the front. Your
25 number and name, please?

1 PROSPECTIVE JUROR: One hundred.

2 THE COURT: I'm sorry. I can't quite hear
3 you.

4 PROSPECTIVE JUROR: One hundred.

5 THE COURT: One hundred?

6 PROSPECTIVE JUROR: Katie Kitchen.

7 THE COURT: This is Ms. Kitchen?

8 PROSPECTIVE JUROR: (Nods head.) (Indicating
9 affirmative response.)

10 THE COURT: And was it you or a relative or
11 friend?

12 PROSPECTIVE JUROR: My brother is a deputy
13 sheriff for Richland County.

14 THE COURT: The fact that you have a brother
15 employed as a deputy sheriff in Richland County, could
16 you still be a fair and impartial juror to both the
17 State and the defense in this case?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Thank you. You may be seated.
20 Yes, ma'am, in the white, your number and name, please?

21 PROSPECTIVE JUROR: Twenty-four, Catherine
22 Byrd. I have a close friend and neighbor for about ten
23 years.

24 THE COURT: A friend and neighbor for about
25 ten years?

1 PROSPECTIVE JUROR: With the transport police, ,
2 retired.

3 THE COURT: All right. And the fact that you
4 have that friendship, could you still be a fair and
5 impartial juror to both the State and the defense in
6 this case?

7 PROSPECTIVE JUROR: Yes, I can.

8 THE COURT: Thank you. You may be seated.
9 Yes, sir, in the black shirt?

10 PROSPECTIVE JUROR: Fifty-one, Wayne Ducote,
11 Jr. My father --

12 THE COURT: That wouldn't be Wayne Ducote,
13 Sr., would it?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: All right. And let's see. How is
16 Mr. Ducote?

17 PROSPECTIVE JUROR: He's doing fine, sir.

18 THE COURT: Good. He's currently employed
19 with Richland County?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Formerly employed with the
22 Columbia Police?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Other agencies?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: All right. The fact that Wayne is
2 your father, could you still be a fair and impartial
3 juror to both the State and the defense in this case?

4 PROSPECTIVE JUROR: Well, there's a little bit
5 more to that, too, sir.

6 THE COURT: All right. Well, then come down
7 here and let me talk with you.

8 (The following bench conference with the
9 Court, counsel, and the juror is reported.)

10 CLERK: He used to be a bailiff over at the
11 City of Columbia too.

12 PROSPECTIVE JUROR: That was my granddaddy.

13 THE COURT: Who's your granddaddy?

14 PROSPECTIVE JUROR: Well, which one? I've got
15 two or three, and one who's retired from the city police
16 as well.

17 THE COURT: That's the one I was thinking of.

18 PROSPECTIVE JUROR: Okay. That's the one.

19 THE COURT: Tell me the rest of your
20 situation.

21 PROSPECTIVE JUROR: Well, I happen to know one
22 of the troopers over there. He's a good friend of mine.

23 THE COURT: All right. Which one?

24 PROSPECTIVE JUROR: Shelton.

25 THE COURT: I haven't got to those questions

1 yet.

2 PROSPECTIVE JUROR: Okay. Well...

3 THE COURT: No, that's fine. I appreciate
4 your bringing that up now. You may as well. He's on
5 the witness list, Solicitor?

6 MR. MOBLEY: Yes, Your Honor.

7 THE COURT: All right. The fact that you have
8 your father in law enforcement and you know one of the
9 troopers in this case, could you still be a fair and
10 impartial juror to both the State and the defense in
11 this case?

12 PROSPECTIVE JUROR: I can try.

13 THE COURT: And that might just be semantics
14 when you say you can try. Can I pin you down a little
15 bit more on that, if that's a yes or no?

16 PROSPECTIVE JUROR: It's tough. I don't know
17 that I could be.

18 THE COURT: All right. I think that's fair.
19 You know yourself. I'm going to set you aside from the
20 trial of this case. Just do not say anything to your
21 fellow jurors.

22 PROSPECTIVE JUROR: Sure.

23 THE COURT: Okay. Thank you. Thank you very
24 much. And tell your dad I said hello.

25

1 (The bench conference is concluded.)

2 THE COURT: All right. I believe we have two
3 ladies; is that correct? Yes, ma'am. And I'm going to
4 call that blue. Your number and name, please?

5 PROSPECTIVE JUROR: One-seventy-one, Henrietta
6 Strohecker. My husband was a trooper for the Highway
7 Patrol, a patrol dispatcher.

8 THE COURT: That was your husband?

9 PROSPECTIVE JUROR: He was a dispatcher about
10 20 years ago.

11 THE COURT: All right. A dispatcher for the
12 Highway Patrol?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: All right. Given that fact, could
15 you still be a fair and impartial juror to both the
16 State and the defense in this case?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Thank you. You may be seated.
19 Yes, ma'am.

20 PROSPECTIVE JUROR: Number 2, Nancee Arnold.
21 My grandfather is long retired from the South Carolina
22 Highway Patrol.

23 THE COURT: All right. And the fact that your
24 grandfather was a member of the South Carolina Highway
25 Patrol, could you still be a fair and impartial juror to

1 both the State and the defense in this case?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Thank you. You may be seated.

4 Yes, ma'am, your number and name, please?

5 PROSPECTIVE JUROR: One-eighty-four,

6 Virginia Youmans.

7 THE COURT: All right.

8 PROSPECTIVE JUROR: I currently reside with a
9 county sheriff's deputy. I'm employed with Lexington
10 E.M.S. I work alongside a majority of these people.

11 THE COURT: All right. Step up here for me,
12 Ms. Youmans.

13 (The following bench conference with the
14 Court, counsel, and the juror is reported.)

15 THE COURT: Good morning. How are you doing?

16 PROSPECTIVE JUROR: Great.

17 THE COURT: You're employed with E.M.S.?

18 PROSPECTIVE JUROR: Uh huh. (Indicating
19 affirmative response).

20 THE COURT: And you say you know a majority of
21 these people. Tell me who you're referring to.

22 PROSPECTIVE JUROR: Not specifically by name.
23 But from working with the Highway Patrol, I know two of
24 the -- I know the E.M.S. and fire service personnel.

25 THE COURT: Who? Which ones do you know?

1 PROSPECTIVE JUROR: Elizabeth Simmons and
2 Nathan -- I don't remember his last name, but don't tell
3 him.

4 THE COURT: All right. I'm going to try to
5 find it for you so you'll know.

6 MR. MOBLEY: Prouse.

7 THE COURT: Prouse. All right. I think I'm
8 going to set you aside for the trial of this case.

9 PROSPECTIVE JUROR: Okay.

10 THE COURT: Please do not say anything to your
11 fellow jurors. All right. Thank you. You may go back
12 and have a seat. Thank you very much.

13 (The bench conference is concluded.)

14 THE COURT: Were there any others?

15 (Juror stands.)

16 THE COURT: All right. Yes, ma'am, your
17 number and name, please?

18 PROSPECTIVE JUROR: Eighty-seven, Anna
19 Hickman.

20 THE COURT: Eighty-seven?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: All right. Your relationship or
23 friendship?

24 PROSPECTIVE JUROR: My godfather used to work
25 for the Columbia Police Department, retired, and now an

1 F.B.I. agent. I've got a brother that's on the special
2 task force for Lexington County, and my sister is
3 retired law enforcement, deputy sheriff from Lexington
4 County.

5 THE COURT: Who's your godfather?

6 PROSPECTIVE JUROR: James Spann.

7 THE COURT: James?

8 PROSPECTIVE JUROR: Spann.

9 THE COURT: Spann. All right. Given those
10 relationships, could you still be a fair and impartial
11 juror to both the State and the defense in this case?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Thank you. You may be seated.
14 Yes, sir, your number and name, please?

15 PROSPECTIVE JUROR: One hundred four, Brian
16 Lane. My college roommate who lives out in Irmo is
17 currently a highway patrolman.

18 THE COURT: All right. Given that friendship,
19 Mr. Lane, could you still be a fair and impartial juror
20 to both the State and the defense in this case?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Thank you. You may be seated.
23 Any others?

24 (There is no response.)

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

1 member of or ever made a contribution to organizations
2 such as M.A.D.D., Mothers against Drunk Driving;
3 S.A.D.D., Students against Drunk Driving; A.A.; Al-Anon
4 or any other similar organization that is opposed to the
5 consumption of alcoholic beverages? If so, please
6 stand.

7 (Jurors stand.)

8 PROSPECTIVE JUROR: I made at one time a
9 contribution to M.A.D.D.

10 THE COURT: All right. Can you give me just a
11 moment. All right. Yes, sir, your number and name,
12 please?

13 PROSPECTIVE JUROR: Thirteen, David Blocker.

14 THE COURT: And what was your response?

15 PROSPECTIVE JUROR: I made a contribution one
16 time to M.A.D.D.

17 THE COURT: To M.A.D.D. And the fact that you
18 made a contribution to M.A.D.D. one time, could you
19 still be a fair and impartial juror to both the State
20 and the defense in this case?

21 PROSPECTIVE JUROR: Yeah.

22 THE COURT: Thank you. You may be seated.
23 Yes, ma'am.

24 PROSPECTIVE JUROR: Juror 21, Kathy Burr.

25 THE COURT: And what organization?

1 PROSPECTIVE JUROR: Probably all of the above.

2 THE COURT: All right. As a member or
3 contributor or both?

4 PROSPECTIVE JUROR: Contributor.

5 THE COURT: All right. And the fact that you
6 have been a contributor to those organizations, could
7 you still be a fair and impartial juror to both the
8 State and the defense in this case?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Thank you. You may be seated.
11 Yes, ma'am.

12 PROSPECTIVE JUROR: Number 5 --

13 COURT REPORTER: I'm sorry, Judge. I cannot
14 hear.

15 THE COURT: Can you speak up a little bit for
16 me. I'm sorry.

17 PROSPECTIVE JUROR: Five, Burgundy Barr. I
18 also have family members in those organizations.

19 THE COURT: All right. And the fact that you
20 have family members in those organizations -- is that
21 what you said?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Could you still be a fair and
24 impartial juror to both the State and the defense in
25 this case?

1 PROSPECTIVE JUROR: Honestly, no, sir.

2 THE COURT: All right. Thank you. I'll set
3 number 5 aside for the trial of this case. Please do
4 not say anything to your fellow jurors. Thank you.
5 Yes, ma'am, your number and name?

6 PROSPECTIVE JUROR: Number 52, Meredith Duke.
7 I have been a member of Al-Anon and have family members
8 in A.A., and I was a member of S.A.D.D. in high school.

9 THE COURT: All right. Given those
10 relationships, could you still be a fair and impartial
11 juror to both the State and the defense in this case?

12 PROSPECTIVE JUROR: I believe so.

13 THE COURT: And, when you say you believe so,
14 that may just be a matter of semantics. I'm just trying
15 to pin you down, I guess. Would that be a yes or no or
16 could you set aside the fact that you have contributed
17 or have relationships with those organizations and make
18 your decision based solely on what you hear in this
19 courtroom and the law as I tell you the law is?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Thank you. You may be seated.
22 You may stay with us. Yes, ma'am, this lady that just
23 stood up, your number and name, please?

24 PROSPECTIVE JUROR: Number 8, and my name is
25 Shirley Beaty, and I did contribute to M.A.D.D.,

1 drunk driving.

2 THE COURT: All right. And the fact that you
3 have contributed in that regard, could you still be a
4 fair and impartial juror to both the State and the
5 defense in this case?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Thank you. You may be seated.
8 Yes, ma'am, your number and name, please?

9 PROSPECTIVE JUROR: One hundred six, Kathleen
10 Lewis. I've given yearly contributions to M.A.D.D. for
11 approximately seven years.

12 THE COURT: And the fact that you have given
13 those contributions over that period of time, could you
14 still be a fair and impartial juror to both the State
15 and the defense in this case?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Thank you. You may be seated.
18 Yes, sir.

19 PROSPECTIVE JUROR: Number 160, Ed Siggelko. I
20 contribute to M.A.D.D. annually.

21 THE COURT: And the fact that you annually
22 contribute to M.A.D.D., could you still be a fair and
23 impartial juror to both the State and the defense in
24 this case?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Thank you. You may be seated.
2 Yes, ma'am, in the white.

3 PROSPECTIVE JUROR: Twenty-four, Catherine
4 Byrd. I've contributed to M.A.D.D., and I've been
5 involved with the Lexington County Coalition,
6 L.R.A.D.A.C., and I educate students as a parent
7 volunteer about drinking and driving.

8 THE COURT: All right. Given the fact of the
9 contribution and the relationship with the other
10 organization, could you still be a fair and impartial
11 juror to both the State and the defense in this case?

12 PROSPECTIVE JUROR: Yes, I can.

13 THE COURT: Thank you. You may be seated.
14 Yes, ma'am, in the purple.

15 PROSPECTIVE JUROR: My name is Rose Hampton,
16 number 77. I've been a member and contributor to A.A.
17 for over 20 years.

18 THE COURT: The fact you have been a
19 contributor for over 20 years to that organization,
20 could you still be a fair and impartial juror to both
21 the State and the defense in this case?

22 PROSPECTIVE JUROR: Yes, Your Honor.

23 THE COURT: Thank you very much. You may be
24 seated. Yes, ma'am, in the back.

25 PROSPECTIVE JUROR: Number 174, Erica

1 Tobolski. I've contributed to M.A.D.D.

2 THE COURT: The fact that have you been a
3 contributor to M.A.D.D., could you still be a fair and
4 impartial juror to both the State and the defense in
5 this case?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Thank you very much. You may be
8 seated. Yes, sir.

9 PROSPECTIVE JUROR: Juror number 80, John
10 Hargreaves. I have a family member going through the
11 A.A. process.

12 THE COURT: All right. Given that fact, could
13 you still be a fair and impartial juror to both the
14 State and the defense in this case?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Thank you. Yes, sir, your number
17 and name, please?

18 PROSPECTIVE JUROR: One-fifty-one, Kenneth
19 Saunders. I have a family member, several family
20 members, in A.A. and Al-Anon.

21 THE COURT: All right. And given that fact,
22 could you still be a fair and impartial juror to both
23 the State and the defense in this case?

24 PROSPECTIVE JUROR: Yes, Your Honor.

25 THE COURT: Thank you very much. You may be

1 seated. Has any member of the jury panel ever testified
2 in court as a witness in a criminal trial? If so,
3 please stand.

4 (Juror stands.)

5 THE COURT: Yes, your number and name, please?

6 PROSPECTIVE JUROR: My number is 10, Lesley
7 Bennett. I'm not really sure of the question.

8 THE COURT: All right. Step up here for me,
9 please.

10 (The following bench conference with the
11 Court, counsel, and the juror is reported.)

12 THE COURT: Good morning. How are you? You
13 are Ms...

14 PROSPECTIVE JUROR: Bennett.

15 THE COURT: Bennett. All right.

16 PROSPECTIVE JUROR: I'm not sure what criminal
17 court is but --

18 THE COURT: That's good.

19 PROSPECTIVE JUROR: -- when I was 12, my
20 father killed my mother, and I had to go to court for
21 that.

22 THE COURT: All right. Well, given that fact
23 that occurred when you were a child, could you still be
24 a fair and impartial juror to both the State and the
25 defense in this case?

1 PROSPECTIVE JUROR: Absolutely.

2 THE COURT: Thank you very much. You may be
3 seated.

4 (The bench conference is concluded.)

5 THE COURT: Besides those organizations I
6 asked you about directly, M.A.D.D., S.A.D.D., and the
7 others, is there any member of the jury panel that is a
8 member of or a financial contributor to any group which
9 has as its primary concern the promotion of law
10 enforcement or victims' rights? If so, please stand.

11 (There is no response.)

12 THE COURT: And again, ladies and gentlemen,
13 the indictments allege two offenses, felony D.U.I.
14 involving a death and possession of a controlled
15 substance.

16 You know yourself. Is there any member of the
17 jury panel that has personal beliefs about alcohol, the
18 consumption of alcohol or anything of that nature
19 whereby you think you could not be a fair and impartial
20 juror to both the State and the defense in the trial of
21 this case? If so, please stand.

22 (There is no response.)

23 THE COURT: I'm going to call a list of names
24 of potential witnesses in the trial of this case. The
25 question, of course, ladies and gentlemen, is if any

1 member of the jury panel is related by blood or marriage
2 or close personal friends of any of these individuals
3 whose names I call.

4 I would ask if any of the witnesses are
5 present, if they would please stand and face the jury
6 panel when your names are called. I would advise the
7 panel that the witnesses are not required to be present
8 during this proceeding, so there may be names called and
9 no one stands.

10 Lance Corporal Q.D. Hallman, Lance Corporal
11 J.B. Baker, both with the South Carolina Highway Patrol,
12 to my front right. Thank you. Heather Fairchild, Lois
13 Cannis, C-A-N-N-I-S, Cannis (phonetic). This is Ms. --
14 how do you pronounce that, ma'am?

15 WITNESS: Cannis.

16 THE COURT: Well, I got it wrong both times
17 then. This is the young lady in the back of the
18 courtroom. Thank you very much. And Trooper D.R.
19 Dodson with the South Carolina Highway Patrol.

20 Again, ladies and gentlemen, is any member of
21 the jury panel related by blood or marriage or close
22 personal friends of any of those individuals whose names
23 I just called and/or who stood before you? If so,
24 please stand.

25 (There is no response.)

1 THE COURT: The next five names: Sergeant
2 C.M. Shelton, Corporal C.M. Coats, Lance Corporal R.A.
3 Frick, Amy Stephens with S.L.E.D., and Nancy V.
4 Chenausky with Palmetto Richland Memorial Hospital.

5 Is any member of the jury panel related by
6 blood or marriage or close personal friends with any of
7 those individuals? If so, please stand.

8 (There is no response.)

9 THE COURT: The next five: Sergeant G.T.
10 Levine, Maribeth C. Burroughs.

11 (Juror stands).

12 THE COURT: Yes, sir, your number and name,
13 please?

14 PROSPECTIVE JUROR: One-fifteen, Archie
15 Maddox.

16 THE COURT: And you have a personal or
17 business relationship with Sergeant Levine?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Given that fact, could you still
20 be a fair and impartial juror to both the State and the
21 defense in this case?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Thank you. You may be seated.
24 Maribeth C. Burroughs with S.L.E.D.; Katie Coy, C-O-Y,
25 S.L.E.D.; Jennifer M.G. Brown with S.L.E.D.; Lance

1 Corporal A.L. Antley, South Carolina Highway Patrol.

2 (There is no response.)

3 THE COURT: The next five: Lance Corporal
4 J.L. Stokes, South Carolina Highway Patrol; Elizabeth
5 Simmons, Lexington County E.M.S. This is Ms. Simmons to
6 my front right. Thank you, Ms. Simmons. James
7 Seagroves, Lexington County E.M.S.; Jerry Wise,
8 Lexington County Fire Service. This is Mr. Wise to my
9 right front. Ronnie Steele, Lexington County Fire
10 Service. You may be seated, Mr. Wise.

11 Is any member of the jury panel related by
12 blood or marriage or close personal friends with any of
13 those individuals?

14 (Juror stands.)

15 THE COURT: All right. Yes, sir. Again,
16 Mr. Maddox?

17 PROSPECTIVE JUROR: Yes, sir. Ronnie Steele
18 worked --

19 COURT REPORTER: I'm sorry, Judge.

20 THE COURT: Ronnie Steele works with you?

21 PROSPECTIVE JUROR: Works for me.

22 THE COURT: He works for you?

23 Is he not with the Lexington County Fire
24 Service, Solicitor?

25 MR. MOBLEY: He's a volunteer, Your Honor.

1 THE COURT: All right. I'm going to set you
2 aside for the trial of this case. Thank you very much.

3 The next five: Charles Wessinger, Jr. and
4 Charles Wessinger, Sr. with the Lexington County Fire
5 Service, David Oswalt, April Rabon, Eric Kitchen. This
6 is Ms. Rabon. Is that right?

7 WITNESS: Yes, sir.

8 THE COURT: All right. Thank you. You may be
9 seated.

10 Is any member of the jury panel related by
11 blood or marriage or close personal friends with any of
12 those individuals whose names I just called and/or who
13 stood before you? If so, please stand.

14 (There is no response.)

15 THE COURT: The next five: Sergeant S.R.
16 Breland with the South Carolina Highway Patrol M.A.I.T.
17 team; Corporal J.R. O'Donnell, also with the M.A.I.T.
18 team; Lance Corporal S.C. Garren, also with the M.A.I.T.
19 team; Nikki Perry. Is that Ms. Perry with S.L.E.D.?

20 MR. MOBLEY: That is correct, Your Honor.

21 THE COURT: With S.L.E.D. Danny Hoover,
22 Lexington County Fire Service.

23 Is any member of the jury panel related by
24 blood or marriage or close personal friends with any of
25 those individuals whose names I just called? If so,

1 please stand.

2 (There is no response.)

3 THE COURT: The next five: Nathan Prouse,
4 Lexington County Fire Service. This is Mr. Prouse to my
5 front right. Bill Zeigler, Lexington County Deputy
6 Coroner; Tiffany Hall, Lexington County E.M.S.; Brandon
7 J. Landrum with S.L.E.D.; and Brandon A. Williams, also
8 with S.L.E.D.

9 (There is no response.)

10 THE COURT: The final three: Patricia H.
11 Crooks with S.L.E.D.; Heather H. Dailey with S.L.E.D.;
12 and Victor Tomaino with the Lexington County Fire
13 Service.

14 Is any member of the jury panel related by
15 blood or marriage or close personal friends with any of
16 those individuals whose names I called and/or who stood
17 before you? If so, please stand.

18 (There is no response.)

19 THE COURT: Any additional requested voir dire
20 from the State?

21 MR. MOBLEY: None, Your Honor.

22 THE COURT: From the defense?

23 MR. MADSEN: None, Your Honor.

24 THE COURT: And finally, ladies and gentlemen,
25 does any member of the jury panel, do you personally

1 know of any reason whatsoever why you feel like you
2 could not be a fair and impartial juror in the trial of
3 this case for both the State and the defense? If so,
4 please stand.

5 (There is no response.)

6 THE COURT: All right. I find the panel is
7 qualified with the exception of those that I have set
8 aside. Mr. Solicitor, how many strikes?

9 MR. MOBLEY: It's five and five, Your Honor.

10 THE COURT: Is that correct, Mr. Madsen?

11 MR. MADSEN: It is, Your Honor.

12 THE COURT: All right. If you would please
13 instruct the jury, Madame Clerk, and give us a panel.

14 CLERK: Yes, sir. As I told you about
15 earlier, when I call your name and number, if you will
16 come forward and stand right in front of this little
17 podium, facing back out at the audience, until I give
18 you instructions to have a seat in the jury box or to
19 return to your seat out there, please.

20 THE COURT: Sheriff, show them where I would
21 like for them to stand when their name is called. Yes,
22 sir, Solicitor.

23 MR. MOBLEY: Your Honor, may we approach for a
24 moment?

25 THE COURT: Yes, sir.

1
2 (Whereupon there is a bench conference off the
3 record in the presence of the jury panel but out of the
4 hearing of the jury panel.)

5 THE COURT: Mr. Graham, step up here for me,
6 please. Step up here for me, Mr. Graham.

7 (The following bench conference with the
8 Court, counsel, and the juror is reported.)

9 THE COURT: Good morning. How are you, sir?

10 PROSPECTIVE JUROR: I'm pretty good.

11 THE COURT: Do you know Mr. Eargle?

12 PROSPECTIVE JUROR: Yes, I do.

13 THE COURT: All right. And y'all knew each
14 other in high school?

15 PROSPECTIVE JUROR: Yeah. This is the first
16 time I've seen him in 15, 16 years.

17 THE COURT: Y'all have been out of high school
18 that long?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: I was out of high school before
21 y'all were born probably. What year were y'all born?

22 PROSPECTIVE JUROR: Sixty-four, '65.

23 THE COURT: Yeah, I was out of high school
24 before you were born. See, y'all thought I made that
25 up. Given the fact that you have known him that period

1 of time, could you still be a fair and impartial juror
2 to both the State and the defense in this case?

3 PROSPECTIVE JUROR: Oh, certainly.

4 THE COURT: Did you forget when I asked that
5 question?

6 PROSPECTIVE JUROR: You said close personal
7 friend, and after 16 years --

8 THE COURT: I know. That's like mine. After
9 45 years, if they ain't called me up by now, I'm not
10 going to the reunion to see them. All right. I
11 understand. Thank you very much. You may have a seat.
12 You may stay with us.

13 (The bench conference is concluded.)

14 THE COURT: Any others?

15 (There is no response.)

16 THE COURT: All right. Thank you very much.
17 Again, ladies and gentlemen, if you would follow the
18 instructions of the clerk when your name is called. If
19 your name is called, if you'd please come forward to the
20 podium, turn around, and face back out towards your
21 peers and await further instructions which is pretty
22 much what I do. I assure you the Clerk will give you
23 further instructions.

24 With that being said, Madame Clerk, if you
25 would give us a panel. Our strikes are five and five.

1 CLERK: Thank you, sir. Number 158, Barbara
2 Johnson.

3 (The juror, a white female, comes forward.)

4 THE COURT: Come right up to the podium,
5 Ms. Johnson, and turn around and face back out to your
6 peers. Thank you very much.

7 CLERK: What say you for the State?

8 MR. MOBLEY: Please present the juror.

9 CLERK: What say you for the defense?

10 MR. MADSEN: Please seat Ms. Johnson.

11 CLERK: Have a seat in the jury box, ma'am.

12 Ladies and gentlemen, make sure you bring your
13 purses and your umbrellas, whatever you have, with you
14 when you come up; okay?

15 Number 87, Anna Hickman.

16 (The juror, a black female, comes forward.)

17 CLERK: What say you for the State?

18 MR. MOBLEY: Please present the juror.

19 CLERK: What say you for the defense?

20 MR. MADSEN: Please seat Ms. Hickman.

21 CLERK: Have a seat in the jury box, ma'am.

22 Number 86, Patricia Heyliger.

23 (The juror, a black female, comes forward.)

24 CLERK: What say you for the State?

25 MR. MOBLEY: Please present the juror.

1 CLERK: What say you for the defense?
2 MR. MADSEN: Please seat Ms. Heyliger.
3 CLERK: Have a seat in the jury box, ma'am.
4 Number 79, Stephanie Hansen.
5 (The juror, a white female, comes forward.)
6 CLERK: What say you for the State?
7 MR. MOBLEY: Please present the juror.
8 CLERK: What say you for the defense?
9 MR. MADSEN: Please seat Ms. Hansen.
10 CLERK: Have a seat in the jury box, ma'am.
11 Number 10, Lesley Bennett.
12 (The juror, a white female, comes forward.)
13 CLERK: What say you for the State?
14 MR. MOBLEY: Please present the juror.
15 CLERK: What say you for the defense?
16 MR. MADSEN: Please seat Ms. Bennett.
17 CLERK: Have a seat in the jury box, ma'am.
18 Number 69, Janice Gordon.
19 (The juror, a black female, comes forward.)
20 CLERK: What say you for the State?
21 MR. MOBLEY: Please present the juror.
22 CLERK: What say you for the defense?
23 MR. MADSEN: Please seat Ms. Gordon.
24 CLERK: Have a seat in the jury box, ma'am.
25 Number 97, Joanne Keough.

1 (The juror, a white female, comes forward.)

2 CLERK: What say you for the State?

3 MR. MOBLEY: Please excuse the juror.

4 CLERK: Return to your seat, please, ma'am.

5 Number 6, Jonathan Bauer.

6 (The juror, a white male, comes forward.)

7 CLERK: What say you for the State?

8 MR. MOBLEY: Please present the juror.

9 CLERK: What say you for the defense?

10 MR. MADSEN: Please seat Mr. Bauer.

11 CLERK: Have a seat in the jury box, sir.

12 Number 163, Lisa Sipe.

13 (The juror, a white female, comes forward.)

14 CLERK: What say you for the State?

15 MR. MOBLEY: Please present the juror.

16 CLERK: What say you for the defense?

17 MR. MADSEN: Please seat Ms. Sipe.

18 CLERK: Have a seat in the jury box, ma'am.

19 Eighty-five, Jeffrey Hester.

20 (The juror, a white male, comes forward)

21 CLERK: Come on up just a little bit more

22 toward the podium. Thank you.

23 What say you for the State?

24 MR. MOBLEY: Please present the juror.

25 CLERK: What say you for the defense?

1 MR. MADSEN: Please seat Mr. Hester.

2 CLERK: Have a seat in the jury box, sir.

3 One hundred, Katie Kitchen.

4 (The juror, a white female, comes forward.)

5 CLERK: What say you for the State?

6 MR. MOBLEY: Please present the juror.

7 CLERK: What say you for the defense?

8 MR. MADSEN: Please excuse Ms. Kitchen from
9 the trial of this case.

10 CLERK: Return to your seat, please, ma'am.

11 Fifty-six, Anthony Eleazer.

12 (The juror, a black male, comes forward.)

13 CLERK: What say you for the State?

14 MR. MOBLEY: Please excuse the juror.

15 CLERK: Return to your seat, please, sir.

16 Number 175, Angela Vandyke.

17 (The juror, a white female, comes forward.)

18 CLERK: What say you for the State?

19 MR. MOBLEY: Please present the juror.

20 CLERK: What say you for the defense?

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

23 CLERK: Return to your seat, please, ma'am.

24 Seventy-eight, Mary Hansen.

25 (The juror, a white female, comes forward.)

1 CLERK: What say you for the State?
2 MR. MOBLEY: Please present the juror.
3 CLERK: What say you for the defense?
4 MR. MADSEN: Please seat Ms. Hansen.
5 CLERK: Have a seat in the jury box, ma'am.
6 Number 46, Christine Deming.
7 (The juror, a white female, comes forward.)
8 CLERK: What say you for the State?
9 MR. MOBLEY: Please present the juror.
10 CLERK: What say you for the defense?
11 MR. MADSEN: Please seat Ms. Deming.
12 CLERK: Have a seat in the jury box, ma'am.
13 Number 14, Edward Boykin.
14 (The juror, a white male, comes forward.)
15 CLERK: What say you for the State?
16 MR. MOBLEY: Please present the juror.
17 CLERK: What say you for the defense?
18 MR. MADSEN: Please excuse Mr. Boykin from the
19 trial of this case.
20 CLERK: Return to your seat, please, sir.
21 Number 38, Bernice Cureton.
22 (The juror, a black female, comes forward.)
23 CLERK: What say you for the State?
24 MR. MOBLEY: Please present the juror.
25 CLERK: What say you for the defense?

1 MR. MADSEN: Please seat Ms. Cureton.

2 CLERK: Have a seat in the jury box, ma'am.

3 Alternates, Your Honor?

4 THE COURT: Yes, ma'am. One alternate will be
5 sufficient, Solicitor?

6 MR. MOBLEY: Yes, Your Honor.

7 THE COURT: Mr. Madsen?

8 MR. MADSEN: Yes, sir.

9 THE COURT: The strikes are one and two.

10 CLERK: Yes, sir. Number 13, David Blocker.

11 (The juror, a white male, comes forward.)

12 CLERK: What say you for the State?

13 MR. MOBLEY: Please present the juror.

14 CLERK: What say you for the defense?

15 MR. MADSEN: Please excuse Mr. Blocker
16 from the trial of this case.

17 CLERK: Return to your seat, please, sir.

18 Number 138, Jessica Poole.

19 (The juror, a white female, comes forward.)

20 CLERK: What say you for the State?

21 MR. MOBLEY: Please excuse the juror.

22 CLERK: Return to your seat, please, ma'am.

23 Number 157, Wayne Shealy.

24 (The juror, a white male, comes forward.)

25 CLERK: What say you for the State?

1 MR. MOBLEY: Please present the juror.

2 CLERK: What say you for the defense?

3 MR. MADSEN: Please excuse Mr. Shealy from the
4 trial of this case.

5 CLERK: Return to your seat, please, sir.

6 Number 59, Jennifer Finklea.

7 (The juror, a white female, comes forward.)

8 CLERK: What say you for the State?

9 MR. MOBLEY: Please present the juror.

10 CLERK: What say you for the defense?

11 MR. MADSEN: Please seat Ms. Finklea.

12 CLERK: Have a seat in the jury box, ma'am.

13 That's our alternate, Your Honor.

14 (The jury is impaneled at 11:57 a.m.)

15 THE COURT: Any motions regarding the jury
16 selection process from the State?

17 MR. MOBLEY: None, Your Honor.

18 THE COURT: From the defense?

19 MR. MADSEN: No, Your Honor.

20 THE COURT: All right. Thank you. Thank you
21 very much.

22 Ladies and gentlemen that were selected for
23 the panel for the trial of this case, momentarily I'm
24 going to ask you to step to your jury room with your
25 bailiff.

1 During this time, I'm going to ask you to
2 perform your first function as a jury, and that is to
3 select among the primary jury one of your number to
4 serve as the foreperson of this jury. It can be anyone
5 except Ms. Finklea. Did I pronounce that correctly?
6 Pronounce it for me.

7 JUROR: Finklea.

8 THE COURT: Finklea. It can be any one among
9 your number except Ms. Finklea. Although I'm sure
10 Ms. Finklea would make a fine jury foreperson, right
11 now, she is in the status of an alternate juror, so she
12 would not be authorized to serve as the foreperson of
13 this jury. I know she is very disappointed in that
14 regard.

15 However, any one among your number, if you
16 would please select the foreperson of the jury, and that
17 person would be the jury's spokesperson here in the
18 courtroom and would also be responsible for writing and
19 signing the verdict.

20 During this brief recess, do not discuss this
21 case with anyone. That includes your fellow jurors or
22 anyone else. If anyone tries to talk with you about the
23 case, please let me know immediately.

24 I will certainly give you further instructions
25 concerning your duties and responsibilities as jurors

1 prior to the taking of testimony in the trial of this
2 case, but if you would, please, once you've made your
3 selection, write that name down, knock on the jury room
4 door and give the name to the bailiff, that note to the
5 bailiff.

6 I will have you right back out here in the
7 courtroom. We will see where we're at administratively
8 as far as our time is concerned. If you would now go to
9 your jury room with our bailiff.

10 (The jury retires to the jury room.)

11 (The jury panel is excused.)

12 THE COURT: There are motions, Solicitor; is
13 that correct?

14 MR. MOBLEY: That's what I understand, Your
15 Honor. That is correct, Your Honor.

16 THE COURT: Is that correct, Mr. Madsen?

17 MR. MADSEN: Yes, Your Honor.

18 THE COURT: And it's 12:00 o'clock now. How
19 long will the motions take?

20 MR. MADSEN: Judge, I would imagine they're
21 going to take some time. I think they're going to
22 require testimony; but, all in all, it looks like I have
23 approximately ten motions, to include Jackson v. Denno
24 and some suppression motions.

25 THE COURT: An hour, hour and a half?

1 MR. MADSEN: I would think at least two hours.
2 It's kind of hard to say.

3 THE COURT: All right. Thank you. What time
4 do you want me to bring the panel back? Do you have a
5 suggestion, Solicitor, Mr. Madsen?

6 MR. MOBLEY: My suggestion would be after
7 lunch, Your Honor. From my understanding, your lunch
8 normally consists from 1:00 or 1:30 to 2:00 or 2:30. So
9 I would suggest 3:00 o'clock to be honest with you.

10 MR. MADSEN: That's fine, Judge. I just
11 worry that we might not have the motions done by then.

12 THE COURT: By 3:00 o'clock?

13 MR. MADSEN: I mean, depending on a lunch
14 break in there.

15 THE COURT: All right. Bring us the jury
16 panel, please.

17 (The jury returns to the courtroom.)

18 THE COURT: Welcome back. Mr. Hester, is that
19 correct?

20 FOREMAN: Yes, sir.

21 THE COURT: Thank you for agreeing to serve as
22 the foreperson of the jury. Momentarily, ladies and
23 gentlemen, I'm going to release you for somewhat of an
24 extended luncheon recess. I will explain to you more
25 about that momentarily.

1 Prior to doing that, I'm going to give you
2 certain instructions concerning this recess and all
3 other recesses during the course of the trial of this
4 case.

5 During your jury service, you shall not
6 discuss the case with others. That includes your fellow
7 jurors, family, friends, lunch mates or anyone else.
8 You should not read or listen to any news reports about
9 the case, should there be any.

10 You may not use a computer, cellular phone or
11 other electronic device with communication capabilities
12 while in attendance at trial or during deliberations.
13 These devices, of course, may be used during lunch
14 breaks but may not be used to obtain or disclose certain
15 information.

16 The information which is prohibited is the
17 following. This is not limited only to the following,
18 but this is prohibited information. You may not use a
19 computer, cellular phone or any other electronic device
20 with communication capabilities to get any information
21 about a party, a witness, an attorney or a court officer
22 or to get any news accounts of the case or to get any
23 information collected through juror research on any
24 topic raised or testimony offered by any witness or any
25 information collected through juror research on any

1 other topic that the juror might think would be helpful
2 in deciding the case.

3 What all that means is in the days of the
4 information age, you can't use your computer or cell
5 phone to look up information about a person, prior news
6 accounts about the case, should there be any, legal
7 terms, anything of that nature.

8 You have to decide the case based on the
9 evidence and testimony that is presented in this
10 courtroom and the witnesses that will testify before you
11 from this witness stand under oath, any documentary
12 evidence, anything else that may be introduced, and the
13 law as I tell you the law is.

14 So you can't look up factual information about
15 the case or about anyone, and you can't look up legal
16 information. You are the judges of the facts in the
17 case. You determine the facts based on what you hear in
18 the courtroom, the inferences that you decide and that
19 you determine may be properly drawn from the evidence
20 and testimony, and you apply that to the law as I tell
21 you the law is.

22 You are the judges of the facts. I am the
23 judge of the law. I used to tell jurors prior to about
24 a month ago that this has become an issue in other
25 states in our country but not in South Carolina and

1 certainly not in Lexington County.

2 I cannot say that anymore because previously a
3 juror within the last month or so did choose to look up
4 certain information on the internet, which is prohibited
5 and which violates the oath, and that juror was
6 disciplined in that regard. So please keep that in
7 mind.

8 Remember, do not watch, read or listen to any
9 news reports about the trial and keep an open mind about
10 the case. Do not begin your deliberations until I
11 instruct you to do so.

12 This case is no different than other cases.
13 Many times there are motions that must be heard by the
14 Court prior to the taking of testimony in the trial of a
15 case.

16 There are certain motions that I must hear
17 outside of your presence. They may take some period of
18 time, so I'm going to give you somewhat of an extended
19 lunch break today.

20 I would ask you to please be back in your jury
21 room promptly at 3:30. I will then try to hear all the
22 motions in the case, and hopefully we'll be able to
23 proceed in an efficient manner upon your return. Any
24 questions?

25 (There is no response.)

1 THE COURT: Please be back promptly at 3:30
2 and follow the instructions of the Court in regard to
3 your jury service in the trial of this case. With that
4 being said, you are now excused for your luncheon
5 recess. See you at 3:30.

6 (The jury is excused for lunch at 12:14 p.m.)

7 THE COURT: All right. Motions, Mr. Madsen?

8 MR. MADSEN: Judge, initially I would like to
9 put our motion for continuance on the record, Your
10 Honor. Your Honor, this case is one that has been
11 pending since, I believe, August 27th, of 2009.

12 Initially when I received discovery from the
13 Solicitor's Office, ultimately to break down their case,
14 their only evidence in this case that my client was the
15 driver of the vehicle was, A., it was his girlfriend's
16 vehicle, and B., they had a statement from a bartender
17 that says that that was his girlfriend's vehicle and he
18 left the bar, and therefore he must have been driving.

19 They did not provide any statements or actual
20 eye witnesses to say who was driving the vehicle, nor
21 did they provide anything from M.A.I.T. indicating that
22 they can, forensically or through any physical evidence,
23 say who was the driver of the vehicle.

24 Judge, on April 28th I began receiving Brady
25 disclosures from the Solicitor's office. On 4/28 that

1 was a disclosure by a Nathan Prouse. Ultimately there's
2 a statement there.

3 Later I received another e-mail from the
4 Solicitor on a Brady disclosure in reference to a Jerry
5 Wise on May 5th. Then, again, I received a disclosure
6 from the Solicitor's office on May 7th, which would have
7 been Friday, at 10:56 a.m. The final one came on May
8 the 7th, which is Friday, at 4:36 p.m., Judge.

9 I would like, Your Honor, because those are
10 all statements that allegedly my client made to those
11 individuals and they vary, but the last one ultimately
12 says that, I should not have been driving, which they
13 got progressively more exculpatory.

14 I would like to mark those in the record, Your
15 Honor, as a Court's exhibit. Given the fact that we
16 don't have anything from M.A.I.T., our initial posture
17 of the case was to make them prove their case, and we
18 had not anticipated calling any witnesses.

19 Given these statements and how this case has
20 actually changed or at least the evidence that the
21 Solicitor has has changed in this case, we would move
22 for a continuance to hire an expert on accident
23 reconstruction to review all the material and see if
24 based on the physical evidence, they could indicate who
25 was driving the vehicle.

1 Like I said, Judge, I would like to have these
2 e-mails that I received from the Solicitor's Office
3 marked as a Court's exhibit into the record.

4 THE COURT: All right. Yes, sir, you may have
5 them marked.

6 COURT REPORTER: Do you want to just mark them
7 as one exhibit?

8 MR. MADSEN: That's fine.

9 (Court's Exhibit Number 1 is marked for
10 purposes of the record).

11 THE COURT: Anything further, Mr. Madsen?

12 MR. MADSEN: No, Your Honor, not in regard to
13 that issue.

14 THE COURT: All right. Solicitor?

15 MR. MOBLEY: Thank you, Your Honor. The State
16 strongly opposes any such continuance motion, Your
17 Honor, on the basis that, first and foremost, the
18 statements that were provided, those particular
19 statements, were provided almost contemporaneously when
20 I received them.

21 The moment I received those, which was during
22 the preparation of this trial itself, after a very
23 thorough interview with my officers, as well as the
24 E.M.S. workers, I was able to obtain those particular
25 statements, the same as Mr. Madsen could have done if he

1 had interviewed those particular witnesses who were
2 available to him. He could have actually obtained these
3 statements first or he could have simply asked his
4 client, Your Honor.

5 Secondly, the statements that we received,
6 they are not from law enforcement or anything of that
7 nature. So, as to whether they're exculpatory or
8 anything of that nature, we disagree with that.

9 It's going to come out on the stand that these
10 statements were made by the Defendant at the scene of
11 the accident itself. Additionally, Your Honor, I simply
12 do not see a connection between an accident
13 reconstructionist and this particular -- these
14 particular statements that were given by the Defendant
15 and don't see how they are interconnected.

16 An accident reconstructionist is basically
17 going to come up with the same thing that mine is going
18 to come up with on the stand and is going to be able to
19 say on the stand they simply could not determine who was
20 driving behind the wheel of the car that day from the
21 M.A.I.T. accident reconstruction team.

22 So we're going to present evidence, and we're
23 going to -- we're not hiding the ball or anything.
24 That's why we were providing all of these particular
25 things all the way up until Friday.

1 When I received them, it was a time period or
2 a time gap of between 15 and 35 minutes. I would have,
3 in the most efficient way and manner, sent Mr. Madsen an
4 e-mail detailing the statement, the time when it was
5 made, who it was made to, and the circumstances that
6 surrounded it, Your Honor.

7 So based upon those things, Your Honor, we
8 simply strongly object to any continuance motion being
9 granted to Mr. Madsen respectfully, Your Honor.

10 THE COURT: Thank you, Solicitor.

11 (Pause.)

12 THE COURT: Is there a Rule 35 motion filed in
13 this case?

14 MR. MOBLEY: Yes, Your Honor.

15 THE COURT: Is it in the Clerk's file?

16 MR. MOBLEY: Yes, Your Honor.

17 THE COURT: It's not in the Clerk's file. May
18 I see it, a copy of it? Wait a minute. I do see it.
19 It's stapled to the back of the Brady motion. I'm
20 sorry. It's just a -- that's all it amounts to?

21 MR. MADSEN: Yes, sir.

22 THE COURT: I'm sorry. I was looking for a
23 different type document. Is it the State's position
24 that these statements contained in the correspondence
25 now marked as Court's Exhibit Number 1 would not be

1 subject to Rule 5 disclosure because they were not in
2 response to interrogation?

3 MR. MOBLEY: That's correct, Your Honor. That
4 is the State's position.

5 THE COURT: And then it would not be Brady
6 why?

7 MR. MOBLEY: Simply it's not exculpatory, Your
8 Honor. When you are looking through those particular
9 statements, inferences can be drawn from them, but there
10 is no outright admission or anything of that nature
11 until the very last one where he states that, I should
12 not have been driving. So we're of the opinion that
13 basically maybe, up until the last one, none of them
14 are --

15 THE COURT: Well, in the first one, he says,
16 according to your document, Mr. Manning says, No, it was
17 just me and my buddy. He was riding with me.

18 MR. MOBLEY: That's correct, Your Honor, and
19 that -- or maybe I'm looking at it in a liberal way
20 here, and it would allow for several different
21 interpretations.

22 Maybe it can be construed that: He was riding
23 with me in the car, not saying that, I was driving at
24 that particular time. But I was just basically allowed
25 several interpretations with that one and wasn't

1 comfortable with just going forward with just that one
2 statement itself, Your Honor.

3 THE COURT: And all these statements come from
4 either E.M.S. or fire service personnel?

5 MR. MOBLEY: That is correct, Your Honor. The
6 moment I received those, Your Honor, I wrote up those
7 particular statements and tried to get them to
8 Mr. Madsen as efficiently as possible within the same
9 day and normally within a period -- a time period of 15
10 to 35 minutes, Your Honor.

11 THE COURT: What time frame, if any, had you
12 previously provided any E.M.S. reports to the defense?

13 MR. MOBLEY: I can get that, Your Honor. Bear
14 with me a moment.

15 THE COURT: E.M.S. or fire service reports.

16 MR. MOBLEY: I beg the Court's indulgence,
17 Your Honor. I have to find that cover letter.

18 (Pause.)

19 MR. MOBLEY: Your Honor, the culmination and
20 the completion of the E.M.S. reports and the run sheets
21 and things of that nature, we provided a copy April 28th
22 of 2010, Your Honor, once we received them.

23 We received them that same day. I made
24 copies, and I notified Mr. Madsen and sent it to him.
25 Because prior to that, some of those documents we did

1 not have, some of them we did. So we made duplicate
2 copies of everything and provided it to them on
3 April 28th, 2010, Your Honor.

4 THE COURT: That wasn't my question.

5 MR. MOBLEY: All right.

6 THE COURT: My question is, you said
7 Mr. Madsen had time to do this himself.

8 MR. MOBLEY: Yes, sir.

9 THE COURT: Well, the State has certain duties
10 and responsibilities under both Court rules and Court
11 decisions to provide certain information.

12 What time frame were the E.M.S. reports turned
13 over by the State to Mr. Madsen where he could conduct
14 this investigation on his own if he chose to talk with
15 Mr. Prouse, Ms. Simmons, and Mr. Tomaino -- that's
16 probably a wrong pronunciation again -- and I think
17 there was a Mr. Wise.

18 MR. MOBLEY: Yes, Your Honor.

19 THE COURT: What time frame did he have that
20 information whereby he could have gone and spoke to
21 these individuals or gotten their reports?

22 MR. MOBLEY: Your Honor, respectfully
23 if I may beg the Court's indulgence so I can get the
24 time frame because we had taken out the actual cover
25 letters when we sent out the discovery for the specific

1 pieces of information. If you will bear with me, if I
2 can beg the Court's indulgence, I can get that for you.

3 THE COURT: All right. That's fine, yes, sir.

4 (Pause.)

5 MR. MOBLEY: Thank you, Your Honor. Thank
6 you for allowing me to actually look for this
7 information. We've torn up this notebook. Beginning on
8 November 19th, 2009, there was a copy of a M.A.I.T.
9 report, as well as a S.L.E.D. drug analysis, that was
10 time stamped and date stamped November 19th, 2009,
11 provided to Mr. Madsen via mail.

12 It was actually dropped in the P.D. box
13 downstairs in the Clerk of Court's office. Within that
14 information, package of information, there was the
15 E.M.S. names of who was on the scene, some of the
16 supervisors that were there as well, indicating through
17 the M.A.I.T. team that these people were present.

18 With that, right above that, it states who,
19 what agencies, and names of the personnel that was
20 available then. That was on November 19th. On
21 April 28th, 2010, we actually received a copy after my
22 investigator went and subpoenaed that said document.

23 Well, excuse me, February 25th, 2010, is when
24 we requested it via subpoena. We received it on
25 April 28th, 2010, at which time I actually wrote up the

1 actual cover letter and placed a copy downstairs and
2 notified Mr. Madsen via e-mail that these specific
3 things were downstairs waiting for him to pick up in
4 preparation for trial.

5 So just to give you a recap, Your Honor, we
6 have November 19th, 2009, when the initial discovery was
7 provided to him, which included the M.A.I.T. report, it
8 included the E.M.S. workers and the agencies that they
9 work with. There was not a run sheet. I don't want to
10 be misinterpreting to the Court at all in that regard,
11 but it did list their names and the agencies that they
12 work for, Your Honor.

13 February 25th, 2010, we--- I had my
14 investigator to subpoena the E.M.S. run reports. We did
15 not receive those until April 28th, 2010. On that very
16 same day, I wrote up the disclosure and forwarded it, as
17 I'm required under the rules of discovery, to provide to
18 Mr. Madsen.

19 I sent him an e-mail immediately letting him
20 know that it would be downstairs ready for him to pick
21 up. From my understanding, he picked it up the same
22 day. I think his co-counsel may have actually picked it
23 up for him on that day if I recall correctly, Your
24 Honor.

25 THE COURT: May I see the M.A.I.T. report?

1 MR. MOBLEY: Yes, Your Honor.

2 (Hands to Court.)

3 THE COURT: All right. Anything further,
4 Solicitor?

5 MR. MOBLEY: Nothing, Your Honor.

6 THE COURT: I want a copy of this marked as a
7 Court's exhibit, the M.A.I.T. team report.
8 Also, there is a cover letter that says, Enclosed please
9 find additional discovery material. So what was the
10 previous discovery material provided?

11 MR. MOBLEY: That was discovery basically with
12 the warrant numbers, as well as the first incident
13 report from the South Carolina Highway Patrol. That was
14 provided on October 20th, 2009.

15 THE COURT: That was the traffic collision
16 report?

17 MR. MOBLEY: Yes, Your Honor, the TR-310. So
18 it's very bare bones, but we had to provide what we had.
19 I think appearances were coming up for the Defendant at
20 that time or closely thereto.

21 THE COURT: Well, does the traffic collision
22 report indicate treatment at the accident scene? Isn't
23 there certain information that is included on that
24 report that's filled out by the initial investigating
25 officer?

1 MR. MOBLEY: I have the initial investigating
2 officer here. We're looking at it now just to refresh
3 our memory, Your Honor.

4 (Pause.)

5 MR. MOBLEY: Yes, it does. The second page of
6 the actual incident report under entry status, it says,
7 One transported by E.M.S. to medical facility. That is
8 on the second page of that collision report, Your Honor.

9 THE COURT: And that is a form, information
10 where you have a scale that the officer fills out on
11 that report; is that correct?

12 MR. MOBLEY: That's correct, Your Honor.

13 THE COURT: All right. And that was at the
14 first appearance October 20th---

15 MR. MOBLEY: October 20th, Your Honor.

16 THE COURT: -- of '09?

17 MR. MOBLEY: That's correct.

18 THE COURT: I would like that also marked as a
19 Court's exhibit, and you can make copies of those,
20 please. Anything further, Solicitor?

21 MR. MOBLEY: Nothing, Your Honor.

22 THE COURT: Mr. Madsen, anything further?

23 MR. MADSEN: Judge, I do believe that they
24 were subject to questions, which would technically be
25 interrogation, which is the asking of questions under

1 Rule 5.

2 But more specifically, Judge, we do believe
3 they would fall under Brady and Kyles v. Whitley.
4 Obviously, as Your Honor has seen, when we get them, we
5 certainly think that changed the nature of the evidence
6 that the State was going to present at that point in
7 time, and that is why we have requested a continuance.

8 THE COURT: Do you think -- let me make sure
9 I track that right, Mr. Madsen. You think his
10 statements to E.M.S. would be interpreted as -- your
11 interpretation is that that's interrogation under
12 Rule 5?

13 MR. MADSEN: Judge, I don't know if it would
14 specifically fall under Rule 5 because I think the
15 question comes up, even if it is interrogation, is it to
16 someone associated with the prosecution?

17 So I don't know the answer to that question,
18 but I do think it falls under Kyles v. Whitley because,
19 as the solicitor has said -- and I don't quibble with
20 the fact that as soon as he got them, he turned them
21 over to me immediately.

22 That's why he did it by e-mail. I certainly
23 don't mean to say that because I don't believe that, but
24 in the end I think he gets them so late in the game that
25 ultimately it potentially changes what we would do on

1 this case.

2 THE COURT: All right.

3 MR. MADSEN: And as he had mentioned,
4 Judge, I think initially with that M.A.I.T. report,
5 there are some numbers associated with the first
6 responding personnel which I don't believe -- quite a
7 few of those numbers were not valid numbers from what I
8 had got from the solicitor. He had actually later sent
9 me an e-mail that had additional contact numbers.

10 THE COURT: All right. Thank you. Thank you
11 very much.

12 MR. MOBLEY: Your Honor, if I may briefly.
13 Your Honor, actually in the first initial discovery --
14 and we can provide a copy if you want to make a Court's
15 exhibit of it -- there's some very detailed notes as to
16 who was on the scene as far as fire personnel, the
17 E.M.S. workers, that were provided by Trooper Hallman,
18 who was the primary investigating officer.

19 I'm going to print those out, but we still
20 have them in the Acrobat format at this moment and can
21 provide you the entire packet. But it provides the name
22 of each individual, the telephone number which we
23 received, and which was handed over in discovery on
24 October 20th.

25 So I'm going to print that out and provide you

1 with the entire document. If you would like to admit
2 that as a Court's exhibit, I would not mind that
3 happening at all, Your Honor, to address this issue
4 about the continuance.

5 THE COURT: That's the 10/25/09 first
6 appearance?

7 MR. MOBLEY: 10/20, Your Honor. That's when
8 they were provided. That's when the letter is dated,
9 yes, Your Honor.

10 THE COURT: All right. Thank you. Thank you
11 very much.

12 MR. MOBLEY: Thank you, Your Honor.

13 THE COURT: Well, in looking at the matter
14 overall, I'm going to deny the motion for a continuance.
15 It appears that information was provided as early as
16 20 October of '09, indicating E.M.S. and fire service
17 workers were at the scene of this traffic collision.

18 That information was provided to the
19 Defendant. That information could have been followed up
20 on from that point in time. Again, that's reiterated on
21 Court's Exhibit, the M.A.I.T. team exhibit which has not
22 yet been marked, but I would want it marked.

23 It appears there's the names of the two E.M.S.
24 and the two fire service workers also included in there.
25 So that will be accessible to both the State and the

1 defense. I do not think it falls under Rule 5.

2 I'm not sure Mr. Madsen entirely agrees with
3 the Court in that regard, but he doesn't entirely
4 disagree with the Court in that regard. He finds it
5 more under Brady or Kyles v. Whitley. I do not find
6 that it falls under that either.

7 The statements and whether or not he gets an
8 expert accident reconstructionist are not so bound that
9 he would have been prohibited from getting an accident
10 reconstructionist at any stage in the process.

11 I found an older case concerning a handwriting
12 expert, although this is in my discretion, provided it's
13 not an abuse of my discretion. It's 385 S.E.2d 827
14 where a defendant--- I think this defendant actually
15 stole some checks that belonged to the late Honorable
16 George Coleman, who had a check writing machine. I
17 believe this is the case. Yes, it was check forgery.
18 Y'all ought to read it. There's some interesting
19 historical artifacts in there.

20 For example, the prosecutor was Lisa
21 McPherson. The defense attorney was Mr. McWhirter, who
22 was the Public Defender at the time, who passed it off
23 to Assistant Public Defender Mike Kolb -- I probably
24 mispronounced his name also -- but Mr. Kolb failed to
25 get a handwriting expert timely, and he could have done

1 so.

2 With all that being said, I think there was --
3 and then, I think, once the solicitor became aware of
4 the information -- and I don't think Mr. Madsen
5 questions that at all -- that once the solicitor became
6 aware of it August 28th, he turned it over as timely as
7 he received it, as I understand Mr. Madsen's position.

8 I would note on the handwriting expert, the
9 case was reassigned to the assistant public defender
10 just two and a half weeks prior to it going to trial.
11 But be that as it may, I'm going to deny the motion for
12 continuance.

13 I would like those exhibits marked, the
14 M.A.I.T. team exhibit and the discovery that was handed
15 over 10/25 or 10/20 of '09. I want Mr. Madsen to look
16 at it also to make sure that is the information that he
17 agrees he received at that time.

18 All right. Any other motions, Mr. Madsen?

19 MR. MADSEN: Judge, I would move for
20 sequestration of the witnesses, not only during the
21 trial but for the rest of the witnesses. Obviously I
22 think they can keep the trooper who was the chief
23 investigating officer and/or any victims, but we would
24 move for sequestration for the rest of the witnesses.

25 THE COURT: All right. Solicitor?

1 MR. MOBLEY: Your Honor, we have no objection
2 to that.

3 THE COURT: All right. I'll leave that up to
4 y'all to police it, both sides. Of course, the -- I
5 don't know if any of the names listed as witnesses are
6 members of the victim's family.

7 MR. MOBLEY: No, no, they are not, Your Honor.

8 THE COURT: Of course, they can remain then.
9 But, as I say, I'll leave that up to y'all to police it.
10 All right. Mr. Madsen?

11 MR. MADSEN: Judge, our next motion would be a
12 motion for severance of the charges. Judge, in this
13 case, you have a felony D.U.I. Then you also have a
14 possession of drugs in this case.

15 It's my understanding when you are dealing
16 with charges such as this, it is an abuse of discretion
17 standard for Your Honor, that ultimately Your Honor
18 looks at four different elements which are:

19 Do they arise out of a single chain of
20 circumstances? The second element, are they proved by
21 the same evidence? Third, are they of the same general
22 nature? And, fourth, no real right of the Defendant has
23 been prejudiced.

24 I get that, Your Honor, from State v. Rice,
25 which is 368 S.C. 610, which is a 2007 case. Of those

1 four elements, Judge, we would take issue with the
2 third, which is, are they of the same general nature?
3 And fourth, no real right of the Defendant has been
4 prejudiced.

5 To give some background, Judge, they say that
6 they retrieved from my client at the hospital a couple
7 of pills which have been described as Hydrocodone or
8 Acetaminophen.

9 Judge, the problem with that is when they did
10 a blood workup of my client, there is no Hydrocodone or
11 Acetaminophen that shows up within his blood.
12 Therefore, we think that it would be highly prejudicial
13 under 403 to allow the introduction of that evidence.

14 I think the natural assumption of the jury
15 will be that that is something that deals with the
16 felony D.U.I. Additionally, given the fact that we are
17 dealing with a felony D.U.I. and this being a drug case,
18 we do not believe that they are of the same general
19 nature.

20 THE COURT: All right. Thank you. Solicitor?

21 MR. MOBLEY: Your Honor, we would oppose that
22 particular motion on the basis that these pills were
23 found during the course of treatment for the crime that
24 was just committed. Although it may not have been found
25 in his blood, he was still in possession of it.

1 For one thing, out of the interest of judicial
2 economy, we're going to have to--- if we were to sever
3 this particular charge, this issue, Your Honor, then we
4 will be trying this case twice, one for possession of a
5 controlled substance and one for felony D.U.I.

6 Obviously you can see the problems that you're
7 going to have there in regards to trying two cases with
8 basically the same facts, Your Honor. So out of the
9 interest of judicial economy, I would say this severance
10 needs to be denied. Additionally, Your Honor -- bear
11 with me a moment.

12 (Pause.)

13 MR. MOBLEY: Your Honor, additionally the
14 drugs may not have been in Mr. Manning's system;
15 however, we have some prescription drugs that showed up
16 in the victim's blood.

17 We're going to have testimony from our
18 forensic toxicologist that's going to let us know if the
19 drug that was found on Mr. Manning at the time of this
20 incident, whether it is the same that shows up inside
21 the blood of our victim, Mr. Jacob Hill, Your Honor.

22 Whether I can answer that or not, Your Honor,
23 we're going to need the toxicologist to answer that, and
24 it needs to be one that the jury can consider. I don't
25 think that it needs to be severed at this point for

1 those numerous reasons, Your Honor.

2 Your Honor, just to make it clear though,
3 we're not committed to actually placing up the results,
4 but if we have to, then we will, and that will answer
5 some of those particular questions. But far removed
6 from that, Your Honor, you know, out of the interest of
7 judicial economy, I just don't think that would be
8 efficient at all.

9 THE COURT: What if somebody is going down the
10 road driving an automobile and he's under the influence
11 of drugs, cocaine, say, in his system, and they search
12 his car and they find a sealed bottle of whiskey.
13 What's the relevancy?

14 I mean, how is it relevant that he's got
15 Hydrocodone and Acetaminophen? Hydrocodone is a pain
16 killer, I think. Acetaminophen, I don't know what that
17 is. I thought that was an antiinflammatory. I thought
18 it was aspirin, but that shows you what I know.

19 MR. MADSEN: I think it's Tylenol.

20 THE COURT: It's Tylenol?

21 MR. MADSEN: I think so.

22 THE COURT: Well, then what's the -- and that
23 brings up another interesting issue. What is the
24 prejudice of somebody having Tylenol?

25 MR. MADSEN: It's the Hydrocodone that makes

1 it a schedule three, I believe.

2 THE COURT: I'm talking about Acetaminophen or
3 it's Hydrocodone -- it's a combo drug?

4 MR. MADSEN: That's our understanding.

5 THE COURT: Is that what you are saying? I've
6 got you, Hydrocodone with Tylenol. I thought you were
7 talking about two separate pills.

8 MR. MADSEN: No, sir.

9 THE COURT: You know, I'm new at this, y'all,
10 to this case. I haven't heard this before. I'm with
11 you now. So you've got two Hydrocodone/Tylenol pills.
12 Has he got a prescription for them? You don't have to
13 answer that if you don't want to or make any statement
14 about it.

15 MR. MADSEN: Judge, I would not, and I
16 would point out that what he had mentioned about the
17 victim's blood, there is Benzodiazepines, which I
18 believe are Xanax and not Hydrocodone.

19 MR. MOBLEY: And, see, that's the thing, Your
20 Honor, we believe. We are not experts on that.

21 THE COURT: Well, you've got experts. You've
22 got Ms. Perry and you've got Ms. Burroughs that are
23 experts --

24 MR. MOBLEY: That's correct.

25 THE COURT: -- who are listed on your witness

1 list. Here is my question though. What is the
2 relevancy of -- what is the relevancy of the drugs in
3 the prosecution of the D.U.I. if it's an alcohol case,
4 whereby I try them together?

5 You know, this Rice case that Mr. Madsen was
6 citing was murder and cocaine, trafficking in cocaine.
7 But the cocaine, you know, he just says, Oh, it just
8 happened to be in my car when I was arrested for the
9 murder that had happened weeks earlier, so I took it.

10 But then the relationship between the
11 Defendant and the victim was over drugs and money. So
12 there was a motive for the combination of that. What am
13 I missing here, Solicitor?

14 MR. MOBLEY: Your Honor, I don't think you're
15 missing anything at this point to be honest with you.
16 There is no type motive or anything behind it. I guess
17 what we're going to need to do is speak to my forensic
18 toxicologist and see in comparison to what is found in
19 his blood, so we don't speculate or assume anything
20 about Benzodiazepine or anything like that.

21 THE COURT: I think, if he's got it in his
22 blood, it becomes relevant, you know. That's an, "I
23 think." All these are motions in limine. But, you
24 know, it's like circumstantial evidence: Oh, well, I
25 have this substance in my blood and, golly, I've got it

1 in my pocket too. I mean, that becomes relevant.

2 I'll tell you what. I'll take it under
3 advisement until you determine whether or not there is a
4 link, if you can convince me there's an link between his
5 blood and Hydrocodone and Tylenol.

6 MR. MOBLEY: Yes, Your Honor.

7 THE COURT: All right?

8 MR. MOBLEY: Yes, Your Honor.

9 THE COURT: All right. Make sure I revisit
10 that now before we swear the jury.

11 MR. MOBLEY: Yes, I will, Your Honor. I will.

12 THE COURT: And Mr. Madsen also.

13 MR. MOBLEY: Your Honor, now does that bar the
14 link being between the pills and the victim, Mr. Jacob
15 Hill?

16 THE COURT: So you're saying that you
17 want to bring out that Mr. Hill was under the influence
18 of or had -- that was a poor choice of words -- had
19 drugs in his possession?

20 MR. MOBLEY: Not in his possession.

21 THE COURT: I mean, in his blood.

22 MR. MOBLEY: Possibly. We're not committing
23 to that at this moment. It's sort of like one of those
24 things that depends on how the trial is going, Your
25 Honor.

1 Because there are some things the State is
2 going to admit to in regards to our victim. We're going
3 to let the jury know and not hide the ball about some of
4 these facts itself.

5 THE COURT: See, usually it's the other way
6 around. I mean, usually, if you have a victim that has
7 an illegal substance, particularly T.H.C. or something
8 like that in his system, they say, Well, that's
9 prejudice. All he's doing is riding along in an
10 automobile, whether he's got T.H.C. in his system or
11 not. I haven't ruled on that.

12 MR. MOBLEY: Okay. Thank you, Your Honor.

13 THE COURT: All right. Do you have another
14 motion, Mr. Madsen?

15 MR. MADSEN: I do, Your Honor. Judge, what I
16 wanted to find out, there were certain things that are
17 indicated in discovery that I had not received, and I
18 wanted to make sure the State does not have those.

19 There is an indication from a Trooper Levine
20 that he is going to retrieve a video from the bar that
21 night. I have not received that, nor have I been made
22 aware that there is anything. But there is an e-mail
23 indicating that he has spoken to the owner of the bar
24 who was basically going to turn that over to him.

25 Additionally, there is an indication in here

1 that an audio statement was taken from a Heather
2 Fairchild, who is the bartender. I have not been
3 provided with that.

4 Now, this comes out of her statement, but her
5 statement says, I gave an audiotaped statement. I have
6 not been provided with that. I wanted to make sure the
7 State doesn't have any of those.

8 THE COURT: All right. What about that,
9 Solicitor?

10 MR. MOBLEY: There is no audio, no video
11 recording that Sergeant Levine -- there was a request.
12 A request was sent to the M.A.I.T. team to go to this
13 particular bar to see if a videotape was available.

14 We found out subsequent to that that basically
15 there was not a videotape available of the outside,
16 specifically which is the one they were looking for at
17 the time. So there's no tape available on that. Now,
18 as far as a Heather Fairchild audio interview --

19 THE COURT: Do you have any video footage or
20 any audio recordings, Mr. Madsen?

21 MR. MADSEN: Yes, sir. He has provided me the
22 video from the M.A.I.T. team, I believe from 8/4, that
23 is a video of the scene without sound. He has also
24 provided me audio of certain interviews, I believe with
25 Trooper Garren, I believe Trooper Hallman, but nothing

1 by, I believe, a Trooper Farmer if I remember, and then
2 also audio notes by a Trooper O'Donnell, who I think was
3 the M.A.I.T. investigating officer.

4 MR. MOBLEY: Your Honor, what we're doing now
5 is just checking the C.D. that I made available to
6 Mr.~Madsen that contained the audio interviews.

7 THE COURT: Well, if you have it, turn it
8 over, Solicitor.

9 MR. MOBLEY: We have, Your Honor.

10 THE COURT: All right. You have turned over
11 video from the bar?

12 MR. MOBLEY: No. There is no video, Your
13 Honor.

14 THE COURT: And you have -- how about audio of
15 Ms. Heather?

16 MR. MOBLEY: We're not aware of any audio, and
17 that's what we're checking to make sure. Certainly,
18 we've provided the actual written statement

19 THE COURT: Check on that. All right. What's
20 next, Mr.~Madsen?

21 MR. MADSEN: Judge, I have one for suppression
22 of the actual drugs that were found based on an invalid
23 search, but I don't know if we need to take that up at
24 this point in time.

25 THE COURT: Well, we can hold that if that's

1 all right with you, Mr.~Madsen.

2 MR. MADSEN: Yes, sir, that's fine. Judge,
3 I've got a motion under Jackson v. Denno in reference to
4 the statements to E.M.S. that were provided to me, and I
5 would object to those statements basically under the
6 voluntariness aspect of Jackson v. Denno and would like
7 to have a hearing on that.

8 Additionally, on certain ones of those
9 statements under 403, the fact that some of those
10 statements are very ambiguous, and therefore could be
11 more prejudicial than probative and basically leave
12 speculation to the jury, Judge.

13 THE COURT: All right. Solicitor?

14 MR. MOBLEY: Your Honor, I think this goes
15 back to the point we were arguing earlier. The
16 officers -- the fire service and the E.M.S. were not
17 officers, so there was not a custodial interrogation at
18 that particular time.

19 They were simply providing him with treatment
20 when he made these spontaneous statements, Your Honor.
21 So I don't even think a Jackson v. Denno would apply in
22 this particular incident to be quite honest with you,
23 Your Honor. Of course, you would know better than I,
24 but it's the State's position that Jackson v. Denno
25 wouldn't even be appropriate on this particular issue.

1 THE COURT: There's a family court case that
2 lays out when a Jackson versus Denno hearing is not
3 necessary.

4 (Pause.)

5 THE COURT: Well, I guess if the State is not
6 going to call its witnesses, you can call its witnesses,
7 Mr. Madsen.

8 MR. MADSEN: Judge, the thing about it is also
9 I would move to exclude certain ones of those statements
10 under 403, more prejudicial than probative, given the
11 nature of -- and Your Honor has read those statements --

12 THE COURT: Certainly.

13 MR. MADSEN: -- which were provided to me.
14 Some of those are extremely ambiguous as far as the
15 conduct. So we do think that under 403 they should be
16 excluded.

17 THE COURT: Do you want me to make that
18 decision based on what I've read or do you want
19 me to make that decision based on an in camera hearing?

20 MR. MADSEN: I would prefer Your Honor make
21 the decision based on an in camera hearing.

22 THE COURT: Well, we can do that. Solicitor?

23 MR. MOBLEY: I understand what kind of
24 position you're placed in now, Your Honor, because
25 basically you're going to hear this testimony twice.

1 You're going to try to decide the admissibility of those
2 statements, Your Honor, I understand that, the
3 admissibility of those particular statements.

4 Your Honor, I understand that. I just think
5 that, at this point, we are going to be conducting the
6 trial twice with statements that were provided basically
7 to lay witnesses.

8 THE COURT: Well, all Mr.~Madsen's going to do
9 is when you call Ms. Simmons or Mr. Wise or the other
10 two individuals, he's going to -- they're going to start
11 testifying, and he's going to say, Your Honor, I have a
12 matter of law, and the jury's going to go out, and I'm
13 going to hear it then. I mean, I'll be glad to do it,
14 but don't mention it in your opening.

15 MR. MOBLEY: We can proceed with the hearing,
16 Your Honor.

17 THE COURT: I mean, I'll be glad to do it in
18 that manner. Just don't mention it because I haven't
19 ruled on it. He is saying -- right now, he's made a
20 motion in limine under 403 on the statements of E.M.S.
21 and fire service personnel. Correct, Mr.~Madsen?

22 MR. MADSEN: Yes, Your Honor.

23 THE COURT: And, if I don't hear it now, I'm
24 going to have to hear it, if he makes an objection at
25 the proper time, outside the presence of the jury

1 anyway.

2 MR. MOBLEY: We're ready to proceed, Your
3 Honor.

4 THE COURT: All right. We're going to take
5 about a ten-minute recess before we get started.

6 (Whereupon there is a recess.)

7 THE COURT: All right. Solicitor?

8 MR. MOBLEY: Your Honor, during the break, I
9 made copies of the M.A.I.T. team report, the traffic
10 collision report, and then the October 20th, 2009,
11 response to discovery requests that we wanted to make
12 Court's exhibits, Your Honor.

13 THE COURT: All right. Any objections;
14 Mr.~Madsen?

15 MR. MADSEN: No, Your Honor.

16 THE COURT: Thank you. If you'd mark them
17 for me.

18 (Court's Exhibit Numbers 2-4 are marked for
19 purposes of the record.)

20 THE COURT: You know, Solicitor, I looked at
21 this State v. Silver case a little bit. It appears that
22 a defendant does not have to show that he's in custody
23 for a Jackson versus Denno hearing if he's alleging that
24 his statement was not voluntary. I haven't read it
25 detailed enough. I would assume that would just apply

25 ELIZABETH GRAYSON SIMMONS.

1 being first duly sworn, testifies as follows:

2 CLERK: Once you are seated, I need you to
3 speak up loud and clear, stating your full name on the
4 record, spelling your last.

5 THE WITNESS: My name is Elizabeth Grayson
6 Simmons, S-I-M-M-O-N-S.

7 IN CAMERA EXAMINATION

8 BY MR. MOBLEY:

9 Q Ms. Simmons, where do you currently work?

10 A Lexington County E.M.S. I am a P.F.C.

11 Q And what is a P.F.C.?

12 A I am an E.M.T. basic, a private first class.

13 Q Okay. Now, how long have you been in that
14 position?

15 A I have been in that position for a little over a
16 year.

17 Q A little over a year. Let me ask you, were you in
18 that position back on August 1st, 2009?

19 A Yes, sir.

20 Q And were you on duty on that day?

21 A Yes, sir.

22 Q Now, currently, are you -- are there any
23 certifications or anything that you have to go
24 through with your current position?

25 A We just have to maintain our E.M.S. certification

ELIZABETH SIMMONS -- IN CAMERA -- MR. MOBLEY

89

- 1 by going to in-service every month.
- 2 Q And on this -- on August 1st, 2009, were you
- 3 certified at that particular time?
- 4 A Yes.
- 5 Q You were up to date?
- 6 A Yes, sir.
- 7 Q Now, we're going to move to that particular night,
- 8 August 1st, 2009. Did you have the occasion to
- 9 respond to an incident on 378 near the Saluda
- 10 County line?
- 11 A Yes, sir.
- 12 Q Okay. Do you mind telling me how you got the call
- 13 and why you responded just to inform the Court
- 14 briefly?
- 15 A How we had gotten the call?
- 16 Q Yes. Why were you responding?
- 17 A We got it over our radio, E.M.S. One. We
- 18 responded and we got the information. It was an
- 19 M.V.C.
- 20 Q What's an M.V.C.?
- 21 A I'm sorry. Motor vehicle collision --
- 22 Q Okay.
- 23 A -- with injured patient.
- 24 Q Okay.
- 25 A And that was pretty much all we got. We got more

1 information, but I cannot remember the exact
2 information we got on the M.V.C.

3 Q Once you received that information, did you
4 respond to the location?

5 A Yes, sir.

6 Q And where was that location?

7 A Off of 378. I want to say over five miles from
8 our Hollow Creek station.

9 Q Okay.

10 A I know we arrived on scene at 4:57.

11 Q At 4:57?

12 A We had gotten dispatched at 4:48 and we responded
13 at 4:51, I believe.

14 Q Now, once you arrived at the location, briefly
15 tell us, what did you observe?

16 A When we had gotten out of our ambulance, at the.
17 time Sergeant Hall had gone -- who is a paramedic,
18 excuse me -- had gone to the victim. I just
19 observed while we were going to the Defendant, and
20 Sergeant Hall had gone to the victim to analyze
21 and to see everything. I can't call anything,
22 only she can.

23 Q Okay.

24 A When I went to the Defendant, he was lying on his.
25 back. I did the assessment to see if he was

ELIZABETH SIMMONS -- IN CAMERA -- MR. MOBLEY

91

1 awake. He could answer all my questions.

2 Q Well, let me stop you there. Was he awake at the
3 particular time?

4 A Yes.

5 Q Okay. Do you mind describing his condition at
6 that particular moment when you walked up to him?

7 A When I approached him, I could smell alcohol, so I
8 knew to ask certain questions, to go through if he
9 was coherent.

10 Q Okay.

11 A I asked him his name, if he knew where he was.

12 Q What name did he give you?

13 A Honestly, I do not remember the name.

14 Q Okay.

15 A He could answer. He did give me a name, so I
16 would check that as one. He told me where he was,
17 so I checked that as two. He told me what year it
18 was, three, and who the president was as four. So
19 he came up as what we call C.A.O., conscious,
20 alert, and oriented, as four, which is the
21 maximum, and that he was stable.

22 Q Okay. So, after you asked him those questions,
23 what did you begin to do?

24 A I began to do the assessment, checking his obvious
25 injuries, his nose, palpating, checking to see if

1 he had any injuries, any closed or open injuries.
2 I lifted his shirt and found an open injury right
3 on his abdomen. I went through -- that's when fire
4 had come. He was trying or kept trying to get up,
5 so I -- I'm sorry...

6 Q Well, let me ask you this, Ms. Simmons. Was he
7 restrained in any manner at this particular point?

8 A Huh-uh. (Indicating negative response).

9 Q Are you aware of him being under arrest at this
10 particular point?

11 A Cardiac arrest?

12 Q No. I mean, was he in handcuffs or anything by
13 law enforcement.

14 A Oh, no.

15 Q Okay. So he was free to move about, although he
16 had those injuries at that particular time?

17 A Yes, sir.

18 Q You can go ahead.

19 A When fire arrived and as the patient was trying to
20 get up, I had one of the firefighters hold the
21 C-spine. I told the patient he needs to lay still,
22 not move his neck, so that when the firefighters
23 went to go get our long spine board, our headboard
24 and our C-collar to place the patient on, one of
25 the firefighters held it manually.

1 That's again when I checked his pupils, again
2 did the assessment all over again. Tiffany Hall
3 had then come over after leaving the victim. She
4 did the same thing. That's when we were getting
5 him on the long spine board, and we took him to the
6 truck. We left right when we got on the truck. We
7 did pretty much as a load and go.

8 Q Okay.

9 A And we went -- we called it in to Richland
10 Emergent Multi-trauma.

11 Q Now, up until this point, does it still appear that
12 Mr. Manning is alert, coherent, and that he
13 understands what you are saying and what he's
14 saying to you?

15 A Yes, sir. I rode in the back of the truck, and I
16 sat in the captain's chair, which is located where
17 we put the stretcher into the truck. The captain's
18 chair is right behind it.

19 While Tiffany did all of the procedures and
20 protocols that she had to do for him, I was there
21 just to ask him questions, to keep him talking, to
22 keep him coherent.

23 Q Now, while you were doing that, did Mr. Manning
24 make any statements during this particular time?
25 You were asking him questions as well as trying to

1 keep him coherent. Do you mind providing us with
2 what you were asking him and what were his
3 responses?

4 A I shouldn't have done this, I f-ed up, which was
5 said many times. When I would ask him questions,
6 he'd answer. I'd ask him another one. He'd go to
7 the saying of I f-ed up, I shouldn't have done
8 this. Look what I've done. And those were
9 repeated a few times, especially the I f-ed up.

10 Q Now, did it appear that these particular
11 statements, were they in response to any questions,
12 direct questions, that you were asking?

13 A No. In my job, it's not my -- and we explain this
14 to all our patients so that they will answer our
15 questions and so they will not be scared to. We
16 tell our patients, You can tell me anything. You
17 can speak how you want. I'm not the police. I'm
18 not here to judge you, I'm here to help you.

19 Q And you don't have any arrest powers, correct?

20 A (Witness shakes head.) (Indicating negative
21 response.)

22 Q Are you anything similar to law enforcement?

23 A (Witness shakes head.) (Indicating negative
24 response.)

25 Q Okay. But you're there to treat the patient and do

1 what you have to do to keep him coherent.

2 A Yes, sir.

3 Q Okay. Now, did you coerce these statements out of
4 Mr. Manning at the time?

5 A No.

6 Q Did you trick him?

7 A No. Unless asking, how is your mother, how was
8 your day, how is your summer going, is a trick for
9 the patient, no. I never asked anything having to
10 do with the victim, with, you know, why did you --
11 why were you drinking, how much did you drink. I
12 never asked him how much he drank.

13 Q Okay. You never did?

14 A No.

15 Q Well, let me ask you this, Ms. Simmons. During
16 your questioning when you asked those specific
17 questions about the family, did he answer those as
18 well?

19 A I don't recollect. I know definitely when I would
20 ask him some questions, he'd say something. I
21 can't tell you exactly what he had said.

22 Q But he was responding.

23 A Yes. The main things I remember are the details
24 of, I shouldn't have done this, I f-ed up, all of
25 that.

1 Q On your way to take him to the hospital, during
2 this entire ride, are those the only statements
3 that he makes during this particular time?

4 A Those are the only ones I can remember.

5 Q Okay. Now, once you arrive at the location and
6 you're transporting him out into the -- I guess
7 it's the trauma area?

8 A Yes, sir.

9 Q Okay. Does he make any statements at this time?

10 A Not that I can recollect.

11 Q After dropping him off in the trauma area, do you
12 come back in contact with Mr. Manning at all?

13 A No, sir.

14 MR. MOBLEY: Nothing further for this witness,
15 Your Honor.

16 THE COURT: Thank you. Mr. Madsen.

17 IN CAMERA EXAMINATION

18 BY MR. MADSEN:

19 Q Hi, Ms. Simmons. How are you doing?

20 A I'm doing fine.

21 Q So, when you come out there, you say you go over to
22 my client. Where is he located in relation to the
23 car?

24 A In relation to the car, if this (indicating) is the
25 road, this (indicating) is the car. When I found

ELIZABETH SIMMONS -- IN CAMERA -- MR. MADSEN

97

1 him, he was 10, 15 feet right here from the car
2 lying on his back.

3 Q Towards the front of the car or the back of the
4 car?

5 A Well, looking at the car that fast while tending to
6 a patient, it was very, very hard to tell you if it
7 was the front or the back.

8 Q Okay. So you don't know?

9 A No. Seeing a motor right here, and I guess the
10 steering wheel was -- I could see the steering
11 wheel, so I guess it was the back of the car.

12 Q And you do an assessment of him when you get up
13 there, correct?

14 A Yes.

15 Q And if he's got injuries to his head?

16 A Yes. The first thing I noticed was his nose.

17 Q Okay. And, if I understand correctly, that was
18 basically split pretty much down the middle, I
19 think like a hotdog.

20 A Yes. We have -- that's the way I had remembered.
21 When you cut a hotdog and you put it in the
22 microwave, it flutters out. You could see the bone
23 of his nose, and the skin and tissue were
24 fluttering out.

25 Q And that would indicate that at some point in time

1 there had been some kind of trauma obviously to his
2 head?

3 A Yes.

4 Q Okay. And then other injuries, you had indicated
5 an open wound where?

6 A On his left lower abdomen or around the abdomen,
7 right under his ribs. When we assess a patient, we
8 have to get the depth of something, how big an
9 injury is. We don't take the time at that moment
10 to be like, oh, it was five inches. I know, when I
11 observed it, I could fit my fist in there. No, I
12 never put my fist near it, but that was the size of
13 his wound.

14 Q Was he actively bleeding from it?

15 A I don't think he was actively bleeding. You could
16 see the blood of the tissue. I don't remember if
17 he was actively bleeding from it. I know we did
18 put an occlusive dressing on it.

19 Q What is that?

20 A An occlusive dressing is when we put a dressing
21 over it, just in case he does start bleeding, and
22 we mark it at three sides so that it won't be
23 leaking from everywhere if he does bleed. It will
24 hold protection to the injury.

25 Q So he's got -- those are the two injuries, the one

ELIZABETH SIMMONS -- IN CAMERA -- MR. MADSEN

99

1 to the head and then the one to the side. Those
2 are the initial ones that you see?

3 A Yes.

4 Q How about -- you had said something about the
5 chest. Did you find any injuries to his chest?

6 A No. All I had done was palpated and felt to see if
7 he had any closed or open injuries. You feel a
8 patient to see if there is a rib sticking out, and
9 I felt nothing.

10 Now, what Tiffany had felt when she did the
11 assessment, when she went, I'm not sure. She
12 didn't know of the wound to his abdomen until I had
13 showed her.

14 Q Was she the one who dressed that or would that have
15 been you?

16 A Honestly, it probably was her. I don't remember.
17 I just remember talking to the patient.

18 Q And so when you get there, you're talking to him
19 and telling him to do certain things, I guess
20 telling him not to get up.

21 A Uh-huh. (Indicating affirmative response).

22 Q And does he keep on trying to get up?

23 A All I can remember and recollect is he tried to
24 get up before we put him on the C-spine.

25 Q So, even though you're telling him not to, he's not

1 necessarily listening to what you're saying?

2 A He kept his head pretty still and answered
3 questions and was talking, so, I mean, I can -- as
4 I say, I think he understood what we were trying to
5 do.

6 Q How about when you tried to place him on the
7 C-spine? Any problem when doing that with him not
8 following instructions?

9 A No.

10 Q Now, you would agree that it was -- the crash
11 scene, it was a pretty bad crash or at least the
12 car was pretty damaged when you get out there?

13 A Yes.

14 Q And when you end up putting in the statements that
15 you say that he made about -- what were the
16 statements that you said that he made?

17 A I heard pretty frequently, I f-ed up.

18 Q Okay.

19 A I shouldn't have done this. Look what I've done.

20 Q Where were those at?

21 A I shouldn't have done this, look what I've done, I
22 f-ed up, were on the scene. When we got in the
23 truck heading to Richland when I was asking the
24 questions, I mean, I f-ed up, I heard four or five
25 times.

ELIZABETH SIMMONS -- IN CAMERA -- MR. MADSEN

101

1 Q And once you get to the hospital, you actually
2 aren't the one who takes him in. That would have
3 been Sergeant Hall, correct?

4 A We both took him in. We transferred him. He went
5 directly to Trauma One, which is the first trauma
6 when you enter Richland's E.R. We had all the
7 R.N.s on call who handle trauma and the trauma
8 doctors in there.

9 We would take and transfer him from the spine
10 board. Tiffany Hall would give the report because
11 she is the sergeant and she is the one who handled
12 the call. I remember after we transferred him, I
13 left and took the stretcher to clean the truck.

14 Q And then were there -- you had mentioned some
15 questions that you had asked him in reference to,
16 What is your name, but you don't recall what name
17 he gave you?

18 A No, I don't remember the name he gave me. But
19 mainly when I ask questions and I don't have any
20 information on a patient, I don't really pay
21 attention to a name they give me. I try to see if
22 they can give one, so I can base it that they are
23 coherent.

24 Q Were there any questions that you asked that he was
25 non-responsive to?

1 A (Witness shakes head.) (Indicating negative
2 response.) There were questions where he went to,
3 I f-ed up, as an answer, but he was never quiet on
4 anything.

5 MR. MADSEN: That's all the questions I have,
6 Your Honor.

7 THE COURT: Redirect?

8 MR. MOBLEY: None, Your Honor.

9 THE COURT: Let me make sure I understand,
10 Ms. Simmons. When you use the consonant F., I f-ed up,
11 is he using the consonant or is he saying the word?

12 THE WITNESS: He is saying the word.

13 THE COURT: All right. Thank you. I just
14 wanted that clear. Thank you very much. You may step
15 down.

16 (Witness leaves the witness stand.)

17 THE COURT: Solicitor, you may call your next
18 witness.

19 MR. MOBLEY: Thank you, Your Honor. The State
20 calls Nathan Prouse.

21 NATHAN ANDREW PROUSE, being
22 first duly sworn, testifies as follows:

23 CLERK: Have a seat, please, sir. Once you
24 are seated, state your full name, spelling your last on
25 the record, please.

NATHAN PROUSE -- IN CAMERA -- MR. MOBLEY

103

1 THE WITNESS: My name is Nathan Andrew Prouse.
2 The last name is P-R-O-U-S-E.

3 IN CAMERA EXAMINATION

4 BY MR. MOBLEY:

5 Q Mr. Prouse, where are you currently employed?

6 A Lexington County Fire Service.

7 Q And how long have you been employed there?

8 A I've been employed just shy of two years.

9 Q Two years. Are you a volunteer or are you a paid
10 firefighter?

11 A I am a paid full-time firefighter.

12 Q Okay. Have you gone to the Firefighter Academy for
13 certification?

14 A Yes. Lexington County has their own recruit class
15 program that they put me through.

16 Q Okay. And are you currently up to date on that?

17 A Yes.

18 Q And you're currently certified?

19 A Yes. Currently or to date, I have 24 current
20 certificates, varying in auto extrication, through
21 firefighting, through medical --

22 COURT REPORTER: Wait a minute.

23 THE WITNESS: I'm sorry.

24 COURT REPORTER: Go through the certificates
25 again, please.

1 A I have 24 certificates --

2 THE COURT: He's using those big words.

3 A I'm sorry. I currently have 24 certificates that
4 are up to date, varying from auto extrication,
5 firefighting, whether it be wild or structural, and
6 medical attention giving.

7 Q Now, Mr. Prouse, were you working with the same
8 company back on the date of August 1st, 2009?

9 A Yes.

10 Q And what was your position then?

11 A Well, my rank is firefighter. That night I was
12 filling in as an apparatus operator or engineer.
13 Some departments call it differently. We had ran
14 short of manpower, and I was just filling in on
15 overtime.

16 Q Okay. Now, on that night, did you respond to -- on
17 August 1st, which would be the early morning
18 actually, early morning August 1st, 2009, did you
19 respond to an incident that occurred on Highway 378
20 near the Saluda County line?

21 A In that direction, yes.

22 Q Okay. Now, when you responded -- Well, why did you
23 respond first and foremost?

24 A I'll explain it to you in the order of events from
25 the time the tone broke. I was at Station 2, which

NATHAN PROUSE -- IN CAMERA -- MR. MOBLEY

105

1 was Hollow Creek down there at 378 at the
2 Priceville Road intersection.

3 Initially, Cedar Grove Station which had just
4 opened prior, I'd say six months prior to the
5 accident, had just opened and was low on manpower.
6 They did not -- they still do not staff at night.
7 So any time that neighboring station gets a call,
8 Station 2's tones also drop for additional manpower
9 to get the initial response times quicker.

10 That way we can get on scene quicker. So when
11 the tones dropped at the station, I got up and, you
12 know, just did my normal thing, put on my gear and
13 got the truck out and just went en route to the
14 scene.

15 Q Okay. Now, you arrive on scene. You get there in
16 approximately how many minutes?

17 A Roughly, because of the distance of covering
18 someone else's area, it was probably six to seven
19 minutes.

20 Q Okay.

21 A Which is just above average response time for
22 anything in my area. So going into somebody
23 else's, that's about right.

24 Q Now, once you arrive on scene, can you describe
25 briefly what you see and who is there.

1 A Okay. As I'm pulling up -- of course, it's raining
2 that night or it had been raining. My windshield
3 was wet. So when I pulled up, I'm having a hard
4 time focusing on everything.

5 I see a man waving at me, to flag me down in
6 the road. I pull up and I stop and, you know, I
7 get down. I get out of the truck and ask him what
8 the deal is.

9 He's pointing out in the field to my right,
10 off to my right. I see the car. I see the
11 reflection of the taillights of the car and kind
12 of -- I can kind of see two bodies out there. So
13 immediately what I did was I went back to my
14 truck --

15 Q Before you get there, approximately how far were
16 you away from what you were seeing? Were you
17 close?

18 A No. Just for reference, the diagrams or the
19 pictures that everybody's seen, the tree line where
20 the car went through, I stopped right at that tree
21 line or just past it, closer to the accident, to
22 where the car was sitting. So everything would
23 have been looking, and going back to my military
24 experience, to my 2:00 o'clock as I was parked --

25 Q Okay.

NATHAN PROUSE -- IN CAMERA -- MR. MOBLEY

107

1 A -- away from the vehicle and the victims.

2 Q Okay.

3 A So I was approximately, I guess if I were standing
4 on the highway looking out at the accident, I was
5 probably 50 feet shy.

6 Q Okay. So you see two individuals out there in the
7 field. Do you see anyone else as far as law
8 enforcement or any E.M.S. workers or anything of
9 that nature?

10 A No. I was the first on scene, other than that
11 one, the one man that flagged me down.

12 Q Now, you see two individuals out in the
13 field. What do you do next?

14 A Immediately I set up for scene lighting. I know
15 E.M.S. is right behind me. I could hear the
16 sirens. I get up on the truck. I raise my scene
17 lights, turn them all on just to get illumination.
18 Because my priorities for emergency scenes is life
19 safety, incident stabilization, property
20 conservation --

21 COURT REPORTER: Hold on. If you could slow
22 down for me..

23 THE WITNESS: I'm sorry.

24 COURT REPORTER: Life safety, and then what?

25 A Incident stabilization and property conservation.

1 Without the lighting, I could not -- nobody on that
2 scene could adequately provide life safety for
3 anybody. It just wouldn't be a safe scene without
4 lights. So that's why I moved straight to the
5 lighting.

6 Q And once you do that, do you go to either
7 of the two individuals?

8 A No. By that time I had radioed to E.M.S. to let
9 them know where I wanted them to position on the
10 scene. They arrived and started the initial
11 assessment of the closest -- the victim closest to
12 the road, which is now the deceased.

13 Q So you didn't -- you never did go to the
14 deceased?

15 A No, not immediately.

16 Q You went from -- you went to whom, the other
17 individual?

18 A Correct.

19 Q And where was that? Where was he located in
20 relation to the truck?

21 A At the vehicle, the rear end of the vehicle was
22 towards the road, and he was -- he was just near
23 the vehicle, kind of where the engine came out. He
24 was -- his head was closest to the road, so his
25 feet were away from the road.

NATHAN PROUSE -- IN CAMERA -- MR. MOBLEY

109

1 Q Okay. Once you approach him, tell me exactly what
2 you see.

3 A I believe it was the paramedic that was already --
4 no, I'm sorry. I'm mistaken. The paramedic went
5 to the deceased first. The E.M.T. went to the next
6 victim.

7 So whenever I approached, he was there with
8 him starting to do the initial assessment. I
9 walked around. I walked past the victim, around
10 his feet, came back up, and I knelt down to his
11 side. And that's whenever I started -- that's when
12 we started talking or I started talking to him.

13 Q Now, you state you started talking to him. What
14 did you say to him?

15 A Well, I knelt down, and I placed my hand on his
16 chest, and I said, Sir. I said, Sir, can you hear
17 me? I need you to talk to me. I need you to focus
18 for just a minute. I asked him, I said, Man, I
19 can -- I said, I see your buddy over here in the
20 field, and I see you.

21 I said, I see your car. Was there anybody
22 else in this vehicle with you? I need to know.
23 Was there anybody else? No, it was just me and my
24 buddy. He was riding with me. It was just me and
25 my buddy. I said, Okay, all right.

1 Q Now, at this particular time when he made this
2 statement, did he seem like he was coherent enough
3 to make a statement like this?

4 A Yeah, he was actually -- I was surprised at the
5 mental state that he was in considering the
6 accident that he had just went through. A lot of
7 people don't live through something like that, but
8 he was in fairly good condition. I mean, he had --
9 other than the few injuries, losing some blood or
10 whatever the case may be, he was in fair condition.

11 Q So you had no reason to think that he was out of
12 his mind or making statements that weren't true or
13 anything at that time, correct?

14 A No. In my experience with those who are out of
15 their mind, they don't open their eyes. They may
16 start humming to themselves. They may become jerky
17 or physically just hard to restrain because they're
18 losing control of their mind.

19 Q But you didn't see any of that exhibited at that
20 time?

21 A No, he was just laying there. The typical
22 accident injury action -- reaction -- you get from
23 people, they kind of squirm a little bit to try and
24 find a comfortable position. That's kind of what
25 was going on.

NATHAN PROUSE -- IN CAMERA -- MR. MOBLEY

111

1 So you knew that he knew he was in pain and he
2 was hurt, but he was staying there because we were
3 talking to him. We were trying to get him to calm
4 down.

5 Q Would you classify that as him being in shock or it
6 wasn't that severe?

7 A It was early, possibly early in the shock stage. I
8 don't believe that he was yet in shock.

9 Q Okay.

10 A He was, with the amount of blood he was losing, he
11 was kind of heading in that direction, but not at
12 that time, no, not whenever I approached him.

13 Q But you had no reason to believe that he wasn't
14 coherent?

15 A No, not at all.

16 Q Did you ask him any other questions?

17 A No. Immediately after I talked with him and he
18 told me what the deal was, I kind of backtracked,
19 and I was still -- being that I was the first on
20 scene made me the incident commander, and I was in
21 charge of this scene until Chief Hoover relieved
22 me, I think shortly between -- before the 6:00
23 o'clock hour.

24 So, whenever I spoke with the individual, I
25 got up, I went back to where my manpower was

1 starting to pull up to, you know, figure out --
2 they were waiting on orders. I told them, I said,
3 get flashlights and get the thermal-imaging camera,
4 the thermal-imager. I told them to get flashlights
5 and thermal-imaging cameras and go look through the
6 woods for more victims.

7 In some instances we find where people think
8 they had somebody riding with them when they really
9 didn't or they didn't think somebody was with them
10 and they really were. So I wanted to double check
11 and make sure we didn't have any more lives at
12 stake or in jeopardy. So that's what I did.

13 Q Now, did you come back in contact with Mr. Manning
14 at any time after?

15 A Yes.

16 Q You did?

17 A Yes. Whenever they were getting or they began
18 patient packaging and getting him ready for
19 transport, that's whenever I came back because they
20 didn't have quite enough people to make it complete
21 for the weight, just to get the weight
22 distribution, to help tote him out of the field.
23 But the distance that he was from the ambulance and
24 with the steep embankment --

25 Q Yes, sir.

- 1 A -- that's why I went back to help. They had
2 already got patient packaging completed, and we
3 just kind of took off from there.
- 4 Q When you went back to help, did Mr. Manning make
5 any additional statements at all to you in regards
6 to this incident?
- 7 A Not to me.
- 8 Q Okay.
- 9 A Not directed to me.
- 10 Q Did you overhear anything?
- 11 A Yes, I did hear things, but not to me.
- 12 Q Okay. You overheard some things?
- 13 A Correct.
- 14 Q Tell me, what did you overhear at this time?
- 15 A All he kept repeating was, Man, I f-ed up. I
16 f-ed up big time. Man, I f-ed up.
- 17 Q Okay.
- 18 A And I mean, f-ed up, you can kind of figure that
19 out I guess.
- 20 Q Okay. And, when you say, f-ed up, You're not
21 saying the word; you're just --
- 22 A Yeah.
- 23 Q -- using an abbreviation?
- 24 A Correct.
- 25 Q -- out of respect for the Court?

1 A Right, absolutely.

2 Q And other than that particular statement, is there
3 anything else you can remember at this time?

4 A No.

5 Q Was he, at any time while you were there, was he
6 under arrest?

7 A No.

8 Q Did anyone coerce him into making any of those
9 statements?

10 A No, not at all.

11 Q Did they trick him into making any of those
12 statements?

13 A No, not to my knowledge.

14 MR. MOBLEY: Nothing further for this witness,
15 Your Honor.

16 THE COURT: Thank you, Solicitor.

17 Mr. Madsen.

18 IN CAMERA EXAMINATION

19 BY MR. MADSEN:

20 Q How are you doing, Mr. Prouse?

21 A Good. And you?

22 Q Good. So let me see if I can kind of understand
23 this. When you get out, the S.U.V. is pretty
24 messed up?

25 A Yeah, extremely.

1 Q It's sitting, I think, on its side past that dry
2 creek bed or woods right there; correct?

3 A Yeah, it was -- it was on the way from the tree
4 line.

5 Q And you see my client. I guess he's on his back
6 when you initially see him?

7 A When I approached him -- initially I cannot tell
8 you whenever I pulled up because it was that dark.
9 I knew that I saw bodies out there. I didn't
10 know the positions they were laying in, and I
11 couldn't -- I can't lay all that out for you.

12 Q Okay. When you get to him, if the car is sitting
13 like this (indicating) with the roadway, 378, being
14 here (indicating), where is he positioned?

15 A All right. Where the motor comes out, where the
16 motor came out of the chassis.

17 Q If this (indicating) is the car, can you just kind
18 of show me where he was?

19 A That's kind of a hard way to do a car. All right.
20 That's more the shape of a car.

21 Q Okay.

22 A Here's the tail end (indicating) towards the road.
23 Here's (indicating) the bottom of the car. Here's
24 (indicating) the roof, the driver's side down. The
25 motor was here (indicating), and the body was here

1 (indicating) outside, away from the motor. It was
2 somewhere at the roof. They were kind of -- well,
3 he was away from the vehicle but along where the
4 roof was.

5 Q Okay. And so when you go up to him, what you're
6 looking for is to figure out if there is anyone
7 else out there?

8 A Right. That's my main goal at that time because
9 E.M.S. was there to do their job and I'm there to
10 do mine.

11 Q When you got up to him, does he have his eyes open?

12 A Yes.

13 Q And he's lying down?

14 A Yes.

15 Q And you ask him as far as if there's anyone else
16 out there, and he tells you, I think you said, no,
17 it was just me and my buddy. He was riding with
18 me, correct?

19 A Correct.

20 Q Do you notice any injuries on him?

21 A Yes.

22 Q Where do you see the injuries?

23 A His nose was -- he had some blood coming from his
24 nose. The bridge of his nose had kind of gotten
25 cut. It was split open. He had a, I guess you can

1 call it an abdomen wound, down here, I think his
2 lower left.

3 Q Could you see that because of blood or what led you
4 to believe it was the lower abdomen?

5 A E.M.S. pointed it out. They always pass
6 information along for us to know. While they're
7 working on him and getting him ready to package,
8 you know, you can just kind of see where they're
9 working.

10 They say it because there's always things we
11 need to know about with doing patient care and
12 especially blood, because you don't want to get
13 contaminated. You don't know what the victim has,
14 and you're not assuming anything, but it's for
15 safety sake.

16 Q Sure. So when you go up to E.M.S. and when you ask
17 him these questions, E.M.S. is already starting to
18 work and assess him?

19 A Yes, one.

20 Q Just one?

21 A One or the other was there.

22 Q Either the E.M.S. or paramedic?

23 A They were talking to him. They hadn't pushed --
24 they didn't start true treatment.

25 Q And so once you ask him those questions and he

1 makes that statement, then you basically go back
2 out and check, I guess, to find out if there is
3 anyone else using thermal cameras or thermal
4 sensors?

5 A What I did is I went -- I went back out to my
6 manpower pool to delegate jobs as far as, you two
7 go look for more people, you go help E.M.S., you
8 get a sheet and cover up the deceased.

9 Q You had mentioned also or the solicitor had asked
10 you about shock. What is that?

11 A Shock is a -- I don't know. I can't give you a
12 true technical term. My medical experience and
13 training is limited beyond putting bandaids on. You
14 know, it's basic life support. I can't do anything
15 further. I don't know a lot of the technical
16 terms. That's just the way the Fire service does
17 it.

18 Q But you don't make any assessment then to see if
19 he's going into shock at that point in time,
20 correct?

21 A No. We do, however -- there are signs for shock.
22 There might be a cold sweat or lack of sweat, but
23 we do -- there are ways to treat shock which would
24 be elevating the feet.

25 Now, for shock, you have to be careful because

NATHAN PROUSE -- IN CAMERA -- MR. MADSEN

119

1 we're looking at possible, you know, hidden
2 injuries which could be a spinal injury. In a
3 vehicle accident, it's very common. So you don't
4 always treat shock right away.

5 Q But shock could be brought on, I guess, by blood?
6 loss.

7 A Yeah, as far as I know.

8 Q It could end up resulting in death, I guess?

9 A I do not know. I don't know what that could end up
10 in.

11 Q And then ultimately you end up helping load him up
12 into the ambulance.

13 A Right, at least -- I didn't help them load him into
14 the ambulance. I helped get him to the bank where
15 there were a group of more responders waiting.
16 Whenever we got to the bank, that's when I turned
17 back around, and I actually let go of the spine
18 board and went on back with my duties.

19 Q So you get him to a certain point, and then other
20 people end up loading him up. But at some point in
21 time, you help in his transport?

22 A Yeah.

23 MR. MADSEN: That's all the questions I have.

24 THE COURT: Redirect, Solicitor?

25 MR. MOBLEY: None, Your Honor.

1 THE COURT: Thank you. Thank you very much,
2 Mr. Prouse.

3 THE WITNESS: Thank you.

4 THE COURT: You may step down.

5 (Witness leaves the witness stand.)

6 THE COURT: You may call your next witness,
7 please.

8 MR. MOBLEY: The State calls Jerry Wise.

9 JERRY WISE, being
10 first duly sworn, testifies as follows:

11 CLERK: Have a seat, please, sir. Once you're
12 seated, I need you to state your full name, spelling
13 your last.

14 THE WITNESS: My name is Jerry Wise. The last
15 name is W-I-S-E.

16 THE COURT: All right, Solicitor.

17 MR. MOBLEY: Thank you, Your Honor.

18 IN CAMERA EXAMINATION

19 BY MR. MOBLEY:

20 Q Mr. Wise, where are you currently employed?

21 A Medical Dynamics on Lake Murray.

22 Q Okay. Now, were you -- how long have you been
23 employed there?

24 A Since I founded the company in 1986.

25 Q In 1986?

JERRY WISE -- IN CAMERA -- MR. MOBLEY

121

1 A Yes.

2 Q Okay. And what does Medical Dynamics do?

3 A We design software for invasive cardiology in
4 hospitals.

5 Q Okay. Now --

6 THE COURT: For cardiology?

7 THE WITNESS: Yes, sir.

8 THE COURT: For what? Say that again.

9 THE WITNESS: For invasive cardiology, heart
10 caths --

11 THE COURT: Oh, invasive.

12 THE WITNESS: -- and heart surgery.

13 THE COURT: I'm familiar with that.

14 THE WITNESS: Well, don't be. That's not
15 good.

16 THE COURT: Well, it was good for me. Go
17 right ahead, Solicitor.

18 MR. MOBLEY: Thank you, Your Honor.

19 BY MR. MOBLEY:

20 Q Now, Mr. Wise, back on the date of August 1st,
21 2009, did you have the occasion -- were you working
22 with that company that you just spoke of, the
23 company you founded, along with any other
24 companies?

25 A I'm a volunteer now with Lexington County Fire

1 Service as an intermediate E.M.T.

2 Q Okay. So, back on August 1st of 2009, you were a
3 volunteer. Now, before you were a volunteer -- you
4 said you're an E.M.T. worker?

5 A I'm an E.M.T., intermediate E.M.T., with the fire
6 service.

7 Q With the fire service?

8 A Yes.

9 Q Okay. And what company were you with at that
10 particular time?

11 A Hollow Creek Fire Service.

12 Q Okay. Now, back on the early morning hours of
13 August 1st, 2009, did you have a chance to respond
14 to an incident on Highway 378 near the Saluda
15 County line?

16 A Yes, I did.

17 Q Now, once you arrived there -- well, why did you go
18 out to that particular location?

19 A We're paged on all accidents in our area, and we
20 respond to those accident scenes.

21 Q Okay. Now, how long did it take you to get to that
22 particular scene?

23 A I would say, from the time the call broke, probably
24 seven or eight minutes to get to the scene.

25 Q Once you arrive on scene, do you notice any other

1 personnel there?

2 A Yes. The ambulance is there. The paramedic and
3 E.M.T. are down by the patient, one of the
4 patients.

5 Q One of the patients?

6 A Yes.

7 Q Where are they located?

8 A Next to the car and it's down by a creek. They're
9 right next to the car, and they're preparing the
10 patient for transport.

11 Q At that particular time?

12 A Yes.

13 Q Now, Mr. Wise, at any point, do you go down to
14 assist or observe what's happening with that
15 particular transport?

16 A Yes, I do.

17 Q Okay. And once you get there, tell us exactly what
18 happened.

19 A When I get to the scene -- and the way the
20 emergency response works is you have different
21 levels of responders: The first responder, the
22 E.M.T., the E.M.T. intermediate.

23 The paramedic had gone ahead to the hospital
24 for the surgeons, and I was the E.M.T.
25 intermediate. There was a first responder at the

1 head of the victim.

2 Q Okay.

3 A And I relieved him and began to analyze his mental
4 state to see if he had a severe head injury.

5 Q Now, when you say victim, you don't know who's a
6 victim and who's not. Well, you mean a victim of
7 the accident itself?

8 A Right.

9 Q Okay. Now, that individual, where is he located?

10 A He's beside the truck.

11 Q Now, is there another person that's in this
12 vicinity at all?

13 A He's nearby. The deceased was a fairly good ways
14 up the little rise from where we were working with
15 this gentleman.

16 Q So these events you're speaking of is the person
17 who was not deceased at that time?

18 A Right.

19 Q Okay. Now, you state you're checking him for head
20 injuries?

21 A Yes.

22 Q What type of head injuries? Do you see any head
23 injuries?

24 A Well, he had severe bleeding, but that may not be
25 significant. The head bleeds very profusely. what

1 I was looking for was I took the flashlight and I
2 held his head. We already had the head-rolls on to
3 secure his spine.

4 I took the flashlight, and I said, Sir, sir,
5 open your eyes. He opened his eyes, and I put the
6 light across his eyes to see if one pupil reacted
7 differently than the other. That could indicate a
8 brain injury.

9 Q Okay.

10 A And I did not see that. Both pupils during this
11 test were constricted.

12 Q Both were constricted?

13 A Yes.

14 Q Which is the normal -- what normally happens when
15 you pass that test?

16 A Normally they're dilated under dark circumstances
17 like that and they will constrict. In this case,
18 they were constricted. To the best of my
19 recollection, they were constricted before and
20 after I passed the light over them.

21 Q Okay. Did he seem to be coherent at this time?

22 A Yes. Whenever I asked him to open his eyes, he
23 did.

24 Q Okay.

25 A And, as he opened his eyes, he did make a statement

1 and -- I'm sorry. Go ahead.

2 Q Well, before you get to that, was he restrained in
3 any manner?

4 A We were working on restraining him. That was the
5 whole idea, was to get this patient with this type
6 of accident immediately to a level one trauma
7 center.

8 So we were working on restraining him. That's
9 why I was helping to hold his head and work with
10 him. But they were putting the restraints on
11 at the time. He was a bit combative.

12 Q Now, was the restraint to stabilize him or to keep
13 him from being combative?

14 A The restraints are to -- They'll do both.

15 Q Okay.

16 A But the restraints are to keep him centered on
17 there and his spine aligned while we transport him
18 up through the field into the unit and then all the
19 way to the hospital.

20 Q Now, during this time when you're doing the
21 assessments and everyone else is around trying to
22 stabilize him, do you ask him any questions?

23 A I said, Sir, open your eyes.

24 Q But is there anything else that you asked him?

25 A I did not ask him anymore. He volunteered a

1 statement, and after that I just went on with the
2 assessment.

3 Q Now, when you say he volunteered a statement, what
4 was that statement?

5 A He said that, Man, I really f-ed up.

6 Q Okay. And when this statement was made, did it
7 appear that he was forced to say that in any way?

8 A Oh, no, not at all.

9 Q Was it voluntary?

10 A Very much so.

11 Q Would you say that it was spontaneous at that time?

12 A Yes.

13 Q Now, let me just make sure that the record is clear
14 on this, Mr. Wise. At this point you are working
15 as an intermediate E.M.T. Correct me if I'm wrong,
16 aren't you a captain?

17 A No, I'm not a captain.

18 Q You're not a captain?

19 A I'm a corporal.

20 Q A corporal?

21 A In their ranking I'm a corporal.

22 Q I apologize. I just wanted to address you
23 appropriately. At that particular time when he
24 makes the statement, it doesn't appear that he's
25 being forced to make that particular statement?

1 A No, not at all, no.

2 Q Now, after he makes the statement, what happens
3 then?

4 A Well, we didn't continue to secure his head. The
5 rest is mechanical from my perspective after he
6 makes the statement. The statement was rather
7 forceful, and I didn't -- we were more concerned
8 with getting him packaged, on the stretcher, and
9 into the ambulance and headed to the hospital.

10 Now, that's our primary focus. We're not --
11 we are not writing down statements. We are not
12 writing down times. We are really -- there are
13 others for that.

14 Q That's right. You're just concerned with getting
15 him taken care of?

16 A We want to get him stabilized. We want to get
17 him -- we want everybody to survive.

18 Q Yes, sir. Now, at any point do you come back in
19 contact with that particular individual?

20 A No, I do not. I help load him into the ambulance.
21 After that I have no more contact.

22 Q Thank you.

23 MR. MOBLEY: Nothing further for this witness,
24 Your Honor.

25 THE COURT: All right. Thank you.

1 Mr. Madsen.

2 IN CAMERA EXAMINATION

3 BY MR. MADSEN:

4 Q Good afternoon, Mr. Wise.

5 A How are you, sir?

6 Q So, when you get out there, he is -- when you first
7 come in contact with my client, he's actually
8 already on the spine board?

9 A They were placing him on the spine board. We were
10 still moving him around at that time.

11 Q Where is he located in relation to the vehicle?

12 A If I recall correctly, he is a little bit to the
13 rear and towards the center of the field. I think
14 there's some diagrams.

15 Q So he's closer to the road.

16 A Yes, he is, very much so.

17 Q And when you get up to him, you indicate that when
18 they're trying to put him on the spine board, that
19 he's somewhat combative. Can you explain to me
20 how?

21 A Just moving around. You don't want somebody to
22 move their head. You want their head perfectly
23 still because we don't know what type of injury
24 their spine has at this point.

25 Q And is someone telling him to stay still?

- 1 A I don't recall.
- 2 Q But he's clearly not, right?
- 3 A He's moving around. That's normal for people under
4 those circumstances.
- 5 Q And you said that he made a statement of, Man, I
6 really f-ed up?
- 7 A Yes.
- 8 Q Which could ultimately mean a variety of things,
9 couldn't it?
- 10 A Yes, it could.
- 11 Q It could mean, Man, I really have f-ed up. I
12 shouldn't have been driving?
- 13 A Uh-huh. (Indicating affirmative response).
- 14 Q It could mean, Man, I really have f-ed up. I
15 shouldn't have let that other guy drive?
- 16 A Uh-huh. (Indicating affirmative response).
- 17 Q It could mean, Man, I'm really messed up, because
18 he had injuries; didn't he?
- 19 A Oh, yes, certainly.
- 20 Q And so for you just sitting there, there's no way
21 for you to put a context on that; is there?
- 22 A No, I couldn't. I just relayed the statement. In
23 his mental state with the circumstances, I don't
24 think I could say he was driving or what the
25 statement meant.

JERRY WISE -- IN CAMERA -- MR. MOBLEY

131

1 MR. MADSEN: That's all the questions I have.

2 THE COURT: Redirect, Solicitor?

3 MR. MOBLEY: Just one thing, Your Honor.

4 IN CAMERA EXAMINATION

5 BY MR. MOBLEY:

6 Q Mr. Wise, just for clarification on the record.

7 When you said the Defendant made the statement,

8 Man, I f-ed up, you're abbreviating that term out
9 of respect for the Court; correct?

10 A Absolutely.

11 Q Okay.

12 MR. MOBLEY: Nothing further, Your Honor.

13 THE COURT: Thank you. Thank you very much,
14 Mr. Wise. You may step down.

15 (Witness leaves the witness stand.)

16 THE COURT: Would the last witness be
17 substantially the same as this witness, Solicitor?

18 MR. MOBLEY: He will, Your Honor.

19 THE COURT: All right. Well, given the time
20 involved -- yes, sir.

21 MR. MOBLEY: I apologize, I apologize. There
22 is one statement that the last witness makes that's
23 substantially different and adds more context to it. It
24 implicates him more.

25 THE COURT: All right. Well, y'all have got

1 15 more minutes for me to finish hearing these motions.

2 Call your next witness.

3 MR. MOBLEY: Your Honor, the State calls
4 Victor Tomaino.

5 VICTOR TOMAINO, being
6 first duly sworn, testifies as follows:

7 CLERK: Have a seat, please, sir. Once
8 you're seated, state your full name, spelling your last
9 name.

10 THE WITNESS: My name is Victor Tomaino,
11 T-O-M-A-I-N-O.

12 THE COURT: Pronounce that for me again.

13 THE WITNESS: Tomaino.

14 THE COURT: Tomaino. Thank you very much.

15 **IN CAMERA EXAMINATION**

16 BY MR. MOBLEY:

17 Q Mr. Tomaino, where are you currently employed?

18 A Currently I'm full-time at Slaggle's Fire Equipment
19 in West Columbia.

20 Q Okay. Now, are you a volunteer firefighter as
21 well?

22 A Yes, sir.

23 Q Back on the day of August 1st, 2009, were you a
24 volunteer firefighter?

25 A Yes, I was.

1 Q For what station?

2 A Hollow Creek Fire Department.

3 Q Now, on this particular morning, early morning,
4 August 1st, 2009, did you have the occasion to
5 respond to an incident on Highway 378 near the
6 Saluda County line?

7 A Yes, I did.

8 Q Once you responded to that particular location, did
9 you happen to come in contact with the individual
10 that was the survivor in this incident?

11 A Yes, I did.

12 Q And where did you come in contact with him at?

13 A I came in contact with him right towards the rear
14 of the vehicle.

15 Q Was he the closest to the vehicle?

16 A Yes, he was.

17 Q Was there another individual out farther into the
18 field?

19 A There was. If you're standing out at the road
20 looking towards the vehicle, I guess you would say
21 right at the vehicle, towards the left of it, I
22 guess you would say, more out towards the field.

23 Q Okay. Now, you go to the individual that's closest
24 to the truck. Does he make any -- were you asking
25 him any questions?

1 A Initially I was not asking questions. The E.M.T.
2 and the paramedic and I believe one of the other
3 persons, personnel, that were there were asking
4 questions. I was -- as soon as I got there, I
5 maintained the spine. I was holding his head --

6 Q Okay.

7 A -- so he wasn't able to move. He attempted to move
8 every once in a while, but he kind of wasn't
9 putting up too much of a fight. So I was holding
10 the C-spine then. The entire time we were doing
11 that, the individual kept stating, Man, I
12 f-ed up, if you will, over and over and over again.

13 Q Was he prompted to say that or was he responding to
14 any questions or was that spontaneous?

15 A I think he was just kind of saying it.

16 Q Did he seem like he was coherent at the time?

17 A If I had to guess, he was kind of more in and out,
18 but, yeah, he was -- every time somebody
19 asked him a question, he did respond.

20 Q He did respond every time?

21 A He did.

22 Q Did it seem like it was voluntary when he made
23 that statement?

24 A Yes.

25 Q Okay. Now, was there any other statement besides

VICTOR TOMAINO -- IN CAMERA -- MR. MOBLEY

135

1 the fact that he said, Man, I f-ed up?

2 A Right as we were about to load the patient up and
3 then take him over to the spine board towards the
4 ambulance, I heard the patient say that he
5 shouldn't have been driving.

6 And I'm kind of guessing that's where the
7 whole, Man, I f-ed up, thing came into play. That
8 was the main statement. That's the only other
9 thing that I really heard him say.

10 Q So there's no other statements that you heard that
11 particular night?

12 A Not offhand. Of course, I was trying to listen to
13 everybody else, and while I was listening to
14 everybody else, I tuned right back into him is when
15 I heard that.

16 Q Did you later come back in contact with
17 Mr. Manning, that particular individual?

18 A Not that night. As soon as he got loaded up in the
19 ambulance, they were gone.

20 Q Okay. So that's all the statements that you can
21 recall?

22 A Uh-huh. (Indicating affirmative response).

23 Q Okay.

24 MR. MOBLEY: Nothing further, Your Honor.

25 THE COURT: Thank you, Solicitor.

1 Mr. Madsen.

2 IN CAMERA EXAMINATION

3 BY MR. MADSEN:

4 Q So you hear these statements ultimately saying,
5 I shouldn't have been driving, when y'all are
6 picking the spine board up and taking him to the
7 ambulance?

8 A That is correct.

9 Q So it wouldn't just be you. Would there have been
10 other people helping to move him?

11 A I would think there would be. But like I said,
12 there was a lot of confusion going on, and we were
13 yelling back and forth to each other. Callers were
14 yelling at each other back and forth trying to
15 figure out what was going on.

16 That was, like I said, in the midst of talking
17 to somebody else. I came back to him, and right
18 when I looked at him is when I heard him say that,
19 and I was --

20 Q Is he up in the air or is he down on the ground?

21 A I can't recall that.

22 Q And were you at his head at that point in time?

23 A I was. I stayed at his head the entire time.

24 Q Was there anyone else working on him, a paramedic
25 or an E.M.T.?

VICTOR TOMAINO -- IN CAMERA -- MR. MADSEN

137

1 A There was a medic there who was -- from what I
2 could see, all she was doing was pushing drugs.
3 That's -- I don't know what she does. That's her
4 job.

5 Q What do you mean by pushing drugs?

6 A Whatever kind of medicines they've got. I don't
7 know. That's not my job. I have no idea what
8 paramedics do.

9 Q They were administering some type of medicine to
10 him?

11 A Yes, I saw them giving him something.

12 Q Okay.

13 MR. MADSEN: That's all the questions I have.

14 THE COURT: Thank you. Anything on redirect,
15 Solicitor?

16 MR. MOBLEY: None, Your Honor.

17 THE COURT: Thank you, sir. You may step
18 down.

19 (Witness leaves the witness stand.)

20 THE COURT: You may call your next witness,
21 Solicitor.

22 MR. MOBLEY: That's all we have, Your Honor,
23 as far as the statements are concerned.

24 THE COURT: Mr. Madsen, are you calling any
25 witnesses in this regard?

1 MR. MADSEN: No, Your Honor.

2 THE COURT: All right. Thank you. Solicitor,
3 I'll be glad to hear from you.

4 MR. MOBLEY: Your Honor, based off the
5 testimony, I think it's clear that Mr. Manning was
6 coherent enough to respond to the questions, the
7 appropriate questions that he was asked at that
8 particular time.

9 The testimony demonstrates that the statements
10 were not only spontaneous but voluntary. There was no
11 confusion as far as when he was making those particular
12 statements. I think he was reflecting upon what had
13 happened.

14 It had just happened at that particular time,
15 he was speaking out loud. The E.M.T. workers and the
16 E.M.S. workers were not law enforcement. They were not
17 interrogating him as far as trying to obtain any type of
18 statements at all.

19 But when they did ask him questions for care
20 and trying to make sure that he was alert at this
21 particular time, they determined that he was, and he
22 began to provide these particular statements. We feel
23 that they are free and voluntary, and they should be
24 admissible at trial, Your Honor.

25 THE COURT: Thank you, Solicitor. Mr. Madsen.

1 MR. MADSEN: Judge, I've got two separate
2 things. The first one is that based on what
3 the solicitor has given me, which has already been
4 provided to the Court on statements from Ms. Simmons and
5 Mr. Prouse, there is no indication in those statements
6 that they told the solicitor about this, I f-ed up
7 statement.

8 So I would like to have that clarified as to
9 whether they didn't tell him that or if that's something
10 different or if that's something new, but that was not
11 included in those e-mails.

12 Additionally, Judge, our objection ultimately
13 is under quite a few of those statements including the,
14 I f-ed up or my buddy was riding with me. Those are
15 certainly ambiguous at best and under 403 ought to be
16 excluded, Judge, because we do believe that those are
17 more prejudicial than probative.

18 THE COURT: All right. Have they changed in
19 the statements? It was Simmons and who else?

20 MR. MADSEN: Ms. Simmons and Mr. Prouse.
21 In both of the things that I had received from the
22 solicitor, neither of those indicate -- he has
23 quotations about the statements that he got from those.

24 On Ms. Simmons, the quotations are, I
25 shouldn't have done this. Look at what I have done.

1 But there is nothing about the, I f-ed up, in that one.
2 In Mr. Prouse's there is nothing about the, I f-ed up,
3 in that one either.

4 THE COURT: Solicitor?

5 MR. MOBLEY: Your Honor, what I provided him
6 was the summary of the statements that were provided to
7 me directly from them. I did not receive any, I f-ed
8 up, statement from Ms. Simmons nor Mr. Prouse.

9 When I received those particular statements, I
10 don't know if they simply forgot about them and, then
11 once they got on the stand and were questioned, that's
12 when they came up at that particular time. They remain
13 very consistent with each other individually.

14 Some of them say the same thing about, Man, I
15 f-ed up. They are saying very clearly he repeatedly
16 said it. When you have so many workers come around, it
17 seems like everyone would hear that. But also each one
18 of them has a different statement that this Defendant
19 makes.

20 But what remains consistent is the fact that,
21 I f-ed up, is heard by each one of them, and each one of
22 them said he consistently and repeatedly says that
23 statement.

24 THE COURT: All right. Thank you.
25 Mr. Madsen?

1 MR. MADSEN: No response, Your Honor. Your
2 Honor, I just -- I think that under the discovery, I was
3 provided with something, and now it's different or at
4 least there's an addition to it.

5 THE COURT: Yes, sir. I don't think it's
6 different. According to the solicitor, it's not
7 different. It wasn't provided on whatever dates they
8 provided this information to the solicitor and then they
9 testified in camera. It appears to be additional. All
10 right. Anything further, Mr. Madsen?

11 MR. MADSEN: Not in relation to this
12 motion, Your Honor.

13 THE COURT: Well, I would find based on the
14 totality of the circumstances that under the case law as
15 I understand it, the statements would be admissible.
16 Under State versus White, which is 428 S.E.2d 740 -- and
17 that was found to be a very interesting case.

18 Mr. White was arrested for felony D.U.I. in
19 Florence County and was tried and convicted of that. At
20 the time he gave certain statements to law enforcement,
21 to highway patrol officers.

22 One of those times was out on the scene. It
23 appears that his brother-in-law, I believe it was Terry,
24 his brother-in-law Terry, White asked the trooper about
25 Terry's whereabouts and condition.

1 When told that his brother-in-law was dead,
2 White began to tug at the restraints that held him to
3 the bed and he screamed, Oh, my Lord, I killed him. I
4 killed him. I said it was at the scene. This was
5 actually at the hospital.

6 He was in four-point restraints. He had been
7 administered drugs, including sodium Pentothal, which as
8 you all know is a truth serum. It's also used in some
9 cultures as an euthanasia drug.

10 All the officers testified that hospital
11 personnel had placed White in restraints because he had
12 become belligerent. They had given him the drug to calm
13 him down. In this case you also do not even have any
14 questioning by the officers or really any questioning at
15 all.

16 Because there was an interesting answer by
17 E.M.T. Simmons when asked, Was he under arrest? Her
18 response was a question to the solicitor, cardiac
19 arrest? That shows exactly what these individuals'
20 focus was, the attempt to administer emergency medical
21 treatment to Mr. Manning at the time.

22 So based on the totality of the circumstances,
23 I would find it appears he was coherent. He was
24 responsive. His answers appear to have been responsive.
25 Whether or not the officers remembered the name he gave

1 or E.M.S. remembered the name he gave or not, the
2 testimony in my presence appeared he gave a name.

3 Further, Miranda would not be required of any
4 of these individuals who heard these voluntary
5 statements. Also coercive police activity is a
6 necessary predicate to finding that a confession is not
7 voluntary within the meaning of the due process clause.

8 I would cite Colorado versus Connelly, a
9 United States Supreme Court decision, which is also
10 cited in White for that proposition. That's the guy who
11 flew out to Denver and confessed to an officer on the
12 street that he had committed a murder sometime in the
13 past, and God told him to come and confess. Really it
14 was his psychosis that was causing him to give his
15 confession, it was not police coercion.

16 Here, it's A., not the police. B., it's not
17 coercion. As to the 403 analysis, I would find that the
18 probative value is not substantially outweighed by the
19 danger of unfair prejudice or confusion of the issues or
20 misleading the jury.

21 I have considered it and listened very closely
22 to all the witnesses. It's consistent one witness to
23 the other, and it would go to the weight, not to the
24 admissibility of the testimony.

25 Any other motions, Mr. Madsen?

1 MR. MADSEN: Yes, Your Honor. Two of
2 them that I just wanted to point out to you, Judge. I
3 don't necessarily think that we need to hear them right
4 now. One motion though, Judge, is a motion to redact
5 the testimony and/or any documents in reference to
6 marijuana found in the blood of my client.

7 I believe that's listed as a marijuana
8 metabolite, which my understanding is that the chemist
9 is going to or would indicate that that is not something
10 that she can say that he was actively under the
11 influence of.

12 What I would request at this point in time is
13 for the solicitor not to make any reference to that in
14 the opening statement, and we can deal with that when
15 the chemist is here later to confirm my suspicions that
16 she can't testify that he was under the influence of
17 marijuana because they are metabolites, which means it
18 could be within the last 30 days.

19 THE COURT: All right. Solicitor?

20 MR. MOBLEY: Well, I agree in opening, Your
21 Honor. But as far as the redaction later, if we can get
22 to that I'd like to, because I think that's something
23 that should come out on cross instead of simply
24 redacting it and acquiescing to the redaction itself at
25 this point.

1 THE COURT: Mr. Madsen.

2 MR. MADSEN: Judge, the same thing with the
3 blood results. As far as potential contamination to the
4 sample, I'll bring that up later. I don't think
5 anything needs to be done on that right now.

6 My final two motions, Judge, I do have a
7 motion for dismissal of the case because the State has
8 violated 56-5-2953, which requires either, A., that they
9 have a video of the scene or, B., that they have an
10 affidavit filled out by the law enforcement officer
11 indicating as to why they do not have a videotape.

12 Judge, there is a case, State v. Suchenski,
13 that talks about that. You do not need to show
14 prejudice on that. It gives them an exception. If they
15 do not provide the video, they need to fill out that
16 affidavit. I have not been provided that by the State.
17 So under Suchenski if they have violated that, it is the
18 case law that it be dismissed under 56-5-2953.

19 THE COURT: Solicitor.

20 MR. MOBLEY: Your Honor, the simple reason why
21 there is no affidavit is because when the first
22 responding trooper responded, there was no defendant
23 there. He had already been transported. So there was
24 nothing to camcord or video record on that particular
25 incident location.

1 The intent of that particular statute and the
2 case that Mr. Madsen is citing is basically to record
3 the conduct of the Defendant when he is being
4 administered field sobriety tests so that his conduct
5 can be judged by the actual jury or judge or whoever may
6 view it to determine and help determine whether he was
7 impaired or not.

8 Obviously, this was a very severe and violent
9 incident. By the time the responding trooper had gotten
10 there, he had already been transported for medical
11 reasons.

12 THE COURT: All right. I'm going to deny your
13 motion. As I read 56-5-2953, it states that a person
14 who violates those other statutes must have his conduct
15 at the incident site and the breath test site video
16 recorded. If the person is not at the incident site, he
17 cannot be recorded. Was there any breath test?

18 MR. MOBLEY: No, Your Honor.

19 THE COURT: All right. I'm going to deny your
20 motion, Mr. Madsen.

21 MR. MADSEN: Judge, just for the record, in
22 B. it indicates that they could submit a sworn affidavit
23 certifying that it was physically impossible to produce
24 the video recording because the person needed emergency
25 medical treatment or exigent circumstances existed, and

1 they have not done that affidavit.

2 THE COURT: I would deny your motion.

3 Do you have another motion?

4 MR. MADSEN: Yes, sir, Judge. The last one is
5 a motion to suppress the blood test evidence, Judge,
6 under 56-5-2946. That indicates that the test must be
7 administered at the direction of law enforcement who has
8 probable cause to believe that the person violated or is
9 under arrest for that section, which in this case would
10 be a felony D.U.I.

11 Judge, Your Honor has heard -- and this is
12 kind of tricky -- Your Honor has heard a lot of evidence
13 from individuals, the E.M.T.s, law enforcement, and the
14 Solicitor just became aware.

15 But, back at that point in time, ultimately
16 all they have is someone who smelled of alcohol. But
17 ultimately you have a question about who is the driver.
18 There is no probable cause at that point in time to
19 indicate who the driver is.

20 Just because someone -- there's two people
21 involved in a car accident and one person is alive, I
22 certainly do not believe that that gives law enforcement
23 probable cause to believe that that individual was the
24 driver.

25 And, in fact, I would point out, Judge, that,

1 when they take my client's blood at approximately 7:38
2 that day, there were reports from Trooper Breland
3 indicating at 8:00 o'clock that morning that they have a
4 driver issue and don't know who the driver is.

5 Additionally, there is a coroner's report that
6 indicates that they don't know who the driver is and
7 finally a tow sheet filled out by the investigating
8 officer that does not -- or indicates that there is a
9 driver issue.

10 So, Judge, our position is they should not
11 have been able to get the blood at that point in time
12 because he was not -- or they did not have probable
13 cause or in the alternative that there wasn't probable
14 cause to support an arrest.

15 THE COURT: All right. Solicitor, you
16 may call your witness in that regard.

17 MR. MOBLEY: Thank you, Your Honor. The
18 State calls Trooper Hallman to the stand.

19 QUEST HALLMAN, being
20 first duly sworn, testifies as follows:

21 CLERK: Have a seat, please, sir. Once
22 you are seated, state your full name, spelling your
23 last, please.

24 THE WITNESS: My name is Quest Hallman,
25 H-A-L-L-M-A-N.

QUEST HALLMAN -- IN CAMERA -- MR. MOBLEY

149

1 COURT REPORTER: What is your first name?

2 THE WITNESS: Quest, Q-U-E-S-T.

3 IN CAMERA EXAMINATION

4 BY MR. MOBLEY:

5 Q Mr. Hallman, where do you currently work?

6 A The South Carolina Highway Patrol.

7 Q And how long have you been working there?

8 A July 16th will be ten years.

9 Q Ten years. Now, what is your current rank?

10 A Lance corporal.

11 Q Now, were you working as a highway patrolman back
12 on the date of the early morning of August 1st,
13 2009?

14 A I was.

15 Q Okay. On that particular date, did you respond to
16 an incident on 378, Highway 378, near the Saluda
17 County line?

18 A I did.

19 Q Now, walk us through why you responded to that
20 particular area.

21 A Around 5:00 a.m. on August 1st, I was on patrol on
22 I-26 in Lexington County. I received a call over
23 my radio from our dispatcher of a collision with
24 injuries on Highway 378, as I refer to it, west
25 near the Saluda County line.

1 I'm very familiar with that area. I live out
2 that way also and travel that road several times a
3 week. I proceeded there. It took me about 25
4 minutes to get there. When I arrived E.M.S. and
5 fire service were already on the scene.

6 Q Okay. Now, once you got to the scene, you stated
7 E.M.S. and fire service is already there. Did you
8 have to speak with anyone else once you arrived on
9 scene about what they saw?

10 A There was no one else, other than the fire service
11 and E.M.S. If memory serves me correctly, the
12 ambulance with Mr. Manning had already passed me as
13 I was proceeding to the scene. So as far as
14 directly with the vehicle or about the vehicle,
15 there was no one else to talk to about that.

16 Q So what did you do when you got there then?

17 A Well, my normal procedure is to, number one, find
18 out who the driver was. During the course of
19 identifying the folks, I, of course, looked under
20 the sheet at Mr. Hill. I recognized him from a
21 previous encounter.

22 I believe I got the name of a Mr. Manning from
23 the E.M.S. units because they came back to the
24 scene to give information about who was in the
25 vehicle because we need that for the report.

QUEST HALLMAN -- IN CAMERA -- MR. MOBLEY

151

- 1 Q Okay.
- 2 A I'm sorry. I forgot the question.
- 3 Q Well, what did you do once you got on scene?
- 4 A Trooper Antley was also with me. I directed him to
- 5 start taking photographs, and Trooper Stokes also
- 6 arrived there sometime after myself and Trooper
- 7 Antley or Trooper -- yeah, it was Trooper Antley.
- 8 I advised him to start marking the scene to further
- 9 the investigation because, with a death, it's more
- 10 in depth.
- 11 Q Okay.
- 12 A And, of course, I'm walking around looking at
- 13 evidence, making sure we document different pieces
- 14 correctly, observing the vehicle, looking for any
- 15 signs of who may have been driving the vehicle. .
- 16 Sometimes seat position or steering wheel
- 17 position or certain things will give away who might
- 18 have been driving. Also, Trooper Baker was also
- 19 working that night.
- 20 Q Okay.
- 21 A He was in the Columbia area, and I sent him to
- 22 Richland Hospital to check on Mr. Manning.
- 23 Q Now, why did you have to send him to Richland
- 24 County to check on Mr. Manning?
- 25 A Because I was out 35 miles away. And when time is

1 of the essence in this situation, he was in a much
2 better position than I was to get to the hospital
3 to check on Mr. Manning. Because with him being
4 involved in a vehicle collision, we have to
5 accurately identify the driver to properly report
6 it and properly investigate it.

7 Q Now, what made you think that Mr. Manning was the
8 driver?

9 A Well, Trooper Baker called me from the hospital and
10 stated that when he went into the trauma area, I
11 believe that he heard some statements about, You
12 know, me and my buddy were riding to the lake, and
13 stuff of that nature.

14 I can't remember exactly what he told me
15 because it's been almost a year, and I don't want
16 to speculate, but he did make reference to hearing,
17 I believe, some comments made by Mr. Manning that
18 he was the driver. Also, it was his girlfriend's
19 vehicle.

20 Q And how did you know that?

21 A We ran the tag.

22 Q Okay.

23 A Also, with the witness, Ms. Fairchild, I found out
24 that the vehicle was Mr. Manning's girlfriend's.

25 So with -- and he was in the vicinity of his work,

QUEST HALLMAN -- IN CAMERA -- MR. MOBLEY

153

- 1 and that combined with his girlfriend's vehicle and
2 one he normally drove to work, according to the
3 witnesses, I took that and was led to believe that
4 he was the driver --
- 5 Q Okay.
- 6 A -- and still do.
- 7 Q Now, when you ran the registration for the vehicle,
8 did it match any information that Mr. Manning had
9 at the particular point in time?
- 10 A His address.
- 11 Q So the address was the same?
- 12 A Yes, sir. The address for the registered owner was
13 to a Ms. April Rabon at [REDACTED] Old Duncan Road in
14 Leesville.
- 15 Q Okay.
- 16 A And also the address that was given to us by E.M.S.
17 for Mr. Manning was [REDACTED] Old Duncan Road in
18 Leesville.
- 19 Q So those were exactly the same?
- 20 A Yes, sir.
- 21 Q So Mr. Manning's address and the vehicle
22 registration was the same, the one that was just
23 involved in this incident?
- 24 A Yes, sir.
- 25 Q Okay. Now, at some point, you have Trooper Baker

1 go to Columbia to check on Mr. Manning?

2 A Yes, sir.

3 Q And he hears these statements about Mr. Manning
4 saying that he's driving. You don't know who he
5 hears these statements from though?

6 A No, sir, I don't.

7 Q Okay. What do you direct Trooper Baker to do?

8 A I told Trooper Baker -- and he's been on patrol
9 longer than I. He knows the procedures that we're
10 going to have to follow. I said, Well, if you
11 heard these statements and feel that he is the
12 driver, then get a blood sample.

13 Q Now, on the scene -- we'll go back to the scene a
14 little. On the scene there was a lot of debris
15 about the field where the accident occurred?

16 A Yes.

17 Q Did you see any type of bottles or alcoholic
18 beverages or anything of that nature that would
19 indicate --

20 A I did. I did recall seeing one Bud Light bottle
21 that was strung out in a large debris field that
22 was there.

23 Q Now, did you know at this particular time that
24 there was a deceased individual present?

25 A Honestly, that's really the first thing that I saw

QUEST HALLMAN -- IN CAMERA -- MR. MOBLEY

155

1 when I arrived. Certain things jump out at people,
2 and not to upset the family but I saw the white
3 sheet there.

4 You know, driving up, with the area that it's
5 in at that time of morning, some things -- you get
6 used to that situation and know it's going to be a
7 bad one.

8 Q Okay. What other information -- was there any
9 other information you had gathered in order to
10 determine that this could possibly be a felony
11 D.U.I.?

12 A Well, there was an odor of alcohol beverage in the
13 vehicle.

14 Q In the vehicle?

15 A Yes.

16 Q Okay.

17 A The smell lingers around. It's sort of like an
18 airbag smell. It lingers around and you get used
19 to certain odors. Other than that, I didn't speak
20 with Mr. Manning because Trooper Baker was at the
21 hospital. But, of course, he said that he did
22 smell of an alcoholic beverage.

23 Q Okay.

24 MR. MOBLEY: Nothing further for this witness,
25 Your Honor.

1 THE COURT: Thank you. Mr. Madsen.

2 IN CAMERA EXAMINATION

3 BY MR. MADSEN:

4 Q How are you, Trooper Hallman?

5 A Fine, sir. And you?

6 Q Good. Now, let me make sure that I understand.

7 When you get out there, you are the case officer;
8 correct?

9 A Yes, sir.

10 Q And ultimately you don't go to the hospital and see
11 my client, right? That's Trooper Baker?

12 A Correct.

13 Q But you're the one who is responsible for putting
14 the reports together to submit to the solicitor
15 since you're the case agent, right?

16 A Yes, sir.

17 Q And in all the reports that you have given, is
18 there anything in any of that stuff that indicates
19 any statements that my client had made to -- is it
20 Sergeant Baker?

21 A Lance Corporal.

22 Q Okay. Trooper Baker.

23 A I don't recall anything.

24 Q Would you be surprised to know that that answer is
25 no, that there's nothing in there of any

QUEST HALLMAN -- IN CAMERA -- MR. MADSEN

157

1 statements?

2 A I haven't seen any statements of that nature, so I
3 wouldn't be surprised of that, no, sir.

4 Q And then when they ultimately take my client's
5 blood -- you've got your case file -- it looks like
6 it's about 7:30 a.m., correct?

7 A I would have to look here. I don't know the time
8 right off the top of my head.

9 Q You should have that on the sheet, correct?

10 A Let's see. It's in here. I saw it earlier.

11 Q And that sheet actually says like 7:19?

12 A Yes, sir.

13 Q Well, you've got the implied consent, and that's
14 filled out at 7:16; correct?

15 A Yes, it says 7:16.

16 Q And you had made reference to knowing about the
17 driver because of a conversation with Heather
18 Fairchild, but she is not talked to until
19 9:30 a.m., so some two hours later?

20 A Yes, sir.

21 Q So certainly you can't take a statement from two
22 hours later and go back and formulate who the
23 driver is based on a blood draw two hours before,
24 correct?

25 A Well, I see what you're saying, but Trooper Baker

1 was in with the statements. And with the address
2 of the registered owner being the same address as
3 Mr. Manning --

4 Q That's what you ultimately have. Well, let me ask
5 you this. When you find out, when you actually run
6 the tag and find out it's supposedly his same
7 address, when is that? What time is that?

8 A I'm not sure of the time, but E.M.S. came back to
9 the scene. They often do that.

10 Q What do you mean came back?

11 A When they left the hospital, they came back. A lot
12 of times, we get follow-up information from them.
13 We were given -- because when they left, we didn't
14 have a name or address or anything. I got the
15 address. I'm not sure who I got it from from
16 E.M.S., but I got his name and address and all the
17 particulars.

18 Q But that would end up being after potentially this
19 7:16 blood draw because E.M.S. has got to go and
20 come back, correct?

21 A I'm not sure. It was early in the morning, but --

22 Q And then I guess Trooper Breland is part of the
23 M.A.I.T. team, correct?

24 A Yes, he's with the M.A.I.T. team.

25 Q And he ends up making some notes which are part of

QUEST HALLMAN -- IN CAMERA -- MR. MADSEN

159

1 your file; is that true?

2 A I'm not sure what notes you refer to. I just have
3 one.

4 Q How about this one (indicating)?

5 A Yes, sir.

6 Q It would have been done by him?

7 A It has his name. I don't see him that often, but
8 his name is there.

9 Q And that indicates 8/1 of '09, and it has, it looks
10 like 6:40; is that correct?

11 A It does.

12 Q And it indicates down at the bottom of the first
13 paragraph initially unknown as to the driver
14 issue; is that correct?

15 A That's what it says. I didn't talk to Mr. Breland
16 at all. Sergeant Levine is the one who spoke with
17 the M.A.I.T. team. Our supervisors are the ones
18 who get in touch with the M.A.I.T. team.

19 Q And the coroner ultimately does a report, and the
20 coroner is out there because of Mr. Hill; correct?

21 A Yes, sir.

22 Q And he does a report which indicates which
23 individual is driving the vehicle has not yet been
24 determined; is that correct?

25 A That's what I read on the report.

1 Q And then ultimately you do a tow sheet, don't you?

2 A Yes, sir, I believe I did. I think it was a
3 wrecker off of our list.

4 Q Okay. Do you have a copy of that?

5 A I do not.

6 Q Is that something -- that's something that you fill
7 out though, right?

8 A Yes, sir. But a lot of times with these in-depth
9 investigations -- just to give you a little
10 background, I had worked all night, and Sergeant
11 Levine said, If there's something you can hand off
12 for someone else to do, you know, you can do it,
13 and that's fine. I can't say for certain that I
14 filled out what we call a tow slip. If memory
15 serves me, Trooper Koon stayed with the vehicle for
16 the wrecker to arrive.

17 Q Let me show you this and see if you recognize -- is
18 that your handwriting?

19 A It is.

20 Q Okay. And that's something that you filled out on
21 8/1 of '09, correct?

22 A Yes, sir.

23 Q And that would be when the vehicle is towed?

24 A Yes, sir.

25 Q And so that would be upon the clearing of the

QUEST HALLMAN -- IN CAMERA -- MR. MADSEN

161

1 scene, wouldn't it?

2 A That's when the wrecker gets there and hooks it up
3 and leaves. That's when I fill that out.

4 Q And under vehicle operator, that says unknown, ;
5 doesn't it?

6 A It does.

7 Q And, down at the bottom I guess, is that your
8 name --

9 A Yes, sir.

10 Q -- where you would have filled that out?

11 A Yes, sir.

12 Q And that indicates I guess 8:08?

13 A Yes, sir.

14 Q And that would be in the a.m. though?

15 A Yes, correct.

16 Q Okay. So that would have been after the blood
17 draw. And at that point in time, y'all still have
18 an issue of who's the driver?

19 A Yes.

20 Q So ultimately with just your investigation out
21 there that morning, there's obviously an issue, A.,
22 whether this is a felony D.U.I., in other words,
23 are alcohol or drugs involved, but also there is an
24 issue of who is the driver.

25 And you weren't able to develop any physical

1 evidence prior to the blood draw that you know of
2 that would say that my client was the driver? The
3 only thing that you say that you had was from --
4 Trooper Baker had made that determination,
5 correct?

6 A Well, he had said he heard some statements from
7 what I can remember.

8 MR. MADSEN: That's all the questions I have,
9 Judge.

10 THE COURT: Redirect, Solicitor?

11 MR. MOBLEY: Yes, sir.

12 IN CAMERA EXAMINATION

13 BY MR. MOBLEY:

14 Q Ultimately, Trooper Hallman, you were investigating
15 what actually happened on this particular case?

16 A Yes, sir.

17 Q Okay. You had to gather multiple pieces of
18 evidence in order to obtain the required necessary
19 information that a crime had been committed and
20 that alcohol had been involved, correct?

21 A Yes, sir.

22 Q Did you receive that information during this
23 particular time, during your investigation, with
24 the information that you have received?

25 A Yes.

QUEST HALLMAN -- IN CAMERA -- MR. MOBLEY

163

1 Q Okay. Did you relay or convey that to the other
2 trooper who was Trooper Baker?

3 A Yes.

4 Q Okay. So, with all this information gathered, you
5 had difficulty establishing who was driving the
6 vehicle at this particular time, but we knew that a
7 crime had been committed. The vehicle that was
8 registered came back registered to the same address
9 as the surviving victim --

10 A Yes, sir.

11 Q -- that there was alcohol on the scene in a beer
12 bottle and that there was a smell of alcoholic
13 beverage inside of the vehicle, correct?

14 A Correct.

15 Q Okay. Did you feel that was enough? I mean, you
16 had the deceased victim that was farther out in the
17 field. Did you feel that, in your mind, in
18 addition to those statements, that there was enough
19 probable cause, enough evidence there to present
20 probable cause for a felony D.U.I. in this
21 particular case?

22 A In my experience to me, that met my burden at the
23 time for requesting a blood sample, and that was
24 sufficient.

25 Q Now, the State requested a blood sample. Did you

1 direct another trooper to do so?

2 A Trooper Baker. And also because he was at the
3 hospital --

4 Q Okay.

5 A -- and with time of the essence, he said he would
6 do it.

7 Q Okay. Thank you.

8 MR. MOBLEY: Nothing further for this witness
9 Your Honor.

10 THE COURT: Any recross, Mr. Madsen?

11 BY MR. MADSEN:

12 Q Ultimately though all this information that you're
13 talking about my client being the driver is
14 developed after the blood is drawn, and you say
15 time is of the essence. You ultimately draw his
16 blood because he's the only survivor. You don't
17 have any information before the blood is drawn
18 showing that he's the driver?

19 A Not all the --

20 Q I mean, You personally.

21 A Not all the information was learned after the blood
22 sample was drawn.

23 Q What was learned before?

24 THE COURT: He's already testified to that.

25 Are you going to go through it again?

QUEST HALLMAN -- IN CAMERA -- MR. MOBLEY

165

1 Answer the question, Trooper.

2 A Can you ask it again, please.

3 Q What information did you have beforehand?

4 A We had the address. Now, the time it took---

5 Q But you said you got that from E.M.S. after.

6 A Yeah, but I was going to explain that. It takes
7 time for the E.M.S. to get from the hospital to the
8 scene. So that time is going to be a little off
9 about when they had it as opposed to us. Now,
10 with --

11 Q Any other information?

12 A -- Trooper Baker at the hospital, we had spoke on
13 the phone. He was mentioning the statements, the
14 smell of alcohol, the alcohol I smelled in the
15 vehicle.

16 Q Okay. I'm not worried about the alcohol. I'm just
17 worried about the driver.

18 THE COURT: Why aren't y'all worried about the
19 alcohol when it's a felony D.U.I.? Why are you just
20 worried about what is not important and not what is?
21 You asked the trooper the question, what information did
22 he have. Let the trooper answer his question. What
23 information did you have from the scene?

24 THE WITNESS: The smell of the alcohol, the
25 conversation with Trooper Baker at the hospital that

1 says he smelled alcohol on Mr. Manning, and the
2 statements he overheard when he was in the trauma room.

3 MR. MADSEN: That's all the questions I have,
4 Judge.

5 THE COURT: Thank you. You may step down.
6 Thank you, sir.

7 (Witness leaves the witness stand.)

8 THE COURT: Any other motions?

9 MR. MADSEN: Judge, we would move to
10 suppress because ultimately I think to show probable
11 cause not only do they have to show that someone was
12 drinking obviously, but they also have to show who the
13 driver was. They don't have any information, except for
14 apparently that this was his girlfriend's car, to show
15 that he was the driver of that vehicle.

16 The solicitor will correct me if I'm wrong,
17 but any statements that supposedly they say my client
18 made to Trooper Baker have not been provided to me in
19 discovery, and that seems to be what they are relying
20 upon for that driving prong.

21 THE COURT: All right. Solicitor?

22 MR. MOBLEY: Your Honor, we're getting back,
23 once again, about basically the State doing the job of
24 the Public Defender, knowing what exactly had
25 transpired.

1 THE COURT: That's very different when you
2 talk about a prosecuting agent or officer.

3 MR. MOBLEY: That's correct, Your Honor. I
4 look at these statements as being basically they
5 were investigating a crime. They were talking amongst
6 one another.

7 There hasn't been anything that's been
8 provided to me in writing that stated these statements
9 were made amongst one another, but it was quite the
10 understanding that the troopers at this particular time,
11 while investigating this particular incident, were
12 basically talking to one another, This is what I heard.
13 This is what I've got. That is what I found out on this
14 particular case.

15 And especially between Mr. Baker and -- excuse
16 me -- Trooper Baker and Trooper Hallman, they had to
17 communicate to one another because you have one that is
18 located 35 miles away and the other one at the incident
19 location itself.

20 So we don't have any statement that's written
21 down saying that it was provided to the trooper to be
22 quite honest and candid with the Court, Your Honor,
23 because we don't have it.

24 We're of the opinion that it's simply an
25 investigation that's going on. That should be assumed

1 because the blood was drawn. It's clearly written in
2 the report that one trooper is at one location and
3 another at the other location getting blood drawn.

4 Now, Your Honor, as to our point, it appears
5 that Mr. Madsen is trying to attack us on a corpus
6 delicti type matter with probable cause to be honest
7 with you. If he's attempting to do that, we've
8 definitely met the burden on that because we've shown
9 that a crime has been committed.

10 We've shown that. Even with corroborated or
11 uncorroborated statements, the evidence is going to show
12 that there was a car that was driven in the county,
13 Lexington County, someone was under the influence of
14 alcohol, and someone died during this particular
15 incident.

16 So if he's trying to disguise this as a corpus
17 delicti argument, then he's failed on that because we've
18 met our burden by showing that we have a vehicle that
19 was registered to the Defendant's home.

20 It was the same address that was registered in
21 this particular location which was found out by the
22 trooper that was on the scene. So could that -- that's
23 connecting Mr. Manning, the only surviving victim in
24 this particular case, to this particular wrecked car.

25 He smelled alcohol that was still lingering

1 inside of the truck. He heard the statements that were
2 being provided by Trooper Baker, as well as the
3 personnel that was on the scene, Your Honor.

4 We feel that probable cause has been
5 established if we're going to take all the totality of
6 the circumstances, all the investigation that they had
7 to do in order to make sure we've got probable cause for
8 a felony D.U.I. arrest.

9 THE COURT: The only probable cause that is
10 relevant in the inquiry or the motion of Mr. Madsen
11 though is the probable cause that exists prior to the
12 law enforcement officer directing the blood to be drawn.
13 That's Mr. Madsen's point. It's not corpus delicti.

14 You can swirl that in as probable cause to
15 believe that a crime has been committed and that the
16 Defendant committed the crime, such that a law
17 enforcement officer can direct that the blood be drawn.

18 I don't even know what time the blood was
19 drawn. I think 7:16 but I'm not sure. If it's 7:16,
20 then what happened at 8:05 and what happened with the
21 other Faircloth or Fairchild and what happened with
22 Trooper Breland or all of that afterwards is really not
23 relevant to this inquiry as to whether or not Trooper
24 Hallman and Trooper Baker had sufficient probable cause
25 to direct that the blood be drawn, that a crime had been

1 committed.

2 You know, you start off 50/50 in a case like
3 this. Assuming there's not a third person, you start
4 off 50/50 because you've got two people. The trooper
5 testified to that. You have a victim that was living,
6 an accident, and a victim deceased. So you've got two
7 people. You start off 50/50.

8 What is probable cause? It's just anything
9 over 50 percent. It's not proof beyond a reasonable
10 doubt. I agree that the trooper doesn't have to --
11 whether they have got a question the next day or later
12 on that day or that night as to who was driving, that's
13 irrelevant.

14 It's probable cause, probable cause from what
15 he knew that the hospital personnel were directed to
16 draw the blood. As I understand it, he smelled alcohol.
17 As I understand it -- correct me if I'm wrong or you,
18 Mr. Madsen. Maybe I wasn't tracking it well enough.

19 He had knowledge that it was April Rabon's
20 vehicle and that the address for the registered vehicle
21 was the same address as Mr. Manning's. He knew that
22 before the blood was drawn; is that correct?

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

24 THE COURT: I wrote down a Bud Light bottle.
25 Was there a Bud Light bottle at the scene?

1 MR. MOBLEY: That is correct, Your Honor.

2 THE COURT: So he knew that. Then he has
3 conversations -- he, Trooper Hallman -- has
4 conversations with Trooper Baker about comments made by
5 Manning that he was the driver; is that correct?

6 MR. MOBLEY: That's the way I track it as
7 well, Your Honor.

8 THE COURT: And is that all before the blood
9 was drawn?

10 MR. MOBLEY: That's correct. Because
11 basically speaking to Mr. -- excuse me -- Trooper Baker,
12 that's when Trooper Hallman directs him to go ahead and
13 get him a blood withdrawal. Because, as he stated on
14 the stand, time is of the essence. He states that for a
15 reason.

16 Whenever there is a felony D.U.I. that is
17 involved, then you have to have the blood withdrawn
18 within a certain amount of time. That has been written
19 into the new statute where it has to be done within
20 three hours. We were -- they were approaching the
21 three-hour time limit. So they were looking at
22 basically with this information --

23 THE COURT: What time was the blood drawn? I
24 don't know even know.

25 MR. MOBLEY: Yes, Your Honor. The blood was

1 drawn at 7:16.

2 THE COURT: Well, I guess I did know.

3 MR. MOBLEY: I'm sorry?

4 THE COURT: I guess I did know because that's
5 what time I said.

6 Mr. Madsen, I take it I did understand your
7 motion. I may have misunderstood it, but I concede --

8 MR. MADSEN: It's confusing but Your Honor had
9 it exactly right. A., Judge, if there are statements
10 from Trooper Baker, then those clearly fall under Rule 5
11 and should have been turned over, and we don't have
12 those.

13 THE COURT: I'm not sure that they do. I was
14 just reading. The substance of any oral statement which
15 the prosecution intends to offer into evidence at the
16 trial made by the Defendant, whether before or after
17 arrest, in response to interrogation by any person then
18 known to the Defendant to be a prosecution agent.

19 It may be -- and I will certainly allow you to
20 present testimony in that regard, Mr. Madsen -- but from
21 what I'm hearing, and I'm just going on the cold record
22 that's before me right now, is that Trooper Hallman is
23 saying that in talking with Trooper Baker, he heard
24 statements. There's no testimony about interrogation.
25 There's no testimony that the State intends to offer the

1 substance of those oral statements, and you may be
2 right.

3 MR. MADSEN: Judge, I'd like to hear
4 then from Trooper Baker in reference to that because I
5 think that would be important. But ultimately what we
6 have right now, Judge, is alcohol involved, which for
7 this hearing we concede that portion. But ultimately my
8 client is alive and apparently he has the same address
9 but nothing else, and that's our contention is that is
10 not probable cause.

11 THE COURT: Well, you can't -- you can't
12 exclude though, or at least the Court can't exclude, the
13 testimony of Officer Hallman as to his conversations
14 with Trooper Baker.

15 This is a probable cause hearing, and as we
16 all know, under the rules of evidence, the rules of
17 evidence would not apply to this type of proceeding. So
18 the Court would not have to hear from Trooper Hallman --
19 excuse me -- from Trooper Baker to make the probable
20 cause determination. I make it on this record.

21 MR. MADSEN: Judge, my only point would be
22 Trooper Baker is actually the who one gets the blood.
23 So I think it would be on his probable cause
24 determination.

25 THE COURT: I don't necessarily agree with

1 that. I think it can be at the direction -- I mean, he
2 may be another prosecuting agent, but I don't
3 necessarily agree that 56-5-2945 or whatever that number
4 was -- 45, I believe that's it. So I think there is
5 sufficient probable cause.

6 You think it's 56-5-2946? However, if you
7 want Trooper Baker's testimony as far as a discovery
8 issue, you can certainly call him. All right. So any
9 other motions?

10 MR. MADSEN: No, Your Honor.

11 MR. MOBLEY: None, your Honor.

12 THE COURT: All right. Court will be in
13 recess 22 minutes. Thank you very much.

14 (Whereupon there is a recess.)

15 THE COURT: Yes, Solicitor.

16 MR. MOBLEY: Your Honor, while we are waiting
17 on the jury to get situated, you directed me to remind
18 you about the motion that you need to rule upon, which
19 was the severance of the actual charges.

20 You wanted to know the relevance. You wanted
21 to know the relevance of the Hydrocodone. I have spoken
22 with my forensic toxicologist, who is Jennifer Brown.
23 She states that that particular drug, if it was present
24 in either of those two individuals' blood, it would show
25 up as an opiate.

1 Looking through the drug analysis, that
2 doesn't show up. So it's going to be negative for this
3 particular drug that was found on the Defendant, and I'm
4 being candid with the Court.

5 Our position would still be, Your Honor, that
6 the severance needs to be denied out of judicial economy
7 and efficiency because basically we will be trying that
8 particular case twice.

9 We are going to call all of these same
10 witnesses back in regards to the possession of the
11 controlled substance, and we think that it would just be
12 efficient to go ahead and try him on that particular
13 charge itself that has been presented to the Court.

14 THE COURT: All right. Anything further in
15 that regard, Mr. Madsen?

16 MR. MADSEN: No, Judge. I just would
17 stand on the elements that we gave Your Honor, which I
18 believe his argument goes to those first two but not the
19 last two.

20 THE COURT: So you're telling me, Solicitor,
21 that it does not show up in either Mr. Manning's blood
22 sample nor Mr. Hill's?

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

24 THE COURT: All right. I'm going to sever
25 those. Now, with that being said, when we qualified the

1 jury, we qualified the jury having called both
2 indictments for trial. So that's not an evidentiary
3 issue for this jury.

4 What do y'all want me to tell the jury in that
5 regard? Does it just disappear and they just don't ever
6 hear about it again or do I just tell them that's been
7 resolved by the Court? They can then decide -- and that
8 they're not to speculate in that regard as to the
9 resolution or that's just not before them? What
10 would y'all like me to tell them, if anything?

11 MR. MOBLEY: Your Honor, I think being that we
12 have called it in front of the jury, something would
13 need to be said so that it doesn't prejudice the
14 Defendant to be honest with you, something to the effect
15 that you stated secondly which would be that the Court
16 has resolved it, they should not speculate upon it or
17 place any evidentiary value upon it.

18 That is the State's position. I think this
19 particular argument would go more so for Mr. Madsen and
20 his client in regards to what needs to be said to the
21 jury because ultimately it could prejudice his client
22 and not mine.

23 THE COURT: All right. Mr. Madsen?

24 MR. MADSEN: Judge, given Your Honor's
25 ruling, I think that I would be remiss if I didn't

1 move for a mistrial because of the prejudice. Because
2 whatever Your Honor ends up telling them is going to
3 ultimately -- The jurors are going to speculate, and who
4 knows what they are going to think when you tell them
5 that. I think I have to make that motion.

6 THE COURT: Well, I'm not going to get trapped
7 into a mistrial. In that regard then, we're going to go
8 forward. Now, you are not going to have it both ways.
9 Either you want to go forward or you don't.

10 You didn't make that motion before the jury
11 was qualified, and the Court is not going to be trapped
12 like that. I'll be glad to give whatever instruction
13 you want me to give them, but the case was called for
14 trial in front of the Court. It was qualified.

15 There were no motions at that time, except the
16 one y'all brought up to me in chambers on the
17 continuance. So if it prejudices him, that's a
18 self-inflicted wound. That's not a wound inflicted by
19 the State or by this Court.

20 I'm not here to inflict any wounds on either
21 the State nor the Defendant. I'll charge whatever you
22 want in regard to that or I'll say nothing, but I don't
23 see where it's -- where the Court could respond like
24 that.

25 MR. MADSEN: Judge, I would prefer the Court

1 say nothing.

2 THE COURT: All right. Let's see. Were there
3 any other matters that needed to be resolved
4 pre-opening? We don't have an issue anymore then on
5 the search for the drugs either.

6 MR. MADSEN: No, Your Honor.

7 THE COURT: How about the video and audio?
8 That's resolved? Have you double checked on that?

9 MR. MOBLEY: There are none, Your Honor.

10 THE COURT: I've severed the charges.
11 The marijuana, that's still in abeyance. That's not
12 going to be mentioned in opening?

13 MR. MOBLEY: It will not be mentioned in our
14 opening, Your Honor.

15 (Pause.)

16 THE COURT: I don't want any of the parties or
17 jurors to think I'm up here e-mailing or texting or
18 anything. I'm actually looking at a case I wanted to
19 look at before we brought the jury in. I really can't
20 multitask that well. Well, let me rephrase that. I
21 can't multitask well.

22 I wanted to visit very briefly Mr. Madsen's
23 motion, the City of Rock Hill v. Suchenski, 646 S.E.2d
24 879, a 2007 case, concerning the video equipment,
25 incident site, and breath testing site video recording.

1 The facts in Suchenski are such that
2 Ms. Suchenski was arrested for driving under the
3 influence and later charged with driving with unlawful
4 alcohol concentration.

5 At the incident site, the arresting officer
6 did not videotape the entire arrest as required by
7 56-5-2953 because the officer's camera ran out of tape.
8 The videotaping began upon activation of the officer's
9 blue light and recorded two field sobriety tests and the
10 Miranda warnings, but the tape stopped before the
11 officer administered a third field sobriety test before
12 respondent was arrested.

13 At trial she moved to dismiss the charge.
14 That was denied. She was found guilty, appealed to the
15 circuit court. The circuit court reversed only on the
16 failure to follow the procedures under Subsection (a)
17 and did not address Subsection (b), which is the
18 affidavit section. The city did not seek a Rule 59
19 ruling from the circuit court on the applicability of
20 56-5-2953(b).

21 When I read that case, the factual situation
22 is very different. When I read (a) and (b) of that
23 subsection, it says a person who violates the various
24 sections must have his conduct at the incident site and
25 the breath testing site video recorded.

1 Well, first off, there is no breath testing
2 site whatsoever in this case, so that would be entirely
3 irrelevant. Second off, when you look at (b), it talks
4 about the failure of the officer to produce the video
5 recording required by this section.

6 It's only required if there is conduct to be
7 recorded at the incident site, which is an impossibility
8 here. When I read Section (b), which is not addressed
9 as I understand it in Suchenski, it states that nothing
10 in this section prohibits the Court from considering any
11 other valid reason for the failure to produce the video
12 recording based upon the totality of the circumstances.

13 Well, the totality of the circumstances in
14 this case is there would be no recording to produce.
15 The Defendant and the trooper were never at the incident
16 site at the same time, and there is no breath testing
17 site whatsoever.

18 With that being said, I just wanted to review
19 that case in that regard. I certainly understand
20 Mr. Madsen's position on the requirements of an
21 affidavit from the officer, but I do not think 56-5-2953
22 applies to the factual situation in this case.

23 All right. Anything before we bring in our
24 jury, Solicitor?

25 MR. MOBLEY: Nothing, Your Honor.

1 THE COURT: Mr. Madsen?

2 MR. MADSEN: No, Your Honor.

3 THE COURT: Thank you. If you'll bring in our
4 jury, please.

5 (The jury returns to the courtroom at
6 4:00 p.m.)

7 THE COURT: Madame Clerk, would you swear our
8 jury, please.

9 CLERK: Yes, sir.

10 (The jury is duly sworn).

11 THE COURT: Thank you. Thank you very much,
12 Madame Clerk.

13 Mr. Foreman and ladies and gentlemen of the
14 jury, the case we are about to try is the case of the
15 State versus Christopher D. Manning, who has previously
16 been introduced to you.

17 What I will now say is intended to serve as an
18 introduction to the trial of the case. These remarks
19 are not an instruction or charge on the law in the case.
20 I will instruct you on the law that applies to this case
21 at the end of the trial before you retire to consider
22 your verdict.

23 This is merely an explanation of the procedure
24 that we will follow in the trial of this case so that
25 you may better understand what may be happening. I have

1 been informed by the bailiff that some of you, perhaps
2 all, would like to take notes during the course of this
3 trial.

4 There's absolutely nothing whatsoever wrong
5 with taking notes. I would encourage you to do so if
6 that is your preference. However, I would remind you
7 that one juror's recollection is as good as another
8 juror's notes.

9 I would further remind you that when you are
10 writing a note, you may miss a particular nuance or
11 demeanor of a particular witness that you may use in
12 determining a person's credibility. So against that
13 background, please feel free to take notes.

14 I am a note taker myself. Sometimes when I go
15 back, I can't read my notes, but I take a lot of them.
16 But please feel free to do so. You may not have access
17 to your notes outside of the courtroom until the time of
18 your deliberations.

19 So any time we take a break, I would ask you
20 to just turn your note pads upside-down on your seat.
21 You may want to put your juror number on them. But turn
22 them upside-down on your seat.

23 They will be available for you upon your
24 return to the courtroom. Over the evening recess or
25 recesses, depending on how long the case may take, they

1 will be secured by the Clerk's Office and given back out
2 to you the next morning.

3 The Defendant in this case is charged by an
4 indictment filed in this court with the crime of felony
5 D.U.I. with a death, the elements of which will be
6 explained to you later.

7 This indictment is simply the charge by which
8 the case is brought into this court, and it is not in
9 any sense evidence of any of the allegations it
10 contains.

11 Mr. Manning has pled not guilty to this
12 indictment. The State, therefore, has the burden of
13 proving each and every element of this indictment beyond
14 a reasonable doubt.

15 It will be your duty, ladies and gentlemen, to
16 decide whether the State meets its burden of proof.
17 Your purpose as jurors is to find and determine the
18 facts. You are the sole judges of the facts.

19 If at any time I make any comment regarding
20 the facts, you must disregard it. You are to determine
21 the facts from the testimony that you hear in this
22 courtroom and any other evidence that may be introduced.

23 It is up to you to determine the inferences
24 which you feel may properly be drawn from the evidence.
25 It is especially important that you perform your duty of

1 determining the facts diligently and conscientiously
2 because ordinarily there is no way to correct an
3 erroneous determination of the facts by a jury.

4 On the other hand, ladies and gentlemen, and
5 with the equal emphasis, the same law that makes you the
6 judges of the facts makes me the judge of the law. The
7 law as given by the Court is the only law you may
8 consider.

9 You must accept and follow it even though you
10 may disagree with it. I cannot tell you what the facts
11 are, and you cannot disagree with me about what the law
12 is or should be.

13 Your job is to take the law as I give it to
14 you and apply it to the facts as you find them from the
15 testimony of the witnesses and any other evidence that
16 is introduced. After doing that, you will render your
17 verdict, a true and just verdict, under the solemn oath
18 that you just took as jurors.

19 Please remember, until I advise you to begin
20 your deliberations, you must not discuss this case with
21 anyone, including your fellow jurors, family, friends or
22 anyone else involved in this case. After the case is
23 submitted to you, you must discuss it only in the jury
24 room with your fellow jurors.

25 The attorneys and parties in this case have

1 been advised that they are not to talk with you at all.
2 So if you see anyone involved in the case in your
3 comings and goings from the courthouse and they do not
4 even say hello, they are not being unfriendly. They are
5 merely following my instructions.

6 Please remember, do not read, listen to or
7 watch any news reports about the case. This includes
8 anything that may be in the newspapers or on the
9 internet, radio or television. You must not consider
10 anything you may have read or heard about this case
11 outside of the courtroom, whether before or during the
12 trial.

13 I will further advise you again at the end of
14 the day concerning your duties and responsibilities with
15 your cell phone, your computer or any other electronic
16 device where you may not do any research in any manner
17 using those types of devices.

18 It is important that you keep an open mind and
19 not decide any issue in this case until all of the
20 evidence has been presented, the parties have made their
21 closing arguments, and I have instructed you on the law
22 in this case.

23 It is your solemn responsibility to determine
24 the guilt or the innocence of the Defendant. As
25 Mr. Manning sits here now, he is presumed to be

1 innocent.

2 That presumption of innocence stays with him
3 throughout the course of this trial and follows him into
4 the jury room at the time of your deliberations. He is
5 entitled to that. That is a very important
6 constitutional right that all criminal defendants have
7 in this country, regardless of the seriousness of the
8 charge.

9 Your verdict must be based solely on the
10 evidence as it is presented to you in this trial and on
11 the law as I instruct you during and at the close of the
12 trial.

13 In a few moments, the solicitor will make what
14 is called an opening statement in which the solicitor
15 will explain to you the issues in the case or at least
16 what the solicitor thinks the issues are in the case.

17 Mr. Madsen or Mr. Casto, one of the attorneys
18 for the Defendant, may also make an opening statement,
19 although they are not required to do so. What the
20 attorneys tell you during their opening statements is
21 not evidence in the case.

22 It is only their contention as to what the
23 issues are. The evidence will be presented to you from
24 the testimony of the sworn witnesses from this witness
25 stand and/or by any exhibits that may be introduced.

1 From time to time during the trial, you may
2 hear one of the lawyers say something like, Your Honor,
3 I believe we have a question of law or a matter of law
4 to discuss with you or, Your Honor, may we approach the
5 bench or sometimes I myself might find it necessary to
6 excuse you from the courtroom for a short while so the
7 attorneys and I can discuss a matter of law.

8 The reason for this is because you are the
9 judges of the facts in the case, and sometimes when I am
10 discussing matters of law with the attorneys, it may be
11 necessary for me to make some comment as to the facts in
12 connection with ruling whether or not a particular law
13 applies.

14 I am not supposed to tell you what I think the
15 facts are. So I will excuse you from the courtroom
16 while these discussions take place so that in no way
17 will you be influenced by anything that I might say or
18 do in connection with the facts.

19 In determining what the true facts are in this
20 case and using your good judgment and your common sense,
21 you must decide whether or not the testimony of the
22 witnesses is believable.

23 It will be my responsibility to rule as a
24 matter of law as to whether certain testimony is
25 admitted at all or not, but once the testimony is

1 admitted, whether or not you believe it is solely for
2 you to determine.

3 In deciding whether to believe a witness, you
4 have a right to consider the interest of any witness,
5 the bias of any witness, the prejudice of any witness,
6 the opportunity for the witness to have seen or heard
7 the matters about which the witness may testify, and the
8 way the witness acts on the witness stand.

9 You have a right to consider anything that is
10 in the record that will help you evaluate the testimony
11 of the witnesses. That means it will be your duty to
12 pay close attention to these witnesses, to observe them,
13 to look at them, to listen to them, to pay close
14 attention to the attorneys and to the Court.

15 Don't let your thoughts wander but give strict
16 attention to the testimony in this case, so that at the
17 end of all the testimony, after the closing arguments by
18 the attorneys, and the instructions on the law by the
19 Court, you will then be in a position to determine what
20 the true facts are and to apply those facts to the law
21 as I tell you the law is and thus render a true and just
22 verdict.

23 It will be your added responsibility,
24 Mr. Foreman, to preside in the jury room and be the
25 jury's spokesperson here in court. It will also be your

1 duty to write the verdict, but I will give you further
2 instructions about that at the conclusion of the case.

3 Just by way of housekeeping, ladies and
4 gentlemen, as you can tell, there is a speaker system in
5 the courtroom. Perhaps I don't need it. But any time a
6 witness is testifying, if you cannot hear, please just
7 raise your hand, get my attention or the attention of
8 one of the our bailiffs or the clerk, and we will have
9 that witness speak up. If you cannot hear what the
10 witnesses have to say, you won't able to determine the
11 believability, the credibility of the witnesses.

12 Also, there could be documents introduced,
13 photographs or diagrams. I don't know. Many times, if
14 it's a document or photograph, it may be handed to the
15 foreperson and passed among the members of the jury
16 while you are out here in your jury box.

17 You may look at those items all you want, as
18 long as you want, but please keep in mind, if I allow it
19 into evidence, you will have all those items of evidence
20 with you in your jury room at the time of your
21 deliberations.

22 The only point I'm making is that will not be
23 the only time, the only opportunity, you will have to
24 look at those items of evidence. Again, look at it as
25 long as you wish, keeping in mind that won't be the last

1 time you'll have an opportunity to see any of those
2 items, if there are any.

3 Also, ladies and gentlemen, I tell jurors week
4 to week, whenever I want to take a break, we take a
5 break. It's kind of that simple. Well, this isn't some
6 type of judicial marathon.

7 I've sat in court for a while now, and I know
8 if you sit too long, sometimes your mind may start to
9 wander or sometimes you may drift off mentally, and you
10 may drift off physically also. Please raise your hand
11 if you need a break. Please raise your hand.

12 As I say, this is not some type of judicial
13 marathon. These are good trial lawyers on both sides.
14 They will have all the opportunity they need to present
15 the case to you. If y'all need a break, y'all will take
16 y'all's break, and we will take our break.

17 Finally, ladies and gentlemen, you may see me
18 from time to time on my computer. I assure you that I'm
19 not texting or e-mailing or playing games or anything of
20 that nature.

21 Many times during the course of the trial, a
22 witness may be testifying and some particular issue of
23 law may pop into my mind, and I'll start researching it
24 somewhat with my limited ability to research. If it's
25 hard research, I give it to my law clerk to do, but if

1 it's easy research, I'll do it myself. So please don't
2 think I'm being disrespectful to the witnesses or to
3 you.

4 Ladies and gentlemen, I consider this
5 courtroom to be a place of honor, dedicated to the
6 rights of all citizens, and much American blood has been
7 shed for the justice system that we have today, which
8 many have rightfully called the best justice system ever
9 created by man. I appreciate your participation in this
10 system today. I know you will follow up and be true to
11 your oath.

12 With that being said, is there any exception
13 to anything I have told the jury from the State?

14 MR. MOBLEY: None, Your Honor.

15 THE COURT: From the defense?

16 MR. MADSEN: No, Your Honor.

17 THE COURT: Thank you. Mr. Solicitor or
18 Madame Solicitor, I apologize, whoever, you may address
19 the jury.

20 **OPENING STATEMENT**

21 MR. MOBLEY: Thank you, Your Honor.

22 July 31st, 2009, was simply a regular day. It was the
23 same as any other day, hot, humid, occasional rain, the
24 summer showers that come along with that during the hot,
25 muggy summertime, especially for Mr. Jacob Hill.

1 He went to work that day. He was working at
2 Fisherman's Wharf, which is right over there around the
3 Saluda County line. He worked. He worked trying to
4 make money, to make an honest living.

5 He gets off. He doesn't have a ride that day.
6 What he does is he walks to a former place of work which
7 is called Boondocks. This is a location that's right
8 across the Saluda County line.

9 Mr. Hill once worked there, so he knew that if
10 he couldn't get a ride, he could ask one of his former
11 friends, coworkers, to get a ride home after working a
12 long, hard day at Fisherman's Wharf.

13 So he walks the approximate fourth of a mile
14 from his work location down to Boondocks. He walks
15 there. He gets there. He recognizes a number of
16 individuals that he formerly worked with, coworkers --
17 quote, unquote -- friends that he had worked with.

18 He begins to have little conversations with
19 them. He sits down. What he wanted to do as well was,
20 you know, he asked for a drink. This was a bar that
21 serves alcohol. He asked for a drink.

22 He sits down and speaks to the bartender and
23 the various workers that are around that he still knows.
24 These were his former coworkers, and these were his
25 former friends.

1 During this particular time -- this was around
2 about 11:00 o'clock or so, 11:00 p.m. to be exact, on
3 July 31st, 2009. He sits down and he's having this
4 drink at the bar, and along comes one of his former
5 coworkers. His former coworker was Mr. Christopher
6 Manning.

7 Mr. Manning was a cook there as well, but he's
8 still employed with Boondocks. So Mr. Manning goes
9 ahead and sits down with him. They begin to have a
10 drink or two or however many they had. They continue to
11 drink that night, both of them together. They're having
12 fun. They're just conversing amongst one another.

13 The patrons there, the coworkers, the former
14 coworkers, everyone is conversing. They are having a
15 good time. Tonight is a good time. It's Friday night.
16 We're going into the weekend. Let's relax and release.
17 That's what they were doing at that bar.

18 Now, while they are at that bar taking those
19 drinks, again, around approximately 11:00 o'clock or so,
20 they don't end until around about 4:30, 4:30 a.m. in the
21 morning, 4:30, 4:45 a.m. in the morning, approximately
22 around about that time.

23 So they consumed quite a substantial amount of
24 alcohol at this particular time. During this particular
25 time, they meet some young ladies. They converse with

1 them, have drinks with them as well. At this particular
2 time, Mr. Manning actually -- he becomes very generous.
3 He begins to purchase alcohol for everyone, including
4 Mr. Jacob Hill.

5 They decide to leave to a destination. It's
6 going to come out in testimony where they were planning
7 on going at that particular time, but those two by the
8 end of the night, they are sitting together. This
9 night, if not any other night, they are drinking
10 buddies. So they leave together.

11 While they are conversing about when they're
12 going to leave and where they're going to go, the
13 bartender overhears them. She overhears them. She's
14 the one that was almost exclusively, but not
15 exclusively, serving them that particular night. She
16 notices that they leave together.

17 Now, ladies and gentlemen, she never sees them
18 get into the car. Ladies and gentlemen, we have no
19 witnesses that see either of those two get into the same
20 car that night, but we do know that by 5:00 o'clock or
21 approximately five to ten minutes after that when they
22 had left the bar, there was an accident that occurred
23 right down the road.

24 You can hear the sirens blaring. You can hear
25 the ambulance coming. You can hear first responders

1 coming. When they get there, what they find is a
2 severely damaged car or can I say S.U.V. It has flipped
3 several different times, gone off the highway, obviously
4 had flipped up in the air numerous times, severely torn
5 up.

6 But in addition to that, what ended up being
7 found by first responders is that not one but two
8 individuals that were inside of that truck were thrown
9 out. Everyone was ejected. Everyone was ejected,
10 ladies and gentlemen, so there was no one inside of this
11 van or this S.U.V. -- excuse me.

12 Jacob Hill lays approximately 50 feet away
13 from the final resting place of where the S.U.V. finally
14 stopped. Mr. Christopher Manning lies anywhere -- with
15 severe injuries -- from 5 to 15 feet away from the
16 vehicle as well. So he is closest to the vehicle.

17 Jacob is approximately 50 feet away in another
18 field. Jacob didn't make it. Jacob did not make it
19 through all the tumbling, the washer effect that
20 occurred at that particular time. Mr. Manning was able
21 to make it. He had some severe injuries, ladies and
22 gentlemen.

23 E.M.S. was able to respond. They took him to
24 the hospital. They were able to make sure that he was
25 able to overcome his injuries fortunately, but not

1 Mr. Hill. Mr. Hill died right there in that field at
2 that particular time. Obviously, ladies and gentlemen,
3 you see we have an issue here. Who was driving this
4 truck, this S.U.V.?

5 Now, we have some very thorough law
6 enforcement, the South Carolina Highway Patrol. We have
7 the Highway Patrol's accident reconstruction team, which
8 is the M.A.I.T. team. We have E.M.S. workers and we
9 have fire service workers that respond to the scene as
10 well.

11 So we have to piece a number of things
12 together in order to find out who was driving that
13 vehicle. We were able to do that though through the
14 thorough investigation by all agencies. The person who
15 was driving that vehicle was Mr. Christopher Manning.

16 Now, we're going to present you with
17 testimony. Now, how about we present you with some
18 testimony that links the vehicle to Mr. Manning? How
19 about we present you with some testimony that
20 Mr. Manning is the only one that normally drives that
21 car?

22 How about we present you with some testimony
23 that Jacob Hill wasn't driving that night, he needed a
24 ride? But most importantly, how about we present some
25 testimony to you that Mr. Christopher Manning lets us

1 know that he was driving the vehicle?

2 Ladies and gentlemen, those are the issues.

3 Those are the facts. We are going to lay it all out on
4 the table for you. We've got a little puzzle here now.

5 The same way my investigating agencies were able to
6 piece it together, we're going to give you everything
7 they had as well so that you can piece it together.

8 You're going to be able to take a string and
9 string it together. You're going to have a full and
10 complete picture. You are going to be able to complete
11 that puzzle that's presented on this particular case
12 itself.

13 At the end of the day, ladies and gentlemen,
14 you are going to be firmly convinced that
15 Mr. Christopher D. Manning is guilty of felony D.U.I.
16 and the death of Mr. Jacob Hill. Thank you.

17 THE COURT: Thank you. Thank you very much,
18 Solicitor. Mr. Madsen.

19 MR. MADSEN: May it please the Court.

20 THE COURT: Yes, sir.

21 **OPENING STATEMENT**

22 MR. MADSEN: As you heard, my name is Rob
23 Madsen, and I work at the Public Defender's Office.
24 It's my pleasure, along with Bennett Casto, to represent
25 Christopher Manning.

1 What you have heard is July 31st, August 1st,
2 about a tragic, tragic accident. I don't want you to
3 think that when you come into this court, that there's
4 any winners or losers. There obviously isn't.

5 You've got one fellow who lost his life, as
6 serious as it gets, as horrible as it gets. You've got
7 another fellow that's sitting here on trial for his
8 life.

9 You're going to hear testimony, I suspect,
10 that they were at Boondocks together, that Chris worked
11 there at Boondocks and that he knew Jacob. Jacob had
12 used to work there, and Jacob did come in at some point
13 in time while Chris was working, and Chris later got off
14 and they kind of sat around. They palled around.

15 Apparently Jacob was a little bit short on
16 funds, so Chris kind of took care of him with buying him
17 drinks every once in a while. At some point in time,
18 they decided to leave, to go home. When they left
19 together, no one sees them walk out to the car. No one
20 sees them get into the car. No one sees anyone driving.

21 In a case like this sometimes what you hear
22 from this witness stand can be important, but also
23 sometimes what you don't hear from this witness stand
24 can be just as important. And why is that? Chris
25 Manning sits there and he is innocent.

1 It is the State's burden of proof to prove him
2 guilty beyond a reasonable doubt of each and every
3 essential element of any crime that he's charged with.
4 They are not going to have the evidence, ladies and
5 gentlemen, that Chris was driving.

6 When you listen to those witnesses up there,
7 see if you listen to the experts that the State and the
8 Highway Patrol have that can tell you who's driving that
9 vehicle. See if anyone gets up there and tells you
10 about any fingerprints that they have gotten from inside
11 that car, any D.N.A., any blood evidence.

12 You're going to hear testimony, I suspect,
13 from the scene. You're going to hear from a bunch of
14 different individuals who end up getting sent out there,
15 how chaotic it is, how unfortunately when they get out
16 there, Mr. Hill is already gone.

17 You're also going to hear about some really,
18 really serious injuries that Chris has, how he's
19 bleeding from the face, from his head, his nose is split
20 like a hotdog, how he's got a gaping wound in his side
21 that you can fit a fist into, how he goes to the
22 hospital for a long, long period of time. You're going
23 to hear all those things.

24 But what you're not going to hear is any
25 physical evidence, any fingerprints or anything that the

1 State can prove to you who was driving that automobile.
2 That is a very, very important thing.

3 Our judicial system is not based on
4 Christopher Manning proving that he's innocent. It is
5 the State's burden of proof to prove each and every
6 essential element of any charge, and they are not going
7 to be able to do that in this case. They absolutely
8 can't do that in this case. They will try but they just
9 don't have it.

10 I know y'all will pay attention. I saw y'all
11 when you were in here before. This is a case that will
12 wrap up this week. And even though it's in that short
13 period of time, it's an extremely important case.

14 Again, I ask you to listen to what you hear
15 from that witness stand, but also keep in the back of
16 your mind what you don't hear, what evidence they don't
17 have.

18 At the end of this case, we will get up and do
19 closing arguments. I think after you've heard the lack
20 of evidence that they have in this case that you will
21 find Chris not guilty. Thank you.

22 THE COURT: Thank you. Thank you very much,
23 Mr. Madsen. All right. Solicitor, you may call your
24 first witness.

25 MR. MOBLEY: Thank you, Your Honor. The State

HEATHER FAIRCHILD -- DIRECT -- MR. MOBLEY

201

1 calls Heather Fairchild to the stand.

2 HEATHER FAIRCHILD, being
3 first duly sworn, testifies as follows:

4 CLERK: Have a seat up there, please, ma'am.
5 Once you are seated, I need for you to speak up loud and
6 clear, stating your full name and spelling your last on
7 the record.

8 THE WITNESS: My name is Heather Fairchild,
9 The last name is spelled F-A-I-R-C-H-I-L-D.

10 DIRECT EXAMINATION

11 BY MR. MOBLEY:

12 Q Good afternoon, Ms. Fairchild. Do you mind telling
13 the jury where you currently work?

14 A I work at Boondocks.

15 Q You work at Boondocks?

16 A Yes, sir.

17 Q Are you employed anywhere else at this particular
18 time?

19 A I am. I'm also a realtor for Russell and
20 Jeffcoat.

21 Q Okay. And how long have you been a realtor?

22 A Eight years.

23 Q Eight years?

24 A Yes, sir.

25 Q How long have you worked at Boondocks?

1 A Two years.

2 Q Two years. Now, Ms. Fairchild, what I want to do
3 is take you back to the evening of July 31st, 2009.
4 Were you working at Boondocks?

5 A Yes, I was.

6 Q If you don't mind telling us, where exactly is
7 Boondocks located?

8 A It's located on 378 going towards the Saluda County
9 line before you get to the old Dan-O's on the
10 right-hand side.

11 Q Okay. Now, how far is that from -- are you
12 familiar with Fisherman's Wharf?

13 A Yes, I am.

14 Q How far is that approximately? And I know you
15 don't know exactly.

16 A Maybe almost a mile, not even a mile.

17 Q Okay. And you stated that you were working
18 July 31st, 2009. When did you come to work?

19 A I would have been there at 4:00 o'clock.

20 Q At 4:00 o'clock?

21 A Yes.

22 Q Now, what are your responsibilities while you're
23 there at Boondocks?

24 A I'm the bartender.

25 Q You're the bartender?

HEATHER FAIRCHILD -- DIRECT -- MR. MOBLEY

203

- 1 A Uh-huh. (Indicating affirmative response.)
- 2 Q Are you familiar with the patrons that were there
- 3 at that particular time?
- 4 A I am. We're a private club. So everybody that
- 5 comes in there is a regular or we know. It's
- 6 private membership only.
- 7 Q And because of the frequency they may come in, and
- 8 others are excluded from coming in?
- 9 A Correct.
- 10 Q Okay. Now, when you came in at 4:00, you were
- 11 going to work as a bartender?
- 12 A Uh-huh. (Indicating affirmative response.)
- 13 Q Let me ask you this. Was Mr. Christopher
- 14 Manning an employee there at this particular time?
- 15 A Yes, he was.
- 16 Q What was his job and responsibilities there?
- 17 A He was the cook.
- 18 Q The cook?
- 19 A Uh-huh. (Indicating affirmative response.)
- 20 Q And he was working that evening when you arrived at
- 21 work?
- 22 A I believe he came on at 6:00 o'clock that evening.
- 23 Q Okay. But he was there present when you were
- 24 there?
- 25 A Yes.

1 Q Now, were there many patrons when you first
2 arrived there?

3 A Usually -- I think that evening it was a slower,
4 happy hour crowd. Then as the night went on, it
5 sped up. We had a band later on that evening, .
6 So we had more people come in later.

7 Q Later?

8 A Uh-huh. (Indicating affirmative response.)

9 Q Okay. So how long did you stay that night?

10 A I personally didn't get out of there until around
11 4:45. We probably called last call somewhere
12 around 3:00, 3:30.

13 Q Okay.

14 A But by the time I cleaned up and everything else,
15 it was around 4:45.

16 Q 4:45?

17 A Uh-huh. (Indicating affirmative response.)

18 THE COURT: You are talking about a.m.?

19 THE WITNESS: Yes, sir.

20 BY MR. MOBLEY:

21 Q Now, just for clarification, that was a.m., in
22 the morning?

23 A Yes, sir.

24 Q Okay. Now, while you were bartending, was there
25 any other bartenders that were there as well or are

HEATHER FAIRCHILD -- DIRECT -- MR. MOBLEY

205

1 you the sole bartender?

2 A No, that evening there was another bartender there.
3 His name was Chris Brown. We had had him for a
4 short period of time there on Friday and Saturday
5 nights as a backup bartender.

6 Q Okay. Just to help you out?

7 A Yes.

8 Q Okay. Now, while you were there bartending, at any
9 point did you begin to serve Mr. Christopher
10 Manning?

11 A It wasn't until Chris got off work, which, you
12 know, his shift time, I would say it had to be
13 10:30, 11:00 o'clock that evening because the
14 kitchen closed at 10:00. So it would have to have
15 been after that. Like I said, we were busy that
16 night, so it had to be after he cleaned up and
17 everything was done.

18 Q Okay. And so after that he's off the clock?

19 A Uh-huh. (Indicating affirmative response.)

20 Q And he comes and sits at the bar?

21 A Correct.

22 Q At this time what happens? Does he begin to order
23 drinks or what happens?

24 A Yeah, I mean, he -- once he was off the clock, he
25 kind of joined -- there was some other people in

1 there that he knew. Before Chris started working
2 there, he was a patron there. He would come in
3 there every so often and have a beer or two.

4 So once he got off the clock, you know, he
5 mingled with the rest of the people that were
6 there, you know, friends of his and guys that he
7 knew, that he hung out with.

8 Q Okay. So he knew a number of individuals that
9 were at the bar?

10 A Uh-huh. (Indicating affirmative response.)

11 Q Now, you began to serve him alcohol once he sits at
12 the bar?

13 A Yes.

14 Q You are not the exclusive person who serves him
15 alcohol, correct?

16 A Correct.

17 Q Now, just from your recollection, approximately --
18 I know it's almost been a year -- approximately how
19 many drinks had you served Mr. Manning initially?

20 A To be honest with you, I really don't know. I know
21 that he was primarily ordering beer. That seemed
22 to be his drink of choice. Then they were ordering
23 shots of liquor. But when they were ordering
24 shots, they were ordering for a number of people.

25 Q Okay.

HEATHER FAIRCHILD -- DIRECT -- MR. MOBLEY

207

- 1 A So I can't say exactly how many, you know, Chris
2 would have had himself.
- 3 Q Okay. But do you think that it was a fairly
4 substantial amount?
- 5 A Yeah, it was a pretty good amount.
- 6 Q And that was over the course of the night,
7 correct?
- 8 A Correct.
- 9 Q Now, at any time did anyone join Mr. Manning at
10 the bar to have drinks with him?
- 11 A Several people did, including Jake.
- 12 Q Jake? You just said including Jake?
- 13 A Uh-huh. (Indicating affirmative response.)
- 14 Q Do you know his real full name?
- 15 A I know it's Jake Hill.
- 16 Q Jake Hill?
- 17 A Uh-huh. (Indicating affirmative response.)
- 18 Q And that's the victim in this case?
- 19 A Uh-huh. (Indicating affirmative response.)
20 He also used to work there as a cook, so I know him
21 that way.
- 22 Q Now, did Jake and Mr. Manning work in the same
23 kitchen as a cook?
- 24 A No. Actually Chris took Jake's job. Jake had been
25 fired about maybe a couple of weeks before.

1 Q Okay. We don't have to go into that --

2 A Okay.

3 Q -- anything of that nature. But you knew that they
4 knew each other?

5 A Right.

6 Q They sat down at the bar, and they were having
7 drinks simultaneously together?

8 A Yes.

9 Q Was Jake buying a lot of drinks?

10 A No, Jake wasn't. Jake seemed to not have hardly
11 any cash on him. So most of the drinks that Jake
12 had were being bought for him.

13 Q And just from what you remember, who was buying
14 those drinks for Jake?

15 A Chris did buy some drinks for Jake. We also had
16 another cook that was there. His name is Nate. He
17 would buy some. Other people in the bar had bought
18 some for him.

19 Q Because this was a close-knit group?

20 A Right, right. Pretty much everybody knows
21 everybody.

22 Q Everyone knows everyone. They're trying to help
23 Jake out at this particular time?

24 A Uh-huh. (Indicating affirmative response.)

25 Q But you are aware that Christopher provided some

HEATHER FAIRCHILD -- DIRECT -- MR. MOBLEY

209

1 drinks, purchased and paid for some drinks?

2 A Yes.

3 Q But do you know about -- was it just shots or just
4 beer or a combination?

5 A It was a combination of both.

6 Q Now, did that last throughout the night?

7 A Yes, it did.

8 Q It did. And was there a young lady that ended up
9 coming and sitting along with these two gentlemen?

10 A Towards the evening, they had -- you know, the
11 group had dwindled down to a select few, and they
12 had talked about going somewhere afterwards. I was
13 tired and was kicking everybody out.

14 Q Okay.

15 A So there was Chris and Jake and another lady, Lois,
16 that had talked about going somewhere else to have
17 some more drinks, go swimming.

18 Q Okay. Now, you overheard them speaking about this?

19 A Yes, I did.

20 Q And was the plan to leave any time soon?

21 A Yeah. I mean, they were hanging around like pretty
22 much until I said, Okay, that's it. Get out. Then
23 at that point, then they all kind of left together.

24 Q Now, when you were overhearing the conversations
25 that were going on at the time, was there any

1 mention about who was supposedly going to drive?

2 A Yes, there was. I knew that Jake had actually
3 walked there from somewhere that evening---

4 Q Okay.

5 A -- because he said he didn't have a car and he had
6 walked there. I even had said to him, you know,
7 How are you going home? That's when they had all
8 talked about going swimming, and Chris had
9 mentioned that he had his car, and he was going to
10 drive. They were all going down to Ramp 4 to go
11 swimming..

12 THE COURT: Going down to where?

13 THE WITNESS: Ramp 4. It's the S.C.E. & G.
14 boat ramp.

15 BY MR. MOBLEY:

16 Q And when you say the S.C.E. & G. boat ramp, are you
17 referring to that's on Lake Murray?

18 A Lake Murray, yes.

19 Q Okay. And is that in Saluda County or is it still
20 in Lexington?

21 A It's in Saluda County.

22 Q Okay. So it would be going the opposite direction
23 of where the club is located?

24 A Correct. Yeah, you would make a left towards
25 Saluda.

HEATHER FAIRCHILD -- DIRECT -- MR. MOBLEY

211

1 Q Okay. Now, you overhear Christopher make this
2 statement saying that, I'll drive --

3 A Uh-huh. (Indicating affirmative response.)

4 Q -- I have my own car here. Now, do you see them
5 get up out of their seats and proceed towards the
6 door?

7 A Yes, they all got up. I think they were making
8 plans as to, you know, what they were going to do
9 or where they were going to go for sure or whatever
10 and walked out the door. I mean, they all kind of
11 walked out together. Like I said, I was, by that
12 time, done with the night and ready to go home.

13 Q Now, when you say they, you are referring to who?

14 A Oh, Chris and Jake and Lois.

15 Q Okay. So they all walked out together?

16 A Uh-huh. (Indicating affirmative response.)

17 Q You saw them walk out together?

18 A Yes.

19 Q Let me back you up a little. When they got up to
20 proceed out the door, did you see any keys in
21 anyone's hand or hear anything?

22 A I didn't.

23 Q Okay. Now, did you hear Jake mention anything
24 about he himself driving --

25 A No.

1 Q -- or that he wanted to drive?

2 A No.

3 Q Okay. Now, you see them walk out the door. From
4 there, do you follow behind them?

5 A No.

6 Q No. You stay inside the club cleaning up?

7 A Uh-huh. (Indicating affirmative response.)

8 Q Ms. Fairchild, do you ever see them get into any
9 vehicle?

10 A No. The vehicle -- if you would have walked out of
11 the front door of the bar from where I was
12 standing, because Chris had worked that evening, he
13 had parked on the farther right-hand side of the
14 parking lot.

15 Q Okay.

16 A Which is kind of, you know, a good place for
17 employees to park just because it's out of the way
18 of, you know, all the other patrons' cars, and that
19 side of the building from the inside is completely
20 walled.

21 Q Now, when you came into work, did you see -- well,
22 how did you know that vehicle was over there?

23 A I saw it there.

24 Q You saw it there?

25 A Yeah.

HEATHER FAIRCHILD -- DIRECT -- MR. MOBLEY

213

1 Q Are you familiar with that Christopher actually
2 drives that vehicle?

3 A Yes, I am.

4 Q Well, how are you familiar?

5 A Oh, because he would drive it there. He drove it
6 there before for work.

7 Q Okay. And it was there that night?

8 A Uh-huh. (Indicating affirmative response.)

9 Q It was Christopher's car?

10 A I think it was his girlfriend April's car.

11 Q Okay.

12 A But I know that he did drive it.

13 Q That he did drive it?

14 A Uh-huh. (Indicating affirmative response.)

15 Q He has driven it there to work before?

16 A Before, correct.

17 MR. MOBLEY: Begging the Court's indulgence,
18 please.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. MOBLEY:

22 Q Ms. Fairchild, based off your observations that
23 night, does it -- would it be safe -- you've been a
24 bartender. You've served numerous people before.

25 A Uh-huh. (Indicating affirmative response.)

1 Q The amount of drinks that Mr. Manning, Christopher,
2 had that night, was he drunk?

3 A I can't say that he was slurring. He wasn't
4 slurring or stumbling. I can tell you he did
5 consume a good bit of alcohol but wasn't, in my
6 opinion, wasn't to the point where he was stumbling
7 over or falling over or not composing himself in a
8 regular fashion.

9 Q But in your opinion as a bartender who has observed
10 numerous individuals come to the bar to drink, did
11 it appear he may have been impaired based off that
12 alcohol consumption?

13 A Yes.

14 Q And based off the amount?

15 A Yes.

16 MR. MOBLEY: Nothing further for this witness,
17 Your Honor.

18 THE COURT: Thank you, Solicitor. Mr. Madsen.

19 **CROSS EXAMINATION**

20 BY MR. MADSEN:

21 Q How are you doing, Ms. Fairchild?

22 A Good. How are you?

23 Q Good. You were working at Boondocks back on that
24 day, and you started at what time?

25 A 4:00 o'clock.

1 Q And, from what you recall, Chris started after you;
2 correct?

3 A I think he started his shift at 6:00 o'clock.

4 Q And when you start at 4:00 o'clock, I guess you're
5 getting out of there real early in the morning. Do
6 you remember approximately what time you get out?

7 A What time I left the bar?

8 Q Yes.

9 A Yeah, about a quarter till 5:00 that morning.

10 Q So you're pretty much working a 12-hour shift?

11 A Yes, sir.

12 Q While you're in there working as a bartender, do
13 you actually come outside?

14 A Outside of the building? Yes. I mean, I run trash
15 outside or, you know, just check to make sure
16 everything is okay outside, so, yeah.

17 Q Now, Boondocks, if we're traveling from here down
18 378, it's going to be on the left-hand side;
19 correct?

20 A Correct.

21 Q And Dan-O's will be a little bit farther down on
22 the right?

23 A Correct.

24 Q And if I recall, does Boondocks, if it's facing out
25 this way (indicating), does it have any windows on

1 the sides of the building?

2 A On the right-hand side of the building, it has
3 double-glass doors. On the left-hand side, it's
4 walls.

5 Q And then it has quite a bit of glass up in front,
6 correct?

7 A Correct.

8 Q And one thing that confused me, you had talked
9 about Chris' car being out there?

10 A Uh-huh. (Indicating affirmative response.)

11 Q You don't see him pull up in that car then, do you?

12 A No, not that particular evening.

13 Q So when you had said that as far as where he parked
14 it, are you assuming -- is that from what you've
15 seen in the past of what he would do?

16 A No. There is a door behind our bar, and if you
17 walk out that door, it goes to a back deck where
18 patrons often frequently sit, especially in the
19 summertime. As soon as you walk out there,
20 you can see the parking lot on the left-hand side,
21 which is where his car was sitting.

22 Q Ultimately he's working from a shift which is, I
23 guess, from 6:00 to would you say about 11:00?

24 A Ten o'clock.

25 Q Ten o'clock?

- 1 A Uh-huh. (Indicating an affirmative response.)
- 2 Q And so he then saddles up to the bar and starts
- 3 drinking for a period of time from about 10:00 to
- 4 4:30, I guess?
- 5 A Well, probably more around 3:30, 4:00 o'clock.
- 6 I mean, he still could have been drinking, but
- 7 I had called last call a little bit earlier than
- 8 when they had left.
- 9 Q So we're talking four or five hours?
- 10 A Four or five hours.
- 11 Q What time does Jake show up?
- 12 A Jake got there probably around 11:00 o'clock that
- 13 evening. It was later.
- 14 Q And you don't recall how many drinks Jake had that
- 15 night, do you?
- 16 A Again, it was -- it's hard to say. There was two
- 17 bartenders, and there was a lot of drinks bought
- 18 for him. And like I said, everybody in the bar
- 19 kind of buys drinks for everybody. So a lot of
- 20 times you don't know exactly who they are going to.
- 21 Q And while they are there, ultimately I guess Chris
- 22 ends up buying some drinks for Jake --
- 23 A Yes, he does.
- 24 Q -- and buying some drinks for other people?
- 25 A Uh-huh. (Indicating affirmative response.)

1 Q And they're all in there just kind of having a good
2 time, cutting up, laughing. Was there a jukebox,
3 maybe singing --

4 A Yes.

5 Q -- going on?

6 A Yes.

7 Q And you had given a statement to law enforcement
8 I think at 9:30 a.m. approximately on August 1st?

9 A Yes.

10 Q Is that the first time that law enforcement
11 contacted you?

12 A No, they had contacted me earlier. I think they
13 met me out there at that time because that was the
14 time I could meet with them out at the scene. They
15 had contacted me previous to that.

16 Q They contacted you but 9:30 was the first time you
17 could meet with them and talk with them?

18 A Right.

19 Q And you ended up giving them a statement, correct?

20 A Yes.

21 Q And you had indicated in that statement that
22 neither Jake nor Chris was visibly drunk?

23 A Yes. What I said was that they were not -- neither
24 one was, you know, falling over or, you know,
25 stumbling out the door. They were both able to

1 talk and they weren't slurring, that kind of thing.

2 Q You ultimately say neither one is visibly drunk,
3 not slurring, stumbling or passing out. They
4 appeared to be in control and behaving.

5 A Correct.

6 Q Is that correct?

7 A Yes, it is.

8 Q And Jake had worked there in the past as a cook?

9 A Yes, he had.

10 Q And you had said that Chris had ended up taking his
11 job. It's not like they hired Chris to get rid of
12 Jake, was it?

13 A No, no. Jake had gotten fired from the job, and
14 Chris had put in his application prior to, so he
15 ended up getting hired.

16 Q What did Jake get fired for?

17 MR. MOBLEY: Objection, Your Honor. May we
18 approach?

19 THE COURT: Yes, sir.

20 (Whereupon there is a bench conference off the
21 record in the presence of the jury but out of the
22 hearing of the jury.)

23 THE COURT: Mr. Foreman, and ladies
24 and gentlemen, if would leave your notes upside-down on
25 your chair. Please step to your jury room just

1 momentarily. Do not discuss the case during this brief
2 recess.

3 (The jury retires to the jury room.)

4 THE COURT: All right. What is your response
5 to that question, Ms. Fairchild?

6 THE WITNESS: My response? Do you want me to
7 tell you or tell them?

8 THE COURT: No, you can say it out loud.

9 THE WITNESS: My response is that Jake got
10 fired for coming to work on his birthday and getting
11 drunk at work.

12 THE COURT: All right. Any follow-up in
13 camera, Mr. Madsen?

14 MR. MADSEN: No, Your Honor.

15 THE COURT: Do you have any follow-up in
16 camera, Solicitor?

17 IN CAMERA EXAMINATION

18 BY MR. MOBLEY:

19 Q When he got fired that day on his birthday, was he
20 working or was he off and came in that day?

21 A No, he had actually had the option of not coming to
22 work that day. My boss had said, If you want the
23 day off, it's your birthday. You can have the day
24 off.

25 He said, No, I'll work. I think he needed the

HEATHER FAIRCHILD -- IN CAMERA -- MR. MADSEN 221

1 money, and he came into work. This was not -- it
2 was not served by me. But he, somehow or other, he
3 had it in his bag or wherever he got alcohol from,
4 but he had come out very visibly drunk.

5 Q To work?

6 A No, at -- well, while he was at work. Somewhere
7 in the back of the kitchen, he had gotten drunk
8 some how, some way. I called my boss and said,
9 Jake is trashed --

10 Q Okay.

11 A -- and I can't do anything with him. You know,
12 he's messing up orders and everything else.

13 Q And this was approximately two weeks prior to?

14 A Correct.

15 MR. MOBLEY: No further follow-up, Your Honor.

16 THE COURT: Thank you. Mr. Madsen?

17 IN CAMERA EXAMINATION

18 BY MR. MADSEN:

19 Q Only one question. What day was it, do you know?

20 A The day that Jake got fired?

21 Q Yes.

22 A The day of the week I really couldn't tell you.

23 Q Well, I mean, was it a week before, a month, a
24 year?

25 A It was about two weeks. I just remember I knew it

1 was his birthday because the comment was made, I
2 got fired on my birthday. So I think it was about
3 two weeks before the accident though.

4 MR. MADSEN: That's all.

5 MR. MOBLEY: Just one more thing, Your Honor.
6 May it please the Court.

7 IN CAMERA EXAMINATION

8 BY MR. MOBLEY:

9 Q If I were to inform you that Jake's birthday was
10 [REDACTED] 2009, would you change the time period
11 approximately when he got fired?

12 A As far as two weeks?

13 Q Yes, ma'am.

14 A Yeah.

15 MR. MOBLEY: Nothing further, Your Honor.

16 THE COURT: All right. What is your position
17 on this testimony, Mr. Madsen?

18 MR. MADSEN: Judge, I just -- I believe, given
19 the context of what we're dealing with and that it's a
20 50/50 or two individuals, that it would be relevant.

21 THE COURT: Solicitor?

22 MR. MOBLEY: Your Honor, I think it's too
23 remote in time. Simply put, it's too remote in time,
24 and it's irrelevant to the actions, to the events, the
25 night of July 31st and the early morning hours of

1 August 1st.

2 You're looking at approximately almost two
3 months that had transpired. I think it's totally
4 irrelevant, Your Honor. It doesn't have any probative
5 value to be quite honest with you.

6 THE COURT: I tend to agree with that. I fail
7 to see how a person getting drunk, as described by our
8 witness almost 60 days prior to the time in which that
9 same person is in a fatal car accident, would be
10 probative to any issue that has to be resolved by this
11 jury in this case.

12 I don't see any probative value, but if there
13 is any, I think the prejudicial effect would clearly
14 outweigh the probative value. All right. Anything
15 further before we bring the jury back in, Mr. Madsen?

16 MR. MOBLEY: No, Your Honor.

17 (The jury returns to the courtroom.)

18 THE COURT: Y'all got lined up and got back in
19 the same seats, didn't you? I'll learn your names
20 before the week is up.

21 All right, Mr. Madsen, you may proceed.

22 **CROSS EXAMINATION**

23 BY MR. MADSEN:

24 Q So when Chris and Jake are sitting there at the bar
25 together, it's not like Chris is forcing any drinks

1 on Jake. I mean, he's just being friendly, isn't
2 he?

3 A Yes.

4 Q And at some point in time, you become aware that
5 they plan on leaving and going swimming at -- is it
6 S.C. 4 or Dock 4?

7 A It's Ramp 4 of S.C.E. & G., yes.

8 Q And this is approximately 4:00 o'clock in the
9 morning; is that correct?

10 A Yes.

11 Q And Lois Cannis is going to go with them?

12 A Correct.

13 Q Give me an idea at that point in time how many
14 people are still in the bar besides yourself.

15 A Very few. The other bartender was still there with
16 me.

17 Q That's Chris?

18 A Chris, Chris Brown. He was there and maybe four
19 other people total.

20 Q Other than Jake, Chris, and Lois?

21 A Correct.

22 Q And so at some point in time, you see Jake, Chris,
23 and Lois leave together; right?

24 A Uh-huh. (Indicating affirmative response.)

25 They were the very last ones to leave.

1 Q And when they're going out, you say that
2 apparently at some point in time before they
3 actually leave the building, they stop and
4 converse about something, but you can't hear that;
5 right?

6 A They had conversed about it on the side of the bar
7 when they were all sitting there.

8 Q Right.

9 A And then they, as they continued to walk out the
10 door as I was kind of screaming, Get out, they
11 continued to talk as they were walking out the
12 doorway.

13 Q But you can't hear what they're talking about as
14 they're walking out, right?

15 A No.

16 Q And Boondocks actually has video, don't they?

17 A Not outside, only inside.

18 Q So there was video from inside the bar that law
19 enforcement could have gotten if they had wanted
20 to, right?

21 A Yes, I guess so.

22 Q And that video might show someone handing keys
23 to someone else or someone having keys in their
24 hand if someone had gotten them, right?

25 A The video is pretty limited. It mainly shows the

1 cash register box for our safety and for the
2 owner's obviously. Then there is a small
3 portion of the left side of the bar that it shows,
4 and that's mainly just to, again, kind of more
5 watch the bartenders than anything.

6 Q But didn't you -- at some point in time, they were
7 at that left-hand side of the bar; weren't they?

8 A Yes, they were.

9 Q And so if we had reviewed that video, that might
10 have caught something on it; right?

11 A It might have. I really don't know for sure.

12 Q Does the video have any audio?

13 A No.

14 MR. MOBLEY: Objection. It calls for
15 speculation.

16 THE COURT: She knows whether it's got audio
17 or not.

18 THE WITNESS: It does not have audio. It just
19 has video.

20 THE COURT: And that's not speculation,
21 correct? You know that, don't you?

22 THE WITNESS: Correct.

23 THE COURT: I mean, if you don't know the
24 answer, you can say, I don't know

25 THE WITNESS: I do know the answer. It does

1 not have video -- or it doesn't have audio. It has
2 video.

3 THE COURT: Thank you. You may ask your next
4 question, Mr. Madsen.

5 BY MR. MADSEN:

6 Q So you have no idea, once they get out of the
7 bar, ultimately who ends up driving any car
8 anywhere; do you?

9 A No, I don't.

10 Q Because you can't see from where you are at
11 cleaning up the bar; isn't that right?

12 A Correct.

13 Q And there can be times where individuals have a
14 plan, and for some reason that plan ends up getting
15 changed; isn't that true?

16 A Sure, it does.

17 Q You had mentioned that even though they had been
18 drinking over a four or five-hour period, you know
19 as a bartender at Boondocks, if you felt someone
20 was unsafe, you would have stopped them and said,
21 Hey, y'all can't go anywhere, instead of letting
22 them get behind the wheel. Isn't that true?

23 A Not necessarily. That's not my job. My job is to
24 say, Please be careful or do you have a ride home
25 or do you want me to call you a cab? But it's not

1 my job to walk them out and say, Don't get in your
2 car.

3 Q Sure. Well, did you feel the necessity -- did you
4 say, Hey, let me get you a cab or do this or don't
5 do that, that night?

6 A That evening I did kind of ask everybody, How are
7 y'all getting home? I mean, I did make that
8 statement, and from there, you know, I personally
9 feel like everybody is an adult and that decision
10 is made upon them. If they needed me to call
11 somebody, I absolutely would've.

12 MR. MADSEN: That's all the questions I
13 have.

14 THE COURT: Thank you, Mr. Madsen. Redirect,
15 Solicitor?

16 MR. MOBLEY: Briefly, Your Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. MOBLEY:

19 Q Are you aware of any videotape existing for this
20 night?

21 A I know that the tape runs every night, and like I
22 said, it's more for my boss, just to make sure his
23 drawer is, you know, all right and nobody has
24 stolen any money or liquor from him.

25 But I'm sure that the video was running that

1 evening. I don't know if anybody talked to him or
2 asked him for it on either side. Like I said, it's
3 very limited to what it shows but --

4 Q How familiar are you with the operation of that
5 video itself?

6 A I don't have anything to do with the operation.
7 It's in my boss' office which is locked at all
8 times. He is the only one that has the key into
9 there.

10 Q So let me make sure --

11 A But I have seen it, you know, in his office with
12 him before, so I know that it works.

13 Q Has your boss ever mentioned anything about the
14 video recycling itself --

15 A Yes.

16 Q -- or recording over?

17 A Yes. I think it's got some span of a period that
18 it records, and then it just re-records over it.

19 Q And it does that automatically?

20 A I think so. I'm not -- I'm really not positive on
21 that.

22 Q Okay. Just briefly you state that the area that's
23 being recorded is very limited?

24 A Uh-huh. (Indicating affirmative response.)

25 Q And it's for the purposes of watching the cash, the

1 bartenders or whoever is going into the cash
2 register?

3 A Uh-huh, (Indicating an affirmative response.)

4 Q So it doesn't show everything around the particular
5 bar because you have a large bar area there?

6 A Correct.

7 Q It only shows that specific area?

8 A Right.

9 Q And so only if someone got or had stayed in that
10 particular area would it record them?

11 A Correct.

12 Q And let me make sure I have this correct. It does
13 not have any audio, so you can't hear what is being
14 said?

15 A No, it does not.

16 MR. MOBLEY: Nothing further for this witness,
17 Your Honor.

18 THE COURT: Thank you. Recross, Mr. Madsen?

19 MR. MADSEN: Nothing, Your Honor.

20 THE COURT: Thank you. Thank you very much,
21 Ms. Fairchild. You may step down.

22 (Witness leaves the witness stand.)

23 THE COURT: How long is your next witness,
24 Solicitor?

25 MR. MOBLEY: Approximately 15 minutes, Your

ELIZABETH SIMMONS -- DIRECT -- MR. MOBLEY

231

1 Honor.

2 THE COURT: All right. You may call your next
3 witness.

4 MR. MOBLEY: The State calls Elizabeth
5 Simmons.

6 THE COURT: If you would come around and be
7 sworn for us, please, Ms. Simmons.

8 ELIZABETH GRAYSON SIMMONS,
9 being first duly sworn, testifies as follows:

10 CLERK: Have a seat, please, ma'am. Once you
11 are seated, speak up loud and clear, stating your full
12 name and spelling your last.

13 THE WITNESS: My name is Elizabeth Grayson
14 Simmons, S-I-M-M-O-N-S.

15 DIRECT EXAMINATION

16 BY MR. MOBLEY:

17 Q Good afternoon or good evening, Ms. Simmons. Do
18 you mind telling the jury where you are currently
19 employed?

20 A Lexington County E.M.S.

21 Q And how long have you been employed at that
22 particular location?

23 A For a little longer than a year.

24 Q A little longer than a year. Now, what is your
25 current position there?

1 A I'm a P.F.C., a private first class, which is our
2 E.M.T. basics.

3 Q Now, when you say E.M.T. basics, can you speak in
4 layman's terms so I can understand.

5 A I'm sorry. We have basics, which is the bottom,
6 intermediates, and then paramedics. A basic is
7 pretty much the level of patient care. We can't
8 start I.V.'s. We can't call a death. That's up to
9 the paramedic or the crew chief. We're just there
10 for patient care and assessment.

11 Q Now, how do you go about -- in your particular
12 position, is there any type of classes or training
13 that you have to go through?

14 A We have to stay certified as an E.M.T. You have to
15 go through a monthly training course. Lexington
16 County holds in-service. You go every month.
17 In Lexington we take tests to prove that we still
18 know and can understand our protocols, and you have
19 a different subject every single month. But
20 throughout the year, you go over the course of
21 every single protocol that we have to follow.

22 Q Now, I want to take you back to the early morning
23 hours of August 1st, 2009. Were you currently
24 employed at Lexington County E.M.S. at that
25 particular time?

ELIZABETH SIMMONS -- DIRECT -- MR. MOBLEY

233

1 A Yes, sir.

2 Q Were you on duty that day?

3 A Yes, sir.

4 Q Did you have to respond to an incident that
5 occurred on Highway 378 over towards the Saluda
6 County line?

7 A Yes, sir.

8 Q Do you mind telling us about the events of that
9 night?

10 A We were sitting in our station. We heard the fire
11 tone go off for Cedar Grove. Hollow Creek was also
12 called, which is where we were located. About two
13 minutes later, my pager went off, and Sergeant Hall
14 got dispatched that we needed to respond to 378 to
15 an M.V.C., which is a motor vehicle collision,
16 possible overturn, possible injured patient.

17 We went and got in the truck. We responded.
18 We had other information on our M.V.C. that shows
19 how to go to the incident and gives us a little
20 information, and then we responded.

21 The first responder, Nathan, who was at Hollow
22 Creek that night, got there approximately 30
23 seconds before we did. We were dispatched at 4:51.
24 The call came in at 4:48. We arrived on scene at
25 4:57. So it took us about six minutes to get to

1 the site.

2 Q So you're not that far away from where this
3 incident occurred?

4 A Probably if you're driving the normal speed limit,
5 it would take about 10 or 15 minutes to get there.

6 Q Okay. Now, you arrived on scene. Tell me exactly
7 what you initially saw.

8 A When I got out of the truck, we were met by -- I
9 want to say Nathan came up to us. When I got --
10 when I looked, you could see the victim. The car
11 was -- do you have a picture of the car, of the
12 site?

13 Q I do. Would you like to see it?

14 A Yes, please.

15 MR. MOBLEY: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 BY MR. MOBLEY:

19 Q I want to hand you these documents and tell me if
20 these fairly and accurately depict the scene as it
21 was that night?

22 A May I show these?

23 THE COURT: No, not yet.

24 A Yes, sir.

25 THE COURT: You can show them in a minute.

ELIZABETH SIMMONS -- DIRECT -- MR. MOBLEY

235

1 A They are perfect. They exactly show what I saw on
2 scene.

3 Q Okay.

4 MR. MOBLEY: Your Honor, the State would move
5 to have these three pictures admitted into evidence as
6 State's Exhibits Numbers 1, 2, and 3.

7 THE COURT: Mr. Madsen?

8 MR. MADSEN: If he lets me see them,
9 I probably don't have a problem.

10 (Pause.)

11 MR. MADSEN: No objection, Your
12 Honor.

13 THE COURT: All right. State's 1, 2, and 3
14 are in evidence without objection. May I see them,
15 please, Solicitor, after they're marked?

16 (State's Exhibits Number 1-3 are received into
17 evidence.)

18 THE COURT: All right, Solicitor. The witness
19 has State's 1, 2, and 3 in her hands now.

20 MR. MOBLEY: Thank you, Your Honor. Begging
21 the Court's indulgence, Your Honor. We're just waiting
22 for this screen to come on. If it doesn't, I'd ask
23 permission to hand the pictures to the jury for
24 publication.

25 THE COURT: Certainly. You may do that.

1 BY MR. MOBLEY:

2 Q Ms. Simmons, what I'm going to show you is State's
3 Exhibit Number 1. Does this look like --

4 MR. MOBLEY: This photo is going to be too
5 dark, Your Honor. I'd just ask that we pass it to the
6 jury after Ms. Simmons describes what is in each exhibit
7 number.

8 THE COURT: Certainly. That will be fine,
9 Solicitor. If you would cut the lights back on for me,
10 please. Thank you.

11 BY MR. MOBLEY:

12 Q I am handing you State's Exhibit Number 1, 2, and
13 3, and if you could, would you describe what you
14 see in that, in those photos.

15 THE COURT: You can hold them up and show them
16 to the jury from that position if you'd like to,
17 Ms. Simmons, and thereafter the Solicitor will publish
18 them closer to the jury.

19 BY MR. MOBLEY:

20 Q Continue, please.

21 A Okay. Taking it from getting out of the truck and
22 going over to the Defendant, which I was the first
23 on scene that I know of to go to him. I'm not sure
24 if Nathan had already approached him. I know
25 Nathan was talking to Sergeant Hall about the

1 victim.

2 Just by a glance of the victim, he was on his
3 left side in a left lateral position. That's all I
4 had seen of him. Approaching the Defendant, with
5 Exhibit Number 1, this is how, from this way, it
6 would look.

7 If you were behind the -- if you were at the
8 road, this would be -- if this (indicating) was the
9 road, this is the position of the truck. This is
10 more of a close-up of Exhibit 2.

11 When I found the patient, the patient was I'd
12 say 10 to 15 feet, and he was sitting right here in
13 a supine position which is on his back. When I
14 approached him, the first thing I noticed was I had
15 a very strong smell of alcohol approaching him.

16 The first injury I noticed was his nose. The
17 patient had -- you could see his bone, and his skin
18 and muscle and tissue were fluttered. To me I
19 noticed it was very similar to a hotdog.

20 When you cut a hot dog and you put it in the
21 microwave, it flutters out. That's what it looked
22 like, and you could see the bone. When I was doing
23 the assessment to the patient, palpating his chest,
24 looking for injuries, I found a left abdomen wound
25 that was as big as a fist. It was an opening

1 there.

2 Also with the assessment, while palpating I
3 asked him questions. We do -- to rate the C.A.O.,
4 the conscious, alert and oriented -- we ask
5 questions. The maximum you can get is four. We
6 always start with the patient's name. The patient
7 said a name.

8 Q Let me ask you this. Why are you asking the
9 patient questions when he has such severe injuries
10 at this particular point?

11 A One, so the patient -- we know that the patient is
12 responsive. So that will keep the patient from --
13 if you don't talk to a patient, nine times out of
14 ten, they're going to go into shock.

15 If you don't keep them alert, if you don't
16 keep them in the responsive mode, they're going to
17 turn and go into shock. Asking the patient the
18 questions of his name, and I had -- let me start
19 over. I had no identification on this patient.

20 Q Okay.

21 A I did not know his name, anything. So, when he
22 answered the name, he told me a name. I cannot
23 remember the exact name he said, but he said a
24 name. So I went to the next one which is, where
25 were you or where are you, and he told me he was

1 off 378 in a field.

2 Q And was that correct?

3 A Yes.

4 Q Okay.

5 A The next one I asked is, What is today, meaning
6 day, date, and he had said August. I'm not 100
7 percent accurate that he said the 1st. But then I
8 asked him the year, and he said 2009.

9 Q Was that correct?

10 A Yes.

11 Q Okay.

12 A Then we asked him the President, and he answered
13 that one correctly also.

14 Q Okay.

15 A All those questions have put him at the rating of a
16 C.A.O. 4, which is the best you can get.

17 Q Meaning that he was totally coherent?

18 A Yes.

19 Q Okay.

20 A He could understand everything I said, and he could
21 answer back.

22 Q So after receiving those answers to the questions
23 and you're in the course of treatment with this
24 particular individual, who ends up later being
25 Mr. Christopher Manning, do you begin to -- well,

1 do you receive help?

2 A Yes, sir,

3 Q Okay.

4 A I had one firefighter that I remember, Victor. He
5 came and helped me with the assessment. The
6 patient was trying to sit up. Again, when we do
7 the palpating and look at his injuries, we told
8 him, You need to stay laying down. Don't move your
9 neck.

10 That's when Victor took the manual C-spine and
11 held him from the back of his head. We then had
12 another firefighter go get the long spine board,
13 the head bed and the C-collar, to put around his
14 neck for safety precautions. No, he never said his
15 back hurt or his neck, but with a wreck we always
16 take precautions because we never know what's
17 wrong.

18 Q Now, during this particular time, he appears to be
19 coherent. Looking at the car, this S.U.V., does
20 there appear to be substantial damage to it?

21 A Oh, yes.

22 Q Did you have to pull Mr. Christopher Manning out of
23 that car?

24 A No. He was lying on his back when I approached
25 him.

ELIZABETH SIMMONS -- DIRECT -- MR. MOBLEY

241

1 Q When you approached him. You were right about one
2 of the first ones there on the scene?

3 A Yes, sir.

4 Q Okay.

5 MR. MOBLEY: If I may, Your Honor, publish
6 this to the jury, 1, 2, and 3, so that the jury can look
7 at them.

8 THE COURT: Certainly.

9 BY MR. MOBLEY:

10 Q So, Ms. Simmons, while the jury is looking at the
11 pictures here to see what we're talking about, you
12 are now treating Mr. Manning?

13 A Yes, sir.

14 Q And you have Victor --

15 THE COURT: Would you sit a little closer to
16 that microphone, Ms. Simmons.

17 THE WITNESS: I'm sorry. Yes, sir.

18 THE COURT: Thank you very much.

19 BY MR. MOBLEY:

20 Q And you have Victor assisting along with you,
21 correct?

22 A Yes, sir. And also --

23 Q You have -- I'm sorry. Go ahead.

24 A And I also had others. I cannot remember their
25 faces because my attention was focused on him. , .

1 But with the help, all I could really see were
2 hands.

3 Q Okay. And you were attentive to him because he was
4 the surviving victim at this time?

5 A Yes.

6 Q You haven't received information that the other
7 person was signal nine at that time, correct?

8 A Yes.

9 Q You haven't received information during the course
10 of your treatment that the other person was signal
11 nine?

12 A Yes. When we arrived we were told that there was a
13 possible signal nine, which was the victim.
14 Again --

15 THE COURT: What is a signal nine?

16 THE WITNESS: Signal nine is dead upon arrival
17 or deceased.

18 THE COURT: Thank you.

19 BY MR. MOBLEY:

20 Q Okay. Now, you're treating Mr. Christopher Manning
21 at this particular time, and you're asking him
22 these questions. He responds and he appears to be
23 coherent. Does he make any other statements to you
24 at this point in time?

25 MR. MADSEN: Judge, I would object subject to

ELIZABETH SIMMONS -- DIRECT -- MR. MOBLEY

243

1 pretrial rulings.

2 THE COURT: Yes, sir. I would renew my
3 pretrial rulings in that regard, Mr. Madsen. Thank you.

4 BY MR. MOBLEY:

5 Q Does he make any other statements to you at this
6 particular time, Ms. Simmons?

7 A During assessment when we were -- we try to talk to
8 our patients to keep their mind off injury and off
9 the scene of what has happened. When I was asking
10 him questions -- and I did the same thing in the
11 back of the truck though when we were still on
12 scene -- I had heard, I f-ed up.

13 Q Now, who's saying this?

14 A The patient.

15 Q Okay.

16 A Excuse me, the Defendant.

17 Q Okay.

18 A And not in this order but, I f-ed up. I should
19 have never done this. Look at what I've done.

20 Q Now, when he's making these statements, is he being
21 questioned by law enforcement?

22 A No.

23 Q Are you interrogating him or anything of that
24 nature?

25 A No.

1 Q Was he under arrest at this particular time?

2 A No.

3 Q Does it seem like it was free and spontaneous or
4 voluntary at this time when he was making it?

5 A Yes.

6 Q You didn't coerce him in any way to make those
7 statements?

8 A No. We always tell our patients we want to hear
9 from them. We're not cops. We're not here to
10 judge you. We're not here to get you in trouble.
11 We're here to help you.

12 We just -- we always take what we hear. We
13 don't tell anybody. If we are not called or asked
14 by the police or the Court, we don't tell anything.
15 We ask that to help the patient, not to try to get
16 them in trouble.

17 Q Okay. So just for clarification, you state that he
18 made a statement in addition to two others, one
19 that stated, I f-ed up?

20 A Yes, sir.

21 Q Now, are those the exact words he stated or are you
22 abbreviating one particular term?

23 A That statement was exactly what he said. The
24 others might be a little abbreviated, but that's
25 the one that sticks out.

1 Q Now, when you say, I f-ed up, is that out of
2 respect for the Court or did he say the actual term
3 of F.?

4 A Oh, he said the actual term.

5 Q Okay. That's what we were trying to clarify there.
6 So he makes these statements, and you continue to
7 work on him?

8 A (Witness nods indicating affirmative response.)

9 Q Where -- what do you do next?

10 A We load the patient. We like to call multi-trauma,
11 which he was called in as a load and go. We don't
12 take the time to find stuff on scene or really
13 notice a lot around.

14 We put the patient on a C-collar, a head bed,
15 and we loaded him on a spine board. The volunteer
16 firefighters that were around -- and about the time
17 we had loaded him, there were many of them there.

18 The men or the volunteer firefighters had
19 helped us out and loaded the patient onto the
20 stretcher and then into the unit. That way we
21 could get in there and go.

22 I was in the back with Tiffany Hall, and one
23 of the volunteers drove us to Richland Emergency.
24 I called it in to dispatch when we had left the
25 scene that we were going to Richland Memorial

1 Emergency for multi-trauma. In our scenario, a
2 multi-trauma is when they are either bleeding, they
3 have cuts in the face or any damage or anything
4 that's open.

5 Q Now, Richland approximately from the incident
6 location is approximately 20, 30 minutes away?

7 A Yes, sir.

8 Q Okay. And that's why you all are speeding with the
9 emergency lights on, of course, to make sure you
10 try to get him there as soon as possible; correct?

11 A Yes, sir.

12 Q Now, you state you were located in the back with
13 Mr. Manning?

14 A Yes, sir.

15 Q At that particular time, were you able to observe
16 any smells that may have been coming from
17 Mr. Manning?

18 A Yes, sir. The stretcher is locked into the side of
19 the truck in the back, and we have a captain's
20 chair that sits in front of it. I was sitting in
21 the captain's chair, so his face was pretty much
22 right in front of mine.

23 To talk to him, I kind of got close so he
24 could see me because with having a head bed and
25 then a C-collar, there is not a lot you can see. I

ELIZABETH SIMMONS -- DIRECT -- MR. MOBLEY

247

1 had asked him questions. I had talked to him. One
2 thing I noticed with that is when he'd say
3 something, the wafting of air -- because he was
4 back -- would be the smell of alcohol, and it was a
5 very strong smell.

6 Q Did you notice anything about his eyes or demeanor
7 at that particular time?

8 A I wasn't really paying attention to his eyes,
9 checking them. I checked them on scene really
10 fast. From what I can remember, I thought they
11 were kind of dilated, but that's because, when I
12 look, I don't really shine the light. I have to
13 check and assess his eyes, yes, but I was more
14 worried about his nose and his abdomen than his
15 eyes.

16 Q So when you all arrive over in Richland County
17 trauma or the emergency room, do you drop off
18 Mr. Manning?

19 A Yes. We take him into the trauma, which he went
20 into Trauma One, which when you walk through the
21 doors of Richland, is right there. We unloaded the
22 spine board, loaded him onto the trauma table. I
23 left right after that so Tiffany could give the
24 report to the doctors. I took everything and
25 cleaned our truck as fast as possible so we could

1 go back into service.

2 Q So, after he's delivered there, do you come back in
3 contact with Mr. Manning?

4 A No.

5 Q At any time else?

6 A No.

7 Q until this day?

8 A Up until this day, no.

9 Q Thank you.

10 MR. MOBLEY: Nothing further for this witness,
11 Your Honor.

12 THE COURT: All right. Mr. Madsen.

13 CROSS EXAMINATION

14 BY MR. MADSEN:

15 Q Ms. Simmons, when you respond out there, prior to
16 you getting to Chris, does anyone move him?

17 A Not that I can recollect.

18 Q And you're there just about as quick as anyone,
19 right?

20 A Yes, sir.

21 Q And given State's Exhibit Number 2, can you just
22 show me in relation to this when you get there,
23 where is he at?

24 A He's about right here (indicating) behind
25 the truck.

- 1 Q Okay. So, if this is the way the truck was, laying
2 on I guess its driver's side, he would have been
3 right over here (indicating)?
- 4 A Yes, sir.
- 5 Q And when you get up to him, the first thing that
6 you see is he has some kind of severe laceration to
7 his nose or his face; correct?
- 8 A Yes.
- 9 Q Is he bleeding from that?
- 10 A Not that I can remember.
- 11 Q Do you not see any blood at all on his face?
- 12 A I see the tissue and the bone. That struck me
13 first. When you have tissue that's open, of
14 course, you're not going to -- you're not going to
15 really notice if it -- it wasn't gushing blood if
16 that's what you're trying to say. There was dried
17 blood, but the tissue was pretty much out.
- 18 Q That would indicate though that somehow he had
19 struck his face at some point in time?
- 20 A Yes, sir.
- 21 Q And looking at that car, it's a pretty big
22 collision; is it not?
- 23 A Yes.
- 24 Q It becomes, if I understand from what you testified
25 to, it becomes very chaotic at the scene with a

1 bunch of different first responders, whether
2 E.M.S., fire department or law enforcement, around
3 the scene; isn't that right?

4 A I wouldn't say chaotic. With what I was doing, I
5 wasn't very distracted. I can remember this like
6 yesterday. This was my first wreck ever to be at,
7 my first ejection, my first signal nine.

8 No, I did not call that signal nine. But
9 arriving on that scene, I remember it like
10 yesterday. I was not one to be distracted. Yes, I
11 remember firefighters coming up, but not once was I
12 hectic or chaotic.

13 Q And I certainly didn't say that you were, but there
14 was a lot of different people there doing a lot of
15 different things?

16 A Yes, sir.

17 Q And you find at some point in time, that there's an
18 injury down at Chris' left side; is that correct?

19 A Yes, sir.

20 Q Do you see any blood from that?

21 A Not gushing out. You can see his intestines which,
22 again, have blood around them. He was not gushing
23 blood from what I remember. The first sight was,
24 Wow, I could stick my fist through that. We put a
25 dressing with occlusive on it which is a -- we used

1 an eight-by-seven, and you tape it, one, two, three
2 sides, so that it can breathe.

3 Q What is the purpose for letting it breathe out of
4 one side?

5 A Well, if you kind of seclude a dressing, especially
6 with a wound -- I mean, I can't tell you in a
7 paramedic vocabulary, but as I've learned in the
8 basic field, that's not very good to totally wrap
9 it up like a bandaid. You don't want to lock air
10 in.

11 Q Okay. And so ultimately at some point in time,
12 with someone who is in a collision like this, do
13 you become concerned with, say, shock?

14 A Uh-huh. (Indicating affirmative response.)

15 Q And could you just tell the jury what does shock
16 mean?

17 A There are eight different types of shock. We learn
18 them as shrimp can --

19 COURT REPORTER: As what?

20 THE WITNESS: Shrimp can (phonetic).

21 A That's an easier way for us to remember each type,
22 each category and type of shock. I cannot specify
23 which category of shock he would have gone into, if
24 at all, but shock is from the type of -- if you are
25 a multi-trauma and you don't stay reacted, your

1 blood goes down, your heart rate goes down, and
2 it's going to put you into automatic shock.

3 You're not going to be able to respond full
4 fledge or stay coherent at a four. You'd be down
5 to a one. I know he never hit shock because he
6 could still talk to me. But that's why we talk to
7 our patients, so they don't go down into shock.

8 Q Severe injuries or wounds could cause shock though,
9 can't it?

10 A Yes.

11 Q And ultimately you say he made some statements to
12 you. Was he in the neck brace at that point in
13 time?

14 A He said them before and after.

15 Q Okay. Now let me see if I understand. You said
16 one was that, I f-ed up, and I mean that's
17 paraphrasing the actual words.

18 A That's the exact words he said, the exact, I f-ed
19 up. That was repeated quite a few times on scene
20 and on the truck.

21 Q Okay. So he doesn't -- when you say f-ed up,
22 that's exactly what he says. He's not saying
23 F-U-C-K-E-D.

24 A Oh, okay. Excuse me. He said F-U-C-K-E-D.

25 Q Okay.

ELIZABETH SIMMONS -- CROSS -- MR. MADSEN

253

- 1 A That exact word.
- 2 Q He said that exactly?
- 3 A Yes, sorry.
- 4 Q Multiple times?
- 5 A Yes.
- 6 Q And then you had said something, you were just --
- 7 the other things you said he said, you're not as
- 8 sure and you were paraphrasing those?
- 9 A Yes, I was paraphrasing those.
- 10 Q And when you're out there with him, he's pretty
- 11 messed up as far as it's a load and go, so it's a
- 12 serious situation; isn't that true?
- 13 A According to his injuries, yes.
- 14 Q And, in fact, when you kind of got notice about
- 15 this case, you really hadn't thought about it since
- 16 pretty much back during the time when you were out
- 17 there?
- 18 A Correct. But, again, it being my first wreck ever,
- 19 my first very bad wreck, and being asked questions,
- 20 they pop back into one's head. We see so much we
- 21 don't try to remember anything. We don't try to
- 22 stay pin-point topic. But it, again, was like
- 23 yesterday.
- 24 Q And, in fact, you had actually heard a few days
- 25 after this that Chris had died?

1 A Yes, sir. But, again, in the E.M.S., in the fire,
2 we hear rumors. We don't -- we don't call up to
3 Richland and say, Can I please check on a certain
4 patient? Again, I didn't know his true name. But,
5 yes, I heard a rumor from my sergeant that he was
6 dead.

7 Q And given the injuries that you saw that night,
8 that didn't surprise you when you heard it back
9 then?

10 A No, it did not.

11 Q You talked about that you had, I guess, pressed on
12 or checked his chest?

13 A Yes.

14 Q What are you doing that for?

15 A When we palpate your chest, we're looking for --
16 before we cut your clothes off --

17 Q Let me ask you and let me stop you there. What
18 does palpate mean?

19 A Palpate (indicating).

20 Q Just pressing?

21 A Yes.

22 Q Okay. What are you looking for?

23 A We're looking for closed injuries, which would be a
24 broken rib, a penetrating fracture, something that
25 sticks out but still has skin over it.

1 Q And you didn't feel anything like that on his
2 chest, did you?

3 A No, sir.

4 Q Did you do anything to check as far as his airway
5 or his lungs?

6 A I didn't listen to his lungs, but then, again, a
7 patient that talks to me, I'm almost positive his
8 airway's open.

9 Q You had indicated at some point in time that his
10 eyes were dilated. Is that while you were out on
11 the scene or is that something that you see when
12 you're actually in the E.M.S going?

13 A That is something that I saw on scene. Again, I
14 didn't do a thorough, you know, holding a light up
15 to your eyes. That was done by a volunteer
16 firefighter. I just did a quick glance of his
17 pupils, and for being pretty much at his rib cage
18 and looking up to try to see pupils, I was probably
19 wrong. I don't know definitely.

20 Q And so, once you end up -- you end up taking him
21 over to Richland Memorial, which is a level one
22 trauma center; correct?

23 A Yes, sir.

24 Q And y'all end up dropping him off there, and then
25 you come back out to the van to basically clean up

1 so up so that you can go anywhere else --

2 A Yes, sir.

3 Q -- and answer any other calls?

4 A Yes, sir.

5 Q What is your normal shift? What hours would you
6 have been working on this day?

7 A Seven at night until 7:00 in the morning. So we
8 would -- we would pretty much be getting off right
9 then if we were still at Hollow Creek. But in the
10 E.M.S., you don't really count on, Oh, well, you
11 know what, I'm going home. You try to focus on
12 your patient, and you really don't care.

13 Q And so do you actually go in with Chris to the
14 hospital?

15 A I took him -- I wheeled him in and transferred him
16 into the Trauma One. That's all I did.

17 Q Do you make a report to any of the attending E.R.
18 physicians?

19 A No, sir, that's Tiffany.

20 Q Can you tell me then why his medical report says
21 that he's a passenger of a motor vehicle accident
22 and the driver was signal nine?

23 A According to a medical report, do you mean his
24 D.H.E.C.?

25 Q I'm just talking about the notes from when he's in

1 the hospital.

2 A So this is something that was said to him by
3 Tiffany Hall who, again --

4 Q I don't know. I'm asking you.

5 A I don't know, sir. That's not my call. Therefore,
6 I do not write anything. I read what Sergeant Hall
7 would write as her D.H.E.C. I don't read what the
8 hospital puts. I only read the E.M.S. part of it
9 which is our D.H.E.C.

10 Q Okay. So you don't know in the end as far as what
11 the hospital records reflect, correct?

12 A No, sir, I know nothing of what the hospital said.

13 Q You had indicated at some point in time -- could
14 you explain this to the jury. At some point in
15 time, you say something about him trying to get up.
16 What's going on with him trying to get up, with
17 Chris trying to sit up? I'm a little bit unclear
18 about that.

19 A Okay. He was found supine which is, again, on your
20 back. He had stayed down. And then --

21 COURT REPORTER: I'm sorry. He had what?

22 A He was -- he stayed down. If this is him lying
23 down, when we were doing the palpating and looking
24 at his injuries, he tried to sit up. That's
25 when -- we don't restrain a patient. We don't try

1 to put any blunt force on a patient, but we do, I
2 guess you could say, we kind of put force or
3 restraint because we hold them down. We are
4 holding them down for safety precautions. That's
5 the only time he pretty much tried to get up. He
6 wasn't aggressive. He wasn't combative.

7 Q Right. Because you don't know what injuries he has
8 at that point in time. So if they've got a spinal
9 injury or an injury to the neck, you basically want
10 them to stay flat and stay still; correct?

11 A Uh-huh. (Indicating affirmative response.)

12 Q And that's ultimately why you put someone on a
13 spine board?

14 A Yes, sir.

15 Q And then when they are on a spine board, they are
16 kind of restrained as far as their arms down to the
17 side, but it's not meant to be a physical
18 restraint; is that correct?

19 A Right. Their hands are -- their arms are actually
20 free. That way the paramedic can do an I.V., give
21 any drugs. They are never restrained. The only
22 thing I guess you'd say are restrained are their
23 legs.

24 Q And so, when he's put on the spine board, does he
25 end up with anything up over his head or his neck?

1 A He had a C-collar over his neck. A C-collar is
2 pretty much like this (indicating) and has a hole
3 right here (indicating) and a head bed, which are
4 two little round pillow-type things that sit to
5 stabilize your head from moving.

6 MR. MADSEN: That's all the questions I
7 have, Your Honor.

8 THE COURT: Redirect, Solicitor?

9 MR. MOBLEY: None, Your Honor.

10 THE COURT: Thank you. Thank you very much,
11 Ms. Simmons. You may step down.

12 (Witness leaves the witness stand.)

13 THE COURT: All right. Perhaps this would be
14 a good time for us to take our evening recess, ladies
15 and gentlemen. Please remember you are not to discuss
16 this case with others. That includes your fellow
17 jurors, family, friends or anyone else.

18 You are not to read or listen to any news
19 reports about the case, should there be any. You are
20 not to use a computer, cellular phone or other
21 electronic device with communication capabilities to
22 obtain or disclose any information about the case which
23 includes the following:

24 Information about a party or a witness,
25 attorney or court officer or newscast accounts about the

1 case or information collected through juror research on
2 any topics raised or testimony offered by any witness or
3 information collected through juror research on any
4 other topic which the juror might think would be helpful
5 in deciding the case.

6 Remember, you are to decide the case based on
7 the evidence and the testimony presented in the
8 courtroom and the law as I tell you the law is.
9 Please remember to keep an open mind about the case, and
10 do not begin your deliberations until I instruct you to
11 do so.

12 If you would leave your note pads upside-down
13 on your chairs as you leave today. They will be secured
14 by the -- make sure your juror number is on them. They
15 will be secured by the Clerk's office overnight.

16 I hope y'all have a pleasant evening. Please
17 be back promptly at 9:30 in the morning. Please be back
18 promptly at 9:30. I hope y'all have a pleasant evening.
19 See you in the morning. Thank you very much.

20 (The jury is excused for the day at 5:40 p.m.)

21 THE COURT: All right. Anything further from
22 the State?

23 MR. MOBLEY: Briefly, Your Honor. Your Honor,
24 we would just ask that because the case has been called
25 for trial, that the Defendant's bond be revoked and that

1 he be housed in the jail overnight.

2 THE COURT: All right. Anything further,
3 Solicitor?

4 MR. MOBLEY: No, Your Honor.

5 THE COURT: Mr. Madsen?

6 MR. MADSEN: Judge, I've got a letter and a
7 card for the Court indicating that his bail
8 company, which is Brad's Bonding and Steve Thompson, is
9 willing to stay on the bond during the pendency of this
10 case.

11 Judge, obviously he's been out on bond, and he
12 has shown up. He has always made roll calls that the
13 Solicitor has had him come to. So we would request that
14 he stay out on bond. It certainly would assist me for
15 him to be able to come to my office as compared to me
16 having to go to the detention center.

17 THE COURT: All right. He is in the custody
18 of the Lexington County Detention Center. What time do
19 you need him here in the morning, Mr. Madsen?

20 MR. MADSEN: At 9:00 o'clock.

21 THE COURT: What about any clothing he needs
22 for in the morning? That's delivered to the jail. Is
23 that correct, Sheriff?

24 DEPUTY: That's correct, Your Honor.

25 THE COURT: Can someone deliver that to him at

1 the jail timely enough?

2 MR. MADSEN: I'll try to get his girlfriend
3 to.

4 THE COURT: All right. If you'll just make
5 those arrangements.

6 Sheriff, if you would have Mr. Manning here by
7 9:00 a.m. He is in the custody of the Sheriff's
8 Department.

9 DEPUTY: Yes, Your Honor.

10 THE COURT: Thank you. Thank you very much.
11 Anything further from the State or the defense?

12 MR. MOBLEY: Nothing, Your Honor.

13 MR. MADSEN: Just one last thing.

14 THE COURT: Yes, sir.

15 MR. MADSEN: Since we do have a sequestration
16 order, one thing I noticed is from when I had talked to
17 Ms. Simmons, she had indicated to me when I talked with
18 her over the weekend, that his eyes were dilated.

19 We have had someone else who testified that
20 the eyes were pinpoint. It seems now that she is kind
21 of hedging on what she had talked about the eyes being
22 dilated.

23 I don't think it's that big of a deal, but
24 certainly under the sequestration order, I don't think
25 that any witnesses should be talking about what their

1 testimony is, whether in here during the trial or
2 obviously during a pretrial.

3 THE COURT: Solicitor, will you so inform the
4 witnesses that they may not discuss --

5 MR. MOBLEY: Absolutely.

6 THE COURT: -- their testimony with any other
7 witness.

8 MR. MOBLEY: Absolutely, Your Honor. We will
9 remind them of that.

10 THE COURT: All right. Thank you very much.
11 Court will be in recess until 9:30.

12 (Whereupon the proceedings are concluded for
13 May 11, 2009).

14 (The following proceedings are reported on
15 May 12, 2009.)

16 THE COURT: Solicitor, anything before we
17 bring in our jury from the State?

18 MR. MOBLEY: Nothing, Your Honor.

19 THE COURT: From the defense?

20 MR. MADSEN: Nothing, Your Honor.

21 THE COURT: All right. Would you bring us our
22 jury, please.

23 (The jury returns to the courtroom at
24 9:43 a.m.)

25 THE COURT: Good morning, Madame Clerk.

1 CLERK: Good morning.

2 THE COURT: Madame Clerk, does our
3 panel have their note pads?

4 CLERK: Yes, sir, Your Honor. I believe they
5 all have been given to them.

6 THE COURT: Good morning, ladies and gentlemen
7 of the jury panel. How are y'all this morning? As you
8 will recall, we are continuing the trial of the case by
9 the presentation of testimony in the State's case in
10 chief.

11 Before I have the State call their next
12 witness, I would like to point out that we have a class
13 with us this morning, law-related education, from
14 Gilbert High School.

15 You may have noticed on the right side of the
16 courtroom a number of individuals observing this
17 morning. It is students from Gilbert High School from
18 ninth, tenth, eleventh and twelfth grades. They will be
19 here for some period of time. They are, of course,
20 welcome to stay as long as their schedule with permit.

21 With that being said, Solicitor, if you would
22 call your next witness.

23 Ladies and gentlemen, if you would please give
24 the parties your complete and undivided attention as you
25 did to all the parties during the trial yesterday.

NATHAN PROUSE -- DIRECT -- MR. MOBLEY

265

1 Solicitor.

2 MR. MOBLEY: Thank you, Your Honor. The State
3 calls Nathan Prouse to the stand.

4 THE COURT: Mr. Prouse, if you would come
5 around and be sworn, please.

6 NATHAN PROUSE, being
7 first duly sworn, testifies as follows:

8 CLERK: Have a seat, please, sir. Once you
9 are seated, state your full name, spelling your last on
10 the record.

11 THE WITNESS: Nathan Prouse. The last name
12 is P-R-O-U-S-E.

13 DIRECT EXAMINATION

14 BY MR. MOBLEY:

15 Q Good morning, Mr. Prouse.

16 A Good morning.

17 Q Where are you currently employed?

18 A Lexington County Fire Service.

19 Q And what is your position there?

20 A Currently I'm a firefighter by rank.

21 Q By rank?

22 A By rank, I'm a firefighter.

23 Q Now, what are some of your duties and
24 responsibilities as --

25 THE COURT: If you would pull that mike down

1 just a little bit towards you, please.

2 THE WITNESS: All right.

3 THE COURT: Thank you very much.

4 A I'm sorry. Repeat that.

5 Q What are some of your duties and responsibilities?

6 A Well, starting with the very basic, fire
7 suppression, handling E.M.S. calls, limited medical
8 services, public service, stuff like that.

9 Q Now, do you ever have to respond to vehicle
10 incidents, accidents?

11 A Yes. That's very common, very -- it happens
12 frequently.

13 Q Okay. And you have been on numerous calls?

14 A Yes, more than I can count.

15 Q Okay. Now, I want to take you back to the early
16 morning of August 1st, 2009. Were you working
17 within your current position at that particular
18 time?

19 A Yes.

20 Q And who were you working for?

21 A That evening I was actually working -- I was
22 filling in a shift for low manpower at Station 2,
23 which is Hollow Creek. I was filling in as an
24 engineer that night. The engineer was out, and I
25 was just -- I was there filling in that position.

NATHAN PROUSE -- DIRECT -- MR. MOBLEY

267

1 Q Okay. Now, in the early morning hours of
2 August 1st, 2009, did you have the occasion to go
3 to an incident that occurred on Highway 378 near
4 Saluda County?

5 A Yes.

6 Q Tell me how you were notified and why you
7 responded.

8 A Okay. The call itself, the location of the call,
9 was actually in the sister station's response area,
10 which is Cedar Grove, Station 29. That station is
11 still relatively new, so it is manned only in the
12 daytime because of the lack of call volume in that
13 area.

14 So with any call after hours for that station,
15 Station 2 gets called to assist with manpower. So,
16 you know, as I was there, you know, I was still
17 asleep. It was shortly before 5:00 o'clock, I
18 believe, that morning.

19 The tones opened up for Station 29 and tones
20 opened up for Station 2. We were notified that
21 there was a vehicle wreck, and I just got up, did
22 my usual thing, got my gear on, and hopped in
23 Engine 21 and went en route.

24 Q Okay. Now, approximately how long after receiving
25 that call that you were en route before you arrived

1 on the scene?

2 A Anywhere between 6 to 8 minutes.

3 Q Okay. And once you arrived there, was there anyone
4 else already there?

5 A The only person I saw, other than the two victims,
6 was a passerby who said he was on his way to work.
7 He just happened to flag me down to let me know
8 where the call was, where the incident was.

9 Q Okay. So there were no other E.M.S. personnel or
10 anything of that nature there?

11 A No. I was the very first responder on scene.

12 Q Okay. Now, being that you are the very first
13 responder on scene, can you describe what you see
14 the moment you come up?

15 A Well, I see the -- really the only thing I really
16 make are the reflection of the taillights from the
17 flashing of my lights off the truck, and I see the
18 reflectors. It's got reflectors in the taillights.
19 I saw those.

20 Q Let me ask you this. Why is that? Was the vehicle
21 located far off the road?

22 A Yeah, the vehicle was roughly between 60 and 70
23 feet from the road or maybe a little bit shy of
24 that.

25 Q Okay.

NATHAN PROUSE -- DIRECT -- MR. MOBLEY

269

1 A It was on its side, and then I could see what
2 appeared to be two victims out in the grass. You
3 know, it was dark. It was not like I had perfect
4 sight out there. It wasn't, you know, that easy to
5 see, but I did see that I had two people out of the
6 vehicle.

7 Q Okay. And, once you observed the vehicle and the
8 two individuals in the field, what did you do?

9 A Well, my next step is to immediately confirm with
10 dispatch that we had to my knowledge ejections,
11 which is passengers of the vehicle that were thrown
12 from the vehicle.

13 That was my assumption immediately because --
14 just because of the severity of the scene, and then
15 I set up for scene lighting just to make things a
16 lot easier later on in the call.

17 Q Now, when you set up the scene lighting, were you
18 able to observe the damage to the vehicle?

19 A Not from the roadway. Once I left the roadway and
20 actually did my scene size-up, I performed a 360 of
21 the scene, which is I walked around to get a visual
22 of what I have. Then, yes, I could get -- yeah, I
23 looked at the vehicle and saw what I had.

24 Q Was there a lot of damage to the vehicle?

25 A A tremendous amount of damage to the vehicle.

1 Q Now, at any point did you go to either of the two
2 victims?

3 A I did not go to the deceased victim because the
4 paramedic on scene who arrived -- they arrived
5 shortly after I did, anywhere between 20 and 30
6 seconds after I arrived on scene. She went ahead
7 and stated that he was signal nine, which is the
8 E.M.S. signal for deceased, and stated that the
9 next victim, they would need help packaging and
10 loading.

11 Q Now, the deceased victim, where was he located in
12 relation to the highway as well as the vehicle?

13 A Let's see...

14 Q Well, let me ask you this. Was he closer to the
15 vehicle or farther away?

16 A He was farther away from the vehicle. He was the
17 farthest victim from the vehicle.

18 Q Okay. So there's another victim who's closer to
19 the vehicle?

20 A Right.

21 Q Now, you did not respond to the victim that was
22 farthest away from the vehicle, but you did so to
23 the one that was closest?

24 A Correct.

25 Q Now, once you responded to the individual that was

NATHAN PROUSE -- DIRECT -- MR. MOBLEY

271

1 closest, was that at the request of E.M.S.?

2 A Correct, correct. That was at the request of the
3 paramedic on scene. Like I said, she stated that,
4 you know, she said that we have one signal nine.
5 There was no -- there was no bringing him back, and
6 then they just needed to hurry up and get the one
7 that was still alive, go ahead and start treating
8 him. So that's why I went straight to the victim
9 closer to the vehicle.

10 Q Now, once you get there, what type of help do you
11 provide?

12 A Really I don't provide anything initially. I talk
13 with the person, with that victim, on the ground to
14 make sure there was nobody else in the vehicle .
15 Because my main concern at this time is looking for
16 more persons, to make sure there's nobody else
17 there in the woods or out in the grass somewhere or
18 maybe even in the car.

19 Q So after doing a 360 -- that was one of the
20 purposes of doing the 360 walk-around?

21 A Right.

22 Q Did you ask anyone on the scene about whether there
23 were other individuals in this car?

24 A Other responders or people or the victim?

25 Q The victim.

1 A Yeah, I did.

2 Q Okay. Can you go through that conversation.

3 A Yeah. Whenever I stepped off the bank after I was
4 asked --

5 THE COURT: Just a minute. Yes, sir?

6 MR. MADSEN: Judge, I just renew my pretrial
7 objection.

8 THE COURT: All right. The objections are
9 renewed. I would renew my pretrial rulings in that
10 regard, Mr. Madsen. Thank you.

11 You may proceed, Solicitor.

12 MR. MOBLEY: Thank you, Your Honor.

13 BY MR. MOBLEY:

14 Q If you can go ahead and tell us a little about that
15 conversation or the question you asked him.

16 A Okay. Well, like I said, I came off the roadway,
17 down the bank, and made my way to the victim. I
18 knelt down, put my hand on his chest and said, Sir,
19 you know, I need you to focus for a little bit. I
20 need you to talk to me for a minute, I need to
21 know -- I said, I see you laying here and I see
22 your buddy. I said, I need to know if there was
23 anyone else in this vehicle.

24 Q Now, let me stop you there for a second. Does it
25 seem as if he is comprehending what you are saying

NATHAN PROUSE -- DIRECT -- MR. MOBLEY

273

1 to him?

2 A Yes. At the time he was speaking both to me and to
3 E.M.S.

4 Q Okay. Was he alert at the time?

5 A Yes, absolutely.

6 Q Was he under arrest or anything at this particular
7 time?

8 A No, there were no law enforcement individuals on
9 scene. I'm not authorized to do that obviously.
10 I'm just there to help.

11 Q Okay. Now, go ahead and finish what you were
12 saying.

13 A Okay. You know, I asked him or I told him, I see
14 you and your buddy. I need to know was anybody
15 else in the vehicle? Was anybody else riding with
16 you.

17 No, no, it was just me and my buddy who was
18 riding with me. It was just me and my buddy. That
19 was all I needed.

20 Q Now, you stated he stated, It was just me and
21 my buddy and he was riding with me; is that
22 correct?

23 A Correct.

24 Q Now, at this point what do you do?

25 A Immediately I stood back up, and I walked back over

1 to where my manpower pool was. I started having
2 some volunteers show up and giving me some help. I
3 immediately started delegating duties, having a
4 couple of them pair up with flashlights and a
5 thermal imager camera, search the woods, the tree
6 lines, the field, looking for any more bodies .

7 Because, you know, somebody could have been
8 mistaken and didn't realize there was a third
9 person in the vehicle. Then I had -- I know I
10 definitely sent one more to help with patient
11 packaging, and then I sent one to cover up the
12 deceased person to protect -- you know, out of
13 respect for him.

14 Q Okay. Now, was there any indication at all that
15 there may have been a third person in the
16 surrounding woods or anything of that nature?

17 A No, I was just doing that to be safe.

18 Q Okay. Did you find anyone else, a third person?

19 A No.

20 Q At this point do you come back in contact with the
21 victim at any point?

22 A After that, yes. I went back to assist E.M.S. with
23 carrying the patient out of the field to load him
24 into the ambulance.

25 Q And while you are loading, helping load him into

NATHAN PROUSE -- DIRECT -- MR. MOBLEY

275

1 the ambulance, does he make any statements
2 to you or anything of that nature?

3 MR. MADSEN: Judge, I would renew my
4 objection.

5 THE COURT: The objections are renewed, and I
6 would renew my pretrial rulings in that regard. Thank
7 you.

8 Solicitor, you may continue.

9 MR. MOBLEY: Thank you, Your Honor.

10 BY MR. MOBLEY:

11 Q Does he make any -- does the victim at the time
12 make any statements to you?

13 A No. Again, I did not actually load him into the
14 ambulance. I helped carry him from his location in
15 the field to the roadside.

16 Q Okay.

17 A And because of the size of the bank, we ended up
18 just passing the spine board up with the victim on
19 it up the bank, so they could load him into the
20 ambulance.

21 But, yes, he did make a few remarks, a few
22 comments and all. He just kept saying -- and,
23 again, I'll abbreviate out of respect for the
24 Court -- he kept repeating, I f-ed up, I f-ed up,
25 you know, just repeatedly.

1 Q And just for clarification, you are just saying the
2 f-ed up out of respect for the Court, but you mean
3 the term spelled F-U-C-K.

4 A Yeah, as bad a word as you can get, yes, sir.

5 Q Okay. And he said or he states this numerous times
6 at the time --

7 A Yeah.

8 Q -- without being prompted?

9 A No, he was just kind of carrying on.

10 Q Okay. And that was just kind of spontaneous at the
11 time?

12 A Yeah.

13 Q It wasn't in response to any questions, right?

14 A No.

15 Q Is there anything else that you do in regards to
16 the victim that night?

17 A No.

18 Q At this point do you just clear the scene?

19 A Well, for me specifically I ended up turning
20 incident command over to Chief Hoover who arrived
21 seven to ten minutes after I did on scene, and I
22 departed in Engine 21 because I had further
23 obligations with Uncle Sam. So I just had to
24 leave.

25 Q Okay.

1 MR. MOBLEY: Nothing further for this witness,
2 Your Honor.

3 THE COURT: Thank you. Thank you very much,
4 Solicitor. Mr. Madsen.

5 CROSS EXAMINATION

6 BY MR. MADSEN:

7 Q Good morning, Mr. Prouse.

8 A Good morning.

9 Q So when you arrive, you are pretty much the first
10 one out on the scene; correct?

11 A Other than the passerby, yes, I'm the first
12 responder to make it to the scene.

13 Q And, when you are the first responder out on the
14 scene, at least from the Fire Department, you are
15 actually -- that makes you in charge at that point
16 in time?

17 A Absolutely.

18 Q Can you tell me, do you know exactly when you end
19 up showing up out there?

20 A If you're looking for a time, I can't provide that.

21 Q I think you said it takes you, what, six to eight
22 minutes?

23 A Six to eight minutes.

24 Q And you're going in a fire truck or what kind of
25 vehicle are you in?

1 A Yeah, a fire engine. It's just a bumper. This
2 specific truck is a four-door. It's a four-door
3 cab. It carries two cross lays and, you know,
4 several thousand feet of hose and about a thousand
5 gallons of water.

6 Q Is there anyone else with you in that vehicle?

7 A No.

8 Q And so when you're going, I'm assuming you're
9 probably driving relatively fast?

10 A We're allowed to do ten over the speed limit. With
11 due regard given that night that it was raining, I
12 did so. You know, I wasn't going any faster than
13 six or seven over.

14 Because I was, number one, unfamiliar with the
15 area because I was filling in. Two, you know, I
16 had been hired. I was a volunteer for 5 years, and
17 I've been hired for just shy of 2 now. So, you
18 know, I'm taking things -- I'm being careful with
19 everything I do.

20 Q And you're running, I guess, lights and sirens --

21 A Yes.

22 Q -- to let everyone know that you're going to a
23 scene?

24 A We're running full code, which is lights and
25 sirens. By State law, we are required to that. If

1 you have lights, you must run sirens.

2 Q And when you get there, where do you end up parking
3 your truck?

4 A If I were standing on the highway facing the
5 vehicle, you know, in a perfect straight angle, I
6 was about 50 feet shy of the incident.

7 Q And after you get there, quite a few different
8 E.M.S. personnel or firefighters start showing up;
9 correct?

10 A The E.M.S. unit showed up and then a few
11 volunteers, yes.

12 Q When those vehicles show up, are those ambulances
13 or fire trucks also?

14 A We have one ambulance. I had a service truck, a
15 rescue, and then multiple volunteer vehicles.

16 Q And those would all have lights and sirens also,
17 correct?

18 A The majority, yes.

19 Q And so once you get there, you end up -- I guess
20 the first thing that you do is end up doing, for
21 the most part, a 360 around the scene; correct?

22 A No, not the very first thing. I provided lighting
23 just for the safety of the fire service and the
24 victims on the scene.

25 Q So you set up some kind of lights to kind of

1 illuminate the vehicle?

2 A Right.

3 Q Let me show you what has been marked as State's
4 Exhibit Number 1. Is that the vehicle that you
5 see?

6 A Yes.

7 Q So that's not sunlight, that's illuminated from
8 lights you provide?

9 A Well, the light that you see in this picture is not
10 from my lights. I have a generator that is here
11 (indicating), shy of the vehicle, and then you have
12 the flash.

13 Q So you've got a generator there. So is this
14 something that you had set up?

15 A No. The person who responded in Rescue 2 set up
16 that smaller generator for me.

17 Q Where were the lights that you set up at?

18 A Again, it was probably 50, 60 feet away.

19 Q Okay. So this is brighter than when you got out
20 there and set up your lights, correct?

21 A Not necessarily. I mean, it's brighter in the
22 picture because of the flash but only -- the only
23 area that is brighter is right here (indicating) at
24 the engine where the generator is sitting.

25 Q And when you first come up and you come around to

1 one of the victims, you end up moving him into the
2 light; don't you?

3 A No. Where the victim was -- the victim was laying
4 right here (indicating). My light just did catch
5 him. We used -- we did have flashlights to assist
6 us.

7 Q Okay. So he's right here (indicating) on the
8 outside of the vehicle?

9 A Yeah. To the best of my memory, he's right--- He's
10 right around that area somewhat. He was close to
11 the vehicle, both the vehicle and the engine. You
12 see the engine removed from the vehicle? He was
13 somewhere around that area, yes.

14 Q You and I talked, I guess sometime over the
15 weekend. Didn't you tell me you moved him into the
16 light then?

17 A Yeah, we had to move -- we did have to move him
18 around, yes, to get a better -- to do a better
19 assessment.

20 Q Okay. He starts out here (indicating). Where do
21 you move him to?

22 A We were only -- we didn't move him past the
23 vehicle. He stayed in the same vicinity, just a
24 few feet from where we found him.

25 Q And you're doing that so you can get better

1 lighting to assess him or for someone else to

2 assess him?

3 A Right.

4 Q And then if the vehicle is here (indicating),

5 Mr. Hill, the fellow who is deceased, he's closer

6 towards the road but way out here (indicating); is

7 that correct?

8 A Well, the road would be where I'm at right now in

9 relation to --

10 Q Right here (indicating)?

11 A No, no. Leave the picture there. All right. The

12 car was angled that way (indicating) from the road.

13 The road runs this way (indicating). Mr. Hill was

14 out this way (indicating).

15 Q Okay. Do you know -- the individual that flagged

16 you down, do you know if that's the individual who

17 initially put in -- I guess y'all are out there

18 because of a 9-1-1 call?

19 A I can only assume. I don't know who the original

20 caller was or any of that.

21 Q So you don't know if that individual was the

22 original caller or not?

23 A No.

24 Q How about while you were out there? At some point

25 in time, the Highway Patrol shows up?

- 1 A Yes, at some point in time.
- 2 Q And when they get out there, I guess they're in
3 their marked vehicles?
- 4 A Uh-huh. (Indicating affirmative response.)
- 5 Q Do you know when they show up?
- 6 A No.
- 7 Q Do you end up having any communication with anyone
8 from the Highway Patrol that morning?
- 9 A I did not, no.
- 10 Q And so when you get out there, you end up basically
11 going around, and then at some point in time, you
12 end up saying you talked with one of the victims
13 basically trying to figure out if there's another
14 individual somewhere; right?
- 15 A Right, for the safety of anybody else on that
16 scene, you know.
- 17 Q But ultimately you take another step because you've
18 had incidents where someone's wrong about that, and
19 you set up -- you said it was a thermal camera?
- 20 A A thermal imager, yes.
- 21 Q Tell me exactly what that does.
- 22 A A thermal imager picks up signs of heat. I can
23 place my hand on this board five seconds, take a
24 thermal imager, and I can see a perfect outline of
25 my hand.

1 It looks as if my hand were sitting, you know,
2 reverse to me. It's just something that we use in
3 various aspects of the fire service, including
4 searching for bodies.

5 Q And so when you come up to the client, how was he
6 laid? Is he standing up, sitting up?

7 A He's laying down on his back.

8 Q Are his eyes open?

9 A Yes.

10 Q Do you notice any apparent injuries?

11 A Yeah, his nose was split open. He had some blood
12 coming from his nose. He had a, I guess what you'd
13 call, like an abdomen wound or a wound down here
14 (indicating) around his stomach on his left side.

15 Q How can you tell that he's got an abdomen wound
16 down there? Do you see blood or do you actually
17 see the wound?

18 A Well, both. The E.M.T.--- you could see blood
19 through the shirt, and then the E.M.T. officer
20 said, Hey, he's got a wound here. Look, there's a
21 wound.

22 Q And so you see him actively bleeding from the face?

23 A Yeah.

24 Q Where? I mean, is the blood coming off to the
25 side? Is it running down in front?

1 A I guess it's just kind of running down. I mean, if
2 you're laying back, it's going to run down hill,
3 you know.

4 Q And so once -- well, let me ask you this. You come
5 up and, I mean, it's a pretty bad crash; isn't it?

6 A Yep.

7 Q And it's -- someone who goes through that is going
8 to be pretty shaken up, aren't they?

9 A In most cases.

10 Q Even though you said you talked with that victim,
11 you end up using that thermal imaging. Can you get
12 the whole scene with one spot or do you actually
13 have to go from side to side to side with it?

14 A No, it's a hand-held device. You have to walk
15 around with it.

16 Q Do you ever do any kind of written report in
17 relation to this case?

18 A No, I didn't. No, I didn't. Not in relation to
19 this case, no.

20 Q And so when -- and I think you had said that, at
21 least as a firefighter, y'all get quite a few
22 calls; don't you?

23 A Uh-huh. (Indicating affirmative response.)

24 Q A lot of motor vehicle accidents?

25 A Uh-huh. (Indicating affirmative response.)

1 Q When you were a volunteer, did you -- would you go
2 out on as many since you have been, I guess, a
3 full-time employee?

4 A I wouldn't say quite as many, no. When I was
5 available as a volunteer, when I wasn't working my
6 daytime job and I was available to run calls, yes.
7 Any time I was available, I would but, no, not as
8 many.

9 Q So you go out a lot more as full-time in the last
10 couple of years---

11 A Correct.

12 Q -- than you ever did as a volunteer because you had
13 a regular paying job?

14 A Right.

15 Q Not a regular paying job, but a different kind of
16 job.

17 A Right.

18 Q What job was that?

19 A I worked still for Lexington County. I was in the
20 central storage warehouse as an inventory clerk. I
21 handled all of the supplies that came in and out of
22 Lexington County.

23 Q Okay.

24 MR. MADSEN: Begging the Court's indulgence.

25 THE COURT: Yes, sir.

1 (Pause.)

2 BY MR. MADSEN:

3 Q Were you there when the victim that was closer to
4 the car was placed on the spine board at all?

5 A I was close. I didn't have hands-on with that.

6 Q Do you know whether he was following directions or
7 fighting?

8 A To my memory, he was not combative at all. He was
9 pretty well following -- he answered questions for
10 the E.M.T.'s. He answered my questions right off
11 the bat, and there was no delay whatsoever.

12 MR. MADSEN: That's all the questions I
13 have, Your Honor.

14 THE COURT: Redirect, Solicitor?

15 MR. MOBLEY: None, Your Honor.

16 THE COURT: Thank you. Thank you very much,
17 Mr. Prouse.

18 THE WITNESS: Thank you.

19 THE COURT: You may step down.

20 (Witness leaves the witness stand.)

21 THE COURT: Solicitor, you may call your next
22 witness.

23 MR. MOBLEY: Thank you, Your Honor. The State
24 calls Victor Tomaino.

25 THE COURT: How do you pronounce that name,

1 Solicitor?

2 MR. MOBLEY: I said Tomaino. I'm going to ask
3 him while he is on the stand to pronounce it correctly
4 for us.

5 THE COURT: I think it's Tomaino. How do you
6 pronounce your name, sir?

7 THE WITNESS: Tomaino, sir. You got it right.

8 THE COURT: Tomaino.

9 MR. MOBLEY: Tomaino, I apologize

10 THE COURT: That's all right.

11 VICTOR TOMAINO, being
12 first duly sworn, testifies as follows:

13 CLERK: Have a seat, please, sir. Once you
14 are seated, state your full name on the record, spelling
15 your last.

16 THE WITNESS: Victor Tomaino, T-O-M-A-I-N-O.

17 THE COURT: Pull that microphone down towards
18 you. Thank you very much.

19 Solicitor, you may proceed.

20 MR. MOBLEY: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. MOBLEY:

23 Q Mr. Tomaino, where are you currently employed?

24 A I'm employed at Slaggle's Fire Equipment in West
25 Columbia.

VICTOR TOMAINO -- DIRECT -- MR. MOBLEY

289

1 Q And how long have you been employed there?

2 A About a year.

3 Q About a year. Back on August 1st, 2009, where were
4 you currently employed?

5 A I believe I was unemployed, just getting home from
6 Iraq.

7 Q You were just getting home from Iraq. Now, did you
8 have the occasion of responding to an incident that
9 occurred on Highway 378 near the Saluda County
10 line?

11 A Yes, sir.

12 Q And why were you responding to that incident?

13 A I was a member of the Hollow Creek Fire Department,
14 and we got the call, so I left.

15 Q Now, you were a member of Hollow Creek Fire
16 Department. Were you a volunteer or a paid
17 firefighter?

18 A I was a volunteer.

19 Q A volunteer, okay. So you weren't being paid at
20 the time, you were just volunteering your
21 services?

22 A Yes, sir.

23 Q Okay. Now, what were some of your responsibilities
24 as a volunteer at that particular time?

25 A On that incident?

1 Q Well, in general.

2 THE COURT: Could you speak up for me just a
3 little bit, please, sir.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you.

6 A Well, it depends on the call. Obviously with a
7 wreck scene, we do make sure the scene is in
8 control, life safety, pretty much anything along
9 those lines. There is nothing really in
10 particular.

11 Q Okay. Now, I want to take you to that incident
12 scene off of 378. You responded there along with
13 your company, correct?

14 A Correct.

15 Q Okay. Now, once you get there, describe briefly
16 for the Court what you see.

17 A When I arrived on scene, the engine and the
18 ambulance were already on the scene at the road. I
19 pulled up as the ambulance crew was walking down to
20 where the vehicle was sitting off the roadway. The
21 paramedic had pronounced one of the patients who
22 was off farther away from the vehicle, she
23 pronounced him as deceased.

24 I immediately went and attended to the victim
25 that was still alive and conscious. As soon as I

VICTOR TOMAINO -- DIRECT -- MR. MOBLEY

291

1 did that, I went straight to him and I maintained
2 C-spine, which is, you know, holding his head
3 still.

4 Q Okay.

5 A And that's about how it went from there.

6 Q Now, was he awake at the time?

7 A Yes, he was.

8 Q Was he alert?

9 A Yes.

10 Q Okay. Did he appear to be answering any questions
11 that anyone may have been asking at that time?

12 A He was answering questions. It might have taken
13 him a second, but he was answering questions.

14 Q Okay. Did it seem like he was coherent?

15 A For the most part, yes, sir.

16 Q Okay. Now, at any point did you ask him any
17 questions?

18 A I personally did not ask him questions. Other
19 members were asking him questions.

20 Q Well, let me ask you this, Mr. Tomaino. Did you
21 hear him make any statements?

22 A Yes, sir, I did.

23 MR. MADSEN: Judge, I would renew my
24 objections.

25 THE COURT: All right. The objections are

1 renewed, and I would renew my pretrial rulings in that
2 regard. Thank you, Mr. Madsen.

3 Solicitor, you may continue.

4 MR. MOBLEY: Thank you, Your Honor.

5 BY MR. MOBLEY:

6 Q Did you hear the victim make any statements at the
7 time?

8 A I did.

9 Q And what were those statements?

10 A The statements that I heard repeatedly -- and for
11 the Court I am going to use the abbreviation for
12 this word -- I f-ed up. He used that repeatedly.
13 Then towards the end, as we picked him up and I
14 believe we were starting to head towards the
15 ambulance, I happened to look down at him, and I
16 heard him state, he said, I should not have been
17 driving. That is what I heard on the way to the
18 ambulance.

19 Q Now, you personally heard that yourself?

20 A I did.

21 Q Was it clear when you heard -- was that particular
22 statement clear to you, what he said?

23 A It was clear as day. I was looking straight at
24 him. I just -- I was looking at where we were
25 going, and I turned around, looked right at him,

1 and I heard him say it.

2 Q Okay. Now, after you hear this statement, what
3 happens next?

4 A We unload him on the ambulance and then he is --
5 he's gone.

6 Q Now, let me ask you this also. In that you are
7 familiar with that area where the incident
8 occurred, was that in Lexington County?

9 A Yes, sir.

10 Q It was. It was not in Saluda County?

11 A No.

12 Q It was just close to the line?

13 A Uh-huh. (Indicating affirmative response.)

14 Q Okay.

15 MR. MOBLEY: Nothing further for this witness,
16 Your Honor.

17 THE COURT: Thank you, Solicitor. Mr. Madsen.

18 **CROSS EXAMINATION**

19 BY MR. MADSEN:

20 Q Mr. Tomaino, right?

21 A Yes.

22 Q Mr. Tomaino, you are still a volunteer fireman;
23 correct?

24 A Correct.

25 Q So can you tell me what time you arrive out on the

1 scene?

2 A I can't remember the exact time. I want to say --
3 I can't remember. I honestly can't remember the
4 exact time.

5 Q And when you arrive out there, are you in your
6 personal vehicle or are you in a fire department
7 vehicle?

8 A I'm in my personal vehicle, which I pulled up a
9 maximum of 35, 40 seconds behind the ambulance.

10 Q In your personal vehicle, do you have any lights or
11 sirens in that or are you just coming from your
12 house?

13 A I was coming from my house, but, yes, I do have
14 lights and sirens on my truck.

15 Q And so were you running those when you got there?

16 A I was not.

17 Q How about -- you say you pull up behind the
18 ambulance. Are they running lights and sirens?

19 A Correct.

20 Q And so once you get there, other E.M.S. are there,
21 and I guess other firemen are there?

22 A Well, there was one other fireman. There's only
23 one paid guy per shift at my fire department. He
24 arrived there first. The ambulance has two people
25 on their crew, and they arrived right after him.

1 Q And so when you come up to the victim who is
2 closest to the car, can you show me on either
3 State's Exhibit Number 1 or Number 2 where you find
4 him?

5 A When I arrived on scene, he was more towards the
6 back of the vehicle.

7 Q Okay. So he's back over here (indicating) then?

8 A Correct. He's somewhere in this general area right
9 here (indicating).

10 Q How about the other fellow who was apparently
11 Mr. Hill?

12 A From the front of the vehicle, he is out this way
13 (indicating).

14 Q Okay. He is quite a bit farther out this way?

15 A Correct.

16 Q And that's the individual that unfortunately was
17 signal nine?

18 A Yes.

19 Q And once you get up to the victim closest to the
20 car, you say that you go to the head to maintain
21 the C-spine?

22 A Correct.

23 Q Does he already have something around his neck?

24 A He did not currently have a collar on him, no.

25 Q So you're holding his head?

1 A Yes.

2 Q And do you end up putting a C-spine around his
3 head?

4 A I was just holding his head, and I believe either
5 the paramedic or the E.M.T. that was there was the
6 one who placed the collar around his neck.

7 Q Do you help him at some point in time or place him
8 on the spine board?

9 A He was already on the spine board when I arrived if
10 I'm not mistaken.

11 Q When he is transported from behind that car to the
12 E.M.S. vehicle, does he have a C-collar or anything
13 around his head at that point in time or is that
14 done once he gets to that?

15 A Yeah, I believe he even put that on prior to
16 picking him up, the collar, and then the two head
17 blocks.

18 Q And the head blocks are things that go around kind
19 of up here (indicating)?

20 A Yes, to keep his head still.

21 Q And so when you get up to him, do you notice any
22 injuries to his face?

23 A Yes.

24 Q What injuries do you see?

25 A Well, he had a split down the front of his nose

- 1 here (indicating).
- 2 Q Do you see any blood associated with that?
- 3 A Yes, sir.
- 4 Q Is he actively bleeding?
- 5 A Yes.
- 6 Q Where is the blood kind of going from his face?
- 7 A Everywhere to be honest with you.
- 8 Q So, there's a lot of blood on his head?
- 9 A Yes, sir.
- 10 Q And that blood is going to go -- basically it's
- 11 going to follow gravity, and he's laying on his
- 12 back when you see him; isn't that correct?
- 13 A Uh-huh. (Indicating affirmative response.)
- 14 Q So it's basically going to run down the front of
- 15 his mouth, the side?
- 16 A Correct.
- 17 Q And you had mentioned that when he was asked
- 18 questions, I think you told the Solicitor he
- 19 doesn't immediately answer them. It takes him a
- 20 second, doesn't it?
- 21 A Uh-huh. (Indicating affirmative response.)
- 22 Q And in State's Exhibit Number 2, I mean, that's a
- 23 heck of crash; isn't it?
- 24 A Yes, it is.
- 25 Q And anyone who goes through that is going to be a

1 little bit shaken up, aren't they?

2 A Uh-huh. (Indicating affirmative response.)

3 Q And when the Solicitor asked you would he answer
4 the questions, you said for the most part. So
5 there were some questions he would be asked that
6 he wouldn't respond to or gave something
7 incoherent?

8 A I wouldn't say it was really incoherent. It
9 just -- like I stated before, it just took him a
10 second, I guess, to comprehend the question and
11 fight through to say what he was saying because I'm
12 sure he was in a slight amount of pain.

13 Q Okay. Did you see any other wounds on him besides
14 that, the big facial wound?

15 A Yes, sir. On his -- I believe it would be the
16 lower left side of his abdomen area, around this
17 area (indicating).

18 Q Do you see it just because you see blood or do you
19 actually see the physical --

20 A I see -- I saw the physical wound.

21 Q You actually see his, I guess, intestines coming
22 out?

23 A Correct.

24 Q Is he actively bleeding from that wound?

25 A Yes, he is.

1 Q And when someone is actively bleeding like that,
2 there is a potential always -- Something that y'all
3 worry about is potentially shock, right?

4 A Yes.

5 Q And with having a wound like that to the face, that
6 certainly could be something that affects -- that
7 shows that there was some kind of trauma at some
8 point in time to the head?

9 A Uh-huh. (Indicating affirmative response.)

10 Q At that point in time during his transport, the
11 E.M.S. are giving him -- the E.M.T.s or the
12 paramedic -- are giving him drugs; correct?

13 A Correct.

14 Q When is that?

15 A When we were on scene still, I believe she was
16 giving him a few drugs. Like I said, I can't
17 remember what they were or why -- I mean, why she
18 was doing it. Like I say, I have no idea what they
19 do.

20 Q Okay. But that's while he was laying on the
21 ground, right?

22 A Yes.

23 Q And you have no idea what the drugs she's
24 administering are?

25 A No.

1 Q You had indicated that you had heard a statement
2 from that victim. At some point in time during
3 your transport of him, he was kind of going in and
4 out of consciousness; wasn't he?

5 A In the transport from the ground to the ambulance?

6 Q Yes, sir.

7 A I wouldn't really say he was going in and out of
8 consciousness. He was just -- I don't know what
9 exactly was wrong with him. I mean, he was kind of
10 slow in answering the questions that we had. I
11 mean, I wouldn't say he was in and out of
12 consciousness too much.

13 Q Well, you've testified at a previous hearing
14 yesterday that he was going in and out of
15 consciousness; didn't you?

16 A I believe so.

17 Q Is there a reason that that would change from
18 yesterday to today?

19 A No.

20 Q When he's on that spine board, is he combative at
21 all?

22 A I wouldn't say combative. At first when we first
23 arrived, he was trying to sit up, but obviously we
24 wouldn't allow that, and then he just kind of gave
25 up.

VICTOR TOMAINO -- CROSS -- MR. MADSEN

301

- 1 Q And someone is telling him, Hey, don't sit up --
- 2 A Yes.
- 3 Q -- lay back, lay still?
- 4 A To stay still.
- 5 Q But he's not necessarily listening to that
- 6 initially, right?
- 7 A Not initially.
- 8 Q And once you get him on the spine board, he's not
- 9 actively fighting or anything like that?
- 10 A No.
- 11 Q But initially he's not listening to instructions,
- 12 correct?
- 13 A Correct.
- 14 Q When you say during that transport of him from when
- 15 he's on the spine board until he gets to the
- 16 ambulance, you're not the only one who is carrying
- 17 him; are you?
- 18 A No.
- 19 Q Okay. Can you give me an idea how many other
- 20 people there are?
- 21 A I'd say possibly six.
- 22 Q Because that spine board is going to pretty much go
- 23 the length of his body, right?
- 24 A Uh-huh. (Indicating affirmative response.)
- 25 Q Let me ask you this. If there is, say, someone who

1 is my size or someone who is shorter or taller, how
2 do you make the spine board the right size? Is
3 it an adjustable thing?

4 A No.

5 Q So if it's a seven-footer, his legs are going to
6 hang off?

7 A Pretty much.

8 Q Okay. I was just curious. So there's six people
9 though who are ultimately transporting him then,
10 from where he is found on the back side of that car
11 to the ambulance; correct?

12 A Uh-huh. (Indicating affirmative response.)

13 Q And you're just one of those six individuals?

14 A Correct. I was at his head.

15 Q While you were there out on the scene, does law
16 enforcement show up or the Highway Patrol?

17 A I believe they showed up at one point. Like I
18 said, I was non-stop. Right after we got him to
19 the ambulance, we continued to search the woods for
20 another victim because we were unsure if there was
21 anybody else in the vehicle.

22 Q So you were looking to see if there was a third
23 individual, correct?

24 A Correct.

25 MR. MADSEN: No further questions, Your

WILLIAM ZEIGLER -- DIRECT -- MR. MOBLEY

303

1 Honor.

2

3 THE COURT: Redirect, Solicitor?

4 MR. MOBLEY: None, Your Honor.

5 THE COURT: Thank you very much, sir. You may
6 step down.

7 (Witness leaves the witness stand.)

8 THE COURT: Solicitor, you may call your next
9 witness.

10 MR. MOBLEY: The State calls Bill Zeigler to
11 the stand, Your Honor.

12 THE COURT: All right. Come around and be
13 sworn, please, Mr. Zeigler.

14 WILLIAM F. ZEIGLER, being
15 first duly sworn, testifies as follows:

16 CLERK: Have a seat, please, sir. Once you
17 are seated, if you would state your full name, spelling
18 your last.

19 THE WITNESS: William F. Zeigler,
20 Z-E-I-G-L-E-R.

21 DIRECT EXAMINATION

22 BY MR. MOBLEY:

23 Q Good morning, Mr. Zeigler.

24 A Good morning.

25 Q Where are you currently employed?

1 A I am working at one of the local funeral homes at
2 this time two days a week to stay out of my wife's
3 way.

4 THE COURT: How is that working out for you?
5 Does it work out all right?

6 THE WITNESS: Pretty good so far, Your Honor.

7 THE COURT: Good. All right.

8 BY MR. MOBLEY:

9 Q Mr. Zeigler, at one point have you ever worked with
10 the Lexington County Coroner's office?

11 A Yes, sir.

12 Q Let me take you back to the day of or the early
13 morning of August 1st, 2009. Were you working at
14 the Lexington County Coroner's office?

15 A I was on call for the office that night, yes, sir.

16 Q Were you listed as the deputy coroner at the time?

17 A Yes, sir.

18 Q Okay. And when you're listed as the on-call
19 coroner, what does that mean?

20 A That means whatever calls come in from 5:00 in the
21 afternoon until 7:00 in the morning, I am
22 responsible for the Coroner's office.

23 Q So, Mr. Zeigler, on this particular morning, were
24 you called out to the scene, to the scene of an
25 incident off of Highway 378?

WILLIAM ZEIGLER -- DIRECT -- MR. MOBLEY

305

1 A Yes, sir.

2 Q Okay. Now, what was your purpose of going to that
3 particular scene?

4 A There was a fatality at the scene --

5 Q Okay.

6 A -- and we are responsible for that.

7 Q Now, approximately what time did you arrive out
8 there?

9 A I arrived around 5:30. It was 5:35, I think was
10 the leave time on it from my home in Irmo.

11 Q Now, once you arrived around about that time, did
12 you locate a deceased individual?

13 A I had to park and walk to the actual scene where
14 the vehicle ended, and they showed me the deceased
15 at that time.

16 Q Now, did you personally go up to the deceased?

17 A Yes, sir.

18 Q Did you confirm that he was deceased?

19 A He was deceased, yes, sir.

20 Q Now, I want to hand you a document.

21 MR. MOBLEY: Begging the Court's indulgence.

22 THE COURT: Yes, sir.

23 MR. MOBLEY: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes, sir.

1 BY MR. MOBLEY:

2 Q I'm going to hand you a document there,

3 Mr. Zeigler. Do you recognize what that document
4 is?

5 A Yes, sir.

6 Q And what is it?

7 A That's the State of South Carolina certificate,
8 Certification of Vital Records, Death Certificate.

9 Q Okay. Now, have you ever utilized one of those
10 before?

11 A Yes, sir.

12 Q Now, don't read the contents of that particular
13 document into the record, but is that a document
14 that is affiliated with the deceased victim on the
15 scene?

16 A Yes, sir.

17 Q Okay.

18 MR. MOBLEY: Your Honor, the State would move
19 to have this document admitted into evidence under
20 Rule 901 as a self-authenticating document.

21 THE COURT: All right. Mr. Madsen?

22 MR. MADSEN: No objections.

23 THE COURT: All right. That will be State's
24 4?

25 MR. MOBLEY: State's Exhibit 4, yes, Your

WILLIAM ZEIGLER -- DIRECT -- MR. MOBLEY

307

1 Honor.

2 THE COURT: State's 4 is in evidence without
3 objection.

4 (State's Exhibit Number 4 is received into
5 evidence.)

6 THE COURT: May I see it, please.

7 MR. MOBLEY: Yes, Your Honor.

8 (Hands to Court.)

9 (Pause.)

10 THE COURT: All right. Solicitor, you may
11 proceed.

12 MR. MOBLEY: Thank you, Your Honor.

13 BY MR. MOBLEY:

14 Q Now, Mr. Zeigler, I am going to hand you back
15 State's Exhibit Number 4. Do you mind looking at
16 the top here and stating what name it shows under
17 decedent's information.

18 A Jacob Edwin Leo Hill.

19 Q Now, does it show a location of where he was
20 pronounced dead at?

21 A Yes, at the scene.

22 Q Okay.

23 A And that would be in the 4000 block of Highway 378.

24 Q Now, on this document does it also show a time of
25 approximate death? It may be near the bottom.

1 A Yes, sir, that would be 4:30 a.m. as an estimate.

2 Q Okay. Thank you.

3 MR. MOBLEY: Nothing further for this witness,
4 Your Honor.

5 THE COURT: Thank you, Solicitor. Mr. Madsen.

6 CROSS EXAMINATION

7 BY MR. MADSEN:

8 Q How are you doing, Mr. Zeigler?

9 A Fine.

10 Q Now, I believe you end up doing a report in
11 relation to this with the Coroner's office;
12 correct?

13 A Yes, sir.

14 Q And that indicates that you arrived on the scene at
15 5:35 a.m.?

16 A Yes, sir.

17 Q And so you were coming from your house in Irmo --

18 A Yes, sir.

19 Q -- and heading out there. When you get there, you
20 obviously come in contact with Mr. Hill in your job
21 as the deputy coroner?

22 A Yes, sir.

23 Q Do you ever come in contact with the other victim
24 on the scene?

25 A I never had any contact with the other person, no,

1 sir.

2 Q When you get there though, law enforcement is
3 actually out there; aren't they?

4 A Law enforcement, fire, all emergency equipment.

5 Q And how about the ambulance with the other
6 individual?

7 A They were gone.

8 Q Once you get out there, you actually end up -- like
9 I said, you do a report. You speak with law
10 enforcement when you're out there, correct?

11 A Yes, sir.

12 Q Let me show you this. Is that a copy of your
13 report?

14 A Yes, sir.

15 Q And there is a question when you actually leave --
16 well, let me ask you this. How long are you out
17 there before you actually end up leaving the
18 scene?

19 A Until I have the deceased removed properly and
20 transferred to the hospital, converse with the law
21 enforcement officers there as they prepare to start
22 their investigation.

23 Q Can you give me an idea on that time, how long
24 you're out there before you leave?

25 A I could not give you a definite time, sir, an hour

1 or more.

2 Q Okay. So it would be at least an hour or more?

3 A That's totally an estimate.

4 Q And once you leave that scene, there is a question
5 of who is the driver; right?

6 A Yes, sir.

7 Q No one knows who the driver, between the two
8 individuals, is?

9 A Right. That's in my report.

10 Q And like you said, you document that?

11 A Yes, sir.

12 Q And once you end up taking Mr. Hill, law
13 enforcement, if they so desire, could request an
14 autopsy; right?

15 A Right, yes, sir.

16 Q Y'all don't do that?

17 A We do a lot of times, but the reason for his death
18 was very obvious, and I did not see the necessity
19 for a full autopsy, but we did do the toxicology
20 which is classed as part of an autopsy.

21 Q Okay. So that's why you have it marked on there as
22 it's actually -- any time you do anything --

23 A Yes, sir.

24

25 Q -- you classify that as an autopsy?

- 1 A Because we are handling the deceased and we've
2 entered his body, either with a needle or whatever
3 instrument they use.
- 4 Q And you actually end up taking blood and urine from
5 him, right?
- 6 A Yes, sir.
- 7 Q And you send that on to S.L.E.D.?
- 8 A That went through the hospital tests. I could not
9 answer the fact that it went to S.L.E.D. or not.
10 Because shortly thereafter, I did leave the office
11 and I did not handle this anymore.
- 12 Q You pretty much retired, I think, September of '09?
- 13 A Yes, sir.
- 14 Q And this was --
- 15 A Actually, sir, that was in August.
- 16 Q This was August 1st.
- 17 A August 1st I was there. I left the 21st.
- 18 Q Of August?
- 19 A Of August.
- 20 Q Okay. And if I understand you correctly, you could
21 make a decision on whether or not to have an
22 autopsy; correct?
- 23 A Exactly, yes, sir.
- 24 Q And law enforcement could also make a request,
25 couldn't they?

1 A They can request it, yes, sir.

2 Q And I think that you list ultimately as the reason
3 for death is body trauma?

4 A Yes, sir.

5 Q Which do you do anything to X-ray the body or
6 anything that's --

7 A No, sir, the injuries were very obvious at the
8 scene.

9 Q And when you say body injuries, what injuries do
10 you see?

11 A He had broken bones, the impacted chest --

12 Q Impacted chest?

13 A Yes, sir, crushed chest and the possibility of a
14 broken neck.

15 MR. MADSEN: Begging the Court's indulgence.

16 THE COURT: Yes, sir.

17 (Pause.)

18 MR. MADSEN: That's all the questions I
19 have.

20 THE COURT: Redirect, Solicitor?

21 MR. MOBLEY: None, Your Honor.

22 THE COURT: Thank you. Thank you very much
23 for being with us today, Mr. Zeigler.

24 (Witness leaves the witness stand.)

25 THE COURT: Solicitor, you may call your next

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

313

1 witness.

2 MR. MOBLEY: Thank you, Your Honor. The State
3 calls Trooper Hallman.

4 THE COURT: All right. If you would come
5 around and be sworn, please.

6 QUEST HALLMAN, being
7 first duly sworn, testifies as follows:

8 CLERK: Have a seat, please, sir. Once you
9 are seated, state your full name, spelling your last.

10 THE WITNESS: My name is Quest Hallman,
11 H-A-L-L-M-A-N.

12 DIRECT EXAMINATION

13 BY MR. MOBLEY:

14 Q Good morning, Trooper Hallman.

15 A Good morning.

16 Q Where are you currently employed?

17 A The South Carolina Highway Patrol in Lexington
18 County.

19 Q And how long have you been employed there?

20 A July 16th is my ten-year anniversary.

21 Q Congratulations. What is your current position
22 with the Highway Patrol?

23 A I'm a lance corporal.

24 Q Okay. And as a lance corporal, what are some of
25 your duties and responsibilities?

1 A As a lance corporal and you get past the five-year
2 mark, your responsibilities can increase. If
3 there's a supervisor out and if you're the senior
4 man on the shift or whatnot, you kind of handle
5 things that a supervisor would handle, unless the
6 situation warrants calling a higher-ranking
7 supervisor.

8 Q Now, does your job entail traffic safety?

9 A Yes, sir, that's pretty much my whole job.

10 Q Okay. Now, have you had any training about
11 accident reconstruction and investigation of
12 accidents?

13 A I've had limited training on accident
14 reconstruction and traffic collision investigation
15 that I've had extensive training in. Like I say,
16 I've also had hands-on for the past ten, almost ten
17 years.

18 Q So limited on reconstruction, but extensive on the
19 investigation thereof?

20 A Yes, sir.

21 Q Okay. I want to take you back to August 1st, 2009,
22 early morning. Were you dispatched to a call in a
23 location off of Highway 378 near the Saluda County
24 line?

25 A I was.

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

315

1 Q Okay. And why were you dispatched to that
2 particular location?

3 A My dispatcher said that there was a collision with
4 injuries at that location. I was working I-26 that
5 night. We are assigned different zones each night
6 we come to work.

7 I had worked the night shift that night. I
8 believe I was around Exit 111, which is the Highway
9 1 exit, and went down Highway 378 and just ran 378
10 all the way out to the location.

11 Q So approximately how long did it take you to get
12 there?

13 A Approximately 25 to 30 minutes from the time I got
14 the call.

15 Q And I would assume that you were speeding a little
16 just to get to the location?

17 A With my blue lights. It was, like has been
18 testified before, a little foggy, a little rainy.
19 So in that regard, I did exceed the speed limit
20 slightly, yes, sir.

21 Q And a little cautiously?

22 A Yes, sir.

23 Q Okay. Now, when you arrive on the scene, is anyone
24 else there?

25 A When I arrived on the scene, the fire service was

1 definitely there. I believe there may have been
2 one E.M.S. worker -- I can't remember for sure --
3 but fire service was definitely still on the scene.

4 Q Now, could you describe for the jury and the Court
5 what you actually see.

6 A When I arrived we were going towards the county
7 line on 378 west, out near Fisherman's Wharf, out
8 near what I call the old boat ramp. We were just
9 past that intersection where the new Shell station
10 is out there.

11 As I started around the curve and down the
12 hill, I noticed some tire marks going off the right
13 side of the roadway still going west on 378. They
14 kind of straddled the embankment a little. Then as
15 the car started down the embankment off to the
16 right side, it started to spin around.

17 It hit a -- the marks impacted a culvert in
18 that there were intermittently some marks where a
19 vehicle had hit it, flipped, hit, flipped, and then
20 the vehicle ended up across a little, either a
21 drain or a creek, with a small tree line several
22 hundred feet from where the marks went off the
23 roadway.

24 Q Okay. So you observe these marks the moment you
25 come onto the scene?

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

317

1 A Yes, sir, that's -- whenever we are heading to the
2 scene, when we get close, we always try to take
3 notice of whatever may be there to aid in the
4 investigation.

5 Q Did they appear to be freshly made marks?

6 A Yes, sir. Like I said, it had been raining a
7 little bit. It was foggy but they were fresh.

8 Q Okay. So now you observe these marks. Are you
9 able to locate the vehicle?

10 A Yes, sir.

11 Q So once you locate the vehicle -- well, how do you
12 locate the vehicle?

13 A Well, I drive up and stop. Of course, it was
14 breaking day, so I could kind of see the
15 reflections of my blue lights flashing from the
16 windows and the reflectors on the vehicle.

17 But also fire service said, Hey, here's the
18 car. They showed me the victim and said the
19 other -- the driver had been transported, which I
20 pretty much assumed because I had passed the
21 ambulance while I was en route to the scene.

22 Q So on the way to the scene, you pass an ambulance
23 coming from that very location?

24 A Yes.

25 Q So one individual had already been transported, and

1 another was still there on the scene?

2 A Correct.

3 Q Now, can you tell us where that other individual
4 was located in relation to the vehicle and the
5 road?

6 A The deceased?

7 Q The deceased, yes.

8 A Mr. Hill, the deceased, was located -- if you're
9 looking at the wreck from the road, the edge of the
10 podium being the road and the vehicle over here
11 (indicating) on its side, Mr. Hill was 50 to 75
12 feet west of the wreck. He was laying on his
13 stomach kind of in a crawling motion facing
14 westbound.

15 Q Now, was there anyone attending to him at that
16 particular time?

17 A No, sir, there was not. He had been covered up
18 with a sheet. I was advised that he was deceased
19 though.

20 Q Now, let me ask you, when you were able to observe
21 the vehicle, did there seem to be severe damage to
22 the S.U.V.?

23 A Yes, sir, the engine -- I'm sorry.

24 Q That's all right. Go ahead.

25 A The engine and transmission had completely

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

319

- 1 unbolted. The assembly was completely removed from
2 the vehicle and laying beside it.
- 3 Q The assembly. What do you mean by the assembly?
- 4 A The engine and transmission bolts together --
- 5 Q Yes.
- 6 A -- and is essentially one unit once it's installed,
7 and all of that had been thrown out of the engine
8 compartment.
- 9 Q So that was totally separated from the actual
10 vehicle itself?
- 11 A Yes, sir.
- 12 Q Did it seem to be a very violent vehicle incident
13 that we had here?
- 14 A Yes, sir.
- 15 Q And was there a lot of debris in this particular
16 area?
- 17 A Yes, sir. There was a fair amount, yes, sir.
- 18 Q Okay. Now, was this vehicle found pretty far from
19 the road, the highway?
- 20 A Yes, sir, probably 50 to 60 feet from the highway
21 and --
- 22 Q Okay.
- 23 A -- also from where it, the vehicle, initially left
24 the roadway, it was several hundred feet.
- 25 Q Several hundred feet from there?

1 A Yes, sir.

2 Q Now, being that you had investigated incidents of
3 this nature before, what did it appear that caused
4 this particular incident?

5 A Well, just from looking at the scene and not being
6 able to speak with anyone yet, it appeared that,
7 while traveling at an excessively high rate of
8 speed, the vehicle ran off the right side of the
9 road in the curve.

10 Q Okay. So there's a curve there?

11 A Yes, sir. It's marked with the yellow and black
12 D.O.T. curve signs.

13 Q Okay.

14 A It ran off, say, maybe midway in the curve, went
15 down the right side at an excessive rate of speed.
16 Once it got sideways, it hit the culvert pipe,
17 which was at a different level than the shoulder,
18 and the vehicle began to roll or flip.

19 Q So the culvert was probably the reason why it began
20 to roll or flip?

21 A Yes, sir.

22 Q Now, once you are there and you observe these
23 things, are you talking to anyone that's on the
24 scene?

25 A I spoke with the fire service and asked them if

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

321

1 they knew who the driver was. Of course, that's my
2 job, to find out who the driver is. They stated --

3 MR. MADSEN: Judge, I'm going to object to
4 hearsay.

5 THE COURT: All right. Mr. Foreman and ladies
6 and gentlemen of the jury, if y'all would please step
7 out momentarily. If you would turn your note pads
8 upside-down on your chair. Do not discuss the case
9 during this brief recess.

10 (The jury retires to the jury room.)

11 THE COURT: All right. Again, your objection,
12 Mr. Madsen?

13 MR. MADSEN: Hearsay, Your Honor. I believe
14 he is going to say what E.M.S. told him.

15 THE COURT: Solicitor.

16 MR. MOBLEY: Your Honor, I think we are going
17 to be able to resolve this very easily just by asking
18 him basically during the course of his investigation as
19 opposed to saying exactly what these individuals said.
20 They have already testified --

21 THE COURT: What is your question?

22 MR. MOBLEY: My question is: During the
23 course of your investigation, did you learn who was the
24 driver?

25 THE COURT: Well, what's his answer?

1 MR. MOBLEY: It's going to be no -- well, I'm
2 sorry. It's going to be yes at that particular time
3 based on the course of the investigation. I'm going to
4 get more thoroughly into it, what he was able to gather
5 in order to establish that Mr. Manning was the actual
6 driver during the course of the investigation.

7 THE COURT: Why isn't that hearsay?

8 MR. MOBLEY: Well, he is not speaking directly
9 to the actual statements that were provided to him.
10 It's law enforcement gathering information during the
11 course of their investigation. I think that would be an
12 exception under -- I'm sorry.

13 THE COURT: Go ahead. I wasn't interrupting
14 you. I was listening. I was learning something,
15 Solicitor. Go right ahead.

16 MR. MOBLEY: I think that would be allowed as
17 an exception to hearsay, being that it is in the course
18 of an investigation itself.

19 THE COURT: Are you talking about something
20 like State versus Green or something like that?

21 MR. MOBLEY: Let me make sure because I don't
22 have that case up, Your Honor.

23 (Pause.)

24 MR. MOBLEY: Your Honor, we are looking
25 through the exceptions. There is no specific exception

1 for law enforcement investigation. However, now I'm not
2 able to verify State versus Green at this particular
3 time with West Law because I don't have my password, but
4 I think that particular case should cover it.

5 If I remember correctly, State v. Green -- I
6 don't have a printout of it -- but during the course of
7 an investigation, with the evidence that the officer is
8 gathering at that particular time, whether it's
9 statements -- and now he is not specifically relying on
10 those statements -- but everything cumulative will allow
11 him to basically use that as a purpose of establishing
12 his probable cause of having this man pointed as the
13 driver.

14 So we are going to get into more depth with
15 what he gathered as far as physical evidence, but in
16 addition to that, it was the information that he
17 received from officers and E.M.S. that was on the scene
18 at the time.

19 THE COURT: Mr. Madsen.

20 MR. MADSEN: Judge, I'm not aware of any
21 exception, and I'm not real sure what State versus
22 Green -- the only thing I can think of is that it's a
23 case that deals with --

24 THE COURT: It's a drug activity case.

25 MR. MADSEN: -- drug activity, which basically

1 holds that it's not hearsay because it's not for the
2 truth of the matter asserted. Here, certainly, driving
3 is what is in issue, Judge. We certainly think that
4 that falls under hearsay.

5 Ultimately there would be an additional
6 objection that he is giving an opinion based on his
7 investigation or a summation of potentially the other
8 witnesses' testimonies, which we don't think would be
9 appropriate.

10 THE COURT: Well, I think he can testify --
11 and I may be wrong in this manner -- but I think the
12 solicitor can ask him about the course and the conduct
13 of his investigation.

14 I think the Solicitor can ask him, Did you
15 talk with fire service? Did you talk to this officer?
16 Did you talk to E.M.S.? Did you talk to the coroner?
17 Did you talk to this, did you talk to that, and as a
18 result of that, what did you do?

19 I don't know what his answer would be. If his
20 answer is, Well, I didn't do anything. Or his answer
21 could be, Well, I charged Mr. Manning with felony
22 driving under the influence. Or, Well, I directed
23 Trooper Baker to direct hospital personnel to draw
24 blood.

25 That purges what -- I agree with you that

1 Green says it's not hearsay. I agree with you in that
2 regard and that line of cases following Green. He could
3 ask him, for example, Who did you charge with driving
4 the vehicle?

5 He could say, Mr. Manning. He could say,
6 Well, why did you charge him? He can explain why he
7 charged him. He could say, Well, I charged him based on
8 my investigation after talking with A., B., C., and D.
9 and after looking at the scene.

10 I think he can testify in that regard. I do
11 not think he can testify -- right now I don't see that
12 in the exceptions, as to what a particular individual,
13 fire officer or E.M.S. officer told him.

14 Do you care to respond to that?

15 MR. MADSEN: Judge, I agree that he could get
16 up there and say, I talked with this person, I talked
17 with that person and that, you know, based on that, What
18 did you do?

19 I placed, you know, Mr. Manning under arrest
20 or did that. I don't think they can go much beyond that
21 and get into any of that substance, but, Your Honor, I
22 do agree with that.

23 THE COURT: All right. Solicitor.

24 MR. MOBLEY: Your Honor, to be quite honest
25 with you, we weren't going to go into the specific

1 statements that were provided to Trooper Hallman at all.
2 I was going to basically ask him, Did you speak to these
3 particular individuals? And based off of that, what did
4 your investigation reveal? But we were also going to go
5 into, through testimony, what he did find at the scene.

6 THE COURT: Sure. Well, he can testify to his
7 observations at the scene.

8 MR. MOBLEY: Yes, that's correct. We are
9 going to use that in combination with it, too.

10 THE COURT: All right. Well, of course,
11 Mr. Madsen, he's just objecting timely. The question
12 is: Well, did you talk to the officers, you know, or
13 the fire service officer? But in his mind he says,
14 Well, this is hearsay, you know, it's on the road at
15 this point.

16 All right. Well then, you know the rules. I
17 would sustain the objection as to hearsay as to
18 statements of fire officers, but he can testify in the
19 manner in which I outlined, I believe. I think we will
20 take about a 15-minute recess.

21 So, Trooper Hallman or Corporal Hallman, you
22 may certainly step down during this recess --

23

24 THE WITNESS: Thank you, sir.

25 THE COURT: -- and refresh yourself. You may

1 not discuss your testimony with anyone.

2 THE WITNESS: Yes, sir.

3 THE COURT: All right. Court will be in
4 recess about 15 minutes.

5 MR. MOBLEY: Thank you, Your Honor.

6 THE COURT: And my law clerk has a copy of
7 Green if you want it.

8 MR. MOBLEY: Okay. Thank you.

9 (Whereupon there is a recess.)

10 THE COURT: Anything before we bring our jury
11 back in, Mr. Madsen?

12 MR. MADSEN: No, sir.

13 THE COURT: Solicitor?

14 MR. MOBLEY: Nothing, Your Honor.

15 THE COURT: All right. If you would bring us
16 our jury, please.

17 (The jury returns to the courtroom.)

18 THE COURT: Welcome back, ladies and
19 gentlemen. I hope you had a pleasant brief recess.

20 Solicitor, you may continue. I have sustained
21 Mr. Madsen's objection.

22 MR. MOBLEY: Yes, Your Honor. Thank you, Your
23 Honor.

24 THE COURT: You may ask your next question.

25 MR. MOBLEY: Thank you, Your Honor.

1

DIRECT EXAMINATION

2

BY MR. MOBLEY:

3

Q Now, Trooper Hallman, when you arrived on that scene, you saw that there was a lot of debris affiliated with that particular accident?

4

5

6

A There was.

7

Q Now, did it appear that that debris came from that truck, that S.U.V.?

8

9

A It appeared so. It looked pretty fresh.

10

Q It looked pretty fresh?

11

A To me, yes, sir.

12

MR. MOBLEY: May I approach, Your Honor?

13

THE COURT: Yes, sir.

14

BY MR. MOBLEY:

15

Q Now, Trooper Hallman, I want to hand you some pictures. I want to see if you can identify these photos. First, look at them for me. Don't say what is in them, but just see if you recognize them.

16

17

18

19

20

A (Pause.) Yes, sir, I'm familiar with these.

21

Q Okay. Now, looking at those photos, do they accurately depict the conditions and the items that are shown in those pictures as they were that night?

22

23

24

25

A They do.

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

329

1 Q Have they been changed in any way, shape, form or
2 manner?

3 A It doesn't appear so, no, sir.

4 MR. MOBLEY: Your Honor, the State would move
5 to have these four photos entered into evidence as
6 State's Exhibits Number 5 through 9.

7 MR. MADSEN: No objection, Your Honor.

8 THE COURT: All right. So they'll be State's
9 5, 6, 7, and 8?

10 MR. MOBLEY: And 9, Your Honor.

11 THE COURT: How many exhibits is it?

12 COURT REPORTER: There's four, Judge. I'm
13 sorry. That was my fault.

14 THE COURT: All right. State's Exhibits
15 Number 5, 6, 7, and 8 are in evidence without objection.

16 MR. MOBLEY: Thank you, Your Honor.

17 (State's Exhibits Number 5-8 are received into
18 evidence.)

19 BY MR. MOBLEY:

20 Q Now, Trooper Hallman, I have shown you some
21 pictures that have been marked as State's Exhibits
22 5, 6, 7, and 8. If you don't mind, if you could
23 hold up each photo, beginning with Exhibit Number
24 5, and describe to the jury what we are seeing
25 here.

1 A This is my patrol vehicle. This is Highway 378
2 near the Saluda County line. Just to give you some
3 reference if you are from the area, Union Lutheran
4 Church is right up here (indicating). The closest
5 intersection back this way (indicating) is Old
6 Lexington Road in the Cedar Grove area.

7 I came from I-26, and this is where I parked
8 my vehicle, well back from where the vehicle was at
9 rest. It's down here (indicating) on the other
10 side of this tree line. These (indicating) are the
11 marks going off the side that I testified to here.
12 I'm not sure if there is anyone else parked behind
13 me, but this is where my vehicle came to rest when
14 I arrived on scene.

15 Q Now, you referenced briefly the marks here. Can
16 you describe them in detail for the jury, please.

17 A These brown areas right here (indicating) are from
18 where the vehicle ran off the right side and at a
19 high rate of speed. The tires are kicking up dirt,
20 tearing up the surface of the shoulder, and you're
21 actually seeing the dirt that's mixed up with the
22 torn grass.

23 Q Now, from this photo it appears that this starts
24 several or would you say a few -- well, how many
25 feet?

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

331

1 A It's hard to say exactly.

2 MR. MADSEN: I'm going to object.

3 THE COURT: Yes, sir.

4 MR. MADSEN: To the leading.

5 THE COURT: All right. Well, you can restate
6 your question, Solicitor.

7 BY MR. MOBLEY:

8 Q How many feet does it appear to have traveled?

9 A It's hard to say exactly because they started
10 sometime before this. This is actually completely
11 out of the curve where the marks started. It's
12 hard to say for sure. I'd hate to guess because
13 it's hard to say.

14 Q Now, you state that this picture is taken after the
15 curve has already ended?

16 A Correct.

17 Q Does it appear that the vehicle, as it was going
18 through that curve, proceeded straight instead of
19 curving around?

20 A It appeared to me that instead of following the
21 slight left curve that it is, the vehicle just ran
22 straight off the right side about the middle point
23 of the curve, what we call the apex, and proceeded
24 down the right shoulder.

25 Q Okay. Now, if we can move to Exhibit Number 6.

1 Can you describe what we have here?

2 A This is the license plate that was in the general
3 vicinity of this collision. When I approached the
4 vehicle that was involved, there was no license
5 plate on it. It was torn off.

6 The actual holes where the license plate
7 attaches were ripped out. The plastic was ripped
8 out. This tag, once the numbers were ran through
9 the D.M.V. database, matched the vehicle that was
10 in the collision.

11 Q So it matched the vehicle that was in the
12 collision?

13 A Correct.

14 Q And that tag was found, along with the other debris
15 that was scattered around?

16 A Correct.

17 Q If we can move to Exhibit Number 7. What do we
18 here there?

19 A This is some of the debris. This (indicating) is
20 what looks like some plastic from a vehicle. It's
21 the same color of the one that was involved. This
22 (indicating) is a bottle of some sort.

23 It's hard to tell exactly what it is because
24 of the glare, but it was laying in the general
25 vicinity of the collision, along with the other

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

333

1 debris that was present.

2 Q Okay. If we can move to Exhibit Number 8.

3 Describe what we have there.

4 A This is several items of the debris, which for me
5 was one of the most important things on the scene
6 was the Bud Light bottle that was laying in the
7 general vicinity also with the other debris.

8 Q Okay. Now, these photos were taken and all of this
9 is in the very general vicinity of the vehicle.
10 You've run that tag number, and it came back to the
11 vehicle; correct?

12 A Correct.

13 Q Now, when you approach the actual vehicle, tell me
14 what you observe.

15 A When I approached the vehicle, the vehicle was
16 laying on its side, I believe the driver's side.
17 It was laying facing away from the roadway. If
18 this (indicating) is the road, the vehicle was on
19 its driver's side facing that direction
20 (indicating).

21 The engine and transmission, which I've stated
22 was thrown out, was laying beside the vehicle.
23 Debris was strung out, for lack of a better word,
24 from the beginning of it or from where the
25 vehicle -- where it appeared to me it started

1 flipping, hitting the ground, through the grass,
2 and extended into the collision scene and a little
3 bit just beyond.

4 Q Okay. Now, did you look inside the -- well, first
5 and foremost, was there anyone present besides the
6 deceased victim?

7 A There were firefighters on the scene.

8 Q Okay. Was there anyone still inside of the S.U.V.
9 that night?

10 A No, sir.

11 Q Did you look inside of it?

12 A I did.

13 Q Did you observe anything inside to mention?

14 A There was extensive damage. It was hard to see
15 everything as you would see in a normal collision.
16 This was a very violent one. There was one shoe
17 that was off of someone's foot, but it's just kind
18 of -- again for lack of a better word -- a jumble
19 of the contents of a vehicle.

20 Q Were there any smells that were emitting from that
21 vehicle?

22 A There was.

23 Q What type smells?

24 A I noticed the smell of an alcoholic beverage. Even
25 with the windows and everything down or broken or

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

335

1 shattered, it still lingers for some time after a
2 collision.

3 Q And were you able to personally observe that?

4 A Yes, sir.

5 Q Okay. And at this time had the other individual
6 been transported away?

7 A Yes, sir.

8 Q Were you able to obtain his name?

9 A Not from anyone at the scene. I had called Trooper
10 Baker once I found out where the other occupant --
11 which hospital he was en route to. I called
12 Trooper Baker because, you know, with him going to
13 Richland Hospital, I'm 30, 35 miles away. I called
14 Trooper Baker who was much closer than I. He
15 proceeded to the scene. Once he got there, I
16 called him and got the name.

17 Q And once you were able to -- once you were provided
18 with that name, did it come back as Christopher
19 Manning?

20 A Yes, sir.

21 Q Now, did you have the opportunity to run any type
22 of D.M.V. check on Mr. Manning?

23 A We did check Mr. Manning's driver's license record,
24 yes, sir.

25 Q Okay. Now, when you checked his driver's license

1 information, did an address appear as to where he
2 was residing?

3 MR. MADSEN: Judge, I would object to
4 hearsay.

5 THE COURT: All right. Well, you can lay that
6 foundation or you can get the custodian from the
7 Department of Motor Vehicles in that regard.

8 MR. MADSEN: Okay.

9 THE COURT: But you can certainly lay the
10 foundation.

11 BY MR. MOBLEY:

12 Q Now, let me ask you this. During the course of
13 your investigation, did the registration for the
14 vehicle and Mr. Manning's address match?

15 A Yes.

16 MR. MADSEN: Judge, objection to hearsay
17 again.

18 THE COURT: All right. I want the custodian
19 of the Department of Motor Vehicles in court --

20 MR. MOBLEY: Yes, sir.

21 THE COURT: -- with those records.

22 MR. MOBLEY: Yes, sir.

23 THE COURT: All right. Thank you very much.

24 MR. MOBLEY: Thank you, Your Honor. Begging
25 the Court's indulgence, Your Honor.

QUEST HALLMAN -- DIRECT -- MR. MOBLEY

337

1 THE COURT: Yes, sir.

2 (Pause.)

3 MR. MOBLEY: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 BY MR. MOBLEY:

6 Q Now, what else do you observe on the scene that day
7 or that night? Is there anything specifically?

8 A In specific, nothing stands out that was anything
9 specifically different than I have already
10 mentioned.

11 Q Okay. Now, you are still investigating this
12 particular incident. Without going into any
13 conversations, the contents of the conversations
14 that you had with some of these individuals, did
15 you speak with anyone else that was still on scene?

16 A I did.

17 Q Okay. During that course of -- well, were you
18 still investigating this incident to determine who
19 was the driver?

20 A Yes, sir.

21 Q Okay. And after speaking with them and conducting
22 your investigation, did you ultimately charge
23 Mr. Christopher Manning --

24 A I did.

25 Q -- with felony D.U.I.?

- 1 A I did.
- 2 Q Okay. Now, at this particular time, Mr. Manning
- 3 wasn't in your presence; correct?
- 4 A Correct.
- 5 Q And where was he located?
- 6 A At Richland County or Richland Memorial Hospital.
- 7 Q And who was there with him at the time?
- 8 A Trooper Baker.
- 9 Q Did you direct Trooper Baker to do anything at this
- 10 time?
- 11 A I did.
- 12 Q And what was that?
- 13 A I directed him to get a legal blood sample drawn by
- 14 the hospital staff.
- 15 Q And why were you able to direct him to do so?
- 16 A In my experience and my determination, I determined
- 17 him as the driver of the vehicle. And with there
- 18 being a death involved, a legal blood sample was
- 19 drawn. Because he was being treated at the
- 20 hospital, I wasn't able to get a breath sample, so
- 21 a legal blood sample was drawn.
- 22 Q Okay. And that was at your direction to Trooper
- 23 Baker?
- 24 A Correct.
- 25 Q Did you ever proceed to the hospital that night?

QUEST HALLMAN -- CROSS -- MR. MADSEN

339

1 A Not that night, no, sir.

2 Q Did you ever come back in contact with Mr. Manning?

3 A Not -- I saw him once in traffic court. Other than
4 that, no, sir.

5 MR. MOBLEY: Nothing further for this witness
6 at this time, Your Honor.

7 THE COURT: Thank you. Thank you very much,
8 Solicitor. Mr. Madsen.

9 CROSS EXAMINATION

10 BY MR. MADSEN:

11 Q When you are on scene, those photographs -- do you
12 actually take any photographs while you are out
13 there?

14 A No, I did not.

15 Q Your car is equipped with a video?

16 A Yes, it is.

17 Q Do you do any video when you get out there?

18 A No, sir.

19 Q We've got in State's Exhibit Number 8 a beer
20 bottle, correct?

21 A Correct.

22 Q Does anyone ever fingerprint that beer bottle?

23 A I don't know.

24 Q Was that not something you would want to be done?

25 A We don't always fingerprint everything that's at a

1 scene.

2 Q But as far as you know, it was never
3 fingerprinted?

4 A As far as I know, it was not.

5 Q And then in State's Exhibit Number 7, is that body
6 wash?

7 A That's -- I was going to assume that. It's hard to
8 tell. It's a glare.

9 Q Those look like cherries, don't they?

10 A It looks like a potpourri liquid or something like
11 that.

12 Q Maybe potpourri or something like that. When you
13 get out there, there are quite a few different
14 vehicles with lights and sirens on; correct?

15 A Well, from what I recall, they still had their
16 lights on.

17 Q And any pictures of the automobile -- you don't
18 take any pictures whatsoever out at the scene of
19 the automobile?

20 A No, sir, I directed another trooper to do that.

21 Q And even though your car is equipped with a video,
22 you never end up taking any video at the scene that
23 day; right?

24 A Correct.

25 Q Cars have what's called, for lack of a better word,

QUEST HALLMAN -- CROSS -- MR. MADSEN

341

1 I guess a black box; right?

2 A Yes, sir.

3 Q You can take that black box and can determine from
4 that black box how fast a car was going at the time
5 of impact; isn't that correct?

6 A From what I understand, yes, sir.

7 Q And that's something that y'all normally do, but
8 that's only in certain cars or newer cars; right?

9 A I don't do it but, yes, sir, I think it's in newer
10 cars.

11 Q The M.A.I.T. team can do that, right?

12 A Correct.

13 Q And ultimately the M.A.I.T. team is requested out
14 that day?

15 A Yes, sir, we requested what is called a deferred
16 response.

17 Q What does that mean?

18 A They don't come out immediately to that particular
19 scene. I'm not sure of their particular reason for
20 doing a deferred response. That's something that I
21 can't answer.

22 Q But at some point in time they come out?

23 A Yes, sir.

24 Q And when we are talking about M.A.I.T., correct me
25 if I'm wrong, but that stands -- that's a division

1 of the Highway Patrol that stands for Multi or
2 Motor --

3 A Multidisciplinary Accident Investigation Team.

4 Q Okay. Multidisciplinary Accident Investigation
5 Team, known as M.A.I.T.; right?

6 A Yes, sir.

7 Q And they end up coming out, and they can do a
8 multitude of things; can't they?

9 A Correct.

10 Q They can document the scene?

11 A Yes, sir.

12 Q They can determine who the driver is in a certain
13 situation if requested?

14 A Yes, sir.

15 Q You don't take any measurements when you're out
16 there that day, do you?

17 A No, sir. If the M.A.I.T. team is doing a deferred
18 response or any type of response, we let them
19 handle all measurements and stuff of that nature.

20 Q And you don't find any physical evidence out on the
21 scene that shows my client is the driver?

22 A No, sir.

23 Q You don't have any fingerprints on anything that
24 shows that he was the driver, correct?

25 A Not to my knowledge.

QUEST HALLMAN -- CROSS -- MR. MADSEN

343

1 Q Nothing inside the vehicle?

2 A Not to my knowledge.

3 Q Nothing on the steering wheel?

4 A No, sir.

5 Q How about any D.N.A. or blood evidence on the
6 driver -- or linking my client to being the driver?
7 You don't have any of that, do you?

8 A I never saw him, so I don't have any knowledge of
9 there being any.

10 Q But that is something that certainly y'all could
11 have come back and tried to do afterwards, right?

12 A I don't know that it wasn't done. I don't handle
13 that part of the investigation.

14 Q And where that vehicle is located, Mr. Hill, if
15 that vehicle is upright, is on the driver's side?

16 A Yes, sir. If it were upright, it would be -- if it
17 were upright facing the wood line, not the creek
18 line but the wood line that runs parallel with the
19 road, he would be on the driver's side.

20 Q Right. He's off to the left?

21 A Yes, sir.

22 Q The person who ends up making the call for y'all to
23 come out or E.M.S., do you ever talk with that
24 individual out there on the scene?

25 A I did not.

- 1 Q Any patrons of the bar earlier, do you ever talk
2 with any of those individuals yourself?
- 3 A Not to my knowledge. I don't remember anyone.
- 4 Q And in your experience as a trooper, certain
5 alcoholic beverages smell a lot more than other
6 ones; correct?
- 7 A Correct.
- 8 Q So vodka might not have a smell, whereas beer can
9 have a more pungent smell; isn't that true?
- 10 A Yes, sir.
- 11 Q And certain kinds of beer can be more pungent than
12 other beers?
- 13 A Yes, sir.
- 14 Q There's no relation to alcohol content in those
15 drinks generally --
- 16 A Generally, no, sir.
- 17 Q -- because vodka is a more powerful drink than,
18 say, beer?
- 19 A Correct.
- 20 Q And there is a question when you get out there that
21 day as far as -- between those two individuals --
22 who is the driver; right?
- 23 A Yes, sir. Initially, yes, sir.
- 24 Q And when you say initially, you say that you call
25 and you direct Trooper Baker to take a legal blood

QUEST HALLMAN -- CROSS -- MR. MADSEN

345

1 sample; right?

2 A Yes, sir.

3 Q And you are aware because you did an incident
4 report, you did your investigation, that that blood
5 sample was taken at 7:16 or around about that time?

6 A I think that's what is on the form, yes, sir.

7 Q And you ultimately fill out a tow vehicle report,
8 do you not?

9 A Yes, sir.

10 Q Do you recognize that?

11 A I do. That's my writing.

12 Q And that's got your signature at the bottom?

13 A Yes, sir.

14 Q And that's dated -- or excuse me -- the time on
15 that is 8:08?

16 A Yes, sir, the time the wrecker arrived.

17 Q And that would be that morning, right?

18 A Yes, sir.

19 Q And there is a listing up here of vehicle operator
20 name. Did you place anything in there?

21 A It says unknown.

22 Q It says unknown?

23 A Yes, sir.

24 Q So at 8:00 o'clock you list that the driver is
25 unknown, correct?

1 A Well, the 8:08 on there is the time the wrecker
2 actually picked the vehicle up. It's not --

3 Q Okay. Well, this is generated after that; right?

4 A It's generated during the course. When I --
5 normally when I call a wrecker, my normal course of
6 action is to call for the appropriate wrecker out
7 of the appropriate wrecker zone. I'll go ahead and
8 fill out the report. Now, what time I filled that
9 out I can't say, but the 8:08 is the time the
10 wrecker arrived.

11 Q And you knew Mr. Hill, correct?

12 A Yes, sir.

13 Q Ultimately a warrant for my client is not gotten
14 ever by you, right? Isn't it by Trooper Ginn,
15 G-I-N-N?

16 A Yes, sir.

17 Q Is that correct?

18 A That may be correct. The only copies I have have
19 just my name as the affiant.

20 Q Originally, I think the warrant was done with your
21 name; correct?

22 A Yes, sir.

23 Q Let me show you this and see if you recognize this.

24 A Yes, sir.

25 Q That would be a served warrant, correct?

QUEST HALLMAN -- CROSS -- MR. MADSEN

347

- 1 A Yes, sir, it's signed.
- 2 Q And that indicates that the affiant on that is a
- 3 K.G. Ginn?
- 4 A Correct.
- 5 Q G-I-N-N, who is another trooper; right?
- 6 A Yes, sir.
- 7 Q And then that would be his signature down there?
- 8 A Yes, sir.
- 9 Q And it looks like that warrant was from -- or was
- 10 received on August 8th of 2009, right?
- 11 A I think so, yes, sir.
- 12 Q It's kind of hard to see.
- 13 A It is hard to read.
- 14 Q And ultimately that warrant is not served until
- 15 August 27th of '09?
- 16 A Correct.
- 17 Q And that's not served by you, is it?
- 18 A No, sir, by Trooper, I think that's Kyzer,
- 19 K-Y-Z-E-R.
- 20 Q He is someone that works with you also?
- 21 A Yes, sir.
- 22 Q And the warrant is actually served when Chris gets
- 23 out of the hospital, right?
- 24 A Correct.
- 25 Q That's the reason for the delay from the 8th to the

- 1 27th --
- 2 A Yes, sir.
- 3 Q -- because y'all keep track of that, don't you?
- 4 A Yes, sir.
- 5 Q Okay. I think I had asked you already, but you did
- 6 a report; correct? And also had notes of yours in
- 7 that report?
- 8 A Yes, sir.
- 9 Q You don't have anything in your report that
- 10 indicates any statements that you had documented in
- 11 your report from anyone from E.M.S. or Fire
- 12 Service, do you?
- 13 A Not to my knowledge. I don't remember any.
- 14 Q You didn't actually even go to the hospital that
- 15 day?
- 16 A No, sir, I did not.
- 17 Q And you never ended up speaking with my client at
- 18 all that day, right?
- 19 A Correct.
- 20 Q You never found any witnesses through your
- 21 investigation as to the actual accident itself,
- 22 right?
- 23 A Correct.
- 24 Q Do you ever request any videotape from Boondocks?
- 25 A I never did, no, sir.

QUEST HALLMAN -- CROSS -- MR. MADSEN

349

1 Q Do you know whether Sergeant Levine, who I guess
2 was maybe your supervisor, if he ever did that?

3 A I know he had mentioned that they had a video
4 system. Now, whether or not he was going to
5 request it, I don't remember if he said that or
6 not.

7 Q And you never yourself ever interviewed anyone from
8 Boondocks, did you?

9 A Yes, sir.

10 Q You did?

11 A Yes, sir.

12 Q Was that Heather Fairchild?

13 A It was.

14 Q Okay. Anyone else besides her?

15 A Not to my knowledge, no, sir.

16 Q When you had talked about the vehicle, we know that
17 the vehicle had obviously at some point in time
18 didn't stay upright. But you can't tell me how or
19 when it flipped or how it flipped or anything like
20 that. That's kind of, to a certain extent, based
21 on speculation on your part; right?

22 A Basically from where it looks like the level of the
23 shoulder changes, that's where I --

24 Q Right. That it would do something, but you can't
25 say whether it came over frontwards, sideways or

1 anything like that?

2 A No, sir.

3 Q And there's no scientific way that you can figure
4 that out unless you have a witness who actually
5 sees it?

6 A Correct.

7 Q Right?

8 A Correct.

9 Q And so you can't say -- if you've got two people
10 ejected, you can't say how Mr. Hill comes out of
11 the vehicle; can you?

12 A No, sir.

13 Q You can't say how Chris comes out of the vehicle?

14 A No, sir.

15 MR. MADSEN: That's all the questions I have.

16 THE COURT: Redirect, Solicitor?

17 MR. MOBLEY: Nothing at this time, Your Honor;
18 reserving the right to recall this witness if needed.

19 THE COURT: All right. Thank you. Thank you,
20 Solicitor.

21 You may step down, Corporal Hallman.

22 (Witness leaves the witness stand.)

23 THE COURT: You may call your next witness.

24 MR. MOBLEY: Thank you, Your Honor. The State
25 calls Trooper Baker to the stand.

JEFFREY BAKER -- DIRECT -- MR. MOBLEY

351

1 JEFFREY BRIAN BAKER, being
2 first duly sworn, testifies as follows:

3 CLERK: Have a seat. Once you are seated,
4 state your full name, spelling your last on the record,
5 please.

6 THE WITNESS: Jeffrey Brian Baker, B-A-K-E-R.

7 DIRECT EXAMINATION

8 BY MR. MOBLEY:

9 Q Trooper Baker, where are you currently employed?

10 A With the Department of Public Safety, South
11 Carolina Highway Patrol in Lexington County.

12 Q And how long have you been employed there?

13 A Since 1996.

14 Q And what is your current position there?

15 A I'm a lance corporal with the Highway Patrol.

16 Q Okay. Now, what are some of your duties as a lance
17 corporal?

18 A Primarily it's to investigate traffic laws in South
19 Carolina -- or investigate collisions, causes of
20 collisions, write tickets.

21 Q Now, let me ask you, do you have any training as
22 to D.U.I. detection?

23 A Yes, sir.

24 Q Can you give us a brief synopsis of some of that
25 training and what you're looking for.

1 A Yes, sir. It's a two-day course for D.U.I.
2 detection. You look at physical mannerisms,
3 detection of odors, standardized field sobriety
4 tests. It goes into observing motorists operating
5 their vehicles to look for signs that they may be
6 impaired.

7 Q Now, are you continuously updated on the D.U.I.
8 laws and the standards to which you use?

9 A Yes, sir.

10 Q And that's every year?

11 A Yes, sir.

12 Q Now, we're going to take you back to the early
13 morning of August 1st, 2009. Did you have the
14 occasion to be called out in response to a vehicle
15 incident off of Highway 378?

16 A Yes, sir, not directly to the scene, but in
17 reference to that incident, yes, sir.

18 Q Well, tell us what happened.

19 A Dispatch gave out a collision. Trooper Hallman
20 responded to the collision, and he asked me to
21 respond to the Richland County -- I'm sorry -- to
22 the Richland Memorial Emergency Room, as one of the
23 occupants of the vehicle had been transported.

24 Q Now, you are coming from where to get to the
25 Emergency Room?

JEFFREY BAKER -- DIRECT -- MR. MOBLEY

353

- 1 A I was coming from Lexington.
- 2 Q Lexington?
- 3 A Yes, sir.
- 4 Q So when you get there, do you locate that
- 5 individual?
- 6 A Yes, sir, he was in a trauma room.
- 7 Q Okay. And at this particular time, do you make
- 8 contact with the individual?
- 9 A Yes, sir.
- 10 Q And who do you find that out to be?
- 11 A It was Mr. Manning.
- 12 Q Okay. Now, did you have the occasion to speak with
- 13 Mr. Manning?
- 14 A No, sir, not on initial contact because they were
- 15 treating him in the trauma center.
- 16 Q Okay. So, at what point did you come in contact
- 17 with Mr. Manning?
- 18 A It was a couple of hours later after they finished
- 19 his X-rays and M.R.I.s and stabilizing him.
- 20 Q Now, once you spoke with him, what are some of your
- 21 observations of Mr. Manning?
- 22 A Around his -- on his breath and person, he had a
- 23 strong odor of an alcoholic-type beverage. I
- 24 noticed that whenever I first went into the trauma
- 25 room. It's a very clean environment. Nobody wears

1 perfumes or colognes or anything like that.

2 When you walk in, you can pick up odors. I
3 managed to get within about three or four feet to
4 get a look at him, and I could smell that odor
5 then. Once again, when I got closer to him after
6 they put him in a room after all his X-rays
7 and treatments, I could smell that odor again.

8 Q So even a couple of hours later, you were able to
9 still smell that smell?

10 A Yes, sir.

11 Q Now, at that point were you directed by Trooper
12 Hallman to arrest Mr. Manning?

13 A Yes, sir, I spoke with him on a couple of
14 occasions.

15 Q I don't want you to state anything that he said --

16 MR. MADSEN: Judge?

17 THE COURT: Yes, sir.

18 MR. MADSEN: I just want to renew my pretrial
19 objections under the statute.

20 THE COURT: Certainly, yes, sir, and I would
21 renew my rulings in that regard.

22 MR. MADSEN: I don't remember if it was
23 2946, but one of those.

24 THE COURT: It was 2946 or 45, I think, but
25 one or the other.

JEFFREY BAKER -- DIRECT -- MR. MOBLEY

355

1 MR. MADSEN: Yes, sir. I just wanted to renew
2 those objections.

3 THE COURT: Certainly, and I renew my pretrial
4 rulings.

5 You may continue, Solicitor.

6 MR. MOBLEY: Thank you, Your Honor.

7 BY MR. MOBLEY:

8 Q Now, were you directed by Trooper Hallman to arrest
9 Mr. Manning or get a blood withdrawal?

10 A Yes, sir.

11 Q Now, he was being attended to by physicians at the
12 time. Was he laying on a bed or anything at that
13 time?

14 A Yes, sir.

15 Q Now, when you were directed to withdraw blood, what
16 was the reason for that blood withdrawal?

17 A It was believed -- well, there was one person that
18 was deceased at the scene, and then with him
19 being -- with Mr. Manning being the driver -- it
20 become a felony type situation. With my
21 observations at the hospital, that's when I went
22 forward with the blood draw.

23 Q Okay. Now, was that pursuant to the statutes of
24 South Carolina to have a blood withdrawal for a
25 driver of a felony D.U.I.?

- 1 A Yes, sir.
- 2 Q Okay. Now, who did you direct to withdraw that
- 3 blood?
- 4 A It was one of the nurses that was assigned to
- 5 Mr. Manning.
- 6 Q Now, let me ask you this here. At any point were
- 7 Miranda warnings given to Mr. Manning?
- 8 A Yes, sir. We have a protocol when we request a
- 9 blood draw from a person. In a felony type
- 10 situation, they don't have an option to refuse. We
- 11 give them their Miranda rights, we read them a
- 12 felony D.U.I. advisement, if it's a felony type
- 13 situation -- that's provided by S.L.E.D. -- and
- 14 then direct the nurse to take the blood and urine
- 15 sample.
- 16 Q Now, when you had read him the Miranda warnings,
- 17 did you utilize a card or anything of that nature?
- 18 A Yes, sir, the one I was given coming through patrol
- 19 school in '96.
- 20 Q And do you still have it?
- 21 A Yes, sir.
- 22 Q And that's the one you used on that night?
- 23 A Yes, sir.
- 24 Q Do you mind reading to the Court exactly what was
- 25 read to Mr. Manning the day that the Miranda

JEFFREY BAKER -- DIRECT -- MR. MOBLEY

357

1 warnings were provided?

2 A Yes, sir. It says: You are in the custody of --
3 and there's an agency block in it. You are in the
4 custody of the South Carolina Highway Patrol. It
5 is my duty to advise you of the following rights --

6 COURT REPORTER: Can you slow down a little
7 bit, please. I can't keep up.

8 BY MR. MOBLEY:

9 Q Yes, slow down for the court reporter.

10 A It is my duty to advise you of the following
11 rights. You have the right to remain silent.
12 Anything you say may be used against you in court.
13 You have the right to -- excuse me -- you have the
14 right to have a lawyer and consult with him before
15 and while answering any questions, and if you
16 cannot afford a lawyer, one will be provided to you
17 without cost.

18 Q Okay. And did Mr. Manning state at any time that
19 he wanted an attorney present?

20 A No, sir, he wasn't very coherent.

21 Q Did he seem to understand those warnings that were
22 given him?

23 A Like I said, he was -- I'm not sure. He was just
24 incoherent.

25 Q Okay. But you did read those to him at that time?

1 A Yes, sir.

2 Q Was he awake?

3 A He was in and out.

4 Q Okay. And you are assuming that that was because
5 of the treatment that was being provided?

6 A Yes, sir.

7 Q Okay. Now, after reading him those rights, did
8 Mr. Manning make any statements to you?

9 MR. MADSEN: Judge, I'm going to object.
10 I think we have a matter of law.

11 THE COURT: All right. Mr. Foreman and ladies
12 and gentlemen, if you would please place your notes on
13 your chair upside-down and step to your jury room. Do
14 not discuss this case during this brief recess.

15 (The jury retires to the jury room.)

16 THE COURT: All right. Mr. Madsen.

17 MR. MADSEN: Judge, we had a Jackson v.
18 Denno or a request for Jackson v. Denno, which is any
19 custodial interrogations. There's Miranda here, and
20 Trooper Baker was not called -- there's been nothing
21 provided in discovery.

22 THE COURT: All right. Solicitor.

23 MR. MOBLEY: Your Honor, Trooper Baker is
24 not -- he's going to state basically that no statements
25 were made to him by the Defendant. Secondly, Your

1 Honor, during that particular hearing, I think even
2 Mr. Madsen acquiesced to the point that we could use
3 hearsay during that particular hearing through Hallman.
4 Hallman didn't mention any statements that were provided
5 by Trooper Baker to him during that particular hearing,
6 Your Honor.

7 THE COURT: This trooper is not going to
8 testify in front of this jury to any statements that
9 were made to him?

10 MR. MOBLEY: Yes, sir.

11 THE COURT: Is that correct?

12 MR. MOBLEY: By the Defendant. That is
13 correct, Your Honor, he's not.

14 MR. MADSEN: And, Judge, I don't have a
15 problem with that. I think -- and they can correct me
16 if I'm wrong -- that a trooper, when they arrest him,
17 have to do a Miranda, and then they have to do their
18 implied consent warnings, which are basically on a form.

19 If that's all he's going to get into, I don't
20 have an objection to that because I think that they're
21 required to do that before a blood draw, but it sounded
22 to me like they were going to get into some statements
23 or at least I didn't want to put the Court in that
24 position since we had done a Jackson v. Denno hearing.

25 THE COURT: I understand. Well, the Solicitor

1 is telling me that trooper, Corporal Baker, is not going
2 to testify that any statements were made to him.

3 MR. MADSEN: Okay.

4 THE COURT: Is that correct?

5 MR. MOBLEY: That's correct. There are no
6 statements that --

7 MR. MADSEN: That presents an entirely
8 different kind of problem because Trooper Hallman
9 yesterday testified that he had overheard statements
10 that were told to him, which is one of the bases of our
11 motion.

12 THE COURT: Well, that's a different issue.

13 MR. MADSEN: And I understand, but I
14 think that that becomes an issue now if he denies ever
15 making those statements to Trooper Hallman.

16 THE COURT: No, sir, that's a different issue.
17 It's a statement. The question is, did the Defendant
18 make any statements to you, Corporal Baker. He has
19 answered no.

20 The Solicitor's question is not, Did you
21 overhear any statements made by the Defendant? Those
22 are totally separate and distinct issues. If they are
23 not the result of any custodial interrogation, that's
24 different. That wouldn't even go to Jackson versus
25 Denno. So that's a different dimension.

1 MR. MADSEN: Well, one of the questions I
2 would have then, Judge, is it's kind of like my 403
3 yesterday. I think he has already testified that he was
4 kind of in and out and incoherent.

5 So I would -- potentially any statements that
6 he overheard, I would have the same motion as to those
7 individuals yesterday under 403, given the fact that I
8 think he has already testified in court that he was
9 incoherent or in and out.

10 THE COURT: I've already ruled on the
11 statements though based on the record that was before me
12 at that time.

13 MR. MADSEN: Right, on those individuals
14 who testified --

15 THE COURT: Yes, sir.

16 MR. MADSEN: -- and we don't quibble about
17 that, but I think that this officer or this witness is
18 different, and Your Honor did not hear from him
19 yesterday.

20 THE COURT: I don't know what you want me to
21 hear from him now. I'm just not tracking it is all I'm
22 saying. What I thought I was hearing was you initially
23 were concerned that it was the Jackson versus Denno
24 issue. The Solicitor is saying, no, I'm not offering
25 any statements through Corporal Baker in front of this

1 jury.

2 MR. MOBLEY: That's correct. And what we can
3 do, just to appease Mr. Madsen, as well as to give
4 information to the Court, we can go through the line of
5 questioning before the jury comes back out to assure
6 that doesn't happen, to clarify everything.

7 We are not offering any statements, but if the
8 Court wants to be cautious, which I totally understand
9 and I understand Mr. Madsen's position as well, we can
10 go through the line of questioning that I was going to
11 ask, if the Court wants us to do that.

12 MR. MADSEN: I don't have a problem with
13 that, Judge.

14 THE COURT: Maybe I'm not tracking your other
15 issue with Corporal Baker. Maybe I'm just not tracking
16 it, Mr. Madsen. That's all I'm saying.

17 MR. MADSEN: And I guess I could be confused.
18 If the Solicitor is saying he doesn't have anything that
19 he has overheard -- I don't know if I'm understanding
20 him.

21 THE COURT: I haven't heard that. All I have
22 heard, the only question I have heard, is: Are there
23 any statements that were given to Corporal Baker?
24 That's the only question I have heard.

25 I haven't heard that the solicitor is now

JEFFREY BAKER -- IN CAMERA -- MR. MOBLEY

363

1 saying there were no statements made that he overheard.
2 It's not in a Jackson versus Denno situation. As I
3 understand your position, Solicitor, you are not even
4 getting into those statements --

5 MR. MOBLEY: I'm not.

6 THE COURT: -- in front of the jury.

7 MR. MOBLEY: To be honest with you, Judge,
8 y'all are talking about something I haven't even thought
9 about. Well, excuse me, Mr. Madsen brought up something
10 that I hadn't even thought about offering through this
11 particular witness, Your Honor. I wasn't---

12 MR. MADSEN: I wanted to make sure. I just
13 don't want us to yo-yo. I mean, obviously there are
14 times that juries need to be sent out. But obviously,
15 if there are things we can handle here, if he's not
16 going to do that, then I don't have a problem with that.

17 THE COURT: All right. Well, go on through
18 your questions before we bring the jury back out.

19 MR. MOBLEY: Thank you, Your Honor.

20 THE COURT: In a timely manner.

21 MR. MOBLEY: Thank you, Your Honor.

22 IN CAMERA EXAMINATION

23 BY MR. MOBLEY:

24 Q Trooper Baker, after you read the Miranda warnings
25 to Mr. Manning, he was awake at the time, but he

1 was going in and out; correct?

2 A Yes, sir.

3 Q Okay. But you did read them to him?

4 A Yes, sir.

5 Q Okay. Now, after those were provided, did

6 Mr. Manning make any statements to you?

7 A None that I recall.

8 Q Okay. Now, after reading him the Miranda warnings,

9 are there any other -- did you read him an

10 advisement of implied consent rights?

11 A Yes, sir.

12 Q And what is the reason for reading him those

13 particular rights?

14 A To advise him of his rights that pertain to the

15 blood and urine draw.

16 Q Okay. Now, did you -- was Mr. Manning able to sign

17 that particular document after you read it to him?

18 A No, sir.

19 Q Okay. Did you sign that document?

20 A Yes, sir.

21 Q Okay. I'm handing you a document. Does this

22 appear to be the document that was given to

23 Mr. Manning during this particular time?

24 A Yes, sir.

25 Q Okay. Do you mind reading --

JEFFREY BAKER -- IN CAMERA -- MR. MOBLEY

365

1 THE COURT: Well, I don't think he needs to
2 read it for purposes of the in camera hearing.

3 MR. MOBLEY: Okay. That's what I was going to
4 get to, Your Honor.

5 BY MR. MOBLEY:

6 Q Now, after this was provided to him -- and you also
7 read it to him, correct?

8 A Yes, sir.

9 Q Okay. After this was provided to him and you read
10 it to him, did you direct a nurse to withdraw
11 blood?

12 A Yes, sir.

13 Q Did you observe her withdraw the blood?

14 A Yes, sir.

15 Q Did you -- did she hand over the blood to you?

16 A Yes, sir.

17 Q Okay. Did it appear that she tampered with it in
18 any type way?

19 A No, sir.

20 Q How many vials of blood was it?

21 A Two.

22 Q Was there any other -- anything else that was
23 withdrawn from the Defendant?

24 A There was urine, but it was taken out of the bag
25 that hangs on the bed from a catheter that was

1 placed in him.

2 Q And after you received possession of that blood and
3 urine, what did you do with it?

4 A I placed it in a little box, a little S.L.E.D. kit
5 that comes with the two vials and the vial for the
6 urine, and sealed it and passed it on to Trooper
7 Dodson.

8 Q And was it sealed before you placed it into that
9 particular box?

10 A Yes, sir, it was. Once I received it from the
11 nurse, I placed the evidence stickers over it and
12 put the gentleman's name and information on it and
13 placed it in the box and sealed it.

14 Q Did you ever come back in contact with Mr. Manning?

15 A No, sir.

16 MR. MOBLEY: Your Honor, for the purposes of
17 this hearing, that's about the extent itself, except for
18 the fact we are going to get into providing evidence of
19 the chain of custody, but that's going to be the extent
20 of it with this particular witness itself, Your Honor.

21 THE COURT: All right.

22 MR. MADSEN: The only thing I would have a
23 question with is after he has read his Miranda saying he
24 doesn't have to say anything, I do think he has a right
25 to maintain his silence. So I don't think that he

1 should do that, Judge.

2 MR. MOBLEY: I don't think I asked him, after
3 the implied consent rights, did he say anything. I
4 don't think I asked him that. The Miranda I did, but
5 not after the implied consent warnings were given to
6 him. But, even if --

7 THE COURT: Well, I mean, that goes back to,
8 Did he make any statements, also then, Mr. Madsen. Do
9 you not want him to ask that question, that I Mirandized
10 him?

11 MR. MADSEN: I think it would be more
12 appropriate to say, As a part of your implied consent,
13 you have to read him the Miranda, and after you got done
14 with the Miranda, you read him the implied consent,
15 instead of saying, Hey, he didn't say anything after
16 given the Miranda. I just worry that that's a comment
17 on this.

18 THE COURT: All right.

19 MR. MOBLEY: Okay. Well, we are splitting
20 hairs. We can definitely do it that way to appease the
21 public defender.

22 THE COURT: All right.

23 MR. MOBLEY: That will be fine.

24 THE COURT: All right. Anything further
25 before we bring our jury back in?

1 MR. MOBLEY: Nothing, Your Honor.

2 MR. MADSEN: No, sir.

3 THE COURT: And so you agree, Mr. Madsen, as
4 far as Corporal Baker's testimony, there is not a
5 necessity for a Jackson versus Denno hearing?

6 MR. MADSEN: Correct.

7 THE COURT: All right. Bring us our jury,
8 please.

9 (The jury returns to the courtroom.)

10 THE COURT: All right, Solicitor, you may
11 proceed.

12 MR. MOBLEY: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 BY MR. MOBLEY:

15 Q Now, Trooper Baker, while you were in the emergency
16 room with Mr. Manning, did you read him his Miranda
17 warnings?

18 A Yes, sir.

19 Q Okay. And you previously read into the record what
20 those Miranda warnings were, correct?

21 A Yes, sir.

22 Q Okay. Now, after reading the Miranda warnings to
23 Mr. Manning, were you obligated under the statute
24 for felony D.U.I. to also read him an advisement of
25 implied consent rights?

JEFFREY BAKER -- DIRECT -- MR. MOBLEY

369

- 1 A Yes, sir.
- 2 Q Okay. Now, did you read that to Mr. Manning?
- 3 A Yes, sir.
- 4 Q Okay. And did you provide a copy of that to
- 5 Mr. Manning?
- 6 A Yes, sir.
- 7 Q Now, I want to hand you a document. Do you
- 8 recognize what that document is?
- 9 A Yes, sir.
- 10 Q And what is it?
- 11 A It is the S.L.E.D. form for felony driving under
- 12 the influence advisement both in Spanish and
- 13 English.
- 14 Q Does that appear to be the form that was used that
- 15 night when you presented it to Mr. Manning?
- 16 A Yes, sir.
- 17 Q How do you know so?
- 18 A Because it has got my signature on the bottom of
- 19 it.
- 20 Q Does it have a date beside it?
- 21 A Yes, sir, August 1st, '09.
- 22 Q Did Mr. Manning sign that particular document?
- 23 A No, sir.
- 24 Q Okay. And why didn't he sign it?
- 25 A He was being attended to on the bed that he was

1 laying on. Like I said, he was in and out of
2 consciousness and just not able to sign it.

3 Q Okay. Now, there's a location for his signature?

4 A Yes, sir.

5 Q What is indicated there?

6 A Unable to sign.

7 Q And who wrote that?

8 A I did.

9 Q Okay.

10 MR. MOBLEY: I would offer this, Your Honor.

11 MR. MADSEN: No objection, Judge.

12 THE COURT: All right. State's Exhibit 9 is
13 in evidence without objection.

14 MR. MOBLEY: Thank you, Your Honor.

15 (State's Exhibit Number 9 is received into
16 evidence.)

17 BY MR. MOBLEY:

18 Q Now, I have the document, State's Exhibit Number 9,
19 that has been entered into evidence without
20 objection from defense counsel. I am going to hand
21 it to you, Trooper Baker. There's two portions
22 that appear there on that particular form. Which
23 portion was read to Mr. Manning?

24 A The top portion.

25 Q The top portion. Do you mind reading to the Court

JEFFREY BAKER -- DIRECT -- MR. MOBLEY

371

1 exactly what was read to Mr. Manning that day?

2 A Yes, sir.

3 COURT REPORTER: Slowly, please.

4 A You are under arrest for driving -- I'm sorry.

5 That's the wrong line. You are under arrest for
6 felony D.U.I., for driving under the influence,
7 felony D.U.I., Section 56-5-2945, South Carolina
8 Code of Laws, 1976 as amended.

9 Where a law enforcement officer has probable
10 cause to believe you have violated this section,
11 the officer has directed that samples be taken for
12 alcohol and/or drug testing.

13 The samples will be taken and tested according
14 to Section 56-5-2950 and S.L.E.D. policies.
15 Pursuant to Section 56-5-2946, you must submit to
16 either one or a combination of chemical tests for
17 the purposes of determining the presence of
18 alcohol, drugs or a combination of alcohol and
19 drugs.

20 The resistance, obstruction or opposition to
21 testing pursuant to Section 56-5-2946 is evidence
22 admissible in trial. If your tests or samples
23 have an alcohol concentration of 15 one-hundredths
24 of 1 percent or more, your privilege to drive in
25 South Carolina must be suspended for at least one

1 month.

2 You have the right to have a qualified person
3 of your own choosing conduct additional independent
4 tests at your expense, and the officer, upon
5 request, must provide you affirmative assistance.

6 You have the right to request an
7 administrative hearing within 30 days of the
8 issuance of the notice of suspension. If you do
9 not request an administrative hearing or if your
10 suspension is upheld at the administrative hearing,
11 you must enroll in an Alcohol and Drug Safety
12 Action Program.

13 Q And that was exactly what you read to Mr. Manning
14 that night?

15 A Yes, sir.

16 Q Okay. Now, after reading him -- did you provide a
17 copy to Mr. Manning?

18 A Yes, sir.

19 Q Okay. Now, after reading him the implied consent,
20 the implied consent warnings, did you direct a
21 nurse to withdraw the blood?

22 A Yes, sir.

23 Q Who was that? Do you know that nurse?

24 A Her name, first name is Nancy. I'm not sure -- she
25 has a strange last name.

JEFFREY BAKER -- DIRECT -- MR. MOBLEY

373

1 Q Okay. Now, did you personally observe the nurse at
2 the time? Did you personally observe her withdraw
3 the blood?

4 A Yes, sir.

5 Q And when she withdrew the blood, what type of
6 container did she place it in?

7 A We give her a S.L.E.D. kit that has two test tubes
8 in it about that long (indicating), and she used
9 those and then she gives them back to us.

10 Q Okay. How many did she fill up?

11 A Two.

12 Q Two what?

13 A Test tubes.

14 Q Test tubes?

15 A Yes, sir.

16 Q Okay. Was there any other type of body fluid that
17 was collected from Mr. Manning?

18 A Yes, sir, urine was.

19 Q Urine was. Now, did it appear at that particular
20 time that they were sealed?

21 A Yes, sir.

22 Q And did it appear that they had been tampered with
23 in any way by the nurse or anyone else that may
24 have been present that day?

25 A No, sir.

1 Q Okay. Now, once they were hand delivered to you,
2 did you place them into that S.L.E.D. box?

3 A Yes, sir. It comes with some evidence tags about
4 this long (indicating) that you can wrap over the
5 top of the test tube. You can initial and put the
6 gentleman's name and information on it, and you can
7 do one for the urine bottle also. You can put it
8 in a Ziploc bag and place it inside the box. It
9 has an evidence sticker that seals the box.

10 Q Okay. And that's just to make sure that it's not
11 tampered with?

12 A Yes, sir.

13 Q You could see if it had been tampered with?

14 A Yes, sir.

15 Q So nothing had been tampered with at this
16 particular point?

17 A No, sir.

18 Q Okay. Now, what I want to do, I want to show you
19 another document.

20 (Attorneys confer.)

21 MR. MADSEN: No objection.

22 THE COURT: Without objection?

23 MR. MADSEN: Without objection.

24 THE COURT: State's Exhibit Number 10 is in
25 evidence without objection.

JEFFREY BAKER -- DIRECT -- MR. MOBLEY

375

1 (State's Exhibit Number 10 is received into
2 evidence.)

3 BY MR. MOBLEY:

4 Q What I have in my hand is State's Exhibit Number 10
5 that has been properly admitted into evidence
6 without objection from defense counsel. Do you
7 mind telling the Court what you have there?

8 A It's the South Carolina Law Enforcement Division
9 urine and blood collection report.

10 Q Okay. Now, is that for Mr. Manning?

11 A Yes, sir.

12 Q It is. Do you mind telling us what is at the top
13 of that form?

14 A Which part?

15 Q The part that's filled out.

16 A Oh, that's the subject's name. Last name is
17 Manning; first name, Christopher; middle name,
18 Donald. It has the subject's address, his driver's
19 license number, the arresting officer, myself, my
20 agency, the date of the test, the date of the
21 arrest, and the times of the arrest and test and
22 location.

23 Q Okay. And what was the time of the test and the
24 time of arrest?

25 A It was 7:16 a.m.

- 1 Q Okay. Now, did you sign your name on that
2 particular document?
- 3 A Yes, sir.
- 4 Q Now, is there another signature that is located on
5 this document as well?
- 6 A Yes, sir.
- 7 Q Okay. Now, whose signature is that?
- 8 A The nurse's.
- 9 Q Okay. Now, did you offer this document to
10 Mr. Manning to sign also?
- 11 A I was unable to because he was in and out of
12 consciousness.
- 13 Q And whose handwriting is there where his name is
14 supposed to be at the bottom?
- 15 A That's my writing.
- 16 Q Okay. Now, this was used when the blood was
17 ordered to be withdrawn; correct?
- 18 A Yes, sir.
- 19 Q Okay. Now, after having the document presented to
20 the nurse, as well as Mr. Manning, and you signing
21 it and notating all of the specific information,
22 you now have in custody the two vials of blood as
23 well as the urine?
- 24 A Yes, sir.
- 25 Q Now, did you ever give a vial of blood to

JEFFREY BAKER -- DIRECT -- MR. MOBLEY

377

- 1 Mr. Manning?
- 2 A No, sir.
- 3 Q Do you know if anyone did?
- 4 A I'm not sure.
- 5 Q Okay. Would that be, to your knowledge, maybe or
- 6 possibly a duty of the nurse?
- 7 A Yes, sir.
- 8 Q Okay. Now, once you take what is in your custody
- 9 at this time, what do you do with it?
- 10 A I gave the sealed box to Trooper Dodson.
- 11 Q And Trooper Dodson is with the South Carolina
- 12 Highway Patrol as well?
- 13 A Yes, sir.
- 14 Q When did you give it to him?
- 15 A Shortly after it was given to me and I sealed it
- 16 up. He responded to the hospital because I was at
- 17 the end of my shift. He was starting day shift
- 18 that morning.
- 19 Q Okay. So you gave it to Trooper Dodson who was
- 20 there present at the hospital?
- 21 A Yes, sir.
- 22 Q Now, Trooper Baker, what I'm going to do, I want to
- 23 show you a document and see if you recognize this
- 24 document.
- 25 A Yes, sir, it's the chain of custody form.

1 Q Okay. Is that a form that you filled out that
2 night?

3 A No, sir, I believe Trooper Dodson filled it out.

4 Q Now, does your name appear anywhere on here?

5 A Yes, sir, with the initial custody of two vials of
6 blood and one vial of urine.

7 Q Okay. Now, is that your signature beside your
8 name?

9 A Yes, sir.

10 Q What is that form used for?

11 A To track the evidence from its originating point to
12 when it ends up at S.L.E.D., to being testing and
13 on through to its destruction point.

14 Q So your name is indicating that it's coming from
15 you to Trooper Dodson?

16 A Yes, sir.

17 Q Okay.

18 MR. MOBLEY: Your Honor, the State would like
19 to have this document marked as State's 11 for I.D.
20 purposes only.

21 THE COURT: All right. State's 11, I.D. only.

22 (State's Exhibit Number 11 is marked for
23 identification.)

24 BY MR. MOBLEY:

25 Q Now, you now transfer the blood and urine to

1 Trooper Dodson?

2 A Yes, sir.

3 Q What do you do from here?

4 A At that point I'm finished with it. He takes it on
5 through the evidence chain.

6 Q Okay. Do you have anything else to do with this
7 particular case or with Mr. Manning after that
8 point?

9 A No, sir.

10 MR. MOBLEY: Nothing further for this witness,
11 Your Honor.

12 THE COURT: Thank you, Solicitor. Mr. Madsen.

13 **CROSS EXAMINATION**

14 BY MR. MADSEN:

15 Q How are you doing, Trooper Baker?

16 A Fine, sir.

17 Q So you were called by Trooper Hallman, and you
18 leave from Lexington and head over to Richland
19 Memorial Hospital; correct?

20 A Yes, sir.

21 Q And when you get there, you don't initially get to
22 see Chris because he is being worked on by doctors?

23 A It was just from a distance.

24 Q And you said it was, I guess -- how long a period
25 of time, once you get there, do you have to wait

1 before you can get close to him?

2 A When I first got there, I mean, I could come within
3 four feet standing behind the attending physicians
4 but, I mean, no up-close contact.

5 Q But the physicians are working on him, correct?

6 A Yes, sir.

7 Q And he's messed up?

8 A Yes, sir.

9 Q And whenever you read these forms to him, because
10 of his injuries you can't get a signature from him;
11 correct?

12 A Correct.

13 Q He's not physically able to do that?

14 A No, sir.

15 Q And when you are dealing with him, you say he's
16 coming in and out of consciousness?

17 A Yes, sir.

18 Q And I think you said he's incoherent?

19 A Yes, sir.

20 Q Which you still do the implied consent even though
21 he is incoherent, correct?

22 A Yes, sir.

23 Q And I think you said that you smelled alcohol on
24 him, correct?

25 A Yes, sir.

JEFFREY BAKER -- CROSS -- MR. MADSEN

381

- 1 Q And you've been a trooper, I guess, almost 15 years
2 now; right?
- 3 A Yes, sir.
- 4 Q Certain alcohols have more of a pungent odor than
5 others ones; isn't that true?
- 6 A Yes, sir.
- 7 Q Vodka doesn't smell at all where beer can have
8 quite a bit of an odor associated with it, correct?
- 9 A Yes, sir.
- 10 Q Even though alcohol is a -- or excuse me -- even
11 though vodka is something that has a much higher
12 alcohol content than generally beer; isn't that
13 true?
- 14 A I believe so, yes, sir.
- 15 Q And you ultimately, on this collection report that
16 has been introduced as State's Exhibit Number 10 --
- 17 A Yes, sir.
- 18 Q -- you get an address for Chris, correct?
- 19 A Yes, sir.
- 20 Q And that address is [REDACTED] -- is that Springdale or
21 Springvale? What is that? Is that Drive?
- 22 A Drive, yes, sir.
- 23 Q And that's out of Florida?
- 24 A I believe so, yes, sir.
- 25 Q And he is unable -- when you are there dealing with

1 him, he is unable to sign either of those
2 documents?

3 A Correct.

4 Q And you get not only blood, but you also end up
5 having the nurse -- I guess when I say you, you
6 have someone get the blood and urine for you?

7 A Yes, sir.

8 Q And you package it up?

9 A Yes, sir.

10 Q Do you ever place that in any type of cooler?

11 A No, sir, I did not. I handed it straight to
12 Trooper Dodson.

13 Q Can you tell me how long after you received it, do
14 you turn it over to Trooper Dodson?

15 A Within minutes. He was there.

16 Q Do you know what he does with it?

17 A He was supposed to take it and turn it into
18 evidence.

19 Q But you're not with him. You don't see it because
20 you're actually ending your shift, aren't you?

21 A Correct.

22 Q And so when you read the implied consent and do the
23 blood draw, you're doing that at the direction of
24 Trooper Hallman; isn't that true?

25 A Yes, sir.

JEFFREY BAKER -- CROSS -- MR. MADSEN

383

1 Q Because you are actually at Richland Hospital based
2 on his request?

3 A Yes, sir.

4 Q Ultimately when you get that blood draw, I believe
5 your notes on that collection report reflect 7:16;
6 is that true?

7 A Yes.

8 Q Let me show you this. Is this a tow vehicle report
9 that the troopers at the Highway Patrol would
10 normally fill out?

11 A Yes, sir.

12 Q And that's for when a vehicle is going to be
13 removed or towed by a wrecker, correct?

14 A Yes, sir.

15 Q And can you tell from this who it was actually
16 filled out by? Would there be an officer's name at
17 the bottom?

18 A Yes, sir, Trooper Hallman.

19 Q Okay. Is there a time associated with that? Does
20 that look like 8:08?

21 A It could be an 08:08 or an 06:08.

22 Q You're not sure?

23 A I'm not sure.

24 Q Is there an indication up here that shows who the
25 vehicle operator is?

1 A It's listed as unknown.

2 Q And that's dated for 8/1 of '09, correct?

3 A Yes, sir.

4 Q And I guess it was taken by Dozier's Paint and
5 Body?

6 MR. MOBLEY: Your Honor --

7 A Yes, sir.

8 MR. MOBLEY: Your Honor, I would like to
9 object to this line of questioning about a document that
10 this particular trooper has not filled out.

11 THE COURT: Sustained.

12 BY MR. MADSEN:

13 Q Can you read that second half of that advisement,
14 implied consent? Can you actually read that second
15 half that's in Spanish or do you actually have
16 someone come out and do that if you have to handle
17 that in a particular case?

18 A We usually get a translator.

19 Q I was just curious.

20 MR. MADSEN: That's all the questions I have.

21 THE COURT: Redirect?

22 MR. MOBLEY: None, Your Honor.

23 THE COURT: Thank you. Thank you very much,
24 Corporal. You may step down.

25 (Witness leaves the witness stand.)

NANCY CHENAUSKY -- DIRECT -- MR. MOBLEY

385

1 THE COURT: Solicitor, you may call your next
2 witness.

3 MR. MOBLEY: Thank you, Your Honor. The State
4 calls Nancy Chenausky.

5 THE COURT: If you would come around and be
6 sworn for us, please, ma'am.

7 THE WITNESS: I can affirm.

8 THE COURT: If you would come around and be
9 affirmed for us.

10 NANCY CHENAUSKY, being
11 first duly affirmed, testifies as follows:

12 CLERK: Thank you, ma'am. Have a seat,
13 please. Once you are seated, state your full name on
14 the record, spelling your last.

15 THE WITNESS: My name is Nancy Chenausky,
16 C-H-E-N-A-U-S-K-Y.

17 DIRECT EXAMINATION

18 BY MR. MOBLEY:

19 Q Ms. Chenausky, where are you currently employed?

20 A I'm employed at Palmetto Health Richland in the
21 Emergency Department.

22 Q Okay. And what is your current position?

23 A I'm a registered nurse.

24 Q And how long have you been an employee there?

25 A I've been there almost 20 years.

1 Q And how long have you been a registered nurse?

2 A Thirty-nine years, almost 39.

3 Q Now, were you working at that location back on
4 August 1st, 2009?

5 A Yes, I was.

6 Q Now, did you have the occasion to come in contact
7 with an individual by the name of Christopher
8 Manning?

9 A I can't say I remember him. However, in a subpoena
10 that I received from your office, there's a note
11 from the chart with my name on it which indicates
12 that I did.

13 Q Okay. Now, as a registered nurse, are some of your
14 responsibilities to withdraw blood from
15 individuals?

16 A Yes.

17 Q Okay. Now, on that night, were you directed by an
18 officer to withdraw blood from the individual that
19 appears on your chart?

20 A According to -- apparently I was according to my
21 note.

22 Q And you take detailed notes so that you can keep
23 track at a later time of what you actually did,
24 right?

25 A Correct.

NANCY CHENAUSSKY -- DIRECT -- MR. MOBLEY

387

- 1 Q Now, I want to hand you a document that is actually
2 State's Exhibit Number 10, which has been admitted
3 into evidence without objection from the defense
4 counsel. Now, looking at that particular document,
5 State's Exhibit 10, do you see the name of the
6 Defendant there, the individual that you withdrew
7 blood from?
- 8 A Yes, I do.
- 9 Q Okay. And what is his name?
- 10 A Christopher Donald Manning.
- 11 Q And does your name appear on there?
- 12 A Yes, it does.
- 13 Q Is that your signature?
- 14 A Yes, it is.
- 15 Q Now, what is the date that is indicated?
- 16 A Let's see. The date is the 8th of September -- I
17 mean -- the 8th of January, 2009 -- well, it's
18 08/01/09.
- 19 Q Okay. So August 1st---
- 20 A Of 2009.
- 21 Q Yes, ma'am. Now, you signed that document because
22 you withdrew some blood from that individual;
23 correct?
- 24 A Yes, that indicates that I drew the blood.
- 25 Q Okay. And what time was that blood withdrawn as

1 indicated, the time of test?

2 A It was 7:16 in the morning.

3 Q Okay. Now --

4 A Oh, no, no. I'm sorry. I don't believe this form
5 indicates when it was drawn. My note would
6 indicate that. My note in the E.R. record would
7 indicate what time it was drawn.

8 Q Well, if you look closely on that document, it says
9 time of test.

10 A Oh, okay. I was looking at the rest. I apologize.
11 Okay, time of test.

12 Q And what time is that?

13 A 7:16.

14 Q Now, in the section that your name appears, there's
15 a box that is marked there, and why is that box
16 marked?

17 A This mark would be the officer's, the trooper's
18 request to have the blood drawn.

19 Q And what does it say?

20 A It says subject is under arrest for -- or in
21 violation of Section 56-5-2945 or 50-21-113, and
22 pursuant to Section 56-5-2946 or 50-21-116, a blood
23 sample or a blood and/or urine sample is/are
24 requested.

25 Q Okay. Now, do you recall from that night, after

NANCY CHENAUSKY -- DIRECT -- MR. MOBLEY

389

- 1 looking at this paperwork, how many vials of blood
2 you withdraw or you withdrew?
- 3 A I drew two. According to the protocol, I withdrew
4 two.
- 5 Q You withdrew two?
- 6 A Usually we draw two.
- 7 Q Okay. Now, did you withdraw that blood and place
8 it into an uncontaminated vial?
- 9 A Yes, a brand new one, uncontaminated, unused.
- 10 Q Unused and uncontaminated?
- 11 A Uh-huh. (Indicating affirmative response.)
- 12 Q Was there any other bodily fluids that were
13 withdrawn?
- 14 A According to my note, I took some urine from his --
15 from the catheter.
- 16 Q Okay. And were they -- was that also placed into
17 an unused and uncontaminated container?
- 18 A Yes.
- 19 Q Now, after withdrawing the blood, are there any
20 indications in your notes that anything had been
21 tampered with as far as those three items?
- 22 A No.
- 23 Q Would you have noted that?
- 24 A Yes.
- 25 Q Now, was it properly sealed?

- 1 A Yes.
- 2 Q And would that have been noted?
- 3 A Yes.
- 4 Q Do you recall providing a sample to the Defendant?
- 5 A I cannot recall.
- 6 Q You cannot recall?
- 7 A Correct. It doesn't say in my note. As I recall
- 8 from my note, it doesn't say whether I gave one to
- 9 him.
- 10 Q Let me ask you this. Your normal procedures --
- 11 have you ever had to do this before for a State
- 12 trooper?
- 13 A Yes, I have.
- 14 Q What would be your normal policies and procedures
- 15 as far as a blood withdrawal that's directed by a
- 16 trooper, as to the withdrawal of blood and body
- 17 fluids from an individual?
- 18 A Normally, I draw two, and I either give them to the
- 19 patient or if the patient is unable to accept it,
- 20 to the trooper to hold for the patient.
- 21 Q Okay. So it just depends on that particular time?
- 22 A Correct.
- 23 Q And there's no indications in your notes saying
- 24 anything different?
- 25 A Not as I recall.

NANCY CHENASKY -- CROSS -- MR. MADSEN

391

1 Q Okay. Now, in this specific case, what did you do
2 with these containers?

3 A I gave them to Trooper Baker.

4 Q Did you observe him to tamper with or do anything
5 to those?

6 A No, they would have been sealed in a tamper-proof
7 method.

8 Q Did you have any other contact with the individual,
9 Mr. Manning, Christopher Manning?

10 A I honestly can't remember, and I haven't seen it in
11 the record, other than that one note.

12 Q Okay.

13 MR. MOBLEY: Nothing further for this witness,
14 Your Honor.

15 THE COURT: Thank you, Solicitor. Mr. Madsen.

16 **CROSS EXAMINATION**

17 BY MR. MADSEN:

18 Q Is it Ms. Chenausky (phonetic)?

19 A Chenausky.

20 Q Chenausky?

21 A Uh-huh. (Indicating affirmative response.)

22 Q This form -- let me actually show it to you. This
23 form which has been marked as Court's Exhibit
24 Number 10, you don't actually fill that out or a
25 portion of it, you just end up signing your name;

1 correct?

2 COURT REPORTER: I'm sorry. I did not hear
3 the answer.

4 A Yes.

5 Q And you make these checkmarks also?

6 A I make the checkmarks and I sign it only. I don't
7 fill in the demographic data.

8 Q So as far as the time of test that says 7:16, that
9 was filled out by the trooper?

10 A Correct.

11 Q Does it indicate on here that you collect --
12 there's a space for a checkmark about a urine
13 sample. Does it indicate that you had taken that?

14 A Not on this form, but it does say up here and/or
15 urine.

16 Q Okay. But you've checked down here that you
17 collected blood. Why wouldn't you have checked
18 about the urine?

19 A I can't answer that.

20 Q Okay. You're not sure. And, in fact, you actually
21 do notes at the hospital; don't you?

22 A Correct.

23 Q Let me show you this and see if you recognize it.

24 A Yes, that's my note.

25 Q And does that give a time or a date where you put

NANCY CHENAUSKY -- CROSS -- MR. MADSEN

393

1 the note in up in the upper corner?

2 A When the note went in, it would be 7:38 in the
3 morning.

4 Q So that's when you actually put the note in?

5 A Correct. And that would have been sometime after I
6 took the blood.

7 Q Okay.

8 MR. MADSEN: That's all the questions I
9 have, Your Honor.

10 THE COURT: Redirect?

11 MR. MOBLEY: None, Your Honor.

12 THE COURT: Thank you. Thank you very much,
13 ma'am. You may step down. Thank you for being with us
14 today.

15 (Witness leaves the witness stand.)

16 THE COURT: Solicitor, you may call your next
17 witness.

18 MR. MOBLEY: The State calls Trooper Dodson.

19 DANIEL RYAN DODSON, being
20 first duly sworn, testifies as follows:

21 CLERK: Have a seat, please, sir. Once you
22 are seated, I need you to state your full name, spelling
23 your last, please.

24 THE WITNESS: My name is Daniel Ryan Dodson.
25 The last name is spelled D-O-D-S-O-N.

1 DIRECT EXAMINATION

2 BY MR. MOBLEY:

3 Q Trooper Dodson, where are you currently employed?

4 A The South Carolina Highway Patrol.

5 Q And how long have you been employed there?

6 A Three years.

7 Q And what is your current position?

8 A Trooper first class.

9 Q Now, within your position do you handle evidence
10 sometime?

11 A Yes, sir.

12 Q I want to take you back to the early morning hours
13 of August 1st, 2009. Did you have the occasion to
14 go to the Palmetto Richland Health Hospital in
15 Columbia?

16 A Yes, sir, I did.

17 Q And did you come in contact with a Trooper Baker?

18 A Yes, sir.

19 Q At that particular time, did Trooper Baker hand
20 deliver or hand over to you some evidence that he
21 had in his possession?

22 A Yes, he did.

23 Q What did he hand over to you?

24 A It was a blood/urine collection kit box.

25 Q And when he handed it over to you, did it appear

1 that it had been tampered with in any way?

2 A No, sir.

3 Q Could you have told? Would you have been able to
4 tell if it had been tampered with?

5 A Oh, yes, sir. They're sealed up and the only way
6 you can tamper with it really is if the seal were
7 torn showing that it would have been opened, but it
8 was sealed.

9 Q Did it show that it was torn or anything?

10 A No, sir.

11 Q Once you received it, what did you do with it?

12 A At that point I left the hospital and traveled back
13 to our parol office, which is in Lexington, where
14 we log in our evidence to be secured.

15 Q And did you do that with this particular evidence?

16 A Yes, sir, right away.

17 Q Right away. What type of locker is it?

18 A We have a -- we have a refrigerator with a lock on
19 it. It has a padlock on it. The only person -- I
20 think there's like two people that has the
21 combination for that lock. That's our supervisors.
22 If it is in use, then we have -- the refrigerator
23 is in use, you know -- which is an extension of our
24 wall lockers, which have padlocks on them as well.

25 Q So it was secured at the time, the locker, when you

1 did that?

2 A I don't remember right now.

3 Q Did it seem to be in proper working order when you
4 deposited the evidence there?

5 A Yes, sir, all those locks are -- I mean, they are
6 in proper working order.

7 Q So the locks are in the refrigerator itself?

8 A That is correct.

9 Q Okay. I want to hand you a document that is marked
10 as State's Exhibit Number 11 for I.D. only. Do you
11 know -- do you recognize that document?

12 A Yes, sir.

13 Q Okay. And what is it?

14 A This is an evidence chain of custody that we use
15 for any sort of evidence we may come in contact
16 with.

17 Q And does your name appear and your signature appear
18 on that document anywhere?

19 A Yes, it does.

20 Q Okay. And where does it appear from? Where does
21 it appear?

22 A Well --

23 Q What does it show basically?

24 A Basically what this document shows is, like I said,
25 it was a chain of custody. So it's going to show

DANIEL DODSON -- DIRECT -- MR. MOBLEY

397

- 1 every hand that the evidence has been placed in.
2 It's going to have their name, who, you know, who
3 they gave it to, and then subsequently who -- how
4 it was passed along. This shows Lance Corporal
5 Baker giving the evidence to me at the E.R.~---~
6 Q Okay.
7 A -- on that day and then me logging it into the
8 evidence locker at the Highway Patrol office that
9 same day.
10 Q That same day. Now, does your signature appear
11 there as well?
12 A Yes, sir, it does.
13 Q Is it beside your name?
14 A It is.
15 Q And that's to show that you personally signed that?
16 A That's correct.
17 Q Okay. Did you come back in contact with any of
18 that evidence any time thereafter?
19 A No, sir.
20 Q Okay.
21 A Once it's locked away, that's -- I don't have the
22 combination to get in there.
23 Q Okay.
24 A So it's secured.
25 MR. MOBLEY: Nothing further, Your Honor.

1 THE COURT: Thank you, Solicitor. Mr. Madsen.

2 CROSS EXAMINATION

3 BY MR. MADSEN:

4 Q Trooper Dodson, you end up -- do you specifically
5 remember being involved in this case and going to
6 the E.R. and coming back or are you just basing it
7 on what you see on the sheet?

8 A I remember being called to meet Trooper Baker that
9 day.

10 Q And then once you got that box from him, you don't
11 open it up, so you don't know what's inside of it
12 personally; correct?

13 A I guess not. I mean, it's totally sealed up, and
14 I'm not to tamper with it.

15 Q And you take it straight from the hospital back to
16 where at?

17 A Our post office where we have -- when I say post
18 office, I mean our patrol office where we log in
19 our evidence.

20 Q And where is that at?

21 A It's right across the street. I don't know exactly
22 where we're at, but --

23 Q Oh, by the Lexington Police Department, that
24 municipal building, I guess?

25 A Yes, sir, our office is on the third floor.

DANIEL DODSON -- CROSS -- MR. MADSEN

399

1 Q And so you have listed on there -- do you recall
2 when you get that box where you end up putting it?

3 A I mean, it says that I put it in the patrol locker.
4 That would be where I put it at. I can't remember
5 those specifics.

6 Q Okay. So as far as -- you don't know if you put it
7 in a refrigerator or if you put it in an actual
8 locker then, do you?

9 A Well, the refrigerator is an extension of our
10 lockers. They all have locks on them. As far as
11 remembering exactly, no, sir, I do not.

12 Q So you could have put it in the refrigerator, but
13 you could have also put it in a locker; correct?

14 A Well, if the refrigerator was already in use,
15 there's no way for me to get in the refrigerator,
16 so I would have had to put it in the locker, but at
17 this point I don't remember.

18 Q Okay.

19 MR. MADSEN: That's all the questions I
20 have, Your Honor.

21 THE COURT: Redirect?

22 MR. MOBLEY: Nothing, Your Honor.

23 THE COURT: Thank you. Thank you very much,
24 Trooper Dodson. You may step down.

25 (Witness leaves the witness stand.)

1 THE COURT: All right, Solicitor, you may call
2 your next witness.

3 MR. MOBLEY: The State calls Sergeant Shelton.

4 THE COURT: Come around and be sworn, please,
5 Sergeant Shelton.

6 CHRISTOPHER SHELTON, being
7 first duly sworn, testifies as follows:

8 CLERK: Have a seat, please. Once you are
9 seated, state your full name, spelling your last on the
10 record.

11 THE WITNESS: My name is Christopher Shelton.
12 The last name is S-H-E-L-T-O-N.

13 DIRECT EXAMINATION

14 BY MR. MOBLEY:

15 Q Sergeant Shelton, where are you currently employed?

16 A The South Carolina Highway Patrol.

17 Q And you are employed as -- your position is a
18 sergeant, correct?

19 A That is correct.

20 Q Now, some of your duties -- what are some of your
21 duties?

22 A Basically I'm one of the county supervisors. I do
23 a lot of administrative work. I do go out here and
24 investigate traffic collisions, write tickets. One
25 of my primary duties is the evidence custodian.

CHRISTOPHER SHELTON -- DIRECT -- MR. MOBLEY

401

1 Q Okay. So you stated evidence custodian?

2 A That's correct.

3 Q And what does that mean?

4 A All of our evidence is obviously put into a locker,
5 drop box, refrigerator or whatnot. I will take
6 that evidence out, enter it in if it needs to be
7 stored in our office or if it needs to be
8 transferred to S.L.E.D., which, in turn, that would
9 go to Central Evidence.

10 Q Okay. Now, I'm going to take you back to
11 August 1st, 2009, the early morning hours. Was
12 there an occasion that you had to handle some
13 evidence that is pertaining to Christopher Manning?

14 A Yes.

15 Q I want to hand you a document that is listed as
16 State's Exhibit Number 11 for I.D. only. Can you
17 tell me what that form is?

18 A This is the Department of Public Safety chain of
19 custody evidence form that is required as far as
20 for the trooper to fill out. It would be filled
21 out with pertinent information as far as the
22 violator's name and the arresting officer.

23 It goes down to the portion where it describes
24 the evidence that is being entered in, and then it
25 goes into the portion of where it would -- it goes

- 1 into the portion of the chain to where it was
2 received from the trooper, in chronological order,
3 all the way to the point of --
- 4 Q So it's a tracking device?
- 5 A Correct.
- 6 Q To show each individual that touches the item?
- 7 A Right.
- 8 Q Okay. Now, on this particular form, do you see
9 your name indicated there?
- 10 A I do.
- 11 Q And on which line do you see your name indicated?
- 12 A It would be on the third line, the middle block.
- 13 Q Okay. Now, what is that showing?
- 14 A That's showing that the evidence which is described
15 here, which is the two tubes of blood and the one
16 bottle of urine, was entered into the Lexington
17 H.P. evidence locker on 8/1/2009, and where I came
18 in on 8/3 of 2009, I retrieved it from the locker,
19 entered it in, and then transferred it to Central
20 Evidence.
- 21 Q Now, once you retrieved that evidence from that
22 particular locker, did it appear that it had been
23 tampered with or bothered in any way?
- 24 A No. In relation to this evidence here, the tubes
25 of blood and the bottle of urine was secured in a

CHRISTOPHER SHELTON -- DIRECT -- MR. MOBLEY

403

1 S.L.E.D. biological specimen kit, which is actually
2 sealed. When I retrieved it from the locker, it
3 was sealed with a label affixed.

4 Q Okay.

5 A And obviously the only thing that I could go by was
6 the description on the chain of custody here as far
7 as the evidence to say what is actually in the box
8 because I don't know.

9 Q But you couldn't see it?

10 A I never broke the seal.

11 Q So the seal wasn't broken when you had retrieved it
12 from the locker?

13 A Correct.

14 Q And it was never broken when you passed it along to
15 the next individual?

16 A Yeah. The only thing I do is we have a system to
17 where, in order for us to track evidence basically
18 across the State within the Highway Patrol, I enter
19 this evidence in and it creates a -- I don't know
20 if you can see the bar code down here.

21 It creates this label here (indicating). I
22 affix the label to that piece of evidence.

23 Basically from this point forward, anything I
24 wanted to know about this particular case or
25 evidence, I can enter in the code that is listed

1 and basically find out anything I need to know
2 about it.

3 Q So you're really tracking this evidence to make
4 sure that it's not tampered with and that it's
5 always documented as to who touches it and when and
6 where?

7 A That's correct. This right here would actually --
8 any time this goes in and there's a movement made
9 of the evidence, it's time stamped. And, once
10 Central Evidence -- It goes from there to S.L.E.D.
11 At that point in time, it's kind of ceased on that
12 end.

13 Q When it went from you, who did you give it to?

14 A I gave it to Lance Corporal R.A. Frick at Central
15 Evidence who took possession of it.

16 Q And he took possession of it. When you hand
17 delivered it to him, you did not -- it wasn't
18 tampered with by you, correct?

19 A That's correct.

20 Q And did it appear that Frick did anything to tamper
21 with that particular evidence?

22 A No, he would actually do basically the same thing I
23 did from the get-go.

24 Q Okay.

25 MR. MOBLEY: Nothing further for this witness

1 Your Honor.

2 THE COURT: Thank you, Solicitor. All right.

3 Mr. Madsen.

4 CROSS EXAMINATION

5 BY MR. MADSEN:

6 Q Trooper Shelton, how are you doing?

7 A I'm doing good.

8 Q So you actually end up taking control of this box
9 some two days later, correct?

10 A That's correct.

11 Q And I guess it's your post? You're the evidence
12 custodian for that entire post?

13 A That's correct. I'm the primary and then we have a
14 backup.

15 Q Who's the backup?

16 A Sergeant Levine.

17 Q So the two of you operate as the evidence custodian
18 for the entire post. Is there a particular troop
19 that is associated with that post?

20 A We're in Troop 1 and then we would be Post C in
21 Lexington.

22 Q Give me an idea who works out of your post. How
23 many troopers are we talking about that work out of
24 your post?

25 A Between 20 and 25.

1 Q I imagine there's quite a bit of evidence that
2 comes in to you initially?

3 A It varies.

4 Q And ultimately once you take this box out of the
5 locker, do you take it straight over to Central
6 Evidence?

7 A On this day in question, I did, yes.

8 Q And that's, I think, at Bluff or Shop Road?

9 A It's at Shop Road.

10 Q And do you recall specifically where you get this
11 box from?

12 A The evidence locker.

13 Q Okay. So it's actually in the evidence locker?

14 A Right.

15 Q And you take it and you just deliver it to, I
16 guess, Trooper Frick at the Central Evidence
17 storage?

18 A I take it out, enter it into our system, bar code
19 it, and then from there I move it to Shop Road.

20 MR. MADSEN: That's all the questions I
21 have.

22 THE COURT: Redirect?

23 MR. MOBLEY: None, Your Honor.

24 THE COURT: Thank you. Thank you very much,
25 Sergeant. You may step down.

RODNEY FRICK -- DIRECT -- MR. MOBLEY

407

1 (Witness leaves the witness stand.)

2 MR. MADSEN: Judge, may we approach?

3 THE COURT: Yes, sir.

4 (Whereupon there is a bench conference off the
5 record in the presence of the jury but out of the
6 hearing of the jury.)

7 THE COURT: Call your next witness, Solicitor.

8 MR. MOBLEY: The State would call Corporal
9 Frick to the stand.

10 RODNEY ALLEN FRICK, being
11 first duly sworn, testifies as follows:

12 CLERK: Have a seat, please, sir. Once you
13 are seated, state your full name, spelling your last on
14 the record.

15 THE WITNESS: Rodney Allen Frick, F-R-I-C-K.

16 DIRECT EXAMINATION

17 BY MR. MOBLEY:

18 Q Lance Corporal Frick, do you work for the South
19 Carolina Highway Patrol?

20 A Yes, sir, I do.

21 Q Back on August 1st, 2009, were you working there?

22 A Yes, I was.

23 Q Okay. Did you have the occasion -- as a lance
24 corporal, do you have the occasion of transporting
25 evidence at times, from time to time?

1 A Yes, sir.

2 Q And did you have the occasion to transport some
3 evidence affiliated with the Christopher Manning
4 case?

5 A Yes, sir, I did.

6 Q Okay. I want to hand you a document. Do you
7 recognize -- and I'm handing you State's Exhibit
8 Number 11 that's identified as identification, I.D.
9 only. Is that the form that was used for the
10 evidence in Mr. Christopher Manning's case?

11 A Yes, sir, it's a chain of custody.

12 Q Okay. Does your name appear on this particular
13 document?

14 A Yes, sir, it does.

15 Q And tell me why your name appears there and what is
16 it showing?

17 A My name appears here. I received this evidence
18 from Sergeant Shelton with the Highway Patrol, and
19 I entered it into our S.L.E.D. -- our lab system.
20 And once I did that, I placed it into our safe
21 refrigerator at the Central Evidence facility.

22 Q Now, when you received that evidence, did it appear
23 to have been tampered with in any way?

24 A No, sir.

25 Q And once you did receive it, did you tamper with it

RODNEY FRICK -- DIRECT -- MR. MOBLEY

409

1 in any way?

2 A No, sir.

3 Q And the evidence that you are speaking of is what?

4 A It's two tubes of blood and one bottle of urine.

5 Q And that's located in a box, correct?

6 A That's correct.

7 Q And there's a seal there?

8 A That's correct.

9 Q Had it been broken?

10 A No, sir.

11 Q Okay. And you state that once you received it, you
12 placed it where?

13 A Into the safe at the Central Evidence facility and
14 located inside the safe is a refrigerated unit
15 where the blood was placed.

16 Q Okay. And did it appear that that refrigerated
17 unit was working properly at the time?

18 A Yes, sir.

19 Q Now, once it was placed in the safe, does your name
20 appear again?

21 A Yes, sir. My name appears again in moving it from
22 the safe refrigerator and transporting it to Amy
23 Stephens at S.L.E.D.

24 Q Once you received it -- once you retrieved it from
25 the refrigerator, did it appear that anything had

1 been tampered with?

2 A No, sir.

3 Q Was the refrigerator still working properly?

4 A Yes, sir.

5 Q Okay. Now, you state that you transported it to

6 Amy Stephens at S.L.E.D.?

7 A That's correct.

8 Q Is that the proper policies and procedures of the

9 Highway Patrol?

10 A Yes, sir, it is.

11 Q Who is Amy Stephens?

12 A She works for S.L.E.D. in the --

13 THE COURT: Would you shut that door, please.

14 Who is that, Mr. Bailiff? Ask him to please not do that

15 while court is in session. Sheriff, would you speak to

16 him, please.

17 Go right ahead, Solicitor.

18 MR. MOBLEY: Thank you, Your Honor.

19 BY MR. MOBLEY:

20 Q Who is Amy Stephens?

21 A She works for S.L.E.D. in the intake department.

22 Q Okay. And is she one of the individuals that takes

23 in evidence that you all submit?

24 A That's correct.

25 Q Now, once you delivered it to her, what did you --

RODNEY FRICK -- DIRECT -- MR. MOBLEY

411

1 what happened then? How do you go about the
2 process of delivering evidence to Amy Stephens?

3 A Once it's delivered to the S.L.E.D. intake, Amy
4 Stephens, they take control of the evidence.

5 Q They take control of the evidence?

6 A That's correct.

7 Q Is there any type of log-in form or anything that
8 is provided?

9 A Yes, sir. Whenever we receive evidence from the
10 troopers in the field, we fill out a S.L.E.D. --
11 our lab report and print out a package slip, which
12 we take also along with the evidence to S.L.E.D.

13 MR. MOBLEY: Begging the Court's indulgence
14 just briefly, Your Honor.

15 THE COURT: Yes, sir.

16 (Attorneys confer.)

17 BY MR. MOBLEY:

18 Q Trooper Frick, I'm going to present you with a
19 document that is marked as State's Exhibit Number
20 11 for I.D. only. When you submitted that evidence
21 to Amy Stephens, was there anything that you have
22 to sign indicating that you had delivered it there?

23 A Yes, sir. They have a name pad or electronic sign
24 pad where you sign on that pad when they're
25 submitting the evidence to you.

1 Q And that is to indicate that the evidence was
2 delivered there?

3 A Yes.

4 Q Okay. And, on this particular form, does it appear
5 that it indicates that the evidence was delivered
6 there?

7 A Yes, sir.

8 Q It has their signature, and I believe your
9 signature is beside it?

10 A Yes, sir.

11 Q And what time appears there?

12 A It's 1:02 p.m.

13 MR. MOBLEY: Nothing further for this witness,
14 Your Honor.

15 THE COURT: Thank you, Solicitor. Mr. Madsen.

16 **CROSS EXAMINATION**

17 BY MR. MADSEN:

18 Q Trooper Frick, you are one of the evidence
19 custodians at the Highway Patrol Central Evidence
20 storage facility?

21 A Yes, sir, that's correct.

22 Q And you had indicated that you had received a box
23 related to this case, correct?

24 A Yes, sir, that is correct, a D.U.I. kit.

25 Q And you had placed that in the safe?

1 A That's correct, inside the refrigerated unit that
2 is inside the safe.

3 Q Okay. And so what you are telling us is that you
4 placed it in the refrigerated unit inside the safe?

5 A I remember placing it in there.

6 Q You remember this particular case and this
7 particular box?

8 A We place all biological evidence inside the safe.

9 Q And that's normally what you do, correct?

10 A Yes, sir.

11 Q But you don't remember specifically this one but
12 just that it's your protocol to do that?

13 A Yes, sir.

14 Q And, of course, when you're dealing with the blood
15 or urine samples, it's important that you keep it
16 refrigerated. And what is the reason for that?

17 A I'm not an analyst. I don't know the answer to
18 that question.

19 Q You don't know the reason that y'all put it in the
20 refrigerator?

21 A It's our policy at Central Evidence to do that.

22 Q But you have no idea what the reason is for that
23 policy?

24 A No, sir.

25 Q But that's what you did then? You take it and put

1 it in the refrigerator and later you deliver it to
2 S.L.E.D., correct?

3 A That's correct.

4 MR. MADSEN: That's all the questions I
5 have.

6 THE COURT: Redirect, Solicitor?

7 **REDIRECT EXAMINATION**

8 BY MR. MOBLEY:

9 Q Trooper Frick, you followed those policies as
10 stated by the South Carolina Highway Patrol;
11 correct?

12 A Yes, sir, I did.

13 MR. MOBLEY: Nothing further, Your Honor.

14 THE COURT: Thank you. Thank you very much,
15 Corporal Frick. You may step down.

16 (Witness leaves the witness stand.)

17 THE COURT: Mr. Foreman, and ladies and
18 gentlemen of the jury, perhaps now would be a good time
19 for us, for y'all to take your luncheon recess. I'll
20 remind you of my instructions during this recess.

21 Please remember, you are not to discuss this
22 case with others. That includes your fellow jurors,
23 family, friends or anyone else. If anyone tries to talk
24 with you about the case, please let me know immediately.

25 You are not to read or listen to any news

1 reports about the case should there be any. Also,
2 please remember my instructions on the use of computers
3 or cellular phones.

4 You are not to use any electronic device with
5 communication capabilities to look up any evidence about
6 a party, about the case or about any information that
7 you think might be helpful in deciding the case. Do not
8 do any investigation on the internet or otherwise.

9 Please remember to keep an open mind about the
10 case, and do not begin your deliberations until I
11 instruct you to do so. I would ask that you please
12 leave your notes upside-down on your chair. The Clerk's
13 office will secure them during the luncheon recess.

14 I have a motion I need to take up, so I'll
15 give y'all a little bit of an extended lunch break. I
16 usually take an hour and a half, but since I have this
17 motion, perhaps I'll have y'all come back, instead of
18 2:30, about a quarter to 3:00.

19 That's an hour and -- that's a little over an
20 hour and a half if I've done my math right. But be that
21 as it may, I hope y'all have a pleasant lunch. Thank
22 you very much.

23 (The jury is excused for lunch at 12:53 p.m.)

24 THE COURT: Mr. Madsen I believe you had a
25 motion --

1 MR. MADSEN: Judge, we --

2 THE COURT: -- or an issue. I'm not sure.

3 MR. MADSEN: We wanted to renew our objection
4 under 56-5-2946. As Your Honor is aware, that was the
5 motion on probable cause in order to obtain a blood
6 sample.

7 Your Honor heard testimony on that, and
8 included in that testimony was that Trooper Hallman had
9 said that he had received statements from Trooper Baker,
10 that Trooper Baker had overheard saying my client was
11 the driver of the automobile, and that was the basis for
12 him directing Trooper Baker to take the blood.

13 We have since talked with Trooper Baker, and
14 Trooper Baker denies ever making any statements or
15 hearing anything from my client, Judge. So we would
16 renew that objection.

17 We certainly think that not only with that,
18 but that would certainly be Brady information because
19 that is a -- that is impeachment evidence that should
20 have been turned over by the State that one witness
21 says -- one witness says a certain thing, and the other
22 witness -- one witness says he got information from
23 Mr. Manning, and the other witness says that's not true,
24 and these are both troopers, Judge. So we would renew
25 that motion for suppression.

1 THE COURT: All right. Well, you may call
2 your witness.

3 MR. MADSEN: I don't know if Trooper
4 Baker is still here or not.

5 (Pause.)

6 MR. MOBLEY: Your Honor, if I may.

7 THE COURT: Yes, sir.

8 MR. MOBLEY: I think what Mr. Madsen is
9 talking about, he totally misunderstood the testimony
10 during the actual hearing and during the testimony in
11 the case in chief.

12 From my recollection of the events during the
13 pretrial motion, I don't think Trooper Baker -- that
14 Trooper Hallman stated that the Defendant made any
15 statements to Trooper Baker at that particular time.

16 Now, I think what was said at that particular
17 time was Trooper Hallman, from his understanding, was
18 that he -- well, first he talked about him receiving the
19 statements from E.M.S. workers and him providing that
20 information to Trooper Baker during that particular
21 hearing.

22 But I don't recall any testimony saying that
23 Trooper Baker got testimony, some statements from
24 Manning, Mr. Manning, and utilized that to have probable
25 cause.

1 The purpose of Hallman calling Trooper Baker
2 was to tell him, I've already got probable cause. Go
3 ahead and withdraw his blood. So I think Mr. Madsen has
4 totally misinterpreted the hearing or what he heard or
5 maybe the context that it was being offered in at the
6 particular time, Your Honor.

7 Maybe I'm wrong, but that's what I recall, and
8 that was the type of testimony that we were trying to
9 offer it for. If I'm incorrect, I apologize to the
10 Court, but that's what I recall, Your Honor.

11 THE COURT: Mr. Madsen.

12 MR. MADSEN: Well, we've got a great court
13 reporter.

14 THE COURT: I don't know what that means.

15 MR. MADSEN: And she can certainly play back
16 the testimony for us, Judge.

17 THE COURT: All right. Madame Court Reporter,
18 we're going to take about a 15-minute recess, you
19 included.

20 COURT REPORTER: Yes, sir.

21 THE COURT: THE COURT: You're going to take a
22 15-minute recess. I'm ordering you to do that.
23 Thereafter, I want you to key up the testimony of
24 Trooper Hallman. Where is Trooper Baker?

25 UNIDENTIFIED MAN: He is on I-77 around

1 Leesburg Road.

2 MR. MOBLEY: Can we get him here in fifteen
3 minutes? I don't know --

4 THE COURT: Do you want him here?

5 MR. MADSEN: Yes, sir.

6 THE COURT: All right. If he would grace us
7 with his presence. I don't mean that being a smart
8 aleck either because I'm sure he thought he was being
9 excused, and he was. If you would ask him if he could
10 come back, we'll take this matter up.

11 UNIDENTIFIED SPEAKER: Yes, sir, Your Honor.

12 MR. MOBLEY: Thank you, Your Honor.

13 THE COURT: All right. We'll check that
14 record, and let's see first where we're at as far as the
15 record is concerned, but I think our court reporter
16 probably needs a recess, and I do, too. Thank you very
17 much. Court will be in recess for 15 minutes.

18 MR. MOBLEY: Thank you, Your Honor.

19 (Whereupon, there is a recess.)

20 THE COURT: All right. Did you find the spot
21 I was referring to, Madame Court Reporter?

22 COURT REPORTER: I'm ready, Judge.

23 (The following portion of the testimony of
24 Jeffrey Brian Baker is played for the Court.)

25 Q Now, what made you think that Mr. Manning was the

1 driver?

2 A Well, Trooper Baker called me from the hospital and
3 stated that when he went into the trauma area, I
4 believe that he heard some statements about, You
5 know, me and my buddy were riding to the lake, and
6 stuff of that nature.

7 I can't remember exactly what he told me
8 because it's been almost a year, and I don't want
9 to speculate, but he did make reference to hearing,
10 I believe, some comments made by Mr. Manning that
11 he was the driver. Also, it was his girlfriend's
12 vehicle.

13 Q And how did you know that?

14 A We ran the tag.

15 Q Okay.

16 A Also, with the witness, Ms. Fairchild, I found out
17 that the vehicle was Mr. Manning's girlfriend's.
18 So with -- and he was in the vicinity of his work,
19 and that combined with his girlfriend's vehicle and
20 one he normally drove to work, according to the
21 witnesses, I took that and was led to believe that
22 he was the driver --

23 Q Okay.

24 A -- and still do.

25 Q Now, when you ran the registration for the vehicle,

1 did it match any information that Mr. Manning had
2 at the particular point in time?

3 A His address.

4 Q So the address was the same?

5 A Yes, sir. The address for the registered owner was
6 to a Ms. April Rabon at ■ Old Duncan Road in
7 Leesville.

8 Q Okay.

9 A And also the address that was given to us by E.M.S.
10 for Mr. Manning was ■ Old Duncan Road in
11 Leesville.

12 Q So those were exactly the same?

13 A Yes, sir.

14 Q So Mr. Manning's address and the vehicle
15 registration was the same, the one that was just
16 involved in this incident?

17 A Yes, sir.

18 Q Okay. Now, at some point, you have Trooper Baker
19 go to Columbia to check on Mr. Manning?

20 A Yes, sir.

21 Q And he hears these statements about Mr. Manning
22 saying that he's driving. You don't know who he
23 hears these statements from though?

24 A No, sir, I don't.

25 (The testimony is concluded.)

1 THE COURT: All right. And that's what my
2 notes reflected. That's the part I recall in the
3 testimony. Me and my court reporter had a brief
4 conversation before we came back out here, and I think
5 perhaps there was some cross examination, brief cross
6 examination, about that at the end of your cross
7 examination and a little bit of redirect. Is that what
8 you are referring to though, Mr. Madsen?

9 MR. MADSEN: That's exactly what I'm
10 referring to, Your Honor.

11 THE COURT: All right. And I had that -- my
12 notes reflected that, not as well as obviously the court
13 reporter's. All right. Solicitor, do you care to
14 respond?

15 MR. MOBLEY: Yes, I do briefly, Your Honor. I
16 think the context during that particular question,
17 Trooper Hallman is referring to the statements not from
18 what Trooper Baker heard from the Defendant. Those
19 statements he referred to was from E.M.S., the E.M.S.
20 workers, hearing those statements from them about
21 Manning making statements. That's the context from my
22 gathering.

23 And what I was asking him at the time is the
24 context about he understood Trooper Baker heard prior
25 statements that Mr. Manning made to E.M.S. workers, that

1 he had heard some information about those statements to
2 the E.M.S. workers such as the ones we got in evidence,
3 I shouldn't have been driving. Man, I f-ed up. No, it
4 was just me and my buddy.

5 THE COURT: Well let's go back. Let's go back
6 and see what that question, what the question was that
7 that is responding to.

8 MR. MOBLEY: Okay. Yes, Your Honor.

9 THE COURT: Can we do that, Madame Court
10 Reporter?

11 COURT REPORTER: Yes, sir.

12 QUESTION: Now, what made you think that
13 Mr. Manning was the driver?

14 ANSWER: Well, Trooper Baker called me from
15 the hospital and stated that when he went into the
16 trauma area, I believe that he heard some statements
17 about, You know, me and my buddy were riding to the
18 lake, and stuff of that nature.

19 I can't remember exactly what he told me
20 because it's been almost a year, and I don't want to
21 speculate, but he did make reference to hearing, I
22 believe, some comments made by Mr. Manning that he was
23 the driver. Also, it was his girlfriend's vehicle.

24 THE COURT: Let me make sure I understand,
25 Solicitor. Your position is Trooper Hallman's testimony

1 is that in his conversation with Trooper Baker that he
2 heard some statements in the trauma room, not
3 necessarily from the Defendant, and that there were
4 comments by Manning that he was driving, not necessarily
5 that he heard them?

6 MR. MOBLEY: Yes, that's correct. It's not
7 Trooper Baker hearing those specific statements from
8 Manning, but he heard some statements that Manning
9 makes, and they are somehow transferred to Trooper Baker
10 which is then conveyed to Trooper Hallman at that
11 particular time. Now, that is my understanding of the
12 line of questioning during that particular hearing.
13 That's what I was looking at, trying to get at.

14 THE COURT: All right. Mr. Madsen.

15 MR. MADSEN: It sounded like, and Your
16 Honor made reference to it in your ruling, that
17 ultimately Trooper Hallman says he gets statements
18 overheard by Trooper Baker, and that was the basis for
19 the decision then for the probable cause to draw the
20 blood.

21 That was my understanding of that question and
22 what he got. There's no reference to any statements
23 from E.M.S. He's asked, you know, What do you get? I
24 talked with Trooper Baker, and he tells me he was giving
25 statements about him and his buddy going to the lake and

JEFFREY BAKER -- IN CAMERA -- MR. MADSEN

425

1 a few other things like that. There's no reference to
2 E.M.S. there. And Your Honor then went on and, as far
3 as establishing probable cause, Your Honor spoke about
4 that in your ruling.

5 THE COURT: All right. You can call your next
6 witness.

7 MR. MADSEN: Is Trooper Baker here?

8 MR. MOBLEY: Judge, Trooper Baker just stepped
9 off the elevator.

10 (Pause.)

11 THE COURT: All right. Thank you. Thank you
12 for returning back to us too, Trooper Baker.

13 All right, Mr. Madsen, Trooper Baker is here.

14 MR. MADSEN: Judge, we'd call him back to the
15 stand, Your Honor.

16 THE COURT: All right. If you would come back
17 around, please, and you are still under oath. Thank
18 you again for returning.

19 JEFFREY BRIAN BAKER, having
20 been previously duly sworn, resumes the witness stand
21 and testifies as follows:

22 IN CAMERA EXAMINATION

23 BY MR. MADSEN:

24 Q Trooper Baker, when you are at the hospital, I
25 think you had previously testified that my client

1 was incoherent; correct?

2 A Yes, sir.

3 Q You don't hear any statement that he makes at any
4 point in time, do you?

5 A None that I recall besides, you know, the sounds
6 that he makes.

7 Q So to say that you had called Trooper Hallman and
8 said that this guy had been talking about driving
9 or going to the lake, that's not true; is it?

10 A I don't recall. I don't recall specifics about the
11 conversations I had with Trooper Hallman.

12 Q Well, obviously in a felony D.U.I., someone
13 admitting to driving the automobile would be
14 something very important to you as a trooper;
15 right?

16 A Yes, sir.

17 Q And it would be normal that you would document
18 something like that when driving is an issue,
19 correct?

20 A Yes, sir.

21 Q And you don't do that anywhere in any kind of
22 report?

23 A In this case or --

24 Q Yeah, this case.

25 A No, sir, I didn't make any notes.

JEFFREY BAKER -- IN CAMERA -- MR. MOBLEY

427

1 Q And you don't recall any kind of statements that my
2 client makes that day because I guess he's
3 incoherent or unconscious --

4 A Yes, sir.

5 Q -- like you testified to, right?

6 A Yes, sir.

7 MR. MADSEN: That's all I have, Judge.

8 THE COURT: All right. Solicitor.

9 IN CAMERA EXAMINATION

10 BY MR. MOBLEY:

11 Q Trooper Baker, did you hear about the statements
12 that were provided by Mr. Manning to first
13 responders at any time?

14 A No, sir, not that I recall.

15 Q You don't recall receiving or hearing anything
16 about statements that he had stated that night?

17 A No, sir.

18 Q And do you recall anything about the conversation
19 that you had with Trooper Hallman?

20 A That he had a collision, one-car collision, off the
21 roadway. The passenger was deceased at the scene.
22 The driver had been transported to Richland E.R.,
23 and he asked me to go take care of that portion of
24 it because he was busy at the collision scene.

25 Q Okay. Now, when he told you to go take care of

1 that portion of it, was he directing you that this
2 was the driver?

3 A Yes, sir.

4 Q Okay. So he had -- your purpose at that time was
5 to go withdraw blood, not to establish probable
6 cause at the time?

7 A I just responded to the hospital. And based on my
8 observations and the information that he had given
9 me, you know, it was my belief that he was under
10 the influence, and we went forward with the blood
11 draw.

12 Q Well, what information was it that he had given
13 you; do you recall?

14 A No, sir, just information about the wreck and that
15 he was the driver.

16 Q You don't recall specifically?

17 A No.

18 Q Okay. But he told you that he was the driver?

19 A Yes, sir.

20 Q Okay.

21 MR. MOBLEY: Nothing further, Your Honor.

22 THE COURT: Redirect?

23 **IN CAMERA EXAMINATION**

24 BY MR. MADSEN:

25 Q You don't have any independent -- any evidence that

JEFFREY BAKER -- IN CAMERA -- MR. MADSEN

429

1 you gathered telling you that morning that my
2 client was the driver, correct?

3 A No, sir, not beyond what was told to me by Trooper
4 Hallman.

5 Q Right. But it was just a statement that he's the
6 driver, nothing that you independently had?

7 A Not that I recall, no, sir.

8 MR. MADSEN: That's all the questions I have.

9 THE COURT: Anything further, Solicitor?

10 MR. MOBLEY: Nothing, Your Honor.

11 THE COURT: All right. Thank you very much
12 again, Corporal Baker. May he be excused?

13 MR. MOBLEY: We would like to have him
14 retained at this moment, please.

15 THE COURT: All right. If you would hang
16 around with us please, we would appreciate it. Thank
17 you very much. You may step down.

18 (Witness leaves the witness stand.)

19 THE COURT: Mr. Madsen.

20 MR. MADSEN: Judge, I would renew my
21 objection on the blood draw under 56-5-2946. Your Honor
22 had even talked about -- or from what I recall, we had
23 talked about utilizing hearsay within that hearing out
24 of the Court's -- or excuse me -- out of the jury's
25 presence.

1 We do not believe that the officer, Officer
2 Baker, had probable cause to believe that my client was
3 the driver of a felony D.U.I. and therefore should not
4 have gotten blood.

5 We renew our motion to suppress that. There's
6 certainly an underpinning of a Brady violation because
7 there's a distinct difference between the testimony of
8 Trooper Hallman and the testimony of Trooper Baker.

9 THE COURT: You're going to have to explain
10 several of those things to me then, Mr. Madsen. Where
11 is the Brady violation? Explain that to me on the
12 record.

13 MR. MADSEN: Well, I certainly think that
14 under Brady or Kyles v. Whitley, if one witness says
15 another witness made statements to him which go to the
16 guilt of driving and that witness denies those
17 statements, I certainly think that the State has a duty
18 to turn that over to the defense.

19 THE COURT: He didn't -- He didn't say those
20 statements weren't made. He said, None that I recall,
21 and I don't recall, unless I didn't hear the same
22 testimony

23 That may be a Brady violation. I'm not saying
24 it's not. I'm just asking those questions. I mean, you
25 asked him, Well, is that the truth, and he

1 said, Well, I don't recall.

2 MR. MADSEN: And, Judge, I don't differ with
3 your recollection of it. We believe that is a Brady
4 violation under Kyles v. Whitley.

5 THE COURT: All right. Solicitor.

6 MR. MOBLEY: Your Honor, first and foremost,
7 I'd like to adamantly deny any accusation of a Brady
8 violation. I think that is very disingenuous. This
9 particular motion that he is speaking of, that's my
10 first time hearing about it as well.

11 I've always been upfront in any of my cases,
12 especially with the Chief Public Defender of this
13 circuit here, knowing that anything in my file has been
14 turned over.

15 He, first and foremost, came to my office at
16 the invitation of me. We set up a time. He went
17 through my entire booklet, except for my personal notes
18 that I was making for trial. So I take strong exception
19 to that particular issue itself. Therefore, I want to
20 place that on the record.

21 Secondly, Your Honor, Mr. Madsen, at his own
22 choosing, decided not -- that Trooper Baker wasn't
23 necessary to be called. He acquiesced to the
24 utilization of possible hearsay through Trooper Hallman.
25 That was the mistake of the Public Defender, nothing

1 that I have done wrong or my troopers themselves.

2 He had the option of calling Trooper Baker up
3 to answer or ask any questions that he wanted to. He
4 chose not to do that. That was at the peril of himself,
5 not the Solicitor's office or the Court or anything of
6 that nature, Your Honor. So I would just like to make
7 sure that that is clear as well.

8 And even in this particular hearing, he chose
9 not to have Trooper Hallman called up to answer any
10 questions about those particular statements, even after
11 this particular motion has ended at this point and he
12 has made his motion and argued it.

13 To this point he still hasn't called Trooper
14 Hallman up, Your Honor. So I don't think it's a Brady
15 violation. I think the motion needs to be respectfully,
16 Your Honor, denied.

17 Probable cause has been established in front
18 of the jury through the case in chief by both Trooper
19 Hallman -- or excuse me -- probable cause is established
20 by Trooper Hallman during the case in chief, and Trooper
21 Baker, he observed the smell of alcohol on the
22 Defendant, and he was acting at the direction of Trooper
23 Hallman at this particular time.

24 We have already established that Manning was
25 the driver in this particular case. So respectfully,

1 Your Honor, we would ask that this motion is denied a
2 second time. I beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 (Pause.)

5 MR. MOBLEY: Also, Your Honor, Trooper Baker
6 is denying and does not have any independent
7 recollection about any statements. He had the
8 opportunity to cross him himself, and when he was asked
9 the questions directly from the Circuit Public Defender,
10 he states that he does not recall those statements and
11 does not have any independent knowledge of those.

12 THE COURT: As to the issue of probable cause
13 to arrest, I take it I'm looking at it from the point of
14 Corporal Baker being the arresting officer. When I look
15 at the cases, the fundamental question in determining
16 the lawfulness of an arrest is whether probable cause
17 existed to make the arrest.

18 Probable cause for a warrantless arrest exists
19 when the circumstances within the arresting officer's
20 knowledge are sufficient to lead a reasonable person to
21 believe that a crime has been committed by the person
22 being arrested, citing State v. George, 476 S.E.2d 903.

23 In a finding of probable cause for a
24 warrantless arrest for murder, whether probable cause
25 exists depends upon the totality of the circumstances

1 surrounding the information at the officer's disposal,
2 citing Beck versus Ohio, 379 U.S. 89, a 1964 United
3 States Supreme Court case.

4 A Court must consider whether at the moment
5 the arrest was made, the officers had probable cause to
6 make it, whether at that moment the facts and
7 circumstances within their knowledge and of which they
8 had reasonably, trustworthy information were sufficient
9 to warrant a prudent man into believing that the
10 appellant had committed an offense.

11 Also, in reading Jackson v. City of Abbeville,
12 which is a civil case, it has an excellent outline of
13 the law on probable cause. It states that probable
14 cause turns not on the individual's actual guilt or
15 innocence but on whether facts within the officer's
16 knowledge would lead a reasonable person to believe that
17 the individual arrested was guilty of a crime.

18 Probable cause is defined as a good faith
19 belief that a person is guilty of a crime when this
20 belief rests on such grounds as would induce an ordinary
21 prudent and cautious person under the circumstances to
22 believe likewise.

23 Probable cause is determined as of the time of
24 the arrest based on facts and circumstances objectively
25 measured and known to the arresting officer. The

1 determination of probable cause is not an academic
2 exercise in hindsight.

3 Also, there is a State v. Cuevas case,
4 C-U-E-V-A-S, which is a felony D.U.I. case, which again
5 states the police officer has probable cause to arrest
6 without a warrant where the officer in good faith
7 believes that the person is guilty of a felony, and the
8 officer's belief rests on such grounds as would induce
9 an ordinary prudent and cautious person under the same
10 circumstances to believe likewise.

11 There is also State v. Williams that holds the
12 proposition where an individual was arrested for driving
13 under the influence and the Court at that time
14 determined there was probable cause for arrest at the
15 scene of the accident, given the appellant's belligerent
16 attitude -- given the odor of alcohol and the
17 appellant's belligerent attitude indicating that he was
18 intoxicated at the time the wreck occurred.

19 So if I analyze it from the elements of a
20 felony D.U.I., the probable cause necessary to believe
21 that a crime has been committed and that the Defendant
22 committed the crime from either of the officers'
23 perspectives, taking first Trooper Hallman who goes to
24 the scene -- and looking back at my notes from the in
25 camera hearing, he is there to determine who the driver

1 is. He recognizes the victim, Mr. Hill.

2 He further states that he has information that
3 Manning was the driver from E.M.S. units. He then
4 states that he asked Trooper Antley to take photographs,
5 Trooper Stokes to mark the scene, and asked Trooper
6 Baker to proceed to Palmetto Richland Hospital to check
7 on Manning. There is his testimony concerning the
8 statements.

9 There is also testimony that the vehicle is
10 registered to April Rabon, that April Rabon's address is
11 the same as the address of the Defendant. Further, he
12 testifies there is a Bud Light bottle at the scene.

13 Even setting aside the statements, if they are
14 interpreted by Trooper Hallman, if his understanding was
15 that those statements were related -- he testified they
16 were related to him by Trooper Baker and were made by
17 Mr. Manning, even if that was misinterpreted, the Court
18 is not going to consider those statements for its
19 determination of probable cause at this juncture, given
20 the fact that it was the Defendant's girlfriend's
21 vehicle.

22 It was obvious the Defendant was involved in
23 the collision, that there was a beer bottle on the
24 scene. There were statements from E.M.S. units that
25 Manning was the driver. According to my notes, I think

1 there is sufficient probable cause for Trooper Hallman
2 to place Mr. Manning under arrest.

3 Now, if I take Trooper Baker as the arresting
4 officer, I directed him -- Trooper Hallman said, I
5 directed Trooper Baker. He is at the hospital. He
6 observes the Defendant in the trauma room. He observes
7 the injuries to the Defendant, trauma consistent with
8 him having been in an accident.

9 He is informed by another Highway Patrol
10 officer that Manning is the driver of the vehicle.
11 There is an odor of alcohol within three or four feet
12 that he smells emanating from the body of Manning.

13 I think there is also sufficient probable
14 cause as to Trooper Baker. Trooper Baker's testimony as
15 to the statements were basically -- his testimony is
16 there were no statements that he recalled, that he did
17 not recall.

18 So the Court's ruling is there is sufficient
19 probable cause to arrest Mr. Manning to believe that he
20 drove a vehicle while under the influence of alcohol
21 and/or drugs, and further that he did an act forbidden
22 by law or neglected a duty imposed by law and that the
23 act or neglect proximately caused the death of another
24 person, that being Mr. Hill.

25 As to Kyles v. Whitley, I will revisit that

1 and I'll read that case again over the lunch 40 minutes.
2 Anything further?

3 MR. MOBLEY: Your Honor, can you provide the
4 citation for Kyles v. Whitley?

5 THE COURT: I don't know. So I'm going to
6 have to look it up.

7 MR. MOBLEY: Okay. Thank you.

8 THE COURT: All right. Court will be in
9 recess until 2:45. Thank you very much.

10 (Whereupon there is a luncheon recess.)

11 THE COURT: All right. Let's see. We have
12 a motion on the table, Mr. Madsen, a Kyles versus
13 Whitley motion?

14 MR. MADSEN: Yes, sir, Judge. I thought
15 that they should have turned it over, but ultimately
16 Your Honor has ruled on that previous motion. So I
17 don't necessarily know if I see or foresee Your Honor
18 needing to rule on that.

19 THE COURT: All right. That was going to be
20 my next question. What do you think the remedy would be
21 at this point? All right. Anything from the State
22 before we bring out our jury, Solicitor?

23 MR. MOBLEY: Briefly, Your Honor. Per the
24 Court's---

25 THE COURT: I can't quite hear you.

1 MR. MOBLEY: I'm sorry. Per the Court's
2 order, we do have the D.M.V. custodians here. I have
3 two names. They are Marie Wearing, as well as Sharon
4 Madison. They are currently present and we will call
5 them next.

6 Secondly, just for housekeeping matters, does
7 the Court foresee that Trooper Baker would be needed at
8 any time? At this point, I don't intend to call him
9 unless the defense decides they would want him
10 present here for some reason.

11 MR. MADSEN: I don't need him present, but I
12 would like to keep him on subpoena and maybe have a
13 number that, if I need him, if something pops up, that
14 we could -- that I could get in contact with him.

15 MR. MOBLEY: That will be provided, Your
16 Honor.

17 THE COURT: All right. If you would just ask
18 him to make himself available should the Court need him
19 back. He is still under subpoena, but he does not have
20 to remain in the courthouse.

21 MR. MOBLEY: Yes, sir.

22 THE COURT: Who are those names again,
23 Solicitor? Marie---

24 MR. MOBLEY: Marie Wearing, W-E-A-R-I-N-G.

25 THE COURT: All right.

1 MR. MOBLEY: And Sharon Madison,
2 M-A-D-I-S-O-N.

3 THE COURT: And those are both employees of
4 the South Carolina --

5 MR. MOBLEY: Department of Motor Vehicles.

6 THE COURT: -- Department of Motor Vehicles?

7 MR. MOBLEY: Yes, sir.

8 THE COURT: Anything further, Solicitor?

9 MR. MOBLEY: No, Your Honor.

10 THE COURT: Mr. Madsen?

11 MR. MADSEN: If there are documents
12 associated that he intends to introduce, could I get
13 copies of those?

14 THE COURT: Sure. Do you have copies for
15 Mr. Madsen?

16 (ATTORNEYS confer.)

17 MR. MOBLEY: These were provided along with
18 the other ones. They were previously provided to him.

19 THE COURT: All right. Do you have copies?

20 MR. MADSEN: Judge, he previously
21 provided those to me in discovery. I just wanted to
22 see -- I wasn't sure if they are something different.
23 They are not.

24 THE COURT: Anything further before we bring
25 in our jury, Solicitor? Mr. Madsen?

1 MR. MOBLEY: Nothing, Your Honor.

2 MR. MADSEN: No, Your Honor.

3 THE COURT: All right. If you would bring us
4 our jury, please. Is Ms. Wearing and Ms. Madison in the
5 hallway?

6 MR. MOBLEY: Yes, Your Honor.

7 THE COURT: Would you have them just come in
8 and sit momentarily on the front row so we can introduce
9 them to the jury.

10 (The jury returns to the courtroom at
11 3:00 p.m.)

12 THE COURT: All right. Welcome back, ladies
13 and gentlemen. I hope y'all had a pleasant lunch.
14 There are two additional names I need to make you aware
15 of that are potential witnesses in the trial of this
16 case.

17 As you recall, I called out about 38 or 39
18 potential witnesses' names. Two additional potential
19 witnesses have been added to the witness list. Of
20 course, the question is if any member of the jury panel
21 is related by blood or marriage or close personal
22 friends of either of these two individuals whose names I
23 will now call.

24 I will ask them to stand and face you
25 when I call their name. Ms. Wearing; is that correct?

1 THE WITNESS: Yes.

2 THE COURT: Marie Wearing. This is
3 Ms. Wearing right here. Thank you. Thank you very
4 much, Ms. Wearing. You may be seated. And Ms. Sharon
5 Madison. This is Ms. Madison here. Thank you very
6 much, Ms. Madison.

7 They are both employees of the South Carolina
8 Department of Motor Vehicles. Again, is any member of
9 the jury panel related by blood or marriage or close
10 personal friends of either Ms. Wearing or Ms. Madison?
11 If so, please stand.

12 (There is no response.)

13 THE COURT: All right. Thank you. Thank you
14 very much. No one stands.

15 With that being said, Solicitor, you may call
16 your next witness, and whoever is not your next witness,
17 if you would advise them to wait outside the courtroom.

18 MR. MOBLEY: The State calls Marie Wearing to
19 the stand, Your Honor.

20 THE COURT: All right. If you would come
21 around for us, please, Ms. Wearing, and be sworn in.

22 MARIE WEARING, being
23 first duly sworn, testifies as follows:

24 CLERK: Have a seat right up there, please.
25 Once you're seated, state your full name, spelling your

MARIE WEARING -- DIRECT -- MR. MOBLEY

443

1 last.

2 THE WITNESS: Marie Wearing, W-E-A-R-I-N-G.

3 DIRECT EXAMINATION

4 BY MR. MOBLEY:

5 Q Ms. Wearing, where are you currently employed?

6 A The South Carolina Department of Motor Vehicles.

7 Q And how long have you been employed there,

8 Ms. Wearing?

9 A Twenty-one years.

10 Q And what is your current position there?

11 THE COURT: Excuse me. How long?

12 THE WITNESS: Twenty-one.

13 THE COURT: Twenty-one. Thank you.

14 BY MR. MOBLEY:

15 Q Would you like for me to pull down the mike for
16 you?

17 A Thank you.

18 Q And, Ms. Wearing, what is your current position
19 there?

20 A I'm custodian of drivers' records.

21 Q And as a custodian of drivers' records, what do you
22 do? What are some of your duties and
23 responsibilities?

24 A I clear -- I'm responsible for clearing and
25 reinstating --

1 COURT REPORTER: Wait a minute. I'm sorry. I
2 didn't hear you. Go ahead.

3 A -- suspended licenses and clear reinstated
4 licenses.

5 Q Now, do you have access to basically all
6 individuals who possess a driver's license here in
7 South Carolina?

8 A Yes.

9 Q Now, that access, is it kept on a server or in a
10 room or anything of that nature as pertaining to
11 the records of those drivers?

12 A Yes.

13 Q Do you have access to it?

14 A Yes.

15 Q Now, are those records kept in the regular course
16 of business that you have access to?

17 A Yes.

18 Q Now, Ms. Wearing, I want to present you with a
19 document that we are going to have marked as
20 State's Exhibit Number 12 for identification
21 purposes only.

22 COURT REPORTER: It would be Number 13. I had
23 marked 12 as something else that we haven't used yet.

24 MR. MOBLEY: I'm sorry, State's Exhibit Number
25 13 for identification only.

MARIE WEARING -- DIRECT -- MR. MOBLEY

445

1 (State's Exhibit Number 13 is marked for
2 identification.)

3 MR. MOBLEY: If I may approach the witness
4 Your Honor?

5 THE COURT: Yes, sir.

6 MR. MOBLEY: Thank you.

7 BY MR. MOBLEY:

8 Q Ms. Wearing, I'm handing you a document, State's
9 Exhibit Number 13. Without going into the contents
10 at this very moment, do you mind telling us what
11 that is in general terms?

12 A This is a copy of a driver's record.

13 Q Okay. Now, that particular record that you are
14 viewing, is it for a one Christopher D. Manning?

15 A That's correct.

16 Q Okay. Now, do you mind providing to the Court what
17 is indicated on that document as to the address
18 only?

19 A [REDACTED] Old Duncan Road, Leesville, South Carolina,
20 29070.

21 Q Thank you.

22 MR. MOBLEY: Nothing further for this witness.
23 Your Honor.

24 THE COURT: All right. Mr. Madsen.

25 MR. MADSEN: No questions, Your Honor.

1 THE COURT: Thank you. Thank you very much,
2 Ms. Wearing. Thank you for being with us today. You
3 may step down.

4 (Witness leaves the witness stand.)

5 THE COURT: Solicitor, you may call your next
6 witness.

7 MR. MOBLEY: Thank you, Your Honor. The State
8 calls Sharon Madison.

9 SHARON MADISON, being
10 first duly sworn, testifies as follows:

11 CLERK: Have a seat up there, please, ma'am.
12 Once you are seated, speak up loud and clear. State
13 your full name, spelling your last.

14 THE WITNESS: Sharon Madison, M-A-D-I-S-O-N.

15 **DIRECT EXAMINATION**

16 BY MR. MOBLEY:

17 Q Ms. Madison, where are you currently employed?

18 A The South Carolina Department of Motor Vehicles.

19 Q And how long have you been employed there?

20 A About 20 years.

21 Q Twenty years. And what is your current position
22 there?

23 A I'm a manager of the titles and registration
24 systems and also the custodian of records, of
25 vehicle records.

SHARON MADISON -- DIRECT -- MR. MOBLEY

447

1 Q Now, as the custodian of records, vehicle records,
2 what does that entail?

3 A That entails making sure that all of the records
4 that are stored in regards to vehicles titled and
5 registered in South Carolina is accurate and
6 complete.

7 Q Now, do you have access to all of those stored
8 records?

9 A Yes, I do.

10 Q And how are those records stored?

11 A They are stored electronically. Hard copies are
12 scanned into the system, and then we have a
13 database of all of the records with access to them.

14 Q Now, are those documents stored in the regular
15 course of business transactions?

16 A Yes, it is.

17 Q Now, Ms. Madison, what I would like to do is have
18 you look at a document I will have marked as
19 State's Exhibit Number 14 for identification.

20 (State's Exhibit Number 14 is marked for
21 identification.)

22 BY MR. MOBLEY:

23 Q I am showing you State's Exhibit 14 for
24 identification purposes only at this point. Do you
25 recognize what that document is?

1 A Yes, I do.

2 Q And in general terms what is it?

3 A It is a current plate history, license plate
4 history.

5 Q Okay. Now, is that a certified true copy of the
6 actual plate history as to the D.M.V.?

7 A Yes, it is.

8 MR. MOBLEY: Your Honor, the State would like
9 to have this document, State's Exhibit Number 14,
10 admitted into evidence.

11 THE COURT: All right. Mr. Madsen?

12 MR. MADSEN: No objection.

13 THE COURT: State's 14 is in evidence without
14 objection.

15 (State's Exhibit Number 14 is received into
16 evidence.)

17 BY MR. MOBLEY:

18 Q Ms. Madison, we are looking at State's Exhibit
19 Number 14. Do you mind providing and reading to
20 the Court what is indicated there?

21 A This is the current plate record for a vehicle, a
22 1998 Chevrolet Blazer, V.I.N. Number
23 1GNCS18W3WK245482. It has the title number on it.
24 The owner's name is listed as April Michelle Rabon
25 at [REDACTED] Old Duncan Road, Leesville, South Carolina,

SHARON MADISON -- DIRECT -- MR. MOBLEY

449

1 29070.

2 Q And can you repeat that address once more for me,
3 please?

4 A [REDACTED] Old Duncan Road, Leesville, South Carolina,
5 29070.

6 Q Okay. Thank you very much.

7 MR. MOBLEY: Nothing further for this witness,
8 Your Honor.

9 THE COURT: Mr. Madsen?

10 MR. MADSEN: No questions, Your Honor.

11 THE COURT: Thank you. Thank you very much.
12 Thank you for being with us this afternoon, Ms. Madison.
13 You may step down and you may be excused.

14 (Witness leaves the witness stand.)

15 THE COURT: Solicitor, you may call your next
16 witness.

17 MR. MOBLEY: The State calls Amy Stephens to
18 the stand.

19 THE COURT: Ms. Stephens, if you would come
20 around and be sworn for us, please.

21 AMY STEPHENS, being
22 first duly sworn, testifies as follows:

23 CLERK: Have a seat, please, ma'am. Once
24 you're seated, state your full name, spelling your last,
25 please.

1 THE WITNESS: Amy Stephens, S-T-E-P-H-E-N-S.

2 DIRECT EXAMINATION

3 BY MR. MOBLEY:

4 Q Ms. Stephens, where are you currently employed?

5 A I'm employed with the South Carolina Law
6 Enforcement Division.

7 Q And what is your current position there?

8 A I'm a forensic technician in the evidence control
9 department.

10 Q Okay. And how long have you been so employed?

11 A I've been employed with S.L.E.D. since March 2nd of
12 2006.

13 Q Now, what are some of your duties and
14 responsibilities in that position?

15 A Our duties are to log in and package the evidence
16 for forensic analysis.

17 Q So you accept evidence that is being brought to you
18 by various agencies throughout the State basically?

19 A That's correct.

20 Q Okay. Now, I want to take you back to a date of
21 August 4th, 2009, and I want to ask, did you have
22 the opportunity to come in contact with some
23 evidence from the Highway Patrol pertaining to a
24 Christopher Manning?

25 A Yes, I did.

AMY STEPHENS -- DIRECT -- MR. MOBLEY

451

1 Q Now, do you mind telling us exactly what you
2 received, when you received that evidence, and what
3 was it?

4 A I received blood and urine from Christopher
5 Manning.

6 Q From Christopher Manning?

7 A That's correct.

8 Q Now, when you received that evidence, did it appear
9 that it was tampered with or altered in any way?

10 A No.

11 Q It was not?

12 A No.

13 Q Now, if it was, would you have accepted it?

14 A We would call our toxicology department and let
15 them make the final call. If we do find an issue
16 with it, we will make documentation of it in the
17 narrative of the case.

18 Q Was there any -- is there any notation about any
19 tampering with that particular evidence?

20 A No, there's not.

21 Q Okay. Now, once you received it, what did you do
22 with it?

23 A Once we receive the evidence, we will place it in a
24 heat-sealed pouch, seal it, and have the submitting
25 officer initial and date the heat seal, as well as

1 sign and date the front of the heat-sealed pouch.

2 We will then log the information into our
3 computer system, which will assign it a unique lab
4 number. We will attach that label to the
5 heat-sealed pouch and transfer the evidence to our
6 intake storage.

7 Q Now, Ms. Stephens, I want to present you with a
8 document, State's Exhibit Number 12 for
9 identification only at this point in time. You
10 referenced a -- well, first, let me ask you, do you
11 recognize this document?

12 A Yes, I do.

13 Q And what is that document?

14 A This is a South Carolina Law Enforcement Division
15 chain of custody for L09-09291.

16 Q Don't read any content at this particular point.

17 A Okay.

18 Q What is the purpose of that particular document
19 itself?

20 A This is an electronic chain of custody. It
21 basically tracks every transfer the evidence takes
22 throughout the forensics laboratory.

23 Q Okay. And is that within the normal policies and
24 procedures of S.L.E.D.?

25 A Yes. Every piece of evidence has an electronic

AMY STEPHENS -- DIRECT -- MR. MOBLEY

453

1 chain of custody.

2 Q Okay. Now, is that particular document associated
3 with this particular case of Mr. Christopher
4 Manning?

5 A Yes, it is.

6 Q Now you referenced a lab number earlier?

7 A Yes.

8 Q Okay. Is that lab number present on this
9 particular document?

10 A Yes, it is.

11 Q And what is that lab number?

12 A It's L09-09291.

13 Q Okay. Now, looking at that chain of custody --
14 well, first, let me see this document, please. Do
15 you recall who you received the evidence from?

16 A I received it from R.A. Frick of the Highway
17 Patrol.

18 Q And when you received it from him, you did not see
19 any apparent tampering or the breaking of the seal;
20 correct?

21 A No.

22 MR. MOBLEY: Your Honor, the State would like
23 to have this document marked as State's 12 for I.D.
24 purposes only.

25 THE COURT: All right. State's 12, I.D. only.

1 (State's Exhibit Number 12 is marked for
2 identification.)

3 BY MR. MOBLEY:

4 Q Okay. Now, I'm going to hand you back State's
5 Exhibit Number 12. On that particular document,
6 does it show that Trooper Frick submitted evidence
7 to you?

8 A Yes, it does.

9 Q And what day and time does it say he submitted it
10 to you?

11 A I accepted the evidence on August 4th of 2009, at
12 1:02 p.m.

13 Q Okay. And that was from?

14 A R.A. Frick of the Highway Patrol.

15 Q Okay. Now, what did you do with the evidence once
16 you had it?

17 A What we do is basically, as I previously stated, we
18 will place the evidence in a heat-sealed pouch,
19 seal the heat-sealed pouch, and have the officer
20 initial and date the heat seal and sign and date
21 the front of the heat-sealed pouch.

22 Q And who did you transfer it to?

23 A I transferred it into our toxicology evidence
24 intake storage refrigerator which is located in our
25 locked evidence room.

AMY STEPHENS -- CROSS -- MR. MADSEN

455

1 Q Now, is that a secured area?

2 A Yes, it is.

3 Q Okay. Now, at that particular time that you
4 deposited it there, was it in proper working order?

5 A Yes, it was.

6 Q And it was secure?

7 A Yes.

8 Q Okay. Do you have any reason to believe that that
9 evidence had been tampered with up until that
10 point?

11 A No.

12 Q Thank you.

13 MR. MOBLEY: Nothing further for this witness,
14 Your Honor.

15 THE COURT: Thank you, Solicitor. Mr. Madsen.

16 CROSS EXAMINATION

17 BY MR. MADSEN:

18 Q You ultimately take and you place -- when you get
19 forensic evidence like this that's blood or urine,
20 it's important to keep it refrigerated; correct?

21 A That's correct.

22 Q And so that's why you end up placing it inside a
23 secure refrigerator within S.L.E.D., right?

24 A That's correct. It's our policy and procedure to
25 do so.

1 Q Because if that's not done, that could actually
2 affect the blood or urine; couldn't it?

3 A I cannot answer that question. I'm not a
4 toxicologist.

5 Q And with you being -- as far as evidence logged in,
6 you also received blood in relation to Jacob Hill;
7 did you not?

8 A Yes, I did.

9 Q And that was actually on August 7th of '09?

10 A Correct.

11 Q And that was the same thing, blood and urine?

12 THE COURT: What date was that, Mr. Madsen?

13 MR. MADSEN: I believe August 7th
14 of '09.

15 THE COURT: Thank you.

16 A Yes, I received blood and urine from Jacob Hill.

17 Q And that's something that you received from, I
18 guess, William Zeigler of the Lexington County
19 Coroner's office?

20 A That's correct.

21 MR. MADSEN: That's all the questions I
22 have.

23 THE COURT: Redirect, Solicitor?

24 MR. MOBLEY: Nothing further, Your Honor.

25 THE COURT: Thank you. Thank you very much

PATRICIA CROOKS -- DIRECT -- MR. MOBLEY

457

1 for being with us today.

2 THE WITNESS: Thank you.

3 THE COURT: You may step down.

4 (Witness leaves the witness stand.)

5 THE COURT: All right. Solicitor, you may
6 call your next witness.

7 MR. MOBLEY: The State calls Patricia Crooks.

8 THE COURT: All right. If you would come
9 around and be sworn for us, please, Ms. Crooks.

10 PATRICIA CROOKS, being
11 first duly sworn, testifies as follows:

12 CLERK: Have a seat. Once you're seated,
13 please state your name, spelling your last.

14 THE WITNESS: Patricia Crooks, C-R-O-O-K-S.

15 DIRECT EXAMINATION

16 BY MR. MOBLEY:

17 Q Ms. Crooks, where are you currently employed?

18 A I'm employed by the South Carolina Law Enforcement
19 Division, also known as S.L.E.D.

20 Q And what is your current position there?

21 A I'm a forensic technician in charge of the evidence
22 room.

23 Q Okay. Now, when you are in charge of the evidence
24 room, what do you mean by that?

25 A What I do is once the evidence is logged in and

1 stocked by the technician that logs it in and
2 someone, the scientist or other technicians, needs
3 that evidence, I pull the evidence and transfer it
4 to myself.

5 Then it's transferred from me to the person
6 taking custody of it. Also, once the evidence has
7 been finished at S.L.E.D. and the submitting agency
8 comes to pick up their evidence, I return the
9 evidence to them.

10 Q Now, Ms. Crooks, I'm going to take you back to the
11 date of August 5th, 2009. Did you have the
12 occasion to handle some evidence that belonged to
13 one Christopher Manning?

14 A Yes, sir, I did.

15 Q Okay. And how did you come in contact with that
16 particular evidence?

17 A I removed that evidence. It was a sealed
18 container, and I removed it from the toxicology
19 intake storage, which is a section in the evidence
20 room, took custody of it myself, and then
21 transferred custody of it to Brandon Williams. He
22 is a technician in toxicology.

23 Q Now, when you received or retrieved that evidence,
24 that sealed box from that storage area, did it
25 appear that it had been tampered with in any way?

PATRICIA CROOKS -- DIRECT -- MR. MOBLEY

459

- 1 A No, it did not.
- 2 Q Did it still have the seal on it when you received
3 it?
- 4 A Yes, it did.
- 5 Q Okay. Now, while it was in your possession, did
6 you tamper with it in any type way?
- 7 A No, I did not.
- 8 Q And did you personally observe the evidence being
9 transferred to a one Brandon Williams?
- 10 A Yes, I personally transferred it to Brandon
11 Williams.
- 12 Q Did you see Brandon tamper with that particular
13 evidence box?
- 14 A No, I did not.
- 15 Q I want to show you a document. It's State's
16 Exhibit Number 12. Do you recognize that?
- 17 A Yes, that's the chain of custody.
- 18 Q Okay. Now, the information that you just provided
19 to the Court in answer to questions, does it appear
20 on that particular document?
- 21 A Yes, it does.
- 22 Q And do you mind providing what time that you
23 retrieved it and the date and the time that you
24 gave it to Brandon Williams.
- 25 A Okay. I retrieved the evidence on 8/5/09 at

1 9:02 a.m. and transferred custody of that to
2 Brandon Williams on 8/5/09 at 9:03 a.m.

3 MR. MOBLEY: Nothing further for this witness,
4 Your Honor.

5 THE COURT: Thank you, Solicitor. Mr. Madsen.

6 CROSS EXAMINATION

7 BY MR. MADSEN:

8 Q Ms. Crooks, how are you doing?

9 A Fine. Thank you.

10 Q You used to be in questioned documents, I think it
11 was?

12 A I was in questioned documents for 19 years.

13 Q And then moved over as a forensic technician?

14 A Correct. I was a technician in questioned
15 documents.

16 Q When you retrieve these items, where do you say
17 that you get them from?

18 A From the toxicology evidence intake storage.

19 Q And what is that?

20 A That's a refrigerator in the evidence room, and
21 it's specifically for toxicology evidence.

22 Q Because S.L.E.D.'s protocol is for forensic samples
23 like blood or urine to be refrigerated, correct?

24 A Correct.

25 Q And you end up transferring that over to Brandon

PATRICIA CROOKS -- CROSS -- MR. MADSEN

461

1 Williams on the same day or shortly after you get
2 it on August 5th, correct?

3 A Yes, I got it at 9:02 and gave custody to Brandon
4 at 9:03.

5 Q And you also actually on August 10th do the same
6 thing with the blood and urine designated as being
7 from Jacob Hill, correct?

8 A That was Christopher Manning. Could give me the
9 item number, please?

10 Q Sure. Do you want a lab number maybe?

11 A No, the item number. What was the S.L.E.D. item
12 number? It should tell you right --

13 Q Item number 4.

14 A Okay. Here it is.

15 Q You took control of that item that's designated as
16 item number 4 and turned that over to Brandon
17 Williams on 8/10; correct?

18 A That's correct.

19 Q The same protocol that you did with the other
20 sample?

21 A Exactly. I took custody of it at 9:05, and then I
22 transferred custody of it to Brandon at 9:05. It's
23 a matter of logging it to a refrigerator and back
24 to the window where I give out evidence.

25 MR. MADSEN: That's all the questions I

1 have.

2 THE COURT: Redirect?

3 MR. MOBLEY: None, Your Honor.

4 THE COURT: Thank you. Thank you very much
5 for being with us today, Ms. Crooks.

6 THE WITNESS: Thank you.

7 THE COURT: You may step down.

8 (Witness leaves the witness stand.)

9 THE COURT: Solicitor, you may call your next
10 witness.

11 MR. MOBLEY: The State calls Brandon A.
12 Williams to the stand, Your Honor.

13 THE COURT: All right. Mr. Williams, if you
14 would come around and be sworn for us, please.

15 BRANDON WILLIAMS, being
16 first duly sworn, testifies as follows:

17 CLERK: Have a seat up here, please. Once you
18 are seated, state your full name, spelling your last.

19 THE WITNESS: I'm Brandon Williams,
20 W-I-L-L-I-A-M-S.

21 DIRECT EXAMINATION

22 BY MR. MOBLEY:

23 Q Mr. Williams, where are you currently employed?

24 A South Carolina Law Enforcement Division.

25 Q And what is your current position there?

BRANDON WILLIAMS -- DIRECT -- MR. MOBLEY

463

1 A I'm a forensic technician.

2 Q And how long have you been a forensic technician?

3 A Four years.

4 Q Four years. And what are some of your duties and
5 responsibilities in that position?

6 A I pick up evidence from log-in, and I inventory it
7 in the state that it's in, and then I help the
8 analyst as needed.

9 Q Okay. Now, Mr. Williams, back on August 5th of
10 2009, did you have the occasion to come in contact
11 with some evidence from one Mr. Christopher
12 Manning?

13 A I can barely hear you. I'm sorry.

14 Q I'm sorry. Back on August 5th, 2009, did you have
15 the chance to come into contact with some evidence
16 for a Mr. Christopher Manning?

17 A Yes, sir.

18 Q And how did you come in contact with that evidence?

19 A I received it from Patricia Crooks.

20 Q Now, when you say you received it from her, she
21 personally gave it to you?

22 A Yes.

23 Q Okay. Now, when you received it from Ms. Patricia
24 Cook -- Crooks, excuse me -- did it appear to be
25 tampered with in any way?

1 A No, sir.

2 Q Okay. Did it still have the seal on the box?

3 A Yes, sir.

4 Q Now, once you received it, did you do anything to
5 tamper with that particular evidence?

6 A Once I received it, I took it upstairs to my
7 department and I photographed it. I actually cut
8 into the bag, took pictures of what it came in,
9 opened that box, took pictures of what was inside
10 the box, and closed it back up.

11 Q And closed it back up?

12 A Uh-huh. (Indicating affirmative response.)

13 Q Now, once you -- so you opened it and then you
14 closed it back up at that particular time?

15 A Yes, sir.

16 Q Did you mess with the contents though? Did you --

17 A I photographed them.

18 Q You just photographed them?

19 A I just photographed them.

20 Q Okay. You did not add anything to the contents
21 thereof?

22 A No, sir.

23 Q And then after you did that, what happened? What
24 did you do with the evidence?

25 A When I completed the inventory, I sealed it back up

1 and I put it into the tox personal refrigerator.

2 Q Now, during the time that you had to inventory it,
3 would you have to have made notations if there were
4 any problems with that particular sample or
5 evidence?

6 A Yes, I would have.

7 Q Were any notations made?

8 A No, sir.

9 Q Okay. And you deposited that evidence once more
10 where?

11 A In the toxicology personal refrigerator, a walk-in
12 refrigerator that only the tox people in my
13 department can use.

14 Q Now, did it appear that it was working properly at
15 the time?

16 A Yes, sir.

17 Q Okay. Did you have any reason to believe that
18 anything had happened to that particular sample
19 once you placed it in there?

20 A No, sir.

21 Q Did you come back in contact with that particular
22 evidence later or anything?

23 A No, sir.

24 Q Okay. I want to hand you a document that is
25 State's Exhibit Number 12. Do you recognize that

1 document?

2 A Yes, sir.

3 Q And what is that document?

4 A It's a chain of custody.

5 Q And is it detailing what you've testified to here
6 today about your handling of that particular
7 evidence?

8 A Yes, sir.

9 Q And what time does it show that you retrieved that
10 evidence and placed it inside the forensic lab?

11 A I received it at 9:03 a.m.

12 Q And what date was that?

13 A August 5th, 2009.

14 Q Okay. Thank you.

15 MR. MOBLEY: Nothing further for this witness,
16 Your Honor.

17 THE COURT: Thank you, Solicitor. Mr. Madsen.

18 **CROSS EXAMINATION**

19 BY MR. MADSEN:

20 Q Mr. Williams, you also received some evidence, I
21 believe it's item 4, which was also blood and urine
22 that belonged to a Jacob Hill; correct?

23 A Yes, sir.

24 Q And that was on August 10th that that was brought
25 to you by Ms. Crooks again, right?

BRANDON LANDRUM -- CROSS -- MR. MADSEN

467

1 A Yes, sir.

2 Q And you do the same thing with that piece where you
3 deliver that to the refrigerator in the toxicology
4 department also.

5 A Yes, sir.

6 Q Okay.

7 MR. MADSEN: That's all the questions I have,
8 Your Honor.

9 THE COURT: Redirect?

10 MR. MOBLEY: Nothing, Your Honor.

11 THE COURT: Thank you. Thank you very much,
12 Mr. Williams. You may step down and you may now be
13 excused.

14 (Witness leaves the witness stand.)

15 THE COURT: Solicitor, you may call your next
16 witness.

17 MR. MOBLEY: The State calls Brandon Landrum
18 to the stand.

19 BRANDON JAMEL LANDRUM, being
20 first duly sworn, testifies as follows:

21 CLERK: Have a seat, please, sir. Once you
22 are seated, state your full name, spelling your last,
23 please.

24 THE WITNESS: Brandon Jame1 Landrum,
25 L-A-N-D-R-U-M.

1 DIRECT EXAMINATION

2 BY MR. MOBLEY:

3 Q Mr. Landrum, where are you currently employed?

4 A The South Carolina Law Enforcement Division, also
5 known as S.L.E.D.

6 Q And how long have you been employed there?

7 A It will be six years in June.

8 Q And what is your current position there?

9 A I am a forensic toxicologist.

10 Q And what exactly does a forensic toxicologist do?

11 A A forensic toxicologist, basically what we do is we
12 analyze biological and non-biological samples for
13 the presence or absence of alcohol, such as
14 ethanol, poisons or drugs.15 Then we take those results and we provide the
16 interpretations of those results for courts of law,
17 for officers, for coroners, for different
18 situations depending on who might need an
19 interpretation of what the results mean.20 Q Well, as a forensic toxicologist, what type
21 training and/or schooling have you received to be
22 classified as such?23 A I received my Bachelor's Degree in Biology from
24 Winthrop University with a Minor in Chemistry. I
25 then went on and received certification as a

BRANDON LANDRUM -- DIRECT -- MR. MOBLEY

469

1 medical technologist at the Carolinas College of
2 Health Sciences in Charlotte where I became board
3 certified -- well, nationally board certified as a
4 medical technologist.

5 What that involved was training for clinical
6 chemistry, hematology, blood bank and phlebotomy,
7 microbiology. It's pretty much any time you go to
8 the doctor's office and you have blood work done or
9 drawn and then they say, We have to send it to the
10 lab to be tested.

11 Upon completion there, I started working at
12 Palmetto Richland Hospital in their core lab and
13 their E.R. lab. Part of that involved doing urine
14 drug screens as well as alcohol testing on samples
15 that came in, as well as chemistry tests, other
16 chemistry tests and hematology tests.

17 Upon completion there, I was hired on at
18 S.L.E.D., went through their internal training
19 program, which involved running a thousand blood
20 alcohol samples of cases that had already been
21 previously run by other analysts, and my results
22 had to be within 5 percent of what the analysts had
23 reported out.

24 Also, upon that, upon completion of doing
25 that, I had to take both written, oral, and actual

1 practical exams to make sure I understood the
2 interpretation of alcohol analysis, as well as what
3 different readings and things like that meant.

4 I also received training where I ran roughly a
5 hundred -- well, it might be a little bit more --
6 drug screens. My results had to be matched to what
7 was previously reported out by the analysts on
8 those cases. Then, once again, we also have oral,
9 written, and practical exams on these.

10 Upon completion and being signed off as a
11 forensic toxicologist, I have since taken courses
12 at Indiana University at the Borkenstein School on
13 driving, the influence of alcohol on the driver.
14 So I completed that course, as well as went to the
15 D.R.E. program at the South Carolina Criminal
16 Justice Academy where we actually did what we call
17 wet labs.

18 We actually took people that were -- had a
19 baseline of zero alcohol readings and then we dosed
20 them based off of their body weight and things to
21 get them to a certain level. Then we actually did
22 field sobriety tests to show how they responded.

23 The alcohol, the levels that we dosed them to,
24 weren't your high levels like your .2's, .3's.
25 They were more around the point of .08's, the .1's,

BRANDON LANDRUM -- DIRECT -- MR. MOBLEY

471

1 just so that we could see how someone reacts and
2 responds to different things at the lower levels.

3 I have also taken online courses on opioids or
4 opiates such as your Hydrocodone, Hydromorphone,
5 Oxycodone, and those impairing effects, as well as
6 your Z-drugs, such as Zolpidem which is the --

7 COURT REPORTER: Wait. You're --

8 THE WITNESS: I'm sorry.

9 COURT REPORTER: Your Z-drugs. You lost me
10 after that.

11 A I'm sorry. Your Z-drugs such as Zolpidem, which
12 the trade name is Ambien. It's a drug to help you
13 sleep. I've also taken proficiency tests twice a
14 year since being hired on at S.L.E.D. just to make
15 sure I'm able to continue performing the work.

16 Q So it's continuous training then? You have a vast
17 amount of training and education to be a forensic
18 toxicologist, correct?

19 A That's correct.

20 Q Okay. Approximately how many samples have you
21 analyzed since your employment with S.L.E.D.? Just
22 give us a roundabout.

23 A On the low end, 2,000 samples for blood alcohol
24 screenings only or blood alcohol screenings. For
25 the low end for drug screens, around about a

1 thousand or 1,500.

2 MR. MOBLEY: Your Honor, at this time I would
3 like to offer Mr. Brandon Landrum as an expert in the
4 field of forensic toxicology.

5 THE COURT: All right. Mr. Madsen?

6 MR. MADSEN: May we approach?

7 THE COURT: Yes, sir, certainly.

8 (Whereupon there is a bench conference off the
9 record in the presence of the jury but out of the
10 hearing of the jury.)

11 THE COURT: All right. Mr. Foreman and ladies
12 and gentlemen, if you would please leave your notes
13 upside-down on your chairs and step momentarily into
14 your jury room. Do not discuss the case during this
15 brief recess.

16 (The jury retires to the jury room.)

17 THE COURT: All right. You wanted to step out
18 momentarily first?

19 MR. MADSEN: Well, I can do it after we get
20 done with this real quick. Just the only question I
21 have, the only report that I had been provided with as
22 far as the analyzing of blood from either Jacob Hill or
23 Christopher Manning was that Mr. Landrum was in the
24 chain.

25 I saw he is listed as a forensic scientist,

BRANDON LANDRUM -- DIRECT -- MR. MOBLEY

473

1 but the report on the analysis on each of the
2 individuals was just listed as a Jennifer Brown.

3 THE COURT: All right. Solicitor?

4 MR. MOBLEY: Your Honor, from my understanding
5 in speaking with Jennifer Brown -- I never personally
6 spoke with Brandon Landrum at the time -- is that he did
7 receive the actual blood samples and then began a
8 process.

9 From there he transferred it on to Jennifer
10 Brown who is the listed forensic toxicologist who comes
11 up with the results here. Because evidently he saw
12 something that it needed to be transferred to her in
13 order to get indicators and the results.

14 We are not introducing any results in this
15 particular one. The question would be: Mr. Landrum,
16 did you feel a need to transfer it to Ms. Jennifer Brown
17 so that she can begin to take over the case and analyze
18 everything thoroughly?

19 So the results will come in under Ms. Jennifer
20 Brown. He is more in the chain, but he does begin a
21 process from my understanding in speaking with
22 Ms. Brown.

23 THE COURT: All right. I guess my question
24 is, what are you asking me to do, Mr. Madsen.

25 MR. MADSEN: I don't -- you know, not knowing

1 that that was the case, I don't have a problem. I
2 thought it was kind of drawn out for a chain of custody
3 and didn't quite understand why they were qualifying him
4 as an expert if someone else had done the analysis. I
5 just wasn't sure, Judge, because he did look like a
6 chain of custody witness that was provided to me in
7 discovery.

8 MR. MOBLEY: Well, for the Court's edification
9 and Mr. Madsen's as well, it was done that way because
10 Mr. Brandon Landrum does start a process, but he does
11 not report the results. The results do not come until
12 Ms. Jennifer Brown. So I can understand his dilemma in
13 that regard.

14 MR. MADSEN: I don't have any problem with
15 that.

16 MR. MOBLEY: That's why he was qualified. He
17 was qualified to do the testing initially.

18 THE COURT: All right. So with that
19 understanding you don't have any problem with going
20 forward with the testimony, but what about qualifying
21 him as an expert witness as a forensic toxicologist?

22 MR. MADSEN: I don't have a problem with
23 that.

24 THE COURT: All right. And you wanted to take
25 a brief recess?

BRANDON LANDRUM -- DIRECT -- MR. MOBLEY

475

1 MR. MADSEN: We just want to step out for
2 about 30 seconds.

3 THE COURT: All right.

4 MR. MOBLEY: While we are here, Your Honor,
5 before we begin, there was an issue that was brought up
6 in pretrial by Mr. Madsen about marijuana in his
7 client's system, and I think Mr. Madsen would like to
8 take that up.

9 I think this may be the appropriate time
10 because once we move past him, which is only going to be
11 another five minutes or so, we're going to get to
12 Jennifer Brown for her to read the results, and the
13 results are going to include marijuana.

14 MR. MADSEN: That might include testimony from
15 her though.

16 THE COURT: All right. Well, why don't you
17 step out, and when you get back, we'll visit that.

18 (Whereupon there is a recess.)

19 THE COURT: All right. What about Mr. Casto?
20 Do you want to wait on him?

21 MR. MADSEN: No.

22 THE COURT: All right. Would you bring us
23 the jury.

24 (The jury returns to the courtroom.)

25 THE COURT: Welcome back. At least this one

1 time I said it would be brief. Yeah, we've heard that
2 before from that judge. It's about time, right?

3 Solicitor, you may continue.

4 MR. MOBLEY: Thank you, Your Honor. The State
5 would like to offer Mr. Brandon Landrum as an expert
6 witness in the field of forensic toxicology.

7 THE COURT: There's no objections in that
8 regard?

9 MR. MADSEN: No objection.

10 THE COURT: All right. Mr. Foreman, and
11 ladies and gentlemen of the jury, normally a person
12 cannot give opinion testimony. Normally when a person
13 testifies, they must testify as to what they either saw
14 or heard or sensed by smell or something of that nature.

15 However, there is an exception when someone is
16 qualified because of education or training or experience
17 in a particular field or profession or occupation. They
18 are permitted to give their opinion in certain areas if
19 the Court qualifies them that way.

20 This witness, Agent Brandon Landrum, will be
21 qualified in the area of forensic toxicology to give
22 opinion testimony in that area. That does not mean that
23 you must accept the opinion, but it is evidence for you
24 the jury to use in any way you see fit. Thank you.

25 Solicitor, you may continue.

BRANDON LANDRUM -- DIRECT -- MR. MOBLEY

477

1 MR. MOBLEY: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. MOBLEY:

4 Q Now, Mr. Landrum, at some point, did you come in
5 contact with some evidence that was submitted to
6 S.L.E.D. for a one Mr. Christopher Manning?

7 A Yes, sir, I did.

8 Q And how did you come in contact with that
9 particular evidence?

10 A The process for our department basically is that
11 once evidence is brought up from log-in by our
12 technicians, the technicians inventory the
13 evidence. They then seal it back, and they put it
14 into the refrigerator.

15 Then I would go and retrieve the evidence from
16 the refrigerator for the day to begin my analysis,
17 and that's how I would have come in contact with
18 the evidence.

19 Q Now, this particular evidence that we're speaking
20 of, what was it that you received?

21 A I received blood.

22 Q You received blood?

23 A Yes, sir.

24 Q Okay. Now, who did you receive it from?

25 A I received it from -- I don't have the chain of

1 custody in front of me.

2 Q I can present you with State's Exhibit Number 12
3 for identification purposes only.

4 MR. MOBLEY: If I may approach, Your Honor?

5 THE COURT: Certainly, yes, sir.

6 BY MR. MOBLEY:

7 Q And what we're looking at is State's Exhibit Number
8 12 for I.D. only. What do we have there?

9 A It shows on 8/6 --

10 Q Well, first, Mr. Landrum, what are you looking at?

11 A I'm looking at our chain of custody, the chain of
12 custody that we keep that shows where the evidence
13 is moved throughout the lab.

14 Q Okay. And is that for this particular case?

15 A Yes, it is.

16 Q And what is that lab number?

17 A L09-09291.

18 Q Okay. Now, according to that particular document,
19 who did you receive that evidence from?

20 A I received it from our walk-in refrigerator. It
21 says refrigerator, but it's sort of like a big
22 walk-in refrigerator like you'd think of at a
23 restaurant where they store all their food, except
24 that this refrigerator has a magnetic lock on it.

25 It has an access card that you have to have in

BRANDON LANDRUM -- DIRECT -- MR. MOBLEY

479

1 order to get in and out of that refrigerator, and
2 only the employees in the toxicology department
3 have access in and out of that refrigerator.

4 Q Now, when you retrieved it out of that particular
5 refrigerator, did it appear that that refrigerator
6 was in proper working order?

7 A Yes, it did.

8 Q Upon retrieving that particular evidence, did it
9 appear that the contents had been tampered with?

10 A No, it did not, other than, like I said, from where
11 the technicians bring the evidence up and they have
12 to inventory it. Other than, you know, being cut-
13 open by the technician and heat sealed back, it did
14 not appear to be tampered with by any other means.

15 Q And is that normal policies and procedures of how
16 you all do the evidence once it comes to you as a
17 forensic toxicologist?

18 A Yes, that is our protocol in the lab.

19 Q That's the protocol. Okay. Now, once you received
20 it, what did you do? And, Mr. Landrum, we don't
21 want to get into any results, but we just want to
22 ask you what did you do at that point?

23 A Upon receiving a piece of evidence in this case on
24 8/6/09, I retrieved the evidence from our walk-in
25 refrigerator. I then opened it up, and I performed

1 a blood alcohol analysis on the sample where I
2 would have actually had to take a portion of the
3 sample from the tube and actually run it on the
4 instrument to find out if there was any alcohol or
5 ethanol present in the sample.

6 Then upon completion of that, I ran a --
7 performed a drug screen on the sample where I took
8 another portion of the sample from that tube and
9 performed a drug screen on the sample.

10 Q Now, these are the normal tests that you would
11 normally do once you receive this type of evidence;
12 correct?

13 A Correct, they are.

14 Q Now, based off these tests, did you feel the need
15 to transfer it to another forensic toxicologist
16 that was in your same department? Or was it
17 required? Was that a procedure that y'all have?

18 A Yes. Part of our -- the way our lab is sort of set
19 up is that we have what we call level one and level
20 two toxicologists. Right now I'm in the level one
21 part of our toxicology department.

22 Basically what that involves is I run -- we
23 run the alcohol analyses and the drug screens on
24 the cases that require them. If the alcohol -- if
25 the drug screen comes back negative --

BRANDON LANDRUM -- DIRECT -- MR. MOBLEY

481

1 Q Mr. Landrum, so there are steps that you have to
2 take and depending on what you find, then you
3 transfer it to a level two?

4 A Correct.

5 Q Is what you are saying?

6 A Yes, just depending on what we find. Then there
7 are certain situations where the evidence has to be
8 turned over to what we call a level two
9 toxicologist for them to perform other testing to
10 confirm what we have found.

11 Q Okay. In this particular case, did you have to
12 transfer it to another forensic toxicologist?

13 A Yes, I put it -- I transferred it -- when I
14 completed my analysis on the sample, I transferred
15 it back into the walk-in refrigerator on 8/10 of
16 '09. That's per our policy. Once we finish with
17 it, we can transfer it.

18 We can either transfer it -- we can hand the
19 evidence directly to the person who is going to be
20 taking hold of that case or we can transfer it to
21 the walk-in refrigerator.

22 Then that next toxicologist would have to go
23 and retrieve that evidence, like I did, from that
24 walk-in refrigerator. So on 8/10 of '09, I
25 transferred it back into the refrigerator, and on

1 8/10 -- in fact, on 8/10 at 9:00 o'clock in the
2 morning, I transferred the evidence back into the
3 refrigerator.

4 On 8/10 at 12:34 that afternoon, Jennifer
5 Brown, the other level two toxicologist, retrieved
6 that evidence from the refrigerator.

7 Q Okay. Now, did you come back at any other time and
8 come in contact with this evidence, this
9 specific --

10 A No, sir, I did not.

11 Q Okay.

12 A Once we give it to a level two, then we don't have
13 anything else to do with that case as far as the
14 analysis. It's up to the level two to finish the
15 analysis.

16 Q Okay. Thank you, Mr. Landrum.

17 MR. MOBLEY: Nothing further for this witness
18 at this time, Your Honor.

19 THE COURT: Thank you. Mr. Madsen.

20 CROSS EXAMINATION

21 BY MR. MADSEN:

22 Q Mr. Landrum, how are you doing?

23 A I'm doing good.

24 Q You also come in contact with a sample listed as
25 item 4 that is the blood of Jacob Hill, do you not?

1 A I do. I would have to see the chain of custody
2 once again.

3 Q (Hands document to witness.)

4 A Yes.

5 Q And you actually received that from a Heather
6 Dailey, correct?

7 A Correct. Heather Dailey was another forensic
8 toxicologist. She's also a level -- in the level
9 one forensic toxicology. What she would have done
10 on that sample, she would have performed the
11 alcohol analysis. Then once she completed her
12 alcohol analysis, it would have been given to me to
13 perform the drug screen on it.

14 Q And that is -- you get that from her on 8/11,
15 correct?

16 A Correct. She received the evidence on 8/10, and
17 then she transferred the evidence to me. I took
18 the evidence from her on 8/11 to perform the drug
19 screen.

20 Q She receives it from that toxicology refrigerator
21 that you had talked about?

22 A Yes, she received it from the toxicology
23 refrigerator on 8/10.

24 Q And so it's important when you are dealing with
25 blood, to make sure that it stays refrigerated;

1 correct?

2 A That's for long term, yes, it is. If it's out for,
3 you know, 20 minutes, an hour, two hours, that's
4 not a concern. Where we want to keep it
5 refrigerated is you don't want blood sitting out
6 for two or three days or for a week on end because
7 then you can possibly have some breaking down of
8 drugs or proteins or whatever in the blood.

9 Q Because ultimately if it's just sitting out for,
10 say, 20 minutes, there's nothing wrong with that.
11 But if, say, for a couple of days it's not
12 refrigerated -- actually in a blood sample when you
13 are testing for alcohol, the yeast inside the blood
14 can attack the carbohydrates and actually create
15 alcohol; correct?

16 A That's incorrect. Actually there's not yeast in
17 the blood. If there's yeast in someone's blood,
18 then you would be hospitalized due to being septic
19 or sepsis.

20 That's basically when you have bacteria or
21 yeast in the blood, and you'd be in the hospital.
22 The only time that -- and we've actually done
23 studies where we actually have taken -- they've
24 taken a red-top tube which is basically a test tube
25 with -- there's no antimicrobial or no

1 anticoagulant in the tube.

2 They've taken a gray-top tube, which basically
3 means that it has a gray top on it to keep the
4 blood in versus a red top. The gray-top tube has
5 an antimicrobial which helps to, just in case there
6 was any type of contamination, to kill bacteria or
7 to try and help prevent or decrease the potential
8 of blood clotting.

9 We've actually taken them and we've incubated
10 them. We left one in the refrigerator, incubated a
11 couple of others at different temperatures just to
12 see if there's any production of ethanol.

13 We found that there was no significant
14 production of ethanol from any of those tubes, the
15 gray-top versus the red-top, the one with the
16 antimicrobial/anticoagulant, versus the one with
17 the red top where there's no type of antimicrobial
18 or anticoagulant in it.

19 Also, the yeast that you think of is sort of
20 like brewer's yeast, which you make beer and stuff
21 out of. There's only certain bacteria or yeast
22 that will actually produce ethanol. So in this
23 case we don't have to worry about that with, I
24 guess, tubes of blood as long as they were stored
25 properly once they were collected.

1 Q Collected properly and stored properly, correct?

2 A Collected properly and you want to store them
3 properly due to -- you have some drugs that are
4 light sensitive. That basically means that the
5 drugs break down in the light. You also have some
6 drugs that are heat labile which basically means
7 that if they are warm, then the drugs will break
8 down.

9 With ethanol you don't have to quite worry
10 about that due with it -- I guess the other thing
11 is with these test tubes, the tube when it's empty
12 has a vacuum. It has a vacuum seal. That way,
13 when the phlebotomist puts a needle in your arm and
14 draws blood out, the vacuum sucks the blood into
15 the tube.

16 Once it's finished the test tube top is sort
17 of like a rubber septum. So, once the needle is
18 in -- there's two needles on the needle. There's
19 one that sticks through, that fledge through the
20 top, so that the blood can go into the tube, and
21 then another one that gets stuck in your arm.

22 Once that needle is taken off of the test
23 tube, that seal is like a rubber seal and it closes
24 back up. So there's no way through that way for
25 there to be contamination from that.

BRANDON LANDRUM -- CROSS -- MR. MADSEN

487

1 So you don't have to worry about -- the only
2 time that we do see ethanol produced from, I guess
3 bacteria that wasn't ingested, is when you have
4 postmortem samples.

5 Basically if someone has been dead for a while
6 laying out possibly in the woods, you know, and you
7 find them, then you have some bacteria that
8 actually produces some ethanol levels there. But
9 even there, we see low amounts of ethanol
10 production formed.

11 Q And when you say that you do these tests, you are
12 not using -- when you start your test, you get a
13 tube of blood or two test tubes full of blood;
14 correct?

15 A We prefer for them to be full of blood. I know
16 from experience as being a phlebotomist, you can't
17 always get a full tube of blood. So I can't say
18 without actually seeing the tubes now how much
19 blood was actually in there. So I'm not sure if it
20 was a full tube or if it wasn't a full tube of
21 blood.

22 Q But when you do your tests, you are not using that
23 entire tube, you are using -- is it microliters?

24 A Yes. For the alcohol analysis, we use 200
25 microliters of the sample for the alcohol analysis.

1 So we'll take 200 microliters of that sample, and
2 then it gets put into what we call -- we call them
3 blood alcohol vials or G.C. vials.

4 Basically that sample is put into there with
5 our internal standard. It's capped with a rubber
6 septum, and then it's crimp sealed so that no air
7 or anything can get in. Once that's done, it gets
8 put onto the instrument.

9 It works off of Henry's Law, which basically
10 says that the amount of -- the amount of solvent or
11 substance that you're looking for in the liquid
12 portion, when heated and pressurized to equal
13 pressure, it will be equal in the liquid as well as
14 in the head space, which is why we use head space
15 gas chromatography as the instrument to determine
16 what type of -- to determine our alcohol analysis.

17 From that if we have a .2 blood alcohol level
18 in the blood, then you'll have also a .2 level in
19 the head space. So the instrument takes the air
20 sample of that, and we, even though we use 200
21 microliters from the sample, we run a calibration
22 of known standards, of known .08's.

23 We calibrate with a 5-point curve from a
24 .01 percent all the way up to a .4, to a .40
25 percent alcohol concentration of certified

1 standards from the outside company. So that's
2 how -- and we use 200 microliters for that.

3 So that's how we know that our instrument is
4 working properly and that we can use 200
5 microliters instead of using a full tube of blood
6 to get our results because it's based off of a
7 curve.

8 Q And ultimately you conduct tests on the blood of
9 not only Christopher Manning but also Jacob Hill?

10 A I performed -- I believe off of Christopher
11 Manning, I performed the blood alcohol and the drug
12 screen analyses. And, off of -- who was the other
13 one?

14 Q Jacob Hill.

15 A Off of Jacob Hill, I performed just the drug screen
16 analysis.

17 Q And I guess Heather Dailey did the alcohol?

18 A Heather Dailey would have done the alcohol
19 analysis.

20 Q Who is someone else in your department?

21 A Yes, she is.

22 MR. MADSEN: No further questions.

23 THE COURT: Redirect, Solicitor?

24 MR. MOBLEY: None, Your Honor.

25 THE COURT: Thank you very much, Mr. Landrum.

1 You may step down and you may be excused.

2 (Witness leaves the witness stand.)

3 THE COURT: Solicitor, you may call your next
4 witness.

5 MR. MOBLEY: Thank you, Your Honor. The State
6 calls Ms. Jennifer Brown.

7 JENNIFER MICHELLE BROWN,
8 being first duly sworn, testifies as follows:

9 CLERK: Have a seat, please, ma'am. Once
10 you are seated, state your full name, spelling your
11 last, please.

12 THE WITNESS: Jennifer Michelle Brown. Brown
13 is B-R-O-W-N.

14 **DIRECT EXAMINATION**

15 BY MR. MOBLEY:

16 Q Good afternoon, Ms. Brown.

17 A Good afternoon.

18 Q Where do you currently work?

19 A I work at S.L.E.D., the South Carolina Law
20 Enforcement Division.

21 Q And how long have you worked there?

22 A A little over three years.

23 Q And what is your current title?

24 A I'm a criminalist but also a forensic toxicologist.

25 Q Now, as a forensic toxicologist, what are some of

JENNIFER BROWN -- DIRECT -- MR. MOBLEY

491

1 your general duties that you have at S.L.E.D.?

2 A Basically we analyze any type of biological sample
3 for the presence or absence of drugs, including
4 alcohol, and we also interpret those results for
5 courts of law or coroners or others.

6 Q Now, in order to do such a duty or function for
7 S.L.E.D., did you have to go through any specific
8 education and/or training?

9 A Yes. We have basically a really thorough in-house
10 training starting with alcohol. What we do there
11 is we have a lecture series with a quiz in between
12 each part, and then you have to pass that. Then
13 you're given a comprehensive exam after that, and
14 you have to pass that.

15 You also are given some case samples that were
16 previously run over six months prior, and then you
17 have to analyze those samples and get within the
18 known range. Then once you've done that, you are
19 given a comprehensive test on analyzing the
20 samples.

21 Once that's all done, then you have a mock
22 trial of your case, and you have to pass that.
23 Then after all that is done, then we go through our
24 drug training. In the drug training, we learn how
25 to extract the different samples, how to analyze

1 them, how to interpret results, and a huge variety
2 of stuff.

3 But we are also given comprehensive tests to
4 go along with that and then a mock trial, and
5 everything like that has to be passed, plus our
6 continuing education through different conferences,
7 different meetings, reading different journal
8 articles.

9 Q So it's an ongoing training process basically to be
10 a forensic toxicologist. Now, that is based --
11 that's in-house at S.L.E.D.?

12 A Correct.

13 Q Outside of S.L.E.D. what type of training and
14 education have you received?

15 A I have a Bachelor's Degree in Chemistry from the
16 University of South Carolina.

17 Q Okay. Did you take any other training or courses
18 outside of S.L.E.D.?

19 A Yes and no. Some of the courses we take are
20 through S.L.E.D.~--~

21 Q Okay.

22 A -- and through different places, like the
23 Borkenstein School of Alcohol, which is up in
24 Indiana. Even though it's through S.L.E.D. itself,
25 you know, it's given by Indiana University.

JENNIFER BROWN -- DIRECT -- MR. MOBLEY

493

1 Q Okay.

2 MR. MOBLEY: Begging the Court's indulgence,
3 please.

4 THE COURT: Yes, sir.

5 (Pause.)

6 BY MR. MOBLEY:

7 Q Now, Ms. Brown --

8 A Yes.

9 Q -- approximately how many samples have you been
10 able to analyze over the course of -- or will you
11 just give an approximate amount? I know it's a
12 lot.

13 A Oh, goodness, probably at least a thousand if not
14 more.

15 Q Okay.

16 MR. MOBLEY: Your Honor, at this time the
17 State would move to offer Ms. Brown, Ms. Jennifer Brown,
18 as a forensic toxicologist that will be able to provide
19 detailed results and interpretation of any alcohol
20 and/or drugs that she may have come across in this
21 particular case.

22 THE COURT: All right. Mr. Madsen?

23 MR. MADSEN: I have no objection as to
24 a forensic toxicologist just to provide the results.

25 THE COURT: Well, if you would step up here,

1 please.

2 (Whereupon there is a bench conference off the
3 record in the presence of the jury but out of the
4 hearing of the jury.)

5 THE COURT: That's without objection again,
6 Mr. Madsen?

7 MR. MADSEN: Yes, Your Honor.

8 THE COURT: All right. Again, ladies and
9 gentlemen, as with our last witness, Mr. Landrum,
10 normally a person cannot give opinion testimony.
11 Normally when a person testifies, they must testify as
12 to either what they saw, heard or sensed by smell or
13 something of that nature.

14 However, there is an exception when someone is
15 qualified because of education or experience or training
16 in a particular science or art or profession. They are
17 permitted to give their opinions in certain areas if the
18 Court qualifies them that way.

19 This witness, Jennifer Brown, will be
20 qualified in the area of forensic toxicology to give
21 opinion testimony in that area. That does not mean that
22 you must accept the opinion, but it is evidence for you
23 the jury to use in any way you see fit. Thank you.
24 Thank you very much.

25 You may continue, Solicitor.

JENNIFER BROWN -- DIRECT -- MR. MOBLEY

495

1 MR. MOBLEY: Thank you, Your Honor.

2 BY MR. MOBLEY:

3 Q Now, Ms. Brown, back in August of 2009, did you
4 have occasion to come in contact with some evidence
5 for one Mr. Christopher Manning? And the specific
6 date is around approximately August 10th of 2009.

7 A Yes, I did.

8 Q You did. On that particular date, why were you
9 receiving that evidence and who was it -- who did
10 it come from?

11 A Well, the evidence came from the Highway Patrol,
12 and I received the evidence because of the type of
13 case it was.

14 Q Okay. Now, specifically within S.L.E.D., who did
15 you receive it from?

16 A I would have received it out of the refrigerator
17 where it's placed after the initial analysis.

18 Q Okay. So you are a secondary analyst of this
19 particular evidence that's been submitted to you?

20 A Well, once -- depending on the type of case,
21 generally there is always an alcohol and then
22 usually a drug screen is done. Depending on the
23 type of case, if something screens positive, then
24 it would have come to me in the flow of how we do
25 cases nowadays. So once something screens

1 positive, then the case will come to me.

2 Q And it just depends on what screens positive?

3 A Yes.

4 Q And we don't want to get into what we are looking
5 for or what it is specifically.

6 A Right.

7 Q But just depending on the type of case, that's why
8 it was presented to you?

9 A Uh-huh. (Indicating affirmative response.)

10 Q Okay. Now, once that evidence was presented to
11 you, what did you do with it?

12 A With this evidence -- let me see. Just in general
13 what I do with the evidence, first, I look up the
14 data and see what I received from whoever had it
15 before me, and I look over the evidence.

16 If I agree with it, I'll sign off on it. Then
17 I'll see if there's a drug screen, and if something
18 screened positive, then I will go forward with it.
19 So if a certain screen screens positive, then I
20 will confirm whatever was there.

21 Q Okay. Did you do that in this particular case?

22 A Yes.

23 Q Now, what is the lab number affiliated with this
24 particular case, Ms. Brown?

25 A L09-09291.

JENNIFER BROWN -- DIRECT -- MR. MOBLEY

497

- 1 Q Okay. And I want to hand you a document, State's
2 Exhibit Number 12 for identification only. Do you
3 recognize what that document is?
- 4 A Yes. It looks like the chain of custody that we
5 have at S.L.E.D.
- 6 Q Now, does that chain of custody that we see here on
7 State's Exhibit 12 have the same identification lab
8 number that you just stated earlier --
- 9 A Yes.
- 10 Q -- for the evidence in this case?
- 11 A Yes.
- 12 Q Now, you previously provided us testimony about
13 where you retrieved the evidence from?
- 14 A Uh-huh. (Indicating affirmative response.)
- 15 Q Does that chain of custody show that?
- 16 A Yes.
- 17 Q Okay. Do you mind telling the Court what that
18 shows confirming where you received it from?
- 19 A There's a line here that shows our toxicology
20 refrigerator, and that's where I would get my
21 evidence out of. Then I would place it into my
22 custody, and that would be the next line.
- 23 Q And what dates and times does it show there?
- 24 A I retrieved it out of the refrigerator on 8/10/09
25 at approximately 12:34.

1 Q Okay, 12:34. Thank you. Now, you performed tests
2 on these particular samples?

3 A Correct.

4 Q Did you receive results? And I don't want to get
5 into those.

6 A Okay.

7 Q Were you able to obtain results based off these
8 samples?

9 A Yes.

10 Q You were. Okay.

11 MR. MOBLEY: Your Honor, I think we have a
12 matter of law to take up at this time.

13 THE COURT: All right. Mr. Foreman, ladies
14 and gentlemen, again, if you will turn your notes
15 upside-down on your table. Please step to your jury
16 room. I think I'll give you at least a 15-minute recess
17 at this time. It's about that time of day.

18 (The jury retires to the jury room.)

19 THE COURT: All right. Solicitor.

20 MR. MOBLEY: Thank you, Your Honor.

21 Previously during a pretrial, we were reminded by the
22 Court that we needed to take up an issue when it comes
23 to the appropriate time for the motion that Mr. Madsen
24 had made regarding marijuana in his client's system
25 during the actual drug test that was conducted by

JENNIFER BROWN -- DIRECT -- MR. MOBLEY

499

1 Ms. Brown at S.L.E.D.

2 So I just wanted to make sure that I did not
3 cross the line and did not address that per the Court's
4 order, Your Honor. So I think it would be Mr. Madsen's
5 motion at this particular point.

6 THE COURT: All right. Mr. Madsen.

7 MR. MADSEN: Judge, my motion is when she
8 tests the blood of my client. Ultimately she comes back
9 with an ethanol result which I believe, given this
10 framework, is appropriate.

11 But she also comes back with a T.H.C., which
12 it's my understanding is the active component of
13 marijuana. The problem is that I believe, with these
14 results -- and if Your Honor wants to hear from her, I'm
15 sure she can say that.

16 I don't believe with the amount found in his
17 blood that she could testify that he was under the
18 active influence of T.H.C. Certainly, he had it in his
19 blood, but I think, as Your Honor knows, when you're
20 dealing with marijuana, it could be at some point out in
21 time upwards of 30 days is my understanding.

22 So I don't believe with the results that we
23 have here that she can say that he's under the active
24 influence. Therefore, we would believe that under 403,
25 that would be more prejudicial than probative.

1 THE COURT: All right. Do you have her
2 report?

3 MR. MOBLEY: Yes, I do. I apologize, Your
4 Honor.

5 THE COURT: Would you have it marked for
6 identification purposes and let me see it, please?

7 MR. MOBLEY: Okay.

8 (State's Exhibit Number 15 is marked for
9 identification.)

10 THE COURT: My first question is, Solicitor,
11 do you intend to offer the results for the T.H.C.
12 metabolite?

13 MR. MOBLEY: Yes, Your Honor.

14 THE COURT: All right. Well, let me hear that
15 testimony in camera as to the T.H.C.

16 MR. MOBLEY: Just dealing with the T.H.C.,
17 Your Honor?

18 THE COURT: Well, I'm assuming your motion
19 doesn't go to the ethanol, does it, Mr. Madsen?

20 MR. MADSEN: No, sir.

21 THE COURT: Well, everything else appears to
22 be negative.

23 MR. MOBLEY: That's correct, Your Honor.

24 THE COURT: Correct?

25 MR. MOBLEY: That's correct, Your Honor.