

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EDWARD LEE JOSEPH WASHINGTON,

APPELLANT

APPELLATE CASE NO 2019-000976

RECORD ON APPEAL

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STATE'S EXHIBIT NO. 91 (JORDAN'S BODY-WORN CAMERA)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2017-GS-26-01070 AND 1069

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

June 3-5, 2019

EDWARD LEE JOSEPH)

WASHINGTON,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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VOIR DIRE

12

1 **JUNE 3, 2019 - 12:09 P.M.**

2 VOIR DIRE:

3 THE COURT: All right. Ladies and gentlemen, what we're
4 gonna to do is we are going to start the jury selection
5 process in the case of State of South Carolina versus Edward
6 Lee Joseph Washington. Now, the defendant has been charged by
7 the State of South Carolina with the crimes of felony driving
8 under the influence, death results, and leaving the scene of
9 an accident resulting in death.

10 What I'm going to do is read to you the allegation or the
11 charge that the State of South Carolina has made against the
12 defendant. Now, before I do that, let me explain what this
13 document is; it's called an indictment. It is the charge
14 brought against the defendant. It is not evidence. It cannot
15 be considered by anyone as evidence in this case. The only
16 reason I'm reading to you the charge, the body of the charge
17 rather and the title of the charge, body of the charge, is to
18 see if you happen to know anything about this particular case.
19 So, in the charge -- and I will explain to this to the jury
20 panel when you're selected, but to this charge, to this
21 indictment, the defendant has pled not guilty and that
22 immediately put the burden of proof on the State of South
23 Carolina to prove the defendant guilty beyond a reasonable
24 doubt.

25 So, in 2000 -- indictment 2017-GS-26-1070, the state

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VOIR DIRE

13

1 charges that Edward Lee Joseph Washington, did, in Horry
2 County, on or about October 29, 2016, drive a motor vehicle
3 while under the influence of alcohol, drugs or a combination
4 of both, and did an act forbidden by law and/or neglected the
5 duty imposed by law in the driving of the vehicle, to wit,
6 defendant did travel in excess of the posted speed limit
7 and/or failed to yield to a pedestrian and/or failed to keep a
8 proper lookout, which act of neglect proximately caused the
9 death of another, to wit, Ryan -- how is that last name
10 pronounced?

11 MR. HOLFORD: Bielawa, Your Honor.

12 THE COURT: Bielawa, B-I-E-L-A-W-A, in violation of the
13 Code of Laws for the State of South Carolina, 1976, as
14 amended. The state also charges that the defendant, Edward
15 Lee Joseph Washington, did, in Horry County, on or about
16 October 29, 2016, this is an indictment 2017-GS-26-1069, that
17 while operating a motor vehicle, become involved in an
18 accident which resulted in the death of Ryan Bielawa, again B-
19 I-E-L-A-W-A, and did leave the scene of the accident without
20 first rendering aide and/or information in violation of the
21 Code of Laws for the State of South Carolina, 1976, as
22 amended.

23 Is there any member of the jury panel that knows
24 anything, has information about this particular case that you
25 need to bring to the Court's attention at this time?

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VOIR DIRE

14

1 (REPORTER'S NOTE: No response.)

2 THE COURT: All right. Now, we had you to fill out the
3 questionnaire and if you responded yes to any of the questions
4 or if there was -- there is some question in the Court's mind
5 about what you answered, then I'm gonna call you up and bring
6 you before me right up here and talk to you about this
7 particular matter.

8 All right. So, counsel, if y'all want to come on up and
9 Juror Number 16, could you come forward, please?

10 (REPORTER'S NOTE: Bench conference is held on the record in
11 the presence of but outside the hearing of the jury venire.)

12 THE COURT: Just basically right here, ma'am. Hold on
13 one second. Okay. Good. All right, so, Ms. Barth, you
14 answered yes to Number 3. Okay. So, let's start off with
15 what's your job as a juror, if you are selected as a member of
16 this jury, you have to decide this case solely and completely
17 on the facts and evidence you hear in the courtroom and you
18 must follow the law that the Court gives to you whether you
19 come into the courtroom with any preconceived ideas of what
20 the law is, what it ought to be, what it should be, what your
21 beliefs are. You disregard all that. You cannot follow that.
22 You must follow the law that I give to you and apply it to the
23 facts and evidence you've heard in this case. That's your job
24 as a juror. Do you understand that?

25 JUROR 16: Uh-huh, (affirmative response).

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VOIR DIRE

15

1 THE COURT: Was that a yes?

2 JUROR 16: I understand.

3 THE COURT: All right. Very good. Understanding that,
4 can you give to the State of South Carolina and to the
5 defendant a fair and impartial trial; can you be a fair and
6 impartial juror in this case?

7 JUROR 16: I already just feel really strongly just at
8 this point hearing what we have, I feel like it would be hard.

9 THE COURT: Okay. So, how about explain to me just very
10 briefly what you believe, what is it that's giving you a hard
11 time about doing that?

12 JUROR 16: Just the -- the case itself.

13 THE COURT: Okay. All right. And if the court told you
14 there are certain things that the state must prove beyond a
15 reasonable doubt before you can convict someone, it is not
16 against the law to drink and drive. That will be part of the
17 Court's instructions. It is not against the law to do that.
18 There are certain limits, there are certain parameters ---

19 JUROR 16: In my opinion it is, period; it's black and
20 white.

21 THE COURT: All right. Very good. So ---

22 JUROR 16: I do not drive if I have drank alcohol, which
23 I do not.

24 THE COURT: Well, and that's a fine rule to follow but
25 that's not the law. Okay? All right. And again, I'm not

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VOIR DIRE

16

1 dissuading you doing that.

2 All right. What I'm gonna do, Madam Clerk is set this
3 juror aside from this particular case only.

4 You can go back and have a seat. You don't have to
5 answer any more questions.

6 Thank you.

7 (REPORTER'S NOTE: End of bench conference.)

8 THE COURT: All right. Juror Number 18. Juror Number
9 18.

10 (REPORTER'S NOTE: Bench conference is held on the record in
11 the presence of but outside the hearing of the jury venire.)

12 THE COURT: Mr. Bateman.

13 JUROR 18: Yes.

14 THE COURT: All right. Now, you answered yes to Question
15 Number 1.

16 JUROR 18: Yes, I did.

17 THE COURT: All right. Now, was it yourself or a family
18 member?

19 JUROR 18: Family member, brother.

20 THE COURT: Okay. All right. Now, your job as juror, if
21 you're selected as a juror is to decide this case solely and
22 completely on the facts you hear in the courtroom, and then at
23 the end of the case, at the end of the presentation of facts,
24 I will give the jury the law. So, it's the jury's job to put
25 the facts they've heard and follow the law that the Court

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VOIR DIRE

17

1 gives to you. Okay? So, that'd be your job; do you
2 understand that?

3 JUROR 18: I do understand.

4 THE COURT: All right. Very good. So, understanding
5 that, can you give to the State of South Carolina and to the
6 defendant a fair and impartial trial; can you be a fair and
7 impartial juror in this case?

8 JUROR 18: I have strong feelings about drinking and
9 driving.

10 THE COURT: All right. Well, let's talk about that. You
11 understand it is not against the law to have a drink and drive
12 a motor vehicle; that is not the law of this state. There are
13 limits, there are parameters that you cannot exceed, things
14 you cannot do, but it is not against the law to have consumed
15 alcohol and then drive, just that mere act. Do you understand
16 that?

17 JUROR 18: I do understand.

18 THE COURT: Okay. And then with that, there'll be -- the
19 Court will explain to you the law and what the state has to do
20 to prove the defendant guilty beyond a reasonable doubt, and
21 that will be based upon what the facts are presented and the
22 jury's decision whether or not the state did that.

23 JUROR 18: Uh-huh, (affirmative response).

24 THE COURT: And you understand that?

25 JUROR 18: Yes, I do.

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VOIR DIRE

18

1 THE COURT: All right, so, understanding that, do you
2 think you can be fair and impartial to both sides or not?

3 JUROR 18: I think I could. I think I can.

4 THE COURT: All right. So, well, see and that's -- if
5 you have a doubt, you have a hesitation then you need to tell
6 me no.

7 JUROR 18: Okay. No.

8 THE COURT: Very good. And I understand that and I don't
9 assign anything to that, but I appreciate that and that's the
10 purpose of the questionnaire. What I'm gonna do is set you
11 aside for this case, not from your jury duty, but from this
12 case. You can go back and have a seat. You don't have to
13 answer any more questions.

14 JUROR 18: Thank you.

15 THE COURT: Thank you, sir.

16 (REPORTER'S NOTE: End of bench conference.)

17 THE COURT: Juror Number 24.

18 (REPORTER'S NOTE: Bench conference is held on the record in
19 the presence of but outside the hearing of the jury venire.)

20 THE COURT: Yes, ma'am. Is your last name Belush?

21 JUROR 24: Yes.

22 THE COURT: All right, Ms. Belush. You answered yes to
23 Question Number 1.

24 JUROR 24: Uh-huh, (affirmative response).

25 THE COURT: All right. So, let's talk about your job

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VOIR DIRE

19

1 generally. If you're a juror on this case, what's your job?
2 Okay? It's to listen to the fact and evidence presented,
3 okay, then at the end of the case, the Court will give you the
4 law that you're gonna apply to the facts and evidence you've
5 heard and decide did the state prove the defendant guilty
6 beyond a reasonable doubt or not. Okay? So, you have to set
7 aside, you know, strongly held beliefs, you can't base it on
8 what you believe the law ought to be or should be, you've got
9 to take the law as I give it to you and apply it to the facts
10 and evidence you've heard. Okay? All right. So,
11 understanding that's your job, my question is can you give to
12 the State of South Carolina and to the defendant a fair and
13 impartial trial; can you be a fair and impartial juror in this
14 case?

15 JUROR 24: Yes. Yes.

16 THE COURT: Thank you very much, ma'am. Thank you.
17 Appreciate it. You can go back and have a seat.

18 I'm sorry, Ms. Belush, one question, I'm sorry. And it's
19 my fault I didn't ask. Was it -- in number one, was that you
20 or a family member?

21 JUROR 24: It was a family member.

22 THE COURT: All right. Thank you, ma'am. You can go
23 back and have a seat. Thank you, ma'am.

24 (REPORTER'S NOTE: End of bench conference.)

25 THE COURT: All right. Juror Number 43, please.

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VOIR DIRE

20

1 (REPORTER'S NOTE: Bench conference is held on the record in
2 the presence of but outside the hearing of the jury venire.)

3 THE COURT: Tell me how you pronounce your last name,
4 please, sir?

5 JUROR 43: Buffa, B-U-F-F-A.

6 THE COURT: Okay. All right, sir. So, you answered in
7 response to Number 3, that your brother was hit by ---

8 JUROR 43: My brother was hit by a young kid, 18 years
9 old. He didn't serve no time, did nothing. I don't know if
10 his family knew somebody. They never gave him a drug test or
11 an alcohol test in the hospital. My brother did a year of
12 rehab and this kid got off scot-free, which wasn't right.

13 THE COURT: Okay.

14 JUROR 43: That to me is ridiculous.

15 THE COURT: And I appreciate that and I understand that
16 and that's the purpose of the questionnaire. So,
17 understanding that, do you -- do you believe you'd find it
18 difficult to make a decision or not difficult maybe ---

19 JUROR 43: I'm not gonna have a problem making a decision
20 on what he did, that's for sure.

21 THE COURT: Okay.

22 JUROR 43: But, I mean, I don't know if -- it's not gonna
23 be impartial; that's for sure. You know what I mean?

24 THE COURT: I appreciate that and I appreciate and
25 understand that. What I'm gonna do then is set you aside from

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VOIR DIRE

21

1 this particular case and -- not from jury duty but from this
2 particular case. You can go back and have a seat and you
3 don't have answer any more questions. Okay?

4 JUROR 43: Okay.

5 THE COURT: Thank you, sir.

6 JUROR 43: Thank you.

7 (REPORTER'S NOTE: End of bench conference.)

8 THE COURT: 97, Juror Number 97.

9 (REPORTER'S NOTE: Bench conference is held on the record in
10 the presence of but outside the hearing of the jury venire.)

11 THE COURT: All right. Mr. Dozier?

12 JUROR 97: Yes, sir.

13 THE COURT: All right. Now, you answered yes to Number 1
14 and you had some questions about 2 and 3. So, were you just
15 unsure whether somebody had been a victim of DUI?

16 JUROR 97: He got charged with it.

17 THE COURT: Okay. All right. Now, Number 1, was that
18 yourself or a family member?

19 JUROR 97: Family member.

20 THE COURT: Okay. Very good. All right. Let's talk
21 about what your job generally as a juror, what's your job
22 generally, is to listen to the facts and evidence that's
23 presented from the witness stand and then -- whatever evidence
24 is presented. And then at the end of the case, I'll give you
25 the law that you apply to the facts and evidence you've heard.

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1 Okay? That's gonna be the juror's job. So, understanding
2 that, can you give to the State of South Carolina and to the
3 defendant a fair and impartial trial; can you be a fair and
4 impartial juror in this case?

5 JUROR 97: I guess so, yeah.

6 THE COURT: Okay. Well, and then let's talk about that
7 for a second. I really need from you -- it has to be absolute
8 yes I can and, if it's not an absolute yes, I can, then your
9 answer is no. Okay? So, can you be fair and impartial to the
10 state and the defendant?

11 JUROR 97: Yes, sir, I can.

12 THE COURT: All right. Thank you very much. You can go
13 back and have a seat. I appreciate it. Thank you.

14 (REPORTER'S NOTE: End of bench conference.)

15 THE COURT: Juror Number 107.

16 (REPORTER'S NOTE: Bench conference is held on the record in
17 the presence of but outside the hearing of the jury venire.)

18 THE COURT: All right. Is it Ms. Edwards?

19 JUROR 107: Uh-huh, (affirmative response).

20 THE COURT: All right. Very good. Now, Ms. Edwards, you
21 answered yes to Question Number 1.

22 JUROR 107: Uh-huh, (affirmative response).

23 THE COURT: First, was that yourself or a family member?

24 JUROR 107: Both.

25 THE COURT: Okay. All right. Now, what's -- let's just

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1 talk generally about what your job as a juror. If you're a
2 juror on this case, you have to listen to the facts and the
3 evidence that have been presented. At the end of the case, I
4 will give the jury the law, so the jury puts the facts and the
5 evidence, the law that I give to you, put it together and
6 decide did the state prove the defendant guilty beyond a
7 reasonable doubt. That'll be the jury's job, okay? All
8 right. So, understanding that, can you give to the State of
9 South Carolina and to the defendant a fair and impartial
10 trial; can you be a fair and impartial juror in this case?

11 JUROR 107: Yes, sir.

12 THE COURT: Thank you very much, ma'am. You can go back
13 and have a seat. Thank you.

14 (REPORTER'S NOTE: End of bench conference.)

15 THE COURT: Juror Number 112.

16 (REPORTER'S NOTE: Bench conference is held on the record in
17 the presence of but outside the hearing of the jury venire.)

18 THE COURT: All right. And you're Ms. Engel?

19 JUROR 112: Uh-huh, (affirmative response).

20 THE COURT: All right, ma'am. Now, you answered no to
21 Question Number 2, but it says it was the father of your
22 grandson that ---

23 JUROR 112: Yes.

24 THE COURT: --- that had been a victim or had gotten hit
25 or something.

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1 JUROR 112: Well, he was the drunk driver.

2 THE COURT: Oh, he was the drunk driver. Okay. So, the
3 father of your grandson was -- okay. All right. Very good.
4 All right. So, let's talk about generally what's your job as
5 a juror. If you're a juror on this case, you have to listen
6 to the facts and the evidence presented in this matter. At
7 the end of the case, I will give you the law that you'll apply
8 to the facts and the evidence you heard and decide did the
9 state prove the defendant guilty beyond a reasonable doubt.
10 That'll be the job of the jury, you know, collectively. Okay?
11 So, understanding that, my question to you is, can you give to
12 the State of South Carolina and to the defendant a fair and
13 impartial trial; can you be a fair and impartial juror in this
14 case?

15 JUROR 112: I would try my best.

16 THE COURT: Okay. And I appreciate that and I -- we hope
17 that ---

18 JUROR 112: I mean, I'm scared to death to be here, but
19 ---

20 THE COURT: Well, and I understand that. It's a strange
21 -- you know, it's a strange, you know, situation that we put
22 jurors in and, unfortunately, we do it every week. But
23 anyway, be that as it may, I have to know from your answer
24 that what you're telling me is, yes, I can be fair and
25 impartial to the state and the defendant. And if you are

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1 uncertain or you've got some question whether or not you can
2 do that, then you need to tell me no. Okay?

3 JUROR 112: Okay.

4 THE COURT: So, can you be fair and impartial to the
5 state and to the defendant?

6 JUROR 112: I think I can, yes.

7 THE COURT: All right. Thank you, ma'am. I appreciate
8 it very much. Go back and have a seat.

9 (REPORTER'S NOTE: End of bench conference.)

10 THE COURT: All right. Juror Number 121, please, 121.

11 (REPORTER'S NOTE: Bench conference is held on the record in
12 the presence of but outside the hearing of the jury venire.)

13 JUROR 121: Yes, sir.

14 THE COURT: All right. Is it Fontaine, sir?

15 JUROR 121: Yes, sir.

16 THE COURT: All right. Very good. Now, Number 3, you
17 said yes depending on the crime committed. All right. So,
18 let's talk about what your job as a juror generally is, first.
19 If you're on the jury, you have to decide the case solely and
20 completely on the facts and evidence you hear. At the end of
21 the case, I will give you the law. I will give the jury the
22 law that you have to follow. So, if you came into the
23 courtroom with any preconceived ideas of what the law is or
24 what you want it be, you have to disregard that. You can't
25 let your personal beliefs interfere with that. You have to

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1 follow the law and apply it to the facts and evidence you've
2 heard and decide did the state prove the defendant guilty
3 beyond a reasonable doubt. Okay? So, that's your job.
4 Understanding that, the question is, can you give to the State
5 of South Carolina and to the defendant a fair and impartial
6 trial; can you be a fair and impartial juror in this case?

7 JUROR 121: Your Honor, I just don't think I can in this
8 case.

9 THE COURT: Okay. And I appreciate that.

10 JUROR 121: And that's ---

11 THE COURT: Don't worry about that. And that's the
12 purpose of the questionnaire and that's what we want, we want
13 straightforward answers and I appreciate that. Not a problem.
14 What I'm gonna do is set you aside from this case. I'm not
15 excusing you from jury duty, but just go back and have a seat.
16 You don't have to answer any more questions. Okay? Thank
17 you, sir.

18 (REPORTER'S NOTE: End bench conference.)

19 THE COURT: Juror Number 151, 151.

20 (REPORTER'S NOTE: Bench conference is held on the record in
21 the presence of but outside the hearing of the jury venire.)

22 MS. WALKER: Judge, I'm sorry. What number was that?

23 MR. STANKO: 151.

24 THE COURT: 151.

25 Yes, ma'am. Please come right up here. All right. Is

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1 it -- is the last name Hager, ma'am?

2 JUROR 151: Hager, yes.

3 THE COURT: Okay. Now, you answered yes to Question 1.
4 So, the first question I ask, was it yourself or a family
5 member?

6 JUROR 151: It was my stepfather back in the 1960s.

7 THE COURT: Okay. Very good. So, wow, anyway.

8 JUROR 151: Yeah.

9 THE COURT: Anyway. So, let's talk about generally your
10 job as a juror. If you are a juror on this case, you have to
11 listen to the facts and evidence presented, you know, from the
12 witness stand or whatever has been presented, okay? At the
13 end of the case, I give the jury the law that you have to
14 follow. If you came in the courtroom with any ideas of what
15 the law is, ought to be, what you hope it would be, you
16 disregard that. You follow the law that the Court gives to
17 you and apply it to the facts and evidence you've heard and
18 decide, did the state prove the defendant guilty beyond a
19 reasonable doubt. That's what the jury has to decide. Okay?
20 So, understanding that, can you give to the State of South
21 Carolina and to the defendant a fair and impartial trial; can
22 you be a fair and impartial juror in this case?

23 JUROR 151: Yes.

24 THE COURT: Thank you very much, ma'am. I appreciate it.

25 (REPORTER'S NOTE: End of bench conference.)

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1 THE COURT: Juror Number 190.

2 (REPORTER'S NOTE: Bench conference is held on the record in
3 the presence of but outside the hearing of the jury venire.)

4 THE COURT: All right, sir. And it's Mr. Johnson; is
5 that correct?

6 JUROR 190: Yes, sir.

7 THE COURT: All right, sir. Now, you answered yes to all
8 three of the questions, correct?

9 JUROR 190: If I read them right, yes, sir.

10 THE COURT: All right. Very good. Now, the first one,
11 was it -- has either you or anyone in your immediate family
12 been charged with or convicted of DUI. The first question is
13 was it yourself or a family member?

14 JUROR 190: A family member.

15 THE COURT: A family member, okay. And then you had a
16 family member that was hurt?

17 JUROR 190: Uh-huh, (affirmative response).

18 THE COURT: Okay. And you indicated some strong beliefs
19 about consumption of alcohol, so let me -- let's talk about
20 generally what's your job as a juror. If you're on the jury,
21 you have to decide the case only on the facts and evidence
22 presented in this matter. At the end of the case, I will give
23 you the law that you have to follow. If you had any ideas of
24 what the law is or what it ought to be, what it should be, you
25 can't -- you can't follow that. You have to follow the law

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1 that I give to the jury, apply the facts and decide did the
2 state prove the defendant guilty beyond a reasonable doubt.
3 Okay. That'll be the jury's job. So, the question to you and
4 all the members of the jury is, can you give to the State of
5 South Carolina and to the defendant a fair and impartial
6 trial; can you be a fair and impartial juror in this case?

7 JUROR 190: Can I speak?

8 THE COURT: Yes, sir, please.

9 JUROR 190: At this present time, Your Honor, I'm dealing
10 with a lot of personal things. You know, I'm trying to handle
11 my own life and at this present time, my mind is not on
12 nothing else but what I'm dealing with. I don't think I'd be
13 a good juror to do this to say this man did this or not
14 because my mind is not on the situation.

15 THE COURT: Okay. So, you believe you'd be distracted
16 from being a juror at this time?

17 JUROR 190: I wouldn't -- yeah, I don't think I'd be a
18 good one because my mind is on -- my mind is not here.

19 THE COURT: I appreciate that.

20 JUROR 190: I'm trying to deal with my personal problems,
21 sir.

22 THE COURT: I appreciate that.

23 JUROR 190: I ain't thinking about somebody else's.

24 THE COURT: All right, sir. What I'm gonna do is I'm
25 gonna set you aside from this particular case. Just go back

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1 and have a seat. You don't have to answer any more questions.

2 Okay?

3 JUROR 190: Uh-huh, (affirmative response). Thank you.

4 I just tell you how I feel -- I mean, how I feel, sir, I mean.

5 THE COURT: Yes, sir. And I appreciate that. Thank you
6 very much.

7 JUROR 190: Okay. Thank you.

8 (REPORTER'S NOTE: End of bench conference.)

9 THE COURT: Juror Number 203.

10 (REPORTER'S NOTE: Bench conference is held on the record in
11 the presence of but outside the hearing of the jury venire.)

12 THE COURT: All right, sir. Is it Kinsler?

13 JUROR 203: Yes, sir.

14 THE COURT: All right. Mr. Kinsler, now you answered yes
15 to Question Number 1. So, my first question is, was it
16 yourself or a family member?

17 JUROR 203: Family member.

18 THE COURT: And let's talk about generally your job as a
19 juror. If you're a juror on this case, what's your job,
20 generally. You have to listen to the facts and the evidence
21 presented. Okay. At the end of the case, I will give the
22 jury the law and you have to follow the law that the Court
23 gives to you. If you have any preconceived ideas of what it
24 is or strong beliefs about what it should be or whatever,
25 you'd have to disregard that. You have to follow the law that

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1 I give to you, apply it to the facts and evidence you've
2 heard, and then decide, did the state prove the defendant
3 guilty beyond a reasonable doubt. That'll be the basic
4 question the jury has to decide. Okay?

5 JUROR 203: Right.

6 THE COURT: All right. So, understanding that, can you
7 give to the State of South Carolina and to the defendant a
8 fair and impartial trial; can you be a fair and impartial
9 juror in this case?

10 JUROR 203: Yes.

11 THE COURT: Thank you very much, sir. Appreciate it.
12 Thank you.

13 JUROR 203: All right.

14 (REPORTER'S NOTE: End of bench conference.)

15 THE COURT: Juror Number 209.

16 (REPORTER'S NOTE: Bench conference is held on the record in
17 the presence of but outside the hearing of the jury venire.)

18 THE COURT: All right. Mr. Landry, you had a question
19 mark about Number 1 and you answered expunged. So, does that
20 mean that it was yourself or a family member?

21 JUROR 209: It was my wife.

22 THE COURT: It was your wife. Okay. And so, her record
23 was expunged?

24 JUROR 209: Yes.

25 THE COURT: All right. Very good. So, let's talk about

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1 generally what your job as a juror is. Okay? If you're a
2 juror in this case, listening to the facts and the evidence
3 presented to people testifying of what happened, the facts and
4 the evidence, at the end of the case, I will give the jury the
5 law that you have to follow. You -- if you had any
6 preconceived ideas of what it is, you can't use that, your
7 beliefs. You follow the law that I give to you, look at the
8 facts and evidence and decide, did the state prove the
9 defendant guilty beyond a reasonable doubt. That's the
10 general question the jury has to answer. Okay? So,
11 understanding that, can you give to the State of South
12 Carolina and to the defendant a fair and impartial trial; can
13 you be a fair and impartial juror in this case?

14 JUROR 209: Yes.

15 THE COURT: Thank you very much, sir. I appreciate it.

16 (REPORTER'S NOTE: End of bench conference.)

17 THE COURT: Juror Number 243.

18 (REPORTER'S NOTE: Bench conference is held on the record in
19 the presence of but outside the hearing of the jury venire.)

20 THE COURT: Please come forward, please, ma'am.

21 All right. And, you are Ms. Mendez-Urbina?

22 JUROR 243: Yes, sir.

23 THE COURT: All right. Very good. Now, you answered yes
24 to Question 1 and 3. So, first, as to Question 1, was it
25 yourself or a family member?

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1 JUROR 243: Family member.

2 THE COURT: Okay. All right. So, let's talk about first
3 generally, your job as a juror. If you're a juror on the
4 case, listen to the facts and evidence presented, the people
5 testifying under oath, the evidence that's presented, at the
6 end of the case, I give the jury the law and you have to
7 follow the law that the Court gives to you. If you have got
8 an idea of what you think it ought to be or whatever, you
9 disregard that and you follow the law that I give to you.
10 Okay?

11 JUROR 243: Uh-huh, (affirmative response).

12 THE COURT: And you decide did the state prove the
13 defendant guilty beyond a reasonable doubt, that'll be the
14 general question the jury has to answer. Okay? So,
15 understanding that, can you give to the State of South
16 Carolina and to the Defendant a fair and impartial trial, can
17 you be a fair and impartial juror in this case.

18 JUROR 243: In this case, I can't, only because the first
19 person was my stepfather and I got physically, mentally, and
20 emotionally abused. He was a chronic alcoholic with two
21 counts of DUI. My ex-fiancé had three counts of DUI. I
22 suffered abuse by his hands.

23 THE COURT: So, it'd be very difficult for you to set
24 aside your personal ---

25 JUROR 243: Exactly.

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1 THE COURT: And I appreciate that and I understand.
2 That's the purpose of this. So, what I'm gonna do is I'm
3 gonna set you aside from this particular case. I'm not
4 excusing you from jury duty, but set you aside from this
5 particular case and you can just go back and have a seat and
6 you don't have to answer any more questions. Okay?

7 JUROR 243: Okay. Thank you.

8 THE COURT: Thank you, ma'am.

9 (REPORTER'S NOTE: End of bench conference.)

10 THE COURT: Juror Number 233, Juror Number 233.

11 (REPORTER'S NOTE: Bench conference is held on the record in
12 the presence of but outside the hearing of the jury venire.)

13 THE COURT: All right. Is it Mayhew?

14 JUROR 233: Yes, sir.

15 THE COURT: All right. Ms. Mayhew, you answered yes to
16 Question Number 3 about having strong beliefs or strong
17 opinions. Okay?

18 JUROR 233: Yes, Your Honor.

19 THE COURT: So, and I understand that and this type of --
20 I definitely understand that. Let's talk first about your job
21 generally as a juror. If you're a juror on this case, you
22 listen to the facts and evidence presented, people testifying
23 under oath, the other evidence presented, at the end of the
24 case, I will give to the jury the law and you'll have to
25 follow the law that the Court gives to you despite personal

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1 beliefs, opinions, what you think the law ought to be; you
2 must follow the law that I give to you and apply it to the
3 facts and evidence you heard. Okay?

4 JUROR 233: Yes, Your Honor.

5 THE COURT: And the general question the jury is gonna
6 decide is did the state prove the defendant guilty beyond a
7 reasonable doubt. Okay?

8 JUROR 233: Yes, Your Honor.

9 THE COURT: So, understanding this, my question to you
10 is, can you give to the State of South Carolina and to the
11 defendant a fair and impartial trial; can you be a fair and
12 impartial juror in this case?

13 JUROR 233: I would do my best to be impartial. I, you
14 know, I feel that I have a -- come from a certain -- I know
15 something ---

16 THE COURT: A belief system?

17 JUROR 233: Yes, a belief system. Basically, my husband
18 worked in the emergency department for 10 years and dealt with
19 patients who were results of -- on both ends, yes.

20 THE COURT: And I appreciate that and I understand that.
21 So, if you were on the jury, and I'm not saying that you
22 couldn't do it, but do you believe it might be a struggle to
23 set those opinions or beliefs aside and to be just straight
24 down the line impartial to both sides?

25 JUROR 233: I think I -- I think I would listen to the

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1 facts. I think I'm very factual. I think I would try to
2 listen to the facts but I wanted to be honest on the paper and
3 -- let you know of my bias.

4 THE COURT: No, and I appreciate that. So, I need to
5 know -- we have to deal in absolutes and I understand that.

6 JUROR 233: Yes, yes.

7 THE COURT: And it's a difficult field to deal in
8 absolutes. But, if you have a question or a doubt in your
9 mind that you believe you cannot be fair and impartial, then
10 the answer to my question has to be no. Okay? So, I'll ask
11 you, can you give to the State of South Carolina and to the
12 defendant a fair and impartial trial; can you be a fair and
13 impartial juror in this case?

14 JUROR 233: I cannot answer yes; so my answer will be no.

15 THE COURT: All right. Very good. And I appreciate that
16 and I understand it's difficult. So, what I'm gonna do, I'm
17 gonna set you aside from this case. I'll -- go back and have
18 a seat and you don't have to answer any more questions. All
19 right?

20 JUROR 233: Yes, sir. Thank you, Your Honor.

21 THE COURT: Thank you, ma'am.

22 (REPORTER'S NOTE: End of bench conference.)

23 THE COURT: Juror Number 258.

24 (REPORTER'S NOTE: Bench conference is held on the record in
25 the presence of but outside the hearing of the jury venire.)

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1 THE COURT: All right. Is it Ms. Muffley?

2 JUROR 258: Uh-huh, (affirmative response).

3 THE COURT: All right. You answered yes to Question
4 Number 3 about strong beliefs or opinions. Okay? Let's talk
5 about your job as a juror, generally. If you're a juror on
6 this case, you listen to the facts and the evidence that's
7 presented, the testimony and evidence in this case. At the
8 end of the case, I'm gonna give to the jury the law. You have
9 to follow the law that I give to you despite strong beliefs,
10 strong opinions, what you think the law ought to be, should
11 be, you must follow what the law that I give to the jury. And
12 then, what you do is put the two together. The law, the facts
13 you've heard, and you answer the question, did the state prove
14 the defendant guilty beyond a reasonable doubt. That'll be
15 the jury's job collectively. Okay?

16 JUROR 258: Yes, sir.

17 THE COURT: So, understanding that, here's the question,
18 can you give to the State of South Carolina and to the
19 defendant a fair and impartial trial; can you be a fair and
20 impartial juror in this case?

21 JUROR 258: I will not be able to.

22 THE COURT: All right. And I appreciate that ma'am,
23 thank you. And what I'm gonna do is, I'm gonna set you aside
24 from this case. You don't have to answer any more questions.
25 Okay?

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1 JUROR 258: Uh-huh, (affirmative response).

2 THE COURT: Thank you, ma'am.

3 JUROR 258: Thank you.

4 (REPORTER'S NOTE: End of bench conference.)

5 THE COURT: Juror Number 263.

6 (REPORTER'S NOTE: Bench conference is held on the record in
7 the presence of but outside the hearing of the jury venire.)

8 THE COURT: All right. Is it Neubauer?

9 JUROR 263: Yes.

10 THE COURT: All right. And you indicated on Question 1
11 it was your son?

12 JUROR 263: Yes.

13 THE COURT: All right. So, let's talk about your job
14 generally as a juror, if you're a juror on this case. You
15 listen to the facts and evidence presented, the people come in
16 and testifying under oath, any evidence presented. At the end
17 of the case, I give to the jury the law, the law that you have
18 to follow. If you've got strong beliefs, opinions on what the
19 law ought to be, you disregard that. You follow the law I
20 give to you, apply it to the facts and evidence you've heard,
21 and then the jury answers this question, basically. Did the
22 state prove the defendant guilty beyond a reasonable doubt?
23 Okay? That's the jury's job. So, understanding that, can you
24 give to the State of South Carolina and to the defendant a
25 fair and impartial trial; can you be a fair and impartial

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1 juror in this case?

2 JUROR 263: Yes, I believe so, sir.

3 THE COURT: All right. Thank you very much, sir.

4 JUROR 263: I'll do that.

5 THE COURT: Appreciate it. Thank you.

6 JUROR 263: Thank you.

7 (REPORTER'S NOTE: End of bench conference.)

8 THE COURT: Juror Number 313.

9 (REPORTER'S NOTE: Bench conference is held on the record in
10 the presence of but outside the hearing of the jury venire.)

11 JUROR 313: Hello.

12 THE COURT: How you doing?

13 JUROR 313: I'm all right.

14 THE COURT: And I'm sorry ---

15 JUROR 313: It's Rollings.

16 THE COURT: Rollings, okay. It's right there. So, Ms.
17 Rollings, you answered in Question Number 3, and you answered
18 no for general consumption of alcohol, but you had strong
19 beliefs about drinking and driving.

20 JUROR 313: Uh-huh, (affirmative response).

21 THE COURT: Okay. All right. So, first, let's cover two
22 things. One, you understand it's not against the law to have
23 a drink ---

24 JUROR 313: I do.

25 THE COURT: --- and drive a motor vehicle. There are

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1 limits, there are things you cannot do, but there are -- but,
2 in general, you can have a drink and drive.

3 JUROR 313: I understand.

4 THE COURT: Okay. Now, the general job of the jury in
5 this particular case is you listen to the facts and evidence,
6 the witnesses testify, presented evidence, I give you the law
7 at the end of the case, you follow the law, the jury answers a
8 question, basically, did the State of South Carolina prove the
9 defendant guilty of the crime charged beyond a reasonable
10 doubt?

11 JUROR 313: Uh-huh, (affirmative response).

12 THE COURT: Okay? So, that's the job. Understanding
13 that ---

14 JUROR 313: Got it.

15 THE COURT: Can you give to the State of South Carolina
16 and to the defendant a fair and impartial trial; can you be a
17 fair and impartial juror in this case?

18 JUROR 313: I believe I can.

19 THE COURT: Thank you, ma'am.

20 (REPORTER'S NOTE: End of bench conference.)

21 THE COURT: Juror Number 356, please.

22 (REPORTER'S NOTE: Bench conference is held on the record in
23 the presence of but outside the hearing of the jury venire.)

24 THE COURT: All right, sir. Is your last name Teeple?

25 JUROR 356: Yes.

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1 THE COURT: All right. Very good. Now, you answered yes
2 to Question 1 with several family members. It was not
3 yourself, correct?

4 JUROR 356: Yes.

5 THE COURT: Very good. All right. So, with that, let's
6 talk about generally your job as a juror. You listen to the
7 facts and evidence presented in the case, the people
8 testifying under oath, what happened, that sort of thing, the
9 presentation of the evidence. At the end of the case, I give
10 you the law that you have to follow. You set aside personal
11 beliefs, opinions, you set that aside, you follow the law,
12 apply it to the facts and the evidence and generally the jury
13 answers the question, did the state prove the defendant guilty
14 of the crime charged beyond a reasonable doubt. Okay? So,
15 understanding that's the jury's job, the question to you is,
16 can you give to the State of South Carolina and to the
17 defendant a fair and impartial trial; can you be a fair and
18 impartial juror in this case? And before you answer, let me
19 say ---

20 JUROR 356: You want me to ---

21 THE COURT: I have to ask that. I have to deal in
22 absolutes. Okay? So, if you have doubts about whether you
23 can be fair and impartial, then you have to tell me no. Okay?
24 So, do you believe you can be fair and impartial to the state
25 and the defendant?

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1 JUROR 356: I don't think so.

2 THE COURT: Okay. And I appreciate that and that's the
3 purpose of the questionnaire. What I'm gonna do is I'm gonna
4 set you aside from this particular case. I'm not excusing you
5 from jury duty, just go back and have a seat. You don't have
6 to answer any more questions. Okay?

7 JUROR 356: Okay.

8 THE COURT: Thank you, sir.

9 (REPORTER'S NOTE: End of bench conference.)

10 THE COURT: Juror Number 393, please.

11 (REPORTER'S NOTE: Bench conference is held on the record in
12 the presence of but outside the hearing of the jury venire.)

13 THE COURT: All right, sir. How do you pronounce the
14 last name, Worland?

15 JUROR 393: Worland, like the land you fight a war on.

16 THE COURT: All right. Very good. All right. You
17 answered yes to Question Number 1. Now, was that yourself or
18 a family member?

19 JUROR 393: It was a family member.

20 THE COURT: All right. Very good. Now, let's talk about
21 your job generally as a juror. You listen to the facts and
22 the evidence presented in the trial, the witnesses testifying,
23 the evidence presented. At the end of the case, I will give
24 the jury the law that you have to follow. You have to set
25 aside beliefs, opinions, what you think the law ought to be.

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1 You must follow the law as I give it, apply it to the facts
2 and the evidence you've heard. And then the jury will
3 generally answer the question of did the state prove the
4 defendant guilty of the crime charged beyond a reasonable
5 doubt. Okay? So, that's what the jury's job collectively
6 will be. So, understanding that, can you give to the State of
7 South Carolina and to the defendant a fair and impartial
8 trial; can you be a fair and impartial juror in this case?

9 JUROR 393: Yes, sir.

10 THE COURT: Thank you very much, sir.

11 (REPORTER'S NOTE: Bench conference is held off the record in
12 the presence of but outside the hearing of the jury venire.)

13 THE COURT: All right. Ladies and gentlemen, what we're
14 going to do now is go over the general qualification questions
15 that we ask in every criminal case. These are standard ones
16 that we ask every time we have a criminal trial or criminal
17 jury trial. First, what I'm gonna do is read off the possible
18 or potential witnesses. Now, just because I read these names
19 does not mean that everybody named that I read off to you is
20 going to testify in this case, but they are available, they
21 potentially could be called as a witness in this case.

22 Where it has CPD; is that Conway?

23 MS. WALKER: Yes, Your Honor.

24 MR. HOLFORD: Yes, Your Honor.

25 THE COURT: All right. Very good.

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1 All right. So, these individuals are with the Conway
2 Police Department: Glenn Guyett, G-U-Y-E-T-T; Jeff Jordan;
3 Christopher Johnson; Joshua Scott; Dale Long; Lisa Hill. All
4 those are with the Conway Police Department. With the South
5 Carolina Department of Natural Resources, Daniel Baker.

6 Is that Coastal Carolina is the next one?

7 MR. HOLFORD: Yes, Your Honor.

8 THE COURT: All right. Robert W. Dale, Jr., of Coastal
9 Carolina University Department of Public Safety. These
10 individuals that I'm gonna call now, these three are with the
11 Horry County Police Department: Chad Piontica, P-I-O-N-T-I-C-
12 A; Jared Soucy, S-O-U-C-Y; William Hall. The next ones, the
13 next four are with the Horry County Fire and Rescue: Dylan
14 Kwitchoff, K-W-I-T-C-H-O-F-F; Michael Henry; Rebecca Olsen;
15 Jeremy Herndon. With the South Carolina Law Enforcement
16 Division: Lindsay D. Mitchell; Rachel Nguyen, that's N-G-U-Y-
17 E-N; Jessica Kapp, with a K, K-A-P-P; Laurie Shacker; I'm
18 sorry, also Doris Yarborough of the State Law Enforcement
19 Division. Rebecca Rowe of Conway Medical Center. Edward
20 Proctor of Grand Strand Medical Center. With the South
21 Carolina Department of Public Safety, the Highway Patrol:
22 Jeremy T. Leach; Greg R. McCrackin; Tyler J. Luther; Michelle
23 A. Ligocki, L-I-G-O-C-K-I. South Carolina Department of -- is
24 that Probation, Parole and Pardon Services?

25 MR. HOLFORD: Yes, Your Honor.

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1 THE COURT: Richard Loskill, L-O-S-K-I-L-L; Melanie
2 Berentsen, B-E-R-E-N-T-S-E-N; Steven McLaughlin-Carneiro, C-A-
3 R-N-E-I-R-O; Manson Roper; Julian Frazier; Morgan Godall-
4 Scott; Olivia Malle, M-A-L-L-E; Kelcee Cramer; Preston Carey,
5 III; Jonathan Hylton, H-Y-L-T-O-N; Jason Plumley, P-L-U-M-L-E-
6 Y; Edward Lee Washington.

7 Any member of the jury panel that's related by blood or
8 marriage, close personal friends, acquaintances of, knows, any
9 of these possible or potential witnesses? If so, please
10 stand.

11 (REPORTER'S NOTE: No response.)

12 THE COURT: Is there any member of the jury panel that
13 either you yourself or member of your immediate family has
14 ever had a matter of any kind handled, worked on in any way by
15 the Fifteenth Circuit Solicitor's Office; that's the
16 prosecuting office that covers Horry and Georgetown Counties,
17 either you yourself or member of your immediate family?

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Any member of the jury panel ever had any
20 matters of any kind handled by the Fifteenth Circuit Public
21 Defender's Office either in Horry or Georgetown Counties? If
22 so, please stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: Any member of the jury panel that's related
25 by blood or marriage, close personal friends, acquaintances of

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1 anyone employed at the Fifteenth Circuit Solicitor's Office
2 either in Horry or Georgetown Counties?

3 (REPORTER'S NOTE: No response.)

4 THE COURT: Anyone related by blood or marriage, close
5 personal friends, acquaintances of anyone employed at the
6 Horry County -- I'm sorry -- the Fifteenth Circuit Public
7 Defender's Office, either in Horry County or Georgetown
8 County? If so, please stand.

9 (REPORTER'S NOTE: No response.)

10 THE COURT: Other than the questionnaire that we already
11 went over, does any member of the jury panel have any type of
12 personal, political, religious, philosophical belief that you
13 believe would prevent you from being a fair and impartial
14 juror?

15 (REPORTER'S NOTE: No response.)

16 THE COURT: Is there any member of the jury panel that
17 you yourself were a former law enforcement officer or you have
18 a current family member or other family member who in the past
19 was in law enforcement; so, it's yourself or a family member
20 is either currently or in the past in law enforcement? If so,
21 please stand.

22 All right. Start in the front row. Yes, sir, your name
23 and juror number, please?

24 JUROR 18: James Bateman, 18.

25 THE COURT: And who is it?

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1 JUROR 18: My cousin, two cousins.

2 THE COURT: And what police department are they
3 associated with?

4 JUROR 18: Niagara Falls, New York.

5 THE COURT: All right. Very good. Can you give to the
6 State of South Carolina and to the defendant a fair and
7 impartial trial; can you be a fair and impartial juror in this
8 case?

9 JUROR 18: No.

10 THE COURT: Did we excused you before?

11 JUROR NUMBER 18: Yes, sir.

12 THE COURT: Oh, okay. All right. Let me just say that
13 if I excused you already, you don't have to answer any more
14 questions. I probably forgot to tell you that.

15 All right. Yes, sir, your name and juror number?

16 JUROR 2: Russell Allman, Juror Number 2.

17 THE COURT: All right. And who is it that ---

18 JUROR 2: My daughter, Horry County Police Department.

19 THE COURT: Horry County Police Department. All right.
20 Can you give to the State of South Carolina and to the
21 defendant a fair and impartial trial; can you be a fair and
22 impartial juror in this case?

23 JUROR 2: Yes, sir.

24 THE COURT: Thank you very much.

25 All right. Is there any member of the jury panel, either

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1 you yourself or a member of your immediate family, that are a
2 member of or involved in any kind of victim's rights
3 organization or a law enforcement support organization? So,
4 let me give you a couple of examples. This is not an
5 exhaustive list of any kind, I'm just trying to give you a
6 couple of examples here: Mothers Against Drunk Driving,
7 Citizens Against Violent Crime, South Carolina Sheriffs
8 Association, South Carolina Law Enforcement Officers
9 Association, just some kind of victim's rights or law
10 enforcement organization, either yourself or a family member
11 are a member or involved in? If so, please stand.

12 Very good. All right. The next question I'm going to
13 ask, ladies and gentlemen, is whether or not you yourself or a
14 member of your immediate family has ever been the victim of a
15 crime. Now, I am not going to ask you what occurred. I do
16 not want you to volunteer any information to me about what
17 occurred. The question is straightforward, yourself or a
18 family member, and then I'll ask the qualification question.
19 So, is there any member of the jury panel, either you yourself
20 or a member of your immediate family ever been a victim of a
21 crime? If so, please stand.

22 All right. We'll start, ma'am, right over here. Tell me
23 your name and juror number, please?

24 JUROR 24: Tina Belush, Number 24.

25 THE COURT: And yourself or a family member or both?

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1 JUROR 24: Well, my son and myself.

2 THE COURT: All right. Okay. Very good.

3 JUROR 24: Our house was broken into.

4 THE COURT: Okay. All right. Don't -- don't -- don't
5 tell me anything about what occurred. Here, let me ask you
6 the qualification question. Can you give to the State of
7 South Carolina and to the defendant a fair and impartial
8 trial; can you be a fair and impartial juror in this case?

9 JUROR 24: Yes.

10 THE COURT: Thank you very much.

11 All right. Yes, ma'am, basically behind her, your name
12 and juror number?

13 JUROR 151: 151, Paulette Hager.

14 THE COURT: And was it yourself or a family member or
15 both?

16 JUROR NUMBER 151: Myself.

17 THE COURT: Okay. Can you give to the State of South
18 Carolina and to the defendant a fair and impartial trial; can
19 you be a fair and impartial juror in this case?

20 JUROR 151: Yes.

21 THE COURT: Thank you very much.

22 Yes, ma'am?

23 JUROR 112: 112, Stacey Engel.

24 THE COURT: All right. And yourself or a family member?

25 JUROR 112: Myself.

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1 THE COURT: Can you give to the State of South Carolina
2 and to the defendant a fair and impartial trial; can you be a
3 fair and impartial juror in this case?

4 JUROR 112: Yes.

5 THE COURT: Thank you very much.

6 All right. Before I ask my general last question,
7 further questions from the state?

8 MR. HOLFORD: None, Your Honor.

9 THE COURT: From the defense?

10 MR. STANKO: Nothing from the defense.

11 THE COURT: All right. Ladies and gentlemen, my last
12 question, I call it my general or catch-all question. Do you
13 know of any reason, have any question in your mind, any doubt
14 in your mind, that you believe you cannot give to the State of
15 South Carolina and to the defendant a fair and impartial
16 trial, that is for any reason whatsoever you believe you
17 cannot be a fair and impartial juror? If so, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Very good. All right. Ladies and gentlemen,
20 this is the process. The clerk is going to call your names
21 again that are set forth in a random order, not alphabetical
22 or by -- by your juror number. They will call your name. If
23 and when your name is called, you will stand up and you will
24 come forward and you will basically come to a place right in
25 front of Ms. Kay, the court reporter right here, stand right

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1 in front of her, turn and face to the back of the courtroom.
2 At that point in time, the clerk's representative will inquire
3 of the state, ask the state to present or excuse the juror.
4 Thereafter, the clerk will ask of the defense to seat or
5 excuse the juror. If you are excused by the state or the
6 defense, you go back and have a seat from whence you came. If
7 you are presented by the state, you are seated by the defense,
8 the clerk will instruct you to go to the jury box and have a
9 seat in the jury box as a member of this jury. So, if you
10 happen to have any personal items with you, purse, whatever
11 the personal item is, bring that along with you in case you
12 are seated you can go directly to the jury box.

13 All right, Madam Clerk.

14 JURY SELECTION:

15 CLERK: Number 203, Dennis Kinsler.

16 THE COURT: Right -- just right up here in front of Ms.
17 Kay, right there, and just turn around and face the other way.
18 There you go; very good. Thank you, sir.

19 CLERK: What say the state?

20 MR. HOLFORD: Please excuse this juror from this case.

21 CLERK: You are excused from this particular case.

22 THE COURT: All right. So, you can go back and have a
23 seat. Yes, sir. Thank you.

24 CLERK: Number 97, Terance Dozier.

25 MR. HOLFORD: Your Honor, may we approach on this?

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1 THE COURT: Certainly. Counsel, y'all come around. Sir,
2 you can just go right there and have a seat. Stand right
3 there. Thank you.

4 (REPORTER'S NOTE: Bench conference is held off the record in
5 the presence of but outside the hearing of the jury.)

6 THE COURT: Mr. Dozier, can you come up and talk to me
7 for just one second please, sir, come around?

8 (REPORTER'S NOTE: Bench conference is held on the record in
9 the presence of but outside the hearing of the jury.)

10 THE COURT: Mr. Dozier, back in 2008, understand there's
11 no convictions, but were you charged with pointing and
12 presenting and a firearm or some type of firearm violation?

13 JUROR 97: That what they tried to charge me for?

14 THE COURT: Yes, sir, back in 2008.

15 JUROR 97: Yes, sir.

16 THE COURT: All right. Did you understand my question
17 when I asked had anybody had any matters that were involved
18 with or brought by the solicitor's office, I asked that
19 question. Did you hear me when I asked or you didn't
20 understand that?

21 JUROR 97: No, no.

22 THE COURT: All right, sir. Very good.

23 JUROR 97: You said you voted, don't you?

24 THE COURT: All right. Very good. Okay. Go back and
25 stand around there. All right. Thank you.

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1 (REPORTER'S NOTE: End of bench conference.)

2 CLERK: What say the state?

3 MR. HOLFORD: Please excuse this juror.

4 CLERK: You're excused from this particular case.

5 Number 209, Marty Landry.

6 What say the state?

7 THE COURT: Do you have a question? All right. Counsel,
8 come up here, please.

9 (REPORTER'S NOTE: Bench conference is held on the record in
10 the presence of but outside the hearing of the jury.)

11 THE COURT: Yes, sir?

12 JUROR 209: My wife rides horses at a barn and the person
13 she rides with, her husband's name is Chad and he's an Horry
14 County copy and I don't know his last name. So, I don't know
15 if I knew him or not.

16 THE COURT: Okay. I'm sorry, he's a police officer?

17 JUROR 209: Yes, sir. And it's one on the list of the
18 people that you called out but I don't know if that's his last
19 name or not and so I ---

20 THE COURT: And then what's his -- what is the name that
21 you believe he has?

22 JUROR 209: Chad is the guy's name.

23 THE COURT: Okay. Pion -- yeah, P-i-o-n-t-i-c-a.

24 JUROR 209: I don't know his last name, but ---

25 THE COURT: And I appreciate that. So, why don't --

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1 let's just assume it's the same person. Okay?

2 JUROR 209: Okay.

3 THE COURT: My question to you is still the same, can you
4 give to the State of South Carolina and to the defendant a
5 fair and impartial trial; can you be a fair and impartial
6 juror in this case?

7 JUROR 209: Uh-huh, (affirmative response).

8 THE COURT: All right. Very good. Thank you very much.
9 Thank you, sir.

10 (REPORTER'S NOTE: End of bench conference.)

11 CLERK: What say the state?

12 MR. HOLFORD: Please present this juror.

13 CLERK: Defense?

14 MR. PINKERTON: Please excuse this juror.

15 CLERK: You're excused from this particular case.

16 Number 74, Robert Coates.

17 What say the state?

18 MR. HOLFORD: Please present this juror.

19 CLERK: Defense?

20 MR. PINKERTON: Please seat this juror.

21 CLERK: Please be seated in the juror box.

22 Number 66, Quamaine Chestnut.

23 What say the state?

24 MR. HOLFORD: Please present this juror.

25 CLERK: Defense?

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1 MR. PINKERTON: Please seat this juror.
2 CLERK: Please be seated in the juror box.
3 Number 10, Marianne Baier.
4 What say the state?
5 MR. HOLFORD: Please present this juror.
6 CLERK: Defense?
7 MR. PINKERTON: Please excuse this juror.
8 CLERK: You're excused from this particular case.
9 Number 263, Glenn Neubauer.
10 What say the state?
11 MR. HOLFORD: Please excuse this juror from this case.
12 CLERK: You're excused from this particular case.
13 Number 107, Iesha Edwards.
14 What say the state?
15 MR. HOLFORD: Please excuse this juror from this case.
16 CLERK: You're excused from this particular case.
17 381, Shelby Wideman.
18 What say the state?
19 MR. HOLFORD: Please present this juror.
20 CLERK: Defense?
21 MR. PINKERTON: Please seat this juror.
22 CLERK: Please be seated in the juror box.
23 Number 182, Robert Huff.
24 What say the state?
25 MR. HOLFORD: Please present this juror.

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1 CLERK: Defense?

2 MR. PINKERTON: Please excuse this juror.

3 CLERK: You're excused from this particular case.

4 343, Stewart Stevenson.

5 What say the state?

6 MR. HOLFORD: Please present this juror.

7 CLERK: Defense?

8 MR. PINKERTON: Please seat this juror.

9 CLERK: Please be seated in the juror box.

10 313, Nancy Rollings.

11 What say the state?

12 MR. HOLFORD: Please present this juror.

13 CLERK: Defense?

14 MR. PINKERTON: Please excuse this juror.

15 CLERK: You're excused from this particular case.

16 393, Michael Worland.

17 What say the state?

18 MR. HOLFORD: Please present this juror.

19 CLERK: Defense?

20 MR. PINKERTON: Please seat this juror.

21 CLERK: Please be seated in the juror box.

22 JUROR 393: Bingo.

23 304, Adrianna Refling.

24 What say the state?

25 MR. HOLFORD: Please present this juror.

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1 CLERK: Defense?

2 MR. PINKERTON: Please seat this juror.

3 CLERK: Please be seated in the juror box.

4 Number 24, Tina Belush.

5 What say the state?

6 MR. HOLFORD: Please present this juror.

7 CLERK: Defense?

8 MR. PINKERTON: Please seat this juror.

9 CLERK: Please be seated in the juror box.

10 333, Katrina Singleton.

11 What say the state?

12 MR. HOLFORD: Please present this juror.

13 CLERK: Defense?

14 MR. PINKERTON: Please seat this juror.

15 CLERK: Please be seated in the juror box.

16 Number 120, Jeanette Fleischer.

17 What say the state?

18 MR. HOLFORD: Please excuse this juror.

19 CLERK: You're excused from this particular case.

20 186, Stephanie Hyman.

21 What say the state?

22 MR. HOLFORD: Please present this juror.

23 CLERK: Defense?

24 MR. PINKERTON: Please seat this juror.

25 CLERK: Please be seated in the juror box.

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1 Number 339, Jemama Spyralatos.
2 What say the state?
3 MR. HOLFORD: Please present this juror.
4 CLERK: Defense?
5 MR. PINKERTON: Please seat this juror.
6 CLERK: Please be seated in the juror box.
7 Number 228, Diane Major.
8 What say the state?
9 MR. HOLFORD: Please present this juror.
10 CLERK: Defense?
11 MR. PINKERTON: Please seat this juror.
12 CLERK: Please be seated in the juror box.
13 Number 112, Stacey Engle.
14 What say the state?
15 MR. HOLFORD: Please present this juror.
16 CLERK: Defense?
17 MR. PINKERTON: Please excuse this juror.
18 CLERK: You're excused from this particular case.
19 274, Kari Paccione.
20 What say the state?
21 MR. HOLFORD: Please present this juror.
22 CLERK: Defense?
23 MR. PINKERTON: Please seat this juror.
24 CLERK: Please be seated in the juror box.
25 THE COURT: All right. Counsel, we're going to have two

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1 alternates. It will be one and two on each alternate.
2 CLERK: 316, Ashley Saenz.
3 What say the state?
4 MR. HOLFORD: Please excuse this juror.
5 CLERK: You're excused from this particular case.
6 Number 31, Luke Bosman.
7 What say the state?
8 MR. HOLFORD: Please present this juror.
9 CLERK: Defense?
10 MR. PINKERTON: Please seat this juror.
11 CLERK: Please be seated in the juror box.
12 THE COURT: All right. So, you're one of the alternates
13 please.
14 CLERK: 151, Paulette Hager.
15 What say the state?
16 MR. HOLFORD: Please present this juror.
17 CLERK: Defense?
18 MR. PINKERTON: Please excuse this juror.
19 CLERK: You're excused from this particular case.
20 Number 79, Lawrence Corey.
21 What say the state?
22 MR. HOLFORD: Please present this juror.
23 CLERK: Defense?
24 MR. PINKERTON: Please excuse this juror.
25 CLERK: You're excused from this particular case.

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1 Number 2, Russell Allman.

2 What say the state?

3 MR. HOLFORD: Please present this juror.

4 CLERK: Defense?

5 MR. PINKERTON: Please seat the juror.

6 CLERK: Please be seated in the juror box.

7 THE COURT: All right. So, you're the other alternate.

8 Thank you very much.

9 All right. Any objections to the jury as empaneled from
10 the state?

11 MR. HOLFORD: No, Your Honor.

12 THE COURT: From the defense?

13 MR. STANKO: No, Your Honor.

14 THE COURT: I find the jury is properly empaneled
15 pursuant to *Batson v. Kentucky* and *JEB v. Alabama*.

16 BY THE COURT:

17 All right. Ladies and gentlemen, I'm going to ask in a
18 minute or two for you to go back to your jury room and do one
19 thing for me and that's going to be to select your foreperson
20 for this particular jury.

21 So, let me tell you what the foreperson's duties and
22 responsibilities are. If we are here in the courtroom and the
23 jury needs attention to some matter, the witness needs to
24 speak up or the lawyers or whatever it is, the foreperson,
25 they'll raise their hand and get this Court's attention and

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1 we'll handle the matter whatever it is. If you're back in the
2 jury room and some matter comes up, you will take a pad and
3 pen provided to you, you will write a note, you will sign it,
4 you'll give it to the bailiff, it will come to me and again,
5 we'll handle that matter whatever it is. When we have gone
6 through the evidentiary portion of the trial, we've heard all
7 of the evidence in this case, you've heard the closing
8 arguments of the attorneys, I have given you to the law that
9 you will apply to the facts and evidence you have heard in
10 this case, then I submit the case to you for your
11 deliberations and your unanimous decision in this particular
12 matter.

13 During that process, the foreperson's duties and
14 responsibilities change in this regard. The foreperson is
15 gonna act like the chairperson at a meeting, guide the
16 discussions, if necessary. Now, the foreperson's voice and
17 vote carries no more weight than any other member of the jury.
18 Everybody is equal in that regard, but the foreperson needs to
19 remain in charge. Again, if there's some question, take the
20 pad and pen, write out the note, give it to the bailiff,
21 again, it'll come to me and we'll handle the matter whatever
22 it is.

23 The final duty and responsibility of the foreperson is
24 once the jury has well and truly deliberated, you have reached
25 your unanimous decision in this particular matter, the

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1 foreperson will take the printed verdict form that the Court
2 will provide to you, check the appropriate block or write out
3 the appropriate words, thereafter sign your name as the
4 foreperson indicating that the verdict on the verdict form is
5 indeed the verdict of each and every member of the jury in
6 this case. So, if called upon by the clerk's representative
7 after they read out the verdict, to affirm that that is your
8 verdict, all members of the jury can raise their right hand
9 and say that is my verdict.

10 So, understanding the duties of the foreperson, I'm gonna
11 send you back to the jury room. Now, gentlemen, the two
12 alternates, y'all can vote on the foreperson, but being the
13 alternates, y'all cannot be the foreperson. Everybody else is
14 eligible to be the foreperson. So, go to your jury room,
15 select a foreperson, knock on the door, and let the bailiff
16 know who it is, please.

17 Thank you.

18 (REPORTER'S NOTE: Jury exits courtroom @ 1:20 P.M.)

19 THE COURT: All right. Ladies and gentlemen of the panel
20 that were not selected, I'm gonna excuse you for the balance
21 of the day. Call back that juror information line tomorrow
22 after 12:00 noon, follow those instructions, whatever they
23 are, if it's a call back or whatever it might be, and with
24 that, you are now excused.

25 Thank you very much.

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1 (REPORTER'S NOTE: Jury Venire exits courtroom @ 1:21 P.M.)

2 THE COURT: All right. Counsel, we'll resume at 2:30 and
3 hear the motions at that point in time. All right?

4 MR. HOLFORD: Yes, sir.

5 MR. STANKO: Yes, sir.

6 THE COURT: Thank you very much.

7 MR. HOLFORD: Thank you, Your Honor.

8 RECESS - 1:22 P.M.

9 *****OFF THE RECORD*****

10 (On the Record - 2:34 P.M.)

11 (REPORTER'S NOTE: The following takes place outside the
12 presence of the jury.)

13 THE COURT: For your information, the jury has selected
14 Juror Number 274 as their foreperson.

15 All right. You want to start with the *Jackson v. Denno*
16 hearing; you ready to go with that?

17 MR. HOLFORD: Yes, Your Honor.

18 THE COURT: All right. Very good. Let's go.

19 JACKSON V. DENNO HEARING:

20 MR. HOLFORD: The state calls Officer Glen Guyett.

21 THE COURT: Come around and be sworn, sir.

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

24 GLEN GUYETT, HAVING BEEN SWORN

25 TESTIFIES AS FOLLOWS:

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GLEN GUYETT - DIRECT BY HOLFORD

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1 CLERK: Please be seated. Please state your name and
2 spell your name for the Court.

3 MR. GUYETT: Officer Glen Guyett, G-L-E-N, G-U-Y-E-T-T.

4 THE COURT: Go ahead, sir.

5 DIRECT EXAMINATION OF GLEN GUYETT BY MR. HOLFORD:

6 Q: Officer Guyett, where are you currently employed?

7 A: With the City of Conway.

8 Q: And how long have you been with the City of Conway?

9 A: Close to eight, nine years now.

10 Q: And in what capacity are you employed there?

11 A: As a patrol officer.

12 Q: Have you been a patrol officer for the last eight or nine
13 years?

14 A: Yes, sir.

15 Q: And in your duties as a patrol officer, have you had the
16 opportunity to arrest defendants or suspects?

17 A: Yes.

18 Q: A number of them?

19 A: Yes, sir.

20 Q: Have you conducted interviews with any of those
21 defendants?

22 A: A few.

23 Q: Did you have the opportunity to take into custody and
24 arrest Edward Washington in this case?

25 A: I did.

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GLEN GUYETT - DIRECT BY HOLFORD

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1 Q: Were you the arresting officer in this case?

2 A: I was.

3 Q: And did you have video recording equipment operating at
4 the time?

5 A: Yes.

6 Q: Did you have in-car video?

7 A: I had in-car video as well as a body-worn camera.

8 Q: Okay. And tell the Court a little bit about the body-
9 worn camera; how -- does it operate fulltime, do you need to
10 turn it on and off?

11 A: It usually operates the fulltime, but they were new to us
12 and they had their technical difficulties and battery lengths.

13 Q: When you have an in-car video, what does that capture;
14 does that capture the audio from your person as well?

15 A: Depending on the body-worn camera, it does as well as it
16 has its own microphone within the car to catch any interaction
17 in the vehicle itself.

18 Q: Okay. And does -- that in-car camera, when does it turn
19 on?

20 A: It can turn on automatically once you activate your
21 emergency lights or you can turn it on manually.

22 Q: And have you had a chance to review the in-car video for
23 this case?

24 A: I have.

25 Q: And did you have in-car video running with this

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GLEN GUYETT - DIRECT BY HOLFORD

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1 defendant?

2 A: I did.

3 Q: Did you provide this defendant with Miranda rights?

4 A: I did.

5 Q: And did you take him into custody?

6 A: I did.

7 Q: Was he handcuffed?

8 A: He was handcuffed.

9 Q: I'm gonna -- may I approach, Your Honor?

10 THE COURT: Yes, sir.

11 Q: I'm gonna hand you what's been marked as State's 3. Can

12 you identify just for the Court what I've handed you?

13 A: Okay. This is the DVD rom with my in-car video that I

14 reviewed.

15 Q: And have you reviewed that in preparation for trial?

16 A: I have.

17 Q: Okay. Does that -- what's contained on that disc, if we

18 open it up and show it to you, would it be a fair and accurate

19 copy of what you supplied?

20 A: It is. It shows my response and my taking the defendant

21 into custody.

22 Q: And -- and did you -- were your Miranda warnings captured

23 on this in-car video?

24 A: Yes.

25 MR. HOLFORD: Your Honor, the state would seek to admit

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1 State's 3 at this time for the purpose of this hearing.

2 THE COURT: Any objection for the purposes of the motion?

3 MR. STANKO: Without objection, sir.

4 THE COURT: It's in evidence. You may proceed.

5 STATE'S EXHIBIT NUMBER 3

6 ADMITTED INTO EVIDENCE FOR PRETRIAL

7 BY MR. HOLFORD:

8 Q: Now, I'm gonna also hand you -- may I approach, Your
9 Honor?

10 THE COURT: Yes, sir.

11 Q: I'm gonna hand you what's been marked as State's 1 and 2.
12 Can you identify what state's 1 is?

13 A: This is the copy of the DVD showing my body-worn video.

14 Q: And have you had a chance to review those -- the body-
15 worn camera video?

16 A: I did.

17 Q: And is that a fair and accurate depiction of what was
18 recorded from your body camera that night?

19 A: It is.

20 Q: And as to State's 2, can you identify what State's 2 is?

21 A: This is the body-worn camera of Officer Jordan from that
22 night, as my video would be cutting in and out, his also
23 depicts what was going on as well.

24 Q: Okay. And as to State's 2, Jeff Jordan's body-worn
25 camera, have you reviewed that?

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1 A: I have.

2 Q: Do you appear on that body-worn camera?

3 A: I do.

4 Q: And what portion of his body camera is State's 2?

5 A: It is the portion where -- where I'm giving the advised
6 rights for the advisement of his rights.

7 Q: Okay. And so, between your body camera and Jeff Jordan's
8 body-worn camera, do they depict you having conversations with
9 the defendant in this case?

10 A: They do.

11 MR. HOLFORD: Your Honor, the state would seek to
12 introduce State's 1 and 2 for purposes of this hearing?

13 THE COURT: Any objection to State's 1 and 2 for the
14 purposes of the hearing?

15 MR. STANKO: Without objection, sir.

16 THE COURT: All right. They're in evidence for the
17 motion. You may proceed.

18 STATE'S EXHIBIT NUMBER 1 AND 2

19 ADMITTED INTO EVIDENCE FOR PRETRIAL

20 MR. HOLFORD: Your Honor, the state seeks to publish
21 State's 3?

22 THE COURT: You may do so.

23 MR. HOLFORD: Your Honor, State's 3 has four or five
24 separate videos. For purposes of this hearing, the state
25 would only seek to introduce the Miranda portion of that, and

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GLEN GUYETT - DIRECT BY HOLFORD

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1 then play the body cam that are relevant to the *Jackson v.*
2 *Denno*.

3 THE COURT: All right. Very good. Any objection to that
4 from the defense?

5 MR. STANKO: None, sir.

6 THE COURT: Very good.

7 BY MR. HOLFORD:

8 Q: Officer Guyett, in reviewing your in-car video, do you
9 remember about what time on that video you do Miranda?

10 A: It was right around 17, 18 minutes into it.

11 Q: Can you see on the screen right there?

12 A: Yes.

13 Q: Does this appear to be the video that you reviewed?

14 A: It is, sir.

15 (REPORTER'S NOTE: State's 3 published. Audio not transcribed
16 herein.)

17 BY MR. HOLFORD:

18 Q: Is that you right there?

19 A: Yes, sir.

20 (REPORTER'S NOTE: State's 3 published. Audio not transcribed
21 herein.)

22 BY MR. HOLFORD:

23 Q: Officer Guyett, the video is at about 14 minutes 16
24 seconds. What did you just do with the defendant there?

25 A: I searched him before placing him into my vehicle.

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GLEN GUYETT - DIRECT BY HOLFORD

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1 Q: Okay. And do you immediately get in the vehicle or do
2 you ---

3 A: No, I actually walk around. My sergeant drives up and I
4 speak to him about what's going on and get more information to
5 him as to what's next.

6 Q: And then you said you come back to the vehicle and you
7 did Miranda somewhere around 17, 18 minutes?

8 A: Yes, sir.

9 (REPORTER'S NOTE: State's 3 published. Audio not transcribed
10 herein.)

11 BY MR. HOLFORD:

12 Q: And now on the video at 19:39, what do we see is
13 happening in that video?

14 A: Right now, I'm leaving the parking lot taking him to the
15 Conway Medical Center for his treatment.

16 Q: Okay. Did you have a conversation with him while he --
17 while you were transporting him?

18 A: He wasn't talking to me a whole lot while being
19 transported.

20 Q: Did he talk to you when he got to the Conway Medical?

21 A: Yes.

22 Q: And is that depicted on your body cam?

23 A: It is.

24 MR. HOLFORD: So, Your Honor, at this time, the state
25 would seek to publish State's 1.

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1 THE COURT: All right. Go ahead.

2 (REPORTER'S NOTE: State's 1 published. Audio not transcribed
3 herein.)

4 BY MR. HOLFORD:

5 Q: Officer Guyett, this first video clip on the disc, as you
6 can see, what -- what is this a body-worn camera?

7 A: That's me getting out of my vehicle talking to those that
8 have approached me to find out, you know, where are the
9 witnesses at, what's going on with where the defendant is and
10 so on.

11 Q: And so, is that first clip, was what was said and
12 happened captured on your in-car video we just watched?

13 A: It may or may not be, depending on how they sync up.

14 Q: Does that -- does that video end at some point prior to
15 you getting to the hospital?

16 A: Yes.

17 Q: And then does it pick up on a separate one?

18 A: Yes.

19 Q: And can you see this video here?

20 A: I can. This is where we're parked outside of the
21 hospital and I'm getting him out of the vehicle to go into the
22 hospital for his treatment.

23 Q: And on this video, are you asking questions and is
24 medical staff asking questions?

25 A: Once we get in there, yes, we ask him questions, you

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1 know, you know, do you want to be treated, would you like to
2 have -- because he had an injured ankle was the major thing
3 that was going on, and we have a doctor come out and he asked
4 him as well.

5 Q: Does he give statements on this video?

6 A: He does.

7 (REPORTER'S NOTE: State's 1 published. Audio not transcribed
8 herein.)

9 BY MR. HOLFORD:

10 Q: Officer Guyett, was there any conversation in the last
11 minute of that video?

12 A: Not that I recall.

13 Q: And what happened to your body cam then?

14 A: The battery gave out.

15 Q: Okay. But State's 2, Jeff Jordan's body cam, did you
16 have another conversation with the defendant that night?

17 A: Yes, when Officer Jordan showed up, I used his body cam
18 when I gave the advisement of rights.

19 MR. HOLFORD: Your Honor, the state seeks to publish
20 State's 2?

21 THE COURT: You may do so.

22 BY MR. HOLFORD:

23 Q: What's on the screen, there were two files on there.

24 There was Jeff Jordan's body cam, EWC, and Jeff your Jordan
25 EWC2. This is Jeff Jordan EWC2. What can you see on the

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1 screen?

2 A: That's my back entering the room.

3 Q: Okay. And where is this?

4 A: This is in the hospital, the room that the defendant is
5 in.

6 Q: And is this the recording that you were referring to?

7 A: Yes.

8 (REPORTER'S NOTE: State's 2 published. Audio not transcribed
9 herein.)

10 BY MR. HOLFORD:

11 Q: At this point in the video, about 7 minutes and 13
12 seconds in, what did we just see Officer Jordan do?

13 A: He is going to where the doctors are at to let them know
14 that we're ready for the blood draw.

15 Q: Okay. So, is that the end of the recording that would
16 contain statements made by the defendant?

17 A: Yes.

18 Q: Between your in-car video and your body-worn camera and
19 that body-worn camera, does that constitute the material
20 statements the defendant made to you that night?

21 A: Yes.

22 Q: He was not free to leave, was he?

23 A: No, he was not.

24 Q: Okay. And you did advise him of his Miranda rights?

25 A: I did.

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GLEN GUYETT - CROSS BY PINKERTON

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1 Q: And he was in your custody?

2 A: He was in my custody.

3 Q: All right. Were you the arresting officer?

4 A: I am the arresting officer.

5 Q: Did he -- did he, at any time, say he didn't want to
6 speak to you?

7 A: No.

8 Q: Did he, at any time, request an attorney?

9 A: No.

10 Q: Please answer any questions the defense counsel may have.

11 THE COURT: Cross examination?

12 CROSS EXAMINATION OF GLEN GUYETT BY MR. PINKERTON:

13 Q: Officer Guyett, I only have a few questions for you, sir.

14 A: Yes, sir.

15 Q: The night you arrested Mr. Washington at the scene, did
16 he appear intoxicated to you?

17 A: He did.

18 Q: Very intoxicated, a little intoxicated?

19 A: He seemed very intoxicated to me.

20 Q: Very intoxicated? And you put him under arrest for DUI,
21 correct?

22 A: Yes.

23 Q: So, he appeared intoxicated and you placed him under
24 arrest for DUI, and after you read him Miranda rights, you
25 still let him waive the Miranda rights?

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GLEN GUYETT - REDIRECT BY HOLFORD

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1 A: After I read him the Miranda rights, he -- it was up to
2 him if he wanted to speak.

3 Q: So, he appeared intoxicated but, yet, you still let him
4 waive Miranda rights, correct?

5 A: Yes.

6 MR. PINKERTON: No further questions, Your Honor.

7 THE COURT: Anything else?

8 MR. HOLFORD: Briefly.

9 REDIRECT EXAMINATION OF GLEN GUYETT BY MR. HOLFORD:

10 Q: Officer Guyett, when Mr. Washington was answering your
11 questions, was he responsive to the questions you asked?

12 A: He was.

13 Q: Did he seem to understand those questions?

14 A: He did understand the questions.

15 Q: Did he seem to understand the questions the doctors
16 asked?

17 A: He seemed to.

18 Q: And were some of those statements he gave not responsive
19 to questions at all, just statements he elicited himself?

20 A: Yes, there were several statements that he just gave of
21 his own free will.

22 MR. HOLFORD: Nothing further.

23 THE COURT: Anything on those questions?

24 MR. STANKO: No recross, Your Honor.

25 THE COURT: All right. You may step down, sir.

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1 Further witnesses?

2 MR. HOLFORD: Your Honor, that would be the statements
3 the state would seek to use against the defendant at trial.

4 THE COURT: All right. Arguments from the defense or do
5 you have any testimony that you want to present?

6 MOTIONS:

7 MR. STANKO: Your Honor, we would simply make a motion
8 related to the waiver of Miranda. As you heard, the officer
9 said that he believed that Mr. Washington was significantly
10 intoxicated at the time. In order to waive your Miranda
11 rights, whether you later are answering questions that the
12 officer believes is satisfactory to, to -- to his questioning,
13 it has to be a knowing and voluntary waiver. Your Honor, he
14 testified that he believed he was significantly intoxicated.
15 They certainly can't have it both ways. They can't say, oh,
16 he was very drunk, he was very intoxicated at this time and
17 yet, he knew enough of his rights to be able to waive those
18 Miranda warnings and answer the questions that the police had
19 for him. Your Honor, we would therefore respectfully ask that
20 those statements that he made on the video that we just saw be
21 excluded from testimony, sir.

22 THE COURT: All right. Very good.

23 Arguments from the state?

24 MR. HOLFORD: Yes, Your Honor. As to, Your Honor, *State*
25 *v. Reed*, to introduce a statement made after an accused has

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1 been advised of his rights, which happened in this case, the
2 state has to prove beyond a preponderance of the evidence that
3 he voluntarily, knowingly and intelligently waived those
4 rights. Your Honor, based on the video and the officer's
5 testimony, as the Court can see, the defendant was responsive
6 to those questions. It appeared that he understood those
7 questions. It appeared that he understood in some part what
8 was happening. He knew he was under arrest, he knew he wasn't
9 free to go, and that he made those statements freely and
10 voluntarily. There were times he made statements not even
11 elicited by the officer. He was responsive to medical staff's
12 questions when being asked. He appeared to be, although
13 intoxicated, appeared to be coherent enough to understand what
14 was going on at the time, why he was at the hospital, what
15 questions were being asked of him. And, when the officer
16 asked a question, he was responsive to those questions.

17 The state would argue that as to voluntariness, the
18 characteristics can be youth. Mr. Washington was 31 years of
19 age at that time. Lack of education or low intelligence,
20 there's nothing in the record to show that he lacked education
21 or had a low intelligence. Reaction to prison environments or
22 intoxication, certainly in this case, Your Honor, he was
23 intoxicated. However, that the defendant exhibits symptoms of
24 drug withdrawal or intoxication does not alone render a
25 statement involuntary. He was advised of his rights. He was

1 provided Miranda rights, and it appeared that he did
2 understand those when he said, when he was asked did he
3 understand the rights, he said yes, and he continued to talk
4 after that point.

5 Your Honor, as the defendant mentioned in one of those
6 body cameras, he had served time before. Although that would
7 not be something before the jury, it is indicative in this
8 record to show that the defendant has been involved in the
9 criminal justice system before and he would be aware of his
10 rights at that time and the ability to voluntarily waive those
11 or choose not to speak to officers.

12 THE COURT: All right. Regarding these statements,
13 obviously, the defendant was in custody, he was not free to
14 leave; he was given his Miranda warnings. While a better
15 procedure would've been to have done that at the time the
16 questions were asked, clearly he was advised of his
17 constitutional rights at a time prior to the questioning.
18 There was not a extraordinary long or lengthy time between the
19 advisement of the rights and the questioning.

20 As to whether or not this was a voluntary statement of
21 the defendant, I do find that he was knowledgeable of his
22 constitutional rights. The defendant, apparently had ingested
23 some substance, either alcohol or drugs. He was, as the
24 officer indicated, under the influence. From the Court's
25 observation of what was taking place, the defendant, though

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1 under the influence, in response to the questions, the
2 defendant was coherent, he was responsive to questions, he
3 answered things logically. There is no indication to the
4 Court that he was so impaired that he did not know what he was
5 doing, that he was not -- there was no indication that he was
6 unaware of his surroundings, what was happening. His
7 voluntary statements that he would make, not responsive to
8 questions, or questions not even being asked and he would make
9 a statement. There's no indication that these are rambling
10 statements. They have a structure to them, they are coherent.
11 The Court doesn't find any symptoms or indications that the
12 defendant was impaired to any extent that would cause the
13 Court concern regarding the voluntariness of these statements.

14 So, the defendant was in custody, Miranda warnings were
15 required, even if the best procedure was not followed, that is
16 giving of Miranda warnings immediately prior to questioning,
17 that does not invalidate the fact that he was given his
18 Miranda warnings. The defendant understood them and any
19 degree of intoxication did not or does not indicate in any way
20 that he was so impaired that the statements should not be
21 viewed. Again, I find that them to be coherent, responsive.
22 He understood what was being asked. They were his voluntary
23 statements so I'm going to allow them. Thank you.

24 Are those all of the statements that the state was
25 intending to use?

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: All right. Very good.

3 You have some motions in limine?

4 MR. STANKO: Your Honor, I have a motion to dismiss.

5 THE COURT: I understand you have a motion to dismiss.

6 MR. STANKO: I apologize, which order are you wanting to

7 ---

8 THE COURT: You said you had some motions in limine?

9 MR. STANKO: We do. All right. Your Honor, first off,
10 just based on the video that we saw today, the first one would
11 be related to the statements that were made by Mr. Washington.
12 Your Honor, as you heard on -- on the video, he mentioned some
13 prior prison sentence that he had served.

14 THE COURT: Any indication or -- does the state intend to
15 try and use that in any way?

16 MR. HOLFORD: No, Your Honor, the state would -- would
17 redact that.

18 THE COURT: All right. Very good.

19 MR. STANKO: Your Honor, that one and also the reason why
20 he went down to the Food Lion. He mentions to the officer
21 twice that he had gone down there for a drug sale, because
22 it's not germane to either charge that he's on trial for?

23 THE COURT: Is that ---

24 MR. HOLFORD: Your Honor, he makes several statements.

25 The state certainly will not object to the removal of where he

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1 says -- where does he say -- he says, you know, talking about
2 prior drug sales, selling drugs, bad stuff, just came home
3 from doing 10 years non-violent. However, in relation to him
4 saying that I shouldn't have even gone down to the Food Lion
5 to do that sale, the state would at least make the argument to
6 the Court that that would be relevant for the hit-and-run. It
7 could certainly be a reason why Mr. Washington fled that
8 scene. If he had drugs or alcohol in the car at that time,
9 that could be a reason why he did not stop and, thus, the
10 reason was not that he didn't realize he hit someone but
11 rather that he had illegal narcotics or alcohol in the car
12 that caused him to flee the scene. The reason for him leaving
13 the scene to dispose of those items.

14 THE COURT: What say you about that, Mr. Stanko?

15 MR. STANKO: Your Honor, that's -- that's speculative.
16 He's merely suggesting that's one of any number of reasons why
17 he potentially did not remain around at that point. Your
18 Honor, I do feel that both that statement saying that he was
19 going down to the Food Lion to make a sale and then later on
20 he says, I had just completed a drug sale. Both of those
21 statements, Your Honor, I feel are significantly more
22 prejudicial than probative related to whether or not he was
23 driving while drunk and whether or not he committed a hit-and-
24 run with death.

25 THE COURT: All right. As to the statement he would make

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1 about going there to make a drug sale or to accomplish a drug
2 sale, I'm not gonna allow that. But a statement to the effect
3 that I should not have gone, that's -- could very well be
4 indication of his recognition of his state and the fact that
5 he should not have been driving at the time because he was not
6 in a condition to be driving. So his statement that he should
7 not have even gone to the Food Lion, I'm gonna allow that.

8 MR. STANKO: And, Your Honor, just for clarification
9 there, it's to stop at Food Lion before he says to make that
10 sale?

11 THE COURT: We're not gonna put in there to make the
12 sale, but to the statement that says that I should not have
13 gone or I should not -- I know he didn't say to be driving,
14 but the words to indicate that he should not have gone,
15 indicating I shouldn't have been in the vehicle driving at the
16 time, I'm gonna allow that.

17 MR. HOLFORD: Yes, sir.

18 MR. STANKO: Understood, sir.

19 Your Honor, the next motion in limine we have, at some
20 point during the trial, there's going to be a discussion of a
21 GPS ankle monitor that Mr. Washington had on his -- on his
22 ankle at the time. He is on that monitor because that 10 year
23 sentence that he discusses on the -- on the video was for a
24 CSC with a minor. Your Honor, considering how substantially
25 prejudicial that would be and I'm guessing, Mr. Holford is not

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1 planning on using that, I just want to make sure that it was
2 on the record that it should be referred to as a GPS monitor
3 and just left at that, not the reason why he was on that.

4 THE COURT: The state wouldn't be trying to elicit why it
5 was there?

6 MR. HOLFORD: Not at all, Your Honor.

7 THE COURT: All right. Very good.

8 MR. STANKO: Additionally, at the time and ---

9 MR. HOLFORD: Your Honor, the person testifying will be
10 from Probation, Pardon and Parole Services, but ---

11 THE COURT: Well, I mean they can say that, you know, he
12 is, you know, under their supervision.

13 MR. HOLFORD: Right.

14 THE COURT: And because of that, he has this GPS, but not
15 as to -- to why, but certainly ---

16 MR. HOLFORD: Yes, sir.

17 THE COURT: --- there has to be a reasonable explanation
18 as to, you know, why the person would be testifying for the
19 jury.

20 Go ahead.

21 MR. STANKO: The one other one, at the -- at the time
22 that he was arrested, I believe Mr. Washington was actively
23 under suspension of his driving privileges. Your Honor,
24 considering that that also is not -- is not evidence that he
25 -- that he left the scene or that he was drunk at that time, I

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1 would also say that that is more prejudicial than probative
2 and we would ask that any, any reference to the fact that he
3 was at that time driving under suspension also be excluded?

4 THE COURT: What's the state's position about driving
5 under suspension?

6 MR. HOLFORD: Your Honor, the state understands that that
7 is not a moving violation that would be required as an
8 element. However, the state would argue that that is -- that
9 is important for the jury to know. It again could've been a
10 reason why he left the scene. His privileges for driving were
11 suspended by the state; he didn't have a license. He says
12 that on the video at some point that he doesn't have a
13 license. And so the state would argue that that is important
14 -- another reason why he could've left the scene without
15 rendering aid or giving information.

16 THE COURT: I'm going to allow that. I do find that it
17 has a purpose regarding the charge for which he has been --
18 has been levied against him; that is the leaving the scene of
19 an accident resulting in death.

20 MR. STANKO: No other motions in limine, Your Honor.

21 THE COURT: All right. Very good. All right. Let's
22 take a very short break for about five minutes and then we'll
23 come back and hear your arguments about the motion to dismiss.
24 Okay?

25 MR. STANKO: Thank you, sir.

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1 THE COURT: Thank you.

2 RECESS - 3:42 P.M.

3 *****OFF THE RECORD*****

4 (On the Record - 3:55 P.M.)

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

6 All right. So, Mr. Stanko, you have a motion to dismiss?

7 MR. STANKO: Yes, Your Honor.

8 THE COURT: Is it your intention to present some
9 testimony before you argue your motion to dismiss?

10 MR. STANKO: It is, Your Honor.

11 THE COURT: Very good. I'll be glad to hear from you.

12 MR. STANKO: Your Honor, I would ask that DNR Officer
13 Baker take the stand.

14 THE COURT: All right, sir. Please come around and be
15 sworn.

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

18 DANIEL ALLEN BAKER, HAVING BEEN
19 DULY SWORN TESTIFIES AS FOLLOWS:

20 CLERK: Please be seated. Please state your name and
21 spell your first and last name.

22 MR. BAKER: My full name is Daniel Allen Baker, D-A-N-I-
23 E-L, A-L-L-E-N, B-A-K-E-R.

24 THE COURT: Go ahead, sir.

25 MR. STANKO: Thank you, Your Honor.

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DANIEL ALLEN BAKER - DIRECT BY STANKO

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1 DIRECT EXAMINATION OF DANIEL ALLEN BAKER BY MR. STANKO:

2 Q: Do you prefer officer or Mr. Baker?

3 A: Either one will be fine.

4 Q: Officer Baker, you -- you had visits to the Circle K over
5 there on Highway 544 on October 29th, 2016, correct?

6 A: Yes, sir.

7 Q: Do you recall about what time you got there?

8 A: It was after midnight.

9 Q: Okay. All right. By the time you got there, was Mr.
10 Washington already there?

11 A: Yes, sir.

12 Q: Okay. When you pulled up, you observed a -- you observed
13 him involved in a -- an altercation, a fight with several
14 people, correct?

15 A: Yes, sir, fist fight.

16 Q: Were you in uniform that night?

17 A: Yes, sir.

18 Q: Okay. Were you in your patrol vehicle?

19 A: Yes, patrol truck, yes, sir; I drive a truck.

20 Q: Okay. All right. Now, as part of your uniform, do you
21 have a body-worn camera?

22 A: No, sir.

23 Q: Okay. Is your vehicle equipped with a dash cam?

24 A: No, sir.

25 Q: It is not. Okay. All right. So, when you arrived on

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DANIEL ALLEN BAKER - DIRECT BY STANKO

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1 the scene, the first thing you did was run over to where that
2 altercation was happening?

3 A: Yes, yes, sir.

4 Q: Okay. And you were the one who placed Mr. Washington
5 under arrest?

6 A: I did not arrest him, I detained him.

7 Q: Okay. You placed him in handcuffs?

8 A: I did, yes, sir.

9 Q: Okay. All right. And what did you do after you had him
10 in handcuffs?

11 A: I put him in my truck and secured him in my truck for his
12 safety.

13 Q: Okay. About how long was it before the next law
14 enforcement officer from any entity ---

15 A: It was pretty quick, just a few minutes.

16 Q: Okay. What would you say two minutes ---

17 A: Two to three minutes.

18 Q: Two to three minutes. Okay. All right. And you said
19 you -- you don't have either a body-worn camera or a camera
20 inside your vehicle?

21 A: No, sir; we do not.

22 Q: Okay. All right. And did you, at any point, provide an
23 affidavit indicating that you do not have a camera?

24 A: No, sir.

25 Q: You didn't. Okay. All right. Did you fill out any sort

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DANIEL ALLEN BAKER - CROSS BY HOLFORD

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1 of a report related to this incident?

2 A: No, sir.

3 Q: Okay. No agency asked you to fill something out?

4 A: No, sir.

5 Q: Okay. All right.

6 Your Honor, nothing further from this witness.

7 THE COURT: Cross examination?

8 CROSS EXAMINATION OF DANIEL ALLEN BAKER BY MR. HOLFORD:

9 Q: Officer Baker, DNR was not the arresting agency in this
10 case, was it?

11 A: No, sir.

12 Q: You were not the arresting officer in this case, were
13 you?

14 A: No, sir.

15 Q: You did not arrest Mr. Washington in connection with the
16 felony DUI, did you?

17 A: No, sir.

18 Q: You actually detained him because he was involved in an
19 altercation?

20 A: Yes, sir.

21 Q: Were you worried about his safety at that time?

22 A: Yes, sir.

23 Q: And why was that?

24 A: It was -- a rather large crowd had gathered at the area
25 and they were, you know, he was in a fist fight and I thought

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DANIEL ALLEN BAKER - BY THE COURT

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1 for his protection to secure him in my truck, so that it was
2 just one of me and a lot of them, so I secured him in my truck
3 for his safety.

4 Q: And you don't have a body camera?

5 A: No, sir.

6 Q: And you don't have an in-car camera?

7 A: No, sir.

8 Q: And it's not because they weren't working, you don't have
9 those equipment with DNR?

10 A: We're not issued those; no, sir.

11 Q: No DNR officers?

12 A: No, sir.

13 Q: Did you give -- did you read him Miranda?

14 A: No, sir.

15 Q: Is that because you didn't arrest him?

16 A: Yes, sir.

17 Q: Did you eventually hand him off to an agency that did
18 arrest him?

19 A: Yes, sir.

20 Q: No further questions.

21 THE COURT: Follow-up questions?

22 MR. STANKO: Your Honor, nothing further for Officer
23 Baker.

24 BY THE COURT:

25 THE COURT: All right. So, Officer Baker, you arrived on

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DANIEL ALLEN BAKER - BY THE COURT

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1 the scene and safe to say there was a melee going on, a big
2 fight?

3 A: Yes, sir.

4 THE COURT: All right. Did I understand you to say that
5 it appeared that there were a number of people trying to fight
6 the defendant?

7 A: Yes, sir.

8 THE COURT: All right. So, he was engaged in an
9 altercation with a number of people by himself?

10 A: Yes, sir.

11 THE COURT: Did that factor in why you detained him?

12 A: Yes, sir.

13 THE COURT: And why was that?

14 A: For his safety.

15 THE COURT: All right, sir.

16 A: For crowd control.

17 THE COURT: All right. Now, was it your -- were you --
18 did you have any information about the defendant and a DUI
19 accident or being involved in a hit-and-run or anything like
20 that when you arrived and detained him?

21 A: Not at that time, no, sir.

22 THE COURT: All right. So, it was later on when you
23 learned that.

24 A: It was after, yes, sir.

25 THE COURT: And it was after you detained him and you

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DANIEL ALLEN BAKER - BY THE COURT

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1 only detained him because of the fight?

2 A: Yes, sir.

3 THE COURT: All right, sir. And so, after you had him
4 secured in your vehicle, you said it was approximately two to
5 three minutes before other officers came; is that correct?

6 A: Yes, sir.

7 THE COURT: And was that the Conway Police Department?

8 A: Conway and I think some of the Horry County.

9 THE COURT: Horry County Police?

10 A: I think so.

11 THE COURT: All right, sir. Is that when you learned
12 about his potential involvement in some other crime, the DUI?

13 A: Yes, sir.

14 THE COURT: All right, sir. And that's when you turned
15 him over to the custody and control of other officers?

16 A: Yes, sir. Conway PD.

17 THE COURT: All right. Very good.

18 Further questions from the state?

19 MR. HOLFORD: None, Your Honor.

20 THE COURT: From the defense?

21 MR. STANKO: Not from this officer, Your Honor.

22 THE COURT: You may step down, sir.

23 A: Thank you, sir.

24 THE COURT: Thank you.

25 Yes, sir?

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GLEN GUYETT - DIRECT BY STANKO

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1 MR. STANKO: Your Honor, I would next call Officer Guyett
2 from CPD.

3 THE COURT: All right, sir.

4 Please come around, sir.

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

7 GLEN GUYETT, HAVING BEEN DULY SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK: Please state your full name and spell your first
10 and last name.

11 MR. GUYETT: Officer Glen Guyett.

12 DIRECT EXAMINATION OF GLEN GUYETT BY MR. STANKO:

13 Q: Officer Guyett, you testified earlier you -- you arrived
14 on scene shortly after the DNR officer, correct?

15 A: Yes.

16 Q: Okay. I believe, from the -- the scene log, it shows
17 that you showed up at about 12:58 A.M.; does that -- is that
18 pretty close?

19 A: I would have to trust what the dispatch had written down.

20 Q: Okay. All right. Well, is this -- so, the crime scene
21 log, who handles crime scene logs?

22 A: Somebody on the scene, but also it's keeping track of --
23 you know, as we get on the scene, we notify the Horry County
24 dispatch. So, it's backed up in both ways. So, if you're
25 looking at the crime scene log, that's the crime scene log,

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1 which is somebody on scene would've filled that out.

2 MR. STANKO: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 BY MR. STANKO:

5 Q: This is where I'm getting all of that from.

6 A: Okay.

7 Q: So, that's a -- would that be ---

8 A: That would be a crime scene log. Okay.

9 Q: Now, would dispatch have done something like that or
10 would that have been ---

11 A: An officer on scene would've done that.

12 Q: Okay. All right, very good. Now, were you the very next
13 officer on scene after DNR?

14 A: When I got on scene there was the DNR officer, I was told
15 about, but the Horry County Police had a couple of officers,
16 and CCU officers were on scene. And as I got out of the
17 vehicle, as we saw there, it was -- Horry County approached me
18 and was able to tell me a little bit of what's going on.

19 Q: Okay. And as soon as you got on scene, you activated
20 your blue lights?

21 A: I activated my blue lights back at the station in
22 response to going there.

23 Q: And so your tape was rolling from the -- from the time
24 you left the station?

25 A: Yes.

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1 Q: Okay. And it, it -- from what we saw in the video, it
2 went all the way through to the hospital?

3 A: Yes.

4 Q: Okay. And you were also wearing a body camera, I believe
5 you ---

6 A: Yes.

7 Q: You don't have it on right now, but ---

8 A: No.

9 Q: Typically, you wear a body-worn camera?

10 A: Yes.

11 Q: Okay. And it's my understanding that the body-worn
12 camera died at some point that evening, correct?

13 A: Yes.

14 Q: Okay. Is it a -- is it run off like a AA battery or is
15 that something you have to charge?

16 A: It's one that charges.

17 Q: Okay. All right. Does it typically die during a shift?

18 A: They were horrible throughout the shift. They would not
19 last an entire shift. So, if you were on a long call, that
20 would burn up the battery on the system.

21 Q: Do you have to -- do you have to charge it at any point
22 during a shift or would it be usually last for at least that
23 evening?

24 A: Usually, it would last for that evening because of
25 turning it on and turning it off, things of that sort, to

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GLEN GUYETT - DIRECT BY STANKO

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1 conserve the battery and so on.

2 Q: Okay. But at some point, while you were at the hospital,
3 it did die?

4 A: It did die.

5 Q: Okay. All right. Did you perform any standardized field
6 sobriety tests on Mr. Washington?

7 A: I did not.

8 Q: Okay. What about any non-standardized tests?

9 A: No.

10 Q: You know the ones I'm referring to; like finger
11 dexterity, saying your alphabet, counting backwards, things
12 like that?

13 A: No, I immediately took him to the hospital for treatment.

14 Q: Was he complaining of an emergency?

15 A: He was complaining of the pain from his ankle.

16 Q: Okay. He just -- he just said his ankle was hurting?

17 A: Well, when he was handed over to me, he was grimacing and
18 flinching as he was walking.

19 Q: Okay. All right. But you didn't see any -- any physical
20 injury on him?

21 A: Just as -- nothing protruding if that's what you're
22 referring to.

23 Q: Yes, any bones, anything like ---

24 A: Nothing external, just the reaction of him putting
25 pressure on it.

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GLEN GUYETT - CROSS BY HOLFORD

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1 Q: Okay. All right. So, your body-worn camera died before
2 you completed your time at the hospital, correct?

3 A: Yes.

4 Q: Okay. Did you provide an affidavit to your agency or the
5 solicitor's office indicating that that footage was not
6 available because it had died?

7 A: I did, but that was very recently. It was not at the
8 time of the incident.

9 MR. STANKO: Your Honor, nothing further from this
10 witness.

11 THE COURT: All right.

12 Cross examination?

13 MR. HOLFORD: Yes, Your Honor.

14 CROSS EXAMINATION OF GLEN GUYETT BY MR. HOLFORD:

15 Q: Officer Guyett, you were the arresting officer in this
16 case; is that correct?

17 A: Correct.

18 Q: And did you fill out a urine and blood collection report?

19 A: Yes.

20 Q: And on that report, would you have put the time of
21 arrest?

22 A: Yes.

23 Q: What did you consider the time of arrest to be, when you
24 took custody of the defendant?

25 A: Yes.

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GLEN GUYETT - CROSS BY HOLFORD

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1 Q: And did you provide the defendant with his Miranda
2 rights?

3 A: I did.

4 MR. HOLFORD: Your Honor, for purposes of this hearing,
5 would the state need to reintroduce the videos that have
6 already been showed by Officer Guyett?

7 THE COURT: Is there any reason that the ones that were
8 previously introduced cannot be introduced for the purposes of
9 this motion?

10 MR. STANKO: None, Your Honor.

11 THE COURT: So, they are accepted by the Court in this
12 motion, also.

13 MR. HOLFORD: Thank you.

14 BY MR. HOLFORD:

15 Q: So, Officer Guyett, we saw in your in-car video, State's
16 3, that you have a camera playing and you read the defendant
17 his Miranda rights; is that correct?

18 A: Yes.

19 Q: And was that while you -- that while you were at the
20 Circle K, correct?

21 A: Yes.

22 Q: That in-car video also showed the defendant in handcuffs,
23 you taking custody and control of him and placing him in your
24 vehicle; is that correct?

25 A: Yes.

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1 Q: Now, you didn't do field sobriety tests because he had
2 complained of an ankle injury?

3 A: I was informed that he had an ankle injury. As he was
4 brought to me, I could see it really inhibited his ability to,
5 to walk.

6 Q: And so, the standard field sobriety tests are in addition
7 to the HTN, is a walk and turn, correct?

8 A: Correct.

9 Q: Requiring a person to do nine steps in a row, heel to
10 toe, turn around and nine steps back?

11 A: Yes.

12 Q: And an ankle injury would've inhibited the defendant from
13 doing that?

14 A: Yes, it would.

15 Q: The second is a one-legged stand, where they place one
16 leg on the ground and stand and count; is that correct?

17 A: Yes.

18 Q: And the defendant could be inhibited from doing that
19 based on an ankle injury; could he not?

20 A: He could be.

21 Q: Did you walk with the defendant that night?

22 A: I did.

23 Q: Did you notice that he was having trouble walking?

24 A: I did.

25 Q: Did you have to help him gingerly into the car?

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- 1 A: I did.
- 2 Q: Did he make any audible sounds of being in pain?
- 3 A: Every so often you could hear him.
- 4 Q: And because of his ankle injury, you didn't do those
- 5 field sobriety tests on scene; is that correct?
- 6 A: That is the reason.
- 7 Q: But we could see him on your in-car video; is that
- 8 correct?
- 9 A: You could.
- 10 Q: And then when you got him to the hospital, did you do --
- 11 did you read him his implied consent rights?
- 12 A: I did.
- 13 Q: Would you recognize a copy of that form if I showed it to
- 14 you?
- 15 A: I would.
- 16 Q: I'm going to hand you what's been marked as State's 79.
- 17 Can you identify what that document is?
- 18 A: That is an advisement of implied consent rights. This
- 19 one is specific for a felony driving under the influence of --
- 20 under the influence advisement.
- 21 Q: And how are you familiar with this document?
- 22 A: This is the document that I read to the defendant.
- 23 Q: And do there appear ---
- 24 A: Or a copy of it.
- 25 Q: Do there appear to be additions or deletions thereto?

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1 A: There does not.

2 Q: Did you sign this?

3 A: I did.

4 Q: And did Edward Washington sign it?

5 A: That one, yes, he did.

6 MR. HOLFORD: Your Honor, the state would seek to admit
7 State's 79 for purposes of this hearing.

8 THE COURT: Any objection to that?

9 MR. STANKO: Without objection, sir.

10 THE COURT: It's into evidence for the purposes of the
11 motion.

12 STATE'S EXHIBIT NUMBER 79

13 ADMITTED INTO EVIDENCE FOR PRETRIAL

14 BY MR. HOLFORD:

15 Q: And was there actually on State's 3 that we showed you
16 earlier -- I apologize -- State's 2, Jeff Jordan body-worn
17 camera, was there a video of you reading this implied consent
18 right to him?

19 A: Yes.

20 Q: And did you leave a copy of this with him?

21 A: Yes.

22 Q: Okay. Did you fill out a South Carolina Law Enforcement
23 Division Urine and Blood Collection Report?

24 A: I did.

25 Q: Would you recognize it if I showed it to you?

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1 A: Yes.

2 Q: I'm handing you what's been marked as State's 78. Can
3 you identify what that is?

4 A: That is a South Carolina Law Enforcement Division Urine
5 and Blood Collection Report.

6 Q: Is this a copy of the form that you filled out that
7 night?

8 A: It is.

9 Q: And how can you tell?

10 A: I can tell by my handwriting and my signature.

11 Q: Do there appear to be additions or deletions thereto;
12 does that appear to be a fair and accurate reflection of that
13 document you filled out that night?

14 A: It does appear to be fair and accurate.

15 Q: Did you sign it?

16 A: I did.

17 Q: And did Edward Washington sign it?

18 A: No, he did not. He refused to sign it.

19 Q: Okay. And how can we tell that?

20 A: I marked that as RTS, meaning that he refused to sign it.

21 MR. HOLFORD: Your Honor, state would seek to introduce
22 State's 78 into evidence.

23 THE COURT: Any objection for the purposes of the motion?

24 MR. STANKO: Without objection, sir.

25 THE COURT: It's into evidence for the purpose of the

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1 motion.

2 STATE'S EXHIBIT NUMBER 78

3 ADMITTED INTO EVIDENCE FOR PRETRIAL

4 BY MR. HOLFORD:

5 Q: Now, on this one, there is RTS, refused to sign. Was
6 that captured on, on the body cam that he was refusing to sign
7 some document?

8 A: I believe all body cam had run out of battery at that
9 point.

10 Q: Okay. On this form, what time do you have listed as the
11 time of arrest?

12 A: The time of arrest is 00:54, 54 minutes after midnight.

13 Q: And the call-out sheet Mr. Stanko was referring to
14 notes that you might've arrived on scene at 00:58, is that ---

15 A: I didn't pay any attention to that, but the original call
16 came out at 45.

17 Q: Okay. And so, you took custody of him, if we watch that
18 body cam on video from, from State's 1 and also your in-car
19 from State's 3, you were on scene for what five to seven
20 minutes before you take custody of him?

21 A: Yes.

22 Q: Okay. And what time was the blood drawn?

23 A: The blood was drawn at 03:46.

24 Q: 03:46. Now, you had said earlier that Mr. Washington was
25 complaining of an ankle injury and that's the reason you took

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1 him to Conway Medical Center. Is there documentation about
2 medical screening?

3 A: There's documentation that he did speak to a doctor, but
4 he refused treatment.

5 Q: I'm gonna hand you what's been marked as State's 77 for
6 ID. Can you identify what that document is?

7 A: That is a refusal of medical screening exam.

8 Q: Okay. And were you present for that?

9 A: I was. I was.

10 Q: Are you familiar with this document?

11 A: Yes, it just says that he didn't want any treatment and
12 the doctor signed off on it and gave it to me.

13 Q: Okay. Does it appear to be a fair and accurate copy of
14 what you signed that night?

15 A: Yes.

16 MR. HOLFORD: The state would seek to introduce 77 in
17 evidence.

18 THE COURT: Any objection to that?

19 MR. STANKO: No objection, sir.

20 THE COURT: It's in evidence for the purpose of the
21 motion.

22 STATE'S EXHIBIT NUMBER 77

23 ADMITTED INTO EVIDENCE FOR PRETRIAL

24 BY MR. HOLFORD:

25 Q: And on here it says that he was in police custody; is

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GLEN GUYETT - CROSS BY HOLFORD

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- 1 that correct?
- 2 A: That is correct.
- 3 Q: And then it says the patient is unable to sign in
4 handcuffs. Patient stated to have the officer sign; is that
5 correct?
- 6 A: That is correct.
- 7 Q: And you signed this?
- 8 A: I did.
- 9 Q: And this is a refusal for medical screening?
- 10 A: Yes.
- 11 Q: Now, had he refused medical treatment before you got to
12 the hospital?
- 13 A: No.
- 14 Q: Okay. So, you'd taken him to the hospital, and we
15 actually see that on State's Number 1, that body-worn camera
16 we saw earlier; is that correct?
- 17 A: That is correct.
- 18 Q: And so, we see you talking with the medical staff in
19 order to have the defendant evaluated, correct?
- 20 A: Yes.
- 21 Q: And then it's after that point, after he talks to them,
22 he refuses any treatment?
- 23 A: That is correct.
- 24 Q: But at that point, you had him in custody, didn't you?
- 25 A: Yes, sir.

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- 1 Q: And you were gonna do a blood draw, weren't you?
- 2 A: Yes.
- 3 Q: Were you waiting on a search warrant?
- 4 A: Yes, sir.
- 5 Q: Did Conway Police Department obtain a search warrant in
- 6 this case for the blood draw of the defendant?
- 7 A: They did.
- 8 Q: And did you execute that warrant?
- 9 A: It was obtained by Detective Scott and we received a
- 10 phone call that he had in hand.
- 11 Q: Okay. And then did you perform a blood draw, both by
- 12 statute that allows you to and also by a search warrant?
- 13 A: Yes.
- 14 Q: Now, are you familiar with the statute that allows you to
- 15 collect urine or blood in the felony DUI cases?
- 16 A: I -- I mean, I'm not all too familiar with it, but
- 17 enough.
- 18 Q: And so, why would you get a search warrant, though?
- 19 A: In anything a warrant is required, there are exceptions.
- 20 In this case, there was an exception and we just wanted to
- 21 make sure that everything was handled appropriately.
- 22 Q: Okay. After -- after the blood collection kit, you were
- 23 present for that blood collection kit; is that right?
- 24 A: Yes.
- 25 Q: And can we see you actually writing on the blood

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1 collection form in State's 2 on Jeff Jordan's body-worn
2 camera?

3 A: That is actually the outside case that I'm writing on.

4 Q: Okay. Is the collection kit inside?

5 A: Yes.

6 Q: Okay. Is there a standardized kit that you use in that
7 situation?

8 A: It is.

9 Q: And then, did you do a return, a search warrant return,
10 for a SLED blood collection kit.

11 A: Okay. But the return, I believe, was done by Detective
12 Scott.

13 Q: I'm gonna hand you what's been marked as State's 81. Can
14 you identify what that is?

15 A: This is a search warrant.

16 Q: How many pages is it?

17 A: Four, including the front page.

18 Q: Okay. And on the last page, is that a return?

19 A: That is a return.

20 Q: And, and the collection -- are you familiar with this
21 document?

22 A: I'm, I'm familiar with what it is for, yes.

23 Q: And is this the search warrant that you used in order to
24 collect the blood?

25 A: It is.

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1 Q: And the last page, that return, the Sled blood collection
2 kit; is that what you were present for?

3 A: That is what I was present for.

4 MR. HOLFORD: The state would seek to introduce State's
5 81.

6 THE COURT: Any objection?

7 MR. STANKO: None, sir.

8 THE COURT: 81 is in evidence for the purpose of the
9 motion.

10 STATE'S EXHIBIT NUMBER 81

11 ADMITTED INTO EVIDENCE FOR PRETRIAL

12 BY MR. HOLFORD:

13 Q: And on this, it says that you received the search warrant
14 on 10/29 and executed it at 0:03:53. The inventory of the
15 SLED blood collection kit was in the presence of Corporal J.
16 Jordan and SMB Guyett.

17 A: SMPO.

18 Q: SMP, SMPO.

19 A: SMPL, yes, sir.

20 Q: And so, that SLED blood collection kit was done -- was
21 done and inventoried in your presence?

22 A: Yes.

23 Q: Now, the collection that we see on State's 78, the date
24 of the test and the time of the test was 03:46 and the
25 inventory was done in 03:53; is that correct?

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- 1 A: Only based on what is written on each form.
- 2 Q: Wouldn't it be true that if, if blood were drawn at 3:46,
3 that you would do an inventory a couple of minutes after that?
- 4 A: Yes, to ensure that everything ---
- 5 Q: Did a licensed -- a licensed nurse actually collect that
6 blood?
- 7 A: Yes.
- 8 Q: Okay. And did she sign 78?
- 9 A: She did.
- 10 Q: Did she do that in your presence?
- 11 A: She did.
- 12 Q: Now, you had stated on direct examination that you filled
13 out an affidavit of failure to produce a video tape of the
14 DUI; is that correct?
- 15 A: That is correct.
- 16 Q: Is that because you did not videotape the standard field
17 sobriety test?
- 18 A: That is correct.
- 19 Q: And is that -- does that happen when there are accidents
20 involved?
- 21 A: It does happen.
- 22 Q: And when you can't do field sobriety on the roadside?
- 23 A: That is correct.
- 24 Q: But we've already seen that there was Miranda on video,
25 correct?

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1 A: Correct.

2 Q: And we've already seen that implied consent was done on
3 video; is that correct?

4 A: Correct.

5 Q: But this affidavit is covering the fact that you didn't
6 do field -- standard field sobriety tests on the scene?

7 A: That is correct.

8 Q: And would you recognize that affidavit if I showed it to
9 you?

10 A: I would.

11 MR. HOLFORD: Your Honor, may I approach?

12 THE COURT: Yes, sir.

13 BY MR. HOLFORD:

14 Q: I'm gonna hand you what's been marked as State's 82 for
15 identification. Can you identify what this document is?

16 A: It is a affidavit for failure to produce a videotape of
17 the DUI.

18 Q: And did you fill out that affidavit?

19 A: I did.

20 Q: Does that appear to be the affidavit that you sent to us?

21 A: It does.

22 Q: And did you sign it?

23 A: I did.

24 MR. HOLFORD: The state would seek to introduce State's
25 82 in evidence?

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GLEN GUYETT - CROSS BY HOLFORD

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1 THE COURT: Objections?

2 MR. STANKO: No objection, sir.

3 THE COURT: All right. It's in evidence for the purpose
4 of the motion.

5 STATE'S EXHIBIT NUMBER 82

6 ADMITTED INTO EVIDENCE FOR PRETRIAL

7 BY MR. HOLFORD:

8 Q: Now, on this -- on this affidavit, it says the defendant
9 needed emergency medical treatment; is that why -- is that why
10 you took him to the hospital?

11 A: That is correct.

12 Q: For the ankle injury. And is that why you could not
13 produce a videotape of the field sobriety tests?

14 A: That is correct.

15 Q: And then the -- from the breath test site, it says that
16 from the breath test site -- you did not produce a video from
17 the breath test site because other valid reasons existed for
18 failing to produce the videotape based on the totality of
19 circumstances, the reasons outlined below. And you put due to
20 the severity of the charges, defendant was taken to the Conway
21 Medical Center for a blood draw; is that correct?

22 A: That is correct.

23 Q: And then, I am unable to produce a videotape that shows
24 the defendant's action during 20-minute pre-testing period,
25 physically impossible because the defendant was taken to

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GLEN GUYETT - CROSS BY HOLFORD

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1 Conway Medical Center for a blood draw; is that correct?

2 A: That is correct.

3 Q: So, he was never taken to a breath-testing site operated
4 by and under the procedures of SLED; is that correct?

5 A: Correct.

6 Q: And that's because you took him for a blood draw?

7 A: Yes.

8 Q: At Conway Medical Center?

9 A: Yes.

10 Q: Both pursuant to statute and pursuant to that search
11 warrant?

12 A: Yes, sir.

13 MR. HOLFORD: Court's indulgence?

14 THE COURT: Yes, sir.

15 MR. HOLFORD: No further questions at this time.

16 THE COURT: Any redirect?

17 MR. STANKO: Your Honor, nothing further for this
18 officer.

19 THE COURT: All right. Very good. You may step down,
20 sir.

21 Further testimony?

22 MR. STANKO: Yes, Your Honor. I would call Officer
23 Jordan.

24 THE COURT: All right. Please come around, sir.

25 CLERK: Please raise your right hand and place your left

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JEFFREY JORDAN - DIRECT BY STANKO

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1 hand on the Bible.

2 JEFFREY WAYNE JORDAN, HAVING BEEN

3 DULY SWORN TESTIFIES AS FOLLOWS:

4 CLERK: Please have a seat. Please state your name and
5 spell it for the Court.

6 MR. JORDAN: Jeffrey Wayne Jordan. J-E-F-F-R-E-Y, W-A-Y-
7 N-E, J-O-R-D-A-N.

8 DIRECT EXAMINATION OF JEFFREY WAYNE JORDAN BY MR. STANKO:

9 Q: Officer Jordan, according the crime scene log, you
10 arrived on scene to the Circle K right about the same time as
11 Officer Guyett?

12 A: Yes, sir.

13 Q: Is that pretty accurate?

14 A: Yes, sir.

15 Q: Okay. Like within a few seconds of each other,
16 essentially?

17 A: Yes, sir.

18 Q: Okay. How long did you remain on scene that day?

19 A: It was a good while. I assisted with getting statements
20 and also assisted with Detective Scott photographing and
21 collecting evidence on scene.

22 Q: Okay. So, when Officer Guyett took Mr. Washington out to
23 the Conway Medical Center, you remained at the Circle K?

24 A: Yes, sir.

25 Q: Okay. And I see from the crime scene log, it says that

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JEFFREY JORDAN - DIRECT BY STANKO

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1 you left at 03:26 from Circle K; do you think that's pretty
2 accurate there?

3 A: Yes, sir.

4 Q: Okay. And you went from there straight to the Conway
5 Medical Center?

6 A: Yes, sir.

7 Q: Okay. Now, were you watching when they played the videos
8 for the *Jackson v. Denno* about an hour ago?

9 A: Yes, sir.

10 Q: Okay. And that last video we saw, that was your body
11 camera, correct?

12 A: Yes, sir.

13 Q: Okay. That video ended -- well, let me ask this. Have
14 you had the opportunity to watch that video?

15 A: I watched just what you did. I haven't went back -- I
16 hadn't had the opportunity to go back and watch the entire --
17 since that day.

18 Q: Okay. So, that was the first time since that day you had
19 seen that?

20 A: Yes, sir.

21 Q: Okay. All right. Now, on that video, it stops while you
22 are still at the nurse's station, correct?

23 A: I would -- that's what I saw, it had stopped when I went
24 to the nurse's station.

25 Q: What that video doesn't show though is the blood draw; is

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JEFFREY JORDAN - DIRECT BY STANKO

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1 that correct?

2 A: That video did -- from what I saw it didn't show it.

3 Q: Okay. All right. Well, at any point during that
4 interaction, did you realize that your body camera had cut
5 off?

6 A: No, sir.

7 Q: Okay. When you got clear from that call, did you realize
8 your body worn camera was dead?

9 A: I'm sure I did when I went to cut it off. I wouldn't
10 have noticed it if it was off already.

11 Q: Okay. All right. If we were to -- if we were to play
12 that video though and it stopped while you were still at the
13 nurse's station, a good nine minutes before the listed blood
14 draw; would that surprise you?

15 A: It could have went off before -- before I got out. It
16 doesn't give us a warning. Sometimes, you know, it'd just --
17 it would cut off and we might not know that they're off.

18 Q: It doesn't even tell you?

19 A: No.

20 Q: You just -- all of a sudden it's just dead?

21 A: You might look down there and you'd notice that it's off.

22 Q: Okay. That morning you didn't notice that it was already
23 off?

24 A: I haven't reviewed the video, so I'm not sure.

25 Q: How long did you remain on scene at the hospital?

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JEFFREY JORDAN - CROSS BY HOLFORD

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1 A: I was there, I know until after -- until he went to take
2 the defendant to J. Reuben.

3 Q: Okay. So, you left basically at the same time as Officer
4 Guyett left?

5 A: Yes, sir.

6 Q: Okay. All right. And again, your only interaction there
7 then was right around 3:30 showing up right before the blood
8 draw, correct?

9 A: Yes, sir.

10 MR. STANKO: Court's indulgence one moment, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. STANKO:

13 Q: Now, you have also not filled out any -- any affidavits
14 indicating that you don't have the complete video, correct?

15 A: No, sir; I did not.

16 Q: Okay.

17 MR. STANKO: Your Honor, nothing further for this
18 witness.

19 THE COURT: Cross examination?

20 CROSS EXAMINATION OF JEFFREY WAYN EJORDAN BY MR. HOLFORD:

21 Q: Officer Jordan, you're a corporal still?

22 A: Yes, sir.

23 Q: Corporal Jordan, the jurisdiction for this case was
24 Conway PD; is that correct?

25 A: Yes, sir.

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JEFFREY JORDAN - CROSS BY HOLFORD

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- 1 Q: There were multiple agencies on scene that night?
- 2 A: Yes, sir.
- 3 Q: And it was determined that this was IN Conway PD's
- 4 jurisdiction?
- 5 A: Yes, sir.
- 6 Q: You were not the arresting officer in this case, were
- 7 you?
- 8 A: No, sir.
- 9 Q: That was Officer Guyett?
- 10 A: Yes, sir.
- 11 Q: Okay. Did you and Officer Guyett arrive at about the
- 12 same time to the Circle K?
- 13 A: Yes, sir.
- 14 Q: And then Officer Guyett took custody of the defendant in
- 15 this case?
- 16 A: Yes, sir.
- 17 Q: And were you present when a blood draw was done?
- 18 A: Yes, sir.
- 19 Q: And was that done by a licensed medical technician?
- 20 A: Yes, sir.
- 21 Q: You did not fill out State's 78, did you; that was
- 22 Officer Guyett?
- 23 A: Yes, sir; that was Officer Guyett, not me.
- 24 Q: And the -- and the licensed technician; is that correct?
- 25 A: Yes, sir.

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JEFFREY JORDAN - CROSS BY HOLFORD

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1 Q: Okay. But you -- I'm gonna hand you what's been admitted
2 as State's 81 for purposes of this motion. Can you identify
3 what 81 is?

4 A: That's the search warrant.

5 Q: Okay. And on that last page, that fourth page of the
6 search warrant, does your name appear on there?

7 A: Yes, sir.

8 Q: And why does it appear on there?

9 A: I did the return, closed out the return.

10 Q: Okay. Now, the return, what is that, a search warrant
11 return, is that the fact that you're letting a Judge know, a
12 Magistrate Judge, that evidence was collected pursuant to the
13 search warrant?

14 A: Yes, sir.

15 Q: And what was the time of the return done?

16 A: At 3:53 A.M.

17 Q: And that would've been after the blood draw was done,
18 correct?

19 A: Yes, sir.

20 Q: Okay. Now, your videotape does show the advisement of
21 his -- of the defendant's implied consent rights; is that
22 right?

23 A: Yes, sir.

24 Q: State's 2, that body-worn camera that you had does show
25 that?

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ARGUMENT BY STANKO

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1 A: Yes, sir.

2 Q: And it does show Officer Guyett saying that his battery
3 died?

4 A: Yes, sir.

5 Q: The defendant was in custody at that time, correct?

6 A: Yes, sir.

7 Q: And the blood draw was sought for by a search warrant and
8 granted based on suspicion of felony DUI?

9 A: Yes, sir.

10 Q: He was never taken to a breath test site, was he?

11 A: No, sir.

12 MR. HOLFORD: No further questions, Your Honor.

13 THE COURT: Anything else from this witness?

14 MR. STANKO: Nothing further.

15 THE COURT: All right, sir. You may step down.

16 Further testimony?

17 MR. STANKO: No other witnesses, Your Honor.

18 THE COURT: All right. Very good. Arguments then -- I'm
19 sorry -- is any testimony from the state?

20 MR. HOLFORD: Nothing further.

21 THE COURT: All right, sir. So, arguments on your motion
22 to dismiss then?

23 ARGUMENT BY STANKO:

24 MR. STANKO: Yes, Your Honor. Section 56-5-2953 says

25 this. During any DUI investigation, the video recording has

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ARGUMENT BY STANKO

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1 to begin at the very latest, at the activation of blue lights.
2 It has to remain on throughout the duration of the incident.
3 It has to record everything that happens at that site. And
4 then additionally, it has to record everything that happens
5 for breath testing. And, Your Honor, obviously, breath
6 testing was not what occurred here; we're talking about a
7 blood draw.

8 Your Honor, to address the incident site first, you have
9 this collision occurred at 12:42 in the morning, October 29th,
10 2016. The first officer on scene says he got there about
11 12:50. He had no -- he had no body worn camera; he had no
12 vehicle camera. He never -- he never submitted an affidavit
13 saying that -- that he didn't have it for the simple reason
14 for the fact that he did not have a camera. The way the
15 statute is written, it says that those will only be excused
16 provided they can provide an affidavit stating why it is they
17 could not come up with that video. Additionally, several
18 officers were on scene. You heard from Officer Guyett. By
19 the time he got there, there were already three or four other
20 officers there. They didn't provide anything either.

21 Your Honor, after they leave, go to the hospital, you
22 heard from Officer Guyett that his, his body camera died. It
23 lasted about 45 minutes while they were in the hospital. You
24 saw the videos during a prior hearing. That camera died.
25 Around 3:30, Officer Jordan shows up. His camera only lasts

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ARGUMENT BY STANKO

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1 another 15 minutes. It also dies. It's not until at least
2 nine minutes after that -- his camera dies at approximately
3 3:37 A.M. and the blood draw happens at 3:46 A.M., sir.

4 That blood draw is extremely material to this case. It
5 is the evidence that they collected, they transported it over
6 to SLED to determine whether or not Mr. Washington was, was
7 intoxicated that evening. Without that video, we are deprived
8 of a significant portion, albeit only nine minutes, but a
9 significant portion of the investigative portion of this -- of
10 this case. And, Your Honor, the statute was written, 56-5-
11 2953, was written to insure this because DUI cases are so
12 technical that defendants and juries would be able to see
13 every step the police took, everything that was exculpatory,
14 inculpatory, so they got the complete picture of it.

15 Your Honor, I'm going to hand up to you *City of Rock Hill*
16 *v. Suchenski*. May I approach?

17 THE COURT: Yes, sir.

18 MR. STANKO: Your Honor, in *City of Rock Hill v.*
19 *Suckenski*, there is an officer, who as you heard hear, did not
20 realize that his recording equipment was going to die right in
21 the middle of the investigation, it did stop. His, his camera
22 equipment did not record the entire arrest. His camera ran
23 out of tape in that situation. Your Honor, the Court in that
24 -- in that situation ended up dismissing that charge related
25 to the fact that that video ran out of tape. And, Your Honor,

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ARGUMENT BY STANKO

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1 as you heard here, two different videos did not record the
2 entire situation. Additionally, we go back to -- to the
3 incident site. You have a DNR Officer who did not have
4 recording equipment, but also did not provide the Court with
5 an affidavit, sworn affidavit, indicating why he was not able
6 to produce that video.

7 Your Honor, considering that it's -- it's not just one,
8 it's multiple violations of this -- this statute that was
9 enacted by the legislature to insure that all steps were taken
10 as necessary in investigating a DUI. Your Honor, because of
11 those violations, we are asking for a dismissal of the felony
12 DUI with that charge.

13 THE COURT: All right. Let me ask you a question first
14 about the DNR officer. The DNR officer testified that he was
15 unaware of any matters involving this defendant for DUI,
16 felony DUI, hit-and-run, anything of that nature. He
17 testified, he came upon a melee, a fight, where a number of
18 people are fighting one person, and he says to protect that
19 person he secures the one person in his vehicle to protect him
20 from the other individuals. He did not -- he says he didn't
21 arrest him for anything, he basically put him in protective
22 custody. So, how would 56-5-2953 apply to the DNR Officer
23 when it specifically talks about violations of the DUI
24 statute? This officer wasn't trying to stop him, wasn't
25 trying to arrest him for DUI, wasn't trying to do anything,

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ARGUMENT BY STANKO

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1 didn't have any knowledge about DUI and felony DUI. So, why
2 would the statute apply to the DNR officer at all?

3 MR. STANKO: Well, Your Honor, the, the statute doesn't,
4 doesn't specify that it's only the video from the arresting
5 officer; it's any law enforcement officer who was involved in
6 that chain of events.

7 THE COURT: All right. But it says any person who
8 violates 56-5-2930, and that one is operating a motor vehicle
9 while under the influence of alcohol or drugs or 56-5-2933,
10 which is driving with unlawful alcohol concentration, and then
11 56-5-2945, that's the felony DUI statute. So, it says a
12 person who violates any of those DUI statutes, must have his
13 conduct at the incident site and the breath test site video
14 recording. But, the statute doesn't apply to the DNR officer
15 at all. How can it apply to him? He's not there about
16 anything about any of those violations, didn't know about
17 them. He's there to stop the fight; that's all he's there
18 about. So, how can you make any arguments about the DNR
19 officer?

20 MR. STANKO: Because the DNR officer was the first one
21 there in the chain. Admittedly, he didn't know what was going
22 on, but once -- I mean, he certainly didn't just leave the
23 moment he handed Mr. Washington over. You know, it was -- he
24 was told why this investigation was happening, what he was
25 being charged with. All he would've needed to do is submit a

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ARGUMENT BY HOLFORD

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1 sworn affidavit indicating that he didn't have the recording
2 equipment and, therefore, he couldn't have -- he couldn't have
3 provided it. And, Your Honor, we don't know what happened in
4 those eight minutes because he didn't have the video. There
5 could potentially have been exculpatory statements made,
6 events could've occurred, we simply do not know because that
7 video was not provided. So, again, he's the first law
8 enforcement officer within that chain.

9 THE COURT: All right. Well, you had him on the stand.
10 I didn't hear you ask him did the defendant make any
11 statements to you about the DUI or hitting anybody or anything
12 like that. You haven't presented anything like that to me.

13 MR. STANKO: Correct, sir.

14 THE COURT: All right. Very good.

15 All right. Let me hear your arguments, Solicitor?

16 ARGUMENT BY HOLFORD:

17 MR. HOLFORD: Thank you, Your Honor. As to 56-4-2953,
18 the incident site and breath test site video recording, in
19 this case, as shown in State's 3, the in-car video from
20 Guyett, his in-car video did start on the blue lights. It
21 shows him at -- actually at the police department, arriving to
22 the scene, and captures the video that is available by his in-
23 car video. Your Honor, Officer Guyett is the arresting
24 officer in this case. That's uncontroverted. He arrested the
25 defendant, he has on State's 78, he lists the time of arrest

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ARGUMENT BY HOLFORD

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1 at 00:54, which would be 12:54 in the A.M. on 10/29/2016. He
2 took custody and control of the defendant. That is seen on
3 his body cam as well as his in-car camera. Your Honor, that
4 in-car camera does provide Miranda that was read to the
5 defendant in this case. Additionally, that in-car camera runs
6 while Officer Guyett and the defendant are in the -- in the
7 hospital. The reason, I think, for the exceptions in this
8 statute, which would've been provided in affidavit, are
9 specifically for that reason. The car is not able to go into
10 the hospital; it has to remain outside. In a situation where
11 Edward Washington had an ankle injury and could not perform
12 field sobriety tests, additionally, he was arrested for felony
13 DUI and a blood draw or urine was required. In this case, it
14 was a blood draw. The statute does not -- statute 56-5-2946,
15 submission for testing for alcohol or drugs, Section (A) says
16 notwithstanding any other provision of law, a person must
17 submit to either one or a combination of a chemical test of
18 his breath, blood, or urine for the purpose of determining
19 presence of alcohol, drugs or a combination of alcohol or
20 drugs if there is probable cause to believe that a person
21 violated or is under the arrest for violation of Section 56-5-
22 2945. And 56-5-2945 is the offense of felony driving under
23 the influence. Section (A)(2) is resulting in death.

24 And so, in this instance, there's a statute that provides
25 that the defendant in this case did not even have an option to

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ARGUMENT BY HOLFORD

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1 deny the collection of blood. However, the police did go a
2 step beyond that; they got a search warrant in this case.
3 That would be the probable cause they presented to the
4 Magistrate Court Judge saying there is probable cause that
5 exists to get a warrant for the defendant's blood, which they
6 did so in this case. There's a search warrant return
7 attached, which Officer Guyett and Jordan were present when
8 the inventory was done of that SLED blood collection kit.
9 That inventory was signed at the time of 03:53 in the morning
10 on the 29th. The blood draw was done prior to that based on
11 State's 78. The time of that test was 03:46.

12 The on-sight came recording requirements talk
13 specifically about breath-test site recording. In DUI's, you
14 typically have a defendant who has been arrested for driving
15 drunk is pulled out of the vehicle, does field sobriety in
16 front of the car on the in-car system. However, they're
17 specific in this statute, in 56-5-2353, which talks about
18 Subsection (B). It says nothing in this section prohibits the
19 Court from considering any other valid reason for the failure
20 to produce the video recording based upon the totality of the
21 circumstances. In this case, Officer Guyett did an affidavit
22 saying that he could not videotape either the standard field
23 sobriety tests or the breath site because the defendant was
24 transferred to the Conway Medical Center for treatment, which
25 he was. We can see that on the video.

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ARGUMENT BY HOLFORD

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1 Your Honor, the videos in this case capture the, the
2 totality of the circumstances of what's going on. I believe
3 that the breath test site video recording is something that
4 happens at every police department where they bring a
5 defendant in, they talk specifically about this 20-minute
6 waiting period, checking their mouth, following those
7 procedures; that's not applicable in this case, because that's
8 not what happened in this case. What happened in this case,
9 based on the affidavit and based on the videos that we see and
10 the testimony from the officer is that Edward Washington was
11 taken both for an ankle injury and also for a blood collection
12 pursuant to the felony DUI statute. And because he was taken
13 to the hospital for the blood collection, they were unable to
14 do a breath test site recording, which is what this section
15 refers to.

16 Your Honor, specifically in 56-5-2953, Section (B), it
17 does talk about traffic accident investigations. That failure
18 by the arresting officer to produce a video recording required
19 by this section is not alone a ground for dismissal. In this
20 case, the state would argue that the video did collect the
21 defendant's actions on scene as much that it could. That it
22 did collect Miranda on scene and that the body worn cameras
23 did collect his actions at the hospital as much as they could
24 and, therefore, would not be a violation. And to ensure that
25 the police did everything they possible could, also submitted

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REPLY ARGUMENT BY STANKO

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1 an affidavit that some of it was impossible to collect because
2 he was at the hospital for medical reasons as well as the
3 blood draw.

4 Your Honor, as to 56-5-2950, implied consent, the
5 evidence in the record is that the blood sample was collected
6 within three hours of the arrest and that the activation of
7 the video recording equipment prior to the commencement of the
8 testing procedures found in Section (B), the person has to be
9 given a written copy and verbally informed of his implied
10 consent rights. State's -- State's 79 is that implied consent
11 rights that the defendant signed and we can also see on
12 State's 2, where Jeff Jordan's body cam captures Officer
13 Guyett reading those implied consent rights and giving the
14 defendant a copy in this case.

15 Based on those reasons, the state would submit to the
16 Court that the officers have complied with the videotape
17 statute required in this case and that the felony DUI
18 resulting in death should not be dismissed.

19 THE COURT: Anything in reply; any argument in reply?

20 REPLY ARGUMENT BY STANKO:

21 MR. STANKO: Your Honor, again it's the -- we're not
22 arguing the -- the three-hour statute timeframe. What the
23 concern is here, once again, is that those -- those body-worn
24 cameras, they die, leaving out important pieces of -- of
25 footage that could potentially have exculpatory information on

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BY THE COURT

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1 it. We simply don't know. Your Honor, the statute isn't as
2 simple as, as Mr. Holford is saying that, that dismissal is
3 not a remedy for it. It's not a remedy for it if there are no
4 other justifications. The fact of the matter remains, by the
5 time Officer Guyett got on scene, this was a static calm
6 scene. There was no longer any fight. There were over a
7 dozen police cars there. This wasn't something that turned
8 into exigency. He said he was complaining of an ankle injury,
9 but that was almost in passing. He said, yeah, my ankle
10 hurts. He wasn't -- he wasn't screaming, laying on the
11 ground, you didn't see a bone, there wasn't any blood.

12 Your Honor, the requirement that they produce the
13 videotape cannot simply be waived because they forgot to
14 charge their cameras; it can't be waived because of an
15 exigency that simply was not as emergent as they are alleging
16 it was. Your Honor, they did not produce all the video that
17 was required under the statute. We would ask that it be
18 dismissed.

19 BY THE COURT:

20 THE COURT: All right, sir. Regarding this particular
21 matter and the incident site and breath test site video
22 recording under 56-5-2953. First, that code section does not
23 apply to the DNR Officer. He had nothing to do with this
24 matter regarding the felony DUI, he didn't stop him for that,
25 he didn't investigate it, he didn't question the, the

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1 defendant about it, he had no involvement with it. He was
2 there -- his intention was only there to stop melee or fight
3 and to put someone in protective custody since they were
4 engaged in an altercation in which a number of people were
5 fighting one person that turned out to be the defendant.

6 When -- thereafter, in a separate matter, police agencies
7 from the Conway Police Department, Horry County Police, and
8 apparently from Coastal Carolina University show up at the
9 Circle K, it's determined that the incident site for which the
10 defendant is charged was under the custody and control of
11 Conway Police Department. And based on that, Officer Guyett
12 of the Conway Police Department, who had turned on his blue
13 lights at the time he left and was dispatched, so he complied
14 with it, was the arresting officer. The car video was
15 working, his body camera was working, the defendant was given
16 his Miranda warnings, he cleared that the defendant could not
17 be given the standard field sobriety tests because he was
18 physically unable to do so because of his physical condition
19 and his ankle injury would not have allowed him to try to
20 complete the standard tests for DUI. The arresting officer,
21 based upon the information, does arrest the defendant for
22 under 56-5-2945, that being the felony DUI statute. Because
23 of that and because of the injury to the defendant, he was
24 taken to the Conway Hospital for treatment and also for a
25 blood draw, which is allowed under the charge for 56-5-2945.

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BY THE COURT

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1 The implied consent law was complied with at that time.
2 The officer -- and there's no requirement that an affidavit be
3 submitted immediately. He did submit an affidavit as to why
4 his body camera was not working that I believe complies with
5 the, the requirements. The blood draw, he was -- the
6 defendant was advised of his rights under the implied consent
7 law. He then had his blood drawn pursuant to the ability
8 under the statute and a properly executed search warrant,
9 which was approved, based on probable cause to a Magistrate
10 and after the search warrant was authorized, the blood draw
11 was done. The necessary requirements as far as the licensed
12 personnel doing the test, it being observed by the arresting
13 officer, he taking custody and control of the blood draw from
14 the licensed individual taking the blood, all that was
15 properly complied with. The fact that there is no video of
16 that, I don't find there to be any violation of the statute
17 and further it was properly explained by the officer.

18 I am going to allow the blood test in evidence and I'm
19 denying the motion to dismiss.

20 Anything further from the defense?

21 MR. STANKO: Nothing further, sir.

22 THE COURT: From the state?

23 MR. HOLFORD: No, Your Honor.

24 THE COURT: All right. So, with that then we'll get
25 started tomorrow morning. 9:30 the jury will be in and we'll

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BY THE COURT

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1 get started with the opening statements and presentation of
2 evidence at that time. All right?

3 Thank you very much.

4 MR. STANKO: Thank you, sir.

5 RECESS @ 4:55 P.M. - END OF DAY ONE.

6 *****OFF THE RECORD*****

7 (On the Record.)

8 JUNE 4, 2019 - DAY TWO - 9:37 A.M.

9 (REPORTER'S NOTE: The following takes place outside the
10 presence of the jury.)

11 BY THE COURT:

12 THE COURT: All right. The state ready for the jury to
13 come in?

14 MR. HOLFORD: Your Honor, before the jury does come in, I
15 have a copy of Glen Guyett's body-worn camera, the statement
16 of the defendant that has been redacted.

17 THE COURT: All right.

18 MR. HOLFORD: It is marked State versus Edward
19 Washington, EWC Trial. I'm going to have this marked by the
20 court reporter.

21 THE COURT: All right. Very good.

22 MR. HOLFORD: And that will be marked as State's 88 and
23 we will use that one as opposed to ---

24 THE COURT: The ones you used in the motion.

25 MR. HOLFORD: --- State's Number 1.

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1 STATE'S EXHIBIT NUMBER 88

2 MARKED FOR IDENTIFICATION

3 THE COURT: Okay. Very good.

4 MR. HOLFORD: Yes, sir.

5 THE COURT: Good deal.

6 All right. So, with that then the state's ready?

7 MR. HOLFORD: Yes, Your Honor.

8 THE COURT: Defense?

9 MR. STANKO: Your Honor, we would just ask and I believe
10 Mr. Holford already did it, but we would just ask that all
11 witnesses be sequestered for the trial.

12 THE COURT: Whoever -- who is your chief investigating
13 officer?

14 MR. HOLFORD: Glen Guyett.

15 THE COURT: All right, sir. He can stay and the rest of
16 them will be sequestered.

17 MR. HOLFORD: Yes, Your Honor. There are a number of
18 people present, the victim's mother, the victim's brother,
19 friends, family members; none of them will be testifying that
20 are present in the courtroom.

21 THE COURT: All right. Very good. As long as they are
22 not to be called as witnesses, they're free to stay.

23 MR. HOLFORD: Thank you, Your Honor.

24 THE COURT: Ask the jury to come in.

25 (REPORTER'S NOTE: Jury enters courtroom @ 9:40 A.M.)

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BY THE COURT

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1 THE COURT: All right. Good morning, ladies and
2 gentlemen.

3 Now, Madam Forelady, where you are seated, that's where
4 you will always need to come in and be seated right there
5 because I need to know where the foreperson is. Two
6 alternates, y'all occupy the two end seats. The rest of you,
7 ladies and gentlemen, just try to fill in wherever it is that
8 you have to come in from the jury room.

9 Counsel, y'all come up here and talk to me.

10 (REPORTER'S NOTE: Bench conference is held off the record in
11 the presence of but outside the hearing of the jury.)

12 THE COURT: First, Madam Forelady, if there's any
13 communications with the Court, you need to put that in
14 writing. You have to put those in writing.

15 You requested about taking the notes. We do not expect
16 this to be extraordinary long trial. We normally do not allow
17 the taking of notes. The reason for that is that, first, some
18 people have the ability to listen and take notes and are
19 better note takers than others. And they are sometimes, their
20 reliance that just because they put something down on a piece
21 of paper, that's the way it is. We're gonna rely on your
22 collective memory. Also, there's a tendency of some people
23 when they are writing notes to concentrate on writing the
24 notes and they're not listening to the next question and
25 answer that is going on in the interim and they've missed

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1 that. So, that's the rationale and reason that we do not
2 ordinarily allow the taking of notes. We rely on your common
3 memory, except if it's gonna be -- we expect it to be an
4 extraordinary long trial, which we do not expect this to be
5 other than, you know taking a couple of days but nothing of
6 any extraordinary length.

7 So, the very first thing that's gonna happen is the
8 clerk's representative is going to administer your oath to
9 you. So, if you would all please stand at this time.

10 (REPORTER'S NOTE: Jury duly sworn.)

11 THE COURT: Is there any member of the jury panel that
12 did not affirmatively take the oath just given by the clerk's
13 representative? If so, please stand.

14 No juror having stood, I find the jury properly sworn in
15 this matter.

16 All right. Ladies and gentlemen, as I indicated to you,
17 the state has charged the defendant with two crimes. Now,
18 I'll remind you again that I read to the panel-at-large, the
19 allegations or the charges against the defendant and I'll
20 remind you again, that's not evidence. It cannot be used as
21 evidence in this case. But, the state has charged that the
22 defendant has committed the crime of felony driving under the
23 influence, death resulting, and leaving the scene of an
24 accident resulting in death. Now, to those indictments, to
25 those two charges, the defendant has pled not guilty. That

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BY THE COURT

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1 immediately put the burden of proof in this case upon the
2 State of South Carolina to prove the defendant, if it can,
3 guilty of these particular charges beyond a reasonable doubt.
4 That is the state's burden to prove the defendant guilty
5 beyond a reasonable doubt.

6 The defendant is presumed innocent of the charges. That
7 presumption of innocence lasts throughout the entirety of the
8 trial through your deliberations unless and until you believe
9 the state has proven the defendant guilty of the crimes
10 charged beyond a reasonable doubt. The defendant has nothing
11 to prove to you. The defendant has nothing to show to you. I
12 tell the juries all the time that the defendant need not even
13 show up for trial, because they don't have anything to prove
14 to you. It is the total and complete burden on the State of
15 South Carolina to prove the defendant guilty beyond a
16 reasonable doubt.

17 Now, you will be operating as the judges of the facts of
18 this case. I will not indicate to you in any way what I
19 believe the facts of this case are. That's gonna be your job
20 and your responsibility to listen to the facts and evidence
21 and determine from the facts and evidence whether or not the
22 state can prove the defendant guilty of the crimes charged
23 beyond a reasonable doubt.

24 Part of your job as being the judge of the facts will be
25 to judge the believability, that is the credibility of the

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1 witnesses that come before you and testify you under oath.
2 And if you're thinking, now how do I judge somebody's
3 credibility or believability, you do it every single day of
4 your life. When somebody tells you something, you are
5 automatically judging in your own mind whether or not you
6 believe them. You use your good common sense. You use your
7 good judgment that you use in conducting your own affairs.
8 That's what we're asking you to do; use your good common
9 sense. Listen to the facts and evidence in judging the
10 credibility and believability and then put all of the facts
11 and evidence you've heard and then you decide whether or not
12 the state has proven the defendant guilty of the crime or
13 crimes charged beyond a reasonable doubt.

14 How the case will proceed. After these brief comments to
15 you, we'll have the opening statements of the attorneys
16 followed by the presentation of the witnesses, the evidence.
17 The witnesses will come before you and testify under oath.
18 There may be the introduction of certain documentary or maybe
19 some other kind of physical evidence in this matter. After
20 that, we'll have the closing arguments of the attorneys and
21 then I will give you the charge on the law, the law that you
22 will apply to the facts and evidence you have heard in this
23 case.

24 Now, as to the opening statements of the attorneys and
25 the closing arguments, they're important, they introduce the

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OPENING BY WALKER

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1 matter to you. That's their opening statements and closing
2 arguments are their comments on the facts that have been
3 developed in this case. But, neither the opening statements
4 or the closing arguments are evidence. You cannot rely upon
5 that to make your decision. In fact, you must make your
6 decision based upon the facts and evidence that has been
7 presented in this trial.

8 We understand we are asking to come to a unanimous
9 conclusion regarding your verdict in this matter. Regarding
10 that, we are requiring and it is necessary, that you give your
11 attention to the facts and evidence in this case and I know
12 that you will and I appreciate the circumstances that we have
13 placed you under. But that is our judicial and legal system,
14 to have members of the community listen to the facts and
15 evidence and make a decision in this matter based upon the law
16 and the facts and evidence.

17 I appreciate your attention. I'll turn it over to the
18 state at this time.

19 MS. WALKER: Yes, Your Honor, may it please the Court?

20 THE COURT: Yes, ma'am.

21 OPENING BY WALKER:

22 MS. WALKER: In the early morning hours of October the
23 29th, 2016, Ryan Bielawa, the victim in this case, and his
24 friends were out doing what a lot of people were doing that
25 night; they were celebrating Halloween. Ryan was a student

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OPENING BY WALKER

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1 over at Coastal Carolina. A bunch of the friends that he was
2 with were also students there. So, for the majority of the
3 evening, they were over in the Coastal campus area hopping
4 between house parties and what not, just having a good time
5 like teenagers do.

6 So, at some point in the evening, they decided to go
7 visit a bar. It was a local college bar called The Coop.
8 It's located, and I'm sure a lot of people know where it --
9 it's located along Highway 544 which is kind of on the
10 backside of Coastal Carolina's Campus, where the football
11 stadium is. So, in order to get to it from the campus, you
12 have to cross Highway 544. So, Ryan and his friends did that.
13 They went over to The Coop and they were there not very long.
14 They didn't stay super long before they decided to go back
15 over to the campus. Just a bunch of jumping around,
16 indecision amongst friends about what to do to celebrate.
17 They -- like I said, they decided to go back over towards the
18 campus.

19 And so, unfortunately, as they prepared to cross over
20 Highway 544 again to make their way back towards the campus,
21 Ryan never made it back to the campus, and that's because as
22 he went across the street, he was crossing Highway 544
23 basically from The Coop over in the general direction of the
24 college, but close to where there's a gas station, a Circle K
25 gas station. And as he was crossing, he was tragically plowed

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OPENING BY WALKER

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1 down by a driver, a speeding driver hit Ryan. And, according
2 to witnesses and what you'll hear throughout the course of
3 this trial, hit Ryan, threw him into the air, in that moment
4 causing catastrophic injuries to his body. Injuries that
5 ultimately was not able to survive. Ryan came to rest in a
6 grassy area right in front of that Circle K gas station. So,
7 he was there, he had, as I said, friends with him and there
8 were a lot of witnesses who were there to see what happened
9 and see the aftermath.

10 But the person who wasn't there to see the aftermath was
11 the driver, the person who had just struck Ryan. And the
12 person who was driving very intoxicated, who caused these
13 injuries, that person did not slam on the brakes, did not get
14 out of the car to try to see what had just happened to try to
15 help the person who he had just hit; he didn't do any of that.
16 He didn't call 911. He just kept on speeding up Highway 544.
17 And as I'm sure many of you probably assume at this point,
18 that driver is the defendant in this case, Mr. Edward
19 Washington.

20 So, as Ryan laid there and took his final breaths there
21 on the side of Highway 544, Mr. Washington was continuing on
22 his path. You know, why did he keep driving? I don't know.
23 Did he drive somewhere to try to get rid of bottles of
24 alcohol, beer, some other sort of contraband that he wouldn't
25 have wanted to the police to find? I don't know. And those

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OPENING BY WALKER

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1 are questions that we'll probably never have answers to. But,
2 what we do know is that Ryan did die that night or that
3 morning. This was probably at that time around 1:00 A.M.
4 What we do know is that he did die as a result of Mr.
5 Washington driving drunk and hitting him.

6 And I'd lying to you if I said that Mr. Washington never
7 came back to the crime scene, that he never returned to the
8 incident site because he did. Oddly enough, several minutes
9 later -- and you'll hear again from witness statements about
10 how that all played out. Several minutes later, Mr.
11 Washington did come back to the scene. He came back to the
12 Circle K gas station and, when he got there, he didn't come
13 and try to make sure everything was okay. At that time, there
14 was some law enforcement officers on the scene. He didn't try
15 to engage with them to provide information about the accident
16 that had just occurred. Nope, he shows up to the scene being,
17 according to witnesses and what you'll hear throughout the
18 course of the trial, being belligerent and combative, even
19 punching one of the witnesses in the face.

20 So, that's where we are. That's why we're here this
21 week. It was because of Mr. Washington's own actions, the
22 choices he made that night to get behind the car -- get behind
23 the wheel of a car and drive while being highly intoxicated
24 and from fleeing the scene once he did strike a pedestrian.
25 That's why we're here. That's why the State of South Carolina

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OPENING BY WALKER

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1 has charged him with the two crimes that Judge John and a
2 couple of us have already mentioned, with a felony DUI with
3 death and the hit-and-run with death. Even though I know
4 Judge John read the indictment about leaving the scene of an
5 accident, you know shorthand is kind of hit-and-run with that.

6 So, that's what we're here for, myself, my co-counsel.
7 The burden is, as the Judge told you, it's up to us to prove
8 to you guys individually, collectively, that beyond a
9 reasonable doubt Mr. Washington is guilty of these crimes.
10 And so, in doing that, we're gonna present to you, multiple
11 witnesses, lay witnesses, some of his friends who were there
12 with him that night, law enforcement officers, all sorts of
13 information. And, hopefully, the goal is to give you all of
14 the information and all of the evidence that you need to make
15 your decision, because at the end of the trial we're gonna ask
16 you one important question, it's the most critical question
17 throughout the trial, and it's is Mr. Washington, Edward
18 Washington, guilty of the two crimes. Is he guilty of a
19 felony DUI with death and the hit-and-run with death. And I
20 submit to you, that once you've had the opportunity to see all
21 the evidence and sit here throughout the course of the trial,
22 that each of you will be able to render the answer that -- the
23 only one that fits in this case and it's that, yes, he is
24 guilty of both of those crimes.

25 Thank you.

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OPENING BY STANKO

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1 THE COURT: Defense?

2 MR. STANKO: Thank you, Your Honor, may it please the
3 Court?

4 THE COURT: Yes, sir.

5 OPENING BY STANKO:

6 MR. STANKO: A few minutes ago, you took an oath. You
7 took an oath to listen to the evidence, follow the law. In
8 many cases, that's not a significant or a difficult thing for
9 a jury to do. This is a very different case. We have a 19-
10 year-old college kid who died that night. We have his family,
11 we have his friends, this whole section over here almost full
12 of them. I know we're asking you a lot. But, the whole
13 justice system requires impartial jurors who follow the law,
14 who follow the evidence, who listen to testimony and render a
15 true verdict based upon what they hear. Like I said, I know
16 it's difficult. This is gonna be an emotional case.

17 Mr. Washington is charged with two different things.
18 He's charged with leaving the scene of an accident or hit-and-
19 run and felony DUI with death. I'll go ahead and take those
20 in reverse.

21 She mentioned to you that immediately after this
22 collision, he did not stop. Now, in order for you to stop, in
23 order for you to remain at an accident scene, you have to know
24 you were in a collision. You're gonna hear testimony, you're
25 gonna see it on the video, Mr. Washington thought that

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OPENING BY STANKO

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1 somebody at the gas station had thrown a bottle at his car,
2 windshield shattered, he swerved. She mentions it was several
3 minutes before he came back. What you didn't hear yet, but
4 you will, he went barely a third of a mile down the street,
5 pulled into an apartment complex, a parking lot, before you
6 even -- if you're familiar with that area, 544 going north
7 from the beach towards Conway, he didn't even make it all the
8 way to 501 to Cox Ferry right there -- pulled in, got out,
9 looked at his car, realized something happened, turned around,
10 came back. He was gone three-and-a-half, maybe four minutes.

11 Now, the purpose of a statute like that, the purpose of
12 the leaving the scene of an accident is chiefly so that an
13 individual who has been involved in an accident can either
14 render aid, if they're able, or to contact proper authorities,
15 if need be. Now, you're gonna see and you're gonna hear,
16 there were dozens of people outside of that gas station. I
17 know it was late night, Halloween parties were going on,
18 people all over the place. By the time Mr. Washington had
19 gotten back, several people had already called 911. He was
20 being tended to. The chief purpose for that statute had
21 already been met. And again, as soon as he realized what had
22 actually happened, he turned around and came right back. But
23 I will submit to you, absolutely, he did not stop immediately.
24 It did take a few minutes for him to get back.

25 Now, the other thing he's been charged with, felony DUI

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OPENING BY STANKO

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1 with death. The way that statute is worded, you have to be
2 driving a motor vehicle in South Carolina, you have to be
3 involved in a collision, your ability to drive has to be
4 materially and appreciably impaired. Simply having a number
5 is not enough. The State of South Carolina requires a showing
6 that an individual was actually intoxicated. You know, we've
7 all seen a tiny person, a college student, has one, maybe one-
8 hand-a-half beers and they're already -- they're already
9 tipsy. And we've seen the career drinker, who could be over a
10 .30 and still standing on their feet with no problem. That
11 number is not enough. The way the statute is worded, they
12 have to be materially and appreciably impaired, and the state
13 has to show you that. They have to show that beyond simply
14 having alcohol in their system that their ability to drive was
15 actually impacted by that alcohol.

16 Now, one last portion of that statute, in addition to
17 being in a collision, driving, and having your ability to
18 drive impaired, you also have to commit a traffic violation
19 that proximately causes that collision. You could be doing
20 everything you're supposed to be doing and if it's someone
21 else's fault, you otherwise did nothing wrong, you cannot be
22 found guilty of felony DUI.

23 What we have here, and again for those who are familiar
24 with that particular area, The Coop bar, if you're heading
25 north, The Coop is your left side, the gas station is on your

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OPENING BY STANKO

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1 right side. You have two lanes coming this way, two lanes
2 coming this way, and a center lane. What you don't have there
3 is a crosswalk. The crosswalk is a good 150 feet, 200 feet
4 farther south. That evening, the victim in this case, came
5 running across the street, not a stop walk, not a cross walk,
6 just right in the road. You're going to hear testimony from
7 several different officers about what Mr. Washington's speed
8 might have been that evening, and it's a significant range.
9 That's a 40 mile-an-hour zone right there. You have speeds --
10 one of the estimates would certainly be below, some are close
11 to it, but it's a reach. And unless they're able to prove to
12 you beyond a reasonable doubt that he actually committed that
13 traffic violation -- once again, according to law, according
14 to that statute, he cannot be found guilty of felony DUI.

15 Ladies and gentlemen, once again, I'm telling you, you
16 swore an oath to follow the law and follow the statute. I ask
17 you this week to listen very carefully to everything you hear
18 from the witness stand and render a true verdict.

19 Thank you.

20 THE COURT: All right. Solicitor, your first witness,
21 please.

22 MR. HOLFORD: The state calls Jaren Soucy.

23 THE COURT: All right. Come all the way around and meet
24 the clerk's representative up front, please, sir.

25 CLERK: Please raise your right hand and place your left

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JARED SOUCY - DIRECT BY HOLFORD

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1 hand on the Bible.

2 JARED SOUCY, HAVING BEEN SWORN

3 TESTIFIES AS FOLLOWS:

4 CLERK: Please have a seat. Please state your name and
5 spell your first and last name.

6 MR. SOUCY: Jared Soucy; J-A-R-E-D, last name is S-O-U-C-
7 Y.

8 THE COURT: Solicitor?

9 DIRECT EXAMINATION OF JAREN SOUCY BY MR. HOLFORD:

10 Q: Officer Soucy, where are you currently employed?

11 A: Horry County Police Department.

12 Q: And how long have you been employed there?

13 A: Five years.

14 Q: What's your job?

15 A: I'm a corporal on the road in patrol.

16 Q: Okay. With patrol, do you respond to incidents,
17 accidents?

18 A: Yes, sir.

19 Q: Do you respond to other crimes?

20 A: Yes, sir.

21 Q: And were you on patrol the night of October 29th, 2016?

22 A: Yes, sir.

23 Q: And did you respond to an incident that night?

24 A: Yes, sir.

25 Q: Or in the early morning hours?

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JARED SOUCY - DIRECT BY HOLFORD

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1 A: Yes, sir.

2 Q: Tell me about that; how did you find out about it?

3 A: I was probably a half a mile down the road when the call
4 came out over the radio. It was a Conway City Police
5 Department call; we're both on the same radio channels. Due
6 to the close proximity, I responded to the call and ended up
7 being one of the first ones on the scene.

8 Q: Okay. So, was this an Horry County case?

9 A: This was a Conway City Police Department case?

10 Q: Okay. So, where is your jurisdiction; where is Horry
11 County Police Department's jurisdiction?

12 A: We do the whole county.

13 Q: But there are -- are there also cities that have
14 jurisdiction with their own police departments?

15 A: Yes, sir.

16 Q: But in this case, did you respond?

17 A: I did.

18 Q: Are you familiar with that area along 544?

19 A: Yes, sir.

20 Q: Would you be familiar if I showed you map of the area?

21 A: Yes, sir.

22 MR. HOLFORD: Your Honor, may I approach?

23 THE COURT: Yes, sir.

24 BY MR. HOLFORD:

25 Q: I'm gonna hand you what's been marked at this point for

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JARED SOUCY - DIRECT BY HOLFORD

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1 ID as State's 4 and 7. Let's deal with 4 first. What does
2 that appear to be that I've handed you?

3 A: It is an overview of a map of Highway 544 at the
4 interchange with 501.

5 Q: Does that appear to include the incident location that
6 you responded to?

7 A: It does.

8 Q: Are you familiar with that area?

9 A: I am.

10 Q: And have you patrolled that area for a number of years?

11 A: Yes, sir.

12 MR. HOLFORD: All right. Your Honor, at this time, the
13 state would seek to introduce State's 4 into evidence?

14 THE COURT: Any objection?

15 MR. PINKERTON: Without objection, Your Honor.

16 THE COURT: All right. It's into evidence without
17 objection.

18 STATE'S EXHIBIT NUMBER 4

19 ADMITTED INTO EVIDENCE

20 THE COURT: You may proceed.

21 MR. HOLFORD: Your Honor, may the witness step down?

22 THE COURT: Yes, sir. Just make sure he's in front of
23 the microphone there, one of the two.

24 Counsel, y'all can move over if you need to.

25 BY MR. HOLFORD:

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1 Q: All right. I'm gonna hold this map. And just so we're
2 clear about where we're talking about, where is Coastal
3 Carolina University?

4 A: (Indicating on map.) This would be Coastal ---

5 THE COURT: All right, sir. You have to speak up so the
6 jury can hear you and the court reporter can take down what
7 you're saying.

8 Q: This is a microphone right here. So, let's ---

9 A: This would be Coastal right here (indicating).

10 Q: And where is Highway 544 and where is 501 on the map?

11 A: 544 runs this way, and then 501 will run this way.

12 Q: Okay. And the incident location, where is that on this
13 map?

14 A: It would be the gas station right here on 544.

15 Q: And is there a little red pen on there?

16 A: Yes, sir.

17 Q: Is that the approximate location of the gas station?

18 A: That is.

19 Q: Okay. And State's 7, can you identify what that is?

20 A: This is Highway 544 right in front of the gas station and
21 in front of The Coop.

22 Q: Is it a street view?

23 A: It is a street view.

24 Q: Does it show the gas station that you responded to?

25 A: It does.

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1 Q: Does it appear to reflect accurately that area of, of the
2 road?

3 A: Yes, sir.

4 MR. HOLFORD: The state would seek to introduce state's 7
5 in evidence.

6 THE COURT: Any objection?

7 MR. PINKERTON: Without objection, Your Honor.

8 THE COURT: It's into evidence without objection.

9 STATE'S EXHIBIT NUMBER 7

10 ADMITTED INTO EVIDENCE

11 THE COURT: You may proceed.

12 BY MR. HOLFORD:

13 Q: Now, I'm not gonna get you up and down and up and down.
14 But can you point on this map and maybe refer to, as we orient
15 the picture, left and right. So, which view are we looking at
16 with this picture?

17 A: You're looking at 544 and you're headed Conway-bound,
18 towards downtown Conway.

19 Q: Okay. And what's on the left side of this picture?

20 A: The left side would be The Coop, Monarch Apartments,
21 Coastal Club Apartments, Coastal Housing.

22 Q: And appears on the right side of the picture?

23 A: The right side is the Circle K gas station.

24 Q: Okay. And so, is this Circle K gas station, is that
25 where you responded that night?

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- 1 A: That is.
- 2 Q: Now, this is a shot during the day, isn't it?
- 3 A: Yes, sir.
- 4 Q: So, it's not dark like it was?
- 5 A: No, sir.
- 6 Q: This just shows the location?
- 7 A: Yes, sir.
- 8 Q: How many lanes -- how many lanes are there?
- 9 A: You have four lanes with a median in the middle of the
- 10 two.
- 11 Q: And the median, is it a raised median or ---
- 12 A: No, sir.
- 13 Q: Okay. Now, when you respond to this incident, what did
- 14 the call come as; what did you respond to?
- 15 A: It came out as a pedestrian hit by a vehicle.
- 16 Q: And what did you do when you responded to the scene?
- 17 A: I arrived on scene and I observed the victim laying in
- 18 front of the grass, grassy area just in front of the gas
- 19 station. I immediately went up to the victim where he was
- 20 being rendered aid by several of what appeared to be his
- 21 friends and other students and I stayed there until the
- 22 ambulance got there on scene.
- 23 Q: On State's 7, there's a -- there's the gas station and
- 24 there's a little sign that says what the price of the gas is.
- 25 About where was the victim laying in relation to that?

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- 1 A: The victim was just -- I recall was just in front or
2 right near the sign right here and there's a grassy area right
3 here.
- 4 Q: Okay. So, he's in -- he's in this grassy area right
5 here?
- 6 A: Yes, sir.
- 7 Q: What condition did you observe the victim in?
- 8 A: The victim was -- they were actively working on the
9 victim. He appeared to already been deceased or, you know,
10 was just about to be deceased. His -- I can remember his
11 chest was split open and you could see the -- it was like a
12 diagonal cut across his chest where you could see the fat
13 coming out of his stomach. Also another thing I remembered is
14 his -- his leg was -- somebody was holding his foot and it
15 wasn't connected -- it was only connected by a piece of skin
16 and that's -- those are the two vivid memories that I remember
17 the condition of the victim.
- 18 Q: Have you reviewed pictures in preparation for trial of
19 the victim?
- 20 A: Yes, sir.
- 21 Q: And those pictures, do they appear the victim as you saw
22 him that night?
- 23 A: Yes, sir.
- 24 Q: Would you recognize those if I showed them to you?
- 25 A: I would.

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1 Q: I'm gonna hand you what's been marked -- now, don't show
2 them to the jury yet. I'm gonna hand you what's been marked
3 as State's 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17. Can you
4 identify what those pictures are pictures of?

5 A: It's pictures of the victim.

6 Q: Okay. And does that appear to be the condition that you
7 found the victim in when you arrived on that scene right after
8 the call?

9 A: Yes, sir.

10 MR. HOLFORD: Your Honor, at this time, the state would
11 seek to introduce State's 8 through 17.

12 THE COURT: Objection?

13 MR. PINKERTON: No objection, Your Honor.

14 THE COURT: State's 8 through 17 are into evidence
15 without objection.

16 STATE'S EXHIBIT NUMBER 8 THROUGH 17

17 ADMITTED INTO EVIDENCE

18 BY MR. HOLFORD:

19 Q: All right. So, State's 8 -- now, they're graphic; are
20 they not?

21 A: Very.

22 Q: But this is how you found him?

23 A: It is how I found him.

24 Q: State's 8, what portion of the body do we see in State's
25 8?

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- 1 A: That would be his chest and stomach area.
- 2 Q: And was he lying on his stomach or his back?
- 3 A: He was lying on his back.
- 4 Q: State's 9, what's the difference in this photo; what does
5 it appear to show?
- 6 A: It shows a portion of his head and more of a side view of
7 the gash on his stomach/chest area.
- 8 Q: State's 10 and 11?
- 9 A: These are two pictures of the victim's head.
- 10 Q: Can you describe, just for purposes of the court
11 reporter, I know that we can see the pictures, but where do
12 there appear to be wounds?
- 13 A: It looks like there's wounds on the -- that'd be the
14 right side of his face. It looks like maybe it's from some
15 road rash.
- 16 Q: State's 12, what side of his body is this?
- 17 A: It's at the right.
- 18 Q: And State's 13, what part of the body is that?
- 19 A: That would be his hand, wrist area.
- 20 Q: And what happened to his hand there?
- 21 A: It appears to be broken severely.
- 22 Q: Now, State's 15 -- 15, 16, and 14, what part of the body
23 is this?
- 24 A: That is the victim's legs.
- 25 Q: All right. So, State's 15, can you tell which leg that

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- 1 is?
- 2 A: That would be his left leg.
- 3 Q: And so State's 14?
- 4 A: His right leg.
- 5 Q: And then State's 16?
- 6 A: That's the left.
- 7 Q: So, we have two pictures of the left leg and then a
- 8 picture of the right leg. Now, his right leg on State's 14,
- 9 it appears to be covered with something; what is that?
- 10 A: It looks like some bandaging from maybe EMS.
- 11 Q: And did you see that leg?
- 12 A: I did.
- 13 Q: How did the leg appear?
- 14 A: When I first arrived there, that bandaging wasn't there.
- 15 That was -- his leg was being held by another -- it was a male
- 16 who was holding his leg and he had his leg in his hand and it
- 17 was only attached by a small piece of skin.
- 18 Q: And that's his right leg?
- 19 A: That's his right leg.
- 20 Q: And -- and then finally, State's 17?
- 21 A: This shows again his wounds on his chest and his stomach.
- 22 Q: And can you tell us what side of the body this is mostly
- 23 of?
- 24 A: His left side.
- 25 Q: Now, you said when you arrived on the scene, that he was

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1 close to dying; is that how you said it?

2 A: Yes, sir.

3 Q: Was he still breathing?

4 A: If I can -- I can recall that I do remember him maybe
5 faintly grasping for a little bit of air, but he was
6 definitely pretty much deceased.

7 Q: And was he deceased on the side of the road?

8 A: He was pronounced deceased by Horry County Fire and
9 Rescue.

10 Q: Now, -- now since this wasn't an Horry County Police
11 Department case, what did your involvement entail afterwards?

12 A: After I arrived on scene and we tried to render aid to
13 the victim, I assisted with crowd control. There was a large
14 group of students out there who were trying to intervene with
15 the crime scene, so we put up tape and assisted with keeping
16 them out of the scene.

17 Q: Was that -- was that the end of your involvement with
18 this case?

19 A: Yes, sir.

20 Q: You hesitated, I don't -- what -- what did you want to
21 say?

22 A: I -- that's all I did was just do the crime scene tape
23 and, you know, made sure everything was -- everybody stayed
24 out. I do remember the car being there. That was the only
25 other thing that I remember from looking at the car.

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- 1 Q: You looked at the car?
- 2 A: Uh-huh, (affirmative response).
- 3 Q: And you saw that car?
- 4 A: Yes, I did.
- 5 Q: Did you see how it appeared on scene?
- 6 A: I did.
- 7 Q: Did you go up to the car?
- 8 A: I did; I walked around it.
- 9 MR. HOLFORD: Your Honor, may I approach?
- 10 THE COURT: Yes, sir.
- 11 BY MR. HOLFORD:
- 12 Q: I'm gonna hand you what's been marked as State's 22, 23,
- 13 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34. Can you
- 14 identify what I've handed you?
- 15 A: That is the car that was located in the parking lot of
- 16 the Circle K that night.
- 17 Q: Okay. Does that appear the condition it was in when you
- 18 saw it at the Circle K?
- 19 A: Yes, sir.
- 20 Q: Is that a fair and accurate depiction of that car that
- 21 night?
- 22 A: Yes, sir.
- 23 Q: And are these photos taken during the day or at night
- 24 time?
- 25 A: They're taken at night.

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1 MR. HOLFORD: The state would seek to introduce State's
2 24 through ---

3 THE COURT: 22 ---

4 MR. HOLFORD: 22 through 34.

5 THE COURT: Any objection?

6 MR. PINKERTON: No objection, Your Honor.

7 THE COURT: All right, sir. 22 through 34 are into
8 evidence without objection.

9 STATE'S EXHIBIT NUMBER 22 THROUGH 34

10 ADMITTED INTO EVIDENCE

11 MR. HOLFORD: Your Honor, may I publish?

12 THE COURT: Yes, sir, you may.

13 BY MR. HOLFORD:

14 Q: I'm just going to hand out State's 22, 28, 29, 31, 32, 33
15 and 34. I'm gonna give them just a second ---

16 THE COURT: Yes, sir.

17 Q: --- and then I'm going to ask you about a couple of
18 these.

19 THE COURT: Whenever the jury is done looking at the
20 photographs, just pass them back to the foreperson, please.

21 All right. Solicitor, you may retrieve those from the
22 foreperson. You may proceed.

23 BY MR. HOLFORD:

24 Q: Now, State's 23, what angle of the car is that?

25 A: It is a picture of the front of the vehicle.

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- 1 Q: Okay.
- 2 A: From looking at the driver's side.
- 3 Q: And if you're -- let's say we're facing the hood of the
4 car, right?
- 5 A: Uh-huh, (affirmative response).
- 6 Q: Well, let's refer to driver and passenger side.
- 7 A: Okay.
- 8 Q: Where does the damage appear?
- 9 A: That is on the passenger side of the vehicle.
- 10 Q: Okay. Does it appear near the bumper, hood, where on
11 that vehicle?
- 12 A: The damage extends from the bumper to the hood to the
13 windshield.
- 14 Q: Now, let's move up the car. 24, what is that?
- 15 A: That is the passenger-side hood.
- 16 Q: Is that a close-up?
- 17 A: It's a close-up.
- 18 Q: And what's the purpose of this picture; what do we see
19 there?
- 20 A: To show the dent in the hood.
- 21 Q: So, there's a dent in the hood on the passenger side of
22 that car?
- 23 A: Yes, sir.
- 24 Q: And then State's 27?
- 25 A: That is showing the windshield of the vehicle, passenger

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1 side.

2 Q: Okay. So, this is a close-up of the windshield,
3 passenger side. So, that's moving up the car from the hood to
4 the windshield?

5 A: Yes, sir.

6 Q: Now, State's 25 and 26, what angle is that from?

7 A: You are looking at the passenger side of the car, the
8 front half.

9 Q: And what is it, what does 25 and 26 show that is
10 different from the last picture?

11 A: You can see that the mirror is missing, the side mirror,
12 and also that the, what we call the A-pillar appears to be
13 bent.

14 Q: Is this the A-pillar here?

15 A: That is the A-pillar.

16 Q: So, this A-pillar is bent in?

17 A: Yes, sir.

18 Q: How would you classify that kind of damage?

19 A: The A-pillar is one of the most strongest parts of the
20 vehicle. So, it would take a lot of force to cause that kind
21 of damage.

22 Q: And then 30?

23 A: It's at the hood of the vehicle or the top part of the
24 vehicle, the roof of the vehicle.

25 Q: And what do we see in this picture that's relevant?

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JARED SOUCY - CROSS BY PINKERTON

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1 A: That is some dents and blood splatter.

2 Q: All right. So, this is the roof of the vehicle. All
3 this damage, was that from a bottle?

4 A: There's no way.

5 Q: No further questions.

6 THE COURT: Cross examination?

7 MR. PINKERTON: Yes, Your Honor.

8 CROSS EXAMINATION OF JARED SOUCY BY MR. PINKERTON:

9 Q: Officer Soucy?

10 A: Yes, sir.

11 Q: You did not actually witness this collision, correct?

12 A: No, sir.

13 Q: Do you know what time you got the call to be dispatched
14 to the gas station?

15 A: It was in the latter half of the midnight hour of that
16 evening.

17 Q: Do you recall what time you would have arrived at the
18 crime scene?

19 A: I don't recall the specific time.

20 Q: If I was to give you your crime scene log, would that
21 refresh your memory?

22 A: If I'm on the crime scene log, it would probably.

23 MR. PINKERTON: Your Honor, may I approach?

24 THE COURT: Yes, sir.

25 A: It says that I arrived at 00:53.

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1 BY MR. PINKERTON:

2 Q: And by the time you arrived, Mr. Washington was back on
3 scene, correct? Well, you said you saw his car there,
4 correct?

5 A: I didn't see the car until after -- my main focus was the
6 victim. So, I didn't see the car until after we got done
7 dealing with the victim.

8 Q: But the car could've been there by the time you arrived
9 as far as you know?

10 A: It could have.

11 Q: And where was Mr. Washington when you arrived, did you
12 see him?

13 A: I did not see Mr. Washington at all.

14 Q: You didn't see him at all. Okay. Do you know if he was
15 in DNR custody at that time or ---

16 A: I did not know.

17 Q: Okay.

18 MR. PINKERTON: No further questions, Your Honor.

19 THE COURT: Any redirect?

20 MR. HOLFORD: No, Your Honor.

21 THE COURT: Do you wish the witness to be excused?

22 MR. HOLFORD: Yes, Your Honor.

23 THE COURT: Any objection?

24 MR. PINKERTON: No objection, Your Honor.

25 THE COURT: All right, sir, you're released from your

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1 subpoena; you may go back to your regular duties.

2 MR. SOUCY: Thank you, sir.

3 THE COURT: Your next witness, please.

4 MR. HOLFORD: The state calls Daniel Baker.

5 THE COURT: All right, Mr. Baker, if you would just come
6 all the way around up front and meet the clerk's
7 representative right up here please, sir.

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

10 DANIEL BAKER, HAVING BEEN SWORN

11 TESTIFIES AS FOLLOWS:

12 CLERK: Please be seated. Please state your name and
13 spell your name for the Court.

14 MR. BAKER: My name is Daniel Baker, D-A-N-I-E-L, B-A-K-
15 E-R.

16 THE COURT: Go ahead, Solicitor.

17 DIRECT EXAMINATION OF DANIEL BAKER BY MR. HOLFORD:

18 Q: Officer Baker, where are you currently employed?

19 A: I'm employed with South Carolina Department of Natural
20 Resources Law Enforcement Division. My headquarters is in
21 Edgefield, South Carolina.

22 Q: Okay. And what's your jurisdiction for DNR?

23 A: Statewide.

24 Q: So, it's statewide?

25 A: Yes, sir.

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1 Q: And what does DNR do?

2 A: DNR, we enforce resource laws. We also enforce
3 regulations on our lakes and rivers as well as our coastal
4 plains.

5 Q: And were you down in Horry County at the end of October
6 in 2016?

7 A: Yes, sir.

8 Q: Tell the jury a little bit why -- what were you doing
9 down here?

10 A: In October, we were here for the aftermath of Hurricane
11 Matthew, which had flooded the towns of Nichols, Socastee, and
12 Waccamaw. The rivers had a significant amount of flooding.
13 During that time, our department, we dispatched groups for
14 river patrols, we enforce no-wake zones on the river because
15 of the excess flooding. We don't want any wakes causing more
16 damage to the homes in the area. And then the town of Nichols
17 had flooded and the waters had receded, so we were there doing
18 patrols for looting and things like that, any burglary
19 activity of any sort.

20 Q: Okay. Now, on October 29th, 2016, tell us how you became
21 involved in this case.

22 A: I was sent here to supervise groups from Socastee Fire
23 Department, Waccamaw, which they were stationed at the fire
24 department, and we had a group in the town of Nichols. It was
25 my first night of being sent to supervise those three groups,

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- 1 so I went from one fire department to the next and was using
2 Highway 544 to access 501 to 41 to enter into Nichols. At
3 that time, that was our only entrance. When I was heading --
4 traveling on Highway 544, I saw a fight at the Circle K, so I
5 pulled in essentially to break up a fight.
- 6 Q: Okay. Now, do you have -- do you have a radio?
- 7 A: I have a radio; yes, sir.
- 8 Q: Are you on the same call channels as Horry County Police
9 Department ---
- 10 A: No, sir.
- 11 Q: --- Myrtle Beach or anything like that?
- 12 A: We have our own dispatch based out of Columbia.
- 13 Q: Okay. So, did you respond to something you saw or
14 something that came over the radio?
- 15 A: Something I saw.
- 16 Q: So, you didn't get called out to this?
- 17 A: No, sir.
- 18 Q: I'm gonna show you what's been entered as State's 7; are
19 you familiar with this area?
- 20 A: I'm familiar with it but, I mean, it's not in my routine
21 patrol area. Yes, sir, I'm familiar with it.
- 22 Q: Does this show the gas station that you went to?
- 23 A: Yes, sir.
- 24 Q: And in which direction are you traveling on this road?
- 25 A: I'm coming from Socastee or from the -- this direction.

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1 I guess you would call that north.
2 Q: All right. So, let's say bottom right towards ---
3 A: Yes, sir.
4 Q: --- were you going towards Conway or towards the beach?
5 A: I was going toward Conway.
6 Q: Okay. So, so, you're in the right-hand lane?
7 A: Yes, sir.
8 Q: Bottom right of this picture?
9 A: Yes, sir.
10 Q: And, and tell us what you saw as you're driving down the
11 road.
12 A: I saw a large gathering of people in the Circle K parking
13 lot and it looked like a fight was taking place or, you know,
14 had taken place. So, you know, as a Class I law enforcement
15 officer, it's my duty, you know, to essentially intervene with
16 it. So, I pulled in and immediately saw the fight taking
17 place and broke it up.
18 Q: Now, a lot of cop cars have video cameras and officers
19 have body cameras; do you have any of that?
20 A: That is not part of our issued equipment; no, sir.
21 Q: Now, our issued equipment, does that apply to all DNR?
22 A: Yes, sir.
23 Q: Okay. So -- so you didn't have a camera on you at the
24 time and you didn't have a camera in your car?
25 A: No, sir.

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1 Q: Now, tell me, when you pull up to this gas station, what
2 did you do?

3 A: Immediately, I got out, saw the fight, could tell, you
4 know, there was a fight, an active fight taking place. I
5 approached the group that were fighting, detained the subject,
6 and then put him in my truck, because the amount of people
7 there, you know, it seemed that the best -- best course of
8 action was to put him in my truck for his safety so that I
9 could, you know, detain the area and keep control.

10 Q: Now, who was the subject that you detained?

11 A: Mr. Washington, Edward Lee Washington.

12 Q: Is he in the courtroom?

13 A: Yes, sir; he's sitting right here.

14 Q: The gentleman seated ---

15 A: Yes, sir.

16 Q: Now, did you know anything about a felony DUI?

17 A: No, sir.

18 Q: Tell us again why, why -- why would you detain him?

19 A: He was actively swinging and punching people.

20 Q: Okay.

21 A: I mean, it was an active fight at the time.

22 Q: Was there a large crowd around there, too?

23 A: Rather large.

24 Q: Did you have any other concerns other than just him
25 actively swinging at people?

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DANIEL BAKER - DIRECT BY HOLFORD

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1 A: For his safety after the fact.

2 Q: Did you write a case report in this case?

3 A: No, sir.

4 Q: Did you make an arrest?

5 A: No, sir.

6 Q: Explain to us, it sounds like if you take someone in
7 custody and put them in the back of your car, explain to us
8 what's the difference between that and an arrest?

9 A: It's just a protective -- I detained him for his own
10 protection. I put him in my truck with, you know, and shut
11 the doors with the air conditioner going. I secured him with
12 my seatbelt and all, so that, you know, for his safety and so
13 that I could contain the crowd or work on, you know, crowd
14 control.

15 Q: Okay. So, so, did you arrest him and charge him with
16 anything?

17 A: No, sir.

18 Q: And was this an SCDNR case?

19 A: No, sir.

20 Q: So, what did you do with, with the defendant after you
21 had put him in your truck?

22 A: I secured him in my truck and just essentially stayed
23 outside because of the -- I guess word had gotten out of what
24 happened and people were coming. You know, there was more and
25 more people. There was one of me and -- and a lot or rather

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1 large crowd. So, I essentially put him in my truck and waited
2 for help to get there.

3 Q: And did help eventually arrive?

4 A: Yes, sir.

5 Q: And who arrived?

6 A: It was Horry County and then some Coastal Carolina
7 University Police, as well as Conway Police.

8 Q: Okay. And then the defendant didn't stay in your truck
9 all night, did he?

10 A: No, sir.

11 Q: And so, what did you do with him at that point?

12 A: He was -- Conway Police Department came on scene and I
13 turned -- he was taken from my truck and put in their patrol
14 car.

15 Q: And do you know, this is gonna sound like a silly
16 question, but the area you responded, what county was that in?

17 A: Horry County.

18 Q: No further questions at this time.

19 THE COURT: Cross examination?

20 MR. STANKO: Very briefly, Your Honor.

21 CROSS EXAMINATION OF DANIEL BAKER BY MR. STANKO:

22 Q: You said you were the very first law enforcement officer
23 on scene?

24 A: Yes, sir.

25 Q: Horry County, CCU, and Conway PD weren't there yet?

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DANIEL BAKER - CROSS BY STANKO

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1 A: No, sir.

2 Q: Okay. Do you happen to recall about what time you were
3 there?

4 A: It was -- it was well after midnight.

5 Q: Okay. Would 12:50, would that be pretty close to about
6 when you were there?

7 A: Somewhere around that time period, yes, sir.

8 Q: Okay. And you stopped at the gas station because you saw
9 ---

10 A: A fight.

11 Q: --- Mr. Washington engaged in a fight?

12 A: Yes, sir.

13 Q: Okay. And again, no other law enforcement agencies were
14 there?

15 A: No, sir, just me.

16 Q: Okay. Nothing further, Your Honor.

17 THE COURT: Any redirect?

18 MR. HOLFORD: No, Your Honor.

19 THE COURT: Do you wish the witness to be excused?

20 MR. HOLFORD: Yes, Your Honor.

21 THE COURT: Any objection?

22 MR. STANKO: No objection.

23 THE COURT: All right, sir, you're released from your
24 subpoena and may go back to your regular duties.

25 MR. BAKER: Thank you, sir.

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1 THE COURT: Yes, sir.

2 Next witness please?

3 MS. WALKER: Melanie Berentsen.

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

6 MELANIE BERENTSEN, HAVING BEEN DULY SWORN
7 TESTIFIES AS FOLLOWS:

8 CLERK: Please be seated. Please state your name and
9 spell it for the Court?

10 MS. BERENTSEN: My name is Melanie Berentsen.

11 THE COURT: Just wait one second.

12 CLERK: Spell it?

13 THE COURT: Just wait until she's done. You need to
14 spell your name, first and last name for the court reporter?

15 MS. BERENTSEN: All right. It's M-E-L-A-N-I-E, B-E-R-E-
16 N-T-S-E-N.

17 THE COURT: Go ahead, Solicitor.

18 MS. WALKER: Thank you, Your Honor.

19 DIRECT EXAMINATION OF MELANIE BERENTSEN BY MS. WALKER:

20 Q: Melanie, where are you currently employed?

21 A: Circle K Number 3225.

22 Q: Okay. And is that the location where this incident took
23 place that we're here for today?

24 A: Yes.

25 Q: Okay. And were you working there that night?

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MELANIE BERENTSEN - DIRECT BY WALKER

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1 A: Yes, I was.

2 Q: Okay. So, at some point, after all of this unfolded, did
3 law enforcement contact you for some surveillance footage?

4 A: Yes, they did.

5 Q: Okay. Do you guys at that store do you maintain a
6 surveillance system?

7 A: We do.

8 Q: Okay. And is maintaining the surveillance system
9 something that you do as part of your duties?

10 A: Yes, I watch video every day and make sure that
11 everything is working properly and all that stuff.

12 Q: Okay. And I apologize if you already mentioned this, but
13 are you a manager at that store?

14 A: Yes, I am the manager.

15 Q: And how long have you been doing that there?

16 A: I've been at that store for four years.

17 Q: Okay. All right. So, would it be fair to say that
18 you're pretty well acquainted with the surveillance system and
19 how it works?

20 A: Yes.

21 Q: Okay. And is it possible, with y'all's surveillance
22 system to edit footage?

23 A: No, it is not. All we can do is make copies.

24 Q: Okay. And had you made a copy of footage and provided it
25 with -- to law enforcement in this case?

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1 A: Yes.

2 Q: Okay. I'm gonna hand you what's been marked State's
3 Exhibit 83 for identification purposes. I'd like to ask you
4 to take a look at that and does it look familiar at all?

5 A: Yes.

6 Q: Okay. And why do you recognize it?

7 A: It is the DVD, the copy of the footage that I burned from
8 the incident.

9 Q: Okay. And is that something that you had an opportunity
10 to watch this morning?

11 A: Yes, I watched it this morning and I dated and initialed
12 it.

13 Q: Okay. All right. And when you watched it this morning,
14 was it an accurate representation of what you burned?

15 A: Yes.

16 Q: Okay. There were no additions, deletions, anything like
17 that?

18 A: Nope.

19 Q: Okay. And this is going to be pretty obvious, but it
20 does represent and show the, the parking lot of your store?

21 A: Yes, yes.

22 MS. WALKER: Your Honor, the state would ask for
23 permission to publish this to the jury at this time -- well,
24 move it into evidence.

25 THE COURT: Any objection to State's 83?

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1 MR. STANKO: No objection, sir.

2 THE COURT: All right. It's into evidence without
3 objection. You may publish.

4 MR. WALKER: Thank you, Your Honor.

5 STATE'S EXHIBIT NUMBER 83

6 ADMITTED INTO EVIDENCE

7 BY MS. WALKER:

8 Q: Before we play it, can you see that from where you are?

9 A: Yes.

10 (REPORTER'S NOTE: State's 83 published. No audio available.)

11 BY MS. WALKER:

12 Q: Is that the footage from your store?

13 A: It is the footage from our parking lot.

14 Q: Okay. What do you see happening here with these people?

15 A: That was the crowd of people that was standing out front
16 at the time and that's when the accident happened is when they
17 all went running over to assist Ryan.

18 Q: Okay. So, do we see on this footage, Ryan actually being
19 hit by the car?

20 A: No.

21 Q: Okay. All right. All right. I don't have any other
22 questions. Please answer anything that Mr. Stanko has.

23 THE COURT: Cross examination?

24 MR. STANKO: Nothing from this witness.

25 THE COURT: All right. You wish the witness to be

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OLIVIA MALLEE - DIRECT BY WALKER

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1 excused?

2 MS. WALKER: Yes, Your Honor.

3 THE COURT: All right. Any objection to that?

4 MR. STANKO: No objection, Your Honor.

5 THE COURT: Ma'am, you are released from your subpoena,
6 you may go back to your regular duties.

7 MS. BERENTSEN: Thank you.

8 THE COURT: Your next witness, please?

9 MS. WALKER: Olivia Malle.

10 THE COURT: Come all the way around up front to where the
11 clerk's representative is, please.

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

14 OLIVIA MALLE, HAVING BEEN SWORN

15 TESTIFIES AS FOLLOWS:

16 CLERK: Please be seated. State your name and spell your
17 name for the Court.

18 MS. MALLE: Olivia Malle, O-L-I-V-I-A, M-A-L-L-E.

19 THE COURT: Go ahead, Solicitor.

20 MS. WALKER: Thank you, Your Honor.

21 DIRECT EXAMINATION OF OLIVIA MALLE BY MS. WALKER:

22 Q: Hey there, Olivia; how you doing today?

23 A: Good.

24 Q: Okay. You and I met recently, correct?

25 A: Yes.

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- 1 Q: We met to just talk about this case a little bit?
- 2 A: Yes.
- 3 Q: So you know why you're here?
- 4 A: Yes.
- 5 Q: All right. So, where -- where do you live currently?
- 6 A: In Carolina Forest.
- 7 Q: Okay. Are you originally from Horry County?
- 8 A: No, I'm from Vermont.
- 9 Q: What brought you down here?
- 10 A: Coastal Carolina.
- 11 Q: All right. And have you finished Coastal?
- 12 A: I just graduated this May.
- 13 Q: Wonderful. So, were you attending Coastal back in
- 14 October 2016?
- 15 A: I was.
- 16 Q: Okay. And were you friends with the victim in this case,
- 17 Ryan?
- 18 A: Yes.
- 19 Q: Okay. And if you need to take a minute, just tell us.
- 20 Were you with Ryan the night of October 28th and morning of
- 21 October 29th?
- 22 A: Yes.
- 23 Q: All right. And were you there with him at The Coop?
- 24 A: Yes.
- 25 Q: Okay. So, tell me what were you guys doing over there?

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OLIVIA MALLEE - DIRECT BY WALKER

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1 A: So, I met up with Ryan that night on campus, hanging out,
2 and then we walked to Campus Walk, to meet up with some
3 friends and we really didn't see anyone, so we Uber'd to The
4 Coop and we couldn't get in so, we just kind of sat in the
5 parking lot and talked for a little bit. And then we decided
6 to go get some food. So, we decided to go on campus to Hicks
7 Dining Hall because they have late night food. So, we walked
8 up to the sidewalk and ---

9 Q: And is that -- I'm sorry to interrupt you, but you said
10 you guys left The Coop ---

11 A: Uh-huh, (affirmative response).

12 Q: --- and walked up to the sidewalk on Highway 544?

13 A: Yes.

14 Q: Okay.

15 A: And we were on the sidewalk and we turned -- turned to go
16 to -- on the sidewalk, I said, let's go walk on the sidewalk,
17 and he was started to walk and cross the road, and so I just
18 turned and walked on the sidewalk and I hear -- I hear ---

19 Q: Did you hear the accident?

20 A: I heard him get hit, so I looked and I see a shoe fly and
21 a shadow, which I think it was his body. And I turned and I
22 say, Ryan was just hit and my friends started to scream.

23 Q: And what did you guys do after that?

24 A: I then sprinted across the road and got to Ryan and kind
25 of just stood at him and knelt down by his head and -- and I

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OLIVIA MALLEE - DIRECT BY WALKER

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1 remember someone was kind of wrapping his wounds up and
2 another person was giving him CPR and I was just kind of
3 holding his head.

4 Q: Let me back you up just a little bit. I know -- am I
5 understanding it that you did not actually see Ryan get hit by
6 the car, correct?

7 A: No.

8 Q: You kind of saw the aftermath?

9 A: Yeah.

10 Q: Okay. What you did see, did you see any other cars there
11 that hit Ryan?

12 A: No.

13 Q: Okay. So, you said you went to Ryan and you were
14 observing people giving him aid?

15 A: Yeah.

16 Q: Okay. And what happened next, was Ryan at that point,
17 was she still somewhat alive?

18 A: I thought he was.

19 Q: Okay. At some point, did you see the driver, this
20 defendant, return to the Circle K or was that not something on
21 your radar?

22 A: I just remember like being over Ryan and like hearing in
23 a distance in the courtyard like yelling and it was just him
24 kind of yelling and kind of like causing a commotion.

25 Q: Okay. Did you ever see the vehicle?

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OLIVIA MALLEE - DIRECT BY WALKER

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1 A: No.

2 Q: Okay. More or less, did you stay there with Ryan?

3 A: Yes.

4 Q: And then when police arrived, were you able to speak with
5 somebody?

6 A: I just remember kind of being asked to go behind the tape
7 and when they put the white blanket over him, I asked.

8 Q: Okay. And you provided a written statement to Coastal
9 Carolina that night, correct?

10 A: Yes.

11 Q: Okay. Is there anything that you can remember about that
12 evening that you feel like you need to share?

13 A: No.

14 Q: Okay. All right.

15 MS. WALKER: Court's indulgence?

16 THE COURT: Yes, ma'am.

17 BY MS. WALKER:

18 Q: So, to back up just a little bit to, again, I know you
19 didn't see the actual impact happen when he was hit, but did
20 you see that car immediately stop or did you see it flee?

21 A: No, I didn't see it stop.

22 Q: Okay. So, you didn't see any car stop?

23 A: No.

24 Q: All right. I don't have any other questions. Please
25 answer anything that Ms. Stanko or Pinkerton has.

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OLIVIA MALLEE - CROSS BY PINKERTON

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1 THE COURT: Cross examination?

2 CROSS EXAMINATION OF OLIVIA MALLE BY MR. PINKERTON:

3 Q: Ms. Malle, how long had you been with Ryan that
4 afternoon?

5 A: An hour and a half.

6 Q: Hour and a half? Had y'all been doing any drinking that
7 night?

8 A: A little bit.

9 Q: A little bit. And you said y'all Uber'd to The Coop;
10 were y'all allowed into The Coop?

11 A: No, it was too busy.

12 Q: Too busy. How old were you at the time?

13 A: 19.

14 Q: 19. And you said y'all decided to go back across campus
15 to, I believe you said, Hicks?

16 A: Uh-huh, (affirmative response).

17 Q: Now, was there a crosswalk anywhere next to The Coop?

18 A: Farther down.

19 Q: About how much further down would you say it would be?

20 A: A good five-minute walk, four-minute walk.

21 Q: About a four or five-minute walk?

22 A: Yeah.

23 Q: And when you said you were walking down the sidewalk,
24 were you walking back to the crosswalk to cross?

25 A: Yes.

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OLIVIA MALLEE - CROSS BY PINKERTON

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1 Q: But Ryan just decided to go across the traffic?

2 A: Yes.

3 Q: But you did not actually witness the collision; you only
4 heard it?

5 A: Yes.

6 MR. PINKERTON: Court's indulgence.

7 BY MR. PINKERTON:

8 Q: When Ryan was crossing the street, was he walking or
9 running?

10 A: He wasn't walking; it was a little faster.

11 Q: Kind of a fast walk across the street?

12 A: Yes.

13 Q: Did he make any indication prior to you that he was just
14 gonna go across the street or did he seem like he was gonna go
15 with the crosswalk with you originally?

16 A: I think he was just gonna walk across the street.

17 Q: Okay. So, he just kind of made a B line across the
18 street?

19 A: Yes.

20 Q: No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MS. WALKER: Nothing, Your Honor, and we would ask that
23 she be released from her subpoena.

24 THE COURT: Any objection?

25 MR. PINKERTON: No objection, Your Honor.

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KELCEE CRAMER - DIRECT BY WALKER

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1 THE COURT: All right, ma'am, you're released from your
2 subpoena and you may go back to your regular duties.

3 Thank you.

4 All right. Next witness, please?

5 MS. WALKER: Yes, sir, Your Honor, we're gonna call
6 Kelcee Cramer.

7 THE COURT: Come around all the way up front, please.

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

10 KELCEE CRAMER, HAVING BEEN SWORN TESTIFIES

11 AS FOLLOWS:

12 CLERK: Please be seated. Please state your name and
13 spell it for the Court.

14 MS. CRAMER: Kelcee Cramer, K-E-L-C-E-E, C-R-A-M-E-R.

15 THE COURT: Go ahead, Solicitor.

16 DIRECT EXAMINATION OF KELCEE CRAMER BY MS. WALKER:

17 Q: How are doing, Kelcee? Where do you currently live?

18 A: Arizona.

19 Q: Arizona. Were you living here in Horry County back in
20 October of 2016?

21 A: Yes.

22 Q: And why were you living here then?

23 A: School.

24 Q: What were you studying?

25 A: Nursing.

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- 1 Q: Okay. Are you still studying that?
- 2 A: No.
- 3 Q: No. Okay. So, were you at Coastal?
- 4 A: Horry Tech.
- 5 Q: Horry Georgetown Tech?
- 6 A: Uh-huh, (affirmative response).
- 7 Q: Okay. But you were living here back in October of 2016?
- 8 A: Uh-huh, (affirmative response).
- 9 Q: And you know why we're here today, correct?
- 10 A: Yes.
- 11 Q: We're about the accident that you witnessed on Highway
- 12 544 on October 29th, 2016, correct?
- 13 A: Yes.
- 14 Q: Okay. And did you know the victim in this case, Ryan
- 15 Bielawa?
- 16 A: No.
- 17 Q: No. Okay. So, why were you at the gas station that
- 18 night?
- 19 A: To get a drink.
- 20 Q: Okay. And had you walked or driven?
- 21 A: Drove.
- 22 Q: All right. Where did you live at the time?
- 23 A: Coastal Club across the street.
- 24 Q: Across the street. Okay. Let me show you what's been
- 25 marked as State's Exhibit 7. Is this the gas station that you

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KELCEE CRAMER - DIRECT BY WALKER

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1 had gone to?

2 A: Yes.

3 Q: The one that's identified in the picture?

4 A: Yes.

5 Q: And then could you point to approximately where your

6 apartment was?

7 A: It's like if you go in Coastal Club here, it's kind of

8 back in this first building; the first building on the left.

9 Q: Okay. So, you were pointing to this blue-roofed area

10 that's kind of behind The Coop?

11 A: Correct.

12 Q: Okay. But you had driven ---

13 A: Uh-huh, (affirmative response).

14 Q: --- to the gas station that night?

15 A: Yes.

16 Q: Okay. And did you have anybody with you in the car?

17 A: Yes.

18 Q: All right. Who was in the car with you?

19 A: Two friends of mine.

20 Q: Okay. All right. So, I'm gonna show you first the

21 surveillance footage from the store. I show you what's been

22 marked as State's Exhibit 83.

23 MR. STANKO: No objection.

24 MS. WALKER: Permission to publish it, Your Honor?

25 THE COURT: Yes, ma'am.

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KELCEE CRAMER - DIRECT BY WALKER

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1 MS. WALKER: And, Judge, I would ask the witness to come
2 down so that she can identify something in this video.

3 THE COURT: All right. You can come down, ma'am, but
4 you're gonna have to speak up because they're going to be no
5 microphones right there. All right?

6 BY MS. WALKER:

7 Q: So, what we're gonna show you is the surveillance footage
8 from the parking lot right before the incident.

9 (REPORTER'S NOTE: State's 83 published for the jury. No
10 audio available.)

11 BY MS. WALKER:

12 Q: At this point, do you see where your vehicle is?

13 A: Yes.

14 Q: Okay. Could you indicate where it is? And you're
15 pointing to the black car?

16 A: Uh-huh, (affirmative response).

17 Q: What kind of car is that?

18 A: A Volkswagen Jetta.

19 Q: Okay. All right.

20 THE COURT: Speak up just a little bit, please?

21 A: It's a black Volkswagen Jetta.

22 Q: Okay. And that's you backing out, correct?

23 A: Correct.

24 Q: Okay. So, at this point, where -- where are you, you've
25 kind of gone off frame?

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KELCEE CRAMER - DIRECT BY WALKER

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- 1 A: I'm at the exit. There's an exit on the far right side.
2 So, I'm just waiting there to pull out to go across into
3 Coastal Club.
4 Q: Okay. And why were you waiting instead of just going?
5 A: For this car coming.
6 Q: Okay. So, did you see that car that had just gone by on
7 its own?
8 A: Yeah.
9 Q: Okay. Was that the vehicle that you saw hit the victim?
10 A: Yeah.
11 Q: Okay. So, that's you backing up. So, here -- does it
12 appear there are any other vehicles at this point on the road?
13 A: No.
14 Q: Do you recall there being any other vehicles after?
15 A: No.
16 Q: Okay. You can go ahead and get back on the stand,
17 please, ma'am.
18 (REPORTER'S NOTE: Witness returns to witness stand.)
19 Q: So, I'm gonna show you one more, again, what's been
20 marked as State's Exhibit 7. Can you kind of point to the
21 jury where you were exiting?
22 A: There's a pull-out spot here, so my car was sitting right
23 here at the exit.
24 Q: Is it where this white truck is?
25 A: Uh-huh, (affirmative response).

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KELCEE CRAMER - DIRECT BY WALKER

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1 Q: Okay. And is that basically on the Conway side of this
2 sign?

3 A: Yes, correct.

4 Q: Okay. So, did you see the car make impact with Ryan?

5 A: Yes.

6 Q: Okay. And what do you remember observing?

7 A: So, I saw the group of people across on like the Monarch
8 side, and I was like waiting to pull out and I was going to go
9 because I knew I had a straight shot straight across to my
10 complex but I saw the car coming. When I first initially
11 looked, it was like the car was really far back and I took
12 like a second look before I like decided and I was like, okay,
13 that car came a lot faster than I thought. So, I saw Ryan
14 like crossing the street part and before I knew it, it was
15 like the car went from being really far to really close and I
16 happened to look at the nick of time where I saw him get hit
17 and I watched him go straight up until he hit the ground, and
18 that's when I responded to it.

19 Q: Okay. So, just to clarify, when you saw Ryan get hit, in
20 what direction did you see his body go?

21 A: Up.

22 Q: Up. Okay. Did it travel upwards a significant, you
23 know, distance ---

24 A: Yes.

25 Q: Okay. I know you provided a written statement to Coastal

1 Carolina, but can you give an estimate of how high in the air
2 you estimate his body went?

3 A: Twenty-five, 30 feet up.

4 Q: Okay. And did you see where his body came to rest?

5 A: Yes.

6 Q: Okay. And you mentioned seeing the car; then the car was
7 there quicker than you thought. You know, did you make any
8 sort of observation about the speed of the car?

9 A: Yeah, it seemed like he was going fast, really fast.

10 Q: Would you be able to, I know in your statement you
11 didn't, but did you make a guess as to how fast he was going?

12 A: Yeah, at the time it just seemed like around like 65, 70
13 miles an hour; it seemed like a very high speed.

14 Q: Okay. So, once -- once you observed this, what did you
15 do?

16 A: So, when I watched Ryan get hit, I saw him up in the air
17 and I had already started to respond. I knew it was like a
18 human, so I had already opened like my door to get out and I
19 started to run over where I thought he was and he ended up
20 dropping pretty close in front of me. That's when I was like
21 yelling it was a person and notifying that I needed 911
22 because I didn't have a phone on me. I think that's the
23 moment where people started to realize it was like a person.
24 So, I acted on like the scene I needed to for the injuries
25 that were present.

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KELCEE CRAMER - DIRECT BY WALKER

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1 Q: Okay. And did you stay there with Ryan until law
2 enforcement got there?

3 A: Yes.

4 Q: You were there that entire time?

5 A: Yes.

6 Q: And was that pretty quickly?

7 A: Yeah.

8 Q: Okay. And do you happen to remember the car that hit him
9 returning to the scene?

10 A: It fled the scene after the impact of the accident and
11 returned sometime later.

12 Q: Okay. But do you remember when Ryan was hit, did the car
13 stop?

14 A: No.

15 Q: Did you see the car even put on brakes?

16 A: No.

17 Q: So, did you observe the car that hit Ryan continue
18 heading down Highway 544?

19 A: Yes.

20 Q: And did you see any other cars hit Ryan or was it just
21 the one?

22 A: Just the one.

23 Q: And as he fell, did you see him hit another car?

24 A: No.

25 Q: Okay. I beg the Court's indulgence. So, back to the

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KELCEE CRAMER - DIRECT BY WALKER

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1 questions about the car returning to the Circle K, do you
2 recall approximately how long it was before the car came back?
3 A: It seemed like five to seven minutes. It wasn't within
4 like a very fast amount of time.
5 Q: Okay. And did you see the driver of the car at the
6 Circle K?
7 A: Yeah.
8 Q: Okay. And do you have any particular memories about the
9 way he was behaving?
10 A: Absurd, belligerent, I mean, it was obvious he was either
11 drunk or something because of the way he retaliated to people
12 when he came back.
13 Q: What do you mean by retaliated?
14 A: Just the way he came back to the scene and started like
15 raising ruckus and like fighting without really anybody aware
16 of who he was or anything until it clicked that that was the
17 person who had just hit him.
18 Q: Okay. And who was he fighting?
19 A: Random people outside the gas station, whoever he thought
20 -- random people.
21 Q: Okay. Do you remember any particular statements or just
22 general ruckus?
23 A: No, you know, just ruckus.
24 Q: Okay. All right. I have no other questions; if you'll
25 answer anything that they might have.

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KELCEE CRAMER - CROSS BY STANKO

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1 THE COURT: Cross examination?

2 MR. STANKO: Thank you, Your Honor.

3 THE COURT: Yes, could we move the ---

4 MR. STANKO: I can go around it.

5 THE COURT: That's fine. They're gonna move it.

6 CROSS EXAMINATION OF OLIVIA MALLE BY MR. STANKO:

7 Q: All right. Now, when you first observed the -- the
8 vehicle, how far back do you recall it being?

9 A: By the Coastal light -- before the light that's by
10 Coastal's back way.

11 Q: Okay. But there is a traffic light right there?

12 A: Yeah.

13 Q: Okay. About how far away from the gas station would you
14 say that traffic light is?

15 A: Probably, a thousand feet or something, a pretty good
16 distance.

17 Q: Okay. There is -- there's a sidewalk that goes down to
18 that traffic light?

19 A: Yeah.

20 Q: On both sides of the street?

21 A: On the one side, on the gas station side, there's not a
22 sidewalk.

23 Q: Okay. But there is on the side that has The Coop?

24 A: Yeah.

25 Q: Okay. And there's a crosswalk there at that light?

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KELCEE CRAMER - CROSS BY STANKO

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- 1 A: Yeah.
- 2 Q: Okay. Now, what about, you said you saw Ryan, how far
3 before he actually got hit, did you see him?
- 4 A: Across the road when he stepped into the street. I saw
5 him cross from the Monarch side.
- 6 Q: Okay. Did it appear like he was walking or was he
7 running across the street?
- 8 A: Just like walking towards to the other side.
- 9 Q: Okay. A fast walk, a slow walk?
- 10 A: Just to make it across the street, like semi-like fast.
11 He wasn't just like walking, but like to get across the
12 street.
- 13 Q: I know it was dark that evening, you might not have seen
14 it, but do you happen to know if he, like did he turn in the
15 direction of the vehicle; do you happen to recall if it looked
16 like he saw the vehicle?
- 17 A: No, I wasn't looking at that.
- 18 Q: Okay. All right. And they asked you a moment ago if you
19 saw brake lights, but you also said your focus was on Ryan,
20 correct?
- 21 A: Yeah.
- 22 Q: Did you, when you were running towards the victim, did
23 you ever turn around and look at the vehicle or was your focus
24 just on that person?
- 25 A: No, I turned and looked at him.

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BY THE COURT

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1 Q: Okay. All right. And you -- you filled out a statement
2 saying that you -- you thought that Mr. Washington had left,
3 but at some point, you heard him yelling. So, you didn't
4 actually see him pull back in, correct?

5 A: No.

6 Q: Okay. All right. And who were the other people in your
7 vehicle that evening; do you recall?

8 A: You want names?

9 Q: If you don't mind?

10 A: Preston Carey, Levay (spelled phonetically) Daniels.

11 Q: Okay.

12 MR. STANKO: Your Honor, nothing further.

13 THE COURT: Any redirect?

14 MS. WALKER: Nothing, Your Honor.

15 THE COURT: Do you wish the witness to be excused?

16 MS. WALKER: I do.

17 THE COURT: Any objection?

18 MR. STANKO: No objection, sir.

19 BY THE COURT:

20 THE COURT: All right, ma'am, you're released from your
21 subpoena, you may go back -- go back home or stay as you
22 choose.

23 All right. Ladies and gentlemen, we're going to take a
24 short break for about 10 minutes.

25 Now, this instruction is going to cover the whole time

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1 until I give this case to you at the end for your
2 deliberations. I do not want you to discuss the case at all
3 until I give it to you at the end. If you would start to do
4 so beforehand, you start talking about the case before you've
5 heard all of the evidence in the case and before you know the
6 law that you have to apply to the facts and evidence you've
7 heard. So, do not discuss the case at all until I give it to
8 you at the end for your deliberations and unanimous decision.

9 We'll take a short break and I'll call you in in about 10
10 minutes.

11 Thank you very much.

12 (REPORTER'S NOTE: Jury exits courtroom @ 11:08 A.M.)

13 THE COURT: All right, Solicitor, before we take a break,
14 anything from the state?

15 MR. HOLFORD: No, Your Honor.

16 THE COURT: From the defense?

17 MR. STANKO: No, sir.

18 THE COURT: All right. Short break about 10 minutes.

19 Thank you very much.

20 MR. HOLFORD: Yes, sir.

21 MR. STANKO: Thank you, Your Honor.

22 **RECESS - 11:08 A.M.**

23 *****OFF THE RECORD*****

24 **(On the Record - 11:22 A.M.)**

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

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JULIAN FRAZIER - DIRECT BY HOLFORD

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1 The state ready to proceed?

2 MR. HOLFORD: Yes, Your Honor.

3 THE COURT: Defense?

4 MR. STANKO: Yes, sir.

5 THE COURT: Ask the jury to come in, please.

6 (REPORTER'S NOTE: Jury enters courtroom @ 11:22 A.M.)

7 THE COURT: All right, Solicitor, your next witness
8 please, ma'am?

9 MR. HOLFORD: Your Honor, the state calls Julian Frazier.

10 THE COURT: Please come around all the way up front
11 please, sir.

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

14 JULIAN FRAZIER, HAVING BEEN DULY
15 SWORN TESTIFIES AS FOLLOWS:

16 CLERK: You may be seated. Please state your name and
17 spell it for the Court.

18 MR. FRAZIER: Julian Frazier, J-U-L-I-A-N, F-R-A-Z-I-E-R.

19 THE COURT: Go ahead, Solicitor.

20 MR. HOLFORD: Thank you, Your Honor.

21 DIRECT EXAMINATION OF JULIAN FRAZIER BY MR. HOLFORD:

22 Q: Mr. Frazier, where do you live?

23 A: In Conway, South Carolina.

24 Q: How long have you lived here in Conway?

25 A: Since 2001.

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JULIAN FRAZIER - DIRECT BY HOLFORD

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1 Q: Tell the jury a little bit about yourself. Are you
2 married? Do you have kids?
3 A: Yes, married, three kids, and work.
4 Q: What do you do for a job?
5 A: I actually drive Uber and Lyft.
6 Q: Okay.
7 A: And I have a moving company.
8 Q: How many kids do you have?
9 A: Three.
10 Q: Three. How old are they?
11 A: Twelve, eight, and three.
12 Q: And you've lived here in Conway since 2001?
13 A: Yes.
14 Q: Back in October 29th, 2016, the reason we're here today;
15 you know why we're here, right?
16 A: Right.
17 Q: Were you involved in this case in any way?
18 A: I was actually on the scene when it happened.
19 Q: You were on the scene?
20 A: Yes.
21 Q: Tell the jury; where were you? Were you over The
22 Cooperate? Were you at the Circle K?
23 A: I was at the Circle K.
24 Q: And what were you doing over at the Circle K?
25 A: I was actually talking with a friend and waiting for some

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JULIAN FRAZIER - DIRECT BY HOLFORD

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1 more rides to come in.

2 Q: Okay. So, you were working for Lyft that night?

3 A: Yes.

4 Q: Is that a good spot to pick people up?

5 A: It is.

6 Q: It's right there by the college?

7 A: Yeah, it's right there by the college.

8 Q: Have you -- you know if there's a video from the Circle K

9 in this case?

10 A: There should be.

11 Q: The store video?

12 A: I haven't seen it, but it -- I'm quite sure I'm in there.

13 Yeah, I should be in there.

14 Q: Would you be able to recognize yourself if you saw

15 yourself on there?

16 A: Yes.

17 Q: Before we do that, just tell the jury a little bit about

18 what did you see, what did you hear, what happened?

19 A: Well, I was parked on the left side of the store and I

20 heard the collision and when I turned around, I saw people

21 running across the street saying somebody was hit. Which I

22 didn't go over there to see if he was hit, but a few minutes

23 later I saw the car come back, and he said who threw a bottle

24 at my car. And he approached us, there was probably about

25 five of us over there. And I said, dude, I heard you just hit

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1 somebody. So, he went over there to the other group where
2 everybody was standing around the person and he said, who
3 threw a bottle at my car? And in the process, I know for
4 sure, one person was punched, and I've heard that a second
5 person had gotten hit, but I didn't see the second person get
6 hit.

7 Q: Now, let me back up just a minute. When we say he, who
8 are you talking about? Who returned in their car?

9 A: Edward.

10 Q: Edward? Is that the defendant seated at the table?

11 A: Yes.

12 Q: Now, do you know Edward?

13 A: Yeah, we went to school together.

14 Q: Did you recognize him that night?

15 A: Yes.

16 Q: You know who he is?

17 A: Yes.

18 Q: So, there's no doubt that the person that returned from
19 the car is this defendant?

20 A: There is no doubt.

21 Q: Did that car stop immediately or was it a little bit of
22 time?

23 A: When it hit him or ---

24 Q: Yeah.

25 A: Okay. So, when he hit him, I saw the car go down the

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JULIAN FRAZIER - DIRECT BY HOLFORD

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1 street because once I heard it, that's what made me turn
2 around and then I saw the car driving by. And then maybe
3 about 10 minutes, I'm not sure, cause it seemed like forever,
4 it could've been quicker, he did come back where I was parked
5 at, stopped a little bit ahead of it. He got out of his car
6 and threw his hat down and, like I said, he said, who threw a
7 bottle at my car.

8 Q: Okay. How was his -- how was his demeanor; was he pretty
9 calm, who threw a bottle at my car or ---

10 A: No, he was very aggressive.

11 Q: Was he?

12 A: Yes.

13 Q: What did you observe of his behavior that night?

14 A: I figured it was altered. I mean, I saw the eyes; they
15 were red. That's how I was able to know who he was because he
16 came right up to my group that was standing by me and I said,
17 dude, they said that you hit somebody over there. And at the
18 time, I remembered who he was as soon as I saw him.

19 Q: When you say altered, what do you mean?

20 A: Could be under the influence.

21 Q: You didn't test his blood or anything, did you?

22 A: No, I didn't, so, I'm just -- previous experiences.
23 Seeing it.

24 Q: Yeah, you've seen people before ---

25 A: Yes

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JULIAN FRAZIER - DIRECT BY HOLFORD

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1 MR. HOLFORD: Your Honor, may I publish State's 83?

2 THE COURT: Yes, sir.

3 MR. HOLFORD: Can I ask that Julian come down here.

4 A: Yeah, I'm gonna have to.

5 BY MR. HOLFORD:

6 Q: Do you mind if I call you Julian?

7 A: Yeah, no, you can call me Julian.

8 THE COURT: Yes, sir, you can go down and stand -- stand
9 there. Just remember to keep your voice up. Okay?

10 BY MR. HOLFORD:

11 Q: We're gonna play this video and I just kind of want you
12 to walk us through where you are and what's happening at the
13 time. Is that all right? All right. Before, before we start
14 it -- okay. This is your car on the right side of the screen?

15 A: Yes.

16 Q: So, so, this is a view of that Circle K that night,
17 right?

18 A: Yes.

19 Q: You know you're out there because your car is there?

20 A: Right.

21 (REPORTER'S NOTE: State's 83 published. No audio available.)

22 Q: Is that the car coming by right there?

23 A: Yeah.

24 Q: Okay. What are these people doing right here?

25 A: They were all just standing there because there was a

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JULIAN FRAZIER - DIRECT BY HOLFORD

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1 party -- it was a couple of nights before Halloween. I think
2 Halloween was falling like on Monday or Tuesday, so they had
3 Halloween parties that night over that weekend.

4 Q: Do you remember about where you are when you heard that?

5 A: I'm over here standing on the driver's side of my car at
6 the trunk.

7 Q: Yeah, now what's going on?

8 A: That's when everybody was realizing -- there was a girl
9 across the street saying, oh my God, oh my God. And then this
10 car right here takes off and goes over...

11 Q: Okay. Who is that?

12 A: That's me.

13 Q: That's you. Okay. All right. What's the time on this
14 video right now, not the -- not like 1:30, but what does the
15 time stamp say?

16 A: It says 59 seconds.

17 Q: Fifty-nine seconds. So, about 59 seconds into this
18 Circle K video, you see yourself come on the screen?

19 A: Right.

20 Q: Okay. Now, what are you doing?

21 A: Oh, right then and there, I'm already hot. I get nervous
22 in situations like this and I'm hot. So, I'm like -- I go in
23 there and wash my hands and stuff and try calm back down.
24 Somebody was already the bathroom. Now, I'm calling my now
25 wife and told her I'd be home late. I don't know who that guy

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JULIAN FRAZIER - DIRECT BY HOLFORD

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1 is. He's just somebody that's walking off.
2 THE COURT: Speak up just a little bit please, sir.
3 A: I'm walking back to my trunk.
4 BY MR. HOLFORD:
5 Q: Okay.
6 A: Back over here.
7 Q: So, you're just hanging out around right on the right
8 side of this video right here?
9 A: Yeah, yeah, right.
10 Q: Do you see any cop cars out there yet?
11 A: No, this is just the campus police. No cop cars had came
12 during that time. The first person on the scene was a DNR.
13 Q: Okay. Was -- all right. What's the time stamp now on
14 there?
15 A: Three minutes 29 seconds.
16 Q: Where does he -- where is this guy from, do you know?
17 A: I don't know where he's pointing at. I can't tell if
18 he's pointing this way or he could be pointing this way like
19 the person went back.
20 Q: All right. So, where does -- where does the defendant,
21 where does the car come back to in relation to that video?
22 A: The car came back on this -- it'd be the right side
23 looking from this angle, this far right side.
24 Q: So, it's over here off the right side of the screen?
25 A: Right.

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JULIAN FRAZIER - DIRECT BY HOLFORD

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1 Q: Okay. Those people running into the building?

2 A: Correct, yeah.

3 Q: Who -- is that DNR; who is that?

4 A: That could be a DNR.

5 Q: Okay. Where -- do you remember about where he was and
6 where he went to?

7 A: DNR?

8 Q: Yes.

9 A: He went and actually arrested him, arrested Edward.

10 Q: All right. Now, you say he's DNR; what was he wearing
11 that night; was he dressed like a normal cop?

12 A: Yeah, a regular game warden attire. I just remember the
13 truck, so I just knew DNR.

14 Q: Okay. So, he runs off to the right side of the screen,
15 and do you remember what he did when he got there?

16 A: He had him in a zip tie, like a zip tie, until the police
17 got there, and at the same time he was still telling him
18 someone hit my car with a bottle, somebody threw a bottle.

19 Q: Who was saying someone threw a bottle?

20 A: Edward was.

21 Q: And so that's -- what's the time on there now?

22 A: It's 4 minutes 31 seconds.

23 Q: Okay. And that's after you start ---

24 A: Right.

25 Q: What's this guy doing down here?

1 A: I have no idea. I don't even remember him.
2 Q: Okay.
3 A: All I knew was just a handful of people that night, with
4 the workers and the person I was talking to.
5 Q: Can you tell what he was holding up?
6 A: It looks like they were videotaping.
7 Q: You're not over there fighting?
8 A: No, not at all.
9 Q: All right. What -- sorry, I'm gonna draw your attention
10 right here. I'm going to play this again. What's -- what's
11 pulling in right now?
12 A: It looks like a cop car.
13 Q: And how can you tell that?
14 A: The lights.
15 Q: All right. And what's the time that's on there?
16 A: That's 5 minutes and 38 seconds.
17 Q: Okay. And so, do you remember whether the cops arrived
18 first or whether Edward arrived first?
19 A: Edward arrived first.
20 Q: And then -- then you said it's the DNR guy?
21 A: Right.
22 Q: And he took Edward, kind of zip tied him and put him in
23 his truck?
24 A: Yes, he did.
25 Q: And then the cops arrived?

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JULIAN FRAZIER - CROSS BY PINKERTON

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1 A: Yes.

2 Q: Did you stay out -- all right. That's good. Thank you.

3 A: You're welcome.

4 (REPORTER'S NOTE: Witness returns to witness stand.)

5 Q: Did you stay out there for a while that night?

6 A: I stayed out there the whole time, yeah, even when the
7 coroner came.

8 Q: Okay. Did you ever go up to the victim or not?

9 A: No.

10 Q: That's -- is that your thing?

11 A: That's my thing. My wife is a nurse and I hear it -- all
12 the stories. I get grossed out in a minute. So, I didn't
13 want to see it in person.

14 Q: Is there anything else I didn't ask you that you remember
15 about that night?

16 A: No.

17 Q: All right. Thank you, Mr. Frazier.

18 A: You're welcome.

19 Q: The defense is gonna have a couple of questions for you.

20 THE COURT: Cross examination?

21 CROSS EXAMINATION OF JULIAN FRAZIER BY MR. PINKERTON:

22 Q: Mr. Frazier, who did not actually witness the collision
23 itself, did you?

24 A: No.

25 Q: You just heard the collision?

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JULIAN FRAZIER - CROSS BY PINKERTON

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- 1 A: Just heard it.
- 2 Q: And you said you saw Mr. Washington pull back in the gas
3 station?
- 4 A: Yes.
- 5 Q: And you said you were familiar with him; you went to high
6 school with him?
- 7 A: Yes.
- 8 Q: So, you would know who he was?
- 9 A: Yes.
- 10 Q: Did he arrive before or after the DNR officer was on
11 scene?
- 12 A: He arrived before.
- 13 Q: Before? And there were no other police officers on scene
14 before DNR?
- 15 A: No, unless you want to count Coastal Police. They was
16 right there, but they're not really ---
- 17 Q: So, Mr. Washington was back on scene before any law
18 enforcement or paramedics had come?
- 19 A: Right.
- 20 Q: Okay. Do you know about how long it took him to get back
21 there?
- 22 A: I said about 10 minutes.
- 23 Q: Could it have been shorter than that?
- 24 A: Judging from the video, it was shorter than that.
- 25 Q: It was? Okay.

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JULIAN FRAZIER - REDIRECT BY HOLFORD

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1 Court's indulgence? No further questions, Your Honor.

2 THE COURT: Any redirect?

3 MR. HOLFORD: Yeah.

4 REDIRECT EXAMINATION OF JULIAN FRAZIER BY MR. HOLFORD:

5 Q: When, when Edward came -- comes back to the scene, you
6 said he's acting out, right?

7 A: Right.

8 Q: Did he ever try to go help the victim?

9 A: No.

10 Q: Okay. No further questions.

11 THE COURT: Anything on that question?

12 MR. PINKERTON: No, Your Honor.

13 THE COURT: Do you wish the witness to be excused?

14 MR. HOLFORD: Yes, Your Honor.

15 THE COURT: Any objection?

16 MR. PINKERTON: No objection, Your Honor.

17 THE COURT: Sir, you are released from your subpoena, you
18 may go back to your regular duties.

19 MR. FRAZIER: All right. Thank you.

20 THE COURT: Thank you, sir.

21 All right, Solicitor, the next witness please?

22 MR. HOLFORD: The state calls Steven McLaughlin Carneiro.

23 THE COURT: All right, sir, if you'd just come all the
24 way around up front and meet the clerk's representative right
25 up here, please.

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STEVEN MCLAUGHLIN CARNEIRO - DIRECT BY HOLFORD

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

3 STEVEN DANIEL MCLAUGHLIN-CARNEIRO,
4 HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

5 CLERK: You may be seated. Please state your name and
6 spell it for the Court.

7 MR. MCLAUGHLIN-CARNEIRO: Steven Daniel McLaughlin-
8 Carneiro.

9 THE COURT: Spell it all for us?

10 MR. CARNEIRO: S-T-E-V-E-N, D-A-N-I-E-L, M-C-L-A-U-G-H-L-
11 I-N, hyphen, C-A-R-N-E-I-R-O.

12 THE COURT: Go ahead, Solicitor.

13 MR. HOLFORD: Thank you, Your Honor.

14 DIRECT EXAMINATION OF STEVEN DANIEL MCLAUGHLIN-CARNEIRO BY MR.
15 HOLFORD:

16 Q: I'm going to have trouble with your last name. Do you
17 mind refer to you as Steven?

18 A: That is fine.

19 Q: Steven, will you tell the jury where you live?

20 A: I live in Socastee near the swing bridge, right next to
21 the Cooper House.

22 Q: How long have you been in Horry County?

23 A: Fourteen years now.

24 Q: Okay. So, you were living in Horry County back October
25 29th, 2016?

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STEVEN MCLAUGHLIN CARNEIRO - DIRECT BY HOLFORD

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- 1 A: Yes, sir.
- 2 Q: Now, tell us a little bit about yourself; are you
3 employed, do you have family here?
- 4 A: I am a substitute teacher. I am also an after-care
5 teacher. I also work at Earthbound. I love working with
6 kids, I read a lot. It's hard to describe myself in a few
7 words.
- 8 Q: Back in -- back October 29th, 2016, where were you
9 working then?
- 10 A: I was working at the Circle K on 544.
- 11 Q: Okay.
- 12 A: Right near The Cove and right in front of UP.
- 13 Q: I'm going to show you what's been entered as State's 7.
14 Do you see that Circle K you were working at there?
- 15 A: I was actually working at the one down the road.
- 16 Q: Okay. So, you were not working at this location?
- 17 A: No, sir.
- 18 Q: Where -- where is that Circle K in regards to that
19 location?
- 20 A: It's probably about maybe two, three miles down the road.
- 21 Q: All right. So, walk me through that night if you're down
22 working at the other Circle K, did you ever respond to this
23 one?
- 24 A: Yes, so what happened that night, we were running out of
25 bags because we needed them to sell our alcohol and we could

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STEVEN MCLAUGHLIN CARNEIRO - DIRECT BY HOLFORD

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1 not sell it without them. So, we, of course, had to get bags
2 from the other store. They requested from us after we got
3 bags from them, to get Blue Game Cigars. So, we came with
4 Blue Games and as I was sitting in my car, I heard a very loud
5 noise coming from the left side of my car.

6 Q: Okay. So, let's -- I just kind of want to orient where
7 we are.

8 A: Uh-huh, (affirmative response).

9 Q: If we're looking at State's 7, so we're looking across
10 544?

11 A: Yes.

12 Q: And this is the gas station. Are you parked here at this
13 gas station?

14 A: Uh-huh, (affirmative response). I was parked -- I was
15 parked on this side.

16 Q: So, the far right side. If we're facing the store,
17 you're parked on the right side of the store?

18 A: Uh-huh, (affirmative response).

19 Q: Okay. Now, are you pulled in -- are you facing the
20 store, are you facing the street?

21 A: I was facing the building and I was about to back out,
22 but I had to text my boss that I was on my way back.

23 Q: Okay. And so, what happened; you're there, you said you
24 heard this noise and then what happened?

25 A: So, as I heard the noise, I saw a bunch of people running

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1 towards something and my first reaction to the sound was
2 gunshot and I was kind of like, oh gosh, why is everyone
3 running towards something. And as I looked, people were
4 running towards like surrounding something and I got out of
5 the car because I was still in a Circle K uniform and the
6 people inside did not see or hear it. So, I ran over to
7 figure out what happened and as I got over to the situation, I
8 saw the kid lying on the ground in the ditch and as I was in a
9 state of oh-my-gosh, looking at him, I had to kind of take
10 control of the situation since I was in a Circle K uniform
11 being there kind of told everyone back up, please. I got --
12 someone was helping him on the ground and then the next thing
13 I knew, someone told me or asked someone, scissors, scissors.
14 I said, got it. I ran inside and, as I got inside, I told
15 them I need scissors, they asked what was going on, I said
16 just call 911, I need scissors, grabbed them, ran outside. As
17 I was doing this, outside some car had pulled up with a broken
18 windshield and lights still turned on, door swung open, and he
19 was just yelling, who threw that bottle at my fucking car, who
20 threw it, who threw it. And he proceeded to basically jump in
21 front of everyone that was surrounding this kid and they were
22 shoving him back because they were trying to help the kid and
23 they didn't realize that he might've been the person. So,
24 they calmly just shoving him away and people weren't really
25 paying too much attention to him. And as I finally got the

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1 scissors and was running back out, he had apparently turned
2 towards the gas station and was walking towards the front door
3 as I was walking out. And as I approached him and we
4 collided, he was winding up for a big punch and punched me
5 right in the jaw and I was -- I was just kind of like in a
6 state of whatever, shoved him out of the way and I had to get
7 the scissors to them. That was my only thought process at the
8 time; get the scissors to them. And as I got them the
9 scissors, in the next maybe minute or two, a -- I can't
10 remember his name, wildlife ranger, showed up in a Jeep and he
11 actually apprehended the man and it took him a couple of
12 minutes for him to actually get him on the ground and actually
13 cuff him, but it was apparent that he was trying to go into
14 the Circle K for one reason or another afterwards.

15 Q: All right. Let me -- let me back you up a little bit,
16 okay? So, you're in your car, you hear something, you went
17 out to see what was going on?

18 A: Uh-huh, (affirmative response).

19 Q: People were asking for scissors; you returned to the
20 store?

21 A: Yes.

22 Q: All right. And then as you're coming back from the store
23 with these scissors; why did you need scissors?

24 A: They were trying to cut off the kid's clothes to try to
25 get a better idea of what we were dealing with.

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STEVEN MCLAUGHLIN CARNEIRO - DIRECT BY HOLFORD

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- 1 Q: Did you cut the clothes?
- 2 A: I did not personally, no.
- 3 Q: But you did bring the scissors?
- 4 A: I did.
- 5 Q: I'm gonna show you what's been marked as or entered as
- 6 State's 15 and 16. Can you tell what that is?
- 7 A: Yes.
- 8 Q: What's that a picture of?
- 9 A: That is the picture of the scissors.
- 10 Q: So, these scissors, they're just laying on the ground;
- 11 you actually brought those out, right?
- 12 A: Yes.
- 13 Q: And you brought them out to cut the clothes?
- 14 A: Yes.
- 15 Q: In State's 17, that shirt looks torn, right?
- 16 A: Yes.
- 17 Q: Did someone cut that short with those scissors?
- 18 A: I'm to believe so.
- 19 Q: Okay.
- 20 A: They were trying to frantically just get it off him the
- 21 best they could. Again, I cannot remember the detail exactly
- 22 if they did or not because I was focusing on the man behind me
- 23 making sure that he was apprehended and everyone else was
- 24 focused on the kid.
- 25 Q: All right. So, let's -- let's say that the store is back

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1 here. 544 is where the jury is.

2 A: Okay.

3 Q: And there's that little grassy area with the -- the sign
4 that says the prices, right?

5 A: Uh-huh, (affirmative response).

6 Q: Is that where the victim was, right here?

7 A: He was actually a bit further from that. He was maybe --
8 I actually just passed it as I was coming here. It was a
9 little bit further down, but he was like right in the middle
10 of the grassy area, but just like a bit off.

11 Q: Okay. And then we have the gas pumps back here in here,
12 right?

13 A: Yes.

14 Q: Now, where -- this car, after you ran inside to get these
15 scissors and you're coming back, where did the car that was
16 damaged go to?

17 A: He pulled in from the entrance over on this side and he
18 had turned into it and just kind of had his car parked like,
19 he just pulled in and didn't move from there.

20 Q: Okay. So, we're at the store and we're looking at 544,
21 are there two entrances into that Circle K?

22 A: Yes.

23 Q: And one would be facing 544 on the left and one would be
24 facing on the right?

25 A: Uh-huh, (affirmative response).

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1 Q: And he pulls into the one on the right?

2 A: Yes.

3 Q: Okay. Now, when he gets out, do you -- do you see who he
4 is; do you know him?

5 A: I do not.

6 Q: Okay. Did you see him try and help the victim at all?

7 A: No.

8 Q: How -- how was he approaching this situation?

9 A: Very angrily as if he had just had something bad happen
10 to his car and that's what he assumed had happened.

11 Q: Okay. And what was he yelling at people on scene?

12 A: Who threw that fucking bottle at my car?

13 MR. HOLFORD: Your Honor, I would ask to publish 83.

14 THE COURT: All right, sir. You may do so.

15 BY MR. HOLFORD:

16 Q: Circle K keeps video surveillance, don't they?

17 A: Uh-huh, (affirmative response).

18 Q: Would you recognize yourself on the video if you saw it?

19 A: Possibly. Three years ago, but...

20 MR. HOLFORD: Your Honor, I would ask that Steven be able
21 or allowed to step down.

22 THE COURT: All right, sir. You can step down and get
23 next to the video equipment.

24 (REPORTER'S NOTE: State's 83 published. No audio available.)

25 BY MR. HOLFORD:

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- 1 Q: What kind of car were you driving at the time?
- 2 A: A silver Nissan.
- 3 Q: All right. Do you see your car in this video?
- 4 A: That's not my car.
- 5 Q: Okay. But where are you; where are you parked?
- 6 A: I am on this side of the building and I'm right at the
- 7 edge.
- 8 Q: Okay. All right. Right here?
- 9 A: Uh-huh, (affirmative response).
- 10 Q: Is that you?
- 11 THE COURT: You need to speak up, sir, please?
- 12 A: Yes, that is me.
- 13 Q: Okay. And where are you going?
- 14 A: To where everyone else was.
- 15 Q: Okay. What are you doing right now?
- 16 A: I think I was getting scissors.
- 17 Q: Where are you?
- 18 A: No, that wasn't me. I'm sorry. It looked like me. I'm
- 19 sorry.
- 20 Q: You know who that guy is?
- 21 A: That is the manager, I think. I'm not too familiar with
- 22 the people at that Circle K. That would be me (indicating).
- 23 Q: Are you in red there?
- 24 A: Yes. I was wearing the Circle K uniform.
- 25 Q: Is that you; you sure? You can step up there.

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- 1 A: These colors are very -- it looks kind of blue, but it's
2 ---
3 Q: Let's just watch it just a little bit.
4 Now, the car the defendant was driving, did he stop
5 immediately; was he parked over here the whole time?
6 A: Yeah, he did not move after he pulled in.
7 Q: But he pulled in -- did he hit him and then pull right
8 in?
9 A: No, he had circled back around, I guess, and came back to
10 the area.
11 Q: All right. Here are two guys in red running to the
12 store; is one of those you?
13 A: Long hair.
14 Q: All right. So, this guy in the back; so, that's you
15 running to that store.
16 A: Yes. I'm sorry. You can tell from the long hair.
17 Q: All right. Is that you going to get scissors there?
18 A: Yes.
19 Q: What's the -- what's the timestamp on the bottom?
20 A: 03:38.
21 Q: All right. So, at 03:38 on this video we see you going
22 in the store. Now that's not the time is it; that's the ---
23 A: No. It was somewhere around -- somewhere around 1:00
24 A.M. I was working a midnight shift, so...
25 Q: Did you run into the store?

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- 1 A: Uh-huh, (affirmative response).
- 2 Q: Okay.
- 3 A: Yes.
- 4 Q: And then coming out here, is that you again?
- 5 A: Yes.
- 6 Q: All right. So, that's about what time on that?
- 7 A: 03:50.
- 8 Q: Okay. So, is this when you have the scissors and you're
- 9 going back?
- 10 A: Uh-huh, (affirmative response).
- 11 Q: Okay.
- 12 THE COURT: Is that a yes?
- 13 A: Yes, sir.
- 14 BY MR. HOLFORD:
- 15 Q: Now, when did you get punched?
- 16 A: About in between there whenever I was ---
- 17 Q: Right about the time those guys react to something?
- 18 A: Yes.
- 19 Q: Who is the first officer, uniformed person on scene?
- 20 A: It was a park ranger, animal r
- 21 Ranger, I can't remember the proper terminology for it.
- 22 Q: That's all right. And, and did he take the defendant
- 23 into custody; did he detain him?
- 24 A: He did.
- 25 Q: Did you get punched before or after that?

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1 A: That was as I was running to them with the scissors, it
2 was before he was apprehended.

3 Q: Okay. And then -- all right. And then just walk us
4 through a little bit after that. What -- what did you do,
5 what happened? So, at this point, you've been punched, the
6 DNR guy comes up, takes the defendant. Was that the person --
7 the person who punched you, is that the person who got out of
8 that car with the busted windshield?

9 A: Yes.

10 Q: Is that the person that the DNR guy put in handcuffs?

11 A: Yes.

12 Q: Same guy who got out of that car?

13 A: Yes, sir.

14 Q: How long did you stay on scene after that?

15 A: It was about maybe an hour and a half. We had to wait
16 for everything to be taped up and we had to wait for everyone
17 to be taken their statements and all of the other fun stuff
18 that is involved.

19 Q: And did you give a statement to police that night?

20 A: I did.

21 Q: Now, you didn't punch Edward, did you?

22 A: No.

23 Q: You didn't get in a fight with him?

24 A: No.

25 Q: Was anyone else hitting him, kicking him, punching him,

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1 were they even attacking him?

2 A: No.

3 Q: Who was aggressive in that whole situation?

4 A: It was just him.

5 MR. HOLFORD: No further questions, Your Honor.

6 THE COURT: Cross examination?

7 MR. STANKO: Thank you, Your Honor.

8 CROSS EXAMINATION OF STEVEN DANIEL MCLAUGHLIN-CARNEIRO BY MR.

9 STANKO:

10 Q: Now, you were still in your car when the collision
11 happened, correct?

12 A: Yes.

13 Q: You were in the driver's seat?

14 A: Yes.

15 Q: Facing towards the store?

16 A: Yes.

17 Q: So, you did not see the collision occur?

18 A: No, I heard it.

19 Q: Okay. And did you -- did you see the vehicle keep going
20 or at any point during that, did you happen to see the vehicle
21 that struck the victim?

22 A: No.

23 Q: You didn't. Okay. Let's fast forward real quick to, you
24 said that when you ran out with the scissors, you got punched
25 by Mr. Washington, correct?

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1 A: Yes.

2 Q: Did he say anything to you right after he punched you?

3 A: No.

4 Q: Okay. You recall filling out a statement with Conway
5 Police Department?

6 A: I do.

7 Q: Okay. If I showed you that statement, would that help
8 you refresh your memory?

9 A: Yes.

10 Q: Okay.

11 MR. STANKO: Your Honor, may I approach the witness?

12 THE COURT: Yes, sir.

13 BY MR. STANKO:

14 A: Okay.

15 Q: So, according to your own statements, he said something
16 to the effect of that's what you get for running up on me?

17 A: Yes.

18 Q: Okay. So, this was a high stress situation, wasn't it?

19 A: Yes.

20 Q: And he -- you said he appeared combative, that he was
21 aggressive towards a few people out there. How many people
22 were out there?

23 A: I could not count how many.

24 Q: Okay. More than 10?

25 A: For sure.

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1 Q: More than 20?

2 A: Maybe around 15.

3 Q: Okay. All right. But apart from the people who were
4 around the victim, how many people were otherwise engaged with
5 Mr. Washington?

6 A: There was just the people that were surrounding the kid
7 that were really focused on the kid. They weren't really
8 focused on him as much; they were more trying to get him away
9 from the victim because they didn't know what the situation
10 was with Mr. Washington. They just were focused on the kid at
11 the moment, weren't really realizing that this was maybe the
12 person that did it.

13 Q: I gotcha. And after -- after you got hit, did you have
14 any other interaction with Mr. Washington?

15 A: I did not.

16 Q: Okay. All right.

17 MR. STANKO: Your Honor, nothing further.

18 THE COURT: Redirect?

19 MR. HOLFORD: Nothing further, Your Honor.

20 THE COURT: You wish the witness to be excused?

21 MR. HOLFORD: I do, Your Honor.

22 THE COURT: Any objection?

23 MR. STANKO: No objection.

24 THE COURT: All right, sir, you're released from your
25 subpoena, you may go back to regular duties. Thank you.

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1 Next witness, Solicitor?

2 MR. HOLFORD: Yes, Your Honor. The state would call
3 Joshua Scott.

4 THE COURT: Come all the way around up front please, sir.

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

7 JOSH SCOTT, HAVING BEEN DULY SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK: You may be seated. Please state your name and
10 spell it for the Court.

11 MR. SCOTT: I'm Josh Scott, J-O-S-H, S-C-O-T-T.

12 DIRECT EXAMINATION OF JOSH SCOTT BY MR. HOLFORD:

13 Q: Josh, where are you currently employed?

14 A: I'm employed with the Conway Police Department.

15 Q: And what's your position there?

16 A: I'm a detective there.

17 Q: Okay. Detective Scott, how long have you been a
18 detective there?

19 A: Detective maybe around six years.

20 Q: And what did you do before that?

21 A: Before that, I was with the street crime unit for a short
22 period of time. I've also been on a traffic unit and I've
23 been on regular patrol.

24 Q: Now, most of us have seen T.V., but just explain what's a
25 detective do that's different from what a patrol officer does?

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1 A: Well, mostly a highway patrol officer, they usually just
2 have time to take an incident report because they have other
3 calls, so they go on to something else. So, usually the --
4 higher set of a crime will get assigned to a detective and
5 then we do additional follow-ups with the victims, try to
6 locate the subjects, try to establish probable cause to obtain
7 warrants.

8 Q: All right. And what did you do in this case October
9 29th, 2016; what was your involvement with this case?

10 A: I was the on-call detective for that night. I received a
11 phone call, I think, from Sergeant Johnson. He explained what
12 he had. I respond on scene. I took initial photographs of
13 the scene and of the vehicle the defendant was driving at the
14 time. After that, I went back to the office, I typed up a
15 search warrant to try to obtain the defendant's blood from the
16 hospital. I presented that search warrant to Judge Mackey.
17 It was granted, and I went to the hospital and, with the
18 search warrant, we obtained the blood.

19 Q: Let me back up to the pictures. I've got -- they've been
20 entered in evidence. I'm gonna show you State's 30 -- these
21 are going to be out of order, so excuse me -- 26, 25, 27, 24,
22 23, 22, 28, 29, 31, 32, 33, and 34. Do you recognize these
23 photographs?

24 A: I do.

25 Q: How do you recognize them?

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1 A: This was at the scene of the collision and these are the
2 photographs that I took with my camera.

3 Q: Okay. So, you took these photos?

4 A: Yes, sir.

5 Q: All right. And what are you trying to document with
6 these photographs?

7 A: Well, I was taking photographs of the vehicle, the
8 vehicle tag number, you can see what make the vehicle is, any
9 damage the vehicle might have that was on the vehicle. The
10 windshield was smashed in, there was actually blood on the
11 vehicle, and there was dents all through wherever he made
12 contact with the victim.

13 Q: Was there glass in the car?

14 A: Yes, sir.

15 Q: Was it in the backseat and the front seat?

16 A: Yes.

17 Q: Now, you said there was blood on the car. Did you
18 photograph that?

19 A: Yes, sir.

20 Q: And so, you did -- did you do an overview and then you
21 did kind of close-ups documenting where the car was damaged?

22 A: Yes, sir.

23 Q: What side of the car was that?

24 A: This was on the passenger side of the vehicle.

25 Q: Okay. Did you also photograph some of the items on the

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1 scene there that night?

2 A: I photographed some of the debris that was on the ground.

3 Q: I'm going to show you what's been marked for ID at this
4 point as State's 35, 36, 37, 38 and 39. These have not been
5 entered yet, so can you identify just what I've handed you of
6 those pictures?

7 A: These are also pictures from the scene that night.

8 Q: Are those pictures you took?

9 A: Yes, sir.

10 Q: Do they fairly and accurately depict the pictures that
11 you took that night, copies of them?

12 A: Yes, there was also more pictures I took of the actual
13 victim there, but these were the ones that don't have him.

14 MR. HOLFORD: Your Honor, the state would seek admit
15 State's 35, 36, 37, 38, 39.

16 THE COURT: Any objection?

17 MR. STANKO: No objection, Your Honor.

18 THE COURT: They're in evidence without objection.

19 STATE'S EXHIBIT NUMBER 35 THROUGH 39

20 ADMITTED INTO EVIDENCE

21 BY MR. HOLFORD:

22 Q: All right. So, let's start 39, what's that a picture of?

23 A: It looks to be like a baseball hat.

24 Q: Like a hat. Was that -- was that kind of off -- where
25 did that land; can you tell?

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1 A: That was -- this convenience store has two entrances to
2 it. There's one entrance that was closer to the red light.
3 This hat was laying near the first entrance to the store.
4 Q: All right. When you say the first entrance, are we
5 talking about if you're facing -- which way you want to face?
6 You want to face 544 or face the store?
7 A: Well, if you're facing 544, the first entrance would be
8 to the left.
9 Q: Okay. Now, I'm gonna back up just a second. You said
10 you took pictures of the body, right, or of the victim in this
11 case?
12 A: Yes, sir.
13 Q: Was he alive when you arrived on scene?
14 A: No, sir.
15 Q: These have been entered, they're 15, 16, 17. Are those
16 the pictures you took?
17 A: Yes, sir.
18 Q: As well as 8, 9, 10, 11, 12, 13, and 14?
19 A: Yes, sir.
20 Q: And what were you documenting with those pictures?
21 A: Just the injuries on the victim.
22 Q: Okay. How would you classify those injuries?
23 A: Fatal.
24 Q: The -- all right. Let's start with 35, we'll go in
25 order. So -- so, what's this a picture of now?

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1 A: That's a picture of, I think of where the victim was
2 laying. This was a picture after he was removed.

3 Q: Okay. And 36, is that a close-up of the same?

4 A: Yes, sir.

5 Q: Okay. So, so, after the victim was removed from the
6 scene, you took pictures of what was laying around him?

7 A: Correct.

8 Q: What are these orange circles?

9 A: Those are, usually we mark objects with a circle at the
10 scene. So, usually we also -- we get MAIT team to assist us
11 in these. So, we try to mark everything on scene, because
12 when MAIT gets out there, maybe the next day, the items might
13 not be present, they might be moved. So, this would show the
14 actual location that we saw them in that night.

15 Q: And then 37, is that a close-up?

16 A: It's a close-up to the objects that were around.

17 Q: And if you'd just describe, what are some of the objects
18 we see that are circled here?

19 A: It looks like a keychain lanyard, a pair of scissors, and
20 I'm not sure what the other object is.

21 Q: And that's just basically a close-up of those objects.
22 When you take pictures, do you move in closer and closer?

23 A: Correct, we try to take a faraway shot, go in a few feet,
24 take a little close-up, and then go all the way in for effect
25 of a real close-up.

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1 Q: And then 38, just describe this view; where are we
2 standing and where are we looking?

3 A: This is really where the victim was laying next to the
4 sign, and I was taking a picture down 544 and that book bag
5 was additional items that was near the victim.

6 Q: And when we're facing, are we facing towards the beach or
7 towards Conway in this?

8 A: We are facing towards the beach.

9 Q: Yeah, okay. And does this just give us an overview of
10 where things were?

11 A: Correct.

12 Q: Kind of a different angle?

13 A: Yes, sir.

14 Q: Now, you said that you applied for a search warrant; tell
15 us a little bit about a search warrant, what is a search
16 warrant?

17 A: With a felony DUI requirements, we now have to go get a
18 search warrant for blood, and we present the facts to a Judge
19 to establish probable cause to see if she'll grant the search
20 warrant for us to obtain blood in this case.

21 Q: What -- what's probable cause; what does that mean?

22 A: Man, I hate to answer that. Probable cause is what,
23 basically what we need to make an arrest. I don't know if
24 that makes sense to y'all. More than likely, the person did
25 it is what probable cause is.

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1 Q: All right. Tell me this, could you -- could you just
2 come and draw anyone's blood who was standing at that scene?

3 A: Oh, no, sir.

4 Q: And why is that?

5 A: Because they didn't have anything to do with the
6 incident.

7 Q: Okay. So, so, do you have to present to the Judge
8 certain facts?

9 A: We do. We present that he was the driver -- the
10 defendant was the driver of the vehicle. He was involved in a
11 motor vehicle collision that resulted in a fatality. Officers
12 on scene relayed back to me that the defendant did smell of
13 alcohol, his eyes were glassy, and also another witness that
14 was on scene stated the car seemed like it was traveling at
15 least 70 miles an hour when she saw the collision.

16 Q: All right. And so, now if -- if the police are going to
17 draw blood, what's the purpose of doing that? Why would you
18 draw blood in a case like this?

19 A: On a case like this, we draw blood to determine
20 impairment of the defendant.

21 Q: Okay. And, and you applied for a search warrant in this
22 case, right?

23 A: Yes, sir.

24 Q: Would you recognize that if I showed it to you?

25 A: Yes, sir.

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1 Q: I'm gonna hand you what's been marked as State's 81 for
2 ID at this point; it's not been entered in evidence. Can you
3 identify what that is?

4 A: This is the search warrant that I wrote and presented to
5 Judge Mackey.

6 Q: Is it a copy of it?

7 A: Yes.

8 Q: Does that appear to be true and accurate, does it have
9 your name or signatures on it?

10 A: Yes, it has my printed name on the front with the date I
11 typed it up. Also, it has me signing for the affiant and also
12 signed it for the return.

13 Q: All right. Affiant, what's an affiant?

14 A: That's just the person giving the information and
15 presenting the case to the Judge.

16 Q: Okay. So, I know you kind of told us you went and talked
17 to a judge, but explain that procedure. There's a Magistrate
18 Court Judge and what do you do?

19 A: In this case we went to the Municipal Judge, Judge
20 Mackey. I would call her first and, you know, wake her up and
21 tell her a little bit about, hey, this is what I got, are you
22 available to even hear the case. If she says yes, I type it
23 up, I drive out to her house, we usually sit down in her
24 kitchen and I tell her all the facts that I gathered for the
25 search warrant and she makes her decision there.

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1 Q: And do you verbally present facts as well as what's
2 written in there?

3 A: I do.

4 MR. HOLFORD: And then -- Your Honor, at this time, the
5 state would seek to introduce State's 81 into evidence?

6 THE COURT: Any objection?

7 MR. STANKO: No objection, Your Honor.

8 THE COURT: All right. It's into evidence without
9 objection.

10 STATE'S EXHIBIT NUMBER 81

11 ADMITTED INTO EVIDENCE

12 THE COURT: You may proceed.

13 BY MR. HOLFORD:

14 Q: Now, with this search warrant, you said -- you're stating
15 that you're looking for a blood draw; is that correct?

16 A: Correct.

17 Q: And you also have to establish some probable cause,
18 correct?

19 A: Correct.

20 Q: And did the Judge find that you established probable
21 cause or that you had enough in order to get the blood draw?

22 A: She did.

23 Q: And who was that -- the description of property, will
24 just read what you're looking for specifically?

25 A: Yes, sir. Sought from the individual identified as

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1 Edward Lee Joseph Washington are blood -- samples of blood
2 taken at the direction of law enforcement pursuant to the
3 search warrant or taken at the time of admittance to the
4 Conway Medical Center on October 29, 2016.

5 Q: So, was the defendant at the Conway Medical Center?

6 A: He was.

7 Q: And you were trying to get a blood sample from him?

8 A: Correct.

9 Q: And you said that was to determine ---

10 A: Impairment.

11 Q: --- impairment. Now, this return, the fourth page of it,
12 it has in the presence of Corporal Jordan and Guyett. Explain
13 to us why your name isn't on the return?

14 A: I think I drove to the hospital and gave them the search
15 warrant and they were the primary officers that was with the
16 person when the blood was taken.

17 Q: Okay. And so what's the difference between a search
18 warrant and a return? Why do you have to do a return?

19 A: The return is just a list of items that we take from an
20 individual. In this case it was blood, but on others, let's
21 say if we do a search warrant on your house, we take certain
22 items. We list all those items that we took within the search
23 warrant, so nobody can come back and say, well, you took, you
24 know, a \$100,000 from me.

25 Q: And what was collected pursuant to this search warrant?

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1 A: It was blood. I wrote down, a SLED blood collection kit
2 as it was placed in the bag.

3 Q: Okay. Is that all you collected from the defendant that
4 night?

5 A: Yes, sir.

6 Q: Or what officers collected from the defendant?

7 A: Yes, sir.

8 Q: Did you have any other involvement with this case after
9 that?

10 A: No, sir.

11 Q: Okay. No further questions at this time.

12 THE COURT: Cross examination?

13 MR. PINKERTON: No questions, Your Honor.

14 THE COURT: All right. Do you wish the witness to be
15 excused?

16 MR. HOLFORD: Yes, Your Honor.

17 THE COURT: Any objection?

18 MR. PINKERTON: No objection, Your Honor.

19 THE COURT: All right, sir, you're released from your
20 subpoena, you may go back to your regular duties.

21 Your next witness, please?

22 MR. HOLFORD: Your Honor, may we approach?

23 THE COURT: Sure.

24 (REPORTER'S NOTE: Bench conference is held off the record in
25 the presence of but outside the hearing of the jury.)

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BY THE COURT

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1 BY THE COURT:

2 THE COURT: All right, ladies and gentlemen, looking at
3 the time and the potential length of the next witness, what
4 I'm gonna do is we're going to break for lunch at this point
5 in time. I'm going to ask you be back at 1:30. We'll resume
6 the trial at that point in time.

7 Now, remember, don't talk about the case, don't allow
8 anybody to talk to you about it. Also, and I'll tell you this
9 again when I excuse you tonight, you're not researchers,
10 you're not investigators, you can't look up anything. You're
11 gonna decide this case solely and completely on the facts and
12 evidence you hear in the courtroom and from no other source.
13 So, with that, I'll see you back at 1:30.

14 Thank you very much.

15 (REPORTER'S NOTE: Jury exits courtroom @ 12:20 P.M.)

16 THE COURT: Anything from the state before we break for
17 lunch?

18 MR. HOLFORD: No, Your Honor.

19 THE COURT: From the defense?

20 MR. STANKO: No, Your Honor.

21 THE COURT: All right. We'll see y'all back at 1:30
22 then.

23 Thank you very much.

24 RECESS - 12:21 P.M.

25 *****OFF THE RECORD*****

1 (On the Record - 1:34 P.M.)

2 THE COURT: All right. The state ready to proceed?

3 MR. HOLFORD: Yes, Your Honor.

4 THE COURT: Defense?

5 MR. STANKO: Yes, Your Honor.

6 THE COURT: All right. Very good. Ask the jury to come
7 in please.

8 (REPORTER'S NOTE: Jury enters courtroom @ 1:36 P.M.)

9 THE COURT: All right, Solicitor, you ready with your
10 next witness?

11 MR. HOLFORD: Yes, Your Honor. The state calls Glen
12 Guyett.

13 THE COURT: All right. Please come around up here sir
14 and meet the clerk's representative.

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

17 GLEN JAMES GUYETT, HAVING BEEN SWORN
18 TESTIFIES AS FOLLOWS:

19 CLERK: You may be seated. Please state your name and
20 spell it for the record.

21 MR. GUYETT: Glen James Guyett, G-L-E-N, J-A-M-E-S, G-U-
22 Y-E-T-T.

23 THE COURT: Go ahead, Solicitor.

24 MR. HOLFORD: Thank you, Your Honor.

25 DIRECT EXAMINATION OF GLEN JAMES GUYETT BY MR. HOLFORD:

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- 1 Q: Officer Guyett, where are you currently employed?
- 2 A: With the City of Conway Police Department.
- 3 Q: And how long have you been employed there?
- 4 A: Approximately eight to nine years.
- 5 Q: And what's your position there; what do you do?
- 6 A: Now I'm a patrol corporal with the patrol side of things.
- 7 Q: Okay. And what was your position back October 29th,
- 8 2016?
- 9 A: I was a patrol officer.
- 10 Q: And did you become involved in this case?
- 11 A: I responded to a collision and I was the sector officer.
- 12 Q: Okay. And what does that mean?
- 13 A: That means that it occurred in the area that I'm working.
- 14 Q: Okay. Now, how did you -- how did you find out about the
- 15 collision; were you driving by?
- 16 A: No, I was dispatched by Horry County dispatch.
- 17 Q: Tell us how dispatch works; what happened?
- 18 A: Someone calls in, a call taker takes that the information
- 19 down, gets sent over to the dispatcher that relays it through
- 20 radio to the other officers and then we would respond.
- 21 Q: And do you remember about what time you were dispatched
- 22 out?
- 23 A: It was approximately quarter to 1:00, 00:45, possibly.
- 24 Q: And does Conway Police Department keep a crime scene log?
- 25 A: Yes.

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1 Q: What's the purpose of a crime scene log?

2 A: That's to document the people that are on scene at the
3 time of what's going on so that we can have that record of, if
4 we need to go talk to anybody else.

5 Q: And have you seen a crime scene log in this case?

6 A: Yes.

7 Q: Do you know about what time you arrived on scene?

8 A: 00:54.

9 Q: Would it help if I showed you a copy?

10 A: It would.

11 MR. HOLFORD: May I approach?

12 THE COURT: Yes, sir, please.

13 STATE'S EXHIBIT NUMBER 89

14 MARKED FOR IDENTIFICATION

15 BY MR. HOLFORD:

16 Q: It's been marked as State's 89 for ID, just to refresh
17 your recollection. What does the crime scene log show about
18 what time you got there?

19 A: 00:58, yes, 58.

20 Q: Okay. And tell me -- tell me what happened when you
21 arrived on scene; what do you see?

22 A: When I got on scene, there were a lot of people around,
23 some confusion. There was some Horry County officers, CCU
24 officers were on scene as well. As I exited my vehicle, I was
25 approached by the -- an Horry County officer directed me to

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1 where some of the witnesses were. So, I tried to make contact
2 with them to, number one, find out if it was in my
3 jurisdiction or not; and number two, what was it that actually
4 happened, so that I could begin the investigation.

5 Q: And did this occur in your jurisdiction?

6 A: It did.

7 Q: Tell us a little bit about that because I know we have
8 county police officers, you've got a DNR guy, Conway, Coastal
9 Carolina; where is your jurisdiction?

10 A: Okay. Our jurisdiction is that section of the highway.
11 The Circle K property itself is actually in the county, but on
12 the opposite side, directly across where the Monarch
13 apartments are, The Cooperate, and The Coastal Club, those
14 properties are in the city.

15 Q: So, if the collision happens in the road, it's your
16 jurisdiction?

17 A: Yes.

18 Q: And is that what determined it in this case?

19 A: Yes.

20 Q: Okay. Now, when you arrived, you said there were already
21 people on scene and so what did you respond to immediately
22 when you first get there?

23 A: I went directly to where they said there were some
24 witnesses. Again, to find out what had truly occurred and
25 where it was at.

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1 Q: And then after speaking with those individuals, what did
2 you do next?

3 A: Okay. I went back to my vehicle. About that time, my
4 sergeant had pulled up and I went to speak to him to let him
5 know what I knew and get direction from there.

6 Q: Okay. And so what happened after you spoke to your
7 sergeant?

8 A: Shortly thereafter, Corporal Jordan had already been
9 escort -- Corporal Jordan and the DNR officer that was on
10 scene had actually brought the defendant to me and turned him
11 over to my custody where I placed him under arrest.

12 Q: Okay. So, the defendant, Edward Washington, are you the
13 one who arrested him?

14 A: I am.

15 Q: What did you arrest him for?

16 A: For the felony DUI, leaving -- it was mainly for the
17 leaving of the scene. More information was gathered
18 thereafter to facilitate what was needed for the felony DUI.

19 Q: Okay. And the felony DUI, that requires a level of
20 intoxication?

21 A: It does.

22 Q: What did you observe from the defendant when you were on
23 scene?

24 A: When he was turned over to me, I could smell what's
25 familiar to me as a smell of alcoholic beverage emitting from

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1 his breath. I could see his eyes were very red and glossy.

2 So, I -- I presumed him to be intoxicated at that time.

3 Q: And did you take him into custody?

4 A: I did.

5 Q: Did you -- was he handcuffed; did you handcuff him?

6 A: He was already handcuffed. What I did was I took custody
7 of him. I searched him again, whether they did or not, it's
8 our procedure that I would search him and then place him in my
9 vehicle.

10 Q: And did you do that?

11 A: I did.

12 Q: And what did you do after you placed him in your vehicle?

13 A: I went back and spoke to my sergeant again and letting
14 him know what's going on and -- and find out -- what more
15 directions we were going with.

16 Q: And did you ever -- did you ever read Miranda rights?

17 A: I did. After speaking to my sergeant, we decided it was
18 best to get him up to the hospital right away with the -- he
19 had -- he actually had a situation with his ankle that was
20 injured. He was limping and, you know, had difficulty with
21 that. So, I went ahead to take him up to the hospital, but
22 prior to leaving, I went ahead and I read the Miranda rights.

23 Q: All right. Let me back up because you mentioned
24 something. Now, you said there was something with an ankle.
25 How were you alerted that there was an issue with his ankle?

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1 A: Well, Corporal Jordan verbally also stated that he has an
2 issue with his ankle to the point that he would not be able to
3 do field sobriety tests.

4 Q: Did you observed that the defendant had an issue with his
5 ankle?

6 A: I did. He had issues walking.

7 Q: Okay. So, you physically observed that?

8 A: Yes.

9 Q: Now, you said standard -- or you said field sobriety
10 tests?

11 A: Yes.

12 Q: Explain what's a field sobriety test?

13 A: It's a standardized test that we use to judge impairment
14 and two of those tests -- it's a three-part test and two of
15 those tests involve use of your feet. One would be walking
16 and turning and the other would be standing on one foot and
17 balancing and things of that sort.

18 Q: And did you make the defendant do or did you request that
19 he do this field sobriety test there on the scene?

20 A: No, just looking at the fact that he could not walk, it
21 was determined that he needed to get medical treatment right
22 away.

23 Q: Okay. If you had had him do -- now, you said there are
24 three tests; tell me the first one?

25 A: The first one is a walk and turn where you ask the

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1 subject to stand in place with one foot in front of the other,
2 heel touching toe, hands down by their side, and they listen
3 to your instructions. So, they're there for a period of time
4 in that position and then you have to give the instruction and
5 you even demonstrate it and then, thereafter, the subject will
6 follow those instructions, which is to walk heel to toe. So,
7 those steps that he would take also being heel to toe for a
8 period of nine steps, at the end doing a prescribed turn,
9 which requires a series of small steps, turning around and
10 then doing nine more steps heel to toe back. And judging by
11 the way that he was -- could barely walk with assistance, it
12 was -- he needed some medical assistance or somebody to look
13 at that ankle.

14 Q: Now, when you do these walk and turn tests, what are you
15 looking for as an officer in a normal DUI?

16 A: Okay. Well, during that time, they're also to be looking
17 at their feet and counting out loud. So, we're looking for
18 the -- all those steps must be heel to toe, they need to be
19 looking at their feet, they need to be counting out loud, we
20 want to make sure they've got the proper number of steps and
21 the turn is important as well. They must do the turn as it
22 was prescribed with a series of small steps and looking for
23 all those things on the way back as well.

24 Q: And so, if someone is swaying or stumbling, having
25 trouble, what would you indicate that to be?

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1 A: That would be another one of the indicators because they
2 are to keep their hands to their side. So, if they're
3 flapping their arms to -- for balance and things, then that
4 would be an indicator that we would be looking for as well.

5 Q: And so, if someone has an ankle injury, would it be
6 difficult for them to do this?

7 A: Yes.

8 Q: What's the next test after the walk and turn?

9 A: The next one would've been the one-leg stand, and
10 basically they get to choose which leg they're standing on,
11 which leg they pick up. The leg that they pick up, they're to
12 point the toe forward and have that -- that foot hovering
13 above the ground approximately six inches and they're to count
14 until they're told to stop. That's for duration of
15 approximately 30 seconds. Numerous times people will be
16 setting their foot down and things and that's -- that's one of
17 the indicators that we're looking for. So, if they're setting
18 their foot down, they're losing count or their count is slow
19 or rapid, not -- not consistent with what an average count
20 would be, these are different things that we would look at.

21 Q: And then just briefly, what's the last test?

22 A: Well, the first test would have been the HGN and that's
23 using the eyes.

24 Q: Okay. And so, in this case, did you do any of those?

25 A: No, because the test is conglomerate. It requires all

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1 three.

2 Q: Okay. Based on your observation of the defendant, what
3 did you -- what did you do after you placed him in your
4 vehicle; what decision did you make?

5 A: We, we went to take him up to the hospital and we were
6 going to be obtaining a search warrant to draw blood. That's
7 based on the -- that night's circumstance, not being a regular
8 DUI but something that involved great bodily harm or, in this
9 case, death.

10 Q: Now, did you have a -- did you have a video recorder
11 going at that time?

12 A: I had body-worn camera going and my in-car camera going.

13 Q: Okay. Now, tell us what's your in-car camera, what's
14 that show; where is that point of view?

15 A: That shows the -- through the windshield. So, as you're
16 driving, it would show the roadway and, when you park your
17 vehicle, it shows the front of what's going on in the vehicle
18 that way.

19 Q: And then your body cam, where is that?

20 A: That is worn approximately center of my chest and it just
21 kind of gives an overall view of the area.

22 Q: Okay. You said you took him to the hospital, correct?

23 A: Correct.

24 Q: And you took him for -- for multiple reasons; what was
25 the first reason?

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1 A: Well, he obviously needed some treatment for his ankle.

2 Q: Did he receive treatment for his ankle?

3 A: Yes.

4 Q: I'm gonna show you what's been marked as State's 77 for
5 -- may I approach?

6 THE COURT: Yes, sir.

7 Q: State's 77 for ID. Can you tell us what that document
8 is?

9 A: Yes, it's a refusal of medical screening exam from the
10 Conway Medical Center.

11 Q: How are you familiar with that?

12 A: I actually signed it on behalf of the subject because he
13 was in handcuffs. He told the doctor he did not want medical
14 attention, and so the doctor had me sign since he was in the
15 handcuffs.

16 Q: Is this a fair and accurate depiction of what you signed
17 that night?

18 A: It is.

19 Q: Does your signature appear on it?

20 A: It does.

21 Q: The state would seek to introduce 77 into evidence?

22 THE COURT: Any objection?

23 MR. STANKO: No objection, Your Honor.

24 THE COURT: It's into evidence without objection.

25 STATE'S EXHIBIT NUMBER 77

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1 ADMITTED INTO EVIDENCE

2 BY MR. HOLFORD:

3 Q: And -- and so just -- just tell us what this form means;
4 you obviously took the defendant to get what, screened for his
5 ankle?

6 A: Yes, I wanted him to get treatment for his ankle. You
7 know, we didn't want to inhibit him from any of the medical
8 help that's available to him, and this allowed him to speak to
9 the doctor and make his own decision from there. And this was
10 also have to be done prior to taking him to jail as well.

11 Q: And then what happened when you got there?

12 A: When we got there, we did see the doctor and, you know,
13 the subject was more worried about what was going on with the
14 collision than himself, and the doctor tried to offer and let
15 him understand, you know, hey, we need to get you checked out
16 and he declined.

17 Q: Is that captured on any video?

18 A: It is. It's captured on my body-worn video.

19 Q: Okay. Now, did you have a conversation with the
20 defendant that night?

21 A: I did.

22 Q: And in relation to his medical treatment as well as other
23 issues?

24 A: Yes.

25 Q: And you said you provided him Miranda, right?

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1 A: I did.

2 Q: Now, tell us what Miranda is?

3 A: Basically, it's reminding the -- someone who's in custody
4 of their rights, the rights that they already have. It tells
5 them that they have a right to have legal counsel, have a
6 lawyer with them, present with them while being questioned,
7 and they've got the right to remain silent. They, you know,
8 they can exercise that at any point. So, even if, if, if they
9 waive those rights and you're speaking to them and they
10 decide, you know what, I'm just gonna be quiet now, they have
11 the right to do so.

12 Q: Was there any question that he was in your custody under
13 arrest?

14 A: No, there was no question. He was told he was under
15 arrest while we were there at the hospital on my video camera.

16 Q: Now, you said that there were multiple reasons. So, the
17 first reason you take him to the hospital is the ankle injury
18 and the second you said you were looking for a search warrant
19 for what?

20 A: For his blood, so that we could get the alcohol content
21 done.

22 Q: Was a search warrant obtained?

23 A: It was.

24 Q: If I show you what's been marked as State's 81 that's
25 entered into evidence, are you familiar with what that is?

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1 A: Yes.

2 Q: And what is it?

3 A: It is a search warrant. It's actually a copy of the
4 search warrant that was used to draw the blood of the
5 defendant.

6 Q: Were you present when the blood was drawn of the
7 defendant?

8 A: I was present when the blood was drawn.

9 Q: And that last page, there's a search warrant return that
10 says there is an inventory done in the presence of; who is
11 that done in the presence of?

12 A: It is in the presence of Corporal Jordan and myself.

13 Q: And what does that mean, that the inventory was done in
14 your presence?

15 A: It means that we were there when the blood was drawn and
16 the kit was put together so that we could go ahead and return
17 this to the judge showing what we have received based on the
18 search warrant.

19 Q: And had a judge -- had a judge granted this search
20 warrant prior to you drawing the blood?

21 A: Yes.

22 Q: Okay. Well, let me back up. You didn't physically draw
23 the blood yourself, did you?

24 A: I did not.

25 Q: I'm going to hand you what's been marked just for ID at

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1 this point as 78, State's 78. Can you identify what that
2 document is?

3 A: Yes, this is a South Carolina Law Enforcement Division
4 Urine/Blood Collection Report.

5 Q: And how are you familiar with that document?

6 A: Okay. I filled out my portion of this. This is the --
7 the paperwork that goes with the blood draw kit.

8 Q: Okay. Does that appear to be a fair and accurate copy of
9 what you filled out that night?

10 A: Yes.

11 MR. HOLFORD: Your Honor, the state would seek to
12 introduce State's 78 into evidence?

13 THE COURT: Any objection?

14 MR. STANKO: No objection, Your Honor.

15 THE COURT: All right. It's into evidence without
16 objection.

17 STATE'S EXHIBIT NUMBER 78

18 ADMITTED INTO EVIDENCE

19 THE COURT: You may proceed.

20 BY MR. HOLFORD:

21 Q: Now, based on that document, do you write the time of
22 arrest for the defendant?

23 A: Time of arrest here is 00:54.

24 Q: All right. And is there a time of the blood draw?

25 A: 03:46.

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1 Q: Now, did you write the time of the arrest and the blood
2 draw?

3 A: No, just the arrest. The, the date of test and the blood
4 draw time is completed by the nurse.

5 Q: And, and so, who is the nurse?

6 A: On here it is -- the name of the nurse is Rebecca Rowe.

7 Q: Okay. And so, there's someone at the hospital that
8 actually took the blood?

9 A: Yes. It was done by medical personnel.

10 Q: Now, once that blood had been drawn and -- tell me about
11 that procedure; walk me through that procedure. Do you have a
12 kit, is there a standard kit?

13 A: It, it's a standard kit. Basically, it's got the vials
14 that are required for once the blood is drawn, the blood goes
15 into these vials, these vials are sent to SLED for testing.

16 Q: And then do you take custody of that?

17 A: The nurse does all the packaging and then I take custody
18 of the kit.

19 Q: And what did you do with that kit?

20 A: I went ahead and brought it back to the station and it
21 gets locked into a refrigerator, because it's biological and
22 must be refrigerated. It is locked and then that key is also
23 locked away and then the only person that has access after
24 that would be the evidence custodian or anyone that is
25 associated with evidence.

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1 Q: If I handed you a property report, would you be able to
2 identify what it was?

3 A: Yes.

4 MR. HOLFORD: May I approach?

5 THE COURT: Yes, sir.

6 BY HOLFORD:

7 Q: I'm going to hand you what's been marked for ID as
8 State's 90. Can you tell the jury what that document is?

9 A: This is the property report for the blood sample. This
10 is the form that I would fill out as I go ahead and secure it
11 into the refrigerator, this is the form that I would fill out
12 and it would also be locked in that other locker with the key
13 to the refrigerator.

14 Q: Okay. Now, did you fill this form out?

15 A: I did.

16 Q: Is it a fair and accurate depiction?

17 A: It is.

18 Q: Are there additions to it?

19 A: There are. When I fill it out, it's my signature and --
20 and the line that I fill out. The additions are below my --
21 where I've filled it out. That would be the evidence
22 custodian, Lisa Hill.

23 Q: But has she changed what you filled out?

24 A: No.

25 MR. HOLFORD: The state would seek to introduce state's

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1 90 into evidence.

2 THE COURT: Any objection?

3 MR. STANKO: No objection.

4 THE COURT: It's into evidence without objection.

5 STATE'S EXHIBIT NUMBER 90

6 ADMITTED INTO EVIDENCE

7 THE COURT: You may proceed.

8 BY MR. HOLFORD:

9 Q: So, this property report says that a blood sample,
10 biological specimen kit -- what's a biological specimen kit?

11 A: That's just something that is taken from the body.

12 Q: All right. Impounding officer is G.J. Guyett, that's
13 you?

14 A: Yes.

15 Q: And you signed for it?

16 A: Yes.

17 Q: And received by fridge evidence?

18 A: Yes.

19 Q: So, what is this report telling us?

20 A: It's basically showing the chain of evidence. The nurse
21 did the blood draw, she packaged it in the container, I took
22 the container from there, delivered it to the refrigerator
23 where it was secured and then placed into evidence. Anyone --
24 the next person to remove that or move that from its location,
25 would be the following signatures that are underneath. In

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1 this case, it's Lisa Hill, who is our evidence custodian.

2 Q: Now, the purpose of keeping a chain like that, what's the
3 purpose? Why do you document where the blood came from and
4 where it goes to?

5 A: It prevents tampering or anything that could mess up what
6 has -- what is being drawn to the testing site.

7 Q: All right. And just tell us why -- why were you seeking
8 blood in this case?

9 A: In this case, because of the -- the victim having passed,
10 it being a felony DUI, we, we, we have the -- we have to go
11 ahead and draw blood for that.

12 Q: Now, there's something called implied consent; can you
13 tell us what implied consent is?

14 A: Basically, an implied consent is -- driving in South
15 Carolina is a privilege. So, when you agree to accept those
16 driving privileges, you also consent to certain things and, in
17 this case, you would consent to, if an officer believes that
18 you're driving intoxicated, you would go for a breath test,
19 you would get your breath sample. In this case, being a
20 felony DUI, it's -- it's a consent saying that you will give
21 blood draw and, in not doing so, then you're -- you're going
22 against what that implied consent is when you accepted your
23 license.

24 Q: Did the defendant have the right to refuse this blood
25 draw?

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1 A: No.

2 Q: And why is that?

3 A: Because it's a felony DUI, he must give the blood draw
4 according to his implied consent.

5 Q: Did you read him those implied consent rights?

6 A: I did.

7 Q: And is there a form that you filled out, also?

8 A: Yes.

9 Q: I'm gonna hand you what's been marked as State's 79.
10 It's for ID at this point. Can you identify what that form
11 is?

12 A: This form is an advisement of implied consent
13 specifically for felony driving under the influence --
14 specifically for felony driving under the influence.

15 Q: And did you fill that out?

16 A: I did.

17 Q: Is that -- is that an accurate copy of what you filled
18 out that night?

19 A: It is.

20 Q: And is that what you read to the defendant that night?

21 A: It is.

22 MR. HOLFORD: Your Honor, the state would seek to
23 introduce State's 79 in evidence.

24 THE COURT: Any objection?

25 MR. STANKO: No objection.

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1 THE COURT: It's into evidence without objection.

2 STATE'S EXHIBIT NUMBER 79

3 ADMITTED INTO EVIDENCE

4 THE COURT: You may proceed.

5 BY MR. HOLFORD:

6 Q: Did the defendant sign this?

7 A: Yes.

8 Q: Did he sign all the forms that night?

9 A: No.

10 Q: What -- what signified the forms he didn't sign?

11 A: Where he would refuse to sign would be signified with the
12 letters RTS, refused to sign.

13 Q: Were you wearing a -- was there body cam video at the
14 hospital that night, too?

15 A: There was.

16 Q: Did you have a body camera on?

17 A: I did -- well, for as long as -- until it died.

18 Q: Okay. So -- so, what happened after it died?

19 A: After it died, Corporal Jordan happened to be there and
20 we used his. So, as I read the implied consent, it's actually
21 gonna be on Corporal Jordan's video camera.

22 Q: So, there's video of you reading him these rights as
23 well?

24 A: Yes.

25 Q: Now, you've stated there is video from your car that

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1 night?

2 A: Yes.

3 Q: And there is also video of your body camera that night?

4 A: Yes.

5 Q: And there's video of Jeff Jordan's body cam while you do
6 implied consent; is that what you've said?

7 A: Yes.

8 Q: Have you reviewed those videos?

9 A: I have.

10 Q: I'm going to hand you what has been marked for ID as
11 State's 3, 88, and 91. Can you identify in order what 3, 88,
12 and 91 are?

13 A: 3 would be my in-car video; 91 would be the video that
14 Jeff, Corporal Jordan, has, his body-worn camera, that is; and
15 88 is my body-worn camera.

16 Q: Okay. Did you review those in preparing for trial?

17 A: I did.

18 Q: Do they reflect what happened that night as captured by
19 whatever video was available?

20 A: Yes.

21 Q: Are they true and accurate reflections?

22 A: Yes.

23 MR. HOLFORD: Your Honor, the state would seek to
24 introduce 3, 88, and 91?

25 THE COURT: Any objection?

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1 MR. STANKO: No objection, Your Honor.

2 THE COURT: State's 3, 88 and 91 are in evidence without
3 objection.

4 STATE'S EXHIBIT NUMBER 3, 88, AND 91

5 ADMITTED INTO EVIDENCE

6 THE COURT: You may proceed.

7 BY MR. HOLFORD:

8 Q: Before we watch these, I just want to go over state's 82
9 for ID. Can you identify what this is?

10 A: This is an affidavit for failure to produce a video of
11 the DUI.

12 Q: And did you fill that out?

13 A: I did.

14 Q: Is that an accurate and fair copy of what you filled out?

15 A: It is.

16 MR. HOLFORD: The state would seek to introduce State's
17 82 in evidence.

18 THE COURT: Any objection?

19 MR. STANKO: No objection.

20 THE COURT: All right. It's into evidence without
21 objection.

22 STATE'S EXHIBIT NUMBER 82

23 ADMITTED INTO EVIDENCE

24 THE COURT: You may proceed.

25 BY MR. HOLFORD:

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GLEN GUYETT - DIRECT BY HOLFORD

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1 Q: Now, why do you do -- why did you do an affidavit of
2 failure to produce a videotape for DUI?

3 A: When working DUI cases, they're very technical and there
4 are things that must be done. The video of the DUI is, is to
5 be fully recorded, and when it's not recorded we must have an
6 affidavit explaining why.

7 Q: All right. So, but you've told us that there's a video
8 that has Miranda, there's a video that shows the defendant,
9 there's a video of you doing implied consent; so, why do you
10 still need to do an affidavit?

11 A: Because the law tells us that we are supposed to do that.
12 Basically, what that's saying is that this is why there's not
13 being shown those tests, those SFST tests showing the
14 impairment.

15 Q: I'm sorry. And what was the reason for that?

16 A: For which part?

17 Q: What was the reason for the affidavit? Was the reason --
18 again, I know we covered this earlier but now, with the
19 affidavit, why did you not do those on video?

20 A: Okay. According to the affidavit and, you know, why I
21 filled out the affidavit is the defendant needed medical
22 treatment. His ankle and the way that he was limping when he
23 was brought over to me, he wasn't gonna be able to do those
24 SFST's. So, we did not do that. We did not record a SFST
25 because he was brought to the hospital to get that treatment.

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GLEN GUYETT - DIRECT BY HOLFORD

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1 Q: Have you also reviewed the store video what's in evidence
2 as State's 83?

3 A: Yes.

4 Q: Okay. Have you been in the courtroom?

5 A: Yes.

6 Q: Are you the primary officer on this case?

7 A: I am.

8 Q: And so, did you see that video?

9 A: Yes.

10 Q: Do you see your car pull up?

11 A: Not sure if it's on -- I don't know if it's showing on
12 that video or not; I didn't see it.

13 Q: Okay. Are you on scene when that video starts?

14 A: No.

15 Q: Okay.

16 HOLFORD Your Honor, the state would seek to publish
17 State's 3 first?

18 THE COURT: All right. You may proceed.

19 THE COURT: You need to move back a little bit so that he
20 see. Stand in front of the microphone and ask questions.

21 BY MR. HOLFORD:

22 Q: Are there multiple files on there?

23 A: Yes.

24 Q: How long was your in-car video going that night?

25 A: It could've been an hour or more.

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GLEN GUYETT - DIRECT BY HOLFORD

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1 Q: All right. We just pulled up the screen and just for the
2 record, this is 057882_61029_045105_4_F.mp4. What does this
3 video show?

4 A: This is actually showing that once you activate your
5 lights, it jumps back to a buffering of 30 seconds prior. So,
6 this is -- we're at the police station when the call comes
7 out. I get in my car, I leave, and when I pull up to the
8 first stop light is when I activated my lights to respond.

9 Q: Okay. Is there some period between you getting the call
10 and actually driving and arriving at the scene?

11 A: Yeah, it's just -- this shows my driving to the scene.

12 (REPORTER'S NOTE: State's 3 published. Audio not transcribed
13 herein.)

14 BY MR. HOLFORD:

15 Q: We're about four minutes and 35 seconds. What are you
16 doing on the video now?

17 A: I'm getting ready to pull into the Circle K.

18 Q: Now, we're looking at one thing, but we can hear you
19 pretty audibly; why is that?

20 A: I'm still next to the vehicle. There's microphones in
21 the vehicle.

22 Q: Okay. And does it also pick up on your microphone when
23 you're away from the vehicle?

24 A: I'm not sure if this was the system that did that or not.

25 Q: About how long did you go speak to other people before

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GLEN GUYETT - DIRECT BY HOLFORD

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- 1 you came back and had contact with the defendant?
- 2 A: Three, four minutes maybe.
- 3 Q: Can you see this over here?
- 4 A: I can.
- 5 Q: Is that you?
- 6 A: No, that's Corporal Jordan and the DNR officer with the
7 defendant.
- 8 Q: Okay. Are you still over talking to people?
- 9 A: Yes, I'm over towards the side.
- 10 Q: But your video is showing what's going on?
- 11 A: Yes.
- 12 Q: What are they doing on that video?
- 13 A: They're, they're checking him for weapons, and I believe
14 they were also changing cuffs at the time from whatever the
15 DNR officer had on him to Corporal Jordan's handcuffs.
- 16 Q: All right. It's 12 minutes and 41 seconds into this
17 video; who just came on scene or on camera?
- 18 A: That is me walking on camera.
- 19 Q: Okay. And so, is this the first time you're approaching
20 the defendant?
- 21 A: Yes.
- 22 Q: All right. What did you just do with the defendant
23 there?
- 24 A: I secured him in the rear passenger seat of my vehicle.
- 25 Q: Okay. Could we hear him making noise?

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GLEN GUYETT - DIRECT BY HOLFORD

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- 1 A: Yes.
- 2 Q: What did that appear to be?
- 3 A: Just discomfort.
- 4 Q: Now, you said that you read Miranda rights at some point?
- 5 A: Yes.
- 6 Q: Have you watched this video before?
- 7 A: Yes.
- 8 Q: Do you remember what time you did that on there?
- 9 A: Maybe 18, 17 minutes in.
- 10 Q: Okay. What do you do between putting him in the car and
- 11 actually coming back to the car to give Miranda?
- 12 A: Right about now, you'll see on my camera, my sergeant
- 13 pulling up and I'll be speaking with him.
- 14 Q: Is that you?
- 15 A: That is me.
- 16 Q: Now, we're at 19:36, what are you doing now on the video?
- 17 A: Getting ready to leave and take him up to the hospital.
- 18 Q: Does this video capture you driving to the hospital?
- 19 A: Yes.
- 20 Q: Okay. All right. We're at 26:10, where are you?
- 21 A: We're outside the emergency room.
- 22 Q: So, at 27:44, do you see yourself back on camera?
- 23 A: I do.
- 24 Q: And what are you doing now?
- 25 A: Escorting him into the emergency room.

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GLEN GUYETT - DIRECT BY HOLFORD

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1 Q: Now, do you have body cam of when you entered the
2 emergency room?

3 A: Yes, when I'm in the emergency room.

4 MR. HOLFORD: Your Honor, permission to publish State's
5 88?

6 THE COURT: Yes, sir.

7 BY MR. HOLFORD:

8 Q: Now, when you're at the emergency room, is the defendant
9 giving statements, is he responding to questions being asked?

10 A: Yes.

11 Q: And does he eventually start talking about what happened
12 that night?

13 A: Yes.

14 Q: Did you -- did you threaten him or force him to talk?

15 A: No.

16 Q: Did you coerce him into talking?

17 A: No.

18 Q: Did you promise him anything?

19 A: No.

20 Q: Promise to let him go?

21 A: No.

22 Q: Was he responsive to your questions?

23 A: He was.

24 Q: No question, was he free to leave?

25 A: No, he was not free to leave.

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GLEN GUYETT - DIRECT BY HOLFORD

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1 Q: Okay. All right. This video is a little bit of time,
2 isn't it?

3 A: It is.

4 (REPORTER'S NOTE: State's 88 published. Audio not
5 transcribed herein.)

6 Q: Where is this video picking up at?

7 A: This is picking up at the emergency room, getting him out
8 of the vehicle.

9 Q: How fast did he say he was going?

10 A: I believe he said he was doing 45.

11 Q: Did you hear what he said?

12 A: Sounds like 45 from here.

13 (REPORTER'S NOTE: End of State's 88.)

14 BY MR. HOLFORD:

15 Q: Now, there's also video of you reading him his implied
16 consent rights, correct?

17 A: That is correct.

18 Q: And we could watch that if we wanted to?

19 A: Yes.

20 Q: This stretch on 544, what's the posted speed limit there?

21 A: It is 40.

22 Q: 40?

23 A: Yes, sir.

24 Q: And if we listen closely to that, which they'll be able
25 to do, if the defendant said he's doing between 45 and 50;

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GLEN GUYETT - DIRECT BY HOLFORD

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- 1 does he put himself under, at or above the speed limit?
- 2 A: It is above the speed limit.
- 3 Q: By the defendant's own admission, was he speeding?
- 4 A: Yes.
- 5 Q: And so if a pedestrian is crossing the road, whether at a
- 6 crosswalk or not, does the driver have a responsibility in
- 7 that situation?
- 8 A: The driver has the responsibility to be aware of his
- 9 surroundings.
- 10 Q: Just because someone is walking across the road and not a
- 11 crosswalk, can a driver strike that person?
- 12 A: No, they need to make attempts to avoid the incident.
- 13 Q: Now, responsibilities of a driver, is there a duty to
- 14 keep a lookout?
- 15 A: Yes, they need to be alert and paying attention to the
- 16 roadway as they're driving.
- 17 Q: Now, you said on there, I don't think this is
- 18 intentional, right?
- 19 A: Yes.
- 20 Q: And, and what were you saying to the defendant?
- 21 A: I don't believe he was aiming for the victim.
- 22 Q: Right. Because no one is alleging that he swerved onto a
- 23 curb and intentionally tried to plow down the victim?
- 24 A: Correct.
- 25 Q: What were you saying he did intentionally?

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GLEN GUYETT - DIRECT BY HOLFORD

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1 A: He was driving.

2 Q: And based on your interactions with him and what you
3 observed on the scene, how did you judge his state of being?

4 A: I believed him to be intoxicated.

5 Q: When you first showed up on the scene, did the defendant
6 have a driver's license?

7 A: I do not remember if he had it on him or not, but his
8 status was suspended.

9 Q: What was his status?

10 A: Suspended.

11 Q: His driver's license was?

12 A: Yes.

13 Q: There was a lot of conversation about a bottle. The
14 defendant admits to coming back at some point. Why did he say
15 he came back?

16 A: He wanted to fight whoever threw the bottle. To him --
17 to him, somebody had thrown a bottle.

18 Q: And did he tell you to look at the damage of the car,
19 look at the windshield?

20 A: He did.

21 Q: This is State's 28 and 27, they've been entered in
22 evidence. Is that a picture of the car?

23 A: That's a picture of the car.

24 Q: And that's what he wanted you to see to show that he
25 thought someone threw a bottle at his car?

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GLEN GUYETT - DIRECT BY HOLFORD

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1 A: Yes.

2 Q: Is that what he kept saying to you?

3 A: Yeah, he kept saying, look at the windshield; look at my
4 car.

5 Q: Yeah, let me just make sure for purposes of the chain,
6 did you, with that blood draw kit, I know it's a little bit
7 out of order, but with that blood draw kit, what do you do in
8 relation to that? Do you fill out anything?

9 A: On the outside of the box, there's information that's put
10 on there, the subject, and just basically more about my
11 information as well, I believe.

12 Q: And then when you turned that in, you turned it into
13 evidence?

14 A: Yes.

15 Q: And then it goes wherever it goes?

16 A: Yes.

17 Q: Does the evidence sheet state -- there's a Lisa Hill on
18 there; do you know who that is?

19 A: Yes.

20 Q: Who is she?

21 A: She is our evidence custodian.

22 Q: Okay. And then there's to SLED and return from SLED on
23 there?

24 A: Yes.

25 Q: Does this property form track where this piece, the blood

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GLEN GUYETT - CROSS BY PINKERTON

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1 sample and biological specimen kit goes?

2 A: Yes.

3 Q: No further questions at this time.

4 THE COURT: Okay. Cross examination?

5 CROSS EXAMINATION OF GLEN JAMES GUYETT BY MR. PINKERTON:

6 Q: Officer Guyett, you were not the original officer on
7 scene?

8 A: I was not the first officer on scene.

9 Q: I believe Officer Baker with DNR was the first officer on
10 scene?

11 A: As I understood it, yes.

12 Q: Where was Mr. Washington when you arrived?

13 A: I couldn't tell you where he was when I arrived. It was
14 when he was turned over to me that I was aware of him being
15 there.

16 Q: Where was he when he was turned over to you then?

17 A: In front of my vehicle.

18 Q: Who had custody of Mr. Washington? Let me rephrase that.

19 A: Okay. He was presented to me by Corporal Jordan and DNR
20 Baker.

21 Q: So, he had been sitting in the back of a DNR, Officer
22 Baker's truck the whole time as far as you know?

23 A: As far as I know now.

24 Q: Okay. And you didn't perform any field sobriety tests on
25 Mr. Washington at the scene?

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GLEN GUYETT - CROSS BY PINKERTON

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1 A: No.

2 Q: Nor at the hospital?

3 A: No.

4 Q: And to your knowledge, had any other officer perform
5 those on him?

6 A: Prior knowledge, no.

7 Q: And what again are the purposes of field sobriety tests?

8 A: It's to show an impairment.

9 Q: To show an impairment. And you agree, it's not illegal
10 to actually have a blood alcohol content while driving; you
11 still have to be impaired to be found guilty of DUI, correct?

12 A: To be found guilty of DUI, you have to show an
13 appreciative ---

14 MR. HOLFORD: Objection, as to found guilty, Your Honor.

15 THE COURT: All right. I'm gonna allow him to answer the
16 question, but you need to rephrase it to fit the charge the
17 defendant is facing.

18 MR. PINKERTON: Your Honor, I'll withdraw the question
19 completely.

20 THE COURT: All right. Very good.

21 BY MR. PINKERTON:

22 Q: But no field sobriety tests were ever performed on Mr.
23 Washington that night as far as you know?

24 A: Yes, correct.

25 Q: Why did you not perform field sobriety tests on Mr.

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GLEN GUYETT - CROSS BY PINKERTON

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1 Washington?

2 A: He, he wouldn't have been able to complete it with
3 injured ankle and it be valid. So, him needing the medical
4 treatment, he was brought to Conway Medical to be offered that
5 opportunity.

6 Q: And you stated there are three standard field sobriety
7 tests that you commonly perform; what are those?

8 A: There was one standard field sobriety test that is three
9 parts.

10 Q: Okay.

11 A: The first part is the HGN, which concerns the eyes, and
12 then the other two are what we discussed earlier with the walk
13 and turn and then the one-leg stand.

14 Q: Now, as far as the HGN test, would that require Mr.
15 Washington be standing at all?

16 A: No.

17 Q: So, theoretically, you still could've performed that on
18 Mr. Washington, even with his ankle being hurt?

19 A: Yes.

20 Q: Now, when you claimed Mr. Washington's ankle -- he was
21 claiming his ankle was hurt. Did you observe any blood on his
22 ankle?

23 A: No.

24 Q: Did you observe like a bone or anything sticking through
25 his ankle?

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GLEN GUYETT - CROSS BY PINKERTON

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- 1 A: No.
- 2 Q: Any swelling?
- 3 A: No, I'm not medical personnel, but ---
- 4 Q: Did you observe any actual injuries to Mr. Washington's
- 5 ankle?
- 6 A: Just his -- the way that he was walking and the
- 7 difficulty that he had with that one leg.
- 8 Q: Now, are there any like non-standard field sobriety tests
- 9 you could've used to determine impairment, such as like finger
- 10 dexterity tests, ABCs, counting backwards from 100?
- 11 A: That's not a part of the field sobriety test that we use.
- 12 Q: But as far as you know, nothing was done on Mr.
- 13 Washington at the scene to actually determine impairment?
- 14 A: Correct.
- 15 Q: Now, as far as where the incident occurred, are there
- 16 street lights down that stretch of road?
- 17 A: There are some street lights, yes.
- 18 Q: But would you say it was fairly dark that night?
- 19 A: As dark as any night in front of a well-lit parking lot.
- 20 Q: Do you remember what kind of clothing the victim was
- 21 wearing?
- 22 A: I didn't see the victim.
- 23 Q: You didn't see the victim? And Mr. Washington, he
- 24 guesses his speed; was that approximate or is that just him
- 25 guessing as far as you know?

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GLEN GUYETT - CROSS BY PINKERTON

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1 A: I asked him how fast he was going and it was an
2 approximate.

3 Q: And he say he guesses 45 miles per hour, but it wasn't
4 for sure I definitely was going that speed?

5 A: I don't recall the word guess was used.

6 Q: Okay.

7 MR. PINKERTON: Court's indulgence?

8 THE COURT: Yes, sir.

9 BY MR. PINKERTON:

10 Q: Now, a driver is under a duty to look out for
11 pedestrians, correct?

12 A: Yes.

13 Q: And you say that it was dark. So, there is a fair chance
14 he might not have seen the victim in this case?

15 A: It was nighttime.

16 Q: Now, was -- is it expected for a pedestrian to be in the
17 middle in a road at the middle of the night?

18 A: Not normally, not unless they're crossing the road.

19 Q: So, it's not normal for someone to be in the middle of
20 the road in the middle of the night?

21 A: No. I wouldn't call it normal, occasional.

22 Q: So, Mr. Washington should not have expected anybody to be
23 in the middle of the road at that time of night?

24 A: Well, I would -- not so much an expectation, but aware of
25 a possibility.

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GLEN GUYETT - REDIRECT BY HOLFORD

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1 Q: And do you believe the victim here was not -- was at no
2 fault at all of bringing on this collision?

3 A: I believe the victim was in the roadway at the time.

4 Q: Was in the roadway at the time?

5 A: Yes.

6 Q: At night, in dark.

7 MR. PINKERTON: Court's indulgence, Your Honor.

8 THE COURT: Yes, sir.

9 MR. PINKERTON: No further questions, Your Honor.

10 THE COURT: Any redirect

11 REDIRECT EXAMINATION OF GLEN JAMES GUYETT BY MR. HOLFORD:

12 Q: Officer Guyett, when you were speaking to the defendant
13 at the medical center, he had said that he had gone down, down
14 that road one way and then came back; is that correct?

15 A: That is correct.

16 Q: Do you remember if he said he saw anyone as he was going
17 down the first time?

18 A: He said he saw a group of people the first time.

19 Q: Near that Circle K?

20 A: Yes.

21 Q: And then he came back that way?

22 A: Yes.

23 Q: And when he came back is when he struck the victim?

24 A: Yes.

25 Q: No further questions.

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BY THE COURT

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1 BY THE COURT:

2 THE COURT: Anything on those questions?

3 MR. PINKERTON: No, Your Honor.

4 THE COURT: All right. You may step down, sir.

5 MR. GUYETT: Thank you, sir.

6 MR. HOLFORD: Your Honor, I would ask that Officer Guyett
7 be excused from his subpoena although he will stay with us.

8 THE COURT: All right. Any problems with that?

9 MR. PINKERTON: No objection, Your Honor.

10 THE COURT: All right. You're released from your
11 subpoena.

12 All right. Ladies and gentlemen, we're gonna take a 10-
13 minute break or so at this point in time. When you go to your
14 jury room, remember, don't talk about the case and I'll call
15 you back out shortly.

16 Thank you very much.

17 (REPORTER'S NOTE: Jury exits courtroom @ 3:04 P.M.)

18 THE COURT: Anything from the state before we take a
19 break?

20 MR. HOLFORD: No, Your Honor.

21 THE COURT: From the defense?

22 MR. STANKO: Nothing, Your Honor.

23 THE COURT: All right. We'll take a short break about 10
24 minutes or so.

25 MR. HOLFORD: Thank you.

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BY THE COURT

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1 THE COURT: Thank you.

2 RECESS - 3:05 P.M.

3 *****OFF THE RECORD*****

4 (On the Record - 3:19 P.M.)

5 THE COURT: All right. Solicitor, the state ready?

6 MR. HOLFORD: Yes, Your Honor.

7 THE COURT: Defense?

8 MR. STANKO: Yes.

9 THE COURT: All right. Very good. Ask the jury to come
10 in please.

11 (REPORTER'S NOTE: Jury enters courtroom @ 3:21 P.M.)

12 THE COURT: All right, Solicitor, your next witness,
13 please.

14 MR. HOLFORD: Thank you, Your Honor. The state calls
15 Lisa Hill.

16 THE COURT: All right, ma'am, come all the way around,
17 meet the clerk's representative up front here.

18 CLERK: Please raise your right hand and place your left
19 hand on the Bible

20 LISA HILL, HAVING BEEN DULY SWORN

21 TESTIFIES AS FOLLOWS:

22 CLERK: You may be seated. Please state your name and
23 spell it for the Court.

24 MS. HILL: My name is Lisa Hill, L-I-S-A, H-I-L-L.

25 THE COURT: Go ahead, Solicitor.

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LISA HILL - DIRECT BY HOLFORD

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1 DIRECT EXAMINATION OF LISA HILL BY MR. HOLFORD:

2 Q: Officer Hill, where are you currently employed?

3 A: The Conway Police Department.

4 Q: And what's your job description there?

5 A: I'm the evidence custodian.

6 Q: Are you a little sick today?

7 A: I'm sorry, I'm trying to get over being -- yes.

8 Q: How long have you been the evidence custodian?

9 A: Since March of 2015.

10 Q: Okay. So, you were the evidence custodian back October
11 29th and 30th, thereabout, 2016?

12 A: Yes, sir.

13 Q: What's your job as the evidence custodian?

14 A: I'm responsible for the safekeeping and the storage of
15 all the evidence that comes in.

16 Q: Okay. Do you keep records of the evidence that comes in
17 and out?

18 A: Yes, sir. I keep records on the property sheets. I sign
19 it in when they take it out of the lockers.

20 Q: Now, talk to me about the lockers; who has access to
21 those?

22 A: I have access to the -- I'm sorry -- me and my supervisor
23 have access to the lockers. The officers put the evidence in
24 the locker on the front side and I'm only able to open it from
25 the evidence room on the inside.

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LISA HILL - DIRECT BY HOLFORD

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1 Q: Okay. The evidence room, who has access to get back
2 there?

3 A: Myself and my supervisor.

4 Q: Can officers can come back there ever?

5 A: They can come in, but they have to sign in on a log at
6 the door and there's an alarm on the evidence room and there's
7 also cameras in the evidence room.

8 Q: And just tell us, why is there all that procedure
9 involved?

10 A: Just to make sure that there's a smooth chain of custody,
11 that nobody takes anything out that they're not supposed to.
12 And I know where everything is at all times; if someone takes
13 something, it's because I sign it out.

14 Q: Okay. And did you take evidence in in this case?

15 A: Yes, sir.

16 Q: I'm gonna show you what's been entered as State's 90. Do
17 you see your signature on there?

18 A: Yes, sir.

19 Q: And so, what does this property report tell me?

20 A: This is telling me that on October 31st, 2016 at 7
21 o'clock in the morning, I signed in a blood sample that was
22 turned in by Corporal Guyett.

23 Q: Okay. When did he turn that in?

24 A: He dropped it off on October 29th.

25 Q: Okay.

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LISA HILL - DIRECT BY HOLFORD

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1 A: Which shows me that it was probably the weekend and then
2 I took it when I came back to work.

3 Q: Okay. And then, what did you do with it after that
4 according to that log?

5 A: I signed it into evidence, and then I have a refrigerator
6 where I keep all the refrigerated evidence, which is sitting
7 right next to me inside the evidence room. It's locked with
8 everything else.

9 Q: Okay. And what did you do with the blood after that?

10 A: I took it to SLED to be tested, to be processed at SLED.

11 Q: Okay. And then did you ever receive it back?

12 A: Yes, I received it back -- I took it to SLED on November
13 15th of 2016, and I received it back on September 1st of 2017.

14 Q: Is there a submission form that you do when you take
15 evidence to SLED?

16 A: Yes, I have to input all the evidence into something
17 called iLab, which shows them what I'm bringing them and then,
18 when I get to SLED, I sign it in and then it gets date and
19 timestamped and it goes into their SLED evidence lockers and
20 they take it from there.

21 Q: I'm gonna show you what's been marked as State's 92 for
22 ID. This is not been put into evidence yet. Can you identify
23 what that document is?

24 A: Yes, this is my iLab submission receipt that shows the
25 evidence that I submitted on November 10th of 2016, which is a

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LISA HILL - DIRECT BY HOLFORD

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1 blood sample, swabs and swatch of clothing into iLab.

2 Q: Okay. And how do you send it to SLED?

3 A: I drive it to SLED myself.

4 Q: Is that a fair and accurate copy of the submission report
5 you did for the blood in this case?

6 A: Yes, sir.

7 Q: Did you sign it?

8 A: Yes, I have to sign it in order to submit it when I drop
9 it off.

10 MR. HOLFORD: Your Honor, the state would seek to
11 introduce State's 92 in evidence?

12 THE COURT: Any objection?

13 MR. STANKO: No objection, sir.

14 THE COURT: It's in evidence without objection.

15 STATE'S EXHIBIT NUMBER 92

16 ADMITTED INTO EVIDENCE

17 THE COURT: You may proceed.

18 BY MR. HOLFORD:

19 Q: Now, on this form, it has department case number; whose
20 case number is that?

21 A: That's the Conway Police Department's case number.

22 Q: Okay. And then it has your name and your information,
23 correct?

24 A: Correct.

25 Q: And ---

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LISA HILL - DIRECT BY HOLFORD

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1 A: And that's -- the reason that is so, so when the
2 completed reports come back they go to me, and once all the
3 completed reports come back, I disseminate them out to all the
4 officers.

5 Q: And then what's this L16-1557?

6 A: That's SLED's own lab number. That's how they identify
7 things. Instead of going by each department's case number,
8 they use their own lab numbers.

9 Q: So, you've assigned a case number to something and then
10 they assign their own case number?

11 A: Correct.

12 Q: Okay. And they're connected; is that right?

13 A: Uh-huh, (affirmative response).

14 STATE'S EXHIBIT NUMBER 93

15 MARKED FOR IDENTIFICATION

16 Q: I'm gonna show you what's been marked as State's Exhibit
17 93 for ID; right now it's in a manila envelope. Can you
18 identify what just State's 93 is, not inside yet?

19 A: Yeah, this is the blood that was turned in.

20 Q: And did you package it like that?

21 A: Yes.

22 STATE'S EXHIBIT NUMBER 94

23 MARKED FOR IDENTIFICATION

24 Q: Okay. Now, I know this seems tedious, but inside that
25 manila envelope, I'm gonna hand you what was been marked as

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- 1 State's Exhibit 94. Can you identify what this is?
- 2 A: Yes, this is the blood sample that was turned in.
- 3 Q: All right. What kind of packaging is it in?
- 4 A: It comes in a sealed -- when I receive it out of the
- 5 evidence refrigerator, it's in a box that's been sealed at the
- 6 hospital and the seal was still intact when I take it to SLED
- 7 and this is how it comes back to me.
- 8 Q: Okay. So, this has been returned to you?
- 9 A: Correct.
- 10 Q: Would you take any blood samples to SLED if they weren't
- 11 sealed in a box?
- 12 A: No.
- 13 Q: Now, we don't see a box here now, right?
- 14 A: No.
- 15 Q: Okay. But when you dropped these blood samples off ---
- 16 A: It was -- it was in the box with the seal.
- 17 Q: Okay. And how is it returned to you; what are you
- 18 actually holding?
- 19 A: Well, these are the vials of blood. When I get there, I
- 20 drop off the box and when it comes back to me, it's in this
- 21 bag right here.
- 22 Q: Okay. That bag, is that bag opened right now?
- 23 A: No, it's still heat-sealed and it has the signature on
- 24 it.
- 25 Q: Okay. And what's that -- is that your signature?

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LISA HILL - DIRECT BY HOLFORD

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1 A: Correct.

2 Q: Okay. And so, you have not opened this bag, have you?

3 A: No, when I drop it off at SLED in the entire box, I heat
4 seal it myself inside of that bag. That's why my signature is
5 -- my initials are on it.

6 Q: Now, is there a way to make sure that the blood that you
7 took from evidence that was collected that was sent to SLED is
8 that there; are there numbers associated on this bag?

9 A: There is the lab number that SLED assigned that was also
10 just like the one that was on that receipt and then our case
11 number and Conway Police Department is also on there.

12 Q: Now, talk to me about this bag. If I opened it up and
13 got inside here, could I reseal it so I wouldn't be able to
14 tell?

15 A: No, because it would break my initials and my date on
16 there. The fact that it's still intact where I put my
17 initials and the date shows that has not been opened.

18 Q: Okay. And that's just for ID at this point. I'm going
19 to put -- was that your involvement with this case, collecting
20 and keeping evidence?

21 A: Correct, I collect it, I take it to SLED to be processed
22 and then when it comes back to me, I sign it back in.

23 Q: Okay. And that's what's shown on that evidence report as
24 well?

25 A: Correct.

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LISA HILL - CROSS BY STANKO

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1 Q: No further questions at this time.

2 THE COURT: Cross examination?

3 MR. STANKO: Thank you, Your Honor.

4 CROSS EXAMINATION OF LISA HILL BY MR. STANKO:

5 Q: Just briefly, you said that Officer, I believe it was
6 Guyett, would have dropped that off in an evidence drawer?

7 A: Evidence refrigerator.

8 Q: Okay. All right. So, when he dropped it off, it
9 immediately went into a fridge?

10 A: Correct. I mean, I take it out -- according to when he
11 put on the property sheet that it was in the fridge.

12 Q: Okay. All right. Thank you.

13 MR. STANKO: Nothing further, Your Honor.

14 THE COURT: Anything on those questions?

15 MR. HOLFORD: No, Your Honor.

16 THE COURT: All right. You wish the witness to be
17 excused?

18 MR. HOLFORD: Yes, Your Honor.

19 THE COURT: Any objection?

20 MR. STANKO: No, sir.

21 THE COURT: All right, ma'am, you're released from your
22 subpoena, you may go back to your regular duties.

23 MS. HILL: Thank you.

24 THE COURT: All right, Solicitor, your next witness,
25 please.

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REBECCA ROWE - DIRECT BY WALKER

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1 MS. WALKER: Your Honor, the state calls Rebecca Rowe.

2 THE COURT: Come all the way up front, please, ma'am.

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

5 REBECCA ROWE, HAVING BEEN DULY SWORN

6 TESTIFIES AS FOLLOWS:

7 CLERK: You may be seated. Please state your name and
8 spell your last name for the Court.

9 MR. ROWE: Rebecca Rowe, R-O-W-E.

10 THE COURT: Go ahead.

11 DIRECT EXAMINATION OF REBECCA ROWE BY MS. WALKER:

12 Q: Hey there, Ms. Rowe. How are you doing?

13 A: I'm good; how are you?

14 Q: Good. So, where do you work?

15 A: I work at Conway Medical Center as a registered nurse
16 right now.

17 Q: Okay. And how long have you been a registered nurse?

18 A: Just a year.

19 Q: All right. How long have you worked at Conway Medical
20 Center?

21 A: Almost six years.

22 Q: Okay. So, were you working Conway Medical Center back in
23 October of 2016?

24 A: I was. At the time, I was a phlebotomist.

25 Q: Okay. And did you maintain a certain schedule; night

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REBECCA ROWE - DIRECT BY WALKER

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1 shift, day shift?
2 A: Night shift.
3 Q: Night shift?
4 A: Yeah.
5 Q: Okay. Are you currently working night shift?
6 A: I am.
7 Q: All right. So, back October 2016, you were working as a
8 phlebotomist, right?
9 A: Uh-huh, (affirmative response).
10 Q: And what sort of training did you have to have in order
11 to be a phlebotomist?
12 A: You go to school for about a year. You get nationally
13 certified to be a phlebotomist and then I started working at
14 Conway.
15 Q: Okay. And, well, tell me a little bit, what does a
16 phlebotomist do?
17 A: Basically, you draw blood.
18 Q: Okay.
19 A: There's a little -- there's a few other things you do,
20 processing specimens in the lab, but mostly my main job was
21 drawing blood.
22 Q: Okay. Drawing blood from patients?
23 A: Patients, yes, yes.
24 Q: Okay. And additionally, did Conway Medical Center have a
25 certain protocol for drawing blood in situations where law

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REBECCA ROWE - DIRECT BY WALKER

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1 enforcement was involved?

2 A: Yes, we were trained to do SLED legal collections.

3 Q: Okay. So, you said that you were trained and received
4 training for about a year in order to become a phlebotomist?

5 A: Yes.

6 Q: Okay. What other credentials or training did you have
7 for that?

8 A: It's really just school, and then I was working for about
9 three years at the time ---

10 Q: Okay.

11 A: --- doing legal collections, drawing blood on patients,
12 processing specimens, stuff like that.

13 Q: Okay. All right.

14 MS. WALKER: Your Honor, at this time, the state would
15 like to ask that Ms. Rowe be qualified as an expert in the
16 sole purpose of being a phlebotomist and drawing blood?

17 THE COURT: All right. Does the defense wish to voir
18 dire the witness or challenge the qualifications?

19 MR. STANKO: Your honor, under those limited parameters,
20 we have no objection to her being qualified as an expert.

21 THE COURT: All right. So, she's qualified as an expert
22 in that field and you may proceed.

23 MS. WALKER: Thank you, Your Honor.

24 BY MS. WALKER:

25 Q: So, Ms. Rowe, back on October 29th, very early morning

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REBECCA ROWE - DIRECT BY WALKER

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1 hours, 2016, did you have an occasion to be presented with the
2 defendant in this case, Mr. Washington?

3 A: I did. He was brought in by police.

4 Q: Okay. And did the police ask you or other personnel to
5 do a blood draw on Mr. Washington?

6 A: On night shift, I was the only one trained to do blood
7 draws, so they called me to come down and do it for them.

8 Q: Okay. And had they indicated that there was a search
9 warrant for this?

10 A: Yes, they showed me the search warrant.

11 Q: Okay. And so these SLED blood collection kits, is that
12 something that you all maintain at the hospital?

13 A: No, they are actually brought in by law enforcement.

14 Q: Okay.

15 A: A sealed kit.

16 Q: Okay. And so, in this case, did the officers present to
17 you with one of those little kits?

18 A: Yes.

19 Q: Okay. If, if there was anything wrong with the vials or
20 the seals on that kit, would you have used it?

21 A: No, you have to throw them out.

22 Q: Okay. All right. I'd like to show you what -- well,
23 what's been marked as State's Exhibit 78?

24 A: Uh-huh, (affirmative response).

25 Q: What is that?

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REBECCA ROWE - DIRECT BY WALKER

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- 1 A: This is the form we use just to process, it has the time
2 and date of the test, who performed the test, which was me, it
3 has the officer's name and sometimes, the person -- the
4 subject will also saw this form.
- 5 Q: Okay. And so, what is the date that is on this form?
- 6 A: 10/29/16 at 03:46.
- 7 Q: Okay. So, is that 3:46 in the morning?
- 8 A: It is.
- 9 Q: And is that something that you wrote?
- 10 A: Yes.
- 11 Q: That date and time?
- 12 A: Yes.
- 13 Q: Okay. And do you see somewhere on here your signature?
- 14 A: Yes.
- 15 Q: Okay. And so, what does this signature signify?
- 16 A: Just that I'm the one that did the collection and handled
17 the specimens.
- 18 Q: Okay. All right. And so, once you draw the blood ---
- 19 A: Uh-huh, (affirmative response).
- 20 Q: --- what is it that you do with the specimen?
- 21 A: So, the kits come with little seals and I sign the seal
22 and the officer also signs the seal and we date them. And
23 then once I collect the blood, I close the blood with the seal
24 on top.
- 25 Q: Okay. And closing it with the seal on top, is that

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REBECCA ROWE - DIRECT BY WALKER

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1 something you do or the law enforcement?

2 A: Yes, I do it.

3 Q: Okay.

4 A: And then I place it back in the kit.

5 Q: Okay. All right. And is that something that you did in
6 this case?

7 A: Yes.

8 Q: Okay.

9 MS. WALKER: I beg the Court's indulgence for a minute.
10 Your Honor, I'd like to show the witness State's Exhibit 94
11 for identification purposes.

12 THE COURT: Yes, ma'am.

13 BY MS. WALKER:

14 Q: Ms. Rowe, I'd like you to take a look at what has been
15 marked for identification purposes only, State's 94. Can you
16 tell me whether your signature is on those vials of blood?

17 A: It is; it's on both of them.

18 Q: Okay.

19 A: Yes.

20 Q: And is that the typical procedure that you do in this
21 situation?

22 A: Yeah, that's how we seal the labels -- that's how we seal
23 the specimens with these labels right here.

24 Q: Okay. I'll take that back.

25 MS. WALKER: I beg the Court's indulgence. I don't have

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REBECCA ROWE - CROSS BY STANKO

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1 any other questions.

2 BY MS. WALKER:

3 Q: If you'd answer anything the defense has.

4 A: Okay.

5 THE COURT: Cross examination?

6 MR. STANKO: Thank you, Your Honor.

7 CROSS EXAMINATION OF REBECCA ROWE BY MR. STANKO:

8 Q: You said police showed you a search warrant in this,
9 correct?

10 A: Yes.

11 Q: They did. Okay. What procedure do you typically use to
12 draw blood?

13 A: Basically, they come in with the kit. There's a prep
14 pad, an alcohol prep pad in the kit. I clean the spot and I
15 just draw the blood, seal it, and I put it back into the kit.

16 Q: Okay.

17 MR. STANKO: Your Honor, nothing further.

18 THE COURT: Thank you very much.

19 Any redirect?

20 MS. WALKER: Yes, sir, Your Honor.

21 REDIRECT EXAMINATION OF REBECCA ROWE BY MS. WALKER:

22 Q: Very briefly, Ms. Rowe, would that alcohol prep pad, would
23 that have any adverse effect?

24 A: No, it was actually an iodine prep pad, so it's free of
25 alcohol.

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REBECCA ROWE - REDIRECT BY WALKER

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1 Q: Okay. All right. Thank you.

2 THE COURT: Anything on that question?

3 MR. STANKO: Nothing further, sir.

4 THE COURT: Do you wish the witness to be excused?

5 MS. WALKER: Yes, Your Honor, we do.

6 THE COURT: Any objection?

7 MR. STANKO: No, Your Honor.

8 THE COURT: Ma'am, you are released from your subpoena,
9 you may go back to your regular duties.

10 MS. ROWE: Thank you.

11 THE COURT: Next witness, please?

12 MS. WALKER: Dale Long.

13 THE COURT: All right, sir, if you'd please come all the
14 way around up front and meet the clerk's representative up
15 here, sir.

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

18 DALE LONG, HAVING BEEN DULY SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: You may be seated. Please state your name and
21 spell your last name for the Court.

22 MR. LONG: Dale Long, L-O-N-G.

23 THE COURT: Go ahead, Solicitor.

24 MS. WALKER: Thank you, Your Honor.

25 DIRECT EXAMINATION OF DALE LONG BY MS. WALKER:

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DALE LONG - DIRECT BY WALKER

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- 1 Q: How you doing, Chief Long?
- 2 A: I'm doing well; thank you.
- 3 Q: Good. So, where are you employed currently?
- 4 A: Conway Police Department.
- 5 Q: And how long have you been there?
- 6 A: Almost nine years now.
- 7 Q: Okay. And are you currently the chief of that police
- 8 department?
- 9 A: I am.
- 10 Q: Okay. And what were you -- what was your title and your
- 11 role back in 2016?
- 12 A: I was the detective sergeant.
- 13 Q: Okay. And so, did you have an occasion to be involved in
- 14 the investigation for the case we're here for today against
- 15 Mr. Edward Washington?
- 16 A: I did.
- 17 Q: Okay. Did you respond to the scene?
- 18 A: I did not.
- 19 Q: Okay. Did ---
- 20 A: Not initially.
- 21 Q: Okay.
- 22 A: I did go later when we were doing some reconstruction,
- 23 but not initially.
- 24 Q: Okay. And when you went later, was that with some
- 25 members of highway patrol?

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DALE LONG - DIRECT BY WALKER

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1 A: Yes.

2 Q: Okay. And in fact, did you obtain a search warrant at
3 one point?

4 A: I did.

5 Q: Okay. And what was the purpose of the search warrant for
6 what objects?

7 A: The subjects vehicle had been impounded and the South
8 Carolina Highway Patrol wanted to download information off of
9 the, for lack of a better word, the black box, so to speak, to
10 get data from it. So, I obtained -- I prepared and obtained a
11 search warrant for that data to be downloaded and took it to
12 the scene where the car was impounded and they did complete
13 their forensic download, and I left a copy of that warrant in
14 the vehicle.

15 Q: Okay. I'd like to show you what's been marked for
16 identification purposes State's 95. What is that when you get
17 a chance?

18 A: That is the copy of the search warrant that I obtained.
19 It has my signature as the affiant and also on the return.

20 Q: Okay. Could you explain just a little bit what the
21 return is?

22 A: The return are the items that we collected, seized, or
23 were able to take possession of at some point in time.

24 Q: Okay. And so, you signed for -- as both the affiant and
25 then also presented the return?

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DALE LONG - DIRECT BY WALKER

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1 A: Yes.

2 Q: Okay.

3 MS. WALKER: Your Honor, the state would like to admit
4 into evidence, State's 95?

5 THE COURT: Any objection?

6 MR. STANKO: No objection, sir.

7 THE COURT: It's into evidence without objection.

8 STATE'S EXHIBIT NUMBER 95

9 ADMITTED INTO EVIDENCE

10 THE COURT: You may proceed.

11 MS. WALKER: Thank you, Your Honor.

12 BY MS. WALKER:

13 Q: All right. Next, I would like to show you what's been
14 marked State's 40 through 76.

15 MS. WALKER: I'm gonna approach real quick.

16 THE COURT: Yes, ma'am.

17 BY MS. WALKER:

18 Q: For identification purposes, they've been marked State's
19 Exhibits 40 through 76. And, so you said that you were with
20 members of highway patrol when they were -- well, let me ask,
21 Were you with members of Highway Patrol when they were
22 executing that search warrant?

23 A: I was.

24 Q: Okay. And as part of that exercise, did you guys take
25 photographs of the vehicle?

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DALE LONG - DIRECT BY WALKER

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1 A: They processed and took photographs, 360 view, close-ups,
2 distance photos. I was there when that was being done, so I
3 did observe them taking photographs of the car.

4 Q: Okay. So, you observed the car and the condition that it
5 was in the next day?

6 A: I did, and I did collect some of the evidence from it,
7 some of what's listed on that search warrant return, some of
8 the things that I actually collected from there, some swabs
9 and things like that. But I was there when these photos were
10 taken as well.

11 Q: Okay. Well, even though it's tedious, we're gonna go
12 through picture by picture just to make sure that they are the
13 ones that you remember seeing if that's all right with Your
14 Honor?

15 THE COURT: Yes, ma'am.

16 Q: All right. So, State's Exhibit for identification
17 purposes 40; is that a reflection of the vehicle?

18 A: It is.

19 Q: Okay. And 41?

20 A: It is.

21 Q: 42?

22 A: It is.

23 Q: 43?

24 A: It is.

25 Q: 44?

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1 A: It is.
2 Q: 45?
3 A: It is.
4 Q: 46?
5 A: It is, too.
6 Q: 47?
7 A: Yes.
8 Q: 48?
9 A: Yes.
10 Q: 49?
11 A: Yes.
12 Q: 50?
13 A: It is.
14 Q: 51?
15 A: Yes.
16 Q: 52?
17 A: Yes.
18 Q: 53?
19 A: It is.
20 Q: 54?
21 A: Yes.
22 Q: 55?
23 A: Yes.
24 Q: 56?
25 A: Yes.

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1 Q: 57?
2 A: It is.
3 Q: 58?
4 A: It is, too.
5 Q: 59?
6 A: Yes.
7 Q: 60?
8 A: Yes.
9 Q: 61?
10 A: It is.
11 Q: 62?
12 A: It is.
13 Q: 63?
14 A: Yes.
15 Q: 64?
16 A: Yes.
17 Q: 65?
18 A: Yes.
19 Q: 66?
20 A: Yes.
21 Q: 67?
22 A: Yes.
23 Q: 68?
24 A: It is.
25 Q: 69?

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1 A: Yes, it is.
2 Q: 70?
3 A: It is.
4 Q: 71?
5 A: Yes.
6 Q: 72?
7 A: Yes.
8 Q: 73?
9 A: Yes.
10 Q: 74?
11 A: Yes.
12 Q: 75?
13 A: Yes.
14 Q: 76?
15 A: It is.
16 Q: So, all of those photos, are they a fair and accurate
17 representation of what you saw that day in the car?
18 A: They are.
19 Q: Okay. And they fairly and accurately depict all of the
20 different bits of damage that was done to the car?
21 A: To the best that we could observe, yes.
22 Q: Okay.
23 MS. WALKER: Your Honor, the state would move to put all
24 those items into evidence, State's 46 through 70 ---
25 THE COURT: 40 through 76?

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1 MS. WALKER: 40 through 76; yes, sir.

2 THE COURT: All right. Any objection to that?

3 MR. STANKO: No objection as to all the pictures, sir.

4 THE COURT: All right. They're in evidence without
5 objection. You may proceed.

6 STATE'S EXHIBIT NUMBER 40-76

7 ADMITTED INTO EVIDENCE

8 THE COURT: You may proceed.

9 MS. WALKER: Okay.

10 BY MS. WALKER:

11 Q: So, beyond that, did you have any other involvement in
12 this case whatsoever?

13 A: No.

14 Q: Okay.

15 MS. WALKER: I beg the Court's indulgence. And, Your
16 Honor, permission to publish?

17 THE COURT: You may do so.

18 BY MS. WALKER:

19 Q: I don't have any other questions right now. Please
20 answer anything the defense may have.

21 THE COURT: Cross examination?

22 MR. STANKO: Your Honor, nothing for this witness.

23 THE COURT: All right. Do you wish the witness to be
24 excused?

25 MS. WALKER: Yes, Your Honor, we do.

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JEFFREY WAYNE JORDAN - DIRECT BY WALKER

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1 THE COURT: Any objection?

2 MR. STANKO: No objection, sir.

3 THE COURT: All right, sir, you're released to go back to
4 your regular duties.

5 MR. LONG: Thank you, sir.

6 THE COURT: Yes, sir.

7 MS. WALKER: Your Honor ---

8 THE COURT: Y'all need to come talk to me?

9 MS. WALKER: Sure, yes, sir.

10 THE COURT: Counsel?

11 (REPORTER'S NOTE: Bench conference is held off the record in
12 the presence of but outside the hearing of the jury.)

13 MS. WALKER: Jeff Jordan.

14 THE COURT: All right, sir. Just come all the way around
15 up front and meet the clerk's representative, please.

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

18 JEFFREY WAYNE JORDAN, HAVING BEEN

19 DULY SWORN TESTIFIES AS FOLLOWS:

20 CLERK: You may be seated. Please state your name and
21 spell your last name for the Court.

22 MR. JORDAN: Jeffrey Wayne Jordan, J-O-R-D-A-N.

23 THE COURT: Go ahead, Solicitor.

24 DIRECT EXAMINATION OF JEFFREY WAYNE JORDAN BY MS. WALKER:

25 Q: Sir, are you currently a corporal?

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- 1 A: Yes, ma'am.
- 2 Q: Okay. So, Corporal Jordan, back in October of 2016, what
3 was your role with Conway Police Department?
- 4 A: I was a corporal with the, I think it was Delta Team.
- 5 Q: Okay.
- 6 A: I was assistant supervisor on the shift.
- 7 Q: All right. And so, what would your average day and
8 duties entail; what would you do?
- 9 A: Answer calls for service. I had guys under me that I had
10 to watch over and make sure they were doing what they were
11 supposed to. I would go to calls with them, answer calls with
12 them and things like that.
- 13 Q: Okay. And in this case, on October 29th, 2016, early
14 morning hours, did you get a call out to go to the Circle K
15 there on Highway 544?
- 16 A: Yes, ma'am.
- 17 Q: Okay. And explain to me why you were called out there?
- 18 A: We were called out for a vehicle accident involving a
19 pedestrian versus a vehicle. We -- it was right -- it was on
20 the verge -- line of our jurisdiction and another
21 jurisdiction, so they determined that it was ours. So, we
22 responded the scene.
- 23 Q: Okay. And so, what did you do when you first got to the
24 scene?
- 25 A: Upon arrival to the scene, at first it's -- when you get

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1 on scene it was kind of chaotic. We had a lot of people on
2 scene, a lot of college students coming across from some
3 apartments over next-door. First of all, we got on scene and
4 tried to secure the scene, make sure people were in safe
5 positions, not out in the roadway, and then we started our
6 investigation on the incident.

7 Q: Okay. At some point, were you put into contact with the
8 defendant in this case, Mr. Edward Washington?

9 A: Yes, ma'am.

10 Q: Okay. And at what point was that?

11 A: The DNR officer had him in his vehicle and we were gonna
12 -- since it was in our jurisdiction, we were gonna take
13 custody of him. I walked to the vehicle with the DNR officer,
14 took him. We got him out of the vehicle, ended up changing my
15 handcuffs over. DNR had his handcuffs on him. So, I took my
16 handcuffs and placed them on him. Then we did a pat-down
17 search on him for weapons at that time.

18 Q: Okay. And when you were conducting the pat-down search,
19 did you find anything abnormal on his person?

20 A: Yes, ma'am, he had a GPS tracking device on his ankle.

21 Q: Okay. And when you made contact with the defendant, did
22 you make any particular observations about his, his person,
23 the way he was coming across to you?

24 A: He appeared to be intoxicated. You could smell alcohol
25 coming from his person. He was also complaining of an injury

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1 to his ankle when we got him out the vehicle.

2 Q: Okay. And was the complaint of the ankle injury
3 something that started right when you engaged with him?

4 A: Yes, ma'am.

5 Q: Okay.

6 A: When we got him out of the truck, he complained of the
7 injury and let me know that it was -- he had it.

8 Q: Okay. And did -- in your interaction with him, did it
9 appear to you at all that he was in any sort of pain?

10 A: Yes, ma'am. You could tell while he was walking that he
11 was kind of favoring that ankle, that he was -- you could see
12 on his face that he in obvious pain.

13 Q: Okay. And now, approximately how long from the time you
14 took possession with the DNR officer of the defendant to when
15 you transferred him over to the next officer?

16 A: It was probably maybe a minute in time. I took him out,
17 did the pat-down, then I just handed him right off to Officer
18 Guyett, who was on scene.

19 Q: Okay. And so, did you arrest the defendant?

20 A: No, ma'am.

21 Q: Okay. So, once you transferred custody of Mr. Washington
22 to Officer Guyett, what did you do next?

23 A: I then started trying to gather statements from people on
24 scene. I tried to secure the scene a little bit better. We
25 had a lot of people out near the road. We asked them to step

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1 up closer to the store. Then I began helping with statements
2 of getting different statements, handing people statement
3 forms, and then I began to mark the scene. We have orange
4 paint. I took the orange paint and started marking the scene
5 of different debris, things that I saw that I figured -- felt
6 was important to the case.

7 Q: Okay. And were you with Officer Guyett when he initially
8 transported Mr. Washington to the hospital?

9 A: When he was first transported to the hospital, I stayed
10 on the scene and did the -- started doing the -- helping with
11 marking the scene. Detective Scott got on scene and I helped
12 him as he was collecting evidence and photographing evidence,
13 I was there with him kind of shadowing him, helping him,
14 whatever he needed.

15 Q: Okay. But at some point, did you go to the hospital?

16 A: Yes, ma'am.

17 Q: Okay. And when you got to the hospital, did you make
18 contact with Officer Guyett?

19 A: Yes, ma'am.

20 Q: Okay. And were you present with Officer Guyett when the
21 implied consent was read to Mr. Washington?

22 A: Yes, ma'am; I was.

23 Q: Okay. And did you have a body cam activated at that
24 time?

25 A: Yes, ma'am; I did.

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1 Q: Okay. So, do we have body cam footage of the implied
2 consent being read to Mr. Washington, if we wanted to see it?

3 A: Yes, ma'am.

4 Q: Okay. And additionally, while you were at the hospital,
5 were you made aware that a search warrant had been obtained
6 for a blood draw from ---

7 A: Yes, ma'am.

8 Q: Okay. And were you present or in the general vicinity
9 when Ms. Rowe, the nurse, took his blood?

10 A: Yes, ma'am.

11 Q: Okay.

12 MS. WALKER: I beg the Court's indulgence.

13 THE COURT: Yes, ma'am.

14 BY MS. WALKER:

15 Q: Just double checking. Is there anything else that you
16 did in your investigation in helping with this case that you
17 recall?

18 A: I actually drew up a -- a little field sketch of the
19 scene. After I marked it, I did a field sketch of the scene,
20 drew it up.

21 Q: Okay. I'm gonna grab that and show it to you real quick.

22 MS. WALKER: I beg the Court's indulgence.

23 THE COURT: Yes, ma'am.

24 MS. WALKER: Your Honor, I would like to show the witness
25 what's been marked for identification purposes, State's

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1 Exhibit 96?

2 THE COURT: You may do so.

3 BY MS. WALKER:

4 Q: Is that the one?

5 A: Yes, ma'am.

6 Q: Okay. And is that the same one that you did that day?

7 A: Yes, ma'am. It's a -- I can't tell if it's a copy or --
8 but it's -- it's my drawing.

9 Q: Right. Okay. Is it done to scale?

10 A: No, ma'am.

11 Q: Is it just kind of your observation?

12 A: It's just a quick field sketch of general areas where
13 things were.

14 Q: Okay. All right.

15 MS. WALKER: Your Honor, I would move to place State's 96
16 into evidence.

17 THE COURT: Any objection?

18 MR. HOLFORD: No objection, sir.

19 THE COURT: It's in evidence without objection.

20 STATE'S EXHIBIT NUMBER 96

21 ADMITTED INTO EVIDENCE

22 MS. WALKER: Thank you, sir. Permission to publish?

23 THE COURT: You may do so.

24 BY MS. WALKER:

25 Q: All right. I don't have any other questions but please

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1 answer anything the defense may have.

2 A: Yes, ma'am.

3 THE COURT: Cross examination?

4 MR. STANKO: Thank you, Your Honor.

5 CROSS EXAMINATION OF GLEN GUYETT BY MR. STANKO:

6 Q: Just briefly. You were the one who was out there
7 documenting the scene shortly after the -- the collision,
8 correct?

9 A: Yes, ma'am, I helped -- I marked it and then I helped
10 Detective Scott with processing.

11 Q: I got you. But you were the only one who, who created a
12 sketch, right?

13 A: Yes, sir.

14 Q: Okay. All right. And the roadway where this happened,
15 it's five lanes across? You have two going one way, two going
16 the other and then a center median?

17 A: Yes, sir.

18 Q: Okay. A raised median or is that just a turn lane?

19 A: It's just like a little turn lane, not a raised median.

20 Q: All right. Are there any -- are there any street lights
21 out there?

22 A: I think -- I can't remember at the time what ---

23 Q: And that's fine. Obviously, there's a gas station right
24 there, there's that Circle K?

25 A: Yes, sir.

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1 Q: And that -- that parking lot is well lit there?

2 A: Yes, sir.

3 Q: But that's, from your recollection, is that the only
4 significant lighting in that whole area there?

5 A: It's been several years and I can't remember what the
6 lighting was at that time.

7 Q: Understood. You, you drew in that there's a sidewalk
8 directly in front of the store running that length of 544
9 there?

10 A: Yes, sir.

11 Q: Okay. All right. And there is a -- there's a traffic
12 light just south of that -- of that gas station. Do you
13 recall how far back that traffic light is?

14 A: Maybe 50 yards, 75 yards back.

15 Q: Okay. All right. So, about 150 to 200 feet, something
16 like that?

17 A: Uh-huh, (affirmative response).

18 Q: Okay. Do you recall if there's a crosswalk there at
19 that, that traffic light?

20 A: I think there is one there. There is one now; I'm not
21 sure at that time, but there is one now there.

22 Q: Okay. All right. Very good.

23 MR. STANKO: Your Honor, nothing further from this
24 witness.

25 THE COURT: Redirect?

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BY THE COURT

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1 MS. WALKER: Nothing, Your Honor.

2 THE COURT: All right. Do you wish the witness to be
3 excused?

4 MS. WALKER: We do.

5 THE COURT: Any objection?

6 MR. STANKO: No objection, sir.

7 THE COURT: All right, sir, you're released from your
8 subpoena, you may go back to your regular duties.

9 MS. WALKER: Your Honor, may we approach for just a
10 moment?

11 THE COURT: Certainly.

12 (REPORTER'S NOTE: Bench conference is held off the record in
13 the presence of but outside the hearing of the jury.)

14 BY THE COURT:

15 THE COURT: All right. Ladies and gentlemen, if you'd go
16 to your jury room for about five minutes and then we'll resume
17 with the next witness. So, please go to your jury room.

18 If you'll just leave the exhibits right there and we'll
19 collect them up.

20 Thank you.

21 (REPORTER'S NOTE: Jury exits courtroom @ 4:02 P.M.)

22 THE COURT: And in the interim while we're taking a
23 break, maybe you can confirm that Dr. Proctor is actually on
24 his way. All right?

25 MS. WALKER: Yes, sir.

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BY THE COURT

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1 THE COURT: All right. Let's take a short break. Thank
2 you very much.

3 **RECESS - 4:03 P.M.**

4 *****OFF THE RECORD*****

5 **(On the Record - 4:18 P.M.)**

6 THE COURT: All right. Solicitor, the state ready?

7 MS. WALKER: Yes, Your Honor.

8 THE COURT: Defense?

9 MR. STANKO: Yes, Your Honor.

10 THE COURT: All right. Very good.

11 (REPORTER'S NOTE: Jury enters courtroom @ 4:19 P.M.)

12 THE COURT: All right, Solicitor, your next witness
13 please.

14 MS. WALKER: Yes, Your Honor, Dr. Proctor.

15 THE COURT: All right, sir. If you'd please come forward
16 and meet the Clerk's representative, sir.

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

19 EDWARD PROCTOR, JR., HAVING BEEN DULY
20 SWORN TESTIFIES AS FOLLOWS:

21 CLERK: you may be seated. Please state your name and
22 spell your last name for the Court.

23 DR. PROCTOR: Yes, ma'am. I'm Edward Proctor, Jr., and
24 that's P-R-O-C-T-O-R.

25 DIRECT EXAMINATION OF EDWARD PROCTOR, JR. BY MS. WALKER:

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EDWARD PROCTOR, JR. - DIRECT BY WALKER

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1 Q: Dr. Proctor, where do you work?

2 A: I am pathologist at Grand Strand Hospital in Myrtle
3 Beach.

4 Q: Okay. And a pathologist?

5 A: That's correct.

6 Q: What does that mean?

7 A: Well, a pathologist is a physician engaged in the study
8 of the basis of disease. We examine specimens, determine what
9 it is. And as another part of my duties, I do forensic
10 pathology, which is a medicolegal investigation of death.

11 Q: Okay. Forensic pathology, how long have you been doing
12 that?

13 A: Approximately, 30 years.

14 Q: All right. So, as part of your duties as a forensic
15 pathologist, do you perform autopsies?

16 A: Yes, I do.

17 Q: Okay. And when do you perform autopsies?

18 A: I perform a forensic autopsy when I receive a request
19 from the office of the coroner.

20 Q: Okay. And I know this is a difficult question given
21 you've been doing it for 30-plus years, but approximately how
22 many autopsies do you think you've done?

23 A: Probably in the neighborhood of about 4 or 5,000.

24 Q: Okay.

25 MS. WALKER: Your Honor, the state would like to move to

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EDWARD PROCTOR, JR. - DIRECT BY WALKER

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1 have Dr. Proctor qualified as an expert for the purposes of
2 forensic pathology.

3 THE COURT: Do you wish to voir dire the witness or
4 challenge his qualifications?

5 MR. PINKERTON: No objection, Your Honor.

6 THE COURT: All right. Dr. Proctor is qualified to give
7 his opinion in the field of pathology and his forensic
8 examination.

9 You may proceed.

10 MS. WALKER: Thank you, Your Honor.

11 BY MS. WALKER:

12 Q: So, Dr. Proctor, did you have an occasion to perform an
13 autopsy on the victim in this case, Mr. Ryan Bielawa?

14 A: Yes, ma'am; I did.

15 STATE'S EXHIBIT NUMBER 97

16 MARKED FOR IDENTIFICATION

17 Q: Okay. Let me hand you what's been for identification
18 purposes, State's Exhibit 97. Just your report. Can you tell
19 me what that is?

20 A: This is a copy of my examination.

21 Q: Okay. And do you create one of these results forms for
22 every autopsy you perform?

23 A: I do.

24 Q: Okay. And based off of your assessment of the victim in
25 this case, what was determined to be his age?

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EDWARD PROCTOR, JR. - DIRECT BY WALKER

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- 1 A: I was told by the coroner that he was 19.
- 2 Q: Okay. And what about his height?
- 3 A: We measured the length to be 76 inches.
- 4 Q: And so he would be approximately how tall?
- 5 A: That's approximately 6 feet 4 inches.
- 6 Q: Okay. And how much did he weigh?
- 7 A: We estimated approximately 225, 200 to 225 pounds.
- 8 Q: Okay. So, you probably say a relatively tall human?
- 9 A: He's a tall individual, yes.
- 10 Q: Okay. And so, throughout the course of your examination,
- 11 what sort of injuries did you identify?
- 12 A: The, the most significant injuries were what we describe
- 13 as a diffuse brain injury where there's swelling, edema of the
- 14 brain, blood within the cranial cavity and blood in within the
- 15 tissue of the brain. Additional injuries included multiple
- 16 rib fractures, lacerations of the posterior surfaces of the
- 17 lungs and a compound fracture of the right leg. There were
- 18 also a lot of contusions and lacerations of the upper body
- 19 area.
- 20 Q: So, what is a contusion?
- 21 A: A contusion is a bruise.
- 22 Q: A bruise?
- 23 A: Uh-huh, (affirmative response).
- 24 Q: Okay. And would a bruise form and still be evident after
- 25 someone dies?

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EDWARD PROCTOR, JR. - DIRECT BY WALKER

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1 A: A bruise can occur as the result of an impact, an impact
2 resulting in death. It can progress somewhat, yes.

3 Q: Okay. But the evidence of it would still remain at the
4 time an autopsy?

5 A: Yes, uh-huh, (affirmative response).

6 Q: Okay. And you mentioned that there were lacerations to
7 the lungs?

8 A: That is correct.

9 Q: Okay. And so, can you pinpoint, which, if any of these
10 injuries, were the result of Ryan's death?

11 A: Well, the most -- all of these were contributory, but the
12 most significant was what I described as the diffuse brain
13 injury, which is the swelling of the brain, hemorrhage in the
14 cavity around the brain, as well as hemorrhage into the brain
15 itself. That, that commonly occurs as a result of severe
16 impact.

17 Q: And did you make a particular finding in this case that
18 Ryan's death was caused by the impact of the car?

19 A: That is correct. Well, I said -- I was told he was
20 struck by a vehicle and the injuries are consistent with being
21 struck by a vehicle.

22 Q: All right.

23 MS. WALKER: I beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 BY MS. WALKER:

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EDWARD PROCTOR, JR. - DIRECT BY WALKER

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- 1 Q: So, after reviewing all of these injuries -- I mean,
2 there's quite significant and extensive injuries -- can you
3 say definitively that they weren't from another thing?
4 A: I can say definitively that these were the result of some
5 sort of impact injury.
6 Q: Okay. All right.
7 A: Whether it be by vehicle or whatever.
8 Q: Was there any evidence that Ryan passed away as a result
9 of a heart attack unrelated to this?
10 A: The only significant findings I had are these injuries.
11 Q: Okay. And so, no finding that there was a drug overdose?
12 A: The only thing we found on complete toxicology was a
13 blood ethanol of 187, which is .18. There were no -- there
14 were no other drugs identified.
15 Q: Okay. All right. I don't have any other questions. If
16 you'd answer anything that the defense has.
17 THE COURT: Cross examination?
18 MR. PINKERTON: No questions, Your Honor.
19 THE COURT: Do you wish the witness to be excused?
20 MR. WALKER: Yes, Your Honor, we do.
21 THE COURT: Any objection?
22 MR. PINKERTON: No objection, Your Honor.
23 THE COURT: All right, Dr. Proctor, you're released from
24 your subpoena, you may go back to Grand Strand.
25 DR. PROCTOR: Thank you, Your Honor.

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RICHARD LOSKILL - DIRECT BY WALKER

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1 THE COURT: Yes, sir.

2 Hand that to Ms. Kay. Thank you, sir.

3 DR. PROCTOR: Thank you.

4 THE COURT: Next witness, please.

5 MS. WALKER: Yes, Your Honor, Richard Loskill.

6 THE COURT: All right, sir. Come all the way around up
7 and meet the clerk's representative, please, sir.

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

10 RICHARD LOSKILL, Jr., HAVING BEEN
11 DULY SWORN TESTIFIES AS FOLLOWS:

12 CLERK: You may be seated. Please state your name and
13 spell your last name for the Court.

14 MR. LOSKILL: Richard Loskill, Jr., L-O-S-K-I-L-L.

15 THE COURT: Yes, ma'am.

16 DIRECT EXAMINATION OF RICHARD LOSKILL, JR. BY MS. WALKER:

17 Q: Yes, sir. Officer Loskill, agent?

18 A: Agent.

19 Q: Agent. Okay. Agent Loskill, where are you currently
20 employed?

21 A: I'm employed with the South Carolina Department of
22 Probation, Parole and Pardon Services here in Horry County.

23 Q: Okay. And how long have you been employed with them?

24 A: Twenty-one years.

25 Q: All right. And so, you, as part of your duties with

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RICHARD LOSKILL - DIRECT BY WALKER

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1 Horry County Probation and Parole, do you maintain monitoring,
2 ankle monitoring systems on certain people?

3 A: Yes, ma'am; I do.

4 Q: Okay. And did you have an occasion to monitor Mr. Edward
5 Washington?

6 A: Yes, ma'am.

7 Q: Okay. And was that back in October 2016?

8 A: That's correct; yes, ma'am.

9 Q: Okay. And so, these ankle monitors that you supervise,
10 basically how do they work; how does a GPS ankle monitor work?

11 A: It is a unit worn by the defender on his ankle. There's
12 12 -- 10 to 12 satellites orbiting the earth and they pick up
13 his movement and track his whereabouts and stuff like that,
14 ma'am.

15 Q: Okay. And how does it track it? I mean without getting
16 too much into the science of it ---

17 A: It sends transmitters to various cell towers, it's like a
18 cell phone on your leg, and that's how it works.

19 Q: And so, when you are tracking someone, is data being
20 collected every minute, every second, every hour; how does
21 that work?

22 A: Every minute, ma'am. Here in Horry County, it's every
23 minute. You can fine tune it or you can lay off of it a
24 little bit, ma'am, but usually it's usually every minute.

25 Q: Okay. And when you say every minute, is it every minute

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RICHARD LOSKILL - DIRECT BY WALKER

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1 at the top of the minute or ---

2 A: That can vary. It depends on the cloud cover, how far
3 the satellites are from apart, cell towers, stuff like that,
4 ma'am.

5 Q: Okay. So, theoretically, if you're collecting data from
6 a GPS ankle monitor, a satellite could ping information at one
7 minute and then at the first second of that minute, but then
8 not collect information until the last second of the second
9 minute?

10 A: That's correct; yes, ma'am.

11 Q: Okay.

12 A: Yes.

13 Q: Or vice versa?

14 A: It could be earlier.

15 Q: Earlier, too. Okay. So, were you approached by officers
16 in this case to produce any sort of data on Edward Washington
17 on the night of October 28th, 2016 to October 29th, 2016?

18 A: Yes, ma'am; I was.

19 Q: Okay. And did you produce any information to officers
20 regarding his ankle monitor?

21 A: Yes, ma'am; I did.

22 Q: Okay.

23 MS. WALKER: I beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 MS. WALKER: Your Honor, I would like to approach the

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1 witness and show him what's been marked for identification
2 purposes?

3 THE COURT: Yes, ma'am.

4 MS. WALKER: State's 98.

5 BY MS. WALKER:

6 Q: So, what is that Agent Loskill?

7 A: This is a spreadsheet of the dates and times, locations,
8 GPS locations, latitude, longitude. It shows standard time,
9 Greenwich mean time, which actual point is zero of the
10 international time calendar, speed, and the times of day,
11 ma'am, is what it shows.

12 Q: Okay. So, this first row, what date and time does it
13 state?

14 A: This report was generated roughly at 23:30 hours on
15 October 28, '16, and the report ends on October 29th at
16 approximately 1:26 A.M. in the morning.

17 Q: Okay. So, does it provide data from Edward Washington's
18 ankle monitor from the time period of basically midnight on
19 October 29th through 1:26 A.M. on the 29th?

20 A: That is correct; it's roughly two hours is what we have
21 here of information pertaining to Mr. Washington.

22 Q: Okay. I'd also like to show you what's been marked
23 already as State's Exhibit 5 for identification purposes.

24 MS. WALKER: May I approach him, Your Honor?

25 THE COURT: Yes, ma'am.

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RICHARD LOSKILL - DIRECT BY WALKER

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1 A: Yes, ma'am.

2 BY MS. WALKER:

3 Q: What is that?

4 A: That is a screen shot of an actual -- the computer
5 printout from our vendor BI. This is what we look at as far
6 as tracking the offender, time and day and stuff like that.
7 It actually gives the print of geofacing, which is the map,
8 and the places that -- with his points.

9 Q: Okay. And is this printout what you supplied to law
10 enforcement?

11 A: That is correct; yes, ma'am.

12 Q: Okay.

13 MS. WALKER: Your Honor, the state would move to move
14 into evidence State's Exhibit 5 and 98 at this time.

15 THE COURT: Any objection to 5 and 98 coming into to
16 evidence?

17 MR. STANKO: No objection, sir.

18 THE COURT: All right, sir. So, 5 and 98 are into
19 evidence without objection.

20 STATE'S EXHIBIT NUMBER 5 AND 98

21 ADMITTED INTO EVIDENCE

22 MS. WALKER: Yes, Your Honor, and permission to publish
23 to the jury?

24 THE COURT: Yes, ma'am.

25 BY MS. WALKER:

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RICHARD LOSKILL - DIRECT BY WALKER

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- 1 Q: Okay. So, I just want to look at this map.
- 2 A: Yes, ma'am.
- 3 Q: Give me an idea of what's going on here. What are these
4 different points and what are the little green indicators?
- 5 A: The green indicators show movement of travel starting
6 right here at 12:30 in the morning. It shows Mr. Washington
7 going down Highway 544 to this location here, and then back up
8 Highway 544.
- 9 Q: Okay.
- 10 A: And it roughly -- we stop here around 1 o'clock in the
11 morning, ma'am.
- 12 Q: Okay. And that's kind of hard to see, but on 12:59 ---
- 13 A: Uh-huh, (affirmative response)
- 14 Q: --- is there a different color marker there?
- 15 A: It appears that it was stationary, ma'am.
- 16 Q: Okay.
- 17 A: When he's located at a certain point, there's no
18 movement, it would lock in at that particular point.
- 19 Q: Okay. And is that indicated by a red pinkish mark?
- 20 A: Yes, ma'am; it should be a flag, yes.
- 21 Q: Okay. All right. So, and again, taking into
22 consideration how the satellites ping with the minute and what
23 not ---
- 24 A: Yes.
- 25 Q: --- at what minute do we first start tracking him on this

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RICHARD LOSKILL - DIRECT BY WALKER

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1 map?

2 A: On this particular map, it's 12:31, and then it roughly
3 ends at, excuse me, 12:59.

4 Q: Okay. But where ---

5 A: I mean-- yes, ma'am, sorry.

6 Q: No, you're fine. Where is he at 12:40?

7 A: 12:40, he's located at the south here of Highway 544
8 heading westbound -- heading westbound at Highway 544.

9 Q: Okay. And by westbound, do you mean towards Conway?

10 A: Going towards Conway; yes, ma'am.

11 Q: Okay. And that's at 12:40?

12 A: Yes.

13 Q: And what about 12:41?

14 A: Again, still going through Conway, roughly around Coastal
15 Carolina University.

16 Q: Okay. And is that somewhat near the football stadium
17 there?

18 A: That is correct, ma'am.

19 Q: Okay. I'll take those from you.

20 A: Yes, ma'am.

21 Q: And if you'll take a look at that ledger there. Let's
22 review looking at the time starting at 12:29?

23 A: Yes, ma'am.

24 Q: What speed is being registered at that time?

25 A: Seventy-nine miles an hour, ma'am.

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RICHARD LOSKILL - DIRECT BY WALKER

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- 1 Q: Okay. And moving to 12:31, what speed is being
2 registered?
- 3 A: At 12:31, ma'am; it's 42 miles an hour.
- 4 Q: Well, right above that, is there another speed?
- 5 A: Yes, ma'am; that's 81 miles an hour, excuse me.
- 6 Q: And why is that, because you're right, there are two
7 12:31s?
- 8 A: Right, again, the satellite might've picked up something
9 going on; that's why it showed two different speeds.
- 10 Q: Okay. But does this indicate that one is right and one
11 is wrong, or did it just collect more information?
- 12 A: It collected more information, ma'am.
- 13 Q: Okay. And moving down another row to 12:32?
- 14 A: Yes.
- 15 Q: What was the speed there?
- 16 A: Thirty-one miles an hour.
- 17 Q: Okay. And then we have 12:33, what's the speed?
- 18 A: Twenty-five miles an hour, ma'am.
- 19 Q: Okay. And then let's look here again.
- 20 A: Yes.
- 21 Q: Let's go back to 12:32?
- 22 A: Okay.
- 23 Q: Would you point to where the satellite put him at 12:32?
- 24 A: Right here, ma'am, heading eastbound on Highway 544.
- 25 Q: So, at 12:32, it indicates eastbound?

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RICHARD LOSKILL - DIRECT BY WALKER

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- 1 A: Yes, going out of Conway.
- 2 Q: Out of Conway?
- 3 A: Yes, towards the beach, ma'am.
- 4 Q: Okay. And does that look like he is somewhat near the
- 5 Coastal Carolina area?
- 6 A: Yes, ma'am.
- 7 Q: There on 544?
- 8 A: Yes, ma'am.
- 9 Q: And the speed there is registered as what?
- 10 A: 12:32, ma'am, it's 40 -- 31 miles an hour?
- 11 Q: Okay. And then we're gonna move to 12:35?
- 12 A: Yes.
- 13 Q: And we don't see 12:35 on this map, do we?
- 14 A: I believe it's covered up with the information here,
- 15 ma'am.
- 16 Q: Okay.
- 17 A: It's kind of all grouped together right there.
- 18 Q: Okay. But what speed is registered?
- 19 A: Sixty-seven miles an hour, ma'am.
- 20 Q: Okay. And between 12:36 and 12:38, is there any speed
- 21 registered?
- 22 A: No, ma'am; zero speed.
- 23 Q: Okay. And then 12:39, what speed is registered?
- 24 A: Forty miles an hour, ma'am.
- 25 Q: Okay. And then what about 12:41?

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RICHARD LOSKILL - CROSS BY STANKO

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1 A: That's 61 miles an hour, ma'am.

2 Q: Okay.

3 A: That's looking right here on the map.

4 Q: Right there. And approximately where is that located?

5 A: CCU football field, ma'am.

6 Q: Back on Highway 544?

7 A: 544 going towards Conway.

8 Q: Okay. All right. So, is it fair to say that at points
9 these speeds are varying a little bit wildly? I mean 79 miles
10 per hour, 31 miles per hour, 67 miles per hour.

11 A: I would say, yes, ma'am, but again, it's Highway 544.
12 I'm sorry.

13 Q: That's fair.

14 MS. WALKER: I beg the Court's indulgence.

15 BY MS. WALKER:

16 Q: I don't have any other questions about this, but if you
17 would please answer anything the defense has.

18 THE COURT: Cross examination?

19 MR. STANKO: Thank you, Your Honor.

20 CROSS EXAMINATION OF RICHARDS LOSKILL, JR. BY MR. STANKO:

21 Q: So, the far right column is the -- is the speed and miles
22 per hour that -- that's measured by the -- by the GPS,
23 correct?

24 A: That is correct, sir.

25 Q: Just to the left of that, I see a second column; what is

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RICHARD LOSKILL - CROSS BY STANKO

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1 measured in that column there?

2 A: I believe that's satellites. I believe that's what that
3 stands for.

4 Q: Okay.

5 A: It's showing particular times, 10 satellites, eight
6 satellites, seven satellites; I believe that's what that is,
7 sir.

8 Q: Okay. Fair to say then that the higher amount of
9 satellites, the more accurate both the location and the speed?

10 A: That is correct, sir.

11 Q: Okay. All right. And you -- you read off from the --
12 from your report speeds and locations basically every minute
13 as -- as you were asked earlier, correct?

14 A: Yes, sir.

15 Q: Now, skip right ahead to -- do you still have yours or
16 did that ---

17 A: I have mine, sir.

18 Q: Okay. Very good. Okay. All right. At 12:39, you --
19 you read that the speed was 40 miles an hour, correct?

20 A: Yes, sir.

21 Q: And that was nine satellites?

22 A: That is correct.

23 Q: Okay. At 12:40 you read that that speed was 12 miles an
24 hour and that was 10 satellites?

25 A: That is correct, sir.

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RICHARD LOSKILL - CROSS BY STANKO

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1 Q: Okay. The next one, you said at 12:41 that that was
2 where he was next to that Brooks Stadium, the CCU football
3 stadium, correct?
4 A: Correct.
5 Q: Okay. And that speed you had at 61?
6 A: That is correct.
7 Q: And eight satellites?
8 A: That is correct.
9 Q: Okay. All right. Are you familiar with that area there?
10 A: Yes, sir.
11 Q: Okay. You've -- I assume you have driven 544 going and I
12 guess west, but ---
13 A: Twenty-one years, sir.
14 Q: --- going into Conway?
15 A: Yes, sir.
16 Q: Okay. All right. So, beyond the -- beyond the football
17 stadium there, there is a, you know, you come up to the -- The
18 Coop is on your left, the Circle K that we're talking about
19 here is on your right?
20 A: Yes, sir.
21 Q: Before you get there, about 50 yards, maybe 75 yards back
22 of that, is there a traffic light?
23 A: Yes.
24 Q: Okay. All right. Fair to say then that if somebody was
25 traveling northbound, westbound into Conway, that they would

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RICHARD LOSKILL - CROSS BY STANKO

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- 1 have to pass under that traffic light?
- 2 A: Yes, sir.
- 3 Q: Okay. All right. Now, again speed at 12:41, eight
- 4 satellites, 61 miles an hour, correct?
- 5 A: Correct.
- 6 Q: All right. The very next minute, we have 12:42. That
- 7 speed was only six miles an hour, eight satellites, correct?
- 8 A: Correct.
- 9 Q: Okay. 12:43, nine satellites, three miles an hour; is
- 10 that also correct?
- 11 A: Yes.
- 12 Q: Okay. What direction was -- was he going at 12:43?
- 13 A: May I look at my board, sir, please?
- 14 Q: Here it is.
- 15 A: Thank you. He was heading back towards the beach at
- 16 12:43.
- 17 Q: All right. So, at 12:43, he was already on his way back
- 18 down ---
- 19 A: 544 going towards the beach.
- 20 Q: Okay. And that speed was three miles an hour?
- 21 A: Yes, sir.
- 22 Q: Okay. The next one down, 12:44, we have eight
- 23 satellites, 32 miles an hour, and also headed towards the
- 24 beach?
- 25 A: That is correct, sir.

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RICHARD LOSKILL - CROSS BY STANKO

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1 Q: Okay. Now, 12:45, we have only two miles an hour, nine
2 satellites, correct?

3 A: Correct.

4 Q: Is it fair to say that at two miles an hour, that's just
5 a person walking around?

6 A: Yes, sir, it could be; yes, sir.

7 Q: Okay. And does your board indicate where he was at that
8 12:45 time?

9 A: My board don't, but probably at the location we're
10 talking about.

11 Q: Okay. So, by 12:45, he had already shown back up?

12 A: Yes.

13 Q: Okay. All right. So, again, we have -- just to run back
14 through it again, 12:39, excuse me. 12:39, he left wherever
15 he was down south of the incident location and was traveling
16 40 miles an hour headed towards Conway?

17 A: Correct.

18 Q: Okay. All right. 12:40, only going 12 miles an hour, 10
19 satellites, headed towards Conway?

20 A: Correct.

21 Q: 12:41, that's the one where he was pretty much right next
22 to the football stadium, still headed towards Conway, he was
23 doing 61 there?

24 A: Correct.

25 Q: Okay. And as we said before, he would have to pass

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RICHARD LOSKILL - CROSS BY STANKO

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1 underneath a traffic light before he would get to the incident
2 location there?

3 A: Yes.

4 Q: Okay. All right. 12:42, only doing six miles an hour,
5 eight satellites, but still headed towards Conway?

6 A: Correct.

7 Q: Okay. 12:43, only going three miles an hour, chances are
8 that's a person walking around?

9 A: Correct.

10 Q: But that was the point that he had begun ---

11 A: Coming back, uh-huh, (affirmative response).

12 Q: --- turning back. So, is it possible he was pulling out
13 of a parking lot at that point slowly making his way back?

14 A: U-turn or something, correct.

15 Q: Okay. All right. 12:44, definitely headed -- headed
16 back towards the beach, your report has him at 32 miles an
17 hour?

18 A: That is correct, sir.

19 Q: Okay. And then by 12:45, his GPS and his speed show him
20 right back at that gas station?

21 A: Yes.

22 Q: Okay.

23 A: Yes, sir.

24 MR. STANKO: Your Honor, nothing further for this
25 witness.

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RICHARD LOSKILL - REDIRECT BY WALKER

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1 THE COURT: Any redirect?

2 MS. WALKER: Your Honor, just one moment, please?

3 THE COURT: Yes, ma'am.

4 MS. WALKER: Yes, Your Honor, just a couple of quick
5 things.

6 THE COURT: Yes, ma'am.

7 MS. WALKER: Your Honor, I'd like to approach the witness
8 with what's been marked as State's Exhibit Number 6 for
9 identification.

10 THE COURT: Yes, ma'am.

11 REDIRECT EXAMINATION OF RICHARD LOSKILL BY MS. WALKER:

12 Q: Could you just take a look at that and tell us what it is
13 without showing the jury just yet?

14 A: Oh, excuse me. This is another one of those printout
15 reports with the geofacing with dates and times with the
16 actual map.

17 Q: Okay. And does it show maybe a bit farther west than the
18 other one did?

19 A: Yes, it's more detailed.

20 Q: Okay. Is it -- would you say it's zoomed in a bit?

21 A: Yes, ma'am; it is actually zoomed in.

22 Q: Okay. All right.

23 MS. WALKER: And, Your Honor, at this time, the state
24 would like to move to put into evidence State's Exhibit Number
25 6?

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RICHARD LOSKILL - REDIRECT BY WALKER

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1 THE COURT: Any objection?

2 MR. STANKO: No objection, sir.

3 THE COURT: It's in evidence without objection.

4 STATE'S EXHIBIT NUMBER 6

5 ADMITTED INTO EVIDENCE

6 THE COURT: You may proceed.

7 MS. WALKER: Permission to publish?

8 THE COURT: You may do so.

9 BY MS. WALKER:

10 Q: All right. So, could you tell me ---

11 A: Yes.

12 Q: --- what it is right here, this green one?

13 A: Yes, that's 12:43.

14 Q: Okay. And what direction is the defendant headed?

15 A: Towards the beach, heading out of Conway.

16 Q: Okay. So, is this location, is that beyond the Circle K?

17 A: Yes, ma'am; that is beyond Circle K.

18 Q: Okay. So, presumably after the collision already
19 occurred?

20 A: Correct.

21 Q: Okay. So, 12:43, remind me again what speed he was
22 going?

23 A: 12:43, he was going approximately three miles an hour.

24 Q: Okay. And then 12:44, where do you see that on the map?

25 A: It's here in the lower part, ma'am.

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RICHARD LOSKILL - RECROSS BY STANKO

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1 Q: And you're indicating the lower most points on this map?
2 A: Yes, yes.
3 Q: Okay. And what was the speed then?
4 A: That time, ma'am, was 32 miles an hour.
5 Q: Okay. And is that still right before ---
6 A: Yes.
7 Q: --- getting back to the Circle K?
8 A: Yes, just a little bit right before, ma'am.
9 Q: Okay. And but just to recap, at 12:41, what was the
10 speed that was registered?
11 A: 12:41 is 61 miles an hour.
12 Q: Okay. I don't have any other questions.
13 THE COURT: Any questions on those just asked by the
14 state?
15 MR. STANKO: Just very briefly, sir.
16 THE COURT: Yes, sir.
17 RECROSS EXAMINATION OF RICHARD LOSKILL, JR BY MR. STANKO:
18 Q: Just to clarify. This right here, that's Cox Ferry?
19 THE COURT: Which exhibit are you looking at?
20 MR. STANKO: I apologize. This is State's Number 6.
21 THE COURT: Very good.
22 A: May I look at it closely, please, sir?
23 BY MR. STANKO:
24 Q: Please, sir. The east/west road, that's Cox Ferry?
25 A: Yes. That is correct, sir.

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BY THE COURT

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1 Q: Okay. And that's the -- that's the farthest into Conway,
2 towards Conway that he went?

3 A: That is correct, sir.

4 Q: Very good.

5 MR. STANKO: I have nothing further, Your Honor.

6 THE COURT: You wish to excuse the witness at this time?

7 MS. WALKER: Yes, Your Honor.

8 THE COURT: Any objection?

9 MR. STANKO: No objection, sir.

10 THE COURT: All right, sir, you're released from your
11 subpoena, you may go back to your regular duties.

12 MR. LOSKILL: Thank you, Your Honor.

13 THE COURT: Thank you.

14 Those are the witnesses the state has for today?

15 MR. HOLFORD: Yes, Your Honor.

16 THE COURT: All right. Very good.

17 BY THE COURT:

18 THE COURT: All right, ladies and gentlemen, we are gonna
19 stop for the evening. I'll have you come back and we will
20 resume the trial tomorrow morning at 9:30. The clerk's office
21 will have something for you in the morning.

22 For that, please remember, don't talk about the case.
23 You go home see your husband, wife, boyfriend, girlfriend,
24 person down the street, you cannot talk about this case,
25 because intentionally or unintentionally, they'll give you

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BY THE COURT

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1 their opinion about it. You should not have an opinion about
2 this because you haven't heard all the evidence in this case,
3 nor have you heard the law that applies to this particular
4 case. So, and the final part, you're not researchers, you're
5 not investigators, you can't look up anything. You have to
6 make your decision solely and completely on the facts and
7 evidence you hear in the courtroom and from no other source.

8 So, with that, I'll see you back in the courtroom
9 tomorrow morning at 9:30.

10 Thank you very much.

11 (REPORTER'S NOTE: Jury exits courtroom @ 4:51 P.M.)

12 THE COURT: Anything further from the state at this point
13 in time?

14 MR. HOLFORD: No, Your Honor.

15 THE COURT: From the defense?

16 MR. STANKO: Nothing, sir.

17 THE COURT: Counsel, just anticipating when we get to the
18 point, if we do, understanding where we are, but if you have
19 any requests to charge, obviously I would like to see those
20 sooner rather than later. All right?

21 MR. HOLFORD: Yes, Your Honor.

22 THE COURT: Thank you very much.

23 See you in the morning at 9:30.

24 RECESS @ 4:51 P.M. - END OF DAY TWO.

25 *****OFF THE RECORD*****

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TYLER JENNINGS LUTHER - DIRECT BY HOLFORD

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1 (On the Record.)

2 JUNE 5, 2019 - DAY THREE - 9:36 A.M.

3 THE COURT: All right. The state ready for the jury to
4 come in?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: Defense?

7 MR. STANKO: Yes, Your Honor.

8 THE COURT: Ask the jury to come in, please.

9 (REPORTER'S NOTE: Jury enters courtroom @ 9:38 A.M.)

10 THE COURT: All right. Next witness by the state,
11 please.

12 MR. HOLFORD: Your Honor, the state calls Tyler Luther.

13 THE COURT: All right, sir. Please come around and meet
14 the clerk's representative right over here.

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

17 TYLER JENNINGS LUTHER, HAVING BEEN

18 DULY SWORN TESTIFIES AS FOLLOWS:

19 CLERK: You may be seated. Please state your name and
20 spell it for the Court.

21 MR. LUTHER: Tyler Jennings Luther.

22 THE COURT: Go ahead.

23 DIRECT EXAMINATION OF TYLER JENNINGS LUTHER BY MR. HOLFORD:

24 Q: Is your title patrolman?

25 A: I'm a corporal.

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TYLER JENNINGS LUTHER - DIRECT BY HOLFORD

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1 Q: Corporal?

2 A: Yes, sir.

3 Q: Corporal Luther, where are you currently employed?

4 A: I'm currently employed with the South Carolina Highway
5 Patrol on the MAIT unit, which is the Multidisciplinary
6 Accident Investigation Team.

7 Q: Now, tell me, what does MAIT do?

8 A: What we do is we -- we're the investigative unit for the
9 highway patrol. We go out and investigate collisions; we
10 reconstruct collisions for the highway patrol. Collisions
11 that are usually more difficult, the road trooper wouldn't
12 have time to dedicate to doing that, so we have a special unit
13 that goes out and investigates these collisions. Most of the
14 time, almost all the time, they're involving deaths.

15 Q: Now, did you investigate a collision in this case?

16 A: I actually investigated and I did the analysis for the
17 airbag control module in this case.

18 Q: Okay. And ---

19 A: But MAIT as a whole did investigate, yes.

20 Q: Right. And so, now, if the collision happened October
21 29th, 2016, at what point did you become involved?

22 A: Normally, when we're assisting an outside agency, as soon
23 as they'll call my captain and it'll come back down to my
24 sergeant and he'll send people out to investigate the
25 collision, sometimes immediately, sometimes deferred. It just

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TYLER JENNINGS LUTHER - DIRECT BY HOLFORD

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1 depends.

2 Q: Now, how long have you done accident investigations?

3 A: I have been on MAIT since 2011. I've been with the
4 highway patrol since 2000, so I'm in my 19th year.

5 Q: Do you have any training or certifications; do you go
6 through anything special to ---

7 A: Yes, sir. Since joining MAIT, I've got over a thousand
8 hours of collision reconstruction training. I've investigated
9 over 900 collisions that we've actually reconstructed as a
10 unit. As far as it pertains to this case, I'm ACTAR
11 accredited, which is the highest accreditation you can get for
12 a collision reconstructionist in the country. I received that
13 in 2014. In 2015, I received the -- my EDR analysis, and EDR
14 is Event Data Recorder is what it stands for. So, I'm an
15 analyst, so I can analyze the airbag control module data from
16 inside the car, inside vehicles. And right now, I'm one of
17 three in the state of South Carolina that can do that.

18 Q: And this airbag control module, just briefly tell us a
19 little bit about, do you manipulate that data or how would you
20 ---

21 A: No, basically what the airbag control module is, a lot of
22 times you'll hear in a plane crash, the black box. They
23 always want the black box. Well, in 1997, they started
24 putting these airbag control modules in cars and, basically,
25 it's a computer that tells us everything that's going on

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TYLER JENNINGS LUTHER - DIRECT BY HOLFORD

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1 inside your car as far as speed. More and more data has come
2 online since 1997 obviously with newer cars, but it gives us
3 steer angle, there's probably 50, 60 pages of data in the
4 newer ones. Everything that's going on inside your car other
5 than voice; it doesn't record voice inside your car. You have
6 a port underneath your dashboard that a mechanic logs into
7 whenever you take your car to get serviced, the onboard
8 diagnostic port. It's actually attached to the airbag control
9 module. So, what we can do is plug our computer system into
10 your car and image the data from the airbag control module.
11 The airbag control module cannot be manipulated. That data
12 can only be imaged. And I say imaged because basically, we're
13 taking a picture of the data. It's not downloaded, it's not
14 uploaded. Then once that data is in there, we cannot
15 manipulate the data at all.

16 There's two types of events that are recorded by your
17 airbag control modules in your car. You have a non-deployment
18 event, which means the airbags did not deploy, but the system
19 said something has happened, so I need to make a non-
20 deployment event. So, what happens in this case, when ---

21 Q: I'm going to -- before we get into the specifics of this
22 case, have you ever been qualified as an expert before?

23 A: I have, yes.

24 Q: Do you know approximately how many times?

25 A: Approximately three times; one time in fragmentation

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TYLER JENNINGS LUTHER - DIRECT BY HOLFORD

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1 analysis, two times in actual collision reconstruction, yes.

2 Q: Okay. And you said you're one of three people in the
3 state certified for -- now you said EDR and airbag control;
4 which one?

5 A: It's, it's Event Data Recorder. They actually, since it
6 encompasses so much, it used to be the airbag control module;
7 now it's moved to EDR because it's the event data recorder
8 because it does more than just control the airbags.

9 MR. HOLFORD: Your Honor, at this time, the state would
10 tender Corporal Tyler Luther as an expert in accident
11 reconstruction and event data recorder analysis?

12 THE COURT: Does the defense wish voir dire the witness
13 or challenge the qualifications?

14 MR. STANKO: Your Honor, we have no objection to him
15 being certified as an expert in the area of the EDR and ACM as
16 he's testified to being an expert in.

17 THE COURT: All right. I am going to, based upon the
18 information presented, I am going to qualify him to give his
19 opinion in the field of accident reconstruction and -- was it
20 EDR?

21 MR. HOLFORD: Yes, sir.

22 THE COURT: All right. EDR recovery information.

23 You may proceed.

24 BY MR. HOLFORD:

25 Q: Now, Corporal Luther, in this case, did you analyze the

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TYLER JENNINGS LUTHER - DIRECT BY HOLFORD

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1 EDR, can we just call it the black box?

2 A: Yes, that's fine. As long as you're okay with it; I'm

3 good with it.

4 Q: Did you analyze that in this case?

5 A: I did.

6 Q: And what vehicle was that for?

7 A: That was from a 2002 Saturn.

8 Q: Okay. And who was -- who was listed as the driver of

9 that Saturn?

10 A: Well, that's not on the actual report that I -- that I

11 have, but ---

12 Q: So, you just pull the information?

13 A: Yes, in this case, the information was actually taken by

14 Lance Corporal Shull from the vehicle and all I get is a file

15 to look at.

16 Q: Okay. And so, we've got State's 95 that's been entered

17 into evidence an ACM image through DLC?

18 A: Yes, sir.

19 Q: Would that be what you analyzed?

20 A: Yes, sir.

21 Q: Okay. So, if the ACM -- and tell us what ACM is?

22 A: Airbag control module, yes, sir.

23 Q: Okay. And so, if that was imaged and drawn pursuant to a

24 search warrant, then it was handed over to you for analysis?

25 A: Yes, sir. Basically, what we do is we'll get a search

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1 warrant for the -- for the data. Investigators will go out,
2 they'll plug into the diagnostic link; that's what the DLC is,
3 connector, and like I said, it images that data. So, it takes
4 a picture of it. They bring that data back and we upload it
5 to our MAIT drive and then I can pull it from the MAIT drive
6 to do my analysis.

7 Q: And do you have the VIN number for this vehicle?

8 A: Yes, sir.

9 Q: Just purpose of the record?

10 A: Okay. The VIN is listed as 1G, Golf, 8Z, Zulu, S,
11 Sierra, 52892Z, Zulu, 251139.

12 Q: And -- and what did you see, what did you -- when you
13 analyzed the EDR for this 2002 Saturn, what did you find in
14 this, case?

15 A: When I looked at this, it shows a non-deployment event,
16 which means, like I said earlier, it's an event that was
17 recorded. However, it did not deploy the airbags. If the
18 airbags would have deployed, it would have been a deployment
19 level event and it would lock in. With a non-deployment
20 event, it does not lock the event, so it can be overridden.
21 In the matter of a deployment event, it's locked and you can't
22 change that data; you can't -- that data cannot be overridden
23 by the system. In this case, like I said, it was a non-
24 deployment event.

25 Q: All right. So, so you said a deployment event, when the

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1 airbag deploys, that's locked in?

2 A: Yes, sir.

3 Q: But you're saying a non-deployment event is not locked
4 in. And so ---

5 A: Correct.

6 Q: --- why would that matter?

7 A: Well, in this case or in any case for that matter, if you
8 get a non-deployment event, I can drive another half a mile or
9 a mile, if I hit something else, it would rewrite; it would
10 cause another non-deployment. So, basically, it clears the
11 data for the first one and tells me what happened in the
12 second one, second event. Then if I hit something else, non-
13 deployment level, it wipes that data and gives me the new
14 data. And the way an airbag control module works, is when I
15 hit something, it actually backs up five seconds. So, it
16 gives us pre-crash data. It tells us what was going on five
17 seconds down the road, four seconds down the road, three
18 seconds, one second, and up to impact. So, like I said, if I
19 go -- it gives me that five seconds of data. If I go further
20 down the road and I hit something else, it's gonna rewrite
21 that data if it didn't lock. Now, in the event of a
22 deployment, it would lock that data and no matter what else I
23 hit, it's only gonna show me that first event.

24 Q: Okay. Now, how do you know -- I know you've testified
25 that it only stores one or that it overwrites in a non-

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1 deployment event, but how do you know that; how are you able
2 to tell that in this case?

3 A: If it overwrote?

4 Q: No, if -- that it can only store one?

5 A: It tells you in the data limitations. Normally, it will
6 -- the way these reports are, it tells you what the module
7 will do. The older modules only store the one non-deployment
8 or one deployment event. And, in this case, it only stores
9 the one. So, if there was a different event, obviously it
10 would overwrite it.

11 Q: Okay. Now, does it give you a time? Does it say that
12 this non-deployment event happened on October 29th, 2016 at X
13 time?

14 A: No, it does not. It does not give you time. What it
15 does give you is ignition cycles. If you crank the car --
16 every time you crank the car it counts as one ignition cycle.
17 So, it keeps a tally of how many ignition cycles, how many
18 times your car has been cranked. So, if the event happens in
19 that ignition cycle, it would tell us whenever the collision
20 occurred or when the event occurred that this was the ignition
21 cycle. But like I said, it does not do time, no, sir.

22 Q: All right. And is there any way to tell from -- from
23 this EDR readout what cycle the engine was on when the
24 defendant hit a pedestrian? Is there a way to tell that?

25 A: There is a way to tell when the non-deployment event

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1 occurred, yes; it tells me the ignition cycle. And then it
2 also gives the ignition cycle of when we imaged the vehicle.
3 So, it will have an image for the crash and then it will have
4 an image -- the ignition cycle for the crash and then it'll
5 have an ignition cycle of when we hook our computer to the
6 car.

7 Q: But you're not able to tell or are you able to tell what
8 that non-deployment event was from?

9 A: No, no, you're not. It will just give you, like I said,
10 it gives you speed, it'll give you the change in the speed of
11 whatever you hit, change in velocity for the car, but it does
12 not tell you what you hit; no, sir.

13 Q: And so -- well, let's talk about values in this case.
14 What does it tell you is happening five seconds before
15 whenever this non-deployment event was?

16 A: In this case, as far as this printout where we imaged the
17 car, five seconds prior to the event, the vehicle speed was 42
18 miles per hour. The engine, RPMs were 1984, and the percent
19 throttle was two, two percent. Do you want me to go all the
20 way through?

21 Q: Yeah -- well, let's talk about that. What does percent
22 throttle mean? What are hearing at that point?

23 A: It's, it's the percentage of how hard you're pressing the
24 throttle. If you put it on the floor, it's gonna read a
25 hundred percent throttle. If you take your foot off the gas,

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1 obviously it's gonna drop back to completely zero. When this
2 data was recorded on the airbag control module, it was at two
3 percent throttle.

4 Q: So, whenever this EDR, whenever this non-deployment event
5 was recorded, it's saying five seconds before whatever that
6 was for, there's barely any foot on the gas?

7 A: Correct.

8 Q: Okay. What about four seconds before?

9 A: Four seconds before, there was still two percent throttle
10 and still at 42 miles per hour.

11 Q: What about three seconds before?

12 A: Still two percent throttle and 41 miles per hour.

13 Q: All right. What about two seconds before?

14 A: Two percent throttle, 39 miles per hour.

15 Q: How about one second before?

16 A: Still two percent throttle and 32 miles per hour.

17 Q: What about -- is that it?

18 A: That is. In this particular module it only goes down to
19 one second prior to impact, yes.

20 Q: Okay. Is there a way to tell if there's a brake?

21 A: Yes, it actually gives brake data. And in this
22 particular image, it actually gives eight seconds of -- eight
23 seconds prior to impact brake data. The brake was not
24 activated until two seconds prior to impact. So, for two
25 seconds before the event, the brake was applied. One second

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1 the brake was applied.

2 Q: And so, for the five seconds, 1/1,000m 2/1,000, 3/1,000;
3 there's barely any throttle?

4 A: Correct.

5 Q: The car appears to be going about the same speed or
6 slowing down?

7 A: It's coasting, yes.

8 Q: And then 1/1,000, 2/1,000, the last, it's saying the
9 brake is engaged and there's a slowing?

10 A: Correct.

11 Q: Okay. And that's for whenever this non-deployment event
12 was ---

13 A: Right.

14 Q: But is there a way for you to say that what was recorded
15 on this box was Mr. Washington hitting Ryan?

16 A: No. No, sir. All I know is, sometime in the ignition
17 cycle between the event and when we imaged it, which was --
18 there was one ignition cycle difference. So, there was a non-
19 deployment event that gave me this data. However, I cannot
20 say when it occurred in that event. I mean, it could've
21 happened prior to hitting the pedestrian; it could've happened
22 after hitting the pedestrian. A lot of times we find with ped
23 strikes, there's not a big enough change in velocity to even
24 make an event.

25 Q: Now, tell me why that would be?

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1 A: The way the module works, you have to have a change of
2 speed over so many milliseconds before it actually causes an
3 event. A 3000-pound car striking a pedestrian, if brakes are
4 not slammed, usually it's not gonna be enough change in
5 velocity in that car to cause an event. By change in
6 velocity, I'm just -- changing the speed is basically what it
7 is. You have to slow down, usually it's 8 miles per hour over
8 so many milliseconds before the module says I need to blow
9 your airbags. If, if it didn't work that way -- obviously, if
10 you slammed on brakes going down 17 or 501, 544, hard enough,
11 it would blow your airbags. Well, nobody wants that to
12 happen. But they had to put a threshold on this thing to say
13 if I slam on brakes without hitting anything, my airbags are
14 not gonna deploy. So, normally what we find with pedestrian
15 strikes, if they're not heavy on the brakes prior to hitting
16 the pedestrian, it usually does not cause an event.

17 Q: Now, what could cause -- what are other causes of a non-
18 deployment event?

19 A: We found that when people run through ditches, curbs --
20 if you strike a curb hard enough with your tire, sidewalk,
21 curb, it will cause a one or two-mile per hour change in
22 velocity, which is enough to make the module wake up and say
23 hey, we hit something, we're gonna lock this data for now to
24 see what else happens. So, curb strikes, ditch strikes, a lot
25 of those are enough to wake the module up to cause a non-

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1 deployment without actually firing the airbags.

2 Q: Have you see pictures of the vehicle in this case?

3 A: I have, yes.

4 Q: I'm gonna show you what's been entered as State's 27 and
5 28. Do these appear to be the pictures that you've seen?

6 A: Yes.

7 Q: Now, on State's 28, what -- what's significant about that
8 damage to you?

9 A: Just how high the impact is with the wind chill and the
10 roofline of the car.

11 Q: All right. What, what about the roof line of the car?

12 A: Well, normally with -- with lower speed ped strikes,
13 you'll see -- they'll have a lot of hood damage and you don't
14 really impact the roofline of the car.

15 Q: Does this damage with the windshield and the bent frame,
16 does that -- does that appear consistent with a -- what's the
17 data say, 32 miles an hour, 42, 32?

18 A: I wouldn't say that would, given the -- knowing the car,
19 the 2002 has got a lower front end. Normally, if you've got a
20 roof fall, normally you're gonna have a little faster speed.
21 Forty-two normally does not make somebody hit the roofline of
22 a car. Normally, they would hit the hood, hit the windshield,
23 and then roll off.

24 Q: Now, you said you've worked probably over 900 accidents,
25 is that ---

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1 A: Yes, sir.

2 Q: Is that right?

3 A: Yes, sir.

4 Q: Does the damage to this vehicle appear consistent with a
5 -- what does it appear to be to you?

6 A: It's definitely a pedestrian strike. But like I said, as
7 far as the speed, I would think that would be a middle speed
8 impact.

9 Q: All right.

10 A: Just judging by where the damage is located on the
11 vehicle.

12 Q: What's a -- what's a range for a low speed, middle speed,
13 high speed?

14 A: Given the roofline impact, I would say it would be 50
15 plus miles per hour. As far as nailing down an actual speed,
16 I, you know, I wouldn't be able to tell you that, just right
17 off.

18 Q: Does there appear to be some inconsistency with the EDR,
19 what this readout is giving us and the pedestrian strike?

20 A: Well, like I said, normally on a ped strike, you don't
21 even get data unless somebody's slamming on brakes prior to.
22 And from what I looked through in the report, I didn't notice
23 any braking prior to impact, no black marks prior to impact
24 with the pedestrian in the roadway.

25 Q: No further questions at this time.

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1 THE COURT: Cross examination?

2 MR. STANKO: Thank you, Your Honor.

3 CROSS EXAMINATION OF TYLER JENNINGS LUTHER BY MR. STANKO:

4 Q: Now, you have looked at the pictures of the vehicle,
5 correct?

6 A: Yes, sir; I have.

7 Q: Have you actually, like did you actually lay eyes on the
8 vehicle or did you see the pictures?

9 A: No, just the photos, yes, sir.

10 Q: Okay. From what you saw, there is some damage to that
11 hood?

12 A: Yes, sir; there is.

13 Q: Okay. All right. The way that particular vehicle is --
14 is manufactured, it has a fairly, I want to say a low angle on
15 the ---

16 A: Yes, sir, correct.

17 Q: Would that -- would that be fair?

18 A: Yes, sir.

19 Q: Okay. So, if somebody is struck with that vehicle, fair
20 to say that they could wind up rolling up that hood and wind
21 up hitting the windshield?

22 A: They could; yes, sir.

23 Q: Even -- even at a speed less than the 50-plus you had
24 said?

25 A: Normally, less than, you know, if you had a lower speed,

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1 normally with that low front end and how high this vehicle is
2 off the ground, you're gonna have ankle break and they're
3 going to slam the hood primarily. I'm not saying they
4 wouldn't roll on, but normally it's going to be a fender roll,
5 which is when somebody actually hits the hood and goes off the
6 fender, not hits the hood and goes off the roof.

7 Q: But, but it is certainly possible that if somebody is hit
8 while they're walking forward and somebody hits them coming
9 from this way, that they would hit the hood and they would hit
10 the windshield?

11 A: Yes, I guess it is possible, yes.

12 Q: Okay. All right. And you said five seconds prior the
13 speed was 42 miles an hour, according to the EDR ---

14 A: Yes, according to the EDR.

15 Q: Okay. And then one second before -- now you mentioned
16 that the engine speed was just shy of 2000 RPM's five seconds
17 prior, right?

18 A: Yes, 1984, yes, sir.

19 Q: 1984. Okay. And then one second prior, the engine speed
20 was down to, I have, 1408?

21 A: Yes, sir.

22 Q: All right. All right. What would that typically be
23 indicative of?

24 A: Somebody taking their foot off the gas or slamming on the
25 brakes, yes, sir.

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1 Q: All right. So, in this case, it is also possible that --
2 that he had slammed on the brakes?

3 A: In this event, obviously he was on the brakes two seconds
4 prior to whatever caused the event, yes, sir.

5 Q: Okay. All right. So, even though you say oftentimes or
6 typically you don't get a non-deployment collision event with
7 a pedestrian?

8 A: Yes, sir.

9 Q: It is possible that hitting this pedestrian did register
10 that incident?

11 A: Obviously, yes, anything's possible, yes, sir.

12 Q: Okay. All right. And again, two seconds prior to --
13 prior to impact, he was -- he had at least touched the brakes?

14 A: According to this event, yes, he touched the brakes two
15 seconds prior to impact. But, now one thing the EDR does not
16 give us is how hard he hit him, you know, obviously.

17 Q: That was going to be my next question.

18 A: There you go. So ---

19 Q: And did you -- did you observe anything on the vehicles
20 that would be -- on the vehicle that would be consistent with
21 running into a ditch or a secondary collision that would have
22 registered here.

23 A: I did notice looking through the photos, that there is a
24 fair amount of damage to the right front tire consistent with
25 scrubbing down a sidewalk appears -- is what it appears to me

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1 to be. That could've triggered this event enough to trigger a
2 event. But, yes, sir, I did notice that.

3 Q: Okay. All right. So, there were several different ways
4 that the ACM could've registered something?

5 A: Correct.

6 Q: It could -- it could've been a curb, it could have been
7 the victim in this case, correct?

8 A: Yes, sir.

9 Q: Okay. And once again, one second prior to -- prior to
10 that impact, the EDR measured that speed at 32 miles an hour?

11 A: Yes, sir.

12 Q: Okay.

13 MR. STANKO: Your Honor, nothing further from this
14 witness.

15 THE COURT: Any redirect?

16 MR. HOLFORD: No, Your Honor, the state would ask that
17 Corporal Luther be excused from his subpoena.

18 THE COURT: Any objection?

19 MR. STANKO: Without objection, sir.

20 THE COURT: All right, sir, you're released from your
21 subpoena, you may go back to your regular duties.

22 MR. LUTHER: Thank you.

23 MR. HOLFORD: The state calls Sergeant Jeremy Leach.

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

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1 JEREMY LEACH, HAVING BEEN DULY SWORN

2 TESTIFIES AS FOLLOWS:

3 THE COURT: Please state your name and spell it for the
4 Court.

5 MR. LEACH: Jeremy Leach, J-E-R-E-M-Y, L-E-A-C-H.

6 THE COURT: Go ahead, Solicitor.

7 DIRECT EXAMINATION OF JEREMY LEACH BY MR. HOLFORD:

8 Q: Sergeant Leach, where are you currently employed?

9 A: The South Carolina Department of Public Safety with the
10 South Carolina Highway Patrol.

11 Q: And how long have you been with highway patrol?

12 A: I've been with the highway patrol for 19 years.

13 Q: Are you a part of the MAIT Team?

14 | A: I am, yes.

15 Q: And tell us again, what is MAIT?

16 A: We are -- MAIT stands for Multidisciplinary Accident
17 Investigation Team. We are the collision reconstruction or
18 the investigative branch of the highway patrol.

19 Q: How long have you been doing that?

20 A: I have been assigned to MAIT since 2009.

21 Q: Okay. So, you were part of the MAIT Team back October
22 29th, 2016?

23 | A: Yes.

24 Q: Were you involved in an accident investigation for this
25 case?

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1 A: Yes.

2 Q: And what was your role in that?

3 A: I am the team leader for the Pee Dee Region. So, I'm in
4 charge of the team that covers the eight counties sort of in
5 the northeast corner of the state. So, as the team leader, my
6 role in that would be to delegate resources, investigators to
7 assist, in this case, it was a request from Conway Police
8 Department to assist with a crash investigation. So, I would
9 be dispatching investigators to handle the different aspects
10 of that.

11 Q: Do you review and sign off on these reports?

12 A: Yes.

13 Q: And how many accidents have you investigated?

14 A: A lot. We generally were carrying probably more than 200
15 cases a year. So, probably a thousand or so.

16 Q: Now, who all was -- who all did you designate to go out
17 and look at the evidence in this case?

18 A: In this case, Lance Corporal Shull and McCracken were
19 sent to the collision scene and to the vehicle, and Lance
20 Corporal Ligoeki was also asked to do an interview for the
21 investigation.

22 Q: And then what -- what did Luther do?

23 A: Luther did the event data recorder analysis.

24 Q: Okay.

25 A: But that was done at our office. He didn't actually have

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1 to go out to do anything.

2 Q: Okay. Now, where is Ligocki right now?

3 A: Ligocki is out on medical leave.

4 Q: All right. What about -- what about Shull?

5 A: Shull is retired.

6 Q: And what about McCracken?

7 A: McCracken, he left the highway patrol and I don't know

8 where he is. He works for another -- another business at this

9 point.

10 Q: And but you were -- you were the team leader for this?

11 A: Yes.

12 Q: Have you reviewed these reports?

13 A: Yes.

14 Q: Have you reviewed this document?

15 A: Yes.

16 Q: What else have reviewed? I'll put it that way.

17 A: The -- all of the information that was in our file, the

18 pictures, the video, the EDR, the CAD, all of that stuff in

19 there that -- that we put together for Conway Police

20 Department.

21 Q: Did you review that just in preparation for trial or did

22 you review that some time ago as well?

23 A: I reviewed back when we originally did the case and then

24 the information was provided to Conway, and then I just

25 reviewed it again for trial also.

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1 Q: Okay. And did you sign off on this specific report?

2 A: Yes.

3 Q: What kind of training and expertise do you have in
4 accident reconstruction?

5 A: I'm accredited through ACTAR in collision reconstruction.
6 They're a national accreditation organization. I have had
7 over a thousand hours of collision reconstruction training,
8 and like I -- I've been doing the work experience-wise
9 probably since 1998 or '9, I started with the classes. Before
10 I joined the highway patrol, I worked for the City of
11 Hartsville Police Department, and I started attending the
12 classes then. So, it's years of experience as well.

13 Q: Have you ever testified as an expert before?

14 A: Yes.

15 Q: Do you know about how many times?

16 A: I think about three times, if I remember right.

17 MR. HOLFORD: Your Honor, at this time, the state would
18 tender Sergeant Leach as an expert in accident reconstruction?

19 THE COURT: Do you wish to voir dire the witness or
20 challenge his qualifications?

21 MR. STANKO: Your Honor, in light of his testified
22 experience and training, we have no objection to him being
23 certified as an expert.

24 THE COURT: All right. I'll qualify him to give his
25 opinion in the field of accident -- accident reconstruction.

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1 You may proceed.

2 BY MR. HOLFORD:

3 Q: Now, what's kind of one of the main things that you're
4 looking for in this accident reconstruction?

5 A: This was -- it's a request from Conway Police Department
6 to assist them in their -- in their collision investigation.
7 So, we do it a little bit different than if it was a highway
8 patrol crash. With that, we go and we have to do everything
9 because we're working for our agency at that point. With the
10 -- with the stuff, we're dealing with outside agencies,
11 sometimes we -- we don't do all of it. We don't deal with the
12 -- the DUI part of this investigation. We're dealing
13 primarily with the crash portion of it; documenting the scene,
14 documenting the vehicle, the event data recorder, as in this
15 case, and then we turn over what we do to Conway Police
16 Department and then they can complete their final collision
17 report on the investigation.

18 Q: All right. Now, we heard a lot about the event data
19 recorder, but are there other ways to try and judge speed from
20 an accident?

21 A: There are. You can do a speed calculations. There's a
22 number of different ways to do calculations depending on
23 circumstances involved and what kind of crash it is, that sort
24 of thing.

25 Q: And was that done in this case other than the EDR?

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1 A: It was done, yes.

2 Q: And what was that calculation based off of?

3 A: That was based off of the, what they call a throw
4 distance. In this case, with a pedestrian struck by a
5 vehicle, they're projected a certain distance. There have
6 been some studies that kind of -- that allow you to take the
7 distance that that person traveled and create a -- develop a
8 speed range of how fast the person had to be going to travel
9 that distance.

10 Q: Now, what was the, the throw distance in this case?

11 A: From memory, I'm -- I want to say -- I can't remember off
12 hand. I don't want to give you the wrong number.

13 Q: Would you -- would you be able to tell us if you had a
14 copy of the MAIT report?

15 A: Yes.

16 MR. HOLFORD: Court's indulgence.

17 A: There would be a sheet that has -- says case notes at the
18 top and then it was done by Shull.

19 Q: Okay.

20 A: No, that's not it.

21 Q: That's not it?

22 A: No.

23 THE COURT: Why don't you just give him the report and
24 let him look for it.

25 BY MR. HOLFORD:

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1 Q: I've probably got it all out of order now. Here it is.
2 I had it set aside for this purpose.

3 A: So you wouldn't lose it?

4 Q: Yeah, so I wouldn't lose it.

5 THE COURT: Don't you have a stapler down there, Ms. Kay?

6 COURT REPORTER: Yes, sir.

7 THE COURT: Staple it.

8 STATE'S EXHIBIT NUMBER 99

9 MARKED FOR IDENTIFICATION

10 BY MR. HOLFORD:

11 Q: All right. I'm going to hand you what's been marked as
12 State's 99 for ID just to refresh your recollection. Are you
13 able to tell the throw distance based on that?

14 A: Yes, it was 85 -- approximately 85 feet.

15 Q: Eighty-five feet?

16 A: Yes.

17 STATE'S EXHIBIT NUMBER 100

18 MARKED FOR IDENTIFICATION

19 Q: And so, I'm gonna hand you what's been marked as State's
20 100 for ID. Can you identify what I'm showing you there?

21 A: This is the field sketch that was drawn.

22 Q: All right. So, that field sketch, the throw distance,
23 tell us where -- where does it start and where does it end;
24 what does that mean?

25 A: It starts, in a crash like this, where a pedestrian is

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1 struck, in most cases, it's very hard to tell where the
2 pedestrian was when they were struck. They don't leave --
3 like if two cars hit each other and interact, you get rubber
4 marks on the road and gouges and you know where that impact
5 took place. When a pedestrian is struck, unless their shoe
6 scuffs the asphalt or something like that, it's usually very
7 hard to tell where that initial impact happened. In many of
8 the studies that have been done with it, pedestrians, if
9 they're wearing a hat or carrying a purse or another item, it
10 generally falls in the area where that person was struck. In
11 this particular case, there was a hat that the pedestrian had.
12 That -- so that was used to determine the area where the
13 person was when they were hit. So, that throw distance is
14 from that approximate area to where they landed or their final
15 rest.

16 Q: Now, 85 -- 85 feet, about how many yards is that; it's a
17 little less than 30?

18 A: Yes.

19 Q: I'm not asking you to do math.

20 A: Sounds good.

21 Q: This is about 20 paces; is it further than this?

22 A: It's probably further than that, yes.

23 Q: So, from -- from where you are at the stand, if that was
24 the strike, the victim was thrown further than this?

25 A: Yes.

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1 Q: Now, the calculation there based on that -- based on that
2 distance, was the speed calculated?

3 A: Yes.

4 Q: And what was that speed that was calculated?

5 A: There's two formulas that they used; it's a minimum and a
6 maximum calculated speed. What those numbers represent, the
7 minimum calculated in this one was 34 miles an hour. That's
8 generally -- it's known in the study to be underreported, but
9 it is the minimum speed of the pedestrian at that point after
10 impact. And then the maximum calculated speed was 42 miles an
11 hour. That's using a 45 degree takeoff angle as an estimate.

12 Q: I'm having a hard time. How can someone be thrown that
13 far at a value of 34 miles an hour?

14 A: It's not a -- what this does it, it's not giving you the
15 speed of the vehicle per se. It's -- these are designed to
16 tell you how fast the person was going to travel that distance
17 after impact. So, if you consider a, a car versus a person,
18 depending on what kind of car it is that strikes the person,
19 it's gonna -- that person is going to absorb more of that
20 vehicle's energy. If you think of like the old A-Team van,
21 the big boxy, fronty van versus a car, like in this case, it
22 was a low profile vehicle. The bigger boxier vehicle is gonna
23 give more of its energy to that person that that low profile
24 vehicle. It's sort of like if you equate it to playing
25 baseball or softball, it's the difference between a homerun or

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1 a foul tip. You're only getting part of that energy transfer
2 depending on the object that is striking the person.

3 Q: Now, these calculations, are they standardized by any
4 means?

5 A: Yes, they are.

6 Q: How do they come up with algorithm?

7 A: They're -- these were -- they are Sorrell (spelled
8 phonetically) calculations. Sorrell is the name of the guy
9 that wrote the paper with it. It's a society of engineers.
10 It's an SAE peer-reviewed system, where they do the research,
11 they write a paper on it, it's peer reviewed and then it's
12 used in the field for different things.

13 Q: And is it based on any -- is there any type of car or
14 tell me -- tell me about the calculations are derived for, for
15 distance?

16 A: They're done in a variety of different ways, depending on
17 the study. A lot of times what they do is they -- they'll
18 take like a mannequin kind of body and drop it like in
19 Sorrell, they had the old, like a British kind of bus where
20 you could go up on the top and they would get the vehicle
21 going at 35 miles an hour and then drop it off the back of the
22 bus and see at 35 miles an hour how far did the body slide.
23 And then they'll do it again at 40 miles an hour; how far did
24 the body slide. So, they do different things like that. Some
25 studies they've used pig cadavers and, and have done the same

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1 sort of things, see how far with the interaction between the
2 person and the asphalt, how far they're gonna travel post
3 impact.

4 Q: Have you reviewed the pictures in this case?

5 A: Yes.

6 Q: Actually, I'm going to show you what's been -- before we
7 get to that. I'm going to show you what has been marked as
8 State's 84 for ID. Can you identify what that is?

9 A: This is the CAD drawing that was completed in this case
10 as a result of the forensic mapping of the collision scene.

11 Q: And what does that mean?

12 A: We use a total station and forensically map the collision
13 area. It's the same thing if you were to call a surveyor to
14 your house to do your property lines, the same tool, we use it
15 out there where it measures distance based on individually
16 shot points throughout the area. So, we know how wide the
17 road is, how -- where the evidence is within that location and
18 all that. We document the collision scene that way.

19 Q: Does that appear to be an accurate reflection of the CAD
20 report in this case?

21 A: Yes.

22 MR. HOLFORD: Your Honor, the state would request to
23 enter State's 84 into evidence?

24 THE COURT: Any objection?

25 MR. STANKO: No objection, sir.

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1 THE COURT: Into evidence without objection.

2 STATE'S EXHIBIT NUMBER 84

3 ADMITTED INTO EVIDENCE

4 THE COURT: You may proceed.

5 BY MR. HOLFORD:

6 Q: And back to this sketch, State's 100; does that appear to
7 be a fair and accurate description or copy of the sketch made?

8 A: Yes.

9 Q: In this case?

10 A: Yes, sir.

11 Q: Are these points on here, are they used in order to
12 develop the CAD report as well?

13 A: Yes, they are -- they're marked evidence points from the
14 investigating officer that was out at the scene that night.
15 It's common -- we use orange spray paint and then the stuff to
16 mark where different locations are within the scene and then
17 if we go out later, like in this case, and map the scene, we
18 can mark -- we can map those orange points and we know where
19 everything is.

20 MR. HOLFORD: Your Honor, at this time the state would
21 seek to introduce State's 100 in evidence.

22 THE COURT: Any objection?

23 MR. STANKO: No objection, sir.

24 THE COURT: Into evidence without objection.

25 STATE'S EXHIBIT NUMBER 100

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1 ADMITTED INTO EVIDENCE

2 THE COURT: You may proceed.

3 BY MR. HOLFORD:

4 Q: On this sketch and on -- on State's 84 and 100, can you
5 tell where the victim came to rest?

6 A: Yes, there's a blowup box on the top of this one that
7 points to the top right corner of the mapped scene and there
8 -- on this one there, there's an H for the final rest of the
9 head and an F for the final rest of the feet in this area
10 here.

11 Q: And can you tell an estimated, where -- based on the
12 calculations, where it was estimated the strike happened?

13 A: At the beginning of this driveway area here.

14 Q: So, in order to do these calculations, it was estimated
15 that the victim was struck here and landed there?

16 A: Yes.

17 Q: Now, to the pictures of the vehicle. I'm gonna show you
18 what's been entered as State's 26, 27, and 28. Are these
19 pictures that you've reviewed in this case?

20 A: Yes.

21 Q: Now, what is -- what is significant about the damage to
22 that vehicle?

23 A: It's a lot of damage in the roofline area where the
24 windshield and the roof meet, and then the roof itself is
25 actually caved in on the vehicle.

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1 Q: Why is that important that the roof is caved in?

2 A: It -- in most pedestrian lower speed crashes, the car
3 strikes the person, the person sort of wraps onto the hood of
4 the vehicle and then either falls off the side or the person
5 slams on the brakes and they fall forward off of the vehicle.
6 Most -- there's a lot of -- like Volkswagen, for example,
7 they're developing pedestrian airbag systems in cars now where
8 the hood actually -- when it feels it's striking a pedestrian,
9 the hood actually has an airbag system in it where it raises
10 the hood a little bit and then it cushions the impact of the
11 person that's being hit. They're designed for like urban
12 areas in cities where you have people crossing all the time
13 and they're getting struck. So that in that lower speed
14 crash, the, the hood would absorb a lot of the energy of the
15 impact and the injuries to the person wouldn't be as severe.
16 Higher speed crashes like in this one, you have the person
17 actually making contact with the top part of the windshield
18 and then vaulting over the whole vehicle, it's -- it's the
19 difference in the speeds and impact.

20 Q: When you're -- based on your expertise and how many
21 accidents that you've reviewed, what does this damage seem to
22 indicate to you about this accident?

23 A: It indicates -- to me, it's a higher speed impact.

24 Q: Now, how can that be consistent with, with throw data
25 saying anywhere from 34 to 42?

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1 A: That's sort of like what I was explaining earlier. It's
2 the difference between the vehicles that are striking the
3 person; it's the amount of the person that comes in contact
4 with the vehicle; and it's also it's the -- it's the
5 interaction between the person and the car and then the amount
6 of the car that touches the person and pushes the person
7 forward. So, the design of the vehicle has a great effect of
8 that as well.

9 Q: Have you reviewed the video, the surveillance video from
10 the Circle K that night?

11 A: Yes.

12 MR. HOLFORD: Your Honor, permission to publish State's
13 83?

14 THE COURT: Yes, sir.

15 BY MR. HOLFORD:

16 Q: State's 83, this video here, is this the video you
17 reviewed?

18 A: Yes.

19 MR. HOLFORD: Your Honor, could I ask that Sergeant Leach
20 come down?

21 THE COURT: Yes, sir. You can step down, please.
22 Remember to keep your voice up, please. Thank you.

23 BY MR. HOLFORD:

24 Q: If you'll come here so you can see.

25 (REPORTER'S NOTE: State's 83 published. No audio available.)

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1 Q: Did you see those lights pass by?

2 A: Yes.

3 Q: Does that -- did you review that video?

4 A: Yes.

5 Q: In preparation for this trial?

6 A: Yes.

7 Q: What does that appear to you?

8 A: It's traveling -- the vehicle is traveling much faster
9 than the other vehicle that comes before, it and it appears to
10 be traveling above the 40 miles an hour to me.

11 Q: Did it appear that that vehicle pressed the brakes or
12 slammed the brakes two seconds before, one second before?

13 A: No.

14 Q: Did you review photographs of -- taken during the daytime
15 around this crime scene?

16 A: Yes.

17 Q: I'm going to show you what's been marked for ID as
18 State's 18, 19, and 21. Can you identify what those
19 photographs are?

20 A: Now, these are daytime photographs of the area of the
21 collision.

22 Q: Okay. Do they appear to be an accurate reflections of --
23 of that area?

24 A: Yes.

25 Q: Were they taken by MAIT?

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JEREMY LEACH - DIRECT BY HOLFORD

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1 A: Yes.

2 Q: As part of this investigation?

3 A: Yes.

4 MR. HOLFORD: Your Honor, the state would seek to
5 introduce 18, 19, and 21 -- State's 18, 19, and 21.

6 THE COURT: Any objection?

7 MR. STANKO: No objection, sir.

8 THE COURT: They're into evidence without objection.

9 STATE'S EXHIBIT NUMBER 18, 19, AND 21

10 ADMITTED INTO EVIDENCE

11 THE COURT: You may proceed.

12 BY MR. HOLFORD:

13 Q: Why, why would you take pictures like this; why would
14 MAIT take pictures like this?

15 A: We take pictures, especially the initial -- the pictures
16 you showed me earlier that were done at night, they -- it's
17 usually very hard to tell where things are, give you
18 perspective, allow you to see everything. So, standard
19 practice for us is to return in daylight, take collision
20 pictures of the scene. We generally follow the path of
21 whatever is involved in the collision. If it's a car, we take
22 pictures along the path that that car was traveling. These
23 pictures are documenting the pedestrian's throw distance after
24 impact.

25 Q: Okay. And what happens when a person slams on their

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1 brakes generally to a roadway?

2 A: It can leave tire marks in the road.

3 Q: Are you able to see tire marks indicative of slamming on
4 the brakes before that driveway there?

5 A: Not before the driveway, no.

6 Q: Did there appear to be tire marks after the driveway?

7 A: Yes.

8 Q: Do they appear to be -- how do they appear to be angled?

9 A: Those marks are actually just -- it's like asphalt and
10 rubber and chemical and stuff from a vehicle pulling in and
11 out of the gas station. That's something that's -- that's not
12 actually a deceleration mark.

13 Q: Okay. So, these marks here are someone pulling in and
14 out of the gas station?

15 A: Yes.

16 Q: But does that appear to be that vehicle we just watched
17 slamming on the brakes and turning in?

18 A: No.

19 Q: Okay. Based on your investigation, reviewing these
20 photographs, reviewing the roadway, reviewing that video, does
21 it appear that the defendant's vehicle slammed the brakes or
22 pressed the brakes two to one second before hitting the victim
23 in this case?

24 A: No, the evidence that I -- reviewing the case, the
25 evidence that I saw and heard, he doesn't hit the brakes at

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JEREMY LEACH - CROSS BY STANKO

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1 all in the crash.

2 Q: I have no further questions at this time.

3 THE COURT: Cross examination?

4 MR. STANKO: Thank you, Your Honor.

5 CROSS EXAMINATION OF JEREMY LEACH BY MR. STANKO:

6 Q: So, the angle that you saw on the video, obviously you
7 can't see any brake lights there, correct?

8 A: No, I didn't see any brake lights.

9 Q: And if somebody were to decelerate by say 10 miles an
10 hour over the span of about two seconds, you wouldn't expect
11 that to be a slamming on the brakes, would you?

12 A: Ten miles an hour over two seconds? No, no.

13 Q: Okay. And there wouldn't be any -- any tire marks in the
14 roadway from that?

15 A: No.

16 Q: Typically, you wouldn't -- you wouldn't even hear those
17 brakes, would you?

18 A: Depending on where you were, yeah.

19 Q: Okay. All right. But again, if you were -- if you were
20 to put on brakes enough that you're only decelerating 10 miles
21 an hour over two seconds, typically wouldn't hear somebody
22 lock up brakes, there wouldn't be tire marks, there wouldn't
23 be anything significant to show that that happened, correct?

24 A: Correct.

25 Q: Okay. All right. And again, in the video, you -- the

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1 brake lights would've been opposite the camera's view, so you
2 wouldn't see if somebody had depressed brakes to the point
3 that they reduced their speed about 10 miles an hour, correct?

4 A: Correct.

5 Q: Okay. All right. Now, you had mentioned that the -- the
6 pedestrian was tossed -- was thrown, approximately, it was 85
7 feet, correct?

8 A: Yes.

9 Q: And I believe Mr. Holford, he stepped it out towards the
10 back wall?

11 A: Yes.

12 Q: Okay. Obviously, that's relatively inaccurate, it was
13 several paces. I guess the easiest way for all of us to
14 imagine it, most people know major league baseball home to
15 first is 90 feet, so it would be about five feet short of home
16 to first?

17 A: Yes.

18 Q: Fair estimate?

19 A: Yes.

20 Q: Okay. I figured that would be easier for everyone to
21 visualize instead of just paces. Now, if somebody is thrown
22 from a -- from a direct hit, you had mentioned a van with a
23 flat front and they are thrown, that's essentially taking on
24 100 percent of the -- of the vehicle's force being thrown at
25 them?

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1 A: Yes.

2 Q: Okay. All right. And in this one, we obviously we don't
3 have a -- we don't have a van; we have a 2002 Saturn?

4 A: Yes.

5 Q: Okay. The -- the windshield there and the -- and that A-
6 pillar, the pillar that connects basically the, the hood area
7 with the top of the windshield, that shows some very heavy
8 damage as well, correct?

9 A: Yes, it does.

10 Q: And that's consistent with a significant strike?

11 A: Yes.

12 Q: So, in your -- in your analysis of the vehicle and of
13 where the pedestrian lined up, can you definitively say how
14 much of that vehicle's force was transferred to the
15 pedestrian?

16 A: No.

17 Q: Okay. So, he could well have been thrown with a
18 significant portion of the force of that vehicle, right?

19 A: It would be a portion of it, yes, but it, it -- there are
20 other variables in it as well. I mean, how high he was thrown
21 versus just being thrown forward is gonna also make a
22 difference.

23 Q: Okay. And you're not able to tell from what you have
24 reviewed, what the angle was anything other than the damage on
25 that vehicle and where the victim wound up, correct?

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1 A: Yes.

2 Q: Okay. And your analysis -- well, I guess Lance Corporal
3 Shull's analysis was that the throw distance 85.82 feet
4 yielded a range of potential speeds for him?

5 A: Yes.

6 Q: Okay. All right. So -- and you reviewed those
7 calculations?

8 A: Yes.

9 Q: And you believe Lance Corporal Shull's calculations to be
10 accurate?

11 A: Yes.

12 Q: All right. Based on the information that was available
13 to him?

14 A: Correct.

15 Q: Okay. And the -- the minimum speed that -- that the
16 victim in this case -- and it's his speed through the air,
17 correct?

18 A: It's just more or less a distance speed covering the
19 ground friction. So, impact with the ground, it's all -- it's
20 kind of, it works itself out. In the air, you don't have a
21 whole lot of friction, but your initial landing to the ground,
22 you have a great deal of friction and then you total it all.
23 So, it's an average over that -- that distance is sort of how
24 it's developed. Excuse me.

25 Q: Okay. And is that throw distance, is that measured from

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JEREMY LEACH - CROSS BY STANKO

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1 the, the point where he initially makes contact with the
2 ground or where he comes to final rest?

3 A: No, it's from the --

4 Q: From the impact ---

5 A: Yes.

6 Q: --- but to the ---

7 A: To final rest.

8 Q: --- to final rest.

9 A: Yes.

10 Q: Okay. So, however, however far he -- he slid, rolled,
11 tumbled, whatever happened, once he hit the ground, that's not
12 where it's measured from; so it would be the friction from the
13 ground plays a part of that as well in where he winds up?

14 A: You're losing me here.

15 Q: I apologize. Again, everything that's factored into this
16 includes the distance through the air and then the ---

17 A: The travel distance on the ground, correct.

18 Q: Okay. That's -- I apologize for all that.

19 A: Okay.

20 Q: I knew I was trying to get there; I apologize. Okay.

21 And again, his combined speed from getting hit by the vehicle
22 to where he finally wound up, minimum on that distance, 34
23 miles an hour or 34.73 miles an hour?

24 A: Minimum, under circumstances that are accounted for in
25 the formula. It's not saying that that's his minimum speed

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JEREMY LEACH - CROSS BY STANKO

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1 for sure in this crash, it's just as a general work-off of
2 those numbers, yes.

3 Q: Okay. You said the maximum based upon what was -- what
4 was known at the time the calculations were done, based upon
5 an assumed angle, was 42.39 miles an hour?

6 A: Yes.

7 Q: Okay. And you said, there are a number of factors that
8 could've -- that could've changed all that?

9 A: Right, it's just something we do as an estimate. There's
10 a lot of variables in there that, that we can't account for.

11 Q: Okay. All right. And I apologize, jumping back to the
12 -- to the video, you said -- you said based upon what you saw,
13 it appears that, that the vehicle that we saw last was
14 traveling faster than the vehicle before it?

15 A: Yes.

16 Q: Was there any way for you to determine how fast that
17 vehicle -- the preceding vehicle had been traveling?

18 A: No, just -- just watching the video.

19 Q: Okay. So, so, it's entirely possible that that vehicle
20 was traveling well under the speed limit?

21 A: It didn't appear to be, no.

22 Q: But again, it is possible?

23 A: It's possible he was traveling under the speed limit,
24 yes.

25 Q: Okay.

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JEREMY LEACH - REDIRECT BY HOLFORD

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1 MR. STANKO: Your Honor, nothing further from this
2 witness.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION OF JEREMY LEACH BY MR. HOLFORD:

5 Q: You just said it was possible he was traveling under the
6 speed limit. Which car were you referring to?

7 A: The first vehicle, the front vehicle.

8 Q: Did it appear that that last vehicle, those headlights,
9 how fast did it appear to be traveling?

10 A: I would say 50 to 60 just based off just looking at the
11 video.

12 Q: No further questions.

13 THE COURT: Anything on those questions?

14 RECROSS EXAMINATION OF JEREMY LEACH BY MR. STANKO:

15 Q: But you are -- you're not certified in video analysis in
16 determining what Vehicle 1's speed was or what Vehicle 2's
17 speed was just based on just what you saw in that video?

18 A: No.

19 MR. STANKO: Your Honor, nothing further.

20 THE COURT: All right. Do you wish the witness to be
21 excused?

22 MR. HOLFORD: Yes, Your Honor.

23 THE COURT: Any objection?

24 MR. STANKO: No objection, sir.

25 THE COURT: You may step down, you are released from your

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JEREMY LEACH - RECROSS BY STANKO

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1 subpoena. Thank you, sir.

2 Next witness?

3 MR. HOLFORD: The state calls Rachel Nguyen.

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

6 RACHEL NGUYEN, HAVING BEEN DULY SWORN

7 TESTIFIES AS FOLLOWS:

8 CLERK: Please be seated. Please state your name and
9 spell it for the Court.

10 MR. NGUYEN: My name is Rachel Nguyen, N-G-U-Y-E-N.

11 THE COURT: Go ahead, sir.

12 DIRECT EXAMINATION OF RACHEL NGUYEN BY MR. HOLFORD:

13 Q: Ms. Nguyen, where are you currently employed?

14 A: I am currently employed at the South Carolina Law
15 Enforcement Division, most commonly known as SLED.

16 Q: And how long have you been employed there?

17 A: I've been there for about four and a half years.

18 Q: Okay. What kind of school or training did you have
19 before getting that?

20 A: I have two Bachelors of Science degrees from the
21 University of New Haven; one in biology and one in forensic
22 science.

23 Q: Back in October 2016 to the end of 2016, were you
24 employed there still?

25 A: Yes, I was.

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RACHEL NGUYEN - DIRECT BY HOLFORD

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1 Q: And in what capacity?

2 A: In 2016, I was a forensic technician within the
3 toxicology department.

4 Q: Now, explain to us, what's the toxicology department?

5 A: The toxicology department basically we're looking at
6 primarily body fluids for alcohol, drugs, or other poisons.

7 Q: And did you have an occasion -- did you have an occasion
8 to test toxicology related to this case?

9 A: I did.

10 Q: And what was that -- what was that based on, what was
11 submitted to you?

12 A: Can I refer to my notes?

13 Q: Yes.

14 A: So, we received blood in this case and my part for
15 analyzing the blood was I did the initial blood alcohol
16 analysis.

17 Q: Okay. Are you familiar with -- with chains of custody
18 kept by SLED?

19 A: I am.

20 Q: Have you reviewed those before?

21 A: I have.

22 Q: And why -- why is a chain of custody done?

23 A: At SLED, the chain of custody is electronic. So, as it
24 moves throughout the building, beginning when it is submitted,
25 it's electronically scanned to where it's contained, which may

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RACHEL NGUYEN - DIRECT BY HOLFORD

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1 be a shelf or a refrigerator. It's also scanned to a person.

2 So, it will show who has touched that evidence as it has

3 traveled through SLED.

4 Q: If I showed you a copy of the chain of custody, would you
5 be able to identify it?

6 A: Yes.

7 Q: I'm gonna hand you what's been marked State's 101 for ID.
8 Are you familiar with that document?

9 A: I am.

10 Q: And how are you familiar with it?

11 A: It has my name on this chain of custody. It also has the
12 lab number and type of sample that was submitted specific to
13 this case.

14 Q: Okay. And do you keep records and notes to know what lab
15 number is associated with a certain case.

16 A: Yeah. So once evidence is submitted to our lab, it's
17 given a unique case number and then each item submitted within
18 that case is given a unique item number.

19 Q: Is this a fair and accurate copy of what the chain of
20 custody was at SLED?

21 A: It is.

22 MR. HOLFORD: Your Honor, at this time, the state would
23 seek to introduce State's 101 into evidence.

24 THE COURT: Any objection?

25 MR. STANKO: No objection, sir.

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RACHEL NGUYEN - DIRECT BY HOLFORD

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1 THE COURT: All right. It's in evidence without
2 objection.

3 STATE'S EXHIBIT NUMBER 101

4 ADMITTED INTO EVIDENCE

5 THE COURT: You may proceed.

6 BY MR. HOLFORD:

7 Q: Now, looking at this chain of custody, can you tell who
8 -- who did SLED receive -- well, first tell us, what did they
9 receive in that first one?

10 A: So, as it pertains to toxicology, we received a blood
11 sample.

12 Q: Okay. And who, who gave you the blood sample; who turned
13 that into SLED?

14 A: It appears that Lisa Hill from the Conway Police
15 Department submitted this on November 15th of 2016.

16 Q: And then who receives it? Where does it go from there?

17 A: So, when evidence is submitted, it's brought to our
18 evidence control department. So, in this case, the technician
19 there, Doris Yarborough, received it from Lisa.

20 Q: Does she -- does she do any analysis?

21 A: She does not. So, as previously mentioned, each thing
22 that's submitted gets a unique lab number and item number.

23 Q: So, what she's gonna do is take the box from the -- from
24 Lisa, and she's gonna make sure that it's sealed, first off,
25 and then she's going to mark it as sealed as well as with the

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RACHEL NGUYEN - DIRECT BY HOLFORD

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1 case number and the item number. She's going to then put it
2 in what we call a heat-sealed pouch, just a plastic bag that
3 she then seals and initials saying that she received it that
4 way and it's tamper evident, so if anything would've happened
5 from that point on, you could see on the bag that someone
6 tried to open it.

7 Q: Would she accept something that wasn't sealed?

8 A: She would not.

9 Q: Why is that?

10 A: So, I've never run into a case where it would happen, but
11 she would either notate it or she would have to speak with the
12 submitting agency as to why it may be appeared open, maybe
13 they went into it for paperwork, that's sort of thing.

14 Q: Did -- did that happen in this case?

15 A: No.

16 Q: Where did this blood go from Doris Yarborough?

17 A: So, after Doris, she put it -- she kept it in the
18 evidence room and it went on to a toxicology evidence intake
19 storage.

20 Q: Is the evidence room and intake storage, is that a
21 secured facility?

22 A: It is a secured facility. The only people that have
23 access to that area are the technicians within that department
24 as well as the higher administration.

25 Q: All right. And so, where did it go after the intake

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1 storage?

2 A: After that, it seems Amy Stevens Black took it into her
3 custody and then a minute later, gave it to a forensic
4 technician within the toxicology department and her name was
5 Jessica Kapp.

6 Q: All right. Where did it go from Jessica Kapp?

7 A: Jessica Kapp put it within the refrigerator that is
8 maintained in the toxicology department.

9 Q: And then where did it go from the refrigerator?

10 A: Then I took it out of the refrigerator to perform
11 analysis on it.

12 Q: Okay. Now, tell me about the procedure. After you
13 received it from a refrigerator, do you check the package for
14 tampering?

15 A: I do. So, I'll do a quick visual examination to make
16 sure there's no tears or anything in it and then I will open
17 the bag myself and then proceed with analysis of the evidence.

18 Q: Would you analyze evidence that appeared to be tampered
19 with?

20 A: I would not and if it did appear to be tampered with, I
21 would go to my supervisor and ask how we should proceed from
22 there.

23 Q: Did you do an analysis on blood in this case?

24 A: I did.

25 Q: I'm going to show you what's been marked for ID as

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- 1 State's 94. Can you identify just what I've handed you?
- 2 A: Can I keep that?
- 3 Q: Yeah.
- 4 A: Yes, I can. So, what I'm looking for is the unique case
5 number to match the chain of custody as well as the item
6 number, and then on the back, where there's a cut made and
7 then resealed, are my initials as well as the date which
8 corresponds to the chain of custody.
- 9 Q: Okay. So, so, you cut the bag open; is that right?
- 10 A: Yes.
- 11 Q: To access what was inside?
- 12 A: Yes.
- 13 Q: And then you reseal it?
- 14 A: I do.
- 15 Q: Is that after you test it?
- 16 A: Yes, I'll take a sample out of the test tube, I'll put it
17 into my own test tube, and then I'll seal that for analysis,
18 and then we also seal it back after taking the sample.
- 19 Q: Now, how did the -- how does the test tube or how do they
20 appear in there; do they appear to have a seal?
- 21 A: Yes. So, you can see in this case, there are two test
22 tubes submitted; one the seal is broken and there's an X on
23 the top stopper, which shows that that's the tube I took the
24 sample from. This other tube has not -- the seal has not been
25 broken, so that's how it would appear before analysis.

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1 Q: Okay. And, and just so, how can you be sure that this
2 vial is the same vial that was turned in from Lisa Hill?

3 A: On the test tube, the seal is also a label. So, it has
4 the subject's name written on it -- let me grab my glasses --
5 as well as it appears the officer's name. And then in this
6 case, it has Rebecca Rowe as the witness or collector on the
7 tube.

8 MR. HOLFORD: Court's indulgence.

9 BY MR. HOLFORD:

10 Q: Now, when you tested this blood, what were you testing
11 for?

12 A: We were looking for ethanol.

13 Q: And did you -- did you ethanol?

14 MR. STANKO: Your Honor, we would renew our objection
15 from the -- based upon the hearing from back on Monday.

16 THE COURT: All right, sir. The Court will reaffirm my
17 prior ruling in this matter, and I'll allow the testimony to
18 proceed over the objection of the defense.

19 You may proceed.

20 MR. STANKO: Very well, Your Honor.

21 BY MR. HOLFORD:

22 Q: Go ahead. Did you find ethanol in this blood?

23 A: I did.

24 Q: And what value did you find?

25 A: The value I received was a .2443.

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1 Q: Now, let me back up. What kind of training did you have
2 in toxicology and the tests for it?

3 A: So, as an employee in the toxicology department, you get
4 in-house training. That consists of first three lectures that
5 are performed in the classroom. After each lecture, you get
6 an exam, which you have to take and pass in order to move on
7 to the next step of training. After that, is the practical
8 portion. I have to analyze 500 previously analyzed samples.
9 I have to compare my results to the values that were obtained
10 during testing from someone who is authorized to do the
11 testing, and then my values have to be within a certain
12 percent to be accepted. After that, I am given a competency
13 test, which is basically a mock case, that I have to perform
14 independently without help and pass in order to then finally
15 move on to the last round, which is a mock court. After
16 completing all of these steps, I am then deemed competent to
17 perform independent case work on samples, which include blood
18 alcohol analysis as well as drug screens.

19 Q: Now, you're listed as a forensic technician on this form;
20 is that correct?

21 A: Correct.

22 Q: Explain to me the difference between forensic technician
23 and forensic scientist?

24 A: So, the forensic technician, we do various tests, which
25 include taking pictures of the evidence as it's submitted

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1 before analysis. We also do -- we make buffers or solutions
2 for the analysts. And then the preliminary testing, is the
3 blood alcohol testing, we also do drug screen testing, and we
4 do carbon monoxide testing. We're basically screening all of
5 the cases for this and then after, depending on the results,
6 usually if it's positive, it will then proceed on to an
7 analyst for either further testing or to be written up because
8 they interpret it as be completed with testing.

9 Q: Did that happen in this case, was it sent on?

10 A: Yes, it was assigned to Lindsay Mitchell and she would be
11 the forensic scientist on this case.

12 Q: How many -- how many times have you tested blood for
13 ethanol or drugs prior to this?

14 A: Approximately, I've done thousands of samples. I was in
15 the toxicology department for a little over three years and
16 each batch you do, which is on a daily basis, will consist of
17 over 60 samples. So, I would say thousands.

18 MR. HOLFORD: Your Honor, at this time, the state would
19 seek to tender Rachel Nguyen as an expert in blood toxicology
20 analysis?

21 THE COURT: Do you wish to voir dire the witness or
22 challenge her qualifications?

23 MR. STANKO: Your Honor, based upon her testifying to her
24 qualifications, we have no objection to her being certified as
25 a witness, I mean as an expert.

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1 THE COURT: I'm going to qualify her to give her opinion
2 in the field submitted by the state, you may proceed.

3 BY MR. HOLFORD:

4 Q: Thank you, Your Honor. Now, -- now let me back up to the
5 question. What value did you receive after testing this blood
6 for ethanol?

7 A: So, the value I received was a .2443.

8 Q: What does that mean?

9 A: So, when the sample is positive for ethanol or any of the
10 other volatiles we look for, it gets a second test. So, this
11 value isn't going to be the reported value. We take the
12 average of the two values that are obtained and that's the
13 reported value for a sample and, in this case, it's positive
14 for ethanol.

15 Q: And so, what's that saying when you hear terms like BAC
16 or a breath test, what is this .244 saying about the
17 defendant's blood.

18 A: Unfortunately, if you would like how it affects a person,
19 you would have to ask the forensic scientists in this case.

20 Q: Okay. Can, can a person pour -- could you take Jack
21 Daniels and pour it in the -- in the blood tube and get a
22 higher value?

23 I know that's a silly question, but ---

24 A: So, that's not something that we would do.

25 Q: Right.

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1 A: However, we do kind -- to kind of indirectly answer your
2 question, we do test samples for alcohol content. Like we'll
3 get moonshine samples to give it the value. If you were to
4 give us an example of straight alcohol, it would have to be
5 diluted because if we ran it straight, it would ruin our
6 instruments, which are machines that calculate values.

7 Q: I guess what I'm just trying to get at, how are there
8 controls in place to make sure that this was the ethanol.

9 A: So, with our samples, we run controls or standards.
10 Basically, these are a liquid component with no values. These
11 samples have to be found within five percent of its known
12 value to be -- so, that's basically saying that the run is --
13 the instrument is working as well as the samples that are on
14 the run or working. So, it's a good test.

15 Q: I have no further questions at this time.

16 THE COURT: Cross examination?

17 MR. STANKO: Your Honor, nothing from this witness.

18 THE COURT: Do you wish the witness to be excused?

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: Any objection?

21 MR. STANKO: No objection, Your Honor.

22 THE COURT: All right, ma'am, you are released from your
23 subpoena, you may go back to your regular duties.

24 MS. NGUYEN: Thank you.

25 THE COURT: Y'all come up and talk to me for a second,

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1 please.

2 (REPORTER'S NOTE: Bench conference is held off the record in
3 the presence of but outside the hearing of the jury.)

4 THE COURT: All right. So, your next witness then?

5 MR. HOLFORD: The state calls Lindsay Mitchell.

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

8 LINDSAY MITCHELL, HAVING BEEN DULY

9 SWORN TESTIFIES AS FOLLOWS:

10 CLERK: Please state your name and spell it for the
11 Court.

12 MS. MITCHELL: Lindsay Mitchell, L-I-N-D-S-A-Y, M-I-T-C-
13 H-E-L-L.

14 THE COURT: Go ahead, sir.

15 DIRECT EXAMINATION OF LINDSAY MITCHELL BY MR. HOLFORD:

16 Q: Ms. Mitchell, where are you currently employed?

17 A: I'm employed at the South Carolina Law Enforcement
18 Division.

19 Q: How long have you been employed there?

20 A: About four years now.

21 Q: And what department do you work in?

22 A: I work in the toxicology department.

23 Q: And were you -- where were you in the end of 2016?

24 A: The toxicology department.

25 Q: How long have you been in the toxicology department?

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1 A: All four years.

2 Q: Where did you go to school or what kind of schooling and
3 education do you have?

4 A: I went to Pace University for my undergrad. I have two
5 bachelor degrees; one in chemistry and one in forensic science
6 from Pace University. And then I went to Penn State and got a
7 masters in forensic science.

8 Q: What kind of training and expertise do you have in
9 toxicology?

10 A: At SLED we do a pretty intensive training program. It
11 starts with our Level 1 training. So, we get trained in the
12 blood volatile testing as well as our preliminary drug
13 screens. So, that involves exams, written exams, as well as
14 competency testing so that we're given a -- essentially, a
15 fake case that we run as if it were a real case. We take
16 written exams throughout the -- we have lectures throughout
17 the course of our training and take three written exams
18 throughout the course of that that we have to get at least,
19 you know, a passing grade on.

20 We have -- for the Level 2 training portion, we have more
21 modules that we have to complete as well as another competency
22 test, and then we also have two mock court scenarios that we
23 have to go through.

24 Q: What kind of substances do you test for toxicology; what
25 are you looking for?

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1 A: It's a wide range. It depends on the type of case and
2 this one we were just looking at alcohol.

3 Q: All right. And, and how many times have you tested blood
4 for alcohol; do you even know?

5 A: Personally, probably near a thousand.

6 Q: Are your values that you get from that, are they peer
7 reviewed?

8 A: Yes. So, every pack that we run is quality controlled by
9 multiple people. The analyst or technician that performs the
10 run, when they put their, what we call pack together, they're
11 looking through the quality control to make sure that it
12 passes. That is then double checked by a senior analyst who
13 signs off on the quality control. The analyst who is then
14 writing up the report, it's -- for me, in this case, was me.
15 It's our job to look through the quality control one more time
16 and then there's another person that signs off on the report
17 as well when I'm done with it. So, about roughly three to
18 four eyes have looked over this by the end of it.

19 Q: Have you been qualified as an expert to testify before?

20 A: Yes, I have.

21 Q: Approximately how many times?

22 A: About three or four.

23 MR. HOLFORD: Your Honor, at this time, the state would
24 tender Lindsay Mitchell as an expert in blood toxicology
25 analysis?

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1 THE COURT: Do you wish to voir dire the witness or
2 challenge her qualifications?

3 MR. STANKO: No objection, sir.

4 THE COURT: She's qualified to give her opinion in the
5 field of blood toxicology analysis.

6 You may proceed.

7 MR. HOLFORD: Thank you.

8 BY MR. HOLFORD:

9 Q: I'm going to hand you what's been entered as State's
10 Exhibit 101. Are you familiar with what 101 is?

11 A: Yes, this is our chain of custody.

12 Q: And does your name appear on that chain of custody?

13 A: Yes.

14 Q: Okay. And where does that appear; who did you receive
15 this sample from?

16 A: Well, I retrieved it from our refrigerator.

17 Q: All right. And who had it before that?

18 A: Rachel.

19 Q: Rachel Nguyen?

20 A: Yes.

21 Q: Okay. So, would you be able to identify a blood sample
22 based on that chain if I showed it to you?

23 A: Based on the lab number associated with it, yes.

24 Q: Okay. I'm gonna to hand you what's been marked as
25 state's 94 for ID at this point. Are you able to tell if the

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1 -- that package is associated with the blood that was turned
2 into you?

3 A: Yes.

4 Q: And how are you able to do that?

5 A: The lab number corresponds and then also during our
6 inventory process, which was performed by Jessica Kapp, one of
7 the things or steps that she has to do is write the lab number
8 and her initials on the tube of evidence, which she did. I
9 can see that.

10 Q: Okay. And then after -- after Rachel tested, did she
11 seal the bag?

12 A: Yes, every time someone goes into the bag, they make a
13 cut and then seal underneath their cut and then initial their
14 seal.

15 Q: Did you go into this bag as well?

16 A: Yes, I was the last person to.

17 Q: Okay. And -- and where, can you see your cut on there?

18 A: Right here.

19 Q: And did you initial there?

20 A: Yes, initial and date.

21 Q: Has that bag been opened since you've sealed it?

22 A: It does not appear to have been tampered with, no.

23 Q: Would be able to tell if that bag had been tampered with?

24 A: Yes, these are tamper-evident bags.

25 MR. HOLFORD: Your Honor, at this time, the state would

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1 seek to introduce State's 94 into evidence?

2 THE COURT: Any objection?

3 MR. STANKO: Without objection, sir.

4 THE COURT: 94 is into evidence without objection.

5 STATE'S EXHIBIT NUMBER 94

6 ADMITTED INTO EVIDENCE

7 BY MR. HOLFORD:

8 Q: Now, the tube in there -- inside that bag, there are two
9 tubes; is that correct?

10 A: Yes.

11 Q: Does one appear to be sealed and one unsealed?

12 A: Yes.

13 Q: So, when you received this package and you cut in and go
14 into there, had one of those vials already been tested?

15 A: Yes.

16 Q: And who was that by?

17 A: Rachel.

18 Q: Okay. And then what do you do at that point?

19 A: All of our alcohol testing, if it's positive, gets two
20 tests, we call them replicates. It's to ensure that
21 essentially no mistakes are made, that our values have to
22 match within eight percent and we take and report the average
23 of those two values.

24 Q: Okay. And so, did you take -- did you test this blood?

25 A: I did. I did the second test.

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1 Q: And what was the value that you received?

2 A: I believe it was a 0.2349.

3 Q: And did you also review Rachel's test?

4 A: Yes.

5 Q: And did you write a report in this case?

6 A: Yes.

7 Q: And did you submit a report about the blood alcohol
8 content in that blood?

9 A: Yes.

10 Q: I'm going to hand you what's been marked as State's 102
11 for identification purposes. Can you identify what that
12 document is that I've handed you?

13 A: This is my report.

14 Q: Okay. And is that the value we were just talking about
15 that you've reported out?

16 A: This is the average, yes.

17 Q: Does that appear to be a fair and accurate reflection of
18 the report based on the ethanol in the blood in this case?

19 A: Yes.

20 MR. HOLFORD: At this time, the state would seek to
21 introduce State's 102 in evidence.

22 THE COURT: Any objection?

23 MR. STANKO: No objections, sir.

24 THE COURT: It's into evidence without objection.

25 STATE'S EXHIBIT NUMBER 102

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1 ADMITTED INTO EVIDENCE

2 THE COURT: You may proceed.

3 BY MR. HOLFORD:

4 Q: So, based on your testing and based on Rachel's testing,
5 what is the reported value of that ethanol or alcohol in this
6 blood sample that was tested?

7 A: It's a 0.239 grams per deciliter.

8 Q: What does that mean?

9 A: Essentially, you can think of it as comparing it to the
10 0.08 that we all think of as the legal driving limit.

11 Q: Okay. And so, this is .239.

12 A: So, almost three times that level.

13 Q: Is that a -- what's fatal?

14 A: Around a .4 is what we would think of as fatal; maybe
15 around a .3 is comatose.

16 Q: Are you -- do you do training or studies to talk about
17 the amount of alcohol it takes to get your blood alcohol level
18 up to a certain point?

19 A: We have -- there's equations in the field. There's a
20 particular one, Widmark, that has been based off of studies
21 that can allow you to calculate based off of assumptions how
22 much alcohol one might have to drink to get to a certain blood
23 alcohol level.

24 Q: Have you reviewed the defendant's height and weight?

25 A: Yeah, it's only based off of the weight. The height does

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1 not matter in this case, but, yes.

2 Q: Does male or female matter?

3 A: Yes.

4 Q: Okay. And where did you gather that information?

5 A: I was given a report that was taken from the time of
6 arrest, I believe.

7 Q: Based on -- now, can you be certain how many drinks a
8 person has had?

9 A: No, not unless they recorded it and told us, there's no
10 way to know for certain.

11 Q: But, are you able to tell if this was one drink; can
12 someone have one drink and have a .239?

13 A: No.

14 Q: Based on the calculations and the science that you've
15 reviewed, are you able to estimate or approximate how many
16 that might be -- how many drinks that might be?

17 A: Yeah, based on what we would call a standard drink, this
18 could be one glass of wine, a standard glass of wine not a
19 large glass of wine or one standard size shot, which is one
20 ounce, or a standard beer, you know, like four percent to six
21 percent, not one of the more heavier types, it's about 11
22 drinks. That's also assuming that this is all at one time;
23 this is not giving time to drink it over the course of a few
24 hours and let your body metabolize. So, that calculation is
25 based off of what we call a bolus dose. So, that's drinking

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1 it all at one time, which is a little unrealistic, but that's
2 just kind of giving an estimation.

3 Q: How does -- how does .239, how does that relate as far as
4 time goes? So, you said it's unrealistic to say that 11
5 drinks right now, if there's a period of time, two, three
6 hours, does that value increase or decrease?

7 A: So, it's doing a few things. If you're talking about the
8 number of drinks that it would take, we -- your body, again,
9 is another average or another assumption. In theory, the
10 average person metabolizes about one drink, one standard drink
11 per hour. So, say that he was drinking over the course of two
12 hours, you could add two drinks to that number. And so,
13 that's how we would think of it.

14 Q: I have no further questions at this time.

15 THE COURT: Cross examination?

16 MR. STANKO: Very briefly.

17 CROSS EXAMINATION OF LINDSAY MITCHELL BY MR. STANKO:

18 Q: Now, every person oxidizes alcohol differently, correct?

19 A: Yes, everyone has different metabolisms.

20 Q: Okay. So, somebody who say never had a drink before
21 might have two and be stumbling, falling down drunk, correct?

22 A: I'm not sure about two per se, but ---

23 Q: Two or three then?

24 A: Yeah.

25 Q: A small person who wasn't used to it, it would impact

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1 them significantly as opposed to somebody who say was used to
2 it?

3 A: Yes, an alcoholic, it would take a lot more drinks for an
4 alcoholic male as opposed to a smaller naive female drinker.

5 Q: Okay. So, and if somebody -- if somebody was an
6 alcoholic, if they -- if they had been drinking a lot over a
7 long period of time, fair to say that a large of amount of
8 drinks might impact them a good bit less than it would a
9 normal person who doesn't maybe have that inclination to drink
10 on a regular basis?

11 A: So, the thing about alcoholism, if you want to think
12 about it the way of tolerance, there's two kind of scenarios
13 there. It might take more drinks to get to that value of a
14 .239, but they still got there. So, it might take more than
15 that 11 drinks that I estimated, but their blood alcohol is
16 still what we calculate it or what we analyzed it to be
17 essentially. There's a different type of -- and that could be
18 because of the metabolism in their liver. You can over time
19 actually get more of the enzymes in your liver that will help
20 metabolize it quickly as opposed to just the normal amount
21 that the normal person might have.

22 Additionally, if you're thinking of like outward
23 appearance tolerance, if that's what you're getting at, you
24 know, you might teach yourself to stand against the wall to,
25 you know, to hide the fact that you're staggering. You know

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1 alcoholics can teach themselves that, but when it comes to
2 driving a car, per se, that's not really something that you
3 can teach yourself. Those smaller motor performance tests,
4 it's not really something that, you know, that's not the
5 tolerance that we're talking about here.

6 Q: I understand.

7 MR. STANKO: Your Honor, nothing further.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION OF LINDSAY MITCHELL BY MR. HOLFORD:

10 Q: Would a blood alcohol content of .239 impair an
11 individual's ability to drive a vehicle?

12 A: Yes.

13 Q: No further questions.

14 THE COURT: Anything on that question?

15 MR. STANKO: No, Your Honor.

16 THE COURT: You wish the witness to be excused?

17 MR. HOLFORD: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. STANKO: No, Your Honor.

20 BY THE COURT:

21 THE COURT: All right, ma'am, you're released from your
22 subpoena, you may go back to your regular duties.

23 All right. Further witnesses by the state?

24 MR. HOLFORD: Your Honor, at this time, the state rests.

25 THE COURT: All right. Thank you very much. Matters of

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1 law from the defense at this time?

2 MR. STANKO: We will, Your Honor.

3 THE COURT: All right. All right, ladies and gentlemen,
4 at this stage of the proceedings, you have received all of the
5 evidence that the state would present in its direct
6 presentation of evidence to you. At this stage, in any
7 criminal case, we must now -- I have to discuss matters of law
8 with the attorneys before we can proceed any further. I need
9 to do that outside your presence. We will do that as
10 expeditiously as possible, but you'll -- you'll be in your
11 jury room probably for about 10 or 15 minutes or so. And so,
12 we'll call you back out as soon as we can.

13 Remember, don't talk about the case, don't allow anybody
14 to talk to you about it.

15 Thank you very much.

16 (REPORTER'S NOTE: Jury exits courtroom @ 11:14 A.M. The
17 following takes place outside the presence of the jury.)

18 THE COURT: All right. Motions from the defense at this
19 time?

20 MOTIONS:

21 MR. STANKO: Yes, Your Honor. We would move for a
22 directed verdict based upon, first off, for the, the felony
23 DUI. There are several elements that they have to meet;
24 operating a motor vehicle within the State of South Carolina,
25 where your ability to drive is materially and appreciably

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1 impaired and you commit the traffic violation that proximately
2 causes the collision we are all here for. Your Honor, all
3 they have been able to show related to intoxication, they have
4 a number and they have a smell of alcohol coming from Mr.
5 Washington. I don't believe that rises to the level the
6 statute requires of material and appreciable impairment.

7 Additionally, Your Honor, none of the witnesses were able
8 to come up with a -- with an exact speed or even anywhere
9 close to an exact speed. We had ranges from 34 all the way up
10 to I believe it was 60. Your Honor, it's a -- it's a fairly
11 wide range, at least some of which falls below the, the speed
12 limit there on the roadway.

13 Based upon the fact that it's in two different areas on
14 the -- on the elements of that charge, they have not been able
15 to come up with concrete evidence for that. We would ask that
16 the -- that the Court direct a verdict.

17 THE COURT: All right, sir.

18 Solicitor, your argument?

19 MR. HOLFORD: Yes, Your Honor, as to the directed verdict
20 for felony DUI, 56-5-2945 requires that a person, while
21 driving under the influence of alcohol, drugs or a combination
22 of alcohol or drugs, drives a motor vehicle, and when driving
23 the motor vehicle does an act forbidden by law or neglects a
24 duty imposed by law in the driving of the motor vehicle, which
25 act or neglect proximately causes great bodily injury or

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1 death.

2 Your Honor, in this case, it is uncontroverted that the
3 defendant was driving the motor vehicle on the roadway in
4 South Carolina. It is uncontroverted that he was intoxicated.
5 We've heard testimony that his blood alcohol content was a
6 .239. I believe the statute allows for, at a minimum, an
7 inference of intoxication.

8 In 56-5-2950 (G)(3), if the alcohol concentration was at
9 that time, 8/100ths of one percent or more, it may be inferred
10 the person was under the influence of alcohol.

11 Your Honor, so at a minimum, at .08, there's an inference
12 of under the influence of alcohol. I believe that the video,
13 his conduct both on the roadside as well as the statements the
14 defendant made himself show a material and appreciable
15 impairment, also given the fact that he struck a pedestrian,
16 killed the victim in this case, and when asked about it, is
17 claiming about a bottle. That also shows impairment,
18 materially and appreciably impaired.

19 Your Honor, as to the act forbidden by law or neglect of
20 duty imposed, there has been testimony that a driver must keep
21 a proper lookout for pedestrians, must yield to pedestrians in
22 the roadway, and -- and the fact that the defendant's alcohol
23 level when consumption was so high that he did not do that in
24 this case.

25 Additionally, as to the speed, it's the defendant's own

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1 testimony that he was going above the speed limit. There's
2 testimony from a lay witness that puts him at above the speed
3 limit. There's testimony from MAIT that puts the vehicle
4 speed above the speed limit.

5 Your Honor, in this case, there has been sufficient
6 evidence, certainly for the jury and also for this Court to
7 find that the state has proven beyond a reasonable doubt, the
8 defendant was speeding, traveling in excess of the posted 40
9 mile an hour speed limit in this case. And then that was the
10 proximate cause of the death of the victim in this case.
11 Based on that, the state would argue that all the elements
12 have been met for felony driving under the influence resulting
13 in death in this case and that this case should be submitted
14 to the jury for their consideration.

15 BY THE COURT:

16 THE COURT: All right. As to the first issue of directed
17 verdict, the general law being when ruling on a motion for
18 directed verdict I'm concerned with the existence or non-
19 existence of evidence, not it's weight. The defendant would
20 be entitled to a directed verdict motion. When the state
21 fails to produce evidence of the offense charged, I would
22 grant a directed verdict motion when the evidence merely
23 raises a suspicion that the accused is guilty of the crime
24 charged.

25 In this particular matter, I must view the evidence and

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1 all reasonable inferences therefrom in the light most
2 favorable to the non-moving party; that is to the state. And,
3 if any direct evidence or substantial circumstantial evidence
4 reasonably tending to prove the guilt of the accused is shown,
5 then the case would be submitted to a jury.

6 In this particular matter, the defendant is charged with
7 felony driving under the influence, death resulting. In that
8 particular offense, the state has to first prove that the
9 defendant, drove the vehicle under the influence of alcohol or
10 drugs. It can be proved by direct or circumstantial evidence.
11 The state has to prove that beyond a reasonable doubt the
12 defendant was sufficiently under the influence to impair his
13 ability to drive with reasonable care with due regard for
14 others and himself or as a reasonably prudent person would
15 drive.

16 Next, the state has to prove beyond a reasonable doubt
17 that while driving, the defendant did an act forbidden by law
18 or neglected a duty imposed by law.

19 And finally, the state has to prove beyond a reasonable
20 doubt that the act or neglect of the defendant proximately
21 caused the, in this case, the death of the victim in this
22 matter.

23 So, looking -- and I'm just going to highlight some of
24 the evidence. I am relying upon all of the evidence that has
25 been presented in this case so far. But just trying to

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1 highlight some of the evidence, we've had the testimony of Ms.
2 Olivia Malle, a CCU student at that time, who never saw the
3 car stop at the time. Kelsee Cramer, a witness, saw the
4 vehicle hit the victim. No other vehicles, just that one. In
5 her testimony, she indicated that that vehicle, the
6 defendant's vehicle was going a lot faster than she thought.
7 She saw the victim hit, go straight up from the hit 20 to 35
8 feet up, saw him land, again, a notation that the car was
9 moving much quicker than she originally thought, that he was
10 going fast. She estimated 65 to 70 miles an hour, a very high
11 speed, that the defendant continued on and came back later,
12 but he did not stop or put of brakes at the time of hitting
13 the victim.

14 Mr. Julian Frazier testified that he saw the defendant
15 later when he returned to the scene. That when he came back,
16 the defendant was aggressive, his eyes were read, that he was
17 in an altered state, that he never tried to help the victim.
18 Stephen McLaughlin Carneiro, who also testified, that he did
19 not see -- he was a witness on scene, that the defendant did
20 not try to help the victim, that the defendant was acting very
21 angrily that he was upset about somebody throwing a bottle at
22 his car, that the defendant was the only person that was being
23 aggressive at the scene.

24 Mr. Officer Glen Guyett of the Conway Police Department
25 testified as to the impairment that he observed of the

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1 defendant and he smelled of alcohol; that he had red and
2 glossy eyes; that he judged him to be under the influence;
3 Also he gave testimony about the drawing of blood and the
4 process properly used in that matter. The -- that when he was
5 -- when the defendant was talking to him, that the defendant
6 estimated that he was going at least 45 miles an hour. There
7 was testimony presented that he indicated that the speed limit
8 at that time for that area was 40 miles an hour.

9 Again, we had a number other witnesses as to what was
10 transpiring as well as the proper taking of the blood from the
11 defendant as well as the body cams.

12 Dr. Proctor testified as to the death of the defendant
13 that was consistent with being struck by a vehicle, that the
14 death was caused by being -- and consistent with being struck
15 by a vehicle.

16 The -- Mr. Loskill of the South Carolina Department of
17 Probation, Parole and Pardon Services testified as to the
18 ankle monitor worn by the defendant obviously placing him at
19 the scene of the crime at the time it was committed. As well
20 as other information. The MAIT team, the two individuals that
21 testified from the MAIT team testified indicating the -- what
22 they had recorded. It was noted that the best as could be
23 estimated from the information presented, that the victim
24 ended up 85 feet from being struck by the vehicle. Obviously,
25 a considerable distance that -- in that the speed of the

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1 victim, not the vehicle, but the speed of the victim after the
2 impact was in a range of 34 miles per hour to 42 miles an hour
3 indicating that was an indication of the force that was
4 transferred from the vehicle, to the victim. Obviously not a
5 hundred percent as indicated by the testimony, a hundred
6 percent is not transferred. So, looking at that, that victim
7 from transferred energy, using the maximum value that's the
8 evidence there, was going above the speed limit. That's
9 transferred energy from the vehicle, which was less than speed
10 and the energy of the vehicle.

11 The -- there's testimony that at defendant's vehicle did
12 not appreciably slow down at the time of the striking of the
13 victim in this matter. And then you had the testimony
14 regarding the alcohol value or the level of ethanol in the
15 defendant's blood.

16 Clearly, just on that summary, and again I'm relying upon
17 all of the evidence that's been testified in this case. There
18 is more than sufficient evidence to show that the state has
19 presented evidence, which covers all of the elements of the
20 crime of felony driving under the influence, death resulting.
21 Again, I'm not judging credibility or believability. Does the
22 evidence exist? Clearly evidence exists without question,
23 looking at the totality of the evidence presented on all the
24 elements that I reflected would have to be proved by the state
25 regarding felony driving under the influence, death resulting.

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1 The motion is denied.

2 Further motions?

3 MR. STANKO: Nothing further, Your Honor.

4 THE COURT: You had started -- you just made a motion for
5 directed verdict on the felony driving under the influence,
6 death resulting. Do you want to make a directed verdict
7 motion on leaving the scene of an accident resulting in death?

8 MR. STANKO: No, Your Honor.

9 THE COURT: Very good.

10 All right. As to the presentation of evidence from the
11 defense, do you want to take a short break, talk with your
12 client, and then come back and inform the Court as to his
13 position as to whether he wishes to testify and, of course,
14 I'll question him at that point in time.

15 MR. STANKO: Your Honor, it's always been my
16 understanding that he does not wish to testify.

17 THE COURT: Well, why don't we -- what we'll do is, we're
18 gonna take a short break for about 10 minutes. We'll come
19 back -- you'll communicate with your client. When we come
20 back, I will talk to him about his right to testify and we'll
21 get his answer at that point in time but this will give you
22 time to communicate with him and review the matter with him
23 again, before I ask him what he wants to do.

24 Thank you very much.

25 MR. STANKO: Very good. Thank you, sir.

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1 MR. HOLFORD: Thank you, Your Honor.

2 RECESS - 11:31 A.M.

3 *****OFF THE RECORD*****

4 (On the Record - 11:47 A.M.)

5 (REPORTER'S NOTE: The following takes place outside the
6 presence of the jury.)

7 THE COURT: All right. Mr. Stanko, is your client ready
8 for the Court to question about his right to testify?

9 MR. STANKO: He is, sir.

10 THE COURT: All right. Very good.

11 All right. If you'd stand up, sir.

12 And Madam Clerk, place him under oath.

13 CLERK: Please raise your right hand

14 EDWARD LEE JOSEPH WASHINGTON, HAVING
15 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

16 THE COURT: All right. Mr. Washington, at this point in
17 time, I'm going to talk to you about certain of your
18 constitutional rights. If at any point in time when we're
19 talking, you have a question about what I'm saying or you want
20 to ask a question or you don't understand any part of it, I
21 need for you to indicate that to me. You can raise your hand,
22 you can tell your attorneys, but you've got to give me some
23 kind of indication that you've got a question or you don't
24 understand what's going on. Do you understand that?

25 MR. WASHINGTON: Yes, sir.

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1 THE COURT: All right. Very good. Now, we've reached
2 the stage of the trial, where you can present your defense.
3 Now, you have to the right to claim the protection given to
4 you by the Fifth Amendment to the Constitution of the United
5 States of America. Now, that amendment states in part, that
6 no person shall be compelled to be a witness against
7 themselves. That means nobody can make you testify in this
8 case. You can testify if you want to, but nobody can make you
9 do that; do you understand that?

10 MR. WASHINGTON: Yes, sir.

11 THE COURT: All right. Very good. Now, if you decided
12 to testify, you'd be under the same rules you've seen all the
13 other witnesses in this case. You'd be examined or asked
14 questions by your attorneys and then you would cross examined
15 or asked questions by the state as to any matter the Court
16 deemed to be proper. Would there be any questioning of Mr.
17 Washington as to a prior record?

18 MR. HOLFORD: Your Honor, I show the defendant's prior
19 record for convictions. He has a 2016 city ordinance
20 violation that would not be eligible; a driving under
21 suspension, I do not believe would be eligible; a driving
22 under the suspension second; a 2017 giving false information
23 to law enforcement, I believe that would be eligible based on
24 truthfulness; he has sex offender registry violation from
25 2017, it's a first offense, so that carries up to 365, so I do

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1 not believe that's over.

2 THE COURT: So, that's up to one year. We'll look at
3 that in just second. Go ahead.

4 MR. HOLFORD: A 2018 violation of city ordinance would
5 not be eligible; a possession to sell or dispose of a stolen
6 vehicle value 1,000 but less than 5,000, that is from 2004,
7 that is an offense that is a felony and carries over a year,
8 the state would also contend that that is a crime of
9 dishonesty because it was a stolen vehicle; he has a commit or
10 attempt to commit a lewd act on a child, that's what is now
11 considered the CSC with a minor third, a child under the age
12 of 16, that is from 2009, that is also a felony; the state
13 would intend to use that. He has a willful violation of
14 electronic monitoring from 2015, that is a felony; he has a
15 violation of city ordinance again in 2015 and simple
16 possession of marijuana that the state would not seek to
17 introduce; and another 2016 violation of the city ordinance,
18 the state would not seek to introduce.

19 And so, possession of a stolen vehicle, the lewd act on a
20 child under the age of 16, and electronic monitoring probably
21 as well as giving false information.

22 THE COURT: All right. The electronic monitoring
23 violation, what's the penalty on that?

24 MR. HOLFORD: Your Honor, I believe that carries -- I
25 would have to look -- it's 10 or 15 years. Let me see what

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1 this statute is.

2 THE COURT: The -- all right. The -- what was the one
3 that was 2004?

4 MR. HOLFORD: That was the possession of a -- possession
5 of a stolen vehicle, value 1,000 to 5,000.

6 THE COURT: All right. I'm gonna rule that that's beyond
7 the 10-year limitation unless you can show me he was in jail
8 past or into 2009.

9 MR. HOLFORD: Okay. And it does appear. So, there's
10 notated in 2004, and then it appears custody status received
11 in 2005 for possession, sale or disposal of a stolen vehicle
12 over 5,000. I can't tell if he had a probation violation but,
13 again, that would put him in custody up until 2006 just for
14 purpose of the record.

15 THE COURT: And then that, I think that's the violative
16 on the 10-year limitation. I do not find it to be a crime of
17 dishonesty based upon the Supreme Court decision. However,
18 giving false information to the police would be a crime of
19 dishonesty. You can ask about that. The failure to register
20 as a sex offender is not more than 366 days. The statute says
21 not more than one year, so 366 days is more than a year, so
22 you can use that. The crime that was in 2009, I do not find
23 that to be violative of the 10-year rule, so you can use that
24 one.

25 MR. HOLFORD: The willful violation of electronic

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1 monitoring, that is Code Section 23-3-545(A), and 23-3-545(A)
2 states that the active electronic monitoring and impose a
3 sentence of up to 10 years for a violation.

4 THE COURT: All right. Very good. You can ask that,
5 also. All right. So, you understand those particular
6 offenses, Mr. Washington, the Court would allow the state to
7 ask if you have been convicted of those crimes in the past and
8 if you admit -- if you would testify and you admit you'd been
9 convicted of those in the past, then that's the end of it.
10 The state can't ask you anything else about it, can't bring it
11 up again. Now, if you would deny it, then they'd be able to
12 submit whatever proof they can that you had been convicted of
13 those crimes. Do you understand that?

14 MR. WASHINGTON: Yes, sir.

15 THE COURT: All right. Very good. Now, if you decide to
16 testify, that's got to be your decision, freely made,
17 voluntarily made, understanding what we have talked about.
18 Now, you can, and I'll give you an opportunity to talk to your
19 lawyers or if there's someone in your family you want to speak
20 to for a minute, before you answer the question, I'll be glad
21 for you to do that. But I will tell you, if you decide not to
22 testify, I will instruct the jury, they can't give that fact
23 any consideration whatsoever. They can't talk about it in the
24 jury room, they can't use it to make a decision. I'll tell
25 them they can't use it mentally to make a decision. It's not

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1 part of this case.

2 Now, before I ask you what you want to do, do you want to
3 ask your attorneys any question or is there a family member
4 you wanted to ask a question of before I ask you?

5 MR. WASHINGTON: No, I'm all right.

6 THE COURT: All right, sir. Do you understand what we've
7 talked about?

8 MR. WASHINGTON: Yes, sir.

9 THE COURT: All right. Do you wish to testify in this
10 case?

11 MR. WASHINGTON: No, sir.

12 THE COURT: All right. Very good. Thank you very much.
13 You can have a seat.

14 All right. Would there be presentation of any other
15 testimony other than that of the defendant by the defense?

16 MR. STANKO: There would not, sir.

17 THE COURT: All right. So, with that then, the defense
18 rests; is that correct?

19 MR. STANKO: We do, sir.

20 MOTIONS:

21 THE COURT: All right. Very good. You want to renew
22 your motions for a directed verdict on the felony driving
23 under the influence, death resulting charge then?

24 MR. STANKO: Yes, Your Honor.

25 THE COURT: All right. Without going through that

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CHARGE CONFERENCE

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1 colloquy that I had just a few minutes ago, I'm gonna just
2 reaffirm and reiterate everything that I previously said and I
3 respectfully decline to grant your motion for a directed
4 verdict on the felony driving under the influence, death
5 resulting charge.

6 Are you making a directed verdict motion on the other
7 charge of leaving the scene of an accident, death resulting?

8 MR. STANKO: We are not, sir.

9 THE COURT: All right. Very good.

10 CHARGE CONFERENCE:

11 THE COURT: All right. Gentlemen, let's talk about then,
12 counsel, let's talk about the charge that the Court would
13 give. The defense, I understand, you've made a request to
14 have a lessor included offense regarding felony driving under
15 the influence, death resulting, of the lessor included offense
16 of driving under the influence; is that correct?

17 MR. STANKO: Correct, sir.

18 THE COURT: All right. So, let me hear your arguments
19 about that.

20 MR. STANKO: Your Honor, there are certain elements for a
21 regular DUI not in place for a felony DUI. If the jury does
22 not find that he actually committed a traffic violation that
23 was the proximate cause for all of this, but they still do
24 find that he was intoxicated that evening while driving. I
25 believe that they would, based upon the -- based upon those

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1 elements still be able to find him guilty of DUI or not guilty
2 of it separate from the felony DUI charge.

3 THE COURT: All right. What's the state's position?

4 MR. HOLFORD: Your Honor, it appears that a jury charge
5 is required on lesser included offenses if there's any
6 evidence from which it could be inferred the lesser rather
7 than greater offense was committed. I'm looking to see if DUI
8 would meet the *Blockburger* test.

9 THE COURT: Driving under the -- just driving under the
10 influence, and that being 56-5-2930, basically is the
11 defendant is charged or the defendant -- the state must prove
12 beyond a reasonable doubt the defendant was driving a motor
13 vehicle in this state while under the influence of alcohol
14 and/or drugs or other substances to the extent that the
15 defendant's faculties to drive were materially and appreciably
16 impaired, and then it defines driving, you also have to prove
17 that the defendant was sufficiently under the influence to
18 impair his ability to drive with reasonable care with due
19 regard for others and himself or as a reasonably prudent
20 person would drive. Then you've got the inference.

21 Now -- go ahead.

22 MR. HOLFORD: Your Honor, I would, I guess the one part
23 that I don't think would meet the *Blockburger* test for regular
24 driving under the influence, is that at least in the penalty
25 phase, it sets out an amount so ---

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1 THE COURT: Well, and I was just gonna talk about that,
2 but that's in the penalty phase. It says, if convicted of
3 driving under the influence and then it says the results show
4 whatever they are, this is from, you know, .10 to, you know,
5 .16 or less than .16 and the penalty is this. If it's .16 to
6 whatever the penalty is this; if it's above the next level,
7 the penalty is this. But, that's in the penalty section of
8 the statute. In the paragraph before that, it defines driving
9 under the influence and, in that paragraph, it does not make
10 any reference to limits. The limits are directed to the
11 penalty, if convicted. So, if you're convicted and the
12 evidence shows this, then, you know, the penalties are less or
13 greater depending upon what the levels are showing, but -- but
14 the basic driving under the influence, the decision, basically
15 is the exact same wording that's in the felony DUI statute.
16 Obviously, the felony DUI has more things you have to prove,
17 but the same thing that's in DUI is in felony DUI, as I read
18 it. Now, I'll be glad to hear from you if you want to make an
19 argument otherwise.

20 MR. HOLFORD: Your Honor, I don't -- to be candid with
21 the Court, I don't see, based on the *Blockburger* test that the
22 -- that the elements of the lessor DUI, other than in that
23 penalty phase, add additional requirements that are not
24 included in the felony DUI. Also, it appears that to be tried
25 for a DUI would probably attach jeopardy to a felony DUI at a

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1 later date, which would also indicate that it may well be a
2 lessor included offense.

3 THE COURT: All right. Very good. I, you know, I was --
4 I questioned it before I read the statute, but looking at the
5 statute, then it just appears directly that they define
6 driving under the influence and then they say, if you're
7 convicted, if the limits are this, then the penalty has to be
8 greater or lesser depending upon the limits.

9 So, I'm going to charge the driving under the influence
10 as a lessor included if the jury does not believe the state
11 has proven the defendant guilty of the greater the offense,
12 that being the felony driving under the influence, death
13 results.

14 Now, let's talk about the inference as far as the
15 inference from results of the tests. And let me get that.

16 I know I complain about this every time, but ever since
17 the state got hacked, the computer can't stay on; it can't
18 stay on for about like a minute and then you've got to put
19 password back on. I have to do it every time.

20 So, for, and I just want to be clear about that, under
21 56-5-2950, are we in agreement that the inference would apply
22 to the felony driving under the influence and the driving
23 under the influence and that it -- it is a 8/100ths of one
24 percent concentration; is that the state's position?

25 MR. HOLFORD: Yes, Your Honor. Under that same statute,

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1 (G), it does say criminal prosecution for violation of Section
2 56-5-2930, 2933, and 2945. 2945 is the felony DUI statute.
3 So, the state would contend that it does apply and the
4 inference level under (G)(3) is that alcohol concentration at
5 the time 8/100ths of one percent, which would be a .08 may be
6 inferred that the person was under the influence of alcohol.

7 THE COURT: And the 2930 is the straight driving under
8 the influence?

9 MR. HOLFORD: Yes, sir.

10 THE COURT: All right. Defense disagree with that?

11 MR. STANKO: No, we don't, Your Honor. That is -- that
12 is my understanding as well.

13 THE COURT: All right. Very good.

14 All right. So, let me just give you what I -- my
15 intention is at this point in time to charge the jury. Let's
16 look at the time. Why don't we -- why don't I send them to
17 lunch, tell them to come back -- you know, we'll talk about
18 the charge. I want y'all to eat lunch and then have some time
19 to work on your, what you're going to say to the jury. I'll
20 just tell them 2 o'clock, that should give more than
21 sufficient time for y'all and certainly them.

22 Tell the bailiff, tell him to excuse them for lunch, be
23 back by 2 o'clock and remind them what the Court's been
24 telling them the whole time, don't talk about the case, don't
25 allow anybody to talk to them, they can't look up anything,

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1 they can't do any research. So, just remind them of all of
2 that, please.

3 Thank you.

4 All right. So, let's talk about the charge. Have --
5 yeah, obviously, the general things we talk about all the
6 time: Credibility, believability, direct and circumstantial
7 evidence, presumption of innocence, have the thing about
8 expert witnesses. Basically, what I tell them is, you know,
9 that because of their -- we don't allow people normally to
10 give their opinion, but some people, by reason of their
11 experience, training and expertise in that particular field,
12 will allow them to give their opinion but it doesn't give them
13 any special status; they judge all of the witnesses the same.

14 The fact that the defendant did not testify, I'll go over
15 that with the -- with the jury. There's been a statement of
16 the defendant and I'll talk to them about that, that even
17 though I allowed it into evidence, they make the
18 determination, that the defendant made his statement, was it
19 voluntary, was it, you know, free for threats, coercion, fear,
20 hope of leniency, reward. They can look at, you know, factors
21 about education, background, environment, detention, nature
22 questioning. Miranda warnings, I'll go over that with them.
23 And again, as with all things, the state has the burden of
24 proving beyond a reasonable doubt that the statement was the
25 voluntary, free and voluntary statement of the defendant, and

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1 then they give it whatever weight they want.

2 We would have obviously the presumption of innocence.
3 We'd talked with them about that and then reasonable doubt,
4 the kind of doubt that would cause an ordinary, reasonable
5 person to hesitate to act. So, those would be the basic
6 things that we would talk to a jury about.

7 As to this particular case, then I have found a couple of
8 statutes that portions of which I believe the jury should hear
9 in this. Talking about when a -- and I'm looking at 56-5-
10 3130, 56-5-3160, and 56-5-1520. When traffic control signals
11 are not in place or not in operation, the driver of the
12 vehicle shall yield the right of way, slowing down or stopping
13 if need be to yield to a pedestrian crossing the roadway
14 within a crosswalk when the pedestrian is upon the half of the
15 roadway upon which the vehicle is traveling or when the
16 pedestrian is approaching so closely from the opposite half of
17 the roadway as to being in danger. No pedestrian shall
18 suddenly leave a curb or other place of safety and walk or run
19 into the path of a vehicle, which is so close as to constitute
20 an immediate hazard. A pedestrian crossing or walking along a
21 highway is required to exercise ordinary care for his own
22 safety; that is such care as a reasonably, prudent person
23 would have exercised under the same or similar circumstances.

24 Motorists using the highways have the duty of exercising
25 ordinary or reasonable care to avoid injuring a pedestrian who

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1 is crossing or upon or along a highway. And the fact that a
2 motorist may have a right of way over a pedestrian does not
3 relieve him of the duty to use reasonable care for safety of
4 such a pedestrian even though the statute may require a
5 pedestrian on the highway to yield the right of way to a
6 motorist. A person shall not drive a vehicle on a highway at
7 a speed greater than is reasonable and prudent under the
8 conditions having regard to the actual and potential hazards
9 then and there existing. Speed must be so controlled to avoid
10 colliding with a person, a vehicle or other conveyance on or
11 entering the highway in compliance with the legal requirements
12 and duty of a person to use due care. The speed limit
13 specified or established are maximum, lawful speeds, and
14 person shall not drive a vehicle on a highway at a speed in
15 excess of these maximum limits.

16 That's the Court's intention as to the statutory rules of
17 the road, to read those to the jury. Any additions,
18 deletions, exceptions from the state?

19 MR. HOLFORD: Your Honor, I'm trying to find the hit-and-
20 run statute that talks about the duties of a driver to return
21 in order to give information or render aid.

22 THE COURT: All right.

23 MR. HOLFORD: What those specific duties are.

24 THE COURT: Okay. Let's see if we can't go back here.
25 Hold on one second.

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1 MR. HOLFORD: I believe in 56-5-1210, that's duties of a
2 driver involved in an accident resulting in death and it
3 refers to Section 56-5-1230, which states that there's a duty
4 to give information and render aid. That would be the duty
5 that is referred to and required for 56-5-1210.

6 THE COURT: All right. So, okay. So, 56-5-1210, all
7 right. And what was the other one?

8 MR. HOLFORD: It's 56-5-1230 is the duty.

9 THE COURT: 1230. Okay. All right. So, let's look at
10 1210 first. 1210 says the driver of the vehicle involved in
11 an accident resulting in injury to or death of a person shall
12 immediately stop the vehicle at the scene of the accident or
13 as close to it as possible. He shall then -- shall return to
14 and in every event shall remain at the scene of the accident
15 until he has fulfilled the requirements of 56-5-1230.

16 So, and then 56-5-1230 basically says or says the driver
17 of any vehicle involved in an accident resulting in injury or
18 death to a person or damage to a vehicle shall give his name,
19 address and registration number of the vehicle he is driving
20 and shall upon request make available and exhibit his driver's
21 license. So, any objection from the defense to charge both of
22 those?

23 MR. STANKO: No, Your Honor.

24 THE COURT: All right. Very good. I will add those to
25 the statutes. Is there anything else from the state as to

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1 the statutory rules of the road?

2 MR. HOLFORD: No, Your Honor.

3 THE COURT: All right. Very good.

4 Anything as to the statutory rules of the road from the
5 defense?

6 MR. STANKO: No, Your Honor.

7 THE COURT: All right. So, then going to the actual
8 crimes that the defendant is charged with, the defendant being
9 charged with felony driving under the influence, death
10 resulting, the state has to prove beyond a reasonable doubt
11 that he drove a vehicle under the influence of alcohol.
12 Driving the vehicle means the vehicle was in motion. Has to
13 prove beyond a reasonable doubt that he was sufficiently under
14 the influence to impair his ability to drive with reasonable
15 care with due regard for others and himself or as a reasonably
16 prudent person would drive. That the -- put in there the
17 inference that we talked about and the state must prove beyond
18 a reasonable doubt that while driving, the defendant did an
19 act forbidden by law or neglected by mood, duty, imposed by
20 law. Here the state has charged the defendant did travel in
21 excess of the posted speed limit or failed to yield to a
22 pedestrian or failed to keep a proper lookout and it goes from
23 the indictment.

24 And finally, the state has to prove beyond a reasonable
25 doubt that the act or neglect of the defendant proximately

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1 caused the death of another person; the proximate cause being
2 the direct cause.

3 And if they find that the state has not proven the
4 defendant guilty of the crime of felony driving under the
5 influence, then they must consider driving under the influence
6 and then I would charge that again with the inference section.

7 Leaving the scene of an accident causing death, the state
8 must prove beyond a reasonable doubt the defendant was driving
9 a vehicle, the vehicle was involved in an accident, the
10 accident causing death to another person. The defendant did
11 not stop or failed to return and remain at the scene. The
12 defendant failed to give his name, address, and vehicle
13 registration number and, if asked, failed to show his driver's
14 license, and defendant failed to give reasonable assistance to
15 the injured person. And, that the state must also prove
16 beyond a reasonable doubt the defendant knew or should have
17 known that the accident happened and that could be done by
18 direct or circumstantial evidence.

19 And finally, greater or lesser offense. I'll actually
20 put that in before I talk about leaving the scene of an
21 accident cause it has nothing to do with that. Greater or
22 lesser offense, cause that's with the felony DUI or the DUI.
23 If you have a reasonable doubt as to whether the defendant is
24 guilty of a greater or lesser offense, you must resolve that
25 doubt in favor of the defendant. If you find the defendant

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1 has proved the defendant guilty of the lesser offense beyond a
2 reasonable doubt.

3 All right. So, that's my intention at this point in
4 time. Additions to that from the state?

5 MR. HOLFORD: Your Honor, I do. You had asked about the
6 statutory provisions and I ---

7 THE COURT: Did you find another one?

8 MR. HOLFORD: I did. There's a 56-5-3230 driver is to
9 exercise due care because under the indictment, we -- we
10 indicted for -- what we indicted for excessive speed, failure
11 to keep a proper lookout, and failure to yield right of way.
12 This 3230, driver to exercise due care, it says
13 notwithstanding any other provisions of any local ordinance,
14 every driver of a vehicle shall exercise due care to avoid
15 colliding with any pedestrian or any person propelling a human
16 -- I take that back.

17 THE COURT: Okay. So, all right.

18 MR. HOLFORD: No, Your Honor, I would stand by that, that
19 it is a pedestrian or a person propelling human-powered
20 vehicle and shall give audible signal when necessary and shall
21 exercise proper precaution upon observation of any child or
22 obviously confused, incapacitated, or intoxicated person.

23 THE COURT: Well, let's hold on a second. I got to put
24 -- it can't be a simple password, it has to be numbers and
25 letters and upper case and lower case and hyphens and all

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1 that.

2 All right. I'm sorry, tell me that code section again
3 please?

4 MR. HOLFORD: 56-5-3230.

5 THE COURT: 3230. All right. All right. So, it says
6 every driver of a vehicle shall exercise due care to avoid
7 colliding with any pedestrian or any person propelling a
8 human-powered vehicle and shall give an audible signal when
9 necessary and shall exercise proper precaution upon observing
10 any child or any obviously confused, incapacitated, or
11 intoxicated person.

12 Objection to that from the defense?

13 MR. STANKO: No, Your Honor.

14 THE COURT: All right. So, we will include that one,
15 also. All right.

16 MR. HOLFORD: And ---

17 THE COURT: Yes?

18 MR. HOLFORD: --- as to proximate cause, Your Honor, that
19 I'm reading from John Ferguson's Criminal Offenses in South
20 Carolina, which quotes *State v. Dantonio*, 376 S.C. 594, which
21 was quoting *State v. Burton*, 302 S.C. 494 at 497 that the
22 defendant's act may be regarded as the proximate cause if it
23 is a contributing cause to the death of the deceased. The
24 defendant's act need not be the sole cause of the death.

25 THE COURT: Right. So, my intention is proximate cause

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1 is the direct cause. It is the immediate cause. It is the
2 efficient cause. It is that cause without which death of the
3 victim would not have resulted. There must be a chain of
4 causation from the time of the injury inflicted by the
5 defendant until the time of the victim's death. Proximate
6 cause does not necessarily mean that it occurred immediately
7 prior to death. The defendant's act need not be the sole
8 cause of the death, but must be a proximate cause contributing
9 to the death of a victim.

10 And, let me see if there's anything else. That would be
11 it; that would be my definition that I would give to the jury
12 about proximate cause. All right?

13 MR. HOLFORD: Yes, Your Honor.

14 THE COURT: Anything else from the state?

15 MR. HOLFORD: No, Your Honor.

16 THE COURT: Anything else from the defense?

17 MR. STANKO: Your Honor, with regard to the -- the
18 language relating to felony DUI, we would just ask that it
19 includes, I believe you said that his abilities to drive were
20 impaired. We would ask that it include materially and
21 appreciably impaired as the 2930 statute reads?

22 THE COURT: Any problem with that from the state?

23 MR. HOLFORD: Your Honor, the state would just request
24 that the -- for felony driving under the influence that it be
25 read as the statute is worded and that's that a person who

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1 under the influence of alcohol, drugs, or a combination of
2 alcohol or drugs. I understand that the other statute does
3 say materially and appreciably and if that wording were used,
4 that that be used for the lesser included DUI. However, the
5 felony driving under the influence be charged as it's written
6 in the statute by the legislature.

7 THE COURT: All right. Well, it's defined on both of
8 them that the state must prove beyond a reasonable doubt that
9 the defendant was sufficiently under the influence to impair
10 his ability to drive with reasonable care, with due regard for
11 others and himself or as a reasonable, prudent person would
12 drive. I'm not sure how that's different from materially and
13 appreciably impaired, honestly. All right.

14 All right. On both of them, I'm gonna say that the, to
15 the extent that the defendant's faculties were appreciably
16 impaired. And again, add also the state must prove beyond a
17 reasonable doubt the defendant was sufficiently under the
18 influence to impair his ability to drive with reasonable care
19 with due regard for the others and himself or a reasonably,
20 prudent person would drive.

21 All right. So, with that, anything else from the state?

22 MR. HOLFORD: No, Your Honor.

23 THE COURT: From the defense?

24 MR. STANKO: No, Your Honor.

25 THE COURT: All right. I'll see y'all at 2 o'clock then.

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1 Thank you very much.

2 MR. STANKO: Thank you, sir.

3 THE COURT: Mr. Stanko and Mr. Holford, here's a copy of
4 the verdict form for y'all. That's your copy.

5 **RECESS - 12:28 P.M.**

6 *****OFF THE RECORD*****

7 **(On the Record - 2:02 P.M.)**

8 (REPORTER'S NOTE: The following takes place outside the
9 presence of the jury.)

10 BY THE COURT:

11 THE COURT: First, is there anything from the state that
12 we need to cover at this point in time?

13 MR. HOLFORD: No, Your Honor.

14 THE COURT: From defense?

15 MR. STANKO: Your Honor, would you like us to rest again
16 in front of the jury?

17 THE COURT: I was just gonna go over that, yes. When we
18 call the jury in, I was going to ask you, Mr. Stanko, what's
19 the position of the defense and you can tell me that the
20 defense rests at that point in time, then I'll explain to the
21 jury where we are and go into the closing arguments at that
22 point in time. All right?

23 MR. STANKO: Thank you, sir.

24 THE COURT: All right. Very good.

25 Ask the jury to come in, please, sir.

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BY THE COURT

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1 (REPORTER'S NOTE: Jury enters courtroom @ 2:04 P.M.)

2 THE COURT: All right. Mr. Stanko, the position of the
3 defense?

4 MR. STANKO: Your Honor, at this time, the defense rests.

5 THE COURT: All right. Very good. All right, ladies and
6 gentlemen, where we are at the stage of the proceedings, you
7 have now heard all of the evidence that is going to be
8 presented in this case. Now, that is not the end of the
9 matter. What we have now are the closing arguments of the
10 attorneys and as I told you at the very beginning, opening
11 statements, closing arguments, that's not evidence. You've
12 heard all of the evidence that you're gonna consider in this
13 case. But the closing arguments are important. They're each
14 side's summation to you of what they believe the important
15 facts and factors are and what they're going to be asking you
16 to do as a result of your unanimous verdict in this particular
17 matter. Remembering of course that you are the judges of the
18 facts of this case. And after that, I will give you the law
19 that you will apply to the facts and evidence you've heard in
20 this case and then I'll submit and give you the case for your
21 deliberations and unanimous decision.

22 Solicitor?

23 MR. HOLFORD: May it please the Court?

24 THE COURT: Yes, sir.

25 CLOSING BY HOLFORD:

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CLOSING BY HOLFORD

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1 MR. HOLFORD: Ladies and gentlemen, you heard me ask a
2 lot of people how long they've been doing their job. I've
3 been doing this for almost seven years and as you can see, I
4 still get nervous. You saw that this morning. I had some
5 missteps and mistakes. The reason for that, this is
6 important. It's important to those people involved.

7 Ryan Bielawa, 19 years old, college student, out
8 celebrating Halloween, October 28th, 2016. He's across the
9 street. He decides he wants to go to the other side of the
10 street. So, he makes his way, probably fairly fast, across
11 four lanes of traffic near the sidewalk. He nearly makes it,
12 nearly makes it. But instead, the defendant decided to drink
13 alcohol that night to the point where his blood was a .239 and
14 get behind the wheel of a car and drive. That's why Ryan
15 didn't make it to the other side of the street. Was there a
16 crosswalk? Sure. Did he walk down it? No. Did he deserve
17 to die because he didn't walk across the street at a
18 crosswalk? No. Ryan died because of the defendant's actions.

19 There's a lot of evidence, a lot of testimony presented
20 in this case and you were probably wondering throughout the
21 course of this trial, gosh, this is monotonous; why are they
22 doing this again; why does it matter what the chain is. You
23 know, we have to do that. The law requires that we prove
24 certain elements, that we show the links in the chain.

25 All of this has been entered. You'll be able to view it

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CLOSING BY HOLFORD

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1 back there. I know I showed you some pictures. I know some
2 we just sat down; you'll be able to look at all of that.

3 I want to talk about first -- because we've charged him
4 with two things -- hit-and-run resulting in death, that's
5 leaving the scene. So, after the defendant struck Ryan,
6 resulted in his death, he left. I get it; the defense is
7 going to say, yeah, but he came back. What's the law require?
8 What's the duty there? Why do we make people stop right then?
9 To render aid, to give their information, to help out, call
10 police.

11 You heard that this is about where the defendant struck
12 the victim. And he travels up here passing all these points,
13 comes up here, turns around. We didn't shy away from that
14 fact. I get it; he came back. Did he come back to render
15 aid? Did he come back to give his information? Did he come
16 back to help out? No. Why did he come back? You heard it.
17 He was mad. Someone threw a bottle at my car; I'm going to
18 fight someone. What's he do when he gets out of the car?
19 Fights, aggressive, yelling, cursing, tried to take on a whole
20 crowd of people. He punched a guy that's trying to help out
21 the victim who's dying on the ground. Is that coming back for
22 purpose of the statute? Is he giving information; is he
23 rendering aid; is he trying to help a dying man? No. He's
24 coming back to cause a problem. No one is going to throw a
25 bottle at his car. A bottle? Would any reasonable person in

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CLOSING BY HOLFORD

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1 their right mind say that damage is caused by a bottle? No.

2 Did he have to come up with something, some reason or was he

3 just too drunk, too intoxicated to even know what happened?

4 You heard him say as he's driving down this way and we've

5 got some timestamps because he's on an ankle monitor; he's got

6 a GPS. We know where he's going. 12:31, he's going out

7 towards the beach. In his own statement, he says, I see a

8 crowd of people out there. This is a college campus, right

9 off a college campus. It's close to Halloween, there's people

10 outside walking on the street. Does he have the duty to keep

11 a lookout, a duty to exercise due care in driving a vehicle?

12 Absolutely. He knew there was a group of people out there.

13 He said that. He's coming back. Why these times are

14 important, they correlate to a printout. So, when he's going

15 down away from Conway, what are his speeds? 79, 81, 42, 31,

16 25, 67. Is that speed right at the time? No. But, what's

17 that show you; what are you able to see from that? That's how

18 he drives. He's flying down 544. What's he doing when he's

19 coming back? 61. Does he eventually turn around? Yes. He

20 comes up here, 42, 43, turns around in some little parking

21 lot, comes back at 44. Now, again, I get it. Defense is

22 gonna say he came back, he came back; it wasn't a hit-and-run.

23 He didn't do what the law requires. He didn't follow the law.

24 Now, let's talk about felony DUI. The felony DUI with

25 death, it requires more than just driving drunk. I know that

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CLOSING BY HOLFORD

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1 might seem crazy, but it's true. You can't just drive drunk,
2 hit and kill somebody, and be guilty of felony DUI. You have
3 to also be doing something against the law, some traffic
4 violation or neglect a duty imposed by law. So, what was the
5 defendant doing in this case? One, he was speeding; two, he
6 wasn't keeping a lookout for the pedestrian; three, he didn't
7 yield to the pedestrian. We're talking about a four-lane road
8 that Ryan walked across or hurried across, maybe even ran
9 across, four lanes. Why do we have pictures and maps to show
10 the scene during the daytime? Because you can see how wide
11 that road is. You can see if there's something obstructing a
12 view from someone running across the street. There's not.
13 We're not talking about a dark winding road off in Horry
14 County; that's a wide road. If he's not so drunk, if he's
15 keeping a lookout, he sees Ryan coming across the road. Now,
16 I'm not going to sit here and tell you that he swerved to hit
17 him; that's not the case, I'm not saying that. He didn't
18 intentionally plow down an innocent man. I honestly don't
19 believe that. But what did he do? He chose to drink to
20 excess. You know, the law says it's .08. We've probably all
21 heard that before. That's an inference level. At .08, you
22 can assume, and above, that he was under the influence.
23 What's his alcohol level? .239. That's nearly three times
24 the legal limit. We're not talking about someone who had two
25 drinks, or three drinks, or four drinks, or five drinks.

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CLOSING BY HOLFORD

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1 You've heard from the witness, an average person, average
2 weight, male, that's maybe 11 drinks. That's a whole lot of
3 alcohol to consume and get behind the wheel of a car. You
4 know why that's against the law? Because of this, these
5 situations, when he's that impaired, driving, speeding down
6 the road, accidents like this happen.

7 I would ask you when considering what happened, the Judge
8 is gonna talk to you about proximate cause. I understand that
9 Ryan crossed the street not in the crosswalk, but that does
10 not negate the defendant's duty. That doesn't negate his duty
11 to keep a lookout. It doesn't negate his duty to yield to a
12 pedestrian. There can be two causes to an accident and the
13 defendant was the proximate cause of this accident. He
14 doesn't have to be the sole cause. I understand there's a
15 pedestrian almost to the sidewalk, he's in the middle of the
16 road. The defendant still caused this. His actions still
17 caused this.

18 Now, how do we know he was speeding? You know, that's
19 the battleground as we'd like to say. These are issues that
20 we have to -- have to talk about. Why? Because he neglected
21 a duty imposed by law. He's not driving the vehicle in a safe
22 manner other than being highly intoxicated. How do we know
23 that he was speeding? Well, he estimates his speed at 45 to
24 50 miles an hour. That's over the speed limit; posted at 40.
25 You heard from the Probation Department that at 12:41, at

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CLOSING BY HOLFORD

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1 12:41, that's right here, 61 miles an hour. 12:43, he's down
2 to 2, 3, 6 somewhere right in there. He's turning around.
3 And then 44, he's coming back. Within a minute before this
4 collision, he's going 61. That's speeding.

5 You heard from MAIT about the throw distance. I've tried
6 to pace it off. This is 25 feet, 25. Do you remember how far
7 the victim was thrown from being hit by this car? Eighty-
8 five feet. From here double to that rail, that's further than
9 the end of the courtroom. Eight-five feet is how far that 19-
10 year-old kid flew through the air. From the strike to where
11 he rested was 85 feet. You can't tell me that's from a 30-
12 mile-an-hour collision. The witnesses didn't say it was from
13 a 30-mile-an-hour collision. Why did we talk about this so
14 much? The EDR guy gives us range and saying that at a certain
15 point, that car registers a braking action two seconds before
16 down to 34.

17 I'm asking you to consider all the evidence and say that
18 event that was recorded is not the defendant striking the
19 victim. It can't be. Thirty-four miles an hour is not gonna
20 throw a body further than that. It's just not. The witnesses
21 on scene are saying, he's going 70. I get it; they're lay
22 people, they can't say exactly. He's going fast. You watched
23 the video. I'm not going to show it again. You can watch it
24 back there if you want. You see those headlights; they are
25 cruising, cruising. You heard from Kelsee Cramer, she pulled

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CLOSING BY HOLFORD

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1 up, that car was moving; it was moving fast. I looked back
2 and he's already here. She saw him. He was flying down that
3 road. That is why Ryan is dead.

4 You're gonna be able to also look at these pictures. I
5 said it before, these pictures, that dented A-frame, you heard
6 it from the witnesses, that's not a slow collision. This is
7 not the result of a low-speed crash. This is the result of a
8 high-speed crash. There's glass in the car. There's some
9 during the daytime -- I know they might be upsetting. That's
10 blood on the top of the vehicle, ladies and gentlemen. Not
11 only did the defendant hit Ryan and throw him 85 feet, the
12 witness said he went 20 feet in the air. Not only did he go
13 that far, he went way up.

14 These injuries are the result of a high-speed collision.
15 I'm confident that you're gonna be able to make that decision.
16 I'm confident that given all of the evidence, all of the
17 testimony, from probation to the witnesses on scene, how he
18 was acting afterwards, to the blood alcohol, to the experts
19 with MAIT, to the accident reconstruction, there's enough
20 evidence that has been presented by the state to prove beyond
21 a reasonable doubt, beyond a reasonable doubt that that
22 gentleman right there, the defendant, Edward Washington, was
23 driving a vehicle so intoxicated, disregarding laws, that that
24 was the result of Ryan's death. And after he did that, he
25 didn't even stop. He came back to get in a fight.

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CLOSING BY STANKO

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1 I can understand how no one wants to be put in this
2 position as a juror, to pass judgment, and that's what I ask
3 of people. That's what I'm asking of you. Has the state
4 proven to you, have we showed you enough evidence, have we
5 given you all the pieces that you need to say, yes, the
6 defendant broke the law, he's guilty. The state demands
7 justice and the victim deserves justice. The only just
8 verdict in this case is guilty.

9 Thank you.

10 THE COURT: Mr. Stanko?

11 MR. STANKO: Thank you, Your Honor.

12 CLOSING BY STANKO:

13 Q: Just to set the scene that evening, 12:42 in the morning.
14 As you heard, the only light out in that area comes from the
15 gas station. If you're heading towards Conway, that's gonna
16 be on your right; the same direction that Mr. Washington was
17 going. There's no crosswalk there. It's not the sort of
18 place you would expect a person to be. We talked about how
19 many lanes there are going through there. You've got two
20 coming this way, center turn lane and two coming back there.
21 You have a bar over on the left, gas station on the right. To
22 expect that a person would be there at any given time,
23 especially well after midnight, just doesn't make sense.

24 Driving down that road, all of a sudden, out of nowhere,
25 there's an impact to your car. For many, that would be a

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CLOSING BY STANKO

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1 shocking experience, especially if you did not know anything
2 was there. Just all of a sudden, (Indicating by finger snap),
3 something hits your car.

4 Now, you heard on the video, you heard from several
5 witnesses, Mr. Washington thought it was a bottle. He goes
6 barely a third of a mile down the street, gets out of his car,
7 takes a look, realizes something definitely hit my car, turns
8 around and comes right back. Mr. Holford made no secret about
9 that; he did not go far and came right back.

10 You know, the amount of time that he was gone, they said
11 not even four minutes, he's right back there. He has just
12 been involved in a traumatic experience. Some people have
13 never been in an auto collision, but the first thing that
14 happens to you is that adrenaline surge. And adrenaline will
15 impact people many different ways. Some people it just makes
16 you jittery. Clearly that evening, it flipped a switch in Mr.
17 Washington's brain and he became aggressive. As you heard and
18 as you saw, his first reaction was he got in a fight. All
19 those people out there and he thought someone was out to get
20 him.

21 Now, in order to remain on scene for an accident, but the
22 very first thing is you have to know you were in an accident.
23 As you heard, Mr. Washington did not realize it was a person
24 he had hit. He went down the street, realized I hit
25 something, he did, he turned around and came right back. By

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1 the time he got there, no police officers had arrived yet, no
2 law enforcement; it was just a bunch of people outside of the
3 gas station. Within a minute of that, DNR shows up and puts
4 him in handcuffs. Certainly, nobody asked him for driver's
5 license, registration, proof of insurance, the things that you
6 would usually get at the scene of an accident and, eventually,
7 they did acquire those items out of Mr. Washington's car.

8 Again, when you have -- when you have a leaving the scene
9 of an accident and you have a hit-and-run, you have to know
10 that you were in a collision in order to have that duty to
11 stay. As soon as he realized it, he did come back.

12 So, what we have, felony DUI, several elements to felony
13 DUI. We spoke about them at the start of the trial; we're
14 going to discuss those again real quick here. Operating a
15 motor vehicle when your abilities to drive are materially and
16 appreciably impaired. It's not enough that you've got a
17 number. There's been no secret about it. His blood alcohol
18 content was .239; that is a high number. It allows you to
19 draw an inference. It allows you to say the average person
20 perhaps was drunk at that number, perhaps was impaired. But
21 it goes beyond that because, as you heard, everyone
22 metabolizes alcohol in different ways. For some people, two
23 drinks and they're stumbling around drunk. You heard Lindsay
24 Mitchell from SLED say that at .3, she would expect someone to
25 be comatose. Well, at .239, Mr. Washington was still standing

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1 up, he was answering questions, he was answering questions
2 logically. The questions that were asked of him, he was able
3 to give a rational answer to them. You don't see him
4 staggering around. He says he has a problem with his ankle.
5 You do see him limping but, again, he was able to make his way
6 everywhere the police officers take him. He's not falling
7 down, he's not throwing up, he's not otherwise messing
8 himself.

9 Now, Officer Guyett, could have done certain field
10 sobriety tests. He could have offered him those tests. In
11 addition to the one-legged stand, the walk-and-turn, you also
12 have horizontal gaze nystagmus, the HGN, as they talked about.
13 It's just an eye test. It tests to see if your eyes are
14 pinging at the ends. It's a test you can do sitting down.
15 It's a test they could've done there on the scene or even at
16 the hospital once they got there. Additionally, there are
17 non-standardized tests. You have finger dexterity tests, the
18 1-2-3-4-4-3-2-1, could've had him say his alphabet, he
19 could've had him count forwards and count backwards; he did
20 none of that. You heard Officer Guyett testify that the only
21 indication that he had that Mr. Washington was drunk was that
22 he smelled an odor of alcohol on his breath and his eyes were
23 bloodshot. That's it. We've got that and we've got a number;
24 that's all.

25 Now, you heard at least four different estimations of his

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1 speed that night. He had an ankle monitor and you heard those
2 speeds were all over the place. He said there was a 79, there
3 was an 81 from 10 to 15 minutes before. He had stopped, he
4 had resumed. You have -- from three minutes prior, you have
5 40 miles an hour. Two minutes prior you have 12 miles an
6 hour. One minute prior to that impact, 61 miles an hour.
7 Now, for those of you who are familiar with that road or for
8 those who recall the testimony, you have to pass through a
9 traffic light before you even get to that gas station. Those
10 speed measurements are done once a minute. There was nothing
11 on that ankle monitor to say when within that minute the
12 collision occurred. So, you have 61 up to 59 seconds before
13 this impact actually happened. He had to pass through that
14 traffic light at some point.

15 The next one we had was what the officer referred to as
16 the ACM, the airbag control monitor. Now, on that one, you
17 had speeds from five seconds before impact, all the way to
18 impact. You had 42, 42, 41, 39, and 32. Now, it is possible,
19 as the officer said, that that came from a separate incident.
20 It's certainly also possible that it came from this one. He
21 said sometimes hitting a pedestrian is not what triggers that,
22 but also sometimes it is. He could not say definitively that
23 this was or this wasn't.

24 Additionally, you had the MAIT Team, the highway patrol,
25 who took measurements. They estimated that the pedestrian,

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1 Ryan, when he was -- when he was hit, the speed of his body
2 was between 34 and 42. Now, if this had been a blunt impact,
3 34 miles an hour, transferring straight from the vehicle,
4 could well have only indicated a speed of 34. It went up to
5 42. Now, if he had been -- if he had been hit with a
6 significant portion of that vehicle, then it would indicate
7 that those are very close to those speeds. I'll submit to
8 you, the MAIT sergeant was not able to tell you how much of
9 that vehicle actually transferred its energy to him. And,
10 certainly, he was thrown a distance; 85 feet is not short at
11 all. But if he had hit where he hit on this vehicle, with the
12 amount of force the sergeant testified to, it is well within
13 the realm of possibility that that is very close to the speed.

14 Not trying to say that it was a glancing blow or anything
15 like that. The state has shown you pictures of the vehicle.
16 They have shown you that damage, very substantial. I don't
17 believe this was a glancing blow. The majority of the force
18 from that vehicle was what propelled the victim
19 straightforward that night.

20 Now, let's talk about the -- about the victim in this
21 briefly. This was a dark roadway, as you've already heard,
22 12:42 at night. He was wearing dark clothing coming from a
23 Halloween party. He didn't cross anywhere you would expect to
24 find a person running across the road. One thing that you
25 heard from the medical examiner yesterday afternoon was that

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1 the victim's blood alcohol content was at a .187. It
2 certainly could've impacted his decision to just run across
3 the road. One of the realties in this case, and I hate to --
4 I hate to put it this way, but one of the reasons why this
5 happened was that a 19-year-old kid, who had a blood alcohol
6 of .187 chose to run across the street in the middle of the
7 night.

8 We all heard that the victim was in the roadway at the
9 time this happened. It wasn't the matter of him being on the
10 sidewalk, being at any of the crosswalks, anything like that.
11 One place in this -- in this case where Mr. Holford and I
12 absolutely agree, he didn't deserve this. He definitely
13 didn't deserve to die. However, not all accidents are
14 criminal situations. You have a duty to use due caution
15 whenever you're driving a vehicle, but you have to be able to
16 see the hazards in the road. You have to -- you have to be
17 able to appreciate that that's what's going on. On a dark
18 night, where someone is not supposed to be, wearing dark
19 clothing, the reality is a person who is traveling that
20 roadway could easily have been the one involved in this.

21 Ladies and gentlemen, I asked you at the beginning of all
22 this to keep an open mind, to listen to everything you hear
23 from the witness stand, to discard any emotional attachment
24 you might have to this. It cannot be easy. I certainly have
25 never done this aspect of it before, but I -- I know that

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1 there's an emotional component in this. I know there's a
2 grieving family. But at the start of this trial, you took an
3 oath. You took an oath to listen to all the testimony, to
4 consider all the evidence and render a true and just verdict.
5 The simple reality is this is not a criminal situation. I'm
6 asking you to find Edward Washington not guilty.

7 Thank you.

8 CHARGE TO JURY:

9 THE COURT: All right, ladies and gentlemen, it's now my
10 duty and responsibility to give you the law that you will
11 apply to the facts and evidence you've heard in this case. I
12 told you at the very beginning, I would not indicate to you in
13 any way what I think the facts of this case are, because
14 that's your job, your responsibility. Now, in that same vein,
15 if you came into this courtroom with any preconceived ideas of
16 what the law is, what it would, you know, you hope it would
17 be, you think it is, you'll disregard that. You will take the
18 law as I now give it to you and apply it to the facts and
19 evidence you've heard in this case.

20 Now, I told you at the very beginning, as one of your
21 jobs being the judge of the facts is to judge the credibility
22 and that is the believability of the witnesses that have come
23 before you and testified under oath.

24 Now, in doing so, you can believe one witness against
25 several, several against one, you can believe a portion of

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1 what a witness says, disregard the remaining portion of it.
2 If you've got a good and sound reason for doing so, you can
3 disregard it in its entirety, the testimony of a particular
4 witness. You look at whether or not that witness has
5 exhibited to you any interest, motive, bias, prejudice they
6 might have in giving you the testimony. You can consider
7 their demeanor, that is how do they appear when they
8 testified. And, obviously, you can consider the opportunity
9 for knowledge; how did they come about that information that
10 they gave you from the witness stand.

11 By your verdict, you don't have any friends to reward,
12 you don't have any enemies to punish, your verdict can't be
13 the result of any kind of passion, prejudice, or sympathy. It
14 has to be an examination of the facts and evidence and decide
15 whether or not the state has proven to you the guilt of the
16 defendant of the crime or crimes charged beyond a reasonable
17 doubt.

18 In this case, there's two types of evidence that have
19 been presented; it's probably every single case almost, direct
20 and circumstantial evidence.

21 Direct evidence, that's the testimony of a person who
22 claims or asserts to have actual knowledge of a fact; what
23 they saw, what they heard, what took place in their presence.

24 Circumstances -- circumstantial evidence, that is proof
25 of a chain of facts indicating the existence of a fact. The

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1 law doesn't make any distinction between the two, but to the
2 extent that the state would rely on any circumstantial
3 evidence, those circumstances must be consistent with each
4 other and, when taken together, point conclusively to the
5 guilt of the accused beyond a reasonable doubt.

6 I qualified a couple of witnesses in this matter to give
7 their opinions. Sometimes, they're called expert witnesses.
8 We normally do not allow people to give their opinion; they
9 have to tell you what they saw, what they heard, what actually
10 took place. But some witnesses, by reason of their education,
11 training, experience, we allow them to give their opinion.
12 Now, that doesn't give them any special status. You judge all
13 the witnesses the same, you examine them all and you judge
14 their credibility as I have explained to you.

15 In this particular matter, the defendant did not testify.
16 If you'll go back and remember, I told you at the very
17 beginning, the burden of proof is on the -- on part of the
18 State of South Carolina to prove the defendant guilty beyond a
19 reasonable doubt. And I told you at the very beginning, I
20 often tell juries, the defendant doesn't even have to show up
21 because they don't have anything to prove to you. The state
22 must do that. So, the fact that the defendant did not testify
23 in this case, is not a factor by you to be considered in any
24 manner. You can't talk about it, you can't use it mentally to
25 make a decision in this case. All defendants have a

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1 constitutional right. Exercising that right, cannot be used
2 against them in any fashion. The state has the burden of
3 proof to prove the defendant guilty beyond a reasonable doubt.

4 Now, a statement alleged to've been made by the defendant
5 was admitted into evidence. Now, while the Court determined
6 it was evidence that you should hear, you make -- you're the
7 judge of the facts, you make the ultimate decision of several
8 things. Did the defendant make a statement? If he made the
9 statement, was that made by the defendant voluntarily of his
10 own free will? That means the statement was not caused by
11 pressure, force, fear, threats, coercion, intimidation, or by
12 hope or promise of any leniency or reward of any kind. You
13 can consider the characteristics of the defendant and the
14 details of the questioning. You can consider the defendant's
15 mental ability or capacity, the place and length of detention,
16 the nature of the questioning, and the advice or lack thereof
17 to the defendant of his constitutional rights, commonly called
18 the Miranda warnings limited to -- but not limited to the fact
19 that you have a right to remain silent. Any statement that
20 you make can be used against you in a couple of law. You have
21 the right to have a lawyer present and if you cannot afford
22 one, one will be appointed to represent you and you could stop
23 making a statement at any time.

24 The state has the burden of proving beyond a reasonable
25 doubt the defendant, as they have with everything, that the

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1 alleged statement was the free and voluntary statement of the
2 defendant. If you determine that, that it was, a free and
3 voluntary statement of the defendant, you give it whatever
4 weight, you determine it should have. If you determine it
5 wasn't free and voluntary, then you disregard it and don't
6 give it any weight at all.

7 I told you at the very beginning and I read to the panel
8 at large the allegations that were in the indictment and I
9 told you the defendant pled not guilty and that put the burden
10 of proof on the State of South Carolina to prove the defendant
11 guilty beyond a reasonable doubt.

12 When he pled not guilty to the indictment and that burden
13 of proof went on the State of South Carolina, the defendant,
14 at that point in time, was presumed innocent of the crimes for
15 which she has been charged and that presumption of innocence
16 has not ended now. It does not end unless and until you
17 believe from the facts and evidence presented, the state has
18 proved the defendant guilty of the crime or crimes charged.

19 Presumption of innocence, that's likened to -- we liken
20 it to a robe of righteousness. It's placed on the shoulders
21 of the defendant and it stays on the shoulders of the
22 defendant unless and until the state rips that robe of
23 righteousness from the shoulders of the defendant by proof
24 that convinces you of the guilt of the defendant beyond a
25 reasonable doubt.

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1 So, what's reasonable doubt? The kind of doubt that
2 would cause an ordinary, reasonable person to hesitate to act.
3 Proof beyond a reasonable doubt is proof that leaves you
4 firmly convinced of the defendant's guilt. Now, I have very
5 few things we can know with absolute certainty. The law
6 doesn't require the State of South Carolina to give you that
7 kind of proof.

8 What is required is based upon your examination of the
9 evidence, your consideration of the evidence, you are firmly
10 convinced the defendant is guilty of the crime charged, you
11 must find the defendant guilty. On the other hand, based upon
12 your examination of the evidence, you are not firmly convinced
13 that the defendant is guilty of the crime charged, you must
14 give the defendant the benefit of the doubt and find him not
15 guilty.

16 Everyone who operates a vehicle on highways, roadways,
17 byways of the State of South Carolina, operates under what we
18 call the statutory rules of the road. Rules you have to
19 follow when you drive upon the state roads. I'm going to read
20 to you certain of these rules of the road. Remember again,
21 you are the judges of the facts. I am giving you the law.

22 When traffic control signals are not in place or not in
23 operation, the driver of a vehicle shall yield the right of
24 way, slowing down or stopping if needed to be to yield to a
25 pedestrian crossing the roadway within a crosswalk, when the

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1 pedestrian is upon the half of roadway upon which the vehicle
2 is traveling, or when the pedestrian is approaching so closely
3 from the opposite half of the roadway as to be in danger. No
4 pedestrian shall suddenly leave a curb or other place of
5 safety and walk or run into the path of a vehicle, which is so
6 close as to constitute an immediate hazard. A pedestrian
7 crossing or walking along a highway, is required to exercise
8 ordinary care for their own safety. That is such care as a
9 reasonable, prudent person would have exercised under the same
10 or similar circumstances.

11 Motorists using the highways have the duty of exercising
12 ordinary or reasonable care to avoid injuring pedestrians who
13 are crossing or who are upon or along a highway. And the fact
14 that a motorist may have the right of way over a pedestrian,
15 does not relieve them of the duty to use reasonable care for
16 the safety of such pedestrians even though the statute may
17 require a pedestrian on the highway to yield right of way to
18 the motorist.

19 Every driver of a vehicle shall exercise due care to
20 avoid colliding with any pedestrian or any person propelling a
21 human-powered vehicle and shall give an audible signal when
22 necessary and shall exercise proper precaution upon observing
23 any child or any obviously confused, incapacitated, or
24 intoxicated person.

25 A person shall not drive a vehicle on a highway at a

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1 speed greater than is reasonable and prudent under the
2 conditions having regard to the actual and potential hazards
3 then and there existing.

4 Speed must be so controlled to avoid colliding with a
5 person, a vehicle, or other conveyance on or entering the
6 highway in compliance with the legal requirements and the duty
7 of a person to use due care.

8 Limits specified or established are maximum lawful speeds
9 and a person shall not drive a vehicle on a highway at a speed
10 in excess of these maximum limits.

11 The driver of a vehicle involved in an accident resulting
12 in an injury to or the death of a person immediately shall
13 stop the vehicle at the scene of the accident or as close to
14 it as possible. He shall then return to and in every event
15 shall remain at the scene of the accident until he has
16 fulfilled the requirements of a code section, and that code
17 section says a driver of any vehicle involved in an accident
18 resulting in injury to or death of a person shall give his
19 name, address, and registration number of the vehicle he's
20 driving, and shall, upon request and if available, exhibit his
21 driver's license, and shall render to any person injured in
22 such accident reasonable assistance including carrying or
23 making arrangements for the carrying of such person to a
24 physician, surgeon, or hospital for medical or surgical
25 treatment if it is apparent that such treatment is necessary.

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1 What's the defendant charged with? The defendant is
2 charged with felony driving under the influence, death
3 resulting. The state must prove beyond a reasonable doubt
4 that the defendant drove a vehicle while under the influence
5 of alcohol and/or drugs to the extent that the defendant's
6 faculties were appreciably impaired. Driving a motor vehicle
7 means that the vehicle was in motion. This can be proved by
8 direct or circumstantial evidence. Movement of the vehicle
9 might occur without any affirmative act by a driver or in
10 fact, by any person. But if the vehicle is moved by some
11 power beyond the control of the defendant, this would not be
12 driving.

13 The state must also prove beyond a reasonable doubt that
14 the defendant was sufficiently under the influence to impair
15 his ability to drive with reasonable care, with due regard for
16 others and himself, or as a reasonably, prudent person would
17 drive. It is not necessary to show that the defendant was in
18 a helpless condition, passed out, or grossly intoxicated. On
19 the other hand, the fact that the defendant at some time prior
20 to the incident, drank an alcoholic beverage or took a drug,
21 does not, by itself, prove the defendant was driving under the
22 influence.

23 Now, the amount of alcohol in the defendant's blood at
24 the time of the alleged violation, as shown by analysis, may
25 be considered by you in deciding whether the defendant was

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1 under the influence. If the alcohol concentration was
2 8/100ths of one percent or more, it may be inferred that the
3 defendant was under the influence. This inference is simply
4 an evidentiary fact to be considered by you along with all the
5 other evidence in the case, and you give it the weight that
6 you decide it should receive.

7 The state also has to prove to you beyond a reasonable
8 doubt that while driving, the defendant did an act forbidden
9 by law or neglected a duty imposed by law. The state has
10 charged that either the defendant traveled in excess of the
11 posted speed limit or he failed to yield to a pedestrian, or
12 he failed to keep a proper lookout.

13 Finally, the state must prove beyond a reasonable doubt
14 that the act or neglect of the defendant proximately caused
15 the death of another person.

16 What's proximate cause? That's the direct cause, the
17 immediate cause, the efficient cause. It's the cause without
18 which the death of the victim would not have resulted. There
19 has to be this chain of causation from the time the injury was
20 inflicted by the defendant until the time of the victim's
21 death. The proximate cause does not necessarily mean that it
22 occurred immediately prior to the death. There can be more
23 than one proximate cause. The acts of two or more persons may
24 combine to be a proximate cause of the death. But, the
25 defendant's act must be -- may be regarded as the proximate

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1 cause if it is a contributing cause to the death of the
2 victim. The fact that other causes also contribute to the
3 death of the victim, does not relieve the defendant from
4 responsibility. The defendant's act need not be the sole
5 cause of death, but it must be a proximate cause, a direct
6 cause contributing to the death of the victim.

7 If you find that the state has not proven to you the
8 guilt of the defendant beyond a reasonable doubt of the crime
9 of felony driving under the influence, death resulting, you
10 may consider the crime of driving under the influence. The
11 state in that must prove beyond a reasonable doubt that the
12 defendant was driving a motor vehicle in this state while
13 under the influence of alcohol and/or drugs or other
14 substances to the extent that the defendant's faculties to
15 drive were materially and appreciably impaired. Again,
16 driving means that the vehicle was in motion and can be proved
17 by direct or circumstantial evidence.

18 The state has to also prove beyond a reasonable doubt
19 that the defendant was sufficiently under the influence to
20 impair his ability to drive with reasonable care, with due
21 regard for others and himself, or as a reasonably prudent
22 person would drive. Again, it's not necessary to show the
23 defendant was in a helpless condition, passed out, or grossly
24 intoxicated. On the other hand, again, the fact that the
25 defendant at some time prior to the incident drank an

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1 alcoholic beverage or took a drug, does not prove solely from
2 that fact that he was driving under the influence.

3 The amount of alcohol in the defendant's blood at the
4 time of the alleged violation may be considered by you in
5 deciding whether the defendant was under the influence. If
6 the alcohol concentration was 8/100ths of one percent or more,
7 it may be inferred the defendant was under the influence.
8 Again, that's an evidentiary fact you consider and give it
9 whatever weight you deem it should have.

10 Greater or lesser offense. If you have a reasonable
11 doubt as to whether the defendant is guilty of a greater or
12 lesser offense, you must resolve that doubt in favor of the
13 defendant, if you find that the state has proven the defendant
14 guilty of that lesser offense, beyond a reasonable doubt.

15 The other crime that the defendant is charged with is
16 leaving the scene of an accident causing death. The
17 defendant, being charged with that crime, the state must prove
18 beyond a reasonable doubt that, one, the defendant was driving
19 a vehicle; two, the vehicle was involved in an accident;
20 three, the accident caused death to another person; four, the
21 defendant did not stop or failed to return and remain at the
22 scene; five, the defendant failed to give his name, address
23 and vehicle registration and has failed to show his driver's
24 license, and the defendant failed to give reasonable
25 assistance to the injured person. Reasonable assistance

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1 includes taking the person to a doctor, hospital, or making
2 arrangements to have the person taken if it is apparent that
3 treatment is needed or the injured person asks for treatment.

4 The state must also prove beyond a reasonable doubt the
5 defendant knew or should have known that an accident happened.
6 This may be shown by evidence or circumstances and conditions,
7 which would cause an ordinary, reasonable, prudent person to
8 believe that the vehicle had been involved in an accident
9 resulting in death to another person.

10 That's the law, ladies and gentlemen. That's the law you
11 have to apply to the facts and evidence you've heard. Now, I
12 have prepared for you the verdict form. Fairly
13 straightforward. The caption of the case, State of South
14 Carolina versus Edward L. Washington, Defendant. One, felony
15 driving under the influence, death results. On the charge of
16 felony driving under the influence, death results, we, the
17 jury, by unanimous consent, find the defendant -- there's two
18 choices, I've got to put one before the other, don't assign
19 anything to that -- not guilty or guilty.

20 When your jury reaches a unanimous verdict on that
21 particular matter, Madam Forelady, you check the appropriate
22 block, you sign your name, put the correct date. If you have
23 found the defendant not guilty of felony driving under the
24 influence, death results, you must proceed to the charge, a
25 lesser included charge, of driving under the influence. On

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1 the charge of driving under the influence, we, the jury, by
2 unanimous consent, find the defendant -- again, two choices;
3 not guilty or guilty. Whatever the unanimous verdict is, if
4 that's -- if you've gotten to that point, again, sign your
5 name, put the correct date.

6 When you have resolved that particular offense, you go to
7 the second offense the defendant has been charged with,
8 leaving the scene of an accident resulting in death. On the
9 charge of leaving the scene of an accident resulting in death,
10 we, the jury, by unanimous consent, find the defendant --
11 again two choices, not guilty or guilty, a place for the
12 foreperson to sign and the date. And once the jury has
13 reached a unanimous verdict on this matter, Madam Forelady,
14 y'all knock on the door and let the bailiff know that the jury
15 has reached a unanimous verdict in this matter.

16 Now, I've said unanimous I don't know how many times,
17 but it means exactly what you think it means. It means 12/0;
18 not 11/1, 10/2, any combination thereof. So, Madam Forelady,
19 you check one of these blocks, you sign your name, you are
20 telling the Court every member of the jury agrees that's their
21 verdict. So, if called upon by the clerk's representative
22 after she reads the verdict, call upon you to raise your right
23 hand and affirm that is your verdict, all members of the jury
24 will be able to do so.

25 What I'm going to ask that you do, Madam Forelady, is

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1 take your jury to the jury room. The two alternates,
2 gentlemen, you stay with us. Take the remaining members of
3 the jury to the jury room. Do not, do not begin your
4 deliberations until the bailiff hands to you the verdict form
5 and the exhibits. At that point in time, you may begin your
6 deliberations.

7 Madam Forelady, take your jury to the jury room, please.

8 Alternates, stay with us.

9 (REPORTER'S NOTE: Jury exits courtroom @ 2:59 P.M. The
10 following takes place outside the presence of the jury.)

11 BY THE COURT:

12 THE COURT: Any reason from the state, at this point in
13 time, that the Court should not excuse the alternates?

14 MR. HOLFORD: No, Your Honor.

15 THE COURT: From the defense?

16 MR. STANKO: No, Your Honor.

17 THE COURT: Gentlemen, I want to thank you for your
18 service in this particular case. I'm gonna excuse you from
19 your jury service for this week. I can't tell you how many
20 times we need an alternate, somebody gets sick, something
21 happens, it happens all the time; it just didn't happen in
22 this particular case. But, I appreciate your service. You're
23 excused and you're excused from your jury service for the
24 week. Thank you very much.

25 You can just go around and give your buttons to the

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1 bailiff when you go around the back. Okay?

2 Thank you very much.

3 (REPORTER'S NOTE: Alternates excused and exit courtroom.)

4 THE COURT: Exceptions, additions, deletions to the
5 charge from the state?

6 MR. HOLFORD: No, Your Honor.

7 THE COURT: From the defense?

8 MR. STANKO: No, Your Honor.

9 THE COURT: Very good. All right, gentlemen, first, I
10 want to thank all of y'all for your work in this case. All of
11 you did exactly what the Court would expect you to do in
12 representing your respective client or interest, and I
13 appreciate that very much. If you will come forward and look
14 at the exhibits and make sure we have the proper exhibits
15 going to the jury, please. And we have that laptop that they
16 can use?

17 CLERK: Yes, sir.

18 THE COURT: Very good.

19 MR. HOLFORD: Your Honor, I do have one matter actually.

20 THE COURT: Sure.

21 MR. HOLFORD: The State's 3 is in evidence. That's
22 Guyett's in-car video.

23 THE COURT: Okay.

24 MR. HOLFORD: They're -- after we did the defendant's
25 statement, we redacted the body-worn camera, State's 88.

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1 THE COURT: Okay.

2 MR. HOLFORD: So, that is a redacted version.

3 THE COURT: Right.

4 MR. HOLFORD: On State's 3, there might be during --
5 because it's five clips of the in-car video, it could be heard
6 from the defendant. So, if the jury played this in the jury
7 room, it was not a portion played during the trial, they might
8 hear defendant's statements about things that have been
9 redacted. I ---

10 THE COURT: What's the defense's position?

11 MR. STANKO: Your Honor, in -- out of an abundance of
12 caution, we would just ask that the redacted one, since it
13 contains the same audio, that that be the one that goes back
14 there for them so that there's no question.

15 THE COURT: Seems to be reasonable to me. So, why don't
16 we do that?

17 MR. HOLFORD: So, I would ask that State's 3 be kept out
18 here. If they want to see ---

19 THE COURT: In the custody and control of the court
20 reporter. If they ask for something, then we can bring them
21 out and play it.

22 MR. HOLFORD: Thank you, Your Honor.

23 MR. STANKO: Thank you. Sir.

24 THE COURT: Okay. Thank you very much.

25 (REPORTER'S NOTE: Exhibits to be submitted to jury are

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BY THE COURT

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1 reviewed and consented to by counsel.)

2 THE COURT: So, one of y'all is going to have to take the
3 exhibits back to the jury.

4 So, do we have all the proper exhibits going back?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: All right. Very good.

7 COURT REPORTER: And the verdict form.

8 THE COURT: So, deputy, if you could take all those along
9 with the verdict form and the laptop into and give them to the
10 bailiff, please.

11 MS. WALKER: And the laptop as well. I think the charger
12 is on there somewhere.

13 THE COURT: You got it all? Thank you, sir.

14 He's got it now, I think. We'll be at ease until the
15 jury needs us. Thank you much.

16 MR. STANKO: Yes, sir.

17 MR. HOLFORD: Thank you, Your Honor.

18 (REPORTER'S NOTE: Deliberations commence @ 3:07 P.M.)

19 **RECESS - 3:07 P.M.**

20 *****OFF THE RECORD*****

21 **(On the Record - 3:37 P.M.)**

22 THE COURT: Thank you.

23 MR. STANKO: Your Honor, they took me from downstairs.
24 It will take one more minute to get him back in.

25 THE COURT: Okay. That's fine. We'll wait until they

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VERDICT OF THE JURY

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1 bring him back up. Not a problem.

2 (REPORTER'S NOTE: Defendant Washington enters courtroom.)

3 THE COURT: All right, counsel, I understand that the
4 jury has reached a verdict in this matter.

5 Is the state ready to receive it?

6 MR. HOLFORD: Yes, Your Honor.

7 THE COURT: Defense?

8 MR. STANKO: Yes, Your Honor.

9 THE COURT: All right. And I will, as I always do in
10 every case, tell everyone that we understand that we have
11 asked this just to do a difficult thing. I do not know what
12 the results of the verdict are. We'll all receive that at the
13 same time. I expect and demand that the reading of the
14 verdict will be received by everyone with respect and silence.
15 If you cannot follow those instructions, please leave the
16 courtroom at this time.

17 Thank you very much.

18 Ask the jury to come in.

19 (REPORTER'S NOTE: Jury enters courtroom @ 3:38 P.M.)

20 VERDICT OF THE JURY:

21 THE COURT: All right. Madam Forelady, has your jury
22 reached a verdict in this matter?

23 JUROR 274: Yes, we have, sir.

24 THE COURT: Could you hand the verdict forms to the
25 clerk's representative, please, ma'am?

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VERDICT OF THE JURY

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1 THE COURT: All right, ma'am, you may publish the
2 verdict.

3 CLERK: Indictment Number 2017-GS-26-01070, the State of
4 South Carolina, County of Horry versus Edward Washington. On
5 the charge of felony driving under the influence, death
6 results, we, the jury, by unanimous consent, find the
7 defendant guilty.

8 Indictment Number 2017-GS-26-01069, the State of South
9 Carolina, County of Horry versus Edward Washington. On the
10 charge of leaving the scene of accident resulting in death,
11 we, the jury, by unanimous consent, find the defendant not
12 guilty. Signed by Foreperson Kari Paccione, dated June the
13 5th of 2019.

14 Ladies and gentlemen of the jury, if this your verdict,
15 so signify by raising your right hand?

16 THE COURT: Put them down. Thank you.

17 The jury having affirmed their verdict by the raising of
18 their hand, does the state wish the jury polled?

19 MR. HOLFORD: No, Your Honor.

20 THE COURT: Does the defense wish the jury polled?

21 MR. STANKO: No, Your Honor.

22 THE COURT: Very good.

23 BY THE COURT:

24 THE COURT: Ladies and gentlemen, I want to thank you for
25 your service in this particular matter. We understand when we

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MOTIONS

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1 ask juries to reach a unanimous conclusion, we are asking them
2 to do something that is somewhat out of the ordinary. If any
3 of y'all are in a relationship, it's sometimes hard to find an
4 agreement where to go to dinner. So, it's something as
5 dramatic and important as this, we understand what we are
6 asking you to do. I appreciate your service. I appreciate
7 the diligence that you exhibited during the trial of this
8 case. I'm gonna excuse you for the balance of the week.
9 Regarding your jury service, you've earned exemptions from
10 coming back to court, Circuit Court now, three years. Your
11 local city judge or magistrate, federal judge asks you to go
12 see them, you have to go see them; you just don't have to see
13 us for the next three years.

14 With that, you are excused. Thank you very much.

15 (REPORTER'S NOTE: Jury exits courtroom @ 3:41 P.M.)

16 THE COURT: All right. Mr. Stanko, matters from the
17 defense at this point in time?

18 MOTIONS:

19 MR. STANKO: Your Honor, we would move for a new trial
20 based upon a verdict against the greater weight of the
21 evidence, sir.

22 THE COURT: All right. And in making a motion for a new
23 trial and that being on the jury's decision to find the
24 defendant guilty of the crime of felony driving under the
25 influence, death resulting, the Court had previously, in your

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SENTENCING

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1 motions for directed verdict, decided that there was
2 sufficient evidence to submit the matter to the jury for their
3 determination, finding that there was more than sufficient
4 evidence if so believed by the jury, to find the defendant
5 guilty of the crime or crimes charged. I do again so find
6 that there is more than sufficient competent evidence to
7 sustain the jury's verdict, and I will therefore decline to
8 grant your motion for a new trial.

9 MR. STANKO: Thank you, Your Honor.

10 SENTENCING:

11 THE COURT: All right. Is the state ready to proceed
12 with sentencing regarding felony driving under the influence?

13 MR. HOLFORD: Your Honor, if I could have about 60
14 seconds?

15 THE COURT: Yes, sir, please. All right. The state
16 ready to proceed?

17 MR. HOLFORD: Yes, Your Honor.

18 THE COURT: All right. I'll be glad to hear from you,
19 sir.

20 MR. HOLFORD: Your Honor, as to indictment 2017-GS-26-
21 01070 for felony driving under the influence, death result,
22 for which the defendant has been convicted of, that is a
23 offense that carries a mandatory minimum 1 year up to 25 years
24 and a fine of \$10,100 up to \$25,100. I show that offense as
25 violent and serious. There are some other collateral

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SENTENCING

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1 consequences. I'm also going to mark on the sentence sheet,
2 it is considered a no parole offense, commonly referred to as
3 an 85 percent crime. There -- statute requires that there is
4 no suspension of mandatory sentences, no probation, no YOA,
5 mandatory minimum sentence, and no PTI.

6 Your Honor, may I pass up the sentence sheet now?

7 THE COURT: Yes, sir, please.

8 MR. HOLFORD: I can provide the defendant's prior record.

9 THE COURT: I'll be glad to hear from you at this point
10 in time, any arguments or statements by representatives of the
11 victim.

12 MR. HOLFORD: Yes, Your Honor. The victim's
13 representatives, brother Kevin and mother Mary, Maryellen, are
14 present and would like to be heard at the appropriate time. I
15 know that they have pictures of Ryan they would like for the
16 Court to receive and look at.

17 THE COURT: All right, sir.

18 MR. HOLFORD: As to the defendant's prior record, there's
19 a -- in 2016, a city ordinance violation. The arrest for that
20 was a public disorderly conduct. So, it's a conviction for
21 city ordinance violation. A 2016 driving under suspension. A
22 2017 driving under suspension, second offense, and 2017 giving
23 false information to law enforcement. A 2017 sex offender
24 registry violation first offense. A 2018 violation of city
25 ordinance. The arrest was for drinking alcohol in a public

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SENTENCING

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1 conveyance, but the conviction shows it a city ordinance
2 violation. In 2004, there's a conviction for possession, sale
3 or disposition of a stolen vehicle valued greater than 1,000,
4 but less than 5,000. That conviction, the court shows in 2004
5 there appears to be a custody status received by the
6 Department of Corrections and that listed possession or
7 disposition of vehicle over 5,000. I believe that that is the
8 same offense, so it's possession of a stolen vehicle more than
9 \$5,000. That custody was received in 2005. In 2009, there's
10 a conviction for commit or intent to commit a lewd act on a
11 child under the age of 16. That is from 2009, for which the
12 defendant received a 10-year sentence. That is also the
13 reason he's on a ankle monitor for the rest of his life. In
14 2015, there's a willful violation of that electronic
15 monitoring device conviction. In 2015, there's also a
16 violation of a city ordinance and a simple possession of
17 marijuana. And in 2016, another city ordinance violation,
18 which appears to be from the arrest of a public disorderly
19 conduct but the violation or conviction shows up as a city
20 ordinance violation.

21 Not for consideration specifically based on convictions,
22 but since this arrest, the defendant is currently on bond for
23 other offenses. He has been arrested twice since being out on
24 bond for this charge.

25 THE COURT: Thank you, sir.

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SENTENCING

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1 MR. HOLFORD: Your Honor, the state -- certainly the
2 Court has heard all of these matters in full, has heard the
3 evidence and certainly the jury's verdict in this case. The
4 amount of alcohol consumed at a .239, the state would argue to
5 the Court is -- is an egregious violation of this law. Flying
6 down the road with no regard for the safety or concern of the
7 college students, of any pedestrians on that roadway. The
8 Court is aware, although it was not allowed in the trial,
9 certainly for good reason, but the Court is aware why the
10 defendant was even out that night. By his own statements, he
11 was going to make a drug deal down the road and -- and in
12 doing so, he saw that there were pedestrians out. He traveled
13 down that road. By his own admission, he shouldn't have even
14 been out that night, and he was. And as a result of his
15 actions, as a result of the amount of alcohol that he drank
16 that night and chose to get behind the wheel of a car, a 19-
17 year-old boy is no longer with us. There is no amount of
18 punishment that can possibly serve to replace that life.
19 That's certainly not what the state would even ask of this
20 Court. What the state would ask of this Court is that you
21 consider the family, their loss, and you consider the
22 defendant's prior actions and disregard for laws of this state
23 and continued disregard for the laws of this state and also
24 his conduct when he came back to the scene. I believe that
25 that speaks as to -- to who the defendant is.

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SENTENCING

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1 THE COURT: Thank you, sir. You indicated that
2 representatives of the victim wish to address the Court; is
3 that correct?

4 MR. HOLFORD: Yes, Kevin Bielawa.

5 THE COURT: All right, sir.

6 MS. WALKER: Your Honor, may I approach real quick with
7 the pictures.

8 THE COURT: Absolutely. Certainly.

9 Yes, sir. Just state your name first and then I'll be
10 glad to hear from you, sir.

11 MR. KEVIN BIELAWA: Kevin Bielawa.

12 THE COURT: Yes, sir.

13 MR. KEVIN BIELAWA: The victim's brother. Ryan was my
14 only sibling and also my best friend. He was the best brother
15 I could've possibly ask for; always there for me, somebody I
16 could call and always talk to and rely on. He still had so
17 much left to give and so much to achieve and so much potential
18 and now all of that's gone. All gone because of choice, a
19 choice Mr. Washington made to get behind the wheel while
20 intoxicated, a choice that ended my brother's life and
21 destroyed my family.

22 The suit I'm wearing today is the very first suit I've
23 ever bought and that was not for my first important job or any
24 celebration of any kind, not even for this trial; it was for
25 my little brother's funeral. I've wanted him in my life every

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1 single day since this -- since this day. I'm sorry.

2 THE COURT: Take as long as you need, sir.

3 MR. KEVIN BIELAWA: This coward needs to be accountable
4 for his actions and should be given the maximum sentence
5 allowed by the law. He's a plague on society. People like
6 him should never be allowed to see the light of day.

7 Thank you for your time.

8 THE COURT: Yes, sir. Yes, ma'am, again, if you'd just
9 tell me your name, then I'll be glad to hear from you, ma'am.

10 MS. BIELAWA: Maryellen Bielawa, I'm Ryan's mom.

11 THE COURT: Yes, ma'am.

12 MS. BIELAWA: I'm going to attempt to read what I wrote,
13 if I can get through it.

14 THE COURT: Yes, ma'am.

15 MS. BIELAWA: When Ryan chose to go to Coastal Carolina
16 University, it was not a surprise to me. I even encouraged
17 him since he was not a fan of cold weather, I knew he would
18 enjoy the experience of going to school in the south. He
19 loved going to the beach and being outdoors. Not a day goes
20 by that I don't regret that I encouraged him to go away to
21 school and so far from home. If I could go back in time, I
22 would've made him stay closer to home. He'd still be with me
23 if I just would worried about him more, but he was the kind of
24 kid that never gave me any reason to worry. He was a
25 responsible kid full of determination, he was funny, kind,

1 upbeat and just a great kid. One of Ryan's expressions was
2 never have a bad day and that was him. He loved to joke
3 around, play tricks on his friends, and just make those around
4 him laugh and have a good time. He was always happy and
5 smiling. When Ryan walked into a room, he turned heads. He
6 was six-foot-five-inches and so very handsome. He had a
7 presence about him and confidence in himself. He was the kind
8 people just liked to be around -- he was the kind of kid
9 people liked to be around. From the time he was a little boy,
10 all of his friends' parents just loved him and said that he
11 would be their first choice for their friends to have over.

12 He was in his second year at Coastal when he was killed.
13 His first semester, he was on the President's List and the
14 Dean's List on the second semester. He had a love of the
15 stock market and he was determined to have a successful future
16 in the finance industry. There's no doubt in my mind or
17 anyone that knew Ryan that he would have achieved those goals
18 and more. He was working as an intern at Merrill Lynch when
19 he was killed. He was only there for around two months. He
20 was so respected and liked there, they planned to offer him a
21 management position when he graduated from school. For them
22 to be that impressed with him in such a short time of working
23 for them demonstrates the kind of person that he was.

24 On the one-year anniversary of Ryan's death, eight of his
25 closest friends sent me letters describing how Ryan's life and

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1 death affected them. The one thing that each of them
2 mentioned, was how he was a role model to them. He encouraged
3 each of them to be the best they could be. They all looked up
4 to him and considered him to be their best friend. They
5 respected him and aspired to be like him.

6 Losing Ryan has devastated my life and his brother,
7 Kevin's life. It was always the three of us. We constantly
8 talked about our futures together and all the plans we had.
9 During our lives, we faced many challenges together but we
10 always had a special bond. Anyone that knows us can tell you
11 how very close I've always been to my boys. They looked out
12 for me and I for them.

13 Over the past two years, I've experienced how the legal
14 system operates. The laws surrounding the case against Mr.
15 Washington have been very confusing to me. It seems as though
16 the rights -- his rights are more of a concern than serving
17 the justice for what was done. My life was devastated by his
18 acts. My son was a beautiful person with an amazing future
19 ahead of him and Mr. Washington took that away from him. I'll
20 never get to see my son graduate from college, have a
21 successful career, family, all the things a parent gets to
22 witness, to be a part of as their children grow up. I am
23 haunted by my loss in every aspect of my life.

24 I believe Mr. Washington should receive the maximum
25 sentence the law provides. He had opportunities in his life

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1 to make good decisions, to obey the law, to be a responsible
2 person but, instead, he repeatedly chose to make bad
3 decisions, break multiple laws, and have no regard for how his
4 actions affect other people. Mr. Washington was driving with
5 a suspended license. He was driving drunk, and he left my son
6 on the side of the road after hitting him and killing him. If
7 he had obeyed the laws, he would not have been on the road and
8 my son would be alive. If he was not drunk and his senses and
9 reflexes dulled by alcohol, he might've seen Ryan and he would
10 still be alive. He's responsible for my son's death. He's
11 responsible for my broken heart. He's responsible for Kevin
12 having to spend the rest of his life with memories of a
13 brother and not a brother to share a future with.

14 Thank you.

15 THE COURT: Thank you, ma'am. Yes, ma'am?

16 MS. BIELAWA: I apologize I had to read it.

17 THE COURT: That's quite all right, ma'am. Not a
18 problem. Thank you.

19 Further presentation from the state?

20 MR. HOLFORD: Your Honor, obviously there are other
21 family members and friends present that do not wish to be
22 heard, but would share in their sympathies with the family.

23 Nothing further from the state.

24 THE COURT: Thank you, sir.

25 Mr. Stanko?

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1 MR. STANKO: Thank you, Your Honor.

2 As you heard from the video, when Mr. Washington first
3 got to the hospital, pretty much every question he was asking
4 was how the victim was doing. Certainly, he made the decision
5 that night and certainly he was the one behind the wheel. It
6 is a -- it's a decision that he made that he is going to have
7 to live with for the rest of his life. Certainly, no --
8 nothing that's said here and now, no sentence that's passed
9 down is going to be able to bring Ryan back or to -- or to
10 really bring justice to the family.

11 Your Honor, Mr. Washington is 33 years old; he does have
12 a 6-year-old of his own back at home. He has an 11th grade
13 education. He tells me he was working at Buffalo Wild Wings
14 before all of this occurred.

15 Your Honor, Mr. Washington has also asked to address the
16 Court before anything further, sir.

17 THE COURT: All right, sir. How long has Mr. Washington
18 been in detention?

19 MR. STANKO: Your Honor, he has been in since February of
20 last year on a separate charge. He ---

21 THE COURT: All right.

22 MR. STANKO: --- only served a few days specifically on
23 this one, but he has been in since, I believe, February 15th
24 for the -- February 15th of 2018 on the ankle monitor
25 violation.

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1 THE COURT: All right, sir.

2 Mr. Washington, you indicated you wanted to address the
3 Court?

4 MR. WASHINGTON: Yes, sir.

5 THE COURT: Please stand up and I'll be glad to hear from
6 you, sir.

7 MR. WASHINGTON: First and foremost, Your Honor, I wanted
8 to say to Ryan's brother and mother that I'm truly sorry. I
9 did not intend for this to happen, but I got to admit that at
10 the time I did have a real bad alcohol problem and alcohol has
11 caused me to ruin my life. And I know that there's not gonna
12 be no amount of time that I could serve to bring him back, but
13 I know I've got to account for my actions, and I just want to
14 say that I'm sorry. I didn't intend for none of this to
15 happen. If I just would've stayed at home that night, I
16 wouldn't be here now and Ryan would still be alive.

17 THE COURT: Thank you, sir.

18 Anything else, Mr. Stanko?

19 MR. STANKO: Nothing further, sir.

20 THE COURT: Thank you, sir.

21 2017-GS-26-1070, State of South Carolina, County of Horry
22 versus Edward Lee Joseph Washington regarding felony driving
23 under the influence, death resulting. The Court has heard all
24 of the facts as presented in this matter. I appreciate the
25 fact that Mr. Washington has addressed the Court and accepted

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1 responsibility and remorse for his actions. The fact of the
2 matter is that based on the facts and circumstances of this
3 case, the severity of what occurred, the prior record of Mr.
4 Washington, the Court finds the proper sentence in this matter
5 is the defendant is committed to the State Department of
6 Corrections for a determinate term of 20 years. The defendant
7 given receive credit for any time he did serve.

8 Thank you very much.

9 MR. STANKO: Thank you, Your Honor.

10 MR. HOLFORD: Thank you, Your Honor.

11 **ADJOURNED - 4:04 P.M.**

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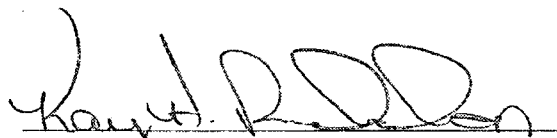
State v. Washington - 2017-GS-26-01069 and 01070
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Edward Lee Joseph Washington, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on June 3-5, 2019.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

September 3, 2019.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: WAGNER, TON EDWARD L HORRY
 Last Name First Name Middle Name County of Arrest
 Subject's Address: 101 PETERMAN ST CONWAY SC 29524
 Driver's License Number: 1-1-1-1-1-1 State: SC DOB: 1985 Sex: M Race: D
 Arresting Officer: Det. GIVETT Agency: CONWAY POLICE
 Date of Arrest: 10-24-14 Time of Arrest: 0054 AM/PM Traffic Ticket Number: 204062
 Date of Test: 10-29-14 Time of Test: 0346 AM/PM Location of Collection: CONWAY PR

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- ☒ Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
- ☒ Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- ☐ Subject has completed a valid breath test (DataMaster reading: _____) and the officer has reasonable suspicion that the subject is under the influence of drug(s) other than alcohol therefore a urine sample is requested.
- ☐ Subject has not completed a valid breath test and a voluntary blood sample has been requested to test for the presence of volatiles and/or drugs.
- ☐ Subject is unconscious or otherwise incapable of refusal (has not taken a breath test) and is considered informed, therefore, a blood sample is requested.
- ☐ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.

Name and Title of Licensed Medical Personnel: _____

(Please Print)

Signature of Licensed Medical Personnel: _____

- ☒ Subject is under arrest for, or in violation of, Section 56-5-2945 (Felony DUI) or 50-21-113 (Felony BUI), and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- ☐ A blood sample is requested by the subject for his/her own independent test.

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- ☒ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- ☐ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector: Rebecca Rowe

(Please Print)

Signature of Licensed or Trained Collector: _____

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

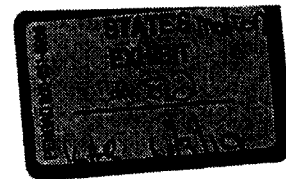
- ☒ Sample collection was under my direct supervision.
- ☒ Sample container is properly labeled with the subject's name and time of collection.
- ☒ Sample is properly sealed and ready for transport.

Signature of Officer: M. J. HunterDate: 10-29-14I, RTS (Subject's Signature)

received a copy of this report on

Date: 10/29/14

Copy to: Subject, Hospital, SLED



STATE OF SOUTH CAROLINA) CITY OF CONWAY MUNICIPAL COURT
)
 COUNTY OF HORRY)
)
 State of South Carolina,) Ticket/Warrant
) No.(s): 2016A2620400922

 Plaintiff,)
) Case No.: 20160260100 _____
 vs. Edward Lee Joseph Washington)
)
 _____) **AFFIDAVIT OF FAILURE TO**
PRODUCE A VIDEOTAPE OF DUI
 Defendant.)

I hereby affirm that I cannot produce videotape:

1. From the vehicle I was operating because:
 - A. ☐ At the time of the Defendant's arrest the vehicle I was operating had not yet been equipped with a videotaping device and therefore pursuant to Section 18 of Senate Bill 174 of 1998, the videotaping requirement regarding vehicles is not applicable.
 - B. ☐ At the time of the Defendant's arrest or probable cause determination, the video equipment in the vehicle I was operating was in an inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition. Those reasonable efforts are as follows:

- _____
- C. ☐ It was physically impossible to produce videotape from the vehicle I was operating of the Defendant at the time of the arrest or probable cause determination because:
 - ☒ The Defendant needed emergency medical treatment, or
 - ☐ Exigent circumstances existed which are outlined below:

The defendant complained of an ankle injury from the incident. _____

- _____
- D. ☐ Other valid reasons existed for failing to produce the videotape based on the totality of the circumstances. These reasons are outlined below: _____

- _____
2. From the breath-testing site because:
 - A. ☐ At the time of the Defendant's arrest the breath testing site had not yet been equipped with a videotaping device and therefore pursuant to Section 18 of Senate Bill 174 of 1998, the videotaping requirement regarding breath testing sites is not applicable.
 - B. ☐ At the time of the Defendant's arrest or probable cause determination, the video equipment at the breath testing site was in an inoperable condition and reasonable efforts have been made to maintain the equipment in an operable condition and there was no other operable breath testing facility in the county. Those reasonable efforts are as follows:

Operable breath test facility means a site with both an operable breath testing machine and operable videotaping equipment.

C. ☐ It was physically impossible to produce a videotape from the breath testing site of the Defendant because:

☐ The Defendant needed emergency medical treatment, or

☐ Exigent circumstances existed which are outlined below: _____

D. ☒ Other valid reasons existed for failing to produce the videotape based on the totality of the circumstances. These reasons are outlined below:

Due to the severity of charges the defendant was taken to the Conway Medical center for blood draw. _____

3. I am unable to produce a videotape that shows the Defendant's actions during the twenty-minute pre-test waiting period. It was physically impossible to videotape the Defendant's actions during the twenty-minute pre-testing waiting period because:

The defendant was taken to Conway Medical Center for blood draw. _____

If additional room is needed for an explanation, please attach a separate sheet to this form referring to the item number being addressed:

Theresa C. Tyler 927
Signature of Officer

04-01-2019
Date

Sworn before me this
1st day of April, 2019.

Theresa C. Tyler
Notary Public for South Carolina
My Commission Expires: 6/15/2020

Theresa C. Tyler
Print Name

WITNESSES

Glen Guyett Conway Police Department

D. Long

ARREST WARRANT NUMBER

20160620024681

CDR: 0395 56-05-2945(A)(2)

DOA: 10/29/2016

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date:

FEB 24 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-26- 61070

The State of South Carolina

County of Horry

Martin D. Spratlin

16H05454

COURT OF GENERAL SESSIONS

FEBRUARY, 2017 TERM

THE STATE

vs.

Edward Lee Joseph Washington

B/ M

Pittman St

Conway, SC 29527-5591

ATTORNEY: James Stanko

Indictment for

FELONY DRIVING UNDER THE
INFLUENCE - DEATH RESULTS

CLERK OF COURT
HORRY COUNTY, SC
RENEE N. ELVIS

Jimmy A. Richardson, II, Solicitor

CERTIFIED COPY

ORIGINAL

SC Court of Appeals

JUN 12 2019

RECEIVED

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on February 23, 2017, the Grand Jurors of Horry County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE – DEATH RESULTS**CDR: 0395.56-05-2945**

That Edward Lee Joseph Washington did in Horry County on or about October 29, 2016 drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law, and/or neglected a duty imposed by law in the driving of the vehicle, to wit: defendant did travel in excess of the posted speed limit and/or failed to yield to a pedestrian and/or failed to keep a proper lookout, which act or neglect proximately caused the death of another, to wit: Ryan Bielawa in violation of Section 56-05-2945, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jimmy A. Richardson, II
 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

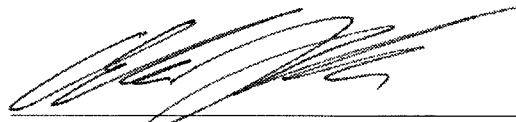
RYNEE N. EVANS
 CLERK OF COURT
 HORRY COUNTY, SC

CERTIFIED COPY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Adam Sinclair Ruffin
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

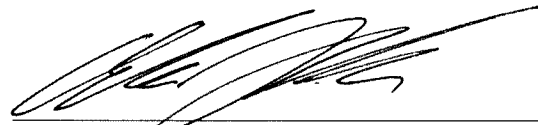
This 4th day of March, 2020.

RECEIVED
MAR 04 2020
SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Adam Sinclair Ruffin
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 4th day of March, 2020.