VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARY ANN GERMAN,

APPELLANT.

APPELLATE CASE NO. 2018-002090

RECORD ON APPEAL

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In the Court of General Sessions for the
State of South Carolina, County of Beaufort

Case No.: 2016-GS-07-01356

State of South Carolina,
Plaintiff,
vs.
Mary Ann German,
Defendant.

Transcript of Record

August 23, 2018
Beaufort, South Carolina

BEFORE:
The Honorable Brooks P. Goldsmith

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PROCEEDINGS

MR. WHETSEL: Your Honor, is the Court ready to hear that motion that Mr. Lee and I discussed yesterday?

THE COURT: Sure.

MR. WHETSEL: Your Honor, the State would call Mary German.

Your Honor, this is the style of the case, briefly, for the Court. This is Indictment 2016GS0701356. The charge is felony DUI with death resulting. And this is a motion -- I guess, really a ruling for the Court to determine the admissibility of a blood draw that was taken at the hospital by Highway Patrol.

In support of that motion we plan on calling three witnesses. And I'm sure Mr. Lee will cross-examine them, and then we'll make legal argument at the end.

THE COURT: All right. Are you ready to proceed, Mr. Lee?

MR. LEE: Yes, sir.

THE COURT: All right.

MR. WHETSEL: The State would first call Linda Kreisel.

Thereupon,

LINDA KREISEL

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Sure.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Ms. Kreisel, will your please state your full name and spell your last.

A It's Linda L. Kreisel. K-R-E-I-S-E-L.

Q And for whom do you work?

A Beaufort Memorial Hospital.

Q What is your current job?

A I work in the express care and occupational health building for Beaufort Memorial.

Q At any point in your career, or even now, are you trained or were you trained as a phlebotomist?

A Yes, I am.

Q And what is a phlebotomist?

A Someone who manages the drawing of blood, and outpatient samples, and legal draws, and taking care of any of the samples that come to the lab for testing.

Q So, for lack of a, I guess, better description, you are medically trained on how to collect blood?

A That's correct.

Q During your career -- I guess the first question

in this is: How long have you been a phlebotomist?

A Twenty-seven years.

Q And are you still currently a phlebotomist?

A I am.

Q In your career, have you ever taken blood samples for law enforcement?

A I have.

Q And if you don't know an exact number, that's okay, but just an approximate, how many do you think you've taken just for law enforcement?

A I would say at least a hundred in the last seven years at Beaufort Memorial. Over my career, at least a thousand.

Q Is there a process you follow when you draw blood for a legal purpose?

A There is. We are called to the emergency room, to the room where the patient is being seen. Law enforcement hands me their sealed box. They have paperwork where I can fill out my name.

We unseal the box, we take out the tubes that will be used. Everything needed for drawing blood, the needle, the hub which holds the needle, the non-alcohol wipe for cleaning the arm, the tamper-evident tape, everything is in that box.

When he hands me that box, it is completely

sealed. We unseal it. I will draw the blood from the patient, then I will seal the tubes, finish up my portion of the paperwork, wait until the officer finishes his portion of the paperwork. Everything is placed back into the box that the officer came with, and then sealed again.

Q And just in your practice, do you typically watch the officer seal everything back up?

A I do.

MR. WHETSEL: Your Honor, may I approach the witness?

THE COURT: You may.

MR. WHETSEL: Your Honor, I'm going to hand Ms. Kreisel what's been marked for identification. This is Court's Exhibit 1.

THE COURT: All right.

BY MR. WHETSEL:

Q Ms. Kreisel, I'm going to ask that you take a look at this and just see about middle of the page if you recognize your name and signature there.

A Yes, I do. It states my name, printed, Linda Kreisel, as well as my signature.

Q Yes, ma'am. And if you could hold onto that.

Now, you've taken, as you said, probably in your career, probably close to a thousand legal blood draws?

A Correct.

Q I don't expect you to necessarily remember this one. If not, that is okay. But by reviewing that paperwork there with your signature, do you believe or are you of the opinion that you were working at Beaufort Memorial back on July 10th, 2016?

A Yes.

Q And at that time, did you draw blood from a patient named Mary German?

A Yes, I did.

Q And was that about 2:00 or so in the morning when you did that?

A The time is not to my memory, but according to the paperwork, that would be the correct time.

Q But based on your signature being on that paper --

A I verified, yes, that is the time.

Q Yes, ma'am. Thank you.

And the way you would have taken the blood in this case, would it follow the same process you described a moment ago?

A That's correct.

MR. WHETSEL: Your Honor, may I approach again?

THE COURT: You may.

MR. WHETSEL: And I'll just take that Court's 1 back from you, ma'am.

BY MR. WHETSEL:

Q Ms. Kreisel, whenever you draw blood in any case, including this one here, you use a vial that's provided by law enforcement; is that correct?

A That is correct.

Q Once that blood is drawn and it's placed into the vial, do you tamper with it in any way?

A No.

Q And then you provide those vials back to law enforcement; is that correct?

A After being labeled and sealed law enforcement and myself place them back into the box.

MR. WHETSEL: Your Honor, may I approach the witness again?

THE COURT: Certainly.

BY MR. WHETSEL:

Q Ms. Kreisel, I'm going to hand you three photographs. I'm going to hand you three photographs that is marked as Court's Exhibits 2, 3, and 4.

And as you are probably aware, once your blood draw is complete, that sample normally makes it up to some lab for testing. These are photos you obviously didn't take, but by looking at the photos, you can see labels on them; is that correct?

A That's correct.

Q And is there a name on those labels as the person

who drew this blood?

A Yes. My name, Linda Kreisel, appears on the labels.

Q And there are two separate labels on there; is that correct?

A That is correct.

Q And there's one actually on the vial, and there's one going across the top of a vial, correct?

A That's correct.

Q And are you involved in the actual sealing of those vials?

A Yes, I am.

Q So, you would recognize the way that those vials are sealed?

A That's correct.

Q And just by looking at the information on there, would you believe those are the same vials that were taken in this case?

A Yes, I would believe that.

MR. WHETSEL: Your Honor, may I approach again?

THE COURT: Yes.

BY MR. WHETSEL:

Q I'll take 2, 3, and 4 back from you.

MR. WHETSEL: Your Honor, I don't believe I have anymore questions for Ms. Kreisel.

THE COURT: Cross examination?

MR. WHETSEL: I just made clear, Your Honor, I was going to make one through four just as Court's exhibits, not evidence, you know, for the actual trial, but just for purposes of the motion.

MR. LEE: Your Honor, if he wants it to use for purposes of his motion, I have no no objection to them.

THE COURT: That motion is granted.

(Whereupon, Court's Exhibit No(s). 1 marked for identification and received in evidence.)

(Whereupon, Court's Exhibit No(s). 2-4 marked for identification and received in evidence.)

MR. WHETSEL: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. LEE:

Q Good afternoon, Ms. Kreisel.

A Hello.

Q Can you tell me a little bit about the actual drawing of the blood procedure? I want to talk about, did Trooper Shumaker just come to you and say, "I need you to draw somebody's blood"?

A No. Working in the hospital for the laboratory, we would be notified by the emergency room that there was a legal draw to be done in the emergency room.

I would go down and report to the charge

nurse that I was there. She would direct me to the area where the officer and the patient were, and then he would tell me whether he had a kit for a urine sample or a blood sample, what was needed.

Q Did you hear at any time Shumaker or any other officer read to her what we call her implied consent rights? Were you present when that happened?

A Yes. And he had read her everything, and then had her -- presented the paper to her to sign.

Q Okay. Now, the actual drawing of the blood, was that done in her room in the ER?

A To my remembrance, it was done in the room she was assigned to in the emergency room.

Q And I know that you have done a bunch of these since two years ago. Do you remember any specifics about the actual drawing of the blood?

A I do not.

Q And you agree that she did not voluntarily consent to the draw, that it was a legal draw?

A It was a legal draw that I have experienced.

Q Okay. But you didn't ask her, or you didn't tell her, hey, I can either take the blood or not take the blood, right? You didn't ask her that, did you?

A I don't remember having that conversation.

Q Were you under the impression that you needed to

take blood, and it wasn't up to you whether or not she consented or not?

A No. People always have the right to consent or refuse, but I was called specifically to draw the blood, and when I got there, she was willing to have the blood drawn.

Q She wouldn't sign the sheet though, would she?

A That, I don't know.

Q Okay.

MR. LEE: That is all I have, Your Honor. For my side, Ms. Kreisel can be excused.

THE COURT: Redirect?

MR. WHETSEL: Your Honor, I have no more questions for Ms. Kreisel. This was for the purpose of this motion's hearing. I have no further questions for her. As long as Mr. Lee has no issue, I would ask that she be excused.

MR. LEE: No objection.

THE COURT: Thank you, ma'am. You may be excused.

MR. WHETSEL: Can we call the next witness, Your Honor?

THE COURT: Next witness, certainly.

MR. WHETSEL: Your Honor, the State would call Trooper Jeff Shumaker.

Thereupon,

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Trooper Shumaker, good afternoon, sir.

A Good afternoon.

Q Would you state your full name, rank, and organization you work for, for the record.

A Jeffrey Allen Shumaker. I'm a lance corporal with the South Carolina Highway Patrol.

Q Can you spell your last name for the record.

A S-H-U-M-A-K-E-R.

Q How long have you been with law enforcement?

A I've worked with the patrol for 11 years, and the City of Walterboro Police Department before the patrol.

Q So you have been with Highway Patrol going on 11 years now?

A Yes, sir.

Q And did you have occasion to participate in an investigation of a felony DUI back on July 10th, 2016?

A Yes, sir.

Q And did you respond out to the location of that incident?

A I did.

Q And to your recollection, was that at the

intersection of Highway 21 and Seabrook Road?

A Yes, sir.

Q And you actually went on scene; is that correct?

A Yes, sir.

Q And you ended up going to the hospital at some point; is that right?

A Correct.

Q But prior to that, did you actually witness the accident scene itself?

A Yes, I did.

Q And did you also participate in taking some of the photographs?

A Yes, sir.

Q At some point, after arriving on scene, did you end up going to the hospital?

A Yes, I did.

Q And you went to Beaufort Memorial, correct?

A Yes, sir.

Q And what was the purpose of you going to Beaufort Memorial?

A To get a blood draw from the driver involved in the collision.

Q And when you were on the way to Beaufort Memorial, at that point, based on the investigation, did you know what driver to look for?

A I knew from on scene, from witnesses and from the primary trooper, Trooper Clarkson, that it was a white female.

Q And did you know her name at that time, too?

A I can't remember if we had -- I believe we had paperwork in the vehicle, the ownership paperwork, I believe, and I can't remember if they told me the name of the driver.

Q Well, once you got there, you knew you were looking for Mary German?

A Correct, correct.

Q And you knew that she was a white female?

A Correct.

Q And you knew that she was the, at least allegedly, the driver of the truck?

A Correct.

Q And just to make sure we understand, when you arrived on scene, you observed a head-on collision, correct?

A Yes, sir.

Q Between a sedan type car and a red truck?

A Yes, sir.

Q And you were looking for the driver of the red truck, correct?

A Yes, sir.

Q And that truck was actually pointed in the wrong

direction on Highway 21?

A Yes, sir.

MR. WHETSEL: Your Honor, may I approach the witness?

THE COURT: You may.

BY MR. WHETSEL:

Q I'm going to hand you what's been marked as Court's Exhibit 1 and ask if you recognize it. Okay?

A Yes, sir. That is the collection report that I retrieved from my vehicle, my file box to bring into the hospital.

Q Is that a fair and accurate copy of the original, of the one you filled out for this particular case?

A Yes, sir.

Q And I'll just have you walk through it a little bit. With the exception of a couple of signatures on here, is this all your handwriting?

A Yes, sir.

Q So just so we kind of understand, whenever you go to draw blood or take urine from a suspect, you're going to utilize this form, correct?

A Correct.

Q And at the very top there, there is a subject name. What name is that?

A Mary Ann German.

Q And that is the person that you, at the time, suspected of being the driver?

A Yes, sir.

Q And then we don't have to go through all of the particular information, but it also lists the subject address, correct?

A Correct.

Q Their driver's license number, correct?

A Correct.

Q And then it has the arresting officer. That's your name, right?

A Yes.

Q And then it has date of arrest being July 10th, 2016?

A Correct.

Q And then it also has time of arrest, 2:00 in the morning, right? 0200?

A Correct.

Q And then if you drop down below that, it says, "Check the following."

Do you see that?

A Yes, sir.

Q And then the first is, subject is under arrest, and it lists several code sections, which includes both misdemeanor DUI and some other different code violations; is

that correct?

A Correct.

Q And then below that, it also has another box, where it says, "Subject has been advised of his or her implied consent rights."

A Yes, sir.

Q And in this case, both of those boxes were checked, correct?

A Correct.

Q Which would lead me to believe that you, one, suspected her of a violation; and two, that you actually read the implied consent rights.

A Correct.

MR. WHETSEL: Your Honor, may I approach the witness again?

THE COURT: You may, certainly.

(Whereupon, Court's Exhibit No(s). 5 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Lance Corporal Shumaker, I'm going to hand you what's been marked -- this is Court's Exhibit Number 5.

A Yes, sir.

Q And ask you if you recognize that.

A Yes, I do.

Q And that is an implied consent right form,

correct?

A Correct.

Q And is that a fair and accurate copy of the original that you would have filled out in this case?

A Yes, sir.

Q In this particular case, it says that you advised the subject of their implied consent rights.

A Correct.

Q And in this case, and any other case, how would you typically do that?

A I would let the subject know I'm going to read them their implied consent rights. And at that point I would read them what is written on this form. And when I'm done, you know, I would ask them if they understood their rights.

Q And in this particular case, at the very bottom, it has your signature; is that right?

A Yes, sir.

Q And it also has a date of July 10th, 2016?

A Yes, sir.

Q And a time of 0200, or 2:00 a.m. in the morning?

A Yes, sir.

Q All right. And then under the subject signature, it has, "Refused to sign."

A Correct.

Q And it's self-explanatory, but in this case, what happened?

A She became very belligerent, and was giving the hospital personnel a very hard time. And she really didn't want to listen to any of this, and there was no way she was going to sign this paperwork.

Q So just as part of your policy --

A Right, right. If they -- yeah, if they are acting in a manner where there's no way that we are going to get a signature, I will put "refused to sign" on the paperwork.

MR. WHETSEL: Your Honor, may I approach again?

THE COURT: Sure.

(Whereupon, Court's Exhibit No(s). 6 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Lance Corporal Shumaker, I'm going to hand you what's been marked as Court's Exhibit 6 for the purpose of this hearing. Just ask if you recognize this document?

A Yes, sir.

Q That is the felony implied consent rights form, correct?

A Correct, correct.

Q In this particular case, when you went to the hospital, in your mind, did you believe that Ms. German was a suspect in a felony DUI?

A Yes.

Q Based on your investigation and information you learned from other troopers, and also you being on scene, did you know that a vehicle collision had occurred?

A Yes.

Q Did you know that there was a driver in a sedan that had passed away at that point?

A Yes, sir.

Q Based on your investigation, as well as information you learned from other law enforcement, did you suspect that the driver of the red truck was Mary German?

A Yes, sir.

Q And then once you got to the hospital, and what you observed, as well as any other information you may have learned at the hospital, did you also have reason to suspect she may have been intoxicated?

A Yes, sir.

Q So, not to put words in your mouth, but at that point, in your mind, did you believe that she was a suspect in a felony DUI?

A Yes, sir.

Q And what I'm trying to get to is, you could have actually read those rights to her. If you wanted to, you could have chosen to read these rights to her?

A Correct.

Q Is there a reason that you read the other implied consent rights as opposed to the felony implied consent rights?

A In my file case, when I was leaving to go into the hospital, I retrieved the form out of the file case, and for whatever reason, I -- I had the two different forms, and I grabbed the wrong form.

Q But that didn't change the fact that in your mind you believed that she was a suspect in a felony DUI?

A Correct, correct.

Q Were you -- I want you to reference, I think it's Court's 2, that blood collection report. Do you see what I'm referring to again?

MR. WHETSEL: May I approach, Your Honor?

THE COURT: Certainly.

BY MR. WHETSEL:

Q Okay. I'm going to take these back from you now. I'll do that at the time.

I'm going to take back Court's 5 and 6, and I'll leave you with one. Okay?

As part of the implied consent, as far as the collection that you did right there, there is a portion of that -- about middle of the box, where it says, "Check the correct one, only one can apply."

Do you see that?

A Yes, sir.

Q And then the third option down says, "A blood sample is requested by the arresting officer, because a licensed medical person informed the office that the subject is unable to take a breath test at this time, due to any reason deemed acceptable by a licensed medical person."

Do you see that?

A Yes, sir.

Q And that box is checked, correct?

A Yes, sir.

Q That would be you checking that box?

A Correct.

Q And then below that is the name and title of the licensed medical person; is that correct?

A Yes.

Q And that name is listed as Meghan Cummins.

A Yes, sir.

Q And Dr. Cummins was the treating E.R. doctor for Ms. German?

A Correct.

Q So how does this work, you approach Dr. Cummins and ask her if Ms. German is able to leave the hospital and provide a breath sample to you?

A Normally, the doctor's in the room with the patient at that time, and I will ask them what they think

the time period would be, to give us an idea if we can, you know, make that three-hour window, if we needed to, to get them to a data master room to get a breath test.

Q Let me stop you right there. There's something I want to kind of unpack.

Based on the law, you have a finite or a very -- a small amount of time to obtain a breath sample; is that correct?

A Correct, correct.

Q And for a breath test, three hours is your understanding?

A Three hours, if a collision was involved.

Q And that is after the arrest, correct, or you have reason to believe they should be arrested.

A Correct.

Q In this particular case, your clock had started ticking, correct?

A Correct.

Q So you talked to Dr. Cummins to see if she would be able to be released within that amount of time?

A Correct.

Q And based on her signature, what was the answer to that?

A I believe she was going to be there for testing, I believe, and it was going to be some hours later that

morning when she could possibly be released.

Q So in order for a subject to provide a breath sample for law enforcement, can you just do it at the hospital?

A No, sir.

Q Where would you have to take a person in order to obtain a breath sample?

A I would have to take the subject to the data master room at the Beaufort County Detention Center, or if that one is not working, Parris Island, at the Naval Air Station. They have a data master room also we could use.

Q But either way, you can't do it in the hospital?

A No. No, sir.

Q I want to kind of go down this a little bit further here.

Right below Dr. Cummins' signature is another box, and it's basically, that box is for the person, the medical person, who is actually going to obtain the blood; is that correct?

A Correct.

Q In this case, it's Ms. Linda Kreisel?

A Yes, sir.

Q So this Linda Kreisel takes this blood for your purpose, correct?

A Yes, sir.

Q And is there some type of sealed box or something you would use when you are obtaining a biological sample for testing?

A Yes, sir. We have -- the boxes are sealed, they come from Columbia, the SLED. We get these kits and they're sealed with a seal on the outside, and the seal is not broken until we actually open it up in the room where the patient is. The nurse is generally there. We open the box up. We remove the vials, and the nurse takes the vials and does her blood draw.

And then those seals that the nurse would actually sign her name to, put the seals over top of the vial, or the tube, and keep the top from, you know, being removed. And we do that twice on each tube, and the tubes are placed in the box, and the box is closed, and there is another seal that they actually put on the outside of the box. And I put my initials on it when we seal the box up. And that box is sealed until it is opened at SLED when they do their analysis.

Q Is that the way you do it every single time?

A Yes, sir.

Q Is that the way you would have done it in this case?

A Yes, sir.

MR. WHETSEL: Your Honor, may I approach the

witness again?

THE COURT: You may.

(Whereupon, Court's Exhibit No(s). 8-9 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Trooper Shumaker, I'm going to hand you two photographs and just ask if you recognize them?

A Yes, sir.

Yes, sir. These are photographs of the specimen kit from that night. I can see my initials on the seal on the kit.

Q And those two photos there, you obviously didn't take those photos, correct?

A No, sir.

Q Those would have come from SLED once they finally got the box?

A Yes, sir.

Q But looking at it, those two photos show, just from different angles, but it shows a seal across the box.

A Correct.

Q And see your initials on that?

A Yes, sir.

Q And you see a date on that, too, correct?

A I can see the year, I can see on the other seal, the 7/10/16, and on just -- the date is going around the box

on the wrapper. I can see it on my initials.

Q But by looking at both those photos side by side, you can tell the date is 7/10/16?

A Yes, correct.

Q And your initials across it?

A Yes, sir.

Q So just like we talked about a moment ago, this vial's been resealed, put back in the box, and then you seal and initial that box?

A Correct.

MR. WHETSEL: May I approach, Your Honor?

THE COURT: Sure.

BY MR. WHETSEL:

Q I'm going to hand you 2, 3, and 4, and I'm going to take back 8 and 9 from you.

We talked about vials. Do you recognize those photographs, those three vials?

A Yes, I do.

Q And as far as the seal going over top of the vials, are you involved in ensuring that those vials are sealed properly?

A Yes. Normally the nurse who draws the blood, she will -- either I'll put their name or she will put her name down on the vials, and we will actually close the vials with the specimen sealed, and it has the name, and it has the

name of the arresting officer on it also.

Q And that's what you did in this case?

A Correct.

MR. WHETSEL: May I approach, Your Honor?

THE COURT: You may.

BY MR. WHETSEL:

Q I'll take those back from you.

Now, when you were done sealing that box, even off the top of your head, I can certainly show you a chain of custody. But I have it that you gave it to Trooper Officer Cook later at Beaufort Memorial Hospital.

A Yes, sir.

Q And then after Trooper Cook gets it, it will go through chain of custody, until ultimately it makes its way to SLED.

A Yes, sir.

Q And that happened in this case as well?

A Yes, sir.

MR. WHETSEL: Beg the Court's indulgence, Your Honor.

(Pause.)

MR. WHETSEL: Your Honor, I have no further questions for Trooper Shumaker at this time.

THE COURT: Cross examination.

MR. LEE: Thank you.

CROSS EXAMINATION

BY MR. LEE:

Q Good afternoon, Trooper Shumaker.

A Good afternoon. How you doing?

Q Fine.

So there's no question that you read the regular felony DUI advisement, correct?

A Correct.

Q And what that says -- and you read it to her verbatim?

A Yes, sir.

Q Asked if she understood it?

A I did ask her, and she did nod her head. Whether it was before or after when I was speaking with her, I can't remember. She was getting very agitated.

Q As you were reading this?

A Yes, sir.

Q You think that might have caused some of the agitation?

A Who knows? I can't speculate on that.

Q All right. But it happened at the same time?

A Yes, sir.

Q So the implied consent rights were read at 2:00 a.m.?

A Yes, sir.

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CROSS EXAMINATION OF JEFF SHUMAKER BY MR. LEE

Q The arrest is listed at 2:00 a.m., and the blood draw was at 2:00 a.m., right?

A Correct.

Q So everything happened at the same time?

A Everything happened just right there.

Q Now, when you read her the regular DUI advisement, it talks about -- it says specifically, "You are under arrest for driving under the influence, Section 56-5-2930, South Carolina code of law," right?

A Yes, sir.

Q And that is a regular or misdemeanor DUI?

A Correct.

Q And that 2930 is that statute, correct?

A Correct.

Q It also says that everything you do and the samples we tested and everything will be according to SLED policies, right?

A Correct.

Q And Section 2950, which is kind of notice of implied consent statute?

A Correct.

Q And you also advised her she doesn't have to take the test or give the samples, "but if you refuse, your privilege of driving could be suspended," right?

A Correct.

Q So you told her that, as one of those warnings?

A Correct.

Q And then, of course, you are aware that under 2950, 56-5-2950, that when someone is under arrest for DUI, that the arresting officer must first offer that person a breath test, correct?

A Correct.

Q You are aware of that?

A Correct.

Q And in some circumstances, it's not possible to offer a breath test first, correct?

A Correct.

Q And that is where we get the thing about the box that you had the doctor check, correct?

A Correct.

Q So, 2950 says that, or 29 -- yeah, 2950 says that the officer must first offer the subject a breath test, correct?

A Correct.

Q And it says if the person is physically unable to provide a breath sample, is because they have an injured mouth, is unconscious or dead, or for any reason deemed appropriate by medical personnel, then you can go to the blood test, right?

A Correct.

Q And that blood collection report that Mr. Whetsel handed up to you, you checked the box saying that you had an exception to first offering a breath test, correct?

A Correct.

Q And that exception was for any reason being acceptable by a licensed medical person, correct?

A Yes.

Q Are you familiar with SLED policies that they provide regarding DUI?

A Not off the top of my head, no, sir.

Q You're not. Are you certified as an ASM operator?

A Yes, sir.

Q Are you aware of SLED policy A.12.5D2 -- I'm going to read it to you -- that says, "SLED's driving under the influence advisement is to be read to subjects given breath alcohol tests for driving under the influence DUI violations."

So it's saying that this one, the one she signed, is what you are supposed to give and what you have to give a subject being arrested for DUI?

A Correct.

Q Regular DUI, misdemeanor DUI, correct?

A Correct.

Q The policy --

MR. LEE: Your Honor, I'll pass up copies of this

at the end of this.

BY MR. LEE:

Q The policy goes on to say, the, "Felony driving under the influence advisement," which Mr. Whetsel gave you a blank copy of, "is to be read to subjects given breath alcohol test for felony DUI violations."

So the SLED policy says, if you want felony DUI, you need to read them the felony DUI advisement.

A Correct.

Q You are aware of that?

A Correct.

Q But you didn't read that?

A No, sir.

Q And, in fact, you read her something else?

A Correct.

Q Something that is inconsistent in some ways with the felony DUI advisement?

A Correct.

Q And you say that Ms. German became belligerent, I think might have been the word you used --

A Yes, sir.

Q -- during around the same time as the reading of --

A Correct.

Q Did she appear to not like what you were saying?

A She was very agitated. There was a lot of cussing to the nurses, and the doctors, and toward myself also.

Q It says she wouldn't cooperate with any testing, right?

A No, sir.

Q Is that correct?

A Yes, sir.

Q You found out. Okay. All right.

So she refused to not only sign the document, but to be willing to let you stick a needle in her arm, right?

A Well, I advised her that we were going to do a blood draw. And at the very beginning, before she became agitated, she shook her head up and down like she understood what I was saying, and I started reading her implied consent rights --

Q She got upset? And she got upset?

A Yeah.

Q So time of the arrest was 2:00, right?

A Yes, sir.

Q Do you know how long she actually ended up staying at the hospital?

A I don't. I don't.

Q And the hospital is, what, two miles from the Beaufort County Detention Center, maybe?

A Approximately, yes, sir.

Q And obviously, if she was to going to have a blood test, you would take her there, correct?

A Correct.

Q If she's under arrest at 2:00 a.m., that is when the clock starts ticking for getting in the window, correct?

A Well, generally, the time of the collision normally is when the clock is started.

Q But the law says, from the time of arrest, correct?

A Right.

Q And I'm sure that some officers probably try to push that arrest time back as far as possible, forward as much as possible, so they don't get in trouble with that window, right?

A Correct.

Q And in truth she wasn't arrested until 2:00 a.m., correct?

A If at that time, she was under arrest at 2:00 a.m, and there was -- I believe, I don't remember if Trooper Clarkson, when he came to the hospital, he waited until she was released. I can't remember what happened after I had left there.

Q When did you leave?

A I don't remember what time it was. It was early

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in the morning, and I met up with Trooper Cook outside the hospital, and relayed the sample kit to him, with the chain of custody.

Q So is it your position that she was properly advised of her regular DUI rights and that the -- even though there was no consent, that the exception that you checked saying a licensed medical personnel said she couldn't physically produce it, is that your basis for introducing the blood, or getting the blood?

A Correct, correct.

Q Because, in fact, if you look at the blood collection report, which is -- I believe that's one -- you got that?

A Yeah.

Q All right. The box you checked talks about a blood sample requested and if there's an issue with the person being able to take the test?

A Uh-huh. (Indicating affirmatively.)

Q Okay. The box right underneath that, that was not checked, and correct me if I am wrong, it says, "Subject is under arrest or in violation of Section 56-5-2945, which is felony DUI, correct?

A Correct.

Q Or 50-21-113, which doesn't apply here, and pursuant to 56-5-2946, a blood sample or a blood/urine

sample is requested. That's what that box says, correct?

A Correct.

Q Okay. That box was not checked?

A No, sir.

Q So your basis for it was not under 2946?

A I don't recall.

Q Okay. Because, if it's a felony DUI case, don't you check 2946 as -- or at least under arrest for 2945 felony DUI, and 2946 is what ostensibly gives you -- them no right to refuse?

A Correct.

Q So if this is treated for warning purposes as a regular DUI, she would have the right to refuse, correct?

A Correct.

Q Okay. And if you didn't first offer her a breath test, which you did not, then you have to get through that exception that is checked there, correct?

A Correct.

Q And would you agree with me -- let me ask you this: Did you ever seek a warrant to get her blood?

A No, sir.

Q Did anyone ever seek a warrant to get her blood?

A I don't recall. I don't think so.

Q Well, weren't you the only one there?

A I was the only one there, but it was -- I wasn't

the primary officer in this case. I was just there for blood draw.

Q And how long have you been in law enforcement?

A Total, 15 years.

Q And you would agree in the 15 years that you have been there, that policies and procedures with reports, and particularly magistrates, have kind of evolved with technology; have they not?

A Correct.

Q Okay. And wouldn't you agree that nowadays, technology-wise, it's a lot easier to get a warrant, in this case a search warrant, than it used to be 15 years ago?

A I'm sure it is.

Q So we got cell phones and we have texting and -- and you can -- magistrates from Beaufort County are on call 24/7, correct?

A Correct.

Q And does your patrol provide you with any type of contact number or phone number in the event you need to get in touch with a magistrate late at night?

A Correct.

Q Have you ever done that before?

A I have.

Q Yeah. Okay.

And there were other troopers -- I know some

people were on the scene, but there were other troopers who could have been made available to go to a judge's house or to go somewhere to assist you in getting a warrant; is that true?

A At that time there was only a supervisor and two troopers. The two troopers were already tied up, supervisor was tied up. We are very shorthanded down here, as a lot of people well know. We didn't have probably the personnel to -- if we needed to do that, to do that.

Q Did you or anybody that you know of try to get a warrant to get to do the blood draw?

A I did not try, no, sir.

Q Even though it would have been possible?

A It could have been possible.

Q And during the time here at the hospital, I mean I know that Ms. German was in a room, yet -- did you have your cell phone with you?

A I don't recall.

Q Radio?

A I don't recall.

Q Radio?

A The radio, yes, sir.

Q So you had -- you were in contact with people?

A Yes, sir.

Q Okay. Is the reason that you didn't seek to get a

warrant because -- well, let me ask you: Why did you not get a warrant?

A In a case, normally, of -- if there's a felony DUI involving death, we do not need permission.

Q You don't.

A No.

Q And what do you base that on?

A Whatever the law states in the blood draw for felony DUIs.

Q All right.

A I was trained that way from when I came into law enforcement.

Q Are you referring to Section 2946, which says that a person cannot refuse a blood draw in a felony DUI case?

A I'm sure that's what it is. Yes, sir.

Q So, again, is your basis for the blood draw, is it she was read regular implied consent rights, she was unable to give a sample and you met the exception; or is your basis for getting a blood draw under 2946, in that Section 56-5-2946, is that the basis for you getting a non-consensual, warrantless blood draw?

A Yes, sir.

Q Which one?

A It was per that 56-5-2946.

Q So your testimony is that is the basis upon which

you relied to get a non-consensual, warrantless blood draw from her?

A Yes, sir.

Q Okay. And you also said that you did not attempt to try to get a warrant to get it?

A Correct.

Q Okay. And you also testified that you would have been -- that you would be able to try to do that within that window, and that there are a lot of quicker ways than there used to be as far as getting a warrant?

A Correct.

Q And that you found a warrant in the past after hours, for lack of a better term?

A Correct.

Q Did you -- after you read the rights, the regular rights, the non-felony DUI, did you supplement to Ms. German -- did you supplement those in any way, give her any additional rights?

A No, sir.

Q Did you tell her that she had no right to refuse it?

A I can't -- I can't recall what verbiage was delivered that night between us.

Q But you told her that it was being done?

A Yes.

Q You were getting the blood?

A Yes, sir.

Q And that was the time that she was agitated or irritated or whatever word you used?

A Yes, sir.

Q And it could have been unhappy about the situation she was in, we don't know, correct?

A Possibly, correct.

Q Could have been upset with the actual rights that you read, could have been upset the fact that you told her that, like it or not, we are getting a blood draw?

A Possible.

Q Yeah. And you did not know when she was taken from the hospital to the jail?

A I don't.

Q And you didn't take her, you left before that?

A No, sir. No, someone -- somebody got there to relieve me, I believe. I don't know who it was that morning.

Q Would it have been a trooper?

A Yes, sir.

Q Okay. Did that trooper ever try to get a warrant for --

A I don't recall.

Q But you can't testify today that there was any

effort whatsoever by law enforcement to try to get a warrant, correct?

A Correct.

Q Okay.

MR. LEE: That is all that I have, Your Honor.

MR. WHETSEL: Just brief redirect, Your Honor.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. WHETSEL:

Q Trooper Shumaker, redirect two questions for you.

A Yes, sir.

Q Based on your investigation and you being on scene, it's your understanding that that vehicle collision happened about 12:30 or so in the morning?

A I believe so, yes, sir.

Q Right around that time frame?

A Yes, sir.

Q And that was a Saturday night, going into the Sunday morning?

A I believe it was.

Q And then she was actually based, in the blood collection report, she was under arrest right about 2:00 a.m. while she was in the hospital, correct?

A Correct.

Q And when you arrived in the hospital and after you

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observed her, and all the information that you have, based on the investigation, in your mind, did you have probable cause to believe that she was a suspect in a felony DUI?

A Yes, sir.

Q And you testified originally on my direct exam that you did not actually have with you physically a copy of the felony implied consent form?

A Correct, correct.

Q If you would have had that, would you have used that form?

A Yes, sir, yes, sir.

Q Either way, in your mind, based on your training, you suspected that she was a suspect in a felony DUI?

A Yes, sir.

Q And based on that, you believe, based on the law, that you could take her blood without a warrant?

A Yes, sir.

Q Is it fair to say, when you first arrived on the scene, it was a pretty chaotic scene?

A Yes, sir.

Q And when you got to the hospital, which wasn't much later, probably about an hour or so; is that correct?

A Yes, sir.

Q Was the hospital a pretty chaotic scene?

A Not at first when I got there. Soon after, when

the implied consent was being read to her, things got out of control a little bit.

Q It became a little chaotic?

A Yes, sir.

Q And then ultimately Ms. German was arrested for felony DUI?

A Yes, sir.

MR. WHETSEL: Beg the Court's indulgence briefly, Your Honor.

I have no further questions. Thank you.

RE-CROSS EXAMINATION

BY MR. LEE:

Q Have you ever signed a search warrant giving someone permission to be searched?

A I don't recall.

Q I mean, have you ever issued one? As a neutral, unattached magistrate, have you ever done a search warrant that you signed and you approved for a search?

A There was one years ago that I did for medical records, but that was years ago. I can't recall.

Q You didn't have a judge sign the search warrant?

A Back in the day, when I did get a search warrant, yes, sir, but it's been so many years ago, I don't recall --

Q But you agree that the judges, a neutral unattached magistrate, has to find probable cause before

they signed a search warrant?

A Yes, sir.

Q The probable cause that you are talking about is a probable cause to charge someone with a crime, correct?

A Correct.

Q Which y'all do everyday?

A Correct.

Q So you're not testifying, although you can, that you had a probable cause for a search warrant, are you?

A No.

Q Because only a judge can determine that, right?

A Correct.

Q And it really wouldn't be fair if you were the cop and the judge signing that warrant, would it?

A No.

Q And that's why they have that division, right?

A Right, right.

MR. LEE: That's all I have for you.

MR. WHETSEL: Your Honor, I have no questions for Trooper Shumaker. I'd ask that he be allowed to be excused.

THE COURT: Thank you, sir. You may step down.

MR. WHETSEL: Your Honor, we call our last witness for purposes of the hearing, it will be Dr. Meghan Cummins.

Thereupon,

MEGHAN CUMMINS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Dr. Cummins, will you state your full name for the record.

A It's Meghan Ann Cummins.

Q And will you spell your last name.

A C-U-M-M-I-N-S.

Q And you are a medical doctor, correct?

A I am.

Q And where do you currently work?

A Beaufort Memorial Hospital.

Q And what part of the hospital do you work in?

A The emergency department.

Q Where did you graduate from medical school?

A What's that?

Q Where did you graduate from medical school?

A Where, University of Cincinnati, College of Medicine.

Q And when did you, I guess, officially become a medical doctor?

A 2011.

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Q And are you board certified in anything?

A I am, emergency medicine.

Q And how long have you worked in the emergency department at Beaufort Memorial?

A At Beaufort Memorial, I've worked there for four years. This is my fourth year.

Q I'm going to get into without going to anymore of your background --

I have a copy of your medical report. Would you like to be able to review that as we talk?

A Sure. Just see it, yeah.

MR. WHETSEL: Your Honor, may I approach?

THE COURT: You may.

BY MR. WHETSEL:

Q Dr. Cummins, this is your record for July 10, 2016.

Do you recognize that?

A I do.

Q And if you need to refer to it while you're testifying, it's perfectly okay.

A Okay.

Q Were you working in the emergency room back on July 10th, 2016?

A I was.

Q And did you treat a woman by the name of Mary

German?

A Yes.

Q And when she first came to the emergency room, do you know why she presented to the emergency room?

A She presented after being involved in a car crash.

Q And as an emergency room physician, when somebody comes to the E.R. after being involved in a car crash, what are your priorities? What are you trying to do?

A My priorities are to assess the patient and determine if they have any injuries, whether they be life threatening or not.

Q Is that the word, "triage," if you will?

A Absolutely, uh-huh.

Q And actually, you've been an E.R. doctor at Beaufort Memorial for about four years, you said?

A Yes.

Q And just if you don't know this answer, it's okay, but can you give me an approximate of how many patients you think you've treated in your job there?

A I don't know.

Q If you can't ballpark it, that's okay.

A Yeah. I see about 20 patients per shift, and I work about 15 shifts a month. So whatever that pocket is. I'd have to use a calculator, but whatever that comes out to.

Q It's a lot of folks.

A Uh-huh, yeah.

Q Do you happen to remember treating Ms. German?

A I do remember her.

Q And this was about two years ago?

A Yes.

Q Is there anything in particular that stands out in your mind as to why you remember her? Even a particular statement, or just anything else.

A Sure. I remember her because she was extremely belligerent and rude to staff, and we don't -- we see a lot of patients and we don't see a ton of patients that would stick out in our memory, but she does because she was trying to bite nurses, spitting at us, yelling at us, cursing at us. And those patients that we see, we don't have many patients like that, often stick out in our memory.

Q If we try to do a flip right there, I could probably go back to you. But do you know about what time she was admitted to the hospital?

A I see at the beginning of the chart it was early in the morning.

Q Then there's a Page 18 in there. It's not in sequential Page 18, but there's a Page 18 in there. And I believe it's listed on that page as well as the discharge time.

I'm going to ask you when she was admitted and when she was discharged.

A Okay. Let me find it here. Listed as Page 18 --

Q At the top right corner, yes, ma'am. And I can probably show you, if you need me to.

A Yeah. It looks like arrival time was 0122. So 1:22 in the morning.

Q And then she was openly discharged, you know, when?

A It looks like discharge date and time was 7:42 in the morning.

Q So she got there about 1:22 in the morning of July 10th, and wasn't released or discharged until about 7:30?

A Yeah. 7:42, yeah.

Q So she was there a total of about six hours, roughly?

A Yeah.

Q During those six hours, what kind of treatment was she undergoing? Just, you know --

A Sure. So initially we would -- EMS would bring the patient in, we would hear the report from EMS on the circumstances. I would then begin to evaluate her, talk to her, find out, you know, was she hurting anywhere, check her over head to toe. And then we would perform testing, being blood work, x-rays, and CAT scans.

Q And when she first arrived, being in a car crash, you don't know the potential extent of her injuries?

A No. The only thing that EMS did tell us with her was there was a fatality involved, and usually when they tell us that, that tells us that it was a significant impact. So just based on their report, I was concerned that she could have serious injuries.

Q So based on her treatment, did you ever form an opinion as if she was intoxicated?

A Yeah.

Q What was your opinion?

A That she was intoxicated.

MR. WHETSEL: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. WHETSEL:

Q Dr. Cummins, I'm going to hand you, for the purposes of this hearing, what's been marked as Court's Exhibit 1. And I'm just going to ask, if you look about the middle of the page, do you recognize your name and signature?

A Yes, I do.

Q If you look at the top of the page, you'll see a time up there. Do you see that 2:00 a.m. is listed as the time of arrest?

A Yeah, I do.

Q So you would -- say this is your name and signature about middle of the page; is that correct?

A Yeah.

Q And so did you, I guess, believe if you will that you signed this document right around 2:00 a.m., somewhere in that time frame?

A Yeah.

Q And you'll see there's a box checked, and this is a box -- I guess, first, I'll ask you, are you aware with this form, just generally speaking?

A Not prior to working in the E.R., but I have seen the form after working in the E.R.

Q After, okay.

A Yeah.

Q So you'll see there's a box checked, and you wouldn't have checked that. It would be the troopers would have checked that box. But it says a blood sample is requested by the arresting officer for the licensed medical person, to be you, has informed the officer the subject was unable to take a breath test at this time due to any reason being acceptable by that licensed medical person; is that right?

A Yes.

Q At 2:00 a.m., when you're treating Ms. German,

based on your medical opinion now, at that time, would she have been in any position to leave the hospital or to go with law enforcement to provide a breath sample?

A No.

Q And what makes you say that?

A Well, at that time we were still doing her medical workup, getting CAT scans, x-rays, determining that she, you know, making sure she didn't have any life threatening injury. And that was a short time after arrival as well, and I don't think that she would have had the wherewithal to participate in a breath test, due to she was that intoxicated, in my opinion. That's just one --

Q And you said a moment ago she was still undergoing a variety of tests as well?

A Uh-huh (indicating affirmatively.)

Q And at that point, are you still trying to evaluate the extent of her injuries, if any?

A Yes.

Q And then ultimately, what -- if you can, look and see what was her final diagnosis prior to discharge?

A Her diagnoses were -- let me look here.

Laceration of the toe, alcohol intoxication, and motor vehicle collision.

Q So from a medical standpoint, that's what your opinion was as to the extent of any injuries that she had

suffered?

A Yes.

Q It's kind of a layman's way to explain it.

A Yes.

Q Did she suffer any head trauma?

A No.

MR. WHETSEL: Beg the Court's indulgence, sir.

THE COURT: All right.

MR. WHETSEL: Your Honor, I have no more questions for Dr. Cummins.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. LEE:

Q Dr. Cummins, so the main thing wrong with her, medically speaking, was that she had a laceration on her toe, right?

A Yes, yes.

Q And what else physically -- physical injuries did she have, do you know?

A Her really only physical injury was the toe laceration that we determined after getting the CAT scans and testing.

Q She did not have an injured mouth, did she?

A I do not recall that.

Q Okay. No injured mouth. And she was not

unconscious, was she?

A No. At times, she would not participate. She was laying there with her eyes closed and mouth closed and would not participate. But within the confines of consciousness. I don't think she was actually unconscious.

Q And she didn't have any lung problems, did she, breathing air?

A Not that I'm aware of.

Q So was it physically from a medical point of view, how was it physically impossible for her to provide a breath sample?

A Well, part of the breath test is the person doing it has to do a particular event. They have to be able to put their mouth on the device and blow. And if they are not willing to participate in that, then it can't happen.

Q If they refuse.

A Uh-huh (indicating affirmatively.)

Q From a medical standpoint, was there anything injury-wise that would have prevented her from physically being able to take a data master test?

A I'm sorry, what?

Q A data -- a breathalyzer test. Did she have a physical injury or sympton that would have prevented her from breathing into a machine and it providing an acceptable breath sample?

A Ultimately, no. At the time that I signed that form, I did not know that yet.

Q Well, what was the reason then for the form saying that she was unable to provide a breath sample?

A Because we were still undergoing her medical evaluation, and she would not participate in the exams. And my medical provided that she would not participate in a breath test.

Q At 2 o'clock a.m., when this was signed, what physical issue or problem did she have that you knew of that would have prevented her from providing an acceptable breath sample?

A Well, physically at that time, we were still undergoing medical workup. She was going to get a CAT scan. At that time, I believe she was restrained to the bed because she had been fighting the nurses and wouldn't participate.

Q Aside from a data master machine not being at the hospital, if a data master machine had been sitting beside her bed, was there any physical problem that would have prevented her from providing a sample into the air in that machine?

A If she wouldn't open her mouth to do it.

Q But that's not a physical problem though. Her mouth wasn't stuck shut, was it, from a medical standpoint?

A No.

Q Okay. So it sounds like it was pretty clear she wasn't taking any test.

A Yes.

Q Okay. And I'm not trying to trick you or anything, but there's some specific language in the law, and that's what we do, and that's why I'm trying to understand.

Were you there when the actual blood was taken from her?

A I don't recall if I was in the room or if I had stepped out to my computer.

Q But you don't know the specific circumstances, as far as doing the blood draw?

A I do not, no.

Q And at some point, because of her agitated state, didn't you give her some Haldol or an equivalent of that?

A Yes.

Q Do you remember when that was?

A No, but I can look. Usually it's documented in here what time medications are given.

Q Go right ahead.

A So it looks like the Haldol was given at 4:17.

Q Was anything else given to her to relieve the agitated manifestation with her?

A Yeah. It looks like Ativan was given as well, and

that was given at 4:16. So usually we give those together, and then we review. Sometimes we give Benadryl with it -- oh, I'm sorry. I missed a page here. It looks like Haldol also was given at 2:28. It was given at 2:28.

Q Okay. That's what I was going to ask.

A Yeah, and then Benadryl, Haldol, and Ativan again were given at 4:16, 4:17.

Q And it looks like she was given some kind of tetanus shot at 1:58?

A Yes, uh-huh.

Q That's right above it.

A Yeah, the tetanus booster.

Q So that 2:28 time period, if it was 28 minutes after she was arrested and they did implied consent and they drew the blood, and they said she was agitated when they started reading it right, that would be consistent timewise of her being agitated, combative, and that sort of thing; right?

A Yeah.

Q And do you know if the combativeness or upset was caused by the reading of the implied consent rights, or was it the request to give blood, do some tests? Was that part of it, do you think?

A From my recollection, she was combative and agitated the entire time. So I can't answer that.

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CROSS EXAMINATION OF MEGHAN CUMMINS BY MR. LEE

Q And she wouldn't take anybody's tests, not read anything or --

A Correct.

MR. LEE: That's all I have, Your Honor.

MR. WHETSEL: I have no more questions for Dr. Cummins, Your Honor. May she be excused?

THE COURT: Thank you, Doctor. You may be excused.

MR. WHETSEL: Your Honor, that's all the evidence I have in support of the motion. I don't know that you would be asking anything about them, I'm prepared to argue whenever the Court would like.

THE COURT: Is there anything disputed?

MR. LEE: No, sir. I do have some things I'm going to pass up to the Court and we can talk about them. I guess I can formally introduce them.

Actually, what I'd like to do -- but I've gone up on --

THE COURT: What's this?

MR. LEE: What I'd like to do, Your Honor, if permitted, is to make a Court's exhibit, enumerating the law that I did, as well as the several documents in a couple cases that I want to cite in an argument. But I'd just make that a Court's exhibit, make sure I'm covered on all of that.

THE COURT: Sure.

(Whereupon, Court's Exhibit No(s). 10 marked for identification and received in evidence.)

MR. LEE: And I'll also be providing a copy to Mr. Whetsel.

But I would ask that Defendant's Memorandum of Law, eight-page document along with some documents that are attached to it, I'd ask that they be introduced as Court's Exhibit Number 10, Your Honor.

And I was going to provide the Court with some additional copies. You can have them, if you want them.

Does the State have the burden, I believe, in the case -- I can go first or he can go first?

MR. WHETSEL: I don't mind arguing first, Your Honor.

I have some cases as well as just probably some of the statute, statutory language I want to pass up just to make sure that we're all kind of on the same page, Your Honor.

One of the documents I want to pass up is Section 56-5-2946. It's South Carolina code section, and I'll just hand this up to the Court.

Your Honor, do you already have a copy of that Code Section 2946? I'll pass it up if you don't.

THE COURT: I think I do.

MR. LEE: It's in his stuff.

MR. WHETSEL: I just got one, I can just pass it up to you.

I want to start there, Your Honor. And South Carolina law specifically provides that law enforcement, when they, in their mind, have probable cause that a person is suspect of felony DUI, they can take a blood sample or a urine sample or a combination of both. They can skip right over the breath test. And I just want to kind of start there.

In support of that, there's a couple of cases. One is State V Long, a Supreme Court case from South Carolina, still good law. It's from 2005, cite being 363 SC 360. I'll pass that up to the Court.

But the purpose of that, that opinion, and why it's relative here, is that the Court there held that law enforement does not have to offer a breath test or have a medical opinion that the person was unable to provide a breath test sample prior to ordering blood or urine tests, once they have probable cause to believe that a suspect is a suspect of felony DUI.

So I want to start there because I think that's exactly what we have here. Trooper Shumaker, as he testified as evidence provided, he used an implied

consent rights form that's typically reserved for misdemeanor DUI.

You'll see in that form, as well. They differ slightly but not greatly. And if he would have had the felony DUI form, he would have used that.

But once he got to the hospital, because he was initially on the crash scene, but once he got to the hospital he knew that there was a truck that was driving the wrong way, that hit head-on a gray sedan, and the driver of the gray sedan had passed away. And he knew that the driver of the red truck was a female -- a white female by the name of Mary German, and he made contact with her.

And once he got to the hospital, in his mind, he believed that she was also intoxicated with alcohol -- under alcohol.

So at that point he has probable cause to believe that she's a suspect in a felony DUI. So under 2946, he can just go ahead and take that blood. That case stands for that.

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Your Honor, do you already have a copy of that, Code Section 2946? I'll pass it up if you don't.

THE COURT: I don't think I do.

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And I just want to kind of start there. In support of that there's a couple of cases. One is State v Long, a Supreme Court case from South Carolina. It's still a good law. It's from 2005 citing through 63 SC 360. I'll pass that up to the Court, both the brief and opinion.

But the purpose of that opinion, and why it's relevant here is that the Court there held that law enforcement does not have to offer a breath test, or have a medical opinion that person is unable to provide a breath test. Same requirement ordering blood and/or

urine tests once they have probable cause to believe that the suspect is a suspect of a DUI.

So I want to start there because I think that's exactly what we have here. Trooper Shumaker, as he testified, as is evident to the form, he used the implied consent rights form that is typically reserved for misdemeanor DUI.

You will see in that form, as well as felony DUI form, they differ slightly, but not greatly. And if he would have had the felony DUI form, he would have used that.

Well, once he got to the hospital, because he was initially on the crash scene, but once he got to the hospital he knew that there was a truck that was driving the wrong way and hit head-on a gray sedan. And the driver of the gray sedan had passed away.

And he knew that the driver of the red truck was a female, a white female by the name of Mary German, and he made contact with her.

And once he got to the hospital, in his mind, he believed that she was also intoxicated with alcohol -- or alcohol. So at that point he has probable cause to believe that she is a suspect in a felony DUI. So under 2946, he can just go ahead and take that blood. And I think that -- that case stands for that.

There's another case I want to pass up. It's State V Cuevas, if I'm saying that right, 365 SC 198.

And all this stands for, Your Honor, it's a Court of Appeals case, from 2005, but it just says that a defendant who is suspected of felony DUI has no right to refuse a breath test. That, again, the officer can just go right to taking blood or urine.

So I just want to make sure, as far as cases, that that's kind of where I want to start. And then we get down to the actual implied consent rights under 2950. So that's what Trooper Shumaker chose to use based on that form.

But I just want to keep in mind that he still had probable cause to take it anyway under 2946, though he did take it under 2950. And, again, I'm just going to pass up a copy of that statute.

He could have taken it under 2946, but he took it under 2950. I'm just going to pass the law to the Court.

And what's important there is that you first have to offer a breath test unless there's an exception. And, again, just based on the form and based on the testimony, the exception being that the subject is unable to provide a breath sample for any reason deemed medically sufficient.

And Dr. Cummins, I think, testified very frankly and clearly that she came to the hospital at 1:22 in the morning, when she initially arrived. This form was signed at 2:00 in the morning, so approximately a half hour later, and at that point she was in no position to be able to leave that hospital and provide any type of breath test that law enforcement may have wanted.

As Trooper Shumaker testified, in order to provide that breath sample, she would have to go to either the detention center or some other law enforcement facility. You couldn't just do it there at the hospital.

But probably most importantly is her general state, Ms. German's general state, as far as being belligerent. Had to have her restrained, the fact that she refused to comply with tests. So at 2:00 in the morning she was in no shape to be able to provide a breath sample. So based on that, the trooper took her blood.

But, again, the trooper also knew that. He could have taken her 2946, because he had probable cause to believe that she was a suspect in a DUI.

So either way, you got exceptions. In his mind, based on his training, he did not need a warrant because the law provided for him to take this blood

based on these exceptions.

So, now, I want to get to a couple of Supreme Court cases of why I -- what I think they stand for, and why I think they are distinguishable from here.

The first, I guess just in order, is Missouri versus McNeely. This is a Supreme Court case, it's classic, it's 9 US 141. It's from 2013. So it's not a U.S. Supreme Court case, excuse me. And I've got a copy I'll pass up to the Court.

MR. LEE: He has a copy.

MR. WHETSEL: Very good.

Mr. Lee informs me that the Court already has a copy, so I will not give you two more papers, Your Honor.

But Missouri versus McNeely, in that case, the question the Court is faced with was whether the natural metabolization of alcohol in the bloodstream created an exigency. So under the Fourth Amendment, is there an exception under the exigency exception to go ahead and take blood without a warrant?

One of the reasons I think this is a case that can be distinguished is in the Missouri versus McNeely case. It's a misdemeanor DUI case. We're not talking about a felony DUI here.

And why I think that's important is that both in

Missouri, as well as the one I'll talk about, Birchfield, is that all these cases deal with misdemeanor DUI.

South Carolina law or statutes provide specifically for warrantless blood taking in felony DUI. So in very narrow classic cases, our law already provides not just misdemeanor DUI, but felony DUI. They provide an exception. And as far as South Carolina courts are concerned, that is still good law.

But the Missouri versus McNeely, in that case the defendant was directed to give a blood sample by law enforcement, and what the Court ultimately held was that the natural dissipation of alcohol in the bloodstream does not, per se, create an exigency. They left open the possibility to a case-by-case analysis.

So why that is important is it doesn't say that you have to get a warrant every time, but it says that it's a case-by-case analysis. And, again, why I think it's also different is because a misdemeanor DUI case -- and also, we are not talking about an exigency here. That's a very specific Fourth Amendment exception.

We are not talking about exigency. We're talking about the trooper took it under a very specific South Carolina law. He could have taken it under 2946, which

is a felony DUI provision, but he did take it under 2950, which was give a breath test, you can't give a breath test, now no doctor says that you are unable to provide a breath test for any reason that they deem medically sufficient, now we are then going to take either blood or urine.

So he's not taking it under an exigency, he is taking it under a very specific South Carolina law.

Now, Birchfield, Birchfield is more recent. That's another Supreme Court case of 2016, 136 Supreme Court 2160. Okay. I think you already got that.

MR. LEE: He does not.

MR. WHETSEL: Your Honor, I'm going to hand you a copy of that one. I don't think that Mr. Lee passed that up.

So Birchfield is a little bit different. But, again, we are talking about misdemeanor DUIs. There are three separate cases the Court is considering, but they are all misdemeanor DUIs.

And in this case, what they're talking about is, can you take a blood sample based on search incident to arrest. That's another Fourth Amendment statute. And, again, we are not talking about that here.

This blood was taken under very general South Carolina provisions. One, you could look at it being

the felony DUI provision under 2946, which you could take if you have probable cause, or the 2950, which is where, again, that the doctor says the person is unable to proceed.

So why take Birchfield? You can distinguish it, because we're talking about assertions to arrest exception. Birchfield, which is not what we're talking about here.

What they ended up finding was that you could write "blood sample" without that, what a blood sample should require.

But, again, I think Birchfield, you can just answer because you didn't take the blood under search incident to arrest. The trooper took it under implied consent, but still all that position could have taken it under 2946 because he had probable cause for the lady as a suspect in felony DUI.

And then if all those arguments are unpersuasive to the Court, I think that ultimately the trooper, based on his training and based on South Carolina law, which I believe is still good law, and I believe he could have taken it without a warrant, as he did, I think he also had a good faith exception. He wasn't acting in bad faith, he wasn't a bad actor. He wasn't trying to skirt the warrant requirement.

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Based on his training and based on the way the statutes are written, he believed he was following those rules correctly when he directed a sample be taken.

For all those reasons, Your Honor, I believe that this blood was properly taken, I believe it should be admitted at the trial of this case.

Thank you.

THE COURT: Thank you, sir.

Mr. Lee.

MR. LEE: Thank you, Your Honor.

Again, I submitted a memorandum of law, which is probably going to mirror what my argument is. I kind of figured this is where we were going.

But, Judge, the -- what the State is essentially trying to do is say, we screwed up 2946, sort of, and screwed up 2930, but it's close enough, so either one of them is good enough.

And quite frankly, it's not. The SLED policy says, you got to read them these certain rights under felony DUI. And that's what triggers felony DUI, it triggers 2946, and he read her the wrong rights.

In trying to now say, well, he would have read those, he meant to read those, he wanted to read those, but even though he didn't, we're going to now use that

as a sword to try to save their back-dooring it. There's a couple problems.

Not that there's any way that it comes in under a 2930 misdemeanor DUI, coupled with a 2950 implied consent with the exception for not first offering the breath test.

Because what they want, they want the best of both worlds. Regular DUI says read them those rights that he actually read her. First you have got to ask for breath. It says they must first ask for breath test, but it's very specific. And the language in the statute, which I handed up, is different than the SLED form.

The SLED form seems to suggest simply if a doctor says it's okay, that they're unable to take a test, that's enough.

What the statute says if they're going under 2950 is that they have to show that it was physically impossible for the subject to provide an acceptable breath sample because, one, they had an injured mouth, which isn't the case here; is that they're unconscious or dead, which isn't the case here; and, three, I want to make sure I get the language exactly right. And this is 2950A, talking about the exceptions.

This is 2950A. It says, "If the person is

physically unable to provide an acceptable breath sample because the person has an injured mouth, is unconscious or dead, or any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken."

What that says is that if the person is physically unable to provide it because they're injured in some way, and so just to say that a licensed medical personnel can see any reason why they're not having a first offered breath test doesn't make any sense.

The part about the reason, considered acceptable by the licensed medical personnel, has to go back and be read in context with the person that is physically unable to do it.

And it makes sense because a medical personnel is going to be able to testify, medically, if someone is physically unable to do it. A person had a collapsed lung. That's not listed. And there's been no testimony nor does it say anything about being physically unable.

It may be inconvenient, they may not be able to get through there in time like that, but I don't think that -- I don't think they satisfied that exception.

And quite frankly, you know, that, I think, is my

second strongest argument as far as keeping it out.

They did it wrong and they can't benefit from that. Because they want you -- they want the Court to rely on, well, he gave these rights under 2930. One book says you can refuse the test. Well, that is diametrically opposed to the proper rights they were supposed to get. It's the exact opposite.

So I have briefed that, and I don't believe that the reason that she gave on the testimony satisfies that requirement. So I think the 2930 and 2950 combo that they want to use to try to get it in, I think isn't even close to allowing it to come in.

I mean, this is a warrantless, non-consensual blood draw. I think we all agree on that. And to be able to say that you can give them the wrong rights and then you can kind of give a reason, but kind of not give a reason for the thing -- we're talking about drawing blood. I mean, it's more serious than searching somebody's house. I mean, if they want to search your cell phone, Riley versus California says they better get a warrant.

If they wanted to look at her mail, if they wanted to go search her house or her car, they got to get a warrant. And none of those things are as invasive as them sticking a needle in your arm and pulling out

blood that you don't want them to do, and then pulling it out to use it as evidence against you.

I think the more significant and appropriate argument for keeping the blood out is -- and Shumaker was very candid and sincere. And he essentially said he relied on 56-5-2946, which is this magic statute that says, if it's a felony DUI, if they have probable cause, you can't refuse.

What I think the State is conflating in the whole argument is probable cause to arrest, which for the purposes of this hearing I will say he said it, he had probable cause to arrest. That is a lot different than the probable cause that we are talking about for a search warrant to invade, intrude in somebody's arm and body and get blood out of it.

That is what the trooper cannot do. The Constitution does not allow that. He couldn't sign the search warrant for a house. They couldn't do that. A Judge has to do that.

So I don't think 2946 is, you know, unconstitutional on its face. But I think, as applied in this type of scenario, that it is unconstitutional as applied.

Just because the officer has probable cause to arrest doesn't mean that he can say, well, I had

probable cause to get a warrant, I didn't need one, but I would have gotten to do it.

So clearly, going all the way back to the Schmerber, which is 1966, Schmerber versus California, we've all been in Court here and we've had Schmerber hearings. And you've got to get in front of a Judge and they are to get permission -- or they have to get a Judge to grant a motion to swab the inside of somebody's cheek, which is a lot less invasive than drawing blood.

And they have to show that they have a DNA sample somewhere that they can't match up, and they really, really need the defendant's DNA.

And Schmerber hearings happen all the time. You have to do that. And it's essentially the same as getting a warrant. Getting a Judge to decide that issue.

But for some reason everyone thinks that 2946, hey, if he thinks you're a felony DUI, 2946 trumps everything out there.

The Fourth Amendment, Article I, Section 10 of the South Carolina Constitution, the case law going all the way back to Schmerber.

And in my memorandum, Judge, I put some quotes and stuff from Schmerber, but Schmerber basically said, I

agree with Mr. Whetsel's summary. They said we are not going to adopt a per se prohibition or per se exception for -- based on the dissipation of alcohol. They said it's got to be on a case-by-case basis. That's been the law for a long time.

What McNeely said in 2013, when it finally was brought back up, they said, hold on a minute. Schmerber is 1966. That was 47 years ago. Things are a lot different. And the way that they are very different is in the fact that it's technology.

Because back in 1966, I mean, they may have had one match for all of Beaufort County. And you weren't able to go in the middle of the night and get a warrant.

Now, they have cell phones, they have faxes, they have everything that you can get warrants very quickly. And so what the issue was in Schmerber all the way through starting McNeely, McNeely said, hold on a minute. The statute by itself can't just give them a carte blanche reason to get to draw blood. You still have to analyze a non-consensual, warrantless search to someone's person; i.e., a blood draw. You still have to analyze it, and the State has the burden of proving it.

It's a warrantless search, and it's per se

unreasonable. They have to satisfy one of the exceptions to the search warrant requirement.

Schmerber, the issue was just saying that the blood in McNeely -- actually just circumstances. And Schmerber established a rule that was followed and continued to follow, saying exigency issues, exceptions, you got to do them in a case-by-case totality of the circumstances analysis.

Schmerber report did that, and they said essentially it wasn't -- it was impractical for the officer to get a warrant.

Mr. Whetsel is fine to split the hairs, saying, well, those are misdemeanor versus felony DUI cases. It doesn't have any bearing whatsoever. We're talking about an intrusion into someone's body. We're talking about the Fourth Amendment. We're talking about searches. It doesn't matter what the underlying charge was.

The thing at issue, or the statutes that intend or purport to give the government a reason to go around the Fourth Amendment, and states simply cannot do that. You cannot -- a state cannot restrict their limits, someone's rights that they have guaranteed under the Constitution. Can't do it.

So getting the deal in 2013, they talked again

about this exigency exception to the search warrant. And what they said was, so what just changed so much as felony that they made it impractical, they need to apply for a warrant. And they should be able to get one because they get them all the time.

The trooper testified he's done it before, got warrants in the middle of the night. The courthouse is two miles from the hospital. They have three hours to do it. The clock doesn't start ticking until he places her under arrest, which is 2:00 a.m., which is on the sheet. Three hours. That's not unreasonable for them to get a warrant for a blood draw.

Judges are on 24/7 standby to do these things, and they use them for it. They just didn't want to, or they didn't know any better.

THE COURT: So you're saying that even if she was -- if everybody agreed she had a broken leg or was paralyzed, he'd still have to get a warrant.

MR. LEE: Yes, sir. For a non-consensual blood draw, yes.

THE COURT: Yeah. That's fine.

MR. LEE: Absolutely. I mean, it doesn't matter, you know, if she's even half dead. Because it would still be intrusive.

So McNeely showed a big shift, as far as in

analyzing an exigency exception. It said, look, he still had more than most basic deep-rooted privacy issues of a person of having their body -- fluid drawn from their body. It doesn't get -- it doesn't really get any worse than that.

But they said, look, when you do it on this case-by-case analysis, take into account all the technological advances, and I'm thinking we have those, and I think that there was testimony that he could have done that.

He didn't even try to. Didn't want to. And the reason he didn't want to is because there's this blind adherence of law enforcement relying on this 2946 as the crutch to get around the Fourth Amendment. And they simply can't do that.

It's been too long, they've been able to allow it, they can't do that. And he didn't do it, he made no effort whatsoever under 2946.

Yeah, he had probable cause to arrest. He can't determine whether there was probable cause for a search warrant. Only a neutral and detached magistrate -- and before they stick that needle in her arm, she's entitled to that, under the Fourth Amendment, under Article I, Section 10 of the South Carolina Constitution, which actually has more protection for an

individual because it protects against unreasonable invasions of privacy. This would be a perfect example, I believe, on an unreasonable invasion of privacy.

Mr. Whetsel talked also about the Birchfield case. All that says is that these statutes claiming to give this carte blanche right to -- for warrantless, non-consensual blood draw, they're saying still can't do it. You still have to analyze it, its fate still has to be an exception, it's still an unreasonable per se unless they meet that exception and -- so how Birchfield came about was the State said, Well, since we're having some problems on this exigency, let's try another -- let's try another one. Let's try search incident to arrest as an excuse for not getting a warrant. And Birchfield said that's not sufficient.

And the warrantless blood draw in Birchfield, because it was three cases, they said that was not valid, it was not a legitimate or legal search, and it did not meet the warrant exception of search incident to arrest, and they kept that one out on the warrantless blood draw.

So, again, it's not important whether it's a misdemeanor or a felony, it's the statutes which are similar, which are trying to allow this non-consensual, warrantless blood draw. Whether it's for a misdemeanor

DUI or a felony DUI doesn't matter. The issue is the statutes that try to do it in the realm of the constitution, and say well, this is a serious, serious deal, so we're just going to make them do this.

And so clearly, if they're relying strictly on 2946, in which Shumaker testified he was, they can't -- this can't stand. That alone in itself is not enough to support it, and there is no evidence --

THE COURT: Because the statute that's applied is unconstitutional.

MR. LEE: Yes, sir. I'm not going to say it's unconstitutional on its face, I think the State probably can.

But, see, what the statute -- the way to read the statute, I believe, is to say if the officer has probable cause that a felony DUI has been committed, then the person cannot refuse a constitutional search for a blood draw. "Constitutional" being the key word.

Constitutional either means they consented to it, and they're saying they can't refuse it. They either consented to it, or that they got a warrant, or that they did not consent and they got -- they meet the exception to the warrant party.

So it has to be -- they can still say you've got to consent. But if they get a warrant and the person

won't agree, I think the statute probably allows them the time to hog tie them and then get blood out of them. I don't know if they do that or not, but I think the way it has to be read is if there's probable cause for felony DUI, a person cannot refuse a lawful or constitutional search; i.e., a blood draw.

THE COURT: All right. Thank you, Mr. Lee.

Briefly, Mr. Whetsel.

MR. WHETSEL: Your Honor, I really want to rely on my previous argument. But to Mr. Lee's point, I think his interpretation of 2946 has been interpreted under the wrong case. And I think in that case, though it does predate Birchfield and Missouri versus McNeely, the Supreme Court is pretty clear in that, that the law enforcement officer, in their mind, has probable cause the person committed a felony DUI. They've been directed to draw blood and/or urine.

That case has not been overturned. That case, as far as I can tell, is still good law. And I think regardless, Trooper Shumaker was operating under that.

So even if the Court did find that McNeely and Birchfield should have required a warrant, I still think that he was acting in good faith, because he believed the law allowed him to do this, based on the facts known to him at that time.

And, again, he's not acting as a bad actor, he's complying to the law as he believed it to be. Though I still believe it is good law. Though I still believe he had every right to take that blood based on probable cause in his mind.

Even if the Court disagrees based on illegal case law, I think he was still acting with the understanding that that statute allowed him to take this blood, and that's why I think it should be admitted.

MR. LEE: I'll be very quick. I think the reason that in State versus Long, it did and didn't address the issue about getting a warrant. It just says that they can make people give blood.

But, again, it's not argued, I don't think, that it has to be unconstitutional. It just says that statute says that if you're under arrest for felony DUI, you have to consent, number one.

Number two, and I forgot to talk about it, is the kind of the Hail Mary, I guess he did on the good faith perception and that he's talking about U.S. versus Leon, which as you know South Carolina has never adopted U.S. versus Leon in good faith exception. Judge Sanders many, many times tried to get the Court to address it. And they always found a way to get around it.

So I don't think that, number one, that good faith exception exists in South Carolina. It isn't recognized by our courts.

But number two, I think it is really pushing the envelope, arguing that a police officer who has read the wrong implied consent rights, who has proceeded under 2950, when he supposedly should not do that, who has checked a box that he shouldn't have checked in the attempt to do that, and then turn around and say, yeah, yeah, yeah, I meant to do it under 2946.

Him reading -- I think that does not show -- I'm not saying he acted in bad faith, but I don't think it satisfied good faith even if it existed.

But most importantly, McNeely has been around since 2014. I mean, that case was over three years old when this happened. And I don't think, even if good faith was recognized, I don't think you could say, well, in good faith, he relied on the statute, and he just didn't know about the constitutional problem with it under Missouri versus McNeely.

And if you're talking about a need for a warrant for this trial for one, you have 1966, a Florida statute that's even written before a lot of us were even born.

So to say he's not on notice that there might be

an issue with an unfettered felony DUI, you get blood no matter what. I don't think that good faith -- number one is applicable to South Carolina, and number two, it was (inaudible) in this case. Certainly it does not apply and excuse --

THE COURT: All right. I understand. I'll be in touch.

MR. WHETSEL: Thank you, Your Honor.

THE COURT: I hope -- I would like to think I could let you all know my decision tomorrow, but I'm not sure.

Let's take a five-minute recess before we take a verdict in the jury trial.

(Whereupon, the hearing concluded.)

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 10th day of May, 2019.

Mona L. Manley /s/

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In the Court of General Sessions for the
State of South Carolina, County of Beaufort

Case No.: 2016GS0701356

State of South Carolina,
Plaintiff(s),
vs.
Mary Ann German,
Defendant(s).

Transcript of Record

TRIAL TRANSCRIPT

November 13-15, 2018
Beaufort, South Carolina

BEFORE:
The Honorable Brooks P. Goldsmith

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Any questions? Any problems? 3:00? You are excused until 3:00, ladies and gentlemen.

Is 2:30 going to be enough time?

MR. WHETSEL: For us? Yes, sir.

THE COURT: I mean, to handle the matters that we need to handle?

MR. LEE: I think so, Your Honor.

THE COURT: Recess until 2:30.

MS. STAGGS: Thank you, Judge.

(Lunch recess.)

THE COURT: All right. What do we need to take up first?

MR. LEE: Your Honor, I have some pre-trial motions that have been previously filed, I think, by Your Honor Friday through Judge Mullen's office. I'll be glad to pass up a copy if you need.

THE COURT: I have a copy. I have an unsigned copy.

MR. LEE: Okay. All right. Well, maybe it'll be easier if I pass you up a copy that matches it. And these were actually filed August 20th because the case was supposed to be tried several months ago and they were filed prior to that.

THE COURT: All right.

MR. LEE: And I guess it's easier just to go in

the order that they lie on the paper as to that.

THE COURT: Okay.

MR. LEE: Do you have that?

MR. WHETSEL: I'm good.

MR. LEE: Your Honor, the first motion that we would ask to be heard, the motion to determine admissibility of prior bad acts, to see if there's any Lyle evidence that the State intends to use. It's my understanding that they do not, but in an abundance of caution I had filed that motion. I'm not aware of any such evidence, but just wanted to put it up pre-trial.

MR. WHETSEL: Your Honor, on behalf of the State, I'm not aware of any 404(b) or Lyle evidence that we intend to admit. There's going to be testimony from that evening, the one in question. But as to any previous conduct, there's nothing that the State intends to admit.

So, unless Mr. Lee has something specific that we can address, I don't think that we have any 404 evidence.

MR. LEE: Nothing specific.

THE COURT: Okay.

MR. LEE: Your Honor, the next one is a Motion to Determine Admissibility of Statements. Obviously I file these in any case, to see if the Jackson versus

Denno hearing is required. I'm not aware of any statements that Ms. German made to law enforcement that the State intends to use. I don't think that there's a need for a Jackson versus Denno hearing, but in an abundance of caution I filed that as well.

MR. WHETSEL: The only thing that I think even comes close to that, and I have talked to the officer and he's not going to testify as to this particular interaction, but the first deputy on scene, Thurman Lofton, who will be a witness, he makes contact with Ms. German in the driver's seat. He's there right after the collision, minutes after, and he asks her something along the lines of, Are you okay, what's wrong, something like that, to which she replies incoherently.

If that would fall within the purview of Jackson v Denno as far as statements to law enforcement, then I think that we would not testify as to that particular statement that she makes, but just -- he would testify based on his observations only. But other than that, there's no other statements from Ms. German outside of the one to the emergency room doctor which I think we are going to address momentarily that we intend to admit.

MR. LEE: I don't think under the circumstances it

would fall under Jackson versus Denno, there was no custodial interrogation or anything like that. I don't think that it rises to the level of requiring a Jackson versus Denno voluntariness hearing.

MR. WHETSEL: If Mr. Lee is okay with it then, I would have Officer Lofton testify to that interaction, assuming that it's not a Jackson v Denno issue.

THE COURT: I guess that we will see, but we don't need a Jackson Denno?

MR. LEE: Your Honor, the next one is a Motion to Determine Admissibility of Prior Convictions. Obviously this deals with Ms. German in the event that she elects to testify. I realize that that decision is down the road to be made. But I would respectfully ask for a ruling on this right now so that we can formulate the strategy as we go along.

MR. WHETSEL: I apologize, Judge, what were we asking for, prior convictions?

MR. LEE: Yes.

MR. WHETSEL: The only prior conviction that she has that would be within 10 ten years is an intoxication conviction from 2014. I don't think that that is something that I can impeach her with, so I would not intend to.

THE COURT: Okay.

MR. LEE: Judge, next I always file -- I know that the solicitors laughed a little bit, but I filed a motion to reveal the deal. This is typically if there is some jail-house snitch or some co-Defendant or somebody who is getting a sweetheart deal to testify against the defendant. I'm not aware of any such witness out there, and they informed me that there is none, but again in an abundance of caution I filed that motion as well.

MR. WHETSEL: There is nobody testifying that received any type of favorable benefit as far as any type of disposition of criminal charges. There is no co-Defendant, there is no witness that got criminally charged in this case, Your Honor.

THE COURT: All right.

MR. LEE: Your Honor, the next one is entitled, Motion to Exclude Testimony. And in that motion we are asking for an order or a ruling from you to prevent the State from eliciting, introducing, or in any way alluding to any reference to a, quote, legal limit with regard to the Defendant's blood or urine alcohol content as determined by any test administered.

Such statements as "legally drunk", "legal limit," et cetera we believe are inaccurate/misleading under 403. And what the law says, as Your Honor knows, is

under 56-52950 there's three different levels that you look at. Point 05 and less there is a conclusive presumption that a person is not under the influence. A 06 or an 07 there's no inference whatsoever. A point 08 the law says that a jury may infer, in conjunction with other evidence, that a person is under the influence. But to say that there's a legal limit or legally drunk, I believe is an improper statement and I would respectfully ask the State as well as any of their witnesses to refrain from using a term of that nature.

MR. WHETSEL: Your Honor, we might be parsing words here slightly, but 565-2950, Subsection G(3) specifically allows for this jury to infer that anything above point 08 means that the person was intoxicated. There's also a case, State v. Martin, 391SC508, which I have a copy of and I can pass up to the Court. But it specifically states that the Judge, if there's evidence of BAC above .08, that the State can have instruction that the jury may infer that that person was intoxicated.

MR. LEE: And I'm not suggesting that he's not entitled to an instruction under 2950. My argument is that using "legally drunk", legally -- "legal limit", it is really just a misnomer. I mean, there is a

permissive inference, the jury can take it or leave it. And I think if he asked for it he would be entitled to that charge if the reading comes in, but I think that it is a mischaracterization to say that it is a legal limit. Because if it's a driving with an unlawful alcohol concentration case, it is. Driving under the influence, they have to prove more than the person registering a point 08, they have to prove impairment which means that someone's mental and physical faculties are materially and appreciably impaired to the extent they cannot safely operate a motor vehicle. And to say that someone, while they are above an 08 so they are legally drunk, that would suggest that is all the State has to prove.

It is merely an inference and it has to be taken in conjunction with everything else. Also, I object to that particular language, and would ask that they not elicit that or argue that in any way.

MR. WHETSEL: Again, Your Honor, maybe parsing the language slightly, I think that we would be entitled to it. I have looked at Page 405 of this Martin case, the very top paragraph on the left-hand side. And it cites the code section, which I have already cited. And then it says, Providing that in criminal prosecution for felony DUI, a blood alcohol concentration of greater

than .01 gives rise to an inference that defendant was under the influence of alcohol.

I think that is a legal limit within the statute. Whether the jury wanted to find that she is materially and appreciably impaired, that is certainly their call to make. However, the term "legal limit" I don't think is a misnomer because the State specifically says if you have over a .08 you can infer that person was intoxicated. I think that's exactly what that statement "legal limit" means. And I don't think that it is a misnomer.

MR. LEE: Inference alone is not enough to convict, beyond a reasonable doubt, clearly. You know, the law frowns on these inferences, but this one still has managed to survive, but it's still out there. But inference in and of itself is not proof beyond a reasonable doubt. And if you start saying "legal limit", that would suggest that that in and of itself is proof beyond a reasonable doubt that someone is impaired, and that, in fact, is not the law.

There is an inference. He's entitled to that charge. The jury can give whatever weight they want to the reading. And I think it has to be couched in the terms of the inference, and not the terms that I have complained about.

THE COURT: Let me look at this again.

(Pause.)

THE COURT: Let me think about this. Point me to the language that you are referring to in State versus Martin.

MR. WHETSEL: Yes, sir. And if I may, may I read the statute and then I will refer back to the case as well?

THE COURT: Sure.

MR. WHETSEL: I am just going to quote exactly 2950G(3), Your Honor. Subsection G says, In the criminal prosecution for a violation, and it lists several sections, including our section, 2945. The alcohol concentration at the time of the test, as shown by chemical analysis of the person's breath or other bodily fluids, gives rise to the following. And if you go down to the three, If the alcohol concentration was at the time eight one-hundredths of one percent or more, so point 08, it may be inferred that the person was under the influence of alcohol.

And that is the specific statute. But as far as the language I was referencing in that case, it was Page 4, the top left-hand corner, in the first paragraph.

THE COURT: All right. That is what I was looking

at.

MR. WHETSEL: Yes.

THE COURT: Okay. So, for example, what the State might want someone to say, or the State may say itself, that the -- assuming that the blood test is in evidence, that this was above the legal limit or something like that?

MR. WHETSEL: As defined by South Carolina law, but, yes, sir.

THE COURT: Isn't that the same as saying another way -- isn't that the same thing as saying to have it above that level, that it's illegal to have it above that level. That is what defense is trying to say. Isn't that right?

MR. WHETSEL: I think that you can infer that it is if they were driving at the time of the other elements, death or great bodily injury, yes, sir.

MR. LEE: It's not illegal to have greater than a point 08 if you are not impaired. And if the other evidence demonstrates that someone is not impaired, then they are not legally drunk. And that is the problem with using that term, that it suggests to the jury that that number and that alone is enough to find someone is legally drunk under the statute.

You can blow a 15, but if you can do the field

sobriety tests and you can do the other things that you are required to do and you can drive well and your eyes aren't glassy, et cetera, et cetera, just because you have an 08 doesn't mean in and of itself that you are in violation of the statute. All that he's entitled to is an inference, and that is what the statute says. He can argue inference all that he wants to.

I'm just saying, don't take the leap from inference to legally, which means in and of itself legally drunk. And that is the only issue that I have with that type of language and argument.

MR. WHETSEL: Maybe, in an effort to compromise, what if we said a legal limit -- a legal inference. So, that legal inference, I think that would correctly state the law, above a legal inference in South Carolina.

THE COURT: Plow it forward, and tell me how that would be stated by somebody?

MR. WHETSEL: For example, if during our opening statements we were to tell the jury, after the testing of the Defendant's blood she was a .27, we could then say that it was above three times the legal inference of intoxication in South Carolina, or something along those lines, because that would be a correct statement, would be legal inference.

MR. LEE: I wouldn't object to that. I think that's the appropriate way to present it. You know, I think that I will submit jury charges, I know a case Samson versus Montana, which defines inference and talks about an inference alone is not enough to convict someone, but I just -- I want to stay away from the language that I'm complaining about. If he wants to use inference or legal inference, I think that's appropriate.

THE COURT: Legal inference, the Court agrees.

MR. LEE: If I can skip to one, Judge, just because I think it is going to be easy. I filed a motion to require election under 5652945. As you know, the DUI statutes, you can be under the influence of alcohol, drugs, or the combined effect of both. I don't have any information or suggestion that there's any suggestion about drugs being part of it or part of the, you know, being the basis for it. But I just want to make sure that we are only talking about alcohol here at this trial. And if there's no -- nothing is brought up as far as any alleged drugs that were consumed, you know, part and parcel with the alcohol that the State intends to bring forth.

MR. WHETSEL: I don't have any evidence of drug usage. I think there may, in the medical records, may

be something of cannabis in there, however it wasn't anything that came out on a subsequent test. When SLED tested the blood it wasn't there, so we are dealing with just alcohol.

THE COURT: Okay.

MR. LEE: Okay. Y'all have gotten past the photographs? I don't have a copy of that one yet. One more, Judge, that is very quick. I filed a motion to determine the source of evidence. Mr. Whetsel, to his credit, provided me a while back some notes that he typed out after a conversation with Trooper Rouse of the Highway Patrol. And I was just unclear as to exactly where that came from.

He's advised me that, since I filed this, that that was just some notes based on his conversation with Rouse, that Rouse gathered from some of the officers on the scene, so I am satisfied that we don't need to hear this one today.

THE COURT: Okay.

MR. LEE: Judge, there's going to be three more. One involving the statement alleging -- made by the defendant to a doctor, and one to determine admissibility of photographs. And I just, for the record, need to renew my previous motion to exclude the blood results from the hospital, which you heard I

think on August 13th and subsequently ruled against us. I just need to -- so, I don't know if you have any preferences in the order in which we go.

THE COURT: No.

MR. LEE: No. Do you?

MR. WHETSEL: No.

MR. LEE: Judge, the first one, I filed a motion to exclude testimony and we have moved for an order from you preventing the State from eliciting, introducing, or in any way alluding to an alleged comment or statement by Ms. German to Dr. Meghan Cummins. This statement, we were made aware of this probably a week or two before the last time that the trial was set, which my understanding was that Dr. Cummins in a conversation with Mr. Whetsel, although it is not written anywhere, said that she remembered the case and that one of the things that she remembers that in response to a remark that she made that Ms. German had killed someone, that Ms. German's response at the hospital was, I don't give a, excuse the language, fuck.

It's obviously our position that that statement has no probative value whatsoever, it is highly prejudicial, and essentially would be used to impugn her character and to inflame the jury. So I don't

think that it's relevant under 401 and 402. And I certainly don't think that the probative value -- I don't think that there's any probative value. But if there is it is certainly substantially outweighed by the risk of unfair prejudice under 403. And it probably even gets to some type of character evidence, which is improper under 404 and 405. So, I just don't believe that there's any place in this trial for that testimony. All it does is that it impugns her character and suggests that, you know, the intent about, you know, whether you care or not is not at issue and there's really no probative value whatsoever in that statement, particularly when you look at it in light of the extreme prejudicial effect that it would have against Ms. German and our case.

THE COURT: All right.

MR. WHETSEL: Judge, the State would argue that that statement is simply an admission by a party opponent under Rule 801. She is confronted with the fact that she killed someone. She doesn't deny it. Her statement constitutes an admission. She said -- I believe the exact words that she said were, I don't fucking care.

So, that is not character evidence. It is not -- it is not a comment on, on her character whatsoever but

rather she doesn't take the opportunity to deny it or say that she doesn't understand. So, it is the State's intention to -- that it's admissible as an admission by a party opponent. And I have a couple cases on that. State v. Pate which says that as a general rule, any act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt. She understands what happened and she admits it by making that statement to the ER doctor.

MR. LEE: It doesn't prove anything, Judge. I mean, they don't need to prove that this young man was killed. They don't have to -- need help proving that she drove the vehicle that resulted in the death of this young man in this car. All it is is that they want the whipped cream and the cherry on top to just say, she is a bad bad person, jury, she is a bad person and she doesn't care. That is -- it doesn't -- that is not an element of the crime, whether somebody cares or whether they are remorseful at all. And I believe that it's totally taken out of context and it absolutely holds -- just because somebody said something, suppose she said, Well, that is the third time that that's happened to me, that wouldn't be admissible because it violates other rules of evidence.

So, just because it is admission by a party

opponent, which they use to try to let everything in. Just because it may satisfy one rule of evidence doesn't mean that it satisfies another one, which is a lot more important, which is the one to make sure that she gets a fair trial and that she is not judged by some spurious comment that they are using to try to impugn her character and try to make her seem like a bad person.

When it comes down to it, that is exactly what they are trying to do on that. They are not trying to say that she's admitting that she did it. How does she know at that time? And if they are -- if it's there for the truth of the matter asserted, I mean, it doesn't matter whether it's even true or not, they are trying to make her sound like a bad, bad person. And that is not what prosecutions are based on. That is not what convictions can be based on. And that is the type of thing that a jury will take completely out of context and will run with that has nothing to do with the underlying issue in this case.

It's clearly an attempt for them to paint her as -- impermissibly paint her as a bad person with bad character who shows no remorse. And it doesn't -- clearly there's no way under 403 that that could possibly have any probative value whatsoever.

MS. STAGGS: Judge, the burden is ours, obviously, to prove that the defendant was driving, that she was intoxicated, and that someone died as a result of her driving while intoxicated. So, you know, that admission is important. It is an admission that she was driving and that she understands that someone died as a result of her actions. The State is not seeking to comment on her remorse or lack thereof in this instance, Judge. It is simply an admission that shows consciousness of guilt. Again, the burden is on the State to prove all of the elements of the crime and her admission in this case, you know, is a part of that.

MR. LEE: If that was the only way that they could prove something, maybe, but they don't need that to prove that she was driving. They cut her out of the car. There's nothing to suggest at any time that she was not the one that was driving. We will stipulate, if that's what it takes to keep us there, we will stipulate that she was driving. But the State doesn't need that to prove it, they are using that, again, to try to antagonize and get the jury fired up and emotional about a very emotional case.

They have the duty of proving something and they can't prove it with inadmissible evidence. I don't care how bad they want to prove it or how many times

they want to prove the same thing, if it's inadmissible it doesn't matter whether it is important to them.

THE COURT: I'll grant the defense's motion. I find that that evidence is only slightly probative, but clearly outweighed by its prejudicial effect. What is the next motion?

MR. LEE: Okay. Motion to determine admissibility of photographs. I'm not sure which ones they intent to use, but I guess that I need to look at them and see which ones.

MR. WHETSEL: Your Honor, to put this in some context with the Court, the additional troopers on scene took roughly 100 photograph and then the MAIT team, which is the Highway Patrol's Multi-disciplinary Accident Investigation Team, they came and took another 100 or so photographs. So, there are roughly, ballpark figure, 200 photographs total. Of those photographs, we are only going to put a small portion in. But I think the part that is of some concern maybe for defense is that there are three photographs that depict Mr. Palmer inside the vehicle, and from that it's obvious that he is no longer living. There are two of those three that we would intend to admit. I would like to mark them as Court's exhibits and I would like to pass them up to the Court to let you see them, Your

Honor.

And the reason for that, and I'll cite the Collins case that I think the Court is aware of. It is not to inflame or ignite passions or anything along those lines, but we have to prove that a death occurred and these photographs help prove that particular element.

MR. LEE: We will stipulate to that. We will stipulate that he died as a result of the car accident, in the car. I mean.

THE COURT: I understand. The defense counsel already seen the photographs?

MR. WHETSEL: He has certainly seen them in evidence, but I will show these particular ones to him. But I would like to -- I have not marked them as courts exhibits, and I would like to do that, and then show them to Your Honor.

THE COURT: All right.

MR. LEE: I object to all of that, Judge. I don't think that there's any reason to put them in. I'm not trying to tell them how to try their case, but there's no question that the young man died. There is no question. We are not denying that. Our defense is not, He didn't die. So, I see no absolutely no probative value in those photographs. If necessary, we will stipulate that he died.

MR. WHETSEL: Your Honor, if I may, I will mark these and I will pass them up to the Court.

THE COURT: Certainly.

MR. WHETSEL: I will mark these as the next three Court's exhibits in order.

(Whereupon, Court's Exhibit No(s). 3-5 marked for identification and received in evidence.)

MR. LEE: Just, for the record, Your Honor, we would intend to admit Court's 3 and 4, but we do not intend to admit Court's 5.

THE COURT: Court's 3 and 4?

MR. WHETSEL: Yes, sir. And assuming that those are admissible I would change them to State's exhibits at the appropriate time.

THE COURT: All right. I have reviewed the photographs. And your continued argument?

MR. LEE: Yes, sir, if you don't mind just briefly. Your Honor, if this was a case where a parent was charged with like not providing nourishment for a child and you had to show the condition of the body to show that they had been malnourished and died that way, or if the cause of the death, such as a brain injury, such as the case of State versus Henry Gray, was some type of issue or was something that was being raised as a possible defense or a question, that is usually when

they let these death photos come in.

The fact that they want to show that picture, I just don't understand what probative value it has at all. And, again, the prejudicial effect of that is, Why does the jury need to see that? Why does the family need to see that? What value is there in doing that? Nobody wants to see those. But the State wants the jury to see that so that they will get upset at Ms. German, just like they wanted to get that statement in and try to get the jury to decide something on an emotional basis because they have sympathy because they have seen that picture. There's no reason that they need to prove anything in their case.

THE COURT: These photographs do not have, as referred to by the appellate courts, the blood, the gory scenes, it just depicts a dead body.

MR. LEE: Well, I would suggest that there's zero probative value to those pictures. And I would suggest that there's tremendous prejudicial effect. And I think under 403 that has to be weighed and I think that the State has to establish what probative value. How is that going to help a jury determine what to do in this case? I mean, they are not going to be wavering on whether or not the young man passed away or not. That isn't going to put him over the edge and say,

Here, we can prove that he passed away because we can show you these pictures taken afterwards and we see some blood and we see him in a crushed up car. There is no probative value.

MR. WHETSEL: Your Honor, before I argue I will pass up State V Knowles, which I think is directly on point and I think supports this argument. It is 409SC524, for the record. And the reason that these pictures, these photographs, are probative I think is apparent. We do have the burden as one of the elements to prove that he did pass away from a result of this collision. These photographs depict that. You can have all of the testimony in the world, you can have the coroner, you can have the paramedic testify, however, I believe juries are entitled to, if you have that evidence, to show exactly when and how that person did pass away.

And I think the reason that that is important is because, and I'm looking at the Collins case on Page 5 of 7, on the right-hand side, about halfway. And it is citing the Rule 403, and the standard is not whether it's prejudicial. Because, certainly, this picture is prejudicial. Most of the evidence that we will put in is prejudicial, but the unfair prejudice has to substantially outweigh the probative value, and that is

just not here. I mean, there are three photographs and we are electing to only put in two. And I would argue that the third one that we are not putting in is probably more gruesome than the first two.

But the reason for putting those first two photographs in is not to inflame the passions of the jury, it is to prove an element of the offense which we are tasked with doing. And for that reason, citing the Collins case, I think they are admissible, Your Honor.

MR. LEE: We will stipulate to whatever they want to say, as far as he died, he died in a car, he died in a car on Highway 21 at such and such time. We will stipulate to that. And for them to insist on, Well, we want to prove it anyway through these pictures indicates what the purpose of the picture is, and it's not to prove their case.

THE COURT: All right. The Court agrees with the argument and position taken by the State in this case and will admit 3 and 4.

MR. WHETSEL: Just for the record, Your Honor, those are Court's 3 and 4. I think for the actual case in chief we will mark those as State's exhibits at the appropriate time.

THE COURT: I said State's?

MR. WHETSEL: Yes, sir.

THE COURT: Court's.

MR. WHETSEL: Yes, sir.

THE COURT: Which brings us to --

MR. LEE: The last one, Judge, I'm not going to rehash everything, that is the motion that I filed seeking to exclude the blood test results from SLED, the toxicology results. We had a hearing on August 23rd, 2018 in front of Your Honor at which time you took it -- I think that I did a memorandum, I'm not sure whether Mr. Whetsel did or not, but you took it under advisement along with other cases and documents and then at some point -- at some point we started communicating by email and you indicated to Mr. Whetsel and I that you had, on Monday, August 27th, you said, After reviewing the materials provided at the hearing last Friday I find that as the facts of this case the blood samples were probably taken pursuant to Section 5652946. And it says, "Statute is not unconstitutional as applied."

That was the first email. We went back and forth, I made a few objections to the Court. Mr. Whetsel provided a proposed order, which I again objected to. I have included that as well as the email chain as Defendant's No. 1 -- or Court's No. 1 for this motion.

And I would also like to introduce as a Court's

exhibit, the order denying the motion to suppress the blood alcohol results that was filed October 3rd, 2018, in the Beaufort County Clerk of Court. I will, if I can just very very briefly for the record purposes put on the record what my objection is to the order as signed and as filed, is that it is still our position that the Court did not engage in the requisite case by case analysis as required by McNeely and by Burchfield. North Carolina versus Burchfield. Each one of those cases, Your Honor -- went back to Schmerber, which is a 1977 case, I think, and said, Things have changed since then. Technology has advanced. And for a warrant-less blood draw, which we have in this case, a warrant, a search warrant, might be needed. And to determine whether or not it was a lawful search without a warrant, the warrant was blood draw, you have to engage in a case by case analysis.

(Whereupon, Court's Exhibit No(s). 1 marked for identification and received in evidence.)

(Whereupon, Court's Exhibit No(s). 2 marked for identification and received in evidence.)

MR. LEE: McNeely said, the fact that alcohol dissipates in the system over time in and of itself is not a per se reason to excuse the requirement to get a search warrant. That is what -- that is what McNeely

is saying. It said, You have got to do the case by case analysis. You have to look and see how improbable or impossible or difficult it was to get a search warrant on a case by case basis. There may be circumstances which make it not feasible to get a warrant. They talk about all of the advances in technology and smart phones and everything else. But they said in that case that there's not a per se exception to the search warrant requirement because of the dissipation of alcohol in the system as time goes by.

Then we go to Burchfield where the State argued, Well, since the per se exception to the search warrant about the dissipation, and it says it was exigent circumstances, the exception that they looked at in McNeely. Since that didn't work, North Carolina -- I mean, North Dakota rather said, Well, we are going to try another exception to try to get around the warrant requirement for a warrant-less blood draw. And what we are going to say is that it is a search incident to arrest, that a search incident to arrest exception to the search warrant requirement.

In Burchfield -- there were three different cases, but Burchfield said, That's not going to cut it either, State, that isn't going to cut it, Government. You

still need to do a case by case analysis, engage in that, see the impracticability, have them present testimony about whether they could or couldn't for whatever reason, and the State has to show that they couldn't go get a search warrant. Because it is such an invasive procedure, you have to show that the State couldn't get a search warrant.

Burchfield, same result. That exception isn't going to cut it, State. So, both of those cases, and both in the last five to six years, clearly said that the Judge has to engage in a case by case assessment whether or not it's reasonable what the State did in not getting a search warrant and relying on these statutes. Some which made a criminal defense, some of them didn't of doing that. So, you have got to make sure that it wasn't reasonable to get a search warrant.

It is our position that this order does not address any type of case by case analysis, analyzing our case, saying this particular case on this particular day in this particular county it was not practical for the Highway Patrol to secure a search warrant for Ms. German's blood.

Now, I lost my train of thought for a minute. Oh, what the other does say at the end, Your Honor, is that it was -- that the trooper took it pursuant to 5652946,

and essentially the order says that is enough, that says that someone cannot not consent to a test of their blood, breath, or urine, that they have to give -- they have to give a sample.

Our position was that the 2946 was unconstitutional as applied in the case, and while someone cannot refuse a constitutional warrant-less blood draw, that they certainly cannot be forced to give an unconstitutional, in violation of their Fourth Amendment right, blood draw. Okay? And it is our position that this order doesn't address that. And it simply says, 2946 says they can't refuse, that's enough, it hasn't been deemed to be unconstitutional so strictly on 2946 without looking at the circumstances of the case 2946 makes it okay and therefore, the defendant's motion is denied.

It is our position that we are challenging 2946 and a mere reliance on 2946 by the officer is appropriate. Because the officer, he also should have to rely as prevailing law on Burchfield as well as McNeely which required the case by case. They have to try to get a search warrant for a warrant-less blood draw. So, just for record purposes, it is our position that this order does not make a case by case assessment by looking at the particular facts of this case. And

it simply relies on the language of 56-5-2946 which says, A person cannot not consent. A person must consent to a blood draw, and that that is simply saying 2946 is enough, Fourth Amendment doesn't matter, specific facts of the case don't matter, the case by case analysis doesn't matter. So, that is our objection to the order in which we have submitted as a Court's Exhibit.

THE COURT: Thank you, Mr. Lee. Mr. Whetsel.

MR. WHETSEL: We argued this motion in depth in this very court back on August 23rd, 2018. In support of the motion several witnesses were called. These same arguments were made. I'll rely on my argument there. Subsequent to that the Court did issue their order which Mr. Lee made a Court's exhibit. I'll rest on my argument as to why these results are admissible.

THE COURT: The Court continues to adopt the argument and position taken by the State in this case and finds no reason to change the prior ruling of the Court. What else do we need to do?

MR. LEE: That is all that I have, Your Honor.

MR. WHETSEL: Your Honor, I have just got a handful of things, but very brief. First, this has been pre-marked as State's 1. It is an aerial map. It is a Beaufort County map that was created by a mapping

agency here in Beaufort County. I have pre-marked it as State's 1 and I am going to move now to admit it as State's 1. I talked to Mr. Lee, I don't think that he's going to object to it.

THE COURT: Go ahead.

MR. LEE: I'm not going to object it to. I just ask that they not hold it up in their opening. I don't object to its admissibility, but hopefully it'll wait until they get to the case.

MR. WHETSEL: We intend to admit it as State's 1 as an actual exhibit, and we will use it, not in opening, I don't believe, but with some of the different witnesses. They may - we may ask them to step down.

MR. LEE: I have no objection to the foundation or the authenticity of that I have no objection to it coming in.

MR. WHETSEL: Can it be admitted Your Honor?

THE COURT: No objection?

MR. LEE: No objection.

THE COURT: Thank you.

(Whereupon, State's Exhibit No(s). 1 marked for identification and received in evidence.)

MR. WHETSEL: The other thing, if we intend to play a 911 call it will probably be the lead witness.

And there were several calls made that evening. There is only one in particular that we are going to play. It was made by Alesia Johnson, who is going to testify as well. We plan to put that call in through the records custodian. I don't think that there's any objection, but I wanted to bring that up. That is our first witness.

There were also several jail calls that were made between Ms. German and her husband. One in particular, which again, is the one that I am referencing. That will probably be near the end of our case and we intend to admit that as well. Again, I don't think that there's going to be an objection as well.

MR. LEE: I have no objection.

MR. WHETSEL: There are, I alluded to earlier, Your Honor, there are probably roughly 200 or so photographs taken. We don't intend to put nowhere near all of those in. And I think maybe the easiest way to handle this, because I have not had an opportunity to show Mr. Lee yet, is maybe at the end of the day we will show Mr. Lee the photographs that we intend to put in and if there is an issue with any particular one maybe in the morning we can take that up. I am trying to streamline things.

THE COURT: Sounds good to me.

MR. WHETSEL: There are -- again, I don't know how the evidence is going to bear out, but there's a potential for maybe a necessity of arrest defense. In the event that we do get there, I do have some argument on that. That may be more of a charging argument, so I would just ask to reserve that argument once that becomes -- if that becomes an issue prior to charging the jury.

I don't want to get into it now, because I don't know how the evidence will bear out. But I just want to be allowed to reserve argument as to the potential charge to the jury as to the particular defense.

THE COURT: Sure.

MR. WHETSEL: Your Honor, I believe that's it.

THE COURT: Ready for the jury, or do we need a break? Anybody need a break?

MR. LEE: A two-minute break, three-minute break?

THE COURT: Two and a half.

MR. LEE: Two and a half, yeah.

MR. WHETSEL: Yes, sir, to get rearranged.

MR. LEE: I want to tidy up a little bit.

(Pause.)

THE COURT: Everybody ready?

MR. WHETSEL: Yes, sir.

MR. LEE: Yes, sir.

THE COURT: All right. Let's bring the jury in.

(The jury enters the courtroom at 3:27 p.m.)

THE COURT: Good afternoon, ladies and gentlemen. Welcome back. I apologize for keeping you waiting. It always seems like there's something, and I'm going to try my best not to do this again to you over the next day or two. The first thing that we need to do, though, is to have our clerk execute your oath as jurors. Mr. Clerk.

(Whereupon, the jury is sworn by the clerk.)

THE COURT: Just a few things before we begin. Ladies and gentlemen, the defendant in this case has been charged by way of an indictment. The elements of the offense will be explained to you at a later date. But I just want to tell you that the indictment is simply the charge or the vehicle which brings the case into the courtroom. It is not in any sense evidence of any of the allegations contained in the indictment. The defendant has pled not guilty to the indictment.

The State therefore has the burden of proving each of the elements of the indictment beyond a reasonable doubt. And it will be your duty, ladies and gentlemen, as jurors to decide whether the State has met its burden. Your purpose as jurors is to find and determine the facts of the case. You are the sole

judges of the facts of the case.

If at any time I do anything to cause you to believe that I have an opinion about the facts of the case, you must disregard it. The law does not permit me to discuss the facts of the case in your presence. You are to determine the facts from the testimony that you hear from the witness stand and other evidence that may be introduced during the trial of this case. It's up to you to determine the inferences which you feel that may properly be drawn from the evidence.

On the other hand, the same -- with equal emphasis, the same law that makes you the judge of the facts of the case makes me the judge of the law of the case. The law that is given to you by the Court is the only law you may consider. You must accept the law and follow the law as I tell you it is. You may not disagree with me over the law.

I can't tell you about the facts of the case and you cannot disagree with me over the law. Your job is to take the law as I give it to you and tell you it is and apply it to the facts as you find them to be from the evidence and testimony introduced during the trial. After doing that, you will render your verdict, a true and just verdict, under your solemn oath that you just took as jurors.

Until the case is completely and finally over, as I told you earlier, you are not permitted to discuss the case with anyone, you can't let anybody discuss the case with you. You can't even discuss it among yourselves in the jury room, not until the case is finally over. And what that means, all of the witnesses have testified, all of the evidence has been presented, the attorneys have made their closing arguments to you and then I tell about the law. Once all of that is done, you retire to the jury room and then you may begin discussing the case and begin your deliberations.

During the trial out of the case I also tell you you are not, from now on until the case is over with, you are not to do any research about the case or cases such as this. You are not to get on the Internet or do any other kind of research about this case. You must decide this based on what you see and hear presented here in this courtroom.

In just a few moments the attorneys will make their opening statements to you where they try to tell what they think the evidence in the case is going to show or not show. What the attorneys say to you or tell you, though, is not evidence; it is merely a statement to you by the attorneys, about what they

think that the evidence might be or might show or may not show. After all of that is done, we begin witnesses and presentation of evidence.

From time to time during the trial you may see the lawyers ask if they can approach. I see them at a sidebar and we whisper things outside of your presence and it may even require me to ask you to step in the jury room while I discuss with the attorneys a matter of law. But in doing that, it may require me to discuss with the attorneys the facts of the case, and as I have already told you, I can't discuss the facts of the case in your presence, once again, because you are the sole judges of the facts of the case.

Having said all of that, ladies and gentlemen, we will now receive opening statements from the attorneys, beginning with the State. Solicitor.

OPENING STATEMENT BY THE STATE

MS. STAGGS: Thank you, Your Honor. Mr. Lee. May it please the Court. Choices. That is what this case is really about, ladies and gentlemen. Choices. We all make choices every single day, big, small, what we are going to wear, you know. There are choices almost every minute of every day that we make. Those choices lead us to actions and those actions have consequences. That is why we are here. Mary German's choices and all

of the things that happened as a result of her choices on the night of July the 9th, 2016 and into the early morning of July the 10th, 2016. That is why we are here today.

On the night, on July the 9th, 2016, the defendant, Mary German, she chose to drink and then to drive. And after she got behind the wheel of her truck, she crossed over a divided highway and she went the wrong way into in-coming traffic. And that choice took the life of Shermain Palmer. He was 24 years old. Earlier that day, July the 9th, the defendant and her husband had been traveling. They were driving into Beaufort on Highway 21. That is the road that weaves out of town. And at the end you turn right to go to Charleston and you turn left to go to Yemassee. It is a divided highway. They passed a little dive bar called A and J Food and Flea Market, some people call it Archies, right across from Whale Branch Middle School.

They stopped there and they had some drinks. They drank until they were drunk. The defendant that night chose to drink and she chose to keep drinking knowing that the only way she had to get somewhere to stay that night was to drive her vehicle. She drank enough in an hour and a half to two hours, approximately, to have a

blood alcohol level of a .27. .08 is the legal inference of intoxication in South Carolina. Ladies and gentlemen, .27 is 3.4 times that amount of alcohol.

So, after choosing to drink to the point that they were drunk, Mary German and her husband left Archies. Once they got out in the parking lot, there were a number of cars there. And the defendant drove a great big truck at the time. You will see pictures of it. It was big. They got into a fender bender in the parking lot, because it was difficult to get out because how large their truck was and how the cars were parked lined up in this little grassy parking lot next to this dive bar.

After they got in that fender bender, they started to leave. You will hear from the witnesses that were there in that parking lot that saw exactly what happened. You will hear from the woman who owned the car that was hit in the parking lot and from her cousin. They are going to come in here today and they are going to testify. They were in the parking lot while the defendant was trying to leave. And they are going to tell you exactly what happened because they were there and they saw it.

They tried to get the defendant to stay for a couple of different reasons. They admit they wanted

her to stay because they wanted her insurance information, she had just hit one of their cars. They also wanted her to stay because they believed that she was intoxicated, she was in no shape to drive. But she chose to drive any way.

Eventually somebody in that parking lot moved that car, so they were able to get that big truck out of that parking lot. At that point, instead of turning right onto 21, to head into Beaufort, Mary German crossed over that divided highway and turned right into on-coming traffic. At that point, unfortunately, Sher'Mann Palmer was driving on 21, heading out of town, he had just finished playing a gig -- he was a musician. He was headed back to Columbia, because that is where he lived. He was in school and he had to be there the next morning to play in a church band.

But he didn't make it to church. He didn't make it because Mary German chose to drive the wrong way down Highway 21 and hit him head-on in her great big truck. The blunt force trauma from that wreck took the life of Sher'Mann Palmer. He didn't die right away.

You are going to hear all of the evidence in this case. You are going to hear from the people who were at that bar. You are going to hear from the highway patrol. You are going to hear from something called

the MAIT team of the highway patrol. They do collision reconstruction, so they are going to be able to tell you what happened in this crash. You are going to hear from the paramedics and the doctor that treated the defendant at the hospital after the crash.

What those witnesses are going to tell y'all is evidence in this case. And we would ask that you consider all of that evidence very carefully. The State's job is to prove to you that the defendant is guilty beyond a reasonable doubt. And the Judge is going to instruct you on the law as he told you that he would. He is going to define what felony driving under the influence resulting in death means, all of the elements that we must prove to you.

And he is going to define beyond a reasonable doubt. It is a heavy burden that the State bears, but ladies and gentlemen, we are going to meet that burden. And at the end of this case you will have an opportunity to go back in your jury room and discuss all of the evidence presented, look at the photos, you can listen to testimony again if you want to. And then you will have the choice to make.

That evidence is going to show that Mary German chose to drink on the night of July 9th and into the morning of July 10th, 2016. She chose to drive despite

the fact that she was grossly intoxicated. While driving, she committed a traffic violation, she crossed into on-coming traffic and hit Sher'Mann Palmer's car head-on. Mary German's choices took the life of Sher'Mann Palmer. And he doesn't get to make any more choices. She took his choices away.

Mary German's choices and her actions, ladies and gentlemen, the State believes will leave you with one choice and that is to find her guilty of felony DUI resulting in death. Thank you.

THE COURT: Thank you, Solicitor. Mr. Lee.

OPENING STATEMENT BY MR. LEE

MR. LEE: Thank you, Your Honor. May it please the Court. Ms. Staggs. Mr. Whetsel.

I have been doing this for 25 years and it never gets any easier. I'm never not scared to get in front of 14 people that I don't know and having someone's future and freedom on the line. I am scared. I'm scared of the prospect of having to tell Roger later in the week that he has to go to Myrtle Beach without his loved one, Mary. I am scared that y'all might have so much sympathy for Mr. Palmer and you convict my client simply because of a terrible thing that happened.

This was a horrible thing, it was a very tragic accident. Nobody doubts that. Nobody contests that.

Everybody feels bad for the whole family out there. But you can't be blinded by sympathy as a juror. You have to listen to the facts in the case and weigh the evidence and judge the credibility of witnesses and uphold your juror's oath, which is to go through the evidence and to apply the law and to come back with the proper verdict, a verdict that is fair and just and a verdict that holds the prosecutor to the high standard of proof or proof beyond a reasonable doubt.

It is a high standard, as Ms. Staggs said. Reasonable doubt, the Judge, later in the week will tell you means a couple of things. A reasonable doubt is the type of doubt that would cause a reasonable person to hesitate to act. And it is a reasonable doubt -- proving a case beyond a reasonable doubt, you have to be firmly convinced that the defendant is guilty of committing the crime.

I'm also scared that y'all are going to get fed up with me sniffling and everything else, because I can't seem to get rid of this cold. I apologize in advance. I'll do my best. And when I do get scared and worried about things -- I'm scared and worried that I can't do a good enough job for Mary, that she deserves, but I am going to try.

But when I do get scared I find that the best

thing to do is try to imagine that we have known each other for a long time or maybe we are sitting together at dinner and talking about something and maybe talk about family a little bit.

When I was a young kid my sister and I are 12 months apart, so you can imagine that we fight like cats and dogs. And every summer -- we lived in Columbia. Every summer we would go down to Dothan, Alabama which is called the Wiregrass. I think that it's the only place hotter than Columbia in the summer. And we would go down there in the summer and, of course, we were always active. And so, when we were young we thought the best thing to do when something happened would be the first person -- we thought that it would be the best to be the first one to go to my grandfather Lee and say, Hey, you won't believe what Laurie did or you won't believe what Scott did. We thought that it was important to be the first one there, get the story out, tell it first.

And my grandfather only went through the 9th grade. Got drafted into the Army, World War II, and then was a bricklayer for 40 years, but he was one of the smartest guys I every met.

And as a kid he used to always quote this Bible verse and I never could quite follow it. But I

happened to look it up not long ago. It was Proverbs 18:17. And he would tell us this, and as kids we wouldn't understand it, but it means a lot to the context of a case like this. And what it says is the first to state its case seems right until another comes forward to question him. And just like when we were getting names of the potential witnesses earlier today, the State always gets to go first in everything we do. They get to argue first. They get to call witnesses first. They get to do everything first. So, the tendency, and again, one of the things that I'm going to worry about is, it sounds so good first, but you have to realize that there is a "yeah but" and there are other things out there that you have to consider.

And that is where we come in. Unfortunately we always have to be second following up on things. But again, that proverb was what my grandfather quoted when we were seven and eight years old and I finally figured out exactly what it was. And he was so -- he didn't have much schooling, but he was so smart. And he would always say, no matter who got there first, he would always say, well, let's bring your sibling in and let's talk about this and let's get both sides of the story. And he was always able to figure things out. That is what is important in any trial, is to do that.

And there is a lot more to it than what she just said, a lot more to it. There's no question that this young man died and this is a tragic, tragic accident. Everybody feels bad. The question that you have before you, and what the State has to prove beyond a reasonable doubt is whether or not beyond a reasonable doubt there's criminal responsibility for what happened.

And you say, well, they just said, you know, they said she was grossly intoxicated. They say that she drove and they say that he died. Well, the law in so many aspects has exceptions, justifications, excuses, conditions, so it's not all black and white. It can't be. And if you think about it a little bit, there's certain things that, on their face, in the Solicitor's view of it, seem to be illegal. Shooting someone, illegal? Yes. Always? No. There's something called self-defense. If someone comes after you with a gun and you are fortunate enough to get the best of them and you kill them, you haven't murdered them. Because you had a right to defend yourself. And the law excuses that, it justifies it. If the police take down a sniper who is shooting people off of a building and killing them, is it murder? Well, they did kill them, it is a homicide. But there's a law enforcement

exception, for the greater good they have to do that.

Did you ever watch boxing or MMA fighting? Those guys are beating the tar out of each other, which if it happened out in front of the courthouse it would be a crime, it would be assault and battery or assault and battery of a high and aggravated nature. Why is it not? How can they do that? How can a baseball pitcher intentionally throw and hit someone with a baseball at 95 miles an hour. Well, the law recognizes just because it seems on its face to be something, that there's more to it. It's consent.

If Connor McGregor and all of these other guys get in the ring and agree to beat each other up one of them then can't go and have one charged for assault and battery of a high and aggravated nature. So, you have to think about those things. If someone comes to your house and kidnaps you and your spouse and your child and takes you into a car and their accomplice stays in the car and they tell you to go in with them and take this gun and rob the store clerk and give them the money. Have you robbed the store? Yeah, you have. But the law excuses that. It's coercion. You are doing something because they are threatening to kill your spouse and your child if you don't go rob the liquor store and give them the money.

So, the law has all kinds of things where something happens and then the law says, but, there are circumstances in which people act. Usually when it is some type of threat or emergency situation if they act reasonable and they don't have another alternative, they are not criminally responsible for what happens. They have not technically violated the law. And that is what you are going to see in this case.

Now, what happened that day? Mary German, who is sitting beside me, her husband Roger over there, been together 25 years. They live up in Myrtle Beach. They have raised three kids together and two of them are still at home, aged 22 and 17 and they have a new little grandson who is living with them as well in Myrtle Beach.

They work like you wouldn't believe. Mary is an electrician by trade and Roger is a cabinet guy, very skilled at what he does. During their life, these are people who work six or seven days a week. In 2016, when all of this tragedy happened, that is exactly what they were doing. And they were trying to find the time when they could take a little time off where they could get away from the kids and go hang out with each.

And what they had started doing was this cool thing where -- it wasn't a contest, but it was like

this adventure quest or something and it was, you know, this book and you go to all of the State and Federal National Parks in the State of South Carolina. And that is what they had been doing for like a year. They had went to the upstate and did a bunch of them. They had did 18 or so. And that is what brought them to Beaufort that day, that faithful day. They had never been to Beaufort before. They started the day at Myrtle Beach, they went to Edisto, saw the state park there, and on the way -- then on the way to Beaufort there was a bad wreck on whatever that one road is out of Edisto. They waited hours and hours and hours, so they were delayed getting back to Beaufort.

So, they rolled into Beaufort, having never been here before, you know how you come in on 17 and it is dark and you turn on 21 and it is dark and there is nothing there. It makes you wonder if there's a town up around the corner. Well, the first place that they see is this quaint little, I think that Ms. Staggs called it a dive bar, quaint little building right across from Whale Branch. And there is a little sign saying, Open, and there is not many people there.

They say, it's 10:30 or so at night, let's pull in here. We can't get out to the beach, to Hunting Island which is where they were going. Can't get out to

Hunting Island tonight. Can't pitch our tents there. They had all of their camping equipment in the car. You will see, they had a big truck and it had a camper on it so they can sleep in the car or truck and sleep in the tent. So, they stopped at this place to assess, what are we going to do. It is 10:30, this doesn't look like much of a town to us, we have to figure something out, this is the first place that they saw that had the lights on. So, they go in there.

And just like I was telling you, cases and the law don't always seem to be what they appear. The place that they went in soon become a place that it didn't originally appear to be. They went in there. Are they drinking? Yeah. They are trying to figure out what to do. And it began to get to the point where it looks like they are just going to stay in the truck in the parking lot. They have done it before. They have got the camping gear. Well, as the night goes on -- let me back up. I think that the testimony will be, they go in, they order beer and they pay for the beer and the bar tender, quote, unquote, says, Hey, for ten dollars you buy a bracelet, all you can drink all night. They are like, Ten bucks? So, they bought a bracelet. And they were being served as much as they wanted to drink for ten bucks.

And all of a sudden this quaint little place turned into a completely different place. It was a party that they didn't know about that had been set up by somebody that they didn't know about, and it was advertised on the internet. I think that it was called a Grown and Sexy Party. And I think that they are planning on calling some of the witnesses that came to that party. So, they have gotten ten dollar all you can drink and, you know, DJ and the place started getting packed, and packed, and packed, and packed. They are hanging out. And there became a problem, supposedly a problem where Mary drops, accidentally drops a beer bottle and all of a sudden they started feeling unwelcome. They started getting threatened, they started having things said to them and it was clear that they had to leave.

And what is important, you can hear through the testimony, you are going to hear about what happened from that point where they were scared and frightened and had to leave until the wreck happened. That is the important time here. And that is what you have got to hear, and it is a lot different than the witnesses are going to say and what they will prove.

And essentially what you are going to see, we believe, is that, yes, she did have a choice, none of

them good. She had to leave that parking lot for fear of her safety and her husband's and that she did the only reasonable thing, which was leave. And we will talk about what options she had later on. And that this terrible crash resulted right across the street from this place.

And I am kind of giving you a preview of it, you can kind of see as things develop to that. So, there's obviously a lot more to it. There's a lot more to this place that they stopped. There's a lot more to this case. And that is what is coming your way. I'm going to ask you, probably on Thursday or whenever we finish, I am going to ask you to find Mary German not guilty. And I'm going to ask you to say that, we have applied the law and we have applied what we are supposed to do and we have found that she's not guilty. That is all that we have. Thank you.

THE COURT: Thank you, Mr. Lee.

MR. LEE: Thank you, sir.

THE COURT: Call your fist witness.

MS. STAGGS: Thank you, Your Honor. The State calls Allyson Moreira.

Thereupon,

ALLYSON MOREIRA

was called as a witness, having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. STAGGS:

Q Good afternoon, Ms. Moreira. Tell me where you work, please.

A The Beaufort County Sheriff's Office.

Q And how long have you worked there?

A 3½ years.

Q What particular job do you hold at the Sheriff's Office?

A I am the 911 recording clerk.

Q Okay. What are the job duties that you do, that you have?

A I receive requests from the offices and I have to locate the call and burn it to a disk.

Q Okay.

MS. STAGGS: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. STAGGS:

Q Ms. Moreira, I'm handing you what has previously been marked as State's Exhibit 2. Do you recognize that item?

A I do.

Q How do you recognize it?

A I initialed it and I burned the disk with the call on it.

Q Okay. So, at my request or Mr. Whetsel's request, you reviewed that disk?

A Yes, ma'am.

Q And did you determine that it was an accurate copy of the 911 call made in this case?

A I did.

Q Has it been altered in any way?

A No.

MS. STAGGS: Your Honor, at this time the State moves Exhibit 2 into evidence.

MR. LEE: No objection, Your Honor.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 2 marked for identification and received in evidence.)

MS. STAGGS: Thank you, Your Honor. Permission to publish?

THE COURT: Certainly.

(Audio CD played.)

BY MS. STAGGS:

Q Ms. Moreira, can you tell me what time that call was placed?

A This one is around 02900.

Q So, that is around 12:29 a.m.?

A Yes.

MS. STAGGS: Thank you. I don't have any other questions. Please answer any questions that Mr. Lee may have.

THE COURT: Questions, Mr. Lee.

CROSS EXAMINATION

BY MR. LEE:

Q Hey, Ms. Moreira.

A Hey, how are you?

Q Good. So the time that this call was placed was 12:29 and 12 seconds a.m.; is that right?

A Yes, sir.

Q Where are you getting that time from?

A From the CAD report.

Q CAD report. Can you tell the jury what a CAD report is?

A It just documents everything from the time that the call is placed, the officers that come out to the call.

Q So, it shows that call that we just heard it being at 12:29 and 12 seconds. Does it tell you at what time the first officer arrived at the scene?

A 04126 is when the first officer arrived.

Q 04126?

A Yes.

Q Okay. So, we are talking about 12 -- 12 minutes

later?

A Yes, sir.

Q Okay. That is when the first officer arrived at the scene?

A Correct.

Q Okay. And this is even though -- I mean, I'm sure that they were telling a lot of officers to go that way under the circumstances, right?

A Yes. Well, EMS got there first.

Q What time did EMS get there?

A At 038.

Q Okay. So, they are there at zero -- so, that is nine minutes before EMS got there, right?

A Yes.

Q All right. Now, isn't it true, that was not the first 911 call made from that business that night, was it?

A That is true.

Q Wasn't there a call made at 12:28 and 39 seconds to 911 from Archie Wearien?

A What time, sorry?

Q 12:28 and 39 seconds, which is before the one that we just heard. Are you aware of that 911 call?

A It is not on this CAD report.

Q Okay.

A I don't have anything else but what is associated

with that case.

Q When 911 calls are produced in discovery as part of evidence, don't they say trunks on them; are you familiar with that? Trunk one, trunk two.

A Correct. Because I'm not an actual dispatcher, there's times where they may not put everything in CAD.

Q Okay. So, you can't look at the CAD report to see whether or not there was a call made prior to that, the one we just heard; you can't look at the documents you have?

A It is not listed on this CAD report.

Q Why is it not listed on that CAD report?

A It is something with dispatchers, you would have to contact them. I don't create the CAD reports on here, I can only do what tape is associated with the case number.

Q Okay. So, who would I need to talk to if I wanted to find out about the call that was made prior to the one that we just heard in the Sheriff's Office, who would I need to talk to?

A My captain.

Q Your captain?

A Yes.

It may be a different case number. It may be that dispatcher may create a whole new case number for a different call that wasn't associated with it.

Q Okay.

A But for this one case number that I was told, I only pulled up for that.

MR. LEE: Got you. Beg the Court's indulgence.

(Pause.)

BY MR. LEE:

Q You are under subpoena by the State and me this week, right?

A Yes.

Q And the subpoena that I sent you asked for all of the 911 calls from this date related to this address, right?

A I don't have it in front of me, but I'm sure that it did.

Q All right. Okay. We will follow-up with that later on. But you don't know if there was a previous call made before that?

A There was a disturbance just from what I -- but it never said in there that it was associated with this accident though.

Q Okay.

A It was just that they were trying to --

Q That is what I was going to ask you about. There was a call from that same place about a disturbance in the parking lot from the same address, right?

A Correct.

Q Okay. And that call came prior to the one that we

just listened to?

A Correct.

Q Okay.

A But it never said if it was in reference to the same thing. I think that they were trying to get somebody to leave. And right after that the accident happened.

Q So you heard that call?

A I did. I did hear that, but I didn't put it on the disk just because I wasn't sure if it was affiliated with the accident and them trying to get somebody to leave. They never put out names or anything and it was associated with a different case number.

Q Okay. Who assigns the case numbers?

A The officer -- sorry, the dispatcher.

Q Okay. But you do not remember that there was a call that proceeded the one that we just listened to about a disturbance in the parking lot at that same address?

A Right, but it was not in this CAD report with this case number so I didn't add it. It was a different case number.

Q Are you aware that that call came from the guy that worked at A and J Food and Flea Market, where Ms. German was, it came from him and it reported a disturbance in the parking lot with weapons?

A I don't recall weapons. I will have to listen to

it again.

Q We can do it later, but you do kind of remember that?

A Yes, uh-huh. (Indicating affirmatively.)

MR. LEE: All right. Okay. That is all that I have. No objection to her being excused, but -- I have no objection to her being excused if they have no other questions.

MS. STAGGS: Nothing further from the State, Your Honor.

MR. LEE: But I may call her later in the week.

THE COURT: You still have your subpoena?

MR. LEE: That is right.

THE COURT: Call your next witness, solicitor.

MS. STAGGS: Thank you, Judge. The State calls Alesia Johnson.

THE COURT: Who?

MS. STAGGS: The State calls Alesia Johnson.

Thereupon,

ALESIA JOHNSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please have a seat and state your name and spell your last name for the court reporter.

THE WITNESS: Alesia Johnson, J-O-H-N-S-O-N.

DIRECT EXAMINATION

BY MS. STAGGS:

Q Good afternoon, Ms. Johnson. Tell me where you live.

A Province Road, Beaufort, South Carolina.

Q What do you do for a living?

A Manager at the mess hall, Parris Island.

Q Thank you. On July the 10th of 2016, July, late in the evening of July 9th and early morning hours of July 10th, do you remember where you were?

A At a party.

Q Okay. And where was that party?

A Archie's Club like, Seabrook.

Q Okay. What is Archies? Tell me what you mean, what that place is.

A It is like a night club.

Q Okay. And when you were there, were you inside, were you outside; what were you doing?

A I was inside.

Q Okay. And did you hear anything, any sort of announcement made?

A Yes.

Q What did you hear?

A There was a guy that came and said, Whoever is driving a white Honda, your car is being hit outside. And

so then the people that I was with go, Alesia, it is your car, let's go see. So, we went outside and it was my car and there was a red truck with two people in it that were trying to get out.

Q Okay. So who made that announcement inside, do you remember?

A No.

Q Somebody like over a loud speaker or something?

A Yes.

Q Okay. You went outside -- who was with you; was anybody else with you?

A Yes.

Q Who was that?

A My cousin Tori and our other friends.

Q Okay. And after you saw your car, then what did you do?

A Call 911.

Q Okay.

MS. STAGGS: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. STAGGS:

Q I'm handing you what has been marked as State's 3, 4, 5, and 6. And let me let you just flip through those very quickly. Do you recognize those photos?

A Yes.

Q What are they?

A Photos of my car.

Q Okay. And how do you recognize it; are they from that night?

A Yes.

Q Okay. And are they a fair and accurate depiction of your car in that parking lot from July the 10th, 2016?

A Yes.

MS. STAGGS: Your Honor, the State moves to put exhibits, I believe 3, 4, 5, and 6 into evidence.

THE COURT: Without objection?

MR. LEE: Without objection, Your Honor.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 3-6 marked for identification and received in evidence.)

MS. STAGGS: Permission to publish.

THE COURT: You may.

(Exhibits published to the jury.)

BY MS. STAGGS:

Q Ms. Johnson, what is that a photograph of?

A My car.

Q Your car. And you car, it is parked where it was that night?

A Yes.

Q And what about -- and it is a little difficult to see from this angle with the light. What about that one?

A That is my car.

Q Okay. And so can you see this little portion right there?

A Yes.

Q What is that?

A The bumper.

Q Okay.

A I think that it's difficult to see with the --

Q I'll pass it up to you again. If I may, Your Honor. If I show it up close to you, what is that?

A A dent.

Q A dent?

A Yes.

Q Is that the damage that you were talking about just a minute ago when you were testifying?

A It is.

Q Okay. And then I'll move on briefly, Judge.

Please explain to me what happened? You were talking about you went outside and there were a lot of cars in the parking lot. After your car was hit, you called 911, then what happened?

A A Honda let them out.

Q At first they couldn't get out?

A They couldn't get out.

Q Okay.

A And then there was a Honda in the way, another Honda in the way as well. And that car moved and that is how they got out. And then sped like, past the stop sign. They didn't stop. They just went on the opposite side of the road and they ran into someone else.

Q Okay, I'll stop you very quickly. If you will look at this photo right here please.

So, in the photo, when you say that they sped up, what did you see there?

A Skid marks.

Q Is that -- what created those marks?

A Their turn.

Q So that is what you are saying, that is how they left?

A Yes.

Q And after they got out of the parking lot, while you were on the phone with 911, then what happened?

A They went into the road, they ran the stop sign, went on the opposite side of the road, and then they ran into another car.

Q Okay. We heard that 911 call. I know that you were not in here, but we have heard that 911 call. Do you remember who was driving that vehicle?

A A woman.
Q It was a woman, not a man.
A Right.
Q On the 911 call you said "he", but it was a woman who was driving?
A Yes.
Q Can you describe what that woman looked like just generally?
A I think she had blond hair then.
Q Was she black, was she white?
A She was white.
Q Okay. There was a white lady driving that car?
A Yes.
Q Sorry, I meant a truck. She was driving the truck?
A Yes.
MS. STAGGS: I beg the Court's indulgence for one moment.
THE COURT: All right.
(Pause.)
MS. STAGGS: Just one more question.
BY MS. STAGGS:
Q So, you actually saw that truck driven by the woman that you are talking about, you saw it leave?
A Yes.

Q And you saw it crash into the other vehicle?

A Yes.

MS. STAGGS: No further questions. Answer any questions that Mr. Lee might have for you.

THE COURT: Cross examination Mr. Lee.

CROSS EXAMINATION

BY MR. LEE:

Q Good afternoon, Ms. Johnson.

A Hello.

Q On the 911 call, didn't you say that the two people had gotten out of the truck and were trying to run away?

A Right.

Q You told that to the police officer, right?

A Yes.

Q Is that true?

A Yes.

Q It is. So, the two people in the truck you said got out of the truck, ran away, and then went back to the truck and got back in?

A They did.

Q Okay. Now this, this place that you are at; what time did you get there at Archies?

A I don't remember.

Q You don't remember?

A (Shakes head.)

Q When you got there it appears that the parking lot was pretty full, right?

A Right.

Q Okay. So, was there a lot of people outside and inside?

A Everyone was pretty much inside.

Q Everyone was pretty much inside. But there were people outside, were there not?

A There was.

Q People that either hadn't paid or --

A Right.

Q Okay. All right. And where they were kind of on that side kind of where your car was parked; is that correct?

A Where who was?

Q Where the people outside were.

A They were everywhere.

Q Okay. All right. And would you agree that there's one, maybe two kinds of overhead lights out there in the parking lot?

A I don't remember that.

Q You don't remember. Okay. And you were inside initially?

A Yes.

Q So, you didn't go -- by the time you went outside, the truck was already attempting to get out of the parking lot, right?

A Right.

Q So you didn't see what happened from leading up to the time that the people got in the car to the time that they started to leave, right?

A Right.

Q You didn't see that?

A Right.

Q And the point -- you were standing in the parking lot when you called 911?

A Yes.

Q Okay. So you were able to see where the wreck happened because it wasn't that far away from where you were standing, right?

A Right.

Q It was just across the road?

A Correct.

Q Do you go to Archie's Night Club or A and J Food and Flea Market, do you go through there a lot?

A No.

Q You don't. Had you ever been there before?

A Yes.

Q You have. Prior to this?

A Yes.

Q Okay. And were you going on this night for a particular event?

A Yes.

Q And the event that was going on that night was called the Grown and Sexy Bash, right?

A Right.

Q Was that advertised on social media or something?

A Yes.

Q Okay. And the host, hostesses, of the Grown and Sexy Bash appear to be Isa and Muck, do you know Isa and Muck?

A Yes.

Q Okay. Isa is Isa Grant, right?

A Yes.

Q And Muck was Mahogany Fields?

A Yes.

Q So, you know them?

A Yes.

Q And you were going to their party.

A (Nods.)

Q And you have to be 25 to get in, is that part of the grown part of the thing?

A I'm not sure.

Q Okay. But you seen this flyer?

A A long time ago, I think so yeah.

Q All right. And you would agree that the flyer also at the bottom says, Security strictly enforced?

A Yes.

Q Okay. Is that something that is important to you at a party?

A Yes.

Q Okay. Is it something that is important to you at a party out at Archies?

A Yes.

Q Okay. Which makes sense. Okay. Now, there wasn't any security out there, though, was there?

A I don't remember seeing them.

Q Did you see any security?

A No.

Q Okay. The only real people, really, in charge was Mahogany sitting at the front door with a cigar box selling wrist bands; is that right?

A I'm not sure.

Q Did you buy a wrist band?

A Yes.

Q Ten bucks, right?

A Five.

Q Five. All you can drink, right?

A Right.

Q Okay. And they were serving the liquor kind of back in the little storage shed, there's not an actual bar in the place; is that right?

A Both places.

Q Okay. Both places.

Did you see any guns that night?

A No.

Q You have seen guns out there before, haven't you?

A No.

Q Never. There is a sign out there that says, No weapons inside, isn't there?

A I'm not sure.

Q You are not sure. But it was important that security be strictly enforced at the bar, according to you; right?

A Right.

Q So you really can't tell this jury about what happened until the truck was leaving the parking lot; do you agree with that?

A No, I went out. There was a guy that came on the mike, told us what was going.

Q Yeah.

A And we went outside and saw the commotion.

Q Right, commotion. Did you see a guy wearing white sweatpants?

A I don't remember that.

Q When you say "commotion", the commotion wasn't -- weren't the passengers already in the truck trying to get out?

A They were.

Q Okay. And people were not letting them out?

A They were not. This one Honda finally let them out.

Q Okay. And they seemed like -- they seemed pretty intent and concerned about getting out there, right?

A They were very serious about getting out of there, yeah.

MR. LEE: All right. That is all that I have, Your Honor.

THE COURT: Redirect.

MS. STAGGS: Thank you, Judge.

REDIRECT EXAMINATION

BY MS. STAGGS:

Q Ms. Johnson, do you not -- you testified that you don't recall how long you had been there at the point that this happened?

A No.

Q But had it been a long time, can you estimate?

A It wasn't long.

Q Okay. Had you been drinking before you got there?

A No.
Q Had you had a number of drinks at that point?
A I don't drink at all.
Q Okay. So you hadn't had any drinks?
A No.
Q Okay. And as far as security goes, about how many times have you been to Archies?
A That was my second time.
Q So not very many?
A No.
Q You don't know anything about their security policy?
A Not really.
Q Okay. Did you see any fight in the parking lot when you got out there?
A I did not see one.
MR. LEE: Can you repeat that? I couldn't hear you.
THE WITNESS: I did not see a fight in the parking lot.
MS. STAGGS: Okay, thank you.
I beg the Court's indulgence for one moment.
(Pause.)
MS. STAGGS: I don't have any further question, thank you.

RE-CROSS EXAMINATION

BY MR. LEE:

Q Let's talk about security. You are friends with Mahogany and Isa, right?

A Right.

Q The Isa and Muck that were having the party?

A Right.

Q The Isa and Muck that were providing the liquor at the place for sale, right?

A I don't know if they provided it, but it was there.

Q Were they the ones charging for the wrist bands?

A They were.

Q Okay. And you are friends for both of those? That is how you got invited.

A Really, I'm only friends with Isa but --

Q Okay. Are you aware that Mahogany and Isa both have been sued for not providing proper security at parties?

MS. STAGGS: Objection.

THE COURT: Sustained.

MR. LEE: No further questions.

THE COURT: Thank you, ma'am. You may step down. You may call your next witness, solicitor.

MR. WHETSEL: Your Honor, the State would call Satori Williams.

Thereupon,

SATORI WILLIAMS

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: If you could have a seat and state your full name and spell your last name for the record.

WITNESS: Thank you. My full name is Satori Williams. My last name is spelled W-I-L-L-I-A-M-S.

MR. WHETSEL: May it please the Court, Your Honor.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Ms. Williams, good afternoon.

A Good afternoon.

Q I'll ask you a few questions about yourself and then I'll ask you specifically about the evening as to why we are here, okay?

A Okay.

Q MS. Williams, where do you work?

A Hopeful Horizons.

Q What do you do for Hopeful Horizons?

A I am the violence prevention specialist. I work directly with victims of trauma, specifically sexual assault and domestic violence and child abuse. And I also go out to the middle and high schools throughout Beaufort, Jasper and Colleton Counties and I host a violence prevention club with

teen girls.

Q Thank you, Ms. Williams. I want to shift now to why we are here, okay.

A Okay.

Q Are you familiar with, I guess, we will call it the place that is off of -- I guess it's known as Archies or A and J Seafood, I have heard both. Are you familiar with a place like that?

A Yes.

Q And it is across from Whale Branch on Highway 21; is that correct?

A Correct.

Q That is there in Beaufort County or here in Beaufort County?

A Correct.

Q I want to ask you if you remember going out there on the evening of July 9th, 2016?

A Yes.

Q And why did you go out there that particular evening?

A There was a party that night and I went out with a few of my friends and family members.

Q One of your friends being Alesia Johnson, was she there with you?

A Correct.

Q And when you got out there, do you remember exactly what time you got out there?

A Maybe about 11 p.m.

Q It was in the evening?

A 11:30 p.m.

Q If was in the evening time?

A Definitely evening.

Q Okay. Now, when you first got there, if you could for the jury, Archie's or A and J Seafood; can you kind of explain what the building is?

A It is just a small I guess vacant building with gravel and grass in the parking lot, also kind of a row of trees. It is directly across from traffic. There is a grassy median, two lanes going north and south traveling on the road. And it has kind of like a little shed on the side and I guess like a screened-in porch kind of.

Q Yes, ma'am. But it is not that big of a building; is that fair to say?

A Yes.

Q And it is across the highway from Whale Branch Middle School?

A Correct.

Q Now, when you got there that evening with Alesia and your other friends, did you go inside?

A Yes.

Q When you went inside, what was the atmosphere like? Was it crowded, was it not crowded? What did you see when you first went in?

A When you first walk in you have a bar to the left. We actually went in and went to the restroom. And some of the girls went to the area where everyone was congregating. There is like a dance floor and a DJ up in the back corner.

Q That particular evening, were you drinking that night, as far as drinking alcohol?

A No.

Q At some point did you hear some type of announcements over like say a loud speaker or something that was an announcement made to the crowd?

A Yes.

Q About how long had you been there, then, like roughly?

A Roughly, 30, 45 minutes.

Q Okay.

A It couldn't have been any more than an hour.

Q That announcement told you or alerted you to something, is that right?

A Yes.

Q What was the announcement?

A That there was a person or they may have specifically said drunk driver in the parking lot that was

hitting cars that was attempting to leave.

Q Was there something about the car that had been hit that kind of got your attention?

A Yes, there was a white Honda.

Q Why did that stick out to you?

A That was Alesia's car.

Q That Alesia being your cousin?

A Yes.

Q Now, after you heard that announcement, did you have a reason to go outside?

A Because that was my cousin.

Q So you did go outside? Sorry, I should bring it a little bit back.

A Yes.

Q So you did go outside?

A Yes.

Q When you went into the parking lot, who did you walk out there with?

A It was me, her, and two other family members. Both cousins.

MR. WHETSEL: Your Honor, may I approach the witness?

THE COURT: You may.

MR. WHETSEL: I am going to show her what's already been admitted as State's 3 and 4.

BY MR. WHETSEL:

Q Ms. Williams, I am going to hand you two State's exhibits and just ask if you recognize them.

A Thank you. Yes.

Q Now, those are two separate photographs, but both showing Alesia's car?

A Correct.

Q And somewhere on that car, did you see some damage?

A Yes.

Q And where, specifically, do you see -- or do you in the photograph see the damage?

A Yes, on the back right bumper.

Q And what caused that damage?

A A vehicle hitting the car.

MR. WHETSEL: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. WHETSEL:

Q Now, Ms. Williams, that particular vehicle that hit the car, do you remember what type of vehicle it was?

A Dodge burgundy truck.

Q A Dodge burgundy truck?

A Yes.

Q And, Ms. Williams, I'm going to -- I want to get

you to walk through what happened.

A Okay.

Q Because that is important.

MR. WHETSEL: And in order to assist with that, Your Honor, I'm going to ask if Ms. Williams be allowed to step down. I am going to use State's Exhibit 1 at this point.

THE COURT: Certainly.

BY MR. WHETSEL:

Q Ms. Williams, this is State's Exhibit 1. And if you would do me a favor and step down from the witness box, okay. Yes, ma'am. And what I'll do is I'll hand -- first, let me do this. This is obviously an aerial photograph; is that correct?

A Uh-huh. (Indicating affirmatively.) Correct.

Q Do you know the area that it's showing?

A Yes.

Q What area are we just looking at here?

A The road right directly across from the club.

Q Okay. So, you are familiar with this -- even though you didn't take this photograph, correct?

A No.

Q But you are familiar with the layout?

A Yes.

Q What I want to do is -- and you can see here at

the bottom that this was taken in 2017, so this isn't the photograph from that night, correct?

A Correct.

Q But it still shows the area we are talking about?

A Correct.

Q And I'll give you a marker and I am just going to ask you, to the best of your memory, to mark on there so that the jury can see, you know, where the truck was, where you were, and as we are talking, explain what you saw. Is that okay?

A Yes.

Q Okay. And I'll hand that to you. And to start out with, and here I'm looking at State's 1, where is Archies on the map?

A Here.

Q Right here. If you want to -- just to clarify for the record, let's just put an "A" on Archies. So, just for the record on State's 1 the A is marking the building known as Archies?

A Correct.

Q That is the building that we are talking about?

A Correct.

Q So now, the parking lot. Where is the parking lot located that we are talking about?

A Here.

Q Will you just put a P for parking lot?

A Cars parked here and there.

Q All right. And I tell you what, do the P if you don't mind and then just do some -- you don't have to do as many cars as you saw, but just a couple of checkmarks as to where you saw vehicles parked.

A Okay. Over here and over here. And some here and this will be the driveway.

Q And Ms. Williams, I am sorry, will you try to speak as loud as you can. The people in the jury box, it's hard to hear. And also the court reporter she is trying to take down what you are saying as well.

A Okay. There are people's cars parked in a row here in line with the building over there and a few cars here.

Q Okay. So, is it fair to say that there were several cars in that parking lot that night?

A Yes.

Q That it was relatively full?

A Yes.

Q Now, when you first came there, did you have any reason to notice that burgundy Ram?

A No.

Q Now, when you came out, though, did you notice the burgundy Ram?

A Yes.

Q Roughly on there, where was that Ram?

A Back here, almost backed entirely into the bushes.

Q So, those bushes, that is like a tree line right there?

A Yes, little a line of trees to the side of the club.

Q Is there a reason that the truck, at least when you went out there, was unable to exit the parking lot initially?

A Yes, because for the most part this row was pretty full. Not full, but there may have been one or two. As a matter of fact there was a car parked here. And I think that we were two down, and there may have been a car between ours, but for the most part most of the row was full.

Q Now, when you walk outside, you heard that Alesia's car has been hit.

A Correct.

Q When you walk outside, what do you see at that point? Do you see the Dodge Ram at that point when you walk out?

A Not initially because, of course, the entrance is here where we walk out and we had to go around to get to where Alesia's car was and Ram.

Q Okay. So, when you first walk out, you don't see

it?

A Yes.

Q When you walk up there in the parking lot, at that point, do you see something?

A Yes.

Q What do you see at that point?

A At that point I saw a Dodge Ram backed into the -- kinda close almost into it, and then just a line of cars.

Q And the Dodge Ram at that point, was it doing anything?

A Not that I remember.

Q Okay. Was it trying -- was it trying to leave, was it staying there?

A Not initially when we first walked out.

Q Okay. So, at that point, what happens? What happens next?

A At that point, of course Alesia got on the phone to call the police after we observed the damage to her car. And then a few minutes after the person kind of backed up into the woods and pull up, backed up into the woods and pull up, trying to I guess find the exit.

Q I am sorry, you said the victim?

A Not the victim, I apologize.

Q That's okay. Are we talking about the Dodge Ram?

A The Dodge Ram.

Q I just want to make sure that we are clear here. So, the Dodge Ram at that point is attempting to exit?

A Correct.

Q Okay. Did you have any reason to make contact with the driver of the Dodge Ram? Like, did you -- did you try to talk to the person?

A I did.

Q Okay. And why did you try to talk to the person?

A Because in the works that I do and have done since 2016 I believe in bystander intervention, so when I see something that may not be right or will cause harm to anyone, physically try to step in and try to say something. With some of the children that I work in the school, I am used to trying to talk people down and just try to bring them back to earth, so I spoke to them.

Q Did you actually speak to the driver of the Dodge Ram?

A I did.

Q And what were you attempting to do at that point when you were talking to the driver?

A I was attempting to just have her stay because at this point she had moved the vehicle multiple times. And I try to say, you should just stay here, you could get hurt. Someone else could get hurt. Help is on the way. And then at that point one of my cousins because of how the vehicle

had moved previously, had asked me to step away so I didn't get hit or hurt.

Q Did you have a clear view of the person driving?

A Yes.

Q Do you know if it was a man or a woman?

A It was a woman.

Q Do you know their race, as far as black, white, Asian, et cetera?

A White.

Q It was a white woman?

A Yes.

Q Okay. I am going to ask you some more questions when you get back on the witness stand, but before we do that, at some point is the red Dodge Ram that is driven by the white woman able to exit the parking lot?

A Yes.

Q And can you -- do you remember the path that it took?

A Yes.

Q Just with a straight line, however it is, can you draw the path of the truck as you draw it leave the parking lot?

A Yes, about here a car had moved from this area and let it come through, drove onto the gravel and never stopped at the stop sign and exited out here.

Q Now, when you were outside, did you see the collision?

A Yes.

Q Okay. And before I get to you to step back up here, I am also going to show you State's 5 that has already been admitted. Probably the easiest way to do this -- are you familiar with that photograph?

A Yes.

Q Okay. And as we are looking at State's 5, in conjunction with the map here, do you see the road back there on State's 5?

A Yes.

Q Do you see that same road up here on the map?

A Here.

Q That is Seabrook Road, is that correct?

A Correct.

Q And we see something in the grass, too, right?

A Yes.

Q What is that?

A The skid marks.

Q OKay. Do you know how those get there?

A From attempts to pull up, back up, pull up, back up.

Q Okay. You say "attempts", what attempts?

A The attempt to leave before they were able to

leave.

Q Talking about the truck?

A Yes.

Q Ms. Williams, I think that is all of the questions that I have with this map. I'll ask you to step back on the witness stand, okay.

Ms. Williams, when you were talking with the driver of the Ram, you said something a moment ago about, there's help on the way.

A Yes.

Q Do you recall what you told her, as far as there is help on the way? Specifically what you were trying to tell her or what you did tell her?

A I don't remember specifically.

Q Do you know if you -- at that point, did you know if your cousin was calling 911?

A Yes.

Q Did you have any reason to tell the driver of the truck that?

A I don't remember specifically saying anything about 911 being called, or the police. I just remember saying help is on the way.

Q But you remember saying help is on the way?

A Yes.

Q When you were talking to the female driver, did

you observe anything about her? And when I say "observe", I mean, did you have any opportunity to see her face, or her eyes, or anything like that?

A Yes.

Q And when you were talking to her, did she respond to you verbally in any way?

A No.

Q Were you close enough to smell anything?

A I was. I don't recall smelling anything, but I feel like I would have been close enough to smell anything.

Q But the purpose of you interacting with the driver was, again, for what reason?

A Simply to try to get her to just stay. She had already made multiple attempts to move or leave the parking lot, and just really to try to get her to stay until someone got there.

Q When you were in the parking lot, did you see any type of physical fight or altercation?

A No.

Q Did you see anybody with any type of gun in the parking lot?

A No.

Q Did you see anybody with any weapon at all in the parking lot?

A No.

Q Now, prior to that -- sorry, I'm backtracking a little bit. But you said that you were inside Archies about 30 to 45 minutes or so?

A Correct.

Q Now, when you were inside Archies, did you see any type of altercation or physical fight?

A No.

Q Did you see any type of argument?

A No.

Q And I guess that I should clarify. Did you see any type of argument with a Caucasian couple inside of Archies?

A No.

Q Ms. Williams, I am going to ask you this. I know it's been a couple of years, but would you recognize the driver of the truck?

A Yes.

Q And do you see that person in the courtroom today?

A Yes.

Q And can you identify who you saw driving that Dodge Ram?

A The lady sitting right there.

Q When you say "the lady sitting right there," do you mean -- do you mean -- please describe what top she is wearing, or what clothing or top she's wearing?

A Burgundy top.

MR. WHETSEL: Your Honor, I just ask that the record reflect that the witness identified the defendant.

THE COURT: Record so noted.

MR. WHETSEL: Beg the Court's indulgence, Your Honor.

(Pause.)

BY MR. WHETSEL:

Q Ms. Williams, I'm almost done, I appreciate your patience. When you were engaging in conversation, when you were trying to talk to the driver, I should say, did you see anyone else around that particular truck?

A Around the truck?

Q Like, in the vicinity, anyone else standing around it?

A I don't remember anyone else, other than those of us who were outside observing the cars and just the situation around the truck, no.

Q The folks that were out there with you in that general vicinity, did you hear them say any or make any threatening language or hear anything that could be perceived as a threat to the people that were inside the Dodge Ram?

A No.

MR. WHETSEL: Your Honor, I have no more questions for Ms. Williams. Ms. Williams, Mr. Lee may have some questions for you, okay.

THE WITNESS: Okay.

THE COURT: Mr. Lee.

CROSS EXAMINATION

BY MR. LEE:

Q Good afternoon, Ms. Williams.

A Good afternoon.

Q So you work at Hopeful Horizons?

A Yes, I do.

Q And y'all's office is over in Okatie, is that right?

A We have an office in Okatie, an office in Beaufort off of the Charles Street, and also a shelter.

Q Now, the office at Okatie is in the same building as the Solicitor's office, right?

A Uh --

Q Y'all don't pay any rent to the Solicitor for that, do you?

A I don't know.

Q You don't, okay.

MR. WHETSEL: Your Honor, objection. It is outside --

MR. LEE: They are getting free rent from the

Solicitor's office.

THE COURT: Overruled, do ahead.

BY MR. LEE:

Q All right. By the time that you got outside, the truck was already in movement trying to get out of there, right?

A Not initially, no.

Q All right. It was just sitting there?

A Yes.

Q Okay. How many people were in that parking lot, a lot? Was anyone around?

A I don't recall specifically, maybe a handful or two.

Q In the whole parking lot?

A Uh-huh. At that time, yes.

Q All of those cars and there is two people?

A No, a handful or two.

Q Oh, like two handfuls. Oh, okay, I didn't know how much -- okay, two handfuls, okay. Sorry about that.

Did you know all of those people?

A No.

Q Were they males and females?

A Yes.

Q Okay. And there are some that you may not have seen around the corner -- I mean, you don't know who all was

there, right?

A Possibly, yes.

Q What I want to ask you, though, is when you went out there though, again, the truck was in the process of exiting the parking lot. I know that you say when you saw it it wasn't moving at that point.

A Yes it was backed into --

Q Sorry, I didn't mean to interrupt you.

A That is okay.

Q But if there's already a dent on the white car, that means that the truck has already moved; right?

A Correct.

Q And when Mr. Whetsel asked you, who hit the white car, you said the red burgundy pick-up truck; right?

A Correct.

Q But that happened before you even went outside, correct?

A Correct.

Q But you didn't see the red truck hit the white car, did you?

A No.

Q That was based on what you heard or were told later, correct?

A Over the announcement, correct.

Q Okay. So, any type of commotion in the parking

lot that happened prior to the car, the white car, getting hit, you would have been inside and wouldn't have seen it, correct?

A Correct.

Q And there is no way to see from the inside of the building to the outside, correct?

A Correct.

Q Except Mr. Waerien has some kind of camera that looks out onto the parking lot; are you aware of that?

A No.

Q Oh, you have never seen that?

A No.

Q Are you friends with Mahogany Fields and Isa Grant?

A No.

Q You are not?

A No.

Q Do you know who they are?

A No.

Q Muck and Isa, the ones that were giving the party.

A No.

Q Well, how did you come to go to this party that night?

A Because my cousins and I always got out together. So, one of them could have possibly been friends with them.

Q Your cousin Alesia, who was here earlier, she knows them?

A I'm not sure if she knows them or not.

Q Okay. Well, how did you get -- how did you decide to go there that night?

A My cousin and I go out together all the time and I was invited and we went there.

Q But you didn't really know who it was?

A I knew that there was a party. I know there were people hosting the party, but I wasn't sure who the host was.

Q Okay. Would you agree with your cousin that, the red pick-up truck, the person was very serious about getting out of there, leaving the parking lot?

A Yes, once they did attempt to move, correct.

Q Okay. And you don't know what triggered that response to being very serious about getting out of there?

A I would assume that it was the fact that they had just hit a vehicle.

Q But you don't know that?

A No.

Q All right. You talk about bystander intervention, right, you try to do that.

A Yes.

Q All right. If you do bystander intervention,

isn't it important to know all of the facts before you start trying to take sides?

A That would be situational.

Q What?

A That would be situational.

Q Situational. But don't you agree that it's fair to hear at least both sides of a story before you take a position or try to intervene to do something?

A Again, I believe that it was situational.

Q Situational. But it's not really fair to take a position if you only know one side of the story, is it?

A If I only know one side of the story?

Q Right.

A Maybe not.

Q Okay. And I know that things -- but if you could, wouldn't you want to know both sides of the story before you took some action?

A You mean in relation to Alesia's car being hit?

Q No, you are talking about bystander intervention, the process of doing in general.

A In relation to what? Because you can be a bystander in any situation.

Q I am just asking you as part of doing your bystander intervention, do you agree that it is fair to try to get as much information from every side possible before

you make a decision about something; do you agree with that?

A I don't really understand what you are asking me.

Q Okay. Okay. You don't know what happened before you went outside, do you? You don't know what happened in that parking lot before you went outside?

A Do I know what happened?

Q Yes.

A I believe the red -- the burgundy Dodge hit cars.

Q You believe that, okay. But you don't know what else might have gone on in that parking lot, do you, because you were not out there?

A No.

Q Okay. Just like you don't know what is happening outside right now?

A Correct.

MR. LEE: That is all that I have, Your Honor.

MR. WHETSEL: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. WHETSEL:

Q Ms. Williams, Mr. Lee was asking about bystander intervention because you mentioned that initially. Was there a reason that you were trying to get this truck not to leave the parking lot?

A Because she was drunk or intoxicated. Definitely not in a clear state of mind.

Q How did you come to that assumption or conclusion?

A When I approached her, one thing that I will not forget is the way that she looked, her eyes were very glazed over and I remember feeling almost like she just looked right through me, like right past me. Just very dazed and just there. There was not really any response with anything that I said. I honestly don't even know if she heard or understood what I was saying, but it was very evident just in the way that she looked.

MR. WHETSEL: Your Honor, I have no further questions. Thank you.

RE-CROSS EXAMINATION

BY MR. LEE:

Q It was evident that something wasn't right with her?

A I am sorry?

Q It was evident that something wasn't right with her?

A Correct.

Q You don't know what might have caused her to be in that frame of mind, do you?

A I know that she looked very intoxicated.

Q But you don't know what made her look dazed or upset? Was she upset?

A I don't know that she was upset.

Q Angry?

A I don't --

Q Scared?

A I don't remember any of that. I remember her very blatantly gazing and staring and having very -- her eyes almost looked dilated to a point. Like, I felt like she was looking directly through me.

Q So, something has just -- it appeared that something wasn't normal, something might have happened? Something wasn't normal?

A Correct.

Q Okay.

MR. WHETSEL: Your Honor, I have no further questions for Ms. Williams.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you.

MR. WHETSEL: Your Honor, I was thinking that now may be a good time to break. I think that the next witness may be rather lengthy.

MR. LEE: Sure.

THE COURT: Okay. We are going to call it an evening, if that's okay with y'all folks, until 9:30 in the morning. Don't let anyone talk to you about the case, you don't talk to anyone about the case. Don't talk about it even in the jury room. See you in the

morning. Thank you so much.

(The jury exits the courtroom at 5:05 p.m.)

THE COURT: Anything that we need to do this evening?

MR. WHETSEL: No, Your Honor, I'll go over exhibits with Mr. Lee before we leave.

THE COURT: All right. We are adjourned.

(Court adjourned for the day. Proceedings continue on 11-14-2018.)

JURY RELEASED BY THE COURT FOR THE DAY

11-14-2018 PROCEEDINGS

MR. LEE: Judge, before we start, it's my understanding that the first witness for the State is going to be a guy named Archie Lees Wearien. His wife, apparently, is the owner of the A&J Flea Market, Food and Flea Market, but he works there. I believe that the testimony is about him making a 911 call prior to the one that we heard yesterday. But the point being is Mr -- the deceased's personal representative had sued, similarly, has sued my client, Ms. Wearien and Ms. Wearien doing business as A&J Flea and Food Market. That is Mr. Wearien's wife. He's there all of the time, apparently, when they are open. And they have been sued by the estate of the deceased.

It is my position that Mr. Wearien, he obviously knows that, we have depositions where he testified. But it's my position that that is for cross examination to show any potential bias, prejudice that he may have in order to make the story sound better for him and worse for my client. Although he's not a named party, it is his wife. There's no insurance that I know of. She, you know, would be personally liable. And he has a big part in running the business.

So, I -- yesterday, I asked a question about, are

you aware that Mahogany Fields and Isa Grant have been sued. Ms. Staggs jumped up and said, objection. And she did not give a basis for it and you said, Sustained. You know, I should have asked for a clarification or at least a reason for that objection, however I did not. But in order to avoid anything today, I'm just letting the Court know that I believe that I can certainly cross Mr. Wearien on that and it is certainly relevant and goes to his credibility as a witness and is proper impeachment material.

THE COURT: He's not being sued, but his wife is.

MR. LEE: His wife is, and the business.

THE COURT: And the business.

MR. LEE: And the business. And he claims that he does work there, but he's not an employee, you know, he just helps out. But he is the one who signs the contracts for these private parties. He is the one who does security. He is the one who is watching the camera in there, and he is the one who is calling 911. So, there is quite a bit of overlap.

THE COURT: Who owns that property? They lease it or rent it or who?

MR. LEE: My understanding is that the Weariens -- I don't know if it is just in his wife's name or both names, but the Weariens own the property, own the

business. It is not incorporated or a LLC, it is my understanding that it is d/b/a A and J Food and Flea Market. But obviously any judgment or anything against his wife is going to affect him, you know, whether he is a named party to the lawsuit or not. So, that is our position. It is proper impeachment material.

MR. WHETSEL: Your Honor, I will say, just based on the public index you can tell that there is a civil suit. And that civil suit has since been settled. There is a dismissal filed. It is no longer a pending action. The deposition that Mr. Lee is referencing was taken in, you know, preparation of that civil suit. I believe that if Mr. Wearien were to deviate from his prior sworn testimony, if you will, under the deposition under oath, he can certainly be impeached with it. But as far as this being some type of bias, he is a fact witness as to what happened that particular evening.

I don't think that there's anything showing that there is a bias as to what he saw that night when he was acting as a cook. So, I think to get into a civil suit at a criminal trial would be improper and we think that it wouldn't be relevant.

MR. LEE: And I also believe, I had a conversation with Mr. Whetsel last week, that Mr. Wearien has

changed his testimony some and, you know, for the first time are saying some things that are different. But whether the case, you know -- apparently it was settled and they paid on it. They deeded some property is my understanding to the personal representative of the deceased.

I mean, if we wanted to go into the status of it and all of that, I mean, we can do that. But I certainly think that it's relevant.

THE COURT: Why is his perceived bias, what is it now? The case is over.

MR. LEE: Well, I mean, can I say that they have admitted liability and paid the -- settled the case with them. I mean, he just -- he has an implicit bias to make it sound as bad as possible against Ms. German and as good as possible for A&J Flea Market. And, you know, I don't know what his testimony is going to be. I do have his deposition. And if he ventures from it we will certainly cross-examine him on that. But I still think that even some of the answers that he's going to give, if they are different from the deposition, I certainly think that there's a question as to what is his motivation for answering that way.

And if the motivation is a civil lawsuit, then I think that a jury should be able to know that.

MR. WHETSEL: I think that the prospect of somehow saying that they are responsible would be improper. They are not criminally responsible for anything. Potentially they settled a lawsuit. Maybe there is some civil responsibility there, but to say that they are criminally responsible, or even to imply that the Weariens are criminally responsible in what happened is not the case. This case is about Ms. German and Ms. German only.

MR. LEE: I'm not suggesting that they are criminally responsible.

MR. WHETSEL: So, the point being that if they are somehow saying that Mr. Wearien or his wife would somehow be responsible here, I think that is improper for the jury.

MR. LEE: I'm not saying that there's any criminal liability. But I am just saying that it is -- it goes to -- I think to cross-examine anybody for just about any reason for bias or prejudice, and I think that the fact that his wife was sued is relevant to this case and relevant to his believability as to what happened.

MR. WHETSEL: If I may, Your Honor, but it wasn't Ms. German who sued him. It was the family of the deceased who sued him. If there's any bias it may be against the family of the deceased. So, to suggest

there's any bias against the defendant, I don't think that that would be true.

MR. LEE: They are codefendants. I mean, they both -- they all got sued. And he wants to point as much blame to Ms. German as he possibly could to hopefully eliminate or reduce any liability that his wife had.

THE COURT: I think that the defense's argument would be stronger with the -- if the lawsuit were pending. But if it's over, I just am having trouble figuring out why, if it's over, he would be biased in his testimony he presents today.

MR. LEE: If it is over and they settled it and essentially accepted liability under a dram shop statute or failing to monitor the supplying of alcohol to a patron, which is the basis of a suit. And I think there's some allegations about security issues as well, which I think are going to be important.

THE COURT: Well, you know, people settle lawsuits all of the time without saying, I'm wrong. They say, I can't afford to litigate.

MR. LEE: I understand. I understand. Right.

THE COURT: I can't afford a hundred thousand dollars in attorneys' fees. So, people, you know --

MR. LEE: I'm not giving much faith as to the fact

that the case has been resolved as to his wife has any bearing on the fact that I can impeach him on the fact that they were sued for liability, civil liability.

THE COURT: Sorry, Mr. Lee, I don't understand it, I'll deny your motion.

MR. LEE: I understand. And we do have the transcript, so I assume there won't be an issue as far as needing -- I mean, we don't have the original sealed transcripts, but we both have copies and we have reviewed them and I think that we agree.

MR. WHETSEL: If he deviates, I won't object to Mr. Lee impeaching him on that. I think that maybe the proper way would be in a previous hearing or something like that without saying that during a civil deposition so that I guess it can be introduced in your question. But maybe like in a prior hearing you were asking about this incident or something along those lines.

THE COURT: And other matters.

MR. WHETSEL: Adn other matters, something like that.

MR. LEE: We don't have the sealed one that you open up in front of the jury. But we are all okay on that.

MR. WHETSEL: So that the Court is aware, the first witness will be Mr. Wearien. We intend to recall

back Ms. Moreira, who was the 911 custodian just because his 911 call didn't get brought up yesterday. And we are going to have her introduce that call. So, it will be relatively brief. I did tell Mr. Lee about it already, but I am going to recall her as a witness briefly.

THE COURT: We are ready for the jury.

(The jury enters the courtroom.)

THE COURT: Good morning, ladies and gentlemen. And I believe that we are ready to return with evidence by the State. Mr. Whetsel.

MR. WHETSEL: The State would call Archie Wearien.

Thereupon,

ARCHIE WEARIEN

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Good morning, Mr. Wearien.

A Good morning.

Q Where do you live? Don't give the street address, but what city do you live in?

A I live in Beaufort County, in Gray's Hill.

Q You live in Gray's Hill here in Beaufort County?

A Right.

Q Sir, what do you do for a living?

A Plumbing.

Q At one point in time -- does your wife own an establishment known as A&J Flea Market and Seafood I believe is that it is called?

A She still do.

Q Still does?

A Right.

Q What is the actual name? I may have messed that up.

A It is A&J Flea Market.

Q A&J Flea Market?

A Right.

Q Do you know that some people also call it Archies as a common name?

A Because I spend most of my time out there.

Q Okay. So, folks know it based on your first name?

A Right.

Q And, sir, is that -- is that located there off of Highway 21?

A 2012 Trask Parkway.

Q 2012 Trask Parkway?

A Right.

Q And what county is that?

A Beaufort.

Q And is it across the street from a school?
A Right.
Q And what school is that across the street from?
A Whale Branch Middle.
Q Whale Branch. Sir, So your wife owns that establishment?
A Right.
Q And do you ever spend time out there?
A Yes, I do, on Thursday.
Q Like what kind -- what do you do out there, just kind of -- what do you do when you go out there?
A Well, I am the cook. I do a lot of cooking on Thursday.
Q Okay. And what, what is the building used for? Just in general, what do you guys use it for?
A Mostly recreation. If somebody want to rent it out to have a function, we do that.
Q And I want to ask you about that. I want to ask if you remember July 9th of 2016?
A I do.
Q And at that particular time, what was -- that evening, what was that building being used for?
A This young lady wanted to use it for a private party.
Q You said that a young lady was using it for a

private party?

A Right.

Q And, sir, were you out there that evening?

A Yes, I was.

Q When you were out there, do you ever recall a Caucasian couple coming into your establishment, or a white couple?

A I do.

Q And when I say "couple," there was a male and a female?

A Right.

Q And that particular female, do you see her in the courtroom today?

A Yes, sir.

Q Can you point out where she's sitting?

A Right there.

Q So sitting over at the defense table?

A Right.

Q And it was her and another gentleman, is that correct?

A I assume that it was her husband.

Q But it was a man, a white man?

A Right.

Q When they came in there, did you -- did you see them come in? Did you see them come into the building?

A I did.

Q And do you know roughly how long they were there for, just approximately?

A Well, I didn't open up until 9. Right after I opened up they walked in. Wasn't nobody there but just they two and the guy who works with me on my job.

Q So you said that you opened around 9?

A Right.

Q Is that in the evening time?

A Right.

Q Okay. Was there ever a point in time in the evening that you had to ask them to leave?

A Right.

Q And can you tell me about that?

A When they got a little vocal. They was in the parking lot and I keep watching them, they were back and forth on the side of the building.

Q I am sorry. When you say "back and forth", what do you mean?

A They would go outside and they would return back inside the building.

Q Okay, got you. Thank you.

A And I was watching the monitor sitting down there and then -- at my desk. And I see a lot of activity going on in the parking lot. So, when they came back in they got

sort of vocal so I asked them to leave. But I had to grab her by her hand and took her outside. But during the time that all of the activity was going on in the parking lot, at that time I called the Sheriff's Department because I didn't know what was going on. But when they came back in the building and she got sort of vocal, so I asked them to leave.

Q Aside of the vocal part, did anything else happen? Specifically, was something dropped at some point?

A Well, she dropped a beer or alcohol, whatever she was drinking, on the floor. So, I had a friend of mine to clean it up. But she got sort of vocal, she and her husband. So, I didn't know what they were arguing about and I didn't know what was going on in the parking lot, so I asked them to leave.

Prior to that I had already called the Sheriff's Department because I didn't like the activity that was going on in the parking lot.

Q Okay. I want to ask about the parking lot, but before I get there, though, you mentioned a monitor.

A Right.

Q Can you tell the Court about the monitor that you are referring to?

A So, I have a camera that sits in the parking lot. If I'm in the kitchen, normally by myself I go down on

Wednesday night and cook, but if I -- if I close the door I want to see who come up in the parking lot. So, at that time, when I was sitting down at my desk, I guess I was watching to see the activity going on in the parking lot. So, right then I got on the phone to call the Sheriff's Department because I didn't like what was going on.

Q That monitor, though, is it producing a video or is it just showing in real-time?

A No, it just show me what is going on around me.

Q But it is not like a video of this?

A No.

Q When you are seeing the activity in the parking lot, was Ms. German and the man that she was with already back outside in the parking lot?

A I didn't actually saw them, but I know they was already on the outside.

Q You had already escorted them out at that point?

A Right.

Q When you see the activity in the parking lot, are you able to describe a little bit more of what you saw?

A I just see a lot of hands up in the air, like a lot of people was talking and waving with their hands and stuff. So, after I escorted them out of the building I didn't think nothing else of it because I thought that they had left already. I didn't know they was still in the

parking lot because I do a lot of monitoring inside the building myself. I watch people comes in and watch people who goes out.

If they start any argument or something, I ask them to leave. That is what I normally do down there, I monitor everybody that comes in and goes out. Yes, sir.

Q And then when you saw the activity as you said in the parking lot, did you see any physical fights, like any physical altercations?

A No. No, I didn't.

Q Did you see any weapons on the monitor?

A No. No.

Q Did you see any guns on the monitor?

A No, I didn't.

MR. WHETSEL: Beg the Court's indulgence, Your Honor.

THE COURT: All right, sir.

(Pause.)

MR. WHETSEL: I have no further questions of Mr. Wearien. Mr. Wearien, Mr. Lee may have some questions for you.

CROSS EXAMINATION

BY MR. LEE:

Q Good morning, Mr. Wearien.

A Good morning.

Q Can you tell me when A&J Flea Market opened up?

A When did they open?

Q Uh-huh. You don't have to give us an exact date.

A I can't recall what year it was, but I know it was during the 2000 era.

Q In the 2000s?

A A little later than 2000s.

Q So, y'all have been opened for a while?

A Yes, we did.

Q Now the solicitor was asking -- so you are -- you say that you cook over there, but you are also kind of in charge of keeping things safe, I guess, right?

A Right.

Q And that is why you have that monitor in the back room?

A Right.

Q Okay. And you -- isn't it true that you typically stay inside the building?

A Yes, I do.

Q Okay. And the reason that you stay inside the building is because it's safe inside the building, correct?

A It's always safe inside the building.

Q But the reason that you stay inside the building is -- and monitor the outside from the inside is because it's safe inside the building?

A Right.

Q And you have testified to that before, have you not, in a sworn proceeding?

A I didn't understand you.

Q Do you remember giving some sworn testimony on September 21st, 2017 regarding this issue, this case?

A Yes.

Q And do you remember being asked, why do you stay inside the building and not monitor the outside? And your response was, It's safe inside the building. Does that sound like what you said?

A Yes, sir.

Q Now let's talk about the safety out at A&J Flea Market. You have testified previously that if things get out of hand you call the police; right?

A They got out of hand, you are right, I call the police.

Q And you have done that before, have you not?

A Yeah.

Q And you have done it before for shots fired in the parking lot, correct?

A Yes.

Q OKay. So, in the past you have had shots fired in that parking lot?

A Right.

Q And you have called the police?

A Right.

Q And it was -- in 2011 there was a guy charged with two attempted murders in the parking lot?

MR. WHETSEL: Your Honor, I would object to relevance at this point.

MR. LEE: We are talking about the safety of the outside, Your Honor, which is a huge issue in this case. And he's testified that it's safe inside the building.

MR. WHETSEL: Five years prior to this incident.

THE COURT: I'll sustain the objection.

BY MR. LEE:

Q All right, let's get a little bit closer. November 8, 2015. Shots fired in the parking lot. You called in and complained; do you remember that?

A Right.

MR. WHETSEL: Objection, Your Honor, again relevance as to why --

MR. LEE: The last objection was it was too long ago.

MR. WHETSEL: But it is still the subject matter.

MR. LEE: This is six months, seven months before this incident happened there were shots fired in the same parking lot.

MR. WHETSEL: Not that particular evening, Your Honor.

MR. LEE: Your Honor, I'm entitled to show the kind of place this is, the environment that is out there. Because they have made a big issue about, he said, Oh there is no guns, there is no weapons out there on that particular -- he testified to that. And I'm showing that I believe that there were and that it's common for them to be out there on specific incidences.

THE COURT: I sustain the objection.

MR. LEE: And the basis of the not allowing me to get into the parking lot, incidences in the parking lot?

THE COURT: Relevance.

MR. LEE: Okay. Can we take a break and send out the jury so I can make a proffer of these other incidents that I would like to get in?

THE COURT: All right. Ladies and gentlemen, we will take a short recess, and I hope to be back with you shortly.

(The jury exits the courtroom at 9:50 a.m.)

MR. LEE: Your Honor, I would like to proffer for the record. I would ask that if I could delay in actually introducing the reports so that I can make

extra copies of them as an exhibit, but I would like to proffer at this time. In March 2011 a guy named Willie Tolbert was arrested involving a series of fights, and he shot into the crowd injuring two people, charged with attempted murder times two.

In the parking lot at 2012 Trask Parkway, when they owned it, on November 8th, 2015 there was a report of a disturbance and shots fired at the above incident location. The police went out there, found a -- found -- sorry, there was a report of shots fired in the parking lot. People didn't want to talk when they got out there.

On January 3rd, 2016 complainant Archie Lee Wearien called in saying about the same time of night, a little later, 2:36 a.m., the defendant was Derrick Polite, pulled a gun in the parking lot. This is 1-3-16, which is six months prior to this incident.

There was an incident also on July 2nd, 2017, which is between the time that it happened and now. Complainant, Archie Lee Wearien, same gentleman, defendant, Germane Osborne. Responded to Mr. Wearien's call about a fight and shots fired in the parking lot. They responded, talked to Mr. Wearien, didn't see one, collected a shirt in the parking lot with blood on it.

In addition, what I would intend to introduce to

show how the parking lot is, is that I have Captain Maddox subpoenaed to come over to authenticate these, but there are dozens, I think between 40 and 100, of what are called extra patrols that the Sheriff's Office runs at this location because of the problems that they have had out at the location.

Again, I would be glad -- I'll make copies if I can hold off on the record to do that so I can make the copies. I believe that it's essential to our defense, that not allowing that in does not allow us to present a full and fair defense. Because, clearly, the issue of the safety of that place and what happened in that parking lot is central to our defense and central to this case; it has been from the beginning.

To allow them just to say, Yes, sometimes there's problems in the parking lot I don't think does justice because the solicitor specifically asked him was there -- did you see any weapons or guns that night. He's seen them before.

The 911 call, as a matter of fact, they ask him, Were there weapons, and he is going to say, Yes. So, it's completely hamstringing my defense, Your Honor, to not be able to show the type of environment that this is and why it is more likely than not that indeed a gun was pulled that night which led to my client leaving in

the car, which is the basis of our defense.

THE COURT: Response from the State?

MR. WHETSEL: Thank you, Your Honor. As the rep -- let me start with the 911 call. We intend to put that in next, so that can be played for the jury. My recollection, when asked if there was a weapon, he said there wasn't. But the jury can certainly hear that.

This is my issue with it, Your Honor: Is -- we are going back to the relevancy objection for this reason. We are talking about this night. Now, whether somebody had a gun at a night prior or two weeks before or two years before, I don't know the answer to that. But if there's reports, there's reports. However -- and I am getting -- now I'm getting into the necessity/duress possible defense. And I'm looking at State versus Holiday, which is 333SC585. And I have a copy of it if Your Honor needs it.

But it talks about the duress definition. It says, To excuse a criminal act, a degree of coercion must be present, imminent and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. If somebody had a gun two days ago, that has no bearing on Ms. German. The fact of the matter is, as I think said during the

opening by Mr. Lee, she's never been here before. So, how does she know if somebody has a gun or doesn't have a gun?

MR. LEE: If she --

THE COURT: Let him finish.

MR. WHETSEL: It's based on her state of mind at the time. Whether somebody has a gun or didn't have a gun the night before or two nights before, or two years before, only serves to unfairly prejudice.

So, now we are getting to a 403 analysis at that point against Mr. Wearien and the establishment that his wife owns. But we are talking about what is going on in Ms. German's mind at that time. And there is no report of there were shots fired. There is a 911 call, which I think would be fair for Mr. Lee to cross-examine Mr. Wearien about, about the activity that he testified to in the parking lot. But to get into these reports of days, weeks, and years prior is completely irrelevant and I think should be excluded under 403.

THE COURT: Mr. Lee.

MR. LEE: First of all, first of all, it is not duress. Duress is not the defense. Necessity is the defense. And they are different. So, a case about duress has no bearing on this. But it is essential,

Your Honor, to show the reasonableness of my client's actions, to show the environment that is out there, to show how it was perceived, what might have happened. Because there's tons of people out there. They don't talk to anybody.

THE COURT: I mean, if she had been a regular attendee and was familiar with all of that, then it might be relevant, but if you are saying that she has only been there -- that that was the first time that she's ever been there, so she wouldn't be aware of the prior problems. At any rate, I agree with the argument and position of the State.

MR. LEE: There's been testimony where he says that it's safe inside the building and that is why he stays in the building. Which obviously, logical inference, it's not safe outside. There is a concealed weapons thing. So, how far can I go with that, about him saying that it's safe inside.

THE COURT: Haven't you already gone there?

MR. LEE: Not as far as I wanted to, but I mean --

THE COURT: I agree with the State, that whether or not there's been guns in the parking lot or in the building or shots fired on previous occasions is not relevant. And I will grant and sustain the objection. And you can make copies of those reports.

MR. LEE: I will, Your Honor. Anything else before the jury comes back?

MR. WHETSEL: Just as far as the scope of cross, it's going to be limited to that evening, Your Honor; is that fair? The scope of cross-examine.

THE COURT: I don't know about that.

MR. WHETSEL: Well, we are not going to get into prior acts, if you will, as far as different police calls out there, what happened or didn't happen.

THE COURT: Unless I heard -- unless there's something different that I haven't heard, yeah, I sustained the objection.

MR. LEE: Your Honor, one more thing. There's also something in the deposition that he did and it says -- he was asked, "So you watch individuals because people have a habit of bringing guns and weapons, correct?"

And his answer was, "Right". That is showing why he watches it the way that he does. And he says that people have a habit of bringing guns and weapons. So, you know, perhaps it comes in under a habit, perhaps it was a habit for people to bring guns and weapons out to the location. And if that is why he watches people like he does and that is why he has -- I mean, habit, routine, practice, I think it is 406 says that it is

admissible.

And I mean, that was -- I wrote it down exactly. I can show you the deposition. I mean the -- that was a question on Page 30, line 5. He was specifically asked about his, you know, why he stays inside and why he does it that way, why he does it that way.

MR. WHETSEL: Your Honor, I think what he's already testified to is that he is watching everybody in almost like a security manner. I think that's certainly getting to what Mr. Lee needs. But to get into he's watching for guns, I think that's, again, outside of what happened that evening. There's no report of that. Mr. Wearien is watching because this is an establishment owned by his wife. He has an interest in watching the individuals that are coming and going. And if he's out there cooking, he has an interest in watching the individuals that may be coming up to his building. But as far as to get into that he's watching for guns or weapons or anything of that sort, I think again that is not relevant based on what happened that evening.

MR. LEE: The exact question is:

Question, you started earlier -- you stated earlier that you watch individuals because people have a habit of bringing guns and weapons, correct?

The answer was: Right.

THE COURT: All right. I will overrule the objection to that and permit that.

MR. LEE: Okay.

THE COURT: In that narrow framework.

MR. LEE: Yes, sir. Okay. And I plan to -- I plan to ask him that exact question. And he can either answer the way he did, or if he answers a different way I can say, You answered this way; right?

THE COURT: Yes. Okay. Ready for the jury?

MR. WHETSEL: Yes, sir.

MR. LEE: Yes, sir.

THE BAILIFF: The jury is entering the courtroom, Your Honor.

(The jury enters the courtroom at 10:03 a.m.)

THE COURT: Welcome back, ladies and gentlemen. You may proceed.

MR. LEE: Thank you, Your Honor.

BY MR. LEE:

Q Mr. Wearien, you said that you stay inside the building because it's safe, and that you watch the monitor from inside the building; correct? Watch the parking lot, correct?

A That's correct.

Q And the reason that you watch individuals in the

parking lot is because people have a habit of bringing guns and weapons; is that correct?

A That is why I call the police.

Q My question is: You watch individuals because people have a habit of bringing guns and weapons, correct?

A That's right.

Q And you also testified that part of what you saw was hands in the air, out there, part of what you saw in the video?

A You know, like people gets in an argument and starts talking with their hands, waving.

Q All right. Got you.

MR. LEE: That is all that I have, Your Honor.

THE COURT: Redirect?

MR. WHETSEL: I have no more questions of Mr. Wearien, Your Honor.

THE COURT: Thank you, sir. You may step down. Solicitor, call your next witness.

MS. STAGGS: Thank you, Your Honor. The State recalls Allyson Moreira.

Thereupon,

ALLYSON MOREIRA

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. STAGGS:

Q I know that we spoke yesterday. Remind the jury of your job title.

A 911 audio recording clerk.

MS. STAGGS: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. STAGGS:

Q Ms. Moreira, I'm handing you what's been marked for identification purposes as State's 36. Do you recognize that item?

A Yes, I do.

Q And how do you recognize it?

A It is the 911 tape that I recorded.

Q And is it a fair and accurate depiction of the 911 call from July the 9th and into the morning of July the 10th that we talked about yesterday?

A It is.

Q Has it been altered in any way?

A No.

MS. STAGGS: Your Honor, the State moves to admit State's Exhibit 36 into evidence.

MR. LEE: Without objection motion granted.

THE COURT: Okay. Motion granted.

(Whereupon, State's Exhibit No(s). 36 marked for

identification and received in evidence.)

BY MS. STAGGS:

Q Just to clarify, this is the call made before the call that we discussed yesterday?

A Correct.

Q Made by Mr. Archie Wearien?

A Yes.

MS. STAGGS: Your Honor, permission to publish to the jury?

THE COURT: Granted.

(Audio CD being played for the jury.)

BY MS. STAGGS:

Q Ms. Moreira, what time was that call placed?

A 12:29 a.m.

Q And what time was the call that we played yesterday played?

A At 12:29 a.m. They were like seconds apart. This one is 12:29, 44 seconds. And the other one was 12:29, 38 seconds.

Q So, this is the one that happened at the 38 second mark?

A No, this one happened at 44.

Q Forty-four, okay.

MS. STAGGS: I beg the Court's indulgence for one moment.

(Pause.)

MS. STAGGS: I have no further questions. Please answer any questions that Mr. Lee has.

THE COURT: Mr. Lee.

CROSS EXAMINATION

BY MR. LEE:

Q Welcome back. So, the one that we heard happened first, the one we heard yesterday happened first; right?

A This one happened after, they were seconds -- one came in at 38 seconds and one came in at 44.

Q The DVD that I received marks this starting at 1228 and 39 seconds, the one we just heard. And the other one yesterday was at 12:29 and 12 seconds; is that consistent with what you are showing?

A I'm basing off what the CAD report says. And it says, Occurred. Reported at 12:29 and 38 seconds. This was from Ms. Johnson.

Q Now, these don't have the same case numbers, do they, the first call and second call?

A They do, but they are not -- this is not really attached to the case number because it was listed as a disturbance, not a traffic accident.

Q Okay. And you listened to the tape?

A I did.

Q Okay. And one thing that 911 operators are

trained to do is ask if it's a disturbance -- one thing that they are trained to do is ask if weapons are involved?

A I don't know, I'm not a dispatcher. I'm not trained in that field.

Q Okay. But you heard this?

A I did.

Q And she did ask, Are there weapons involved; correct?

A Correct.

Q And his response was, Yes; is that correct?

MS. STAGGS: Objection, Your Honor. I think the jury can decide what they hear on that call. They have heard it. We have all heard it. I don't think that Ms. Moreira needs to testify as to what she heard.

MR. LEE: The jury can still listen to it and I think that she can say what she heard.

BY MR. LEE:

Q Doesn't he say yes when they say, Are there weapons involved?

THE COURT: Overruled. I will let him. Go ahead.

THE WITNESS: I would have to listen to it again. I don't remember that.

MR. LEE: Okay. Thank you.

MS. STAGGS: I have no further questions. Thank you.

THE COURT: THank you, ma'am. You may step down.

MR. LEE: Judge, I actually have her under my subpoena and I'll release her from mine, so she can be released for good.

THE COURT: Okay. You are released from your subpoena.

Call your next witness.

MR. WHETSEL: We call Officer Thurman Lofton.

Thereupon,

THURMAN LOFTON

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Give your full name and spell your last name for the court reporter.

THE WITNESS: Thurman Lofton, and my last name is spelled L-O-F-T-O-N.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Good morning, Officer Lofton.

A Good morning, sir.

Q Officer Lofton, how long have you been in law enforcement?

A I have been in law enforcement for five years.

Q And you currently work for what police organization?

A The Beaufort City Police Department.

Q How long have you been at Beaufort City?

A I have been with Beaufort City for two years.

Q And prior to Beaufort City, did you work anywhere else in law enforcement?

A Yes, I did.

Q Amd where did you work?

A The Beaufort County Sheriff's Office.

Q And then prior to the Sheriff's Office, what did you do for a living?

A I was 22 years active duty, Marine retired. Three combat tours.

Q What was your MOS; what was your job in the Marine Corps?

A I was infantry.

Q When you were working with the Sheriff's Office, what was your position with the Sheriff's Office?

A I was a deputy with the patrol division.

Q And just in case the jury doesn't know, what are some typical duties that a Sheriff's deputy might do on a shift?

A Typical duties that a deputy does is respond to emergency calls, 911 hang-ups, domestics, traffic collisions, anything that the general public may need law enforcement services for.

Q Then, Officer Lofton, back when you were Deputy Lofton, were you working as a Sheriff's Department back on the early morning of July 10th of 2016?

A Yes, I was.

Q And did you have occasion to respond out to a traffic collision?

A Yes, I did.

Q Was that collision located on Highway 21 by Whale Branch High (SIC) School?

A Yes, it was. In Beaufort County. And I was employed as a deputy at that time.

Q So it was in Beaufort County?

A Yes.

Q How are you initially made aware of this collision on Highway 21?

A I received a -- I was on patrol, received a dispatch, put out a call on the radio that there was an accident in the area of Trask Parkway, since I was close in the area, I responded due to dispatch saying that there was -- that there was a fatality, so I got there when the accident occurred.

Q Were you the first law enforcement on the scene?

A Yes, I was.

Q Before you got there had other first responders already arrived?

A Not to my knowledge, no. When I arrived on scene, I blocked all lanes of traffic. I didn't observe any other law enforcement officers there at the time.

Q So, you were kind of the first person on scene as far as not being a civilian, but being a law enforcement officer?

A Yes. Yes.

Q Was your vehicle, at least at that time, is it equipped with a dash video?

A Yes.

Q And how is that dash video typically activated?

A As soon as the emergency lights are activated the camera automatically comes on.

Q And on that particular evening, was your car equipped with a dash video?

A Yes, it was.

Q Did you activate your blue lights in response to driving out to the scene of the collision?

A Yes.

Q And did your car produce a video of, basically, your dash video, did your car produce a dash video of you driving to the scene and being there on the scene?

A Yes.

MR. WHETSEL: Your Honor, may I approach the witness?

THE COURT: Sure.

(Pause.)

BY MR. WHETSEL:

Q Officer Lofton, I am going to hand you a disk, and I'll ask if you recognize the initials on there.

A Yes, those are my initials.

Q And before court today did you have a chance to review this disk?

A I have.

Q And is this a copy of your dash video from that particular night?

A Yes.

Q Is it a fair and accurate copy of the video and what you saw driving up to the scene of the collision and what happened while you are on scene?

A Yes, sir.

MR. WHETSEL: Your Honor, we would ask to admit State's Exhibit 7 in evidence.

MR. LEE: No objection.

THE COURT: All right. Motion granted.

MR. WHETSEL: We would ask to publish too, yes, sir. It is around about 40 or so minutes. I am probably going to play about 30 minutes of it.

THE COURT: Is everyone okay?

(The dash video being played.)

(Whereupon, State's Exhibit No(s). 7 marked for identification and received in evidence.)

MR. WHETSEL: Your Honor, I'll stop the video there. The rest of it is EMS and fire personnel working. It is in evidence if the jury would like to watch it. But I think for purposes of right now, I will stop it.

THE COURT: All right.

MR. WHETSEL: And I am returning Exhibit 7.

BY MR. WHETSEL:

Q Officer Lofton, we just watched 23 minutes or so of your dash video; is that right?

A Yes, sir.

Q And you could see yourself on the video walking around?

A Yes.

Q As the first person on scene, when you come up to a collision such as this, what are you trying to do? Are you trying to assess the situation?

A Yes, the first thing is to assess the personal injury and then check in and look at the vehicles as well. This particular collision I was told -- well, it came over the radio that we had one deceased. And when I arrived on scene the black male driver, the kid that was driving the other vehicle, the passenger vehicle, I realized when I got

to the window that he was not deceased. And it took me a second. I briefly looked up and assessed the female driver and the white male driver of the pick-up truck. But I noticed that -- I stayed there for a second. You will see in it the video, that I stood there for a second because I realized that the -- what came across the radio and what I actually saw when I arrived on scene is that he's still alive, but his -- I realized that his injuries were to the point that there was nothing that I could do about it. So, I stood there and I talked to him by the driver's door until he stopped breathing.

Q And Officer Lofton, I just wanted to -- I'll back up a little bit. The young man that you just described, the black male driver, we are talking about which vehicle?

A It was the -- the passenger vehicle, the first vehicle. I believe it was a Honda. I believe it was a Honda.

Q But the car?

A The car, yes, passenger car.

Q Okay. As far as the red truck, there may be more, but at least two times that I noted, around the 13-minute mark and around the 19-minute mark, you can see yourself inside the driver's side of the red truck; do you remember seeing that?

A Yes.

Q When you went up there, did you have the opportunity -- the opportunity to observe who was sitting in the driver's seat?

A I did.

Q And was that a male or a female?

A It was a female, a white female.

Q The next question was did you see her race; you said that she was white?

A Yes.

Q Was there anybody else in the truck?

A There was a white male in the passenger's seat.

Q So, you have a white female in the driver's seat and you have a white male in the passenger's seat?

A Correct.

Q This has been some time ago, but do you happen to recognize the white female driver in the courtroom?

A Yes, she's sitting right next to counsel.

MR. WHETSEL: Let the record reflect that Officer Lofton identified the defendant.

THE COURT: So noted.

BY MR. WHETSEL:

Q When you came up to the driver's side of the truck, could you smell anything?

A Yes, there was an odor of alcohol emitting from inside the vehicle. And I was close enough that it was also

emitting from the person.

MR. WHETSEL: Your Honor, may I approach the witness with Exhibit 1?

THE COURT: You may.

BY MR. WHETSEL:

Q Officer Lofton, I'll hold up here what is already in evidence as State's Exhibit 1. Do you recognize that? It is an aerial map.

A Yes, I do.

Q You do recognize it?

A Yes, I do.

Q And based on your recollection, do you know where the collision was, just approximately?

A The collision -- may I, Your Honor?

Q You can stand up, that is fine.

THE COURT: Yes.

A The collision was on this side. The young man, he was traveling going out of Beaufort. What should have happened is that her vehicle should have been coming into Beaufort. It went out of Beaufort coming into Beaufort, and the collision was on this side.

Q That red truck, was it driving in the correct direction or the incorrect direction?

A The incorrect direction.

Q Thank you. That is all.

(Witness resumes the stand.)

BY MR. WHETSEL:

Q When you first arrive on scene, are you on the radio? Are you trying to dispatch like what personnel you need, or is that somebody else that is doing that?

A That is somebody else. My patrol sergeant and supervisor, they were also responding to the scene. When I came across the radio -- and when I first arrived on scene and I came across the radio and I let dispatch know, He's not deceased. That is when my sergeant came over the radio at that point and they were not too far behind me.

Q Did you stay on scene until the coroner arrived?

A Yes, I did.

MR. WHETSEL: Beg the Court's indulgence, Your Honor.

(Pause.)

MR. WHETSEL: Your Honor, I have no more questions for Officer Lofton. Officer Lofton, Mr. Lee may have some questions for you.

THE COURT: Mr. Lee.

MR. LEE: Thank you.

CROSS EXAMINATION

BY MR. LEE:

Q Good morning, Mr. Lofton. I still can't get used to you wearing blue. You were wearing tan on the video,

right?

A It makes me look skinnier.

Q Slimming, yes. Thanks for coming. Just a couple of quick things. Do you know exactly what time you arrived on the scene?

A Not without looking at the report.

Q I have a copy of your report. I'm not sure whether it's on there or not, but if I hand it to you it might refresh your recollection?

A Yes, sir.

Q Okay. I'm just trying to get a ballpark when you think that you got there since you were the first one.

A It was reported that, according to the report here, at 12:29 at night on 7-10-2016.

Q Right.

A I'm not sure, Mr. Lee, of the exact time that I arrived, but shortly after the call came out.

Q I think that there was testimony that it might be 12:38, 9 or 11 minutes after; does that sound reasonable based on --

A It is reasonable. Yes.

Q All right. And wouldn't you admit that the scene out there where that happened, at that intersection, where that cut-through, the median, is, wouldn't you agree that is a dark -- it is not ever well lit on that highway right

there? There is not a lot of businesses or anything lighting up the highway, are there?

A There's enough lighting from Whale Branch School that gives you light for the northbound traffic.

Q The Whale Branch School is past where this happened, correct?

A Their parking lot is lit.

Q Are you familiar with the parking lot at A&J Food and Flea Market?

A Yes, I am.

Q Would you agree with me that I think that there's maybe two kind of street lights lighting up the parking lot; does that sound right?

A Yes.

Q Okay. Did -- are you the one that got Mary German and Roger German out of the car, or did you let EMS do that?

A EMS. It's always EMS.

Q That is what I thought. Did you observe them opening the door to the -- the doors to the car; was there any problem getting the doors open?

A I did observe EMS opening the driver door. There was issues with them getting the door open, yes.

Q Issues, meaning that they had to use some pretty serious force to get it open?

A Yes.

Q And you don't know about the passenger's side?

A No. I am sorry, Mr. Lee, my focus that night was that young man.

Q I'm sure it was. Sorry you had to do that. But I guess what I am leaning towards is that, do you think that Mary German and Roger German got out of their truck prior to you getting there?

A No.

Q Okay. And, in fact, there were marks on the windshield where they hit their heads, correct?

A Correct.

Q Which would indicate that neither one of them were wearing seat belts; is that right?

A That would be in Highway Patrol's report.

Q If I told you that it said, No seat belt; would that be consistent with what you observed?

A Yes.

Q I think that you put in your report that when you arrived, that both of the Germans were slightly conscience; is that correct?

A Yes.

Q Okay. And this, this -- this was a full-sized Dodge, like, extended bed or long-bed truck with a camper on top; is that right?

A Yes.

Q Okay. Did you have a chance to see that?

A Yes, I did.

Q Did you do any type of inventory search of the vehicle at any time?

A No.

Q Okay. Did you observe any alcohol containers or otherwise in the vehicle?

A I did not. Just the odor emitting from the person.

Q Okay. And in both of them -- well, wasn't there some blood in the vehicle too, injuries to them?

A There was.

Q Did you observe the camping gear in the back of the truck underneath the camper shell?

A I did not.

Q You didn't look back there?

A No.

Q I mean, not that you would. Okay. So it would not sound plausible to you, that after the wreck happened, that the Germans got out of the car, ran away, and then came back to the car and got back in the car and then you got there?

A No.

MR. LEE: Okay. That is all that I have. Thank you, Mr. Lofton.

MR. WHETSEL: I have no further questions for Officer Lofton. Your Honor, would now be a time for a short break?

THE COURT: Short break. Ladies and gentlemen, let's have a short recess. And I will remind you that it's too early to begin discussing the case.

All right. We will be in recess.

MR. WHETSEL: Thank you, Your Honor.

(Brief recess.)

THE BAILIFF: The jury is entering the courtroom.

THE COURT: Welcome, back, ladies and gentlemen. And I think that we are ready to resume presentation by the State. Solicitor.

MS. STAGGS: Thank you, Your Honor. The State calls John Ireland.

Thereupon,

JOHN IRELAND

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. STAGGS:

Q Good morning.

A Good morning.

Q Where do you work?

A I currently work at the Bluffton Fire District.

Q Where did you work before you went to Bluffton?

A Burton Fire District.

Q Okay. What was your job there?

A I was a lieutenant, which is a company officer. So, I'm in charge of the engine company, firefighter paramedic.

Q Firefighter paramedic is what you said?

A Uh-huh. (Indicating affirmatively.)

Q What were your duties; what were your duties in that role?

A So, I lead the engineer company responding to the calls. I'm kind of in charge of the scene until we transfer care of a patient, or in case of a fire, I direct operations until my supervisors get there.

Q Okay. Were you working for the Burton Fire Department on June the 10th of 2016?

A Yes.

Q Sorry, July of 2016, my apologies.

A Yes, I left Burton December 4th of '17.

Q Okay. Thank you. And on July the 10th of 2016, did you respond to a collision on 21 and Seabrook Road?

A Yes.

Q Will you please tell me what you saw when you arrived on that scene?

A We -- I respond to a lot, have responded to a lot

of calls. But, as I remember, if I looked at my report correctly, it was a head-on, somewhat head-on collision between a truck and a car is what we responded to.

Q Okay. And did you see the driver in the car?

A Yes. Yes.

Q And what was his condition at the time?

A It was a very difficult situation. His injuries were such that they were not survivable from the collision.

Q Did you take any action when you saw him though?

A Yes, we put him on a cardiac monitor. We -- I tried to feel for a pulse, couldn't feel a palpable pulse. The cardiac monitor showed what we call an idioventricular rhythm. PA at first but it digressed down to idioventricular. So, basically it was beyond -- he was beyond any real help.

Q But that means that his heart was beating still?

A Technically, no. There was electrical activity in his heart, but it was not profusing or pumping blood around essentially.

Q Okay. Did you notice anything else about his physical condition?

A He had an obvious neck injury where, you know, from the outside not having an x-ray you could tell that his neck was broken, he was pinned in the vehicle where the dashboard and the steering wheel was around him, so it was

going to take a few minutes to extricate him.

Q Okay. Did you direct people to do that?

A I directed, if I remember my report correctly, I did direct somebody to take the door off or open the door. And based on training and experience, it would be a long width of time to extricate him, and the condition is beyond what we could do.

Q Then at any time did you transfer his care?

A Yes, to Beaufort County EMS, paramedics.

Q Okay.

A It was one of them that was on scene, either paramedic Tamera Piker (phonetic) or Dianna.

Q Okay. And after you went and observed, put the heart monitor on the victim in the car involved, did you ever go to the truck involved in the accident?

A No, I didn't go over to the truck. From my recollection of the night it didn't take very long for Beaufort County to arrive so I -- if I recall correctly, one of their medics was over there at the truck tending to them.

Q Okay.

MS. STAGGS: Beg the Court's indulgence.

(Pause.)

MS. STAGGS: Your Honor, may I approach the witness?

THE COURT: Sure.

MR. LEE: Object to photograph that she has for reasons stated previously, without re-arguing. The photographs --

THE COURT: The ones that we have ruled on pre-trial?

MR. LEE: Yes, sir, just note my objection for the record.

THE COURT: The Court notes the objection.

MS. STAGGS: Thank you, Judge.

BY MS. STAGGS:

Q Captain Ireland, I'm handing you what's previously marked as Exhibits 8 and 9.

A Okay.

Q Do you recognize those photographs?

A Yes.

Q How do you recognize them?

A That is what I saw when I came on the scene, got on scene and assessed the patient.

Q Are those a fair and accurate depiction of what you saw inside that Nissan Sentra on the morning -- early morning of July the 10th, 2016?

A Yes.

MS. STAGGS: Your Honor, at this time the State would move Exhibits 8 and 9 into evidence.

THE COURT: Over objection.

MR. LEE: Certainly.

MS. STAGGS: Permission to publish to the jury?

THE COURT: Certainly.

(Whereupon, State's Exhibit No(s). 8-9 marked for identification and received in evidence.)

MS. STAGGS: Ladies and gentlemen, I will not put these up on the screen, I'll show them to you. And they will go back in evidence with you.

Captain Ireland, I don't have any more questions for you. Please answer any questions that the defense may have.

MR. LEE: No questions, Captain Ireland.

THE COURT: Thank you. You may step down.

MR. WHETSEL: The State would call Dianna Jones.

Thereupon,

DIANNA JONES

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q I want to walk through who you are and what did you -- are you a paramedic here in Beaufort County?

A Yes.

Q As far as emergency responders, there's different levels; is that correct?

A Correct.

Q And can you tell the jury, because I wasn't familiar before this case, but what are the different levels of emergency care providers?

A In the EMS world, there's EMT, which is just basically CPR and driver. And then EMT advanced, which they can start IVs. And then there's paramedic, which you can do pretty much anything that an ER doctor can do under his license in the back of an ambulance.

Q What are you, ma'am?

A I am a paramedic.

Q So, you are the top of the emergency care providers?

A Yes. And usually I have an EMT partner, which is a driver or an EMT intermediate.

Q And Paramedic Jones, how long have you been a paramedic?

A Since 2006.

Q And to become a paramedic, can you tell the jury and the Court what kind of training you have to receive?

A We have about 1800 hours of training to become a paramedic. And all of those hours were spent in Charleston. There was so many -- 14 months of classroom time in Charleston and about 500 hours of training at MUSC and ambulance ride-alongs in Charleston County. So, it took

quite a while.

Q And once you complete that training, are you then certified as a paramedic?

A Well after that, after the training, then you pass your paramedic class, you have to take national registry test and a state test, you have to pass that before you can get your paramedic.

Q Is that like a license or a certificate that you hold?

A Correct, it is a certificate.

Q And as far as maintaining that certificate, do you have to undergo any additional training?

A Yes, we have to have in-service training once a month, about three hours a month. And in addition to that we have to have 25 extra hours of our -- extra that we have to go on our own, CEUs and stuff like that that we have to maintain.

Q What is a CEU?

A Continuing education that we do on our own.

Q Thank you.

A And then every two years we have to recertify in our state. And every three years we have to recertify our national.

Q Now, as a certified paramedic, can you just give us an example of some of the medical treatment that you can

provide?

A Any life saving measures I can -- CPR, of course. We can give any kind of cardiac drugs that, that South Carolina allows us to do. We can intubate, put a breathing tube down their throat or we can -- let's see. We -- any life saving measure that South Carolina allows us to do, we can do. We can give medication procedures to stop seizures and so forth.

Q Thank you. So, you have been a paramedic since 2006, you said?

A Correct.

Q In that course, I don't expect you to know the exact number, but do you know approximately how many medical emergencies that you have responded to as a professional?

A Oh gosh.

Q Ballpark figure is okay. Are we talking hundreds?

A Oh, yes, yes. So far this year I have probably responded to 500 calls this year.

Q And in a course of your professional experience, some of the calls that you respond to, does it involve somebody that has died or is deceased?

A Yes.

MR. WHETSEL: Your Honor, I think based on her training, qualifications and experience, we would offer her as an expert in pre-hospital medical emergency

care.

MR. LEE: No objection, I agree.

THE COURT: Witness so qualified.

BY MR. WHETSEL:

Q Paramedic Jones, I want to ask if you were working as a paramedic in your capacity back on the early morning hours of July 10th?

A Yes.

Q Did you receive a call to respond out Highway 21 to a vehicle collision?

A Yes.

Q When you arrived on scene, were you responsible to going to treat, if you will, the driver of a Nissan Sentra?

A Yes.

Q Do you recall that?

A Yes.

Q And the person that was in the Nissan Sentra, do you recall their gender; whether they were male or female?

A Yes.

Q What were they?

A A male.

Q A male?

A Yes.

Q What about the race of the individual?

A He was African-American.

Q African-American male. Now, when you arrived there, Captain John Ireland was already on scene treating him; is that correct?

A Correct.

Q And when you come up at that point, based on your qualifications, are you taking transfer of his care?

A Correct.

Q And just explain to me, why does John Ireland then give you transfer of the young man's care?

A He was with the fire department and he was first on scene and when -- he is also a paramedic. He responds as ACLS, which is as a paramedic. He also -- with Burton Fire Department. When I came up, he told me that the patient was in PEA.

Q What is PEA?

A It is pulseless electrical activity. And it is, which the heart was -- had electrical beats but he had no pulse. So -- and of course he was entangled in the wreckage and it was a traumatic arrest. So, he said that -- you know, we discussed it and I left him with that patient because he had to extricate him with the fire department. And then I went on to the vehicle with the other two patients in it.

Q Yes, ma'am. But before you left the young man in the Sentra, though, I wanted to ask you, what -- what are

you using to determine that he is in PEA?

A Captain Ireland had already had him on the cardiac monitor.

Q Is that something that you are observing, or that you can also see yourself?

A Yes. Yes.

Q With, except for the PEA, was there any other obvious injury or anything that you noted?

A I noted --

MR. LEE: We are willing to stipulate that the young man passed away. I think going into all of the details I mean, I think is unnecessary to do. We will stipulate that the young man passed away as a result of this accident. I don't understand why he needs to keep talking about all of the medical procedures that were done and what he went through.

MR. WHETSEL: We have a burden, Your Honor, we have to prove that this young man is dead.

MR. LEE: We will stipulate and agree that he died.

MR. WHETSEL: I am almost done. I decline to stipulate.

THE COURT: I overrule the objection.

BY MR. WHETSEL:

Q Paramedic Jones, based on your training,

education, and experience, and with what you saw on scene, was the driver of that vehicle deceased?

A Yes, sir.

Q And at that point, because the driver was deceased, do you then contact someone else to then, I guess, officially take control of that individual?

A Yes, sir.

Q And who do you contact?

A The coroner.

MR. WHETSEL: Beg the Court's indulgence?

THE COURT: All right.

(Pause.)

MR. WHETSEL: Your Honor, I have no more questions for Paramedic Jones.

MR. LEE: No questions, Your Honor.

THE COURT: Thank you, ma'am. You may step down. You may call your next witness.

MR. WHETSEL: We will call Paramedic Jennifer Calcorzi.

Thereupon,

JENNIFER CALCORZI

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

DIRECT EXAMINATION OF JENNIFER CALCORZI BY MR. WHETSEL

Q Good morning, ma'am?

A Good morning, sir.

Q Will you tell us what your current job is?

A Currently I am a paramedic and field training officer with Beaufort County EMS.

Q And Paramedic Calcorzi, how long have you been a paramedic?

A I have been a paramedic for five years.

Q And in order -- we just heard some testimony from Paramedic Jones, so I won't get into a lot of the specifics of what a paramedic is because we have heard that, but you specifically, what training did you undergo to become a paramedic?

A Initially you begin at the EMT level. From the EMT level, that can take anywhere from four to nine months, depending on the program and institution that you go through. From there there is an additional, anywhere from 9 to 16 months of training to become a paramedic. There's some people that do a middle step as well called an intermediate, now called advanced EMT, which is an additional three hundred hours.

Q Did you undergo the same training?

A I did.

Q Once you undergo the training in order to become a paramedic, is there an exam or something that you have to

take to become certified?

A Yes, there is a national exam on psychomotor and cognitive rhythm.

Q And are you certified as a paramedic?

A I am.

Q Do you have to maintain any type of annual training or anything to maintain certification?

A Yes, we have to maintain both the national level and at the state level.

Q Do you yourself provide any training or teaching in the area of emergency medical care?

A I do. I am South Carolina certified to teach at the EMT, advanced EMT, and paramedic level.

Q And do you so provide the courses?

A And I do. I am a faculty member of Lowcountry Regional EMS Council and provide that education.

Q Just ballpark, I don't expect you to have an exact number, but in your professional capacity as a paramedic, how many emergency medical situations do you think that you have responded to?

A Thousands, hundreds to thousands.

Q In the course of that, have you ever had to respond to somebody that was deceased once you came on scene?

A Yes, I have.

MR. WHETSEL: Your Honor, I'm going to offer Paramedic Calcorzi in the same expertise, as an expert in pre-hospital emergency medical care.

MR. LEE: No objection.

THE COURT: So qualified.

BY MR. WHETSEL:

Q Paramedic Calcorzi, I am going to talk to you about a particular evening. Were you working as a Beaufort paramedic back in the early morning hours of July 10, 2016?

A Yes, sir, I was.

Q And were you dispatched to respond to a vehicle collision on Highway 21?

A Yes, I was.

Q When you arrived on scene, did you see the red truck and the Nissan Sentra?

A I did.

Q And your job at that moment was -- what did you have to do?

A I responded as a secondary unit. Ms. Jones was on the initial responding ambulance and we were called as a secondary unit to help respond because of there being multiple patients potentially. So, once I arrived I was directed by Paramedic Jones as to which patient to go care for.

Q Were you tasked with treating the patient in the

driver's seat of the truck?

A Yes, I was.

Q And when you arrived, did you see somebody sitting in the driver's seat of the truck?

A I did.

Q And do you recall their gender, whether male or female?

A It was a female.

Q Do you recall the race?

A Caucasian female.

Q It's been some time ago, so I don't necessarily expect you to remember this, but do you recognize the person that you treated that night?

A Yes, I do.

Q Can you point to that person?

A She is sitting at the table to my right with the gray jacket on.

MR. WHETSEL: Let the record reflect that Paramedic Calcorzi identified the defendant.

THE COURT: So noted.

BY MR. WHETSEL:

Q When you went over there, was your job then to treat Ms. German?

A It was.

Q And what actions did you take?

A When I first arrived to the truck there was a firefighter already attending to her. They had already put a cervical collar on her neck to protect for potential neck injuries. They gave me a brief report of what they had seen upon their arrival, and from there I proceeded to take over care from there.

Initially we do an initial assessment. We look at any life-threatening injuries that we can see right off the bat that would address airway issues, breathing issues, or any type of circulatory issues or significant bleeding.

Q Were you able to have her removed from the vehicle and loaded into the ambulance?

A Yes.

Q And did that so happen?

A It did.

Q And where was she transferred from the scene; where was she taken?

A Beaufort Memorial Hospital ER.

Q Based on your overall view of Ms. German, did you smell anything in particular?

A I did. There was a smell that was very strong notated in my report. I choose to document it as an odor similar to the ETOH or ethanol.

Q I know that that is very carefully worded, but

ETOH or ethanol, is that what we believe to be alcohol, or an odor of alcoholic beverage?

A Yes.

Q Tell me this, if somebody is diabetic, can they emit a similar type odor?

A They can.

Q Based on your care and review of the patient at that time, did you do anything to determine if she was in fact diabetic?

A Yes, because of that smell and the fact that that can be a potential diagnosis, I did do a blood glucose level check on her.

Q And was there anything indicating that she was diabetic?

A No, it was normal.

Q While you are providing care, are you trying to talk to Ms. German?

A Yes.

Q And how does that play out? Do you get any type of response?

A When I did get a -- I would speak to her -- she was conscious. When I would attempt to ask questions she would not make direct eye contact, so she was not alert to the fact of me speaking to her. She was making -- attempting to make statements, they were very

incomprehensible. I couldn't specifically understand what she was saying, and there was a heavy slurring of the speech. So it made it that she was unable to clearly answer any questions regarding medical history, injuries, pain anywhere, anything of that nature.

Q So, are you trying to talk to her to try to assess her physical condition?

A Yes, sir.

MR. WHETSEL: Beg the Court's indulgence, Your Honor.

THE COURT: All right.

(Pause.)

BY MR. WHETSEL:

Q Paramedic Calcorzi, I'll ask you another question and see if you can answer it or not. But based on your training, based on your experience, and based on your care in this particular case, would you have formed an opinion of whether Ms. German was intoxicated or not at the time that you were treating her?

A Yes, in my opinion there was intoxication.

MR. WHETSEL: Your Honor, I have no further questions of Paramedic Calcorzi.

THE COURT: Mr. Lee.

CROSS EXAMINATION

BY MR. LEE:

Q When you were talking to her, she had a cervical collar on?

A Yes, sir.

Q And she had just been in a head-on collision?

A Correct.

Q And did you see the spidering of the windshield where she had hit her head?

A I did.

Q All of that had happened before you spoke to her; that was the condition that you found her in?

A Yes. So, yes.

Q Do you know what time you arrived there that night?

A I believe it was just after 12:30 a.m.

Q Okay. Did you get there before Officer Lofton, or do you know?

A I don't not recall.

Q Were there people there when you got there?

A There were people, yes.

Q You don't know anything that may have happened at the bar in the parking some 10 or 15 minutes before you got there?

A That's correct.

Q You don't know anything about that?

A No, sir.

MR. LEE: That is all that I have. Thank you.

THE COURT: You may step down. Call your next witness, solicitor.

MS. STAGGS: Thank you, Your Honor. The State calls Tim Clarkson.

Thereupon,

TIMOTHY DAVID CLARKSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. STAGGS:

Q Where do you work?

A Currently, employed with the South Carolina Highway Patrol.

Q OKay. And where did you work before you were employed with the Highway Patrol?

A Employed by the Beaufort County Sheriff's Office.

Q You have been in law enforcement for a while?

A Yes, ma'am.

Q About how long?

A Coming up on 13 years.

Q Okay. And were you working for the Highway Patrol on July the 10th of 2016?

A Yes, ma'am, I was.

Q Did you receive a call that night from dispatch

about an accident on 21?

A Yes, ma'am, I did.

Q And did you respond to that scene?

A I did, yes, ma'am.

Q And that is in Beaufort County?

A It is, yes, ma'am.

Q What time did you arrive on scene?

A Arrival time was 52 minutes after midnight.

Q Who was present on scene when you arrived?

A At that time the Sheriff's Office was on scene, Beaufort County Sheriff's Office. Several of their deputies were establishing traffic control. Beaufort County EMS was on scene, as well as Burton Fire Department.

Q Okay. And did you have a heads-up, so to speak, in any way while you were on your way to that about what sort of scene you were responding to?

A Yes, ma'am. While responding to the initial scene I received some information from our dispatch center in Charleston surrounding the circumstances to the incident that I was responding to. I transferred my radio over to the Beaufort County Sheriff's Office channel and began to monitor their radio transmissions to get a little bit more information about what I was walking into.

Q So you knew that there was a death?

A Shortly before I arrived on scene, yes.

Q What did you see when you arrived?

A Well, when I first arrived on scene I observed that all of the northbound Trask Parkway was shut down. Fire department was on scene taking care of the actual securing of the two vehicles, along with EMS treating the people involved. There was quite a few vehicles that were on the side of the roadway on the southbound side near the club and the intersection. A lot of people were actually standing out in the parking lot and towards the edge of the roadway.

Q As far as the collision that occurred, what did you observe?

A It appeared that there was a vehicle traveling northbound on Trask Parkway, appeared to be in the fast lane of travel and a pick-up truck that was going the opposite way. And they struck head-on and they were pretty much like off center, crossing over the fast lane of travel over into the slow lane of travel on the northbound side.

Q So, the truck was going in the wrong direction?

A That is what it appeared like, yes, ma'am.

Q Do you know the speed limit at that particular location?

A That section of roadway is posted 60 miles per hour.

Q 60 miles an hour?

A Yes, ma'am.

Q And after you arrived on scene and sort of took everything in, what did you do, as far as talking to people?

A Usually on scene I try to talk to the senior deputy that is on scene, because usually they are ahead of us because of our large response area that we have to respond from. I talked to the Sergeant Lamb from the Beaufort County Sheriff's Office. He kind of gave me a brief assessment as to what was going on. At that point, because of the severity of the scene, additional units responded from the highway patrol and I began to look for any witnesses that were present. Spoke to any of the parties involved that actually witnessed the collision.

Q Okay. And did you -- were you able to conduct interviews with those witnesses?

A There was a total of three witnesses that I did conduct an interview on scene with, yes, ma'am.

Q When you say that other troopers or members of the highway patrol, is there another team that comes in in an accident like this?

A Depending on the incident there are parameters that we have to call additional resources to respond. In this particular case they contacted the major accident investigation team to respond to the scene and document the incident a little more thorough than we can without

capabilities that we carry with us.

Q After you contacted the MAIT team; that is what it is called, right?

A The MAIT team, yes, ma'am.

Q And did those witness interviews, then what did you do to document the scene?

A While on scene, after conducting those interviews, the next process of it is actually photograph the scene as well as doing any additional information or note taking that we can that we need to retain that to accurately document the scene.

MS. STAGGS: May I approach the witness, Your Honor?

THE COURT: Sure.

BY MS. STAGGS:

Q Trooper Clarkson, I'm handing you what's been previously marked as State's Exhibit 10 through 16. Do you recognize those photos? You can just flip through them briefly.

A Yes, ma'am. These are still photographs taken from the at-scene location that evening.

Q I'll take those back from you, thank you. So, those are the photos that you took?

A Yes, ma'am, along with myself and Lance Corporal Shumaker.

Q Are they a fair and accurate depiction of what you saw on Trask Parkway on July the 10th, 2016?

A Yes, ma'am.

MS. STAGGS: I move to admit these as State's Exhibits 10 through 16.

MR. LEE: No objection.

THE COURT: Motion granted. You may publish.

MS. STAGGS: Thank you, Your Honor.

(Whereupon, State's Exhibit No(s). 10-16 marked for identification and received in evidence.)

BY MS. STAGGS:

Q Trooper Clarkson, I'll ask you to describe to the jury what they see in each of these photographs.

A This is a still photograph of the driver's side of the vehicle that was traveling opposite direction on Trask Parkway driven by Ms. German.

Q Okay.

A This would be a still photograph of the passenger's side of the same vehicle.

Q Okay. And what about in this area, it looks like up through here, with the door?

A The driver's side door and parts of the vehicle had to be removed by the fire department to safely extricate parts of the vehicle and occupants of the vehicle.

Q Sorry, you said driver, but you mean the

passenger's side?

A Passenger's side, sorry.

Q I think this is just a closer-up photo where you could see the one door?

A Yes, ma'am, the one door that was removed was the passenger's side rear door on that side.

Q Okay. Thank you. And then this photo.

A This is a still photograph showing how the two vehicles came to rest on impact of both. The vehicle that was traveling northbound, as well as the vehicle that was traveling southbound.

Q Okay.

A This is another still photograph of the vehicle that was traveling southbound on Trask Parkway, showing impact damage. More of a direct view of head-on.

Q Okay. And then I just have a couple more.

A And this would be a still photograph of the vehicle that was traveling northbound on Trask Parkway, showing impact damage to the victim's vehicle.

Q Okay. And I believe that that is just a different angle?

A Yes, ma'am, it is the opposite side of the same vehicle.

Q Okay. Thank you. After you took those photos -- EMS you said was on scene?

A Yes, ma'am.

Q At the time. And they, they were -- the Highway Patrol is not responsible for transporting anyone to the hospital, correct?

A No, ma'am.

Q So, EMS would have done that?

A That's correct.

Q And did you notice any particular odor coming from the truck?

A After we -- or after I spoke to the witnesses and began to photograph the scene and talk to the other parties that were there, while standing at the driver's side of the vehicle, the Defendant's vehicle, I could smell, even after they had been transported, a strong odor of an alcoholic beverage emitting from the passenger compartment even after they were not inside.

Q We have heard testimony that the coroner was contacted; were you there when the coroner arrived?

A Yes, ma'am, I was on scene when Mr. Allen arrived.

Q And did you -- did you do anything with the coroner as part of your response that night?

A Yes, ma'am. After speaking with him on scene we were able to establish a location where he was residing at and then responded to his residence and made contact with his family to do the notification.

Q So, you were there when his family was told?

A Yes, ma'am, I was.

Q Did you return to the scene?

A Yes, ma'am, after speaking with the coroner on scene and speaking with the victim's family, I then responded back to the scene at Trask Parkway where I met with my supervisor.

Q Okay. And at that time had the MAIT team responded?

A Yes, ma'am, the initial response of first officers were arriving on scene for MAIT and they were already there.

Q And then later that morning, as part of your investigation/inspection in this case, what did you do?

A After securing the scene, there was some additional documents that I had to do administratively, as far as paperwork-wise. I met with the trooper who was at the hospital with the defendant and take to the detention center and process her in and secure the arrest warrant.

Q So you secured the arrest warrant in this case?

A Yes, ma'am.

Q Did you serve that on the defendant?

A Yes, ma'am, at the bond hearing.

Q Do you recognize her in the courtroom today?

A Yes, ma'am, she is seated at the Defendant's table.

DIRECT EXAMINATION OF TIMOTHY DAVID CLARKSON BY MS. STAGGS

MS. STAGGS: Your Honor, please let the record reflect that he's identified the defendant.

THE COURT: So noted.

MS. STAGGS: I have no further questions, Trooper Clarkson. Please answer any questions that Mr. Lee may have.

THE WITNESS: Yes, ma'am.

CROSS EXAMINATION

BY MR. LEE:

Q Good morning, Mr. Clarkson.

A Good morning, sir.

Q So you got the warrant on this case?

A Yes, sir.

Q So, you were the lead investigator?

A Yes, I was the primary, yes, sir, on the charge.

Q Primary investigator, so what primary investigator means is that everything kind of funnels through you to a certain extent?

A As the arresting officer, yes.

Q As part of being the primary officer, obviously it's part of your duty to look for any culpatory evidence, things to indicate or suggest that a crime was committed, right?

A Yes, sir.

Q And also, in all fairness, as an investigator, you

are supposed to look for exculpatory evidence as well, correct?

A To make sure that the correct crime is charged, yes, sir.

Q As primary investigator, can you tell me what happened in the parking lot before this truck left A&J that night?

A Only what witnesses told me, I wasn't present.

Q When you say "witnesses", would you say that there was a crowd of people when you got there?

A Yes, sir, in the parking lot.

Q Had some of them left probably?

A Yes, I'm sure that they left prior to my arriving, yes, sir.

Q Do people often leave -- if you are on the way, or law enforcement is on the way, do people commonly leave the scene?

A It is common, yes, sir.

Q For good reasons or bad reasons, right?

A For whatever reason, they decide to leave, yes, sir.

Q Some people don't want to get involved and some people don't want to get caught, right?

A That is possible, yes, sir.

Q But there were still a lot of people there when

you got there?

A Yes, sir, there were.

Q And your interviews, as the investigating officer, consisted of talking to three people; correct?

A Yes, sir.

Q All right. One is Alesia Johnson?

A Yes, sir.

Q Who walked out and saw the truck leave and was on the 911 call, right?

A Yes, sir.

Q And then I think that her cousin named Satori Williams, who was with her, who walked out after -- while the truck was leaving or in the process of leaving, correct?

A Yes, sir, that is correct.

Q And the other is a guy named Marion Moultrie, Junior, the third witness, right?

A Yes.

Q He didn't see anything, he actually came up to the scene after the crash had already happened, right?

A He made the turn right after the collision occurred and the vehicles had already stopped, so, yes, sir.

Q Okay. Other than those three people, did you interview anybody else at A&J Food and Flea Market at that time or any other time?

A Those are the only three that I interviewed, yes,

sir.

Q Did you talk with Archie Wearien, who is one of the owners of A&J?

A No, sir.

Q Did you listen to a 911 call that he made prior to all of this happening?

A No, sir.

Q You didn't. Okay. Did you listen to any jail calls as part of your investigation?

A No, sir.

Q Okay. Now, this truck that we are talking about, the red truck, it had a big, like an extended bed and had a big camper on the back, right? A big shell?

A Yes, sir, kind of like a hard top.

Q And did you look in the truck at any point?

A In the bed?

Q Yes, sir.

A No, sir.

Q You didn't?

A No.

Q Well, did you find any alcohol in the truck?

A From the passenger's compartment, I didn't do a search. From where I could see from standing outside of the vehicle, I didn't see any, no.

Q And you didn't find any weapons in the vehicle

either, did you?

A Nothing that I could see in plain view from standing outside.

Q It's been in impound since this happened, right?

A I'm assuming.

Q Okay. Has anybody searched it?

A That is normally, generally when MAIT is called they do their vehicle inspections.

Q If MAIT found alcohol or guns or something, would they let you know as primary officer?

A It is something that would normally be passed on.

Q Has it been passed on to you that any of that stuff was found?

A No, sir.

Q Were you aware that there was camping gear in the truck?

A Unaware of that.

Q The damage to the windshield of the truck, did it make it apparent to you that both occupants of the red truck, Mr. and Mrs. German, struck the windshield with their head?

A That is what it appeared, yes, sir.

Q Now, does that also give rise to the statement in your TR310 that neither one of them was a restrained passenger, didn't have seat belts on?

A That is the State's belief, yes, sir.

Q If somebody does have their seat belt on and is in a wreck and air bags goes off, doesn't the seat belt like lock?

A It depends on the vehicle. Usually the newer vehicles do that. The older ones don't.

Q I heard that the other day. But consistent with the marks on the windshield, it appears that they were not wearing seat belts and that is what was entered into your TR310 official report, that they were unrestrained?

A Yes, sir.

Q Okay. Isn't it true that one of the points of emphasis of the Highway Patrol nowadays is seat belt, this target zero thing that they have about seat belts; do you agree with that?

A It is part of our primary importance, to enforce seat belts so we have more compliance, yes, sir.

Q So, whether you like it or not, it's good for you to write seat belt tickets, right?

A It is part of our job as state law enforcement, yes.

Q And you have written plenty of seat belt tickets, have you not?

A I have, yes, sir.

Q Reasons that people don't wear seat belts -- have

you run across being given different reasons for people not wearing seat belts?

A Quite a few, yes, sir.

Q Some people I think are fundamentally opposed or scared of seat belts, would you agree with that?

A I have heard that quite a few times, yes, sir.

Q Some people forget for whatever reason?

A I have heard that as well, yes, sir.

Q Okay. And any other reason that you can think of that somebody might not be wearing a seat belt?

MS. STAGGS: Objection, not sure how it's relevant.

THE COURT: What is the response? Relevance is the objection.

MR. LEE: Well, if I ask him -- I have to ask one more question and I think that will clear it up.

THE COURT: Go ahead.

BY MR. LEE:

Q Isn't it true that someone may not have time to put on their seat belt because it is an emergent situation?

A That is possible.

MR. LEE: All right. That is all that I have, Your Honor. Thank you, Trooper Clarkson.

MS. STAGGS: Thank you, Trooper Clarkson, I don't have any other questions.

THE COURT: You may step down. And you can call your next witnesses.

MR. WHETSEL: If now would be a good time for lunch. We tried to time witnesses, and these went a little faster than expected.

THE COURT: You have one to be here at 1?

MR. WHETSEL: Yes, sir.

THE COURT: Let's take a lunch break. And I'll remind you during the lunch break, don't talk to anyone about the case or let anyone talk to you about the case. And do me a favor, when you come back, see if you can elect a foreperson to represent the jury. It has to be one of the 12. If you can't do it, that is fine, I'll appoint somebody. I don't want you to get in a fight over who is going to be the foreperson. But if you can appoint someone, I'll appreciate it. See up back at 1:00, ladies and gentlemen.

(The jury exits the courtroom at 12:00 p.m.)

THE BAILIFF: The jury is clear, Your Honor.

THE COURT: Mr. Lee, you had documents that you wanted to introduce?

MR. LEE: Yes, Your Honor, I have to run to my office and copy them. I have the reports, pursuant to my subpoena. I will just have to go back to my office and copy them. I don't know why I didn't get a copy.

If we can leave it open.

THE COURT: Anything else that I need to do during the lunch break?

MR. WHETSEL: I don't think so, no, sir.

(Lunch recess.)

MR. LEE: Judge, one quick thing. Your Honor, before the break, during Mr. Wearien's testimony, I started inquiring of him about specific incidences of guns, et cetera, in the parking lot at a particular location. And it was objected to and we had a conference, a motion outside of the hearing of the jury, at which time I proffered what my evidence would be, as far as in that regard and I asked the Court for some indulgence to go back at lunch and make copies of the reports. Indicating the four incidences that had happened at the place since 2011. I have done that, someone has premarked them Court's 6, 7, 8, and 9. And I would ask that I be allowed to introduce these Court's exhibits as part of my earlier motion. I would also say that, had Captain Maddox from the sheriffs -- evidence custodian from the Sheriff's Office under subpoena.

He had provided me these documents ands he was prepared to the testify. And I was advised that he was released based on the Court's ruling. I would like to

enter these as Court's exhibits with regard to that.

MR. WHETSEL: I have no objection, these are for the record and not for the jury.

MR. LEE: Correct.

THE COURT: Okay. That request is granted.

MR. LEE: Thank you, sir.

(Whereupon, Court's Exhibit No(s). 6-8 marked for identification and received in evidence.)

(Whereupon, Court's Exhibit No(s). 9 marked for identification and received in evidence.)

THE COURT: Welcome back. Ladies and gentlemen, the bailiff turned in a form stating that you have elected as foreperson Juror 161, Bradley Ingles, as foreperson. The Court approves that very wise decision that the jury has made. Thank you, sir.

I believe that we are ready to resume with the presentation by the State. Solicitor.

MR. WHETSEL: Thank you, Your Honor. May it please the Court. The State would call Sergeant James Booker with South Carolina Highway Patrol MAIT team.

Thereupon,

JAMES BOOKER

was called as a witness, having been first duly sworn, was examined and testified as follows.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Sergeant Booker, good afternoon.

A Good afternoon.

Q I'm not sure if you have already done this, have you given your full name and spelled it for the record?

A I have not.

Q Please do that.

A James L. Booker, B-O-O-K-E-R.

Q And Sergeant Booker, you are a sergeant with the South Carolina Highway Patrol?

A I am, yes, sir.

Q Sergeant Booker, I am going to go through a little bit about what you do and specifically, your training; okay?

A Yes, sir.

Q So, how long you have you been with Highway Patrol?

A I have been with law enforcement since 2004. I joined the Highway Patrol in 2005.

Q Prior to joining the Highway Patrol, where else did you work as far as a law enforcement officer?

A I worked as a police officer with the Charleston County Aviation at the airport.

Q At some point were you assigned to the MAIT team?

A I was.

Q And when was that?

A 2010.

Q And what is MAIT? We have heard that term. What is MAIT?

A The multi-disciplinary accident investigation team. Basically we just reconstruct advanced collisions, any kind of -- anything that needs maybe more -- we are like the investigative unit of the Highway Patrol when it comes to collisions.

Q In your role now, are you the team leader?

A I am.

Q That is the coastal MAIT team; is that correct?

A Yes, sir.

Q What is your area of responsibility?

A We have 12 counties in the southeast of South Carolina. We go all the way down to the Georgia line. And basically we cover that whole 12-county area, with exception of Aiken. If you are familiar with troops, the troop concept of the Highway Patrol, we cover all troops six and seven which encompasses 13 counties, with, like I said, exception of Aiken. The midlands team covers the midlands. We basically go from the ocean to the state line and then out towards almost to the Columbia area and then up towards what we call the pee dee region, like towards the Georgetown area.

Q As part of that, is Beaufort County in your area

of responsibility?

A It is.

Q I want to go through a little bit of your education and training.

A Okay.

Q Do you have your CV with you?

A I do.

Q I know it's extensive, and I won't go through everything, but I do want to touch on pertinent trainings that you received for this particular reconstruction. Are you internationally certified in a particular area?

A I am. I'm internationally certified with ACTAR, which is the Accreditation Commission For Accident Reconstructionists. My certification number is 2530. It basically means that there's only -- at that time. There's more since, but at that time in 2012 there was only 2530 individuals that were certified in the whole world.

Q And what kind of training did you have to go through in order to become certified?

A Well, in order -- that particular certification is a test, it is a day-long test which basically encompasses an overall of different questions as well as actually a collision that you will actually investigate, as far as they give you the dynamics and then you will actually reconstruct it. Prior to that, it is kind of an overall test of your

knowledge towards collision reconstruction. Prior to that you have to take a certain prerequisites to even qualify for it. And that is pretty much all of the basic -- what I would call the basic collision reconstruction courses such as at-scene technical reconstruction, as well as some of the more advanced with motorcycle reconstruction, pedestrian bicycle reconstruction. And, you know, with commercial vehicles there's an assortment that you can take.

Q And also, for a period of time, were you also the MAIT state mechanic?

A I was.

Q And were you certified through an organization of that?

A I was.

Q What organization is that?

A ASE, Automotive Service Excellence in suspension and steering, and I just recently gave up at the beginning of this year due to my position. Really we don't have no sergeants that are doing mechanical examinations anymore. So, lance corporal, which is more of an investigator, I took over that position.

Q And let me go through some of your -- I'm looking through your CV here. It is multiple pages long, however I want to ask you about a few particular courses. Back in 2006, did you complete a course in 80 hours titled, At

Scene?

A Correct.

Q Is that in this field of reconstruction?

A It is.

Q And then back in 2008 did you complete a course of 80 hours in technical collision investigation?

A Yes.

Q And then, also in '08 another 80-hour course in reconstruction?

A Correct.

Q I have got a 16-hour course in '08 of grade crossing collision?

A Yes.

Q Let's see. Again, there's been quite a bit, but in 2010, I am on Page 2, crash data retrieval technician, an eight-hour course?

A Yes.

Q Let's see. 16 hours in 2011 in crash scene photography?

A Yes.

Q Same thing, in 2011, eight-hour course entitled, CAD by Smart Roads Program?

A Yes.

Q We have got a 40-hour course in commercial vehicle post-crash inspection in April 2011?

A Yes.

Q Motorcycle reconstruction, 40 hours in May 2011?

A Yes.

MR. LEE: Your Honor, I'm happy to stipulate that he's an expert in whatever field of accident reconstruction or whatever. I know Sergeant Booker, I have been before him before, and I would stipulate as to his qualifications.

MR. WHETSEL: I will accept that this time because it is quite lengthy. We would offer him as an expert in collision reconstruction.

THE COURT: Without objection, the expert is so qualified.

BY MR. WHETSEL:

Q Now, Sergeant Booker, now that we have you qualified I want to get to the reason that you are actually here. Like you testified a moment ago, you are the team leader of the coastal MAIT team, correct?

A Correct.

Q Did you have reason to respond to Beaufort County, specifically Highway 21, back on July 10th of 2016?

A Yes, sir.

Q And why -- why were you called out there?

A Well, specifically I would have been called out as a team leader even if I -- during that time I was actually

on call, I would go out to an active call-out. But even if not, 365 days a year I'll receive a call, even if I'm not going out. On that specific day I received a call for this collision on US 21 in front of Whale Branch Middle School.

Q Did you personally respond out there?

A I did.

Q As part of MAIT, you work in a team environment, if you will; correct?

A Correct.

Q Were some other MAIT troopers also -- did they also respond out there?

A Yes.

Q Do you recall the other team members that came out there with you, if you do recall?

A Yes, I do. It would have been Lance Corporal John Conley as part of our office, as well as Lance Corporal Gerald Hoffman.

Q Was there also a Corporal Proctor out there, or he may not have been out there --

A Corporal Proctor didn't go out there at the time.

Q But later on he was involved in the investigation?

A Correct.

Q Got you. Thank you. But as sergeant, were you the MAIT team supervisor in charge of this investigation?

A Yes.

Q Now, when you responded out to Highway 21, would that have been in Beaufort County?

A It would, yes.

Q And do you recall when you arrived on scene, was it around two in the morning, somewhere in that time frame?

A I would not have -- in this specific situation, Lance Corporal Conley would have got there, just geographically he lives a lot closer than I do. I live in the Charleston area. So, with him coming from the Beaufort area, he is going to be a lot closer and he would have arrived just after -- I believe that it was around 2:15 if I can check my notes.

Q Yes, please. That is fine.

A Yes, 2:15.

Q Just generally speaking, I'll go through some photographs here in a minute. But when you first arrived on scene, what did you see when you got to Highway 21?

A When I got there, it would have been some time after the fact, coming from the Charleston area and being notified, as well there's a little bit of lag time for lack of a better term. But when I get there, two of my investigators are already there, Lance Corporal Hoffman and Conley. So, I obviously approached them and spoke to them about what was going on, as well as Sergeant Wooten. Sergeant Wooten was the road supervisor. He is not a member

of MAIT. He would have been working that night, would have been the scene supervisor. So, I spoke with him as well about what was going on, you know, what the situation was. Very brief conversations before I do a walk-through of the scene. And when I walk through the scene I just saw the Dodge pick-up truck and the Nissan car, very close proximity to each other, facing each other in the roadway.

Q And what direction of travel was the truck going on, if you recall?

A It would have been -- and bear with me for a second, because that area, I believe that it is -- the truck would have been facing southbound.

Q Was it facing in the correct or incorrect direction?

A The incorrect direction.

Q You were there and very familiar with the scene, is that fair to say?

A With the scene, yes.

Q Yes, sir. I'll hand you a stack of photographs and take your time to look through them, and I will ask you if you recognize them. Okay?

(Pause.)

MR. WHETSEL: May I approach, Your Honor?

THE COURT: Certainly.

BY MR. WHETSEL:

Q Sergeant Booker, just so I can correctly say for the record, I am going to hand you what has been marked as State's Exhibit 17 through 35. So, Exhibits 17 through 35. And I'll just ask if you will take a look at them for me.

A Okay.

Q Do you recognize those photographs?

A I do.

Q Do they accurately and fairly depict the scene that you saw on the early morning hours of July 10th, 2016?

A Yes.

MR. WHETSEL: Your Honor, I would ask to admit State's Exhibits 17 through 35.

MR. LEE: No objection.

THE COURT: Motion granted without objection.

(Whereupon, State's Exhibit No(s). 17-35 marked for identification and received in evidence.)

MR. WHETSEL: Permission to publish some of these as we go through the testimony?

THE COURT: You may.

BY MR. WHETSEL:

Q And I'll put some of these up on the board here. And I'll just, based on your expertise, sort of what we are looking at; okay?

A Okay.

Q Now, all of these will go back with the jury. I'll probably not go through all of them. I'll just pick and choose a few here. But I am going to put up what has been admitted as 18. Are you able to see that okay?

A I am.

Q In 18 here, the main vehicle that we are seeing is what?

A That would be the driver's side door of the Nissan Sentra.

Q And if you can tell, and it may be hard to see on the big board, are you able to see the truck in that photograph to the left?

A You can see a portion of it, yes.

Q Based on the impact, has that car been deformed in any way?

A Yes, it has.

Q I'll take down 18. I'm going to put up 21 just for this reason here. I'm not sure, are you able to -- it may be difficult to see on the big board. Are you able to see the license plate?

A I cannot read the license plate. I can just see the license plate.

Q That's okay.

MR. WHETSEL: Your Honor, I'll ask to approach briefly.

THE COURT: You may.

MR. WHETSEL: There is a bit of a glare and it's hard to see. I will approach.

BY MR. WHETSEL:

Q And are you able to see the license plate?

A I am.

Q What is the license plate on that vehicle?

A MAB394 for South Carolina.

Q Okay. Thank you, I'll take that back from you. Sergeant Booker, I'm going to use this photograph here, because I'm going to talk a little bit about collision; okay?

A Okay.

Q Now, it appears to be apparent. And I'm looking at 22, it appears to be apparent from the photograph that there's some distance between the vehicles, correct?

A Correct.

Q Now, based on your investigation, and based on some other tools, to include I believe something called an EDR, can you tell me what is happening as far as when these vehicles actually impact with each other; why is there some distance there?

A Well, you are going to have some kind of -- some kind of what we call restitution, where when they come together, two vehicles come together and strike, it is like

throwing -- it is not exactly, but you can imagine if you threw a ball against a wall it is going to bounce back off. It is the same type of principle, it is just not exactly that same way. When two vehicles come together and they strike, they bring energy with each other. I mean, they are going to -- and for lack of a better term, they bounce off of each other. And that is the separation that you see.

Q Thank you. And we will take 22 back down. Sergeant Booker, I'm going to put up 26 here. And I want to see -- are you familiar with that picture?

A I am.

Q I'm looking at the brake pedal specifically, and it may be hard to see from the big board. If so, I am happy to actually hand you the photograph. But do you see something on that pedal that appears to be off a little bit?

A Appears to be off?

Q Yes, sir.

A I mean, there's blood and something that appears to be tissue.

Q You see something on that pedal; is that fair to say?

A Correct.

Q Okay. I'm going to take 26 back down. I am going to put this one up here for this purpose here. On 29 it shows a pretty good photograph of the road. Based on your

observation at the scene as well as this photograph, is it -- can you tell which direction of travel that Nissan Maxima is traveling in?

A Well, the Nissan Maxima would have been traveling away from Beaufort heading towards -- heading towards U.S. 17, so it would have been, I believe, north.

Q And the point of the question, I guess, let me clarify a little bit, is that Nissan Maxima traveling in the correct direction?

A Yes.

Q As far as, when we are looking at 17, is it a four-lane highway?

A Yes.

Q And is it divided by some type of grassy median?

A Yes.

Q We will take 29 back down. I'm going to put 30 up. Your MAIT team took some photographs also after the sun came up, correct; you are still out there at this point in time?

A Correct.

Q And in this photograph here, can you tell me what direction we are looking at?

A You would be looking to the left of this picture would be where the crash site was. You are looking back towards the business or the building to where the vehicle

would have came from. You are actually facing towards Beaufort, so it would be south.

Q Okay. Thank you.

A But you are actually in the northbound lane.

Q You were in the lane that the collision actually occurred in?

A Yes. You are on the side that the collision is on looking back over towards the other side of the road that the collision did not happen in.

Q Understood. And we will take 30 back down.

Now, I'm going to show you a few of these that are aerial-type photographs. Are you familiar with 32 there, Sergeant Booker?

A Yes.

Q Can you just tell us what we are looking at there, from 32?

A It is just the top down at the final rest of the vehicles. Obviously you have first responders still there and fire department and police personnel. But right in the center of the picture you can see the Dodge, which in this would be facing up. And then the Nissan facing directly in the opposite direction, facing down.

Q Can you see -- can you see the business that we have been talking about, Archies or A and J's in the picture? There on the right-hand side. It may be hard to

see. Do you want me to hand it to you?

A Can you please?

Q Yes, sir.

A I see where I think it is but --

Q That is fair enough.

MR. WHETSEL: May I approach, Your Honor?

THE COURT: You may.

A Yes, yes, it would have been over towards the far right.

Q That is where the business is in that particular photograph?

A Correct. I can see a lot clearer right there.

Q Yes, sir. I'm going to take 32 back from the witness. All right. Sergeant Booker, I think that's all of the photographs that I'll put up there. There is some more, you know, that I didn't put up that will go back with the jury. But that's enough for us right now.

Now, tell me this, in a MAIT investigation, and specifically this one, what actions does the MAIT team take as far as, how do you conduct your investigation?

A It depends on what you are investigating. We have certain things that we have to do, as far as document the scene. And it depends on the type of case. For instance, if this was a hit and run collision, we would have a certain few extra things that we might do. But for the most part,

we have got to document the scene, the vehicles involved, interview anybody involved or anybody that we are aware of as far as witnesses or anything of that nature. And then what we will do is that we will actually, like in this case, we will actually map the scene. And when we are doing that we will take a -- if you have ever seen a surveyor, they will use what is called a total station on a tripod. And they will plot out points for, you know, let's say a lot or something like that, or business. We do the same -- we use the same equipment to lay out and plot out a collision scene. So, any kind of skid marks or gouges or final rest of vehicles, runway edges or anything like that, will be mapped out. We do what we call a forensic map.

So, then what we will do is bring that forensic mapping and bring it into a CAD program that we have, a computer-aided drawing program, and that is what we will render a final product, is that we will bring it in and it is just points. So, we will do a drawing, and in this case we will also do an animation, depending on the situation. But like I said, we will document, you know, depending on, you know, what the issue is, we might do speed calculations. We might do, you know, different things of that nature.

Q Is it fair to say that the primary purpose of MAIT, and if I'm wrong tell me, but the primary purpose of

MAIT is to investigate and attempt to reconstruct what happened prior in the collision?

A Correct.

Q One of your team members, Corporal Proctor, did he use a tool called, I believe it's EDR?

A It is an acronym used. I mean, there's -- we use EDR for data recorder, but there's multiple different terminology, air bag control module. You know, there is different ones that are used, RCM, restraint control module. But basically, yes. I mean, we are using a technology of the event data recorder, and in this case it would have been an air bag control module.

Q Did he utilize this under your supervision for the Nissan Maxima in this case?

A Well, I downloaded the data. I took the data from the vehicle. He was the one that actually analyzed that data.

Q In that final analysis, was that part of a report that you ultimately prepared?

A Yes.

Q And do you recall what the speed calculation was for the Nissan Maxima?

A Well, what he did was he took, for the Nissan Sentra, he took a -- actually there's no calculation, he takes the data that is actually given to him for -- from the

air bag control module and reported that, and that would have been 62 miles per hour.

Q So, we believe that the Nissan was driving 62 miles per hour at the time of impact?

A Yes.

Q Sergeant Booker, I am going to hand you two disks, okay and ask you if you recognize them. I'm going to hand you what's been marked as State's Exhibit 37 and also State's Exhibit 38, and it has initials on there.

A Yes, I recognize them.

Q Did you review those prior to today?

A I did.

Q And as part of your investigation, did you while on scene video some of the collision scene as you saw it that night?

A Yes.

Q And would that be depicted on State's Exhibit 37?

A Yes.

Q And -- after reviewing this, was this a fair and accurate depiction of what you saw that particular evening?

A It is, it is a nighttime video, so, you know, we will do that day or night. But yes, it is.

MR. WHETSEL: Your Honor, we would ask to admit State's 37 into evidence.

MR. LEE: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 37 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q And then lastly, or as far as this evidence, State's 38 you were talking about an animation that you produced with the CAD program?

A Correct.

Q Was that also done in this case?

A It was.

Q Did you review State's 38 prior to -- I am sorry, prior to trial today?

A Yes.

Q Does that contain the animation that your MAIT team put together based on the data points?

A Yes.

MR. WHETSEL: Your Honor, we would also offer to admit State's 38 in evidence.

MR. LEE: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 38 marked for identification and received in evidence.)

MR. WHETSEL: I would also like to publish both of these, Your Honor.

THE COURT: Granted.

(Exhibits published to the jury.)

MR. WHETSEL: Your Honor, I'll stop it there. I wanted them to get a 360 of the vehicle. The whole video is in evidence.

BY MR. WHETSEL:

Q Sergeant Booker, based on your training and experience, can you tell us how a vehicle collision kills somebody?

A Well, it is the sudden change of velocity. The change is the, you know, the -- is the traumatic situation in the event.

Q In this particular case, was the MAIT -- your MAIT investigation, were you able to estimate the speed of the truck?

A We were able to calculate the speed of the truck from the speed -- from taking the speed of the car from the air bag control module.

Q And what -- what was the speed that you believe that the truck was traveling at the time of impact?

A Approximately 22 miles an hour.

Q So, you have the truck going 22 miles per hour, approximately, and you have the Nissan traveling at 62; is that correct?

A Correct.

Q Now, now, when you are taking that into account,

what kind of impact is the driver of the Nissan feeling in comparison to the individuals inside the truck?

A Well, it depends. It depends on the size, or better terms, mass of the vehicle. So, you know, everybody equates speed as to what kills you. And in some ways it does. But it is the sudden change. In a situation like this where you have a large truck that is striking or any way that you want to look at it, the smaller car striking the larger truck, you would think that the larger truck is going to experience more change in speed because they are being struck by a vehicle that is going faster, but that's not necessarily the case.

In this situation you have a car traveling highway speed, 62 miles per hour, but it has got less mass, it's smaller. So, what is going to happen is it's kind of like hitting a wall, in a way. So, we calculate it out at a 30-mile per hour change in velocity for a pick-up truck that is traveling 22 miles an hour, which means that the pick-up truck is struck and then pushed backwards slightly. So, but it still only experienced about a 30-mile per hour change in speed, change in velocity.

The car in this case, which is going faster at the time, it's going highway speeds, is actually calculated out at 58-mile an hour, so you are looking at almost double the change in speed or change in velocity

that -- so that, in layman's terms, the car is going to experience almost double what, you know, the occupants or anything inside the vehicle is going to experience double what the pick-up truck did.

Q So, when it comes down to it, the change in velocity oftentimes is what can cause serious injury or death?

A Yes, it is like the old saying that, It is not the fall that kills you, it is the sudden stop when you hit the ground.

Q Same concept?

A It is the exact same concept.

Q I have my notes here and I wanted to ask this. I remember you telling me that you didn't notice any gouges or marks in the road, and that is unusual?

A It is unusual with a head-on collision. Usually one of the things for area of impact, even though we felt pretty confident just looking at the dynamics of the wreck, one of the kind of things that we try to look at is, where are gouges. Typically when two cars come together they are going to go -- the front ends will actually go downward and gouge into the ground. And then you will see actually scrapes or gouges, sometimes very deep gouges. In this case I didn't see a single one, which left me a little perplexed at the beginning, yes.

Q And ultimately, you know, is there a reason? Can you explain why you didn't -- there's an absence of the marks?

A On further examination, I think, basically what happened is you have an override of the truck. The truck is taller, the truck is going up. And by the time that it has time to push down and really interact with the vehicle it's over the front tires, so the entire front end is pushing downward where you have more flat surface.

In a typical collision where you have two cars that hit directly on, they are going to hit -- let's just say, in a perfect situation you would have bumper to bumper, what is designed to be, they are going to hit and they are going to go downward. That energy has got to go somewhere, so what it will typically do is it will go downward and then their rear-ends will lift up. In this case they overrode each other, so when they overrode each other the car actually, you would think, would scoop down, but when the car goes -- the truck goes over it has time to actually get some of the suspension in the rest to account for that. So, it pushed more of the entire vehicle down instead of just the front end.

So, basically when we are looking at it you have to think there's oil in there, there is antifreeze and everything of that nature on the ground, well if there's

just little scrapes -- what we are looking for is deep gouges. We are looking for anything, but if we see -- but we are also looking for little scrapes as well. Well, in my experience, usually it's very hard to find scrapes if you have just a light scraping of, for instance, the undercarriage of the vehicle because of the oil and things like that will cover it up. When you have a gouge it is actually ripping the pavement up so you can see it.

Q So, at the point of impact of the vehicles, that truck went slightly backwards based on your calculation of what happened?

A Well, after, yes, post collision.

Q Correct.

A After the vehicles will come in, they will make contact. They will come in to what we call maximum engagement and then they will separate. And then in that separation, that is where the, you know, at some point during maximum engagement the separation of the vehicle actually goes backwards.

Q But do they come to rest close to where the actual impact occurred?

A Yes.

Q I will play the animation in a moment, but I want to ask you one more question prior to that. Being a Highway Patrol trooper for over 12 years now, are you familiar with

the different traffic laws of South Carolina?

A Yes, sir. Excuse me.

Q I want to ask you specifically about this one. It is South Carolina Code Section 56-5-1810 and it says something along the lines that it is illegal to drive on the left-hand side of a four-lane highway; is that your understanding?

A Yes.

Q So, basically if you are -- in this particular case, on a four-lane highway, if you are driving in the incorrect direction, that would be illegal; is that fair to say?

A Correct.

MR. WHETSEL: Your Honor, at this time I would publish the animation.

THE COURT: All right.

(Animation shown to the jury.)

MR. WHETSEL: Sergeant Booker, that is all of the questions that I have for you. Mr. Lee may have some.

THE COURT: Mr. Lee.

CROSS EXAMINATION

BY MR. LEE:

Q Sergeant Booker, it looks like there's a lot of math training involved in what you do; is that right?

A That is part of what we do.

Q Right, lots of formulas to plug in and figure out some of these things?

A That's part of it, yes, sir.

Q In doing this math and judging things, did you establish the route taken by the truck out of the parking lot across the -- across -- cutting through the median into the other lane?

A By witness statements.

Q Okay. Did you -- did anybody at any point measure the distance from when the truck left the parking lot onto Seabrook Road to the collision, did anybody measure the actual distance traveled by the truck?

A The only measurement would have been, as far as the CAD, so it is on the CAD. But no, physically get out and measure that, no.

Q Now, the animation that we saw, is that actual time? I mean, from when that truck pulls out on the animation, pulls out of the parking lot to the collision, is that the amount of time that it actually took for it to happen?

A Well, the only issue that we have, and this is with any collision, we have -- we go off evidence. So, as far as from the impact, we know what the speed is at impact, what we calculated or what we got from the event data recorder. Prior to that, in this situation, he would have

given the speed of the pick-up truck the -- let me go back. The pick-up -- the car we would have taken the data from the actual AIB control module, because we have enough data. This is just like any other collision where we don't have that data -- we only have impact data, so from that point backwards would have been a constant of what the speed would be at impact.

Q Okay. What I'm trying to get at is 22.3 miles per hour at impact, if that was the average speed from coming out of the parking lot to the collision, it appears that would be -- the car would travel -- the truck would travel 32.26 feet per second.

A I think that he did have to come from a stop, if I'm not mistaken. We don't have solid evidence to show what would have been prior to impact, as far as speed.

Q Do you have any estimation, though, about the distance in feet that the truck traveled from leaving the parking lot to the collision?

A I would have to go back and look.

Q Look at what?

A I would have to look back at the CAD program.

Q Okay. Well, how about this? How wide is the typical highway lane?

A An average lane is about 12 feet.

Q 12 feet?

A Yes, sir.

Q Okay. So, there's two lanes going south, correct?

A Yes, sir.

Q Okay. On 17. And then there's the open part where the median is cut, which is probably another lane or so; right?

A I believe it is a little wider than that, if I remember. But something of that nature.

Q Okay, so there's two lanes. And then we would be at 48 feet from the stop sign, right?

A Yes, sir. Yes, sir.

Q Then if it's two lanes over, that would be another 24 feet, which would be 72 feet; is that right?

A Okay.

Q And then you have to back up from where the parking lot comes out to the stop sign. What I'm trying to figure out is, if you are traveling 22 miles an hour and 32 some off feet per second, how many seconds was it from when they left to when it happened?

A We don't know.

Q Okay. Could it be around three, if it is 100 feet and they are going 22; would that be right?

A Yeah, I mean, it very well could be, we just don't know.

Q Okay. But is it safe to say it is somewhere from

three maybe up to 10. I mean, if you are going 22 miles an hour you can only cover a certain amount of distance, right?

A Okay. I can't calculate to an exact amount of time because I truly don't know.

Q Okay. But you would agree if somebody was traveling 22 miles an hour, that they would cover 32.266 feet per second?

A Yes, I believe that is -- that sounds right.

Q All right.

A 32.25 seconds at 22 miles per hour.

Q Okay. 32.2 feet per second?

A Feet per second, yes.

Q Somebody going even 128 feet, that would be four seconds approximately?

A Approximately, yes.

Q The point being, there wasn't a lot of time between leaving the parking lot and the actual wreck happening?

A Sorry, I couldn't hear you.

Q The point being, there was not a lot of time between leaving the parking lot, going to the stop sign and then having the wreck?

A I would presume no.

Q All right. Okay. Now, did you look at that TR310?

A I have, yes.

Q Okay, you have one. It appears that they had to use mechanical means to get Mr. German out of the truck; does that sound right?

A I got --

Q The door was ripped off, or torn off?

A They ended up -- yes, the fire department, I believe, took the door off, yes.

Q So, it appeared that both of the Germans had to be assisted or helped out of the truck at the scene?

A I wasn't there at the time.

Q Okay. The TR310 also appears to indicate that neither of the three people were wearing seat belts; they were unrestrained? Is that your understanding?

A Yes.

Q So, Mr. and Mrs. German were not wearing a seat belt and Mr. Palmer was not wearing a seat belt?

A Correct.

Q I might have missed it. Sorry, what time did you think someone from the MAIT team, Conley, first arrived?

A I have down on my notes that it was 2:15.

Q Okay. And it appears that the accident happened around 12:30 or so; is that your recollection?

A Let me verify. But I -- I have got 12:38, yes.

Q Okay. You have 12:38 is the time of collision.

A I have got -- yeah, 30.

Q Well, there was a 911 call at 12:29 that purports to have the accident happen in the background. But do you know where that 12:38 came from?

A That would have been the trooper's.

Q Clarkson's report?

A Correct.

Q I have one more question. So, the MAIT team just investigates the driving part of what happened, correct?

A I'm not sure that I understand what you mean.

Q Well, I mean did the MAIT investigation have to do with anything that happened before these people got in their car to leave?

A No. We will do interview of witnesses, but we didn't necessarily deal with that, no.

Q Because you are more concerned about what happened in the crash, rather than what happened prior to them leaving or in the parking lot of the bar, right?

A Well, we are brought in to look at the crash primarily, yes.

Q So, you cannot testify to anything that happened in that parking lot before they got in the truck, can you?

A Only what was told.

MR. LEE: All right. Thank you, sir.

MR. WHETSEL: I have no further questions of

Sergeant Booker.

THE COURT: Thank you. You may step down. Call your next witness.

MR. WHETSEL: The State would call Ms. Linda Kreisel. It is K-R-E-I-S-E-L.

Thereupon,

LINDA KREISEL

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Ms. Kreisel, what do you do for a living?

A I am a clerical specialist presently at Beaufort Memorial Express Care and Occupational Health. I have been there for a year and I was in the lab for seven.

Q Are you also a trained phlebotomist?

A That is correct.

Q What is a phlebotomist?

A Someone who draws blood, processes samples, collects drug screens.

Q I understand, yes, ma'am, thank you. In your career, roughly, you know, how many times have you had to draw blood from somebody?

A Thousands. Thousands.

Q Okay. Are you ever called on, based on law

enforcement asking you to draw blood from an individual?

A Yes, I am.

Q And I want to get into the specific case, but before we get there will you just tell the jury, what is your standard protocol when taking a blood sample for law enforcement?

A I will be called usually to the emergency room. There is a kit that law enforcement brings with them. I will witness them opening the kit. I will use the tubes and the needle and the tourniquet that are provided in the kit. There is a cleaning swab that is non alcoholic used on the person to whom I'm drawing their blood. I will draw the blood. I will label the blood. And then I will affix the seal over the top of the blood and then give the specimen back to the police officer. He will finish his paperwork and I'll watch him seal the box in which the specimens are located.

Q And ma'am, back on July 10th of 2016, were you working at Beaufort Memorial Hospital?

A That's correct.

Q And were you requested, about two or so in the morning by a Highway Patrol trooper, to take a blood sample?

A Yes, I was.

Q Did you take a blood sample from a white female named Mary German?

MR. LEE: Your Honor, at this time I would just renew my previous motion regarding the taking of the blood sample and the reasons set forth.

THE COURT: Renew that motion.

MR. LEE: And I would ask that it be a continuing objection.

THE COURT: Certainly. Thank you.

BY MR. WHETSEL:

Q MS. Kreisel, were you requested to take a blood sample from Mary German that night at Beaufort Memorial?

A Yes, I was.

Q That protocol that you just described, is that the same protocol that you would have used when you took the blood sample from Ms. German?

A That is correct.

MR. WHETSEL: Your Honor, I am going to ask to approach the witness at this time.

THE COURT: Okay.

BY MR. WHETSEL:

Q Ms. Kreisel, I am going to hand you three photographs. I know that you didn't take these photographs, but they were taken at the lab. However, I am going to ask if you recognize them.

A That would be, yes, my signature and my handwriting and how I would affix the specimen label, so,

yes, they are recognizable by me.

Q So, based on looking at that, the seals on those particular two vials, would that lead you to believe that those are photographs of the vials taken by you of Ms. German back on July the 10th of 2016?

A Yes.

Q And are those photographs, do they fairly depict the vials as they would have been when you gave them back to the trooper?

A Yes.

MR. WHETSEL: Your Honor, we would move State's 39, 40 and 41 into evidence.

MR. LEE: Subject to my prior objection.

THE COURT: Subject to prior objection.

MR. LEE: Yes.

(Whereupon, State's Exhibit No(s). 39-41 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Then, lastly, Ms. Kreisel, after you sealed those two vials up -- you said that you took two vials, correct?

A Correct.

Q You seal those up and then you give them to a law enforcement officer?

A Yes.

Q And then you watch that person put it inside the

box and seal it up themselves?

A That's correct.

Q And did that happen in this case?

A Yes, it did.

MR. WHETSEL: I have no further questions of Ms. Kreisel.

THE COURT: Mr. Lee.

CROSS EXAMINATION

BY MR. LEE:

Q What time did you draw the blood?

A It would be early morning hours.

Q Can you give me a specific time? Do you have documents saying what time that you drew the blood?

A On me, I don't have any documents, no.

Q Anywhere, anybody else?

A They would be recorded in the laboratory in with some paperwork.

Q The subpoena that brought you here didn't direct you to bring those items?

A No, it did not.

Q When you are analyzing blood for the presence of alcohol or whatever, isn't it important the time between -- if you are looking at a DUI case, isn't it important the time between driving and the time that you take the blood; isn't it important to know what that difference is?

A I get called. I go immediately to the emergency room and I do what is asked of me, and that is the last that I have of it.

Q Okay. I'm not trying to be mean, but today you don't have anything to say that I drew her blood at a certain time?

A No, I don't. I wasn't asked to bring anything.

MR. LEE: Okay. All right. That is all that I have, Your Honor.

MR. WHETSEL: Your Honor, brief -- brief redirect, if you will.

THE COURT: Sure.

MR. WHETSEL: And I don't intend to offer it as an exhibit. I marked it as a Court's exhibit. I thought it might refresh Ms. Kreisel's recollection.

THE COURT: All right.

BY MR. WHETSEL:

Q Ms. Kreisel, I am going to hand you a document and I'll just direct you to the middle or so. And I think that you might recognize your name on there. Do you recognize that, ma'am?

A Yes, sir.

Q And is that your signature on that paper?

A Yes, it is.

Q So, if you look at the top you will see it says,

Time of test.

A Yes, sir.

Q And by looking at that document, would that refresh your memory as to, you know, approximately when you would have drawn the blood?

A Yes, sir.

Q And what would that be?

A 2:00 a.m.

Q And what -- is that on July 10th, 2016?

A Yes, sir.

MR. WHETSEL: Your Honor, that is all that I have. I'll ask to approach the witness again. And I will take that back from you. Thank you.

THE COURT: Thank you, ma'am, you may step down. Call your next witness.

MR. WHETSEL: Thank you. Your Honor, the State would call Jeff Shumaker.

Thereupon,

JEFF SHUMAKER

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Thank you, sir. Please say your full name and spell your last name.

THE WITNESS: Jeffrey Allen Shumaker, S-H-U-M-A-K-E-R.

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Sure.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Trooper Shumaker good afternoon, sir.

A Good afternoon.

Q You are currently working for the Florida Highway Patrol, correct?

A Yes, sir.

Q How long have you been with Highway Patrol?

A Approximately 11 and a half years on patrol.

Q Just average day, what do you do; what are your duties?

A My duties are to enforce traffic laws and try to eliminate collisions in the counties that I work in the state.

Q I want to direct your attention back to a specific day, which would have been early morning hours of July 10th of 2016. Do you recall that date, sir?

A Yes, sir.

Q Do you recall having to respond out to a traffic collision?

A Yes, sir.

Q And was that traffic collision located off of Highway -- or on Highway 21?

A Yes, sir.

Q And what county is that in?

A That is Beaufort County.

Q And did you actually respond out there?

A Yes, sir, I did.

Q And when you first arrived on scene, what actions did you take? Like what did you do to assist the investigation?

A I was assisting the primary officer, which was Trooper Clarkson at the time, and I believe that I took photographs of the collision scene and helped him out. And then, not too long after that, I was instructed to be en route to Beaufort County Hospital.

Q So, at some point while out there, you were told to go to Beaufort Memorial?

A Yes, sir.

Q And what was the purpose of you going out to Beaufort Memorial?

A To speak with the subject that was driving the other vehicle involved in the collision and to assess if the party was intoxicated or not, and to go ahead and try to get a blood draw at that time.

Q And based on -- based on the information that you received, did you know what individual you were looking for when you went to the hospital?

A Yes, I was given a name and a description of the individual. When I did arrive at the hospital they escorted me back to the room that she was being treated in.

Q So, do you recall who you were trying to find at that point?

A At that time they gave me a name, I believe, of Ms. German, Mary German.

Q Mary German?

A Yes, sir.

Q And did you actually make contact with her?

A Yes, I did.

Q Just so the jury is aware, when Highway Patrol is involved and they are -- they suspect somebody of committing a traffic offense such as this, what are you trying to do? What is your standard procedure?

A The standard procedure is to, to speak with the individual and to assess whether they have been intoxicated with drugs or alcohol and go ahead and -- usually we go ahead and read the implied consent rights. There was no way that she was going to be put on a breathalyzer machine because of her injuries. And we had three hours from the time that the accident occurred for us to get the blood draw. And we went ahead and read her implied consent rights, explained to her what was going to happen. She did shake her head to confirm that she understood what I was

telling her. And at that point, you know, the nurse began to do the blood draw.

Q I guess, at that point, just to be clear, did you direct that that vial of blood be taken from Ms. German?

A Yes.

MR. LEE: Your Honor, again, just for purposes of the record, I just renew my previous objection to the warrantless blood draw.

THE COURT: Noted.

BY MR. WHETSEL:

Q Trooper Shumaker, whenever you go to take a specimen, blood, urine, et cetera, do you use some type of standard kit?

A Yes, there is a kit that we receive from the Department of Public Safety. The kit is sealed until we use it. There's an expiration date on it. And we -- every trooper usually has one or two kits in their vehicle.

Q Can you just explain to the jury what is a typical kit?

A A typical kit is a small box about five by five. It has two vials for taking a blood draw. There's a small canister for urine, if we need to get urine, and there's multiple stickers that actually -- you to seal the container and initial it so that the evidence cannot be tampered with after we actually put it back in the kit. After we put the

evidence in the kit the kit goes to our office, which gets refrigerated, gets logged, and that evidence gets taken up to SLED in Columbia for analysis.

Q Are you trained in a particular way as to how to collect and seal evidence?

A Yes.

Q And do you treat the evidence the same way every time?

A Yes.

Q That is, you follow the same procedure every time?

A Correct, correct.

MR. WHETSEL: Your Honor, I beg the Court's indulgence. I am going to show him some photographs here momentarily.

(Pause.)

MR. WHETSEL: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. WHETSEL:

Q Trooper Shumaker, I am going to hand you some photographs and ask you if you recognize them, okay?

A Okay.

Q They are State's -- what has been marked as State's 42 through 46.

A These are all photographs of the specimen kit that

night that we used.

Q Do these all accurately reflect that kit?

A Yes.

MR. WHETSEL: The State would move these into evidence.

MR. LEE: No objection.

THE COURT: So admitted.

(Whereupon, State's Exhibit No(s). 42-46 marked for identification and received in evidence.)

MR. WHETSEL: May I publish to the jury?

THE COURT: Yes.

(Exhibits published to the jury.)

BY MR. WHETSEL:

Q Trooper, let me ask you this: When you got there, you directed that a blood sample be taken and there was a medical professional that took that blood; is that correct?

A Yes, sir.

Q And while, while you are observing this, after that blood is taken, what do you do with those two vials?

A Those two vials, we actually, myself and the nurse, I like to do this, while she's there we go ahead and seal the vials. We initial the seals on the vials. Make sure that the vials go in the kit. And we actually make sure that all of the paperwork and vials are all in the kit. And then the kit is sealed.

Q And once you seal that kit, at any point in time do you tamper or mess with that blood sample?

A No, sir. No, sir.

MR. WHETSEL: Your Honor, I'm going to publish a couple of these photos here.

Q I am going to show you two back to back, because there's different angles, Trooper Shumaker. The first being 46. And see if you can -- see if you can -- if you are unable to see it I'll hand it to you.

A Okay.

Q But it may be hard to see. I'll use my finger here to point.

A Yeah, I can see it.

Q Right here, what am I pointing at as far as what is this piece of tape going around the box?

A That's the seal. When the vials are placed in the box that seal is placed on on the outside of the box to keep anybody from tampering with the box. And my initials are on that seal.

Q And I was going to say, do you -- I was going to ask you, do you recognize that as your initials?

A Yes, sir.

Q And this is a different angle of it. And let me ask you this, too, in the second picture here, 42, I am going to take 46 off. Can you see that? It is a separate,

different angles, but is that still the same seal?

A That is -- I can't see.

Q It is hard. Do you want me to hand it to you?

A Yes. sir.

Q Let me do that.

MR. WHETSEL: May I approach, Your Honor?

THE COURT: Yes.

BY MR. WHETSEL:

Q I am going to hand you 46 and 42. And it'll be easier for you to look at it.

A Yes.

Q The question being: Do you recognize the seal and the initials?

A Yes, I do.

Q All right. Is that your initials?

A Yes, on the one page, my initials. The other is -- looks like a date. I can't see the initials on this seal here.

Q But does it appear to be the same seal, like continues over?

A Yes.

Q And what date is on there? If you are able to read it.

A It looks like 7-10 of 2016.

Q So, that would have been the same night that you

took it?

A Same night, yes, sir.

Q Okay. That would have been the purpose of the whole question. I am going to take those back from you.

I'm also going to show you one of these here. We put these in through Ms. Kreisel, but the vials there from this case, when you are talking about that they are sealed, is this what we are talking about?

A Yes, sir.

Q And are you actually watching Ms. Kreisel do this?

A Yes, sir.

MR. WHETSEL: And we will take this back down, Judge.

BY MR. WHETSEL:

Q Almost done, Trooper Shumaker. Once you have evidence -- and you kind of touched on this earlier. Once you have evidence and you need to ultimately get it somewhere to be tested, once you seal it up is there a procedure that Highway Patrol law enforcement commonly use as far as -- we will call it chain of custody -- is that a term that you are familiar with?

A Yes.

Q And just, generally, what does that mean?

A That means even for that night that means the chain of custody means that we need to have a chain of who

is in contact with that specific sample box between the time that it leaves my hands until the time that it gets to SLED.

And we fill out a chain of custody form. Which that night I filled one out because the box went from me to Trooper Cook, I believe, that night. He met me at the hospital. And then he filled out that chain from there to the office, and I don't know where it went -- I mean, it went to SLED, but I don't know who exactly was on that chain after I handed it over to him.

Q Understood.

MR. WHETSEL: Beg the Court's indulgence, Your Honor.

THE COURT: Sure.

(Pause.)

MR. LEE: We have no objection to the chain of custody having been established.

MR. WHETSEL: In that case, I'll mark this as a State's exhibit if that is okay, Your Honor? May I approach, Your Honor?

THE COURT: You may.

BY MR. WHETSEL:

Q Trooper Shumaker, I am going to hand you this document and ask if you recognize it.

A I do.

Q And what is that?

A That is the chain of custody for the vials of blood that went to SLED.

Q For this particular case?

A Yes.

Q And is that typically how evidence is handled in cases like this?

A Yes, sir.

Q So, let's just start from the beginning. So, you were there when the blood was initially drawn?

A Correct.

Q And then you sealed it up?

A Correct.

Q From there what do you do with that box?

A That box, as I stated, I met Trooper Cook outside of the hospital when I left the hospital. And we did the chain of custody with him being the next person to handle the box. And from him it went -- I, like I say, this is the first that I have seen where it all went to. It goes from him to another trooper until we get that box to SLED.

Q Understood.

MR. WHETSEL: May I approach, Your Honor?

THE COURT: You may.

BY MR. WHETSEL:

Q I am going to take that back from you. And then actually, Trooper Shumaker, I have another question. I

think I skipped over this part. The person's whose blood was drawn that particular night, and it was a couple of years ago, but do you recognize that person in the courtroom?

A Yes, sir.

Q Can you identify whose blood was drawn that night?

A Ms. Mary German.

Q And can you just point her out if you would.

A Yes, sir. (Pointing.)

MR. WHETSEL: Let the record reflect that the witness pointed to the defendant.

THE COURT: So noted.

MR. WHETSEL: That is all of the questions that I have of Trooper Shumaker. Thank you.

MR. LEE: No questions, Your Honor.

THE COURT: You may step down. Call your next witness, Solicitor.

MS. STAGGS: The State calls Christopher Wooten.

Thereupon,

CHRISTOPHER WOOTEN

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Give your full name and spell your last name for the court reporter.

THE WITNESS: Christopher Wooten, W-O-O-T-E-N.

DIRECT EXAMINATION

BY MS. STAGGS:

Q Good afternoon, Sergeant Wooten. You work as a Highway Patrol?

A Yes, ma'am.

Q Okay. And what are your job duties there?

A I am the sergeant for Troop 6 (inaudible).

Q As sergeant, what do you do?

A Responsible for trooper's activity review. Reports, check their accuracy. Labeling evidence. Assisting the first sergeant with the work schedules. Court schedules. A lot of administrative duties as a sergeant.

Q Okay, great, thank you. And you were involved in this case in an evidence capacity, correct?

A Yes, ma'am.

Q Okay. And what did you do with the evidence in this case?

A Labeled the evidence, the SLED kit.

Q Okay. Where was it when you put that label on it?

A I retrieved it from the evidence refrigerator from the patrol office in Ridgeland.

Q Is that also known as temporary storage?

A Yes, ma'am.

Q Okay. So, you put the label on, and then what did you do with the evidence once you affix that label?

A I put it back in the evidence fridge.

Q At the temporary storage?

A Yes, ma'am.

Q Okay. Did you tamper with it while it was in your custody?

A No, ma'am.

Q And then did you sign the chain of custody form indicating what you had done?

A Yes, ma'am.

Q Before you put that label on, could you tell if the box had been tampered with in any way?

A The box had not been tampered with in any way.

Q Okay. And do you know who placed the box into temporary storage?

A I would have to look at the chain of custody.

Q All right.

MS. STAGGS: Permission to approach the witness, Your Honor?

THE COURT: You may.

(Whereupon, State's Exhibit No(s). 47 marked for identification and received in evidence.)

BY MS. STAGGS:

Q I'll hand you what's been admitted as State's Exhibit 47. I believe that is the chain of custody form. If you will just look at that to refresh your memory. If

you could tell us who put the box into temporary storage?

A Trooper A.D. Cook.

Q Okay. And after it was put back into evidence, into temporary storage by you, who took it out the next time that it was signed out?

A First Sergeant W.A. Rouse.

MR. WHETSEL: I don't have any further questions. Thank you, Sergeant Wooten.

MR. LEE: No questions, Your Honor.

THE COURT: Thank you. You may step down. Call your next witness.

MR. WHETSEL: Your Honor, the state would call Trooper Conley, John Conley.

Thereupon,

JOHN CONLEY

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Give your full name and spell your last name for the court.

THE WITNESS: It is John F. Conley. It is C-O-N-L-E-Y.

MR. WHETSEL: May it please the Court.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Trooper Conley, good afternoon. What do you do

for Highway Patrol?

A I'm currently assigned to the MAIT team for the coastal region.

Q Were you involved in responding to the specific collision that we are here for today back on July 10th, 2016?

A Yes, I was.

Q Is that located off of Highway 21 here in Beaufort County?

A Yes, it is.

Q Were you the first MAIT trooper on scene?

A Yes.

Q And we don't have to go into specifics, but just generally, what did you do on scene?

A On scene I photographed the scene. And I operated the total station in doing the forensic mapping of the scene.

Q Was Sergeant Booker also out there with you?

A Yes, he was.

Q And this is really the reason that I wanted to have you testify, you are also involved in transporting the blood in this case; is that correct?

A Yes, that's correct.

MR. WHETSEL: May I approach the witness, Your Honor.

THE COURT: You may.

BY MR. WHETSEL:

Q I'm going to hand you State's 47 and just ask if you see your name on that chain of custody?

A Yes, I do.

Q And where did you fall in the chain of custody; what did you do?

A I picked it up at the Ridgeland office from First Sergeant Rouse.

Q First Sergeant Rouse you said?

A Yes.

Q And that was on what date?

A That was on the 12th.

Q Of July?

A Of July, yes.

Q So, about two days after?

A Yes.

Q And that was at what time in the morning?

A 0800.

Q Okay. And then you, you take the box. When you receive it into your custody, was it tampered with in any way?

A It was not.

Q Was it still sealed?

A Yes, it was.

Q And then you give it to who?

A I gave it to Lance Corporal Hawthorn.

Q At the time Lance Corporal Hawthorn, what was his job description?

A He was also assigned to the MAIT team.

Q So, he was one of your MAIT teammates, if you will?

A Yes.

Q And then once Hawthorn receives it, what does he do with it?

A He took it to -- he transported it to the CEO, central evidence.

Q Central evidence, that is up in Columbia?

A Yes, it is.

Q And he would have transported it on what day?

A I am sorry?

Q What day did he transport it to central evidence?

A On the 12th.

Q So the same day that you gave it to him?

A Yes.

MR. WHETSEL: May I approach the witness, Your Honor?

THE COURT: You may.

MR. WHETSEL: I'll take that back from you. Thank you, sir.

(Pause.)

MR. WHETSEL: We have no more questions for Trooper Conley.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. LEE:

Q You said that you did some of the forensic mapping, Conley?

A Yes.

Q Okay. What I was trying to figure out -- were you here when Booker testified?

A Yes, I was.

Q What I was trying to ask him. If I can put this up for everybody to see it. How far is it -- well, are you familiar with where this is? That is the bar and that is --

A Yes.

Q Coming out of this parking lot and going right there to the wreck, how far is that right there in feet? Did you map that?

A I would have to look back to the actual measurements. I don't know.

Q Do you have the measurements for that though?

A It is in the CAD. I have to pull it up.

Q Okay. But you would have the measurement from right there to right there?

A Yes.
Q Do you know where the CAD is?
A It is on my computer.
Q Okay. Do you have any, like, memory of how far it might be, that distance, or that an estimation?
A Not offhand. I would have to --
Q Okay. Do you have your computer with you?
A I do.
Q Okay.

MR. LEE: Your Honor, can we take a short break and allow me to look at that and get back with him?

THE COURT: All right. Let's take a short recess, ladies and gentlemen. I'll remind you that it's too early to begin discussing the case.

(The jury exits the courtroom.)

THE COURT: What do we need to do?

MR. LEE: Can I talk to him real quick?

THE COURT: Yes. We will take a short recess.

(Brief recess.)

MR. LEE: Yes, sir.

THE COURT: We have three more witnesses?

MR. WHETSEL: To be honest, we have three others hopefully will come tomorrow morning if we can get to them. One is an ER doctor who is working now, she is off tomorrow morning. And the other two are SLED

witnesses coming from the lab. Then once we have those two witnesses then I will be out of witnesses. Yes, sir, two more today and I am going to ask to break until tomorrow morning and we can start as early as you want.

THE COURT: Okay. We will explain to the jury.

MR. WHETSEL: Thank you.

(The jury enters the courtroom at 2:45 p.m.)

THE COURT: Welcome back, ladies and gentlemen. I believe that we are ready to return with the witnesses.

BY MR. LEE:

Q Trooper Conley, before we took a break I asked you to look at your computer. I asked you if you could calculate the distance -- and what we talked about doing was, when you are out of the parking lot at the stop bar right there, from there back up there to where the crash happened.

A Yes, sir.

Q Did you do that during the break?

A Yes, sir.

Q With your CAD program, or I don't know what is the proper way to call it.

A CAD program, exactly.

Q Did you determine what that distance is? Not as the crow flies, but as a vehicle drives.

A Yes, approximately 200 feet.

Q 200 feet. Okay. And we heard previously that the speed at impact for the truck was 22.3 miles per hour; correct?

A Correct.

Q Okay. And I think that you heard -- when Sergeant Booker was in here we established the fact that if a vehicle was going 22 miles per hour that they travel 32.25 feet per second. I hate to get into all of this math, but this is the last thing. So, 200 feet at 32.25 feet per second is about 6½ seconds, correct?

A I would have to actually -- it sounds about right. But I would have to actually do the math.

Q Okay, but it is between 6 and 7 seconds.

A Okay.

Q And that would be the time elapsed if it is traveling at 22 miles per hour from leaving the parking lot to the actual crash?

A At a constant speed.

Q Yes. It could be varied a little bit, speeding up or slowing down, but at a constant speed that is that it would be; correct?

A Correct.

MR. LEE: Okay, that is all that I need. Thank you.

THE WITNESS: Okay.

MR. WHETSEL: I am sorry, Your Honor, no more questions for Trooper Conley.

THE COURT: Thank you, sir. You may step down.

All right, sir. You may call your next witness.

MS. STAGGS: Thank you, Your Honor. The State calls Denise Palmer. Denise Palmer, P-A-L-M-E-R.

Thereupon,

DENISE PALMER

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your full name and spell your last name for the court.

THE WITNESS: Denise Palmer, P-A-L-M-E-R.

DIRECT EXAMINATION

BY MS. STAGGS:

Q Good afternoon, Ms. Palmer. Were you with -- first of all, let me clarify: Where do you live?

A St. Helena.

Q Okay. So, here in Beaufort County?

A Yes.

Q And you are the mother of Sher'Mann Palmer?

A Yes.

Q Were you with Sher'Mann on the night of July the 9th, 2016?

A He had a prior engagement.

Q What do you mean by "engagement"?

A He is a musician.

Q Okay. So, he was playing that night?

A (Nods.)

Q When he left, do you know where he was going?

A He was going back home.

Q Where did he live?

A In Columbia.

Q Okay. And that was pretty late at night. Do you know why he was leaving that night instead of in the morning?

A Being a musician they travel at night. And he chose to travel at night. And he has two churches that he plays to on Sundays, 8:00 and 12:00.

Q So, that was pretty early to have to leave?

A Yeah.

Q Okay. And I just have one more question for you, Ms. Palmer. To the best of your knowledge, at the time of his death, was Sher'Mann taking any medications?

A He was taking something, he was supposed to get a tooth pulled. I gave him money to have it pulled and a doctor prescribed a prescription for him to get the infection out.

Q So, like an antibiotic?

A Yes.

MS. STAGGS: Thank you, Mrs. Palmer. I don't have any further questions.

MR. LEE: I don't have any questions.

THE COURT: Thank you. Call your next witness.

MS. STAGGS: The State next calls Jeff Maxwell.

Thereupon,

JEFF MAXWELL

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: If you could state your full name and spell your last name for the court reporter.

THE WITNESS: My name is Jeffrey Maxwell, M-A-X-W-E-L-L.

DIRECT EXAMINATION

BY MS. STAGGS:

Q Sir, what is your rank?

A Lance Corporal.

Q All right. Lance Corporal Maxwell, I just wanted to make sure that I got it right.

A Okay.

Q Where do you work?

A Okay. I work at the Beaufort County Detention Center.

Q Okay. And in what department do you work in

there?

A I work under the intel office. I am the intel officer, to where I take care of the video system, the inmate phone system.

Q Okay. And how long have you worked there?

A Since October of 2013.

Q So, in that intel position, would you be the records custodian, for lack of a better word, for all of those jail calls?

A Yes. Yes, ma'am.

Q So, what does that mean? How do you maintain those?

A We use a company called IC Solutions. And when a person is booked into our facility they are then enrolled. Well, they have a special number that is assigned to them by the jail. And then also a pin number that is assigned to where they can put those numbers in and then have their own account for the phone system.

Q Okay. So, do you maintain all of the detention center calls made in Beaufort County as part of your job?

A Yes, ma'am.

Q And they are maintained in the ordinary course of business?

A Yes, ma'am.

Q And are the inmates told that their calls are

recorded?

A Yes, ma'am. And every time they get on the phone it tells them each time they have the phone accessed.

Q Do you monitor those calls for security purposes?

A Yes, ma'am.

Q You mentioned something called IC Solutions, is every single call made from the jail, obviously except privileged conversations with someone's attorney, is every one of those calls are recorded and saved in that IC Solutions' system?

A Yes, ma'am.

Q And you talked about the PIN number. Does it verify their voice as well?

A Yes, part of the enrollment is that they have to say their name and also say "United States," and it'll randomly pick out those particular. When they put their stuff on the account with their numbers it will ask them to say their name or United States, and if it is a voice match then they will put them -- the call will proceed.

Q Okay. So, that is in addition to that ID number and that pin number?

A Yes, ma'am.

Q So, for example, if an inmate tried to pass the phone to someone else, the software would notice and would flag that?

A Yes.
Q Did you receive a request to pull a jail call in this case?
A Yes, ma'am.
Q And did you make a copy of that call?
A Yes, ma'am.
Q Do you know who made that call?
A German, I believe, last name.
Q And so, it would be flagged, though, if someone else had made that call?
A Yes.
MS. STAGGS: Permission to approach.
THE COURT: You may.
BY MS. STAGGS:
Q I'm handing you what's been marked as State's 48. Do you recognize that disc?
A Yes, ma'am.
Q And how do you recognize it?
A I have initialed and also dated it the 15th of August.
Q So, you have reviewed it prior to today?
A Yes, ma'am.
Q And is it a fair and accurate depiction of the jail calls that you pulled in this case?
A Yes, ma'am.

Q Do you know the date and the time that that call was made?

A I do not recall.

Q Okay. All right. All right.

MS. STAGGS: Your Honor, at this time the State moves to admit State's 48 into evidence.

MR. LEE: No objection.

THE COURT: Granted.

MS. STAGGS: Permission to publish to the jury.

THE COURT: Certainly.

(Jail phone call published to the jury.)

MS. STAGGS: I don't have any further questions. Please answer any questions that the defense may have.

MR. LEE: No questions for the officer. Thank you.

THE COURT: Thank you. You may step down.

MR. WHETSEL: That is all that we have for today, Your Honor.

THE COURT: Ladies and gentlemen, we are apparently going to call it a day for today. As I understand it, one of the witnesses who was scheduled to be here is an emergency room physician who is working in the emergency room and two SLED agents.

MR. WHETSEL: Yes, sir, they are coming from Columbia, correct.

THE COURT: So, we are going to regroup at 9:30 in the morning. And I believe, with our fingers crossed, that we are going to finish this case tomorrow is what I think. So, I am going to ask you to come back at 9:30 in the morning, ladies and gentlemen. I remind you, don't let nobody talk to you about the case and you don't talk to anybody about the case. See you at 9:30 in the morning.

(The jury exits the courtroom at 3:50 p.m.)

THE COURT: Your best guestimate is that it'll take you how long to finish to completion of your case with withering cross examination?

MR. LEE: It hasn't been withering today.

MR. WHETSEL: Yes, sir. My best guess is about an hour. There was one witness that I forgot, but it is short, retired Trooper Todd Cook. He is the last link in the chain before the test goes to SLED. His son was having knee surgery today. But he lives in Beaufort. So, he would be very short. And Jessica Capp, who is the person at SLED who initially opens the box. She is in the chain, but she is very short.

Lindsay Mitchell tests the blood. So, probably Ms. Mitchell, and then the doctor will be the longest. But there is really no exhibits coming in through them, it is just testimony. I think that we will be done

within an hour.

MR. LEE: I'm glad to stipulate as to Trooper Cook. If he wants to have him here, that is fine. But we are not challenging the chain of the blood. But that's up to him. And then we may, we may call my client and we may call her husband. I don't know yet. But that will be the extent of our case, if we present one.

THE COURT: We can finish the presentation of the evidence before lunch?

MR. WHETSEL: I feel confident on that, yes, sir.

THE COURT: You mentioned earlier some jury charges that you had that you were wanting to propose?

MR. LEE: Yes, sir. I don't have it formally done. I have -- I am going to ask for the defense of necessity. I think that it is proper at this point, much less if we put in more evidence. And there is a -- there's one in the criminal jury instructions book, but I was just going to get one straight out of -- there's some pretty recent cases that talk about it. So, I'll be glad to hand those up. I just don't have them in a proper typed-up form.

THE COURT: Well, that is okay.

MR. LEE: But I can get that to you.

THE COURT: I mean, I have one on necessity. But

I guess we are not looking to argue as to whether or not the State feels they should proceed on that.

MR. WHETSEL: I do have a slight distinction, Your Honor, and I will pass the case up. It is between duress and necessity. It is State v Cole, 304 SC 47. And I'm not trying to split hairs, but I think that it's proper to bring it up. The reason why I'm bringing it up is it talks about duress versus necessity and how common law distinguishes between the two. The major difference being that, I think in the case we talked about duress, because it says, I'm quoting from the case, "Duress was said to excuse criminal conduct where the actor was under an unlawful threat of imminent death or serious bodily injury, which threat caused the actor to engage in conduct violating the literal terms of the criminal law. While the defense of duress covered the situation where the coercion had its source in the actions of other human beings."

And then it goes on to say, the defense of necessity, or choice of evils, traditionally covered the situation where physical forces beyond the actor's control rendered illegal conduct the lesser of two evils. Again, it may sound like we are splitting hairs, but I am just looking at this case. I think

that if there is a defense --

THE COURT: I think that they are two different.

MR. WHETSEL: It would be duress, would be my argument, as opposed to necessity.

THE COURT: Two different things.

MR. LEE: State versus Sullivan, 345 SC 169, the defense of necessity should be charged where the evidence shows, one, there is a present and immediate emergency arising without fault on the Defendant's part. The emergency gives rise to well-grounded apprehension of death or serious bodily injury if the criminal act is not done, and there's no other reasonable alternative to avoid the threat or harm except to commit the illegal act. That is necessity.

The State V Cole is necessity, which is a driving case, which is not a duress case. Cole is what started all of this.

THE COURT: I'm getting confused. I thought that the State was saying that they thought that you might be entitled to the necessity charge.

MR. WHETSEL: No, I'm sorry, Your Honor. I think that at this point we are not there. There is still a burden of preponderance. And that being said, if we got there -- all I'm saying is that I think that duress is the appropriate charge. Because what Mr. Lee is

going for is that a person may have pulled a gun, would be the actions of another, which could make it duress as opposed to necessity.

THE COURT: I misunderstood.

MR. WHETSEL: Again, not trying to split hairs, but that is just how I read State V Cole. But again, I think right now being an affirmative defense, there still is a burden, a preponderance burden, and I'm not sure if they are there yet.

MR. LEE: Well, it's not for you to determine whether I have met the preponderance burden, it is whether there's any evidence then you charge, then you charge and then the jury decides that. But Judge, you know, we can argue about it tomorrow. My understanding and reading of the law is that duress is more like you are holding someone's kid hostage and saying, You better go in and rob that liquor store. That is duress, kind of Patti Hurst type of thing.

Necessity, I mean, as the word implies, it is necessary to do something. You are in a situation and you have to act reasonably because you have no other good alternatives. That is what necessary is, plain and simple. Duress is where, essentially, it is taking away the required intent to do something because someone is forcing you to do something, or coercing you

to do something.

THE COURT: All right. We can talk about it tomorrow.

MR. LEE: We can charge both. I mean, it doesn't --

MR. WHETSEL: Your Honor, I would like to pass this case up, if I may.

THE COURT: Sure.

MR. WHETSEL: Just for the Court. Again, State V Cole.

THE COURT: Sure. Any other unusual issues concerning charges?

MR. LEE: I think that we would ask for the inference charge on .08. Assuming that the blood comes in, as I suspect it will tomorrow, at the .27. And I do have that case that cites the statute if the Court needs it.

THE COURT: I don't need that.

MR. WHETSEL: I don't have an objection to that.

MR. LEE: And I think that a Logan -- a circumstantial evidence charge under Logan is probably appropriate.

THE COURT: I am sorry, say it one more time, I didn't hear you.

MR. LEE: I think that a Logan circumstantial

evidence charge -- I think that circumstantial evidence charge needs to be charged, and State V Logan is the prevailing law on that.

And then Dustin said that he wanted inference under 2950 to be charged.

MR. WHETSEL: Yes, sir, the .08 inference.

THE COURT: It is simply an evidentiary fact to be considered.

MR. WHETSEL: Yes, I would like to propose some type of right to act on appearances in conjunction with the other defense, as far as someone can act on appearances what they observe and, you know, just like a self-defense type of right to act on appearances under the circumstances, as long as it is a reasonable way to act, react.

THE COURT: All right. Put it together.

MR. LEE: I'll start working on it.

THE COURT: Assuming, of course, that the case goes to the jury, there wouldn't be any lesser includeds, is there?

MR. WHETSEL: I don't think that there is.

MR. LEE: I looked at reckless homicide and I looked at involuntary manslaughter. I don't think that either felony DUI -- I mean, I don't think that regular DUI or serious bodily injury, because there's no

question that he passed away.

MR. WHETSEL: I think that it's all or nothing, Judge.

THE COURT: All or nothing is what I thought.

MR. WHETSEL: Yes, sir.

THE COURT: What -- in an all or nothing with no lesser includeds, what I oftentimes do is just give the indictment to the jury and have them write on the back of the indictment the verdict, guilty or not guilty, and sign it. I have agreed not to do it if there's some inflammatory language in the indictment that was not necessarily presented. But it seems to me that this indictment is just fairly straightforward.

MR. WHETSEL: Your Honor, you know, I think that the way, you know, that I drafted it was tracking with the statute. I don't think that there's anything inflammatory in it.

THE COURT: All right. What else do we need to do?

MR. WHETSEL: Your Honor, that is all that we have right now.

THE COURT: Probably need to wait until tomorrow to talk to your client about her right to testify.

MR. LEE: Yes, sir. Yes, sir.

THE COURT: All right. The Court is adjourned

until 9:30 tomorrow morning.

MS. STAGGS: Thank you, Your Honor.

MR. LEE: Thank you.

(Trial adjourned for the day. Proceedings continued on 11-15-2018.)

11-15-2018 PROCEEDINGS

THE COURT: Good morning, ladies and gentlemen. Please be seated. I believe we actually are short two or three jurors at the moment.

MR. LEE: Yes, sir.

THE COURT: Is there anything we need to do before the jury comes in this morning?

MR. WHETSEL: I don't think so, unless you want to talk charging or anything. Maybe that's too soon. I don't know. But that's the only thing I can think of.

THE COURT: I think we're gonna probably have to talk about that after we---

MR. WHETSEL: Yes, sir.

THE COURT: ---see where we are.

MR. WHETSEL: Very well.

(Pause.)

THE COURT: All right. All jurors are present. State ready?

MR. WHETSEL: We are, yes, sir.

THE COURT: Defense ready?

MR. LEE: Yes, sir.

THE COURT: Let's bring the jury.

(Jury in)

THE BAILIFF: The jury's in the courtroom, Your Honor.

THE COURT: Ready?

Morning. Welcome back, ladies and gentlemen. I believe we are ready to resume with presentation of evidence by the State.

Solicitor.

MR. WHETSEL: Thank you, Your Honor. May it please the Court. The State would call Todd, Todd Cook, retired Highway Patrol trooper.

Thereupon,

TODD COOK

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please watch your step over here, and speak directly in the microphone. Give your full name and spell your last name for the court reporter.

THE WITNESS: Yeah. My name is Todd Cook. My last name is C-O-O-K.

MR. WHETSEL: May it please the Court, Your Honor?

THE COURT: Certainly.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Mr. Cook, did you use to work with the South Carolina Highway Patrol?

A I did.

Q And how long were you a Highway Patrol trooper?

A Twenty-five and a half years.

Q And have you since retired?

A I have.

Q When you were working with Highway Patrol, near the end of your career, did you work in something called central evidence?

A I did.

Q And just can you tell the jury so they know, what, what is central evidence?

A It's where it's a central location in Columbia, South Carolina where all the evidence for the State of South Carolina is stored as far as with the Highway Patrol, the State Transport Police, and Bureau of Protective Services.

Q And as part of your duties as central evidence, would you ever transport evidence from your facility to SLED?

A I do.

Q And did you do that in this case?

A I did.

MR. WHETSEL: Your Honor, may I approach the witness?

THE COURT: Certainly.

BY MR. WHETSEL:

Q Mr. Cook, I'm gonna hand you two things. I'm gonna hand you what's already been admitted as, as State's

47, which was a chain of custody, and I'm gonna hand you State's 48, which has not yet been admitted, and I'm gonna ask if you recognize it. And then, Mister, Mr. Cook, looking at the chain of custody, do you see your name on there?

A I do.

Q And what was your actions, in this case, as far as transporting this particular blood?

A On a particular case here, I actually logged it out of central evidence facility in Columbia and took it over to Broad River Road to SLED.

Q And you retrieved that from where in central evidence?

A We have a locked facility inside our facility. This, this evidence actually was stored in, inside of a refrigerator, a refrigerator at the time. And on that particular day I logged it out of or retrieved it out of the refrigerator, and took it to SLED, transported it to SLED for evidence.

Q And when you transported it, was that box still sealed?

A It was.

Q And while it was in your custody, was it ever -- did you tamper with it in any way?

A No, sir, I did not.

Q And you retrieved it from the refrigerator. Did Sergeant Frick place that in there initially?

A Yes, sir, he did.

Q And then when you transported it to SLED, did you give it to a technician named Jennifer Aycock?

A I did.

Q And when you, when you go to transfer that to Ms. Aycock, what, what is -- what process happens then?

A Once I get to SLED, the -- Jennifer is, is sitting at a desk. I turn the evidence over to her and, from that point in time, she seals it in a plastic bag. And, once it's sealed, I initial it and put the date on it that it's sealed in front of me.

Q And now I want you to look at 48 now, and ask if you recognize that photograph? And you can, you can look at the lab numbers to match them up.

A Okay.

Q Do you recognize that photograph?

A I do.

Q Does that accurately depict that sealed bag you're talking about?

A Yes, sir, it does.

MR. WHETSEL: Your Honor, we'd ask to admit 48 into evidence.

MR. LEE: No objection.

THE COURT: Motions granted.

(Whereupon, State's Exhibit No(s). 48 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q And then -- may I retrieve the exhibits from the witness? I'm gonna hand you one more and ask you one more question. I'm gonna hand you 42, which has already been admitted. This is just a photograph of the box. Just to clarify, on the left-hand corner, you can see blue marker that says, Sealed 7/14/16 with initials. Whose initials would those be?

A Those are Jennifer's at SLED.

Q So, she initials the box prior to sealing it in the big heat sealed package?

A That is correct.

MR. WHETSEL: May I approach the witness, Your Honor?

THE COURT: You may.

MR. WHETSEL: I have no more questions for Mr. Cook.

THE COURT: Cross-examination.

CROSS EXAMINATION

BY MR. LEE:

Q Have you ever been to the A&J Flea Market -- to the Flea Market at night in the parking lot?

A No, sir, I have not.

Q Have you ever been to the A&J Flea, Flea Market when they're hosting a Grown and Sexy party?

A No, sir, I have not.

Q Have, have you met Mary German before?

A I have not.

Q Have you met Roger Lee German before?

A No, I have not.

Q Okay. So, your only contribution to this case is, is during the chain of evidence, right?

A That is correct.

MR. LEE: Okay. No more questions, Judge.

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

MR. WHETSEL: And may he be released from his subpoena?

MR. LEE: Sure.

THE COURT: Certainly.

THE WITNESS: Thank you, Your Honor.

THE COURT: Yes, sir.

You may call your next witness.

MR. WHETSEL: Your Honor, the State would call Dr. Meghan Cummins.

Thereupon,

MEGHAN CUMMINS

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Thank you, ma'am.

THE WITNESS: Thank you.

THE CLERK: Please be careful coming up. If you'll just speak directly and soundly into the microphone.

THE WITNESS: Okay.

THE CLERK: And give your full name and spell your last name for the court reporter.

THE WITNESS: Okay. My name is Meghan Cummins. It's C-U-M-M-I-N-S.

MR. WHETSEL: May it please the Court, Your Honor?

THE COURT: Certainly.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Dr. Cummins might give it away a little bit, but what do you do for a living?

A I'M an ER physician.

Q And, and where do you work?

A Beaufort Memorial ER.

Q And how long have you been an ER physician?

A I've been an ER physician since 2011. I've worked at Beaufort Memorial since 2014.

Q And your, your medical education, where did you go

to school?

A I went to Medical School at the University of Cincinnati. And I did my residency at MUSC in Charleston.

Q And your residency, what was that in specifically?

A Emergency medicine.

Q Do you hold any type of certifications or, or, or board qualifications?

A I am a board certified emergency physician.

Q Okay. As part of being a board certified emergency physician, do you have to maintain any type of accreditation or any type of annual hours?

A I do, yes. To have a state license you have to have continuing education hours. And then to maintain your board certification you have to have a maintenance of certification, which has multiple requirements.

MR. WHETSEL: Your Honor, we would offer Dr. Cummins as an expert in emergency medicine.

MR. LEE: No objection, Your Honor. We agree.

THE COURT: The witness is so qualified.

BY MR. WHETSEL

Q Dr. Cummins, I want to ask you specifically about a patient that you treated back on July 10th, 2016.

Okay?

A Okay. Uh-huh. (Indicating affirmatively.)

Q And just to kind of give a frame of reference, I

guess, for the jury, and this may be hard, but how many patients do you think you treat annually?

A I see about 20 to 30 patients a day and work about 17 shifts a month. So, I'd have to do the math there, but a lot.

Q Quite a few?

A Yes.

Q Is that fair to say?

A Yes.

Q Okay. And, again, I know you treat a lot of folks. If I ask you a question and you don't know the answer, I got -- I've got your medical report here.

A Okay.

Q You're welcome to reference it.

A All right.

Q But I just want to talk just specifically about a treatment.

A Okay.

Q Did you treat a woman named Mary German on the morning of July 10th of 2016?

A Yes, I did.

Q And did you also treat a patient named Roger German---

A Yes, I did.

Q ---on the morning of July 10th, 2016?

A Uh-huh. (Affirmative).

Q I want to ask about Roger first, and then I'm going to go into Mary. When, when Roger came in, do you recall what his, his physical state was as far as his demeanor?

A He was agitated. Appeared intoxicated. Didn't really have much physically that I could see in the way of injuries.

Q And as part of blood work-up, did you determine a blood alcohol for Roger Lee German?

A Yes.

Q And what was that?

A I believe it was over three hundred.

Q And what would that be kind of in layman's terms if you know?

A A .3. The legal limit to drive is a .08, which equates to an 80 --

Q We'll, we'll stop you.

A Yeah.

Q I don't want to go to that.

A Okay.

Q I just want -- just the actual number.

A Yeah. Okay.

MR. LEE: Your Honor, I would ask that testimony be stricken from the record.

THE COURT: I'll grant that motion.

MR. LEE: There's no sufficient---

THE COURT: Ladies and gentlemen, please disregard the last statement by the witness---

MR. WHETSEL: And just ask for the number only.

THE COURT: ---will be stricken from the record.

THE WITNESS: Sure.

BY MR. WHETSEL:

Q Now, I want to, I want to go into, to Mr. -- Mary German. Do you recall treating her?

A Yes.

Q And how was she transported to Beaufort Memorial?

A By EMS.

Q And when she arrived, do you recall her physical demeanor?

A Yes, she was initially laying on a backboard, and not speaking to us, not responding at all. So, she was actually taken into our trauma bay because we were concerned that she could have a serious head injury, and then, a short time later, she, as soon as we rolled her off of the backboard, she was belligerent, agitated, trying to bite nurses, spitting at us, cursing at us.

Q And I'm not gonna ask about verbal interaction. I just want to ask about---

A Yep.

Q ---you know, physically, what you saw.

A Uh-huh. (Indicating affirmatively.)

Q And when she was brought to the emergency room, did you know what had occurred prior to before? Specifically, was there a type of motor vehicle---

A Yes.

Q ---collision, if you will?

A Yes.

Q So, when she came in, you knew that there was a vehicle collision prior---

A Yes.

Q ---to her coming in?

A Yes, we got a -- as EMS is on their way, they tell us -- give us a report. So, we knew there was a serious vehicle crash.

Q As far as physical injuries, did you note any cuts or abrasions on her?

A Yes.

Q And do you recall specifically where you saw any cuts or abrasions?

A Yes, she had a laceration on the bottom of her right foot, I believe.

Q Was there any other significant lacerations or cuts that you observed?

A Not that I recall.

Q And as part of -- and tell me if I'm wrong, but I'm guessing somebody comes in with a, a traumatic vehicle collision, are you doing some type of triage to figure out what, if anything, is wrong with them?

A Yes. Yes.

Q And as part of that, do you, and I may say this wrong, but is it like a CT scan or something along those lines?

A Yes.

Q And what is that exactly?

A A CAT scan is a radiographic test basically where we see cross-sections of the body to look for internal injuries. And somebody in a, you know, what we believe to be a serious car crash, we'll often do a CAT scan from the head all the way down through the pelvis.

Q Did you perform a CAT scan on Ms. German that evening---

A Yes.

Q ---or early morning hours?

A Uh-huh. (Indicating affirmatively.)

Q Did, did you note any head injury after performing the CAT scan?

A No.

Q Do you recall approximately when she was brought into the emergency room?

A I know it was the early morning hours, but I'd have to look at the chart to remember the exact time.

Q That's okay.

A Yeah.

Q And if I showed you the chart, would it help refresh your memory?

A Yes. Uh-huh. (Indicating affirmatively.)

MR. WHETSEL: May I approach the witness, Your Honor?

Q THE COURT: You may.

Q THE WITNESS: Thank you.

(Pause.)

BY MR. WHETSEL

Q Feel free to take your time.

A Okay.

Q And while you're looking, Dr. Cummins---

A Uh-huh. (Indicating affirmatively.)

Q ---I'm also going to ask you when she was discharged.

A Okay. It looks -- sorry. I'm trying to find the first page here. Oh, there we go. I'm sorry. I'm trying to find the first page where it says -- okay.

Q There's no page number I'm showing.

A It looks like her time of disposition, which is when we decide that she's ready for discharge, was 7:24.

Q Is that the morning of July 10th of 2016?

A Yes. And I'm trying to find her actual time of arrival on here. It looks like my note was started at 1:39 in the morning, and we typically start the notes as soon as the patient arrives. For some reason I'm not finding the actual time on here where it says arrival.

Q And that's okay. I'm just wanted to get a, a general idea of how long---

A Uh-huh. (Indicating affirmatively.)

Q ---she was at the hospital.

A Yeah.

Q So, she was there roughly six hours?

A Yes.

Q And then I'm almost done, Dr. Cummins.

A Uh-huh. (Indicating affirmatively.)

Q When you were finished with your treatment, did you actually develop any medical diagnoses?

A I did.

Q And what were those diagnoses?

A The diagnoses that she had were a laceration, hypokalemia.

Q And what, what's hypokalemia just so we know?

A Low Potassium level, which, when we check labs, sometimes we find abnormalities like that, and alcohol intoxication.

Q So, is it fair to say, based on your medical opinion, she was intoxicated when she came into the hospital?

A Yes.

MR. WHETSEL: Okay. Beg the Court's indulgence.

(Pause.)

MR. WHETSEL: May I approach, Your Honor? Or actually, Mr. Lee, do you want her to hold on to that medical chart?

MR. LEE: Sure.

MR. WHETSEL: Okay. I have no more questions. Mr. Lee may have some for you.

THE COURT: Mr. Lee.

CROSS EXAMINATION

BY MR. LEE:

Q Hey, Dr. Cummins.

A Hey.

Q Good to see you again. Just a few questions. So, you said that when Ms. German came in she was on a, a backboard?

A Yes.

Q And, at that point, she was calm? In other words, she was --

A When she initially came in, one of the reasons we took her into our trauma bay is because EMS was concerned

that she was not---

Q Okay.

A ---talking to them very much.

Q Okay.

A But then, shortly after, she did.

Q All right. And, and, and in talking to EMS or whoever, do, do you understand that both she and Roger struck the windshield with their head, and an unrestrained passenger hit the windshield with their head? Did they tell you that?

A EMS told us that there was spidering on the windshield---

Q Okay.

A ---with hair noted.

Q Okay.

A That was the report they gave for her.

Q Okay.

A They, they did not give me that report for him.

Q Okay. All right. Well, I'm not a doctor, but spidering in front of your -- in, in the windshield, hair in it, probably would indicate, maybe not for me, but it would indicate that, that probably the driver's head hit the windshield, right?

A It could.

Q Okay. And do you know the explanation for the

hair getting in the windshield with the spidering?

A No, I do not.

Q Okay.

A Uh-huh. (Indicating affirmatively.)

Q So, she's calm when she comes in, and then when the -- who, who got her off of the backboard?

A It's a team approach.

Q Okay.

A One person has to hold her neck.

Q Okay. Yeah.

A Because she's in a collar, and then it takes probably four or five of us to---

Q Okay.

A ---roll her so that we keep her spine straight.

Q Like you see on a football field sometimes when they're---

A Exactly.

Q Okay.

A Exactly.

Q All right. So, at that point though, once people start putting their, their hands on her is when she appeared to get agitated, is that right?

A I---

Q When they started moving her?

A I don't recall the exact moment --

Q Okay.

A -- was when we initially put our hands or after we were done rolling.

Q Okay. And she did -- well, from that point, she did at some point, get agitated, like you said, right?

A Yes.

Q Okay. And she became agitated to the, to the extent that someone, I don't know if it's you or not, decided to give her a sedative?

A Yes.

Q Okay. And it's intramuscular Haldol was administered to her twice, right?

A Yes.

Q As well as Benadryl and Ativan?

A Yes.

Q So, all of those were given to her that morning?

A Yes.

Q Okay. Now, are you aware of some recent studies suggesting that IM or intramuscular Haldol is not a good idea for treating agitation?

A No, I am not.

Q You're not?

A Uh-huh. (Indicating affirmatively.)

Q Well, are you aware that some of the side effects of it could be, particularly someone who hasn't had it

before, could be some short-term memory loss and that sort of stuff?

A I mean any sedative that somebody gets, they may lose some---

Q Okay.

A ---time during the time of the sedative.

Q Okay.

A But, beyond that, no, I'm not aware of that.

Q Okay. And, and it might have some, some side effects, I mean everybody's different, I mean some side effects might be not remembering certain things for, for a while, right? Possible side effects.

A I'm not -- I mean, when you're sedated you may not remember the period of time. Just like when you're asleep, you don't remember when you're asleep kind of thing.

Q Okay.

A But, beyond that, I'm not aware of anything, no.

Q Okay. Any type of amnesia effect that Haldol or any type of sedative could have on someone?

A Again, just---

Q It varies?

A ---like what I said, you may not remember that time when you're sedated.

Q Okay.

A But beyond that, I'm not aware of that, no.

Q Okay. How about before that then?

A Not that I'm aware of.

Q Okay. Can, can any type of striking your head or a head injury cause any type of amnesia or short-term memory loss?

A Yes.

Q Okay. In doing the ER, I'm sure you see all kind of patients come in there. Would you agree that some, some patients that come in, some people, are more upset by being touched and probed and prodded than others? Would you agree that some people just don't like being touched?

A Yes, to some extent.

Q Okay.

A Uh-huh. (Indicating affirmatively.)

Q That's all I have, Your Honor. I have no objection to her being excused if Mr. Whetsel does --

MR. WHETSEL: Your Honor, I have no more questions for Dr. Cummins. I'd ask that she be allowed to be dismissed from her subpoena.

THE COURT: Thank you for coming, Doctor. You may be excused.

THE WITNESS: Thank you.

MR. WHETSEL: And I will -- I'll approach and retrieve that record back.

THE WITNESS: Here you go. Thank you.

THE COURT: Thank you.

MS. STAGGS: The State calls Jessica Kapp.

THE CLERK: Good morning.

Thereupon,

JESSICA KAPP

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Thank you, ma'am. If you'll watch your step over here. Please speak directly in the microphone, and give your full name and spell your last name for the court reporter.

THE WITNESS: My name is Jessica Kapp. Last name spelled K-A-P-P.

DIRECT EXAMINATION

BY MS. STAGGS:

Q Morning, Ms. Kapp, or is it Agent Kapp?

A Miss is fine.

Q Okay. Please tell us where you work.

A I work at the South Carolina Law Enforcement Division otherwise known as SLED.

Q Okay. And what do you do there?

A I am a forensic technician.

Q And what do your job duties involved as a forensic tech, technician?

A As a forensic technician, I perform duties such as

evidence inventory. I also perform preliminary drug analysis, and blood alcohol analysis, and I take care of other miscellaneous tasks in the lab such as making buffers.

Q Okay. Will you please explain to the jury what the process of receiving evidence at SLED?

A Yes. So, receiving evidence starts with the submitting agency. They bring the evidence to our evidence log-in department. A unique case number is created for the evidence. Then it comes up to the toxicology department where it is then inventoried and stored in a secured refrigerated location.

Q Okay. So, that means you would, you would log it in to your system?

A Not me personally, but yes.

Q But someone has---

A Yes.

Q ---at that point? Okay.

A Uh-huh. (Indicating affirmatively.)

Q And you'd also confirm that it's sealed at that time?

A Yes, we do confirm.

Q Okay. So, in this case, that same process would of been followed?

A Yes, absolutely.

MS. STAGGS: Your Honor, may I approach the

witness?

THE COURT: Certainly.

BY MS. STAGGS

Q Ms. Kapp, I'm gonna hand you what's been admitted as State's Exhibit 47.

A Uh-huh. (Indicating affirmatively.)

Q When the box in this case was placed into evidence, who did you receive it from?

A I received it from one of our forensic technicians in log-in, Jackie Davis.

Q Okay. And then, at that time, when you received it, was it sealed?

A Yes.

Q Would you have opened it if it wasn't sealed?

A No, I would not of.

Q Okay. And did you, in fact, open that box?

A I did.

Q And what did do you with it?

A I took photos of all important identifying markers, and I wrote the unique case number on each of the blood vials, and initialed. And then I placed it back into the heat sealed tamper-evident pouch.

MS. STAGGS: Your Honor, may I approach again?

THE COURT: Certainly.

(Whereupon, State's Exhibit No(s). 49 marked for

identification and received in evidence.)

BY MS. STAGGS:

Q I'm handing you what's been previously admitted as State's Exhibit 39 through 46, and Exhibit 49. Do you recognize those photos?

A I do.

Q Are those the photos that you took?

A They are.

Q So, once you -- so, you open the box when it comes in, correct?

A Yes.

Q And you'd break the seal?

A Yes.

Q Okay. And then, like I said, you labeled it and then you resealed the tubes?

A Yes, as you see in there, it comes in as a -- in a tamper-evident pouch that the box comes in, and we take out the evidence, photograph it, initial the case number on the evidence, and we place the evidence back in that tamper-evident heat-sealed pouch once the inventory process has been depleted.

Q And then once you do that, where is it stored prior to testing?

A It is stored in a tamper -- in a secure refrig -- secured toxicology refrigerator.

MS. STAGGS: Thank you. I don't have any more questions. Please answer any question Mr. Lee may have.

MR. LEE: No questions.

THE COURT: Thank you. You may step down.

MR. WHETSEL: Your Honor, the State would call Lindsay Mitchell.

THE CLERK: Good morning.

Thereupon,

LINDSEY MITCHELL

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Thank you. Be careful of those steps. Speak directly into the microphone. Give your full name and spell your last name for the court reporter.

THE WITNESS: Lindsay Mitchell. M-I-T-C-H-E-L-L.

MR. WHETSEL: May it please the Court, Your Honor?

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Good morning, Ms. Mitchell. Where do you work?

A I work at the South Carolina Law Enforcement Division commonly referred to as SLED.

Q And, specifically, where at in SLED?

A I work in the toxicology department.

Q And what do you do in the toxicology department?

A I am a, a forensic toxicologist. So, what we do is we analyze biological specimens for the presence or absence of drugs, alcohol, or other poisons.

Q And how long have you worked as a forensic toxicologist at SLED laboratory?

A As a forensic toxicologist, about two and a half years now.

Q And can you tell us what your educational background is?

A I have a Bachelor's Degree in Chemistry as well as a Bachelor's Degree in forensic science from Pace University. And I have a Master's in Professional Studies in Forensic Science from the Pennsylvania State University.

Q And do you receive any type of continuing education within your field?

A Yes, when we start at SLED there's a training process there. We go through -- starting as a technician, we learn drug screens, and blood volatiles analysis. There's a series of lectures and tests that we have to complete as well as competency tests, and a mock court that we have to complete. I've also had the opportunity to go to two Borkenstein classes. I've gone to Borkenstein School for alcohol and traffic safety, and the Borkenstein School on drugs, the effect on human performance.

Q Do you hold any type of certification or

accreditation in the field of forensic toxicology?

A I do not.

Q But based on your training and experience, this -- that's the field that you work in?

A Yes.

Q And, and, approximately, how many biological samples have you tested in your career so far?

A Probably about---

Q Ballpark figure is okay.

A Testing, maybe close to a thousand.

MR. WHETSEL: Your Honor, we would offer Ms. Mitchell as an expert in the field of forensic toxicology.

MR. LEE: No objection.

THE COURT: She's so qualified.

BY MR. WHETSEL

Q Ms. Mitchell, I want to ask if you were the forensic toxicologist that tested blood samples labeled "Mary German" in this case?

A Yes, I did.

Q And before we get to that, when you're testing blood, can you just tell the jury the, the, the technique that you use when testing blood?

A For our blood volatiles testing, which is testing for things such as ethanol, which you're gonna find in your

drinking alcohol, we do a -- we do two types of tests. The first one, we use something called a GCFID. It's gas chromatograph flame ionization detector. That helps give us a number for the concentration of the volatile in the sample. We also use GCMS. That's gas chromatography mass spectrometry. That helps us identify specifically the compound that we're looking at. That it is ethanol or methanol or whatever volatile we're looking for.

Q And, in this particular case, did you actually test two vials of blood that were labeled "Mary German"?

A I tested one of them, but yes.

Q You tested one of those vials?

A Yes.

Q And, and you received those vials from your evidence refrigerator?

A Yes.

Q And when you receive the vial, how, how do you prep it for testing?

A So, what we do is we do batch analysis. So, we're testing multiple samples at one time, but when we retrieve all the evidence from the refrigerator we aliquot or take a small portion of each sample, but we only have one bag or tamper-proof bag out at a time in our hood. So, we open up the bag that we're working on, take out a small sample of blood, put it in a vial, and then close and seal that bag,

initial and date it, and then move on to the next sample. And then that's run on the instrument in that batch.

Q Will your lab test samples that are not properly packaged or sealed?

A We will document if it's improperly packaged.

Q Was that documented in this case at all?

A No.

Q So, this -- as, as far as you know, this was properly packaged and sealed when it came to you for testing?

A Yes, sir.

Q And did you test the vial of blood from Mary German in this particular case?

A Yes, for blood volatiles.

Q And, based on that, did you develop an opinion as to the blood alcohol concentration in that vial of blood?

A Yes, we developed a concentration.

MR. WHETSEL: Your Honor, I, I would offer to admit the results at this time formally.

(Whereupon, Court's Exhibit No(s). 10 marked for identification and received in evidence.)

MR. LEE: I would object based on my previous objection.

THE COURT: Prior objection noted.

MR. LEE: Yes, sir.

BY MR. WHETSEL:

Q And then, Ms. Mitchell, can you tell the jury what your opinion is as to the -- and tell me what it is? Is it blood alcohol or ethanol concentration? What would you refer to it as?

A Blood alcohol concentration or the ethanol concentration. It's essentially the same thing.

Q And what, what would be your opinion as the amount in Ms. German's blood at the time you tested it?

A Do you have the report?

Q I do have a copy of the report.

(Pause.)

MR. WHETSEL: Ms. Mitchell, I'm gonna hand you a report I'm marking as Court's Exhibit 11.

(Whereupon, Court's Exhibit No(s). 11 marked for identification and received in evidence.)

BY MR. WHETSEL

Q And I'll ask if you recognize it?

A Yes.

Q Is that your report in this particular case for Mary German?

A Yes.

Q And then based on it, would you tell me what your opinion is as to her ethanol and or alcohol concentration?

A We found an ethanol concentration of 0.275 grams

per deciliter.

Q So, is that, is that fair to say that's commonly known as .275?

A Yes.

MR. WHETSEL: Beg the Court's indulgence, Your Honor.

(Pause.)

MR. WHETSEL: Your Honor, I have no more questions for Ms. Mitchell. Mr. Lee may have some though.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. LEE:

Q Do you know what the manner in which the blood was drawn, the, the process that was specifically used on this case?

A How do you mean?

Q The person that drew the blood, do you know who that was?

A They're -- they usually document that on the tubes. If I had the picture in front of me, there might be the nurse's name on the tube.

Q Okay. But you don't actually watch them draw the blood, do you?

A No.

Q Okay. So, you don't know what, what they do or

don't do?

A No.

Q Okay. And you don't know whether they use an ethanol or non-ethanol prep before they stick the needle in, do you?

A The kits that are used in this case, they come with a non-ethanol, ethanol wipe.

Q So, you, you just assume that they used that?

A Yes.

Q Because if you use an ethanol wipe it can, it can skew the results, right? That's why you use non-ethanol?

A It wouldn't -- there's -- to go through your skin like that, to absorb through your skin like that from a, a wipe, would not have an appreciable effect on that amount.

Q But there is a reason that they tell you you should use non-ethanol?

A Yeah, just---

Q Okay.

A ---abundance of caution I'm sure.

Q Okay. Can you tell the jury what Mary German's blood alcohol level was at 12:38 a.m. that day?

A If that was the---

Q When she was driving?

A That -- no.

Q There's no way to know that, is there?

A No, unless I know that she was specifically on the down curve of her elimination phase, essentially --

Q Right.

A -- we could back calculate, but I do not know when she had her last drink.

Q Or if she was on the up curve, it would be different, would it not?

A It could, yes.

Q Yeah. And if it's an hour and a half difference, she be -- the absorption phase could be -- it could be a lot higher at -- when you, you tested than when she was driving, right?

A I'm not sure I would say a lot higher, but yeah, it could be higher.

Q It would depend on -- you don't know what she drank? I mean drink---

A You're right.

Q Okay. That's all I have.

Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. WHETSEL:

Q Ms. Mitchell, if you don't know the answer to this, it's okay. Are you familiar with the metabolization of alcohol in a human body?

A Yes.

REDIRECT EXAMINATION OF LINDSEY MITCHELL BY MR. WHETSEL

Q So, if I were to say, hypothetically, somebody were to quit drinking at 12:32, and then you have blood drawn at 2:00, would you expect your results to be higher at the time of 12:32 or lower? As in, will the body metabolize alcohol in that hour and a half if you had quit drinking?

A Yes, it would still continue to metabolize alcohol.

Q Meaning that is it -- would it be fair to say that your blood alcohol would likely be higher than what it would be at the time you tested it?

A At -- from 12:32 to --?

Q Till two o'clock when the blood is drawn.

A Peak alcohol absorption, the peak concentration can occur anywhere from 30 to, if you want to be really conservative, maybe 90 minutes after your last drink. So, if that is about 90 minutes after that, could be she's still on the rise. But if you're looking at somewhere more like 30 minutes, it does depend on the person.

Q But, ultimately, it's not gonna vary that much though?

A I would not think so, no.

MR. WHETSEL: I have no more questions for Ms. Mitchell.

MR. LEE: No further questions.

THE COURT: Thank you, ma'am. You may step down.

MR. WHETSEL: I will retrieve that Court's Exhibit back from her just for the record. Your Honor, at this time the State would rest their case.

THE COURT: Ladies and gentlemen, this is one of these moments I told you about that I will need to ask you to step out of the room for a few minutes while I discuss with the attorneys a matter of law. I hope to be back with you shortly, and remind you it's too early to begin discussing the case. Thank you.

(The jury exits the courtroom at 10:14 a.m.)

THE BAILIFF: The jury's clear, Your Honor.

MR. LEE: Your, Your Honor, I do intend to make a motion for directed verdict at this time, but my client told me she really needs to go to the restroom. Could we---

THE COURT: Sure.

MR. LEE: ---take a five-minute break?

THE COURT: We'll take a five-minute recess.

MR. LEE: Thank you. Thank you.

MR. WHETSEL: Thank you, Judge.

(Break)

THE COURT: And Mr. Lee.

MR. LEE: Thank you, Your Honor. At this time I would like to renew all the previous motions I've made heretofore, and specifically the motion that's been

ruled on a while back of the admissibility of the blood alcohol results of .275 that was just testified to. We would renew our motion on the same grounds raised, that it was a warrantless blood draw that was taken pursuant to 56-5-2946. However, we believe that that statute, as applied in this case, would be unconstitutional. So, I would just renew that at this time. I also would -- I assume that would be denied?

THE COURT: That was denied.

MR. LEE: Okay.

THE COURT: Continues to be denied, right.

MR. LEE: Yes, sir.

THE COURT: I'm sorry.

MR. LEE: I also, at this time, Your Honor, would make a motion for a directed verdict on the charge of driving under the influence, felony driving under the influence with -- resulting in death based on the State has -- had that two point -- .275 not been admitted, I don't believe there would be, be any substantial circumstantial evidence, which is the test under Rule 19, as far as the directed verdict standard. However, even with that -- even with that result in, it is only an inference to be taken in light, in light of everything else. But the statute, Your Honor, under which she's charged, 56-5-2945, states that a person

who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle, and while driving a motor vehicle, does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes bodily injury or death to another person is guilty of the offense of felony driving under the influence.

It's our position that, all they've done, Your Honor, is they've gotten an opinion from an EMT, from a paramedic, and from a police officer -- I mean, from a, a doctor that she was intoxicated. The statute does not, does not say they have to prove she's intoxicated. They have to prove she is under the influence of alcohol to the extent she cannot safely operate a motor vehicle. What that means, under the law, is that her mental and physical faculties must be materially and appreciably impaired to the extent she cannot safely operate a motor vehicle. It's our position that them saying well, she's intoxicated, and using that language is not sufficient under the statute, and that they have failed in, in meeting that element. And, therefore, we think we're entitled to a directed verdict of not guilty.

THE COURT: All right. Solicitor, briefly.

MR. WHETSEL: Your Honor, I think, I think there's ample evidence. I think Satori Williams, who interacted with Ms. German right before she drove away, she testified that she was staring through her. She didn't even think she was even hearing what she was saying. You have the paramedic who treated her minutes after who gave an opinion, as an expert, that she was intoxicated. You have the doctor that treated her less than an hour after who diagnosed her with alcohol intoxication. That's not even counting the .27 that was already testified to.

I think you couple that with the fact that she drove across the median and into on-coming traffic clearly demonstrates that her driving was impaired by her -- by her intoxication level. So, I think that, that's a point of contention, but the other elements itself I think they're given ample evidence in the record, in the record, that she was driving a motor, a motor vehicle based on multiple witness accounts, that she did an act that was unlawful, which is she crossed over the median into on-coming traffic driving left of center on a four-lane highway.

There's photographs. There's maps, animation video, et cetera, et cetera, and that, as a result of that, Sher'mann Palmer lost his life that, that night.

And I think that's all supported amply by, by evidence in the record.

THE COURT: The Court agrees with the argument and position by the State, and, therefore, is compelled to deny the motion for directed verdict.

Any other motions from, from anybody for that matter?

MR. LEE: No, sir.

MR. WHETSEL: Not from the State, no, sir.

THE COURT: Would this be a good time for me to talk to your client?

MR. LEE: It would, Your Honor, and I will tell you that I have spoken with her, and, at this time, it is her intention to testify.

THE COURT: Okay. Ms. German, at this time, I'm going to explain to you certain of your rights, and if you don't understand anything that I say, please let me know. If you want me to explain anything in more detail, please let me know.

Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: We have now reached the stage in the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United

States, and that amendment states, in part, as follows: That no person shall be compelled, in any criminal case, to be a witness against himself.

This means you cannot be required to testify. You have the right to testify. However, no one can make you testify, and this is a personal right that you have. No one can waive, waive this right except you. If you decide to testify, you will be subject to the same rules that govern other witnesses. You'll be examined and cross-examined on any relevant issue in the case.

In addition, if you have any convictions, convictions involving dishonesty, or for false statements, or for crimes punishable by imprisonment for more than one year, and the Court determines that the probative value of admitting that evidence outweighs its prejudicial effect to you, the Solicitor would be able to introduce your record to attack your credibility.

Pausing there for a moment, it's my understanding there, there is no such evidence.

MR. WHETSEL: She has a minor prior record, but nothing that I think would qualify as a---

THE COURT: Nothing that the State would attempt to use?

MR. WHETSEL: Correct.

THE COURT: Okay. If you decide to testify, the decision on your part must be freely, and voluntarily, and intelligently made with the knowledge of the protections given to you by the Fifth Amendment, and the consequences of your decision to testify. If you decide not to testify, I will instruct the jurors that they cannot give that fact, the fact that you didn't testify, any consideration whatsoever. There's to be absolutely no prejudice to you because you did not testify. It's left entirely up to you as to whether or not you testify. You may talk with your attorney, family, friends, or anyone else. But the final decision's left up -- entirely up to you.

Do you understand what I've said so far?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about anything I've said?

THE DEFENDANT: No, I don't.

THE COURT: Have you discussed with your attorney as he said a moment ago---

THE DEFENDANT: Yes, I have.

THE COURT: ---your right? And have you decided?

THE DEFENDANT: Yes, sir.

THE COURT: Your decision is?

THE DEFENDANT: To testify.

THE COURT: To testify. All right. Thank you, ma'am.

THE DEFENDANT: Thank you.

THE COURT: Is everybody ready?

MR. LEE: Yes, sir.

MR. WHETSEL: Yes, sir.

THE COURT: Let's bring the jury in.

THE BAILIFF: The jury is entering in the courtroom, Your Honor.

(The jury enters the courtroom.)

THE COURT: Welcome back, ladies and gentlemen. If you recall, before we took our break, the State had rested its case. The defense now has the right and the opportunity to present evidence should the Defendant decide to do so although the Defendant is not required to introduce any evidence.

Mr. Lee.

MR. LEE: Thank you, Your Honor.

The Defense calls Roger German.

Thereupon,

ROGER GERMAN

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please speak directly into the microphone. Give your full name and spell your last name for the court reporter. Try to get a little closer.

THE WITNESS: Roger Lee German. G-E-R-M-A-N.

DIRECT EXAMINATION

BY MR. LEE:

Q Good morning, Mr. German. You seem a little nervous. If you need to stop or whatever, let us know. Okay? Are you nervous?

A Yes, sir.

Q Okay. Why are you nervous?

A I'm in court. This, this is important.

Q All right. All right. Do you know Mary German whose been sitting next to me all week?

A I do.

Q Okay. How do you know her?

A That's my wife.

Q Okay. How long have y'all been married?

A Since 1999.

Q Okay. How long have y'all been together?

A About 26 years.

Q Okay. And do you have any kids together?

A We do.

Q Okay. How many?

A Three.

Q Okay. And what are their ages?

A Seventeen, 22, and 27.

Q All right. And do any of your children still live with you?

A They do.

Q Which ones?

A My son and my daughter. My youngest, which is 17, my daughter, and my son, which is 22.

Q Okay. Y'all have any grandkids?

A We do. We have one.

Q Okay. How old?

A He will be three December.

Q He will. Okay. And where does he live?

A He lives with us.

Q Okay. And where do y'all live?

A In Myrtle Beach.

Q Okay. How long have you lived in Myrtle Beach, approximately?

A Four or five years.

Q Okay. All right. And what, what do you do for a living up there, Roger?

A I am a cabinet maker, installer.

Q Okay. And what does Mary do for a living?

A By trade, she is an electrician.

Q An electrician. Okay. All right. And in, in a typical week, how many days a week do, do the both of you work?

A Six or seven.

Q Okay. All right. Is it kind of a paycheck to paycheck life?

A Exactly.

Q Okay. All right. And did y'all go on mini-vacations?

A Not for a long time.

Q Okay. And is it because you work a lot?

A Yes, sir.

Q Okay. And when you do go on, I'll use the word "vacation", what do y'all typically like to do?

A Road trips, see sites, go places we haven't been.

Q Okay. And when you say "road trips", in 2016, in July, did y'all come down to Beaufort?

A Almost.

Q Almost. Okay. And, and what was the, the reason for coming down to Beaufort?

A My wife and I were involved in a state program with the National Parks to be an Ultimate Outsider---

Q Uh-huh. (Indicating affirmatively.)

A ---to visit all of the historical landmarks, national parks, and federal parks. So, we headed this way

to Hunting Island.

Q So, it's called the Ultimate Outsider?

A Yes, sir.

Q And, and what in, what in Beaufort is on the list or on the checklist to do for the Ultimate Outsider?

A Hunting Island.

Q Hunting Island?

A Yes, sir.

Q Okay. Which is almost to Fripp Island, south of, of here, is that right?

A I didn't make it.

Q Okay.

A We didn't get there.

Q Okay. But that's where you were going?

A Yes, sir.

Q Okay. All right. Can you walk us through a little bit about your day that day prior to, to the reason we're here? Can you kind of walk us through your day starting in Myrtle Beach that morning?

A Just kind of prepping and packing, and we were going to hit as many national parks and/or, you know, places. They, they give you a book --

Q Uh-huh. (Indicating affirmatively.)

A -- and at each place you get a stamp. So, we just kind of had prepped for anywhere from a two to three or

maybe longer, you know, up to maybe seven days if it worked out.

Q Okay. So, when you left Myrtle Beach, you weren't sure how long you were gonna be gone for?

A No, sir.

Q Okay. You were gonna try to stay a few days depending on whether you could be out of work for a few days, right?

A Correct.

Q Okay. And when you say prep and pack, how do y'all prep and pack for that type of road trip?

A A lot of it's spontaneous, but it's just provisions. We intend to do some camping. Fishing.

Q Okay.

A Sightseeing. So, just the prepping food, and just clothing, and, and things for travel.

Q Okay. And, and what vehicle did you travel in?

A My wife has a Dodge pick-up truck with a camper shell on the back.

Q Okay. And so the provisions and, and packing were, were in the, in the back there?

A They were throughout the truck.

Q Okay.

A It was a quad cab. They were in the back seat, and in, in the back of the---

Q All right. What type of camping gear did you have?

A Everything from sleeping bags, air mattresses, lanterns. Just I, I would imagine typical things you would need to---

Q Any tents?

A Yes, sir.

Q How about in the way of food, did you pack any food or drinks or anything?

A Yes, sir.

Q What did you take?

A Probably more, more than what we needed. Snacks, meals, meats---

Q Okay.

A ---packed in a cooler.

Q Okay. And when you go on these road trips, do you typically stay in the truck or, or camp in a tent rather than stay at a hotel or a motel?

A With the national park thing we were doing, most of it was camping, or sleeping in the back of the truck, or popping up a tent.

Q Okay.

A Just kind of took it as it came.

Q Okay. Did you have a grill in the truck?

A Yes, sir.

Q Propane?

A Had a propane stove.

Q Okay. So, how many times do you think in the past y'all have, have gone on a road trip and either slept in the cab of the truck or in the, in the back of a truck or slept in a tent? How many times y'all done that?

A From the time we been together?

Q Yeah.

A Hundreds.

Q Okay. So, it's pretty common for y'all to do that?

A Yes, sir.

Q Okay. And, and y'all are pretty much equipped to deal with whatever? I mean, you can pretty much stop anywhere and you can stay without having to do much preparing, right? You have everything ready?

A Pretty much fully self-sustained.

Q Okay. All right. So, let's go back. I think this is on a Saturday. You left Myrtle Beach Saturday morning?

A Yes, sir.

Q Okay. And where did, where did you go first?

A Edisto Beach.

Q Edisto?

A Yes, Edisto Beach, yes, sir.

Q Okay. All right. Where you had started from. All right. So, what were you doing in Edisto?

A We're getting a stamp from one of the---

Q Oh, this same adventure thing you're talking about?

A It's Edisto State Park.

Q Okay.

A You know, collect a stamp.

Q Okay. So, you went to Edisto that afternoon/evening from Myrtle Beach?

A I'm not sure of the time.

Q Okay.

A I probably don't have -- wear a watch. I didn't---

Q Okay.

A I didn't keep track of time.

Q Okay. But you went to Edisto, saw the place, and you left Edisto at some point?

A Yes, sir.

Q Okay. And tell -- did anything happen after leaving Edisto that was significant?

A We were significantly delayed as to a part -- due to a pretty severe car wreck.

Q On that one road in and one road out?

A It was only one road in and one, one road out.

Q Okay.

A So, we actually -- it was on the way in. So, of course, the park closes and anybody that was there had to leave.

Q Right.

A But we -- after the accident, it took four, five, six -- it took a very long time, hours, before the accident was cleared.

Q Okay. So, at that point, you're, you're or six hours behind your -- what you wanted your schedule to be, right?

A Yes, sir.

Q By the time you get through?

A Yes, sir.

Q Okay. And so what time approximately would you say that it was when you got through the, the, the traffic jam, accident at Edisto, and started heading towards Beaufort? What time around do you think that was?

A Evening, dark.

Q Okay.

A I mean the, the sun, you know, had, had set. I do believe the park was about to close.

Q Okay. So, this is July 10th. So, the sun probably sets at nine o'clock or so. So, will you tell -- after that?

A It was late. That sounds about right.

Q Okay. And so once you got through the, the, the holdup, where did you drive next?

A To our next destination. We headed towards the Hunting Island.

Q Okay. But, again, you're five or six hours behind schedule?

A Yes, sir.

Q Okay. And did you drive out onto Highway 17 and come into 17 -- into Beaufort on 17, and take a left on 21 coming into town?

A My wife was driving, yes, sir.

Q Okay.

A That's the way we went.

Q Okay. What -- did you stop anywhere between Edisto and Seabrook ultimately?

A We did.

Q Where did you stop?

A I found out -- that was at A&J Flea Market.

Q No, I'm talking about before that, Roger.

A No, sir.

Q Okay. Did you see any place to stop between here and there?

A There -- no, it's a pretty long stretch of empty road---

Q Okay.

A ---with nothing much on it.

Q Okay. And so when you came, when you came into -- on 21, this was the first place that you saw that looked like you could stop?

A Yes, sir.

Q Okay. And what, what made y'all decide to, to stop here, at A&J Flea Market?

A Basically the delay in our day. We had just decided to get a place to stop, figure out kind of what to do next.

Q Okay. So, you didn't have any hotel reservations?

A No, sir.

Q Okay. It -- do you -- when y'all go on trips, you typically go to hotels?

A Not very often, no, sir.

Q Okay. Do y'all typically go to chain restaurants like Applebee's when you go, or do you look more for like the local flavor type of stuff?

A I would say more like local flavor --

Q Okay.

A -- or we pretty much have our own provisions, snacks, and whatnot with us.

Q All right. Well, what struck you about this place on that night, though, late at night that you decided you

were gonna stop there?

A It just seemed like a little bar or place to maybe stop and get a drink and --

Q Okay.

A -- figure out what to do next.

Q And where did you park your truck?

A At that establishment.

Q Okay. Was there anybody else in the parking lot?

A No, sir.

Q Okay. Did you think that that might be the place, in fact, that y'all spent the night, and get up the next morning and go to the -- to go to the beach?

A Ultimately, you know, we had, we had come to about that conclusion that we didn't know where we were or where we were going.

Q Uh-huh. (Indicating affirmatively.)

A We, we had pretty much realized that the next State Park would probably be closed --

Q Uh-huh. (Indicating affirmatively.)

A -- where, you know, we had intended on most likely camping there.

Q Okay.

A So---

Q At that -- I'm sorry. At that point, did it look like a safe place to stop?

A Yes, sir.

Q Nobody there?

A No, sir.

Q Okay. All right. So, you pull in there and you go inside the place, right?

A Yes, sir.

Q All right. Tell me what happened when you went inside.

A We went in and had a beer.

Q All right.

A We ordered a beer and I got a beer.

Q Okay. Now, who was in there when you went in?

A There was a gentleman and a lady, and the place was pretty empty. It -- not a very big place, but a fairly empty place.

Q Uh-huh. (Indicating affirmatively.)

A Just a little bar, and we had sat down and ordered two beers.

Q Okay. Have any problems with anybody, anybody say anything to you, anything like that?

A No.

Q Okay. All right. And, and time wise, do you know about what time this is?

A No, sir.

Q 10:30ish, maybe 11:00, something like that? Do

you---

A Could be.

Q Okay. But the time it took you to drive from Edisto to, to there? All right.

A Correct.

Q All right. So, you, you ordered a beer for each one of you, and, and did you have anything else to drink?

A We did.

Q Okay. And, and how did you come to, to have anything else to drink?

A We had sat down and ordered the beer, and my wife had mentioned that she's not really a beer drinker. She wished she could of had a mixed drink.

Q Uh-huh. (Indicating affirmatively.)

A And then we were offered the opportunity to purchase and all you can drink bracelet for $10.

Q And who offered you that opportunity?

A The lady sitting at the corner of the bar.

Q Okay. And did you, in fact, buy an all you can drink bracelet?

A Yes, sir.

Q Okay. And where, where, where were you -- where were they serving the, the liquor, at the bar where you got the beer?

A No, sir, they told us we had to go around the

corner in the establishment --

Q Uh-huh. (Indicating affirmatively.)

A -- to a different location for liquor.

Q Okay. And where, where exactly was that? Was it -- it was on the property? It was just in the---

A It was in the same building. It was just -- it was more back toward -- to me, it looked to be -- they served alcohol through like a kitchen window.

Q Okay. All right. And did you, in fact, get some drinks from the kitchen window?

A Yes, sir.

Q Okay. Do you know what they were ordering?

A They had several different types of alcohol. I never asked for it.

Q Yeah, but you don't know -- I mean you don't necessarily know that's what you got? I mean --

A No, sir.

Q And they were just free pouring it?

A Yes, sir.

Q Okay. All right. Did you go -- when you went in there, did you know that there was a, a private party that was getting ready to start?

A No, sir.

Q Had you ever heard or seen anything on social media about Isa and Muck's Grown and Sexy Bash that was

going on that night?

A No, sir.

Q Okay. So, you weren't going there to go to this, right?

A No, sir.

Q Okay. Do you know Isa or Muck?

A No, sir.

Q Do you know anybody in Beaufort?

A No, sir.

Q Okay. All right. So, that -- time went on and, and you, you had -- you and Mary both had a few more drinks. Were there more people that started showing up?

A It was empty for a while.

Q Uh-huh. (Indicating affirmatively.)

A But eventually the place became extremely packed.

Q Okay. All right. Do you or Mary smoke cigarettes?

A We do.

Q At any time did you leave to go outside to smoke a cigarette?

A Yes, sir.

Q Okay. Did -- how many times did that happen during the night you think?

A Once, maybe twice.

Q Okay. So, you left, went outside, came back in?

A Yes, sir.

Q Okay. All right. Was there music playing?

A Yes, sir.

Q Okay. Did -- was there anybody, was there anybody dancing or doing anything like that at the, at the place?

A No.

Q Okay. Did you, at any point, dance?

A We did.

Q Okay. And did you have any interaction with anybody there other than, than y'all talking to each other?

A No, just the person at the back bar serving liquor.

Q Okay.

A And just to go back to get another drink.

Q Okay. All right. At any time during the time that you were there, did, did anybody say anything to you or Mary that, that, that you were worried about?

A Not initially, but as the place became packed --

Q Uh-huh. (Indicating affirmatively.)

A -- we were made to feel unwelcome.

Q You were made to feel unwelcome?

A Yes, sir.

Q And how were you made to feel unwelcome?

A Well---

Q And I realize there may be some language. I mean

this is Court. So, we got to keep it real. So, I mean if you -- if somebody said something, you can say it in Court. We understand.

A There was a lot of things said to me. You know, I believe to my wife as well.

Q Uh-huh. (Indicating affirmatively.)

A I was called a white bitch. I was asked, you know, what, what the fuck was my white ass doing there by several other people in the bar.

Q Uh-huh. (Indicating affirmatively.)

A You know, at one point I had actually gotten shouldered---

Q Uh-huh. (Indicating affirmatively.)

A ---by a fellow. The atmosphere became intense, hotly -- hostile towards me and my wife.

Q Did, did you start to feel concern for you, you or her -- her safety?

A Yes, I did.

Q Okay. Did anything -- and what, and what, if anything, eventually led to you actually leaving the inside of the bar?

A The shoulder nudge was, was a good sign, but the continued comments calling me a, a white this or that.

Q Uh-huh. (Indicating affirmatively.)

A And I told my wife we had, we had to leave.

Q Okay.

A You know, we're not welcome here.

Q Okay. All right. Did anything happen -- I, I believe there was some testimony about a, a beer bottle dropping. Did any -- did that happen to kind of speed things up in you getting out of there?

A It, it, it may have. My wife drops a, a beer real -- initially hung on to that initial beer, and we had moved to a small table just by ourselves.

Q Uh-huh. (Indicating affirmatively.)

A And, and she had dropped the beer on the dance floor, and, again, there was more racial comments directed at us.

Q Okay. How long after the beer dropped did you and her head out the door?

A I'm not sure of the exact time, but not long thereafter.

Q Okay. All right. When, when you were inside, before you went outside, did you feel concerned for your safety?

A Mine and my wife's.

Q Okay. Did---

A More -- after dropping the beer, things escalated, and the -- it, it, it became a hostile environment.

Q Okay. Were you being hostile back to anyone?

Were you saying anything back? Were you doing anything that would be considered---

A No.

Q ---aggressive or dangerous?

A No.

Q Did you do anything to bring on those type of comments and those type of threats?

A No, sir.

Q Okay. When you left that -- when you, when you were inside going outside, were you concerned for your safety?

A Yes, sir.

Q And Mary's?

A Very much.

Q Okay. All right. Now, once you got outside, did that alleviate your concern---

A No.

Q ---once you got outside?

A Things went from bad to worse.

Q From bad to worse once you got outside?

A Yes, sir.

Q Okay. Your truck's still parked there?

A Yes, sir.

Q Okay. Do you still have the option of staying, spending the night there?

A No, sir, that's not a possibility.

Q Okay. Now, when you were going out, was anybody following you out?

A There were people that came out with us.

Q Came out with you.

A I kind of tried not to look behind. It was -- we wanted to leave.

Q All right.

A It was, it was, it was time to go.

Q Okay.

A Just -- we didn't -- we shouldn't of -- not supposed to be there.

Q Okay. And when you say it went from bad to worse, how did it get worse from being inside to being outside?

A When we got out -- got into the parking lot, the parking lot had just as many people as the inside of the establishment. Kind of, kind of a gang or, or doing whatever they were doing.

Q Uh-huh. (Indicating affirmatively.)

A But people came out and left the establishment with us. My wife and I went to the truck. We had noticed that the parking lot was now completely full of vehicles and people.

Q Completely full of vehicles and people?

A Yes, sir.

Q Okay. Out in the parking lot?

A Yes, sir.

Q And you hadn't realized that it had filled in like that because you'd been inside for a while, correct?

A Correct.

Q Okay. And we were unable to get out of our parking spot due to the placement and the amount of vehicles---

Q Okay.

A ---that were there?

Q Any, any other -- were you still feeling threatened or concerned for your safety at that point?

A People followed us to our car --

Q Okay.

A -- still making comments, and going back and forth between themselves --

Q Uh-huh. (Indicating affirmatively.)

A -- and making comments towards us. So, I -- my wife kind of panics. I mean, I think we were both in like a panic mode --

Q Right.

A -- to leave or we had to -- it just -- we were panicked.

Q Okay. Was there a, was there a clear route out for the truck to go?

A No.

Q Okay. So, so, who, who, who got in the driver's seat?

A My wife.

Q Okay. And what did you do because the, the truck was blocked in?

A I was gonna see if I could find, you know, some way somebody could move a car or, you know, to help us get out of there.

Q Right.

A That wasn't a possibility.

Q Okay. So, you were outside the car?

A Yeah.

Q Outside the truck?

A Yes, my wife---

Q Okay.

A ---remained in the truck.

Q Okay.

A People had gathered around our truck as I stepped away, and then people had approached me --

Q Uh-huh. (Indicating affirmatively.)

A -- and, and pretty much surrounded me.

Q All right. And I know you said shouldered in, in the bar. Did -- at any point, did anybody try to hit you or hit you outside in the parking lot?

A Yes, sir. Actually they had, they had come around me and made more racial comments, and then there was a fellow who had swung on me, and I fell to get out of the way of the swing. And then he came to kick on me, and I rolled away.

Q Uh-huh. (Indicating affirmatively.)

A And then I stood up, and, as I was standing up, the fellow next to him pulled out a gun, and pointed a gun to me, and I put my hands in the air.

Q Uh-huh. (Indicating affirmatively.)

A And then he said -- then it was just a mob of people around the both of us.

Q Okay. So, somebody swung at you, kicked you, and then somebody else pulled a gun on you?

A Yes, sir.

Q Okay. What kind of gun was it? Pistol, rifle, shotgun?

A Pistol.

Q Okay. Pistol. All right. And the person that pulled the gun on you, do you remember what he looked like or what he was wearing or anything?

A He was a black male, and I, I do recall white sweatpants.

Q White sweatpants. Okay. Did you say anything to him or anybody else that would cause them to want to fight

you, hit you, kick you, shoot you?

A No, sir.

Q Okay. All right. And this -- so then you said you put your hands up like that?

A Yes, sir.

Q Okay. All right. What, at this time, is, is Mary doing?

A I was worried because there were people around the truck, and people around me. I started to lose a little visibility.

Q Uh-huh. (Indicating affirmatively.)

A And I could hear my truck running and revving and people hollering at her and me. I'm not exactly sure what she was doing. I was kind of being herded away from my truck.

Q Uh-huh. (Indicating affirmatively.) Physically?

A I couldn't go toward my truck any longer.

Q Okay.

A I was, I was being forced away.

Q What, what, if anything, were people doing? Not the guy with the gun. What were the other people in the crowd doing in response to the guy with the gun?

A Laughing. Making jokes.

Q Laughing?

A They got -- the guy swung at me, and then I'm not

sure what they said.

Q Uh-huh. (Indicating affirmatively.)

A But he went to kick me, and I rolled.

Q Uh-huh. (Indicating affirmatively.)

A So, I, I, I don't know if they were his friends or what, but they started laughing---

Q Uh-huh. (Indicating affirmatively.)

A ---at him.

Q Uh-huh. (Indicating affirmatively.)

A And then, after that, I just put my hands up and I, I -- all I said to everybody around me, I just want to leave. I just want to leave.

Q What, what did you think was gonna happen, Roger?

A They were gonna shoot me.

Q You thought you were gonna get shot?

A Or, or something was happening to my wife that I didn't know about.

Q Were you concerned that they might shoot her?

A They might. I didn't know what was happening with my wife at that point. There were so many people around me and so many people around her.

Q All right. Did you have a gun?

A No, sir.

Q Did she have a gun?

A No, sir.

Q Did you have a gun in the car?

A No, sir.

Q Okay. Do you carry guns?

A No, sir.

Q Okay. Do you know why the guy did not ultimately shoot you?

A He may have been distracted. My wife had come around with the truck.

Q Uh-huh. (Indicating affirmatively.)

A I heard her come around, and she pulled right up along side of me, threw open the door and yelled, Get in.

Q Okay.

A And I did.

Q Okay.

A Just that quick.

Q Can you describe how she seemed at the time?

A Frantic, panicked, scared.

Q Scared for you and for her?

A Yes, sir.

Q Okay. And did you ultimately get in the truck?

A I did.

Q Okay. Did, did the guy shoot at the truck at any point?

A I don't know.

Q Were you concerned he might shoot at the truck?

A Absolutely.

Q Okay. Were you concerned -- you know, were you, were you thinking you had to get out of there so you wouldn't, you wouldn't get shot at?

A Absolutely.

Q Okay. What do you think would of happened if y'all would of stayed?

A We would of died. We would of been shot.

Q Okay. Now, the doctor came in earlier and said that, when you got to the hospital, that, that you had a blood alcohol reading of .30, and she thought that you were intoxicated. You had had something to drink that night, right?

A Yes, sir.

Q And, and probably more than you had planned on, right?

A Perhaps.

Q Okay. Does the fact that you had that much to drink affect your ability to remember what happened, and what went down at that place in that parking lot?

A I'll remember that forever, and -- no, no, whatever I drank or whatever I had to drink, that's something you don't, you don't forget.

Q Why don't you forget it or don't remember it?

A I see it all of the time.

Q When do you see it?

A Everyday I see it. There's not a day that goes by, and with tragedy events that followed it, this is something you'll never forget about.

Q When, when they published the, the videos, how did, how did that affect you? Had you seen them before?

A No, sir.

Q You hadn't seen the wreck or the --

A No.

Q Do you still remember that?

A I don't remember the wreck.

Q Okay. Did you have a cell phone that night?

A Yes, sir.

Q Did you have it or Mary have it?

A We left it in the truck.

Q You left it in the truck?

A Yes, sir.

Q Okay. So, it would not have been an option to call 9-1-1 when this guy was pointing a gun at you?

A No, sir.

Q Okay. Even if they had been able to get there within a reasonable amount of time, which, again, that wasn't an option, right?

A I don't think I'd of had the ability to dial it.

Q Okay. Was it an option to try to run away from

the vehicle then?

A No, there was no where to run to.

Q Okay. Did you know where you were?

A No, sir.

Q Would you know where to run?

A No, sir.

Q Okay. Going inside wouldn't have helped then, would it?

A No, sir.

Q Okay.

A There was no returning inside.

Q Okay. So, was it safe to say that this, this quaint, almost vacant place did a complete 180 from when you got there until when you left?

A Yes, sir.

Q Okay. And do you remember how long it was when you were finally got out of that parking lot and get away from them before the, the crash happened? Do you remember how long it was?

A No, sir.

Q Okay. I think there was some testimony it might of been six, seven seconds at that speed. You don't remember that?

A No, sir.

Q Okay. All right. I know you and your wife been a

long -- been together a long time. Do you remember talking to her on the jail call that was played earlier?

A I do.

Q Okay. And that's you calling -- I guess she had to call you though, right?

A Yes, sir.

Q Okay. And that was the next morning?

A Yes, sir.

Q Okay. And, and, and you, you talked about the, the situation in the parking lot, right?

A I did.

Q Okay. Now, in talking to her and knowing her for a long time, would, would you say that she seemed to be -- how would you describe Mary when you were talking to her on the phone that next morning?

A Confused, a little disoriented, a little in shock, a little in disbelief.

Q Uh-huh. (Indicating affirmatively.)

A And scared.

Q Okay. There was some testimony that she had been administered two doses of Haldol, and some Benadryl, and some Ativan. Well, you know her. Does she typically take prescription drugs?

A My wife has had three children and wouldn't accept as much as an aspirin. She doesn't take any type of, of

pills or, or drugs.

Q Okay. So, so, she has no resistance built up to any type of pharmacological drugs or anything like that?

A She really doesn't like to take antibiotics because she says she may need them later in life.

Q Yeah.

A If she takes them now, they won't work later.

Q Okay. All right. Do you believe that the, the Haldol and the prescription drugs given to her that night at the hospital, because she was agitated from people touching her, do you think that affected her when you talked to her on the phone?

MR. WHETSEL: Objection. Speculation.

THE COURT: Sustained.

MR. LEE: I'll, I'll try to change it.

BY MR. LEE

Q Did she seem a little bit different on the phone?

A She did.

Q Okay. Because there was, there was some statement -- you talked about the guns, and, she -- you said, you know, something about the guns, and you said you remember all those guns, and she said no, no, but I knew something was going on? Remember that?

A I do.

Q Okay. All right. Now, since -- in the two --

more than years since this happened, have y'all spoken about this, this?

A A lot.

Q Okay. All right. And has, has she spoken about the gun?

A Yes, sir.

Q The same gun you're talking about?

A Yes, sir.

Q Okay. And do you believe that she remembers that?

MR. WHETSEL: Objection. Speculation.

THE COURT: Yeah, I'll sustain the objection.

MR. LEE: Okay.

BY MR. LEE:

Q Roger, what would you have done different that night if you could go back and re-do it?

MR. WHETSEL: Objection. Relevance.

MR. LEE: I'll reask it.

BY MR. LEE:

Q Had you known, had you known the reputation and situation at this establishment, would you have gone there in the first place?

A Absolutely not.

MR. LEE: No further questions, Your Honor.

THE COURT: Cross-examination.

MR. WHETSEL: Thank you, Judge.

CROSS EXAMINATION

BY MR. WHETSEL:

Q Morning, Mr. German. I think it's fair to say there's some stuff we can agree on, and there's some stuff we can't agree on. Let's start with the stuff we can agree on. Okay. On July 9th of 2016, you and Mary German drove from Myrtle Beach on your way to Beaufort, correct?

A Yes, sir.

Q And just to clarify, Mary German is the woman sitting beside Mr. Lee; correct?

A Yes, sir.

Q And that's your wife?

A Yes, sir.

Q And then the photos we've seen of the crash showing the red/burgundy truck, that truck belongs to your wife, Mary German?

A Yes, sir.

Q And she was driving that night?

A Yes, sir.

Q At the time of the crash?

A Yes, sir.

Q When you pull into A&J Seafood, you said that the parking lot was not very full, correct?

A Yes, sir.

Q And then you walk inside, correct?

A Yes, sir.

Q Now, Mr. Lee asked you if you had a few drinks at the bar, correct, a few, a few alcoholic drinks?

A We had beer at the, at the bar, and you had to go in the back of the establishment, establishment to get liquor.

Q But I mean the total time you were there, you did consume alcoholic drinks?

A Yes, sir.

Q And I want to be specific about that. You actually had one beer, correct?

A Yes, sir.

Q And then you had at least, in your best estimate, four to six pineapple and rum liquor drinks?

A Yes, sir.

Q Is that fair to say?

A Yes.

Q And your wife, Mary German, she also had a beer, correct?

A Yes, sir.

Q And then she also had, in your best estimation, four to six vodka drinks; is that correct?

A Yes, sir.

Q Now, as far as the timing, you testified on direct that you left Edisto, it was getting dark, and Mr. Lee

suggested maybe around nine o'clock in the evening; is that correct?

A Yes.

Q And is it fair to say from where you were in Edisto to Archie's A&J Seafood, it would of taken you approximately an hour to get there?

A Correct.

Q Would you agree with me on that?

A I would.

Q That's so we're trying to condense our timeline a little bit. So, is it fair to say you got there between 10:00 and 10:30?

A Sounds fair.

Q That, that -- on the evening of the 9th?

A Correct.

Q And then you go to leave, you and Mary German, you both leave a little after midnight? Is that fair to say? Cause just to understand -- you've been in the courtroom the whole time, correct?

A Yes, sir.

Q So, I mean you've heard all the evidence, correct?

A Yes, sir.

Q You've heard the 9-1-1 calls, correct?

A Yes, sir.

Q You've heard the testimony, correct?

A Yes, sir.

Q So, you are at -- you and Mary are at Archie's for roughly an hour and a half to two hours, somewhere in that timeframe. Is that fair to say?

A Yes, sir.

Q Now, prior to getting to Archie's, at least before you got stopped in Edisto, the plan was to go all the way to Hunting Island; is that right?

A Edisto and then Hunting Island, yes, sir.

Q To make sure I'm clear, but before -- cause you got stuck in Edisto for some period of time?

A Correct.

Q But before you got stuck in Edisto, the plan was to drive all the way to Hunting Island that night?

A Yes.

Q But you got stuck in Edisto. So, you were unable to get to Beaufort until later in the evening; is that right?

A Yes, sir.

Q So, at that point, you stopped at that bar, Archie's, to try to formulate a plan as to what to do that night; is that right?

A Yes, sir.

Q And that plan, at least based on my understanding, was you may have stayed at a hotel; is that right?

A It could of been an option.

Q That could of been an option. But you didn't have any particular reservations that night; is that correct?

A No, sir.

Q Though you did know where you were. Is that fair to say?

A No, it's not.

Q You had a phone with GPS on it, correct?

A Yes, sir, that gives you a long line with an arrow that's -- I was where the arrow was.

Q So, you could have figured out how close to a hotel or motel you were from that particular location, Archie's?

A Yes, sir.

Q But during the formulation of this plan, you and Mary consumed anywhere from at least four, all the way up to six or more liquor drinks in about an hour and a half or two hours; is that fair to say?

A Okay.

Q I'm asking. Is it yes or no?

A Yes, sir.

Q So, at that point, really, the only plan is, is to either stay there in your truck or to drive away; is that right?

A Correct.

Q Or you could have called a cab; is that right?

A I wouldn't call a cab.

Q But you could have?

A Yes, sir.

Q Do you make it a practice to camp in your truck in private parking lots?

A Yes, sir.

Q So, that's something you typically do?

A Yes, sir.

Q In private establishments is to sleep in your truck?

A Gas stations, rest stops, state parks, somewhere off to the side of the road. I wouldn't pull in somebody's residence in their driveway and sleep overnight. But we've done it several times.

Q So, your testimony is that your plan that night, after consuming that many drinks, was to just sleep in your truck?

A Yes, sir.

Q In the parking lot of this bar?

A Yes, sir.

Q You testified earlier on direct that, when you first got there, it was not a very busy bar; is that fair to say? There weren't a lot of folks there?

A Yes, sir, that's correct.

Q And you stayed about, again, an hour and a half to two hours; is that right?

A Yes, sir.

Q And over that period of time it became busier, more people came inside the bar?

A Yes, sir.

Q And is it fair to say that the bar we're talking about, it's, it's really not that big; is that fair to say?

A Yes, sir.

Q I mean really it's probably about the size of this courtroom right here I mean in total; is that fair to say?

A Yes, sir.

Q Approximately?

A Yes, sir.

Q So, you're there for about an hour and a half to two hours really with no issues; is that right?

A Yes, sir.

Q And then, at least your testimony is, until we're getting closer to midnight, around that timeframe, somebody has said something to you that makes you feel uncomfortable?

A There was more than just one person, but yes, sir.

Q So, at that point, you decided to leave; is that right?

A Yes, sir.

Q Did anybody ask you to leave?

A No, sir.

Q So, you decided on your own accord just to leave the bar?

A Yes, sir.

Q And, and what I mean is nobody said, hey, you have to go?

A Not in those exact words.

Q Now, walk me through this a little bit. When I said earlier there's some things we can agree on, and some things we can't, this is the part that it seems like we can't agree on is that when you get out in the parking lot, your testimony is that you get surrounded by a group of African-American males?

A Yes, sir.

Q And that somebody swings on you?

A Yes, sir.

Q And I -- make sure I understand right, they, they swing on you, but how do you avoid the punch? Do you, do you kind of move? Do you fall to the ground? Like how do you avoid getting hit?

A I went to move out of the way of the punch and fell.

Q Okay. And how many people were surrounding you?

A I didn't count, but a lot. By a lot, I mean eight, ten or more?

Q Okay.

A Not two, three. A lot.

Q A lot. Eight to ten or maybe more African-American males are surrounding you?

A Yes, sir.

Q And, at this point, Mary is in the truck in the driver's seat?

A Yes, sir.

Q I'm sorry. I'm asking. I, I -- at least, on your -- to your knowledge, your testimony is, is she with you or has she already gotten into the Dodge truck at that point?

A She was in the truck.

Q And when we saw the pictures, this Dodge, it's, it's a large vehicle; is that fair to say?

A Yes, sir.

Q And Mr. German, would -- based on Dr. Cummins' testimony, she said, when you came to the hospital, that your blood alcohol was a, was a 31, a .31. Based on how much you drank that night, does that sound accurate to you?

A Isn't that what the doctor said?

MR. LEE: That's stipulation right there. I don't know how he can testify to that.

THE COURT: I sustain the objection.

MR. WHETSEL: I'll rephrase it, Your Honor.

BY MR. WHETSEL:

Q Were you intoxicated that night on alcohol?

A I would suppose.

Q Now, I'm not saying that to make you feel bad. I want to understand your frame of mind at the time this is happening. Okay?

A Okay.

Q So, you get swung on and you're able to kind of move out of the way, and you fall to the ground, correct?

A Correct.

Q And, at that point, your testimony is that somebody tries to kick at you?

A Yes, sir.

Q And then, and if I'm, if I'm remembering this right, this is when Mary's in the truck, and then she comes around the corner and tells you to get in?

A About that time. You know, not when the guy swung on me and kicked on me. After, after, after the fellow tried to kick on me, but they were joking, and then I, I don't know if the guy just had enough, got mad, but he pulled a gun. And then my wife had come around the corner.

Q That's why---

A Or wherever she was. I don't know where my wife was. I really wasn't focused on where my, where my wife was.

Q Well, were you beside the truck when you were on the ground, and this, and this---

A Further away from the---

Q ---gentleman was trying, trying to kick at you?

A No, I wasn't beside my truck. I was further away.

Q Okay. That's what I'm trying to, I'm trying to visualize here, and I can't quite wrap my head around it. So, you walk out in the parking lot with the intention to leave, correct?

A Yes, or at least get, get in the truck.

Q To, to at least get in the truck. You, you and Mary are together and you're trying to leave the bar?

A Correct.

Q At some point you get surrounded by a group of males?

A Correct.

Q And, at this point, Mary's not with you, correct?

A Correct.

Q So, she's in the truck?

A Yes.

Q So, that's what I'm trying to understand. So, if she's in the truck, and we heard testimony as to where the truck was parked -- and, I guess, let me ask you. Based on your recollection, the treeline beside the bar, the truck was backed up in that treeline; is that right?

A I don't really recall exactly where we were parked. I -- we just parked when we got there, and when we got back out I really didn't take time to notice where we were parked. So, I don't have an accurate account of exactly where my truck was parked.

Q But when you first pulled in, there were no other -- there weren't many other vehicles in that parking lot?

A That's right.

Q And so was that truck backed up then, like backed up into as far in the parking lot against the trees as you could park up -- park back up into?

A From the front of the -- so I'd have to say no. There were cars in front of me, cars beside me, and cars behind us.

Q Okay. So, so, you were surrounded by vehicles?

A Correct.

Q But this is after you get back out. This is when you're going to leave you're saying is when---

A Yes, sir.

Q Okay. So, this, this is what I'm trying to understand is you get surrounded by this group of males, and then Mary's in the truck; correct?

A Correct.

Q So, where, where are you in relation to the truck?

A I'm not sure. I was a little disoriented.

Q So, somebody pulls a gun on you and, at that time, Mary comes around the corner, as you said, in the truck?

A Yes.

Q Now, we saw the map of the bar, and we saw some photographs kind of depicting the bar. When you say "around the corner," that's what I'm trying to understand. Like where, where's she coming from?

A From wherever her car was parked I would imagine. Wherever the truck was. She showed up. The door opened up. I got in.

Q So, from wherever she's parked, you're not near the truck, but she's able to come around the corner at the time this gun's getting pulled on you?

A Yes, sir.

Q Now, do you have a recollection of when Mary hits Alesia Johnson's car, which you heard the testimony of, that she has a dent in her bumper from where the truck hit it?

A My wife didn't hit her car.

Q I'm sorry, sir?

A My wife never hit another car at that point.

Q At that point. Okay. That's what I'm trying to understand. So, do you recall her hitting another car as she's trying to exit the parking lot?

A I didn't see it.

Q Okay. But your testimony is that you are surrounded somewhere in the parking lot, somebody pulls a gun on you, and, at that time, your wife comes around in the truck and tells you to get in?

A Yes, sir.

Q And, at that point, she speeds away; is that fair to say? Speeds away quickly, drives away quickly?

A My last recollection is jumping in the truck, shutting the door, and then coming to at the hospital.

Q So, you say you have no recollection from the point of leaving the parking lot until waking up in the hospital?

A Correct.

Q But you have a crystal clear recollection of the events that occurred in the parking lot?

A Yes, sir.

Q And where did you get into the truck?

A Excuse me?

Q Where -- like where did you -- did you get in the passenger's side or in the back?

A Passenger's---

Q Where did you get in the truck?

A ---side?

Q The passenger's side of the truck?

A Yes, sir.

Q Mr. German, you testified, while Mr. Lee was getting -- asking you questions, he asked you, if you wouldn't have left that night, what would have happened, questions like that, and your answer was something along the lines of we would have died. We would have been shot. Is that right?

A Yes, sir.

Q Are there bullet holes in that truck? Did anybody shoot at you?

A I didn't look at the truck for bullet holes. I don't know if anybody shot at us.

Q Did you hear any shots?

A No, sir.

Q Well, let me ask you this. I mean you were here for the testimony, correct?

A Yes, sir.

Q You have heard Alesia Johnson's 9-1-1 call, correct?

A I did.

Q So, for those three minutes or so when she's reporting that this truck has just hit her car and is trying to leave the parking lot, there's about three minutes in there before the actual crash happens; is that right?

A If you say it is.

Q Well, I am saying it is, but you heard it; is that

right?

A I don't know if that's right. I don't know that lady. I -- we didn't hit her car when we said she hit her car. So, I, I can't make any comment on that.

Q So, the time on the 9-1-1 call when Alesia is reporting that her car's been hit, in those three minutes, is the same time, it's got to be, is the same time that you're surrounded by these men with guns, and is jumping in the car and speeding away; is that right?

A Sure. Now, I don't know if that's right or not. I don't know when she was making the call. I, I didn't see her make the call. I don't, I don't believe what she said in that call is true that I heard in this courtroom.

MR. WHETSEL: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. WHETSEL

Q Well, let's try to clarify, Mr. German, cause I am very confused. Help me out here. Would you agree this is the bar that we're talking about?

A Yes, sir.

Q Would you agree up here, with the P, where Ms. Williams put a P, is the parking lot, if you will?

A Okay.

Q I'm asking.

A Yes, sir.
Q And then she had a checkmark here near the treeline. I'm pointing on the left-hand side of the P on State's Exhibit 1 was the recollection of where the truck was parked; is that your recollection as well?
A Again, I don't recall where the truck was parked.
Q You don't remember where you were parked in the parking lot?
A No, sir.
Q Is it fair to say it's a relatively small parking lot?
A It is.
Q So, this is where I'm trying to understand is the truck's parked somewhere in the parking lot?
A Yes, sir.
Q Where are you when you're surrounded by the, by these men?
A I don't know. Outside.
Q Where at outside? I'm showing you a map. I don't under -- tell me---
A I don't know. I don't know.
Q So, these three minutes while Alesia's on the phone with 9-1-1 reporting the, the dent, the fender bender to her car, you're being surrounded by these men where?
A Somewhere in the parking lot.

Q And this---

A Not, not in -- I can tell you not at the front door.

Q So, so, not the front?

A Not---

Q Okay.

A I can tell you not around the front door. I, I don't, I don't know.

Q So, it has to be somewhere where the P's labeled?

A If it has to be that, then it has to be that.

Q I'm asking.

A It sounds like you were telling me. I, I don't know.

Q Well, sir, you're testifying. You tell me. Where, where are you standing?

A I don't know is what I'm telling you. I don't know.

Q Okay.

MR. WHETSEL: I have no more questions, Your Honor. Thank you.

THE COURT: Redirect?

MR. LEE: Nothing else, Your Honor.

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

MR. LEE: Your Honor, the Defense would call Mary

German.

Thereupon,

MARY GERMAN

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: Thank you. Watch your step. Give your full name and state (sic) your last name again.

THE WITNESS: Mary German. G-E-R-M-A-N.

DIRECT EXAMINATION

BY MR. LEE:

Q Good morning, Ms. German.

A Good morning.

Q You realize that, as someone who's charged with a crime, that you can't be forced to testify; correct?

A Yes, sir.

Q Okay. And you realize that, if you choose not to testify, that the jury is to be told by the Judge that they can't hold that against you, right?

A I understand.

Q It's called your Fifth Amendment right?

A Yes, sir.

Q Okay. And so you, you don't have to testify if you don't want to; right?

A That's correct.

Q Okay. And, and the jury will be told that they

can't hold that against you or think anything about it, right?

A Yes.

Q Okay. But you're -- you want to testify, do you not?

A I do.

Q And why do you want to testify?

A I want everyone to know what happened that night.

Q Okay. Do you have anything to hide?

A The truth. Excuse me?

Q Do you have anything to hide?

A No, sir.

Q Okay. And you know that, by testifying, that not only will I get to ask you questions, but the Solicitor, just like they did with Roger, will get to ask you whatever questions they want, right?

A Absolutely.

Q Okay. And you still want to testify?

A I do.

Q All right. Okay. I went through a lot of this stuff with Roger about y'all. Y'all been together 26 years?

A Yes, sir.

Q Okay. And how would y'all des -- how would you describe your relationship with him?

A Soulmate, best friend. Spend seven days a week,

24 hours a day together.

Q Okay.

A And I don't ever recall wanting to be apart.

Q And---

A We work together. We live together. We raise our children together.

Q And you both are in the construction business industry.

A Yes, sir.

Q So, a lot of times y'all work the same job sites?

A We always work on the same job sites.

Q You do?

A Yes.

Q Okay.

A Throughout the years, there's been a couple of jobs that I've taken---

Q Uh-huh. (Indicating affirmatively.)

A ---you know, for financial reasons---

Q Uh-huh. (Indicating affirmatively.)

A ---maybe insurance benefits or whatnot for our children.

Q Uh-huh. (Indicating affirmatively.)

A But for the majority of our life, we've worked together.

Q Okay.

A You know, electrician and carpenter, they make a pretty good pair.

Q Right.

A And, in-between, we do everything.

Q Okay. And---

A A lot of people say -- want to know how we can do it. It takes a, a real special relationship for that.

Q Okay. All right. We've kind of gone through the, the way that day went and everything like that, but two of your children live with you; is that right?

A Yes, sir.

Q And a grand, grandson?

A Yes.

Q Okay. Your youngest daughter who has the grandson, does she work?

A She does.

Q Where does she work?

A She works at an aerospace place.

Q Aerospace?

A She makes harnesses for airplanes.

Q Okay. All right. Does she have any plans to go in the military?

A She did. Right now I don't know that that's gonna happen. You know, we care for the baby. We raise the baby.

Q You do?

A Yes.

Q Okay.

A She was young. She was 13 when she got pregnant.

Q Okay.

A So---

Q All right. But if she goes in the military, who, who's supposed to watch the baby? You?

A Yeah.

Q She's put that on hold --

A Yes, sir.

Q -- because of this case? All right. Let me -- let's fast forward a little bit so we don't have to go from the Myrtle Beach to Edisto to Seabrook thing. Let's, let's just start with your -- you and Roger are coming down 21 into Beaufort, and see, see this place that we've seen. I think it's called -- referred to as a dive bar in the Solicitor's opening. What made you -- did you see it from afar? Did you drive by it? Did you hear about it? Why did you stop there?

A So, we left Edisto, and we were driving, and there was nothing. As far as I was concerned, we drove so long with nothing around. I thought that was it. The first thing we came across was this building, and it had lights on it. It looked like a bar. I thought it -- one with a little pool table inside. It looked like a spot where no

one was, and it would look like -- a little dead place. We passed it. As I passed it, I noticed it.

Q Uh-huh. (Indicating affirmatively.)

A And I made a U-turn, and we came, and I said, Let's sit here, and we'll have a drink, and we'll figure out what we're gonna do for the night.

Q Okay. And do, do you possibly what time that was?

A I know exactly what -- well, within a very good approximation. At Edisto, at that accident that had happened earlier, it just started to rain. There was an accident in front of us. We hadn't reached the park yet.

Q Uh-huh. (Indicating affirmatively.)

A They detoured us in, and let us into the park.

Q Uh-huh. (Indicating affirmatively.)

A At that time, we went ahead and walked the beach, and got our stamp, and gave it some time, hung out on the beach for a little while cause we knew they were cleaning up the accident mess. I thought we could leave. But when we came back out, we were stopped. Traffic was backed all the way up, and it was backed up for a long time.

Q Uh-huh. (Indicating affirmatively.)

A There was no getting out of the traffic. At 9:30 something, the, the police opened the road back up. So, in other words, they, they detoured us in. They let us go in from the one way, but they would not let us back out. And

we sat there till -- it was just after 9:30. I know this because I was, you know, upset that we missed that next stamp.

Q Right.

A When you -- then we drove.

Q Okay.

A So -- and that's from the township of, of Edisto. So, it was a minimum of an hour.

Q Okay. So --

A So, it would of been about 10:35---

Q 10:00, 10:30?

A ---something like that.

Q Okay. And, and, again, what -- was it the first place that had lights on---

A That was it.

Q ---that was opened?

A That was the only place.

Q Okay.

A That was the only place between Point A, and, and where we stopped.

Q Okay. Had you ever been to Beaufort before?

A No, sir.

Q Okay. So, you didn't know what---

A I don't know.

Q ---laid---

A No.

Q Nice part---

A That's part of our road trip. You just don't know what's ahead.

Q Okay.

A And, you know, we had mentioned -- he had mentioned when we left it was so late. What are we gonna do now? You know, you're not getting your stamp, and I said, well, we'll head that way, and we'll get it in the morning then. And he said, well, what do you -- where do you want to crash? And I said, if we pass a hotel, maybe we'll grab one, and we didn't.

Q Uh-huh. (Indicating affirmatively.)

A And as far as I was concerned, that was all that I was gonna see for the remainder of the drive. That was it.

Q Okay.

A I mean I just saw nothing but just open land. That was all.

Q Okay. You talking about along 17 and then---

A Yeah. Oh, yeah, yeah. I said there's not even a gas station.

Q Yeah. Or at least one that's open, right?

A Right.

Q All right. So, you go into -- you go into the A&J's, and tell me what your initial thought is.

A I, I thought I was gonna see a pool table and, you know, like a -- I mean just a bar. Maybe a jukebox.

Q Uh-huh. (Indicating affirmatively.)

A And when I opened up the door, it was not like that at all.

Q Okay.

A It looked like a, a -- some kind of a disco club. A little nicer looking than I expected to see---

Q Uh-huh. (Indicating affirmatively.)

A The first thing I saw was a lady sitting on a stool---

Q Uh-huh. (Indicating affirmatively.)

A ---with a blue dress on.

Q Uh-huh. (Indicating affirmatively.)

A And the second thing I saw was a man standing in the corner behind her.

Q Uh-huh. (Indicating affirmatively.)

A I saw a bar with bar stools, and a very young man behind that bar.

Q Uh-huh. (Indicating affirmatively.)

A There was a DJ over in the right-hand corner, and a couple tables with two seaters beside each table, and no else in the building except for, once we turned the corner---

Q Uh-huh. (Indicating affirmatively.)

A ---there was an old man in a chair with a cane.

Q Uh-huh. (Indicating affirmatively.)

A And there was a person behind a back bar.

Q Uh-huh. (Indicating affirmatively.)

A It was made out of plywood.

Q Okay.

A So, other than that, in that building, I saw no one else.

Q Okay. So---

A And in the parking lot, no one else.

Q Did, did you think that the place was getting ready to close down?

A I absolutely thought that. That's why I selected that spot. I thought this was it. We'll go in, and I didn't even know if they were open. Some places leave the light on---

Q Right.

A ---the open sign on.

Q Right.

A And they're not even open. So, the fact, when the door opened, we went in --

Q Uh-huh. (Indicating affirmatively.)

A -- I was gonna have a drink, and we were gonna talk---

Q Okay.

A ---and hang out. We didn't have anywhere to be till the morning.

Q Okay.

A I mean the park doesn't open --

Q So, you weren't on any schedule? You didn't have any reservations?

A No.

Q You didn't have any obligations to anybody?

A No.

Q Okay. I know there was testimony earlier about, in the past, y'all have crashed, for lack of a better word, in, in parking lots---

A We'll pitch---

Q ---and rest areas?

A ---a tent anywhere.

Q Okay.

A We have a tent. We push the top button. It goes poof.

Q Okay.

A I have a bed roll in my -- bed rug in my truck --

Q Uh-huh. (Indicating affirmatively.)

A -- which we, we paid quite a bit of money for.

Q Uh-huh. (Indicating affirmatively.)

A It's a very thick cushion. It's -- and it -- and we bought it with the, the camper shell --

Q Okay.

A -- for that specific reason.

Q Is there enough room in that truck to sleep in the, in the back?

A Oh, absolutely.

Q Okay.

A It's a -- it's made -- we've been complimented on our, our camping by people who spent a lot of money on campers before.

Q Right.

A Like, wow, you guys got it going on up in there.

Q Okay.

A We have screens in the windows.

Q Not exactly roughing it when you're, when you're in the truck, huh?

A Yeah, it really isn't that bad. It's pretty nice.

Q I think they call it glamping---

A Yeah.

Q ---for glamorous camping?

A Yeah.

Q All right. So, so, you go inside. You pretty much have the place to yourself, and then kind of fast forward us a little bit---

A Okay.

Q ---as to what, what changed.

A The first thing we did was we went in, and we, we ordered two beers and two shots, and the guy gave us two beers. We paid for two beers.

Q Uh-huh. (Indicating affirmatively.)

A Then the -- he said -- he looked at us and said, if you want shots, you got to go back over there and buy a bracelet. And I looked back and I saw the lady with a cigar box. And I gave her the $10 and she---

Q Uh-huh. (Indicating affirmatively.)

A ---gave us the bracelet. Put it around our wrist for us, and then she directed us where to get the, the liquor.

Q Uh-huh. (Indicating affirmatively.)

A We walked through another doorway. Off to the right was the bathrooms, and behind a plywood wall was a bartender---

Q Uh-huh. (Indicating affirmatively.)

A ---which turns out to be Archie Wearien, and he had probably four or five types of liquor bottles. All of them were open. And then he poured those into a cup.

Q I'm sorry. Sorry about that. Okay. All right. So, then you got the bracelet, all you can drink, ten bucks, two bracelets?

A Right.

Q Okay. And, obviously, you know -- y'all started

drinking some, right?

A Yes.

Q Okay. Were you interacting with people in the club? Were you just---

A There was no one in the club.

Q Okay. So---

A I was interacting with my husband.

Q Okay.

A That's what this trip was about.

Q Okay. All right.

A We grabbed a table. First table in the corner.

Q Okay.

A We danced.

Q Right.

A And we were holding each other, and hugging each other.

Q Okay. So, y'all were getting away from the, the two kids and the grandkids?

A Oh, yeah.

Q Yeah. Okay.

A Yeah.

Q Okay.

A We were staring at each other.

Q Okay. All right. At any point did you drop a beer bottle?

A Oh, yeah.

Q Yeah. When was that?

A So, at some point the place apparently was filling up around us.

Q Uh-huh. (Indicating affirmatively.)

A I was really not paying much attention to who was coming in. I knew there was people -- it was getting -- there was people coming in, you know.

Q Right.

A It wasn't like I thought. I thought the place was getting ready to close down.

Q And they're just opening up?

A Instead it was getting ready to open up.

Q Yeah. Okay.

A And so I knew there was people there, and I wasn't focused on those people. I wasn't there for those people. I was focused on my husband.

Q Uh-huh. (Indicating affirmatively.)

A We were dancing. We were drinking, you know, went back, got another shot, more dancing. And then I dropped a beer bottle.

Q Uh-huh. (Indicating affirmatively.)

A It busted on the floor, and my husband's tapping me on -- the next thing I remember, you know, is he's tapping me on the shoulder. I'm bent over and I'm trying to

pick up the glass.

Q Uh-huh. (Indicating affirmatively.)

A He's tapping me on the shoulder, and Mary, Mary, Mary. Come on. It's time to go. It's time to go.

Q Now, had you heard anything up to that point as far as comments or anything---

A At that point, I wasn't pay attention.

Q Okay.

A Once he said that, I looked around.

Q Uh-huh. (Indicating affirmatively.)

A And when I pulled my head up and looked around, I could hear people saying stuff. I heard one, one lady very loudly say, Who the fuck is this white bitch, and---

Q Was there anybody else that could be directed to in the bar?

A Excuse me?

Q Was there anybody else in the bar---

A Oh, no, no.

Q Okay.

A No.

Q Do you know who it was that said that?

A A lady off to my left. So, there was a table over here. That was where we were.

Q Uh-huh. (Indicating affirmatively.)

A And there was a table over here. Like I said, I

hadn't noticed where anybody else really was---

Q Uh-huh. (Indicating affirmatively.)

A ---until that point.

Q Uh-huh. (Indicating affirmatively.)

A I looked over and she said -- that's when she said that, and then I looked at my husband, and I realized why he's tapping me on the shoulder, and he's, he's insistent, Mary, it is time to go. Please, leave the bottle. Please.

Q Uh-huh. (Indicating affirmatively.)

A Just get up. Come on. And that's when we made our way towards the---

Q Did you hear any other comments that he had heard?

A I heard a lot of comments. Everyone was -- everybody was moving towards us then. Kind of felt mobbed at that point.

Q Did you feel threatened?

A Oh, I felt threatened.

Q Did you feel scared?

A Oh, I was terrified.

Q Were you scared about being injured or attacked---

A I could---

Q ---or assaulted?

A Oh, absolutely.

Q Okay.

A I was surrounded by people I didn't --

Q Did you and Roger have anybody else there that you knew or that were friends that would help you?

A No.

Q Okay. Did you know a single person in the bar other than Roger?

A Not at all.

Q Okay. All right. And then there was -- he testified that it went from bad to worse. So, if that's bad and you feel terrible, how does it get worse in the parking lot?

A It got so much worse in the parking lot.

Q All right. Well, let's walk, walk us through. Are there people behind you as you're leaving?

A Yes.

Q Okay. Are you looking at them or doing anything or saying anything to them?

A Yeah, moving faster.

Q Okay.

A You know, moving faster.

Q Okay. So, you go out in the parking lot?

A Go out in the parking lot. I see that we're blocked in. We're boxed in.

Q Okay.

A Like I said, when I pulled into the parking lot---

Q Do you want to show us real quick where you were

parked?

A Yeah, I can show you about where I was parked. Now---

Q Make sure the jury can see this. So, this is---

A Yes, we come up this way, and I passed the bar.

Q All right. Let's---

A Then we just made a U-turn.

Q Right.

A We came back and I pulled in and parked somewhere in this area. It wasn't even---

Q Right on this -- in this parking lot area?

A No, it wasn't---

Q On the other side of the bar?

A Yeah, it was somewhere around here.

Q Okay.

A But I wasn't at the woods.

Q Okay.

A I mean I had the parking lot to myself.

Q Okay. And when you came back out, it was blocked in around---

A Blocked in all around. There was cars everywhere. There was cars here. There was cars here. There was---

Q Okay.

A There was so many cars.

Q All right. I'm gonna fast forward a little bit.

When Roger had the gun on him, did you see that?

A Yes, I did.

Q Okay. And where is Roger, if you're parked right here, where's Roger?

A He's back here.

Q Okay. So, he's within eyeshot of the car?

A That's right.

Q Okay. In the same parking lot?

A I could see him through my windshield.

Q Could you see -- okay. Okay. I, I jumped ahead. I probably shouldn't have.

A That's fine.

Q So, you go out of the bar. You go straight to the truck.

A Yes.

Q Get in.

A Yes.

Q Crank it up?

A Yeah, well, I looked at it. I said, oh, my God, we're blocked in.

Q All right.

A Yeah, then I got in.

Q Okay. And Roger never got in at that point, did he?

A No.

Q Because, because he knew that he had to get some people to try to move---

A And oh, at first, he started to trying to tell me, you know, how much room, yeah.

Q Oh, like directing you?

A Yeah. Yeah.

Q That's something---

A Like you, you can come on back, come on back, and then, at some point, he, he starts looking for who owns the car I guess --

Q Okay.

A -- you know, cause, he, he moved away---

Q Now---

A ---from the vehicle a little bit.

Q Now, when you're doing that, is anybody -- are people still making you feel scared and threatened at that point?

A Yeah, yeah, I didn't want to---

Q How so?

A I didn't roll my window down. I didn't want to open up my door. All I wanted to do was get out, and I took my money out my pocket and stuck it in my bra. I didn't know what was happening. I felt maybe I was about to get robbed. I didn't know.

Q Okay.

A I didn't know what -- you know, all I did was drop a beer bottle.

Q And Roger's, Roger's still out in the parking lot trying to clear the way?

A Yeah.

Q Okay.

A He was at -- over -- he was kind of guiding me.

Q Okay.

A And then the next time---

Q And how many people were around Roger?

A A lot -- they were more and more. They were accumulating.

Q Okay.

A And, and---

Q And could you hear what was being said, or you could just see?

A I can just see.

Q Okay. And what type of -- what could you see that indicated to you what might be going on?

A Oh, he was moving farther and farther away.

Q All right.

A And I was steady backing up. Wiggling, wiggling, wiggling, wiggling.

Q Right.

A Trying to wiggle out of the spot.

Q Okay. At any point did you see Roger with his hands up?

A Absolutely.

Q Okay.

A And that's when I changed my mind about being careful about getting out of the parking spot.

Q Right.

A I moved and got out.

Q Uh-huh. (Indicating affirmatively.)

A I got out of that parking spot, and I pulled up next to him and I slung the door open, and I said, Get in. He got in. We took off, and I screamed a lot of people to, move, move, move. I didn't want to hit anybody.

Q Uh-huh. (Indicating affirmatively.)

A I just wanted to get---

Q All right.

A ---away.

Q Did you see a guy with white pants near Roger?

A I saw the gun.

Q Well, let me back up. Did you see anybody swing at Roger?

A I did.

Q You did?

A I saw him.

Q Okay.

A That's when I decide -- I just -- I was wiggling faster. I was just trying to back up and forward and---

Q When you say "wiggle", you mean like just move a little bit---

A Yeah.

Q ---and then turn it and move a little bit?

A Yes.

Q Okay.

A Very good driver. Like I get -- yeah.

Q Right. So, you saw Roger get swung at, but not hit, right?

A Yes.

Q You see them kicking at him, or could you not see that?

A I could not see that.

Q Okay. And then, and then how about a gun---

A I saw him go down.

Q ---that came out after that?

A Well, I saw him go down --

Q Okay.

A -- and I know it was -- he was in trouble.

Q He was in trouble. Okay. And then how about the gun coming out?

A The gun is all I saw with his hands up.

Q Okay.

A And that's when everything changed for me.

Q Okay.

A There was no way I was gonna watch my husband get shot.

Q Okay. Now, we played -- there was a phone call that was played from the jail the next morning. You remember that, between you and Roger?

A I heard it, yes.

Q Okay. And you heard it. And, and, obviously, both of y'all were upset and talking on the phone, but there's some -- something about him having a gun pulled on him. He said something about having a gun pulled on him. Do you remember? And you said, No, but I knew there was something going on. I knew there was something the matter. Is that what you said?

A That is what I said.

Q Okay. All right. That's different from what you're saying today?

A That's correct.

Q Okay. Now, are you sure you saw a gun?

A I am positive.

Q Okay.

A That will never leave my mind.

Q Okay. Why, why do you think that that, at that point on the telephone call that you may have indicated you

didn't see a gun?

A I know it's from the drugs. I know it is.

Q From the drugs you got at the hospital?

A Yes, sir.

Q The Haldol?

A I have never in my life been so disoriented and so unable to piece myself together even at the jail, even at the courthouse, and everywhere---

Q Uh-huh. (Indicating affirmatively.)

A ---was very, very, very foggy.

Q Uh-huh. (Indicating affirmatively.) Okay.

A For some time. It took me quite some time to come out of that.

Q Okay.

A I know for a fact that's what it was because I know my body. I have never ever been---

Q And you're saying today, in here, under oath, that you did see a gun, and that's what absolutely---

A I saw my husband's hands in the air and a gun pointed at him.

Q Okay.

A And that is a -- that changed everything---

Q Okay.

A ---from trying to be careful about getting a parking -- out of the parking spot.

Q Right.
A There was no other way I could help him.
Q All right. But gun or no gun, it was a dangerous situation. You were concerned for your safety and for his, right?
A I was terrified.
Q Even before you saw the gun?
A Absolutely.
Q Now---
A I've never been scared in my life.
Q Now, let's talk about what options you had at that time. Okay. Let me go back. You could of just stayed there and gotten out of the truck, right?
A I thought about that a thousand times.
Q What would of happened?
A I could of gotten out the truck. I'm not -- and then both of us would of had a gun pointed at us.
Q Okay.
A I didn't think it was---
Q Is it safe to say you were outnumbered?
A Oh, I know we were outnumbered.
Q How many people do you think were in that parking lot?
A It got to be more and more.
Q Okay.

A There was a lot of people. There were people over here smoking cigarettes, over there.

Q Uh-huh. (Indicating affirmatively.)

A There were groups everywhere, and then the, the, the mob around us kept growing.

Q All right. How about call 9-1-1?

A Everything was locked in the, in the center console. It's standard practice. I keep everything in there.

Q Okay.

A Keys.

Q Do you carry, do you carry a gun in the truck?

A I do not.

Q Do you wish you had a gun in the truck?

A No.

Q Would you have felt compelled to use it that night if you had it?

A I would of used a gun that night.

Q And you don't know how long it takes 9-1-1 -- the people -- 9-1-1 to get out there, do you?

A I, I thought I was in the middle of nowhere.

Q Okay.

A I had no idea there was another township ahead of me.

Q Okay.

A I thought I was headed to an island.
Q Okay.
A That's why we stopped.
Q You were---
A I mean, you know, Hunting Island. I thought it was an island.
Q And another, another, another option would have, I guess, would of been just run right through the crowd or run the guy over, right?
A I thought about it.
Q You did?
A You know, like every -- it runs through my mind.
Q But how many people probably would of -- you would of run over?
A I would never hit my husband, and they were too close to him.
Q And there were a lot of people there?
A Yes.
Q Okay. Or you could of just left and left Roger there?
A I would never do that.
Q I understand. I'm just talking about what the options are. Or the suggestion earlier, you could of called a cab.
A Called a cab?

Q That wasn't an option, was it?

A No, I don't -- you know, like where I live, maybe an Uber, yes, but not there.

Q The point is the situation, as you saw it, none of those were available options, were they?

A There were no options. I couldn't go back in the club. I couldn't run away. I couldn't leave my husband there to be shot. I did the only thing that I knew to do.

MR. LEE: That's all I have, Your Honor.

THE COURT: Cross-examination.

MR. WHETSEL: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WHETSEL:

Q Ms. German, I -- obviously, I'm gonna ask you some questions. So, in your mind, you were kind of in the middle of nowhere; is that fair to say?

A Yes.

MR. WHETSEL: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. WHETSEL:

Q Showing State's 1. Ms. German, is it fair to say there's a middle school right across the street?

A Yeah.

Q So, middle school right there across the street middle of nowhere?

A Yeah, I didn't, I didn't look for a middle school.
Q You didn't see the lit sign, Whale Branch Middle, when you came in?
A No.
Q Ms. German, you were on the way to Hunting Island, correct?
A Yes.
Q Did you route how you were going to get there?
A I did not.
Q So, you were gonna drive to Hunting Island with zero idea how to get there?
A I did that earlier in the day before we even left.
Q So---
A It was pretty easy. 17 to 21.
Q So, you had an idea how to get to Hunting Island, right?
A Yeah.
Q So, you had to know you would go through Beaufort, South Carolina to get to Hunting Island, correct?
A Yes, I knew I was headed towards Beaufort.
Q Which is a pretty big city in South Carolina.
A I don't know that. I really don't. I still today don't think it's a big city, but I didn't know there was anything ahead of me but an island.
Q So, you didn't know what---

A I wasn't looking for McDonald's, hotels. I wasn't gonna go shopping.

Q So, your testimony is that you have no idea that Beaufort, South Carolina is just a few miles down the road from where you are?

A That's right.

Q Because of that---

A Beaufort may be there, but I don't know what's in Beaufort. I didn't -- I don't know whether I'm -- what I'm gonna see. I didn't expect to see much of anything at that point.

Q So, because you are in the middle of nowhere, calling a taxi's not an option; is that right?

A Calling a taxi when you have a gun pulled on you is not an option.

Q How interesting a gun. So, the time we hear about a gun is today; is that right?

A Excuse me?

Q The first time we hear about a gun from you is today; is that right?

A That's the first time I've testified.

Q But on that jail call, there is absolutely no mention of a gun.

A No, sir.

MR. LEE: Your Honor, I'm gonna object. He can't

get into the -- to this.

MR. WHETSEL: Your Honor, I'll---

THE COURT: I'll let him go where he's going now.

MR. WHETSEL: Okay.

THE COURT: But I understand what you're talking about.

MR. LEE: Yes, sir.

MR. WHETSEL: I might be a bit confused, Your Honor. Mr. Lee asked about the jail phone call as far as you didn't say anything about, about---

THE COURT: I said you could go in---

MR. WHETSEL: Yes, sir, thank you.

THE COURT: Down that path.

BY MR. WHETSEL:

Q But just to understand, when you were talking to your husband on July 10th at about 10:30 in the morning, there is no mention of a gun; correct?

A That's correct.

Q And just to make sure we're all on the same page as far as timing, you were released from the hospital about 7:30 in the morning on July the 10th, 2016; is that right?

A I wouldn't know.

Q Is that incorrect?

A I have no memory. The first memory I have is at the Court, at the bail hearing where I was told what

happened, and then pushed through the door. The door's opened. That's when I found out.

Q So, you were released---

A I don't know what time it was. I don't have any recollection of any, any, any -- the transport there.

Q So, you have no independent recollection of the jail call that we heard?

A No.

Q That jail call that was made on July the 11th---

A I know---

Q ---at about 10:30?

A I made a jail -- I made a call, yes. I have -- I recall making the call. It, it was the only call I could make.

Q That's okay, but I'm saying the one that we heard in the courtroom, correct?

A That's right.

Q Okay. Let's just clarify a few things, Ms. German, that I think we can agree on. The truck, the red Dodge burgundy truck that we see in the photographs, that's your truck, correct?

A Yes.

Q And you were driving that night when you pulled into Archie's, is that correct?

A That's correct.

Q And you were also driving that night when you left Archie's; is that correct?

A That's correct.

Q So, you were driving the time of the collision; is that correct?

A That's correct.

Q And is it fair to say that, prior to leaving, you had at least one beer at Archie's?

A I had one beer.

Q And that you had four to six vodka drinks; is that fair to say?

A I, I, I don't -- I didn't count. So -- and I wouldn't know what that number is, but I had, I had drinks, yes.

Q Did you have, did you have one vodka drink?

A He poured it -- it wasn't in a shot glass. It was in a cup. So, I couldn't tell you how much it was in there. I went back there a couple times.

Q Well, did you have one cup?

A No, it was the same cup.

Q Well, did you have one pour in that cup?

A Do you mean only one pour?

Q Yes, ma'am.

A No.

Q Did you have two?

A I had two at least.

Q Did you have three?

A I probably had three or four.

Q Okay. Five?

A I'm not sure. You know, I went on my own. He went on his own. I wasn't going anywhere when I got there. So, I, I was drinking before anybody even showed up at the place. No one even showed up till some time later.

Q How many people were surrounding Roger?

A A good number.

Q Okay. Estimate. How many people?

A To start?

Q Out in the parking lot, yes, ma'am.

A Probably five at the beginning. Increasing quickly after that. Five, then eight, then ten. That -- it was -- I was in more of a panic the more people I saw crowding around him.

Q And just to be clear, when Mr. Lee was cross or direct exam -- directly examining you, you pointed to the parking lot kind of where the P was located as to where all of this was going down?

A Yeah.

Q Now, after you say you saw that gun pulled, how quickly did Roger get into the passenger's seat of the truck?

A Quick. That door opened, and he was in.

Q Within seconds?

A Seconds. I screamed, Get in.

Q So, after he's in---

A He didn't even know I was there until I screamed at him, Get in.

Q After he gets in, how quickly are you able to exit the parking lot?

A Pretty, pretty quick I would think. I, I would say pretty quick.

Q Within a matter of seconds; is that fair to say?

A I don't know. Yeah, there was people in my way and I was screaming at them when I was driving around people. There was people all over the parking lot.

Q Right. May I approach again, Your Honor?

THE COURT: You may.

BY MR. WHETSEL

Q And I, I just want to kind of make sure that we're -- again, some stuff we can agree on. Just try to understand what, what we're talking about. So, when you tried to exit the parking lot, if you disagree with this, tell me, but is it fair to say you came up here where Seabrook Road is?

A I was parked somewhere around here.

Q Right.

A I could see him ahead of me.

Q Right.

A And he was getting pushed farther and farther away from me.

Q Right.

A I would say he's somewhere around where you see that pad right there. I get out that spot, and I open up the door, I swing around, and dodge people, and that's how it happened.

Q Okay.

A I got through this way.

Q So, so, this, this line that was drawn by Ms. Williams, that's roughly the path you would of taken?

A Roughly.

Q Okay. That's fair.

A Although she said back to the woods.

Q Yes, ma'am.

A I was not back to the woods. I pulled straight in.

Q But as---

A And I wasn't anywhere near the woods. I was somewhere right around here.

Q Okay. But as far as the actual exit path, is that pretty accurate?

A That's pretty accurate.

Q Okay. And at least your recollection would of been that would of happened within a matter of seconds? As far as once Roger gets in the truck, a few seconds you're able to get out of there?

A Yeah, I didn't, I didn't stick around. That's for sure.

MR. WHETSEL: Your Honor, I don't have any more questions for Ms. German.

THE COURT: Any redirect?

MR. LEE: No follow-up, Your Honor.

THE COURT: Thank you, ma'am. You may step down.

MR. LEE: Your Honor, at this point, the Defense would rest.

THE COURT: Okay. Anything from the State?

MR. WHETSEL: We have no rebuttal, Your Honor.

THE COURT: This is another one of those occasions, ladies and gentlemen, when I need to speak with the attorneys outside of your presence. And due to the hour, I have to take up some matters of law with these same attorneys. Let's try lunch until 1:15. And I'll remind you, don't let anybody talk to you about the case. You don't talk to anybody about the case, and it's too early to begin discussion of the case. See you back at 1:15, ladies and gentlemen.

(Jury exits the courtroom.)

THE BAILIFF: The jury's clear, Your Honor.

THE COURT: Any motions by anybody?

MR. LEE: Your Honor, matter of formality, renew my directed verdict motion at the State -- at the end of the State's case as well as renew my previous motion to exclude the, the blood alcohol results for the reasons stated.

THE COURT: I understand the motions and the reasons for the motions. The Court feels compelled to stand by its prior rulings, and deny the motions.

MR. LEE: Yes, sir.

MR. WHETSEL: Nothing from the State, Your Honor.

THE COURT: All right. About -- what about charges while we've got a few minutes here, or do we need to take a break?

MR. WHETSEL: I've got a couple of suggestions, but I don't know if we heard, Judge, one would be the inference charge of .08. That would be an inference charge based on the testimony.

THE COURT: All right.

MR. WHETSEL: The second would be, and, honestly, I'm not sure the best way to do this, but it's alleged in the indictment that the traffic infraction, I had Sergeant Booker testify to it as well, I would ask that Court charge what 1810 says, which is 56-5-1810,

Subsection C specifically, and it talks about it being unlawful to drive in the left-hand side of a four-lane highway unless there's like traffic controlled devices, et cetera, et cetera. So, basically it's -- you know, it's illegal to drive on the left-hand side of the, the road in a four-lane highway. I think it'd be proper to charge. It's the statute itself cause we do have the burden of proving that element, and though I had Sergeant Booker testify to it, I'd ask the Court also charge the language in the statute.

THE COURT: And the statute you're talking about is which one?

MR. WHETSEL: It's in the indictment, Judge, but it is 56-5-1810.

THE COURT: 56-5-1810.

MR. WHETSEL: Yes, sir, and I can, I can print that off for the Court if you'd like.

THE COURT: That would be great. Okay.

MR. WHETSEL: Actually, Your Honor, I may, I may have a copy. I've highlighted on it, but I think I have a copy. Can I just give that to you?

THE COURT: Sure.

MR. WHETSEL: Okay.

MR. LEE: And I think that's an appropriate charge.

MR. WHETSEL: And then, I guess, the last thing would be the duress and necessity defense. I certainly think Mr. Lee has raised an issue to get a charge on. It's just a matter of which one it is.

MR. LEE: Your Honor, I'd, I'd like to pass up Proposed Charge Number 1 for the defense of necessity, which I think certainly has been raised to the level of being charged, and I understand that Mr. Whetsel disagrees with me. And it says -- it refers to duress, but I would, I would submit to you that, that this is clearly a necessity case. The South Carolina Courts have often co-mingled and conflated necessity, duress, and coercion, but they are two different, two different animals, and different entities.

And the reason they're different is necessity, in general, excuses actions that are based on a Defendant's reasonable response to some event or occurrence, occurrence that threatens a person's life or health. Fear is not an element of the defense of necessity. Whereas, duress, under duress, a defendant must show that his actions were caused by a reasonable fear that he would suffer immediately -- immediate death or serious bodily injury if he did not so act.

So, they're similar in that regard. What makes duress different is, is because a duress defense

generally is used to justify a Defendant's actions based on an -- on intentional threats from a third party that are designed to coerce the Defendant to the -- to carry out a crime. That's where the difference is. Duress is two guys, one of them stays in the car with a gun to your spouse's head, and the other one walks in the bank and tells you to go rob the bank.

The, the difference is duress is a third party, is getting you to commit a crime they want you to commit. Whereas, necessity is you're in a position. It's an untenable situation. It's just an emergency situation, and you act reasonably, and have no viable alternatives. So, that's why it's necessity versus duress.

THE COURT: I understand. What does the State say?

MR. WHETSEL: Judge, I'll be honest, I think they sound very similar. That being said, I think that the Cole case that I, I passed up to the Court, one I, I just can't get, get past is the necessity defense is the way that, that case states it. Seems to be based on the actions of a third party, excuse me, duress on the action of a third party, and necessity being the -- some type of action beyond the control of a person. I

think this is clearly on the part of a third party is what's causing this supposed defense. But when it comes down to it, I don't know, honestly, what -- if there's really a big difference. They're both affirmative defense. I just think it has to be charged correctly, and if he gets one of them. I guess that's my position. He gets one of them.

THE COURT: I, I, I think that necessity, necessity is, is the one.

MR. LEE: Yes, sir, I do too.

THE COURT: I believe necessity, although I agree it's close, I believe necessity is more appropriate here.

MR. LEE: Your Honor, also---

THE COURT: And mine's almost the same as yours. It may be word for word. Let me look. This has a few more words in it, but the same thing.

MR. LEE: Yours does?

THE COURT: Mine.

MR. LEE: Can I look at it?

THE COURT: You can look at it.

MR. LEE: And, Judge, I would -- I, I think circumstantial evidence is, is appropriate, and I would hand up Logan, State versus Logan, which says---

THE COURT: All right.