

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Hon. Donald Hocker, Circuit Court Judge

Appellate Case No. 2018-000022
Lower Case No. 2015-GS-24-0535, 0536

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SC Court of Appeals

The State

..... Respondent,

vs.

Adam Rowell Appellant.

RECORD ON APPEAL
VOLUME III

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1 Q And the red truck, once it got -- if it got
2 straightened out it couldn't go off to the right because of
3 the guardrail, right?

4 A That's correct.

5 Q But if the impact had taken place, the other side would
6 either have to go off the -- into the gully or into the
7 creek over there or hit the guardrail.

8 A The blue truck. Yes, sir. Yes, sir. Mr. Rowell's
9 truck. They were -- as I pointed out, there were obviously
10 some hazards over to the right there.

11 Q Are you trained as a South Carolina Highway Patrol how
12 to drive a vehicle?

13 A Well, we had -- we had training, yes, sir, from -- from
14 early on, and consistent in-service training usually every
15 year on driving.

16 Q And is that a lawful maneuver if you're trying to
17 defend yourself against somebody else coming at you to try
18 to anticipate -- how many seconds did you have to make that
19 decision once you saw them in your lane, if you did in your
20 hypothetical, how much time do you think, based on your
21 analysis, did a person in the blue truck have to make a
22 decision about what to do?

23 A Well, as we saw, there were several seconds there. But
24 when it comes down to actually deciding and committing to
25 one way or another, probably a second or less.

1 Q A second or less?

2 A Yes.

3 Q So you could have got a hesitation and then an attempt
4 to drive through?

5 A Yes, sir. And then what you touched on, in our
6 training we're taught not to brake and to drive -- you know,
7 to try to steer through and maintain your speed, or either
8 slow down, or maybe even accelerate in some -- in some
9 instances to avoid the collision, because -- especially in
10 the old days if you -- you know, when you got on the brakes
11 you're going -- you're going to lose a lot of control,
12 especially if you're on the shoulder or on a wet surface or
13 whatever.

14 Q It takes, you know, more hand/eye control to try to
15 power drive one through a situation, doesn't it?

16 A Yes, sir. Anyone can just lock it up and hang on, you
17 know, for the ride. But to try to drive through and avoid
18 obstacles takes -- takes more input. Yes, sir.

19 MR. GARRETT: Thank you. Please answer any questions
20 opposing counsel may have.

21 THE COURT: Cross-examination.

22 MR. DOWTIN: Beg the Court's indulgence.

23 MR. GARRETT: Judge -- I'm sorry. I need to move the
24 part into evidence. I move at this time to put it into
25 evidence, but we're going to have to -

1 THE COURT: Right.

2 MR. GARRETT: -- make some changes to it to have it for
3 the Court's liking.

4 THE COURT: So long as those discussed changes are
5 made, any objection?

6 MR. BLACK: The ones that I mentioned up at the bench,
7 Your Honor. Yes, sir.

8 THE COURT: Right. And what we'll do, we'll go over
9 those in the record before we leave today and you can just
10 -- tomorrow.

11 MR. GARRETT: Yes, sir.

12 THE COURT: All right.

13 MR. DOWTIN: Your Honor, I don't have many questions,
14 but before I get started I think we need to approach about
15 something.

16 THE COURT: Okay.

17 (Whereupon, a sidebar was held.)

18 THE COURT: Cross-examination by the State.

19 MR. DOWTIN: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MR. DOWTIN:

22 Q Mr. Sims, I'm going to try and be pretty quick here,
23 sir. Just briefly. I mean, are you up here for free?

24 A No, sir. No, sir.

25 Q How much are you getting paid to be here?

1 A Well, I got paid a fee to do an initial look -- kind of
2 look see for a few hours to Mr. Garrett first called me --
3 or actually Mr. Henderson. Told me a little bit about a
4 case they had and that -- you know, didn't know if I could
5 help them or not, but they wanted me to try to find out the
6 truth. And if I could help them we'd go forward. If not,
7 we would stop there. And it's probably not real good for my
8 business, but I've told a lot of attorneys not what they
9 want to hear and had to stop and didn't make as much money.
10 But in this case I really thought I could help them. So
11 initially I was paid \$1,000 for the work I did, and I've
12 been paid 2,000 since then. I bill at one twenty-five an
13 hour.

14 Q Okay. Thank you, sir. Now, going back to this -- you
15 said something about 313 feet and it's possible that the red
16 truck could have come into the other person's lane. You
17 said that was based on some information you received?

18 A It was, yes.

19 Q And where did you receive that information from?

20 A Well, I've actually received that information from a
21 couple different places and I wasn't sure I could talk about
22 that.

23 MR. GARRETT: I believe he's opening the door.

24 THE COURT: Well, the question is based upon our
25 sidebar conferences.

1 Q Is one of the people you received that information from
2 here in the courtroom?

3 A Yes.

4 Q Can you tell us who that is?

5 A Mr. Rowell.

6 Q Okay. Thank you. Let's go back to the --

7 A Let me -- let me clarify that, please. Mr. Rowell
8 didn't say anything about 313 feet. He said that it
9 appeared to him there was a vehicle coming at him that was
10 crossing the center line and --

11 Q Yes, sir.

12 A --, weaving back and forth. Then I went out and did my
13 investigation. What I like to think was a thorough
14 investigation, and found evidence that supports that.

15 Q When did you go out to the scene? I guess, the -- do
16 you recall?

17 A No. It was a while afterwards. It was out there on
18 the 11th. I've actually got some dates there at your feet.
19 The 11th --

20 Q 11th of?

21 A August the -- August the 11th --

22 Q Of this year?

23 A -- '15. '15.

24 Q Thank you, sir.

25 A It happened -- it happened '14.

1 Q Yes, sir.

2 A Yes. Yes. August of '15.

3 Q So almost a year later.

4 A Yes, sir.

5 Q And going back to the crash data retrieval. As far as,
6 you know, the blue truck potentially could have swerved in
7 the red lane, changes the speed, what have you, the most
8 accurate information we have as far as the speed is from the
9 ACM, correct?

10 A No, sir.

11 Q It's not?

12 A No, sir. For the blue truck?

13 Q For the blue truck.

14 A Well, I mean, I guess maybe I didn't make my point too
15 good. But I went through all these slides of tires and the
16 changes we made in speeds and everything and how that
17 affects the speed. So I really don't know how much stock we
18 can put in that, in that speed, because the tire sizes do
19 make a difference and then they don't make a difference. So
20 I'd rather calculate the speed such as what I did.

21 Q Well, let's focus on there -- I'll narrow it down then.
22 That was kind of general speed. Five seconds before the ACM
23 is not the most accurate we have?

24 A Well --

25 Q For the blue truck, the speed?

1 A -- it's -- you know, what part of it is accurate -- you
2 know, if we get to tearing it apart as to what part is
3 accurate and what part is not, I'm not saying that it's not.
4 It doesn't have any use or accuracy. But we can see in this
5 particular case, based on all the modifications we've had to
6 do in this case to get different speeds, I mean, I'd rather
7 just come to my speeds another way.

8 Q So not by the computer that says one second before the
9 blue truck was going 66 miles an hour?

10 A Well, I'm saying at impact he was going 59. So there
11 was no skids or anything, do he didn't decelerate that much.

12 Q Were there any brake marks in the blue truck's lane?

13 A Not that I've ever seen. No, sir.

14 Q And you want to dispute that the majority of the gouge
15 marks and fluid were in the red truck's lane of travel,
16 would you?

17 A I've said that many times, yes.

18 Q And also -- I mean, I know you wanted to focus on the
19 animation, but you've seen the photos from that night,
20 correct, sir?

21 A I used most of them. Yes, sir.

22 Q I'm just making sure.

23 A Yes.

24 Q You've had a chance to look at all the photos?

25 A Yes, sir.

1 Q I mean, you've seen the brake marks from the red truck,
2 correct?

3 A That's correct.

4 Q You refer to some of them in your photos.

5 A That's correct.

6 Q And it's obvious even to, I mean, a layperson that the
7 red truck's brake marks were in his lane of travel?

8 A Both marks were in his lane, and I also observed they
9 were at an angle coming from left to right. Coming from
10 toward the center line back to the right.

11 Q The ultimate area of impact was in the victim's lane in
12 this case?

13 A The red truck's lane.

14 MR. DOWTIN: Beg the Court's indulgence.

15 THE COURT: Sure, take your time.

16 Q So again, you agreed with the MAIT team in this case
17 that this collision occurred in the victim's lane of travel?

18 A Yes. Impact was clearly in that lane, yes.

19 MR. DOWTIN: Thank you very much, sir.

20 THE COURT: Is there any redirect in direct response to
21 anything that the State asked in cross, Mr. Garrett?

22 MR. GARRETT: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. GARRETT:

25 Q The 1990 vehicle didn't have a black box, did it?

1 A No, sir.

2 Q The blue truck did?

3 A Yes.

4 Q In the old -- you've been doing this for quite some
5 time. Before black boxes, did you go back to your old
6 science?

7 A Yes, sir. It's not old. It's still used. The black
8 box is just an addition that's been added -- added to it.
9 But yes, I did.

10 Q So doing your analysis you considered the black box as
11 part of the total picture?

12 A I did, yes.

13 Q But you didn't use it exclusively?

14 A That's correct.

15 MR. GARRETT: Thank you.

16 THE COURT: Thank you, Mr. Sims. You can step down.

17 THE WITNESS: Thank you, sir.

18 (Whereupon, the witness steps down from the witness
19 stand.)

20 THE COURT: Okay, Mr. Foreman, ladies and gentlemen of
21 the jury. It is five after 6:00. You've had a long day
22 with us. Appreciate your patience, your hard work. And
23 we're going to start back tomorrow. The plan is -- and, of
24 course, plans do change. But hopefully they won't change in
25 this situation. We're going to start back tomorrow. Hope

1 everybody's good with Saturday. I really hate taking your
2 Saturday from you. But, I mean, it had been suggested that
3 we just take the weekend off. Take the President's Day off
4 and start back Tuesday, but that gives you three days away
5 from this case. And I think -- it's been my experience you
6 need to keep things as fresh as possible. And so, that's
7 why we're going to start back in the morning and hopefully
8 finish all the testimony and the evidence in this case
9 tomorrow. That's the hope. And then on Monday -- we will
10 not work on Sunday. And then on Monday come back and we
11 will -- the lawyers will have their closing arguments and I
12 will charge you on the law in this case. So that's the plan
13 right now. I hope everybody's good with that, or at least
14 willing to accept it. Maybe reluctantly somewhat, but
15 nonetheless accept it. So get you good rest. Get yourself
16 some good food tonight. And we'll see you back in -- back
17 in the morning at 9:30. And once again, remind you no
18 discussion about this case with anybody and we'll see you
19 back in the morning. Have a good evening.

20 (Whereupon, the jury was released at 6:06 p.m.)

21 THE COURT: Appreciate everybody's hard work. We'll
22 see you in the morning at 9:30.

23 (Whereupon, the proceeding was adjourned at 6:06 p.m.)

24 TRIAL DAY 6-02/18/17

25 THE COURT: Let's bring the jury out, please.

1 (Whereupon, the jury entered the courtroom at 9:40
2 a.m.)

3 THE COURT: Let the record reflect the jury is back in
4 the courtroom. Good morning, ladies and gentlemen. Maybe
5 some of you are used to working on Saturdays because of your
6 job. No, I see some -- no? Okay. Well, I think it's kind
7 of new for most of us. We don't work on -- well, maybe they
8 do getting ready for cases. But anyways, we appreciate you
9 being here. We really do appreciate your hard work.

10 Mr. Garrett, you read to call your next witness?

11 MR. GARRETT: I am, Your Honor. I call Justin
12 Pennington to the stand.

13 JUSTIN PENNINGTON, having first
14 been duly sworn, testified as follows:

15 THE COURT: You may proceed. Yes, sir.

16 MR. GARRETT: Thank you.

17 DIRECT EXAMINATION

18 BY MR. GARRETT:

19 Q Mr. Pennington, could you tell me what your name is for
20 our Court record.

21 A Justin Pennington.

22 Q Mr. Pennington, who are you? Who do -- just tell me a
23 little bit about yourself. Where you live. Your
24 background.

25 A I live on Rock House Road.

1 Q That's out in Greenwood?

2 A Yeah. I'm from Ninety Six.

3 Q Did you happen to witness an accident on the evening of
4 the 15th of November, '14? 2014?

5 A Yes, sir.

6 Q And at the time -- who were you working for at the
7 time?

8 A Asset protection for Walmart.

9 Q And just tell us, if you don't mind, about what you
10 actually saw that night, if you don't mind.

11 A I was coming up to the stop sign. I, of course, looked
12 both ways.

13 Q Hold on a minute. Is that the -- let me kind of put us
14 on -- would that be the stop sign at Scotch Cross Road?

15 A Yes, sir.

16 Q Let me get you to step down for just a moment.

17 THE COURT: What you'll need to do, Mr. Pennington,
18 since you're away from the microphone, when you are speaking
19 be sure to speak up loud enough so we can hear you, and
20 especially the court reporter. Okay, sir?

21 THE WITNESS: Yes, sir.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 Q Do you recognize the this area? The Hot Spot?

25 A Uh-huh.

1 Q The fairground here. And this is Scotch Cross Road
2 here?

3 A Yes, sir.

4 Q And would you tell the jury, please, where you in
5 relationship to this accident?

6 A Stop sign.

7 Q The stop sign?

8 A Uh-huh.

9 MR. GARRETT: Step back up there.

10 (Whereupon, the witness returned to the witness stand.)

11 Q Now, had the wreck already occurred when you got up to
12 the stop sign?

13 A No, sir.

14 Q Tell us what you observed, if you can recall.

15 A I got up to the stop sign. Of course, looked both
16 ways. And I seen a blue truck go by. He might have been
17 going 55, 60..

18 Q Was he going -- was he going in front of you from your
19 left to your right or from your right to your left?

20 A Right to left, coming from the Hot Spot.

21 Q Coming from the Hot Spot?

22 A Yes, sir.

23 Q All right. Well, that way. He'd be going north?

24 A Yeah.

25 Q Go ahead.

1 A And when I seen a red truck coming around the curve --
2 I'm not 100 percent on its speed, but I noticed that it was
3 swerving.

4 Q In whose lane was it swerving?

5 A Into the right lane. The blue truck.

6 Q So the red truck was swerving into the blue truck's
7 lane?

8 A Yes, sir.

9 Q And then what happened?

10 A It looked like they both tried to correct. Well, he --
11 they looked like they tried to correct to miss each other
12 and they just hit.

13 Q Okay. And did you give a sworn statement, a statement
14 to law enforcement right after this happened?

15 A Yes, sir.

16 Q Actually there was a tape recording of it, wasn't
17 there?

18 A Yes, sir.

19 Q Telephone?

20 A Yes, sir.

21 Q And did you talk to Trooper Anderson about what you
22 observed?

23 A Yes, sir.

24 Q Okay. Do you recognize what that is?

25 A Phone call.

1 Q So actually there is a -- there's an actual phone call.
2 There is a recording of the phone call where you told them
3 what you saw happen; is that correct?

4 A Yes, sir.

5 Q All right. Is it consistent with what you've testified
6 here to today?

7 A Yes, sir.

8 Q All right. And you didn't see the whole accident? You
9 just saw parts of it?

10 A Yes, sir.

11 Q But you did hear -- did you hear the boom and turn
12 around and look at the boom or --

13 A Yeah, I was -- I was actually already looking that way.

14 Q So you actually saw the boom?

15 A Yeah.

16 Q And from your direction you thought that it happened in
17 the blue trucks lane; is that correct?

18 A Yes, sir.

19 Q Okay. But it didn't happen in the blue truck's lane?

20 A No, sir.

21 Q You know that now. Now, the red truck, when you were
22 talking about it coming from the fairground, you were clear
23 that it was the red truck that was swerving out into the
24 blue truck's lane; is that correct?

25 A Yes, sir.

1 Q And you actually saw that?

2 A Uh-huh. Yes, sir.

3 Q And at the point -- at or near the point of the impact
4 how many lights did you see on on the red truck?

5 A One.

6 Q How many could you see?

7 A One.

8 Q And which side was that?

9 A Left.

10 Q So you saw -- you were able to see one -- one light of
11 the -- of the red truck --

12 A Uh-huh.

13 Q -- in the blue truck's lane?

14 A Yes, sir.

15 Q You couldn't see the other light? That doesn't mean it
16 wasn't on, you just couldn't see it?

17 A Yes, sir.

18 Q Did it appear to you that both of their lights were on?
19 When the truck came by you -- the blue truck came by you was
20 his regular lights on?

21 A Yes, sir.

22 Q Did he have any bright lights on that would have caused
23 you to have to dim yours or anything like that?

24 A I'm not 100 percent on that?

25 Q Don't recall? Actually there was -- there was -

1 MR. BLACK: Judge, I'm going to object. I think this is
2 direct examination. Open-ended questions are appropriate.

3 THE COURT: Right. Try to rephrase and not lead, Mr.
4 Garrett.

5 MR. GARRETT: Yes, sir.

6 Q Was there any -- was there a car directly in front of
7 you at the intersection?

8 A Yes, sir.

9 Q And did you ever -- was that person ever identified?

10 A Not that I know of.

11 Q And then after you talked to law enforcement have you
12 had any further conversations with anybody about this wreck
13 scene?

14 A I had a few people call me.

15 Q Did they identify who they were?

16 A No.

17 Q Okay. And I got a call to you last night. Did I
18 identify who I was?

19 A Yes, sir.

20 Q Did I ask you to come here today, to subpoena you to be
21 here?

22 A Yes, sir.

23 Q And I believe you had a little daughter and had to make
24 arrangements to try to take care of your daughter?

25 A Yes, sir.

1 Q Have I paid you anything or promised you anything to
2 get you here today to testify?

3 A No, sir.

4 Q Are you testifying truthfully?

5 A Yes, sir.

6 Q And that's what you saw?

7 A Yes, sir.

8 Q And at the time you considered yourself one of law
9 enforcement because you actually helped them out there on
10 the scene for a little while, didn't you?

11 A Yeah. Yes, sir.

12 Q Being at loss prevention at Walmart, if you all catch
13 thieves and whatnot you all work with law enforcement to
14 prosecute them and that's what you were doing?

15 A Yes, sir.

16 MR. GARRETT: Please answer any questions.

17 THE COURT: Cross-examination from the State?

18 MR. BLACK: Yes, sir, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. BLACK:

21 Q Mr. Pennington; is that right?

22 A Yes, sir.

23 Q You actually know Mr. Rowell?

24 A I actually know both.

25 Q You do? How do you know him?

- 1 A I went to high school with him.
- 2 Q Where did you go again, Ninety Six you said?
- 3 A Yes, sir.
- 4 Q So you went to -- were you all at school at the same
- 5 time?
- 6 A I think so. Yes, sir.
- 7 Q When did you end up graduating?
- 8 A I didn't.
- 9 Q Okay. Are you still at Walmart, Mr. Pennington?
- 10 A No, sir.
- 11 Q Where are you working now?
- 12 A I'm actually unemployed.
- 13 Q Okay. So you were sitting at Scotch Cross Road; is
- 14 that right?
- 15 A Yes, sir.
- 16 Q And then the wreck happened back up kind of to your
- 17 left?
- 18 A Yes, sir.
- 19 Q Back up towards the fairgrounds; is that right?
- 20 A Yes, sir.
- 21 Q How far is it from Scotch Cross Road to where the wreck
- 22 happened? Do you know about how far it is?
- 23 A No.
- 24 Q If you had to estimate do you know how far it is?
- 25 A About 300 yards.

1 Q Three hundred yards? That's just an estimate?

2 A Yeah.

3 Q And your testimony today you said that you saw the red
4 truck swerving before the wreck happened; is that right?

5 A Yes, sir.

6 Q So you -- if it's -- if it was 300 yards from where the
7 wreck happened, you saw -- you saw beyond that?

8 A Yeah, you can see most of around that curve.

9 Q And you could see it in the other lane; is that right?

10 A Yes, sir.

11 Q Further than 300 yards?

12 A Not 100 percent.

13 Q If I were to tell you from where you were sitting from
14 where the wreck happened that it was about 500 feet, 166
15 yards, does that sound right?

16 A A little better, yeah.

17 Q So 166 yards. I see you got a Clemson shirt on. You
18 like football?

19 A Yes, sir.

20 Q You've been to a -- have you ever been to Clemson games
21 before?

22 A Yes, sir.

23 Q Have you ever sat in one of the end zones or on the
24 hill?

25 A Yes, sir.

1 Q You have? Now, when the team is on the other end of
2 the field how far -- how far is a football field?

3 A A hundred yards.

4 Q Okay. But if you're in the end zone it's really 120,
5 right?

6 A Yeah.

7 Q Now, when the team is on the other end of the field can
8 you see clear as day what's going on on the other side?

9 A It's harder, but you can see.

10 Q You can see the numbers on the back of the jerseys?

11 A Yeah.

12 Q Clear as day?

13 A No.

14 Q Okay. Now, your testimony is before the wreck
15 happened, the impact, you saw the red truck swerving in the
16 other lane, correct?

17 A Yes, sir.

18 Q And so, there's a -- there's a yellow line in the
19 middle of the road; is that right?

20 A Yes, sir.

21 Q So you saw the red truck's tire cross the other lane?

22 A Yeah, it looked like coming around the curve right
23 there.

24 Q It looked like or it did, because this is really
25 important.

1 A It as in the other lane.

2 Q It was clearly in the other lane?

3 A Yes, sir.

4 Q So you can see -- so if it happened at 166 yards you
5 saw past that, right?

6 A Uh-huh.

7 THE COURT: You need to give a verbal answer.

8 A Yes, sir.

9 Q And you clearly saw that tire in the other lane?

10 A Yes, sir.

11 Q But didn't you just say that even at a football game
12 120 yards you can't really see as clear?

13 A Well, that's also players and, you know, it's a lot
14 bigger. His vehicle.

15 Q And maybe it's daylight if it's a day game or something
16 like that. Well, let's talk about the lighting. Are you
17 familiar with that stretch of roadway?

18 A Yes, sir.

19 Q Are there street lights on the side?

20 A No.

21 Q Now, when the wreck happened it was November the 14 --
22 or November the 15th, 2014. Did that road have lights on it
23 on that particular day?

24 A No, sir.

25 Q Are there lights out there now?

1 A No, sir.

2 Q It's not lit? And it happened about -- do you know
3 what time it happened?

4 A No, sir.

5 Q Was it dark?

6 A Yes, sir.

7 Q You don't know what time it happened?

8 A No, sir. Not 100 percent.

9 Q And, in fact, when Ms. Anderson called you five days
10 later you didn't know what time it was when it happened?

11 A Uh-huh.

12 Q That's correct?

13 A Yes, sir.

14 Q And you actually told her that in your statement, you
15 didn't know what time it happened?

16 A Yes, sir.

17 Q Now, you keep saying, and it's in your statement, too.
18 Your statements -- well, it sounds like it's relatively
19 consistent.

20 MR. GARRETT: Objection, Your Honor. Make a comment or
21 ask a question.

22 MR. BLACK: I'll rephrase.

23 THE COURT: Yeah, rephrase. Just ask a question.

24 MR. BLACK: Yes, sir, Your Honor.

25 Q You told us today, your testimony today is that both

1 vehicles looked like they were swerving and trying to
2 correct; is that correct?

3 A Yes, sir.

4 Q Did you say that in your statement to Ms. Anderson when
5 you talked to her five days later? What are you looking at?
6 I don't even know what you're looking at. What is that?

7 A My statement.

8 Q Same thing, okay. Have you had a chance to look at
9 that?

10 A No, sir.

11 Q You haven't? Well, take a minute to review that and
12 see if you can see anything about you telling Ms. Anderson
13 that five days after the wreck.

14 A And your question was again?

15 Q That both vehicles were swerving and they both tried to
16 correct.

17 A "It looked like the car coming from the fairgrounds
18 kind of swerved and hit the other vehicle."

19 Q And what page is that? That's on page five it looks
20 like?

21 A Yes, sir.

22 Q But you didn't say anything about the blue truck doing
23 the same thing?

24 A No. It actually looked like the blue truck was trying
25 to swerve to get out the way.

1 Q So the blue truck was swerving to get out of the way?

2 A Yes, sir.

3 Q So both trucks were swerving. But you didn't say that
4 in your statement though, did you?

5 A No, sir.

6 Q Okay. And so, this is -- I don't even know what day it
7 is. February of 2017. You would agree with me on that?

8 A Yes.

9 Q And this was -- your statement was on 11/20/2014?

10 A Uh-huh.

11 Q So now your memory is more clear today than what it
12 was?

13 A Yes, sir.

14 Q All right. Mr. Pennington, do you have any -- I know
15 you worked loss prevention. We might have even talked about
16 a case at one point or another. I don't remember. Do you
17 have any training or experience in accident reconstruction?

18 A No, sir.

19 Q You don't? Now, in your statement to Ms. Anderson on
20 page eight, do you see that? Do you see that on your -- on
21 page eight?

22 A I'm on eight.

23 Q Down at the bottom? You said it was in the blue
24 truck's lane. The wreck happened in the blue truck's lane.
25 Do you see that?

1 A Yes, sir.

2 Q Now, you said -- I think Mr. Garrett said now you know
3 that's not correct; is that right?

4 A Yes, sir.

5 Q I'm showing you what's been marked as State's 27 and
6 entered into evidence. You were out there that day, right?

7 A Yes, sir.

8 Q Do you remember seeing this? A photograph similar to
9 this, or do you remember seeing the wreck?

10 A No. I wasn't that close.

11 Q You didn't get that close?

12 A No, sir.

13 Q Now, if the red truck was coming from the fairgrounds
14 you would admit that's in the red truck's lane, correct?

15 A Yes, sir.

16 Q And just talking briefly about when the blue truck
17 passed you. The blue truck was coming up from the Hot Spot;
18 is that right?

19 A Yes, sir.

20 Q And you specifically remember it --

21 A Yes, sir.

22 Q -- passing you, right?

23 A Yes, sir.

24 Q And you were sitting at the stop sign. Were you the
25 first car?

1 A No, sir.

2 Q You were the second car?

3 A Yes, sir.

4 Q Now, you remember telling Ms. Anderson that it went by
5 kind of fast?

6 A Yeah. Yes, sir.

7 Q The speed limit out there is 55, isn't it?

8 A Yes, sir.

9 Q And then your testimony today was that it was 55 to 60
10 miles an hour. Did you tell Ms. Anderson that it was going
11 55 to 60?

12 A No, I just said it was, you know, going real fast.

13 Q Well, is 55 to 60, is that fast or is that just the
14 speed limit?

15 A I mean, at the beginning right there that's fast, but,
16 I mean, that's the speed limit.

17 Q So that's not really that fast. You're just -- he
18 would be complying with the law at that point, right?

19 A Yes, sir.

20 Q So was he complying with the law or was he going faster
21 than 55 or 60?

22 A I really don't know.

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

24 THE COURT: Anything in redirect, Mr. Garrett?

25 MR. GARRETT: Just briefly.

1 REDIRECT EXAMINATION

2 BY MR. GARRETT:

3 Q You're well familiar with that road there? The 225
4 Bypass?

5 A Yes, sir.

6 Q And is it a -- do most people run pretty fast down that
7 road?

8 A Yes, sir.

9 Q And you've been living out there for how long?

10 A Almost four years.

11 Q And you recognize what you said, the blue truck did
12 come by, and your statement was a little fast?

13 A Yes, sir.

14 Q Okay. But you're not an accident reconstructionist,
15 right?

16 A No, sir.

17 Q All right. But you tried to help law enforcement that
18 night, didn't you?

19 A Yes, sir.

20 Q And did you also tell Kevin Fallaw who was there that
21 when they got settled down that you welcomed -- welcomed
22 them to come call you about what you observed?

23 A Yes, sir.

24 Q And sure enough they got in touch with you on the 20th,
25 five days later -

1 A Yes, sir.

2 Q -- and this is when you gave that statement --

3 A Yes, sir.

4 Q -- is that correct? Now, you know the deceased's
5 family, you know the Rowell family, and you know some law
6 enforcement; is that correct?

7 A Yes, sir.

8 Q Do you have a dog in the fight as far as trying to help
9 one over the other?

10 A No, sir.

11 Q Are you the only independent witness that we've got to
12 this accident?

13 A Yes, sir.

14 Q That's independent of both sides and everybody?

15 A Yes, sir.

16 MR. GARRETT: Thank you.

17 THE COURT: Recross?

18 RECCROSS-EXAMINATION

19 BY MR. BLACK:

20 Q Looking through your statement it looks like there's a
21 lot of it looked like, it might have been, maybe. Do you
22 remember saying all those things when you were talking to
23 Ms. Anderson?

24 A Yes, sir.

25 Q And you've got your statement right there?

1 A Yes, sir.

2 Q And that's -- that's what's in the -- on the paper,
3 right?

4 A Yes, sir.

5 Q Looked like, maybe, might have been?

6 A Yes, sir.

7 MR. BLACK: Thank you.

8 MR. GARRETT: Your Honor, can he be excused?

9 THE COURT: Sure. Any objection?

10 MR. BLACK: No, sir.

11 THE COURT: All right. Without objection, sir, you're
12 free to leave the courthouse.

13 (Whereupon the witness stepped down from the witness
14 stand.)

15 MR. GARRETT: Defense calls, Your Honor, Gene Rowell
16 for the limited purpose of identifying the person in that
17 photograph there.

18 THE COURT: Okay.

19 GENE ROWELL, having first been duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GARRETT:

23 Q Thank you, Mr. Rowell. Would you tell the jury your
24 name, please, sir?

25 A Donald Eugene Rowell.

1 Q All right. I want you to step down from here.

2 (Whereupon, the witness stepped down from the witness
3 stand.)

4 Q Into evidence there's some videos and these are a still
5 -- these are still pictures. And I will tell you that
6 there's been testimony that it was about 7:00 -- 6:37
7 timeframe. Do you recognize this person right here walking?

8 A Yes, sir. That's my son.

9 Q Is that Adam Rowell?

10 A Yes, sir.

11 Q And is that the clothes he was wearing that evening?

12 A Yes, sir.

13 Q At some point in time did you have -- did you get his
14 blue jeans that were cut off of him?

15 A Yes, sir.

16 Q Were you able to get his shoes?

17 A No, sir.

18 Q And then what about his coat?

19 A I didn't see it, sir. A coat.

20 Q I believe -- and you recognize this vehicle right here?

21 A Yes, sir.

22 Q How do you recognize it?

23 A That's a 2005 Chevrolet that we purchased. And
24 actually I further recognize it by there's a box in the back
25 that came UPS to our home a few days earlier that had a

1 guitar stand in it.

2 Q And then is that the toolbox?

3 A Yes, sir.

4 Q And you actually owned that truck; is that correct?

5 A Yes, sir.

6 MR. GARRETT: That's all I have, Your Honor, for him
7 right now. We reserve the right to recall him.

8 THE COURT: Okay. Is that 16 and 17?

9 MR. GARRETT: They're into evidence, 16 and 17.

10 THE COURT: All right. Very good. Cross-examination
11 from the State?

12 MR. BLACK: Mr. Rowell, just briefly.

13 I don't think I have any questions for you.

14 THE COURT: Okay. Thank you, sir. You can step down.

15 MR. GARRETT: Your Honor, he still needs to be
16 sequestered?

17 THE COURT: Yeah.

18 MR. GARRETT: Because he's on the stand -- he's been on
19 the stand he doesn't need to talk to anybody.

20 THE COURT: That's right. And especially if you
21 possibly intend --

22 MR. GARRETT: I do intend to call him back.

23 THE COURT: All right.

24 (Whereupon, the witness steps down from the witness
25 stand.)

1 MR. GARRETT: I'd ask the bailiff to make sure he gets
2 into a situation where -- Mr. Sims. Calling Mr. Sims back.

3 THE COURT: Okay. For what purpose?

4 MR. GARRETT: Your Honor, to reaffirm that's the person
5 he talked to is Mr. Pennington in coming to his conclusions.
6 We were unable to do that without Mr. Pennington's
7 statement. He's testified now, so he should be able to
8 comment on it as part of his --

9 THE COURT: What says the State?

10 MR. BLACK: Judge, I think he testified that he also
11 received information from the Defendant as well in making
12 his conclusions. So I don't --

13 THE COURT: I guess what I'm asking, Solicitor, is the
14 State opposed the Defense recalling Mr. Sims?

15 MR. BLACK: I don't think so, Your Honor.

16 THE COURT: No opposition? Come around, please, sir.
17 Yes, it's a different day. You need to reswear him.

18 MATT SIMS, having first been duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GARRETT:

22 Q We're not going to talk about tires today, right?

23 A Yes. I hope not. Yes, sir.

24 Q Okay. Let me ask you a question. When you were
25 testifying you said some of the things that you were doing

1 was trying to interview independent eyewitnesses?

2 A That's correct.

3 Q And had you interviewed Mr. Pennington before coming to
4 your conclusions there?

5 A No, sir. I'd heard -- well, I knew there was a
6 statement.

7 Q Had you read his statement?

8 A Yes. Yes.

9 Q Okay. You hadn't interviewed him or --

10 A No, sir.

11 Q -- talked to him?

12 A No, sir.

13 Q And did you use his statement along with other
14 statements to come to the conclusions that you've told us
15 about yesterday?

16 A Yes, I did.

17 MR. GARRETT: Thank you.

18 THE COURT: Solicitor?

19 CROSS-EXAMINATION

20 BY MR. BLACK:

21 Q Mr. Sims, you were on MAIT for a while; is that right?

22 A Yes, sir. A good while.

23 Q You started, what, '95 you said?

24 A Training started in '95. We actually started working
25 in '96, yes.

1 Q And you retired in when?

2 A 2012, June.

3 Q And during the course of your time at MAIT you talked
4 to -- you did everything that Sergeant Duncan with the MAIT
5 team did, correct?

6 A Yes.

7 Q You talked to witnesses?

8 A Yes.

9 Q You would -- you would go out to the scene, take
10 measurements, examine the scenes --

11 A That's correct.

12 Q -- paint?

13 A Yes.

14 Q All those type things?

15 A Yes.

16 Q And you were here when the MAIT team testified. I
17 think that was on a Wednesday now. I could be wrong.
18 Either Wednesday or Thursday.

19 A That's correct.

20 Q And you heard Ms. Anderson and Sergeant Duncan say that
21 they took everything into account making their decision?

22 A Yes, sir. There's -- you know, there's -- I mean, I
23 have trained those folks as -- as it came --

24 Q Right. And that's --

25 A -- came out, yes, in Court and whatever. But there's

1 -- you know, you can -- you can do 100 percent of the job or
2 you can do 80 percent or you can do 50 percent.

3 Q Right. And talking to -- talking to witnesses is a
4 part of the job?

5 MR. GARRETT: Objection, Your Honor.

6 THE COURT: You're objecting he didn't allow him to
7 finish his answer?

8 MR. GARRETT: I want him to finish his answer, yes.

9 THE COURT: Finish your answer, Mr. Sims.

10 A As I was saying, you can do -- you know, you can follow
11 your training or you can not 100 percent follow your
12 training, so that's an individual thing. So I pointed out
13 some things that I would have done if -- if I was still
14 their supervisor, or that I would have had them do. That's
15 -- this is a very serious case, as we've talked about
16 before, so we need to have a very thorough investigation
17 done.

18 Q In Mr. Pennington's statement he said it happened --
19 the wreck happened in the blue truck's lane?

20 A That's correct.

21 Q The area of impact was in the red truck's lane?

22 A That's correct. He also --

23 Q I thought --

24 A He also said that --

25 MR. GARRETT: Objection, Your Honor. Let him finish.

1 THE COURT: Okay. He can -- he can finish his answer.

2 A He also said that the red truck was swerving. That it
3 appeared to be going left of center prior to the collision.

4 Q Were you in here when Matthew Sanders testified?

5 A I was.

6 Q And you heard him testify that they didn't swerve at
7 all? That they were in their lane the whole time?

8 A That's correct. And I also heard him testify that
9 there was something -- some argument, or something going on
10 in the vehicle.

11 Q They were having a discussion, right?

12 A Distraction.

13 Q A discussion.

14 A Well, he didn't want talk about it.

15 Q Right.

16 MR. BLACK: That's all the questions I have. Thank
17 you.

18 THE COURT: You can step down.

19 (Whereupon, the witness stepped down from the witness
20 stand.)

21 MR. HENDERSON: Call Dr. Valentine.

22 THE COURT: Sir?

23 MR. GARRETT: Call Dr. Valentine.

24 THE COURT: Okay. Come around, Dr. Valentine.

25 DR. JIMMIE VALENTINE, having first

1 been duly sworn, testified as follows:

2 MR. GARRETT: Please the Court.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. GARRETT:

6 Q Tell us your name for our Court record, please, sir.

7 A Yes, sir. It's Dr. Jimmie Valentine. I spell my first
8 name J-i-m-m-i-e.

9 Q Yes, sir.

10 A Last name is Valentine, just like Valentine's Day.

11 Q Okay, sir. Just had that pass.

12 A We did.

13 Q All right, sir. Tell me a little bit about you and
14 about your educational background and help the jury know who
15 you are.

16 A Yes, sir. I'll be glad to. Actually I grew up in
17 Shreveport, Louisiana and went to high school there, and
18 actually went to college at Centenary College in Shreveport,
19 Louisiana. I received a Bachelor's degree in biology in
20 1962 and a Bachelor's degree in chemistry in 1964. And then
21 I went from there to the University of Mississippi where I
22 received the Master's degree in medicinal chemistry, and
23 then the PhD degree in medicinal chemistry. Finished there
24 in 1968.

25 Q Yes, sir. And what have you done since then?

1 A Well, after I left University of Mississippi I went to
2 Mallinckrodt Pharmaceuticals in St. Louis, Missouri with
3 some of the staff there as a senior research scientist for
4 five years. And then I accepted a position as an associate
5 professor and lectured in medicine at the University of
6 Missouri in Kansas City. Of course, that's in Kansas City,
7 Missouri. And I was on faculty there for a total of five
8 years, and then went to the Oral Roberts University School
9 of Medicine in Tulsa, Oklahoma where I was an associate
10 professor of pharmacology. At that institution I was
11 promoted to full professor and then later became the
12 chairman of the Department of Pharmacology there and served
13 in that capacity until that school closed in 1990. And my
14 wife and I were both on the faculty there. We had to
15 relocate, so we relocated to the University of Arkansas
16 College of Medicine in Little Rock, Arkansas, and I finished
17 out my career there. It was 19 years at the University of
18 Arkansas College of Medicine in Little Rock where I was a
19 professor of pediatrics and pharmacology.

20 Q All right, sir. Are you a published author?

21 A Yes, sir. I am.

22 Q How many writings have you -- have you prepared?

23 A Well, there's several different kinds of writings that
24 you do as an academic person as I was all those years. You
25 publish what's called peer reviewed journals, and I think I

1 had 59 peer reviewed articles in scientific literature.

2 I've published a number of chapters in books. Then I've
3 actually been the editor of two different books as well.

4 Q And so, what are you -- what areas of science are you
5 qualified to testify in?

6 A Well, over the course of my career I used the
7 techniques of gas chromatography. Gas chromatography mass
8 spectrometry. Liquid chromatography, mass spectrometry, so
9 forth, in all the research programs that we did. So I'm
10 very qualified in the area of analytical chemistry because
11 we use that as a research tool for the research that we did.
12 And I've published widely with articles in those areas. I
13 am also board certified in clinical pharmacology. I taught
14 clinical -- medical pharmacology to medical students for
15 almost 40 years before I retired. And so, I'm boarded --
16 boarded in that. I'm also a fellow of the American
17 Chemistry Institute as well, too. So I kind of have a
18 multidiscipline type of background in pharmacology and
19 analytical chemistry. And then we -- we've done a lot of
20 forensic toxicology over the years because the capabilities
21 we had in our laboratories, we were often called on by law
22 enforcement and others to analyze samples that were in
23 various cases.

24 Q Have you testified as an expert before in court's of
25 law?

1 A Yes, sir. I have.

2 Q Federal courts?

3 A Both federal and state, and also in hearings as well,
4 too.

5 Q Have you testified for the prosecution previously?

6 A Yes, sir. I have.

7 Q Have you testified for the defense previously?

8 A Yes, sir. I have.

9 Q What percentage of your testimonies as an expert would
10 you say you worked for the State or you worked for the
11 Defense?

12 A Well, I don't do any work for the State any longer but
13 simply because I'm not employed by the State. When I was at
14 the University of Arkansas almost all the testimony I did at
15 that time was related to cases either for the Attorney
16 General's Office. I was a consultant for the medical -- the
17 different professional boards in the state. The medical
18 board, pharmacy board, nursing board and so forth. And I
19 testified in hearings for those organizations on a regular
20 basis. Since I had retired I still am the consultant to the
21 Arkansas State Board of Nursing, and also the Arkansas
22 Department of Corrections. And so, I regularly write
23 reports for them concerning drug testing that's going on
24 with their employees or people in their jurisdiction, and I
25 frequently testify in hearings before them as well still.

1 MR. GARRETT: Your Honor, at this time I'd move to
2 qualify Dr. Valentine in the areas of pharmacology,
3 toxicology, forensic -- forensic examinations and -- one
4 other thing. Hold on just a minute. Let me make sure I get
5 them. Chemistry. Chemistry.

6 THE COURT: All right. What says the State?

7 MR. BLACK: No objection.

8 THE COURT: All right. Without objection I find that
9 Dr. Valentin is an expert in the area of toxicology,
10 pharmacology and chemistry.

11 MR. GARRETT: Thank you.

12 Q As a medicinal chemist are you sometimes called upon to
13 determine whether or not alcohol or drug screens are valid?

14 A Yes. When I was still active in academia, as well as
15 since then, I frequently testify in court cases. Alcohol is
16 involved in a number of cases. There's a lot of drugs that
17 are involved in cases, too. And so, I routinely testify in
18 that area.

19 Q Are you free?

20 A No, sir.

21 Q How much do you cost?

22 A Well, I charge -- I charge for my time. In this
23 particular case I charged 1,500, my retainer fee, to --
24 first off, I visited with you and Mr. Henderson over the
25 phone and went over the merits of the case. I always do

1 that before I ever accept a case. And then I -- I got a
2 \$1,500 retainer from you all to look at the records. And
3 then after I looked at the records I felt like that I had
4 something to offer in the case. And so, I agreed to take
5 the case. Since that time I've done a lot of work in this
6 case because I had to look at a lot of medical records. I
7 had to look at all the records from the SLED analyses. And
8 so, I charged you for that, for my professional time. My
9 professional time I get \$1,500 per day. And so, whenever
10 I'm someplace like now I get paid \$1,500 per day for my
11 professional time, plus expenses.

12 Q I understand. Now, as a medicinal chemist are you able
13 to try to compare what someone's alleged blood alcohol level
14 would be and their abilities to drive a vehicle and/or to
15 walk in a straight line?

16 A Yes. Part of the discipline of pharmacology that I've
17 taught in medical school all these years, alcohol is a drug.
18 We consider it a drug. So we would teach the medical
19 students, and then I taught the residents as well, too,
20 about the effects of alcohol, because they have to
21 understand when they see a patient what to expect clinically
22 from a person that's intoxicated with any alcohol. And that
23 goes along with the blood levels that correspond to the
24 physiological state that you would expect at that point in
25 time. So I'm very versed in that area.

1 Q When it was found out that we had a recording of Mr.
2 Rowell some 20 minutes before this accident, did that peak
3 your interest? Did you want to look at that?

4 A It certainly did. I said I wanted to look at that,
5 because that's important to see what his demeanor is, what
6 physical signs he's showing 23 minutes before the accident.
7 Correct.

8 Q Now, it wasn't set up to be a test where you could
9 actually ask somebody to walk a line or talk or carry on,
10 and there's no -- there's no audio?

11 A That's correct.

12 Q So really you're simply left with that you -- what
13 we've got?

14 A That's correct.

15 Q But you did find that important to look at?

16 A Yes, sir. I did.

17 Q So at the beginning of this case, once you've reviewed
18 the records and we found that, you wanted to see that
19 immediately; is that correct?

20 A I did. And you all sent me the video of that. Yes,
21 sir.

22 Q What I'd like for you to do is I'd like for us to play
23 that and to take our time for a minute and I want you to
24 talk to the jury about what you observed about Adam's
25 abilities in that.

1 A Yes, sir. I'd be happy to.

2 Q Are you more comfortable there?

3 A I think they can hear me well here and I can see the
4 screen just fine, so I believe it would be fine.

5 THE COURT: Which video is this, 13 or 14? Just for
6 the record.

7 MR. GARRETT: 14, Your Honor.

8 THE COURT: 14, okay.

9 MR. GARRETT: Defendant's 14.

10 Q Dr. Valentine, what parts did you find important to
11 you, if any, in that video?

12 A One of the things on driving performance under the
13 influence of alcohol is being able to control a vehicle
14 appropriately. We saw on this particular scene the truck
15 came in. The Silverado truck came in. That's it that we
16 saw just a moment ago. And it -- there you go. And it
17 turns into the -- into the lane of the parking garage.
18 Parking lot. You'll see it turn in now. And then he's --
19 he's actually behind another vehicle and he appropriately
20 stops behind the vehicle and then waits. Obviously there
21 was somebody -- you can see the parking lot was kind of
22 crowded that night. Somebody is there and he's waiting for
23 someone to back out. Another car comes in behind him at
24 that point in time. And then you'll notice in a moment that
25 he puts on his turn signal. Again, these are all

1 appropriate actions for driving a vehicle. And he pulls --
2 you'll notice as the car backs out he pulls into the parking
3 spot that's there. We can't see whether there's a car on
4 the other side, but I assume there were multiple cars there
5 and he's pulling in between the cars. And again, that's an
6 appropriate action being able to pull into a parking spot.

7 Q So based upon that driving, would that be consistent
8 with either of the tests that you have examined in this
9 case? Either of the alcohol tests that you've examined in
10 this case?

11 A Typically police officers, for example, are taught in
12 their training to look for swerving of a car, inappropriate
13 braking action, failure to put on blinkers, single light, or
14 pulling into parking places. Those are all things that can
15 be looked at, and I've seen that on -- I've looked at
16 literally hundreds of videos over the years where police
17 action has been exercised when people that those kind of
18 characteristics.

19 Q If someone was a 22 level -- true 22 level, would they
20 be able to do that?

21 A No, sir. If you were at a point -- it's a .22 level.
22 If you were at a .22 level your faculties would not all you
23 to do -- appropriately drive a vehicle like that.

24 Q Now, that's all they had of the outside. They don't
25 have him coming in or anything.

1 A Yes, sir.

2 Q The only other thing we were able to find was this next
3 one. And we sent you this next one as well at the same
4 time; is that correct?

5 A Yes, sir. You did.

6 Q And help the jury understand what this -- and that
7 would be Defendant's 13. What does that show you, or kind
8 of give the jury --

9 A You're going to see -- you're going to see Mr. Rowell
10 walking down the aisle of the Walmart store there. Of
11 course, I did not have the opportunity to observe his gait
12 or anything prior to this, so I had no -- no concept of how
13 he walked. We'll see it in just a moment. We'll just let
14 him -- just let him walk all the way down the aisle and let
15 the jury observe it and then I'll comment on it after that.

16 Q Okay. Can you tell us approximately when he comes into
17 the screen as to which one he is? We'll try to get that --

18 A Yes, sir. When I spot him here I'll let you know.
19 There he is now. He's the second gentlemen walking there.
20 That's the complete -- that's complete -- all we have.

21 Q We lose sight of him and we don't -- we don't see
22 anything more than that?

23 A Yes, sir, that's correct. That's all we see.

24 Q Doctor, based on your observations, could a person walk
25 that way if they were a true 22?

1 A No, sir. They could not.

2 Q And did you have an opportunity to look at Mr. Rowell's
3 gait? All of us have, I guess, our own gait or our own way
4 of walking.

5 A We do. I did. When I first met him, I believe it was
6 last -- a week ago today that I met Mr. Rowell for the first
7 time. I asked him to actually walk down the hallway to your
8 office so I could take a look at his gait. Now, I'll remind
9 you that he's had multiple surgeries on his legs because he
10 had injuries, so he may not walk the same as he did at that
11 point in time. What I did notice about his gait, he tends
12 to splay out his feet when he walks.

13 Q Is that called being pigeon toed or --

14 A Well, they would be inward like this. He tends to walk
15 out like that. Some people -- I assume that's his normal
16 gait. And I observed that on this same -- this video here.
17 It seemed like to me that that's what he was doing. He was
18 splaying his feet outward just a little bit as we walked.

19 Q And did you see whether he was having any balance
20 problems or anything in his walk?

21 A No, sir. He didn't appear to be having any balance
22 problems. I mean, you know, someone at a .22 would be
23 trying to put their arms out for balance or be holding on to
24 things because they simply don't have any balance at that --
25 at that level.

1 Q And was he able to maneuver around -- or slow down
2 behind people and maneuver around some of the --

3 A I think that's kind of typical at Walmart. You're
4 always having to move around people, I guess, aren't you.
5 But he seemed -- it seemed to be fine. I mean, I didn't see
6 anything out of the ordinary with that.

7 Q He didn't bump into anybody or anything like that?

8 A No, sir. I didn't see anything like that.

9 Q Is that -- is that way of walking consistent with a
10 .22?

11 A No, sir. It's not.

12 Q Let's -- then let's start talking then about your
13 findings. Did you have an opportunity to review all of Mr.
14 Rowell's medical records?

15 A Well, I -- what I reviewed in his medical records were
16 the transport records. The records of the Greenwood County
17 emergency group, both the fire and the EMS people. I also
18 looked at the LifeFlight records. I looked at all of the
19 emergency records, or trauma records, and the surgery
20 records that were done on him. I did not look at -- I did
21 not have records to look at from his extensive hospital stay
22 that he was there. That really wasn't necessary for my --
23 my part of this case.

24 Q All right. So then tell us what your analysis found.
25 What did you find? And start, if you don't mind, at the

1 beginning when he was inside of the vehicle still trapped
2 inside. Was there any type of medical procedures being
3 performed on him in the vehicle?

4 A Yes. It appeared from the medical -- from the EMS
5 records that they tried to start an intravenous line in his
6 arm while he was still in the vehicle and that was
7 unsuccessful. Apparently they did get that established once
8 they got him out of the vehicle and into the -- into the
9 back of the ambulance.

10 Q What is commonly used -- do you have an opinion as
11 what's commonly used to start the IV? Do they just stick it
12 in or do they wipe it with something, or do you know?

13 A Well, it's a septic procedure. You're supposed to wipe
14 it down with some type of disinfectant. Usually isopropyl,
15 and alcohol swab is what's typically used.

16 Q You don't know what was used in this case?

17 A I do not know what was used, and it's not recorded in
18 there what they used either.

19 Q Now, if they tried to stick and they stuck him and he
20 bleed, would that be a contamination of his blood system?

21 A It could be if there was contamination of the needle or
22 anything that was used. Typically they have a sheath over
23 those needles, so they're supposed to be sterile. And so
24 long as no one touches it, it is sterile.

25 Q Okay. And then -- so then, you say they get him out,

1 they get him up on a gurney or whatever, and then they do
2 get the IV started; is that correct?

3 A Yeah, once they got him into the -- into the back of
4 the ambulance they did get an IV started. And then I think
5 you heard some testimony yesterday of how he was -- his
6 breathing was supported.

7 Q Are you familiar with those bags? The bags that you
8 use for --

9 A Yes, sir. I am.

10 Q And as the nurse testified yesterday, is that true?
11 Does the exhaust of his breathing come directly into your
12 face?

13 A I believe those are set up -- it's typically -- it's a
14 mask that fits over both the nose and the mouth. And then
15 it comes -- it has a metal piece that comes up. It's
16 stainless steel that comes up. It's got a T on at the end
17 and the T goes over to the side. There's a bag here that's
18 used to manually breath for the individual. And then you've
19 got an exhaust port that's up on the top. And so, the
20 exhaust port would be if someone were leaning over bagging
21 them they would get that exhaust up into their face, or
22 close to their nostrils.

23 Q In a closed -- in a closed environment inside, let's
24 say, the back of the ambulance, at the distance that you saw
25 yesterday with the Nurse Boyter, you believe you would have

1 been able to smell any alcohol or anything on the person at
2 that time?

3 A Yes, sir. I believe you would.

4 Q If a person was truly a 22, would you -- what
5 percentage or chance would you have of smelling a strong
6 odor of alcohol?

7 A Well, let me say this. There's no certain smell of
8 alcohol associated with a level. Okay?

9 Q Okay.

10 A That's never been shown to be scientific. What we do
11 smell on the breath of somebody after they're drunk any kind
12 of alcoholic beverage, you're smelling what we call
13 congeners. They're the things that are in there from the
14 fermentation process. You're not smelling the alcohol
15 itself. You're smelling these congeners. And so, a person
16 who has been drinking beer does smell a little bit different
17 than somebody who's been drinking whiskey and so forth. But
18 all one has to do is drink one drink and you can smell it on
19 their breath. Okay? So the blood level can be very low of
20 alcohol and still you smell it on their breath.

21 Q I understand. So there's no scientific correlation
22 between a smell of alcohol and it being --

23 A There have been -- there have been studies in the
24 scientific literature trying to correlate the two, but it's
25 not correlatable.

1 Q Now, after they got him loaded on the gurney, got the
2 IV in him and they were bagging him, what next did they do?

3 A Well, by that time the life support people had arrived.
4 Now, the EMS people had initiated -- they had gotten a
5 saline infusion going in him. They were just hanging a bag
6 of saline on him. And then the Life people came and they --
7 they did the intubation, as we heard, in the back of the
8 ambulance. They gave him the paralyzing drugs to do that,
9 and then they mechanically breathed for him at that point in
10 time.

11 Q What would the -- if you paralyze somebody as it
12 relates to a normal -- there was some discussion yesterday
13 about a normal time dissipation of alcohol. Would that
14 change that?

15 A Well, one of the routes of excretion of alcohol from our
16 body is on our breath. We the police, for example, use a
17 Breathalyzer to analyze alcohol concentration on the breath.
18 So that's one of the routes of elimination. So if you
19 paralyze someone's breathing and you are breathing for them,
20 you are still eliminating some alcohol from the lungs, but
21 it's changed. The main thing about when you have somebody
22 that's in severe trauma, like we've heard described of Mr.
23 Rowell at this point in time, is that their metabolism is no
24 longer functioning like it would be in a normal person. He
25 is not a normal person at this point in time.

1 Q He's not normal?

2 A He is not normal at this point in time.

3 Q So, in other words, the science of trying to determine
4 how much alcohol someone has in their system goes out the
5 door when they become abnormal?

6 A Let's say it this way. The metabolic processes in the
7 body change dramatically. And so, when one is trying --
8 that's one of the ways that we eliminate alcohol from the
9 body is through -- through metabolism. The liver primarily
10 does that. And when you get problems with -- essentially
11 when you -- you don't have any blood flowing through the
12 liver that's what -- when you're bleeding and you've got a
13 loss of blood you don't have as much blood coming through
14 the liver, so the metabolism has changed dramatically.
15 There's no question about that.

16 Q So as opposed to being a normal person, an average
17 person, once you find that you've got a liver injury and
18 once you find that you've got a paralytic situation for
19 breathing, then that metabolism is changed markedly from
20 what the metabolism of a normal person would be?

21 A Yes. And in addition to that, too, they've also given
22 him drugs for sedation, too. They gave him Midazolam, or
23 Versed, which is a drug, too, to -- and it shows down the
24 metabolism as well, too, so...

25 Q And go from there as you're working your way through

1 the chain of what all happened to him. He was on the -- I
2 guess at some point loaded on the air transport. Tell us
3 what happened --

4 A Yes, sir. He was loaded on the helicopter. And again,
5 you heard testimony by the person who was there that did
6 that, and they transported him -- I think she said it took
7 about 23 minutes or so for them to fly to Greenville to get
8 him to the -- to the trauma center there. And so, once at
9 the trauma center they took him into the -- into the trauma
10 bay, as you heard.

11 Q Now, on the way there did they give him -- in addition
12 to fluids did they give him blood?

13 A Yes, sir, they did. They gave him additional -- they
14 call it a unit of blood. Now, we're going to be talking in
15 a little bit about these units of blood. These are not
16 whole blood in the sense that you -- that's drawn from you,
17 for example, if you donated blood. But rather what it is,
18 is it's a blood component. So they've concentrated things
19 down. So what he received in the helicopter was a unit of
20 blood, but it was packed red blood cells. We call them RBCs,
21 for red blood cells, and he received that. And then he also
22 received what we call fresh frozen plasma. Now, plasma, I
23 think you heard it described -- I believe Dr. Reddic, was
24 it, his name? I believe from the Greenville Hospital,
25 talked about it. And what happens is if you take whole

1 blood and you put it in centrifugion and spin it down, the
2 speed with pack the cells down at the bottom and up at the
3 top it will be this clear yellow looking fluid, and that's
4 what we call plasma. And so, he received fresh frozen
5 plasma which is -- again, it comes from many people. It's
6 not just from one person, because they -- when you collected
7 this and you collect the red cells you pull the plasma
8 together. And so, fresh frozen plasma is typically a
9 multi-donor fluid.

10 Q Now, but regardless what it is, there were certain cc's
11 put into him; is that correct?

12 A That's correct. Yes, sir.

13 Q And why were they -- why would the doctors be putting
14 cc's of blood and cc's of saline and the FF and also the
15 plasma? Why would they be doing that?

16 A When they arrived on the scene his blood pressure was
17 very low. I think you heard it was something 80 over 40 I
18 believe I heard on that, and I think that's what it said in
19 the records as well, too. When you get a person that's got
20 very low blood pressure like that it means that they're in
21 shock or they've lost some -- have lost some blood. And so,
22 the first thing you've got to do to -- in an emergent
23 situation like that is to try to replace fluids. You're
24 trying to get more volume back into the body so that you can
25 -- you can bring the pressure up. Just kind of aside of

1 that, too, is that when you -- your pressure gets real low
2 like that it's hard to find a vein to go into. And so, by
3 pushing fluids into people you can -- you can get it -- get
4 it up higher. And I think you heard the transport nurse say
5 the other day that they tried to use the gun. It's a gun
6 that puts the needle right into the bone and you can fuse
7 stuff right into the bone. Because he had all these
8 injuries in extremities they could even go into the bone.
9 So they had to find a line -- you know, vein to go into.

10 Q Let's move on from there. Then what happened to him
11 next?

12 A Well, he arrives at Greenville Hospital then and that's
13 when we start getting some blood samples drawn from him.
14 You heard testimony about a blood sample was drawn. It then
15 went to the laboratory to be analyzed for -- one of the
16 things analyzed for was alcohol.

17 Q Okay. You want to talk to us then about that one first
18 and then --

19 A Yes, sir.

20 Q -- kind of go through it? However you want to approach
21 it.

22 A Yes, sir. I think that would be good, if we could. I
23 felt like the jury's heard so much on this that I to
24 summarize what happened from the -- as I got it from reading
25 the medical records, hearing the testimony that I've heard

1 over the past few days as well, too, and I've made a series
2 of slides that I'd like to show the jury, if we could, to
3 kind of summarize that.

4 Q That'll be fine. Would you like to do that now?

5 A Yes, sir. We'll see if Jane has got it on -- Ms. Jane
6 has got it on for us.

7 MR. GARRETT: It's good to have these young people know
8 what they're doing.

9 THE WITNESS: I'm sorry. I think I didn't have my -- I
10 got it now. If you'll just fix it so it's -- Jane, we've
11 got it. That's got it. Thank you.

12 Q So what's your first slide show?

13 A Well, this showed -- again, I got this from the
14 LifeFlight records itself. It showed them arriving at 20:59
15 hours at the Greenville facility. And then going to the
16 hospital records. Greenville Hospital Systems is what GHS
17 stands for here. The patient arrives there, according to
18 the nursing notes, at 21:00 hours. So it was pretty close
19 in time of the two that arrived. And then the first thing
20 obviously, because they do them right away, is they take his
21 vital signs. Blood pressure and so forth. And that was
22 recorded in the nursing records as being 21:04 hours. And
23 then next we get into a little problem with these blood
24 draws that we -- we heard some testimony this the other day.
25 There's apparently a blood specimen drawn on him at 2:054

1 hours.

2 Q That would be 8:54?

3 A 8:54. Yes, sir.

4 Q Go ahead.

5 A And then we heard some testimony the other day that it
6 arrived in the laboratory, according to their records, at
7 21:24. So that's about a -- roughly about a 30 minute block
8 of time before it arrives in the laboratory.

9 Q Does that shock you that it would take 30 minutes to
10 get an emergency --

11 A It does. Yes, sir. I mean, you've got an emergency
12 situation here. You want this data from this. It seems
13 like you'd get it there pronto. Okay? But anyway, I'm just
14 going by what the records show.

15 Q Yes, sir.

16 A Now, this particular blood is what's supposedly the
17 alcohol analysis is done on by this hospital test. I'm
18 going to cover that in just a few minutes. But then there
19 was another blood specimen that was drawn from a central
20 line that Dr. Snow, the surgeon that you heard the other
21 day. He put in a central line. And you remember there's
22 some testimony there was a blood specimen drawn at 21:08
23 hours from Mr. Rowell as well. And so, we think from the
24 records, and looking at the next slide here -- actually,
25 this was entered into evidence the other day. Up there at

1 the top -- and this is what was put on it by the personnel
2 from -- from Greenville Hospital trying to help us
3 understand what was happening. You see up there where it's
4 got 1. That doesn't mean it was collected. You see that
5 time in there 20:54. And then where they've got a box
6 around the 2, that's the time it was received in the
7 laboratory. And then you remember them interpreting that
8 saying that number that was there was the person that
9 collected them. You see that other box is, is the person
10 that collects that sample was identified as Nurse Amanda
11 Baker, I believe was her name that collected -- collected
12 the sample. So that was the sample that we -- that according
13 to the audit trail went to the laboratory and was the one
14 that was analyzed for the alcohol. I'm not sure my laser
15 pointer will work on this screen. It won't. But you see
16 the -- where it says ALCP. That's the alcohol test. That
17 was the code for the alcohol test that was supposed to be
18 run.

19 And then this, again, is just from the records from the
20 hospital. And I just put a red box around this to show
21 again that this is the lab that was -- see, it clearly says
22 labs drawn from the central line 21:08 by Snow. And that
23 would be Dr. Snow that drew those samples. And then down at
24 the bottom of that record it said central line again, 21:08.
25 So

1 Q So --

2 A Yes, sir. Go ahead.

3 Q So how is that -- how is that possible?

4 A Well, I'm not sure. I mean, I'm just showing you
5 what's in the records. We've got -- we've got a sample that
6 was collected at -- supposedly at -- if you go back to the
7 previous slide, that one was collected at 28 -- 20:54. And
8 then we have this other sample that's collected from the
9 central line at 21:08. So I'm not sure. You know, we never
10 were able to get clear the day who collected that -- that
11 one at the -- this one, the 20:54 sample. That one's
12 identified as being collected by Nurse Amanda -- her last
13 name, but --

14 Q Right.

15 A I'll call her Nurse Amanda for a moment. And that's
16 her -- was her number. She identified that as her number
17 collecting the sample.

18 Q That would be from a central vein, or from a central
19 line?

20 A No, sir. Well, I don't know. I don't know the site.
21 That's the reason I put a question mark on the site. I
22 don't know what the site is. It's not -- not identified.
23 Okay.

24 Q Go ahead.

25 A So that 20:54 sample is the one that looks like it goes

1 to the hospital laboratory. Now, this is the actual
2 printout from the hospital records again. This is the
3 hospital test that was done for the alcohol. And you'll see
4 as I've got it in the block there, again it's showing that
5 it -- it has a level of 219. Now, the hospital reports out
6 in milligrams per deciliter, it's a different until, and
7 it's converted over to a level that would be a forensic
8 level. A legal level would be you'd move the decimal three
9 points to the left. And so, it would be a .219 is what we
10 -- what essentially the hospital was reporting out. Now,
11 you'll notice that they say that that is alcohol plasma.
12 And again, so this is not a whole blood sample for -- the
13 law identifies whole blood as using for legal purposes. And
14 so, again you heard some testimony about you'd have to
15 convert this level over to a whole blood level. Use some
16 kind of conversion factor to try to convert it over to a
17 whole blood level. So at this point it's just simply what
18 they're reporting there. But again, I just put a little
19 note out to the side to remind everyone again, this is not
20 apparently the 21:80 -- the 21 -- whatever it is. I can't
21 quite read it from here, sample that was there. This must
22 be that 20:54 sample that we're talking about.

23 Q Hold on a minute. I thought I saw earlier on where he
24 didn't arrive until 21:00.

25 A Yes, sir. That's another kind of a puzzle in the

1 records. When you go back to when the person -- let me go
2 back to the very first slide here. When they actually
3 arrive, according to the note, they arrived at 20:59. Okay.
4 And then the nursing notes has them arriving at 21:00.

5 Q Is that the -- is that the LifeFlight?

6 A Yes, sir. The LifeFlight is the 20:59 record, and then
7 the arrival at the Greenville Hospital System, that's in the
8 nursing notes, it said 21:00 hours. And then you see that,
9 you know, the vital again in the nursing notes were taken at
10 21:04 hours. So that's pretty close. Those two are pretty
11 close.

12 Q Let me let you look at what's been marked for evidence
13 State Exhibit 70. Is that what you got that --

14 A Yes, sir.

15 Q -- 21:00 from?

16 A Yes, sir. It is. They have a -- they have in here a
17 thing. It's called transport down here and they arrival at
18 facility time. They have it -- I'm sorry. That's the
19 estimated one there. That's not the exact one. Oh, here it
20 is. Arrive at scene. And they've got -- they've got 20:09
21 as when they arrived. Okay? I'm sorry. That's estimated
22 time. That's the estimated time. Forgive me. I'm looking
23 at the wrong page. They have what they call an event log in
24 their -- in their report. And so, they give the -- they
25 give the time -- they gave the time as the patient being

1 placed in the trauma bay one as 20:59, and that's what I put
2 on my slide.

3 Q Okay. So if he was --

4 A And they were taking him from the helicopter and taking
5 him -- putting him in the trauma bay, and that's what
6 they've got as their recorded time is 20:59.

7 Q So if it's 20:59 and they've got him loaded, how could
8 you take a blood sample at 20:40 --

9 A 20:54.

10 Q Yes, sir.

11 A I don't know.

12 Q They said it was chaos. Have you been in trauma
13 centers before?

14 A Yes, sir. I have. I've actually worked in some
15 before.

16 Q Is it -- is it chaos?

17 A It is.

18 Q Is it very important that these times be accurate to
19 make sure that the blood that got taken was the blood that
20 was used in this case?

21 A Well, I think we can allow them a little slop in the
22 time. Okay?

23 Q Okay.

24 A But again, this one at 20:54 sample doesn't correlate
25 with some of these other times that we've seen. Okay? I

1 mean, it's close. But I guess close counts in horseshoes
2 maybe but not on this kind of work.

3 Q Let me let you get back on. I'm just trying to help
4 you --

5 A Yes, sir.

6 Q -- presentation.

7 A We've seen these. So the tests that they ran in the
8 hospital was a test that's run. What I did is I asked
9 actually the hospital to provide us what's called the
10 package insert, and the package insert is in the kit that
11 they buy from the manufacture to run the alcohol test. And
12 so, what I'm going to show you, the next few slides, are
13 just a few snippets out of this package insert.

14 Q Yes, sir.

15 A And so, this shows you this is an ethanol kit that
16 they're using. They purchased this. Over here to the right
17 is the machine that's designed to run on the Architect, and
18 that's what they testified was their clinical chemistry
19 analyzer that he ran this one.

20 Q So it's called the Architect?

21 A Yes, sir. It's called the Architect. It's made by
22 Abbott Laboratories and it's -- that's just a trade name of
23 it.

24 Q So let me make sure the jury understands this. So
25 there's a company called Abbott that has machines called

1 Architect which uses a reagent agent and that's what you're
2 showing us there?

3 A That is correct. This is the reagent that they buy
4 from the manufacturer to put on this Architect machine to
5 run this alcohol assay.

6 Q And is it -- can you explain the difference then between
7 the gas chromatography versus this enzyme test? Which is the
8 -- scientifically the better test?

9 A Yes, sir. I'd be happy to. The enzyme test that we're
10 going to be looking at here, the one that was run in the
11 hospital lab, is what's called an indirect analysis. We're
12 not analyzing for alcohol itself. We're analyzing for a
13 product that's produced from alcohol. And so, what you do
14 is you take ethyl alcohol and you add to that an enzyme
15 that's called alcohol dehydrogenase. And this alcohol
16 dehydrogenase comes from the yeast. That's where they get
17 it from. So it's from yeast. You put it in, and it takes a
18 hydrogen off of the ethyl alcohol. And that hydrogen is
19 transferred to that alcohol dehydrogenase. In that transfer
20 of that hydrogen, what you can do is to that with another
21 coenzyme which is called NAD. And it's got a fancy name.
22 It's called nicotine adenine dinucleotide, or NAD. We'll
23 just use NAD for the abbreviation. And so, NAD can pick up
24 that hydrogen. And when it picks up that hydrogen what
25 happens is that it changes the configuration of that NAD so

1 it now changes the wavelength of light that you measure it
2 at. And so, this machine, this Architect, is actually
3 measuring wavelength of light change that occurs when NAD is
4 converted over to NADH. And so, that's the reason you say
5 indirect assay. You're not analyzing for alcohol per se.
6 you're analyzing for that transfer of hydrogen. Okay? Now,
7 the gas chromatographic procedure, like SLED used, the test
8 we'll see in a little while, is a totally different
9 technology. It's used to separate out the ethanol away from
10 any other components that might be there. Chromatography,
11 we used to call it the separation of science, and it would
12 separate one component away from another. Gas
13 chromatography for alcohol is considered kind of the gold
14 standard to run by. This is a test that's designed to be
15 used in the clinic, and it helps a person get a quick --
16 quick answer. If you had to run it by gas chromatograph it
17 would take a little bit longer to run. Here the speed is of
18 essence. They want to know whether or not this person has
19 some alcohol aboard, because it would influence their
20 treatment of a person. Okay? How much anesthesia they give
21 him and so forth later.

22 Q All right. Go ahead.

23 A And so, you see the intended use of this is to do the
24 analysis on this Architect machine.

25 Now, in this package insert it provides for some

1 limitations of the procedure. I'm just taking the liberty
2 to put a couple red arrows here to kind of highlight a
3 couple of these. You see the very first it says legal
4 alcohol intoxication levels vary. And that's true. I mean,
5 you can get a lot of different levels legally in someone.
6 And then it says the test results should be interpreted in
7 light of clinical signs and symptoms. And so, that's what
8 this test is designed for is to allow the clinician to see
9 if it correlates with what they're seeing clinically in the
10 individual. And then notice it says the test is designed
11 for use with human urine, serum or plasma only. Well, the
12 hospital did that correctly because they used plasma to do
13 the analysis and that's the way it's designed for. And then
14 notice it says that increased levels of lactic acid and LDH.
15 Now, LDH is another enzyme that's in our level. It's called
16 lactate dehydrogenase. And they say in this one in
17 postmortem samples it can cause elevations of ethyl alcohol.
18 It is true, and in postmortem samples you will see this.
19 You can also see it in the living person, and I'm going to
20 speak more to that in just a few minutes as to how you can
21 see it in the living person. And then it says it's possible
22 that other substances and/or factors, either technical or
23 procedural errors, not listed in the specificity table, they
24 interfere with the test and cause false -- false results.
25 And again, that's so -- the manufacturer again is telling

1 you that this may -- you may get some false results from it.
2 You've got to be careful. You've got to, you know, know how
3 to use the test.

4 Any questions about that?

5 Q No. It seems like it's telling you up front to watch
6 out for the lactic acid and the LDH. Did you happen to, in
7 your studies of his medical records, did you find elevated
8 levels of lactic acid and LDH?

9 A Well, the LDH was not measured in him, so we don't know
10 what it is. The lactic acid, yes. And I'll show you that
11 in just a moment, okay, that it was elevated.

12 Now, towards the end of the package insert -- and I
13 didn't do this. You all highlighted this was done by, I
14 assume, someone in the lab and we asked for this record, and
15 I asked for who was the manufacturer of the kit. And they
16 highlighted this at the end of the thing. And notice it's a
17 place -- a company called Microgenics Corporation. So
18 Abbott Lab is basically buying from Microgenics Corporation
19 the ingredients that go in this kit and then they're
20 repackaging it and selling it for use on their machine.
21 Okay? But this Microgenics is actually the corporation that
22 makes the components of the kit.

23 Q Yes, sir.

24 A Now, the reason that's important you're going to see in
25 the next thing we're going to show you here. This is an

1 article that was in Clinical and Forensic Toxicology News.
2 This is a news letter that's put out. It's a joint
3 publication of the American Association for Clinical
4 Chemistry, and also the College for American Pathologists,
5 or CAP. And, in fact, you'll see right underneath that
6 toxicology it says an AACC. That stands for American
7 Association of Clinical Chemistry, slash, CAP. That stands
8 for College of American Pathology. Educational for
9 Toxicology Laboratories. So this is distributed to all
10 laboratories that participate in what we call the
11 proficiency testing that's done by College of American
12 Pathology. So there would be probably in the neighborhood
13 of 200 and 300 laboratories across the United States that
14 would get this news letter.

15 Q Would the Greenville Laboratory be getting this news
16 letter?

17 A They should, yes. It's given -- it's given to every
18 laboratory that participates in CAP, and I heard them say
19 they were CAP certified the other day. So they should have
20 received this. Okay?

21 Q So this is a learned -- a learned news magazine that
22 you folks get on different articles?

23 A Yes, sir. This is not what we call a peer reviewed
24 publication, but it is what's called an editorial reviewed
25 publication. Now, the reason I know that is I was on the

1 editorial board for clinical and pharmacology and toxicology
2 news. I was on there for four years as an editorial board
3 member. And so, when someone would submit an article like
4 this they would send it out to those of us in the editorial
5 board and we would review it for --

6 Q For science to make sure it's --

7 A Yeah, make sure the science is right. We're going to
8 make sure that, you know, things weren't being sent out to
9 laboratories that were incorrect.

10 Q Yes, sir.

11 A And so, the two people that wrote this particular
12 article, and you see it, it says, "Lactic dehydrogenase can
13 cause false positive ethanol." It's Dr. Frederick. I call
14 him Don because I know him well. He -- and you see there
15 are affiliations down below there. He is with the -- he's
16 in Peoria, Illinois. He's the head of a big commercial
17 laboratory there in Peoria, Illinois. Dr. King, the other
18 author, I do not know him, but he's at the -- as you see
19 there, his affiliation was at the Christian Hospital in St.
20 Louis. So they published this article in this clinical and
21 forensic toxicology news letter to try to alert people in
22 the laboratory that there might be a possibility you'll get
23 false positives with this.

24 Now, what they did is they did a study. They took --
25 they sent out samples to 50 laboratories that participate in

1 the College of American Pathology work and they asked them
2 to perform their normal serum alcohol test that they run
3 their laboratory to perform that.

4 Q So let me make sure I'm with you.

5 A Yes, sir.

6 Q You were talking about that they're worried about false
7 positives. False positives on alcohol tests like the one
8 performed on Mr. Rowell?

9 A Yes, sir. That's correct.

10 Q And so, in order to try and figure out whether or not
11 these machines are given false positives, the cause of the
12 lactate and the other things, they've now done a study on
13 it?

14 A Yes, sir. And they're reporting on the study.

15 Q Fifty laboratories. Do you know which 50 laboratories
16 it was?

17 A No, I don't. It would have been 50 laboratories that
18 are associated with -- they'd be doing CAP surveys, we call
19 it. So they would be 50 of those laboratories.

20 THE COURT: In the next couple of minutes, when you get
21 to a good stopping point, let's do that and take a break.

22 Okay?

23 THE WITNESS: Okay, sir.

24 THE COURT: I'm going to leave that up to --

25 MR. GARRETT: Judge, this might be a good time right

1 now because --

2 THE COURT: That's fine.

3 MR. GARRETT: -- then he could pick up --

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen of the jury, we're going to take a morning break
6 and let's go back to the jury room again. I'll remind you
7 no discussion about this case. We'll get you back out
8 shortly and continue with this witness.

9 (Whereupon, the jury exited the courtroom at 10:59
10 a.m.)

11 (Whereupon, a recess was held from 10:59 a.m. to 11:21
12 a.m.)

13 THE COURT: Let's bring the jury back out.

14 (Whereupon, the jury entered the courtroom at 11:21
15 a.m.)

16 THE COURT: Let the record reflect the jury is back in
17 the courtroom. Mr. Garrett, are you ready to proceed?

18 MR. GARRETT: I am, Your Honor. Thank you.

19 Q Dr. Valentine, before the break we were talking about
20 the plasma blood draw at the Greenville Hospital System --

21 A Yes, sir.

22 Q -- being a medical as opposed to a legal test.

23 A Correct.

24 Q You were talking about some studies about false
25 positives.

1 A Yes, sir.

2 Q So let's pick it up from there. What types of things
3 would create false positive alcohol tests?

4 A Well, that's what they were trying to show in this
5 study, whether or not the lactate dehydrogenase and the
6 lactate being in the sample would cause a false positive
7 with this serum ethanol test. And so, what they did is you
8 see down in that second bullet point, they sent out samples
9 to these laboratories that contained sodium chloride, and
10 that's saline that we've been talking about. It's just a
11 different concentration. It's table salt is sodium
12 chloride. And sodium lactate. And then they put in also
13 some human LDH. This lactate dehydrogenase enzyme we've
14 been talking about. And I notice that those samples contain
15 no alcohol at all. Okay?

16 Q Okay.

17 A No alcohol. So just these. And the test here is to
18 see whether or not you would get a reading for alcohol based
19 on just having lactate and the lactate dehydrogenase
20 present. That's the purpose here. Okay? And so, what they
21 -- what they found then is that -- they said in the article,
22 this is kind of what they were looking for, that in most
23 clinical settings the level of lactate and LDH are too low
24 to generate significant positive interference. And what
25 that means is that in a typical normal person you won't see

1 elevated levels of lactate or LDH.

2 Q Now, was Mr. Rowell a normal person --

3 A He was not.

4 Q Okay. Go ahead.

5 A He was not. And so, in that sort of situation you
6 would see a possibility that in the normal -- this test in a
7 normal person probably would work okay, because it wouldn't
8 have these interfering agents. Now, they say some other
9 sources of interferes as you see here would be. However,
10 lactate can accumulate as a result of tissue hypoperfusion.
11 Now hypo means low. Perfusion means you're not getting much
12 blood circulation through organs. Okay? That's what
13 hypoperfusion is.

14 Q Was that kind of the situation -- the abnormal
15 situation that Mr. Rowell was in?

16 A Yes, sir. He was in a shocked state. Okay? And
17 that's -- because he had this very low blood pressure he
18 wasn't getting -- he wasn't getting good perfusion.

19 Q So can lactate accumulate while --

20 A It accumulates more. Lactate is normally -- lactate
21 acid is normally stored in our muscles of our body. And, in
22 fact, when you exercise, if you have a sore muscle it's
23 because you produced a lot of lactic acid in your muscle.
24 Trauma can cause lactic acid to be released. And then these
25 other conditions we'll talk about here in just a moment.

1 And then it goes on to say that high levels of LDH, this is
2 that enzyme again, are also seen in liver disease. Now, we
3 know he didn't have liver disease because, you know, we know
4 that from the records. Acute liver failure, and that wasn't
5 true. He didn't have liver failure. Liver contusion or
6 lacerations. In other words, if your liver gets bruised in
7 some way or you get a laceration in your liver then that's a
8 possibility because LDH is in the liver. It could -- it
9 could be released.

10 Q In fact, Mr. Rowell had these problems?

11 A He had the -- yes, sir. He had the laceration for
12 certain. We'll talk about that more in just a moment.

13 And then the -- it says the lactate and LDH can be
14 significantly elevated in major trauma, such as in vehicular
15 accidents in which hemodynamic shock from blood loss and
16 tissue injury lead to lactate elevations that coexist with
17 hepatic injury to form contusions or lacerations. Bingo.
18 That's everything we had in Mr. Rowell.

19 Q Perfect storm?

20 A Perfect storm in Mr. Rowell for this. Okay?

21 Q All right. Go ahead.

22 A Now, here was the results that they had in their table
23 when they sent this out to these 50 different laboratories.
24 I took the liberty again to put a red arrow there just to
25 point to that's a Microgenic kit, you know, that I showed

1 you earlier that the Greenville lab was using.

2 Q And can you flip back to that real quick? So that's
3 the point you're trying to make is that --

4 A Yes, sir. I'll go back to that. This is on that --
5 right there. That was the -- that Microgenics Corporation
6 is where they got their kit. That's the one that made the
7 kit for Abbott. And so, going back to this table, there you
8 go. You see Microgenics. And that's showing it on a
9 dimension, which is another one of these chemical analyzers.
10 Okay? But again you see that they got -- there was no
11 alcohol there. They got a reading of 106 milligrams per
12 deciliter. So that's -- that's what we consider a false
13 positive. We know there was no alcohol in these samples and
14 yet it showed a positive reading.

15 Now, as you see -- you kind of run all over the place.
16 There was other -- other systems that gave, you know,
17 readings that were not too bad. Like the Siemens, for
18 example. They use a different type of reagent kit, and
19 notice that it gave a fairly low reading. And so, you know,
20 I mean, I wouldn't be here today talking about this if
21 Siemens had been used.

22 Q So Abbott -- even though it was an Abbott machine,
23 didn't use an Abbott reagent? They used a Microgenics
24 agent?

25 A Correct. They bought it from Microgenics. They

1 packaged it and sold it.

2 Q Is it cheaper?

3 A Well, I don't know if it's cheaper, but it's -- maybe
4 they have some kind of agreement. Maybe it's a subcompany
5 of them. I don't know. Okay? It's just that's the reagent
6 that was used in this kit.

7 So that shows us that there could, you know, be --
8 there is a possibility again that this thing -- that we had
9 some problem with it.

10 Now, this is from the medical records. This actually
11 -- this specimen was actually taken, I think, an hour after
12 what's supposedly the sample that was analyzed for him for
13 the alcohol. It was about an hour later. But it's -- and
14 it's also drawn from an arterial line. So it's arterial
15 blood instead of venous. Okay?

16 Q What's the difference in that?

17 A Well, the lactic acid would be a little bit higher in
18 venous than it is in -- than it is in arterial. Okay? But
19 simple because it's released from the muscle and goes out
20 into the vein first and it's picked up and brought back to
21 the heart. So typically it's higher in the venous system.
22 So this probably is a little bit lower. But nonetheless, it
23 is elevated. You can see there that it's high. It looked
24 like 3.3 from where I'm sitting.

25 Q What does that -- how do we determine what's high

1 versus what's not?

2 A Well, notice in parenthesis they've got right behind
3 it, that's their normal range that the laboratory would
4 expect the lactic acid to be in. And so, it looks like the
5 high is -- I can't quite see it, but it looks like 1.6. Is
6 that what it says? It would be the upper end of their
7 range. And so, this is greater than that. Then they've got
8 a -- they've got a little H by it that's -- so the doc can
9 scan down real quick that that's high. Okay. So the lactic
10 acid was high in him. We know that.

11 Now, as I mentioned earlier, nowhere in the records did
12 I find that they had measured LDH. And typically you don't
13 measure LDH unless for some reason you're looking for it.
14 Okay? So I'm not faulting them for not measuring it, but
15 I'm just saying it wasn't measured. So we don't know what
16 the LDH was. But we do know --

17 Q If we had that we could know better how it might have
18 affected --

19 A Correct.

20 Q -- this particular test?

21 A Yes, sir. That's correct.

22 Q All right. Go ahead.

23 A And then next I'm simply showing -- I got on the
24 lefthand side, this is actually the surgical notes from Dr.
25 Snow, and then I just, again, have taken the liberty to kind

1 of underline some places there. And there on the right over
2 here I just put up a picture of the liver -- human liver
3 that I had to show the jury again where Dr. Snow had the --
4 where the laceration might have lay. And you see in there
5 he says there is a laceration to the liver and it's in the
6 right lobe. So it's in that big lobe over there on the --
7 on your lefthand side when you're looking at this picture.
8 And he said the laceration was there and he had to put
9 packing -- he calls it packing gauze over top of that and
10 under the bottom of that lobe of the liver to stop the
11 bleeding from that.

12 Q Is it bleeding from both the front and from the back?

13 A I wasn't clear from his description here. I think the
14 laceration was just on the front side the way I -- but I
15 think he was using the backside to put pressure on it to
16 help stop it. But I don't know that for certain. Okay?
17 But that's what I -- that's my interpretation of it.

18 Q That's one of the ways he saved his life was by packing
19 that?

20 A Yes, sir. He had to stop -- you have to stop the
21 bleeding in the liver. The liver is a regenerating organ.
22 It can regenerate. And it's one of the -- an organ we've
23 got that can regenerate in our body, so it's an amazing
24 organ. And so, once you stop the bleeding in it and so
25 forth it'll come back and heal itself. Okay?

1 Q Okay.

2 A So again, that just shows us that he did have the
3 laceration there. And then also in the -- this is just the
4 second page of Dr. Snow's records there. I just again took
5 the liberty to underline here to call attention that he had
6 acidosis. And the acidosis is due to the lactate. Okay?
7 When you get an elevated lactate in someone that's going --
8 we talk about them being acidotic. Their pH has dropped.
9 It goes down. Our pH normally is about 74 in the blood.
10 And so it'll drop down to 72, 71, something like that
11 sometimes when you get acidotic. That's a life-threatening
12 situation again. And you see Dr. Snow's concern there about
13 it when he said he -- that he felt because -- to do damage
14 control he wanted to make sure that, you know, he covered
15 all his bases there.

16 Q If someone is acidotic how does that affect the test
17 results?

18 A Well, just from the standpoint that we know that
19 there's lactic acid there that can interact in this assay.
20 But we've got to have lactic dehydrogenase there as well,
21 too. Now, because he had the lacerated liver we can -- we
22 can make the assumption, and I think it's a good assumption,
23 that the laceration would have released some lactic
24 dehydrogenase out into -- into the peritoneal cavity. Also
25 into the bloodstream. That's -- that's --

1 Q What about all the broken bones and broken ribs and
2 that type of thing? Would that also have put --

3 A It certainly releases lactic acid, not LDH. LDH is
4 mainly in the liver.

5 Q I got you. Okay. But --

6 A But to some extent it's in the kidneys, too, but it's
7 mainly in the liver.

8 Q But acidotic, again, the rate was up substantially?

9 A Yes, sir.

10 Q And he was worried about it?

11 A Yeah. Yeah. I mean, that's a life-threatening
12 situation when you get acidotic. It's --

13 Q How do you treat it? I mean, how do they --

14 A Typically you give sodium bicarbonate to somebody and
15 try to reverse the pH and go back up to more -- get back up
16 to normal physiological pH of 7.4.

17 Q Go ahead.

18 A Okay. So basically this is just kind of a summary of
19 what we've just been talking about, about this -- I'm
20 calling it again the 20:54 hour blood specimen. The
21 hospital blood test showed an elevated alcohol. You saw the
22 result on it. It showed an elevated alcohol. Mr. Rowell
23 had elevated lactic acid. We know that he had a lacerated
24 liver, and that's a source of the LDH. That's the other
25 component we've got to have for this test not to work. And

1 so, I just simply put here I think it's a high probability
2 that this is a false alcohol positive test that the
3 laboratory got on him.

4 Q So based on chemistry, that's your conclusion then,
5 within a reasonable degree of scientific certainty that --
6 would you recommend somebody rely upon this result?

7 A Well, no. You cannot rely on this result simply
8 because of these other factors that we know that could
9 effect this test. Okay? So it's not -- it's not a test
10 that we can rely on from that standpoint.

11 Q And if you go back and you -- as you've said earlier,
12 you watched the videos of him walking and whatnot. Now I
13 want to try to talk a little bit about that reading. Not
14 only the science, but I want you to compare the science now
15 to him being able to walk and drive safely and whatnot.

16 A Well, as we talked about, if you -- if you're going to
17 try and use this level, because it's done in plasma, you've
18 got to convert it to what we call a whole blood sample to
19 get the legal -- to get in the legal realm where we use that
20 -- we use -- the blood alcohol concentration is from whole
21 blood when you try to correlate that with the clinical signs
22 and symptoms that you see for alcohol. And so, there's a
23 lot of controversy about how to do that conversion. But
24 pretty much everybody accepts it. It's something around
25 1.13, somewhere in there. You use that factor to do -- they

1 used 1.18 which is okay. So you can use that factor. And
2 so, some -- this test would convert over to a whole blood
3 level of about .18, 19, something of that nature. Okay?

4 Q All right. Now, let's just use that number, .18, .19.
5 Can you operate a motor vehicle safely at that?

6 A Absolutely not.

7 Q Could you -- would you be able to turn signal and stop
8 and wait and pull into a parking space, wait for people to
9 get by, that type of thing?

10 A No, sir, you would not at that level.

11 Q Any question about that in your mind?

12 A Generally in -- when we think about the clinical
13 effects of alcohol, any time you get up above .15, anytime
14 above .15, most of everyone -- and laypeople would all
15 recognize this person as being drunk, or having -- being
16 under the influence of alcohol. They would -- everybody
17 exhibits a little bit different signs, but you would -- you
18 would certainly observe the staggered gait. That is, when
19 they walk they'd be kind of shuffling a little bit, trying
20 to support themselves. They might be trying to lean up
21 against something as their walking to support themselves.
22 They would have slurred speech. So those are common things
23 that you would observe just overtly in them. As far as
24 driving performance is concerned, the -- all the studies --
25 certainly when one gets above .1 there is an affect on

1 driving performance. There's not question about that. The
2 epidemiology studies that have been done clearly, clearly
3 show that. There are some epidemiology studies that would
4 suggest that at .08 you -- it affects the driving. Not all,
5 but some will.

6 Q So if someone had to drive, say, 12, 13 minutes from,
7 say, south Greenwood all the way over to the Walmart to get
8 there, and then they had to drive 12 or 13 minutes after
9 that to get to the accident site, that person wouldn't have
10 been able to drive at all, would they?

11 A Well, they could have driven, but it would have been --
12 it wouldn't have been very effective. I mean, somebody
13 would be calling the police and reporting somebody on the
14 road drinking, I think.

15 Q Now, if we find this high false alcohol probability
16 with what you've got to observe, again I'm going back to the
17 question of reliability, would you have doubt about the
18 reliability of that false positive?

19 A Well, as I hope I've shown here, is that there is good
20 scientific evidence that this test can give false positives,
21 and we had everything in Mr. Rowell that lined up with the
22 fact that it was -- it could have been a false positive
23 test.

24 Q Let's move on then to -- let's go talk about the other
25 test that was performed.

1 A Now, what happened was that SLED received for analysis
2 a blood specimen that was collected after surgery on Mr.
3 Rowell, and it was collected at 0:54 hours. And again, that
4 was recorded to Nurse Childers that was here the other day
5 to testify. She gave the specimen physically to the police
6 officer shortly after that. And I think that's actually
7 shown on this next slide. This is actually the chain of --
8 chain of custody document that she signed. You see there
9 where she signed it where I've got the red arrow. She
10 signed it. And then she turns it over to the officer, it
11 looks like, at 1:05 in the morning. So that was -- this is
12 the sample that was sent to SLED for analysis.

13 Q So from the time of the accident, if the accident was
14 just before 7:20, what time is this when it's being handed
15 over to SLED?

16 A Well, that's what, about six hours, I guess. Something
17 like that. Somewhere around that.

18 Q Between five and six hours?

19 A Five to six hours, yeah, when that occurred.

20 Q Let me just talk to you about -- generally about
21 general alcohol testing --

22 A Yes, sir.

23 Q -- for breath and blood. What is usually a time period
24 -- if you're trying to show what somebody's alcohol level is
25 and you're using breath or you're using blood, are there

1 some time parameters on which one you should look at over
2 the other and how far out you should look at it for it to be
3 scientifically --

4 A I don't know what -- I don't know specifically what it
5 is here in South Carolina. But as I go around the country I
6 know that most states you've got to do the blood sample --
7 or the blood sample within two hours of the driving for it
8 to be legally admitted. Again, as I said, I don't know
9 what's in South Carolina.

10 Q I'm not asking about legal admission. What I'm asking
11 about is scientific. For you as a scientist, if you wanted
12 to look at a sample, how far out would you feel comfortable
13 being able to render an opinion that that is an accurate
14 reflection of what somebody had in their blood before --
15 before that test? What timeframe? Is it two hours, three
16 hours?

17 A Well, the two hours is a good -- is a good timeframe.
18 You can -- obviously you can take a sample into the
19 laboratory. We've got technology today to get minute
20 amounts of things. Okay?

21 Q Okay.

22 A And so, you can take a sample in the laboratory and you
23 can -- 24 hours later we can find some of these drugs in
24 people. Sometimes for eight hours afterwards. Okay? So it
25 depends on, you know, kind of what your frame of reference

1 is. Now, from the standpoint of alcohol, alcohol dissipates
2 from the body fairly rapidly so that we -- if you get it
3 within the first couple of hours it gives you a better
4 chance to know approximately where they were at the time of
5 the accident or the -- or the thing. You don't know -- you
6 can't -- we don't have good ways to do it precisely, but you
7 can get an approximation.

8 Q As a scientific test then from the very beginning, if
9 this is between five and a half and six hours, as a
10 scientist, is this the kind of sample you want to rely upon
11 to make a decision of the condition at, say, 7:20?

12 A Yeah. Not necessarily. I mean, everything can be
13 looked at in certain light. As I said, you're better off if
14 you get it the first couple hours. Okay?

15 Q Yes, sir.

16 A You start getting around five, six hours a lot can -- a
17 lot can happen. And in this case we had a lot happen in
18 that intervening time.

19 Q All right. Go ahead.

20 A So what I did next is I wanted to look at these blood
21 components and fluids that were actually given to Mr. Rowell
22 prior to this blood sample being drawn. Now, in the medical
23 records after this 0:54 hours there was other blood given to
24 him and so forth. I'm not -- I'm not considering that
25 because that doesn't apply to this sample. Okay? I'm just

1 going up to the time that this sample was taken from him.
2 So I went through the medical records, the transport
3 records, emergency room records to determine how much blood
4 components -- we were talking about that earlier about how
5 the blood is not whole blood but it's some kind of
6 component. I'll go into that more in just a moment. The --
7 and also the fluids that he was given because we've got to
8 count that in here, too, with saline and other fluids that
9 he was given during this period of time. So what I've done
10 on the next couple of charts -- and again, I apologize about
11 this being a little bit small, but I think all of you are
12 close enough you can see this okay. This first table that
13 I've prepared comes from the transport records, the
14 emergency room records and the surgery records. And so,
15 you'll notice in the column over to the left I've got a
16 date, and then I've got a time. And then you'll notice
17 there -- if you go down that column there's some places
18 where there's no times there. And the reason for that is
19 that all these things that were given to him in surgery were
20 in a transfusion record. They fill out a form, and whoever
21 filled it out didn't put times on it. So I don't know what
22 time that was. But I do know that it was given during this
23 surgery, period, because that's who was administering these
24 units to him. So what we've got then in the -- in that
25 third column, I put the type of blood component that he got

1 -- okay? Let me go through this kind of -- these with you
2 because they all coded it on this infusion form. So for
3 example, we've already talked about RBCs. That means red
4 blood cells. So packed red blood cells is what they gave
5 him in transport. And then you remember also I said earlier
6 they gave him some fresh frozen plasma. So that FFP stands
7 for fresh frozen plasma. They gave that to him in transport
8 as well. Now, the next column in there gives the volumes as
9 you'll see. So they gave him 350 of the packed red blood
10 cells and -- is that 150? I can't quite see it. 160, of
11 the -- of the fresh frozen plasma.

12 Q 180.

13 A Is it 180? Okay. I'm sorry. I just can't quite see
14 it from here. You'll help me with the numbers if I get them
15 wrong. And then notice that the next thing they gave him
16 was in the emergency department, or the trauma center,
17 whatever you want to call it, at Greenville Hospital. And
18 this time he received a PCL is the component. And that --
19 PC stands for packed cells, so that's just kind of a
20 nomenclature for the RBCs that we were talking about a
21 moment ago. And the L stands for -- it means that his
22 sample is undergoing what we call leukopheresis.
23 Leukopheresis means that you've removed some of the white
24 blood cells from the sample. You haven't removed all of
25 them, but you've removed the majority of them. And the

1 reason for that is that the white blood cells contain an
2 immune response. And so, if you take those out of the
3 sample then your -- it allows you to not get as much of the
4 immune response. In other words, you won't get any kind of
5 allergic reaction with the blood that -- when you give it to
6 individuals. So that's the reason for doing it that way.

7 Q Somebody else's blood?

8 A Somebody else's blood. Yes, sir. All this is from
9 donors that we're talking about here now. And then as they
10 were taking him down to the -- to the MRI or CAT scan,
11 whichever they used. I've forgotten which they used. They
12 gave him blood, and then they gave him blood on the way up
13 to the OR as well, too. They had a bag hanging. And so,
14 those are the two units they've got there. And those are
15 both PCLs again. Okay? And then in surgery he got mostly
16 the packed cells as you see. The PC. But then he also got
17 TP, which they -- is their designation for total plasma.
18 This means that this is plasma. Again, not the red blood --
19 packed red blood cells. So what I did then is I took all
20 that volume that he got -- the volume was recorded on these
21 forms, so I got the volume. I totaled that up and it's
22 4,000 -- you'll have to help me with that Mr. Garrett. It's
23 4,081. Is that what it is?

24 Q 4,081.

25 A 4,081. I knew it was about that.

1 Q Right.

2 A And then, so that's how much volume of blood he had --
3 or blood components he had transfused into his body before
4 this sample was every drawn. And then I wanted to compare
5 that with how much -- how much blood volume does he have in
6 him normally. Okay? And in Court the other day it was used
7 here that the was 200 pounds at the time of the accident.
8 So I used that figure, and that's -- you have to convert
9 that to kilograms. And so, that's about 90 kilograms, that
10 body weight that he has. And just for kind of a rule of
11 thumb you can multiply that times 75 and that'll give you
12 pretty close to what the volume is. I actually did it out
13 on a -- I used a calculator -- a program to do this. But
14 anyway, so it's real close. Okay? So you see his total
15 blood volume was about six -- 6,000. A little over 6,000
16 milliliters. Okay? And that's about what you'd expect a
17 man of his size. Somewhere between five to seven liters of
18 blood volume is about what you'd expect. So then if you
19 take that amount that they gave him and divide that by the
20 amount that we anticipate he should have, you see that he
21 had about 60 percent of his -- of his body blood was
22 transfused into him. Okay? Is what he received, again,
23 before the sample was given.

24 Q So that really -- the test was at least 60 some odd
25 percent that wasn't his?

1 A Correct. Yes, sir. That's another way you can look at
2 it. Now, we have to also consider the volume of fluids that
3 they gave him, too. They have him an awful lot of saline.
4 So you see the units of saline that they were giving him.
5 And oftentimes, like the EMS people hung a bag of 1,500 on
6 him at the scene. He got another 500 in the helicopter.
7 And then he got another 1,000 when he got to the trauma bay.
8 And then they gave him another thousand shortly after that.
9 You can see the times there. And then when he went to
10 surgery they gave him -- they gave him 3,000 liters total of
11 saline, plus they gave him what's called Plasma Lite. And
12 Plasma Lite is basically saline with most of the -- we call
13 it electrolytes. It'll have other things in it like
14 potassium and magnesium and other electrolytes in it as
15 well, too. So they gave that to him during surgery, too.
16 And you total up that volume. That's 11,000 cc's of fluid,
17 or milliliters of fluid that they got, or about 11 liters of
18 fluid, if you want to look at it that way. And again, using
19 that volume that we had before. And this time you've got
20 to, you know, divide that into that 11,000. So basically
21 that calculates out to about 160 percent -- 67 percent I
22 think it is that -- of his blood volume that's been replaced
23 by just fluids.

24 Q 161.7?

25 A Yes, sir.

1 Q All right. So I don't understand. If you've got -- if
2 you've replaced 60 percent of his blood with blood and you
3 replaced 11,000 in his blood, in theory, by the time the
4 test was done he had 11,000 something in his bloodstream, as
5 well as all of that other blood?

6 A You've got it. You're a good student. You're
7 listening. That's exactly right.

8 Q Well, I'm just asking. It was 67 -- the other one was
9 67 --

10 A Well, it was 60 percent, I think.

11 Q And you add that --

12 A Yeah, you would add those two together. It would be
13 about 200 and, what, 20 percent, something like that, of --

14 Q Well, why didn't he just blow up and pop?

15 A Well, they've got a catheter in him obviously. A Foley
16 catheter in him. So he's putting out urine. His kidneys
17 are still functioning. He's putting out -- putting out
18 urine. So he's putting out a lot of volume. So it's kind
19 of like you've got a tap up here. You're pouring in one end
20 and you're taking it out the other end here. But things are
21 changing, so nothing's the same inside of this -- in this
22 container you had to begin with.

23 Q And then what about blood loss? Is there blood loss in
24 this? I mean, are you replacing blood because it's being
25 lost?

1 A Well, we don't know the total amount of blood that he
2 lost other than that we had Dr. Snow's testimony the other
3 day when he did the laparotomy on him, opened him up. He
4 estimated somewhere between 500 to 700 milliliters of fluid.
5 It's called a hemoperitoneum. In other words, we go from a
6 peritoneum cavity and you've got this blood in it. And --

7 Q Is that a sack that kind of covers your guts and --

8 A Yes. The peritoneal cavity is where all your -- your
9 major -- your organs, or your intestines and your liver and
10 so forth. Okay?

11 Q Okay.

12 A It's underneath the diaphragm. The diaphragm is up in
13 the heart. It's in a little bit different cavity, but...

14 Q Okay.

15 A So what -- so we know he lost that much in the -- that
16 was out in this cavity. We don't know how much he lost from
17 all these broken bones and other lacerations and whatever on
18 his body.

19 Q Would that be bleeding out into his body?

20 A Not necessarily. It could be external. I mean, he
21 could have been bleeding externally.

22 Q Like when they said he had a busted nose or something
23 like that?

24 A Yeah, that is -- they call that epistaxis, right. He
25 had a bloody nose, too. Bleeding from his nose.

1 Q So is it fair to say, or can you tell us what
2 percentage of his blood was literally tested by this test,
3 or is it even scientifically possibly to determine that?

4 A I don't even want to venture a guess. I'm just -- what
5 I'm telling you is there's a lot of fluid been put in him.
6 So what we're -- what we're testing is not the same as it
7 would have been if no fluids had been put in him.

8 Q And it's not the same as it would have been if no blood
9 were put in him?

10 A True. And going back to what we talked about earlier,
11 too. A normal versus -- I can call it abnormal here. But
12 let's just be candid, Mr. Rowell was near death.

13 Q So he was not normal?

14 A He was not normal.

15 Q Is it fair -- can you tell us whether or not then, as a
16 scientific test, whether or not the attempt to determine his
17 alcohol concentration, was it a valid test based upon that
18 sample?

19 A Well, you can take anything and analyze it. We talked
20 about that earlier. The machine doesn't care where the
21 sample comes from. It's going to analyze it and give you a
22 number. And they did that in this case. They analyzed the
23 specimen and got a number. Whether that number is reliable?
24 I don't see how you can put any reliability in the number at
25 all because we had such an exchange of volume of fluid here.

1 It's just so different. Okay. And as I said, I can't
2 really estimate for you what percentage are we looking at
3 here. I don't really know. Okay? It speaks for itself
4 what was given to him.

5 Q Well, let me ask you this. If you get a result based
6 on that, is it reliable for you to be able to make a
7 scientific judgment about it?

8 A I wouldn't make a scientific judgment about it. Okay?
9 I mean, it's a number. Okay?

10 Q Okay. But it's a contaminated number?

11 A Well, I think you could -- you could view it as that.
12 Okay?

13 Q I mean, have you ever seen any study where anybody was
14 trying to determine the alcohol level of someone who's had
15 that done them ever in your -- in your science?

16 A Well, unfortunately I've seen this before in some --
17 some criminal cases.

18 Q You have?

19 A Yes, sir. I have.

20 Q So have there ever been any studies on it to try to
21 determine how to come to a conclusion?

22 A No, sir. There's been no scientific studies. And if
23 you stop and think about it, you just can't do this
24 ethically, because when you've got a person that's near
25 death you can't start drawing blood samples from them to

1 test for alcohol. You know, you'd have to do a whole bunch
2 of them and you can't do that. It's just unethical.

3 Q And he's dying and he's needing blood, so you've got to
4 --

5 A That's right. It would never been approved.

6 Q You're not worried about contaminating the subject
7 blood?

8 A Yeah. And so, there's just -- I don't have any science
9 to offer you as to what really went on with this. Okay?
10 Whether this test has any validity to it or not. I
11 personally don't think it has any validity, but I don't have
12 any scientific studies to offer you because it just simply
13 hasn't been done.

14 Q Let's move on then. Now, this was allegedly sent down
15 to SLED?

16 A Yes, sir.

17 Q You want to go ahead and start talking about that?

18 A Yes, sir. I'll be happy to. This is the first page of
19 the SLED analysis that they get at the laboratory. And as
20 you see they give us a number. They say it was a .09
21 whatever. I can't see the last digit there. So they give
22 us a number from this sample.

23 Q So it was -- so it was .096 percent of what -- that's
24 what the --

25 A This specimen that was sent to the lab, this is what

1 they say is how much alcohol is in him.

2 Q So let's talk about the unit that was used. What kind
3 of -- what kind of piece of equipment do they use to get
4 this result?

5 A They use what's known as a headspace gas chromatograph.
6 And a headspace gas chromatograph, basically alcohol is what
7 we call a volatile substance. And so, what they do is they
8 take a little bit of this blood that was sent -- that was
9 sent to them. They'll take 100 microliters of that and
10 they'll put it in a little tube that's about that tall. And
11 then they'll add what's called an internal standard to that.
12 And then they cap that tube and then they take it over and
13 put it on this instrument, and this instrument is what's
14 called an AutoAnalyzer. It'll take that tube and it'll heat
15 it up, usually to about 70 degrees centigrade. Something
16 like that. It'll heat it up. And that will cause the
17 alcohol to vaporize and come up into what we call headspace
18 above that little bit of liquid that's in there. And then
19 they put a needle into that to draw out that gas that's
20 there, and that goes over to the gas chromatograph. And the
21 gas chromatograph then has a column inside of it that will
22 separate one component away from another, and then it comes
23 out -- it goes through a detector. It's called a flame
24 ionization detector. It goes through that. And it will
25 then detect -- you'll get a peak on a chart that comes out.

1 We call that a chromatogram that comes out of the
2 instrument. And you can look at that chromatogram then and
3 get an idea of how much alcohol is in there. Now, you have
4 to -- you have to have previously calibrated the machine so
5 it knows what that size peak -- how much alcohol that
6 relates to.

7 Q And in your opinion, are these gas headspace, are these
8 pretty good -- pretty good machines?

9 A Yes, sir. They're considered -- they're considered the
10 gold standard for doing alcohol analysis.

11 Q Okay. So you don't have any problem with the machine?

12 A No, sir. I do not.

13 Q What about the specimen?

14 A The specimen itself is what -- where we've got
15 problems, okay, is because they're analyzing something that
16 we don't know really what -- if that's all him or not.
17 Okay? That's the problem I have with it.

18 Q Would it cause for you to speculate to be able to come
19 to that conclusion? To speculate?

20 A No, sir. I can actually look at the chromatogram that
21 came out on his run. And here's the way I tell people this.
22 I can look at a chromatogram, because I've looked at
23 literally thousands of them over my career. I can look at a
24 chromatogram and it's like a radiologist looking at an
25 x-ray. I can look at the chromatogram and tell you what's

1 going on. If this instrument was working right or not. I
2 can tell you whether or not, you know, what it looks like
3 they've produced in it. What they determine in this
4 particular one. So that's what I'd like to show the jury
5 next. This is just a -- that's the last page of that thing
6 that you saw -- Jennifer Brown, who was here to testify the
7 other day, signed that.

8 Q Before you get there, I'm still trying to understand
9 the validity of the sample.

10 A Yes, sir.

11 Q If you don't know whose blood went into that sample,
12 it's just rogue speculation as to what was in their blood
13 that got put into this sample?

14 A Well, we know that these were donor bloods. Okay?

15 Q Okay.

16 A We know that the blood banking facility does not test
17 for drugs in these. What they test for is viral components.
18 They're looking for infectious disease transmission. That's
19 their goal. They give if somebody gets a little bit of --
20 let's say they give them a little bit of Lisinopril for
21 lowering blood pressure. That's not going to hurt them.
22 Okay? Or you get a little bit of alcohol in it. That's not
23 going to hurt them from this -- from this transfusion that
24 they get.

25 Q But if there's West Nile in there it'll kill them?

1 A West Nile would kill them. Hepatitis B would, HIV. So
2 those are the kind of things that they're testing for, and
3 that's what we want them testing for.

4 Q In your history have you ever seen a situation where
5 blood donors sometimes are alcoholics and they actually do
6 that as a form of making money?

7 A Yes, sir. I mean, that's a common thing. That does
8 occur. I was going to just make the comment, too. In all
9 of the research work that we did we had to develop assays
10 for the drugs that we were looking for in people. We do --
11 we were doing what we call pharmacokinetic studies. We were
12 looking at the time the drug goes in the body and when it
13 comes out again. And so, to develop those we had to develop
14 it with Blood Bank blood. We'd walk down the hall and get
15 it from the Blood Bank down the hall. It was expired blood
16 that they gave us. And we'd bring it back to our lab and
17 that's what we'd use to -- for our standards -- standards
18 and everything. And we have seen the gamut of drugs in
19 those -- in those kind of specimens coming from donors.
20 Okay? So I know from personal experience that you will find
21 a lot of drugs in various samples. Alcohol included.

22 Q Alcohol included. And did you say you at one time
23 worked somewhere where you would see it done -- being done
24 regularly?

25 A Yeah. I saw -- when I -- I have to travel quite a bit

1 and I go to the Gulfport-Biloxi Airport, and where I turn to
2 go in there, there's a plasma center there. And most time I
3 have to catch an early flight out to get to Atlanta to get
4 somewhere, you know. And so, it's usually about 5:30 in the
5 morning, 5:15 or something like that, and these people are
6 all lined up out there waiting to go in and donate their
7 blood to get -- you know, that's a plasma center. So, you
8 know, people do it for pay. I mean, that's the way people
9 -- some people survive.

10 Q Not everybody -- not everybody comes from a church or
11 not everybody comes from work to give blood?

12 A No, that's true. And, you know, the blood drives will
13 go to churches and schools and stuff. That's wonderful. I
14 mean, we need that kind of thing, too. But that's not to
15 say that the people they're getting don't have some drugs in
16 them.

17 Q So is there any science to be able to figure out those
18 14 units of blood as to where they came from?

19 A Well, they -- on the transfusion record they had a code
20 number that apparently link it to a donor, and I don't have
21 any way to go back and back that up. So I have no way to
22 know. You heard the testimony from the lady from the Blood
23 Bank the other day and she identified two of those units. I
24 don't know about the others. I have no idea about them.

25 Q So we just don't know.

1 A We don't know. Yes.

2 Q So if we don't know, we have to speculate?

3 A I don't like to speculate in science. Okay?

4 Q Well, I understand.

5 A I try to go with whatever facts we've got. Yes, sir.

6 Q But if you're having to speculate then that's what
7 you're doing, you're doing, you're --

8 A Yes, sir.

9 Q -- speculating?

10 A I would be, yes, sir --

11 Q But --

12 A -- and I don't do that.

13 THE COURT: Try not to talk over each other, please.

14 THE WITNESS: Yes, sir. I was just saying I don't want
15 to speculate. I want to try and be as scientific as I can.
16 But you're right. I would have to -- have to make some
17 assumptions here as to the blood products that he got.

18 Q All right. Let's go ahead and start looking then at
19 your -- this is the actual graph that is Mr. Rowell's graph?

20 A Yes. This is what we call a chromatogram. And this is
21 actually the SLED printout. Just like they print it out.
22 They provided this to us and we were able to look at it.
23 And you'll notice that they've got one peak there where they
24 have -- they call it ethanol. That's the alcohol that
25 people drink. And then there's the next peak next to it is

1 identified as acetone. And then notice the next peak is not
2 identified. It's, you know, a small peak there and it's not
3 identified. And then the largest peak over there on the
4 right-hand side is identified as their internal standard.
5 They use tertiary demo, which by the way is the perfect
6 internal standard to use. I applaud SLED for doing that.
7 Most labs I see do not do that. This is -- that's the
8 perfect internal standard to use. It would never be in the
9 human body. Okay? You'd never expect to see it in the
10 human body. So what we've got then is we got ethanol that
11 they've determined.

12 Now, they ran Mr. Rowell's specimen twice, and that's
13 good practice. In other words, they do what they call a
14 sequence run. They run a lot of other samples on the same
15 day besides his. And they put his on two different places
16 on this sequence run. And I can't quite read it, but up on
17 the top there the vial number -- I think it's vial 27? Is
18 that correct? You might be able to see that. I think it
19 says vial 27. You see where it says the vial number?

20 Q You want to look at this?

21 A Yeah, that might help if I can look at that. I'll tell
22 you exactly what it is. I'm just at a little bit of an
23 angle here and it's kind of hard to read the number. Yeah,
24 vial 27. So that's vial 27 that they ran on him. And --
25 but this -- the next slide is the duplicate that they ran on

1 him, and that's vial number five, I believe, if I remember
2 correctly. Yes, sir. It's vial number five that they have
3 -- they have run that one on. So they've run the sample
4 twice. And then they take the values that they get here and
5 they average them from the two runs and that's what they
6 report out. And again, that's okay. Nothing wrong --
7 nothing wrong with that. Now, what I did on this very next
8 line is I simply took those two chromatograms we were just
9 looking at and I pulled them out and put them over -- laid
10 them one over top of the other so we -- we can compare the
11 two. And then on the bottom one you notice I circled there.
12 That little peak there. And notice it's not in the top one.
13 So there was something in vial number five that they ran for
14 him that wasn't in vial number 27, and I'm not certain why
15 that is. Okay? There could be several explanations. One
16 is they got what we call carryover. The sample right before
17 him had this in it and it all didn't come out and it comes
18 out on his sample. I don't know. That's one explanation.
19 Another explanation might be that they pipe -- they pipetted
20 two different samples from this sample that got to them and
21 they weren't homogeneous and there's something else in the
22 second pipette that wasn't in the first one. That would be
23 another problem.

24 Q You say they weren't homogeneous. What does that mean?

25 A It just means that they weren't completely mixed

1 together, so there's a little bit of variation in the sample
2 itself. Okay?

3 Q In other words, other peoples' blood potentially?

4 A Well, yeah, that too, or some other component in there.
5 Something that was causing it not to be completely mixed
6 together. Okay? I'm just -- that I just have to assume at
7 the moment I don't know. But the most likely explanation
8 here is carryover from a previous sample. That would be the
9 most likely explanation. Now, both of these -- you'll
10 notice both of these -- is the reason I overlayed -- another
11 reason I overlayed them. Notice that both of them contain
12 acetone. They --

13 Q Is that the peak in the middle there? That little --

14 A Yes, sir. That smaller peak in the middle there. Now,
15 normally when you run a sample like this from anybody, if we
16 were to take a blood sample from anybody in here today
17 that's not a diabetic and we would run it on this
18 instrument, we would not see that peak. Only a person that
19 is a diabetic and not very well controlled will we see
20 acetone showing up in their -- in their specimen. So
21 acetone is present in this -- in Mr. Rowell's sample. It's,
22 you know, alleged to be his sample here. Yet I have no
23 indication from the medical records that he is diabetic. So
24 again, the most likely explanation is that this acetone came
25 from somebody that donated blood. Somebody that was a

1 diabetic donated some blood.

2 Q So that's not one of the things that will prohibit you
3 from giving blood if you're a diabetic. Again, they don't
4 test for that?

5 A They don't test for that. They should ask for that, I
6 would think, but I'm not certain what their checklist says.
7 The blood banks I've been associated with before would ask
8 that question.

9 Q What about high blood pressure? Suppose you get high
10 blood pressure and you have to take high blood pressure
11 pills?

12 A They would not show up on this because this is
13 volatiles, and the high blood pressure medicine would show
14 up only if you did the GC mass spectrometry analysis.

15 Q All right. Go ahead.

16 A So that's basically what we've got on his -- on his
17 alcohol analysis. Now, they did some additional work on
18 this. They put it on another machine. The same -- I guess
19 it's another - the same thing. They put it on another
20 machine. This machine is called a headspace gas
21 chromatograph, but now it's got attached to it a mass
22 spectrometer. A mass spectrometer allows you to determine
23 what the compound is that's actually there. And so, they've
24 identified in this three different components when they
25 looked at it. Once is we just looked at the ethanol alcohol

1 that was there -- that's there. And then we've identified
2 in this one another component which is called isoflurane.
3 And then they're internal standard.

4 Now, when I looked at this -- the first time I looked
5 at these chromatograms I had not seen Mr. Rowell's medical
6 records. But when I looked at the chromatogram the first
7 thing I knew was this sample had to be taken after surgery.
8 And the reason I knew that is because of the isoflurane
9 being there. Isoflurane is one of the anesthetic gasses
10 that's used. It's never used in medicine or anything else
11 but anesthetic gasses. No reason for it to be there except
12 from surgery.

13 Q And that would be like Propofol or something like that,
14 that Michael Jackson might have had or something like that?

15 A Yeah, Propofol -- Propofol is a different compound.
16 This is one of the old standby anesthetic gasses that's been
17 used for years.

18 Q But you don't -- you can't just go out and buy it?

19 A No, sir. It's not available to the public at all. So
20 I knew that, you know, he had that. And then the lab
21 actually -- they did the mass spectrometry, and that's what
22 I'm showing here on these next few slides. This is the one
23 where they identified alcohol, and that's the one where they
24 identified isoflurane.

25 And then that brings us really, I guess, to kind of a

1 summary of what all I've kind of found in here. If you want
2 to go through that next.

3 Q Okay. Just getting back to whether or not we can rely
4 upon these results as being good science or being without a
5 doubt analysis of his blood. What are you -- what are your
6 findings, Doctor?

7 A Well, the science as far as SLED is concerned was okay.
8 The analysis -- there are a few things that I didn't like
9 about it. But by and large the analysis is okay. I don't
10 have -- I'm not picking on them for their analysis.

11 What I did see is that when you look at things here
12 we've got two different blood samples that have been
13 analyzed for alcohol in Mr. Rowell. The first one was that
14 -- this sample that we just talked about. We had talked
15 earlier about the one that was drawn that went to the
16 hospital lab to test. This is the one that went to SLED.
17 This 00:54 sample that Nurse Childers drew. And she drew
18 this from an arterial line, not from a venous line. And
19 we're going to try to say what is meaningful as far as
20 clinical signs and symptoms of alcohol, blood level, we use
21 venous blood. We don't use arterial.

22 Q So arterial blood would have a different kind of
23 reaction?

24 A Well, it -- you can get different levels of alcohol in
25 arterial blood. You see, arterial blood is being pumped

1 out. So it's going to be pumped out from the heart to all
2 parts of the body. And venous is the blood that's coming
3 back to the heart. And so, when we draw a sample from
4 somebody's arm we're drawing from the venous site. If you
5 drew from the arterial site and you didn't know what you're
6 doing the blood would shoot across the room because you've
7 got that heart heart pushing the blood out. So you will
8 have a -- the concentrations in arterial specimens will be
9 higher at certain points after one has drunk alcohol than it
10 will be in venous blood. Basically after you get out six or
11 seven hours, something like that, they're about the same.
12 Okay? But initially the arterial is higher. So it's not
13 the proper site to draw a sample. It was a convenient site
14 for her to draw because they had an arterial line in him and
15 she just draws from that. Okay?

16 Q Okay.

17 A And then I think, as I've shown here, is he got about
18 220 percent of his -- what we expect to be his blood volumes
19 been replaced by either blood components or fluids of some
20 sort. He received 13 as I count them -- 13 units of various
21 donor blood that he had gotten from people. And again, as
22 we've talked about, we don't know exactly what is all in
23 those donor bloods. And then the specimen that was analyzed
24 by SLED -- here's the way I said it here. I didn't know any
25 other better way to say it. It's just not attributable to

1 Mr. Rowell's body fluid, because we've changed so much of
2 his body fluid it's not the same as when he appeared at that
3 facility.

4 MR. GARRETT: Beg the Court's indulgence.

5 THE COURT: Sure.

6 Q Two or three points. I want to make sure I tie this
7 up. When Dr. Snow testified he was talking about initially
8 a percentage -- subsequently after doing more math, the
9 percentage. But that didn't -- that did not include
10 everything that you've included which is everything that
11 went into Adam's blood before that draw; is that correct?

12 A Yes, sir. Dr. Snow did not include in that the blood
13 that was given to him in transport, the blood components
14 given to him in transport, nor what was given to him in the
15 trauma center. Trauma bay.

16 Q Did you find anything in his blood, Doctor, that just
17 couldn't possibly be true in the blood results?

18 A Yes, sir. I did.

19 Q What did you find?

20 A The SLED analysis of this sample, I found that he
21 contained a drug called diphenhydramine, or Benadryl is the
22 trade name of it. And the laboratory reported that he had
23 4.9 micrograms per milliliter -- well, actually reported 4.9
24 milligrams per liter, but that's the same as 4.9 micrograms
25 per milliliter. Normally we associate -

1 MR. BLACK: Your Honor, I hate to object at this point,
2 but I think we might need to approach.

3 THE COURT: Okay.

4 (Whereupon, a sidebar was held.)

5 THE COURT: Mr. Garrett, you may want to restate -- or
6 not restate but re-ask the question and bring us back to
7 where we were.

8 Q We were talking about you found something extraordinary
9 in his blood that just couldn't be there.

10 A Yes, sir.

11 Q Do you have any documents available so we can put that
12 together right quick?

13 A That would be -- I'm not sure. I've got it
14 electronically. It's the SLED report we're talking about
15 now or the --

16 Q What I'm asking about, of your review of all the
17 records from SLED and whatnot --

18 A Yes, sir.

19 Q -- and you've shown us where there was some issues with
20 some acetones which you say normally for people who are
21 diabetic.

22 A Yes, sir.

23 Q Did you find something else in there that just couldn't
24 be right in the SLED work that you did?

25 A I did. Yes, sir.

1 Q And what did you find?

2 A Well, they ran a screen for the drugs that were in him,
3 and one of the drugs that they found was the diphenhydramine
4 that we talked about just a moment ago.

5 Q Okay. And it's a Benadryl?

6 A The Benadryl. Yes, sir.

7 Q And then tell us how much they found.

8 A They found 4.9. I'll use the units micrograms per
9 milliliter.

10 Q And to help the jury understand what that would be,
11 tell them what affect what 4.9 milligrams is what you called
12 it?

13 A Micrograms.

14 Q Micrograms?

15 A Yes, sir. Micrograms per milliliter.

16 Q If somebody had that in their blood what condition
17 would they be in?

18 A The -- that level would be what we consider to be at
19 the high end of a toxic dose. The -- kind of agreed a dose
20 in the literature for a lethal dose is five micrograms per
21 milliliter. So that was just below five micrograms. So it
22 certainly would be at a high toxic dose. Diphenhydramine is
23 a central nervous system depressant and a very high dose.
24 You would suspect somebody to be very sedated with that --
25 with that level.

1 Q And, of course, this is after surgery?

2 A Yes, sir.

3 Q But you saw in no notes showing that he received any
4 Benadryl?

5 A No, sir. As I said -- now, I didn't look at the
6 complete medical records because I didn't have them after
7 the surgery. But up to that time and point in the surgery I
8 didn't see any indication that diphenhydramine had been
9 administered to him.

10 Q Now, if a person -- a normal person has got 4.9
11 micrograms of that in their system, how much more would they
12 need to be to be lethal? In other words, kill them?

13 A Well, as I said, there's a variation in what lethality
14 is, but generally five micrograms per milliliter is
15 considered to be kind of a median level that's been shown in
16 the literature to be lethal.

17 Q So we're a tenth --

18 A We're just a tenth away, so it's very near being a
19 lethal level. It's certainly a level that would be -- you'd
20 see it in the person if -- you know, I mean --

21 Q As a medicinal chemist, Doctor, any way possible that a
22 person could have an 18-100ths of one percent alcohol and a
23 4.9 Benadryl in his system and be able to do anything other
24 than be in a comatose state?

25 A No, sir. There's not.

- 1 Q He'd be comatose, wouldn't he?
- 2 A I'm sorry. I didn't hear you.
- 3 Q He would be comatose, wouldn't he?
- 4 A Yes, sir. He would.
- 5 Q So it's not possible?
- 6 A It's not possible. Yes, sir.
- 7 Q Therapeutic levels, sometimes doctors will use it. If
- 8 they use a therapeutic level what is a standard therapeutic
- 9 level for Benadryl?
- 10 A It runs about .025 to point -- I'll say .1, .12,
- 11 something like that.
- 12 Q All right. And that -- there's no evidence that --
- 13 A A therapeutic level would be -- that would be the level
- 14 we'd expect for somebody that is using it as an
- 15 antihistaminic substance to dry up their nose and that sort
- 16 of thing.
- 17 Q But scientifically it's just not possible for somebody
- 18 to have that --
- 19 A Not that level. No, sir.
- 20 Q And does that Benadryl, does it also dissipate from the
- 21 body in a normal way?
- 22 A Well, it has -- it has what we call half-life in the
- 23 body and it will dissipate. The half-life is about nine
- 24 hours. So every nine hours one-half of the dose that you
- 25 gave would disappear.

1 Q So let's suppose that -- let's suppose that five and a
2 half hours before that test was taken, in a normal person,
3 what would their level have been?

4 A Well, it would have been higher than 4.9, and we'd have
5 to do the calculation to do it back. But it's -- it would
6 just be an estimation, but it's -- it's probably somewhere
7 around six, something like that maybe.

8 Q You probably wouldn't be alive to eliminate it, would
9 you, at six?

10 A Correct.

11 Q Five is enough to kill you?

12 A It is.

13 Q So now, with all of the things now that you've studied,
14 all of the things that you've looked at, then what is the
15 reliability of the SLED's .09 draw?

16 A Well, we've got -- we've got a lot of unexplained
17 things here. Okay? We've got this diphenhydramine that's
18 certainly a weird sort of thing to be there. I don't
19 understand it. And I don't -- you know, and this .09, even
20 at that level with this much blood and fluid exchange, that
21 doesn't make sense either.

22 MR. GARRETT: Beg the Court's indulgence. Please
23 answer any questions opposing counsel may have.

24 THE COURT: Solicitor, cross-examination?

25 MR. BLACK: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. BLACK:

3 Q Dr. Valentine, thank you for being here.

4 A Yes, sir. You're welcome.

5 Q I know you've got your slide up. But just briefly, I
6 think we printed this off. Is this your website? Is this
7 from your website?

8 A No, sir. I don't have a website.

9 Q This must be just the Texas DUI defense lawyers.

10 A That's correct. It's an organization in Texas and I --
11 I speak somewhat frequently for them. Okay?

12 Q Okay. But you live in, you said, Mississippi?

13 A Yes, sir. I live in Ocean Springs, Mississippi.

14 Q I guess that's not too far from Texas, is it?

15 A It's about -- it takes me about three hours to get over
16 there in my plane, something like that.

17 Q And you said that you primarily testify for the defense
18 now. You used to testify for the state back in the day --

19 A Correct.

20 Q -- when you worked for the state?

21 A Correct. Yes, sir.

22 Q You were at the state hospital, I believe, or maybe it
23 was the state lab or --

24 A Well, I was in the state lab. I wasn't at the -- I was
25 at the Arkansas Children's Hospital. I ran the clinical

1 toxicology service there.

2 Q Okay. And by my calculations it sounds like you have
3 been paid \$10,500 for your services thus far just this week
4 and then your retainer?

5 A That's probably accurate. You'd have to check with my
6 wife who is over it. I never -- I never look at it. I'm
7 sorry.

8 Q Yes, sir. And you all -- I guess you all are staying
9 here in Greenwood?

10 A Yes, sir. We are.

11 Q Are you covering your hotels or are they covering your
12 hotels?

13 A I believe they covered my hotel.

14 Q And meals? I guess they're probably covering meals as
15 well?

16 A I cover the meals. I pay for the meals. I paid for
17 the rental car and my gasoline for my plane to get here.

18 Q Okay. So you actually -- you flew here?

19 A Yes, sir. We did.

20 Q You're a pilot as well?

21 A Yes, sir.

22 Q And Dr. Valentine, you said you all have a -- you all
23 are renting a car?

24 A Yes, sir.

25 Q And have you all had a chance to travel the state or

1 you're primarily just here for Court?

2 A We're just here for Court.

3 Q Have you had a chance to go up to Greenville Hospital?

4 A I have not.

5 Q But you -- I think I saw you on Monday; is that right?

6 A Yes, sir.

7 Q So you've been here all week?

8 A I've been here all week. Yes, sir.

9 Q But you haven't necessarily been in the courtroom all
10 week; is that correct?

11 A Correct.

12 Q Dr. Reddic was here. I think he's the clinical
13 director of the lab. You heard his testimony?

14 A I heard his testimony. Yes, sir.

15 Q You didn't go up there and review any of his lab
16 materials, have you?

17 A I'm sorry?

18 Q You didn't go up there and review his lab materials or
19 anything like that, have you?

20 A We requested that he send us the package -- the insert,
21 which we got --

22 Q Yes.

23 A -- and then the records from their calibration of the
24 instrument.

25 Q I think you got that, right?

1 A Yes, we did get that.

2 Q But you haven't been to Greenville Memorial to look at
3 all of the patients that have kind of been run through the
4 lab to look at their results and stuff?

5 A I have not.

6 Q You were hear for Dr. Snow's testimony --

7 A Yes, sir.

8 Q -- is that right?

9 A Yes, sir. That's correct.

10 Q He's the doctor that operated --

11 A Did the surgery on Mr. Rowell. Yes, sir.

12 Q So you heard his testimony?

13 A Yes, sir. I did.

14 Q And Mr. Rowell, I think there was mention that he was
15 in a coma for some time after surgery. Have you seen those
16 records?

17 A I have not seen those records.

18 Q You just don't -- you don't know?

19 A I don't know.

20 Q But you have reviewed the surgery records for Dr. Snow?

21 A I have. Yes, sir.

22 Q Before we jump into those records, let's start kind of
23 when he -- when Mr. Rowell first gets to the hospital.

24 Okay?

25 A Okay.

1 Q Can we start there? At that point Mr. Rowell had
2 received 540 units of blood; is that right? Which is the
3 whole blood and the plasma. About 540?

4 A Yes, right. I think that's about right.

5 Q Feel free to look at your notes if you need to do that.

6 A Okay.

7 Q And I think there was testimony -- I think you probably
8 heard the testimony of the LifeFlight?

9 A Yes, sir.

10 Q And the nurses that gave him the blood?

11 A Correct. I had --

12 Q 360 whole blood and 180 of FFPs, which is the fresh
13 frozen plasma?

14 A Yes, sir. That's correct. That's what the LifeFlight
15 gave him.

16 Q And that's all the blood that he received before he got
17 to the hospital, correct?

18 A Correct. Yes, sir.

19 Q And then once he got to the hospital he started
20 receiving additional blood?

21 A Correct.

22 Q Now, I was just curious, because I don't know anything
23 about liters or milliliters. This is a Dr. Pepper bottle.

24 A Uh-huh.

25 Q Can you tell us how many liters are in that Dr. Pepper

1 bottle?

2 A Five hundred.

3 Q Five hundred milliliters?

4 A That's what it says right here. Yes, sir.

5 Q So 40 more milliliters of blood he received before he
6 got to the hospital?

7 A Correct.

8 Q And there was a blood draw that was done at -- there
9 was a blood draw that was done at 20:54; is that right, by
10 the hospital?

11 A Well, that was the one where we had the --

12 Q Nurse Baker, I think? Amanda Baker?

13 A Yes, sir. That was the 20:54, correct.

14 Q Yes, sir.

15 A It was identified as she -- she's the one that drew it.
16 Correct.

17 Q And then you talked -- and you've got tons of
18 experience. I'm not doubting that. And you said that
19 you've been in trauma centers before?

20 A Yeah, actually I worked my way through college working
21 in the trauma center at the -- what's called the Confederate
22 Memorial Hospital in Shreveport, Louisiana.

23 Q And you did agree that they're pretty chaotic?

24 A It is.

25 Q And he had some pretty bad injuries, didn't he?

1 A Yes, sir.

2 Q So they were -- he's lucky to be alive?

3 A Oh, yeah. I agree.

4 Q So they were trying to save his life when he got to the
5 hospital?

6 A Yes, sir.

7 Q And I think you mentioned clock slop. Is that
8 something that you said?

9 A I think somebody used that on the stand here. But I --

10 Q I think you said it too, but --

11 A Maybe, yeah. Yeah, you're allowed a little slop in the
12 -- in the timing here.

13 Q Yes, sir. And you don't know Ms. -- Nurse Amanda
14 Baker, do you?

15 A I'm sorry?

16 Q Do you know her personally?

17 A Whose that now?

18 Q Nurse Amanda Baker? The one that --

19 A No, sir. I've never -- I never met her.

20 Q -- collected the sample?

21 A No, sir. I saw her testify today but I've never met
22 her.

23 Q But would you agree with me that not everybody has
24 their watch set at the exact actual time?

25 A Sure.

1 Q Dr. Valentine, just kind of going back to the 540
2 milliliters of blood that were given to them. Mr. Rowell,
3 how much do you estimate him weighing?

4 A I used what you used in Court the other day. I heard
5 you use 200 pounds --

6 Q Yes, sir.

7 A -- and that's what I used.

8 Q And I don't know how much he weighs. Do you know
9 exactly how much he weighs?

10 A I do not. I've not put him in a scale. I suspect he
11 probably is a little bit more than 200, but --

12 Q Yeah, I'm 200. So he's probably 200 to 220. You could
13 probably guestimate that's accurate?

14 A He could be. The only reason I used 200 is because I
15 heard you use it in Court the other day --

16 Q Yes, sir.

17 A -- and I want to be -- I want to be correct.

18 Q Yes, sir. He might be a little bit bigger than me
19 though.

20 A He might be, yes.

21 Q I'm probably taller, but he might be a little bit --
22 okay. How many liters of blood does a typical 220 pound man
23 have? Did you say seven liters?

24 A Somewhere between five to seven liters. And it would
25 be more to the larger amount with a bigger person.

1 Q And would you agree with me that the blood that he
2 received before he got to the hospital was probably about
3 five percent of his blood volume?

4 A Yes. It's not -- not that much. I mean, he's
5 obviously lost some blood, and so --

6 Q Right.

7 A -- we don't know exactly how much.

8 Q Right. But of his total blood volume would be about
9 five percent? You wouldn't disagree with that? Ballpark
10 it?

11 A Yeah, it's --

12 Q Five to --

13 THE COURT: Try not to talk over each other, Solicitor,
14 and Dr. Valentine.

15 Q If we went five, seven, eight percent that's probably
16 about accurate?

17 A Probably. You know, the thing we don't -- the unknown
18 to us is how much blood he had lost at that point in time.

19 Q Right. Yes, sir.

20 A He could have lost, say, you know, maybe up to a liter
21 of blood by that time. We don't know.

22 Q Now, talking a little bit about what the doctors found
23 in their report. Dr. Snow. You heard his testimony; is
24 that right?

25 A Yes, sir. I did.

1 Q Do you remember him talking about the liver having a
2 small little puncture in the liver?

3 A He said a small laceration, yes.

4 Q Small laceration. And you heard him testify to that?

5 A Yes, sir. I did.

6 Q And do you remember him saying it wasn't -- the liver
7 wasn't leaking anything?

8 A I'm not certain that I heard that. But a laceration of
9 the liver would be -- would be bleeding. There's no
10 question about that.

11 Q And he testified that there was no leaking from the
12 liver. Now, the bowels. There was some problems with his
13 bowels as well. Do you remember that?

14 A Correct. Yes, sir.

15 Q And he said there was really no leaking in the bowels
16 either. Do you remember that testimony?

17 A Yes. What he was talking about there is there was no
18 perforation of the bowels. So actually the contents of the
19 bowel were flowing out into the peritoneum.

20 Q Yes, sir.

21 A That's correct.

22 Q And they did put sutures just to make sure that nothing
23 was going to leak. You remember him testifying to that?

24 A He put the -- he put the sutures in him to stop the
25 bleeding.

1 Q Yes, sir.

2 A And then the sutures would have been there, so he'd
3 take out that little piece of bowel that he took out,
4 because it was going to die anyway.

5 Q And he talked about the acidosis that he -- that he
6 noted that in his operative report?

7 A Yes, sir. He did.

8 Q Would you agree that excessive alcohol can cause
9 acidosis?

10 A Excessive alcohol?

11 Q Yes, sir.

12 A I've not seen that personally. Okay?

13 Q But Dr. Snow, you remember him testifying to that?

14 A Yes. He did say he had acidosis. That's correct.

15 Q And you remember him saying that alcohol can cause the
16 acidosis?

17 A I'm not sure where he's getting that. Okay? I don't
18 know of any literature that would specifically say that.

19 Okay?

20 Q Okay.

21 A There may be. He may have some source that I'm not
22 aware of.

23 Q And I'm not going to be too much longer, Doctor.

24 Hopefully not. But I wanted to talk a little bit about the
25 tests that were -- that were run. You and I would agree

1 that there's two separate blood draws in this case?

2 A Yes, sir.

3 Q One about 20:54, nine o'clock p.m.?

4 A Yes, sir.

5 Q And then there's another one that's at 1:05 -- or well,
6 I guess, 12:56 a.m., which is the next day --

7 A Correct.

8 Q -- but still at night?

9 A Correct.

10 Q So two different blood draws, correct?

11 A Yes, sir. To clarify. There's two different blood
12 draws that are drawn for alcohol testing.

13 Q Yes, sir.

14 A Okay, good.

15 Q That's right. And in the first test, that was done at
16 nine o'clock, 9:00 p.m., kind of when Mr. Rowell first gets
17 to the hospital?

18 A Correct.

19 Q And the test that was used was an enzyme based test on
20 this Abbott machine by the hospital?

21 A Correct.

22 Q And that was a 219 plasma, would you agree with that?

23 A Yes, sir.

24 Q And this 219 plasma, I think you did a little bit of --
25 plasma is different than whole blood; is that right?

1 A Correct.

2 Q And if you convert the 219 to whole blood, that's about
3 an 18 or -- it's 186, right?

4 A Yes, sir. It would be close to that.

5 Q If you round it up to 18?

6 A (Non verbal response).

7 Q Yes, sir. And alcohol in a normal person metabolizes
8 -- what's the rate that it typically metabolizes at?

9 A In a normal male the average is .05 grams per deciliter
10 per hour.

11 Q And is that different than the testimony that was said
12 yesterday with SLED when they were talking about it?

13 A I think that's the figure she used as well.

14 Q So it's the same as the SLED -- her interpretation of
15 that as well?

16 A Correct. There's a range of elimination of alcohol
17 from people. In general it's somewhere between .01 and
18 .012. And so, I split the baby, so to speak, and got .015.

19 Q Yes, sir. I understand. And would you agree with her
20 assessment that if all circumstances were normal he would be
21 metabolizing at a .06 on a four hour window?

22 A Yes, you would take four -- you would multiply four
23 times .015 and that would be .06, correct.

24 Q Because 9:00 to 10:00, 10:00 to 11:00, 11:00 to 12:00,
25 12:00 to 1:00 is -- you would agree that that's about four

1 hours?

2 A Yes, sir.

3 Q It's probably a little bit more but about four hours?

4 A Correct.

5 Q So if normal -- normal circumstances were at play in
6 this case he would have metabolized .06 during this four
7 hour window?

8 A That's correct..

9 Q And 19 -- 19 minus six is what? Is it 13?

10 A 13.13, yeah.

11 Q So he -- if normal -- if everything was kind of going
12 normal in this case he would have been a .13 at 1:00 in the
13 morning when the second blood draw occurred, correct?

14 A If normal, that's correct.

15 Q And you would agree with me that the first -- the first
16 blood draw was on this enzyme machine, this Abbott machine
17 that measures the enzymes?

18 A Correct..

19 Q And that was the hospital?

20 A Correct.

21 Q Greenville Memorial?

22 A Yes, sir.

23 Q And the second blood draw, it didn't come back a 13,
24 did it?

25 A It did not.

1 Q It came back a .09 --

2 A Yes, sir.

3 Q -- 6, which I guess you could round it up to a 10,
4 right?

5 A Okay.

6 Q You have that, right? You've looked at that?

7 A Yes, sir. I've looked at it. You showed that on the
8 screen earlier.

9 Q And that was SLED's draw, right?

10 A That's their analysis. Not their draw. Their
11 analysis.

12 Q Their analysis, yes.

13 A Yes, sir.

14 Q And they used the gas chromatography machine, mass
15 spectrometry -- I might be butchering that; is that right?

16 A That's correct. They used what's called headspace gas
17 chromatography for it with ionization detector.

18 Q And you said that's pretty much the gold standard?

19 A It's the gold standard. Yes, sir.

20 Q And that -- and that test specifically kind of
21 separates the alcohol component and measures it more
22 directly, is that --

23 A It does.

24 Q -- is that what your testimony is?

25 A It does.

1 Q Now, there was -- there was talk in this case about a
2 false positive. You testified about that, correct?

3 A Yes, sir.

4 Q Now, in this particular case are you testifying that a
5 false positive occurred in this sample with the hospital
6 records?

7 A In the initial sample, yes.

8 Q So you're saying it definitely happened?

9 A Yes.

10 Q Now --

11 A If I could, I could define that by saying that all of
12 these circumstances line up with what we see in the
13 scientific literature. So that would be my conclusion that
14 it was a false positive.

15 Q Okay. Now, let's talk a little bit about the false
16 positive. You remember Dr. Reddic testifying -- I guess it
17 was Wednesday. Maybe Wednesday or Thursday. I don't
18 remember.

19 A Yes, sir.

20 Q The days are all running together.

21 A Right.

22 Q Now, he testified that he's been at Greenville for
23 about three years. You remember that testimony?

24 A Yes, sir.

25 Q And he's the clinical director of the lab?

1 A Correct.

2 Q So he's kind of responsible for a lot of stuff that
3 goes on there?

4 A Correct.

5 Q And kind of like your friend that's over the lab in, it
6 sounds like, Chicago at the hospital up there, right? Maybe
7 similar position?

8 A Correct. Similar to there, yes.

9 Q So possibly similar position?

10 A Similar, correct.

11 Q Now, do you remember Dr. Reddic testifying that he had
12 seen one case of that in his career since he's been at the
13 hospital?

14 A Yes, sir. I did.

15 Q And that was a situation where a kid had tested
16 positive for the alcohol and there shouldn't have been any
17 alcohol in his system?

18 A Correct.

19 Q And that testimony -- do you remember him testifying
20 that it should have been a zero and it was really a 30
21 deciliters per liter. Is that the correct measurement?

22 A Milligrams per deciliter. Yes, sir.

23 Q Milligrams per deciliter. I'm sorry. So it was a --
24 he was a 30?

25 A 30, yes, sir. That's what he said.

1 Q Is that plasma?

2 A That would be plasma or serum, either one.

3 Q So if we convert that to whole blood that's really a

4 .03, right?

5 A Well, it would be less than that.

6 Q So less than a .03.

7 A Yeah.

8 Q So probably a .02?

9 A Possibly, yes. But probably a .025, something like
10 that.

11 Q And that's the only example that he had seen since he'd
12 been at Greenville Memorial?

13 A Yes, that's correct.

14 Q And you heard that testimony?

15 A I heard that testimony, yes.

16 Q And you have -- have you seen other false positives
17 generated in your experience?

18 A I have.

19 Q And we had a -- you were nice enough to talk to us the
20 other day.

21 A Yes, sir.

22 Q And we appreciate that, Doctor. You told us the -- you
23 told us the highest false positive that you'd ever seen was
24 a 10?

25 A I just remember that it was over a .1. Okay?

1 Q So a 10 -- converted --

2 A A hundred. It would be over 100 milligrams per
3 deciliter.

4 Q But if we convert that to whole blood, you know, kind
5 of a legal standard that we --

6 A It would be about a .09. Something like that --

7 Q .09 --

8 A -- would be --

9 Q I'm sorry. I'm talking over you. I apologize.

10 A It would be a .09, .08, something like that.

11 Q And that's the highest you've ever seen in your career?

12 A If -- now, you have to use -- I have to give you a
13 little bit of reference on that. That was also in the
14 pediatric patient. We used this particular assay we did use
15 in our laboratory at Arkansas Children's Hospital. We were
16 -- as far as I know, we were the very first persons to ever
17 report this to the manufacturer that we got this false
18 positive on the alcohol on this child. We always use gas
19 chromatography as a backup when we got a positive. And so,
20 when we did that and saw what we -- we had a positive -- we
21 did not have a positive by gas chromatography, we contacted
22 the manufacturer to let them know about this.

23 Q And this is one that you personally saw at the lab?

24 A Personally I saw. Yes, sir.

25 Q That was the .09?

1 A I just recall -- it's been a good while back. But I
2 know it was -- I know it was greater than 100 milligrams per
3 deciliter when we looked at it. Okay?

4 Q Okay. And that's the highest one that you've ever
5 seen?

6 A That's the -- that's the only one that I saw. Now, you
7 have to remember that we were doing mostly pediatric and
8 adolescent patients, and so I wasn't using this in the adult
9 population, and we had not done a specific study to show the
10 rate of false positives with this test. And the reason was
11 that we always backed it up with gas chromatography.

12 Q Yes, sir. I understand. Now, I'm going to put this
13 back on. I'm going to go through a couple of your slides,
14 if that's all right.

15 A Sure.

16 Q I'm just curious. I forget which one it was.

17 A I think it's HAMI-2. Yes, sir.

18 Q All right.

19 A You let me know which number it was and I'll go to it.

20 Q Yeah, let's start at page nine. And your page -- you
21 might have an extra page --

22 A Yeah, I've got a number down in the bottom right-hand
23 corner.

24 Q I think ours might be a little different. That's the
25 one I was looking for.

- 1 A All right.
- 2 Q It looks like my page nine, your page 10.
- 3 A All right.
- 4 Q I see that word "can".
- 5 A Correct.
- 6 Q I guess -- I guess there's a difference between can and
7 always.
- 8 A Yes, sir. There is.
- 9 Q And in this case the word before can is the lactate
10 dehydrogenase; is that right?
- 11 A Yes, sir. That's correct.
- 12 Q And so, in this particular case, through any of the
13 records, was there any lactate dehydrogenase in any of the
14 records?
- 15 A It was not analyzed.
- 16 Q It was not analyzed?
- 17 A Correct.
- 18 Q So you haven't looked at anything to see how much
19 lactate dehydrogenase that Adam Rowell had in his system?
- 20 A There was nothing in the medical records. No LDH was
21 measured.
- 22 Q So no LDH was measured. Now, let's go to the next
23 page. These are -- these are studies, correct?
- 24 A Yes, sir.
- 25 Q And the laboratories that received these particular

1 studies, they got this particular sample. I'm looking at
2 the second bullet. The second bullet proof. Is that --

3 A Yes, sir.

4 Q Bullet point. I'm sorry. 120 mm sodium chloride, 25
5 mm sodium lactate, and 5,000 UL human LDH.

6 A That's correct.

7 Q I guess we'll just start with the human LDH. There's
8 none of that here in this case, right?

9 A That's correct.

10 Q The sodium lactate. Do we have a number in this case
11 --

12 A We do.

13 Q -- of what that was?

14 A We do.

15 Q And what was that number?

16 A It was 3.2 millimeter, I believe.

17 Q It was 3.2. But these labs analyze it at 25, correct?

18 A Yes, sir. That's correct.

19 Q But in this case the Defendant had -- his was only a
20 3.2?

21 A 3.2, and that was an hour after this alleged 20:54
22 sample was drawn.

23 Q But they're analyzing it and they're finding -- they're
24 finding problems with the test when it's elevated to a 25,
25 right?

- 1 A That's correct.
- 2 Q And if you go to the next page -- or, I think, the next
- 3 two pages, right?
- 4 A Which one --
- 5 Q Three pages over. I'm sorry. That has his actual
- 6 medical record. Yes, sir. With the red arrow up there.
- 7 That's --
- 8 A Yes, sir.
- 9 Q -- that's the 3.3; is that right?
- 10 A Right. I think I said 3.2, but it's 3.3, yeah.
- 11 Q 3.3. Yes, sir. And normal for a human being is a .5
- 12 to a 1.6?
- 13 A That's the range for this laboratory.
- 14 Q Okay. And that's about, you know, twice -- probably
- 15 twice what a normal person should be?
- 16 A According to their values, yes.
- 17 Q But when it was analyzed in the laboratories where
- 18 there was a problem it looks like there was 25 times, maybe
- 19 50 times what the lactate should be?
- 20 A At least -- probably 20 times more, correct.
- 21 Q 25 to 50?
- 22 A Let's see. They had the 20 and 3.2.
- 23 Q Well, if normal is a .5 to a 1.6, let's just split the
- 24 baby and call it 1. That's -- it would have to be 25 times
- 25 more to start getting --

1 A Sure.

2 Q -- the interferences.

3 A Sure.

4 Q And, Doctor, you would agree with me that having excess
5 lactate -- lactic acid in a person is not unusual? And let
6 me preference this by saying I told you I played college
7 baseball, right?

8 A Yes, sir, you did.

9 Q And I was a pitcher in college. And after I pitched
10 I'd have to run like two to four miles to flush the lactic
11 acid. So it's not unusual, is it?

12 A To have an elevated lactic acid?

13 Q Yes, sir.

14 A It's not. If you exercise profusely, that's correct.

15 Q It flushes it out. Gets into the legs and gets it out
16 of the body, right?

17 A It can. Yes, sir.

18 Q At least that's what I was told by my coaches. Now,
19 that might have just been a ploy, but you're saying --

20 A No, that's right.

21 Q You're saying --

22 A I used that -- I used that word can again. Yes.

23 MR. BLACK: Your honor, may I have just a brief moment?

24 THE COURT: Sure. Take your time.

25 Q Dr. Valentine, Ms. Merrill's gracious enough to help me

1 out, to help out with your guy's technology. Before we get
2 to that though, there was some talk of Benadryl, correct?

3 A Yes, sir.

4 Q And can you buy that over-the-counter?

5 A You can. Yes, sir.

6 Q And some people use it even to help them go to sleep at
7 night, right?

8 A Correct.

9 Q I apologize, Doctor. I'm trying to work technology.
10 Doctor, we'll just skip this part. I was going to show that
11 video again. But you've analyzed the video?

12 A Yes, sir.

13 Q And you've analyzed the video in the parking lot --

14 A Yes, sir.

15 Q -- with Mr. Rowell allegedly driving?

16 A Correct.

17 Q Based on what you've seen -- based on what you've seen
18 on those two scenarios, would you agree with me that those
19 are 15 second clips at the most?

20 A Yes. They're not very long. That's correct.

21 Q And so, in your -- in your professional experience you
22 can judge somebody whether or not they're intoxicated based
23 on a 15 second clip?

24 A I wouldn't go so far as to say that. But what I would
25 say is you can look for certain indications, and that's

1 basically what I was looking for here. Again, we had no --
2 we had no audio on this. So I don't know speech pattern and
3 that sort of thing.

4 Q You just observed a 15 second clip of him walking in
5 Walmart?

6 A That's correct.

7 Q And then him allegedly driving his truck in the parking
8 lot?

9 A Yes, sir. Correct.

10 Q Okay. Doctor, you said something while you were
11 testifying about the SLED blood draw. Well, before we get
12 to that, it looks like Ms. Merrill's got the video working.
13 It looks like it's playing now.

14 A Yes, sir.

15 Q I'm going to rewind that again. You had a chance to
16 watch that a couple times, Doctor?

17 A I have.

18 Q Are you testifying today that this is straight walking?

19 A Well, no one walks in a straight line except when
20 you're asked to by the police. Okay? I mean, that's not
21 normally our walking pattern.

22 Q Well, slow it down. It's going backwards now. It
23 looks like he's on the left-hand side. Now he's on the
24 right-hand side.

25 A Well, if you'll notice, there are people in front of

1 him, too. It may be he's trying to maneuver around them. I
2 don't know.

3 Q The people that are walking with him?

4 A In front of him.

5 Q That are walking in the same direction he's walking?

6 A Yes, sir. And that one guy stops there momentarily.

7 Q It looks like when he first comes on screen he's on
8 that right side.

9 A Yes.

10 Q And then he goes -- veers off to the left over here.

11 A Yes.

12 Q And you've seen this video a couple of times?

13 A Yes, sir.

14 Q And you're testifying that this is straight walking?

15 A Well, just stepping off to the side there he -- maybe
16 he's following the line behind the other people.

17 Q We'll play it again.

18 A It looks like perfectly normal gait to me. Okay?

19 Q I understand.

20 A The only thing that's a little bit different is he --
21 as I talked about earlier, he does splay his feet out just
22 slightly when he's walking.

23 Q And probably most of us southern people do that anyway.

24 A Could be. You see a lot of it in Texas, but...

25 MR. BLACK: Thank you for being here, Doctor. We

1 appreciate it. I think that's all the questions I have
2 right now. Please answer any questions Mr. Garrett might
3 have for you.

4 THE WITNESS: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. GARRETT:

7 Q The test was 5,000 what in the test? What was -- it
8 was 5,000 what?

9 A It was lactic dehydrogenase.

10 Q No tests were done on Adam?

11 A Correct.

12 Q So we're just simply having to speculate as to how many
13 of those he had in his system?

14 A That's correct.

15 Q Is there a body -- if it was full of it what would it
16 have? How much would it have?

17 A It could be up as high as 17, 18,000. I mean, I've seen
18 -- I've seen levels like that in individuals that have liver
19 disease. That's a common level you see postmortem.

20 Q A trauma?

21 A From trauma, yes.

22 Q And he certainly didn't get -- wasn't able to go out
23 and run a bunch of laps before he took this test, was he?

24 A No, sir. He wasn't.

25 Q All right. So the lactate and the bad stuff that you

1 were trying to look for simply wasn't eliminating from his
2 body; is that correct?

3 A That's right. I mean, it -- what we have to remember,
4 too, is that the one sample we do have with the lactic acid
5 was an hour after this blood test was done. So the lactic
6 acid could have been higher at that -- at that point.

7 Q So there's just no -- there's just no way to know
8 exactly what it would be?

9 A Exactly.

10 Q So are you having to speculate to be able to put
11 science to this?

12 A I'm not speculating. What I'm doing is I'm saying this
13 is what the scientific studies have shown. We have all
14 indications in Mr. Rowell that he met the criteria of what
15 we saw -- discussed in that paper.

16 MR. GARRETT: I'd like to go ahead and move his
17 presentation into evidence. Judge, we may have to modify it
18 slightly, too, based on our conferences yesterday.

19 THE COURT: Okay.

20 MR. BLACK: I'm going to object to that, Judge, and if
21 we need to take that up out of their time I don't have a
22 problem discussing that at a later --

23 THE COURT: Okay. We will -- we'll just -- once we
24 break for lunch, we can either do it before we actually go
25 to lunch or after. That'll be probably about the best time

1 to deal with that.

2 MR. GARRETT: I'll just go ahead and mark it, Judge, if
3 I may.

4 THE COURT: Sure, not a problem.

5 (Whereupon, Defendant's Exhibit No. 18 was marked for
6 identification.)

7 Q Doctor, you reached that several times; is that
8 correct?

9 A Yes, sir.

10 Q And he didn't bump into anybody, did he?

11 A No, sir. He didn't.

12 Q If a person truly had, based on SLED, a .09 and a 4.9
13 Benadryl, would they even be able to walk at all?

14 A No, sir. They would not.

15 MR. GARRETT: Thank you.

16 THE COURT: Any recross, Solicitor?

17 RECROSS-EXAMINATION

18 BY MR. BLACK:

19 Q Were you in the state of South Carolina while this
20 incident happened?

21 A I was not.

22 Q So you have no idea the Defendant's state either before
23 or after this?

24 A No, sir. I do not.

25 MR. BLACK: Thank you, Doctor.

1 THE COURT: You can step down, Doctor.

2 (Whereupon, the witness stepped down from the witness
3 stand.)

4 THE COURT: Okay. Ladies and gentlemen, it's the one
5 o'clock hour. It'll be a good time to break for lunch. And
6 let's try to start back at 2:15. Hopefully an hour and 15
7 minutes will be good enough for you. And again remind you,
8 as I've been do so all week long, no discussion with anybody
9 about this case, and we'll see you back at 2:15. Have a
10 good lunch.

11 (Whereupon, the jury exited the courtroom at 1:00 p.m.)

12 THE COURT: We'll start back at 2:15.

13 (Whereupon, a lunch recess was held from 1:00 p.m. to
14 2:20 p.m.)

15 (Whereupon, Court's Exhibit No. 21 was marked for
16 identification.)

17 (Whereupon, Defendant's Exhibit Nos. 19 and 21 were
18 marked for identification.)

19 THE COURT: Let's bring the jury out, please.

20 (Whereupon, the jury entered the courtroom at 2:20
21 p.m.)

22 THE COURT: Let the record reflect the jury is back in
23 the courtroom. Mr. Garrett, are you ready to call your next
24 witness?

25 MR. GARRETT: I do. Defense calls Adam Rowell.

1 THE COURT: Come around, please, sir.

2 ADAM ROWELL, having first been duly
3 sworn, testified as follows:

4 MR. GARRETT: May it please the Court.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. GARRETT:

8 Q Adam, tell us your full name for our Court record.

9 A Adam Martyn Rowell.

10 Q And what's your date of birth?

11 A September 15th, 1988.

12 Q And how old are you now?

13 A Twenty-eight.

14 Q I want to talk to you a little bit about your
15 background and that type of thing. Where were you born?

16 A I was born in Greenwood, South Carolina.

17 Q At Self over here?

18 A Yes, sir.

19 Q And where did you grow up?

20 A Greenwood and Ninety Six.

21 Q And where did you go to high school?

22 A Ninety Six High School.

23 Q Did you graduate from Ninety Six High School?

24 A Yes, sir. I did.

25 Q After graduating Greenwood High School where did you

1 go?

2 A I went to the Citadel.

3 Q Did you graduate the Citadel?

4 A Yes, sir. I did.

5 Q After the Citadel where did you go?

6 A I worked at Velux.

7 Q Velux?

8 A Yes.

9 Q And on the night of this wreck where were you working?

10 A At Velux.

11 Q Adam, I want to kind of talk to you about that entire
12 time period, if we can. Let's talk about, did you work the
13 night before?

14 A Yes, sir. I did.

15 Q I'm going to ask you to speak loudly so this young lady
16 can take down what you say.

17 THE COURT: You might want to slide a little closer to
18 that microphone.

19 A Yes, sir. I did.

20 Q I want you to start there and tell the jury about that.
21 What time did you get off on Friday night?

22 A Friday night I got off about midnight. I was working
23 the second shift.

24 Q Was that normal for you working second shift?

25 A I started working it a little bit. We usually get off

1 at 10:00, but I had been training for a new job, so I got
2 off a little later. So about midnight.

3 Q And then after leaving work where did you go?

4 A I went by the Hot Spot on the south end of town. 25
5 South.

6 Q And what did you do?

7 A Went in and purchased two bottles of Red Stripe and a
8 can of Grizzly Wintergreen.

9 Q So what time of the morning was that?

10 A It's a little after -- a little after 1:00. Probably
11 about 1:10, 1:15.

12 Q Do you recognize Defendant's No. 19?

13 A Yes, sir. I do.

14 Q What time does that say you made your purchase?

15 A Ten minutes after midnight.

16 Q Is that an accurate reflection of the receipt from the
17 Hot Spot there?

18 A Yes, sir. It is.

19 Q And it had two beers on it and a Grizzly?

20 A Yes, sir.

21 Q Can you tell us what a Grizzly is.

22 A Grizzly Wintergreen is a can of tobacco.

23 Q Tobacco dip?

24 A Yes.

25 MR. GARRETT: I move to introduce this into evidence.

1 MR. BLACK: No objection.

2 THE COURT: Without objection, No. 19 for the Defense
3 into evidence.

4 MR. GARRETT: No. 19. Thank you, Your Honor.

5 (Whereupon, Defendant's Exhibit No. 19 was admitted
6 into evidence.)

7 Q So it's Friday night at 12:10. What did you do after
8 that?

9 A After that I came home.

10 Q When you say home, tell the jury where home is.

11 A Home is -- if you go down to the House of Colors, right
12 down from the Hot Spot, we live in the back end of that
13 subdivision.

14 Q So going down south Greenwood, take a left at the Hot
15 Spot, go down to that House of Colors?

16 A Yes, sir.

17 Q Is there a road that goes to the right?

18 A Yes, sir. It's called Sherwood Drive.

19 Q Sherwood Drive?

20 A Yes, sir.

21 Q So you and your family live there?

22 A We live in the back of that where it changes over to
23 Meadow View.

24 Q Were you -- at that time were you living with your
25 parents?

1 A Yes, sir. I was.

2 Q Are you still living with your parents now?

3 A Yes, sir. I am.

4 Q How is your place kind of setup inside of their home?

5 A We have the main livingroom. Down the hallway, first
6 one to the right. Down the hallway is my room.

7 Q And that's where you were living at the time?

8 A Yes, sir. I was.

9 Q All right. So what time would you say you got home?
10 How long does it take you to drive from the Hot Spot to your
11 house?

12 A Not long. It's probably five to six minutes at most.

13 Q Got to your house. Tell the jury what you did.

14 A I brought everything in inside. I'd been working the
15 paint line, so changed my clothes. Changed -- I had paint
16 on my clothes. So I changed into my -- something cleaner.
17 Came in. Got a microwave dinner. Warmed it up, and had one
18 of the Red Stripes.

19 Q And after having one of the Red Stripes did you stay at
20 home?

21 A Yes, sir. I did.

22 Q Did you drive or anything like that?

23 A No, sir. I didn't.

24 Q So you had your meal, and then would you say you -- how
25 long you stayed up that night before you went to sleep?

1 A I had a movie going. I just stayed up watching that
2 movie and went to bed probably -- probably 2:00, 2:30.
3 Somewhere in there.

4 Q And so, you went to sleep that night there?

5 A Yes, sir. I did.

6 Q And about what time did you get up Saturday morning?

7 A Probably a little after 10:00.

8 Q Were your parents there at the house when you got up?

9 A Yes, sir. They were.

10 Q And was there anything planned for that day at all?

11 Did you have something scheduled, or what were you all

12 trying to do that day if anything?

13 A Well, my grandmother and my father's birthday falls on
14 the same week, and so we're -- we were going to celebrate
15 their birthday that evening. So we had plans to do that.

16 Q And so, when you all celebrate what was your all's
17 intention? Where were you all going to eat that night?

18 A There wasn't a specific place yet, but they said that
19 they were just going to go up in town and eat. I was
20 assuming something like O'Charley's. Somewhere on that side
21 of town.

22 Q Outback?

23 A Somewhere like that.

24 Q Is that usually where you all have your little
25 celebrations?

1 A Yes, sir.

2 Q So it was your dad and your grandmother's birthday; is
3 that correct?

4 A That's correct.

5 Q Is your grandmother in the courtroom?

6 A Yes, sir. She is.

7 Q Is that the young lady back over there?

8 A Yes, sir. Oh, yes, sir. It is.

9 Q So this is supposed to be a celebration night?

10 A It was supposed to be.

11 Q Now, let's take it on from there. After your parents
12 left you said around -- what time did they leave?

13 A They probably left probably about 10:30, 11:00,
14 somewhere in there.

15 Q After you got up what did you do?

16 A We had a hunting trip planned. Well, before all that I
17 got up, showered, cleaned up. We had a hunting trip planned
18 for the following weekend at Santee. I started getting
19 stuff ready for that.

20 Q What kind of hunting trip?

21 A Waterfowl. Duck hunt.

22 Q Who was supposed to go on a trip the following weekend?

23 A Me and my father.

24 Q Was that customary that you and your father generally
25 go --

- 1 A Yes, sir.
- 2 Q -- duck hunting?
- 3 A Yes, sir.
- 4 Q It was part of your duties or responsibilities was to
- 5 get your equipment and whatnot ready?
- 6 A Yes, sir.
- 7 Q So just kind of take us through your day and tell us
- 8 what you did up and until we got you at the Walmart there.
- 9 Go ahead.
- 10 A Okay. Well, as I said, I got up. Got dressed and
- 11 everything. Got ready. Stared doing stuff -- in the safe.
- 12 We've got a safe at the house. So I was getting the guns
- 13 ready for that.
- 14 Q You all got a gun safe at your house?
- 15 A Yes, sir. We do.
- 16 Q Do you all have your important weapons locked up in the
- 17 safe?
- 18 A Yes, sir. We do.
- 19 Q And do you have a combination for the safe?
- 20 A Yes, sir. We do.
- 21 Q And so, you know the combination?
- 22 A Yes, sir.
- 23 Q Did you open the safe?
- 24 A Yes, sir. We did.
- 25 Q And what guns did you retrieve out of the safe?

1 A I had a Benelli at the time, and he had a Winchester
2 SBX.

3 Q Any other guns you retrieved at that time?

4 A Yeah. I had a hunting rifle I'd used earlier in the
5 week.

6 Q Were you successful earlier in the week hunting?

7 A Yes, sir. Me and my friend, Doug Hall, we went deer
8 hunting. We both got bucks that Wednesday.

9 Q You both bagged some bucks?

10 A Yes, sir. We did.

11 Q And so, these three weapons were in your safe?

12 A Yes, sir. They were.

13 Q You took them out. Now, did you take the time to sit
14 down and start cleaning them?

15 A Yes, sir. I did.

16 Q So that's what you were doing, say, after 11:00 or so?

17 A Yes, sir.

18 Q How long does it take you generally -- just kind of
19 walk through what you did with your weapons and what you did
20 with your duck gear and try to let the jury know what you
21 were doing that day.

22 A It was going to be a weekend trip. So I was getting
23 that stuff ready, broke down. Make sure everything's good
24 to go. Of course, clean the rifle. Make sure I had that
25 cleaned up, because I'd used it earlier in the week. Got my

1 waders ready. Had a leak in one of them --

2 Q What is a wader?

3 A Well, you go duck hunting you have -- and it's cold and
4 you're going to be in the water. So I had a pair of waders
5 kind of protect you from like getting water on your clothes
6 and getting wet.

7 Q Right.

8 A So you had a hole in your waders?

9 A Yes, sir.

10 Q How do you fix holes in your waders?

11 A You got to get like this little -- like silicone or
12 something like that and just put it on the seams.

13 Q Did you do that that day?

14 A Yes, sir. I did.

15 Q And how long did you work -- did you have decoys?

16 A Yes, sir. We had decoys in the attic.

17 Q Did you have to go up into the attic and get your
18 decoys?

19 A Yes, sir. I did.

20 Q How long would you say it took you to do -- to try to
21 get everything ready for this trip that was going to be the
22 following weekend?

23 A A few hours to get everything altogether ready.

24 Q At what point in time -- did you go -- did you leave
25 there to go anywhere from that point in time?

- 1 A After I got all that ready I went to Walmart.
- 2 Q Let me ask you this. After you got up that morning at
- 3 around 10:00, 10:30 did you have any alcoholic thing to
- 4 drink at all?
- 5 A No, sir.
- 6 Q Did you have -- do you take any diabetic medicine?
- 7 A No, sir. I don't.
- 8 Q Are you a diabetic?
- 9 A No, sir. I'm not.
- 10 Q Did you take any Benadryl?
- 11 A No, sir. I didn't.
- 12 Q Do you even use Benadryl?
- 13 A No, sir.
- 14 Q If you've got a nasal allergy or whatever, what do you
- 15 use?
- 16 A Something like Sudafed, or off brand Sudafed.
- 17 Q Now, let's move on -- let's move on from there. So
- 18 about around 2:00 you decided to go to Walmart?
- 19 A Yes, sir.
- 20 Q And what was your purpose in going to Walmart?
- 21 A I like music. I play guitar. So I was going to buy
- 22 some CDs at Walmart.
- 23 Q And why were you going to buy some CDs at Walmart?
- 24 A There's a few songs I want to learn how to play, so I
- 25 bought those CDs. That's the one I play.

1 Q When you all go on those trips do you usually take your
2 guitar and play?

3 A Yes, sir.

4 Q Do you try to learn new songs while you got downtime
5 where you can't hunt?

6 A Yes.

7 Q Around the campfire and that kind of thing?

8 A Yeah, that sort of thing.

9 Q And so, about what time did you get to Walmart?

10 A Probably 2:00, 2:30. Somewhere in there.

11 MR. GARRETT: Beg the Court's indulgence.

12 THE COURT: Sure.

13 Q I'll show you what has been marked and entered into
14 evidence as Defendant's 15. Do you recognize those
15 purchases and about what time you purchased those?

16 A Yes, sir. I do.

17 Q About what time does it say that you purchased those
18 CDs.

19 A 14:26.

20 Q So would that be 2:26?

21 A 2:26. Yes, sir.

22 Q And after purchasing those CDs what did you do?

23 A I went back home.

24 Q Is your normal -- how long is your normal drive from
25 Walmart to home?

- 1 A It varies. Probably -- probably 12, 14 minutes.
- 2 Q Which way do you normally go?
- 3 A Come down 225.
- 4 Q So if you left out of the front of Walmart you'd make a
- 5 right?
- 6 A Yes.
- 7 Q Go down to, what, County Bank?
- 8 A Yes, sir.
- 9 Q Did you get on 225 there?
- 10 A Yes, sir. I did.
- 11 Q And then drive it all the way out to Scotch Cross Road?
- 12 A Yes, sir. That's correct.
- 13 Q Is that the way you went?
- 14 A Yes, sir. It was.
- 15 Q About what time did you get home? If you got there at
- 16 about 2:36, about what time did you get home?
- 17 A Probably sometime close to 3:00.
- 18 Q Close to 3:00?
- 19 A Yes, sir.
- 20 Q And what did you do from 3:00 on?
- 21 A I had work clothes from earlier in the week, so I had
- 22 to wash those. Like I said, I work on the paint line and it
- 23 got some paint on it. I can't wash it with my normal
- 24 clothes, so I had to wash them separate.
- 25 Q Your momma don't let you wash those with all the good

1 clean clothes?

2 A No, not with the paint on it.

3 Q Go ahead.

4 A Just did cleaning up. Cleaning up my room. Made up my
5 bed, stuff like that.

6 Q Then what did you do?

7 A Sat down and had something to eat. Spaghetti and some
8 garlic bread, and I had the other Red Stripe beer.

9 Q You drank the other Red Stripe beer?

10 A Yes, sir. I did.

11 Q And it's a 24 ounce beer?

12 A Yes, sir.

13 Q Is it fair to say that's basically two 12 ounce beers
14 in one?

15 A That would be correct.

16 Q So around 3:00 you had a beer?

17 A Yes, sir.

18 Q Okay. 24 ounces?

19 A Yes.

20 Q Which is basically two beers?

21 A Yes, sir.

22 Q Now, up and until that time that day had you had
23 anything to drink?

24 A No, sir. I didn't.

25 Q Any diabetic medicine?

1 A No, sir. I didn't.

2 Q Any Benadryl?

3 A No, sir. I didn't.

4 Q When you drank that -- those -- that one beer, which is
5 basically two beers, did you take any medication or anything
6 like that?

7 A No, sir. I didn't.

8 Q Any Benadryl?

9 A No, sir.

10 Q Any diabetic medicine?

11 A No, sir.

12 Q And you say you ate spaghetti and then you had some
13 garlic toast?

14 A Yes, sir.

15 Q After eating what did you do?

16 A I was working on cleaning up. Cleaning my room and
17 stuff like that. I was making up my bed. Straightening up
18 around the house.

19 Q So then about 5:00 did you decide to go somewhere else?

20 A I did. Like I said, I'd been hunting with my friend
21 Doug Hall earlier in the week. So I went by his in-law's
22 land where we hunt to see if he was out there.

23 Q And was he out there?

24 A No, sir. He was on a trip.

25 Q About how long does it take you to drive out to your

1 in-law's land?

2 A His in-law's?

3 Q His in-law's?

4 A It's down like going towards Ninety Six, so like 15
5 minutes, maybe a little bit more.

6 Q Did you stop anywhere on your way back to town?

7 A Yes, sir. I stopped by an ATM.

8 Q And what did you get at the ATM?

9 A I got \$20 out.

10 Q I'll show you what has been marked Defendant's Exhibit
11 20. Do you recognize that?

12 A Yes, sir. That's the receipt for the ATM.

13 Q It's a receipt from an ATM?

14 A Yes, sir. It's a little blurry.

15 Q Hold on just a moment. Hold on just a minute. Let me
16 see it first. I want to go back to one point. When you
17 were at Walmart before you went home and had your meal, did
18 you see anybody there?

19 A I did.

20 Q Who did you see there?

21 A Samantha Byrd.

22 Q And could you just tell us about that briefly.

23 A It was just a quick meeting. She was up there with her
24 son, and we knew her from church from years back. I saw her
25 and said hey.

1 Q She had her son with her?

2 A Yeah, she kind of tended to him.

3 Q You all just spoke?

4 A Yes.

5 Q You all didn't sit and have a conversation or anything
6 like that?

7 A Nothing long. Just hey, how's it going. And she asked
8 me how my grandpa was doing.

9 Q So let's move on from there. Let's get back to this
10 20. You were trying to look at it. Does it show what time
11 you got -- approximately what time you got the \$20 out of
12 the ATM?

13 A It's a little blurry, but I think it says like 17:45,
14 17:55. Something like that.

15 Q 17 something like that?

16 A Yes, 17.

17 Q So that would be 5:35, 50 -- 5:45, 5:55?

18 A 5:50. Somewhere in there.

19 MR. GARRETT: I'm going to introduce 20 into evidence.

20 MR. BLACK: No objection.

21 THE COURT: Without objection, No. 20 for the Defense
22 into evidence.

23 (Whereupon, Defendant's Exhibit No. 20 was admitted
24 into evidence.)

25 Q Now, let's move on from there. Did you -- the time you

1 were there at the ATM you got \$20; is that correct?

2 A Yes, sir. That's correct.

3 Q And why did you get \$20?

4 A Because it was my grandmother and father's birthday, so
5 I got it out. I didn't know if I was going to get a card or
6 a gift for them. So I just had it just to have it on hand
7 for something like that.

8 Q And then what did you do?

9 A I went back to Walmart.

10 Q Drove to Walmart?

11 A Yes, sir.

12 Q And about what time did you get to Walmart?

13 A 6:30. Somewhere in there.

14 Q And we've seen some videos. Is that you driving?

15 A Yes, sir. It is.

16 Q Did you have any difficulty driving from the Ninety Six
17 -- and that would -- that would be at, what, the Shell
18 station there?

19 A Yes, sir.

20 Q The ATM at the Shell station?

21 A Yes.

22 Q About how far is it from there to Walmart? The one you
23 went to?

24 A Maybe about 15, 20 minute drive.

25 Q And so, you got there. Did you have any difficulty

1 driving?

2 A No, sir. I didn't.

3 Q Did you have any open containers in the vehicle with
4 you?

5 A No, sir. I didn't.

6 Q The containers of beer, tell us about those. You had
7 drank a Red Stripe the night before and you had drank --
8 that day around 3:00 you drank the other one?

9 A Yes, sir.

10 Q Where were the bottles?

11 A They were in the HP computer bag.

12 Q HP computer bag. I'm going to let you see Defendant's
13 8 for ID. Do you recognize that bag?

14 A Yes, sir.

15 Q Is that the bag you say you put the beer bottles in?

16 A Yes, sir. That's correct.

17 Q Were they empty?

18 A Yes, sir.

19 Q Did you have anything left in them?

20 A No, sir.

21 MR. GARRETT: I move at this time to introduce Defendant
22 No. 8.

23 THE COURT: Without objection from the State, No. 8 for
24 the Defense into evidence.

25 (Whereupon, Defendant's Exhibit No. 8 admitted into

1 evidence.)

2 Q Now, help me understand what you -- what you did with
3 those beer bottles.

4 A I just put it in the bag to move it out of the house
5 because my mother's religion I didn't want to have them out
6 in front of her.

7 Q So it's customary not to have bottles of beer in the
8 house?

9 A I just didn't want to have them in front of her. She
10 doesn't like it.

11 Q And so, what do you normally do? And so, if you want
12 to take a drink of beer or whatever and she's not there, or
13 not up, what do you do with them?

14 A That's how I -- I just bring it in that bag, or a bag
15 like that.

16 Q And how do you get rid of them once you bring them --
17 you know, put them back in that bag?

18 A Put them back in the bag and put them in the toolbox or
19 the back of the truck.

20 Q The last time you saw that bag was -- where was your
21 last remembrance of where you put that bag?

22 A In the cab -- in the back of the back of the truck.
23 Like in the very bag.

24 Q In the -- not -- is it in the cab or --

25 A No, not the cab. It's in the -- like in the very back

- 1 end of it. In the bed somewhere.
- 2 Q In the bed?
- 3 A Yeah.
- 4 Q Not in the --
- 5 A Not in the cab. No, sir.
- 6 Q Do you know how your bag got from one place to another?
- 7 A No, sir. I don't.
- 8 Q When you got to Walmart there did you have any
- 9 difficulty driving?
- 10 A No, sir. I didn't.
- 11 Q So that would have been about 6:30?
- 12 A Yes, sir. There about.
- 13 Q You had had that other beer at around three o'clock?
- 14 A Yes, sir. That's correct.
- 15 Q And did you have any difficulty driving whatsoever?
- 16 A No, sir.
- 17 Q After you were there tell us what you did. Why were
- 18 you in Walmart and what were you trying to do?
- 19 A As I said, I got a choke tube for my Benelli the night
- 20 before.
- 21 Q Help -- let's help the jury understand what a choke
- 22 tube is.
- 23 A When you go duck hunting you have to have a choke tube
- 24 for the gun to go duck hunting. It screws in the top.
- 25 Q It makes the bullet shoot out a different way?

- 1 A It changes the pattern.
- 2 Q Changes the pattern to duck?
- 3 A Yes.
- 4 Q And so, you were trying to find one for your father?
- 5 A That's correct.
- 6 Q Did you find one for your father there at Walmart?
- 7 A Not the one I wanted. So I didn't --
- 8 Q So you didn't buy it?
- 9 A No, sir.
- 10 Q And what did you do then?
- 11 A So I left the store.
- 12 Q We don't have any pictures of you leaving the store.
- 13 About what time would you say you left the store?
- 14 A Probably a little before 7:00. Seven o'clock.
- 15 Q Right at 7:00?
- 16 A Yes, sir.
- 17 Q And tell us which way you took to go out.
- 18 A The same way I did the first time. Just left out the
- 19 front, went towards the County Bank, and down 225.
- 20 Q And did you go all the way home?
- 21 A I did.
- 22 Q And what happened at home?
- 23 A I didn't get the choke tube that I wanted for him, so I
- 24 grabbed the gift certificate I had for Hunter's
- 25 Headquarters.

1 Q You had a gift certificate from Hunter's Headquarters?

2 A Yes.

3 Q For how much money?

4 A It was like 40 bucks, I think.

5 Q And so, then where were you going?

6 A I was going to go ahead by that time just meet them and
7 be on time to meet them.

8 Q And now I want to take you to the scene. Which way did
9 you travel from -- let's take it from the place -- you said
10 Seabrook? Is Seabrook a subdivision?

11 A It's Sherbrook.

12 Q Sherbrook. Is Sherbrook a subdivision?

13 A Yes, sir. It is.

14 Q South Greenwood?

15 A Yes, sir. It is.

16 Q You would come out there to Scotch Cross Road?

17 A That's correct.

18 Q And went up to the -- why don't you just take us
19 through there and just tell us what happened.

20 A Okay. Went up like going past the Hot Spot. That's
21 when I was there. The other vehicle in my lane.

22 Q Let's slow down -- let's slow down a minute. I'm
23 assuming you had to stop at the stop sign there? There's a
24 stop sign or is it a red light?

25 A It's a red light.

- 1 Q You had to cross 25?
- 2 A Yes, sir. That's correct.
- 3 Q Did you cross 25?
- 4 A I did.
- 5 Q And let's just take -- take our time. Was it dark?
- 6 A It was very dark.
- 7 Q And you had just -- you had just been right down that
- 8 road; is that correct?
- 9 A That's correct.
- 10 Q and how long would you say you had been at the house to
- 11 get the Hunter's Headquarters gift certificate?
- 12 A Not long at all. Maybe just a couple minutes to stop
- 13 in and come back out.
- 14 Q Were you in any kind of major hurry or anything like
- 15 that?
- 16 A Not a real big hurry, no.
- 17 Q And you were heading to meet, what? Your folks, or who
- 18 were you going to meet?
- 19 A Yeah. I was going to be on time, because we were going
- 20 to meet about that time to go eat.
- 21 Q Was that customary? You all were going to meet around
- 22 7:30, 8:00?
- 23 A Yeah, because they had the birthdays. Yeah.
- 24 Q So let's take you -- as soon as you -- let's take you
- 25 to the point in time that you got to Scotch Cross Road. Did

1 you see any cars to your left as you got to Scotch Cross
2 Road?

3 A I did.

4 Q And did you have any problems with any kind of bright
5 lights or anything like that?

6 A No, sir.

7 Q And did you have your bright lights on?

8 A Not that I recall, no.

9 Q Just tell the jury what you saw as you came -- as you
10 came up to that point?

11 A It was dark. I saw headlights in my lane. So I come
12 -- drive up towards the median and just kind of let up the
13 gas a little bit.

14 Q And then what happened?

15 A The light was continuing on in my lane, and I go over
16 in his lane trying to miss him. So speed up, try to drive
17 past him, but -- I mean, it's not now it worked out.

18 Q Was he in your lane of traffic?

19 A Yes, sir.

20 Q Did you try to get in his lane of traffic to avoid
21 hitting him in your lane?

22 A Yes, sir. I tried to get in his lane to get out of the
23 way.

24 Q And how many times would you say you saw him up ahead
25 of you and as he got close to you, how many times, if any,

1 did he cross the center line in front of you?

2 A Maybe twice.

3 Q And after that there was an explosion. Do you recall
4 the impact or anything like that?

5 A Huh-uh.

6 Q Is that a no?

7 THE COURT: You need to verbally answer, sir.

8 A No, sir.

9 Q After the impact what happened to you?

10 A I woke up in the hospital. That's it.

11 Q And were you out for quite some time?

12 A Yes, sir.

13 Q How long was it before you reached consciousness?

14 A Two weeks.

15 Q Did you incur very large medical bills?

16 A I did.

17 Q Was your body shattered?

18 A It was pretty bad.

19 Q Were you almost killed?

20 A Yes, sir.

21 Q And did you do everything you felt like you could have
22 done to try to avoid this accident?

23 A I feel like I did.

24 Q After the -- after you got put into the hospital, you
25 know, do you know anything about these tests?

1 A No, sir.

2 Q Do you know anything about anybody reading any implied
3 consent laws to you --

4 A No, sir.

5 Q -- or any Miranda warnings to you or anything like
6 that?

7 A No, sir.

8 Q You just don't know anything about it?

9 A No, sir.

10 Q And then after you got out -- you got out in February;
11 is that correct? Around February the 16th? Do you remember
12 when you got out of the rehab hospital? It might have been
13 December. I'm sorry.

14 A It was close --

15 Q How long were you in the hospital altogether?

16 A It was close to Christmas before I got out.

17 Q Like December the 16th?

18 A Something like that.

19 Q And were you -- were you served these warrants at that
20 time?

21 A Yeah. When they went to take me out. They had the
22 patrol come and pick me up.

23 Q As soon as you got out -- as soon as you got out then
24 you were served with these warrants?

25 A Yes, sir.

1 Q Are you guilty of felony DUI?

2 A No, sir. I'm not.

3 Q Did you take any type of Benadryl?

4 A No, sir. I didn't.

5 Q Did you drink any more alcohol than what you've told
6 this jury here today?

7 A I did not.

8 Q Did the alcohol that you had at three o'clock that day
9 cause you any difficulty in your driving?

10 A No, sir. It didn't.

11 Q Did you take any diabetic medicine?

12 A No, sir. I didn't.

13 Q Are you a diabetic?

14 A No, sir.

15 Q Is that the best recollection that you have about what
16 happened just before this accident?

17 A Yes, sir.

18 Q And the last thing you remember is what? Who was in
19 your lane?

20 A He was and I was trying to steer out of it.

21 MR. GARRETT: Thank you.

22 THE COURT: Are you finished with direct, Mr. Garrett?

23 MR. GARRETT: I am. I'm sorry.

24 THE COURT: That's okay. Cross-examination, Solicitor?

25 MR. BLACK: Yes, sir. Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. BLACK:

3 Q Mr. Rowell, the first time you had an alcoholic
4 beverage the day of the wreck was about three o'clock in the
5 afternoon, you said?

6 A Yes. I had one prior to that, like still kind of the
7 same day. It was like midnight when I got off.

8 Q When you woke up the day before?

9 A Yes, sir.

10 Q You're saying you had one Red Stripe?

11 A That morning. Yes, sir.

12 Q Which is 24 ounces?

13 A Yes.

14 Q I can't hear you.

15 A Yes.

16 Q And you said you had a plate of spaghetti, too, right?

17 A That's correct.

18 Q I guess that would have been your lunch?

19 A Yes, sir. It was.

20 Q And you had some bread with that as well?

21 A (Nonverbal response.)

22 Q Is that a yes?

23 A Yes, that's correct.

24 Q And then once you got done with the Red Stripe you said
25 you took it and put it in your car.

1 A I had it in a bag. The HP bag. Well, I had the HP bag
2 at the house at the time of the other one. I put them all
3 in there.

4 Q That's a bookbag?

5 A Yeah. It's like an HP book bag.

6 Q So you just put empty bottles in a book bag?

7 A Yeah, to carry them out of the house.

8 Q You said but you don't -- you all have trash bags at
9 your house?

10 A I don't leave the bottles at the house.

11 Q Right. I understand that.

12 A Yeah.

13 Q But you have trash bags at your house, right?

14 A That's correct.

15 Q So you could have put an empty bottle in a trash bag,
16 right?

17 A Yes.

18 Q And thrown it away that way?

19 A I suppose.

20 Q You could have taken it to the dump and put it in the
21 recycle or something like that, right?

22 A I suppose.

23 Q So whenever you drink at the house you always put them
24 in this book bag?

25 A That's correct.

1 Q Every time you have any alcohol?

2 A That's correct.

3 Q So you never throw them in the trash can?

4 A That's correct.

5 Q And you said because your mom's religious, right?

6 A That's correct.

7 Q What about putting them in the bottom of the trash bag
8 and kind of under some trash? You don't do that?

9 A They'd still clank and she's know.

10 Q So you've never -- you've never do this?

11 A No, not in front of her.

12 Q You always put it in a book bag, put it in your truck
13 and then take it somewhere else?

14 A Put it in the back of the truck and take it.

15 Q Put it in the back of the truck?

16 A The cab -- not the cab, but like the bed of the truck
17 in the back.

18 Q In the bed of the truck?

19 A That's correct.

20 Q And in this particular case I guess it was different
21 because the pictures that the jury has seen, in this
22 particular case there was a bottle in the back of the truck?

23 A That's not correct.

24 Q Now, you've been here the whole time, correct?

25 A Yes.

1 Q And you've seen the evidence that's come in, correct?

2 A Yes.

3 Q You've seen this picture before, right?

4 A I have.

5 Q And it looks like that's the box of Blue Moon.

6 A Yes.

7 Q That's your toolbox, right?

8 A Yeah.

9 Q And so, you're saying typically you put them in the
10 toolbox or in the bed of the truck, right?

11 A That's correct.

12 Q The empty bottles?

13 A That's correct.

14 Q Now, this picture -- this looks like the back of your
15 truck, right?

16 A Yes.

17 Q You had -- is it leather seats? It doesn't look like
18 they're leather seats, are they?

19 A No, they're cloth seats.

20 Q And you would agree with me that that looks like --
21 that's a Red Stripe bottle?

22 A It's -- yeah, that's what it looks like.

23 Q And your book bag, was it in the back -- it was in the
24 back of the -- backseat of your truck, right?

25 A That's what that picture shows.

- 1 Q And this can was sitting in the seat, right?
- 2 A That's what the picture shows.
- 3 Q And that's Red Stripe, correct?
- 4 A That's what the picture shows.
- 5 Q Okay. Is this the -- is this the bottle that you drank
- 6 at lunchtime?
- 7 A I couldn't be sure.
- 8 Q But didn't you just testify that you put it in the --
- 9 in the -- in your book bag, right?
- 10 A It was in the book bag.
- 11 Q But this one is outside the book bag, right?
- 12 A It appears to be, yes.
- 13 Q Now, this was a Saturday afternoon, right?
- 14 A Yes.
- 15 Q And it sounds like you were running around town trying
- 16 to get a bunch of stuff; is that correct?
- 17 A That's correct.
- 18 Q And you play a little bit of guitar. I think you
- 19 testified to that.
- 20 A Yeah.
- 21 Q And you went to Walmart about 2:30 to grab some CDs?
- 22 A That's correct.
- 23 Q And those -- what kind of CDs were they? I know they
- 24 were Foo Fighters --
- 25 A It's still up here.

1 Q Yes, sir.

2 A It was Foo Fighters, Zac Brown, Stevie Ray Vaughan,
3 Jimi Hendrix and Bruce Springsteen.

4 Q Okay. And these particular CDs, you said you got them
5 so that you could learn to play some of the songs; is that
6 right?

7 A That's correct.

8 Q So is this CD like a teachable CD or is it just a CD
9 with all the songs on it?

10 A No, it's just one with all the songs on it.

11 Q So how would you learn to play these different songs
12 from this particular CD?

13 A Well, I had books on most of those. But I will listen
14 to an original song as well.

15 Q So you've got books on how to play the guitar?

16 A Well, I have the -- I have the books, but I don't have
17 like the audio part with the books. It's just sheet music
18 books.

19 Q And you can go on the Internet and look at cords and
20 stuff and --

21 A Yeah, absolutely.

22 Q Okay. And these songs are also -- you can get them --
23 you can look them up on Youtube, right and listen to them?

24 A You could, but it'll be handy to have all the ones you
25 want right there with you.

1 Q I understand. And you probably wanted to listen to
2 them on your trip as well, right?

3 A Yeah, absolutely.

4 Q Mr. Rowell, we talked a little bit about the empty Red
5 Stripe bottle that you had in your truck; is that right?

6 A Right.

7 Q The one you drank at lunch?

8 A Yes.

9 Q You had -- you also had other beer in the truck as well
10 that were not opened?

11 A Not that I remember, other than what's in the picture.

12 Q Not that you remember?

13 THE COURT: Mr. Rowell, you need to speak up a little
14 bit. Get a little closer to the microphone would help.
15 Thank you.

16 (Whereupon, State's Exhibit Nos. 74 and 75 were marked
17 for identification.)

18 Q Mr. Rowell, I'm showing you what's been marked as 74
19 and 75. Do you know what that is?

20 MR. GARRETT: Can I see those?

21 MR. BLACK: I apologize, Mr. Garrett.

22 MR. GARRETT: No problem. Without objection.

23 Q Do you know what that is, those two pictures are, Mr.
24 Rowell?

25 A They look like a bottle.

1 Q It looks like a bottle. Do you know what it is?

2 A No. I can't really see the label.

3 Q You can't see the label?

4 A No.

5 Q Now, you've been here the whole time this week, haven't
6 you?

7 A I have.

8 Q And you've seen everything that's been shown in Court?

9 A I have.

10 Q And you saw that Kelly Anderson -- she works for MAIT.
11 You saw that she testified earlier this week.

12 A I did.

13 Q And you saw that she -- she showed up the day of the
14 wreck, probably about an hour and a half after. Do you
15 remember her testifying to that?

16 A Yes, sir. Something like that.

17 Q And do you remember her showing a video?

18 A I do.

19 Q And that video is essentially the wreck scene right
20 when she arrived. Do you remember seeing that?

21 A Yes, sir.

22 Q And the jury saw it, too, correct?

23 A That's correct.

24 Q And why she was -- while she was going through this
25 video she went through the red truck; is that right?

1 A That's right.

2 Q And she showed video of your truck as well, correct?

3 A That's correct.

4 Q And that was played in front of the jury, correct?

5 A That's correct.

6 Q It looks like she was rummaging through the stuff in
7 your truck; is that right?

8 A It would appear so, yes.

9 Q And at this point you had already been taken out of the
10 truck; is that right?

11 A That's correct.

12 Q I direct your attention to the screen. Can you see the
13 screen where you're sitting, Mr. Rowell?

14 A I can.

15 MR. BLACK: I'm going to start this video again. And
16 of course technology doesn't want to cooperate with me.

17 THE COURT: Solicitor, do you need a couple minutes to
18 get things going? We can take a short little break if you
19 need it.

20 MR. BLACK: I think I'm -- I think I'm good while Mr.
21 Downtin can get it going.

22 Q But you have those pictures in front of you, correct?

23 A That's correct.

24 Q Would you agree that they're still photos of the video?

25 A They appear so, yes.

1 Q And the bottle on those particular -- it's closed,
2 right?

3 A It would appear so, yes.

4 Q Now, in those pictures it looks like there's some beads
5 of sweat coming off of them; is that right? Maybe you can
6 tell and maybe you can't tell?

7 A You can't really tell from these photos.

8 Q But your testimony today is that that beer wasn't in
9 your car?

10 A I wouldn't think so.

11 Q You wouldn't think so?

12 A No.

13 (Whereupon, video was published for the jury.)

14 Q Did you get a chance to see that, Mr. Rowell?

15 A I did.

16 Q And that picture is the same picture as the still frame
17 that you have, correct?

18 A It appears so, yes.

19 Q And I've got it stopped on the screen. That bottle is
20 clearly closed, right?

21 A It appears so, yes.

22 Q And you don't know -- but you don't know what that is?
23 That's your testimony today?

24 A Yeah, I can't tell what it is.

25 Q But it does look like there are beads of sweat on the

1 screen; is that right?

2 A I can't really make it out. If you say so.

3 Q Maybe you need to step down and take a better look at
4 it.

5 (Whereupon, the witness stepped down from the witness
6 stand.)

7 A I still can't see it.

8 Q Okay. But this -- it appears --

9 THE COURT: Wait a minute. What was that last
10 response, since you're away from the microphone, Mr. Rowell?

11 (Whereupon, the witness returns to the witness stand.)

12 THE WITNESS: I still couldn't tell if that was sweat
13 -- beads of sweat or not.

14 Q And this appears to be in some kind of bag or
15 compartment, correct?

16 A It appears so, yes.

17 Q But you only put empties in your vehicle?

18 A I put it on the back of the vehicle. In the back.

19 Q Empties in the back?

20 A Not the cab but in the bed. The back of the truck.

21 Q In the bed?

22 A Yes.

23 Q In the toolbox and the bed, both of them?

24 A In the toolbox or the bed, yes.

25 Q But you carry other containers in the car?

1 A Not necessarily.

2 Q Okay. Now, let's talk a little bit about the crash.

3 You had gone to Walmart to try to find something for your
4 gun, like a choke or a plug?

5 A Yeah. A plug for my dad's gun, yes.

6 Q Walmart didn't have it?

7 A It did not.

8 Q So you went to Hunter's Headquarters -- well, you had
9 to go back home?

10 A Yes.

11 Q Then go to Hunter's Headquarters?

12 A No, I didn't go to Hunter's Headquarters. I had a gift
13 certificate for Hunter's Headquarters I was going to give to
14 him.

15 Q Just give him a gift certificate so your dad could go
16 buy it?

17 A Yes.

18 Q So you were -- at this point you went home to get the
19 gift certificate and then you were heading back to
20 Greenwood, back to town; is that right?

21 A That's correct.

22 Q And you were -- at this point you were trying to head
23 to the restaurant?

24 A That's correct.

25 Q And you were headed back on 225 kind of the way that

1 you usually go, right?

2 A That's correct.

3 Q And you were sitting at the red light probably on 25
4 and crossed 25, kept on going on 225 past Scotch Cross Ferry
5 Road, and then headed up kind of towards the fairgrounds?

6 A Yes, sir. That's correct.

7 Q That's the way to go?

8 A Yes.

9 Q Okay. Now, you'll agree with me that the speed limit
10 on that road is 55 miles an hour?

11 A That's correct.

12 Q And you'll agree with me that coming from the Hot Spot
13 that road kind of curves; is that right?

14 A That's correct.

15 Q And it curves back from the way you're headed back
16 across kind of towards the right?

17 A It does.

18 Q So you would agree with that? If you're headed from
19 the Hot Spot back to Greenwood it curves back towards the
20 right?

21 A Yeah, it's got a slight curve all the way throughout
22 that turn.

23 Q And I'm sure you've traveled this road a ton in your
24 life, right?

25 A All my life.

1 Q Heading from Ninety Six to Greenwood, back to and fro,
2 you probably travel it a couple times a day, don't you?

3 A That's correct.

4 Q Okay. Now, at a certain point while you were traveling
5 on this road you said you saw the red truck essentially in
6 your lane of travel; is that right?

7 A That's correct.

8 Q And at that point you're saying that you had to make a
9 decision?

10 A That's correct.

11 Q And your decision in this particular case was to get in
12 the red truck's lane, correct?

13 A So I could try to pass him around the --

14 Q Pass him on the red truck's side?

15 A Yes.

16 Q When you saw the red truck coming down it was kind of
17 on the top of that hill?

18 A It was dark. All I know, it was up around, you know,
19 where those guardrails were. That's --

20 Q Now, you talk about guardrails. Now, on the red
21 truck's side of the road there were guardrails on his side,
22 correct?

23 A That's correct.

24 Q On your side of the road there were not guardrails,
25 right? Not yet?

1 A Not yet, no.

2 Q There are guardrails a little bit further up?

3 A Yes. All the way around that turn there's guardrails
4 on both sides.

5 Q So you're here telling this jury that your first
6 instinct when you saw this red truck come was to get in the
7 red truck's lane and try to pass it on his side of the road?

8 A Around it.

9 Q But you agree that there are guardrails on the red
10 truck's side of the road?

11 A There's guardrails on both sides of the road.

12 Q Right. But you hadn't gotten to the guardrails yet.
13 Not on your side, correct?

14 A Well, they're a little staggered, but they're still
15 pretty close together.

16 Q They're pretty close together. But at the rate -- when
17 you saw the red truck allegedly in your lane, right, there
18 were no guardrails?

19 A No, but I knew they were coming up pretty close.

20 Q So you did have time to turn off, or to pull over onto
21 your side of the road, because you weren't inhibited by any
22 guardrails, were you?

23 A Not by a guardrail. But there's -- it's really boggy
24 on that side of the road.

25 Q Right. And it kind of slopes off, doesn't it?

1 A It slopes off. And you've got a pond and a bunch of
2 trees on that other side.

3 Q And the pond -- the pond doesn't directly back up into
4 the road though, does it?

5 A Not directly, but it's just -- when it's raining or
6 when it's cold it'll just -- if you ever seen it this time
7 of year it's up pretty bad on this end.

8 Q Right. But if there's a pond there there would be
9 guardrails, correct? You would agree with me?

10 A Not necessarily. There would be -- it's around this
11 side.

12 Q I'm showing you what's been marked as No. 10. It's the
13 red truck. You would agree with me on that?

14 A Yes.

15 Q And you can see the end of the guardrail, correct?

16 A Yes.

17 Q The guardrail ends right here?

18 A Yes.

19 Q And this guardrail runs up the road a good ways,
20 correct?

21 A That's correct.

22 Q So your testimony to the jury is that you were going to
23 try to pass the red truck on this side of the road even
24 though there's a guardrail literally three feet off the
25 road?

1 A when he was in the lane it looked like I had a little
2 room to go around him on that side.

3 Q A little bit of room to go around him --

4 A Yes, sir.

5 Q -- on that side?

6 A That's correct.

7 Q What if the red truck overcorrects and gets back in his
8 lane?

9 A That's what would happen.

10 Q Now I'm showing you what's been marked as State's 45.
11 You've seen this picture, right, Mr. Rowell?

12 A I have.

13 Q And this is that road where the wreck happened?

14 A That's correct.

15 Q And your truck ended up coming to rest right here; is
16 that right? Where this kind of indentation is?

17 A No. It was probably back closer to the guardrail.

18 Q Closer to the guardrail, so just a little bit up here?

19 A Yeah, it's right about where your finger is where I
20 came to rest.

21 Q So at this point the guardrail kind of goes up towards
22 the fairgrounds; is that right?

23 A That's right.

24 Q But there's no guardrails down here; is that right?

25 A That's right.

1 Q And your testimony is that there's a -- it's boggy and
2 it's kind of muddy and it's not a good spot to pull off; is
3 that right?

4 A That's correct.

5 Q I'm showing you what's been marked as State's 48. Do
6 you now which way this is going?

7 A It's going back towards the Hot Spot.

8 Q So this is looking back towards the Hot Spot?

9 A (Nonverbal response.)

10 Q Yes?

11 A That's correct.

12 Q And you were coming from this direction up top of the
13 road up here and coming this way? Traveling this way?

14 A That's correct.

15 Q And your testimony is that there's no spot to turn off.
16 No spot to pull off to the right-hand side. But the best
17 course of action in this case was to go around in the red
18 truck's lane and try to pass him on this side? That's your
19 testimony?

20 A Yes. You have to understand it's like seconds.

21 Q Seconds.

22 A Seconds.

23 Q And you didn't think about hitting your brakes at all?

24 A I let off the gas, but it was just -- I was trying to
25 maneuver around him.

1 Q You were trying to maneuver around him?

2 A Yes.

3 Q What about this spot where this little machine is set
4 up? There's a turnoff right here. Do you see that?

5 A I do now.

6 Q Way up here the side of the road. It slopes off a
7 little bit, but you can get a truck right there, can't you?

8 A It would be possible, yes.

9 Q Let's talk about your course of action. Your truck is
10 a 2005 Chevrolet.

11 A That's correct.

12 Q and you have a -- you have a CAT ACM. Do you know what
13 that is?

14 A I do now.

15 Q It's basically a black box, isn't it?

16 A I guess so.

17 Q Kind of like what you hear about an airplane. It
18 records all the data?

19 A Apparently so, yes.

20 Q And so, your 2004 -- or 2005 Chevrolet, it had one of
21 these black boxes, didn't it?

22 A It did.

23 Q And it records data that's going through your truck?

24 A I assume so. That's what I've been told.

25 Q That's what you've been told. And you've had a chance

1 to review this, haven't you?

2 A Yes, I have.

3 Q Does this look like the information that you've
4 reviewed?

5 A Not that I remember, no.

6 Q Let me show it to you.

7 A Okay.

8 Q This has been marked as State's 63 into evidence. Take
9 a look at that page right there, sir.

10 A Okay.

11 Q That might mean something to you, it might not.

12 A I don't know what I'm looking for.

13 Q But you're not a crash data analysis -- you don't know
14 how to analyze any of this data; is that right?

15 A No, I do not.

16 Q You're not an accident reconstructionist?

17 A No.

18 Q But the black box, it records different speeds and
19 other different things going on; is that right? That's what
20 you've been told?

21 A That's what I've been told, yes.

22 Q And five seconds out it's got information. You would
23 agree with that? You heard testimony about it?

24 A Yeah, that's what I've heard. Yes.

25 Q Sixty-six -

1 MR. GARRETT: Your Honor, he doesn't -- understand that
2 he's not an analyst, and I just want to make sure. He's
3 asking him about things that he's already said he doesn't
4 know about. He's seen what's gone on in the courtroom but
5 he's not an analyst.

6 THE COURT: Well, he can -- I guess he can agree or
7 disagree with something that the Solicitor asks that comes
8 off the report. So I'm going to overrule at this point in
9 time. We'll see how it goes.

10 MR. GARRETT: Thank you, Your Honor.

11 Q Five seconds before the wreck it looks like you're
12 going 66 miles an hour, according to the black box. Percent
13 throttle zero. Four, 65. Three seconds before the wreck,
14 66. Two seconds before the wreck 67. One second before the
15 wreck 66 miles an hour. Do you see that?

16 A Yeah, I see that. Yeah.

17 Q And below that it looks like we've got some more
18 information. Brake switch circuit state. Eight seconds
19 before the wreck the brakes aren't on. Seven seconds before
20 the wreck they're on. Do you see that?

21 A Yes.

22 Q So when did you see the red truck in your lane? Was it
23 seven seconds?

24 A That's probably when I saw him swerve the first time.

25 Q Probably?

- 1 A I told you it was a matter of seconds.
- 2 Q So you hit your brakes, and then six seconds you're off
3 your brakes.
- 4 A It appears so, yes.
- 5 Q Five seconds it looks like you're off your brakes.
6 Four seconds it looks like you're off your brakes. Three
7 seconds off your brakes. Two seconds off your brakes. One
8 second before the wreck, off your brakes. Impact. When did
9 you make the decision to try to pass him on his side of the
10 lane?
- 11 A I would assume somewhere in between that timeframe.
- 12 Q Even though you had all this room to pull over off to
13 the right-hand side of the road?
- 14 A Like I said, it was only a matter of seconds.
- 15 Q You lost consciousness out at the scene?
- 16 A That's what they've told me, yes.
- 17 Q You don't really remember much after that, do you?
- 18 A I was -- I was in and out.
- 19 Q And then you went to the hospital, right?
- 20 A That's correct.
- 21 Q You were in a comma for a while?
- 22 A That's correct.
- 23 Q And then you woke up?
- 24 A Yes.
- 25 Q And then you remembered all the details?

1 A No. It took me a while to piece together details.

2 Q It took you awhile to piece together the details?

3 A Yes.

4 MR. BLACK: That's all the questions I have.

5 THE COURT: Anything in redirect in response to
6 cross-examination?

7 MR. GARRETT: None, Your Honor.

8 THE COURT: All right. You can step down, sir.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Mr. Garrett, do you have any other
11 witnesses?

12 MR. GARRETT: That's the case, Your Honor.

13 THE COURT: All right. The Defense rests. Does the
14 State have any rebuttal case?

15 MR. BLACK: No, sir, Your Honor.

16 THE COURT: All right. The evidentiary record in this
17 case is now closed. Mr. Foreman, ladies and gentlemen of
18 the jury, I'm going to send you back to the jury room. I
19 want to talk with the lawyers and just kind of finalize
20 plans for the remainder of this case, which will consist of
21 the lawyers making closing arguments to you. I will
22 instruct you on the law in this case and then I will give
23 you an instruction sometime after that to begin your
24 deliberations. But I want to talk with the lawyers and just
25 kind of get a good game plan, so to speak, on when we do

1 that. So if you'll go back to the jury room. Do not begin
2 any discussion yet, and we'll get you back out shortly.

3 (Whereupon, the jury exited the courtroom at 3:19 p.m.)

4 THE COURT: Lawyers come back in chambers for a second,
5 please.

6 (Whereupon, there was a pause in the proceedings from
7 3:19 p.m. to 3:27 p.m.)

8 THE COURT: Let's bring the jury out for purposes of
9 dismissing them for the day.

10 (Whereupon, the jury entered the courtroom at 3:27
11 p.m.)

12 THE COURT: Let the record reflect the jury is back in
13 the courtroom. Ladies and gentlemen, here's the plan.
14 We're going to go ahead and we're going to send you all on
15 now and have you back at 9:30 Monday morning. And let me
16 just kind of tell you my reason behind doing what we're
17 doing. Yeah, we could very well keep going. There's some
18 work that the lawyers and I need to do related to some
19 issues, so we'll have to leave you back here. Probably we
20 would not be ready to argue and charge until probably about
21 4:30, and the closing arguments. I don't know how long they
22 will be, but certainly some cases, especially cases that
23 have gone on this long, closing arguments could be very well
24 lengthy, and then I charge you on the law. You know, you
25 may very well not get this case to begin your deliberations

1 until suppertime or after. And so, I think it would be
2 better to come back on Monday. I realize that's a holiday
3 for at least some of you. I've already taken your Saturday
4 away from you. Now I'm taking a holiday away from you. But
5 I think looking at everything, I think that's going to be
6 the best way of going. So start back at 9:30. Hit the
7 ground running, having the closing arguments, charge you on
8 the law, and then you'll get this case to begin your
9 deliberations. Okay? So that's the reasoning behind my
10 decision. So at least you get to leave the courthouse at
11 3:30. You've been leaving around six o'clock every evening,
12 I think. So have a good afternoon and evening. Have a good
13 restful Sunday. We'll see you back Monday at 9:30. And
14 again, I'll remind you no discussion about this case with
15 anyone. Don't get on the Internet, social media to do any
16 research, and we'll see you back 9:30 on Monday. Have a
17 good rest of the day and a good Sunday.

18 (Whereupon, the jury was released at 3:27 p.m.)

19 THE COURT: Let's go ahead and take a short recess.
20 We'll get a copy of the draft charge to you. I think you
21 all need to do a little work on Matt Sims' report, and then
22 we can talk about Dr. Valentine's report and kind of do
23 everything at one time.

24 MR. HENDERSON: And we want to renew all our motions
25 again when the appropriate time comes, Your Honor.

1 THE COURT: Right. We can just -- we'll put that on
2 the record when we go -- come back. Okay?

3 MR. HENDERSON: Sounds good.

4 THE COURT: Everybody be at ease for a little bit.

5 (Whereupon, a recess was held from 3:27 p.m. to 4:46
6 p.m.)

7 THE COURT: Mr. Henderson, you have something to put on
8 the record?

9 MR. HENDERSON: I do, Your Honor. I want to go ahead
10 and renew all our directed verdict motions and all the prior
11 motions that we had made. And, Your Honor, taken in the
12 light of after the Defense put up its case, I think the --
13 regardless of looking at the hospital blood draw, regardless
14 of the chain of custody, it's undisputed from the State's
15 standpoint that the test was taken at 8:54. And I think
16 what's also in evidence is undisputed that Mr. Rowell did
17 not arrive to the hospital trauma bay until 8:59 to nine
18 o'clock. Your Honor, it's out belief that it would be --
19 forget about the chain of custody. It would be rank
20 speculation for the jury to be able to try to determine
21 whether or not this sample associated with the chain of
22 custody is Mr. Rowell's, when the undisputed evidence in the
23 record is that Mr. Rowell was not even at Greenville
24 Hospital when this blood draw was taken. And again, you're
25 -- that's truly speculative. And again, I just don't think

1 the jury should -- that doesn't mean -- that's not even more
2 likely than not. I think the government has to show at
3 least more likely than not before they can try to prove it
4 beyond a reasonable doubt. And on the hospital draw, we
5 believe that the Court, based upon that, ought to direct a
6 verdict of not guilty.

7 Then as it relates the SLED draw, Your Honor, the
8 State's own evidence is that a minimum 52 percent of the
9 blood was replaced from Mr. Rowell. Our expert, Dr.
10 Valentine, says it's 60 percent of the blood, as well as 123
11 percent of the blood -- of the fluid product. So it's --
12 and that's undisputed. Nobody has disputed that at all.
13 And again, Your Honor, as it relates to the SLED draw, we
14 believe it would be rank speculation for the jury to be able
15 to try to ascertain any reading allegedly coming from Mr. --
16 that did come from Mr. Rowell's body on its reliability.
17 They would be speculating about the reliability. Again, Your
18 Honor, that goes back to the motion that we made for not
19 contesting the validity of the machine. Not contesting the
20 machine at all. It's what got put into the machine. Again,
21 it's the reliability side of it. And again, if the -- if
22 the undisputed evidence is all this stuff got put through
23 his body, again, that would be rank speculation for a jury
24 to be able to try to attach that reading to Mr. Rowell's
25 blood. Basically he's being punished for something in a

1 sense is not his. Could not be his.

2 And again, Your Honor, just Ms. Merrill and I were
3 think about analogies. It's almost like a polygraph
4 analogy. That you're saying that if the polygraph machine
5 was working right, then anything that spits out has got to
6 be -- has got to be accurate. No. You might be putting
7 junk into it. And again, that's been our whole argument all
8 along that it's unreliable what gets put into it. So forget
9 what the result says. It doesn't matter what the result is
10 because it's based upon unreliable data being entered.

11 And again, based upon all that, we would renew our
12 motion for directed verdict now after the close of all
13 evidence.

14 THE COURT: Okay. Thank you Mr. Henderson. Does the
15 State want to put anything on the record?

16 MR. BLACK: In terms of the directed verdict motion?

17 THE COURT: Anything in response to what --

18 MR. HENDERSON: And incorporating all our prior motions
19 too as well.

20 THE COURT: Sure. Anything in response to what Mr.
21 Henderson has just moved the Court.

22 MR. BLACK: Just in looking at all the evidence in the
23 light most favorable to the State, we think there's enough
24 evidence that overcomes that, and we just ask that you deny
25 their motion.

1 Judge, just kind of briefly, specifically to mention
2 kind of what he was talking about in terms of the timing. I
3 think that's one of the main issues he harped on. Their
4 expert even testified -- Dr. Valentine testified that there
5 is clock shop. And in the trauma unit he admitted is chaos.
6 So if those times don't add up he said he had no really idea
7 what Ms. -- Nurse Amanda Baker's watch was -- what it was
8 set at. That he did say that that's a possibility. So I
9 think that the motion should be denied.

10 And also just briefly. The two pictures that we talked
11 about previously when talking to Mr. Rowell, I think that
12 those were consented to --

13 THE COURT: Right.

14 MR. BLACK: -- to come into evidence, and we're just
15 moving those into evidence at this point.

16 THE COURT: All right. Everything's noted for the
17 record and the motions are denied. Here are the two
18 pictures.

19 (Whereupon, State's Exhibit Nos. 74 and 75 were
20 admitted into evidence.)

21 THE COURT: Okay. We're off the record.

22 (Whereupon, the trial was in recess at 5:00 p.m.)

23 TRIAL DAY 7-02/20/17

24 (Whereupon, the trial resumed at 9:33 a.m.)

25 THE COURT: We are on the record this morning. It's my

1 understanding that you all are okay with Matt Sims' report.
2 It was cleaned up. Using the word cleaned up some. And so,
3 everybody's good with that.

4 MR. GARRETT: We understand, Your Honor.

5 MR. BLACK: Yes, sir.

6 THE COURT: And then I further understand that with
7 respect to Dr. Valentine's PowerPoint presentation that is
8 not coming into evidence but will be marked as a Court's
9 exhibit, correct?

10 MR. GARRETT: That's correct.

11 THE COURT: Very good. And would that be 17, Madam
12 Court Reporter?

13 COURT REPORTER: No, sir. It's 23.

14 THE COURT: Court's Exhibit?

15 COURT REPORTER: Valentine?

16 THE COURT: Dr. Valentine -- the paper copy of his
17 PowerPoint presentation will be Court's exhibit 23.

18 COURT REPORTER: 23.

19 THE COURT: Okay. Then I haven't been keeping track of
20 my Court's Exhibits then. I trust you. No, I stopped at
21 20. So I'm missing 21 and 22.

22 COURT REPORTER: Court's 21 is the Sims CD, and 22 is
23 the Defendant's proposed jury charge.

24 THE COURT: All right. Very good.

25 (Whereupon, Court's Exhibit No. 23 was marked for

1 identification.)

2 THE COURT: And with respect to the -- based upon our
3 charge conference on Saturday, and then, Mr. Henderson, we
4 received from you some request to charge via email yesterday
5 afternoon.

6 MR. HENDERSON: And also another email this morning,
7 Your Honor. It wasn't really a charge this morning. It was
8 an objection this morning.

9 THE COURT: Right, okay. Let me go over that now. And
10 what we'll do, we'll take a break between closing and
11 charge. I'll give you a final draft. You can make any
12 other comments you want to make, and certainly after I
13 charge you can make any objections you want to make. I am
14 going to charge the inference level under 56-5-2950, and I'm
15 primarily basing that on subsection H which says when a
16 person is unconscious rendering them unable to give a
17 refusal, they are considered informed under subsection A and
18 not to have withdrawn the consent. So I find that
19 subsection A would have been complied with, and therefore I
20 will charge that inference level of a .08 and greater.

21 Also, and I think I may have mentioned this to you back
22 in the office on Saturday. I am making a finding that there
23 was an arrest made at the time the trooper gave Miranda,
24 even though Mr. Rowell was unconscious. Miranda and the
25 implied consent act was read to -- or his implied consent

1 rights were read to him. I find that the arrest was
2 affected at that time. And that's all related to that three
3 hour restriction that's in the statute.

4 With respect to your request in your emails, Mr.
5 Henderson. The first one related to suspicion and
6 reasonable doubt, I mean, I think I've thoroughly covered
7 that in my charge, defining reasonable doubt for them. I
8 think in my -- in the intents section of the charge I
9 mention if you find that the behavior of the Defendant is
10 suspicious then, you know, the proof has failed and you must
11 find him not guilty. So I think I covered that. I've not
12 worded it as you have requested, but I think I cover that
13 sufficient. So I will not charge as you have requested.

14 Concerning your two open container -- unopen container
15 charge and the open container charge, I will charge that. I
16 have inserted completely empty. Where you have an open
17 container that is empty I have inserted the word completely
18 empty. But I will charge those two. And certainly once
19 I've gone through this if the State or the Defense has any
20 further comment I'll be glad to hear from you.

21 The chain of custody request I'm not going to charge.
22 That's a legal finding that I must make in order to
23 determine whether or not certain evidence is admissible or
24 not. So I'm not going to charge that. The necessity
25 charge, I'm not going to charge that. That -- the necessity

1 charge relates to a defense to the actual crime having been
2 committed. For example, self-defense. That is a defense to
3 an act of murder or manslaughter. In this situation the
4 necessity is not with respect to the crime being charged,
5 felony DUI. It's with respect to an element of the -- of
6 the offense, driving left of center. So necessity has to
7 apply to the actual crime being charged and not to an
8 element as in this case as I just said, driving left of
9 center. So necessity will not be charged.

10 And lastly the 56-5-6170, the enforcement statute.
11 Quite honestly, I'm just kind of really confused with how
12 that should come into play as far as -- I mean, law
13 enforcement investigates, juries have to make a
14 determination of guilt or innocence based upon the evidence,
15 and that is covered in my charge. So I'm just a little
16 uncertain why that statute would want to -- why the Defense
17 would want that to be charged. I'm not going to charge it
18 unless you can give me an explanation for that.

19 So, State, any comments related to my rulings related
20 to charge?

21 MR. BLACK: Yes, sir. Your Honor, just going back to
22 the open container that I think you said that you were going
23 to charge the language that Mr. Henderson put in his email.
24 The open container indictment hasn't gone to the jury.

25 THE COURT: Right.

1 MR. BLACK: So from our perspective, this just kind of
2 muddies the water about the evidence that's been portrayed
3 whether or not there was an open container or not. They
4 don't have that indictment. That's something that they're
5 not --

6 THE COURT: Right.

7 MR. BLACK: -- going to consider. I guess our position
8 is that we're concerned that the jury, after you give this
9 instruction, might take it that they can't consider all the
10 evidence of the beer cans and whatnot on scene that day.

11 THE COURT: Right.

12 MR. BLACK: So I guess I'm opposed to the instruction.
13 However, if you decide to keep the instruction we would ask
14 for some kind of language at the end of it to say, you know,
15 ladies and gentlemen of the jury, you still have -- you
16 still can consider all the evidence that's been admitted in
17 the trial of this case. So I guess we kind of disagree with
18 how it's going to -- how it's going to be put in as is. But
19 if Your Honor does deem it necessary to come in, just some
20 of the additional language so that they don't -- that they
21 can consider it.

22 THE COURT: I can -- I can fashion something. Do you
23 have any objection, Mr. Henderson at the end of the two
24 container charges just saying that this certainly does not
25 prohibit you from considering any evidence that has been

1 offered in this case. That's, you know, up to you. I'll
2 have to figure out the exact language, but some kind of
3 qualifying --

4 MR. HENDERSON: That's standard, Your Honor. Again,
5 the jury can weigh the evidence as they see fit. Right.

6 THE COURT: What I'll do is I'll think of some language
7 and then let you all take a look at it. Okay? Anything
8 else from the State?

9 MR. BLACK: Just briefly, Your Honor. I think Mr.
10 Downtin's going to handle this.

11 MR. DOWTIN: Your Honor, I guess just in further
12 support of your ruling as far as the inference levels. I
13 mean, again, the Defense keeps referring to it as the
14 implied consent statute, but -- I don't claim to be a
15 grammar expert. But implied consent testing for alcohol or
16 drugs, semicolon, procedure, semicolon, inference level of
17 DUI. Those alone -- they can stand on their own. I mean,
18 they're both independent clauses, independent things. And
19 if you look at the section G which talks about the inference
20 levels, not one time in that entire section does it say
21 implied consent.

22 THE COURT: Right.

23 MR. DOWTIN: The Legislature could have easily thrown
24 those words in there. It only applies to implied consent.
25 I know you've made your ruling. We just want to put that on

1 the record.

2 THE COURT: But is your argument just an affirmation of
3 my ruling that I am going to charge the inference level --

4 MR. DOWTIN: Yes, sir.

5 THE COURT: -- with respect to .08 and greater?

6 MR. DOWTIN: Yes, sir.

7 THE COURT: All right.

8 MR. DOWTIN: And that's just on the SLED draw or is

9 that also --

10 THE COURT: That's on the SLED draw.

11 MR. DOWTIN: And then, I guess, also, Your Honor, we
12 have an objection to them using their little chart over
13 there in their opening. I believe there's a couple
14 misstatements in the law as far as definitely beyond a
15 reasonable doubt. I'm not sure that's accurate and the
16 chart's beyond confusing.

17 THE COURT: They have a chart that they used in
18 opening?

19 MR. DOWTIN: I meant they're going to use in their
20 closing. I'm sorry.

21 THE COURT: What -- I mean, I'd have to look at it.

22 MR. DOWTIN: Yes, sir. We just wanted you to look at
23 it before we had to stand up and object when they're in the
24 middle of their closing.

25 THE COURT: What you got, Mr. Garrett?

1 MR. GARRETT: You're the instructor of the law. This
2 is our interpretation of the law.

3 THE COURT: Right.

4 MR. GARRETT: They have to defer to you.

5 THE COURT: Right.

6 MR. GARRETT: This is our view of guilty versus not
7 guilty.

8 MR. DOWTIN: I think that definitely guilty beyond a
9 reasonable doubt is not accurate. I mean, guilty beyond a
10 reasonable doubt, I don't --

11 THE COURT: Do you have any problems with their view of
12 what not guilty is?

13 MR. DOWTIN: I mean, it's a lot of information. I
14 mean, I feel like you've kind of covered all that in your
15 charge already. I feel like it's more confusing than
16 anything.

17 THE COURT: Well, here's what -- I mean, I'll allow it.
18 I will preface the closing arguments by saying that the
19 lawyers will more than likely argue what they believe the
20 law to be. However, what I tell you is the law. And if
21 what I tell you differs from what the lawyers say then you
22 disregard what the lawyers say and you follow what I say. I
23 think that would probably be the easiest thing to do.

24 Now, anything from the Defense related to the charge?

25 MR. HENDERSON: Yes, sir, Your Honor.

1 THE COURT: Don't -- I mean, really the only one I want
2 -- you're not going to convince me on the others. I'll
3 allow you to make argument to protect the record. The only
4 one that I was just more -- really more confused about was
5 this enforcement statute, why that would be necessary to
6 charge.

7 MR. HENDERSON: As it relates to the enforcement
8 section, Your Honor, and the specific part of it, no police
9 officer in investigating a traffic accident shall
10 necessarily deem the fact that an accident has occurred as
11 giving rise to the presumption that a violation of law has
12 occurred. Basically the legislature has basically said,
13 hey, just because there's a wreck --

14 THE COURT: Right.

15 MR. HENDERSON: -- the police can't come out here and
16 presume that a crime has been committed. In a sense it's a
17 reasonable doubt statute.

18 THE COURT: Right. Right. Well, in light of the fact
19 that I tell them the fact that Mr. Rowell has been, you
20 know, arrested and charged with these offenses is not proof
21 that he's guilty. I think that pretty much says the same
22 thing. The fact that there was an accident, that doesn't
23 mean he's guilty. I'm going to go ahead. You've submitted
24 all your requests to charge, I think, as a Court's Exhibit,
25 so...

1 MR. HENDERSON: And, Your Honor, I have some additional
2 argument on the inference that we have not -

3 THE COURT: Okay. Put that on the record.

4 MR. HENDERSON: -- in the email. Your Honor, of
5 course, you're not charging the inference on the hospital
6 blood draw --

7 THE COURT: Right.

8 MR. HENDERSON: -- medical blood draw. I think *State*
9 *v. Hunter* is very clear that you can't do that. And then on
10 the SLED side, on the SLED draw, now you're wanting to
11 charge the inference. Like our email addressed, that's
12 going to be confusing, number one.

13 THE COURT: Right.

14 MR. HENDERSON: It's going to be prejudicial, number
15 two. And again, the State could opt not to put in the
16 hospital draw if they're trying to keep their inferences.
17 And I believe that the Defendant, if you've got competing --
18 not really competing -- competing statutes, but statutes
19 versus cases, meaning that this *Hunter* says you can't put in
20 blood draw and you're trying -- they're trying to get in the
21 inference under the SLED blood draw by statute, I think the
22 Defendant ought to get the benefit of the doubt and there be
23 no inferences.

24 And again, as we discussed the other day, Your Honor,
25 the implied consent statute, especially in the light of

1 McNealy and subsequent US Supreme Court cases, that our
2 implied consent statute 2950 only applies now to expressed
3 consent or expressed refusal. And in that case -- in the
4 case here we've got now neither one of those apply. Again
5 the government had to go outside of the implied consent
6 statute, i.e., getting a judicial search warrant to try to
7 get Mr. Rowell's blood. And again, it's our position that
8 that's what takes it out of implied consent regardless of
9 what the reading is. Because keep in mind, you can't
10 legally refuse a search warrant. Say Mr. Rowell was
11 competent. Say he was conscious. He can't refuse that
12 search warrant. And the whole idea behind implied consent
13 is that any person can refuse, and then the government takes
14 it outside of your right to refuse, that takes it outside of
15 implied consent. And again, under 2950 all these inferences
16 have to do with implied consent draws. No other type of
17 draws. And again, another concern we've got, Your Honor,
18 it's undisputed that the great majority of the blood tested
19 was not Mr. Rowell's. And again, if you go back under the
20 implied consent statute it talks about the person's, the
21 Defendant's blood. I think it's undisputed that the blood
22 that was tested, the great majority of it is not Mr.
23 Rowell's. I think that's another reason why we believe it
24 ought to be outside of implied consent.

25 And also, Your Honor, I see what you're saying under

1 paragraph H, but I think paragraph H has basically been
2 taken out of our law by McNealy. McNealy overrode
3 subsection H, because now the Legislature can't judicially
4 by fiat say if you're unconscious we can use your blood
5 against you through implied consent. No. McNealy's made it
6 clear you've got to go outside implied consent. You've got
7 to go get a judicial search warrant. And again, I'm
8 thinking that subpart H as it's written and as His Honor is
9 applying it is unconstitutional. And again, that's why
10 we're arguing that none of this ought to be coming in under
11 implied consent.

12 THE COURT: Thank you.

13 MR. BLACK: Judge, just briefly just in response. I do
14 actually agree with Mr. Henderson that the title of this
15 subsection inference from result of the SLED test is
16 confusing. And it's kind of going back to what Mr. Downtin
17 was saying that the semicolon at the head of that particular
18 statute sets it apart as an inference level. The inference
19 level doesn't just apply to implied consent. It applies to
20 just standard DUI in general. So I guess the remedy that
21 we're asking for in this case is for you to change the title
22 and just put inference for DUI in South Carolina. I think
23 that would be more of the appropriate charge. Because I do
24 agree that the SLED test, if you just -- if the title stays
25 as is the jury might think that it just applies to the SLED

1 test. But that's not what the statute says. The statute
2 says that the inference level is the inference level. So I
3 --

4 MR.. HENDERSON: That's really going to -- Hunter makes
5 clear of that --

6 THE COURT: Yeah, I have to -- I have to -- tend to
7 disagree with Solicitor Black's analysis. I think State v.
8 Hunter is clear that it only applies to, in this case, the
9 SLED draw.

10 I'm going to leave it as is. You know, I've read
11 McNealy several times, Mr. Henderson, and I'm not convinced
12 that it would be applicable here. I may be wrong.
13 Certainly if I'm wrong somebody can tell me that I'm wrong.
14 But I'm going to -- I'm going to charge the inference. I'm
15 going to keep the charge title of that section where it is.

16 Anything further? I'll work on a little language to go
17 with this container provision and let you all see that
18 before I actually charge it. Anything else before I bring
19 the jury out?

20 MR. HENDERSON: One moment. Nothing further, Your
21 Honor.

22 THE COURT: Let me ask you guys this, with respect to
23 the little sentence with the container. What about this.
24 Any evidence of containers may still be considered by the
25 jury in determining whether Defendant committed the crime

1 charged? Is that --

2 MR. BLACK: Yes, sir. I don't have a problem with
3 that.

4 MR. HENDERSON: That's going to be kind of the last
5 sentence after --

6 THE COURT: That will be after the two paragraphs where
7 unopen container, and then completely empty container, and
8 then any evidence of containers may still be considered by
9 the jury to determine whether the Defendant committed the
10 crime charged.

11 MR. HENDERSON: I don't have that.

12 THE COURT: Well, that's the addition. And we'll get
13 you a copy before we actually charge. Okay.

14 MR. HENDERSON: And, Your Honor, as it relates to chain
15 of custody. I know you've let the chain come in, but it's
16 still up to the jury to be able to give it what weight that
17 they want to give it, and that's why we were asking for a
18 specific chain of custody. And also about necessity, Your
19 Honor. And again, I recognize where the Court's coming
20 from, but according to the State's theory of the case
21 driving left of center is part of the proximate cause of the
22 felony DUI.

23 THE COURT: Yeah. I mean, it's an element. There has
24 to be -- there has to be some illegal act committed in order
25 for there to be felony DUI.

1 MR. HENDERSON: And the Defendant, Mr. Rowell, has a
2 legal excuse to cut off any one of those elements, a
3 necessity to cut off any one of those elements. He can't be
4 convicted of the underlying crime. And that's why we
5 believe necessity ought to be charged. That would make him
6 legally not guilty of felony DUI if the jury believes he had
7 a necessity to drive left of center.

8 THE COURT: I understand. Thank you. Let's bring the
9 -- bring the jury out. Is the State ready to proceed first?

10 MR. BLACK: Yes, sir.

11 (Whereupon, the jury entered the courtroom at 9:54
12 a.m.)

13 THE COURT: Let the record reflect the jury is back in
14 the courtroom. Good morning, ladies and gentlemen. Hope
15 you had a good day yesterday and ready to get back to work
16 today.

17 As I told you on Saturday what we have left to do, and
18 this is certainly -- every part of this case is extremely
19 important, but this is a very important part of the case.
20 It gives the lawyers an opportunity to make their closing
21 arguments to you. It's their attempt to really advocate for
22 their people that they represent and it's their statement of
23 what they believe you have heard these past six days of
24 evidence. They probably -- both sides will probably tell
25 you what they believe the law is in this case. And

1 certainly if they say something concerning the law that does
2 not agree with what I tell you then you are to completely
3 disregard what they tell you about the law and listen to
4 what I tell you. If they do misstate something I'm not
5 suggesting that they're doing it intentionally. But I just
6 want you to understand and make sure that you follow the law
7 that I tell you, what the law is and not what they may tell
8 you. Okay? Please give the lawyers your complete and
9 undivided attention during these closing arguments. The
10 State will go first, the Defendant will go second, and then
11 the Defense will have the right if they so choose to come
12 back in what we call rebuttal if there's anything new that
13 they need to address that the Defense argues.

14 So, Solicitor Black, are you ready, sir?

15 MR. BLACK: Yes, sir, Your Honor.

16 THE COURT: You may proceed.

17 MR. BLACK: May it please the Court.

18 CLOSING ARGUMENT

19 BY MR. BLACK: Choices and consequences. We make them
20 every day, folks. A lot of these choices are oftentimes
21 inconsequential. Am I going to have water or am I going to
22 have a sweet tea at lunch. Some of these choices mean life
23 and death. November the 15th, 2014 the Defendant in this
24 case made a choice. He made the choice to get behind the
25 wheel of a motor vehicle in the state of South Carolina

1 after drinking alcohol, and that choice ultimately caused
2 Jeremy Cockrell his life.

3 Now, folks, we've been here a long time. You guys came
4 here a week ago today and you've been here all week,
5 Saturday. It's now Monday. Monday morning. And you heard
6 a lot of evidence. You've seen a lot of testimony. And
7 over the course of the next several minutes I'm going to be
8 going over all of that because it has been a long week.

9 But folks, in every criminal case if you've watched
10 anything on TV, any kind of criminal show with lawyers and
11 defense attorneys, you know that in all criminal cases in
12 the United States of America the State has the burden to
13 prove its case beyond a reasonable doubt.

14 Now, in this particular case Adam Rowell is charged
15 with felony DUI, two counts; death and great bodily injury.
16 And we as a State have to prove those two crimes to you
17 beyond a reasonable doubt. So first, what's the law? The
18 Judge is going to read you the law -- the law here in a few
19 minutes, but this is essentially what the statute says.
20 Taken verbatim. 56-5-2945, the offense of felony driving
21 under the influence. "A person who while driving under the
22 influence of alcohol, drugs, or a combination of alcohol and
23 drugs, drives a motor vehicle, and when driving a motor
24 vehicle does any act forbidden by law," like crossing left
25 of center," or neglects any duty imposed by law in the

1 driving of the motor vehicle which act or neglect
2 proximately causes great bodily injury or death to another
3 person is guilty of the offense of felony driving under the
4 influence." That's what we've got to prove, folks. And it
5 further defines what great bodily injury is. I think
6 everybody knows what death is. But great bodily injury
7 means, "Bodily injury which creates a substantial risk of
8 death which causes serious permanent disfigurement or
9 protracted loss or impairment of the function of any bodily
10 member or organ." That's the law.

11 Folks, we have to prove this to you beyond a reasonable
12 doubt. And what's beyond a reasonable doubt? Now, the
13 Judge is going to talk to you about beyond a reasonable
14 doubt. It's very important. But when you think of what
15 beyond a reasonable doubt is think of being firmly convinced
16 of something. Firmly convinced. Firmly convinced. It's
17 not all doubt. It's not beyond a shadow of a doubt. It's
18 not beyond all possibly conceivable doubt. But it's beyond
19 a reasonable doubt. Being firmly convinced of something.

20 Now, folks, everybody in this courtroom has a role.
21 Mr. Downtin told you on Tuesday morning that everybody has a
22 role. The Defense, their role is to represent their client,
23 just like Mr. Downtin said on Tuesday. We're prosecutors for
24 the State. Our job is to prosecute the case. The Judge has
25 a role. He's the gatekeeper. He basically calls the balls

1 and strikes. The legal balls and strikes. And you've
2 noticed this. I mean, we've had 37 sidebars this week.
3 We're arguing legal issues and he's deciding different legal
4 things that we can argue. That's his job. And your job are
5 the finders of the facts of the case. Your job is to
6 determine what actually happened on November the 15th, 2014,
7 7:20 p.m. What happened.

8 Now, folks, you've heard a lot of evidence, like I
9 said. We put up 30 witnesses. They've put up several
10 witnesses, and it's been a long drawn out process. We've
11 been here all week. So what have we learned? What have you
12 guys heard?

13 Now, if you remember on Tuesday morning, first witness
14 was John Long. Everybody remember that? John Long, the
15 first -- first witness that got up here. Works for the
16 Sheriff's Department but he wasn't on duty that day. He was
17 driving back home. He was coming from town. I think he
18 said that he had been working at the Skate and Park or
19 something like that and he was on his way home traveling 225
20 and he rolled up on a horrible scene. And his instincts
21 took over, folks. He's a law enforcement officer. He works
22 at the Sheriff's Department. He immediately got out,
23 assessed the damage. Saw there was an individual in the
24 passenger seat of that red truck and began to take action.
25 A few minutes later Evan Fallaw showed up. He used to work

1 at the Sheriff's Department. Doesn't work there any longer.
2 The first law enforcement officer to show up. What's his
3 primary concern? Touch base with John Long. He's got a guy
4 in the red truck that's alive and we've got to get him out.
5 The truck's smoking. The thing could go up in flames.
6 We've got to act and we got to act now. So what did they
7 do? They did their job. They eventually got Matthew
8 Sanders out of the truck. He was complaining of some leg
9 damage. You heard about that. They put him on a stretcher,
10 got him in an ambulance and took him to Self Regional
11 Hospital. The next day he had surgery. So what happened
12 after that? The call went out. Everybody started showing
13 up. You saw the pictures. You saw the video. A lot of
14 people showed up. Firefighters, EMS, law enforcement
15 personnel, Highway Patrol. Everybody showed up. It was --
16 it was awful. And they did their job. They did their jobs.
17 There were three people involved in that wreck that day.
18 There was a dark truck. It looked like a black truck. It
19 turns out it's actually a blue truck. You can't see when
20 it's dark out there like that, and a 1990 red truck.
21 Chevrolet both of them. Head-on collision. Extensive
22 damage. One dead, one unconscious, one alive. Highway
23 patrol showed up. You heard from K.D. Smith, Brunson Smith,
24 who was the arresting officer in the case. You heard his
25 testimony. They were eating at a Mexican restaurant in

1 Ninety Six and they got a call. They immediately responded.
2 Showed up about 7:47, about 20 minutes -- 25 minutes after
3 the wreck happened. They started taking over and doing
4 their job. Cody Bishop with Highway Patrol showed up. He
5 did a job. He took pictures. But they couldn't really do
6 anything. They couldn't help anybody. Their job was to
7 secure the scene, call the MAIT team, the accident
8 reconstruction team, to come out there and take pictures,
9 take measurements and let them do their job. But the
10 Highway Patrol, they stayed out of the way, because at that
11 point EMS, medical personnel, were trying to save this man's
12 life. Jeremy Cockrell was already dead. Matthew Sanders
13 thankfully only had a broken leg. A broken femur. But they
14 were trying to save this man's life.

15 What did you hear? Who did you hear from EMS? You
16 heard from several EMS people. You heard from Derrick
17 Oliver, you heard from Larry Kidd. What did they tell you?
18 Derrick Oliver said that he was stationed at Medic 30.
19 Medic 30 was the first EMS ambulance to arrive, and they got
20 there about three to five minutes after the wreck. In fact,
21 Derrick Oliver told you that he was standing outside smoking
22 a cigarette and he heard what sounded like a bomb go off.
23 Does that make sense, folks? You've seen the map, and
24 you're going to have this back there with you. 225, the
25 scene of the wreck right here in the curve of the road where

1 the star is. What else is on this map? The Hot Spot right
2 here. Medic 30 is labeled up here at the top. The way the
3 crow flies probably a mile if that. Derrick Oliver outside
4 smoking a cigarette, hears a loud boom. Seconds later the
5 alarm system goes off. He and Larry Kidd jump in the EMS
6 van and they take off. Three or four minutes later they're
7 on scene. First emergency personnel responders to arrive.
8 You heard their testimony. You heard both Larry Kidd's
9 testimony and Derrick Oliver. Larry, shorter white guy.
10 His testimony was he got out and he triaged the situation.
11 What does that mean? Basically a quick assessment. What do
12 we got, because we got to figure out what to do and we got
13 to do it quick. Jeremy Cockrell. He's dead. Driver in the
14 red truck. Can't worry about him. Matthew Sanders is
15 alive. He seems to be doing all right. Go down to the blue
16 truck with this gentleman is trapped behind the steering
17 wheel. Feels a pulse. He's alive. We might be able to
18 save this man's life. So what does Derrick Oliver do? He
19 jumps in the car through the passenger side, gets in the
20 vehicle and is in the vehicle with that man for 20 to 30
21 minutes he said trying to hold his head up. Trying to make
22 sure that he stays alive. Doing whatever he can. Trying to
23 poke him for an IV. He can't get anything. Can't get
24 nothing. Nothing anything. But he's right there holding
25 his head while firefighters, EMS, John Long and company are

1 trying to cut him out of that vehicle. Twenty to 30 minutes
2 inside the vehicle. And what was his testimony when he got
3 up here on the stand, folks? Smelled alcohol coming from
4 his breath. That was his testimony. How close were you?
5 Mr. Downtin talked to him. Mr. Downtin right there. He
6 talked to him. How close were you? Were you this close?
7 Closer. This close? Closer. This close? Closer. Right
8 in his face holding his head up trying to save his life.
9 Derrick Oliver in the vehicle with the Defendant, Adam
10 Rowell. Alcohol coming from his breath. Larry Kidd wasn't
11 in the vehicle. There was only one person in the vehicle
12 with Adam Rowell and that was Derrick Oliver. They
13 eventually cut him out of that car, put him on a stretcher,
14 put him in an ambulance to drive him up the road to where
15 the chopper was going to take him to Greenville. Larry
16 Kidd, what was his testimony? Walked in the ambulance, the
17 smell about knocked you out. You could smell it as plain as
18 day in that EMS vehicle. Derrick Oliver, any doubt in your
19 mind that you smelled alcohol? No doubt, quote. He
20 testified to it on the stand, folks. No doubt. No doubt.

21 Page 61, EMS report. The one they fill out immediately
22 once they get done treating a patient. You heard Larry
23 Kidd. He's the one that filled this report out. But he --
24 Derrick Oliver and Larry Kidd get together and they fill it
25 out. You'll have this report. Patient's name, Adam Rowell,

1 up at the top. Alcohol, drugs. What does it say? Smell of
2 alcohol on breath, 11/15/2014. Filled out immediately after
3 saving that man's life while it was still fresh on their
4 mind. It's in black and white, folks.

5 While we're on the EMS personnel you also heard from
6 another EMS personnel, Tiera Boyter. What was her
7 testimony? She didn't smell any alcohol. I think she's
8 actually sitting back here. She didn't smell any alcohol.
9 But what was her job? What were her duties out there? They
10 were the last EMS personnel to be there. She wasn't in the
11 car with Adam Rowell. She wasn't holding his head up. She
12 wasn't doing any of that. She was the last one there in
13 terms of EMS personnel. Lowenna Prestel, you heard from
14 her. They tended to Matthew Sanders and took him to Self.
15 Their job was to take Jeremy Cockrell, to pull him out of
16 that truck, leg impaled in the brake. Pull him out of the
17 truck and take him to the morgue. I'm not denying that Ms.
18 Boyter helped with the Defendant in this case. You all
19 heard that. She definitely did. But what did she do after
20 the fact? What did she do after the fact? She went to
21 Greenville Memorial Hospital. She met with the Defendant's
22 father. His father took her back there to see this man who
23 was in a coma. She became emotionally involved in the case.
24 She became friends with the Defendant's sister on Facebook.
25 They kept up. They're still friends today. She became

1 emotionally involved in this case.

2 Now, folks, I don't want to make light of the
3 situation, but I've been married for three years now and I'm
4 over the honeymoon stage and my wife blames me for selective
5 hearing. Maybe some of you guys been blamed for this as
6 well. When your wife says, hey, after the game can you
7 unload the dishwasher, all I'm hearing is after the game.
8 There's also a thing called selective memory. Tiera Boyter
9 said that she didn't smell any alcohol. But in this
10 particular case she's got selective memory. She suppressed
11 those memories because she became emotionally invested in
12 this case.

13 Who else did you hear from, folks. You heard from the
14 MAIT team. Stand up group of folks that work with the
15 Highway Patrol. Accident reconstruction folks. Extensive
16 training in how vehicles when they collide what they do.
17 They talk about angles. I heard the word vector. I haven't
18 heard that since high school. A bunch of stuff that's stuff
19 I don't know about. You heard from all of them. You heard
20 from Kelly Anderson, you heard from Corporal Duncan, you
21 heard from T.J. Brooks, you heard from Chris Bratcher. All
22 these individuals responded in some capacity. Kelly
23 Anderson and Al Duncan responded that night. They both live
24 here in Greenwood and they got there about an hour and a
25 half after the wreck. Kelly Anderson was the first one to

1 arrive. And they started taking pictures. They started
2 taking pictures. They took pictures of a Red Stripe bottle
3 located in Defendant's car. They took pictures of the
4 aftermath of the vehicle after he'd been cut out. They took
5 lots of pictures. Tons of them. They took pictures of
6 extensive damage to the red truck. Front end damage. They
7 took pictures of where the collision occurred in the red
8 truck's lane of travel. Where that big blob of black stuff
9 is, all the fluid leaking out of the vehicle. Took pictures
10 of that. They took them from all different angles, folks.
11 They took pictures front end damage of the vehicle looking
12 back the way towards the Hot Spot. And they took pictures
13 even further behind the Hot Spot -- or right behind the red
14 truck towards the -- moving towards the Hot Spot.

15 And what's clear as day in these pictures, folks? What
16 is that? What's the testimony that you heard? What did Ms.
17 Anderson, what did Sergeant Duncan, what as their testimony?
18 That when they got there and started taking pictures they
19 started going an assessment. They saw where the vehicle was
20 rusted. They took pictures and there was brake marks
21 clearly in the victim's lane of travel. Clearly in the
22 victim's lane of travel. Jeremy Cockrell was driving that
23 vehicle and he saw what was coming towards him and he hit
24 the brakes trying to stop. The evidence is undeniable.
25 It's undeniable. He's in his lane of travel trying to stop.

1 What was the MAIT team's assessment? What was their
2 final findings? The red truck as driving down the road. I
3 guess they had seen something that didn't right -- didn't
4 sit right, didn't look right. Hit the brakes. Try to come
5 to a stop. Try to avoid whatever it was and ultimately a
6 collision happened. Area of impact clearly in the victim's
7 lane of travel.

8 Matt Sims is the Defense expert, former MAIT guy
9 himself. He said the same exact thing. The area of impact
10 was in the red truck's lane. It's not contradicted. He
11 testified to the exact same thing. So what does that tell
12 us? That tells us that this man right here, Adam Rowell,
13 crossed the left of center in that road -- in that stretch
14 of road and hit the truck that killed Jeremy Cockrell and
15 fractured Matthew Sanders femur. He crossed left of center.
16 It's his fault. And there's no question about it, not from
17 MAIT, not from Duncan, not from Anderson, not from Bratcher,
18 not from Brooks, and not from Matt Sims. It's as plan as
19 day, folks. Plan as day.

20 And that testimony about where that lane -- where this
21 wreck occurred, where this collision occurred is
22 substantiated by Matthew Sanders. You heard from Matthew
23 Sanders. He was the other victim in this case that was
24 riding passenger with Jeremy Cockrell. And what was his
25 testimony? That he was in a relationship with Jeremy

1 Cockrell. They'd known each other for several months, and
2 they were coming from Abbeville. They were at his teacher's
3 house, Mr. Raines. Mr. Raines was giving him some advice
4 about getting a job and growing up and starting to be a man.
5 And then they were heading to Jeremy's cousin's, Brandy's
6 house. And Matthew said it was towards Anderson. But this
7 man, he's never had a driver's license. He testified to
8 that. He's got no sense of direction. Brandy lives towards
9 Saluda. So they get on 72. They drive back to Greenwood,
10 take 225 and are heading to Brandy's house. I asked Matthew
11 Sanders, when's the last time you -- did you all have
12 anything to drink that day? No, didn't have anything to
13 drink. When's the last time you all smoked marijuana? The
14 week before. Neither of them were under the influence of
15 anything. And they were having a discussion. You heard
16 about that. And he didn't really want to go into that, and
17 that's private. I understand why he didn't want to go into
18 that. But his testimony was -- they were coming around that
19 curve and 30 yards out he saw the truck and it was in their
20 lane and he grabbed the handlebar and he curled up in the
21 fetal position and he screamed, the impact happened and
22 Jeremy Cockrell was dead and he watched him gasp his last
23 breath. That's what happened, folks. That's what happened.
24 I've already gone through all of the EMS people said.
25 What MAIT testified to. But what happened after that? You

1 heard about a chopper. The LifeFlight that had to show up,
2 because Adam Rowell, his life was in danger. EMS personnel
3 saved him. They called a chopper. The chopper got on the
4 ground. While they were waiting on firefighters and EMS
5 personnel to cut him out of that vehicle Angela Waite showed
6 up with the helicopter. She was driving the helicopter but
7 she was the nurse on the chopper. They gave him some drugs.
8 They intubated him. Got his breathing tube in there to make
9 sure that he would be able to breath and they took him to
10 Greenville. And you heard that he was given blood on the
11 LifeFlight chopper, 540 milliliters of blood. This is 500
12 milliliters. Not 24 ounces. A 16.9 fluid ounces, 500
13 milliliters of blood. This is what was given to him before
14 he got to Greenville. Once he got to Greenville what did
15 they do? They took him into the trauma center. And you
16 heard testimony about what the trauma center is like. Even
17 Dr. Valentine, the Defense's expert, said it's controlled
18 chaos. When you're trying to save somebody's like that it's
19 nuts. But everybody's got a job. Every nurse has a job.
20 Everybody's got a job. And while Dr. Snow is saving this
21 man's life everybody else, all the nurses, all the emergency
22 personnel are doing something to ensure that that man lives.
23 And standard procedure, standard protocol, you've heard,
24 folks, that when an individual gets to the hospital they
25 immediately draw blood and send it to the lab to see what

1 the heck is going on in his system. Why do they do that?
2 So they don't give him something that kills him. Standard
3 procedure. And you heard that Nurse Baker got this blood
4 about nine o'clock, 20:54, 8:54. Maybe her clock's a little
5 bit off. The blood was sent to the lab. You heard from
6 Robert Smith, the lab technician that received it. Entered
7 it into the computer system and began running the test, and
8 that test came back 219. 219 plasma. You'll have this
9 document. It looks like a bunch of computer gibberish if
10 you ask me. State's 69. But on the second to the last
11 page, you guys will have a chance to look at it. The test
12 that was done. Ethanol test right here and the result, 219.
13 And you heard the conversation factor. This is plasma
14 alcohol, remember. So it's not a 22. It's really an 18.6.
15 You can round up to a 19, or you can keep it as an 18. 18
16 percent alcohol. The legal inference you're going to hear
17 about, .08.

18 MR. GARRETT: Objection, Your Honor.

19 THE COURT: Okay.

20 MR. GARRETT: Can we approach?

21 THE COURT: Let me -- Mr. Foreman, ladies and gentlemen
22 of the jury, let me deal with this legal issue. Go back to
23 the jury room, hopefully for just a couple of minutes.
24 Again, don't begin any deliberations yet, and we'll get you
25 back out shortly.

1 (Whereupon, the jury exited the courtroom at 10:24
2 a.m.)

3 THE COURT: Mr. Garrett.

4 MR. GARRETT: Your Honor, that's exactly what we were
5 talking about. I have no problem with him talking about the
6 inference in the SLED, but he's using the inference that
7 you're going to charge in the draw that -- the case clearly
8 says that we can't use.

9 THE COURT: Yeah.

10 MR. GARRETT: And that's exactly what we were trying to
11 prevent.

12 THE COURT: Right.

13 MR. GARRETT: But now that jury's been tainted with
14 that.

15 THE COURT: You want to put anything on the record,
16 Solicitor?

17 MR. BLACK: Judge, I think the instructions that you're
18 going to charge are that they are -- I said -- I said the
19 legal inference is --

20 THE COURT: Right.

21 MR. BLACK: -- .08.

22 THE COURT: Right. But I think it was in connection
23 with the -- your discussion about the hospital draw result.

24 MR. BLACK: Right. And I just said that you will hear
25 -- you will hear an inference level -- a legal inference

1 level.

2 THE COURT: Well, I think the best way to handle this
3 is for me to remind them once again when they're brought out
4 that -- concerning the law that I instruct them, if it
5 conflicts with whatever the lawyers say. And quite
6 honestly, I think it may would help if when we bring them
7 out that -- well, I was going to suggest that, Solicitor,
8 you may clarify yourself or correct yourself. I don't know
9 if that necessarily will help, but I think it might if there
10 could be some -- I mean, you're -- you're not moving for a
11 mistrial are you, Mr. Garrett? You're just wanting some --
12 the best cleanup that we can make?

13 MR. GARRETT: There has to be a demarcation, Judge,
14 under our law between that -- was it Huntsman case?

15 THE COURT: Hunter.

16 MR. GARRETT: Hunter case and this one. And our
17 concern was it was going to be confusing --

18 THE COURT: Right.

19 MR. GARRETT: -- if everybody's doing what they're
20 supposed to be doing. But if people are purposefully
21 putting them together. And if we don't get that
22 straightened out, Judge, I don't think it's a fair trial.

23 THE COURT: Right.

24 MR. HENDERSON: And about the only way to straighten it
25 out, Your Honor, would be just to remove the inference from

1 the charge and prohibit the Solicitor from talking about it
2 at all.

3 THE COURT: No, I'm not going to remove the inference.
4 What I want to do is make sure that there is no prejudice
5 resulting in this case by what Solicitor Black had argued.

6 I think the best way to handle it is I will reaffirm
7 the fact that they are to consider my law and not anybody
8 else's law. And I think it may help if you tell them that
9 you need to correct yourself as far as an inference level
10 and hopefully you can do that. I think if it comes from you
11 that you misspoke, I think that would -- I think that would
12 help to some fashion.

13 MR. GARRETT: If that's the best we can do, that's the
14 best we can do.

15 MR. BLACK: I'll -- Judge, I guess I can -- I can just
16 read straight from your jury charge if you'd rather me do
17 that.

18 THE COURT: No, I don't -- I don't think you need to do
19 that. I think you just need to tell them that you made a
20 mistake. That there's not any inference level with respect
21 to this blood test result that I've just been arguing to you
22 about.

23 MR. BLACK: Yes, sir.

24 THE COURT: And then move on. And I think that would
25 be the best way to handle it.

1 MR. BLACK: And, Judge, before we have them back out
2 here, I can talk about that with respect to the .096 which
3 is the SLED draw? The inference level?

4 THE COURT: Right. I am charging the inference level
5 as it relates to the SLED draw. That's right.

6 MR. BLACK: Yes.

7 THE COURT: Let's bring them out.

8 (Whereupon, the jury entered the courtroom at 10:29
9 a.m.)

10 THE COURT: Let the record reflect the jury is back
11 out. Ladies and gentlemen, let me just remind you once
12 again that the only law that you are to consider in this
13 case is the law that I will be giving you after the closing
14 arguments are made. And if there's -- again, if there's
15 anything that is stated to you with respect to the law by
16 these attorneys and it does not agree with what the laws as
17 I instruct it to me then you disregard what they say and you
18 follow the law as I give it to you. Okay?

19 Solicitor, are you ready to proceed, sir?

20 MR. BLACK: Yes, sir. Thank you, Your Honor. And like
21 the Judge stated, folks, if I say something that doesn't
22 match up what the Judge says, the Judge is right. And the
23 same applies for Mr. Garrett. And just to clarify, we're
24 talking about an inference level. That does not apply to
25 the 219 which is really an 18. That does not apply here.

1 But it does apply on the second draw. And you heard that
2 the Defendant in this case, Mr. Rowell, as soon as he got
3 there he was stuck, taken into emergency surgery. Brunson
4 Smith, Highway Patrolman, drove immediately up there to
5 Greenville Memorial and you heard that he was in the waiting
6 room while the Defendant, Mr. Rowell, was in surgery. And
7 once surgery was complete he went back there with Nurse
8 Leslie Childers. Ms. Childers drew the Defendant's blood,
9 12:56. You heard about the whole process about how he takes
10 that blood, he puts it -- puts it in a box. He seals it up.
11 He drives that box immediately to Troop 2 here in Greenwood,
12 places it in evidence, turns it over, and ultimately that
13 box goes down to SLED to be tested. And what was the result
14 of that test? .096. That test -- that blood was drawn at
15 1:00 a.m. in the morning, four hours -- about four hours
16 after the Defendant got to the hospital after he'd been
17 given additional fluids and that result still comes back a
18 .096. And the instrument that was used on that test was the
19 gas chromatography and you heard that test is -- that's the
20 gold standard, because that measures ethanol exactly. And
21 with the result of that draw the inference level comes into
22 play. The second draw.

23 Now, you heard testimony from the toxicologists. From
24 two toxicologists that work for SLED, and you heard from Dr.
25 Valentine who's a toxicologist and expert in his own right.

1 And what did you guys hear about that? You heard that if an
2 individual is a .08 they're impaired to drive. If they're a
3 .10 they're too impaired to drive. If they're a .18 they're
4 too impaired to drive. To operate a motor vehicle in this
5 state. That's what the testimony was, folks.

6 He arrived at the hospital about nine o'clock. 9:00 to
7 10:00, 10:00 to 11:00, 11:00 to 12:00, 12:00 to 1:00. About
8 four hours. And you heard that a normal person -- a normal
9 human being is metabolizing alcohol like they should be,
10 during that four hours it should be .06, and 19 minus six is
11 13, 18 minus six is 12. The results come back to a .09.
12 Why is that? Why is it coming back to a .09? Remember
13 folks, he'd been given fluids. Additional fluids. It all
14 makes sense. All this follows. It all makes sense.

15 Folks, you guys heard from Dr. John Reddic and you
16 heard from Dr. Jimmie Valentine. And you heard that --
17 talking about the first draw, you heard that the machine
18 that's used for this particular type of draw is an enzyme
19 based machine. And the Defense put up an expert witness, a
20 Mr. Jimmy Valentine. And Mr. Valentine talked about his
21 research in this area and what he's seen personally in this
22 particular area as relating to this machine testing ethanol.
23 I don't know if you all remember all of that. But he talked
24 about false positives. And I want to discuss that just
25 briefly for a minute. Part of the Defense's case was

1 putting up Mr. Valentine and he said that in this case there
2 was a false positive. But if you remember what he said, he
3 said that in these particular cases there can be false
4 positives. Even Dr. Reddic, who the State put up who is the
5 clinical director of the lab at Greenville Hospital System
6 said that there can be false positives. And he has been at
7 Greenville for about three years and how many has he seen in
8 the course of his career? He's seen one. They're rare.
9 They're rare, folks. And what was the one instance that he
10 talked about that he had seen? It was a little kid that
11 should have read a zero and they were at 30 milliliters per
12 deciliter, which is really a .03. It's actually less than
13 that. It's .02. .02 false positive. What did that result
14 come back? 18. 18.

15 When Dr. Valentine was up on the stand asked him,
16 what's the highest one you've ever seen Dr Valentine.
17 You've been doing this a long time. You're getting paid
18 \$10,500 for your testimony this week. You've done a lot of
19 research. You've written a lot of articles. What's the
20 highest one you've ever seen. .09 was the highest he'd ever
21 seen as a false positive. 18 minus nine is .09. The
22 highest one that Dr. Jimmie Valentine had ever seen, .09.
23 They can happen. Sure they can happen. But the highest
24 one, .09, and that result was an 18. 18 or 19, depending on
25 if you round it up or not. What do you have to have to have

1 that false positive? You've got to have lactate acid and
2 you've got to have lactate dehydrogenase in order to make a
3 determination. There's no lactate dehydrogenase that was
4 measured on that report. Nothing in the records of that.
5 Dr. Valentine testified to that. Dr. Reddic testified to
6 that. But we don't know what he had in his system, the
7 lactate dehydrogenase. What we do have is how much lactic
8 acid he had in his body. And what's a normal level of
9 lactic acid? .5 to 1.6 is normal -- a normal level. At
10 22:10, 10:10 p.m. that night his lactic acid was a 3.3. Two
11 or three times the -- two or three times elevation of what
12 it should be. And if you remember what Dr. Valentine said,
13 when there are false positives from all the tests that were
14 sent to the labs where they ran these tests it was 25. 25
15 times the normal elevation. He was only one or two. Folks,
16 I submit to you that that test was accurate. There wasn't a
17 false positive on that test and all the evidence after that
18 suggests the same thing.

19 Who else did you hear from in this case? You heard
20 from Adam Rowell. What was his testimony? His testimony
21 was that he went and bought a Red Stripe after he got off
22 work on a Friday night. It was early Saturday morning after
23 he got off work. He consumed one of those Red Stripes and
24 saved -- saved one of them for the next day that he had for
25 his lunch about three o'clock when he ate his spaghetti

1 meal. And you heard testimony that once he finishes the Red
2 Stripe he puts it in a book bag. He doesn't throw it in the
3 garbage can because his mom's religious. That's what he
4 testified to. But he takes his Red Stripe in the house
5 where his mom lives and consumes the Red Stripe in the house
6 and his mom's still religious. But he doesn't throw it in
7 the garbage can. He puts it in a bag. Drinks it in the
8 house, mom's religious, but doesn't throw it in the garbage
9 can because mom's religious. That was his testimony. He
10 admits to drinking alcohol that day. Having a Red Stripe at
11 dinner. His testimony was that he was trying to go to
12 Outback or O'Charley's, a restaurant here in town, I forget
13 which one it was, to celebrate some birthdays. After
14 driving around to and from town all day, goes back to the
15 house to get a gift card to give his dad after being at
16 Walmart and then heading to this family dinner. Driving
17 225. The road that he travels every day. A road that he's
18 traveled his entire life. The roads that we travel every
19 day. How familiar are we with those roads? We know every
20 detail of those roads between Abbeville and Iva. It's the
21 road I travel every day. Every detail. Mr. Rowell's
22 testimony was he crossed over 25, passed the Hot Spot and
23 was heading up towards the fairground. And at a certain
24 point that evening while he was on that road he saw that red
25 truck in his lane. At that point Mr. Rowell made a

1 decision, and he said that his decision was to hit the gas
2 and try to pass the red truck in his lane. In the red
3 truck's lane. Folks, you're going to have this CAD report,
4 this CDR. It's the black box of his particular vehicle.
5 And you've heard testimony about these numbers and what they
6 mean. And you get to judge the credibility of the
7 witnesses. That's the job that you guys get to do. What
8 does it say. Eight seconds before impact the brakes are
9 off. Seven seconds before impact he taps the brakes.
10 They're briefly on. And at that point his testimony was
11 that he saw the red truck in his lane, so he made the
12 decision to go in the red truck's lane and pass the red
13 truck in his lane seven seconds before the wreck. How fast
14 was he going? Sixty-six, 65, 66, 67, 66 five seconds before
15 he wrecked. So at seven seconds he was probably going
16 between 60 and 65.

17 Folks, I submit to you that if you're going 60 miles an
18 hour you can travel 200 yards over seven seconds. You can
19 travel 200 yards in seven seconds. I submit to you you can.
20 200 yards is two football fields. Two football fields. And
21 you can see at night where there's no lights and a curve in
22 the road 200 yards out what lane another vehicle was
23 traveling? And that vehicle is also driving. You're going
24 like this. So I submit to you that it's more like 300
25 yards. Three football fields out, seven seconds. And you

1 see the red truck is in your lane at dark with no lights and
2 there's a curve in the road? You get to be the judge of the
3 witnesses, folks. You judge the credibility of the
4 witnesses. So at seven seconds he taps his brakes, then
5 hits the gas to try to pass the red truck in his lane where
6 there's a guardrail, a road that he's familiar with that he
7 drives every day, his whole life. There's a guardrail on
8 the red side -- on the side of the road where the red truck
9 is and he's going to pass him in that lane. The guardrail
10 is right here. Folks, seven seconds out. That's that road
11 looking back up towards the Hot Spot. It looks like there's
12 a Highway Patrol. This is the MAIT team vehicle pulled over
13 to the side of the road. I'll give you that. I'll give you
14 it's not ideal to pull over. It's not an ideal spot. But
15 there is plenty of room to pull over. Plenty of room to
16 pull over, and there's no guardrails inhibiting any of this.
17 Not one guardrail. But Mr. Rowell is going to pass him on
18 the right side of the road where there's a guardrail seven
19 seconds out from the time of the wreck. That was his
20 testimony, folks. It doesn't add up. It does not add up.
21 There is plenty of room to pull over on the left side of the
22 road. Not ideal. Not ideal. But folks come on. Seven
23 seconds, he saw it in his lane and he tapped the brakes. I
24 submit to you you can go 200 yards in seven seconds going 65
25 miles an hour. Two football fields.

1 The last words uttered in this trial were by Mr.
2 Rowell. His words, took me a while to piece together what
3 took place. He was in a comma for two weeks after that.
4 Took me a while to piece together what took place. Not my
5 words. Not my words.

6 Folks, we all make choices. Life's full of choices.
7 And every choice has a consequence. Every single one of
8 them. From the minute choices that we make in our every day
9 lives to the choices that cost people their lives. November
10 the 15th, 2014 a man made a choice. He made a choice folks.
11 That choice was to get behind his 2005 Chevrolet truck after
12 he'd been drinking. He made a choice to get in that truck,
13 to drive that vehicle. Cost one man his life. Cost another
14 man a broken leg. Life's all about choices. All those
15 choices, folks, have consequences. They all do. In a few
16 minutes, after all the attorneys get done talking, you're
17 going to go back in this room and you're going to
18 deliberate. Your job is the finder of the facts and
19 determine what happened in this case.

20 Folks, the facts could not be any more clear. If you
21 are firmly convinced that Adam Rowell is guilty, you've got
22 to find him guilty. And I submit to you the evidence shows
23 nothing to the contrary. Thank you.

24 THE COURT: Thank you, Solicitor. Let's take about a
25 five minute break before we start Defense closing. Okay?

1 Mr. Foreman, ladies and gentlemen of the jury, we'll take a
2 short break and then Defense will make their closing
3 argument. Again, don't start any discussion about this
4 case.

5 (Whereupon, the jury exited the courtroom at 10:51
6 a.m.)

7 THE COURT: Let's take a short little break.

8 (Whereupon, a recess was held from 10:51 a.m. to 11:03
9 a.m.)

10 MR. GARRETT: Judge, can we be heard on one issue
11 before the jury comes out?

12 THE COURT: Sure. Mr. Garrett, or Mr. Henderson, you
13 got a point?

14 MR. HENDERSON: Yes, sir, Your Honor. I know you
15 mentioned in chambers the other day that you will honor the
16 ruling in State vs. Beatty from December of last year. And
17 the whole idea behind State vs. Beatty is that the side that
18 goes in the middle, in this case the Defense, gets to
19 respond to the best argument that the government has on a
20 particular issue. Again, it cuts off sandbagging. In the
21 government's argument here there's no mention of several
22 different things, when they're required to open fully on the
23 law and the facts. There was no mention of Ms. Samantha
24 Byrd. There's no mention of Walmart videos or the receipt
25 entered at Walmart. There's no mention of Justin.

1 Pennington. If they don't want to open fully on that, fine,
2 but they should be prohibited from rebutting Mr. Garrett's
3 argument on that, because keep in mind, we have a right to
4 respond to their best argument on any particular matter, and
5 they have a right to reply to our best argument on any
6 particular matter --

7 THE COURT: What do you mean by best argument, Mr.
8 Henderson?

9 MR. HENDERSON: That's the whole idea of cutting off
10 sandbagging.

11 THE COURT: Right.

12 MR. HENDERSON: Intellectually, if you cut off
13 sandbagging each side gets to put up their best argument.
14 The party that goes first gets to put their best argument,
15 because they've got to open fully on the law and the facts.
16 The party that goes in the middle gets to put up their best
17 argument. They get to open fully on the law and the facts,
18 and then the party that goes last in this case, if there's
19 any reply, they get to respond to new matters raised by the
20 party that went second.

21 THE COURT: Right.

22 MR. HENDERSON: So in a sense, if they get -- if the
23 State stands up and addresses Ms. Byrd, the Walmart videos
24 and the receipt, Mr. Pennington, we're not getting a chance
25 to respond to their best argument in the middle. In a sense

1 they're getting to sandbag us on those particular items.

2 And again, Beatty - that's what Beatty's designed for is to
3 cut off sandbagging. So again, if they want to stand back
4 up and address these issues, fine, or if not, we'd ask that
5 you instruct them that they cannot reply to those particular
6 points in any rebuttal.

7 THE COURT: What says the State?

8 MR. BLACK: Judge, that's not my understanding of this
9 at all. I don't see how the -- in my first argument I think
10 you can anticipate what a defense might be, but you can't
11 anticipate every defense that, you know, the Defense might
12 have. The purpose of the law is to allow the State to
13 address anything that the Defense brings up. Not respond to
14 new matters. But if the Defense wants to bring up Justin
15 Pennington and Ms. Byrd then at that point I have every
16 right, under my interpretation of Beatty to rebut anything
17 that they say.

18 THE COURT: All right. Let me take a look at Beatty
19 again.

20 Well, certainly the Beatty case did address this notion
21 of sandbagging, but I think it was related to the State,
22 using the word that the opinion uses, perfunctory opening
23 statement and then really making their argument in full
24 after the Defense. I think that was the situation it was
25 addressing. I would have to consider the State's closing

1 argument that Solicitor Black just made to be more than just
2 a perfunctory closing argument. And I don't think that
3 necessarily we should -- I should hold either side to being
4 able to address every single bit of evidence, every single
5 witness. This was a six-day trial full of a lot of
6 information. So I don't think if the State elected to
7 address the receipt and Pennington and whoever else, I don't
8 think that necessarily would be volative of what State vs.
9 Beatty is telling us to do. So I'm going to deny your
10 request for me to limit the State in responding if it so
11 chooses to. And I don't know what it's going to plan to do.
12 But you're -- certainly your position is well noted for the
13 record. Mr. Garrett, are you ready, sir?

14 MR. GARRETT: I am, sir.

15 MR. HENDERSON: Yeah, because depending on what the
16 State might say in reply we might be asking for rebuttal.

17 THE COURT: You can certainly ask for it and I'll give
18 it every consideration that I can possibly give it.

19 Bring the jury out, please.

20 (Whereupon, the jury entered the courtroom at 11:11
21 a.m.)

22 THE COURT: Let the record reflect the jury is back in
23 the courtroom. Mr. Garrett, you ready, sir?

24 MR. GARRETT: Thank you, Your Honor.

25 THE COURT: Yes, sir.

CLOSING ARGUMENT

1
2 BY MR. GARRETT: Mr. Foreman, ladies and gentlemen of
3 the jury, this has probably been one of the longest trials
4 that I've had to participate in and I hope that our work
5 here has gone -- has been accepted by you as hard work by
6 all sides in this case. It's a very, very -- I told you at
7 the very beginning this is a very, very difficult case.
8 Thank God for the right to a trial by jury. In some
9 countries you don't have the right to have a trial by jury,
10 and in our society we have the right to be tried by a jury
11 of our peers. Now, His Honor is going to read that to you,
12 in a case where somebody's been charged with a criminal
13 offense, the person has a right to plead not guilty to that
14 charge or they can plead guilty. In this case Adam
15 absolutely pled not guilty to these charges from the very
16 beginning. Now, what does that force the State to do? It
17 forces the State to prove their case beyond all and any
18 reasonable doubt.

19 Now, reasonable doubt has been defined in many ways,
20 and His Honor will take time to define it for you. I'm
21 going to try to talk to you about what it is, because I want
22 you all to see this case through the eyes of reasonable
23 doubt. As a young lawyer once I was told that it's kind of
24 like this. A person has got this robe of righteousness
25 placed upon him. In other words, they're protected.

1 They're completely innocent. So let's suppose we begin our
2 case, and right here is where we plead not guilty. Suppose
3 we start right here. You all see that row down through
4 there? As we walk that row we go through the indictment
5 process. We go all the way through the beginning of the
6 trial, and then all the way through the trial and get down
7 to this wall. This wall here, that wall is what I call the
8 bricks of reasonable doubt. In order for the State to prove
9 their case they have to penetrate that wall to prove their
10 case beyond a reasonable doubt. That is their burden. Not
11 because I said so. Because His Honor is going to instruct
12 you that a reasonable doubt is the type of doubt that might
13 cause you to hesitate to act in your most important affairs.
14 A reasonable doubt is the kind of doubt that you just have a
15 -- you have hesitation. He's also going to tell you that
16 jury trials have to be unanimous. What does that mean?
17 Well, all 12 of you are down there in your own minds as to
18 whether or not the State has convinced you beyond a
19 reasonable doubt as to the guilt of the Defendant, Mr.
20 Rowell. Each of you have your own decision to make. See,
21 the Defendant, he didn't have any burden of proof. I told
22 you all at the beginning of this case he wasn't hiding
23 behind not testifying. He got up here, was subject to
24 cross-examination just like everybody else. He has no
25 burden.

1 I want to put a little chart up here. You'll also hear
2 that the reasonable doubt is the doubt that leaves you
3 firmly convinced. Suppose the person is not guilty. That's
4 one way to look at it. Highly unlikely he's guilty. Less
5 than likely he's guilty. Probably not guilty. Unlikely
6 guilty. Possibly not guilty. May not be guilty. Don't
7 know if he's guilty or not. Perhaps guilty. Suspicion he
8 may be guilty. Possible guilty. Probably guilty. Guilty
9 likely. Guilt highly likely. All those are not guilty,
10 because they're still bricks that haven't been pulled down.
11 We only get to guilty if you're definitely guilty beyond a
12 reasonable doubt. That's the standard to try to help you
13 understand that.

14 Now, let's talk about some other issues of law, if we
15 can. And I'm going to try to just paraphrase a few things
16 for you that His Honor, I believe, will tell you about DUI.
17 I think he's going to tell you that in South Carolina it's
18 against the law to operate a motor vehicle while under the
19 influence of alcohol, or drugs, or a combination thereof.
20 He's also going to say that you have to drive a motor
21 vehicle somewhere in the state. Forget that part. There's
22 no question, Adam was driving a motor vehicle. The fight
23 here is whether or not he was under the influence or not.
24 That's the fight. They've got to prove that beyond all and
25 any reasonable doubt. There's also no question that Mr.

1 Jeremy Cockrell is deceased, and there's no question that
2 the other young man had serious bodily injury. So don't
3 waste any time on those issues. Let's get down to the meat
4 of this case. At the beginning of this case I told you all
5 about the -- I tried to tell you about the Walmart thing.
6 The State didn't want me to tell you about the Walmart
7 thing. We're absolutely lucky to have that, because had we
8 not had that there's no way in the world I'd been able to
9 prove -- it's almost like an alibi. There's no way in the
10 world I'd been able to prove that he was okay walking and
11 talking just 20 minutes before this accident. And what is
12 that? That is a reasonable doubt. Because you can't walk
13 and talk -- and everyone of their experts said you can't
14 walk, talk, carry yourself if you have a high blood level
15 like they said he had. Besides, it wasn't even his blood,
16 but we're going to talk about that in a minute. I want to
17 talk about the Judge's charges to you to start with.

18 Now, you folks -- His Honor is the judge of the law and
19 what he says about the law, you all listen to him. If I say
20 anything about the law that he doesn't say, you all remember
21 to listen to him over me. We all try to say what the law is
22 and there's different ways of saying it. But he's the final
23 arbitrator of the law. Just like he's the final arbitrator
24 of the law, you folks are the final arbitrators of the facts
25 in this case. You make the decision about the facts. His

1 Honor doesn't do that, this prosecutor here doesn't do that,
2 I don't do that, Adam doesn't do that. Now, how do we look
3 at the facts? You should judge the facts as you would judge
4 your own facts in your own -- in your own situation, in your
5 own life, and you should judge these facts with common sense
6 and with fairness in mind.

7 Now, let's move forward. It's also your duty to
8 determine the effect, value, and weight of evidence
9 presented during this trial. The weight and the value of
10 the evidence. What kind of evidence do we have in this
11 case. Testimonial evidence, we have direct evidence and
12 circumstantial evidence. And I want to tell you about
13 testimonial evidence. You can believe part of what a
14 witness says, all of what a witness says, none of what a
15 witness says, or any weight or any combination. One witness
16 against many, many against one. That's your choice. And
17 I'm going to talk to you how we think from the Defense side
18 you should think about some of this evidence. The
19 credibility of the witnesses, the credibility of the
20 evidence is your decision. Was people biased or prejudiced
21 in some way to help one side or the other.

22 Now, at the very beginning of this case it appeared to
23 me that the State was going to try to hide a few things from
24 you. The State wasn't going to tell you about that Walmart
25 deal. State wasn't going to tell you about Mr. Pennington.

1 Judge the facts as you would have your facts judged. If the
2 State's trying to prove it's case beyond all and any
3 reasonable doubt why aren't they putting up evidence. Why
4 are they trying to keep that from you. Why do I have to go
5 up and put up evidence. I've got no burden in this case.
6 Defense has no burden, yet we were forced to find witness.
7 Eyewitnesses. And in this case we also found out that one
8 of the officers mislead the Court. Credibility? Misleading
9 the Court. Let's talk about this case from the very
10 beginning. What made the State think that this was Adam's
11 fault. Okay? Mr. Derrick Oliver said that when he got in
12 the car EMS -- and let me say this right now right here at
13 the beginning. I love every one of these EMS workers.
14 Highway Patrolman. All these people that saved Adam's life.
15 They're my friends. They're people I work with every day.
16 My nephew is a police officer over in Clinton. My
17 son-in-law is with NOAH. On the officer enforcement side of
18 NOAH. It's a national organization. So I don't want you
19 all for a second to think just because I'm talking about
20 this case that I'm talking about them and I'm being
21 negative. But look, you all got to do the judging. I don't
22 do the judging. My job is to bring you the evidence.

23 Now, let's talk about what happened here. We're there
24 at the scene. It's seven o'clock, 7:20. Okay? Of all of
25 the experts, if it's 6:38 this driving is going on right

1 here -- it's just by the grace of God that we found this,
2 because we had no alibi. We had no other way to show
3 exactly where he was and what he was doing. We had some
4 receipts, and I'm going to talk to you about that in a
5 minute. But just think, if you have a wreck and there's a
6 small of alcohol about your breath, if you can't show that
7 you've been out driving and doing right things instead of
8 wrong things how you going to prove your innocence, or how
9 you going to try to make your case for innocence. Here's
10 Adam walking. Here's Adam walking. Now, did he perform a
11 field sobriety test? No. Did he know he was going to have
12 to, you know, be subject to these examinations later on?
13 No. This right here is at or about seven o'clock. This
14 wreck happened at 7:20. How do we know that? Because we
15 got a CAD that says he left from here, he drove to his home
16 in Sherwood, down there by the House of Colors off of Scotch
17 Cross. And I submit to you, ladies and gentlemen, if he was
18 a 22, or more than that, he wouldn't have been able to drive
19 out of the parking lot. What is that? That's what I call
20 reasonable doubt. Reasonable doubt. They can't explain --
21 when their own experts say if a person's 9 they wouldn't be
22 able to do that without falling into somebody, how's he able
23 to do it? Well, the conclusion is that he's not a 9.

24 Now, you know, 20 minutes before he drives home. And
25 there's been no testimony by any law enforcement officer or

1 any call-ins that there's somebody driving a blue truck
2 driving erratically. He goes home. There's actually a
3 picture of the Hunters Headquarters -- Hunters Headquarters
4 certificate that he talked about. When you all go back and
5 you look at this piece of evidence you can see the Hunters
6 Headquarters certificate that he got. Hunters Headquarters,
7 of course, was closed at that time, but he was going to give
8 that to his daddy. He had \$20 to give to his grandmother.
9 And so, I mean, that's where he went. He went back home to
10 do that, and then he was headed back this route in order to
11 do what? In order to see his folks. Have a party at either
12 O'CHARLEY's or the Outback. So what happened? This
13 accident occurred. I'm going to talk about how the accident
14 occurred in just a few minutes. I don't what to talk about
15 that yet, but I want to pick it up from where law
16 enforcement decided. They became one way in this case and
17 their entire focus was against Adam. They did not give him
18 the benefit of the doubt in any part of this investigation.
19 So what happened. And maybe as I talk about the facts
20 and circumstances in this case remember what was said on the
21 stand. If I misspeak - if I misspeak or I don't say it
22 exactly as it was, remember what you heard from the stand.
23 Derrick Oliver, EMS on the scene with Mr. Kidd said as he
24 was trying to extricate him he had a smell of alcohol about
25 his breath. That's interesting, and he may have, because by

1 Adam's testimony he did, in fact, have a 24 ounce Red Stripe
2 at or about three o'clock. So he would still have that in
3 his gastric system during that time. It hadn't eliminated
4 yet. The alcohol part, but the stuff is in your gut. So
5 when he took that big hit it's probably likely that some of
6 that came up into his esophagus, and so he might have had a
7 smell of alcoholic beverage, but that doesn't mean that he
8 was highly intoxicated or even intoxicated at all. As Dr.
9 Valentine testified, the smell of alcohol doesn't show how
10 much you have in your system. There's been no studies to
11 show that. Adam couldn't talk. He was unconscious on and
12 off saying help me. So what happens? Oliver's working with
13 him. Smells it. He notes it. They get him out.

14 Now, if you recall, Mr. Oliver doesn't remember
15 triaging him in the back of the ambulance. Mr. Oliver
16 remembers going from the car directly to the helicopter.
17 That's not what happened. As we now know he got into the
18 back of the ambulance. And why is Tiera Boyter's testimony
19 so important? Because she bagged him. Now they're wanting
20 to say, well, she didn't smell it because she's invested in
21 the case. Well, that's interesting. After she bagged him
22 guess who else bagged him? The nurse on the helicopter, and
23 we've got her notes, and it's going to be in evidence. This
24 is the transport, State's Exhibit No. 7. She got in here
25 and she testified. She didn't smell any alcohol. Now,

1 who's biased and who is not biased. She clearly doesn't
2 have any reason to say yeah or nay, but nowhere in her
3 report -- and she's bagging him. And you all heard what Dr.
4 Valentine said about bagging. How can somebody be so bad
5 off and it not be in this report. I submit to you because
6 she didn't smell it. I submit to you that the nurse
7 allegedly drew the blood didn't smell any alcohol. There's
8 been no testimony that the nurse that drew the blood
9 allegedly smelled any alcohol. Dr. Snow got up here and
10 testified. These are medical doctors. He's a surgeon. Did
11 you all see him say Adam smelled of alcohol? No. He didn't
12 say that. Why don't you think he said it? Because he
13 didn't smell it. These nurses and people that are nurses --
14 my wife's a nurse. She tells me if it's not wrote down in
15 the paperwork it didn't happen. And that's why it's not
16 wrote down in the paperwork because it didn't happen.
17 Reasonable doubt. Reasonable doubt.

18 Now, let's get back to how these bottles all came
19 about. I told you all at the beginning of this case that
20 there's something bothering me about this case. I really
21 wanted them -- I really wanted them to give me the time
22 stamps on each of those photographs and each of those videos
23 so I could put them all together and figure this thing out
24 and it was hundreds of -- hundreds of photographs. And I
25 just want to hand that one back to you, Defense No. 2.

1 Right over here where that Hunter's Headquarters is, there's
2 no beer on top of them glasses in that picture. And if
3 you'll recall, this is one of those pictures that's got that
4 stamp on it that was wrong as to time. There's some blood
5 here. We don't know whether that was Mr. Oliver's blood or
6 whether it was Adam's blood when they were trying to stick
7 him while he was still in the vehicle and they were
8 unsuccessful. The most important thing is that beer bottle
9 wasn't there. And then you'll find one in the same location
10 where the beer bottles there, and then the beer bottle is on
11 top of the glasses right there. And now the beer bottle is
12 over here.

13 Let me tell you what the Defense's belief is. The
14 Defense believes that at some point in time somebody went
15 into that case in the backseat and dropped one of those on
16 the -- on the seat. Hold on just a minute. I'm going to
17 show you the -- it's actually a computer bag is what was
18 testified to. Here's the computer bag in that section right
19 there. You all will be able to see it closer up. If I knew
20 how to operate this machine I might could make it closer up.
21 The point is, in some of these pictures you're going to see
22 this thing closed and some of them you're going to see it
23 open. And again, if they would have gave me time stamps I
24 would know when it got open and when it didn't.

25 Now, Adam's testimony is is that Adam put this thing in

1 there. Okay? He put these two Red Stripes in this bag,
2 zipped it up, and that's what he had in it. Later on they
3 come in and they try to say, well, there's another bottle in
4 the bag. Let's assign that to him. Let's talk about that
5 for just a minute. It's not against the law, and I believe
6 His Honor will instruct you, that if you have a closed
7 container, which this clearly is -- if you've got a closed
8 container of beer in your car it's not against the law. So
9 why are they trying to show you this? Well, there's all
10 kind of beer in that car. It's not against the law to have
11 beer in your car. It's only against the law if you got beer
12 in your car that's open and it's not empty. If it's empty
13 it's not against the law. So those two Red Stripes empty in
14 his bag was not illegal. He had a right to have them in his
15 car. Now, how did that officer decide that there was
16 multiple containers of Red Stripe, how did he tell that
17 Judge up there? This is what we believe happened. We
18 believe after the wreck they started -- I think he said
19 peeking. I believe that's what the officer's word he used.
20 I peeked in there. I think that's what he said. In that
21 bag when he peeked in there he saw a Red Stripe. He
22 actually saw two Red Stripes. Somebody had to pull it out,
23 or either -- lets assume for a minute that he didn't --
24 let's assume for a minute that he didn't do it. Let's
25 suppose somebody else did it. I don't know if he did. I

1 know he didn't put any Jack Daniels in it or any of that
2 stuff as was alluded to by the State, you know, and none of
3 that -- none of that kind of thing went on. But what
4 happened was he saw two of them. When he was making out his
5 warrant he told the Judge that there was multiple containers
6 of Red Stripe in the car. In fact, there was not. There
7 were two in the bag. Somehow they got out. Somehow they
8 got -- they weren't even on the chair, and then they got on
9 the chair and then they got flipped over twice. So the
10 State's trying to make you believe that Adam had those --
11 had one container out of open beer. Hold on a minute.
12 Let's think about that for a minute. What did he tell the
13 Judge to get the warrant? Told the Judge he had multiple
14 containers of -- open containers of Red Stripe. How many do
15 you know go down the road drinking several bottles out of --
16 several bottles of Red Stripe? There would only be one in
17 the car out, right? It doesn't make any sense. So the
18 other had to be in the back. So, you know, at the end of
19 the day -- at the end of the day, you know, there's a
20 reasonable doubt as to whether or not that open container
21 was even in the vehicle loose. And I'll show you something
22 else. Did you all see all the busted glass on that thing?
23 Again, I told you a while ago to use your commonsense.
24 How did that -- how did that bottle survive all of that.
25 Pristine looking bottle. How come that bottle didn't get

1 hit at 100 miles an hour. An impact that it went through
2 100 miles an hour. How did it get back there? How did it
3 not break when everything around it broke. Commonsense
4 suggests somebody put it there. Why, I don't know. To
5 build a case. To look at only one side of the case.
6 There's beer in there. Strike one out. He had to be
7 drinking it. Yet he had just come -- he had just come and
8 he was doing fine.

9 Then they got pictures of all kind of stuff. Open
10 beer, closed beers. I'll show you that picture of that one.
11 That one's kind of interesting, because that's a piece of
12 the truck that somebody's done dropped over into the
13 toolbox. So obviously stuff is coming in and out of that
14 toolbox. That toolbox was thrown off of the truck. That
15 toolbox had stuff all in it, and it's not against the law to
16 have stuff right there in your toolbox. His Honor is going
17 to tell you about the law on that. They keep wanting to
18 show you an open container, and I just have no clue where
19 that open container was. I asked every officer that went up
20 there to talk about this trying to figure it out. There's
21 picture of that and there's apparently a box, or some beer
22 in that box right there. But all that's closed beer. I'll
23 tell you, you know, from a position representing Adam, I
24 would rather have a closed beer than an open on any day.
25 Because a closed beer you don't have in your system. But

1 let's go back to Adam's circumstances. What had Adam done.
2 And Adam was able to recreate this. He was in a comma for
3 two weeks. So he had to go back and look at all of his
4 records. He had to go back and talk to his family about
5 what happened that day. He was out for a while. He had to
6 -- it took him months to learn how to walk. \$500,000 worth
7 of medical bills just trying to learn to walk again. Now,
8 that night he worked at Velox, got off at or about 12:00.
9 Stopped by and bought two 24 ounce Red Stripes and some
10 Grizzly. Apparently he likes to chew or whatever you do --
11 whatever you do with that stuff. He goes home. He goes to
12 his room where he's got kind of a little apartment room, and
13 he brings his bag of Red Stripes in and he drinks one of
14 them and he has, as I recall, a Salisbury steak dinner
15 frozen, like most bachelors do. Goes to bed. Sleeps to,
16 say, 10:30. Gets up, speaks to his folks. That first beer
17 is gone. That's no longer in his system, because at that
18 point in time he's normal. So he had normally eliminated
19 whatever was in his system. What did he do the rest of the
20 day. Well, we know at some point in time he went to Walmart
21 earlier where we didn't get a photograph. And the State
22 didn't talk to talk about Samantha Byrd because around 2:00,
23 2:38 talked to Samantha Byrd. I want you to notice, the
24 Defense that gave you the evidence that he had something to
25 drink. We got nothing to hide here. So you'll have in your

1 evidence the time that he bought those Red Stripes that
2 morning at 12:05, and that's No. 19. It's there. You're
3 going to have it back there with you. And here's where he's
4 at Walmart at 2:38. I know that's real small, but as I
5 understand it that's about 2:38 is the time -- 14 -- 26:07.
6 Okay. So 2:26:07 is when he's checking out and these are
7 the things that he bought. Now, the important thing is here
8 is that he talked to Samantha Byrd. When you all go back,
9 that's Defendant's No. 15. We gave you that. He leaves
10 there and goes home. Continues to do the things he was
11 normally doing. He was cleaning things up. He went ahead
12 and got some spaghetti out of the -- well, I guess the
13 refrigerator. Leftovers. And had a spaghetti and a piece
14 of garlic toast and leftover stuff, but also he drank that
15 other beer. So at 3:00 we got him drinking that last beer.
16 Suppose he was drinking it 3:00, 4:00. If he has a wreck at
17 or about 7:20 some of that may still be in his stomach but
18 not enough to make him impaired. There might have been some
19 smell. So I'm not saying that Derrick Oliver didn't get a
20 smell, or that Kidd didn't get a smell. But it was also
21 very little because Tiera Boyter, who is bagging him, and
22 also the nurse, she didn't smell anything on him. The nurse
23 that drew the blood didn't smell anything on him. Dr. Snow
24 didn't smell anything on him. So if it was something there,
25 it was what we said it was. Although he doesn't have any

1 burden of proof.

2 I'm going to show you this bag. You know, I asked
3 these folks, the Highway Patrolman, if you want to come and
4 you want to bring alcohol evidence into the courtroom
5 there's a method for doing it. Why don't you think they did
6 it? Why didn't they bring it here for you guys to look at?
7 Why didn't they let us see it. Why -- you know, why do they
8 want you to see it there but they don't want you to see it
9 in person. Why didn't they seal it. At some point look
10 what that bag looked like.

11 Now, I don't see that bottle of beer in this one. They
12 can't have it both ways. They're taking a picture of it and
13 saying it's there, and then here where did it go? Where did
14 it go? Was this the part that -- was it thrown on the ground
15 and they stuck it in the bag? Is that the one that got put
16 into the bag? The empty bag? There's now beer in the bag.
17 There's a reason why you don't have any records of the
18 alcohol, for that very reason. So let's move on.

19 After Adam had his -- had his lunch he went on over to
20 Ninety Six for a little while. Went over to see his friend,
21 to see if his friend was there at his parents -- at his
22 in-law's property about potentially going hunting. He had
23 been successful with a deer earlier that week. I think
24 Wednesday on that week the evidence will show. But then he
25 went and got \$20 at the ATM there at Ninety Six at the

1 Shell.

2 Beg the Court's indulgence just a moment.

3 THE COURT: Sure, take your time.

4 MR. GARRETT: While they're looking for that we'll keep
5 going. But we're going to show you a receipt where he got
6 that at or about 5:45, 5:55. And it's hard to tell. And
7 they actually found that on the site. So they found that in
8 the vehicle. So we know that he went by and he got that \$20
9 that he said he was going to use to either buy his dad
10 something or his grandparents' something. So he left there,
11 and then that's when we get him here at Walmart about 6:30.
12 6:30 or so. So when you're looking at the evidence back
13 there, if you don't mind look at 20, and that's what it
14 looks like right there. That is something that they found.
15 The government found in his vehicle to show where he was at
16 that time. That's Defendant's Exhibit No. 20. And then
17 we've got the evidence of him going here at 6:38 driving,
18 and then that is at about 7:00. So we reconstructed his day
19 almost -- almost to the letter. And what is that? That's
20 reasonable doubt. That's reasonable doubt about what
21 happened.

22 Now, we brought in our MAIT expert and he trained most
23 of these other experts. He's kind of like the godfather of
24 these guys. He knows what he's talking about. And if
25 you'll remember Kelly Anderson said -- and again, I'm not

1 picking on Kelly. But Kelly made a decision very early on
2 in his case that Gene was -- I mean, that Adam was at fault
3 and they didn't look at the other side of the equation.
4 They only did a 50 percent investigation. They didn't look
5 at the wreck from the wreck scene all the way back to where
6 the fairgrounds were. They only looked at the scene from
7 the point of the impact, or the slides, back in that
8 direction. So they only saw one half of it. They didn't
9 put it altogether.

10 Now, all I can tell you is this. Is that I've seen two
11 animations. I've seen them change -- I've seen every one of
12 them changes their speeds, and nobody's gotten anything what
13 I call proof beyond a reasonable doubt about the speeds,
14 because when experts -- and His Honor is going to tell you,
15 you can believe one expert over another, one over another,
16 don't believe any part of what an expert says. Just like
17 you judge credibility. But in this case, because only half
18 of it was done, it's almost impossible to give Adam a fair
19 shot because they didn't go back and look at the red truck.

20 Now, let's talk about -- let's talk about credibility
21 and believability a minute. Why would Ms. Anderson, Kelly
22 Anderson, head of the MAIT, a responsible person, along with
23 Brunson, why wouldn't they want you all to hear from Mr.
24 Pennington? If they're trying to get to the truth of what
25 happened and they're being open and honest and they're

1 really trying to figure it all out why wouldn't they have
2 brought him in here. Why did it require the Defense to go
3 get him and put him up? They had his statement. His
4 telephonic statement. They had it. And what did he say he
5 saw? I guess he's somehow emotionally connected to this
6 case. You reckon? The man worked at Walmart. Sitting
7 right here. And according to Matt Sims, our expert, he was
8 about 500 yards from the point of impact. He was sitting
9 right here. He said there was a car in front of him, but he
10 was sitting right here.

11 Now, Adam testified that he saw the man come in his
12 lane twice. Mr. Pennington only saw it once. If you think
13 about it, if you've got this -- if you're coming around this
14 curve and you've got this median to work with -- there's a
15 median. You'll see it in some of these pictures. This
16 median tightens up. But you're coming in here on the right
17 side and you can tighten up. If you see somebody on your
18 side of the road you got to make a decision. What are you
19 going to do. Sometimes people -- I don't know if you all
20 have noticed it lately, but I've noticed it a lot when I'm
21 riding. People are reading their text messages or whatever
22 they're -- they're in my lane. I've been seeing a lot of
23 that lately. I also had somebody hit me on Mathis Road the
24 other day. I mean, literally, I thought I got hit. They
25 pulled away at the last second. They were reading their --

1 they were reading their mail. I don't know what Mr. Sanders
2 and Mr. Cockrell were doing in that car. That vehicle. He
3 said that they were complaining. You know, I've been
4 married 40 years and if my wife says I'm complaining, or
5 she's complaining, we're generally arguing about something.
6 I don't know why he got over on the -- into his lane --
7 Adam's lane twice. But I know being in there a second time
8 puts you in a worst position than the first time, because if
9 you're already trying to set up for what he's going to do
10 from the first time he goes over, and then you're about to
11 make another change, and then he stays in his lane, or gets
12 back into his lane, what are you going to do. There's
13 something in our law called sudden merges. It goes to the
14 proximate cause of the accident. Mr. Cockrell, based on
15 what Mr. Pennington said, was in Adam's lane. Whether Adam
16 decided to go to the right or to the left makes no
17 difference in the sense that he was in his lawful lane of
18 travel, and if this red truck has come over into his lawful
19 lane of travel, that's the emergency -- that's what's the
20 probably cause for this wreck. It's not Mr. Rowell trying
21 to figure out what this guy's doing. So, you know, and
22 you're talking about cars meeting. We're talking a second
23 and a half. Two and half seconds at most based upon Mr.
24 Sims' view of how long it took for these two to contact.
25 2.6 seconds. There's some evidence -- and again, Mr. Sims

1 is very clear about it, because he never got to look at the
2 truck. But there's an impact on that guardrail that's
3 consistent with the right-hand side -- the driver's side of
4 that truck. Again, trying to figure out why was Mr.
5 Cockrell left of center two times. Why was he there? And
6 why wouldn't the State want you to hear from Mr. Pennington?
7 Because here he's testifying, I look back up and Cockrell
8 was in his lane. Cockrell was in Adam's lane. And then
9 when Kelly Anderson -- we're here at a trial with this man's
10 life hanging in the balance. We've got Kelly Anderson,
11 Highway Patrol, saying what? Well, we just didn't believe
12 him. It wasn't possible for that to happen. And what? And
13 so, we didn't investigate it. We didn't investigate it.
14 Find facts - facts found for yourselves. They didn't
15 investigate it because why? Because it didn't fit? Why
16 didn't they investigate the mechanical -- why didn't they do
17 a mechanical on the red truck. Why didn't they check the
18 four tires out on the red truck. Why did they check only
19 three of the four tires on the blue truck. Why didn't they
20 go up here and come back this way and look for those yaw
21 marks where if somebody is crossing the center line, if they
22 crossed in a fast way, they would have been able to see it.
23 You remember what they said about that? I talked to Duncan
24 about that, and I asked Mr. Duncan about that and he said,
25 well, those kinds of yaws would have been dissipating almost

1 immediately. But they were there that night. They could
2 have -- they could have went on up the road, looked at that
3 road and saw whether or not there was any proof Mr. Cockrell
4 came by. When did they know that there was an eyewitness?
5 That night they knew that there was an eyewitness because
6 Mr. Fallaw is the one that Mr. Pennington told -- and Mr.
7 Pennington went to school with Adam, Mr. Cockrell, and Mr.
8 Fallaw. He was there that night on the scene. He went up
9 here to the Hot Spot and came back and he was there with
10 them. Told Fallaw call me. Call me. When you all get into
11 a position I want to tell you about what I saw. Five days
12 later on the 20th is when they finally got up with him on an
13 eyewitness. But by then they'd already made up their mind.
14 There wasn't two sides of the story like you're getting here
15 today, ladies and gentlemen. There was only one side of the
16 story. And I told you at the beginning of this case there's
17 two sides to this story. You've heard the witnesses. You
18 close your eyes. You sit there and you go on and you close
19 your eyes. You look at that wall. You close your eyes and
20 think about at night driving. You know what you're doing.
21 Now, if you come over one time, yeah, and you're trying to
22 get -- trying to make a decision, and then he goes again,
23 what do you do. You're either going left or right. You got
24 to make the decision. He made the decision to go left. But
25 it wasn't his fault he had to make that decision. It was

1 the proximate cause of this accident was that that man was
2 in his lane of traffic by Pennington's testimony. And that
3 is, ladies and gentlemen, what you call reasonable doubt,
4 again. That is if you believe Mr. Pennington. I don't
5 think they're going to say that he had any type of
6 relationship, was vested. And I know that nurse wasn't
7 vested. We're trying to say that he either smelled or
8 didn't smell, the doctor and the nurse that drew the blood
9 and that kind of thing.

10 Now I want to move on from there. I want to talk to
11 you a little bit about these tests. If this test were
12 valid, if this was of his sample only, I wouldn't have very
13 much to talk to you about. It's just that simple. But this
14 test is not of his blood. It is of other's blood. They
15 have a right to take blood, and they have a right to test
16 the sample. But if they test your blood along with somebody
17 else's blood then how is it a fair test. You remember what
18 I said a while ago about judging? To be fair. Would you
19 want to be judged by somebody else's blood. In a case where
20 you can spend the rest of your life in jail, you want to be
21 judged by somebody else's blood? There's a fairness thing
22 here. Let's talk about the fairness.

23 Now, this hospital test, the plasma test, the one that
24 is for medical purposes only. I want to kind of summarize
25 some of the problems with that test. He wants to make --

1 the State wants to make a point, well, there was just a
2 little bit of somebody else's blood in there. Am I going to
3 be judged on somebody else's blood? I don't want to be
4 judged on somebody else's blood, and that ain't fair. Oh,
5 it's just a little bit of blood. It's just a little bit. I
6 don't know if I want to be judged by somebody's else's
7 blood. I don't know if you would either. Now, let's get
8 down to it. I don't know if this is his blood or not.
9 We've got some of the craziest things I've ever seen going
10 on here. Let's talk about this for just a minute.

11 Out to the left is a timeline based on all these
12 records that we have in evidence. And up to the right is
13 the various things that we're relying upon in the evidence.
14 And I want you all to look at this. When you go back I
15 can't let you have this document. But I want you to look at
16 some of these things to look at what I'm saying. They said
17 that he -- the blood got collected at 20:54. 8:54 p.m. You
18 all heard that testimony. At first the nurse said, well --
19 the flight nurse said, well, I saw -- I saw that nurse take
20 it from the arm. You all remember that? Well, we find out
21 that it wasn't from the arm. Prove beyond a reasonable
22 doubt. They're in trauma. They're not worried about that
23 blood draw or tying it to whoever it is. They're in a
24 hurry. Proof beyond a reasonable doubt.

25 Listen to me for a minute. Clock slop? Clock slop?

1 It's okay to judge a person based on clock slop? I don't
2 think so. Let's look at the next one. Adam arrives at the
3 GH trauma, LifeFlight records. They say they got there at
4 20:59, or 8:59. How is it possible that they took the blood
5 before he arrived? How is it possible? It's not possible.
6 Clock slop? Adam arrived in the GH trauma bay, GHS records,
7 at 9:00. Patient arrives. 21:08. 9:08, labs draw with
8 central line by Dr. Snow. GHS records. Labs draw with
9 central line time 21:08 by Dr. Snow. And that's the --
10 that's the blood draw. Now, clock slop that many minutes
11 back? I mean, it took a while for them to get him in, get
12 him set up in trauma, assess him, then call for the labs and
13 then pull the labs. By that time he'd already had a central
14 line put in. Clock slop that many minutes? I don't know.
15 The nurse says she wrote it down on the hospital records
16 when she drew it. Come to find out she didn't draw it. So
17 who's blood did they look at? Somebody else's blood that
18 they drew at that time? It's impossible. It's not only --
19 it's impossible for a man to walk like he walked, as he did,
20 and have a 21 reading. It's impossible. It makes no sense.
21 The only way it can be making any sense is they don't have
22 the right person.

23 Let's look on some more here. Blood specimen finally
24 got at the lab. Collected at 20:54. And I -- I want to
25 apologize. I might have picked on that gentleman that was

1 there at the -- the thing about the number of vials that he
2 had and that kind of thing. But to be honest with you, it's
3 that important in this case. And it's frustrating to hear
4 one vial, three vials, and then finally four vials. It was
5 frustrating to hear that, because it was important for us to
6 find out exactly what got checked. And that was why I was
7 asking those questions. Just like I was trying to ask about
8 those pictures. What time did you all take those pictures.
9 You see, the truth will set you free, if you can find it.
10 But you've got to find it sometimes. Especially when the
11 State don't want to see it. You got to help them see it.

12 Where is the blood specimen for 30 minutes from 20:54
13 until 21:24? I submit to you that nobody, nobody knows who
14 had the blood. The nurse said her regular practice -- if
15 you recall her testimony, and rely upon what she said on the
16 stand. Their regular practice was to get it on up there
17 quick because it was stat. Did they get it up quick? No.
18 Thirty minutes ain't quick. Whose blood is this? Let's
19 think of something else. She said, I usually take it up
20 there because if it's stat, but she said I don't recall
21 taking it up. It could have been a tech. Well, I hadn't
22 seen that tech in here telling us what kind of blood they
23 took up there. And if you'll remember, Adam's name is not
24 on here at the time. You all remember that? Adam's name is
25 not on this blood yet. They don't -- they don't put it on

1 -- put it to Adam until this clerk puts it in the record as
2 being Adam's.

3 And the other thing -- so let's just talk about the
4 reasonable doubts. Let's talk about the bricks of
5 reasonable doubt on the specimen used, then I want to talk
6 about the machine itself. The blood was drawn before Adam
7 arrived at GHS according to their own records. Judge as you
8 would want to be judged. Hospital blood test showed
9 elevated alcohol level. The hospital test. Rowell had
10 elevated lactic acid in his system based upon their records.
11 Rowell had a lacerated liver, that is a source of LDH.
12 Acetone as found in his system. It's interesting -- not in
13 this record. Acetone diabetic medicine, or diabetic parts
14 are found not in this test but in the other test we'll talk
15 about in a minute. And Benadryl is not found in this test.
16 According to Dr. Valentine there was a high probability of a
17 false alcohol positive here. And I just want to say about,
18 you know, Dr. Valentine, you know, basically dealt with
19 pediatrics. That's what he said. His basic study for the
20 most part has been with pediatrics. So he spent the
21 greatest part of his time working with children. So you
22 wouldn't expect to see any alcohol false positive in babies.
23 And as you heard the other doctor from the Greenville
24 Hospital System say he's only saw it one time. But if
25 you'll recall, his testimony was Adam had a perfect storm

1 going on. The other part of it is by that time other
2 peoples' blood had already contaminated Adam's blood. So
3 are we really judging Adam on Adam's blood or -- if it was
4 his sample, we know his sample has been contaminated by
5 other people. If you all remember, I talked to Dr.
6 Valentine about this. If I were to be judged, I want to be
7 judged on my blood. I asked him was there any way that DNA
8 typed that blood that was sampled to be able to see what
9 alcohol he allegedly had in his blood and there's not been a
10 test yet for that. So if there's not a test for that then
11 these results we can't rely upon because they're not his
12 blood. And there's also no test to show whether there was
13 dilution or whether they actually tested his blood. These
14 results are all over the -- are all over the map.

15 Now I want to go to the SLED blood draw. You recall
16 he's unconscious. This is about 1:00. If the accident
17 happened about 7:00 or a little before 7:00, or a little
18 after 7:00. 8:00, 9:00, 10:00, 11:00, 12:00, 1:00, that's
19 almost six hours. Six hours later from the time he was
20 driving. SLED comes in, a warrant based on multiple Red
21 Stripes open in the car. And so, they read him Miranda
22 warnings although he's unconscious. They execute a search
23 warrant on him and they have Nurse Childers draw his blood.
24 Now, instead of getting venous blood like these tests are
25 set up, she got arterial blood. And the reason that's an

1 issue is that the results are always higher. Adam had
2 received 13 units of various donors' blood by this time.
3 Other peoples' blood in his body. His blood wasn't tested.
4 His in combination with 13 other people was tested. And
5 approximately 220 percent of his blood volume had been
6 replaced by the time. If you look at 60 percent in blood
7 products and 161.7 percent from other fluids, salines and
8 PlasmaLite. And I asked the doctor how -- why wouldn't he
9 just blow up? I mean, if he had all this in his system. He
10 said, well, we're replacing it. We're putting new in. And
11 that stuff is coming out through catheters. The doctor said
12 he had a back system on him. They were backing the blood
13 out from the surgeries. They kept him open for days until
14 they finally got him cleaned up on the inside. As you
15 heard, the peritoneal sac was open and they found blood.
16 And they found various amounts of blood in the peritoneal
17 sac. But the doc was real clear. I can't say how much
18 blood he lost in his pelvic area or how much he lost in his
19 broken legs and that type of thing. Broken knee.

20 Now, the next thing is -- and nobody's refuted this.
21 The State had an opportunity once we got through with Dr.
22 Valentine to put up a witness. They -- that gold standard
23 machine we were talking about on his sample said that he had
24 4.9 percent Benadryl in his system. That gold standard
25 machine couldn't be right because one more point he'd be

1 dead. How did that machine -- you know, you remember when
2 Dr. Valentine was up here and he was showing you all those
3 charts and how he showed you the 21 chart and the next how
4 all of a sudden there was a blip or something that appeared
5 on one chart that didn't appear on the other? You remember
6 him doing that? Well, what he was trying to tell you is
7 this -- there's something going on here that's just not
8 correct. It's just not correct. The medical records show
9 that Adam was not given any Benadryl. Then we find acetone
10 in this blood draw. Using the gas tester we found acetone.
11 And Adam's not a diabetic and wasn't receiving any diabetic
12 medicine. And those graphs of the same specimen show
13 different results from vial five showed that vial 27 didn't
14 show. So again, these are his summaries. I'm just trying
15 to remind you of the reasonable doubts about -- reasonable
16 doubts here about why you shouldn't use this piece of
17 evidence and find it credible. It's not Adam's blood. His
18 Honor is going to tell you, you have a right to judge the
19 credibility of all the evidence of the witnesses, of the
20 evidence itself. Judge as you would be judged on matters of
21 fact.

22 Now, another thing that's pretty interesting to me is
23 guess what else they took in this draw. Guess what else
24 what they took in this draw. They took his urine. They
25 took his urine. And again, instead of checking on his urine

1 to see how it related to the blood they didn't do it. They
2 didn't do a test on his urine, yet he gave it up. They took
3 it from him while he was laying there. They had it. They
4 didn't test it. Why didn't they test it. What were they
5 trying to hide. What happens if that urine sample would
6 have been different from the blood sample. Again, I found
7 in this case for whatever reason when things don't help them
8 you don't hear about it unless I figure it out and I find it
9 for you. You're not hearing the whole case. I don't know
10 what that urine showed, but I know they hadn't produced it.

11 The South Carolina Highway Patrol advised that they
12 were sending it down for testing the day before and they
13 said it was at 19:29. You know, we asked those questions
14 about when the Highway Patrol said that they sent down a
15 sample. Well, when Ms. Brown got the sample I got her to
16 look at it, and it's here. The SLED documents say that the
17 report that they got sent said that the blood draw that was
18 to be -- that was drawn was drawn at the date and time,
19 11/15/14. You'll see it. South Carolina Highway Patrol
20 advised that the tested sample was collected 11/15/2014 at
21 19:29. Now, we know that's not possible because that would
22 be 7:29. That is unless that blood we found on the seat was
23 actually somebody trying to get a blood sample from him
24 right there on the spot. I asked Mr. Oliver about it. Mr.
25 Oliver said that he thought he might have gotten cut, and

1 that they were unable to get a line in or they were unable
2 to get -- but that would have been where his right arm would
3 have been where that blood is in those two places there.
4 But again, I don't know why their report would say that
5 unless it was accurate. I don't see any clock slop in that.
6 And I don't want to be judged by clock slop. Specimen
7 analyzed by SLED not attributable Adam's own bodily fluid.

8 We believe that His Honor will talk to you about
9 alcohol inferences. It's important that you listen closely
10 to his statement of law to you. I believe that he's going
11 to tell you that based upon certain readings from the SLED
12 test only. You see, the hospital test doesn't even meet
13 legal muster. Okay? SLED test is a different test. It's a
14 different test because the law allows it to be a different
15 test. But he's going to tell you that you may infer, and I
16 underline the word may, that if a person has a .08 or more
17 that that person would be inferred to be under the
18 influence. That doesn't mean that they are. It just says
19 that that is a piece of evidence along with all the other
20 evidence. But before you make decision on may, I want you
21 to weigh the credibility of that before you make that
22 decision about the credibility of that finding that they're
23 going to try to put in.

24 Now, I want to talk to you a little bit about Mr.
25 Cockrell had marijuana in his system. And SLED says that

1 they couldn't determine how much marijuana he had in his
2 system in relationship to whether or not he'd be under the
3 influence. They're quick to do that with Adam -- with
4 somebody else's blood, but they're not willing to give an
5 opinion in this case on Mr. Cockrell.

6 Now, let's talk about Mr. -- the credibility of Mr.
7 Sanders. Mr. Sanders says that he was wearing his seatbelt
8 and the records Mr. Sims looked at clearly indicated that he
9 wasn't. Mr. Sanders says that he and Mr. Cockrell were
10 having complaining or something going on in the car, and he
11 said -- and this is important. This is important, because
12 he said that he saw Mr. Rowell completely in his lane of
13 travel. That's important. Because if you look at the
14 animations they don't show where Adam is trying now to cut
15 back to the right. You see, the evidence in the case,
16 instead of showing those cars hitting like this straight on,
17 about half and half. In fact, Adam's car had already
18 started a turn to the right to get back into his lane as was
19 testified to by Mr. Sims. Two points I wan to make on that.
20 That's State's Exhibit No. 25. If you'll see, those aren't
21 straight down the line like this, or following the line like
22 this. They are more like going in that direction where the
23 blue truck showed up. No question that they hit and then
24 turned around. But according to Mr. Sims those marks were
25 made by Adam's truck. So Adam had already started going

1 back to the right. Now, why is that important? If you all
2 will look back here you can see that Adam was trying to
3 figure out which way this guy was going to go because he's
4 got a median, and as you go look in that evidence you'll see
5 that there's a median back there. So he hadn't completely
6 committed until right back before that as to which way he
7 was going to go. And that was based upon the second being
8 in his lane of travel. It's important because that might
9 actually had been true what Mr. Sims said. That he was
10 completely in our lane. And if you'll look at the
11 renditions by the State they've got him coming over slowly.
12 They've got him just coming in slowly and impacting almost
13 -- you know, so he's coming over slowly when, in fact, he
14 had already gotten over there and trying to figure out what
15 this guy was going to do and he was watching him.

16 Now, again, but for Mr. Cockrell being in his lane he
17 wouldn't have necessarily needed to defend himself. And Mr.
18 Cockrell did have marijuana in his system. And, you know,
19 when I asked Mr. Sanders about whether or not he had told
20 anybody about his using marijuana on the 14th, using a gram
21 a day until the 14th before this accident, he said, well, I
22 didn't sign it. My signature ain't on it. I'll let you
23 make up your mind on credibility and believability whether
24 or not that was his stuff that I was asking about.

25 Again, credibility and believability, if on any of

1 these points, any of those bricks in the wall, you believe
2 that the State hasn't met its burden of proofing the case
3 beyond all and any reasonable doubt, then it's equally your
4 sworn responsibility to find him not guilty. And I want to
5 talk to you -- because I may not get to talk to you again.
6 I'm going to have to go sit down and be quiet. I know you
7 all are tired. This has been the longest trial I've ever
8 tried and I've tried a lot of them.

9 When you're thinking about reasonable doubt each and
10 every one of you have your own set of -- you brought to this
11 group your commonsense, your common knowledge and I want you
12 to be fair and I want you to use it. And the State has to
13 prove it's case beyond all and any reasonable doubt. Not to
14 just one of you, or two of you, three of you. It's got to
15 prove it to all 12 of you beyond a reasonable doubt. So in
16 other words, if even one of you is not convinced that all
17 those bricks have been knocked down it's your sworn duty to
18 find him not guilty. Not because Billy Garrett says so.
19 Because His Honor is going to tell you that's the law.
20 Thank you.

21 THE COURT: Thank you, Mr. Garrett. Solicitor, you
22 have some rebuttal?

23 MR. BLACK: Yes, sir, Your Honor. Are we going to go
24 ahead and do that?

25 THE COURT: Yeah.

1 REBUTTAL CLOSING ARGUMENT

2 BY MR. BLACK: Folks, it's Mr. Garrett's contention
3 that on that second blood draw that Adam Rowell's blood
4 wasn't tested. It wasn't his blood. That's they're
5 contention. They've made no bones about it. No if, and/or
6 buts about it. There's no doubt about it however Mr. Rowell
7 received additional blood. You heard testimony to that.
8 There's no doubt about that as well. But Mr. Rowell's blood
9 doesn't just go away. Mr. Rowell's blood is still there.
10 It's still being tested. It's still being drawn by the
11 nurse four hours after arriving to the hospital, and his
12 blood is still sent down to SLED. Yes, his blood has been
13 diluted. I'm not going to deny that. That's commonsense,
14 folks. But his blood is still being tested. And as the
15 testimony has indicated from the doctors, from the
16 toxicologist, that if somebody is at a .19 they should be
17 metabolizing alcohol at .06 during that four hour window,
18 and 19 minus six is 13. And that draw came back at .09. It
19 should have been a 13. His blood was diluted, absolutely.
20 But his blood was still being tested. His blood was still
21 in his body. He still had blood in his body. Folks, to
22 believe what the Defense is trying to tell you is to believe
23 that there's some grand conspiracy. That everybody was in
24 on it. Highway Patrol was in on it. Hospital was in on it.
25 The lab at Greenville Hospital was in on it. Everybody as

1 in on it. Everybody was in on it. Those Highway Patrolman,
2 they showed up and they started dropping beer bottles left
3 and right because we got to make sure -- got to plant this
4 here to make sure that we can show that he was driving under
5 the influence. Are you kidding me? You got to be kidding
6 me. Those guys, EMS, Highway Patrol, firefighters, law
7 enforcement, they all showed up at that scene not trying to
8 plant evidence. They showed up at that scene trying to save
9 this man's life. And because a beer bottle wasn't in the
10 exact same spot as maybe another picture would have been.
11 Are you kidding me right now? Firefighters worked profusely
12 to cut that roof off so they could extract him from the
13 vehicle, throwing stuff wherever it's got to be trying to
14 save that man's life. Planting evidence. Come on. Come
15 on. It's a grand conspiracy when they get to the hospital.
16 The times aren't right, folks. The times aren't right.
17 Even their own paid expert that got up here for \$10,500 this
18 week said yeah, there's clock slop. I've seen it before.
19 Does everybody sync their watch up? Does everybody have the
20 same exact time? Nurse Baker, the one that wrote it on the
21 vial that got sent to the lab. Is her watch off a little
22 bit? I don't know that. But it's definitely a possibility.
23 Some people like to set them fast, some people set them
24 slow. It's a grand conspiracy. A grand conspiracy.

25 Another issue that they want to bring up is State's

1 hiding evidence. State's hiding evidence. Folks, what they
2 don't want to tell you is we didn't have that video until
3 Sunday of last week. We didn't have that video --

4 MR. GARRETT: Objection, Your Honor.

5 THE COURT: Well, try not to testify, Solicitor. Okay?

6 MR. BLACK: Yes, sir. We'll let you -- we'll watch the
7 video. We're not trying to hide anything. You want to
8 watch the video of Mr. Rowell at Walmart? We'll watch it.
9 Of course technology doesn't want to work for me right now.

10 While Ms. Merrill is working on getting that up, I'll
11 head up a couple other points before I sit down. But we can
12 watch that video. It's not a problem. I'm not trying to
13 hid anything.

14 Justin Pennington. We didn't call Justin Pennington.
15 He's absolutely right. We didn't call him. We're not
16 trying to hide anything. Mr. Pennington got up here and
17 testified. He testified that he's sitting here at Scotch
18 Cross Road, sees the blue truck go by real fast. Saw the
19 red truck serving. Then he testified that the red truck
20 swerved in the blue truck's lane and it happened in the blue
21 truck's lane. The wreck -- collision happened in the blue
22 truck's lane. That's what he testified to. But folks, what
23 do we know? We know that what he saw, what he said is
24 absolutely not true. The wreck did not happen in the blue
25 truck's lane. I submit to you this is 500 feet. You've

1 heard testimony. What's 500 feet? 166 yards. A football
2 field and a half. And the red truck is not just sitting
3 there in the middle of the road. The red truck is further
4 up this highway towards the fairgrounds, folks, and he can
5 unequivocally see the red truck's in the blue truck's lane?
6 Folks, Mr. Garrett said that each of you bring with you your
7 commonsense and your life experiences. And we've all driven
8 at night. This is Greenwood, South Carolina. Kind of off
9 the beaten path. Everybody has driven a back road at night.
10 You can use your commonsense and your life experience in
11 making inferences and drawing from that. How far can you
12 see at night when you're driving down the road? I submit to
13 you when you're driving down the road and your lights are
14 just on normal you can't see 60 yards in front of you. Now,
15 when they're on brights you can see a little bit further,
16 absolutely. But when you've just got your regular lights on
17 you can't see 50 or 60 yards in front of you. And Mr.
18 Pennington is sitting right here at this light -- or at this
19 road right here and can see 166 yards where the wreck
20 happened and on past that.

21 Folks, I few up sitting in the west end zone at Clemson
22 games. The football field is 100 yards. And when they're
23 on the other side of the field I'm watching the big screen
24 because I can't see what's going on. And that's only 100
25 yards. Maybe 120 yards from where I'm sitting. Folks, use

1 your life experiences. Perception, distance. The red truck
2 is coming from up here. That's 250 to 300 yards away. Two
3 and a half to three football fields. Mr. Pennington, nice
4 guy, but he was wrong. And you heard Kelly Anderson. You
5 heard her testimony. They considered everything. She took
6 his statement. She did her job. She did her investigation.
7 But from what he said to the physical evidence that's been
8 put on display it's impossible how Pennington described it.
9 Absolutely impossible.

10 Folks, I think we might have this video. Let's see if
11 we can play this video again for you. I know we've played
12 it previously. I'm not trying to hide anything. I'll play
13 it a couple of times for you.

14 (Whereupon, the video was published for the jury.)

15 MR. BLACK: This is Mr. Rowell, the second individual
16 is what's been testified to. Comes on screen. That's 15
17 seconds right there, folks. We'll back it up in slow
18 motion. Folks, I submit to you he is all over that aisle.
19 All over that aisle. Hugging the right side right now -- or
20 the left side right now, back to the middle. Right now when
21 he comes on screen he's on the right-hand side of that
22 aisle. 6:56 p.m.

23 Go back to Dr. Valentine's testimony for a brief
24 moment. You saw his PowerPoint. You saw his news article.
25 Lactate dehydrogenase can cause false positives. Not that

1 it always will. Not always, not maybe, but can. But what
2 did he testify to? Lactate dehydrogenase. Do we have any
3 of that in this case? There's been nothing in the medical
4 record about that at all. What we do have, lactic acid. He
5 was a 3.3 at 22:10. 22:10, 10:10, he was a 3.3. Standard
6 is .5 to 1.6. He's two or three times normal than what he
7 should be. But that's not unusual. Anybody that's
8 exercised and had excess lactate acid in their body. When
9 do the studies go array? 25 mm of sodium lactate. That's
10 when there's false positives in these tests. Not when it's
11 a three, not when it's a two, not when it's a five, not when
12 it's a 20, but when the lactate acid is 25. Here it was
13 only a three. To say that the machine definitely yielded a
14 false positive? You can't make that. You can't make that
15 determination at all. Not at all.

16 I want to talk a little bit about Jeremy Cockrell.
17 Found marijuana in his system. No denying that. But what's
18 the testimony? What did you hear? Mr. Sanders testified
19 they smoked a week before. And the toxicologist said that
20 they can't determine whether a person is under the influence
21 of that whether or not -- unless they have the parent of
22 that drug, and they didn't have the parent of that drug. So
23 yes, we know it was in his system. We don't know if he was
24 under the influence of it or not. But what we do know and
25 what's undisputed is the wreck happened in their lane of

1 travel. Mr. Garrett even said it himself. He said the only
2 thing in dispute in this case is the alcohol. The area of
3 impact where those two trucks collided pushed that pressure
4 down, the force down to create those gouge marks, clear as
5 day in the red truck's lane. So what do you have to do?
6 You have to judge the credibility of the witnesses. And in
7 this case Mr. Rowell testified -- he testified that at seven
8 seconds out when he tapped the breaks the red truck was in
9 his lane. And he had to make a split decision. And that
10 split decision was instead of hitting the brakes, instead of
11 pulling off to the side of the road, his side of the road on
12 the right side where there was plenty of room to pull over,
13 he decides to make his vehicle, drive it in the other lane
14 to avoid hitting them. Is that rational? Is that
15 reasonable? Folks, I submit to you that he couldn't even
16 tell first of all where in the world they were coming from
17 and if they were in his lane or not. Seven seconds outside.
18 Seven seconds from point of impact. At least 250. Or at
19 least 166 to 200 yards. Two football fields. And it was
20 dark and there's no lights out there. He didn't have a
21 clue. He did not have a clue. Could not tell. But he's
22 going to take his vehicle and drive it in the red truck's
23 lane where there is a guardrail over there, a road that he
24 is familiar with traveling his entire life. No way. No
25 way. No way. Not a chance. That's not rational. It's not

1 reasonable. He crossed the center line. He drifted over,
2 just like he was drifting while he was walking in Walmart.
3 He's behind the wheel and he drifts over, just like his
4 walking. He crashed in that car and he killed Jeremy
5 Cockrell and he injured Matthew Sanders. Two of those
6 people testified. One of them couldn't. And Matthew
7 Sanders' testimony was that yes, they were fighting. They
8 were having a discussion. But they were clearly in their
9 lane of travel. And he never loss consciousness. Not one
10 time. He was in a comma for two weeks and had to piece it
11 back together. Took him a while to piece it all back
12 together.

13 Folks, the evidence in this case could not be any more
14 clear. The EMS personnel, they ain't got a dog in this
15 fight. They smelled it on him and they put it in their
16 report. He got to the hospital and was a 219, which is an
17 18 or 19 percent. The laboratory at Greenville Memorial.
18 Greenville Memorial. He was stuck again four hours later.
19 Yeah, he had diluted -- his blood was diluted, but his blood
20 was still in there. His blood was -- his blood was drawn.
21 His blood was taken into evidence, it was taken down to SLED
22 and it was tested .09. It's a grand conspiracy. Highway
23 Patrol's in on it. The hospital's in on it. Everybody's in
24 on it.

25 Folks, the Judge is going to read to you the law and

1 its about 15 pages, and I know you're sick and tired of
2 hearing us lawyers talk. You've been here a long -- you've
3 been here for more than a week. But he's going to read to
4 you that proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the Defendant's guilt. There
6 are very few things in this world that we know with absolute
7 certainty. And in criminal cases the law does not require
8 proof that overcomes every possible doubt. That's what he's
9 going to read you. And he's going to give you a copy of
10 these jury instructions. You're going to take them back
11 there with you. And the Defense wants to get up here and
12 tell you that proof beyond a reasonable doubt is definitely
13 guilty beyond a reasonable doubt. No way. No chance.
14 Because the law does not require the State to prove it
15 definitely guilty. It doesn't require the State to prove it
16 definitely guilty. Because there are few things in this
17 world that we know definitely, absolutely certainty, 100
18 percent, and the law does not require us to do that. This
19 is wrong. This is wrong. Proof beyond a reasonable doubt
20 is proof that leaves you firmly convinced of the Defendant's
21 guilt. There are very few things in this world that we know
22 with absolute certainty, and in criminal cases the law does
23 not require proof that overcomes every possible doubt. The
24 evidence is there, folks. It's there. There's one verdict
25 in this case. Find him guilty.

1 THE COURT: Mr. Foreman, ladies and gentlemen of the
2 jury, what we're going to do, we're going to take another
3 short break before I charge you on the law. Now, we're in
4 lunchtime. I don't want to release you to go eat lunch, so
5 we're going to provide lunch for you. I'm going to have you
6 go back to the jury room. Again, don't being any
7 discussions about this case, and we're going to have an
8 order form. I think we're going to Howard's? Is that
9 correct, Madam Clerk? And get you -- you can pick what you
10 want off the -- off the sheet, and then we'll bring you back
11 out. Go and get our order in while I'm charging you on the
12 law. Now, there will still be maybe a little bit of time
13 before lunch actually gets here and you will have already
14 started your deliberations. But we want to go ahead and
15 feed you. So if you go back to the jury room, and I'm going
16 to get the Clerk to go back in there with Mr. Willingham and
17 hand you the order forms. You be working on that, we'll
18 collect them up. And then once we do that we'll get you
19 back out for the charge on the law. Okay? So if you'll go
20 back to the jury room.

21 (Whereupon, the jury exited the courtroom at 12:46
22 p.m.)

23 THE COURT: We'll be at ease for a few minutes.

24 MR. HENDERSON: Judge, before we break we've got
25 something we want to bring to the Court's attention.

1 THE COURT: Well, we'll do that when I come back out
2 before we bring the jury out.

3 MR. HENDERSON: I think we need to do it right now,
4 Your Honor, because I think we're entitled to a rebuttal.
5 They actually raised a matter -- a grand conspiracy that we
6 never argued during closing at all. The first time -- grand
7 incompetence maybe, but not grand conspiracy. That's the
8 first time that's come up and I think Mr. Garrett's entitled
9 to respond to rebut that particular issue only.

10 THE COURT: Well, even though Mr. Garrett did not use
11 those -- use that phrase, I think that was a part of the
12 argument and I'm going to deny your request.

13 MR. HENDERSON: Just so the record is preserved.

14 THE COURT: Thank you. Be at ease for a few minutes.

15 (Whereupon, a recess was held from 12:46 p.m. to 1:00
16 p.m.)

17 THE COURT: We're back on the record. Let me just read
18 for the lawyers the two -- well, I added one other little
19 thing about no sympathy, and I'll read that to you. But
20 that addition to the container part, any evidence of
21 containers may still be considered by the jury in
22 determining whether Defendant committed the crime charged.
23 Now, that was added. And then I just added a one sentence.
24 Your verdict cannot be based on sympathy, passion, emotion
25 or any other consideration not in evidence in this case. So

1 with those two additions which you have your copy is
2 complete. Okay?

3 And secondly, I don't want to beat a dead horse, but we
4 looked again at the defense of necessity and I'm satisfied
5 that under the facts of this case the Defense would not be
6 entitled to a charge, and we came across several cases that
7 would support that position of the Court.

8 Let's bring the jury out for the final charge.

9 MR. HENDERSON: I just want to make sure that we're
10 preserved on all our objections.

11 THE COURT: You are. You are. You're more than
12 covered, Mr. Henderson.

13 (Whereupon, the jury entered the courtroom at 1:00
14 p.m.)

15 THE COURT: Let the record reflect that the jury is
16 back and seated. Ladies and gentlemen of the jury, I now
17 will charge you on the law that is applicable to this case.
18 You must consider the charge as a whole and not focus on
19 some portions to the exclusion of other portions. Once
20 again, the indictments charge the defendant with two counts
21 of felony driving under the influence. I remind you once
22 again that the fact the defendant was arrested, charged and
23 indicted in this case, is not evidence in this case and
24 cannot be considered by you as evidence of guilt in this
25 case, nor does it create any presumption or inference of

1 guilt. These documents are simply the formal written
2 instruments which contain the charges made against the
3 defendant. These are the formal documents by which this
4 case is brought into this court. Now, each indictment, even
5 though they are the same offense, they are separate and
6 distinct. You must decide each indictment separately on the
7 evidence and the law applicable to it uninfluenced by your
8 decision as to any other indictment. The defendant may be
9 convicted or acquitted on any or all of the offenses
10 charged. You will be asked to write a separate verdict of
11 guilty or not guilty for each indictment. There is a
12 verdict form I have, Mr. Foreman, that I will show you at
13 the conclusion of my charge.

14 Once again, the defendant has pled not guilty to these
15 indictments, and that plea of not guilty puts the burden on
16 the state to prove the defendant guilty. A person charged
17 with committing a criminal offense in South Carolina is
18 never required to prove himself innocent.

19 I charge you that it is an important rule of the law
20 that the defendant in a criminal trial, no matter what the
21 seriousness of the charge may be, will always be presumed
22 innocent of the crime for which the indictment was issued
23 unless guilt has been proven by evidence satisfying you of
24 that guilt beyond a reasonable doubt. This presumption of
25 innocence does not end when you begin your deliberations,

1 but it accompanies the defendant throughout the trial unless
2 you reach a verdict of guilt based on evidence satisfying
3 you of that guilt beyond a reasonable doubt.

4 This presumption of innocence is like a robe of
5 righteousness placed about the shoulders of the defendant
6 which remains with the defendant unless it has been stripped
7 from the defendant by evidence satisfying you of the
8 defendant's guilt beyond a reasonable doubt. The
9 presumption of innocence is not mere legal theory. It is
10 not just a legal phrase that we use in a courtroom. It is a
11 substantial right to which every defendant is entitled
12 unless you, the jury, are satisfied from the evidence of the
13 defendant's guilt beyond a reasonable doubt.

14 Now, concerning reasonable doubt. Some of you, first
15 of all, may have served as jurors in civil cases, where you
16 were told that it is only necessary to prove that a fact is
17 more likely true than not true, such as by the greater
18 weight or preponderance of the evidence. But, in criminal
19 cases, the state's proof must be more powerful than that.
20 Again, it must be beyond a reasonable doubt.

21 Proof beyond a reasonable doubt is proof that leaves
22 you firmly convinced of the defendant's guilt. I think the
23 Solicitor, during his rebuttal argument, read from a portion
24 of the charge. I give the lawyers a copy of the charge so
25 they know what I am going to say in advance. He read, which

1 is true, there are very few things in this world that we
2 know with absolute certainty, and in criminal cases the law
3 does not require proof that overcomes every possible doubt.
4 If, based on your consideration of the evidence, you are
5 firmly convinced that the defendant is guilty of the crime
6 charged, you must find the defendant guilty. If on the
7 other hand, you think there is a real possibility that the
8 defendant is not guilty, you must give the defendant the
9 benefit of the doubt and find him not guilty.

10 As I explained to you at the beginning of this case,
11 which seems like many days ago. It was on Monday. That you
12 and I have certain duties to perform. As the trial judge,
13 it has been my responsibility to preside over the trial of
14 this case, and I've also had the duty to rule on the
15 admissibility of the evidence offered during this trial.
16 You are to consider only the competent evidence before you.
17 If there was any testimony ordered stricken from the record
18 in this case during this trial then you must disregard that
19 testimony. You are to consider only the testimony which has
20 been presented from this witness stand, any exhibits which
21 have been made a part of the record in this case, and there
22 are numerous ones, and any stipulations of counsel.

23 I have the additional duty to charge you the law
24 applicable to this case, as I am doing now. As the
25 presiding judge, I am the sole judge of the law in this

1 case, and it is your duty as jurors to accept and apply the
2 law as I now state it to you. If you already have any idea
3 as to what the law is or what the law ought to be and it
4 does not agree with what I now tell you the law is, you must
5 abandon your idea because you are sworn to accept the law
6 and apply the law exactly as I state it to you.

7 In every case tried in this court before a jury, the
8 jury becomes the sole and exclusive judge of the facts in a
9 case, and I also told you that on Monday. A trial judge
10 cannot intimate, state, comment on, or make any statement to
11 a trial jury about the facts in a case. Since you, the
12 jury, are the sole judge of the facts in this case, you are
13 not to infer from what I have said during the progress of
14 this trial in ruling upon the admissibility of evidence, or
15 otherwise, or anything that I say now during the course of
16 this instruction to you, that I have any opinion about the
17 facts in this case. The law does not allow me to have an
18 opinion about the facts in this case. This is a matter
19 solely for you, the jury, to determine. As jurors, it is
20 your duty to determine the effect, value and weight of the
21 evidence presented during this trial.

22 Now, Mr. Foreman, ladies and gentlemen of the jury,
23 there are two types of evidence which are generally
24 presented during a trial, that being direct evidence and
25 circumstantial evidence. Direct evidence directly proves

1 the existence of a fact and does not require deduction.
2 Circumstantial evidence is proof of a chain of facts and
3 circumstances indicating the existence of a fact.
4 Crimes may be proven by circumstantial evidence. The law
5 makes no distinction between the weight or value to be given
6 to either direct or circumstantial evidence, however, to the
7 extent the state relies on circumstantial evidence, all of
8 the circumstances must be consistent with each other, and
9 when taken together, point conclusively to the guilt of the
10 accused beyond a reasonable doubt. If these circumstances
11 merely portray the defendant's behavior as suspicious, the
12 proof has failed.

13 Again, the state has the burden of proving the
14 defendant guilty beyond a reasonable doubt. This burden
15 rests with the state regardless of whether the state relies
16 on direct evidence, circumstantial evidence, or some
17 combination of the two. Necessarily, you must determine the
18 credibility of witnesses who have testified in this case and
19 the evidence presented. Credibility simply means
20 believability. It becomes your duty as jurors to analyze
21 and to evaluate the witnesses and the evidence and determine
22 the credibility of the witnesses and the evidence.
23 In determining the credibility of witnesses who have
24 testified in this case, you may believe one witness over
25 several witnesses or several witnesses over one witness.

1 You may believe a part of the testimony of a witness and
2 reject the remaining part of the testimony of that same
3 witness. You may believe the testimony of a witness in its
4 entirety or reject the testimony of a witness in its
5 entirety. You may consider whether any witness has
6 exhibited to you any interest, bias, prejudice, or other
7 motive in this case. You may also consider the appearance
8 and manner of a witness while on the witness stand.

9 Now, during the course of this trial we've had some
10 expert witnesses testify. After the first or -- when the
11 first expert testified I gave you a little summary about
12 that. I'm going to go into a little more detail about that.
13 The rules of evidence ordinarily do not permit witnesses to
14 testify to opinions or conclusions. An exception to this
15 rule exists for witnesses we call "expert witnesses". A
16 witness who, by education and experience, has become expert
17 in some art, science, profession, or calling may state an
18 opinion as to relevant and material matter, in which the
19 witness claims to be an expert, and may also state the
20 reasons for the opinion given.

21 You should consider any expert opinion received in
22 evidence in this case and, like any other evidence, give it
23 the weight you think it deserves. If you decide that the
24 opinion of an expert witness is not based on sufficient
25 education and experience, or if you conclude that the

1 reasons given in support of the opinion are not sound, or
2 that the opinion is outweighed by other evidence, you may
3 disregard the opinion entirely. An expert witness
4 testimony is to be given no greater weight than that of
5 other witnesses simply because the witness is an expert.
6 Further, you are not required to accept an expert's opinion,
7 even though it is not contradicted.

8 Let me talk to you about intent. In order to establish
9 criminal liability, criminal intent is required. For
10 example, the mental state required to be proven by the state
11 for a particular crime might be purpose, intent, knowledge,
12 recklessness, or criminal negligence. Criminal intent must
13 be proven by the state beyond a reasonable doubt. Criminal
14 intent is always a matter that must be determined by the
15 jury from the circumstances surrounding the situation. There
16 is no way to prove intent to a mathematical certainty.
17 There is no way medical science can dissect a person's brain
18 and determine what the person had in mind, so the law says
19 that criminal intent may be inferred from the circumstances
20 shown to have existed. This is how you make a determination
21 of whether or not the element requiring intent was present.
22 It is not necessary to establish intent by direct and
23 positive evidence, but intent may be established by
24 inference in the same way as any other fact by taking into
25 consideration the acts of the parties and all the facts and

1 circumstances of the case.

2 Criminal intent is defined as a mental state, a
3 conscious wrongdoing. It is up to you to determine what the
4 defendant intended to do based on the circumstances shown to
5 have existed. Criminal intent can arise from action or a
6 failure to act. It may arise from negligence, recklessness,
7 or an indifference to duty or to consequences that is
8 considered by the law to be the equivalent of criminal
9 intent.

10 Now, let me discuss with you the elements of felony
11 driving under the influence. This will be related to Jeremy
12 Cockrell, but the same elements have to apply to the other
13 person in the car, and I'll explain a little bit more about
14 that in a minute. Once again, the defendant is charged with
15 felony driving under the influence. The state must first
16 prove beyond a reasonable doubt that the defendant drove a
17 vehicle while under the influence of alcohol and/or drugs.
18 Driving a motor vehicle means that the vehicle was in
19 motion. This may be proved by direct or circumstantial
20 evidence.

21 A movement of the vehicle might occur without any
22 affirmative act by a driver or, in fact, by any person. If
23 a vehicle is moved by some power beyond the control of the
24 defendant, or by accident, this would not be driving.
25 The state must prove beyond a reasonable doubt that the

1 defendant was sufficiently under the influence to impair his
2 ability to drive with reasonable care, with due regard for
3 others and himself, or as a reasonably prudent person would
4 drive. It is not necessary to show that the defendant was
5 in a helpless condition, passed out, or even intoxicated.
6 On the other hand, the fact that the defendant, at some time
7 prior to this incident, drank an alcoholic beverage or took
8 a drug does not prove that the defendant was driving under
9 the influence.

10 Next, the state must prove beyond a reasonable doubt
11 that while driving under the influence the defendant did an
12 act forbidden by law or neglected a duty imposed by law.
13 The state alleges the defendant crossed the center lane of
14 travel. Finally, the state must prove beyond a reasonable
15 doubt that the act or neglect of the defendant proximately
16 caused the death of Jeremy Cockrell. Proximate cause is the
17 direct cause; it is the immediate cause; it is the efficient
18 cause; it is that cause without which the death of the
19 victim would not have resulted.

20 There must be a chain of causation from the time of the
21 injury inflicted by the defendant until the time of the
22 victim's death. Proximate cause does not necessarily mean
23 the that it occurred immediately prior to death. The
24 defendant's act may be regarded as the proximate cause if it
25 is a contributing cause of injury or death of the victim.

1 The fact that other causes also contribute to the injury or
2 the death of the victim does not relieve the defendant from
3 responsibility. The defendant's act need not be the sole
4 cause of the injury or death, but must be a proximate cause
5 contributing to the injury or the death of the victim.

6 Now, with respect to Matthew Sanders everything I've
7 just read to you about felony driving under the influence
8 applies here. The same elements apply. As to the second
9 indictment for felony driving under the influence, the state
10 must prove beyond a reasonable doubt all aforementioned
11 factors and that the act or neglect of the defendant
12 proximately caused great bodily injury to Matthew Sanders.
13 Great bodily injury" means bodily injury which creates a
14 substantial risk of death or which causes serious, permanent
15 disfigurement, or protracted loss or impairment of the
16 function of any bodily member or organ

17 Now, related to the test results of the SLED test, the
18 amount of alcohol in the defendant's blood at the time of
19 the alleged violation, as shown by chemical analysis of the
20 defendant's bodily fluids, may be considered by you in
21 deciding whether the defendant was under the influence.
22 If the alcohol concentration was eight one-hundredths of one
23 percent (.08) or more, it may be inferred that the defendant
24 was under the influence. This inference is simply an
25 evidentiary fact to be considered by you, along with the

1 other evidence in the case, and you may give it the weight
2 you decide it should receive.

3 Now, let me explain to you further, it is not against
4 the law for a person, while driving a motor vehicle in the
5 State of South Carolina, to have an unopened container of an
6 alcoholic beverage in his or her vehicle. It is not against
7 the law for a person, while driving a motor vehicle in the
8 State of South Carolina, to have a completely empty
9 container of an alcoholic beverage in his vehicle. Any
10 evidence of containers may still be considered by you, the
11 jury, in determining whether defendant committed the crime
12 charged.

13 Now, as to each indictment, there are two possible
14 verdicts for each charge, either guilty or not guilty. The
15 fact that on the verdict form, which I'll show you in just a
16 minute, lists guilty first above not guilty is of no
17 significance whatsoever. Your verdict as to each indictment
18 must be unanimous among the twelve of you. Your verdict,
19 Mr. Foreman and ladies and gentlemen of the jury can not be
20 based on sympathy, passion, emotion or any other
21 consideration not in evidence in this case.

22 Mr. Foreman, when a verdict is reached as to each
23 indictment, just knock on the door and ill you inform one of
24 our bailiffs that you have reached a verdict as to each
25 indictment in this case.

1 Now, I think one of the lawyers told you that I do give
2 a copy of what I've just read to the jury to take back with
3 you and use in whatever fashion you feel is appropriate
4 while you deliberate this case. Let me come down and show
5 you the verdict form. It's very simple. Mr. Foreman, this
6 shows the name of the case, the two indictment numbers, and
7 as to the first indictment that relates to Jeremy Cockrell
8 you state whether your verdict is guilty or not guilty.
9 Whatever your verdict is you'll place your initials on the
10 line next to your verdict, and likewise as to the other
11 indictment related to Matthew Sanders. Place your initials
12 next to the verdict you reach. You'll sign it and put
13 today's date.

14 Now, I'm going to send all 14 of you back to the jury
15 room. Do not begin your deliberations yet. I need to talk
16 to the lawyers first to make sure that I do not need to
17 bring you out and charge anything further. If I don't, and
18 when the bailiffs bring back all of the exhibits, the
19 verdict form, and a copy of my charge, that will be your cue
20 for two things to happen. First of all, I need the two
21 alternates to come out. I know you've sat through this
22 whole trial and you cannot participate in these
23 deliberations, and I want to talk with you a little bit when
24 you come out. But that will be your cue for the two
25 alternates to exit the jury room and for your deliberations

1 to begin. Go back to the jury room. Don't start any
2 discussions yet, and hopefully we won't need to bring you
3 back out.

4 (Whereupon, the jury exited the courtroom at 1:20 p.m.)

5 THE COURT: Other than what's been noted on the record
6 does the State have any exceptions or objections to the
7 charge?

8 MR. BLACK: No, sir, Your Honor.

9 THE COURT: Other than what's noted on the record,
10 Defense have any?

11 MR. HENDERSON: Your Honor, we do have one thing, and
12 its about five minutes into your charge where you were going
13 into beyond a reasonable doubt. While you're sitting there
14 reading you actually look up and tell the jury this is the
15 exact same stuff that the Solicitor just read you. I mean,
16 that's kind of a direct bolstering of -- I mean, that --

17 THE COURT: Mr. Henderson, I just alluded to the fact
18 that you've already heard this one time and I'm going to
19 read it to you again.

20 MR. HENDERSON: Again, it just -- we just didn't like
21 it. I mean, it's almost like you're bolstering -- picking
22 one side over the other.

23 THE COURT: All right. Bring the jury back out.

24 (Whereupon, the jury entered the courtroom at 1:22
25 p.m.)

1 THE COURT: Let the record reflect the jury is back in
2 the courtroom. Ladies and gentlemen, kind of towards the
3 first part of my charge I alluded to the fact that the
4 Solicitor had read a small portion of what I was about to
5 read to you and it was -- I made that comment to you not to
6 bolster in any sense whatsoever that the fact that that
7 happened. I was just telling you you've already heard this.
8 You're going to hear it again. And don't place any other
9 significance to the fact that I prefaced that part of the
10 charge by telling you that the Solicitor had read that
11 portion. I was just wanting to let you know you've heard
12 this one. You're going to hear it again from me. Okay?

13 Now, when that said, if you'll go back to the jury
14 room. We will bring you the exhibits in just a few minutes.
15 And I want both alternates to go back there. Don't start
16 your discussion yet until the exhibits and the verdict form
17 and the charge are brought to you. Okay? And that should
18 be just a minute. All right?

19 (Whereupon, the jury exited the courtroom at 1:23 p.m.)

20 THE COURT: Okay. If the lawyers will get with the
21 court reporter to make sure all of the exhibits are
22 together. We're off the record.

23 THE COURT: I just want to make an observation, and
24 this is really directed toward both sides in this case.
25 This has been an extremely difficult case. A lot of emotion

1 which I understand that completely and I appreciate that.
2 But I want you to understand that practicing law is
3 extremely difficult. It may appear to be glamorous at
4 times. It may appear that lawyers are all rich. And while
5 that may be true at times, it is extremely difficult. And I
6 have to commend these five lawyers for the work that they've
7 done in this case. They have brought civility, they brought
8 professionalism, and an ordinate amount of preparation and
9 time, and they brought passion in this case. Now, has it
10 gotten contentious at times? Sure. Has the Judge gotten
11 cranky at times? Sure. But at the end of the day these
12 five lawyers, regardless of the outcome of this case, and
13 none of us know the outcome, but they need to be thanked for
14 the work that they've done, and I appreciate them very much.
15 All give of them. Okay?

16 Got the exhibits?

17 THE BAILIFF: Yes, sir.

18 (Whereupon, the jury began deliberations at 1:31 p.m.)

19 (Whereupon, there was a jury note sent out from the
20 jury at 2:38 p.m.)

21 (Whereupon, the Court went on the record with the
22 defense by telephone on speaker.)

23 THE COURT: With respect to the jury's question, "What
24 time is the video from WalMart taken?" The lawyers have
25 stipulated to send back to the jury the following

1 information written on their note which is marked as a
2 Court's exhibit. Starting time for the parking lot video is
3 06:38:14. Starting time for the inside video is 6:56:30.
4 Is that your agreement, Solicitor?

5 MR. BLACK: It is.

6 THE COURT: Is that your agreement, Mr. Henderson?

7 MR. HENDERSON: It is our agreement, but these are p.m.
8 times.

9 THE COURT: All right. I'm going to put p.m. after each
10 one. That's how we'll do it.

11 MR. GARRETT: Our client is here with us, Judge, and
12 he's heard the conversation.

13 THE COURT: Very good. Thank you. Make a copy.

14 (Whereupon, the note was returned to the jury room and
15 deliberations resumed at 2:40 p.m. At 3:00 p.m. there was a
16 knock and the jury indicated they had a verdict.)

17 VERDICT

18 THE COURT: Okay. It's my understanding that the jury
19 has reached a verdict which we'll bring them out in just a
20 second. We've got a lot of people in the courtroom. Again,
21 I realize this is a very emotional case. If anybody in the
22 courtroom believes that you may have a difficult time
23 controlling your emotions when the verdict is announced then
24 I would respectfully request that you exit the courtroom at
25 this time, because I can't -- can't have any emotional

1 outbursts. All right. Seeing known, let's bring the jury
2 out, please.

3 (Whereupon, the jury entered the courtroom at 3:08
4 p.m.)

5 THE COURT: All right. Let the record reflect the jury
6 is back in the courtroom. Mr. Foreman, without telling me
7 what the verdict is it's my understanding that you have
8 reached a verdict as to both indictments?

9 Mr. Foreman: Yes.

10 THE COURT: And the verdict that you reached on both
11 indictments, was that and is that unanimous among the 12 of
12 you?

13 MR. FOREMAN: Yes, it was.

14 THE COURT: All right. If you will hand the paperwork
15 to Mr. Willingham. Madam Clerk, if you will publish the
16 verdict, please.

17 MADAM CLERK: State of South Carolina, County of
18 Greenwood, in the Court of General Sessions, Eighth Judicial
19 Circuit, indictment numbers 2015-GS-24-0535 and
20 2015-GS-24-0536, State of South Carolina versus Adam Rowell,
21 as to indictment number 2015-GS-24-535 which charges the
22 Defendant with felony driving under the influence resulting
23 in death of Jeremy Cockrell, we the jury find the Defendant
24 guilty. As to indictment number 2015-GS-24-536 which
25 charges the Defendant with felony driving under the

1 influence resulting in great bodily injury of Matthew
2 Sanders, we the jury find the Defendant guilty. Signed
3 Foreperson George Gordon, February 20th, 2017.

4 Juror Number 62, Charles Gordon, please stand. Is this
5 your verdict?

6 MR. FOREMAN: Yes, it is.

7 MADAM CLERK: Is this still your verdict?

8 MR. FOREMAN: Yes, it is.

9 MADAM CLERK: You can sit down. Number four, Shunessa
10 Anty, is this your verdict?

11 JUROR NO. 4: Yes.

12 MADAM CLERK: Is this still your verdict?

13 JUROR NO. 4: Yes.

14 MADAM CLERK: You may have a seat. Number 22, Timothy
15 Cadden. Is this your verdict?

16 JUROR NO. 22: Yes.

17 MADAM CLERK: Is this still your verdict?

18 JUROR NO. 22: Yes, ma'am.

19 MADAM CLERK: You may sit down. Number 133, Robert
20 Ridge. Is this still your verdict?

21 JUROR NO. 133: Yes.

22 MADAM CLERK: You may sit down. Number 20, Alessandro
23 Butler. Is this your verdict?

24 JUROR NO. 20: Yes.

25 MADAM CLERK: Is this still your verdict?

1 JUROR NO. 20: Yes.

2 MADAM CLERK: Number 58, Jennie Gambrell. Is this your
3 verdict?

4 JUROR NO. 58: Yes.

5 MADAM CLERK: Is this still your verdict?

6 JUROR NO. 58: Yes.

7 MADAM CLERK: No. 173, George Williams. Is this your
8 verdict?

9 JUROR NO. 173: Yes.

10 MADAM CLERK: Is this still your verdict?

11 JUROR NO. 173: Yes, it is.

12 MADAM CLERK: No. 42, Jason Dodson. Is this your
13 verdict?

14 JUROR NO. 173: Yes.

15 MADAM CLERK: Is this still your verdict?

16 JUROR NO. 173: Yes.

17 MADAM CLERK: Number 164, Anxaviar Waldrop. Is this
18 your verdict?

19 JUROR NO. 164: Yes, ma'am.

20 MADAM CLERK: Is this still your verdict?

21 JUROR NO. 164: Yes, ma'am.

22 MADAM CLERK: Number 108, Lawrence McGee. Is this your
23 verdict?

24 JUROR NO. 108: Yes, ma'am.

25 MADAM CLERK: Is this still your verdict?

1 JUROR NO. 108: Yes, ma'am.

2 MADAM CLERK: No. 155, Michelle Stevens. Is this your
3 verdict?

4 JUROR NO. 155: Yes.

5 MADAM CLERK: Is this still your verdict?

6 JUROR NO. 155: Yes.

7 MADAM CLERK: And Number 9, Cassandra Barr. Is this
8 your verdict?

9 JUROR NO. 9: Yes.

10 MADAM CLERK: is this still your verdict?

11 JUROR NO. 9: Yes.

12 MADAM CLERK: Thank you.

13 THE COURT: Thank you, Madam Clerk. You can have a
14 seat.

15 Mr. Foreman, ladies and gentlemen of the jury, let me
16 take this opportunity to thank you for your jury service.
17 It's been a long hard trial. I think even Mr. Garrett
18 alluded to the fact that as long as he's been practicing
19 it's been the longest trial for him. Certainly since I've
20 been on the bench it's been the longest trial for me. So
21 it's been a -- it's been a tough -- tough task at hand. But
22 what is important to me -- your verdict means nothing to me.
23 What is important to me is the fact that a jury performs its
24 duties conscientiously, efficiently. You know, we told you
25 at the very beginning you got to pay attention because

1 you're not allowed to take notes, and I've looked at you
2 numerous times and every time I've looked at you you were
3 always being very attentive to the proceedings and what was
4 going on at the time. So once again, I thank you for your
5 service. Even though it's an extremely difficult task for
6 you, I hope that you found it to be somewhat educational and
7 be something that maybe down the road you'd like to
8 participate in again.

9 You are free now to discuss this with anyone if you
10 care to. Sometimes the lawyers like to talk to you to get
11 kind of an idea about things in the case and things that
12 they can improve on or not. So you're free to talk with
13 them. The sentencing will take place in short course today.
14 You're welcome to sit in for the sentencing. If you do,
15 we'll just need for you to -- the bailiffs will direct you.
16 You can go out and just come around and you can sit -- sit
17 in the back somewhere if you care to. You don't have to.
18 Checks for your service will be mailed out sometime this
19 week. So probably maybe by the end of the week you'll get
20 your checks. If you need a work excuse they have that
21 there, too. Thank you. Thank you again for your jury
22 service. You're free to go or free to remain with us if you
23 like.

24 (Whereupon, the jury was released at 3:15 p.m.)

25 MR. GARRETT: May we approach?

1 THE COURT: Does the Defense wish 10 days to file any
2 appropriate post-trial motions?

3 MR. GARRETT: We do, Your Honor.

4 THE COURT: Okay. You got it. You got 10 days. I'm
5 going to take a little short recess.

6 MR. GARRETT: May we approach the bench, Judge?

7 THE COURT: Yeah. You want to just come back in --
8 come back in the office?

9 MR. GARRETT: Yeah, that'll be fine.

10 (Whereupon, a recess was held.)

11 THE COURT: We are back on the record. Had a
12 discussion with the lawyers in chambers. The Defense has
13 made a request for me to order the Probation Department and
14 do a pre-sentence investigation and report. I'm not going
15 to do that. But what I am going to do is that certainly,
16 and I don't have to tell the lawyers this, but any time the
17 Court undergoes a sentencing proceeding the State has an
18 opportunity to submit anything and certainly the Defense as
19 the right to submit anything in mitigation. I will be here
20 next week, so I'm going to defer sentencing until next
21 Monday morning. I realize and understand that especially on
22 this side of the courtroom you're wanting to finality to
23 this, and I understand that. But I want to give the lawyers
24 -- and this applies to both sides, but I realize the Defense
25 made the request. So I'm going to give both sides an

1 opportunity to put together whatever they can put together
2 to assist me in handing down hopefully the right and just
3 sentence or whatever that may be. So I'm not going to order
4 a pre-sentence report. But I will defer sentencing for a
5 week. And I'll be back in Greenwood next week so we'll
6 schedule it Monday morning at 10:00 unless for some reason
7 that time creates a conflict for the lawyers' schedule. And
8 if it does then certainly I can -- I can be flexible in
9 scheduling that. So that's what we're going to do.

10 This matter is concluded. Thank you very much.

11 MR. GARRETT: Thank you, Your Honor.

12 TRIAL DAY 8: 02/27/2017

13 SENTENCE

14 (Whereupon, the sentencing began at 10:15 a.m. Court's
15 Exhibits 26-29 were marked for identification.)

16 THE COURT: We are on the record this morning. This is
17 the sentencing phase of the matter of the State of South
18 Carolina v Adam Rowell, Mr. Rowell having been found guilty
19 by a jury a week ago today. Mr. Garrett, Mr. Henderson, and
20 Mr. Rowell, if y'all will come up to the forebench, please.
21 How we will handle this, I'll hear from the State first with
22 regard to sentencing. Anybody that you have, Solicitor
23 Black, that you would like to have speak on behalf of the
24 State I'll be glad to hear from them. Once I've heard from
25 the State I will turn it over to the Defense. Same thing.

1 I'll be glad to hear from anybody that you have on the issue
2 of sentencing. Solicitor Black, I'll turn it over to you,
3 sir.

4 MR. BLACK: Yes, sir. Thank you, Your Honor. Your
5 Honor, we're here on the case of Mr. Adam Rowell who was
6 tried and convicted a week ago today. Your Honor, this is
7 the event that happened on November 15, 2014 at 7:20 p.m.
8 We tried the case. It took 7 days. Ultimately a jury
9 rendered a verdict of guilty on two counts of felony DUI.

10 Your Honor, there's a couple of things that stood out to
11 me during the course of the trial. First of all, Judge, I
12 think that kind of the elephant in the room is that Mr.
13 Rowell is a former cop. As a former cop, Judge, I think
14 we're all -- all of us in a position of being in the public
15 eye. Cops, police officers, solicitors, even judges, we're
16 all in the public eye, Judge. We're all held to a higher
17 standard. Mr. Rowell, I'm sure with his job, he made
18 arrests for DUI. I'm sure he pulled people over for driving
19 intoxicated. I'm sure that he wrote tickets for open
20 container. And while he did not have that job in November
21 2014, he had lost that job for a DUI related offense, it's
22 hard to wrap my mind around what he's seen in his
23 profession, his job, and just blatantly ignore what he sees
24 and turn around and do it himself. So that's kind of the
25 first point, Judge.

1 The second point is the lack of empathy coming from Mr.
2 Rowell that was noticeable throughout the course of the
3 trial. You know, this family is here and I can see it in
4 their eyes, Judge. They literally went through hell and
5 back in 2014 and then in sitting through a seven day trial.
6 It was undisputed that the area of impact in this wreck
7 occurred in the victim's lane. In this particular case, Mr.
8 Rowell took the stand and at no point was there no empathy
9 at all in his emotion, in his face, whatsoever. That was
10 also quite concerning for the State.

11 The last thing, Judge, is the history of Mr. Rowell.
12 Mr. Rowell does not have a criminal record. He's got no
13 convictions on his record at all, but I've passed forward
14 kind of a packet that I believe Your Honor reviewed before
15 coming out here. I want to go through some of those right
16 now. October --

17 MR. GARRETT: For the record, any non-convictions where
18 he's pled not guilty and requested a trial by jury it is the
19 position of the defense that is improper for the Court to
20 consider during sentencing. For the record, Your Honor.

21 THE COURT: Thank you very much.

22 MR. BLACK: Your Honor, the first incident occurred on
23 October 24, 2012 at 2:43 in the morning. Mr. Rowell was
24 driving his vehicle in the town of Ninety Six and was
25 driving erratically and he was pulled over by a Ninety Six

1 police officer. At this time Mr. Rowell was working for the
2 City of Greenwood. He informed the officers that he was
3 working for the City of Greenwood. The officer pulled him
4 out of the car and asked him to conduct some field sobriety
5 tests. He failed those field sobriety tests, but he wasn't
6 arrested, Judge. Ninety Six Police Department called his
7 father. His father came out there and picked him up, took
8 him home, and the Greenwood City Police Department handled
9 this situation internally.

10 Judge, he met with Captain Morgan with the city. I
11 believe he also met with other individuals with the city and
12 he admitted that he had had too much to drink that night.
13 He admitted to consuming twelve beers that night. He also
14 admitted to having open containers, open liquor bottles in
15 his vehicle at 2:43 in the morning when he was driving
16 through Ninety Six. They disciplined him, Judge, but he
17 kept his job. One would think after a situation like that
18 it would be a wakeup call.

19 You know, Judge, everybody in this room has had family,
20 they've had friends, close friends, that have had DUI's.
21 I'm sure Your Honor has had friends and family, you've
22 represented people that have had DUI's. Oftentimes these
23 people, when a situation like this occurs, it serves as a
24 wakeup call and they either turn their life around or they
25 take another road. In this case, Mr. Rowell was given a

1 chance, Judge. He was given a golden ticket. Didn't get
2 arrested. Didn't get charged, and he kept his job. He
3 admitted to his superiors at Greenwood City Police
4 Department that he had consumed too much to drink. Admitted
5 to drinking twelve beers.

6 Judge, then fast forward to the June 8, 2013 incident,
7 less than a year later. He was arrested by the Highway
8 Patrol here in the City of Greenwood. He hasn't been
9 convicted of this crime. I think this charge is still
10 pending, but in this case officer smelled alcohol on him.
11 Got him out of the car. Same situation. Open containers in
12 the vehicle. He performed the field sobriety test and he
13 failed quite miserably, Judge, in my opinion. Your Honor,
14 you've had a chance to review that video. I passed it
15 forward. But that case is still pending, Judge.

16 At this point, Mr. Rowell lost his job as a city
17 officer. I believe he resigned the next day. That was June
18 8, 2013. Judge, he still didn't learn his lesson. He
19 picked up another open container ticket. There was no DUI
20 related to this, but this was May 17. It's hard to make
21 out. An open container charge. I talked to the officer
22 that made the arrest and he doesn't have an incident report,
23 Your Honor, but he told me that if he remembers correctly
24 that it was a bottle of wine that he had in his car. That
25 was in May 2014.

1 And then just a couple of months later, Judge, the
2 incident that happened on 225 at 7:20 p.m. November 15,
3 2014. Judge, there's no winners here today. There's no
4 winners. There's a family over here that's losing a son, a
5 grandson, a best friend, a loved one. He's going to prison.
6 And there's a family over here that's lost a loved one as
7 well. There's no winners, Judge.

8 Judge, this has been a difficult case. This really
9 has. But like Mr. Downtin said in his opening statement on
10 that Tuesday morning, he said this case was about a
11 decision. About a decision that Adam Rowell made on
12 November 15, 2014 to be inebriated, to get behind the wheel
13 of a car, and to drive his vehicle. If he hadn't made that
14 decision, Judge, Jeremy Cockrell would still be here and
15 Matthew Sanders would not have lost a loved one. Judge,
16 like I said in my closing, life is about choices.
17 Oftentimes -- oftentimes, Judge, we learn from the choices
18 that we make in the past and we turn from those, but Mr.
19 Rowell didn't do that. He continually made bad choices to
20 get on the road and to drive while intoxicated. And it was
21 a ticking time bomb, Judge. This was eventually going to
22 happen because he did it over and over and over again.

23 Judge, I think in Mr. Rowell's letter of reprimand,
24 Captain Morgan with the city put it best. He said, "Adam,
25 your conduct by an officer of the City of Greenwood Police

1 Department cannot and will not be tolerated. Your
2 irresponsible actions could've led to you being arrested,
3 seriously injured, and/or possibly hurting an innocent
4 citizen, which would have been detrimental to you as well as
5 the reputation of the Greenwood City Police Department."
6 Judge, he received this warning two years in advance of this
7 and he kept doing it. I can't explain it, Judge. I really
8 can't.

9 Judge, I'm not asking for a number, but I am asking
10 that a message be sent. I'm asking that you send a message
11 with this sentence, because drunk driving, continual
12 repeated drunk driving, cannot be tolerated. Because people
13 die, Judge. People's lives they're changed. And it can't
14 be accepted.

15 Judge, I think that's all that I have. I believe
16 several members of the family want to address you if this is
17 the appropriate time.

18 THE COURT: I'll be glad to hear from them. I'll need
19 to have you sworn in, whoever in the family would like to
20 address the Court.

21 MS. STROUP: Your Honor, we're going to read the letters
22 for them, if that's okay.

23 THE COURT: You're going to read the letter, so they're
24 not going to speak. Okay. That's fine. I'll be glad to
25 hear from you.

1 MS. STROUP: Your Honor, never in my wildest dreams
2 would I have ever imagined that I would be in the place
3 where I am today. A place where no parent should ever be.
4 A place where I have to put the one person more important to
5 me than anyone else in the world in the ground and walk
6 away. What compounds my grief and heartache is the
7 senselessness of the whole situation. You can't imagine all
8 the what ifs, if only, that have gone through my mind in the
9 last 20 months of my life. If only Adam Rowell had not
10 chosen to drink and drive. If only Jeremy had not chosen
11 that route. If he had been five minutes earlier, or later,
12 I could still have my son. I do this sometimes until the
13 point I want to scream. But at my house there is no longer
14 anyone to scream to.

15 Jeremy was my only child. I don't have another child
16 to help get me through all the lonely hours that I face. At
17 the time of Jeremy's death it had been almost two years to
18 the day that I lost his dad. His dad was diagnosed with a
19 brain tumor and was gone within a month. Jeremy and I were
20 dealing with the loss of my husband, his father. I don't
21 think I could've made it without Jeremy when all of that
22 happened. A loss that I thought was the worst thing that
23 could ever happen to me. Little did I know what was to
24 come. Now, the only thing that I can do for Jeremy is to
25 make sure that his life is not dismissed as unimportant or

1 less important than Adam Rowell's. He was my everything.
2 He wasn't perfect, but he was a soul that loved life. He
3 was always there for me. If I didn't see him every day we
4 at least talked on the phone. I can't do that anymore. I
5 can't hear his voice or touch his face.

6 Adam's decision to drink and drive and having a .29
7 blood alcohol level set into motion circumstances that we
8 will have to live with. Jeremy does not have that choice.
9 At least Adam gets to live. Adam celebrated Thanksgiving,
10 Christmas, birthdays, and holidays with his family since
11 November 15, 2014. I have spent mine alone, because getting
12 together with extended family was too painful. This was not
13 Adam's first DUI, and if he is not held accountable for his
14 actions it may not be his last. So many young people today
15 think that no matter what they do someone will get them out
16 of it.

17 Jeremy was loved by his family just as Adam is by his.
18 Jeremy was an awesome son, grandson, nephew, cousin, and
19 friend to many people. He had a great sense of humor and a
20 heart of gold, and would do anything he could for anyone.
21 He loved his music, especially country and gospel. His dad
22 taught him to play the guitar and he loved to sing. He was
23 good at it. He practiced each chord that his dad taught him
24 until he had it perfect. He sang in church and loved doing
25 karioke at different places.

1 I wasn't there for Jeremy in his last moments, but I am
2 here today, and I plead for justice in this case. I beg of
3 you not to let his death be a total waste. He was somebody.
4 He was loved. He was needed. He was mine and all that I
5 had left of his father. I know that sending Adam to prison
6 doesn't bring Jeremy back, but not sending Adam to prison
7 for a significant amount of time says Jeremy's life didn't
8 count as much as Adam's. To me, my son is just as
9 important. To our family and what's left it does. To his
10 friends it does. Please send the message to those who
11 choose to drink and drive that there are consequences for
12 their actions. How many lives could be saved if everyone
13 knew that there would be a mandatory number of years to be
14 served for taking the life of another driving under the
15 influence. Sincerely, Rhonda Cockrell, mother of Jeremy
16 Cockrell. There was one other letter I'm just going to hand
17 up.

18 THE COURT: Okay.

19 MS. PARRISH: Judge, are you going to read that first or
20 do you want me to read this one?

21 THE COURT: Oh, you're going to read one? Go ahead.

22 MS. PARRISH: This is from Jeremy's Aunt Joyce. First
23 of all, Judge, I'd like to say that I have two sons myself
24 and I pray I never have to be in the position of either of
25 these families. For my sister, she lost her whole world

1 when her son was killed that night. An accident is just
2 that, an accident, but when you make the decision to drink
3 and drive, no matter how many times you've done it before
4 and you're lucky enough to make it home. Because we all
5 know that you don't get caught every time. You decide to
6 take that chance, not knowing what the outcome might be.
7 It's like playing Russian roulette. Evidently, when you're
8 stopped and charged for drinking and driving if the penalty
9 is not harsh enough you don't see any reason to stop. But
10 when you continue the same habits until the end results is
11 what happened here then you made the wrong decision too many
12 times.

13 As bad as I feel for the family involved here I have to
14 feel worse for my sister. Adam Rowell needs to pay for his
15 very wrong decision and I hope, Judge, that you will give my
16 nephew justice and my sister some peace so that she can move
17 on with her life. Thank you. Joyce.

18 THE COURT: Thank you. This letter that I'm going to
19 read now, not out loud, is from a Brandi Cockrell.

20 (Whereupon, there was a brief pause in the proceeding.)
21 Anything further, Solicitor?

22 MR. BLACK: No, sir.

23 THE COURT: Mr. Garrett and Mr. Henderson, I'll be glad
24 to hear from you and anybody on Mr. Rowell's behalf.

25 MR. GARRETT: Thank you, Your Honor. Judge, as we began

1 this case this has been a horrible, horrible case from the
2 defense and I'm sure for this family. Our condolences have
3 always been for this family. This young lady experienced
4 the loss of her only son. I experienced the same thing so I
5 can't help but grieve with her. There's nothing that any of
6 us can do to fix that hurt. It is there, and it is there
7 for life. For the rest of our lives we'll have that, so I'm
8 not unmindful of where she's coming from.

9 Adam was born September 15, 1988 to his mother and
10 father here in south Greenwood, twenty-eight years old
11 today. He attended Marshall Road Church of God from birth
12 to age 18. His father was a reverend there. His
13 grandfather was a reverend there at the Marshall Road Church
14 of God. I happened to meet his family very early on. His
15 dad and I worked together in a grocery store. I lived in
16 Augusta Fields, right behind where this happened, or right
17 in front of where this happened. So I knew the family and
18 knew them throughout my life. They're good Ninety Six
19 folks. They live in the Ninety Six area and they all grew
20 up together. Adam grew up with Mr. Cockrell and also the
21 other witness that was there.

22 Judge, he never had any problems in school from the
23 time he was a baby he attended Noah's Ark preschool ages
24 three to five right here in Greenwood. He attended
25 Greenwood Christian School grades one through four. He

1 attended Ninety Six Elementary School grade 5. He played
2 the local parks. He played football and baseball and soccer
3 during his elementary school years. He was a Cub Scout
4 during elementary years. He attended Edgewood Middle School
5 here grades six to eight. Played parks and rec football in
6 grades five through seven. He played JV and Varsity
7 football at Ninety Six High School, so he was one of their
8 regulars and they would come out and see him on Friday
9 nights. He played soccer at Ninety Six school his junior
10 and senior years. So all throughout his entire schooling
11 and what not there was never a problem. Never a suspension.
12 Never a bad word. People have told me they've never even
13 heard him say a cuss word.

14 He was always the best kind of student and child. He
15 was named Who's Who of American High School Students in 2002
16 and 2003. He was nominated in '04 and '05. He graduated in
17 '06. He attended Northside Baptist Church from 2006 to
18 2014. That was a new church here in Greenwood where a lot
19 of young people were going and he went to that church. Then
20 he went into the Citadel. He went through four years of the
21 Citadel. He graduated in 2010. He received Gold Star
22 Senior year for maintaining a 3.7 or higher GPA. He was on
23 the President's list at the Citadel. He was awarded the
24 Dean's List twice at the Citadel. Since getting out attends
25 Safe Harbor Worship Center and his pastor is here with us

1 today. Judge, he has worked all of his life. Kind of like
2 his dad and I did at the grocery store, he has worked at
3 Velux, which is one of our local companies here, well liked.
4 Well respected. I talked to his manager. As he was in high
5 school he worked there at Velux and when he was in college,
6 when he was off of college he worked at Velux.

7 When he graduated he graduated with a criminal justice
8 degree in arts and then he went into the training -- police
9 training where he learned how to drive, Your Honor.
10 Obviously not DUI, but he learned how to drive, you know,
11 offensively as opposed to defensively. And I know the jury
12 has found otherwise, but I'm just telling the Court to give
13 the Court some idea where we were going with that. Judge,
14 he's worked all the way through. When he got out he was in
15 the hospital. He worked -- after he left the police station
16 he resigned. After he left there he worked for about a year
17 at Velux as a temporary. They hadn't got him all the way up
18 to being a regular until September. In other words, he had
19 to work as a temp, but in September that year he became full
20 time. Then, of course, this accident happened and he was
21 out three or four months. He was out from mid February --
22 mid '15 through -- excuse me. He got out December 15th. He
23 as in the hospital for a month and got out December 15 and
24 basically was incapacitated until March of that year.
25 Judge, he's horribly medically injured. He's got over a

1 half million dollars of medical bills that he's trying to
2 pay or pay some towards. He had two broken ribs, a broken
3 neck, a broken back, both of his arms were broken, both of
4 his legs were broken, one in two places, he had one foot
5 that was broken, both of his ankles were broken, his
6 collarbone was broken, and he was in the hospital, like I
7 said, for a month. For two of those weeks he didn't -- he
8 was completely comatose. Judge, I will say that -- and it
9 was held against him because he had to kind of piece
10 together what happened that day, but that had something to
11 do with it. The fact that he was completely out of it for
12 two weeks. So he was trying to go back and put this all
13 together, and it's been very difficult for him to put all
14 together what has happened. But from his perspective, what
15 happened is what happened in his mind, and he's clear with
16 that now. He understands what this jury has done. This
17 jury has convicted him. He had a right to a trial by a jury
18 and the jury has spoken, so he understands that. So he
19 stands here, you know, in a situation where he knows in his
20 mind what happened.

21 Judge, we have been unable to find him drinking
22 anything other than what he's testified to, and we have
23 looked diligently to try to find any other evidence that he
24 drank. I can assure this Court, having tried cases as many
25 years as I have, when you've got a case like this and you

1 can substantially find the evidence you need you plead
2 guilty and you take the best deal you can get. So I just
3 hope that the Court, after seeing seven days of trial, will
4 not hold it against him that he tried his case and he asked
5 to jury to make it's decision. Not to hold it against him.

6 Judge, I would hate to wear your robe in this case.

7 What we have here is a young man who, other than these other
8 bouts of alcohol to start with, has had a perfect, perfect
9 background, perfect history. Alcohol -- the jury has found
10 him guilty of it and they based it upon that twenty-
11 something blow -- or blood. 22.9, you know, it is what it
12 is. I mean, so it's a very serious charge, obviously if we
13 were to look at that then he's got a problem with alcohol.
14 That's an addiction. If you take the other side of it, then
15 obviously he's got a problem with alcohol, if one looks at
16 it. So maybe there should have been some type of alcohol
17 training or something like that. But when we go back and we
18 look at his records at work every time he was ever tested
19 they never once found any alcohol in his system. Never
20 found any drugs in his system. I

21 t's just hard for the family to fathom how he could
22 possibly be that. That night he was supposed to be over
23 there meeting his family and the phone was ringing in the
24 vehicle because they were asking him where he was at,
25 because he was late. It's hard to believe he would've came

1 to his family's meeting drunk. Especially with the preacher
2 being there at the family meeting, and his wife, celebrating
3 his dad and his grandmother's birthday. But, again, I'm not
4 questioning what the jury did. The jury has made it's
5 decision, and we live and die by what the jury says.

6 I just ask the Court to fashion a sentence that makes
7 him responsible for his actions, that gives closure to this
8 fine family and respect to the young man that passed, but
9 leave light at the end of the tunnel for this family. Leave
10 light at the end of the tunnel for this young man that he's
11 able, at the end of the day, to be a productive member of
12 society. To be able to look at his family, look at these
13 folks, look at his community, and try to redeem himself.
14 I've seen cases where people after they have come out they
15 spend their lives trying to do the right thing and trying to
16 preach to others about the dangers of driving under the
17 influence.

18 There's some reason that he's here today. That may be
19 his calling. That may be the thing that he's supposed to
20 do. I don't know. I just ask the Court that if you're
21 going to have to give him time, I know you are, consider at
22 least that he's not been a problem in the two years at least
23 he's basically stayed at home, worked, stayed at home. He's
24 got a perfect work record. That at the end of the day let
25 him come out and maybe do some type of home monitoring for a

1 period of time and then another period of time of probation.
2 Judge, you know, if you want to permanently restrict him
3 from driving as a condition, you know, for the loss of this
4 life, you know it would be okay with us if you took his
5 license away for the rest of his life. They do that in some
6 countries. I know they do it in Germany as a penalty.

7 Judge, he was paying his student loans back. He was
8 always on time. He's just been a prodigal son and done all
9 these good things. This just doesn't fit him. So I'd ask
10 you to consider that he can be a productive member of
11 society. He can pay back his bills. He can -- and as I
12 understand it the insurance is doing something, but he's
13 always been of the opinion that I'll do what I can for the
14 family as well. Judge, he's sorry. He's different since
15 this wreck. I knew him as a child. I knew him as he grew
16 up. His affect is different. I don't know how to explain
17 it, but his personal affect is different than it used to be.
18 Solicitor may have taken that as not being empathetic. It's
19 not that at all. His affect is just different since having
20 this wreck. It's hard to explain, but his family knows what
21 I'm talking about. His pastor knows what I'm talking about.
22 So I just ask you to fashion a sentence that gives him a
23 chance to spend some positive time with his family in the
24 future and to redeem himself. Thank you.

25 THE COURT: Thank you, Mr. Garrett. Anybody want to

1 speak on his behalf?

2 I'll need to have you sworn in, sir.

3 DERRICK CUTTER, having first been
4 duly sworn, testified as follows:

5 THE COURT: State your name, sir.

6 MR. CUTTER: My name is Derrick Cutter. I am the pastor
7 at Safe Harbor Worship Center in Columbia, South Carolina.

8 THE COURT: I'll be glad to hear from you reverend.

9 MR. CUTTER: Your Honor, thank you for this opportunity.
10 I've been a pastor at this local church I'm at now for
11 almost 17 years. I've been in ministry almost 30, and I've
12 been asked to do this several times in my ministry in the
13 four churches that I've pastored and I've always declined,
14 because I didn't really know the life of the person that
15 they were asking me to talk about. But this one I do. I've
16 known him most of his life. Had the opportunity to pastor
17 his family since his grandfather retired from the church
18 that he was pastoring and I just want this Court to know
19 that Adam is a very compassionate guy. He's a very loving
20 person. He keeps most of his feelings to himself. I know,
21 because I've been his pastor now for several years, that he
22 would've done none of this in front of his family. He
23 would've done none of this to embarrass them or anything.
24 In my personal experience with him I saw him a little while
25 after the wreck when he was able to talk. Being his

1 spiritual confidant I saw him tore all to pieces. His body
2 broken up. About every bone in his body broken. Adam
3 expressed to me one thing that hurt him most and that was
4 the death of somebody involved in this accident. He was, in
5 my opinion, very remorseful. I've pastored a church a long
6 time and there's nothing like the death of a child. I know
7 that very seriously. But we're asking the Court today,
8 because I believe Adam can be a very good part of the
9 community, for his family. I know he would be a great
10 asset. So we're just asking for you today that you would
11 give him the consideration of being a great part of this
12 community and this family and again, I know as his pastor
13 he's been very remorseful over this. That's what I wanted
14 you to understand today, Judge. Thank you very much.

15 THE COURT: Thank you very much. Mr. Garrett, anything
16 further from your side?

17 MR. GARRETT: That's all.

18 THE COURT: Solicitor, anything in brief response?

19 MR. BLACK: No, sir, Your Honor.

20 THE COURT: I'm going to take about a ten minute break.
21 Everybody be at ease.

22 (Whereupon, there was a short recess.)

23 THE COURT: We're back on the record. Let me just make
24 some observations before I hand down sentencing. I think
25 Solicitor Black correctly stated that there are no winners,

1 and that certainly is the case. Tragedy on both sides.
2 I've said this before that it would be my wish, but it's an
3 impossible wish, but I've said it before that it's my wish
4 in this position to just wave a magic wand and make
5 everything back to where it was. Where there was not a
6 death involved, a serious injury, and the decision to drive
7 while having consumed alcohol. But, of course, we all
8 realize that's not possible.

9 The felony DUI cases that I have been involved in all
10 seem to be similar in this respect. The Defendant typically
11 is a good person, generally does not have a prior record,
12 comes from a good family, they just for some reason fit into
13 that mold. I noticed that I have numerous highway
14 patrolmen. If I were to poll you guys and ladies, probably
15 the felony DUI cases you've been involved in typically
16 involve good people from good families. I don't know why
17 that is, but that just seems to be the unique feature that I
18 see on a routine basis when I have this type of cases.

19 I certainly recognize that during the course of these
20 seven days there was a lot of dispute concerning whether or
21 not Mr. Rowell was under the influence. I recognize that
22 and I appreciate it, but once the jury returned its verdict
23 that, Mr. Rowell, you were guilty of both counts of these
24 felony DUIs then I accept as a matter of fact, one hundred
25 percent, that you were impaired that night.

1 The fact that you do not have a prior record,
2 certainly, is in your favor. The fact that you have pending
3 charges has not been considered by me other than to just
4 wonder why you would put yourself in a situation that at
5 least you had been involved before as far as being around
6 drinking and driving. Your admission to your chief when you
7 were employed as a city police officer. Your admission that
8 you had consumed some alcohol and drove. But the fact that
9 you don't have a prior record certainly is in your favor.
10 But at the end of the day, Mr. Rowell, I have a death that
11 was caused by you. I have a serious injury that was caused
12 by you. I've got a good friend who repeatedly says that we
13 all can choose the sins that we commit, but we can never
14 ever choose the consequences of those sins. That's
15 basically what happened, Mr. Rowell. You chose your sin to
16 drink and drive that night, but you did not have the
17 opportunity to choose the consequences of what happened.

18 Mr. Rowell, the sentences on these two felony DUI
19 charges will run concurrent with each other. I do recognize
20 that the felony DUI involving a death is deemed a violent
21 offense and that is applicable with the statutory mandate as
22 far as how much time you have to serve your sentence. I've
23 certainly factored that in my decision. While you are in
24 the Department of Corrections I want you to participate in
25 the ATU Program. The sentence of the Court, Mr. Rowell,

1 that on the felony DUI involving a death you be committed to
2 the State Department of Corrections for a period of thirteen
3 years and pay a fine of \$10,100, which is a mandatory
4 minimum fine. That will run concurrent with the other
5 sentence of eight years in the Department of Corrections and
6 payment of a mandatory fine of \$5,100.

7 Good luck to you. We'll be in recess.

8 MR. GARRETT: Your Honor, can I ask one thing? Because
9 he is a former police officer, can I ask the Court to give
10 him that security. There is special security for people who
11 are prior police officers for their safety. We would ask
12 that because he is a prior police officer that be taken into
13 consideration in his housing and what not.

14 THE COURT: Let me give that some thought, Mr. Garrett,
15 without telling you right now. I'll let you know that
16 decision.

17 MR. GARRETT: Thank you, Your Honor.

18 (Whereupon, the sentencing hearing concluded at 11:07 a.m.)

19 (END OF REQUESTED TRANSCRIPT OF RECORD.)
20
21
22
23
24
25

1 Certificate of Reporter

2 I, the undersigned, Tara T. Scott, CVR, Official Court
3 Reporter for the Eighth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Greenwood County, South Carolina, on the
9 13th-18th, 20th, and 27th days of February, 2017.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12
13
14
15 Tara T. Scott

16 Tara T. Scott, CVR
17 Circuit Court Reporter
18 March 3, 2018
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood
 STATE VS.
Adam Martyn Rowell

INDICTMENT/CASE#: 15GS24-0535

AKA:
 Race: CAUCASIAN Sex: M Age: 28

A/W#: 2014A2410201428Date of Offense: 11/15/2014DOB: 09-15-1988 SS#: 247-85-8745S.C. Code §: 56-05-2945CDR Code #: 0395Address: 171 Meadowview LaneCity, State, Zip: Greenwood, SCDL#: 100315632 SID#: _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUI / Felony driving under the influence, death results (1 year - 25 years)☒ CONVICTED OF or ☐ PLEADSin violation of § 56-05-2945 (A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Mind Ball 101119

Black, Micah

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 13 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 10,100; provided that upon the service of _____ days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$10,100§ 14-1-206 (Assessments 107.5%) \$10,857.50§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$100§ 56-5-2995 (DUI Assessment) \$12 \$12§ 56-1-286 (DUI Breath Test) \$25 \$25Proviso 61.6 (Public Def/Probation) \$500 \$§ 14-1-212 (Law Enforce. Funding) \$25 \$25§ 14-1-213 (Drug Court Surcharge) \$150 \$§ 50-21-114 (BUI Breath Test Fee) \$50 \$§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$3% to County (if paid in installments) \$636.59TOTAL \$21,856.09Clerk of Court/ Deputy Clerk: Chastity CopelandCourt Reporter: T Scott

SCCA/217 (07/2016)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: ATU

ATTEST A TRUE COPY

Chastity Copeland

CHASTITY COPELAND

CCCP AND GS

GREENWOOD COUNTY

☐ Appointed PD or appointed other counsel
 Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge 2167Judge Code: 2167Sentence Date: 2/27/17

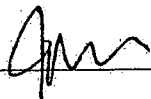
WITNESSES

K. B. Smith
S C Highway Patrol

WARRANT NUMBER

2014A2410201428

True Bill



Foreman of the Grand Jury

Date: 3/27/15

VERDICT



Foreman

ATTEST A TRUE COPY
CHASTITY COPELAND
COCP AND S
GREENWOOD COUNTY
S.C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2015

Indictment # 15GS24- 0535

THE STATE

vs.

Adam Martyn Rowell

INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

CDR: 0395

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR
FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

At a Court of General Sessions, convened on the 27th day of March, 2015, the Grand Jurors of
Greenwood County present upon their oath:

That Adam Martyn Rowell, on or about November 15, 2014, in Greenwood County, who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: that the said defendant drove with reckless disregard for the safety of others; and/or failed to change the course of travel to avoid causing the accident; and/or failed to slow down to avoid causing the accident; and/or failed to keep a proper lookout; and/or failed to maintain his vehicle under proper control; which act and/or acts of neglect proximately caused the death of one Jeremy Cockrell, in violation of Section 56-5-2945 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Mical Black

Assistant Solicitor

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGreenwood
VS.

Adam Martyn Rowell

AKA:

Race: CAUCASIAN Sex: M Age: 28

DOB: 09-15-1988 SS#: 247-85-8745

Address: 171 Meadowview Lane

City, State, Zip: Greenwood, SC

DL#: 100315632 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, great bodily injury results

in violation of § 56-05-2945 (A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *Michal*

10/11/19

Black, Michal

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 5,100; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 15-65-24-535☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100

§ 56-5-2995 (DUI Assessment) \$12

§ 56-1-286 (DUI Breath Test) \$25

Proviso 61.6 (Public Def/Probation) \$500

§ 14-1-212 (Law Enforce. Funding) \$25

§ 14-1-213 (Drug Court Surcharge) \$150

§ 50-21-114 (BUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

\$ 5,100

\$ 5482.50

\$ 100

\$ 100

\$ 12

\$ 25

\$

\$ 25

\$

\$

\$

\$ 325.34

TOTAL

\$11,169.84

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 15GS24-0536

A/W#: 2014A2410201429

Date of Offense: 11/15/2014

S.C. Code § : 56-05-2945

CDR Code #: 0406

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(30 days - 15 years)

in violation of § 56-05-2945 (A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *Michal*

10/11/19

Black, Michal

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 5,100; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 15-65-24-535☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100

§ 56-5-2995 (DUI Assessment) \$12

§ 56-1-286 (DUI Breath Test) \$25

Proviso 61.6 (Public Def/Probation) \$500

§ 14-1-212 (Law Enforce. Funding) \$25

§ 14-1-213 (Drug Court Surcharge) \$150

§ 50-21-114 (BUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

\$ 5,100

\$ 5482.50

\$ 100

\$ 100

\$ 12

\$ 25

\$

\$ 25

\$

\$

\$

\$ 325.34

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

ATTEST: TRUE COPY
Chastity Cope
CHASTITY COPE, JND☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2167

Sentence Date: 2/27/17

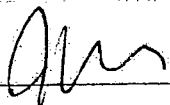
WITNESSES

K. B. Smith
S C Highway Patrol

WARRANT NUMBER

2014A2410201429

True Bill



Foreman of the Grand Jury

Date: 3/27/15

VERDICT

Foreman

ATTEST A TRUE COPY
Christina G. Brown
CLERK OF COURT
COUNTY OF GREENWOOD
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2015

Indictment # 15GS24- 0536

THE STATE

vs.

Adam Martyn Rowell

INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

CDR: 0406

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

At a Court of General Sessions, convened on the 27th day of March, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Adam Martyn Rowell, on or about November 15, 2014, in Greenwood County, who, under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: drove with reckless disregard for the safety of others, and/or failed to change the course of travel to avoid causing the accident, and/or failed to slow down to avoid causing the accident, and/or failed to keep a proper lookout, and/or failed to maintain his vehicle under proper control, which act of neglect proximately caused great bodily injury to another person, Matthew Sanders, in violation of the provisions of Section 56-5-2945 of the South Carolina Code of Laws, 1975, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Michael Thach

Assistant Solicitor

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

WITNESSES

K. B. Smith
S C Highway Patrol

WARRANT NUMBER

2014A2410201430

True Bill

[Signature]
Foreman of the Grand Jury
Date: 3/27/15

VERDICT

Foreman

ATTEST A TRUE COPY
Debra M. Rowell
CLERK OF COURT
SOUTH CAROLINA
GREENWOOD COUNTY
S.C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2015
Indictment # 15GS24- 0537

THE STATE

vs.
Adam Martyn Rowell

INDICTMENT FOR

OPEN CONTAINER OF ALCOHOL
IN MOTOR VEHICLE
§ 61-04-0110

CDR: 0660

Dismissed
Per Court
[Signature]
2/20/17

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

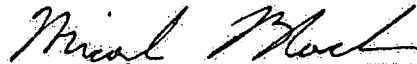
INDICTMENT FOR

OPEN CONTAINER OF ALCOHOL
IN MOTOR VEHICLE
§ 61-04-0110

At a Court of General Sessions, convened on the 27th day of March, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Adam Martyn Rowell, on or about November 15, 2014, in Greenwood County, willfully and unlawfully have in possession, except in the trunk or luggage compartment, beer or wine in an open container in a motor vehicle of any kind while located upon the public highways or highway rights of this State in violation of Section 61-4-110 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor

ATTEST A TRUE COPY
Chastity Coffland
CHASTITY COFFLAND
CCCP AND GS
GREENWOOD COUNTY
S.C.

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)
STATE OF SOUTH CAROLINA)
v.)
ADAM MARTYN ROWELL,)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR NEW TRIAL**

Indictment Nos. 2015-GS-24-0535/0536

17 MAR -7 A9:36

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

**TO: THE HONORABLE DONALD B. HOCKER, PRESIDING CIRCUIT
COURT JUDGE; ASSISTANT SOLICITOR MICAH E. BLACK; and ASSISTANT
SOLICITOR M. WADE DOWTIN:**

YOU WILL PLEASE TAKE NOTICE that the undersigned, on behalf of the Defendant, will move before the Honorable Donald B. Hocker, Presiding Circuit Court Judge, at a place and time to be determined by the Court, and then and there make application to the Court for a new trial pursuant to Code Section 17-23-110 ("Circuit courts may grant new trials.") and SCRCrimP 29(a) (post-trial motions generally) and such other and further relief as the Court deems just, equitable, and proper.

Incorporated herein are the Defendant's pre-trial motions, the Defendant's motions and objections during trial, the Defendant's directed verdict motion after the State's case in chief, the Defendant's directed verdict motion after the Defendant's case in chief, the State's response to the Defendant's directed verdict motions, and the Court's rulings on the Defendant's objections and motions.

The grounds for this motion are as follows:

I. Juror Challenges

The trial court erred in refusing to allow the Defendant to have ten (10) peremptory juror challenges pursuant to Code Section 14-7-1110. This statute reads in pertinent part: "Any person who is arraigned for the crime of murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, or breach of trust when it is punishable as for grand larceny, perjury, or forgery is entitled to peremptory challenges not exceeding ten[.]" The charge of felony DUI with death resulting is a form of murder and/or manslaughter, just with a more specific name, and carries up to twenty-five (25) years in prison. However, defendants charged with crimes that carry no more than ten (10) years potential incarceration, such as grand larceny, are entitled to ten (10) strikes.

II. Photographs of Purported Alcohol Containers

The trial court erred in allowing the State to introduce photographs of purported alcohol containers taken at the scene of the accident, when the State failed to keep as evidence any of these containers and when the State failed to test the liquid contents of these containers. This failure to preserve evidence violated S.C. Department of Public Safety policy. The State's witnesses couldn't identify where at least one (1) of the photographs was taken. The Defendant couldn't cross-examine photographs of these containers.

III. Search Warrant

The trial court erred when it failed to dismiss the Defendant's charges when the chief investigating officer, Trooper Keith Brunson Smith, admitted he gave false sworn testimony to a magistrate about the purported alcohol containers found in the Defendant's vehicle in order to

obtain a search warrant. Trooper Smith also admitted that he gave false sworn testimony about the same subject at the Defendant's preliminary hearing. Trooper Smith admitted at trial there was only one (1) empty Red Stripe container in the vehicle. Trooper Smith's false statements and their impact prejudiced the Defendant.

IV. First Blood Draw - Speculation

The trial court erred by failing to direct a verdict of not guilty regarding the Defendant's first blood draw. Hospital nurse Amanda Baker testified that she couldn't remember if she obtained a blood sample from the Defendant at 8:54 p.m. while the Defendant was in the trauma ward. However, during in camera testimony, Life Flight nurse Angie Waite testified that she saw hospital nurse Baker draw blood from Defendant. During her testimony before the jury, Life Flight nurse Waite's testimony varied slightly in that she "thought" she saw hospital nurse Baker drawing blood from Defendant. (This was after the State's investigator spoke to her while she was under oath. See Paragraph X, *infra*.) Hospital nurse Baker testified medical records show labs were drawn from the Defendant's central line at 9:08 p.m., and it was possible she took the vials from Dr. Bradley M. Snow and labeled them. Medical records do not show that hospital nurse Baker treated the Defendant in the trauma ward, although lab records identify her, through her badge number, as the person who collected the blood at 8:54 p.m. It should be noted that the Defendant's name was not listed on any of the vials which purportedly contained his blood.

Every witness involved in the medical treatment of the Defendant testified his situation was critical and urgent. If blood was drawn from a person at 8:54 p.m. in the trauma ward, that

person, by necessity, would have already been in the trauma ward for at least several minutes. If one subtracts five (5) minutes, thereby making it 8:49 p.m., it is undisputed that the Defendant was in the Life Flight helicopter at 8:49 p.m. Life Flight records indicate that the helicopter carrying the Defendant landed at the hospital's helicopter pad at 8:55 p.m., and the Defendant arrived in the trauma ward bay at 8:59 p.m. Hospital records indicate that the Defendant arrived in the trauma ward at 9:00 p.m., and his vital signs were taken at 9:04 p.m. Hospital records indicate that the surgeon, Dr. Bradley M. Snow, obtained the Defendant's blood for labs through a central line at 9:08 p.m. The Defendant wasn't inside the hospital, much less in the trauma ward, at 8:54 p.m. The jury was allowed to speculate that the first blood draw was obtained from the Defendant.

V. First Blood Draw - Chain of Custody

The trial court erred by failing to suppress the results of the first blood draw because the State failed to establish a sufficient chain of custody. Hospital nurse Amanda Baker testified that she couldn't remember if she obtained a blood sample from the Defendant at 8:54 p.m. while the Defendant was in the trauma ward, and that it's possible she merely labeled the vials after Dr. Snow drew the blood from a central line at 9:08 p.m. Vials from the 8:54 p.m. blood draw arrived at the hospital lab at 9:24 p.m. Nurse Baker didn't know who carried the blood purportedly drawn from the Defendant to the lab. All witnesses testified that blood drawn from a trauma ward patient should have been delivered immediately to the lab.

Lab employee Robert Smith testified that he didn't recall who delivered the blood sample to him. Testimony was that the trauma ward and the lab are on separate floors of the

hospital. However, the State provided no evidence as to the location of this blood sample for a period of thirty (30) minutes, when all testimony was that it was imperative to deliver a blood sample from the trauma ward to the lab in a prompt manner, and it's uncontroverted that the Defendant's medical situation was critical and urgent. Also, from the time the blood sample was drawn in the trauma ward and delivered to the lab, there was contradicting testimony that the blood was contained in one (1) vial, three (3) vials, and four (4) vials.

VI. First Blood Draw - Contamination

The trial court erred by failing to direct a verdict of not guilty regarding the Defendant's first blood draw. The uncontradicted evidence is that the blood drawn from the Defendant during the first blood draw (if in fact this blood actually came from the Defendant) contained 540 cc's of blood units administered by Life Flight crew members. The blood tested at 8:54 p.m. (if in fact it was the Defendant's blood) wasn't the Defendant's blood as it existed prior to the accident.

VII. Second Blood Draw - Contamination and Lack of Reliability

The trial court erred by failing to direct a verdict of not guilty regarding the Defendant's second blood draw, which was obtained after the Defendant's surgery. The Defendant's surgeon, Dr. Bradley M. Snow, testified that fifty-two percent (52%) of the Defendant's blood volume was replaced during surgery. Dr. Snow's calculation does not include any blood products given to the Defendant prior to surgery. The Defendant's expert, Dr. Jimmie L. Valentine, testified that, in total, sixty percent (60%) of the Defendant's blood volume had been replaced by blood products, and fluids constituting one hundred sixty-one and seven-tenths

percent (161.7%) of the Defendant's blood volume had been replaced by the time of the second blood draw.

The SLED blood test results indicated the presence of a toxic level of Benadryl, as well as acetone (systematically named propanone). Acetone is found in diabetics. No testimony indicated the Defendant was diabetic, and no evidence indicated the Defendant took or was administered Benadryl prior to the accident or at the hospital. The results of the first blood draw taken at 8:54 p.m. (assuming that the first blood sample in fact came from the Defendant) didn't indicate the presence of Benadryl or acetone.

The State presented no witness or evidence to establish the reliability of the test results, to a reasonable degree of medical certainty, when the sample was taken after, by state witness Dr. Snow's testimony, at least fifty-two percent (52%) of the Defendant's blood had been replaced, and the results showed Benadryl and acetone, which are inconsistent results given Defendant's medical records. Instead, the court required the Defendant to disprove the reliability of the results through his own expert. Dr. Valentine testified there was no reliable way to confirm that the blood tested by SLED was the Defendant's blood as it existed at the time of the accident. The State did not contradict Dr. Valentine's testimony. Nevertheless, the court found the test results were reliable because Dr. Valentine testified the testing instrument itself was in proper working order.

The trial court erred when it determined that the instrument used by SLED to test the blood was reliable, and ignored the uncontradicted evidence that the test result was unreliable because blood tested in the SLED instrument was not reliably associated with the Defendant's

blood as it existed at the time of the accident. A properly working instrument alone is not sufficient to create a reliable test result if the sample tested is flawed or contaminated.

VIII. Both Blood Draws -- Lack of Scientific Reliability

The Defendant's expert, Dr. Jimmie L Valentine, testified that no scientific test, within a reasonable degree of medical certainty, is available to determine the amount of alcohol and drugs in the Defendant's blood versus the amount of alcohol and drugs in the blood that was transfused into the Defendant's body, or to what extent new blood transfused into the Defendant's body would reduce the amount of alcohol and drugs (if any) already in the Defendant's blood. By the Court allowing this evidence, the jury could only speculate as to the amount of the alcohol and drugs in the first blood sample (which may not have been drawn from the Defendant anyway) and in the second blood sample, which belonged to the Defendant and which the Defendant would be legally responsible for.

Furthermore, the State presented no evidence of either blood draw's reliability to a reasonable degree of medical certainty.

IX. Burden Shifting

The State presented no evidence to support the reliability of the second blood draw obtained from the Defendant. None of the State's listed witnesses was qualified to testify about the reliability. Instead, the Defendant had no choice but to present the in camera testimony of Dr. Jimmie L. Valentine about the unreliability of the test results associated with the second blood draw. Once the Court ruled that the test results were admissible, the jury was allowed to hear this evidence over the Defendant's objection.

X. Mistrial - Prosecutorial Misconduct

The trial court erred when it failed to grant the Defendant a mistrial when it was learned that the State's chief investigator, Chris Wilkie, purposefully and intentionally talked to at least two (2) witnesses (hospital nurse Amanda Baker and hospital lab employee Robert Smith) about their testimony while both of these witnesses were under oath and supposedly sequestered. Ms. Baker's and Mr. Wilkie's testimony changed after they spoke with Mr. Wilkie.

XI. Inference Charge

The trial court erred when it charged the inference contained in Code Section 56-5-2950 to the jury regarding the test results from the second blood draw. The court was correct in not charging an inference level regarding the test results from the first blood draw, because such test was not taken pursuant to the implied consent statute, but was instead taken for medical purposes. Moreover, the second blood draw was not taken pursuant to the implied consent statute. The State took implied consent out of the equation when it obtained a search warrant to draw blood from the Defendant.

Because there were two (2) blood draws, the Defendant was prejudiced and the jury was confused when the court told the jury that it could make a statutory inference pursuant to Code Section 56-5-2950 on one blood draw but not make an inference on the other blood draw. The jury was left to speculate about why it couldn't make an inference on the first blood draw versus being able to make an inference on the second blood draw, when both blood draws exceeded 0.08%. This inference charge was also a charge on the facts.

Even though the second blood draw was not an implied consent test, there's a reason why the Legislature placed time limits in Code Section 56-5-2950 for the State to obtain blood samples from a defendant. The second blood sample was drawn from the Defendant about 5.5 hours after the accident. Because of the length of time between the accident and the second blood draw, the Defendant's blood as it existed at the time of the accident was contaminated because of the blood and fluids transfused into the Defendant's body prior to and during surgery.

XII. Chain of Custody Charge

The trial court erred when it failed to give the jury a chain of custody charge as requested by the Defendant.

XIII. Necessity Charge

The trial court erred when it failed to charge the jury with the defense of necessity. The State's theory of the case was that the Defendant was in the decedent's lane of traffic at the time of the accident. The Defendant admitted this. Regardless of the place of impact, the only independent witness to the accident, Justin Lee Pennington, testified that he saw the decedent's vehicle cross into the Defendant's lane of traffic. The Defendant testified that he drove into the decedent's lane of traffic because the decedent was in the Defendant's lane. In the light most favorable to the Defendant, the Defendant's unlawful conduct of driving in the wrong lane of traffic was necessitated by the decedent's unlawful conduct of driving in the wrong lane of traffic.

XIV. State's Reply Closing Argument - Conspiracy

The trial court erred by not allowing the Defendant a sur-rebuttal to the State's reply argument. In its reply argument, the State argued that the Defendant blamed this prosecution on a grand conspiracy to frame him. The Defendant argued no such thing. The Defendant argued grand incompetence by the State during its investigation (such as failures to properly document evidence and failures to establish the reliability of the blood test results), not a grand conspiracy to frame the Defendant. The State admitted to misleading a magistrate to get a search warrant, but the Defendant made no claim that the lying chief investigative officer and the medical personnel who treated the Defendant conspired in any way at all against the Defendant. In fact, multiple medical personnel testified that they didn't smell any alcohol on the Defendant, or either didn't testify one way or the other about smelling alcohol on the Defendant, including an EMS worker, nurse Waites, nurser Baker, and Dr. Snow.

XV. Juror #164

After trial, the Defendant learned that juror #164, Anxavier Waldrup, who was seated on the jury, had pending felony charges for possession with intent to distribute marijuana and unlawful neglect of a child, and a pending misdemeanor charge for purchasing a controlled substance within proximity of a school. These pending charges weren't listed on the Public Index for Greenwood County on secourts.org at the time of jury selection. The State is held to know if it has pending charges against a potential juror, even if the Defendant and/or the public doesn't know.

The trial court asked the jury panel, "Any member of the jury panel or immediate family member or friend ever been arrested or charged with a criminal offense by local, federal, or state law enforcement agency?" Juror #164 failed to respond. The Defendant would not have seated this juror, because the decedent and his passenger in fact had marijuana in their systems at the time of the accident, and the decedent's passenger admitted to smoking marijuana with the decedent multiple times prior to the accident. Furthermore, the Defendant wouldn't have run the risk of this juror believing that he could help his own cause with the solicitor's office by convicting the Defendant.

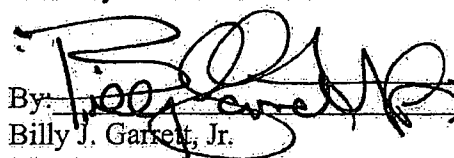
XVI. Combination of Errors

Due to the combination of errors that prejudiced the Defendant's defense as set forth above, the Defendant is entitled to a new trial.

WHEREFORE, the Defendant prays for a new trial.

THE GARRETT LAW FIRM, P.C.

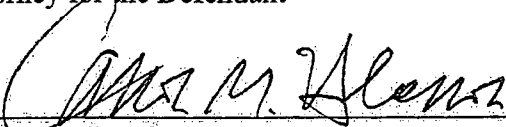
Attorney for the Defendant

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THE HENDERSON LAW FIRM, P.C.

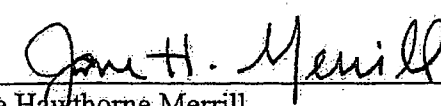
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HAWTHORNE MERRILL LAW, LLC

Attorney for the Defendant

By: 

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Greenwood, South Carolina

March 7, 2017

COPY

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

17 MAR -7 AM 36

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

STATE OF SOUTH CAROLINA)

v.)

ADAM MARTYN ROWELL,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

EIGHTH JUDICIAL CIRCUIT

CERTIFICATE OF DELIVERY

Indictment No(s). 2015-GS-24-0535/0536

The undersigned does hereby certify that on the 7th day of March, 2017, he served the below-referenced documents, by mailing via first class regular United States mail in Greenwood, South Carolina, and/or hand delivering the same in Greenwood, South Carolina, to the person(s) listed below at the address(es) listed below:

FIRST-CLASS UNITED STATES MAIL

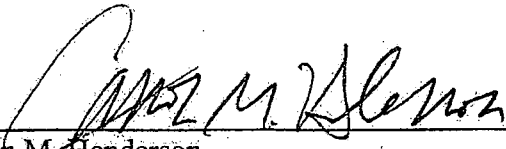
Hon. Donald B. Hocker
Circuit Court Judge
P.O. Box 972
Laurens, S.C. 29360

HAND DELIVERED VIA CLERK'S BOX

Micah E. Black, Esquire
M. Wade Downtin, Esquire
Eighth Circuit Solicitor's Office
P.O. Box 516
Greenwood, S.C. 29648-0516

1. Defendant's Notice of Motion and Motion for New Trial
2. Certificate of Delivery

THE HENDERSON LAW FIRM, P.C.
Attorney for the Defendant

By: 
Carson M. Henderson
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Greenwood, S.C. 29646
Phone: (864) (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina

March 7, 2017

17 MAR 29 PM 3:39

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENWOOD	)	EIGHTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA	)	SUPPLEMENT #1 TO DEFENDANT'S
	)	MOTION FOR NEW TRIAL
v.	)	
	)	
ADAM MARTYN ROWELL,	)	Indictment Nos. 2015-GS-24-0535/0536
	)	
Defendant.	)	
	)	

TO: THE HONORABLE DONALD B. HOCKER, PRESIDING CIRCUIT COURT JUDGE; ASSISTANT SOLICITOR MICAH E. BLACK; and ASSISTANT SOLICITOR M. WADE DOWTIN:

I. Juror #164

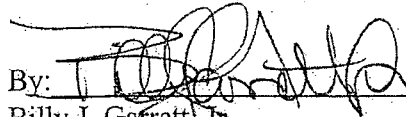
Jury #164, Anxavioar Jemorris Waldrup, was discussed in the Defendant's initial Notice of Motion and Motion for New Trial. The Defendant has learned post-trial that, upon information and belief, Mr. Waldrup previously served as a confidential informant for the Greenwood Police Department. The Defendant worked as a police officer for the Greenwood Police Department prior to the events which led to his recent conviction.

The Defendant has served a Subpoena in a Criminal Case on the Greenwood Police Department and the Greenwood County Sheriff's Office for any confidential informant files maintained on Mr. Waldrup. See EXHIBIT A attached. The Defendant asks the Court to require the Eighth Circuit Solicitor's Office to make a good faith search to determine whether Mr. Waldrup has ever served as a confidential informant for any law enforcement agency in the Eighth Judicial Circuit.

WHEREFORE, the Defendant prays for a new trial.

THE GARRETT LAW FIRM, P.C.

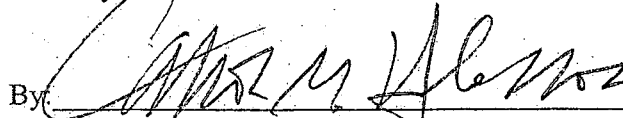
Attorney for the Defendant

By: 

Billy J. Garrett, Jr.
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Phone: (864) 229-8000
Fax: (864) 229-8001

THE HENDERSON LAW FIRM, P.C.

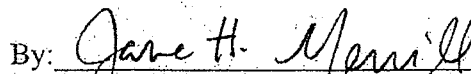
Attorney for the Defendant

By: 

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Fax: (864) 229-8001

HAWTHORNE MERRILL LAW, LLC

Attorney for the Defendant

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Fax: (800) 547-6540

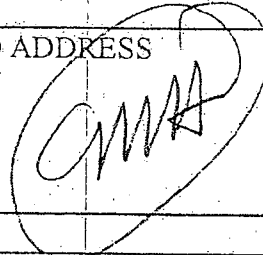
Greenwood, South Carolina

March 29, 2017

EXHIBIT A

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT	COUNTY GREENWOOD
STATE OF SOUTH CAROLINA V. ADAM MARTYN ROWELL	CASE NO: 2014A2410201428
	SUBPOENA FOR ☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)
TO: GREENWOOD POLICE DEPARTMENT ATTENTION RECORDS CUSTODIAN	
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.	
PLACE THE HENDERSON LAW FIRM, P.C. 109-B OAK AVENUE GREENWOOD, S.C. 29646	COURTROOM DATE AND TIME FRIDAY, APRIL 7, 2017, AT NOON
☒ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).	
LIST DOCUMENT(S) OR OBJECT(S) UNREDACTED COPIES OF ALL DOCUMENTS CONTAINED IN THE CONFIDENTIAL INFORMANT FILE FOR FOR ANXAVIAR JEMORRIS WALDRUP (BLACK MALE; DATE OF BIRTH 10/30/93; SSN 248-93-9610), INCLUDING BUT NOT LIMITED TO: 1. THE NAMES OF ALL PEOPLE WHO HAVE BEEN INVESTIGATED AND/OR ARRESTED BASED UPON INFORMATION PROVIDED BY MR. WALDRUP IN HAS CAPACITY AS A C.I. FOR THE GREENWOOD POLICE DEPARTMENT, AND UNREDACTED COPIES OF THE COMPLETE CASE FILES IN THESE MATTERS. 2. UNREDACTED COPIES OF ALL DOCUMENTS SHOWING HOW MUCH EXPENSE MONEY WAS PAID TO MR. WALDRUP WHILE SERVING AS A C.I. FOR THE GREENWOOD POLICE DEPARTMENT. 3. UNREDACTED COPIES OF THE RESULTS OF ALL DRUG SCREEN URINALYSIS, STRESS ANALYSIS, POLYGRAPH, AND/OR OTHER TESTS ADMINISTERED TO MR. WALDRUP WHILE SERVING AS A C.I. FOR THE GREENWOOD POLICE DEPARTMENT. 4. UNREDACTED COPIES OF ALL TELEPHONE CALLS INVOLVING MR. WALDRUP RECORDED BY THE GREENWOOD POLICE DEPARTMENT (OR ANY OTHER LAW ENFORCEMENT AGENCY) WHILE MR. WALDRUP WAS SERVING AS A C.I. FOR THE GREENWOOD POLICE DEPARTMENT.	

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		ATTORNEY'S TRUE COPY CHASTITY COPELAND CLERK OF COURT S.C.C.P. AND GREENWOOD COUNTY S.C.
CLERK OF COURT	Chastity Copeland DATE MONDAY, MARCH 27, 2017	
(BY) DEPUTY CLERK	Amb. O'Shield THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: ☐ SOLICITOR ☒ DEFENDANT	ATTORNEY'S NAME AND ADDRESS CARSON M. HENDERSON 109-B OAK AVENUE GREENWOOD, S.C. 29646 864-229-8000 

COPY

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT	COUNTY GREENWOOD
STATE OF SOUTH CAROLINA V. ADAM MARTYN ROWELL	CASE NO. 2014A2410201428
	SUBPOENA FOR ☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)
TO: GREENWOOD COUNTY SHERIFF'S OFFICE ATTENTION RECORDS CUSTODIAN	
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.	
PLACE THE HENDERSON LAW FIRM, P.C. 109-B OAK AVENUE GREENWOOD, S.C. 29646	COURTROOM
	DATE AND TIME FRIDAY, APRIL 7, 2017, AT NOON
☒ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).	
LIST DOCUMENT(S) OR OBJECT(S)	
UNREDACTED COPIES OF ALL DOCUMENTS CONTAINED IN THE CONFIDENTIAL INFORMANT FILE FOR FOR ANXAVIAR JEMORRIS WALDRUP (BLACK MALE; DATE OF BIRTH 10/30/93; SSN 248-93-9610), INCLUDING BUT NOT LIMITED TO: 1. THE NAMES OF ALL PEOPLE WHO HAVE BEEN INVESTIGATED AND/OR ARRESTED BASED UPON INFORMATION PROVIDED BY MR. WALDRUP IN HAS CAPACITY AS A C.I. FOR THE GREENWOOD COUNTY SHERIFF'S OFFICE, AND UNREDACTED COPIES OF THE COMPLETE CASE FILES IN THESE MATTERS. 2. UNREDACTED COPIES OF ALL DOCUMENTS SHOWING HOW MUCH EXPENSE MONEY WAS PAID TO MR. WALDRUP WHILE SERVING AS A C.I. FOR THE GREENWOOD COUNTY SHERIFF'S OFFICE. 3. UNREDACTED COPIES OF THE RESULTS OF ALL DRUG SCREEN URINALYSIS, STRESS ANALYSIS, POLYGRAPH, AND/OR OTHER TESTS ADMINISTERED TO MR. WALDRUP WHILE SERVING AS A C.I. FOR THE GREENWOOD COUNTY SHERIFF'S OFFICE. 4. UNREDACTED COPIES OF ALL TELEPHONE CALLS INVOLVING MR. WALDRUP RECORDED BY THE GREENWOOD COUNTY SHERIFF'S OFFICE (OR ANY OTHER LAW ENFORCEMENT AGENCY) WHILE MR. WALDRUP WAS SERVING AS A C.I. FOR THE GREENWOOD COUNTY SHERIFF'S OFFICE.	

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK OF COURT

Christy Copeland

DATE

MONDAY, MARCH

(BY) DEPUTY CLERK

Amber O'Neil

27, 2017

THIS SUBPOENA IS ISSUED UPON
APPLICATION OF THE:

☐ SOLICITOR

☒ DEFENDANT

ATTORNEY'S NAME AND ADDRESS

CARSON M. HENDERSON

109-B OAK AVENUE

GREENWOOD, S.C. 29646

864-229-8000

CMH

TEST A TRUE COPY
CHASTITY COPELAND
CLERK OF COURT
GREENWOOD COUNTY
S.C.

COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD)

EIGHTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

v.)

CERTIFICATE OF DELIVERY

ADAM MARTYN ROWELL,)

Indictment No(s). 2015-GS-24-0535/0536

Defendant.)
_____)

17 MAR 29 P 3:27

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

The undersigned does hereby certify that on the 29th day of March, 2017, he served the below-referenced documents, by mailing via first class regular United States mail in Greenwood, South Carolina, and/or hand delivering the same in Greenwood, South Carolina, to the person(s) listed below at the address(es) listed below:

FIRST-CLASS UNITED STATES MAIL

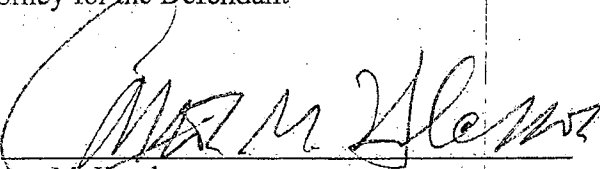
Hon. Donald B. Hocker
Circuit Court Judge
P.O. Box 972
Laurens, S.C. 29360

HAND DELIVERED VIA CLERK'S BOX

Micah E. Black, Esquire
M. Wade Downtin, Esquire
Eighth Circuit Solicitor's Office
P.O. Box 516
Greenwood, S.C. 29648-0516

1. Supplement #1 to Defendant's Motion for New Trial
2. Certificate of Delivery

THE HENDERSON LAW FIRM, P.C.
Attorney for the Defendant

By: 

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Phone: (864) (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina

March 29, 2017

State of South Carolina) In the Court of General Sessions
County of Greenwood) Eighth Judicial Circuit
2015-GS-24-0535
2015-GS-24-0536

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Adam Martyn Rowell,)
Defendant.)

November 27, 2017
Laurens, South Carolina

B E F O R E:

The Honorable Donald B. Hocker, Judge

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

Micah E. Black, Assistant Solicitor
M. Wade Downtin, Assistant Solicitor
Attorney for Plaintiff

Carson M. Henderson, Esquire
Billy J. Garrett, Jr., Esquire
Jane H. Merrill, Esquire
C. Rauch Wise, Esquire
Attorney for Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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I N D E X

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Proceedings	4
Certificate Page	46

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>

D-1	Time Line	4	

D-2	Medical Records	4	

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 2:26 p.m.)

(Whereupon, Defendant's Exhibits 1 and 2 were premarked for identification before the commencement of the proceeding.)

THE COURT: All right. We're on the record this afternoon. This in the *State of South Carolina v. Adam Rowell* matter. It's a Greenwood County case, motion -- or, I guess, a motion and then a supplemental motion for new trial having previously been -- been filed by the defense. And -- all right. Who's going to argue for the defendant?

MR. HENDERSON: I will, Your Honor.

THE COURT: Okay. And then, who's going to argue for the state?

MR. BLACK: Probably me, Your Honor.

THE COURT: Okay. All right. What -- what I want to do -- and I've -- I've gone through -- prior to today, I've gone through your motion and your supplemental motion. I've gone back through all my trial notes. I think, basically, there are maybe two new issues: the juror issue and then -- and I'm just going to refer to it as the "Greenville Hospital" issue. Everything else is basically what was raised during the course of the trial. Is that correct, Mr. Henderson?

MR. HENDERSON: That is correct, Your Honor.

1 THE COURT: Okay.

2 MR. HENDERSON: We may have another issue that we just
3 want to call the Court's attention ---

4 THE COURT: Okay.

5 MR. HENDERSON: --- to.

6 THE COURT: What I'd like to do is I -- I don't really
7 necessarily want to plow new ground -- I mean, old ground,
8 as it relates to the issues raised during the trial.
9 Certainly, I mean, you -- you can -- you can touch on them.
10 But try to keep it in a, you know -- a -- a summary
11 fashion.

12 And then, on these -- the new issues, then I'll -- you
13 know, I'll hear from you on -- on -- on those. But I just
14 -- I don't -- I don't want to spend a whole lot of time on
15 the issues that we had already thoroughly discussed during
16 those seven days of -- of -- of trial. So with -- with
17 that said, I'll -- I'll turn it over to you, Mr. Henderson.

18 MR. HENDERSON: Thank you, Your Honor. And -- and
19 again, if something is not addressed here today, by no
20 means are we abandoning ---

21 THE COURT: Sure.

22 MR. HENDERSON: --- that argument. We -- we just want
23 to make that clear for ---

24 THE COURT: Certainly.

25 MR. HENDERSON: --- the record. Your Honor, prior to

1 you coming in here, I handed up two documents to madam
2 court reporter to be marked. The first one would be a -- a
3 document, three pages, titled "State v. Rowell Time Chart"
4 that I handed up to His Honor. And also, what's been
5 marked as Defense No. 2, it's going to be 99 pages of
6 medical records.

7 And these are the records from the Greenville Hospital
8 System that Your Honor was so helpful in us getting
9 posttrial. And again, they have been thoroughly redacted,
10 so we have no idea what this person's name or any other
11 identifying information is.

12 And we're going to have a third document. I'm waiting
13 for it to be e-mailed to me. And it's going to be a letter
14 dated today from our expert, Dr. Jimmy Valentine. We'd
15 just like to be able to supplement the record with it. I'm
16 having trouble getting on the Internet here. And I'm --
17 I'm ---

18 THE COURT: Okay.

19 MR. HENDERSON: --- otherwise, I would read the letter
20 into the record and provide it to His Honor. But I can't
21 get on for ---

22 THE COURT: That's fine.

23 MR. HENDERSON: --- whatever reason.

24 Your Honor, I'll start with the Greenville Hospital
25 System records, because -- and -- and again, we're very

1 thankful for you and -- and your assistance in helping us
2 get these records -- and again, posttrial before we ever
3 realized this was an issue. Now, looking back on it, some
4 things that were testified to at trial, kind of make some
5 sense now, now that we have these medical records from this
6 unidentified person.

7 And from talking to the hospital's counsel, Your
8 Honor, you know -- again, he can't go into great HIPAA-
9 related details -- but he told us that -- in some e-mail
10 that this is -- this patient is a white male in his 20s.
11 He did tell us that. And again, that's very similar to
12 Adam, white male in his 20s, when all this was going --
13 when all this was occurring on November the 15th of 2014.

14 Your Honor, I want to look at this flow chart, this
15 time chart that we made. And -- and -- you -- and you'll
16 see at the bottom right, I had made one addition. I
17 crossed out the number 92 and -- and put in the number 50.
18 What that is, those are pages.

19 So I know we've plowed a lot of ground on Adam's side
20 of the equation. I didn't put page of records. But on
21 this other patient's records, I did put the page numbers.
22 And again, I think that'd just be easier for the Court to
23 review or any reviewing court to review.

24 And I'm going to -- and -- and again, all this ties
25 back in to so many of the arguments that we raised at trial

1 and raised in the written motions and now have been further
2 confirmed, we think, by the production of these records by
3 this unnamed person.

4 THE COURT: Let me just stop you just a second. I
5 know that the general thinking on -- on your side of the --
6 the room was that -- was that this other person was -- was
7 in the same trauma area as -- as the defendant and that,
8 somehow or another, blood samples, blood specimens, got
9 switched. In other words, they -- they took John Doe's
10 blood and labeled it Adam Rowell. I think that was --
11 that's been kind of the general line of thought, correct?

12 MR. HENDERSON: Your Honor, I think that is a -- a
13 substantial possibility ---

14 THE COURT: Right.

15 MR. HENDERSON: --- absolutely.

16 THE COURT: All right. Can you point out in these
17 records where that would be supportive of you -- your --
18 your line of thinking.

19 MR. HENDERSON: Absolutely. I'll -- I'll just cut
20 right there. Page 55, Your Honor.

21 THE COURT: Okay.

22 MR. HENDERSON: All right. You recall that during the
23 trial, that the nurse there at the Greenville Hospital
24 says, "Hey, everybody that comes into the hospital, before
25 we draw blood, before we do anything, we assign them a

1 number. We assign them -- you know, put on bracelets. We
2 do all this is a security precaution," and understandable
3 why they would do that.

4 And I think that was the testimony. Now, if quoting
5 anything wrong -- but -- but, you know, all of us have put
6 our minds together here at defense table, and that's our
7 recollection of the testimony: that we do that immediately
8 when somebody comes in the hospital.

9 And you notice, going back and looking at Mr. Rowell's
10 records, there's nothing in his medical records that talks
11 about when he got an armband or when his blood sample was
12 labeled, anything along those lines. And -- and again, it
13 wasn't there, so we weren't missing it.

14 But lo and behold, we get this other patient's medical
15 records. And if you look at page 55, at about halfway down
16 here on November 15th of '14 at 2258, or 10:58 p.m., this
17 other patient, at that time his specimen is only being
18 labeled; his armband is getting labeled.

19 He's not getting identified until 10:55. And why is
20 that important? His blood was drawn at 9:05, Your Honor,
21 an hour and 50 minutes after the fact, before they ever put
22 an identification with this other patient.

23 And again, this lady from the hospital, this nurse
24 from the hospital, testified to say, "Hey, when somebody
25 comes in here, immediately we do this, before we ever start

1 drawing blood. And again, it -- it's -- it's for -- I -- I
2 say the word "security." It's not really security, but you
3 understand what I'm talking about, because you want to make
4 sure that the proper samples go with the right people.

5 So -- so again, we're seeing in this other guy's
6 records that they marked when he was finally armbanded and
7 when his samples were labeled. There are no corresponding
8 records like that in Mr. Rowell's records at all. And I --
9 I -- I think I've pored over these medical records, and Mr.
10 Garrett has, and Ms. Merrill has. Such does not exist.

11 And -- and again, we were -- we didn't know to look
12 for something that wasn't there. And now that we're seeing
13 these other records, it -- it -- it's made a big
14 difference.

15 And -- and -- and something else I want to call the
16 Court's attention to: If -- if you look in Mr. Rowell's
17 records, the records were greatly detailed about when the
18 sample that purportedly came from Mr. Rowell made it to the
19 hospital lab to be tested. And -- and again, it -- that
20 was at 9:24 p.m., is when Mr. Rowell's sample, or what was
21 purported to be his sample, arrived at the lab to be
22 tested.

23 But we're looking at these other -- this other
24 patient's records. And again, the lawyer that was real
25 gracious, he told us he was sending us the complete file.

1 I have no reason to doubt that he didn't send us the
2 complete file, Your Honor. I don't think anybody has a
3 reason to doubt that. But if you look through this other
4 patient's file, there is no evidence that a sample,
5 allegedly taken from this other patient, ever got to a lab.

6 All we're seeing is that a sample got drawn. And now
7 we're seeing some results. And again, we don't know -- we
8 know what time the -- the -- the sample was taken. Well, I
9 say -- what the records indicate, that they were taken at
10 9:05 p.m. from this other gentleman. And then, all of a
11 sudden, we're seeing some records indicating an alcohol
12 result. But there's no evidence about where it went to,
13 that sample went to or where -- or whether that sample ever
14 made it to the lab. Have no idea.

15 And -- and -- and again -- and -- and going back to
16 the time chart, you know, that's one reason I -- I thought
17 it was real helpful, at least to me, to kind of do side by
18 side, you know, just walk down minute by minute what is
19 going on. I mean, we know that Dr. Snow was involved in
20 both of these patients.

21 And then, if you're looking at this other patient,
22 they're talking about he arrived at 8:53 p.m. You can see
23 that on the right-hand column. And they're talking about
24 -- and -- and going down the right-hand column, this other
25 patient, they -- they greeted him at 8:56.

1 And then, you get down to nine o'clock, they're
2 talking about the patient arriving in the hospital. The
3 EMS records talk about the patient arrived at the hospital
4 at nine o'clock. You know, he was placed -- and -- and
5 they actually ordered, it looks like, alcohol plasma
6 toxicology studies at nine o'clock.

7 So again, you've got at least a seven-minute window of
8 when this -- this other patient arrived at the hospital.
9 And again, the -- these aren't our numbers. We're just
10 going through and compiling the numbers from the hospital
11 records.

12 At 9:02 Dr. Snow requested this other patient's -- you
13 know, that they take a blood draw from him. And the blood
14 draw that they took from this other patient, Your Honor,
15 was in the arm. They actually tried it twice, it looks
16 like, one in the left wrist and -- and -- and one in the
17 left A.C. And it's my understanding that stands for
18 antecubital, a-n-t-e-c-u-b-i-t-a-l.

19 Actually, they took two draws from this other guy.
20 And again, they're using I.V.s. They're actually sticking
21 into him. And again, if they stick into somebody, that
22 means they're using alcohol preps, all the stuff that would
23 not be used in the central line that was entered into Adam.

24 And again, Your Honor, when -- why we think that's
25 important, you know, one of the nurses was adamant, you

1 know, under her testimony at first that Mr. Rowell -- that
2 we -- I -- that that nurse watched him have blood drawn
3 from his left arm.

4 THE COURT: Let me stop you just ---

5 MR. HENDERSON: Yeah.

6 THE COURT: --- another minute, Mr. Henderson. What
7 proof do you have that -- and I'm going to refer to him as
8 "John Doe" ---

9 MR. HENDERSON: Right.

10 THE COURT: --- that John Doe and Adam Rowell were
11 right next to each other or at least in close proximity to
12 each other in the trauma unit to where it would make it,
13 not likely or more likely, but lend some credence to your
14 argument that there may have been some switching, as
15 opposed to Adam Rowell being in that corner of the trauma
16 unit -- and I don't know what size this room is or area is
17 ---

18 MR. HENDERSON: Right.

19 THE COURT: --- and John Doe being way over here to
20 where maybe it would make it less likely that there was
21 some mixup? What -- what proof do we have that they were
22 right next to each other or in very close proximity?

23 MR. HENDERSON: Your Honor, just the fact that they
24 were both in the trauma ward ---

25 THE COURT: Right.

1 MR. HENDERSON: --- at the same time. And -- and --
2 and go to any of these hospitals. Trauma wards are not
3 humongous places.

4 THE COURT: Right.

5 MR. HENDERSON: I mean, for obvious reasons, I mean,
6 we -- we -- we're glad they're there when there's trauma.
7 But thank goodness, there's not a lot of trauma going on at
8 any given ---

9 THE COURT: But we don't ---

10 MR. HENDERSON: --- time.

11 THE COURT: --- have -- we don't have proof of the
12 size. I mean ---

13 MR. HENDERSON: Right. We -- we -- we haven't scaled
14 ---

15 THE COURT: We -- we ---

16 MR. HENDERSON: --- it off ---

17 THE COURT: --- don't know if it's a -- you know, a --
18 a small area, large area, or where the -- the two gentlemen
19 were -- were located. We just don't have any evidence to
20 that.

21 MR. HENDERSON: We -- we -- we know that ---

22 MR. BLACK: Judge, I'll -- I'll jump in, if you don't
23 mind, just so that it's clear for the record. According to
24 the records from the events category on Rowell's chart, he
25 was in Trauma Bay 1. And I guess we'll call him "John

1 Doe." He was in Trauma Bay 2.

2 And I guess, just from my understanding, they're --
3 they're two different areas. They're -- I guess they're
4 near each other. They're in the E.R. there in the trauma
5 bay. But one's over here, and the other one's over here.

6 THE COURT: Okay. All right. Okay.

7 (Whereupon, Mr. Henderson and Mr. Garrett conferred.)

8 MR. HENDERSON: And -- and -- and -- and, Your Honor,
9 again, Dr. Snow was involved in both of these patients. We
10 know so they're close. I mean, they're -- they're
11 numerically next to one another. Now, physically, you
12 know, obviously, there's going to be some space.

13 But it's my understanding, from listening to the
14 testimony at trial, that there was a charge nurse up there
15 supervising all of this: you know, calling out names or
16 calling out numbers or times. So when -- it should be
17 small enough and close enough that there was one person
18 that could account for all of this activity that could
19 observe everything.

20 And -- and -- and -- and, Your Honor, you know, I
21 think that's kind of where we stand on these new records.
22 You know, Dr. Valentine, he's looked at these records.
23 He's written a letter. And like I said, I just can't
24 access it ---

25 THE COURT: That's fine.

1 MR. HENDERSON: --- right now. But -- but I think I
2 have summarized the same issues ---

3 THE COURT: Okay.

4 MR. HENDERSON: --- that he is going to address in the
5 letter, except he can just offer it from a professional
6 opinion. And then, we're just offering it as mere lawyer's
7 ---

8 THE COURT: Sure.

9 MR. HENDERSON: --- argument.

10 THE COURT: Sure.

11 MR. HENDERSON: But -- if I may have one minute as it
12 relates to this particular ---

13 THE COURT: Sure.

14 MR. HENDERSON: --- the Greenville ---

15 THE COURT: Take your time.

16 MR. HENDERSON: --- hospital.

17 THE COURT: Take your time.

18 (Off the record briefly.)

19 MR. HENDERSON: Okay. And -- and -- and, Your Honor,
20 what the letter would say is -- Dr. Valentine's letter --
21 and again, some of the stuff that I issued -- that -- that
22 I just discussed, that there is no evidence or times of
23 when this other gentleman's draw ever got to the lab -- I
24 think that's one of the key things -- and that the timing
25 here are just eerily running parallel.

1 THE COURT: Right.

2 MR. HENDERSON: I mean, just so -- and -- and -- and
3 again, you've got two gentlemen that -- you know,
4 approximately the same age, approximately the same race --
5 you know, same gender.

6 THE COURT: Okay. All right. Let me ask you this,
7 Mr. Henderson. And we've kind of ---

8 MR. HENDERSON: Right.

9 THE COURT: --- talked about this a little bit when we
10 were in Abbeville. It's my understanding that you and Mr.
11 Garrett and Ms. Merrill -- of course, Mr. Wise wasn't
12 involved at the time -- didn't find out about John Doe
13 until after the trial, correct?

14 MR. HENDERSON: Absolutely.

15 THE COURT: And -- and that information came from Mr.
16 Rowell's some family members. And they indicated -- you
17 correct me if I'm not stating what you've already told me
18 -- that they remember being in the emergency room and that
19 this John Doe's family was in there and there were some
20 discussions about, "Well, you know, we got Adam Rowell, we
21 got John Doe, and they're back there in the trauma unit
22 together."

23 MR. HENDERSON: Right. Right. And it just kind of
24 came in passing in conversation ---

25 THE COURT: Right.

1 MR. HENDERSON: --- after the verdict ---

2 THE COURT: Right.

3 MR. HENDERSON: --- Your Honor.

4 THE COURT: Okay. All right. So how -- how do you
5 get over the -- the -- let -- let's say you have some merit
6 to what you're arguing here. How do you get over the
7 hurdle that -- that this information, John Doe and swapping
8 of -- or -- and mishandling of blood samples, that couldn't
9 have been discovered under an after, you know, discovered-
10 evidence ground for a new trial? How -- how -- how -- how
11 does the defense get past that?

12 MR. HENDERSON: Your Honor, and as we've discussed
13 amongst ourselves in theory, everything is discoverable
14 ahead of trial. But again, there's only so much time.
15 There's only so much effort. There's only so much thinking
16 outside the box that you can do. Again, well prepared for
17 this trial, I think His Honor would say that; spent
18 countless hours with Dr. Valentine on piecing together
19 these medical records.

20 And -- and again, the records just stink to high
21 heaven -- Mr. Rowell's -- I mean, the time. And again,
22 that kind of goes back to the written motion that we made
23 about both blood samples.

24 THE COURT: Right. May -- maybe I -- my question was
25 -- was not very well stated. If -- if you had found that

1 out from the -- Mr. Rowell's family before trial, y'all
2 would have attacked this issue just like you've been
3 attacking it now.

4 MR. HENDERSON: Oh, absolutely, we ---

5 THE COURT: Right.

6 MR. HENDERSON: --- we would have. But ---

7 THE COURT: So -- so my point being is that it
8 could've been used at -- at -- at -- at trial if counsel
9 had found out about it.

10 (Whereupon, Mr. Henderson and Mr. Garrett conferred.)

11 MR. HENDERSON: Well -- well, Your Honor ---

12 THE COURT: It's not -- and I'm not putting any fault
13 on -- on your ---

14 MR. HENDERSON: No.

15 THE COURT: --- part whatsoever.

16 MR. HENDERSON: And -- and again, there's no need to
17 go look for this until all the confusion that came up at
18 ---

19 THE COURT: Right.

20 MR. HENDERSON: --- trial. Because looking at Mr.
21 Rowell's records, just at his records, not knowing about
22 John Doe out here ---

23 THE COURT: Right.

24 MR. HENDERSON: --- we're looking at this stuff.
25 They're saying, Hey, they took his first blood draw at

1 8:54, except he's not even at the hospital. You know, then
2 -- then it comes to trial that -- that nurse saying, "Oh,
3 we watched them take it out of his arm." That's not what
4 happened at all. It got taken out of this central line and
5 -- and -- and then, you know, we thought for medical
6 purposes.

7 It -- it honestly surprised us that with -- with the
8 -- with the changes that had been made to Adam's blood and
9 -- and the bodily fluids, really, we were still in shock
10 that that even got into evidence. But -- but again, that's
11 -- that's part of our grounds for a new trial and,
12 obviously, would be a appellate issue if -- if you decline
13 the motion.

14 But again, you know, if we had even an inkling that
15 there was something -- that there was a John Doe sitting
16 out here, oh, you better bet we would have attacked this.

17 THE COURT: Sure.

18 MR. HENDERSON: Dr. Valentine says he would have loved
19 to have had this material to -- to point out to the jury.
20 But again, we had no reason to think about that. And in
21 hindsight, you know, all the confusion about the vials --
22 you know, that the government's -- the investigator went
23 back and straightened out all the testimony about the
24 vials: you know, one vial, three vials, four vials.

25 And the reason there may be so many vials going on

1 here, Your Honor, we've got multiple people. And who knows
2 what they took from John Doe because we don't have those
3 records. They're not in the file. All we know is that
4 there was blood drawn from John Doe at 9:05 and a central
5 line inserted into Adam at 9:08 that a vial of blood was
6 drawn from.

7 You know, if we had any idea, in hindsight, a lot of
8 this stuff makes sense now. But we'd had no idea about it
9 until we actually got our hands on these records.

10 And you see the difficulties that we had getting the
11 records. But -- but it -- for the life of me, if we'd had
12 any idea about this prior to trial, oh, absolutely. We
13 would've been all over it and -- and would've asked the
14 Court's help to get those records pretrial. But -- but
15 these records, posttrial now, they're putting a lot of
16 stuff into context for us.

17 And -- and -- and one other issue I wanted to raise,
18 Your Honor, is I've been in some talk with the SLED counsel
19 -- chief counsel down at SLED. And he still doesn't have
20 an answer for me. I've asked him to see if they actually
21 have any of Mr. Rowell's blood sample still in existence.
22 I don't know if they save it. I'm not exactly sure of what
23 their procedure is.

24 But we've asked him that -- that if there is still any
25 of that sample, on our own dime, we're going to have the

1 DNA of that blood tested. Because after all these other
2 records have come to light, John Doe, we're not convinced
3 that the blood that actually made it down to SLED came from
4 Mr. Rowell. You know, and -- and the only way we could
5 ever know that is to have that -- have that blood DNA-
6 tested.

7 And I'm hoping they still have the samples. The
8 lawyer has been on vacation for a while. And we've been
9 communicating. But he assures me that he's looking into
10 it.

11 And if they have it, I'm hoping he'll be gracious
12 enough to -- to -- to make it helpful for us to get the
13 blood -- you know, that blood tested. Because Adam's
14 easily found to be tested. I mean, he -- he's not going
15 anywhere for a while. So we're looking into that as well.

16 And again, that's something that has come to light
17 only after looking at these records.

18 THE COURT: Okay. All right.

19 MR. HENDERSON: It just didn't -- didn't ---

20 THE COURT: Okay. Let me hear from the state as it
21 relates to the -- John Doe and the hospital records and
22 then what Mr. Henderson has already mentioned about trying
23 to see if SLED still maintains the -- or has maintained the
24 -- the blood sample.

25 MR. BLACK: Yes.

1 THE COURT: Solicitor?

2 MR. BLACK: Yes, sir. Thank you, Your Honor. Just, I
3 guess, to point out: The time line that I think the
4 defense, they ---

5 THE COURT: Right.

6 MR. BLACK: --- they gave you is -- I think that's
7 Defense 1. The -- I just wanted to point out that
8 according to the chart, the greet time for Adam Rowell --
9 and they obviously have this in their record -- is 2044 on
10 November the 15th, 2014. And that would be 8:44 p.m.

11 So they conveniently left that out on the chart. But
12 it's clearly marked in the medical records, which they
13 have. So to get up here and argue that Mr. Rowell hadn't
14 been there yet is ---

15 THE COURT: So 8:44 indicates what, Solicitor?

16 MR. BLACK: 8:44, according to the medical chart of
17 Mr. Rowell -- obviously, it wasn't admitted into evidence.
18 But the ---

19 THE COURT: Right.

20 MR. BLACK: --- the time of greet, that's kind of when
21 the nurses first greet the patient. That's when he
22 arrived. And that's not listed on the sheet that you have,
23 Your Honor.

24 So the -- the -- the chart, I -- I believe the -- the
25 first draw, I believe, is 8:54. So he had been there for

1 ten minutes. So to get up here and argue that Mr. Rowell
2 hadn't been at the hospital yet is disingenuous and -- and,
3 quite frankly, just not true. So I just wanted to make
4 that clear before we ---

5 THE COURT: Okay.

6 MR. BLACK: --- before we started.

7 MR. HENDERSON: Your ---

8 MR. BLACK: There was -- there was talk a little bit
9 about, you know, timing and how this whole thing -- how
10 there was more information that -- that took place over
11 trial before -- and more information came out during the
12 course of trial, which that's kind of -- that's how it
13 always -- that's how it always is, Your Honor.

14 But it did take about 2 1/2 years, from my
15 calculation, before we -- we -- we went to trial. And so
16 there was plenty of time, plenty of opportunity for them to
17 look into these records and try to figure out which way to
18 approach it.

19 They're talking about two middle-aged white guys at
20 the Greenville Hospital. I believe it was a -- a -- I -- I
21 forget what -- the day it was. But I just don't think
22 that's unusual, two -- two middle-aged white guys coming
23 into Greenville Memorial Hospital ten minutes apart.
24 That's not super unusual, so I don't think that's a -- a
25 smoking gun by any stretch of the imagination.

1 Just going back on the -- on the timing issue, Your
2 Honor: There -- there was testimony at trial. I remember
3 specifically the nurses talked about, you know, "Our clocks
4 aren't synchronized. Our watches aren't synchronized."

5 And even their expert -- I forget his name; I think
6 Dr. Valentine was his name -- talked about clocks and how
7 that's not unusual to look in the records and see the
8 timing just off a little bit, just based on how -- how the
9 nurses have their watch. Because when they're entering
10 records in, they look at their watch. And it's not always
11 the exact time that everybody always has.

12 Judge, even if we were to assume that the blood was
13 switched -- and -- and you -- I've passed the case law up
14 to you previously when we were in Abbeville. But just
15 citing the cases, just for the record, *State v. Mercer*, 381
16 S.C. 149; *State v. Spann*, 334 S.C. 618. I believe I handed
17 you the *Harris* case, *State v. Harris*, 391 S.C. 539.

18 You're well aware of the standard for a -- a motion
19 for a new trial. Basically, to obtain a new trial after-
20 discovered evidence, the party must show that this evidence
21 would probably change the result if a new trial were at
22 hand.

23 So let's assume that there -- let's assume that the
24 worst happened and their blood -- John Doe and Mr. Rowell's
25 blood got switched, right? Well, the -- the records are --

1 and Mr. Shaw, who's the hospital's attorney, indicated to
2 us that his blood draw was higher than Mr. Rowell's. I
3 believe his plasma alcohol came back a 219, which comes
4 back to about a 0.19. This gentleman's a 36-something,
5 which like a 30.

6 So even -- even if we were to assume that that's true,
7 even if we were to assume that the blood did get switched,
8 it doesn't change the results at all. And that's kind of
9 the first prong in looking at whether or not to grant a new
10 trial based on this after-discovered evidence.

11 And -- and that's making a huge assumption, Judge.
12 There -- there's no evidence in any of these records that
13 it happened. If you go back and look at the records, the
14 only common denominator in this whole -- whole deal was Dr.
15 Snow. You've got a completely separate set of nurses
16 handling Mr. Rowell, compared to this John Doe individual.
17 The only person that saw both of these is Dr. Snow, who's
18 the attending physician at the E.R.

19 So it would have to be -- it -- I mean, it would have
20 to be, obviously, gross negligence from the hospital.
21 Because they don't know who these people are. But -- but
22 even if -- even if that were the case, it doesn't change
23 the results, because he's still four or five times over the
24 legal limit, even higher than what Mr. Rowell's blood was.

25 The other prong to those, Judge, are -- has not been

1 discovered since trial, could not have been discovered
2 before trial by the exercise of due diligence. And that
3 just kind of goes back to my previous point that they
4 could've looking into this previously. And obviously, they
5 failed to do so, even though they had 2 1/2 years to
6 prepare for trial.

7 The other factors -- is material to the issue of guilt
8 or innocence and is not merely cumulative or impeaching.
9 So just looking at the standard, looking at the records, it
10 -- there's just -- it just doesn't support it, Judge. It
11 doesn't rise to the level to grant a new trial. It -- he'd
12 still be four or five times over the legal limit ---

13 THE COURT: Okay.

14 MR. BLACK: --- even if their blood was switched.

15 THE COURT: All right.

16 MR. BLACK: And that's ---

17 THE COURT: All right.

18 MR. BLACK: --- making a huge assumption.

19 THE COURT: Okay. Very good. Thank you. Mr.

20 Henderson ---

21 MR. HENDERSON: Very ---

22 THE COURT: --- next -- next -- next argument let's --
23 let's touch on is the -- the juror issue. Is that still a
24 -- a -- still an issue? I know we've talked about it. I
25 think, Solicitor Black, you had indicated that you had

1 checked with law enforcement. Defense maintained, at least
2 initially, that Juror 164 was formerly a -- a -- a C.I. for
3 the -- for law enforcement. And you checked into that and
4 had indicated that there was no record of that or ---

5 MR. BLACK: I -- I ---

6 THE COURT: --- you ---

7 MR. BLACK: --- did, Your Honor. I checked with both
8 the county -- Chad Cox with Greenwood County and I checked
9 with Mickey McAllister, who's the captain over at the city.
10 They looked through their files. There's no record at all
11 that he was ever a C.I. There's no indication that he's
12 ever been a C.I. So that was -- that just wasn't true.

13 There was another issue -- and I'll just go ahead and
14 address it while I'm talking to Your Honor -- that Mr.
15 Xavier Waldrop -- I think he was Juror 164. He had been --
16 he got charged with possession with intent to distribute
17 marijuana in January, as well as unlawful neglect of a
18 child. And I think there was -- there was another charge
19 too. It was ---

20 (Whereupon, Mr. Black and Mr. Downtin conferred.)

21 MR. BLACK: --- proximity -- it was proximity charge
22 to a school or park ---

23 THE COURT: They were all pending, though, at the time
24 ---

25 MR. BLACK: They -- they were ---

1 THE COURT: --- of ---

2 MR. BLACK: --- were pending, in fact, Your Honor. So
3 he got arrested at the end of January.

4 THE COURT: Okay.

5 MR. BLACK: It was from Ware Shoals. The case didn't
6 get transmitted to us till the Wednesday during trial. And
7 it got assigned to Wade, because he's our drug prosecutor,
8 primarily. And obviously, we're -- Wednesday of trial, we
9 had no idea. We're not checking to see which cases we're
10 ---

11 THE COURT: Right.

12 MR. BLACK: --- getting assigned to. So we had no
13 idea. It was 40 -- about 40 grams of marijuana, so anybody
14 could assume that he wasn't going to be -- I mean, I guess
15 -- he didn't have a record, so I would assume that he
16 thought it was just a possession-of-marijuana charge. And
17 I'm sure he just got a blue ticket.

18 He got charged with unlawful neglect of a child
19 because his kid was in a -- he had a kid -- 2-year-old in
20 the backseat that had a seat belt on; didn't -- wasn't in a
21 car seat. So that was the reason for that charge.

22 THE COURT: Okay.

23 MR. BLACK: So I -- we didn't -- we didn't know. And
24 quite frankly, we probably would've struck him if we knew
25 that he had pending charges.

1 THE COURT: Okay.

2 MR. BLACK: So ---

3 THE COURT: All right. Mr. Henderson, is that still
4 -- still an issue on the table for you guys?

5 MR. HENDERSON: Your Honor, as it relates to this
6 juror -- and -- and again, nothing has been produced to us
7 indicating that he was a confidential informant. And
8 because he does have a lawyer, Ms. Nelson with the public
9 defender's office, we ethically thought that we can't
10 directly contact him. Even on unrelated matter, we don't
11 think we're -- it's -- it's proper to contact him. But
12 we've contacted Ms. Nelson, and she's made it very clear to
13 us, he has no interest in talking to us.

14 THE COURT: Right.

15 MR. HENDERSON: So -- so -- and again -- and like I
16 said, I don't think we can make him.

17 THE COURT: Right.

18 MR. HENDERSON: I'm -- I'm not even sure you can make
19 him come in here and talk to us about ---

20 THE COURT: I ---

21 MR. HENDERSON: --- that.

22 THE COURT: --- I -- I don't ---

23 MR. HENDERSON: You know ---

24 THE COURT: --- think I -- I have ---

25 MR. HENDERSON: --- you know ---

1 THE COURT: --- powers greater than the constitution.

2 MR. HENDERSON: Right. And -- and -- and --- and so
3 -- so in -- to a certain degree, we don't have any evidence
4 that ---

5 THE COURT: Okay.

6 MR. HENDERSON: --- he was a confidential informant.
7 But again, we -- we still are not abandoning this issue of
8 -- of putting somebody with an arrest record on the jury.

9 THE COURT: Okay.

10 MR. HENDERSON: Because, you know, we went back and
11 had Ms. Scott read the question that she asked and -- you
12 know, "Have any of you ever been arrested?" I went back
13 and looked. He did not stand up.

14 THE COURT: Okay.

15 MR. HENDERSON: And -- and clearly, he had been
16 arrested. He'd been booked. He'd been taken downtown, as
17 they say.

18 We wouldn't have put him on the jury either. We
19 would've -- because again, marijuana was an issue in this
20 case, from the decedents. And plus, always thinking like
21 some other creative defense lawyer, that -- that, Hey, if
22 he's sitting out here on the jury, I'm worried that he
23 might be, you -- you know, helping himself out by sticking
24 it to my client, sitting on the jury. Wouldn't ---

25 THE COURT: Was ---

1 MR. HENDERSON: --- have put him on there at all. So

2 ---

3 THE COURT: Was -- was that one of the voir dire
4 questions? Certainly, the standard is convictions. But
5 was that -- and I -- I certainly don't recall. But was
6 that a voir dire question: Has anybody been arrested ---

7 MR. BLACK: I ---

8 THE COURT: --- for whatever?

9 MR. BLACK: I don't remember. But -- I do know that
10 Mr. Henderson usually puts it in his stuff. So I wouldn't
11 be surprised that if it was.

12 MR. HENDERSON: Right. So we asked Ms. Scott to go
13 back and actually pull or what -- what your question was
14 and who came forward. And the question asked arrested --
15 who's been arrested and also convicted. You know, you went
16 through the whole litany. And I'm -- and -- and this
17 gentleman did not come forward.

18 THE COURT: Okay.

19 MR. HENDERSON: And -- and -- and again, Your Honor,
20 we believe, because the state, you know, arrested him --
21 actually, an underling of the solicitor's office -- and all
22 these law enforcement agencies are underlings of the
23 solicitor's office. You know, it -- it would be our
24 position that -- that the law enforcement agencies -- that
25 the solicitor has actual knowledge of what its underlings

1 are doing, I mean, just from an agency theory.

2 And -- and again, we -- there would've been no chance
3 that we would've put this guy on our jury knowing that.
4 And again, I hear the state saying that there's no chance
5 they would've put him on there either. But -- but again, I
6 mean, I -- I think both sides can make plausible arguments
7 that, Wait, we wouldn't have put this guy on the jury.

8 But again, we're not held to the standard of having to
9 know that he's been arrested. It's not imputed to us. It
10 is imputed to the state.

11 THE COURT: Okay.

12 MR. HENDERSON: So -- so -- so again, it's not -- it's
13 not really completely apples and oranges.

14 And again, you know, I -- I hear Mr. -- the -- the
15 state talking about, you know, after-discovered evidence.
16 And -- and again, I think a lot of this evidence -- again,
17 we did discover it after trial. But our whole motion's not
18 just on after-discovered evidence.

19 THE COURT: Oh, I understand that. You got -- you
20 raised, you know, arguments that you had made during the
21 course of the trial.

22 MR. HENDERSON: Right. And -- and -- and again, going
23 back to what the state said about this meet-and-greet time
24 with Mr. Rowell -- and -- and again, the LifeFlight people
25 were adamant at trial, based upon their records, that when

1 -- when this first blood draw was purportedly taken from
2 Mr. Rowell, they were in air. I mean, you just -- I mean,
3 you -- just looking at their records, I mean, all -- all of
4 -- all these -- all these numbers are just off. I mean,
5 they're off for Mr. Rowell. They're off for John Doe.

6 Not sure what's going on in -- in the emergency room.
7 Glad they're saving lives, don't get me wrong. But -- but
8 not -- not sure what else is going -- going on in there,
9 Your Honor.

10 You know, and I -- I think that -- and I don't think
11 the solicitor had any comment to the -- to the -- to our
12 SLED issue -- and again, I'm still waiting to hear back
13 from the lawyer from SLED. Because again, I don't even
14 know whether or not they have any of that sample left.

15 You know, if -- if this had been an issue quicker, you
16 know, obviously, we could've had that -- the Greenville
17 Hospital samples tested. But again, they talk about how
18 quickly those get destroyed. You know, before we ever --
19 you know, Mr. Rowell's still in the hospital before we ever
20 get involved.

21 Those -- that's gone. I mean, there's just nothing
22 there to test at all. And that would be the best evidence
23 of what -- what happened that night, would -- would be his
24 samples and John Doe's samples. But they're gone.

25 THE COURT: Okay.

1 MR. HENDERSON: They're gone immediately.

2 THE COURT: Other than the Juror 164 issue and John
3 Doe issue, are the other -- and I believe I'm correct in
4 saying this -- I believe the other grounds for a motion for
5 new trial are issues that actually came up during the
6 course of the trial. There's nothing -- none of the other
7 issues are new that I can tell.

8 (Whereupon, Mr. Henderson, Mr. Garrett, and Mr. Wise
9 conferred.)

10 MR. HENDERSON: And -- and again, Your Honor, we --
11 it's our belief that these hospital records, now that we've
12 got them, make some of the other, what we believe, trial
13 errors more substantive. I mean, again ---

14 THE COURT: Oh, I -- I understand that. But the
15 actual issue itself, all these other grounds for your
16 motion for new trial are issues that were raised at trial.
17 I understand that you believe that John Doe now sheds some
18 additional light on those issues in your favor. I
19 understand that.

20 But the actual issue itself -- I just wanted to make
21 sure that there's nothing brand new that you're raising.

22 MR. HENDERSON: I'll let ---

23 MR. GARRETT: May I ---

24 MR. HENDERSON: --- Mr. Garrett address ---

25 MR. GARRETT: --- may -- may -- may I ---

1 THE COURT: Well, I'll ---

2 MR. GARRETT: --- I speak ---

3 THE COURT: --- let you ---

4 MR. GARRETT: --- just -- just briefly, Your Honor?

5 Your Honor, the cumulative effect of the at-trial
6 arguments -- and -- and I -- and I specifically go to the
7 state's going back and correcting -- while I was trying to
8 cross-examine the witnesses, try to figure out whether one
9 vial/two vials/three vials/four vials -- I -- I -- I know
10 you probably -- maybe remember that. But there were
11 different testimony that we got in-camera. And then all of
12 a sudden, we get out and we start asking questions and it
13 had changed.

14 And I asked the question, "Why did it change?"

15 And they said, "Well, he told me." And they pointed
16 to a solicitor's agent. And the solicitor's agent had went
17 back there and told them that they needed to get their
18 story straight and get to one vial instead of four.

19 Now, Judge, the four vials might've been very well the
20 evidence that we have uncovered now that might've been one
21 of those other vials that wasn't his blood at all. And --
22 and so that -- the failure of -- of -- the Court didn't
23 give us a -- a -- a new trial based on that mistake by the
24 state.

25 And, you know, if you got them knowing -- or by

1 imputation of law knowing that there is a juror on there
2 that one of these prosecutors has already been assigned to,
3 we know that they -- actually, the other cases, Judge, they
4 falsified information to get a -- an arrest warrant. And a
5 -- another warrant is -- was admitted at trial. These are
6 prosecutorial-misconduct-type of arguments that denied us
7 fundamental due process in this case.

8 And then, if you go back to that problem that we were
9 trying to figure out this blood during trial, I was trying
10 my best to get fair cross-examination so I could figure out
11 exactly what was going on with this blood. It didn't make
12 any sense. Now it makes sense.

13 THE COURT: Okay.

14 MR. GARRETT: But at the time, it didn't.

15 THE COURT: Okay. All right.

16 (Whereupon, Mr. Henderson and Mr. Wise conferred.)

17 THE COURT: Let -- let him finish and then I'll turn
18 it back over to you, Solicitor.

19 MR. GARRETT: And also, Your Honor, the -- the -- the
20 juror would've known that the case would've been handled by
21 this same solicitor's office. So we -- you know, we can't
22 impute what's in his mind.

23 And I can't say what the private talkings in the jury
24 are. None of us can. That's sacred. But it gives him a
25 -- a -- an incentive to help the solicitor.

1 THE COURT: How -- how would this -- how -- how would
2 the -- if it's a pretty new charge, how would the -- Juror
3 164 know that Solicitor Downton was assigned to the case, if
4 he just got it on Wednesday during trial? I mean, I'm --
5 I'm just asking the question.

6 MR. GARRETT: I -- I'm not sure. We know ---

7 THE COURT: Yeah.

8 MR. GARRETT: --- that they do assign them. But what
9 we also know is -- is that that is the prosecutorial office
10 that's going to prosecute that case. In other words, they
11 didn't have ---

12 THE COURT: Right.

13 MR. GARRETT: --- a prosecutor come in from another
14 ---

15 THE COURT: You ---

16 MR. GARRETT: --- county to ---

17 THE COURT: Okay.

18 MR. GARRETT: --- prosecute this case. The same ones
19 who were prosecuting ---

20 THE COURT: Right.

21 MR. GARRETT: --- this case is going to prosecute or
22 not prosecute his case.

23 MR. BLACK: And, Judge, just to address the issues:
24 To be clear, so the case got transferred in from Ware
25 Shoals to the clerk's office, which is the process. It got

1 transmitted on that Wednesday of trial. Then the clerk's
2 office, they send it to our office to be assigned out.
3 After trial it got assigned to Wade, not knowing the whole
4 situation.

5 So it wasn't even during the trial that the case got
6 assigned to Wade. So to make it seem like he knew that
7 Wade was the prosecutor that was going to handle the case
8 is obviously ---

9 THE COURT: All right.

10 MR. HENDERSON: Your Honor, we don't care which
11 solicitor it was assigned to, ultimately. This young man
12 was told on his bond paperwork that this being handled in
13 General Sessions court by the solicitor's office.

14 THE COURT: I -- I -- I think the argument is not
15 necessarily that Juror 164 knew that Solicitor Downtin would
16 be prosecuting; he just knew that the Eighth Circuit
17 Solicitor's Office ---

18 MR. GARRETT: Right.

19 THE COURT: --- would be ---

20 MR. GARRETT: And, Judge ---

21 THE COURT: --- prosecuting ---

22 MR. GARRETT: --- I don't mean to in any way impugn
23 Mr. Downtin. I'm not ---

24 THE COURT: Right.

25 MR. GARRETT: --- suggesting, even for a second, that

1 -- that he ---

2 THE COURT: Right.

3 MR. GARRETT: --- had anything to do with that. But

4 ---

5 THE COURT: Right.

6 MR. GARRETT: --- from the juror's perspective, the
7 same problem that we've got, where he won't talk to us ---

8 THE COURT: Okay.

9 MR. GARRETT: --- I mean, we don't know what was in
10 his mind. So it's the appearance, Judge. And then, when
11 you -- you take ---

12 THE COURT: Right.

13 MR. GARRETT: --- it cumulative of all these
14 appearances and it -- it just doesn't -- it doesn't feel
15 like due process was ---

16 THE COURT: Right.

17 MR. GARRETT: --- was fully granted here.

18 MR. BLACK: And then, Judge, just kind of to talk
19 about the argument that Investigator Wilkie went back there
20 and talked to the nurse and the lab tech and the doctor,
21 telling them what to testify to, that didn't happen either,
22 Judge. I know that was talked about just now. But that
23 didn't happen.

24 We were out -- they tried to figure out what's going
25 on. They were just asking questions. He was off the

1 stand. And the -- he was trying to ask the lab tech what
2 happened. And obviously, Mr. Garrett had an opportunity,
3 twice actually, to cross-examine him. And he -- and he
4 did.

5 We were just trying to figure out how the whole
6 process works. Because if -- I -- I know it was eight/ten
7 months ago when this whole trial happened. But what they
8 testified to is, depending on the situation, sometimes
9 there's one vial; sometimes there's two or three vials.
10 And then when it comes into the lab, sometimes it gets spun
11 out into different vials. So they were just trying to
12 figure out how this whole thing went down.

13 Talking about -- also, they talked about falsifying
14 the arrest warrants. That -- that wasn't the case. The
15 issue was a -- a beer can, I think, in the -- in the
16 affidavit that the -- that the trooper had. He said -- he
17 said there were beer cans in the vehicle. I think there
18 ended up being one.

19 And Mr. Garrett obviously had an opportunity to cross-
20 examine him about that. The trooper said, "Yes, there's
21 one, according to these pictures," when he was shown the
22 pictures; that there was one beer can in the -- in the
23 vehicle. And so that's where they're getting this
24 falsified -- falsifying the -- the affidavit on the -- on
25 the warrant.

1 Judge, I was afraid this whole thing was going to turn
2 into this. But basically, we're just relitigating the
3 case. And if you -- all of this, all of what we're talking
4 about, was talked about in my closing argument and Mr.
5 Garrett's closing argument. It's all weight issue.

6 And the jury looked at all the evidence and they said,
7 "All right. Are we going to go with the evidence or are we
8 going to believe this conspiracy?" And they made their
9 decision. And so ---

10 THE COURT: All right.

11 MR. BLACK: --- Judge, with all that, I think you
12 should deny the motion. And I think that we should -- we
13 should move forward.

14 THE COURT: Okay. Thank you. Mr. Henderson, anything
15 further on your side?

16 MR. HENDERSON: Your Honor, we just incorporate again
17 all the motions ---

18 THE COURT: Sure.

19 MR. HENDERSON: --- and everything else we made at
20 trial, our two written motions, and all the arguments we've
21 made here today. And we would like to be able to
22 supplement the record with Dr. Valentine's letter when I
23 ---

24 THE COURT: I'm -- I'm going to do that. I'm going to
25 take this under advisement to give you an opportunity to

1 get that and just -- I don't ---

2 MR. HENDERSON: I'll e-mail ---

3 THE COURT: --- know how ---

4 MR. HENDERSON: --- it to everybody. And ---

5 THE COURT: Yeah. Just ---

6 MR. HENDERSON: --- that's no ---

7 THE COURT: --- e-mail it. And it can be -- we -- we
8 can have it marked so the record's protected. So I'll --
9 I'll take everything under advisement and appreciate
10 everyone's hard work.

11 MR. HENDERSON: And I ---

12 MR. BLACK: And, Judge, just for the record, could we
13 have the time of greet for Mr. Rowell be placed on the
14 record at 8:44? I know it's -- we've talked about it. But
15 it's not on that sheet that's been ---

16 THE COURT: Okay.

17 MR. BLACK: --- admitted.

18 THE COURT: All right. Any objection to that, Mr.
19 Henderson?

20 MR. HENDERSON: Can I see the ---

21 (Whereupon, Mr. Henderson and Mr. Garrett conferred.)

22 MR. HENDERSON: Right. And -- and again -- if I may?

23 THE COURT: Sure.

24 (Whereupon, Mr. Henderson and Mr. Garrett conferred.)

25 MR. HENDERSON: Right. Your -- Your Honor, we're --

1 we're not going to concede that because the LifeFlight
2 records, which they were very adamant about, which are in
3 -- in evidence, indicate that he didn't get there till
4 after this blood draw. This isn't in the record ---

5 THE COURT: Well ---

6 MR. HENDERSON: --- at all.

7 THE COURT: --- I -- I -- you know, if the -- if the
8 state wants to have something marked as part of this motion
9 for new trial, just get it marked solicitor. And -- and so
10 you don't -- you don't have to consent to that.

11 MR. HENDERSON: Oh, I agree. They can mark what they
12 want. We agree. We're just not ---

13 THE COURT: Sure.

14 MR. HENDERSON: --- going to consent to it ---

15 THE COURT: That -- That's fine.

16 MR. HENDERSON: --- right this ---

17 MR. BLACK: Can we ---

18 THE COURT: That's fine.

19 MR. BLACK: Can we e-mail it to Your Honor? Can we e-
20 mail it to Valerie?

21 THE COURT: Huh?

22 MR. BLACK: Can we e-mail it, Your Honor? I ---

23 THE COURT: Yeah. Just e-mail it -- e-mail it to us,
24 and e-mail it to everybody, and we'll make sure that's
25 marked as an exhibit too.

1 MR. BLACK: Thank you, Your Honor.

2 THE COURT: Okay. Anything further before we adjourn
3 this hearing? From the state?

4 MR. BLACK: No, sir.

5 THE COURT: From the defense?

6 MR. HENDERSON: No, sir, Your Honor.

7 THE COURT: Okay. Thank you very much. Again, thank
8 you for your hard work on both sides.

9 MR. GARRETT: Thank you, Your Honor.

10 (Whereupon, the proceeding was adjourned at 3:09 p.m.)

11 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR GREENWOOD COUNTY, SOUTH CAROLINA, ON THE
27TH DAY OF NOVEMBER, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 18, 2017

STATE OF SOUTH CAROLINA)

Court of General Sessions

COUNTY OF GREENWOOD)

State of South Carolina)

Case Number 2015-GS-24-0535

2015-GS-24-0536

vs.)

Adam Rowell)

**ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL**

THIS MATTER CAME FOR HEARING before the undersigned on Monday, November 27, 2017 in Laurens, South Carolina by Defendant's Motion for New Trial. Present for the Defendant were Mr. Billy Garrett, Mr. Carson Henderson, Ms. Jane Merrill, and Mr. Rauch Wise. Representing the State were Solicitors Wade Dowtin and Micah Black.

The Defendant was tried for two counts of Felony Driving under the Influence during the week of February 13, 2017. He was found guilty on both counts and convicted on February 20, 2017. Subsequently, Defendant filed a Motion for New Trial and, later, a Supplemental Motion for the same.

Law & Analysis

"All the circuit courts of this State shall have power to grant new trials in cases in which there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law of the United States." S.C. Code § 17-23-110.

Defendant's Motion for New Trial is respectfully denied, based on the reasons herein:

I. Defendant's Arguments I-III, V-XIV

The majority of Defendant's arguments are issues that were argued during trial. These arguments are again denied, and the Court incorporates by reference its rulings and bases for those rulings in the record at trial.

II. Defendant's Claims that the Hospital May Have Switched His Blood with another Patient's Sample

There is no credible evidence to support any suggestion that Defendant's first or second blood draw was swapped with another patient's blood, or that the blood samples used in Defendant's case did not come from the Defendant. The argument is far too speculative to warrant the granting of a new trial.

Furthermore, though not in the Motion, Defense Counsel represented to the Court that additional discovery was needed because, at the end of the first trial, members of the Defendant's family indicated that there was another patient in the trauma ward whose blood could have been labeled as the Defendant's. The fact that another white male appearing to be in his twenties also had blood drawn in the same area of the hospital as Defendant around the same time as Defendant could have been discovered before trial. This is not changed merely because that particular detail escaped Defendant's family members' memories until after the close of trial, making these claims improperly based on the "after discovered evidence" evidence rule. S.C. Crim. P. 29(b).

III. Defendant's Claims that Juror 164 Served as a Confidential Informant for Law Enforcement

At hearing, Defendant admitted that he could provide no credible evidence that Juror 164 served as a confidential informant for Greenwood City Police Department or the Greenwood Sheriff's Office. On that basis, this ground in support of the Motion for a New Trial is denied.

#2
DBA

IV. Juror 164's Nondisclosure of January 21, 2017 Arrest for Possession with Intent to Distribute Marijuana, Unlawful Neglect of a Child, and Purchasing a Controlled Substance within Proximity of a School

A juror's concealment of facts can be grounds for a new trial; the Court's inquiry is a "fact-intensive determination that must be made on a case-by-case basis" to decide whether the concealment was intentional or unintentional. *State v. Sparkman*, 358 S.C. 491, 596 S.E.2d 375 (2004). Where a juror's concealment is found to be unintentional, the Court ends its inquiry, and no new trial is granted. *Id.* Where a juror's concealment is found to be intentional, a new trial is warranted when the concealed information would have supported either a challenge for cause or would have been a material factor in the use of the parties' peremptory challenges. *State v. Woods*, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001); and *State v. Guillebeaux*, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (2004) (requiring a finding in addition to the concealment being intentional.).

The test for whether a juror's concealment is intentional is two-fold: (1) the question is reasonably comprehensible to the average juror, and (2) the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. *Supra Woods*, 345 S.C. at 588, 550 S.E.2d at 284.

A juror's concealment is unintentional where: (1) the question is ambiguous or incomprehensible to the average juror, or (2) the subject of the question is so far removed in time that failure to respond is reasonable. *Supra Sparkman*, 358 S.C. at 496, 596 S.E.2d at 377.

In this case, the question to which Juror 164 failed to respond was, "Question One-- any member of the jury panel, any immediate family member or close personal friend ever been arrested and charged with any criminal offense through any state, local, or federal law enforcement agency." This was the first of ten (10) questions asked, and the panel was asked at the end of that litany of questions to come speak to the Court privately if any panel member needed to respond.

On its face, the question at issue is reasonably comprehensible to the average juror. However, in practice, the question was the first of ten that the jury panel had to remember; consider; and, if needed, privately answer to the Court.¹ The manner in which the question was asked, and the amount of time between when the question was posed and when it was meant to be answered could be confusing to the average juror. For this reason, the Court finds that the Juror 164's concealment was unintentional.

However, even if the Court found that Juror 164's concealment was intentional, and that the intentionally concealed information would have provided a basis for either a challenge for cause or for a peremptory challenge by either party, the Court would not find that a new trial is warranted.

"Concealment" is the "act of preventing disclosure" and "the act of removing from sight or notice; hiding." Concealment, *Black's Law Dictionary* (10th ed. 2014). The vast majority of case law about jurors' failures to disclose information discusses the concealment of relationships, especially between potential jurors and witnesses. See, e.g., *supra* *Guillebeaux*, (where the information concealed was a social relationship with a witness); *State v. Galbreath*, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004) (where the seated juror did not answer in *voir dire* that he knew the victim's mother and brother-in-law).

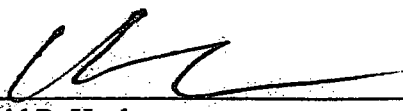
Here, though, Juror 164 is alleged to have "concealed" an arrest. An arrest record—unlike personal, private relationships—is public information. Juror 164 failed to answer a question, but he did not prevent Defendant or the State from seeking and seeing his arrest record. Juror 164 could not "remove from sight or notice" this public information—the fact that he had been arrested the month prior—such that the attorneys could not have possibly known about it.

The Motion and Supplemental Motion for New Trial are denied.

¹ A practice the Court has since modified considerably.

So Ordered.

Laurens, SC
December 27, 2017



Donald B. Hocker
Circuit Court Judge



#5



Carson Henderson <carson@carsonhendersonlawfirm.com>

Rowell Medical record

23 messages

Micah Black <mblack@greenwoodsc.gov>

Mon, Nov 27, 2017 at 5:13 PM

To: "Hocker, Donald B. Law Clerk (Catherine Thomas)" <dhockerlc@sccourts.org>, "Hocker, Donald B." <dhockerj@sccourts.org>, Carson Henderson <carson@carsonhendersonlawfirm.com>, Billy Garrett <billygarrettjr@yahoo.com>, mnevers@sccourts.org
Cc: Wade Dowtin <wdowtin@greenwoodsc.gov>

Judge Hocker,

Attached is the medical record that I would like to have marked as a state's exhibit. I have highlighted the greet time noted at 20:44.

Thank you,

Micah Black

Find Greenwood County on social media:



NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, to a person or party requesting the same.

**Rowell medical record.pdf**

2280K

Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>

Tue, Nov 28, 2017 at 8:16 AM

To: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Carson Henderson <carson@carsonhendersonlawfirm.com>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>

Cc: Wade Dowtin <wdowtin@greenwoodsc.gov>

Got it printed. Still waiting on Defense Exhibit—letter from Dr. Valentine?

Thanks,

Valerie

From: Micah Black [mailto:mblack@greenwoodsc.gov]**Sent:** Monday, November 27, 2017 5:13 PM

<https://mail.google.com/mail/u/0?ik=c6b08a67f0&view=pt&search=all&permthid=thread-f%3A1585259096730745143&simpl=msg-f%3A1585259096...> 1/20

To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>; Hocker, Donald B. <dhockerj@sccourts.org>; Carson Henderson <carson@carsonhendersonlawfirm.com>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>
Cc: Wade Dowtin <wdowtin@greenwoodsc.gov>
Subject: Rowell Medical record

[Quoted text hidden]

--- CONFIDENTIALITY NOTICE --- This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Carson Henderson <carson@carsonhendersonlawfirm.com>

Tue, Nov 28, 2017 at 9:01 AM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>
Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, " <rauchwise@gmail.com>" <rauchwise@gmail.com>

Attached is the letter from Dr. Valentine. Please have Maryann mark this as Defendant's Exhibit #3.

[Quoted text hidden]



*Carson M. Henderson
 The Henderson Law Firm, P.C.*

864-649-0384 (office)

109-B Oak Avenue
 Greenwood S.C. 29646

www.carsonhendersonlawfirm.com



2017-11-27 Letter following review of undocumented male patient (Defendant's exhibit #3 at motion hearing).pdf
 126K

Carson Henderson <carson@carsonhendersonlawfirm.com>

Wed, Dec 6, 2017 at 11:39 AM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>
Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, " <rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Judge Hocker,

After our hearing in Laurens last week, defense counsel have reflected upon some of the issues raised by the State. At trial, the State knew it had problems with the time of Mr. Rowell's first blood draw, the number of vials taken from Mr. Rowell during the first blood draw, and the body part location of the first blood draw from Mr. Rowell. As these inconsistencies were known to the State prior to trial, or at least should have been known, we would argue that the State has the burden of clarifying these issues, and the State probably had an obligation to inform defense counsel before trial of these inconsistencies. The State still hasn't clarified these issues, and the Court appears to be placing the burden on the defense to establish the lack of reliability of the information. We believe until the State meets its obligation to clarify these issues, we have no burden. Only after defense counsel learned of these problems, and received information post trial of possible confusion as to the identity of Mr. Rowell, did we know to even look at a possible second person being in the hospital trauma ward at the same time as Mr. Rowell.

10/23/2018

Henderson Law Firm Mail - Rowell Medical record

Please have Maryann mark this email as Defendant's Exhibit #4.

Thank you for considering this.

Carson

[Quoted text hidden]

Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>

Wed, Dec 6, 2017 at 11:59 AM

To: Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, Wade Downtin <wdowntin@greenwoodsc.gov>, "<rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Thank you for your email. Judge Hocker will go ahead and mark the exhibit, as he remains in possession of the other exhibits.

Additionally, Judge Hocker has some concern about Juror 164's nondisclosure of his arrest. He asks that you please brief this issue. The briefs do not need to be particularly elaborate and can be submitted in email form.

Knowing that the holidays are fast-approaching, please have the briefs to Judge Hocker by January 15, 2018.

Thank you,

Valerie

From: Carson Henderson [mailto:carson@carsonhendersonlawfirm.com]

Sent: Wednesday, December 6, 2017 11:39 AM

To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>

Cc: Micah Black <mblack@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; Wade Downtin <wdowntin@greenwoodsc.gov>; <rauchwise@gmail.com> <rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

Subject: Re: Rowell Medical record

Judge Hocker,

After our hearing in Laurens last week, defense counsel have reflected upon some of the issues raised by the State. At trial, the State knew it had problems with the time of Mr. Rowell's first blood draw, the number of vials taken from Mr. Rowell during the first blood draw, and the body part location of the first blood draw from Mr. Rowell. As these inconsistencies were known to the State prior to trial, or at least should have been known, we would argue that the State has the burden of clarifying these issues, and the State probably had an obligation to inform defense counsel before trial of these inconsistencies. The State still hasn't clarified these issues, and the Court appears to be placing the burden on the defense to establish the lack of reliability of the information. We believe until the State meets its obligation to clarify these issues, we have no burden. Only after defense counsel learned of these problems, and received information post trial of possible confusion as to the identity of Mr. Rowell, did we know to even look at a possible second person being in the hospital trauma ward at the same time as Mr. Rowell.

Please have Maryann mark this email as Defendant's Exhibit #4.

Thank you for considering this.

Carson

On Tue, Nov 28, 2017 at 9:01 AM, Carson Henderson <carson@carsonhendersonlawfirm.com> wrote:

Attached is the letter from Dr. Valentine. Please have Maryann mark this as Defendant's Exhibit #3.

On Tue, Nov 28, 2017 at 8:16 AM, Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org> wrote:

Got it printed. Still waiting on Defense Exhibit—letter from Dr. Valentine?

Thanks,

Valerie

From: Micah Black [mailto:mblack@greenwoodsc.gov]
Sent: Monday, November 27, 2017 5:13 PM
To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>; Hocker, Donald B. <dhockerj@sccourts.org>; Carson Henderson <carson@carsonhendersonlawfirm.com>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>
Cc: Wade Downtin <wdowntin@greenwoodsc.gov>
Subject: Rowell Medical record

Judge Hocker,

Attached is the medical record that I would like to have marked as a state's exhibit. I have highlighted the greet time noted at 20:44.

Thank you,

Micah Black

Find Greenwood County on social media:

 <http://www.greenwoodsc.gov/websiteData/socialmediaicons/facebook.png>
 <http://www.greenwoodsc.gov/websiteData/socialmediaicons/twitter.png>

NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, to a person or party requesting the same.

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 <http://www.kologinsky.com/images/scales.jpg>

Carson M. Henderson

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109-B Oak Avenue

Greenwood S.C. 29646

[www.carsonhendersonlawfirm.com](http://www.carsonhendersonlawfirm.com)

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Carson Henderson <[carson@carsonhendersonlawfirm.com](mailto:carson@carsonhendersonlawfirm.com)>

Thu, Dec 7, 2017 at 7:56 AM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <[dhockerlc@sccourts.org](mailto:dhockerlc@sccourts.org)>

Cc: Micah Black <[mblack@greenwoodsc.gov](mailto:mblack@greenwoodsc.gov)>, "Hocker, Donald B." <[dhockerj@sccourts.org](mailto:dhockerj@sccourts.org)>, Billy Garrett <[billygarrettjr@yahoo.com](mailto:billygarrettjr@yahoo.com)>, "Nevers, Maryann S." <[mnevers@sccourts.org](mailto:mnevers@sccourts.org)>, Wade Downtin <[wdowntin@greenwoodsc.gov](mailto:wdowntin@greenwoodsc.gov)>, " <[rauchwise@gmail.com](mailto:rauchwise@gmail.com)>" <[rauchwise@gmail.com](mailto:rauchwise@gmail.com)>, "Jane H. Merrill" <[jane@hmlawsc.com](mailto:jane@hmlawsc.com)>

<https://mail.google.com/mail/u/0/?ik=c6b08a67f0&view=pt&search=all&permthid=thread-f%3A1585259096730745143&simpl=msg-f%3A1585259096...> 5/20

Please have Maryann mark this email as Defendant's Exhibit #5. Please let us know if Judge Hocker requires additional information. The defense has ordered the relevant portions of the voir dire transcript from court reporter Tara Scott, who assures us that she will expedite the request. Once we receive the transcript, we will email it to everybody.

Also, the clerk's file for the juror, Anxaviar Jemorris Waldrup, indicates that Solicitor Dowtin was the prosecutor handling this case at Mr. Waldrup's initial appearance on March 10, 2017. At Mr. Waldrup's second appearance on May 5, 2017, the clerk's file indicates that Solicitor Tunstall was handling the case. Mr. Waldrup was subsequently arrested again, and the clerk's file indicates that Solicitor Tunstall is handling these charges.

#### CASE #1:

When allegations arise concerning a juror's failure to reveal information in response to voir dire questions, courts look to whether the concealment was intentional and consider the nature of the information concealed. *State v. Woods*, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001). A new trial is warranted if the court finds: (1) the juror intentionally concealed the information; and (2) "the concealed information would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." *Id.* However, a determination that a juror did not intentionally conceal the information ends the court's inquiry. *State v. Sparkman*, 358 S.C. 491, 497, 596 S.E.2d 375, 377-78 (2004).

*State v. Guillebeaux*, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004)

-The defense asks that the Court conduct a hearing with the juror. Janna Nelson with the PD's office is representing Mr. Waldrup.

#### CASE #2A:

After conducting a lengthy inquiry, the trial court found that the alleged connection between Juror # 7 and Respondent would have been a material factor in the State's exercise of its peremptory challenges. The court did not view Juror # 7's connection with Respondent and his family as a basis for a challenge for cause. However, the court ruled that the connection would have been a legitimate basis for the State's exercise of its peremptory strikes, and that the State would have struck Juror # 7 had she disclosed the connection. Therefore, the trial court excused Juror # 7 from the jury and replaced her with the alternate juror. The State then called its remaining witnesses, and the jury ultimately convicted Respondent of armed \*\*245 robbery and possession of a firearm during the commission of a violent crime.

*State v. Coaxum*, 410 S.C. 320, 326, 764 S.E.2d 242, 244-45 (2014)

#### CASE #2B:

"[T]rial judges and attorneys cannot fulfill their duty to screen out biased jurors without accurate information." *Kelly*, 331 S.C. at 145, 502 S.E.2d at 106. Should jurors give false or misleading answers during voir dire, the parties may mistakenly seat a juror who could have been excused by the court, challenged for cause by counsel, or stricken through the exercise of a peremptory challenge. *State v. Gullledge*, 277 S.C. 368, 371, 287 S.E.2d 488, 490 (1982). 91011 In the event of such juror misconduct, the trial court must inquire into whether the withheld information affects the jury's impartiality. *Kelly*, 331 S.C. at 141, 502 S.E.2d at 104. However, the court should not grant a mistrial based on a juror's concealment of information "unless absolutely necessary." *Id.* at 142, 502 S.E.2d at 104. "Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial." *Id.* (citing *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989)); see also *State v. Williams*, 321 S.C. 455, 459-60, 469 S.E.2d 49, 52 (1996) \*328 (affirming the trial court's decision to seat an alternate juror midtrial after another juror's impartiality came into question); *State v. McDaniel*, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980) (same).

*State v. Coaxum*, 410 S.C. 320, 327-28, 764 S.E.2d 242, 245 (2014)

#### CASE #3:

We agree that the juror's lack of response in this case must rise to the level of "intentionally concealed information." Considering the facts available to us, especially the telling statements found in Anderson's first affidavit, we find \*576 Anderson did not truthfully respond to the trial court about his 1996 automobile repossession. Concomitantly, in the interest of justice, in circumstances where:

(1) it is discovered a juror did not disclose a truthful answer in response to voir dire;

(2) the juror's disqualification is discovered following trial;  
(3) a truthful response could have supported a challenge for cause or could have been a material factor in the use of a peremptory challenge; and  
(4) the Gray criteria have been satisfied,  
the proper remedy for the injured party is a de novo trial. Gray v. Bryant, 298 S.C. 285, 379 S.E.2d 894 (1989); see also Shafer v. Schuster, 882 S.W.2d 310 (Mo.Ct.App.1994), cited in Annotation, 66 C.J.S. New Trial § 25 (1998) (in the case of a juror's intentional nondisclosure in response to voir dire, bias and prejudice are inferred, and a new trial is required).

Long v. Norris & Assocs., Ltd., 342 S.C. 561, 575-76, 538 S.E.2d 5, 13 (Ct. App. 2000)

-Both the State and the defense agreed they would have struck the juror.

---

CASE #4:

In the case of Photostat Corporation v. Ball, 338 F.2d 783 (CA 10 1964) it was held reversible error to fail to grant a new trial where jurors did not respond to voir dire questions:

Necessarily, it is expected and required that jurors in their answers shall be completely truthful and that they shall disclose, upon a general question, any matters which might tend to disqualify them from sitting on the case for any reason. It therefore becomes imperative that the answers be truthful and complete. False or misleading answers may result in the seating of a juror who might have been discharged by the Court, challenged for cause by counsel or stricken through the exercise of peremptory challenge. Ball, supra, at 786.

State v. Gulledge, 277 S.C. 368, 371, 287 S.E.2d 488, 490 (1982)

---

CASE #5:

If the voir dire questioning is sufficiently specific to elicit the information which is not disclosed, or as to which a false answer is later shown to have been given, the defendant has established a prima facie case of concealment or deception. (See. e.g., Moore v. Preventive Medicine Medical Group, Inc. (1986) 178 Cal.App.3d 728, 742, 223 Cal.Rptr. 859; People v. Jackson (1985) 168 Cal.App.3d 700, 705-706, 214 Cal.Rptr. 346.) Here, juror R. knew appellant was charged with killing her husband, and that the evidence involved an alcoholic husband and a battered wife. She was asked during voir dire if she had ever experienced domestic violence, and whether she had ever seen or experienced domestic, and specifically spousal, violence or alcoholism within her family. The line of questioning by counsel and the court was sufficiently clear to alert her to provide information about her own \*930 prior experiences. In her declaration she does not state that she misunderstood or was confused by the questions during voir dire. Nor does she state that she failed to inform the court of her abusive first husband during voir dire because of oversight or forgetfulness. Her affidavit thus establishes misconduct. (Weathers v. Kaiser Foundation Hospitals, supra, 5 Cal.3d at pp. 102-106, 95 Cal.Rptr. 516, 485 P.2d 1132; People v. Castaldia, supra, 51 Cal.2d at p. 572, 335 P.2d 104; People v. Diaz, supra, 152 Cal.App.3d at p. 934, 200 Cal.Rptr. 77.)

People v. Blackwell, 191 Cal. App. 3d 925, 929-30, 236 Cal. Rptr. 803, 805 (Ct. App. 1987)

-This case says that once the lie is established, there is a prima facie case of prejudice that the State must overcome.

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Carson M. Henderson  
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[www.carsonhendersonlawfirm.com](http://www.carsonhendersonlawfirm.com)

Carson Henderson <carson@carsonhendersonlawfirm.com>

Thu, Dec 7, 2017 at 8:22 AM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>

Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, "<rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Attached are Mr. Waldrup's four (4) roll call Records of Appearance. Please have Maryann mark these four (4) pages as Defendant's Exhibit #6.

[Quoted text hidden]

 2017-12-07 Anxaviar Jemorris Waldrup roll call Records of Appearance.pdf  
2244K

Wade Dowtin <wdowtin@greenwoodsc.gov>

Thu, Dec 7, 2017 at 10:46 AM

To: Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>, Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, "<rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Judge Hocker,

Micah and I will get our argument to you as soon as possible. With that said, I just wanted to mention a couple of things. According to the warrants, Juror #164 was arrested on January 20, 2017 in Ware Shoals for PWID Marijuana, a Proximity charge, and an Unlawful Neglect charge. Looking at the arrest warrants from Ware Shoals, the Clerk's stamp on the warrants show her office received the case on Thursday, February 16, 2017. It also appears that our office received the warrant from the clerk on that date. According to our records, the case was created in our system and assigned to me on February 24, 2017. The record also shows that the case was assigned to Tee on March 28, 2017 by Demetri Andrews. I am attaching a copy of the record with this email. I am also attaching a copy of the warrants showing the Clerk's stamp on when they received the warrants from Ware Shoals. We would request that these items be marked as State's Exhibits. The Adam Rowell trial began Monday, February 13, 2017.

I had no clue who juror #164 was until after defense counsel filed their motion regarding juror #164. Defense counsel attached juror #164 March 10, 2017 Initial Appearance form to their email. I may have been assigned the case at this point, but I did not see the juror at his appearance because I was on vacation. I can provide documentation of that if I need to. At some point I looked juror #164 name up in our system and noticed I had been assigned his case. Because of the pending motion for a new trial, I thought it would be best for someone else in our office to handle his case. I discussed this with Demetri, and he agreed. He then reassigned the case to Tee. I just wanted to be abundantly clear that I did not discuss juror #164 case with him, and based on the information above, there is no way I could have. I understand defense counsel has a job to do, but unless they are going to allege some type of prosecutorial misconduct on my part, then all of this information about who was assigned the case and the defendant's appearance dates is irrelevant. Micah and I will have our argument to you ASAP. He is in Abbeville General Sessions right now.

Thanks,

Wade

 Virus-free. [www.avast.com](http://www.avast.com)

[Quoted text hidden]

M. Wade Dowtin  
Assistant Solicitor

8th Judicial Circuit  
 PO Box 516  
 Greenwood, SC 29648-0516  
 (864) 942-8800 office  
 (864) 992-8250 cell  
 wdowntin@greenwoodsc.gov

Find Greenwood County on social media:



[Quoted text hidden]

**Anxavier Waldrup documents.pdf**  
 815K

**Hocker, Donald B. Law Clerk (Valerie Fulton)** <dhockerlc@sccourts.org>

Thu, Dec 7, 2017 at 11:37 AM

To: Wade Dowtin <wdowntin@greenwoodsc.gov>, Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: Micah Black <mblack@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett

<billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, "<rauchwise@gmail.com>"

<rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

As a point of clarification, Judge Hocker is not interested in whether or not the Solicitor's office should have known or disclosed Juror #164's arrest; rather, Judge Hocker is concerned about Juror 164's failure to respond during voir dire when the jury panel was asked if any members had been arrested and charged.

Thank you,

Valerie

**From:** Wade Dowtin [mailto:wdowntin@greenwoodsc.gov]

**Sent:** Thursday, December 7, 2017 10:46 AM

**To:** Carson Henderson <carson@carsonhendersonlawfirm.com>

**Cc:** Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>; Micah Black

<mblack@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett

<billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; <rauchwise@gmail.com>

<rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

[Quoted text hidden]

[Quoted text hidden]

**Micah Black** <mblack@greenwoodsc.gov>

Mon, Dec 11, 2017 at 5:22 PM

To: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>, Wade Dowtin <wdowntin@greenwoodsc.gov>,

Carson Henderson <carson@carsonhendersonlawfirm.com>

Cc: "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S."

<mnevers@sccourts.org>, rauchwise@gmail.com, "Jane H. Merrill" <jane@hmlawsc.com>

Judge Hocker,

After reviewing the issue, it appears Carson has cited most of the relevant case law on this issue. When a juror conceals information during voir dire a motion for a new trial should be granted only when the concealment is intentional. If it is an unintentional concealment, the inquiry should end and the motion should be immediately denied. However, if it is determined to be an intentional concealment, the inquiry continues. Only if the concealed information would have supported a challenge for cause or would have been a material factor in the use of the party's preemptory challenges should the motion for a new trial be granted.

First, there is no evidence to suggest that juror #164 intentionally concealed information regarding his arrest. From talking to Tara Scott, the question concerning whether anyone had been arrested previously was read in a series of questions that then elicited the panel to approach the bench if any applied to them. I know that I personally have trouble remembering lists or a series of items even right after they are told to me (i.e. I still make a grocery list even if it's only for a few items). I would contend that the general population struggles with the same concept. Quite simply, there is no evidence to suggest juror #164 intentionally concealed the information that was asked in voir dire and to assume so at this point would be pure speculation and conjecture. The only way to know for certain is for the Court to order him to appear and directly inquire with the juror to determine if the information was intentionally concealed.

If the court determines the concealment is unintentional, the inquiry should end, and the motion should be denied. If it is determined that the concealment was intentional, the moving party must show the juror should have been struck for cause or the concealment would have been a material factor in the use of the party's preemptory challenge. A person having pending charges is not a reason to strike for cause. I have personally asked several times for jurors to be stricken for cause when they had pending charges and have always been denied. Juror #164 would not have been struck for cause simply because he had pending charges.

Therefore, the defense is arguing that in this case the concealed information (not informing the court of his previous arrest) would have been a material factor in the use of a preemptory challenge by the defense. "Material" means "[o]f such a nature that knowledge of the item would affect a person's decision-making; significant; essential." *Black's Law Dictionary* 1066 (9th ed.2009). In *State v Phillip Miller* 398 S.C. 47, a "juror failed to disclose that, just ten months earlier, she participated in a criminal trial in which a man who had stabbed her mother was successfully prosecuted by the same solicitor's office that was prosecuting *Miller*. This information would have been significant to *Miller*, and therefore a material factor, in deciding how to use his preemptory challenges. Accordingly, we find the trial court committed an error of law."

The situation we have here in Rowell is completely different from the *Phillip Miller* case. In *Miller*, the juror personally knew the solicitor from recently participating in a trial where the juror's mother was stabbed and endured a jury trial. Here, juror #164 was arrested for essentially having a "dime bag" of marijuana and not properly restraining his child as required by 56-05-6410. Juror #164 has never had close relationship with anyone in our office, never been a victim in a case prosecuted by our office, and has never worked or volunteered in our office. He has no relationship outside of the fact that our office is prosecuting his cases where he is the defendant.

Of course the defense is going to "arm chair quarterback" and insist they would have struck Juror #164 had they known about his pending charges, but I seriously doubt the defense would have utilized a strike on a juror with these charges because they are not significant and completely unrelated to the charges of Felony DUI with death (alcohol). In all the other cases where this same issue arises, it concerns jurors knowing people (familial or a business relationship) testifying at trial. In other words, the common denominator in these cases are that jurors knew parties involved in the case, and the jurors did not properly disclose that information to the court. That is not the case here. Here, the character of the concealed information is that juror #164 had been arrested before. Not that he knew anyone associated at all with the Rowell Felony DUI trial. The fact that juror #164 failed to stand up when asked if he, a family member, or a close friend had ever been arrested before, in and of itself, is not significant enough to warrant a new trial even if it is determined that Juror #164 intentionally concealed this information.

Finally, in every trial I have ever participated, the final voir dire question is whether or not a juror can be fair and impartial. The judge always tells the jury panel he is looking for fair and impartial jurors. That is the ultimate question. Juror #164 never stood and stated he could not be fair and impartial. There is no evidence in this case to show otherwise.

In sum, a motion for a new trial should be granted only when the concealment is intentional. If it is an unintentional concealment (which is likely the case here), the inquiry should end, and the motion should be immediately denied. However, if it is determined to be an intentional concealment, the inquiry continues. Only if the concealed information would have supported a challenge for cause or would have been a material factor in the use of the party's preemptory challenges should the motion for a new trial be granted.

At this point, we think it is appropriate for the Court inquire upon Juror #164 this week to determine whether or not the concealment was intentional. He is represented by Janna Nelson, and I imagine at the Courts request, he could be available this week to answer any questions you might have. Our position is that this motion for a new trial has dragged on for quite some time now, and to be fair to the victim, this motion be ruled on as soon as possible.

Thank you,

Micah

**From:** Hocker, Donald B. Law Clerk (Valerie Fulton) [mailto:dhockerlc@sccourts.org]

**Sent:** Thursday, December 07, 2017 11:37 AM

**To:** Wade Dowtin <wdowtin@greenwoodsc.gov>; Carson Henderson <carson@carsonhendersonlawfirm.com>

**Cc:** Micah Black <mblack@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; <rauchwise@gmail.com> <rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

**Subject:** RE: Rowell Medical record

As a point of clarification, Judge Hocker is not interested in whether or not the Solicitor's office should have known or disclosed Juror #164's arrest; rather, Judge Hocker is concerned about Juror 164's failure to respond during voir dire when the jury panel was asked if any members had been arrested and charged.

Thank you,

Valerie

**From:** Wade Dowtin [mailto:wdowtin@greenwoodsc.gov]

**Sent:** Thursday, December 7, 2017 10:46 AM

**To:** Carson Henderson <carson@carsonhendersonlawfirm.com>

**Cc:** Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>; Micah Black <mblack@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; <rauchwise@gmail.com> <rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

**Subject:** Re: Rowell Medical record

Judge Hocker,

Micah and I will get our argument to you as soon as possible. With that said, I just wanted to mention a couple of things. According to the warrants, Juror #164 was arrested on January 20, 2017 in Ware Shoals for PWID Marijuana, a Proximity charge, and an Unlawful Neglect charge. Looking at the arrest warrants from Ware Shoals, the Clerk's stamp on the warrants show her office received the case on Thursday, February 16, 2017. It also appears that our office received the warrant from the clerk on that date. According to our records, the case was created in our system and assigned to me on February 24, 2017. The record also shows that the case was assigned to Tee on March 28, 2017 by Demetri Andrews. I am attaching a copy of the record with this email. I am also attaching a copy of the warrants showing the Clerk's stamp on when they received the warrants from Ware Shoals. We would request that these items be marked as State's Exhibits. The Adam Rowell trial began Monday, February 13, 2017.

I had no clue who juror #164 was until after defense counsel filed their motion regarding juror #164. Defense counsel attached juror #164 March 10, 2017 Initial Appearance form to their email. I may have been assigned the case at this point, but I did not see the juror at his appearance because I was on vacation. I can provide documentation of that if I need to. At some point I looked juror #164 name up in our system and noticed I had been assigned his case. Because of the pending motion for a new trial, I thought it would be best for someone else in our office to handle his case. I discussed this with Demetri, and he agreed. He then reassigned the case to Tee. I just wanted to be abundantly clear that I did not discuss juror #164 case with him, and based on the information above, there is no way I could have. I understand defense counsel has a job to do, but unless they are going to allege some type of prosecutorial misconduct on my part, then all of this information about who was assigned the case and the defendant's appearance dates is irrelevant. Micah and I will have our argument to you ASAP. He is in Abbeville General Sessions right now.

Thanks,

Wade

 Virus-free. www.avast.com

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—  
  
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—  
  
Carson M. Henderson

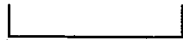
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M. Wade Downtin

Assistant Solicitor

8th Judicial Circuit

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[Quoted text hidden]

**Carson Henderson** <carson@carsonhendersonlawfirm.com>

Tue, Dec 12, 2017 at 8:09 AM

To: Micah Black <mblack@greenwoodsc.gov>

Cc: "Hocker, Donald B. Law Clerk (Valerie Fulton)" <dhockerlc@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, "<rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>

Judge,

We're still waiting on the transcript from Tara Scott. As the defense recollects, the Court's questions about arrests and convictions were straight forward and easy to comprehend. The juror was arrested on or about January 21, 2017, and he bonded out on or about January 24, 2017. Voir dire was on Monday, February 13, 2017, less than three (3) weeks after the juror was released from jail after being arrested. As previously stated to the Court, the defense would not have seated a juror who had pending criminal charges being prosecuted by the same solicitor's office prosecuting Mr. Rowell. If the juror had disclosed this information, the Court may have stricken the juror for cause. The defense believes that a hearing should be conducted so that the juror can be questioned under oath.

Furthermore, Billy will be out of town for the remainder of the week beginning tomorrow. Also, the defense would want Mr. Rowell to be present for any hearing.

Thanks for your consideration.

[Quoted text hidden]



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**Hocker, Donald B. Law Clerk (Valerie Fulton)** <dhockerlc@sccourts.org>

Tue, Dec 12, 2017 at 11:21 AM

To: Carson Henderson <carson@carsonhendersonlawfirm.com>, Micah Black <mblack@greenwoodsc.gov>

Cc: Wade Dowtin <wdowtin@greenwoodsc.gov>, "Hocker, Donald B." <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, "Nevers, Maryann S." <mnevers@sccourts.org>, "<rauchwise@gmail.com>" <rauchwise@gmail.com>, "Jane H. Merrill" <jane@hmlawsc.com>



Good morning,

Thank you to both sides for briefing this issue for Judge Hocker. He has already spoken to Tara about the exact wording of the question; the juror did not respond. This has been taken under advisement, and we will get an Order out to everyone as soon as possible.

Thank you,

Valerie

**From:** Carson Henderson [mailto:carson@carsonhendersonlawfirm.com]  
**Sent:** Tuesday, December 12, 2017 8:09 AM  
**To:** Micah Black <mblack@greenwoodsc.gov>  
**Cc:** Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>; Wade Dowtin <wdowtin@greenwoodsc.gov>; Hocker, Donald B. <dhockerj@sccourts.org>; Billy Garrett <billygarrettjr@yahoo.com>; Nevers, Maryann S. <mnevers@sccourts.org>; <rauchwise@gmail.com> <rauchwise@gmail.com>; Jane H. Merrill <jane@hmlawsc.com>

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[Quoted text hidden]

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**Carson Henderson** <carson@carsonhendersonlawfirm.com>  
**To:** "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:28 PM

----- Forwarded message -----

**From:** Micah Black <mblack@greenwoodsc.gov>  
**Date:** Mon, Nov 27, 2017, 5:14 PM  
**Subject:** Rowell Medical record  
**To:** Hocker, Donald B. Law Clerk (Catherine Thomas) <dhockerlc@sccourts.org>, Hocker, Donald B. <dhockerj@sccourts.org>, Carson Henderson <carson@carsonhendersonlawfirm.com>, Billy Garrett <billygarrettjr@yahoo.com>, <mnevers@sccourts.org>  
**Cc:** Wade Dowtin <wdowtin@greenwoodsc.gov>

[Quoted text hidden]

---

 **Rowell medical record.pdf**  
2280K

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**Carson Henderson** <carson@carsonhendersonlawfirm.com>  
**To:** "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:29 PM

----- Forwarded message -----

**From:** Carson Henderson <carson@carsonhendersonlawfirm.com>  
**Date:** Tue, Nov 28, 2017, 9:01 AM  
**Subject:** Re: Rowell Medical record  
**To:** Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>

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 **2017-11-27 Letter following review of undocumented male patient (Defendant's exhibit #3 at motion hearing).pdf**  
126K

**Carson Henderson** <carson@carsonhendersonlawfirm.com>  
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:29 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>  
Date: Wed, Dec 6, 2017, 11:39 AM  
Subject: Re: Rowell Medical record  
To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>  
[Quoted text hidden]  
[Quoted text hidden]

**Carson Henderson** <carson@carsonhendersonlawfirm.com>  
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:30 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>  
Date: Thu, Dec 7, 2017, 7:56 AM  
Subject: Re: Rowell Medical record  
To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>  
Cc: Micah Black <mblack@greenwoodsc.gov>, Hocker, Donald B. <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, Nevers, Maryann S. <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, <rauchwise@gmail.com> <rauchwise@gmail.com>, Jane H. Merrill <jane@hmlawsc.com>  
[Quoted text hidden]

**Carson Henderson** <carson@carsonhendersonlawfirm.com>  
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:30 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>  
Date: Thu, Dec 7, 2017, 8:22 AM  
Subject: Re: Rowell Medical record  
To: Hocker, Donald B. Law Clerk (Valerie Fulton) <dhockerlc@sccourts.org>  
Cc: Micah Black <mblack@greenwoodsc.gov>, Hocker, Donald B. <dhockerj@sccourts.org>, Billy Garrett <billygarrettjr@yahoo.com>, Nevers, Maryann S. <mnevers@sccourts.org>, Wade Dowtin <wdowtin@greenwoodsc.gov>, <rauchwise@gmail.com> <rauchwise@gmail.com>, Jane H. Merrill <jane@hmlawsc.com>  
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 **2017-12-07 Anxaviar Jemorris Waldrup roll call Records of Appearance.pdf**  
2244K

**Carson Henderson** <carson@carsonhendersonlawfirm.com>  
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:31 PM

----- Forwarded message -----

From: **Micah Black** <mblack@greenwoodsc.gov>  
Date: Mon, Dec 11, 2017, 5:24 PM  
Subject: RE: Rowell Medical record

10/23/2018

Henderson Law Firm Mail - Rowell Medical record

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**4 attachments**

**~WRD000.jpg**  
1K

**image001.jpg**  
1K

**image002.jpg**  
1K

**Image003.jpg**  
1K

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**Carson Henderson** <carson@carsonhendersonlawfirm.com>  
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Sat, Sep 1, 2018 at 2:32 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>

Date: Tue, Dec 12, 2017, 8:09 AM

Subject: Re: Rowell Medical record

[Quoted text hidden]

[Quoted text hidden]

**4 attachments**

**image001.jpg**  
1K

**image003.jpg**  
1K

**~WRD000.jpg**  
1K

**image002.jpg**  
1K

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**Carson Henderson** <carson@carsonhendersonlawfirm.com>  
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Tue, Oct 23, 2018 at 4:35 PM

[Quoted text hidden]



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**Rowell medical record.pdf**  
2280K

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Carson Henderson <carson@carsonhendersonlawfirm.com>  
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Tue, Oct 23, 2018 at 4:36 PM

----- Forwarded message -----

From: Carson Henderson <carson@carsonhendersonlawfirm.com>  
Date: Sat, Sep 1, 2018 at 2:29 PM  
Subject: Fwd: Rowell Medical record  
To: <rauchwise@gmail.com> <rauchwise@gmail.com>

[Quoted text hidden]

[Quoted text hidden]



**2017-11-27 Letter following review of undocumented male patient (Defendant's exhibit #3 at motion hearing).pdf**  
126K

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Carson Henderson <carson@carsonhendersonlawfirm.com>  
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Tue, Oct 23, 2018 at 4:36 PM

----- Forwarded message -----

From: Carson Henderson <carson@carsonhendersonlawfirm.com>  
Date: Sat, Sep 1, 2018 at 2:29 PM  
Subject: Fwd: Rowell Medical record  
To: <rauchwise@gmail.com> <rauchwise@gmail.com>

[Quoted text hidden]

[Quoted text hidden]

---

Carson Henderson <carson@carsonhendersonlawfirm.com>  
To: "<rauchwise@gmail.com>" <rauchwise@gmail.com>

Tue, Oct 23, 2018 at 4:36 PM

----- Forwarded message -----

From: **Carson Henderson** <carson@carsonhendersonlawfirm.com>

Date: Sat, Sep 1, 2018 at 2:30 PM

Subject: Fwd: Rowell Medical record

To: <rauchwise@gmail.com> <rauchwise@gmail.com>

[Quoted text hidden]

[Quoted text hidden]

**From:** Micah Black [mailto:[mblack@greenwoodsc.gov](mailto:mblack@greenwoodsc.gov)]

**Sent:** Monday, November 27, 2017 5:13 PM

**To:** Hocker, Donald B. Law Clerk (Valerie Fulton) <[dhockerlc@sccourts.org](mailto:dhockerlc@sccourts.org)>; Hocker, Donald B. <[dhockerj@sccourts.org](mailto:dhockerj@sccourts.org)>; Carson Henderson <[carson@carsonhendersonlawfirm.com](mailto:carson@carsonhendersonlawfirm.com)>; Billy Garrett <[billygarrettjr@yahoo.com](mailto:billygarrettjr@yahoo.com)>; Nevers, Maryann S. <[mnevers@sccourts.org](mailto:mnevers@sccourts.org)>

**Cc:** Wade Dowtin <[wdowtin@greenwoodsc.gov](mailto:wdowtin@greenwoodsc.gov)>

**Subject:** Rowell Medical record

Judge Hocker,

Attached is the medical record that I would like to have marked as a state's exhibit. I have highlighted the greet time noted at 20:44.

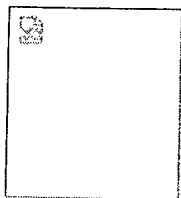
Thank you,

Micah Black

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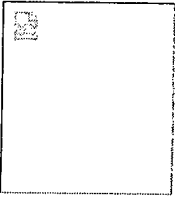


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2017-11-27 Letter following review of undocumented male patient (Defendant's exhibit #3 at motion hearing).pdf
125.9kB

**GMMC
PRIMARY**

Patient, Tr20142744
DOB: 1/1/1901 113
Wt/Ht:
MedRec: 980338480
AcctNum: 08021722564

Patient Data

Complaint: Accident — automobile
Triage Time: Sat Nov 15, 2014 20:49
Urgency: 1—Critical
Bed: ED CC
Initial Vital Signs: 11/15/2014 21:04
BP:
P:132
O2 sat:

ED Attending: Snow, MD, Bradley M.
Primary RN:

R:18
T:
Pain:

PRESENTING PROBLEM (20:49 ASW)

Presenting problems: Trauma — Major.

TRIAGE (Sat Nov 15, 2014 20:49 ASW)

PATIENT: NAME: Patient, Tr20142744, AGE: 113, DOB: Tue Jan 01, 1901, TIME OF CREW: 1:54
Nov 15, 2014 20:49, RACE: Unknown, Africa past 21 days?: Unable to answer — acute injury/illness,
Poss. Flu Exposure?: Unable to answer — acute injury/illness, Homicidal/Suicidal?: Unable to
answer — acute illness/injury, Need Isolation?: Does not need Isolation, MEDICAL RECORD
NUMBER: 980338480, ACCOUNT NUMBER: 08021722564, PERSON ID: 980338480.
ADMISSION: URGENCY: 1—Critical, ADMISSION SOURCE: Greenville County — scene of
accident, TRANSPORT: LifeNet, DEPT: Emergency, BED: BTC-W.
COMPLAINT: Accident — automobile.
PROVIDERS: TRIAGE NURSE: Amanda Westhart, RN.

ADMIN

PATIENT DATA CHANGE: A08 63506_32473_TA2 by Interface, Gender: I, Payment: 18.

(22:09)

Gender: (none), Payment: (none), Triage Source: (none), Attending: Bradley M. Snow, MD.

(22:45 ALB)

BEDBOARD ENTRY: Request Date/Time: Nov 15, 2014 22:12, Bed Type: ICU, Update admitroom:
(none), Diagnosis: MVC, etoh intoxication, BLE fxs, LmHumer, DRO: *None Known, Special Code:
Trauma, Admitting Doctor: Snow, Other Drips: *None, Equipment: *None, Tubes: *None, Mode of
Travel: Stretcher, Going to prior to room: *To room, Comments: pt is ready to move., Admit Room:
(none), Bed Status: (none). (22:12 BKA)

KNOWN ALLERGIES

No recorded allergies

VITAL SIGNS

VITAL SIGNS: Pulse: 132, Resp: 18, Time: 11/15/2014 21:04. (21:04 ASW)
BP: 113/71, Time: 11/15/2014 21:04. (21:04 ASW)
Pulse: 144, Resp: 19, Time: 11/15/2014 21:09. (21:09 ASW)
BP: 139/100, Time: 11/15/2014 21:10. (21:10 ASW)
Pulse: 134, Resp: 19, O2 sat: 99, Time: 11/15/2014 21:56. (21:56 ASW)
BP: 132/87, Time: 11/15/2014 21:59. (21:59 ASW)
BP: 148/132, Time: 11/15/2014 22:01. (22:01 ASW)
Pulse: 135, Resp: 21, O2 sat: 100, Time: 11/15/2014 22:06. (22:06 ASW)
Pulse: 136, Resp: 19, O2 sat: 100, Time: 11/15/2014 22:11. (22:11 ASW)
BP: 161/141, Time: 11/15/2014 22:15. (22:15 ASW)
Pulse: 135, Resp: 25, O2 sat: 94, Time: 11/15/2014 22:21. (22:21 ASW)
BP: 90/45, Time: 11/15/2014 22:21. (22:21 ASW)
BP: 85/63, Time: 11/15/2014 22:24. (22:24 ASW)
BP: 71/35, Pulse: 141, Time: 11/15/2014 22:29. (22:29 ASW)
BP: 131/43, Pulse: 132, O2 sat: 99, Time: 11/15/2014 21:20. (21:20 ASW)
BP: 146/84, Pulse: 139, Time: 11/15/2014 21:30. (21:30 ASW)
BP: 141/125, Pulse: 138, Resp: 18, O2 sat: 100, Time: 11/15/2014 21:40. (21:40 ASW)

**GMMC
PRIMARY**

Patient, Tr20142744
DOB: 1/1/1901 113
Wt/Ht:
MedRec: 980338480
AcctNum: 08021722564

BP: 132/97, Pulse: 139, Resp: 18, O2 sat: 100, Time: 11/15/2014 21:50, (21:50 ASW)

CURRENT MEDICATIONS

No recorded medications

HPI TRAUMA FLOWSHEET (21:22 SPM)

PHYSICIANS NOTES: The individual medication events and other treatment modalities or diagnostic procedures listed here represent verbal orders by the trauma physician/ED Attending to a Registered Nurse during stabilization and treatment of a trauma patient. Each medication line represents the drug, dose and route. The drug was immediately administered after the verbal order was given, so the time represents when the drug was given, with the order occurring immediately prior to the delivery of the medications. I agree and co-sign these medication and procedure orders as the medications and procedures I ordered during the care of this patient., Level 1 alert.

DIAGNOSIS (Sun Nov 16, 2014 00:21 NWE)

FINAL: PRIMARY: see physician record.

ORDERS

CATH CENTRAL VENOUS: Status: Active. (22:06 ASW)

CATH FOLEY WBAG TRAY 16F: Status: Active. (22:06 ASW)

INS NON-TUNNELED CV 5 YRS >: Status: Active. (22:06 ASW)

Critical Care EPoint: Status: Active. (22:15 ASW)

PRESCRIPTION

No recorded prescriptions

NURSING ASSESSMENT: TRAUMA FLOWSHEET

PREHOSPITAL RECORD: Attending: Snow, Arrived at: PTA, Chief Resident: Le, Arrived at:

PTA, Resident: McGrath, Arrived at: PTA, Resident2: Jacobs, Arrived at: PTA, Nurse Recorder: Amanda Westhart, RN, Arrived at: PTA, Nurse Bedside: Joe Saitz, RN; Themp Drummond, RN; Nancy Whaley, RN, Arrived at: PTA, NST: Bill Evans, NST, Arrived at: PTA, RT: Marci S., RT, Arrived at: PTA, Patient arrived at: 2100, Trauma alert called at: 2040, Level 1, Transport by helicopter, Name: Life Flight, Injury from MVC, Descriptor: driver, Descriptor: extrication, Time prolonged, Name: hypotensive en route, receiving blood en route, C-collar, Intubation, RSI drugs. (20:10 ASW)

HISTORY AND ROS: RTS PTA 8, Unknown allergies, Unknown medications, Unknown past medical history, past surgeries unknown, Unknown social history, Unknown tetanus, Last meal unknown. (20:35 ASW)

PRIMARY SURVEY: Airway patent, Airway Oral BT, Rate: 18, assisted, Time vent, O2Sat, pattern Bzcap 99, Time o2sat 2105, Pattern, Apneic, Trachea, Midline, Chest wall movement, WNL, Breath sounds, Present on the right, Present on the left, Notes patient intubated en route, Heart rate: 132, Time 2102, EKG rhythm: sinus tach, Initial BP: 113/71, Time 2103, Color, WNL, Skin, cool, dry, Pulses, Radial present, Cap refill, 3 seconds or less, Time 2102, Byes, None (1), Verbal, None (1), Motor, Flaccid (1), LOC, yes, Patient temp: 98.3, Axillary, Time 2159, Warming blankets, Warmed IVF. (21:02 ASW)

SECONDARY ASSESSMENT: Deferred to MD, See H. (20:50 ASW)

PROCEDURES: Patient intubated orally, Intubation placement confirmed, Patient intubated time:

PTA, Patient intubated size: 7.5, Patient intubated site: oral, Patient intubated by: EMS, Peripheral IV Site 1, Peripheral IV Site 1 time: PTA, Peripheral IV Site 1 size: 18, Peripheral IV Site 1 site: right wrist, Peripheral IV Site 1 by: EMS, Labs drawn with central line, time: 2108, by: Snow, Monitor, time: 2102, by: Bill Evans, NST, NIBP, time: 2102, by: Bill Evans, NST, Pulse Ox, time: 2102, by: Bill Evans, NST, ABG drawn, ABG drawn time: 2206, ABG drawn size: 23, ABG drawn site: left radial, ABG drawn by: Ashley, RT, Foley, Foley time: 2202, Foley size: 16, Foley by: Le, FAST questionable, time: 2203, by: Le, Central line, Central line time: 2108, Central line size: cordis, Central line site: left subclavian,

**GMMC
PRIMARY**

Patient: Tr20142744
DOB: 1/1/1901 113
Wt/Ht:
MedRec: 980338480
AccNum: 08021722564

Central line by: Snow, Head CT, Neck CT, Chest CT, Abdomen CT, Pelvis CT, time: 2128 to CT,
CXR, Cxr: 2105, Pelvic X-ray, Pxr: 2109. (22:05 ASW)

CRITICAL CARE TIME: Patient is a critical care patient with trauma activation, Facility critical
care time **75 minutes.** (22:15 ASW)

MEDICATIONS: Time: 2220, manufacturer: Sanofi Pasteur, lot number: C4695AA, expiration
date: 11Feb17, Site: right delt, Given by: Nancy Whaley, RN, Time: 2220, Medication: Ancef, Dose: 2
gm, Route: IV, Site: right wrist, Given by: Nancy Whaley, RN, Time: 2134, Medication: Fentanyl, Dose:
50 mcg, Route: IV, Site: right wrist, Given by: Joe Saltz, RN, Time: 2134, Medication: Versed, Dose: 2
mg, Route: IV, Site: right wrist, Given by: Joe Saltz, RN, Time: 2136, Medication: Propofol, Dose: 10
mcg/kg/min, Route: IV, Site: right wrist, Given by: Joe Saltz, RN, Time: 2145, Medication: Fentanyl,
Dose: 50 mcg, Route: IV, Site: right wrist, Given by: Joe Saltz, RN, IV fluids, Type: NS, Bag#: 1, Time
started: 2100, Time ended: 2130, Amount: 1000 ml, Warned: yes, Type: NS, Bag#: 2, Time started: 2130,
Time ended: 2200, Amount: 1000 ml, Warned: yes, Type: LR, Bag#: 3, Time started: 2210, Amount: 1000
ml, Warned: no. (22:15 ASW)

DISPOSITION: Patient admitted to, OR, Service: TTS, Physician Snow. (22:30 ASW)

VALUABLES/BELONGINGS: At time of arrival, watch and ring locked up along with phone in
camo otterbox by Ellison, patient liaison. (22:30 ASW)

NURSING PROCEDURE: NURSE NOTES

TIME: Time: 2100, Patient arrives, one unit of blood and one bag FFP infusing per Life Flight.

Patient had Succinylcholine, Norcuron, and Versed between 2017 and 2022 prior to intubation en
route. See Trauma flowsheet. (21:30 ASW)

Time: 2138, Propofol has been titrated up to 50 mcg/kg/min. Will continue to monitor and adjust as
needed to get through CT scan, as patient is fighting the vent. (21:35 ASW)

Time: 2153, Propofol decreased to 20 mcg/kg/minute as BP is decreased to 97/73. (21:53
ASW)

Time: 2200, Back to trauma bay from CT. Propofol has been stopped at this time. Will continue to
titrate as needed. All doctors at bedside continuing to evaluate patient. ICU is working on making a
bed for the patient. (22:00 ASW)

Time: 2207, Propofol turned back on by Dr. Snow at 20 mcg/kg/min. (22:07 ASW)

Time: 2220, Propofol again turned off by Dr. Snow. Patient's BP is declining. Will administer
more blood and take patient to the OR. (22:20 ASW)

Time: 2230, Patient transported to the OR, trauma team at bedside. One unit of O Negative given
to OR staff from our fridge for them to transfuse as we await massive transfusion protocol blood
products. Bedside report given to nursing and anesthesia. Dr. Snow remained at bedside and
aware of all changes in patients status throughout the entire span of his care in the ER.
(22:30 ASW)

Time: 2216, Patient taken off backboard by Dr. Le. (22:16 ASW)

DISPOSITION (Sun Nov 16, 2014 00:22 NWB)

PATIENT: Disposition Type: Admit, Disposition: Admit to OR, Condition: Stable, Patient left the
department.

EVENTS

TRANSFER: Triage to Emergency ETCWaitingRoom. (Sun Nov 16, 2014 20:49 ASW)

Emergency ETCWaitingRoom to TraumaBay 01. (20:49 ASW)

Emergency TraumaBay 01 to AwaitingICUbed (Hold Bed). (22:12 BRA)

Emergency TraumaBay 01 to CriticalCare H15. (Sun Nov 16, 2014 00:05 ALR)

Emergency CriticalCare H15 to H23. (Sun Nov 16, 2014 00:12 STR)

Removed from Emergency CriticalCare H23. (Sun Nov 16, 2014 00:22 NWB)

Key:

ALR=Rochester, MD, Angel L. ASW=Westhart, RN, Amanda BRA=Atkins, HUC, Betsy NWB=Whaley, RN, Nancy
SPM=McGrath, MD, RES, Sean STR=Galloway, RN, Sabrina

Time of report 02/26/2016 1133

ROWELL, ADAM MARTIN (980338480)

Hospital ID G08

S29603(I)

1

Collect D/T 11/15/2014 2054

2

Receive D/T 11/15/2014 2124

HIS # 68213483-0

Phleb Tech 27174

Order physician: SNOW, BRADLEY M

Order account #: 080021722564

Order location: GMTB

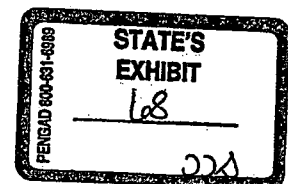
Wrkid Cd NOT

Collection # 1

Date	Time	Activity	Batch Loc	Tech	Act Loc	Test Codes	SPOT	Rack Slot	Batch ID
11/15/2014	21:00:35	ORD RCVD/MOD			ED	ALCP,CREAT, GLU,HPNOD,K,PT,PTT,SAVE			
11/15/2014	21:01:20	CONT created				ALCP,CREAT, GLU,K		170002,4	
		CID L263094712							
11/15/2014	21:24:43	CONT updated		12524		ALCP,CREAT, GLU,K	GSPA	170002,4	
		CID L263094712							
11/15/2014	21:24:43	CONT RCVD		12524 L2		ALCP,CREAT, GLU,HPNOD,K,PT,PTT,SAVE			
		CID L263094712,L263094713,L263094714,L263094715							
11/15/2014	21:24:43	ORD RCVD/MOD		12524 L2		ALCP,CREAT, GLU,HPNOD,K,PT,PTT,SAVE			
11/15/2014	21:40:12	CONT updated		0029		ALCP,CREAT,GFRA,GFRN, GLU,K		170002,4	
		CID L263094712							
11/15/2014	21:40:12	CONT resulted		IXPROC		ALCP,CREAT,GFRA,GFRN, GLU,K C8M1		170002,4	
		CID L263094712							
11/15/2014	21:40:12	ORD RCVD/MOD		0029-A		GMH ALCP,CREAT,GFRA,GFRN, GLU,HPNOD,K,PT,PTT,SAVE			
11/15/2014	21:40:12	RES ENT/MOD		0029-A		GMH ALCP			
11/15/2014	23:10:00	CONT tracked		0088		ALCP,CREAT,GFRA,GFRN, GLU,K APSU		170002,4	
		CID L263094712							
11/15/2014	23:14:12	CONT tracked				ALCP,CREAT,GFRA,GFRN, GLU,K APSU		170002,4	
		CID L263094712							

*** END OF REPORT ***

Hospital Data Management system audit trail



Transport



Patient Info	
Record Number:	369-14-3819A
Patient Name	Rowell, Adam
Patient Form	Adult
Patient Gender	Male
Patient Weight	125.0 kg
Patient Age	35 Years (est.)
Patient DOB	
Patient Race	Caucasian
Barriers to Care	Unconscious

Transport Info	
Transport Date	2014-11-15
Mission Type	Scene Call - Trauma
Unit	AnMed - N407SM
Call Type	Emergency Rotor - Scene
Base	ANMED
Controlling MD	Davies
Rec. Hosp. MR #	TR20142744
Transport Team	
RN	Waite, Angela
PM	Kelly, Alfred

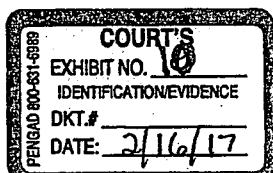
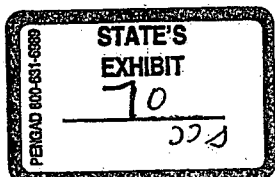
Sending and Receiving			
Sending LZ	Scene - Greenwood County	Receiving LZ	Greenville Memorial
Sending Facility	Scene - Greenwood County	Receiving Facility	Greenville Memorial
Sending MD		Receiving MD	GHS Trauma Services
Sending Unit	Scene Call	Receiving Unit	Emergency Department - Adult

Reason for Transport (medical necessity determination)	
Sending	Patient was located at the scene of incident/accident
Receiving	Specialty Services Required: Trauma Facility
Transport	Transport by another method to the appropriate facility would take too long
Complicating Issues	Patient required advanced procedures not available to ground EMS
CAMTS	MVC in which another person in the same vehicle died

Transport Details	
Patient Consent	Implied: Patient mental status depressed (GCS<12)
Trauma Alert Activated	Yes. Airway Assist (Not O2), Airway Assistance/Intubation, Altered Mental Status, Amnesia or LOC, BP < 90, Closed Long Bone Fracture, Fracture 2 or More Long Bones, GCS < 12, Multiple Fracture Sites, Paramedic Discretion
EMS local protocol utilized	N/A
Level of Care PTA/Place of Exam	ALS / Greenwood County EMS unit located at the scene of the accident
Outcome of PTA Aid	Unchanged

COBRA/EMTALA
The patient's care is medically necessary and has been certified by a physician involved with chosen receiving hospital as an EMTALA/COBRA request. PLEASE NOTE: This emergency patient transport was performed with the authorization of the physician. The authorization has been properly documented.

Procedures
Airway Management



Powered by



Confidential

Record Number	369-14-3819A
Transport Type	Trauma : Multi-System

Name	Adam Rowell

Impressions Detail	
Rank	Detail
1	Impression is Motor Vehicle Accident
2	Impression is Multi-Trauma

Patient Medical

Chief Complaint	Multi-Trauma due to MVC Organ System: Global. Anatomic Location: General/Global. Duration: 60 Minutes
Primary Symptom	Change in responsiveness
Other Symptoms	Bleeding, Breathing Problem, Change in responsiveness, Fracture, Weakness, Wound
Incident:	Incident occurred HWY 25 S, Greenwood SC. County of Incident: Greenwood SC. Motor vehicle incident. Patient was a Driver of/in a Auto which Struck. a A Fixture Head-On Patient was in Driver's Seat. Patient was restrained by Unknown. There was significant intrusion. Damage to vehicle was: DOA Same Vehicle, Damage, Dash Deformity. Patient was unconscious upon arrival. Extrication required.
Medication Allergies	Unknown
Environment & Food Allergies	Other. Comment: Unknown
Medical History	Unknown
Surgical History	Other. Comment: Unknown
Infection History	Other (Specified in Comments). Comment: Unknown

Transport

Dispatch Times	
Time of Call	11/15 19:38 EST
Time Dispatch	11/15 19:39 EST
Time Enroute	11/15 19:46 EST
Arrive Scene	11/15 20:09 EST
Depart Scene	11/15 20:31 EST
Arrive Facility	11/15 20:55 EST
Depart Facility	11/15 21:50 EST

Clinical Times	
Incident Time	11/15 19:38 EST
Rendezvous	11/15 20:12 EST
Depart with Patient	11/15 20:26 EST
Accepting Unit	11/15 20:59 EST
Signover	11/15 21:00 EST



Record Number	369-14-3819A
Transport Type	Trauma : Multi-System

Name	Adam Rowell

History of Present Illness/Injury

Requested to the scene by Greenwood County EMS in reference to an MVC with entrapment / fatality / multi-patients.

On arrival at patient's side, full report received from EMS. The pt was an approx 35 year old 125kg male patient which was involved in a 2 vehicle, head on MVC. Patient was the driver per EMS. Patient required 45 minutes extrication per EMS. EMS also advises that there was one DOA in patient vehicle.

Pt was placed on a spine board with cervical collar with head secured PTA by EMS. IV access had been obtained. EMS reports patient was in and out of consciousness during extrication. On flight crew arrival, patient was unresponsive with ventilations being assisted by EMS at a rate of 12. EMS was unable to get a good ventilation of patient despite re-positioning of the head. EMS SpO2 while assisting ventilations 88%. Glasgow of 4, RTS 6.

On Scene Delay:

Patient required RSI

Packing patient for transport due to weather considerations

Patient re-accessed after all medications to confirm desired effect.

Patient re-accessed during blood and blood product administration

Incident Information

Scene	Incident occurred HWY 25 S, Greenwood SC. County of Incident: Greenwood SC. Motor vehicle incident. Patient was a Driver off/in a Auto which Struck a A Fixture Head-On Patient was In Driver's Seat. Patient was restrained by Unknown. There was significant intrusion. Damage to vehicle was: DOA Same Vehicle, Damage, Dash Deformity. Patient was unconscious upon arrival. Extrication required.
Regulatory	First responder was Greenwood County EMS. Second responder was Greenwood Fire Department. Number of patients at scene: Multiple. This is a mass casualty incident. Other Service Agencies: EMS Mutual Aid, Fire Dept., Law Enforcement. Injury took place at Street or Highway. Intent of injury was Unintentional. Mechanism of injury was Blunt. Injury was caused by: Motor vehicle traffic accidents MOTR VEH RE-ENTRANT COLL W/MV-INJR MV DRIVER Trauma Alert Activated: Trauma Alert Activated: Airway Assist (Not O2), Airway Assistance/Intubation, Altered Mental Status, Amnesia or LOC, BP < 90, Closed Long Bone Fracture, Fracture 2 or More Long Bones, GCS < 12, Multiple Fracture Sites, Paramedic Discretion
Procedures	Procedures: Backboard, CID, Cervical Collar, Cervical Immobilization, IV, Splinting. Interventions: Medications, Ventilator.



Record Number	369-14-3819A
Transport Type	Trauma : Multi-System

Name	Adam Rowell

Transport Information			
		Transport Position	Supine
Altitude	1500	Cabin Pressure	1500
Transport Loading	Hot Loaded	Signed Over to	Amanda Westhart RN
Transport Device	Aircraft stretcher, Backboard	Condition at Signover	Unchanged
NVG Utilized	Yes		

No safety briefing given. Ear protection supplied to patient. Safety straps used to secure patient for transport. Stretcher and/or Isolette secured for transport.

Fluid I/O			
Fluid	PTA	Enroute	Total
IVF	1,500	500	2,000
Blood	0	540	540
Urine			
Emesis/NG			
EBL			

Prior To Arrival Procedures (PTA)

Intravenous Therapy	18G Right Hand IV initiated by EMS Provider. Dressing: Dressing clean, Dressing intact, No edema noted, Veniguard Used. Bolus of 1000 ml NS. Bolus Only.

Crew Physical Exams

Neuro	Patient Mentation: Unconscious, Unresponsive. Recall: Positive Loss of consciousness. Pupils equal round and reactive to light [3mm]. Movement: No movement. Reflexes: Gag present.
Skin	Appearance: Bruising. Peripheral Temperature: Cool. Central Temperature: Cool. Moisture: Dry. Capillary Refill: Less than 2 seconds. Turgor: Supple. Texture: Dry.
HEENT	Head: Cranium intact, Normocephalic. Eyes: Left pupil round and reactive, Right pupil round and reactive. Ears: Normal. Nose: Epistaxis. Throat: Other [blood in throat].
Neck	Immobilization: Backboard, C-Collar, CID, Fully immobilized, Head Blocks, Head Taped, Straps. Trachea deviation: None. Trachea mid-line.
Chest	Breathing: Shallow. Breath Sounds: Clear to auscultation. Symmetry: Normal
Cardiac	Regular rate and rhythm, no murmurs, gallop or rub.
Abdominal	No visible trauma, nondistended, soft, normal active bowel sounds throughout.
Pelvis	Instability located Left Pelvis, Right Pelvis.

Record Number	369-14-3819A
Transport Type	Trauma : Multi-System

Name	Adam Rowell

Physical Exams (cont.)

GU	Not examined: Due to packaging.
Back	Not examined: Due to packaging.
Extremities	Closed Fracture located Arm [Closed fractures bilateral humerus], Leg [Multiple closed fractures bilateral tib/fibs, possible left knee fracture, possible closed left femur fracture].

Procedures

Airway Management	20:14:00 EST Nov 15, 2014 Assessment reveals: Failure to Oxygenate, Failure to Protect Airway, Failure to Ventilate, Per Protocol, Respiratory distress. Pre Pulse Ox: 88. 15 lpm. Patient prepared for Oral intubation. RSI delivered per program protocol. Procedure performed by Alfred Kelly [PM]. Visualization: 1 - Able to visualize glottis fully using Macintosh 4. ET Tube - Cuffed 7.5 placed. Depth 23 cm at Teeth. Placement verified with: Appropriate Breath Sounds, Colorimetric EtCO2 detector, Direct Visualization, EtCO2 Sensor, Receiving MD, Verification of ETT after movement. Secured via ET Tube Holder. Adjuncts: Sellick Maneuver. Post Pulse Ox: 94% Complications: None.

Blood

Start Time	11/15 20:40 EST	Stop Time	11/16 21:10 EST	Locale	Transport Time
Product	Packed Red Cells	Source	Transporting Agency	Type	O negative
Blood Bank ID	10500	Donor	W043914007844	Exp. Date	2014-12-07
Consent	Implied	Documented	No		
Indications	Severe Hypotension	Patient Temp	96.7f	Given By	Angela Waite [RN]
Coombs Test	Coombs Negative	Crew Verification	Angela Waite [RN]		
Pump Used	No	Warmer Used	No	Volume	360 mL
Complications	None				
Start Time	11/15 20:42 EST	Stop Time	11/16 20:50 EST	Locale	Transport Time
Product	Fresh Frozen Plasma	Source	Transporting Agency	Type	A positive
Blood Bank ID	10500	Donor	W043914008186	Exp. Date	2014-12-08
Consent	Implied	Documented	No		
Indications	Severe Hypotension	Patient Temp	96.7f	Given By	Angela Waite [RN]
Coombs Test	Coombs Negative	Crew Verification	Angela Waite [RN]		
Pump Used	No	Warmer Used	No	Volume	180 mL

Scores

Time	Total	Glasgow Scores	RTS Scores	Sedated/Paralyzed	Comments
11/15 20:12 EST	Glasgow = 4 RTS = 6	Eyes = 2, Verbal = 1, Motor = 1	Cardio = 3, Resp = 2, Coded = 3.72	No/ No	
11/15 20:59 EST	Glasgow = 3 RTS =	Eyes = 1, Verbal = 1, Motor = 1	Cardio = 4, Resp = , Coded =	Yes/ Yes	



Record Number	369-14-3819A
Transport Type	Trauma : Multi-System

Name	Adam Rowell

Vital Signs

Primary							
Time	11/15/2014 20:31 EST	11/15/2014 20:36 EST	11/15/2014 20:41 EST	11/15/2014 20:46 EST	11/15/2014 20:51 EST	11/15/2014 20:55 EST	
Pulse	134 (Regular)	131 (Regular)	130 (Regular)	129 (Regular)	130 (Regular)	132 (Regular)	
Monitor	Sinus Tachycardia	Sinus Tachycardia	Sinus Tachycardia	Sinus Tachycardia	Sinus Tachycardia	Sinus Tachycardia	
BP	81/45 (Right Arm, Automated Cuff)	74/42 (Right Arm, Automated Cuff)	76/40 (Right Arm, Automated Cuff)	80/44 (Right Arm, Automated Cuff)	84/46 (Right Arm, Automated Cuff)	94/50 (Right Arm, Automated Cuff)	
Mean BP	50 mmHg	53 mmHg	52 mmHg	56 mmHg	59 mmHg	65 mmHg	
Pulses O ₂	94%	94%	93%	93%	94%	94%	
Pulse O ₂ site	Finger	Finger	Finger	Finger	Finger	Finger	
Resp.	12	12	12	12	12	12	
Pain	0	0	0	0	0	0	
ETCO ₂	32 mmHg	34 mmHg	35 mmHg	35 mmHg	34 mmHg	34 mmHg	
Skin Color	Pale	Pale	Pale	Pale	Pale	Pale	
Cap refill	2 secs.	2 secs.	2 secs.	2 secs.	2 secs.	2 secs.	
Temp	96.7				96.7	96.7	
Temp Method	Temporal				Temporal	Temporal	
Env Temp	74	76	76	76	80	80	
R pupil size	2 mm	2 mm	2 mm	2 mm	2 mm	2 mm	
R pupil response	Non-reactive	Non-reactive	Non-reactive	Non-reactive	Non-reactive	Non-reactive	
L pupil size	2 mm	2 mm	2 mm	2 mm	2 mm	2 mm	
L pupil response	Non-reactive	Non-reactive	Non-reactive	Non-reactive	Non-reactive	Non-reactive	
Responsiveness	Unresponsive	Unresponsive	Unresponsive	Unresponsive	Unresponsive	Unresponsive	
Resp effort	Mechanically Ventilated	Mechanically Ventilated	Mechanically Ventilated	Mechanically Ventilated	Mechanically Ventilated	Mechanically Ventilated	
11/15/2014 20:31 EST	Unable to access pain						
11/15/2014 20:36 EST	Unable to access pain						

Medications

Nov 15, 2014 20:14:00 EST	Medication: 180 mg of Lidocaine given as IV Drip Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Given prior to intubation. Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration.
Nov 15, 2014 20:15:00 EST	Medication: 36 mg of Etomidate given as IV Drip Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Given prior to intubation. Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration.
Nov 15, 2014 20:17:00 EST	Medication: 180 mg of Succinylcholine given as Single Dose Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Given prior to intubation. Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration.
Nov 15, 2014 20:21:00 EST	Medication: 5 mg of Versed given as Single Dose Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration.



Record Number	369-14-3819A
Transport Type	Trauma : Multi-System

Name	Adam Rowell

Medications (cont.)

Nov 15, 2014 20:23:00 EST	Medication: 12 mg of Vecuronium given as Single Dose Prior To Transport by Angela Waite [RN] via Intravenous (IV). Authorization: Protocol (Standing Order). Complications: None. Response was: Unknown. Notes: For desired effect, Re-accessed after administration.

Oxygen Therapy

Nov 15, 2014 20:20:00 EST	Performed by: Alfred Kelly [PM]. Locale: Prior to Arrival. Delivery device: Bag valve mask. Indication(s): Per Protocol. Flow Rate: 15 lpm. Comments: Post intubation, patient ventilated via BVM.

Event Log

Time	Details
11/15 20:12 EST	IV Site Checked Patient contact, IV site intact and flowing well.
11/15 20:13 EST	Patient Condition Update Exam completed with decision to RSI patient due to altered LOC and failure to maintain airway
11/15 20:20 EST	Initial ETT/Trach Check Initial ET confirmation
11/15 20:22 EST	Medical Decision Making Patient re-positioned on LSB
11/15 20:24 EST	Moved to Cot Patient placed into Life Blanket due to outside temps, moved to flight cot
11/15 20:25 EST	ETT rechecked after patient movement ET checked after movement
11/15 20:26 EST	Loaded/Unloaded from/to vehicle. Patient moved to aircraft and secured.
11/15 20:32 EST	Trauma Alert Report called to GHS
11/15 20:55 EST	ETT rechecked after patient movement ET confirmed after movement
11/15 20:55 EST	Loaded/Unloaded from/to vehicle. Patient moved from aircraft to ED stretcher and moved to ED, still in Life Blanket due to ambient temps
11/15 20:59 EST	Other: Patient placed into Trauma Bay 1. Report given to receiving team. Present Rt confirms tube placement.

Chronological

Time	Details
11/15 19:38 EST	Incident Time
11/15 20:12 EST	Rendezvous
11/15 20:12 EST	GCS: 4
11/15 20:12 EST	Event Log: IV Site Checked. Patient contact, IV site intact and flowing well..
11/15 20:13 EST	Event Log: Patient Condition Update. Exam completed with decision to RSI patient due to altered LOC and failure to maintain airway.
11/15 20:14 EST	20:14:00 EST Nov 15, 2014 Assessment reveals: Failure to Oxygenate, Failure to Protect Airway, Failure to Ventilate, Per Protocol, Respiratory distress. Pre Pulse Ox: 88. 15 lpm. Patient prepared for Oral intubation. RSI delivered per program protocol. Procedure performed by Alfred Kelly [PM]. Visualization: 1 - Able to visualize glottis fully using Macintosh 4. ET Tube - Cuffed 7.5 placed. Depth 23 cm at Teeth. Placement verified with: Appropriate Breath Sounds, Colorimetric EtCO2 detector, Direct Visualization, EtCO2 Sensor, Receiving MD, Verification of ETT after movement. Secured via ET Tube Holder. Adjuncts: Sellick Maneuver. Post Pulse Ox: 94% Complications: None.
11/15 20:14 EST	Lidocaine 180 mg For desired effect, Re-accessed after administration



Record Number	369-14-3819A
Transport Type	Trauma : Multi-System

Name	Adam Rowell

Chronological (cont.)

Time	Details
11/15 20:15 EST	Etomidate 36 mg For desired effect, Re-accessed after administration
11/15 20:17 EST	Succinylcholine 180 mg For desired effect, Re-accessed after administration
11/15 20:20 EST	Event Log: Initial ETT/Trach Check. Initial ET confirmation.
11/15 20:20 EST	Bag valve mask. Indication(s): Per Protocol.
11/15 20:21 EST	Versed 5 mg For desired effect, Re-accessed after administration
11/15 20:22 EST	Event Log: Medical Decision Making. Patient re-positioned on LSB.
11/15 20:23 EST	Vecuronium 12 mg For desired effect, Re-accessed after administration
11/15 20:24 EST	Event Log: Moved to Cot. Patient placed into Life Blanket due to outside temps, moved to flight cot.
11/15 20:25 EST	Event Log: ETT rechecked after patient movement. ET checked after movement.
11/15 20:26 EST	Depart with Patient
11/15 20:26 EST	Event Log: Loaded/Unloaded from/to vehicle.. Patient moved to aircraft and secured..
11/15 20:31 EST	61/ 45 134 12 94% 32 mm Hg Unable to access pain
11/15 20:32 EST	Event Log: Trauma Alert. Report called to GHS.
11/15 20:36 EST	74/ 42 131 12 94% 34 mm Hg Unable to access pain
11/15 20:40 EST	O negative
11/15 20:41 EST	76/ 40 130 12 93% 35 mm Hg
11/15 20:42 EST	A positive
11/15 20:46 EST	80/ 44 129 12 93% 35 mm Hg
11/15 20:51 EST	84/ 46 130 12 94% 34 mm Hg
11/15 20:55 EST	Event Log: Loaded/Unloaded from/to vehicle.. Patient moved from aircraft to ED stretcher and moved to ED, still in Life Blanket due to ambient temps.
11/15 20:55 EST	Event Log: ETT rechecked after patient movement. ET confirmed after movement.
11/15 20:55 EST	94/ 50 132 12 94% 34 mm Hg
11/15 20:59 EST	Accepting Unit
11/15 20:59 EST	GCS: 3
11/15 20:59 EST	Event Log: Others.. Patient placed into Trauma Bay 1. Report given to receiving team. Present Rt confirms tube placement.
11/15 21:00 EST	Signover



Record Number	369-14-3819A
Transport Type	Trauma : Multi-System

Name	Adam Rowell

Intercept Documentation	
Was the patient brought to the aircraft by Ground Ambulance	Yes
EMS Agency: Greenwood County 911	Intercept Location: LZ located at accident site
Was the patient taken from the aircraft by Ground Ambulance	No
EMS Agency:	Intercept Location:

Signatures

Alfred Kelly [PM] as [Digital Signature]	11/16/14 00:44 AM
Kelly, Alfred [PM]	Date & Time
Angela Waite [RN] as [Digital Signature]	11/16/14 00:44 AM
Waite, Angela [RN]	Date & Time



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

K.B. Smith
S.C. Highway Patrol Troop #2
1801 ByPass 25 SE
Greenwood, SC 29646

TOXICOLOGY DEPARTMENT
March 05, 2015
SLED No: L14-14573
Your Case No: 1411015
Incident Date: 11/15/2014

[V-Deceased] Jeremy Dean
Cockrell
[S] Adam Martyn Rowell
[V] Matthew Ryan Sanders

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

PARTIAL REPORT

ITEMS OF EVIDENCE

Item: 3 Sample Type: Blood (Toxicology) - labeled "Adam M. Rowell"

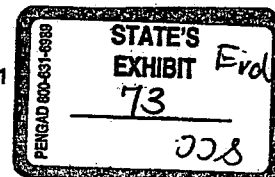
Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.095 ±0.009	% (g/dL)	0.010

The above range is calculated at 99.7% confidence.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



3/5/15

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.

Jennifer Brown

Jennifer M. G. Brown
Forensic Toxicologist

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department , (803) 896-7385.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Hon. Donald Hocker, Circuit Court Judge

Case No. 2015-GS-24-0535, 2015-GS-24-0536

State of South Carolina Respondent,

vs.

Adam Rowell Appellant.

NOTICE OF APPEAL

Notice is hereby given that Adam Rowell appeals the ruling of the Hon. Donald Hocker at the trial that ended on February 20, 2017, and his denial by Order dated December 27, 2017 of a timely filed Motion for New Trial. Appellant received a copy of this Order on December 28, 2017

January 3rd, 2018



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Hon. Donald Hocker, Circuit Court Judge

Appellate Case No. 2018-000022

State of South Carolina Respondent,

vs.

Adam Rowell Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 27th, 2018



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