

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Roger L. Couch, Circuit Court Judge

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Oct 21 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PAMELA MICHELLE TACKETT,

APPELLANT

APPELLATE CASE NO 2019-001284

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 45 (BODY CAMERA VIDEO)**

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD

v.)

18-GS-30-1109

PAMELA M. TACKETT,)

18-GS-30-1110

18-GS-30-1111

DEFENDANT.)

July 15-18, 2019
Laurens, South Carolina

B E F O R E :

THE HONORABLE ROGER L. COUCH, JUDGE;
AND JURY

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

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Typed for April Herron

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1 (WHEREUPON, State Exhibits Nos. 1 through
2 46 were marked for identification only.)

3 THE COURT: All right, I ask the solicitor
4 to call the first case to trial.

5 MR. MOWRY: Your Honor, if it please the
6 Court, the State would call for trial the case of
7 The State vs. Pamela Michelle Tackett, indictment
8 18-GS-30-1109, felony DUI with great bodily injury;
9 18-GS-30-1111, felony DUI, in which death results;
10 and 1110, child endangerment.

11 THE COURT: All right, ladies and
12 gentlemen of the jury, we're about to begin the
13 trial of the case of The State of South Carolina
14 versus Pamela Michelle Tackett. As you heard, the
15 Solicitor has presented me with several indictments
16 in this case and let me explain to you what those
17 are. An indictment is an informational document.
18 It informs this court of the charges that have been
19 lodged against the defendant. It informs this court
20 also of the charges that are to be tried in this
21 case. It informs the defendant of the charges that
22 have been lodged against her in the case to be
23 tried. An indictment, however, is simply
24 information concerning the charges. It is not
25 evidence in the case. It can't be used by the jury

1 as evidence in a case. It can't be used by a jury
2 in determining the guilt or innocence of someone of
3 the charges contained in the indictments. It simply
4 informs us of those charges.

5 Now, the defendant has pled not guilty to
6 these indictments and that plea places the burden of
7 proof in the trial that we're about to conduct upon
8 the State to prove guilt by proving the allegations
9 in the indictments by proof beyond a reasonable
10 doubt and that's the State's burden to prove those
11 alleges.

12 Now, the defendant -- I assume,
13 Mr. Stoddard -- has been arraigned on these charges.
14 Am I correct?

15 MR. STODDARD: Yes, sir.

16 THE COURT: So the defendant is aware of
17 the charges that are before the Court. I'm going to
18 go over the indictments briefly with you this
19 morning. In just a few minutes I'm going to ask you
20 questions that apply specifically to this, these
21 cases. I'm going over the indictments so that you
22 will know a little bit about them and perhaps it
23 will help you in answering the questions that I'm
24 about to ask you about these cases.

25 The first indictment that I'm going to

1 discuss with you is case number 18-GS-30-1109. That
2 indictment is for felony driving under the influence
3 with great bodily injury. It alleges that the
4 defendant did on or about March 28th of 2018 in
5 Laurens County while under the influence of alcohol,
6 drugs, or a combination of alcohol or drugs, drive a
7 motor vehicle and when driving that vehicle did acts
8 that were forbidden by law or neglected a duty
9 imposed by law in the driving of the vehicle in
10 failing to operate in a safe and reasonable manner
11 resulting in an accident, which caused great bodily
12 injury to a person by the name of John Howell in
13 violation of the Code of Laws of South Carolina.
14 That's the allegations in one of the indictments.

15 The next indictment I'll talk about is
16 case number 1111, and this is for felony driving
17 under the influence resulting in death, and it also
18 alleges that the defendant did on or about March
19 the 28th of 2018 in Laurens County, South Carolina,
20 while driving a motor vehicle while under the
21 influence of alcohol, drugs, or a combination of
22 those, did commit several unlawful acts or
23 neglectful duties imposed by law while driving under
24 the influence of those drugs and by failing to
25 maintain the, her car in a safe lane of travel,

1 failing to maintain proper control. Alleges several
2 acts of illegal acts while driving, and that these
3 acts resulted or proximately caused the death of
4 Zacharia Ivey. This occurred on interstate 385 in
5 Laurens County on the date that I stated, which was
6 March 28th of 2018.

7 The next indictment is case number 1110
8 and this is for child endangerment, and this alleges
9 that Pamela Michelle Tackett on that same date,
10 March 28th, 2018, did commit the crime of child
11 endangerment. The defendant who is over 18 did
12 drive a vehicle with one or more passengers who were
13 under the age of 16 and did commit the crime of
14 felony driving under the influence in violation of
15 the Code of Laws while operating said vehicle.

16 So those are the allegations. I
17 paraphrased them somewhat for the interest of
18 brevity; but that gives you an idea of what's been
19 alleged, when and where it occurred, and the people
20 that would have been involved in those alleged
21 incidents. Now, it's important again that you
22 answer my questions in this matter truthfully,
23 honestly, and completely. You have been sworn
24 earlier this morning to be honest during our
25 qualification process, and I'm going to ask that the

1 clerk, again, place you under oath concerning the
2 responses that you're about to give to the Court in
3 this trial.

4 Madam Clerk.

5 THE CLERK: If you'd please stand and
6 raise your right hand.

7 (WHEREUPON, the jury panel was sworn.)

8 THE COURT: If any of you either failed or
9 refused to take the oath the clerk just administered
10 I ask that you now stand.

11 (No one stood.)

12 THE COURT: The record will reflect that
13 all potential jurors have been sworn concerning your
14 responses to me. Now we're going to follow the same
15 process that we did when we did qualification. I'll
16 ask you a question; you have a response. I'll ask
17 you to stand. I'll get your name and number on the
18 record before I receive any response from you.
19 Before I start the questioning I want the attorneys
20 in this case to introduce themselves to you; and in
21 the case of the defendant, I'll ask that the defense
22 counsel introduce the defendant to the jury.

23 For the State.

24 MR. MOWRY: Thank you, Your Honor. Ladies
25 and gentlemen, my name is Warren Mowry. I am the

1 deputy solicitor for Laurens County, and I will be
2 the lead prosecutor in this case. Also with us is
3 Knox McMahon, and he is assistant solicitor in our
4 office, and Walter Bentley, who is our investigator.
5 We are all employed by the circuit solicitor David
6 Stumbo. Thank you.

7 THE COURT: And for the Defense.

8 MR. STODDARD: Yes, sir. My name is David
9 Stoddard. I'm an attorney. I'm from Anderson. And
10 my client here is Pamela Tackett.

11 THE COURT: Ma'am, if you would stand and
12 face the jury so that they can put a face with your
13 name.

14 (WHEREUPON, Ms. Tackett, the defendant, complies.)

15 THE COURT: Thank you very much. You can
16 be seated.

17 All right, my first question is, is there
18 any member of this jury panel who has ever been
19 related by marriage or are you related by blood to
20 either the defendant Pamela Michelle Tackett or the
21 alleged victims in this case, that being Zachariah
22 Ivey and/or John Howell? If that's true, please
23 stand.

24 (There was no response.)

25 THE COURT: Now is there any member of

1 this jury panel who has ever had a close personal,
2 social, or business relationship with either the
3 defendant Ms. Tackett or the alleged victim
4 Zachariah Ivey and/or John Howell? If that's true,
5 please stand.

6 (There was no response.)

7 THE COURT: Now as to the attorneys that
8 are involved in this trial, has any member of this
9 jury panel ever been represented by any of the
10 attorneys involved in this case or have they ever
11 appeared on the other side of a legal matter from
12 you? If that is true, please stand.

13 (There was no response.)

14 THE COURT: Now is there any member of
15 this jury panel who has ever been related by
16 marriage or are you related by blood or have you
17 ever had a close, personal, social, or business
18 relationship with any of the attorneys involved in
19 the trial? If that's true, please stand.

20 (There was no response.)

21 THE COURT: I'm going to go over a list of
22 people that have been provided to me as possible
23 witnesses in this case. Now the list is somewhat
24 lengthy; but at any rate, I want you to listen to
25 all the names, listen carefully. I'm going to ask

1 you something about these individuals once I've
2 completed going over the names. Now in cases where
3 they have been identified by their employment, I
4 will give you that information as well. The first
5 one is Ireneusz -- did I say that right?

6 MR. MOWRY: That's close enough, Your
7 Honor.

8 THE COURT: Ireneusz Glodz, G-L-O-D-Z;
9 Diane Conte; Sherie Abercrombie; John Howell;
10 Michael Gabriele; David Terry with the South
11 Carolina Highway Patrol; Dana Nemr, N-E-M-R; Kelly
12 Bugden with SLED, State Law Enforcement Division;
13 Dr. Michael Ward; Demi Garvin; Cheryl Wingo with the
14 South Carolina Highway Patrol; B.J. Robinson; Mark
15 Turner with the South Carolina Highway Patrol; Chad
16 Edwards with the South Carolina Highway Patrol; M.L.
17 Burnette, also with the Highway Patrol; Michael
18 Allen with the Highway Patrol; P.M. Odom with the
19 Highway Patrol; David Andis with the Highway Patrol;
20 Benji Cannon; Dr. Jack Fincham with PC School of
21 Pharmacy; and Walter Bentley with the eighth
22 solicitor, circuit solicitor's office. Does the
23 Defense wish to add any other witnesses to that
24 list?

25 MR. STODDARD: Yes, sir.

1 I made some notes.

2 THE COURT: Pamela Tackett; Christopher
3 Doyle; Joseph Tackett; Pamela Brown; Cory Deiber, a
4 pharmacist; Nancy Goodbar, a pharmacist; Kyle Green.
5 Now as to the people that I just identified as
6 possible witnesses ---

7 MR. STODDARD: Judge.

8 THE COURT: Yes, sir.

9 MR. STODDARD: The Goodbar is a
10 pharmacist, it's Goodbar, sorry.

11 THE COURT: Yes, sir, I thought I said
12 that. Nancy Goodbar is a pharmacist, that's right.
13 Now as to the people that I just identified as
14 possible witnesses in this case, is there any member
15 of the jury panel who's ever been related by
16 marriage or are you related by blood, or have you
17 ever had a close, social, personal, or business
18 relationship with any of the individuals I named as
19 a possible witness in this case? If that's true,
20 please stand.

21 Ma'am, I need your name and number.

22 PROSPECTIVE JUROR: Lauren Broome, juror
23 27.

24 THE COURT: Yes, ma'am, your situation.

25 PROSPECTIVE JUROR: I used to go to church

1 with Chad Edwards.

2 THE COURT: All right, so you attend
3 church with that person?

4 PROSPECTIVE JUROR: I used to.

5 THE COURT: Oh, used to, okay.

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: okay. Now, let's assume that
8 person appeared as a witness in the case and you
9 were seated on the jury, would the fact you knew
10 that person in the past, would it effect your
11 ability to be impartial to both the State and the
12 Defense?

13 PROSPECTIVE JUROR: I wouldn't think so.

14 THE COURT: Well, I have to know for sure
15 whether or not, if it could affect your
16 impartiality.

17 PROSPECTIVE JUROR: I should be ---

18 THE COURT: Could you be impartial in that
19 situation?

20 PROSPECTIVE JUROR: I should, yes, sir.

21 THE COURT: Okay. Thank you very much.
22 You can be seated.

23 Anyone else? Yes, sir, name and number.

24 PROSPECTIVE JUROR: Michael Hopkins,
25 number 82.

1 THE COURT: Yes, sir.

2 PROSPECTIVE JUROR: I know Chad Edwards.
3 He's worked on my vehicle in the past, and it would
4 not ---

5 THE COURT: Would it affect your
6 impartiality if he were a witness in this trial?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: Thank you, sir.

9 MR. MOWRY: Your Honor, if I could just
10 put on the record, one of the things that was
11 brought up in chambers was the consideration of
12 chain witnesses and Mr. Edwards would have been a
13 chain witness, but ---

14 THE COURT: He may not be appearing at
15 all?

16 MR. MOWRY: Yes, sir.

17 THE COURT: Thank you. I see somebody
18 raising their hand. You need to stand, sir. Name
19 and number please.

20 PROSPECTIVE JUROR: Travis Stewart, 171.

21 THE COURT: Yes, sir.

22 PROSPECTIVE JUROR: I have a aunt named
23 Sherie Abercrombie, but I don't know if it's the
24 same person.

25 THE COURT: All right, so that is an aunt

1 of yours, possibly?

2 PROSPECTIVE JUROR: Possibly.

3 THE COURT: Well, let's assume that is
4 your aunt and she was going to be a witness in the
5 trial, would it affect your ability to be fair and
6 impartial to either side?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Okay, thank you, sir. Please
9 be seated. Anyone else?

10 (There was no response.)

11 THE COURT: Now this trial may involve
12 evidence of someone who possibly was using the drug
13 marijuana, and so that's a possible thing that will
14 be brought out during the trial. I'm going to ask
15 you if that were a question or an issue in the
16 trial, would that affect your ability to be fair and
17 impartial either for or against the State or for or
18 against the Defense, would the fact that that were
19 an issue, would that affect your impartiality as to
20 either side in this trial? If it would, please
21 stand.

22 (There was no response.)

23 THE COURT: Now has any member of the jury
24 panel gathered or received any information such that
25 it would have caused you to either form or express

1 an opinion about the issues that might be involved
2 in this case? So if you've gotten or received any
3 such information, please stand.

4 (There was no response.)

5 THE COURT: Now is there any juror who is
6 aware of a bias or a prejudice that you might have,
7 either for or against either the State or the
8 Defense? So if you're aware of such a bias or
9 prejudice, please stand.

10 Name and number, sir.

11 PROSPECTIVE JUROR: Jonathan Daniel. I
12 don't know my number.

13 THE COURT: Yes, sir.

14 PROSPECTIVE JUROR: So, my wife was in a
15 similar situation on the charges. She wasn't
16 working at the time, I paid them all, and I'm not at
17 all impartial.

18 THE COURT: Okay, so you're saying that
19 experience would affect your impartiality?

20 PROSPECTIVE JUROR: Absolutely.

21 THE COURT: All right, then I'll excuse
22 you from the trial of the case. You can be seated.
23 You no longer have to answer my questions about this
24 case. Thank you, sir.

25 Anyone else?

1 (There was no response.)

2 THE COURT: Now is there any member of
3 this jury panel who may have served as a member of
4 the grand jury that considered the indictments in
5 this case? I will tell you that those indictments
6 were issued July the 27th of 2018. So if you were a
7 member of that grand jury, please stand.

8 (There was no response.)

9 THE COURT: Is there any member of the
10 jury panel who is a member of or a contributor to a
11 group which has as its primary concern the promotion
12 of law enforcement or victims rights? These groups
13 would include, but not be limited to, groups such as
14 Mothers Against Drunk Driving, Students Against
15 Drunk Driving, Citizens Against Violent Crimes, the
16 South Carolina Sheriffs Association, the South
17 Carolina Troopers Association, or other similarly
18 oriented organizations? So if you're a member of or
19 a contributor to such a group, please stand.

20 (There was no response.)

21 THE COURT: Now does any member of the
22 jury panel know of any reason whatsoever why he or
23 she should not serve as a juror in the trial of this
24 case with particular emphasis being placed upon your
25 ability to be both fair and impartial to both the

1 State and the Defendant? If you're aware of any
2 such reason, please stand.

3 Name and number please, ma'am.

4 PROSPECTIVE JUROR: 139. My daughter was
5 killed in a motor vehicle accident. She was killed
6 by a drunk driver, passed away 20 years ago.

7 THE COURT: I see. So that would affect
8 your impartiality?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: All right, ma'am, you're
11 excused from the trial. Please be seated. You no
12 longer have to answer my questions in this trial.

13 Anyone else?

14 (There was no response.)

15 THE COURT: Does the State request any
16 additional questions?

17 MR. MOWRY: No, sir, Your Honor.

18 THE COURT: Does the Defense request
19 additional questions?

20 MR. STODDARD: No, sir.

21 THE COURT: All right, I'll declare the
22 remainder of the jury to be qualified to serve as
23 jurors in this case. I'm going to ask that the
24 clerk prepare a list of potential jurors. So what's
25 going to happen, we have a computer program here

1 that does a random search of your names. Your names
2 will be placed on a list and the order the computer
3 picks them, we'll be calling your name as we go down
4 that list.

5 I believe the State will have five
6 strikes. Defense will have five. Is that correct?

7 MR. MOWRY: That's my understanding, Your
8 Honor.

9 THE COURT: Is that your understanding as
10 well, Mr. Stoddard?

11 MR. STODDARD: That's my understanding.

12 THE COURT: All right, we're going to pick
13 two alternates. Each alternate, the State will have
14 one strike. Defense will have two.

15 All right. Now ladies and gentlemen, the
16 clerk is going to call the names in the order they
17 appear on the list. When your name is called I'm
18 going to ask you to pick up whatever personal
19 belongings you might have in the courtroom, a purse,
20 a book, whatever you brought in. Bring it with you
21 because if you're selected to sit on a jury, you're
22 going to go over here to the box. The bailiff is
23 going to have you take a seat in the box; you won't
24 go back to your seat. So bring whatever you have
25 with you when your name is called and come forward.

1 So I want you to come down, come right down to this
2 table in front of the Bench here. Face the back of
3 the courtroom. At that time the State and the
4 Defense will consider their strikes.

5 You may call the roll.

6 THE CLERK: Juror number 128, Adam D.
7 Moses (white male). What says the State?

8 MR. STODDARD: Please present the juror.

9 THE CLERK: What says Defense?

10 MR. STODDARD: Excuse the juror.

11 THE CLERK: Juror number 52, Auston ---

12 THE COURT: You can return to your seat,
13 sir. You've been excused.

14 THE CLERK: Auston D. Davis (white male).

15 MR. MOWRY: Number again, please.

16 THE CLERK: 52. What says the State?

17 MR. MOWRY: Please excuse the juror from
18 this trial.

19 THE CLERK: Juror number 21, Kandace
20 Bouchichas (white female).

21 What says the State?

22 MR. MOWRY: Please present the juror.

23 THE CLERK: What says the Defense?

24 MR. STODDARD: Seat the juror.

25 THE CLERK: Juror number 82, Michael L.

1 Hopkins (white male). What says the State?

2 MR. MOWRY: Please present the juror.

3 THE CLERK: What says Defense?

4 MR. STODDARD: Seat the juror.

5 THE CLERK: Juror number 23, Dynasha S.

6 Boyd (black female).

7 What says the State?

8 MR. MOWRY: Please present the juror.

9 THE CLERK: What says the Defense?

10 MR. STODDARD: Seat the juror.

11 THE CLERK: Juror number 100, Regina L.

12 Lawrence (white female).

13 What says the State?

14 MR. MOWRY: Please present the juror.

15 THE CLERK: What says the Defense?

16 MR. STODDARD: Seat the juror.

17 THE CLERK: Juror number 37, Quintavus M.

18 Carter (black male).

19 What says the State?

20 MR. MOWRY: Please present the juror.

21 THE CLERK: What says Defense?

22 MR. STODDARD: Seat the juror.

23 THE CLERK: Juror number 120, Destiny S.

24 Medlin (white female).

25 What says the State?

1 MR. MOWRY: Please present the juror.

2 THE CLERK: What says the Defense?

3 MR. STODDARD: Seat the juror.

4 THE CLERK: Juror number 31, Pamela B.
5 Byers (white female). What says the State?

6 MR. MOWRY: We'll excuse the juror from
7 this trial.

8 THE CLERK: Juror number 171, Travis W.
9 Stewart (white male). What says the State?

10 MR. MOWRY: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. STODDARD: Excuse the juror.

13 THE CLERK: Juror number 154, Brenda R.
14 Romines (white female). What says the State?

15 MR. MOWRY: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. STODDARD: Seat the juror.

18 THE CLERK: Juror 164, Ashlynn L. Smith
19 (white female). What says the State?

20 MR. MOWRY: Please present the juror.

21 THE CLERK: What says the Defense?

22 MR. STODDARD: Excuse Ms. Smith.

23 THE CLERK: Juror number 29, Debra L.
24 Burnett (white female). What says the State?

25 MR. MOWRY: 29?

1 THE CLERK: Yes, sir.

2 What says the State?

3 MR. MOWRY: Please present the juror.

4 THE CLERK: What says the Defense?

5 MR. STODDARD: Seat the juror.

6 THE CLERK: Juror number 88, Latoya M.

7 Jackson (black female). What says the State?

8 MR. MOWRY: Please present the juror.

9 THE CLERK: What says the Defense?

10 MR. STODDARD: Seat the juror.

11 THE CLERK: Juror number 60, Crystal A.

12 Finley (white female). What says the State?

13 MR. MOWRY: Please present the juror.

14 THE CLERK: What says the Defense?

15 MR. STODDARD: Seat the juror.

16 THE CLERK: Juror number 159, Elizabeth A.

17 Shaw (black female). What says the State?

18 MR. MOWRY: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. STODDARD: Could you give me that
21 number again?

22 THE CLERK: 159.

23 MR. STODDARD: Seat the juror.

24 THE CLERK: Juror number 28, Rebekah C.

25 Bruyere (white female). What says the State?

1 MR. MOWRY: Please present the juror.

2 THE CLERK: What says the Defense?

3 MR. STODDARD: Excuse the juror.

4 Juror number 25, Laquisa D. Boyd (black
5 female). What says the State?

6 MR. MOWRY: We'll excuse the juror for
7 this trial.

8 THE CLERK: Juror number 48, Tyler Croxton
9 (white male). What says the State?

10 MR. MOWRY: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. STODDARD: Excuse the juror.

13 THE CLERK: Juror number 71, Ricky H.
14 Grady (white male).

15 THE COURT: I have five strikes for the
16 Defense. Any other challenge must be for cause.

17 THE CLERK: What says the State?

18 MR. MOWRY: We'll excuse the juror for
19 this trial.

20 THE CLERK: Juror number 196, Benjamin
21 Word (white male). What says the State?

22 MR. MOWRY: Please present the juror.

23 THE CLERK: Would the Defense challenge
24 for cause?

25 MR. STODDARD: Please seat the juror.

1 THE CLERK: Be seated.

2 THE COURT: All right, we are now picking
3 the alternates.

4 THE CLERK: Juror number 93, James R.
5 Kanning (white male). What says the State?

6 MR. MOWRY: Please present the juror.

7 THE CLERK: What says the Defense?

8 MR. STODDARD: Seat the juror.

9 THE CLERK: Juror number 136, Ankur V.
10 Patel, (Asian male). What says the State?

11 MR. MOWRY: Please present the juror.

12 THE CLERK: What says the Defense?

13 MR. STODDARD: Seat the juror.

14 THE COURT: Thank you, Madam Clerk.

15 Any objections to the jury selection
16 process from the State?

17 MR. MOWRY: No, sir, Your Honor.

18 THE COURT: Any from the Defense?

19 MR. STODDARD: No, sir.

20 THE COURT: All right.

21 (Pause while jury venire was excused.)

22 THE COURT: All right, ladies and
23 gentlemen, you have been selected as jurors in the
24 case. I do know that we're at about 12:30 and I
25 told you we'll be stopping along that time for a

1 lunch break so that's what we're going to do right
2 now. You'll be leaving the courthouse and let me
3 give you some instructions concerning you behavior
4 while you're away. When you return you're going to
5 take an oath concerning your responsibilities as
6 jurors in this case, and part of that oath is that
7 you will decide this case based upon the law and the
8 evidence that's presented. Now the only place
9 you're going to hear the evidence in this case and
10 be given the law to be used in this case will be in
11 this courtroom during the trial. For that reason it
12 will be a violation of your oath for you to try to
13 gather any information about this case from any
14 source outside of this courtroom. You know, I'm not
15 so old that I don't know how to use computers. I
16 know you can do a Google search or Yahoo search or a
17 information search on just about anything in the
18 world; and some of the information you get as a
19 result of that is true, some of it's not. But I
20 will tell you it would be improper for you to
21 attempt to do that, to attempt to gather any
22 information about this case.

23 Also, I'm going to urge you not to discuss
24 this case with anyone, family, friends, or even
25 among yourself during any of our breaks during the

1 trial. As you can tell, we've gone through a lot of
2 trouble this morning to try to pick a jury that has
3 an open mind concerning the issues involved in this
4 case; and you may not realize it, but even the most
5 innocent conversation you might have with family or
6 friends or among yourselves about the issues that
7 are involved in the case, the people that are
8 involved in this case, or any of the facts or
9 figures that might be involved in it, those
10 discussions might begin to color your own decisions
11 in this case one way or the other and you haven't
12 heard the first word of testimony yet. You haven't
13 seen the first piece of evidence yet so you can see
14 how unfair and improper it would be for you to start
15 discussing the case with others, start making up
16 your minds about any of the issues that you might be
17 called upon to decide. It's okay to tell family and
18 friends that you've been selected on a jury and that
19 you got to go back to the courthouse for the trial.
20 That's about as far as that discussion should go.
21 Start talking about the weather, start talking about
22 sports, family, friends, talk about your neighbors,
23 whoever you want to talk about, but don't talk
24 about the trial. And I will be telling you every
25 time you leave the courtroom not to discuss the case

1 even among yourselves, until I ask you to begin your
2 deliberations and that will be at the end of the
3 trial in this matter.

4 I've already touched on the fact that it's
5 improper, in fact illegal, for someone to try to
6 influence your decision on a jury. And so if
7 someone were to contact you about your service
8 on this case -- I don't anticipate that happening,
9 but if it does, I want you to report it to us as
10 soon as you can. I can assure you I take those
11 matters extremely serious and I will see that
12 appropriate investigations are done should that
13 occur so don't allow anyone to discuss it with you.

14 Finally, I will tell you that it would be
15 highly improper for you as well to listen to, watch,
16 or read any media reports about the case. I don't
17 know if it's being reported in the media. I don't
18 control the media, don't want to; but I will tell
19 you that if you hear, see, or come into contact with
20 any media reports about the case, ignore them, turn
21 them off, walk away. The only ways you're supposed
22 to get information about this trial is in this
23 courtroom during the trial itself, and I can assure
24 you the attorneys and the witnesses will be
25 providing you information as the trial goes on. The

1 only evidence in any trial is the testimony of
2 witnesses sworn to tell the truth and testify from
3 the witness stand in front of you, and you'll get
4 all that information here in the courtroom.

5 So in a nutshell, don't try to gather any
6 information about this matter on your own, don't
7 allow anyone to discuss it with you and you don't
8 discuss it with anyone. Don't listen to, watch any
9 media reports, and if anybody tries to contact you
10 let us know about those attempted contacts.

11 Now I'm going to ask you to be back in the
12 jury room. Let's see, I want you back there, let's
13 say, about 1:45. We should be in a position to
14 start shortly thereafter. I hope you have a good
15 lunch break. The bailiffs will show you out.
16 They'll show you how to get back to the jury room
17 that's in use for this trial. You'll report to that
18 location after you get back from lunch. Thank you
19 for your assistance thus far. I look forward to
20 working with you on this case. You're free to go at
21 this time.

22 (WHEREUPON, the jury was removed from the
23 courtroom at approximately 12:26 p.m., and
24 the following proceedings commenced in
25 open court.)

1 THE COURT: All right, we're going to
2 resume about 1:45. Let me see, I believe the
3 defendant has been on bond and out. Any trouble
4 from the State in having her appear for any
5 hearings?

6 MR. MOWRY: Not so far, Your Honor.

7 THE COURT: Okay, very good. I'm going to
8 leave her out and about during the trial.

9 Ms. Tackett, let me caution you. We're
10 going to start the trial of your case at 1:45.
11 Should you fail to appear in the courtroom at that
12 time we will proceed with this trial in your
13 absence. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Ma'am, if you did not appear,
16 unless there was some good excuse given to me, I
17 would issue a bench warrant for your arrest. Are
18 you aware of that as well?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay, we'll be in recess then
21 until 1:45. Thank you very much.

22 MR. MOWRY: Thank you, Your Honor.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: All right, the State ready to
25 proceed?

1 MR. MOWRY: Yes, sir, Your Honor.

2 THE COURT: Defense ready?

3 MR. STODDARD: Yes, sir.

4 THE COURT: Before we bring the jury in,
5 there's just a couple of things I'd like to touch
6 on. It's been a while I've been in Laurens and let
7 me go over some things I'd like to do. When
8 witnesses are called I'll have the clerk swear them
9 in, and then when they take the stand I'd ask that
10 the attorneys refrain from asking questions until I
11 turn the witness over to you. You'll hear me ask
12 you to begin. And when one side finishes
13 questioning, I'll call on the other side and then
14 you can begin your questioning. I know lawyers --
15 sometimes you run into lawyers prior in questioning
16 and you don't know whether they're on cross or
17 direct; and I just found if I call on you, I know
18 where we are and where we're starting. So I'll ask
19 that you cooperate with me on that.

20 Now, as far as courtroom behavior I want
21 everybody to be present. I want you to view what
22 goes on in the courtroom, but this is a courtroom
23 and I may want -- I would like to caution you. If
24 you're going to testify in the case you're going to
25 be given an opportunity to get on the stand and tell

1 your story, and it will be up to the lawyers as to
2 who they call to testify. I want to caution people
3 that any kind of gesturing, face making, making
4 noises, sighing while other people are testifying
5 whether in agreement or disagreement with a witness,
6 won't be tolerated. We're not here to try to
7 influence the jury from the galley. So that goes
8 for anyone in the courtroom. So any type of
9 disruption, any type of effort to communicate a
10 feeling or a belief, this Court will exclude those
11 people from the courtroom and not allow them back in
12 should that occur. So if you want to be here, you
13 want to view it, I'm glad for you to be here, look
14 forward to you being present during the trial; but
15 anyone who tries to in any way influence the
16 proceedings other than testifying from the witness
17 stand, as any other witness would do, that will be
18 met with some problems from the Bench. So I hope we
19 don't have to go there, I hope that's not a problem.
20 I want everybody to be here and observe what goes
21 on. It's an open courtroom in that regard, but I'm
22 not gonna have disruptions during the trial. If you
23 can't control yourself or if you can't control your
24 emotions, now would be a good time to leave the
25 courtroom 'cause if we get into a problem I may have

1 to take action, I don't want to do that. So if you
2 can't control your emotions you might as well step
3 outside right now so we won't have a problem, okay?

4 All right, bring the jury in.

5 (WHEREUPON, the jury was returned the
6 courtroom at approximately 1:50 p.m., and
7 the following proceedings commenced in
8 open court.)

9 THE COURT: The closer you can sit to the
10 witness stand you'll find that will be a better
11 place for you, and there's no assigned seating in
12 the jury box except for the two alternates. You two
13 gentlemen are going to be down on that end
14 throughout the trial. Everyone else can sit
15 wherever you like to sit, but fill in close to the
16 jury, or the witness stand, as you can.

17 Now I hope everyone had a good lunch
18 break. When you left I gave you some instructions
19 on your behavior while you're away from the
20 courthouse; and if any of you had any problems or
21 difficulty in complying with my instructions during
22 your absence, please stand.

23 (There was no response.)

24 THE COURT: It looks like everybody has
25 been able to follow my instructions thus far and

1 we'll be in a position now to start the trial of the
2 case. I told you that when you came back to the
3 courtroom you would be taking an oath concerning
4 your duties as jurors, and at this time I'm going to
5 ask that the clerk place you under oath concerning
6 your responsibilities in this case.

7 Madam Clerk.

8 THE CLERK: If you'd please stand and
9 raise your right hand.

10 (WHEREUPON, the jury was sworn.)

11 THE COURT: Now, again, if there was any
12 member of the jury panel who either failed or was
13 unable to take the oath, please stand.

14 (There was no response.)

15 THE COURT: The record will reflect that
16 all jurors have now been sworn concerning your
17 responsibilities in this case. And in respect to
18 that, there's some matters I'd like to go over with
19 you before we actually start the trial of the case.
20 You know, it's my belief and I think it's true that
21 most of you have never been in a situation where
22 you're seated on a jury in a criminal case to decide
23 the case; and so for those of you who have never
24 been in this position before, I want to go over some
25 things with you about the responsibilities and the

1 roles that each of us will fill during the trial of
2 the case, especially your role as a juror because I
3 suspect that for most of you, what you might know
4 about what juries do in a courtroom you would have
5 gathered from books you read or TV shows you watched
6 or movies you've seen. Unfortunately, they don't
7 teach a lot of civics in school these days and don't
8 cover specifically what juries do or how they
9 function. And of course, if most of your
10 information comes from those other sources like TV
11 shows and movies and things like that, you know, I
12 hope you realize that when you watch television you
13 see an event occur and they try the whole case and
14 wrap it up in the space of an hour and they still
15 have time to stop for about four or five commercials
16 in the middle of all that, that you might realize
17 that those are fictional. Of course, that's not the
18 way it really works. They're trying to entertain
19 you. They're trying to get you to watch those
20 commercials so they can make more money off those
21 commercials. It's not intended as an informational
22 tool. And I hope you realize that what you're
23 engaged in today is intended for anything but your
24 entertainment. You're involved in a fundamental
25 part of our governmental structure. You know, if

1 you went around the world today and looked at most
2 of the judicial systems that exist in other
3 countries of this world you'd probably notice that
4 the vast majority of them do not allow citizens to
5 come into the courtrooms of those countries and
6 decide important issues between the State and
7 citizens involved in litigation. That doesn't
8 happen in most places in the world; we're different.

9 Our constitution guarantees everyone the
10 right to a trial by jury. That tradition goes back
11 to a document known as the Magna Carta. It was
12 signed in a place called Runnymede, England, in the
13 year 1215. So that means what, about four years ago
14 that document had its 800th anniversary. Now think
15 about the kinds of things that man has created that
16 have lasted 800 years. There aren't too many things
17 like that in our world. So obviously we consider
18 the right to a trial by jury a very important
19 concept. It's embodied in our Constitution in this
20 state and in the United States, and you are here to
21 fulfill the responsibility of citizens sitting on
22 juries making important decisions in our courtrooms.
23 I want to thank you very much for your willingness
24 to come forward and assume the responsibilities that
25 you consume by sitting on our jury in this case and

1 in this courtroom this week.

2 Now the attorneys who are here to
3 represent their clients, they're gonna present their
4 client's cases to you in just a little bit, but I
5 hope you realize -- and most layman don't realize
6 this -- first and foremost, lawyers are also
7 officers of this court. They have appeared at some
8 point in time and taken an oath before a court in
9 this state to do certain things, and one of those
10 things is that they will assist you in your search
11 in this case. You can expect from them that they'll
12 act in a reasonable and a professional manner in
13 handling their client's cases before you. I'm going
14 to remind you, too, that you just came in front of
15 this court. You took an oath to decide this case
16 based on the law and the evidence. You, too, are
17 now expected to act in a reasonable, a professional,
18 and an ethical manner in the determination of the
19 issues that'll be placed before you during this
20 case. And again, I thank you for your willingness
21 to accept that.

22 Now what I'm telling you now is not
23 intended to be a charge on the law. Later on when
24 all the arguments have been made and all the
25 evidence has been presented, then at that time I'll

1 charge you concerning the law to be applied in this
2 case. Again, this discussion is about our
3 responsibilities and duties in the trial and the
4 procedure that we're going to follow in this case.

5 And I told you earlier that there are
6 indictments in this case. Those are the
7 informational documents that bring the case into the
8 court. They inform the defendant of the charges
9 against her. They inform this court of the charges
10 to be tried, but they are simply informational
11 documents. They're not evidence, can't be
12 considered by you as evidence in the case, but they
13 are the documents that bring the case into this
14 court and to those indictments the defendant has
15 pled not guilty. That plea under our system of
16 justice places the burden of proof in this trial
17 solely upon the State. It's the State's obligation
18 to prove the allegations contained in the
19 indictments by proof beyond a reasonable doubt.
20 It'll be your job at the close of the trial to make
21 a determination as to whether or not the State has
22 met its burden of proof in regards to these
23 indictments.

24 I'll go over the concepts of proof beyond
25 a reasonable doubt and the burdens of proof. I'll

1 go over those things in more detail when I charge
2 you on the law; but suffice it to say, you are here
3 to determine whether the State has met that burden
4 of proof. As such, you will be the finders of fact
5 in this trial. You will be the sole and only judges
6 of the facts in this case. I will tell you now that
7 the law doesn't allow me an opinion about the facts.
8 Please don't take from what I do in the discharge of
9 my duties during this trial somehow to indicate to
10 you that I have an opinion one way or the other as
11 to how you determine the facts in this case. You're
12 the sole judges of the facts.

13 Now the same law that makes you the sole
14 judges of the facts makes me the sole judge of the
15 law in the case. So at the close of the, close of
16 the trial when I charge you on the law, that's the
17 only law that you can use in making a determination
18 in this case. I'm not allowed to disagree with you
19 about the facts. You're not allowed to disagree
20 with me concerning the law to be applied to those
21 facts. So if you came into the courtroom today with
22 a notion as to what the law is or what it ought to
23 be, under your oath you're to leave those notions
24 outside of the jury room. You're to take the law
25 exactly as I give it to you at the close of the

1 trial, then apply that law to the facts as you
2 decide the facts to be. That should put you in a
3 position to render a verdict at the close of the
4 trial in this case.

5 Now it is up to you to determine the facts
6 in this case from the evidence presented; and the
7 only evidence presented in this case will be
8 testimony from witnesses who were sworn to tell the
9 truth, who will testify from the witness stand right
10 over here in front of you, and whatever documents or
11 other pieces of evidence come into the record
12 through the testimony of those witnesses or comes
13 into the record through agreements by the lawyers.
14 That's the only evidence in the trial, the testimony
15 by witnesses and what comes into the record through
16 that testimony.

17 Now I'm going to allow the lawyers to
18 address you directly on two occasions during the
19 trial. First of all, they'll be given an
20 opportunity to make an opening statement to you.
21 They'll talk directly to you at that time. They'll
22 tell you what the case is about, perhaps what they
23 intend to prove or show, to give you an overview or
24 an idea as to what this, the issues are that are
25 involved in this case and what their case is

1 expected to be.

2 Now at the close of the trial once all the
3 evidence has been presented, you've heard all the
4 testimony from the witnesses and the evidence that's
5 gone into the record, they'll be allowed to come
6 back and do what's called a summation or a closing
7 argument. Again, they'll talk directly to you. And
8 during that argument, generally what they'll do is
9 go over the evidence that you've heard in the trial
10 and they'll ask you to draw certain conclusions from
11 that evidence. They'll argue their case, their
12 side, their version of that evidence. So those are
13 the two times that lawyers will be allowed to speak
14 directly to you during the case: At the beginning
15 in an opening statement and at the close in a
16 summation of the evidence to you.

17 Now let me point out one other thing to
18 you. Statements made by lawyers during the trial of
19 the case, those statements themselves are not
20 evidence. They may be comments on the evidence, but
21 they are not evidence. The only evidence you'll
22 hear in the case, again, testimony from the
23 witnesses who testified from the witness stand and
24 what comes into the record through that testimony or
25 by agreement of counsel. That'll be the evidence

1 that you'll hear in the case.

2 Now, as part of your job as a fact finder
3 in the case, necessarily you will need to make a
4 determination as to the credibility and
5 believability of the testimony you hear. You at the
6 close of the trial will be asked to weigh the
7 evidence, determine the effect, the value, and the
8 weight of the evidence. And in order to do that you
9 will need to make a determination as to what
10 evidence you believe convinces you that it's
11 credible, believable. So as you listen to the
12 evidence, the testimony, I'm going to ask you to use
13 your own good common sense and evaluate the
14 testimony that you're going to hear. You should
15 evaluate it in light of your life experiences,
16 things that you've experienced yourself. Use your
17 good common sense in making those determinations.
18 You know, every single day of your life you make
19 common sensible decisions as to what you choose to
20 believe or what you choose not to believe.
21 Sometimes you do it without even thinking that much
22 about it; it's just what we do. We decide what we
23 believe and what we choose not to believe. Serving
24 on a jury is no different than that.

25 I want you to listen carefully to what the

1 witnesses say. You have the right to consider
2 whether or not a witness has a stake in the outcome
3 of the case, whether or not the witness has
4 exhibited a bias or prejudice in favor of one side
5 of the case or other, whether or not the witness
6 actually had the ability to know the facts that the
7 witness is testifying about. And I've been coming
8 into courtrooms since 1975, that's a long time. And
9 I will tell you that I have never been in a
10 courtroom where the witness stand wasn't right in
11 front of the jury box. It's always there, and the
12 reason it's there is so that you can observe or
13 watch the witnesses as they testify, the way they
14 speak. So use your good common sense, evaluate
15 what's going on this courtroom, evaluate how the
16 testimony is being delivered. Consider the factors
17 I just mentioned. Use your good common sense, make
18 a determination as to which evidence convinces you
19 of its believability, how much weight you assign to
20 that testimony. Try to be in a position at the
21 close of the trial to discuss those matters with
22 your fellow jurors about what you've chosen to
23 believe and what you've chosen not to believe.
24 Again, use your good common sense in making those
25 determinations in this matter.

1 Now during the trial there may be
2 occasions where I have to rule on questions that
3 come up concerning the admissibility of evidence or
4 the appropriateness of questions that are being
5 asked, things of that nature. And if it's my belief
6 my discussions with the lawyers might lead into a
7 discussion of some matter that would not be
8 admissible under the rules of evidence that govern
9 how evidence gets into a trial, if I think the
10 discussion may go in that direction I may ask you to
11 step out of the courtroom while I have those
12 discussions with the lawyers. I hope you don't take
13 that as an effort on my part to try to influence
14 your decision on the facts. It's just me doing my
15 job because part of my job is as a gatekeeper. I
16 decide what comes into the record and what doesn't
17 come into the record. I open the door or I close
18 the door and so it's just me doing my job to see to
19 it that you decide the case based on evidence that's
20 been properly admitted into the record under the
21 rules that govern them. So if I ask you to step out
22 of the courtroom, I'm working on one of those
23 questions and I'm going to do that outside of your
24 hearing. I'll bring you back once I've made a
25 ruling, I'll announce that ruling, and we'll proceed

1 with the trial of the case. But don't think I've
2 done that to try to influence your decision in the
3 case, it's just me doing my job in trying to see
4 that you only consider properly admitted evidence in
5 reaching your verdict in the case. So don't be
6 surprised if I do that at some point in time during
7 the trial.

8 Now I have not and I will not appoint a
9 foreperson of your jury until I charge you on the
10 law. That'll be at the end of the trial. Don't
11 think I've forgotten about the foreperson, I haven't
12 forgotten. I do that for a reason and I want to
13 stress a couple of things to you. At the close of
14 the trial the verdict that you reach must be
15 unanimous. Each of the jurors who is in
16 deliberations must agree on the verdict before it's
17 the verdict of the juror so there's no one juror
18 who's more important than any other juror. I don't
19 want you to think that if I were to appoint somebody
20 as your foreperson right now that somehow I believe
21 that person is smarter or in a better position to
22 handle the case than you are. In fact, I want you
23 to think that you might be that person because at
24 the close of the trial one of you will be the person
25 that I appoint as the foreperson of the jury. That

1 means you may be the person who leads the discussion
2 of the jury, who handles the questions of the jury,
3 so prepare yourself as the trial goes on as if
4 you're going to be that foreperson because of the
5 twelve of you one of you will be the foreperson and
6 I'll make that choice at the close of the trial.
7 But during the trial, if there's anything that you
8 feel needs to be communicated to me, let the
9 bailiffs know directly, they'll come see me. You
10 don't need a foreperson to communicate with me if
11 you think there's something important that I need to
12 know about. Tell the bailiffs, they'll get in touch
13 with me and I'll deal with it accordingly, whatever
14 that is. I will appoint the foreperson when I
15 charge you on the law at the close of the trial. If
16 I don't forget it then -- don't think I've forgotten
17 that as the trial goes on if I have not appointed a
18 foreperson until that time.

19 Now I want to be sure that I haven't
20 violated anyones rights in my opening comments to
21 you. At this point in time, does the State have an
22 objection to my opening comments?

23 MR. MOWRY: No objection, Your Honor.

24 THE COURT: Any objection from the
25 Defense?

1 MR. STODDARD: No objection.

2 THE COURT: All right, now ladies and
3 gentlemen, I mention to you and I told you and I
4 stress to you, the State has the burden of proof in
5 this case so that means the State will be allowed to
6 go first in the opening arguments followed by the
7 Defense. Then the State will be given the first
8 opportunity to present its evidence before you. If
9 the Defense wishes to present any evidence they'll
10 be given an opportunity once the State has
11 completed.

12 Once all the evidence is into the record
13 we'll have closing arguments. Once the closing
14 arguments or summations are finished, that's when I
15 charge you on the law. Once I finish that charge on
16 the law the case will be turned over to you for your
17 deliberations and verdict so those are the steps
18 we'll go through. Opening statements, presentation
19 of evidence, closing statements, charge on the law,
20 and then the case will be yours for your
21 deliberations. So we're going to begin the case
22 with opening statements.

23 The State may proceed.

24 MR. MCMAHON: Thank you, Your Honor, may
25 it please the Court.

1 THE COURT: Yes, sir, Mr. McMahon.

2 MR. MCMAHON: Thank you, Your Honor, may
3 it please the Court.

4 THE COURT: Yes, sir, Mr. McMahon.

5 MR. MCMAHON: So much of human interaction
6 regard, if not all, is placed on communication.
7 Then you step back down a little or up a little bit,
8 however you want to look at it, we all communicate
9 in various points. Sometimes we communicate by
10 observation and looking at each other. Sometime we
11 communicate by having conversations or writing notes
12 or writing letters; and other times we communicate
13 by observation. And I say observation, other times
14 we communicate by pointing at signs. For example,
15 if one of you were to ask me what time is it, I
16 don't wear a watch, but I can point right over to
17 that wall clock. And you can look without me saying
18 a word, point at that clock and you know what time
19 it is. Or, how do I get out of here? I can point
20 in five different directions and also the exit
21 signs. The signs are so important to our
22 communications. All aspects of our communication is
23 very important. But don't neglect signs, the signs,
24 whether they're observation or other types of signs.

25 The 28th of March, 2018, John Howell --

1 John Howell right here -- and Zack Ivey were working
2 in the northbound lane of Highway 385 that splits
3 off in case any one of y'all I'm sure where right
4 there at Clinton, heads north to Greenville, a four
5 lane highway, shoulders on the road, grass median
6 separated by cables. The cables all the way up
7 from, I think it goes exit 1, whatever number. This
8 is going to be at mile marker 19. And Zack and John
9 were preparing cables on 385 about 9:30 that morning
10 or so, clear bright day, as I say, in March. About
11 as hot as today I'm sure, but probably the
12 visibility was comparable then as it is today.
13 Stretch of highway. They had put out some signs
14 over on the highway, work zone ahead, mowing next
15 3-miles, all types of communications to us for
16 members of the motoring public to give us
17 indicators of what we may encounter ahead of us on
18 the highway. Signs were put out 1700 and another
19 700 feet, 2400 feet before you got to the work area
20 where Zack and John were working notifying,
21 notifying motorists of it. 1700 feet. I don't know
22 why I do this and estimate distance in football
23 fields because the only position I ever played was
24 on the bench or something like that; but seems the
25 responsible estimate about eight footballs before

1 you would get to their work truck which was over in
2 the grass median because they were going to be
3 working on the cable that is between the north and
4 south grassy part of the median for it to be
5 repaired. Their truck also had illumination, had
6 illumination. The truck, you'll hear about some of
7 this. You'll hear from the testimony. It had
8 certain features on it. There were safety features
9 that were designed to add an additional layer of
10 safety to the workers on the highway to take
11 potential impact and such like that, a big work
12 truck, big work truck. And they were between the
13 driver's side of the truck and the cable barriers
14 on, in the grassy median, the closest to the cable,
15 not in the left-hand lane or right-hand lane, but
16 the one next to the shoulder or the shoulders. They
17 were away from members of the motoring public and
18 had put out all of the safety signs. And they don't
19 even stop there. What else do they do? What else
20 do they do? They have safety vests on. We see that
21 all the time. That's the sign. That's the sign.

22 And as Ms. Tackett was driving her
23 vehicle, SUV, north of what's going towards
24 Greenville, the northbound lane, other people that
25 will testify before you today, other people observed

1 the signs. They observed signs of her erratic
2 driving. This is well before mile marker 19. One
3 of them, Ms. Conte, who is seated at the second seat
4 over there, second row, first seat, who was, who is
5 a state employee member which is PEBA, Public
6 Employee Benefits Association. You may tell I'm
7 very familiar with that. Maybe you've seen the sign
8 there. Yeah, I bet you've fixed a tire, you know,
9 but she was -- and goes around the state of
10 Columbia. She passed her. And she observed erratic
11 driving, an individual unable to maintain lanes --
12 not a lane, lanes -- both lanes of traffic going
13 north. She'll testify before you she observed that
14 vehicle and she said I'm getting out of the way. I
15 read these signs, I'm getting out of the way, they
16 can go on, they can go on. And that may not be
17 verbal communication, that might not be written
18 notice; but when the judge says use your common
19 sense, that's a common sense sign we can all read,
20 we can all read.

21 And there was another gentleman, I'm going
22 to call him Mr. G. I can't, I know I have his name,
23 I can't pronounce it. And he's from Chicago. He
24 and his wife and his child had been down to our
25 beach, our coast, and was going -- they wanted to

1 visit Clemson. I'm not gonna give you my opinion
2 about that right now, but that's where they wanted
3 to go is visit Clemson. And they observed that same
4 vehicle northbound driving erratically and Mr. G
5 even told his wife, you need to get out the way.
6 Now this is a day like today, ladies and gentlemen,
7 coming up 385 northbound, all over the road.
8 Erratic driving is a sign you can read. Erratic
9 driving. Use your common sense. Use your common
10 sense.

11 And also Ms. Abercrombie, next to, next to
12 our State employee Ms. Conte, she was coming in
13 opposite direction. She was coming from Greenville
14 and getting off on Highway 14, and there'll be
15 photographs and diagrams and such like that. I used
16 to show juries photographs. They don't let me do it
17 anymore. Now they have these electronic screens
18 that, believe it or not, they didn't teach me how to
19 use in law school and I ain't learned nothing about
20 them since then. But you'll see all this area, all
21 this area. And listen very closely and intently to
22 these three witnesses, these three witnesses. And
23 Mr. G, we have statements from him where he was
24 cross-examined by the defense lawyer that will be
25 presented to you also.

1 Now impact occurred between the vehicle
2 Ms. Tackett was operating and the vehicle that John
3 and Zack were working out of -- 28 year old at the
4 time I think, Zack 24 year old, I think at the time
5 -- their job. And of course his wife and kids move
6 on in the years, and Zack doesn't of course. And
7 the impact, the impact from Ms. Tackett's vehicle to
8 the Bagwell cable work truck was on the driver's
9 side of the vehicle, not on the left lane, not on
10 the right lane, but the driver's side of the
11 vehicle. And all three of these people, all three
12 of these people, Ms. Conte, Ms. Abercrombie, Mr. G.,
13 stop, stop. One was his family. The other two they
14 were by themselves. They tell you what they were
15 doing. And Ms. Abercrombie testified as coming down
16 she thought they saw something flying across the
17 northbound lane. And she'll tell you what she
18 thought that was and what she later on determined
19 that to be. And then she, she saw the impact.
20 Ms. Abercrombie saw the impact. She saw something
21 fly, saw another gentleman get hit on the driver's
22 side of the truck. And that gentleman, Mr. Howell,
23 will testify before y'all. And then that vehicle
24 was driving, riding the cable barrier after the
25 impact after having struck both Zack and John for a

1 distance. And we'll have the testimony to what
2 distance that was, the testimony of what her speed
3 would have been. And those are other signs:
4 Erratic driving, speed, distance, the impact.

5 And all these citizens, all these citizens
6 stopped to render whatever assistance they could.
7 One, they couldn't remember anything. And then
8 you'll have the trooper responding, Trooper Gabriel.
9 And you know, you know they got these, they got
10 these cameras and you'll see that. And you'll see
11 his observation of, or here, and perhaps see his
12 observations of Ms. Tackett's condition and his
13 administrating, administrating the field sobriety
14 tests, the walk, follow directions. And of course,
15 driving a car, we all know there's signs, there's a
16 lot more finer motor skills. It's multitasking is
17 what it is; we all know that. We all know that.
18 And she was ultimately charged with driving under
19 the influence. And I want to make this perfectly
20 clear, ladies and gentlemen.

21 When you hear the term, I think DUI,
22 everybody thinks somebody's had too much to drink,
23 had too much to drink, too much alcohol, too much
24 beer and what have you. This is the driving under
25 the influence of not a DUI, DUID, the driving under

1 the influence of drugs, not alcohol. There's no
2 allegation by the State that there was alcohol
3 involved. It's drugs. It's, I can't pronounce them
4 all. I can't pronounce them all. Klonopin,
5 Gabapentin, Clonazepam, six or eight, six or eight
6 drugs, marijuana, marijuana, combination. And all
7 but the marijuana is prescribed drugs, prescribed
8 drugs. You need to take, you know, a doctor's
9 prescription. They're -- not illegal drugs, they're
10 legal drugs. But to come from that, a lesser amount
11 of drugs will mess your mind. It wasn't
12 (indiscernible), but it was something legal that
13 puts you under such a condition it's unsafe to
14 operate a vehicle on the highway. And you mix all
15 that with marijuana, with marijuana -- regardless of
16 what they say about marijuana now, I don't know. We
17 all have different opinions, but I don't know. The
18 SLED expert will get up here. Ms. Tackett was taken
19 to the hospital. The nurse will be here. The
20 toxicologist will be here to tell you what was found
21 in her blood. It's simple nervousness, depressants,
22 depressants, and how those negatively affect our
23 motor skills and our mental ability. And another
24 expert will be here about the drugs, a very
25 experienced expert about the drugs and the

1 combination of those drugs, content of those drugs,
2 and of course the mixture into the marijuana, all of
3 it, all of it. Clearly driving under the influence
4 of drugs, felony driving under the influence of
5 drugs resulting in death. Felony driving under the
6 influence of drugs resulting in great bodily injury;
7 and you'll hear about what we will submit to you is
8 great bodily injury, no question about it.

9 And we'll have other officers testify that
10 had made observations of Ms. Tackett, had
11 conversations with Ms. Tackett, that gave
12 Ms. Tackett certain tests, certain tests that tied
13 into whether you're driving under the influence,
14 driving under the influence of drugs, the results of
15 those tests, and their observations of her abilities
16 to safely drive a motor vehicle, safely drive a
17 motor vehicle. And not only the officers there will
18 be EMS and, as I said, the medical personnel. And
19 the judge, he's talking about your common sense.
20 You don't check it at the door. You don't -- leave
21 your cell phone in the car, but you don't leave your
22 common sense in the car. It comes in with you. It
23 comes in with you. Because that's how all we all
24 make our life decisions based on our common sense,
25 our individualized and collective life histories,

1 education, whatever, work histories, that all
2 combines. And where is it supposed to end up? I'll
3 go down this 358 highway with you; I'll try to do it
4 chronologically talking about the signs and all.
5 Where is it supposed end up? It's supposed to end
6 up in justice. The evidence is supposed to take
7 you -- you go with it wherever it takes you,
8 wherever it takes you, to the end of the road.
9 Justice. I'm not telling you what your verdict is.
10 I'm not suggesting that to you whatsoever. Each and
11 every one of you have more common sense, more
12 intelligence, more abilities than I do. I shouldn't
13 do that but my wife tells me sometimes, you know,
14 you don't have a lick of common sense, you know what
15 I'm saying. But I mean, I don't need to tell you
16 where to go. You just need to follow that highway
17 and go where it leads you to whatever happened that
18 day. Under your oath that's where you go and that's
19 where you go.

20 Pay attention, I know you will. Pay
21 attention. Pay attention. The judge's concept not
22 to appoint a foreperson, but we don't know who's
23 going to end up sitting in that chair. And I know
24 you're sitting there thinking, oh, it might be me, I
25 want to make sure I can do that job. Thank you.

1 Thank you so much for your time.

2 Ladies and gentlemen, I'm Knox McMahon,
3 assistant solicitor, and Warren Mowry introduced
4 himself to you earlier and Walter Bentley, our
5 investigator. And the simple elements of this crime
6 driving a motor vehicle in the State of South
7 Carolina while under the influence of alcohol and/or
8 drugs to such an extent that your ability to drive
9 is remarkably impaired. Don't get sidetracked by
10 the illegal drugs, illegal drugs, marijuana. So
11 unfortunately you have a, you have to take John,
12 John and Zack. Appreciate y'all's service to our
13 State today. Thank you. Thank you very much.
14 Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 Mr. Stoddard, you may proceed for the
17 Defense.

18 MR. STODDARD: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 MR. STODDARD: Ladies and gentlemen, I'd
21 like to start out by talking about rules. Every
22 case has rules. Some of these rules apply to every
23 case, and then in each case sometimes has its own
24 rules. The first thing I want to talk about is the
25 things that Ms. Tackett is charged with, felony DUI

1 and endangerment of a child. Felony DUI is driving
2 a vehicle or operating a vehicle while you're under
3 the influence of either drugs or alcohol, and under
4 the influence is defined as your ability to operate
5 a vehicle materially and appreciably impaired.
6 Felony DUI is when you're under that influence if
7 you commit a traffic violation or a duty, a legal
8 duty, which is usually a traffic violation -- we
9 have a duty to obey all traffic laws -- which
10 results in death or serious bodily injury. That's
11 felony DUI. Endangerment to a child, that's putting
12 the child in danger. You heard some of what
13 happened already and I'll talk to you a little bit
14 about what happened.

15 Now rules that apply to all criminal cases
16 is the presumption of innocence and burden of proof.
17 Right now Ms. Tackett is presumed innocent. Despite
18 everything you've heard already, she's to be
19 presumed innocent until you've heard evidence that
20 proves beyond a reasonable doubt that she's guilty
21 of it. Beyond a reasonable doubt is probably a term
22 you've heard a lot and the judge talked about how
23 we've learned a lot, our ideas about what court is
24 about in reading books and TV; but you may have
25 never had an opportunity to ponder what does that

1 mean. Well, one thing I will do is compare it to
2 what the burden of proof is in other cases, which is
3 civil court.

4 I believe we've got rain. We're inside
5 and we're getting rain. I hope it's raining; we
6 need some. In civil court the burden of proof is a
7 preponderance of evidence meaning more likely than
8 not. If the evidence shows it's more likely than
9 not, any of those, all of those elements I just
10 discussed, driving, which won't be an issue.
11 Serious bodily injury death won't be an issue in
12 this case. Being under the influence, all of those,
13 that will be an issue in this case. In a civil case
14 you just have to prove that evidence by a
15 preponderance of the evidence. In a criminal case
16 it's beyond a reasonable doubt. That has been
17 described in a couple of different ways, maybe more
18 than a couple, but I've heard it described as a
19 doubt for which you can give a reason, a doubt for
20 which Ms. Tackett was under the influence if her
21 faculties were materially impaired by the drugs in
22 the system. You have a doubt that's reasonable that
23 you can have a reason for, that's reasonable doubt.
24 Another way I've heard it described is a doubt that
25 would cause a reasonable person to hesitate. A

1 reasonable, a doubt that would cause a reasonable
2 person to hesitate to act. So in your
3 deliberations, for example, if you have a doubt
4 about that that causes you to hesitate, that by
5 definition gives you a reasonable doubt.

6 Now Mr. McMahon and other prosecutors and
7 I are gonna agree on a lot of the evidence.
8 Ms. Tackett was on the road as he said that day. I
9 think the evidence will show that she was driving
10 from her home and got on the interstate at exit 5
11 and this accident happened a little past exit 14, so
12 she was at least 14, plus whatever miles from her
13 home to the interstate when this happened. She is
14 at the time and still is under various prescription
15 drugs; and I think they named some of them, the
16 drugs in question. And she had marijuana in her
17 system which I'll talk to you a little bit about.
18 She was seen driving erratically and she ended up
19 going off the road. She had the accident and there
20 was a death and very serious injury.

21 Mr. McMahon talks about signs. Oh, by the
22 way, I missed, I forgot to tell you about another
23 rule. There's another rule called the rule of
24 circumstantial evidence. There's direct evidence.

25 Direct evidence is where the evidence

1 directly proves a fact that's at issue. I saw John
2 Doe shoot the gun. If shooting a gun is an element
3 of a crime, that's direct evidence, I saw him. I
4 saw, I heard a bang, I turned around, John Doe had a
5 gun, I saw smoke coming out of the gun, somebody
6 fell, that would be circumstantial evidence. I
7 didn't shoot the gun, but I saw facts that point to
8 him shooting the gun. When Mr. McMahon talks about
9 signs and there are signs pointing to this or that,
10 that's circumstantial evidence and the judge will
11 talk about circumstantial evidence at the end of
12 this case I believe. And when you're evaluating
13 circumstantial evidence, that evidence has to point
14 to a moral certainty to the fact that is the
15 ultimate fact. There are signs that Ms. Tackett was
16 under the influence, but there also signs in this
17 case that are contrary to her being under the
18 influence.

19 We know she had drugs in her system, the
20 Klonopin, the Gabapentin, and I can't remember all
21 of them. Again, a toxicologist will talk about
22 these drugs. But I will submit to you the evidence
23 is also going to show these are all prescribed. But
24 we all know people who have medicines prescribed and
25 that sort of thing; but the evidence will also show

1 that not only was she using them as prescribed, they
2 were within therapeutic limits. They were in
3 moderate amounts. Yes, there was marijuana in her
4 system. The toxicology is going to show that was a
5 very low dose. And the evidence will also show that
6 Ms. Tackett, one of the things that she takes
7 medication for is severe migraine headaches, and she
8 was in the habit of smoking a certain amount of
9 marijuana each night right before going to bed.
10 This happened at 9:00 in the morning and she had had
11 marijuana the night before as she usually does
12 because of her several headaches. That was still in
13 her system the next day and I'm sure a lot of you
14 know it remains in your system for a while after you
15 smoke it.

16 There was erratic driving, running off the
17 road, and I would submit that the evidence will show
18 when she was driving she was not just impaired like
19 somebody that might be a little buzzed or a little
20 impaired, she was totally unconscious. When she ran
21 off the road that, this was the action of somebody
22 that's not even conscious at the time. So you have
23 to ask yourself, the drugs that they found in your
24 system, would that render you unconscious and what
25 had happened in this case. Well, there are other

1 possible explanations like, you've all known
2 somebody that simply passed out for an unknown
3 reason and then wake up. There may be up here
4 something about her medical conditions. One of her
5 conditions is sleep apnea. There'll be other
6 evidence that the impairments indicate you'll hear
7 things about pupils eyes. You'll hear things about
8 tests, tests for divided attention, and pay
9 attention to those.

10 In the end there will be signs that she
11 was impaired. The question is, are there signs that
12 she was not impaired, that this was something else?
13 We would agree that there was an accident, it was
14 her fault. If you find that there was an accident
15 that was her fault, but the drugs in her system were
16 just incidental to that, they just were there, but
17 we don't, we have a reasonable doubt that that's
18 what caused this driving, then certainly the
19 accident, all of this was her fault but she's not
20 criminally liable, we're in the wrong court, it
21 should be civil court. Or where she fell asleep
22 because of the sleep apnea, there's even something
23 called reckless homicide, but not felony DUI.
24 That's the question. Are these drugs in her system
25 what caused this event. Was she under the influence

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1 of her ability to operate the vehicle and was
2 severally impaired or was there something else that
3 caused it.

4 So the judge I think charged you or may --
5 if he hasn't, you don't decide this case until
6 you've heard all of the evidence. Keep an open mind
7 until the end of this case until you've heard all of
8 the evidence. Thank you.

9 THE COURT: The State may call its first
10 witness.

11 MR. MOWRY: Thank you, Your Honor. We
12 call Diane Conte.

13 THE COURT: Come forward, ma'am, and
14 please be sworn.

15 WHEREUPON,

16 **DIANE CONTE,**
17 having been duly sworn by the Clerk, testified
18 as follows:

19 THE COURT: Ma'am, state your name, spell
20 your last name, please.

21 THE WITNESS: Diane Conte, C-O-N-T-E.

22 THE COURT: Counsel, your witness.

23 MR. MOWRY: Thank you very much, Your
24 Honor.

25 **D I R E C T E X A M I N A T I O N**

SW - D. CONTE - DIRECT

1 BY MR. MOWRY:

2 Q Ms. Conte, where do you live?

3 A I live in West Columbia.

4 Q And what do you do for a living?

5 A I'm a public health specialist for the
6 Public Employee Benefit Authority. I travel around
7 the state four to five days a week helping people
8 understand what their health insurance are, all of
9 their needs.

10 Q So mostly you deal with state employees;
11 is that right?

12 A Correct.

13 Q Or people that are in the state system?

14 A Yes.

15 Q And you travel about the state and
16 instruct them on their benefits?

17 A Yes.

18 Q How long have you been employed in that
19 capacity?

20 A Twenty-nine years.

21 Q Okay. And let me ask you this, where are
22 you from originally?

23 A Long Island, New York, or Washington.

24 Q And when did you move to South Carolina?

25 A In the '70s.

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1 Q Okay. And you've lived in Columbia ever
2 since?

3 A Yes, except for a little while in New York
4 City in the '80s.

5 Q But for 29 years you have worked for the
6 Public Employee Benefits Authority; ---

7 A Yes.

8 Q ---is that right? How many counties have
9 you traveled to to instruct employees on their
10 benefits?

11 A Every single one of them. And I do love
12 South Carolina for that, being able to see parts of
13 the state I never would have been able to see.

14 Q So you've been to all 46 counties; is that
15 right?

16 A Yes.

17 Q And how do you travel to all of these
18 counties?

19 A Well, I let them pick the time. And I
20 basically wake up, I give myself two hours to wake
21 up, feed my animals, drink my coffee and make sure
22 that I am wide awake on the road because if I travel
23 four or five days a week all year, the odds are
24 against, you know, against me. So I always give
25 myself plenty of time. And my coworkers laugh at

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1 me, old lady, but I always give myself at least
2 another hour between when I know I have to be there
3 leaving the house to give myself that hour.

4 Q And so you drive yourself; ---

5 A Yes, I do.

6 Q ---is that correct? So that's your job to
7 be on the road?

8 A Yes, it is.

9 Q Were you on the road back on the 28th of
10 March of last year?

11 A Yes, I was.

12 Q About 9:30 in the morning that morning
13 where were you?

14 A I was on 385 and I was heading up towards
15 Anderson.

16 Q Okay. You were going to go up to
17 Greenville and take 85 over to Anderson?

18 A Uh-huh.

19 Q Anything unusual as you were driving
20 along?

21 A Yeah, my worst nightmare of being a
22 driver. I drive everyday. I do defensive driving.
23 I look in front of me. I look behind me. Some
24 people say too much because my hands are tired when
25 I get home gripping the wheel. But I saw a car come

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1 up, it was a silver car far behind me and it was
2 doing variable speeds, slowing up, speeding up,
3 slowing down, and not picking a lane. I mean, not
4 just like just changing lanes, but swerving through
5 lanes. And as it became apparent that it was going
6 to come up and hit me, the car swerved to the left a
7 little, but not enough to give me room and I ended
8 up on the shoulder to avoid that car.

9 Q So you saw it coming up behind you?

10 A Yes.

11 Q Do you recall about how fast you were
12 going at that time?

13 A Yes. I was going probably a little less
14 than 60, probably 57.

15 Q Okay. The speed limit is 70 there; is
16 that right?

17 A I don't know that.

18 Q Okay. If I told you it was 70 would that
19 surprise you?

20 A No. But I was going very slow 'cause I
21 saw the car behind me.

22 Q Okay. Were you going faster than that
23 before you saw the car?

24 A Oh, yeah, uh-huh.

25 Q How fast would you reckon you were going?

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1 A I always do at least two miles under the
2 speed limit.

3 Q Okay. So you saw the car coming up behind
4 you and you noted what about it?

5 A I noticed that it was going in multiple
6 lanes swerving and coming up on the back of me very
7 quickly.

8 Q What did you, what went through your mind
9 when you saw the car driving in that manner?

10 A Oh, my God, I got to get out of the way
11 and they're never gonna make it home alive,
12 honestly, is what I said.

13 Q So as the car came up on you, and what
14 kind of vehicle was it?

15 A It was a silver car.

16 Q Okay. As you saw it coming up on you, you
17 did what?

18 A I slowed down and went on to the shoulder
19 of the road because the car was going to pass me
20 but, like, between lanes, and I knew she was -- it
21 was not, the car was not going to make it if I
22 didn't pull over to the shoulders.

23 Q So you went completely off the road; is
24 that right?

25 A Two wheels.

SW - D. CONTE - DIRECT

1 Q On to the shoulder?

2 A Yeah, the passenger side, two wheels on to
3 the shoulder.

4 Q What did the car that was passing you do
5 at that point?

6 A Just kept going.

7 Q Okay. Did its driving improve as you saw
8 it?

9 A No.

10 Q Same ---

11 A Same kind of driving.

12 Q ---manner.

13 A Uh-huh.

14 Q Okay. What did you do after it got around
15 you?

16 A I slowed down to about 50, 57, thinking I
17 want this person way ahead of me, miles ahead of me,
18 I'm in no rush. It's, you know, between 9:15, 9:30,
19 it's early in the morning, so I just kind of just
20 really took my foot off the pedal and slowed down.

21 Q Okay. A short time later did you see the
22 car again?

23 A Yes, I did.

24 Q Describe how that came about.

25 A As I came up I gave the car lots of

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1 distance, a minute or so, two minutes, I don't know.
2 I came up over the rise and I saw that the car --
3 the DOT truck was in the median; it was not on the
4 road. And she, I only know it's a woman now because
5 it's after the point. I didn't know if it was a man
6 or a woman. But instead of going around the truck,
7 she didn't have to go around the truck. The left
8 lane was clear, the right lane was clear. The car
9 swerved into the median, hit one of the DOT workers
10 into the middle of the highway and then crushed the
11 legs of the second DOT worker.

12 Q Okay.

13 A Took the door off the truck. I've never
14 seen that before in my life and then the car came to
15 a stop after the underneath of the car was torn
16 apart by the cables.

17 Q Okay. So you saw the truck off the
18 left-hand side of the interstate?

19 A Correct.

20 Q Out of the lanes of travel?

21 A Correct.

22 Q And there was a lane, a corridor I guess,
23 between that truck and the cable?

24 A Yes.

25 Q And the car that you had seen had gone ---

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1 A Road to cable, hit the truck, hit the men.

2 Q And gone up that corridor between ---

3 A Yes.

4 Q ---the truck and the cables?

5 A Yes.

6 Q The center median cables?

7 A Yes.

8 Q When you saw that what did you do?

9 A I stopped immediately and I got out of my
10 car, left it running, and ran to the man that was in
11 the center of the road. I did public health. I've
12 taken wilderness medicine so I felt pretty confident
13 that I could at least triage. So I ran to the man
14 in the middle of the road and his eyes were dilated
15 and I could not feel a pulse so I ran to the second
16 man who was screaming in pain.

17 Q Let me ask you this, did you find out
18 later who the first man that you were talking about
19 was? Did you find out his name?

20 A Yes.

21 Q Is it Zachariah Ivey?

22 A Yeah.

23 Q All right. When you went to the second
24 man did you find out later that was John Howell?

25 A Yes.

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1 Q J.C. Howell? What did you see there?

2 A I saw that he was screaming in pain. His
3 legs were crushed. He, I felt like the only thing I
4 could do for him was to keep him from going into
5 shock before EMS got there.

6 Q What was his position when you saw him?

7 A He was lying face first in the grass and
8 his legs were crushed.

9 Q Okay. You said that you wanted to keep
10 him from going into shock.

11 A Yes.

12 Q How did you go about doing that?

13 A I climbed into the cab and I grabbed their
14 cell phones and I called the emergency or the first
15 number I could find on the cell telephone and I got
16 his girlfriend. I went down to him. I was stroking
17 his neck, stroking his back, telling him it's okay.
18 I've been in an accident like this myself. I was
19 run over in front of the State House by a girl also.
20 And so I really just didn't want him to go into
21 shock so I gave the telephone and he was talking to
22 his girlfriend, and I was stroking him and just
23 trying to keep him awake and with us until EMS could
24 get there.

25 Q And did EMS arrive?

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1 A Yes, they did.

2 Q All right. Did they take over treatment

3 ---

4 A Yes, they did.

5 Q ---of John and try to care for Zack as
6 well?

7 A Yes.

8 Q Okay. Did you ever see the driver of that
9 car?

10 A I didn't go to the car because I was so
11 concerned keeping him from going into shock. The
12 only time I went to the car was when I noticed for
13 the first time there was a four year old that they
14 were putting on a stretcher and they were giving her
15 a bear, and she was in shock, just never said a
16 word. And I went over to the stretcher and just
17 kind of tried to settle her down, it's just an
18 adventure, just you know, you're like Dora the
19 Explorer, kind of thing.

20 Q Right. Did you ever see the driver of the
21 car?

22 A No.

23 Q Did you speak to highway patrol? Did they
24 arrive later?

25 A Yes.

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1 Q Do you speak to them?

2 A Yes.

3 Q What did you tell them?

4 A Exactly what I've told you about having
5 seen the car and then coming up on the accident and
6 helping. And I honestly, I didn't go to the car
7 because, you know, I felt one man is dying and the
8 other man needs help and I don't know who's in that
9 car, but they're gonna have to wait this time. I
10 feel bad about that.

11 Q Ms. Conte, I'm gonna show you what have
12 been admitted as State's Exhibits 8, 7, and 24, and
13 ask you if you can identify those. Let me hand you
14 24 first.

15 THE COURT: Mr. Mowry, before we start on
16 that let me check with Mr. Stoddard.

17 My understanding, Mr. Stoddard, is the
18 exhibits that have already been placed with the
19 court reporter, you've agreed that they're
20 admissible; is that right?

21 MR. STODDARD: That's correct.

22 THE COURT: All right. And so these are
23 part of those exhibits?

24 MR. MOWRY: Yes, sir.

25 THE COURT: All right. Ladies and

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1 gentlemen of the jury, pretrial these exhibits have
2 been marked and the attorneys have agreed that they
3 should come into the record, so as he refers to
4 these photographs, they are already part of the
5 record in the case and have been admitted into
6 evidence.

7 You may proceed.

8 (WHEREUPON, State Exhibits Nos. 1 through
9 46 were admitted into evidence.)

10 MR. MOWRY: Thank you.

11 THE WITNESS: This is a picture of the
12 truck and you can see that it's clearly not in the
13 road. It's on, in the middle and you can see all
14 the debris that came over her car as well.

15 BY MR. MOWRY:

16 Q So that's the picture that you're looking
17 at right there?

18 A Yes.

19 Q What is this yellow line right here,
20 ma'am?

21 A That's, that's not the road. I mean, the
22 road is to the right of that yellow line and what
23 that yellow line is, is you know, a little shoulder.

24 Q So ---

25 A And then the median.

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1 Q Yeah. This is the lane of travel where
2 this highway patrol car is; is that right?

3 A Correct.

4 Q Referring to State's Exhibit 24. The
5 truck is parked off the road; is that right?

6 A Right, which is what I could not
7 understand that two lanes were clear. There's no
8 real reason ---

9 Q Okay.

10 A ---for that car to do that.

11 Q Let me hand you Number 7. What does that
12 illustrate?

13 A That's the back of the car that hit the
14 DOT workers; and it looks from the back like, oh, no
15 problem, but you have to realize that everything
16 from underneath that car had been removed by the
17 cables by the time that car came to a stop. So when
18 I looked at it, it didn't look damaged, and that's
19 another reason I didn't go to her car. I went to
20 see the DOT workers.

21 Q Let me show you Number 8.

22 A Oh, that's her car and it's damaged on the
23 left side, damaged on the driver's side.

24 Q Okay. Finally, ma'am, I'm gonna hand you
25 Number 11. What does that illustrate?

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1 A That's the car and that's damage on the
2 right side of the car and that was where she hit the
3 truck and the men.

4 Q Okay. Ms. Conte, how long do you think
5 you observed the driving of that car?

6 A I'd say about three minutes.

7 Q Okay. As it was coming up behind you ---

8 A Behind me and then forward.

9 Q Okay. And about how long after the car
10 passed you and you let it go on up the highway,
11 about how long was it before you came up on this
12 collision scene?

13 A About a minute, two minutes, something
14 like that.

15 Q So we're talking about ---

16 A I would have seen it if there wasn't a
17 rise in the road.

18 Q So we're talking about a total of close to
19 five minutes or around there?

20 A Uh-huh.

21 Q Okay. Thank you, ma'am, I believe that's
22 all I have. If you'd answer any of Mr. Stoddard's
23 questions before you go.

24 THE COURT: Mr. Stoddard, you may
25 cross-examine the witness.

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CROSS-EXAMINATION

BY MR. STODDARD:

Q At the beginning of your testimony you mentioned having to prepare that morning driving and you said you give yourself time to wake up and drink your coffee. You mentioned because as much driving as you do, I think you said the odds aren't too good?

A I see this every week. If I don't see it twice a week, it's a good week. I mean, people dying on the roads because of poor driving. And that's why I feel like if I drive every day I need to be the best driver that I can be.

Q Is -- when you talk about waking up, is getting sleepy and drowsy something you're concerned about?

A No, it's just making sure that I don't get on the road drowsy. I mean, I'm in a, I'm in what essentially could be a weapon. I'm in a car and I wouldn't want to hurt anyone else, and I certainly wouldn't want to hurt myself.

Q From what you observed of the damage to the car and the path that it took, does it appear that Ms. Conte [sic] hit the -- first of all, did you see approximately where she hit that, I guess

1 it's called a guidewire or is that what you would
2 call it?

3 A It looked like it went right down the
4 underbody of her car, but I'm not a ---

5 Q Can you estimate how far it went on that
6 wire or cable?

7 A I don't know. Maybe from there to the
8 wall.

9 Q Yes, ma'am. Did it appear there was no
10 attempt to brake or anything?

11 A No attempt at all.

12 Q I've got no further questions.

13 A I've never seen a car take off a door of a
14 truck that big.

15 MR. STODDARD: I've got no further
16 questions.

17 THE COURT: Redirect?

18 MR. STODDARD: I don't think so, Your
19 Honor.

20 THE COURT: Ma'am, you may step down now.
21 Wish to have the witness excused?

22 MR. MOWRY: Yes, sir.

23 THE COURT: Any objections to her being
24 excused at this time?

25 MR. STODDARD: No objection.

1 THE COURT: Ma'am, you're free to leave
2 the courtroom if you'd like. You can stay of
3 course.

4 You may call your next witness.

5 MR. MOWRY: Your Honor, as part of our
6 presentation we had mentioned to Your Honor that one
7 of our witnesses was from Chicago and ---

8 THE COURT: Yes.

9 MR. MOWRY: ---Mr. Stoddard, I believe,
10 has stipulated to his previously taken testimony
11 that was subject to cross-examination, and we will
12 just simply read the transcript of that testimony.

13 THE COURT: Mr. Stoddard, is it correct
14 that you've agreed to allow this witness to appear
15 through the transcript of his former testimony?

16 MR. STODDARD: Yes, sir.

17 THE COURT: All right. How long is that
18 going to be?

19 MR. MOWRY: If you'd wish to take a break
20 now, Your Honor, I'd like ---

21 THE COURT: We've gone past the hour so I
22 think it might be a good idea to take a short break.

23 MR. MOWRY: Yes, sir.

24 THE COURT: Ladies and gentlemen of the
25 jury, this is one of those breaks I told you we

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1 would take. I'll let you step back to the jury room
2 stretch your legs, clear your mind. We'll do about
3 10, 15 minutes before we start back. I'll tell you
4 as always, don't discuss anything about this case,
5 even among yourselves, until I ask you to begin
6 deliberations. You may retire to the jury room.
7 Thank you very much.

8 (WHEREUPON, the jury was removed from the
9 courtroom at approximately 3:00 p.m.)

10 THE COURT: All right. During the break,
11 again, I would caution everyone, I know it's an
12 emotional case, but I would ask that you hold down
13 the interactions and any kind of emotions that you
14 show here at the courthouse. Court's in recess.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: All right, let's come to
18 order. State ready to proceed?

19 MR. MOWRY: Yes, sir, Your Honor.

20 THE COURT: Defense ready to proceed?

21 MR. STODDARD: Yes, sir.

22 THE COURT: All right, bring the jury in.

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 3:15 p.m., and
25 the following proceedings commenced in

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1 open court.)

2 MR. MOWRY: Your Honor, my plan is to read
3 my questions, or the attorney questions, and then
4 Mr. Bentley would take the part of Mr. Glodz.

5 THE COURT: Is he going to sit on the
6 stand?

7 MR. MOWRY: Yes.

8 THE COURT: I think that's a good idea.
9 Why don't you come on up and have a seat.

10 (Mr. Bentley takes a seat on the witness stand.)

11 THE COURT: Ladies and gentlemen of the
12 jury, we're going to present the testimony of
13 Mr. Glodz by way of a recorded transcript of his
14 testimony previously given. It was given under
15 oath. The attorneys were present and given an
16 opportunity to both question him. The gentleman
17 seated in the witness stand here is Mr. Bentley. He
18 is the investigator for the State. He is going to
19 play the role of the witness, and then they will be
20 reading his testimony as it appears in the
21 transcript so that you can follow it as it's being
22 testified to. You may proceed.

23 MR. MOWRY: Thank you very much, Your
24 Honor.

25

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1 BY MR. MOWRY:

2 Q Okay, you are Ireneusz Glodz?

3 A Close enough.

4 Q I've tried it several times and I still
5 butcher it. Where are you from originally, sir?

6 A Originally from Poland.

7 Q Okay, so you were born in Poland?

8 A Yes, sir.

9 Q When did you come to the United States?

10 A Twenty ago.

11 Q I'm sorry?

12 A Twenty years ago.

13 Q Twenty years ago. Are you married?

14 A Yes, I'm married.

15 Q How many kids do you have?

16 A Three.

17 Q And where do you live now?

18 A I live in Chicago.

19 Q What sort of work do you do there?

20 A Electrical contractor.

21 Q Do you own your own business?

22 A Yes, I do.

23 Q I'm going to ask you to think back to
24 March of last year. Were you in South Carolina in
25 March of last year?

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1 A Yes, I was.

2 Q What was your, what was the purpose of
3 your visit?

4 A Spring break with my family.

5 Q Spring break with your family.

6 A Yes, sir.

7 Q So, so you were down here for spring break
8 with your wife and your kids; is that right?

9 A That's correct.

10 Q Where did y'all visit?

11 A We visited a few towns in South Carolina.

12 Q Okay, mostly down on the coast?

13 A That's correct.

14 Q And I want you to think specifically back
15 to the 28th of March. Were you in Laurens County
16 that morning?

17 A We were driving up the highway.

18 Q Okay. Who was actually driving?

19 A My wife was driving the car.

20 Q And you were the passenger?

21 A I was the passenger.

22 Q And the kids were in the back seats?

23 A The kids were in the back.

24 Q Where were you heading?

25 A We were going to see the college Clemson

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1 University.

2 Q You were gonna visit Clemson University?

3 A That's where we were going.

4 Q How old is your oldest child?

5 A Sixteen.

6 Q So getting ready for college?

7 A That's correct.

8 Q So this was sort of an unofficial college
9 visit?

10 A Well, while we were on spring break might
11 as well check out the great university.

12 Q There you go. What route were y'all
13 driving about, right about 9:30 that morning?

14 A That was highway 3.

15 Q Highway I-385?

16 A Yeah, that sounds like that.

17 Q Okay. Did anything bring your attention
18 to something on I-385 about 9:30 that morning?

19 A That is correct. We were driving. I was
20 in the passenger seat, and my wife all of a sudden
21 noticed somebody driving erratically behind that car
22 so I was like, what's going on. She said, you know,
23 somebody just pulling out real quick to our car
24 riding our bumper and backs off, riding her bumper,
25 backs off again. So I just instructed her to move

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1 over to the right lane, let the car pass, and we'll
2 just deal with this.

3 Q Okay. Did you see the car as it passed?

4 A Yes, I did.

5 Q What kind of car was it?

6 A It was an SUV, Chevy Equinox I believe.

7 Q Okay. What color?

8 A It was silver-ish.

9 Q Okay. Let me hand you what's been marked
10 as State Exhibit Number 7 and ask you if you can
11 identify that please, sir.

12 A That looks like the car.

13 Q Okay. This, that is the car you saw?

14 A That's the car.

15 Q Did you see it later?

16 A I did see it later when we stopped.

17 Q When you stopped?

18 A (Witness nods affirmatively.)

19 Q Witness nods his head affirmatively. What
20 had happened in the interim?

21 A Well, once we moved over to the right lane
22 the car sped up real quick and pulled up to another
23 car that was ahead of us close to her bumper, then
24 would slow down again, slowly back up a little bit,
25 will go back up again, and then go weaving between

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1 the lanes left and right, left and right. And then
2 the last thing we saw was the car weaving to the
3 left slowly going onto the middle of the road. Then
4 we notice the truck, I notice the truck standing
5 ahead of us and I, looked like, we are all looking
6 at this and it look, we were all looking and it's
7 looks like this is not good. This is where we end
8 up the wreck, and it looks like the car was actually
9 going and heading straight in the back of the truck
10 and then it happened. The car went slightly, well,
11 just kept going to the left. It was like the
12 perfect storm because it was just right there in the
13 one right in between the median and the truck and
14 that was, the car was gone. Right after the car
15 disappeared between those two behind the truck I saw
16 a man flying right ahead of us when we were driving.
17 We were in the same lane at that time and the man's
18 body fell straight on the highway in front of us.

19 Q So you saw the car go between the truck
20 and the cables and the median; is that right?

21 A Disappearing one stride in between.

22 Q Okay. Let me hand you State's Exhibit
23 Number 24 and ask you if you can identify that.

24 A That is the truck.

25 Q That is the truck. So, let's see, this is

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1 the car we're talking about; ---

2 A That's correct.

3 Q ---is that right? Did you later find out
4 who the driver of that car was?

5 A Yes, I did.

6 Q Do you know her name?

7 A Don't know her name.

8 Q Did you see her that day?

9 A Yes, I did.

10 Q Did you have a conversation with her?

11 A Yes, I did. I had asked her a question.

12 Q Okay. Do you see that person in the
13 courtroom today?

14 A Yes, I do.

15 Q Can you point out who that person is?

16 A That lady right there.

17 MR. MOWRY: Your Honor, for the record he
18 has pointed out the defendant. And the Court did
19 note that, that for the record.

20 THE COURT: All right, thank you. You may
21 proceed.

22 BY MR. MOWRY:

23 Q You talked about the truck.

24 A That's the truck.

25 Q And is that how the truck appeared that

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1 day?

2 A Yes, sir.

3 Q Okay, now, you say that the car had been
4 driving erratically?

5 A That's what I said.

6 Q Behind you?

7 A That's correct.

8 Q Then continued to drive erratically as it
9 went up the road; is that right?

10 A That is correct.

11 Q Let me show you State's Exhibit Number 9,
12 this photograph, and ask you if you can identify
13 that.

14 A Yes, I've seen it. That's the car.
15 That's what happened.

16 Q That's the car. What's in the background?

17 A That's the truck.

18 MR. MOWRY: And again, Your Honor, I
19 offered that into evidence at that time and it was
20 accepted. Your Honor, in that case I would offer
21 State's Exhibits 11, 8, 35, and 37 into evidence,
22 and I'll move on ahead past that.

23 THE COURT: Those have already been put
24 into evidence.

25 MR. MOWRY: Yes, sir, they have been.

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1 THE COURT: Thank you.

2 BY MR. MOWRY:

3 Q Mr. Glodz, you were coming -- you were
4 coming this way on I-358; is that correct?

5 A That is correct.

6 Q So you were looking south. So we're
7 looking south, but this road goes north; is that
8 right? I mean, you were heading northbound towards
9 Greenville?

10 A That's correct.

11 Q Is that how the road appeared to you that
12 day?

13 A It did, but obviously a state trooper
14 truck, and then there's cones in there too. They
15 weren't there when we were driving.

16 Q So the road was clear?

17 A That's correct.

18 Q The truck, was that how, was that how the
19 truck was positioned?

20 A The truck was exactly the way it is right
21 there.

22 Q So it's outside the yellow line; is that
23 right?

24 A Correct.

25 Q Off the road?

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1 A Off the road.

2 Q After -- go ahead. And if you would,
3 describe again, how did the car that Ms. Tackett was
4 driving, how did that behave after it passed you?
5 Describe that in some detail if you would.

6 A Did not look normal. Looks like somebody
7 was driving erratically, speeding up and weaving
8 from left to right. It looked dangerous.

9 Q Okay.

10 A That's why we moved over and then let her
11 pass, but that was continued happening ---

12 Q Okay.

13 A ---ahead of us.

14 Q And you saw the car disappear, I believe,
15 is the way you described it, between the cables and
16 the truck; is that right?

17 A It went in straight there.

18 Q Okay. What did you see after that car
19 disappeared?

20 A I see a man flying in the air pretty up
21 high and then following on to the lane of traffic.

22 Q Okay. Did you see, did you see this item
23 on the left-hand side ---

24 A I see it.

25 Q ---of the picture? Was that pretty much

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1 where the person landed?

2 A Pretty much.

3 Q Okay, all right. What did you do when you
4 observed that?

5 A Well, my wife stopped right away. She ran
6 out of the car. I ran out of the car to check on
7 the man that was lying on the ground. My son was
8 calling 9-1-1. I told him to get back in the car
9 because it's dangerous and ---

10 Q Was there still traffic coming?

11 A Traffic, traffic, after that traffic
12 stopped behind us so I went to check what's going on
13 up there and I looked at the man on the ground that
14 was -- he was bleeding. I checked his pulse. It
15 was a pulse. He was breathing. He was shivering a
16 little too.

17 Q This gentleman right here?

18 A That's correct.

19 Q Okay. So he was alive at that time?

20 A He was alive at the time. He was slight,
21 slight bleeding of, from his head, not much; but he
22 was moving his eyes and he was, he was shivering a
23 little. From that time, check, tell him to stay
24 calm, the cop is on the way.

25 Q Was he able to verbally respond to you?

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1 Did he, could he say anything to you?

2 A No. No.

3 Q Okay. What did you do then?

4 A Then I went 'cause, see there, there's
5 more people behind. There was another gentleman by
6 the truck under the truck over there. He was
7 conscious, and he was ---

8 Q Was he about right here?

9 A That is correct.

10 Q Did you find out later that that was John
11 Howell?

12 A Yes.

13 Q And Zack Ivey was right here; is that
14 right?

15 A That's correct.

16 Q What did you do then?

17 A I checked behind, but it was a lady
18 already there talking to him trying to calm him
19 down. He was in a lot of pain; he was screaming.

20 Q He was screaming?

21 A He was screaming from his pain.

22 Q Did you later find out that this lady who
23 was there with him was Diane Conte?

24 A Yes, she's right there.

25 Q And then I asked Ms. Conte to stand up for

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1 a moment. Is that, is that the lady you saw there
2 at the scene that day?

3 A Yes.

4 Q Okay. What did you do then?

5 A I went to the car. I wanted to see what
6 was going on in the car and then ---

7 Q You went up to the ---

8 A I was gonna try and ---

9 Q The SUV?

10 A The SUV, the truck.

11 Q Okay.

12 A Yes.

13 Q Let's see, I'm gonna hand you State's
14 Exhibit Number 8 and ask you if you can identify --
15 let's see. Did you go, which side of the car did
16 you go up to?

17 A The driver's side.

18 Q Okay. And not -- does that picture
19 illustrate the way the car looked when you got
20 there?

21 A That's what it looked like.

22 Q All right. What is the item that is
23 draped down over the ---

24 A An air bag.

25 Q ---driver's side window?

SW - I. GLODZ - DIRECT

1 A It's an air bag curtain.

2 Q Side curtain air bag?

3 A Side curtain, yeah.

4 Q All right. What did you do to try to get
5 into the car?

6 A I tried to open the door. I had some
7 difficulties, but I opened the door and asked if the
8 driver's okay. I wanted to see what was going on in
9 the car.

10 Q And who was the driver?

11 A The lady sitting right there.

12 Q Ms. Tackett?

13 A Ms. Tackett.

14 Q All right. Did she respond to you?

15 A I asked if she was okay. She said, I
16 think I'm okay, and she showed me her hand. It had
17 a few bruises and a little bit of blood on her hand.

18 Q Okay. What else did you do at the car?

19 A Somebody said there was a baby in the car
20 so I opened the other door and checked. There was a
21 baby in the back of the, in the back seat.

22 Q So you opened this door?

23 A The back door.

24 Q Is that right?

25 A That's correct.

SW - I. GLODZ - DIRECT

1 Q How old was the child, just a ---

2 A Four or ---

3 Q Just a ballpark.

4 A Four or five.

5 Q Four or five years old?

6 A It's a girl, yep.

7 Q Was she, was she in a child's seat?

8 A Yeah, car seat, passenger side.

9 Q Okay. Mr. Glodz, let me back up for just
10 a second. When you observed Ms. Tackett's driving
11 after she had passed y'all, you were talking about
12 the nature of her driving. Was there anything in
13 the road that might have accounted for her erratic
14 movements?

15 A No.

16 Q Did a deer run out in the road or anything
17 like that?

18 A No, clear road ahead.

19 Q Was there anything that you could see that
20 would account for that erratic driving?

21 A She tried to swerve around something with
22 a quick move. We saw like waving moves. There was
23 absolutely nothing there.

24 Q Okay. And you say the road was clear?

25 A The road was pretty clear.

SW - I. GLODZ - DIRECT

1 Q Mr. Glodz, how quickly did law enforcement
2 and first responders like EMS get there?

3 A I'd say it was a few minutes, four or five
4 minutes.

5 Q Okay.

6 A I'm, it's just an estimate. I'm not
7 looking at my watch.

8 Q Okay. What did you do in the meantime?

9 A I went back to the gentleman on the road
10 to see how he was still doing and so and then tried
11 to calm him down a little, say something like, calm
12 down, calm down, help is on the way, and then going
13 between people trying to see if there's anything I
14 can do to help in any way.

15 Q Okay. When law enforcement did arrive,
16 law enforcement and first responders, what did you
17 do then?

18 A When the ambulance showed up at first and
19 they started attending to the gentleman in the road,
20 and then I was -- when the trooper showed up he told
21 us to stand over, move our car to the side and just
22 wait there until we handed, until we handed our
23 information.

24 Q Okay. And did you give him the
25 information?

SW - I. GLODZ - DIRECT

1 A That's correct.

2 Q Okay. Once you had completed that were
3 you able to do anything else at the scene?

4 A While I was waiting there I was just
5 observing what was going on and helping, talk to
6 nobody, was standing and just watching what's going
7 on.

8 Q Okay. How long do you able -- do you
9 think you were able to observe that erratic driving?
10 Was it just a second or two, or was it ---

11 A Closer to a minute. It was a lengthy time
12 period. It wasn't just like one or two seconds, no.

13 Q Okay. Once you had given your information
14 to law enforcement, what did you do then?

15 A I was -- said that it was okay for us to
16 go on your way.

17 Q Okay. And ---

18 A I got in the car. I got in the car and
19 drive away.

20 Q Okay. Did you eventually head home to
21 Chicago?

22 A We went home. We spent a couple of more
23 days in the area and then, then we went home.

24 Q All right. What had you done with your
25 car while all that was going on? Where were you

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1 parked?

2 A Well, we didn't really park in the
3 beginning. We just stopped because the body of the
4 man was in front of us. So we stopped there to --
5 it was nowhere to go or nor, I think, any parking of
6 the truck and ---

7 Q Okay. Thank you, sir. I believe that's
8 all I have, all the questions I have. If you'd
9 answer any of Mr. Stoddard's questions, and I'll go
10 ahead and read Mr. Stoddard's questions and
11 Mr. Bentley will respond.

12 **CROSS-EXAMINATION**

13 BY MR. MOWRY:

14 Q Let's see, do you see the bridge back
15 there?

16 A I do.

17 Q When you first saw Ms. Tackett were you on
18 this side of the bridge, do you know, do you think?

19 A I don't know where I was. I was not
20 paying attention ---

21 Q Okay.

22 A ---to the bridge.

23 Q Okay. You weren't -- when you say how
24 long this, you observed -- or you weren't timing?

25 A I wasn't timing it. My wife was driving

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1 and then she started talking about some driver.

2 Q All right. You, when she started going
3 off the left side, when she came off the road to the
4 left, ---

5 A Uh-huh.

6 Q ---to her left, not our left, her left,
7 y'all, the left as you were driving, did the car
8 sway or was it just a drift?

9 A At that time when I wasn't -- let me start
10 over with that answer. At that time when it wasn't
11 locked it was just a drift.

12 Q Do you recall telling the officer that you
13 think she's, Ms. Tackett's in shock?

14 A She could be in shock, I don't know.

15 Q Did you tell the officer you thought she
16 was in shock?

17 A Possibly.

18 Q Okay.

19 A I don't remember everything.

20 Q Did she look like she was in shock to you?

21 A She looked -- possibly.

22 MR. MOWRY: I've got no further questions
23 and no redirect.

24 THE COURT: All right, you may step down,
25 sir. Thank you.

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1 The State may call its next witness.

2 MR. MCMAHON: Sheri Abercrombie.

3 THE COURT: Come forward, ma'am, to be
4 sworn please.

5 THE CLERK: Place your left hand on the
6 Bible, raise your right hand.

7 WHEREUPON,

8 **SHERI ABERCROMBIE,**

9 having been duly sworn by the Clerk, testified
10 as follows:

11 THE WITNESS: My name is Sheri
12 Abercrombie. It's spelled A-B-E-R-C-R-O-M-B-I-E.

13 THE COURT: Mr. McMahon, your witness.

14 MR. MCMAHON: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 **DIRECT EXAMINATION**

17 BY MR. MCMAHON:

18 Q Ms. Abercrombie, let's begin by telling
19 the jury a little bit about yourself. Where are you
20 from, Ms. Abercrombie?

21 A Simpsonville, South Carolina.

22 Q And where do you live now?

23 A Simpsonville.

24 Q So you've been there all your life?

25 A For about 25 years. I've been in

SW - S. ABERCROMBIE - DIRECT

1 Greenwood.

2 Q And are you employed?

3 A No.

4 Q You've been previously employed in the
5 past?

6 A Yes.

7 Q And what type work did you do?

8 A I've worked for the post office.

9 Q And how long did you work for that?

10 A I worked for them for about ten years, and
11 I worked as a regional manager for McDonalds for
12 about 15 years.

13 Q Now I want to take your attention back to
14 the 28th of March, 2018. Did you have occasion to
15 be on I-385 at any time that day?

16 A About 9:30 that morning.

17 Q And you say what time of day was it?

18 A 9:30 a.m.

19 Q 9:30 a.m. And where had you come from and
20 where did you get on to I-385?

21 A I come off Harrison Bridge Road which is
22 Simpsonville and I was headed towards the exit 19
23 which is the Gray Court exit, and I was going there
24 to go to a local business.

25 Q And just to orient me, so you would have

SW - S. ABERCROMBIE - DIRECT

1 gotten on further north ---

2 A Yes, sir.

3 Q ---of where this incident occurred; is
4 that correct?

5 A That's correct.

6 Q And would have been coming southbound
7 towards Gray Court; is that correct?

8 A That's correct.

9 Q All right. Now, and your plan was to exit
10 off of 385 at what exit?

11 A Exit 19.

12 Q Do you know is all that in Laurens County?

13 A Pretty much all of it.

14 Q All right. And I believe you were running
15 some type of errand; is that right?

16 A I was going to a pharmacy.

17 Q Was anyone with you?

18 A No, sir.

19 Q Can you describe for the jury, please, the
20 weather conditions, the traffic conditions, when you
21 were southbound on 385 that morning?

22 A Yes, sir, it was a Sunday morning, a
23 little cooler than today, and no -- I mean, just a
24 pleasant day.

25 Q And I believe you said it was 9:30, about

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1 9:30; is that right?

2 A 9:30.

3 Q Now as you approached that exit 19 ---

4 A Yes, sir.

5 Q ---what, if anything, came to your
6 attention? What did you observe, Ms. Abercrombie?

7 A I was starting to get on 19 which is a
8 fairly long exit to get off of, and I saw the work
9 truck to my left so it caught my attention because
10 of the blinking lights and everything. Just like
11 everything else I just was looking ahead. And I
12 looked, glanced over and saw -- when I saw the truck
13 all of a sudden I saw something orange, and then at
14 that point as I saw the orange in the air I didn't
15 know what was orange in the air at the time. I saw
16 a vehicle coming around the white truck on the metal
17 cable and come around and hit the door of the
18 driver's side door and another -- I looked and I
19 found at that time it was a gentleman. And it
20 continued on up that barrier for probably, I don't
21 know, probably 75-yards or feet. And the barrier
22 finally stopped that vehicle. And then that's when
23 I immediately got over and turned on my flashers and
24 got out of my vehicle to go over to see if I could
25 do anything to help them.

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1 Q So much of what you've just testified to
2 is observations that you made before you stopped
3 your vehicle?

4 A As I, I mean, I had -- of course I had
5 slowed down because I saw this happening. And when
6 I saw -- I couldn't, I was trying to figure out what
7 was going on and all and so I stopped to try to help
8 if I can. I was a public rural carrier and so they
9 trained us to do that. And so I stopped, pulled
10 over to the left and got out of everybody's way and
11 parked my car and went up the embankment and had to
12 cross over two lanes of traffic and to get to where
13 Mr. Howell was.

14 Q And just back up for me a little bit.

15 A Okay.

16 Q Was the first thing that caught your
17 attention, was it the truck, the work truck, or was
18 it something out your peripheral vision there was
19 arms in the air?

20 A It was almost simultaneously. It was like
21 I saw the truck. The lights on the truck is what
22 made me look that direction, and at that time I saw
23 something orange flying through the air.

24 Q Almost simultaneously?

25 A Uh-huh.

SW - S. ABERCROMBIE - DIRECT

1 Q For example, if you look at this
2 photograph. This is 9. And you can see this all
3 right, Ms. Abercrombie?

4 A Yes, sir.

5 Q And where I'm pointing now would that be
6 the southbound two lanes?

7 A Yes, sir.

8 Q Can you see that?

9 A Yes, sir.

10 Q And you were, you were headed southbound?

11 A I was, but I was on the exit.

12 Q Say again?

13 A I was on the exit.

14 Q Right, right, you were further on the
15 exit.

16 A I was on the exit behind, behind that car.

17 Q Okay. And then, so you'd have been
18 further up here?

19 A Further back.

20 Q Okay. And then this is the truck that
21 caught your attention?

22 A Yes, sir.

23 Q And almost simultaneously something orange
24 was in the air?

25 A Uh-huh.

SW - S. ABERCROMBIE - DIRECT

1 Q Kind of flying across the air, is that a
2 fair statement?

3 A Yes, sir, I did not know what it was at
4 the time.

5 Q And it, was it, would it be fair to state
6 it was going in this direction?

7 A Yes, sir, exactly.

8 Q All right. Now you're slowing down,
9 you're at that exit; but before you get stopped and
10 all, you had already observed the car ---

11 MR. STODDARD: Objection. Your Honor,
12 there's a little bit of leading and I've been kind
13 of letting it go but it sounds like he's kind of ---

14 THE COURT: Okay, I'm gonna ask that you
15 not lead the witness.

16 MR. MCMAHON: All right. Thank you, Your
17 Honor.

18 BY MR. MCMAHON:

19 Q Did you see the car up against the cable?

20 A After I had that -- right before I got
21 ready to stop because, I mean, she hadn't reached
22 that or that car had not reached the truck. I mean,
23 as I was exiting the truck, that vehicle was
24 reaching that truck.

25 Q All right. Now once you parked your

SW - S. ABERCROMBIE - DIRECT

1 vehicle ---

2 A Correct.

3 Q ---what were your intentions? What were
4 you were going to do, Ms. Abercrombie?

5 A Help if I could.

6 Q And so what, if anything, did you do?

7 A I first made sure it was safe for me to
8 cross the street, crossed over and went over to down
9 -- Ms. Conte was already at Mr. Howell, and he was
10 lying on the ground screaming. I could hear him as
11 I was crossing the street and he was laying -- part
12 of his body was in the grass in front of the truck
13 and the other part that was crushed was in the other
14 part of the truck, and he was screaming and she was
15 trying to calm him down. And as I looked down at
16 him, I then looked over and noticed what I had saw
17 that was orange was actually Zachariah laying on the
18 ground.

19 Q And Zachariah, you didn't know him at the
20 time ---

21 A I didn't know his name was Zachary at the
22 time, but a gentleman was laying in the road.

23 Q And what did you do upon making that
24 observation?

25 A I stayed right there with Ms. Conte at

SW - S. ABERCROMBIE - DIRECT

1 that point with Mr. Howell because by the looks of
2 Zachary there was nothing I could do to help him.
3 He was, I mean, I mean, to me I just didn't see him
4 surviving at that point. That was my observation.

5 Q Did you make any observations that you
6 connected or didn't connect back to the orange
7 object?

8 A I realized when I looked over and saw the
9 orange vest I said, that's what I saw.

10 Q What was that?

11 A Well, that was the vest that was on
12 Zachary.

13 Q That was the safety vest?

14 A Safety vest.

15 Q All right, now, did you remain there by
16 the Bagwell truck with Ms. Conte or did you go
17 otherwise?

18 A Well, I remained there for a while and she
19 had -- I didn't know if it was his wife or
20 girlfriend or there was someone on the telephone and
21 she was trying to calm him. And at that point I
22 couldn't, there was nothing I could do for the
23 gentleman in the road so I went to the silver
24 vehicle and went to the -- I didn't go to the
25 driver's side; I went to the passenger's side. And

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1 at that point the side air bags were still smoking,
2 both of them were dropped. And I lifted up because
3 I wanted to see if I could help that person and
4 lifted it up, and that's when I saw Ms. Tackett.

5 Q The Ms. Tackett you're referring to the
6 defendant in this case?

7 A Yes, sir.

8 Q And so you, this, is this the vehicle you
9 approached, ---

10 A Yes, sir, that's correct.

11 Q ---is States 9? And you approached it on
12 the driver or passenger side?

13 A Passenger side.

14 Q All right. And describe, again, the
15 curtains or the air bags or whatever.

16 A The air bags, both of them were dropped
17 down and were still having that powdery residue that
18 was coming out of it. I lifted it up to see if on
19 the driver's, the passenger side of the front side
20 and saw that the driver was there, and she was
21 talking to someone.

22 Q Ms. Tackett?

23 A Ms. Tackett was. So I assume she was on
24 the phone. I didn't know who she was talking to,
25 but she was talking to someone.

SW - S. ABERCROMBIE - DIRECT

1 Q What position in the vehicle was she in,
2 what seat?

3 A She was in the driver's seat.

4 Q Was there anyone in that front passenger
5 seat?

6 A No, sir.

7 Q And describe, if you recall, what -- you
8 said she was talking. Did you hear that
9 conversation, part of that conversation?

10 A I heard just little bits and pieces that I
11 can remember. She was talking to them, and I
12 couldn't tell if she was on the phone or whatever.
13 I assume she was on the phone and although I didn't
14 see a phone. But whoever was on the other end, when
15 they heard my voice they wanted to know who she was
16 speaking with, and she carried on a conversation
17 with that person.

18 Q But you were able to hear both sides of
19 the conversation?

20 A Yes, sir.

21 Q Is that correct?

22 A That's correct.

23 Q And other observations you made at that
24 time about Ms. Tackett?

25 A Other than she seemed to be okay enough to

SW - S. ABERCROMBIE - DIRECT

1 talk to whoever that was that she was talking to.

2 Q And did you observe any other passenger in
3 the Tackett vehicle?

4 A I noticed the -- when I pulled up the back
5 air curtain there was a little girl in the back
6 seat.

7 Q So that would have been the back ---

8 A Back passenger side.

9 Q ---passenger side there was a little girl.
10 About what age, do you remember?

11 A About four years old.

12 Q Had you -- had the child made any sounds
13 at that point?

14 A She did not ever make any sound.

15 Q And how did you come to observe her? Just
16 by looking or hearing or?

17 A No. When I had, I tried to address
18 Ms. Tackett and I said, are you okay, and she didn't
19 say anything and there was -- she didn't speak to
20 anyone else in the vehicle other than whoever was on
21 the phone. And she said, I think my daughter is
22 trapped; and so, that's when I lifted up the air
23 curtain and I saw the little girl there and she just
24 had this blank stare on her face like she was in
25 shock of some sort. And I said, honey, are you

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1 okay, are you okay, are you hurt, you're going to be
2 all right, we got people coming to help you; and she
3 never once said a word, not a tear, not a cry. She
4 was just in shock I believe.

5 Q Were there any other communications
6 between you and Ms. Tackett?

7 A Not after that.

8 Q About the child?

9 A No.

10 Q And what steps did you take, if any,
11 towards the child in assisting the child in any
12 manner?

13 A By that time the EMS were there and they
14 had asked us to back off a little bit, and that's
15 when they started taking over making sure she was
16 okay.

17 Q All right. Now did you have any other
18 interaction with Ms. Tackett?

19 A No.

20 Q And did you leave the position you were at
21 on the passenger side of the vehicle?

22 A I did. I went back where Mr. Howell and
23 Ms. Conte were at.

24 Q And did you remain on the scene, Ms.
25 Abercrombie?

SW - S. ABERCROMBIE - CROSS

1 A Yes, sir.

2 Q And were you ever -- describe the
3 injuries, the condition of Mr. Howell, the best you
4 observed.

5 A The best I could observe it was just heart
6 wrenching 'cause he was screaming extremely loudly.
7 You can tell he was in a lot of pain. Just by
8 looking down at him I couldn't tell if the upper
9 part of his body was injured, but you could tell
10 obviously his lower extremities were damaged because
11 it looked as though his foot was turned in a
12 direction your foot should not be turned in.

13 Q It wasn't anatomically correct?

14 A Correct. And it was just, he never once
15 stopped screaming, he was in that much pain, even
16 when EMTs were working with him and trying to get
17 him to where they could get him moved and
18 transported.

19 MR. MCMAHON: One moment, please, Your
20 Honor.

21 THE COURT: Yes, sir.

22 BY MR. MCMAHON:

23 Q And you've mentioned, I believe, several
24 times Ms. Conte ---

25 A Yes, sir.

SW - S. ABERCROMBIE - CROSS

1 Q ---being at the scene attending to
2 Mr. Howell?

3 A That's correct.

4 Q Did you hear any part of a telephone
5 conversation between Mr. Howell and another person?

6 A I just heard him -- I mean, I couldn't
7 tell what he was saying to the other person on the
8 phone. I did not know who was talking to. Ms.
9 Conte said it was, I couldn't remember if it was his
10 girlfriend or his wife.

11 Q And you were present during that period of
12 time?

13 A I was present, uh-huh.

14 Q All right. Thank you very much,
15 Ms. Abercrombie.

16 THE COURT: You may cross-examine.

17 **CROSS-EXAMINATION**

18 BY MR. STODDARD:

19 Q Ms. Abercrombie, did the police talk to
20 you, or the patrolman?

21 A All they did was get my information and
22 where I lived and how to get in touch with me.

23 Q Did they ask you anything about your
24 conversation with Ms. Tackett?

25 A Not to my knowledge.

1 Q All right. Did you tell the police
2 officers that she asked about the condition of the
3 two victims in the road, or on the side of the road?

4 A I don't recall that.

5 MR. STODDARD: No further questions.

6 THE COURT: Redirect?

7 MR. MCMAHON: Nothing in redirect, Your
8 Honor.

9 THE COURT: Ma'am, you may step down.
10 Thank you very much.

11 Permission to excuse the witness?

12 MR. MOWRY: Yes, Your Honor.

13 THE COURT: Any objection?

14 MR. STODDARD: No objection.

15 THE COURT: Ma'am, you're free to go if
16 you'd like. You're free to stay if you'd like.
17 It's your choice.

18 MR. MOWRY: Your Honor, if I can check, I
19 think we may have another witness.

20 THE COURT: All right, let's take another
21 short break this one time. You may step back to the
22 jury room. As always I'll instruct you not to
23 discuss the case until I ask you to do so. You may
24 retire to the jury room.

25 (WHEREUPON, the jury was removed from the

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1 courtroom at 3:56 p.m.)

2 THE COURT: All right, we'll be in recess
3 for about five to ten minutes.

4 (WHEREUPON, a recess was taken from the
5 proceedings.)

6 THE COURT: Yes, sir.

7 MR. MOWRY: I would suggest that this be
8 our last witness for the day. It would take us past
9 4:30, right to 4:30. The next witness we would have
10 is gonna be Trooper Gabrielle, and that's gonna be
11 very ---

12 THE COURT: Long.

13 MR. MOWRY: ---lengthy. Yes, sir.

14 THE COURT: I understand. All right,
15 bring the jury in.

16 (WHEREUPON, the jury was returned to the
17 courtroom at approximately 4:08 p.m., and
18 the following proceedings commenced in
19 open court.)

20 THE COURT: Ladies and gentlemen, when we
21 took our break the State was calling its witnesses.

22 And you may call your next witness.

23 MR. MOWRY: Thank you, Your Honor. We
24 would call Doctor Michael Ward.

25 THE COURT: Sir, if you'll come forward

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1 over here to my right to be sworn, please.

2 WHEREUPON,

3 **MICHAEL E. WARD** ,

4 having been duly sworn by the Court, testified

5 as follows:

6 THE COURT: Take a seat please. Sir, once
7 you're seated state your name and spell your last
8 name for us.

9 THE WITNESS: My name is Michael Eugene
10 Ward, W-A-R-D.

11 THE COURT: Counselor, your witness.

12 MR. MOWRY: Thank you very much, Your
13 Honor.

14 THE COURT: Yes, sir.

15 **DIRECT EXAMINATION**

16 BY MR. MOWRY:

17 Q Doctor Ward, you're a medical doctor; is
18 that right?

19 A Yes.

20 Q What is your area of specialty?

21 A My area of speciality is pathology and my
22 subspecialty is forensic pathology.

23 Q What kind of training and education do you
24 have in order to be a forensic pathologist?

25 A I received my undergraduate degree from

SW - M. WARD - DIRECT

1 the University of Alabama in biology. I have a,
2 received my medical degree from the University of
3 South Alabama, which is in Mobile. I did a four
4 year anatomic pathology residency at the Medical
5 University of South Carolina in Charleston and a
6 fellowship in forensic pathology at the University
7 of New Mexico in Albuquerque. I'm certified by the
8 America Board of Pathology in both anatomic and
9 forensic pathology.

10 Q Can you tell us what pathology is and also
11 what forensic pathology is.

12 A Pathology is the study of disease and
13 disease processes and how they affect man. Forensic
14 pathology takes that one step further primarily
15 concentrating on reasons that we die: So trauma,
16 natural disease processes, injuries, things like
17 that.

18 Q Okay. How long have you been a forensic
19 pathologist?

20 A I finished my fellowship in 1993. I moved
21 to Greenville in 1995 and became the medical
22 examiner at that time.

23 Q And you are the chief medical examiner for
24 Greenville County; is that right?

25 A That's correct.

SW - M. WARD - DIRECT

1 Q How is it that you are dealing with cases
2 from Laurens County?

3 A We are consulted by various counties in
4 the upstate -- Pickens, Laurens County, sometimes
5 Anderson -- to perform medical, legal autopsies for
6 them on a case-by-case basis.

7 Q How many autopsies would you estimate that
8 you have conducted in your career?

9 A Well over 5,000.

10 Q Have you testified in courts as to
11 forensic pathology before?

12 A Yes, I have.

13 Q How many times would you estimate that you
14 have testified in courts?

15 A Well over 100 times.

16 Q And you have been declared an expert in
17 each of those cases?

18 A Yes, I have.

19 Q Was there ever a case where you were
20 offered as an expert and were found not to be an
21 expert?

22 A No, there has not been.

23 Q And, in fact, you have testified from that
24 very witness stand in this courtroom; is that right?

25 A That is correct.

SW - M. WARD - DIRECT

1 Q And been found an expert?

2 A Yes.

3 MR. MOWRY: Your Honor, I would offer
4 Doctor Ward as an expert in forensic pathology.

5 THE COURT: Any objection?

6 MR. STODDARD: No objection.

7 THE COURT: All right. Ladies and
8 gentlemen of the jury, let me digress for just a
9 moment, explain what we're doing. Under the rules
10 of evidence that govern the testimony of witnesses,
11 generally witnesses are not allowed to state their
12 opinions on subjects or to state the reasons why
13 they have opinions. They're required to testify
14 concerning facts that are within their knowledge.
15 There's an exception to that general rule for a
16 witness that's been declared by the Court to be an
17 expert within some profession or science or calling.
18 For witnesses declared to be an expert by the Court
19 they are allowed to state their opinions within
20 their area of expertise and state the reasons why
21 they have all those expert, those expert opinions.

22 Now later on when I charge you concerning
23 the law I'll give you some additional information as
24 to how you might consider testimony given by experts
25 in a case; but nevertheless, this gentleman's been

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1 offered as an expert in forensic pathology without
2 objection, I'll designate him as such. That will
3 allow him to state his opinions within that area and
4 the reason he holds those opinions.

5 You may proceed, sir.

6 MR. MOWRY: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 BY MR. MOWRY:

9 Q Doctor Ward, how did you come to be
10 involved in this case?

11 A We were contacted by the Laurens County
12 coroner's office and asked to perform an examination
13 on Mr. Ivey.

14 Q This was not a -- I don't mean to be
15 graphic about it, but it was not a full fledged
16 autopsy; is that correct?

17 A That is correct.

18 Q In preparation for this examination did
19 you review any records that might have existed?

20 A Yes, I did. I reviewed the medical
21 records from the, what was at that time Greenville
22 Hospital System, in regards to Mr. Ivey.

23 Q Okay. There's been testimony that
24 Mr. Ivey was injured on the 28th of March. On what
25 date did you conduct the examination?

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1 A On the 11th day of April.

2 Q Do you have a record as to what date
3 Mr. Ivey passed?

4 A Mr. Ivey was pronounced brain dead on
5 April 5th, 2018, at roughly 12:17 p.m. At that time
6 examinations in the hospital were such that he no
7 longer had brain activity and was able to be
8 pronounced brain dead and then allowed to proceed to
9 organ harvesting.

10 Q Was there some kind of natural cause that
11 brought about Mr. Ivey's condition?

12 A No, there was not.

13 Q What did you determine based on your
14 examination of Mr. Ivey?

15 A Based on our examination as well as the
16 review of medical records was that Mr. Ivey died as
17 a result of complications of blunt force trauma of
18 the head, and he, so he died as a result of trama.

19 Q Did you have any indication in those
20 records as to how those injuries were received?

21 A Yes, I did.

22 Q Can you explain those to the jury.

23 A So the, both the report from the coroner's
24 office as well as the EMS records and statements in
25 the medical records from the hospital indicate that

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1 Mr. Ivey was a pedestrian who had been struck by a
2 motor vehicle.

3 Q Okay. There has been testimony that
4 Mr. Ivey was struck by a car going at a high rate of
5 speed, was basically catapulted into the air for
6 quite a distance, and landed on the pavement on
7 I-385. Do you have any opinion based on your
8 experience, your observations, and your reading of
9 the records as to whether the injuries you saw were
10 consistent with that testimony?

11 A Mr. Ivey had injuries that would be
12 consistent with that testimony. He has a fracture
13 of his left ankle, has an open fracture of the right
14 femur on the bone of the thigh. He also has blunt
15 force trauma to the back of his right scalp or the
16 back of the head. He's got a, with that he's got an
17 associated basilar skull fracture to, fractured the
18 bones basically behind the face. He had blood
19 around the brain, as well as blood within the
20 substance of the brain itself.

21 Q So in your opinion this, these injuries
22 that you have described would have been consistent
23 with what?

24 A So these injuries are very consistent with
25 the impact by a motor vehicle with fracture of the

1 lower extremities, both the ankle and the femur
2 being -- for lack of a better word, catapulted --
3 landing on a hard surface such as a roadway
4 primarily on his head resulting in basilar skull
5 fracture and the trauma to his skull and underlying
6 brain.

7 Q You've talked about a fracture to the
8 femur. The femur is in the thigh ---

9 A Yes, sir.

10 Q ---you testified?

11 A Yes, sir.

12 Q Is that a fracture that you see very often
13 in your experience?

14 A We see a fracture of femurs quite often,
15 yes.

16 Q How do those normally come about? Do you
17 break a leg falling off a skateboard, for example,
18 is it normally the femur?

19 A Generally, no. The femur is a rather
20 robust bone, if you will, and doesn't fracture very
21 easily. You may fracture the fibia, which is fairly
22 small and thin, the fibia. But the femur in and of
23 itself is fairly robust and it takes a fair amount
24 of trauma or force, especially in a young man such
25 as Mr. Ivey's age, to fracture the femur.

1 MR. MOWRY: Beg the Court's indulgence
2 just one moment.

3 THE COURT: Yes, sir.

4 MR. MOWRY: Thank you, sir. I believe
5 that's all I have.

6 THE COURT: You may cross-examine.

7 MR. STODDARD: I've got no questions.

8 THE COURT: All right, sir, you may step
9 down from the witness stand.

10 You wish to excuse the witness?

11 MR. MOWRY: Yes, sir.

12 THE COURT: Any objections?

13 MR. STODDARD: No objection.

14 THE COURT: Sir, you're free to go. Thank
15 you for coming today.

16 THE WITNESS: Yes, sir, thank you.

17 THE COURT: All right, ladies and
18 gentlemen of the jury, in talking with the attorneys
19 I believe the next witness will be fairly lengthy
20 and I notice we're past 4:00 at this time. It'd
21 probably be a good time to break for the afternoon.
22 I will tell you the same instructions I gave you
23 when you left for lunch, will be the same
24 instructions I give you now. That is, for you not
25 to attempt to gather any information about this case

1 on your own or discuss the case with anyone. Don't
2 allow anyone to discuss it with you. Don't listen
3 to, watch, or read media reports concerning this
4 case and should someone try to contact you during
5 the break, please report that as soon as possible.
6 We'll start back in the morning at 9:00. If you'll
7 be in the jury room at that time we should start
8 shortly thereafter. Hope everyone has a good
9 evening. You're free to go at this time. Thank you
10 very much.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 4:30 p.m.)

13 THE COURT: Ms. Tackett, again I'll remind
14 you, we'll start the trial in the morning at 9:00.
15 Should you fail to appear, the trial will continue
16 in your absence and at that time I will issue a
17 bench warrant if there's no viable excuse for your
18 absence. You understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right, we'll resume at
21 9:00 in the morning. Hope everyone has a good
22 evening. Thank you very much.

23 MR. MOWRY: Thank you, Your Honor.

24 (WHEREUPON, the proceedings were concluded
25 for the day to be reconvened on July 16,

1 2019.)

2 THE COURT: State ready to proceed?

3 MR. MOWRY: State's ready, Your Honor.

4 THE COURT: Defense ready to proceed?

5 MR. STODDARD: Yes, sir, may we approach
6 the Bench?

7 THE COURT: Yes, sir, come on up.

8 (WHEREUPON, the attorneys approached the
9 Bench for an off-the-record discussion.)

10 THE COURT: All right, Mr. Bailiff, please
11 bring the jury in.

12 (WHEREUPON, the jury was returned to the
13 courtroom at approximately 9:25 a.m., and
14 the following proceedings commenced in
15 open court.)

16 THE COURT: Thank you, ladies and
17 gentlemen. I hope you had a good evening. Sorry
18 we're starting a little late, but we had some
19 housekeeping matters we were taking care of. I
20 appreciate your patience with us. Of course, you
21 know my instructions. As you left the courthouse
22 yesterday I went over those with you. And if any of
23 you had any problems or difficulty in complying with
24 my instructions regarding this case, I'd ask that
25 you now stand.

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1 (No response.)

2 THE COURT: It appears that all jurors
3 have been able to comply with my instructions thus
4 far. When we took our break yesterday the State was
5 in the process of calling its witnesses.

6 And you may call your next witness, Mr.
7 Mowry.

8 MR. MOWRY: Thank you, Your Honor. If it
9 please the Court, we call Michael Gabriele.

10 THE COURT: Come forward, sir, to be sworn
11 please.

12 THE CLERK: Place your left hand on the
13 Bible and raise your right hand.

14 WHEREUPON,

15 **MICHAEL A. GABRIELE,**
16 having been duly sworn by the Clerk, testified
17 as follows:

18 THE COURT: Sir, once you're seated I'd
19 ask that you state your name and spell your last
20 name for us.

21 THE WITNESS: Michael Anthony Gabriele,
22 last name G-A-B-R-I-E-L-E.

23 THE COURT: All right, counselor, your
24 witness.

25 MR. MOWRY: Thank you, Your Honor.

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1 THE COURT: Yes, sir.

2 **DIRECT EXAMINATION**

3 BY MR. MOWRY:

4 Q Mr. Gabriele, where are you employed at
5 the present?

6 A Currently Greenville City Police
7 Department.

8 Q And what is your position with the
9 Greenville P.D.?

10 A A patrol officer.

11 Q How long have you been employed in that
12 capacity?

13 A Since August of last year.

14 Q Prior to August of 2018 where were you
15 employed?

16 A With the South Carolina Department of
17 Public Safety, South Carolina Highway Patrol.

18 Q What did you do with the highway patrol?

19 A I was a trooper.

20 Q And what were your duties as a trooper
21 with the South Carolina Highway Patrol?

22 A Traffic enforcement, collision
23 investigation, and aside from traffic enforcement of
24 speed, seatbelts, DUI.

25 Q Speed, seatbelts, and DUI?

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1 A Yes, sir. Yes ---

2 Q But you also -- go ahead, I'm sorry.

3 A Yes, sir.

4 Q But you also investigated ---

5 A Collisions.

6 Q ---wrecks on the highway, is that right?

7 Were you on duty on the 28th, the morning of the

8 28th of March of 2018?

9 A Yes, sir.

10 Q What were you doing early morning hours?

11 A I was conducting stationary speed

12 enforcement on 385 southbound.

13 Q All right. On 385 southbound?

14 A Yes, sir.

15 Q Where were you positioned, what ---

16 A The rest area just before the 5 exit.

17 Q While you were in that process did you

18 receive a radio call that morning?

19 A Yes, sir. I was being dispatched to a

20 collision on 385 northbound approximately at the

21 19-mile marker.

22 Q Okay. Let me show you before we go any

23 further the lay of the land. Handing you a

24 photograph that's been marked -- well, actually,

25 it's been admitted as State's Exhibit Number 1.

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1 What does that depict, sir?

2 A The, it's an aerial view of 385 at the 19
3 exit.

4 Q Okay. And how is this situated? Which
5 lane is going this way from -- I'll stay, from
6 right, from the lower right to the upper left.

7 A That will be the northbound lane.

8 Q Okay. And which is coming this way from
9 the upper left to the lower right?

10 A The southbound lane.

11 Q Okay. Now, there is another lane here
12 that is highlighted. What road is that?

13 A That is the exit ramp which leads to SC
14 14.

15 Q Okay. And where does this end up going,
16 going down to the lower ---

17 A Takes you down Gray, the town of Gray
18 Court and through Laurens.

19 Q Okay. Where was the accident that you
20 just talked about?

21 A The collision was located just before the
22 end of the entrance ramp on 385 northbound.

23 Q And that's this humpback thing up in the
24 upper ---

25 A Yes.

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1 Q ---center portion of the picture; is that
2 right?

3 A Yes, sir.

4 Q So the collision would have been about
5 right there; is that correct?

6 A Approximately, yes, sir.

7 Q Okay. When you received the call to go to
8 this location what did you do?

9 A I proceeded to enter 385 south from the
10 rest area, turned around the 5 exit, proceeded
11 northbound via lights and sirens due to a vehicle
12 versus pedestrian on the interstate. Traveled up
13 385 north, approached the scene and I observed fire.
14 There was police already on scene. Fire was just
15 shortly after I arrived.

16 Q When you say fire you're talking about
17 fire trucks, not flames; is that right?

18 A Yeah, yes, the fire department, right.
19 There was already an officer on scene with the
20 Greenville County and ---

21 Q Greenville County or Laurens County?

22 A It was -- I'm trying to remember the
23 specifics on that one. I just remember I was on the
24 opposite lane. There was a deputy, I believe
25 possibly Greenville County, may be Laurens County,

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1 just stopped after the collision occurred.

2 Q Okay. But there were already first
3 responders on the scene; ---

4 A Yes, sir.

5 Q ---is that correct? Okay. Let me walk
6 you through some of the pictures. State's Exhibit
7 Number 2, what does that show?

8 A On the top of the photo on the shoulder
9 would be the bumper truck for Bagwell Fence and then
10 the violator's vehicle in the median.

11 Q So this, this is the truck and this is the
12 vehicle; is that right?

13 A Yes, sir.

14 Q Obviously this is an overhead picture.
15 How was it taken?

16 A I do not know the specifics on that, sir.

17 Q Was there a drone flown?

18 A MAIT is known to use drones to do aerial
19 photography, but I do not specify.

20 Q Let me go then to picture number 3. What
21 does that show?

22 A Another aerial view this time leading up
23 to the collision scene in the overpass to the onramp
24 of 385. Then you see one of the signs advising of
25 the construction.

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1 Q This right here?

2 A Yes, sir.

3 Q Okay. And this overpass, let's go back to
4 number 1 briefly. Is this the overpass right here?

5 A Yes, sir.

6 Q In the middle, almost dead center?

7 A Yes, sir.

8 Q Okay. Let's take a look at number 4.

9 What does that show?

10 A That's going to be further back from photo
11 number 3 so further south on 385 leading up to, once
12 again, the construction area, as well as another
13 sign advising of the coming up construction area.

14 Q So there were two signs that had been
15 placed out; is that right?

16 A Yes, sir.

17 Q Okay. And did you pass those signs when
18 you were heading towards the scene?

19 A Yes, sir.

20 Q Okay. Let's take a look at number 5.
21 What is that?

22 A It's the area leading up to the collision,
23 as well as the bumper truck that was struck.

24 Q Okay. And you see cones here, were those
25 in the road at the time of the collision or were

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1 those placed afterwards?

2 A Those were placed after.

3 Q For traffic control; is that right?

4 A Yes.

5 MR. MOWRY: I'm sorry, Your Honor,
6 technology is not my friend.

7 BY MR. MOWRY:

8 Q All right, number 7 I think we've already
9 had in court, but what does that depict?

10 A That's the rear of the vehicle operated by
11 Ms. Tackett.

12 Q All right. And what are these rope or
13 cable looking things underneath?

14 A That's the cable median barrier.

15 Q What is their purpose?

16 A To mitigate head-on collisions in the
17 opposite direction. They're rather strong cables
18 that will stop a vehicle from crossing over. I've
19 seen them actually stop tractor-trailers as well.

20 Q You've seen them stop tractor-trailers?

21 A Yes, sir.

22 Q So if ---

23 A In person I've seen it.

24 Q If we went and drove down 385 today would
25 we see cable barriers like this?

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1 A Yes, sir.

2 Q What was Bagwell Fence's purpose, do you
3 know?

4 A They were out there to replace a couple of
5 posts that were struck previously with cable
6 barriers.

7 Q Okay. So they were out there to repair
8 damage that had just occurred?

9 A Yes, sir.

10 Q In order to keep these things in a
11 position to stop other people from crossing the
12 center line; is that right?

13 A Yes, sir.

14 Q Let me just ask you this, based on what
15 you saw that day did those cables perform their
16 function the way they were supposed to that day?

17 A Yes, sir.

18 Q Okay. How about number 8? Number 8, can
19 you talk about that picture a little bit.

20 A The driver's side of the vehicle. You see
21 resting on top of the cables were front end damage
22 as well as damage to the side consistent with
23 somebody striking the cable median barriers.

24 Q All right. So this mark across, or these
25 marks across here are, appear to you to be from the

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1 cables; is that right?

2 A Yes, sir.

3 Q Okay. I see some orange, looks like
4 orange paint there. What is the purpose of that?

5 A To denote the final rest of the vehicle
6 where the tires were located.

7 Q Okay. So that was placed after the fact
8 for investigative purposes; is that right?

9 A Yes, sir.

10 Q Okay. Number 9, what does that show?

11 A It depicts both the vehicle operated by
12 Ms. Tackett, as well as the bumper truck from the
13 front, Ms. Tackett's vehicle sustaining heavy damage
14 that included a piece of sheet metal that was
15 actually torn from said bumper truck.

16 Q And would that be this piece of metal that
17 was sticking out from under the hood of the car?

18 A Yes, sir.

19 Q What is this item right here?

20 A That's a article of clothing that was on
21 the deceased.

22 Q Okay. On Zachariah Ivey?

23 A Yes, sir.

24 Q All right. Do these orange dots here
25 depict where he was, where his -- for lack of a

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1 better term, his landing spot?

2 A His final -- those two dots represent head
3 and core of final rest of Mr. Ivey.

4 Q What does that show, number 10?

5 A It's going to be from the door that's
6 opened to the rear passenger -- or rear driver's
7 back door of Ms. Tackett's vehicle and then showing
8 the collision scene from the bumper truck that was
9 struck and then the cable barriers that were then
10 ran over in the debris field.

11 Q Okay. When we talk about the debris
12 field, where did all this debris come from?

13 A It appears, at least, the majority of the
14 debris come from Ms. Tackett's vehicle.

15 Q So it's consistent with coming from her
16 car?

17 A Yes, sir.

18 Q What does that show?

19 A That's going to be the passenger side view
20 of the vehicle with the heavy damage that was
21 sustained as it sideswiped the front of the ---

22 MR. STODDARD: What number is that?

23 MR. MOWRY: This is number 11.

24 BY MR. MOWRY:

25 Q We heard some testimony about these items

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1 that are hanging down here in the windows of the
2 car. What are they?

3 A Those are the side curtain air bags.

4 Q Okay. Did they appear to deploy as they
5 should have, as best you can tell?

6 A It's consistent in as I've seen in
7 previous collisions.

8 Q Okay. Number 12, what does that show?

9 A That's going to be the debris field. That
10 one particular would be the muffler from
11 Ms. Tackett's vehicle.

12 Q The muffler is ---

13 A The vehicle is ---

14 Q ---here where I'm pointing?

15 A Yes, sir.

16 Q And then the exhaust pipe?

17 A Yes, sir.

18 Q And the catalatic converter and all that
19 good stuff?

20 A Yes, sir, and you can see some headlamp
21 and, well, the two separate headlamps as well.

22 Q Okay. Number 13?

23 A Now that's going to be a closeup of the
24 driver's side of the vehicle. You can see damage
25 all along the doors, as well as wheel well probably

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1 from the cable barriers.

2 Q Okay. If the cable barriers had not been
3 there, just asking your opinion based on your
4 experience and training as a South Carolina Highway
5 Patrolman ---

6 MR. STODDARD: Objection, I believe this
7 is going to go into speculation.

8 THE COURT: Well, let him finish the
9 question.

10 Are you asking him for an opinion at this
11 point in time?

12 MR. MOWRY: I'm asking him for an opinion
13 based on his experience and training.

14 THE COURT: Okay.

15 MR. STODDARD: Again, and I know he hasn't
16 finished the question, but I think I know what he's
17 going to ask and I believe that would be speculation
18 and improper opinion testimony.

19 THE COURT: Well, he has not been
20 qualified as an expert so---

21 MR. MOWRY: No, sir.

22 THE COURT: ---generally he's not going to
23 be allowed to give his opinion on that. He can
24 testify as to what he observed.

25 MR. MOWRY: Yes, sir.

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1 THE COURT: And of course, if he, if he
2 drew conclusions from that, then I would let him
3 testify as to what his conclusions were. But to
4 state opinions about things, I'll have to stop that.

5 MR. MOWRY: I'll just back out of that
6 then, Your Honor.

7 THE COURT: Thank you.

8 BY MR. MOWRY:

9 Q And again, number 14, what does that show?

10 A It's going to be the driver's side in
11 front of Ms. Tackett's vehicle, once again,
12 depicting the heavy damage that was sustained.

13 Q So she was basically sitting on top of the
14 cables; is that right?

15 A Yes, sir.

16 Q Let's switch perspective a little bit and
17 talk about number 16. The panel from the truck that
18 was embedded in the hood in one of the earlier
19 pictures, were you able to determine from this
20 picture where that came from?

21 A Yes, sir. It appears that that piece of
22 metal was consistent with the missing...

23 Q Side panel?

24 A Truck hatch panel, I'm trying to find what
25 the right way to really, to phrase that. I'm not

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1 too familiar with the terminology for these
2 vehicles. But it's very consistent with the piece
3 of metal that was missing from this vehicle.

4 Q Okay.

5 MR. STODDARD: Was that 16?

6 MR. MOWRY: This is 16, yes.

7 BY MR. MOWRY:

8 Q Okay. There is a mark. This large
9 upright grayish/black panel here, there is a mark in
10 the middle of that on the right-hand side. Were you
11 able to determine what that was?

12 A It appeared to be fresh scuffing damage.

13 Q Let me go to 17. What does that depict?

14 A One of the tires on the left side or the
15 driver's side of the bumper truck and that's going
16 to be the wheel, the total wheel assembly with a
17 bent rim.

18 Q Okay. And is there anything wrong with
19 the tire where I'm pointing?

20 A Yes. The tire also appears to be
21 punctured and it looks, it appears to be freshly
22 scuffed.

23 Q Okay. Let's go to number 19. What does
24 that show?

25 A That is the driver's side door, as well as

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1 the steps up to the door with apparent fresh damage
2 to at least the door.

3 Q How about this step down here, this is a
4 step-up cab; is it not?

5 A Yes, sir.

6 Q I believe two steps, one, two. Is that
7 right?

8 A Yes, sir. The bottom step is, does appear
9 to be damaged. It, just like the other parts of the
10 vehicle it appears to be fresh with the dirt being
11 scuffed off of it.

12 Q Okay. But this is ---

13 A Damaged, yes, sir.

14 Q Yes. Number 20?

15 A That is the door, as well as the hood
16 latch for the bumper truck, the Bagwell Fence. The
17 door has apparent damage as well as the wheel well.

18 Q Okay. Let me go to number 23. What does
19 that depict?

20 A It is the wheel from Ms. Tackett's vehicle
21 on the front passenger side.

22 Q Okay. So the vehicle and the truck were
23 in the median between the northbound and southbound
24 lanes; is that right?

25 A Yes, sir.

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1 Q Where was this wheel found?

2 A The wheel was located just north of the
3 collision scene. It, off the right-hand shoulder
4 just at the end of the entrance ramp.

5 Q Okay. So it went up the, up 385 north and
6 ended up on the other side of the interstate; is
7 that right?

8 A Yes, sir.

9 Q Okay. Let's talk about 24, what does that
10 show?

11 A That is the rear of the bumper truck which
12 is legally parked on the shoulder of the interstate.

13 Q Just to make sure I heard you correctly,
14 you said it was legally parked ---

15 A Yes, sir.

16 Q ---properly parked?

17 A Yes, sir.

18 Q Okay. When you got to the scene what did
19 you do?

20 A I first assessed the scene, tried to
21 locate my, all parties involved. The first one was
22 Ms. Tackett's vehicle to confirm that she was first
23 okay, try to get her information, the vehicle's
24 information, after which I then went to go check on
25 my two victims to which one was unresponsive, one

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1 was, and I wanted to tend to them after I got some
2 pertinent information.

3 Q The unresponsive victim, that was Zack
4 Ivey?

5 A Yes, sir.

6 Q And the responsive victim I guess is the
7 way you described him, did you determine his name?

8 A Mr. Howell.

9 Q John Howell?

10 A Yes, sir.

11 Q J.C. Howell?

12 A Yes, sir.

13 Q Okay. What did you do then?

14 A I then conducted my collision
15 investigation tried to determine what happened, was
16 able to locate any witnesses as well who were able
17 to provide me with some information about some
18 driving that led up to the collision.

19 Q Okay. Were those Mr. Glodz, Ms. Conte,
20 and Ms. Abercrombie?

21 A Yes, sir.

22 Q Okay. And you spoke with them?

23 A From speaking with Mr. Glodz, I believe it
24 was Ms. Abercrombie for certain. The third party, I
25 believe that she'd ultimately captured on my body

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1 camera video camera.

2 Q Okay. What happened with J.C. Howell and
3 Zach Ivey?

4 A It appears they were performing the
5 maintenance as required or requested from their
6 employer. Once they were struck Mr. Howell was
7 tossed to the front of the bumper truck, and
8 Mr. Ivey was tossed almost probably 75 feet or so to
9 where his final rest was.

10 Q Okay. And you, when you got there were
11 first responders treating them, do you recall?

12 A I recall there was another officer from a
13 outside jurisdiction who was tending to Mr. Howell.
14 I believe it was Mr. Ivey; and it was just shortly
15 after either fire showed up just shortly after, and
16 I cannot remember exactly when EMS arrived on scene.

17 Q But it wasn't long after you got there ---

18 A Yes, sir.

19 Q ---that EMS was there?

20 A Yes, sir.

21 Q What did you focus on after first
22 responders were treating both of them?

23 A I then returned to Ms. Tackett's vehicle
24 and that's when I spoke first with her. She
25 appeared to be a little spacey. She had trouble

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1 with response on pertinent information as required.
2 Then I followed up asking trying to confirm if she
3 takes any sort of medications. There was no odor of
4 an alcohol beverage coming from her personal vehicle
5 so I went on to see if she took any sort of
6 medications, she used any sort of drugs prescribed
7 that could possibly impair her motor functions.

8 Q Okay. Did you perform any kind of tests
9 on her to determine her ---

10 A Yes, sir, due ---

11 Q ---presence of impairment, I guess is the
12 best way to put it?

13 A Due to some concerns to her slow
14 responses, her very deliberate movements, possible
15 slurred speech, I had her exit her vehicle and I
16 proceeded to request a standardized field sobriety
17 test outside the vehicle.

18 Q Let me ask you this, from the time that
19 you got the call -- and that was at what time?

20 A That was at -- I arrived on, correction, I
21 was dispatched around 9:43 a.m.

22 Q Okay. So around 9:43 a.m. How long did
23 it take you to get to the scene?

24 A When I arrived it was at 9:52 so
25 approximately nine minutes.

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1 Q Okay. Where was Ms. Tackett when you
2 approached her vehicle nine minutes later?

3 A Still in the driver's seat of her car.

4 Q What was she doing in the driver's seat?

5 A I believe she was on the phone with some
6 sort of roadside assistance, probably Onstar.

7 Q Okay. Did you note any kind of visible
8 injuries on Ms. Tackett?

9 A I did not observe anything.

10 Q Did she complain of anything?

11 A After she was exiting from the vehicle --
12 well, I believe while she was still inside the
13 vehicle she was complaining about migraines.

14 Q But did you note anything that might have
15 been collision related?

16 A No, sir. There was no damage consistent
17 with her striking the windshield. She was
18 seat-belted in.

19 Q All right. What did you do in
20 continuation of your investigation?

21 A After gaining the pertinent information, I
22 then had Ms. Tackett exit her vehicle. I then
23 relocated her to a relatively flat area of I-385
24 which had a nice long stretch of relatively straight
25 line, and I blocked off that area so I wouldn't have

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1 to worry about possibly being struck and I proceeded
2 to issue a standardized field sobriety test.

3 Q What is a standardized field sobriety
4 test?

5 A They are three tests that are designed by
6 the National Highway Traffic and Safety
7 Administration, also known as NHTSA, to help provide
8 police to possible impairment of drugs and/or
9 alcohol, primarily alcohol. Those are what it was
10 designed for.

11 Q And as part of your training are you
12 instructed on how to administer those tests?

13 A Yes, sir.

14 Q What to look for, that sort of thing?

15 A Yes, sir.

16 Q When were you first, just a ballpark, when
17 were you first instructed on that?

18 A In November or December of 2013.

19 Q Okay. So about five years before,
20 four-and-a-half years before this incident; is that
21 right?

22 A Yes, sir.

23 Q How were you instructed?

24 A Through the South Carolina Criminal
25 Justice Academy. It was during the week 11 or week

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1 12 of the Academy that, approximately 10 or 11 of
2 the Academy at that time. It was a -- I can't
3 remember the exact number of hour of course, about a
4 week long of classroom material, videos, and then
5 your performance evaluation at the end.

6 Q All right. And do you receive any kind of
7 certification in order to administer these tests?

8 A Yes, sir, you receive one through the
9 South Carolina Criminal Justice Academy.

10 Q Have you been re-certified in the
11 meantime?

12 A Yes, sir. You've got to re-certify every
13 two years.

14 Q Okay. Tell the jury then what these tests
15 are. You talk about being standardized by the
16 National Highway Traffic Safety Administration; is
17 that right?

18 A Yes, sir.

19 Q What are the tests?

20 A So there are three tests. The first one
21 is for Horizontal Gaze Nystagmus. Horizontal Gaze
22 Nystagmus is an involuntary jerking of your eyes
23 under the influence of alcohol. It's going to see
24 in the preidential, the presence of the nervous
25 system, in the presence you'll see a distinctive

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1 bouncing in the eyes as they try and keep up with
2 the stimulus.

3 Q All right. Why don't we demonstrate the
4 tests.

5 A Yes, sir.

6 Q Show the jury exactly what you did that
7 day. And before we begin, tell them what you're
8 looking for.

9 A So, during Horizontal Gaze Nystagmus there
10 are three separate tests. Each test involves two
11 separate passes. The first one is for lack of
12 smooth pursuit. So that's one where you go out, you
13 come back four seconds, bring it back out to the
14 right. You're always gonna go to your right-hand
15 side, then to your left for every single test. And
16 during that you will look for a lack of smooth
17 pursuit, a bouncing, almost like a windshield wiper
18 on a dry windshield. When you turn them on there's
19 that chirping and that bouncing, that's essentially
20 how the Horizontal Gaze Nystagmus looks. The next
21 one is distinct and sustained nystagmus and maximum
22 deviation. You'll take your stimulus all the way
23 out to the eyes; you can't go out any further. And
24 you will observe a distinctive bouncing as you get
25 out to that maximum edge. And then there's the

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1 nystagmus prior to the -- the onset of nystagmus
2 prior to 45-degrees and that's where you're getting
3 your eyes about 45-degrees out and you will observe
4 nystagmus. What you'll do to observe is you'll hold
5 it there and then make note of what that distance
6 is.

7 Q Okay. Well, let's go ahead and -- wait,
8 let me ask you this. Each of those tests that you
9 were talking about, do you do it for each eye?

10 A Yes, you do two passes for each eye.

11 Q Okay. So six total ---

12 A At the minimum six total passes.

13 Q Right, okay. Let's go, let's go ahead and
14 do it. Let's show to the jury what, how you
15 conducted the test that night. Or that day, I
16 should say, sorry.

17 A I have to use a, it's like a stimulus pen
18 so you are required to remove their -- you're
19 required to have ---

20 THE COURT REPORTER: Judge, I'm having a
21 hard time hearing him.

22 THE COURT: You've got to speak up ---

23 THE WITNESS: I apologize.

24 THE COURT: ---for her to hear you.

25 THE WITNESS: You're required to have them

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1 remove glasses and then contacts, hard contacts.
2 You can come out of soft contacts as long as there's
3 no sort of disruption they can't keep them in. But
4 some of them remove their glasses, a little more
5 difficult to find the pen so I use the green light.
6 The reason why I use the green light is to prevent
7 any sort of interference. The interstate, it's very
8 rare you'll see a green light out on the interstate.
9 First I'll have them stand heel-to-heel, toe-to-toe,
10 keep their hands down by their sides. Confirm
11 whether you're wearing glasses or contacts.

12 Q I'm taking my glasses off. I have no
13 contacts.

14 A And you don't have any sort of head gear
15 on right now?

16 Q No, sir.

17 A All right, what color do you see right
18 here?

19 Q I see green.

20 A Now I'm gonna hold my stimulus pen
21 approximately 12 to 15 inches away from my subject's
22 face. After confirming that they do see my stimulus
23 I'll let them, inform then you can follow that light
24 using your eyes and advise you understand my
25 instructions.

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1 Q I understand your instructions and let me
2 ask you a question. If the person does not follow
3 your instructions, is that significant to you?

4 A Yes, it shows that they can't follow a
5 simple instruction as that so they can't focus on
6 more than one aspect at a time.

7 Q Okay.

8 A So after I confirm I'll ask them what was
9 my instructions.

10 Q To follow with my eyes and my eyes only.

11 A After I confirm that they do understand my
12 instructions I proceed to start the tests. By doing
13 so I will first check for equal pupil size and equal
14 tracking and that would just be two general passes
15 like you'll see in the next, the first actual test.
16 This I'm just noting if there's anything that I need
17 to know other than using onset nystagmus or if I see
18 unequal pupil size I'll make notes of that as well.

19 Q Nystagmus, again, is that involuntary
20 jerking?

21 A Yes, sir. Let's start. After confirming
22 that I don't see any sort of resting nystagmus or
23 pupil sizes on the first test which is for the lack
24 of smooth pursuit. I'll go out to my right, bring
25 it back in, stop, continue, go back down, bring it

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1 back in. Once again, going from right, bring back
2 to center, to the left, bring it back to the center.

3 The next is for distinctive sustaining
4 nystagmus at maximum deviation. First I'm gonna go
5 all the way up. Then I'll gonna hold it for a
6 minimum of four seconds. You can hold it for a
7 little bit longer if you'd like. I will advise if
8 it's too long you can make the person look
9 disoriented. Then the last one, the horizontal gaze
10 nystagmus, would be the horizontal gaze nystagmus
11 which would be the onset nystagmus prior to
12 45-degrees to where I'm just slowly going to move my
13 stimulus over to my right side and my left side,
14 looking for that nystagmus, the onset of it, prior
15 to me getting to 45-degrees. That you want to go
16 about 40 seconds. Once you do see, you stop, you
17 pause.

18 Then the final is called Berkle Gaze
19 Nystagmus. It's not indication towards impairment
20 for standardized field sobriety test, but that's
21 held to determine grossly intoxicated underneath
22 alcohol or classify under the influence of
23 barbiturates or any other class or drugs. That's
24 where I take it. Go all the way up like I do for
25 vertical -- or for maximum deviation. I'll hold it

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1 looking for the vertical gaze nystagmus and the eyes
2 bouncing up. Bring it back down to that level,
3 bring it back up. And that will be the first test
4 for horizontal gaze nystagmus.

5 Q How'd I do?

6 A Beautiful.

7 Q Thank you. So that was the first test
8 that you did; is that right?

9 A Yes, sir.

10 Q What is the next test?

11 A The next test is called the walk-and-turn,
12 what we all know as the heel-to-toe, walk-the-line
13 test to which there I first have the subject stand
14 as instructed with the right foot in front of the
15 left, heel touching toe.

16 Q Right foot in front of the left, heel
17 touching toe?

18 A Yes, sir. Their hands would be down by
19 their sides. I then instruct them to stay like that
20 until I tell them otherwise. I then proceed to
21 describe, briefly demonstrate the test, inform that
22 they are to take nine heel-to-toe steps forward,
23 turn around. As I show them, take nine heel-to-toe
24 steps back. And then I briefly describe, I'll take
25 three steps, stop, overexaggerate me pointing at my

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1 leg which you want to keep still, and how to proceed
2 to do the proper turn and then continue another
3 three steps back. Throughout all this I confirm
4 that that they do understand my instructions, and
5 once they do confirm I have them start the test.

6 Q Okay. There seem to be a few parts to
7 that test, the number of steps, the manner in which
8 they do it, the turn, the number of steps back. Is
9 that intentional?

10 A Yes, sir, it's all about divided
11 attention. When you are under the influence it's a
12 lot more difficult to multitask. A perfect example
13 of a driver. You're gonna multitask when you're
14 driving; it's what you're supposed to do. They
15 divide your attention. You're to focus on
16 something. You're to follow pertinent instructions
17 on, you know, how many steps to take, you have to
18 remember that, how to turn around properly all while
19 trying to, you know, while walking along a line.

20 Q Okay. And what about the third test that
21 you outlined?

22 A The third test is the one leg stand and
23 throughout this test I actually stand on one leg to
24 show that it is very much feasible. At the first
25 stance first heel-to-heel to toe-to-toe. At this

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1 point I'll actually lift one of my legs about six
2 inches off the ground. I'll hold it throughout the
3 entire time.

4 Q Does it matter which one?

5 A I'll inform them that what I need to do is
6 have them put their right foot in front of the left,
7 whichever one they're more comfortable with. Lift
8 it six inches off the ground, point your toe
9 outwards, look down at your foot, and you're to
10 count the passage of time out loud, one thousand and
11 one, one thousand and two, one thousand and three,
12 so on and so forth until I tell you to stop.

13 Q Okay.

14 A And then I remind them during this test to
15 make sure you look down at your foot, count your
16 steps out loud, keep your hands down by your side.
17 If you do put your foot down, just pick up where you
18 left off.

19 Q Okay. And again, all of those moving
20 parts in that particular segment of the tests for
21 what purpose?

22 A Once again to divide your attention. You
23 are putting yourself just slightly off balance,
24 nothing too egregious. While you look down at your
25 foot those who are under the influence have a

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1 tendency, they're not gonna balance themself
2 properly, they'll want to lean forward eventually
3 having to put their foot down to gain and then to
4 divide their attention. So you're not just
5 constantly just focusing on your foot, you have to
6 actually count out loud, you have to think about
7 what time you're at. So once again, it's just to
8 completely divide your attention.

9 Q Okay. Did you administer those
10 standardized tests ---

11 A Yes, sir.

12 Q ---to Ms. Tackett?

13 A Yes, sir.

14 Q Let's take them individually. What was
15 the result on the Horizontal Gaze Nystagmus test?

16 A I was able to detect the lack of smooth
17 pursuit in both eyes which would be the first test,
18 sustained nystagmus at maximum deviation in both
19 eyes and nystagmus prior to 45-degrees. During the
20 test I also noticed Ms. Tackett would sway heavily
21 which is consistent with somebody under the
22 influence.

23 Q Okay. How about the walk-and-the-turn?

24 A During walk-and-turn I observed
25 Ms. Tackett did not touch heel to toe multiple

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1 times. She stepped off line. She raised her arm
2 more than six inches, took too many steps, had to
3 stop to ask for directions; and then during the
4 instruction phase Ms. Tackett attempted to start the
5 test before instructed, as well as to not stand as
6 instructed.

7 Q How about the one leg stand?

8 A During the one leg stand I observed Ms.
9 Tackett had to use her arm and put her foot down to
10 regain balance, also observed count was off by about
11 five seconds which isn't the most egregious, but
12 could possibly be an indicator to a person being
13 under the influence.

14 Q Okay. Based on what you would have
15 observed both in her car and with the field sobriety
16 tests and considering what had happened at the
17 scene, what did you think?

18 A Well, while speaking with Ms. Tackett
19 there was a slurred speech. I also observed that
20 she had a abnormal small pupil sizes which is
21 something else that possibly lean towards medication
22 being in her system, drugs being in her system. And
23 she admitted to using certain controlled substances,
24 one being Clonazepam. I believe that she was under
25 the influence of something other than alcohol.

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1 Q Okay. And what did you do once all those
2 tests were concluded and once you had observed as
3 you described?

4 A With the clues as I observed before, I
5 proceeded to place Ms. Tackett under arrest for
6 driving under the influence. I placed her in
7 handcuffs and was preparing to put her in the rear
8 of my patrol car when she started complaining of
9 chest pains to which at that point, that being above
10 my medical purview, I proceeded to take the
11 handcuffs off her allowing her to be transported by
12 EMS to Greenville Memorial Hospital.

13 Q Okay. So you had told her she was under
14 arrest, you had placed handcuffs on her, and at that
15 time she told you she was having chest pains?

16 A Yes, sir.

17 Q Again, what did you do once you had gotten
18 that complaint from her?

19 A I followed my standard procedure for
20 someone complaining of chest pains. That would be
21 possible serious injury, possible medical problem.
22 I un-handcuffed her and let her be transported by
23 EMS.

24 Q Okay. Had she complained about chest
25 pains before this inc---

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1 A No.

2 Q ---before this time?

3 A No, sir, the only complaint she made was
4 of the migraine.

5 Q And where was she transported to?

6 A Greenville Memorial Hospital.

7 Q Okay. Let me stop at that point and show
8 you State's Exhibit No. 45. You recognize that?

9 A Yes, sir.

10 Q What is that, please, sir?

11 A That is my body camera video.

12 Q Okay. This is a video from your body cam?

13 A Yes, sir.

14 Q Describe what a body cam is.

15 A Body cam, body worn camera. Mine was
16 specifically a watchguard. I kept it probably about
17 centered on my chest, was able to view pretty much
18 anything that was going on. While fantastic video,
19 unfortunately it does have its limits due to its
20 size, but it built the entire collision scene from
21 the point I was exiting my patrol car where after I
22 was finished with my contact.

23 Q And you have previously reviewed State's
24 Exhibit Number 45; is that right?

25 A Yes, sir.

1 Q Does that fairly and accurately depict the
2 scene, your encounter with Tackett, and your entire
3 investigation?

4 A Yes, sir.

5 Q Up to a point?

6 A Yes, sir.

7 Q Does it fairly and accurately depict that?

8 A Yes, sir.

9 MR. MOWRY: Your Honor, I would ask at
10 this time to be able to publish State's Exhibit
11 Number 45 to the jury.

12 THE COURT: It's in evidence already?

13 MR. MOWRY: Yes, sir, it is.

14 THE COURT: All right, it may be published
15 then. What's the length?

16 MR. MOWRY: It's about 20 minutes, if at
17 all, Your Honor.

18 THE COURT: All right. State Exhibit 45
19 and 46 were previously admitted.

20 (WHEREUPON, State's Exhibit 45 was published to
21 the jury.)

22 THE COURT REPORTER: I cannot hear you.

23 Judge, I cannot hear him.

24 (WHEREUPON, solicitor was questioning
25 witness during playing of video and court

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1 reporter was unable to hear

2 questioning.)

3 MR. MOWRY: Your Honor, we've got a little
4 bit more to go, but if you'd like to take a break
5 here this would be a good ---

6 THE COURT: We have been going about an
7 hour-and-a-half. Ladies and gentlemen, I'll allow
8 you to step back to the jury room, don't discuss
9 anything about this case until I ask you to do so.
10 You may retire at this time.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 10:30 a.m.)

13 THE COURT: All right, we'll be in recess
14 about ten minutes. Thank you very much.

15 (WHEREUPON, a Bench conference was held.)

16 THE COURT: Mr. Mowry, you ready to
17 proceed?

18 MR. MOWRY: Yes, sir.

19 THE COURT: You ready to proceed from
20 defense?

21 MR. STODDARD: Yes, sir.

22 THE COURT: Okay, let's bring the jury in.

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 10:45 a.m.,
25 and the following proceedings commenced

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1 in open court.)

2 THE COURT: You may proceed, Mr. Mowry.

3 MR. MOWRY: Thank you, Your Honor.

4 BY MR. MOWRY:

5 Q Mr. Gabriele, we ended with the video
6 showing Ms. Tackett being placed under arrest and
7 then complaining of chest pains. What were you
8 planning to do before that?

9 A My plan was originally to transport her to
10 the Laurens County Detention Center and escort her
11 to the data master room, then issue a data master
12 test which is locally termed as the Breathalyzer to
13 obtain a breath sample for requesting a urine sample
14 from Ms. Tackett.

15 Q Okay. The Breathalyzer or the data master
16 measures what?

17 A The blood alcohol content in, in one's
18 breath. How it works, I'm instructed how to operate
19 it. I do not know the workings on it. But it is
20 required before I request even though I expect
21 alcohol to be in your system, prior to obtaining any
22 sort of sample, urine, I have to give the breath
23 test.

24 Q Okay. When she complained of chest pains
25 what was your concern?

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1 A Would be for the wellbeing of Ms. Tackett
2 making sure there's nothing else going on. She was
3 transported by EMS. At that point I have to call a
4 little bit of an inaudible to indicate to the
5 toxicology test that's where the blood sample was
6 requested.

7 Q So, she was transported to which hospital?

8 A Greenville Memorial Hospital.

9 Q What did you do as she was being
10 transported?

11 A I finished completing some of the
12 information I needed for the collision, try to get a
13 little bit more pertinent information and then to
14 which I drove to Greenville Memorial to check on the
15 condition of my two victims, as well as continue
16 with my DUI or a felony DUI arrest.

17 Q Did you request another trooper to meet
18 you at the hospital?

19 A Yes, sir.

20 Q And was the purpose of his going there to
21 conduct other assessments of Ms. Tackett?

22 A Yes, sir.

23 Q Okay. When you went to the hospital about
24 how long did it take? What was the, what was the
25 time lag between the scene and the hospital?

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1 A I don't believe I have those times in my
2 report.

3 Q Just roughly.

4 A Probably going to be about 30 minutes or
5 so.

6 Q Okay. What route did you take, do you
7 recall?

8 A Take 385 to the southern connector.
9 Southern connector, I'll ride that all the way
10 around to downtown.

11 Q Okay. And that runs you right into the
12 hospital. That's basically where you get dumped out;
13 is that right?

14 A Yes, sir.

15 Q Okay. When you got to the hospital what
16 did you do?

17 A I was able to locate Ms. Tackett's room to
18 where I went inside there. I advised Ms. Tackett
19 that I was there requesting a blood draw due to her
20 being in the hospital for extended period of time
21 due to her chest pains. It would be within that two
22 hour time limit of time of arrest to where I'm
23 required to get that breath sample so a blood draw
24 was requested. To do that I proceeded to read
25 Ms. Tackett the felony driving under the influence

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1 implied consent. I then requested a voluntary
2 sample and to which she stated she gave, she would
3 give one. Then I had a doctor sign off stating that
4 there was, that because of her being in the hospital
5 it would be possible to obtain a breath sample and
6 complete the toxicology chain.

7 Q So that's stuff that's required by law; is
8 that right?

9 A Yes, sir.

10 Q You were just following the required
11 procedures?

12 A Yes, sir.

13 Q Unable to get a breath test so you
14 proceeded to ask her to give a sample. How did you
15 go about asking her to give the sample?

16 A So there's the implied consent for
17 (indiscernible) implied consent, there's one for
18 your standard DUI and one for your felony DUI.

19 Q You mean driving under the influence or
20 alcohol and then other, I guess, driving under the
21 influence of drugs?

22 A Right. Our DUI law comes as both alcohol
23 and drugs so it'd just be one implied consent for
24 that.

25 Q Okay.

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1 A The implied consent states that the
2 testing will be done for alcohol and/or drugs. In a
3 situation where I would say, I would still put a
4 second implied consent just as a reminder of the, of
5 punishments for failing. The implied consent is a
6 little bit different. It basically states that you
7 are to provide a sample, and if you refuse to
8 provide one a warrant will be obtained to get that
9 sample.

10 Q Okay.

11 A It takes out the whole option of refusal.

12 Q So any time by accepting the privilege to
13 drive in South Carolina?

14 A Yes, sir, that, and when you sign for your
15 license you sign stating you will take all tests
16 requested of you.

17 Q So we are required by law to take those
18 tests. What if, for example, I get arrested for
19 DUI.

20 A In a non-felony situation it would be a
21 six month suspension of your license if you refuse
22 to provide those standard tests.

23 Q Did you advise Ms. Tackett of this at the
24 hospital?

25 A Yes, sir, I advised her of the felony

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1 driving under the influence implied consent.

2 Q And how did you advise her? What
3 procedure did you use?

4 A There's a form that's printed off the data
5 master. I'll print out two copies since there won't
6 be a subject copy for it and I will write that
7 subject copy on one, and then I have my copy and
8 then I'll advise them this is gonna be audio and
9 video recorded. I ideally like to do it in the data
10 master room with SLED's recording device; but this
11 situation allows -- my body camera. I inform her of
12 that and then I just proceed to read it verbatim
13 from the form.

14 Q Okay, let me back up just a little bit.
15 Ms. Tackett was talking about a person named Kara, I
16 believe; is that right?

17 A Yes, sir.

18 Q Who was Kara did you determine?

19 A Kara was the four year old little girl in
20 the, in the child restraint on the passenger side
21 rear of the vehicle.

22 Q Okay. Let me refer you to State's Exhibit
23 Number 32. What does that demonstrate?

24 A That's the rear of Ms. Tackett's vehicle,
25 and the seat that's closer to the camera was the

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1 seat that the child was located in.

2 Q So this right here near the bottom of the
3 photograph; is that right?

4 A Yes, sir.

5 Q Okay. Did you ultimately seek another
6 charge on Ms. Tackett?

7 A Yes, once it was confirmed that Mr. Ivey
8 passed away ---

9 Q Wait, no, no, no.

10 A I'm sorry.

11 Q Before we go into that, aside from felony
12 DUI did you obtain other warrants or another charge
13 against her?

14 A Yes, there was also a citation issued for
15 child endangerment.

16 Q Okay. And what were the factors that led
17 to that?

18 A If the operator of the vehicle operating
19 the vehicle under the influence and then the child
20 that's in there, that's inside the vehicle -- they
21 don't have to be under their direct care, just a
22 child being under the age of, I think at the time of
23 16, be inside that motor vehicle.

24 Q And this child certainly was under 16; is
25 that right?

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1 A Yes, sir.

2 Q Okay. What happened to the child?

3 A Thankfully the child was unscathed.

4 Q Okay.

5 A A little traumatized, but none, but wasn't
6 seriously injured.

7 Q What was done with her in the meantime?

8 A I believe the custody was transferred to
9 the child's father. I left the scene at that point,
10 but I know there is a certain procedure that it has
11 to go through where DSS is contacted and then at
12 that point DSS can make the determination to release
13 the child to the father, put protective custody in
14 place.

15 Q Okay. You had gone to the hospital
16 though; is that correct?

17 A Yes, sir.

18 Q And you advised Ms. Tackett of her rights
19 under implied consent; is that correct?

20 A Yes, sir. Also, before implied consent is
21 given Miranda is read to the subjects.

22 Q Okay. As you did at the scene did you
23 have your body cam activated?

24 A Yes, sir.

25 Q And have you taken a look, I believe, at

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1 State's Number 46?

2 A Yes, sir.

3 Q And that disk, have you reviewed the video
4 that's on that disk?

5 A Yes, sir.

6 Q Does that disk fairly and accurately
7 depict what went on at the hospital?

8 A Yes, sir.

9 MR. MOWRY: Your Honor, I would ask to be
10 able to publish that disk at this time.

11 THE COURT: Any objections?

12 MR. STODDARD: No objection.

13 THE COURT: All right, it's already in the
14 record; is that correct?

15 MR. MOWRY: Yes, sir.

16 THE COURT: You may proceed.

17 (WHEREUPON, video was published to the jury.)

18 BY MR. MOWRY:

19 Q What was her response?

20 A Yes, sir.

21 MR. MOWRY: We need to switch over, Your
22 Honor.

23 BY MR. MOWRY:

24 Q We saw another trooper in there. Who was
25 that?

SW - M. GABRIELE - DIRECT

1 A It was Trooper Terry.

2 Q Deputy David Terry?

3 A Yes, sir.

4 Q Was he the officer that you, the trooper
5 that you had requested to come to the scene?

6 A Yes, sir.

7 Q Or to the hospital? Was a blood draw
8 conducted?

9 A Yes, sir.

10 Q Did you observe it?

11 A Yes, sir.

12 Q Is this the nurse that did the blood draw?

13 A Yes, sir.

14 Q Did you receive, did you receive the blood
15 from her?

16 A Yes, sir.

17 Q What did you do with it after that?

18 A I sealed it. There's seals that go over
19 the top that are signed and dated. That is then
20 placed in a plastic bag. I take all the air out of
21 the bag, seal the plastic bag, put that in the SLED
22 kit that was, that provides the vitals and the urine
23 collection cup. Then that box is then closed. The
24 pertinent information is filled out on it, the
25 chain, it's a chain of command -- or chain of

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1 custody, sorry, as well as demographic information.
2 That is then sealed, signed and sealed. Then that
3 is put in another box, a shipping box which is also
4 sealed shut. Then that was secured in the trunk of
5 my patrol car. So I still had to transport
6 Ms. Tackett. After transportation it was then
7 brought to the post office of or post office for the
8 South Carolina Highway Patrol which is out of
9 Newberry. It was then secured in the evidence
10 refrigerator and locked into property as evidence.

11 Q What was done with it after that?

12 A After that point the evidence technician
13 will do as they do and then get it gets transported
14 down to Columbia.

15 Q And was that done in this case?

16 A To my knowledge, yes, sir.

17 Q You said you had to transport Ms. Tackett
18 to the detention center?

19 A Yes, sir.

20 Q In Laurens; is that right?

21 A Yes, sir.

22 Q Where was the blood during that time?

23 A It was secured in the trunk of my patrol
24 car.

25 Q And about how long did it take to get back

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1 from Greenville to the detention center?

2 A I had arrived probably about 30, 45
3 minutes.

4 Q Okay. How long did the process take for
5 you at the detention center?

6 A It honestly varies. Sometimes it can be
7 as quick as ten. Sometimes you're waiting there
8 almost a half an hour, but it's not an extended
9 period of time.

10 Q Okay. And then where did you go after you
11 left the detention center?

12 A Immediately to the office or the post-day
13 office, the office that we work out of.

14 Q Is that when you placed the blood in the
15 refrigerator?

16 A Yes, sir.

17 Q Is there any kind of protocol for that,
18 any kind of legal guidance that you get as far as
19 handling of the blood?

20 A We've got -- there's actually two separate
21 chain of commands kind of a remoteancy type. One is
22 in a box and then there's also the South Carolina
23 Department of Public Safety chain of demand and
24 that's documented -- once it goes through my hands,
25 everywhere else it's constantly assigned to where

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1 it's going to.

2 Q Was Ms. Tackett ultimately released on
3 bond?

4 A Yes, sir.

5 Q Several days later was there something
6 else that happened related to this case?

7 A Yes, sir. Unfortunately, we heard news
8 that Mr. Ivey passed away.

9 Q Okay. What had Ms. Tackett been charged
10 with at that point?

11 A Prior to that it was two counts of felony
12 driving under the influence resulting in great
13 bodily injury, which at one point, at which after
14 that point one of the citations were voided and a
15 warrant was then obtained for driving under the
16 influence, felony driving under the influence
17 resulting in death.

18 Q That was of Mr. Ivey; is that right?

19 A Yes, sir.

20 Q Did you serve a warrant on Ms. Tackett?

21 A Yes, sir, it was a somewhat lengthy
22 process as far as citation and filling out pertinent
23 information, I confirmed subjects are at their
24 current address to which Ms. Tackett first is at [REDACTED]
25 Millennium Drive. I first attempted to serve that

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1 warrant and go at ■ Millennium Drive, and we were
2 informed that nobody had lived there for a couple of
3 months. The trailer that was out there was unkempt.
4 There was grass growing, foliage all over. It was
5 obvious that ---

6 Q Did it look a mess?

7 A Yeah. Somebody hasn't lived there for a
8 while. So I think I dig first for some DMV
9 information, was able to locate an address on SC-49
10 which Ms. Tackett stated she was coming from the day
11 of the collision, and we went out there in attempt
12 to serve that warrant. Once we got out to that
13 address we were greeted at the door by an older male
14 who stated that Ms. Tackett had left to go food
15 shopping with her mother. We asked for the ETS,
16 estimated time of arrival that Ms. Tackett would
17 finish food shopping. He couldn't provide one.
18 Throughout all this we heard some movement upstairs,
19 and I observed somebody who is friends with
20 Ms. Tackett coming downstairs. We then informed,
21 again, hey, if she's here you need to let us know.
22 Ms. Tackett then eventually came downstairs.

23 Q Okay. And was she placed under arrest on
24 that charge?

25 A Yes, she was secured in handcuffs, hands

SW - M. GABRIELE - DIRECT

1 were checked for tightness, and double locked to
2 prevent...

3 Q Was she ever admitted to Greenville
4 Memorial Hospital?

5 A No, sir.

6 Q So treated ---

7 A Or ---

8 Q Go ahead.

9 A As for the collision itself?

10 Q Yes.

11 A That day, no, sir.

12 Q Was she ever admitted to the hospital for
13 anything else?

14 A Not that I'm aware of, sir.

15 Q Okay. How long were y'all at the hospital
16 before you took her to the detention center?

17 A I, I honestly do not know the exact time.
18 I know I was there for a few hours, but I don't know
19 the exact time.

20 Q Okay. Not for days, though, is what I'm
21 getting at.

22 A No, sir.

23 Q Mr. Gabriele, based on your experience and
24 your training, based on your observations at the
25 defendant, of the defendant at the scene and based

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1 on the tests that were administered, were you able
2 to form an opinion as to her condition at the time
3 that you saw her?

4 MR. STODDARD: Objection, Your Honor,
5 improper opinion evidence, not qualified as an
6 expert.

7 THE COURT: I have no problem with him
8 stating what he observed and what he, what
9 conclusions he may have drawn from those
10 observations. He's not a medical professional.

11 MR. MOWRY: No, sir.

12 THE COURT: I'm not gonna allow him to ---

13 MR. MOWRY: I'm asking, I'm asking for
14 lay, a layman can testify to that, Your Honor.

15 THE COURT: Oh, I agree that he can
16 testify to his observations, but he's not to draw
17 any kind of medical diagnosis as a doctor so.

18 MR. MOWRY: No, sir. I'm simply asking
19 did he -- my ultimate question was, or is, did he
20 believe that she was under the influence. That's
21 all I'm ---

22 THE COURT: I'll let you ask that
23 question.

24 BY MR. MOWRY:

25 Q Based on your experience, based on your

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1 training, based on your observations, based on the
2 tests that you conducted at the scene, do you have
3 an opinion as to whether or not Ms. Tackett was
4 under the influence?

5 A Yes, sir. That's, where the charges come
6 from being that the probable cause is required she
7 had very slow, lethargic movements when I asked her
8 for her license, you know, she was very slow to
9 provide it. When I asked for that registration she
10 was very slow to go over to the glove box and to
11 open that up. When she got out of the car she was a
12 little uneasy on her feet. Saw multiple clues
13 towards impairment for the field, standardized field
14 sobriety tests. Prescription medications, she was
15 very hesitant about saying some of them. I had to
16 help her out, especially ones like Klonopin that
17 could cause these reactions, and that was -- I was
18 able to kind of form that opinion of her operating
19 that vehicle under the influence of something other
20 than alcohol.

21 Q Okay. And just for the record, this site
22 where the collision occurred, is that in Laurens
23 County?

24 A Yes, sir.

25 Q All right. Thank you, sir.

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1 MR. MOWRY: Your Honor, that's all I have.
2 If you'd answer any of Mr. Stoddard's
3 questions.

4 THE COURT: You may cross-examine, Mr.
5 Stoddard.

6 MR. STODDARD: Beg the Court's indulgence.

7 **CROSS-EXAMINATION**

8 BY MR. STODDARD:

9 Q One of the things I want to do is -- I
10 hate to ask you to do this. I'd like to repeat that
11 demonstration y'all did 'cause I'm not able to ask
12 questions about it.

13 A Sure.

14 MR. MOWRY: You need me as a dummy? I
15 feel better already, Your Honor.

16 THE WITNESS: (Inaudible.)

17 THE COURT REPORTER: I cannot hear you,
18 sir.

19 THE WITNESS: I'm thinking to myself out
20 loud. Heel-to-heel toe-to-toe, hands down by sides,
21 no glasses, no contacts, no head gear. What color
22 is the stimulus?

23 MR. MOWRY: Green.

24 THE WITNESS: Follow that, confirm that
25 you understand my instructions.

SW - M. GABRIELE - CROSS

1 MR. MOWRY: I do.

2 (WHEREUPON, a demonstration of the field
3 sobriety test was given.)

4 THE COURT REPORTER: Sir, I can't hear
5 you.

6 BY MR. STODDARD:

7 Q Could you stop. Could you do just the one
8 swipe again. We're doing the pupil tracking?

9 A No, sir.

10 Q Is that ---

11 A Yeah, (indiscernible) pupil size.

12 Q I mean, we're not ---

13 A (Indiscernible.)

14 Q Oh, we're not?

15 A No, sir, this is just pupil tracking. I'm
16 not doing horizontal tracking. That would be check
17 for lack of smooth pursuit.

18 Q Could you stop right there at the end
19 outside, or just do the one swipe.

20 A I can't stop it, sir.

21 Q I understand. I just want to show
22 something. Would you agree that you're doing a
23 curved motion?

24 A I'm trying to keep it straight as possible
25 but it's, unless I've got a level, a straight line

SW - M. GABRIELE - CROSS

1 it's not possible ---

2 THE COURT REPORTER: Sir, I can't hear
3 you.

4 THE WITNESS: I was answering his question
5 that it's almost impossible to go with a straight
6 line. You try to keep it as straight as possible,
7 do everything we do is relatively straight line.
8 You're asking for an impossibility there if you want
9 me to keep it straight.

10 BY MR. STODDARD:

11 Q So it's impossible to demonstrate like
12 that?

13 A It is impossible to do it every single
14 time. If I had a level of some sort I could almost
15 guarantee that there would be some sort of
16 deviation.

17 Q That's all I needed.

18 A Okay.

19 Q In your direct examination when he asked
20 you about the data master, you said don't ask me how
21 it works, I just know how to work it, right?

22 A Yes, sir.

23 Q On these tests there are certain things
24 that they tell you to do like a -- hold that ---

25 A Yes, sir.

SW - M. GABRIELE - CROSS

1 Q ---stimulus 12 to 15 inches. Do they tell
2 you not to curve it like you did?

3 A Try to keep it straight as possible, yes,
4 sir.

5 Q Do you know why?

6 A You want to keep those eyes on a level
7 field, keep them on a plane as they can follow the
8 stimulus as much as possible.

9 Q Do you know why they picked 12 to 15
10 inches?

11 A It's not too close, it's not too far, but
12 it's not ---

13 Q Isn't it true that basically they tell you
14 do it as we instruct you?

15 A Yes, sir.

16 Q And if you do it as we instruct you then
17 it's fine, right?

18 A Yes, sir.

19 Q And they emphasize that you're to do it,
20 that's why they call it a standardized test; is that
21 correct?

22 A Yes, sir.

23 Q And one of the things they do say is don't
24 do that curving that, like this, but make it a
25 straight line. 'Cause when you curve it, it changes

SW - M. GABRIELE - CROSS

1 the distance between the stylus and the subject,
2 right?

3 A If you keep the same distant, or if you
4 keep it actually straight your distance actually
5 grows. I can't remember, your head is curved, if
6 you curve it, keep the same distance, but they don't
7 actually go into full detail on that. They just,
8 they instruct you how you would do it properly, but
9 they're not going off curve distances and all.

10 Q On the testing for lack of smooth pursuit
11 do they tell you, isn't there a certain number of
12 seconds you're supposed to ---

13 A Four seconds per pass.

14 Q Okay, so four seconds -- two seconds out
15 and two seconds in?

16 A One pass a second is from right to left.

17 Q All right. And so it would be two seconds
18 out and two seconds in?

19 A Minimum of four seconds for an entire pass
20 from one side to the other.

21 Q So if you're doing less than four -- if
22 you do, if the first pass is less than four seconds
23 you didn't do it right; is that correct?

24 A For standardized, yes. It's one, but once
25 again, to clarify, a pass is all the way from the

SW - M. GABRIELE - CROSS

1 right to the left.

2 Q Oh, it's all the way from here to here?

3 A That's one pass.

4 Q Is that what you're saying?

5 MR. STODDARD: Beg the Court's indulgence.

6 BY MR. STODDARD:

7 Q Does this appear to be instructions from
8 the, from one of the courses from the NHTSA courses
9 that you guys take?

10 A It's been a while. No, sir, this one is
11 for ARIDE. ARIDE is for Advanced Roadside Impaired.
12 That's not the one that's provided for Criminal
13 Justice Academy. I haven't gone through ARIDE.

14 Q You haven't gone through ARIDE ---

15 A Yes, sir.

16 Q ---but it is a course for South Carolina
17 troopers; isn't it?

18 A No, sir, it's a course for any sort of law
19 enforcement, but it's an advanced course. This
20 isn't for the DUI/SFT, standardized field sobriety
21 course that the Academy has. This one is for ARIDE
22 itself.

23 Q ARIDE stands for Advance Roadside Impaired
24 Driver Enforcement.

25 A Yes, that's a completely separate course.

SW - M. GABRIELE - CROSS

1 Q But it is ---

2 A It's an advanced course.

3 Q Doesn't, don't they teach that to some
4 South Carolina troopers?

5 A No, sir. It's a voluntary course that
6 goes on after. So you have to, you then have to
7 take this course. So you do your DUI/SFT first,
8 then you take ARIDE. ARIDE is different from the
9 DUI/SFT course.

10 Q I realize that, but it is a course that is
11 taught by our Academy; isn't it?

12 A Yes, sir, but it's not a course taught to
13 everybody.

14 Q No, I understand that.

15 A Yes, sir.

16 Q It's actually ---

17 A I have never seen this one before because
18 I've never taken ARIDE.

19 Q ARIDE is actually more advance training
20 after the course --

21 A Yes, sir.

22 Q ---you took.

23 A So this one itself, I've never taken
24 ARIDE.

25 Q But ---

SW - M. GABRIELE - CROSS

1 A So I can't attest to this form itself.

2 Q Do you have any reason to believe that the
3 way you do an HGN test would be different for that
4 course?

5 A I've never taken ARIDE. I could not know,
6 sir.

7 Q These tests -- you were taught, were you
8 not, that this test you just demonstrated is a
9 standard test developed by NHTSA, National Highway
10 Traffic Safety?

11 A Yes.

12 Q So they wouldn't have a separate test for
13 the advanced course?

14 A I do not know. Well, I do know in ARIDE
15 they do teach you further testing, but I do not know
16 what those tests are.

17 MR. STODDARD: Give me just a minute, Your
18 Honor.

19 BY MR. STODDARD:

20 Q Did I leave that with you?

21 A Yeah.

22 Q Take back at this time.

23 A I prefer to hold on to it please.

24 Q Okay, that's fine. By the way, do you see
25 what they teach at the ARIDE course on the number of

SW - M. GABRIELE - CROSS

1 seconds?

2 A I can see the form, yes, sir.

3 Q What do they say you do for two seconds?

4 A Which portion are you wanting me to read
5 off of?

6 Q Well, it, toward the middle of the page it
7 tells you how to move the stimulus and how many
8 seconds you should go.

9 A Okay.

10 Q What does it say?

11 A It says moving the stimulus should take
12 approximately two seconds, move from the center of
13 the subject's face to the left side. Approximately
14 two seconds to go back to the center. Approximately
15 two seconds to move from the center of subject's
16 face to the right side and approximately two seconds
17 to return to the center of subject's face.

18 Q So it says two seconds out and two seconds
19 in ---

20 A For ARIDE, yes, sir.

21 Q Okay. So that's how they do it, you were
22 taught something different?

23 A I, sir ---

24 Q You were taught one second and one second.

25 A No, sir, to make the passes at least the

SW - M. GABRIELE - CROSS

1 minimal of four seconds.

2 Q From center, both sides back to center.
3 So that's one second, one second, one second, one
4 second.

5 A Yes, sir.

6 Q And that's what you say you were taught?

7 A (No verbal response.)

8 Q Would you agree, whatever you were taught,
9 if it goes too fast that can cause the eyes to jump?

10 A It can. That's why I do multiple passes.
11 And even during your check for the resting nystagmus
12 as well as the -- my apologizes. Getting up at 1:00
13 yesterday morning for work. For the resting
14 nystagmus and the -- wow.

15 Q It's okay, I do the same thing.

16 A It's one of those days.

17 Q Lose my thought, train of thought.

18 A Equal track, there we go. Resting
19 nystagmus and equal tracking, even then I'm still
20 looking for it just to, just to kind of paint a
21 better picture. Because if I do see it when I'm
22 doing that but not hear, I'll stop, I'll go up, and
23 I'll do it again. As very much seen during the
24 prior to 45 -- and I'm giving too, we are fallible.
25 I noticed I was going a little too fast, I would

SW - M. GABRIELE - CROSS

1 stop, slow it down, I made sure because I want to
2 give Ms. Tackett the benefit of the doubt. And
3 until -- it is guilty until proven innocent, but
4 once I start seeing those clues, then I will go
5 forward with my PC for arrest.

6 Q Did your training say that even when they,
7 you see the clues that you're looking for there is a
8 percentage of people that are not under the
9 influence, according to the testing there's a
10 percentage that aren't under the influence of
11 anything despite those clues?

12 A Yes, sir. But the more clues you see, the
13 higher that percentage is, and then you combine that
14 with the other things you've observed so if it was
15 alcohol, alcoholic beverage falling outside of the
16 vehicle, you have slurred speech, slow movements,
17 you're thumbing through things that are right there
18 in front of you. So you take more than just the
19 standardized field sobriety tests when it comes to
20 DUI. It is a all encompassing charge.

21 Q One of the tests you did was the one
22 legged stand?

23 A One leg stand, yes, sir.

24 Q And are the clues that you're looking for
25 there, one is putting your foot down?

SW - M. GABRIELE - CROSS

1 A Yes, sir.

2 Q Is one of them hopping?

3 A Yes, sir.

4 Q One of them is using your arms for
5 balance?

6 A Yes, sir.

7 Q And I've forgotten the fourth one.

8 A Swaying.

9 Q Swaying?

10 A Yes, sir.

11 Q You noted she did put her foot down and
12 you said she used her arms for balance?

13 A Yes, sir.

14 Q If she didn't use her arms for balance
15 now, two clues indicate intoxication, correct?

16 A No, sir. Two clues will mean that that
17 test -- pass/fail is a horrible world to use for it.

18 Q I understand.

19 A But it would show that there are signs of
20 impairment for that one particular test.

21 Q Right.

22 A That one would have been two clues, yes,
23 sir.

24 Q So in other words, if there is only one
25 clue that does not indicate intoxication?

SW - M. GABRIELE - CROSS

1 A To a certain point. NHTSA, once again,
2 requires a, a exigent amount. They don't have the
3 information that less, but it does indicate
4 intoxication from these -- those two clues do point
5 towards intoxication, yes, sir; but you don't need
6 to have two clues that says, hey, there's something
7 that's going on.

8 Q Well, ---

9 A So this is, this is more than just, this
10 is all to help form the opinion of impairment.

11 Q Now what I'm saying, if there's less than
12 two clues, then that would not contribute to an
13 opinion of impairment, would it?

14 A It still would, it still would be noted.
15 It's still something you're gonna go, hey, this is
16 observed or this is what's going on. It doesn't
17 mean, it doesn't mean they failed the test; but it
18 would still be going, hey, this is a possible sign
19 of something.

20 Q And one of the things you noticed was
21 small pupil size?

22 A Yes, sir.

23 Q Now does your training say that for
24 depressants you expect dilated pupils?

25 A That's beyond my training. I just do

SW - M. GABRIELE - REDIRECT

1 know that there are, that it can be assigned to a
2 opioids, opioids, barbiturates can cause them; but I
3 haven't had the training to be able to testify to
4 that. But when I go through my process, it does at
5 this point towards clues for the arrest itself.

6 MR. STODDARD: Your Honor, I've got no
7 further questions.

8 THE COURT: Redirect?

9 MR. MOWRY: Just very few, Your Honor.

10 THE COURT: Yes, sir.

11 **REDIRECT EXAMINATION**

12 BY MR. MOWRY:

13 Q Mr. Gabriele, you have testified there
14 were about nine minutes of your getting the call to
15 the arrival at the scene?

16 A Yes, sir.

17 Q And you didn't go immediately to
18 Ms. Tackett based on what we saw in the video; is
19 that right?

20 A I observed the scene, then I went to Ms.
21 Tackett.

22 Q So a couple minutes after you got there
23 before you went to Ms. Tackett?

24 A Probably about a minute or two.

25 Q So we're talking over ten minutes probably

SW - M. GABRIELE - REDIRECT

1 from the time you got the call to the time that you
2 encountered Ms. Tackett, ---

3 A Yes, sir.

4 Q ---correct? What did she tell you
5 happened?

6 A Said she couldn't remember.

7 MR. STODDARD: Your Honor, I don't know if
8 this is redirect or responsive to any of my
9 questions.

10 MR. MOWRY: Your Honor, he has asked her,
11 asked the officer questions about her intoxication
12 or her impairment. I'm going back to discuss some
13 of those factors that the officer noted.

14 THE COURT: In that respect I'll allow the
15 questions. You may proceed.

16 BY MR. MOWRY:

17 Q So she was not aware of what had happened?

18 A No, sir.

19 Q Couldn't tell you. How was she walking?

20 A She seemed uneasy on her feet. She got
21 out of her car, a little stumble, then she was very
22 slow to walk. And I had to remind her more than a
23 handful of times keep following me, keep following
24 me, and then when I got to the front of my patrol
25 car I try to, I had to inform her where to stand.

SW - M. GABRIELE - REDIRECT

1 Q When you had asked her while she's still
2 sitting in the car for her credentials or her
3 documentation, license, registration, all that, how
4 did she behave?

5 A She went over to her passenger seat and
6 she had thumbed through her information to get her
7 license, and it took her a pretty good bit of time
8 for her just to find her license. Then when it came
9 to her insurance she said it was on her phone, and
10 she was just kind of spaced looking about. When she
11 looked outside of her car for her phone she was
12 having a hard time. And then when it came to the
13 registration she was very slow to move over to the
14 glove box and open her glove box.

15 Q How were her movements?

16 A Very slow and deliberate movements. She
17 was focusing heavily on the, whatever she was
18 looking for that she's got to focus on it. She had
19 divided attention.

20 Q Mr. Stoddard asked you about the field
21 sobriety test on the Horizontal Gaze Nystagmus. How
22 did she perform?

23 A I observed multiple clues.

24 MR. STODDARD: Objection, we're doing
25 redirect, I mean, we're re-doing the direct. I

SW - M. GABRIELE - REDIRECT

1 don't see ---

2 MR. MOWRY: This is in response to his
3 cross-examination, Your Honor.

4 THE COURT: I'm going to allow the
5 questions.

6 BY MR. MOWRY:

7 Q How did she perform?

8 A I observed the lack of smooth pursuit in
9 both eyes. I observed distinct sustained nystagmus
10 at maximum deviation, and I also observed the
11 positive nystagmus at 45-degrees.

12 Q Okay. On the walk and turn how did she
13 perform?

14 A During the walk and turn I observed her
15 fail to stand as instructed, also potential to start
16 the test too soon. And then during the test I
17 observed a scenario she did not touch heel/toe
18 multiple times. She stepped off line, raised her
19 hands more than six inches. She took too many steps
20 and had to stop and ask for directions.

21 Q Okay. So in your opinion did she follow
22 your directions?

23 A No, sir.

24 Q How about the one leg stand?

25 A During the one leg stand she had put her

SW - M. GABRIELE - RECROSS

1 foot down and then it was, it egregiously slowed
2 down. She was off by a couple of seconds, not too
3 much; but if they are off by a good bit that can be
4 considered, can go towards impairment.

5 Q All right. So those were the factors that
6 led to your conclusion to place her under arrest for
7 DUI; is that right?

8 A The erratic driving that was told to me by
9 witnesses, the slow, deliberate movements, the
10 spaced out nature in general, the multiple clues
11 during the STs and just the inability to follow
12 instructions were all indicators for possible
13 impairment. That's where I made my arrest from.

14 Q Thank you, sir. That's all I have.

15 THE COURT: Recross?

16 **RECROSS-EXAMINATION**

17 BY MR. STODDARD:

18 Q The, you say that when she counts at being
19 off by 30 seconds can be an indication of
20 intoxication?

21 A Possible.

22 Q But that's not one of the four clues
23 you're taught on the one legged stand, is it?

24 A No, sir, but over. Through experience,
25 myself as well as others, you do learn somebody

SW - M. GABRIELE - RECROSS

1 that's under the influence of the central nervous
2 system depressant would be slow and their perception
3 of time is a lot slower. Somebody who is under the
4 influence of methamphetamine, cocaine, I've had some
5 that were at 40, 45 seconds by the time I was at 30.

6 Q Was her -- it's my understanding, correct
7 me if I'm wrong, that she counted one Mississippi to
8 30 in 25 seconds; is that right?

9 A No, sir. She was at 25 when I was at 30.

10 Q She did it -- that's right.

11 A She was slower than actual passage of
12 time.

13 Q Okay, I got you. In your instructions
14 isn't it true that you said count one Mississippi,
15 two Mississippi, three Mississippi?

16 A No, sir. One thousand one, one thousand
17 two, one thousand three.

18 Q Okay, you told her to count one thousand
19 one, one thousand two, one thousand three, right?

20 A Yes, sir.

21 Q Did at any time you say try to make it 30
22 seconds?

23 A That's not part of -- you are testing
24 their ability to determine the passage of time.
25 It's count until I tell you to stop.

SW - M. GABRIELE - RECROSS

1 Q Right, but what I'm saying is, if you
2 don't tell her try to make it last 30 seconds, how
3 can you mark her down for doing it slower than 30?

4 A Because you are determining their
5 perception of passage of time. Regardless of it, I
6 mean, you are -- it's not whatever they count; it's
7 your actual time itself.

8 Q Yeah, but you told us ---

9 A It's the 30 -- yes, sir, because at that
10 point, once again, it's dividing her attention. She
11 has to count out loud while focusing on her foot,
12 making sure she keeps her hands down by her sides,
13 to make sure she keeps her foot raised. It's all
14 divided attention test. The counting itself is just
15 to help divide it and then can help with the
16 argument of either depressant or stimulant being in
17 your system.

18 Q I agree that counting and watching your
19 foot can make you divide attention; but unless you
20 tell her to count it for 30 seconds, then I don't
21 understand how that indicates anything about her
22 perception of time.

23 A Because I instruct her to count the
24 passage of time out loud, one thousand and one, one
25 thousand and two, one thousand and three. So I've

SW - M. GABRIELE - RECROSS

1 told her to count the passage of time out loud.
2 Regardless of the time, it's still I'm asking her to
3 count the passage of time out loud so I have given
4 her a time limit. I've told, it's just counting the
5 passage of time out loud.

6 MR. STODDARD: I've got no further
7 questions, Your Honor.

8 THE COURT: All right, sir, you may step
9 down. Thank you very much.

10 MR. MOWRY: Your Honor, just for
11 housekeeping matter, could we approach real quick?

12 THE COURT: You may.

13 (WHEREUPON, counsel approached the
14 Bench for an off-the-record discussion.)

15 THE COURT: The State may call its next
16 witness.

17 MR. MOWRY: We call Ben Cannon.

18 THE COURT: Come forward to be sworn, sir.
19 WHEREUPON,

20 **BEN CANNON,**
21 having been duly sworn by the Clerk, testified
22 as follows:

23 THE WITNESS: My name is Benjamin Cannon,
24 C-A-N-N-O-N.

25 THE COURT: Thank you. Your witness,

SW - B. CANNON - DIRECT

1 counselor.

2 MR. MOWRY: Thank you very much, Your
3 Honor.

4 THE COURT: Yes, sir.

5 **DIRECT EXAMINATION**

6 BY MR. MOWRY:

7 Q Mr. Cannon, I believe you go by Benji; is
8 that right?

9 A That's correct.

10 Q What do you do for a living?

11 A I am currently employed as a paramedic
12 with Pickens County EMS.

13 Q And back in March of last year, 2018,
14 where were you employed?

15 A I was employed with Greenville Health
16 System as a paramedic.

17 Q What are your duties, what do you do as a
18 paramedic?

19 A Just respond to any kind of 9-1-1 calls.
20 Or with Greenville Health System we did enter
21 facility transport, discharges, and all kinds of
22 other nonemergency transport as well.

23 Q But you respond to emergencies and render
24 medical aid at the scene; is that right?

25 A Yes, sir.

SW - B. CANNON - DIRECT

1 Q Were you working on the 28th of March of
2 last year?

3 A I was.

4 Q And what was your shift? What time of day
5 were you working?

6 A I believe then it was a nine to nine
7 shift. We changed right around there so it was
8 either nine to nine or seven to seven.

9 Q But you were working that day?

10 A Yes, sir.

11 Q Sometime around 9:30 or 9:40, somewhere in
12 that vicinity did you respond to an emergency call?

13 A Yes, sir.

14 Q How did you get that notification?

15 A We were dispatched to a mutual aid with
16 Laurens County and Greenville County EMS for an MVA
17 on ---

18 Q Motor vehicle accident, MVA?

19 A Yes, sir.

20 Q And where was it located?

21 A They informed us just north off 219-mile
22 marker, northbound 385.

23 Q How did you proceed to the scene?

24 A With lights and sirens. We proceeded down
25 southbound from Greenville, proceeded on to exit 19,

SW - B. CANNON - DIRECT

1 but had to turn around due to traffic so we were
2 delayed a little bit in our response. We had to go
3 one more mile marker down to turn around.

4 Q Did you come southern connector or did you
5 go 85 to 385?

6 A We were actually in downtown Greenville so
7 we just came right down 385.

8 Q So you're county square in downtown
9 Greenville, that's where you were located?

10 A Very close by, yeah.

11 Q When you got there what did you see?

12 A When we were approaching on southbound, I
13 just saw a large police, fire, EMS presence,
14 couldn't really tell what vehicles were involved at
15 that time. Then we turned around and came back. I
16 saw the truck sitting on the left-hand side of the
17 road and Ms. Tackett's vehicle ahead of it with
18 Ms. Tackett and her, I believe it's her niece Kara,
19 both back-boarded on the ground. When I say
20 backboard, a long spine board with straps and head
21 blocks to keep them from being able to move.

22 Q Okay. Is this kind of what you saw,
23 referring to State's Exhibit Number 9?

24 A Yes, sir.

25 Q Okay. So the two men at the scene were

SW - B. CANNON - DIRECT

1 being loaded up on to stretchers; is that right?

2 A They were, I believe they were actually
3 transported before we arrived on the scene.

4 Q Okay, all right. When you got there what
5 sort of function did you carry out?

6 A We were directed to right near the front
7 of the scene where Ms. Tackett and her niece were
8 located, like I said, on backboards, and we were
9 directed to transport those two patients.

10 Q Okay. And you took who?

11 A We took Ms. Tackett and her, and Kara, her
12 niece.

13 Q You took both of them?

14 A Yes, sir.

15 Q In one vehicle?

16 A Yes, sir.

17 Q Okay. What sort of treatment/protocol did
18 you carry out with Ms. Tackett?

19 A Usually when we have patients complaining
20 of neck, back, or any kind of central pain, they're
21 back-boarded, immobilized, with a C-collar,
22 backboard, and head blocks so they can't move their
23 neck or back.

24 Q When you say C-collar, you're talking
25 about the support around the neck?

SW - B. CANNON - DIRECT

1 A Yes, sir, to prevent them from being able
2 to move so they don't cause further injury to
3 themselves.

4 Q Okay.

5 A Once they were both loaded inside,
6 typically it's just we take blood pressure, pulse
7 rate, sometimes use an EKG which is
8 electrocardiogram. And then most trama patients
9 will get an IV possibly and some normal saline fluid
10 replacement.

11 Q And did you, in fact, give Ms. Tackett
12 saline solution?

13 A Yes, sir.

14 Q What was the reason for doing that?

15 A Usually with trauma you're just worried
16 about either blood or fluid loss. It's typically
17 just a standard treatment with trauma patients.

18 Q Okay. Did Ms. Tackett appear to be
19 bleeding anywhere?

20 A No, sir.

21 Q Was there any visible injury to
22 Ms. Tackett?

23 A No, sir.

24 Q Okay. How much fluid was given to her?

25 A Let me check. I believe it, it's usually

SW - B. CANNON - DIRECT

1 around 250 to 500, but let me just confirm that.

2 500.

3 Q 500-milligrams.

4 A Milliliters.

5 Q Milliliters, I'm sorry. So that's half a
6 liter?

7 A Yes, sir.

8 Q About a pint. Is that right?

9 A Correct.

10 Q You weren't able to observe Ms. Tackett
11 moving?

12 A No, sir.

13 Q At all?

14 A No, sir.

15 Q What did you do with her once you got her
16 to the hospital?

17 A We transported her inside to a hospital
18 room in the ER and moved her over due to the use of
19 the backboard to a hospital bed.

20 Q Was that the end of your function?

21 A Yes, sir. We give a report to the
22 accepting nurse and they sign for the patient.

23 Q Okay. Besides the 500 milliliters of
24 saline, was there any other medication or any other
25 fluids that were administered to Ms. Tackett?

SW - B. CANNON - CROSS

1 A No, sir.

2 Q That was it?

3 A That was it.

4 Q Just saline?

5 A Yes, sir.

6 MR. MOWRY: That's all I have.

7 THE COURT: You may cross-examine.

8 **CROSS-EXAMINATION**

9 BY MR. STODDARD:

10 Q Have you got your report in front of you?

11 A Yes, sir.

12 Q Did you take any pulse and blood pressure,
13 blood pressure through the trip?

14 A Yes, sir, let me locate that file. Yes.
15 Which one would you like? We can do all of them
16 or...

17 Q All of them.

18 A Well, the first one is BP was 155 over
19 104, which is typically a little out of range on the
20 high side for most patients. Her pulse rate was 116
21 which, again, is high for normal, for a normal
22 patient. Respiration rate was 20 in the normal
23 range and ---

24 Q On that one where the pulse and blood
25 pressure was high.

SW - B. CANNON - CROSS

1 A Yes, sir.

2 Q Tell me what, do you know what was going
3 on then? Was she in your vehicle or was she ---

4 A She was in our vehicle, yes, sir.

5 Q All right, go ahead.

6 A She was on the stretcher, like I said, on
7 a backboard. Typically, you know, when we see high
8 blood pressure or high pulse rate it's either due
9 from stress, you know, can be from anxiety or pain.

10 Q Could be pain?

11 A Yes, sir.

12 Q Could it be shock?

13 A Shock we would typically look for low
14 blood pressure, but the pulse rate would be high.

15 Q Did you take any other tests?

16 A We do our general examine which is ---

17 Q No, I mean, did you do like a later blood
18 pressure?

19 A You mean the vital signs?

20 Q A later blood pressure.

21 A Yes, sir. The second blood pressure was
22 109 over 70, which is within normal range.

23 Q Okay. How much later was that?

24 A That would have been 18 minutes after the
25 first vital sign.

SW - D. NEMR - DIRECT

1 Q Did you converse with Ms. Tackett?

2 A Yes, I did talk with her.

3 Q Did her speech seem normal to you?

4 A It seemed normal to me, yes, sir. I
5 didn't observe any slurring or anything like that.

6 Q Did she -- I've got no further questions.

7 **REDIRECT EXAMINATION**

8 BY MR. MOWRY:

9 Q But you never saw her walking or moving or
10 anything else?

11 A No, sir.

12 MR. MOWRY: Okay, thank you, sir.

13 THE COURT: You may step down. Thank you
14 very much, sir.

15 The State may call its next witness.

16 MR. MOWRY: We call Dana Nemr.

17 THE COURT: Come forward, ma'am, to be
18 sworn, please.

19 WHEREUPON,

20 **DANA NEMR,**

21 having been duly sworn by the Clerk, testified
22 as follows:

23 THE COURT: Ma'am, once you're seated
24 please state your name and spell your last name for
25 us please.

SW - D. NEMR - DIRECT

1 THE WITNESS: My name is Dana Nemr,
2 N-E-M-R.

3 THE COURT: Mr. Mowry, it's your witness.

4 MR. MOWRY: Thank you very, much Your
5 Honor.

6 THE COURT: Yes, sir.

7 **DIRECT EXAMINATION**

8 BY MR. MOWRY:

9 Q Ms. Nemr, by whom are you employed
10 currently?

11 A Prisma Health, previously known as
12 Greenville Health System.

13 Q And which of their places of employment or
14 places of medical care do you work?

15 A I work in the emergency department at the
16 Greenville location in the GI lab in Oconee County.

17 Q Okay. So you work in two different
18 locations; is that right?

19 A Yes, sir.

20 Q With regards to this case you were
21 concerned with your employment in the ER; is that
22 right?

23 A (No verbal response.)

24 Q What is your job? What work do you do
25 with Prisma Health?

SW - D. NEMR - DIRECT

1 A I'm a registered nurse for Prisma Health
2 in the emergency department and for the past three
3 years I've been in the charge nurse role.

4 Q And what does that, what does that
5 indicate?

6 A Charge nurse helps with staffing for the
7 day, gives everybody their assignments. When
8 something like the event that happened on
9 March 28th, we are the ones that are called to the
10 trauma bay to either help with the victims, the
11 patient at bedside or to do charting. Or if we get
12 a call EMS is coming in with an unresponsive
13 patient, we go bedside with that nurse. Critical
14 patients, we assist with and just help out the
15 department in general.

16 Q Okay. So typically the charge nurse, is
17 that more or less a supervisory role?

18 A Yes, sir.

19 Q The more experienced, more longer term
20 nurses would be in that role; is that correct?

21 A Yes, sir.

22 Q Okay. What sort of education and training
23 do you have to become a registered nurse?

24 A I've got my four year degree bachelor of
25 science in nursing.

SW - D. NEMR - DIRECT

1 Q Where did you receive that?

2 A USC Upstate.

3 Q How long ago? I don't mean to date you or
4 anything?

5 A 2012.

6 Q 2012. So you've been a nurse for seven
7 years; is that right?

8 A Seven years, uh-huh.

9 Q What sort of certification do you have to
10 go through to become a registered nurse? Is there
11 any process?

12 A You have to pass your nursing boards to
13 get your license, and then to work in the emergency
14 department we need ACLS training which is beyond LS,
15 which is just basic CPR, PAL certification, stroke
16 certification.

17 Q And you have all of those; is that right?

18 A Yes, sir.

19 MR. MOWRY: Your Honor, I would offer her
20 as an expert in emergency nursing.

21 THE COURT: Any objection?

22 MR. STODDARD: No objection.

23 THE COURT: Without objection she'll be
24 designated as such. You may proceed.

25

SW - D. NEMR - DIRECT

1 BY MR. MOWRY:

2 Q Ms. Nemr, you were on duty on the morning
3 of March 28th ---

4 A Yes, sir.

5 Q ---2018; is that right?

6 A Yes, sir.

7 Q Tell us what happened at the hospital in
8 Greenville. Tell us the process you went through.

9 A At Greenville Memorial we have something
10 called the COMM center. It's our communications
11 room where every EMS truck calls in report of what's
12 coming in. So that's when we're first notified that
13 there was a MVA, motor vehicle accident, with a
14 vehicle striking two highway workers and the two
15 gentlemen that were struck were the level one
16 traumas. The defendant was not considered a trauma.
17 So those two gentlemen were brought to the trauma
18 bay, and that's why they left the scene prior to the
19 defendant.

20 Q Where did you go, or what tasks did you
21 perform that morning?

22 A Initially, I was the -- the trauma bay has
23 two bays so I was on the second side, and I was
24 actually documenting on the gentleman that survived
25 the incident.

SW - D. NEMR - DIRECT

1 Q Okay. So you saw Mr. Howell that morning;
2 is that right?

3 A Yes, sir.

4 Q What can you tell us about his condition?

5 A He was in excruciating amount of pain. He
6 was very, very loud.

7 Q Okay.

8 A And on the other side of the bay was
9 silence.

10 Q That was Mr. Ivey?

11 A Uh-huh.

12 Q Did he ever regain consciousness?

13 A Not that I'm aware of.

14 Q All right. Did you also have any
15 interaction with Ms. Tackett that day?

16 A Yes, sir. She was brought into the
17 section of the emergency department called the
18 A-pod, and I believe she was in room 2 or 3. And as
19 a charge nurse, when a legal draw is requested it's
20 my duty to draw that blood, or collect the urine,
21 which either they have asked for.

22 Q Okay. What did you do in this case?
23 Which did you do?

24 A Drew her blood.

25 Q When you talk about a legal draw, are

SW - D. NEMR - DIRECT

1 their different types of blood draws that you might
2 make?

3 A Yes. A legal draw is when an officer has
4 requested it and it goes through the chain of
5 custody. We've got to follow a certain protocol,
6 paperwork, et cetera.

7 Q And did you do that in this case?

8 A Yes, sir.

9 Q How much blood are you supposed to draw
10 for a legal draw?

11 A Two, two vials. No, yeah.

12 Q Okay. And did you do that in this case?

13 A Yes, sir.

14 Q Prior to doing that did you associate with
15 Trooper Gabriele that day, the officer that was in
16 here a few minutes ago?

17 A Not that I'm aware of, no, sir.

18 Q In any event you were present when her
19 rights were given; is that right?

20 A Yes, sir.

21 Q Okay. You were present when David Terry,
22 the other trooper was there; is that right?

23 A Yes, sir.

24 Q Okay. Did you go through any kind of
25 protocol to insure that you had Ms. Tackett's

SW - D. NEMR - DIRECT

1 permission to draw her blood?

2 A There's conversation carried out with the
3 patient. The defendant did not deny me drawing the
4 blood. She did not hesitate at all. She was very
5 accommodating.

6 Q Okay. What injuries did you note about
7 her?

8 A I did not see any injuries. The
9 defendant, she did have a C-collar, cervical collar
10 on, but that's a precaution for pretty much anybody
11 comes in on a high speed MVA.

12 Q Was there any kind of concussion protocol
13 that was done, any kind of observation for that?

14 A I believe that the physician on that day
15 did do some head exams on her such as a CT exam
16 which were all ---

17 Q And -- I'm sorry.

18 A I'm sorry, which were all negative.

19 Q Okay. As a matter of fact, do you have
20 your notes or the hospital records for this
21 encounter?

22 A I do not, sir.

23 Q If I handed you this, does this appear to
24 be the notes?

25 A Yes, sir.

SW - D. NEMR - DIRECT

1 Q Okay. I believe on page 51 with all those
2 notes, what can you tell us about that page?

3 A This page includes her medication
4 administration record. Is that what you're looking
5 for?

6 Q Yes, ma'am. Were there any medications
7 that were administered to her at the hospital?

8 A There were none, no, sir.

9 Q Okay. What was her status? Was she
10 admitted to the hospital or was she released?

11 A She was discharged.

12 Q How long was she there, just
13 approximately?

14 A Can I look through this ---

15 Q Sure.

16 A ---to get the ---

17 Q Of course.

18 A Looks like she was discharged at 10:54.

19 Q Okay. So there was not a whole lot of
20 time that she was there; is that right?

21 A No. She came in with chief complaint of
22 shoulder pain so.

23 Q Okay. Who did you turn the blood over to?

24 A The officer that requested it.

25 Q Okay. Thank you, ma'am. That's all I

SW - D. NEMR - CROSS

1 have.

2 THE COURT: Mr. Stoddard, you may
3 cross-examine.

4 **CROSS-EXAMINATION**

5 BY MR. STODDARD:

6 Q In addition to shoulder pain didn't she
7 complain of neck pain and chest pain?

8 A Yes, sir.

9 Q In fact, it's got that as diagnosis I
10 believe?

11 A And reflux and cigarette dependence.

12 Q In a whiplash injury where your brain gets
13 kind of squashed around inside your head, that
14 doesn't show up on a CT scan, does it?

15 A Not that I'm aware of.

16 Q That would need additional testing;
17 wouldn't it?

18 A Yes.

19 Q If someone were to have a, I think it's
20 called a TI. Do you know what a TI is?

21 A Yes, sir.

22 Q What is that?

23 A It's what in layman's term a ministroke.

24 Q Ministroke. If someone has a ministroke
25 and then is later brought to the ER, is that

SW - D. NEMR - CROSS

1 something that would catch in the tests that were
2 done on Ms. Tackett?

3 A The CT scan probably would have showed the
4 history of a small blood clot.

5 Q Is it possible could have missed that?

6 A It's possible.

7 Q If she just had a event where her blood
8 pressure dropped from she fainted, would that show
9 up in any of the tests?

10 A No, sir.

11 MR. STODDARD: I've got no further
12 questions.

13 THE COURT: Redirect?

14 MR. MOWRY: No further questions, Your
15 Honor.

16 THE COURT: All right, ma'am, you may step
17 down. Thank you very much.

18 Wish to excuse the witness?

19 MR. MOWRY: Yes, sir.

20 THE COURT: Any objections to her being
21 excused?

22 MR. STODDARD: No, sir.

23 THE COURT: Ma'am, you're free to go at
24 this time. Thank you for coming today.

25 I ask the attorneys to approach briefly.

1 (WHEREUPON, counsel approached the
2 Bench for an off-the-record discussion.)

3 THE COURT: All right, ladies and
4 gentlemen, we've reached the point where I'm going
5 to take a lunch break at this time. It's about
6 12:00, good time to stop for you folks. There are
7 some matters that I'm going to take up with the
8 attorneys that I have to do outside of your hearing
9 during the lunch hour so I'm going to give you a
10 longer break than the people in the courtroom will
11 get and then I'll ask you to come back once we've
12 completed that. So I'm going to ask you to be back
13 in the jury room by 1:30. We should be in a
14 position to start shortly thereafter. We'll try to
15 get our work done as quickly as possibly so we can
16 move on.

17 You know my instructions as you leave the
18 courthouse. Do not discuss the case with anyone,
19 don't allow anyone to discuss it with you, don't try
20 to gather any information on your own. Don't listen
21 to, watch, or read any media report. I'm from
22 Spartanburg and I don't listen to or watch the local
23 media here except when I'm town. I understand there
24 may be some stories running so it's very important
25 that you don't watch, listen to, or read any of

1 those reports during the trial. Again, if anyone
2 tries to contact you concerning your service on the
3 jury, I would ask that you report that to us as soon
4 as possible. Be back in the jury room 1:30. We'll
5 hope to be able to start shortly thereafter. Thank
6 you very much. You're free go at this time.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 11:57 a.m.)

9 THE COURT: Again, I'd ask the attorneys
10 to approach just a second.

11 MR. MOWRY: Your Honor, just on the
12 record, Mr. Gabriele is working third and he's got
13 to work tonight.

14 THE COURT: Okay.

15 MR. MOWRY: I would ask that he be
16 excused. He may want to stick around, I'm not sure.

17 THE COURT: Any objection to his being
18 excused?

19 MR. STODDARD: No objection.

20 THE COURT: Okay, you're free to go if
21 you'd like, sir. Thank you.

22 (WHEREUPON, a Bench conference was held.)

23 THE COURT: All right we're in recess
24 until 1:00. We'll resume at that time to start
25 considering some matters. 1:00. Thank you very

1 much.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: All right, I was informed by
4 the State that the next witness may require a
5 proffer.

6 MR. MCMAHON: Yes, sir.

7 THE COURT: Yes, sir, I'll be happy to
8 hear from you.

9 MR. MCMAHON: All right, Trooper Terry,
10 come around, please.

11 THE COURT: Sir, if you'll come forward,
12 let's put you under oath. Place your left hand on
13 the Bible, raise your right hand.

14 WHEREUPON,

15 **CHARLES D. TERRY,**
16 having been duly sworn by the Clerk, testified
17 as follows:

18 THE COURT: Have a seat, please, sir.
19 Once you're seated state your name, please.

20 THE WITNESS: Charles David Terry, Jr.

21 THE COURT: Thank you.

22 Your witness.

23 MR. MCMAHON: Thank you, Your Honor. Your
24 Honor, may it please the Court.

25 **PROFFER EXAMINATION**

1 BY MR. MCMAHON:

2 Q You are currently employed by the South
3 Carolina Highway Patrol?

4 A That's correct.

5 Q For what period of time have you been so
6 employed?

7 A I've been with the highway patrol since
8 2014 until current, and before that I started my law
9 enforcement career in Simpsonville in 2004 to 2009.
10 Then I went to Mauldin police from '09 to '14.

11 Q So your law enforcement experience begins
12 in 2004?

13 A 2004, yes, sir.

14 Q And it's currently, it tracks on until
15 through Mauldin and all, then the patrol starts in
16 2014; is that correct?

17 A That's correct.

18 Q And it's been consistent throughout?

19 A That's correct.

20 Q What rank do you currently hold in the
21 highway patrol?

22 A Lance corporal.

23 Q And I'm gonna try to cut to the chase. Do
24 you have any specialized training particularly in
25 the field of drug recognition?

1 A Yes, sir, I've been through a class called
2 drug recognition expert.

3 Q All right. And when did you first go
4 through that class?

5 A The class was held in 2010.

6 Q All right. And that was prior to you
7 being a trooper?

8 A That's correct.

9 Q You were with Mauldin at that time; is
10 that correct?

11 A That's correct.

12 Q All right. Can you tell us the type of
13 training you received in this course known as drug
14 recognition experts, the purposes of that course?

15 A Yes, sir.

16 Q For purposes of this testimony.

17 A Yes, sir.

18 Q All right.

19 A The course consists of they say pre-- it
20 consists of three phases in a sense. One of the
21 first phases, you know, preschool, you take a 16
22 hour course where you're kind of introduced to the
23 course with various training topics relating to drug
24 recognition. After that, once you pass a test from
25 that class you go on to what I would call the main

1 course; and it's going to be more or less a
2 week-and-a-half, almost two weeks work week, so
3 you're looking at about seven to eight days' worth
4 of material where you learn about -- we learn seven
5 different drug categories to recognize. We will
6 also learn a 12 step process where we do hands-on
7 evaluations with a person that we suspect is either
8 impaired from alcohol or drugs or both or possibly
9 have a medical issue. We'll look at this person
10 through the 12 step process with the individual and
11 come to a conclusion if they're under the influence
12 upon those seven drug categories or have a medical
13 issue.

14 Q How are you selected to attend this
15 course?

16 A The way I was selected was I was
17 recommended was by somebody who was already in the
18 course with the Mauldin Police Department.

19 Q Let me go back, if I can call it phase
20 one, two, and three. Phase one, I believe you
21 characterized as a kind of preschool?

22 A Yes, sir.

23 Q Is that right?

24 A That's correct.

25 Q And how long is that phase one, that

1 preschool?

2 A That's 16 hours so it'd be about two days.

3 Q Where is that presented at?

4 A They've kind of broke it up differently
5 over the years. The way I took my preschool is it
6 is directly before the DRE school. The purpose of
7 the preschool is to gather more or less an overlying
8 knowledge, learn overlying knowledge of what you're
9 going to learn during the DRE school. There are
10 some failures there that they won't make it to the
11 DRE school.

12 Q Well, I don't know where this comes from
13 or where I'm from or I'm smart enough to go to the
14 school to even attend the school, is that ---

15 A That might be one way to put it.

16 Q That might have been the way they put it
17 in my -- but I don't know. You got to pass that
18 phase initially?

19 A That's correct.

20 Q Is that right? Where was it presented at?

21 A That course was actually in Columbia at
22 the Criminal Justice Academy.

23 Q All right. You just give us very
24 generally and briefly, what did that consist of and
25 what were the type of professors?

1 A The instructors are law enforcement
2 officers. They have been through the DRE program
3 before. They took the training, then eventually
4 cross on to be DRE instructors. The training
5 topics, they would include learning about the seven
6 drug categories that ---

7 Q And that was in preschool?

8 A This is in preschool, yes, sir.

9 Q And the seven drug categories so you would
10 be presented pharmacological or scientific
11 information about those seven categories?

12 A Yes, sir.

13 Q What type of professors or instructors
14 presented that information?

15 A It would be the, the instructors with the
16 DRE program.

17 Q All right. They had been DREs and were
18 now also DRE instructors; is that correct?

19 A That's correct.

20 Q And this was, I believe you said 16 hours,
21 is that ---

22 A That's correct, 16 hours.

23 Q All right. And how are you tested to see
24 if you pass that phase to go to the next phase?

25 A They do have a written test. I don't

1 recall how many questions, but it was a pretty
2 thorough test. It's at least an hour long.

3 Q Primarily what would you have been tested
4 on in that pre-course stage?

5 A The knowledge that you learn from the
6 instruction from the 16 hour course.

7 Q And the focus of that knowledge was the
8 seven drug categories?

9 A A good bit of it was seven drug categories
10 and you learn some about physiology.

11 Q Human physiology?

12 A Yes, sir.

13 Q In other areas besides the drug categories
14 and human physiology, is there other areas in the
15 preschool?

16 A Yes, sir, there's, you know, just it
17 covers the topics how drugs will react with the
18 body. It's nothing too in-depth at that point. The
19 DRE school or phase two really goes in depth. It's
20 an overlying, kind of touches the surface.

21 Q And there were students in that preschool
22 that didn't get the opportunity to go to the next
23 phase; is that correct?

24 A If I remember correctly there wasn't any
25 failures in my class, but there have been failures

1 with it before.

2 Q There have been failures in those classes.
3 You got to meet the standard?

4 A That's correct.

5 Q To go to phase two?

6 A That's correct.

7 Q All right now, and you passed preschool
8 and you went to phase two?

9 A That's correct.

10 Q And give us a brief and overall view of
11 phase two.

12 A Phase two is very in depth. We, again,
13 you're gonna have instructors that are certified,
14 that are DRE instructors, and this course is
15 nationally recognized through NHTSA, International
16 Association of Chief of Police, so certified through
17 them and recognized through them. You learn
18 in-depth about the DRE program and how it was
19 founded and how it was validated.

20 Q And how was it founded?

21 A It actually was founded by officers with
22 Los Angeles Police Department. They were looking
23 for a better way to determine drug impairment; and
24 they actually, they formed with doctors and did a
25 lot of research. They actually did some field

1 validation studies with one place including John
2 Hopkins University where they did field validation
3 studies where they actually did experiments with
4 people that were on certain types of medications to
5 see what signs and symptoms they exhibited while
6 they took these medications.

7 Q And from these origins and Los Angeles
8 Police Department, what decade was that?

9 A 1970s.

10 Q In the 1970s. It has gone forward from
11 that origin?

12 A Yes, sir.

13 Q Is that correct?

14 A That's correct.

15 Q And do you know if these programs exist in
16 all our states in America now?

17 A There is, every state in this nation I
18 believe does something with a DRE program, whether
19 or not it's an activity program within every state,
20 I'm not exactly sure; but most states are doing
21 this. In fact, I think there's even different
22 countries around the world that recognize this DRE
23 program.

24 Q And you've mentioned International Chief
25 of Police and such like that. How are they

1 committed to this program and other federal
2 agencies?

3 A So my understanding NHTSA and
4 International Association of Chief of Police, they
5 would have a say in recognizing the standards of the
6 program and how it's overseen, how to make sure that
7 it's a valid thing.

8 Q All right. And it's exacted as a tool for
9 law enforcement to use with the proper background in
10 scientific foundation; is that correct?

11 A Yes, sir, that's correct.

12 Q All right now, I take it in phase two
13 you're talking about the history of it, the origins
14 of it. And what else, what else in phase two
15 building up over phase one?

16 A Yes, sir. Phase two, again, phase one we
17 learn, you touch the surface on those seven drug
18 categories and we go in very detailed about signs
19 and symptoms to look for, general indicators to look
20 for for people that are on these seven drug
21 categories. We, within the drug recognition program
22 we do break it down to CNS depressants and then the
23 CNS being the central nervous system. CNS
24 depressants, CNS stimulants, hallucinogens,
25 associated anesthetics, narcotic analgesics, and

1 inhalants and cannabis. So we'll recognize when we
2 do a 12 step process and then, again, we also learn
3 the 12 step process during that step phase two, that
4 meat and potatoes, the DRE school. And we do the 12
5 step process and learn to do that during that second
6 phase.

7 Q Do you have your chart of those seven
8 categories?

9 A I do.

10 Q May I see it, please?

11 A Yes, sir.

12 MR. MCMAHON: Your Honor, I would like to
13 offer this as a Court's exhibit solely for the
14 purposes of this.

15 THE COURT: Any objections?

16 THE CLERK: No, sir.

17 THE COURT: All right, it will be received
18 as Court's exhibit for purposes of this proffer.

19 (Court's Exhibit Number 1 was marked
20 and made a part of the record.)

21 BY MR. MCMAHON:

22 Q And this really looks like a lot of a
23 foundation of what you study and what you learn in
24 phase two; is that correct?

25 A That's correct. This matrix here, a lot

1 of stuff we do, we can refer back to the matrix to
2 help us.

3 Q And across the top of the seven
4 categories?

5 A That's correct.

6 Q And then down are the various ---

7 A You have matrix ---

8 Q ---indicators and such like that; is that
9 correct?

10 A That's correct.

11 MR. MCMAHON: Your Honor, I would make a
12 clean copy so notations on the back, none of which I
13 can read. But I can make a copy before I hand it up
14 to the judge.

15 THE COURT: Is this what you just marked?

16 MR. STODDARD: Yes, sir.

17 MR. MCMAHON: It has nothing to do with
18 anything, but I ---

19 MR. MOWRY: It's already in earlier as a
20 Court's exhibit.

21 MR. MCMAHON: Well, I move ---

22 THE WITNESS: All right, this exhibit ---

23 THE COURT: We just put it in, but I think
24 you just noted there is writing on the back.

25 MR. MCMAHON: I didn't want it to, not

1 direct your attention.

2 THE COURT: Get the clerk to make a copy
3 for us.

4 MR. MOWRY: We've got it right here.

5 THE COURT: Okay, that will be fine.

6 BY MR. MCMAHON:

7 Q All right. So, the basic of what you're
8 studying is a seven category indicators,
9 observations you may make and such like that; is
10 that right?

11 A That's correct.

12 Q Additionally, what are you studying in
13 this phase two as I call it?

14 A Phase two mentioned a little bit about a
15 12 step process to learn the 12 step process in
16 phase two to learn how to administer it. The 12
17 steps, I'll read them out to you. The first step
18 would be a breath test. The second step would be
19 the DRE doing the interview. The arresting officer
20 ---

21 Q Let me slow you down just a little bit or
22 speed myself up perhaps is what I should do. Is
23 that a copy of the protocol you actually conducted
24 on Ms. Tackett in this case?

25 A It is.

1 Q In fact, that's not a clean copy. That's
2 a copy of hers.

3 A Yes. This is the form we use for that 12
4 step process.

5 Q And before we get to anything to do with
6 Ms. Tackett, is that a standard protocol that had
7 been approved, created, approved, and is used by law
8 enforcement throughout our country by DRE officers?

9 A It is.

10 Q That's the document whether you're an
11 officer or state trooper here or state trooper in
12 Alaska or park ranger in Texas?

13 A That's correct.

14 Q They use that same 12 step protocol on
15 each and every individual that you request to do a
16 drug recognize evaluation ---

17 A That's correct. That is the same process.

18 Q All right. And are you introduced in that
19 in phase two?

20 A That's correct. We learn the 12 step
21 process within that phase two.

22 Q Okay. And how, what other areas do you
23 address in phase two?

24 A Drug combinations will be another thing we
25 learn. A lot of times people will take those seven

1 drug categories, they may be taking more than one
2 drug category and we'll learn how to read those
3 while doing that 12 step process.

4 Q And other areas you may learn in phase
5 two?

6 A The administration of that 12 step
7 process. One thing we would do is actually an
8 alcohol workshop. We, you know, we can't give
9 anybody -- well, we learn what's in the drugs or
10 anything like that ---

11 Q Like we did in data master school or in my
12 time you drink one day, I drink the next, assisting
13 each other?

14 A That's correct.

15 Q You can't do that with drugs?

16 A That's correct (indiscernible.)

17 Q All right. So, how -- do you have to pass
18 phase two to go to three?

19 A Yes, sir, it's a written test in phase two
20 as well.

21 Q And so there's a test on that?

22 A That's correct.

23 Q During that test have you already
24 conducted the 12 step protocol on folks?

25 A No, that would be a phase three.

1 Q All right. So you don't really have a
2 population, you can't do it by actor to conduct a 12
3 step protocol at that point?

4 A We do some mock evaluations during phase
5 two; but you know, you don't have anybody that's on
6 any type of drugs in phase two.

7 Q All right. So then you go to, you have to
8 pass phase two, you go to phase three?

9 A That's correct.

10 Q Is there a name for phase three?

11 A Phase three would be the field
12 certification.

13 Q Okay.

14 A We used to do a field certification in
15 Phoenix, Arizona, Mericopa County Sheriff's Office.
16 Currently they're doing their field certification in
17 Jacksonville, Florida. And what this entails, more
18 or less, you're going to go to -- I just went to the
19 training they had in Jacksonville earlier this year.
20 But what that entails is you actually deal with
21 people that are actually on drugs, and you'll go
22 through the 12 step process and then verify if, you
23 know, they'll give a urine sample and that urine
24 sample will be measured for what drug they have
25 within their system by an instructor. And then

1 that, the student while they're doing that 12 step
2 process, they won't be told what drugs are in the
3 system of the person they're doing the evaluation on
4 until after they're done with that and after they've
5 made their call as far as what type of drugs they're
6 on.

7 Q Would you always know in advance, I'm just
8 asking from a validity point of view -- well, where
9 do you get this population from? Where is this
10 population of individuals that get the drugs?

11 A The, within Jacksonville it is a community
12 center where there are volunteers from the community
13 actually that ingested drugs that come in there.

14 Q Do they advertise to get these volunteers
15 to come in or is it an ongoing program or?

16 A Within Jacksonville I've only been once to
17 that location. I'm not sure how, if they're
18 advertising or -- it's a community center that does
19 offer help to people.

20 Q How about Arizona?

21 A In Arizona, as for I did multiple field
22 certifications at Mericopa County is at -- it's
23 within their jail facility and it's people that have
24 been arrested in Mericopa County that are within
25 their intake facility and they happen to be on drugs

1 as well and volunteer to come work with that process
2 while they await being arraigned.

3 Q So that's kind of how you get the
4 populations of individuals known to have ingested
5 drugs?

6 A That's correct.

7 Q Then what do you do once you get these
8 individuals? Do you protocol?

9 A The 12 step process that we learned within
10 the phase two. We'll do that 12 step process and
11 then at the end of that 12 step process the
12 evaluator that's already been trained will make
13 their call as far as what drug category that person
14 is on.

15 Q And you do that on your own?

16 A Yes, sir.

17 Q You don't do it with another student?

18 A There is times when they will have a
19 student, two students together. One will scribe and
20 the other one will be hands-on with the 12 step
21 process.

22 Q But the scribe is not being tested?

23 A The scribe could be being tested at some
24 points.

25 Q Right.

1 A But it's up to, you know, each individual
2 to make the call.

3 Q Oh, so you're making separate and distinct
4 calls?

5 A Yes, sir.

6 Q Is that correct?

7 A Yes, sir.

8 Q Now did you do this in Phoenix?

9 A Yes. When I went through original school
10 I did my field certification in Phoenix, Mericopa
11 County.

12 Q And did you also do it in Jacksonville on
13 re-certification?

14 A When I went to Jacksonville is in
15 instructor capacity?

16 Q I see. And how many of these tests on the
17 original one, original times you went in 2010 would
18 you have to conduct?

19 A I'm sorry?

20 Q How many protocols would you have to do?

21 A Have to do?

22 Q Have to do?

23 A Each, every two years your certification
24 is up to being renewed. Within that two year period
25 you're required to do four evaluations.

1 Q No, I'm asking the first time you went to
2 the school ---

3 A Okay.

4 Q ---in 2010. How many protocols did you
5 conduct?

6 A Okay, at the field evaluation it's 12.

7 Q 12.

8 A We're required to do 12.

9 Q And did you conduct those field
10 evaluations?

11 A I did.

12 Q And make certain opinions about whatever
13 drug category of those seven that individual would
14 be in?

15 A I did.

16 Q About how long would it take in average to
17 conduct a drug recognition evaluation per person?

18 A Per person it can vary. Some of them can
19 be as quick as 30 minutes and some I've had take as
20 long as an hour-and-a-half. It can be depending on
21 what type of substance they've taken or some
22 depressants and some narcotics, it slows them down
23 so it may take the test longer to do to get the
24 cooperation.

25 Q So it's long, it's hard to get an average,

1 may not be able to, and it depends upon the person
2 and on potentially the drugs that has been ingested?

3 A That's correct.

4 Q Is that right?

5 A That's correct.

6 Q Did you pass that phase?

7 A I did. I did.

8 Q Now how'd I, how would an instructor, how
9 would I, how would anybody know if you were right or
10 wrong?

11 A We do keep records of, you know, our tests
12 that we do. We have what's called a rolling log,
13 and we'll document on the rolling log what we call
14 and was actually found through toxicology.

15 Q All right, so, but I mean, if you're
16 trying to tell me, well, they've got this
17 combination of central nervous system depressants or
18 they've got this combination of stimulants, how in
19 any way is that confirmed?

20 A I'd say through the toxicology, toxicology
21 test that -- in most cases, you know, during a field
22 certification, the way we find out if we're right or
23 wrong, the toxicology is done there at the scene.
24 More or less, they're going to be given a urine
25 sample in a cup, and the instructor they maintain

1 who is on what, you know, with that urine sample and
2 they find out the results after the test. In a real
3 world application here in South Carolina we do get,
4 you know -- let's say a DUI arrest. When we get a
5 urine or blood sample that toxicology is sent off to
6 SLED in Columbia and then that will kind of
7 corroborate our findings there.

8 Q So you had your initial certification.
9 And how many times have you been re-certified?

10 A I believe just as of this year it's four
11 times I've re-certified.

12 Q All right. And you passed your initial
13 and you passed all your re-certifications; ---

14 A Yes, sir.

15 Q ---is that right?

16 A That's correct.

17 Q How many cases are you, drug recognition
18 cases, have you been assigned to -- well, I guess,
19 I'll go back to 2010. I guess, I'll go back when
20 you're on probably ---

21 A The 2010 is when I took the phase two and
22 the phase three actually carried over to January so
23 2011.

24 Q Okay.

25 A That, there's just a gap between doing a

1 class in Columbia and then a field certification in
2 Phoenix. So 2011, my rolling log documents 122
3 cases that I've been involved in either hands-on
4 directly or as an instructor.

5 Q How many hands on directly?

6 A I'd have to go back and count, I can't
7 remember.

8 Q Well, let me try to ask it this way. More
9 hands on directly or more as an instructor?

10 A They're close to being even. I'd say I've
11 done, I have a lot as instructor since I became an
12 instructor.

13 Q Sure. And all those, both, I guess on
14 both the instructor and the hands on and whatever
15 you call, whatever your call was, whatever your
16 opinions were, give us an indication of accuracy of
17 those.

18 A So the accuracy of what we consider to be
19 accurate is one thing when you have a multiple drug
20 category. If you call three drug categories, then
21 toxicology comes back with two of those three, then
22 that would be a correct call. So all of those just
23 looking at it loosely, there's only two calls that
24 were relatively inconsistent.

25 Q And two out of 122?

1 A Yes, sir.

2 Q Whether by way of instructor or in the
3 field?

4 A Correct.

5 Q Is that right?

6 A That's correct.

7 Q And did you go back and -- well, I guess
8 it's hindsight. When I say 50, not 20/20 -- but
9 anyway, did you go back and look at those two and
10 kind of, you yourself?

11 A Yes, sir. The funny thing with toxicology
12 sometimes, like, I'll give you an example. One of
13 the toxicologies we made the call for cannabis.
14 That's marijuana. Someone was smoking marijuana.
15 If we have learned through that class sometimes you
16 may not get a toxicology result for marijuana as a
17 positive result because if they don't smoke it
18 regularly, it may not show up in their urine system.
19 If they recently smoke it and they just give a urine
20 sample close to when they smoke it, it's possible
21 there's a whole bunch of different types of
22 synthetics for each specific type of synthetics. If
23 they're not testing for each specific type of
24 synthetic marijuana you won't find that.

25 Q Did you review that on yourself?

1 A Yes.

2 Q Particularly yourself; is that right?

3 A That's correct. I want to make sure I'm
4 accurate.

5 Q Was there another one or?

6 A There was one where I called CNS
7 depressant and CNS stimulant came back. One
8 possible explanation for this when you take a CNS
9 stimulant you will actually, your body introduces
10 natural chemicals to try to make you come off that
11 stimulant while you are on it. And when that
12 stimulant comes out of your system, that chemical is
13 still there so it's actually going to make you
14 appear in depressed state. So you might, it make
15 mimic some of the signs or symptoms of that
16 depressant.

17 Q And you learned from those two mistakes?

18 A Absolutely.

19 Q Congratulations, I wouldn't have learned
20 from mine, glad to hear that. So the other 120, I
21 believe you said, they were confirmed frequently?

22 A Yes, sir.

23 Q Okay, all right. You ---

24 MR. MCMAHON: Judge, I can go into now, I
25 don't want if you want me to or not, whether or not

1 to go into the protocol that he conducted on
2 Ms. Tackett at this point.

3 THE COURT: Do you feel that's necessary?
4 Any objection you may have to him being qualified as
5 an expert?

6 MR. STODDARD: Oh, yeah, I object.

7 THE COURT: To what?

8 MR. STODDARD: To him being qualified as
9 an ---

10 THE COURT: Oh, I understand, but he's
11 saying he can go into what he did specifically in
12 this case. He's finished with putting his
13 qualifications on the record, ready to get into the
14 facts of the case.

15 MR. STODDARD: Oh.

16 THE COURT: And I'm more concerned with
17 the admissibility of the testimony at all. Now, if
18 you feel I need to listen to what he did in this
19 particular case, we can do that. I mean, I'm not
20 saying he can't do it. If you feel it necessary for
21 him to go through that given whatever objection
22 you're gonna have.

23 MR. STODDARD: At this point, first of
24 all, they've got the burden of proof and he's an
25 expert I suppose. If you've heard enough at that

1 point ---

2 THE COURT: I think I've heard -- have I
3 heard what you're going to put up to qualify him as
4 an expert to do the testing in ---

5 MR. MCMAHON: Yes, sir.

6 THE COURT: Okay.

7 MR. STODDARD: Now there's some aspects of
8 this particular test that I might want to bring out
9 that I think he didn't follow the 12 step process
10 but...

11 THE COURT: I'm not going to limit your
12 cross-examination if I let him testify.

13 MR. STODDARD: But at this point what I'm
14 saying is in essence on this issue like directed
15 verdict, if you feel he's not qualified I don't need
16 to cross-examine him, if that makes sense. But if
17 you ---

18 THE COURT: No, no, I'm gonna give you
19 opportunity to cross-examine.

20 MR. STODDARD: Okay.

21 THE COURT: This is kind of like when
22 somebody, the way I'm looking at it, someone puts up
23 someone as an expert in the trial while the jury is
24 sitting here and then I say you have any objection
25 and you say yes, I do, you want to cross-examine on

1 his qualifications. So right now that's where we
2 are as far as I'm concerned. He's put up his
3 qualifications; and if you wish to cross-examine him
4 on his qualifications, this is your chance to do
5 that.

6 MR. STODDARD: And that, I would hope that
7 would include what he did in this particular case.

8 THE COURT: Well, if you're gonna do that
9 he's gonna have to put that proof up himself.

10 MR. MCMAHON: I was trying to be brief.

11 THE COURT: Well, I understand that, but I
12 don't think he wants to hear the whole thing because
13 he's going to object to the whole thing. Is that
14 right, Mr. Stoddard?

15 MR. STODDARD: Well, I'm going to object
16 to him being qualified as an expert. And part of my
17 objection is, even if he's, even if he does this
18 test directly, he would be qualified I think he did
19 this test incorrectly, he didn't qualify.

20 THE COURT: See, that goes to the weight
21 of his testimony and whether or not the jury should
22 believe it or not believe it. Now that doesn't go
23 to his qualification to perform the test and/or to
24 be qualified is the way I look at it.

25 MR. STODDARD: Well, then I don't need to

1 hear ---

2 THE COURT: So where we are ---

3 MR. STODDARD: Given that reasoning, yes,
4 I'll ask a few questions.

5 THE COURT: Then I'll let you
6 cross-examine on his qualifications to testify as an
7 expert on this issue.

8 MR. MCMAHON: Thank you.

9 THE COURT: Yes, sir.

10 MR. MCMAHON: Thank you.

11 **CROSS-EXAMINATION**

12 BY MR. STODDARD:

13 Q One of the things, I believe that one of
14 the questions you're going to be asked to give an
15 opinion on is whether ultimately Ms. Tackett was
16 impaired by these drugs; is that correct?

17 A Yes, sir.

18 Q Not just the presence of them. Now, I
19 understand in your training you would identify that
20 this person has drugs in their system and then
21 toxicology would confirm that; but is there any way
22 that you were able to confirm that just the presence
23 of a drug doesn't necessarily make you impaired?
24 How do you confirm that they're impaired by the
25 drug?

1 A I believe there were some other
2 circumstances where the other officer during that 12
3 step process I had an interview with at the time,
4 Trooper Gabriele, he told me about his observations.

5 Q You're talking about this particular case?

6 A Yes, sir.

7 Q I'm talking about in your testing you
8 would do your 12 steps and then get toxicology
9 report, if you said that they had CNS stimulants and
10 they had CNS stimulants, that would confirm your
11 test is accurate; but that doesn't necessarily mean
12 they were impaired. In fact, you mentioned one case
13 where you identified a C-- a depressant when it was
14 actually a stimulant and you believe, well, they
15 were, they had had come off of it, they wouldn't
16 have been impaired, would they, by a CNS?

17 A No, I would disagree because if they're,
18 you know, because that they've taken that CNS
19 stimulant and when they're coming off they could
20 still be impaired, not necessarily psychoactive at
21 the time, but they're still in impaired state and
22 not safe to drive a vehicle.

23 Q You mentioned some studies. Have you read
24 those studies or have you just heard about them?

25 A We were instructed about the studies

1 during a course. I didn't, you know, go in detail
2 about them. We were just told there were studies to
3 validate the protocol.

4 Q Basically you've learned how to do these
5 12 steps, you're told they're accurate, but you
6 haven't read the studies or done any research
7 yourself?

8 A Well, I don't know if my research myself
9 would be doing the 12 hands on in the field, that
10 kind, what I like to stay is that kind of turns the
11 light bulb on for what we've learned in the class.

12 MR. STODDARD: Judge, I have no further
13 questions.

14 THE COURT: Anything further at this point
15 in time?

16 MR. MCMAHON: No, Your Honor. Just, and
17 like I say, I'd just focus on the issue, two issues.
18 The field, the field of expertise would be his
19 qualifications as an expert in that field so I don't
20 have any other questions on those issues.

21 THE COURT: All right, well, let's --
22 I'll, your objection, so I'll hear your objection.
23 You can state the grounds of your objection.

24 MR. STODDARD: Your Honor, I would think
25 for him to be qualified as an expert you need some

1 kind of evidence that this 12 step process can
2 accurately lead to an opinion on an impairment, and
3 I've heard very little evidence, if any, on that. I
4 understand the methodology if you follow these 12
5 steps. It may detect the presence of certain drugs
6 in your, in the subject, but I haven't seen how they
7 connect that to impairment and how they, how that
8 works. Nor have I heard any evidence of what --
9 I've heard there's studies that confirm this, but I
10 haven't read, you know, nobody has read the studies
11 or produced that information, the data. I haven't
12 heard an expert on the process, what makes this a
13 field of expertise. First there's just, you know,
14 some, something that's not science.

15 THE COURT: All right, I'll hear from the
16 State as to why I should accept him as an expert.

17 MR. MCMAHON: Yes, sir. Part of my
18 reliance is going to be those items, those documents
19 that were presented in-camera.

20 THE COURT: Yes, sir. I will put on the
21 record that I have received a copy of a case U.S.
22 versus Everette, 270 -- excuse me, 972 Federal
23 supplement 31313 from the District of Nevada, a 1997
24 case. And I've also received I believe, it looks
25 like a -- is it a law review article I believe?

1 MR. MCMAHON: Yes, sir.

2 THE COURT: It looks like it's from the
3 Widener Law Journal.

4 MR. MCMAHON: Yes, sir.

5 THE COURT: It's 26 Widener Law Journal
6 229. So I have received those and I have reviewed
7 those prior to this hearing.

8 MR. MCMAHON: Yes, sir. And in those,
9 just as far as the field of expertise, I think
10 there's very much a foundation in both the law
11 review article and Everette that looks at the
12 different standards courts now look at for areas of
13 expertise. You know, the Frye, as we all remember
14 it and of course it's still out there bubbling
15 around, the Frye test and of course, then we end up
16 with Daubert and Council and it really gets blurry.
17 Now the only person I know that can clarify it in
18 mind very quickly is my, Judge John Kittredge with
19 White, (ph) I know there are many others. But just
20 as an area of expertise, reading all that history
21 from the '70s and bringing it forward and how it's
22 been accepted in so many courts that it's been
23 presented in, I don't know if it's ---

24 THE COURT: Well, it's been accepted and
25 then it's has been rejected by some courts.

1 MR. MCMAHON: But they're looking at it on
2 two different levels. One level is says an
3 acceptance as an expert in that field. In another
4 level it's been the Frye test. It clearly, you
5 know, I, boiled up in my mind the 1923 case of Frye
6 was the polygraph, and I had forgotten that,
7 probably remembered it several times over the course
8 of my life. And obviously there is a scientific
9 foundation for this. Whether or not, I mean, that
10 protocol is regularly accepted in this field of
11 expertise, and it's -- and I don't want to say
12 always about anything, but most times it is
13 forensically confirmed with what we'll end up having
14 in this case.

15 THE COURT: Well, and that's one thing I
16 want to be sure I get on the record. My
17 understanding during my in-camera discussions with
18 the attorneys is that there was, and there was
19 testimony that a blood draw was taken and forensic
20 test was done on that blood draw.

21 MR. MCMAHON: Yes, sir.

22 THE COURT: And I believe I heard that you
23 intend to present the results of those tests, which
24 I'm not ruling on it prior to coming in; but it
25 seems to be a more standard way of handling

1 toxicology results in court and more than likely
2 will get admitted if it's done properly.

3 MR. MCMAHON: SLED Agent Bugden is the
4 forensic toxicologist that will testify to the
5 results that are consistent with his opinions. And
6 Judge, part of that protocol, and perhaps I, you
7 know, perhaps I'm too quick from the hip sometimes,
8 part of the protocol is for the DRE officer to
9 interview the arresting officer. It's in the record
10 already.

11 THE COURT: Let me just talk with you,
12 just us talking for a second.

13 MR. MCMAHON: Yes, sir.

14 THE COURT: As I was listening to what he
15 does and when I've read this, I'm thinking about and
16 I'm reminded of the sobriety tests that are done on
17 the side of the road.

18 MR. MCMAHON: Yes, sir.

19 THE COURT: Which are tests to test
20 peoples' motor skills, their reactions to certain
21 things, their abilities to function. And based on
22 those standard examinations, tests, whatever you
23 want to call them, an officer is in a position to
24 make a decision then as to whether or not he
25 believes there's probable cause for an arrest. Now

1 of course, that doesn't prove the case one way of
2 the other. That's the reason they do a subsequent
3 test, a breath test, using chemical analysis to
4 verify those results. So it struck me that what we
5 have here may be something akin to that where an
6 officer is trained to do certain standardized tests,
7 things like taking somebody's blood pressure,
8 talking to somebody, interviewing them, observing
9 them, which may indicate the need of a more
10 standardized toxicology, which did happen in this
11 case, a blood draw was done.

12 MR. MCMAHON: I think that's why from the
13 California coming forward over the decades they went
14 and got that standardized protocol on all officers
15 in this program across the country because the same
16 way ---

17 THE COURT: The defense in this case asked
18 about the Horizontal Gaze test. There's a standard
19 way of doing that, ---

20 MR. MCMAHON: Yes, sir.

21 THE COURT: ---the they way do that.

22 MR. MCMAHON: Yes, sir.

23 THE COURT: I hear what you're saying.

24 MR. MCMAHON: And that didn't go to the
25 ability of the officer to testify to it; but the

1 quality of presenting that test to the defendant
2 which is what was cross-examined on, did you have
3 the second, did you have the right timing, the right
4 math ---

5 THE COURT: I'm gonna interrupt you a
6 little bit to take a minute to do that again.

7 MR. MCMAHON: Oh, yes, sir.

8 THE COURT: Now, Mr. Stoddard, you've
9 heard what I just said and about what I'm
10 considering. You got any comment about that?

11 MR. STODDARD: Well, I mean, I think he
12 can testify as to his observations. I, you know,
13 one of the things I think I observed earlier today
14 when we were discussing this, when it comes to
15 alcohol, you know, a layman's allowed to give an
16 opinion on whether you're impaired on alcohol. I
17 don't know if a layman is allowed to do that on
18 drugs because drugs are a different animal; and so
19 when an officer does field sobriety testing and then
20 says in my opinion he's drunk, it's not really an
21 expert opinion necessarily. So, I don't, I think he
22 can testify to doing these tests and what he
23 observed, but I'm not sure about drawing a
24 conclusion that they're impaired, especially an
25 expert opinion.

1 THE COURT: Anything else from anybody?

2 MR. MCMAHON: Well, Judge, by the same
3 token, when you look at rule 701, 702, and
4 assisting, assisting the jury, if you've got
5 somebody that has the training, the education, the
6 experience to track coondogs or what have you, you
7 know, we can say, you know, I guarantee the fella at
8 the drive-thru where I was raised, he could tell if
9 somebody was drunk from 50 yards away because he was
10 the one serving him all the time, you know what I'm
11 saying.

12 THE COURT: I know what you're saying.

13 MR. MCMAHON: And I don't know what the
14 prohibition is just when you change it from alcohol
15 to drugs, why does it, why does it tie somebody's
16 hand if you see different behavior and say no, he
17 wasn't acting like a drunk man.

18 THE COURT: To somewhat respond to your
19 position, there are so many different drugs that can
20 be taken and people these days -- I don't know what
21 the tox screen shows in this case. I think I've
22 got an inkling that it may show multiple drugs, ---

23 MR. MCMAHON: Yes, sir.

24 THE COURT: ---some of which may give
25 different signals when you take 'em which makes it a

1 little more difficult to be able to say, well, I got
2 this signal and it's gotta be that one. I was
3 reading in one of the articles that I was reading
4 here that they were -- maybe it's in LA where there
5 were how many people involved in an accident who
6 later on were shown to have drugs in their system
7 ---

8 MR. MCMAHON: Medication in the system.

9 THE COURT: --and they were talking about
10 there was multiple drugs, ---

11 MR. MCMAHON: Yes, sir.

12 THE COURT: ---lots of different drugs
13 involved.

14 MR. MCMAHON: Yes, sir.

15 THE COURT: So I think that's common
16 occurrence that appears from what I read in this
17 article so I, that's the reason I have a concern
18 with it. That's the reason I would find that a
19 toxicology screen of a blood draw would be more
20 accurate with the way it's determining what's
21 someone's blood screen at any given time because
22 it's gonna separate those things out, you're going
23 to know exactly which drugs.

24 MR. MCMAHON: Just like if you were
25 talking about family kin. They might not be first

1 cousin, but they're all at the same reunion, Judge.
2 That's all I'm saying, that his opinion is based on
3 his field of expertise that he's been trained, he's
4 been taught, and it's verified by someone I don't
5 want to say more or less -- differently trained,
6 differently educated, the forensic toxicologist.
7 And that's just mirroring each other. That's no
8 more than cooperation.

9 THE COURT: Okay, I understand your
10 position. All right, my ruling is going to be -- I
11 feel a little bit, I'm reluctant to have him
12 qualified as an expert although he certainly has
13 more training than the average person would have in
14 this field. He has more experience than that
15 average person would have in this field, and for
16 that reason I am not going to prevent him from
17 testifying about the test that he ran or the results
18 of those tests or as far as the level of blood
19 pressure was, things of that nature. I will allow
20 him to testify that based on that testing, he felt
21 that there was sufficient evidence of drug use to
22 justify further testing and recommend that. But I
23 don't want to use, and I'm not gonna allow him to be
24 qualified before the jury as an expert. I don't
25 think there's been sufficient peer review of this

1 method. There's not sufficient literature that
2 establishes its veracity. I have concern with the
3 number of drugs even in the case from what I know
4 there were multiple drugs in the system. His
5 ability to be able to differentiate between those or
6 pick them out, I have my doubts about the veracity
7 of that and I feel that it would lend -- for him to
8 be classified as an expert before the jury it would
9 -- whether we would charge them on that or not, I
10 feel that jurors quiet often give deference to
11 people qualified simply because we qualify them that
12 way. That's the reason we give the charge for them
13 not to do that that because we know that. So at
14 this point in time I will allow him to testify
15 concerning the testing he did. I'll allow him to
16 testify that based on that testing the results
17 indicated that there had been drug use and drugs in
18 her system and that he certainly would have asked
19 for and requested additional testing, which was done
20 in this case, so I'll allow him to testify.

21 MR. MOWRY: Your Honor, could I just get
22 clarification on one of the issues. Some of the
23 procedures that he went through in the protocol, we
24 have a forensic toxicologist -- well, I'll call her
25 expert -- that will testify at the close of our case

1 and part of her opinion is derived from the steps
2 that he took and the results that he gained from
3 those steps so she incorporated those ---

4 THE COURT: Well, you know, but it,
5 somebody that's qualified as an expert can base
6 their opinion even on hearsay if they want to.

7 MR. MOWRY: Yes, sir.

8 THE COURT: So that would not prevent her
9 from using his test results as a basis for her
10 opinion. He certainly can attack whether that's
11 proper or not, but that'd be up to his
12 cross-examination. But I won't limit her from doing
13 that.

14 MR. MOWRY: Thank you very much, Your
15 Honor.

16 THE COURT: All right. Now anything
17 further before we get the jury back in?

18 MR. MCMAHON: Judge, I don't, I just, I
19 just want some kind of guidance, clearance, and
20 boundaries. I cannot go into his training and
21 experience as an officer ---

22 THE COURT: Oh, yes, sir, you can go into
23 the fact that he's been trained how to conduct these
24 tests. You can, but I don't want him referred to as
25 a drug recognition expert.

1 MR. MCMAHON: Right, and that was my
2 next -- I can refer to him as a drug recognition
3 evaluator. That's what ---

4 THE COURT: What you can say is have you
5 been trained on drug recognition using certain
6 tests.

7 MR. MCMAHON: Okay. I just didn't what to
8 step over any boundaries.

9 THE COURT: I just don't want him to tell
10 that jury as an expert within some field that I'm
11 declaring that there's -- my understanding I haven't
12 heard that any of this has ever been accepted in
13 courts of South Carolina, ever been qualified that
14 way.

15 MR. MCMAHON: And I can go into some
16 detail with his experience and training that would
17 make him more qualified.

18 THE COURT: Yes, sir, you have a right to
19 say have you been trained in how to perform these
20 tests; but I don't want him referred to as a drug
21 recognition expert training.

22 MR. MCMAHON: Yes, sir.

23 THE COURT: Let's don't go there.

24 MR. MCMAHON: That's why -- but I'll stay
25 away from that, yes, sir.

1 THE COURT: But you can establish the fact
2 that he, when he takes blood pressure, he knows how
3 to do it, he learned how to do it somewhere.

4 MR. MCMAHON: Yes, sir.

5 THE COURT: You can do that.

6 MR. MCMAHON: And I can go through his
7 whole protocol.

8 THE COURT: Yes, sir. I don't have any
9 problem saying what are the steps you took and what
10 did you look at when you went over this.

11 MR. MOWRY: If I can just state for the
12 record, Your Honor, every field of expertise had its
13 first testing in court.

14 THE COURT: Oh, absolutely. And I
15 understand in looking at the results I've been able
16 to glean from the research I've done, myself and
17 what I've been given, the courts are somewhat split
18 on this and maybe at some point in time somebody
19 will bring some clarity to this for us.

20 MR. MOWRY: Thank you, Your Honor.

21 THE COURT: Okay. That's kind of the way
22 I'm looking at it.

23 MR. MCMAHON: May the witness step down?

24 THE COURT: Oh, yes, we're going to take
25 about five -- we're going to start back at 2:00.

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1 Let's just break until 2:00 and then we'll start
2 back. We're in recess until then.

3 (Whereupon, a lunch break was taken.)

4 THE COURT: You ready to go?

5 MR. MCMAHON: Yes, sir.

6 THE COURT: You ready to proceed?

7 MR. STODDARD: Yes, sir.

8 THE COURT: Let's bring the jury in.

9 Officer, we'll call you back up.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 2:00 p.m., and
12 the following proceedings commenced in
13 open court.)

14 THE COURT: All right. I trust everybody
15 had a good lunch break. Did any of you have any
16 difficulty in following my instructions during the
17 lunch break? If any of you had any problems please
18 stand. All right, the State is in the process of
19 calling its witnesses.

20 You may call your next witness.

21 MR. MCMAHON: Thank you, Your Honor. The
22 State calls Trooper Terry.

23 THE COURT: Sir, come forward and be
24 sworn, please. Place your left hand on the Bible
25 and raise your right hand.

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1 WHEREUPON,

2 **CHARLES D. TERRY,**
3 having been duly sworn by the Clerk, testified
4 as follows:

5 THE COURT: Have a seat, please, sir.
6 Once you're seated state your name and spell your
7 last name for us.

8 THE WITNESS: Charles David Terry, Junior.
9 Last name Terry, T-E-R-R-Y.

10 THE COURT: Thank you.

11 Counsel, your witness.

12 MR. MCMAHON: May it please the Court.

13 THE COURT: Yes, sir.

14 **DIRECT EXAMINATION**

15 BY MR. MCMAHON:

16 Q Trooper Terry, first off, give us a
17 background and history of yours in law enforcement.
18 Tell us when you first started and when you ended up
19 on patrol and such.

20 A I started law enforcement in 2004 with the
21 Simpsonville Police Department, and in 2009 I went
22 to Mauldin Police Department. And in 2014 I became
23 a highway patrol with the South Carolina Highway
24 Patrol. No gaps in between, just straight through.

25 Q And how many years of that, is that in law

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1 enforcement?

2 A That's probably about 15.

3 Q 15 years in law enforcement? And how many
4 number of years you been on patrol now?

5 A Just over five now, have completed five.

6 Q Now when you start at patrol do you start
7 at particular rank?

8 A Basic trooper.

9 Q Basic trooper?

10 A Yes, sir.

11 Q And you can be, rise up through the ranks
12 so to speak?

13 A Yes, sir.

14 Q What is your rank now?

15 A It's called lance corporal and you obtain
16 that after five years of service with no
17 disciplinary issues.

18 Q And where are you assigned?

19 A I'm assigned to Greenville County.

20 Q And was that referred earlier as troop
21 number eight?

22 A That's troop three.

23 Q Troop eight is a different one. And is
24 that the location you've been assigned the entire
25 time with the patrol?

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1 A Yes, sir.

2 Q Since your time either back prior to
3 patrol and in your history of law enforcement, I
4 take it you graduated from the Criminal Justice
5 Academy?

6 A I am.

7 Q And also the South Carolina Troopers
8 Academy, is there such a creature?

9 A There's different training through the
10 highway patrol so, yes, I did graduate there.

11 Q So deputies and perhaps city police would
12 go to the Criminal Justice Academy, and of course,
13 different than just troopers?

14 A Yeah. The way they do it now is troopers
15 will go to the same Criminal Justice Academy as
16 police officers and sheriffs deputies, and then the
17 highway patrol will have a supplement type of
18 academy. And the weeks kind of vary. In the last
19 few years they've kind of changed.

20 Q Have you since -- during your years in law
21 enforcement have you had any additional training
22 besides basic law enforcement?

23 A Yes, sir. I have taken several courses
24 like DAR. One course includes drug recognition
25 course, standardized field sobriety testing.

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1 Q All right. And I want to talk to you a
2 few minutes specifically about the drug recognition
3 course. Now is, what generally, what type of course
4 was that?

5 A This is a course that helps us detect
6 impaired drivers. You know, you have people most of
7 the time when hear DUI you think of alcohol. This
8 course helps me as an officer on the road to detect
9 people that are impaired from drugs as well as
10 alcohol.

11 Q What agency were you with when you went to
12 this drug recognition course?

13 A I started the course in 2010 so I was with
14 Mauldin Police Department when I took it.

15 Q All right. And do you, if you were
16 successful in completing that course are you
17 certified?

18 A Yes, sir.

19 Q In drug recognition?

20 A Yes. For the purpose of that course, yes,
21 sir.

22 Q And do you have to re-take followup
23 courses every year, every two years, to stay
24 certified?

25 A You have to maintain so many evaluations.

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1 At those evaluations critiqued by an instructor.

2 Q How many hours was the initial course?

3 A Initial course, I believe it's right
4 around 80, right about two weeks.

5 Q And where are those -- where one location
6 or different location where the course is held?

7 A What they have is three, there's three
8 phases. The first phase would be the preschool
9 that's about 16 hours. That held at the Criminal
10 Justice Academy. And then the phase two is the main
11 part where you learn a lot in a classroom setting.
12 That's also at the Criminal Justice Academy. That's
13 in Columbia.

14 Q All right. And do you have to test out to
15 graduate from preschool to be able to go to school;
16 is that correct?

17 A That's correct. There's the pass or fail
18 test for that 16 hour preschool. If you fail you
19 cannot go to the main school.

20 Q All right. And I take it you passed, you
21 went on and you graduated to certified?

22 A That's correct.

23 Q Now what, again, what subject matter, how
24 do they delve into drug recognition? I mean, what
25 do you do, what are you taught?

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1 A You're taught pretty in depth about seven
2 basic drug categories that we will break it down.
3 You know people will take different types of drugs,
4 whether it be marijuana, cocaine, methamphetamine,
5 and that can impair your ability to drive. So we'll
6 break down those different types of drugs into seven
7 broad categories. We'll learn about those seven
8 drug categories within that course, and then we will
9 also learn a 12 step process that will deal with any
10 person we suspect of driving under the influence of
11 drugs. We'll go through that 12 step process with
12 that person and determine what drug categories we
13 believe they're under.

14 Q And let me show you this document and ask
15 you, is that the seven drug categories that you're
16 referring to?

17 A It is.

18 Q And is that the document you taught, you
19 worked on, you studied and graduated out of this
20 drug evaluation school?

21 A Yes, it is.

22 MR. MCMAHON: I'd mark this only as
23 State's whatever number for identification purposes
24 only at this time.

25 THE COURT: It'll be marked for I.D.

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1 purposes please.

2 (WHEREUPON, State Exhibit Nos. 47 and 48
3 were marked for identification only.)

4 BY MR. MCMAHON:

5 Q Were all members of the Mauldin Police
6 Department students at this school?

7 A No.

8 Q Are all state troopers students and/or
9 graduates of this school?

10 A No.

11 Q Besides you, are there others that have,
12 troopers they have attended this school?

13 A There are some other troopers, yes, sir.

14 Q How many other, how many are there that
15 have attended?

16 A For the statewide I believe all
17 agencies -- the number, it fluctuates from time to
18 time. I believe it's around 120 is the last time I
19 heard for statewide.

20 Q Statewide?

21 A Statewide, yes, sir, that law enforcement
22 agency in South Carolina.

23 Q How many troopers are there statewide, if
24 you know?

25 A That number fluctuates too. The last

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1 number I've heard it's around 800 troopers.

2 Q 800?

3 A Yes, sir.

4 Q And only about 100 of them have attended
5 this school?

6 A Yes, sir. 120, that'd be for every
7 agency.

8 Q Oh, so that's for every agency. That's
9 sheriff ---

10 A Sheriff's department.

11 Q Law enforcement, maybe wildlife.

12 A Yes.

13 Q Or game warden I guess you're supposed to
14 call them now, game warden, such like that. All
15 right, now, as a result of this training -- well,
16 before I get to that, this school, does it have a,
17 what you call a standard protocol that you would
18 follow in conducting drug evaluations on an
19 individual?

20 A Yes. We learn about a 12 step process and
21 during this 12 step process is the standard
22 protocol.

23 Q So, if you were conducting a drug
24 evaluation protocol on say, Mr. Mowry -- he seems to
25 be our model or what have you -- you would conduct

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1 this 12-point evaluation; is that right?

2 A That's correct.

3 Q And if you did it on any other person in
4 this courtroom if you would follow the same
5 protocol?

6 A That's correct, same steps.

7 Q And if there was another trooper in South
8 Carolina, let's say down in Jasper County, and he
9 had been to this course, what protocol would he
10 follow?

11 A That would be the same 12 step process.

12 Q And I can go on and on, but it's the same,
13 any drug officer who's been to this course would use
14 the same protocol no matter what state he may be in?

15 A That's correct. Other states would be
16 recognized.

17 Q Whether he worked for the State, County or
18 local agency; is that right?

19 A That's correct.

20 Q Whether he was a sheriff, park ranger,
21 game warden, what have you; is that a fair
22 statement?

23 A That's correct.

24 Q Now as a result of that specific training,
25 from time to time do you receive a call from other

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1 troopers to assist them in whatever incident they
2 may be investigating?

3 A Absolutely. We get some that will call
4 for advice in a particular situation. We'll have
5 someone that's arrested and they suspect they're
6 under the influence of drugs, then I could go
7 through this 12 step process with them.

8 Q And I'm gonna back up just a minute.
9 Let's talk both about life in general and life as a
10 law enforcement officer. I mean, do you feel in
11 your experiences that you have in life you would
12 have some ability to recognize whether or not an
13 individual may or may not be under the influence of
14 alcohol?

15 A Yes, I have.

16 Q And taking that another step, based on
17 your experience in life and perhaps prior to being
18 in law enforcement, do you think you have any
19 ability or experiences that perhaps assist you in
20 evaluating somebody's conduct or behavior that may
21 or may not be under the influence of drugs?

22 A Sure, absolutely.

23 Q And let's taking that on, -- I'm not
24 saying law enforcement officers have more experience
25 necessarily, but sometimes perhaps different,

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1 perhaps being exposed to it more frequently, do you
2 ---

3 MR. STODDARD: Judge, I'm going to object,
4 leading at this point.

5 MR. MCMAHON: I wasn't even, I didn't even
6 ask the question.

7 MR. STODDARD: That's kind of my whole
8 point.

9 THE COURT: Well, I'm gonna say that he
10 was leading. Leading is a question that suggests an
11 answer. I don't find that that was leading. You
12 may proceed.

13 BY MR. MCMAHON:

14 Q If you're going back to that, you know,
15 like I say, maybe exposure or what have you, do you
16 feel like you as a law enforcement officer that
17 perhaps maybe you are attuned or have more
18 opportunity to view it to determine whether or not a
19 person is under the influence?

20 MR. STODDARD: Now I'm going to object to
21 the leading.

22 THE COURT: No, sir, overruled.

23 BY MR. MCMAHON:

24 Q To determine whether or not an individual
25 is under the influence of alcohol?

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1 A Yes, absolutely.

2 Q Or drugs?

3 A Absolutely.

4 Q Or a combination perhaps?

5 A Yes, sir, absolutely.

6 Q And you're like every other law
7 enforcement officer, aren't you, you're not
8 infallible, correct?

9 A That's correct.

10 Q Or every other person on earth I guess,
11 correct?

12 A That's correct.

13 Q Now do you think that training assisted
14 you in recognizing individuals under the influence?

15 A I did.

16 Q Of drugs?

17 A Absolutely it did.

18 Q All right now, were you called on a
19 particular day, I think it was 28th of March, 2018,
20 when John was struck and Zack was killed, to the
21 particular location?

22 A Yes, sir, I was given a call that day.

23 Q How did you receive notification and where
24 were you directed to go?

25 A Supervisor requested me to go to

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1 Greenville Memorial Hospital and meet with Trooper
2 Gabriele.

3 Q All right. Did you know Trooper Gabriele
4 before that day?

5 A Not before that day, no.

6 Q Do you know what county he worked in?

7 A He worked in Laurens County.

8 Q And that was troop eight?

9 A Troop two.

10 Q That's troop two. I'm gonna find troop
11 eight before I sit down. But you don't know him?

12 A No, sir, I didn't know him.

13 Q And you were called to Greenville
14 Hospital. And was that for purpose of conducting a
15 drug evaluation?

16 A Yes, it was.

17 Q And what information were you given, what
18 you were responding to?

19 A The information I had there was a serious
20 collision within Laurens County. I didn't know very
21 much detail before I went to the hospital and talked
22 specifically. But serious collision, they suspected
23 the driver of the vehicle could be under the
24 influence of drugs so that's when I made my way for
25 Greenville Memorial Hospital to access what I could.

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1 Q And because of your training, additional
2 training, is that why you were directed or assigned
3 to respond?

4 A Yes, sir. That was my normal work day and
5 they have knowledged I've had this drug recognition
6 training so they directed me to go to Greenville to
7 assist with what I could.

8 Q All right now, what were your plans? How
9 were you gonna proceed when you got to the hospital?

10 A One of the first things is to make contact
11 with the officer, get more information or as much
12 information as I can about what he observed on the
13 scene. So I made contact with Trooper Gabriele.

14 Q All right. Is that an -- preface that is
15 where you're going to conduct your protocol?

16 A I'm sorry, where?

17 Q Were you going to conduct the standard
18 protocol?

19 A Yes, I was.

20 Q Same protocol you would perform on
21 Solicitor Mowry, correct?

22 A Yes, sir.

23 Q Or any other person?

24 A That's correct, and the 12 steps.

25 Q And you call that 12 steps. Is there a

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1 form you go by those steps ---

2 A There is a form.

3 Q ---in that protocol?

4 A We do have a form that we use to help us
5 with that.

6 Q And is this a copy of the protocol that
7 you conducted on 3/28/18?

8 A Yes, it is.

9 Q All right. And as I look over to the
10 left, it appears it starts number 1, kind of a third
11 way up on the left. You follow it on down 1 through
12 6 on page 1. That's 7 through 12 on page 2, is that
13 right?

14 A That's correct.

15 Q All right. Now what is, what is this --
16 let's kind of walk through, talk through the
17 protocol. Before the protocol up above you get
18 certain information identifying information?

19 A Yes.

20 MR. STODDARD: Judge, could I see what
21 he's looking at?

22 THE COURT: Certainly, yes, sir.

23 MR. STODDARD: I've got a copy, I think,
24 but I think there might be. If he's going to
25 publish parts of this I think it ought to be in

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1 evidence.

2 MR. MCMAHON: I offer this in evidence.

3 THE COURT: Any objection?

4 MR. STODDARD: No objection.

5 THE COURT: Has it already been marked? I
6 don't believe it has. Let's mark it.

7 (WHEREUPON, State Exhibit No. 49 was
8 marked for identification and admitted
9 into evidence.)

10 THE COURT: You may proceed.

11 MR. MCMAHON: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 BY MR. MCMAHON:

14 Q Now referring to what's been marked
15 State's Exhibit 49. Is this your copy of what is
16 indicated South Carolina Drug Influence Evaluation?

17 A It is.

18 Q And as far as down to the first indicator,
19 first number one, what's the actual information
20 above that? Share that with us and the jury.

21 A The information just above it, it has the
22 arresting case number, the Trooper Gabriele's, the
23 case number he associates with his reports. The
24 rolling log, that's a documentation number that I
25 use to maintain documentation of the drug influence

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1 evaluations that I do with certain people. And it
2 has my name, my agency, the arrest date, the time,
3 the time of the evaluation. About the time I was
4 notified about the time the evaluation started, my
5 D-- drug recognition, I'm assigned a number after
6 completing this course, the number I have, the
7 county of arrest, the location of the evaluation
8 which was Greenville Memorial. It has just above
9 that Ms. Pamela Tackett's information, her birth
10 date, and her driver's license number.

11 Q All right. And on a couple of those
12 indicators, what time were you notified to respond
13 to Greenville Hospital?

14 A It was about 10:25 in the morning.

15 Q And what time did you begin your
16 evaluation?

17 A The evaluation started about 11:10 in the
18 morning.

19 Q And that would have been when you first
20 saw Ms. Tackett or when you first began number 1 on
21 protocol?

22 A It's usually about the time when I'm going
23 to start number 1 on the protocol.

24 Q All right. Tell us in 1 through 12, did
25 you do each one of those steps?

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1 A There are some steps that I had to omit.

2 Q Okay, had to omit because of what reasons?

3 A She was confined to a hospital bed. She
4 had a neck brace on and she had IV in her arm so I
5 naturally couldn't have her stand up at that point.

6 Q So you couldn't administer because of
7 medical. She would not have been able to perform
8 because of whatever medical ---

9 A That's correct. Those specific steps you
10 have to omit.

11 Q Talk to me about number 1. What's the
12 first thing that every officer would do during a
13 drug evaluation for any individual in America, if
14 they had been trained like this.

15 A With the 12 step process the first thing
16 there would be the breath test. In this case, you
17 know, that's not an option because she's at the
18 hospital receiving treatment.

19 Q All right. So there's not a Breathalyzer
20 at the hospital?

21 A No, sir.

22 Q Most Breathalyzers are either in the
23 sheriff's office or detention centers?

24 A That's correct.

25 Q They all are manned by SLED at certain

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1 sites, not a hospital. So, so that would be a
2 reason you would not, you would eliminate number one
3 on the protocol?

4 A That's correct. There's no way to avoid
5 that.

6 Q Because of the location of the defendant?

7 A Correct.

8 Q Number 2, what about number 2?

9 A That was the interview of the arresting
10 officer which in this case was Trooper Gabriele.

11 Q And is that required to getting the
12 history from the arresting officer?

13 A That's correct.

14 Q Is that right? And how do you do that,
15 just conversation?

16 A Yes, sir. I ask him what he noticed at
17 the scene, try and get any field sobriety test he
18 may have given to the defendant, any specifics about
19 why he would suspect drug impairment versus alcohol
20 impair, if he noticed anything in the car, if he
21 noticed any statements by the person of suspect.

22 Q And that's what any drug recognition
23 officer trained like you are would do; is that
24 right?

25 A That's correct. That's the standard step

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1 right there.

2 Q And that conversation with you and the
3 officer that goes to the scene and observe
4 whatsoever he or she may have observed about the
5 defendant, is that important for y'all to receive to
6 assist you ---

7 A It is important.

8 Q ---in your drug evaluation?

9 A It is important.

10 Q And what was that conversation between you
11 and what, did Trooper Gabriele?

12 A Part of it included field sobriety test
13 that was given at the scene, her performance of it.
14 He told me that he noticed that she had Horizontal
15 Gaze Nystagmus.

16 Q Now Horizontal, that's the horizon, right?

17 A Horizontal.

18 Q That's this way.

19 A That's correct.

20 Q Is that right?

21 A That's correct.

22 Q All right, and that's Horizontal Gaze
23 Nystagmus?

24 A That's correct.

25 Q All right, and what did he tell you about

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1 that?

2 A He noticed when we do the Horizontal Gaze
3 Nystagmus test they're basically going to follow the
4 stimulus, finger or pen, and her eyes will follow
5 that finger or pen without moving her head. And
6 then their eyes, if they're the influence of certain
7 types of drugs or alcohol there will be an
8 involuntary jerking of her eye which they can't
9 control that. So he noticed six out of six pulls
10 for Horizontal Gaze Nystagmus in Ms. Tackett is what
11 he told me.

12 Q All right, now there are two other types
13 of nystagmus; is that correct?

14 A Nystagmus.

15 Q And is there a vertical?

16 A There is a Vertical Gaze Nystagmus where
17 you will actually raise the stimulus -- finger
18 and/or pen or whatever you have the person looking
19 at -- raised up, and there's an involuntary jerking
20 of your eye at that point as well if you're under
21 the influence of certain types of drugs and alcohol.

22 Q And is there another, a third type?

23 A Of those six clues, one clue which would
24 be one clue for each eye so it would be two clues,
25 lack of smooth pursuit where your eyes do not follow

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1 that stimulus in a smooth manner. One way to kind
2 of illustrate this, if you were to turn your
3 windshield wipers on on a dry windshield and they
4 kind of scrape across, if it goes smooth that's what
5 it should look like; but if it goes very choppy also
6 like a marble rolling across a piece of sand, that's
7 a clue of possible impairment. That would be your
8 lack of smooth pursuit. Then your maximum and
9 distinct nystagmus, that maximum deviation, that's
10 another clue for one in each eye, so that's another
11 clue. And the this onset nystagmus prior to
12 45-degrees would be three times. Again, that would
13 be your third clue. So he observed all those clues.

14 Q Now you take, you take the clues into your
15 consideration?

16 A Yes, sir.

17 Q And there could be some clues, correct,
18 just on the eyes, correct? And this is just coming
19 from history.

20 A Yes, sir.

21 Q Is that right?

22 A Yes, sir.

23 Q From the trooper?

24 A Yes, sir.

25 Q And they could be no clues, no words?

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1 A That's correct.

2 Q You're smooth tracking, you're not moving,
3 and you're up and down, right?

4 A That's correct.

5 Q And regardless of which side it's on or
6 whether it's present or not, you still are absent,
7 you still take that into your consideration, right?

8 A That's correct.

9 Q All right.

10 A Certain types of drugs will cause
11 horizontal gaze nystagmus. Certain types won't have
12 any affect with horizontal gaze nystagmus so it's
13 important to know if he saw it or not.

14 Q So not only is your school, your training,
15 assisting you in determining whether or not a person
16 may be under the influence of drugs, but can assist
17 you determining what type of drugs that may be under
18 the influence of?

19 A Yes, sir, that's correct. Like I
20 mentioned before, we've had seven drug categories
21 we're trained in recognizing where we can break down
22 to the different type of drugs into different drug
23 categories. For example, one drug category would be
24 central nervous system stimulants. That would
25 include cocaine, methamphetamine, and other types of

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1 drugs that may speed up your system so there's
2 different drug categories. So training helped me
3 recognize those different type of drug categories.

4 Q Protocol number three, preliminary
5 examination, would you explain that to us please.

6 A All right, during this 12 step process
7 preliminary examination is when you take a first
8 pulse. Certain types of drugs that can speed up,
9 raise or lower your pulse rate. At this time I took
10 a pulse. Also I, preliminary examination I'll just
11 have an initial interview or talking with the person
12 or suspect, in this case Ms. Tackett. I'll ask her
13 different types of questions like what time is it
14 that she believes it is and look at the actual time.
15 Other things like when is the last time she slept or
16 how long she slept. Oh, I also ask her if she's
17 sick or injured and taken certain types of
18 medications.

19 Q Now you've been taught before, you know
20 how to take somebody's pulse?

21 A Yes, we learned that in class.

22 Q And I think there's been some testimony
23 she might have a C-collar. What locale did you use
24 to take Ms. Tackett's pulse?

25 A We'll take it on the, right here near her

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1 wrist.

2 Q All right. And that, you've been taught
3 in the past?

4 A Yes, that's where we normally take it.

5 Q All right. And you got her pulse rate as
6 what?

7 A Seventy-two beats per minute.

8 Q What time was that?

9 A That's approximately 11:32 a.m.

10 Q All right. And there's some notation
11 under where you have the term, number 72 first
12 pulse. What is that writing on there?

13 A That is a, where we will ask what time it
14 is. We'll ask the person without looking at a watch
15 what time it is and then we'll record what time it
16 actually is.

17 Q Okay. And what was -- did she respond to
18 that?

19 A She did.

20 Q And what was her response?

21 A She replied around lunch time or around
22 11:00. The actual time was 11:32.

23 Q So those words, the writing, that's your
24 writing?

25 A It is.

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1 Q And that's around lunch time right there?

2 A That's correct.

3 Q And around 11, 11:32. Now where is she,
4 tell the jury where she was at, what her condition
5 is.

6 A She's still lying in the hospital bed with
7 that C-collar and has the IV attached.

8 Q All right. And then you have the date,
9 you asked her the date. And what was her response?
10 That next question I think is what it says.

11 A Yes, I will ask her what date it is and
12 28th of March is what she responded.

13 Q All right. And that was the correct date?

14 A That is.

15 Q You take all this into account?

16 A Absolutely.

17 Q All right. And what have you eaten today,
18 what's her response?

19 A After asking her what she'd eaten, she
20 replied french toast bites. I asked when and she
21 replied 8:15.

22 Q And then have you had, have you had to
23 drink when, what was her response?

24 A She replied that she had water, flavored
25 water and she replied all day.

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1 Q When did you last sleep?

2 A She replied to that, got up this morning.
3 And asked her for how long and she said from about
4 10 p.m. to 8 a.m.

5 Q Okay. And then -- y'all just had a
6 conversation.

7 A Yes. Some of these questions can be
8 important, especially with date and time. That can
9 lead you to certain type of drug categories might be
10 having an effect on her. For example, you have
11 someone that's slightly dazed, she might be taking a
12 stimulant type of medication that's keeping them
13 awake.

14 Q Stimulant type medication, would that be
15 something like cocaine or ---

16 A Cocaine, methamphetamine, yes, sir.

17 Q All right. And then you ask her are you
18 sick, injured, physical disability. Did you talk to
19 her about that?

20 A Yes, sir.

21 Q And what was her response?

22 A She said -- she first mentioned the car
23 collision that she was involved in and said she had
24 some chest pain associated with that. She did say
25 she has ongoing migraine headache. Just my personal

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1 observations combined with the hospital bed this
2 entire time. She also mentioned she has PTSD,
3 post-traumatic Stress Syndrome.

4 Q She's telling you that?

5 A She's telling me this.

6 Q What others?

7 A She also mentions that she has depression,
8 a multiple personality disorder.

9 Q Now what's the importance of these
10 responses?

11 A You know, a lot of times when people have
12 some type of a physical or maybe a mental disability
13 they take medication for it. Sometimes it might be
14 a self-medication, taking a illegal drug that's not
15 legally prescribed. Sometimes they're given
16 prescription medication. So it's a, you know, you
17 want to be aware of if they have any type of medical
18 disability. I'll give you another example. If
19 someone with back pain, that can be an alert to me
20 they may be taking some pain medication that might
21 be impairing to them.

22 Q Did you ask her if she was taking -- by
23 the way, did you see any indication of multiple
24 personality disorder while you were in her presence?

25 A No, I didn't see any.

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1 Q Did you ask her if she was taking any
2 medications?

3 A I did.

4 Q Did she respond to you?

5 A She did.

6 Q All right. What first medications she
7 indicated to you that she was taking?

8 A One of the first medications that she
9 mentioned she informed me -- she was taking several
10 medications. She said she couldn't remember -- the
11 nurse or hospital employee was there and had access
12 to that information so they pulled up some
13 information about what medications she was on. Then
14 after consulting with that, she did tell me she had
15 been taking Wellbutrin.

16 Q What type of drug is Wellbutrin?

17 A Wellbutrin, that would be a central
18 nervous system depressant. A lot of times that
19 would be taken for, as an antidepressant.

20 Q So a depressant, let me make sure I
21 understand the term. "I take it down or up," what
22 does that mean?

23 A With that as an antidepressant, that's
24 kind of a play on words. It's going to be under
25 your central nervous system depressant category.

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1 When you take a certain type of medication, it goes
2 in your body, it does a certain thing to your body.
3 Your body wants to naturally stay level. So when
4 you introduce this substance to your body, your body
5 is going to introduce natural chemicals to
6 counteract that and bring it back to level, so
7 that's why it's called antidepressant; but it acts
8 as a depressant on your body.

9 Q And let me make sure I understand your
10 response earlier. Ms. Tackett, she couldn't tell
11 you these drugs, she couldn't remember, then you
12 were able to get some medical records to assist you
13 in that; is that correct?

14 A That was a hospital employee that, there's
15 a computer in the same room. They pulled up the
16 file and we went over them with Ms. Tackett and the
17 hospital employee.

18 Q And the second, Klonopin, what type of
19 medicine is that?

20 A That's an anti-anxiety drug, sometimes
21 also known as Clonazepam. It's called Klonopin.
22 Those are for anti-anxiety. Usually it's a pretty
23 short lasting, it won't last.

24 Q Claritin?

25 A Claritin, that would be an antihistamine.

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1 You take that for allergies. This ---

2 Q That's the one you can buy -- sometime you
3 have to buy it sometimes behind the counter and
4 sometime you can just go down to the store and buy
5 it?

6 A Yes, sir. Regular Claritin you can by not
7 over the counter, you can buy right off the shelf.
8 But Claritin-D has your decongestant in greater
9 numeric. With Pseudoephedrine, you have to sign for
10 it at the counter and you get that over the counter.

11 Q What about the Effexor?

12 A Effexor, I believe that would be a muscle
13 relaxer and that would be also that central nervous
14 system depressant category.

15 Q Geodon.

16 A Geodon, I can't recall exactly that, but
17 I'm pretty sure that one would be within the central
18 nervous depressant category.

19 Q Tramadol?

20 A Tramadol, that would be within your
21 central nervous system depressant category as well.

22 Q Now any of those I've named so far, are
23 they pain medication? Any of those I named so far.

24 A The Geodon, I'm not a hundred percent sure
25 if that's gonna ---

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1 Q If you don't know, that's fine.

2 A Yeah, I'm not sure if it's related with
3 that or not.

4 Q Now did she indicate to you what she took
5 for pain?

6 A She did indicate to me that she does smoke
7 marijuana nightly for her pain.

8 Q Did she indicate that she was under the
9 influence of a doctor?

10 A Yes, she was under the care of a Doctor
11 Dent, a migraine specialist.

12 Q And what was her attitude, your
13 coordination, your observation of her speech
14 patterns, such as ---

15 A Her attitude was cooperative, kind of
16 relaxed and mellow. Coordination was sluggish, kind
17 of slow movement. Speech was slurred and at times
18 she was slow to respond to my questions. Maybe take
19 her a few seconds to answer or she wouldn't answer
20 the question I asked. I also noticed pale
21 complexion about her face.

22 Q All right. And then you have certain,
23 certain checkmark on there. Any of those in that
24 next box of that area significant as far as
25 evaluation of drugs?

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1 A Yes, sir. The blindness and corrective
2 lenses when using Horizontal Gaze Nystagmus test we
3 want to know if contact lenses are present; that
4 could pop out. Eyes and eyelids, these are
5 important in helping associate with drug categories.
6 I noticed watery eyes. Her eyes looked kind of
7 watery. Eyelids were droopy. Again, people may
8 with droopy eyelids. Certain drug types they can
9 have droopy eyelid. And red conjunctivi was noticed
10 also and what that would be. If you pull down the
11 bottom of your eyelids and it looks very deep red,
12 that's is a red conjunctivi and that is associated
13 with certain drug types as well.

14 Q What drug types?

15 A That one is very big for marijuana. If
16 you notice red conjunctivi, is usually associating
17 that with cannabis drug category which contains
18 marijuana in it.

19 Q All right now, anything else significant
20 about number three?

21 A Pupils were equal. A lot of times one of
22 the things that's significant about that if someone
23 is in a car accident and they've had a head injury,
24 the pupils may have a concussion and may not be
25 equal in size.

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1 Q All right, let's go to number four as far
2 as a eye examination. What's significant there as
3 far as drug evaluation?

4 A Eye examination, this is where you would
5 do that Horizontal Gaze Nystagmus test that I
6 mentioned before. When I conducted that I did
7 notice her eyes had a clue of lack of smooth
8 pursuit. One breached eye so that's two clues. I
9 also noticed the stint and sustained nystagmus,
10 maximum deviation. Basically that's where I hold
11 the top of the eye as far as she would look and her
12 eyelid would involuntary jerk, you can't control it.
13 Someone's eye will do that if they're under the
14 influence of certain types of drugs or medications.
15 I also noticed an angle 45 deals basically when I
16 start moving my finger of looking before to see what
17 we're looking at before we get to 45-degrees you'll
18 start to notice the jerking of her eye. And I did
19 notice that as well with this.

20 Q Are those indicators of drug intoxication?

21 A They are. If you want to look at those
22 seven drug categories, central nervous system
23 depressants will have that clue in it.

24 Q And those are what many of the drugs that
25 y'all discovered that she was taking?

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1 A That's correct.

2 Q Central nervous system depressant?

3 A That's correct.

4 Q And what was her responses like during
5 this time? As far as timing, how was she
6 responding?

7 A She was slow to respond at times.
8 Sometimes she may not respond to a question. But
9 I'll ask her a question, she may take a little bit
10 of time to respond.

11 Q What, if anything, did she say
12 additionally about smoking marijuana?

13 A She stated to me she smokes marijuana
14 every night for migraine headaches or to help her
15 with pain.

16 Q All right, and as we go to number five on
17 a protocol, divided attention test. What is that?
18 Explain that us please.

19 A Divided attention test, those are where
20 you will have someone more or less walk a straight
21 line, stand on one leg. You know, her being
22 confined to a hospital bed with a neck brace and IV,
23 you know, her care is more or less the primary thing
24 right there so we're not going to get the IV out.
25 We're not going to take the neck brace off to cause

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1 any further harm to her if she's injured so we'll do
2 what we can with that. You know, I can't have her
3 walk the line or stand on one leg. One of the
4 things that we did do in that, since she's laying
5 there, if she can close her eye and estimate,
6 estimate 30 seconds. One of the divided attention
7 test, we'll have someone ideally standing so we can
8 see if there's swaying. But you can also notice a
9 person's internal clock, how long they think time
10 is. I'll ask her to estimate 30 seconds, close her
11 eyes, estimate 30 seconds, and open her eyes and
12 tell me stop when she believes 30 seconds has
13 passed. She did estimate this in 42 seconds so
14 that's actually pretty significant with my
15 experience for this particular category so after 42
16 seconds she believed that was 30 seconds.

17 Q And that is significant?

18 A That is significant. The training will
19 indicate plus or minus five seconds as a threshold.
20 If they're over five seconds, then you want to
21 really start paying attention to that and that's,
22 you know, that's twelve seconds past 30.

23 Q All right, going to page 2. Were there
24 certain -- page 25, number 6. You were not able to
25 do the walk and turn, correct?

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1 A That's correct.

2 Q One leg stand was not completed.

3 A That's correct.

4 Q That was because of her condition.

5 A That's correct. Wouldn't make her get out
6 of hospital bed with a neck brace and IV out of
7 concern for her safety.

8 Q Her finger to nose?

9 A That would have to be done standing up as
10 well, but we'll have her close her eyes and bring
11 her finger to her nose. Again, we want to do that
12 when standing to evaluate her balance.

13 Q And then over to the right in this
14 category explanations of not doing because of her
15 condition.

16 A Right. I documented she's unable to
17 perform divided attention test in a hospital bed.
18 Blood pressure, that's actually a step further down.
19 I can explain that a little bit when we get to that
20 one.

21 Q All right. And then vital signs and
22 second pulse. What time did you perform the second
23 set of vital signs?

24 A So that would, the vital signs and pulse?

25 Q Yes, sir.

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1 A That would include your blood pressure.
2 Due to her having IV in each arm I did put a blood
3 pressure cuff on. I've been trained to take blood
4 pressure with blood pressure cuff and then the ear
5 piece of the thing that slips in right quick. But
6 she did have a hospital monitor with her vitals
7 attached to her; and at one point the blood pressure
8 was indicated at 113 over 69, which would be below
9 normal range. I also took another pulse at this
10 time. It was 68 beats per minute. That was
11 approximately 11:48 when we took that. And her body
12 temperature with a thermometer was 96.8-degrees
13 Fahrenheit.

14 Q All right. What was significant as far as
15 her vital signs and pulse as far as an indication of
16 a drug evaluation?

17 A As trained, normal range that we want to
18 look at is somewhere between 60 to 90. Now in my
19 experience, whenever I'm starting to take blood
20 pressure or pulse from people it tends to rise if
21 they're, you know, in their normal circumstances;
22 but if you're a law enforcement officer doing it.
23 So this one, it did seem normal in a lower range.
24 Her blood pressure was below the normal range, 113
25 over 69. 120 to 140 would be the normal range for a

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1 high number. And then 70 to 90 would be a normal
2 range for the bottom number so both those numbers
3 were low. Both a low blood pressure can indicate
4 the presence of a central nervous system depressant
5 as well.

6 Q All right. And going to number seven,
7 dark room and checks pupil size and injection
8 examination. Why is that important and what were
9 the results?

10 A Yes, sir. Again, being confined to a
11 hospital bed I couldn't take her into a -- what
12 we'll do with that actually step is we'll take them
13 into a room, turn out the lights, let their eyes
14 adjust to the darkness and then we'll introduce a
15 direct light and notice her pupil reaction to that
16 light. That can indicate certain drug types.
17 Unable to do that one because, again, she was in a
18 hospital bed.

19 However, in room light while she's laying
20 in the bed I can look at her eyes while she's in
21 normal room light. While looking at them and
22 measuring with just a card that more or less pupil
23 sizes. Her eye, pupil size was 2.5 millimeters
24 which in normal room light that's below the normal
25 range for pupil sizes. Again, a restricted pupil

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1 would indicate a presence of a narcotic analgesic
2 type drug in her system.

3 Q All right. Now I noticed on here you've
4 indicated dry mouth with ---

5 A Yes. During this ---

6 Q ---whitish green, I can't read that.

7 A Coating, yes, sir. During this particular
8 step also, I can check her nasal cavity and oral
9 cavity. That's basically I'll have her open her
10 mouth and stick her tongue out. A whitish green
11 color in the -- people smoke certain types of
12 substances like a cigarette, let's say, you're gonna
13 have a grayish color on the back of your tongue.
14 The hotter substance you have, you might have a
15 fever blister so that's one thing we're looking for.
16 But a whitish green coloring, if you're a green
17 color, that's indicative of smoking marijuana.

18 Q And then were able to check, step eight,
19 check for muscle tone?

20 A When I check for muscle tone I physically
21 squeeze on her muscle to see if it's flaccid in a
22 normal range or a rigid. Again, different drug
23 types will do different things with your muscle
24 tone. Since she had an IV in each arm I wasn't
25 going to be able to be squeezing on her arm to cause

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1 any harm to her.

2 Q Check for injection sites and third pulse.
3 That's in case somebody is taking a drug that
4 requires a needle to inject it?

5 A That's correct. I didn't notice any extra
6 needle injection. Of course, IVs were in her arm, I
7 didn't consider that anything negative. I didn't
8 notice any other injection sites as well.

9 Q What about interrogation, statements, and
10 observations?

11 A That would be step 10 of this 12 step
12 process. This is where I'd ask her, a lot of times
13 we'll have some people try and hide substances they
14 may be using. Ms. Tackett, she was very upfront and
15 honest about everything she was taking. She
16 mentioned multiple medications. She mentioned that
17 she had taken marijuana and does so on a regular
18 basis for an added treatment for her for pain and
19 migraine headaches. She says it helps with that.
20 Some other drugs she mentioned she was taking
21 Wellbutrin, Klonopin, Effexor. She mentioned she
22 prescribed her at 8:00 that morning. The Claritin
23 and Geodon, marijuana she had said one dose and then
24 the marijuana, half to a whole bowl about 10 p.m.
25 that night before. The Tramadol she mentioned two

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1 days ago. The marijuana is interesting. The
2 initial effects as I'm trained, you'll notice
3 active effects three to five hours. However, the
4 impairment effect can last up to 24 hours without
5 the person knowing it with marijuana.

6 Q Did you based on all your observations --
7 and you can tell us what they were -- did you draw a
8 conclusion or did you not draw a conclusion as to
9 whether or not drugs were present in her system?

10 A I did.

11 Q And further based on all your
12 observations, did you make, perform conclusion as to
13 the types of drugs?

14 A I did.

15 Q By category?

16 A I did. Of those seven drug categories I
17 did CNS depressants, a narcotic analgesic, and then
18 cannabis drug categories.

19 Q So CNS depressant, cannabis, is that
20 right?

21 A That's correct.

22 Q And go back for a minute for me back to
23 school. When you went to that school did you as
24 part of that course did you have to perform this
25 protocol on individuals ---

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1 A Yes, sir.

2 Q ---as part of that class?

3 A After taking the class in Columbia we
4 would do what's called a field certification. And
5 for the field certification that I went to I
6 actually went to Phoenix, Mericopa County, and
7 inside a jail setting they had arrestees that
8 happened to come in for other charges. And they
9 would be under the influence of different types of
10 drugs and they would volunteer while we're there and
11 while they're waiting to go to court or whatever
12 else they had, they would come and we would do this
13 12 step process with them, these inmates that were
14 under the influence. And after doing the 12 step
15 process we would come to the conclusion what drug
16 categories they were under the influence of.

17 Q And this was done in a jail setting?

18 A That's correct.

19 Q With individuals known to test for drugs;
20 is that right?

21 A That's correct.

22 Q And would you form an opinion to the type
23 of drugs?

24 A We would figure out based on this 12 step
25 process---

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1 Q The category?

2 A ---what drug category we believed they
3 were under the influence of.

4 Q And did you pass that course?

5 A I did pass the course, yes, sir.

6 Q All right. And was there peer review or
7 forensic review?

8 A There was.

9 Q Explain that to the jury.

10 A The person that was under the influence of
11 these drugs, before coming to the student they would
12 more or less go and get a urine sample. That urine
13 sample would reveal what type of drugs they would
14 have in their system. That information would be
15 documented by the instructor and not revealed to the
16 student until after they've done their 12 step
17 process to confirm if they got it right or not.

18 Q Did you get it right?

19 A I got it right every time.

20 Q And so your opinion based on your
21 observations and protocol on all of those
22 individuals were confirmed by urine tests; is that
23 right?

24 A That's correct.

25 Q Forensics?

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1 A Correct.

2 Q And how about in the protocol, the 12
3 step, was there a request of a particular type of
4 examination?

5 A The last step of this 12 step is the
6 toxicology examine. You would obtain blood or urine
7 sample from the subject.

8 Q And do you have acknowledge of whether or
9 not a blood sample was taken from Ms. Tackett?

10 A Yes, a blood sample was obtained from
11 Ms. Tackett that day.

12 Q And that was submitted to the State Law
13 Enforcement Division?

14 A That's correct.

15 Q For toxicological examination?

16 A That's correct.

17 MR. MCMAHON: May I approach the Bench,
18 Your Honor.

19 THE COURT: You may cross-examine.

20 MR. MCMAHON: May I approach, Your Honor.

21 THE COURT: Oh, I'm sorry.

22 (WHEREUPON, counsel approached the
23 Bench for an off-the-record discussion.)

24 THE COURT: You say you have a video I
25 believe, and the Defense does not object to that; is

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1 that correct?

2 MR. STODDARD: That's correct.

3 THE COURT: All right, it will be admitted
4 and I'll allow you to publish it. Before we do
5 that, it's probably gonna be about 20 minutes long.
6 Let's take a break, step outside to stretch your
7 legs. So again, you know what I'm going to tell
8 you. Don't discuss anything about the case until I
9 ask you to begin deliberations. You may retire to
10 the jury room.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 3:00 p.m.)

13 THE COURT: All right, we'll take about a
14 ten minute break.

15 MR. MCMAHON: May the witness step down
16 during the break?

17 THE COURT: Yes, you may step down. Don't
18 discuss your testimony, though, with anyone. Do you
19 understand that?

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you.

22 (WHEREUPON, a recess was taken from the
23 proceedings.)

24 THE COURT: Mr. McMahan, you ready to
25 proceed?

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1 MR. MCMAHON: Yes, sir.

2 THE COURT: Defense ready?

3 MR. STODDARD: Yes, sir.

4 THE COURT: All right, bring them in.

5 (WHEREUPON, the jury was returned to the
6 courtroom at 3:13 p.m., and the following
7 proceedings commenced in open court.)

8 THE COURT: The State has asked to publish
9 a video and I have admitted and authorized its
10 publication.

11 You may proceed with the video.

12 MR. MCMAHON: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 (WHEREUPON, State's Exhibit 49 was
15 published to the jury.)

16 THE COURT: Any other questions?

17 MR. MCMAHON: No further questions, Your
18 Honor.

19 THE COURT: You may cross-examine.

20 MR. STODDARD: Before I do that, can I ask
21 a question of counsel over here?

22 THE COURT: Certainly.

23 (Pause.)

24 **CROSS-EXAMINATION**

25 BY MR. STODDARD:

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1 Q Good afternoon.

2 A Hello.

3 Q So one of the things that you had
4 mentioned in this report you -- oh, before I start
5 with that question let me ask you something. And I
6 have seen, I have forgotten and I still can't
7 remember why this happened, but I was given a
8 report. Yeah, if you look at this one, I was given
9 this one. It does not have cannabis checked on the
10 back where you identify. And I remember later on
11 seeing this one that's in evidence it does have it
12 checked. And I'm not accusing anybody if there was
13 a reason for that, but I can't remember it.

14 A I review these, you know, periodically,
15 and I might have just neglected to check that at the
16 time.

17 Q But initially, when you did this you
18 didn't check that, right?

19 A That's correct.

20 Q All right. Let me ask you something about
21 those Nystagmus tests. Number one, when you're
22 checking for lack of smooth pursuit, is -- first of
23 all, these are standardized, right?

24 A Yes.

25 Q And they tell you how many seconds to do

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1 this and that. Is it two seconds out and two
2 seconds in? I'm going the wrong way. You start on
3 the left side; don't you? Two seconds out, two
4 seconds in; is that right?

5 A It's going to be, lack of smooth pursuit
6 two seconds as far as you can look; then you reload,
7 then it's two seconds to the other side.

8 Q Okay. Two seconds out and then you
9 reload?

10 A Yeah, I guess my term. Thuses one
11 thousand two that is they can look and while you do
12 that you're going to break down each eye you're
13 looking at. One thousand one, one thousand two.
14 Then you're going to look at the other eye. And
15 like here, I'm sorry. One thousand one, one
16 thousand two.

17 Q Okay. I got it now. And one of the
18 things they instruct people to do, too, is when
19 you're looking for the onset, it says -- I think the
20 literature or your materials tell you if you've got
21 a question, don't know that, don't imagine you're
22 seeing it when you're not seeing, something to that
23 effect if in doubt.

24 A I'm not sure what you're asking.

25 Q All right. Let me, now, I can't remember,

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1 did you say there was Nystagmus on the vertical?

2 A Yes, in the Vertical Gaze Nystagmus.

3 Q Does that indicate a high level of drugs,
4 not just a little bit?

5 A Yes, it does, with a trian -- it indicates
6 a higher level.

7 Q It specifically says that. Some of the
8 others it could be just the presence, but that
9 indicates a high level?

10 A That's correct, high dose for the
11 individual.

12 Q And if the individual turns out not to
13 have a dose, would that maybe indicate that
14 something else is going on?

15 A I'm trying to understand your question so
16 I'll answer it properly.

17 Q So after you do all these tests you do a
18 blood draw and toxicology. If the toxicology shows
19 a moderate to low dose, would the fact that you had
20 this vertical nystagmus perhaps indicate there's
21 something else going on?

22 A That's a good question. Maybe a
23 toxicologist may be able to answer that better than
24 I can. I would think at the time, you know, over
25 time the drug, the substance is coming out of your

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1 body, the time you see it's going to be different
2 than the time it's collected.

3 Q By the way, there are other things that
4 that cause nystagmus, that cause these things you're
5 looking for; is that correct?

6 A As far as Horizontal Gaze Nystagmus what
7 I'm trained to look for is the type of nystagmus you
8 recognize as impairment.

9 Q But not everybody that you see that in is
10 impaired; is that correct?

11 A There are a very, very few amount of
12 people they have a naturally occurring nystagmus.
13 However, I've met maybe two in my lifetime. Both of
14 them know they have it and let me know that they it.

15 Q You're talking about it naturally
16 occurring?

17 A Yes.

18 Q Well, what about -- aren't there certain
19 things like it that cause fatigue or perhaps even
20 migraines?

21 A There's different circumstances, I
22 believe, yeah.

23 Q And your training even teaches you, you
24 know, it tells you percentages that when you see
25 that there's the percentage that turn out to be

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1 impaired according to testing?

2 A (There was no response.)

3 Q Not 100 percent.

4 A I'm trying to understand your question,
5 I'm sorry.

6 Q All right. So in your training and they
7 tell you to do this test and you see these things,
8 and I think this number may be 77 percent for the
9 Nystagmus that is impaired. It's 77 percent
10 accurate?

11 A I think that I understand your question.
12 They did studies to validate the Horizontal Gaze
13 Nystagmus test. Three different studies came up
14 with, I think, three different percentages.

15 Q Okay. Now one other thing, when you --
16 are you taught that a mistake is when you do that,
17 if you do curving motion when you're doing the
18 stylus, is that something they teach you to avoid
19 doing?

20 A Yeah. They would teach you to avoid doing
21 a curve ---

22 Q Yeah.

23 A ---if possible.

24 Q Yeah, and that could affect the result.

25 A I don't know if it would affect the result

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1 or not. I don't ---

2 Q 'Cause you just know they tell you how to
3 do it.

4 A Yes.

5 Q But there must be a reason you shouldn't
6 do that.

7 A It may not get the complete -- when you're
8 doing distinct sustained nystagmus at maximum
9 deviation, it may not get the eye all the way out.

10 Q But you're not sure really what the reason
11 is that they tell you not to do that?

12 A No, I'm just instructed to make sure it's
13 on a straight plane.

14 Q One of the things you notice, and I would
15 think this would be one of the important
16 observations you made, is that she was slow to
17 respond to you in your questioning.

18 A (No verbal response.)

19 Q Yeah, I watched this video several times,
20 you just watched it. Can you pick out a particular
21 time we just watched that she was slow?

22 A Yeah, I was kind of making note of that
23 myself. When I asked her specifically a date and
24 time, she was pretty slow around that point. Other
25 than that I, there's different parts. You know, we

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1 can rewind it and watch it all and find different
2 parts. That was one specific one I noticed there,
3 though.

4 Q Okay. Now on that estimating time I
5 notice -- I don't know if you said this in, I think
6 you said this in your direct examination, maybe I
7 heard it somewhere else. But you -- there's a five
8 second threshold; is that right?

9 A Yeah, within the, that, when I asked her
10 to close her eyes and estimate 30 seconds. You
11 know, every situation is different, but give or take
12 five seconds. If it's 31, 32, 33 seconds you want
13 to really compare that with what else you have going
14 on. You know, you don't -- with any of this stuff
15 you don't rest your hat on one given thing; but with
16 that, you know, give or take five seconds is what
17 you really want to look at your threshold before,
18 you know, your totality of circumstances of grading
19 this with other stuff.

20 Q And by that what you mean is, I assume, if
21 you're within five seconds either way of whatever
22 --- if I'm supposed to estimate 30 seconds, if I say
23 35 or 25 or if I do it in 35 or 25 seconds, I'm not
24 really off, that's, you shouldn't even note that.

25 A Well, we would note that and take that in

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1 consideration with everything else that we have
2 going on. If that's one thing that -- let's say
3 that we have a specific case where everything else
4 is really pointing us in one direction; but that one
5 is, you know, within that five second threshold,
6 that's not a deal breaker; it's not gonna say, oh
7 well, oh no, maybe they're not impaired.

8 Q Well, doesn't that threshold really mean
9 it's got to be outside that threshold for it to even
10 be meaningful at all?

11 A This particular test, you know, we take
12 everything in consideration. If it was 32 seconds
13 that this person counted and everything else pointed
14 to a particular drug category, I would still say
15 that, you know, because of everything else, you
16 know, that wouldn't have as much meaning just
17 because they were within that time frame.

18 Q And I understand I -- by the way, on yours
19 I think it might have been outside of the five
20 second threshold. I'm just trying to figure out,
21 I've been told, you mentioned threshold; and I've
22 read that somewhere, too, that it seems to me that
23 if it's within five seconds one way or other that
24 doesn't mean anything.

25 A Well, again, it's, a lot of this stuff

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1 taken in a totality of circumstances type situation,
2 you don't just look at one thing and say, well, that
3 means nothing. You got to look at everything, and
4 you know, you can make a puzzle by pieces. You look
5 at the whole puzzle as a picture.

6 Q I'm handing you a piece of paper here, a
7 document. Have you ever taken the, are you familiar
8 with the Advance Roadside Impairment Driving
9 Enforcement?

10 A I haven't taken that course, but a lot of
11 it is related with the DRE program.

12 Q Yeah. There's overlap in all these
13 courses. Like, a lot of these courses teach the --
14 I think they call it SFT, standardized field
15 sobriety tests, those three tests. You get those in
16 different courses. By the way, would you agree that
17 when that's taught it's always taught the same way,
18 it's standardized.

19 A Correct.

20 Q You see the statement, do you agree with
21 this statement -- and I've kind of got it
22 highlighted there for you I think. "Performance
23 outside the range of plus or minus five seconds must
24 be used cautiously and considered with the totality
25 of the circumstances," right?

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1 A Yes, sir.

2 Q By the way, it says outside the five
3 seconds and that's why I'm saying that inside five
4 seconds it seems like it shouldn't even be noted.
5 By the way, it says the use of this time testing
6 estimation is not supported by research at this
7 time. Does it say that? That's the sentence above
8 the one that...

9 A Yes, it says that.

10 Q It's not even supported by research so
11 it's got to be cautious in drawing conclusions on
12 that, right?

13 A On that alone, absolutely.

14 Q Alone, okay. And by the way, this 12 step
15 thing and I heard Mr. McMahon ask you think this, is
16 performed the same way every time?

17 A Yes, sir.

18 Q All over the state and it's standardized,
19 right? And that it, in fact, if somebody didn't
20 perform all 12 steps -- and I know there was a
21 reason you didn't -- but if somebody didn't have a
22 reason, they just skipped some tests, it would be an
23 invalid test; wouldn't it?

24 A I'd have to hear individually why it was.
25 I mean, it's a standard process. You're supposed to

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1 do it the same way every time when possible. Like
2 we mentioned, we have certain reasons we couldn't
3 hear, but...

4 Q And by the way, some of these tests, for
5 example, the one legged stand, my understanding is
6 if there's two or more clues that's an indication of
7 impairment, right?

8 A Yeah, that would be according to SFST
9 battery, it would be a failure to note four clues.

10 Q Okay. Let's say two out of four would not
11 be a failure; is that right?

12 A Part of SFST battery.

13 Q For example, if I'm doing that test and I
14 put my foot down and put it up, but that's all I do
15 wrong, that would not be a fail?

16 A No. If you're looking strictly at, you
17 know, a pass or fail, that would not be a fail.

18 Q Right. Now on this 12 steps you don't
19 really have as much of a n objective criteria as you
20 do on those SFTs, right. Even the walk-and-turn
21 there's a certain number of clues you're looking
22 for. There's a number -- I think it may be four,
23 but I can't remember right now. But you don't have
24 that with this 12 step, right? It's sort of - or do
25 you?

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1 A I don't have ---

2 Q You don't have, like, there's ten clues
3 and if you got six clues it point to impairment.
4 That's not any part of this, is it?

5 A It would be the same eight clues for that
6 walk and turn.

7 Q No, no, no, we're not on the same page at
8 all. I'm saying on your 12 step drug evaluation,
9 the standardized 12 steps, there's not like a set of
10 number of clues like 10, 12, or whatever that you're
11 looking for. And if you've got a certain number of
12 them they fail, right? It's, there's not that kind
13 of test, is it?

14 A I'd be documenting everything I saw.

15 Q Yeah.

16 A Again, taking each test and everything I
17 do with the entire evaluation and looking at it as a
18 totality of circumstances like a puzzle piece.

19 Q Yeah, it's ---

20 A You get the puzzle pieces and at the end I
21 see what picture I have.

22 Q There's a certain amount, I suppose, of
23 discretion in a word of judgment.

24 A Yes, sir.

25 Q And that's my point is on the one legged

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1 stand you do the test one way and there are four
2 clues and you look at those clues. You know, two or
3 more is a fail. This one, it's more, it doesn't
4 have that kind of objective criteria. And by that I
5 meant it's either pass or fail depending on number
6 of clues.

7 A Right. This, you know, this is kind of
8 like a supplemental report. We don't have, you
9 know, to make a pass or fail judgment whereas --
10 it's kind of two different things. This can be done
11 usually in a case after an arrest gathering extra
12 information as far as any other impairment so it --
13 we don't really have to make a pass or fail judgment
14 like we would on the side of a road. That pass or
15 fail judgment inside a roadway, well, maybe I do
16 need to make an arrest because they failed the
17 sobriety test. This is just documentation towards
18 painting a picture of drug impairment and what time.

19 Q That brings me up to sort of another point
20 I'd like to explore a little bit 'cause you talk
21 about how you got trained to do this, and you would
22 have subjects who you would do this 12 step thing
23 and they would do a tox screen and later compare
24 your conclusions with the tox screen, right?

25 A Yes, sir.

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1 Q Now having a certain, having a drug in
2 your system does not necessarily mean you're
3 impaired. Does that, would you agree with that?

4 A Yes, sir.

5 Q You can have -- and you're not a
6 toxicologist, but I would assume you could have all
7 these drugs that Ms. Tackett had in her system and
8 still not necessarily be impaired?

9 A I don't know if I'd agree with that or
10 not.

11 Q Okay. So, but let's just say you take one
12 of those drugs, an individual could have that drug
13 in their system and not be impaired -- their tox
14 screen could say that's in their system, right?

15 A (No verbal response.)

16 Q So when you were tested on these things
17 and trained on it, was there any way to -- did y'all
18 do anything to say, well, this one, not only did he
19 have that drug, but he was impaired was it more
20 we're just looking to see if it was in his system?

21 A Yeah, we would determine if they were
22 impaired or not.

23 Q How?

24 A Well...

25 Q I mean, the tox screen itself says it's in

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1 there. It doesn't say how impaired, does it?

2 A The tox screen wouldn't say they're
3 impaired. That's kind of what we would articulate
4 by doing this is to figure out if they're impaired
5 from it.

6 Q One of the things you look that's on there
7 is pupils. You noticed her pupils were
8 constricted?

9 A Yes, that's correct.

10 Q And that now, if you're -- one of your
11 conclusions is she was on depressants, yes,
12 depressants, I guess. Depressants would normally
13 would cause dilated pupils; wouldn't it?

14 A Looking at the chart that's going to be
15 normal pupil size, there are going to be some
16 exceptions where they would be dilated. Sometimes
17 alcohol, certain depressants may cause it. There's
18 a couple of other exceptions that's on that chart.

19 Q So the chart is -- so you think it would
20 be normal?

21 A The normal range.

22 Q Is this the chart you're talking about?

23 A Yes, sir.

24 Q There's so many words on that I'll never
25 find it.

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1 A Pupil size would be normal, then there's
2 exceptions and some exceptions would be Quaaludes
3 and possibly antidepressants usually dilate pupils.

4 Q Usually dilate. But constricted small
5 pupils would not indicate a depressant?

6 A Not a depressant.

7 Q Unless you want to keep it, but...

8 A Okay.

9 Q I don't want to be accused of taking it.
10 So something else would be causing, I mean, if all,
11 if you don't have some of the drugs that cause
12 constricted pupils, something else may be causing
13 that I would guess?

14 A Narcotic analgesics is a drug category
15 that will cause constriction.

16 Q And that's one you indicated she might
17 have?

18 A Correct.

19 Q Now did, the last step in this 12 steps is
20 the tox screen itself. Have you reviewed it?

21 A I briefed over it last time I met with the
22 solicitor.

23 Q Do you remember if it had narcotic
24 analgesics?

25 A The one I'm curious about and not

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1 100 percent sure would be one drug in particular is
2 possible narcotic analgesic.

3 Q Do you know what that drug is?

4 A I think Gabapentin.

5 Q Gabapentin.

6 A I know it's depressant based; but as far
7 as constricting pupils, I wouldn't know if
8 100 percent I couldn't say for sure that that would
9 be the drug that did it.

10 Q One thing that I have heard a lot in this
11 case is divided attention. In fact, those SFST,
12 standard field sobriety test, part of the purpose is
13 to make the person who had divided attention; is
14 that right?

15 A Yes, sir. Evaluate pretty well their
16 divided attention.

17 MR. STODDARD: Judge, at this time there's
18 a part of his, the encounter in the hospital. I
19 think there was another tape, disk, that had part of
20 that on there. I want to play that. And I think
21 it's in evidence.

22 THE COURT: Okay.

23 (WHEREUPON, video was played.)

24 BY MR. STODDARD:

25 Q Well, just quickly, so divided, things

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1 that would demonstrate divided that she was able to
2 do, things that require divided attention, would
3 actually indicate sobriety rather than impairment;
4 is that correct?

5 A Say that once again, I'm sorry, I didn't
6 follow you.

7 Q If you're impaired you shouldn't be able
8 to do things that would require divided attention;
9 is that correct?

10 A Being impaired would most likely impair
11 your ability to divide your attention.

12 Q And also, one of the things that you're
13 trained to look for, I believe, in impairment is
14 lack of fine motor skills, things like when you grab
15 your keys you drop them or having difficulty
16 handling objects like retrieving your license from
17 your pocketbook or your billfold?

18 A Yes, they can do that, yes, sir.

19 Q Holding a pen like they just did, signing
20 her name, things like that?

21 A They can do that, yes, sir.

22 Q That's what you, that's one of the things
23 you're trained to look for; isn't it?

24 A Yes, sir.

25 Q And to the extent that she's able to do

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1 that indicates sobriety, rather than impairment; is
2 that true?

3 A I wouldn't agree with that. There's times
4 people can take their license out of their wallet
5 okay, and then the next few minutes they have finger
6 dexterity issues because of that impairment.
7 There's times when they'll be able to walk a line
8 straight when they're falling down drunk, and
9 there's times when they won't be able to.

10 MR. STODDARD: Judge, I think I'm about
11 through. I just want to make sure. I have a bad
12 habit of after I turn loose the witness thinking of
13 three questions I forgot.

14 THE COURT: Take a second to look at your
15 notes, I have no problem with that.

16 BY MR. STODDARD:

17 Q Oh, I did think of a couple of things.
18 What did you say the normal blood pressure range is?

19 A Normal blood pressure range for your top
20 number would be 120 to 140. Your bottom number is
21 70 to 90.

22 MR. STODDARD: Sorry, Judge, I'm looking
23 at a document. I'm trying to find a number. I
24 found it earlier.

25 BY MR. STODDARD:

SW - C. TERRY - REDIRECT

1 Q Give me the bottom number again. 120 to
2 90?

3 A The bottom number would be ---

4 Q 90 would be tie high.

5 A The bottom number is 70 to 90 would be
6 your normal range.

7 Q Oh, of 70 would be -- I'm talking about
8 the whole bottom number of blood pressure, I'm
9 sorry. Like, 120 to 90, is that what you said?

10 A 120 ---

11 Q 120 is, ---

12 A Your top number would be 120 to 140 normal
13 range; and the bottom number, 70 to 90 is your.

14
15 normal range.

16 Q Not 90 over 70 though?

17 A No.

18 Q That's what I mean. Of the bottom range
19 your normal blood pressure.

20 A 70 would be the lowest number within the
21 normal range.

22 Q Okay.

23 A If you have ---

24 Q I can't remember which is systolic versus
25 diastolic.

1 A Systolic is the top number.

2 Q What would be the bottom range of your
3 would systolic?

4 A Bottom range of your normal systolic would
5 be 120.

6 Q Okay. So 120 over 70?

7 A Yes.

8 Q Okay. And would 98.6 be, is the average
9 temperature I think?

10 A Yeah.

11 MR. STODDARD: Your Honor, I've got no
12 further questions.

13 THE COURT: Redirect?

14 MR. MCMAHON: Yes, sir. Thank you, Your
15 Honor.

16 **REDIRECT EXAMINATION**

17 BY MR. MCMAHON:

18 Q On State's Exhibit Number 49 Mr. Stoddard
19 had many questions on. What time did the drug
20 evaluation start. Is that indicated on that report?

21 A It is. 11:10 a.m. is the approximate
22 time.

23 Q 11:10 a.m. and the accident happened
24 approximately 9:30 a.m. How much longer after that?

25 A Almost two hours.

1 Q And what time do you have indicated also
2 in State's 49 the evaluation ended?

3 A Ended right around 12 noon.

4 Q And I want to make sure I was tracking
5 something. This document was used by Mr. Stoddard
6 on cross-examination. I think you published part of
7 it, the use of the MRV test. What is the MRV test?

8 A Modify Number Testing.

9 Q And if I go back to State's 49 and look at
10 the protocol and I look at number six, this is, it
11 says modified Romburg ---

12 A Balance.

13 Q Balance.

14 A Yes, sir, that's under number five.
15 Divided attention test, modified Romburg balance
16 test.

17 Q That's number five? I see, there's four
18 right below it. All right, now the modified Romburg
19 Balance is the same as the modified, MRV test
20 factor?

21 A The same times?

22 Q The same thing. It's modified -- I just
23 want to know the answer. The modified Romburg
24 balance, the same as the MRV test time?

25 A Yes, sir. It would be 30 seconds is what

1 you would have the time for.

2 Q That's the same.

3 A Yes, sir.

4 Q All right. So we can take this and put it
5 into your protocol.

6 A Yes. Mine was slightly modified because
7 she was confined to the hospital bed so it's not
8 specifically that type of test. It's just so
9 modification to gather an estimate for time to see
10 how they're doing with their internal clock to see
11 if they're slow or see if they're fast.

12 Q Because when I look at the details of this
13 document they handed up to you, right, you've not
14 been to this course, right?

15 A Correct.

16 Q And I looked at that video we saw, there's
17 no pictures of an officer out on the road with you?

18 A That's correct.

19 Q That's two different environments,
20 correct?

21 A That's correct.

22 Q And the document is saying, as I
23 understand it, performance outside the range of plus
24 or minus five. So, if the range -- you're asking
25 for 30, correct?

1 A That's correct.

2 Q That the goal, right?

3 A That's correct.

4 Q If I do my math, then it, within 25 to 35
5 for lack of a better way to explain it, that's a,
6 that would be passing the test. There wouldn't be
7 no problem with the time, or at least -- is that a
8 fair statement or not?

9 A That's mostly fair. Again, you know,
10 let's say they're within 25 or 35.

11 Q Right.

12 A I'm still gonna take the whole picture in
13 consideration, but that five seconds is generally
14 what's taught to be mindful of that.

15 Q And everything in your opinion is the
16 totality of all the circumstances; is that correct?

17 A That's correct.

18 Q Based on conversation, observations,
19 pulse?

20 A That's correct.

21 Q Blood pressure, based on everything?

22 A Yes, sir.

23 Q Based on everything. And this one, the
24 five plus or minus, well -- the 42 seconds, 30 --
25 I'm not gonna try to do the math. About 25 to

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1 whatever percentage, 40, 40 would be, whatever
2 percentage would be greater and it'd be over the 35
3 up to threshold?

4 A That's right.

5 Q Okay. All right. So this document that
6 Mr. Stoddard showed you, he said performance outside
7 the range of plus or minus five seconds must be used
8 cautiously and considered with the totality of the
9 decision process. Did you do that?

10 A Absolutely.

11 Q Is that how you formed your decision?

12 A That's how I did it?

13 Q And what was your decision?

14 A That she was impaired.

15 Q Based on what category of drugs?

16 A Based on the central nervous system
17 depressants, narcotic analgesics, and cannabis.

18 Q Such an extent she could not safely
19 operate a motor vehicle?

20 THE COURT: I'm going to rule that out of
21 order given my prior ruling.

22 MR. MCMAHON: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 MR. MCMAHON: Yes, sir. I have no further
25 redirect.

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1 THE COURT: Recross.

2 MR. STODDARD: I have nothing further.

3 THE COURT: You may step down. Thank you
4 very much.

5 Wish to excuse the witness? Wish to
6 excuse the witness?

7 MR. MOWRY: Yes, sir.

8 THE COURT: Any objection?

9 MR. STODDARD: No objection.

10 THE COURT: You're free to go, sir.

11 You may call your next witness.

12 MR. MOWRY: We call Kelly Bugden.

13 WHEREUPON,

14 **KELLY BUGDEN,**

15 having been duly sworn by the Clerk, testified
16 as follows:

17 THE COURT: Ma'am, once you're seated
18 state your name, spell your last name please.

19 THE WITNESS: My name is Kelly Bugden,
20 B-U-G-D-E-N.

21 THE COURT: Thank you very much.

22 Your witness.

23 MR. MOWRY: Thank you, Your Honor. I'm
24 gonna get the court reporter to mark an exhibit.

25 THE COURT: All right.

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1 (WHEREUPON, State's Exhibit Number 50 was marked for
2 identification only.)

3 **DIRECT EXAMINATION**

4 BY MR. MOWRY:

5 Q Ms. Bugden, by whom are you employed?

6 A I work at the South Carolina Law
7 Enforcement Division, which is more commonly known
8 as SLED.

9 Q And in what area or department of SLED do
10 you work?

11 A I work in the toxicology department.

12 Q What is toxicology please, ma'am?

13 A Forensic toxicology is the study of drugs,
14 alcohol, and other poisons, and their effect on the
15 body or postmortem entraps.

16 Q And are you employed as a forensic
17 toxicologist with SLED?

18 A Yes, I am.

19 Q What kind of training and education do you
20 have in order to have that job at SLED?

21 A So first in my education I have a
22 bachelor's of science in forensic science and
23 chemistry, both from the University of Connecticut.
24 I also have a master of science in economics also
25 from the University of Connecticut. From there I

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1 was hired at SLED straight out of my masters
2 graduate work, and I was trained in-house both we
3 first start off with analysis so we get some
4 in-house lectures, some in-house tests to learn
5 about pharmacology and about alcohol and how it
6 affects the body and how to test for it and what
7 those results that we get mean. We, to do that we
8 also have to do 500 previously analyzed samples and
9 we have to get results similar to previously
10 reported for those samples. After that we do get
11 some extensive drug training as well. That's
12 in-house and trained by more senior analysts. I've
13 also gone to the Burgstein class of alcohol and
14 safety and also the drug and alcohol, the drug and
15 permission course as well. Those are the two
16 separate courses that are very widely accepted in
17 forensic toxicology and those constant kinds of
18 hands-on in-house training.

19 Q How long have you been with SLED?

20 A I have been with SLED for five-and-a-half
21 years now.

22 Q When did you, or went did you compete this
23 in-house training that you're describing?

24 A Gosh, I don't remember.

25 Q Just a ballpark.

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1 A About two years ago I believe, the drug
2 part.

3 Q Okay.

4 A The drug training.

5 Q And what have you been doing in the two
6 years since?

7 A I have actively been taking my own cases
8 so taking samples, setting for quantitations and
9 confirmations, then writing reports, and then
10 interpreting those reports for the Court or
11 attorneys, whichever the case.

12 Q Have you testified in courts of law in
13 South Carolina before?

14 A Yes, I have.

15 Q Can you estimate how many times you have
16 testified in court?

17 A At least five times.

18 Q And were you declared an expert each time?

19 A Yes, sir, every time.

20 Q Has there ever been an instance where you
21 were offered as an expert and were not accepted as
22 an expert?

23 A No, sir.

24 MR. MOWRY: Your Honor, I would offer her
25 as an expert for the sixth time.

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1 THE COURT: Any objection?

2 THE CLERK: No objection.

3 THE COURT: Without objection she'll be
4 declared to be an expert in the field of toxicology.
5 You may proceed.

6 MR. MOWRY: Your Honor, I'm holding ---

7 THE COURT: Is that a report?

8 MR. MOWRY: Yes, sir. I am holding State
9 Exhibit Number 50. If I am not mistaken, I believe
10 Mr. Stoddard has any, I won't speak for him.

11 THE COURT: Is that a report?

12 MR. MOWRY: Yes, sir. I would offer it
13 into evidence.

14 THE COURT: Is there any objection?

15 MR. STODDARD: No objection.

16 THE COURT: Without objection it'll be
17 part of the record as marked.

18 You may proceed.

19 (WHEREUPON, State Exhibit No. 50 was
20 admitted into evidence.)

21 BY MR. MOWRY:

22 Q Ms. Bugden, let me hand you State's
23 Exhibit Number 50. Do you recognize that?

24 A This appears to be a copy of my report.

25 Q Okay. And what is the report about?

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1 A It is the toxicology findings for a sample
2 that was submitted to our laboratory, lab number
3 L1804758.

4 Q Okay. Who was the officer that submitted
5 or made the request for the examination?

6 A It looks like A.M. Gabriele with the South
7 Carolina Highway Patrol.

8 Q Okay. And how did you receive this
9 evidence? How does that typically come to an
10 analyst at SLED?

11 A Typically highway patrol has their own
12 evidence custody area. They have an officer who's
13 designated to bringing evidence to SLED so they have
14 evidence in their custody. They brought it to SLED
15 for analysis. At that point that's where the SLED
16 chain of custody would begin. They would give the
17 evidence to an evidence technician in their log-in
18 department. They would help them put in the proper
19 paperwork, names, information for the case, and the
20 incident reports, and also log-in that evidence in
21 with a specific lab number. That's that number that
22 I referenced before. And it would be stored in a
23 refrigerator downstairs.

24 Each day our forensic toxicology
25 technicians that work in our department would go

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1 down to the log-in department and pick up whatever
2 cases were dropped off from that date prior, and
3 they will do what we call inventory so they would
4 bring that evidence upstairs in a toxicology lab.
5 They would open any of the tapered heat-sealed
6 pouches and they would take photographs of the
7 external packaging, external boxes, and notate any
8 type of indication on the test tubes or containers
9 as to any name or information that would apply to
10 that case. They would then put those test tubes
11 back into the heat sealed pouch at which point it
12 will be put into the refrigerator until you do blood
13 alcohol analysis.

14 Q Okay. Let me ask you this, if there were
15 any evidence of tampering or damage to the packaging
16 or anything else that might be noteworthy, what
17 would be done?

18 A Sure. If a case came upstairs to the
19 toxicology laboratory and it appeared that it had
20 been tampered with, so the bag was cut opened or
21 wasn't properly sealed or initialed on that seal,
22 our technicians would bring that back down to the
23 log-in department and typically we would call back
24 the submitting officer and have them rectify the
25 situation, whether they take the evidence back or

SW - K. BUGDEN - DIRECT

1 they re-seal that package and make sure that
2 everything is the way it should be.

3 Q How was everything with this particular
4 package?

5 A Everything as far as I know was the way it
6 should be; otherwise, it would have been notated in
7 the case notes it was not.

8 Q Okay. What do you do when you receive
9 that package?

10 A So, like I said, the technician will
11 inventory it.

12 Q Right.

13 A They'll do our volatile analysis first,
14 which is for alcohol and other alcohol as well, that
15 aren't drinking alcohol. And then after that it
16 will get what we call preliminary drug screen which
17 looks for the most common drugs that we see here in
18 South Carolina. We've done some studies way back in
19 the past to figure out which drugs we most commonly
20 see through a very vague drug screen. At that point
21 if anything becomes positive it would get sent on to
22 me as an analysis for further work to confirm and
23 to quantitate or find out how much drug is present
24 in those samples.

25 Q Okay. Let me ask you this, if there was

SW - K. BUGDEN - DIRECT

1 no evidence or no submission about suspicion of
2 alcohol, under your protocol would you still analyze
3 for it?

4 A For a DUI case, as long as that case or
5 that person has not submitted to a breath test, we
6 will do a volatile analysis at SLED.

7 Q Okay. What was the result of the
8 volatiles analysis that you just described in this
9 particular case?

10 A This particular case was negative for
11 ethanol which is the alcohol present in drinks.

12 Q Now we talk about drug panels; is that
13 right? What is a drug panel?

14 A So, we have these 12 classes of drugs that
15 we look for. I call them panels. That's what we
16 call them in-house. So our instrumentation that we
17 have is limited to 12 classes of drugs so, like I
18 said, we pick the twelve most common things that we
19 see. Some of those panels are drug specific like
20 amphetamine, buprametamine(ph), carisoprodol,
21 metabolite cocaine, methadone, methamphetamine,
22 oxycodone. We also look for opiates, cannabinoids,
23 Benzodiazepines -- so each class of drug is what we
24 call a panel.

25 Q Is there any conceivable way to screen for

SW - K. BUGDEN - DIRECT

1 every single drug?

2 A No, because the vast differences
3 chemically and physically between all the possible
4 drugs, there's no way to cover every single possible
5 drug in one single test.

6 Q So you got to be selective; is that right?

7 A Yes, sir.

8 Q Talk about how you went about doing the
9 test. You know, once it was negative for alcohol,
10 where do you go then?

11 A So after it was negative for alcohol, like
12 I said, they got preliminary drug screen. Whatever
13 came up positive from that got sent down for a
14 confirmation so our technicians do all of our
15 volatile DNA drug screen work; and as an analyst I
16 take care of getting it to the confirmation and
17 quantitation assets that we look for. So this case
18 in particular, we don't report our positives on here
19 because we take tube test order positive so
20 preliminary drug screen does not get referred
21 positive. We only report our negative for the
22 primary drug screen on here. So just for reading
23 what's missing from our drug screen panel I can see
24 that this sample, this screen being positive for
25 Benzodiazepines and THC.

SW - K. BUGDEN - DIRECT

1 Q Okay. What are Benzodiazepines?

2 A Benzodiazepines are central nervous
3 depressant drugs. They're typically used for
4 anxiety or organic disorders.

5 Q What kind of effect does a Benzodiazepine
6 have on a human body?

7 A A Benzodiazepine as a central nervous
8 depressant is very similar to ethanol or alcohol
9 because they are central nervous system depressant
10 class of drugs. So you would expect some
11 drowsiness, sleepiness, slurring of words, lack of
12 coordination, drowsiness, the same things you would
13 expect for alcohol.

14 Q Okay. What on your report there is a
15 Benzodiazepine?

16 A We have the Clonazepam and its metabolite,
17 the seven amino Clonazepam as our Benzodiazepine
18 drug.

19 Q What is a trade name for Clonazepam?

20 A The trade name for Clonazepam is Klonopin.

21 Q Are there other drugs that were also
22 discovered or the sample is positive for?

23 A Yes, sir. We also found Gabapentin, which
24 is more commonly known as Neurontin, Venlafaxine
25 which is also known as Effexor. Its metabolite

SW - K. BUGDEN - DIRECT

1 O-desmethylvenlafaxine and Hydroxypropion (ph).

2 Q Okay.

3 A And then also THC.

4 Q THC is tetrahydrocannabinol?

5 A Yes, sir, that's the long name for it.

6 Q And what is that an ingredient of?

7 A THC is the primary ingredient in
8 marijuana.

9 Q Okay. So we're talking Venlafaxine,
10 Gabapentin, Clonazepam, marijuana?

11 A Correct.

12 Q Those four, all right. Do you -- I don't
13 know quite how to ask this. What about the levels
14 that we're talking about here?

15 A All of these drugs quantitated or came
16 back with a value that we would expect to see within
17 a therapeutic range. So when you're prescribing
18 medication you are given a dose that would cause the
19 effects that you want. So if you're taking
20 antidepressant, you're gonna something that will not
21 make you feel depressed. That means that that drug
22 is in your body at a therapeutic level to work at
23 that level they want it to do things that it was
24 made for. So all of these drugs are present at
25 therapeutic or subtherapeutic, aside from THC,

SW - K. BUGDEN - DIRECT

1 because that is not medical at this time.

2 Q So Klonopin, Effexor, and Neurontin,
3 Gabapentin, Venlafaxine, Clonazepam are all
4 prescription drugs; is that correct?

5 A That's correct.

6 Q Marijuana at this point is not ---

7 A That's correct.

8 Q ---in South Carolina?

9 A Correct.

10 Q Let me ask you this, based on what you see
11 in your report are you able to render an opinion as
12 to whether or not the defendant was impaired at the
13 time of blood draw?

14 A With the toxicology report standing alone
15 it's, we're not able to say yes, this person was
16 absolutely impaired in cases other than alcohol. In
17 cases of alcohol we held certainly levels you
18 definitely would be considered to be impaired.
19 Unfortunately, the vast majority of drugs that are
20 present, we don't have what we call per civil limit
21 or a level that we say somebody is impaired. Along
22 with the fact that everybody reacts differently and
23 takes medications and it works differently within
24 their body. So there's no cookie cutter level for
25 somebody to say as far as drugs are concerned, to

SW - K. BUGDEN - DIRECT

1 say that they are impaired.

2 Q So you can't make a call one way or the
3 other?

4 A That's correct.

5 Q Let me ask you this, just because
6 something is a prescription drug, does that mean it
7 do not be impairing?

8 A No, there are a lot of prescription drugs
9 that cause impairment.

10 Q And just because something is in, as you
11 termed it, therapeutic level, does that mean it
12 cannot be impairing?

13 A No, sir, they can be impairing at
14 therapeutic levels.

15 Q What about the combination of drugs? The
16 marijuana, the Gabapentin, the Klonopin, and the
17 Venlafaxine?

18 A Since there are a couple of central
19 nervous system depressants, that's something of
20 concern. One standing alone at a therapeutic level
21 may not necessarily be a concern; but when you add
22 on a couple of different central nervous system
23 depressant drugs and they're all depressing your
24 nervous system causing you to be more sluggish,
25 causing you to tire, they act together. It's not,

SW - K. BUGDEN - DIRECT

1 oh, I'm taking a couple of central nervous system
2 depressants, no big deal. You add those on top of
3 each other they can have a more increased effect.

4 Q Is there a name for that combination of
5 drugs?

6 A I'm not sure what you're asking.

7 Q Are you familiar with the synergistic
8 effect of drugs?

9 A Sure. There's additive and synergistic
10 effect of drugs. Additive meaning one plus one
11 equals two. A lot of drugs fall into what we call
12 the synergistic category where it means one plus one
13 would equal 10, 15, 20; it's not a one plus one
14 equals two situation.

15 Q Of the prescription drugs, which are most
16 concerning to you?

17 A In this case the Clonazepam and the
18 Gabapentin are the two very common central nervous
19 system depressants, and those I would expect to
20 possibly have press and effect on an individual.

21 Q And what would those side effects
22 potentially be?

23 A Again, that would be the drowsiness,
24 dizziness, confusion, lack of coordination. All
25 those things that you would expect to see with

SW - K. BUGDEN - DIRECT

1 alcohol, you know, you would very well expect to see
2 those as well with central nervous depressant drugs.

3 Q And all of those potential side effects
4 that you listed, how would that affect somebody's
5 ability to drive?

6 A Sure. If you're asleep at the wheel
7 obviously that's, you're not able to safely drive a
8 vehicle at that point. If you're nodding off it
9 could affect your lane, it could affect your speed.
10 If you're not coordinated enough to be able to take
11 in all the information that you need to process
12 while you're driving a motor vehicle -- am I staying
13 in my lane, am I going 65 miles per hour, are there
14 any other cars around me, do I need to brake, is
15 there something coming up in my lane, do I need to
16 move over. All these things are complex tasks that
17 you don't necessarily think about because it's just
18 kind of trained in you as a driver. When you put
19 central nervous systems on board, not everything
20 meshes together anymore, and you're not able to as
21 quickly make those decision or coordinate to another
22 lane if you need to. All those things could
23 definitely affect your ability to drive a car.

24 Q Let's talk about the marijuana as well.
25 What about that? What kind of drug is marijuana?

SW - K. BUGDEN - DIRECT

1 A Marijuana is also a central nervous system
2 depressant and it tends to make you feel relaxed.
3 It will show down your reaction time so if you're
4 driving and something falls, say you're driving in
5 the city and somebody walks across the street, you
6 might say, your brain say, okay, I have time, you
7 unnecessarily need to slow down. But if you're on
8 marijuana and see that person trips or falls or
9 drops something and they stop in the middle of that
10 road, on marijuana your brain is not going to tell
11 you, hey, you need to stop now, you're unfortunately
12 going to hit ---

13 Q Okay. And you weren't present at the
14 scene of the collision that's been testified to back
15 on March 28th of 2018?

16 A I was not there.

17 Q Let me ask you, you were present in the
18 courtroom a little while ago while David Terry, the
19 trooper, was testifying; is that right?

20 A Yes.

21 Q Did you hear him talk about the estimation
22 of time test that he did, the passage of 30 seconds?

23 A Yes, I did.

24 Q The estimation of that?

25 A Uh-huh.

SW - K. BUGDEN - CROSS

1 Q I believe he testified that the defendant
2 estimated the 30 seconds, the actual passage of time
3 was 42 seconds. Is that of any significance to you?

4 A It seems like there's a delay, or she, or
5 the person felt that 42 seconds which is longer than
6 30 seconds was, in fact, 30 seconds; so she's not
7 quite tracking time, it's slower.

8 Q How would that correspond to the ingestion
9 of central nervous system depressants, as you found
10 in your report?

11 A The central nervous system depressants,
12 like I said, could cause some delayed affect along
13 with the marijuana, as well they could cause you,
14 again, to have that drawn out slow physical delay.

15 MR. MOWRY: Thank you, Ma'am. I believe
16 that's all the questions I have. If you would
17 please answer any questions Mr. Stoddard may have.

18 THE COURT: You may cross-examine.

19 MR. STODDARD: I don't think I have any.
20 Well, wait a minute.

21 **CROSS-EXAMINATION**

22 BY MR. STODDARD:

23 Q There was testimony in this case, I
24 believe speak for itself, you talk about how these
25 blood samples are handled and all?

SW - J. HOWELL - DIRECT

1 A Sure.

2 Q I assume there -- it's important to
3 refrigerate them fairly quickly and keep them
4 refrigerated all the way till they get to your
5 refrigerator at SLED?

6 A That's correct.

7 Q Is there any -- I think there was some
8 testimony is that the blood was, the officer drove
9 it for maybe an hour, if it was 30 minutes here,
10 then 30 minutes driving. Would that cause any
11 problems?

12 A Not particularly, no. The biggest drug
13 that usually gets arguable is ethanol, but there are
14 preservatives within the tubes that the blood is put
15 into that prevent any degradation or growth or
16 bacteria or anything that might alter test results
17 so just a half an hour or so, an hour outside the
18 refrigeratory is not a major concern of ours.

19 MR. STODDARD: I've got no further
20 questions.

21 MR. MOWRY: And no redirect examination,
22 Your Honor.

23 THE COURT: Ma'am, you may step down.
24 You wish to excuse the witness?

25 MR. MOWRY: Yes, Your Honor.

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1 THE COURT: You're free to go, ma'am.

2 Thank you for coming.

3 The State may call its next witness.

4 MR. MOWRY: Thank you, Your Honor. We
5 call John Howell to the stand.

6 WHEREUPON,

7 **JOHN HOWELL,**

8 having been duly sworn by the Clerk, testified
9 as follows:

10 THE COURT: Sir, once you're seated please
11 state your name, spell your last name please.

12 THE WITNESS: All right.

13 THE COURT: Thank you.

14 THE WITNESS: John Howell, H-O-W-E-L-L.

15 THE COURT: Your witness, counsel.

16 MR. MOWRY: Thank you very much, Your
17 Honor.

18 THE COURT: Yes, sir.

19 **DIRECT EXAMINATION**

20 BY MR. MOWRY:

21 Q You go by J.C.; is that right?

22 A Yeah.

23 Q Your initials? J.C., how old are you now?

24 A I'm 24.

25 Q How old were you back in March of 2018?

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1 A 23.

2 Q Okay. What kind work did you do back in
3 March of 2018? I'm gonna move this up a little
4 closer to you; you're kind of soft spoken.

5 A I did cable barrier repair.

6 Q And what is a cable barrier?

7 A Cable barrier is the barrier in the middle
8 of the interstate.

9 Q What is its purpose?

10 A The purpose is to deflect traffic from
11 going head-on into the opposite bound.

12 Q To keep traffic from crossing over the
13 median and running head-on into traffic going in the
14 other direction; is that right?

15 A Yeah.

16 Q Is that kind of barrier present on most
17 interstates in South Carolina?

18 A Yeah.

19 Q What is the name of the company you worked
20 for?

21 A Bagwell Fence Company.

22 Q And did they have a contract to repair
23 these cable barriers throughout South Carolina?

24 A Statewide, yeah.

25 Q Where is Bagwell Fence located?

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1 A In Spartanburg, South Carolina.

2 Q Okay. And where do you live?

3 A I live in Woodruff, South Carolina.

4 Q How long had you worked with Bagwell Fence
5 as of March of 2018?

6 A Almost three years.

7 Q Okay. Describe a typical day working on
8 the cable barriers. What time would y'all come to
9 work in the morning?

10 A Around 6:00 a.m. on average day. If we
11 have to travel down towards the lower part of the
12 state, maybe 4:30.

13 Q So you might get there as early as 4:30,
14 normally 6:00 a.m.?

15 A Correct.

16 Q How long is your work day?

17 A Anywhere from 12 to 15 hour days.

18 Q What kind of assignments would you get?
19 The chores you had to do during the day, how would
20 you get those?

21 A I mean, what I did was I set up traffic
22 control; and I would be setting up the traffic signs
23 that would tell people, hey, why about to be working
24 up here. We'd have a perimeter set up and then we
25 would set up the taper for our crash truck.

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1 Q What I'm getting at, though, is how would
2 know where to go to work on the cables?

3 A Well, our foreman would give us the mile
4 marker sheet with all the hits, which would be
5 knocked down cable posts or whatnot. We would have
6 mile markers with, say, like right down here 26 or
7 Interstate 385 and it'd be mile marker 19.4, and
8 then so on, so on, for which every hit was where it
9 was.

10 Q And so you would have the interstate
11 number and then the mile marker where you would need
12 to do the work; is that right?

13 A Yes.

14 Q And whether you were going east or west,
15 whether you're going north or south, mile marker 19
16 was gonna be the same, right?

17 A Correct.

18 Q So you knew where to go?

19 A Yeah.

20 Q Okay. On a typical day how many, how many
21 of those assignments for those mile markers would
22 you get?

23 A I mean, it depends. Some days we can only
24 do four or five because how big they are. Some days
25 you can do 15 or 20 because they're smaller hits, 3,

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1 4, 5 posts.

2 Q All right. When you say hits, what are
3 you talking about?

4 A We say hits because that's where a car had
5 hit the barrier and all that, so, yeah.

6 Q Describe, if you can, how the cable
7 barrier works. What is it, what is it designed to
8 do?

9 A All right. So what the cable barrier is
10 meant to do is to not only slow a vehicle down, but
11 to catch it and keep it from going into the opposing
12 lanes. So if said car comes head-on, the cable is
13 supposed to catch it and then the post has a cable
14 hold the car. The posts are supposed to slow the
15 car down.

16 Q So if somebody hits the barrier it would
17 just kind of do a zipper effect on the cables, I
18 mean, on the posts; is that right?

19 A To slow them down, yeah.

20 Q What are the posts designed to do?

21 A Slow the car.

22 Q Well, I mean, by how? How do they do
23 that, yeah?

24 A Well, I mean, solid object. You know,
25 they hold the cable which helps keep the car from

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1 going across the street; and then as the cable is
2 holding the car going across the street, the posts,
3 as the car hits the posts it will slow down.

4 Q Okay. We've heard some testimony about
5 these cable barriers and tractor-trailer trucks.
6 What can you tell us about how effective these cable
7 barriers are?

8 A I've seen them stop tractor-trailers.
9 I've seen them stop multiple cars. I've seen them
10 stop just about anything that came at them.

11 Q Okay. Now did you have a list of hits
12 that you were gonna go repair that day ---

13 A Yeah.

14 Q ---on March 28th, 2018?

15 A I did.

16 Q Okay. How many did you have, just a quick
17 count?

18 A Eight.

19 Q All right. And y'all started at the usual
20 time; is that right?

21 A Yes, sir.

22 Q I said y'all. How many people were in a
23 crew?

24 A There's four of us in a crew.

25 Q Okay. How many people worked in a truck?

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1 A There would be two of us in a truck.

2 Q Who were you partnered with?

3 A I was partnered with Zack Ivey.

4 Q How long had you been partnered with Zack?

5 A Me and him had been in the same truck for
6 around six months.

7 Q Okay. was he your friend?

8 A Oh, yeah, good buddy.

9 Q And y'all spent half the day six days a
10 week together; is that right?

11 A Yeah.

12 Q Where did y'all have to go first? And how
13 do you -- let me ask you this before we get started
14 on that. How do you make a determination as to
15 where to go first and then second and third and that
16 sort of thing?

17 A Well, we try to choose the best route, I
18 mean, try to circle around. Depending on the mile
19 marker, where I went first, 28,24 on I-26, which the
20 happened to be the 221 Woodruff Exit and then the
21 next after we finished following it, then it was
22 next highway would be 385 so we just ended up
23 doing -- by the end of day we would have ended up
24 doing a whole circle and come back to almost where
25 we started.

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1 Q So you started down I-26?

2 A Yeah.

3 Q So that was this first one. Where was
4 your second one?

5 A It was on 26 just further down the road.

6 Q All right. By 9:30 that morning had you
7 completed both those first two projects?

8 A Yes.

9 Q What was your third project?

10 A The third project was on I-385, mile
11 marker 19.4.

12 Q Is that where this incident we're talking
13 about this week occurred?

14 A Right before 19.4.

15 Q Okay. Describe how you went about
16 preparing for this work that you were gonna do?

17 A Well, like I said, we set up traffic
18 control. Not only do we help the two guys that were
19 getting there, they can't get their null we set up
20 traffic control. So we have to notify the public
21 with our signs that, hey, we're going to be working
22 on the shoulder and so we would have, we put on our
23 strobes and I would put my mile markers, set my mile
24 markers in the truck so I know exactly where I need
25 to put my signs a certain distance apart. Then we

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1 started putting out signs.

2 Q Okay. Let me show you a sign. I'm gonna
3 pull up State's Exhibit Number 42. Is that one of
4 your signs?

5 A Yes, it is.

6 Q And I believe it says shoulder closed one
7 half mile; is that right?

8 A Correct.

9 Q Is that where you were supposed to put
10 this sign out was a half mile up the road?

11 A Yeah.

12 Q And then you have a second sign; is that
13 right?

14 A Yes.

15 Q State's Exhibit Number 43, Your Honor.
16 And that says shoulder closed one thousand feet; is
17 that right?

18 A Yes.

19 Q Okay. Are these to alert motorists that
20 there's work being done?

21 A Yes, it is.

22 MR. MOWRY: Beg the Court's indulgence for
23 just a moment.

24 THE COURT: Yes, sir.

25

SW - J. HOWELL - DIRECT

1 BY MR. MOWRY:

2 Q Well, we're gonna have to do it the old
3 fashioned way. I'm gonna pull up number 24 and ask
4 you, what are we looking at there, J.C.?

5 A The back of the crash truck.

6 Q Is this the truck that y'all were driving
7 that day, you and Zack?

8 A Yes, it was.

9 Q It was your job to be out there -- was he
10 driving and you were putting out the signs as you
11 went along?

12 A I was driving, but we both were putting
13 out the signs.

14 Q Okay, I got you. And this sign, or this
15 contraption on the back of the truck, what is that
16 called?

17 A The boom.

18 Q What is its purpose?

19 A Well, it's for when we have our sign set
20 up and our gun tapered out, that's what we put down
21 so in case a car was to come into our traffic
22 control or through our cones, then that would absorb
23 almost all the impact.

24 Q That was for y'all's protection, is that
25 right, while y'all are out there working?

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1 A Correct.

2 Q Okay. And it says, stay back, truck makes
3 frequent stops; is that right?

4 A Yes.

5 Q Were there flashing strobes on your truck?

6 A Yes, there was.

7 Q Okay. What color were they, do you
8 recall?

9 A Orange and yellow.

10 Q Okay. How far up the road were y'all
11 gonna have to work on the cables? How much further
12 up the way beyond your truck were they?

13 A I'd say another tenth of a mile.

14 Q Okay. How were y'all going to proceed up
15 there to the cables? Were y'all gonna drive or were
16 you gonna walk?

17 A We were gonna drive.

18 Q Okay, let me show you number 9. Is this
19 where you were parked?

20 A Yes.

21 Q Is that outside the yellow line?

22 A Yes, it is.

23 Q So you were off of the lanes of travel of
24 the interstate; is that right?

25 A I was.

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1 Q What is this item right here?

2 A That is the -- it's the door where we pull
3 our signs. It's a drop-down door so we can have
4 easy access to the back of the truck to gather our
5 signs.

6 Q Okay. What were you about to do while you
7 were parked there?

8 A We were about to put the third sign up.

9 Q And what would that third sign have said?

10 A It would have said, 500 feet, work zone
11 500 feet.

12 Q Okay. So you're gonna drive, put that
13 sign out, and then drive another 500 feet; is that
14 right?

15 A Yes.

16 Q Where in relationship to the truck were
17 you and Zack?

18 A We were in between the cable and the back
19 corner of the driver's side.

20 Q So you were in this area in relation to
21 the truck, is that right, and you were on the
22 driver's side of the truck?

23 A Yes.

24 Q In between the truck and the cable
25 barrier. Do you recall anything about the next

SW - J. HOWELL - DIRECT

1 couple of minutes?

2 A If you're asking if I remember getting hit
3 by the car, no, but I remember screaming. I can
4 remember my legs being on fire. I remember talking
5 to Ms. Diane for half a second.

6 Q Ms. Conte?

7 A Yes, sir.

8 Q Do you remember talking to your
9 girlfriend?

10 A No, I don't remember talking to her.

11 Q What's her name?

12 A Kinley.

13 Q Is she present in the courtroom?

14 A Not right now, no.

15 Q Okay. Has she been this week?

16 A Yeah, she was this morning.

17 Q You've been present during the testimony;
18 is that right?

19 A Yes, I have.

20 Q You recall Ms. Conte's testimony?

21 A Uh, yeah.

22 Q Do you recall ever talking to your
23 girlfriend?

24 A I don't.

25 Q Do you recall Mr. Glodz?

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1 A I don't recall him at all.

2 Q Do you recall Ms. Abercrombie?

3 A No, I do not.

4 Q Okay. When you started out that day what
5 condition was the truck in?

6 A It was just fine.

7 Q Any dents, dings?

8 A No, sir.

9 Q Damage?

10 A No, sir.

11 Q Did the side of the truck look like that?

12 A It didn't.

13 Q State's 16. What is that number 17?

14 A It's a bent rim.

15 Q Was the rim bent like that?

16 A No, it wasn't.

17 Q Was the side wall of the tire torn?

18 A It was not.

19 MR. MOWRY: States 18, Your Honor.

20 THE COURT: All right.

21 BY MR. MOWRY:

22 Q Didn't look like that. State's 19, what
23 are these?

24 A Those are the steps to the door.

25 Q So this is the door. This white up here.

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1 These black items down here are the steps?

2 A Correct.

3 Q Were they in that condition?

4 A No, they were not.

5 Q State's Number 20, what does that show?

6 A That shows the driver's side door.

7 Q Does it also show the hood there?

8 A Yeah, it does.

9 Q Were those in that condition?

10 A No, they were not.

11 Q When you were about to put that last sign
12 out was that panel still attached to the side of the
13 truck?

14 A It was.

15 Q J.C. what is this?

16 A That's our Bagwell Fence vest.

17 Q This neon color?

18 A (No verbal response.)

19 Q Is this like one of the ones you were
20 wearing that day?

21 A Yes, it was.

22 Q Was Zack also wearing one of those?

23 A Yes, he was.

24 MR. MOWRY: State's 41, Your Honor.

25 THE COURT: All right.

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1 BY MR. MOWRY:

2 Q Was that the one Zack was wearing that
3 day?

4 A It was.

5 Q Number -- excuse me. What's the next
6 thing that you recall?

7 A The only thing I remember is just lying
8 there screaming; and like I said, my legs, just
9 fire. And then, I guess I blacked out because all I
10 really remember was I woke up for half a second. I
11 got, asked my mom and my finance -- I'm not sure
12 who -- about what happened, and then that's all I
13 remember.

14 Q That was in the hospital, right?

15 A Yeah.

16 Q Okay. How long were you in the hospital?

17 A I was in the hospital for three weeks.

18 Q How long were you bedridden or were you
19 bedridden the entire time you were in the hospital?

20 A The entire time I was in the hospital,
21 yes, and after I got out.

22 Q How long after you got out were you
23 bedridden?

24 A I think I was bedridden for a total of
25 three months.

SW - J. HOWELL - DIRECT

1 Q While you were in the hospital did you
2 find out that Zack had died?

3 A I did.

4 Q Were you able to go to his funeral?

5 A I wasn't.

6 Q Did your condition prevent you from doing
7 that?

8 A It did.

9 Q Can you describe the injuries that you
10 received as a result of this?

11 A Can I show my leg?

12 MR. MOWRY: Sure.

13 THE WITNESS: All right. So I ended up
14 with compartment syndrome because I dislocated my
15 left ankle and shattered my tibial plateau. Because
16 I have Parkins(ph) syndrome I had to have emergency
17 fasciotomy (ph) to save my leg. What that had done
18 was they had to cut my leg open on both sides from
19 here to here and then cut it all the way down to the
20 bone so that my muscles would continue to swell or
21 it would eventually have to amputate my leg. So
22 then I had a skin graph to cover that up. I have 21
23 screws and two plates underneath my knee to
24 restructure it into a plateau.

25 And then I also have nerve damage in my

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1 left leg while, also, I had snapped my left ankle, I
2 mean my right ankle, and they ended up putting eight
3 screws and a plate in that while I also snapped my
4 right wrist and they had to put a screw to secure my
5 bone.

6 Q Is that all?

7 A I think I had a mild concussion too.

8 Q So both legs and your right arm were all
9 affected; is that right?

10 A Yes.

11 Q You talked about being bedridden about
12 three months. How about after that three month
13 period, what then?

14 A I was in a wheelchair for another few
15 months before I could gradually, through a lot of
16 PT, able to start with a walker to stand up.

17 Q So you were doing physical therapy?

18 A I have. I've been doing it for over a
19 year now.

20 Q Okay, you used a walker. Did you then
21 graduate to a cane?

22 A I did.

23 Q Are you using a cane now to get around?

24 A It depends on where I need to go. If I
25 have -- if I know I'm gonna be on my feet for a long

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1 period of time it's a best bet for me to take it.
2 It helps me get the pressure off of my left knee and
3 I just -- here today, you know, I can sit down so
4 it's not that big a deal. I mean, it hurts to walk
5 sometimes. It hurts to stand sometimes if I stand
6 in one spot too long.

7 Q Are you able to work?

8 A No.

9 Q Are you on any medications now?

10 A I am.

11 Q What kind of medications are you on?

12 A I am on Hydrocodone for pain medication.
13 I take that three times a day, and I'm always on
14 Gabapentin which I take twice a day.

15 Q Gabapentin, what do you take that for?

16 A My nerve pain, nerve damage.

17 Q Have you received any kind of cautions or
18 warnings about taking Gabapentin?

19 A They say you may not want to operate heavy
20 machinery.

21 Q Okay. Do you drive on Gabapentin?

22 A No.

23 Q Let me ask you about the screws and plates
24 and everything that have been placed in your body.
25 Are they still there?

1 A They are.

2 Q Are they going to continue to be there?

3 A They told me they have no reason to take
4 them out unless my range of motion later on down the
5 line is still affected.

6 Q So they're gonna be in you for the rest of
7 your life; is that right?

8 A Most likely.

9 Q Tell me again, how old are you?

10 A I'm 24 years old.

11 MR. MOWRY: Thank you, sir.

12 That's all I have.

13 THE COURT: You may cross-examine.

14 MR. STODDARD: I have no questions.

15 THE COURT: Sir, you may step down from
16 the witness stand. Thank you very much.

17 I ask the attorneys to approach.

18 (WHEREUPON, counsel approached the
19 Bench for an off-the-record discussion.)

20 THE COURT: All right, ladies and
21 gentlemen of the jury, that completes the witnesses
22 we're going to take up for this afternoon. You
23 know my instructions when you leave the courthouse.
24 I probably don't have to repeat them, but I think I
25 do. Do be careful about the media reports. If

1 there are any out there don't watch them or read
2 them or listen to those. I caution you about that
3 again.

4 We've got some witnesses who are coming
5 from out of town in the morning so we're gonna start
6 at 9:30 to be sure they have time to get here and be
7 ready to go. So if you'll be in the jury room by
8 9:30 we should be able to start shortly thereafter.
9 Hope you have a good evening. I'll be checking on
10 you in the morning. We'll see you then. Thank you
11 very much.

12 (WHEREUPON, the jury was removed from the
13 courtroom at 5:11 p.m.)

14 THE COURT: All right, we'll resume in the
15 morning at 9:30.

16 Ma'am, I will caution you again. We'll
17 start the trial at that time. If you fail to appear
18 we'll continue the trial in your absence. I would
19 issue a bench warrant if there's not a valid excuse
20 for your absence. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Thank you very
23 much. 9:30 in the morning.

24 (Court adjourned and resumed on July 17, 2019.)

25 THE COURT: All right, Mr. Mowry, you

1 ready to proceed?

2 MR. MOWRY: Yes, sir, Your Honor.

3 THE COURT: Defense ready to proceed?

4 MR. STODDARD: Yes, sir.

5 THE COURT: Okay, bring the jury.

6 MR. MOWRY: Just for the record, Your
7 Honor, I do have something I need do on the record
8 before the jury comes in and then Mr. McMahon will
9 conduct the examination of the next several
10 witnesses.

11 THE COURT: All right, thank you very
12 much.

13 (WHEREUPON, the jury was returned to the
14 courtroom at approximately 9:40 a.m., and
15 the following proceedings commenced in
16 open court.)

17 THE COURT: The record will reflect the
18 jury has returned to the courtroom. I hope all of
19 you had a good evening last night. If there were
20 any of you who were unable to follow any of my
21 instructions during your absence from the courtroom,
22 I'd ask that you now please stand.

23 (There was no response.)

24 THE COURT: It appears that all jurors
25 have been able to comply with the Court's

SW - D. ANDIS - DIRECT

1 instructions so far. When we took our break
2 yesterday the State was in the process of presenting
3 its evidence. You may continue at this time,
4 Mr. Mowry.

5 MR. MOWRY: Thank you very much, Your
6 Honor.

7 THE COURT: Yes, sir.

8 MR. MOWRY: For the record, Your Honor,
9 Mr. Stoddard can correct me if I'm wrong, but the
10 State and Defense are stipulating to the admission
11 of four documents, each a separate exhibit: State's
12 Exhibits 51, 52, 53, and 54. They are in order, the
13 defendant's prescription records for the last six
14 months from CVS pharmacy in Simpsonville. And then
15 three different FDA, Food and Drug Administration
16 medication guides for Neurontin or Gabapentin, for
17 Effexor or Venlafaxine, and then for Klonopin or
18 Clonazepam. Those would be 51 through 54. And I'd
19 spoken just a few minutes ago with Mr. Stoddard. He
20 can correct me if I'm wrong in any of this.

21 THE COURT: Mr. Stoddard, any objections
22 to those records?

23 MR. STODDARD: No objection, he's correct.

24 THE COURT: All right, well, they will be
25 admitted into the record as marked. Thank you, sir.

SW - D. ANDIS - DIRECT

1 (WHEREUPON, State Exhibits No. 51 through
2 54 were marked for identification and
3 admitted into evidence.)

4 MR. MOWRY: Thank you, Your Honor.

5 THE COURT: The State may call its next
6 witnesses.

7 Mr. McMahon.

8 MR. MCMAHON: Thank you, Your Honor. The
9 State calls David Andis.

10 THE COURT: Come forward, sir, to be sworn
11 please, sir.

12 WHEREUPON,

13 **DAVID ANDIS,**
14 having been duly sworn by the Clerk, testified
15 as follows:

16 THE COURT: Sir, once you're seated in the
17 witness stand I ask you to state your name and spell
18 your last name for us, please.

19 THE WITNESS: Yes, sir. David Andis,
20 A-N-D-I-S.

21 THE COURT: Thank you.
22 Counselor, your witness.

23 MR. MCMAHON: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 **DIRECT EXAMINATION**

SW - D. ANDIS - DIRECT

1 BY MR. MCMAHON:

2 Q Mr. Andis, you are employed by the South
3 Carolina Highway Patrol?

4 A Yes, sir.

5 Q How long have you been so employed?

6 A With the highway patrol for 14 years.

7 Q And prior to that do you have any law
8 enforcement experience?

9 A Yes, sir.

10 Q And what period of time, what agency, or
11 agencies?

12 A The city of Mauldin Police Department for
13 three years.

14 Q So you have a total of 17 years in law
15 enforcement?

16 A Yes, sir.

17 Q Fourteen of which has been with the
18 highway patrol?

19 A Yes, sir.

20 Q What is your current assignment?

21 A Current corporal with the highway patrol
22 MAIT unit upstate or upstate region.

23 Q All right. Let's go back a little bit
24 back 14 years, let's say. When you first became a
25 trooper where were you assigned, what were your

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1 general responsibilities and duties?

2 A When I first came on patrol I was assigned
3 in Pickens/Oconee County as a normal road trooper
4 working collisions, investigating DUIs, traffic
5 enforcement.

6 Q I believe now you say you're on the MAIT
7 team?

8 A Yes, sir.

9 Q We'll talk a little bit more in detail
10 about the MAIT team, but how long were you on parole
11 before you were assigned or perhaps I can say
12 promoted to the MAIT team?

13 A Well, I was on the road, a road trooper
14 for five years, before I applied to be on the MAIT
15 team.

16 Q And after you applied were you accepted?

17 A Yes, sir.

18 Q All right. Tell us, tell the jury please,
19 generally, briefly, what is -- is it M-A-I-T, MAIT
20 team?

21 A Yes, sir.

22 Q What that stands for, what type of team
23 that is?

24 A MAIT stands for Multidisciplinary Accident
25 Investigation Team. We are a specialized unit

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1 within the highway patrol to assist them, the road
2 troopers, and also other agencies through the state,
3 specifically with collision investigations, usually
4 high probability of significant injuries, not
5 necessarily the case.

6 Q Not necessarily fatal, but significant
7 injuries in significant major traffic accidents, ---

8 A Yes, sir.

9 Q ---would that be a fair statement? And do
10 you have -- well, before you were accepted to the
11 MAIT team, did you have any additional training or
12 experience as a highway patrolman beyond the basic
13 academy?

14 A Yes, sir. I've been through the two weeks
15 acene course which is 80 hours of training just
16 related to collision investigation. And then when I
17 came on MAIT during my nine years I've had probably
18 a thousand additional hours of specific to collision
19 training ---

20 Q Is that -- excuse me, I didn't mean to
21 interrupt you. Go right ahead.

22 A I was saying the nine years since I've
23 been on MAIT I received probably a thousand
24 additional hours specific to collision
25 investigation.

SW - D. ANDIS - DIRECT

1 Q Both specific to collisions and the
2 dynamics to collisions and such as that?

3 A Yes, sir, such as pedestrian involved
4 collisions, commercial motor vehicle collisions,
5 motorcycle collisions, crush dynamics, things of
6 that nature.

7 Q Now are, I know there's one MAIT team, I
8 guess, overall; but are there officers assigned to a
9 MAIT team within particular areas of the state?

10 A Yes, sir. So MAIT is comprised of four
11 units, geographics, positions across the state. The
12 team that I'm, our office is in Greenville. We
13 cover twelve counties here in the upstate. Another
14 team in Columbia. There's another team in
15 Charleston and one in Florence.

16 Q Now how many officers are assigned to the
17 team that you're on?

18 A Currently as of today there are five.

19 Q Five. And is that generally the number in
20 the other areas of the Pee Dee, the low country, and
21 the midlands? Is that generally the same amount?

22 A Well, our numbers are low right now for
23 personnel so.

24 Q Okay.

25 A Ours is probably at the low end right now.

SW - D. ANDIS - DIRECT

1 Q Now how do y'all, how do y'all get
2 assigned or called out to a particular traffic
3 incident? How is that?

4 A The way it works is a -- the trooper, the
5 agency will respond to a collision. They would have
6 a question about the collision or, you know, just
7 meet the certain criteria that's set by MAIT, such
8 as DUI death, or hit and run. They would go up
9 their chain of commands who would then contact our
10 chain of command and then it comes back down to me
11 or my sergeant to tell us to respond either
12 immediately or as a deferred response.

13 Q Were y'all called out as to follow proper
14 procedure, were y'all called out to an incident that
15 occurred on the 28th of March, 2018, on I-385 in
16 Laurens County?

17 A Yes, sir.

18 Q And how many MAIT officers responded?

19 A Four of us.

20 Q And is that typical?

21 A Because it was during as we call it normal
22 business hours, yes, everybody was working.

23 Q All right. And do you recall that being
24 at mile marker 19 on 385?

25 A Yes, sir.

SW - D. ANDIS - DIRECT

1 Q Now is there one officer designated as the
2 supervisor of that response?

3 A Yeah, that would have been me. In this
4 case I was the MAIT supervisor.

5 Q All right. So you would make certain
6 decisions or assignments as to other members of the
7 MAIT team that would also respond?

8 A Yes, sir.

9 Q What, again, just give us an overview very
10 briefly, what does the MAIT team do when they arrive
11 at such an incident?

12 A It depends on the collision, but the first
13 thing that I do is as scene supervisor is go to the
14 road supervisor. I don't recall who was there, but.
15 I go to them, have them walk me through the scene,
16 and then I have them tell me what questions they
17 have, if they need questions answered such as the
18 speed or who was driving, or whatever their
19 questions may be. Otherwise, it just ends up being
20 a scene documentation and vehicle examination.

21 Q So you get kind of a walk-through or
22 briefing?

23 A Correct.

24 Q And like you say, you may get some
25 inquiries, some questions to you that y'all may or

SW - D. ANDIS - DIRECT

1 may not be able the answer; is that correct?

2 A Correct.

3 Q All right. And then based on that
4 overview so to speak that you got on the scene, do
5 you assign the other officers to specific tasks?

6 A Yes.

7 Q All right. And you walked through this
8 scene?

9 A Yes, sir.

10 Q Tell us generally what you recall of the
11 accident site.

12 A The collision occurred on northbound 385
13 so if you're going toward Greenville. The scene had
14 already been marked when we arrived. There's a CMV
15 on the left side of the yellow line at the median
16 that had been struck on the left side by the right
17 front of a grayish colored Chevrolet SUV. That
18 vehicle after striking the CMV travels into the
19 cable barriers and just continues through into the
20 cable line and came upon rest actually still in the
21 cable.

22 Q And the photographs were taken by members
23 of the MAIT team; is that correct?

24 A Yes.

25 Q Put up 43, please. All right, and here's

SW - D. ANDIS - DIRECT

1 the smaller version of 43. Is that, you recognize
2 that as the scene or looking northbound on 385?

3 A Yes, sir.

4 Q And northbound, if I'm -- correct me if
5 I'm wrong, that's headed towards Greenville,
6 correct?

7 A Yes, sir.

8 Q And y'all would have arrived approximately
9 what time? "Y'all" being the MAIT team,
10 approximately what time?

11 A I would have to look at the actual case
12 report. It would be on there.

13 Q All right. You're referring to this?

14 A Yes, sir.

15 Q What time does it say y'all's arrival?

16 A 11:35.

17 Q A.m.

18 A Yes, sir.

19 Q Correct? And you also referred to in your
20 testimony about the scene had already, had already
21 been marked. What does that terminology mean? What
22 are you referring to?

23 A That's just what the investigating troop
24 does to show tire marks, the rest of the vehicle,
25 just paint on the perimeter.

SW - D. ANDIS - DIRECT

1 Q All right. So they, we have some
2 photographs where they had sprayed down where the
3 vehicle was, you're talking about marking the scene
4 with that type of paint; is that correct?

5 A Yes, sir.

6 Q All right now, what did y'all need to
7 accomplish? Not just you, but what did members of
8 y'all's team as the MAIT team need to accomplish?

9 A In this particular collision we were told
10 to document the scene, to treat -- really no
11 questions as far as the dynamics of the wreck. We
12 were called mainly -- it was a construction zone,
13 see how the construction zone was set up and
14 document that.

15 Q And when you say troop, the officers that,
16 the responding officers, the supervisor or the
17 responding officer said they had no questions about
18 the dynamics of the scene of the wreck. And but in
19 your mind, did you, or your opinion about the
20 dynamics of the scene how the wreck happened?

21 A Yes, sir.

22 Q And was that consistent with the
23 information you were getting from the troopers that
24 responded initially to the scene?

25 A For the most part.

SW - D. ANDIS - DIRECT

1 Q What do you mean by the most part?

2 A There were some questions as far as where
3 the pedestrians were standing.

4 Q All right, all right. The truck, where it
5 was parked, the construction truck, it was parked
6 legally, correct?

7 A Yes.

8 Q Off of the highway?

9 A Yes.

10 Q Up to the -- if I'm standing on 385
11 looking north, it would have been to the left on the
12 yellow line off of 385?

13 A Yes.

14 Q Out of any lane on 385?

15 A Yes.

16 Q Between that yellow marker and the grass
17 median leading to the cables; ---

18 A Yes.

19 Q ---is that correct? All right. Did you
20 observe -- well, what did you do next?
21 Specifically, what task did you do?

22 A I completed the scene case notes, assigned
23 the tasks to the other MAIT investigators out there
24 on the scene. I was in communication with the road
25 scene supervisor who had been on the interstate to

SW - D. ANDIS - DIRECT

1 try to get the interstate back open per the
2 collision.

3 Q Now in a scene such as this where you have
4 a construction truck or truck do any type of repairs
5 on the interstate, do they, are they required to set
6 out certain signage?

7 A They are.

8 Q And was it important and part of y'all's
9 investigation to document, photograph that signage?

10 A Yes.

11 Q All right. I thought I had 43 up there.
12 Did it disappear on me?

13 A No, that's my bad.

14 Q And I think you have a small version of
15 43. Example of this right here, shoulder closed one
16 thousand foot, is that some of that signage
17 associated with that construction vehicle?

18 A Yes, sir.

19 Q And that would be a thousand foot and then
20 as you drive towards a construction site on the side
21 of the interstate there would be more signage closer
22 to where the instruction is going on; is that
23 correct?

24 A Yes, sir.

25 Q And I believe -- let's see, I thought it

SW - D. ANDIS - DIRECT

1 was 43.

2 A I believe that's actually after the
3 collision.

4 Q And then there's a sign also -- it's
5 documented in that record I handed up to you. There
6 was another sign 700 feet?

7 A One 700 feet back where the collision took
8 place and one 1000 foot behind that.

9 Q So there was a total signage shoulder
10 closed half mile?

11 A Correct.

12 Q And then you get further up and that's
13 other sign; is that correct?

14 A Yes. The first signage you see right
15 there, based on our measurements was approximately
16 1700-feet prior to the, where the collision occurs.

17 Q Wasn't it, wasn't it 700-feet one closest,
18 then another 1700 according to your documentation?

19 A No, sir. The sign you're seeing in that
20 still shot from the video is -- that's the first
21 sign that you encounter as you're approaching the
22 collision scene and that sign right there is
23 1700-feet prior to collision. The next sign up is
24 700-feet from the collision.

25 Q All right. So this documentation is

SW - D. ANDIS - DIRECT

1 measuring it from the collision?

2 A Yes. That had not made it to the actual
3 work site.

4 Q Wasn't they in the process of putting out
5 a third sign?

6 A Correct.

7 Q And that would have been 500-foot sign?

8 A Correct.

9 Q All right. Now there after those
10 measurements were taken, what arrangements you made
11 for documenting the scene or taking any aerial
12 photographs or anything of that nature?

13 A I had one of the investigators, Kelly
14 Brugden, who used a drone what we call a DUB to take
15 a picture or a video. He also completed, began a
16 vehicle examination of the Chevrolet involved.
17 Lance Corporal Wingo documented the scene with
18 visual pictures, also completed the examination of
19 the commercial motor vehicle. Lance Corporal Craig
20 [ph] did some interviews on the scene. And I did
21 video, but that's actually, had Lance Corporal Craig
22 travel southbound past the collision location and
23 respond to the scene videoing so we could document
24 footage of those signs.

25 Q All right. And I believe Officer Robinson

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1 with us today; is that right?

2 A Yes, sir.

3 Q And Officer Turner?

4 A Yes, sir, he was also there.

5 Q He was not at the scene, but he did some
6 followup as far as a MAIT report is concerned; is
7 that correct?

8 A Correct.

9 Q Now you had an opportunity to walk through
10 the scene and such. Did you have an opportunity to
11 view a vehicle that's depicted in State's Exhibit
12 Number 11?

13 A Yes, sir.

14 Q All right. And which vehicle was that?

15 A This is the Chevrolet Equinox.

16 Q In reviewing that did you determine just
17 in general observation and examining the scene and
18 the vehicle, what brought the vehicle to a final
19 halt, stopped?

20 A Basically what stopped this vehicle is the
21 cable barriers that the cars ---

22 Q This is one example you're talking about
23 marking the scene there?

24 A Yes, sir.

25 Q And did you walk from this area of the

SW - D. ANDIS - DIRECT

1 vehicle, back of the vehicle, back towards the
2 truck?

3 A Yes, sir.

4 Q And State's Exhibit Number 15, is that the
5 back of the construction vehicle?

6 A Yes, that's what we would consider the
7 left rear of the...

8 Q All right. And did you, did you notice
9 this collision or this damage to this vehicle on the
10 back driver's side?

11 A Yes, sir.

12 Q And you also noticed the condition of the
13 rim of this back tire?

14 A Yes, sir.

15 Q Now talking about this area here if I go
16 back to -- I apologize, Solicitor. If I go back to
17 the previous photograph I had up there.

18 MR. MOWRY: Is that number 11?

19 THE WITNESS: Yes, sir.

20 BY MR. MCMAHON:

21 Q All right. What -- this item right here,
22 you see where I'm pointing at on the front passenger
23 side of the Chevrolet? I believe it's the Chevrolet
24 Equinox.

25 A Yes, sir.

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1 Q I believe that's right. Did you -- were
2 you able to determine where that came from?

3 A It came from the left rear of that
4 construction vehicle.

5 Q All right. And that left rear was the
6 side of the construction vehicle closest to the
7 cable?

8 A Yes, sir.

9 Q Correct?

10 A Yes, sir.

11 Q All right. And that area, I'm gonna call
12 it the area between -- I ask you if you, well, let
13 me show you this one. State's 9, does that show
14 both vehicles and the area between both vehicles or
15 at least part of the area between both vehicles?

16 A Yes, sir.

17 Q And does this show, State's 12, a closeup
18 of that area without the vehicles? In other words,
19 the area between the two?

20 A Yes, sir.

21 MR. MCMAHON: Solicitor, do you mind ---

22 MR. MOWRY: This is Number 9.

23 BY MR. MCMAHON:

24 Q All right, Number 9. So here you can see,
25 I'm gonna call it impact vehicle, okay. And this

SW - D. ANDIS - DIRECT

1 area and the area between the two -- I call this the
2 impacted vehicle, the construction vehicle. So you
3 see various items out here and you documented those,
4 reviewed those?

5 A Yes, sir.

6 Q Would they be what would be known perhaps
7 a debris field?

8 A Yes, sir.

9 Q What were those items?

10 A The majority of it was car parts from the
11 Chevrolet. There were some from the construction
12 vehicle itself.

13 Q All right. And if I look at Number 12,
14 this is just an enlargement of that, of that debris
15 field, and I think you can see. I think that's the
16 wheels of the construction vehicle there.

17 A It is.

18 Q Do you agree that's what that is?

19 A Yes, sir.

20 Q And it looks like, you talk about some of
21 the items that may have come off the Equinox, the
22 Chevrolet, Ms. Tackett's vehicle, that looks like
23 the bumper or part of the exhaust system?

24 A Yes, that's the muffler.

25 Q Okay, got a muffler, and then other

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1 various parts. Then of course the cable -- I know
2 you didn't see it before the impact -- but it would
3 not have been in that condition pre- impact?

4 A No, the Chevrolet also has where he was
5 cables were ---

6 Q All right, all right. And again, that's
7 consistent with the Chevrolet, Ms. Tackett's
8 vehicle, coming down the driver's side of the
9 construction vehicle back towards the cable?

10 A Yes.

11 Q All right. Now there's, not on my car,
12 but I understand nowadays they got computers on
13 cars?

14 A They do have computers, yes.

15 Q And sometimes those computers they
16 document or they gather certain data; is that
17 correct?

18 A If you're referring to the ACM or the
19 airbag modular.

20 Q Perhaps air bag, perhaps other data about
21 what the driver may be doing and speed, such like
22 that?

23 A Yeah. The air bag control modular, black
24 box if you will, if -- its purpose is to tell
25 whether the air bag is supposed to deploy or if your

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1 seatbelt locks when you slam on brakes. That's what
2 it's designed for. But it's a by-product we use for
3 re-construction.

4 Q I mean, there's computer programs where
5 data can be downloaded from the vehicle?

6 A Yes, sir.

7 Q And then analyzed. Is that a fair
8 statement?

9 A Yes, sir.

10 Q But you can't do that on a 1985 Pontiac,
11 can you?

12 A No, sir.

13 Q How many MAIT responses have you had?

14 A Probably a thousand.

15 Q And over and above that with the four or
16 five years being a trooper prior to MAIT, how many
17 traffic accidents do you think you've done?

18 A In my career probably 2 or 3,000.

19 Q And then add on a thousand MAIT responses
20 or is that part of it?

21 A That's probably part of it.

22 Q Part of it, 2 or 3,000. That's a lot.

23 A Yes, sir.

24 Q Yeah, that's a lot. And so as part of
25 your other duties and responsibilities that day did

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1 you make -- or would your officers have done it on
2 their own to gather whatever information they could
3 get from the vehicles?

4 A Yes.

5 Q The data. And that would have been
6 analyzed also?

7 A Yes.

8 Q Reviewed and analyzed. I left that -- let
9 me see if I did. There's various terminology on
10 this scene case notes and such, and it refers to EDR
11 entity. What is that terminology?

12 A That's the event data recorder, the air
13 bag control modular.

14 Q And that, another trooper would have
15 downloaded that, another trooper analyzed that?

16 A In this case, yes. Lance Corporal
17 Robinson imaged it there on the scene and then
18 Corporal Turner ended up doing the analysis.

19 Q All right. And that, like I say, that
20 collect data for later analysis that may include,
21 that would include the time frame surrounding the
22 event. Is that a fair statement?

23 A It could.

24 Q It could.

25 A That's why you do it as part of your

SW - D. ANDIS - DIRECT

1 investigation, right.

2 Q And y'all would do that in all of those
3 types of investigation?

4 A Yeah. Any time a vehicle is what we call
5 it supported, or had one that we can retrieve the
6 data, we do that.

7 Q And I do want to show you maybe one more
8 picture. And this, you recognize this as the field
9 sketch prepared by Officer Robinson?

10 A Yes, sir.

11 Q And that would have been part of the --
12 and this is the sketch from one of the MAIT team
13 members, team members that were on the scene?

14 A Yes, sir.

15 Q And this isn't forensic mapping or
16 anything of that nature?

17 A No, sir.

18 Q And that was not -- was that, that was not
19 called for at this scene?

20 A That was not completed due to the
21 interstate being shut down; and like I said, more
22 collisions occurring while we were out there
23 happening down the road.

24 Q And what, you see that item and what, on
25 that side of the road on northbound off the shoulder

SW - D. ANDIS - DIRECT

1 and all?

2 A On the right shoulder.

3 Q What does that indicate?

4 A That's a tire.

5 Q And you know what vehicle that tire is off
6 of?

7 A That's off the Chevrolet Equinox.

8 Q And State's Exhibit Number 23, is that a
9 photograph of that tire separated off of that
10 Equinox?

11 A Yes.

12 Q And this is on detective Robinson, excuse
13 me, Trooper Robinson's, crime scene sketch. And
14 when I look at this, what is this right here?

15 A That's a guide rail.

16 Q And what is this area over here I'm
17 seeing?

18 A That's the right side of the road ---

19 Q Over here?

20 A Traveling northbound.

21 Q This would be the right side ---

22 A That's the right lane going northbound on
23 385.

24 Q Is this what you call a fog line?

25 A Yes, sir.

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1 Q All right, and then this would be the
2 right shoulder?

3 A Yes, sir.

4 Q And this would be a grassy area off the
5 right shoulder before you get to the guard rail?

6 A Yes, sir.

7 Q And over across, this is off the
8 interstate entrance ramp or something of that
9 nature?

10 A That's the side of the road it looks thee.

11 Q The side road, it's not, it's beyond the
12 guide rail?

13 A Yes.

14 Q And so this tire, if it, if it came off of
15 the Equinox which y'all determined that it did,
16 would have come up a little bit of a grassy median
17 and then the other line -- I'll show you the
18 photograph, let me find one with the yellow low
19 line. This one right here will be perfect. 24. So
20 this is also northbound?

21 A Yes, sir.

22 Q Correct. And now the fog line was white.
23 Now this line here, that's yellow. Y'all have a
24 name for that call or anything besides yellow line?

25 A Yellow line.

SW - D. ANDIS -CROSS

1 Q It's not labeled like the fog line is.

2 A No, sir.

3 Q But is it painted yellow for a reason like
4 to give a indication, hey, I probably ain't supposed
5 to be over here.

6 A Yeah, it's done close to the yellow line.

7 Q All right. So, and then this would be the
8 shoulder, grass, cable barriers?

9 A Yes, sir.

10 Q Off the left side of 385 going north?

11 A Yes.

12 Q And that tire came off of this vehicle way
13 up, the Chevrolet Equinox, and was over in the
14 grassy area on the right side, actually beyond the
15 shoulder on the right side?

16 A Yes, sir.

17 Q So it would cross the grass, shoulder,
18 left lane going north, that lane we see here, right
19 lane going north, and ended up in the grass off that
20 grass?

21 A Yes, sir.

22 Q Into that grass. All right, you reviewed
23 the report; didn't you?

24 A Yes, sir.

25 Q The MAIT report

SW - D. ANDIS - REDIRECT

1 A Yes.

2 Q And your officers that you work with,
3 those officers you assign perform certain tasks and
4 duties, did they perform it?

5 A Absolutely, yes, sir.

6 Q And all of that was made part of the
7 report?

8 A Yes, sir.

9 Q All right, and give me just a minute. Oh
10 by the way, Trooper Robinson would also been
11 assigned to inspect the vehicle; is that right?

12 A He was. He was assigned that one.

13 MR. MOWRY: Thank you very much, Trooper,
14 and appreciate your being with us.

15 THE COURT: Mr. Stoddard I believe you can
16 cross-examine at this time, sir.

17 **CROSS-EXAMINATION**

18 BY MR. STODDARD:

19 Q Did you make measurements?

20 A Yes.

21 Q And you made, if I -- you may have
22 testified to this, if you did I apologize. But do
23 you know the distance, did you determine where
24 Ms. Tackett's vehicle, the silver vehicle exited the
25 road on to the median, or hit the grass I guess I

1 should say?

2 A No, there was -- there wasn't really a,
3 there wasn't a question the trooper had. There was
4 no roadway evidence of her ---

5 Q Let me ask you another question, maybe get
6 at it another way. Did you determine how far after
7 she left the road she traveled before the vehicle
8 came to rest?

9 A No, I didn't take that measurement. We
10 could have taken pictures though.

11 Q Did you measure the distance from the time
12 she struck the cable until she came to rest?

13 A No.

14 Q Okay. I've got no further questions.

15 THE COURT: Redirect.

16 MR. MCMAHON: Yes, sir.

17 THE COURT: All right.

18 **REDIRECT EXAMINATION**

19 BY MR. MCMAHON:

20 Q Were any skid marks or brake marks that
21 you noted ---

22 A No, sir.

23 Q ---prior to impact with the construction.
24 vehicle?

25 A No, sir.

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1 MR. MCMAHON: Thank you, no further
2 questions.

3 THE COURT: Wish to follow up on that
4 question?

5 MR. STODDARD: No followup.

6 THE COURT: All right, you may step down,
7 sir. Thank you very much.

8 You'd like to have the witness excused?

9 MR. MCMAHON: Yes, sir.

10 THE COURT: Any objection, Mr. Stoddard?

11 MR. STODDARD: No objection.

12 THE COURT: All right, you're free to go
13 if you like, Officer. Thank you very much.

14 The State may call its next witness.

15 MR. MCMAHON: The State calls Trooper
16 Robinson.

17 THE COURT: Sir, come forward to be sworn,
18 please.

19 WHEREUPON,

20 **B.J. ROBINSON,**
21 having been duly sworn by the Clerk, testified
22 as follows:

23 THE COURT: Officer, once you're seated
24 state your name and spell your last name for us,
25 please, sir.

SW - B.J. ROBINSON - DIRECT

1 THE WITNESS: B.J. Robinson,
2 R-O-B-I-N-S-O-N.

3 THE COURT: Thank you.

4 Mr. McMahon, it's your witness.

5 MR. MCMAHON: Thank you. Yes, sir, Your
6 Honor.

7 THE COURT: Yes, sir.

8 **D I R E C T E X A M I N A T I O N**

9 BY MR. MCMAHON:

10 Q Now are you employed currently with the
11 South Carolina Highway Patrol?

12 A No, sir, I work for the Spartanburg County
13 Sheriff's Office.

14 Q All right. And previously you were
15 employed with the highway patrol?

16 A Yes, sir.

17 Q What year were you with the patrol?

18 A 2011 until 2019?

19 Q '11 to 19?

20 A Yes, sir.

21 Q So let's see, you left the patrol this
22 year?

23 A Yes, sir, in March.

24 Q And prior to 2011 were you employed with
25 any law enforcement agency?

SW - B.J. ROBINSON - DIRECT

1 A No, sir.

2 Q All right. You left the patrol, you went
3 to the Spartanburg County Sheriff's Office?

4 A Yes, sir.

5 Q What position are you?

6 A I'm on the warrants team with them.

7 Q Going back to your years on patrol, what
8 various duties or assignments did you hold during
9 that period of time?

10 A I worked for about four-and-a-half years
11 in the Greenwood/Abbeville just doing regular road
12 so investigators DUI enforcement traffic laws of
13 South Carolina. I also worked for six or seven
14 months in Greenwood County doing the same thing,
15 then I went on MAIT after that for three years.

16 Q All right. And so you're assigned to the
17 MAIT. And as a result of being assigned to the MAIT
18 team do you get additional, additional classes,
19 courses, education in that particular field?

20 A Yes, sir. After coming on to MAIT I
21 received 100 hours specific training for
22 investigating collisions involving various types of
23 vehicles.

24 Q And how many, how many MAIT responses do
25 you think you were assigned to?

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1 A Probably involved in helping investigate a
2 little over 300, 350 wrecks.

3 Q All right. Now were you one of the
4 officers assigned with Corporal Andis on the 28th of
5 March of '18 on 385?

6 A Yes, sir.

7 Q And that was mile marker 19?

8 A Yes, sir, northbound.

9 Q That is all in Laurens County, correct?

10 A Yes, sir, it is.

11 Q And upon your arrival there about what
12 area did you live in?

13 A Well, I had call out during the normal
14 business hours so we would have come from the
15 Greenville office on Pleasantburg.

16 Q All right. That's where y'all would have
17 been responding from?

18 A Yes, sir.

19 Q Upon your arrival what did you first do?

20 A Well, we came down the southbound side. I
21 parked my truck to southbound, cease access without
22 going up turning around. Again, Corporal Andis was
23 there. He was our senior supervisor. He assigned
24 various tasks. I started with a field sketch so we
25 wouldn't miss any evidence. That's the easiest way

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1 for us to quickly document the scene to make sure
2 that we know where everything is at in case
3 something gets moved or we can't find a fire fighter
4 or something like that, to see where it would have
5 been or should have been. After that I helped with
6 examining the Chevrolet Equinox that was on the
7 cable median and then we did the ER imaging of that.
8 I ended up with that. Because I was trained in UAVs
9 I did a overhead flight of the scene to take
10 pictures of video.

11 Q And let's go back a moment. You prepared
12 a field sketch, is that right?

13 A Yes, sir.

14 Q And I want to show you this document. Can
15 you identify this?

16 A Yes, sir.

17 Q Is that your field sketch?

18 A Yes, sir.

19 MR. MCMAHON: Your Honor, I want to offer
20 this into evidence.

21 THE COURT: Without objection?

22 MR. STODDARD: That's correct.

23 THE COURT: All right, without objection.
24 Has it been marked yet?

25 MR. MCMAHON: No, sir.

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1 THE COURT: Let's have it marked. Thank
2 you.

3 (WHEREUPON, State Exhibit No. 55 was
4 marked for identification and admitted
5 into evidence.)

6 BY MR. MCMAHON:

7 Q Now marked State's Exhibit Number 55, this
8 is just a basic field sketch ---

9 A Yes, sir.

10 Q ---showing the vehicles? And it's not to
11 scale.

12 A Right, not to scale.

13 Q But isn't there orientation on the
14 highway?

15 A Yes, sir.

16 Q And there's orientation to each other?

17 A Right.

18 Q Then also it has various indicators on
19 there between the construction truck and the
20 Chevrolet Equinox with -- those are your writing.
21 It's kind of where that debris is at, correct?

22 A Yes, sir.

23 Q One even indicates if you have her?

24 A Yes, sir.

25 Q I have without showing those photographs

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1 you need to show them again. Also it shows some
2 areas indicated as blood in the lane of travel?

3 A Yes, sir, that would have been the final
4 rest of the pedestrian.

5 Q And then, again, the tire I talked with
6 Corporal Andis about?

7 A Yeah, past the right shoulder on to the
8 northbound side.

9 Q All right. Now that's one thing you were
10 assigned to do. Were you also assigned to examine
11 the Chevrolet Equinox?

12 A Yes, sir.

13 Q What type of examination would you do as a
14 member of the MAIT team when somebody says examine
15 that vehicle?

16 A It's a pretty basic examination. We
17 document tire sizes, the recommended tire size,
18 pressure, tread depth. It goes once around the
19 vehicle with the piece of paper to make sure that,
20 you know, everything is lining up.

21 Q You're looking, checking it off?

22 A Right. You got your make of the vehicle,
23 year, the model, whatever data you can get off of
24 it.

25 Q And do you also make any determination

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1 that appear to be operating mechanically properly?

2 A No, sir, I'm not certified to do a
3 mechanical of the vehicle so I can't speak to its
4 mechanical capability or not; but I mean, just as a
5 personally look in good working order prior to the
6 wreck.

7 Q Do you determine -- did you see whether or
8 not air bags had been deployed?

9 A Yes, sir, they were deployed.

10 Q And noted had side curtains?

11 A If I checked it on the paper it did, I
12 don't recall.

13 Q There's a copy of your report.

14 A Now side curtains deployed.

15 Q All right. Did you note the condition of
16 the front right tire?

17 A Yes, sir, it was -- I believe that was the
18 one separated from the vehicle because I didn't
19 write any pressure on there because it's on there.

20 Q But you do have it notated right front
21 tire separate, correct?

22 A Yes, sir, that's at the bottom where we
23 makes notes.

24 Q That's the tire that we've shown on the
25 photograph and your field sketch?

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1 A Yes, sir.

2 Q Also as part of your examination did you
3 determine the weight of the vehicle?

4 A No, sir, that would have done later on by
5 one of the supervisors. We have our auto stats
6 program that gives us access to the metrics of the
7 vehicle.

8 Q All right. And what, if anything, was
9 your responsibility as far as flying the aerial...

10 A Well, after I imaged the vehicle, we go
11 ahead and do that in case they need to remove it
12 from the scene for any reason. The UAV flight stuff
13 is really simple. You've got to be trained do it;
14 but once you're trained it's an app basically on a
15 mobile device that will allow you to plot what you
16 want the UAV to document and you hit start. Your
17 job really is to make sure the area is safe while
18 it's flying and make sure nothing crazy happens; but
19 it's got auto pilot on that.

20 Q A UAV, tell me about that.

21 A A UAV, unmanned aerial vehicle. Most
22 people call it a drone. It's not much dissimilar
23 than what you see at Wal-mart or Best Buy. We just
24 have special software that allows us to document
25 scenes.

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1 Q Okay. Lastly, you mentioned -- I want to
2 go back to the downloading. What did you recover
3 to?

4 A The vehicle had an air bag control
5 modular. What we're able to do is image it so
6 you're not able to change anything on there, we can
7 just see what it says. Like I said, basically take
8 a picture of what it says and keep that for our
9 records to be analyzed at a later time.

10 Q Tell me, what do you do to image it?

11 A Well, in this particular case I was able
12 to do what's called a BSC download. Like you have
13 check engine light that plugs into the little port
14 of your car, we're able to plug in your device into
15 that as well and image what the airbag control
16 module said happened when the air bags were
17 deployed.

18 Q So that vehicle supported that type of
19 technology?

20 A Yes, sir.

21 Q Now were you trained to -- once its
22 downloaded, something or somebody or something
23 determine what's been downloaded, right?

24 A Yes, sir.

25 Q Analyzed?

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1 A All I was able to do, certified to do, was
2 download it and keep it. We have other officers who
3 are certified to analog it. In this case Corporal
4 Turner analyzed the data.

5 Q So it went, the data to the officers, and
6 Corporal Turner analyzed it?

7 A Yes, sir.

8 Q Is that a fair statement?

9 A Yes, sir.

10 Q Anything else you recall at the scene?

11 A No, sir.

12 Q All right. Thank you very much, Officer
13 Robinson.

14 THE COURT: Mr. Stoddard, you may
15 cross-examine.

16 MR. STODDARD: I've got no questions.

17 THE COURT: You may step down, sir.

18 Wish to excuse this witness?

19 MR. MCMAHON: Yes, sir.

20 THE COURT: Any objections?

21 MR. STODDARD: No objections.

22 THE COURT: You're free to go, sir. Thank
23 you for coming today.

24 You may call your next witness,
25 Mr. McMahon.

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1 MR. MCMAHON: Corporal Turner.

2 THE COURT: Come forward to be sworn,
3 please.

4 WHEREUPON,

5 **MARK W. TURNER,**

6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE COURT: Sir, when you're seated state
9 your name and spell your last name, please.

10 THE WITNESS: It's Mark William Turner,
11 T-U-R-N-E-R.

12 THE COURT: Thank you.

13 Counsel, your witness.

14 MR. MCMAHON: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. MCMAHON:

17 Q Are you now with the highway patrol?

18 A Yes, sir.

19 Q And how many years have you been with the
20 highway patrol?

21 A Twenty-five years.

22 Q Twenty-five. And do you have future plans
23 to remain at the highway patrol?

24 A I do not. I am in leave status currently
25 and will be retired August the 16th.

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1 Q August?

2 A August 16th, yes, sir.

3 Q You got a calendar on the wall scratching
4 off?

5 A Absolutely.

6 Q Sir?

7 A Absolutely, yes, sir.

8 Q Twenty-five years. Tell me the assignment
9 you held at that period of time.

10 A Upon graduation from patrol school I was
11 assigned to Chesterfield County where I was a road
12 trooper for 15 years. In 2009 I was assigned to
13 MAIT in the -- originally, it was called the
14 foothills region. So MAIT, that's since been
15 dissolved. It was folded into the Midlands-Columbia
16 area MAIT team.

17 Q So you're with the MAIT team, been with
18 the MAIT team for ten years?

19 A Yes, sir.

20 Q And after being assigned to the MAIT team
21 did you get additional classes, training, experience
22 and investigation on traffic collisions?

23 A Yes, sir. I have over 1200 hours of
24 collision reconstruction, education, as well as
25 being ATCAR certified which is the only governing

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1 body for reconstruction essentially worldwide and
2 I'm also a crash data retrieval analyst.

3 Q And of course, that is what we're going to
4 get into, talk about. How many, how many MAIT
5 responses do you know you've done in that ten years?

6 A I would say close to 900.

7 Q And then prior to that, I guess, how many
8 years?

9 A Fifteen.

10 Q Fifteen. How many traffic accidents do
11 you think you investigated?

12 A As a whole in 25 years, wow, thousands.

13 Q Do think thousands, all right. Did you as
14 a member of MAIT team respond to this incident on
15 385 on the 30th -- excuse me, 28th of March of last
16 year?

17 A I did not.

18 Q You were not at the scene?

19 A No, sir.

20 Q And did you receive certain items to
21 review and examine from the vehicle?

22 A Yes. I received a single X file which is
23 essentially the raw data that is imaged from the
24 vehicle, in this case the Chevrolet Equinox. I also
25 received the PDF of that scene, CNX file, or raw

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1 data file.

2 Q And that was what Trooper Robinson
3 testified to that he had downloaded?

4 A Correct.

5 Q That's the same item?

6 A Yes, sir.

7 Q Now tell me again, follow up on that, your
8 training and education as far as being, having the
9 ability to be an analyst in this type of data.

10 A Okay. In 2013 I traveled to Chicago to
11 Northwestern University to receive training from
12 Rusty Hate with Collision Safety Institute.
13 Mr. Hate is, I would say, the premiere crash data
14 retrieval instructor. I think he made the argument
15 worldwide. That was a week long 40 hour course.
16 Since then I have analyzed, I would say, close to
17 300 crash data reports.

18 Q All right. And among those would have
19 been this one from the Chevrolet Equinox?

20 A Yes, sir.

21 Q And have you testified in court in that
22 particular area?

23 A I have.

24 Q On how many occasions?

25 A I have been certified as an expert in

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1 court now three times with regard to general
2 collision reconstruction, as well as CDR
3 analyzation.

4 Q All right. Have you ever been offered as
5 an expert in those fields and not accepted?

6 A I have not.

7 MR. MCMAHON: Your Honor, I would offer
8 him as an expert in the field of accident
9 reconstruction.

10 THE COURT: Say those again.

11 THE WITNESS: CDR, crash data retrieval.

12 MR. MCMAHON: I wrote down. I couldn't
13 read my writing.

14 THE COURT: Any objection?

15 MR. STODDARD: No objection.

16 THE COURT: Without objection, he'll be
17 certified as an expert within the field that he's
18 been offered in. I've explained to you what that
19 designation means.

20 You may proceed, counselor.

21 MR. MCMAHON: Thank you, Your Honor.

22 BY MR. MCMAHON:

23 Q I really want to focus on the retrieval of
24 data. Tell us how, just tell me what it looks like
25 when it first comes to you and then what kind of

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1 data can you retrieve?

2 A Okay. Again, as I mentioned, the CDR X
3 file is the raw data file that you get when you
4 image a vehicle supported with that data. As
5 Corporal Anderson eluded to, the airbag control
6 modular in each vehicle's primary function is to
7 deploy the vehicle safety devices so it does that.
8 It makes a millisecond decision. In case you're not
9 aware of what the millisecond is, there are
10 thousands of milliseconds in one second. So the
11 system makes, has to make a millisecond decision to
12 deploy the vehicle safety devices: air bags,
13 seatbelt devices, essentially save your life. So it
14 makes, has to make a millisecond discussion to
15 deploy those. We call a crash pulse as -- if you
16 can imagine, if you hit a tree it's gonna first make
17 contact with the tree as obviously in the case
18 vehicle versus tree, that crash pulse is going to
19 get worse really, really quickly. So that system
20 initially as what we call a delta V, or change in
21 velocity, again, this millisecond chain in velocity
22 takes place. That system wakes up initially if that
23 crash pulse begins to worsen. In the case of
24 vehicle versus tree it's going to worsen. Again,
25 the system is gonna, okay, we got something bad

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1 going on here, let's deploy the airbags, let's
2 tighten the seatbelt not to let you go forward. In
3 order to do that it has to gauge things like speed,
4 again, change of velocity, how quickly that's
5 happening, breaking. So we get, as a collision
6 reconstructionist we get a lot of neat stuff from
7 that; but that's not its primary job function.

8 Q Its primary is what?

9 A Its primary job function is save your
10 life, is to deploy the vehicle safety devices.

11 Q And it's been designed by humans?

12 A Yes.

13 Q And then it actually ends up relying on
14 artificial intelligence because of data it's being
15 fed?

16 A Sure.

17 Q Is that a fair statement?

18 A Yes, sir.

19 Q Okay. Now from, like you say, function is
20 life saving?

21 A Yes, sir.

22 Q Detection of velocity, correct?

23 A Yes, sir.

24 Q And why is this information desired, so to
25 speak, by the accident investigators and accident

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1 reconstructionists?

2 A Again, I mean, it gives us, it gives us
3 things like the speed of the vehicle, which
4 ultimately in collision reconstruction is one of the
5 primary goals you're attempting to achieve, how fast
6 that one that know, how fast was the vehicle going.
7 But again, it gives as in terms of the totality of
8 the collision reconstruction we get braking, we get
9 change of velocity. You may have the speed from one
10 vehicle that is supported with CDR data; the other
11 vehicle does not. So we're able to take the
12 information given from the one vehicle and calculate
13 speed for the second vehicle so it has many, many
14 functions that's beneficial to us.

15 Q Now does it depend on, also, the data
16 itself that's downloaded by your analyzing and
17 review, are there some vehicles that may collect
18 more data or more data in the sense of type of data
19 or more data in the sense of the time frame in which
20 it was collected?

21 A Yes, and that's manufacture specific,
22 sometimes models specific. For example, GM made by
23 a airbag control model from all of their -- there's
24 several different manufacturers of the modulars
25 themselves -- but it is, it is manufacturer specific

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1 as to what type of data is recorded the precrash
2 data time frame, the resolution rate, how quickly it
3 records -- typically it's a second. I think in this
4 case it's a half a second resolution rate so a half
5 a second for five -- in this particular model it's
6 be five seconds of precrash data. And by precrash
7 essentially before impact occurs, before anything
8 really bad goes on. It gives you five seconds prior
9 to that, again, at a half a second resolution rate
10 so it's pretty specific data in this particular
11 case.

12 Q And I guess just like everything else,
13 someone come equipped with this and you find cases
14 where it's equipped, but not working, did you find
15 that?

16 A I've never ran off across that, no, sir,
17 never ran into that. No, sir.

18 Q So from this one down from and turned over
19 to you, you were able to retrieve, analyze certain
20 information from it, certain data?

21 A Yes, sir.

22 Q And what was the result? What was the
23 data you were able to retrieve and analyze?

24 A Again, the speed of the vehicle, the Chevy
25 Equinox -- and I don't have the report in front of

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1 me -- but it was, the average speed, she was around
2 66 miles per hour to 67. I believe the highest
3 speed that was ever recorded was 68.

4 Q Is that what you recovered, Trooper?

5 A No, the highest speed that was ever
6 achieved was 68 miles per hour, a second-and-a-half
7 before the wreck. And again, in this particular
8 instance we have braking. The brake switch was not
9 pressed. The brakes were not pressed until half a
10 second which was the last data point that we
11 received. In this particular data was a half a
12 second before the wreck. The brake switch was
13 pressed then.

14 Q A half a second before impact?

15 A Impact, yes, sir.

16 Q A half a second?

17 A Yes, sir.

18 Q All right. And the last recorded speed?

19 A I believe her last recorded speed was 67,
20 if I'm not mistaken. You actually have the CDR
21 printout. I'm fairly certain it was 67 and a half a
22 second.

23 Q Now what, based on your area of expertise,
24 what information can you give us that the brake
25 wasn't engaged until half a second before impact?

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1 A It's fairly self-explanatory. As far as
2 gleaning anything other than the fact that the brake
3 was not pressed until a half a second before the
4 wreck. So for four-and-a half seconds the previous
5 crash data, the driver of the Equinox did not press
6 the brakes.

7 Q Okay, all right. And that speed you're
8 referring to, is that last recorded speed?

9 A Last recorded speed was 67 miles an hour.
10 Again, ---

11 Q Five seconds?

12 A I'm sorry?

13 Q Within that five seconds?

14 A Yes. The last recorded speed, the last
15 data point recorded in this particular modular was a
16 half a second before the wreck. Some modulares do,
17 some manufacturers do go down to what we call time
18 zero, which is essentially at, given a millisecond
19 difference, at the wreck for all intensive purposes
20 at the wreck.

21 Q All right. Thank you very much.

22 THE COURT: You may cross-examine,
23 Mr. Stoddard.

24 **CROSS-EXAMINATION**

25

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1 BY MR. STODDARD:

2 Q Are you familiar that some vehicles have
3 systems that automatically brake, you know, if the
4 vehicle senses a collision is going to happen?

5 A Yes, sir.

6 Q Do you know if this vehicle had such a
7 system?

8 A It did not.

9 Q Are you certain of that?

10 A Yes, sir.

11 Q How do you know that?

12 A The make and model of the vehicle.

13 Q Well, what is the make and model of the
14 vehicle?

15 A I don't have it in front of me. It was a
16 Chevrolet Equinox.

17 Q Could it have been a 2014?

18 A I would have to look at my report. I
19 don't remember. You have the first page of this
20 analysis?

21 MR. MCMAHON: I'm handing him up what I
22 think he's referring to.

23 THE COURT: He may use the document to
24 refresh his memory.

25 THE WITNESS: Yes, I have it recorded as a

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1 2012 Chevrolet Equinox.

2 BY MR. STODDARD:

3 Q 2012.

4 A To my -- let me further answer, try to
5 answer your question.

6 Q Okay.

7 A To my knowledge a 2012 Chevrolet Equinox
8 did not offer that type of technology. I don't
9 think any vehicle in 2012 from GM offered that
10 technology.

11 Q If it did have that, if there's some
12 evidence that it did, if that system kicked in would
13 you be able to tell the difference between it being
14 that system and the driver? That brake that you
15 testified to, the braking, would you know the
16 difference?

17 A I have not analyzed a CDR report with a
18 self-braking system. Subaru has a -- there are not
19 a lot of manufacturers that have that; and more and
20 more are coming onboard, but I have personally not
21 seen a CDR report where an, a self-assisted braking
22 system. I would imagine, if I had to take a stab at
23 it, unless it's gonna be outlined in the CDR data,
24 which I don't know that it would, I also don't know
25 that I wouldn't, haven't seen it.

1 Q I don't know.

2 A But I would imagine it would produce the
3 same results. In terms of the brake switch being,
4 -- and again, I don't know that -- I'm taking a stab
5 at that.

6 Q You've answered my question, thank you.

7 A Okay.

8 THE COURT: Anything further,
9 Mr. Stoddard?

10 MR. STODDARD: Nothing further.

11 THE COURT: Redirect?

12 MR. MCMAHON: No redirect, Your Honor,
13 thank you.

14 THE COURT: All right, sir, you may have
15 step down.

16 Wish to excuse the witness?

17 MR. MCMAHON: Yes, sir.

18 THE COURT: Any objections?

19 MR. STODDARD: No objection.

20 THE COURT: Sir, you're free to leave the
21 courthouse. Thank you very much.

22 Ask the attorneys to approach the Bench,
23 please.

24 (WHEREUPON, a Bench conference was held.)

25 THE COURT: All right, ladies and

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1 gentlemen, we'll take a short break at this time.
2 I'll have you to step back to the jury room. As
3 always when you left the courtroom I'll tell you not
4 to discuss anything about the case until I advise
5 you to begin your deliberations. You may retire to
6 the jury room at this time.

7 (WHEREUPON, the jury was removed from the
8 courtroom at approximately 10:52 a.m.)

9 THE COURT: All right, we'll take about a
10 five to ten minute recess. I understand the
11 attorneys would like to speak to me in chambers.
12 Please come back.

13 MR. STODDARD: It doesn't have to be -- or
14 we can do it right here.

15 THE COURT: That's fine. Come forward.

16 (WHEREUPON, counsel approached the
17 Bench for an off-the-record discussion
18 and recess **was taken**.)

19 THE COURT: All right, the State ready to
20 proceed?

21 MR. MOWRY: Yes, sir, Your Honor.

22 THE COURT: Defense ready to proceed?

23 MR. STODDARD: Yes, sir.

24 THE COURT: Step back and tell the bailiff
25 to bring the jury in, please.

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1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 11:14 a.m.)

3 THE COURT: The jury has returned to the
4 courtroom. The State may call its next witness.

5 MR. MOWRY: Thank you, Your Honor, we call
6 Doctor Demi Jones Garvin.

7 THE COURT: Come forward, ma'am. Please
8 be sworn.

9 WHEREUPON,

10 **DEMETRA J. GARVIN,**
11 having been duly sworn by the Clerk, testified
12 as follows:

13 THE COURT: Ma'am, once you're seated in
14 the witness stand state your full name and spell
15 your last name, please.

16 THE WITNESS: My name is Demetra,
17 D-E-M-E-T-R-A, Blackley, B-L-A-C-K-L-E-Y, Jones,
18 J-O-N-E-S, Garvin, G-A-R-V-I-N, and I'm commonly
19 known as Demi Garvin.

20 THE COURT: Thank you very much. You may
21 proceed, counsel.

22 **DIRECT EXAMINATION**

23 BY MR. MOWRY:

24 Q And you are a doctor; is that right?

25 A Yes, I have a doctorate in clinical

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1 pharmacy.

2 Q Okay. And so it's a Ph.D. and not an
3 M.D.; is that right?

4 A It's actually referred to as a Pharm. D.,
5 which is specific to the area of the specialty to
6 clinical pharmacy.

7 Q But it is a doctorate?

8 A It is, yes, sir.

9 Q Where did you receive your education in
10 order to achieve level of education?

11 A I have a bachelor of science degree in
12 biology from Furman University in Greenville, South
13 Carolina. That was followed by two years cystic
14 fibrosis research at the University of North
15 Carolina Chapel Hill. And then I returned to South
16 Carolina to pursue the doctorate in clinical
17 pharmacy at the University of South Carolina College
18 of Pharmacy in Columbia.

19 Q And because I think you were being modest,
20 you were a Phi Beta Kappa graduate from Furman; is
21 that correct?

22 A Yes, sir.

23 Q Magna Cum Laude graduate ---

24 A Yes, sir.

25 Q ---before you received your doctorate?

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1 A Yes, sir.

2 Q What kind of field have you spent most of
3 your career in?

4 A I practiced pharmacy, I'm a registered
5 pharmacist in the State of South Carolina, licensed
6 to practice here. I spent the early years of my
7 career practicing pharmacy in a number of different
8 settings; but in conjunction with that practice, I
9 began a career path with the State Law Enforcement
10 Division, better known as SLED, in Columbia, South
11 Carolina, as a staff clinical and forensic
12 toxicologist for 16 years. That was followed by --
13 excuse me, 14 years. That was followed by a two
14 year stint in the drug chemistry section which is
15 the area in forensics where we -- I like to refer it
16 as to where we analyze the, most powders, potions,
17 and paraphernalia that come into the laboratory so I
18 analyze body fluids and tissues to identify
19 alcohols, drugs, and other poisons, and also
20 analyzed the actual raw drugs substances themselves
21 during that period of time.

22 Following the 16 years at the State Law
23 Enforcement Division I joined the Richland County
24 Sheriff's Department to assist Sheriff Lott in
25 developing a full service forensic sciences

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1 laboratory and to seek to staff and get it
2 accredited. There were multiple forensic
3 disciplines there in the laboratory received in that
4 capacity for 15 years.

5 Q I believe you started out as assistant
6 director and then for about 11 years were actually
7 the director of the Richland County crime lab; is
8 that correct?

9 A Five, six years, seven -- I'm sorry, seven
10 years as assistant lab director and eight years as
11 laboratory.

12 Q Okay, my bad. Have you published any
13 writings with regard to forensic toxicology?

14 A Yes. I've, there have been a couple that
15 are specific to analytical work, that is testing
16 work specifically. There are a couple of others
17 that are in the pipeline, if you will, that have not
18 been published yet.

19 Q Have you in the past 20 years or so
20 lectured at various professional seminars or
21 gatherings on the subject of forensic toxicology or
22 something associated to it?

23 A Oh, yes, many, many times. I'm also an
24 adjunct professor. I've been an adjunct professor
25 in the College of Pharmacy as well as the department

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1 of chemistry and biochemistry at the University of
2 South Carolina.

3 Q And are you still with the sheriff's
4 office in Richland Count?

5 A No, essentially just as a consultant on an
6 as needed basis.

7 Q And you have your own consulting firm now;
8 is that right?

9 A Yes, sir, since 1997.

10 MR. MOWRY: Your Honor, I would offer
11 Doctor Garvin as an expert in forensic toxicology.

12 THE COURT: Any objections to that
13 destination?

14 MR. STODDARD: No objection.

15 THE COURT: All right, she'll be qualified
16 as an expert in that field.

17 MR. MOWRY: And in Pharmacology as well,
18 Your Honor.

19 THE COURT: Any objection to that field as
20 well?

21 MR. STODDARD: No objection.

22 THE COURT: All right, without objection
23 she'll be so recognized. You may proceed.

24 BY MR. MOWRY:

25 Q And Doctor Garvin, just for the record,

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1 you were retained as part of your consultancy to
2 examine materials provided to you by the Sheriff's
3 Office and speak with us, consult with us, in the
4 preparation of this occasion; is that right?

5 A Yes, sir.

6 Q And you were paid for your services?

7 A Yes, sir.

8 Q What, as part of your services have you
9 reviewed?

10 A I reviewed the South Carolina Highway
11 Patrol incident report. I've reviewed body camera,
12 law enforcement body camera footage from both the
13 scene of the motor vehicle collision, as well as
14 from Greenville Hospital.

15 MR. MOWRY: And just for the record, Your
16 Honor, I believe those are numbers -- pardon me.
17 They've already been admitted into evidence as
18 State's Exhibits 45, 46, and 49.

19 THE COURT: Thank you.

20 BY MR. MOWRY:

21 Q Yes, ma'am.

22 A I reviewed SLED toxicology report.

23 MR. MOWRY: And that is admitted into
24 evidence as State's, I believe it's 50 if I'm not
25 mistaken. Yes, sir, number 50.

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1 THE WITNESS: I reviewed as part of the
2 body camera footage, standard field sobriety tests
3 that were performed, a DRE evaluation form.

4 BY MR. MOWRY:

5 Q And that is State's Exhibit Number 48.
6 That was from David Terry?

7 A Yes, sir.

8 Q Okay.

9 A That's correct. I reviewed statement from
10 Ms. Tackett. I reviewed ---

11 Q Was that a transcript from a previous
12 court hearing?

13 A Yes, sir.

14 Q Okay.

15 A I reviewed a witness statement.

16 Q Was that from Mr. Glodz in another
17 previous, one of the driver's; is that right?

18 A Yes, sir.

19 Q Okay.

20 A I reviewed prior transcripts from prior
21 experts in pharmacy. I reviewed medical records
22 from Greenville Hospital for Ms. Tackett. I
23 reviewed EMS records of Ms. Tackett, pharmacy
24 records pertaining to Ms. Tackett.

25 Q That's State's Exhibit Number 51; is that

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1 right?

2 A Yes, sir, that's correct.

3 Q Okay.

4 A And I've always reviewed what I believe to
5 be a pertinent peer review and literature in this
6 case.

7 Q Are you familiar with the field of human
8 performance toxicology?

9 A Yes, sir.

10 Q And in particular, are you familiar with
11 the effects of drugs on a person's ability to drive?

12 A Yes, sir. In addition to being trained in
13 that area in the course of my studies, my education,
14 I also, I received additional intensive training
15 over the course of my career in forensic toxicology
16 and continue to do so; and I've been involved in the
17 analysis of body fluids and tissues from individuals
18 who were potentially under the influence of alcohol
19 and/or other potentially impairing drugs and have
20 testified in a court of law over the course of my
21 career.

22 Q Can you explain to us what that entails as
23 it relates to this case?

24 A Yes, sir. Essentially human performance
25 toxicology is a subspecialty of toxicology. There

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1 are -- and it deals with essentially the mental and
2 physical effects of drugs that may impair a person's
3 ability to safely operate a motor vehicle or heavy
4 machinery. Broadly, there are several classes of
5 drugs that we often find are associated with
6 impairment for purposes of operating a motor
7 vehicle; and those include marijuana, stimulants,
8 depressants, opioids, and hallucinogens.

9 Q Let me ask you this, can somebody take
10 drugs and not be impaired for the performance of
11 every day tasks, walking around or, you know, doing
12 simple tasks and be impaired to drive a motor
13 vehicle?

14 A Yes, sir.

15 Q Okay. Can someone be impaired for the
16 purpose of operating a motor vehicle, substantially
17 impaired, on prescription drugs?

18 A Yes, sir. Any drug that affects mental or
19 physical processes have the potential to impair
20 driving.

21 Q Okay. You and I talked about the term
22 therapeutic drug concentration as it relates to
23 drugs. Can you explain to us what that means?

24 A So, in toxicology we often refer to a
25 specific compound for purposes of my illustration a

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1 drug as being either therapeutic in concentration,
2 toxic in concentration, or lethal in concentration;
3 and specifically, when we refer to a drug as having
4 a therapeutic concentration, that first and foremost
5 means that that drug is capable of creating or
6 resulting in something beneficial to the patient
7 who's going to receive it, otherwise, we wouldn't
8 want to administrate or we wouldn't want to
9 prescribe it or we wouldn't want to dispense it. So
10 it has to start out with the understanding that a
11 benefit will come to the patient for taking that
12 medication. A therapeutic drug concentration is a
13 specific amount of a drug with a defined volume,
14 typically, blood, from the individual, that is
15 expected to produce that therapeutic or beneficial
16 effect in the individual without causing harm to the
17 patient or the individual receiving medication.

18 Q And as far as -- let me ask you this, can
19 someone with a therapeutic drug concentration
20 nonetheless be substantially impaired for operating
21 a motor vehicle?

22 A Yes. Those are mutually separate events
23 or ideas. You can have someone who has a
24 therapeutic concentration of a drug and is taking it
25 for the beneficial effects; but that doesn't mean

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1 side effect will incur, that their side effects will
2 be impairing.

3 Q So you don't simply look at the levels of
4 drugs in a toxicology report in a vacuum; is that
5 right?

6 A Correct. We do not, should not evaluate
7 those alone without other information.

8 Q Okay. Can you then explain to the jury
9 how toxicologists approach the study of illicit or
10 legal drugs and their effects on driving.

11 A So, the effects of drugs on driving is an
12 entire, has become an entire specialty in and of
13 itself because of the expanse of the number of drugs
14 that has the potential need to be studied for
15 purposes of understanding that. And the fact that
16 we have so many millions of drivers driving on any
17 given day all over the world, and there are many
18 approaches to the study of drugs and their potential
19 to cause impairment. Some of them include what we
20 refer to as empirical studies which basically means
21 that is understanding what the drug is, what its
22 pharmacology is so what is its action on the body,
23 how long does it last, and do we have any basic
24 information about whether or not it could cause
25 potential impairment for purposes of driving. Then

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1 there are what we refer to as epidemiological
2 studies. Epidemiological studies are retrospective
3 which means we're looking back at information that
4 has already happened at events that have already
5 happened and we're looking at a particular drug or
6 drug class and driving in a particular driving
7 population. So we look back and say we look back
8 over ten years and we look at all drivers who had
9 access to or were prescribed a particular drug and
10 then we look at how they performed when they were on
11 that drug and they were driving. That's an
12 epidemiological study.

13 There are case reports where we have
14 scientists who publish in the literature actually
15 case reports of an individual or individuals who
16 were on a specific compound and were determined to
17 be impaired and they provide all the data about that
18 event, about that incident. We have lab studies
19 where we literally administer a drug to volunteers,
20 and we evaluate their mental and physical response
21 while they're driving and that's in a controlled
22 environment. So that's another type of study that
23 we routinely use. We have what are called simulator
24 studies. You may have seen those on television.
25 Simulator studies from where we administer drugs,

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1 again, to volunteers and we evaluate their
2 performance in a driving simulator so it's pretend
3 by the simulator is set up to look and feel and
4 respond exactly like a vehicle would. We have
5 actual driving studies where we administer the drug,
6 again, to volunteers and we evaluate their actual
7 driving on a highway or city street, or both. And
8 each of these approaches exists. It's part of how
9 we have gain knowledge about the effects of drugs
10 and their ability to take into account the
11 individual. And each of them has their advantages
12 and disadvantages in terms of the information that
13 we get from them and how we can use that
14 information. There is no perfect study, if you
15 will, and that's why we have multiple options
16 available to us.

17 Q Okay. What are the domains or the factors
18 of driving that are typically gonna be adversely
19 effected by drugs?

20 A So, driving at its foundation is a very
21 complex task, even though those who drive, do it
22 every day, probably don't think a lot about it. It
23 involves certain skills by individually or together,
24 could be impaired by drugs, and we refer to these as
25 domains. So, the first domain that I'd like to

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1 reference is coordination. So in order to drive a
2 vehicle an individual has to have some level of
3 coordination because driving is at its base a
4 physical act; it requires physicality. Driving
5 requires judgment and decision making. We have to
6 be able to process information; and once we process
7 it, we have to make appropriate decisions about that
8 information in order to be safe. It requires
9 perception, that our perception be in tact. The
10 majority of information that comes into us when we
11 are driving a vehicle is visual. We have to be able
12 to see around us. There is some auditory sense; We
13 have to be able to hear. But that's not as
14 important -- on a certain level we have to be able
15 to hear, although, there are individuals who cannot
16 hear who drive. But visually, we must be able to
17 see, you must be able to have your vision in tact.
18 So any drug that alters our perception to space, to
19 time, to conviction, can potentially impair your
20 driving.

21 There's tracking. Now tracking is
22 essentially necessary for us to be able to maintain
23 our position in the lane at any given time as we're
24 moving down the road. So if we're weaving, if we're
25 unable to maintain our vehicle lane, that is often

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1 an indication of potential impairment in the
2 individual. Tracking is very, very important.

3 Reaction time and our perception of time,
4 as I mentioned earlier. Any drug that slows our
5 reaction time or alters our sense of time could
6 result in changes in inappropriate braking,
7 steering, striking a fixed object, rear ending
8 another object or sideswiping it. Again, failure to
9 maintain lane, failure to make an evasive maneuver,
10 these, these issues can all be affected by a
11 particular drug or drugs.

12 And then, finally, the last domain that I
13 want to mention is your ability to divide your
14 attention. So divided attention is basically our
15 ability to multitask, and when we are behind the
16 wheel of a vehicle we are multitasking at any given
17 of time. Driving requires divided attention rather
18 than focused attention because there are so many
19 things going on in our vehicle and around your
20 vehicle at any given time. Even though the task of
21 driving may be well learned, you have someone who's
22 been driving since they were 16 years old or 15
23 years old, they're now much older and been driving
24 for decades. Driving still demands that we be able
25 to process information constantly and respond to it

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1 appropriately.

2 Q Doctor, let me ask you this, who in your
3 opinion would be the worst person to ask for the
4 ability of an individual to drive after ingesting
5 drugs? Would it be that person himself?

6 A I understand your question. So driving
7 studies have shown that when individuals consume
8 alcohol and/or other drugs that have the ability to
9 impair them for purposes of driving a motor vehicle
10 to drive himself or herself is the absolute worst
11 person to know whether they are capable of operating
12 that vehicle. We are not good judges of our ability
13 to drive when we consume alcohol or other drugs.

14 Q Okay. Now, Doctor, I wanted you to take
15 us through the SLED report. This was prepared by
16 Kelly Bugden from SLED who testified yesterday,
17 State's Exhibit Number 50. And can you walk us
18 through that a little bit and tell us a bit about
19 those drugs that are found in that toxicology
20 report?

21 A So the SLED toxicology report was issued
22 pursuant to testing that was performed on a sample
23 of Pamela Tackett's blood, which was then submitted
24 to the State Law Enforcement Division, and it
25 received -- it was involved in a number of tests

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1 that were performed and are commonly associated with
2 specimens that are submitted for purposes of alcohol
3 and drug testing. Alcohol that is ethanol drinking
4 alcohol was analyzed for in the blood and was found
5 to be negative. There were a number of drugs that
6 were, or drug classes that were tested for that we
7 refer to as potentially elicit. We see those
8 statistically when individuals don't have a
9 prescription for a particular drug, for that
10 particular substance. Those included stimulants,
11 opioids, cocaine which of course is a stimulant,
12 hypnotic Zolpidem which is Ambien, skeletal muscle
13 relaxant, Carisoprodol, also known as Soma. So
14 there was an extensive panel of tests that were
15 performed, all of which were negative there. And
16 then there was testing for Tetrahydrocannabinol,
17 otherwise known as THC by abbreviation which is the
18 primary psychoactive ingredient in marijuana.

19 And then there were reported
20 concentrations for three major drugs and their
21 associated metabolites and one other. Those were
22 specifically Clonazepam and its metabolite or
23 breakdown product Gabapentin, Venlafaxine, and its
24 metabolite or breakdown product
25 O-desmethylenlafaxine and hydroxypropion which is a

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1 metabolite of bupropion, otherwise known as
2 Wellbutrin. That's not an antidepressant. So there
3 were concentrations that were reported with the
4 Clonazepam, Gabapentin, Venlafaxine, both of their
5 metabolites, the Clonazepam, Venlafaxines,
6 Hydroxypropion, and then the THC.

7 Q Okay. And with regard to the
8 non-marijuana drugs, let's put it that way, which
9 mostly caught your eye? Which are you most
10 concerned with?

11 A I was concerned with the Clonazepam and
12 the Gabapentin, as well as the Venlafaxine so those
13 three compounds in addition to the THC. The
14 Hydroxypropion I was not affectively concerned
15 with.

16 Q Okay. Can you tell us a little bit about
17 what central nervous system depressants are?

18 A So, central nervous and depressants are
19 used clinically for a number of situations to
20 include anxiety. Patients who have anxiety we
21 prescribe a Venlafaxine. An example of that is
22 Clonazepam, Diazepam, Alprazolam. They're also
23 prescribed for sleep as hypnotics, if you will, to
24 help induce sleep or keep the patient sleeping.
25 Then I did --

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1 Q I did it too much. Let's try it this way.
2 Okay, thank you.

3 A They're also prescribed for panic attacks
4 or panic disorders, or you may see them prescribed
5 for posttraumatic stress disorder. And sometimes
6 they're also described for epilepsy, although that's
7 less common in today's world.

8 Q And in the SLED report that you've
9 referenced, State's Exhibit Number 50, were their
10 CNS depressants in the defendant's drub sample found
11 collected at the hospital?

12 A Yes. Clonazepam is a central nervous
13 system depressant. The two other primary
14 medications that were identified, Gabapentin and
15 Venlafaxine, are not classified pharmacologically
16 central nervous system depressants, but they have
17 sedating capacity.

18 Q All right. Are those drugs typically
19 prescribed -- can you legally obtain those drugs
20 through prescription?

21 A Oh, absolutely, yes, sir.

22 Q Is Clonazepam, is that a controlled
23 substance?

24 A Yes, it is. It is a controlled four
25 substance.

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1 Q Can you tell the jury the difference
2 between a controlled substance and a prescription
3 drug.

4 A So the controlled substance act of 1970
5 was created to stratify or classify drugs according
6 to their potential for whether or not they had
7 medical indication, so a reason to be prescribed,
8 whether they had the potential for abuse and how,
9 how serious was that potential across the schedules
10 and also whether or not they have the potential to
11 develop psychological and/or physiological
12 dependence resulting in addiction.

13 Q Which of these schedules does Clonazepam
14 fall into?

15 A It's a Schedule IV.

16 Q Okay. Both Neurontin or Gabapentin and
17 Effexor or Venlafaxine are not controlled
18 substances; is that correct?

19 A Not in South Carolina, that's right.

20 Q Okay. But they must be obtained by a
21 prescription; is that also correct?

22 A Correct, yes, sir.

23 Q Okay.

24 A They should.

25 Q Let me hand you what have been admitted as

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1 State's Exhibits 52, 53, and 54. They are entitled
2 medication guides. Let me ask you if you can
3 identify those.

4 A Yes, sir. These are medication guides
5 associated with Clonazepam, Venlafaxine, and
6 Gabapentin.

7 Q And who publishes those or what agency
8 puts those out?

9 A So these are required by the FDA, the Food
10 and Drug Administration to be provided to the
11 patient at the time the patient receives the
12 prescription initially.

13 Q Okay. That is required for every
14 pharmacist to do; is that right?

15 A Yes, sir.

16 Q Okay. Can you go through those
17 individually and discuss some of the topics that are
18 brought up in these medication guides as it relates
19 to this case?

20 A So, across the three medication guides
21 they contain information, important information
22 about what the patient should know about each of the
23 medications to include side effects, effects to look
24 out for such that if they begin to happen you should
25 contact your pharmacist or health care provider.

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1 The most serious side effects, whether or not a harm
2 could occur to developing a baby if a patient was
3 pregnant and other pieces of information specific to
4 the medications themselves. Fundamentally for
5 purposes of this case, what's important about items
6 of medication guides is they discuss the ability of
7 each of the medications to cause adverse effects or
8 side effects that would result in impairment for
9 uses of operating heavy machinery or motor vehicle.

10 Q Okay. So they cause, for example, looking
11 at Clonazepam, if I can find it. There's a warning:
12 Do not drive, operate heavy machinery or do other
13 dangerous activities until you know how Klonopin
14 affects you; is that right?

15 A Yes, sir.

16 Q And also, a little later on, talks about
17 the possible side effects: Drowsiness, dizziness,
18 problems walking and coordination and fatigue. Was
19 that found in there?

20 A Yes, sir.

21 Q Okay. Gabapentin or Neurontin, the same
22 warning about operating heavy machinery. And then
23 under side effects, does it list lack of
24 coordination, feeling tired, double vision, unusual
25 eye movement, difficulty with coordination, feeling

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1 drowsy?

2 A Yes, sir.

3 Q Okay. And then Venlafaxine or Effexor can
4 cause sleepiness or may have affect your ability to
5 make decisions, think clearly, or react quickly.
6 And it also has the driving warning as you pointed
7 out; is that correct?

8 A Yes, sir.

9 Q Okay. So these, according to the Food and
10 Drug Administration, the Federal Food and Drug
11 Administration are required to be issued to everyone
12 who receives these drugs; is that correct?

13 A Yes, sir.

14 Q Okay. Are there any kind of warnings that
15 are placed on the bottle that the bottles are
16 dispensed in?

17 A Typically the pharmacist at the time of
18 dispensing to the patient would include what we
19 refer to as auxilliary labels on the medication
20 bottles. In this case, speak to warning or advising
21 the patient that the use of that medication is
22 associated with, should not be -- the individual
23 should not be operating heavy machinery or driving
24 while use of the medication.

25 Q Okay. I'm gonna hand you what's been

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1 marked as State's Exhibit Number 44. Is that an
2 exemplar of the kind of sticker that we're talking
3 about?

4 A Yes, sir, a number of them, but that is
5 one, yes, sir.

6 Q And they're all essentially the same; is
7 that correct? As far as these are concerned.

8 A Yes. The content of the auxilliary label
9 would be effectively the same.

10 Q Okay. Do pharmacists discuss with
11 patients the potential side effects?

12 A Oh, yes, sir. The pharmacists, that's
13 part of the job description, if you will, and
14 certainly would offer that to the patient at any
15 time. Certainly, at the initiation of a new
16 medication, but also periodically as the patient
17 would allow.

18 Q Okay. Doctor, taken individually, could
19 each of the central nervous system depressants that
20 you have listed from the SLED report that were
21 present in the defendant's blood sample, could each
22 of those cause impairment of a person's ability to
23 drive?

24 A In my opinion each of the substances
25 identified on the SLED toxicology report with an

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1 associated concentration has the potential to
2 adversely effect and impair an individual for
3 purposes of operating a motor vehicle.

4 Q Okay, and that's taken individually?

5 A Yes, sir.

6 Q All right. Let me, let me ask you this.
7 You said that you had reviewed David Terry's body
8 cam from Greenville Memorial Hospital, and there was
9 a part on there where the defendant talked about
10 using marijuana every day and smoked approximately
11 one half bowl to one bowl at 10:00 the night before
12 the collision. Do you recall that section?

13 A Yes, sir.

14 Q First of all, what is a half bowl or a
15 bowl? What does that refer to?

16 A So, if you can envision a pipe, even a
17 pipe where someone smokes tobacco, you know that
18 most tobacco pipes have a hole where the tobacco is
19 packed into prior to smoking. That's what we refer
20 to in a marijuana pipe or a bong. There will be a
21 hole where the marijuana, the green plant material,
22 will be placed into that indentation, that bowl, if
23 you will, and packed into there prior to smoking.

24 Q Now you've talked about Venlafaxine and
25 Gabapentin and Clonazepam all being central nervous

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1 system depressants. What kind of drug is marijuana?

2 A Well, actually, I just want to clarify for
3 purposes of the record. The Clonazepam is actually
4 chronologically a central nervous system depressant.
5 Gabapentin has sedating capability. It does produce
6 sedation, drowsiness, and depressant-like effects;
7 but it's classified as what we refer to as a
8 Gabapentin weed. And then the Venlafaxine is
9 actually a serotonin/norepinephrine uptake
10 inhibitor. It's an antidepressant so it would not
11 be classified pharmacologically as a central nervous
12 system depressant, but it does have a potential to
13 cause sedation. I just wanted to clarify that, I'm
14 sorry.

15 Q And I appreciate that, I appreciate that.
16 But how would you classify marijuana?

17 A Well, marijuana, for purposes of driving
18 kind of gets its own category because it can cause
19 central nervous system depression, but it can also
20 cause hallucinations so it sort of straddles both
21 categories.

22 Q Okay. Tell us about THC a little bit.
23 Taken alone, what is your opinion about the THC
24 concentration in the defendant's tox report.

25 A So again, THC, or Tetrahydrocannabinol is

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1 the primary psychoactive ingredient marijuana or
2 cannabis. It causes the psychoactive effects, the
3 principal psychoactive effects that are experienced
4 by the user regardless of the route of
5 administration. In the SLED toxicology report, THC,
6 the parent compound, if you will, was identified in
7 the blood sample, had a concentration of to 2.9
8 nanograms per mil; so with respect to that
9 concentration we can, we can ascertain, draw
10 several, several conclusions. Number one, the
11 primary psychoactive ingredient was identified THC
12 as opposed to a breakdown product of the drug which
13 may or may not have an effect on the body at any
14 given time. And furthermore, the concentration that
15 was measured and reported, 2.9 nanograms mil, I was
16 able to conclude based on what my understanding, my
17 education, training and experience with regard to
18 marijuana that, and Ms. Tackett's own statement
19 about use the night before, that the concentration
20 could represent use the evening before in a chronic
21 user, someone who is used to using drug daily and
22 simply has because of the nature of marijuana and
23 THC, has on any given time one to several nanograms
24 per mil THC in their bloodstream; or, it could
25 represent use the morning of much later or the day

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1 of the motor vehicle collision. I wouldn't be able
2 to ascertain the time of use. It could be either
3 one.

4 Q Okay. What effect is there, or is there
5 any effect, if a person habitually uses marijuana?
6 I believe in the video Ms. Tackett is heard saying
7 that she smokes it everyday. What effect does that
8 have as to the concentration?

9 A So when an individual uses marijuana
10 acutely you can have acute impairment, which by
11 definition means that it occurs and then it goes
12 away. Or, in chronic use, and use when I say occurs
13 anywhere from one to three hours after the
14 individual, by example, smokes marijuana. You would
15 expect to see impairment for purposes of operating a
16 motor vehicle. But in chronic users we also know
17 that their situation where the individual will have
18 residual, what we refer to as residual impairment
19 which can last for up to 24 hours and that can exist
20 without the use of any other medications or drugs.
21 That's just the presence of THC and marijuana use
22 chronically, alone, to the exclusion of any other
23 compound.

24 Q Okay. So if a person smoked at 10:00 the
25 night before and the accident happened at 9:30 the

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1 next day, that residual impairment could still be
2 present?

3 A It's possible.

4 Q And again, you aren't able to say yay or
5 nay on that; is that correct?

6 A That's correct.

7 Q Okay. Let me ask you this, we see the
8 number there. Among the states that have legalized
9 the drug, is there a consensus as to what
10 constitutes a threshold level before someone could
11 be inferred as impaired?

12 A So, a number of the states that have
13 decriminalized marijuana have established what we
14 refer to as per se laws where the presence of five
15 nanograms per mil or more constitutes presumed
16 impairment for purposes of operating a motor
17 vehicle. That actually has, appears to be based on
18 studies that we have that are retroac --
19 retrospective studies that we have as well as
20 current studies that are going on appears to be not
21 really based on science because we know that
22 impairment occurs at concentrations less than five
23 nanograms per mil.

24 Q How about Europe? Marijuana is legal in a
25 lot of Europe; isn't it?

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1 A It is.

2 Q And do they have any standards they apply
3 to marijuana use and driving?

4 A Well, there are countries where there's
5 zero tolerance. There are countries where the
6 concentration is one to two nanograms per mil so
7 significantly lower than five nanograms per mil.

8 Q Okay. Can you talk a little bit about
9 additive and synergistic effects as they relate to
10 drugs?

11 A So, the term additive in pharmacology,
12 when we talk about additive effects with drugs, what
13 we're referring to is the scenario where two or more
14 drugs used together, their effects are the sum of
15 each of their individual effects. So if we're
16 talking about two drugs, drug one and plus drug two
17 equals, one plus one plus two, equals the sum of
18 both of these individual effects are additive.
19 Synergistic means we have two drugs by example where
20 the sum of their effects is greater than the
21 addition of the two of them so we have a multiplied
22 effect, if you will. So instead of having one plus
23 one equals two, we may have one plus one equals five
24 or one plus one equals ten. And we use those terms
25 to, to discuss poly drug use where more than one

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1 drug, more than two drugs, two or more drugs, excuse
2 me, are used together because we know that poly drug
3 use increases the risk of impairment and increases
4 the risk of a crash.

5 Q So Doctor, sometimes -- I'm a sports fan
6 and sometime in sports you get a bunch of average
7 players together and they end up being a
8 championship team and you often hear it said that
9 the sum was, or that the whole was greater than the
10 sum of its parts. Is that kind of the same
11 principle as additive and synergistic effects?

12 A Yes, I would -- you could go either way
13 with that analogy, but yes, yes.

14 Q Okay. Let's talk about some of the
15 specifics that you reviewed in this case. You
16 looked at the EMS records as well as the hospital
17 records from Greenville Memorial. Basically I'm
18 asking in your review of those documents, did you
19 see any other medical reason for what happened aside
20 from drug impairment?

21 A No, sir, and I would also include in
22 addition to those records I was able to see the body
23 cam footage from inside the emergency department
24 when Ms. Tackett was being triaged as well. I
25 didn't see any other reason for impairment.

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1 Q Okay. According to those records were
2 there any other drugs that were administered to
3 Ms. Tackett either during the EMS run or at the
4 hospital that would account for the drugs that you
5 noted in the SLED tox report?

6 A No, sir.

7 Q Okay. You observed the body cam videos
8 that, of the defendant, including the standardized
9 field sobriety test on Highway 385 and Highway 14;
10 is that correct?

11 A Yes, sir.

12 Q What were your takeaways from the video as
13 it relates to the defendant's reported toxicology?

14 A So, from those videos I observed that
15 Ms. Tackett, when the, when the officer approached
16 the vehicle I observed that she was, her responses
17 to him -- well, first of all, her movements were
18 very purposeful and slow. Her speech was slurred.
19 She was unable to answer some questions posed and
20 they had to be repeated. She initially expressed
21 that she did not know what had happened and then she
22 could not recall initially what drugs she had used
23 or was prescribed after multiple questions. That
24 question was asked multiple times. And then she
25 underwent, was asked to undergo the three major

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1 standardized field sobriety tests, and in my opinion
2 she did not pass them.

3 Q Okay. You also saw the video from the bay
4 at Greenville Memorial Hospital; is that right?

5 A Yes, sir.

6 Q Do you have any takeaways from that?

7 A I would say that despite the passage of
8 time, by the time the drug influence evaluation
9 occurred in the emergency department bay almost two
10 hours had passed so I would anticipate because
11 these -- the drugs that were reported in the SLED
12 toxicology report were not administered to Ms.
13 Tackett after she would, or during or after she was
14 transported, I would have an expectation that their
15 effects would have abated or diminished, diminished
16 over that period of time. I, I felt that the
17 evaluation still had aspects associated with it that
18 were suggestive or potentially indicative of central
19 nervous system depression.

20 Q Well, you said that it would have abated
21 over time. Does that mean two hours before you
22 think she would have been more impaired?

23 A Yes, sir.

24 Q Let me also refer you to David Terry's
25 report that was admitted into evidence. One of

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1 the -- Number 5, I believe it's the bottom of the
2 first page where there's an estimation of the
3 passage of 30 seconds. Do you see that?

4 A Yes, sir.

5 Q Okay. And it was testified to and it's
6 noted in that report that the defendant estimated 42
7 seconds. Do you see that?

8 A Yes.

9 Q Is that significant for toxicological
10 purposes?

11 A It's potentially another indication of a
12 slow reaction time, slow perceived time on the part
13 of the individual.

14 Q Okay. Doctor, you had discussed a variety
15 of different domains that are typically adversely
16 effected by drugs as far as driving is concerned.
17 Coordination was one of them. What is your opinion
18 based on everything that you looked at with regard
19 to this case and based on your experience, what is
20 your opinion as to the defendant's degree of
21 coordination? Was it okay or was it impaired?

22 A As I watched the standardized field
23 sobriety test, I felt that her coordination was
24 impaired.

25 Q Do you have any opinion as to her judgment

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1 or decision making?

2 A Yes, I felt that her judgment decision
3 making were also impaired.

4 Q How about her perception?

5 A Her perception as well, impaired.

6 Q Would that time passage, part of that,
7 would that enter into your opinion?

8 A Yes, sir.

9 Q Okay. And tracking, for example, was that
10 according to your observations, do you have any
11 opinion as to whether or not that was impaired?

12 A In my opinion tracking was also impaired
13 and I came to that conclusion on the basis the
14 witness statements and also there was a witness on
15 the body cam footage, in addition to the transcript
16 that I've read from another witness. And the
17 information that was communicated about the,
18 Ms. Tackett's inability to maintain her lane, and
19 also, of course, the accident, the collision itself,
20 excuse me, where essentially the median and guard
21 rail became the lane itself, improper lane.

22 Q So you took into account the transcript
23 from Mr. Glodz; is that right?

24 A Yes, sir.

25 Q What about his transcript or what about

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1 the testimony that he'd given that was recited to
2 this jury, what about that did you think was
3 significant as far as impairment is concerned?

4 A So when I reviewed his statement, what I
5 gleaned from that or what I will refer to as pre,
6 pre-collision clues, where a witness can provide
7 information that can underpin the potential for
8 impairment. And in the case of this witness I felt
9 that his statements about weaving, weaving across
10 lanes and drifting, swerving, striking a fixed
11 object, speeding and braking, unnecessary
12 acceleration and deceleration, in addition to
13 driving somewhere other than the designated roadway,
14 which would be the median. All those things were
15 fundamental to my opinion about impairment.

16 Q Thank you, Ma'am. Just a moment please.
17 Doctor Garvin, based on your observations of the
18 videos, your review of the EMS and the hospital run,
19 or the EMS run report and the hospital records,
20 based on your review of the toxicology reports, and
21 all the other documentation you have received in
22 this case and in conjunction with your education and
23 your training and your experience, do you have an
24 opinion to a reasonable degree of scientific
25 certainty as to the defendant's condition and

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1 ability to drive at the time of the collision on
2 March 28th last year at Highway 14 and I-385 in
3 Laurens County?

4 A Yes, sir. I believe that Ms. Tackett was
5 incapable of safely operating a motor vehicle.

6 Q Thank you, Ma'am. That's all I have.

7 THE COURT: You may have cross-examine.

8 **CROSS-EXAMINATION**

9 BY MR. STODDARD:

10 Q The drugs that you talked about that were
11 in the toxicology report, you mentioned a
12 synergistic effect. Do some of those drugs, do all
13 of those drugs interact with each other in a
14 synergistic way or do some of them work
15 independently without synergy?

16 A I'm not sure I understand your question,
17 I'm sorry.

18 Q Well, if I have two drugs, do all, do some
19 drugs tend to work synergistically and others not,
20 they're more additive?

21 A Yes. Some drugs are additive and some,
22 some act synergistically. Yes, either one.

23 Q Okay. Among the drugs that you've
24 mentioned, are any of those, act synergistically
25 with each other?

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1 A The Clonazepam and Gabapentin could
2 certainly with increase in doses act synergistically
3 and be additive to each other.

4 Q They may, so they may only be additive?

5 A I guess, are we asking about
6 therapeutically? I'm not sure I understand your
7 question.

8 Q So you can't say -- maybe I'll ask you
9 anyway. It is possible that none of these drugs
10 acted synergistically with Ms. Tackett?

11 A No. Based on everything that I reviewed I
12 would say, no, sir.

13 Q Okay. And that includes the things you've
14 mentioned like the videos you reviewed and the
15 witness statements?

16 A Everything, including the peer review
17 literature, drugs and driving studies, every item
18 that I state for the record that I reviewed for
19 purposes of this case today.

20 Q But it's possible, I guess, on a
21 hypothetical subject that none of these drugs would
22 have acted synergistically; is that correct?

23 A I don't believe that to the case in this
24 case.

25 Q That's not what I asked. I said on a

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1 hypothetical person.

2 A Hypothetically? Hypothetically it's
3 possible.

4 Q Okay. Well, I mean, is there a way that
5 we can tell how common it would be that it's, that
6 all these would be additive and not synergistically?
7 Is there literature anywhere?

8 A Not -- it is indirectly by virtue of the
9 pharmacology of each of the drugs and what we would
10 expect to, how we would expect to prescribe them and
11 counsel about them, as we added yet another drug to
12 the therapy, the patient's therapy. But in terms of
13 a specific study or report that called out these
14 specific drugs in combination, I doubt that such an
15 article exists or study.

16 Q My understanding is these drugs are to
17 have a sort of even effect. Like, if you take a
18 drug let's say once a day, for example, it's
19 supposed to operate over the whole day; is that
20 right?

21 A If it's prescribed one a day theoretically
22 one should have the benefit for an entire day before
23 the next dose is taken.

24 Q If it's two times a day it would be
25 benefit for the half a day?

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1 A Yes, sir.

2 Q And is that benefit supposed to be kind of
3 evenly dolled out during the half day or whole day?

4 A That's the theory. It's not always the
5 case in practice.

6 Q You mentioned you would expect over the
7 two hours that the effects of these drugs would
8 have, on Ms. Tackett would have gone -- on the two
9 hours I'm talking about between Gabriele's
10 observations at the scene and the trooper's
11 observations at the hospital during that time that
12 the effects on Ms. Tackett would have gone down?

13 A They might be -- depending on the specific
14 drug they may began to abate or diminish, but
15 certainly the concentration would be expected to
16 diminish, to be lower. So in other words, the
17 measure of concentration, if we had measured the
18 concentration of the drug at the time of the
19 collision which essentially never happens, I would
20 have expectation that the concentration would be
21 higher at that time than it would be two hours after
22 once she was in the hospital.

23 Q How is it that if a drug is supposed to
24 work over a half a day that, how do they, if it's
25 true that that concentration is going down over time

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1 how do they keep it -- how does it work over the
2 whole half a day I suppose, instead of having to
3 take one every hour?

4 A Well, you have -- it's drug dependent and
5 also dependent on dose and route administration and
6 what we're trying to achieve in a patient
7 beneficially; but that has to do with -- another
8 factor that's important is you have the
9 concentration of the drug, but you may have a
10 benefit that ex-- or an adverse effect that extends
11 beyond the peak concentration of the drug. So the
12 action of the drug whether it's beneficial or
13 adverse will continue on past, in some instances,
14 the drug being present at all.

15 Q Okay. So you just made -- you mentioned
16 the term peak concentration. So it sounds like to
17 me it means to me the concentration goes up and then
18 goes down?

19 A Well, the illustration that you just
20 provided is more common with intravenous
21 administration because you have no drug and then you
22 have a high peak, if you will, and then you have a
23 drug falling off back to zero. But depending on the
24 route of administration, that curve may look very
25 different.

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1 Q Well, for the drugs that we're talking
2 about today, is there a time -- let's say it's a
3 half day drug. Is there, does it have a peak? You
4 mentioned a peak.

5 A Every drug has a peak concentration in
6 blood if you measure it at the right time.

7 Q Okay. So for say, see if I can... Now let
8 me make sure I remember. The three that you seem to
9 be most concerned with -- I'm having trouble reading
10 my writing. Wait a minute, it may be in a different
11 place. Clonazepam, Gabapentin and is it
12 Venlafaxine?

13 A Venlafaxine.

14 Q Are those the three?

15 A And THC.

16 Q And THC. But I'm just gonna concentrate
17 on these for now. For example, the Clonazepam, how
18 would a peak look on a Clonazepam? Of does it
19 matter -- do I need to find out the one a day or two
20 a day for your answer to that?

21 A I'm not -- yeah, I'm not following your
22 question, I'm sorry.

23 Q All right, so, if Ms. Tackett was
24 prescribed Clonazepam twice a day you would think
25 she would do it maybe in the morning and then at

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1 night?

2 A If it was prescribed twice a day that
3 would seem reasonable, yes, sir.

4 Q So if you took one at 8:00 in the morning,
5 when would you expect there to be a peak?

6 A Well, I reviewed -- just so I'm clear, I
7 reviewed Ms. Tackett's pharmacy records for
8 Clonazepam and it appeared to me that she was taking
9 more than one a day, one at each dosing time. If
10 she was supposed to get BID she was on five
11 milligrams a day over the period of prescription
12 closest to the motor vehicle collision. And so that
13 would equate, based on a number that were dispensed
14 that would equate to two-and-a-half milligrams a
15 day, twice a day, beg your pardon.

16 Q You'd say, what, 50-milligrams?

17 A There are two milligram dosage units.

18 Q I don't know the date on this. I'm trying
19 to find the date. You reviewed some records -- I
20 think they're in evidence. The pharmacy records,
21 they don't give the frequency?

22 A No, they do not.

23 Q Okay.

24 (WHEREUPON, Defense Exhibit No. 1 was
25 marked for identification only.)

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1 BY MR. STODDARD:

2 Q I don't know, I can't say that this is
3 during the timeframe of this event, but is this a --
4 I'm handing you what's been marked as Defendant's
5 Exhibit 1. Does that appear to be a prescription
6 bottle for Ms. Tackett?

7 A Yes, sir, from this year.

8 Q This year?

9 A March of 2019.

10 Q Is it a similar dose than was the ones
11 you're testifying about?

12 A No, sir.

13 Q Is this one for more or less?

14 A Less.

15 Q And how many times a day is it?

16 A It's -- the directions are one tablet by
17 mouth twice a day as needed for anxiety.

18 Q So if she had a higher dose back then, it
19 stands to reason it's probably twice a day?

20 A I couldn't, I couldn't answer that. It
21 could have been prescribed twice a day, but I can't
22 say for sure without seeing the directions.

23 Q But earlier you said you thought it was
24 four times a day so that's, you can't say that?

25 A No, I never said it's four times day, no,

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1 sir.

2 Q Okay. All right. Let's say -- well, I
3 think you said it was likely, would be likely four
4 times a day with that dose?

5 A Oh, no, sir.

6 Q I'm sorry, I might have misunderstood you.
7 So let's say it's twice a day. Is it possible to
8 peak if it might have been around 11:00 if she took
9 it at 8:00?

10 A Could you ask the question again, I'm
11 sorry?

12 Q All right. We were talking about this
13 peak. There's a peak concentration, right, if you
14 take one of those things?

15 A Anyone who takes a drug by any route
16 administration will have a peak amount of the drug
17 in their bloodstream.

18 Q So if you took it at 8:00 in the morning,
19 is it possible the peak would have been at
20 11:00 o'clock in the morning?

21 A Specifically for what drug?

22 Q Clonazepam.

23 A Due to individual differences the peak
24 concentration by the oral route, that's probably
25 excessive. I would say it would be earlier, more

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1 likely 45 minutes to an hour for peak.

2 Q Okay. What do you base that on?

3 A My understanding of how the drug breaks
4 down in the stomach and how long it would take it to
5 be absorbed by the oral route. Usually 45 minutes
6 to an hour. So 45 minutes to an hour-and-a-half
7 would be reasonable for peak concentration.

8 Q Even on a half a day drug?

9 A Yes, sir.

10 Q Well, then, I would think that for it to,
11 the effects to last for the whole eight hours, then
12 it must drop off slowly after that?

13 A Well, peak concentration and the length of
14 time that effects occur, whether those are
15 beneficial effects or adverse effects aren't
16 necessarily related.

17 Q I understand. What you're saying is how
18 much is in your bloodstream versus it's not
19 necessarily related to effects?

20 A Correct.

21 Q When you said part of your opinion is
22 based on what you observed -- by the way, when you
23 said the effects would have believed that the
24 concentration would be lower at the hospital.

25 A Yes.

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1 Q And I'm assuming that you agree that those
2 domains you described, her ability to do divided
3 attention, her speech, -- I can't remember all of
4 the names, but her, her impairment appeared to be
5 less that at the hospital; wouldn't you agree?

6 A If you'd be more specific about what
7 impairment, what domains you're speaking of.

8 Q Well, her -- you mentioned she had slurred
9 speech. Did you observe slurred speech in the
10 hospital?

11 A Her speech still appeared to be somewhat
12 slurred and that was documented by the officer as
13 well.

14 Q I understand it was documented by -- he
15 also said that she was show in responding to his
16 questions; didn't he?

17 A He did.

18 Q Do you agree?

19 A Yes, sir.

20 Q Okay. By the way, on the slurred speech.
21 I noticed she had that collar thing, right?

22 A Yes, she was wearing a collar, yes, sir.

23 Q It affected her ability of her jaw going
24 up and down; didn't it?

25 A I don't know that it did, but she did have

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1 a collar on.

2 Q Do you think it might have affected her
3 speech?

4 A It's possible.

5 Q One of the things that you look for in
6 impairment is the fine motor skills, things like,
7 you know -- my understanding the troopers, they look
8 for whether you can take your license out and hand
9 it to them without dropping it, fumbling it, that
10 kind of thing?

11 A Those, that's not part of the standard
12 field sobriety test, but that's certainly could
13 potentially be remarkable if an individual was
14 fumbling or slow.

15 Q Well, as a Pharm.D., is that something you
16 would look for?

17 A Yes, I was trying to observe all of Ms.
18 Tackett's behavior.

19 Q Did she look like her fine motor skills s
20 were affected in the hospital?

21 A Oh, I couldn't appreciate that. I wasn't
22 able to determine that at all.

23 Q Well, then it means that they weren't
24 affected, right?

25 A No, sir, it doesn't. And again, that's

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1 not part of the standard evaluation that would
2 normally occur for purposes of pointing impairment.

3 Q You're talking about standard by police
4 officers or by experts like you?

5 A Either.

6 Q Well, I understand field sobriety tests,
7 there's three of them, is that you understanding?

8 A The standards one, yes, sir.

9 Q But do you realize that -- are you
10 familiar with the three phases of DUI detection?

11 A Yes, sir.

12 Q And in one of those phases you are
13 observing those things, right?

14 A Yes, you're observing them, yes.

15 Q What I'm trying to figure out is in your
16 opinions today, are you relying on the police
17 officers' training or what you know about pharmacy?

18 A I'm relying on both.

19 Q Okay. On the -- when you mentioned her
20 ability to the counting thing where she counted one
21 Mississippi, two Mississippi and it's 42 seconds
22 instead of 30, you said that was significant?

23 A It was a potential indicator of
24 impairment.

25 Q Are there any studies that show that that

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1 you're aware of?

2 A It indicated to me a slowed perception of
3 time and slow reaction, slow perception of time
4 primarily.

5 Q Do you know whether somebody that's
6 unimpaired might have the same problem?

7 A It's possible.

8 Q Okay. If the earlier one of the police
9 officers I showed him part of their training says be
10 careful in relying on that 'cause I think it said
11 something to the effect it's not scientifically
12 proven. It hasn't been studied scientifically. Do
13 you agree with that?

14 A What hasn't been studied ---

15 Q Scientifically using that as an indicator
16 of impairment.

17 A It's a potential indicator and it would
18 not be used, should not be used to the exclusion of
19 any other information for purposes of opining
20 impairment.

21 Q By the way, you've talked about you seem
22 to understand the field sobriety test. Do you know,
23 I mean, some -- do you know how they're supposed to
24 be conducted and you can, the clues they look for
25 and what's passing and failing?

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1 A Yes, sir, I have them.

2 Q Okay. So you would know is somebody --
3 you would know how the one legged stand would be
4 administered, what a pass and fail would be?

5 A Yes, sir.

6 Q And did you see Ms. Tackett's one legged
7 stand?

8 A I saw the body cam footage, yes.

9 Q And do you believe she failed it?

10 A I believe she had difficulty with it, yes.

11 Q Well, you're familiar with there four
12 allows you look for, right?

13 A Yes.

14 Q And if two clues is a fail?

15 A Yes, sir.

16 Q Do you remember?

17 A Yes, sir.

18 Q She failed it?

19 A Yes, sir.

20 Q And the officer said she failed it?

21 A Yes, sir.

22 Q And you agree with that?

23 A Yes, sir.

24 Q You have said there were, you didn't see
25 any medical reasons, any other, any medical record

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1 you reviewed, any reason for this event other than
2 the drugs?

3 A Based on the records that I was provided,
4 that's correct.

5 Q You're not a medical doctor?

6 A Not a medical doctor.

7 Q And would that be outside you area of
8 expertise?

9 A Perhaps, but not necessarily. I'll use
10 the example of individuals who are diabetic who are
11 experiencing severe or profound hypoglycemia, low
12 blood sugar, very similar to alcohol and/or drug
13 impairment and that would be an area that I would be
14 able to evaluate and did so by virtue of the
15 clinical information that is provided in the medical
16 record and the pharmacy records that belong, the
17 pharmacy records for Ms. Tackett because -- and her
18 medical diagnoses because I did not see that she
19 suffered from diabetes. In addition to that, I did
20 not see any evidence of epilepsy or any other
21 physical illness for which a specific drug or drugs
22 could have been prescribed that could be important
23 to the potential for impairment.

24 Q Okay. Did the hospital records show that
25 she has sleep apnea?

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1 A I believe there was a diagnosis that she
2 suffered from sleep apnea.

3 Q And did it say she's not on a Bipap or
4 CPAP machine at that time?

5 A Yes, I seem to recall that.

6 Q As far as drowsiness, that could cause
7 drowsiness; couldn't it?

8 A The sleep apnea.

9 Q Yes.

10 A It certainly could.

11 Q You would agree -- I would agree with
12 this. The person driving that vehicle, Ms. Tackett,
13 at the time immediately before the accident and
14 right, the time of the accident, was severally
15 impaired. I mean, it -- let me back up and ask
16 another way. And it's easier for me to relate to
17 alcohol than drugs 'cause drugs are unpredict --
18 alcohol is more predictable than drugs, right?

19 A Not necessarily.

20 Q Explain that. Well, let me tell you my
21 understanding. My understanding is with alcohol,
22 there's a more predictable effect on those domains.
23 Like a, at a 10 we know, we kind of know what it
24 would be. At a 15, at an 8. When I say eight I'm
25 talking about the .10, I don't remember if it's ---

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1 MR. MOWRY: Your Honor, I hate to object,
2 but is there a question in there anywhere?

3 THE COURT: Well, I'm gonna ask you to get
4 to the point of the question.

5 BY MR. STODDARD:

6 Q All I'm saying, there are different
7 levels, different concentrations of alcohol to
8 blood. I was thinking it was more predictable than
9 the effects of these drugs.

10 A We know what the effects of the drugs are.
11 Alcohol we have -- because we have studied alcohol
12 longer we have more data with respect to a given
13 concentration, but we fundamentally understand and
14 can predict the effects of the drugs that are
15 represented in the toxicology report here.

16 Q Well, let me ask you a question. Given
17 those levels that you see there, at the time of that
18 blood draw on a hypothetical person knowing nothing
19 else, can you say that person is too impaired to
20 drive?

21 A As a toxicologist I don't interpret
22 concentrations in a vacuum so if you're asking me --
23 to make sure that I understand the question -- to
24 look at a concentration and tell you whether that
25 individual is impaired or not, I can't do that.

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1 Q What if it, what if someone had a, what we
2 would, what I usually call .15 on the breath-- or in
3 the bloodstream, whatever the 15 is. Do you know
4 what I mean by that? And I'm talking about alcohol.

5 A Alcohol is totally different from the
6 drugs that are here. Again, we have a vast amount
7 of knowledge with respect to concentration, specific
8 concentration, and effect relationships where we can
9 begin to deduce that or draw conclusions at a given
10 concentration; but with drugs, we also have to have
11 additional information in order to be able to put it
12 all together so to speak.

13 Q So you say we have more information on
14 alcohol, it's been studied more?

15 A With respect to specific concentrations or
16 a range of concentrations over which we can begin to
17 anticipate effects.

18 Q So if I'm hearing you correctly, we have
19 less knowledge about these drugs and how they affect
20 someone?

21 A No, we don't have less knowledge about how
22 they affect us. We know how they affect us
23 beneficially and adversely. We just don't have
24 specific concentrations to associate with those
25 drugs for purposes of opining as to impairment in

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1 the absence of any other information.

2 Q So anyway, the driv-- let me get back to
3 where I was going before. That driver, Ms. Tackett,
4 was very impaired based on the witnesses. She was
5 not just barely not maintaining her lane; it was
6 pretty severe. Is that correct?

7 A That's my understanding.

8 Q Then the car went completely off the road
9 and kept going until it was stopped by the wires?

10 A It's my understanding, yes, that's
11 correct.

12 Q Is that -- based on the concentrations you
13 saw, is that expected, or how would you characterize
14 that? Is that something you would expect or does
15 that seem to be unusual given that level?

16 A Again, you cannot associate a level of a
17 drug with a specific behavior.

18 Q Let me ask you another question. If she
19 got up that morning and did her morning routine and
20 then got in the car, would it be unusual for her to
21 have little impairment on the domains you've
22 mentioned and then got in the car and then that
23 happened after about five or ten miles, that
24 condition that was described by the witnesses?

25 A I'm sorry, I just don't understand the

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1 question.

2 Q I guess what I'm saying, would it be
3 unusual that that level of impairment happens
4 quickly, suddenly?

5 A As I understand the timeline for
6 Ms. Tackett, Ms. Tackett woke up at approximately
7 8:00 in the morning and had breakfast thereafter and
8 was in her vehicle such that the motor vehicle
9 collision occurred at approximately 9:43 a.m. on the
10 28th of March, that would in my opinion based on the
11 compounds that I see here put her in the window for
12 purposes of impairment based on that timeline with
13 respect to the medications that she said she took
14 that morning, whether or not THC was used that
15 morning.

16 Q What I'm saying is, when she got in the
17 car. I think she had driven at least, at least
18 10-miles and maybe about 15-miles depending on where
19 her home is from that. That's all I'm saying. When
20 she got in the car would it be unusual for her to
21 be, have no adverse, or very little adverse affects
22 on those domains and then after driving about 15,
23 10-miles or so, suddenly she has these, this
24 impairment in those domains to the degree that it's
25 witnessed?

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1 A I wouldn't refer to it and suddenly
2 because she's had - the drugs have had time to be
3 absorbed and distributed. They may be prior to
4 peak; they may be passed peak. But for purposes of
5 impairment, it would be my opinion that she would be
6 in the window of that period of time.

7 Q Let me ask it a different way. If she
8 says I felt no impairment, there was nothing unusual
9 going on with me when I got in the car; but later
10 this happened -- because of the drugs maybe -- would
11 that be consistent with everything you've seen?

12 A Well, when the individual enters the
13 vehicle they're not necessarily challenged for
14 purposes of driving at that point so it might not be
15 uncommon or unusual for Ms. Tackett to not feel that
16 she's impaired; but again, I would also say that
17 drivers themselves are very poor judges of their
18 ability to drive a motor vehicle.

19 Q The degree of impairment described by the
20 witnesses, that person looks like would not have
21 difficulty even walking or getting in the car?

22 A I don't know that that's necessarily true
23 at the time that she entered the vehicle.

24 Q Well, and that's kind of -- my question is
25 again, would it be unusual for her to have no

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1 impairment, whether it's in her mind or not? I'm
2 saying, actually very little impairment, and then it
3 comes on after about ten miles of driving?

4 A Not necessarily unusual. And if we're not
5 testing her at that time we wouldn't know
6 necessarily.

7 Q I understand. You mentioned that the
8 person, the last person you would ask if they're
9 impaired is the person on the drugs, right?

10 A As a general rule we find in studies that
11 we're poor judges of our impairment, or lack
12 thereof.

13 Q Would you say then -- let me ask you
14 another question. The drugs you've seen there, you
15 sort of have an idea from the hospital records of
16 Ms. Tackett's medical conditions, anxiety?

17 A Yes, she was being treated for anxiety.

18 Q Posttraumatic stress syndrome?

19 A Yes, sir.

20 Q Migraine headaches?

21 A Yes, sir.

22 Q These drugs, do they seem kind of typical
23 for those conditions?

24 A Yes, essentially.

25 Q They seem appropriate for those

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1 conditions?

2 A They are used for those indications.

3 Q Are they effective?

4 A They may be.

5 Q Do you dispense drugs at all anymore?

6 A Only as a volunteer. I'm not, I'm not in
7 a practice environment where I dispense drugs.

8 Q So do you know whether this would be a
9 common combination of drugs or not?

10 A I looked at the pharmacy records and I
11 looked at all the medications that Ms. Tackett has
12 been provided -- prescribed, beg your pardon. Prior
13 to the, and up to the motor vehicle collision, and I
14 deduced what I felt were the probable indications
15 for those absent all of her medical records so I
16 have an understanding. I believe I have an
17 understanding of what drugs she was on certainly and
18 has been on up to that point and why she would have
19 been on them.

20 Q Do you believe that anybody, that no one
21 with those combinations of drugs should ever drive?

22 A I didn't say that.

23 Q So the answer is no?

24 A Correct.

25 Q So the warning that's been put up here is