

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

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SC Court of Appeals

The State

..... Respondent,

vs.

Adam Rowell Appellant.

RECORD ON APPEAL
VOLUME II

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INDEX

Transcript of Trial and Sentencing dated February 13-18, 20, & 27, 2017	1
Indictments and Sentencing Sheets	1346
Post-Trial Motions	1354
Supplement #1 To Defendant's Motion For New Trial	1368
Transcript of Post-trial hearing held November 27, 2017	1377
Post-Trial Order of Judge Donald Hocker dated December 27, 2017	1423
E-mails exchanged after the hearing	1428
State's Post Trial Exhibit	1450
State's Exhibit # 68, Hospital Data Management System Audit Trail	1453
State's Exhibit #70, Transport	1454
State's Exhibit #73, SLED Forensic Services Laboratory Report	1463
Notice of Intent to Appeal	1465

1 gouges, scratches. They usually tell me what they're on,
2 because I can't see, you know, all the evidence from where
3 I'm at, especially on larger scenes. So they'll tell me if
4 they're on a tire mark. If they switch from one tire mark
5 to another tire mark they'll tell me their changing from a
6 tire mark one to the second tire mark and I just enter that
7 data in as a tire mark one, tire mark two, gouge one, gouge
8 two, and so on.

9 Q So you were involved in the process, taking
10 measurements, recording those measurements?

11 A Yes. So basically I was just helping them take the
12 measurements.

13 Q You also relied on the information from Kelly Anderson
14 and Al Duncan?

15 A Yes.

16 Q Was a CAD actually made in this case?

17 A Yes.

18 (Whereupon, State's Exhibit No. 65 was marked for
19 identification.)

20 Q I'm going to show you what's been marked as State's
21 Exhibit No. 65. Can you tell me what this is?

22 A This would be the actual scale drawing that was
23 generated from mapping the scene. It actually draws the
24 points. And I put these in different layers. I make a
25 roadway layer which just shows what the roadway is to scale,

1 and the scale on this is one inch equals 80 feet. And then
2 I label the roadway. But this is an actual scale drawing of
3 the roadway that's generated from the mapping. The second
4 page, it's an impact layer. It shows where the vehicles
5 would have been at impact based on the evidence that was
6 mapped from the scene. And the third layer here is -- it
7 shows the evidence which -- it's hard to see on this CAD
8 because it's so big. All the little gouges and scratches.
9 But it shows the evidence and it shows the final rest of the
10 vehicles as they were marked and painted out there on the
11 scene. And then the last layer shows the sequence of events
12 of how the vehicles would have traveled through the whole
13 dynamic of the collision..

14 Q And you did this CAD report?

15 A Yes.

16 Q And it's a fair and accurate representation of what you
17 believe happened that evening?

18 A Yes.

19 Q Was only one CAD report done in this case?

20 A One CAD report was done. I ended up changing the
21 animation. Sergeant Duncan informed me that he was changing
22 --

23 MR. GARRETT: Objection, Your Honor, as to -- I'll
24 withdraw it.

25 THE COURT: I think so.

1 MR. GARRETT: I'll withdraw it.

2 THE COURT: You may proceed. Keep going.

3 A I received my -- I didn't do the calculations in this
4 case.

5 Q Who did?

6 A Sergeant Duncan did the calculations in this case. I
7 base my animation, because I have to put the speeds of the
8 vehicles in the program to show them going that speed in the
9 animation. The calculations had changed based off tire size
10 difference. So I readjusted the speeds and the animation to
11 reflect the new calculations.

12 Q So there was only one CAD done, but there were two
13 animations done based on the change in speed?

14 A Yes. Yes. Because the CAD doesn't move and the
15 animation actually moves.

16 MR. DOWTIN: Your Honor, at this time State would offer
17 State's 65 into evidence.

18 THE COURT: What says the Defense?

19 MR. GARRETT: Your Honor, I'm just having difficulty.
20 Was there a first version of the CAD before it got changed
21 to the second --

22 THE WITNESS: The CAD never changed. The movement of
23 the vehicles changed in the animation.

24 MR. GARRETT: Okay. So you used the same CAD to change
25 the -

1 THE WITNESS: The roadway stays the same. The size of
2 the cars, everything stays the same. But the motion of the
3 cars change.

4 MR. GARRETT: I'm okay if there's not two CADs, there's
5 only one. If he's putting it in, I'm okay with it.

6 THE COURT: I believe that's what he said in his
7 testimony. So without objection, 65 into evidence for the
8 State.

9 (Whereupon, State's Exhibit No. 65 was admitted into
10 evidence.)

11 MR. DOWTIN: Permission to publish to the jury, Your
12 Honor.

13 THE COURT: Certainly.

14 (Whereupon, State's Exhibit Nos. 66 and 67 were marked
15 for identification.)

16 Q So you said two animations were done in this case?

17 A Yes.

18 Q Let me show you what's been marked as State's Exhibit
19 66. Can you tell me what that is?

20 A This is a copy of the animation and CAD on this
21 particular case that I done.

22 Q And is that the first one or the second one, or the
23 updated one?

24 A This is the updated one.

25 Q And then State's 67?

1 A This is the original one that was done before the
2 speeds was changed in it.

3 Q And these are fair and accurate representations of the
4 calculations that ultimately led to these animations?

5 A Yes.

6 MR. GARRETT: Without objection, Your Honor.

7 THE COURT: All right. Without objection, 66 and 67
8 into evidence for the State.

9 (Whereupon, State's Exhibit Nos. 66 and 67 were
10 admitted into evidence.)

11 MR. DOWTIN: Your Honor, when the jury has had a chance
12 to look at that we're just going to ask that 66 be
13 published, not 67.

14 THE COURT: Okay.

15 MR. DOWTIN: And 66 is the animation with the most
16 accurate --

17 THE COURT: The updated.

18 MR. DOWTIN: Yes, sir.

19 THE COURT: And certainly if Mr. Garrett wants to have
20 the 67 played during cross he can do that. It would be up
21 to him.

22 (Whereupon, State's Exhibit No. 66, CAD animation, was
23 published for the jury.)

24 MR. DOWTIN: Your Honor, if you don't mind, if I could
25 play it one more time, just because I know a couple of the

1 jurors were also looking at --

2 THE COURT: Sure. Why don't we do this. Why don't we
3 just say everybody be at ease for just a few minutes. Give
4 the remainder of the jurors an opportunity to look at the
5 CAD, and then we'll play the animation one more time.
6 Everybody be at ease for just a moment.

7 MR. DOWTIN: Thank you, Your Honor.

8 (Whereupon, there was a brief pause in the
9 proceedings.)

10 THE COURT: Okay, Solicitor. I believe all the jurors
11 have looked at the CAD report. So if you want to replay the
12 animation again.

13 MR. DOWTIN: Thank you, Your Honor.

14 Q And, Lance Corporal Bratcher, this is the most accurate
15 animation based on the information you received from
16 Sergeant Duncan?

17 A Yes. That shows the actual speed of each vehicle that
18 I was given to put into the animation. That would be the
19 actual speed that they were going.

20 (Whereupon, State's Exhibit No. 66, CAD animation, was
21 republished for the jury)

22 Q Lance Corporal Bratcher, based on your research -- or
23 not research, excuse me, your investigation and review of
24 this case, what is your expert opinion as to what happened
25 that evening?

1 A My expert opinion is that the blue truck crossed the
2 center line and struck the red truck. The red truck
3 actually did apply brakes by the skidmarks that were left in
4 the roadway, rotated in a counter-clockwise position. The
5 red truck ended up against the guardrail and the blue truck
6 ended up off on the grass.

7 MR. DOWTIN: Thank you, sir. Please answer any
8 questions Defense counsel may have.

9 THE COURT: Just as a technicality, I don't think I
10 ever found this Trooper an expert even though I think there
11 was a stipulation.

12 MR. GARRETT: We stipulate, Your Honor.

13 THE COURT: But I do find that this officer's an expert
14 in the area of accident reconstruction.

15 MR. DOWTIN: Thank you, Your Honor.

16 THE COURT: Okay. Mr. Garrett, you got some cross?

17 MR. GARRETT: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. GARRETT:

20 Q It was told earlier that this is a 360 degree view
21 here; is that correct?

22 A Yes.

23 Q How many feet or yards or miles or whatever was it to
24 the north that you did your analysis?

25 A We go back far enough to get -- if it's going to be

1 animated, we'll go back far enough to where you'll actually
2 see the car come in on the animation for a second or so.

3 Q All right. Can you tell this jury how far back towards
4 the fairground this analysis takes place?

5 A If I had my CAD program right in front of me I could
6 give you an exact measurement, but I don't have it in front
7 of me.

8 Q It's into evidence, so it's there, right?

9 A Yes.

10 Q Is everything that you're telling this jury completely
11 accurate --

12 A Yes.

13 Q -- about the calculations and the information you were
14 given?

15 A Yes.

16 Q And how far south did this animation take place?

17 A It's in the CAD program. I can't tell you exactly how
18 many feet it was exactly.

19 Q East and west. I'm assuming you go out to the tree
20 line?

21 A Yes.

22 Q You want to get enough in to where -- you've got one
23 vehicle that's off the roadway. So you want to make your --
24 you want to map off the roadway enough where you can put
25 that vehicle in. And if there's any evidence off the side

1 of the roadway you want to map off the side of the roadway
2 enough where you can get the evidence in the CAD.

3 Q Okay. For instance, the blue truck was off the road --
4 off the side of the road.

5 A Yes.

6 Q The red truck would have been but for the guardrail?

7 A Yes.

8 Q Okay. And so, that's as far out as you go from
9 side-to-side in your 360?

10 A Yes, because if they had of -- if everything was still
11 in the roadway there'd be no point in mapping the trees and
12 the ditches and everything else off the side of the roadway.

13 Q I'm just trying to understand your 3D concept.

14 A Yeah.

15 Q The animation relies upon that drawing; is that
16 correct?

17 A Yes.

18 Q And it's based solely and accurately upon that
19 information?

20 A The CAD -- the roadway doesn't change.

21 Q Right.

22 A The only thing that changes is the vehicles are put
23 into motion.

24 Q The second -- this is your second attempt at this
25 scene; is that correct?

1 A The vehicles' motion didn't change. It was just the
2 actual time it took this vehicle to get from point A to
3 point B and for this vehicle to get to point A to point B.

4 Q And nothing else was changed between that first one and
5 the second one except for speed?

6 A Speeds.

7 Q That's the only thing that changed?

8 A Yes.

9 THE COURT: No further questions?

10 MR. DOWTIN: Nothing, Your Honor.

11 THE COURT: You can step down, sir.

12 THE WITNESS: Thank you.

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

15 THE COURT: Mr. Foreman, ladies and gentlemen of the
16 jury, it's at the 5:30 hour. I think it would be a good
17 time to go ahead and recess for this evening. And so, let's
18 start at -- let's start at 9:30 in the morning. And I
19 appreciate you being prompt. Everybody's gotten back here
20 on time, to the best of my knowledge, and I appreciate that.
21 We've -- you've waited on us. We haven't had to wait on any
22 of you, and I appreciate that. So have a good evening. Get
23 some rest. You've worked very hard today and I imagine
24 you'll have a full day tomorrow as well.

25 Once again, I remind you no discussion about this case

1 amongst yourselves or anybody that you come into contact
2 with, and we'll see you in the morning at 9:30.

3 (Whereupon, the jury was released at 5:32 p.m.)

4 THE COURT: All right. We'll be in recess until 9:30.

5 (Whereupon, the proceeding was adjourned at 5:32 p.m.)

6 TRIAL DAY 4-02/16/17

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

8 (Whereupon, the jury entered the courtroom at 9:39
9 a.m.)

10 THE COURT: Let the record reflect the jury is back in
11 the courtroom. Good morning, ladies and gentlemen. I hope
12 you had a good restful evening and are ready to get back to
13 work.

14 Solicitor, are you ready to call your next witness?

15 MR. BLACK: Yes, sir, Your Honor. Thank you. State
16 calls Angela Waite to the stand.

17 ANGELA WAITE, having first been
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BLACK:

21 Q Ms. Waite, can you please introduce yourself to the
22 jury, please.

23 A Yes, sir. Hello. My name is Angie Waite. I'm a nurse
24 with LifeFlight out of AnMed Hospital, Anderson.

25 Q And how long have you been with LifeFlight?

1 A Almost six years.

2 Q Where did you work before that?

3 A Before that I've worked in multiple ICUs. Neuro ICUs,
4 cardiac ICUs. I was a stroke nurse at Kansas City, Saint
5 Luke's Hospital, and I've done a little work in the ERS.

6 Q And how did you end up getting down to here to South
7 Carolina?

8 A My husband is from here, and it was always his dream to
9 come home. So we moved here 2010.

10 Q And how long have you been a nurse total?

11 A Almost 18 years.

12 Q And you said you've been with LifeFlight for how long?

13 A Almost six.

14 Q And as -- what kind of job -- describe your job at
15 LifeFlight.

16 A We have 12 hour shifts. I usually work night shift.
17 It works better that way with my children. And you carry a
18 radio. You get a call from Flight Com. Out flight
19 communications which is out of Texas with Med-Trans. We are
20 -- we are a hospital affiliated flight program. So I work
21 for the hospital. Our pilot and mechanic work for Med-Trans
22 Corporation. And we can get a call. We have scene calls,
23 interfacility calls. Scene calls are usually most often -
24 80 percent as of last count. Eight percent of our calls are
25 SIM, 20 percent interfacility.

1 Q What do you mean by interfacility?

2 A Interfacility is when a hospital calls us and says we
3 have a critical patient that needs to go from Self to MUSC
4 or AnMed to Greenville. Hospital to hospital.

5 Q But the majority of your calls are on scene?

6 A Yes, sir.

7 Q To a hospital?

8 A Uh-huh.

9 Q And you all are based out of where again?

10 A AnMed in Anderson.

11 Q Anderson.

12 A Uh-huh.

13 Q Where do you all take patients? Wherever they need to
14 go?

15 A We have a 150 mile radius, but we can go outside of
16 that. We've been to Duke. A lot of flights to MUSC in
17 Charleston. Augusta Burn Center, that's a big one. And
18 Greenville Health System being a level one trauma center,
19 that's where we take our very sick patients.

20 Q Okay. How many calls have you been on in the course of
21 your career?

22 A It varies. In the summer is usually our big call load.
23 I can't estimate. Probably several hundred.

24 Q Have you been on multiple in a shift?

25 A Yes, sir.

1 Q Multiple calls?

2 A Uh-huh.

3 Q What's the most you've ever done?

4 A Three.

5 Q Three. So that was a busy shift?

6 A That was busy, uh-huh.

7 Q And are you always on the chopper, so to speak, with
8 your -- with your current position?

9 A Yes, sir.

10 Q How many people fit on the chopper?

11 A We have room for our patient to lie on the litter, we
12 call it, with his head facing back and his feet towards the
13 pilot. The pilot sits up front right. I sit behind the
14 pilot. And then the medic sits at the head of the patient.
15 So normally a call with entail four people including
16 patient. Some pediatric calls we include a parent or
17 guardian if we're able to weight-wise.

18 Q And that's for smaller kids or children?

19 A Yes.

20 Q Do you remember working the night of November the 15th,
21 2014?

22 A I do.

23 Q And what time did your shift start, or what time does
24 your typically start?

25 A 2000, which is 8:00 p.m.

1 Q And do you remember getting a call responding to
2 Greenwood, South Carolina?

3 A I do.

4 Q Can you kind of walk us through how you got the call
5 and what you all did.

6 A Okay. At the start of every shift we're supposed to do
7 our walk-arounds for the helicopter, checking safety,
8 checking all our medications, making sure everything in the
9 helicopter -- all equipment is charged and ready to go.
10 After we each do our individual walk-arounds then we come in
11 at 9:00 p.m., 2100, for what we call -- it's call conference
12 -- conference call with all the other bases here in South
13 Carolina and Flight Com, and they go over any hazards in the
14 areas of our -- of our flight volume. Maybe Self has a --
15 Self Regional might have a crane up at 400 feet. That's
16 just so we all know what's going on.

17 But at this particular night we got a call before -- a
18 patient call before we had our conference call. So when
19 that happens our radios go off and we acknowledge that we
20 received the call. Usually we get the call always from
21 Flight Com in Texas and they say, "LifeFlight this is Flight
22 Com. You have a launch request for a scene call in
23 Greenwood County." We have exactly nine minutes from that
24 moment to get off the ground towards Greenwood, and that's
25 after making safety checks, making sure we have our code.

1 One to go -- or three to go, one to say no. And what I like
2 about Med-Trans is if someone just has a horrible feeling,
3 you don't even have to explain it, your hair stands up on
4 the back of your neck, you can decline a call. So we all
5 coordinate, are you good, I'm good, we're all good. We do
6 another quick run around of the helicopter and then we're in
7 route.

8 Q And in this particular -- in this particular case how
9 long did it take you all to get to Greenwood from Anderson?

10 A May I look at my chart?

11 Q Yeah. And I'm going to --

12 A Thank you.

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

14 THE COURT: Sure.

15 Q I'm showing you what's been marked as a Court's Exhibit
16 No. 9. Can you just describe what that is?

17 A What this paperwork is?

18 Q Yes, ma'am.

19 A This is our actual medical chart that we do on every
20 patient call. It entails what we -- what we do en route
21 from once we pick the patient up to once we land.

22 Q When do you all end up filling this paperwork out?

23 A We're supposed to do it as soon as we arrive back at
24 base. Sometimes we get another call as we're flying back,
25 or as soon as we get back. So as soon as possible.

1 Q So you're filling this paperwork out kind of after you
2 take care of the patient?

3 A Yes.

4 Q And why do you do that? You don't have -- do you have
5 time to do it while --

6 A No time. And at the time we didn't have any mode of --
7 we didn't have an iPad or anything to use, which we still
8 don't. We're working on that. But at the time it's all
9 patient care. This comes later..

10 Q Okay. And while I forget. You said your company was
11 out of Texas; is that right?

12 A Uh-huh.

13 Q You all just have different bases around the United
14 States?

15 A Uh-huh, they do.

16 Q Okay. Now, going back to the question that I
17 originally asked. What time did you all -- what time did
18 you all leave Anderson and what time did you all get to
19 Greenwood?

20 A We left at 1946 and got there at 2009.

21 Q And when you got to the scene do you remember -- do you
22 remember this at all? I know you've responded to a lot of
23 accidents and wrecks.

24 A Looking at the chart and talking to my partner and our
25 pilot, it helps -- it helps you remember certain things,

1 because when you can -- we can identify which pilot. We
2 have four pilots. They each work seven day shifts. When
3 you can identify which pilot was with you it's easier to
4 remember, because they all have their own flying -- their
5 way to fly. They all talk -- speak differently over the
6 radio. So yes, I did speak with my medic and pilot about
7 this call, and I remember certain aspects of it.

8 Q Do you remember all the details though?

9 A I don't remember all the details. No, sir.

10 Q I guess that's just the nature of the work.

11 A It is.

12 Q When you all -- when you got to Greenwood do you
13 remember kind of what was going on?

14 A I remember that it was a long extrication, which when
15 that happens, when there has been a horrible motor vehicle
16 collision, sometimes we can get that patient right out.
17 Other times fire department, law enforcement, they're all
18 there and they're trying to get that patient out of that
19 vehicle as quickly as possible before -- yes. And I know it
20 was a 45 minute extrication. So I know we sat on the scene.
21 And most of the time we go up and help, as long as they have
22 helmets for us and it's not unsafe. So I know we were at
23 the scene. I know we were at the -- I do not know if we
24 were at the vehicle. I do not remember that part.
25 Sometimes our LZ, which is the landing zone, it has to be

1 100-by-100 feet squared. And if it's not, if right at the
2 scene it's not that open space, we have to land -- could be
3 a couple miles away. And then the ambulance will transport
4 us, or a private vehicle of a responder.

5 Q When did you make contact with this particular patient?

6 A Our rendezvous was 2012. So that would -- our rendezvous
7 was 2012. And according to the chart I know he was not out
8 yet, so I know we were at the vehicle at that time.

9 Q And what is your job on scene? Can you tell the jury
10 what you do on scene?

11 A Sure. So we have two medical workers. We have a medic
12 and a nurse, and we both have our critical care. You must
13 have that to fly. I have my flight nurse certification. He
14 has his flight paramedic. Once we are there we hear --
15 sometimes we can get over the radio from EMS at scene a
16 broad description of what's going on, and sometimes we
17 don't. They're too busy working on the patient. But after
18 that we hop out. He grabs the bag, I grab my meds and we go
19 to the patient. He goes through the side door of the
20 ambulance. His primary role is to look airway immediately.
21 My primary role is to enter the back and do a head to toe as
22 he's doing ABC. Airway, breathing, circulation. And then
23 once we coordinate that -- we work together this whole time.
24 He's worked, I think, almost 10 years at this -- not with
25 this program. As long as they've been in at AnMed. And

1 then before that he worked at another flight program. And
2 it's a good thing to work with one partner because you know.
3 Immediately I knew -- I know when he raises his head -- he
4 doesn't even have to say a word. I know to start drawing up
5 RSI medications because we're going to have to intubate.

6 Q What are the RSI medications that you gave in this
7 particular case?

8 A I gave Lidocaine, and that was to blunt the ICP, which
9 is the intracranial pressure. Any time you put an airway
10 down you're going to bumper their intracranial pressure
11 inside their head. And he already had, I remember, a lot
12 going on. He was minimally responsive. Steve had to -- my
13 partner had to bag him to give him ventilations. So we gave
14 him that to blunt head trauma. He already had head trauma.
15 We gave to him Etomidate, which is a sedative. And then
16 after we give the Etomidate we give the succinylcholine
17 which is a paralytic. Because a lot of times patients that
18 are this -- this critical will clamp down and you cannot
19 open that jaw for anything until this paralytic starts
20 working and then they relax and then you can open and see.
21 So we gave the paralytic. And then I gave -- I'm okay to
22 look at this chart?

23 Q Sure.

24 THE COURT: Yes.

25 A Thank you. Then I gave Versed and Vecuronium to keep

1 him sedated and paralyzed. And you never paralyze without a
2 sedation, because in case a patient wakes up they're frozen.
3 They can't move a -- they can't breath, they can't move, but
4 they can hear you and see you. So that would be why you
5 give a sedation.

6 Q Are these standard medications that you all typically
7 give --

8 A Yes, sir.

9 Q -- I these types of incidences?

10 A Uh-huh.

11 Q Okay. You also gave the Defendant fluids and blood as
12 well; is that correct?

13 A Yes, that's right.

14 Q Can you tell the jury how much fluid you gave the
15 Defendant?

16 A When we arrived on scene I know -- I remember the
17 medic. We -- we have done many, many calls with him.

18 Q Which one is that?

19 A Derrick Oliver, from Greenwood County. And I remember
20 they were trying to start an IV because the patient's blood
21 pressure. He was so hypotensive.

22 Q What is hypotensive?

23 A Sorry. Very low blood pressure. Severely hypotensive.
24 I know by the time we could finally get a pressure --
25 sometimes the manual cuff, you know, the blood pressure

1 cuff, won't even go off. So you have to palpate femorally
2 or carotid. And I know that when we finally did get a
3 pressure to register it was 61 over 45. They were
4 attempting to start the IV. Normally at that time
5 immediately we will -- we have a drill which drills the
6 bone. Any bone we can find to get another IV access, or IO
7 access to start blood. But I remember with this patient we
8 couldn't because he had bilaterally -- it appeared he had
9 bilaterally humerus fractures, which we cannot go if he has
10 -- if there's a possible fracture, because of the damage we
11 could do later. Also he had bilateral tib fib fractures,
12 which is your lower leg. Both bones in the lower leg. And
13 then we were unsure if he had femoral fractures. It was
14 apparent he had a left femoral but we weren't sure about
15 right. So there was really nowhere to go, because our
16 protocols do not allow us to hit the iliac crest in the
17 pelvis, and at the time he also had an unstable left and
18 right pelvis. So we got one IV site. I know they were
19 popping fluids in him. I know he had 1,500 milliliters
20 prior to our arrival, and then we kept it going with 500
21 more and then started blood products.

22 Q So prior to arrival he had 1,500. What was -- what was
23 that? Was that just -- was that blood or was that something
24 else?

25 A For IV fluid.

1 Q Just fluids?

2 A Uh-huh.

3 Q And what typically makes up the IV fluid?

4 A A normal saline or lactated Ringer's, which is like an
5 isotonic --

6 Q It's clear?

7 A Clear, uh-huh.

8 Q And then what did you all end up giving the Defendant?

9 A After that we gave 500 more, and that was a normal
10 saline hung with the blood. I always hang normal saline
11 with the blood to chase it. And we hung the blood -- we
12 always hang the blood on pressure to -- pressure bag to get
13 it in quicker. And I only always hang one blood product at
14 a time in case there's a reaction you know what's causing
15 it. So we gave him one unit of packed red blood cells and
16 then followed that with a unit of fresh frozen plasma.

17 Q And how much of the packed cells was it that he was
18 given?

19 A 360 milliliters.

20 Q And how much of the FFPs, the plasma that you were
21 talking about, how much was he given on that?

22 A 180 milliliters.

23 Q So total fluid kind of at the scene and en route to the
24 hospital how much -- how much blood and how much fluid was
25 it?

- 1 A 2,540 milliliters total.
- 2 Q And where do you all typically get the fluid and the
- 3 blood? Where does that come from?
- 4 A That comes out of our hospital. At AnMed we -- we can
- 5 go to the ER. Emergency room. That's where we get a lot of
- 6 our supplies charged out to us. And then the blood
- 7 products, every morning -- every 24 hours we go to the blood
- 8 bank at AnMed and they give us a big cooler like they use in
- 9 the military. A big cooler for blood products. And we have
- 10 two units of packed cells, two units of FFP in every cooler
- 11 for a whole 24 hour, two shifts.
- 12 Q Do you all typically keep -- do you go through the
- 13 blood to make sure it's --
- 14 A Always. Always checking it, yes.
- 15 Q And why are you checking it? To make sure it hadn't
- 16 expired or something of that nature?
- 17 A Yes. Expiration, and make sure it's O-negative blood.
- 18 Q Why is that?
- 19 A Because at the scene we cannot take a patient's labs
- 20 and check and make sure they're -- if they're O-negative or
- 21 A-positive. And O-negative blood does not react. It's a
- 22 universal donor.
- 23 Q So that goes into anybody?
- 24 A Anybody.
- 25 Q The blood that was given in this case, do you know the

1 expiration on the blood that was given?

2 A According to the chart, expiration on the packed cells
3 was 12/7 of 2014.

4 Q And this was on 11/15/14?

5 A Uh-huh.

6 Q Okay. And what about the FFPs?

7 A 12/8 of 2014.

8 Q What's the shelf-life typically of that? Do you know?
9 You might not even know.

10 A I know that in the hospital if you take out -- if you
11 call Blood Bank needing it for OR or whatever, they say that
12 you only have four hours from removal from the refrigerator
13 to the -- to making sure the patient gets it. You have a
14 four hour window. Now, because we have these coolers that
15 are certified per the Blood Bank I do not know. I know that
16 we can -- if we don't use that blood within a 24 period we
17 return it to Blood Bank. They use it that next day for
18 patients in the hospital.

19 Q Do you have any other information about the blood like
20 a number associated with each of these -- these blood packs
21 that you get?

22 A We do have a donor number that we have and a Blood Bank
23 ID number.

24 Q And the ID number, that just identifies which Blood
25 Bank it comes from?

1 A Right.

2 Q And then the donor number, that's specific to the
3 individual giving the --

4 A It is.

5 MR. BLACK: Beg the Court's indulgence.

6 THE COURT: Sure.

7 Q Ms. Waite, after you all were able to start treating
8 the patient how soon thereafter did you all take off and
9 head to Greenville?

10 A Normally on scene calls we have 10 minutes to get off
11 the ground.

12 Q Yes, ma'am.

13 A And we are -- we are checked on that on every call. We
14 are audited on every chart, because time is life to us. But
15 with this patient I remember he was so critical that --
16 anytime we have to RSI intubate it usually -- a lot of times
17 we can do it under 10. But with that and the bleeding out
18 -- and it wasn't external bleeding. We thought he was
19 bleeding out of his pelvis, so we tried to get him out as
20 soon as possible. But with the extrication, with the
21 extrication -- forgive me. Extrication, blood products and
22 intubation it -- we departed 2031.

23 Q And how long did it take you all to get to Greenville?

24 A It took us 24 minutes.

25 Q And once you all arrived at Greenville did -- where do

1 you all -- where do you all land at in Greenville?

2 A At Greenville Memorial Hospital there is a helipad.

3 It's a dual helipad right in front of the parking deck. The

4 ER is located, I believe, to the east. So the -- the

5 ambulances, the bay is. So we usually always try to land on

6 the right side. It's closer. There's a right -- or left

7 helipad, too. We always call ahead, or have Flight Com call

8 ahead for their security to meet us out there and they --

9 and we also call GHS red phone in the ER stating what

10 patient we're bringing in and what's going on, and our ETA.

11 Q And I guess you all did that in this case?

12 A We did.

13 Q And once you all arrived do you -- do you go in with

14 the patient or no?

15 A We do.

16 Q How long are you all there with the patient?

17 A We're supposed to only stay -- get him over to their

18 bed and give report and leave. But a lot of times we sure

19 want to see if they're going to be okay. What's going on.

20 Do they -- are they taking him to the OR. And Greenville is

21 very helpful about that, because that's part of our -- I

22 don't know. It makes us feel good if -- you know, if we

23 know that the patient's going to be okay.

24 Q So you typically -- do nurses and doctors meet you out

25 on the helipad?

1 A They do.

2 Q And then you go -- you go with them as well?

3 A We do.

4 Q Into the hospital?

5 A We do.

6 MR. BLACK: Please answer any questions Mr. Garrett
7 might have for you.

8 THE COURT: Mr. Garrett, any questions?

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

10 THE COURT: Sure. Take your time.

11 MR. GARRETT: Your Honor, I have no questions for this
12 witness.

13 THE WITNESS: Thank you.

14 MR. GARRETT: And thank you for what you do for all of
15 us.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you, ma'am.

18 THE WITNESS: Thank you.

19 THE COURT: Ms. Waite, you are free to leave. You're
20 certainly welcome to remain with us, but I imagine you need
21 to head on. So you're free to go.

22 THE WITNESS: Thank you.

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

25 THE COURT: Next witness, Solicitor.

1 MR. BLACK: State calls Emily Southerland to the stand.

2 EMILY SOUTHERLAND, having first

3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BLACK:

6 Q Ms. Southerland, can you please introduce yourself to
7 the jury, please.

8 A I'm sorry?

9 Q Can you introduce yourself, please, to the jury?

10 A My name is Emily Southerland. I'm the Donor Center
11 coordinator at AnMed Health Blood Center.

12 Q And what is your -- what kind of duties and
13 responsibilities do you have at your job?

14 A I'm basically the supervisor over the collection
15 facility where we collect blood units for patients. I write
16 procedures and review QC, staff and mobiles, and we do
17 competency testing on our staff. We do -- I just oversee
18 all of that.

19 Q Okay. And do you -- do you ever spend time on the
20 Blood Mobile in Anderson?

21 A Yes.

22 Q How much of your time do you spend on the Blood Mobile?

23 A It's quite a bit. I would say -- it varies from week
24 to week, but I do fill in when they need help, which is
25 probably about two to three times a week.

1 Q And can you describe kind of the donor process of how
2 you all work at AnMed?

3 A Well, basically on the Blood Mobile we have -- we
4 normally staff three to five people, depending on how many
5 donors we're anticipating. The donors come in and they are
6 registered through a computer. A laptop. They give
7 basically their address, phone numbers, things like that.
8 And then we do what we call a mini physical where we do the
9 blood pressure, temperature, pulse, check their hemoglobin.
10 And we do arm inspections looking for needle tracks or any
11 kind of rashes, and then we also do a general appearance
12 where we look for a healthy donor. Someone who doesn't
13 appear sick or just -- just that they're in general good
14 health and that they're mentally competent to understand our
15 questions and our educational materials.

16 Q And when you all are questioning these people where
17 exactly are you all doing this?

18 A The questioning is done in a little room in the back of
19 the Blood Mobile. It's very small. You can get two people
20 in there. A third person can fit in there if they're
21 standing. They can't sit. It's very, very small. Very
22 tight.

23 Q And how long -- are they filling out paperwork while
24 they're -- while they're going through this examination?

25 A No. We do all the questions verbally. That's what we

1 do in the back interview room where we do that in private
2 with the door closed.

3 Q Are you all taking notes or filling out a chart or
4 something like that?

5 A We are.

6 Q And that would be the nurse's that are working on the
7 Blood -- Blood Bank?

8 A Right.

9 Q Blood Mobile. And how long have you been working on
10 the Blood Mobile, Ms. Southerland?

11 A Well, I've been working with the Blood Center -- I
12 started out with plateletpheresis. But I've been doing that
13 -- I've been working with donors for about 18 years.

14 Q Okay. And the type of questions that you all are
15 asking the donors, the potential donors, what questions are
16 those and what are you all -- what exactly are you all
17 screening?

18 A There's several questions that we're required to ask.
19 One is if they're feeling well and healthy. That's our
20 first question. Then we also ask about shots, vaccinations,
21 medications, heart problems, lung problems, travel. Travel
22 is a big issue. And then, of course, we ask about HIV,
23 hepatitis. And, of course, high sexual risks that could
24 potentially harm a patient if we were to collect their
25 blood.

1 Q Once the blood is collected is any of -- are any of
2 those things screened by the Blood Center in Anderson?

3 A The Blood Bank -- the Blood Bank does. They -- we're
4 the collection facility, and then we have a Blood Bank. But
5 I -- all those tests are sent out to another facility. But
6 yes, it is screened for things like HIV, hepatitis B and C.
7 There's an HTLV 1, syphilis, Chagas, West Nile virus.
8 Things such as that.

9 Q What about alcohol? Do you all screen for alcohol?

10 A No.

11 Q What about -- do you, I guess, physically screen for
12 alcohol while you're questioning individuals?

13 A Right.

14 Q Can you explain -- can you explain that process to us?

15 A Well, basically we just -- we see the donor. We
16 interact with the donor. Of course, anyone who's
17 intoxicated you can smell it. You can see -- you can tell
18 by their speech, if it's slurred. Of course their motor
19 skills if -- when they're signing papers and things. How
20 they walk. How they get in the bus. How they, you know,
21 interact with our staff. So -- and basically that's pretty
22 much it. But it's a small corner and you can smell -- you
23 can smell alcohol when someone's been drinking.

24 Q Have you all ever turned people away for smelling
25 alcohol?

1 A In my career I have turned away one. The people that
2 come in -- I guess people are educated now. They just don't
3 tend to come in as much. But just one, and he was very
4 intoxicated at the time and I had to ask him not to donate.

5 Q And I guess the other people that work on the Blood
6 Mobile are they also trained in turning people away if they
7 smell alcohol?

8 A They are.

9 Q What kind of -- what kind of training is it?

10 A It's basically just where we talk about it and explain
11 what we want them to look for. It is documented that
12 they're trained. They -- and they're taught the same thing
13 that they -- what I've just told you. They look for the
14 motor skills. They look for speech impairment and things
15 like that.

16 Q What is the shelf-life of blood that's donated? Once
17 it's donated and is going to be used, how long does that
18 last? How long until it expires?

19 A Forty-two days.

20 Q Forty-two days?

21 MR. BLACK: Your Honor, may I approach?

22 THE COURT: Certainly.

23 Q I'm showing you what's been marked as Court's No. 9.
24 If you'll turn to page five. Does your -- does your lab
25 have a unique kind of number that identifies it and sets it

- 1 apart?
- 2 A We do.
- 3 Q And what is that number?
- 4 A Well, there's two.
- 5 Q And what are those?
- 6 A W043914007844, and the second one is W043914008186.
- 7 Q And how do you know -- how do you know that's your
- 8 blood from your Blood Bank?
- 9 A Well, there should be -- on the -- on the unit itself
- 10 there should be a locator sticker or some kind of
- 11 identification to say where the blood was collected.
- 12 Q And in this particular -- in this particular case, the
- 13 numbers that you have read off, those -- those come from the
- 14 transport report it appears from the Defendant in this case,
- 15 Mr. Rowell; is that right?
- 16 A I'm sorry. I didn't understand that. What do you
- 17 mean? Where they came from?
- 18 Q Yes, ma'am. Just on the first page. Do you have the
- 19 patient name? Can you flip to the first page?
- 20 A First page?
- 21 Q Yes, ma'am.
- 22 A Oh, okay.
- 23 Q Do you see a patient name on that?
- 24 A I do.
- 25 Q Okay. And who is that?

1 A Adam Rowell.

2 Q And the numbers that you just read off, what are those
3 numbers again? Are those the units that were given to Mr.
4 Rowell?

5 A Yes, sir.

6 Q Okay. And you stated that those came from your Blood
7 Bank in Anderson; is that right?

8 A Yes.

9 Q The donors that give blood, I guess, are they aware
10 that their information is confidential; is that correct?

11 A Yes.

12 Q And so, you can't give us any information about who
13 they are and where they live or anything like that, can you?

14 A No, sir.

15 Q What can't -- what are you allowed to tell us about
16 these particular units, if anything?

17 A I can tell you that one was collected from a church in
18 Anderson County.

19 Q Which one was that?

20 A That would have been the red cell.

21 Q And that number ends in 7844?

22 A 7884. Oh, yes, sir. 7844.

23 Q Okay. And where was that collected? You said a
24 church?

25 A Yes, sir.

1 Q Is that in Anderson County?

2 A It is.

3 Q Do you know what time that was given?

4 A They donated that unit at 7:15 p.m.

5 Q And you can't give us the name of the church or
6 anything like that, right?

7 A No, sir.

8 Q And that was the red packed cells; is that right?

9 A Right.

10 Q What about the other unit? Was there another unit
11 given?

12 A There was an FFP. A fresh frozen plasma.

13 Q Yes, ma'am. And what -- I think that number ends in
14 8186?

15 A That's correct.

16 Q And what -- I think that number ends in 8186?

17 A That's correct.

18 Q And do you have any information that you can give us
19 about that particular unit?

20 A It was collected at an industry in Anderson County at
21 -- this person was on the job. We take the Blood Mobile
22 into the industries and companies allow them to donate while
23 they're on the job. And this one was collected at 10:05 in
24 the morning.

25 Q Okay. And I know you can't give us any information

1 about the individuals, but do you all keep records of how
2 often individuals donate?

3 A We do.

4 Q Were these individuals, did they -- have they donated
5 before?

6 A They have.

7 Q Have they donated since?

8 A Yes.

9 Q And who ended up taking these samples? It wasn't you
10 personally but it was somebody on the Blood Mobile?

11 A It was. As far as taking the samples or --

12 Q For taking the blood.

13 A The blood?

14 Q Yes, ma'am.

15 A Let's see. Well, I don't know if I can tell you the
16 staff name.

17 Q I'm not asking you that. They just -- they work for
18 you guys?

19 A They do. Yes. Yes.

20 Q And they have all the training that you spoke about
21 previously about what to look for and --

22 A They do. They have years of experience as well.

23 MR. BLACK: Please answer any questions Mr. Garrett
24 might have for you.

25 CROSS-EXAMINATION

1 BY MR. GARRETT:

2 Q So if my client received 14 units of blood over the
3 process of his treatment, then you would be able to
4 determine, based on your information, who those people were?

5 A Yes, sir.

6 Q So you could find out who they were and you could
7 actually do a chain from that person, you could actually
8 talk with that person, if they were willing to talk, but
9 could tell you when they gave the blood and how they gave
10 the blood and that type of thing, correct?

11 A Yes, sir.

12 Q And to your knowledge, do you know which people gave
13 the blood at the church and/or at the work?

14 A Yes, sir.

15 Q You know their names?

16 A Yes, sir.

17 Q And so, why can't -- why can't that be shared with us
18 so we could actually talk with those people?

19 A You would need to talk with our -- the hospital legal
20 group.

21 Q So there is actually a person behind each of these
22 units or draws of blood; is that correct?

23 A Yes, sir.

24 Q You all don't do any tests for alcohol, as I understand
25 it; is that correct?

- 1 A No, sir. That's correct.
- 2 Q Do you do any testing for anything like Benadryl?
- 3 A No, sir.
- 4 Q And you didn't draw this particular blood from these
- 5 particular people, right?
- 6 A Right. Not myself.
- 7 Q And so, you can't say particularly about these people
- 8 what their condition was when they gave the blood?
- 9 A That's correct.
- 10 Q And you're not willing to try to suggest to the jury
- 11 you would be able to do that because you didn't draw it,
- 12 right?
- 13 A That's right.
- 14 Q All right. Is there anything else that it doesn't test
- 15 for? You talked about the important, the West Nile,
- 16 hepatitis, syphilis, hepatitis, what, B and C --
- 17 A Yes.
- 18 Q -- or A and C?
- 19 A B and C.
- 20 Q And any other major things -- it's all educational to
- 21 me as to what we might get if we, you know, get into a
- 22 situation. Is there anything else you test for?
- 23 A Okay. I'm trying to remember. We go through -- we do,
- 24 of course, the HIV, hepatitis B and C. Those are done by
- 25 antibody tests. Antibody nucleic acid testing. We do the

1 syphilis, Chagas disease. We do one called HTLV 1 and 2.

2 And, of course, every donation, whether they're historical
3 donors or not, are blood typed again, and they do an
4 antibody screen on those donors. Anything that can be
5 transmitted through the blood to a patient that may harm
6 them is what we test for.

7 Q So as far as any other types of medication, suppose
8 somebody's on a heart medication yet they still give blood,
9 would it -- would you assay show up that?

10 A No, sir.

11 Q If they're -- in other words, the only kind of things
12 you're really looking at is something that could potentially
13 damage a patient; is that correct?

14 A Or the donor themselves. Yes, sir.

15 Q Or the donor themselves?

16 A Yes, sir.

17 Q So, for instance, if there was alcohol in there that's
18 not something that's going to damage a patient down the road
19 if there is?

20 A I guess I should say infectious diseases. Maybe I
21 should --

22 Q Okay. That's what I'm saying.

23 A Yes, sir.

24 Q So you all don't really -- you're all not worried about
25 minute amounts or that kind of thing that might be in blood

1 that might get transfused because it's not an infectious
2 disease?

3 A Right.

4 Q So you don't really -- you're not there to test for
5 alcohol or drugs or anything other than what you've said you
6 test for?

7 A Yes, sir.

8 Q But, so there can be a name tied to each of those blood
9 products; is that correct?

10 A Yes, sir.

11 Q And you've testified here that you've only -- you've
12 only identified two.

13 A That's correct.

14 Q Okay. Have you identified the other 12?

15 A Was made aware of two units.

16 Q So you're not aware of all the others?

17 A No, sir.

18 MR. GARRETT: Thank you very much.

19 THE WITNESS: Yes, sir.

20 THE COURT: Anything on redirect?

21 MR. BLACK: No, sir.

22 THE COURT: Okay. You can step down, ma'am, and you
23 are free to leave the courthouse.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness stepped down from the witness

1 stand.)

2 THE COURT: All right, Solicitor.

3 MR. BLACK: Your Honor, I think we spoke briefly back
4 in chambers about an issue that we might have.

5 THE COURT: All right. Mr. Foreman, and ladies and
6 gentlemen of the jury, we're going to take a break. I've
7 got a couple of legal matters that I need to talk with the
8 lawyers about. So the break may take a little bit longer.
9 Just be patient with us, and we'll try to get you back out
10 just as soon as we possibly can. Again, remind you no
11 discussion among yourselves about this case.

12 (Whereupon, the jury exited the courtroom at 10:20
13 a.m.)

14 THE COURT: Okay. As I understand it, we are going to
15 take some testimony in camera as it relates to the blood
16 draw that was done at the hospital when Mr. Rowell was first
17 admitted, or close in time to when he was first admitted to
18 Greenville Hospital; is that correct?

19 MR. BLACK: Yes, sir. I believe that's what the
20 Defense is asking for us to do.

21 THE COURT: All right. And how many witnesses will you
22 proffer during an in camera interview?

23 MR. BLACK: Your Honor, I feel that I only need to just
24 handle the one witness that identified the individuals that
25 took the sample. But as I indicated back in chambers I

1 don't -- the lab tech and the nurse that drew the sample,
2 they don't remember particularly taking the sample. It's
3 just identified on the audit trail.

4 MR. GARRETT: Your Honor, we differ with that.
5 Substantially we differ with that.

6 THE COURT: Well, you know, let me hear -- let me hear
7 what they put up and what they offer in camera, and then we
8 can certainly deal with whatever --

9 MR. GARRETT: Yes, Your Honor.

10 THE COURT: -- objections they may have.

11 (Whereupon, State's Exhibit No. 68 was marked for
12 identification.)

13 DR. JOHN REDDIC, having first been
14 duly sworn, testified as follows:

15 IN CAMERA DIRECT EXAMINATION

16 BY MR. BLACK:

17 Q Can you introduce yourself, please, Mr. Reddic?

18 A Yes. My name is John Reddic. I work as a clinical
19 chemist for the Greenville Health System.

20 Q And, Dr. Reddic, what is your -- what is your position
21 at Greenville --

22 A I am the clinical technical director of laboratories.

23 Q Okay. And I'm just going to go ahead and approach.

24 And I'm showing you what's been marked as State's No. 67.

25 Do you recognize that document?

1 A I do. This is an audit trail from our laboratory
2 information system. It's an IT data management system
3 called Sunquest.

4 Q And what does this document show you?

5 THE COURT: What exhibit number is that?

6 THE WITNESS: 68. 68.

7 THE COURT: I thought I heard 67.

8 MR. BLACK: I apologize, Your Honor.

9 THE COURT: That's all right. Identify the document
10 again, please, Mr. Reddic.

11 THE WITNESS: It's a -- it is a audit trail from our
12 laboratory data management system following a specific
13 specimen.

14 Q And that specific specimen, is that given a number?

15 A Yes. It's given a specimen ID. Let me find it on
16 here. So there's multiple ways to accession it, but here in
17 the hospital information system that number is 68213483-0.

18 Q And is it associated with a particular patient at
19 Greenville Memorial?

20 A It is. Let's see. I have to look. Give me one
21 second. Yeah. So it's associated with a patient Adam
22 Martin Rowell, patient number 980338480.

23 Q And this particular audit trail, what does -- what does
24 this document -- what does it tell you?

25 A So this details the collection and handling and testing

1 of a specimen stated collected from this patient. It
2 provides the collect time.

3 Q And when was that?

4 A It was at 2054 on 11/15/14.

5 Q And does it identify who collected it?

6 A It identifies it in terms of a phlebotomist collect
7 number which is an employee ID. That number is 27174.

8 Q And do you know who that is?

9 A I believe I looked into the medical records and we
10 identified that person as a Amanda Baker who was a nurse ED.

11 Q Okay. And once that sample is collected it's brought
12 to the lab at Greenville Memorial?

13 A That is correct.

14 THE COURT: We need time of collection. I didn't catch
15 that.

16 THE WITNESS: The collection time was 2054. So 8:00 --

17 Q 8:04 p.m.?

18 A 8:54.

19 Q 8:54 p.m.

20 A Correct.

21 Q And so, it was received by the lab a little bit
22 thereafter?

23 A Correct. It was received at 2124. So approximately 30
24 minutes later.

25 Q So that would be 9:24 p.m.?

1 A Correct.

2 Q And does it have an individual at the lab that's
3 receiving this particular item?

4 A Yes. The receiver is listed as tech ID of 12524, and
5 according to our hospital records that's Mr. Robert Smith
6 who's a laboratory technologist in the laboratory at
7 Greenville.

8 Q He works in your lab?

9 A He did at this time. He works at the Greer laboratory
10 now. Still works for the hospital system but has moved to a
11 different location.

12 Q Okay. And you have -- what information does this audit
13 trail show you after it was received by Mr. Robert Smith?
14 Was it tested?

15 A Yes, it was tested for several things. Plasma,
16 alcohol, creatinine, glucose, potassium. It looks like
17 there's also a PT and PTT which are coagulation tests. And
18 I believe the other test code on here, I think, is a CBC. A
19 hematology profile.

20 Q And how was it tested at the lab? Can you tell us that
21 process?

22 A So a specimen is delivered to the laboratory either via
23 directly delivered from the collection location or through a
24 tube system. The specimen is received in the laboratory,
25 entered into our data -- laboratory data system. It is

1 processed, which typically involves centrifugation.
2 Spinning the sample down to separate the blood cells from
3 the plasma or serum, if it's going to go on chemistry
4 testing. And then it is placed on the analyzers that do the
5 direct measurement.

6 Q So the analyzers, is that kind of a machine that runs
7 through it?

8 A It is. It's an electromechanical device that contains
9 reagents. All the components necessary to perform the
10 various chemistry tests that are offered through our
11 laboratory.

12 Q What about while it's spinning out? Is that a
13 different machine that does that?

14 A It is a -- it is a physically different machine. It's
15 a centrifuge. Depending on the course and the handling of
16 the sample it can be manually loaded into a centrifuge or it
17 can go down an automated line system into centrifuge and
18 then automatically from the line system into the testing
19 instruments.

20 Q Do you know how this sample was treated?

21 A I believe the information that I've looked at said that
22 this one was manually loaded on the system. So someone
23 manually loaded the sample onto a centrifuge and took it and
24 manually loaded it directly onto the testing instrument.

25 Q And that would have likely been done by Mr. Smith, the

1 lab tech that received the sample?

2 A I believe so. That's most likely the course that the
3 sample was carried.

4 THE COURT: Hold on just one second, Mr. Reddic.

5 MR. GARRETT: Just trying to determine if he knows that
6 or if that's based on --

7 THE WITNESS: That's based on routine operational
8 procedure. I cannot say with certainty if Mr. Smith loaded
9 the specimen. But it is possible. They're usually on that
10 shift two technologists working in the chemistry section at
11 that -- routinely at that time of the day.

12 Q And, Dr. Reddic, did you all eventually get a reading
13 -- did the sample eventually get tested for all these
14 things?

15 MR. GARRETT: Your Honor, I'm going to object to any
16 finding until the chain has been established.

17 MR. BLACK: There's not a jury here.

18 THE COURT: We're in camera.

19 MR. GARRETT: I understand, but I'm just --

20 THE COURT: We're in camera.

21 MR. GARRETT: -- I want the record to reflect --

22 THE COURT: I understand. I understand.

23 MR. GARRETT: -- before that was given I objected to
24 it, Your Honor.

25 THE COURT: Very good. Keep going.

1 Q So was the test eventually -- it ran it's course?

2 A Yes, sir. It was --

3 Q How long did that take?

4 A It's several minutes. Less than 10. Somewhere
5 probably between five and 10 minutes. I'd have to look at a
6 separate audit trail to give you a specific breakdown, but
7 it's relatively quickly.

8 Q Okay. And the -- I'm sorry.

9 MR. BLACK: Your Honor, may I approach?

10 THE COURT: Sure.

11 MR. BLACK: I don't know what he has.

12 (Whereupon, State's Exhibit No. 69 was marked for
13 identification.)

14 Q I'm showing you what's been marked as State's 69. Is
15 that the other audit trail that you're referring to?

16 A Yes. It's a secondary audit trail. This is the data
17 management system that is specific to the chemistry
18 analyzers in our laboratory. We have multiple testing
19 platforms. This one is specific to chemistry where the
20 testing in question on the first -- on the first exhibit
21 that you showed me was performed.

22 Q And is that all the stuff that was done, all the
23 testing that was done that you were talking about earlier?

24 A Yes. This was all the specific testing that was done
25 on the specimen loaded onto the chemistry analyzers.

1 Q And the document that you have, to me it looks like
2 just a bunch of computer code. Is that kind of a good
3 description of what's going on there?

4 A It is. You know, it's -- it's just meaningful to state
5 all the decision points and software and results and things
6 that were made about that specimen along with date, time
7 stamps for various aspects in the process.

8 Q But all the code, I mean, it means something there?
9 Abbreviations and numbers, they all mean something, right?

10 A They do.

11 Q And those are the results, I'm assuming, and the tests
12 that were run?

13 A Yes.

14 Q Okay. And you guys ultimately did get a result on the
15 alcohol from your testing, right?

16 A That is correct.

17 Q And what was the result?

18 A I believe that it was 219 milligrams per deciliter in
19 the units that we report out in.

20 Q And what does that mean?

21 A It's a concentration measurements. It means for every
22 deciliter of solution there is a 219 milligrams of alcohol
23 present in the sample. So to convert that to the percentage
24 that is used traditionally in forensic and for evidentiary
25 purposes here, that would be a .219. Just simply moving a

1 decimal place three positions. The decimal three positions.

2 Q And that was a plasma alcohol test, right?

3 A That is correct, plasma, alcohol.

4 Q And that's different than the number that we use for
5 like legal purposes, right? That's --

6 A That is correct. For legal purposes you perform what's
7 called a whole blood alcohol and it's performed on a
8 different testing methodology. It's not performed on a
9 chemistry analyzer like used in our laboratory.

10 Q So what would the number be if you used that method?

11 A So literature --

12 MR. GARRETT: Unless he's -- unless he's done it.

13 THE WITNESS: Pardon me?

14 THE COURT: You may want to maybe lay a little bit more
15 foundation before he renders his opinion as far as equating
16 it to another -- results from another tech's procedure.

17 MR. BLACK: I'm going to -- I'm going to withdraw that
18 question since we're here really just for the chain purpose.

19 Q Dr. Reddic, can you talk about the security of the lab
20 at Greenville Memorial?

21 A Sure. So the chemistry laboratory is a fairly
22 self-contained room or series of rooms. It is maintained
23 behind -- we call them badge activated doors. They're --
24 basically to enter into the laboratory space you have to
25 have a hospital ID and the embedded ID in that badge has to

1 be approved to enter those doors in order to be -- in order
2 to let yourself. You can be let in by a staff member,
3 usually escorted. But samples that come from the emergency
4 department or something that are hand-delivered actually
5 come to a reception window and are passed through. You
6 don't typically enter the laboratory. So to come into the
7 laboratory you have to be granted access through your ID, be
8 escorted -- or be escorted, typically, from someone who has
9 access to the laboratory.

10 Q Okay. So it's behind a bunch of locked doors?

11 A It is, correct.

12 Q And nobody willy nilly can just walk back there?

13 A That is correct.

14 Q And you also have a tubing system as well that can
15 transport these samples?

16 A We do. Specimens can be hand-delivered or transported
17 through a pneumatic tube system.

18 Q And in this particular case were you -- from the audit
19 trail were you able to identify if it was hand-delivered or
20 tubed?

21 A I'm not able to identify that from the audit trail.

22 MR. BLACK: I believe that's all the questions I have
23 regarding the chain of custody, Your Honor, on this
24 particular witness.

25 THE COURT: All right. Cross-examination concerning

1 the chain of custody issue.

2 MR. GARRETT: Thank you.

3 CROSS-EXAMINATION

4 BY MR. GARRETT:

5 Q Did you, sir, did you draw this blood?

6 A No, sir.

7 Q Do you know how the blood was drawn?

8 A I know our normal procedure for drawing blood, but I
9 cannot speak to the specifics of this sample.

10 Q Do you know whether or not alcohol was used on the
11 cleaning of the area?

12 A That would be normal procedure, an alcohol swab. I
13 cannot speak specifically to this sample.

14 Q Okay. So you don't know whether they used an alcohol
15 swab -- again, this is for medical purposes. This is not
16 for legal purposes; isn't that correct?

17 A That is correct.

18 Q This whole test, right?

19 A That is correct.

20 Q It's not designed to be -- to be offered into forensic
21 evidence or anything like that?

22 A That is correct.

23 Q Now, so there was a nurse, you think, and you're
24 identifying that nurse based upon some code?

25 A Correct.

1 Q And that nurse allegedly drew this blood. Okay?

2 A Correct.

3 Q All right. Now, what kind of -- so you don't know
4 exactly what happened, but your normal protocol is to draw
5 it, put it into some type of what?

6 A It's a blood tube called a Vacutainer. It is a
7 hermetically sealed until pierced by a needle device.

8 Q So it's hermetically sealed. The blood goes into that.
9 And do you know which arm they stuck him with or how they
10 got the blood?

11 A I do not.

12 Q Did they get arterial blood or did they get venous
13 blood?

14 A Routinely it would be a venipuncture for a collection
15 of this nature. It's really only test to draw arterial. I
16 cannot specifically, but my assumption would be a
17 venipuncture.

18 Q Okay. And do you know which arm they took it from?

19 A I do not.

20 Q Now, this tube that we've got now that allegedly had
21 blood in it. Does the nurse take it and go to that window
22 you were talking about and hand it off?

23 A That would be a routine process and for emergency
24 department specimen.

25 Q What about pneumatic?

1 A If it -- I do not know what the routine process for
2 pneumatic tubes from the emergency department would be.

3 Q That's fine. So you actually don't know whether -- by
4 your own admission you don't know whether it was
5 hand-delivered or whether it was pneumatically delivered?

6 A That is correct.

7 Q There are problems from time to time with pneumatic
8 deliveries and things get lost and you've got to find them
9 and that kind of thing. Do you agree with that?

10 A I've heard of that, yes.

11 Q And you don't know whether or not that occurred in this
12 case?

13 A No, sir.

14 Q And then at some point in time somehow you got it into
15 your laboratory; is that correct?

16 A Correct.

17 Q And you didn't perform the test?

18 A No, sir.

19 Q So you're giving us another name from somebody else who
20 allegedly manually, I guess. Where did they take it from?

21 A Well, it was either received at the reception window if
22 it was manually delivered, or there is a pneumatic tube
23 station just a few feet down from that reception window if
24 it was tubed. They would have received it from one of those
25 two locations.

1 Q And do you all have a receptionist that -- a nurse or
2 clerk or somebody that --

3 A It's probably the laboratory tech staff. Again, Robert
4 Smith is the person indicated in the -- in the audit trail
5 who processed the specimen. So my assumption, based on the
6 audit trail, is that he physically received the specimen.

7 Q But that's just an assumption?

8 A Correct.

9 Q You all do have somebody there, a clerk or somebody who
10 receives the sample?

11 A At this time of day on second shift it is routine that
12 it's not a receptionist. It would be a laboratory
13 technologist who works on this equipment. You know, they
14 would be technically trained to perform the testing.
15 There's usually two laboratory technologists working the
16 chemistry line on second shift.

17 Q You don't know which one actually retrieved it?

18 A No. The assumption is Robert because he is listed.

19 Q I understand. Now, this person, once they get
20 possession of it, then they have to manually load it. And
21 you've checked. It wasn't automatedly loaded. It was
22 manually loaded into this machine?

23 A I believe that was correct. I have to review the
24 papers, but I believe it was a manually loaded --

25 Q Any given one time how many different bloods can go

1 into that machine? In other words, for analysis? How many
2 -- does it only test one person at a time or does it -- is
3 it continuously doing 25 or 30 people at a time? How many?

4 A It could -- yes. It could conceivably do even more
5 than 30 people at a time.

6 Q How many can it do?

7 A I want to say there's 125 cuvettes on the analyzer.
8 But most people do not have a single specimen done. I would
9 say on average, if you assume, there's probably seven. So
10 125 divided by seven. What is that? We're just going to
11 call it maybe 20 would be a typical. At a typical time as
12 many as 20 individual patient samples maybe on the
13 instrument.

14 Q Let me ask you this. Some of this stuff is coming in.
15 It's coming in at or about the same time with trauma or
16 whatever else, surgeries?

17 A That's correct. At that time of night most of the work
18 is either going to be collected on the floor of the hospital
19 -- not routine, but -- for some reason. But the majority of
20 the samples at that time are going to be emergency
21 department samples.

22 Q Do we have seven -- do you have the -- if the average
23 is seven, do you have all those seven -- have you analyzed
24 all seven samples to see who else was there and their blood
25 was collected in relationship to Mr. Adam Rowell's blood

1 that evening?

2 A I'm sorry. Can you repeat that question?

3 Q Yes. I'm trying to go with you. If there's 125
4 different people that can be looked at at the same time with
5 this machine that you're talking about; is that correct?

6 A Potentially, if each person is having a single test
7 performed. Most people have panels performed which are
8 multiple tests.

9 Q And did Adam have multiple tests going on at that time?

10 A Yes. He had several tests performed at that time.

11 Q Not only this test but several other test?

12 A Correct.

13 Q All right. So if he had several tests going on, would
14 -- how many other people could also be tested while he's
15 being tested?

16 A Ballpark 15 could be loaded on the instrument
17 concurrently.

18 Q And these people that are manually doing this loading
19 would be manually loading for all 15 people?

20 A That is correct.

21 Q All right. And you -- you haven't looked at the
22 specifics of this to make sure that the 15 or so people that
23 were there were loaded correctly?

24 A Well, so specimens are labeled and bar coded --

25 Q I understand.

1 A -- and bar codes are read by the instrument. And so,
2 the potential for human error for the point of bar coding
3 for it is negligible. At the point where a specimen is
4 appropriately labeled the chances of a -- either a
5 miscommunication on the instrument or misinterpretation of
6 whose specimen is being run is vanishingly small to zero.

7 Q And can I see the -- can I see the unit to make sure
8 that it was properly marked?

9 A The blood specimen?

10 Q Yeah. Can I see the tubes to make sure it was properly
11 marked?

12 A That is not been in existence for some time.

13 Q Okay. So what did you do with that tube?

14 A It was disposed of in a routine process. Samples are
15 held typically for a week in our laboratory based on
16 capacity for storage volume or viability and then they're
17 just routinely disposed of.

18 Q And then you gin this stuff up into a plasma? You said
19 it's in a separation machine, so it has to -- does it have
20 to leave this machine manually to be taken to another
21 machined to be ginned up?

22 A If it is a manual -- if it's loaded onto one of the
23 manual centrifugations then, yes, it has to be manually
24 transported to the test instrument.

25 Q Well, I want to know about this one. What happened to

1 this one?

2 A I do not -- again, I do not know if this was
3 automatically -- put on the automatic line or if it was
4 manually loaded.

5 Q Okay. So now we've got it then coming off of the
6 machine and having a tech, you say?

7 A Correct.

8 Q And you assume that it's this one person?

9 A Robert Smith, correct.

10 Q That goes to this other location and puts it into
11 another machine if it wasn't manually whirled up, right?

12 A That's correct. But if it's properly bar coded there's
13 no issue of --

14 Q Now, I wish I could see your bar code on your thing and
15 I'd feel more better about it.

16 A Uh-huh, sure.

17 Q But you don't have it, do you?

18 A No.

19 Q How can I cross-examine and how can I look at it to
20 make sure that it's accurate?

21 A You cannot.

22 Q And then after this thing gets ginned up to plasma,
23 what happens then?

24 A The automatic -- once it's loaded on the machine it
25 automatically process it. There's the pipe adding system

1 that draws the sample out, places it in a cuvette. Pipe
2 adding system adds reagents. The instrument makes the
3 measurements. The instrument produces the result. Those
4 results are transmitted to the HIS. They either are
5 auto-verified based on rules of the software or the results
6 -- within certain criteria, it's mainly verified and
7 reported by the tech.

8 Q Reported by the tech to whom?

9 A To whoever ordered the test. If it was not -- if it
10 meets criteria for auto-verification it's just automatically
11 released. If it does not meet criteria for auto-verification
12 the result is called to the -- whoever ordered the test, and
13 then released. Critical -- critical tests are called.

14 Q Is this a critical test?

15 A It should not be. I can look into the -- I can look in
16 the record and see.

17 Q He was in ICU in critical condition. Would that make a
18 difference?

19 A The result of the test is not necessarily a critical
20 result. The patient themselves may be in critical
21 condition, but the result of the test is not necessarily a
22 critical result, so...

23 Q So honestly, we can't -- based upon what you've
24 testified here today there's no way I can cross-examine
25 that, look at it, or cross-examine those people unless

1 they're here to find out what they did and to make sure it
2 was -- I can never be able to see whether it was bar coded
3 or not, right?

4 A That's correct.

5 Q I mean, you all have done away with it?

6 A That's correct.

7 Q And what about the balance of the specimen? When you
8 got through doing whatever you was doing to it -- how many
9 tubes of blood did you get, one or two?

10 A So let's see. We received one tube -- let's see. The
11 ID was created. So the tube that went to the chemistry lab
12 looks like it was aliquoted into two separate specimens for
13 different -- or three separate specimens for different
14 testing protocols that were necessary for what was ordered
15 on that patient.

16 Q So one tube went to three different places, or three
17 different --

18 A It was split into three different containers for
19 analysis.

20 Q Who split it?

21 A That would have been split by a machine. There's an
22 automatic process in the machine for aliquoting.

23 Q So hold on a minute. Let me make sure I've got this.
24 We take -- somebody takes the blood. Somebody takes the --
25 gets the blood to the window, or you got it pneumatically

1 sent. Somebody has to put it then into some kind of machine
2 to divide it into three tubes. Is that right?

3 A Correct.

4 Q All right. And then for -- then after it gets
5 allocated into three tubes then one of those three tubes, is
6 the one we're talking about here, gets transported and
7 manually put into a machine?

8 A I believe the allocation process should occur, I
9 believe for this particular group of testing, after the tube
10 is spun down. I believe the tube is processed into plasma
11 and then the plasma is then separated into the various
12 aliquots that go for testing. I believe that's the process.

13 Q So is that done automatically?

14 A It can be done automatically or it can be done
15 manually. It just depends on how the processing process was
16 started for the particular sample.

17 Q Well, I want you to look at your -- bit giant pile of
18 records or whatever that is you got there, your computer
19 program for checks and balances, and tell us what happened
20 to this -- this tube. The one that got set aside for
21 alcohol. Where did it go?

22 A I cannot say. It does it not specifically say on the
23 -- the auto does not distinguish between manual or automatic
24 processing.

25 Q So you don't know whether it got divided into three by

1 hand or whether it got divided by three by the automated
2 machine?

3 A That is correct.

4 Q So that would require a tech?

5 A That would.

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

7 Q Would it surprise you if I can't find anywhere in this
8 medical records where an Amanda Baker took his blood?

9 A I don't know how to respond to that. I mean, I don't
10 -- I don't know the completeness of the documents that you
11 have or what particular set of records you're looking at.

12 Q And the collection, based on these documents that you
13 have there indicate that it was allegedly collected at 2054.
14 Is that what you've told --

15 A That is correct.

16 Q And it didn't get received until 2124.

17 A That is correct.

18 Q Now, where did this alleged sample sit?

19 A At what point?

20 Q From 2054 -- that would be, what, 8:54?

21 A Yes, sir.

22 Q To 9:24. Where did it sit? Where did this sample that
23 was drawn allegedly by Baker, where did it go?

24 A I don't know. It could be in the tube system, and the
25 trays, the time in the tube system, can be a few to 10s of

1 minutes. It could be in possession of the collector.

2 Q But you agree that, you know, you got no chain you
3 don't know where it was? You don't know. You can't tell
4 this Court or this Judge --

5 A With certainty no, I cannot.

6 Q Well, you can't even tell us almost with certainty?

7 A I would say that we had well established long-term
8 processes that are routine and that it is highly likely that
9 the specimen was under some reasonable level of control.
10 But with certainty, no, I -- you can never speak to
11 certainty.

12 Q You're not telling me that you all have never had a
13 mistake at the lab, are you?

14 A Of course not. We've had mistakes.

15 Q And, you know, you all have them all the time and you
16 keep trying to work --

17 A I would disagree that we have them all the time.

18 Q All right. Well, I mean, you all have protocols for
19 quality assurance to try to make sure that you don't have
20 them. But you do -- you have mistakes?

21 A Sure, we have mistakes.

22 Q And who is in charge of mistakes? Making sure they
23 don't happen? Are you the head of that department?

24 A I'm one of the people who's involved in that process.

25 It's a multidisciplinary, multi-individual process to ensure

1 continual quality assurance.

2 Q Who's the head person? Who makes all the decisions at
3 the lab? Are you it?

4 A No. It would either be my boss or the medical director
5 who ultimately is in charge of the final decisions like
6 that.

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

8 THE COURT: Sure. Take your time.

9 Q Do you know Amanda Baker?

10 A I met her briefly waiting to come in here to speak, but
11 I've never met her before then. So I have no significant
12 experience with her beyond -- I have no experience beyond
13 just meeting her waiting to come in here and be deposed.

14 Q So you knew the Robert --

15 A I know Robert, yes.

16 Q Okay. You said he's at Greer?

17 A He's at Greer now, yes.

18 Q Okay. So you didn't know who Amanda Baker was at all?

19 A I did not know.

20 Q Can you just briefly tell me what your degrees are in?

21 A I have a Bachelor's in science --

22 Q Where from?

23 A University of South Carolina. I have a PhD in physical
24 chemistry from the University of Georgia.

25 MR. GARRETT: Thank you, Your Honor.

1 THE COURT: Redirect?

2 MR. BLACK: One second, Your Honor.

3 THE COURT: Sure. Take your time.

4 REDIRECT EXAMINATION

5 BY MR. BLACK:

6 Q Dr. Reddic, just briefly. How long have you been at
7 Greenville over the lab?

8 A Approaching four years. Just over three and a half
9 years.

10 Q And in your time there has technology changed even
11 within the lab in terms of how tests are run and stuff like
12 that?

13 A There have been a few tweaks to certain testing
14 platforms. For all of the testing associated with what
15 we're speaking about here there are no significant changes.

16 Q Okay. In terms of, you know, automation. Machines
17 have become involved as opposed to human beings testing
18 samples. Is that --

19 A That's correct.

20 Q You would agree with that?

21 A Correct.

22 Q Machines are doing more of this now than actual people?

23 A It's an automated process, yes.

24 Q And is that just at Greenville or is that typically in
25 other hospitals?

1 A For most high volume laboratories. Most laboratories
2 that are in a hospital that have an emergency department
3 there's a high degree of automation.

4 Q So you're talking major -- major hospitals like Augusta
5 and MUSC and Greenville and, you know, Emory in Atlanta?

6 A Certainly. Certainly.

7 Q It would be different than the hospital in Abbeville?

8 A Yes. But even in a hospital like Abbeville most likely
9 has an automated analyzer similar to the one we would use.

10 Q And what machine was that again?

11 A The platform -- the testing platform analyzer we use is
12 from Abbott Laboratories.

13 Q And so, these machines that run these tests are pretty
14 standard?

15 A They are. They're fairly industry standard with
16 respect to clinical labs.

17 Q And how do these machines work? Do they -- you were
18 talking about a conveyor belt. Are they put like on a
19 conveyor belt system?

20 A Yes. Again, the Greenville laboratories is highly
21 automated. So most samples are bar coded, loaded on a
22 conveyor belt. And from the waiting point to the disposal
23 point four, five, six days later, they are typically not
24 touched by a human again.

25 Q And this sample was given a unique bar code, right?

1 A That is correct.

2 Q And all samples are given these unique bar codes --

3 A That is correct.

4 Q -- to track the sample?

5 A Correct.

6 Q And Robert, he hasn't testified yet, but he still works
7 for Greenville Hospital system --

8 A He does, correct.

9 Q -- in the lab?

10 A He does.

11 Q Now he's at Greer?

12 A Yeah, correct.

13 Q You ever had a problem with him?

14 A No.

15 Q Has he ever been reprimanded or anything?

16 A Not to my knowledge, no.

17 MR. BLACK: I think that's all the questions I have,
18 Your Honor.

19 THE COURT: Mr. Garrett, any recross?

20 MR. GARRETT: No, nothing on recross, Your Honor.

21 THE COURT: Let me just ask a couple of questions, Dr.
22 Reddic. Who seals the vials when the blood is actually
23 taken out of the body? Who seals and labels and bar codes
24 the vial?

25 THE WITNESS: Okay. So the specimens themselves are

1 hermetically sealed. The seal is never broken except for
2 the needle that punctures the collection tube. So it's not
3 -- it's not an open container. It's a sealed container.
4 The blood transitions into that that sealed container, and
5 the cap is such that it reseals itself when the needle is
6 removed.

7 THE COURT: And the labeling, bar coding on the vial?

8 THE WITNESS: So the labeling -- the bar code labeling
9 for the specimen most likely takes place when it is received
10 in the laboratory. There's typically a label put on the
11 tube by the collector which they initial and sign that
12 indicates what tests are ordered. But that is not bar
13 coded. The bar coding is for the automated process that
14 happens in the laboratory. So the label received most
15 typically from, say, the emergency department, is initialed
16 and dated by the collector indicating the tests that were
17 ordered on that tube. And they have a lot of the patient
18 information on it as well.

19 THE COURT: From the audit trail that you have, have
20 you been able to determine normal protocol procedure was not
21 followed in this case?

22 THE WITNESS: The paperwork here, there's nothing that
23 indicates that normal protocol was not followed. This looks
24 like it was a routine handling of a specimen using our
25 normal policies and procedures.

1 THE COURT: And is there any other documentation that
2 you can look at that can possibly tell you that your
3 protocol was not followed, or is that -- is that the
4 documentation?

5 THE WITNESS: This is the documentation that I have to
6 myself. It is from two different data systems. There may
7 be other documentation that I have no knowledge of
8 whatsoever. But these are the routine business documents
9 that we as laboratorians use to follow samples.

10 THE COURT: Okay. State have any questions in followup
11 to the Court's questions?

12 MR. BLACK: No, sir, Your Honor.

13 THE COURT: Defense?

14 MR. GARRETT: One moment, Your Honor.

15 THE COURT: Sure. Take your time.

16 RECCROSS-EXAMINATION

17 BY MR. GARRETT:

18 Q Who is going to be writing on that sample?

19 A Who's going to be writing on that -- oh, I believe that
20 would be the person that made the collection. Who
21 physically drew the blood.

22 Q And how would they come up with a number to write on
23 there?

24 A The patient has a -- has a medical record number and --
25 which is assigned to them as a patient. You know, when they

1 are received in the hospital you're given a unique hospital
2 ID for you as an individual, and so -- and that tracks with
3 anything collected from you at that time. And this
4 particular --

5 Q Well, why wouldn't the medical records, sir -- why
6 wouldn't the medical records have an input from that nurse
7 in his medical records that she actually took blood from him
8 using that number? Follow what I'm saying?

9 A Again, I don't -- I don't know how to respond to that.
10 The records that I have here indicate that patient
11 980338480, which we are designating as Adam Martin Rowell,
12 did in fact have a collection by tech 27174, which we are
13 saying is Ms. Amanda Baker. This is a record to me. I
14 don't understand the question.

15 Q It's a medical record though, right?

16 A What's what?

17 Q Medical record?

18 A This is part of the medical record.

19 Q How do you spell Martin?

20 A M-a-r-t-i-n.

21 Q Would it shock you if that's not his spelling?

22 A Oh, sure. Misspells happen.

23 Q So that's normal?

24 A I wouldn't say normal, but it happens.

25 THE COURT: Okay. Thank you, Dr. Reddic. You can step

1 down.

2 MR. BLACK: One moment, Your Honor.

3 THE COURT: Oh, you need -- okay, then don't step down.

4 MR. BLACK: No further questions, Your Honor.

5 THE COURT: You can step down.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 THE COURT: Solicitor, did I hear Dr. Reddic say that
9 Nurse Baker is here?

10 MR. BLACK: Yes, sir. All the -- Robert Smith is here
11 and Ms. Baker's here. They're --

12 THE COURT: Was it your plan to -- I realize they don't
13 have specific recollection of Mr. Rowell's case having taken
14 place a couple years ago. Was it your plan to --

15 MR. BLACK: It wasn't --

16 THE COURT: -- call them?

17 MR. BLACK: I'm sorry, Your Honor. It wasn't my plan
18 to call them. But if Your Honor needed to hear from them to
19 make a ruling we'd be more than happy to call Ms. Baker.
20 But I doubt --

21 THE COURT: Well, and I'm not suggesting that they're
22 going to help me in my decision making process. But they
23 might.

24 MR. BLACK: Yes, sir.

25 THE COURT: So I would suggest possibly calling them.

1 And again, they may not help, but...

2 MR. BLACK: Can I have just one -- one second, Your
3 Honor?

4 THE COURT: Yeah. Do we need to take about a five
5 minute break?

6 MR. GARRETT: That would be good.

7 MR. BLACK: I think we're ready, Your Honor.

8 THE COURT: Let's take a five minute break anyway.

9 MR. BLACK: Yes, sir.

10 (Whereupon a brief recess was held.)

11 THE COURT: As I indicated to the lawyers, since we
12 have some more in camera work to do, to avoid keeping the
13 jury back in the jury room I'm going to go ahead and send
14 them on for an early lunch and we'll do our in camera, and
15 then we can take our lunch and then start back at 1:00. So
16 that's kind of the plan. Okay? Bring the jury out, please.

17 (Whereupon, the jury entered the courtroom at 11:19
18 a.m.)

19 THE COURT: Let the record reflect the jury is back in
20 the courtroom. Mr. Foreman, and ladies and gentlemen of the
21 jury, here's the plan. We have some more work to do outside
22 of your presence. So to avoid keeping you back there any
23 longer than we have to what I'm going to do is I'm going to
24 go ahead and send you on for an early lunch. And if you'll
25 be back here at 1:00 and we'll start back then. So that

1 will -- it'll give us enough time to finish our work that we
2 need to do on some legal issues, then we can take a lunch,
3 and then we'll start back at 1:00.

4 So I again remind you no discussion about this case
5 among yourselves or anybody that you come in contact with,
6 and have a good lunch and we'll see you back at 1:00.

7 (Whereupon, the jury was released for a lunch break at
8 11:20 a.m.)

9 THE COURT: Okay, Solicitor.

10 MR. BLACK: Thank you, Your Honor. The State calls
11 Angela Waite back.

12 THE COURT: Ms. Waite, remind you you're still under
13 oath. You can just have a seat at the witness stand.

14 ANGELA WAITE, having been
15 previously duly sworn, testified as follows:

16 IN CAMERA DIRECT EXAMINATION

17 BY MR. BLACK:

18 Q Ms. Waite, once you all arrived at Greenville did you
19 go into the hospital with the Defendant?

20 A Yes. We follow the patient to the trauma bay and stay
21 there with them.

22 Q Are you helping kind of get him to the trauma bay?

23 A Absolutely. They are my -- that patient is my
24 responsibility until I give handoff to the doctor and the
25 nurse.

1 Q And in this case when did the handoff occur, or do you
2 remember?

3 A It's sign over on my chart, and I think it was 2100.
4 Five minutes after our arrival. I have a copy if you need
5 it.

6 Q I'm showing you Court's 9. Do you remember when that
7 was?

8 A Sign over says it was 2100 on 11/15.

9 Q Okay. And are you -- did you stay in the hospital for
10 a little bit longer?

11 A I do.

12 Q And do you remember some of the nurses that were
13 involved in this case?

14 A I do. I know Amanda Westhart well.

15 Q And do you know of any other nurses that were there?

16 A I know other nurses, just not by last name.

17 Q And in this particular case, the doctor that treated
18 the Defendant, Dr. Snow --

19 A Yes. I know him.

20 Q -- do you remember seeing him there?

21 A I do.

22 Q Do you remember a nurse drawing blood from the
23 Defendant?

24 A I do.

25 MR. GARRETT: Your Honor, he's leading.

1 THE COURT: Well, this is in camera. Did you see a
2 nurse drawing blood. Is that what the question was?

3 MR. BLACK: Yes, sir.

4 THE COURT: I think it's proper. You may proceed.

5 Q Who was the nurse?

6 A Amanda Baker.

7 Q And she works at Greenville?

8 A She does, emergency department.

9 Q Emergency?

10 A Department.

11 Q And what -- just tell the judge what you observed.

12 A Well, usually we walk -- I mean, we always walk the
13 patient in. That's -- the patient is my responsibility
14 until I give bedside report to the doctor and the nurse.
15 Amanda Westhart was the head nurse that day. And at
16 Greenville's trauma bay, they have two trauma bays, and you
17 go to one side and then there's a pedestal where the charge
18 nurse, Amanda Westhart, stands up several feet in the air so
19 she can see all of what's going on and hear what the doctor
20 shouting to her for recording. And so, I go and stand back
21 by her. My partner -- either one of us gives a loud report
22 for the whole team, because there are probably 20 to 30
23 people in that room all ready to save this patient's life.
24 And so, we give report and then I go back and stand by the
25 charge nurse giving her any needed information additional,

1 which I have a sheet that I fill out for what we did en
2 route. I give her that. I have her sign forms. And at the
3 same time I'm standing there I always watch -- this is -- it
4 probed me a minute ago, because I always watch in the
5 emergency rooms I go to how they act and how -- whether I
6 think they're good with the patient or not. Before I was a
7 rotor wing nurse, and during -- I was a fixed wing nurse.

8 Q What is that?

9 A We actually flew a King Air 300.

10 Q That's a big airplane.

11 A Big airplane. Well, not -- but compared to the --
12 compared to the helicopter. And we would fly the Eastern
13 Seaboard. This is with Eagle Med that has since been taken
14 over by Med-Trans. But at that time we would fly to Boston
15 Children's, Vanderbilt, Virginia Medical Center --
16 University Medical Center. Different ones. Pensacola,
17 Tallahassee. And I would watch in each trauma bay. And I
18 had my favorites and I had my ones I never want to go back
19 to again because of how either they treated us or they
20 treated the patient, you know.

21 Q How does Greenville compare?

22 A They're one of the best. I did my practicum in school
23 in their pediatric ER because I thought they were that
24 great.

25 Q Okay. And in this particular case you said you always

1 pay attention to what's going on in the room?

2 A Always. And I watch the nurses. There are usually
3 several residents. Trauma residents. One's doing a fast
4 exam, which is an ultrasound to check for abdominal blood.
5 One is checking the area with respiratory. Then there's the
6 head trauma surgeon, and he's overseeing it all. One's
7 checking pulses on the feet. And I know in this patient's
8 case he was mangled. I remember that vividly. But I always
9 -- I always watch the nurse, because there's always maybe
10 two or three nurses at bedside. One's starting blood, one's
11 doing the IV. And for these traumas, when these patients
12 are this critical, they always do a type and cross when they
13 draw blood. So they put the tourniquet on and they do a
14 type and cross, which they're typing and crossing for the
15 patient's actual blood product, so they can -- if the
16 patient is A-positive they can give a A-positive match,
17 which is better than giving O-neg. That's just the
18 universal. So when they have to give that type and cross
19 they have to use a Hibiclens or Chlorhexidine swab to go
20 over that site before they poke that needle in for the
21 blood. They cannot use alcohol because it could introduce
22 bacteria.

23 Q So no alcohol is used when they're doing this?

24 A And I know it sounds silly, but I watch --

25 Q Yes, ma'am.

1 A -- for that, because that's really important to me.

2 Q Okay. And in this particular case how soon --
3 typically in Greenville how soon do they usually stick them
4 to draw blood to send to the lab?

5 A As we're walking them in we actually -- the gurney we
6 walk them in on, they flip them over to the trauma bay
7 gurney and right there. That's -- as soon as walk through
8 that door we give report loudly so everyone can hear. And
9 Dr. Snow is one of my favorites because he tells everybody
10 to be quiet. And then they start working. They immediately
11 go to the airway. The nurse immediately goes and draws
12 blood, because the sooner they can get that type and cross
13 the sooner he can have his own blood type and get labs back.

14 Q So time is of the essence in these particular events?

15 A Oh, definitely.

16 Q I mean, he was -- he was bad off?

17 A Yes.

18 Q Okay. And so, they drew the blood as soon as they
19 could, right?

20 A Absolutely.

21 Q And who drew the blood?

22 A Amanda Baker drew that blood.

23 Q And you saw this with your own eyes?

24 A I saw it. I remember her being on this side.

25 Q And what is the protocol --

1 A On the patient's right.

2 Q And you might not -- you might not be able to answer
3 this. But the protocol when the blood is drawn, what do
4 they typically have to do?

5 A When the blood is drawn?

6 Q Or do you know?

7 A I know generally speaking.

8 Q Yes, ma'am.

9 A You mean the actual technique or the sending it?

10 Q No, not the technique. But like the labeling and all
11 that kind of sort of thing to identify it.

12 A When the blood is drawn, the nurse who draws that blood
13 is the one who writes her identification on that blood.

14 Nobody else. That's protocol. In most hospitals. Now, I
15 don't work for Greenville Memorial. But from where I'm
16 from, if I were to draw blood and have someone else sign it
17 --

18 Q You could lose your license for doing something like
19 that?

20 A I know I could get disciplined.

21 Q Okay. And then after she drew the blood do you
22 remember -- do you remember what happened to it, or do you
23 even know?

24 A I know that they always -- because they're almost time
25 -- everything is timed in the trauma bay. So Amanda

1 Westhart is up there just typing away everything. What
2 nurse drew, when she drew, how -- the time. When the blood
3 was sent out. And I know that immediately they get this big
4 sheet of stickers for each patient identification that has
5 that specific patient identification. They put that there
6 as soon as those three or four, however many tubes are
7 drawn. They take them right to that spot, sign their name,
8 ID number, date and time it, and then it's taken out in a
9 biohazard bag to be -- and I don't know Greenville's
10 protocol, but we at AnMed they might walk it up.

11 Q Just depends on the hospital?

12 A Depends on the hospital.

13 MR. BLACK: I don't have any other questions. Please
14 answer any questions Mr. Garrett may have.

15 THE COURT: Mr. Garrett, any cross-examination on this
16 limited in camera issue that we have?

17 MR. GARRETT: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. GARRETT:

20 Q Is that the signature of who you would have handed off
21 to?

22 A That is the signature.

23 Q Who is that signature of?

24 A May I go through this page?

25 Q That's the copy that I had. Use that one.

1 A May I use yours? Sorry. I usually look back at these
2 pages because sometimes they're very hard to identify.

3 Q I agree. That's why I'm asking.

4 A Now, I have a couple other pages on mine, from my, that
5 they have to sign as well. This one. This is Amanda
6 Westhart. Now, she always signs hers. This one could have
7 been -- I cannot read that clearly.

8 Q But is that the handoff sheet right there?

9 A This is the handoff sheet. Now, sometimes I take the
10 sheet and sometimes my partner takes the sheet and has
11 either Dr. -- well, whoever was the doctor at the time,
12 which it has Dr. Snow, a respiratory therapist. Like for
13 this sheet we need respiratory therapy.

14 Q I understand.

15 A They're the doctor. This sheet can be anybody. So
16 that is definitely not, to my knowledge, Amanda Westhart.
17 But it is an RN.

18 Q It's also not Amanda Baker?

19 A It does not look like Amanda Baker.

20 Q Is it fair to say that Amanda Baker and Amanda Westhart
21 are two different people?

22 A Yes. Yes.

23 Q I got you. I want to make sure of that. You said
24 something interesting. I know we're in a limited purpose.
25 You said if somebody sticks with alcohol it can cause

1 bacteria?

2 A No. It's a better cleaning agent, that Chlorhexidine.
3 So it's a -- you squeeze it. There's a little vial inside,
4 and you have to rub it if you're doing a type and cross.

5 Q Right.

6 A You do not have to use that if you're doing just a
7 regular blood draw, because the type and cross, you use --
8 if it's not clean enough there could be some contamination
9 when they're trying to --

10 Q Which arm did they take it from?

11 A I believe it was the right arm, because we had the IV
12 in the right hand. They were standing on that side of the
13 room. That is my -- that is what I remember.

14 Q All right. And are you aware that they might have
15 tried to put an intravenous unit into him there at the
16 scene, you know, while he was still entrapped or --

17 A At the scene?

18 Q Yeah.

19 A Yes. Yes. I remember Derrick Oliver, looking back at
20 my notes, having trouble getting it because of his low --
21 hypotension.

22 Q They wouldn't have used that type -- what you're
23 talking about trying to get a vein -- trying to get a vein
24 so they could put intravenous fluids in him, would they?

25 A They may. I don't know Greenwood's protocols.

1 Q But if they did -- if they didn't use what you were
2 talking about, then the reason that you would be upset about
3 it is you want to make sure they don't contaminate the blood
4 with bacteria?

5 A Only for type and cross. For a regular blood draw
6 alcohol is fine. But we are told at AnMed you must use
7 Chlorhexidine for -- if you're drawing blood for type and
8 cross.

9 Q But alcohol would cause --

10 MR. BLACK: Judge, I'm just going to object. I think
11 we're here for a limited purpose. I know he's got --

12 THE COURT: I think -- I know we are, and I think Mr.
13 Garrett probably is winding down.

14 MR. GARRETT: I am. I am. I'm just trying to finish.

15 THE COURT: I'll allow it.

16 MR. GARRETT: I was just trying to find out about the
17 bacteria.

18 Q You're a nurse, right?

19 A I am.

20 Q I mean, you've got the RN?

21 A Yes, sir.

22 Q Master's degree?

23 A I do.

24 Q So you're a B --

25 A BSN.

1 Q BSN, okay. My wife's one of those. She gets mad at me
2 if I didn't know that. What I want to know is, is it true
3 in medical records that if it's not documented it didn't
4 happen?

5 A I know that maybe in the ICU where I worked.

6 Q Right.

7 A But in the ER there's one person documenting. So I'm
8 not sure.

9 Q I didn't know if that's just a general statement. I've
10 heard my wife say 1,000 times and I didn't know if that's
11 just a norm. If it happens, you've got to document it?

12 A Absolutely, to cover yourself.

13 Q And would it shock you if Amanda Baker is -- that name
14 is not anywhere in his medical records?

15 A No, it wouldn't. Not from -- only because of -- and I
16 don't know -- I have never actually really read -- I mean, I
17 have, but I'm not -- not from this patient, the medical
18 records from Greenville ER. And I know that if your ID
19 number is in there, it's the same as you being there.
20 Sometimes -- does that make -- am I -- is that answering
21 your question?

22 Q I hear what you're saying. But if her ID number is not
23 in there, as far as in the medical records, his flowchart,
24 his medical records?

25 A No, that does not mean you were not there or didn't do

1 something.

2 MR. GARRETT: Thank you.

3 MR. BLACK: Nothing, Your Honor. State calls --

4 THE COURT: You can step down, ma'am.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 MR. BLACK: State calls Amanda Baker.

9 AMANDA BAKER, having been first
10 duly sworn, testified as follows:

11 IN CAMERA DIRECT EXAMINATION

12 BY MR. BLACK:

13 Q Are you Amanda Baker?

14 A I am.

15 Q And are you a nurse, Ms. Baker?

16 A I am.

17 Q And where do you work?

18 A Greenville Memorial Hospital in the ER.

19 Q Do you still work there?

20 A I do.

21 Q Were you working there in November of 2014?

22 A I was.

23 Q And what job -- what kind of job do you have?

24 A I work in the ER, so I work around in various areas;
25 trauma bay, critical care, and all those.

1 Q Can you tell us like what kind of patients do you all
2 see. Are they -- oversee. Are they patients that need
3 critical care, a lot of attention kind of real quick?

4 A We do receive those, as well as some that are not
5 emergent.

6 Q And a lot of the ones that are emergent, are they -- I
7 mean, if you don't do something soon they're going to --
8 they're going to die?

9 A If they're considered critical, yes.

10 Q How many people typically are involved in a critical
11 care patient where death is a good possibility, is likely?

12 A We can have anywhere from three to four nurses, a tech,
13 respiratory, one to two doctors, depending on if residents
14 are involved. So it can be a multitude of people.

15 Q So there can be a lot of people working on somebody in
16 a given time?

17 A Yes.

18 Q I'm going to show you what's been marked as State's No.
19 68. At the hospital do you typically have to sign things
20 and place your identification on different things that you
21 do at the hospital?

22 A We do.

23 Q and do you have a specific number that identifies you?

24 A Yes.

25 Q And what number is that?

- 1 A Mine is 27174.
- 2 Q And how long have you had that number?
- 3 A Since '09, so almost eight years.
- 4 Q Has it changed at all?
- 5 A Huh-uh.
- 6 Q Okay. And the document that I handed you, I believe
- 7 it's 60 -- what number is at the bottom of that?
- 8 A 68.
- 9 Q 68. It's a audit trail. Is your name attached to this
- 10 audit trail in any way -- or your number? I apologize.
- 11 A My number is listed up at the top as the phlebotomy
- 12 tech.
- 13 Q And is that the one that collected this particular
- 14 sample?
- 15 A According to this documentation, yes.
- 16 Q And what is your number again?
- 17 A 27174.
- 18 Q And that number is the number that appears on this
- 19 audit trail?
- 20 A Yes.
- 21 Q And, Ms. Baker, specifically do you remember taking
- 22 blood from Adam Rowell, the Defendant in this case?
- 23 A I don't.
- 24 Q And that would have been November the 15th of 2014; is
- 25 that right?

1 A Uh-huh.

2 Q Is it fair to say that you take a lot of blood from
3 critical care patients?

4 A Yes.

5 Q Is that one of the jobs that you have at the hospital?

6 A Uh-huh.

7 Q And you've been working there --

8 THE COURT: You need to verbally respond your answer.

9 THE WITNESS: Yes. I'm sorry.

10 THE COURT: That's okay.

11 A Yes.

12 Q And you've been working there for how long?

13 A Almost eight years.

14 Q Do you remember every patient that you've ever cared
15 for?

16 A I do not.

17 Q But your number is associated with this audit trail; is
18 that correct?

19 A Yes.

20 Q Typically when you guys -- when you and other nurses in
21 the trauma level, in the ER when you all take blood and it's
22 sent to the lab, why do you all do that?

23 A Why do we take blood --

24 Q Yes.

25 A -- right when they get there? We take blood to check a

1 variety of things. The standard trauma panel is checking
2 their hemoglobin to see if they're bleeding from somewhere,
3 to check their clotting, which would be their PT and INR,
4 and to check their creatinine, which is their kidney
5 function. We also do alcohol plasmas on all traumas that
6 come in, too.

7 Q And in this particular case do you all -- what kind of
8 system do you all have to get the vial of bloods to the lab?
9 How do you all do that typically?

10 A Once the blood is obtained, whether it's with an IV
11 start, with just a regular venipuncture start, or with a
12 central line draw, it's obtained, labeled, verified, and
13 then it is given to either a tech -- if a tech is available,
14 or another nurse, and we run it upstairs.

15 Q To the lab?

16 A It's not tubed in our normal -- normal blood is tubed
17 upstairs. But the trauma blood is walked to the lab.

18 Q And in this case do you know if it was tubed or walked?

19 A I cannot recall, but it should -- normal process is to
20 walk it.

21 Q And you -- would your number have been on that blood
22 that you drew?

23 A Yeah, according to this documentation.

24 Q You're the one that collected the sample?

25 A Collected the sample.

1 Q Okay. And once it's given to the lab you all
2 eventually get the results back; is that correct?

3 A Yes.

4 Q And does that -- does that effect how you all may or
5 may not treat a patient?

6 A Yes. The results of the labs do.

7 MR. BLACK: Thank you. Please answer any questions Mr.
8 Garrett might have for the purposes of the chain on this
9 item.

10 CROSS-EXAMINATION

11 BY MR. GARRETT:

12 Q I know you don't recall this particular patient.

13 A Yes, sir.

14 Q So I'm not picking on you.

15 A Okay.

16 Q So I just want you to know that we appreciate what you
17 done. Okay? Now, the question is, is do you recall whether
18 or not you took this blood venously or did you take it from
19 a central line?

20 A According to the documentation it says it was obtained
21 from a central line.

22 Q So there wasn't going over to an arm and taking it from
23 an arm, was it?

24 A Not that I recall.

25 Q So this blood was arterial -- could you help the judge

1 understand what an arterial line, or what you call a --

2 A The central line?

3 Q Yeah. Help us all understand what a central line is.

4 A Okay. So I'll start off by saying normally blood, when
5 they come in, if we can obtain it quickly enough, it's taken
6 from a vein via venipuncture or another IV start, which is
7 something the nurse does. A central line, however, is
8 started in someone who is hemodynamically unstable, whether
9 it's their heart rate, their blood pressure, they're
10 bleeding internally from somewhere. The doctors will start
11 a central line. That is a sterile process in which nurses
12 do not -- do not do. They can draw blood off of the central
13 line and administer medications through it, but they do not
14 start the line itself. I think in the documentation it said
15 that it was started by Dr. Snow. The central line. And
16 then it says that the labs were obtained at that time with
17 the central line. So that would have been -- normal process
18 is for the doctor to hand the specimen over to the nurse, in
19 which I wrote my tech code and the -- on the individual's
20 labels, and then I would have labeled the blood and got it
21 to the lab

22 Q And you don't recall taking this to the lab?

23 A No, sir.

24 Q You don't recall handing it off to a tech to take it to
25 the lab?

1 A I do not recall.

2 Q Okay. We have been provided a copy of all the notes,
3 as I understand it. Complete records. Is there any
4 explanation as to why you're not in there?

5 A I do not understand why I'm not in there. In traumas
6 -- I know that there were -- I think in reviewing it, I
7 think there were three nurses listed, so there were four
8 total. One was documenting. So the ones that are doing all
9 of the work down with the patient, they aren't responsible
10 for documenting anything. That is the nurse that is up on
11 the podium in the trauma bay's responsibility. But I can
12 agree I'm not listed.

13 Q That's unusual, isn't it?

14 A It is, but -- yeah.

15 Q Then you didn't draw this blood? Dr. Snow drew this
16 blood?

17 A According to the documentation, yes. Off of the
18 central line. But doctors don't have the tech code. So
19 when we place it in the tubes we use our tech code.

20 Q So you didn't do it. That's why you didn't remember
21 it, you didn't do it.

22 A That's not why I don't remember, but -- it's probably
23 because I take care of hundreds of patients.

24 Q I understand. We appreciate what you've done. Don't
25 misunderstand. But if you didn't do it, you didn't do it.

1 THE COURT: Solicitor, any redirect?

2 MR. BLACK: Beg the Court's indulgence. Nothing
3 further, Your Honor.

4 THE COURT: Let me ask you, Ms. Baker. You indicate
5 based upon the medical records Dr. Snow actually was the one
6 to draw the blood out through this central line into the
7 vials, correct?

8 THE WITNESS: According to the nursing documentation.
9 Yes, sir. Not according to the lab documentation.

10 THE COURT: And then would he have handed it over to
11 you to do the labeling and whatever else you do with the
12 actual vials?

13 THE WITNESS: Yes.

14 THE COURT: So would you have been standing there when
15 he actually drew the blood?

16 THE WITNESS: Yes.

17 THE COURT: And the fact that he turned it over to you,
18 is that why your code number appears on the lab audit trail
19 documentation?

20 THE WITNESS: Yes.

21 THE COURT: And there was previous testimony that the
22 vials itself automatically seal themselves. They do not
23 have to be sealed physically by a nurse or a doctor or
24 anybody. Is that how it works?

25 THE WITNESS: Right. Once the -- you place the needle

1 it's a vacuum seal and it takes all the blood it needs into
2 the tube and then you remove the needle, and that's all you
3 have to do.

4 THE COURT: All right. Solicitor, anything in followup
5 to the Court's questions?

6 MR. BLACK: No, sir, Your Honor.

7 THE COURT: Mr. Garrett, anything in followup to the
8 Court's questions?

9 RECROSS-EXAMINATION

10 BY MR. GARRETT:

11 Q Again, I know what you do generally. But do you have
12 any independent memory of what happened in this particular
13 case?

14 A No, sir.

15 MR. GARRETT: Thank you.

16 THE COURT: You can step down, ma'am. Thank you.

17 (Whereupon, the witness stepped down from the witness
18 stand.)

19 MR. BLACK: The State calls Robert Smith.

20 ROBERT SMITH, having been first
21 duly sworn, testified as follows:

22 IN CAMERA

23 DIRECT EXAMINATION

24 BY MR. BLACK:

25 Q You are Robert Smith?

1 A Yes.

2 Q I'm just going to jump right into it. I'm showing you
3 what's been marked as State's 68. Are you a lab tech at
4 Greenville Hospital System?

5 A That's correct.

6 Q Currently you work in Greer?

7 A Yes.

8 Q But previously you worked at Greenville Memorial?

9 A Yes.

10 Q What's your job there?

11 A I'm a medical lab technician.

12 Q And what do you do as a lab technician?

13 A We process blood, urine, body fluids and all. Whatever
14 they submit to the lab.

15 Q And when you say process them, what do you mean by
16 that?

17 A We receive it, run the tests that they order. If we
18 don't run it in that particular lab we will send it out for
19 testing.

20 Q Okay. And do you have a specific kind of unique
21 identification number at the hospital?

22 A Yes.

23 Q And what is that number?

24 A That's my employee ID number is 12524.

25 Q 12524?

1 A That's correct.

2 Q And I've shown you what's been marked as State's 68, I
3 believe; is that correct?

4 A Yes.

5 Q And that's -- can you identify that document?

6 A Yes. This is a printout of the -- well, it's an audit
7 trail of the processing of a specimen that we had at the
8 lab.

9 Q And is your number -- your unique number, is that the
10 number that you still use?

11 A Yes, it is.

12 Q Even though you're in Greer now?

13 A Right. It's just a system number.

14 Q Okay. Does that number appear on this document?

15 A It does.

16 Q And in what capacity does it appear?

17 A It's showing me as the person that received the blood
18 on Adam Martin Rowell.

19 Q And what time did you receive the blood?

20 A It's showing that I received the blood at 2124.

21 Q Do you know how you received this particular unit of
22 blood?

23 A No, not -- I mean, it's from 2014. I don't remember.

24 Oh, are you asking me the process or --

25 Q I'm just asking you if you remember specifically how --

- 1 A No.
- 2 Q -- you received this sample?
- 3 A No, I do not.
- 4 Q What is the process?
- 5 A Generally the process for -- because this looks like
- 6 this is a trauma patient on a patient.
- 7 Q Yes, sir.
- 8 A The ER will collect that specimen and hand-deliver it
- 9 to the laboratory giving it to one of the techs to receive.
- 10 Q That's standard protocol?
- 11 A That's standard protocol, yes. We will then take that
- 12 specimen, after we identify it to make sure that the
- 13 identify is correct. We will receive it in our system, then
- 14 we would -- based on the type of tests run where you use
- 15 plasma or whole blood --
- 16 Q Yes, sir.
- 17 A -- we would then spin down tubes where they needed
- 18 plasma. If they needed whole blood we would send it. And
- 19 after we receive it we will label it and send it to the
- 20 various departments to be -- for the tests to be run on
- 21 that.
- 22 Q And in this particular case you were primarily the tech
- 23 involved in this sample?
- 24 A Yes.
- 25 Q And did -- is there another way that you guys typically

1 receive these -- is there a tubing system that you guys also
2 have?

3 A Yes. But we have a policy that we -- that the ER's not
4 to tube any trauma blood through the tube system because of
5 the seriousness of the -- the serious condition of that
6 patient. So they should be hand-delivered.

7 Q And you eventually received that and began testing the
8 items. How long did it take you to complete the test?

9 A Let's see. Well, the thing is that considering that I
10 was probably -- in our laboratory we have various
11 departments. We have a specimen processing area and then
12 the testing area. If I'm -- considering how large
13 Greenville Memorial lab is, if I was the one that received
14 it I was probably not the run who actually ran the assay.
15 But I would have received the specimen and then I would have
16 -- that generally takes less than five minutes, because I
17 receive it and then centrifuge the tubes that need to be
18 centrifuge.

19 Q What do you mean by centrifuging?

20 A We have a -- it spins the tube down. The tubes that we
21 need plasma have to be centrifuged. That means it separates
22 the blood from the plasma, or serum, depending on the tube
23 type. We would then take that and then submit it to the
24 department that would need to run whatever tests was ordered
25 on it if we run it from that lab.

1 Q Okay. And in this case the machines are doing the work
2 of the actual testing what's inside of it?

3 A Yes. Once we send it to the testing area, so that
4 particular machine would run the test.

5 Q Okay. And your lab is under kind of lock and key; is
6 that right?

7 A That's correct.

8 Q You've got to have a specific badge or a chip in the
9 badge to get in?

10 A That's correct.

11 Q So I couldn't just walk in there, could I?

12 A No.

13 Q Do you remember what the results of this particular
14 test were in terms of the alcohol?

15 MR. GARRETT: Your Honor, subject to my prior --

16 THE COURT: So noted.

17 A I don't remember myself. I have seen the result and
18 stuff from --

19 Q I'm showing you what's been marked as State's 69.
20 Would it be in that document?

21 A It's in the test alcohol plasma was 219.

22 MR. BLACK: I think that's all the questions I have,
23 Your Honor. Thank you.

24 THE COURT: Mr. Garrett.

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

1 CROSS-EXAMINATION

2 BY MR. GARRETT:

3 Q Thank you for being with us today. You don't remember
4 any of this test at all, right? Is that correct?

5 A No. No, I do not, sir.

6 Q All right. So I'm going to kind of talk you through
7 what you normally do. Okay? Is that all right?

8 A You want me to talk, or you said --

9 Q I'm going to -- I'm just going to ask you a few
10 questions. What I'm going to do is start at the
11 chronological beginning and go all the way through until you
12 have no further, you know, input on this. Somebody would
13 bring it to you. Would you be at a window or would there be
14 a clerk at the window? Who would -- who would actually
15 receive the vial?

16 A Because the lab actually is locked --

17 Q Yes, sir.

18 A -- the employees usually have badge access to get into
19 the laboratories, so they would have scanned their badge to
20 bring it into the laboratory. They would have identified
21 this as a trauma. And then, I guess if I was the receiver I
22 would have taken it from them and received it from them
23 myself.

24 Q Looking at that document, 68, can you tell -- can you
25 determine whether you think you were -- based on that,

1 whether you were the person that received it?

2 A Yes.

3 Q Now, so would there be a record of who brought it to
4 you then if they had to badge open the door?

5 A If they keep a record -- I don't know if security would
6 keep a record of when someone scans their badge at the ID.
7 I don't know if they would keep -- if they do keep a record,
8 then I guess you could look at that. But other than that, I
9 don't know.

10 Q And then, as I understand it, we have reason to believe
11 it sat there for about 30 minute -- maybe longer than that.
12 Hold on a minute. Look at the first page of that document.
13 Did it -- if it was collected at 2154, did it sit there
14 until 2124?

15 A What do you mean, by sitting in the lab? That would
16 probably be no.

17 Q I'm looking at between collection and then received.
18 See at the top of that, first page?

19 A Yeah, 2054 was when it was collected and when it was --

20 Q Who would type in the received part of that?

21 A I would have typed in the received part.

22 Q So where did it sit from 2054 until 2124?

23 A That I don't know, because the ER is separate from the
24 laboratory. So I don't -- until I actually get it -- when
25 they bring -- generally when they bring a trauma to the

1 laboratory we usually try to get that processed within 30
2 minutes. That means from it being received, run and
3 resulted. I would have generally had -- if someone came to
4 the lab and I was the one receiving the blood, I would have
5 taken that blood and immediately processed it. We do not
6 let trauma sit down on the counter or at any point rest
7 until it's actually resulted.

8 Q All right. So let's say if you received it at 2124 --
9 let's go from there. Now, you said something about --
10 earlier there was testimony about that it got analyzed
11 before it got centrifuged. But you're telling me that you
12 centrifuged it first?

13 A No. I would have received -- I would have identified
14 it and then received it, and then centrifuged it.

15 Q And then --

16 A Yeah.

17 Q Tell me, physically is there a separate machine that
18 allows you to centrifuge?

19 A A separate -- we -- I'm not sure exactly what you're
20 asking.

21 Q Well, I mean, we got -- you said you sent something out
22 for tests. I heard you say that a minute ago. But as far
23 as the tests that you perform, do you just do the
24 centrifuging? Is that your job?

25 A When I -- if I was receiving that day I was probably

- 1 just the person just receiving that specimen in to be sent
2 to the various departments. So I didn't -- I didn't process
3 it, I don't think. But like I say, I don't remember. In
4 other words, I was the one -- I received the specimen in the
5 SPA, in the specimen processing area, and then I would have
6 either taken it back and handed it to a tech and said this
7 is a trauma so that they would continue testing it, because
8 it looks like they had three tests. Three different areas
9 it would have gone to, chemistry and hematology, because
10 they run the various tests in different departments. And I
11 would have identified that it was a trauma. So either --
12 I'm not -- I don't know if I actually loaded it on the
13 chemistry lines, because I did work chemistry, but I don't
14 work hematology. So I definitely would have handed the
15 hematology specimen to someone and said this is a trauma.
16 They would have taken it and processed it and --
- 17 Q So where's the -- I'm sorry. Go ahead.
- 18 A No, go on.
- 19 Q Where is the hematology -- I'm trying to use your
20 words. Where is the hematology room at?
- 21 A Actually it's all in one lab. It's just departments
22 within that one large room.
- 23 Q Okay.
- 24 A Yes.
- 25 Q So there's some guys or some people, technicians

1 standing by the hematology?

2 A They're working in that hematology department.

3 Q And there's some people standing there with --

4 A They're lab technicians.

5 Q Lab technicians.

6 A They're lab technicians.

7 Q And then there's a person standing by -- where else
8 would this have gone?

9 A From the two tests that I'm looking at on here -- well,
10 I guess I have to break it down. The -- if you're looking
11 at -- if I'm looking at page 68, the HPMOD stands for a CBC,
12 and the PT, PTT, which is for coagulation, those are run in
13 the hematology department. The ALCP, which is a plasma
14 alcohol, the creatinine and glucose, which is CREAT and GLU,
15 those would have been run in chemistry. So I would have
16 taken it to those two departments.

17 Q After you --

18 A After I've centrifuged the tubes that needed to be
19 centrifuged.

20 Q Now, help me understand how you do that. You take --

21 A Well, we have a -- well, the way the laboratory is set
22 up we have a receiving -- our receiving computers are mixed
23 through our -- it's in a specimen processing area. That's
24 where we receive and then either spin them or just divide
25 them into various departments they're supposed to go into.

1 I would have received -- they actually -- the ER. They
2 actually have a centrifuge that's right next to where the ER
3 computer, where I would receive it at. So I would receive
4 it. I would have spun the green and the blue top tube,
5 because they would have needed to have been spun. The
6 purple top --

7 Q Green and blue top tube?

8 A Yeah. There would have been three tubes involved for
9 these tests right here.

10 Q Who would have divided it up?

11 A That would have been me, because if I was the one
12 receiving it I know which departments they go to. I would
13 have divided them.

14 Q So tell me how you divide it up.

15 A Now, when you say divide it, I mean like the different
16 tubes and stuff. I knew where each one went.

17 Q Well, that's my point. You got a tube?

18 A Yes.

19 Q You get one tube. Do you --

20 A No, I don't get one tube. I would have gotten three
21 for these tests. But --

22 Q Who gave you the three tubes?

23 A I don't know who gave me those tubes. Not for --

24 Q Well, you didn't take one tube. Somebody gave you
25 three tubes?

1 A Yeah, they would have -- for the tests right here they
2 would have needed a green top tube, a purple top tube and a
3 blue top tube. So that's three tubes for the test that they
4 have on here. Those would have -- two of them would have
5 gone to the hematology department, one would have gone to
6 the chemistry department.

7 Q Right. I'm with you there.

8 A Right.

9 Q What I'm trying to figure out is how you got three
10 tubes to start with. You didn't -- so you didn't take one
11 tube, break it down into three, then centrifuge it and then
12 send it out?

13 A No. They would have brought those three tubes up to
14 the lab. I mean, when I -- when I say they're coming in, I
15 have trauma blood, they would have had those three tubes
16 with blood in them to say that this blood was on the trauma.
17 And I would have taken those tubes, which would have been
18 three tubes, and I would have identified them, received
19 them, and then separated the ones that need to be separated
20 and left the ones be left whole. And then after I received
21 them, processed them, I would have taken them to the various
22 departments to be run.

23 Q Of the three how many did you centrifuge?

24 A Two.

25 Q So that left one that was whole --

1 A Yes.

2 Q -- and went somewhere else?

3 A Went to the hematology department.

4 Q Went to hematology. Now, after you spin them up are
5 you the one that actually takes them there to those places?

6 A If I'm the one that received them, I'm the one who
7 probably took them over there to be --

8 Q But again, probably.

9 A Yeah.

10 Q It sounds like --

11 A Well, the thing is, I'm not the only person working in
12 the specimen and processing area. Even though I might have
13 been maybe the ER receiver, we have other people who works
14 as well. If some came and presented a trauma, anybody in
15 the specimen processing area. So even though I wouldn't
16 have received it, say if I got side-tracked, someone else
17 would have known it was a trauma. But like I say, I can't
18 say for sure if that's what happened with this one. But
19 generally what happens is that if I receive a trauma, I'll
20 receive it, spin what needed to be spun, and would have
21 taken it to the department myself just to make sure it went
22 to the proper department.

23 Q Do you have any knowledge of once it leaves you, are
24 you -- are you in the position that you actually run the
25 tests yourself?

1 A Not if I was receiving that day. Probably not.

2 Q So you give it -- you just hand it to somebody?

3 A I will hand it to another lab tech.

4 Q It's not put in some kind of automated system? It just

5 --

6 A No. No. That's for routine. Not for --

7 Q Not for trauma?

8 A Yeah, trauma.

9 Q So you would just literally hand it to somebody?

10 A I would hand it and identify it as trauma.

11 Q And then it would be gone from your view after that.

12 In other words, if you received it you wouldn't do the tests
13 on it?

14 A Yes. Once I relay to someone else that I was handing
15 in trauma blood it would have been -- the burden would have
16 been on them to take care of it after.

17 Q Can you look at that document then and tell us who
18 tested the -- who actually ran the tests on these -- on
19 these three specimens?

20 A Well, with this -- because this is a computer trail,
21 the part that I do as far as taking it to the system, it's
22 not something that is computer monitored. So I would have
23 taken it to a tech. We don't have -- we don't actually
24 generally just document the person that we give it to once
25 you give out tests. We just make sure that we identify that

1 this is a trauma and they take that blood.

2 Q Right. I mean, I understand this is not for legal
3 purposes.

4 A Yes.

5 Q But for medical purposes that's just the way you all do
6 it?

7 A That's just the way, yeah. That's the general process.

8 Q So you're not worried about trying to keep up with it
9 as a chain of custody to make sure it's right?

10 A No, because this is not a chain of custody type
11 specimen. It's just general -- it's a critical specimen,
12 which is why we process then so quickly. But not chain of
13 custody, no.

14 Q And you can -- you know, you've used your number as an
15 identifier. There's a lot of numbers in that stuff there.
16 Can you look through there and tell me which numbers did the
17 actual testing on this one?

18 A From what I'm looking at on this right here, because I
19 know the workings of the lab, if -- when I have -- well,
20 let's just start with the chemistry. That would be the
21 alcohol, the creatinine and the glucose and the potassium.
22 That green top tube, because that's the one the alcohol --
23 that one I would have spun, handed it off to someone, and
24 they would have -- either I would have loaded it onto the
25 analyzer to be run or the tech who was in the chemistry

1 department would have loaded it onto the analyzer to be run.
2 But one of us would have made sure that it had got loaded
3 onto the analyzer to be run. It would not have been sitting
4 in -- sitting or anything like that because it's a critical
5 specimen.

6 Q So can you look at that document and tell me who
7 actually ran that test, or loaded it on that --

8 A It doesn't say --

9 Q -- unit to run that test?

10 A -- it doesn't say on this document who loaded that
11 specimen.

12 Q We don't know?

13 A No.

14 Q And the other ones. The other two. The hematology,
15 the one that you said was whole blood --

16 A Right.

17 Q -- it was in another vial?

18 A Yes, the purple top.

19 Q And you would have done the same thing, took it to
20 somebody else and handed it to them and they would have --

21 A Yes, and identified it as a trauma.

22 Q Can you tell me who did the hematology? Who did the
23 test on the hematology?

24 A They -- it doesn't actually say on here that another
25 tech actually ran that either, because when I'm looking at

1 the 0029 number, that sounds like a -- if the results are
2 normal it will autofile. You have an autofile system that's
3 setup to our instrument manager. If it's normal it will
4 autofile, so -- but it doesn't show on here that -- who the
5 person I handed it off to on the document.

6 Q And so, going to the other one. You said you had three
7 vials.

8 A The coagulation tube.

9 Q Tell me about the third one. Can you look on there and
10 tell --

11 A That is not on this document.

12 Q Same thing?

13 A Same thing.

14 Q You just don't know who you gave it to?

15 A Well, yeah, I would have given it to another lab tech,
16 but I couldn't tell you -- name specifically who I gave it
17 to that day. I mean, they have a schedule of the people who
18 worked in the lab that day. If -- I could just as well say
19 that I gave it to those people who were on the schedule that
20 day in that department.

21 Q But again, you don't know?

22 A I don't remember, no.

23 Q I understand. I understand. It would be impossible.

24 A Yeah.

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

1 Q Once you turn it over, before it's tested, that's your
2 last involvement in it?

3 A Somewhat. Not quite really, because -- it's generally
4 kind of like an unspoken rule in the laboratory that we kind
5 of all participate in making sure that traumas are processed
6 within that 30 minute time. That's not to say that I would
7 necessarily just completely turn it over to them and just
8 forget about it altogether. I would have just made sure,
9 you know, that it was -- it's just the way that I generally
10 am. I just want to make sure that that stuff is processed
11 in a timely manner, so...

12 Q But you don't recall whether this was in a timely
13 manner?

14 A No, I do -- no, I do not.

15 MR. GARRETT: Okay.

16 THE COURT: Solicitor, anything in followup?

17 MR. BLACK: Yes, sir, briefly.

18 REDIRECT EXAMINATION

19 BY MR. BLACK:

20 Q Mr. Smith, you received the sample, correct?

21 A Yes.

22 Q And essentially it's your responsibility -- is it your
23 responsibility to kind of see that it's processed through?
24 To see that the trauma -- see that this trauma unit has been
25 tested?

1 A No. No. Well, it could have -- the thing is, once --
2 like I say, once I've -- I put it -- like I say, it's kind
3 of like where we work as a team. I let them know that this
4 is a trauma. Just like I know how important this other --
5 the tech I'm handing it out to knows it's important as well.
6 So I can trust it when I give it to them they're going to
7 take care of the specimens.

8 Q Now, did you hand this one off to another tech, you
9 said, or do you even know?

10 A I don't -- I don't remember.

11 Q How long did it take to run the test on this particular
12 specimen?

13 A Let's see. Seems like it took less than maybe 20 --
14 less than 20 minutes. Because I received it at 2024, minus
15 five minutes for the centrifuge, and it was resulted at
16 2140. Let me see. Hold on one second. About 2140 was when
17 it was resulted. Wait a minute. I received it at 2124. It
18 was resulted at 2140.

19 Q So less than 20 minutes?

20 A Yes, less than 20 minutes.

21 Q And can you describe for us what the lab looks like?
22 It's -- is it open?

23 A It's a -- yeah, it's a large open room. Let's see. We
24 have -- Say if -- I'm looking at this right here. That
25 right quadrant would probably be the specimen processing or

1 where I received the specimen. The one farthest to the left
2 would be where chemistry is.

3 Q You're talking about --

4 A Yes, that. That would be the processing -- the
5 specimen processing area which would be where receive and
6 spin everything. But then on the far right where probably
7 be where chemistry is. No, this one right here. And then
8 hematology would be the one -- the top middle. Top middle
9 would be hematology. Right. So I would have spun it down,
10 walked it over to chemistry and then also walked the
11 specimens over to hematology as well.

12 Q But they're all right there together?

13 A They're altogether.

14 Q And at this particular time, is this considered second
15 shift?

16 A Yes.

17 Q How many people -- do more work in the lab in first
18 shift?

19 A Yes.

20 Q How many people work in second?

21 A Maybe like 20, because that's including phlebotomists
22 as well or something.

23 Q Okay. Are you testifying today that you for sure gave
24 it to somebody else to run these tests?

25 A No, because I don't remember.

1 Q But the machine -- they have to be placed on the
2 machine and the machine ultimately runs the test, right?

3 A That's correct. That's correct.

4 Q The machine ultimately generates the results?

5 A That's correct.

6 Q Essentially, the lab techs are -- what is your role, to
7 move it from point A to point B to point C?

8 A We do note -- we do note the specimens, but we also,
9 depending on where we're working at, we also verify the
10 results that come off as well, in the sense, to make sure
11 that what we're turning out is actually correct as well.
12 That's like all the controls and calibrations and all that.

13 Q So you all are verifying to make sure the results are
14 accurate?

15 A That's correct. We do that every shift.

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

17 THE COURT: Mr. Garrett, anything in --

18 MR. GARRETT: Nothing else, Your Honor.

19 THE COURT: Let me just ask you, Mr. Smith. If -- all
20 right. Your number shows up on the audit trail. Does that
21 indicate to you that you receive the three vials?

22 THE WITNESS: Yes, sir.

23 THE COURT: And then either you would have -- either
24 yourself -- after centrifuging, would have either yourself
25 put it in the machines for testing or another lab tech such

1 as yourself would have done the test, correct?

2 THE WITNESS: Yes, sir.

3 THE COURT: No, if upon receive of the vials, if
4 they're not properly sealed, labeled, what do you do?

5 THE WITNESS: I would then notify the ER of whatever
6 was in that specimen, and either request a recollect or just
7 -- well, pretty much request a recollect for that specimen.

8 THE COURT: State have any questions in response to the
9 Court's questions?

10 MR. BLACK: No, sir, Your Honor.

11 THE COURT: Mr. Garrett?

12 RECROSS-EXAMINATION

13 BY MR. GARRETT:

14 Q Are you sure then that the specimens that you put into
15 those other -- I'm sorry. There were three specimens you
16 received; is that right?

17 A Yes, sir.

18 Q Three separate specimens?

19 A Yes.

20 Q And they were hermetically sealed, like you said?

21 A Yes. I mean, they were -- well, I'm thinking that the
22 tubes were intact. If they were not I would have notified
23 them that they were not, so...

24 Q And asked for another draw?

25 A Yes, sir.

1 Q But you -- you don't know whether you put it in the
2 machine to run the test or not?

3 A No, sir.

4 Q So, I mean, whoever manually puts it into the machine
5 is the person that's running it on the machine?

6 A Yes, sir.

7 Q And has there ever been a mistake where somebody's got
8 the wrong stuff at the wrong place?

9 A Do you mean like if they put the wrong person on the --

10 Q Yeah.

11 A Generally the way our system is set up our specimens
12 are run by the specimen ID. It's called a sample ID. Those
13 are bar coded onto the tubes. Once we probably identify
14 them into that system to make sure that the original tube
15 that the ER puts on it, or the floor puts on it, versus what
16 we put onto that ID on there is correct, we send that back
17 to the test. And so, it kind of -- it eliminates the
18 possibility that it be the wrong patient that we're putting
19 on that machine. Because it reads the bar code, not the
20 patient's actual information that's written on that tube.

21 Q My question is have you ever had an episode where
22 somebody put the wrong one in the wrong place? Ran the
23 wrong test or put it in the wrong -- manually into the
24 machine?

25 A I mean, we've had times when people have miss-ID'd

1 specimens, if that's what you're asking.

2 MR. GARRETT: Okay. Thank you.

3 THE COURT: You can step down sir.

4 THE WITNESS: Yes, sir.

5 (Whereupon, the witness stepped down from the witness
6 stand.)

7 THE COURT: Solicitor, anything you -- anything further
8 in camera on this issue of chain of custody?

9 MR. BLACK: No more witnesses, Your Honor.

10 THE COURT: No more witnesses. I'll take brief
11 argument from both sides on this.

12 MR. BLACK: Yes, sir. Your Honor, I think the law is
13 pretty well established, and I'm sure the Defense is going
14 to agree with the law as well. State v. Hatcher is kind of
15 the primary case that the State is familiar with. There's
16 also other cases, State v. Cribb. But the law is that the
17 chain must be established as far as practical.

18 In this particular case the State has done everything
19 in their power to make sure that the chain of this
20 particular blood analysis was established. The State --
21 we've tract down an audit trail. We've heard from numerous
22 witnesses. You've heard from the LifeFlight crew. You
23 heard from Ms. Angela Waite. She stated that she followed
24 the patient into the hospital. She observed the blood being
25 taken by Ms. Baker and her labeling that particular item.

1 And then from that point on you heard that Ms. Baker sent
2 the blood off to the lab to be analyzed. And you heard that
3 Ms. Baker put on the lab tube her information, her hospital
4 ID. Her information signifying that she was the nurse that
5 took it. I believe there was some testimony that Dr. Snow
6 might have put the centrifuge in -- or the central line in
7 that actually took the blood and then handed that off to
8 her. She labeled it and it was sent off to the lab. The
9 time that it was received by the lab was established by Mr.
10 Robert Smith about when he received it. You heard testimony
11 about how the lab is kept under lock and key and how only
12 those individuals that had access to it in terms of their
13 badge and their chip are able to go into the lab and are
14 able to run the test on these particular items. You heard
15 that Mr. Smith obviously doesn't remember this episode.
16 This particular sample that was -- that he tested back in
17 2014, I'm sure he's tested probably hundreds of thousands of
18 samples, and thousands of samples since that particular day.
19 But he did testify that he began the process of testing it
20 and ultimately he was able to generate a result in terms of
21 the blood alcohol that was resulted from the Defendant
22 immediately upon arriving at the hospital that night. And
23 the chain, as far as the State's concerned, we -- it's our
24 position the chain has followed what we needed to follow
25 through Hatcher and Cribb, as previously stated, and that

1 the chain has been -- the chain has been established as far
2 as practical like the law requires.

3 THE COURT: All right. Thank you. Who's going to
4 argue for the Defense? Well, you need to determine that.

5 MR. HENDERSON: I will, Your Honor.

6 THE COURT: All right. Mr. Henderson, I'll be glad to
7 hear from you.

8 MR. HENDERSON: Very briefly. Angela Waite's testimony
9 was that she saw Angela Baker draw the blood. We clearly
10 know that didn't happen. And again, I think Ms. Angela
11 Waite was sincere in her recollections, but that just isn't
12 what happened. That's not what's reflected in the medical
13 records. We know that Dr. Snow actually drew the blood. He
14 set in a central line because they said the nurses are not
15 allowed to do that. So Dr. Snow drew the blood. And then
16 Nurse Baker is assuming that it was handed off to her and
17 that she would have labeled it. And then from there only
18 one vial. I think her testimony was one vial, Your Honor,
19 and --

20 THE COURT: I don't remember her testifying one vial.
21 And I'm not going to say that you're completely incorrect,
22 Mr. Henderson. I just don't recall that she specifically
23 said one vial. I think when I asked her about, you know, it
24 was automatically sealing and labeling she may have said one
25 vial, but I don't specifically remember her saying that when

1 Dr. Snow pulled from the central line that there was just
2 one vial delivered to the lab. And again, I may be -- I may
3 be wrong on that. I just don't recall that. But go ahead.
4 Go ahead.

5 Mr. Henderson: Your Honor, I think Dr. Reddic, he's
6 the one that said it was one vial, if I'm not mistaken.
7 There was testimony there about one vial being drawn. I
8 know it's either Dr. Reddic or it was Nurse Baker. One or
9 the other talked about one vial. I might be mixed up on
10 which one it was, but I'm certain one of them said one vial,
11 Your Honor. So assuming it is the one vial, Nurse Baker
12 said that she would have labeled that container. And then
13 the next thing we know, or the next thing we have is that
14 Mr. Smith, who just testified, who's the lab tech, received
15 three vials. So we've got this missing time, Your Honor.
16 Even assuming Ms. Baker is accurate and she would have
17 labeled one vial -- or Dr. Reddic said there was one vial.
18 And then we've got a period of time, Your Honor, it looks to
19 be about 30 minutes. And the next testimony we have, to the
20 best of my recollection, was Mr. Robert Smith saying he
21 received three vials. Right, that he -- it would have been
22 three that he would have received based upon the tests that
23 were being ordered. And then from there he said he would
24 have processed in those three tubes. And then he sent them
25 out to people, that he doesn't know who these people are,

1 Your Honor. He just doesn't know. I think he was very
2 forthright about that. So I think you've got a couple of
3 issues here, Your Honor. You've got this missing time and
4 number of vials between Nurse Baker taking possession of
5 this item, and then turning over to Mr. Smith back in the
6 lab and it's three vials at that time. So again, there's
7 been nothing in the intervening approximately 30 minutes
8 there about what happened to these samples, Your Honor, and
9 that's a grave concern to us on the chain of custody.

10 And again, I think even if you look at this Cribbs
11 case, C-r-i-b-b. I think it's singular. I've been saying
12 plural but it's singular, and it is 310 S.C. 518 or 426
13 S.E.2nd 306. And it's a case of -- kind of somewhat similar
14 to this that a hospital blood draw where there's a messed up
15 potential chain of custody, Your Honor. So -- and I think
16 that would be instructive of the Court to look at that case.

17 THE COURT: All right. Thank you very much, Mr.
18 Henderson. Anything in very brief reply, Solicitor?

19 MR. BLACK: No, sir, Your Honor.

20 THE COURT: Okay. Thank you very much. I'll take a
21 look at this over lunch. The short lunch break that I've
22 given everybody. And before we start back in the presence
23 of the jury I'll inform the lawyers of my decision.
24 Appreciate your all's hard work.

25 MR. BLACK: Thank you, Your Honor.

1 THE COURT: We'll start back at one, or a little after.
2 I want everybody to have a chance to get a bite to eat.

3 MR. HENDERSON: Judge, let me hand you up one more
4 case, and I'll give Wade a copy of it, too.

5 THE COURT: Okay.

6 (Whereupon, Court's Exhibit No. 9 was changed to
7 Court's Exhibit No. 10.)

8 (Whereupon, a lunch recess was held from 12:25 p.m. to
9 1:21 p.m.)

10 THE COURT: We're back on the record. Let me ask just
11 for a point of clarification, Solicitor, the -- and I know
12 it was in camera and over the objection of Mr. Garrett as
13 far as the results of the blood analysis which -- whatever
14 it was. Is that -- is that generated -- I know the machine
15 does the testing. Does it submit a printout, a report,
16 reflecting that test result number, or is -- or somebody
17 have to look at something and then record it down? How do
18 we get to -- let me find it. How do we get to .219 test
19 result? How do we get that?

20 MR. BLACK: From what I understand talking to all the
21 individuals involved and from the testimony that we've heard
22 today, it's -- the samples are run through the machine and
23 then a report is generated kind of automatively -

24 THE COURT: By the machine?

25 MR. BLACK: By the machine.

1 THE COURT: And the reason why I ask that, and I --
2 because Mr. Henderson, just before we went back on the
3 record, handed me the Bullcoming case, which I think I dealt
4 with in the last felony DUI trial that I had here. And the
5 Bullcoming case makes a distinction between an analysis
6 certification as to results and a machine generated raw
7 number. It makes that distinction. Because the machine
8 can't be cross-examined as the analysis -- the SLED analysis
9 in the Bullcoming case and that -- because of the
10 confrontation clause.

11 MR. BLACK: And Judge, our -- I'm sorry. Did I cut you
12 off?

13 THE COURT: No, you didn't cut me off. So that's why I
14 think it's extremely important for me to know in this case
15 how do we get the .219 number.

16 MR. BLACK: Yes, sir. And that would be -- and from
17 everything that I have, my talking with all of the
18 individuals in the lab, it's all generated by the machine.
19 And like you stated, you can't -- it's inconceivable to
20 cross-examine a machine about the results. Now, they can
21 question the validity of the machine. They can do that
22 through cross-examination with everybody that's here that --
23 you know, everybody in the lab that's associated with that.
24 They have every right to do that. We're not saying they
25 don't have that right. But in this Bullcoming case, Judge,

1 the difference in this scenario and the Bullcoming case is
2 this is not testimonial. This evidence is not testimonial.
3 It's not made by law enforcement personnel or police
4 officers. This is a Greenville Hospital System laboratory.
5 And these results were intended to necessarily come into
6 court. They're intended to treat their client, Mr. Rowell
7 --

8 THE COURT: Right, I understand.

9 MR. BLACK: -- who was essentially dying.

10 THE COURT: I understand.

11 MR. BLACK: So they had to -- they had to save his
12 life. So this case really doesn't apply in this situation
13 at all because the results -- these results are
14 non-testimonial.

15 THE COURT: Right, that's -- that's what I want to make
16 sure. I just don't want this to be a situation where Mr.
17 Smith or some other lab tech had to look at a computer
18 screen and then record down the number. That the machine
19 actually produces the document which bears the test result
20 .219.

21 MR. BLACK: And from my understanding, that's what
22 happens. If we need to call another witness to verify that
23 I'm not going to stand in your way. But from everything
24 that I've heard, and from talking to everybody involved,
25 that's what happens in -- at the Greenville Memorial

1 Hospital System laboratory.

2 THE COURT: All right. I think to make sure that we
3 have a very clear record, even though I don't disbelieve
4 what you're telling me -- okay? I know you're relaying the
5 information as an officer of the court to me based upon what
6 you learned in this case, so I'm not doubting that. But I
7 think the record needs to be complete because this is, I
8 think, a pretty important distinction that I need to make to
9 where if I'm going to follow the Bullcoming case or not. So
10 if you've got a witness back there, and all I need to know
11 is that the document that bears the number, test results or
12 something akin to that .219, is generated by the machine and
13 from no other source. That's what I need to know.

14 MR. BLACK: Yes, sir. And I guess we can call Mr.
15 Smith. But even if -- even if all that -- the assumptions
16 that you're making, even if those are true this case is
17 still different than the case here.

18 THE COURT: I understand.

19 MR. BLACK: This is non-testimonial. It's not taken
20 for law enforcement purposes. So even if -- Your Honor,
21 even if in this particular case he had to transcribe that
22 number onto a machine, it's still non-testimonial for this
23 purpose.

24 MR. GARRETT: But it's still being used for a law
25 enforcement purpose, Your Honor.

1 MR. BLACK: And, Your Honor, we agree that the Defense
2 has every -- we've got them all here. They can
3 cross-examine him about any of this information, so...

4 THE COURT: Well, let's -- let's hear -- are you going
5 to call -- who are you going to call?

6 MR. BLACK: If you want to hear from somebody, Judge, I
7 don't plan -- I guess I don't really plan on calling
8 anybody. But if you want to hear from Mr. Smith and
9 question him about it, that's probably appropriate.

10 THE COURT: Well, whoever can -- whoever you believe
11 can give me the answer that I'm looking for. And I'm going
12 to leave it up to you as far as who that may be.

13 MR. BLACK: I'm not sure if it's Robert Smith or John
14 Reddic, but we'll get them both out here if you need to hear
15 from them, Judge.

16 THE COURT: All right. Let's do it. I think it was
17 Dr. Reddic who actually, over Mr. Garrett's objection, in
18 camera gave us the result. I don't recall any other
19 witness. But I do --

20 MR. GARRETT: Mr. Smith read the -- read the numbers
21 aloud.

22 THE COURT: All right. Come back around the witness
23 stand.

24 ROBERT SMITH, having been
25 previously duly sworn, testifies as follows:

1 IN CAMERA

2 THE COURT: Mr. Smith, it's been -- there is a document
3 that gives the -- he has it? All right. There is a
4 document before you that gives the blood alcohol content
5 test result.

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. And I believe the number that's been
8 given is .219. Can you look and confirm that?

9 THE WITNESS: Actually it says 219.

10 THE COURT: But that equates to what?

11 MR. BLACK: It's a 219 plasma alcohol, which is -- we
12 didn't really get into all that because we're just trying --
13 we're just focusing on the chain for that in camera hearing.

14 THE COURT: Right. But I thought Dr. Reddic gave --
15 converted it into the --

16 MR. BLACK: It's about an 18 percent blood alcohol.
17 Yes, sir. I think that's what he -- he might have testified
18 to it. I don't remember if he did or not. But my
19 conversations that's what he's going to testify to.

20 THE COURT: Well, of course, you're going to have to
21 have an expert to be able to convert it over to the numbers
22 that we need.

23 MR. BLACK: Yes, sir. We understand that.

24 THE COURT: All right. 219 is the number?

25 THE WITNESS: Yes, sir.

1 MR. GARRETT: Judge, may I -- on that point, I'm
2 familiar with the case. It takes an analyst, it takes the
3 person to do it to program it. And I'm entitled -- in order
4 to get that result, I'm entitled to --

5 THE COURT: I'm -- that's what I'm trying to find out,
6 Mr. Garrett. Okay?

7 MR. GARRETT: Yes, sir. I'm sorry. I'm sorry.

8 THE COURT: All right. How is that number arrived at?
9 Does the machine does all the testing of the blood and then
10 produces that 219 number? Or does there have to be any human
11 involvement in obtaining that 219? Once you put that vial
12 in the machine and the machine does the testing, how does
13 that 219 number -- how is that generated?

14 THE WITNESS: According to what Dr. Reddic was telling,
15 that the fact that it actually -- it has -- the analyzers
16 are actually programed to run the assays that's established
17 by the manufacturer to test what a particular analyte. In
18 this case the alcohol. It actually -- the way -- when they
19 actually set up this program in the system, it's -- like I
20 say, it's not a human thing. It's something they actually
21 just program. When we set it -- when we put the specimen on
22 the analyzer it tests for that particular analyte that it's
23 -- or testing for whatever particular test that we're trying
24 to look for in that specimen, and it yields that result.
25 But Dr. Reddic could explain it better than I can.

1 THE COURT: Okay. But to your knowledge -- and we're
2 going to call Dr. Reddic, too. But the machine gives us
3 that number and there's no -- after the human puts the vial
4 into the machine and hits the start button, and I know I'm
5 being very elementary.

6 THE WITNESS: Yes, sir.

7 THE COURT: Then there's no more human involvement
8 involved prior to getting that 219 number; is that correct?

9 THE WITNESS: That's correct, sir.

10 THE COURT: I'm going to bring Dr. Reddic out.
11 Evidentially he probably knows a little bit more than Mr.
12 Smith. But does anybody want to question -- on this limited
13 point question Mr. Smith?

14 MR. BLACK: No, sir, Your Honor.

15 THE COURT: Okay. State does not. Mr. Garrett?

16 MR. GARRETT: Beg the Court's indulgence just one
17 second.

18 CROSS-EXAMINATION

19 BY MR. GARRETT:

20 Q You have to tell the machine -- you have to program the
21 machine to run the program that you want it to run?

22 A No, sir. Because our analyzer is set up with our
23 computer system, analyzed by LIS. The preprogram tests are
24 actually in our system. Our system communicates with the
25 analyzers to tell it what to run. We don't have to tell the

1 program anything because it's preset in the system. Once
2 it's been received and those tests have been ordered, that
3 -- our system communicates to the analyzer, tells it what to
4 run on the scan bar code what test it will be testing for.

5 Q So all the technician does then, what you're talk
6 about, is set it into the machine. Is that what you're
7 saying?

8 A Yes, sir. Generally --

9 Q You just have to make sure you put it in the right
10 machine?

11 A That's right, sir.

12 Q But somebody had to put it in the right machine?

13 A Yes, sir.

14 THE COURT: Thank you, sir. You can step down. And
15 let's get Dr. Reddic out here.

16 (Whereupon, the witness stepped down from the witness
17 stand.)

18 DR. JOHN REDDIC, having been
19 previously duly sworn, testified as follows:

20 IN CAMERA EXAMINATION BY

21 THE COURT: Dr. Reddic, the Court has actually raised
22 an issue and we need to make sure we're clear. And my
23 questions may sound very elementary. I may not artfully ask
24 the question or questions correctly. Hopefully you'll
25 understand where I'm coming from.

1 We have a test result number in this case, a 219. Now,
2 I'm not sure how we equate it over to the numbers that we
3 use in the law, but there's a 219 test result, correct?

4 THE WITNESS: Correct. Yes, sir.

5 THE COURT: For alcohol content?

6 THE WITNESS: I'll double check. But that is my
7 memory. Let's see. That's correct, 219.

8 THE COURT: And this machine that does the analysis has
9 already preprogrammed or preset programs in order to do the
10 alcohol content test, correct?

11 THE WITNESS: That is correct.

12 THE COURT: Now -- and this is going to be very
13 elementary. Once the tech puts the vial into the machine
14 and hits the start button. Okay?

15 THE WITNESS: Uh-huh.

16 THE COURT: Does the human have to do anything else
17 leading up to the machine producing that 219 number?

18 THE WITNESS: They do not.

19 THE COURT: So the 219 number would be purely raw data,
20 raw information generated solely from the machine and from
21 no other source, correct?

22 THE WITNESS: That is correct.

23 MR. BLACK: Nothing from the State.

24 THE COURT: Mr. Garrett?

25 MR. GARRETT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. GARRETT:

3 Q That is ran by a bar code, isn't it? The test that
4 you're asking for has to be ran by a bar code?

5 A The specimen is identified on the machine by the bar
6 code on the tube.

7 Q All right. And the bar code tells the machine what to
8 run? What test to run?

9 A That is correct.

10 Q Somebody had to program that bar code before the
11 machine could run that particular test?

12 A May I explain?

13 THE COURT: Yeah, yeah, yeah. Please.

14 A So the specimen is logged into the system which has its
15 unique identifier and the test associated with it.

16 Q Somebody has to ask for that test? I mean, does it
17 make --

18 MR. BLACK: Judge, can he finish answering the first
19 question?

20 THE COURT: Yeah.

21 A So the specimen is logged into this system, into the
22 software, with that bar code, and it's assigned a unique
23 identifier. The specimen ID, if we want to call it that.
24 That specimen ID is put on the bar code. That is what the
25 bar code is. It is the -- it is the C of -- you know eight

1 of nine font bar code representation for whatever the unique
2 identifier for that specimen is. The software knows because
3 at the log in point that this specimen is supposed to have
4 test X, Y and Z done on it. And so, that specimen, once it
5 is loaded, because the software system -- the integrated
6 software system knows that, well, this tube has the bar code
7 on it. This is specimen one, two, three, four, five. It's
8 supposed to have test X, Y and Z done on this sample. And
9 it -- because of the integration of the software when the --
10 when things are logged in, it is known -- you know, the
11 instrument knows to run the pre-prescribed test on the
12 specimen.

13 Q So we're back to who programs the bar code. Who puts
14 the -- who tells -- who tells the machine to make this bar
15 code for this person?

16 A That would be the medical technologist, such as Robert
17 who is there receiving and logging the specimen in.

18 Q But I'm talking about before it gets there who's -- who
19 is making the decision about what tests need to be ran on
20 this specimen?

21 A Oh, the physician or the care provider at the point of
22 -- you know, at the point of where the patient is and -- you
23 know, the person who orders the test, you know, is the
24 physician who refer to. They tell -- they directly order or
25 they tell the nurse I want these tests run on this patient,

1 and --

2 Q Then who programs it into a machine to run with the
3 patient to get down there to the lab?

4 A Who programs -- at which point? When it's received in
5 the lab or --

6 Q Before -- you're saying basically that the lab doesn't
7 have anything to do with it? Basically what you're saying
8 is, is that we take one of these three vials and drop it in
9 that hole right there and it automatically -- it
10 automatically tests it.

11 A We have a specimen that we have received from a
12 location, and in this case the emergency department. That
13 specimen comes to us and someone -- the physician has
14 assigned specific tests to be performed on that specimen.
15 We accept that specimen. We log it into our system with
16 those assigned tests. A bar code is generated at that point
17 that goes on the specimen, and at that point that's where it
18 becomes fairly automated. You can load it -- you know, you
19 load it and it goes, or you spin it on a centrifuge and load
20 it on the instrument and it goes.

21 Q So again, I'm getting back -- I order to program the
22 machine to run the alcohol test a doctor would have to order
23 that particular test in order for it to be programmed to
24 ultimately run the test?

25 A Correct.

1 THE COURT: Is there any significance to the different
2 colored tops of the various vials that the blood is in?

3 THE WITNESS: There are. There are different additives
4 or preservatives for -- you know, you want the blood to be
5 preserved in a certain way. Sometimes you want the blood to
6 coagulate and clot for a certain kind of testing. Sometimes
7 you don't want it to coagulate and clot for a different kind
8 of testing. So you choose tube types based on the type of
9 testing that is planned for that collected specimen.

10 THE COURT: All right. Thank you, Doctor.

11 MR. BLACK: Just a brief question.

12 REDIRECT EXAMINATION

13 Q Do you all run this for law enforcement?

14 A The plasma alcohol?

15 Q Just the test in general. Any of the tests at the lab,
16 do they run for law enforcement?

17 A We do have the capacity and we do run medical -- or we
18 do run legal alcohols. We have run those for law
19 enforcement before.

20 Q But in this particular sample who --

21 A No. This specimen was not ordered for a legal alcohol.

22 THE COURT: Thank you, Doctor. You can step down.

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

25 THE COURT: I'm going to find that the Bullcoming case

1 is not controlling in this. I find that the result 219,
2 whatever that may be, or whatever that may mean, is purely a
3 machine generated number and not as a result of any sort of
4 human generated number.

5 I'm going to find that the chain of custody has been
6 established. And let me kind of go through some points so
7 everyone's clear on where I'm coming from on this. I do
8 realize that when dealing with fungible evidence that the
9 standards are a little stricter than with non-fungible
10 evidence. But in this case we have -- we have the identity
11 of Dr. Snow who drew the blood, then to Amanda Baker who
12 took the vials and labeled them in some fashion. Robert
13 Smith who's the tech who received it. He delivered it to
14 another tech who did -- put it into the machine for
15 analysis. I do realize that we don't have the identity of
16 the person who transported the vials to the lab. I realize
17 that. But State vs. Hatcher and State vs. Pope would take
18 care of that. Both of the cases, and State vs. Pope is the
19 most recent case we've got on this, chain of custody needs
20 to be established only as far as is practicable. State vs.
21 Pope specifically says testimony from each custodian is not
22 a prerequisite to find chain of custody. And then State vs.
23 Hatcher has this classic phrase as we reiterate that every
24 person handling the evidence need not be identified in all
25 cases. You know, that's pretty -- pretty strong language

1 from our Appellate Court.

2 There's a little bit older case, State vs. Taylors
3 which says where the handling of the evidence is reasonably
4 demonstrated a weakness in the chain, if there is a weakness
5 in the chain -- I'm not finding that there is one. But if
6 one does exist it goes to the credibility of the evidence
7 and not to the issue of admissibility.

8 And then it kind of all falls into this pot where I
9 think that my discretion comes in. Every single case
10 dealing with chain of custody and fungible evidence states
11 is there any proof of tampering. Is there any proof of
12 ill-motive. Is there any proof of bad faith. And there is
13 none. I've had none presented to me. And so, I think
14 that's what allows my discretion to kick in.

15 The Defense mentioned the State vs. Cribb case. That's
16 a 1992 case, and I think if you track these chain of custody
17 cases all the way up to State vs. Pope, I think you're going
18 to find that the courts have become more liberal, and I just
19 have to assume the reason why is because technology has
20 certainly improved over the years. And here we got in this
21 case, we got a machine that's doing the testing and not a
22 human, and I just have to assume that's why our cases have
23 become more liberal when they look at chain of custody. So
24 taking all that into account, I'm going to find that there
25 was a proper chain of custody as it relates to the hospital

1 draw.

2 Now, with all that said, I realize we're going to have
3 to listen again to what we've just listened to for the last
4 several hours, but that's -- that's just what we'll have to
5 do.

6 MR. HENDERSON: And, Judge, we just want to confirm.
7 You're just ruling that you're finding there was a proper
8 chain of custody?

9 THE COURT: Yeah. Now, I mean, if there's -- if
10 there's any other issues that we need to address as to the
11 admissibility of the actual results then I will entertain
12 that. I'm just -- even though getting over to Bullcoming I
13 think we kind of deviated just a little bit. But apart from
14 that, I'm finding chain of custody. And if there's any
15 other issues related to the result then I will certainly
16 deal with that at the appropriate time.

17 MR. HENDERSON: We have a lot of issues dealing with
18 results.

19 MR. GARRETT: I want to ask the Court this. Which vial
20 are you -- are you finding is proper? Which vial? Because
21 the testimony was one vial, some that it's three, or are you
22 -- you saying that all three are valid or --

23 THE COURT: Well, and again, I realize before lunch
24 break Mr. Henderson mentioned that there's been some
25 discrepancy in the testimony as it relates to one vial

1 versus three vials. And again, quite candidly, the Court
2 does not recall there being testimony as far as this case,
3 as far as Mr. Rowell's blood, that there was only one vial.
4 I always understood it was three vials. I don't recall
5 Nurse Baker -- and, of course, she's going to be back up on
6 the stand. But I don't recall her specifically saying that
7 there was only one vial drawn and that's what we transported
8 to -- to the lab. So with that understanding, I'm finding
9 all three vials that there was a proper chain of custody.

10 MR. GARRETT: Your Honor, and we would just ask the
11 Court to please reconsider that, and we'd ask the Court to
12 allow us to work with our court reporter for the purposes of
13 going back to that testimony where it was discussed it was
14 one vial as opposed to three.

15 In fact, Judge, I specifically recall Dr. Reddic saying
16 -- I think he's a PhD doctor. Saying that he took the one
17 vial and converted it into three vials. I'm almost
18 positive. And we can have the court reporter -- I just want
19 the court reporter to have our record clear --

20 THE COURT: Right.

21 MR. GARRETT: -- so I know what we're agreeing to with
22 the chain.

23 THE COURT: And again, assuming Dr. Reddic did testify
24 to that, would he have gleaned that information from the
25 audit track report? Because as we all recognize, I mean, he

1 wasn't actually involved in this. Would he have gleaned
2 that -- assuming, Solicitor, that he testified to that,
3 would he have gleaned that from the audit track report?

4 MR. BLACK: I don't think -- I don't think that he -- I
5 have no idea, Judge. I'll be honest. I don't think that he
6 has, but I don't -- from my conversations with him he hasn't
7 indicated that there were three different vials

8 THE COURT: Now, let me go back, Mr. Garrett. So your
9 recollection is that this came from Dr. Reddic and not Nurse
10 Baker where -- I think Mr. Henderson alluded to Nurse Baker.

11 MR. GARRETT: Judge, I don't --

12 THE COURT: And I'm not trying to pit the two against
13 each other.

14 MR. GARRETT: No. I don't recall. Maybe Nurse Baker
15 actually -- you know, she said she didn't recall at all.
16 She knew that she didn't take the blood. She knew that it
17 was -- I mean, it was taken out of a central line, which is
18 different from what --

19 THE COURT: Right.

20 MR. GARRETT: -- different from what these records are
21 showing. Which is shocking for credibility, but they're
22 there. But Reddic - I asked him about spinning up the blood
23 because I didn't know how -- I mean, I was honestly just
24 inquisitive about how he did it, and he said he took the one
25 vial and they split it up into three. I mean, that's what

1 -- I believe, if she'll go back and look at the record, I
2 believe that's what you'll --

3 MR. BLACK: Judge, honestly that's a weight issue. I
4 feel like they have every right to cross-examine all of
5 these individuals that have already testified before lunch
6 about any of these questions. But your ruling in terms of
7 the chain of custody is pretty much settled. I don't see
8 why we're -- why we're not starting back in front of the
9 jury.

10 THE COURT: Well, let's go ahead and take a break.
11 And, Madam Court Reporter, if you can go back to Dr.
12 Reddic's in camera testimony upon Mr. Garrett's cross and
13 let's -- let's take a look at it before we -- before we go
14 any further. So we're off the record. Everybody be at
15 ease.

16 (Whereupon, a recess was held.)

17 THE COURT: We're back on the record, and let's go
18 ahead. We need to get moving with this. The issue was
19 raised by the Defense that -- they're taking the position --
20 and they've got a doctor who's been with us most of the
21 time. They're taking the position that the methodology and
22 the machine that the hospital uses is not reliable. And the
23 Defense's further take in the position -- certainly if I
24 misquote anything you've told me then you can correct me.
25 The Defense has further taken the position that this element

1 of reliability, while I need to determine reliability
2 through the State's witnesses, I don't necessarily need to
3 hear from the Defense in determining admissibility.

4 In other words, assuming that the lab folks state that,
5 you know, their methodology is reliable and the quality
6 control and that sort of thing, and we really -- we touched
7 on that, I think, a little bit in chain of custody. But I
8 assume that the State's going to get them to testify in
9 those particular areas. And if I'm satisfied it's reliable
10 then it's going to come in. And then if the Defense wants
11 to attack it's reliability then you have every right to do
12 that in your case and chief. But I don't think I have to
13 hear from all sides on reliability before I determine
14 admissibility. So again, assuming that the State's
15 witnesses are going to get into the reliability issue, then
16 -- and if I'm satisfied, I'm going to allow it in assuming
17 everything other thing is met. But I'm not going to allow
18 you all to put up your expert at this stage to attack
19 reliability. Okay?

20 MR. GARRETT: Thank you, Your Honor. We understand
21 your ruling. Our other question would be, Judge, we're not
22 limited in our cross-examination of their chain in front of
23 the jury; is that correct?

24 THE COURT: Right. When these lab people come back and
25 testify for the jury, no, it's -- it's full

1 cross-examination, right. Is that responsive to your
2 question?

3 MR. GARRETT: It is. I just want to make sure that
4 they basically do what they did before. They built their
5 chain, because I'm assuming that's why you --

6 THE COURT: Right.

7 MR. GARRETT: -- you approved it. So if they --

8 THE COURT: No. I think cross-examination is going to
9 be -- you know, maybe wide open is not the correct way to
10 term it. But I think you understand what I'm saying.

11 MR. GARRETT: Yes. I just want to make sure we're not
12 limited.

13 THE COURT: No. I don't think I can -- well, I can
14 limit you, but I don't see why I would at this stage.

15 MR. GARRETT: Thank you, Judge.

16 THE COURT: Unless I hear something that you bring out,
17 Mr. Garrett, that causes me some pause.

18 THE COURT: Yes, sir.

19 MS. MERRILL: Your Honor, may I clarify one thing? You
20 want us to do the reliability through cross-examine in front
21 of the jury that was not proffered in camera, right? I'm
22 just making sure that --

23 THE COURT: Right. Without proffering your expert.
24 That would be done in your case and chief. But certainly
25 you can cross-examine the State witnesses on reliability.

1 Sure.

2 MS. MERRILL: No, I also meant like proffering the
3 State's witnesses. We're just going to do it all over
4 again, right?

5 THE COURT: Yeah, we're going --

6 MS. MERRILL: Just making sure I understand.

7 THE COURT: Right, yeah. We're going to bring the jury
8 out and we're going to go in full. Okay? Let's bring the
9 jury out.

10 (Whereupon, the jury entered the courtroom at 2:02
11 p.m.)

12 THE COURT: Let the record reflect the jury's back in.
13 Ladies and gentlemen, thank you for your patience. Again, I
14 always try to impress upon juries that while we've got you
15 back in the jury room doesn't mean we're sitting around
16 talking about football and drinking coffee. We're working.
17 When you have a very important case, as this case is, very
18 significant case, and then when you couple it with five
19 excellent attorneys, then there are a lot of issues that the
20 Court has to deal with. That's just the nature of this
21 business. So what we have been doing, even though I think I
22 only allowed the lawyers about maybe 45 minutes of
23 lunchtime, maybe even less than that, since you have been
24 away and back in the jury room we have been working. And
25 so, thank you for your understanding. Thank you for your

1 patience.

2 Solicitor, call your next witness..

3 MR. BLACK: State recalls Angela Waite.

4 ANGELA WAITE, having been
5 previously sworn, testifies as follows:

6 REDIRECT EXAMINATION

7 BY MR. BLACK:

8 Q Ms. Waite, you previously testified right before we
9 broke; is that correct?

10 A Yes, sir.

11 Q Okay. And just to kind of refresh everybody's memory,
12 you work for LifeFlight; is that correct?

13 A I do.

14 Q And you were the nurse involved with the Defendant --

15 A I was.

16 Q -- carrying him from Greenwood to Greenville?

17 A Yes.

18 Q Now, when you were in Greenville can you tell us what
19 you did once you arrived in Greenville?

20 A So usually 10 to 20 minutes before we arrive we give a
21 heads up call on the red phone, they call it in Greenville,
22 which is kind of their emergency phone in the ER telling
23 them our ETA and the patient status. Then once we arrive we
24 unload the patient. This patient was unloaded hot, which is
25 with the rotor blades still running. So we unload the

1 patient. We give a thumbs up once we hear from our pilot to
2 allow the Greenville crew to come out and help us unload
3 this patient from the helicopter. And then with all the
4 equipment, blood, we pile all that on. Make sure the tube
5 has stayed in. Really vigilant about that. And then we all
6 wheel patient in to the ER through the ambulance bay.

7 Q So you go -- you go with the patient into the hospital?

8 A I do.

9 Q And how long are you there typically with a patient?

10 A We're not supposed to stay more than maybe 15, 20
11 minutes. But I like to stay -- my partner teases me because
12 I'm a nurse. I like to stay as long as we can just to see
13 if they need help, what's going on.

14 Q Do you remember how long you stayed in this particular
15 case with this individual?

16 A I think we were there about an hour.

17 Q And this whole time are you moving back and forth to
18 the chopper to the hospital, or are you in the hospital?

19 A No. I'm in the trauma bay.

20 Q Now, in the trauma bay what's going -- can you describe
21 what's going on in the trauma bay?

22 A So when we arrive -- and Greenville Hospital System is
23 really good. They're a level one trauma. When we arrive
24 they have the doors open for us. We're rushing the patient
25 in to the trauma bay. As we come through the trauma bay

1 doors it gets about -- it feels like 90 degrees with all of
2 our gear on. Probably 80 something. We are met by a group
3 of physicians, residents, nurses and respiratory, lab tech,
4 radiology crew. And as soon as we walk through those two --
5 the double door we -- one of us gives report, and we -- they
6 help us transfer the patient over to their gurney.

7 Q About how many people were kind of in this area, if you
8 can put an estimate on it?

9 A From that -- in that trauma bay to the little alcove
10 where the radiology equipment is, probably 20.

11 Q So there's a lot of people in here working on an
12 individual?

13 A A lot of people.

14 Q And was that the case in this particular individual?

15 A Yes.

16 Q And the primary concern was to try to save his life?

17 A Yes.

18 Q Now, in this particular case did Greenville Memorial,
19 did they take blood from him relatively soon once you got
20 there?

21 A Yes.

22 Q How soon was that?

23 A As soon as we -- we had him in what we call a life
24 blanket, and especially -- this was November and I know it
25 was freezing cold out there. I think we took a life blanket

1 to the actual ambulance on the scene. So we had him in this
2 life blanket to keep him thermoregulated. I know he was
3 cold already because we were giving blood. Cold night. So
4 we transported him over to their gurney with that. And then
5 we always have to take that off because we don't some
6 hospitals like to keep them and throw them away, and that's
7 a \$500 blanket. So we pull the blanket out, and as soon as
8 that happens, as we're giving report, there's a doctor at
9 the head making sure the airway is still patent, making sure
10 -- then there's a nurse that comes up to the side. I
11 remember he had so many fractures -- long bone fractures,
12 which is why we couldn't drill him. But I know -- it was
13 the right side, because I'm standing up here. So right side
14 of him, I believe -- I know Dr. Snow was on the left side
15 talking to whoever the resident was at the head of the bed.
16 So immediately they get to work on him.

17 Q Okay. And somebody got blood from him at that point?

18 A Yes.

19 Q And do you know who that was?

20 A I thought it was Amanda. And I did not know her last
21 name, but I recognized her face, because she works the same
22 shifts as Amanda Westhart who I do know well. But she was
23 on the right side of the bed. Dr. Snow was on the left. I
24 know he was still very hypotensive. I think he was in the
25 80s or the 90s systolically on his blood pressure by the

1 time we arrived with what we had given. But I know that
2 when they are that hypotensive it is hard to get a blood
3 return. It's hard to poke and get that good blood return.
4 So I believe -- I believe it was Amanda who was -- I know
5 she was poking on that antecubital.

6 Q And do you know her last name?

7 A Baker.

8 Q And do you know what the purpose of getting blood for?
9 Why do they do that?

10 A Uh-huh. Mainly they're looking at hemoglobin,
11 hematocrit. Any vital labs -- life saving labs, you know.
12 He was coming in. We knew he had bleed out in his pelvis
13 and that'll -- that'll kill you within an hour if it's
14 openly bleeding and there's no stopping or no receiving
15 blood products. So they get hemoglobin, hematocrit. They
16 get a blood glucose. They get anything that they can work
17 on right then to make him more stable for OR. Sometimes
18 they take them straight to OR.

19 Q So they're sending these off to the lab to get tested
20 to figure out what's going on?

21 A Yes.

22 Q And you have -- you've worked for other agencies as
23 well that fly patients to and from different locations; is
24 that right?

25 A I did, yes.

1 Q And what was that place again?

2 A I worked for Eagle Med. It's a fixed wing. Our base
3 was fixed wing. They have -- they're out of -- they were
4 out of Wichita at the time. They've been taking over by
5 AMGH, which Air Medical Group Holdings, which Med-Trans is
6 under that. So, but that the time we just had fixed wing
7 and we were located at Donaldson Center in Greenville and we
8 flew the Eastern Seaboard with critical patients.

9 Q So you would go all up and down the Eastern Seaboard?

10 A Uh-huh.

11 Q And you've been to major hospitals throughout the
12 Eastern Seaboard?

13 A I have.

14 Q Can you tell us some of those?

15 A Sure. Boston Children's. An incredible hospital. We
16 took a patient there. We've been to Vanderbilt, Charleston,
17 West Virginia. We've been to Virginia University Medical
18 Center. I can't remember the one in Tallahassee but we've
19 been there, Jacksonville.

20 Q MUSC in Charleston?

21 A Oh, yes. MUSC and Mississippi. I've been to
22 Mississippi.

23 Q And how does -- how does Greenville's trauma unit
24 compare to these other places?

25 A I would -- it's one of my favorites. Greenville and

1 Boston Children's are my two favorites, by how they take
2 care of patients.

3 Q And then you -- after you had done what you had to do
4 with this particular patient you all eventually left; is
5 that correct?

6 A Uh-huh.

7 Q Do you know if you got any more flights that evening?

8 A I looked the other day at it and I do not believe we
9 did. I tried to look to see the flights we had had around
10 it, because I know we had some really emotional cases,
11 emotional calls around his, too. And I do not believe we
12 did that night.

13 MR. BLACK: Please answer any more questions that Mr.
14 Garrett might have for you.

15 THE COURT: Defense cross-examination.

16 MR. GARRETT: Thank you.

17 RECROSS-EXAMINATION

18 BY MR. GARRETT:

19 Q Thanks again for coming back. Let me -- as I
20 understand it, you think that you recall the person that you
21 recognize poking on his right arm?

22 A It would have been on the right -- his right side.

23 Q On Adam's right side?

24 A Yes.

25 Q And the purpose for that would be to take blood?

1 A Right.

2 Q And --

3 A And to establish another IV, if possible. Because
4 sometimes after all the fluid we've given those veins poke
5 up a little bit more and you're able to get another IV site.

6 Q And it was chaotic. I understand that.

7 A Uh-huh.

8 Q Do you recall approximately how many people, just
9 approximately, were in the trauma bay? Were there other
10 traumas going on at the same time, or do you recall that?

11 A There are times when there are. I cannot remember. I
12 just remember Dr. Snow, because he's one of my favorites,
13 and I know Amanda Westhart was here on the podium, and --

14 Q Why would she be up on the podium, this Amanda
15 Westhart?

16 A She's kind of the nurse in my -- to my knowledge -- I
17 don't work there. But she's the one that's kind of in
18 charge of the -- of that trauma. So she's the recorder. No
19 one else records. I know residents do on their little
20 papers. But for computer charting it's nursing charting --

21 Q So she's kind of up high?

22 A Uh-huh.

23 Q And there may be several traumas going on all at once
24 and she's kind of at the head of it and kind of --

25 A Well, she's only head over that one trauma.

1 Q That one, okay.

2 A And then there's a curtain and then there's another
3 trauma bay. So we don't even see in there.

4 Q I got you.

5 A We know if it's being used, but that's about it.

6 Q You don't recall whether it was being used or not?

7 A No.

8 Q At what time did Dr. Snow put a central line in him?

9 A I know he was on his left side. The patient's left
10 side. And I know there was a resident -- two residents
11 maybe at the head of the bed and then respiratory because
12 they have a ventilator set up, because we call that in so
13 that they're prepared. I do not -- see, once we give report
14 my -- once I give bedside report I'm done. I'm just there
15 if they need an extra hand. Maybe poke at a fluid bag or --
16 I do not know of a time.

17 Q Since we talked last we learned that there was -- in
18 this case he had a central line already established, and
19 instead of going through the arm they got their sample
20 through the central line. And that would be standard
21 protocol, wouldn't it?

22 A Absolutely. And especially -- and now they, you know,
23 would be working on the arm.

24 Q Right.

25 A And probably both arms. But yes, I know with his

1 hypotension he was -- he was really critical.

2 Q I got you. So in addition then to the central line
3 draw you're fairly comfortable that there was another draw
4 of the arm?

5 A I know that there was poking in that right arm.

6 Q Well, why would you be poking?

7 A Well, to establish another line.

8 Q I got you. I got you. In order to do a blood draw?

9 A Uh-huh.

10 Q Now, you said earlier --

11 THE COURT: You need to verbally answer that last
12 question.

13 THE WITNESS: Oh, I'm sorry.

14 THE COURT: That's okay. Verbally answer that last
15 question.

16 A If we can -- sometimes when they're doing central lines
17 and at the same time it is chaotic. Pretty much a chaotic
18 mess. Controlled chaos. But when -- if a physician is
19 doing a central line, sometimes before he even gets that
20 threaded or whatever, if we -- the nurse isn't trying to get
21 that other line. So I don't know timeframes. But I know
22 everybody is working on the patient.

23 Q I understand. And so, your best recollection is, is
24 that Nurse Waites was on his right-hand side drawing blood.
25 And you actually said you recall her cleaning it maybe with

1 some kind of --

2 A Nurse Baker.

3 Q I'm sorry. Nurse Baker.

4 A And I -- I don't recall for sure. I know that if they
5 type and screen -- which he was so critical they always type
6 and screen. So if it was type and screen they would have
7 used Hibiclens, because that package comes at least -- most
8 hospitals that package comes with -- I mean, it's like in a
9 package deal.

10 Q So you would recognize that package?

11 A Oh, absolutely.

12 Q And to your -- do you -- I'm trying to -- I know this
13 is a long time ago.

14 A I know.

15 Q But you feel comfortable that she was over there poking
16 trying to find a vein?

17 A Uh-huh.

18 Q Is that what the nurse --

19 A I do.

20 Q -- was trying to find a vein? And then if she was
21 trying to find a vein she was trying to do blood testing in
22 order to determine to make sure instead of giving him --
23 what did you say, O-negative?

24 A Right.

25 Q You wanted to find out if he's got A or B, whatever?

1 A Right, for surgery.

2 Q You were trying to type it?

3 A Right. They want to type it for -- uh-huh.

4 Q So there's a certain chemical you put on the arm in
5 order to then invade with a syringe, I guess, to withdraw
6 it?

7 A Protocol at most hospitals would be that Chlorhexidine
8 prep.

9 Q And your recollection is that's what she was doing?

10 A That was my guess, because he was so hypotensive. We
11 knew he was going to go to the ER because he had an unstable
12 pelvis. So we knew -- there was no outward bleeding. We
13 knew it was all right there. So we knew that would probably
14 be what she was doing.

15 Q And like you said, organized chaos.

16 A Uh-huh.

17 Q Were there a lot of techs there?

18 A Techs?

19 Q Technical people, respiratory people, med techs.

20 A I don't know about med -- med techs. Respiratory, they
21 usually stay at, you know, the head of the bed to the
22 patient's left where the ventilator is. Then on the other
23 side usually is where all the blood products. They have
24 their little IV poles hanging from the ceiling. That's
25 where we put all that in. And towards the middle of the

1 room where the -- where it divides into the two trauma bays,
2 that's usually where one of the residents stands and writes
3 up his or her report, at that table. And then a bunch of
4 radiology techs at the foot of the bed.

5 Q Ten people, one people?

6 A When we start it's like 20 people, because it's hard to
7 get in there.

8 Q The doctor takes control of the shift --

9 A Yes.

10 Q -- and he starts calling out orders?

11 A He does.

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

13 Q Are you pretty sure that Baker took a vial of blood?

14 A I know she was working on that arm.

15 Q In your prior testimony you suggested that she took a

16 --

17 A I thought she -- I thought if she had gotten the blood
18 it would be from that arm. But that would be in their
19 charting.

20 MR. GARRETT: Okay.

21 THE COURT: Anything in redirect?

22 MR. BLACK: No, sir, Your Honor.

23 THE COURT: Thank you very much. Any objections to
24 this witness being excused?

25 MR. GARRETT: None, Your Honor.

1 MR. BLACK: No, sir, Your Honor.

2 THE COURT: Ma'am, you are excused. You're certainly
3 welcome to remain with us, but you are free to leave the
4 courthouse.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 MR. BLACK: State calls Amanda Baker.

9 AMANDA BAKER, having been first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BLACK:

13 Q Ms. Baker, can you please introduce yourself to the
14 jury, please.

15 A My name is Amanda Baker. I'm a registered nurse at the
16 ER at Greenville Memorial.

17 Q And how long have you been at Greenville Memorial?

18 A I've been there eight years.

19 Q And where did you go to nursing school?

20 A Clemson University.

21 Q And you've been at Greenville since you graduated?

22 A No. I worked for one year at AnMed right after
23 graduation.

24 Q I guess we'll jump right into it. What center -- or
25 what area of the hospital do you work at?

1 A I work in the ER, or emergency trauma center.

2 Q And how long have you been there?

3 A For eight years.

4 Q Do you remember working on November the 15th, 2014,
5 kind of that evening?

6 A I don't.

7 Q Do you remember -- what typically is your shift?

8 A I work 7:00 p to 7:00 a.m.

9 Q So usually at night?

10 A Yes.

11 Q Do you have a certain -- do you have a certain
12 identification number that identifies you at the hospital?

13 A I do.

14 Q And what's the purpose of that number?

15 A That's used in labeling blood specimens, or any kind of
16 specimen that's sent to the lab.

17 Q And how long have you had that particular number?

18 A Since being employed there.

19 Q Has your number changed at all?

20 A No.

21 Q So in November of 2014 it's the same today as it was
22 then?

23 A Yes.

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

25 THE COURT: Sure.

- 1 Q I'm showing you what's been marked as State's No. 68.
2 Do you know what that is?
3 A This is the lab report.
4 Q It's the lab audit trail?
5 A Audit trail.
6 Q Now, the number -- is your -- is your nurse
7 identification number on that particular chart?
8 A It is.
9 Q And where is it on that particular chart?
10 A It's up beside phlebotomy tech. It's 27174.
11 Q 27174, that's your number?
12 A Yes.
13 Q Okay. And is that the same number that's on this lab
14 document?
15 A Yes.
16 Q And why exactly is your -- is your lab tech number --
17 or is your nurse number on this lab document?
18 A Because I am the one that apparently drew the blood --
19 or didn't draw the blood but labeled the blood.
20 Q And in this particular case is there a time that's
21 associated with your number?
22 A It says it was collected at 2054.
23 Q And what time is that?
24 A That's 8:54 p.m.
25 Q 8:54. Now, you stated something previously. You said

1 you didn't draw the blood; is that right?

2 A According to the nursing documentation, no.

3 Q Okay. And what do you -- I'm going to -- I'm going to
4 show you a document. Is that the document you're referring
5 to?

6 A Yes.

7 Q And you said that's the nursing -- what did you call
8 that again?

9 A The nursing documentation.

10 Q And is your name on that documentation?

11 A It is not.

12 Q But your name is on the -- or your number is on the
13 laboratory report?

14 A Yes.

15 Q Now, in Greenville you all are level one trauma; is
16 that right?

17 A Yes.

18 Q You all -- do you all see pretty crazy stuff?

19 A Very.

20 Q Can you describe some of the -- maybe some of the stuff
21 that you all see?

22 MR. GARRETT: Relevance, Your Honor.

23 THE COURT: Well, I think it's probably laying some
24 sort of foundation to what -- so I'll allow it right now,
25 but you can certainly -

1 MR. BLACK: I'll tighten up the question, Your Honor.

2 Q Ms. Baker, do you all oftentimes get patients that time
3 is of the essence in saving their lives?

4 A Oh, very much so.

5 Q Okay. When you all get patients of this kind of
6 magnitude can you describe for the jury kind of what's going
7 on in the trauma center?

8 A So it -- from the time of the accident to when EMS
9 calls out -- they call it a trauma alert so that the
10 hospital is made aware that we have a trauma coming in.
11 They specify whether it's level one or level two. Level one
12 is the most serious trauma that you can have. This -- what
13 we're in reference to today was a level one. So we prepared
14 the bay. All of our -- the physicians that are there, the
15 residents. We normally have one nurse at beside, one nurse
16 documenting, a tech, which is there to help put the patient
17 on the monitor, do all tech things, and a respiratory
18 therapist. So everything is -- there's a lot of people in
19 there. Probably -- in a normal day there's about 10 people
20 probably at the bedside in the trauma bay.

21 Q And would you consider that to be kind of controlled
22 chaos?

23 A It is.

24 Q Now, in this particular nurse record your name is not
25 on this record; is that so?

1 A It is not there.

2 Q When a sample is collected from the trauma unit how
3 does that end up getting -- how does that sample end up
4 getting to the laboratory for testing?

5 A Once it's labeled and confirmed with the patient it's
6 then handed over either the nurse -- which it's normally not
7 the nurse because -- unless we have a multiple -- multitude
8 of nurses. But it's normally the tech that walks the blood
9 to the lab.

10 Q Now, in this particular case would your name have
11 appeared on the vial of blood that was drawn from the
12 Defendant?

13 A My name, no.

14 Q Would your number have appeared? Your identification
15 number?

16 A It would have if it's documented here on the lab
17 report.

18 Q Okay. And in this particular case how was this sample
19 collected?

20 A According to the nursing documentation it says that the
21 labs were drawn with central line placement.

22 Q And what is -- tell us what that is?

23 A So when people come in to the trauma bay we either do a
24 venipuncture, which is just a straight stick to get blood,
25 like with a butterfly needle. Another way would be to start

1 an IV and get the blood at the same time as starting the IV.
2 But in this instance it was -- it says it was drawn with a
3 central line placement. So central line is something that a
4 physician puts in in a very sick patient. Someone who needs
5 a lot of fluids, a lot of -- whether it's blood or
6 medications very rapidly. And it's a line that goes into a
7 very big vein and it goes kind of directly to the heart. So
8 it says that the blood was drawn at that time, and it says
9 by Snow. Indicating Dr. Snow.

10 Q So he put the central line in?

11 A According to this documentation.

12 Q And how did -- how did you come to acquire this blood
13 sample?

14 A Well, in normal -- I don't recall this specific event,
15 but in normal cases the doctor, if they get the blood off of
16 the line, they hand it over to the nurse. We then put it in
17 the tubes that are sent to the lab for processing. We label
18 them and then send them up.

19 Q Now, you mentioned tubes heading to the lab. How does
20 blood get to the lab from where you guys are? Are there
21 several different ways?

22 A From the traumas they are walked up. Other methods,
23 they can be tubed up in the tube system. But when they're
24 traumas and they're trauma alerts they're considered life or
25 death they're walked up.

1 Q So in this particular case it more than likely would
2 have been walked up?

3 A Yes.

4 Q And how was the blood -- can you describe for the jury
5 how this particular sample was kind of sealed up?

6 A Once we put the blood in the tube it's a vacuum system,
7 so we just put -- when the doctor draws the blood off of the
8 central line we put a Vacutainer on there and place the tube
9 into the Vacutainer, and that just allows the blood to go
10 into there. And we pull the needle out and it's already
11 sealed that way. And then we put it into -- after labeling
12 it, put it into a biohazard bag and seal it and then give it
13 over to the tech, or whoever takes it up.

14 Q Takes it to the lab?

15 A Yes.

16 Q And just -- I have no idea, but where is the -- where's
17 the trauma unit in relation to the lab at the hospital there
18 in Greenville?

19 A The trauma unit is on the first floor and the lab is on
20 the second floor.

21 Q And, Ms. Baker, you have been a nurse or how long
22 again? Eight years you said?

23 A I've been at Greenville for eight, yes.

24 Q Eight years. Yes, ma'am. And you see a lot of
25 critical care trauma patients that you deal with?

1 A Yes.

2 Q Do you remember all the details about all the patients
3 you've ever dealt with?

4 A No.

5 Q How quickly thereafter once, you know, the blood is
6 received from Dr. Snow, given to you, is it's sent up to the
7 lab?

8 A I mean, it's supposed to be walked immediately.
9 Whether it was or not I can't recall that.

10 Q But typically the standard procedure is to kind of
11 immediately get it up there as quickly as possible?

12 A Yes.

13 MR. BLACK: I believe that's all the questions I have
14 right now, Ms. Baker. Please answer any questions Mr.
15 Garrett might have for you.

16 THE COURT: Defense cross.

17 CROSS-EXAMINATION

18 BY MR. GARRETT:

19 Q Thank you for being here today. You don't remember
20 this case at all, do you --

21 A No, sir.

22 Q -- as far as an independent personal recollection?

23 A No, sir.

24 Q And if the doctor had ordered you to take a blood draw
25 on the arm the venous way you would have done it?

1 A Yes, sir.

2 Q And you just don't recall whether or not you did or
3 not?

4 A Correct.

5 Q And if there was another nurse, a Ms. -- young lady
6 over there, Ms. Waite. If she had seen you working on the
7 arm, poking on the arm to get in either an IV or a blood
8 assay -- I guess some type of blood trying to determine
9 whether or not it's an A or whatever. You would have done
10 whatever the doctor told you to do, wouldn't you?

11 A Yes, sir.

12 Q All right. And we've just now -- or earlier, after we
13 worked on this a little bit, learned that, in fact, you
14 didn't actually draw the blood that was used here. It was
15 allegedly taken out of a machine, or taken out of a --

16 A Out of a central line.

17 Q Out of a central line.

18 A According to the documentation.

19 Q Okay. And if you had taken blood, what -- what would
20 happen to that blood?

21 A The blood that I allegedly took from the arm?

22 Q Right.

23 A That would have -- normally that would be sent up to
24 the lab. That would be the initial blood draw.

25 Q Okay. Here it says collection one. Collection number

1 one. Does that mean one vial?

2 A Where?

3 THE COURT: What are you looking at, Mr. Garrett?

4 Maybe help her.

5 Q Well, first let me ask you generally. Do you know how
6 many vials you took? If you don't remember -- you don't
7 remember taking any?

8 A But normal process is to draw four.

9 Q Four?

10 A One of each color is the normal process.

11 Q Four?

12 A In the trauma bay, yes.

13 Q Okay. And if so -- if you had been asked to draw blood
14 you would have drawn four?

15 A Right, because each color tests different things.

16 Q I got you. And -- but you don't remember?

17 A No, sir.

18 Q And if you had been asked by the doctor to draw four
19 you would have drawn four?

20 A Right. It's standard protocol.

21 Q And you said it was supposed to be drawn and got up to
22 the lab quickly?

23 A Right.

24 Q Do you know what time you allegedly drew the blood?

25 A Here it says 2054, and then it was --

- 1 Q What time would it have been received upstairs?
- 2 A It says 2124.
- 3 Q How long is that?
- 4 A It's 30 minutes.
- 5 Q So nobody's in a big hurry if it took 30 minutes to get
- 6 from there upstairs, right?
- 7 A Right.
- 8 Q I'm assuming you all had other things to do?
- 9 A Right.
- 10 Q More important things to do than worry about blood,
- 11 right?
- 12 A Well, no. That is a very -- a priority.
- 13 Q But it sat down there -- once you take it where does it
- 14 go?
- 15 A It goes into the tube, into the -- into the bag, and
- 16 then the tech takes it up there. And then they have to hand
- 17 it to a person at the lab window.
- 18 Q And you don't recall doing that in this case?
- 19 A No.
- 20 Q Or giving it to a tech?
- 21 A No, sir.
- 22 Q Or the tech taking it upstairs?
- 23 A No, sir.
- 24 Q Do you know what the name of the tech would be?
- 25 A The only one listed here is Bill Evans. He's the only

1 tech present, according to this documentation, the day that

2 --

3 Q So there might have been a person named Bill Evans who
4 had possession of this blood?

5 A Uh-huh.

6 Q Affirmative. That was yes?

7 A Yes.

8 Q You said yes?

9 A Yes.

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

11 THE COURT: Redirect?

12 MR. BLACK: No, sir, Your Honor.

13 THE COURT: You can step down, ma'am. No objection you
14 are free to leave or you're welcome to remain with us.

15 (Whereupon, the witness stepped down from the witness
16 stand.)

17 MR. BLACK: The State calls Robert Smith.

18 MR. GARRETT: May we approach?

19 THE COURT: Sure.

20 (Whereupon, a sidebar was held.)

21 ROBERT SMITH, having been
22 previously duly sworn, testified as follows:

23 Q Can you introduce yourself to the jury, please?

24 A Yes. My name is Robert Smith. I'm a medical lab tech.
25 I work at Greenville Memorial Hospital System.

1 Q And, Mr. Smith, how long have you worked at Greenville
2 Memorial?

3 A Around 15 years. A little over 15.

4 Q And currently you're not actually at Greenville
5 Memorial. You're in the -- still in the Greenville Hospital
6 System, correct?

7 A That's correct.

8 Q Which hospital are you at now?

9 A Greer Memorial Hospital.

10 Q Greer?

11 A Greer Memorial Hospital.

12 Q And can you talk to the jury a little bit about what
13 your job is as a lab tech.

14 A As a lab tech we process blood, body fluid, urine,
15 stool and spinal fluid which is submitted to the lab.
16 Either we run the test on it or we send it out to the
17 facilities that do run the tests on those specimens,
18 depending on what type of test it is.

19 Q In your position, in your job, do you oftentimes run
20 tests on items, samples?

21 A Yes, sir.

22 Q What are -- and you said those were blood and urine?

23 A Blood, urine, stool, spinal fluid.

24 THE COURT: Please speak up, sir.

25 THE WITNESS: I'm sorry.

1 Q How often -- how often are you guys running samples?

2 A Twenty-four hours a day.

3 Q So the lab stays open all the time?

4 A Yes, sir.

5 Q Typically what is your shift? Is it a 12 hour shift?

6 A I think at that time my shift was 10 hours and eight
7 hours. They alternated it.

8 Q Ten and eight. Can you describe to the jury kind of
9 the layout of how the lab system -- how the lab -- the
10 Greenville lab works, previously where you worked at at
11 Greenville Memorial?

12 A In the department -- well, in the lab I worked in was a
13 large area, but it was divided in various departments. We
14 had a specimen processing area that receives specimens,
15 labeling them and then send them to the various departments
16 for testing. We had a blood bank department for type and
17 screens. We had hematology for coagulation and hematology.
18 And chemistry ran -- chemistry, toxicology. And then we had
19 a records department that send those test out if they need
20 to be sent out for tests.

21 Q And tell us about kind of the security at the lab. Can
22 any -- can I just walk up there if I wanted to go back there
23 and check it out?

24 A No. We have -- the doors are actually secured. They
25 have -- we have to have badge access in order to enter the

1 lab. If anyone were to -- they will have to identify
2 themselves to be let into the lab also. You generally just
3 had employees in the laboratory.

4 Q So nobody can just walk in there willy-nilly?

5 A No, sir.

6 MR. BLACK: May I approach, Your Honor?

7 THE COURT: Sure.

8 Q I'm showing you what's been marked as State's No. 68.
9 Do you know what that document is, Mr. Smith?

10 A Yes, sir.

11 Q And what is that particular document?

12 A This is an audit trail printed out from my computer
13 system to show the specimen as it was received, processed,
14 resulted. Pretty much a trail of the specimen as it was
15 processed in our laboratory.

16 Q It's a business record of the particular sample?

17 A Yes, sir.

18 Q Now, samples that come into the lab, are they given
19 unique numbers?

20 A Yes, sir.

21 Q Was a unique number given on this particular sample on
22 this audit trail you're looking at?

23 A Yes, sir.

24 Q And whose -- whose sample was that?

25 A This specimen was on an Adam Martyn Rowell.

- 1 Q Yes, sir. Was there a number associated with his name?
- 2 A Yes. There's a medical record number.
- 3 Q And you don't have to give us that medical record
- 4 number. Now, is your name anywhere on this audit trail?
- 5 A My name is not, but my employee identification number
- 6 is on this audit trail.
- 7 Q So you have -- you have a specific number associated
- 8 with your -- with yourself?
- 9 A Yes. All employees of the hospital have a number.
- 10 Q And how long have you worked at Greenville Memorial?
- 11 A Fifteen years.
- 12 Q Has your number changed at all?
- 13 A About five years ago our numbers -- we used to go by a
- 14 number we were actually assigned, but then they changed it
- 15 to this current -- my current number, so...
- 16 Q Greenville Hospital System probably got too big, right?
- 17 A Yes.
- 18 Q Your current number, what is that number?
- 19 A 12524.
- 20 Q 12524?
- 21 A Yes, sir.
- 22 Q And is that the number that you had in November of
- 23 2014?
- 24 A Yes, sir.
- 25 Q Same number?

1 A Yes, sir.

2 Q This particular audit trail, does it say when you got
3 Mr. Rowell's -- when you got his sample of blood?

4 A It shows when I received his specimen.

5 Q And how did you receive this sample?

6 A If -- in a case of a trauma they would have brought --
7 the ER was, by protocol, was supposed to walk a specimen to
8 the laboratory, identify it as a trauma and hand it to a
9 tech to receive. In this particular case I don't know what
10 time it actually -- well, arrived. But I received it and
11 identified the specimen at 2124.

12 Q And how do you actually receive a specimen? How is it
13 -- how is it packaged?

14 A Usually when they bring it to the lab it's in a -- they
15 identify ER specimens in a -- kind of a blue, or a light
16 blue bag. It's to know that it's being stat, and that it's
17 a biohazard because it had some blood in it.

18 Q Yes, sir.

19 A And they would have had all -- any tubes they would
20 have -- all the tubes they collected on that person in this
21 bag when they bring it to the lab.

22 Q So you open the bag and then start doing your job on
23 the testing?

24 A That's correct.

25 Q And you got -- and you received it what time?

1 A 2124.

2 Q And how do you -- how do you make a note of that? Do
3 you log it into like a computer system?

4 A Yes. When -- the ER orders the assays that they want
5 run on that blood. We actually get a print. We get printed
6 labels that denote those tests that they want run, and it
7 actually has the patient information on the tube. But we
8 match up with the specimen that comes to the lab so we make
9 sure we probably identify them. We then enter in the
10 collect time and the name of the -- the tech code of the
11 person that collected that specimen, and then we labeled
12 those specimens and then sent them to the various
13 departments after either centrifugion or leave them as whole
14 blood, depending on the assay.

15 Q Now, do you remember this particular sample?

16 A No, sir.

17 Q You don't remember handling this particular one?

18 A No. We handle numerous samples on a daily basis.

19 Q What about a sample from like two weeks ago? Do you
20 remember handling that one?

21 A No. Because we -- we handle numerous specimens.

22 Q In your shift how many samples would you typically
23 handle?

24 A At the lab that I'm currently at maybe like -- it
25 fluctuates from day-to-day. So maybe anywhere from 20 to 60

1 specimens, or maybe even more than that.

2 Q But I imagine Greer might be a little bit smaller, less
3 work, as compared to Greenville Memorial?

4 A Yes, sir.

5 Q When you were at Greenville how many samples would you
6 handle on a shift?

7 A Oh, man. Over -- probably over 100 and stuff a day.
8 Definitely over a 100 for sure.

9 Q For sure? And, Mr. Smith, you said you've been working
10 for Greenville Hospital Systems for 15 years?

11 A Yes, sir.

12 Q Have you ever been reprimanded for anything, gotten in
13 trouble for tampering with any kind of sample or anything
14 like that?

15 A No, sir.

16 Q And can you describe kind of the layout of the lab? I
17 think you said it was -- it's a big lab --

18 A Yes.

19 Q -- with security. Is it open-air, is it closed? Can
20 you describe that for us?

21 A It's -- like I say, there's auto-doors that actually
22 are closed. But even still, like I say, you can't get into
23 the main lab. We have the specimen processing center. It's
24 like the start of the lab. And then it kind of fans out
25 from there into the various departments, but it's all

1 enclosed in one very large room.

2 Q And on this particular sample do you know what kind of
3 tests were run on this particular sample? I'm going to show
4 you what's been marked as State's 69.

5 A Are we just referring to the green top tube or just all
6 the specimens? Because there was more than one tube that
7 was submitted for this.

8 Q Yeah, let's get into that. So there's a couple of
9 tubes that are submitted.

10 A Right.

11 Q Why is that?

12 A Because they -- like I say, you -- generally in the lab
13 you don't want all -- because assays require whole blood,
14 some are plasma, some require serum, you know, based on the
15 assay and per the manufacturers established setup. So we
16 have to process those specimens according to the
17 manufacturer's guide and prepare those to be tested in the
18 various areas depending on that.

19 Q And so, tell us -- tell us kind of what the first step
20 is once you received it and you began kind of running it
21 through the lab. Tell us what first happened on this
22 particular sample.

23 A When we -- when we receive a specimen in the lab we
24 first identify it to make sure it's properly identified. If
25 it's not, we have to notify the floor or the ER if the

1 specimen is incorrectly labeled or something. Then they
2 will have to submit another specimen for testing. If the
3 specimen is properly identified we then match that with the
4 labels that -- with the orders that were generated by that
5 -- by the floor or the ER. Match that up that specimen.
6 Put the information in our computer system, which then
7 transmits that information to the -- our interface which
8 interfaces with our analyzers to tell it what to run once we
9 put that specimen on that machine to be run. And then I
10 will then either spin it or send it whole blood to that
11 department to be processed.

12 Q So in this particular case did you spin anything?

13 A Yes. From -- when I'm looking, I probably would have
14 spin definitely two of those specimens.

15 Q And why would you do that?

16 A Because the alcohol, creatinine and glucose would be
17 run on the green tube and they require plasma. The PT-PTT
18 would have been on the blue top tube and that requires
19 plasma. But they're run in two different departments, so I
20 would have had to spin those down and then take them to
21 those departments separately.

22 Q And these are the different types of tests --

23 A These are the different types of tests, that's correct.

24 Q And why are these different tests run on a specimen?

25 A It's -- depending on what the doctor is trying to

1 determine the health of that patient is based on what
2 results he gets and all. So he determines the tests that
3 are run. We don't determine those.

4 Q So it's the doctor's decision and you all are just
5 carrying out doctor's orders?

6 A That's correct.

7 Q Once you -- once you start running the tests are you
8 manually -- are you manually running these tests or is a
9 machine doing these tests?

10 A It's -- we're an automated laboratory. So I analyze
11 the program to run a set test.

12 Q So essentially you put this particular substance on a
13 machine and it starts running the test?

14 A Yes, according to the program.

15 Q And does it eventually generate a report of what's
16 going on in the samples?

17 A It generates a result, yes.

18 MR. HENDERSON: Your Honor, we've got a matter we'd
19 like to take up outside the presence of the jury.

20 THE COURT: All right. Mr. Foreman, ladies and
21 gentlemen of the jury, I've got a legal issue I need to deal
22 with. So if you'll go back to the jury room, and hopefully
23 it won't be too long we'll get you back out.

24 (Whereupon, the jury exited the courtroom at 2:49 p.m.)

25 THE COURT: Okay, Mr. Henderson.

1 MR. HENDERSON: Your Honor, we figure the best way to
2 do this would be outside the presence of the jury. This
3 audit trail, I believe is State's 69 or 68?

4 THE COURT: Well, there's two, 68 and 69, if my notes
5 are correct.

6 MR. HENDERSON: Okay. Then we may be referring to both
7 of them. The one that talks -- Your Honor, I would be
8 referring to State's Exhibit 68 talking about a collection
9 time of 2054, 8:54 p.m.

10 THE COURT: Okay.

11 (Whereupon, Court's Exhibit No. 11 was marked for
12 identification.)

13 MR. HENDERSON: Your Honor, this is something that I've
14 had identified as Court's 11. This is our client's surgical
15 records. And again, we keep hearing about all this talk
16 about the blood draws ordered by Dr. Snow. The central line
17 draw.

18 THE COURT: Right.

19 MR. HENDERSON: And again, it's going back here. And
20 again, these are the records produced by the State. It says
21 that the labs drawn with the central line were at 9:08 p.m.
22 And if we go back to State's 68 and 69, the blood draw
23 they're talking about was drawn at 8:54 p.m. So, I mean,
24 some of this testimony seems to be suggesting there was
25 multiple blood draws. I think we've got confirmed multiple

1 blood draws. So that's somewhat begging the question of
2 what got sent back to get tested. And that's -- again,
3 this goes back to the chain of custody issue, Your Honor,
4 why none of this stuff was meant for chain -- I mean, was
5 not meant to be used in the courtroom. And that's, I
6 believe, is --

7 THE COURT: Let me just take a peek at Court No. 11 you
8 referred to.

9 MR. HENDERSON: And, Your Honor, just pointing out
10 where it's at. It's just right there. It says labs drawn
11 with central line.

12 THE COURT: Solicitor, you -- I trust you have this
13 same document. It's some surgery notes.

14 MR. BLACK: I do, but I'm not sure which one you have,
15 Judge. Can I look and see which one you have?

16 THE COURT: Sure. You want to address this issue that
17 was raised?

18 MR. BLACK: I guess I -- what is the -- what is the
19 issue? Maybe I'm missing something.

20 MR. HENDERSON: Your Honor, I'll be very clear. We
21 keep hearing all this testimony about the blood draw being
22 collected at 8:45 pursuant to Dr. Snow's orders. Dr. Snow
23 didn't order it until 9:08. So again, we've heard some
24 testimony from Nurse Baker, and perhaps Nurse Waites, that
25 there was a potential -- a second blood draw. I don't know.

1 And again, but clearly the medical records indicate there
2 were two separate blood draws, labs drawn at 2108, at 9:08,
3 and previously it says 8:54. That's 14 minutes apart.
4 We've got two separate blood draws. And again, which one
5 made its way back there to get tested.

6 MR. BLACK: And, Judge, for this -- for argument sake,
7 I think that Ms. Waite and Ms. Baker have both testified
8 that basically it's controlled chaos. And, you know,
9 they're doing things kind of in a rapid pace. Multiple --
10 you know, they're doing multiple things. And so, if a time
11 doesn't necessarily match up to when it happened I don't
12 think that's really outside of the question, because from my
13 understanding of the testimony is a nurse stands up on a
14 platform and is trying to take notes while people are
15 yelling stuff at her. So from our perspective, this kind of
16 falls in line with the testimony that's already been given.

17 The audit trail is given from the sample of Mr. Rowell.
18 That's what we have been provided. There's been no other
19 audit trail to match up with this particular patient. I
20 don't really understand what the issue is. If they want to
21 -- if they want to argue that during their -- you know, the
22 defense of the case and cross-examine each of these people
23 about it, I don't have a problem with that. But it's
24 controlled chaos. They're trying to save their client's
25 life. I don't think this is anything outside of the

1 ordinary, Judge.

2 THE COURT: Well, first of all, and certainly I
3 recognize, even though I have not had firsthand experience,
4 I can certainly envision that it is controlled chaos and
5 their one goal and one goal only is to try to save a human
6 life, which I appreciate very much. However, I cannot use
7 that as a reason or an excuse to make any sort of legal
8 rulings. I can't -- I can't allow that to factor in my
9 decision. What has been presented is that blood was drawn
10 at 8:54 and delivered to the lab, or at least acknowledged
11 received by the lab about 30 minutes later and then tested.
12 That's -- that's the blood draw that we're going on. If
13 there was another blood draw then -- I mean, I can't control
14 that. All I can -- with the evidence before me is that we
15 have blood drawn at 8:54 which was later analyzed.

16 Now, if you want to cross-examine these witnesses, or
17 call your own witnesses, as to this discrepancy, you
18 certainly have that right. But what has been presented to
19 me, and what I have found to have proper chain of custody,
20 is blood drawn at 8:54.

21 MR. HENDERSON: But 8:54 was drawn through the central
22 line pursuant to -- I mean, that's what all the testimony
23 is. Pursuant --

24 THE COURT: I understand that. But I don't think
25 because there is a discrepancy in the medical records as to

1 time in and of itself would make it inadmissible. I don't
2 find that it would. Certainly it can go to the weight of
3 this evidence. But I don't think it determines
4 admissibility, the fact that one record shows -- I mean, it
5 could have been drawn again and that blood is wherever. I
6 mean, I don't know that. So I'm not going to rule that --
7 as to admissibility of this evidence solely based upon a
8 discrepancy or a notation in the records as far as time.

9 Bring the jury back out. Wait a minute. Wait a
10 minute, Jim. Hold up.

11 Let's take a real short, about a five minute break.

12 (Whereupon, the witness steps down from the witness
13 stand.)

14 (Whereupon, a 5 minute recess was held.)

15 (Whereupon, the witness returns to the witness stand.)

16 THE COURT: We're back on the record. Just one
17 housekeeping matter. Concerning Court's Exhibits 9 and 10,
18 the numbers need to be reversed where now Court's 9 is the
19 transcript of a potential defense witness. I think
20 Pennington might be his name. And then 10 is the LifeFlight
21 chart. Just a housekeeping matter to keep the record
22 straight.

23 Let's bring the jury out, please.

24 (Whereupon, the jury entered the courtroom at 3:08
25 p.m.)

1 THE COURT: Let the record reflect the jury is back in
2 the courtroom. You may proceed, Solicitor.

3 Q I think, Mr. Smith, that I was at -- talking about a
4 report that is generated once all the testing is done.

5 A You mean the results?

6 Q The results of all the testing that's done on a
7 specimen?

8 A Yes.

9 MR. HENDERSON: Your Honor, we just want to renew all
10 our objections.

11 THE COURT: Sure. So noted, Mr. Henderson.

12 Q Is there a report that is generated by your lab?

13 A With the current system we have now -- it used to be
14 where we had a paper trail. But when a specimen, if there's
15 nothing outstanding on that result, it will auto-file and it
16 doesn't generate a paper trail.

17 Q And before we get into anything else about that. If
18 there's a possibility of tampering with the sample would you
19 -- would you note that?

20 A If -- you mean if the lab tampered with it or if it was
21 tampered with before it got to the lab?

22 Q Before it got to you?

23 A There would be no way I would know if it was tampered
24 with before it got to me.

25 Q But if there was something -- if there were something

1 wrong with the samples, say one of them was busted or
2 something?

3 A If I look at a specimen and it looks -- it looks kind
4 of abnormal, I would actually make note of that. I would
5 probably notify the ER that probably another specimen might
6 be needed.

7 Q What if it -- what if it was unsealed? Would you have
8 tested that still?

9 A Like I say, generally we get our tubes -- they're
10 capped. So, like I say, if it was unsealed it would
11 probably spill in the bag. But we would not test it if it
12 was -- if the cap was off the tube we would not test it.

13 Q And in this particular case how many -- exactly how
14 many samples did you receive, do you know?

15 A From what I'm looking at on this audit trail -- because
16 I'm looking at the CIDs. Those are the sample IDs. There
17 were actually a total of four tubes.

18 Q And what are you doing with these tubes? Are you
19 running them through different machines?

20 A The ones we're testing would be run on the analyzers
21 that they are supposed to be run on.

22 Q And exactly when did you start running these tests?
23 Can you tell from your -- from your records?

24 A You can't -- you can't tell from -- after I would
25 receive it -- our centrifuge takes about five minutes to

1 spin --

2 Q And what is -- can you explain what a centrifuge is?

3 A A centrifuge is -- it's a machine that we have that
4 actually separates the plasma serum from the whole blood.
5 It separates it into the various components. Whole blood
6 packed cells and then the either plasma or serum on the --
7 on the tubes.

8 Q So after you spin it what do you do?

9 A I then take it to the departments to be ran.

10 Q And is it put in like a machine that runs these tests?

11 A Yes. The analyzer.

12 Q And what kind of machine do you use?

13 A We use an Architect Abbott c8000. It's a chemistry
14 analyzer. That's for just the chemistry one. We have two
15 other ones for the coag. Coagulation is one -- another
16 analyzer, and the hematology has their own analyzers as
17 well.

18 Q So did you all -- did you all screen this particular
19 sample for alcohol?

20 A According to this right here we did. We ran an alcohol
21 for medical purposes.

22 Q And what machine was that?

23 A That was the Architect.

24 Q Was that the Abbott machine that you referred to?

25 A Yes.

1 Q And this particular machine, how big -- explain this
2 kind of piece of equipment to the jury.

3 A It's a large analyzer. It analyzes a number of
4 chemistry tests. Basic metabolic, comprehensive, liver
5 function. It's a large machine. It has a -- it has
6 actually two methods of loading. One is a manual method.
7 That's generally what we use with LOD specimens when we
8 would manually place that specimen on there. And the other
9 one is where we put it on the automated system that actually
10 reads the bar code, determines what test is on that bar code
11 and then sends it to the various analyzers to be run.

12 Q And I'm sure Greenville Memorial has the best of the
13 best?

14 A Oh, yes. Yes. They paid a lot of money for that
15 analyzer.

16 Q And once -- once the sample was run through the alcohol
17 test do you know what that sample -- what it was?

18 MR. HENDERSON: And just renew our objections --

19 THE COURT: Sure.

20 MR. HENDERSON: -- in camera, Your Honor.

21 THE COURT: Exactly.

22 Q What were the results of the test?

23 A For just for the plasma alcohol it looks like it was
24 219.

25 Q 219?

1 A 219. That's correct.

2 Q And that was generated on the report -- the lab report;
3 is that correct?

4 A Yes. Yes, it was. It says result 219.

5 Q And that report, is that kept in the normal course of
6 business?

7 A We actually have to keep a record of any assays that we
8 run, but we have -- that's what our instrument managers --
9 it stores the results on a patient for a number of years, so
10 in case it needs to be pulled up it can be retrieved. And
11 they actually keep hard copies sometimes as well.

12 MR. GARRETT: Please answer any questions that Mr.
13 Garrett might have for you.

14 THE COURT: Cross-examination.

15 MR. GARRETT: Thank you.

16 CROSS-EXAMINATION

17 BY MR. GARRETT:

18 Q Mr. Martin, I want you to look at the -- I guess that
19 would be 68. Yeah, that's it. And your number is State's
20 68?

21 A No. My number is 12524.

22 Q Oh, I'm --

23 A Oh, are you talking about page number? I'm sorry.

24 Yes.

25 Q I'm sorry. The legal document --

1 A Yes, I'm sorry.

2 Q -- State's 68.

3 A Yes, sir.

4 Q Okay. I just want to make sure. And I got your
5 number. And it says collection, it says number one. See
6 that?

7 A Yes, sir.

8 Q All right. And so, it says you collected number one,
9 and that's where you start from; is that correct?

10 A I don't really follow. I mean, you said I collected
11 number one?

12 Q Well, I mean, you said -- it says right there on the
13 machine, it says order location GNTB, collection number one.
14 Top right-hand corner.

15 THE COURT: Maybe you can point it out for them, Mr.
16 Garrett.

17 A Oh, okay. Location GNTB trauma bay.

18 Q And it says collection number one.

19 A Yes, sir.

20 Q All right. Then it goes on down and it says -- I'm
21 assuming that -- and you correct me if I'm wrong, that when
22 you receive a sample that somebody has told you that it was
23 collected on 11/15 at 2054.

24 A Yes, sir.

25 Q And in regular time that's 8:54?

1 A Yes, sir.

2 Q Okay. So whoever brought it up to you allegedly
3 collected it at that time?

4 A Yes, sir.

5 Q And so, do you put that into the computer?

6 A Yes, sir.

7 Q So you're the one that actually puts that into the
8 computer itself?

9 A Yes, sir.

10 Q So you start the process by putting things into the
11 computer?

12 A Yes, I put the collect information in the computer.

13 Q And if they misspelled his name, that would be
14 something that was on the file as a misspelled name?

15 A That would be correct if his name was on that vial,
16 yes. If it were misspelled on the vial.

17 Q Okay. So if his name is not Martin but spelled a
18 different way instead of M-a-r-t-i-n, if it's spelled
19 differently would that have been on the vial itself?

20 A Actually, generally when we get traumas they do not
21 have the patient's personal -- their name or their date of
22 birth on that information. It shows it in this Exhibit 69
23 that the patient came in as a trauma, so they would
24 designate him a trauma number. That way they can just keep
25 up with it until they actually merge it with his actual

1 information. So when his tube came up to the lab it would
2 have had a trauma number on it. And his trauma number is
3 actually on the front page of this Exhibit 69.

4 Q So that's 980338480?

5 A That's his medical record number. The number below it
6 would be his trauma number. That would have been the number
7 on the tube and also on his test labels.

8 Q The S9603I?

9 A It actually reads as patient -- it would actually say
10 patient -- patient, and TR stands for trauma, and then it
11 generates that numeric number, which is 20142744. That
12 would be his designated trauma number.

13 Q Okay. I'm trying to find that.

14 A It's -- when you see records, what's requested from
15 smart orders is...

16 Q I'm going to let you point that out to me.

17 A It's right here.

18 Q Oh, that's on a separate -- that's on 69?

19 A Yes, I'm sorry.

20 Q That's all right. That's all right. I'm just trying
21 to -- but let's stay -- I want to stay on 68 for now. Let's
22 stay on 68 for a minute. So his name is put on there after
23 or later? At some time -- some later point in time?

24 A It's not actually put on the tube itself. Because,
25 like I say, when they designate him a trauma number they --

1 his tube will always have that original label and number on
2 it. They -- they have a process, what they call a merger,
3 where they actually put the actual patient information to
4 the trauma number or account. So they kind of merge them
5 together. So they kind of merge them together, so that
6 you'll know that this trauma was actually this patient.

7 Q But his name's not on it when you get it?

8 A No, his name is not on that tube when I get it.

9 Q Well, then who puts in this -- who puts in this name at
10 some point in time?

11 A That's done by the business office. That's not done by
12 the laboratory. The merging process is not performed by the
13 laboratory techs. It's actually done at a different --
14 separate department.

15 Q But I guess the information that you got without having
16 Mr. Rowell's name on it --

17 A Would have been his designated trauma number.

18 Q -- would have been a trauma number, but it's not
19 identified on this -- this document that --

20 A On the -- on the trail?

21 Q I'm on 68 now. I'm still on 68.

22 A I'm sorry.

23 Q I'll go to 69 in a minute. I see his name up there but
24 I don't see that number you were calling out. Is it on
25 there?

1 A The 68 is actually -- it's kind of like a -- I don't
2 know. Like I said, it's kind of like a -- just a --
3 possibly it's a post-merge data printout. I would imagine
4 maybe this -- the one, 69, might have a detail that say what
5 it -- I don't know if it would even have the information
6 that it was actually merged because, like I say, I don't
7 think it's -- that aspect is actually documented in our
8 computer system. That would have been done by a different
9 department.

10 Q That would have been done who?

11 A A different department possibly.

12 Q So somebody in a different department would have put
13 his name on this --

14 A Yeah, because they would be given the information to
15 say that when this patient came in that they designated this
16 number for this man, and then they say that this man is
17 actually this number that we designated, and they would have
18 put those together.

19 Q All right. But the important thing here I'm going to
20 ask you about in addition to that is where it says that the
21 collection date and time was 11/15/14 at 2054.

22 A Yes, sir.

23 Q And the only way you could have gotten that was if that
24 vial had that on it, right?

25 A Yes, sir.

1 Q The only way you could have gotten that vial would have
2 been -- and you wouldn't have put any other number on there.
3 You would have put that time.

4 A I will say this. In some cases there are times when
5 they don't put collection information, and in that instance
6 I would call to the ER to get the collection information --

7 Q That's right, because it's important to get the
8 collection information?

9 A That's correct. Yes, sir.

10 Q And then when you say received date and time, that's
11 the first time you have any access or see it or have any
12 idea what it is?

13 A That's not correct actually. Like I say, generally
14 when -- when they have a trauma, they can actually order a
15 trauma panel on a patient before we actually get the blood.
16 So we would get a printout of the label saying that it's a
17 trauma. A trauma. And then we -- like I say, when we get
18 the blood we then match it up to that specimen to make sure
19 that this is the trauma label versus the blood that we have.

20 Q So what is received date and time, 11/15/2014, 2124,
21 mean to you?

22 A That's the -- it looks like that's the time that I
23 received that blood.

24 Q All right. And that's my question. The first time you
25 actually put hands on --

1 A Hold up. I'm sorry. I might have misspoke. When I
2 say receive I actually mean put the collection information
3 into the system. Not actually being handed, that tube of
4 blood. So I didn't document when I was handed the blood.
5 Just the time that I actually received it in our computer
6 system.

7 Q All right. So when we say received, what that means is
8 when you have gotten it and you're looking at it to see when
9 it was alleged collected.

10 A Yes, sir.

11 Q You don't know the name. You're basing it upon some
12 number.

13 A Yes, sir.

14 Q So really, as far as all you really know is number and
15 time it says it was collected, right?

16 A And the orders will usually be on those labels as well.

17 Q Okay. And then you're typing it in? You're typing --
18 you're typing in the orders?

19 A No. I'm not typing in the orders.

20 Q Okay. You're typing in then the 2124 is when you
21 received it to put it into the computer?

22 A Yeah. But the information I would be putting in would
23 be the collect time and the tech -- the person who collected
24 that blood. That would be what I would be putting into the
25 system.

1 Q And HIS682123483-0. HIS, what is that?

2 A I'm not really sure, because it doesn't look like a
3 billing number and it doesn't look like a medical record
4 number, so --

5 Q It says HIS number.

6 A It's short for something. That's what I'm not really
7 sure what that is. So, because like I say, we generally
8 deal with the medical record number which is the one up by
9 his name, if that was what was on the tube. It's a -- we
10 have a method that we identify. Any specimen we have to
11 have two identifies on that specimen, and that's usually the
12 patient's name, either date of birth or medical record
13 number. And in the instance where they don't have the name,
14 they will have the medical record number and -- if you don't
15 have the -- and the patient's billing number will possibly
16 be on that tube as well.

17 Q All right. Well, let's flip over now and let's talk
18 about 69 then. And it says date and time, beginning
19 specimen ID, and it's got an ID number on it, right?

20 A On which page?

21 Q On one of one on State's Exhibit 69? Top of the -- top
22 of the thing.

23 A That would have the ID. On the L263 number?

24 Q Right.

25 A Uh-huh.

1 Q That's that specimen ID?

2 A Let me see for that one.

3 Q It should be page one of one.

4 A Yeah. What I was just checking, to make sure that that
5 was the number that was assigned to that particular test,
6 because when we receive it it assigns a test to particular
7 CID. And since I received more than one tube it would have
8 assigned it for different CIDs based on the tests that were
9 ordered. So I can only assume that 42712 was the number
10 that was assigned to the alcohol, unless I look through here
11 to check to make sure that was the one that was assigned.

12 Q I'm just talking about the beginning specimen ID is
13 L263094712.

14 A I see -- I see that number.

15 Q And tell me what that number is again.

16 A That's a sample ID number.

17 Q It's a sample ID number?

18 A Uh-huh.

19 Q Okay. So would that sample ID number follow throughout
20 his chart?

21 A Yes, it should follow throughout his chart. Yes, sir.
22 It was assigned -- assigned to and the sample it was
23 collected for.

24 Q Okay. And is the patient's name different than the
25 patient ID, and a number is different for the specimen?

1 A I'm sorry. Are you --

2 Q You've got a beginning specimen number, then you say
3 you got a patient ID number if his name's not on there.

4 A The specimen ID number is generated when a doctor puts
5 in the order. It assigns a test to that sample ID number.
6 So when I get this patient -- the patient specimen chances
7 are it will not have that specimen number on there because
8 those labels generate in the laboratory with the test
9 numbers on there with the sample ID. When I receive that
10 patient's specimen it generally has a chart number that has
11 the patient's name, medical record and their information,
12 and I compare that to the label to make sure that they match
13 up.

14 Q And the specimen ID is -- if you'll go down on the
15 first page, is S29603. Where it says specimen ID.

16 A Oh, that's the accession number.

17 Q Sir?

18 A That's the accession number. That's not the sample ID
19 number.

20 Q I call it the specimen ID. That's what it says here.
21 Specimen ID.

22 A In our system we have -- accession number is a general
23 number that all the sample ID numbers -- because you can
24 have more than one test on -- on accession number, but you
25 can only have certain tests on a sample ID number. So in

1 this case, if the 4712 number was the sample ID number --

2 Q Yes, sir.

3 A -- only the tests that would be aliquoted to that --

4 that sample ID, which would be the -- if it was the green

5 top tube it would be the alcohol, creatinine, and glucose

6 and potassium would be assigned to that sample ID number.

7 No other tests would be assigned to that number. The

8 accession number can have multiple numbers on it, but the

9 sample ID can only have one assigned to the tests that are
10 designated to it.

11 Q Okay. And as I understand it -- so you're saying you
12 get multiple vials of blood?

13 A Yes, we get multiple vials of blood on patients.

14 Q And originally how many did you think you got here?

15 A I don't know how many. Well, according to this it
16 looks like there might have been four vials of blood.

17 Q Might have been four?

18 A Yes.

19 Q And did you think you had gotten three earlier?

20 A Well, at the time when I -- when this -- or on my part,

21 I was only looking at the tests on the sheet. I didn't

22 actually -- if I had looked down I would have seen the

23 sample ID actually has four numbers, I would have known it

24 was four tubes that were actually sent to the laboratory.

25 Q Anybody tell you to look at that --

1 A No.

2 Q -- and say how many?

3 A No, sir. Actually it was just when I was handed -- at
4 the time someone asked about the tube numbers that we had
5 and then I actually looked at it again and I noticed it does
6 have four sample ID numbers. So there were actually four
7 tubes.

8 Q And who asked about that?

9 A I don't know. Someone had came and asked about whether
10 it was one tube or three tubes or something and I --

11 Q When did --

12 MR. GARRETT: May we have a -- Your Honor, we have a
13 matter of law.

14 THE COURT: Can we try to take care of it sidebar
15 first?

16 MR. GARRETT: We can.

17 (Whereupon, a sidebar was held.)

18 THE COURT: Mr. Foreman, ladies and gentlemen of the
19 jury, I have a legal matter. Go back to the jury room.
20 Hopefully it won't be long, then we can get back out and
21 proceed forward.

22 (Whereupon, the jury exited the courtroom at 3:29 p.m.)

23 THE COURT: Okay, Mr. Garrett.

24 CROSS EXAMINATION (IN CAMERA)

25 Q It's important we do something in our court called

1 sequester. Do you know what sequester means?

2 A No, sir.

3 Q Okay. Were you instructed by anyone that it was
4 important for you not to talk to any of the other witnesses
5 about your testimony or about their testimony?

6 A I don't think anybody told me -- no. I'll just say no.

7 Q So then you didn't know that it was improper for you to
8 discuss your testimony with other witnesses concerning your
9 testimony here today?

10 A I would've known that it was improper, yes.

11 MR. BLACK: Judge, I'm going to object. I don't know
12 if that's an accurate portrayal of what sequestration is. I
13 don't -- I think that he and Dr. Reddic have spoken about
14 their involvement, you know, prior to coming here. I think
15 that's just -- that's a mischaracterization of what
16 sequestration is.

17 MR. GARRETT: If I can finish, Your Honor.

18 MR. BLACK: I wanted to put that on the record.

19 MR. GARRETT: May I continue?

20 THE COURT: You may continue.

21 MR. GARRETT: Thank you.

22 Q You said a moment ago on the stand that you originally
23 thought it was three?

24 A No, I -- yes, because I -- when I was out here the
25 first time I was nervous and I looked -- when I looked there

1 I only was looking at the assays that I saw which was the
2 alcohol, creatinine, glucose profile, a potassium PT-PTT in
3 the same tube.

4 Q I understand. Who -- how did you find out that there
5 was a problem with the number of tubes?

6 A Well, then I was sitting in the jury rooms someone came
7 and asked was there one tube or three tubes.

8 Q Who came in and asked?

9 A I don't know. It was the gentlemen, I think, who
10 brought us in here. Maybe that gentlemen over there.

11 Q Which one?

12 A The gentlemen right there with the beard.

13 Q With the beard?

14 A Yes.

15 MR. GARRETT: Your Honor, may we approach?

16 THE COURT: Sure.

17 (Whereupon, a sidebar was held.)

18 THE COURT: Okay. We're back on the record. We had a
19 sidebar. Mr. Garrett, you have a motion to make and you're
20 going to -- and then your basis for the motion.

21 MR. GARRETT: Yes, Your Honor. Thank you. If it
22 please the Court.

23 Your Honor, it's sacrosanct that a criminal defendant
24 in a criminal trial have an unfettered right of
25 cross-examination. In any case, it is based on our United

1 States constitutional rights and on our South Carolina
2 constitutional rights. And we as officers of the court have
3 an absolute responsibility, as the Court does, to ensure the
4 integrity of the process. Now, in this case, it was
5 interesting. Ms. Waites' testimony changed a little bit to
6 wasn't as firm in her first. But I didn't say anything. I
7 just, you know, just let that -- let that be. But then we
8 asked this gentlemen whether or not he overheard somebody
9 talking about a problem with their evidence. And clearly in
10 this case, as I have brought up, is it one tube, three
11 tubes, four tubes, two draws, one draw. And, Judge, I can't
12 get to the bottom of it if they keep changing their
13 testimony.

14 Based on Solicitors -- not these gentlemen. Judge, I
15 trust these two men implicitly. They know better. They
16 know the rules. They didn't do it. But we may have
17 somebody in their staff who didn't -- in the battle of
18 conflict sometimes we make mistakes. But if you make a
19 mistake that hurts the integrity of the case that the Court
20 -- we ask the Court to do a mistrial on this case on the
21 basis of this -- this is very crucial. This is a 21, 29, 22
22 blow that -- or blood reading they're trying to put in, and
23 he's the one that allegedly put it into the machine. He's
24 the most crucial witness in this case if you really want to
25 know the truth. And for him to be tampered with has

1 undermined the Defense, and if the Court allows it my client
2 doesn't get justice. And if he's going to have to go to
3 jail, I'd like to make sure he's got justice so I can look
4 at him and say that's the Lord's will, son. It wasn't
5 something we did.

6 THE COURT: Thank you, Mr. Garrett. Solicitor?

7 MR. BLACK: Thank you, Your Honor. I believe the
8 question was how many -- how many vials of blood were
9 tested, and I'm not -- I don't remember what happened this
10 morning. We've been going at this for several hours now.
11 But apparently the testimony was there was one vial, and
12 then Mr. Smith gets up on the stand and says there's three.
13 And then the allegation is that somebody came back there and
14 clarified and asked him what it was. There's been no
15 allegation that anybody from our officer, neither Mr. Downtin
16 nor myself, or anybody went back there and told him what to
17 say. The testimony that came from Mr. Smith was, "I looked
18 at the chart. I relooked at the chart and saw that there
19 were three."

20 Now, honestly, Judge, I have no idea what this is. I'm
21 a lawyer. I -- you know, I remember taking high school
22 chemistry. I took physics in high school and I had to take
23 biology in college, but those -- that's the extent of my
24 science. None of this means anything to me. I have to --
25 they have to explain it to me. His testimony today was --

1 apparently this morning was there was one vial, and then he
2 said he looked back over all the charts and noticed that
3 there were four, I think was his testimony just a moment
4 ago.

5 Now, if that's clarified back there during lunch, or
6 whenever it happened, I don't think -- I don't see a problem
7 with that. It's no different than a motion in limine where
8 we're talking to a witness, prepping a witness. And I'm
9 sure Mr. Garrett has prepped all of his witnesses that are
10 going to be testifying. And for, you know, a motion in
11 limine where the State and the Defense argues what can and
12 cannot be testified. Once we have a meeting with the Judge
13 and the Judge says we can't go into, you know, situation X,
14 us going back to our witness and saying, all right. We
15 talked about it but we can't talk about this. Stay away
16 from that. It's no different, Judge. This is absolutely no
17 different at all. So to suggest that the remedy in this
18 particular case is a mistrial after we've been here all week
19 is outrageous.

20 Now, he has every right of cross-examination. That was
21 his argument, Judge. He says it's inhibiting his
22 cross-examination. No, it's not. We haven't objected. He
23 can get up there and talk to Mr. Smith about how his
24 testimony has changed from the outset from when he first
25 started talking this morning in this in camera hearing

1 versus what his testimony is now. His cross-examination has
2 not been inhibited whatsoever. So his Fifth and his Sixth
3 Amendment rights are still intact, Judge. Mistrial is not
4 the remedy in this situation. He can -- he can
5 cross-examine him about it. We're not objecting to that at
6 all.

7 So that's -- I mean, that's the State's argument. It's
8 pretty clear cut if you ask in our opinion.

9 THE COURT: All right. I just ask, Mr. Smith, now you
10 thought that what you overheard came from -- I think you
11 referred to him as the gentlemen seated here to the left
12 with the beard. Was his statement made directly to you or
13 was it just made in general in the room, or how as it made?

14 THE WITNESS: It was made general room in the room and
15 all, because he just wanted to clarify whether or not there
16 was more than one tube that was collected at the time.

17 MR. BLACK: And, Judge, that goes back to our point
18 that we have -- we don't know this stuff. This is his lab.
19 We don't know. That's why we're asking him. He's -- this
20 is his area of expertise. So I really see no problem with
21 this whatsoever.

22 THE COURT: Well, you know, my statement to the lawyers
23 at sidebar, I realize the accommodations in the Greenwood
24 Courthouse are not ideal as far as having enough space and
25 room and -- to do everything, and it would be a better

1 practice, I believe, to have sequestered witnesses not in
2 the Solicitor's home base in the courthouse. And I think
3 before we start back with the jury that needs to be, you
4 know, taken care of, because it just would lend itself to a
5 situation like we have here. Whether the situation is not
6 good or whether there's no harm, depending on what side you
7 look at it.

8 I mean, basically there are five factors in granting a
9 mistrial. You look at the nature of that actual testimony.
10 That is, creates the issue. Circumstances in which it was
11 offered and nature of the case, other testimony in this
12 case, and then the degree of prejudiced to the party making
13 the motion for a mistrial. And taking everything in
14 consideration, I'm going to deny the motion. But I want to
15 go ahead and we need to make sure that nothing like this --
16 even if it was just inadvertent and not intentional, we need
17 to make sure that it doesn't happen again.

18 So what -- what I'm asking both sides to do is to
19 instruct your witnesses not to have any communication about
20 their testimony or the facts of the case with anyone,
21 whether it's lawyers or other witnesses. And I'm going to
22 ask the Solicitor, too, that if we have any -- I know Dr.
23 Reddic would still be back there because I know you're
24 planning to call him. And if there are any other witnesses,
25 I'm going to ask that they be placed in some other room.

1 MR. GARRETT: May I ask for two things, Your Honor?

2 THE COURT: Sure, please do.

3 MR. GARRETT: I'd like to know the names of all the
4 other witnesses that overheard the problem with the blood
5 vials, the number. I'd like to know who they were.

6 THE COURT: Okay. Mr. Smith, you would be the one to
7 know who else was in the room, if anybody else. Other than
8 yourself, were there any other witnesses in the room when
9 you overheard the investigator make that statement or
10 comment?

11 THE WITNESS: There was myself, Dr. Reddic and Dr. -- I
12 think Childers I believe is her name.

13 MR. BLACK: She's a nurse, Judge. Leslie Childers, a
14 nurse.

15 THE WITNESS: Okay, then. I didn't know her title. I
16 apologize.

17 MR. BLACK: Yes, sir. She's a nurse.

18 THE COURT: Okay.

19 MR. GARRETT: So our position is also then that
20 Reddic's testimony then, because he clearly said there was
21 one spun up to three.

22 So now, Your Honor, the only way to remedy this, Judge,
23 and go forward in our request is that you put the original
24 testimony, the original testimony, into evidence in their
25 place because it's been tampered with. So we do have their

1 original testimony. That's fair to the State, because
2 they've already got to testify one time. We got to
3 cross-examine them one time. And they can play that back
4 and forth. You know, the testimony as it came out before it
5 was tampered with. Now they've got it fixed.

6 They've undermined us, Judge, in this -- in this case
7 and it's -- it's just fundamentally prejudicial and unfair,
8 and that's the only way I know to be fair to the Defense.
9 That way the State -- the State's had their shot in it and
10 we've had our shot in it.

11 THE COURT: Well, that prior testimony was -- I can't
12 hold the State to their prior testimony because that was --
13 that was in camera testimony and was not testimony for the
14 jury. I'm going to deny your request. You certainly have
15 every right to cross-examine these witnesses if they do
16 change their -- their testimony. You can certainly --
17 certainly do that.

18 MR. GARRETT: Your Honor, I'd like to request that the
19 Court proffer their testimony in toto in the in camera
20 hearing into the record separately as a proffer as to what
21 we were requesting at this time.

22 THE COURT: Well, it will be -- it will be in the
23 record because it's in camera proceedings. And if you want
24 it also designated as Defense proffer testimony then it can
25 be identified as that as well and not just in camera

1 testimony for purposes of the Court making certain rulings.

2 MR. GARRETT: Yes, sir.

3 THE COURT: So designated.

4 MR. GARRETT: Thank you, Your Honor.

5 THE COURT: Now, let's go ahead and Solicitor ---
6 Solicitors, how about going ahead and take care of who we
7 got back there. Instruct them. And that will need to be
8 all future witnesses be instructed and have them moved
9 elsewhere.

10 MR. BLACK: And, Judge, that applies to the Defense as
11 well and all their witnesses?

12 THE COURT: Yeah, right.

13 MR. GARRETT: We don't need any instructions on it.

14 MR. BLACK: And does that include expert witnesses as
15 well, Judge.

16 THE COURT: Well, I think I've ruled that expert
17 witnesses are not subject to sequestration.

18 MR. BLACK: Okay.

19 THE COURT: I mean, this doctor has been here a good
20 bit. Has four MAIT team people here yesterday, so...

21 MR. BLACK: Yes, sir.

22 MR. GARRETT: Just to be clear, Judge. One witness can
23 be back here?

24 THE COURT: I don't want any witnesses -- I don't want
25 any witnesses in the Solicitor's -- in the Grand Jury room.

1 Everybody be at ease for a moment.

2 (Whereupon, a 5 minute recess was held.)

3 THE COURT: Bring the jury back and we are in
4 cross-examination.

5 (Whereupon, the jury entered the courtroom at 3:52
6 p.m.)

7 THE COURT: All right. Let the record reflect the jury
8 is back in the courtroom. Mr. Garrett, we are still in your
9 cross-examination.

10 MR. GARRETT: Thank you, Your Honor.

11 Q Mr. Smith, just one last question. I want to make
12 absolutely positively sure that you're the one who put into
13 the machine -- you put into the machine that this was
14 collected at 2054. That's on top of the 68.

15 A Yes. I put the collection information 20 -- according
16 to this I put the collection information 2054 -- wait, no.
17 Excuse me. No, that's -- hold on. I put in that it was
18 collected -- yeah, 2054.

19 Q 8:54?

20 A Yes, sir.

21 Q No question about it?

22 A Because it says my tech code by it that I received it,
23 then it must have been me.

24 Q Okay. And so, in order to do that you had to -- you
25 had to receive a specimen that you put into the computer at

1 that time?

2 A Yes.

3 Q And there's absolutely no question about it?

4 A What -- say that again. I'm sorry.

5 Q I just want to make sure that you received a specimen
6 from somebody who brought it to the window or whatever.

7 A Uh-huh. Yes, sir.

8 Q And you were the one, according to these records, that
9 allegedly actually took physical possession of it?

10 A According to this. Yes, sir.

11 Q Okay. And you then had to figure out and put some
12 stuff -- there was some material on it already. There was
13 some writing on it already.

14 A That would be the collection information. The time and
15 the tech code.

16 Q Collection information. You wrote that collection
17 information into this program?

18 A I entered it into the system. If I received it I
19 entered it into the system. Yes.

20 Q And according to that information that was provided to
21 you on that collection document, collection bag, you got it
22 at 2054?

23 A Yes, that's -- I would have put whatever collection
24 information was on the tube itself, so yes.

25 Q Now, previously you've testified in this same case that

1 you only got three vials, right?

2 A Yes. That was a mistake on my part.

3 Q Okay. And after you went out and talked to some of
4 these other people out here and they knew there was a
5 problem with it you all cleaned it up?

6 A No, sir. That's not what happened.

7 Q Well, I mean, you came back out here and you said now
8 it's four -- four of those tubes as opposed to three tubes.

9 A That's because I actually looked at the -- like I say
10 -- if I might say it. I really haven't had a lot of sleep,
11 so I'm not really just completely here.

12 Q I'm not picking on you, sir.

13 A But then, yes, I did -- I looked -- I took another look
14 at the patient -- the paper and I saw the sample ID actually
15 has four numbers on there that have the L -- it start with
16 L2.

17 Q I'm not picking on your, sir. Listen to me. I'm sorry
18 that you're without rest or sleep.

19 MR. BLACK: Judge, can he finish answering the
20 question. I know that he was trying to.

21 THE COURT: Yeah. Make sure the witness finishes
22 before another question is asked.

23 MR. GARRETT: Yes, Your Honor.

24 Q Isn't it true that one of the State's investigators
25 came back there and said they were having trouble with the

1 tube numbers, and based on that you went back and reviewed
2 your work?

3 A I don't know that he said they were having trouble with
4 the tube numbers. He just asked was it -- was there -- it's
5 like was there one or -- one tube or was there three tubes.

6 Q Well, who did he ask that to?

7 A Like I say, he was -- I think he was asking to me and
8 Dr. Reddic possibly.

9 Q To you and another doctor, they were asking you
10 questions about your testimony in here in this courtroom; is
11 that right?

12 A Say what you're --

13 Q He as asking you -- you all questions about your
14 testimony in this courtroom while you were under
15 sequestration?

16 A No. He just asked me to clarify whether or not there
17 was one or -- he wanted to get it clear as to who said what,
18 because Dr. Reddic said there was one tube. I had said
19 there was three.

20 Q Okay. So Dr. Reddic says there's one, you said there's
21 three, and now you're all trying to get your story straight
22 and say there's four?

23 A Well, actually, no, it's -- like I say, because you
24 have to understand, like I say, the way this system works.
25 The alcohol --

1 Q Well -

2 MR. BLACK: Judge, can he answer the question?

3 A The alcohol is only run on one tube, and that's the
4 green top tube. Even if they submitted four tubes we're not
5 running alcohol on all four tubes. We enter it on the one
6 specimen that is required for that test which is a lithium
7 green. When it's assigned to that tube it's not going to
8 run on -- like I say, when we put it on the analyzer it will
9 run that particular test based on what is in the system that
10 was ordered by the physician after we receive it.

11 Q Sir, did the State remind you that you needed to clean
12 that testimony up?

13 A No, sir.

14 Q You cleaned it up on your own?

15 A I don't know about cleaning it up. I just know I
16 noticed I saw on here that there was four tubes and that's
17 what I just stated.

18 Q The State went back there and -- but for that you
19 wouldn't have went back and looked at it, would you?

20 A I think it would have been irregardless of whether he
21 came back there or not, because, like I say, I just happened
22 to look at this and saw that is was four -- I saw there was
23 four CIDs on here, and I'm thinking that -- I know from my
24 experience that that means that there were four specimens.

25 Q Well, let me ask you this. How did you know Dr.

1 Reddic, when he was in here without being around you,
2 testified that there was only one vial?

3 A He told me that he said that there was only one.

4 Q Okay. So even after he testified he talked to you
5 about his testimony?

6 A No, he did not.

7 Q Well, he told you what he testified to, didn't he?

8 A No. He just set out the fact that I stated that the
9 alcohol was run on one tube. That's what he said that he --
10 that's what I think I heard that he said, that the specimen
11 was run on -- that the alcohol is run only on one tube. And
12 that was the only tube that he was referring to. I just
13 stated the fact that when I receive the blood in the lab
14 there was more than one tube.

15 Q I'm only concerned about the fact that you and he were
16 talking about your testimony back when you all were --

17 A I really wasn't talking to Dr. Reddic about the
18 testimony.

19 Q But he told you he only --

20 A He didn't tell me -- when the gentleman came in and
21 asked -- said I want to get clarification on what tube types
22 were -- or what tubes there were, he said was there one tube
23 or was there three. Dr. Reddic said I said there was one,
24 and he said that -- Dr. Reddic said that he said there was
25 one tube, and I said that there was three tubes.

1 Q Could you identify the person in the courtroom that --

2 A I don't know the gentleman's name. Actually I don't
3 see him in here now.

4 MR. GARRETT: Your Honor, I'd ask that the State to
5 produce this person for purposes of identification for our
6 record.

7 MR. BLACK: Judge --

8 THE COURT: I think he already identified him. Chris
9 --

10 MR. BLACK: Wilkie, yeah.

11 MR. GARRETT: Is he here?

12 THE COURT: I don't see him.

13 MR. GARRETT: Your Honor, I ask that he be brought so
14 this witness can identify him.

15 THE COURT: Well, I think he's already identified who
16 the State will stipulate is their -- is their investigator.

17 MR. BLACK: Chris Wilkie, our investigator. Yeah, the
18 investigator that's helping us on the case, clarifying some
19 issues. Yes, sir, Your Honor. That's him.

20 THE COURT: I think he's already identified him.

21 MR. GARRETT: Thank you.

22 THE COURT: Redirect?

23 MR. BLACK: No, sir, Your Honor. Thank you.

24 THE COURT: You can step down. You are free to leave.
25 You're welcome to remain with us but you're free to leave

1 the courthouse.

2 THE WITNESS: Thank you.

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

5 MR. BLACK: State calls Dr. John Reddic to the stand.

6 MR. HENDERSON: And, Your Honor, we would renew all our
7 prior motions prior to Dr. Reddic's testimony.

8 THE COURT: Certainly.

9 MS. MERRILL: Your Honor, may we approach?

10 MR. BLACK: I'm sorry. Did she say we wanted to
11 approach again?

12 MS. MERRILL: May we approach real quick?

13 (Whereupon, a sidebar was held.)

14 DR. JOHN REDDIC, having been first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BLACK:

18 Q Dr. Reddic, good afternoon to you.

19 A Hello.

20 Q Can you introduce yourself to the jury, please.

21 A Yes. My name is John Reddic. I'm a clinical chemist
22 working at Greenville Memorial Hospital.

23 Q And how long have you worked at Greenville Memorial?

24 A Three and a half years.

25 Q And where did you work before that?

1 A I was the director for clinical chemistry for the
2 Department of Health, DHEC, in Columbia for approximately 10
3 years before that.

4 Q Let's talk a little bit about your educational
5 background. Where did you go college?

6 A I did undergraduate work. I got my Bachelor's from the
7 University of South Carolina in Columbia, and I got a PhD in
8 physical chemistry from the University of Georgia.

9 Q And what was your undergrad in? Was it chemistry?

10 A Chemistry. Yes, sir.

11 Q And with your PhD, tell us a little bit about what that
12 entailed.

13 A Well, it's a four to five year program, both classes on
14 like advanced topics along with original research
15 requirements and production of original dissertation thesis.
16 You want to know particulars of what I did or --

17 Q I have no idea what you did. Even if you explained it
18 to me I doubt I'd understand. You did do a dissertation
19 though?

20 A That is correct.

21 Q Did you do like a big thesis that you had to write up?

22 A Yes. Yes, I did.

23 Q And how big was that?

24 A About 300 pages.

25 Q And, I guess, it was publish?

1 A It was published through the school publishing, you
2 know. There were about six copies sold and I bought five,
3 so....

4 Q Yes, sir. I understand. And I guess you had to defend
5 that in front of the school as well?

6 A Correct.

7 Q You said that you were the -- what did you say, the
8 director at DHEC?

9 A I was the director over the clinical chemistry division
10 at DHEC.

11 Q And you said you were there for what, 10 years?

12 A Approximately 10 years, yes.

13 Q Have you ever appeared in court before -- have you ever
14 had the chance to appear in court before as an expert
15 witness?

16 A No, this is my first time.

17 Q Okay. But you've never had the opportunity?

18 A That's correct. I've been called to cases that have
19 settled, but I've never --

20 Q Okay. Do you have any professional publications?

21 A I do.

22 Q And what are those?

23 A Journal articles in peer review journals dealing with
24 various topics that I've worked on over the years. Majority
25 of them were during graduate school, a few post-graduate

1 work, and one or two articles by then a supporting author
2 since I've been working in clinical chemistry with the
3 state.

4 Q Was your work peer reviewed?

5 A Yes, sir.

6 MR. BLACK: Your Honor, at this point the State offers
7 Dr. John Reddic as an expert in the field of clinical
8 chemistry.

9 THE COURT: Okay.

10 MR. GARRETT: Without objection.

11 THE COURT: All right. Without objection Dr. Reddic is
12 found to be an expert in the area of clinical chemistry.

13 Q Before we get into all the chemistry. Your job now,
14 can you explain that to the jury?

15 A So my job title is clinical technical director for
16 laboratories at Greenville Health Systems. I'm considered a
17 technical expert in the test methodologies that are
18 performed in the hospital. So I have responsibility to --
19 in quality assurance. Making sure that the tests we are
20 performing meet all our quality factors, that we're turning
21 out good results. Have responsibilities for as technology
22 -- new technologies come available, deciding what new
23 equipment will be used in our laboratory in the future. I
24 have some responsibilities as far as certain tests that
25 doctors have questions and want consultation about the

1 meaning of results. I provide that information. That's
2 kind of a broad level of what I do.

3 Q And you said you're responsible for the machines in the
4 lab essentially?

5 A Essentially, yeah. I have an overall responsibility
6 for quality assurance for the laboratory. For the tests
7 that are turned out from those machines.

8 Q And can you just describe for us the types -- well,
9 just the type of machine that runs the ethanol alcohol
10 testing on samples at Greenville Memorial.

11 A Okay. So for a large volume laboratory, which I would
12 consider Greenville Memorial Hospital, clinical chemistry
13 tests by and large, the majority of them are performed on
14 instruments called auto-analyzers. They're very large.
15 About the size of a car. They can -- and they're able to
16 perform multiple clinical tests on multiple samples at a
17 time. So you can load, you know, eight, 10, 20, 50 patient
18 samples into a sample holding bin. The machine will take
19 those samples. It will aliquot the sample out. Put it in
20 little measuring cups. Measure the right kinds and the
21 right amount of reagents. Let them incubate. Either just
22 need to sit for time or either they read immediately. And
23 then do the chemical test and make the measurement off of
24 those samples. It's a complex technology, but it's been
25 around for many years. They're fairly standard kind of

1 devices. They're big and complex, but they're well
2 understood and --

3 Q And I guess these machines are relatively standard in
4 hospitals around the country?

5 A They are. There's about five -- four or five national
6 and international manufacturers who -- the vast majority of
7 hospital laboratories use one of those kind of four or five
8 manufacturers.

9 Q And which one do you all have?

10 A We use instruments from a company called Abbott
11 Diagnostics.

12 Q Okay. And these machines, do you all update these
13 machines on occasion?

14 A We do. We purchase them on service contract periods
15 from five to seven years. And so, our cycle of updating
16 machines is anywhere from three to seven years, just
17 depending on the nature of the volume of tests that we do.

18 Q And I'm sure Greenville, they make no bones about how
19 much money they're willing to spend on these types of
20 equipment?

21 A They're very expensive machines, and they --

22 Q And that's not really a problem for a lab?

23 A No one has made a significant issue to my experience
24 here.

25 Q Okay. And the machines that test samples, why are --

1 why are samples, blood or urine or anything, tested by the
2 lab at Greenville? What's the purpose of that?

3 A There's diagnostic information that can be gained about
4 the patient's state of health based on any of a number of
5 tests that can be performed. There's routine -- there's,
6 you know, routine and common tests. There's about 70 from
7 various degrees of hundreds of -- you know, hundreds to
8 thousands a day to, you know, 10 to 20 a day. Then another
9 batch of tests that we may perform that are not common but
10 are necessary for -- for certain life-threatening
11 conditions. So there's, you know, 125 different things that
12 are tested for in human blood in our chemistry testing
13 laboratory area.

14 Q And do you all -- do you all regularly test items that
15 come from a trauma center or the emergency room?

16 A Yes, we do, daily.

17 Q And what are those? What are those items?

18 A Principally it is blood specimens. To a lesser extent
19 urine can be tested. To even a lesser extent other body
20 fluids like spinal fluid or pleural fluid, fluid taken from
21 the chest cavity. Things like that.

22 Q And the blood that's typically tested, describe -- can
23 you describe how that process works for the jury?

24 A So tests are requested from a physician. Blood is
25 drawn from the patient into a device we call a Vacutainer,

1 or a blood tube. Small tube. Most common ones are about
2 five milliliters in volume. A liter is placed on that. A
3 needle is placed in someone's arm. The blood is pulled in
4 to the tube via just the natural blood pressure and the
5 vacuum that's on the tube. When the tube is filled up to
6 the appropriate level the liter is removed. The tube
7 self-seals. The tube is labeled or indicated belonging to
8 that patient and the appropriate test. That tube is sent to
9 the laboratory. It is processed according to what kind of
10 collection tube it is and what tests have been ordered on
11 that. And the sample then after processing is placed onto
12 the appropriate instrument and the test is performed on the
13 instrument.

14 Q And was there a -- I'm going to show you what's been
15 marked as State's 68 and 69. Do you recognize these two
16 documents?

17 A I do.

18 Q And what are those documents?

19 A These are what we call audit-trails in the laboratory.
20 They are documents that describe the flow of a sample from
21 -- it provides information as far as from the point of
22 collection, the point and time of collection, who the
23 collector was. Wherever there are electronic checks in our
24 work process indicating the sample was received. A sample,
25 you know, tested them. Ordered for a sample. Sample has

1 been put on an instrument. A result has been generated for
2 a sample. It's a bunch of date and times indicating when
3 those processes happen for a given sample. And this is
4 specific to a sample -- this particular first document, 68,
5 is specific to a patient Adam Martin Rowell with a -- with a
6 medical record number 980338480.

7 Q And this document, this auto-trail, is kept in the
8 regular course of business?

9 A It is.

10 Q I'm sorry?

11 A It is.

12 MR. BLACK: Your Honor, the State offers 68, I believe,
13 into evidence.

14 MR. GARRETT: Subject to our former -- prior
15 objections.

16 THE COURT: Yes. Subject to previous objections, 68
17 will be put into evidence for the State.

18 (Whereupon, State's Exhibit No. 68 was admitted into
19 evidence.)

20 Q Dr. Reddic, that audit-trail, I know it looks like a --
21 for me it looks like a bunch of just code. What exactly
22 does that tell you?

23 A Well, there's several pieces of information that are
24 contained here. It provides a collection date and time for
25 a given specimen or collection event for a given patient,

1 that medical record number I had mentioned earlier. It says
2 who the collector of the specimen was, providing a employee
3 ID number. It says when that -- when that specimen
4 collection set was received in the laboratory. Providing a
5 date and time. Indicates in what unit the specimen was
6 collection from. The physician that made the collection
7 request. And then it breaks down different steps along the
8 way of when the lab -- at what time the sample was received
9 into the lab. At what time was the sample -- or the various
10 -- there's actually multiple samples, put on the machines.
11 At what time were results generated from the test and things
12 like that. It's kind of a step-by-step breakdown of that
13 workflow of the sample through our laboratory.

14 Q Okay. And this particular sample, was it eventually --
15 it was eventually tested by your laboratory, correct?

16 A That is correct. There are multiple samples listed
17 here. I'm speaking specifically to the one sample that was
18 tested in the chemistry -- on the chemistry analyzers.

19 Yeah, so -- but there are multiple samples listed on this.

20 Q And the samples, are they all from the same individual?

21 A That's what the record indicates to me. Yes, sir.

22 Q Is that standard? Is that standard for you all to
23 receive multiple samples from an individual?

24 A From a -- from the emergency department for a trauma
25 patient, yes, that is -- that is common.

1 Q Why is that? Why is that common?

2 A There's multiple things that they want to test for a
3 lot of times for a patient who's had trauma. And all of the
4 tests cannot be performed on one instrument or done under
5 one method. And so, multiple specimens are collected
6 because different kinds of tests require samples with
7 different kind of additives or to be treated differently.
8 So they have to be collected in multiple tubes.

9 Q Okay. So, for example, in this -- you have to send it
10 -- the tubes have to be tested by different kind of
11 departments within the lab?

12 A That's correct, yes. There's the -- these specimens
13 had -- these samples here indicated that tests were
14 performed in chemistry in our hematology and in our coag.
15 Hematology and coagulation are kind of together, but you
16 can't -- you do hematology test on one kind of tube and
17 coagulation test on another kind of tube, so...

18 Q Now, was there a test done on Mr. Rowell's blood as far
19 as ethanol or alcohol?

20 A Yes, there was. There was a plasma alcohol test
21 performed.

22 Q And what was the result of that?

23 A So the audit-trail -- this is Exhibit 69, and I --

24 Q And that might be the best way to do it. 69 is -- what
25 is that again? Is that a continuation of --

1 A Yeah, it --

2 MR. GARRETT: Your Honor, subject to our prior
3 objection.

4 THE COURT: Certainly. You're protected on the record,
5 Mr. Garrett.

6 A So Exhibit 68 was a kind of whole hospital system
7 audit-trail. It talks about everything. You can look at
8 things that go on for multiple samples from multiple
9 locations. Actually 69, for the chemistry testing section,
10 it has its specific own little piece of software that
11 monitors just everything that comes into chemistry. So I
12 have -- Exhibit 69 is the chemistry analyzer's audit-trail.
13 And on this audit-trail the alcohol -- the plasma alcohol
14 test was performed and it came back with a result of 219
15 milligrams per deciliter.

16 Q Yes, sir. And tell us kind of -- you said that was
17 plasma alcohol?

18 A That was plasma alcohol, yes. It's --

19 Q Can you explain to the jury what -- what plasma alcohol
20 is?

21 A Sure. So when your blood is drawn -- your blood is --
22 has different components in it. And the two main parts that
23 we talk about are the cells themselves. The red blood
24 cells, the white blood cells, and they make up a certain
25 portion. But there's also the extra cellular fluid. The

1 plasma, the serum, depending on how you separate it. So you
2 can make a physical separation between the cells and the
3 plasma or the serum by putting a sample in what's called a
4 centrifuge. It's basically a device that spins the sample
5 very rapidly and the two parts will separate. The plasma or
6 serum will rise up and sit on top of the cells. And then
7 there's a little -- most of them that are -- our separators
8 have a little gel that's in the tube whose -- whose density
9 is between that of the density of cells and the density of
10 plasma. And so it actually acts as a physical barrier. So
11 you'll have a tube where the cells will be trapped in the
12 bottom of the tube, there'll be a gel in the middle of the
13 tube, and sitting on top of the gel will be that just liquid
14 part of your blood that's not cells. And that's either
15 serum or plasma depending on whether or not you've allowed
16 clotting to occur. Plasma is still -- is blood that hasn't
17 been clotted, so there's clotting factors in it. And serum
18 is when blood is clotted, and so those clotting factors are
19 removed.

20 Q Okay. And you have State's 69 up there. Is that the
21 results of the entire lab? The lab results on that
22 particular --

23 A It is the results for the tests that were ordered that
24 were run on the chemistry analyzer, yes.

25 Q And that includes the ethanol test?

1 A That includes the plasma alcohol, correct.

2 Q And this is a business record kept in the course of
3 business?

4 A It is.

5 MR. BLACK: Your Honor, the State offers Exhibit 69
6 into evidence. Do you want to see it?

7 MR. HENDERSON: Subject to our same objections as --

8 THE COURT: Certainly. Do you want to see it before --

9 MR. HENDERSON: Yes.

10 THE COURT: Sure.

11 (Whereupon, State's Exhibit No. 69 was admitted into
12 evidence.)

13 Q Now, Dr. Reddic, the result of this blood draw and the
14 plasma alcohol was 219; is that correct?

15 A That is correct.

16 Q Can you -- can you explain how that's -- if that's the
17 same thing as, you know, a 21.9 in terms of blood alcohol
18 content?

19 A So that's a units conversion. The units that we use in
20 the laboratory are milligrams per deciliter.

21 Q Yes, sir.

22 A In Court cases or forensic cases like this they use a
23 different unit which is just percent blood alcohol content,
24 and it's a -- it's a straightforward conversion. So
25 basically you move the decimal three places to the left. So

1 100 would become .1. So in the case of this, 219 would
2 become blood alcohol content of .219.

3 Q And do you have to -- do you have to divide anything or
4 multiple anything to get -- I think you said plasma alcohol
5 versus whole blood?

6 A You do. It is understood that -- so we're testing just
7 the plasma for alcohol in our laboratory. The legal
8 standard for a criminal case --

9 MR. GARRETT: Objection, Your Honor. May we approach?

10 THE COURT: Sure.

11 (Whereupon, a sidebar was held.)

12 THE COURT: Try to regroup on that, Solicitor.

13 MR. BLACK: Thank you.

14 Q Dr. Reddic, so the .219, that's plasma alcohol; is that
15 correct?

16 A That's correct. Plasma alcohol, and that --

17 Q For standard -- I guess, for a standard, you know,
18 blood draw, it's whole blood; is that correct?

19 A That's correct.

20 Q Okay. What -- if you convert the 219 to whole blood
21 what would that conversion be, and how do you -- how did you
22 arrive -- how do you arrive at that?

23 A So in the -- it's understood that plasma alcohol levels
24 will be higher than whole blood alcohol levels. Different
25 groups or studies have looked to say, you know, if we do a

1 conversion, what's the appropriate conversion factor. I've
2 seen numbers as small as you have to take 12 percent away,
3 to as high as you have to take 20 percent away. So --

4 Q So it's between 12 and 20?

5 A Twelve and 20 percent is what I have most commonly seen
6 in literature. So if you take .219 and subtract 20 percent
7 of .219, so .022, .0 -- so .044. Can I --

8 MR. BLACK: Do you have a calculator?

9 THE WITNESS: Calculator, or can I jot on a piece of
10 paper?

11 THE COURT: Calculator or a sheet of paper?

12 THE WITNESS: Either way is fine. Okay. We'll just do
13 it on a calculator.

14 A So .219, 20 percent of that is .0438. So .219 minus
15 .0438. .219 minus .0438 -- oh, sorry. I hit the -- .219
16 minus --

17 THE COURT: Try not to talk as you're figuring, and then
18 when you done with your figuring then testify. Okay?

19 THE WITNESS: All right.

20 A So if I do the conversion factor, usually 20 percent
21 decrease, that number becomes .1752.

22 Q So the whole blood would be 17 percent -- or, I guess,
23 maybe 18 percent alcohol if you round up -- if you round up?

24 A That is correct.

25 Q Okay. And that was at 20 percent, right?

1 A If you use a 20 percent correction factor, that is
2 correct.

3 Q And what about -- what about the 12 percent?

4 A All right. It's a .1897.

5 THE COURT: What's that number again, sir?

6 THE WITNESS: .1897.

7 Q And that would be whole blood; is that correct?

8 A That would be -- those two numbers that I've given
9 would be in the range of normal converted factors to whole
10 blood alcohol.

11 MR. BLACK: Beg the Court's indulgence.

12 THE COURT: Sure.

13 Q And now the -- just going back to the types of
14 machines. The machine that you used to test this result,
15 how is -- what kind of machine is it?

16 A So again, it's an auto-analyzer. It's manufactured by
17 a company called Abbott Diagnostics. It is --

18 Q How does it -- how does it test? Exactly what is it
19 testing?

20 A Well, in this case, for a plasma alcohol, it is adding
21 an enzyme to react with the alcohol to make some products.
22 Acetaldehyde and NADH. And so, what the machine does is it
23 takes some -- a specific volume of the sample. It adds a
24 specific volume of reagent, which is the -- an enzyme at a
25 specific concentration. It causes a reaction to start to

1 occur, and it measures that reaction at specific points in
2 time to measure how quickly a compound called NADH is being
3 performed. And the weight that NADH is produced is related
4 to the starting concentration of ethanol in the sample.

5 Q Okay. Are you familiar with the machines that they use
6 down at SLED to test --

7 A Yes. They use gas chromatography at SLED.

8 Q Is gas chromatography mass spectrometry?

9 A They probably do mass spectrometry for detection, yes.
10 I would assume.

11 Q Is that machine different than what you all use?

12 A Yes, it is. It is a fundamentally different way to
13 measure -- to measure the alcohol. In fact, it's a direct
14 -- it measures alcohol directly. Where the test that is
15 performed in my laboratory measures the -- measures the
16 formation of a reaction product of alcohol.

17 Q So the SLED machines are kind of -- they're measuring
18 just the alcohol?

19 A That is correct.

20 Q And your machines are measuring, obviously the alcohol,
21 but other -- there's other tests going on as well?

22 A My machine forces a reaction with the alcohol and it
23 measures the product formed in that reaction of the alcohol.

24 Q In your expert opinion, Doctor, an 18 percent alcohol
25 content on the whole blood, how would that affect -

1 MR. GARRETT: Objection, Your Honor. If Your Honor
2 goes to -- may we approach?

3 THE COURT: Okay.

4 (Whereupon, a sidebar was held.)

5 Q Doctor, I'm going to move on just briefly. A couple
6 more questions. Can you talk a little bit about the lab and
7 the security at the Greenville Hospital Memorial, the lab
8 there that you oversee?

9 A Certainly. So the laboratory has a lot of expensive
10 equipment and uses expensive reagents to perform tests, and
11 we maintain human samples. Clinical specimens. So it is a
12 secured facility. The laboratory in whole is behind a
13 series of closed doors that are locked and can only be
14 accessed by personnel that have appropriate clearance. We
15 wear badges as employees and our badge is encoded with our
16 ID. And so you have to scan a badge to enter certain areas
17 in the laboratory, or in the -- in the hospital. And the
18 laboratory has that encoding at the main laboratory doors.
19 You have to use a badge and have to be cleared to be able to
20 open a door into the laboratory.

21 Q And does your lab -- do you all have to go through like
22 a type of accreditation or a process to, you know, remain
23 certified? Do you all have to do that?

24 A We do. All laboratories in the US that produce test
25 results for clinical samples, from samples that come from

1 human beings, have to be certified under rules called CLIA.
2 They're the Clinical Laboratory Improvement Amendments that
3 were passed by the federal government. CLIA says certain
4 other agencies meet their standards and laboratories can be
5 approved by those agencies. Our laboratory is approved by
6 an agency called the College of American Pathologist, which
7 is a CLIA approved agency. And we go through -- we have
8 onsite certification every two years, and we have continual
9 performance verification that we do for most tests at least
10 three times a year to prove that we are turning out accurate
11 results.

12 Q And do they just show up whenever, or do they warn you?

13 A They're scheduled in a time window. We know roughly
14 within about three months when our inspections will occur.
15 They can have followup surprise inspections. They can
16 essentially audit an inspection. But we generally know the
17 time window every other year when we will have an
18 inspection.

19 Q So it's every two years?

20 A Every two years we have an inspection.

21 Q And it's quite an involved process?

22 A It is.

23 Q And I'm guessing that you still have your
24 certifications?

25 A We do. We just finished an inspection last month. We

1 just completed our inspection.

2 MR. BLACK: Beg the Court's indulgence.

3 THE COURT: Sure.

4 MR. BLACK: Please answer any questions Mr. Garrett
5 might have for you.

6 CROSS-EXAMINATION

7 BY MR. GARRETT:

8 Q You're a PhD doctor; is that correct?

9 A Yes, sir.

10 Q You're not a medical doctor?

11 A I'm not an MD. No, sir.

12 Q And I'm going to ask you a few questions about this
13 instrument that was used. But the first thing I want to ask
14 you though is can you look on your documents and tell the
15 jury, please, exactly what time your records indicate this
16 blood of Mr. Rowell was brought to your laboratory. What
17 time was it collected and what time was put into your
18 system?

19 A So we have a collect date time of 11/15/2014 at 2054,
20 so that would be 8:54 p.m.

21 Q P.m., okay.

22 A And we have --

23 Q Let me ask this question. Who put that information
24 into the computer?

25 A It would have been the laboratory technician working in

1 the laboratory at that time who received the specimen.

2 Q Now, I want to stop there and I want to go back for
3 just a minute. So at some point in time a doctor would
4 order the blood be pumped out; is that correct?

5 A Yes. A doctor would make an order for tests to be
6 performed.

7 Q And so, that alleges there that it was done at 8:54?

8 A That is correct. That's not what -- that's when the
9 sample was drawn. That's not necessarily when the doctor
10 placed the order.

11 Q I got you.

12 A There can be a time lag there.

13 Q I understand. So a doctor places the order, then it
14 gets done, and then it's about 30 minutes before you all
15 receive it?

16 A That is correct. We have a received date, time of this
17 specimen for 11/15/2014 at 2124, which is, I guess, about
18 9:24 p.m.

19 Q And where did that specimen -- where was it at during
20 that 30 minutes?

21 A I cannot answer that. It was not collected in the
22 laboratory. It was collected in the emergency department.
23 And so, the position of that sample and the transition
24 between collection and receipt in the laboratory is unknown
25 to me.

1 Q And it's also unknown who actually transported it from
2 down there to your lab? You can't tell me who actually
3 transported it, can you?

4 A I cannot tell you who transported it. I can tell you
5 who is listed as collecting the specimen and who is listed
6 as receiving the specimen, but I cannot tell you if that's
7 who transported it.

8 Q That's Mr. Smith. But we would agree that from the
9 doctor, or the draw to you folks it was 30 minutes
10 somewhere?

11 A Approximately, yes, sir. There is what we call clock
12 slop. Someone's watch may not be synced with the clock in
13 the laboratory. The computer laboratory. There usually --
14 there can be several minutes of clock slop there. But
15 approximately 30 minutes is appropriate.

16 Q But is it your -- your section's fault for having a
17 clock slop or theirs?

18 A I can't do anything about what someone's watch is set
19 to. I mean, you know, it depends. But, you know, I mean,
20 watches are not all necessarily synced to the same time.

21 Q And I'm assuming somebody gives your tech -- gives your
22 tech the time that they allege that they drew the sample?

23 A It is normal practice for it to be indicated with the
24 specimens at collection time, yes.

25 Q I'm just trying to understand you all's system. Okay?

1 Now, once it gets to your tech, your tech takes it and then
2 he spins it up?

3 A Logs in it. And if it is appropriate for it to be spun
4 up to separate the cells they would then have it spun up.
5 That's correct.

6 Q So he's got it in his hand. He takes it and he spins
7 it up?

8 A Correct. If it is a manual spinning process. It can
9 be an automated process.

10 Q Can you look at this and tell us whether it was
11 automated or manual?

12 A The audit-trail does not indicate whether or not this
13 hand sample was handled automatically or was handled
14 manually as far as the spinning of the specimen.

15 Q The same person that took it, would he be the same
16 person to spin it?

17 A Usually, yes, sir. That would be correct.

18 Q How many samples at any given time are you all taking
19 care of?

20 A So the daily workflow is such that I can't say for sure
21 without looking at the specifics of our workload for this
22 timeframe. But I would say it would be routine for us to
23 have 50 -- approximately 50 samples in the laboratory at
24 this time in various stages of testing.

25 Q And you can test up to 125 stations at one time?

1 A On the analyzer where this alcohol test is performed up
2 to 125 tests can be performed simultaneously.

3 Q All right. And so, in theory you could have as many --
4 like you said, you had 50 probably working, but you could
5 have as many as 125?

6 A Theoretically, yes.

7 Q Theoretically.

8 A Yes.

9 Q And once it's spun up then what happens to it?

10 A So a sample is -- is processed. It's spun up. The
11 cells are separated from the plasma. That tube is then
12 loaded onto -- again, it depends on the specifics of what
13 tests were ordered.

14 Q Okay. Let's just stay with -- let's stay with the
15 alcohol --

16 A Okay. So if I have a tube that has alcohol and a few
17 other chemistry samples, as this one did, the tube would be
18 -- a few other chemistry tests ordered. Sorry, not samples.
19 If you have a chemistry test ordered on this, that tube
20 would then be -- if it was manually spun and it was for the
21 emergency department, it would probably be then manually
22 loaded onto the instrument.

23 Q And who would do that?

24 A My assumption would be the person who's been processing
25 it, with this indication would most likely be Robert Smith.

1 It would manually load that specimen onto the instrument,
2 and then the instrument would take over at that point the
3 sample, performing the test, making the measurements. And
4 then actually also electronically releasing the results.

5 MR. BLACK: Judge, may we approach briefly?

6 THE COURT: Sure.

7 (Whereupon, a sidebar was held.)

8 MR. GARRETT: May I continue?

9 THE COURT: Yeah, please do.

10 MR. GARRETT: Thank you.

11 Q Now, you were talking about once it's spun up, once
12 it's put into the machine. But I was asking after it's been
13 in the machine tell us what the tech does next with the vial
14 or what happens?

15 A So if testing is complete on that instrument it doesn't
16 need to go to another department for testing. It's rather
17 highly automated at that point. The sample will actually
18 leave the instrument on a conveyor and move to an automated
19 storage facility attached via conveyor to the machine and
20 the sample will be stored there until it is either needed
21 for additional testing or it hits kind of a maximum storage
22 time, which is usually four or five days, and then it would
23 be disposed of.

24 Q Can you look on this and tell us when it was ultimately
25 disposed of?

1 A I do not believe I can. I did not take the audit trail
2 back -- or that far beyond just the point of testing. Those
3 records may exist, but I do not have them.

4 Q So we don't know what happened to the specimen after
5 you all got through doing whatever you were doing to it?
6 You think it's just --

7 A What do you -- I mean, I'll have to look at -- in our
8 sheets. But I believe that there's indication here that it
9 was racked, which means it was moved to the storage -- to
10 the storage device.

11 Q Is it possibly still there?

12 A No, sir. No. The longest we would store a specimen on
13 that would be maybe five days.

14 Q Thank you. Now, this test that you're giving has
15 stamped all over it for medical purposes only, not for legal
16 purposes, right?

17 A That is correct.

18 Q Okay. So, I mean, it's not even a test that's intended
19 for a legal purpose. It's a test for the doctors; is that
20 correct?

21 A That is correct.

22 Q Now, can you explain to the jury the meaning of testing
23 specificity in your science?

24 A So specificity speaks to -- for a given test usually an
25 enzyme related test. Does the enzyme reaction -- how

1 specifically does it just react with the compound that you
2 care about, or can there be a thing called cross-reactivity.
3 Can it react with other compounds that are not what you're
4 looking for. So with a degree of specificity, the higher
5 the degree of specificity the less the degree of
6 cross-reactivity with other compounds there is.

7 Q Okay. And when you test for alcohol in your laboratory
8 is the instrument you use used only for the testing of
9 alcohol?

10 A Is the instrument only used for -- no. There's
11 approximately 50 other compounds that are also tested for by
12 that instrument.

13 Q And it can be doing that simultaneously, right?

14 A Multiple samples and multiple different kinds of tests
15 can be carried out simultaneously. Yes, sir.

16 Q For instance, like sodium, potassium, calcium, et
17 cetera?

18 A That is correct.

19 Q If your emergency department received something called
20 blood stat, s-t-a-t, how does your agency or how does your
21 department treat it differently than, say, normal blood?

22 A So stat is a priority assignment. It stands for short
23 turnaround time. It's a specimen that you want to have
24 essentially prioritized to the front of the line for
25 testing, and most specimens coming from the emergency

1 department would be stat specimens. So it kind of controls
2 how they get handled. For the main laboratory at Greenville
3 Memorial that means they'll probably be manually spun over
4 loaded on the automated spin system, and they will be front
5 loaded on the instrument rather than being put on the
6 conveyor belt which kind of takes things as they come.

7 Q Also kept out of the pneumatic tubes that you use
8 sometimes?

9 A It is not routine practice for the emergency department
10 to tube specimens to the lab. It is routine practice for
11 them to -- for specimens to be hand-delivered to the lab.

12 Q The lab technician, he literally has to hand take that
13 thing and put it into the machine; is that correct?

14 A That is correct.

15 Q And not until then would we begin the testing sequence?
16 We have to put it in there first to begin the testing
17 sequence?

18 A That is correct.

19 Q And again, if it's stat, you all don't use the
20 pneumatic tubes?

21 A We are not supposed to. It's not routine practice for
22 the emergency department to use pneumatic tubes for stat
23 samples.

24 Q Can you check this just to see whether or not --

25 A I do not have -- my auto-trail does not answer that

1 question. I do not know if it was hand-delivered or tubed
2 to the -- to the laboratory.

3 Q And how many stat blood specimens -- not just all of
4 them, but how many stat blood specimens would you say your
5 department handles, say, in a month or a year?

6 A Gosh.

7 Q Estimate.

8 A So I get about 50,000 specimens a month. Maybe 20
9 percent of them are stat, 10,000. That's a very rough
10 estimate. That's not something that I've looked at closely
11 recently.

12 Q Who's responsible for quality control?

13 A It's a group effort. I am one of the people in the
14 laboratory who is responsible for quality control. And also
15 more globally the concept of quality assurance. That is one
16 of my responsibilities. Along with my boss and other -- you
17 know, everyone in the laboratory has a responsibility for
18 quality. But like directly reportable duties beyond routine
19 QC, myself and several other people are assigned those
20 duties.

21 Q And have you ever had a situation where a sample for
22 some reason got delayed and here you are talking to the
23 doctor about it and trying to explain why it got delayed?
24 Have you ever had that happen to you?

25 A What do you mean delayed? Like delayed in time in

1 reporting?

2 Q Delay in time getting to you, delay in time --

3 A Yes. Yes. We've had -- those situations do occur.

4 Q Have you ever had a situation where it never got to the
5 lab? Somehow it just never got to the lab?

6 A Those situations have occurred very rarely. But I'm
7 aware of one or two instances over the years of lost
8 specimens.

9 Q And has there ever been a mixup in a patient specimen
10 and the wrong report issued for a given patient's blood
11 specimen? Has that ever happened?

12 A That is called a misidentification. And yes, I am
13 aware of the occurrence of misidentifications. They are
14 rare events, but they do occur.

15 Q I understand. And how do you have protocols in place
16 to catch it? In other words, to make sure that you know
17 that it's a mistake and how do you -- how do you fix that or
18 how do you check to confirm it or -- help us understand
19 that.

20 A Well, there are -- you know, for most identification a
21 lot of times it's a case-by-case basis. We get alerted to
22 misidentification. One of the most common ways we would be
23 alerted to a misidentification would be that a result of --
24 a chemical test result does not make clinical sense to the
25 physician. Like this person's whatever is elevated and

1 they're in this particular medical state it obviously can't
2 be elevated. So that is one of the more common ways we
3 would discovery a misidentification.

4 Q It's just basically a physician saying wait a minute,
5 this don't match up. This don't --

6 A That is correct.

7 Q He calls back and he gets it retested or --

8 A He would either as for retest or request a redraw and
9 retest of a new sample.

10 Q And how do you all document these types of problems?

11 A We have specific forms for -- like for
12 misidentification. We monitor and document each one. It's
13 part of our -- it's a quality assurance followup form. And
14 we track our volumes monthly and we -- you know, each --

15 Q -- I'm assuming.

16 A Yes, we have a low threshold for misidentifications.

17 Q Can you explain to the jury the meaning of a false
18 positive result?

19 A So strictly speaking, for a quantitative test where a
20 result is provided, not as a numerical value but either as
21 positive or negative, a false positive in sample that the
22 laboratory because of testing says it's positive, but in
23 truth the specimen is negative. You will apply that to
24 quantitative tests sometimes. Like you will call it a false
25 elevation, or a false decrease in levels where the

1 laboratory reports out a value -- a numerical value is high,
2 when in truth, the true value of the specimen is lower than
3 that. That would be exactly the false elevation, so...

4 Q And sometimes that does occur?

5 A Yes, sir. That is -- that can occur.

6 Q Now, this test is supposed to be testing for ethyl
7 alcohol, but isn't it true it can also false positive for
8 other alcohols in addition to ethyl alcohol? In other
9 words, the reagent will cause it to --

10 A For other alcohol, say isopropanol or some of those,
11 I'm only aware of any interference for our particular test
12 associated with other alcohols.

13 Q Okay. Have you studied the literature on this -- you
14 call it the Abbott machine?

15 A Yes, sir.

16 Q Are you aware of some of the problematical studies
17 especially in the area of alcohol testing?

18 A In general I'm aware of some of the literature that
19 talks about interferences for this particular weight
20 reaction that is used. The enzymatic reaction that is used
21 for this test. Yes, sir.

22 Q And the alcohol test is something that you use in a lot
23 of trauma patients, right?

24 A It is a common trauma test. Yes, sir.

25 Q And do you know how many trauma patients got treated at

1 or about the same time that Mr. Rowell got treated?

2 A I do not know, sir.

3 Q How many alcohol tests would you say that your
4 laboratory performs in a given year?

5 A Multiple thousands. Maybe 15,000. That is a very
6 loose approximation, but certainly multiple thousands.

7 Q And would the majority of those tests be done for
8 trauma patients as far as the alcohol test?

9 A A significant percentage. I don't know of majority,
10 but more than 20 percent I'm certain. Maybe -- maybe more
11 than 50 percent of those, but certainly more than 20
12 percent.

13 Q Okay. Has your laboratory done any studies to document
14 that no one single false positive test result has occurred
15 from the alcohol test that you routinely run in the trauma
16 patients?

17 A I'm sorry. Can you restate that question.

18 Q Yeah. What studies has your laboratory done to
19 document that not one single positive -- false positive
20 result has occurred from the alcohol tests that you
21 routinely run? Have you done any studies to determine
22 whether or not there were any false positives as a result of
23 your alcohol test?

24 A We have observed once that there was a false positive.
25 And in my tenure at the laboratory I'm aware of one false

1 positive that has occurred for ethanol testing.

2 Q What was wrong with that one?

3 A It reported a value of 30 milligrams per deciliter.

4 Approximately 30 milligrams per deciliter in a patient where

5 the alcohol level should have been zero, or the limit of --

6 we would have reported less than 10 would be the limit of

7 our reporting.

8 Q Are you familiar as to whether or not any acidic

9 acidosis might cause your reading to be skewed in this

10 particular test?

11 A There's literature to suggest the possibility that a

12 combination of high lactic acid along with a highly elevated

13 lactate dehydrogenates may cause a false elevation in this

14 testing.

15 Q All right. Have you had an opportunity to look at my

16 client's medical records?

17 A I have.

18 Q And have --

19 A I've looked at your client's medical records with

20 respect to the specimens that are listed here, yes.

21 Q Okay. Are you aware that he had a lacerated liver?

22 A No, I was not.

23 Q Are you aware he had numerous broken bones in his body?

24 A I was aware of that, yes.

25 Q And what causes acidosis?

1 A So --

2 Q Lactate --

3 A Lactic acidosis. The most common occurrences would be
4 septic shock from a bacterial infection, and it can be
5 associated with trauma as well.

6 Q Are you aware that he had been bleeding into his
7 peritoneal sac from the time of the accident all the way
8 until the time he was --

9 A I know he had significant trauma. I don't know the
10 details of that.

11 Q I'm just saying that, again, your studies -- there are
12 studies that show that you can have a false positive from
13 these -- you know, from these -- from acidosis. And you
14 called it acidosis what?

15 A So in order -- the literature that I have reviewed says
16 you have to have two situations occur. There has to be a
17 very high level of an enzyme called lactate dehydrogenase.

18 Q Yeah.

19 A LD or LDH abbreviated. And lactic acid. They have to
20 be in exceptionally high levels.

21 Q Well, if you go back and look at his medical records --
22 we'll have the doctor talk about that later. But you
23 haven't studied them to see if he had two or three of those
24 potential problems, have you?

25 A What do you --

1 Q You haven't reviewed his medical records to determine
2 whether or not Gene Rowell - I mean, Adam Rowell, whether or
3 not he had three or four of those potential problems going
4 on when this test was done?

5 A I have nothing in his medical record, you know, as far
6 as testing goes to indicate those specific examples.
7 There's nothing in his medical records that says they were
8 performed. And I do not know any degree of septic shock he
9 may have been in or the significance of the trauma. I'm
10 unaware of those. I mean, other than just generally knowing
11 that he was a trauma patient, so there was trauma, yes.

12 Q The is it fair to say then you did not -- in your
13 studies you did not calculate that in to determine this
14 result?

15 A That is correct.

16 Q So is there a way that you could have tested for that
17 in your system that's got 50 different things it tests for?
18 Is there some --

19 A If a lactic acid test had been ordered and the lactate
20 dehydrogenase test had been ordered you could have possibly
21 gotten an answer. If a full electrolyte panel had been
22 ordered you can indirectly infer the degree of acidosis,
23 like the acidosis from an Anion Gap calculation. But from
24 the tests that I have before me there's not enough
25 information to do that.

1 Q Okay. These tests -- is it something that this is the
2 first time you've ever testified as a witness as an expert
3 in one of these cases; is that correct?

4 A That is correct.

5 Q All right. Are you being paid by the Greenville
6 Hospital System to come down here today to educate us, or
7 how do they -- how do they handle that?

8 A I am hoping that I do not have to take time off to be
9 here today, but that is the extent of any pay that I would
10 receive. You know, I'm assuming that this will be treated
11 as a regular workday for me, so my normal salary would be
12 the closest thing that I would have.

13 Q I was just wondering if you were being paid for being
14 here today. Does it pay at least your transportation or
15 anything to be here?

16 A If they would give me mileage, that's awesome. But I
17 doubt they will.

18 Q And is -- this particular machine, you'll have done
19 away with it?

20 A Yes, we replaced it with an identical machine about six
21 months ago. A little over six months ago now, simply
22 because we're a very high volume laboratory and the machine
23 that we retired had been in service for several years and
24 just had a volume of tests put through it that we were kind
25 of, you know, reaching the end of its life without requiring

1 significant routine servicing.

2 Q And you've produced these results. Can you look on
3 your report to see when you were asked to produce these
4 results? I assume you've produced them that night?

5 A Let's see. So let's see. I know that I have seen when
6 those results were released. Let's see. Where is the
7 alcohol result --

8 THE COURT: As you're looking through it and making
9 commentary --

10 THE WITNESS: Yes.

11 THE COURT: -- look and then answer the question. It's
12 a little easier on the court reporter.

13 A I have a result time for the alcohol test of 9:30 p.m.
14 and 56 seconds for that evening. So that is when the test
15 was made available from the instrument. It -- this result
16 should have auto-verified, which means it was automatically
17 released from the instrument to the medical records. So
18 somewhere approximately 9:40, 9:41 p.m. on November 15th,
19 2014 that result should have been in the medical record.

20 Q So if we knew that the challenge -- there was going to
21 be a challenge based on septic -- sepsis, based on acidosis
22 and based on lactate issues, we could have run another
23 series of tests to see what those percentages were in that
24 -- in that plasma?

25 A Yes. If the lactic acid test and the lactate

1 dehydrogenase test were performed, those could give us some
2 indication of whether or not there was a possible
3 interference. In the literature, the concentrations for
4 lactic acid and lactate dehydrogenase levels that cause
5 interference are exceptionally high.

6 Q I understand.

7 A They're exceptionally high.

8 Q I understand. But your -- your particular -- the one
9 that you're using has got the highest rate. Are you
10 familiar with that? The highest rate of false positives in
11 the nation of tests being used?

12 A For?

13 Q For false positive alcohol if you have those two or
14 three other problems in the patient.

15 A I've not heard that. I am not aware of that in
16 literature.

17 MR. GARRETT: Thank you.

18 THE COURT: Redirect.

19 MR. BLACK: Sure, briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. BLACK:

22 Q Did Dr. Snow order the lactic test on this sample?

23 A There's nothing that I have in my documentation where
24 that test was ordered.

25 Q And ultimately that's Dr. Snow's call, right?

1 A That is correct.

2 Q You don't take what test your running?

3 A No, sir. We're given orders and we follow those
4 orders.

5 Q I understand. You talked about this one time where you
6 observed a false positive.

7 A That's correct.

8 Q And can you tell us a little bit more about that? You
9 said they were 30 milliliters per deciliter of the ethanol?

10 A It was approximately 30ish. I don't remember the exact
11 number, but I remember the incident.

12 Q Can you tell us about it?

13 A Yeah. So it was a child who was in a very traumatic
14 state. They'd had some significant medical issues involving
15 trauma and shock. And the physician called us because they
16 had gotten a report for a positive blood alcohol -- plasma
17 alcohol. It was approximately 30, 33, 35. I don't remember
18 the exact number. And they were questioning why they were
19 seeing this, because the child was in the hospital and there
20 was no expectation that the number would -- that it would be
21 a value at all. And so, at that time we looked at the
22 child's -- the test ordered. They had had a lactate
23 dehydrogenase LD test ordered, and the value was
24 approximately 40 times the normal value. And normal value
25 for LD would be 150 to 200, you know, maybe 300, and I want

1 to say this one was approximately 14,000. And so, it had an
2 exceptionally high LD for this child.

3 Q So the 30, you said moved the decimal place over a
4 couple of times.

5 A So that would be equivalent to a .03.

6 Q .03 in whole blood?

7 A In whole -- in -- yes. You got to do the 20 percent
8 subtraction. But approximately .03.

9 Q .03 as opposed to a zero is what it should have been?

10 A Correct.

11 Q And that's the only case you've seen?

12 A That's the only case I've ever directly observed.

13 Q And you've been there how long again?

14 A Approaching four years.

15 Q And once again, a lactate test, it wasn't done on Mr.
16 Rowell in this case?

17 A That's correct. Neither a lactate test nor a lactate
18 dehydrogenase test were done.

19 Q And the doctor didn't order it?

20 A Because the doctor did not order it, correct.

21 Q And these are according to your records that you don't
22 see that one has been done? One has been ordered?

23 A I'm sorry. Say that again.

24 Q According to your records, you don't see that one of
25 these tests was ordered?

1 A According to the records that I -- that I looked up for
2 this case I do not see where that was ordered at Greenville
3 Memorial --

4 Q Laboratory?

5 A At the laboratory during this time -- during this, you
6 know, window of sample -- of sample collection and ordering,
7 so...

8 MR. BLACK: That's all the questions I have. Thank
9 you.

10 THE COURT: Recross?

11 MR. GARRETT: Just briefly.

12 RECCROSS-EXAMINATION

13 BY MR. GARRETT:

14 Q If the medical records that you haven't seen though do
15 show it, then it had to come from somewhere, didn't it?

16 A Yes, it had to.

17 Q So if we review these medical records and we can find
18 elevations of these problems or heightened amounts then it
19 may very well have affected this outcome?

20 A It's possible. You know, from literature that I have
21 reviewed has levels of, you know, greater than 16,000 LD and
22 greater than 20 lactic acid.

23 Q That's in what you've reviewed?

24 A The literature I've reviewed indicates that, correct.

25 Q But you haven't -- you haven't reviewed all the

1 literature on this subject, have you?

2 A I doubt anyone has reviewed all the literature on this
3 subject.

4 Q I'm just talking very specifically about the effects of
5 the lactate of the acids of -- what was the last --

6 A Lactic acid and lactate dehydrogenase.

7 Q Dehydrogenase. It's a very specific inquiry as to a
8 false positive alcohol. It's a very -- it's a narrow issue?

9 A That's correct.

10 Q And you've only -- you've only studied how many
11 different periodicals about that subject?

12 A I've pulled five or six articles probably in recent
13 history on this topic.

14 Q And all of them say that you've got to have -- do you
15 agree with me that the ones that are being complained about
16 the most are on your machine?

17 A No, I do not. I have no knowledge of that. I mean,
18 I'm aware of this particular method which many standard
19 machines use are subject to this interference. I'm unaware
20 that it's particularly better or worse on any model over
21 another. I have no knowledge of that.

22 Q But the gas -- the gas chromatography is a lot better?
23 It's a direct test; is that correct?

24 A The gas chromatography does not suffer from this
25 interference. It would not occur with the gas

1 chromatography. That is correct.

2 MR. GARRETT: Thank you.

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

4 (Whereupon, the witness stepped down from the witness
5 stand.)

6 THE COURT: Doctor, you're welcome to remain with us or
7 your free to go.

8 Come up here.

9 (Whereupon, a side bar was held.)

10 THE COURT: Mr. Foreman, ladies and gentlemen of the
11 jury, the State has indicated that they have two more
12 witnesses and neither one should be very long. Don't hold
13 me to that. But they evidently have been here for quite
14 some time, so we'd like to get them in and out. Everybody
15 good to work a little bit longer? We're going to take a
16 break right now. But is everybody good to work a little bit
17 longer?

18 (Whereupon, the jury indicated in the affirmative.)

19 THE COURT: All right. Very good. Thank you very
20 much. Just go back to the jury room. We'll take a short
21 break and then we'll get these two witness up and out and
22 then we'll adjourn for the night.

23 (Whereupon, the jury exited the courtroom at 5:09 p.m.)

24 THE COURT: Go ahead, Mr. Henderson.

25 MR. HENDERSON: Your Honor, I understand that the

1 government wants to put up a couple of chain witnesses, I
2 guess for the SLED blood draw. We don' have any problems
3 with that, but we just want the Court to understand and
4 acknowledge that we are not waiving any suppression motions
5 that we may have as it related to this legal blood draw,
6 because we probably will have them.

7 THE COURT: Sure.

8 MR. HENDERSON: And I know just for conveniences sake
9 we don't want to send these people back down to Columbia or
10 Greenville and --

11 THE COURT: Right.

12 MR. HENDERSON: -- bring them back up and down the
13 highway.

14 THE COURT: Right. And based upon our communication on
15 Monday I anticipated that you would have some, but certainly
16 you're not waiving any rights by way of participation and,
17 you know, cross-examination of these witnesses.

18 MR. HENDERSON: Right. We just didn't want to
19 inconvenience them because one's in Columbia and one's in
20 Greenville.

21 THE COURT: So you're protected on the record that you
22 do reserve the right to make appropriate motions to suppress
23 whenever you feel it's needed.

24 MR. HENDERSON: And also I think we've agreed to turn
25 one Court's exhibit into a State's Exhibit, but I'm not sure

1 what number it is. It's the LifeFlight records.

2 THE COURT: That would be No. 10.

3 MR. HENDERSON: I believe we have stipulated, I guess,
4 as a State's Exhibit, or it doesn't matter.

5 MR. BLACK: Yes, sir, Your Honor. The State has no
6 problem stipulating to that.

7 THE COURT: So LifeFlight chart, Court's Exhibit 10
8 will now be State's 70.

9 (Whereupon, State's Exhibit No. 70 was marked for
10 identification.)

11 THE COURT: Let me just go ahead and put on the record,
12 since we've dealt with it about the sequestration. We did a
13 little research. And federal rules in sequestration do not
14 require sequestered witnesses to be separated from one
15 another either before or after testimony. And that's a
16 federal rule. I understand that. But that maybe would give
17 us some guidance. And also we did some research concerning
18 violation of sequestration orders being the basis of
19 granting mistrials, and several cases that we came across,
20 State cases, found that the Court did not abuse its
21 discretion in declining to grant the motion for mistrial
22 based upon violation of sequestration order. So I just
23 wanted to get that on the record.

24 And lastly, for purposes -- and I didn't want to do
25 this in the presence of the jury. But for purposes of

1 admissibility only, with respect to the hospital draw
2 alcohol content results. Based upon the testimony, I find
3 that there was sufficient reliability for admissibility
4 purposes only. Understanding that part of the Defense case
5 is going to be expert testimony to attack the reliability.
6 But for purposes of admissibility only, the testimony
7 supported a finding of reliability. So I wanted to get that
8 on the record.

9 MR. GARRETT: Could I add one more thing, Judge? I
10 want to make sure. These witnesses not only were
11 sequestered, but they were also under oath, and had stepped
12 down -- had stepped down from the stand, but were still
13 under oath and remained under oath.

14 THE COURT: That's correct.

15 MR. GARRETT: And they're not subject to any
16 discussions. I think there's a different rule for a witness
17 who is under oath and a sequestered witness. I just want to
18 make sure that we recognize in this case that those
19 witnesses were literally under oath and had stepped down.

20 THE COURT: Well, in one case. State vs. Todd, there's
21 no abuse of discretion if the testimony is arguably
22 contradictory of and in reply to earlier testimony. So
23 there was -- the sequestration order in effect, and the
24 testimony in two situations was contradictory. And again,
25 the Court did not abuse its discretion in declining to grant

1 a mistrial.

2 MR. GARRETT: Thank you, Your Honor.

3 THE COURT: All right. Let's bring the jury out,
4 please.

5 (Whereupon, the jury entered the courtroom at 5:34
6 p.m.)

7 THE COURT: Let the record reflect the jury is back in
8 the courtroom. Solicitor, you want to call your next
9 witness?

10 MR. BLACK: Yes, Your Honor. State calls Leslie
11 Childers to the stand.

12 LESLIE CHILDERS, having first been
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BLACK:

16 Q Ma'am, could you please state your name for the record,
17 please.

18 A Leslie Childers.

19 Q And, Ms. Childers, where -- where do you work?

20 A I work at Greenville Memorial Hospital in the neuro
21 trauma ICU.

22 Q And you're a nurse?

23 A I am.

24 Q And were you -- how long have you been working there?

25 A I've been with the Greenville Hospital System for 19

1 years and in neuro trauma ICU for 19 years.

2 Q And so, you were working in that same department back
3 in November of 2014?

4 A I was.

5 Q Okay. I'm going to show you what's already been marked
6 and entered into evidence State's 3 and 4, and then for
7 identification purposes State's No. 5. Let's start with No.
8 3 first. Can you identify that document?

9 A This is a South Carolina Law Enforcement Division urine
10 and blood collection report.

11 Q And in this particular case did you fill this -- did
12 you sign this document anywhere?

13 A Yes. My signature is on the document in two places.

14 Q And can you just tell the jury why your signature would
15 be on this document?

16 A In the first situation it says that I'm supposed to
17 check a correct activity, and it says a blood sample is
18 requested by the arresting officer because a licensed
19 medical person has informed the officer that the subject is
20 unable to take a breath test at this time due to any reason
21 deemed acceptable by that licensed medical person. And I
22 did check that. And I printed and signed my name.

23 Q And then you also signed it in another location?

24 A Yes. It says this section is to be checked by sample
25 collector using a non-alcohol prep. A blood sample was

1 collected in an unused, uncontaminated vial and given
2 directly to the arresting officer or to the subject
3 requesting sample for his or her independent test after
4 collection.

5 Q And did you do that?

6 A Yes, I did. I printed and signed my name.

7 Q And have you had a chance to -- and that's number
8 three; is that correct?

9 A That's number three. Yes, three.

10 Q Yes, ma'am. And then let's move on to number four.

11 That looks like a Greenville Health System chain of custody?

12 A That is correct.

13 Q And does this document tell you what time you ended up
14 drawing this sample? Maybe down at the bottom.

15 A Oh, yes. It was 0105.

16 Q So is that 1:05?

17 A 0105 in the morning.

18 Q And that would be on 11/16/14?

19 A That's correct.

20 Q And once you -- once you drew this particular specimen
21 what did you do with it?

22 A I would give it to the officer.

23 Q And is his signature on here, or what appears to be his
24 signature?

25 A I see a signature of Keith B. Smith.

1 Q Okay. Now, just briefly. You talked about taking a
2 sample. You used a non-alcohol adhesive before you drew the
3 sample?

4 A I typically use providone iodine.

5 Q What is that?

6 A Betadine. It is non-alcoholic. It has no alcohol in
7 it.

8 Q And I'm also showing you what's been marked as State's
9 No. 5. I think it's the items up there.

10 A Uh-huh.

11 Q You briefly reviewed that before the jury came out,
12 didn't you?

13 A I did.

14 Q And what is that?

15 A This is a blood and urine sample containers.

16 Q And was there -- are there -- are they vials?

17 A Two vials, grey top tubes.

18 Q And did you sign those?

19 A Yes, I did.

20 Q And you signed those vials immediately after you --
21 immediately after you take a blood sample?

22 A Yes, I do that at the bedside. We have to check the
23 label against the patient's armband.

24 Q Okay. And how long are you in possession of that
25 specimen?

1 A Until I turn it over to the officer.

2 Q So it's relatively quickly?

3 A Yes. Once I draw it the officers -- my experience has
4 been the officers are there, and once I draw the blood and
5 label everything and seal it I turn it directly over to the
6 officers have them sign the documents that they've received
7 it.

8 Q It sounds like you've done this before?

9 A Yes, I have.

10 Q Do you remember drawing this particular sample on that
11 date?

12 A I do not.

13 Q But you have done this multiple times?

14 A Yes.

15 Q Do you know about how many, if you had to -- if you had
16 to guesstimate?

17 A Well, I'm a charge nurse in neuro trauma with a lot of
18 young nurses. And so, probably at least once a month.

19 Q At least once a month?

20 A I would say.

21 Q And before you turned this over, these samples over, do
22 you tamper with the results at all?

23 A I don't understand what you mean tamper with.

24 Q Do you -- do you lace it with any kind of alcohol or
25 any kind of drugs or anything?

1 A Oh, no.

2 Q Okay. Once you take this blood, Ms. Childers, do you
3 ever get back and -- do you ever take possession of those
4 samples ever again?

5 A No, not once I turn them over to the law enforcement
6 officer.

7 MR. BLACK: Thank you. Please answer any questions Mr.
8 Garrett might have.

9 THE COURT: Cross-examination.

10 MR. GARRETT: Thank you. Just very briefly.

11 CROSS-EXAMINATION

12 BY MR. GARRETT:

13 Q Thank you for being here.

14 A Thank you.

15 Q At the request of the officer you went ahead and did
16 what we call a SLED blood draw; is that correct?

17 A That is correct.

18 Q All right. Now, I want you to look again real quick
19 and tell the jury specifically what time you did that --
20 what time you did that draw. I believe you said a moment
21 ago it was 105. Would that be 1:05 in the morning?

22 A I believe the 1:05 is when I turned it over to the
23 officer. That's on the paper.

24 Q What time was it drawn?

25 A 0056.

1 Q 0056?

2 A That would be 56 minutes after midnight. So there
3 would be an eight minute time lag.

4 Q Between the time you drew it and handed it to the
5 officer?

6 A That's correct.

7 Q So 56 you drew it, and you gave it to the officer eight
8 minutes later, and that's where we got the -- where it was
9 signed for as at 1:05?

10 A That's correct.

11 Q Now, if -- I just want to make sure. If an accident
12 happened around 7:20, that would be almost six hours later
13 before that draw would have been made?

14 A That would be --

15 Q Just take 7:20, 8:00, 9:00, 10:00, 11:00, 12:00, 1:00.

16 A About five hours and 20 minutes or 30 minutes.

17 Q Five hours and 30 minutes. So we can do the math.
18 Something like that. So between five and six?

19 A That's correct.

20 Q All right. And you're sure for sure now that you
21 didn't take this test at 1929 hours, or 7:29?

22 A I can only go by what is on the tube, yes. 0056 is
23 what time I wrote on the tube.

24 Q All right. I just want to make sure that you didn't
25 take any other draws at 7:29 p.m. in this case.

1 A I don't recall taking any. I don't recall the
2 circumstances.

3 MR. GARRETT: All right. Thank you. That's all I
4 have.

5 THE COURT: Any redirect?

6 MR. BLACK: No, sir, Your Honor.

7 THE COURT: Thank you, ma'am, you can step down. You
8 are free to leave the courthouse, or you're free to stay
9 with us if you like.

10 (Whereupon, the witness stepped down from the witness
11 stand.)

12 MR. BLACK: State calls R.A. Frick.

13 RODNEY FRICK, having first been
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BLACK:

17 Q Can you state your name for the record, please, sir.

18 A My name is Rodney Frick.

19 Q And you work for the Highway Patrol?

20 A Yes, sir. I do.

21 Q How long have you worked there?

22 A Twenty-four years.

23 Q And currently you -- what is your job?

24 A Currently I'm employed as a Sergeant in our Central
25 Evidence facility in Columbia.

1 Q And that's in Columbia?

2 A It is.

3 Q And tell us what exactly you do at Central Evidence.

4 A In Central Evidence we have house all evidence for the
5 South Carolina Highway Patrol, South Carolina -- well,
6 basically the South Carolina Department of Public Safety,
7 which includes Highway Patrol, Bureau of Protective Services
8 and STP and Immigration.

9 Q So you're essentially -- you're an evidence custodian
10 for all the evidence that comes through the Highway Patrol?

11 A Yes, sir.

12 Q I'm going to show you what's been marked as -- for
13 identification purposes as State's No. 5. Can you tell --
14 can you tell us what that is?

15 A Yes, sir. This is one of my evidence bags which
16 contains a SLED evidence bag.

17 Q And do you know what the items are inside of it?

18 A Yes, sir. It's two vials of blood and a container of
19 urine.

20 Q And there's a sheet -- there's an adjoining sheet to
21 that; is that correct?

22 A Yes, sir.

23 Q And what is that sheet?

24 A That is our chain of custody.

25 Q And is it standard that a chain of custody is filled

1 out for any evidence that comes through the Highway Patrol?

2 A It is.

3 Q Okay. And so, it's not unusual to see one of those
4 sheets attached to this document?

5 A No, sir. You always see one of those sheets attached.

6 Q And -- now, your name appears on that sheet; is that
7 correct?

8 A It is.

9 Q Where does it appear on that particular sheet?

10 A It appears on the chain of custody part. On November
11 17th of 2014 I received a sealed SLED blood and urine kit
12 from Officer Lusk with the Highway Patrol.

13 Q And do you -- do you specifically remember receiving
14 this item?

15 A Not specifically this item. We receive hundreds of
16 items a month.

17 Q Hundreds a month?

18 A Yes, sir.

19 Q Multiple a day, I'm guessing?

20 A Multiple. Yes, sir.

21 Q How many items have you received since you've been
22 working at CEF down in Columbia?

23 A Thousands.

24 Q And you've been there -- how long have you all been --
25 have you been there?

1 A I've been there for eight years.

2 Q Okay. When you first received this sample was it
3 packaged differently than how it's received now?

4 A Yes, sir. It was.

5 Q How as it packaged?

6 A It was packaged in what is known as what we call a SLED
7 blood/urine kit, which is a box --

8 Q Yes, sir.

9 A -- which contains vials and a container.

10 Q Is that box sealed?

11 A It is. Or it was. Yes, sir.

12 Q Now, when you got it was it sealed?

13 A It was.

14 Q If there's -- if there had been any kind of tampering
15 or if it's opened when you got it would you have made a note
16 of it?

17 A We would not have received it. Our standard operating
18 procedures are if it's not sealed when it comes to Central
19 Evidence we return it to the officer.

20 Q You reject it and send it back on its way?

21 A Yes, sir.

22 Q So did you accept this particular item?

23 A Yes, sir. I did.

24 Q And what did you do with it?

25 A Once I received this item from Officer Lusk I entered

1 it in what is known as a SLED ILAB system.

2 Q Yes, sir.

3 A Once I put it in there I took all the paperwork in that
4 item and stored it in our refrigerator and our secured safe.

5 Q Did you end up doing the testing on this item?

6 A No, sir.

7 Q Who does the testing?

8 A SLED.

9 Q And was it eventually taken to SLED?

10 A It was. I received it on November 17th from Officer
11 Lusk.

12 Q Yes, sir.

13 A According to the chain of custody, on November 18th
14 Lance Corporal Odom, who was employed also at Central
15 Evidence --

16 Q Yes, sir.

17 A -- he received it from our refrigerator in our safe and
18 delivered it to SLED.

19 Q The very next day?

20 A The very next day. Yes, sir.

21 Q And then it was tested at SLED?

22 A Yes, sir.

23 Q Were you involved in getting this item at any other
24 time after testing?

25 A The only time I touched this was on February 13th. I

1 received it from our refrigerator. It had come back from
2 SLED.

3 Q Yes, sir. After it had been tested?

4 A After it had been tested it had come back from SLED,
5 and Officer Fouty, who was at our facility but now is with
6 DEA task force, he brought it -- he brought it back from
7 SLED on July the 9th of 2015 and put it back into our safe,
8 in our refrigerator. I received it from our safe on
9 February 13th, 2017 and turned it over to Sergeant Harris
10 for transportation.

11 Q And when was that? What was that date again? Was that
12 this week?

13 A It was. February the 13th.

14 MR. BLACK: That's all the questions I have. Thank you
15 for being you here. Sorry to keep you so late.

16 MR. GARRETT: No questions.

17 THE COURT: I just want to ask the name of the Trooper
18 that brought it back to the evidence facility.

19 THE WITNESS: From SLED, Your Honor, is --

20 THE COURT: Yeah.

21 THE WITNESS: -- Lance Corporal D.K. Fouty, F-o-u-t-y.

22 THE COURT: Thank you.

23 THE WITNESS: Yes, sir.

24 THE COURT: Did you say no questions, Mr. Garrett?

25 MR. GARRETT: No questions.

1 THE COURT: Thank you, sir. You can step down. You're
2 free to leave the courthouse.

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

5 THE COURT: Okay. Solicitor, I believe that's the
6 witnesses for today?

7 MR. BLACK: Yes, sir.

8 THE COURT: All right. Mr. Foreman, ladies and
9 gentlemen of the jury, it's about 10 till 6:00. We have
10 worked you very hard today, and we appreciate your
11 understanding, appreciate your patience, appreciate your
12 good attention to this case. You've been very observant,
13 very attentive. I've watched you, and we appreciate that.

14 So get home. Get some rest. Get something good to
15 eat. And we'll start back at 9:30 in the morning.

16 (Whereupon, the jury was released at 5:53 p.m.)

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

19 (Whereupon, the proceeding was concluded at 5:53 p.m.)

20 TRIAL DAY 5-02/17/17

21 (Whereupon, State's Exhibit Nos. 71, 72 and 73 were
22 marked for identification.)

23 THE COURT: We are on the record this morning. It's
24 been brought to my attention that the Defense has a motion
25 they need to deal with.

1 MR. HENDERSON: That's correct, Your Honor. Before we
2 get into our motion to suppress -- we'll call Dr. Valentine
3 as our witness on that. Your Honor, obviously the State
4 still was working on the chain of custody for the SLED blood
5 draw, because they haven't completed it yet, and obviously
6 we thought this would be the appropriate time to do the
7 motion to suppress. And I'd like to hand this up as well,
8 Your Honor, to the chain of custody.

9 THE COURT: Is this document already in evidence or
10 not?

11 MR. HENDERSON: It might very well be, a portion of it.
12 But I want this marked as a Court's exhibit, too, just to
13 keep it separate.

14 (Whereupon, Court's Exhibit 12 was marked for
15 identification purposes.)

16 MR. HENDERSON: Thank you.

17 THE COURT: Yeah. I think it is State's 4, and then
18 for purposes of this motion it's Court's 12.

19 MR. HENDERSON: Your Honor, just as it relates to chain
20 of custody -- and again, these are the documents that the
21 government's produced and these are the documents that they
22 gave to us to establish their chain of custody. You can
23 look through all this. All this deals with Mr. Rowell. And
24 if you look at the fifth page in, and down at the bottom
25 near the bottom right, Your Honor, you'll see a heading

1 called Analysis Request Information and you'll see three and
2 four written out to the left. So these are clearly the
3 samples that got tested from Mr. Rowell, and the Government
4 has indicated that these samples were collected at 19:29,
5 which is 7:29 on November the 15th of '14. Now, obviously
6 the testimony is that they've been talking about a draw that
7 was at some later time trying to establish the chain of
8 custody to get in. But, Your Honor, the documents indicate
9 that the draw that was tested was taken at 7:29. The blood
10 and the urine was taken at 7:25. And both of those would be
11 p.m. times, Your Honor, because the numbers were military
12 time. And again, we think that's the problem with the
13 Government trying to establish their chain of custody.

14 THE COURT: All right. Solicitor?

15 MR. BLACK: Judge, I guess I really don't understand
16 the motion. I'm really confused. I don't really see how
17 this affects the chain of custody if they put on date
18 collected the time of the actual wreck. I'm sure that they
19 just went back and looked at when the wreck happened and
20 when the call came out, and that's when they put -- when the
21 sample was collected. I don't really see that being a
22 problem. I guess I really -- honestly I don't understand
23 their motion, to be quite frank.

24 MR. DOWTIN: Your Honor, there is a case out there, as
25 well. We can get you a copy. We had it yesterday. We're

1 trying to find it, where the date was totally different on
2 when the sample was collected. It's more of, again, a
3 weight issue. The time is all they're talking about here.
4 We got it on the same day. We can get a copy of that case
5 and hand it up to Your Honor and Defense counsel, if need
6 be.

7 THE COURT: Well, again, what I have before me is
8 testimony from several witnesses concerning the chain of
9 custody. And just because there is a discrepancy insofar as
10 time -- I mean, we got -- we got discrepancies of time all
11 the way through this case beginning with photographs that
12 have a time stamp that has an entirely different date on it,
13 all the way to what you raised -- well, maybe Mr. Garrett
14 raised it yesterday concerning the date on a medical record
15 being about 20 minutes off concerning the blood draw at the
16 hospital, and then we have a discrepancy on time here.

17 But I have testimony from these witnesses concerning
18 the blood and urine taken around one o'clock a.m. and what
19 was done with it from that point forward, and just because
20 we have a discrepancy you're asking me to totally disregard
21 -- again, I think it goes to the weight. It goes to the
22 credibility. But I don't think it goes to the extent that I
23 find no chain of custody and therefore suppress whatever
24 results that may otherwise come in.

25 But let me -- if you can find that case, let me take a

1 look at that and that may very well give some credence on
2 where I'm headed on my ruling on this.

3 MR. BLACK: And, Judge, just to kind of let you know
4 what this particular sheet is, page five of the document
5 that Mr. Henderson handed up. From my understanding this is
6 kind of internal what the Highway Patrol does internal to
7 the slip that's generated. The chain of custody -- the
8 actual chain of custody sheet are the first two pages of the
9 document that list the individual, when they receive it, who
10 they receive it from, where they -- what they're doing.
11 Where they're putting it and the date they receive it. So
12 like I stated previously --

13 MR. HENDERSON: And, Your Honor, our concern is that
14 they've been calling witnesses to establish a chain of
15 custody for a draw at 1:05 when, in fact, SLED is indicating
16 that the draw they got was at -- taken at 7:29. Meaning
17 that again they say their right with their chain of custody.
18 That's not the document they got.

19 MR. BLACK: Well, the chain of custody seems clear to
20 me. It seems the issue he's raising is a time issue, which
21 obviously goes to kind of what you were opining about,
22 Judge, how this goes to weight, not really the chain of
23 custody, so...

24 THE COURT: Let me -- let's just be at ease and let me
25 take a look at that case that the State has.

1 (Whereupon, there was a brief pause in the
2 proceedings.)

3 THE COURT: *State v. Johnson*, let me just quote a
4 portion of that. "The State established a continuous chain
5 of custody through the testimony of the people that had
6 control and possession of the evidence. Although a
7 discrepancy existed as to the dates --" it refers to a
8 person by the name of Daily, whoever that is, "-- received
9 evidence, no evidence was presented to indicate the drugs
10 were not within the control of the identifiable people
11 during the entire time. A reconciliation of this
12 discrepancy was not necessary to establish the chain of
13 custody, but merely reflected upon the credibility of the
14 evidence rather than its admissibility."

15 Deny your motion.

16 MR. HENDERSON: Thank you, Your Honor.

17 THE COURT: Just for your information, that's 318 S.C.
18 194.

19 MR. HENDERSON: Thank you.

20 THE COURT: And we just found the case before you came
21 in.

22 You got something else, Mr. Henderson?

23 MR. HENDERSON: We do. Your Honor, I call Dr. Jimmy
24 Valentine.

25 THE COURT: Well, tell me first where you're coming

1 from.

2 MR. HENDERSON: Your Honor, attacking the reliability
3 of the results of this SLED test. Because, again, they've
4 got to come in -- the only way they can get it in is through
5 expert testimony and they're going to have to show the
6 reliability to get that in under one of the factors.

7 THE COURT: Okay. Give me some more meat. I know
8 where you're coming from, but we're not going to just throw
9 up a witness at your request without telling me exactly
10 where you're coming from.

11 MR. HENDERSON: Your Honor, Dr. Valentine, from
12 reviewing Mr. Rowell's medical records, is going to discuss
13 all of the blood that was replaced in his system, all the
14 other fluids that were replaced in his system. And based
15 upon all of that is going to talk about that what was tested
16 was not our client's blood. It's not reliable.

17 THE COURT: If I remember it, and I'd have to go back
18 through my notes, when Dr. Snow testified, and you all
19 correct me if I'm wrong, did he say that there was 52
20 percent of transfused blood, I guess, at the end of the
21 surgery which would precede the legal blood draw. Is that
22 -- is that what he's testified to?

23 MR. HENDERSON: That is correct, Your Honor. He
24 testified that based upon the transfusions he was in control
25 of it was 52 percent. Correct.

1 THE COURT: Right.

2 MR. HENDERSON: And again, I don't think he was
3 familiar with the records that preceded his treatment of Mr.
4 Rowell, i.e., the LifeFlight records, Med-Trans records and
5 afterward.

6 And again, we stayed away from anything after the SLED
7 blood draw because it just wouldn't be relevant to this
8 analysis.

9 THE COURT: Let me just stop you right there.
10 Solicitor?

11 MR. BLACK: Yes, sir, Your Honor. Thank you. I think
12 the number was 52 percent. That's what Dr. Snow testified
13 to. And I think before that he actually testified to a
14 third new blood that he -- that had been transfused during
15 the course of, you know, the accident, surgery, and then by
16 the time surgery was complete. I think all those were kind
17 of ballpark figures based on what the Defendant weighed, and
18 I think he was just -- everybody was just kind of
19 guesstimating at that time. So the number that I have is
20 between a third, a 52 percent like he testified if his -- if
21 his math was correct.

22 Judge, I don't -- I understand their testimony, where
23 it's coming from. But I think that obviously they'll have
24 -- they'll have a right to contest any of that when they put
25 up their case. And it sounds like they're planning on

1 calling Mr. Valentine when they put -- when it's their
2 opportunity to put up their case in chief. And this -- this
3 is ultimately a question that the jury can have. I think in
4 the SLED toxicologist the result that was done at 1:05 comes
5 back a .09. And so, our toxicologist is going to be able to
6 talk about how the depreciation of alcohol, how it affects a
7 normal person. And I think that should be an issue that the
8 jury has to cipher through when it's their opportunity to.

9 THE COURT: Well, I think the question or the issue
10 that I'm dealing with is, you know, at what stage do we --
11 do we deal with this issue of what affect, if any, at the
12 time of the SLED draw there was potentially more blood in
13 the system from somebody else than his own blood. I mean,
14 in other words, do I go ahead and we take all sorts of in
15 camera testimony now to deal with that before the State is
16 allowed or not allowed to have the SLED results in evidence,
17 or do I, assuming all other factors are met, allow the State
18 to put in the results, and then just in their case in chief
19 have the Defense attack the results based upon their
20 arguments about the amount of blood in the system. I mean,
21 that's the question that I've got -- got to deal with.

22 MR. HENDERSON: And, Your Honor, the research I've
23 done, and I'll be glad to hand it up, talks about
24 contaminated blood.

25 THE COURT: Right.

1 MR. HENDERSON: Meaning stuff coming in from outside
2 sources. That's not relevant. I mean, if it's not the
3 person who's being accused's blood, if their blood has been
4 contaminated or extraneous matters have been put into it,
5 it's not relevant. It's not relevant --

6 THE COURT: To what extent, Mr. Henderson -- let's say
7 it's shown that five percent of his blood was transfused
8 blood, would you have that amount of, quote, contamination,
9 does that keep the results out, or does it -- or is it a
10 question of weight. Is it, 10 percent, 15 -- you know, 50.
11 What amount of, quote, contamination, whether it's by
12 transfused blood or otherwise would cause this court to keep
13 -- keep the results out?

14 MR. HENDERSON: Let's look at it from the opposite
15 side, Your Honor, you said five percent. Let's go 100
16 percent. Say if we had records showing that 100 percent of
17 Mr. Rowell's blood had been replaced --

18 THE COURT: Right.

19 MR. HENDERSON: -- I don't any prosecutor with a
20 straight face would stand up here and try to argue any test
21 result --

22 THE COURT: Right.

23 MR. HENDERSON: -- on Mr. Rowell. How about 95
24 percent?

25 THE COURT: Once you come off that 100 percent -

1 MR. BLACK: We're not talking about any of that.

2 THE COURT: -- then that's what I'm struggling with.

3 What -- and I know you got -- you got your doctor who's
4 going to say that the amount -- and I assume the State
5 doesn't have any counter-expert to say, okay, 52 percent,
6 the results should be this amount, or -- I assume you don't
7 have that expert?

8 MR. BLACK: Well, we have a toxicologist that's going
9 to talk about how alcohol metabolizes in a person's body and
10 -- Judge, I mean, the expert -- I don't know what she's
11 going to testify to and, you know, when the -- when the
12 appropriate time comes up for her to make her testimony she
13 has every right to be cross-examined about it. And then --

14 THE COURT: Right.

15 MR. BLACK: -- if we go with kind of the scenario that
16 I suggest we play out and let the toxicologist testify and
17 let the Defense put up their defense, he has every right to
18 attack how it metabolizes and how different blood affects
19 different people. And so, I kind of agree with what you
20 were stating. How we should just handle it with the
21 toxicologist. Let the Defense put up their case. I mean,
22 we can have another in camera hearing, but, I mean, I guess
23 we'll be going to next Wednesday, and that's fine.

24 MR. HENDERSON: But, Your Honor, dollars to donuts the
25 SLED toxicologist hasn't examined any of Mr. Rowell's

1 medical records. I'd be willing to bet my bottom dollar on
2 that. I haven't talked to her about that. I haven't talked
3 to the Solicitor about that. But I just know that.

4 THE COURT: Right.

5 MR. HENDERSON: And again, Dr. Valentine, we have all
6 his records. He's gone through it extensively. And, Your
7 Honor, just letting you know that it's of his opinion 60
8 percent of blood volume was replaced --

9 THE COURT: Right.

10 MR. HENDERSON: -- and that 161.7 percent of his blood
11 volume as related to other fluids was replaced. So
12 basically when you're looking at blood and blood fluids it
13 is his opinion that 220, 225 percent of our client's system
14 was replaced. So what was tested mathematically could not
15 have been Mr. Rowell.

16 THE COURT: You said you had a case about dealing with
17 contaminated blood?

18 MR. HENDERSON: I do, Your Honor. Let me hand up a set
19 of packets to His Honor and the Solicitor. And I can kind
20 of give you a quick summary of the cases, Your Honor, if you
21 like.

22 MR. BLACK: And, Your Honor, just for the record, when
23 we were emailing back and forth last week I thought all
24 these motions were supposed to be made last week. I'm just
25 -- I guess -- I guess they just thought of that this week.

1 So just opining, Judge, I apologize.

2 MR. HENDERSON: That's all right. And, Your Honor,
3 this goes -- these cases go to the reliability aspect of
4 giving expert testimony.

5 THE COURT: Well, I don't think it's a question. I
6 mean, I'm sure your guy's very well qualified. But what I'm
7 dealing with is at what point in time do we hear from your
8 guy.

9 MR. HENDERSON: Now.

10 THE COURT: Well, I know you want me to -- I know.
11 State wants it in your case and chief. You want it now.
12 That's what I'm struggling with. I don't think it's a
13 question of your doctor's qualifications.

14 MR. BLACK: And, Judge, we're not trying -- I mean, if
15 he wants to get up there and testify to it we're not trying
16 to keep that out. I just don't really understand why we
17 have to have all this in camera and -- if he's going to say
18 that all his blood was replaced and that it wasn't his
19 blood, that, you know, the transfusion that occurred, that's
20 alcohol that was in other peoples' system and it affected
21 Mr. Rowell's blood when they drew it at 1:05 that's --
22 that's fine with me.

23 MR. HENDERSON: But again, you're putting something --
24 you're putting speculative evidence -- unreliable evidence
25 in front of the jury. So if you let it get in front of the

1 jury the cat's out of the bag.

2 THE COURT: Let me just ask you for my information. Do
3 we have a urine test? I know urine went down there.

4 MR. BLACK: Just the blood, Judge.

5 THE COURT: It was never tested?

6 MR. HENDERSON: But he never tested the urine, Your
7 Honor.

8 MR. BLACK: He didn't test the urine.

9 THE COURT: Why is that? Do you have an explanation?
10 Again, just for my information.

11 MR. BLACK: Just from my understanding, the blood's
12 more accurate than a urine test, but I could be wrong about
13 that. That's what I have kind of learned over the past
14 three years, Judge. I'm not a -- I'm not a scientist, but
15 that's what I've learned.

16 THE COURT: Well, I think probably the best way of
17 handling this is I'm going to go ahead and hear from their
18 doctor in camera and then make the decision whether or not
19 based upon that I can rule now to suppress the SLED results
20 or let it come in and then let them put the doctor up in
21 their case and chief to attack the credibility of the
22 results. I mean, I can speculate to some limited sense of
23 what he's going to say. But as far as, you know, details of
24 it, I don't know. So I guess I need to hear from him.

25 MR. BLACK: Well, I think you know what he's going to

1 testify to because Mr. Henderson and Mr. Garrett were saying
2 63 percent of -- that's what he's going to testify to, that
3 it was -- that his blood was replaced. I mean, I don't
4 really understand what else there needs to be said. I mean,
5 that's what he's going to testify to. We're not -- we're
6 not saying that's not what he's going to testify to. If
7 that's what he's going to testify to, that's what he's going
8 to testify to.

9 MR. HENDERSON: For record preservation, Your Honor, I
10 think it would probably be wise. It's not going to go on
11 all day. I mean, this is for this limited purpose to talk
12 about why this draw was not reliable. I mean, it's our
13 understanding that the SLED young lady is coming soon. We
14 can deal with her in camera, too, to see what she has to
15 day.

16 THE COURT: Well, I don't know -- I don't think we need
17 to deal with the toxicologist -- assuming she is qualified
18 to be able to give results, if I'm going to allow her to
19 give results. And I don't need any in camera testimony
20 there. Assuming that she is qualified to render opinions as
21 to the affects of alcohol on a person's body. And certainly
22 case law is very clear that a toxicologist can do that.
23 State vs. Martin, a 2011 case allows for that. So I don't
24 -- I don't think we need in camera testimony from the --

25 MR. HENDERSON: It would be strictly toward this

1 reliability issue. I'm not contesting that she believes she
2 pulled a 9. That's not the challenge. Does she know what
3 that 9 is coming from, and that's --

4 THE COURT: Now, I mean, if she hasn't reviewed any of
5 the records and if she doesn't have any medical training, I
6 don't think that she's going to be able to testify on this
7 issue of, you know, are the results good or bad based upon
8 the transfused blood.

9 MR. BLACK: No, sir.

10 MR. HENDERSON: That's my point exactly.

11 THE COURT: And I don't think the State was going to
12 offer that.

13 MR. BLACK: No.

14 THE COURT: I think the State -- you correct me if I'm
15 wrong, Solicitor Black. The State's going to offer the
16 toxicologist for two purposes. To try to get in the test of
17 the blood, hear the results, and the general affects of that
18 reading on a person. Right?

19 MR. BLACK: Yes, sir.

20 THE COURT: So we don't need in camera testimony from
21 the toxicologist.

22 MR. HENDERSON: Well, basically they're stipulating,
23 from my understanding, that their witness is not qualified
24 to offer --

25 THE COURT: Well, they're not stipulating, Mr.

1 Henderson. They're just not going to offer it in. Don't --
2 don't try to twist this around. They're not stipulating to
3 anything. They're just -- this is what we plan to offer
4 this witness and this is what we plan to offer the witness
5 --

6 MR. HENDERSON: Because she's not qualified to offer an
7 opinion on what Dr. Valentine would offer here.

8 THE COURT: Let's put up Dr. Valentine for some brief
9 testimony. Come on up, Dr. Valentine.

10 DR. JIMMIE VALENTINE, having first
11 been duly sworn, testified as follows:

12 IN CAMERA DIRECT EXAMINATION

13 BY MR. HENDERSON:

14 Q Dr. Valentine, good morning.

15 A Good morning, sir.

16 Q Please introduce yourself.

17 A Dr. Jimmie Valentine.

18 Q And just give a little bit of background about
19 yourself. Obviously we're not in front of the jury. Just
20 let the Court know a little bit about you.

21 A Yes, sir. I hold Bachelor's degrees both in biology
22 and chemistry from Centenary College in Shreveport,
23 Louisiana. I hold a Master's and PhD in medicinal chemistry
24 from the University of Mississippi. And after I finished
25 graduate school with the University of Mississippi I was a

1 senior research scientist at Mallinckrodt Pharmaceuticals in
2 St. Louis, Missouri for five years. Then I accepted a
3 faculty position at the University of Missouri, Kansas
4 School of Medicine in Kansas City, Missouri. Was on the
5 faculty there for five years as an assistant professor in
6 lecture and medicine. Then I went from there to the Oral
7 Roberts School of Medicine in Tulsa, Oklahoma. I was an
8 associate professor of pharmacology, subsequently promoted
9 to full professor, and then served six years as the Chairman
10 of the Department of Pharmacology within the School of
11 Medicine.

12 When that school closed in 1990 my wife and I -- we
13 were both on the faculty there. We transferred then to the
14 University of Arkansas College of Medicine where I was
15 professor of pediatrics and pharmacology.

16 Q Let me just stop you. I just want to --

17 THE COURT: For purposes of this in camera hearing -- I
18 mean, I'm sure he's very well qualified. We don't need to
19 get into all that. Okay?

20 MR. HENDERSON: That's why I was -- I was going to do
21 it briefly, Your Honor.

22 Q Dr. Valentine, have you had a chance to review Mr.
23 Rowell's medical record?

24 A Yes, sir. I have.

25 Q And to the best of your knowledge you have reviewed all

1 of his medical records?

2 A I believe so. I think I've seen everything that was --
3 obviously I went through everything that was sent to me.

4 Q Right. And that's everything that we received?

5 A Yes, sir.

6 MR. HENDERSON: Can we get this marked as a Court's
7 exhibit.

8 (Whereupon, Court's Exhibit No. 13 was marked for
9 identification.)

10 Q Dr. Valentine, I believe you have a copy of Court's
11 Exhibit No. 13 in front of you?

12 A Yes, sir. I do.

13 Q And on the first page of it -- there are two sheets,
14 correct?

15 A Yes, sir.

16 Q Will you tell His Honor what these two pages are?

17 MR. HENDERSON: And I'm going to pass up one for the
18 Judge to follow along with.

19 A The first page is -- I've titled it Blood Units, and
20 put in parenthesis Components, because actually what they
21 gave was blood components to him. Replacements in Mr.
22 Rowell. And the second document is the fluid replacements
23 that were given to Mr. Rowell.

24 Q And when you look at that first page, Blood Units,
25 Components, walk the Court through that. What does this

1 document mean?

2 A I think as we heard the other day in Dr. Snow's
3 testimony, typically what's done now is when a person is
4 transfused with blood it's not -- it's not the whole blood
5 but whether it's the components of blood. And so, on the
6 transfusion records they have what the blood components
7 were. They had a little code for it. And so, I've kind of
8 broken that down. I've called this blood, but in
9 parenthesis behind it I've put -- I've given a footnote as
10 to what the component is. So, for example, if we look at
11 11/15/14, a 21:05 time, you'll see blood and in parenthesis
12 PCL. And the PC stands for packed cells. So that's packed
13 red blood cells. The L means it's undergone leukapheresis.
14 Leukapheresis means it's removed the majority of the white
15 cells. And they do this in units to keep from getting a
16 reaction when you put blood into an individual, because it's
17 a white cell that has the immune responses associated with
18 it. So he received two units on the way to surgery. And by
19 the way, I've got over on the right-hand -- the far
20 right-hand column is who gave the units of blood to him. So
21 on his way to surgery he would have received the two -- two
22 units of the PCL blood, which is the packed red blood cells
23 minus most of the white cells. And then the blood samples
24 that he received during surgery are listed there, and that's
25 what Dr. Snow went over the other day. And those were

1 packed cells. As you see they've got a PC for that. And
2 then also he received what they call TP, and TP is actually
3 the total plasma. And this would be plasma that's from
4 multiple donors. It's -- you remember -- you've heard it
5 described a couple of times in testimony already that plasma
6 is the clear fluid that's up above the cells when you pack
7 the cells down through centrifugation. And so, that total
8 plasma, he received some of that as well, too, during the
9 surgery.

10 And then going back up to the very beginning of this.
11 During the transport we heard again that he received the
12 packed RBCs, red blood cells, during transport, and then he
13 received the fresh frozen plasma as well, too, during
14 transport. And then in the emergency department at
15 Greenville he received one unit of the -- of the cells again
16 that were the PCL that had the leukocytes removed from them.

17 Q And you heard Dr. Snow testify the other day?

18 A Yes, sir.

19 Q And Dr. Snow, I believe his testimony was that while he
20 -- while Mr. Rowell was under his control, that
21 approximately 52 percent of his blood had been transfused.

22 A Correct.

23 Q And you've actually gone back and -- is that correct,
24 from when Mr. Rowell started being treated that night?

25 A Correct. In other words, I took all of the blood that

1 had been infused into him starting at transport through the
2 surgery, and I stopped at the point where the sample was
3 drawn from him at surgery. The end of surgery.

4 Q Because no blood given to him after that would be
5 relevant to this analysis?

6 A Correct. He was given blood after that, but that
7 wouldn't be relevant to this test.

8 Q And I see on this sheet you've got total volume
9 transfused 4,081. Tell the Court what that means.

10 A Well, three, that's -- if you divide that by 1,000
11 it'll be four liters. Okay? And about 3.8 liters is a
12 gallon. So he's had about a gallon of -- a little bit over
13 a gallon of blood transfused into his body during this
14 period of time.

15 Q And that's in cc's?

16 A Cs's is the same thing as milliliters. Basically the
17 same units.

18 Q Because looking down here the testimony was that Mr.
19 Rowell's estimated blood volume based upon 90.72 kilograms,
20 that he ought to have 6,804 cc's of blood in him.

21 A Again, the other day the testimony you heard Dr. Snow
22 give the rough calculation for blood volume in an
23 individual. You take their weight in kilograms, multiply it
24 by 75, and that will give you the actual -- pretty close to
25 the blood volume in him. Actually I did the calculation and

1 got just a little bit closer than you would get with 75.

2 But he would have a total blood volume of about 6.8 liters.

3 Okay? And that's about what you would expect of a man his
4 size.

5 Q So this -- where you've got down here 60 percent of
6 blood volume was replaced?

7 A Yes. What you would do then is you just take that four
8 thousand that was infused into him and divide it by that
9 6,800 that was there and that's how you get that percentage,
10 times 100, yeah.

11 Q Let's turn to the second page. And you've got that
12 titled fluid replacement. Kind of walk His Honor through
13 what this page is.

14 A Well, I wanted to separate out clearly so we understood
15 the difference between the blood that went in him and the
16 fluids that went in him. They'd given him a lot of fluids
17 as well, too. And so, it started out in the -- the Green
18 County -- Greenwood County EMS, fire department started the
19 saline drip on him when they -- they came to the scene. He
20 got 1,500 milliliters volume from that. And then during air
21 transport he received another 500 milliliters. And then
22 once he got to the emergency department at Greenville, from
23 the records again he got 1,000 milliliters saline infused
24 him three different times. And then during surgery he
25 actually had saline infused into him, 3,000 milliliters.

1 And then this Plasma-Lyte, which was talking -- again, about
2 the testimony the other day, it's a -- it's a mixture of all
3 the electrolytes. It's the same thing as saline but it's
4 got a lot of the electrolytes in there like sodium,
5 potassium and magnesium. That sort of thing. And so, if
6 you add all that up then he also received 11,000
7 milliliters, or cc's, of volume of fluids in addition to the
8 blood that he was transfused.

9 Q And so -- and you've come up with the number 161.7
10 percent?

11 A Again, if you -- in this case we take the 11,000 and
12 divide it by 6,804 times 100 and you'll get that percentage
13 again. So it's greater than 100 percent of his blood
14 volume.

15 Q Doctor, have you had a chance to do any research or any
16 reading or any investigations on what it means when
17 somebody's blood has been -- I'm using the word
18 contaminated, but outside materials have been entered into
19 their blood?

20 A Well, that's -- I mean, that's the kind of thing that
21 you have to face all the time. When you have a sample that
22 you're analyzing you have to know the course of it. What
23 went into it before you -- the sample was actually analyzed
24 so you would know what to expect.

25 Q What is your -- what is your opinion on the validity of

1 a test done on someone's blood when that someone has had at
2 least 60 percent of their blood replaced, transfused?

3 A Well, we're certainly dealing with a sample that's not
4 part of this individual anymore. We're dealing with the
5 samples that came from somebody else. We have no control
6 over that amount of blood that came into him from an
7 external source as to whether it had alcohol it or not, or
8 other -- other contaminants as well. As you heard the
9 testimony the other day, what's typically done in Blood Bank
10 testing, we test for the -- the viral components that could
11 be there, but we don't -- no one looks for the drugs or
12 alcohol that might be there.

13 Q Is it your opinion that what was tested -- and I don't
14 think anybody's disputing that something was withdrawn from
15 Mr. Rowell's body. Nobody is disputing that. But it is
16 your opinion, I just want to make sure that we're clear,
17 that it's not -- is it reliable -- what was tested, is that
18 a reliable indicator of what was in Mr. Rowell's body at the
19 time it was withdrawn and tested?

20 A Yes. I do not believe it was an accurate indication of
21 what was there. We have -- we have such an exchange of
22 fluids here. And again, the -- any -- any value that one
23 would find or try to attach to that has very little
24 scientific meaning because of this volume that's gone into
25 him. Replacement volume.

1 Q Let me ask you. You heard His Honor ask the question
2 to me earlier what happens if it was five percent. I think
3 His Honor was trying to figure out is there a demarcation.
4 Is there a line after which you shouldn't go past in
5 reliability, or is there no line?

6 A Yes. I don't know scientifically if I can give you an
7 answer to that. Okay? I think what we talked about, 100
8 percent, you would have to say yes. We certainly have had
9 -- a majority of his blood has been replaced. And so, that
10 is going to affect this analysis. One way or another it's
11 going to affect the analysis that's done. So I believe that
12 we have to in some way try to account for that. And I don't
13 know a good way to account for that because he's received --
14 when you count total volume he's received more than 100
15 percent replacement.

16 Q When you say total volume, and again, I just want you
17 to be clear to His Honor, part of that is fluid replacement?

18 A Part of it is fluid replacement.

19 Q And would the fluid replacement have any affect on the
20 alcohol reading from the blood that was withdrawn from his
21 system that so much was circulating through his body?

22 A Well, certainly, because what you're doing is you're
23 withdrawing the sample from the -- from the blood. From
24 what we call the peripheral circulating blood. Okay? And
25 so, by drawing a sample from that you're getting a sample of

1 what's in that -- in that blood at that time.

2 Q And that includes these fluids?

3 A It includes these fluids, and it can include anything
4 that's being leached out into the body, too, because of all
5 the trauma that's been going on as well, too.

6 MR. HENDERSON: Can I have one minute, Your Honor?

7 THE COURT: Sure, take your time.

8 Q Doctor, you have examined the results that SLED
9 received from these -- from this blood draw, correct?

10 A Yes, sir. I have.

11 Q And do you recall whether or not the SLED report
12 indicates there was any Benadryl in Mr. Rowell's system?

13 A Yes, sir. It did.

14 Q And can you tell His Honor -- I'm looking for a copy of
15 that right now. What's been marked as State's Exhibit No.
16 73. I don't believe it's in evidence yet. But it's -- take
17 a minute to look at that, Doctor, and confirm that's the
18 same document you looked at.

19 A It is. Yes, sir.

20 Q And on there does it indicate that Mr. Rowell had any
21 Benadryl in his system?

22 A Yes, sir. They call it diphenhydramine, which is the
23 generic name for Benadryl, or the trade name -- trade name
24 Benadryl. And they found 4.9 milligrams per liter.

25 Q Let me ask you. For our record, what is Benadryl and

1 what does it do?

2 A Well, Benadryl is what we call an H1 antagonist. It's a
3 drug that's used to -- is an antihistamine is one of the
4 uses of it. It's used to dry up nasal secretions.

5 MR. BLACK: Judge, I'm just going to object. I thought
6 that we were just kind of having an in camera hearing based
7 on the blood volume and how it relates to the alcohol, but I
8 could be wrong.

9 MR. HENDERSON: And this is going to that, Your Honor.

10 THE COURT: Okay. Go ahead.

11 Q Doctor, continue.

12 A So the Benadryl is used also in allergic reactions.
13 It's sometimes given for allergic reactions. And it's also
14 used for sleep induction as well.

15 Q And tell His Honor again how much Benadryl was in Mr.
16 Rowell's system.

17 A It was 4.9 milligrams per liter.

18 Q And we've discussed this. What would 4.9 milligrams
19 per liter of Benadryl do to someone?

20 A It would -- it's a toxic level.

21 Q So you're saying that somebody ought to be dead at that
22 level?

23 A It would generally be -- the level of five is
24 considered to be lethal.

25 Q And you have reviewed Mr. Rowell's medical records?

1 A Yes, sir.

2 Q Okay. Have you found any evidence he was given any
3 Benadryl?

4 A No, sir. I have not.

5 Q During other investigations, including talking with Mr.
6 Rowell, have you unearthed him taking anything with --
7 taking any Benadryl?

8 A No, sir. I have not found anything.

9 Q Do you have an explanation as to why SLED says from the
10 blood that was drawn from Mr. Rowell's body there is a
11 lethal amount of Benadryl in it?

12 A Well, there's basically, I think, only two
13 explanations. One is SLED got the analysis wrong, or
14 secondly that one of those blood products -- or some of
15 those blood products he had in him contained Benadryl.

16 Q And that's your professional opinion?

17 A Yes, sir. Unless I'm, you know, shown any other data
18 to show that he was given it in the hospital.

19 Q Is this reading of Benadryl another reason why you
20 would have trouble relying upon this result?

21 A It is. And certainly when -- the first time that I
22 looked at this report, too, I saw that it contained
23 isoflurane. And isoflurane, you never see it in anyone
24 unless it's an anesthetic gas. So when I first saw this
25 report I didn't have his medical records at the time and I

1 looked at it and I said this is strange. This has got to be
2 -- somebody's had anesthesia. I mean, why would you take --
3 why would you take a sample during surgery. That didn't
4 make sense to me. Okay?

5 Q Okay. That doesn't make sense to you?

6 A Yes, sir.

7 Q Would that question in your mind's eye the reliability
8 of this test sample?

9 A Well, it does, simply because we've got something else
10 in here. That's a volatile component just like ethanol is.

11 MR. HENDERSON: If I may have one moment, Your Honor.

12 THE COURT: Sure.

13 MR. HENDERSON: Nothing further, Your Honor.

14 THE COURT: Before the State, let -- Dr. Valentine, let
15 me make sure that I'm clear. First of all, are you familiar
16 with the science and the methodology that SLED uses to
17 analyze someone's blood for alcohol content?

18 THE WITNESS: Yes, sir. I am.

19 THE COURT: You are?

20 THE WITNESS: I am.

21 THE COURT: I figured you were.

22 THE WITNESS: I published widely in the field, too.

23 THE COURT: Are you -- are you suggesting that the
24 methodology and the science behind the way that they test,
25 are you suggesting that's not reliable, or are you saying

1 that it is reliable but in this case the results, because of
2 X, Y and Z, it's not reliable?

3 THE WITNESS: Exactly. You've got it right. That is
4 that the analysis that they did appears to be okay.

5 THE COURT: Right.

6 THE WITNESS: Because I've looked at -- I've looked at
7 reams of data from SLED. Okay? The analysis basically
8 looks correct. I had a little question about the Benadryl,
9 but otherwise --

10 THE COURT: Right.

11 THE WITNESS: -- the alcohol analysis looked okay. So
12 the question then becomes, you know, the validity of the
13 sample that they got.

14 THE COURT: Right.

15 THE WITNESS: They could take anything and analyze it,
16 but what --

17 THE COURT: Sure.

18 THE WITNESS: -- what does that sample that you got
19 really -- where did it come from.

20 THE COURT: All right. Thank you. Solicitor, any
21 examination of Dr. Valentine on this limited issue?

22 MR. BLACK: Just briefly.

23 CROSS-EXAMINATION

24 BY MR. BLACK:

25 Q So the gas chromatography method that SLED used, that's

1 pretty much the standard that's --

2 A Yes, sir. It is.

3 Q -- used for alcohol testing?

4 A Correct. And they actually did two things. They
5 analyzed the alcohol by what we call headspace gas
6 chromatography --

7 Q Right.

8 A -- and then they also analyze it by headspace gas
9 chromatography and mass spectrometry to identify the alcohol
10 as well. So there's no question that alcohol is there.

11 Q And that was a .09, right?

12 A Correct. That's what they're reporting.

13 Q Now, I know that we probably have a disagreement about
14 this particular issue, but you heard the -- you were here
15 yesterday, right?

16 A Yes, sir.

17 Q And you heard the testimony that the plasma alcohol of
18 219 is about 18 percent. Would you agree with -- I mean,
19 would you agree with that if the test was accurate?

20 A Yes.

21 Q I know you're going to dispute the test, right?

22 A Yes, sir. That's right. And I think what you're
23 talking about is whether or not when you get a plasma level,
24 if you're trying to convert that over to a whole blood. The
25 figures that he used are approximate.

1 Q So about 18, 19 percent?

2 A Correct. Somewhere in that -- somewhere in that
3 ballpark.

4 Q So let's just assume the test was right and there was
5 -- you know, there was no -- there was no false positives,
6 which I know you're going to testify to later, right?

7 A Yes, sir.

8 Q But let's assume that test is right. How -- how does
9 alcohol metabolize in a person? In a normal person? Can
10 you tell us that.

11 A In a normal male --

12 Q Yes, sir.

13 A -- about the age of Mr. Rowell, he would eliminate .015
14 milligrams per deciliter per hour.

15 Q So how -- what percent of -- can you convert that to a
16 percentage?

17 A Well, let's see. I'm not sure how to convert that to a
18 percentage.

19 Q I guess my question is --

20 A See, the .015 is a percent. It's a gram percent.

21 Q Okay. So if he's at an 18, and let's say that test was
22 drawn about nine o'clock. 8:54, right, if you're -- from
23 your -- looking at the records?

24 A Yes, sir.

25 Q So about nine o'clock. And then there was another

1 blood draw that was done at 1:00 a.m. in the morning,
2 correct?

3 A Correct.

4 Q Would you agree that's about four hours? 9:00 to
5 10:00, 10:00 to 11:00, 11:00 to 12:00, 12:00 to 1:00.
6 That's four.

7 A Yeah. The first sample, was it drawn actually at 9:00?
8 I was thinking it was --

9 Q 8:54. So let's just round up to nine o'clock, right?

10 A Okay.

11 Q: 9:00 to 10:00, 10:00 to 11:00, 11:00 to 12:00, 12:00 to
12 1:00. The other sample was 1:05. So about 1:00. That's
13 about four hours, would you agree?

14 A About four hours, yeah.

15 Q You would agree with me about that?

16 A Yes.

17 Q So if somebody is at an 18, and let's just say a normal
18 person metabolizing alcohol during a four hour window, what
19 would that -- what would his percentage of alcohol be after
20 four hours if standard situation applied?

21 A What you do, you should take that .015 and multiple it
22 by four. So that would be 26. It would be .06. So you
23 would subtract .06 from the .18 and you'd have .12.

24 Q So about a 12?

25 A About a 12, yes.

1 Q If all the -- if normal everything was going on,
2 correct?

3 A Correct. That's an average. Okay?

4 Q That's an average normal person?

5 A Correct.

6 Q So essentially what you're assuming in this case is
7 that he received some kind of tainted blood from the -- from
8 the OR?

9 A There could have been two things going on here. You
10 could have received tainted blood. That's a possibility,
11 because he received so much blood.

12 Q Right. You don't know for sure, but that's kind of
13 what you're assuming, right?

14 A Well, we know what -- we know what blood he received --

15 Q Right.

16 A -- because that's in the records.

17 Q You don't know if that blood was tainted or not?

18 A No, I don't.

19 Q You weren't there, right?

20 A No, I do not. All I know is that's the amount of blood
21 that he received.

22 Q So you're just kind of assuming that maybe the blood
23 was possibly tainted and that's what caused the level of
24 .09?

25 A That could be one explanation.

1 Q So the level -- I mean, the level could have actually
2 be diluted, right?

3 A If you -- again, you've made a lot of assumptions.
4 Okay?

5 Q Right.

6 A But if we take your assumption it could have been
7 diluted by this much volume, correct.

8 Q And I don't think this has anything to do with
9 reliability. I think I've made my point. But I'm curious.
10 On the first page you showed us 60 percent of blood volume
11 was replaced.

12 A Yes, sir.

13 Q Do you see that?

14 A Yes, sir.

15 Q And then the second page you have 161.7 of blood volume
16 replaced.

17 A Yes, sir.

18 Q Can you explain that to me? I just --

19 A Yeah. What you do on that one, you just simply take
20 the 11,000, divide it by 6,804, and that'll give you the 161
21 percent.

22 Q So should it be the blood or should it be -- are you
23 talking total -- total liquids in a person?

24 A Well, it's the amount of liquid that's been put in him.
25 Okay?

1 Q So why -- why did --

2 A Because change is blood volume. Okay? Because, see,
3 it's been put into his veins.

4 Q The liquid, like the saline and the Plasma-Lyte?

5 A Sure. Sure. And what it's done is it's simply
6 increased the total blood volume.

7 Q Okay. That's not -- is it really a replacement or is
8 it just kind of supplementing what's already in the body?

9 A It's adding to what's already in his body. But
10 remember, he'd lost a lot of blood.

11 Q I think it was 700 milliliters that was --

12 A That was in his peritoneal cavity.

13 Q In his belly, right?

14 A Yeah. But we don't know how much other blood he'd
15 lost.

16 Q Fair point.

17 MR. BLACK: I think that's all the questions I have for
18 you, Doctor.

19 THE COURT: Let me before -- and certainly, Mr.
20 Henderson, I'll give you an opportunity to ask anything
21 else. This 161 percent is kind of throwing me off. And
22 it's not your fault. It's my fault. Let me just ask this
23 basic question. At the time the blood was drawn at 1:05
24 a.m. was there any of Mr. Rowell's blood in his body?

25 THE WITNESS: There should have been some in there. I

1 mean, you know, you're not going to replace --

2 THE COURT: Are you able to give a percentage?

3 THE WITNESS: No, sir. What happens is, is -- you've
4 got to remember that we've got a traumatic situation here.
5 So profusion of the tissues shuts down. And so, the blood
6 that was out of the tissues when he gets rehydrated, he gets
7 more of the fluids back in him, that starts coming out of
8 there. So he would have had some blood volume in other
9 areas of the body that had been drawn back out into that
10 central region.

11 THE COURT: So he had some blood, but I guess what
12 you're saying it's somewhat difficult to quantify it by a
13 percentage; is that correct?

14 THE WITNESS: That's correct. In other words, the
15 blood that's been -- we've given all these fluids to him to
16 replace it. He's been catheterized during this period of
17 time, so he's putting out urine. So some of the fluids are
18 being eliminated again. Okay? But this is done to keep his
19 pressure up so he stays alive.

20 THE COURT: Anything further?

21 MR. HENDERSON: Very briefly.

22 REDIRECT EXAMINATION

23 BY MR. HENDERSON:

24 Q Doctor, the Solicitor was asking you -- walking you
25 back from 18 to 12. You remember, you just did the

1 mathematics?

2 A Yes, sir.

3 Q And again, would that be assuming that apples to
4 apples?

5 A Well, it would be assuming that he was perfectly normal
6 and healthy and he was an average man. We typically use a
7 range of somewhere between .01 to .02 grams per deciliter
8 per hour. I hit the middle of -- by .015. So I just gave
9 the average.

10 Q And it's obvious he wasn't a perfect man at the time
11 the --

12 A Absolutely not.

13 Q -- hospital did their blood draw?

14 A Absolutely not.

15 Q And it seems like he maybe went through a lot of trauma
16 before the second blood draw?

17 A Correct. And he is not going to be -- there's no
18 question that he would not be eliminating alcohol from his
19 body in a normal manner. Absolutely no question about that.

20 Q So you just can't -- you just wouldn't know, but it
21 wouldn't be normal?

22 A It wouldn't be normal. These kind of studies just
23 simply have not been done. And you can understand why
24 because you don't take somebody that's devoid of blood
25 already and keep drawing more blood from them to test for

1 alcohol. You don't do that. It's unethical.

2 Q Right. So no studies have been done to confirm this?

3 I mean, I guess that's another reason why you can't rely on
4 these numbers; is that correct?

5 A Well, that's correct. There's just no studies have
6 been done to show when you replace this much blood volume is
7 the alcohol level the same as it was when you first started.
8 If we had had a gas chromatographic analysis off the blood
9 right at the get-go and then one at the end maybe we would
10 have had better comparisons. But we don't have that in this
11 case.

12 MR. HENDERSON: One moment, Your Honor.

13 THE COURT: Sure.

14 Q Is the analysis that the State -- assuming that they
15 would try to use -- try to turn this 18 into a 9, basically
16 because all this blood was replaced it would cut his alcohol
17 level in half, is there any science to back that up?

18 A No, sir. None whatsoever.

19 Q Can you tell His Honor why?

20 A You would have to -- to do that you'd have to use a
21 process called retrograde extrapolation. And retrograde
22 extrapolation has been reported in the scientific literature
23 to be unreliable. The Court's have found it to be
24 unreliable in a lot of cases as well, too. And it's because
25 what you're trying to do is you're trying to back up to a

1 point in time and say what a level was at a point in time.

2 You simply can't do that.

3 Q It sounds like they're taking four hours and a lot of
4 blood cutting it in half and saying this 18 becomes a 9?

5 A It sounds like that's what the Solicitor was doing.
6 Yes, sir.

7 Q And you don't believe there's any validity to that?

8 A No, there's not. As I said, there's no studies that
9 have been done to show that in a person that is on life
10 support that they're going to eliminate alcohol like a
11 normal person would. There's absolutely no studies to
12 validate that.

13 Q So in your professional opinion, that would not be a
14 reliable argument to make or to rely on?

15 A Not from a scientific standpoint. You can't -- there's
16 no way you can back it up. You got to be able to back it up
17 with some kind of scientific literature and I don't know any
18 that would back that up.

19 Q Okay. And, Doctor, maybe I just want you to clarify,
20 make sure I understand it properly. That on this front page
21 of your analysis where it says 60 percent of the blood
22 volume was replaced. And that's higher than what Dr. Snow
23 testified to, right?

24 A He was -- he was testifying only to what he was given
25 during surgery. Okay? And I included that was given during

1 transport and the ER, as well as on the way to surgery.

2 Q So you've included it all?

3 A I've included it all.

4 Q And Dr. Snow didn't?

5 A He did not.

6 Q And again on the second page you're talking about
7 fluids, and in the front pages is blood, correct?

8 A Correct. I separated them out so we clearly wouldn't
9 try to mix the two together.

10 Q So in theory you would have to add these two numbers
11 together about the total volume that --

12 A Yes, it would be the total volume. That's correct.

13 Q And if my math is correct, it would be 221.7 percent of
14 his --

15 A That would be real close, yes.

16 Q And that's over two times what he would have at any
17 given time?

18 A Yeah, that's what this is all telling us is that he had
19 -- about two and a half times his normal volume was
20 replaced.

21 Q And again, you just don't believe it's reliable to rely
22 on that?

23 A Correct.

24 MR. HENDERSON: Nothing further, Your Honor.

25 THE COURT: Anything further from the State?

1 MR. BLACK: I don't think so, no.

2 THE COURT: Okay. Thank you very much, Dr. Valentine.

3 THE WITNESS: You're welcome.

4 (Whereupon, the witness stepped down from the witness
5 stand.)

6 THE COURT: In light of the fact that Dr. Valentine is
7 not attacking the reliability of the methodology and science
8 behind the SLED testing and the procedures that they use,
9 he's only attacking the reliability of the results itself, I
10 am not going to suppress the results at this time, assuming
11 that everything else comes into play properly to get the
12 results in. And certainly in the Defense case and chief
13 they can put up Dr. Valentine to offer that same line of
14 testimony. And this is in no way an indication that I don't
15 believe that Dr. Valentine's expert opinion and his
16 testimony was not a good sound basis. I'm sure it is. But
17 again, he's not attacking the methodology of the test, just
18 the results, and that would go to the weight.

19 Anything further before -- is your toxicologist here?

20 MR. BLACK: I think she's here. Can I step out just
21 real quick to check?

22 THE COURT: Sure.

23 MR. GARRETT: And, Your Honor, very brief, just to be
24 clear. I understand His Honor's ruling. And again, the
25 only way you get to the validity of their testing sample is

1 based upon the sample that went into the machine. I just
2 want to be clear that -- I guess His Honor is finding as a
3 threshold matter that that sample that went into the machine
4 is reliable.

5 THE COURT: Well, what I'm finding is is that you're
6 wanting me to suppress the results simply because your
7 expert disagrees with the validity of the results. But what
8 I have to look at is, assuming the SLED toxicologist has the
9 proper credentials to be declared an expert in that field of
10 toxicology, and the method that she used, that's what I have
11 to determine is reliable. And you want to attack the
12 results. So I am not making a finding that the results
13 itself is reliable, nor did I make a finding that the
14 results from the hospital test was reliable. The
15 methodology and the procedure I found to be reliable. Okay?
16 So let's make sure I'm clear, Mr. Henderson.

17 MR. HENDERSON: Thank you.

18 MR. BLACK: Thank you, Your Honor. He went to get Ms.
19 Brown.

20 THE COURT: Okay.

21 (Whereupon, there was a brief pause in the
22 proceedings.)

23 THE COURT: Does anybody need a little short break
24 before we start back?

25 MR. HENDERSON: And, Your Honor, with the Court's

1 permission, I would like to ask the SLED chemist a couple of
2 questions related to my in camera motion for Dr. Valentine.

3 THE COURT: For what purpose, Mr. Henderson?

4 MR. HENDERSON: Basically, Your Honor, assuming -- and
5 again assume that the methodology is fine. We're not
6 attacking the methodology. We're talking about a
7 potentially corrupted sample that comes into their
8 methodology. And again, it may be her opinion that, hey, if
9 we've got a corrupted sample coming into our methodology, we
10 can't rely on our methodology.

11 And again, that doesn't go to her methodology. Let's
12 assume her methodology is right for the sample that she got
13 for purposes of this argument.

14 THE COURT: So again, it's the receiver, not the sender
15 here. You're wanting to find out from her specifically
16 what, Mr. Henderson?

17 MR. HENDERSON: Right. Assuming for the sake of this
18 argument -- like Dr. Valentine said, assume that the
19 methodology that SLED uses is fine for this particular test.
20 The issue is if a corrupted sample was what got tested, is
21 that a reliable result if the sample that got tested is
22 corrupted. And again, it has nothing to do with it being a
23 proper analysis.

24 THE COURT: Again, you can cross-examine her and if she
25 -- I mean, let's be practical about this. If she

1 acknowledges, yeah, my sample was corrupted, therefore my
2 results aren't any good, then certainly, you know, the
3 jury's not going to use that. I mean, I'm not going to
4 allow any more in camera testimony.

5 MR. HENDERSON: And just to preserve our record, Your
6 Honor, we believe that -- and respecting the Court's ruling,
7 but believe it's burden-shifting that the Court's making us
8 prove that it's not reliable instead of the State proving
9 that it is reliable. I just want to make sure that's on the
10 record.

11 THE COURT: So noted. Let's bring the jury out.

12 (Whereupon, the jury entered the courtroom at 10:52
13 a.m.)

14 THE COURT: Let the record reflect the jury is back in
15 the courtroom. Good morning ladies and gentlemen. Again,
16 it's been pretty much standard in this case. We've had a
17 lot of issues to deal with and we've been working every
18 since you got here this morning about 9:30. So we had to
19 deal with those issues before we could continue.

20 Solicitor, you want to call your next witness?

21 MR. BLACK: Yes, sir, Your Honor. Thank you. The
22 State calls Jennifer Brown.

23 JENNIFER BROWN, having been first
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BLACK:

2 Q Ms. Brown, would you please introduce yourself to the
3 jury, please.

4 A My name is Jennifer Brown.

5 Q And where do you work, Ms. Brown?

6 A I work at the South Carolina Law Enforcement Division
7 commonly known as SLED.

8 Q How long have you been at SLED?

9 A A little over 10 years.

10 Q And what kind of -- what kind of -- before we jump into
11 your duties at SLED tell us a little bit about your
12 education.

13 A Sure. I have a Bachelor of Science in chemistry at the
14 University of South Carolina, but most of our training is
15 done extensively in-house at SLED. So we have an extensive
16 in-house program to do most of the training to tell us --
17 show us what we do and interpretation, everything we need
18 for our job. So the first part is blood alcohol training.
19 So we have a series of lectures that we have to go through
20 with tests and have to pass those. And then we go ahead and
21 analyze samples for the presence or absence of ethanol and
22 other volatiles. And we have to do an x-amount of those
23 samples, which is generally over 500. And then after all
24 that we're given a competency test and a written test. We
25 have to pass that. If we don't pass that then I wouldn't be

1 here. And then from there we go on to our drug training.

2 And once again, we go through all the different classes of
3 drugs, learn all about those that we can. And then at the
4 end of that part of the training then we do another -- I
5 guess you would say test. More like a mock trial. And then
6 if we don't pass that then I wouldn't be here once again.

7 Q And so, at SLED you primarily test samples that contain
8 alcohol and drugs; is that correct?

9 A Sure.

10 Q Do you test other things?

11 A We test a lot of different stuff for toxicology; blood,
12 ocular tissues, urine, moonshine, some other random stuff
13 that they sometimes bring in, too.

14 Q So you're in the toxicology department?

15 A Correct.

16 Q And how many -- you said you've been there, what, 10
17 years?

18 A Uh-huh (affirmative.)

19 Q How many samples would you estimate having tested over
20 the course of 10 years?

21 A Ballpark, a good question. SLED in itself as
22 forensics-wide gets probably at least 16,000 cases in every
23 year. So then, I don't know, maybe a third of those go to
24 toxicology. And then depending on how many people we have,
25 what we call online, so working active cases, maybe another

1 six of that. So I think generally somewhere between maybe
2 three to 500 a year.

3 Q And have you ever appeared in Court before?

4 A Yes.

5 Q And what have you -- like criminal cases?

6 A Yes.

7 Q How many times have you appeared to testify as an
8 expert?

9 A Over 10.

10 MR. BLACK: Your Honor, at this point the State offers
11 Ms. Brown as an expert in forensic toxicology.

12 THE COURT: Okay. What says the Defense?

13 MR. GARRETT: Judge, we were wondering, did she just
14 say she had a degree in biology?

15 THE COURT: Quite honestly, I could not hear what she
16 said.

17 THE WITNESS: I'm sorry.

18 VOIR DIRE BY MR. GARRETT:

19 Q I was just trying to --

20 A I'm sorry. In chemistry.

21 Q You have a degree in what?

22 A Chemistry.

23 Q In chemistry?

24 A Uh-huh.

25 Q Do you have a Bachelor's in biology?

1 A No.

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

3 Q Is that marine science?

4 A I do have one in marine science. But I also have mine
5 in chemistry, which is what focuses on what I do.

6 Q You have a degree in both?

7 A I have a degree in both, yes.

8 Q Was that a minor?

9 A No, they're both Bachelor's.

10 Q Both Bachelor's degrees?

11 A Uh-huh.

12 Q You have transcripts for those?

13 A Not with me, but yes.

14 Q But you do?

15 A Yeah.

16 MR. GARRETT: All right, Your Honor. Subject to that,
17 fine.

18 THE COURT: Very good. I find that Ms. Brown is an
19 expert in the field of forensic toxicology. You may
20 proceed.

21 MR. BLACK: Yes, sir. Thank you.

22 Q Ms. Brown, can you walk us through kind of the process
23 that SLED received the items from different agencies around
24 the State.

25 A Sure. Depending on who it's from either they can bring

1 the evidence in-house to us or they can actually mail us
2 evidence. But generally that's all brought into our login
3 department. And our login department will receive the
4 evidence, give it a unique identifier, which is generally a
5 bar code. And if I may, it's something similar to this.
6 That's just my case jacket. But it'll be something similar
7 to that so everybody has their own bar code, so it goes
8 along with the evidence. They're given that. We get all
9 the information that we need. It's put into a heat sealed
10 pouch, sealed and initialed, and any information that needs
11 to be on that pouch is on that pouch. Then it's placed into
12 our toxicology refrigerator in the login department and then
13 someone from SLED toxicology department, one of our
14 technicians generally will come down to our login department
15 and then grab that evidence. Bring it back upstairs,
16 inventory it and take pictures of it. And then we'll put it
17 back in the pouch, seal it, initial it, date it, and then it
18 goes on to further testing depending on what it needs.

19 Q Are you specifically the person that usually receives
20 these items?

21 A Depending on what part of the chain, but yes.

22 Q When they first come into the law enforcement agency?

23 A No. That would be the login department.

24 Q So not one of the forensic scientists? Somebody -- a
25 technician or somebody that works at SLED?

1 A Uh-huh.

2 Q Eventually these items get placed -- you receive these
3 items that you have to test, correct?

4 A Correct.

5 Q The items that you receive, are they usually sealed up?

6 A Yeah, they're in a heat sealed pouch.

7 Q And can you describe kind of the packaging and sealing
8 which you receive items in?

9 A I mean, it's kind of hard to explain if I don't have --
10 sorry. But it's basically kind of like a plastic bag, but
11 it's temper evident and -- well, not quite that. But temper
12 evident. And so, if you were to cut into it I would clearly
13 know. But -- and then you heat seal it with a heat sealer
14 and then initial and date it, like I said.

15 Q And does it usually have like a label on it or some
16 kind of --

17 A Oh, yeah. I don't have our -- the bar code for each
18 case, and depending on if it's a container, if it's an
19 individual item, and then the information that goes along
20 with it. Usually like the case number for the department
21 that sent it in. Which department sent it in. And then
22 it'll tell you, too, like who brought it in. It'll have
23 their initials, their dates, all that type of stuff.

24 Q If it appears that an item had been tampered with does
25 SLED have different policies and procedures of how you all

1 handle that?

2 A Yes. So if we thought it had been tampered with then
3 we would stop doing anything, because they would usually
4 find that on inventory. And so, we would stop and generally
5 go to our supervisors and say, okay, well, how do you want
6 us to proceed. He'll let us know how he wants us to proceed
7 and it goes from there, just depending on what he makes the
8 decision.

9 Q And so, you would make a note of it somehow, correct?

10 A Oh, yes.

11 Q And in this particular case was it tampered with in any
12 way before it got to you?

13 A Not to my knowledge.

14 Q Do you specifically remember testing these items?

15 A Not specifically. Like I said, we test a lot of
16 samples. So not specifically this one.

17 Q I'm showing you what's been marked as State's No. 71.
18 Can you identify this for us, please, ma'am.

19 A Sure.

20 Q What is that document?

21 A This is -- I'm comparing it to the one I have. It's
22 the chain of custody that we -- that we prepare.

23 Q And is this done in the normal course of business at
24 SLED?

25 A Yes.

1 Q And I see that there's a number that starts with an L14
2 at the top. What is that number?

3 A That's the lab number that comes in. So each case will
4 be given it's own lab number and login, and that's the one
5 associated with this case.

6 Q And so, that number stays with the samples throughout
7 the entirety of while it's at SLED?

8 A Yeah. It's bar coded and everything.

9 Q How many pages do you have there?

10 A Six.

11 Q And that would be --

12 A I believe.

13 Q -- a normal chain, correct?

14 A Yes. Yes.

15 MR. BLACK: Your Honor, State moves No. 71, I believe,
16 into evidence.

17 THE COURT: Okay. Wait one second.

18 MR. HENDERSON: One second, Your Honor.

19 THE COURT: Sure, take your time.

20 MR. GARRETT: Your Honor, may we -- may we approach?

21 THE COURT: Sure.

22 (Whereupon, a sidebar was held.)

23 THE COURT: Solicitor, go back just a little bit in her
24 questioning concerning the chain, because evidently I missed
25 something.

1 Q All right. So this is an internal chain from SLED,
2 correct?

3 A Correct.

4 Q How many items eventually were -- how many items came
5 to SLED underneath this lab number?

6 A Four.

7 Q And it went through several hands at SLED before it
8 eventually got to you; is that correct?

9 A Yes.

10 Q All the items?

11 A Yeah.

12 Q And so, you testified previously that if there -- if
13 the seals had been broken or if anything of that nature
14 happened you would have made a note on it?

15 A Uh-huh, or anybody before me. Yes.

16 Q And did you make a note on it in this case?

17 A No.

18 MR. BLACK: Your Honor, the State is trying to move
19 this document into evidence.

20 MR. GARRETT: Subject to our sidebar objection --

21 THE COURT: And previous --

22 MR. GARRETT: -- Your Honor, and what was number?

23 THE COURT: Certainly. So noted. Is that, what, 71?

24 All right. 71 into evidence for the State.

25 (Whereupon, State's Exhibit No. 71 was admitted into

1 evidence.)

2 MR. BLACK: Thank you, Your Honor.

3 Q The first item that's on this chain of custody sheet,
4 it looks like it was -- what is that item?

5 A Item one is an ocular fluid sample, so eye fluid, from
6 Jeremy D. Cockrell.

7 Q And what about item two?

8 A Is a blood sample also from Jeremy D. Cockrell.

9 Q And you eventually -- you received these items; is that
10 correct?

11 A Yes.

12 Q To test?

13 A Yes.

14 Q And there were several techs that it had passed through
15 their hands; is that right?

16 A Or toxicologists, yeah.

17 Q And different toxicologists as well?

18 A Uh-huh.

19 Q And you eventually tested these items; is that correct?

20 A Correct.

21 Q I'm showing you what's been marked as State's No. 2.

22 Do you recognize -- or 72. I apologize. Do you know what
23 that document is?

24 A It's the SLED report for Jeremy D. Cockrell.

25 Q And in this report you've got two items; is that right?

- 1 A Correct.
- 2 Q And what items did you test on Mr. Cockrell?
- 3 A The ocular was tested along with the blood.
- 4 Q And tell the jury what the ocular is?
- 5 A Just the eye fluid. So fluid from your eye.
- 6 Q And you eventually -- you ran a report of that; is that
- 7 correct? Of those two items?
- 8 A Yes.
- 9 Q Of the ocular did you -- what did you test and what did
- 10 you find?
- 11 A The ocular was tested for volatiles including ethanol,
- 12 which is what you get when drinking alcohol. And so, that
- 13 reported negative. And then you said the blood, too?
- 14 Q Was there anything else that you tested from the
- 15 ocular?
- 16 A No, that was just it from the ocular.
- 17 Q So no ethanol in his system according to the ocular?
- 18 A Correct.
- 19 Q You also tested the blood; is that right?
- 20 A Correct.
- 21 Q Did you test ethanol as well?
- 22 A Yes, ethanol was also tested.
- 23 Q And this was all Mr. Cockrell still?
- 24 A Uh-huh.
- 25 Q And what was the result of that?

1 A Negative.

2 Q And did you test for other items in his system?

3 A Yes. We also tested -- we screened for different
4 drugs, from different drug classes. So amphetamine,
5 benzodiazepines, cocaine metabolite, methadone,
6 methamphetamine, opiates, Oxycodone, Tramadol and sulpadone.
7 And then another one that isn't necessarily on that list
8 which is cannabinoids, which is where you see the positive
9 result on there.

10 Q So on this chart, all the drugs that you previously
11 mentioned before the -- what was the last one? I'm sorry.
12 How did you pronounce it?

13 A Cannabinoids?

14 Q Yes.

15 THE COURT: Spell that for us, please.

16 THE WITNESS: C-a-n-n-a-b-i-n-o-i-d-s.

17 Q And that's basically marijuana, right?

18 A Correct.

19 Q So he tested negative for alcohol and then amphetamines
20 and cocaine metabolites, methamphetamine, Oxycodone,
21 Tramadol. All those drugs, correct?

22 A Yes.

23 Q But he tested positive for marijuana?

24 A Correct.

25 Q In layman's terms.

1 A Sure.

2 Q And what was that result?

3 A We have a result of 2.6 of the 11
4 carboxy-tetrahydrocannabinol, which is a metabolite of
5 marijuana.

6 Q What does that mean?

7 A It means sometime prior he had smoked marijuana.

8 Q And how far in advance? Can you tell us that?

9 A Not really. We like to have the parent drug there to
10 give you kind of a timeframe of using it. Not having that I
11 can't really tell you, unless we knew if someone was an
12 acute user or a chronic user.

13 Q What is the parent?

14 A The parent is what we consider the active component of
15 marijuana which is tetrahydrocannabinol.

16 Q So was there active -- was there an active component in
17 his system?

18 A No.

19 Q There was not an active component?

20 A Not in this sample, no.

21 Q So all you can tell from this result is he had smoked
22 marijuana sometime prior?

23 A Correct.

24 Q What's the furthest out that he was -- you would have
25 been able to tell from this, or could you?

- 1 A Not really. Not knowing the use.
- 2 Q If it's chronic? If he used it every day or --
- 3 A Right.
- 4 Q -- once a week or --
- 5 A Right.
- 6 Q -- once a month?
- 7 A Right. Or used for a long time and then stopped and
- 8 used once, you know, after that.
- 9 Q So you really -- you really just don't know?
- 10 A Huh-uh.
- 11 Q And you would be able to know if you had the active
- 12 component, but you don't have the active component?
- 13 A Correct.
- 14 Q And you tested -- that was the blood that screened for
- 15 the marijuana?
- 16 A Correct.
- 17 Q But there was nothing else that was in Mr. Cockrell's
- 18 system?
- 19 A Not that we tested for, no.
- 20 Q You also ran a test on the Defendant in this case, Mr.
- 21 Rowell; is that correct?
- 22 A Correct.
- 23 Q I'm showing you --
- 24 MR. HENDERSON: Just subject to our prior objection
- 25 this morning, Your Honor.

1 THE COURT: Certainly.

2 Q I'm showing you what's been marked as State's No. 73.

3 THE COURT: Let me ask you, Solicitor. Exhibit 71, the
4 chain of custody, is that for both Cockrell and Mr. Rowell,
5 or not?

6 MR. BLACK: Yes, sir. It is. And, Your Honor --

7 THE COURT: Because it's all -- all at the same time,
8 right?

9 MR. BLACK: Yes, sir. They were all under this one --

10 THE COURT: I just wanted to make sure.

11 MR. BLACK: And, Your Honor, the State moves No. 72
12 into evidence.

13 THE COURT: Okay. Subject to previous objections that
14 will be put on the record --

15 MR. GARRETT: Subject to our prior objections.

16 THE COURT: Yes.

17 MR. GARRETT: Yes, without objection, Your Honor, as to
18 that.

19 THE COURT: Okay. Without objection on 72.

20 MR. GARRETT: Is that on that as well?

21 MR. BLACK: No.

22 MR. GARRETT: Then we have no objection to Mr.
23 Cockrell.

24 (Whereupon, State's Exhibit No. 72 was admitted into
25 evidence.)

1 MR. GARRETT: Judge, we need to have another sidebar.

2 THE COURT: Okay.

3 (Whereupon, a sidebar was held.)

4 THE COURT: Ladies and gentlemen, we're going to take a
5 short morning break. So if you'll go back to the jury room
6 and we'll get you back out shortly.

7 (Whereupon, the jury exited the courtroom at 11:15
8 a.m.)

9 (Whereupon, a recess was held from 11:15 a.m. to 11:36
10 a.m.)

11 THE COURT: We're going to send the jury home for lunch
12 now. We'll probably have them come back about 1:30 just to
13 give us enough time to do whatever needs to be done
14 concerning this witness and otherwise. So bring the jury
15 out, please.

16 (Whereupon, the jury entered the courtroom at 11:36
17 a.m.)

18 THE COURT: Let the record reflect the jury's back in
19 the courtroom. Ladies and gentlemen, kind of like
20 yesterday, to avoid you having to spend -- you've spent
21 enough time back in this jury room, and to avoid any
22 extended periods of time leaving you back there I'm going to
23 to go ahead like we did yesterday and send you on home for
24 an early lunch, and if you can be back at 1:30. That's
25 going to give you two hours. So -- but again, it's -- we've

1 got issues that we have to deal with, and I know you'd
2 rather be elsewhere out somewhere instead of just sitting
3 back -- back here. So if you'll be back at 1:30. Again,
4 remind you no discussion among yourselves or anyone else you
5 come into contact with. Thank you for your patience and
6 your understanding, and we'll see you back at 1:30.

7 (Whereupon, the jury exited the courtroom at 11:36
8 a.m.)

9 THE COURT: As soon as our witness gets back then we'll
10 take some in camera testimony from her so I can make a
11 definitive ruling on this issue about how much of the
12 overall test that she actually did. So let's just be at
13 ease until she gets back.

14 (Whereupon, a brief recess was held.)

15 (Whereupon, Court's Exhibit Nos. 14 and 15, headspace
16 logs, were marked for identification.)

17 THE COURT: We are back on the record and an issue
18 arose concerning what involvement that Agent Brown had with
19 the SLED analysis of the blood for purposes of blood alcohol
20 content. Had in chambers conference with the lawyers. I
21 think they had just an informal conversation with Agent
22 Brown. So we're going to take some in camera testimony of
23 her and see exactly what she says -- give the Court an
24 opportunity to see exactly what she says and then we can
25 make a decision on the SLED results. So I'm going to go

1 ahead and allow -- Solicitor Black, you want to go ahead and
2 examine her first and allow Defense to examine her and then
3 we'll go from there.

4 MR. BLACK: Yes, sir. Thank you, Your Honor.

5 IN CAMERA DIRECT EXAMINATION

6 BY MR. BLACK:

7 Q Ms. Brown, do you have the -- I think it's State's 73
8 which is the toxicology report on Mr. Adam Rowell.

9 A Yes.

10 Q Is that up there?

11 A Yes.

12 Q And your name is at the end of that report, correct?

13 A Correct.

14 Q How were you involved in this particular sample? Well,
15 first, what did you test?

16 A The --

17 Q Or what was tested?

18 A The blood was tested, and tested for ethanol and then
19 other volatiles. And then a drug screen was performed, a
20 general drug screen, and confirmation of anything found.

21 Q And the results -- this is in camera, but there was a
22 -- it was a positive test for ethanol; is that right?

23 A Correct.

24 Q It was a positive test underneath that for isoflurane?

25 A Correct.

- 1 Q Am I pronouncing that correct?
- 2 A Yeah.
- 3 Q There was a bunch of negative reports on the next page;
- 4 is that right?
- 5 A Several, yes.
- 6 Q Amphetamines and cocaine metabolites and different
- 7 prescription drugs, right?
- 8 A Yes.
- 9 Q And then there was another positive test for -- can you
- 10 pronounce that word for me?
- 11 A Diphenhydramine.
- 12 Q Which is essentially Benadryl, right?
- 13 A Correct.
- 14 Q And that was a result of 4.9?
- 15 A Correct.
- 16 Q There was a positive test for Lidocaine?
- 17 A Yes.
- 18 Q Positive test for -- you'll have to help me with this
- 19 one.
- 20 A Just MEGX. That's what we generally call it.
- 21 THE COURT: You're probably going to need to spell some
- 22 of these terms that we're not familiar with, please.
- 23 THE WITNESS: Sure. Which one would you like me to
- 24 spell?
- 25 A So Diphenhydramine, d-i-p-h-e-n-h-y-d-r-a-m-i-n-e. And

- 1 then Lidocaine, L-i-d-o-c-a-i-n-e. And then
2 monoethylogoyinexlidide. I have a problem trying to say it.
3 It's
4 m-o-n-o-e-t-h-y-l-g-o-y-c-i-n-e-x-y-l-i-d-i-d-e.
5 Q And the abbreviation is MEGX?
6 A Correct.
7 Q He tested positive for that one?
8 A Correct.
9 Q And then he tested positive for -- what was the last
10 one?
11 A Midazollam. M-i-d-a-z-o-l-l-a-m.
12 Q And that's Versed essentially?
13 A Correct.
14 Q And then the urine was not screened, right?
15 A No.
16 Q How many -- how many analysts worked on this particular
17 test for Mr. Rowell?
18 A Give me one moment.
19 Q And I think that Mr. --
20 MR. BLACK: Did you make this?
21 MR. HENDERSON: I think it's already been made a
22 Court's exhibit, Your Honor.
23 A This one?
24 Q Yes.
25 A And I don't have anything on it for a Court exhibit.

1 THE COURT: Let's mark is as a Court exhibit, which
2 would be 14.

3 MR. HENDERSON: Your Honor, I think they're already
4 marked.

5 THE WITNESS: Oh, I just don't have the marked one.

6 THE COURT: What number is that?

7 MR. BLACK: Court's 14 and Court's 15.

8 Q You can just refer to that, Ms. Brown, to answer the
9 other questions. How many analysts -- or how many forensic
10 scientists, toxicologists worked on Mr. Rowell's blood
11 report?

12 A Besides me just one other.

13 Q Who was that?

14 A Stacey Matthew.

15 Q Now, what particular involvement did you have?

16 A So the way that it's tested at work there's a level one
17 and a level two. It's not that one's better than the other.
18 It's just how we phrased it. Level one does blood alcohol
19 and drug screens, and then if it needs further work it goes
20 to level two. And I'm part of level two. So level one
21 would be the drug screens, which is what Stacy did, and then
22 level two. So anything that tested positive for a drug
23 screen or needed for work, like a general drug screen
24 looking for other drugs, then it comes to me.

25 Q So were you always classified as a level two?

1 A In this situation, yes.

2 Q What about Stacy? Is she always classified as a level
3 one?

4 A No, because she's now a level two.

5 Q When did she become a level two?

6 A Oh, that's a good question. I couldn't really tell
7 you, because she concluded her training, so now she's level
8 two.

9 Q So in this particular -- in this particular sample what
10 did she test?

11 A She would have tested -- sorry, let me pull it out. It
12 looks like the blood for the volatiles and then for the drug
13 screen. The general -- or the drug screen. Not the general
14 drug screen.

15 Q And what did you do?

16 A Then I would have received a sample and then pipetted
17 it up for what it needed. So confirm anything that
18 screened positive. So benzodiazepines would have screened
19 positive, so we would have gone after that to see what, you
20 know, benzodiazepine specific that was. And then a general
21 drug screen was done. So we kind of look for a wider range
22 of drugs. And so, that's where we get the diphenhydramine,
23 Lidocaine, and then to shorten it, MEGX.

24 Q And what about the ethanol? Did you rescreen that?

25 A No. Everything's done in that part in level one, and

1 then I get the reports, read through everything, go over the
2 QC that's already been gone over once before, or twice
3 before, and accept it.

4 Q So you have to kind of reaffirm that report?

5 A Correct.

6 Q And then you do -- basically you do an essential --
7 another drug screen on the other items that you just
8 mentioned previously?

9 A Right, because we call it a general drug screen,
10 because the one that's at the top of the page only looks for
11 certain drugs. This one can look for a wide range of drugs.
12 So not just what we're looking for which is, what, seven or
13 so of them.

14 MR. BLACK: Judge, that's all the questions I have on
15 this subject.

16 THE COURT: Mr. Garrett.

17 CROSS-EXAMINATION

18 BY MR. GARRETT:

19 Q I understand you don't remember this. It's been a
20 while back. In order for you to be able to look at your
21 records you would need the records themselves, wouldn't you,
22 to see who did what?

23 A The case jacket, yes.

24 Q Are you telling the court then that TAM -- who is TAM?

25 A Can you show me where you're looking at? Sorry.

1 Q Let me just do this first and then you can try to help
2 us. Okay?

3 A Okay.

4 Q My notes say that TAM did the Benadryl test, TAM did
5 the blood for drug test, TAM did the liquid and the --
6 liquid chromatography and the mass spectrography, I guess?

7 A Sure.

8 Q For the Fentanyl. TAM did the Versed. A CJT did the
9 Benadryl. Then you got KAB doing the -- a drug screen and
10 STM doing an Amyl and a CJT doing the opiates, on this
11 --

12 A Okay. That was a lot.

13 Q -- on this --

14 A I would have to see exactly what you're saying. But
15 those seem to be all the initials of the different people in
16 my department.

17 Q I understand.

18 A Yeah.

19 Q I'm just trying to figure out. These people, according
20 to your notes, or these records --

21 A Right.

22 Q -- just like we showed you on the alcohol --

23 A Right.

24 Q -- are the persons who are identified in your records
25 have done all these other tests.

1 A So I guess the best way to explain it to you is I will
2 pipette a sample and put it in a rack where it's all
3 labeled, identified, everything else. And then each person
4 has their own confirmation they do, because if I had to go
5 through and do everything in this case and then do that for
6 every single case we have it would take a while. So we
7 consider that batched. So like for right now I'm
8 responsible for confirming all the urine opiates and
9 cocaines. So I will take all the samples there for that and
10 run all those. So when you have something like this then
11 you'll see my initials on that for that. In this case it's
12 Stacy for this one.

13 Q I've got initials for -- I've got the same kind of
14 thing for each of those people that have just -- I've got
15 the documents right here. I've got all of them.

16 A Sure.

17 MR. GARRETT: Mark these as Defendant's -- or Court's
18 exhibits, Judge.

19 (Whereupon, Court's Exhibit Nos. 16, 17, 18, 19, 20 for
20 identification.)

21 THE COURT: Mr. Garrett, aren't we kind of focusing on
22 the alcohol testing and not as concerned with the others?

23 MR. GARRETT: Well, we are. And it's more complicated
24 because it gets into one part where there is something in
25 his blood that only a diabetic could have, and I need that

1 analyst -- whoever did that test if we're going to talk
2 about reliability of this blood. I promise I'm not wasting
3 time, Judge.

4 THE COURT: I'm not -- I'm not suggesting you're doing
5 that.

6 MR. GARRETT: I'm trying to get here as quick as I can.
7 Have we given them a copy? I need a copy. Let me let you
8 be looking at these while I'm getting copies to counsel.

9 THE WITNESS: Sure.

10 Q Have you had a chance to look at those?

11 A Give me one more moment. Sorry. The one that's --
12 this one, 17, you just had the one page? Not the whole
13 packet? Because there's 18 pages it says that go with that.
14 And the same for the rest of these. You just wanted the
15 front pages of all of these?

16 Q I just want the name of the operator for what I'm
17 trying to do. And if we have to get into the 18 pages, we
18 can. I'm just trying to do the operator right now.

19 A Sure.

20 Q Now that you've got that, can I ask you the following
21 questions.

22 A Sure.

23 Q Did Stacey Matthew do the ethanol testing?

24 A Hold on. Yes.

25 Q Who is TAM?

- 1 A That's Tracy McKennen.
- 2 Q Who?
- 3 A Tracy McKennen. And that's actually a guy.
- 4 Q McKennen. Did he do the Benadryl?
- 5 A I'm not sure what you're referring to that one, but I
- 6 don't see anything that says that for that one.
- 7 Q Who did the blood drugs?
- 8 A Can you be a little more specific?
- 9 Q So who did the test on Benadryl? Can you tell from
- 10 those records who did the test on Benadryl?
- 11 A You have to be more specific, because there's a screen
- 12 and a confirmation.
- 13 Q Who did the screen?
- 14 A So the screen, I would have pipetted the sample and we
- 15 have an analyst that would have run the batch of the --
- 16 Q Please tell me who the analyst was.
- 17 A I don't know if I can tell you just the -- or the
- 18 screen for this, because there's nothing on the front page
- 19 to tell me.
- 20 Q Who is CJT?
- 21 A That's Carmen Tucker.
- 22 Q Carmen Tucker?
- 23 A Yeah.
- 24 Q Who is R. Sears?
- 25 A Robert Sears..

- 1 Q Robert Sears. Who is KAB?
- 2 A K. Bogdon.
- 3 Q Kelly Ogdon?
- 4 A Bogdon. Don't ask me to spell that one. I always get
- 5 it wrong.
- 6 Q And who is STM? That's Stacey?
- 7 A That's Stacey, yeah.
- 8 Q And CJT? Same thing?
- 9 A Yeah.
- 10 Q And let me just tell you what my records indicate so we
- 11 can kind of get through this kind of quick.
- 12 A Okay.
- 13 Q Would you disagree with me that Stacey Matthews did the
- 14 alcohol testing?
- 15 A Correct, yeah.
- 16 Q That TAM did Benadryl, blood drugs, liquid
- 17 chromatography and mass spectrometry for the Fentanyl?
- 18 A Okay. I'd have to see. None of the stuff you handed
- 19 me has any of that.
- 20 Q The TAM -- well, let's just make sure we know you have
- 21 an issue with. The TAM did the Versed?
- 22 A I don't have anything up here for that.
- 23 Q And CJT did the Benadryl?
- 24 A Without having the other pages I can't really tell you,
- 25 because I only have the run list.

1 Q And R. Sears did the validation for the unit?

2 A The headspace for the blood -- yeah. The blood
3 alcohol, yes. He did the calibration for what you have for
4 me.

5 Q KAB did a drug screen?

6 A Is that the one you're talking about? If this is the
7 one you're talking about, the analyst that pipetted it out
8 was Stacey, and then the person that actually analyzed it
9 would have been KAB.

10 Q KAB which was Kelly --

11 A Yes, Bogdon.

12 Q And CJT again for opiates?

13 A I'm not sure on that one because I don't have that
14 either.

15 Q I've got the whole book here. You want me to look --

16 A I mean, if you want to look through my case jacket that
17 might be more helpful.

18 Q Do you have it your case jacket?

19 A Well, I don't have all of this, but I have everything
20 that it took me to report out.

21 Q Look and see what you've got. I've got -- I have the
22 complete book. I'll let you look at it.

23 A Okay.

24 Q Can you tell me who did what test?

25 A Sure, okay. So once the sample -- I pipe it out from

1 the blood. It looks like Tracy would have ran the general
2 drug screen.

3 Q Can I ask you to give me the full name of the person.

4 A Do you want the middle name, too, because I don't know
5 that? But it's Tracy McKennen. And then -- sorry. There's
6 the general, but it's on the GC and the LC, so it's a
7 two-parter on my data.

8 Q Who did that?

9 A That was Tracy McKennen.

10 Q So she did -- not only did she do blood drugs, what
11 else did she do?

12 A He.

13 Q He?

14 A Yeah. That was the general drug screen. And like I
15 said, that was on the gas chromatograph, and then the liquid
16 chromatograph.

17 Q And that was where the Fentanyl was found?

18 A I don't have any Fentanyl. But -- oh, if you're
19 talking about that. Yeah. There's not --

20 Q Did he do that testing?

21 A -- there's nothing positive for Fentanyl. And then,
22 once again, the sample would have been pipetted out, and
23 then in the batch run Tracy would have run the
24 benzodiazepine, which is where you get Midazolam.

25 Q I'm sorry. Which one? The --

1 A That would be the Versed.

2 Q Versed?

3 A Yeah, that's the Midazolam.

4 Q Benadryl --

5 A Yes. And then once again the sample would have been
6 pipetted out by me, and then in the batch Carmen, it looks
7 like, did the diphenhydramine, which is Benadryl.

8 Q And then we've got -- did Tracy McKennen also do
9 something on Benadryl?

10 A Not unless you're considering the general drug screen,
11 but I went through and found the Benadryl.

12 Q My notes here indicate that it was one that found the
13 Benadryl.

14 A Well, when a general drug screen is pipetted out he
15 just extracts it. I actually go through that whole sample
16 and find all the drugs in it. So I would have -- so they're
17 individually and some of this you're not going to be able to
18 see. But there's little peaks and I sit there and go click,
19 click, click, click, click. Do this whole thing on the
20 computer in the software and find all the drugs that --

21 Q I'm just asking who on your records are indicted to do
22 the tests.

23 A Who extracted it? Actually like physically took the
24 samples and -- sorry, there's no better way to explain it.
25 But extracted it as Tracy and then I went through it.

1 Q I understand you went through it later. But then Kelly
2 Bogdon did the general drug screen?

3 A No. That was Tracy. Tracy would have extracted the
4 general drug screen. I don't know where you're getting
5 Kelly.

6 Q What did Kelly Bogdon do then?

7 A I think the only thing we said was that she was the
8 technician that ran the drug screen. So -- which is the
9 general drug screen.

10 Q That's what I was asking. She did the drug screen, and
11 STM did the amyl. What is the amyl? Is there anything
12 called amyl? And then CJT, who is that again?

13 THE COURT: Mr. Garrett, the court reporter is having a
14 hard time understanding.

15 MR. GARRETT: I'm sorry.

16 THE COURT: And I realize what we're dealing with.
17 Okay?

18 MR. GARRETT: I'll try to cautious and try to help her.

19 Q And the opiate test was done by whom? My notes say
20 CJT. Can you confirm that?

21 A Opiate test. I'm not sure what you mean by opiate
22 test. I mean, there's the drug screen.

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

24 Q Looking through those papers that I handed you up just
25 a few moments ago, is there anything in there about an

1 opiate test? Anything at all about an opiate test? TAM on
2 the opiate test?

3 A Hold on.

4 Q I'm sorry. I think we -- I think we've got all of it.

5 THE WITNESS: May I also add something to this?

6 THE COURT: Sure.

7 THE WITNESS: Even -- even when I get all of this --
8 sorry. I know you don't have in all these. But when I get
9 back the data I review everything myself. It's already been
10 reviewed by a reviewer to say, yeah, this is acceptable
11 data. Then I will receive the data, and then I will go
12 through all those QC reports and say it's acceptable or not.
13 So even if someone else extracted it, because we have to
14 batch things just because of all the samples we get in, I
15 still have to go back and review it. Make sure the QC,
16 everything worked. The quality control, the controls
17 worked, everything. Then I okay it, and that's why it's in
18 my report. And not only that, then after that happens then
19 I also have someone that reviews my case jacket and then
20 goes, okay, this is acceptable. And that's why we have a
21 report.

22 THE COURT: But my understanding, ma'am, is that
23 concerning the alcohol, that is done level one, correct?

24 THE WITNESS: Correct.

25 THE COURT: And what you're just referring to as far as

1 the -- your review and that sort of thing, that's all
2 related to the drugs, correct?

3 THE WITNESS: Well, even with the alcohol. Because
4 when I get the case jacket from level one it'll have the
5 alcohol and the drug screens and all that in there. I go
6 back and review all that, too.

7 THE COURT: Right. But the actual workup is done, in
8 this case, by Stacey?

9 THE WITNESS: She would have pipetted out the samples,
10 run it on the instrumentation, got the report, signed it,
11 got the QC, and then on to me, so...

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

13 THE WITNESS: Sure.

14 THE COURT: Anything else in camera with respect to
15 this witness?

16 MR. BLACK: Nothing, Your Honor.

17 THE COURT: You can step down but don't -- don't leave
18 quite yet. Okay?

19 THE WITNESS: Okay. Do you have, like, all the stuff.
20 There's a lot of --

21 THE COURT: Yeah, take your time, because I know that
22 some stuff is yours and some stuff is exhibits. So yeah,
23 take your time.

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

1 THE COURT: Solicitor, you were wanting to say what?

2 MR. BLACK: Yes, sir. Before you made a ruling on
3 anything I just wanted to let the Court know that Stacey
4 Walker, she is on her way. She will be here at 1:40, just
5 to let the Court know that, before ruling.

6 THE COURT: Well, I mean, I was going to require that
7 -- I mean, I was not going to allow Jennifer Brown to
8 testify as to the alcohol results without having the other
9 technician come here, too. But if you're telling me that
10 Stacey -- you say Stacey Walker is her name?

11 MR. BLACK: I believe that she has been identified as
12 the individual that ran the alcohol screen. Yes, sir.

13 THE COURT: I wrote down Stacey Matthew.

14 MR. BLACK: Matthews. I apologize. Matthew.

15 THE COURT: So, I mean, if the -- so we got two SLED
16 toxicologist who did the alcohol then -- then we can proceed
17 forward. Now, quite honestly, as it relates to any
18 testimony related to the drugs, I'm very confused as far as
19 -- and again, it's the hearer, it's not the sender, confused
20 as far as Ms. Brown's involvement with the drug testing and
21 how much she did and how much other folks did.

22 MR. BLACK: Well, to me, Judge, it sounds -- and from
23 being in this area, from what I understand there's an
24 initial drug screen that happens, and then it goes to the
25 analyst to further identify specific drugs, and Ms. Brown

1 was the -- is the individual in this case that identified
2 the specific drugs. After -- everything that comes in goes
3 through an initial drug screen. So somebody sticks that on
4 kind of just the lab machine and it runs the initial drug
5 screen, and then the sample goes to further be tested for
6 each particular one that they -- they're trying to test.
7 Ms. Brown's the one that did that in this case and she needs
8 to be able to testify about it.

9 And Judge I think -- I'm sorry. I'm saying Stacey
10 Walker. I think he plays for the Texas Rangers. I've got
11 baseball on my mind for some reason.

12 THE COURT: All right. Mr. Garrett?

13 MR. GARRETT: That's not the only problem that they've
14 got, Your Honor, with this in order to get -- in order to
15 have to validate the test that they ran, and that does
16 require a technician and it does require a technician after
17 that to run the -- so, I mean, without that person to
18 validate the test then --

19 THE COURT: Right.

20 MR. GARRETT: -- the people that took the test --

21 THE COURT: And you're alluding to the drug portion of
22 --

23 MR. GARRETT: No, sir. I'm alluding to the alcohol
24 test included.

25 THE COURT: Well, the only two people that touched the

1 alcohol testing completely was Stacey and Jennifer, right?

2 Is there anybody else? I didn't hear anybody.

3 MR. BLACK: Stacey did it, apparently, and then the
4 result went to Jennifer. She verified it. And she verified
5 all the drugs --

6 THE COURT: I'm not talking about drugs right now. I'm
7 --

8 MR. GARRETT: R. Sears is someone who set up the
9 machine and validated it.

10 MR. BLACK: That sounds like -- to me it sounded like a
11 calibration, Judge.

12 MS. BROWN: Right.

13 THE COURT: Wait a minute. You need to come back up
14 here. You don't need to bring your stuff. Hopefully you
15 don't need it.

16 (Whereupon, Jennifer Brown returns to the witness
17 stand.)

18 THE COURT: Agent Brown, who else other than you and
19 Stacey had any involvement whatsoever with respect to
20 alcohol testing?

21 THE WITNESS: So the calibration is done with every
22 batch of t-Butanol, so that's -- I shouldn't say once it's
23 done. But it's done once, calibrated, and then it's -- and
24 then there's a person that individually does this. That's
25 Stacey. So -

1 THE COURT: Well, when you say does this --

2 THE WITNESS: Sorry.

3 THE COURT: -- that doesn't help, Ms. Brown.

4 THE WITNESS: Sorry. I apologize. That ran the blood
5 alcohol. So Sears -- Robert Sears would have done the
6 calibration for the instrument, but beyond the calibration
7 he has no involvement in --

8 THE COURT: Right.

9 THE WITNESS: -- the running of the samples.

10 THE COURT: But now, every time alcohol testing is done
11 at the level one stage is the machine calibrated?

12 THE WITNESS: No.

13 THE COURT: Is it calibrated -- how frequent is it
14 calibrated?

15 THE WITNESS: Basically whenever -- we have our
16 internal standard. Whenever our internal standard runs out
17 then it gets recalibrated.

18 THE COURT: And on an average -- let me just ask it
19 that way. On an average how often is it calibrated?

20 THE WITNESS: I would be badly guessing, but maybe a
21 month or two. And then -- may I additional --

22 THE COURT: Okay.

23 THE WITNESS: But there's controls run with every
24 batch, so that's how we can verify that our calibration is
25 still good.

1 THE COURT: So as far as alcohol testing in general,
2 Robert Sears would not touch every single alcohol testing
3 case?

4 THE WITNESS: Oh, no. He's basically just doing the
5 calibration for the instrumentation.

6 THE COURT: Other than Robert Sears, as far as this
7 alcohol testing, it was just you and Stacey, correct?

8 THE WITNESS: Correct.

9 THE COURT: All right. Based upon -- based upon her
10 testimony, assuming Stacey gets here to testify, I'm going
11 to allow the alcohol portion to come in. Again, as far as
12 the drugs, we'll just have to explore this further. I'm
13 just -- it's no reflection on you, ma'am. Okay? But I'm
14 just really confused as far as to what extent this lady can
15 testify as to drugs and not be allowed to testify as to
16 drugs.

17 MR. BLACK: Yes, sir. And I don't know if you want me
18 to further inquire or if you actually want to inquire about
19 how the screening works and then how the process works with
20 Ms. Brown. I mean, I can ask. We can go through this
21 again. But if you have direct questions that you would
22 rather ask to clarify that, Judge, maybe it would be better
23 if you asked her. And I can ask her questions, Judge, if
24 you would like me to go there.

25 THE COURT: Go ahead.

1 REDIRECT EXAMINATION (IN CAMERA)

2 BY MR. BLACK:

3 Q Now, Ms. Brown, there's a general drug screen that gets
4 done, correct?

5 A Sure.

6 Q What is that?

7 A So the general drug screen, as I said before, is
8 looking for a wide range of drugs. So we're not looking
9 just for opiates or amphetamines or that. So in this case
10 we can find the diphenhydramine, the Lidocaine. Is it
11 possible also to see some of the other drugs that were
12 screened for in the sense of opiates, amphetamines, yes.

13 Q Now, who did -- who did the general drug screen on this
14 one?

15 A That's over there. I'm sorry. To remember, I believe
16 it was Tracy McKennen.

17 Q I think I heard Tracy McKennen's name about 40 times.
18 Does that ring a bell?

19 A Yes.

20 THE COURT: But is -- let me ask you this. Is the
21 general drug testing a prerequisite for any work that you do
22 with respect to drug testing?

23 THE WITNESS: Okay. I guess the best way to explain it
24 is, so once I find what needs to be done, I take the
25 evidence and I say, okay, these are the tests that need to

1 be done. So I go and pipette out other samples. So I go
2 into the evidence bag and I grab the test tube that the
3 blood's in, and I get my pipette and just pipette it out
4 into what needs to be done. So then that goes into a rack
5 in our refrigerator for whatever needs to be done. So those
6 are generals rack, a benzodiazepines rack and whatever. So
7 then whoever's responsible for that class of drugs or that
8 quant will take that rack and run them. Now, everything is
9 labeled and -- like you'll see it on top of all the
10 paperwork. So everything's labeled. And so, then when all
11 that's done the results come back to me. I review the QC,
12 review everything and okay it or not okay it. And then once
13 everything's finished that's reported out.

14 THE COURT: The actual -- I'm going to use the term,
15 legwork, is actually done by others and not you, correct?

16 THE WITNESS: It just depends on what it is, because I
17 have my own or confirmation that I do. So in this case I
18 wouldn't have done any of the extractions.

19 THE COURT: And is extraction, is that important to
20 doing drug testing?

21 THE WITNESS: I mean, sure. That's how we get the drug
22 out of the sample and be able to analyze it.

23 THE COURT: I mean, just looks like to me you have to
24 have others here.

25 MR. BLACK: Well, Judge, I mean, I hear what you're

1 saying. But if that were the case you would essentially
2 have to shut down SLED to get every toxicologist to come
3 testify in a court, which it sounds like they all kind of
4 work together as a team. She does the initial -- or initial
5 screening gets done. The results come back to her. If
6 something doesn't, you know, stand out right then she has to
7 send it back. She has to specifically do a test. And then
8 -- but if it doesn't, then it continues on down the line. I
9 mean, your ruling -- you know, I'm afraid your ruling will
10 essentially, you know, shut down SLED for the foreseeable
11 future for any -- for any case where they were analyzing a
12 substance, because according to your ruling you have to have
13 everybody there that -- that did anything. Even the initial
14 drug screening, Judge.

15 THE COURT: But now, isn't this case somewhat unusual
16 or not common because you've got a whole slew of drugs
17 involved?

18 MR. BLACK: I don't think so.

19 THE WITNESS: No.

20 MR. BLACK: This is standard SLED -- this is how they
21 do it at SLED every single day, Judge.

22 THE COURT: But if -- I'm just going to pick out a name
23 that I wrote down.

24 MR. BLACK: Okay.

25 THE COURT: If whatever Kelly did, if that is a vital

1 part, an important part of the overall process to determine
2 the existence of a particular drug alleged to have been in
3 the Defendant's system, is that not important to have that
4 person here?

5 MR. BLACK: Judge, I think it's the same exact scenario
6 with the medical blood draw, because ultimately the
7 machine's doing the work and it's got to be verified by a
8 SLED agent. And so -- I mean, I guess they could wheel in
9 the machine, but the machine can't testify, Judge. The
10 machine is actually doing the hard work in these case.

11 THE COURT: I think we're mixing apples and oranges
12 here, equating this situation with the dilemma that we had
13 yesterday as it relates to the Abbott machine at Greenville
14 Hospital System. I think it's an entirely different
15 situation.

16 Mr. Garrett, do you want to be heard on this?

17 MR. GARRETT: I've practiced 33 years and I've never
18 seen even an attempt to take blood from 14 other people, put
19 it into your client, or the Defendant, and then try to test
20 it, and then try to have one person come in and testify,
21 well, this is what all what we found, without explaining the
22 science of it to help the jury understand. If he's got
23 Versed in him, for God's sakes he didn't take any Versed.
24 He's got Propofol. Unless he's Michael Jackson he's not
25 going to have Propofol in his system.

1 So yeah, I'm sorry. We're getting into the -- you
2 know, to the grass here, maybe even all the way down to the
3 grains of granules. But, you know, there's a lot of --
4 they've indicted him for drugs and alcohol.

5 MR. BLACK: We've indicted him for felony DUI which is
6 alcohol, drugs, or a combination of the two. So that's
7 inaccurate.

8 THE WITNESS: May I talk to something that he said?

9 THE COURT: Sure.

10 THE WITNESS: It is our standard policy and procedure
11 to do kind of what he said. With every single case if we
12 find, okay, well, these five cases need benzodiazepines run,
13 it's all going to be pipetted out -- I mean, we're going to
14 take each -- sorry, I don't have the document anymore. But
15 each bag individually, open it up, pipette out what we need.
16 Everything's labeled, everything's with the case number and
17 everything that was done. It's sealed. My initials are on
18 it with the date, but to the side, next case. And then
19 that's going to be put in the rack and then those run.
20 Because otherwise we'd be having one case and about -- I
21 don't know, 10 controls for one case and we would not
22 function as a laboratory. So that's why we consider
23 batching. So one person's going to be in charge of this.
24 One person is going to be in charge of that. And so, we --
25 everybody's got their own stuff for their own case. And so

1 -- and it's common procedure, because we'd be shutting down
2 labs just to do one case. And there isn't enough time in
3 the day for me or anybody to go through every single case
4 and do every single extraction to find everything that we
5 find. It's just -- it's not plausible.

6 MR. GARRETT: Your Honor, my constitutional -- my
7 client's constitutional rights are a lot more important than
8 that, period.

9 MR. BLACK: And, Judge, he has every right in
10 cross-examination to talk about the lab process and how the
11 general screen works and how all that works, and his --

12 MR. GARRETT: She didn't do it.

13 MR. BLACK: His constitutional rights are protected
14 through cross-examination. Judge, I don't think that -- I
15 don't think that your ruling affects that.

16 THE COURT: Well, I don't think my ruling would
17 necessarily control other judges in so far as shutting down
18 SLED in future cases.

19 So, Agent Brown, is it fair to say that -- all right.
20 Let's say Kelly. We're using Kelly again. If Kelly does
21 not find the presence of a particular drug that she's
22 looking for, then that never gets to you, right?

23 THE WITNESS: Depending on the type of case.

24 THE COURT: Okay. Well, in some situations yes and
25 some situations no. Okay?

1 THE WITNESS: Correct.

2 THE COURT: So -- so she would be an important part of
3 this process, would she not, because she's the one that
4 initially finds the drug.

5 THE WITNESS: If you're talking about Kelly in the
6 sense that she operated the instrument, then maybe. But
7 Stacey's the actual one who pipetted out the sample. So
8 took the blood and pipetted it out, put it into a vial, and
9 then going on to the instrument from there.

10 THE COURT: Well, then, Stacey then. I mean, I'm just
11 using Kelly as an example. I don't know what involvement
12 Kelly had. But you're saying then Stacey would then take --
13 go the next step. And wouldn't Stacey's involvement be
14 important?

15 THE WITNESS: Sure.

16 THE COURT: All right. Well, you know, we can -- we
17 can beat this all day long. I'm going to allow her to
18 testify conditioned upon Stacey being here as it relates to
19 alcohol testing. But without the other technicians involved
20 in the drug testing process I'm going to suppress any
21 evidence from this witness for the State.

22 Okay. We got -- we got about a half hour for lunch.
23 We'll be in recess until 1:30.

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

1 (Whereupon, a lunch recess was held from 1:02 p.m. to
2 1:45 p.m.)

3 MR. GARRETT: Judge, can we sidebar before we start?

4 THE COURT: Yeah.

5 (Whereupon, a sidebar was held.)

6 THE COURT: Let's get the jury out.

7 (Whereupon, the jury entered the courtroom at 1:51
8 p.m.)

9 MR. BLACK: Jennifer Brown.

10 THE COURT: She's already been sworn in before the
11 jury. Ms. Brown, you've already been sworn in, so if you'd
12 take a seat on the witness stand, please, ma'am.

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

14 THE COURT: I believe we are still in the middle of
15 direct examination. Solicitor, you may proceed.

16 MR. BLACK: Thank you, Your Honor.

17 DIRECT EXAMINATION RESUMED

18 BY MR. BLACK:

19 Q Ms. Brown, just briefly. You work at SLED, right?

20 A Yes.

21 Q You're a toxicologist?

22 A Yes.

23 Q And in this particular case there were items that were
24 sent to SLED, right?

25 A Correct.

1 Q What were those items again?

2 A There was ocular from Jeremy Cockrell. There was blood
3 from Jeremy Cockrell. Blood from Adam, and I'm sorry if I
4 pronounce it wrong, Rowell. And then urine also from Adam.

5 Q And what ultimately got tested? I know that we've
6 already talked about Mr. Cockrell, but in terms of Mr.
7 Rowell.

8 A Yeah.

9 Q And don't -- don't tell us what -- well, there were
10 items that were tested from the blood, right?

11 A Yes.

12 Q A few more specific?

13 A Yes.

14 Q And you said you're a toxicologist; is that right?

15 A Correct.

16 Q Ultimately what -- what as your involvement in the
17 items that were tested?

18 A My involvement is once samples get to us from what we
19 considered level one, so level one just has blood alcohol
20 and drug screens, it needs further work, it will come to
21 another toxicologist that's in what we consider level two.
22 And that's just distinguishing one versus the other. So
23 level two will see, okay, did anything screen positive on
24 the drug screen. Let me pipette out that and have it run
25 for whatever needs to be run for. So if it's positive for

1 benzodiazepines, then we're going to send that to a
2 benzodiazepine, for confirmation depending on what the
3 sample is.

4 THE COURT: Can you slow down just a little bit,
5 please.

6 THE WITNESS: Yes. I apologize.

7 THE COURT: That's okay. Not a problem.

8 A So, like I was saying, if something screens positive,
9 we're going to go and confirm it or quantitate it depending
10 on what type of sample it is. So, and then also depending
11 on what needs to be done, a general drug screen which will
12 look for a little bit of everything will also be done. And
13 that's case depending.

14 Q But the general drug screen -- this is always done on a
15 sample?

16 A It just depends on the type of case, because we get
17 DUIs, death, rape cases. A little bit of everything.

18 Q Now, in this particular case who ran the alcohol
19 screen?

20 A The alcohol was run by Stacey Matthew.

21 Q Okay. And then did you end up looking at her results?

22 A Yes. I would look at the results in my case jacket and
23 I'll review all the data that I received, along with the
24 quality control packets for that.

25 Q And the machine that got this result, do you know what

1 machine she used?

2 A What specific machine, or just the type of machine?

3 Q The machine that was used to test it.

4 A The instrument that we used for the headspace gas
5 chromatograph, which has also a mass spec on it, too.

6 Q And this type of machine, is this a -- is this like a
7 standard machine you guys use at SLED?

8 A Yes, it's a standard instrumentation that we use.

9 Q And how -- how -- can you -- without going into too
10 much of the details, how does this machine test the alcohol?

11 A Simply, if you pipette out your sample you place it on
12 the instrument, and -- well, there's a whole bunch of QC
13 that goes into everything. But just in general it goes onto
14 an instrument. It runs through the instrument, and we'll
15 get a screen printout of what it's found and what it didn't
16 find. There's a whole bunch of different science stuff that
17 goes into it, but general basics.

18 Q And that was the machine you used to test the alcohol
19 in this case?

20 A Correct.

21 Q And so, Ms. Matthew, she was a level one, you said?

22 A At the time, yeah.

23 Q And is she a level one now still or is she --

24 A No, she's level two.

25 Q Okay. And in this case you were a level two?

1 A Yes.

2 Q So what was your task regarding this case?

3 A So in this case, if -- in whatever screened positive
4 for the drug screen, then I would have gone ahead and
5 confirmed or quantitated, and then because the case called
6 for it, a general drug screen was done, too. And I would
7 have pipetted that out for the general drug screen.

8 Q So you just continued to kind of reaffirm her results?

9 A Right. And if there was anything else that we needed
10 to find.

11 Q And I'm showing -- I'm going to show you what's been
12 marked as State's -- I'm showing you what's been marked as
13 State's 73. Do you recognize that document?

14 A Yes.

15 Q And just generally what is that document?

16 A This is the report that I issue once we get all of our
17 findings, all of the data back. So it shows what's screened
18 positive, what our confirmation results are. Everything's
19 on there.

20 Q And just before we get into that. Do you sign off on
21 it on the end? On the --

22 A Yeah. My signature on the last page.

23 Q And you confirm everything that's been run?

24 A I look for all the QC. Make sure all the QC was good.
25 Make sure everything worked properly, and then issue my

1 report. And then that's also -- before that, someone else
2 also reviews all the data that comes to me additionally.
3 And then when I'm done with everything and they say, okay,
4 here's my report, then someone else reviews that, too, to
5 make sure everything's in line.

6 Q So you've been qualified as an expert in toxicology; is
7 that right?

8 A Correct.

9 Q Now, generally what is -- what is the study of
10 toxicology? What is that?

11 A So basically all we're doing is looking for the
12 presence or absence of drugs. So that can be alcohol. That
13 can be your common drugs. But like I said, the presence or
14 absence. And then because we're analysts, we interpret
15 those and find our result. Give our results to courts, or
16 to a coroner, or an officer, or anybody that's involved in
17 the case that calls us.

18 Q And you understand how the metabolization process works
19 for alcohol in a person? Are you familiar with that?

20 A Yes.

21 Q Can you explain to the jury how alcohol metabolizes in
22 a normal human being.

23 A I mean, in general metabolization is just your body's
24 way of getting rid of the drug. So an ethanol, when it
25 metabolizes, it just goes out of your system and there's a

1 constant rate that it generally does, depending on the value
2 you have. And that can change depending on your metabolism,
3 but there's a general rate in which that happens.

4 Q And what is that rate?

5 A It's a 0.015 percent per hour.

6 Q Say that again. I'm sorry.

7 A Sorry. 0.015 percent per hour.

8 Q Per hour. Okay. And so, if a person were at a certain
9 level and then you were to, let's say, four hours or five or
10 six hours, whatever it would be, would you be able to give
11 another percentage of what they should be?

12 A Yes. Using assumptions that they -- depending on if
13 they're on an empty stomach, depending on if they ate, if at
14 the time they were fully in elimination. So fully coming
15 down off of using the drug, not adding more to their system.

16 Q Okay. And before we get into that. Are you familiar
17 with, you know, plasma alcohol test and what that is? Like
18 an enzyme test of plasma alcohol?

19 A Like what we do or --

20 Q No, not what you guys do, but another instrument that
21 runs a test.

22 A In general? I guess. It just depends on what you're
23 talking about.

24 Q Do you know the difference between whole blood and
25 plasma?

1 A Yes.

2 Q Okay. In this particular case -- you weren't here
3 yesterday or anything, but in this particular case there was
4 a reading of 219 plasma.

5 A Uh-huh.

6 Q What does that -- what is that in whole blood?

7 A In whole blood, if I remember the number correctly,
8 it's less. So you take that number and you divide it by
9 1.18. So if I remember the number correctly, it was a .186.

10 Q And that would be the whole blood?

11 A That would be the whole blood number, yes.

12 Q So 186?

13 A Yes.

14 Q Now, you talked about how alcohol metabolizes, correct
15 --

16 A Uh-huh.

17 Q -- and you gave us that percentage. I don't remember
18 that number off the top of my head, but you gave it to us
19 previously.

20 A Uh-huh.

21 Q If a person were at 18 percent and then four hours
22 later -- if it was a normal person and everything just kind
23 of, you know, metabolized like a normal person, what would
24 it be four hours later?

25 A Well, you're saying before or after? After?

1 Q After, yes.

2 A After. So using that average. And so, you take the
3 .015, multiple it times four for the hours, and so that's a
4 .06. So you would expect it to be that much less.

5 Q .06. So 18 -- the 18 minus the .06 --

6 A Correct.

7 Q -- so that would a 12?

8 A Yes.

9 Q And that's how everything normal is working in a normal
10 human being --

11 A Yeah.

12 Q -- and how it normally metabolizes?

13 A Correct.

14 Q Okay. And the person that actually ran the initial
15 screen on the alcohol in this particular test on Mr.
16 Rowell's sample, who was that again?

17 A Stacey Matthew.

18 Q And then she got -- did she end up giving those results
19 to you?

20 A We -- there's a case jacket that's put into a filing
21 cabinet and once a day or so I go grab all those and find
22 out my cases for the day.

23 Q So you're kind of working out -- working with her on
24 this?

25 A Some would say, yes.

1 Q But you reviewed her work?

2 A Yes.

3 Q Was there anything that stood out with her work? Was
4 it correct or was it incorrect, or do you remember?

5 A It's correct, to all my knowledge.

6 Q Generally speaking as a toxicologist, can you describe
7 the effects of alcohol, that it has on a person, and how
8 that would, you know --

9 MR. GARRETT: Your Honor --

10 Q -- relate to their ability to drive?

11 MR. GARRETT: -- I'm going to object to that.

12 THE COURT: You might need to lay some foundation as
13 far as training and that sort of thing in order for her to
14 render opinions.

15 MR. BLACK: Thank you, Your Honor.

16 Q Ms. Brown, are you familiar with how -- have you
17 studied and in your schooling and experience, education, are
18 you familiar with how alcohol affects a person?

19 A Yes. That's part of our extensive in-house training at
20 SLED. So the first part of my training was to learn about
21 blood alcohols. And once again, we had a series of lectures
22 and tests associated with those lectures that you had to
23 pass. And then we learn how to analyze the samples and we
24 have to learn at least 500 of those. And those have no
25 value. So we compare the number that I get with a known

1 value, and have to pass that. And then once we pass that we
2 are given a written and an oral exam. And once again, we
3 have to pass that, otherwise I wouldn't be here.

4 Q So based on your education, training and experience do
5 you know how certain percentages affect normal people?

6 A Correct.

7 Q Okay. Let's say, for example, 05. Five percent.

8 A Okay.

9 Q How would that affect a normal person?

10 A And you're saying .05 percent?

11 Q Yes, ma'am.

12 A Well, in that case a person would mostly likely have
13 increased self-confidence and decreased inhibition. So
14 they're more likely to do something they otherwise wouldn't.
15 They're also going to have a little bit of a problem with
16 their vision. But the big problem here is you have a
17 diminution in attention. So you have problems multitasking
18 which is a lot of what's needed in driving. So driving and
19 steering, driving and braking. It's a lot harder to do both
20 of those at once, as opposed to someone that would be
21 driving normally.

22 Q And what about .09? How would that affect a normal
23 person?

24 A You're going to start having more problems with
25 increased reaction times. So where you would normally see

1 like an accident happened, you would stop. Well, now it's
2 going to take you longer to do that action of braking. Once
3 again, slow motor and coordination and just a little bit of
4 the other stuff with your vision, and problems with your
5 peripherals.

6 Q And at .09, how would that affect the ability to drive?

7 A It would make it impaired to drive.

8 Q What if we doubled that and made it -- if it was an 18,
9 how would that affect a normal person?

10 A It would still increase. So you're going to have more
11 motor incoordination. The person is more likely to be
12 drowsy when driving. Once again, other vision problems,
13 incoordination, reaction time. Basically everything prior,
14 but more heightened.

15 Q What if we were to take it a step further? What if it
16 was a 30? A 30 whole blood?

17 A You start approaching the point of respiratory
18 depression. So at that point you could possibly die, be in
19 a comma from it. And once you get higher than that you're
20 mostly likely going to be dead from alcohol.

21 Q Do you know what the inference level of impairment is
22 in this state?

23 A The percent --

24 MR. GARRETT: Objection, Your Honor.

25 THE COURT: Sustained. That's a legal opinion.

1 MR. BLACK: I think that's all the questions I have.

2 Please answer any questions that Mr. Garrett might have for
3 you.

4 THE COURT: Cross-examination.

5 MR. GARRETT: Thank you.

6 CROSS-EXAMINATION

7 BY MR. GARRETT:

8 Q You said all this needs to be a normal person?

9 A Yes.

10 Q Have you studied the medical records of this gentleman?

11 A No.

12 Q Are you a medicinal chemist?

13 A No.

14 Q You've got a couple weeks training?

15 A No. I have 10 years of being a toxicologist training.

16 Q I'm talking about in the extrapolation process.

17 A Oh, no. I mean, that's something's that a general
18 thing that we can do. And our training is over a year, so
19 it's not just a couple of weeks of learning stuff. It's
20 mixed into the program.

21 Q So you haven't looked at his medical records at all?

22 A No.

23 Q Can you tell me -- can you look at your paperwork,
24 ma'am, and tell me what time that they told you this sample

25 was collected?

1 A Sure.

2 THE COURT: You want to show the Solicitor what you're
3 showing her, if that's going to aid her in her testimony.

4 MR. GARRETT: Let me -- I think you've got it marked as
5 a Court's Exhibit, Your Honor. Let's see if we can identify
6 -- this is SLED Laboratory Forensic Services Request
7 document.

8 Q Could you tell us what time that specimen was
9 collected?

10 A On this part it doesn't have it on here.

11 Q Is it at the bottom?

12 A But on that other page --

13 Q I understand.

14 A Yeah. It says the date collected is 11/15/2014 at
15 19:29 for the blood.

16 Q So this blood was allegedly -- that you all looked at
17 was allegedly taken at what time again? 19 what?

18 A 29.

19 Q 19:29, and that -- if we converted that, that would be
20 7:29?

21 A Correct.

22 Q In regular time?

23 A Correct.

24 Q So you all analyzed blood that was drawn on the date of
25 this accident at 7:29. Allegedly draw at 7:29. Is that

1 what you're telling this jury?

2 A I'm telling you what you have on your paper, but --

3 Q That's not my paper. That's SLED paper.

4 A Well, this is -- yeah, the paper that you have printed

5 out. But I will say that according to the pictures I have

6 from the -- what we inventoried has a different time on it.

7 Q Okay. But these are your documents, right? It says

8 date collected?

9 A Yes. That's the pre-login form that was logged in and
10 sent to us.

11 Q Time collected?

12 A Yes. On that paper, yes.

13 Q And as I understand it, you signed off --

14 THE COURT: Mr. Garrett, hold on just a second. We've
15 got to change batteries.

16 MR. GARRETT: I apologize. I didn't see it.

17 (Whereupon, there was a pause in the proceedings.)

18 THE COURT: We're good.

19 MR. GARRETT: Thank you, Your Honor.

20 Q So as I understand it, you didn't do the alcohol test
21 on this, someone else did it?

22 A Correct.

23 Q Okay. Can you tell me whether the specimen that you
24 received, whether or not it was a venous or an arterial
25 artery?

1 A No. That wasn't labeled for us.

2 Q But do you know the difference between the blood
3 arterial versus venous?

4 A To some extent, yes.

5 Q Well, do you understand or know which one will cause a
6 higher alcohol reading than the other?

7 A Not really, no.

8 Q You just don't know whether it would affect higher or
9 not?

10 A No. Not in this case, no.

11 Q Have you done any studies on whether or not -- whether
12 you take it from the artery or whether you take it from the
13 vein would cause the reading to be higher?

14 A Me personally, no.

15 Q In your years of study have you done any research on
16 that point?

17 A No, I've not personally done any research.

18 Q And if a person is almost dead from all the injuries
19 they've received, you'd agree with me that's not a normal
20 person, wouldn't you? A while ago you were saying in a
21 normal person these rules would apply generally.

22 A Sure.

23 Q The person has been through a horrific accident, almost
24 dead. Had to get 14 units of blood. Would that be a normal
25 person?

1 A That would not be a normal person.

2 Q And you would agree with me, too, then that if the vial
3 of blood that you analyzed had 14 units of other peoples'
4 blood in it, it wouldn't be a valid sample, would it?

5 A Not exactly sure what you mean. It's valid for what
6 I've received.

7 Q But if you're trying to test the alcohol in somebody's
8 blood and it's already been all pumped out and other stuff
9 has been put in there, the blood's been put in there, it's
10 not a valid result, is it?

11 A I mean, my results are filed for what I've received.

12 MR. GARRETT: I got you. No further questions.

13 MR. BLACK: Just briefly, Your Honor.

14 THE COURT: Did you say you're finished with the cross?

15 MR. GARRETT: I'm through.

16 THE COURT: All right. Redirect.

17 MR. BLACK: Briefly, Your Honor. I apologize.

18 REDIRECT EXAMINATION

19 BY MR. BLACK:

20 Q Do you recognize this, Ms. Brown?

21 A Yes. It's -- this blood evidence bag is kind of seen
22 backwards there. And then it looks like it was repackaged
23 into the evidence packet.

24 Q And Mr. Garrett showed you a report a while ago. Was
25 that your report or was that another packing slip?

1 A Essentially it's kind of like a packing slip, because
2 people can pre-log evidence into us.

3 Q And that was the Highway Patrol's packing slip, or the
4 agency?

5 A It's generated with our stuff. But they can pre-log
6 all their information first and send it to us.

7 Q You said you had another time. What was that time?

8 A It's the time that's -- I'm sorry. It's really hard to
9 move in this. Timed upon the actual physical blood evidence
10 here, and that would have generally been put on there by
11 whoever sampled the blood -- or taken the blood.

12 Q Did you -- did you have that result, or did you have
13 that time?

14 A Yes. And if you don't mind, let me refer to pictures
15 that were actually taken of it.

16 Q Yes.

17 A It's a little easier to read than on here. But the
18 pictures that were taken -- if I'm reading this correct --

19 MR. GARRETT: Can I ask about these pictures.

20 THE WITNESS: Sure. When we inventory all of our
21 evidence we take photographs of everything.

22 MR. GARRETT: Has that been provided in discovery? I
23 haven't seen it.

24 MR. BLACK: I haven't seen it either.

25 THE WITNESS: I don't know.

1 THE COURT: Did you have it?

2 MR. BLACK: No, sir.

3 THE WITNESS: I don't know what was part of the
4 discovery to know if that's part of --

5 MR. GARRETT: Can I see the picture? Can I look at it?

6 THE WITNESS: Yeah, sure.

7 THE COURT: Yeah, if you can just get it --

8 MR. GARRETT: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 MR. BLACK: And I've never looked at any -- I have no
11 idea what's in here.

12 Q What was the time on it?

13 A It looks like 11/16/14, and then at 00:56 a.m.

14 Q You said 00:56. I'm guessing that's 12:56? Right
15 after midnight?

16 THE COURT: Did you respond to that question?

17 THE WITNESS: Oh, sorry. Yes. I'm sorry.

18 Q Ms. Brown, in your -- in your expert opinion, how would
19 -- how would a .09 affect a person's ability to drive?

20 A They'd be impaired to drive.

21 Q What about 18?

22 A Definitely impaired to drive.

23 MR. BLACK: No further questions.

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

25 RECROSS EXAMINATION

1 BY MR. GARRETT:

2 Q Would you expect --

3 MR. GARRETT: Yes, sir.

4 Q Would you expect a person to be able to drive well 20
5 minute before the accident if they were an 18?

6 A No.

7 Q They couldn't drive a car at all, could they?

8 A I mean, they can drive. I wouldn't say effectively or
9 not impaired.

10 Q Okay. Let me ask you this. Would they be able to pull
11 into a parking lot, wait for people to pass, drive on, give
12 a turn signal, let somebody back out, and then pull their
13 car in straight between two cars?

14 A I mean, I don't know to what extent they could. But I
15 guess it's plausible they could.

16 Q Probably be bumping into things, wouldn't they, if
17 they're as bad you say they are 18?

18 A I could imagine they might, yeah.

19 Q So if somebody is able to drive well 20 minutes before
20 this accident then it wouldn't sound like an 18, would it?

21 A I mean, I don't know what you consider well.

22 Q Well, I'm talking about what you said well. A while
23 ago you said if somebody blew a .05 and had a .05, that
24 person's ability to drive would be limited.

25 A Sure.

1 Q And if you said it went to a 9 you said it would be
2 limited. More limited.

3 A Correct.

4 Q And if it went to a 15, I guess it would be more
5 limited.

6 A Correct.

7 Q And then if it went to an 18 it would be more limited.

8 A Sure.

9 Q By the time you're 18 you ought to be falling down
10 drunk.

11 A That's -- sometimes when people think of drunk that
12 would be the general, that level that you would think of it
13 with staggered walking and slurred speech and stuff like
14 that, yes.

15 Q That's right, staggered walking, wouldn't it?

16 A Generally, yeah. That would --

17 Q Now, suppose a person's photographed right before the
18 wreck and they seem to be walking straight. It wouldn't
19 sound like that 18 you're talking about, would it?

20 A I mean, it's possible if they're holding on to
21 something, but I don't have any --

22 Q Okay. So they'd have to be holding on --

23 THE COURT: Wait a minute. Let her finish her answer.

24 A But I don't have anything to reference to know what
25 you're talking about.

1 Q Okay. So they gave you false information in that
2 pre-login about when they drove -- when they picked up that
3 -- it's different from what you were told. Highway Patrol
4 or whoever did the pre-login gave you the wrong date and
5 time, didn't they?

6 A They just gave me whatever date, yeah, that was on
7 there.

8 Q That's wrong, isn't it?

9 A It's not the date that I have on the test tube, no.

10 Q Did you look back at that date that they gave you,
11 pre-login, and is it correct or not?

12 A I mean, it's not the dates that I have on the test
13 tubes, no.

14 Q So it's not correct?

15 A Yes, those don't coincide with each other.

16 MR. GARRETT: Thank you.

17 THE COURT: Thank you, ma'am. You can step down.

18 MR. GARRETT: Just a moment, Your Honor.

19 THE COURT: Oh, wait a minute.

20 MR. GARRETT: Nothing further.

21 THE COURT: Okay. Now you can step down.

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

24 THE COURT: All right, Solicitor.

25 MR. BLACK: The State calls Stacey Matthew.

DIRECT EXAMINATION

25 A The job.

1 MR. BLACK: Beg the Court's indulgence.

2 THE COURT: Sure.

3 MR. BLACK: I'm trying to take care of some
4 housekeeping matters, Judge.

5 MR. GARRETT: Counsel, may I look at the one you intend
6 to submit? Your Honor, may we approach?

7 THE COURT: Sure.

8 (Whereupon, a sidebar was held.)

9 Q Ms. Matthew, I apologize. I'm trying to do three
10 things at one time.

11 A That's okay.

12 Q How long have you been working at SLED?

13 A Four years.

14 Q And what department are you in?

15 A I am in the toxicology department.

16 Q And did you have training that you did once you started
17 working at SLED?

18 A Yes, sir.

19 Q What is that?

20 A Well, I've been certified by SLED on the analysis and
21 the interpretation of blood volatiles, which included a
22 series of practical and written tests. The practical
23 portion involved a series of testing a number of samples,
24 and the oral portion -- the practical written portion was
25 involved with test lectures and oral examination.

1 Q Did you pass all that?

2 A Yes, sir. I did.

3 Q And once you pass what do you -- what happens next?

4 A After that you are signed off to perform blood volatile
5 testing on samples that come into the lab.

6 Q And currently what is your level at SLED? What are you
7 considered?

8 A A forensic toxicologist.

9 Q Is there a difference between like a level one and a
10 level two?

11 A Level one is primarily just alcohol related, and a
12 level two analyst would be considered doing drug work also.

13 Q And you do drug work as well?

14 A Yeah, I do.

15 Q So you're considered a level two?

16 A Yes.

17 Q And have you ever testified in court before?

18 A I have.

19 Q How many times -- have you testified as an expert?

20 A Yes.

21 Q And how many times have you testified?

22 A Twice.

23 Q And that was in forensic toxicology?

24 A Yes, sir.

25 MR. BLACK: Your Honor, at this point the State moves

1 to have Ms. Matthew qualified as an expert in forensic
2 toxicology.

3 MR. GARRETT: Without objection.

4 THE COURT: All right. Without objection this witness
5 is found to be an expert in the area of forensic toxicology.

6 Q Now, Ms. Matthew, I'm going to bring up a couple items.
7 State's 73 and what's been marked for identification
8 purposes as State's No. 5. We'll start with 73. What is
9 that document?

10 A It is -- appears to be a copy of the toxicology report
11 issued.

12 Q And who issued that report?

13 A It was issued by Jennifer Brown.

14 Q And that report is for an individual by the name of Mr.
15 Rowell?

16 A That's correct.

17 Q And what was -- what was tested in this particular
18 case?

19 A The blood sample was tested.

20 Q Now, at the lab at SLED, typically when a sample comes
21 in does the analyst test everything dealing with that
22 sample?

23 A No, they do not.

24 Q Now, you were involved testing a particular item of the
25 sample; is that correct?

1 A Yes, sir.

2 Q What was that?

3 A I tested the blood sample that was submitted.

4 Q For what?

5 A Let me check. I tested it for the blood alcohol, as
6 well as the preliminary drug screening. Well, for this one
7 I just tested the -- according to this what you gave me, the
8 blood alcohol.

9 Q And how did you -- how did you end up testing the blood
10 alcohol? What machine did you use?

11 A We used a GC-MS, or gas chromatography and mass spec.

12 Q And tell the jury a little bit -- can you tell us how
13 this machine works? Basically.

14 A Okay. Essentially a sample is injected. The sample is
15 injected and it goes through a column. And every one starts
16 at -- is starting like together. And as the rate
17 progresses, whoever's faster goes ahead of the line, and
18 whoever is slower tails behind. So based on that,
19 substances are going through the column based on their mass.
20 So the lighter things go through the column into the
21 detector sooner than the heavier particles.

22 Q And State's No. 5, that's a package off to the side.
23 Do you recognize what that is?

24 A Yes, sir.

25 Q And what is that?

1 A It is a sample submitted to our laboratory for testing.

2 Q And are these the samples that you tested on Mr.

3 Rowell?

4 A Yes, sir.

5 Q And so, you did the ethanol test; is that right?

6 A That's correct.

7 Q Did you get a result on that?

8 A I did.

9 Q And what was the result of that test?

10 A The result was 0.098 blood alcohol.

11 Q Can you maybe want to look at that just --

12 A Oh, sorry. 0.096.

13 Q Okay. And that's according to the report, correct?

14 A Yes, sir.

15 MR. BLACK: Your Honor, at this point the State moves

16 No. 73 into evidence.

17 THE COURT: Okay.

18 MR. GARRETT: Subject to our prior.

19 THE COURT: Right. And what about 5?

20 MR. BLACK: Your Honor, the State also moves No. 5 into

21 evidence.

22 THE COURT: And subject to prior objections?

23 MR. GARRETT: Yes, Your Honor. Subject to prior

24 objections.

25 THE COURT: All right. 5 and 73 will be into evidence

1 for the -- for the State.

2 MR. BLACK: Thank you, Your Honor.

3 (Whereupon, State's Exhibit Nos. 73 and 5 were admitted
4 into evidence.)

5 Q Ms. Matthew, you've been qualified as an expert. Do
6 you generally know how alcohol affects a human being
7 typically, normally?

8 A Yes, sir.

9 Q And you've had training and education and experience
10 dealing with that?

11 A Yes, sir.

12 Q In your profession?

13 A Yes.

14 Q In this particular case I think the result was a .096;
15 is that right?

16 A That's correct.

17 Q How would that -- how would that effect a person
18 typically?

19 A Typically -- well, ethanol, which is the common -- it's
20 the alcohol that you find in drinking alcohol, is a central
21 nervous system depressant. So once you start drinking it,
22 in the beginning you'll feel euphoric. You'll be social.
23 You know, you know, you feel good. But as you continue
24 drinking your motor coordination starts to decline. Your
25 judgment, your perception of events. They all become

1 diminished. So essentially as you can consume more alcohol
2 your body essentially starts to shut down. You'll become --
3 sorry. Your speech will become slurred. Your -- you'll
4 become dizzy. You may become drowsy. Eventually it may
5 lead to respiratory depression if you have way too much.
6 But that's essentially what's --

7 Q Okay. And at a .09 who would it affect somebody's
8 ability to operate a motor vehicle?

9 A They would be impaired. Their motor coordination would
10 be diminished. Their sense of judgment and events. So they
11 wouldn't be able to react properly compared to if they were
12 sobber.

13 Q What if it was doubled? What if it was an 18? How
14 would that affect somebody? A normal person.

15 A It would still. It would be worse than an 09, so it's
16 still either -- your perception of events would become even
17 worse. Your judgment would become even worse. Your ability
18 to assess a situation and act appropriately become very
19 diminished.

20 MR. BLACK: Thank you for being here. Sorry to pull
21 you off the line.

22 THE WITNESS: It's okay.

23 THE COURT: Cross-examination?

24 MR. GARRETT: Very briefly.

25 CROSS-EXAMINATION

1 BY MR. GARRETT:

2 Q If a person is an 18, how impaired are they? The
3 normal person that you've just testified to, how impaired
4 are they?

5 A I would say they're still significantly impaired.

6 Q Significantly impaired. At what point does a person
7 become pretty drunk?

8 A There's no real number or -- alcohol affects a person
9 differently, but we say it's still a depressant in everyone.
10 So regardless of if a person is at an 08 or .18 they
11 shouldn't be driving because their ability to actually
12 assess a situation is impaired.

13 Q Would you agree with me it takes fine hand/eye
14 coordination to drive a vehicle?

15 A It does, sir.

16 Q All right. And if a person is an 18, for instance.
17 I've seen tests where they actually put people in cars and
18 they let them drive at various levels. Have you seen those?

19 A Yes, sir.

20 Q And when people are doing that they can't go around
21 little objects, or they run into objects, or they have
22 difficulty parking or parking a car and that kind of thing.
23 Is that correct?

24 A That's correct.

25 Q Did you do any of those studies? Did you get to

1 participate in any of that stuff?

2 A I did actually participate in a drinking study.

3 Q Okay. It's pretty fun. I got to see it. I didn't get
4 to do it, but I got to watch it. And so, actually when a
5 person gets to like an 8, during an 8, 10, they start
6 messaging up. They start hitting cones and that kind of
7 thing, right?

8 A That's correct.

9 Q Okay. Now, if -- suppose we have a person that was an
10 alleged 18 but yet they were able to drive around in a
11 parking lot very, very well? I mean, they were able to
12 stop, give a turn signal, allow somebody to walk by. Pull
13 up, allow somebody to back out. Wait until they pull out.
14 Pull in perfectly, not hitting anything. That would be hard
15 to do, wouldn't it?

16 A Yeah, essentially.

17 Q Okay. Again, your studies and your tests show that for
18 a person to be able to do that kind of thing, an 18 just
19 doesn't sound like that person?

20 A Well, there's no yes or no to that. It could depend on
21 the person's history with alcohol intake.

22 Q All right. And so, everybody's different; is that
23 correct?

24 A That's correct, sir.

25 Q So when you're given those numbers it's just the norm;

1 is that correct?

2 A It's the norm. But over time there's been plenty of
3 studies that still state that an 08 or above is still
4 impaired.

5 Q That's my point. That's my point. So if somebody is
6 really an 18 they're not driving. Actually, they're having
7 trouble walking. Keeping the coordination of balance,
8 slurred speech, etcetera?

9 A It could. It's also something where if someone is a .8
10 and say they're a chronic drinker, they could learn to mask
11 these signs. So they may think they have -- you know,
12 they've mastered the whole "I'm not drunk" situation, but in
13 reality they just learn how to lean against the wall so they
14 don't end up staggering or things like that.

15 Q All right. So let's suppose we've got somebody that's
16 -- we've got a photograph of this gentleman 20 minutes
17 before the accident and he's walking in a straight line and
18 he's not holding on to anything. It doesn't match up, does
19 it?

20 A Everyone is different, sir.

21 MR. GARRETT: Thank you.

22 THE COURT: Anything on redirect?

23 MR. BLACK: No, sir, Your Honor.

24 THE COURT: Thank you, ma'am. You can step down.

25 (Whereupon, the witness stepped down from the witness

1 stand.)

2 MR. BLACK: State rests, Your Honor.

3 THE COURT: Okay. Mr. Foreman, ladies and gentlemen of
4 the jury, we're going to take a little afternoon break at
5 this point in time. And I'll remind you no discussion among
6 yourselves about this case and we'll get you back out
7 shortly and proceed forward. Thank you.

8 (Whereupon, the jury exited the courtroom at 2:37 p.m.)

9 THE COURT: Let's go back on the record. And Defense
10 have any motions they want to put on record?

11 MR. HENDERSON: Your Honor, we would like to review all
12 the prior motions that we have made, and these are probably
13 not in any particular order.

14 THE COURT: That's fine.

15 MR. HENDERSON: But our motion for mistrial for the --
16 talking with the witnesses yesterday by the State's
17 employee, you know, the pictures of the open containers, or
18 alleged open containers after you directed a verdict or
19 dismissed the open container indictment but still let in the
20 photographs and, you know, our objections to that. We think
21 that's highly prejudicial. Chain of custody at the
22 hospital. You know, again, we believe the Court erred in
23 saying that there was a proper chain there. And also the
24 validity of the samples of -- you know, that got sent to
25 SLED. Basically our motion this morning with Dr. Valentine.

1 We believe the Court erred. And basically the validity and
2 reliability of those results. And again, our motion was
3 focused on whether or not the machine was working. For
4 purposes of that motion we're assuming that the machine was
5 working. It's basically that it was an unreliable sample
6 that was placed into the machine. And again, we think all
7 of those, and cumulatively, Your Honor, we believe that the
8 Court should direct a verdict and a mistrial. Obviously the
9 Court can't direct a verdict on mistrial issues. But on
10 the remaining evidentiary issues we believe that the Court
11 erred in allowing all this stuff to go forward and go in
12 front of the jury, and we would ask cumulative, Your Honor,
13 that all that -- the Court grant our verdict -- grant out
14 motion for directed verdict on both indictments.

15 THE COURT: Thank you very much, Mr. Henderson.
16 Viewing the evidence in the light most favorable to the
17 State the Court is concerned with the existence of any
18 evidence and not its weight, and I will respectfully deny
19 your motion as to both indictments.

20 Let's take about 10 minutes break and then we can do
21 some of --

22 MR. GARRETT: I'm going to try to do about -- Judge,
23 just for scheduling purposes, I've got the fellow from
24 Walmart is going to be here first, around 3:00ish, 3:05. So
25 that's -- I've got him coming first.

1 THE COURT: You want him first?

2 MR. GARRETT: Yes.

3 MR. HENDERSON: Yes.

4 MR. GARRETT: Then I'm going to put up a Tara -- I
5 mean, Samantha Byrd, and then I'm going to put up Tiera
6 Boyter. My next two witnesses are going to be rather long,
7 so -- Mr. Sims, my expert -- traffic expert, and then, of
8 course, Dr. Valentine.

9 THE COURT: Right. And after the break, of course, I
10 need to advise Mr. Rowell of his rights. I know you've
11 already indicated that he's going to testify. So you can
12 just kind of explain to him what I will be doing with him --

13 MR. GARRETT: I will.

14 THE COURT: -- after the -- at the end of the break.
15 Okay?

16 MR. GARRETT: Yes, sir.

17 THE COURT: Thank you very much.

18 (Whereupon, Defendant's Exhibit Nos. 13, 14, 15, 16 and
19 17 were marked for identification.)

20 (Whereupon, a recess was held from 2:40-3:00 p.m.)

21 (Whereupon, a sidebar was held.)

22 THE COURT: We're back on the record. Two things.
23 Let me go ahead and address an issue raised at sidebar just
24 a moment ago by Solicitor Dowtin. By ruling as to not
25 allowing the SLED toxicologist to relay any drug results,

1 and I indicated it was not because of chain of custody, but
2 because the other toxicologist who did work in the drug
3 analysis were not here to testify. And, Solicitor, you
4 raised the issue, well, if the -- Dr. Valentine in the
5 Defense case in chief is permitted to bring out some of the
6 test results, then why are they allowed to do it and the
7 State's not. Is that kind of a fairly accurate statement of
8 your issue?

9 MR. DOWTIN: Yes, Your Honor.

10 THE COURT: All right. If you'll look at 703 it allows
11 expert to bring out in their testimony information gleaned
12 that they normally rely on as a basis to offer their
13 opinions and inferences. Okay? But that differs
14 information that's not in evidence but normally relied upon
15 by experts in their field. There is a difference in that
16 and the State being precluded from having an expert relay
17 information, drug results, because they were stating a fact.
18 They were not giving an opinion or giving an inference.
19 They were stating a fact. And because of that, and because
20 of those other SLED people were not here to be examined and
21 cross-examined. That's why State was not allowed to do it.
22 But through the expert, Dr. Valentine, the Defense will be
23 able to talk about that if that's what they choose. So
24 there is a difference.

25 Oh, now, Mr. Rowell, I need you to stand and be sworn

1 in, please. Madam Clerk.

2 ADAM ROWELL, having first been duly
3 sworn, testified as follows:

4 THE COURT: Mr. Rowell, at this time I'm going to
5 explain to you certain of your rights, and if you do not
6 understand anything I say, please let me know that. And if
7 you want me to explain anything in more detail, please let
8 me know that as well. Do you understand sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, we have reached the stage in the trial
11 where you may present your defense, and I understand that
12 you are going to present a defense through witnesses or
13 otherwise. You have the right to claim the protections
14 given to you by the Fifth Amendment to the constitution of
15 the United States, and this amendment states in part, "No
16 person shall be compelled in any criminal case to be a
17 witness against himself." This means that you cannot be
18 required to testify in this case. You have the right to
19 testify on your own behalf; however, no one can make you
20 testify. This is a personal right. No one can waive this
21 right except you. Do you understand, sir?

22 THE DEFENDANT: Yes, sir. I do.

23 THE COURT: Okay. If you decide to testify you'll be
24 subject to the same rules that govern other witnesses and
25 you may be examined and cross-examined on any relative issue

1 in this case. In addition, if you have any convictions --
2 and I'm not suggesting that you do. I don't know. But if
3 you have any convictions involving dishonesty or false
4 statement, or for crimes punishable by imprisonment for more
5 than one year and this Court determines that the probative
6 value of admitting this evidence outweighs its prejudicial
7 effect to you, the Solicitor would be able to introduce your
8 record to attack your credibility. If you decide to
9 testify, this decision on your part must be freely,
10 voluntarily and intelligently made with knowledge of the
11 protections given to you by the Fifth Amendment and the
12 consequences of your decision to testify. However, if you
13 decide not to testify I will instruct the jurors that they
14 cannot give the fact that you did not testify any
15 consideration whatsoever and that there is to be absolutely
16 no prejudice to you because you did not testify. It is left
17 entirely up to you whether or not you testify. In this
18 decision, if you decide not to testify must also be freely,
19 voluntarily and intelligently made. You have the right to
20 talk with your attorney, your family and friends, anyone
21 else, but the final decision would be left entirely up to
22 you.

23 Have you understood what I've explained to you, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you have any questions what I've

1 explained to you?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you had enough opportunity to make the
4 decision whether or not you will testify?

5 THE DEFENDANT: Yes, sir. I have.

6 THE COURT: And what is that decision?

7 THE DEFENDANT: I'm going to testify.

8 THE COURT: And is that decision that you will testify,
9 has that been made freely, voluntarily and intelligently
10 made with the assistance of your attorneys?

11 THE DEFENDANT: Yes, sir. It has.

12 THE COURT: Thank you very much. You can have a seat.
13 Okay, let's bring the jury out, please, Mr. Willingham.
14 (Whereupon, the jury entered the courtroom at 3:21

15 p.m.)

16 THE COURT: Let the record reflect the jury is back in
17 the courtroom.

18 Mr. Garrett, you ready to proceed, sir?

19 MR. GARRETT: Yes, we are, Your Honor. Mr. Henderson
20 and Ms. Merrill will be starting.

21 MR. HENDERSON: Your Honor, the Defense calls Ron
22 McGahee.

23 RON MCGAHEE, having first been duly
24 sworn, testified as follows:

25 THE COURT: Who's doing the examination?

1 MR. HENDERSON: I'm doing the examination, Your Honor,
2 and Ms. Merrill is going to be helping with the video side
3 of this -- with this examination.

4 THE COURT: Okay. And that's why Mr. Garrett is still
5 at his seat; is that right?

6 MR. HENDERSON: Absolutely.

7 THE COURT: All right. You may proceed.

8 MR. HENDERSON: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. HENDERSON:

11 Q Ron, please state your full name for the record.

12 A Ronald Pittman McGahee.

13 Q And, Ron, where do you work at?

14 A Walmart.

15 Q And what is your position at Walmart?

16 A I'm an asset protection manager.

17 Q Is that kind of like a loss prevention manager?

18 A Yes, sir. I'm over theft and safety.

19 Q Okay. And how long have you worked at Walmart?

20 A Going on 19 years.

21 Q And there are two stores here in Greenwood, correct?

22 A Yes, sir.

23 Q Which one do you work at?

24 A Store 1382 in 508 Bypass, 72 Northwest.

25 Q Is that the one going out toward Abbeville?

1 A Yes, sir.

2 Q And have you been there your whole time, or --

3 A No, sir.

4 Q -- since it opened?

5 A No, sir. I've been there a while, but I've not been
6 there the whole time.

7 Q And describe some of what your duties are.

8 A Anything that causes the company to lose money is what
9 I'm involved in, whether it be accidents, theft, internal or
10 external.

11 Q And let me ask you. In this matter you were served
12 some document subpoenas, weren't you?

13 A Yes, sir.

14 Q Is part of your job duties to respond to document
15 subpoenas?

16 A Yes, sir.

17 Q Okay. And in this matter did you, in fact, respond to
18 some document subpoenas?

19 A Yes, sir.

20 Q And did you, in fact, produce documents?

21 A I did.

22 Q After producing those documents have you had a chance
23 to review them?

24 A No, sir.

25 Q Have you looked at them at our office?

1 A I have.

2 Q Okay. So to confirm that that's actually what you
3 produced?

4 A Yes, sir.

5 Q Okay. I want to show you what has been marked as
6 Defendant's 13. And if you'd look at the back of it first
7 and tell the jury what that is.

8 A The back has been labeled what the actual shot was that
9 we burned onto this DVD. It stands for Action, apparel
10 backroom facing GM.

11 Q And in layman's terms, what is that? Is that a picture
12 in the store, or video from the store?

13 A Yes, sir.

14 Q Where at in the store?

15 A In this particular one is going to be the very back of
16 the store facing towards toys and electronics, if you've
17 ever been there.

18 Q Okay. Now, I want to show you this. What's been
19 marked as Defendant's No. 14. Can you read what's on the
20 back of that?

21 A Yes, sir. The store's rooftop associate parking.

22 Q And I hear the word parking. I'm assuming a parking
23 lot?

24 A Yes, sir. That's correct.

25 Q What parking lot would that be? Give the jury some

1 idea. If they're at this Walmart going toward Abbeville
2 where would this video be?

3 A If you're coming up the exit of Walmart, if you look to
4 your immediate right towards Cato's, it would be that
5 vicinity there in the parking lot.

6 Q And, Ron, are these videos that I've shown you right
7 there, are they kept in your normal course of employment?
8 Are they kept as normal business records?

9 A These videos?

10 Q Right. I mean, you've got surveillance there?

11 A Right. We have surveillance. It's kept for a certain
12 amount of time that I can't control and then it dumps.

13 Q And in response to these subpoenas did you actually go
14 into that surveillance?

15 A Yes.

16 Q And are these videos copied from that surveillance?

17 A Yes.

18 Q Any doubt about that?

19 A No, sir.

20 Q You do it yourself or have someone do it at your
21 direction?

22 A Either me or my team members will. Yes, sir.

23 Q Okay. I want to show you what's been marked as
24 Defendant's No. 15. Do you recognize that?

25 A Yes, sir. This is a sales receipt printed out from our

1 electronic journal.

2 Q And did you have that printed off?

3 A Yes, sir.

4 Q And what's the store number on that receipt?

5 A Store number 1382.

6 Q And is that the store that you work at?

7 A Yes, sir. It is.

8 Q And what is that a receipt for? Can you tell?

9 A Yes, sir. It states here that they bought some Foo
10 Fighters for 11.88, Zac Brown for 11.88, and a couple other
11 CDs it looks like to be.

12 Q Sounds like a music purchase.

13 A Yes.

14 Q Would that be fair to say that would be in the music
15 kind of DVD entertainment part of the store?

16 A Yes, sir.

17 Q And what date was that subpoena -- of that receipt?

18 A 11/15 of 2014.

19 Q And what time was that transaction?

20 A 14:26.

21 Q Is that a document that is kept in your normal course
22 of employment at Walmart?

23 A If subpoenaed.

24 Q If subpoenaed. But you produced that document?

25 A Yes, I produced this document.

1 Q Any doubt that that's a valid document?

2 A This is our document.

3 MR. HENDERSON: Your Honor, I'd move this particular
4 exhibit into evidence.

5 THE COURT: That's No. 15?

6 MR. HENDERSON: No. 15.

7 THE COURT: What says the State?

8 MR. BLACK: No objection.

9 THE COURT: Without objection, 15 into evidence for the
10 Defense.

11 (Whereupon, Defendant's Exhibit No. 15 was admitted
12 into evidence.)

13 Q Ron, I'm going to have Ms. Merrill here pull up these
14 videos and I want you to watch certain portions of these
15 videos to confirm that these are actually part of what you
16 produced.

17 A Okay.

18 Q Now, it's my recollection that both of these videos are
19 over four hours long, correct? From about 3:00 p.m. to 7:00
20 p.m.?

21 A Yes, sir.

22 Q We're not going to watch eight hours of stuff, trust
23 me.

24 A All right.

25 Q I just want you to look -

1 MR. BLACK: Judge, I'm not really sure -- I'm not
2 trying to slow this down, but has he already watched these
3 videos?

4 (Whereupon, Counsels confer at table.)

5 MR. HENDERSON: And we'll go ahead and move 13 and 14
6 into evidence. I was going to lay the foundation, but I
7 believe the State stipulations.

8 MR. BLACK: No objection.

9 THE COURT: 13 and 14, Walmart's videos into evidence.

10 (Whereupon, Defendant's Exhibit Nos. 13 and 14 were
11 admitted into evidence.)

12 Q Ron, before we start watching this video. This receipt
13 I believe you testified was at 2:26 in the afternoon.

14 A Yes, sir.

15 Q And if you need to refresh your memory, I'll show you
16 what's been marked again as Defendant's 15. That's around
17 2:24 in the afternoon?

18 A 2:26. Yes, sir.

19 Q Okay. I'll take that back from you. And these videos,
20 what's the -- we're going to show what's been marked as
21 State's 14 -- Defendant's 14. What's the start time on that
22 video? Again, we haven't started it yet. But can you look
23 up there? If you need to get down and walk up there to take
24 a look.

25 A Yes, sir. Sorry.

1 THE COURT: Just be sure if you say anything while
2 you're away from the microphone, sir, that you speak up a
3 little louder. Okay?

4 THE WITNESS: Yes, sir.

5 (Whereupon, the witness steps down from the witness
6 stand.)

7 A That time states it's 6:38 p.m.

8 Q And do you recognize what you're looking at there?

9 A Yes, sir. I do.

10 Q And tell the jury what that is.

11 A That's going to be your parking lot shot that I told
12 you. If you step outside in front of Walmart, if you look
13 to your right, it's going to be that side of the parking
14 lot. As you can see, Murphy's is in the background.

15 Q And that's a gasoline station?

16 A Yes, sir. It is.

17 Q Okay. And I'm going to let Ms. Merrill publish a
18 little bit of the video, and I just want you to confirm that
19 this is actually the video.

20 A Yes, sir.

21 (Whereupon, the witness returns to the witness stand.)

22 (Whereupon, State's Exhibit No. 14, video, was
23 published for the jury.)

24 Q And you would agree that portion of the video that the
25 jury's just watched is a portion of the video you produced

1 to us?

2 A Yes, sir.

3 Q Okay. I want to show you what's been marked as
4 Defendant's Exhibit No. 16. Do you recognize that?

5 A That's the same shot.

6 Q Same shot that we just watched on the video?

7 A Yes, sir.

8 Q Any doubt about that?

9 A No, sir.

10 MR. HENDERSON: Your Honor, I'd move this into evidence
11 as Defendant's No. 16.

12 MR. BLACK: No objection.

13 THE COURT: Without objection, 16 into evidence for the
14 Defense.

15 (Whereupon, Defendant's Exhibit No. 16 was admitted
16 into evidence.)

17 Q And, Ron, we're going to cue up another video. Ms.
18 Merrill's going to get it for us. Ron, if I may please have
19 you step off the stand.

20 (Whereupon, the witness stepped off the witness stand.)

21 Q And what's in the machine is a copy of Defendant's
22 Exhibit 13. Can you recognize what that is?

23 A Yes, sir.

24 Q Can you tell the jury what it is?

25 A This is a shot from November 15th at 6:56 p.m. This is

1 on the very back, in the back of the store. To your left
2 you see the shoe department. To your right is going to be
3 little girls, and on down -- further down on your
4 left-hand side will be the electronics department.

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

6 Q I'm going to have Ms. Merrill play a portion of the
7 video I'd like you to watch, Ron.

8 A Yes, sir.

9 (Whereupon, Defendant's Exhibit No. 13, video, was
10 published for the jury.)

11 Q And Ms. Merrill has stopped it. Ron, let me ask you.
12 Do any of these videos -- do any of your surveillance videos
13 have audio?

14 A No, sir.

15 Q So you can't hear any of this?

16 A I cannot.

17 Q Okay. Let me show you what's been -- I'm sorry. I
18 picked up the wrong one. Let me show you what's been marked
19 as Defendant's Exhibit No. 17. And can you recognize this?

20 A Yes, sir. That's the same exact shot that's on the
21 video.

22 Q Any doubt about that?

23 A No, sir. No doubt.

24 MR. HENDERSON: Your Honor, we'd move this into
25 evidence as Defendant's No. 17.

1 MR. BLACK: No objection.

2 THE COURT: Without objection, 17 for the Defense.

3 (Whereupon, Defendant's Exhibit No. 17 was admitted
4 into evidence.)

5 MR. HENDERSON: One moment, Your Honor.

6 THE COURT: Sure, take your time.

7 Q Ron?

8 A Yes, sir.

9 Q In looking at that receipt, I believe it was, that it
10 was taken at 2:26 in the afternoon.

11 A Uh-huh.

12 Q Is that correct?

13 A Yes, sir.

14 Q And these videos look to be taken anywhere from about
15 6:36 to 6:56 in the afternoon, correct?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes, sir.

19 Q So clearly two different timeframes?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes, sir.

23 Q No doubt about that? So I mean, just using
24 mathematics, the purchase wasn't made at the time that these
25 videos were made?

1 A Correct.

2 Q Okay. I wanted that to be clear.

3 A Yes, sir.

4 MR. HENDERSON: Nothing further, Your Honor.

5 THE COURT: Okay. Cross-examination, Solicitor?

6 MR. BLACK: Just briefly.

7 CROSS-EXAMINATION

8 BY MR. BLACK:

9 Q So 2:26 was the time of the receipt? The receipt that
10 you produced?

11 A Yes, sir. 14:26.

12 Q They were music -- music CDs and whatnot that were
13 purchased?

14 A Yes, sir.

15 Q Did you bring a copy of the video of allegedly this
16 vehicle driving at 2:26?

17 A The actual copy?

18 Q Is there a video of him -- of a black truck driving at
19 2:26?

20 A That I do not know, sir.

21 Q Did you bring -- you didn't bring one?

22 A No, sir.

23 Q But you would agree with me that at 2:26 it would still
24 be daylight, right?

25 A Yes, sir.

1 Q Even in November?

2 A Yes, sir.

3 Q Okay. What about -- did you bring the receipt for
4 6:38?

5 A No, sir.

6 Q No Walmart receipt for 6:38?

7 A (Nonverbal response.)

8 Q Were you working that Saturday night, do you know?

9 A I can't honestly tell you that.

10 Q Do you remember seeing Mr. Rowell at Walmart that
11 night?

12 A No, sir.

13 MR. BLACK: That's all I have. Thank you.

14 THE COURT: Redirect, Mr. Henderson?

15 REDIRECT EXAMINATION

16 BY MR. HENDERSON:

17 Q Ron, in response to the subpoenas, you -- you provided
18 all that you had?

19 A Yes, sir.

20 Q No doubt about that?

21 A No, sir.

22 Q How often -- tell the jury why you wouldn't have more
23 pictures for that timeframe, or more videos of that
24 timeframe?

25 A We use hard drives, so every -- I don't have a

1 timeframe. Once those hard drives get full, the hard drives
2 automatically dump. So if they dump, I will not have any
3 information or video on those certain times. Usually it
4 goes anywhere from 30 days to 60 day timeframe before the
5 dump.

6 Q But in response to our subpoenas you provided
7 everything you had?

8 A Yes, sir.

9 Q No doubt about that?

10 A That's correct.

11 MR. HENDERSON: Nothing further, Your Honor. Can Mr.
12 McGahee be released?

13 THE COURT: Any --

14 MR. BLACK: No objection.

15 THE COURT: Yes. You're welcome to remain with us, but
16 you are free to leave the courthouse.

17 THE WITNESS: Yes, sir. Thank you.

18 THE COURT: Thank you.

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

21 SAMANTHA BYRD, having been first
22 duly sworn, testified as follows:

23 MR. GARRETT: May I proceed?

24 THE COURT: Yes, sir.

25 MR. GARRETT: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. GARRETT:

3 Q Tell us your name for our court record, please, ma'am.

4 A Samantha Byrd.

5 Q Ms. Byrd, tell us a little bit about yourself. Are you

6 a Greenwood native or --

7 A I am. Yes, sir.

8 Q Tell us a little bit about yourself.

9 A I'm a mother, Christian faith.

10 Q How many children do you have?

11 A One.

12 Q Where do you all live?

13 A In Greenwood, South Carolina.

14 Q Whereabout?

15 A In Hodges.

16 Q Hodges, okay. And do you know Gene Rowell? I mean,

17 Adam Rowell?

18 A I do.

19 Q Tell us how long you've known Adam Rowell.

20 A All his life.

21 Q Are you a friend of the family?

22 A I am.

23 Q And during this time of investigation was it found out

24 that you had actually seen him at Walmart?

25 A Yes, sir.

1 Q Tell the jury about that. Tell us about what time it
2 was that you saw him and what you all talked about.

3 A I seen him, it was probably around 2:30 that day. It
4 was just a brief conversation. I had my little boy, who was
5 at the time eight-years-old. So that's probably why it was
6 brief. I told Adam hey. He said hey. I said how's the
7 family. Doing good. And we went on about our business that
8 day.

9 Q And where -- what part of the Walmart store were you in
10 at the time?

11 A In the movie section. We were at the beginning part of
12 the movies and Adam was headed toward the CDs.

13 Q The CDs, okay. Did you actually see him make a
14 purchase of some CDs that day at around 2:30 or so?

15 A I didn't see his actual purchase. No, sir.

16 Q 2:26.

17 A As I said, I had my eight-year-old, so we were -- I was
18 trying to --

19 Q Right. I know it's been a while back. You didn't see
20 any -- any CDs in his hand at that time?

21 A No. He was coming in at that time.

22 Q Were you pushing a buggy?

23 A I was. Yes, sir.

24 Q Was he pushing a buggy?

25 A No, sir.

1 Q All right. And when you all got close to each other,
2 about how close would you say you got to each other?

3 A Probably a buggy or two.

4 Q A buggy or so?

5 A Uh-huh.

6 Q And just -- you all were just being nice and social --

7 A Uh-huh.

8 Q -- hello, how you doing?

9 A Yes, sir.

10 Q You weren't trying to examine him for any intoxication
11 or anything like that, were you?

12 A No, sir.

13 Q Now, did he -- did you watch him walk?

14 A I did.

15 Q Did he appear to walk all right? I mean, nothing --
16 did you see anything in his walk that would cause you any
17 concern?

18 A No, sir.

19 Q Did you hear his voice?

20 A I did.

21 Q Did you hear anything in his voice that would have
22 caused you any concern?

23 A No, sir.

24 Q And as far as his demeanor, the way he carried himself,
25 was there anything that you saw that caused you any concern?

- 1 A No, sir. He was normal.
- 2 Q So it was just a chance meeting. You were there at
- 3 Walmart.
- 4 A Uh-huh.
- 5 Q Based on these -- about that time and you saw him?
- 6 A Yes, sir.
- 7 Q And when you -- who did you report to the family that
- 8 you happened to see him that day of the accident?
- 9 A Well, actually once I heard of the accident -- my
- 10 sister and Adam's sister are really close. And I told my
- 11 sister, I said --
- 12 Q Don't say what your sister said. You can say what you
- 13 said --
- 14 A Okay.
- 15 Q -- to somebody, but don't say what your sister said.
- 16 A Okay.
- 17 Q Go ahead.
- 18 A And I said, well, I just saw Adam. I said, he appeared
- 19 perfectly fine.
- 20 Q And so, you didn't see him later on that evening?
- 21 A No, sir.
- 22 Q You didn't see him after 2:30, so you don't know what
- 23 happened?
- 24 A No, sir.
- 25 Q And you didn't see him that morning before that

1 happened?

2 A No, sir.

3 Q And you had no knowledge of what he did before you saw
4 him or what he did after you saw him?

5 A No, sir.

6 Q Again, you weren't trying to figure anything out. It
7 just was a chance meeting?

8 A Right.

9 MR. GARRETT: Thank you. Please answer any questions.

10 THE COURT: Solicitor?

11 MR. BLACK: Yes, sir. Just briefly.

12 CROSS-EXAMINATION

13 BY MR. BLACK:

14 Q Ms. Byrd? Is that your name? I'm sorry.

15 A Yes, sir.

16 Q Okay. And I think the receipt says 2:26. So you would
17 have seen him prior -- prior to that purchase, correct?

18 A Right.

19 Q Like 2:15 or so?

20 A Right.

21 Q And you said he was a family friend?

22 A Yes, sir.

23 Q You've known him all your life?

24 A I have.

25 MR. BLACK: That's all. Thank you.

1 THE COURT: You can step down, ma'am. You're free to
2 stay with us or you're welcome to leave, either way.

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

5 TIERA BOYTER, having first been
6 duly sworn, testified as follows:

7 MR. GARRETT: May it please the Court.

8 THE COURT: You may proceed.

9 MR. GARRETT: Thank you.

10 DIRECT EXAMINATION

11 BY MR. GARRETT:

12 Q Tell us your name for our court record, please.

13 A My name is Tiera Madden Boyter.

14 Q Tell us a little bit about yourself, Ms. Boyter.

15 A I've been in the medical field now since 2001. I
16 worked at EMS starting in the year 2008 with Greenwood
17 County EMS. During that time I worked in the ER, and as
18 well obtained my nursing degree from Piedmont Tech.

19 Q Congratulations. RN?

20 A Right.

21 Q Go ahead.

22 A When I obtained my nursing degree I became a nurse on 7
23 Tower at Self Regional, which is cardiac unit. After I did
24 some time there I decided I needed to change some career --
25 a career change for my family. So now I'm the RN case

1 manager for hospice.

2 Q Very good. Which company do you work for? Just
3 hospice at Greenwood Hospice?

4 A It's Caris Healthcare.

5 Q All right. Back in November of 2014 on the 15th day,
6 did you happen to participate in a call as a result of a
7 wreck out there?

8 A Yes, I did.

9 Q Would you tell the jury a little bit about who you were
10 working for then and how long you had worked for them and
11 what kind of things you did?

12 A At the time of the wreck I had been with Greenwood
13 County EMS six years. I'm an intermediate EMT, which is a
14 trauma EMT is what it really is. Is that it?

15 Q And so, you were working -- what kind of shifts were
16 you working back then?

17 A At the time I was working 24 shifts. I was also in
18 nursing school at the time as well. So I worked when I
19 could. I was working at Medic 40, which is the station in
20 Ninety Six, and --

21 Q Where is that Ninety Six station located?

22 A It's -- if you go into town and take a left at the main
23 red light and go down 246, we're a couple miles on the left.

24 Q And so, that was your home base?

25 A For that night, yes.

1 Q And so, you would work 24 hour shifts?

2 A Uh-huh.

3 Q Would that be -- you have to say yes or no --

4 A Oh, yes.

5 Q -- so our court reporter can take it down. That's

6 fine. All of us do it. We're all uh-huhs and huh-uhs.

7 A Yeah.

8 Q So that's where you were working that night. Could you

9 -- do you recall about what time it was that you got a call
10 to be there?

11 A It was around 7:00ish. The city at night we're down to
12 three trucks in the city.

13 Q Yes, ma'am.

14 A Medic 20 had run a call, which left Medic 10 and Medic
15 30 open. When the call came in Medic 30 got the call. And
16 on the call they said it was an MVA, possible multiple
17 patients. Medic 30 got on scene and they --

18 Q Now, who was -- who was in Medic 30?

19 A Medic 30 was Larry Kidd and Derrick Oliver. He got on
20 scene and he assessed the situation and requested another
21 ambulance for multiple patients. At that point that took
22 all trucks out of the city busy. So Medic 40, our job was
23 to come to standby. If another call comes into the city, we
24 would have to take it.

25 In route to the city Medic 10 had got on scene and they

1 took over a patient in the red truck. They transported him
2 to the hospital. We were called out to come assist Medic 30
3 with the patient in the blue truck, because when they
4 triaged he had already blacked tagged the passenger -- I
5 mean, the driver in the red truck.

6 Rodney and I went on into the city and assisted on the
7 scene. When we got --

8 Q I'm sorry. Who is Rodney?

9 A Rodney Free is a paramedic that was on the truck with
10 me that night.

11 Q Okay. Go ahead.

12 A When we got on scene it was a mess. Access to the blue
13 truck was on the passenger side door. Fire department was
14 there. They -- them and Larry Kidd and Derrick Oliver had
15 already did a rapid assessment of the patient. The front
16 end of the truck was completely crushed in the driver's
17 side. The patient was entrapped up to his chest. The
18 steering wheel was entrapped up to his chest. The whole
19 dash was in his lap. The Defendant's legs were -- am I okay
20 to say this?

21 Q Yes, ma'am.

22 A Okay. The dash had brought the Defendant's legs open
23 to where they were this way but, you know, bent down. He
24 obviously had a open fracture to the pelvis area. At this
25 time his C-spine was immobilized. Someone was holding

1 C-spine. They kept taking turns because they was having to
2 get in the backseat to hold him and you could access him to
3 the side. So they kept taking turns doing that. During
4 that time, with his injuries, he needed to be fully
5 resuscitated. Because of the injuries he had he could lose
6 blood. So during that time Derrick Oliver, which was on
7 Medic 30, and myself were on the passenger side trying to
8 access the patient and start an IV. During that time we
9 were unsuccessful in getting the IV on him. He was also
10 breathing eight times a minute, which was shallow. We
11 placed a rebreather on him to help with the breathing.

12 Q At some point did you all have to get him all covered
13 up and blanketed, and yourself --

14 A Right.

15 Q -- in order to cut the top off and --

16 A The fire department was cutting all the posts, four
17 corners of the post, to get ready to take the top of the
18 truck off. Meanwhile we were treating the patient for his
19 symptoms. When they were ready to extricate the truck we
20 covered him with a sheet. And then the only person that
21 stayed with him was the one holding the C-spine. The rest
22 of us got into a safe distance so the fire department could
23 take the truck apart.

24 Q Okay. So that happened. The truck was apart. Then
25 what happened?

1 A He was still entrapped. The dash is still up against
2 him. They had to get the Jaws of Life to push the dash off
3 of him. We had thought that we could get him up and out,
4 but he was a bigger size. So there wasn't no way we could
5 bring him up and then out for the safety of us, because of
6 the metal that was showing. So we got the dash off of him.
7 We put him on a spine board. After we put him on a spine
8 board we put him onto the stretcher and finished
9 immobilizing him there. After we got him on the stretcher
10 we moved him to our unit, which is the ambulance. Medic
11 30's ambulance. In the back of the ambulance is where we
12 had to get him more stable because his breathing was not
13 sufficient.

14 Q So hold on a minute. So after you took him out of the
15 car you did actually stage him in the back of the ambulance?

16 A Yes.

17 Q And that staging took place before -- was the
18 helicopter already there?

19 A They were down the road apiece. I'm not sure how long
20 -- how far they were, because a fireman drove us to him.

21 Q So -- and so, when you say drove you to them, where
22 were you and Adam? Who all was in -- taking care of Adam?

23 A It as me, my partner, Rodney Free, Derrick Oliver, and
24 Larry Kidd.

25 Q And who was -- tell the jury then what kinds of things

1 you were doing in the back of the ambulance.

2 A While I was in the back of the ambulance, of course, we
3 always try to reassure our patient. We're here for them.

4 Try to stay with us. We didn't want him to go to sleep
5 because we didn't want him going unconscious. His breathing
6 was not great at all. So I grabbed a BVM, which is a bag
7 valve mask, and I did rescue breathing for him. So after we
8 -- I started doing rescue breathing for him he started to
9 get a little bit better. Meanwhile, Derrick --

10 Q I'm going to ask you to hold up just one minute.

11 A Uh-huh.

12 Q How close do you have to get to a person's face and
13 mouth in order to do that -- what you call bag breathing?

14 A Can I demonstrate.

15 Q Not on me, no.

16 A No?

17 Q How close? I mean, if that's the head right there, how
18 close would you get to the head?

19 A This would have been Adam on the stretcher, and I would
20 have been in the captain seat. I would have had to have
21 been at least this close to get a good seal around my mask
22 to perform breathing for him.

23 Q Okay. And how long did you say you had to breath for
24 him?

25 A A couple of minutes. While I was doing that they were,

1 of course, taking his clothes off because we had to do a
2 detailed physical exam on him, and they started IVs. At
3 this point a fire department guy -- the truck was actually
4 sitting real close to the scene and there was other fire
5 departments there. People in their POVs there, which is
6 personal vehicles that were there. And so, it was -- it was
7 cold out. So we didn't want to take Adam on a stretcher and
8 just wheel him through vehicles, or get him to where that
9 helicopter was. So we had a fireman to drive us a short
10 distance to the helicopter. Get close enough as we could
11 because of the cold. And the helicopter crew then came down
12 in the ambulance to where they RSIed. RSI is rapid sequence
13 intubation. That's where we paralyze a patient and intubate
14 them so they can -- so we can help them breath.

15 Q All right. And was that done inside of the ambulance
16 before he was loaded into the helicopter?

17 A Yes, he was.

18 Q And did you perform that or did the other nurses do
19 that or --

20 A No. That's one of the reasons why Rodney Free and
21 myself was on the call is for RSI to take place you have to
22 have two paramedics on scene. I was the intermediate at the
23 time. Derrick Oliver was an intermediate at the time. So
24 Larry Kidd needed the assistance from Rodney Free, because
25 he was a paramedic, to do the RSI. Since -- they thought

1 the RSI was going to take place before he was given over to
2 LifeFlight. But LifeFlight took patient care over in the
3 back of the ambulance and they performed the RSI.

4 Q Now, were you all able -- once you got him into the
5 back of the ambulance, were you able to give him anything --
6 any kind of IVs or anything?

7 A Yeah, he was given an IV. I'm not sure which arm. I
8 didn't place the IV. And he started a fluid bolus.

9 Q I'm sorry. You're going to have to --

10 A Fluid bolus is -- it's like a fluid resuscitation.
11 When patients have injuries that sustain blood loss we have
12 to replace that blood with something to keep their blood
13 pressure sustainable.

14 Q Did you give him any -- did you actually -- you didn't
15 actually give him those drugs -- I mean, not drugs. You
16 didn't actually give him that saline or whatever it is?

17 A No.

18 Q Okay. Somebody else did it?

19 A Uh-huh.

20 Q Now, did they give him any blood in the back of the
21 ambulance or did they wait until they got him into the
22 medevac, do you recall?

23 A Blood was given in the ambulance. When he was -- when
24 he was intubated -

25 Q Right.

1 A -- and more stable, that's when we took him out of our
2 truck and took him to LifeFlight.

3 Q Now, during that period of time that you were there
4 with him, two minutes bagging him --

5 A Yes.

6 Q -- did you smell any alcoholic beverage about his
7 breath?

8 A I did not.

9 Q You sure about that?

10 A I'm sure.

11 Q How do you know, or how do you remember back two years
12 ago as to whether or not you smelled any alcoholic beverage
13 about his breath?

14 A The questioning at hand came about in a conversation
15 during the scene. Derrick Oliver and I --

16 Q Don't say what somebody else said.

17 A Okay.

18 Q You can say what you said in response to what somebody
19 said, but you can't say what they said.

20 A Okay. When the fire department was taking the top of
21 the truck off we had to get to a safe distance away from the
22 truck so that could be -- that could take place. During
23 that time I look around, and I'm like this is awful. What
24 has happened here. And a comment was made. My comment back
25 to them was I didn't smell any alcohol.

1 Q And did that change during any of the time that you
2 were close to him, working with him?

3 A No, it did not.

4 Q So somebody made a comment.

5 A Uh-huh. Yes.

6 Q But you have your own opinion?

7 A Right.

8 Q Now, did you -- did you examine the interior of his car
9 or truck or anything?

10 A I did. When I was trying to access IVs I kept hearing
11 something then. I looked over and I seen a light flashing
12 and there was a cell phone sitting there.

13 Q Where was it at?

14 A It was -- there was a compartment under the radio and
15 it was sitting in this little slot.

16 Q So it's in a slot --

17 A Yes, sir.

18 Q -- but it was ringing?

19 A Yes, sir.

20 Q It was ringing?

21 A Yes, several times.

22 Q So while you all were trying to work you were hearing
23 this phone go off?

24 A Yes.

25 Q Tell us what you did.

1 A I picked it up and looked at it. I told my partners, I
2 said, somebody's trying to get in touch with him. It's the
3 same people that keep calling. I could not answer the
4 phone. With Greenwood EMS we don't have the insurance to
5 cover us if I was to talk to a family member and they try to
6 come to where the patient is and they get into an accident
7 we're reliable for it. We don't have insurance to cover us
8 for that.

9 Q Yes, ma'am.

10 A So after we got him into the back of the ambulance I
11 got his cell phone and gave it to LifeFlight. I'm not sure
12 if they're covered under insurance for that, but I gave the
13 cell phone to them and I said family's trying to call.
14 Either you can answer the phone or please give the phone to
15 the hospital so somebody can make contact with his family.
16 I wasn't sure if he had a wife or kids, what.

17 The reasoning why I did that is because of 2011. I ran
18 a call where a man was -- he got thrown out of his boat and
19 his boat amputated his arm and his leg. We did the same
20 thing with him as we did the Defendant. We had to RSI him.
21 But before we did that, that man begged me to call his wife
22 and his kids to tell them he loved them, and I didn't do
23 that. But the next day I was able to talk to them on the
24 phone to see how that patient was. I was -- I felt guilty
25 for that. But I wanted to make sure that his family knew

1 where he was at the time.

2 Q All right. And subsequent did you go check on him at
3 the hospital?

4 A Yes. Later on that night -- I didn't know the name of
5 the victim -- of the patient at the time, but I had seen
6 stuff on Facebook where someone had had a wreck. We found
7 out what his name was. Me being me, I wanted to check on
8 him to see what his -- how he was. His condition was. I
9 personally did not think that he would make it to Greenville
10 Hospital with a heartbeat. So I found out that he was still
11 alive, but not stable at all. So I asked my mother-in-law
12 to go with me to the hospital, because I had a one-year-old
13 at the time, and I didn't know if I could go in there with
14 him or not. So she came to be with him. When I went there
15 to check on him the family stopped me and spoke with me.
16 They had questions, of course, and I answered them the best
17 way I could. And that's when I found out they were the one
18 that were calling his phone the whole time. And I
19 apologized to them then for not answering the phone, but I
20 explained myself to them why I couldn't answer the phone.

21 Q And did you get to see him that night?

22 A Yes. His father took me back there to his room to see
23 him. At that time he was in ICU. He was unresponsive on a
24 ventilator. And that was the last time I'd seen him.

25 Q Now, did you have any kind of a personal relationship

1 with him, Adam Rowell, prior to this?

2 A No. I didn't even know who he was when I looked at him
3 in the truck.

4 Q So even to this day, tell me, do you have any kind of
5 personal relationship with him today?

6 A No, I don't.

7 Q All right. Yesterday I think you saw him at my office;
8 is that correct? Was it yesterday --

9 A No.

10 Q -- day before yesterday?

11 A No. I seen him this morning when I come to give a
12 statement. He passed through to the office.

13 Q Okay. That's good. And you all embraced. Is that the
14 first time you've seen him?

15 A First time I've seen him since the day I seen him in
16 the ICU.

17 Q Is that the first time you've talked with him?

18 A Well, he didn't talk back.

19 Q I understand. But --

20 A Yeah.

21 Q -- there was just a little hug.

22 A Right.

23 Q Or something like that between you all. And so, that's
24 simply a patient/nurse kind of thing?

25 A Right.

1 Q A sign of affection by both of you. Now, you said
2 something about your mother-in-law and your child. Do you
3 know whether your mother-in-law or your child has any kind
4 of relationship with Adam?

5 A She told me that she knew the name --

6 Q Don't tell me what somebody said. If you know that
7 there's a relationship between your mother and that family
8 or your child and that family tell us about it.

9 A My child has no relationship at all with that family.
10 My mother-in-law, years ago when my husband --

11 Q What's your mother-in-law's name?

12 A Sharon Boyter.

13 Q So Sharon Boyter has got a relationship with who?

14 A The family went to the same church together when my
15 husband was small.

16 Q And your husband's name was what?

17 A Rodney Boyter.

18 Q Rodney Boyter. And what church did they go to?

19 A I don't know. It could have been Reedy Grove.

20 Q So it was some church and she knew the family?

21 A Right.

22 Q So on your way up there did you talk about, well, this
23 is Adam Rowell and that's the Rowell family, or did you all
24 have any discussion about that going up there?

25 A We didn't discuss it because I'm not supposed to

1 discuss patient information.

2 Q So you didn't even talk to her about it?

3 A No. She -- what she heard was what was interacted with
4 his parents at the hospital is what she heard.

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

6 THE COURT: Sure.

7 Q A while ago you and I were trying to demonstrate how
8 close you were, but I failed to, for the record, to
9 demonstrate how close that was. Can we do that again and
10 then you tell me roughly how close you were to his head?

11 A Yeah.

12 Q Can you do it in feet or inches or --

13 A I would say within inches. I would say this is no more
14 than a foot. Less than a foot.

15 Q Twelve inches?

16 A Well, his back is going to be up here, so I'm going to
17 say six inches.

18 Q So how many inches would you say?

19 A Six.

20 Q So that would be six inches from your ability to smell
21 and his head?

22 A Yes, sir.

23 Q While he's breathing?

24 A Yes, sir.

25 Q And you're helping him breath?

1 A Yes, sir.

2 MR. GARRETT: That's all at this time, please.

3 THE COURT: Okay. Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. DOWTIN:

6 Q Thank you, Ms. Boyter. You're not friends with anybody
7 from Mr. Rowell's family, including Facebook friends?

8 A I became Facebook friends with his sister Brittany at
9 the time of the incident. She kept -- she sent us messages
10 updating -- keeping us updated on his care.

11 Q And now, just going back to that night. You're with
12 Medic 40, correct?

13 A Right.

14 Q And Medic 40 was you and Rodney Free, correct?

15 A Yes.

16 Q And your team was one of the last groups on scene that
17 night, correct?

18 A Yes.

19 Q It was Medic 30 which was Derrick Oliver and Larry
20 Kidd?

21 A Yes.

22 Q And then Medic 10 was Ms. Prestel and Mr. Hill, I
23 believe?

24 A Yes.

25 Q And Derrick Oliver was already with the Defendant when

1 you arrived on the scene?

2 A Yes.

3 Q And Derrick and Larry Kidd, their primary
4 responsibility that night was the Defendant?

5 A Right.

6 Q You and your team's primary responsibility that night
7 was Mr. Cockrell?

8 A Yes.

9 Q And when you talk about this -- how close you were, you
10 mentioned you put a seal around his mouth. I mean, so you
11 actually -- the bag, it seals his mouth. Is that what we're
12 --

13 A Yes.

14 Q Going back to Mr. Jeremy Cockrell. What all did you as
15 far as in regards to assessing Mr. Cockrell?

16 A The assessment for him for determining whether he had a
17 pulse or not was already determined. He did not have a
18 pulse. Next our primary job was to help assist with another
19 patient that was viable that could be sent to the hospital.
20 We helped with patient care and extrication for that
21 patient. After we had him loaded up into the air flight
22 Rodney Free and myself went to the red truck to extricate
23 Mr. Cockrell. Mr. Cockrell was -- he couldn't have been
24 taken out of the truck and sent to the morgue because he was
25 -- the damage on his truck was as severe as the damage on

1 the other truck. He was entrapped.

2 Q Was there any particular damage you observed to Mr.
3 Cockrell?

4 A The main injury for Mr. Cockrell was, when we took the
5 dash off of him --

6 Q It's okay, ma'am. Take your time.

7 A The emergency brake was impaled into his left thigh,
8 and we had to take him the pedal to get him out of the
9 truck.

10 Q And from -- at that point -- or at some point
11 thereafter, you and Mr. Free then took Mr. Cockrell to the
12 morgue?

13 A Yes.

14 Q And was that the extent of your involvement, other than
15 going to check on Mr. Rowell later that night?

16 A Yes.

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

18 THE COURT: Sure.

19 MR. DOWTIN: Thank you, ma'am.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MR. GARRETT:

23 Q Could you explain the seal? Is air still going between
24 the two of you?

25 A It's called a BVM. It's a bag valve mask. There's a

1 valve at the top of the seal. The mask is here, then
2 there's an L-shaped valve here, and then there's a bag. The
3 valve is where the air has to be released, because for him
4 to take in air we've got to release air.

5 Q Where does that air to release go?

6 A Into the air.

7 Q Okay. By your nose?

8 A Yes.

9 Q So even though you're sealing his mouth you're trying
10 to make sure you push air in, but he still has to exhale?

11 A That's correct.

12 Q And when he exhales you can smell his exhale?

13 A That's correct.

14 Q And for two minutes you did that did not smell any
15 alcohol?

16 A I did not.

17 MR. DOWTIN: Just briefly, Your Honor.

18 THE COURT: Sure.

19 RECROSS-EXAMINATION

20 BY MR. DOWTIN:

21 Q And that was done in the back of --

22 A Medic --

23 Q -- Derrick Oliver's and Larry Kidd's ambulance?

24 A Yes.

25 MR. DOWTIN: Thank you, ma'am.

1 THE COURT: Thank you, ma'am. You can step down.

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

4 THE COURT: Ladies and gentlemen, we're going to take a
5 short little break. I think the next witness that Defense
6 has may be a little lengthy. I'm not sure if we'll even
7 finish his testimony today, but nonetheless we're going to
8 get started with it. So let's go ahead and take a break
9 before we do that. So if you'll go back to the jury room
10 for a few minute break. Okay?

11 (Whereupon, the jury exited the courtroom at 4:08 p.m.)

12 MR. GARRETT: Jane Merrill went to speak with Judge
13 Addy real quick for second. She'll be right back.

14 THE COURT: Okay.

15 MR. BLACK: Judge, I think we might have just an issue.
16 I don't know -- I don't know the extent of it, but I guess
17 we might want to put it on the record.

18 THE COURT: Have an issue with --

19 MR. BLACK: Well, to my understanding they have --
20 their expert has prepared a PowerPoint, and from what I
21 understand there's pictures and stuff that are -- you know,
22 that was provided by MAIT, given to their expert to use. I
23 think, from what I understand, the PowerPoint has some, you
24 know, typings and, you know, he's kind of opined what he's
25 talking about in the PowerPoint. I think the best way to do

1 it, you know, under the rules, I think that he has every
2 right to put up pictures and stuff and kind of explain
3 what's going on. But in terms of writing out what's going
4 on and then putting that in front of the jury, I tend to
5 have an issue with that, because we -- I don't -- we can't
6 -- we just have to put pictures up and let, you know, our
7 expert explain what's going on within the pictures. I think
8 they got to be held by the same kind of standard.

9 THE COURT: Okay. So I want to make sure I understand.
10 So this PowerPoint presentation has got some pictures, and
11 then Mr. Sims has made comments in typed form what he opines
12 concerning the pictures?

13 MR. BLACK: There -- it looks like there are some
14 slides where he's opined and kind of pointed stuff out, and
15 it's our -- and I think there's a couple other -- there's
16 some other slides in there as well. I'm not sure if they're
17 planning on going through the whole PowerPoint or what their
18 plan is. I just wanted to let you know what our concern is
19 kind of on the outset.

20 THE COURT: Okay. And I appreciate that. What -- what
21 is the plan with Mr. Sims?

22 MR. GARRETT: Your Honor, they finally got us their
23 automation on Monday and, you know, we were lucky enough to
24 get ours even together by today having gotten it Monday. If
25 you recall, they had a problem with their first one, so we

1 didn't get our calculations until Monday. So we
2 haphazardly, or as fast as we could, working this gentleman
3 real hard overtime, and I think he also was trying to get
4 this thing together. So we got it together. He's made some
5 personal comments about his findings and he's written those
6 -- some of those out as he goes to explain what it is he's
7 explaining. He's actually sat down with Mr. Duncan -- sat
8 down with Mr. Duncan and went through it with him to let him
9 see what it was that he was going so we wouldn't catch them
10 by surprise. So we've done that. So I don't see the -- I
11 don't see the reasoning behind not allowing us to put our
12 presentation in under the circumstances.

13 THE COURT: Well, I guess what -- I'm not speaking for
14 the Solicitor, and you can correct me if I'm wrong. I guess
15 it is testimony that will be going back to -- assuming his
16 PowerPoint comes into evidence then, I guess, what he's
17 objecting to is that there will be some of his, quote,
18 testimony that will be going to the jury room as evidence.
19 Is that -- is that what you're coming from?

20 MR. BLACK: That's part of it. Yes, sir, Your Honor.

21 MR. GARRETT: We can redact -- you know, before we
22 submit it to the jury I can redact his commentary after he's
23 testified to it. It's going to take us a little time to
24 redact it again while -- you know, he's trying to get it
25 done.

1 MR. HENDERSON: I just asked Mr. Sims and he said
2 tonight he can go into his PowerPoint and remove all of his
3 commentary.

4 MR. GARRETT: Is there any other objections to anything
5 else so we'll try to have it cleaned up to -- so there's no
6 objection?

7 MR. BLACK: And I'm not sure. I guess they're trying
8 to offer the PowerPoint as a Court's exhibit or as evidence?

9 THE COURT: Well, I don't know. All I said was just
10 assuming that it comes into evidence. I don't know if it is
11 or not. But assuming that it does, I just kind of
12 speculated what your issue would be insofar as testimony
13 going -- in written form going to the jury.

14 MR. BLACK: Yeah, that's part of my objection, Your
15 Honor.

16 THE COURT: Right. And that can -- assuming it does
17 come into evidence that can be resolved. Now, you have no
18 other issue with that?

19 MR. BLACK: Even if it's going to be shown to the jury
20 in that form I still think that's not the appropriate way to
21 do it, Judge.

22 THE COURT: Well, you know, if he -- if he
23 simultaneously says what is next to a picture or a slide or
24 whatever, if he simultaneously says that I don't really have
25 a problem with that.

1 MR. DOWTIN: I guess we just want to make sure they're
2 going to be asking him questions and it's not just him
3 standing up saying here's my PowerPoint, go, and here's my
4 testimony, you know, laid out on a computer.

5 THE COURT: Right. Right. I mean, is it going to be
6 kind of a question, answer type format?

7 MR. GARRETT: I'm going to say, Your Honor, what
8 happened next. What happened next. I mean, I can do that.
9 If that's going to -- try to break it up a little bit.

10 THE COURT: All right. Very good. Let's bring the
11 jury out, please.

12 (Whereupon, the jury entered the courtroom at 4:20
13 p.m.)

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

16 MR. GARRETT: We are, Your Honor. I'd like to call
17 Matt Sims to the stand, please.

18 THE COURT: Come around and be sworn in, Mr. Sims.

19 PELHAM MATTHEW SIMS, having first
20 been duly sworn, testified as follows:

21 MR. GARRETT: Please the Court?

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY MR. GARRETT:

25 Q Please state your name for our court reporter, please,

1 sir.

2 A My name is Pelham Matthew Sims.

3 Q And tell us a little about yourself, Mr. Sims.

4 A I'm the owner, president of Reedy Consultant and
5 Investigation, an accident reconstruction firm.

6 Q And how long have you been so employed?

7 A Almost five years. End of June it will be five years.

8 Q What qualifies you to have a company that does what you
9 do?

10 A I'm a retired lieutenant from South Carolina Highway
11 Patrol. One of the original members of MAIT. The
12 Multidisciplinary Accident Investigation Team. During that
13 time I was fortunate enough to be able to obtain over 3,000
14 hours of accident reconstruction specific training.

15 MR. DOWTIN: And, Your Honor, we'll stipulate to Mr.
16 Sims' qualifications.

17 THE COURT: Okay. I'll go ahead -- I know you may want
18 to get some of his qualifications out, but maybe not the
19 whole load. But I will go ahead and find Mr. Sims to be an
20 expert in the area of accident reconstruction.

21 Q Mr. Sims, again, your Curriculum Vitae is rather thick.
22 Instead of us having to go through all of what we heard with
23 these other officers, tell me, after hearing all those other
24 officers, how your -- in your opinion, if you are better
25 qualified to make an opinion than they are.

1 A Well, we're all, I think, qualified experts. I retired
2 in 2012 as lieutenant of the MAIT. As I stated earlier I
3 was one of the original MAIT members in the beginning. In
4 1995 we tested and were selected to be on MAIT, and since
5 that time -- since that time up until present I have accrued
6 over 3,000 hours of training. During my time with MAIT I
7 rose through ranks of corporal, sergeant, lieutenant. And
8 before I retired I was supervising investigations statewide
9 for MAIT as -- at the rank of lieutenant.

10 Q And you have one -- sort of like an accreditation. A
11 doctor accreditation. Do you have some type of special
12 accreditation?

13 A Yes, sir. I don't know if you can call me doctor or
14 not, but I'm a -- I have ACTAR accreditation. A-C-T-A-R.
15 It stands for the Accreditation Commission for Traffic
16 Accident Reconstruction. And in order to get that
17 accreditation you have to qualify to be tested. In other
18 words, you have to have a certain amount of training -- a
19 good bit of training to just sit for the tests. And then
20 when you sit for the test it's an all day test where there's
21 a practical side of the test where you actually take a wreck
22 scene and do drawings and reconstruct the wreck and there's
23 -- there's basically a math portion, too, where you just
24 have to work problems. And that's pretty much an all day
25 examination. That's an examination that engineers, as well

1 as highly trained police officers pursue in this field. And
2 back in the day -- it's been a few years now, when I -- when
3 I took it the pass/fail rate was about the same for
4 engineers and police officers. So it's a pretty extensive
5 examination program.

6 Q Could I ask you this? How many -- how many roughly
7 would you say Highway Patrolmen, or people who do your kind
8 of work, have that high level of accreditation in the state
9 of South Carolina?

10 A Well, in the beginning, I guess -- I think I got it in
11 about '98 or whatever. We were the first Highway Patrolmen,
12 the group of us, and half of us passed and half of us didn't
13 on the first round. But it's always been -- it was a big
14 thing for our commander at the time that we get certified.
15 At that time I think there were maybe two other police
16 officers in the state that were certified and they weren't
17 on -- they were not Highway Patrolmen. And since then it's
18 been a -- it's been a priority. And it's something that the
19 MAIT, you know, works toward to try to reach that goal. And
20 to my knowledge now, some of the guys are and some aren't.

21 Q You had the opportunity to be here and appear in Court
22 and listen to their testimony; is that correct?

23 A I did.

24 Q And the ones of the gentlemen that got up to testify,
25 are any of them at that level?

1 A Some of those gentlemen have ACTAR, to my knowledge. I
2 think maybe a couple of them did and a couple of them didn't
3 maybe. But, you know, to my knowledge.

4 Q All right. Now, have you -- have you been retained by
5 the Rowell family to help them do a reconstruction of this
6 scene?

7 A Yes, sir.

8 Q Do you know the Rowell family?

9 A I do not. I was actually retained through you for
10 them. Yes.

11 Q So you don't have any personal relationship or anything
12 like that with them?

13 A No, sir.

14 Q Now, did you have an opportunity to fully examine all
15 of the evidence in this case?

16 A Everything that was -- that was presented to me. Yes,
17 sir.

18 Q And to your knowledge, everything that -- everything
19 there is to know about this case, as far as from the science
20 of the wreck and whatnot, you've observed it or reviewed it
21 or --

22 A To the best of my knowledge and ability. Yes, sir.

23 Q To the best of your ability. Okay. Having done that,
24 do you think that you could kind of go through that with the
25 jury and go through your -- well, your findings to help them

1 come to a conclusion, or help explain what actually happened
2 out there, in your opinion?

3 A Yes, sir.

4 Q Based on your experience?

5 A Yes, sir.

6 Q Would you like to start that now?

7 A I would.

8 (Whereupon, the witness stepped down from the witness
9 stand.)

10 THE WITNESS: Ladies and gentlemen, I've prepared a
11 PowerPoint presentation, and I do these on all my cases,
12 whether I -- whether I testify in Court or not, and most of
13 the cases I don't testify in Court. I -- it didn't come out
14 up there, but I work a lot of civil cases and some criminal
15 cases such as this. But the PowerPoint just helps me to
16 organize my thoughts and keep my thoughts together in my
17 head. So that's -- that's kind of how I keep my points and
18 everything organized. Shall I start?

19 Q What's the first thing you think is important in your
20 presentation?

21 A Well, the main thing here is that that you folks get to
22 hear everything, and you're going to hear everything that I
23 know and have seen and reviewed and you need to hear -- need
24 to hear the whole story as to whatever happened based on any
25 knowledge that any witness may have. I'll start the -- get

1 started here.

2 From the very beginning, there were some contradictions
3 that -- that I pointed out from the initial reporting of the
4 accident. We had the TR310 accident report filled out,
5 reported by Trooper Smith, and then there were MAIT
6 notifications and issues, and there were some contradictions
7 that I would just like to point out to you on those.

8 First of all, nowhere in the narrative of the accident
9 report does it mention a head-on. Now ---

10 MR. BLACK: Judge, I think we're going to object that
11 the police reports, they don't ever come in ever. I think
12 the rule is explicitly -- I mean, testimony, this is not how
13 you do this. That's my objection.

14 THE COURT: Let's -- I guess I'll call for a sidebar.

15 (Whereupon, a sidebar was held.)

16 THE COURT: Okay. We got that resolved at sidebar.

17 Mr. Garrett, you may proceed, sir.

18 MR. GARRETT: Thank you, Your Honor.

19 Q Take -- I don't want you to show right now the jury the
20 accident report. But did you have an opportunity to look at
21 the accident report as part of your investigation in
22 determining where the contradictions were?

23 A I did. Yes, sir.

24 Q Tell us then what you found after reviewing the
25 accident report, if you found any contradictions and explain

1 them, please.

2 A Well, the accident report, as I was stating, it was
3 actually going to be a very complimentary statement. But it
4 didn't -- it didn't describe a head-on in the narrative,
5 which it doesn't have to describe a head-on in the
6 narrative. Some folks put that in the narrative to describe
7 head-on, rear-end or whatever, some don't. This one did not
8 have that in the narrative. However, on the next page it
9 actually describes a rear-end.

10 Q All right. Don't -- don't show it right now. Just --

11 A I'm passed it.

12 Q Just don't show it. So are you -- would you tell us
13 then the difference between the front page and the back
14 page? What does it describe in the back page?

15 A Well, the front page is okay. It just -- I was just
16 telling the jury that some folks, some troopers would --
17 would describe the collision or a head-on or a rear-end or
18 whatever. I think as you've heard the testimony now enough
19 to know that this was clearly a head-on collision. But on
20 the second page of the accident report it is actually coded
21 as a rear-end collision.

22 The MAIT intake sheet, which is on the screen now --

23 Q Okay. Don't -- don't show it. Don't show it right
24 now. Tell us, did you have an opportunity to review the
25 Multidisciplinary Accident Investigation Team, MAIT case

1 notes, dated 11/15/2014 by Investigator Brock?

2 A I did.

3 Q And is there something relevant in there that you want
4 to tell the jury?

5 A Well, the contradiction is just between the accident
6 report and what MAIT was going to do from the beginning.
7 The issues pointed out by Lieutenant Brock here from the
8 phone call he received from Lieutenant Dangerfield shows
9 issues seen, documentation, audio, video, pictures, laying
10 location, ACM and mechanical. And in the next paragraph it
11 clearly shows the highlighted portion based on a head-on
12 collision. So simply just saying contradictions between
13 road trooper paperwork, MAIT paperwork, from the very
14 beginning.

15 Q And does that sometimes often happen?

16 A It does, unfortunately.

17 Q Go ahead on.

18 A This is just a picture that was provided to me by
19 Defense counsel which -- which is a picture that was taken
20 by the Highway Patrol of each vehicle put together for
21 comparison to show that this is clearly a head-on collision,
22 so there's no mistaking that it is a head-on collision. One
23 of the things I looked at is, well, were injuries that
24 sustained by the victims. Seatbelt usage is always
25 important in sustaining injuries or not sustaining injuries.

1 Just some contradictions there in my findings based on the
2 material I was given. Cockrell -- Mr. Cockrell was not
3 restrained according to Mr. Sanders' statement. Mr.
4 Sanders' statement said that he was restrained. As I've
5 said, according to his own statement. Then the question
6 becomes what does the evidence show.

7 This is a summary of a statement taken by Kelly
8 Anderson of MAIT of Mr. Sanders, and he had told her on -- I
9 don't see the date on there. But whenever this statement
10 was taken, that he actually had his seatbelt on and he
11 doesn't think Jeremy had on his seatbelt. Mr. Cockrell.

12 Q So you found that --

13 MS. MERRILL: Matt, turn off the TV unless you're
14 showing a picture.

15 A Okay. Another part of Matthew Sanders' statement
16 highlighted just saying the other vehicle was going 50 to 60
17 miles per hour, approximately 35 yards away. From my memory
18 that's what he testified to. Curled up and grabbed handle.
19 And he had a broken femur and shattered knee.

20 I'm about to show you a photograph that actually shows
21 the inside of the vehicle. The red truck. Mr. Cockrell's
22 truck. And it shows damage to the dash of the vehicle and
23 damage consistent with a person's body impacting the dash
24 during a very horrendous crash like this one, and most
25 likely resulted in the broken leg from -- from being in the

1 fetal position.

2 Q Based on your years of experience in examining these
3 types of accidents, if a person is unrestrained is it
4 unusual for them to do an indentation of the dash similar to
5 this one?

6 A No, sir. It's not unusual. This is -- this is a very
7 serious indentation, or damage. But this is a very serious
8 collision. And something large such as a body, leg matched
9 with the injury received by Mr. Sanders, this is what it
10 takes to do this. And then not only was it my opinion but
11 it was also the doctor's opinion at some point that Mr.
12 Sanders was not restrained. Actually was not wearing his
13 seatbelt.

14 I'll talk to you next about the mechanical examination.
15 There was a mechanical examination done on one of the
16 vehicles. On Mr. Rowell's vehicle. The blue Chevrolet.
17 There was not a mechanical done on the red truck.

18 Q Why is that? Why wouldn't there be one on both?

19 A Well, I don't know, to be honest with you. I think
20 there should have been one done on both, especially since we
21 had -- we have witness statements that we'll see in just a
22 minute that -- a witness statement that it appeared that the
23 red truck was across the center line as well. Any time you
24 have a left of center issue, you know, the easy thing to do
25 is examine the vehicle that clearly went left of center and,

1 you know, sometimes you may think' caused the accident,
2 whether that's the case -- whether that's the case or not.
3 But in these type situations it's always best to do a
4 mechanical on both vehicles, because you never know what
5 witnesses are going to say or what Defendant's are going to
6 say or anything to that extent.

7 As I said, only the blue truck was examined and it
8 wasn't fully examined. It was only partially examined.
9 Three wheels were examined for tires, brakes and such. The
10 fourth wheel was not examined. You all probably remember, I
11 caught a little -- caught a little heat on this one from the
12 -- from the stand up there. Mr. Brooks, he's a friend of
13 mine, but, you know, said something about we used to burn
14 cars up or whatever. But we -- we used to tear cars apart
15 if they needed tearing apart to make sure we found out
16 everything we needed to find out. When you use torches you
17 can catch a car on fire. We also had good fire
18 extinguishers so we could put them out. And I'm going to
19 give you a little more information. MAIT actually still
20 does that. It's not done all the time. It's not done in
21 every case. It's determined -- prioritized or whatever.
22 But it's determined which vehicles will be done a full exam
23 on or not. And as he said, the local guys have hand tools.
24 Okay? That's some policy changes or something that's come
25 about in recent years. They only have hand tools. But

1 there is a gentleman, a sergeant I think he is now, named
2 Jimmy Booker who his name appeared. He's the lead MAIT
3 mechanic and he does have all the heavy tools. He still has
4 the trailer with all the tools he can roll out and tear a
5 car apart if -- if they see fit to do so.

6 Q So was there a decision made by somebody in this case
7 -- in this case then not to do a full inspection of the blue
8 truck as well as to do no inspection of the red truck?

9 A That's correct. And ladies and gentlemen, in these --
10 in these guy's defense, they work a lot of cases. And, you
11 know, I don't know that they can do a full examination on
12 every vehicle. But they probably work too many case, to be
13 honest with you. But that's not this family's loved ones
14 fault and it's not this young man's fault that they didn't
15 get a full examination done. So, you know, it's hard to
16 prioritize on these kind of things when someone's died and
17 someone's life is in the balance. So I would have liked to
18 have seen a full --

19 Q Can I ask you a question about mechanical --

20 A Yes, sir.

21 Q -- very briefly. As far as lights are concerned, would
22 you want to see whether or not all the lights were working
23 or all the bright lights were working or what condition or
24 what position they were in at the time of the impact?

25 A Well, lights are always important. I've always kind of

1 leaned toward lamps and lamp examinations. What your
2 headlights are doing. Whether they were working. Your
3 brake lights. We took some training years ago from a guy
4 that referred to himself as lamp nerd. I mean, he knew
5 everything about headlights, taillights and so forth, and
6 it's really interesting. But it was dark out there. It was
7 nighttime, and headlights were in use. And that's always an
8 issue. I mean, it can't become an issue. Did someone maybe
9 have a headlight out. Did someone maybe have their bright
10 lights on and didn't -- you know, didn't dim them. Those
11 are things that could have, you know, possibly been looked
12 at after the fact and determined -- which could also
13 possibly be causation factors in a collision.

14 Q So as to the blue truck, where are we at on the blue
15 truck as to the partial work on the blue truck? Which tire
16 did they -- are you there yet or --

17 A I'm getting there. Yes, sir. This is -- this is a
18 MAIT form. Mechanical examination form that says basically
19 left front could not be removed due to impact damage, and at
20 the bottom it says no mechanical defects could be found.
21 And, you know, you obviously can't find them maybe on every
22 wheel if you don't examine every wheel. This is the left
23 front of Mr. Rowell's truck. The one that was not examined.
24 It just simply was not removed to examine the brakes.

25 A lot of measurements were taken in this case and a lot

1 of angles were measured. Distances were measured and so
2 forth. And to determine speeds, speeds were attempted to be
3 determined in several different ways on this case. And I'm
4 just going to talk about a few of those ways now.

5 Q Hold on.

6 A Accuracy of speed determination. The post-impact
7 travel distance for red truck restricted by guardrail. I
8 don't think there's any argument about that. Sergeant
9 Duncan testified yesterday, not a true head-on inline
10 calculation. It was a ballpark number. And sometimes --
11 you know, I don't like the term ballpark, but ballpark may
12 be the best you can do. But we just need to make sure we've
13 done the best we can in this kind of investigation.

14 Here his notes, he clearly designates that the distance
15 was shortened by contact with the guardrail and the red
16 truck after impact. The vehicles rotated -- both rotated
17 counterclockwise basically and the red truck traveled about
18 10 feet and hopped up on the guardrail with the back bumper
19 and was -- it's post-impact travel which is -- which is a
20 factor is taken into speed calculations was deterred or cut
21 short by the guardrail. No question in my mind that that's
22 actually what happened. There's just a photo showing that
23 the truck was rotated and stopped by the guardrail.

24 Q So let me help -- help try to understand. Are you
25 saying that had that guardrail not been there and had that

1 traveled further in reverse, or backwards, that that might
2 have changed the ability of you as experts to determine the
3 speed of the truck, or both trucks?

4 A Yes, sir. It could have -- it could have affected the
5 speeds of both vehicles. As I've said, the post-impact
6 travel from impact out to rest is a -- is one of the
7 ingredients that you use in this type speed calculation, and
8 this one was cut short by the -- by the guardrail.

9 Q I believe Mr. Duncan concurred with you on that issue?

10 A Yes, sir. I -- Yes, sir.

11 Q All right. Go ahead.

12 A Just another -- just another angle of the same -- same
13 thing, showing the truck is on the guardrail. And that
14 would -- that would cut the travel distance short.

15 Q Is that damage down the left-hand side?

16 A Right-hand side?

17 Q I'm sorry. The right-hand side? The passenger side?

18 A Yes, sir. If you're sitting in the truck, the
19 right-hand side. There appears to be some minor damage.
20 Some paint flecking or flakes, like maybe some sort of minor
21 impact under the molding there.

22 Q What about that tire on the right-hand side? Is that
23 -- back there. Does that look -- what's that little --

24 A It looks like maybe there's possibly some areas where
25 something had been rubbed or possibly a slight contact.

1 Tire sizes, we've heard a lot about that from the stand
2 yesterday. The MAIT mechanical here, general vehicle exam
3 form shows MasterCraft AXT 205/70R17s on the vehicle. On
4 Mr. Rowell's vehicle. Actually they were 265/70R17s. So
5 just, you know, could be -- could be just it was written
6 down wrong. Okay? It was written down wrong. But in these
7 type investigations, these type serious investigations, just
8 pointing out some discrepancies. We have to be careful when
9 we're documenting these type situations. When you -- when
10 you use those sizes -- here we have other sizes. The
11 vehicle was designed for P235/75R16s and it actually had
12 265/70R17s, which is actually a different -- if you notice,
13 that's a different size than the one here. It's 205 here.
14 So that -- you know, there was a lot of speed calculations
15 done to show that that changes speed calculations. I
16 actually did some research and found that Yokohama,
17 Goodyear, Tire Rack, GM, some of those -- some of those
18 actual tire makers recommend several different sizes. So
19 one of the sizes they recommend is actually a size that was
20 on -- that was on this vehicle. So I really don't know that
21 the tires -- in my opinion, the tires didn't have a whole
22 lot to do with the speed variances.

23 Q Well, let me ask you this. Did you receive notice that
24 the MAIT team, in its initial report and its initial
25 analysis, decided to change its analysis as it related to

1 speed and distance based upon the tire?

2 A Yes, sir. There were changes made. And that's what I
3 was trying to point out. The -- at first, as I said, I
4 guess, the size was written down wrong, and then Auto Stats
5 a common program that reconstructionists use, that say these
6 type -- these sizes should be on the truck. But they're
7 actually in contradiction with some manufacturer's
8 recommendations. So all of which could change the speed
9 possibly as calculated, but I'm just of the opinion that I
10 don't know about this tire thing, because there are so many
11 tires that are recommended for this vehicle that I'm not
12 sure the changes. The size. I'm not sure all the
13 recommended sizes are what change the speed.

14 Q What about the speed of the red truck?

15 A Well, this -- this first red truck speed here is 58 --
16 58 miles per hour. That was the original speed calculation
17 done.

18 Q So you're saying that MAIT originally said that the red
19 truck was going how fast?

20 A Fifty-eight miles per hour at the beginning of skid and
21 47, I think it is, at impact. Yes.

22 Q Did that change?

23 A That did. That did. When we decided we had the wrong
24 tires on it, it changed -- the second calculation came out
25 to be 41.81 at the beginning of skids, and 24 miles per hour

1 at impact, based on different tire sizes.

2 Q Why? Well, how in the world would you determine the
3 speed of the red truck based upon the tire size of the blue
4 truck?

5 A Say that again, sir?

6 Q How would you determine the speed of the red truck by
7 looking at the tires of the blue truck --

8 A Well, the tires --

9 Q -- in this case?

10 A The tires -- the blue truck, an ACM speed was used. A
11 black box speed was used. Heard testimony about that
12 yesterday. The ACM, SDR, whatever black boxes in the
13 vehicles. That speed was used for Mr. Rowell's vehicle.
14 And then once -- once it was discovered that maybe the tires
15 were different than what the -- than what one reference
16 called for, the Auto Stats, then the calculation was done on
17 the difference in the circumstances and it changes the
18 speed.

19 Q I understand how it can change the speed of the blue
20 truck, but help this jury understand how it changes the
21 speed of the red truck.

22 A The blue truck speed in the type calculation that MAIT
23 did on the speeds for both vehicles. As I've said, the blue
24 truck, the ACM, or the black box speed was used. Well, this
25 is a -- this is a near head-on. It's pretty close to a

1 head-on collision. In my opinion, it's not a true head-on.
2 And we had testimony yesterday from Sergeant Duncan that he
3 pretty much agrees it's a ballpark, or it's not a true
4 head-on, so -- but in a head-on calculation you have to have
5 the speed of one of the vehicles. So we had the speed of
6 the blue truck, Rowell's truck, from the ACM. And that's
7 the one that kept changing because of the discoveries of
8 different size tires. So in turn, that changed not only his
9 speed but it changed the speed of the red truck a couple of
10 times.

11 Just an observation from the animation. The second
12 animation. This is the red truck. Ladies and gentlemen of
13 the jury, you all saw the animation yesterday. This is a
14 still shot at about 15 seconds in the animation. You can
15 count -- you get real close and put your glasses on like I
16 have to do, you can count 15 guardrail posts -- or, I'm
17 sorry, 20 guardrail posts on the sides. And they actually
18 line up. There's 20 on each side and they're actually
19 straight across from each other. Those guardrail posts are
20 six to six and a half feet apart. This is more like six and
21 a half. So that's 120 feet with 20 pots. And just doing a
22 little time and distance, constant speed takes -- takes 1.68
23 seconds. I actually ran -- ran the vehicle through several
24 times and timed it to that point. Got an average 1.68.
25 When you do constant speed calculation that's 49 to 51 miles

1 per hour depending on whether you're looking at 120 or 125.
2 So just a little range there. So from the second animation
3 that as produced by MAIT we get another speed. We get like
4 a third speed.

5 Q So let's talk about the first, second and third speeds
6 then. In their last animation how fast do they have the red
7 truck going pre-impact?

8 A On the animation here it's -- like I said, based on
9 this calculation it's 49 to 51 miles per hour.

10 Q And the second one, what was their calculation of the
11 red truck?

12 A This -- this is the second animation.

13 Q Excuse me. The second speed that they came up with for
14 the red truck.

15 A It was 41.81 miles per hour.

16 Q And then what was their -- so what was -- so it went
17 from 41 -- excuse me.

18 A It actually went from 58 to 41, to 49 to 51.

19 Q Is that -- I mean, if this is mostly an exact science,
20 why would you have such a deviation between their three
21 analyses?

22 A Well, it's not an exact science, ladies and gentlemen,
23 but it's -- you need to be consistent. And this was given
24 -- this was given to you all as a visual aid to show you
25 what happened in this collision. And it's not -- what I'm

1 just pointing out is it's not in agreeance -- it doesn't
2 agree with their former calculation. So the time and
3 distance calculation is not showing this truck from point A
4 to point B on this scale diagram, or this scale CAD drawing
5 that was put into motion, it's not showing the same speed as
6 the calculation.

7 Tire size, again, just another documentation of tire
8 size. One of the -- one of the places where the tire --
9 tire size changed.

10 Q And so, that's all your backup for your tire issues?

11 A Sir?

12 Q That's all your backup? You've got backup behind that,
13 just to try to get to the bottom line so we don't bore this
14 jury to death --

15 A Yes, sir. It is. It is.

16 Q -- with this -- this --

17 A That was. That last slide, yes.

18 Q So that'll be the last slide on tire stuff that we need
19 to talk about?

20 A Well, yes, sir. I was going to mention one more here
21 that has to do with actually the red truck. We were talking
22 about tires on the blue truck and how there were so many
23 different sizes of the question. And even the manufacturer
24 specs called for -- can recommend several different sizes.
25 However, the red truck had the wrong size tire on it as

1 well.

2 Q But did they do an analysis on the red -- the red
3 truck's tires size?

4 A Not that I saw. There was no analysis on this. This
5 wasn't -- this wasn't pointed out.

6 Q So was there any analysis on the red truck?

7 A Well, there's -- there's a speed analysis based on the
8 blue truck's speed, but no mechanical or no -- no tires or
9 basic mechanical examination on the red truck. No, sir.

10 Q Well, let's talk about pre-impact skid evidence, if
11 you're through with your tires. Do you feel like you've
12 covered the tires?

13 A Yes, sir.

14 Q I know there's a lot of specifications --

15 A Yes, sir.

16 Q -- and a lot of detail. Go ahead.

17 A Pre-impact skid evidence for the red truck, which tires
18 made the marks. You'll see a CAD drawing here which shows
19 -- is highlighted in yellow. Tire -- tire marks that appear
20 to be coming from the back of the red truck. So it kind of
21 appears to me that there are rear skids in that -- in that
22 depiction.

23 Q As opposed to front skids?

24 A Yes.

25 Q Would that make a difference as to your speed time and

1 distance determination?

2 A Not necessarily. It's just more of a -- it's more of a
3 documentation issue. Was the documentation accurate. Was
4 it accurately documented. Here a clip at 27 seconds from
5 animation, the first animation, looks like rear skids as
6 well. The skids stop at impact and they are behind --
7 behind the vehicle there as you can see. Behind the red
8 vehicle.

9 Q Are those tires in their animation lined up with the
10 skidmarks?

11 A Well, this is -- this is at impact and it started to
12 rotate here. Here we see another clip of animation on the
13 left where the skidmarks don't line up -- I actually have a
14 better -- better photo there. At 52 seconds into the first
15 animation I don't have an idea which tires made those marks.
16 As you can see, they're in front of the rear tires and
17 they're beside the front tires, so that's -- that's the
18 problem with the evidence lining up and being accurate.
19 Being an accurate depiction.

20 Q So with that 360 they were talking about yesterday, if
21 the truck is over to the right a little bit in your 360
22 dynamic that would throw it off somewhat?

23 A Well, it could. I mean, it just depends on your other
24 factors. But the point here is just that the animation is
25 not accurate. It's not accurately depicted on the evidence

1 that was on the scene.

2 Q Go ahead.

3 A Just another -- another clip at one minute. Right side
4 skidmarks for the red truck, and the mark is actually in
5 front of the front tire. So not an accurate depiction
6 there. And the truck is beside the mark. The wheels are
7 not actually on the mark. That's -- you know, the question
8 becomes left of center. Blue truck left of center. When
9 did he go left of center. When did he decide to go left of
10 center. Who was left of center at impact. Were both
11 vehicles left of center at some point. What's actually the
12 causation.

13 MR. DOWTIN: Objection, Your Honor.

14 MR. BLACK: We'd like to just get that off.

15 MR. GARRETT: Take that off.

16 MR. BLACK: I don't know if we need to address this or
17 not, but --

18 MR. GARRETT: We do.

19 (Whereupon, a sidebar was held.)

20 Q I want you to skip over that one for the time being.
21 But did you have an opportunity to review all witness
22 statements and that type of thing in this case?

23 A Yes. Yes, sir. I did.

24 Q And in trying to determine pre-impact, post-impact,
25 impact and causation did you consider some of those things

1 as well?

2 A I did, yes.

3 Q Don't discuss what Mr. Pennington said. We'll have to
4 bring him here on that. But go ahead, without that.

5 A Yes, sir. Next line is a view -- an animation view
6 from the first animation at 39 seconds. I mean, I'll let --
7 I'll let the jury decide. It appears to me this red truck
8 is left of center from -- from this animation clip. He's
9 showing the red truck left of center.

10 Q And would that be consistent at least early on in --
11 that's the first -- that's the first one, right?

12 A Yes, sir.

13 Q And so, that would be consistent that the red truck was
14 left of center, based on everything you've observed?

15 A Yes, sir.

16 Q Keep going.

17 A Same -- same type deal a few seconds later. Impact is
18 in view on this one, 47 seconds maybe. Still appears to be
19 left of center. Moving on down the road, this looks like
20 the red truck is hugging the center line now. Maybe on the
21 center line moving back into the proper lane of travel.

22 Q And in the simulation do they have him left of center
23 there or is he kind of straddling up there?

24 A He's -- he meaning Mr. Rowell -

25 Q Mr. Rowell. The blue truck.

1 A Yes, sir. The blue truck is -- appears to be
2 straddling the nearest side solid double yellow line in the
3 median nearest his side.

4 Q Is there any evidence of that? I mean, other than the
5 animation, is there any evidence as to where the blue truck
6 was in relationship to the red truck at or about this time?

7 A No, sir, other than -- red or whatever.

8 Q Go ahead.

9 A This is a -- this is a very important picture or
10 observation for a reconstructionist. This is the impact
11 point where the two vehicles came together. You can
12 actually see the end of the left front tire. In some of the
13 slides earlier the skid stopped before they got to impact in
14 the depiction. In the animation. You can clearly see here
15 the red line, the bottom red line --

16 THE WITNESS: I kind of need to walk up there, Your
17 Honor.

18 MR. GARRETT: Go ahead.

19 A These lines -- just to show the angle of these gouges.
20 These gouges are the point of impact. No -- no disputing
21 that by me or MAIT. Not contradicting them on that. It was
22 not real clear yesterday. Didn't really get testimony out
23 that this was the left front that I observed all the way to
24 impact and then after impact. This is like a Y-mark we call
25 it. So the vehicle stops and rotates back. The red

1 vehicle. The question could be, well, you know, who made
2 these gouges. Well, if you really look at the evidence and
3 examine the evidence, you know, the thought is, well, it
4 could be from either vehicle. But if this is the left front
5 of the red truck then the undercarriage and everything that
6 would make gouges would be in this direction. So these are
7 clearly from the blue truck. And the importance of that is
8 to show the angle at impact, or maximum engagement of the
9 blue truck. The blue truck is heading in this direction.

10 Q So the blue truck is clearly in the red truck's lane
11 but heading out of it?

12 A Yes. Heading back to the proper side.

13 Q At the point of impact?

14 A Yes, sir.

15 Q In your opinion?

16 A Yes, sir.

17 Q Go ahead.

18 A And there's other evidence that's pointed out yesterday
19 that ties in with that at the top of the red lines that lead
20 to the area of rest where the blue. So it all goes
21 together.

22 Q Animation number two. This is just the measurements I
23 took that I've talked about earlier and the timing. The
24 timing -- or I used this slide twice. Once in the speed and
25 once in the tires to show the difference in speeds. Same

1 thing. Just a speed contradiction, 49, 51 based on the
2 animation.

3 A I this clip at, it looks like, 38 seconds in the second
4 animation the truck is not accurately depicted on the
5 evidence. On the skidmark evidence.

6 Q Which truck?

7 A The red truck.

8 Q Why not, or can you determine why not?

9 A This photo -- this photo was looked at extensively
10 yesterday and it shows the left front wheel at rest on the
11 skidmark of the right side. So that skidmark goes on under
12 the truck to impact. And this just happened to end up here.
13 That's not the skidmark of the left front. It's actually
14 the skidmark of the right front. And that's what was
15 testified to. However, here the point is the animation
16 shows the left front not really even close to the right side
17 skidmark at rest.

18 Q Let me ask you this. Would you go back to that one
19 just before this. Yeah. No, it's the one after that.
20 That, yeah. If you were to take the standard width of that
21 truck and put that right tire on that line, how close would
22 it have been to the center line at that point?

23 A How close would the truck have been?

24 Q Yeah.

25 A Well --

1 Q You can see, is that a left skidmark there?

2 A It is. It is.

3 Q So that's the left -- the little -- the little marking
4 there to the left is the left side -- is the left --

5 A Yes, sir. This photo shows -- it doesn't show the
6 entire left side, but it shows the left side skidmark coming
7 in with the orange paint got it on it, and then there's a
8 lot of debris and you can't see it. That's both skidmarks.
9 And they appear to be at an angle to the right, showing that
10 the vehicle is sliding. At the end of the skids it's closer
11 to the white line than at the beginning of the skids. Just
12 another clip from the animation showing an inaccuracy. We
13 just saw that the skidmarks go to impact without a doubt.
14 This clip shows the left side stopping. You can't see the
15 right side. But the left side skidmark has stopped before
16 impact. The vehicles have not touched yet in this -- in
17 this clip.

18 Q And based on that line you drew just a moment ago about
19 the -- the placement of the blue truck, would it be going
20 from left to right or would it be going from right to left
21 based upon that earlier --

22 A It would be going from left to right. The --

23 Q That's got it going the other way though.

24 A Yes, sir. The angle at impact is off somewhat, in my
25 opinion. The blue truck was actually traveling -- had

1 clearly been in the lane. Been in the opposing lane. Been
2 on the wrong side of the road and was trying to correct back
3 at impact.

4 Another picture that we've seen already but just
5 another example of impact. At the bottom right corner you
6 can see that left -- left mark coming in from the red truck
7 and it Ys back around to rest, and actually comes to rest at
8 the left front on the right side skid.

9 Followup picture. Very similar to the one I had the
10 arrows on earlier showing the same depiction. The end of
11 the left front skid right at impact where the big gouges
12 are. And the direction -- the importance there again is the
13 direction of those gouges showing which direction their
14 headed. And that helps with the placement of vehicles in
15 calculating speeds based on linear moment. Just another
16 same thing. A picture here with a little better lighting,
17 but it shows the same thing.

18 MR. GARRETT: Judge, may we approach?

19 (Whereupon, a sidebar was held.)

20 Q Your next section deals with very definite tire sizes
21 and whatnot?

22 A Yes, sir. I've just got that documentation I spoke of
23 earlier of variance in tires. I was just going to run
24 through that kind of quickly.

25 Q Okay. Go ahead.

1 A Just research Tire Rack for Mr. Rowell's vehicle shows
2 a 17 inch 245 70/17 which is the size under the tire that
3 was on that vehicle. Yokohama shows LT245 75R16E. So it
4 even recommends a 16 as an accepted tire size. So we've
5 heard pretty much about 17s until now, but this size 16 is
6 even recommended by Yokohama. Goodyear -- Goodyear actually
7 has the tire listed that was on Mr. Rowell's vehicle at the
8 time of the collision, B265 70R17. That's the middle one
9 there at the bottom just above the blue. That's the tire
10 size that was on the vehicle and it's recommended by
11 Goodyear. And then 245 is to the left, and the four-wheel
12 drive is recommended for the same size tire that he had on
13 his vehicle under the two-wheel drive category. So it could
14 be on the two-wheel drive or the four-wheel drive.

15 Q Can we go ahead on past the tire information?

16 A Yes, sir.

17 Q It's getting kind of late and that's very technical
18 detail and --

19 A Yes, sir.

20 Q -- as long as you're making your main points.

21 A Yes, sir.

22 Q If you need to back some of it up, that's fine.
23 Otherwise, let's move on.

24 A I calculated the speed based on some of that evidence
25 that I showed you earlier, the angle, the weight. This is

1 linear moment. The calculation takes into account the
2 weights of the vehicles. It takes into account the
3 post-impact travel after impact. How far did it go. What
4 was the drag factor of that period. What was the distance.
5 What was the surfaces. And the angles, the weights. Those
6 distances. The angles that the vehicles approached before
7 they came together and the angles after as they departed
8 from each other. So this is a 360 momentum -- linear
9 momentum. It's not an inline calculation. I felt like this
10 would be a more accurate depiction of the speed of the two
11 vehicles. When the approach angles get as close as these
12 did, MAIT - MAIT was right in using -- you know, you can use
13 what they used. I don't know that it's the best scenario to
14 use. But the thing with this momentum is you have to be
15 careful when the angle -- the approach angles look that
16 close because it's just -- you're off a little bit you can
17 get some crazy numbers. But if you -- if your angles are
18 off you will get crazy numbers. So you'll know
19 -- you'll know that that's not accurate. And then this
20 program actually runs what's called a Vector Sum Analysis
21 and it -- it shows whether the calculation actually is good
22 or not, basically in layman's terms, because energy in has
23 to equal energy out, and that all checked out in this
24 calculation. In my speed calculation for both vehicles was
25 59.9 for Mr. Rowell's vehicle, the blue truck, and 18 miles

1 per hour at impact for the red truck, and it was 40 to 41 at
2 the beginning of the skid. And these are just the numbers,
3 the inputs that go in, and one of the Vector Sum Analysis
4 diagrams that shows the equal weights on both sides. The
5 equal -- not equal weight as in pounds but equal momentum on
6 both sides coming in and out. Just to kind of check to show
7 the calculation was good. These are just supporting
8 calculations that go into the main calculations.
9 Post-impact speeds and so forth. Angles. Just a little
10 diagram of angles that were drawn to get the approaches and
11 departures. And then when I obtained those speeds then I
12 used this little depiction to try to figure out what
13 happened. What actually happened in this whole scenario.
14 And based on information that I had reviewed --

15 Q Whose that red -- whose that red car down there in your
16 depiction?

17 A That was Mr. Pennington's.

18 Q All right. Go ahead.

19 A That was at the intersection of Scotch Cross Road. Mr.
20 Rowell was headed in the direction from Scotch Cross to the
21 left. His distance from Scotch Cross would have been 500
22 feet to impact based on the red line there. Can I point?

23 Q Yes, please do.

24 THE COURT: Sure.

25 A I thought my pointer was going to work, but my pointer

1 didn't work. From this point to impact, 500 feet. Based on
2 my speed calculation of 59 miles per hour that would take a
3 constant speed of 59, that would take Mr. Rowell 5.78
4 seconds to reach impact. Also, there as information that --
5 I'm sorry. I've got to get where I can reach it.

6 MR. BLACK: Objection, Your Honor.

7 THE COURT: You need to speak up, Mr. Sims.

8 THE WITNESS: Okay.

9 A 313 feet back. The information I --

10 MR. BLACK: Judge. Judge, I think this is the issue
11 that we addressed previously that he's about to start
12 talking about. We're objecting to about -- what he's about
13 to say. I think that we discussed that two sidebars ago,
14 maybe three. I lost count.

15 MR. GARRETT: Well, he's not going to speak about --

16 THE COURT: Well, come on over.

17 (Whereupon, a sidebar was held.)

18 Q Again, don't say anything about what Mr. Pennington
19 said. Again, don't say anything about Mr. Pennington and
20 the red vehicle, but you can go ahead -- don't say anything
21 anybody else told you. Just tell us --

22 A Based on the information I obtained --

23 Q Yes, sir.

24 A -- the red truck had possibly crossed the center line
25 in this area at 40 miles per hour calculated speed. My

1 calculated speed, which would put him 4.41 seconds back.
2 Information I obtained, that made him cross the center line,
3 dropped off the road or whatever. There was actually some
4 guardrail damage here at 313 feet that could possibly match
5 the damage to the right side of the red truck. And
6 something that appeared to be rubber that could -- black
7 marks that could have been from tire rubs. But anyway, from
8 this point at 313 feet it takes the red truck 4.41 seconds
9 to reach the beginning of the skidmark, and there's a 50, 54
10 feet of skidmark there. And the time of the skid to go from
11 40, 41 miles per hour to 18 miles per hour is going to be
12 1.3 seconds. So when you add the 1.3 and the 4.41 you come
13 up with 5.71 seconds for this whole maneuver to occur. And
14 based on information of Mr. Rowell's vehicle being, at this
15 point in time -- I just thought it was kind of interesting
16 on the speeds. It kind of made me feel good about my speed
17 calculations, that at 59 his times are so close to Mr.
18 Cockrell's time to get to impact within tenths and a few
19 hundredths. This would give -- if there -- if there was any
20 maneuvering going on up here, this time would be enough time
21 to kind of -- to kind of show what happened in the
22 animation, or as the animation showed Mr. Cockrell's vehicle
23 on the center line and moving back to the beginning of the
24 skids and then sliding to impact at somewhat of an angle to
25 the right which could tend to lead you to believe that he

1 was coming from left to right at the end of the skid.

2 Again, the 500 foot of travel, same time as the maneuvers

3 over here on this side from the red truck.

4 Q So you're saying that it's possible then that the red

5 truck had crossed the center line and then eventually came

6 back into his lane?

7 A Yes, sir. It's possible based on -- based on

8 everything that I've looked at. The whole -- the whole

9 approach and, you know, going back. Going back further and

10 looking for evidence.

11 Q Now, did MAIT - you may want to come back over here

12 now, unless -- unless you want to stay over there longer.

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

14 Q Now, did MAIT do any analysis on the red truck?

15 A Not to my knowledge. No, sir.

16 Q Did MAIT do any analysis, to your knowledge, of the

17 road -- I guess it would be north of the -- north of the

18 area of impact? In other words, north along the guardrail

19 and maybe even towards the fairground?

20 A Not -- not that I've seen. No, sir.

21 Q You heard the testimony of one of the officers, it

22 might have been Duncan, who said that when people serve in

23 and out of lanes or whatever they sometimes leave very light

24 marks that dissipate relatively quickly.

25 A Yes, sir.

1 Q Do you recall him saying that?

2 A I do. You could -- you could leave scuff marks, scuff
3 marks or, you know, could be -- I like to use the term scuff
4 or something like that. And they are going to dissipate
5 rather quickly because it's not a -- it's not a locked tire
6 actually putting a dark mark down. It's a rotating and slid
7 slipping tire that leaves a scuff mark. So it's just like
8 when you go into a curve too fast and you maybe hear a
9 little noise. That's your tire scuffing. You're starting
10 to lose friction, brake traction, so your tire is scuffing
11 but it's not sliding. It's not skidding.

12 Q To your knowledge, did any -- was any analysis done on
13 the road for that 319 -- I'm sorry.

14 A 313.

15 Q 313.. Any analysis done to that area of the road -- on
16 the road to look at it and see whether or not there was any
17 yaws or anything where the red truck might have crossed the
18 center line in that area?

19 A Not to my knowledge. I didn't see anything documented.
20 I don't think that the -- the animation didn't go back as
21 far as the end of the guardrail.

22 Q It did not?

23 A It did not actually.

24 Q All right. And so whereabouts did you -- I guess you
25 ought to help us find out where you -- where did you find

1 some damage to the vehicle vis-a-vis -- or consistent with
2 damage to the guardrail?

3 A Well, just a couple more slides.

4 Q Yes, sir.

5 A But I can come back down.

6 (Whereupon, witness steps down from the witness stand.)

7 Q These are just some photos, ladies and gentlemen, that
8 show -- I can zoom up and show you it's six feet between the
9 post, which I thought was important based on the calculation
10 I gave you earlier. I wanted to let you know the distance
11 is correct. This was just a picture of the guardrail on the
12 left side traveling the direction of the red truck. This is
13 my measuring instrument showing I measured the 313 feet.
14 Again, the distance between the post. You can actually see
15 -- you can actually see some damage and some black marks
16 there on the guardrail at that point, which is about 313
17 feet.

18 Q Let me ask you this. I mean, at this late of date, if
19 that wasn't pretty well documented at or about that time is
20 there any definitive way to show whether or not, without
21 having the red truck or the tires on the red truck, would
22 there be any definitive way to determine whether or not that
23 truck actually made those marks along the rail?

24 A No, sir. Not really, no. Not definitive.

25 Q And again, were you aware at the beginning of this

1 case, if no analysis was done whatsoever on the red truck's
2 direction into -- towards the Hot Spot or --

3 A Yes, sir. That's correct.

4 Q You found that out?

5 A Yes.

6 Q So you went out there and did that on your own?

7 A I did. Yes, sir.

8 Q Go ahead.

9 A Just showing the guardrail on the right-hand side in
10 Mr. Cockrell's direction. There's a measurement taken down
11 there which is about 18 inches, I think it is, which would
12 be about the same height as just under the molding on the
13 right side of Mr. Cockrell's truck.

14 Q So that little -- at the bottom, would that be the tire
15 mark?

16 A It could possibly be. Yes, sir.

17 Q Would that be consistent with that ring?

18 A It would. There's black scuffing, black marks, and
19 actually some indentation there on the guardrail in that
20 location as well.

21 Q Is there -- what about that -- the step guard on the
22 right-hand side of that --

23 A Yes, sir.

24 Q -- on the passenger side of the truck?

25 A It's damaged as well. It could have possibly made some

1 impact. I really -- it would be hard to say. But it -- it
2 is damaged.

3 Q Did the rail look like it got damaged? I mean, the
4 door on the passenger side and then the -- do you have that
5 picture again?

6 A I do.

7 Q Was there any -- any impact on that?

8 A The -- once again, this was -- this was a horrendous
9 impact between the two vehicles. But the step -- the step
10 on the passenger side is actually pushed backwards some, it
11 appears from photos. This photo and other photos. And
12 there's what could possibly be some impact damage, paint --
13 paint damage there. Paint being removed under the molding
14 on the -- on the passenger door, as well as possible paint,
15 tire impacts or imprints with the tires there. Just had one
16 more slide.

17 Q Okay.

18 A This is -- this is just an overhead shot of the area of
19 impact. And if you look closely at the end of the corner
20 there over impact you can see those two gouges that lead
21 back to the right inside of the road. And just to point
22 out, there's -- there's a culvert at the bottom of the
23 picture there on the right. There's a small -- small thing
24 of water there that you can see, and then there's a large
25 water hazard further on up. There's actually a swampy area

1 which ponds up at times there. And, of course, the end of
2 the guardrail on the right. So with all those obstructions,
3 you know, a person might decide to go left instead of right,
4 especially if they thought they were observing someone
5 coming at them on their side of the road.

6 Q And going back to the little box. Did it show an
7 increase in speed for a second there? In other words, is it
8 consistent with somebody trying to power -- power drive
9 around the problem?

10 A It could be considered that. The speeds were pretty
11 well consistent several seconds out and then they -- and
12 then they slowed by a mile per hour or two and then it
13 accelerated by --

14 Q Kind of like somebody let off the gas to kind of make a
15 decision and then get on the gas to try to drive through it?

16 A Very possibly. And then it accelerated for a second or
17 two right before impact. I haven't looked at that today,
18 but that's from my memory, yes.

19 Q If you'll return to the --

20 A Yes, sir.

21 Q If you'll return to the stand.

22 (Whereupon, witness returns to the witness stand.)

23 Q In your opinion, based upon everything you've shown us
24 today, is -- let me give you a hypothetical. Is it possible
25 that a person who is driving the 59 miles an hour as you

1 indicated in the blue truck, and the 40 something mile an
2 hour of the red truck at or about the points that you point
3 out, for them to come together, based on your numbers it's
4 pretty close. Do you feel very comfortable with that?

5 A Yes, sir. I do. The times match up and the speed
6 looks -- you know, it's a big calculation based on my best
7 knowledge, yes.

8 Q Is it also consistent that there is some evidence out
9 there that there might have been some goings on in that
10 truck coming out?

11 A Yes, sir. That's -- that's very possible.

12 Q Two people arguing and whatnot and getting over into
13 the side of the road or coming -- coming at you. Would it
14 cause you to pause and try to figure out what to do next?

15 A Yes, sir. The -- usually when folks aren't maintaining
16 their lane of travel there's something going on. There's a
17 distraction. So yes, sir.

18 Q And this is a unique thing in the sense that as you
19 approach this from Scotch Cross Road you actually got a
20 median that you can kind of hang out in the median there a
21 little bit until you can figure out which way they're
22 coming?

23 A That's correct. Maybe they'll turn -- you have some
24 wiggle room or whatever. You're not -- at that point you're
25 not just across a narrow line into someone else's lane.