Office of Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida

ON APPEAL TO THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

Shannon Stephen,
Appellant,

vs.

State of Florida,
Appellee.

FIRST SUPPLEMENTAL

Transcript of Record in the case of State of Florida, Plaintiff(s) vs. Shannon Stephen, Defendant(s). Circuit Criminal Number(s) 06-1591CFAWS in the Circuit Court of the Sixth Circuit in and for the County of Pasco, State of Florida, prepared for use on appeal to the District Court of Appeals, Second District.

Robert Harper, Esq.
325 W. Park Avenue
Tallahassee, FL 32301
Attorney for Appellant

Office of Attorney General
Concourse Center
3507 East Frontage Road, Suite 200
Tampa, FL 33607
Attorney for Appellee

Presiding Judge: Honorable Shawn Crane

SHANNON STEPHEN
VS.
STATE OF FLORIDA
CT.CR.NO. 06-1591
APPEAL NO. 10-4018
VOLUME II PAGE 1

SUPPLEMENTAL INDEX

Rec'd
CD attd to original

SAO 12/19/11

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

STATE OF FLORIDA,

ORIGINAL

Plaintiff,

vs.

CASE NUMBER
CRC06-01591CFAWS

497502

SHANNON LEYLAND STEPHEN,

Defendant.
_____/

PROCEEDINGS: Motion to Suppress Hearing

BEFORE: HONORABLE SHAWN CRANE
Circuit Court Judge
Sixth Judicial Circuit
New Port Richey, Florida

DATE: March 26, 2009

PLACE: West Pasco Judicial Center
7530 Little Road
New Port Richey, FL 34654

TRANSCRIBED BY: Ken Bernard
Court Reporter

FILED FOR RECORD
PASCO COUNTY, FL
2011 DEC 15 PM 4:07
Paula S. O'Neil
Clerk & Comptroller
Pasco County, FL

Administrative Office of the Courts
Court Reporting Department
Robert D. Sumner Judicial Building
38053 Live Oak Avenue
Dade City, FL 33525
(352)521-4375

APPEARANCES

APPEARING ON BEHALF OF
THE STATE OF FLORIDA:
Michael E. Rosario, Assistant State Attorney
Office of Bernie McCabe, State Attorney
Sixth Judicial Circuit, Pasco County
New Port Richey, Florida 34653

APPEARING ON BEHALF OF
THE DEFENDANT, SHANNON LEYLAND STEPHEN:
Kenneth L. Foote, Esquire
6521 Ridge Road, Suite 4
New Port Richey, Florida 34668

* * *

I N D E X

PROCEEDINGS

THE COURT: All right. We're here with regard to the case of the State of Florida versus Shannon Leyland Stephen; is that correct?

MR. ROSARIO: Yes, Your Honor.

THE COURT: Case Number 06-1591CFAWS. Correct?

MR. FOOTE: Correct, Judge.

THE COURT: All right. And there is a motion to suppress that has been filed. I've had the opportunity to review that motion prior to coming into court here today. And this is the motion to suppress that was filed October, 2008; is that the one we're working from?

MR. ROSARIO: Yes, Your Honor.

THE COURT: All right. All right. Did you all want to start with testimony or proceed with a short kind of explanation? How did you all want to proceed?

MR. FOOTE: Judge, if we may, there are two other motions that we filed notice for today; those are smaller in nature.

MR. ROSARIO: I'm sorry, I only have one of those.

MR. FOOTE: One is a motion to issue a

subpoena duces tecum and one is a motion to compel.

MR. ROSARIO: And I only have the -- I only see the motion for a subpoena duces tecum.

MR. FOOTE: And they both deal with the same information. And I --

THE COURT: Yeah. And I haven't seen the -- actually, I haven't seen either one of those motions. The only one I received was the motion to suppress. So.

But you have received those, Mr. Rosario, or at least one of the two?

MR. ROSARIO: No, sir. The only one I have received was the subpoena duces tecum.

MR. FOOTE: Judge, they deal with the same information. I (indiscernible) if the Court wanted to hear those first, since they're quicker and they're non-testimony.

THE COURT: All right. Well, let's see if that's something that Mr. Rosario thinks they can do, even though they just got notice of the one, if they're that overlapping.

MR. ROSARIO: That's the motion to compel?

THE COURT: Well, apparently they're the same thing; it's the compel and then presumably to get

a subpoena duces tecum for that item; is that the idea?

MR. FOOTE: It's the same thing, Judge. Same information; same argument. And that was hand-delivered to the State Attorney's Office.

MR. ROSARIO: When?

MR. FOOTE: (Indiscernible.)

MR. ROSARIO: (Indiscernible.) That's interesting. The one I have is dated the 20th.

MR. FOOTE: Which one is that?

MR. FOOTE: The motion to subpoena duces tecum.

MR. ROSARIO: (Indiscernible) the motion to compel, because I didn't have it.

MR. FOOTE: Right.

MR. ROSARIO: Okay.

MR. FOOTE: Judge, while he's reading that, it's a factual basis.

Obviously, we're here on a two-count DUI manslaughter case. This case occurred actually three years to today; today is the third year anniversary. And Mr. Stephen, who is present here at counsel table, was charged with this crime by information.

And after extensive discovery and numerous

trial dates, we did have a trial back in June of last year, which ended up in a hung jury; it went back to pretrial and we're moving forward with new discovery.

The basis of the motion to issue subpoena duces tecum and the motion to compel is that several weeks ago the State provided us with a copy of additional phone records compiled by Sprint/Nextel (indiscernible) Kansas City.

And those records are in the form of what is called a Viador report, which indicates cell phone calls made to a particular person's telephone -- cellular telephone number, not Mr. Stephens, but another person that's listed as a witness by the State. We received that a few weeks ago.

And the basis of the motion to issue duces tecum, the subpoena, as well as the motion to cull records, are based upon the new discovery that was given to me by Mr. Rosario a couple of weeks ago. Based --

MR. ROSARIO: (Multiple speakers) reviewing the motion to compel, I do feel that there is a slight amount -- caught a little off guard by a little bit.

He has handed me a motion to compel which is

dated March 19th, which he said was handed in at the exact same time as the motion to subpoena duces tecum, which I --

MR. FOOTE: Didn't say that, Judge. Didn't say that.

MR. ROSARIO: -- dated on March 20th. The new motion to compel is requesting the Viador report, which I've already provided to the defense. They want copies of subpoenas.

THE COURT: Okay.

MR. ROSARIO: They want the names of persons involved in the request compilation of the Viador report and I have not done the deposition of these people yet.

And they're now asking -- as I see here, they're asking for copies of my personal emails that were involved in contacting of Sprint, and I'd have an objection to that.

And I -- I have not seen this motion to compel until it was provided to me in court.

What I did see going into here today was the motion for a subpoena duces tecum that I was going to question, because there was -- it was very vague. Their -- they -- they want the -- the custodian of records at Sprint/Nextel that has

documentation. And then they requested in paragraph number two, the documentary information requested in capitals and small letters and capitals all legal requests made to and reports compiled by Sprint/Nextel with regards to the cell phone records of Jim Wallace. That I thought was vague; I didn't know what they were going after.

I do think they're on a fishing expedition if they're going after my personal emails.

THE COURT: Okay.

MR. FOOTE: Judge, if I can make my argument.

I never stated that both were given at the same date. All I stated was it was hand delivered to the Office of the State Attorney. If the Court recalls, we were here probably a month or six weeks ago when this was provided to me. I did an ore tenus motion to ask for extra documents. Mr. Rosario objected, said he didn't get notice.

THE COURT: Uh-huh.

MR. FOOTE: You said set it on your calendar, which is what we did. And we're noticed here today about discovery that he himself provided.

The basis of our motion to issue subpoena duces tecum is as follows: The State listed a witness from Sprint/Nextel, which we contacted.

That person, who will not be testifying in this case, is just a litigation expert, who's able to talk about authenticity of the documents as well as procedure in compiling the documents.

MR. ROSARIO: I'm going to --

THE COURT: Okay, hold on.

MR. ROSARIO: I'm going to --

THE COURT: Let Mr. -- let Mr. Foote finish.

MR. FOOTE: Judge, and based on that, only thing I was provided was one copy of what Mr. Rosario gave me. I subsequently learned that this information was emailed to Mr. Rosario's personal email. And what I'm asking for is the original that was sent by Sprint/Nextel.

Sprint/Nextel said fine, we'll give it to you, but you're not the requesting party; the State of Florida asked for it first. We need a court order to actually give you the originals of what was given.

And so, that's -- that's the basis of the issue, the motion to -- to issue the subpoena duces tecum. That is to Sprint, so they can give us -- so we don't have to rely on what the State gives us.

I would like to see, so that we can examine

everything that was given to the State or what was used in compiling of these documents. Now, as a -- as a --

THE COURT: Well, let me ask this: Who -- I mean, who compiled the documents?

MR. FOOTE: We don't know.

THE COURT: Do you --

MR. FOOTE: No idea.

THE COURT: The State Attorney's Office or Sprint?

MR. FOOTE: No idea, Judge.

MR. ROSARIO: Judge, actually Mr. Foote does know. I gave this information to him --

THE COURT: Well -- well, just hold on a second. How do you -- how -- how is it that you don't know?

MR. FOOTE: Judge, I was given --

THE COURT: I mean, didn't -- you talked to the Sprint person; did the Sprint person say I didn't do those?

MR. FOOTE: Yes.

THE COURT: Okay. And the Sprint person said Sprint did not compile any of these reports you've got? This Via -- what's it called? The Via?

MR. ROSARIO: Viador.

MR. FOOTE: May I approach?

THE COURT: Viador report.

MR. FOOTE: May I approach with it, Judge?

THE COURT: Sure.

MR. ROSARIO: Judge, at this point may I ask who he spoke with? He keeps referring to this unknown person.

THE COURT: Okay. Well, we'll find that out in just a moment.

MR. FOOTE: Judge, this was discovery that was handed to me in open court on an off-calendar matter; I was here on another case. Mr. Rosario flipped in, came in, put it in my hand and left. That's all the information I have about that.

THE COURT: Okay. But -- but this -- these things here were not done by Sprint?

MR. FOOTE: I don't know, Judge.

THE COURT: Well, I mean, did --

MR. FOOTE: Two weeks later --

THE COURT: Did you ask?

MR. FOOTE: Two weeks later, I was provided a name of an individual at Sprint who I was told was going to be a custodian of records and could testify as to the general nature of that type of report.

I contacted the person that the State Attorney listed to me, Heather Ramos in Overland Park, Texas -- in Kansas. That's the person I spoke with to -- to determine what those records were about. Okay?

We wanted to get a copy directly from Sprint of what was given to the State of Florida. Especially after I learned that it was sent to Mr. Rosario's personal email.

You know, I don't know what the request was; I never saw a subpoena for these records in the first place.

These are not records like phone records that are just sitting around and they did a copy. The State actually hired a group of people to go into the databases of information that has been stored in a binary form, a bunch of --

THE COURT: Yeah, but a group of people at Sprint.

MR. FOOTE: I don't --

MR. ROSARIO: Correct.

MR. FOOTE: I don't know, Judge.

THE COURT: Okay.

MR. FOOTE: My -- my -- all I have is what you have in your hand; that's what was given to

me. No other further inquiry or questions were answered about the document. I was told -- I know what they want to use it for.

And so I said well, give me a person who is going to testify about these documents. And I spoke with Mr. Rosario a few times in the hallway off and on; he's given me some answers to his opinion --

THE COURT: Uh-huh.

MR. FOOTE: -- as to what happened.

But obviously, my client wants to know the basis of what was asked for, when was it asked for, who compiled it, how much they paid for it, when was it given to the State, and what media form was it given to the State.

When I spoke to the individual that was listed by the State, Heather Ramos, she indicated that Sprint, as a general rule, does not email evidence, for the obvious problems that could arise from it.

And in the few circumstances that they do email evidence, it goes to a dot gov or a dot state email. When I learned that it went to Mr. Rosario's personal email, being a former prosecutor myself, I thought it was highly unusual

that evidence in a major case such as this, is going to someone's personal email and not even to the Office of the State Attorney.

So at that point, in an abundance of caution, my client has instructed me to ask for any and all requests, subpoenas, anything in connection with this newly-presented evidence that's given three years after his arrest. Brand new evidence, which we're entitled to -- and be able to prepare our defense and to speak to our own expert regarding these technical documents.

I've learned that these things were compiled by individuals. I asked Ms. Ramos if I wanted to get my own -- they said we have to get a team of people together, because we don't keep records such as that until after 90 days, there's no more records, is what I was told in the three years in litigating this case.

Of course, the Court could imagine my surprise when I'm handed that document a few weeks ago, almost three years later; oh, we found some records.

We want to know where they came from, who asked for them, what did they ask for, in what manner did they compile them, the cost of

compiling them, everyone that's involved, and I want to see the original that was given to Mr. Rosario.

And if it happens to be he's chosen to use his personal email as a medium, then that opens it up to public record. I don't want to see his whole email; I want to see what Sprint sent him to his personal email.

So, the issue -- the issue here is, we're asking the Court to grant us permission for the clerk to issue a subpoena duces tecum to Sprint, so that they can send us what they have in their file.

The motion to compel is based to the State to give us any and all information regarding this request, so that we may properly prepare for our deposition and trial.

THE COURT: So, are you -- then I guess the idea is, are you going to pay Sprint to re-compile all this, if they have to do that?

MR. FOOTE: Judge, first I want to see what they gave the State of Florida; and it may not be necessary. But if so, my client's prepared to do that. We're not going to take the State of Florida's word in picking and choosing what they

believe is relevant in this case.

THE COURT: So, but once again, so you don't believe that Sprint -- well, Mr. Rosario, did Sprint compose this, or?

MR. ROSARIO: Judge, if I could give some background on this.

THE COURT: Okay.

MR. ROSARIO: On -- on a cell tower -- on cell records, it goes across and on the -- it goes across, it gives you phone numbers and the last number dialed. The next two cells on a cell phone record are usually cell tower information. Now, the cell phone companies delete that record after a period of time.

It seemed incongruous to me that there was just -- not going anywhere. So, I kept calling and I found out there was a thing -- initially, I thought it was called an IBM rollover. I was later (indiscernible) was told it was called a Viador report. But what it is is the information is -- is compressed into binary form. And it is kept by Sprint.

And I contacted them and I said can I get this; and they said -- they told me how much it would cost. It's $52 an hour to compile this.

And they compiled it; I asked for one hour, the only hour that's relevant to this case, between 1 and 2:00 in the morning on the night this -- this crash occurred; because the crash occurred at 1:09 in the morning. I asked for that one hour.

They sent it to me; they gave me that information. It came to me at my personal email address. When it came to me, they sent me all -- the reports that have just been provided to you, right before you; and I gave that to him.

There was one report that they gave to me that was extraneous and that I did not give to the defense. And I emailed back to them and they said oh, we gave you the wrong one; here's the right one.

I gave the defense everything that was relevant to this case. If it becomes an issue, Judge, while I think it's a fishing expedition, I have these -- I -- I never deleted these email requests. If you want to look at it in camera, that would be fine. I do not think -- I think it's a fishing expedition on the part of the defense and I don't think that it's relevant.

THE COURT: Well, I guess the question becomes, this other -- was this other report --

does -- did this other extraneous report deal with this defendant?

MR. ROSARIO: No. What it was was, it's called a 606 report; and what he did was, I believe he gave me an erroneous 606 report because we're talking about 2006. And when I asked him, I said the numbers aren't matching up on this -- those 606 reports; he said, oh -- he -- he basically, you know, he said I sent you the wrong one; this is the correct one. And he sent me the correct one and it matches up correctly.

THE COURT: Okay. So, is there any problem with giving the erroneous report over, so they can look at that?

MR. ROSARIO: No, I can give that to them, as well.

THE COURT: Okay. So, you can give them the -- so, this document that is in the form like this, was something done by Sprint?

MR. ROSARIO: Yes.

THE COURT: So, you didn't compile that?

MR. ROSARIO: I did not.

THE COURT: You did not sit around and do an Excel spreadsheet or anything of the sort?

MR. ROSARIO: I did not. And I did not pay

-- Mr. Foote's saying that I went out and I hired these specific people. I called Sprint and Sprint did this. And they gave this to me.

THE COURT: Okay. So --

MR. FOOTE: Judge, if I may respond to that. First of all, I take -- we take issue at the fishing expedition situation.

THE COURT: Well --

MR. FOOTE: We're three years into a case that's already been tried one time. Obviously, this case is not proven beyond a reasonable doubt. The State is still conducting an investigation and giving me discovery.

THE COURT: Well, just --

MR. FOOTE: A few weeks -- a few weeks prior.

THE COURT: Just like they just called it a fishing expedition, your statement is kind of your rhetoric to that.

MR. FOOTE: I wouldn't be fishing, Judge, if they didn't show me a lake to go to.

THE COURT: You know.

MR. FOOTE: They're still doing their things. If they give me evidence -- and the Court is the one. This Court, Your Honor is the one that decides what's relevant; not Mr. Rosario, the

State of Florida. So, if he picks out what he thinks is relevant --

What I'm asking for, Judge, and which is permitted under the rules, for the rule of completeness, is to give me everything that's in connection with this brand new evidence that the State is giving me.

The names, the addresses of people that are involved, so that we may properly depose these people; all reports that could possibly be *Brady* or not; we don't know.

I'm asking for all these documents that are there. Mr. Rosario says he has --

THE COURT: Well, what are all the documents? I guess that's what I don't -- I mean, you act like there's hundreds of documents out there. Are there? I mean, tell me what's out there.

MR. FOOTE: Judge, if there's not, then our subpoena will reveal nothing. But, Mr. Rosario just stated in open court, there's even -- this is the first time I've heard of that. There's another report that they erroneously sent.

I'm asking for whatever documents that were sent to Mr. Rosario --

THE COURT: Okay.

MR. FOOTE: -- to be turned over to us, so that we can conduct our own investigation and be able to call our own experts, if necessary.

THE COURT: All right. And Mr. Rosario has already indicated that he has no quarrel with turning those things over to you.

MR. ROSARIO: That's correct, Judge; I'll do it today. If you want to take a break, I'll go print out that -- that stuff, right now.

THE COURT: Okay.

MR. FOOTE: And Judge, what we're asking for is anything else I don't know about. Today is the first time --

THE COURT: Well, is there anything else that he doesn't know about?

MR. ROSARIO: Judge, the totality of this was because I did -- I did everything by the rule of discovery and by my subpoena power. There's a subpoena that -- that I sent; there is a consent that I got Jim Wallace to sign to get these records. And that's it.

THE COURT: Okay.

MR. FOOTE: Judge, I've never seen those documents.

THE COURT: All right.

MR. FOOTE: I've never seen any consent. This is not a pre-investigation; this is a post-arrest --

MR. ROSARIO: I'm not required to provide him with my investigative discoveries, subpoenas and consents.

MR. FOOTE: Ongoing litigation, Judge.

THE COURT: Well, I understand all that, but -- but I'm not sure that he's -- for instance, if the State Attorney's Office issues a subpoena, I guess it's your position that they have to give you a copy of that?

MR. FOOTE: Judge, I want to know what they requested. I want to know what it is that they are asking for. After they fix up and fashion up what they think is relevant, as Mr. Rosario just said, they give it to us and we should ask nothing further.

THE COURT: Well, I'm just asking you where -- where -- point to me somewhere where it says if they subpoena a witness, then they have to give you a copy of that subpoena. If they do a request or get a -- a -- a waiver to receive certain items, certainly they have to give you those items. I guess I'm just not sure that they --

they need to give you the mechanism to get those items.

MR. FOOTE: Okay, Judge; if you --

THE COURT: But let's -- let's kind of cut the --

MR. FOOTE: But --

THE COURT: Let me just kind of cut this off a little bit.

Do you have any problem giving them the copy of the consent that was signed and the subpoena that was sent to Sprint?

MR. ROSARIO: No, I don't.

THE COURT: Okay.

MR. ROSARIO: But it's going to take me a moment to -- to locate --

THE COURT: That's okay. Just -- but you need to have a running list here of these things.

So, you're going to give them all the raw data you got, including the erroneous report; right? So, the raw data is coming. The subpoena is coming. The consent is coming. And --

MR. FOOTE: The email that he received, in which he supposedly received the original data.

And before we go further on that, Judge, the Excel spreadsheet that the Court is holding in his

hand came in a non- -- it was a writable form, let's put it that way. And we might address this down the line, once we finish our discovery.

This was not in PDF format, and it wasn't scanned in. This came, according to Sprint, it came as a Excel document, that when you open up, anything can be manipulated within it. Okay?

This was not given like a phone record that we requested. Sprint told us the phone records come either by fax or FedEx. If we email something, which is highly unusual, it certainly is not going to come into a writable format. It's going to come in a PDF scanned format so that the document, in itself, cannot be manipulated with.

It came in a downloadable -- you can just open it up on any computer; and as evidence of that, on the first page of that Excel spreadsheet, Judge, there's a date, time, and stamp. And as anyone knows that uses -- uses Excel, any time you print off an Excel document that can be written on in your own computer, it prints out a new date. It prints out a brand new date.

And so, what we're asking for, in an abundance of caution, is to give us the original document or whatever was sent by Sprint to the

Office of the State Attorney.

THE COURT: Well, they've already said they're going to give that to you.

MR. FOOTE: Well, that's the basis of our subpoena duces tecum. We don't want to deal with the State; we would like to get directly from Sprint what was sent to them, which we are entitled to do. If they subpoenaed these people with their subpoena power, we are asking for the original -- best evidence rule. Show us what was actually sent to the State. Not through multiple servers and Mr. Rosario's personal email.

THE COURT: Okay. I don't think -- under the evidence code, I'm not sure that's the best evidence rule, but I understand what you're saying.

MR. FOOTE: We're asking for the actual original document, Judge, that was used. That's what we're asking for. And I don't think that's far-reaching; it's not prejudicial to the State.

It's to Sprint/Nextel, who said we will give it to you, we just need a court order based on their procedures. That's all we're asking for.

THE COURT: All right. You have no objection to them getting another copy of what you got,

presumably?

MR. ROSARIO: No. Not at all.

THE COURT: All right. And I guess, presumably then, when you get a copy of that, you supply that to them.

MR. ROSARIO: Correct.

MR. FOOTE: Once, Judge, we ask to receive -- to look at what Mr. Rosario actually received; not what he printed off and gave to us later on. What did he receive from Sprint/Nextel?

THE COURT: I know. But he's saying what he printed off is what he received.

MR. FOOTE: Well, Judge, that's nice in a nice world. However, my client doesn't want to just take somebody's word for that.

THE COURT: What are you suggesting?

MR. ROSARIO: Judge --

MR. FOOTE: I'm asking for a copy --

THE COURT: No, no. What are you suggesting? He just represented, as an officer of this court, that he is going to give you exactly what he received. Is that correct?

MR. ROSARIO: That's correct.

THE COURT: Mr. Rosario --

MR. FOOTE: Then if that's true, that's --

that's the answer to the email, then. Because he received it by his email.

THE COURT: Correct. He is going to go and he will print that out again and give that to you. As an officer of the court, he's -- he has represented he is going to do that. If you have a reason to believe that he is not going to do that or that he is going to tamper or in any way manipulate that document --

MR. FOOTE: No Judge, I think -- I think the Court misunderstands. His first objection was, he walked up there and said I objected to having any of my emails given over.

THE COURT: No. He didn't want his emails generally opened up --

MR. FOOTE: I don't want to see emails generally. I want that document that was just --

THE COURT: And he said he'd do that.

MR. FOOTE: That's fine.

THE COURT: But then you said that's not good enough.

MR. FOOTE: No, Judge; the Court must have misunderstood what I'm saying. I don't want him printing off his own document that he gave me. I want to see the to, the from, the date, from his

email; with the attachment.

THE COURT: Okay. So, you want to see kind of the cover part of the email.

MR. FOOTE: Correct, Judge; correct.

THE COURT: All right. Do you have any problem giving the cover part of that email?

MR. ROSARIO: All right. I'm just trying to -- to be clear on this. When I receive an email and I -- and I click on it and open up, he wants to look at that page?

THE COURT: Yes.

MR. ROSARIO: Judge, no, I really don't. I would rather it -- Judge, as -- as -- as you may have noticed the tenor of -- of this conversation.

I would rather -- just give -- I'll give you all the emails. I'll -- I -- I --

THE COURT: I don't want to see all your emails.

MR. ROSARIO: I'll -- I'll -- well, the only ones on this -- this case; I'll give you the (indiscernible), it's one -- one (indiscernible). I'll give it to you; I'll let you review it in camera. I don't think it's relevant for him to have everything so he can look at it.

THE COURT: Well, some of them may be work

product. He doesn't want to see your work --

MR. ROSARIO: Exactly.

THE COURT: Well, he doesn't want to see your work product. He wants to see what came -- the -- the first -- the sheet that -- or the -- I don't know, sheet's probably not the right word, 'cause it's formulated electronically. The -- the thing, like he says, it says, here it is, to/from, here it is, and here is the attachment. That -- that part.

MR. ROSARIO: Correct, Judge.

THE COURT: Any of the other part that's work product, you're not talking about that part.

MR. FOOTE: No, Judge, but I want to see what the -- what did they ask for?

MR. ROSARIO: He wants -- he wants the work product.

MR. FOOTE: What the request -- what request was asked for? And the reason why I'm asking for that is when we were before the Court before in the off-calendar matter and the Court asked us to set this for a hearing --

THE COURT: Uh-huh.

MR. FOOTE: -- is that Mr. Rosario wants us to have the exact 1:09 time of the crash.

We're asking for, just to make sure, just like on the Breathalyzer test, Judge, an Ontoxilyzer (*sic*) in a DUI, you don't just get that only breath test; we're entitled to have the records of the breath tests taken before and after. We're not even asking for before and after.

Mr. Rosario states to this Court, he asked for one hour. There's three days -- three days worth of information there.

THE COURT: Well, but he didn't get that. You can get all that that you want. You can get a month --

MR. FOOTE: But they haven't --

THE COURT: -- if you're willing to pay for it.

MR. FOOTE: Judge, that's not our objection. My client is willing to do that; we need a court order to Sprint to allow us to do that.

THE COURT: Correct.

MR. FOOTE: That's what we're asking for.

THE COURT: And I -- I don't think there's a problem with that.

MR. FOOTE: That's all we're asking for, Judge.

THE COURT: I don't think there's a -- if you -- like I said, if you want to get a month of -- well, I guess the issue is, this is not your client's cell phone. So, I guess there is maybe an issue with regard to that. Because we're actually -- are we getting a third person's cell phone?

MR. FOOTE: Correct, Judge.

MR. ROSARIO: Yes.

THE COURT: Okay, well, that's a little different, then. We're not getting your client's cell phone records.

MR. FOOTE: No, Judge. And these are on phone records -- here's the basis of the tenor of my -- of my tone here. We got what you have in front of you, Judge.

THE COURT: Uh-huh.

MR. FOOTE: And we pulled phone records from Sprint by subpoena, court subpoena, two years ago. They don't match.

There are numbers on that document, three years later, that are not on the original bills that are kept in the regular course of business.

They're on a writable document sent to a person's -- a State Attorney's personal email. I

should be able to look into that; my client is asking me to look into that. And these times are critical.

And that's what we're asking for, Judge.

THE COURT: All right. But -- so, there's some -- there's a number of different issues here.

One, the issue is, let's not -- let's -- let's get back to the cover page. I don't have a problem with you getting that cover page.

MR. FOOTE: Correct.

THE COURT: And Mr. Rosario has no problem with that.

Now, there are items about -- that are kind of probably, I suspect, work product.

MR. FOOTE: We're asking for what was requested, Judge.

THE COURT: And I guess that's the issue. Is there any way to cull out what was requested -- and you've already told us you've requested just the one hour. Is there any documentation that shows you requested that one hour, or does Sprint have some sort of documentation that you requested one hour?

MR. ROSARIO: And that's where I (indiscernible) my subpoena, Judge. I -- I do

believe in my subpoena, I put down the -- the language that I wanted -- let me see if I can --

MR. FOOTE: And that may suffice, Judge; that may suffice, if the information is included in the subpoena.

THE COURT: Well, they wouldn't have released it, anyway, without a subpoena to cover themselves.

MR. ROSARIO: Correct.

THE COURT: I mean, they -- I've dealt with those folks enough to know they -- they don't do hardly anything on a phone call.

MR. FOOTE: Well, actually -- well, correct, with any type of subpoena. The difference here was civil versus criminal, which I was discussing with them.

THE COURT: Uh-huh.

MR. FOOTE: Very rare they do this in criminal cases; it's mostly civil, where the attorneys, pursuant to the civil rules, just issues a subpoena.

THE COURT: I know where it's been done in criminal cases before, though, too. I'm aware of it.

MR. FOOTE: I know, I was going to do that in

an abundance of caution before the Court.

THE COURT: No, no. I mean I know where it's -- where they've -- where they've become witnesses in criminal cases and as a result of --

MR. FOOTE: They said it's very rare, at least for Sprint, the lady said.

THE COURT: Uh-huh.

MR. FOOTE: She thought it was a civil case, as well.

THE COURT: And that may just be kind of comparatively speaking. Maybe this sort of thing happens all the time in civil cases, you know.

MR. FOOTE: It does. According to them, it does.

THE COURT: 'Cause, you know, in criminal cases, it's really not an issue and probably a very small percentage, but I know it's been done.

Okay. So, that's where we kind of wind up there. They're going -- he's going to find his -- okay. Okay. So, he's going to get his subpoena for the -- for the phone records. He is going to get the original -- the original documents that were emailed to him with -- I want to call it a cover page; I don't know what else you'd call it. That -- that --

MR. FOOTE: Memo section, I guess.

THE COURT: I -- I don't know what you'd call it; whatever you'd call that part. I don't know. Memo, cover --

MR. FOOTE: Cover slash memo.

THE COURT: Yeah, whatever, I guess. 'Cause it's really kind of the cover thing; here's the stuff you asked for. You know, historically, because I'm an old guy, I mean, you do this stuff in real hard things you'd hold onto.

MR. FOOTE: Correct.

THE COURT: And that would be like the cover page they would send, pursuant to your request, here it is.

MR. FOOTE: Correct.

THE COURT: I guess an email would be -- gosh, like you said, it's kind of in that body part, so I guess it's in kind of the memo section. So, we'll call it the cover or memo page; okay?

MR. ROSARIO: Judge, if I may? It looks like the way it's going to print out is, I'm going to have to black out the work product.

THE COURT: Uh-huh.

MR. ROSARIO: But I will give the cover page, the memo, and everything that the Court is saying.

I -- I -- I'll do the best that I can with it. But.

THE COURT: All right. Well, it's -- really, what you're looking for is the subpoena is going to tell what they -- what they required you to send to get.

MR. ROSARIO: Right.

THE COURT: So, they're going to get a copy of that subpoena, so they know what that is going to be. And you're kind of giving us an idea that that's an hour.

MR. ROSARIO: Yes, sir. I -- I specifically requested March 26th, 2006, between 1:00 a.m. and 2:00 a.m.

THE COURT: Okay. Then, we get -- then -- so, it's a cover/memo, whatever you want to call a page, and that document.

Any objection if he -- he can redact his personal email, so that doesn't become part of this file and anybody in the world who wants to get his personal email, wants to --

MR. ROSARIO: My personal email address?

THE COURT: Right. Any objection to that, Mr. Foote?

MR. FOOTE: Judge, at this point, I -- I

really don't know. I mean, I -- I thought it was a crazy move on his part anyway.

THE COURT: Well --

MR. FOOTE: It's a public record now, basically. And --

Judge, no objection if he's going to state as an officer of the court that's where it came from.

THE COURT: I mean, I think that goes -- I mean, we're talking about it here; this is part of my order. I can't imagine he's -- I mean, going to in any way manipulate that. Mr. Rosario, that's correct?

MR. ROSARIO: That's correct, Judge; as an officer of the court, I would never manipulate any of it.

THE COURT: All right. Okay. So, they got the subpoena itself; we've got the original -- that -- that -- that document part; we've got the original stuff.

Okay, what else -- now, what else am I missing?

MR. FOOTE: Judge, we're asking for the names of the persons actually involved in compiling this report. The name that was provided to us, a Heather Ramos, she has no knowledge of that report

whatsoever.

THE COURT: Okay.

MR. FOOTE: In fact, she never saw it before.

THE COURT: Well, who did you -- who -- who did you talk to to get this information?

MR. ROSARIO: Judge, the person I initially spoke with was a person by the name of Gavin Pinchback, who is a supervisor with the Sprint/Nextel subpoena compliance.

Upon receiving the Viador report, I asked for the name of a person who can testify in court; and that person's name is Heather Ramos. I provided that name to the defense, because that was the person I believed was the actual custodian of records.

THE COURT: I guess that's the question, how they do that in -- you know, if they do a lot of this in civil, this question's got to come up in civil court, who actually --

MR. FOOTE: Judge, I asked her that. She's the head of the litigation department for Sprint/Nextel. There are five people on the litigation team that sent her out to (indiscernible) to actually testify.

The State would have to tell them when they

would need the particular person, so they can determine who the individual would be. That would be the person that we would want to depose, not a person who's going to stay in Kansas and not come down here. She said, I'm not coming --

THE COURT: (Indiscernible) do they -- but, do they know who's going to be the -- one of the five?

MR. FOOTE: They stated that what they would do is if there's a trial date on a special request, they would try to pinpoint that person for that week of when we set it for trial; and then we can be able to move forward with it.

THE COURT: 'Cause I know a lot of those people just have like rotating people. You put -- you put custodian --

MR. FOOTE: Correct.

THE COURT: -- and then they just send whoever.

MR. FOOTE: Well, normally that would be fine. But Mr. Rosario has indicated to me that this person is going to attempt to testify as a possible expert, not just a custodian of records. That's why it matters to us.

If the person is just going to come in and

say this is a Sprint record, I don't care who they send.

THE COURT: Well, an expert as far as how they compile the records?

MR. FOOTE: No, they're going to talk about cell towers and Viador reports and all this stuff. So, that person needs to be deposed.

THE COURT: Okay.

MR. ROSARIO: At that -- this point, Judge, the information that I have in regards to that is -- is that I was told by Sprint that Heather Ramos is a facts qualified expert and can testify about the records as well as cell tower information as to how the cell towers work.

THE COURT: Uh-huh.

MR. ROSARIO: If I wanted to go to the point of getting a cell tower engineer, that would, of course, cost expert fees; I don't know exactly the amount. But I never went that far to figure out if I needed that person.

I was going to -- actually, to be quite honest, I was going to wait for the defense to depose to find out if I was going to need more than Heather Ramos or the subpoenaed (indiscernible) person, who is a -- a -- a

(indiscernible) witnesses to the cell tower. If I needed more, I was going to get another person.

MR. FOOTE: Judge, as --

THE COURT: Yeah, but see, this has to come up all the -- gosh, I know this comes up all the time.

MR. FOOTE: As --

THE COURT: Who -- who you -- I mean, 'cause, maybe -- maybe one of people, that's just how they do this.

MR. FOOTE: If I may, Judge. As of last Thursday, I spoke with Ms. Ramos; I didn't have to get on an airplane and go to Kansas to learn that this person is not going to be relevant to anything.

So, she spoke with me and stated yes, I know something about cell towers. But one, I never saw the document that you're talking about. Number two, we don't even have it here on my screen; I don't have access to it, because it goes to a supervisor. Number three, all I do is authenticate documents; I am in no way an expert, but I can testify as to some type of how towers generally work.

So, I said well, this is actually going to

trial.

THE COURT: Uh-huh.

MR. FOOTE: So, it's not about documents.

Who is the person that will be sitting in Florida? She goes, it's not me; I'm not coming. I'm the supervisor.

When you have a -- a trial date, then we will try to isolate --

THE COURT: Yeah. See, that's -- and the problem is, that's not either your fault or -- or Mr. Rosario's fault --

MR. FOOTE: Sure.

THE COURT: That's -- that's the nature of the beast.

MR. FOOTE: And it's $300 an hour for an engineer, to answer that question.

MR. ROSARIO: Is that what it is?

MR. FOOTE: Yes.

THE COURT: And is that -- is that portable (indiscernible) I suspect?

MR. FOOTE: Yes, Judge.

THE COURT: Okay. Well, I guess that's then the issue. The issue is -- I guess that's the issue. I guess the issue becomes who that person's going to be. And the problem is, Sprint

doesn't even know.

MR. FOOTE: Well that person is, as far as trial purposes is concerned, for deposition, what I'd rather have is a person that actually worked on this report, so I can talk to them.

And I'm sure -- Mr. Rosario just mentioned a name I never heard, Mr. Pinchback; I don't know who he is.

THE COURT: Well, he is the subpoena compliance person.

MR. FOOTE: That's --

THE COURT: See, we're getting into a big, big business here. So, we have apparently a subpoena compliance department and a litigation support department, neither of which, apparently, are the same department, neither of which are the same people. So.

MR. FOOTE: Here's the -- here's the issue, Judge: Before these documents come in front of a jury, we're going to be jumping up and down objecting to them.

If I can't find out the basis for which they were created, who created them; it's technical in nature, whereby the defense is entitled to have their own expert to determine if the information

myself. I would like the names of the people involved that Mr. Rosario is aware of, so I can set their depositions; and if that leads to more relevant information, such as new names, then we can continue our discovery.

THE COURT: Okay. Well, I don't think that's necessarily -- is that -- is that a problem to list Mr. Garvin (*sic*) Pinchback?

MR. ROSARIO: I -- I -- I will list him; I'll -- I'll have to notify him that I am listing him. But yes, I will list him. And --

THE COURT: Okay. And is there anybody else you talked to, besides Mr. Pinchback?

MR. ROSARIO: That's it, Judge.

MR. FOOTE: Okay.

MR. ROSARIO: And the thing that is, Judge, is the trouble with this is, I think, untimely. I think they should take the deposition, get to the point --

THE COURT: Well, the problem is, the -- the -- and it's not -- and as I just indicated, it's no one's fault.

MR. ROSARIO: Correct.

THE COURT: It is -- it is the nature of dealing with a company the size of Sprint and the

issues that you're dealing is, you would love to say this is the person who does it. You know, Joe Smith; Joe Smith is the person everybody needs to talk to.

The problem is, you ask Sprint is Joe Smith the person you talk to? Well, maybe not. Maybe it's, you know, Sam Jones. Well, okay, how do we know whether it's -- and that's the point you brought up. Is it Joe Smith or is it Sam Jones? Well, you know, I don't know. Is it, you know, Shawn Crane?

MR. FOOTE: Judge --

THE COURT: Well, I don't know if it's Shawn Crane.

MR. FOOTE: -- according to their work orders --

THE COURT: Uh-huh.

MR. FOOTE: -- their work orders that are done in Sprint, according to Ms. Ramos, those are attached to certain employees.

We can't get that information without a subpoena. That work order doesn't have a case number, which I'm -- everything we've requested from them over the last couple of years has a reference or case number.

This has no number referenced to it, because it's a special order type item that most people don't order, because it's expensive. Being that the State of Florida has the expenses, they can --

THE COURT: You know, $52 an hour, that's not too bad. I was kind of surprised by that.

MR. FOOTE: Well Judge, from what I was told, it doesn't take an hour to do it; it could take several weeks or several months to do it. So, the bill -- I would be interested in what the bill was to actually do that. But that's another issue.

What we're asking for then, Judge, is --

MR. ROSARIO: Judge, would you like the case -- the Sprint case number?

MR. FOOTE: Sure.

MR. ROSARIO: Sprint case number 2008-070214.

MR. FOOTE: 070 --

THE COURT: One more time.

MR. ROSARIO: 2008-070214.

MR. FOOTE: I think that answers pretty much 99 percent of our inquiry, Judge.

And so, what we would ask for now is just the subpoena duces tecum under that reference number and they should be able --

THE COURT: And then, (indiscernible) said

he's going to do that.

MR. FOOTE: No.

THE COURT: Or you're -- you're asking for you to do that?

MR. FOOTE: Correct.

MR. ROSARIO: Now, I'm sorry, does that change what we've already discussed?

MR. FOOTE: No.

MR. ROSARIO: Do I need to provide any of this other --

THE COURT: Yeah. 'Cause then we can compare the two, because there's some thought that there may have been some hanky-panky going on, I guess, with some of the papers.

MR. FOOTE: We're not saying hanky-panky, Judge. But we have two records coming from Sprint that has a different date on it.

THE COURT: Uh-huh.

MR. FOOTE: And Ms. Ramos couldn't explain it.

THE COURT: You mean, not different date; but you mean different -- do you mean different date or different number?

MR. FOOTE: Different data.

THE COURT: Well, I'm saying that, different

number.

MR. FOOTE: Sure.

THE COURT: So, the numbers don't match up.

MR. FOOTE: Yes.

THE COURT: Okay. You said data, I -- I thought it was date. I thought you said you had a different date. In other words --

MR. FOOTE: Numbers.

THE COURT: Right, that things don't match up.

MR. FOOTE: Correct.

THE COURT: Okay. Well, you want to talk to somebody, ask them why that is. That's -- that's fine.

MR. FOOTE: Correct.

THE COURT: So, that's our problem; you probably want to know why that is, too.

MR. ROSARIO: I have an idea as to why. But that's fine; I'd love to find out for sure (indiscernible).

THE COURT: Okay. So, we know that Heather Ramos has already been listed; Gavin Pinchback will be listed.

MR. FOOTE: And Judge, I think that may be sufficient if there is no other information that

the State of Florida has as far as names and contacts. We can start with --

THE COURT: Well, I guess that's -- I guess, having -- gosh, it's been a long time since I've dealt with these folks. And I remember it was -- back then, it was astronomically expensive to get some of this stuff done. But, the -- but once you've got that case number, they ought to be able to do it over tracking they're going to do.

MR. FOOTE: We were --

THE COURT: Heather Ramos is probably the contact person for that.

MR. FOOTE: We were told that if we were to get a subpoena, a court order, then they would run the case number, which she didn't know what it was --

THE COURT: Uh-huh.

MR. FOOTE: -- run that case number and anything in the file connected with that request would be sent to us.

THE COURT: Okay.

MR. FOOTE: That's all we're asking for. But now that we have the case number, a court order will allow us to issue that subpoena, download everything; we have Mr. Pinchback, who's on the

list. I think that will be sufficient, along with what --

THE COURT: Now, the -- then, the only issue then becomes if -- well, I'm sorry, go ahead.

MR. ROSARIO: Judge, it's very interesting. Sounds like a backwards fishing experience, again.

Every -- all the work orders, if my personal emails are in there with my work product in there in that they're going to go back door and get the information, so I --

THE COURT: Well, that's one thing that's just going to need to be addressed as far as --

MR. FOOTE: And Judge, I also am an officer of the court --

THE COURT: Uh-huh.

MR. FOOTE: -- and a former prosecutor. If they were to send me things that this court has ordered to be redacted, it will be redacted.

THE COURT: Okay. And you can get with them and just let them know if these are the certain things that --

MR. FOOTE: Correct, Judge.

THE COURT: Okay. And I certainly -- once again, no -- I have no doubt in my mind, Mr. Foote will do that. And I'm sure you're aware -- you

agree with that, Mr. Rosario?

MR. ROSARIO: Yes, Judge.

THE COURT: All right. Okay.

So, does that -- and this was the short motion?

MR. FOOTE: That was the short one.

THE COURT: All right. And what's our -- and so, have we kind of covered that, then? Is that -- are we good to go on that, then?

MR. FOOTE: Is the Court granting our request to issue a subpoena duces tecum?

THE COURT: Correct. You can have the subpoena duces tecum based upon the parameters which we've talked about.

And like I said, I have no doubt that -- that you'll -- that you'll comply with that, like you said; you'll let them know the redacted personal email information and that sort of thing.

I have no doubt that once again, that Mr. Rosario's going to supply you with the original information that he received from them and the copy of the subpoena that he received.

I have no doubt that Mr. Rosario is going to list Gavin Pinchback in (indiscernible); and if he doesn't list him, you know about him now and so

you can call him up.

MR. FOOTE: That will be fine, Judge.

THE COURT: And he's going to -- he's going to formally list him, just so he's --

MR. ROSARIO: If -- if I might add, to help the defense: I attempted to call Mr. Pinchback for months. His email has -- his voicemail has an email address on it; that's why I had mentioned emailing him, because I could not get a hold of him by phone and I ended up having to email him. So, the defense may end up having to -- being in the same situation, where they will have to email him and then have it become public record.

MR. FOOTE: Well, apparently yours is not public record.

THE COURT: Well, it would -- once again, enough of this. Once again. To equal extents; I mean, it's just going to be the same.

I'm not going to expect Mr. Foote to open up all his personal information, either. And I'm not going to expect Mr. Foote's personal information to be, you know, put -- put in a document where anybody who has a bone -- an axe to grind with -- I almost said a bone to pick -- I almost mixed my metaphors there.

But -- but anybody who wants to, you know, harass Mr. Foote, can do that through his own personal information. So.

MR. FOOTE: We're not going to do it that way, Judge.

THE COURT: You know. But you may need to email, apparently. So.

MR. FOOTE: Well, that will be a last resort.

THE COURT: Well, apparently that was the last resort -- Mr. Rosario had the last resort, too, according to what he's just told us.

MR. FOOTE: We'll -- we'll supply orders to those (indiscernible) on those two --

THE COURT: And I just want you all to get together -- either side, whatever orders throughout the course of this hearing, whatever -- I just want -- if the State prepares the order, I want them shown to Mr. Foote; if Mr. Foote prepares the order, I want them shown to Mr. Rosario.

MR. FOOTE: That's fine, Judge. May we retrieve the Viador report?

THE COURT: Sure. But once again, Sprint must have put that in -- in that. I don't know if that's an -- I guess that is an Excel spreadsheet.

Sprint must use Excel, too, I guess.

MR. ROSARIO: That's what I got.

THE COURT: All right. So. Well, let me ask, which one of you are going to do -- which one of you are going to do the order for what we just did?

MR. FOOTE: Judge, we can prepare the order and I'll provide it to Mr. Rosario for his review.

THE COURT: Okay. All right. Where to from here?

All right. Where to from here?

MR. FOOTE: The motion to suppress, Judge.

THE COURT: All right. So, there's -- so, there's no other motions then pending. Okay.

All right, Mr. Rosario, are you ready to --

MR. ROSARIO: It's defense's burden to go forward on this one, Judge.

THE COURT: -- go forward on the motion to suppress?

MR. ROSARIO: The defense is filing a motion stating that the vehicle involved in this crash was tampered with. Case law is clear, it's their burden to go forward and prove that it was probably tampered with, before any burden shifts.

MR. FOOTE: That's correct, Judge. There's a

brief factual basis, pursuant to 3.190(h) in the Florida Rules of Criminal Procedure.

The defendant is moving for an order from the Court suppressing the 2001 Chevrolet Silverado 1500, as outlined in the motion, would therefore show that the -- the vehicle was tampered with and therefore would be unreliable to rely on any type of evidence or information obtained from this vehicle, based on that tampering.

THE COURT: Okay. And was there testimony with regard to this at the last trial?

MR. ROSARIO: Yes, there was.

MR. FOOTE: Very -- no, Judge.

THE COURT: Okay. So, there was no testimony about the vehicle at the last trial?

MR. FOOTE: Very little; because the main witness involved, the traffic homicide investigator, the State did not call in their case in chief.

THE COURT: All right. But then -- so, there weren't photographs and all that sort of thing in evidence?

MR. FOOTE: There were some photographs, Judge, yes. There were photographs that came in. I -- I thought you meant did we argue this.

THE COURT: All right. So, this -- not unlike the last thing we did, are all -- is something that's come -- that's been argued subsequent to the last trial?

MR. FOOTE: I don't understand the Court's question.

THE COURT: Okay. Well, I just want to make sure this -- that this isn't somehow res judicata.

MR. FOOTE: No.

THE COURT: In other words, there's already been -- in other words, the other -- the last trial was over; this -- this motion was never filed or a similar motion was never filed.

There was testimony heard; there was pictures shown; then that trial hung the jury. And now -- and so, that was never argued or issued -- or argued; there was no orders issued by that court, whoever that was.

And then, so once again, just like, kind of, the last thing we dealt with, this is all subsequent post-trial to what happened before?

MR. FOOTE: Correct. There are no standing orders from this Court; no motions previously filed with this basis.

THE COURT: No motions in limine; none of

that sort of thing?

MR. FOOTE: No.

MR. ROSARIO: However, it is information that they knew of prior to the first trial.

THE COURT: Okay.

MR. FOOTE: Judge, there's a -- there's a factual basis.

On March 26th, 2006, the DUI manslaughter occurred at Grand and Dahlia here in New Port Richey, approximately -- where two people were killed; and a third person, walking with them, was a witness. The vehicle continued to go without stopping and was found a mile later on Grand and 54.

And that vehicle -- there were two crime scenes here, which we've been calling throughout the litigation, Scene A and Scene B. Scene A is where the young people were killed. Scene B is where the vehicle came to final rest. Approximately a mile in between.

THE COURT: So, Scene A is the point of impact.

MR. FOOTE: Correct.

THE COURT: Okay.

MR. FOOTE: At Scene B --

THE COURT: Let me -- pardon me, Mr. Foote; let me just interrupt you just for a second.

Generally speaking, how long do we think we're going to be going with this whole -- with this motion? Do you think it's going to wind up taking?

MR. FOOTE: I anticipate calling two witnesses. The State seems to have five out there, maybe.

MR. ROSARIO: I have their two plus two more; possibly, if necessary, maybe a third. It depends on whether the defense proves there was a probability it was tampered, and then the burden would shift and then I would have to call -- I would potentially call witnesses.

THE COURT: All right. Okay. Because, you know, we have that request based upon the budgetary concerns, not to ring up overtime for the bailiffs and the clerks and the keeping the building open, so the air conditioners run and bailiffs have to be down at the front desk and --

MR. FOOTE: What time?

THE COURT: Well, they ask us to cut things off in about five minutes. So --

MR. FOOTE: From now?

THE COURT: So everything can get done. But at the very least -- well, that's when I had other documents to review, when I was doing DVIs and stuff. The clerks asked that, because they would then have to wait till 6 or 7 for me to do injunctions. But we don't have that, so we can go till 5. But the problem is, I'm not sure, are you all going to be done by then, do you think?

MR. ROSARIO: I believe we could, Judge.

THE COURT: Okay. Then that's fine with me. I don't mind working.

I just -- like I said, I -- I'm under orders to kind of -- at the request of both the Sheriff and the clerk, that they can't afford the -- and the county, that today, based upon the budgets, they can't afford to keep things open like we used to in the old days.

MR. FOOTE: We only need two witnesses, Judge. So.

THE COURT: Okay.

MR. FOOTE: The -- the vehicle itself, when it came to final rest, law enforcement showed up at Scene B, the final rest.

My client was present at that time, unconscious, and he was under the influence,

according to the State's evidence.

However, based on photographs and videos taken by the Florida Highway Patrol, it's obvious that items within the vehicle were moved around from the original condition. Someone was inside the vehicle. It hasn't been identified who was inside the vehicle and who was moving things around.

Subsequently to that, the vehicle was released to a private tow company and was taken off to their location. In between, no one knows where it was; it didn't have a police escort; it wasn't guarded; no one sat on it. There was no evidence of property receipt that was done.

And that's -- as a result of that, items within the vehicle, specifically a GPS locator that was on the windshield, credit cards of my client, various items were stolen. That resulted in its own criminal investigation by the Florida Highway Patrol that has a report. To date, I think -- I think one of the persons who worked for the tow company confessed to taking it. No arrests have been made.

But obviously, someone outside of the State of Florida -- the Florida Highway Patrol's

control, had the vehicle, supposedly bonded to protect the vehicle. But the vehicle -- they went through the vehicle; things are missing.

And for those reasons, we're asking the Court to suppress the vehicle itself and preclude the State from mentioning anything regarding any reports that are connected with it, any reports that were taken subsequent to the tampering.

We believe that the two witnesses that we will call from the Highway Patrol will substantiate our position regarding tampering.

We will have met our burden and it will shift to the State.

THE COURT: What kind of -- okay. What kind of reports were taken subsequent to the tampering?

MR. FOOTE: There was -- I think they took a black box out of the vehicle to bring down with the crash data reports.

There were FDLE reports; hair and fiber analysis that were taken from the vehicle, while it was -- after all of this happened, at the tow yard, days and weeks later.

In fact, they don't even have a record as to when the vehicle was actually brought to the Florida Highway Patrol. There's no chain of

custody.

There's no -- there's no evidence whatsoever.

THE COURT: All right. All right. You may call your witnesses.

MR. FOOTE: The defense calls Corporal Michael Styers.

(Staff conversation.)

MR. ROSARIO: Judge, I -- I did have one issue I wanted to clarify before we move forward with this.

THE COURT: Uh-huh.

MR. ROSARIO: What exact evidence is the defense attempting to say was tampered with? He's -- he's throwing in the generality of the entire truck.

THE COURT: Uh-huh.

MR. ROSARIO: But the evidence introduced at trial was -- was -- was crush damage and black box testimony.

And I'm not -- I do not believe the defense is -- is saying in any way, shape or form that those two things were tampered with.

MR. FOOTE: Judge --

THE COURT: All right.

MR. FOOTE: That's Mr. Rosario's argument, I

guess, for me. We want to suppress the truck, Judge. That was the direct piece of evidence that was taken in.

If there were particular items from the truck that was -- the State of Florida and the Florida Highway Patrol wanted as evidence, they could have excised and taken those particular items out.

Based on the doctrine of fruit of the poisonous tree, that vehicle itself was impounded as a piece of evidence and taken into custody.

THE COURT: Well, fruit of the poisonous tree, that's -- I'm not sure that specifically applies to this situation that you just outlined.

MR. FOOTE: Judge, our position is, if the vehicle was tampered with --

THE COURT: I mean, there's a difference between being tampered and fruit of the poisonous tree. Fruit of the poisonous tree is -- is the *Wong Sun* case, which specifically deals with improper police conduct -- affirmative improper police conduct; and therefore, any evidence derivative or derived from that would be suppressed as -- as opposed to lack of action, which, I think, we -- I think the argument is here.

They didn't do what they should have; so inaction is what caused the problem. Correct?

MR. FOOTE: It's -- it's hard, because the Court, Your Honor, is just coming in on the back end of this case. There's a lot of history in this case. All right? There are a lot of things -- without tipping my side of it, it's -- basically, it's the truck, as we've outlined in our motion.

THE COURT: Okay.

MR. FOOTE: The vehicle itself was not properly maintained. There's no chain of custody. There's an improper chain of custody as the Court is already aware of.

And we will argue cases later within the argument, all right, that because of that break in chain of custody, because it's connected with criminal activity, resulting with the evidence itself.

There are cases that are even less egregious than this one, where the Supreme Court of Florida overturned the trial court because, in taking a chance, it allowed this evidence in and the -- there was no foundation as to the veracity of the evidence that they were looking at. Murder cases

and traffic/homicide cases.

THE COURT: Okay.

MR. FOOTE: So, the answer to the question is the vehicle.

THE COURT: Okay. All right.

THE BAILIFF: Corporal, you may step up right here; face the clerk and raise your right hand, please.

WHEREUPON,

CORPORAL MICHAEL STYERS,

the witness herein, was duly sworn.

THE COURT: All right, you may inquire.

MR. FOOTE: Thank you, Judge.

DIRECT EXAMINATION

BY MR. FOOTE:

Q Good afternoon, sir.

A Good afternoon.

Q Can you please introduce yourself to the Court by stating your name, first name, and spell your last name.

A Corporal Michael Styers, S-T-Y-E-R-S.

Q Sir, how are you employed?

A I'm a traffic homicide investigator with the Florida Highway Patrol.

Q And how long have you been in that position?

A Since 2000; nine years.

Q And how long have you been with the Florida Highway Patrol?

A Twelve years.

Q And can you take a moment and explain what your duties are as a traffic homicide investigator?

A To investigate traffic crashes involved fatalities.

Q And how many -- how many of these cases would you say you have been the lead investigator and have investigated, approximately?

A To date, approximately 155 fatalities.

Q Were you working in that capacity on March 26th, 2006?

A Yes, I was.

Q Okay. And do you recall coming into contact with individuals in connection with this case, State of Florida versus Shannon Stephen?

A Yes.

Q And how were you dispatched to that scene?

A I was dispatched as a confirmed Signal 7, which is a fatality, at Grand Boulevard and I don't recall the cross street that they gave me.

Q Okay. When you arrived on scene, was law enforcement already present?

A There -- from the Highway Patrol, no. There was the Sheriff's Office, but they were down the road a bit.

Q Okay. And we've talked about this numerous times over the last couple of years, correct?

A Yes.

Q We had the Scene A and the Scene B. The Scene A is the point of impact.

A Yes.

Q The Scene B is the final rest of the vehicle?

A Yes.

Q Okay. Were you the supervising trooper on scene?

A No.

Q Okay. Who was the supervisor?

A At that time it was Sergeant Eric Schaub.

Q Now, was he acting in the capacity as the traffic homicide investigator?

A No.

Q Okay. What capacity was he acting in?

A Supervisor.

Q Okay. And what rank was he?

A Sergeant.

Q Now, who was assigned to actually compile all the evidence and --

MR. ROSARIO: Objection, Judge, relevance.

THE COURT: Excuse me. Overruled.

Q (By Mr. Foote) Who was assigned to compile all the evidence and be in charge of the actual traffic crash investigation?

A I don't recall the crash investigator, but I was the traffic homicide investigator.

Q Are they two separate people?

A Yes.

Q Okay. One takes care of the actual crash?

A The crash report, yes.

Q And one actually deals with the homicide?

A Yes.

Q And you were the person in charge of the homicide?

A Yes.

Q Would your duties entail collecting of evidence, the preserving of evidence for subsequent hearings such as a trial?

A Yes.

Q Okay. Are there standard operating procedures issued by the Florida Highway Patrol that you are familiar and trained with in order to know how to collect evidence and what procedures you should use regarding evidence?

A Yes.

Q Are you familiar with those standard operating procedures?

A Yes.

Q Can you explain what your duties were on March 26th, 2006, in connection with this case?

A Conduct a fatality investigation.

Q What does that entail?

A Dependent upon the type of investigation, it -- it -- it entailed anywhere from photographing to interviewing to sketching the scene to getting an overview of the scene, talking to witnesses.

Q Okay. Now, Sergeant Schaub, you said he was a supervisor. But he wasn't telling you exactly what to do; in fact, it was your scene, right?

A Yes.

Q You were in charge of making the call as to what evidence to collect, what not to collect? As far as the homicide is concerned?

A I wasn't telling anyone to collect anything.

Q Well, you would be the person in charge of the homicide investigation?

A Yes.

Q Fair statement?

A Yes.

Q In fact, you've -- you've said on previous occasions, this was my scene?
A Yes.
Q All right. And that includes both scenes, A and B, correct?
A Yes.
Q Now, between Scene A and B, it's approximately -- approximately a mile?
A Yes.
Q All right. Scene A being at Grand Boulevard and Dahlia Avenue?
A Yes.
Q And Scene B at Grand Avenue and State Road 54?
A Yes.
Q Okay. With regard to this particular crash, did you see the vehicle that was involved with the crash, at Scene B?
A Yes.
Q Okay. Were you between both Scene A and Scene B, or were you at one particular location?
A I was at Scene A through the majority of the investigation. When I concluded Scene A, then I went to Scene B.
Q Now this -- I guess the 911 calls started

coming in at 1:09, 1:10, early that morning; do you recall that? Roughly?

A I don't recall the times; but yes, the 911 calls came in.

Q And you arrived on scene at what time?

A I don't recall without looking at my report.

Q Okay. Do you have your report?

A Yes, I do.

Q Okay. It's no test; I mean, if you want -- if you need to refer to your report at any time, feel free to do so.

What time did you arrive, sir?

A Approximately 2:15 a.m.

Q Okay. Almost an hour after the reported accident.

A We received the call at approximately 1:15; so, yes.

Q Okay. Now, between Scene A and Scene B, the -- the mile or so that was there, I think we've talked before, it was about 5280 feet, which is in your report. Sound accurate?

A Yes.

Q Between that period of Scene A and Scene B, the entire mile, was that scene blocked off and secured by law enforcement?

MR. ROSARIO: Judge, I'm going to object; this does not go to the motion. The motion goes to the truck and an item that was stolen from it. (Indiscernible.)

MR. FOOTE: Judge, if I can --

THE COURT: Mr. Foote?

MR. FOOTE: There's evidence that was collected all over the place, according to their own witness. And if it's not relevant, then we can motion in limine out for trial, if it's not relevant.

MR. ROSARIO: Their motion is not the evidence that was collected prior to the --

THE COURT: Yeah. Isn't your motion about what happened to the truck subsequently?

MR. FOOTE: There's parts and things that fell off the truck, Judge, that they've tested.

THE COURT: Okay.

MR. FOOTE: And it's just good background as to what was secured and what was not secured and how it was --

THE COURT: So, your motion goes to suppress things that had nothing to do with this impound or anything else?

MR. FOOTE: The vehicle when it comes to rest

at Scene B and how it was secured is the basis of my motion.

THE COURT: Well, that's not what you're asking now. You're talking about evidentiary items between Scene A and Scene B.

MR. FOOTE: Judge, it's foundational to determine what level of security they had around the vehicle and the scene in general. I'll -- I'll move down through --

THE COURT: Okay.

Q (By Mr. Foote) Is it your opinion that the scene was secured properly?

A To my knowledge, yes.

Q And when you say to your knowledge, are you guessing or did you actually sign or have people to block off the scene?

A No, I did not.

Q Okay. So, you don't know whether or not the scene was secure or not?

A I just know that there was no vehicles that traveled to my scene, so therefore from -- from the point of view that I could see --

MR. ROSARIO: Judge, I'm going to object again. We're talking about between Points A and B; we're not talking about the truck in its final

resting point and being taken into inventory.

THE COURT: Mr. Foote's indicated this is kind of a -- laying a predicate; I'll give him some leeway here.

Q (By Mr. Foote) You can continue, sir.

A From -- from the point I could see -- that I could see other lights, flashing lights, I could -- it was -- it was a deputy, because I could tell, it had red and blue lights --

Q Uh-huh.

A -- that had blocked off to the point where I could see, which they did not allow any other vehicle traffic. Beyond my eyesight, I don't know whether or not anything else was blocked off. I do know that my scene was secure and Scene B was secure.

Q Okay. And you knew Scene B was secured, how?

A By other troopers being at that scene; and the Sheriff's Office.

Q So, you're assuming that they're following the standard operating procedures. Is this something you observed or that you're saying what they're supposed to do?

A Both.

Q Okay. And what did you observe?

MR. ROSARIO: Objection, indefinite question;

and we're talking about (indiscernible).

THE COURT: Yeah, correct. Where did it -- where --

Q (By Mr. Foote) What did you observe at the scene?

MR. FOOTE: It can go quicker -- well.

Q (By Mr. Foote) What did you observe at Scene B, with regard to securing the scene?

A When I got there?

Q You can only observe it when you were there, sir.

A Okay. After I cleared Scene A, I went to Scene B. I saw troopers, deputies that had -- the road was blocked, everything was secured; and there was troopers and deputies there on that scene.

Q Okay. Now, you previously testified that there were possibly deputies on every block all the way leading down to Scene B.

A No, I did not.

Q Do you recall taking a deposition --

MR. ROSARIO: Objection, relevance again, Judge. What happened between Scene A and Scene B are not relevant to the motion. That's why I've tried to (indiscernible) where we were going.

It's when the vehicle is impounded, something

was tampered with. That is the motion.

This is a free discovery deposition; I am objecting to it.

THE COURT: Okay.

MR. FOOTE: Judge, now it's going to credibility. The witness has made a previous statement with regard to securing this vehicle and how secure the scene was. And my motion goes to the truck itself, it being --

THE COURT: Well, your motion doesn't talk anything about what you're -- what you're questioning about now. Your motion does not cover any of that.

MR. FOOTE: Judge, we're going to show evidence at Scene B, and -- okay, we'll file an amended motion with regard to Scene B. Then we'll do that.

I'm trying to as expeditiously -- there are items that were tampered with at Scene B.

It goes to the credibility of the lead homicide investigator as to securing the scene, which he says he was in charge of the whole thing.

Now there are inconsistent statements that were made previously, under oath, with regard to securing of that scene, and that's the basis of

this question.

THE COURT: Well, once again, I thought the questions were predicate questions. You said they were foundational; these are foundational questions --

MR. FOOTE: Correct, Judge.

THE COURT: -- just to get down to the scene.

So, I guess, now we're going to get -- get into the point where we're going to redo, I guess, where all the cars were and -- and that sort of thing.

I mean, the problem is, I read this -- your motion; your motion doesn't talk about anything occurring at the scene. It doesn't talk about that. I mean, am I missing it? If I am, by all means point it out to me.

I -- I -- what your motion seems to say is that -- oh, you do. Actually, you do have a paragraph in here where it says the vehicle was left on the side of the road at the southwest intersection of State -- State Road 54 and Grand Boulevard, for a number of hours while the on-scene investigation was being conducted. And that is actually in part of the factual allegation --

MR. FOOTE: Judge, it goes to Scene B. And

-- and certainly, this particular question that's before the Court that's been objected to --

THE COURT: Okay. Well, here's what your wherefore clause says: Wherefore the defendant motions this honorable Court to issue an order suppressing the 2001 Chevy Silverado 1500 as well as any and all evidence and photographs obtained from said vehicle after the initial towing of the vehicle by Tatum's Towing and Recovery.

MR. ROSARIO: And that is what the State's prepared to argue today, that it is after the initial towing.

MR. FOOTE: Judge, I can --

THE COURT: Well, it also says, though, issue an order suppressing the truck --

MR. FOOTE: Correct, Judge.

THE COURT: -- as well as.

So, I guess the argument is this goes to the truck.

MR. FOOTE: The handling of the truck, the securing of the truck, particularly at Scene B, by law enforcement.

THE COURT: All right, I'll allow it.

Q (By Mr. Foote) Sir, is it your testimony that there were not deputies at every street between

Scene A and B, securing the scene to collect evidence?

A I can only assume there was, as I stated early, that no other vehicle traffic came through my scene. So therefore, I can only assume that it was blocked off.

Q Okay. But you didn't observe this?

A No.

Q Okay. Now, with regard to this vehicle, did you see the vehicle at Scene B when you arrived at Scene B?

A Yes, I did.

Q What did you observe when you saw the vehicle? Did you make any inspection of the vehicle at Scene B?

A I examined it for damage; yes, I did.

Q Okay. In fact, you took photographs of the vehicle?

A Yes, I did.

Q Okay. And within that, you looked in -- in the interior of the vehicle as well as the exterior?

A Yes.

Q Okay. And those photographs are provided in evidence?

A Yes.

MR. FOOTE: May I approach the witness,

Judge?

THE COURT: You may.

MR. FOOTE: Actually, if I can mark these.

I guess we would call them A and B, if the Court pleases, or numbers?

THE CLERK: (Indiscernible)?

THE COURT: If they're going to be evidence, you can go ahead and -- it's -- it's however you want to do them. I know here they do A -- they go letters, then numbers.

THE CLERK: Right now we're going with numbers and they have to be pre-marked; but I can mark them.

THE COURT: Okay, numbers. So, it would be 1 for -- Defense 1 for identification and Defense 2.

MR. ROSARIO: Judge, I've already pre-marked mine as State's A, B, C, D, E.

MR. FOOTE: Do you have these exact ones?

MR. ROSARIO: I haven't marked those, but --

THE COURT: Okay.

MR. ROSARIO: I've already -- I've already pre-marked --

THE COURT: Well, our clerk says now they're shifting to numbers. But if we want to --

THE CLERK: (Indiscernible) we'll keep yours.

But, I will --

MR. FOOTE: What's your last letter?

MR. ROSARIO: Well, you can start with Defense A.

MR. FOOTE: Okay.

(Staff conversation.)

THE COURT: Well, they're going to be marked for identification first. Once they're authenticated and moved in, then they'll be moved in, I guess, as 1 and 2.

Q (By Mr. Foote) Sir, you took photographs yourself at Scene B?

A Yes.

Q Of a vehicle?

A Yes.

Q And subsequently, you took photographs of the vehicle when it was at its tow location?

A Yes.

Q And this happening at early morning hours; it was dark outside?

A While I was at Scene B, yes.

Q Correct. So, you have nighttime and daytime photographs?

A Yes.

Q Okay.

MR. FOOTE: May I approach the witness, Judge?

THE COURT: You may.

Q (By Mr. Foote) I'm showing you what has been previously marked as Defense Exhibit 1 for identification. Take a look at that and tell me if you recognize it.

A Yes, I do.

Q What is it?

A It's the interior shot that I photographed while at the scene.

Q At Scene B?

A Yes.

Q And you took that photograph yourself?

A Yes.

Q Does it accurately depict the vehicle as you saw it when you took the photograph on that evening at Scene B?

A Yes.

Q I'm going to show you Defense Exhibit 2 for identification. Do you recognize that?

A Yes.

Q What is it?

A It is the same vehicle with an interior shot that I photographed while at the tow yard.

Q Okay. And you yourself took the photograph?
A Yes.
Q Does it accurately depict the vehicle as you saw it on March 26th in the daytime hours?
A Yes.
Q Okay.
MR. FOOTE: Judge, at this time we would move in Defense Exhibit 1 and 2 for identification as Defense 1 and 2 entered.
THE COURT: All right. Any objection?
MR. ROSARIO: No, sir.
THE COURT: It will be so received.
Q (By Mr. Foote) What was the purpose of taking those photographs, Corporal?
A It was in the scope of an (indiscernible) of my investigation.
Q Right, but for what purpose?
A For evidence documentation, investigation.
Q Okay. Now, with regard to a vehicle -- you come on a vehicle like at Scene B; what is the Highway Patrol's operating procedures for the preservation of that particular evidence?
A I don't understand your question.
Q How do you preserve that evidence to make sure that it's not tainted with --

MR. ROSARIO: Sir, is (indiscernible) question (indiscernible) referring to the picture or referring to something else?

THE COURT: I think he's referring to a truck.

MR. FOOTE: Truck.

THE COURT: Truck?

MR. FOOTE: Yes, sir.

THE COURT: Uh-huh.

A We make sure they're only law enforcement, which is basically myself, is allowed to enter, touch it or do anything else with it.

Q When you say touch it, do you actually go in and move things around, take things in and out of it, or do you preserve it first the way it is and then subsequently you do other things with it?

A Preserve it, first; document everything; if there's anything of evidentiary value that is removed or taken off of any type of vehicle, it is done, you know, before a photograph and then a photograph is also taken afterwards to show where this type of evidence was located.

Q Okay. And I -- I guess that's like at a -- a -- a murder scene, there are shells on the ground; you all just don't pick those up, look at them and put them

back --

A No.

Q You preserve the scene the way you see it?

A Yes.

Q Correct. On these photographs, do they depict -- if I show you Defense 1, which is the nighttime photo at Scene B.

A Yes.

Q Is that vehicle the way you found it and the way it was left before law enforcement touched it?

A It's when -- when I arrived at Scene -- Scene B; when I -- when I opened the door, that's -- this is what I saw; this is what I photographed.

Q Okay. Did law enforcement tamper with this vehicle at all or move anything around inside of that vehicle when you took this photograph?

A To my knowledge, no one entered the vehicle.

Q And these are the photographs, the only photographs that were given to us in evidence as far as Scene B is concerned. Is it fair to say that this is what you're talking about? You leave the vehicle the way it is and take a photograph of it?

A Yes.

Q And this is the way, then, the photograph depicts the truck was when it came to rest?

A Yes.
Q Now, in Defense 2, that's a daytime photograph.
A Yes.
Q Do you see any differences between Defense 1 and Defense 2?
A Yes.
Q They're both the interior compartment of the vehicle.
A Yes, I do.
Q And what are the differences?
A The GPS that was mounted on the windshield is missing from the daytime photograph.
Q Okay. And that's just one obvious thing that you can see in this particular photograph?
MR. ROSARIO: Judge, argument. Leading.
THE COURT: Overruled.
A Yes. I mean, from -- for obvious reasons, yes.
Q (By Mr. Foote) Okay. Do you know what happened to the GPS unit, sir?
A No, I do not.
Q Now, there was also a video taken in this case?
A Yes.

Q And did you see that video?
A No.
Q You've never seen the video?
A No.
Q You're the -- the homicide investigator; you've never saw the video of Scene B?
A I didn't take the video.
MR. ROSARIO: Objection, asked and answered and argumentative.
THE COURT: Overruled.
Q (By Mr. Foote) You're the homicide investigator in charge of the death investigation; you haven't seen the video that's submitted in evidence in this case?
A I don't have -- I don't have a VHS viewer to view it. I'm sure the State Attorney has, but I have not seen it.
Q My question is, in three years, you have never seen that video?
MR. ROSARIO: Objection, argumentative, Judge.
THE COURT: Well, I just need to know the -- I want to hear the answer.
A I think I might have got a glimpse of it at one time; and I was told there was no audio. And I

don't -- I don't recall the whole contents of the video.

THE COURT: Now, we're talking about the video of the -- of the Scene, either A or B.

MR. FOOTE: B. Actual video of Scene B --

THE COURT: Okay.

MR. FOOTE: -- of the things he photographed.

THE COURT: So, the questions are -- in -- in -- with regard to Scene B, has this witness ever seen the video of Scene B.

MR. FOOTE: Taken by Florida Highway Patrol, yes.

THE COURT: All right. All right.

The answer to that is, maybe part of it?

THE WITNESS: Yes, parts.

Q (By Mr. Foote) And do you recall in seeing that video whether or not the interior compartment of that vehicle is consistent with the photographs that you took here in Defense 1 and 2?

A I don't recall what I saw on the video. I don't recall the image of that.

Q Okay. Did you compile a property in evidence receipt in this case? At C and D? At C and D?

A After the fact, at the tow yard.

Q Is that part of standard operating procedures

for the Florida Highway Patrol?

A No, it's not.

Q I'm sorry?

A No, it's not.

Q Okay. Was there any evidence or property receipt compiled at Scene B before this vehicle was disturbed?

A No.

Q So, we have no record as to how the vehicle was or what items were inside the vehicle at Scene B?

A Only with the photograph.

Q There's no written documentation according to the Highway Patrol as to what was actually inside that vehicle?

A No, because the trooper failed to -- to do the property in evidence, which it was his responsibility. Once I learned that -- of that did not occur, I made a property in evidence sheet, listed the -- the articles that was in the pickup truck at the tow yard.

Q When you say the trooper, that was his job; that wasn't your job?

A No.

Q Okay. And would you characterize that as a mistake in this investigation?

A The trooper's. Again, once I corrected the mistake, once I found out there was not a property in evidence or a tow sheet initiated, then I completed one.

Q What's the purpose of that sheet?

A To document what -- what is in the vehicle, how the vehicle is, describe damage or whatever --

Q So, there could have --

A -- and it wasn't done.

Q There could have been a weapon or drugs inside that vehicle that no one actually documented?

A They -- it's -- it's whatever was in the vehicle at the time.

Q My question is, at Scene B, because of the failure of the Highway Patrol to write a property in evidence receipt documenting everything that was in the vehicle as you found it, there could have been anything in the vehicle; correct?

A Correct.

Q So, subsequently, after -- the following day or a couple days later, when did you actually do one?

A About six hours later.

Q Six hours later.

Corporal, is there a difference between a property in evidence receipt and an inventory sheet?

A Yes, there is.

Q What is the difference?

A One is completed at the scene, which is -- it is a vehicle inventory; it describes who owns the vehicle, what type of vehicle, where the vehicle was at, whether it was impounded, whether it was a crash, whether -- whatever. It lists on another blank, describe property; it lists on it hold or no hold; that is a vehicle inventory.

Then, a property in evidence sheet is a sheet that describes evidence that's going to be placed into evidence at our station, which -- which they are two totally different documents.

Q Is there a difference between an inventory and a vehicle storage receipt and a property taken into custody?

A Yes.

Q Okay. What's the difference between those two?

A One of them belongs to -- in the field notes of a homicide report; and the other one goes with the crash report.

Q And so, what is it that you actually completed? It wasn't a property in evidence slip; was it a property taken into custody?

A It was the -- the inventory; vehicle inventory sheet.

Q So as you sit here today, you didn't actually do one of those detailed property in evidence sheets? You did a inventory report.

A At -- at the tow yard.

Q Okay. So, my initial question, so the Court understands, there's an inventory sheet to indicate every item that's inside of a vehicle, which you said there are two different types of forms, correct?

A Yes.

Q You completed one, because a trooper made a mistake at Scene B?

A Yes.

Q What you completed was not the inventory sheet -- I mean, not the property in evidence sheet; right?

A Correct.

Q All right. You did the inventory sheet?

A Yes.

Q Okay. So to date, there still isn't a property in evidence form that's been completed by the Highway Patrol that indicates every single item that was inside that vehicle?

A Property in evidence is a sheet that is

documented as to what evidence was removed and submitted into evidence.

Q Okay.

A If we didn't have any, then nothing was submitted; so therefore, no form was completed. If there was evidence submitted, which in this particular case I believe there was, that went through FDLE, then there was. But, it's only items that are submitted. It does not list a complete inventory of the vehicle; only the items that were collected.

Q So, you pick and choose what you actually put down on this property in evidence sheet?

A No, I didn't say that.

Q Okay. Were there items inside of this vehicle at Scene B?

A Yes.

Q Were those items inventoried on a property in evidence slip, no matter who did it?

THE COURT: See, I think the difficulty with that question is you've mixed two different questions.

MR. FOOTE: Not really.

A I think --

THE COURT: You asked if there were -- and make sure -- and the only reason I'm stopping you

is, I've got to make sure I'm clear.

The property in evidence list shows items that are removed and placed into property.

THE WITNESS: Correct, Your Honor.

THE COURT: An inventory sheet would inventory the contents of the item -- contents of the -- well -- of the vehicle, who owns the vehicle, whether there was a hold and what the vehicle was involved in.

THE WITNESS: Correct.

THE COURT: So, if no items were taken, there would be no property in evidence sheet; but if five items were taken, there would be five items on a property in evidence sheet.

THE WITNESS: Correct.

THE COURT: So, is it correct to say that you -- you use inventory items on -- on the property in evidence sheet for items that weren't necessarily taken into custody.

THE WITNESS: The -- the -- the vehicle inventory sheet I completed at the tow yard lists the property that was in the truck.

THE COURT: (Indiscernible)

THE WITNESS: Cigarettes -- it's what I see. Cigarettes. For instance, I don't recall exactly

what his contents were in this truck.

But just for an example, whether it be cigarettes or it be cell phone, indicate the make, model of the cell phone; just whatever property that was in the truck, we list.

THE COURT: Okay. I just need to make sure I -- that I was clear on the difference between the two. Okay.

Q (By Mr. Foote) And so, the items that you listed -- you stated if there's no evidence, then we don't need to do one. That doesn't apply in this case, right? There was evidence.

A Yes.

Q In fact, the truck itself, the 2001 Silverado, was a piece of evidence. Would you agree with that?

A Yes.

Q So, that being a piece of evidence -- let's not even talk about the interior -- that is a piece of evidence that was taken into custody by the Highway Patrol; right?

A Yes.

Q And according to your operating procedures, you're supposed to complete a property in evidence sheet for that item of evidence; right?

A I believe there was one when it would have arrived at our Land O' Lakes station.

Q Is that when you're supposed to do it, sir?

A When we take it into custody. If it's -- if it's left forever, then we don't do one. Only if we take it into evidence.

Q So, it wasn't taken into evidence? When it went to Tatum's Towing, it wasn't in evidence?

A Yes, it was.

Q Okay. Therefore, a property in evidence form should have been completed, according to the FHP procedures.

A It was evidence; but then again, we don't -- the property in evidence sheet that's filled out indicates that when we take possession of it, whether it's a hold, whether it's ordered by the State Attorney's Office or whoever, if it's maintained in custody in our lot, then there is documentation showing where that vehicle is at and it -- it is secured at our lot.

Q When is the property in evidence receipt completed? When is it supposed to be completed?

A When -- when something's taken into evidence.

Q So, at Scene B, when you're looking at the vehicle with all the little items in it, you don't look

there and report everything that's in it? You must move the vehicle (indiscernible) and do it later?

A Again, I did not do one at Scene B, nor did the trooper.

Q I'm not asking who did what; I'm just asking about procedure now. What is -- you're -- you're telling the Court a couple of things, and maybe I'm confused with it.

Before you move a piece of evidence, don't you have to document everything about that piece of evidence?

A The trooper should have done a vehicle inventory.

Q And that was not done in this case; right?

A At Scene B, no, it was not.

Q Okay. You said later on, six hours later, that you filled something out. But that still wasn't the property in evidence receipt; right?

A It was a vehicle inventory documenting what items were in the vehicle.

Q So, my question -- the answer to my question is no. You didn't do a property in evidence receipt, then?

A Not at Tatum's Towing; no.

Q Okay. Did you ever do one? A property in

evidence sheet?

A There was a property in evidence sheet done upon its arrival at the Land O' Lakes impound lot.

Q When did it arrive to Land O' Lakes impound at the FHP station?

A After I got done processing at Tatum's Towing. I followed it to our impound lot.

Q When was that?

A That's March 26th.

Q Do you have a date?

A The date the crash happened?

Q Yeah.

A It was documented on Page 13 --

Q No.

A -- of my homicide report.

Q The date when the vehicle actually came to FHP station; do you have a date today when that happened?

A Yes. It's March 26th.

Q Sir, we had talked about this before; and I asked you whether or not you knew when the vehicle actually got to FHP. You stated in previous similar testimony --

A I didn't know; I didn't recall.

Q So, today -- so, you just found out?

A I -- I'm -- I have a chance to -- to read over my report, which it has not been altered, changed or anything --

Q Okay.

A -- since the date I first authored this report. It stated in there, on March the 26th, 2006, I responded to Tatum's Towing.

If you can (indiscernible) on down to the paragraph that I then requested Tatum's record to tow V1 to Land O' Lakes station impound, where it could be secured. That was the same day, after I got done processing it.

Q It doesn't say that; that's what you remembered, you mean? Is there a document that says this vehicle was received at FHP station at this date and time? Anywhere in this discovery?

A There should be a -- a property in evidence sheet indicating that, when we took it in.

Q And do you have your report there?

A I just have my homicide report.

Q In fact, sir, there is no property in evidence receipt that says when this vehicle ever came. And under sworn testimony, deposition, isn't it true you said you don't know when the vehicle arrived?

A I didn't recall. But now, it's -- it's

documented -- it's -- it's in my report.

Q What page in your report, sir?

A Page 14.

Q And it actually says the vehicle arrived at the FHP station on the date and time you just testified to?

A I never -- I never said a time.

Q Sir, you just said 1-something.

A No, I did not.

Q Okay. And the exact sentence in your report that says when the vehicle arrived at FHP says what?

A On March the 26th, 2006, I responded to Tatum's Towing and Recovery, give the address, to begin to examine and process V-1. I list the damage, the crush; I then concluded my examination of V-1 at the tow yard. I then requested Tatum's (indiscernible) tow V-1 to the Land O' Lakes station impound lot where it could be secured. That was the same day.

Q Okay. Well, where does it say it arrived at FHP on that date? I know what you asked them to do; but when did it actually arrive?

A I know when it arrived, because I followed it out there.

Q Okay. And is there a receipt stating when it was turned over from Tatum's Towing to you, which is

required under FHP procedures?

A I don't -- I didn't get the receipt, no.

Q And you were in charge of that piece of evidence at that time; right?

A The receipt from Tatum's Towing?

Q Were you in --

A That's not my responsibility.

Q Sir, were you in charge of the 2001 Chevrolet, the -- the big piece of evidence in this case?

A Yes, I was.

Q And when you followed it, now, from Tatum's Towing to FHP, you're required to document the movement of evidence from one place to another; it's called chain of custody, right?

A Uh-huh. Yes.

Q Is that a yes?

A Yes.

Q Did you do that in this case?

A Follow the vehicle? Yes, I did.

Q Did you complete the chain of custody document saying when the vehicle actually arrived at FHP headquarters?

A No.

Q So, there's no official document, which is

required by FHP, to indicate what you're testifying to today?

A There is a property in evidence sheet showing that the vehicle was impounded at our -- our Land O' Lakes station.

Q It has a date and time on it, when it came in?

A It's computer generated. It's whatever time we turn on the computer and enter it; it gives that time.

Q Did you ever give that to the State Attorney's Office in this case?

A I don't know what they -- what they do have; but they should have it.

Q You stated that it wasn't your job; so, did someone not do it or do it?

A Okay now, you're getting me confused. When I say -- when it's not my job -- and you said receipt; okay, there is different types of receipts. There's a bill for -- for towing; and no, that's not my responsibility.

MR. FOOTE: Judge, may I approach the witness?

THE COURT: Sure.

Q (By Mr. Foote) I'm going to show you a few items here, if you can identify them.

Defense Number 4 for identification; can you tell me what that is? Do you recognize it?

A Yes, I do.

Q What is it?

A It is the property taken into custody, per my field notes.

Q Okay. What kind of form is it?

A It's a field note packet form.

Q Okay. So, this is not a property in evidence sheet?

A No, it's not.

Q And it's not an inventory sheet?

A No, it's not.

Q Okay.

MR. ROSARIO: May I -- may I see that document? What is -- I'd like to know what its titled (indiscernible) what the titles (indiscernible) --

THE COURT: I think it's been titled a field note pocket report.

MR. FOOTE: It's actually property taken into custody, is what it says; Form Number 62708, Florida Highway Patrol. 62 --

THE COURT: Okay. And what -- and you referred to it, sir, as a -- as a what?

THE WITNESS: As a field note packet. (Indiscernible) piece of paper. In other words, it is not documentation to go in the formal report. It stays with us in our field note packet.

Q (By Mr. Foote) It stays with you --

A It's field notes.

Q How long does it stay with you? At some point you turn it over, 'cause I have it. So, you turned it over to the State; right?

A To whenever it becomes discovery.

Q Okay.

MR. ROSARIO: That's marked as Defense what?

MR. FOOTE: Four.

THE WITNESS: Four.

Q (By Mr. Foote) I'm going to show you Number 5 for identification; do you recognize that?

A Yes.

Q What is that?

A Property taken into custody, personal.

Q That's Form 62707 of the Highway Patrol. All the way down there --

A Right.

Q Okay. What's the purpose of this document?

A That if we take any personal property, such

as a wallet, watch, just like it states on there --

Q Uh-huh.

A -- it's entered into evidence, that I take into evidence and do another sheet of paper that says property into evidence.

Q Okay. I'm showing you Defendant's Exhibit 6 for identification, Form 61802. Do you know what this is?

A That is a property in evidence sheet.

Q This is a property in evidence sheet?

A Yes.

Q Defendant's 3; it doesn't have a form number, but do you recognize it?

A That's a vehicle inventory receipt.

Q Defendant's 9 for identification; do you recognize that?

A That's a vehicle property receipt.

Q And that's form 61802; are you familiar with that document?

A Yes.

Q Okay. All the documents that I have just showed you and the different form numbers, in your capacity as a homicide investigator and a state trooper, are you familiar with these documents?

A Yes.

Q Do you fill them out in the regular course of your business?

A It depends on if they're needed.

Q But you have filled them out?

A Yes.

Q Okay.

MR. FOOTE: Judge, at this time we move Defendant's 5 into evidence; Defendant's 4 --

THE COURT: Let me ask, any objection to Number 4?

MR. ROSARIO: No, Judge.

THE COURT: Number 5?

MR. ROSARIO: No, Judge.

THE COURT: Number 6?

MR. ROSARIO: No, Judge.

MR. FOOTE: Number 3?

MR. ROSARIO: I have no objection to any of them (indiscernible) --

MR. FOOTE: And Number 9?

THE COURT: All right. They will be received.

THE CLERK: Do you know if it's received as Exhibit 3 as Evidence 3?

THE COURT: Sure.

THE CLERK: Exhibit 4 as Evidence 4; Exhibit

5 as Evidence 5; Exhibit 6 as Evidence 6; Exhibit 7 as Evidence 7 --

THE COURT: Well, there is no 7. There's no 7 and 8 in yet. So, there's only -- 7 and 8 are not in yet. So, it's 1 through 6 and then 9.

MR. FOOTE: 3, 4, 5, 6 and 9.

THE COURT: Well, 1 and 2 are in, too.

MR. FOOTE: I think we did that already.

THE COURT: That's what I mean. So, 1 and 2 are in.

MR. FOOTE: Correct.

THE COURT: 3, 4, 5, 6 and 9.

THE CLERK: 9 would be marked as Evidence 6.

THE COURT: Okay. 9 -- does 9 become 6 or 9 become 7?

THE CLERK: We have 3,4,5,6 -- 9 will become 7. I'm sorry.

THE COURT: Now, Evidence 9 was a vehicle property receipt -- Defense 9 was a vehicle property receipt; Defense 6 was a -- yet another property in evidence sheet. Correct?

MR. FOOTE: Which number (indiscernible)?

THE COURT: Well, I -- I think we've just dropped 6. Because it was indicated that Number 9 becomes Defense Number 6. I think there is a --

MR. FOOTE: Number 6?

THE COURT: I think there is a Number 6. And that one should be a property in evidence.

MR. FOOTE: Correct.

THE COURT: Then, Number 9, which I guess becomes Number 7, becomes a vehicle property receipt.

MR. FOOTE: The other one is going to come in, especially if you want to leave them as I --

THE COURT: Well, I was just talking about how the clerk wanted to do it.

MR. FOOTE: Oh.

THE CLERK: As they come in is how we number them.

THE COURT: Okay.

(Staff conversation.)

THE COURT: But I just wanted to make sure; 'cause 9 was going to become 6. Well, it can't become 6, 'cause there is a 6.

MR. FOOTE: Correct.

THE COURT: So we do have a 6 in there. There should be a 6 in there. So, 9 must become 7. Correct?

THE CLERK: We received Evidence 6 -- Exhibit 6 as Evidence 6 already.

THE COURT: Right.

THE CLERK: So --

THE COURT: And then, 9 becomes -- then -- 9 --

THE CLERK: 9 would become Evidence 7.

THE COURT: Okay. Okay. Okay.

MR. FOOTE: So, do you need to mark those (indiscernible)?

(Staff conversation.)

MR. FOOTE: May I approach the witness, Judge?

THE COURT: You may.

Q (By Mr. Foote) I'm going to show you now what's in evidence as Defense Number 6. That says evidence and property receipt; it has two pages.

Is that the property in evidence receipt that you were talking about earlier, that's different than the inventory sheet?

A Yes.

Q Okay. And the purpose of this, is this the document that you would use to list the items that are found inside the vehicle?

A No.

Q Is this the document that you said that a trooper was supposed to do at Scene B?

A No.

Q What is the document that should have been completed at Scene B?

A Inventory and vehicle storage receipt.

Q And that's Defense 3 in evidence. Okay. And you completed this document?

A Yes, I did.

Q When did you complete it?

A The date was March the 26th at 10:33 in the morning, at the tow yard.

Q Okay. I'm going to show you Defendant's 4 and 5; they say property taken into custody on the top.

A Correct.

Q Those -- when do you complete that? Is it supposed to be done at Scene B?

A No.

Q When is this supposed to be done?

A During processing or after.

Q Okay. The purpose of these documents are to tell you what's inside of the vehicle, such as the number of tires, seat belts, personal items?

A If I take anything out of -- out of the vehicle at the tow yard, I would document it there.

Q Okay.

A Which, in this particular case, nothing was

removed at the tow yard, by me.

Q Okay. So, you complete this to say what it is that you take out to test or to work on? Is that the purpose of this form?

A It's anything that is removed by me.

Q Now, I notice that on this, Defendant's 4, it's dated March 24th at 5:00 a.m., I believe. Is that your writing?

A Yes.

Q Is that a mistake, sir, since the accident happened two days later?

A Yes.

Q Okay. So, that date is not the accurate date?

A Correct, it is not.

Q Okay. And nothing is listed on here as what's inside of the vehicle, what you took or anything like that?

A No, it is not.

Q Okay. Now, on this next day, on March 26th, did you actually go into the vehicle and observe any items?

A As -- as is depicted in the photograph, I opened the door and photographed; I did not -- I mean, I quickly, you know, viewed the vehicle to see if there

was any other contraband or anything that I noted. And to my recollection, I did not; so therefore, nothing was removed.

Q Did you complete a report in connection with those observations?

A It's those reports there, that you have. Where it says nothing was removed. That, over there.

Q So, this is you just observing what's in the vehicle? I don't understand. You're saying if you didn't take anything.

A If I didn't take anything, then I don't fill nothing out. Which is that -- that's what I -- that's -- that's how it says: Nothing removed per FHP personnel.

Q Is there any document when you go there that says what's actually in the vehicle? Had that been completed at this time, when you actually went to see the vehicle at the tow yard?

A No, that's why I completed the vehicle inventory. As I stated, at Scene B that should have been completed by the trooper. Once I found out that this had not been completed, I did it at the tow yard.

Q That's Defendant's 3? That's what you're talking about?

A Yes.

Q Okay. And in this, you list a number of items, a watch, Fossil, a wallet, cell phone, charger; those are the items that you observed?

A Yes.

Q And in fact, there's no GPS and there were no credit cards from Mr. Stephens noted on that form?

A I didn't see it.

Q Okay. 'Cause it wasn't there?

A Correct.

Q All right. On Defendant's 7, it says evidence and property receipt; now, when do you fill this one out?

A I didn't fill that one out.

Q Or when do -- when does a trooper fill this out, this form?

A If there's something that is removed, placed into evidence at our station in a secured room, then at that point, it's filled out.

Q Okay. So, according to your testimony, the only form that should have been filled out to document whatever was in the vehicle is Defendant's 3, the inventory and vehicle storage receipt?

A Yes.

Q And that wasn't done on that evening?

A I'm sorry?

Q That wasn't done at Scene B?
A No, it was done at the tow yard.
Q Now, Corporal Styers, you're telling me what you actually did on this case; do you believe that's in compliance with the Florida Highway Patrol Standard Operating Procedures for the Collection of Evidence?
A Yes.
Q In fact, doesn't the policy manual state when collecting evidence, the property in evidence receipt should be completed at the time the evidence is taken into custody?
A Yes.
Q And that wasn't done in this case; isn't that right?
A I don't -- I don't understand what you're referring to, taken into custody.
Q Well, that truck didn't go home that night, right?
A Okay. Then, you know, say, the truck. I mean, let me know what you're wanting to go in. If you're -- if -- if you're saying that a form should have been filled out once it arrived at the Land O' Lakes station, an E/P sheet was done then.
Q Okay. But before it arrived at the station, it left Scene B, spent a few days at a private tow

company with no troopers there, right?

MR. ROSARIO: Objection, (indiscernible).

THE COURT: Well, I'll sustain as to the form of the question.

Q (By Mr. Foote) Sir, when are you required to fill out the property in evidence sheet, when it gets to Land O' Lakes? Is that your testimony?

A When it's entered into property in evidence, yes.

Q Okay. So, is it your testimony then, when it was given to Tatum's Towing, it wasn't in evidence, the truck?

A It was in our -- it was in our custody.

Q Okay. So, it is taken into evidence at that time, isn't that right, no matter who is holding it?

A It depends on what definition you want to say is evidence.

Q The truck.

A It is in our custody at this time because of the -- because it's new in the investigation. It is unknown whether or not we are going to retain that vehicle. Because we do not -- if a crash occurs, we don't automatically keep the vehicle as evidence.

Q Sir, did you intend to release this vehicle that involved two deaths out back to the owner or

anyone else, besides law enforcement?

A Not until I was conferred by the State Attorney's Office.

Q Okay. In fact, it's still in Florida Highway Patrol custody, right?

A I'm sorry?

Q Is it still in your custody and control, in the Highway Patrol?

A Yes.

Q Okay. So, from March 26th, 2006, three years to the date, that vehicle is still in the care and custody of the Highway Patrol, right?

A Yes.

Q All right. So, according to your operating procedures, you're supposed to complete an evidence and property receipt to establish chain of custody as soon as you take that evidence into custody.

A Only when it's being kept.

Q You didn't keep it March 26th?

A It was too new an investigation to determine if the State Attorney wanted to keep the vehicle; in some cases, they don't. We confer with the State Attorney; if they say keep the vehicle, then it is -- it is removed from the tow yard, escorted or followed by one of us to our impound lot.

Then, once we take that permanent control, then an E/P sheet is completed.

Q Sir, would you agree with me that that truck, the evidence we're talking about, was recovered by the Highway Patrol on March 26th, 2006?

A The truck was taken, yes.

Q My question is, was it recovered by the Highway Patrol?

A It was -- it was taken into the tow -- tow yard.

Q Would you call that recovered by the Highway Patrol, sir?

A We didn't seize it, no.

Q Was it in the -- was it transferred from the private owner to law enforcement custody?

A No, it was not.

Q So, he could have picked up his truck the next day, Mr. Stephen?

A Under Florida statute and by our policy, we are allowed to hold the vehicle up to five days pertaining, you know, as long as there is a serious injury or death, then we are allowed to keep that vehicle up to five days unless otherwise noted by the State Attorney's Office.

Q I'm showing you what has been previously

marked as Defendant's 12 for identification; do you recognize that?

A Yes, I do.

Q What is that?

A That is a Florida Highway Patrol Policy Manual.

Q Are you familiar with this document?

A Yes, I am.

Q Do you refer to it regularly in the course of being a State Trooper?

A I look at it from time to time.

Q Okay.

MR. FOOTE: Judge, at this time, we would move Defendant's 12 (indiscernible) --

MR. ROSARIO: I'd object, (indiscernible) relevance.

THE COURT: The objection will be overruled; I'll allow it.

Q (By Mr. Foote) Now, sir --

THE COURT: I mean, as Defense 8.

THE CLERK: Yes, sir.

THE COURT: Correct?

THE CLERK: Yes, sir.

THE COURT: I mean, was my numbering right, so far?

THE CLERK: Yes.

THE COURT: Okay.

Q (By Mr. Foote) Sir, with regard to the collection of evidence, according to the Highway Patrol Manual, sir, doesn't it say that any transfer of custody including the relaying of all or any part of the materials will be documented in a chain of custody section of the evidence property receipt in the evidence property computer program? Isn't that part of your procedures?

A Yes.

Q And earlier you stated, although it's not your fault, but another trooper was responsible for doing that at Scene B; isn't that right?

A That is two separate documents.

Q Which document was completed with regard to this vehicle, because the policy manual says it should be recorded in an E/P, which is evidence and property receipt.

A Evidence, property. When we take it into, as -- as the policy says, as it's entered into the -- the -- the program, is that what it -- what you said, right?

Q You can turn to page 12.01, Page 10.

A What section?

Q Actually, the -- Page 8, Section B. Where it starts, "The proper collection" --
A Okay.
Q -- "preservation, handling, safe-keeping" --
A Uh-huh.
Q -- "of any and all physical evidence or property will begin immediately when coming into a member's possession." Is that in your policy?
A Yes.
Q Did you read those words as I read them?
A Yes.
Q So, when it becomes comes into your immediate custody and control, your procedures say a document should be completed.
A And which it was.
Q Okay. What document was completed at Scene B?
A Nothing.
Q Is that in violation of these procedures?
A Yes.
Q If you could turn to Page 10, sir, Section E.
A E, policy, 10, or --
Q Policy 12.01.
A Okay.
Q About two pages later.

A Okay.
Q Section E, any transfer.
A I'm sorry?
Q Do you see where Section E is?
A Yes.
Q "Any transfer of custody, including the relaying of all or any part of the materials, will be documented in a chain of custody section of the evidence/property receipt in the evidence/property computer program." Do you agree with that, sir?
A Yes.
Q Okay. Was that done at Scene B?
A No.
Q Is that contrary to your policy and procedures manual?
A It depends on how you want to interpret this manual. Because documentation, correct, was not completed at Scene B. However, that documentation was completed by me at the tow yard.
Q Actually, it states an evidence and property receipt should be done as soon as you guys get your hands on it. Don't you agree with that?
A Only if it's considered as evidence at that time.
Q Okay. You even said that the truck is a

2001. That's your official position, that the Highway Patrol states that this 2001 vehicle that was involved in two deaths was not evidence when you ordered it to be towed. Is that your testimony?

A Yes.

Q It was not evidence?

A It -- it was evidence, but it wasn't being kept as evidence until it was confirmed by the State Attorney's Office that yes, we want to keep it.

Q What you just testified to, does it say that in these operating procedures that you need to check with the State Attorney to determine if evidence is evidence --

A That's --

Q -- before you call it evidence?

A That's in another policy.

Q In another policy? What policy?

A It's -- it's a different type of policy. I mean, when it comes to the traffic homicide, then if we wanted to keep a vehicle -- I mean, if we kept every vehicle that we conduct a traffic fatality investigation on, we would need a building three times -- or we would need a space three times this building.

However, only in major, major criminal cases, that's why I refer to the State Attorney's Office, give

them the synopsis of my investigation, say this is the vehicle I have; do you want us to keep it? If the State Attorney says yes, then we take other methods.

Q Okay. Sir, this states Florida Highway Patrol manual, Policy Manual, which was just entered into evidence --

A Uh-huh.

Q -- that's the policy manual. What you just testified to today, is that in here? Does it say check with the State Attorney first, before you call it evidence? Or does it tell you to do a property in evidence receipt as soon as you take the property?

A I have two policy manuals I have to follow.

Q What's the other one, besides this one?

A A Traffic Homicide Policy Manual.

Q And does it differ from what this one says?

A Yes, it does.

Q So, it tells you do to something different with regard to evidence?

A Yes, because it solely pertains to traffic fatalities.

Q And what's it called?

A Traffic Fatality Policy Manual -- or Traffic Homicide Policy Manual.

Q And that manual, is it your testimony, it

tells you not to do a property in evidence receipt?

A I never said that.

Q So, in any event, you should have done a property in evidence receipt?

A One was done when it got to the Land O' Lakes station.

Q At Scene B, sir?

A As I already stated, there was nothing done at Scene B.

Q And you would agree with -- agree with me that that would violate the chain of custody, proper chain of custody; right?

MR. ROSARIO: Objection, calls for speculation.

THE COURT: I'll sustain the objection.

Q (By Mr. Foote) Did you know where that vehicle was after it left Scene B?

A I'm sorry?

Q Did you know where that vehicle was when it left Scene B? Were you present when it was released to Tatum's Towing?

A When Tatum's Towing picked it up, they took it to their lot and secured it in a very large building.

Q Okay. Did you observe Tatum's Towing take

the truck from Scene B?

A Yes.

Q When it left Scene B, did you go with it?

A No.

Q Did you send a trooper with it?

A No.

Q Was there any law enforcement with that vehicle?

A No.

Q Okay. So, as you sit here today, you don't know where the vehicle went before it even got to Tatum's Towing; right?

A I know it went straight to Tatum's Towing.

Q How do you know that, sir? How do you know it went straight to Tatum's Towing?

A Because I know five-and-a-half -- five-and-a-half hours later -- besides, we've had them on our tow rotation list for years; we know what they're supposed to do, they know what they're supposed to do.

Q Okay. And does it say that all this time that you know these people and you want to vouch for them, that they take items and steal them out of vehicles?

A I don't know who took it.

Q But someone was taking it?

A Yes.

Q And for five hours -- you come back five hours later; do you know where the vehicle was five hours before?

A I can only assume it was locked up in the building.

Q Not what you can assume; do you know where that vehicle was?

MR. ROSARIO: Speculation, Judge.

Q (By Mr. Foote) Do you know where the vehicle was --

THE COURT: Overruled.

Q (By Mr. Foote) -- for five hours?

A I can assume it was at Tatum's Towing.

Q Not what you assume, sir; you're a law enforcement officer. As a fact, do you know where that vehicle was for five hours when you didn't have your eyes on it?

A No.

Q And in fact, the photographs that we entered in as Defendant's 1 and 2, you took both those pictures?

A Yes.

Q One before and once -- one when it got to Tatum's Towing?

A Yes.
Q You yourself took those photographs?
A Yes.
Q And there are items missing from that vehicle, right?
A There's one item that I know of that is missing.
Q And in fact, a criminal investigation was started in this case that's the basis of that stolen property; right?
A Yes, another investigation was conducted.
Q A criminal investigation?
A Yes.
Q Into Tatum's Towing employees, right?
A I don't know; I didn't do the investigation.
Q So you have no knowledge of that investigation, Corporal --
A I know there was an investigation; I was not involved with it.
Q Okay. I'm asking --
A So, I don't know who interviewed who; I don't know -- I know there was a criminal investigation and I know Tatum's Towing. I do not know the persons or how many was involved with it.
Q I'm not asking any of that information. All

I'm asking is do you know that it focused on Tatum's Towing?

A Yes.

Q The company that you trusted for 20 years --

MR. ROSARIO: Objection, argumentative.

THE COURT: Sustained.

Q (By Mr. Foote) And in fact, inventory of the items at Scene B is not your job?

MR. ROSARIO: Objection, asked and answered.

MR. FOOTE: I never asked that question.

THE COURT: Well, I think -- actually, I think you have asked --

MR. FOOTE: He responded and ended it on -- as a response to another question.

THE COURT: Actually, I believe he said it was not his job to do the inventory on Scene B; the trooper whose job it was to do it did not do their job and do it; so, some five hours later he went and did it at Tatum's Towing.

Am I recalling that incorrectly?

MR. FOOTE: No, Judge. He's saying that someone else did it. I'm just asking who that --

THE COURT: No, no. He didn't -- he did the inventory at Tatum's Towing. No one did the inventory on -- on scene; it should have been done

on scene. The trooper dropped the ball and didn't do it.

Am I correct on that? Is that a correct --

THE WITNESS: That's correct.

MR. FOOTE: I'll withdraw the question.

Q (By Mr. Foote) And it's your testimony that Tatum's Towing, where the evidence, the actual truck and everything inside of it, was left at Tatum's Towing yard?

A Yes.

Q And that was not a secure location; would you agree with that as you sit here today?

A No, I can say it is a secure location, because it was -- it was in a large building, behind a locked door, upon my arrival.

Q Okay. But you will agree with me that items were taken from the vehicle; right?

MR. ROSARIO: Objection, asked and answered.

A Yes.

Q (By Mr. Foote) And would you still say that that's secure, under FHP policy?

MR. ROSARIO: Objection again, relevance and calls for speculation.

THE COURT: I'll overrule the objection. But I know we're -- I mean, I think we're just kind of

getting into semantics here. But --

MR. FOOTE: Judge, I'm just trying to preserve my record; he's going all over the place.

Q If it's a secure location, it wasn't that secure that items were taken from the vehicle. Is that a fair statement, sir?

A As far as the Highway Patrol is concerned, if it's in a locked building with a lock, it is secure. If anyone took anything out of it, which obviously they did --

Q (By Mr. Foote) Sir, you've stated that you completed the document the next day, as the Court just stated; what document did you create the next day?

A I never said I created a document the next day.

Q Sir, it was just put into evidence; you said you did it five hours later.

A That wasn't the next day; the crash happened at 1:15 in the a.m. I arrived at Tatum's Towing in the a.m.

Q Defendant's 3 in evidence, it says inventory and vehicle storage receipt.

A Yes.

Q Is that the document you completed the next day?

A No, it's not. March the 26th, 2006 at 10:33 in the a.m. at Tatum's Towing. The date the crash happened.

Q Okay. The -- the -- when the sun came up, five hours later, did you complete this document?

A At Tatum's Towing on that date and on that time.

Q Okay. All right. Now, my next question is, is this a property in evidence receipt as outlined in your manual that we put into evidence?

A No, it is not.

Q Okay. And in fact, no property in evidence slip --

MR. ROSARIO: Objection, asked and answered.

Q (By Mr. Foote) -- was completed --

THE COURT: Sustained.

Q (By Mr. Foote) To your knowledge, does one exist in this case, a property in evidence slip with regard to this vehicle? As you sit here today, three years later?

A I would have to look in all the files to pinpoint one; if one, I don't recall.

THE COURT: Well, verify -- or -- help me with that question. Do you mean at Tatum's Towing or do you mean back at FHP?

MR. FOOTE: Anywhere, Judge. It's our position a P in E was never done in this case for this vehicle.

Q (By Mr. Foote) Isn't that right, Corporal?

A Again, I would have to look at all the paperwork to -- to recall.

Q Fine.

MR. ROSARIO: Judge, I don't know how you want to handle this. I know we were -- we're past 5:00 at this point. I don't see us actually ever being close to finishing this hearing at this point. I don't know if you want to bifurcate it at this point.

THE COURT: Well, we'd hoped we'd get on two witnesses by this time, but obviously that didn't happen.

Let me just -- just so I'm clear on something. I thought one of these pieces of evidence Mr. Foote has entered into evidence was a -- was filled out at -- when it was -- when it -- when it returned -- was --

Well, I guess I'll ask the trooper this: Was there a document filled out when it was -- when it came to FHP, Land O' Lakes?

THE WITNESS: I don't recall if I did it, but

there should have been one showing that it was placed into our custody and entered in the computer. That's the document that I would have to look at all the paperwork to see. I don't -- I don't recall.

MR. FOOTE: Judge, we've discussed this in deposition as well.

THE COURT: Okay.

MR. FOOTE: There is no document.

THE COURT: Okay.

MR. FOOTE: There is no document that exists. And I think the State would agree with that (indiscernible).

THE COURT: Well, I know there were some documents that -- that were filled out that said nothing taken; that's what I thought those documents were. And did I misunderstand that?

MR. FOOTE: Yes, Judge. He explained that that document is what he completes if he takes something --

THE COURT: Right, but he didn't take anything. So, when it came in to him, he didn't take anything out, so he filled that document out.

MR. FOOTE: But that's not a property in evidence receipt.

THE COURT: Well, it is -- it is a property in evidence receipt, 'cause nothing was taken out.

MR. FOOTE: If the Court wants to call it that.

I'm calling the documents that he's familiar with that have -- actually have form numbers that the -- the Highway Patrol says that you should do a P in E, which I showed him and is in evidence; that was not completed. He just wrote down something to say he didn't take anything off the site, which we agree with.

THE COURT: Well, there's a vehicle property receipt, which is in as Defense Number 7.

MR. FOOTE: Right.

THE COURT: There is an evidence in property sheet, which is in as Defense Number 6.

MR. FOOTE: Uh-huh.

THE COURT: There is a vehicle inventory sheet, which is in as Number 3. So -- okay --

MR. FOOTE: And that's why I was trying to clarify it (indiscernible) objections. I'm trying to clarify what these documents are. Number 6, the P in E --

THE COURT: Well, let's make sure something's clear: You were given a lot of leeway to go

through it. You've been asking questions about those for about the last hour. So, it's not like you've been actually cut off a lot.

MR. FOOTE: No, but I'm just saying --

THE COURT: You've been able to ask these questions. So --

MR. FOOTE: If we get -- If we get a straight answer as to what they are, then the Court, I believe, will understand. I know what they are and if Corporal Styers knows what they are, and the SOPs say what they are. So, my question --

THE COURT: Well, can I see -- can I see 6 -- Defense 6; Defense 3; then Defense 7.

MR. ROSARIO: Judge, may I ask for a short recess while you review those, to use the restroom?

THE COURT: Oh, sure you can use the restroom.

MR. ROSARIO: Thank you, sir.

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

THE COURT: All right. So -- and I think really to help clear the record up, the -- I think the difficulty was, many of these things you were referring to are, for instance, Defense Number 7 is indeed an evidence in property receipt from the

Florida Highway Patrol. But that refers to items in -- that appear to have been removed from the truck and returned to Mr. Stephen's mom.

Then we have Number 6, which is an evidence in property receipt which specifically relates to the blood draw or the vials of blood that were presumably removed from the defendant and submitted for -- for analysis.

Then we have the inventory and vehicle receipt, which is Number 3, which shows that it was done at 10:33 a.m. and that's the one that there was some was it the next day, it wasn't really the next day, it was later, you know, since it happened after midnight, it was the same day, but la la la. And that is the inventory sheet.

I think -- and I -- and that was the discussion. And see, that was the difficulty; the difficulty is, I think you, Corporal Styles (*sic*) and Mr. Rosario, know what each one of these documents is. But -- but they were all just identified on the record as evidence in property receipts.

MR. FOOTE: That's why I'm giving form numbers; the little form numbers on the bottom.

THE COURT: Well, I think what -- what makes

them easier to -- and really makes it easier to deal with, is the one is for blood; the one is for returned items; the one is for inventory items.

So, the issue comes down to, is there one of those sheets that specifically identifies a 2001 1500 Chevy Silverado. That -- and this trooper says, I don't know; there should be; I'd have to look at the paperwork.

Your feeling is that during depos and stuff, if there is one, certainly no one has produced it. And you haven't seen it, right?

MR. FOOTE: Correct, Your Honor.

THE COURT: Okay. So that's -- and see, now that makes a little bit more sense. When we keep referring to everything as merely a property in evidence sheet, well, we have one for blood, which has nothing to do with what we're here for; we have one for returned keys and everything, which has nothing to do for everyone here; other than they were done.

But there was nothing done for the truck, I think. Is that your point? I'm -- just to make sure.

MR. FOOTE: Almost, Judge.

THE COURT: Okay.

MR. FOOTE: And I don't want to oversimplify it. The one -- I entered the one for blood in to show the form, not the (indiscernible).

THE COURT: Okay.

MR. FOOTE: That form should have been done for the vehicle.

THE COURT: Okay.

MR. FOOTE: It wasn't done for the vehicle, which shows the chain of custody like it was, it went to FDLE, the (indiscernible) --

THE COURT: Oh no, I understand that. I understand -- and that's exactly what I understand you're saying --

MR. FOOTE: Okay.

THE COURT: -- is that there -- that -- and the trooper is agreeing that there should have been one done for -- for the truck when -- now, there's some difference in whether it should have been --

There's some argument to be made whether it should have been when it was initially done, either at the scene or when it went to the towing place; as opposed to, we don't fill it out until it actually comes into our custody. Literally, our custody meaning physically into our lot; as

opposed to in our custody at the towing place.

MR. FOOTE: Correct.

THE COURT: So, I just needed to make sure I understood it; and I understand that is kind of where we are.

MR. FOOTE: That is basically where we are --

THE COURT: And -- and he says yeah, there should be one.

You say look, one's never been produced; if there is one, we haven't seen it. And we talked at depo and no one's ever produced it.

So yeah, maybe there should be one, but you sure haven't seen it.

MR. FOOTE: Correct.

THE COURT: Okay.

MR. FOOTE: And if I could just follow-up with just two questions based on that.

THE COURT: Uh-huh.

MR. FOOTE: Now we have an understanding -- we're calling it Defendant's 6, the property in evidence that has the blood on it --

THE COURT: Right, okay.

MR. FOOTE: -- with the chain of custody --

THE COURT: Right.

MR. FOOTE: -- which the Highway Patrol

Manual, which is in evidence --

THE COURT: Right.

MR. FOOTE: -- calls a P in E, which is a property in evidence. I'm just going to use the same language --

THE COURT: Uh-huh.

MR. FOOTE: -- that the SOPs state --

THE COURT: All right.

MR. FOOTE: -- so we're not confused.

Q (By Mr. Foote) So, they're talking about Defendant's 6 in the SOPs, is that correct, Corporal Styers, when they say a P in E?

THE COURT: Well, let's show him -- let's show him Number 6. Want to give that to Mr. Foote?

Q (By Mr. Foote) I'm showing you Defendant's 6; is that what is called a P in E?

A Property in evidence receipt, yes.

Q Okay. Is that the same thing that your operating procedures manual is talking about when it says a P in E should be completed?

A No.

Q Okay. What (indiscernible)?

A Because the policy that you have was written in 2007. This crash occurred in 2006. At that time,

we did not have a computer program to enter into the -- into the computer; that's why it was handwritten and on the property in evidence sheet. That's what we had to enter it into safekeeping. That policy was written in 2007.

Q Sure about that?

A On the top.

Q Are you sure that was written in 2007?

A I'm close -- but I'm not full 100 percent positive, no.

Q (Multiple speakers), sir. What does it say.

A Revision date, 7/10 --

Q (Multiple speakers) date, sir.

A Revision date, that's what we go by.

Q Okay. Everything is in different languages, I guess, on your job. It says issue date; what does the issue date say, sir?

A I have a policy that's issued back in 1960, but it's also revised --

THE COURT: Mr. Foote, isn't that like a statute; if a statute's been revised, you go for the most recent date, rather than the -- the date the statute was initially enacted?

THE WITNESS: We usually go by the revision --

MR. FOOTE: I'm just trying to get a straight answer first, 'cause that's why --

THE COURT: Well, I think he's --

MR. ROSARIO: Judge, I'd like to have the witness be allowed to answer the question before defense counsel starts throwing --

THE COURT: Well, when was that policy written? That's all he -- when -- when was it -- we can even get -- does it indicate whether -- when it -- I can look at it.

MR. ROSARIO: Issue date was 2/1/96; the revision date was July 1st of '07.

THE COURT: Okay.

MR. FOOTE: And the revision says five pages. This --

MR. ROSARIO: That's correct, it does say a total of five pages (indiscernible) --

MR. FOOTE: -- is about a 60-page document. So --

THE COURT: Well, the issue -- because, if it's the important five pages or not.

MR. FOOTE: Well, I'll just ask that question.

THE COURT: I think that's where you need to go.

Q (By Mr. Foote) Is it your testimony that the five pages that were revised on July 1st of 2007, have to do with what we were talking about, section --

A I -- I do not know.

Q Okay.

MR. FOOTE: Can I have a moment, Judge?

THE COURT: You may.

Q (By Mr. Foote) As a corporal, you're still a crash homicide investigator?

A Yes, I am.

Q Okay. And you're familiar with the current March 26th, 2009 policy, are you?

A Yes.

Q Okay. And are you familiar with what the procedures are for the collection of evidence specifically relating to property in evidence receipts?

A Once we take --

THE COURT: The -- the 2009?

MR. FOOTE: Right now.

THE COURT: Okay.

A Once we take something into evidence, it's submitted into evidence. However, we now have a computer program called I-Evidence --

Q (By Mr. Foote) Uh-huh.

A -- that's entered into a computer.

Q Uh-huh. And that document I just showed you actually says it's entered into a computer, too, in 2007. Isn't that right?

A That policy.

Q Correct.

A However, this crash occurred 2006; and to my recollection, that computer program was not up and running then. That's the reason why everything was handwritten on the property in evidence receipts that you have into evidence.

Q Even better, sir; so, let's say there was no computer in 2006. All the more to complete a property in evidence receipt, so that we can have accurate documentation of evidence; would you agree with that?

A Yes.

Q Okay. And there is not one in this case?

A To my knowledge, there should have been one.

Q And over --

A I don't recall.

Q And over the three years, including the trial, depositions and all kind of hearings, you're the person that signed off on the main traffic crash homicide report; right?

A I completed the report, yes.

Q Okay. And in that three years, are you

saying that you've never come across one of those? Even in preparation for coming today?

THE COURT: In this case.

Q (By Mr. Foote) In this case?

A No. Because I did not -- I was under the impression this was a suppression for the truck.

Q Uh-huh.

A Not the suppression for the documents. This was just supposed to be for the truck.

Q Okay.

MR. FOOTE: That's all I have.

THE COURT: Okay. Okay, it's almost 5:30 now. We probably have many more hours to go. You've got to put on somebody; they're going to put on somebody.

MR. FOOTE: I don't -- I didn't think the second witness is going to be that long, if you just wanted to finish the defense part.

THE COURT: Well, the problem is, he still has an opportunity --

MR. FOOTE: I understand.

THE COURT: -- to know. And as Mr. Rosario has indicated, he doesn't see how any of that is going to be -- how the whole thing is going to be done pretty -- at all. And I think that's

probably right, just kind of where we are right now.

Mr. Rosario, how much -- how long do you believe your redirect for this witness would be?

MR. ROSARIO: Well, it would be a cross --

THE COURT: A cross. Well.

MR. ROSARIO: -- at this point, Judge. It -- I'm in a precarious position, because the case law is clear, the defense has got to prove that the evidence was probably tampered with.

And the evidence that's being sought to be introduced is the crush damage, the black box information. We haven't even come close to addressing that in any way, shape or form; we're talking about a GPS unit.

THE COURT: Well, that's why -- I mean, they've got to finish.

MR. ROSARIO: Right.

THE COURT: We've got to give Mr. Foote an opportunity to finish.

MR. ROSARIO: Right.

THE COURT: So, you're really not in a precarious position. The question becomes, I suspect, you are going to have questions for this witness.

MR. ROSARIO: As far as cross-examination up to the point of a burden, I don't know whether I have to put any testimony on as far as -- as that goes, at this point. I can put some on in anticipatory --

THE COURT: The -- the question is, with regard to what we've heard, is there any questions that you would ask this witness to specifically address the burden issue and -- and to some extent, I'm sure there's some -- just like there was in this case, some overlap with kind of the substantive part of the argument, absent the burden. 'Cause it's kind of hard to surgically dissect the two; I mean, there's going to be some overlap there.

MR. ROSARIO: I can ask some basic questions.

THE COURT: Well, my question is -- I mean, it's -- like I said, it's 5:30; is this going to take awhile? Is this not going to take awhile? Should we do this now, so we're finished with this witness? Or is this witness going to have to come back anyway, you know, for the second part of this, if we get there?

MR. ROSARIO: Well --

THE COURT: I mean, I -- I'm just trying to

logistically figure this out kind of for everybody's benefit. I mean, that's all I'm trying to do.

I mean, if this fellow is going to wind up coming back anyway, well okay. If this fellow is not going to wind up, well, we can cut -- you know, he can be done in, you know, a relatively short period of time and we can move on, that's fine, too. I mean --

MR. ROSARIO: Judge, I --

THE COURT: -- I just, you know, just kind of for everybody's benefit, we need to know where we are.

MR. ROSARIO: It's 5:30 in the afternoon; it probably would be best to stop at this point (indiscernible) I'm going to start at the next point with my cross-examination.

THE COURT: All right.

MR. FOOTE: Judge, we don't anticipate calling Corporal Styers back; we've gotten to our point --

THE COURT: Well, the problem is, they may call him back for the -- if they have other stuff; you know, if the burden shifts, then they may -- they may -- they may become much broader as far as

it. I don't know, I can't answer that.

MR. FOOTE: The burden is to show that the evidence was not tampered with.

MR. ROSARIO: No, Judge, their burden is to show --

THE COURT: Well --

MR. ROSARIO: I'm sorry, you're right.

THE COURT: I'm -- I'm -- it's -- it's -- *Peak;* I'm aware of the case law. So, I mean, I understand that -- that part of the case law.

Okay, this is what we are going to do: We are going to end for the day.

Now, what's going to happen, though, is, because this fellow is on the stand, you are not going to be able to -- to consult with him until we come back in our next hearing.

MR. ROSARIO: That's fine.

THE COURT: Okay? And you understand that?

THE WITNESS: Yes.

THE COURT: You're -- you're kind of technically on the stand. Actually, the rule kind of becomes that -- that it kind of fades away. But, you know, if you're -- if there's years between, or whatever, you know. But when someone's on the stand, we know you really can't

really consult with the person, unless it's the defendant.

But -- but in an abundance of caution, I'm going to ask you -- you can read, you can review whatever you want, you can review whatever documentation. You just can't consult with Mr. Rosario or anybody else from the State; okay?

THE WITNESS: All right.

MR. ROSARIO: Judge, in -- I think I have about 15 minutes left of questioning.

THE COURT: Okay. Well, that's -- that's way different than gee, it's going to be a real long time.

MR. ROSARIO: Right.

THE COURT: I mean, I'll go -- I'll go --

MR. ROSARIO: Right. If you wanted to do that right now, I could do that right now.

THE COURT: Okay, I'll do that. I'll do -- I can --

Is that okay with you all? I mean --

THE CLERK: It's fine with me.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. ROSARIO:

Q Trooper, you've been asked questions by the

defense counsel in this case. You were dispatched to this fatality crash at approximately 1:15 in the morning?

A No; the crash occurred at 1:15. I was notified at approximately 1:47 a.m.

Q And when you got there, you ended up traveling to Scene B, where the -- the final resting point of the truck was located; correct?

A My first arrival?

Q When you -- you finally got the (indiscernible).

A Okay.

Q When you got to Scene B.

A Okay.

THE COURT: Well, Mr. Rosario, let me just -- I'm not going to pressure you to, you know, this isn't a race, but, you know, just be vigilant to the time of it. But I don't want you -- you know, just like I didn't hurry Mr. Foote, I mean, I'm not going to -- that's why I asked you the questions I asked. I'm not going to rush you through this.

Q (By Mr. Rosario) You've already testified that you went to Scene A.

A Correct.

Q Now, you did your investigation?
A Correct.
Q You went to Scene B?
A Correct.
Q Continued your investigation?
A Correct.
Q When you got to Scene B, did you see the 2001 Chevrolet 5000 vehicle?
A Yes.
Q And was it damaged?
A Yes.
Q Was the front end of the vehicle damaged significantly?
A Yes.
Q Was that consistent with your investigation that you saw over at Scene A, the bodies of people that had been injured there?

MR. FOOTE: Judge, we're going to object to relevance now. We -- we all concede that the vehicle was involved in a fatality.

THE COURT: All right. Overruled, I'll allow it.

Q (By Mr. Rosario) And did you subsequently take a photograph -- photographs of the vehicle at Scene B?

A Yes.

Q And when you photographed it, were you looking for items of evidence that could be used if this were a vehicular homicide or a DUI manslaughter?

A Yes.

Q And you're trained to look for crash damage, crush damage, things like that to corroborate what you saw between Scene A and Scene B, correct?

A Yes.

MR. ROSARIO: Your Honor, I'm showing the witness what has previously been marked as State's Exhibit 1.

Q (By Mr. Rosario) Do you recognize that?

A Yes, I do.

Q And is that a true and accurate representation of the front of the truck at Scene B on 3/26/06?

A Yes.

MR. ROSARIO: Your Honor, move for admission of State's Exhibit 1.

MR. FOOTE: No objection to either.

THE COURT: Okay. It will be received. And that's a photo of the truck?

MR. ROSARIO: Yes, that is a photo of the front of the truck.

THE COURT: Uh-huh, thank you. Can I see it? Okay.

Q (By Mr. Rosario) And does that picture show crush damage and damage that you were trained to look for as a traffic homicide investigator?

A Yes.

MR. ROSARIO: Your Honor, I'm showing the witness what's been previously marked as State's Exhibit 2.

THE COURT: All right, you may approach.

MR. ROSARIO: I'm sorry for not asking you first, Judge.

THE COURT: All right.

Q (By Mr. Rosario) Do you recognize that?

A Yes, I do.

Q Is that a true and accurate representation of the truck in question that we're talking here about today, but from a farther distance back?

A Yes.

MR. ROSARIO: Your Honor, move for admission of State's Exhibit 2.

MR. FOOTE: No objection.

THE COURT: Okay. Received -- will be so received.

Q (By Mr. Rosario) And in that photograph,

does it show the crush damage and the evidentiary value that you were looking for in taking that picture?

A Yes.

Q Now, you stated that the truck was towed by Tatum's after the scene was, I guess, cleared?

A Yes.

Q And it was taken back to Tatum's Towing?

A Yes.

Q And you didn't follow the vehicle back to Tatum's Towing?

A No.

Q When you got to Tatum's Towing the next day at approximately what time -- or the same day -- it was the same day, right?

A Yes.

Q About approximately what time was it when you arrived there?

A I filled out the inventory -- it would have been possibly around 9:30 or so.

Q And when you arrived there, did you meet with someone from Tatum's Towing?

A Yes, they had to unlock the door.

Q Did you watch them unlock the door?

A Yes.

Q And did you have them bring the vehicle out

of -- pull the vehicle out of that -- that big facility?

A Yes. They opened the door and pulled it out.

Q Did you take a photograph of the vehicle when they unlocked the -- the truck -- or the -- the -- the shed, and pulled it out?

A When it was outside the shed, yes -- or the building.

Q And when -- when you looked at the truck, viewing it, compared to several hours earlier, did you see any material changes to the crush damage or the evidentiary value that you were looking for?

A No, there was no other damage.

MR. ROSARIO: Your Honor, moving -- may I approach the witness?

THE COURT: You may.

Q (By Mr. Rosario) I'm showing you what was previously marked as State's Exhibit 4. Do you recognize that?

A Yes.

Q Is that a picture you took that morning you were talking about?

A Yes.

Q Is that the shed in the background where the vehicle had been placed in and was pulled out?

A Yes.

Q And this shows the crush damage that you -- you believe was evidentiary in value?

A Yes.

MR. ROSARIO: Your Honor, I move for admission of State's Exhibit 4.

MR. FOOTE: Those, Judge, I have not seen.

THE COURT: Okay.

MR. FOOTE: How many? You've only shown me two.

MR. ROSARIO: (Indiscernible) all four?

MR. FOOTE: Showed me two.

Judge, I have no objection to the admission of either one of those.

THE COURT: All right. And for right now, it's just State's Number 3; is that correct?

THE CLERK: Yes.

MR. ROSARIO: I believe that was 4, Judge.

THE COURT: I mean, I'm sorry; I apologize. That's right, State's Number 4.

THE CLERK: This is Exhibit Number 4 -- into evidence as Number 3.

THE COURT: Do you want to put that one in right now?

MR. ROSARIO: We'll move this one first.

THE COURT: Okay. Any objection to Number 3? Just so we could -- at least we can keep the numbers somewhat consistent?

MR. FOOTE: No objection.

THE COURT: So, 3 doesn't become 4 and 4 doesn't become 3.

MR. FOOTE: No objection to anything that he has right there.

THE COURT: Okay. Okay.

MR. ROSARIO: I'm showing the witness what has previously been marked as State's Exhibit 3.

Q (By Mr. Rosario) Do you recognize that?

A Yes.

Q Is it another photograph of the front of the truck?

A Yes.

Q Showing the crash damage?

A Yes.

MR. ROSARIO: And I would move for admission of Exhibits 3 and 4.

THE COURT: Okay, 3 and 4 will be so admitted.

Q (By Mr. Rosario) Now, you reviewed -- on the night in question, you looked over this truck, correct -- or the morning of, right after the crash scene,

Scene B, correct?

A Yes.

Q And did you note and take pictures of the crush damage and the damage that you thought was relevant at that time?

A Yes.

Q The next morning, when you got to the vehicle and started inspecting the vehicle, did you notice any material changes or -- or differences between the vehicle as far as the crush damage or anything about the evidentiary value you were looking for?

A The damage was -- had remained the same. Nothing changed; there was no additional damage to the vehicle; it remained the same as I first initially made contact with it.

Q And the GPS unit that you subsequently learned was stolen from the vehicle, did that have any material effect to the composition of that truck as far as it being able to strike another individual and kill that individual?

A No.

MR. ROSARIO: Your Honor, at this time, I would tender the witness.

MR. FOOTE: Brief redirect, Judge?

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. FOOTE:

Q The State asked you what you believe -- what you believe -- what you believe; did you believe something had evidentiary value.

Based on those questions, can you tell this Court how many people were in that truck?

MR. ROSARIO: Objection, that's not --

MR. FOOTE: Well --

MR. ROSARIO: -- not within the -- the scope of cross-examination.

THE COURT: Overruled that one.

Q (By Mr. Foote) Can you tell the Court how many people were inside that truck once it left Scene B until the time you saw it the next day and took pictures? How many people were inside that truck?

A I can't -- I don't know.

Q Can you tell me what the difference in the damage was or any type of changes underneath in the undercarriage of that truck?

A There was none.

Q How do you know that, sir?

A Because I looked at Scene B as well as when I got there to the light. Then I also noted other evidentiary items that -- as documented on Page 14 of

my homicide report.

Q Everything that you saw underneath that vehicle at Scene B was exactly the same, identical, to when you went there the next day?

A Yes.

Q Is that your testimony?

A Nothing changed.

Q Nothing changed. What about the interior under the hood of the vehicle and all its components? Can you tell this Court if anyone went under that hood from Scene B until when you saw it the next day?

A Yes, I can.

Q What can you tell the Court?

A I can tell that the hood was locked. And it was not opened until later on when the vehicle was towed to Castriota Chevrolet, where they had to physically remove the locking mechanism in order to raise the hood. So therefore, I do know that hood was never ever raised by me or anyone at the tow yard at the time.

Q Can you tell how many times the ignition was turned in that vehicle when it left Scene B to the time you saw it?

A I -- repeat the question.

Q (Indiscernible) tell how many times the

ignition was turned when it left Scene B to when you saw it the next day.

A When it left Scene B, to my recollection, none.

Q And you can't tell the Court whether or not anyone got inside that vehicle from Scene B to when you went there the next day? If anyone got in the seat, turned the keys or did anything with the components inside?

A I know they didn't turn the key, because the -- it was -- it was -- it couldn't run.

Q I didn't ask if they turned it on, sir. Did they just turn the keys?

A I don't know.

Q (Indiscernible.) When the State asked you about material changes of evidentiary value, that's in your opinion, what you think has evidentiary value; correct?

A Yes.

Q Okay. I mean, you're looking at damage at the front of a hood, as Mr. Rosario stated?

A Yes.

Q That didn't change?

A Correct.

Q Okay. But as far as any other evidence with

regard to wiring or anything inside the cab, you didn't do any type of examination at Scene B to even see if there were any changes; isn't that right?

A The -- the truck was involved in a fatality when it struck two people. The two people were not struck inside the vehicle, so therefore, my -- all of my attention was basically on the outside evidence, such as the crush, blood, hair, whatever that may be, because the crash occurred outside, not inside.

Q So, you're not worried about the interior electrical components, whether or not the truck malfunctioned or anything like that? You're just worried about the outside damage?

A At that particular time. And then later on, the vehicle was studied.

Q So, as you sit here today, you don't know -- because you didn't stay there overnight. I understand you want to vouch for Tatum's Towing, but you weren't there that night, correct? You didn't spend the night in the vehicle.

THE COURT: I think this has all been asked and answered.

MR. FOOTE: Well, the questions were, were there any changes of evidentiary value. He's saying --

THE COURT: You can -- you can ask about that. He's already testified he didn't -- that he was not with the vehicle while -- for a period of time while it was at Tatum's Towing. I mean, that's already been testified to. I'm -- I'm clear on that, that he was at the scene that it was, you know, it was outside of his presence for a period of time.

Q (By Mr. Foote) None of the -- you didn't check the electrical systems at Scene B?

A No, I did not.

Q And you didn't check them the next day when you went to Tatum's Towing?

A No, I did not.

Q So, you cannot sit here and tell this Court under oath today that there were no material changes to the electrical system; isn't that true?

A I can tell you nobody raised the hood. That's what you asked.

Q All right. That's a different question; you answered that one. We're talking about the electrical system.

A I -- I didn't check it.

Q The question was, you can't say whether or not when it left Scene B to Tatum's Towing, whether or

not anybody touched it or -- messed with the electrical system. Can you say that under oath?

A I can say I don't know if anyone entered the vehicle.

Q Thank you.

MR. FOOTE: That's all I have, Judge.

THE COURT: All right.

MR. ROSARIO: I have one question, Judge.

RECROSS-EXAMINATION

BY MR. ROSARIO:

Q The vehicle in total when you looked at it, was it in substantially the same condition as it was when you left Scene B?

A I'm sorry?

Q The vehicle in total when you saw it at the impound lot, was it in substantially the same condition as it was when it left Scene B?

A Yes.

MR. FOOTE: Asked and answered, Judge.

THE COURT: All right.

All right, thank you all very much. What we'll do is, we will then -- from here, we will, I guess, pick this up at a later time.

What I am going to ask both counsel for the State and counsel for the defense, if you all have

any case law, I'm going to ask you to provide the Court with a courtesy copy of that, either now or at some point in time in the near future. And by providing a courtesy copy to the Court, I'm assuming you're also going to provide courtesy copies to one another.

MR. ROSARIO: Judge, I have them now that I can provide you with. *Taplis v State* -- or *State v Taplis*, 684 So2d. 214.

THE COURT: All right.

MR. ROSARIO: I have other ones all ready for you.

THE COURT: Mr. Foote, do you have any of your case law available?

MR. FOOTE: Yes, Judge. And this is obviously subject to addition by --

THE COURT: Oh, yeah; you can always -- you can always add to it. I'm just --

MR. ROSARIO: Judge, while -- while --

THE COURT: And that goes for -- obviously, I mean, you all can add to it, if you're (indiscernible) case law. I want to make the best informed decision we can.

MR. ROSARIO: Okay. Judge, we have three cases at this time that we would submit.

THE COURT: We're fixing to get done. We're -- we're --

THE CLERK: Oh, that's fine, Judge.

THE COURT: Okay, we're hearing you.

THE CLERK: I'm just giving him a break.

THE COURT: Okay.

MR. FOOTE: Judge, we're providing to the Court *Murray v State*, 838 So2d. 1073; *Dodd v State*, 537 So2d. 626; *Beck v State*, 405 So2d. 1367. Obviously, we're giving them to the State, as well.

THE COURT: And Mr. Rosario, did you provide Mr. Foote with a copy of the case you just provided me?

MR. ROSARIO: I provided him with *Taplis*, Judge. And I'm also providing him with the Supreme Court case that directly addresses *Dodd*, as well, 703 So2d. 453, reaffirming *Taplis*.

THE COURT: I don't need the argument; I just need to make sure he's seen it.

MR. ROSARIO: 814 So2d. 1153, *Nimmons*. And 788 So2d. 308, *Davis*.

THE COURT: Okay. All right.

I thank you both very much for this; this is -- this will be some good reading prior to our

next hearing.

Corporal, you may be excused today. You are subject, certainly, to being recalled. You need to find out from either -- eventually from the State or the defense, when this is reset to and see if either one of them are going to want you over here. Okay?

THE WITNESS: Yes, sir.

THE COURT: Great. Thank you so much.

Okay. Anything else we need to take up other than you all are going to get together with my assistant and see when you can all reset this. And obviously, it's going to -- you'll need a pretty good chunk of time for that.

MR. FOOTE: Nothing else, Judge. We'll supply the orders to the State on the previous motions and get that to the Court.

THE COURT: Great.

MR. FOOTE: And obviously, we -- I don't know, we're not really set for anything now.

MR. ROSARIO: Well, we need to set another --

THE COURT: That's a good point. Was today a pretrial and a motion?

MR. ROSARIO: Yes, Judge.

MR. FOOTE: Correct.

THE COURT: Can -- can you all just -- well, it makes sense, kind of, to do that again, so you're not coming back again. Or do you want me to set an intervening pretrial? Do you all have a preference?

MR. FOOTE: That's a waste.

MR. ROSARIO: Judge, I --

THE COURT: Well, that's kind of what I was thinking. That's why -- I just don't want it to fall through the cracks, you know, on top of this; but --

MR. ROSARIO: I'd ask for a pretrial in April or before.

THE COURT: Well, but -- but, I mean, I guess we could do that and then subject to -- well, let's just -- I think -- I think we -- I think maybe kind of -- if we can get all this in and do this at the same time, it makes more sense to have a pretrial and the motion.

MR. FOOTE: Right.

THE COURT: I agree. I think that's -- but, you all need to kind of -- I have every confidence that both of you are going to make sure this doesn't fall through the cracks. And --

MR. FOOTE: We'll get time from your judicial

assistant.

THE COURT: Sure.

MR. FOOTE: And then, we have to obviously make sure all of the witnesses are clear.

THE COURT: Yeah. Well, I mean, that's -- you guys are going to have to do what lawyers do and try to coordinate all that stuff, which is -- at times can -- can be fairly frustrating or can be kind of stressful. But that's, you know -- that's --

MR. FOOTE: Judge, the only one matter that I -- and we -- if we can do this expeditiously, since it came up.

Corporal Styers mentioned a document, the traffic homicide manual, that's different than what we introduced into evidence, that he follows.

THE COURT: Oh, the -- the -- right, the (indiscernible), right?

MR. FOOTE: Right. Judge, we would ask if we can either get a court order allowing us to get a copy of that. We've attempted to; they said not without a court order. And now it's actually come up in testimony.

THE COURT: So, then -- so, that wasn't subject -- how did you get the manual? Isn't that

just a regular public records request?

MR. FOOTE: (Indiscernible) investigator. (Indiscernible) that's actually on the internet, I think. But they told us they wouldn't give us the other one without a court order.

THE COURT: All right. Do you -- Mr. Rosario, with regard to the THI Manual?

MR. ROSARIO: Judge, I have no objection to it. The difficulty is, I think FHP, I don't know if it's a top priority issue; I don't know what -- I don't know anything about it.

THE COURT: Well, you know, I suspect Mr. Hood understands he wouldn't be making copies and distributing it and doing anything, sticking it on the internet or anything like that.

MR. FOOTE: Don't use the internet for personal emails, Judge. It's all locked down.

THE COURT: So. Why don't you see, Mr. Rosario, if -- if there's some way you can come about that. If you can't, then we can see about getting a court order. And I think you're both in agreement to get it, so that -- that's something you can all agree on; and just get me the order, if you all want to do that. But, if Mr. Rosario can do it short of that, that's fine; if he can't,

then, you know, we'll --

MR. FOOTE: If we can provide an order and the State can provide it to us, that will be quicker and easier; if not --

THE COURT: Well, that's what I mean; they'll -- they'll talk to them, and see what -- we'll see what's required.

MR. ROSARIO: I -- I -- I would not want to be put in a position where the State would have to provide the document if it's not in our possession. If they --

THE COURT: Okay. Then, do you want to just agree to me issuing an order, then, saying that he can get a hold of it?

MR. ROSARIO: That's fine. That's fine.

THE COURT: Okay.

MR. FOOTE: We'll submit an order, Judge.

THE COURT: All right.

MR. FOOTE: That's all -- all -- all we have.

THE COURT: All right. Thank you all very much.

MR. FOOTE: Thank you, Judge.

(PROCEEDINGS CONCLUDED.)

STATE OF FLORIDA)
)
COUNTY OF PASCO)

I, Ken Bernard, Court Reporter, certify that I was authorized to and did transcribe the foregoing proceedings and that the transcript is a true record.

DATED this 14th day of December, 2011.

Ken Bernard

Ken Bernard, Court Reporter

Office of Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida

STATE OF FLORIDA }
{
COUNTY OF PASCO }

I, Paula S. O'Neil, Clerk & Comptroller of Circuit Court for the County of Pasco, State of Florida, do hereby certify that the foregoing pages 328-1444 & 1-1085 & 1-1735, inclusive, contain a correct Supplemental Transcript of the Record in the case of State Of Florida, Plaintiff(s) vs. Shannon Stephen, Defendant(s), being Case Number(s) 06-1591, Circuit Criminal, and a true and correct recital and copy of all such papers and proceedings in said cause as appears from the records and files of my office that have been directed to be included in the record by the directions furnished to me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 4 day of February, 2013.

By: Brenda McBee
Deputy Clerk