

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CASE NO. CRC06-01591CFAWS-3

STATE OF FLORIDA, :
 :
 Plaintiff, :
-VS- :
 :
 SHANNON L. STEPHEN, :
 :
 Defendant. :

926945

PROCEEDINGS: JURY TRIAL
BEFORE: HONORABLE JACK DAY
Circuit Judge
Sixth Judicial Circuit

DATE: June 17, 2008

PLACE TAKEN: Pasco County Government Center
7530 Little Road
New Port Richey, FL 34654

REPORTED BY: Maria A. Fortner, RPR
Notary Public
State of Florida at Large

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Actually the last trial I had, I
3 tried the case and I realized there was a typo on
4 the court file of the defendant's last name.

5 Sir, I have Stephen without an S.

6 DEFENDANT STEPHEN: Yes, sir.

7 THE COURT: I think people are slipping up and
8 putting an S. Mr. Stephen, do you have any
9 questions for me before we have this little hiatus?

10 DEFENDANT STEPHEN: No.

11 THE COURT: Okay. Well, we're waiting now for
12 the State Attorney, Counsel for the State, and the
13 jury, and we'll get going.

14 Mr. Foote, have you had a chance to go over
15 the first draft of the jury instructions?

16 MR. FOOTE: No, Your Honor.

17 THE COURT: I will tell you that they're
18 pretty straightforward except there's nothing in
19 there about lesser includeds. Are you in a
20 position, you think, to let the Court know what
21 you're going to be --

22 THE BAILIFF: The jury is in the courtroom,
23 Your Honor.

24 THE COURT: Okay.

25 JURY PRESENT:

1 THE BAILIFF: All jurors are present and
2 seated in the courtroom, Your Honor.

3 THE COURT: Thank you, Deputy. Good morning,
4 ladies and gentlemen. We're going to get underway
5 in just a moment. We temporarily lost Mr. Rosario.

6 MR. ROSARIO: Good morning, Judge.

7 THE COURT: Good morning, Mr. Rosario. Are
8 you ready to proceed?

9 MR. ROSARIO: Yes, sir.

10 THE COURT: Okay. Please call your next
11 witness.

12 MR. ROSARIO: I would call Phil Moore, Judge.

13 PHILLIP MOORE,
14 a witness herein, being first duly sworn, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ROSARIO:

18 Q. Would you please state your name for the
19 record.

20 A. Phillip Moore.

21 Q. Mr. Moore, how are you employed?

22 A. I work for the Pasco County Emergency
23 Communications Center.

24 Q. Where is that located?

25 A. Right across the street behind the jail

1 there.

2 Q. Right back here?

3 A. Right back here.

4 Q. What do you do there?

5 A. I'm the CAD data technician for our CAD
6 database, and I also make 911 recordings.

7 Q. Okay. So when someone in Pasco County calls
8 911, does it go to your office first?

9 A. It comes into our call center, and as soon as
10 the line is activated, our 911 recorder activates.

11 Q. And then once you find out where the calls is
12 originating from, what do you do with that phone call?

13 A. We either dispatch fire rescue to it or we
14 transfer it to the appropriate police agency.

15 Q. Directing your attention back to March 26th,
16 2006, around 1:04 in the morning, did you receive a 911
17 call that you subsequently reduced to a disk?

18 A. Yes.

19 Q. And what you reduced to a disk that occurred
20 on March 26, 2006, beginning at 1:04:38, is this the
21 disk that you made?

22 A. Yes. It has my initials on it.

23 Q. And that's a true and accurate representation
24 of the phone call that came in at that time?

25 A. Yes, sir.

1 MR. ROSARIO: Your Honor, I'd move for
2 admission of State's Exhibit for ID purposes K.

3 MR. FOOTE: No objection, Your Honor.

4 THE COURT: Granted.

5 MR. ROSARIO: I'd ask to publish the exhibit,
6 Judge, or the evidence?

7 THE COURT: Has it been marked?

8 THE CLERK: No.

9 THE COURT: Let's complete the initialing of
10 the evidence first.

11 MR. ROSARIO: Yes, sir.

12 THE CLERK: This is State's Evidence 10.

13 THE COURT: Don't ask me. That's your
14 department.

15 THE CLERK: I got it.

16 THE COURT: Okay. That will be State's
17 Exhibit 10.

18 (Whereupon, the audiotape is played in open court.)

19 "OPERATOR: 911. What's your emergency?

20 Hello.

21 CALLER: I need to report a drunk driver.

22 OPERATOR: Where at?

23 CALLER: State Road 54, going up Grand.

24 OPERATOR: I'll connect you to the sheriff's
25 office. Stay on the line. They'll pick up in just

1 a moment.

2 CALLER: Thank you.

3 OPERATOR: Sheriff's office. What is your
4 emergency?

5 CALLER: I need to report a drunk driver."

6 (Whereupon, the audio tape has concluded.)

7 BY MR. ROSARIO:

8 Q. Is that the complete tape that was in your
9 possession or disk?

10 A. Yes, sir.

11 MR. ROSARIO: Thank you, Your Honor. That's
12 all I have of this witness.

13 THE COURT: Defense?

14 MR. FOOTE: Yes, Judge.

15 CROSS-EXAMINATION

16 BY MR. FOOTE:

17 Q. You stated that the tape from March 26th was
18 at 1:04 a.m., approximately at 1:04?

19 A. That particular one, yes.

20 Q. And all that we heard, is that all that you
21 have on it?

22 A. Yes, sir.

23 MR. FOOTE: Thank you. Nothing further,
24 Judge.

25 THE COURT: No redirect I trust?

1 MR. ROSARIO: No, sir.

2 THE COURT: Can Mr. Moore be excused?

3 MR. ROSARIO: Yes, Judge.

4 THE COURT: You are excused, sir. Thank you.

5 THE WITNESS: Thank you, sir.

6 MR. ROSARIO: Judge, may I have a moment to
7 move this out of the way?

8 THE COURT: Sure. Maybe Deputy Eddings will
9 help you.

10 Call your next witness.

11 MR. ROSARIO: Your Honor, at this time the
12 State would call Joe Lopardo.

13 THE COURT: Joe Lopardo?

14 THE BAILIFF: Yes, Judge.

15 JOSEPH LOPARDO,

16 a witness herein, being first duly sworn, was
17 examined and testified as follows:

18 MR. ROSARIO: Judge, may I proceed?

19 THE COURT: Please.

20 DIRECT EXAMINATION

21 BY MR. ROSARIO:

22 Q. Would you please state your name for the
23 record?

24 A. Joseph M. Lopardo, Junior.

25 Q. And how are you employed, Mr. Lopardo?

1 A. I work for the Pasco County Fire Rescue
2 Department Division, Pasco County.

3 Q. What did you do for them?

4 A. As of right now, I'm qualified to be a driver
5 engineer paramedic for the County.

6 Q. Are you certified as a paramedic?

7 A. Yes.

8 Q. And as an EMT?

9 A. Yes.

10 Q. And are you certified by the State of Florida
11 to draw blood?

12 A. Yes.

13 Q. Directing your attention back to March 26th,
14 2006, were you on duty?

15 A. Yes, I was.

16 Q. Around 1:16 in the morning, were you
17 dispatched to a crash located in the area of Grand
18 Boulevard and Dahlia?

19 A. Yes.

20 Q. When you arrived there, what did you see?

21 A. When we arrived, we saw two people on the
22 ground on the side of the road.

23 Q. Okay. Which one of the people did you go to
24 first?

25 A. The nearest one to me I went to was the

1 male.

2 Q. And he was located on the side of the road?

3 A. Yeah. Located about five to seven feet away
4 from the road in the grass.

5 Q. And when you went to him, did you check his
6 vitals?

7 A. Yes.

8 Q. And what did you find?

9 A. He had no breathing, no heartbeat.

10 Q. And what did you do when you saw that?

11 A. I called a Signal 7.

12 Q. What's a Signal 7?

13 A. It's death.

14 Q. And after you called the Signal 7 on the
15 deceased male, where did you go?

16 A. I spent a minute or two with him and then I
17 directed my attention towards the female on the ground
18 several yards away.

19 Q. And what was her condition?

20 A. When I got there they had already got her
21 prepped and ready to go on a spine board. I didn't
22 notice any breathing at the time.

23 Q. So did you stay there for awhile?

24 A. I assisted the other medic on the scene for
25 approximately five to ten minutes.

1 Q. Did there come a time when you were dispatched
2 down to State Road 54 and Grand Boulevard?

3 A. Yes.

4 Q. When you arrived there, did the police have
5 someone in custody?

6 A. Yes.

7 Q. Were you asked to draw blood from that person?

8 A. Yes.

9 Q. And this was two years ago?

10 A. Yes. Over two years.

11 Q. And the kit that you were provided, can you
12 please describe to the jury what the kit looked like?

13 A. Yes. It was provided by FHP, it comes in a
14 box, a little cardboard box about 8-by-6, maybe a little
15 smaller, and it's sealed up.

16 Q. And what do you do when you're given this kit?

17 A. It's obviously to draw blood for purposes of
18 law enforcement. We're to open it up under the
19 supervision of the FHP officer in charge of the box and
20 to display everything that's in the box, and we're to
21 make sure that everything is in proper order and
22 everything is in the box at the time before we draw
23 blood.

24 Q. And inside the box is there an alcohol or a
25 Betadine swab?

1 A. There's a Betadine swab.

2 Q. How many vials are in the box?

3 A. I believe in that box there was two.

4 Q. And you open the box, everything was in
5 accordance?

6 A. Yes.

7 Q. And did you draw blood from the person in
8 custody?

9 A. Yes.

10 Q. And did everything go properly?

11 A. Yes.

12 Q. Can you please describe to the jury how you
13 drew blood from that person?

14 A. We sit the person down and we apply a
15 tourniquet to the extremity above where we're going to
16 draw blood. We prep the arm with Betadine solution --
17 sometimes it comes in a little vial, sometimes it comes
18 in an alcohol-looking swab -- to clean the area.

19 And then we have a Vacutainer kit that comes with a
20 needle and a little tube. We insert that into the vein,
21 and we attach it to two tubes that is sealed with a
22 certain fluid in it to draw blood from.

23 We draw the blood from one tube, we take it out
24 when it's at the proper level, and we take another tube
25 and attach it to the needle that's still in the arm and

1 draw blood to a proper level in that tube.

2 At that point we take the tubes and lay them on the
3 seat, and we take the needle out, pop the tourniquet
4 off, put a Band-Aid on it if necessary, and proceed with
5 recording and packaging up the blood for whatever reason
6 they need it for.

7 Q. So on the night in question you were able to
8 successfully get two vials of blood from the suspect?

9 A. Yes, sir.

10 Q. And the two vials of blood, were they sealed
11 up in the kit?

12 A. Yes, sir.

13 MR. ROSARIO: Your Honor, I'm showing the
14 witness what's previously been marked as State's
15 Exhibit M for identification.

16 BY MR. ROSARIO:

17 Q. Do you recognize that, sir?

18 A. Yes, sir.

19 Q. What time was the blood drawn?

20 A. 2:45 a.m.

21 Q. And that was put into the kit and sealed up?

22 A. Yes, sir.

23 Q. This is a copy of the cover container showing
24 that you signed it and did everything appropriately?

25 A. Yes, sir.

1 MR. ROSARIO: Your Honor, I'd move for
2 admission of State's Exhibit M?

3 MR. FOOTE: No objection.

4 THE COURT: Granted.

5 THE CLERK: State's Evidence Number 11.

6 MR. ROSARIO: And I'm going to ask to publish
7 it at this point, Judge?

8 THE COURT: Publish Exhibit 11.

9 BY MR. ROSARIO:

10 Q. And Mr. Lopardo, while you were at the scene,
11 did you also sign a document that was a certification of
12 the blood withdrawal?

13 A. Yes.

14 MR. ROSARIO: Your Honor, I'm showing the
15 witness what's previously been marked as State's
16 Exhibit N for identification.

17 BY MR. ROSARIO:

18 Q. Is that the certification?

19 A. Yes. That's me.

20 Q. And that's your signature?

21 A. Yes, sir.

22 MR. ROSARIO: Your Honor, I'd move for
23 admission of State's Exhibit N?

24 MR. FOOTE: No objection.

25 THE COURT: Granted.

1 THE CLERK: State's Evidence Number 12.

2 MR. ROSARIO: And I'd ask to publish, Judge?

3 THE COURT: Yes.

4 BY MR. ROSARIO:

5 Q. And the person that you drew the blood from,
6 was there a trooper with you during this time period?

7 A. Yes.

8 Q. Do you remember the trooper's name?

9 A. No. I cannot remember.

10 Q. But he was present during the whole time you
11 drew the blood?

12 A. Yes, sir.

13 Q. Is there anything further that you've done in
14 this case?

15 A. No, sir.

16 MR. ROSARIO: That's all I have of this
17 witness, Judge.

18 THE COURT: Mr. Foote.

19 CROSS-EXAMINATION

20 BY MR. FOOTE:

21 Q. Good morning, Mr. Lopardo.

22 A. Good morning, sir.

23 Q. On the evening in question when you drew the
24 blood, we see the documents that you signed, you were
25 told to go and take blood from a particular person?

1 A. Yes, sir.

2 Q. And that was Highway Patrol actually directing
3 you to do that?

4 A. My dispatch directed me to go to the scene for
5 a blood draw.

6 Q. Okay. And how did you know who to take the
7 blood from?

8 A. I was directed towards an individual in an
9 officer's vehicle, and that man was presented to me as
10 the man I needed to draw the blood from.

11 Q. Okay. You didn't personally observe this
12 crash obviously?

13 A. No, sir.

14 Q. All right. And as you stated it was 1:16 in
15 the morning you responded to Grand and Dahlia, that's
16 the place where --

17 A. That was the accident, yes, sir.

18 Q. That was the accident scene?

19 A. That was the first time I was dispatched.

20 Q. And then you were sent down to Grand Boulevard
21 and State Road 54, and instructed to take blood from a
22 person who was already in a police car?

23 A. Correct. That was an hour or so after the
24 first call. I had already been back to the station once
25 dispatched to draw blood.

1 Q. And FHP, the Florida Highway Patrol, told you
2 that's the person you should take blood from?

3 A. That's the person they gave me to draw blood
4 from.

5 MR. FOOTE: That's all I have. Thank you,
6 Judge.

7 THE COURT: May Mr. Lopardo be excused,
8 Counsel?

9 MR. ROSARIO: On possible recall, Judge.

10 THE COURT: Okay. Mr. Lopardo, you'll still
11 be subject to your subpoena, but you're excused for
12 now. Thank you.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Please call your next witness.

15 MR. ROSARIO: I would call Trooper Adam
16 Morris, Judge.

17 ADAM MORRIS,
18 a witness herein, being first duly sworn, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ROSARIO:

22 Q. Would you please state your name for the
23 record.

24 A. Trooper Adam Morris.

25 Q. And Trooper, what agency do you work with?

1 A. Florida Highway Patrol.

2 Q. And how long have you worked with the Florida
3 Highway Patrol?

4 A. Seven years.

5 Q. Directing your attention back the March 26th,
6 2006, were you dispatched in reference to a crash in the
7 area of Grand Boulevard and Dahlia or Pasadena or all
8 the way down to State Road 54?

9 A. Yes, sir, I was.

10 Q. Where did you go first?

11 A. I first went to the scene that they told us to
12 go to, which was on Grand Boulevard, where the two
13 victims were hit.

14 Q. All right. And did you see their bodies
15 there?

16 A. Yes, I did.

17 Q. And where did you go next?

18 A. After that, I responded to State Road 54 and
19 Grand Boulevard.

20 Q. And did you make contact with a person later
21 known to you as Shannon Stephen?

22 A. Yes, I did.

23 Q. Is that person in the courtroom today?

24 A. Yes, he is.

25 Q. Can you point him out and describe what he's

1 wearing?

2 A. Yes. He's wearing a gray suit with a gray
3 tie.

4 Q. Would you step down and double-check that for
5 me?

6 A. I'm sorry. He's wearing a black jacket with a
7 tan undershirt.

8 MR. ROSARIO: Your Honor, may the record show
9 the witness correctly identified the defendant?

10 THE COURT: Counting from the left, Trooper,
11 the man on the left is number one, which one are
12 you talking about?

13 THE WITNESS: From the left, he's number two.

14 THE COURT: Okay. Let the record reflect the
15 trooper has identified the defendant.

16 BY MR. ROSARIO:

17 Q. Now, from the night in question, has he
18 changed the way his appearance is?

19 A. Yes, he has.

20 Q. What has he changed?

21 A. He no longer has the goatee.

22 Q. Does it's appear he gained or lost weight?

23 A. It looks like he has lost weight.

24 Q. And, Trooper, after a person is arrested, do
25 they go and have a booking photo taken?

1 A. Yes, they do.

2 Q. Would a booking photo be a more accurate
3 representation of the way he looked on the night in
4 question?

5 A. Yes, it would.

6 Q. Trooper, if I approached you and showed you a
7 copy of a booking photo, would that refresh your
8 recollection as to how he looked that night?

9 A. Yes, it would.

10 Q. Does that refresh your recollection?

11 A. Yes, it does.

12 Q. Does it appear he has changed his look since
13 then?

14 A. Yes, sir. Like I said, he no longer has the
15 goatee.

16 Q. Now, Trooper, when you made contact with
17 Mr. Stephen, what did you notice about his person?

18 A. I observed that Mr. Stephen appeared to be
19 intoxicated to me, sir.

20 Q. And how about the odor of alcohol from his
21 breath?

22 A. A strong odor of alcohol. I observed that the
23 defendant was unsteady on his feet. I observed that his
24 face was flushed, his eyes were red, glassy and
25 bloodshot, and that he had slurred speech.

1 Q. And did you ask to draw blood from him?

2 A. Yes, I did. I asked the defendant to
3 willingly give me legal blood to determine his blood
4 alcohol content.

5 Q. And did he agree to give you his blood sample?

6 A. Yes, he did.

7 Q. And, Trooper, tell the jury about the blood
8 kit that you provided to get this blood sample.

9 A. The State issues us blood kits that have
10 expiration dates. I inspected the blood kit. It was a
11 sealed blood kit not yet opened.

12 Q. And you gave this blood kit to whom?

13 A. I gave this blood kit to the medical personnel
14 on the back of the EMS.

15 Q. And that person drew blood?

16 A. Yes, he did.

17 Q. From the defendant?

18 A. Yes, he did.

19 Q. And you observed that?

20 A. Yes, I did.

21 Q. And did the person who drew blood fill out the
22 form that's on top of the blood kit?

23 A. Yes, they did. Per chain of custody, whoever
24 takes the blood signs for the blood that they're the one
25 that drew the blood.

1 MR. ROSARIO: And, Your Honor, I'm showing the
2 witness what's previously been marked as State's
3 Exhibit 11.

4 BY MR. ROSARIO:

5 Q. Do you recognize that?

6 A. Yes, I do.

7 Q. Is that a true and accurate copy of the
8 consent form?

9 A. Yes, it is. It has the signature of the
10 defendant as well as the signature of the person who
11 drew the blood.

12 Q. And you read this to him, "I have granted
13 permission for blood samples to be taken," and that's
14 Shannon Stephen's signature?

15 A. This is correct.

16 Q. And you took this and you placed this into
17 evidence?

18 A. Yes, sir. That consent form comes inside the
19 blood kit.

20 Q. And you also had Paramedic Lopardo do a
21 certification of the blood draw?

22 A. That is correct. Both of these forms are
23 filled out every time that we do a blood draw from any
24 person.

25 Q. And, Trooper, this booking photo that I showed

1 you, it is a true and accurate representation of what he
2 looked like that night when he was booked?

3 A. Yes, it is.

4 Q. And that's the same way he looked when you saw
5 him?

6 A. Yes, he did.

7 MR. ROSARIO: Your Honor, I'd move for
8 admission of State's Exhibit O.

9 MR. FOOTE: May we approach, Judge?

10 THE COURT: Yes.

11 BENCH CONFERENCE:

12 MR. FOOTE: Judge, the only objection we would
13 have to this is the whole issue of the booking
14 photo, it has the Pasco County Sheriff's Office,
15 and that information would denote some type of
16 guilt on the part of Mr. Stephen on the basis that
17 it's from the Sheriff's Office.

18 If Mr. Rosario wants to just put the photo
19 part in for that purpose, that's fine, but all the
20 other stuff is irrelevant and potentially
21 prejudicial.

22 THE COURT: I can't see the prejudice when
23 he's already on trial here. Even though he's
24 charged, this doesn't reflect any prior criminal
25 record or anything of that nature. I'm going to

1 deny the objection.

2 MR. ROSARIO: Your Honor, I move for
3 admission.

4 THE COURT: Granted.

5 THE CLERK: This is State's Exhibit Number 12.

6 THE COURT: It's marked State's Exhibit A, B,
7 C, D, E for identification. It's admitted into
8 evidence as State's Exhibit 1, 2, 3, 4 in evidence.

9 MR. ROSARIO: Okay. I got you.

10 THE COURT: I don't want to confuse them.

11 OPEN COURT:

12 THE CLERK: You're right. Judge, we need to
13 correct State's Exhibit O is State's Evidence
14 Number 13.

15 THE COURT: Exhibit Number 13.

16 THE CLERK: Exhibit O, Evidence Number 13.

17 THE COURT: Okay. So that will be 13. Thank
18 you.

19 MR. ROSARIO: And, Judge, I ask to publish
20 State's Exhibit 13?

21 THE COURT: You may.

22 MR. ROSARIO: Your Honor, that's all I have of
23 this witness.

24 THE COURT: Mr. Foote.

25 CROSS-EXAMINATION

1 BY MR. FOOTE:

2 Q. Good morning, Trooper.

3 A. Good morning, sir.

4 Q. You stated earlier that you supervised the
5 blood draw in this case?

6 A. Yes, sir, I did.

7 Q. You were instructed by a supervisor or someone
8 to obtain blood?

9 A. I don't believe so, no. I just asked the
10 defendant based on my observations due to the severity
11 of the crash.

12 Q. What time did you arrive on the scene?

13 A. I don't recall, sir.

14 Q. So when you arrived, Mr. Stephen was already
15 pulled aside?

16 A. Yes, sir. He was already out of the vehicle
17 upon my arrival.

18 Q. Okay. Were you the first law enforcement
19 officer on the scene?

20 A. I don't believe so. I believe the Sheriff's
21 Department was already on scene prior to my arrival.

22 Q. What about Trooper Evans?

23 A. Myself and Trooper Evans I believe arrived on
24 scene at the same time.

25 Q. Okay. So my question was, Mr. Stephen was

1 already in custody by law enforcement?

2 A. Oh, absolutely not.

3 Q. He was walking around free?

4 A. Yes, he was.

5 Q. And you just picked him out of the crowd as
6 the person you should take blood from?

7 A. No, sir. He was identified to me as the
8 driver.

9 Q. Who identified him as the driver?

10 A. The Sheriff's Department and the witness they
11 said stayed by the driver.

12 Q. When you say driver, now, you were at Grand
13 and 54?

14 A. Yes.

15 Q. Okay. Where the vehicle came to final rest?

16 A. Yes.

17 Q. All right. Now, do you have an independent
18 recollection of this evening?

19 A. Pretty fairly, yes.

20 Q. Okay. Prior to coming to court, the State
21 Attorney showed you a photograph that you showed the
22 jury?

23 A. No, he did not.

24 Q. Is that the first time you've seen it was
25 today?

1 A. Yes, it is.

2 Q. All right. And you were asked to identify
3 Mr. Stephen and you pointed to the gentleman over there
4 in the gray.

5 A. Yes. The last time I observed the defendant
6 he had a goatee, so it kind of threw me off a little
7 bit.

8 MR. FOOTE: Thank you, Trooper. That's all I
9 have.

10 THE COURT: Any redirect?

11 MR. ROSARIO: No redirect, Judge.

12 THE COURT: Can Trooper Morris be excused or
13 do you want to keep him under subpoena?

14 MR. ROSARIO: Keep him under subpoena, Judge.

15 THE COURT: Trooper, you're subject to recall
16 but you're excused.

17 THE WITNESS: Thank you, sir.

18 MR. ROSARIO: Judge, may we approach?

19 BENCH CONFERENCE:

20 MR. ROSARIO: Judge, based upon my schedule,
21 we're running a little hot, meaning we're running a
22 little fast.

23 THE COURT: You don't have a witness?

24 MR. ROSARIO: The witness that I want to call
25 next should be here in the next couple of minutes.

1 I have another witness out there, but he's a long
2 witness. I don't want to take him out of order
3 because I have Dr. Thogmartin coming in.

4 THE COURT: You've only got one out there
5 right now?

6 MR. ROSARIO: Right.

7 MR. FOOTE: Break.

8 THE COURT: You know how excruciating this is
9 after a late start and we went late last night.

10 MR. ROSARIO: We're running really fast for
11 today.

12 THE COURT: We need to keep that up.

13 MR. ROSARIO: We will.

14 THE COURT: Okay. Give me names. The short
15 witness you want to call is named what?

16 MR. ROSARIO: Well, the next witness I want to
17 call is Jeff Hays who is the person who did the
18 analysis of the blood.

19 THE COURT: Okay. But the one witness you
20 referred to is?

21 MR. ROSARIO: The next three people, Hays is
22 probably the shortest, then I have Dr. Thogmartin,
23 and then Marvin Dalzell.

24 THE COURT: Okay. Is Thogmartin out there?

25 MR. ROSARIO: Not yet.

1 THE COURT: He's not out there?

2 MR. ROSARIO: I haven't got word yet.

3 THE COURT: When was he supposed to be here?

4 MR. ROSARIO: He's supposed to be here at
5 10:00 o'clock, Judge. I just need a little bit of
6 time to get him oriented and sent in here.

7 THE COURT: You're going to need to prepare
8 your witness in the middle of the trial?

9 MR. ROSARIO: No, no, not prepare him. I need
10 to tell him he's going to be coming in here in the
11 courtroom.

12 THE COURT: Don't you have somebody to do that
13 for you?

14 MR. ROSARIO: I'm concerned with if we do
15 Dalzell, that it's going to drag on and keep
16 Dr. Thogmartin the expert waiting.

17 MR. FOOTE: What time is he supposed to be
18 here?

19 MR. ROSARIO: He's supposed to be here at
20 10:30.

21 THE COURT: Well, Dalzell is the third guy
22 set?

23 MR. ROSARIO: Yes.

24 THE COURT: How long are you going to be with
25 Dalzell, more than 40 minutes?

1 MR. ROSARIO: No.

2 THE COURT: Are you going to be more than 40
3 minutes?

4 MR. FOOTE: Not more than 40.

5 THE COURT: Okay. Is there a logical
6 necessity to do the ME before Dalzell? Dalzell is
7 out there now?

8 MR. ROSARIO: Yes, sir.

9 THE COURT: Okay. If we have to have the ME
10 wait 30 minutes, that's what he gets the big bucks
11 for. Jeff Hays?

12 MR. ROSARIO: Jeff Hays is here.

13 THE COURT: Do Hays. If the next one isn't
14 ready go after Hays, we'll go to Dalzell.

15 MR. ROSARIO: Yes, sir.

16 OPEN COURT:

17 MR. ROSARIO: Judge, my next witness would be
18 Jeff Hays. Judge, the notification I got is he was
19 up in our office. It may take a moment before he
20 gets here.

21 THE COURT: Folks, I would invite you to stand
22 and stretch if anybody is so inclined. It's a
23 little early for me to stretch.

24 The orchestrating of witnesses and timing to
25 get them in is a tricky thing for trial lawyers

1 during a trial. These kinds of brief delays are
2 going to happen, the trick is to try to keep them
3 brief. So we're trying to do that.

4 JEFFREY HAYS,
5 a witness herein, being first duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ROSARIO:

9 Q. Good morning, Mr. Hays.

10 A. Good morning.

11 Q. You were scheduled to be here right at 10:00,
12 right?

13 A. Yes.

14 Q. And would you please state your name for the
15 record.

16 A. My name is Jeffrey Hays, H-a-y-s.

17 Q. And Mr. Hays, how are you employed?

18 A. I'm employed as a toxicologist at the Pinellas
19 County Forensic Laboratory.

20 Q. And could you tell the jury about your
21 training and experience. Actually, what do you do as a
22 toxicologist?

23 A. As a toxicologist we analyze blood and other
24 body fluids for drugs, we analyze specimens that are
25 collected at autopsies for the Medical Examiner's Office

1 for District Six, which includes Pasco County and
2 Pinellas County, and we also do legal testing that's
3 submitted by law enforcement agencies.

4 Q. And can you tell the jury about your training
5 and experience to do that?

6 A. I have a Bachelor's of Science degree in
7 chemistry from the University of South Florida in Tampa.
8 I've worked 13 years and five months at the Medical
9 Examiner's Office in toxicology.

10 Prior to that, I worked 20 years at St. Anthony's
11 Hospital in the clinical chemistry department, and I was
12 supervisor of that department for 15 years.

13 In both the hospital setting and at the Pinellas
14 County Forensic Laboratory, drug testing is part of the
15 position, part of the job, and the techniques we used at
16 the hospital are similar to the techniques used at the
17 Medical Examiner's Office.

18 Q. And are you certified by the State of Florida
19 to do these tests?

20 A. Yes. I have a certificate from the Florida
21 Department of Law Enforcement to analyze specimens for
22 blood alcohol content. I also have a supervisor's
23 license in the field of clinical chemistry from the
24 State of Florida.

25 Q. And going back to March 26th, 2006, were you

1 working in the same capacity?

2 A. Yes.

3 Q. And I believe sometime around April 11th, did
4 you begin working on a blood kit that you received from
5 a crash involving Shannon Stephen?

6 A. If can I look to my notes?

7 Q. Would that refresh your recollection?

8 A. Yes. Yes, actually I ran the specimen on
9 March 30th.

10 Q. Okay.

11 A. The report I believe was signed out on April
12 11th, and that's where that date is coming from.

13 Q. So on March 30th, you got a kit containing
14 what?

15 A. That's when I personally received the kit,
16 yes.

17 Q. Please tell us about the kit.

18 A. Yes. The police officer or the law
19 enforcement agency delivers the kit, which is usually a
20 box sealed container that has whatever specimen. They
21 deliver it to the laboratory, it's received by an
22 evidence technician, he logs in the specimen and
23 transfers it to a vault.

24 That vault is kept locked until the evidence
25 technician for the toxicology section retrieves it from

1 the first evidence technician. They bring it to the
2 toxicology department, they break the seals, they open
3 the box, they look at the specimens -- in this case
4 there were two tubes of blood -- they estimate the
5 volume that are in the tubes, and they mark down the
6 appropriate specimen preserved and any anticoagulants
7 that are contained in the tube.

8 They then assign a specimen number, I believe in
9 this case they were labeled specimen 1-A and B, and then
10 they're put in a working refrigerator. As the
11 toxicologist, when it was my turn to do the alcohols, I
12 retrieved the specimen from the working refrigerator,
13 prepared the specimen and analyzed it.

14 Q. And when you got the vials, they all appeared
15 to be properly sealed and in proper form?

16 A. Yes.

17 Q. And did you do an analysis on the vials?

18 A. Yes. I did an alcohol analysis.

19 Q. And can you tell the jury what an alcohol
20 analysis is?

21 A. We basically are testing the blood for
22 ethanol. Ethanol is the proper term for alcohol that's
23 contained in alcoholic beverages. We run it on a
24 technique called a headspace analysis with a gas
25 chromatograph. It's the state of the art procedure for

1 this kind of thing. It will separate ethanol from other
2 volatiles, any other alcohols that may be present, and
3 quantitates the value.

4 Q. And did you get a value for the vials you
5 tested?

6 A. Yes, we did.

7 Q. And what were those values?

8 A. We run it in duplicates and the two results
9 obtained were 0.238 and 0.240 grams per deciliter.

10 Q. And did you subsequently do a blood alcohol
11 analysis affidavit?

12 A. Yes, I did.

13 Q. And would that indicate that you performed all
14 the proper tests and did the tests and got the results?

15 A. Yes.

16 Q. And you put the results on there?

17 A. Correct.

18 MR. ROSARIO: Your Honor, I'm showing the
19 witness what's previously been marked as State's
20 Exhibit P for identification.

21 BY MR. ROSARIO:

22 Q. Do you recognize that?

23 A. Yes. This is the blood alcohol affidavit that
24 I prepared and signed.

25 MR. ROSARIO: Your Honor, I move for admission

1 of State's Exhibit P.

2 THE COURT: Mr. Foote?

3 MR. FOOTE: No objection.

4 THE CLERK: P is entered as State's Exhibit
5 Number 14 for evidence.

6 BY MR. ROSARIO:

7 Q. So Mr. Hays, you just testified that you did
8 the analysis of this blood for alcohol and the results
9 were .238, .240. You're a toxicologist?

10 A. Yes.

11 Q. A .238, what is that in relation to a .08?

12 A. .08 is the, per se, limit for the state of
13 Florida. If you're driving with an alcohol
14 concentration greater than 0.08, you're considered to be
15 impaired.

16 Q. So if 0.08 is the legal limit, would this
17 result be one time greater, two times greater, or three
18 times greater than that?

19 A. Both are three times greater than that.

20 Q. And are you capable of testifying as to the
21 effects of that high level of blood alcohol in a
22 person's system, what effect it would have on them?

23 A. Just generally, yes.

24 Q. Generally what effect would that have?

25 A. Well, alcohol is considered a central nervous

1 system depressant, and as the concentration increases,
2 all brain functions become depressed. In essence,
3 coordination becomes worsened and the ability to
4 concentrate, the ability to perform multiple tasks. The
5 attention decreases, reaction times increase, taking
6 longer to react to something. As the alcohol gets
7 progressively higher, you can go into memory loss,
8 passing in and out of consciousness, falling asleep.

9 Q. And can you tell the jury how alcohol is
10 absorbed into a person's body and about how long it
11 takes to process that alcohol out of the system?

12 A. When you start drinking alcoholic beverages,
13 the alcohol is fairly readily and quickly absorbed
14 through the stomach and the intestines, mainly through
15 the intestines. As it's absorbed, though, it begins to
16 be eliminated fairly quickly also.

17 So if a person is drinking, your alcohol
18 continually increases, but in between drinks it will
19 decrease a little bit. So as you're drinking more and
20 more, it's kind of rising in a stair-step fashion.

21 Finally, when a person quits drinking, the period
22 of time will elapse until the stomach contents are
23 completely empty and all the alcohol has been absorbed.
24 At that point, you go into an elimination phase or a
25 post-absorption phase, and at that point the rate of

1 elimination is fairly constant per individual, and the
2 rates vary but are usually at around 0.02 grams per
3 deciliter per hour.

4 Q. 0.002?

5 A. No. 0.02.

6 Q. 0.02?

7 A. Grams per deciliter per hour. During that
8 absorption, the period after you've taken your last
9 drink and you're not going to drink anymore, studies
10 have shown that the time to full absorption can vary
11 from a half hour up to two hours. Normally most people
12 will finish absorbing within about one hour, one and a
13 half hours.

14 Q. So basically if I have a drink at a bar or
15 several drinks, my alcohol level is going to reach a
16 certain point. If I don't drink after that, then at
17 some point it's going to start going down?

18 A. Correct. After you quit drinking, more will
19 still be absorbed if there's still more alcohol in your
20 stomach until you reach a point where there's none left
21 to be absorbed and at that point the allineation is
22 fairly straightforward.

23 Q. So once you reach that point, you can pretty
24 much subtract off 0.02 per hour?

25 A. Correct. Per hour.

1 Q. So if there was a blood alcohol level of .238,
2 .240, several hours later it will have decreased by some
3 amount?

4 A. Correct.

5 MR. ROSARIO: Your Honor, that's all I have
6 for this witness.

7 THE COURT: Mr. Foote?

8 CROSS-EXAMINATION

9 BY MR. FOOTE:

10 Q. Good morning, Mr. Hays.

11 A. Good morning.

12 Q. All right. You tested a blood specimen kit as
13 you've just testified about. That kit came sealed to
14 you?

15 A. To the laboratory, yes.

16 Q. You never saw the person that that specimen
17 was taken from?

18 A. No.

19 Q. You never showed up on the night of March
20 26th, or in the early morning hours to any accident
21 scenes?

22 A. No.

23 Q. You didn't look at any vehicles or anything
24 like that?

25 A. No.

1 Q. You didn't conduct any interviews?

2 A. No.

3 Q. You were just given something and you were
4 asked to test it in your specialty?

5 A. That is correct.

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

7 A. Uh-huh.

8 Q. All right. And it was related to you that
9 this is connected with a fatality crash, probably a DUI?

10 A. I believe, yes. That information was given to
11 me when I received the subpoena. At the time of the
12 analysis I didn't know that.

13 Q. Okay. So you have no knowledge of any driver
14 of any vehicle or anything like that?

15 A. No.

16 Q. All right. And you just testified a .238,
17 .240 is three times the legal limit?

18 A. Correct.

19 Q. And you stated, from your training and
20 experience and your knowledge in the field, that level
21 of alcohol -- I'm just going to try to use your words --
22 brain function will be depressed?

23 A. Correct.

24 Q. Coordination would be affected?

25 A. Yes.

1 Q. The ability to conduct multiple tasks?

2 A. Correct.

3 Q. Memory loss?

4 A. Uh-huh.

5 Q. A person going in and out of consciousness?

6 A. Yes.

7 Q. Possibly even fall asleep?

8 A. Correct.

9 Q. That's a high amount of alcohol, in your
10 opinion?

11 A. In my opinion, yes.

12 Q. Okay. I mean the effects that you mentioned
13 to this jury, those would be exhibited in a person at
14 that level?

15 A. At that level, yes.

16 Q. At this level?

17 A. Uh-huh.

18 Q. Are you aware of conducting any other
19 examinations in connection with this case?

20 A. Pardon me?

21 Q. Did you conduct any other examinations?

22 A. No.

23 Q. Okay.

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

1 THE COURT: Yes.

2 MR. ROSARIO: Judge, may I?

3 MR. FOOTE: I'm sorry.

4 MR. ROSARIO: Judge, may we approach?

5 THE COURT: Okay.

6 BENCH CONFERENCE:

7 MR. ROSARIO: Judge, instead of recalling this
8 witness, I'm not objecting to them going beyond the
9 scope of my examination to address their part with
10 Mr. Hays.

11 The only question I have is, I don't know if
12 they've spoken with Mr. Hays, and I don't know if
13 he knows this testimony is coming on this. I don't
14 know if he's got the documentation, but I'm sure he
15 can testify to it.

16 MR. FOOTE: I'm going to give it to him.

17 MR. ROSARIO: Okay. So I have no objection.

18 THE COURT: You have no objection to actually
19 admitting this exhibit into evidence?

20 MR. ROSARIO: No.

21 THE COURT: Okay. Thank you.

22 OPEN COURT:

23 BY MR. FOOTE:

24 Q. Mr. Hays, I'm going to show you what's been
25 previously marked as Defendant's Exhibit L for

1 identification. Why don't you just take a look at it
2 and see if that refreshes your recollection of your
3 involvement in this case.

4 A. This appears to be a toxicology report that I
5 prepared on the deceased person Sarah Gleason.

6 Q. Okay. And as part of your duties as a
7 toxicologist, law enforcement can give you substances to
8 test, the Medical Examiner's Office can give you things
9 to test as well?

10 A. Sure.

11 Q. You're asked to perform a number of tasks in
12 your position?

13 A. Yes.

14 Q. Okay. And in reviewing this document, does it
15 refresh your recollection that you had some other
16 involvement in this matter?

17 A. Well, since the subpoena only had Shannon
18 Stephen's name on it, I'm unaware that this is related
19 to that case, but I did prepare the report, that is my
20 signature.

21 Q. Your signature appears on the bottom?

22 A. Correct.

23 Q. Okay. Can you explain what that report is?
24 What were you asked to do with that particular report?

25 A. Well, for the Medical Examiner cases, we get

1 an assortment of specimens, blood, urine, gastric
2 contents; in this case vitreous fluid, that's fluid
3 that's contained in the eyeball. It appears there were
4 also some specimens that were collected at the hospital,
5 the person that went to the hospital.

6 In doing a case for the Medical Examiner's Office,
7 we then review all the specimens that we have on-hand to
8 determine which specimens would be appropriate for
9 testing and then proceed with our testing.

10 Q. Okay. In this particular case you're given
11 certain specimens and you're asked to conduct certain
12 types of tests on them?

13 A. Yes.

14 Q. And what types of tests were you asked to
15 conduct on the specimens in that report?

16 A. We did a series of drug screens and we also
17 did alcohol analysis. Any drugs that were positive in
18 the screening technique, we try to confirm and identify
19 those as well.

20 Q. Okay. And so on this particular case, you
21 conducted drug analysis and alcohol analysis on
22 specimens that were submitted to you by the Medical
23 Examiner's Office?

24 A. Correct.

25 Q. All right. Do you use the same techniques

1 that you explained to the jury earlier with regard to
2 chromatography?

3 A. The alcohol testing, yes, it is exactly the
4 same.

5 Q. Okay. And how do you conduct drug screens?

6 A. Well, drug screens, we use various techniques.
7 We have what's called the immunoassay, which we do the
8 major part of the screens, those detect specific classes
9 of drugs and types of drugs.

10 We also do what's called simulator chromatography,
11 which will separate drugs and they'll be able to be
12 identified on a chromatogram, that will check for a
13 broad spectrum of drugs.

14 As I said, if anything shows up positive in these
15 screens, we then do another extraction and we'll run it
16 on the GCMS, which is gas chromatograph-mass
17 spectrometry. With the mass spectrometer, we are then
18 able to identify exactly what compounds are in the
19 sample.

20 Q. Okay. And with regard to the specimens that
21 you tested that were submitted to you for Sarah Gleason,
22 you used those procedures?

23 A. Yes.

24 Q. And what were the results of the procedures?

25 A. In the screening section we had a presumptive

1 positive for cocaine, cocaine metabolites; we had a
2 presumptive positive for cannabinoids, which would be
3 marijuana.

4 The alcohol test, we ran both the blood and
5 vitreous fluid. Again, the vitreous fluid, because it's
6 in the eye, is considered sequestered, it doesn't change
7 as rapidly as blood will change.

8 As the person is absorbing alcohol, the vitreous
9 fluid the alcohol level will be lower than the blood
10 level. In persons in the post-absorption phase, the
11 vitreous fluid will be higher than what's circulating in
12 the blood.

13 We run both of those because there can be sources
14 of contamination in the blood, depending upon the
15 circumstances dealing with time of death and manner and
16 cause of death.

17 So in this instance the blood ethanol was 0.095
18 grams per deciliter; the vitreous fluid was 0.140 grams
19 per deciliter. So the vitreous fluid was a little bit
20 higher than the blood, which probably indicates this
21 person would have been in a post-absorptive phase,
22 elimination phase.

23 We also specifically identified cocaine, methyl
24 ecgonine, which is a metabolite of cocaine; caffeine,
25 coffee and sodas and things; nicotine, cotinine, which

1 is a metabolite of nicotine.

2 Q. When you say cocaine metabolite, what does
3 that mean?

4 A. When a person ingests drugs, the body tries to
5 change the drugs to make them less harmful and also to
6 aid in the elimination. So a metabolite is another
7 compound that's similar to the parent compound that was
8 ingested. In some cases, depending upon the drugs, the
9 metabolites can also be active.

10 Q. Okay. And on your report you list it twice,
11 you list cocaine and then you list cocaine metabolites.
12 Why are the two on the same report?

13 A. As I said, we specifically identified with the
14 gas chromatograph-mass spectrometry the methyl ecgonine,
15 the cocaine, and we also included in the report what's
16 listed as cocaine metabolite, total immune cross
17 reactives. That's a value that we obtain during the
18 immunoassay screening, which is not a specific
19 scientific quantitative result for either cocaine or the
20 metabolites, it's just a generalized result to indicate
21 how high these compounds might have been.

22 It helps us decide if further testing is needed or
23 not. And in this instance it was 318 nanograms per
24 milliliter, and we did not proceed any further with the
25 specific quantitation of the exact cocaine and methyl

1 ecgonine and benzoylecgonine and any other metabolites
2 that may have been present.

3 Q. Okay.

4 MR. FOOTE: Judge, at this time the Defense
5 would move Defense Exhibit L for identification
6 into evidence.

7 MR. ROSARIO: No objection.

8 THE COURT: Granted.

9 THE CLERK: This is Defense Exhibit Number 5
10 entered as evidence.

11 MR. FOOTE: Judge, permission to publish to
12 the jury?

13 THE COURT: Yes.

14 MR. FOOTE: That's all I have for Mr. Hays.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. ROSARIO:

18 Q. Mr. Hays, from those tox screens, can you tell
19 whether Sarah Gleason was under the influence of cocaine
20 that night?

21 A. No.

22 Q. Can tell from those tox screens whether she
23 was feeling the effects of any marijuana that night?

24 A. No. The marijuana was unconfirmed and we did
25 not proceed with any confirmation testing.

1 Q. So all that says that sometime before she was
2 killed she had gotten those drugs into her system?

3 A. Well, definitely she had cocaine, but again
4 the cannabinoids is unconfirmed, so that may not have
5 been in her system. That could have been possibly
6 another interfering substance.

7 Q. So even the cocaine, the marijuana pretty much
8 ruled out the cocaine? You can't say what effect it had
9 on her that night?

10 A. Correct.

11 MR. ROSARIO: Nothing further.

12 THE COURT: Recross?

13 RECCROSS-EXAMINATION

14 BY MR. FOOTE:

15 Q. Mr. Hays, when you show in the gas
16 chromatography, it shows that those compounds are
17 present in the system, when you identify cocaine and not
18 a metabolite?

19 A. Correct. We actually saw the parent drug
20 cocaine and that was with mass spectrometer.

21 Q. Okay. That's not a mistake, right?

22 A. No.

23 Q. That's not being mistaken for something else?

24 A. No.

25 Q. Okay. What effects would that have on a

1 person? You spoke about alcohol, brain, depression and
2 all that. Are you familiar with what effects the
3 cocaine compound would have?

4 A. Cocaine is considered a stimulant. It gives a
5 person an immediate rush, a feeling of euphoria. They
6 feel more active, they feel sharper, more precise, more
7 in control.

8 Q. What about the combination of ethanol and
9 cocaine, are you familiar with that?

10 A. When drugs are taken at the same time,
11 sometimes, if they're that same class of drug, for
12 instance, there's several central nervous system
13 depressants, they can have additive effects where you're
14 feeling the effects of both drugs.

15 When they are different types of compounds, as in
16 this instance, the alcohol being a central nervous
17 system depressant, the cocaine being a stimulant, it's
18 harder to predict what could happen. They don't
19 necessarily cancel each other.

20 Depending upon which drug is in greater
21 concentration at a specific point in time, a person
22 would probably be feeling the effects of that drug
23 stronger at that point in time. But again, when you
24 have mixed drugs like that, it's hard to predict what
25 the exact effects would be.

1 MR. FOOTE: Thank you. That's all I have.

2 THE COURT: Can Mr. Hays be excused, Counsel?

3 MR. ROSARIO: Subject to recall, Judge.

4 THE COURT: You're still under subpoena,
5 Mr. Hays, but you are excused.

6 THE WITNESS: So I have to stay here?

7 THE COURT: No, no. If you get a phone call
8 and you get invited back, you get a return
9 vacation.

10 THE WITNESS: Okay. Thank you, Your Honor.

11 MR. ROSARIO: Judge, may we approach?

12 THE COURT: Okay.

13 BENCH CONFERENCE:

14 MR. ROSARIO: Judge, if I may brag about
15 myself. We're running exactly on schedule as I
16 have.

17 THE COURT: That's what Mussolini did in
18 Italy. I wouldn't brag to much.

19 MR. ROSARIO: So I'll stop then. But we are
20 running exactly on time. As a matter of fact,
21 depending on when Dr. Thogmartin's clock is --

22 THE COURT: Okay. He's not here?

23 MR. ROSARIO: If I could just have a
24 five-minute break. It would be a good time to take
25 a break at this point.

1 THE COURT: You need 15?

2 MR. ROSARIO: Fifteen is fine.

3 MR. FOOTE: Yes.

4 OPEN COURT:

5 THE COURT: Okay. Ladies and gentlemen, we
6 have to take a recess until quarter of 11:00 by the
7 courtroom clock.

8 THE CLERK: The jury is out of the hearing of
9 the court, Your Honor.

10 RECESS TAKEN:

11 THE COURT: Let's bring them in.

12 MR. ROSARIO: If Mr. Ulano wants to go up and
13 speak with Ms. Connerty, I am advised she is up in
14 my office.

15 THE COURT: There you go. Let the record
16 reflect Mr. Rosario from the State has just
17 advised -- what's her first name?

18 MR. ROSARIO: Sharon.

19 THE COURT: Sharon Connerty is in the building
20 and the Defense's investigator Mr. Jonathan Foote
21 appears to be headed up that way to interview her.

22 THE BAILIFF: The jury is entering the
23 courtroom, Your Honor.

24 JURY PRESENT:

25 THE BAILIFF: All jurors are present and

1 seated in the courtroom, Your Honor.

2 THE COURT: Thank you, Deputy Eddings.

3 Mr. Rosario, please call your next witness.

4 MR. ROSARIO: Your Honor, I'd call
5 Dr. Thogmartin.

6 JON THOGMARTIN, M.D.,

7 a witness herein, being first duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ROSARIO:

11 Q. Would you please state your name for the
12 record.

13 A. I'm Jon Russell Thogmartin.

14 Q. Can you tell the jury what you do for a
15 living?

16 A. I'm a District Six Medical Examiner.

17 Q. And what are your duties as the District Six
18 Medical Examiner?

19 A. Well, under Florida Statute 406, medical
20 examiners throughout the state of Florida investigate
21 and determine the cause and manner of death and certain
22 types of death, typically trauma-related deaths or
23 unexpected deaths.

24 Q. And how long have you been a Medical Examiner?

25 A. Since July of 1995.

1 Q. And during that time period, do you have an
2 idea, a rough estimate as to how many autopsies you've
3 performed?

4 A. 2,000, 3,000, probably right in there.

5 Q. And can you tell the jury about your
6 qualifications to become a medical examiner?

7 A. Well, in Florida you're a medical doctor,
8 you're trained and certified to practice forensic
9 pathology.

10 I went to medical school in Texas. I trained in
11 pathology, anatomic and clinical pathology in Texas in
12 that same city, San Antonio.

13 Then I came here to Florida to train in forensic
14 pathology in Miami. And I'm board certified in all
15 those areas of pathology, anatomy, clinical and forensic
16 pathology.

17 And then since my training, I've been working full
18 time as a Medical Examiner, both Associate Medical
19 Examiner and District Medical Examiner since '95.

20 Q. And you've testified in court as to being a
21 Medical Examiner and the results of your tests?

22 A. Yes.

23 Q. And you have been qualified as an expert?

24 A. Yes.

25 Q. Now, directing your attention to the autopsy

1 of Joe Swiech, did you receive Joe Swiech's body?

2 A. Yes.

3 Q. When did you receive that body?

4 A. The date of the autopsy was March 26th.

5 Q. Okay.

6 A. Same date as death.

7 Q. And were photographs taken of Mr. Swiech?

8 A. Yes.

9 MR. ROSARIO: Your Honor, I'm showing the
10 witness what's previously been marked as State's
11 Exhibit A.

12 BY MR. ROSARIO:

13 Q. Do you recognize that?

14 A. Yes.

15 Q. And is that a true and accurate depiction of
16 Joe Swiech?

17 A. Yes.

18 MR. ROSARIO: Your Honor, I move for admission
19 of State's Exhibit A.

20 MR. FOOTE: May I approach, Judge?

21 BENCH CONFERENCE:

22 THE COURT: Do you want to renew your
23 previous objections?

24 MR. FOOTE: I renew my previous objections to
25 the photographs State's A and B for identification.

1 Those were photographs that were not previously
2 disclosed to the Defense until the day of trial.

3 THE COURT: Okay. Are there any objections
4 not previously made?

5 MR. FOOTE: We rest on our previous
6 objections.

7 THE COURT: I'll rest on my previous ruling.
8 It will not be necessary for you to reiterate that
9 as to the second photograph.

10 MR. ROSARIO: A standing objection.

11 THE COURT: We all understand that that
12 applies to Photograph B as well.

13 MR. FOOTE: A and B.

14 THE COURT: Okay.

15 OPEN COURT:

16 MR. ROSARIO: Your Honor, I move for admission
17 as State's Exhibit A.

18 THE COURT: Granted.

19 THE CLERK: It becomes State's Exhibit Number
20 15.

21 MR. ROSARIO: Judge, I'd ask to publish
22 State's Exhibit 15?

23 THE COURT: Yes.

24 BY MR. ROSARIO:

25 Q. Now, Doctor, I believe you testified that on

1 March 26th, 2006, the day that Joe Swiech died, you
2 actually perform the autopsy?

3 A. Yes.

4 Q. Can you tell the jury briefly how it starts
5 and what goes on?

6 A. Well, an autopsy starts with weighing and
7 measuring the body, doing an external examination of the
8 body that includes photography. And then the body is
9 opened, the body is examined, the organs are removed,
10 weighed, and then individual injuries are documented,
11 described, and then you're looking also not only for
12 injuries but for diseases. You draw blood samples to
13 run for toxicology, and then if you can, you determine
14 cause and manner of death.

15 Q. As to Joe Swiech, could you please tell the
16 jury what you found as far as your autopsy?

17 A. Well, Mr. Swiech, he had multiple, multiple
18 injuries. He had head injuries, torso injuries, spinal
19 injuries and extremity injuries.

20 The head injuries were severe in that he had what's
21 known as an atlanto-occipital joint dislocation. It's
22 kind of where the head bone is connected to the neck
23 bone, so to speak. So his neck was dislocated, or his
24 head was dislocated from his neck.

25 And what happens there is your brainstem and your

1 spinal cord go up and connect to your brain right at
2 that point, and when his cervical spine became
3 dislocated from his head, it popped his brainstem, and
4 that's just pretty much instant death. That's called an
5 internal decapitation.

6 Q. And what other injuries did you see on him?

7 A. Well, he had multiple rib fractures. He had
8 liver lacerations. He had a spleen laceration. He had
9 hemorrhage in his abdominal cavity behind his abdomen.
10 He had an extremity fracture, his femur was fractured.
11 There was a proximal tibia fracture.

12 He had multiple cutaneous abrasions, which is
13 typical of a traffic-type accident. When someone gets
14 hit by a car and their body is hit and moved, they slide
15 on the ground, and if you can imagine, your skin is
16 sliding on the ground, you're going to get abraded. So
17 he had lots of those. And that's about it. I mean it
18 was pretty much a typical pedestrian/automobile-type
19 scenario.

20 Q. Could you tell by the injuries whether he was
21 hit from the front or from the rear?

22 A. Well, often it's hard to tell from just the
23 body which way the person is hit. It's actually more
24 reliable to rely on the information that you gather from
25 the scene and circumstances. However, the injury that

1 he has, the atlanto-occipital joint dislocation, it's
2 typical for hyperextension of the neck.

3 You most typically see that injury if someone is
4 hit from the rear, the neck is hyperextended and that
5 causes fractures and dislocation of the cervical spine
6 as seen here.

7 So it's more consistent with being hit from the
8 rear, which is consistent with the circumstances that I
9 received prior to the autopsy.

10 Q. And what were your conclusions as to the cause
11 of death?

12 A. The cause of death was -- I tried to keep it
13 simple. I listed the cause of death as blunt trauma.

14 Q. Sarah Gleason, did you receive her body?

15 A. Yes, I did.

16 Q. And when did you receive her body?

17 A. I received her body the same day, and her
18 external examination occurred slightly before
19 Mr. Swiech's.

20 MR. ROSARIO: And, Your Honor, I'm showing the
21 witness what's previously been marked as State's
22 Exhibit B.

23 BY MR. ROSARIO:

24 Q. Do you recognize that?

25 A. Yes.

1 Q. Is that Sarah Gleason?

2 A. Yes.

3 Q. And that's a photograph of her when you did
4 the autopsy?

5 A. Yes.

6 MR. ROSARIO: Your Honor, I move for admission
7 of State's Exhibit B.

8 THE COURT: Granted.

9 MR. ROSARIO: And ask to publish?

10 THE COURT: You may.

11 THE CLERK: That would be State's Exhibit
12 Number 16.

13 BY MR. ROSARIO:

14 Q. And, Doctor, could you please tell the jury
15 about the autopsy of Sarah Gleason.

16 A. Well, Sarah Gleason's injuries were similar to
17 Mr. Swiech's, just less severe. She again had that
18 atlanto-occipital joint injury similar to him, but hers
19 did not involve a complete severance of the upper spinal
20 cord and brainstem. Hers just were still intact, and so
21 her injury to her neck and her brainstem was less
22 severe.

23 However, the other injuries were very similar. She
24 had rib fractures, the liver and spleen injuries, the
25 hemorrhages. She also had the lower extremity injuries

1 very similar to his injuries.

2 And then again, what you typically get in a
3 pedestrian-type automobile collision, you get the
4 pedestrian being thrown or pushed along or dragged along
5 the rough surface and they end up with abrasions on the
6 skin. So their injuries were very similar, it's just
7 that Mr. Swiech's were more severe.

8 Q. And what did you find was the cause of death?

9 A. I listed her cause of death as the same, blunt
10 trauma.

11 MR. ROSARIO: Your Honor, that's all I have of
12 this witness.

13 THE COURT: Mr. Foote?

14 CROSS-EXAMINATION

15 BY MR. FOOTE:

16 Q. Good morning, Doctor.

17 A. Good morning.

18 Q. As part of your postmortem examination for
19 both Joseph and Sarah, you were able to determine that
20 the cause of death was blunt force trauma more than
21 likely caused by a motor vehicle?

22 A. Well, when you're looking at just the body
23 alone, it's obviously blunt trauma. I would list it and
24 certify it how the injury occurred on the death
25 certificate as related to a motor vehicle based on the

1 circumstances.

2 Q. When you say based on the circumstances, is it
3 what you're observing or do other people tell you other
4 things?

5 A. It's both. I mean, you know, you can give me
6 a body, let's say you give me a body and say, here you
7 go, here's your body, we're not going to tell you
8 anything about it, a lot of times I can arrive at an
9 appropriate cause of death.

10 Like in these cases I can tell you, no doubt,
11 absolute certainty blunt trauma caused their deaths.
12 But if you want more information, you know, like if I'm
13 supposed to certify the death on how their injury
14 occurred, typically you would need the circumstance of
15 how the injury occurred to do that, particularly if
16 you're talking about manner of death, like is it a
17 suicide, a homicide or an accident.

18 We always get the circumstances of death, and
19 there's nothing inconsistent with these people being hit
20 by a car. Let's face it, that's the reason I'm involved
21 is to make sure that the circumstances as law
22 enforcement sees them are, indeed, consistent with the
23 injuries. Otherwise, like in many states, incidents
24 like this aren't even autopsied. They're certified
25 based on the circumstances. They don't even get

1 autopsied. Alabama is one of them. Here these are
2 autopsied and the reason is to make sure that this isn't
3 something else that looks like a traffic but isn't.

4 Q. Okay. And you used the words to kind of work
5 with law enforcement to verify the circumstances as
6 provided to you?

7 A. Correct. I mean common sense, two people get
8 hit by a car, a guy sees it, a damaged truck, all this
9 stuff this, you know, this is what the circumstances
10 are.

11 I'm involved not to tell people the obvious, hit by
12 a car, blunt trauma. I'm there to make sure that this
13 isn't something completely different, and that's how we
14 approach the cases. It's under statute, of course, but
15 the underlying reason is to make sure that this isn't
16 something else.

17 Q. Okay. And you didn't go out to any scene that
18 evening; is that right?

19 A. No. The doctors typically don't go to
20 traffics unless there's something very, very unusual,
21 but members of my staff, both the removal people and
22 there's an investigator that goes to the scene.

23 Mr. Swiech was the only body that remained at the
24 scene. Ms. Gleason was transported, and I think the
25 reason is he had his brainstem, you know, severed, she

1 did not. So she probably showed some signs of life that
2 made them think that she needed to be transported.

3 Q. And based on your autopsies of both Joseph and
4 Sarah, you're not able to determine who the driver of
5 that vehicle was that was involved in the accident?

6 A. Oh, absolutely not, no.

7 MR. FOOTE: Thank you. That's all I have.

8 Thank you, Doctor.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. ROSARIO:

12 Q. Doctor, what is adrenaline?

13 A. It's epinephrine, norepinephrine produced by
14 the adrenal glands.

15 Q. Is that a depressant or a stimulant?

16 A. A stimulant.

17 MR. ROSARIO: Nothing further, Judge.

18 THE COURT: May Dr. Thogmartin be excused?

19 MR. ROSARIO: Subject to recall, yes.

20 THE COURT: With the possibility of being
21 recalled. Thank you, Doctor.

22 Please call your next witness.

23 MR. ROSARIO: Judge, I'd call Marvin Dalzell.

24 THE COURT: Counsel, please approach.

25 BENCH CONFERENCE:

1 THE COURT: Just a quickie here, but is there
2 a chance you're going to be able to continue to run
3 a little ahead of schedule? And if so, is there a
4 chance you can get some more folks in here so we
5 get ahead of the game?

6 MR. ROSARIO: I think Mr. Dalzell is going to
7 take awhile.

8 THE COURT: I'm looking at this evening?

9 MR. ROSARIO: Well, I have five people
10 scheduled for this afternoon, one of them being
11 Trooper Evans.

12 THE COURT: Could you put one or two on
13 standby in case we're able to keep knocking them
14 out?

15 MR. ROSARIO: Before lunch?

16 THE COURT: No, no.

17 MR. ROSARIO: I've got five people scheduled
18 for today. I might be able to get Kara Wallace in
19 as a standby.

20 THE COURT: Okay. I'd ask you to do that. It
21 would be nice to capitalize on this newfound
22 efficiency.

23 OPEN COURT:

24 MARVIN DALZELL,
25 a witness herein, being first duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ROSARIO:

4 Q. Would you please state your name for the
5 record.

6 A. Marvin Duane Dalzell.

7 Q. Do you also go by Joe?

8 A. Yes, I do.

9 Q. And Mr. Dalzell, where do you live?

10 A. 3530 Edenwood Drive, Holiday, Florida.

11 Q. Now, Mr. Dalzell, do you know a Shannon
12 Stephen?

13 A. Yes, I do.

14 Q. Is he in the courtroom today?

15 A. Yes, he is.

16 Q. Can you point him out and describe what he's
17 wearing?

18 A. He's the gentleman sitting over here to my
19 left, the second person from the right, wearing a black
20 suit with a black and gray tie on.

21 MR. ROSARIO: Your Honor, may the record show
22 the witness correctly identified the defendant?

23 THE COURT: Actually I believe he identified
24 Jonathan Foote. Did you mean the second person
25 from your right, sir?

1 THE WITNESS: As I'm looking, the second
2 person from the right-- or from the left, end of
3 the table.

4 THE COURT: You mean the second person from
5 your left?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. I don't mean to nitpick,
8 but you understand?

9 THE WITNESS: Yes, sir.

10 THE COURT: If there's no objection, I'm going
11 to let the record reflect that the witness has
12 identified the defendant, Mr. Stephen.

13 BY MR. ROSARIO:

14 Q. Now, going back to March 26 of 2006.

15 A. Yes, sir.

16 Q. Did you know Shannon Stephen?

17 A. Yes, sir.

18 Q. Does he look today the same as he looked back
19 then?

20 A. Except for the suit, yes, sir.

21 Q. What about his facial hair?

22 A. If I remember right, he wasn't clean-shaved
23 that day. He looked like he might have needed a shave
24 that day.

25 Q. Okay. So today he's clean-shaven?

1 A. Yes, sir.

2 Q. Does he look like he's gained or lost any
3 weight?

4 A. To the best of my knowledge, no, he looks
5 about the same weight-wise.

6 Q. Okay. And back on March 26, 2006, was there a
7 plan to get together with Shannon Stephen and other
8 people?

9 A. Yes, sir.

10 Q. Who were you going to get together with?

11 A. Jim Wallace and I, we were visiting, and we
12 decided we wanted to go shoot some pool, and he gave
13 Frank a call and give Shannon a call to meet us at
14 Sevens to shoot a couple rounds of pool.

15 Q. Okay. Where were you guys visiting? Where
16 were you visiting?

17 A. Jim and I started off visiting at my place.

18 Q. Okay. And then did you go back to his place?

19 A. We went to Jim's place from my place, and I
20 parked my vehicle at Jim's house, and then we left there
21 in Jim's vehicle and went to Sevens.

22 Q. Okay. What kind of vehicle did you have?

23 A. I had a red Econoline van.

24 Q. That's one of those big conversion vans?

25 A. Yes, sir.

1 Q. And you parked that at Jim Wallace's house?

2 A. Yes, sir.

3 Q. And who drove to Sevens?

4 A. Jim.

5 Q. And Jim had what color truck?

6 A. It's sort of a silverish beige GMC pickup,
7 half-ton.

8 Q. And did Jim drive his truck or did you drive
9 Jim's truck?

10 A. Jim drove his truck.

11 Q. And you guys went to what bar?

12 A. Sevens.

13 Q. And is that located at Old County Road 54 and
14 Little Road?

15 A. Yes, sir.

16 Q. And when you got there, did you get there
17 ahead of Frank and Shannon?

18 A. Yes.

19 Q. Who came next?

20 A. To the best of my recollection, Frank was the
21 next person to show up.

22 Q. And about how long after that did Shannon
23 arrive?

24 A. I'd have to say roughly ten minutes after that
25 Shannon showed up.

1 Q. Okay. When you were there, were you drinking
2 any alcoholic beverages?

3 A. I had just gotten my first beer, yes.

4 Q. And what was Jim drinking?

5 A. A beer.

6 Q. And when Frank arrived, what did he order?

7 A. He went and got a beer.

8 Q. And then when the defendant arrived, what did
9 he have?

10 A. When Mr. Shannon walked into the club, I
11 walked up to the bar and ordered him a Captain and Coke,
12 and brought that back to the table and gave that to him
13 upon his arrival to the table where we was.

14 Q. Okay. And did he drink that alcoholic
15 beverage?

16 A. Yes, he did.

17 Q. Did he drink more alcoholic beverages after
18 that?

19 A. Yes, he did.

20 Q. Do you have any idea as to how many he had?

21 A. Not total, no.

22 Q. His sobriety as the night went on, can you
23 please tell the jury how his sobriety became worse?

24 MR. FOOTE: Objection. Lack of foundation.

25 THE COURT: If you can rephrase that question,

1 please.

2 BY MR. ROSARIO:

3 Q. As the night went on, what did you notice
4 about any signs of impairment or any drunkenness on the
5 part of Shannon Stephen?

6 A. As the night went on, I noticed that his
7 walking become more staggered. He wasn't walking a
8 straight line at that particular time. He became more
9 jovial.

10 Q. More jovial?

11 A. More playing around throughout the whole bar
12 that evening.

13 Q. More carefree?

14 A. Yes, sir.

15 Q. Okay. And did you notice anything unusual
16 start to occur?

17 A. No.

18 Q. Did he get drunk at the bar?

19 MR. FOOTE: Objection. May we approach?

20 THE COURT: Yes.

21 BENCH CONFERENCE:

22 THE COURT: What is your objection?

23 MR. FOOTE: Lack of proper foundation. He's
24 just asking this witness is he drunk. What's his
25 standard of drunk? Just ask him has he ever seen a

1 person impaired before and what are some of the
2 signs. For him to just come out and say drunk and
3 on what level?

4 THE COURT: Somehow I have a feeling this
5 witness is an expert on that. You know, in light
6 of the other evidence, I thought maybe you were
7 going to speed that along, but I think the
8 objection is technically well-founded.

9 MR. ROSARIO: I'll move on.

10 THE COURT: And I'd ask you to show some
11 acquaintance on the part of this gentleman of the
12 signs of insobriety and then you can explore it.

13 MR. ROSARIO: Okay.

14 OPEN COURT:

15 BY MR. ROSARIO:

16 Q. Mr. Dalzell, have you had the occasion to be
17 around people who are drunk?

18 A. Yes.

19 Q. And how old are you?

20 A. I'm 60.

21 Q. All right. And did you ever have any military
22 service?

23 A. Yes.

24 Q. How long did you serve in the military?

25 A. Twenty-two and a half years, sir.

1 Q. What branch of the service?

2 A. U.S. Army.

3 Q. During that time period, did you have occasion
4 to go out to bars with guys and have them have a little
5 too much to drink?

6 A. Yes, sir.

7 Q. Have you seen them impaired by alcohol?

8 A. Yes, sir.

9 Q. Have you seen somebody who's drunk?

10 A. Yes, sir.

11 Q. On the night that we're talking about, March
12 26, 2006, did Shannon Stephen appear to be drunk?

13 A. In my opinion, yes, sir.

14 Q. And he got drunk. Did you have a conversation
15 with Jim Wallace?

16 A. Yes, sir.

17 Q. Was there any conversation about maybe trying
18 to get him to go home or take a ride home?

19 A. Yes, sir.

20 Q. What did you two talk about?

21 A. First we talked about going out and getting
22 something to eat so we had something in our stomach
23 besides just the alcohol, and then I made the suggestion
24 that since I was riding with Jim that I would drive
25 Shannon's vehicle for him to the restaurant and possibly

1 to Shannon's residence because of the state and
2 ~~condition that I felt he was in, he shouldn't be behind~~
3 the wheel.

4 Q. How much had you had to drink at that point
5 when you decided possibly to be the designated driver?

6 A. One and three quarters beer.

7 Q. Are you sure about that?

8 A. Yes, sir.

9 Q. So your plan to be the designated driver, did
10 it come through?

11 A. No, sir.

12 Q. Tell the jury what happened?

13 A. After we left the establishment, got out to
14 the parking lot, I asked Mr. Shannon for his vehicle
15 keys, that I would drive him to the restaurant or drive
16 him to his residence, and he emphatically said, no.

17 His keys was in his pants pocket and I wasn't about
18 to reach in his pants pocket. He refused to give up the
19 keys, and next thing I knew he left from between Jim and
20 I and he was headed to his vehicle, and we was going to
21 try to talk him out of not driving and next thing he was
22 backing up.

23 Q. Well, let me stop you right there. That's
24 kind of a lot of information. You're in the bar?

25 A. Yes, sir.

1 Q. Did you see him close out his tab?

2 A. Yes, sir.

3 Q. Okay. So he walked up to the bar. Tell the
4 jury what happened when he walked up to the bar and
5 closed out his tab.

6 A. He walked up to the bar to pay his tab, and he
7 reached in his pocket and pulled his hand out and I seen
8 his credit card hit the floor. I reached down to pick
9 it up and I give it to Jim, and at that time, I would
10 have to say joking around, Mr. Shannon turned around and
11 give me a polite pop to the stomach. I wasn't expecting
12 it and my knee buckled on me. Then he turned back
13 around and paid his bill and we left the bar.

14 Q. And did he pay with the card you had given to
15 Jim?

16 A. No.

17 Q. How did he pay?

18 A. That, I'm not sure how he paid.

19 Q. So Jim has got his card and he paid his bill
20 some other way?

21 A. Yes, sir.

22 Q. And he punches you, you went down on a knee or
23 something like that?

24 A. My knees buckled. I almost went all the way
25 down, yes.

1 Q. All right. What happened after he paid his
2 bar tab and was leaving the bar?

3 A. We had got outside of the door of the bar, and
4 there was a pretty stocky man, I'd have to say about six
5 foot tall, around 300 pounds, was walking into the bar,
6 and Shannon turned and said, "I'll pay you \$20 to beat
7 this man up and get my credit card back, he won't give
8 it to me." And the gentleman just laughed or ignored
9 him and walked into the club.

10 Q. Do you remember if that guy had a Mohawk?

11 A. I don't recall.

12 Q. Okay. So the guy laughed and walked into the
13 bar?

14 A. Yes, sir.

15 Q. What happened next?

16 A. There's a pillar out in front of the door, and
17 Mr. Shannon said he had to go to the bathroom, and he
18 walked over to the pole and proceeded to urinate on the
19 post, and then I knew for sure he was too intoxicated to
20 drive.

21 And then this other gentleman went by, about 5'6",
22 5'7", roughly 250, 260 pounds, and Shannon says, "I'll
23 pay you \$25 to beat him up and get my credit card back."
24 And the gentleman just ignored him and walked on into
25 the bar and we proceeded to walk across the drive of the

1 parking lot at that point.

2 Q. Okay. So did you guys walk up to Jim's silver
3 truck or the defendant's red truck?

4 A. We walked to Jim's truck.

5 Q. And was there some conversation being had
6 then?

7 A. We were talking about going to the bar -- or
8 going to the restaurant to get some breakfast that
9 morning and Shannon was coming up behind us at that
10 point.

11 Q. Okay. Then what happened as Shannon came up
12 from behind you?

13 A. As we was getting ready to step up onto one of
14 the little island deals there where there was a tree and
15 some flowers --

16 Q. Is that right next to Jim's truck?

17 A. Yes, sir.

18 Q. Okay.

19 A. -- Shannon come up over it, and I don't know
20 if he was trying to tackle Jim or what, but he jumped on
21 Jim from behind, and Jim just turned with the glancing
22 blow and Shannon went down to the ground.

23 Then we proceeded to help him get back up, and we
24 went to the tailgate of Jim's truck and was talking
25 about going to the restaurant and getting something to

1 eat, and that's when I offered to drive Shannon's truck
2 for him.

3 Q. Did he take you up on that offer?

4 A. No. He was very emphatic that I was not
5 driving his truck. And I made the offer, well, fine,
6 Jim can drive your truck and I'll drive Jim's truck.

7 Q. What did he say to that?

8 A. He didn't. He was gone from where we was at
9 and headed towards his vehicle. As we were going across
10 the parking lot to him, I hollered at Jim, don't. We
11 were going to cross from one lane to the other, and I
12 said, Jim, don't, he's coming back. And at that time
13 Mr. Shannon come out of the slot he was parked in and
14 just missed Jim and bumped another vehicle.

15 Q. Okay. Just to be clear, when you yelled to
16 Jim "Don't", Shannon Stephen has already gotten into his
17 truck?

18 A. Yes, sir.

19 Q. And he's backing out?

20 A. Yes, sir.

21 Q. Okay. And as he backs out, how did he back
22 out?

23 A. He come back out I would have to say at a
24 moderate speed. And I seen where Jim was at, if he
25 continued his route, that he would have got hit. When I

1 hollered at Jim to stop, Jim did, and Shannon's truck
2 just missed him by a few inches.

3 Then as he proceeded to pull forward, he just
4 barely missed me and he kept going on out, and he come
5 to the end of the lane, come to a stop, and then he made
6 a right and headed over toward Alternate 54.

7 MR. ROSARIO: Now, Your Honor, I'm showing the
8 witness what's previously been marked as State's
9 Evidence 6.

10 BY MR. ROSARIO:

11 Q. Do you recognize that?

12 A. Yes, sir.

13 Q. That is a picture of what?

14 A. That is the tailgate of Mr. Shannon's truck.

15 Q. So he backs out of this and almost hits you
16 and Jim?

17 A. Yes, sir.

18 Q. Does he drive towards Sevens or away from
19 Sevens?

20 A. Towards Sevens.

21 Q. And he drives towards Sevens and he takes a
22 right and goes which direction?

23 A. That would be going south.

24 Q. Okay. And did you see him drive south to the
25 end of the parking lot exit?

1 A. Yes, sir.

2 Q. And when he got to the parking lot exit, which
3 way did he turn?

4 A. Well, he did come to a complete stop, and then
5 he made another right onto that road there that took him
6 back toward Little and Old 54. At the red light there,
7 he had a red light, and he come to a complete stop.

8 Q. And at the red light, what did he do after it
9 turned green?

10 A. He went straight through the intersection at a
11 reasonable speed. At that point Jim says, he's got it
12 under control, he's headed home, he doesn't live far
13 from here, and so Jim and I got in his vehicle, went
14 back to Jim's house, and I got out, we talked for a
15 minute or two, maybe five, and I left and went home.

16 Q. Okay. Could you guys also have been talking
17 in the truck on the way over about what had just
18 happened?

19 A. Yes, we did.

20 Q. And he lives about how far away from Sevens?

21 A. I have no idea.

22 Q. Okay. So you get to Jim's house and you get
23 into your own van?

24 A. Yes, sir.

25 Q. And where do you go in your van?

1 A. I left there and headed home.

2 Q. Okay. Do you remember the route you took?

3 A. Yes, sir. But I don't remember the name of
4 the streets.

5 Q. Okay.

6 A. I come out of Jim's, I got to the end there, I
7 made a left on that road, went approximately a mile and
8 a quarter, made another left. It brought me out at
9 Little Road to McDonald's there on the corner, I don't
10 know the name of the road. I made a left from there
11 onto Little to Old 54, and I made a right on Old 54 over
12 to 54, and made the right there and proceeded west
13 across 54 to 19.

14 Q. So some period of time has elapsed since
15 Shannon left and going down to Old 54, and then when you
16 came back around to Old 54?

17 A. Yes, sir.

18 Q. Were you watching your watch at all as far as
19 the time or anything?

20 A. No.

21 Q. When you got to State Road 54, and you're
22 driving down the road, did something else happen?

23 A. Yes, sir. As I went along there and I come up
24 on Grand --

25 Q. Grand Boulevard?

1 A. -- Grand Boulevard, I noticed a red pickup
2 sitting out into the outside lane of 54.

3 Q. The red pickup being?

4 A. Yes, sir. It ended up being Mr. Shannon's
5 truck, but at that particular point I can only identify
6 it as a red pickup.

7 Q. Okay.

8 A. And as I got closer to the truck, then I seen
9 Mr. Shannon get out of his pickup, holding onto the side
10 of the truck and go around behind it. Well, at this
11 point I knew he needed help, but I couldn't pull over
12 where I was at because there was no place to park, so I
13 decided there's a bus stop on the other side, I'll go
14 around his truck, park in the bus stop, and then come
15 back and see if I could help.

16 Q. Okay. And what happened when you tried to do
17 that?

18 A. As I slowly went around the front of his
19 truck, I noticed the hood was totally caved in. And I'm
20 like, oh, my God, he had a hell of a wreck, and I called
21 911 to report where his truck was at and that he had
22 been in a wreck. I had no idea what he had hit or what
23 had hit him.

24 Q. Well, let me stop you right there. Just prior
25 to calling 911, did you call Jim Wallace?

1 MR. FOOTE: Objection. Leading.

2 THE COURT: Sustained.

3 BY MR. ROSARIO:

4 Q. Just prior to calling 911, did you make any
5 other calls?

6 A. Not to my recollection.

7 Q. Would looking at your phone records refresh
8 your recollection?

9 A. Possibly, yes, sir.

10 MR. FOOTE: May we approach, Judge?

11 THE COURT: Yes.

12 BENCH CONFERENCE:

13 MR. FOOTE: I'm just going to object. I know
14 Mr. Rosario wants to tell his story, but he needs
15 to let the witness tell the story, Judge. It's a
16 lot of leading. I don't want to keep coming back
17 up here, but when it gets to a big point like this.

18 MR. ROSARIO: I'll do my best to stay away
19 from that, Judge.

20 THE COURT: I think that's a fair point.
21 You're on offense and I appreciate the fact that
22 you have a lot of evidence to juggle.

23 MR. ROSARIO: I'll work on that. I won't
24 lead.

25 THE COURT: Yes, you can do better.

1 MR. ROSARIO: I can do better, yes, sir.

2 OPEN COURT:

3 MR. ROSARIO: May I have one moment, Judge?

4 THE COURT: Yes.

5 MR. ROSARIO: Judge, may we approach?

6 BENCH CONFERENCE:

7 MR. FOOTE: We're just going to stipulate that
8 the phone records that are marked as Defense
9 exhibits are going to be entered in so that he can
10 use them as evidence. So we stipulate to their
11 admission.

12 THE COURT: Do you want to just stipulate them
13 into evidence and call it court exhibits since
14 you're both going to use them?

15 MR. ROSARIO: That's fine.

16 THE COURT: It needs a name if it's going into
17 evidence. I don't care if we call it Fred.

18 MR. ROSARIO: Defense Exhibit C. I have no
19 objection.

20 THE COURT: You want to call it what?

21 MR. FOOTE: Defense C for identification will
22 be next.

23 MR. ROSARIO: Well, actually you want to have
24 it marked? We'll have her mark it.

25 THE COURT: What is that?

1 MR. FOOTE: It's phone records.

2 THE COURT: Okay. Defense C is going to be
3 Defense 6, right?

4 MR. FOOTE: Defense C as Defense 6.

5 OPEN COURT:

6 THE COURT: Okay. Defense Exhibit C for
7 identification is by stipulation now admitted into
8 evidence as Defense Exhibit 6.

9 MR. ROSARIO: Your Honor, I'm approaching the
10 witness with what's previously been marked as
11 Defense Exhibit 6.

12 BY MR. ROSARIO:

13 Q. Could you look at that? Does that appear to
14 be your cellphone record?

15 A. Yes, sir.

16 Q. And does this refresh your recollection as to
17 when you called 911 on March 26th, 2006?

18 Mr. Dalzell, could I direct you to the middle row
19 where it says the numbers?

20 A. Yes, sir.

21 Q. Does it refresh your recollection as to when
22 you called 911?

23 A. Yes, sir.

24 Q. What time did you call 911?

25 A. 9:23 a.m. -- or excuse me, 1:23 a.m.

1 Q. The number right above it, whose phone number
2 does that appear to be?

3 A. Jim Wallace, sir.

4 Q. And you called him at what time?

5 A. 1:22 a.m.

6 Q. And your provider in this is what company?

7 A. T-Mobile.

8 Q. Why did you call Jim Wallace at 1:22 a.m.?

9 A. At that particular time I believe I tried to
10 make contact with him just to have general conversation
11 with him, but I do not recall talking with Jim at that
12 particular time.

13 Q. You think you may have left a message?

14 A. No, sir.

15 Q. Okay. You called 911?

16 A. Yes, sir.

17 Q. Did you tell them what you saw?

18 A. I described the vehicle I saw and the location
19 of the vehicle and that the vehicle had passed through
20 behind me, and at that point I made a U-turn, and then I
21 told them that the sheriff was right there behind me.

22 Q. By that time the sheriff had arrived?

23 A. Yes, sir.

24 Q. After you made a U-turn and went back?

25 A. Yes, sir.

1 Q. And once the sheriff arrived, was there anyone
2 else there ahead of you?

3 A. Yes, sir.

4 Q. Tell us about that.

5 A. Just as I pulled up behind Shannon's truck,
6 there was a silver pickup that come flying by me, I have
7 no idea where it come from, and he slid catty-corner
8 across the front of Shannon's truck and got out. At
9 this particular time Shannon had opened his door and
10 this gentleman helped Shannon out of the truck, around
11 behind the truck, and this whole time he was hollering,
12 "He just killed two people back up the road."

13 I sat back down in the vehicle in total shock, and
14 that's when I seen the sheriff come through the parking
15 lot there at Club 54, and then one pulled up behind me,
16 and the one that was in Club 54, went over and took
17 Mr. Shannon into custody.

18 Q. So when these two guys said he just killed two
19 people up there, did you call Jim Wallace and leave a
20 message or tell him that had happened?

21 A. Yes, sir. After I had hung up with 911, yes,
22 sir.

23 Q. So the person you saw get out of the vehicle
24 and run around, did he run around to a certain area in
25 that intersection, the defendant, when he got out of the

1 truck and ran around before you stopped?

2 A. He was going around behind the back of his
3 vehicle, he had ahold of the tailgate. I didn't know
4 where he was headed at that particular time or what was
5 going on. And before I could come to a stop, I seen the
6 motion in my mirror and I looked and saw him going
7 through the intersection.

8 Q. And he got back into the truck?

9 A. Yes, sir.

10 Q. When he came back to the rear of the truck, he
11 came around and got back into the truck?

12 A. Yes, sir.

13 Q. Okay. The truck, is it leaking fluids? Is it
14 smoking?

15 A. It wasn't smoking, but I didn't look under to
16 see if it was leaking fluids. I just saw the damage on
17 the hood and I was going stop.

18 Q. Okay. So you see him get back into the truck?

19 A. I didn't see him get into the truck. I seen
20 the truck pull through intersection, so I knew he had to
21 get back into the truck.

22 Q. Okay. So you see the truck pull across the
23 intersection?

24 A. Yes, sir.

25 Q. And you did what again? I'm sorry.

1 A. I backed up just a little bit, cut the wheel
2 hard to the left and made a quick turn to pull in behind
3 him, and without looking I cut another vehicle off and
4 he let me know about it. But I pulled in behind
5 Shannon, and then the next thing the silver truck come
6 flying by me, blocked Mr. Shannon's truck, and then the
7 sheriff pulled through the Club 54 parking lot and one
8 pulled in behind me.

9 Q. So you were blocked in?

10 A. Yes, sir.

11 Q. Did you end up talking to the police that
12 night?

13 A. Vaguely, yes, sir.

14 Q. Did there come a time after you called Jim
15 Wallace up, that he came to the scene?

16 A. Yes, sir.

17 Q. And did you talk to him a little bit?

18 A. We stood there in amazement about the truck
19 and what had happened. We really didn't have much of a
20 discussion.

21 Q. And then did the two of you leave about the
22 same time?

23 A. I left before Jim. I don't know how long
24 after that Jim left.

25 Q. Okay. And the person that was pulled out from

1 the truck, Shannon Stephen, that's the same person that
2 you saw the police take custody of, correct?

3 A. Yes, sir.

4 Q. The same person that those two guys in the
5 truck pulled out of Shannon's truck?

6 A. Yes, sir.

7 MR. ROSARIO: Your Honor, that's all I have of
8 this witness.

9 THE COURT: Mr. Foote?

10 MR. FOOTE: May I have a moment, Judge?

11 MR. ROSARIO: Judge, may we approach?

12 THE COURT: I think you better.

13 BENCH CONFERENCE:

14 MR. ULANO: Same thing as last time, there is
15 two 911 calls. The initial one comes on a CD, the
16 second one is on a tape.

17 THE COURT: Okay. You want to cross him about
18 the 911 calls?

19 MR. FOOTE: Yes.

20 MR. ROSARIO: You want me to set it all up?
21 It will take me a minute.

22 THE COURT: Should we give them a break? How
23 long will it take?

24 MR. ROSARIO: Oh, two minutes.

25 THE COURT: Okay. Take your two minutes.

1 Anything else?

2 MR. FOOTE: We're going to admit the 911
3 tapes.

4 MR. ROSARIO: I have no objection to the
5 admission of the 911 tapes.

6 THE COURT: Okay.

7 OPEN COURT:

8 MR. ROSARIO: It's all set up and ready,
9 Judge.

10 THE CLERK: Defense Exhibit N is Defense
11 Exhibit Number 7, and Defense Exhibit O is entered
12 as Defense Exhibit Number 8.

13 MR. ROSARIO: We stipulate to the admission of
14 the 911 tapes, Judge.

15 THE COURT: Okay. Those two items previously
16 marked for identification will come in as
17 Defense -- what numbers, Madam Clerk?

18 THE CLERK: Exhibit N is entered as Exhibit
19 Number 7, and Defense O is entered as Defense
20 Exhibit Number 8.

21 MR. FOOTE: May I proceed, Judge?

22 THE COURT: Please.

23 CROSS-EXAMINATION

24 BY MR. FOOTE:

25 Q. Good morning, Mr. Dalzell.

1 A. Good morning, sir.

2 Q. Let's talk about your testimony here today.

3 You were present at the Sevens bar with Jim Wallace?

4 A. Yes.

5 Q. And Shannon Stephen?

6 A. Yes.

7 Q. Do you consider Jim a good friend of yours?

8 A. Yes.

9 Q. More friends with Jim than Shannon?

10 A. Yes, sir.

11 Q. How long have you known Jim?

12 A. Roughly four years now.

13 Q. You would consider you and Jim to be best
14 friends?

15 A. Yes, sir.

16 Q. And you stay in contact even up to now with
17 Jim?

18 A. Yes, sir.

19 Q. Okay. When is the last time you've seen Jim?

20 A. Oh, probably a month ago.

21 Q. When is the last time you spoke with him?

22 A. Probably three days ago.

23 Q. Okay. And you guys talk about three times a
24 week or so? You're in pretty frequent contact with Jim?

25 A. Yes, sir.

1 Q. Now, before this whole incident occurred, you
2 spent very little social time with Shannon Stephen?

3 A. True.

4 Q. You don't have contact with Shannon that
5 often?

6 A. No, sir.

7 Q. In fact, you haven't spoken to him since this
8 incident back in 2006?

9 A. No, sir.

10 Q. Now, let's talk about the night at the bar, at
11 the Sevens bar. Shannon accidentally knocked over a
12 beer at the bar?

13 A. Yes, sir.

14 Q. And that was an accident, right?

15 A. Yes, sir.

16 Q. He wasn't standing there knocking over beers
17 on purpose?

18 A. True.

19 Q. And he knocked it over one time?

20 A. He knocked it over three times, sir.

21 Q. Okay. And you tried to get Shannon's keys
22 from him?

23 A. I had asked him for his keys at the parking
24 lot, yes, sir.

25 Q. When you say you tried to get them, you just

1 asked him for the keys?

2 A. Yes, sir.

3 Q. And it's your testimony that Shannon punched
4 you?

5 A. Yes, sir.

6 Q. Now, let's talk about this punching, because
7 there's different stories that are going on.

8 MR. ROSARIO: Objection. Argument.

9 THE COURT: Sustained. No commentary toward
10 the line of these questions, please.

11 BY MR. FOOTE:

12 Q. How many times did Shannon punch you?

13 A. Once.

14 Q. The whole night?

15 A. Yes, sir.

16 Q. He punched you one time the whole night?

17 A. Yes, sir.

18 Q. Are you certain about that?

19 A. Yes, sir.

20 Q. Was it as in a fight or was he playing?

21 A. Playing, sir.

22 Q. He punched you one time and he was playing?

23 A. Yes, sir.

24 MR. ROSARIO: Objection. Asked and answered.

25 MR. FOOTE: Judge.

1 THE COURT: Overruled. We're not going to
2 nitpick, but just keep it rolling, please,
3 Mr. Foote.

4 BY MR. FOOTE:

5 Q. In fact, there was no fights going on in the
6 bar with Shannon? In fact, he was laughing? Joking?

7 A. Yes, sir.

8 Q. Flirting with girls?

9 A. Yes, sir.

10 Q. All right. He wasn't fighting with anybody in
11 the bar?

12 A. No, sir.

13 Q. Which means he wasn't fighting with Jim in the
14 bar?

15 A. No.

16 Q. Now, Shannon paid his bill and you guys left
17 the bar?

18 A. Yes, sir.

19 Q. And at some point you spoke with Corporal
20 Styers, the homicide investigator, from the Highway
21 Patrol, right?

22 A. Yes, sir.

23 Q. You never indicated to Corporal Styers that
24 Shannon was punching anybody, did you?

25 A. I only indicated the one time that he turned

1 around jovially and punched me in the stomach and that
2 was it, sir.

3 Q. And that was at the bar as he was paying the
4 bill?

5 A. Yes, sir.

6 Q. There comes a point where you, Shannon and Jim
7 are walking to the door of the Sevens bar and you guys
8 were all leaving?

9 A. Yes, sir.

10 Q. Jim was on one side and you were on the other
11 side helping Shannon out of the bar?

12 A. Yes.

13 Q. He needed some assistance because he had
14 consumed a lot of alcohol?

15 A. Yes, sir.

16 Q. That's what you observed?

17 A. Yes, sir.

18 Q. He was staggering as he was walking?

19 A. Yes, sir.

20 Q. And he needed you and Jim's assistance?

21 A. We gave it to him, yes, sir.

22 Q. Well, if you didn't hold him up, would he have
23 fell down?

24 A. I wouldn't say fell down, but I don't think he
25 could have walked a straight line to get out the door.

1 Q. In your opinion, he needed help walking; is
2 that right?

3 A. Yes, sir.

4 Q. And you had to hold him up to guide him out
5 through the door?

6 A. We just guided him, sir. We didn't really
7 hold him up, sir.

8 Q. Did you say that on any previous occasion,
9 that you had to hold him up to guide him through the
10 door?

11 A. Not to my recollection, sir.

12 Q. Outside of the bar, you get outside, you say
13 that Shannon urinated on a pole and, in fact, he punched
14 Jim a few times?

15 A. No, sir.

16 Q. He never punched Jim a few times?

17 A. No, sir.

18 Q. How many times did he punch Jim?

19 A. I don't recall him punching Jim.

20 Q. Are you certain about that?

21 A. Yes, sir.

22 MR. FOOTE: One moment, Judge.

23 BY MR. FOOTE:

24 Q. Do you remember speaking to the Highway Patrol
25 and giving a recorded statement?

1 A. No, sir.

2 Q. Did you ever give any statement to the Highway
3 Patrol?

4 A. No, sir.

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

6 BY MR. FOOTE:

7 Q. I'm showing you a document that says, "Sworn
8 Statement of Marvin Dalzell".

9 MR. ROSARIO: Objection, Your Honor. May we
10 approach?

11 THE COURT: Yes.

12 BENCH CONFERENCE:

13 MR. ROSARIO: Is this the one given at your
14 office?

15 MR. FOOTE: Uh-huh.

16 MR. ROSARIO: Is this the one given at your
17 office? Okay. I just hadn't seen it before,
18 Judge.

19 MR. FOOTE: You haven't seen this?

20 THE COURT: I'll just ask both of you, before
21 you confront a witness with anything by way of
22 impeachment or recollection or refreshment, I want
23 you to make sure opposing counsel knows what you're
24 showing to avoid this sort of time waste.

25 OPEN COURT:

1 THE COURT: Go ahead.

2 BY MR. FOOTE:

3 Q. Sir, I'm showing you a document and I'll ask
4 you to take a look at it, not to read it, just the
5 front. What's it say there, sir?

6 MR. ROSARIO: Objection, Your Honor. That's
7 improper recollection to refresh.

8 THE COURT: Sustained.

9 BY MR. FOOTE:

10 Q. Sir, do you remember giving a statement to
11 Trooper Styers?

12 A. No, I do not.

13 Q. Okay.

14 MR. FOOTE: I'm going to direct Court and
15 Counsel to the sworn statement of Marvin Dalzell
16 dated March 31st, 2006.

17 MR. ROSARIO: Judge, I'm going to object.
18 Improper impeachment.

19 THE COURT: Approach.

20 BENCH CONFERENCE:

21 THE COURT: What is this thing?

22 MR. FOOTE: He gave a recorded statement to
23 the Highway Patrol and he doesn't remember it.

24 THE COURT: So it's not in through him? Is
25 this substantive evidence?

1 MR. FOOTE: Judge, that's the initial
2 statement that he gave to the Highway Patrol
3 recorded by Trooper Styers.

4 THE COURT: If you're going to impeach him
5 with it --

6 MR. FOOTE: I'm not trying to impeach him.
7 Now I'm just trying to refresh his recollection.

8 THE COURT: You tried and he said he doesn't
9 remember it.

10 MR. FOOTE: Okay. So do we just get away from
11 it?

12 THE COURT: I think you're done on trying to
13 refresh his recollection.

14 MR. FOOTE: Okay. Now I'm just going to go
15 ahead and impeach him.

16 THE COURT: Okay. Then you need to get
17 somebody else to say that this actually happened.

18 MR. FOOTE: Because he doesn't remember?

19 THE COURT: It's not a deposition, right?

20 MR. FOOTE: It's a sworn statement to a law
21 enforcement officer under Florida statute.

22 THE COURT: It's a prior inconsistent
23 statement. And, you know, I'm fighting with things
24 all the time, but show me in the Evidence Code
25 where this gets in? You need somebody to

1 authenticate it before you do something with it.

2 MR. FOOTE: I'll just call him back. We'll
3 call him back.

4 THE COURT: Do you want to stipulate that this
5 was taken?

6 MR. ROSARIO: The difficulty is, I'm unaware
7 of any transcription.

8 THE COURT: You've never seen this?

9 MR. ROSARIO: No. I'm unaware of that. If
10 Mr. Foote took an audiotaped statement and had it
11 transcribed, then the audiotaped statement
12 would come in.

13 THE COURT: Okay. I'm going to describe this
14 for the record. This is sealed from Barbara
15 Preslock, court reporter. Attestation, transcribed
16 the forgoing sworn statement to the best of her
17 ability. And actually to that effect, this is an
18 original and then one copy. Is that what this is?

19 MR. FOOTE: I got a tape from discovery from
20 the State Attorney's Office. We had it transcribed
21 by a certified court reporter. That is what was
22 provided to us.

23 THE COURT: You know, I'm not the one who had
24 to prepare for this trial. I thought what you
25 would need to do to be able to use that is to

1 impeach the witness, but I don't see that it's been
2 done. Who was a party to this?

3 MR. FOOTE: This gentleman.

4 THE COURT: You need to call Styers, I mean
5 technically. Unless he cuts out some moving part
6 by stipulation, as far as I'm concerned, you need
7 to get statements from him; I did say this, I did
8 not say that. Then if you're going to impeach
9 that, you bring Styers to say he did say that, he
10 did not say this.

11 MR. FOOTE: That's fine with me. We'll bring
12 him back.

13 THE COURT: You know, we are all colleagues in
14 a scholarly following here. If any of you four
15 attorneys here in front of me think that we don't
16 need to jump through those hoops, you tell me so
17 and tell me why.

18 MR. ROSARIO: Judge, in my opinion, he never
19 gave us anything that was transcribed.

20 THE COURT: Now, wait. Are you telling me,
21 are you going to educate me on what I said about
22 the law on evidence?

23 MR. ROSARIO: I think in this situation I have
24 something, Judge. If Defense counsel is saying
25 that he gave an audiotaped interview, that might

1 refresh this witness' recollection that he gave an
2 audiotaped interview to a trooper, and then you can
3 play the audiotaped statement. This transcript may
4 very well just be confusing to him.

5 THE COURT: Okay. You said recorded
6 statement. That's a term of art that may confuse
7 him.

8 MR. FOOTE: He said he doesn't remember
9 speaking to a trooper and we'll call him back
10 afterwards.

11 THE COURT: Back to my point of evidence,
12 though. You're making a practical suggestion, I
13 understand that, and I think it's a good practical
14 suggestion. In the absence of that, does anybody
15 want to debate my theory of the law of evidence?

16 MR. ROSARIO: No, sir.

17 THE COURT: What I'm saying is, you know,
18 we're all lawyers, we can all be wrong. I think
19 I'm right, but I'm looking for input.

20 MR. FOOTE: You may possibly be right. I'm in
21 the efficient trial mode way. Now we'll go back
22 into the long and drawn out way.

23 THE COURT: Okay. I would say Mr. Rosario is
24 not the only one who has raised a technical
25 objection in this trial and you can both do that.

1 MR. FOOTE: He says he never spoke to the
2 Highway Patrol, but I will ask him if he spoke to
3 the Highway Patrol, did he give a recorded
4 statement. If he says, no, I'll come off of that,
5 we'll bring Styers, and we'll bring him back.

6 MR. ROSARIO: That's fine.

7 THE COURT: Well, what Styers has to say to
8 contradict him is not relevant until you commit him
9 to a story. Do you understand what I'm saying?

10 MR. FOOTE: Right. He's going to say, no.

11 THE COURT: Yes, but bringing him back, he's
12 going to say, well, the light was red, it was a
13 Tuesday, my name is Susie, and you're going to get
14 Styers to say he said the light was green, it was a
15 Thursday, and his name is John.

16 MR. FOOTE: Okay. Well, we can introduce the
17 recording and sit here and play that for the jury.

18 THE COURT: I don't know how you can introduce
19 the recording without having someone authenticate
20 it.

21 MR. FOOTE: I'll bring in Styers and we'll
22 play it.

23 MR. ROSARIO: Okay.

24 OPEN COURT:

25

1 BY MR. FOOTE:

2 Q. All right. Just to clarify. Mr. Dalzell, do
3 you recall ever talking to anyone from the Florida
4 Highway Patrol?

5 A. No, sir.

6 Q. Throughout this whole case you've never spoken
7 to anyone?

8 A. The only time I seen the Highway Patrol was
9 when I come to the State's Attorney Office and the
10 Highway Patrol was present, and the deposition was with
11 the State Attorney.

12 Q. Okay. And after your meeting with the State
13 Attorney, did you speak with a Corporal Michael Styers
14 afterward and he took a statement from you?

15 A. He said that he would probably be getting back
16 in touch with me, but I do not recall ever speaking with
17 the gentleman after that day, sir.

18 Q. Do you recall him saying, I want to take some
19 statements and record them?

20 A. He said he would be getting back with me, that
21 he had some questions for me, but I do not recall ever
22 speaking with the gentleman after that, sir.

23 Q. Okay.

24 MR. FOOTE: May I have a moment, Judge?

25 THE COURT: Yes.

1 BY MR. FOOTE:

2 Q. ~~You do recall speaking to me before on another~~
3 occasion?

4 A. Yes, sir.

5 Q. We sat down in a room with a lady like this
6 typing things down?

7 A. Yes, sir.

8 Q. Okay. All right. So let's go back. So
9 outside the bar, it's your testimony that Shannon jumped
10 on Jim's back by the island in the parking lot?

11 A. Yes, sir.

12 Q. All right. And Shannon had rolled off of Jim
13 and hit the ground and you guys had to help him up?

14 A. Yes, sir.

15 Q. And did you try to get the keys from Shannon
16 at that time, you and Jim?

17 A. At that particular time we got him up, we
18 walked to the back of Jim's truck, and we were standing
19 there talking about going to the restaurant, and I
20 suggested that I would drive Shannon's truck to the
21 restaurant and possibly to Shannon's house.

22 Q. Was Shannon just standing there?

23 A. He was standing between us, yes.

24 Q. Were you still holding him up?

25 A. No, sir.

1 Q. Now he's standing up on his own?

2 A. Well, he was standing next to the back of the
3 truck, yes, sir.

4 Q. Okay. Whose truck?

5 A. Jim's.

6 Q. All right. And Shannon at some point leaves
7 Jim's truck and goes over to his truck?

8 A. Yes, sir.

9 Q. Did he run over to that truck?

10 A. I didn't pay attention. I would have to say
11 he walked at a very high rate of speed. I can't say he
12 run, but before we knew it he was in his truck and was
13 attempting to -- well, he did back up.

14 Q. Did you and Jim try to go and stop him?

15 A. Yes, sir.

16 Q. Did you try to go and stop him?

17 A. Yes, sir.

18 Q. You couldn't catch him?

19 A. No, sir.

20 Q. Okay. So he ran a little faster than you and
21 Jim?

22 A. Yes. He was moving quite a bit faster than
23 us.

24 Q. He got his keys out of his pocket?

25 A. Yes, sir.

1 Q. Did he press the key down to unlock his door?

2 A. I don't know if he pressed to unlock the door
3 or what. The next time I seen Mr. Shannon, he was in
4 his truck and backing up.

5 Q. Okay. So he gets away from you and Jim, he
6 gets in the car and had it already started and he's
7 leaving?

8 A. Yes, sir.

9 Q. Okay. Did he screech his tires at a high rate
10 of speed and leave the parking lot?

11 A. No, sir.

12 Q. He never screeched his tires?

13 A. No, sir.

14 Q. Did he appear to be leaving normal, driving
15 normal?

16 A. Yes, sir.

17 Q. Did you see anything about his driving through
18 that parking lot that would alert you that he shouldn't
19 be driving?

20 A. No, sir.

21 Q. Okay. And the plan was that you, Jim and
22 Shannon were going to get something to eat?

23 A. Yes.

24 Q. And, in fact, at some point you had mentioned
25 Denny's, that was a place that would be open?

1 A. Yes, sir.

2 Q. ~~And Denny's would be up on 19, U.S. 19?~~

3 A. Yes, sir.

4 Q. And you stated that Shannon didn't want to go
5 get anything to eat?

6 A. Correct, sir.

7 Q. But you and Jim wanted to go get something to
8 eat?

9 A. Yes, sir.

10 Q. So Shannon takes off. Do you and Jim go get
11 something to eat?

12 A. No, sir.

13 Q. You changed your mind?

14 A. Yes, sir.

15 Q. So you and Jim were not hungry at that time?
16 Is that what happened?

17 A. Yes, sir. We was just wanting to -- we was
18 going to get something to eat just to absorb the
19 alcohol, but Jim and I hadn't had that much to drink,
20 and we changed our mind and decided that we was just
21 going to go to the house and chill out for the rest of
22 the night.

23 Q. Okay. And if Jim stated you had three beers
24 and a Screwdriver, would that be incorrect?

25 A. That would be incorrect.

1 Q. You only had one and three quarter beers?

2 A. Yes, sir.

3 Q. And your plan to get Shannon home was you were
4 going to drive him home?

5 A. Yes, sir.

6 Q. But you didn't have any idea where Shannon
7 lived?

8 A. No, sir.

9 Q. Because you had never been to the house?

10 A. Correct.

11 Q. And you were hoping that Shannon could give
12 you directions?

13 A. Yes, sir.

14 Q. Did it appear, as you said, in an intoxicated
15 state, that he would be able to give you directions to
16 get to his house?

17 A. Yes, sir.

18 Q. So you believe he would be able to give you
19 directions to his house?

20 A. Yes, sir.

21 Q. And Jim was going to follow in his own truck?

22 A. Yes, sir.

23 Q. That was the plan?

24 A. Yes, sir.

25 Q. All right. . . And you testified earlier that

1 Shannon didn't want you driving his truck?

2 A. Right.

3 Q. So you then said let Jim drive Shannon's truck
4 and you would follow?

5 A. Yes, sir.

6 Q. All right. But none of that actually happens?

7 A. No, sir.

8 Q. All right. You suggest that you drive Jim's
9 truck and Jim drive Shannon's truck, but Shannon wasn't
10 having any of that; is that your testimony?

11 A. That is that correct, sir.

12 Q. Okay. So you go to Jim's house. It's about
13 three minutes away from the Sevens bar?

14 A. About five to seven minutes from Sevens bar,
15 yes.

16 Q. Okay. And you go to pick up your van?

17 A. Yes, sir.

18 Q. And how long do you stay at Jim's house after
19 Shannon takes off?

20 A. Roughly ten minutes.

21 Q. Okay. You're there ten minutes and then you
22 head on your way home?

23 A. Yes, sir.

24 Q. And when you pull up, you happen to just come
25 up on State Road 54, and happen to see Shannon Stephen's

1 vehicle?

2 A. Yes, sir.

3 Q. And you recognized it as Shannon's vehicle?

4 A. Not at first, sir.

5 Q. All right. And as you stated, you couldn't
6 tell it was in an accident, so you had went around the
7 front of it?

8 A. Correct.

9 Q. So the truck was pointing out of Grand Avenue
10 and you were coming down 54?

11 A. Yes, sir.

12 Q. And from your vantage point, you couldn't see
13 damage on the right side of the truck?

14 A. No, sir.

15 Q. So you go around that truck and then you see
16 the damage?

17 A. Yes, sir.

18 Q. All right. So now it's your testimony that as
19 you go up to the truck, though, Shannon gets out of the
20 vehicle?

21 A. Yes, sir.

22 Q. And you recognized it was Shannon's truck when
23 you pulled up and slowed down?

24 A. Yes, sir.

25 Q. And you immediately recognized it was Shannon

1 getting out of the vehicle because it was his vehicle
2 and it was him?

3 A. I recognized Shannon and then I recognized it
4 being Shannon's truck, yes, sir.

5 Q. What was Shannon Stephen wearing when he got
6 out of that vehicle?

7 A. I do not recall at this time what he was
8 wearing, sir.

9 Q. Okay. Now, when you see Shannon getting out
10 of the vehicle and you see this damage to the vehicle,
11 all of this occurs before you call 911; is that right?

12 A. Yes, sir.

13 Q. And you knew that Shannon's vehicle had been
14 in a serious accident, and as you stated at an earlier
15 occasion you knew he had left the scene of something was
16 in your words?

17 A. Yes, sir.

18 Q. Okay. So you figured he left the scene of
19 something?

20 A. Yes, sir.

21 Q. All right. You weren't aware whether or not
22 he had hit a pole sitting right there on a corner?

23 A. I did not know if he hit a pole or a car hit
24 him. I had no idea what hit his truck, but I knew it
25 had a serious impact with something.

1 Q. But you figured he left the scene of
2 something?

3 A. Yes, sir.

4 Q. And you called 911, because you didn't know if
5 it had been reported already or not?

6 A. Yes, sir.

7 Q. Okay. Now, prior to calling 911, did you know
8 that there was a fatality where two people were killed?

9 A. No, sir.

10 Q. You didn't know that before you called 911?

11 A. No, sir.

12 Q. Did you call Jim to tell him, before you
13 called 911, that Shannon had been in an accident?

14 A. No, sir.

15 Q. You didn't speak to Jim until after you were
16 on 911?

17 A. Correct, sir.

18 Q. When you called Jim, did you call him on his
19 phone number or cell number?

20 A. Cell number.

21 Q. Do you know his home number?

22 A. No.

23 Q. So is it programmed in your phone already that
24 you would call him on his cell?

25 A. Yes, sir.

1 Q. So you don't dial the number each time? You
2 probably have it under the name Jim or something?

3 A. Yes.

4 Q. So every time you call Jim, you open your
5 phone and you press Jim and it dials his cell phone
6 number?

7 A. Yes, sir.

8 Q. How often would you say you called his house
9 number?

10 A. His house?

11 Q. Yes.

12 A. Maybe once or twice.

13 Q. Is that something frequently you would do,
14 call his house number?

15 A. No.

16 Q. More you would call his cell number?

17 A. Yes, sir.

18 Q. Now, the first time that you actually find out
19 that Shannon killed two people, as you say, was when the
20 two people in the pickup truck pull up?

21 A. Yes, sir.

22 Q. Prior to that time, you didn't get out of your
23 vehicle to go and check on Shannon, did you?

24 A. I did not get a chance, no, sir.

25 Q. How fast would you say, when you came up on

1 the vehicle and the other pickup truck came and they
2 jumped out, how long were you looking at Shannon?

3 A. Prior to the other vehicle pulling up?

4 Q. Yes. You come up, you see a vehicle, you see
5 Shannon jump out?

6 A. Right.

7 Q. You don't go and talk to Shannon?

8 A. No, sir.

9 Q. You don't go give him any help?

10 A. No, sir.

11 Q. Okay. How long when you first see this
12 vehicle to when the pickup truck comes up?

13 A. A matter of 20, 30 seconds.

14 Q. Twenty to 30 seconds?

15 A. Yes, sir. It was very fast. As soon as I
16 made the U-turn and I come to a stop behind his vehicle,
17 the other truck come flying by me, and I mean it was 20,
18 30 seconds in there that everything just come down.

19 Q. Are you certain about that, sir?

20 A. Fairly certain, yes, sir. It was very fast.
21 Everything happened so fast, it was unbelievable.

22 Q. All right. So instead of checking on Shannon,
23 you actually called 911 first?

24 A. I was attempting to check on Shannon. I was
25 on the phone with 911. I called 911 before I could get

1 to a complete stop to be able to check on Shannon, and
2 Shannon got in his vehicle, pulled through the
3 intersection, next the silver truck was there and then
4 the sheriff was there.

5 Q. Did you tell the 911 people that? As you're
6 watching this and you're on the phone, are you telling
7 them this on the 911 call?

8 A. To my recollection, yes.

9 Q. Did you tell them that this is a person you
10 know, his name is Shannon Stephen?

11 A. No, I did not.

12 Q. You didn't tell them it was the person that
13 you just left 15, 20 minutes ago?

14 A. No, I did not.

15 Q. Did you give them a description of the vehicle
16 and act like you knew who this person was and who the
17 vehicle was?

18 A. I give them a full description of the vehicle
19 and the location, yes, sir.

20 Q. Now, it's your testimony that as you're on
21 911, you hear them say he's killed two people?

22 A. No, sir.

23 Q. Okay. When do you find that out?

24 A. I found that out while the gentleman got out
25 of the silver truck, the passenger, and he come running

1 up and he's hollering at me, "He killed two people back
2 up the road," and that's when I found out.

3 Q. So were you already off the phone with 911 at
4 that time?

5 A. I had just hung up from 911, yes, sir.

6 Q. And when the two people pull up, do they come
7 and talk to you or do they go right to Shannon's truck?

8 A. They went right to Shannon's truck. They were
9 in front of it, I was behind it, and he had opened the
10 door, he proceeded to help Mr. Shannon out of the
11 vehicle and over to the curb, and the sheriff come right
12 up and took custody of Mr. Shannon, and I was still
13 sitting in the van dazed as to what was going on.

14 Q. And all this time Jim is at home?

15 A. Yes, sir.

16 Q. Okay. And when do you tell Jim that Shannon's
17 been in an accident?

18 A. After the sheriff had placed Mr. Shannon in
19 the cruiser, I called Jim and told him that Shannon had
20 been in a bad wreck, and he didn't believe me and I had
21 to tell him twice. And then he showed up over at Club
22 54, and we just stood there waiting to see what was
23 going to happen.

24 Q. All right. And at some point they get Shannon
25 out and put him down on his knees, and you start asking

1 the cops if you can leave?

2 A. After they put him in the police cruiser, I
3 asked if I could leave.

4 Q. How long did it take the deputies to arrive
5 after you got on 911?

6 A. Probably two, maybe three minutes from the
7 time I originated the call they showed up.

8 Q. How long were you at that scene?

9 A. From the very beginning of it, probably five
10 minutes.

11 Q. Okay. And then after that, you left and went
12 home?

13 A. Yes, sir.

14 Q. Did you ever tell the police you knew who the
15 driver was?

16 A. No, sir.

17 Q. Did you ever go up and try to talk to Shannon?

18 A. No, sir.

19 Q. Now, this is a person you were just out with
20 for a few hours, you're drinking beers with him, you try
21 to stop him from driving, you hear that he's killed two
22 people, police are on the scene.

23 A. Yes, sir.

24 Q. You don't tell them anything?

25 A. No.

1 Q. And you don't tell 911 who this person is?

2 A. No, sir.

3 MR. FOOTE: May I have a moment, Judge?

4 THE COURT: Yes.

5 BY MR. FOOTE:

6 Q. Okay. You stated that you were at the scene
7 for about five minutes. Does Jim ever come to the scene
8 while you were there?

9 A. Yes, sir.

10 Q. And you and Jim were standing there talking?

11 A. We were standing off to the side. We couldn't
12 believe that it happened. We really didn't talk, we
13 just stood there.

14 Q. Okay. And so it's your testimony that you
15 were there about the scene for about five minutes. In
16 fact, you asked the police officers if you could leave?

17 A. Yes, sir.

18 Q. And you were trying to leave?

19 A. Yes, sir.

20 Q. But you couldn't because you were blocked in?

21 A. Yes, sir.

22 Q. So you wanted those cops to move to release
23 you?

24 A. Yes, sir.

25 Q. Because you were ready to go home?

1 A. Yes, sir.

2 Q. You had looked at some phone records. The
3 State showed you some phone records. After you hang up
4 from 911, is it your testimony that you called Jim?

5 A. Yes, sir.

6 Q. Okay. On your cellphone?

7 A. Yes, sir.

8 Q. To his cellphone?

9 A. Yes, sir.

10 Q. All right. Are you familiar with your phone
11 bill? Do you look at your phone bill?

12 A. Once in a while, yes, sir.

13 Q. Okay. Do you know what it means when it says
14 incoming call?

15 A. Yes, sir.

16 Q. That means that someone is calling you?

17 A. Yes, sir.

18 Q. After you hang up from 911 at 1:23, you're on
19 the phone with him for five minutes. At 1:28, the next
20 call that's incoming, is Jim calling you. Did you know
21 that?

22 A. I don't recall it, but, yes, sir.

23 Q. So Jim's calling you?

24 MR. FOOTE: Judge, we're going to move into
25 evidence Defense K, which is an enlarged version,

1 if the State has no objection.

2 MR. ROSARIO: No objection.

3 THE COURT: Okay. We'll let it in as
4 Defense --

5 THE CLERK: Exhibit Number 9.

6 THE COURT: -- Number 9.

7 MR. FOOTE: Judge, may I have the witness step
8 down?

9 THE COURT: Yes.

10 MR. FOOTE: I publish Defense 9 to the jury.

11 THE COURT: Mr. Dalzell, would you step down
12 and help him out, please.

13 BY MR. FOOTE:

14 Q. Now, this is just a big page of what you
15 already looked at. That's your phone bill, right?

16 A. Yes, sir.

17 Q. Okay. And that's your phone number?

18 A. Yes, sir.

19 Q. 271-5544?

20 A. Yes, sir.

21 Q. All right. And you make a 911 call, which is
22 clearly seen --

23 MR. ROSARIO: Judge, I'm going to object as to
24 Mr. Foote marking the evidence. May I approach?

25 BENCH CONFERENCE:

1 THE COURT: Okay. Is it the fact that it's
2 permanent images?

3 MR. ROSARIO: Yes, sir. What he was about to
4 do is take --

5 THE COURT: You lend him your pointer and make
6 your little red dots.

7 MR. ROSARIO: Sure.

8 THE COURT: Can you do the same thing with a
9 pointer and red dots?

10 MR. FOOTE: I can put red dots on it. I'm
11 just trying to make it easy for him.

12 THE COURT: Well, if you do a pointer, then
13 there's nothing permanent left.

14 MR. FOOTE: Red dots will be fine.

15 MR. ROSARIO: Judge, I'm very sorry, I need a
16 comfort break. I need to go to the bathroom.

17 MR. FOOTE: Right now?

18 THE COURT: Well, it happens.

19 MR. FOOTE: You want to run in real quick?

20 THE COURT: No, no. I'm not going to do that
21 to him.

22 MR. FOOTE: It's in the middle of my cross.

23 THE COURT: We can take a five-minute break.
24 We're going to call it a stretch break and you slip
25 out the back.

1 MR. ROSARIO: That's fine.

2 OPEN COURT:

3 THE COURT: Ladies and gentlemen, we're just
4 going to take a five-minute comfort recess, stand
5 up, stretch, walk around, and then we'll continue.
6 Mr. Dalzell, you can resume your seat.

7 RECESS TAKEN:

8 THE COURT: Okay. Is everybody set?

9 MR. ROSARIO: Yes, sir.

10 THE BAILIFF: The jury is entering the
11 courtroom, Your Honor.

12 JURY PRESENT:

13 THE BAILIFF: All the jurors are present and
14 seated in the courtroom, Your Honor.

15 THE COURT: Thank you, Deputy.

16 Mr. Foote, you may proceed.

17 BY MR. FOOTE:

18 Q. Mr. Dalzell, as we stated, we entered in a
19 bunch of small records. This is one page from the date
20 that we're talking about. Looking at this, do you
21 recognize it?

22 A. Yes, sir.

23 Q. Okay. And here is your 911 call on 3-26 at
24 1:23 a.m.?

25 A. Yes, sir.

1 Q. Can you put a little sticky there right next
2 to that. That's the 911 call you made once you came up
3 on the truck?

4 A. Yes, sir.

5 Q. Now, just before that, you testified that a
6 minimum before -- that's Jim number?

7 A. Yes, sir.

8 Q. 642-1236?

9 A. Yes, sir.

10 Q. That lasted only one minute, but you testified
11 that you didn't get to speak to him?

12 A. No.

13 Q. And you didn't leave a message?

14 A. No.

15 Q. And you testified just a little while ago,
16 then after you hung up with 911 --

17 A. Yes, sir.

18 Q. -- you call Jim?

19 A. Yes, sir.

20 Q. All right. Would you agree with me that the
21 next calls at 1:28 and 1:35 are incoming?

22 A. Yes, sir.

23 Q. So it's Jim calling you?

24 A. That's what it shows, yes, sir.

25 Q. Okay. So you didn't call Jim right

1 afterwards?

2 A. ~~According to the record, no, I did not.~~

3 Q. So I'm going to put two stickies next to those
4 two calls.

5 Would you agree with me that on 3-25, the day
6 before, the last time -- that's Jim number -- that Jim
7 called you was at 8:37 at night?

8 A. Yes, sir.

9 Q. After that you don't talk on the phone because
10 you're out at the Sevens bar?

11 A. Yes, sir.

12 Q. Okay. And then you go home, as you stated?

13 A. Right.

14 Q. And then you leave his house, and the next
15 time you're using your phone is to try to call Jim?

16 A. Yes, sir.

17 Q. You leave no message?

18 A. No message.

19 Q. And then you talk to 911?

20 A. Yes, sir.

21 Q. All right. Is that accurate to you?

22 A. Yes, sir.

23 Q. All right. 1:44, that's another Jim call?

24 A. Yes, sir.

25 Q. Okay. 3:05 in the morning Jim's calling you?

1 A. Yes, sir.

2 Q. ~~And those are the calls for March 26th?~~

3 A. Yes, sir.

4 Q. Right?

5 A. Yes, sir.

6 Q. Does that look accurate to you?

7 A. Yes, sir.

8 Q. All right. Thank you, sir. You can have a
9 seat.

10 Now, sir, how long would you say it took for Jim to
11 get to the scene?

12 A. I'd say roughly about seven minutes.

13 Q. Seven minutes?

14 A. Yes, sir.

15 Q. Okay. And you stated he only stayed there
16 about five minutes?

17 A. Yes, sir.

18 Q. And you left and left Jim at the scene?

19 A. No. We were both at the scene for a short
20 period of time.

21 Q. Five minutes for you?

22 A. Yes, sir.

23 Q. And then who leaves first?

24 A. I do.

25 Q. You leave first?

1 A. Yes, sir.

2 Q. And you leave Jim there?

3 A. Yes, sir.

4 Q. All right.

5 MR. FOOTE: All right. Judge, at this time I
6 have no further questions, but we would like to
7 publish the 911 tapes previously stipulated to.

8 THE COURT: Can the witness be excused?

9 MR. FOOTE: Probably not.

10 MR. ROSARIO: Judge, I'm going to ask for
11 redirect.

12 MR. FOOTE: Correct.

13 THE COURT: Okay. Do you want to do that
14 before redirect by the State?

15 MR. FOOTE: While he's here, yes.

16 THE COURT: Agreed?

17 MR. ROSARIO: Agreed.

18 THE COURT: For the record, this is exhibit
19 what?

20 MR. FOOTE: This is Defendant's Exhibit --

21 THE CLERK: If it's the CD, it should be
22 Number 7.

23 THE COURT: Defense 7.

24 MR. FOOTE: Defense 7.

25 THE COURT: Okay.

1 (Whereupon, the audiotape is played in open court.)

2 "OPERATOR: ...911... What is your emergency?

3 CALLER: Yes. This is Marvin Dalzell.

4 There's been a wreck over here on 54 at Club 54. I
5 don't know the intersection here. (Inaudible) the
6 front-end of it is totally smashed in.

7 OPERATOR: Okay. What did he hit?

8 CALLER: I have no idea. I see no other
9 vehicles.

10 OPERATOR: Is he still there? Is the driver
11 still there?

12 CALLER: He's rolling slowly. I'll try to get
13 to him around to where I can follow him a little
14 bit, but if I got to the intersection --

15 OPERATOR: Is he still moving?

16 CALLER: Very slowly, yes. He's right behind
17 Club 54.

18 OPERATOR: On Grand?

19 CALLER: Yes.

20 OPERATOR: I'm going to transfer you to the
21 Sheriff's Office. Stay on the line here.

22 CALLER: Hello.

23 OPERATOR: Okay. Yes, sir. Just stay on the
24 line here with me, okay?

25 CALLER: Yeah.

1 S.O. OPERATOR: Sheriff's Office. 911. What
2 is your emergency?

3 OPERATOR: Yes. This is District 7 here.
4 We've got a gentleman on the line who wants to talk
5 to you about a truck that's got front-end damage.
6 We just had an accident on Trouble Creek and Grand,
7 maybe this is related. Sir, talk to the Sheriff's
8 Office here.

9 CALLER: Hello.

10 S.O. OPERATOR: Yes, sir. What can I help you
11 with?

12 CALLER: Yes. I'm at Highway 54 and Grand,
13 and there's a pickup right behind Club 54 on Grand,
14 and he smashed the front-end of his truck in, and
15 he's stopped temporarily, but he has been trying to
16 move it.

17 S.O. OPERATOR: All right. He's behind where?

18 CALLER: Club 54 on Grand, on Highway 54.

19 S.O. OPERATOR: Okay. Is that in New Port
20 Richey, sir, or Holiday?

21 CALLER: Holiday.

22 S.O. OPERATOR: In Holiday? Okay.

23 OPERATOR: It's at the intersection of Grand
24 and 54.

25 S.O. OPERATOR: Got it. What color is it,

1 sir?

2 CALLER: It's --

3 S.O. OPERATOR: Sheriff's Office. 911.

4 What's your emergency?

5 OPERATOR: We've got a gentleman on the phone
6 (inaudible) that's got front-end damage. We've had
7 an accident on Trouble Creek and Grand, maybe
8 that's related.

9 CALLER: Hello.

10 S.O. OPERATOR: Yes, sir. What can I help you
11 with?

12 CALLER: Yes. I'm at Highway 54 and Grand,
13 and there's a pickup right behind Club 54 on Grand,
14 and he smashed the front-end of his truck in, and
15 he's stopped temporarily, but he has been trying to
16 move it.

17 S.O. OPERATOR: All right. He's behind where?

18 CALLER: Club 54 on Grand, on Highway 54.

19 S.O. OPERATOR: Okay. Is that in New Port
20 Richey, sir, or Holiday?

21 CALLER: Holiday.

22 S.O. OPERATOR: In Holiday. Okay.

23 OPERATOR: At the intersection of Grand and
24 54.

25 S.O. OPERATOR: Got it. Uh-huh. What color

1 is it, sir?

2 CALLER: It's kind of a burgundy color.

3 S.O. OPERATOR: Do you know what make it is?

4 CALLER: I don't know. I've got to drive
5 around to where he's at.

6 S.O. OPERATOR: Okay.

7 CALLER: Actually I see him.

8 S.O. OPERATOR: All right. Just stay with me.
9 I'm here waiting on you, okay.

10 CALLER: Yeah. Okay. It's a Chevy.

11 S.O. OPERATOR: Chevy?

12 CALLER: Yes.

13 S.O. OPERATOR: Pickup?

14 CALLER: Yes.

15 S.O. OPERATOR: And they just had an accident
16 nearby, right?

17 CALLER: Yes. The front of his truck is
18 smashed up. Oh, oh, we just got another truck come
19 up and having a confrontation with him.

20 S.O. OPERATOR: All right. Stay on the phone,
21 please.

22 CALLER: Yes.

23 S.O. OPERATOR: I got it. So another pickup
24 came up and --

25 CALLER: Oh, oh.

1 S.O. OPERATOR: What's the matter?

2 CALLER: This pickup that just come up there,
3 they said he hit two people back up the road a
4 little bit. They got him over here on the ground.

5 S.O. OPERATOR: Okay.

6 CALLER: All right.

7 S.O. OPERATOR: Are you still there?

8 CALLER: Yeah. I'm still here.

9 S.O. OPERATOR: Okay.

10 CALLER: So.

11 S.O. OPERATOR: Does he look like he's drunk?

12 CALLER: Yes, he is.

13 S.O. OPERATOR: All right. Sir, I got all the
14 information and we've got deputies coming out.
15 Okay?

16 CALLER: Yeah. I'm standing here directing
17 traffic.

18 S.O. OPERATOR: All right. We've got deputies
19 on the way. Okay?

20 CALLER: Yeah.

21 S.O. OPERATOR: Thank you, sir. Bye-bye.

22 CALLER: Okay."

23 (Whereupon, the audiotape is concluded.)

24 MR. ROSARIO: May I inquire, Judge?

25 THE COURT: Yes.

REDIRECT EXAMINATION

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BY MR. ROSARIO:---

Q. Mr. Dalzell, when your out there that night at the scene where the defendant had been taken out of the vehicle, were you watching your watch?

A. No, sir.

Q. Is five minutes a guesstimate?

A. Yes, sir.

Q. About how long from the time you called 911, in your opinion, was it when Jim arrived? How long after you called 911 and got off the phone with 911 did Jim arrive after you talked with him? Best guess.

A. About seven minutes.

Q. And when he arrived, did he have a goatee?

A. No, sir.

Q. The only person that had facial hair that night was whom?

A. Mr. Shannon, to my recollection, sir.

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

THE COURT: Mr. Foote?

RE CROSS-EXAMINATION

BY MR. FOOTE:

Q. You listened to the 911 tape?

A. Yes, sir.

Q. Does it refresh your recollection about what

1 was going on that night?

2 A. Yes, sir.

3 Q. You never told 911 -- they asked you what type
4 of vehicle, you needed to get around and drive around to
5 see what type of vehicle it was?

6 A. Yes, sir.

7 Q. You were standing at that vehicle no more than
8 20 minutes before, 30 minutes before at the Sevens bar?

9 A. Yes, sir.

10 Q. This is Shannon's car? You guys were going to
11 hang out? You didn't know what kind of car that was?

12 A. I didn't pay attention to what brand he was
13 driving, no, sir.

14 Q. And you didn't tell them that it was Shannon
15 Stephen's either?

16 A. No, sir.

17 Q. You acted like you never even knew the person,
18 right?

19 A. Yes, sir.

20 Q. You just told the State that about ten minutes
21 after you hung from 911 is when Jim arrived?

22 A. Roughly seven to ten, yes, sir.

23 Q. Okay. But your phone records show you're
24 still on the phone with him, you guys are still talking
25 on the phone. Do you know why that is?

1 A. Who?

2 Q. You and Jim?

3 A. He was driving while talking with me on the
4 phone on the last conversation.

5 Q. Okay. Do you recall your phone continually
6 ringing? Jim trying to reach you on that phone?

7 A. No, sir, I don't.

8 Q. While you were there at the scene, do you
9 remember the phone ringing?

10 A. No, sir.

11 Q. From Jim?

12 A. I do not recall it.

13 MR. FOOTE: Judge, I have no further
14 questions. Oh, one question.

15 BY MR. FOOTE:

16 Q. On that night, Jim was wearing a gray shirt
17 and blue jeans?

18 A. I don't recall, sir.

19 Q. Do you recall talking to me at that deposition
20 where the young lady was typing?

21 A. Yes, sir.

22 Q. And I had asked you that question before?

23 A. Yes, sir.

24 Q. If I were to show a copy of that and you read
25 it, would it refresh your recollection?

1 A. Yes, sir.

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

3 THE COURT: Yes.

4 BY MR. FOOTE:

5 Q. I'm just going to show you a copy of that
6 deposition and ask you to look at Line 15.

7 A. Yes, sir.

8 Q. And just read it to yourself.

9 A. Yes, sir.

10 Q. Tell me whether it refreshes your
11 recollection.

12 A. Yes, sir.

13 Q. Okay. Do you remember now?

14 A. Yes, sir.

15 Q. Okay. So on that evening Jim was wearing a
16 gray shirt and blue jeans?

17 A. To my knowledge, yes, sir.

18 MR. FOOTE: Okay. That's all I have, Judge.

19 THE COURT: Can Mr. Dalzell be excused,
20 Counsel?

21 MR. ROSARIO: Subject to recall, yes, Judge.

22 THE COURT: Okay. You will continue under
23 subpoena, sir, but you're excused for now.

24 Counsel, please approach.

25 BENCH CONFERENCE:

1 THE COURT: How soon can you call your next
2 witness I mean after lunch?

3 MR. FOOTE: Do we get at least an hour?

4 THE COURT: We'll see.

5 MR. ROSARIO: About 1:15.

6 THE COURT: Okay. Mr. Foote, are you going to
7 suffer if we start at 1:30? That gives you 50
8 minutes.

9 MR. FOOTE: That would be fine.

10 THE COURT: Let's get a sense from the jury if
11 they want an hour, if they want an hour and five,
12 or they want to come back at 1:30 and get out of
13 here a little sooner tonight. Speaking of which,
14 tonight I want to be prepared to go probably not as
15 late as last night, but be prepared to go late to
16 keep churning. Tomorrow I can't begin any sooner
17 than 10:00 o'clock.

18 MR. ROSARIO: You cannot?

19 THE COURT: Cannot. I've cleared the morning
20 on Thursday.

21 OPEN COURT:

22 THE COURT: Folks, we're going to recess. I
23 understand the consensus of the jury is to keep
24 moving and we're all for that. We're going to
25 reconvene at 1:30. Have a good lunch.

1 BENCH CONFERENCE:

2 THE COURT: Mr. Rosario, do you have any other
3 housekeeping stuff to do between now and then?

4 MR. ROSARIO: No, sir. The Connertys have
5 been sitting in my office ever since 10:30.

6 MR. FOOTE: Didn't Jonathan go up and speak
7 with them?

8 MR. ROSARIO: Between noon I gave them a note
9 telling them they'd like to go to lunch.

10 THE COURT: Wait, wait. Are you done with the
11 Connertys?

12 MR. FOOTE: No. John went up to talk to them.

13 THE COURT: Okay. Do you need to talk to them
14 now?

15 MR. FOOTE: To the Connertys?

16 THE COURT: Yes.

17 MR. FOOTE: Yes.

18 THE COURT: Okay. Do you want to go do that
19 now? So are you going to call them?

20 THE CLERK: The jury is out of the hearing of
21 the court.

22 JURY ABSENT:

23 MR. FOOTE: I already told them to go to lunch
24 and be back in a half hour. That was 30 minutes
25 ago.

1 THE COURT: So they should be back by now.

2 MR. FOOTE: Yes.

3 THE COURT: Okay. Do you need to talk to
4 them?

5 MR. FOOTE: At some point, yes.

6 THE COURT: Well, can you do that and take
7 care of your blood sugar?

8 MR. FOOTE: They give me a Snickers or
9 something.

10 MR. ROSARIO: I need to get some food myself,
11 but I have food up in my office.

12 THE COURT: We gave them 30 minutes for lunch
13 30 minutes ago, so they should be back. So get
14 fed, meet with the Connertys and let's tee up at
15 1:30.

16 RECESS TAKEN:

17 THE COURT: Have a seat, please. I wanted to
18 talk about jury instructions briefly. Mr. Rosario?

19 MR. ROSARIO: Yes, sir.

20 THE COURT: Can you get those jury
21 instructions, that CD to us?

22 MR. ROSARIO: Tomorrow morning?

23 THE COURT: Yes, that will work. I talked to
24 Mr. Foote about trying to identify the lesser
25 includeds that he would be seeking. Any progress

1 with that, Mr. Foote?

2 MR. FOOTE: I'm doing it now.

3 THE COURT: Okay. I'll give you the benefit
4 of any research if you want, it's free. It looks
5 to me like the only Category 1 is straight DUI.
6 The other one that you might not be interested in
7 would be DUI bodily injury, which is a Category 2,
8 and vehicular homicide is a class of Category 2,
9 but since it's a (2)(f), I don't know if --

10 MR. FOOTE: The only thing that we would be
11 bouncing around is DUI.

12 THE COURT: Okay. Well, even though that is
13 helpful now, you can be playing with that.

14 Ready?

15 MR. ROSARIO: Yes, Judge.

16 THE COURT: Bring in the jury, please. Back
17 on the record.

18 THE BAILIFF: All jurors in the courtroom,
19 Your Honor.

20 JURY PRESENT:

21 THE COURT: Thank you, Deputy.

22 Mr. Rosario, please call your next witness.

23 MR. ROSARIO: The State would call Jim Ramsey.

24 JAMES RAMSEY,

25 a witness herein, being first duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ROSARIO:

4 Q. Could you please state your name for the
5 record.

6 A. James Ramsey.

7 Q. Mr. Ramsey, how are you employed?

8 A. I work right now at Julian's Auto Showcase in
9 New Port Richey.

10 Q. And, Mr. Ramsey, directing your attention back
11 to March 26th, 2006, around 1:00 o'clock in the morning,
12 who were you with?

13 A. Rick Scott.

14 Q. And where were you?

15 A. Going to pick up some friends.

16 Q. And who was driving?

17 A. I was.

18 Q. And whose vehicle were you driving?

19 A. Mine.

20 Q. What kind of vehicle did you have?

21 A. I still have a 2005 Ford pickup truck.

22 Q. What color is it?

23 A. Silver.

24 Q. And did there come a time when you got to a
25 traffic light at Grand Boulevard and State Road 54?

1 A. Yes.

2 Q. Did you observe anything there?

3 A. Yes.

4 Q. Can you please tell the jury what you
5 observed?

6 A. I dark-colored pickup truck with some
7 front-end damage, steam, it appeared to be stalled, kind
8 of lurched to a stop in the I guess the north side of
9 the intersection heading south.

10 Q. What did you see next?

11 A. I saw a gentleman get out of the vehicle, go
12 around to the front of the vehicle I guess to assess the
13 damage or whatever, that's just an assumption. And when
14 the light turned, I heard a siren, and the individual
15 ran behind the control box at the intersection and it
16 appeared to get on the cellphone making a call or
17 talking to someone.

18 Q. Did you actually hear him talking?

19 A. No, sir.

20 Q. Or did it just appear that way?

21 A. It appeared that way.

22 Q. And the person that you saw, about how far
23 away from him were you?

24 A. Maybe a little farther from here to the back
25 wall.

1 Q. Is that person in the courtroom today?

2 A. Yes, sir.

3 Q. Can you point him out and describe what he's
4 wearing?

5 A. It appears to be a black suit, a light colored
6 shirt, and a tie.

7 MR. ROSARIO: Your Honor, may the record show
8 the witness correctly identified the defendant?

9 THE COURT: Noted.

10 BY MR. ROSARIO:

11 Q. And what did he do after you heard the siren?

12 A. Like I said, he kind of went behind the big
13 control box. On the northwest corner of the
14 intersection there's a control box there I guess for the
15 intersection -- I'm assuming that's what it is -- and he
16 went over behind that and appeared to get on the phone.

17 Q. Okay. And what did you do next?

18 A. Well, we were proceeding through the
19 intersection, I went kind of slow, I rolled my window
20 down trying to get a better look at what was going on.
21 And like said, we were on our way to pick up our
22 friends, so we kind of kept going.

23 Q. What happened as you kept going up Grand
24 Boulevard?

25 A. We saw our friend Robert Bartlett standing on

1 the road, it looked like he was trying to do something
2 on his cellphone or whatever, and there was some sort of
3 a rescue sport utility or something there. It was kind
4 of a blur -- I apologize -- and it's been a long time.
5 But Joe and Sarah were laying on the ground, Robert was
6 just beside himself, he kind of gave us a quick what
7 happened.

8 Q. Did you or Rick give him a quick rundown of
9 what you had seen?

10 A. Not really. We just kind of said, I think we
11 just passed that truck, and we went back to see if he
12 was still there.

13 Q. So did you get back into the truck?

14 A. Yes.

15 Q. And did you drive back?

16 A. Yes.

17 Q. Did you find that truck in the same place as
18 where you had left it?

19 A. No. He had gotten through the intersection
20 and gotten all the way across Grand Boulevard -- or
21 across 54 on Grand Boulevard just before the first curve
22 to the right there next to I think it's Club 54.

23 Q. Okay. And what did you do?

24 A. There was a white van behind his vehicle, and
25 I pulled in front of him, and Rick beat me to the

1 vehicle and opened up the door, and the guy was trying
2 to start the vehicle, you could hear him trying to start
3 the vehicle.

4 And I remember I kind of was by the fender, and I
5 remember Rick telling him that, you know, you just hit
6 our friends. And Rick took him out of the vehicle and
7 took him over to the sidewalk and told him he was not
8 going anywhere until the police could come here and sort
9 all this out.

10 Q. And did the police arrive?

11 A. Yes.

12 Q. Did they take this gentleman into custody?

13 A. Yes.

14 Q. The person they took into custody, is that the
15 same person you saw get out of the truck before you
16 crossed 54?

17 A. Yes.

18 Q. The same person that Rick got out of that
19 truck, is that the same person?

20 A. Yes.

21 Q. And after the police arrived, did you see the
22 police perform field sobriety tasks on that same person?

23 A. I saw them doing something. I wasn't sure
24 that that's what it was, but I think I heard somebody on
25 the radio saying that they were checking a blood alcohol

1 level or something. I just assumed that's what they
2 were doing.

3 Q. Did you see him walking off like heel-to-toe?

4 A. I didn't see that part of it. They had taped
5 everything off and we were kind of back off to one side.

6 Q. And were you there when the police put him in
7 the ambulance and took the blood? Did you see that?

8 A. If that's what they did in there, yes. I was
9 there when they took him. The ambulance was in the
10 parking lot of the bar there.

11 Q. The same person that you guys took out of the
12 truck?

13 A. Yes.

14 MR. ROSARIO: Nothing further, Judge.

15 THE COURT: Defense?

16 MR. FOOTE: Thank you. May I have a moment,
17 Judge?

18 BENCH CONFERENCE:

19 MR. ROSARIO: Judge, may we have the jury
20 taken out, please.

21 THE COURT: It could be awhile?

22 MR. ROSARIO: Yes.

23 OPEN COURT:

24 THE COURT: Ladies and gentlemen, we have a
25 little business to do that's going to take more

1 time than I'm going to make you sit through. So
2 we're going to excuse you for a few minutes and get
3 to the business at hand.

4 Counsel.

5 BENCH CONFERENCE:

6 THE COURT: Let me ask you this on the record.
7 He expressed the distance in terms of this
8 courtroom. Do you want to try and quantify that
9 for the record?

10 MR. ROSARIO: Yes, I will.

11 THE COURT: Do you want Mr. Ramsey to step out
12 also?

13 MR. FOOTE: Either that or the back room.

14 THE COURT: Mr. Ramsey, you don't get
15 claustrophobic I hope, do you?

16 THE WITNESS: No, sir.

17 THE COURT: Okay. That's the jury room in
18 there, it's not too small a space. Could you go
19 ahead and excuse us, we're going to put you in
20 there for a while.

21 OPEN COURT:

22 THE BAILIFF: The jury is out of the hearing
23 of the Court, Your Honor.

24 THE COURT: Thank you, Deputy. I've excused
25 the witness also.

1 MR. FOOTE: Judge, there was a concern that
2 ~~was brought up, and this will have to possibly do~~
3 with the identification of this witness of Shannon
4 Stephen.

5 Mr. Ulano, my co-counsel, stated that during
6 the break in the presence of Mr. Rosario the
7 witness was standing there, and Mr. Rosario comes
8 up to him and starts saying, well, how long have
9 you been a lawyer and things like that.

10 MR. ULANO: How to spell my name. I was
11 sitting with Shannon's mother and two other friends
12 of the family. He was with that individual I've
13 never seen before and an individual in a red shirt
14 with tattoos on his arm. He said, how long have
15 you been an attorney? I said, approximately eight
16 years. He asked me how to spell my name and I
17 spelled it for him.

18 THE COURT: So?

19 MR. ULANO: And then he just asked to
20 identify -- did he see the person there that night,
21 and obviously there's one identification of him
22 today.

23 MR. FOOTE: The issue is, Judge, that
24 Mr. Rosario is talking to Mr. Ulano in the presence
25 of the two witnesses, one on the stand and one

1 that's getting ready to be called, and in that, the
2 witness comes up and identifies Mr. Stephen, he
3 points him right out and says, yes.

4 In doing that it's already been suggested,
5 well, this is obviously not the defendant because
6 he's an attorney that was identified by the State
7 Attorney in the presence of those witnesses.

8 THE COURT: Mr. Ulano is not really here as
9 your co-counsel? Is he over there to be like a
10 defendant look-alike or something?

11 MR. FOOTE: No.

12 THE COURT: Okay. Well, I don't really see
13 anything improper at all for a lawyer contacting --
14 in fact, I encourage for lawyers to have collegial,
15 civil conversations with one another, and the fact
16 that it takes place in front of a witness is quite
17 immaterial.

18 MR. FOOTE: For the record, I'm going to
19 object to the identification made by this witness
20 as it was possibly suggested by the process of
21 elimination that Mr. Ulano as the attorney was not
22 possibly the defendant.

23 There's no valid reason as to why the State
24 Attorney would need to have a conversation with
25 Mr. Ulano in front of two witnesses that are about

1 to take the stand.

2 THE COURT: Okay. You made your record. I'm
3 not going to chastise Mr. Rosario for being civil.

4 Bring them back.

5 THE BAILIFF: Start with the witness?

6 THE COURT: Yes. Start with the witness,
7 please.

8 MR. ROSARIO: And, Judge, if I can reopen to
9 get the quantification of distance or do you want
10 me to get that in redirect?

11 BENCH CONFERENCE:

12 THE COURT: Well, I'm not directing that you
13 get that. I don't think it's legally necessary. I
14 think it makes a better record whenever any witness
15 puts something in terms from me to you, it's good
16 to say what that is.

17 MR. ROSARIO: May I reopen?

18 THE COURT: Well, it doesn't have to be
19 through this witness. He said it's as far as from
20 the witness stand to the back of the courtroom. Do
21 you want to stipulate to what the distance is? I
22 was thinking Deputy Eddings may have measured it.
23 Deputy Eddings, do you know what the length of
24 courtroom is by chance?

25 THE BAILIFF: I do not.

1 THE COURT: Okay. That wasn't part of your
2 basic bailiff orientation?

3 THE BAILIFF: No, Your Honor.

4 THE COURT: Oh, you're falling down the job
5 again. Well, I don't think it's necessary for you
6 to reopen for that purpose. Mr. Foote, do you have
7 any objection? I'm not sure the witness is going
8 to be able to put it better than he put it already
9 either.

10 MR. ROSARIO: I'm not going to reopen.

11 THE COURT: I was just sort of raising it. I
12 like a clear record.

13 MR. FOOTE: Well, how long do you think it is,
14 60, 70 feet?

15 THE COURT: Yes. I'd say that's exactly. I'd
16 say 60 to 70 feet. For the record we all agree the
17 length of the courtroom is about 60 to 70 feet, and
18 I'd say the witness is about eight feet in front of
19 one wall. So from him to the back wall is going to
20 be something in the neighborhood of 60 feet. I'm
21 glad we could all get together on that.

22 OPEN COURT:

23 THE BAILIFF: The jury is entering the
24 courtroom, Your Honor.

25 JURY PRESENT:

1 THE BAILIFF: All jurors present and seated in
2 the courtroom, Your Honor.

3 THE COURT: Go ahead, Mr. Foote.

4 MR. FOOTE: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. FOOTE:

7 Q. Just so that we have an understanding. You
8 stated earlier that you were in a vehicle and you
9 observed the driver of that vehicle on 54 and Grand, and
10 you were approximately the distance of the courtroom
11 where you are?

12 A. Approximately.

13 Q. And would you agree that's about 60 to 70
14 feet?

15 A. Approximately, yes.

16 Q. Okay. Now, let's talk about, you were going
17 to pick up your friends Sarah and Joseph and --

18 A. Robert.

19 Q. And Robert. And you were driving your
20 vehicle?

21 A. Yes.

22 Q. Someone else was in the vehicle with you?

23 A. Yes.

24 Q. Sitting right next to you?

25 A. Yes.

1 Q. Who was that person?

2 A. Rick Scott.

3 Q. Rick Scott is present here today?

4 A. He's here somewhere.

5 Q. You've seen him?

6 A. I saw him downstairs, yes.

7 Q. Have you talked to him prior today regarding
8 the case?

9 A. No, sir.

10 Q. Did you talk to him today about the case?

11 A. No, sir.

12 Q. All right. You're in this vehicle, and you're
13 heading northbound on Grand by the Old Club 54?

14 A. Correct.

15 Q. Is that the light that you're sitting at?

16 A. Yes, sir.

17 Q. All right. And it's about after 1:00 in the
18 morning?

19 A. I don't remember the time. It was after
20 midnight, I know that.

21 Q. Nighttime?

22 A. Yes.

23 Q. So it's dark outside?

24 A. Yes, sir.

25 Q. All right. And the vehicle that you're saying

1 you see stalled out, is in the opposite direction
2 heading in the southbound lane on Grand?

3 A. Correct.

4 Q. All right. And you're sitting at a red light?

5 A. Correct.

6 Q. And the vehicle that you see, is it fair to
7 say that on State Road 54, there are three lanes heading
8 eastbound and three lanes heading westbound?

9 A. I guess at the intersection. I thought it was
10 two lanes and a turning lane at the intersection.

11 Q. Including the turning lane?

12 A. Yes.

13 Q. So about at least six lanes across?

14 A. Correct.

15 Q. And a concrete island?

16 A. Yes. That's about six inches high, yes.

17 Q. Okay. It's six inches high?

18 A. It's just like a island. It's not like a
19 barrier.

20 Q. I didn't say it was a barrier, sir.

21 MR. ROSARIO: Objection. Argumentative.

22 THE WITNESS: It's just a little concrete
23 island between the lanes, yes.

24 BY MR. FOOTE:

25 Q. There is concrete in between?

1 A. Yes.

2 Q. So you're sitting on the other corner and

3 you're looking all the way across the highway?

4 A. Uh-huh.

5 Q. Correct?

6 A. Yes.

7 Q. All right. Now, from that vantage point, were
8 you able to observe any fluids or anything coming out of
9 the vehicle?

10 A. Yes.

11 Q. Okay. And what did you observe?

12 A. There was steam coming out from the front of
13 the vehicle, I guess, I'm assuming from the radiator.

14 Q. And while you're sitting at that red light
15 next to Club 54, looking across the six lanes, you see
16 someone, a driver or someone come out the driver's side?

17 A. Correct.

18 Q. And is this at the time that you hear the
19 emergency vehicles coming by?

20 A. Shortly thereafter, yes. As we started to go
21 through the intersection.

22 Q. So the light had changed?

23 A. It was just changing as we heard the sirens.

24 Q. When you saw the driver of the vehicle get
25 out, were you sitting at the red light or were you

1 already in the intersection?

2 A. We were sitting at the red light.

3 Q. Okay. So you were sitting at the red light?

4 A. Uh-huh.

5 Q. And that's when you see the person get out of
6 the vehicle?

7 A. Correct.

8 Q. And it's your testimony they looked around the
9 front, right?

10 A. To my recollection, yes.

11 Q. All right. And then you heard emergency
12 vehicles at some point, and that person in front of the
13 vehicle bolted over behind the utility box?

14 A. Correct.

15 Q. All right. When you say bolted, he's moving
16 pretty fast?

17 A. He didn't walk. He was running, yes.

18 Q. Running. And it appeared to you, because from
19 what you saw, you heard the emergency vehicles and this
20 person was trying to get out of the way?

21 A. I don't think get out of the way was what he
22 was trying to do. We didn't see the emergency vehicle,
23 we heard it.

24 Q. Okay. So what did it appear to you that he
25 was doing?

1 A. In my opinion?

2 Q. Sure.

3 A. That he was hiding.

4 Q. And that person that you saw him go around the
5 utility box, it appeared to you, in your opinion, that
6 the person was hiding?

7 A. Correct.

8 Q. It happened the same time sirens are coming
9 through?

10 A. Correct.

11 Q. All right. At some point the light changes
12 and you proceed to drive across?

13 A. Correct.

14 Q. Okay. How fast are you driving across the
15 road?

16 A. If I had to estimate, maybe 10, 15 miles an
17 hour. I went a little slower to try to see what was
18 going on.

19 Q. Okay. And as you now cross the six lanes,
20 you're coming up closer to this vehicle that you've been
21 looking at?

22 A. Correct.

23 Q. Were the headlights on on that vehicle?

24 A. I remember a headlight being on. I can't say
25 whether or not for sure both were on, but I do remember

1 lights in the front of the vehicle.

2 Q. All right. Now, at this time you have no
3 knowledge that your friends Sarah and Joseph, people
4 that you're going to meet, had been involved in the
5 accident?

6 A. That's correct.

7 Q. So you had no knowledge of that?

8 A. That's correct.

9 Q. No one's called you on any phones to tell you
10 anything has happened at that point, right?

11 A. That's correct.

12 Q. So at this point you see a damaged vehicle,
13 you're driving across and basically -- well, do you
14 think that the person's been in an accident and that's
15 it?

16 A. I made a comment to Rick that something
17 similar to it looks like that vehicle has hit something
18 or someone, and we proceeded to go pick up our friends.

19 Q. Now, as you get closer, you said you slowed
20 down a little bit and you're able to look at the
21 vehicle, correct?

22 A. Correct.

23 Q. Are you still able to see the driver at that
24 point?

25 A. He's over at the control box, but I can see

1 him because he's around the back side around the corner.

2 Q. But you were able to see that he had a
3 cellphone up to his head?

4 A. It appeared to me that that's what he was
5 doing, correct.

6 Q. Well, he had a phone and had it up to his ear;
7 isn't that right?

8 A. Okay. From that distance can I absolutely say
9 it was definitely a cellphone? No. But he had
10 something that looked to me to be a cellphone up to the
11 side of his head and it appeared to me that he was
12 talking on a cellphone.

13 Q. Okay. This is not the first time you had to
14 give a statement regarding this case; isn't that right?

15 A. In my opinion, yes, he was talking on a
16 cellphone.

17 Q. Okay. On a previous occasion you said he was
18 talking on a cellphone?

19 A. Yes.

20 Q. Right?

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes.

24 Q. And you never stopped your vehicle as you
25 passed by? You just slowed down?

1 A. Correct.

2 Q. And the person that you saw get out of that
3 vehicle, bolt around, as you said, run around, get
4 behind the utility box on the cellphone was wearing dark
5 blue or black jeans?

6 A. Actually I believe in my statement I said blue
7 jeans. But anybody who knows me, I use blue jeans for
8 any kind of jeans. I know that when I took my
9 deposition with you last year, I later recanted myself
10 and said they were light-colored jeans.

11 Q. Well, which one is it?

12 A. Pardon?

13 Q. Which one is it?

14 A. They were light-colored jeans, but I say blue
15 jeans regardless. I have black jeans and green jeans at
16 the house, but I call them blue jeans.

17 Q. Okay. You mentioned the deposition. You and
18 I were sitting down with the State Attorney?

19 A. Yes.

20 Q. And there was a court reporter there?

21 A. Yes.

22 Q. And the first thing she did was swear you and
23 put you under oath?

24 A. Yes.

25 Q. Just like you took an oath here today?

1 A. Yes.

2 Q. And that occurred back on March 16th, 2007, or
3 so?

4 A. Correct.

5 Q. All right.

6 MR. FOOTE: I'd like to direct Court and
7 Counsel to Page 23 of the sworn deposition, Line 7.

8 BY MR. FOOTE:

9 Q. Sir, do you remember when I asked you this
10 question: "Question: You said he was wearing jeans.
11 What color was the jeans?

12 MR. ROSARIO: I'm sorry. What line?

13 MR. FOOTE: Page 23, Line 7.

14 BY MR. FOOTE:

15 Q. "Question: You said he was wearing jeans.
16 What color was the jeans?

17 Answer: They were dark. Whether they are blue or
18 black, I don't recall."

19 MR. ROSARIO: Objection. Rule of
20 completeness.

21 THE COURT: Approach.

22 BENCH CONFERENCE:

23 THE COURT: My understanding of the rule of
24 completeness is that if he uses something to
25 cross-examine the individual from the statement and

1 if it's misleading or out of context, you have the
2 right to come back when it's your turn and
3 introduce the other part. It's not, from what I
4 understand, a permissible objection. And I'm
5 always open to education.

6 MR. ROSARIO: That's fine, Judge. I would say
7 it was improper impeachment.

8 MR. FOOTE: My understanding of the rule is
9 similar to the Court's. But also if an attorney
10 takes part of an answer and just gets a phrase out
11 of part of that response, you're entitled to read
12 the entire response to put it into context, not
13 just take excerpts out. That's a full question and
14 a full answer.

15 THE COURT: Well, he can come back if it's
16 necessary to put it into context when it's his
17 turn.

18 MR. ULANO: He objected it's improper
19 impeachment.

20 MR. ROSARIO: I'll allow co-counsel to make
21 that argument.

22 MR. ULANO: Judge, improper impeachment. He
23 can't read the statement to him. He needs to give
24 him the statement and give him an opportunity to
25 explain.

1 THE COURT: Well, he's admitted that he gave
2 his deposition. He's now refreshing his
3 recollection. He can confront him in a reasonable
4 manner with his prior inconsistent -- he can
5 establish the inconsistency. It's not because the
6 witness said, I don't remember. I think you can
7 point out the inconsistency and ask him about it.

8 MR. ULANO: And, Judge, in that respect --

9 MR. ROSARIO: Judge, we'll withdraw the
10 objection.

11 THE COURT: Well, he's younger and brighter
12 than me. I want to hear what he has to say.

13 MR. ULANO: In that respect, it goes to
14 Mr. Rosario's argument, too. Because I mean
15 there's a series of questions here in which the
16 witness says, I don't know what color they were, I
17 don't know if they were light or dark, and then one
18 of the questions --

19 THE COURT: Yes. And if you're lucky, you'll
20 dispel this whole thing and maybe get redirect with
21 that. That's for redirect.

22 MR. ROSARIO: Thank you.

23 OPEN COURT:

24 BY MR. FOOTE:

25 Q. Sir, I asked you the question about the

1 deposition back in March of '07, and I asked you that
2 question: "You said he was wearing jeans. What color
3 was the jeans?"

4 "Answer: They were dark. Whether they were blue
5 or black, I don't recall."

6 Do you recall that question and answer?

7 A. Yes. I also remember a couple pages after
8 that that I recanted myself after pulling myself
9 together and said it was light-colored jeans.

10 Q. You said it was light-colored?

11 A. Yes, sir.

12 Q. Well, that was March of '07. This incident
13 where you actually saw everything was March of '06, even
14 a year before?

15 A. Correct. And I said blue jeans.

16 Q. Would you agree with me that your memory would
17 probably be fresher on the date that this happened, when
18 you observed it?

19 A. I was emotionally charged, but probably
20 fresher, yes.

21 Q. Do you remember talking to a Corporal Heather
22 Glenny from the Highway Patrol?

23 A. Yes.

24 Q. You gave her actually a recorded statement
25 right after you saw all this stuff?

1 A. Yes.

2 Q. Would you agree with me what you told her then
3 was fresher than one or two years later?

4 A. Yes.

5 Q. I'm sorry?

6 A. Yes.

7 Q. Do you recall your conversation with Trooper
8 Glenny with regard to recognizing the person you saw?

9 A. I remember some of the conversation, and it
10 was quite a day in my life.

11 Q. Do you recall telling her that it was a pair
12 of blue jeans at that point?

13 A. I believe that's what I did say.

14 Q. Okay. And light-colored shirt?

15 A. Yes, sir.

16 Q. And the trooper what trying to make sure that
17 you could positively identify the person and asked you
18 how can you possibly identify the person, and you said
19 because of blue jeans and what he was wearing?

20 A. Correct.

21 Q. Do you remember that?

22 A. Yes.

23 Q. Nowhere in that statement do you say he was
24 wearing light-colored jeans or light-colored anything?

25 A. Again I explained to you earlier blue jeans to

1 me are blue jeans.

2 Q. My question was, you didn't quantify that with
3 the trooper? You said blue jeans?

4 A. Yes.

5 Q. Okay. So the person that you see come out is
6 on the phone behind the utility box wearing blue jeans,
7 you don't know anything about your friends yet, and you
8 proceed northbound on Grand, correct?

9 A. If you're using blue as a color description
10 for his jeans, no, he had on light-colored jeans.

11 Q. Sir, I'm going to use the words that you used.

12 A. Okay. That's fine. If you're going to use my
13 terminology, yes.

14 Q. Okay. You were heading northbound on Grand?

15 A. Yes.

16 Q. Okay. When you get up to the scene, do you
17 see Mr. Bartlett who was walking with Joseph and Sarah?

18 A. Correct.

19 Q. At that point you realize that there had been
20 an accident?

21 A. Correct.

22 Q. All right. You stop, you and Mr. Scott get
23 out of your vehicle?

24 A. Yes.

25 Q. Okay. You actually looked at Joseph and

1 Sarah?

2 A. Yes.

3 Q. Did you talk to Mr. Bartlett?

4 A. Rick talked to him. I just kind of was
5 stunned.

6 Q. Okay.

7 A. But I heard part of it.

8 Q. Do you recall seeing Mr. Bartlett frantic on
9 the cellphone?

10 A. That's what it appeared to, he was trying to
11 talk to somebody on his cellphone when we pulled up.

12 Q. All right. Now, how long would you say that
13 you walked over and checked out Joseph and Sarah?

14 A. How long were we there?

15 Q. Yes.

16 A. Two or three minutes tops.

17 Q. Okay. And did you talk to Mr. Bartlett while
18 he was on the cellphone? Did he hang up at some point?

19 A. I didn't talk directly to Robert, no.

20 Q. Did you observe Mr. Scott talking?

21 A. Yes.

22 Q. Was he still on the cellphone with
23 Mr. Bartlett at the time?

24 A. I don't recall.

25 Q. All right. Then at some point you and

1 Mr. Scott get back into the vehicle because you put two
2 and two together that the vehicle you saw may have been
3 responsible for this, right?

4 A. Correct.

5 Q. Now, Mr. Bartlett didn't tell you that he saw
6 a maroon truck or anything like that, right?

7 A. I thought Rick said that he said that he saw a
8 dark truck. But again that's hearsay. I don't know for
9 sure.

10 Q. I'm just asking if you recall?

11 A. No, I don't.

12 Q. Okay. You and Mr. Scott actually tell
13 Mr. Bartlett, we saw a vehicle up there?

14 A. That we just saw a truck, yes.

15 Q. And a guy who was hiding behind a utility box
16 by the BP gas station?

17 A. I don't know if we said that.

18 Q. Okay. So you and Mr. Scott get back in your
19 vehicle, you make a U-turn, and then you head back up to
20 where you saw the disabled truck before?

21 A. Well, we were actually in the parking lot. We
22 just pulled out of the parking lot and proceeded down
23 Grand Boulevard back to where we were.

24 Q. What parking lot?

25 A. There's a little apartment complex or

1 something there near where they were hit.

2 Q. Okay. So you actually pulled into a parking
3 complex and parked?

4 A. We turned left off of Grand and pulled into a
5 parking lot, yes.

6 Q. Okay. So you weren't stopped on the street?

7 A. No.

8 Q. Did you see any emergency vehicles at that
9 time?

10 A. There was somebody there, yes.

11 Q. Flashing lights?

12 A. There was a flashing light, yes.

13 Q. Do you recall whether or not traffic was just
14 going through that area or did it appear that everyone
15 was focused on the emergency?

16 A. I don't recall.

17 Q. Okay. Do you recall what Mr. Bartlett was
18 wearing on that evening?

19 A. No, sir.

20 Q. What about Sarah and Joseph, do you recall
21 what they were wearing?

22 A. No, sir.

23 Q. Now, at this point you get back in the car and
24 you head all the way back down approximately a mile back
25 down to State Road 54 and Grand?

1 A. Correct.

2 Q. And at this time you see the vehicle further
3 across closer to Club 54?

4 A. Correct.

5 Q. Just right next to where you were when you
6 were sitting at that red light?

7 A. Down a little further, but, yes.

8 Q. Okay. When you get there, do you see any
9 other vehicles there?

10 A. There was a van behind his truck.

11 Q. There was a van sitting there?

12 A. Yes.

13 Q. Okay. Did you know who the van was or who the
14 driver was?

15 A. No.

16 Q. Did you speak to that driver at all?

17 A. I don't recall.

18 Q. And when you pull up, the vehicle, the maroon
19 damaged truck is at a standstill?

20 A. Correct.

21 Q. You didn't have to go and chase that vehicle?

22 A. I never said I chased it.

23 Q. It was just a question, sir.

24 A. No. I just pulled in front of him.

25 Q. You pulled in front of an already stopped

1 vehicle?

2 A. Correct.

3 Q. And you get out?

4 A. Correct.

5 Q. And you make contact with the person who's at
6 the driver's seat at that point?

7 A. Rick did, yes.

8 Q. How far are you from Rick? Did you see what
9 was going on?

10 A. I could see what was going on. Rick was just
11 closer to getting out because of the angle I pulled in.
12 He was straight to the front of the truck; I had to go
13 around the back of my truck.

14 Q. All right. And you saw the person that was
15 taken out of the vehicle at that point?

16 A. Yes.

17 Q. Because you and Mr. Scott are doing that?

18 A. Yes.

19 Q. And at that point that person is wearing what
20 that you pull out of the vehicle?

21 A. A polo shirt just like similar to what I'm
22 wearing, a light-colored shirt; he had on pants,
23 light-colored pants.

24 Q. And when you get back up to that second scene
25 and take the driver out of that vehicle, that person is

1 wearing light-colored pants and a light shirt?

2 A. Yes.

3 Q. When you come back up there, obviously you
4 could say in your own words you were pretty excited?

5 A. I guess that would be safe to say.

6 Q. Adrenaline pumping?

7 A. I'm sure, yes.

8 Q. Heart beating fast?

9 A. Yes, sir.

10 Q. Because you had just saw something pretty
11 traumatic?

12 A. Yes.

13 Q. All right. Now, when you give the
14 identification of the person you saw both before sitting
15 at the red light and after you came back, you gave that
16 identification to the Highway Patrol after all of this
17 had transpired, right?

18 A. Correct.

19 Q. And the person you got out of the vehicle --
20 let's talk about that -- you identified him today pretty
21 quickly here in court. You remember that face?

22 A. Yes.

23 Q. Okay. Mr. Stephen appeared not to know where
24 he was or what had happened?

25 A. Correct.

1 Q. And it looked like he was in a daze?

2 A. Yes, sir.

3 Q. He said nothing to you guys? It looked like
4 it was a big surprise on his face?

5 A. Again Rick got to the vehicle before I did,
6 and after Rick said something to him and helped him over
7 to the curb, I don't recall him saying much of anything
8 after that.

9 Q. In fact, he never said a word, right?

10 A. To the best of my recollection, I don't
11 remember him saying anything.

12 Q. And even while waiting for law enforcement,
13 because you and Mr. Scott were there with him, you had
14 him down on his knees, right?

15 A. Knees or sitting down, one of the two.

16 Q. He never said a word?

17 A. Not that I remember. Rick said something to
18 him as I was approaching the vehicle, he said something
19 back the Rick, and I don't recall him saying much of
20 anything after that.

21 Q. Do you recall saying previously in your words
22 that he never said a word? Do you remember saying that
23 earlier at a different time?

24 A. I don't remember him saying anything at all.

25 Q. Okay.

1 MR. FOOTE: May I have a moment, Judge?

2 BY MR. FOOTE:

3 Q. On your way to pick up Joseph and Sarah, when
4 you see this vehicle and you slow down to look at the
5 person who bolted behind the box, you didn't look inside
6 the vehicle that was disabled?

7 A. No.

8 Q. Okay. And the windows were tinted?

9 A. On his vehicle?

10 Q. Yes.

11 A. I believe they were.

12 Q. And you never looked inside of that vehicle?

13 A. No, sir.

14 Q. Is it fair to say your eyes were fixated on
15 the person you saw just bolt behind the box?

16 A. After he got out of the truck, yes.

17 Q. So that was the focus of your attention was on
18 that person?

19 A. Correct.

20 Q. Now, when you come back and you guys get this
21 person out of the driver's seat, did that person try to
22 resist you at all?

23 A. Well, Rick is the one that got him out of the
24 vehicle, but I don't recall him resisting at all.

25 Q. How far were you from Rick when he gets him

1 out of the car?

2 A. I was just coming around the front of the
3 truck when Rick opened the door.

4 Q. Okay. How close would you say that you were
5 to Mr. Stephen?

6 A. At that point?

7 Q. Yes.

8 A. Within ten feet probably.

9 Q. Okay. And when he's down on the ground,
10 whether on his knees or sitting down, how close? I mean
11 could you see him?

12 A. Yes, I could see him.

13 Q. Did he attempt to run away at all?

14 A. No.

15 Q. Did he attempt to bolt away from you?

16 A. Not that I recall.

17 MR. FOOTE: That's all I have.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. ROSARIO:

21 Q. Mr. Ramsey, I'm showing you what's previously
22 been marked as State's Exhibit 6. Do you recognize this
23 photo?

24 A. Yes.

25 Q. What does that appear to be?

1 A. The truck that we got him out of that night.

2 MR. ROSARIO: May I show it to the jury,

3 Judge?

4 BY MR. ROSARIO:

5 Q. Now, you saw more the front of the truck; is
6 that correct?

7 A. Yes.

8 Q. If I showed you a photo of the front of the
9 truck, would you be able to identify it?

10 A. Yes.

11 MR. ROSARIO: Your Honor, I'm showing the
12 witness what's previously been marked as State's
13 evidence 7.

14 BY MR. ROSARIO:

15 Q. Do you remember that?

16 A. Yes.

17 Q. Does that appear to be the front of the truck
18 that you saw?

19 A. Yes.

20 Q. Now, Defense Counsel asked you about your
21 deposition. Do you recall this response on Page 24,
22 Line 25: "How certain are you about that
23 identification?

24 "Answer: As far as his clothing goes?

25 "Question: Correct.

1 "Answer: Like I said everything happened so
2 quickly, and from where I was originally, from where I
3 was at originally is what I was recalling what he had on
4 from the original light when he got out and walked
5 around in front of the truck, it was light jeans and a
6 shirt."

7 A. Yes.

8 Q. Is that what you're referring to?

9 A. After he -- yes.

10 Q. And this person that you guys pulled out of
11 that car, that was the same person the police took into
12 custody?

13 A. Without a doubt, yes.

14 MR. ROSARIO: Nothing further, Judge.

15 THE COURT: Recross?

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

17 **RECCROSS-EXAMINATION**

18 BY MR. FOOTE:

19 Q. Let me show you what's been entered into
20 evidence as Defense Exhibit 2. I want you to take a
21 look at that and tell me if you recognize that?

22 A. Well, I can't really see that much as dark as
23 it is.

24 Q. Thank you.

25 A. But I know what it is. I mean it's a truck.

1 Q. What is it?

2 MR. ROSARIO: Judge --

3 THE WITNESS: It says it's a Chevy pickup or a
4 GMC pickup, one of the two.

5 BY MR. FOOTE:

6 Q. You don't recognize that vehicle?

7 A. Not with that lighting, no.

8 Q. Okay.

9 THE COURT: Mr. Rosario, were you saying
10 something?

11 MR. ROSARIO: I withdraw my --

12 THE COURT: Okay. Is that it?

13 MR. FOOTE: No, Judge.

14 BY MR. FOOTE:

15 Q. The State showed you a photograph of the truck
16 at daytime. That's not how you saw the truck; isn't
17 that right?

18 A. Correct.

19 Q. And he asked you about your deposition, and
20 you were trying to recall different things back and
21 forth, but at some point in that same deposition you
22 stated, "I'd rather rely on the statement I gave to the
23 police officer, that's probably more accurate." Do you
24 remember that?

25 A. Yes.

1 Q. Before you ever spoke to a lawyer in this
2 case, a prosecutor or anybody, me at the deposition,
3 before you spoke to anyone, the first person you spoke
4 to as an official was the Highway Patrol officer?

5 A. Yes.

6 Q. And even in your deposition when you went back
7 and forth, you stated, "I'd rather rely on what I told
8 the person that night"?

9 A. Yes.

10 MR. FOOTE: That's all I have, Judge.

11 THE COURT: Okay. You want Mr. Ramsey subject
12 to recall?

13 MR. ROSARIO: Yes, Judge.

14 THE COURT: Okay. Mr. Ramsey, you're excused
15 but you're still under subpoena.

16 MR. ROSARIO: May we approach, Judge?

17 THE COURT: Yes.

18 BENCH CONFERENCE:

19 THE COURT: We're going to take a break.

20 MR. ROSARIO: Okay.

21 THE COURT: We're going to give them?

22 MR. FOOTE: Ten, 15 minutes.

23 THE COURT: Yes. Fifteen. Okay.

24 OPEN COURT:

25 THE COURT: Folks, we're going to take a

1 15-minute recess.

2 BENCH CONFERENCE:

3 THE COURT: Now, what else have you got?

4 MR. ROSARIO: Judge, my next witness that I'm
5 going to call to the stand, I am concerned with the
6 Defense's assertions. To avoid any issue, I would
7 ask that Mr. Ulano -- I don't even know how to
8 pronounce his name.

9 THE COURT: Mr. Ulano.

10 MR. ROSARIO: -- Mr. Ulano not be in the
11 courtroom during the testimony of this witness.

12 THE COURT: No. I thought Mr. Foote's
13 objection about your -- actually the record can
14 stop at no.

15 MR. ROSARIO: Okay. That's fine, Judge.

16 THE COURT: I was going to say it was more
17 ridiculous than what he said before, but we'll call
18 it a tie.

19 MR. FOOTE: No, I'd rather it be on the record
20 on that if we can real quickly.

21 THE COURT: I'm not going to deny you being on
22 the record. Go ahead.

23 MR. FOOTE: Obviously the Court is not present
24 out in the hallways and everything else like that,
25 and Mr. Rosario and I have been bringing up

1 whatever concerns we say to each other --

2 THE BAILIFF: The jury is out of the hearing
3 of the courtroom, Your Honor.

4 JURY ABSENT:

5 BENCH CONFERENCE:

6 MR. FOOTE: -- without bothering the Court.
7 The reason I brought up that statement is because
8 it was the second statement that came up that
9 possibly people are being told and prepped as to
10 where the defendant is. And I don't think it
11 was --

12 THE COURT: Well, I can be very expressive
13 about that. I'm not going to insult Mr. Rosario by
14 asking him if he's done that. I think he's a more
15 ethical lawyer than that. But I will unequivocally
16 instruct Mr. Rosario to not coach any witness in
17 regard to persons at the Defense table.

18 MR. ROSARIO: Yes, sir.

19 MR. FOOTE: Specifically that was not to
20 Mr. Rosario.

21 THE COURT: Well, that's --

22 MR. FOOTE: By accident or whatever.

23 THE COURT: Okay. I don't think it's
24 necessary -- okay. If it's necessary for me to say
25 it expressly, I'll say that anything that I say for

1 any side applies to all members of the Bar on that
2 side and their agents, operatives, subsidiaries and
3 asides. Now can we take a break?

4 MR. ROSARIO: Yes, sir.

5 RECESS TAKEN:

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(CONTINUATIN IN VOLUME IV.)

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