

No. \_\_\_\_\_

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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SEAN FREDERIK FRANKE,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

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**On Petition for Writ of Certiorari  
to the Florida First District Court of Appeal**

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**APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI**

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FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D17-979

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SEAN FREDERIK FRANKE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Duval County.  
Steven B. Whittington, Judge.

February 20, 2019

PER CURIAM.

AFFIRMED.

MAKAR, WINOKUR, and M.K. THOMAS, JJ., concur.

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***Not final until disposition of any timely and  
authorized motion under Fla. R. App. P. 9.330 or  
9.331.***

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Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for Appellant.

Ashley B. Moody, Attorney General, and Benjamin Louis Hoffman, Assistant Attorney General, Tallahassee, for Appellee.

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2013-CF-5674  
DIVISION: CR-E

STATE OF FLORIDA

v.

SEAN FREDERIK FRANKE,

*Defendant.*

**ORDER DENYING DEFENDANT'S MOTION TO EXCLUDE LEGAL BLOOD DRAW  
EVIDENCE AND DENYING DEFENDANT'S SECOND MOTION  
TO SUPPRESS RESULTS OF TESTING CONDUCTED ON BLOOD  
DRAWN FROM THE DEFENDANT**

This matter came before the Court on Defendant's Motion to Exclude Legal Blood Draw Evidence, filed herein on January 6, 2015, and Defendant's Second Motion to Suppress Results of Testing Conducted on Blood Drawn From the Defendant, filed herein on May 8, 2015. An evidentiary hearing was held on the Motions on May 12, 2015, June 30, 2015 and July 7, 2015, at which time the Court received the testimony of witnesses and exhibits in evidence. Having considered the evidence, the argument of counsel and the legal authority presented, the Court orally announced its ruling denying the Motions on the record on August 5, 2015. The Court enters the following written Order addressing its factual findings and conclusions of law which are the bases for the Court's denial of the Defendant's Motions.

**Background**

On January 1, 2013, following a single-vehicle crash, the Defendant was transported to Shands Hospital, which is now known as UF Health. While at the hospital, blood was drawn from the Defendant by RN Kim Manuel at the direction of Trooper Michael Quade of the Florida

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Highway Patrol. The Defendant seeks an Order from the Court prohibiting the State from introducing at trial the results from the blood draw, as well as an order prohibiting Nurse Manuel from testifying. In summary, Defendant argues in his two motions that law enforcement officials: 1) lacked the requisite probable cause to believe he was the driver of the vehicle at the time of the crash to justify the taking of the blood; 2) that no sufficient exigent circumstance existed at the time to conduct the blood draw without first securing a warrant; 3) that the medical records are inadmissible under Section 90.803(6), Florida Statutes; and 4) that the admission of the medical records, and allowing Nurse Manuel to testify regarding same, would violate Defendant's Sixth Amendment rights under the Confrontation Clause.

#### **Factual findings**

At the evidentiary hearing, the Court heard from several witnesses who were present at the crash site. Devin Reddick, a civilian, testified that at approximately midnight on January 1, 2013, he heard a loud crash coming from Beach Boulevard and close to where he was standing and talking on the phone. Mr. Reddick ran to the crash scene and was the first to arrive thereon, some 35-45 seconds after the loud crashing noise of the impact. Mr. Reddick saw that the pick-up truck had hit a large pole, with its front end "mashed in" and encroaching into the cab. Mr. Reddick approached the driver's side of the truck and saw a white male occupying the driver seat and wearing a shoulder safety belt across his chest. The male appeared to be unconscious. Mr. Reddick also noted that a female was draped over the male. Mr. Reddick detected a strong odor of alcohol coming from the truck while he was standing just outside the driver's side door. Mr. Reddick remained on the scene until rescue arrived, and he observed a member of the Jacksonville Fire and Rescue remove the white male from the driver's seat by cutting the shoulder harness

safety belt off of him. Mr. Reddick identified Defendant, Sean Franke, as the white male he saw in the driver's seat of the truck.

**Michael Kennedy**, an Engineer with the Jacksonville Fire and Rescue, responded to the scene of the crash. Mr. Kennedy testified that he approached the driver side of the truck and observed a white male in the driver seat, leaning slightly outside of the vehicle, held in place by a shoulder harness seatbelt. It appeared to Mr. Kennedy that the seat belt was restricting the person's air flow. To relieve the pressure, Mr. Kennedy used a pocket knife to cut the seatbelt, and the male partially fell out of the truck. Upon cutting the seatbelt, the white male fell into the arms of Mr. Kennedy. Mr. Kennedy had to hold the person up in order to keep him from falling further out of the truck and cause further injury. Mr. Kennedy also observed that the white male's lower body was trapped under the driver's side dashboard. Mr. Kennedy held onto the white male until the white male could be cut out and extricated from the vehicle. During this time, Mr. Kennedy was in close proximity to the white male, and could smell an odor of alcohol in the area.

**Officer Carl Oder** of the Jacksonville Sheriffs' Office testified that he arrived at the scene of the crash just after emergency personnel had arrived. Officer Oder testified that he saw a white male in the driver seat of the truck with his legs pinned under the dashboard. Officer Oder observed the white male being extricated from the truck after seeing a paramedic cut the seat belt that the white male had been wearing. Officer Oder subsequently identified the white male as Defendant Sean Franke. While Defendant was being transported from the truck to the ambulance, Officer Oder, who had six-years of experience on the DUI Enforcement Unit, detected an odor of alcohol coming from Defendant's person and noticed that Defendant had bloodshot and watery eyes. Officer Oder informed Corporal Austin Bennett of the Florida Highway Patrol of

his observations.

Much was made at the evidentiary hearing, and in Defendant's Motion to Suppress, that Officer Oder had some past familiarity with Dara Kusiv, the female passenger in the vehicle who died as a result of the crash, and that Officer Oder failed to disclose that knowledge to Corporal Bennett or any investigating officer. Officer Oder testified that he only knew Ms. Kusiv as the sister of a man who worked as a waiter in the country club where Officer Oder worked off-duty. Moreover, Officer Oder testified that when he arrived at the scene, he did not recognize Ms. Kusiv due to the extensive nature of her facial injuries - a photograph of which was introduced into evidence during this hearing and for the Court's review. Having considered the photograph and observed Officer Oder's demeanor at the hearing, the Court finds Officer Oder's testimony is credible.

**Corporal Austin Bennett** of the Florida Highway Patrol testified that he arrived on the scene and spoke with Devin Reddick and Officer Oder, among other things. Based on the information provided by Reddick and Oder, Corporal Bennett, as the lead investigator, believed he had sufficient probable cause to request, and if necessary, forcibly have drawn, blood from Sean Franke. That information included credible statements that the Defendant was located in the driver seat, wearing the driver's side seatbelt, and had his legs pinned under the dashboard, at the time of the crash. Additionally, Defendant had an odor of alcohol on his person and had bloodshot and watery eyes. Corporal Bennett also knew that there was at least one fatality and at least two additional persons with serious bodily injuries as a result of the crash. Finally, Corporal Bennett found a bottle of Sangria in the bed of the truck during his investigation of the scene. Corporal Bennett requested Trooper Michael Quade to obtain a blood sample from the Defendant



because he had a significant amount of work to complete at the crash scene, due to the violence of the crash, which required the blocking of two lanes of traffic. Further, Corporal Bennett needed someone to attempt a blood draw as soon as possible due to the inevitable dissipation of alcohol and the concern that the Defendant may become unavailable for a blood draw at any moment due to the Defendant's own serious injuries. For those reasons, as well as it being the middle of the night and it being unlikely he could find a judge quickly, Corporal Bennett decided not to attempt to secure a search warrant.

**Trooper Michael Quade**, now a sergeant, testified that upon arrival at the hospital he met with the Defendant. When Trooper Quade approached the Defendant and identified himself as an officer from the Highway Patrol, the Defendant made the following statements: "You might as well kill me. I'm already dead. I'm going to spend the rest of my life in prison." Trooper Quade believed the Defendant's statements confirmed what he already had been told, that the Defendant was the driver of the truck at the time of the crash. Trooper Quade also detected a strong odor of alcohol from the Defendant, that he had bloodshot and watery eyes, and exhibited slurred speech. When Trooper Quade asked the Defendant for permission to take a blood sample, the Defendant did not respond – he closed his eyes and did not speak any further to the Trooper. Trooper Quade directed RN Kim Manuel to take a blood sample, which she did. The blood was drawn at 3:12 a.m.

**Nurse Kim Manuel** testified that she was working at Shands Hospital in the early morning hours on January 1, 2013. She testified that while she has no independent recollection of the events surrounding her care and treatment of Defendant during those early morning hours, she recognized her handwriting on the notes concerning that care and treatment. Nurse Manuel

testified that those notes are the type of notes that she regularly takes in administering treatment to patients and that those notes are completed contemporaneous with the treatment and care she gives patients at the hospital. Nurse Manuel was subject to cross examination by defense counsel at the hearing.

Additional witnesses at the multi-day hearing (Dr. Christine Swenton, Dr. Kyle Fleck, Lt. Stephen Lee, and the Defendant's mother, Jolanda Frensch) did not add pertinent facts for the Court's determination of the issue at hand. **Dr. Swenton** did not recall many facts, including: 1) whether she was present for the blood draw; 2) whether the Defendant had seat belt marks on his torso; 3) whether she took the Defendant's history; and 3) whether the Defendant had 1 or 2 IV lines, and which one may have been used to draw the blood, among other things. **Dr. Fleck** does not recall treating the Defendant, and further cannot remember if law enforcement was present at the hospital. He cannot recall if he and Trooper Quade discussed Defendant's surgery status, and could not comment on Defendant's smell of alcohol or level of impairment. He had no independent recall whatsoever about the Defendant or the treatment in question.

**Lt. Lee** testified he arrived at the scene of the crash at the same time as Engineer Kennedy. He confirmed it was a very busy night – "intense" and "fast." Lt. Lee approached the passenger-side door of the truck, and he testified that from his vantage point, he could not see the white male, partially hanging out of the driver's side door, could not see the shoulder harness seatbelt holding him up and did not see Kennedy cut the seatbelt with a knife. He testified he was not close enough to see. In general, Lt. Lee did not appear certain about his observations and confirmed that he did not go to the driver's side or assess the driver's side occupant, instead leaving that task to Mr. Kennedy.

## The Law and Court findings

### 1) Defendant's Motion to Exclude Legal Blood Draw Evidence

The Defense has sought to exclude medical records prepared by Nurse Manuel on the night she treated the Defendant. The Defense has raised two concerns: 1) the medical records at issue do not fall into the business record exception to the hearsay rule, section 90.803(6), Florida Statutes; and 2) even if the records are admissible under the exception, because Nurse Manuel has no independent recollection of the events surrounding her care and treatment of Defendant, to allow Nurse Manuel to testify would violate the Defendant's rights under the Confrontation Clause. Nurse Manuel testified at the hearing and will be available to testify at the trial.

#### a) Section 90.803(6), Florida Statutes – Evidentiary Analysis

Section 90.803(6), Florida Statutes, provides an exception to the hearsay rule for records of regularly conducted business activities. Hospital and medical records are admissible under section 90.803(6), if the proper foundation is introduced. Love v. Garcia, 634 So.2d 158, 160 (Fla. 1994). In order to establish the proper foundation, it must be shown that the record was made at or near the time of the event, was kept in the regular course of regularly conducted business, that it was the regular practice of the business to keep the record, and that the information in the record was supplied by someone acting within the course of a regularly conducted business activity. Id. “The medical record exception includes routine blood tests which disclose alcohol content if the tests are a component of the hospital or medical records.” Id. at 159 n. 2.

A requirement of minimum reliability of a record is contained in section 90.803(6) which states that when the “sources of information or other circumstances show lack of trustworthiness” business records are not admissible. Stambor v. One Hundred Seventy-Second Collins Corp.,

465 So.2d 1296, 1298 (Fla. 3d DCA 1985) (Accident report prepared by restaurant manager immediately after slip and fall accident was inadmissible as it lacked reliability as manager had motive to fabricate the report). "Once this predicate is laid, the burden is on the party opposing the introduction to prove the untrustworthiness of the records." Love, 634 So.2d at 160.

The State laid the proper predicate to establish that the records in question are "business records" through the testimony of Nurse Manuel. The Defense failed to offer proof that the records or the sources of information in the records show lack of trustworthiness. Therefore, the medical records are admissible.

**b) Confrontation Clause – Constitutional Analysis**

The Defense argues next that even if admissible as a business record exception to the hearsay rule, the records, and Nurse Manuel's testimony, should be excluded because Nurse Manuel has no independent recollection of the events surrounding her care of the Defendant and the blood draw that she performed. The Defense contends that Nurse Manuel's failure to recollect the events in question would deny the Defendant his right to confront the witnesses against him.

In Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the United States Supreme Court held that testimonial statements by witnesses who are not subject to cross-examination at trial may not be admitted unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. First, the medical records at issue here are not testimonial; therefore, the Confrontation Clause is not implicated. See Johnson v. State, 117 So.3d 1238, 1243 (Fla. 3rd DCA 2013) (Physician's report concerning examination of rape treatment victim and collection of DNA was not testimonial, noting that the report was made at a

hospital and not a law enforcement lab; thus, the admission of the report did not violate confrontation rights). Second, even if the report was testimonial, the declarant, Nurse Manuel, did testify at the hearing, was subject to cross-examination, and will be available and subject to cross-examination at trial. Nurse Manuel's inability to independently recollect the events at issue does not deny Defendant the ability to conduct cross-examination. See United States v. Owens, 484 U.S. 554, 108 S.Ct. 838, 98 L.Ed.2d 951 (1988) (holding that the Confrontation Clause is not violated by admission of a prior, out-of-court identification statement of a witness who is unable, because of memory loss, to explain the basis of the identification). The Confrontation Clause is satisfied because Nurse Manuel will be available and subject to cross-examination at trial.

**2) Defendant's Second Motion to Suppress Results of Testing Conducted on Blood Drawn from the Defendant**

**a) Probable cause**

Florida Statute section 316.1933(1), permits the forcible extraction of a blood sample if the officer has "reasonably trustworthy information," sufficient to cause a person of reasonable caution to believe that a driver was under the influence of alcoholic beverages at the time of an accident causing death or serious bodily injury of a human being. The officer must determine that probable cause exists based on objective facts and circumstances and not on personal opinions or suspicion. State v. Durden, 655 So.2d 215 (Fla. 1st DCA 1995). The probable cause determination may also be based on the "collective knowledge" of officers. Henninger v. State, 667 So.2d 488 (Fla. 1st DCA 1996). "Probable cause is a fluid concept that deals in probabilities, which include common sense conclusions by law enforcement officers." Williams v. State, 731 So.2d 48, 50 (Fla. 2d DCA 1999)(citing Illinois v. Gates, 462 So.2d 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)). "Probable cause is not the same standard as beyond a reasonable doubt, and

‘the facts constituting probable cause need not meet the same standard of conclusiveness and probability required of the circumstantial facts upon which a conviction must be based.’” State v. Catt, 839 So.2d 757, 759 (Fla. 2d DCA 2003); citing Williams, *supra*, 731 So.2d at 50.

An officer may order a blood test if the officer knows that there was an accident involving serious bodily injury, the suspect was driving one of the involved vehicles, and the suspect has a strong odor of alcohol. Catt, at 760. In Palazzota v. State, 988 So.2d 123 (Fla. 2d DCA 2008), the court held that after the defendant was involved in an accident involving serious bodily injury, there was probable cause for a blood draw based on the defendant’s speed, violence at the hospital, and odor of alcohol. In State v. Cesaretti, 632 So.2d 1105 (Fla. 4th DCA 1994), probable cause was found to justify a blood draw based only on the odor of alcohol on the suspect combined with evidence of a crash causing serious bodily injury.

Corporal Bennett and Trooper Quade had sufficient, trustworthy information to reasonably believe that the Defendant operated the truck at the time of the crash while he was under the influence of an alcoholic beverage. “Under the influence” means something more than having simply consumed an alcoholic beverage but something less than intoxicated, and an odor of alcohol on a driver’s breath is a critical factor in determining whether probable cause exists. Catt, 839 So.2d at 760. Of the four occupants in the truck when it crashed, Defendant was the only one identified as being in the driver’s seat. Credible witnesses identified Defendant as wearing the driver’s side seatbelt, and having his legs pinned under the driver’s dashboard, which necessitated an extraction team to remove the Defendant from the driver’s seat of the truck. Corporal Bennett had trustworthy information that the Defendant had an odor of alcohol coming from his breath when the Defendant was being removed from the truck. Additionally, before the blood was

actually drawn, Trooper Quade observed the Defendant exhibiting slurred speech, and bloodshot, watery eyes. Defendant also made voluntary statements that would appear to a reasonable person as an acknowledgment of culpability in the crash; the statements were tantamount to an admission. A bottle of Sangria was also found in the bed of the truck. Certainly common sense would dictate to any reasonable person that the Defendant was driving the truck, while under the influence, at the time of the crash which caused a death and multiple serious bodily injuries. Based on the information known to the officers at the time, it would have been unreasonable for them to conclude that any of the other occupants in the truck had been driving at the time of the crash.

**b) Exigent circumstances**

Defense has also argued that no exigent circumstance existed to justify the forced blood draw without at least attempting to secure a warrant. No attempt was made to obtain a warrant prior to the taking of Defendant's blood. In response, the State points out that the crash occurred just after midnight and it would have been difficult and time consuming to secure a warrant in a timely fashion due to the late hour. Further, Defendant suffered serious injuries and was in the hospital and subject to surgeries, or other serious medical procedures, that would have made waiting for a warrant unreasonable. The crash was particularly violent and required an extensive on-scene crash investigation that necessitated the closure of two lanes of a major roadway. Corporal Bennett testified that he wanted to complete the crash investigation, without having to leave the scene to obtain a warrant, so that all lanes of traffic could be opened as quickly as possible. Finally, the State argues that the natural dissipation of alcohol in the bloodstream required that the blood be drawn quickly if the results were to have any relevance at all.

At the hearing, the Defense relied heavily upon the United States Supreme Court case of

Missouri v. McNeely, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013). The McNeely case, it must be noted, was decided on April 17, 2013, four months after the blood draw at issue. In McNeely, the Court decided a fairly narrow issue: “whether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment’s warrant requirement for nonconsensual blood testing in all drunk-driving cases.” Id. at 1556. The Court determined that it did not. Furthermore, the Court did not overturn its holding in Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966).

In Schmerber, the Court applied a totality of circumstances approach in determining whether law enforcement officials faced an emergency that would justify acting without a warrant. In Schmerber, the defendant had suffered injuries in an automobile accident and was taken to a hospital. Id. at 758. While in the hospital and receiving treatment, a police officer arrested the defendant and ordered blood to be drawn over the defendant’s objection. The Schmerber court concluded that the warrantless blood search was permissible because the officer “might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence.” Id. at 770. In support of that conclusion, the Court “observed that evidence could have been lost because ‘the percentage of alcohol in the blood begins to diminish shortly after drinking stops, as the body functions to eliminate it from the system.’” McNeely, 133 S.Ct. at 1560, citing Schmerber, 384 U.S. at 770. The Court added that “[p]articularly in a case such as this, where time had to be taken to bring the accused to a hospital and to investigate the scene of the accident, there was no time to seek out a magistrate and secure a warrant.” Schmerber, at 770-771.

After concluding that Schmerber “fits comfortably” within “case law applying the exigent




circumstances exception,” the McNeely court refused to “depart from careful case-by-case assessment of exigency and adopt a categorical” *per se* rule that the natural dissipation of alcohol creates an automatic exigency in every case. McNeely, 133 S.Ct. at 1560-1561. “In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.” Id. at 1561.

In this case, after considering the totality of circumstances, the Court finds that sufficient exigent circumstances existed to justify a warrantless search through a nonconsensual blood draw. The Defendant had to be immediately taken to the hospital after he was extricated from the truck; he had suffered serious injuries and it was reasonable to assume that he would have to undergo lengthy surgical procedures that would have made him unavailable for a blood draw. This issue alone created a sufficient exigent circumstance to justify a forcible blood draw pursuant to Section 316.1933, Florida Statutes. The law enforcement officers would have also had extra difficulty securing a warrant in a timely manner as it was the middle of the night on a holiday – New Year’s Eve. The Court finds that the warrantless search was reasonable under the Fourth Amendment as interpreted under both Schmerber and McNeely.

In view of the above, it is

**ORDERED AND ADJUDGED** that Defendant’s Motion to Exclude Legal Blood Draw Evidence, filed herein on January 6, 2015, is **DENIED**; and Defendant’s Second Motion to Suppress Results of Testing Conducted on Blood Drawn from the Defendant, filed herein on May 8, 2015, is **DENIED**.

**DONE AND ORDERED** at Jacksonville, Duval County, Florida this 14<sup>th</sup> day of March,  
2017, *nunc pro tunc* August 5, 2015.

  
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**TATIANA R. SALVADOR**  
Circuit Court Judge

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IN THE COUNTY COURT OF  
THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, FLORIDA

CASE NUMBER: 2013-CF-5674

STATE OF FLORIDA,

Plaintiff,

vs.

SEAN FRANKE,

Defendant.

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**DEFENDANT'S SECOND MOTION TO SUPPRESS RESULTS OF TESTING  
CONDUCTED ON BLOOD DRAWN FROM THE DEFENDANT**

The Defendant, Sean Franke, by and through his undersigned counsel, hereby respectfully request this Honorable Court to enter an order excluding the blood test results in the instant case on the following grounds and in support thereof states:

1. On or about January 1, 2012, Mr. Franke was allegedly involved in an automobile crash.
2. Blood was allegedly drawn from the Defendant at the request of law enforcement and submitted to the Florida Department of Law Enforcement lab for analysis of its ethyl alcohol content.
3. Law enforcement did not obtain, or otherwise take any steps to obtain, a warrant prior to searching and seizing a sample of blood from Mr. Franke's body.

4. Fla. Stat. 316.1933(1)(a) states that:

If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement office may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

5. That the probable cause asserted in this case on January 1, 2013 consisted of witness Officer Carl Oder and Trooper Michael Quade.
6. That Trooper Michael Quade cited in his legal blood draw kit that the probable cause was "fatal crash, slurred speech, alcohol bottle found in vehicle driven."
7. That there is no mention in any of this probable cause an ascertain by any witness they witnessed either a driver seatbelt on Mr. Franke or that Jacksonville Fire Rescue cut a driver seatbelt off Mr. Franke.

8. That Corporal A.C. Bennett with Florida Highway Patrol conducted the Traffic Homicide Investigation on the night of the accident and subsequently filed a report dated May 13, 2013.
9. That on page 10 of this report Corporal Bennett cites that "while conducting the vehicle inventory on V-1, I observed an open bottle of Cruz Real Sangria (750 ml and 7-10% by volume) in the bed of V-1. The bottle was almost completely empty and had appeared to be thrown in the bed of V-1, either by the impact of the crash or by an occupant of V-1 prior to leaving the party on Eunice Road.
10. That Corporal Bennett has no independent information that allows him to conclude that the bottle "appeared to be thrown in the bed of V-1, either by impact of the crash or by an occupant of V-1 prior to leaving the party on Eunice Road."
11. That if it either premise is accepted there was no determination on which of the four occupants of the vehicle possibly consumed this alcohol, how long the bottle had been in either the cab or the bed of this truck or even that it was mistakenly identified as being part of this scene which could imply it could have been discarded by someone not associated with this accident at some other time prior to this accident.

12. That witness Michael Kassab testified in deposition and at his recorded statement to Corporal Bennett that upon the upon the truck's front tire impact with the curb a spare tire was thrown out of the bed of the truck and the tire was "coming to me" (Deposition conducted on January 22, 2014, page 19 line 2)
13. If the impact of the truck jumping the curb was powerful enough to eject a spare truck tire from the bed of the truck it begs the question of how this Sangria bottle remained intact in the bed of the truck.
14. Another unrealized possibility never investigated was that this bottle had been discarded by someone unrelated to this case and was "discovered" in the area of the truck and it was assumed that this bottle was part of this scene.
15. In fact, in Trooper Quade's deposition he testified he had no "personal recollection. It's in or around the truck. I don't have a personal recollection exactly where it was at. But I know it was associated with that vehicle." When pressed about how Trooper Quade "knew it was associated with" that vehicle, his response was "because it was in or right-right there at that -at the truck." When asked if there could have been a chance it was just there on the side of the road, the witness was not allowed to answer due to his previous answer of not having any "personal recollection" of where

this bottle was found. (Deposition conducted on March 13, 2014, pages 17-18)

16. That when questioned about who "discovered" this Sangria bottle either in the bed of the truck or on the ground near the truck, Trooper Quade did "not have personal recollection of exactly if anybody pointed it out to me or not."
17. Additionally, this bottle of Sangria found the night of the accident, used as probable cause for this legal blood draw was not collected as evidence for over a year after the accident.
18. This Sangria bottle remained in the bed of this vehicle until February 2014, some 13 months after this accident all while this vehicle was being stored outside, exposed to the elements, at the Florida Highway Patrol Vehicle Impound Facility.
19. That continued in Corporal Bennett's Traffic Homicide Investigation Report he cites that Mr. Franke was identified as "the driver of V-1 by the on scene wheel witness, Officer C. Oder of the Jacksonville Sheriff's Office" (page 10 of the report)
20. That Bennett's report also goes on to say:

"While on scene, I made contact with Officer C. Oder of the Jacksonville Sheriff's Office, who was one of the first officers

on the scene of the traffic crash. Officer Oder advised me he arrived; he observed the Jacksonville Fire Rescue Department personnel attempting to extricate the driver of V-1, Sean Frederik Franke, from the driver's seat of V-1 where he was seat belted in behind the steering wheel of V-1. Officer Oder stated rescue personnel had to pry the driver's door open and cut Mr. Franke's seatbelt to remove him from the vehicle. As Mr. Franke was being removed from V-1, Officer Oder detected the odor of an alcoholic beverage coming from his breath as he spoke and his eyes were blood shot and watery." (page 11 of the report dated May 13, 2013)

21. That pursuant to the CAD reports provided in this case by the State Attorney, Officer Oder arrived on scene approximately six minutes after Jacksonville Fire Rescue arrived and departed the scene approximately six minutes before Corporal Bennett arrived on scene.
22. The timing of Officer Oder's arrival and departure of this scene is not consistent with either Officer Oder's testimony or Corporal Bennett's Traffic Homicide Investigation.



23. During a deposition of Officer Torin Dudley of the Jacksonville Sheriff's Office it was disclosed that Officer Carl Oder "was familiar with one of the girls in the truck." (Deposition conducted on December 14, 2014 page 22 line 20)
24. At a subsequent deposition in December 2014 of Officer Oder he disclosed that during his "off duty" work at Glen Kernan Country Club he had been introduced to the deceased Dara Kusiv by her brother Stephan Kusiv who was also employed at the country club. Officer Oder also testified that while he only met her "once or twice" prior to the accident he recognized Dara Kusive while on scene the night of the accident based on his independent recollection of her likeness.
25. That at no point on January 1, 2013 prior to the legal blood draw did Officer Oder feel it was necessary to disclose to anyone involved in this investigation that he knew Dara Kusiv especially considering he was used as the "wheel" witness in this case to find probable cause to conduct the legal blood draw.
26. That based on the probable cause that Trooper Quade relied on at the time the legal blood draw was conducted it appears this probable cause was lacking and therefore the legal blood draw in this case should be suppressed.

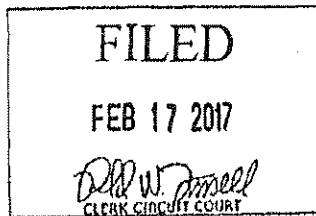
WHEREFORE, the Defendant, Sean Franke respectfully requests that this Court GRANT his Motion to Suppress the Results of Testing Conducted on Blood Drawn From the Defendant in the absence of evidence showing the existence of qualified probable cause, and all other relief deemed just and proper by this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document has been furnished via the Florida Courts e-Filing Portal to: R. Lee Smith, Assistant State Attorney on this 8 day of May 2015.



Harvey V. Cohen  
Florida Bar Number: 161020  
Cohen Battisti & Grossman  
Attorney for Defendant  
1211 Orange Avenue, Suite 200  
Winter Park, Florida 32789  
Phone : (407) 478-4878  
Fax : (407) 478-0204  
Primary: hcohen@cohenbattisti.com



IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NUMBER: 16-2013-CF-005674-AXXX-MA  
DIVISION: CR-E

STATE OF FLORIDA

vs.

SEAN FREDERIK FRANKE, DEFENDANT

- ☐ Probation Violator  
☐ Community Control Violator  
☐ Retrial  
☐ Resentence

**CORRECTED JUDGMENT**

The defendant, SEAN FREDERIK FRANKE, being personally before this Court, represented by

K. Proulx-Riel, the attorney of record, and the State being represented by  
J. Kalinowski, and having:

- ☐ been tried and found guilty by jury/by court of the following crime(s)  
☒ entered a plea of guilty to the following crime(s)  
☐ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree Of Crime
1	Driving under the influence manslaughter	316.193(1) 316.193(3)	F2 3
2-3	Driving under the influence with serious bodily injury	316.193(1) 316.193(3)(a)(b)(c)2	F3 2

☒ and no cause being shown why the defendant should not be adjudicated guilty; IT IS ORDERED that the defendant is hereby ADJUDICATED GUILTY of the above crime(s).











☐ being a qualified offender pursuant to F.S. 943.325, the defendant shall be required to submit a DNA sample as required by law.

☐ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

Re-Record to show correct date on last page SR 4-10-17

STATE OF FLORIDA  
vs.  
SEAN FREDERIK FRANKE, DEFENDANT

CASE NUMBER: 16-2013-CF-005674-AXXX-MA

FINGERPRINTS OF DEFENDANT				
1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: Name: PETER L. P. #15593 Title: SALIFF

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, SEAN FREDERIK FRANKE, and that they were placed thereon by the defendant in my presence in open court on this date.

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this 2/17 day of 2017.

  
Judge

Page 2 of 8  
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STATE OF FLORIDA

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

VS.

SEAN FREDERIK FRANKE, DEFENDANT

CASE NUMBER: 16-2013-CF-005674-AXXX-MA  
DIVISION: CR-E**COURT ORDERED COSTS/FINES/FEES**

The defendant is hereby ordered to pay the following sums if checked:

- ☒ A sum of \$3.00 as a court cost pursuant to section 938.01, Florida Statutes, (Additional Court Cost Clearing Trust Fund).
- ☒ A sum of \$50.00 pursuant to section 938.03, Florida Statutes, (Crimes Compensation Trust Fund).
- ☒ A sum of \$225.00 pursuant to section 938.05, Florida Statutes, (Local Government Criminal Justice Trust Fund).
- ☒ A sum of \$3.00 pursuant to section 938.19, Florida Statutes, and section 634.108, Ordinance Code, (Assessment of Additional Court Costs-Duval County Teen Court Trust Fund).
- ☒ A sum of \$65.00 pursuant to section 939.185, Florida Statutes, and section 111.385, Ordinance Code, (Assessment of Additional Court Costs to be used for innovations, legal aid, law library, teen court programs).
- ☐ A sum of \$100.00 pursuant to section 938.055, Florida Statutes, (FDLE Operating Trust Fund).
- ☐ A sum of \$100.00 pursuant to section 938.27(1), Florida Statutes, (Sheriff's Office Investigative Cost).
- ☐ A sum of \$ \_\_\_\_\_ pursuant to section 938.27(1), Florida Statutes, (Prosecution Investigative Cost).
- ☒ A sum of \$100.00 pursuant to section 938.27(8), Florida Statutes, (Cost of Prosecution).
- ☒ A sum of \$20.00 pursuant to section 938.06, Florida Statutes, (Assessment of Additional Court Costs for Crime Stoppers Trust Fund).
- ☒ A sum of \$ \_\_\_\_\_ pursuant to section 938.29, Florida Statutes, (Court Appointed Counsel Fees).
- ☐ A sum of \$ \_\_\_\_\_ pursuant to section 27.52, Florida Statutes, (Application for Court Appointed Counsel Fees).
- ☐ A sum of \$151.00 pursuant to section 938.10, Florida Statutes, (Crimes Against Minors).
- ☐ A sum of \$201.00 pursuant to section 938.08, Florida Statutes, (Funding Programs in Domestic Violence).
- ☐ A sum of \$151.00 pursuant to section 938.085, Florida Statutes, (Rape Crisis Trust Fund).
- ☒ A sum of \$50.00 pursuant to section 775.083(2), Florida Statutes, (Cost).
- ☐ A fine in the sum of \$ \_\_\_\_\_ pursuant to section 775.0835, Florida Statutes, (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed. Fines imposed as a part of a sentence to section 775.083, Florida Statutes, are to be recorded on the sentence page(s)).
- ☐ A sum of \$ \_\_\_\_\_ pursuant to section 938.04, Florida Statutes, (additional cost 5% of fine).
- ☒ A sum of \$2.00 as a court cost pursuant to section 938.15, Florida Statutes, (Criminal Justice Education by Municipalities and Counties).
- ☒ A sum of \$15.00 pursuant to section 938.13, Florida Statutes, (Misd. convictions involving drugs or alcohol).
- ☒ A sum of \$135.00 pursuant to section 938.07, Florida Statutes, (EMS - DUI/BUI cases).
- ☒ A sum of \$30.00 pursuant to section 318.18(13), Florida Statutes, and section 634.102, Ordinance Code, (CHT - State Court Facilities).
- ☒ A sum of \$3.00 pursuant to section 318.18(17), Florida Statutes, (State Radio System (SRS)).
- ☐ A sum of \$ \_\_\_\_\_ for the cost of collecting the DNA sample required by section 943.325, Florida Statutes.
- ☐ Restitution in accordance with attached order.
- ☐ Other \_\_\_\_\_

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this \_\_\_\_\_ day of

20 \_\_\_\_\_

Page

3 of 8

Judge

SEAN FREDERIK FRANKE, DEFENDANT

CASE NUMBER: 16-2013-CF-005674-AXXX-MA

OBTS # 1602275397

## SENTENCE

(As to Count (s) 1)

K. Prbulix-Rtd The defendant, being personally before this court, accompanied by the defendant's attorney of record and the adjudication/withhold having been determined, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown:

- ☒ and the court having on 9-20-16 deferred imposition of sentence until this date.
- ☐ and the court having previously entered a judgment in this case on \_\_\_\_\_ now resents the defendant.
- ☐ and the court having placed the defendant on probation/community control, and having subsequently revoked the defendant's probation/community control;

It is The Sentence Of The Court That (check all that are applicable; unmarked sections are inapplicable):

- ☐ The defendant pay a fine of \$ \_\_\_\_\_, pursuant to section 775.083, Florida Statutes plus \$ \_\_\_\_\_ at the 5% surcharge required by section 938.04, Florida Statutes.
- ☒ The defendant is hereby committed to the custody of the Department of Corrections.
- ☐ The defendant is hereby committed to the custody of the Sheriff of Duval County, Florida.
- ☐ The defendant is sentenced as a Youthful Offender in accordance with section 958.04, Florida Statutes.

To be Imprisoned (check one; unmarked sections are inapplicable):

- ☐ For a term of natural life.
- ☒ For a term of 15 years.
- ☐ Said SENTENCE SUSPENDED for a period of \_\_\_\_\_ subject to conditions set forth in this order.
- ☐ Youthful Offender Sentence:  
Pursuant to the Florida Youthful Offender Act, the defendant shall be imprisoned for a period of \_\_\_\_\_, of which \_\_\_\_\_ shall be served by imprisonment followed by \_\_\_\_\_ in a Community Control Program according to the terms and conditions set forth in a separate order.

☐ Split Sentence (complete the appropriate paragraph):

- ☐ Followed by a period of \_\_\_\_\_ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order.
- ☐ However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of \_\_\_\_\_ under the supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Imposition of Sentence Stayed and Withheld (check one; unmarked sections are inapplicable):

- ☐ The court hereby stays and withholds the imposition of sentence and places the defendant on:
- ☐ Probation/community control for a period of \_\_\_\_\_ under the supervision of the Department of Corrections with a special condition that the defendant serve \_\_\_\_\_ in Duval County Jail, with credit for \_\_\_\_\_ days.
- ☐ Unsupervised probation for a period of \_\_\_\_\_ with the special condition that the defendant serve \_\_\_\_\_ days in Duval County Jail, with credit for \_\_\_\_\_ days. Unsupervised probation will terminate upon completion of special condition.

(All other general/special conditions of probation/community control shall be set forth in a separate order.)

SEAN FREDERIK FRANKE, DEFENDANT

CASE NUMBER: 16-2013-CF-005674-AXXX-MA

OBTS # 1602275397

**SENTENCE**(As to Count (s) 2-3)

The defendant, 16 Proulx-Rtd, being personally before this court, accompanied by the defendant's attorney of record, and the adjudication/withhold having been determined, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown:

- ☒ and the court having on 9-20-16 deferred imposition of sentence until this date.
- ☐ and the court having previously entered a judgment in this case on \_\_\_\_\_ now resents the defendant.
- ☐ and the court having placed the defendant on probation/community control, and having subsequently revoked the defendant's probation/community control;

It is The Sentence Of The Court That (check all that are applicable; unmarked sections are inapplicable):

- ☒ The defendant pay a fine of \$ 1660, pursuant to section 775.083, Florida Statutes plus \$ 50 at the 5% surcharge required by section 938.04, Florida Statutes.
- ☒ The defendant is hereby committed to the custody of the Department of Corrections.
- ☐ The defendant is hereby committed to the custody of the Sheriff of Duval County, Florida.
- ☐ The defendant is sentenced as a Youthful Offender in accordance with section 958.04, Florida Statutes.

To be Imprisoned (check one; unmarked sections are inapplicable):

- ☐ For a term of natural life.
- ☒ For a term of 3 Years.
- ☐ Said SENTENCE SUSPENDED for a period of \_\_\_\_\_ subject to conditions set forth in this order.
- ☐ Youthful Offender Sentence:  
Pursuant to the Florida Youthful Offender Act, the defendant shall be imprisoned for a period of \_\_\_\_\_, of which \_\_\_\_\_ shall be served by imprisonment followed by \_\_\_\_\_ in a Community Control Program according to the terms and conditions set forth in a separate order.
- ☐ Split Sentence (complete the appropriate paragraph):
- ☐ Followed by a period of \_\_\_\_\_ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order.
- ☐ However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of \_\_\_\_\_ under the supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Imposition of Sentence Stayed and Withheld (check one; unmarked sections are inapplicable):

- ☐ The court hereby stays and withholds the imposition of sentence and places the defendant on:
- ☐ Probation/community control for a period of \_\_\_\_\_ under the supervision of the Department of Corrections with a special condition that the defendant serve \_\_\_\_\_ in Duval County Jail, with credit for \_\_\_\_\_ days.
- ☐ Unsupervised probation for a period of \_\_\_\_\_ with the special condition that the defendant serve \_\_\_\_\_ days in Duval County Jail, with credit for \_\_\_\_\_ days. Unsupervised probation will terminate upon completion of special condition.

(All other general/special conditions of probation/community control shall be set forth in a separate order.)

SEAN FREDERIK FRANKE, DEFENDANT

CASE NUMBER: 16-2013-CF-005674-AXXX-MA  
OBTS # 1602275397**OTHER PROVISIONS**(As to Count(s) 1)**Current Jail  
Credit Time:**☒ It is further ordered that the defendant shall be allowed a total of 161 days as credit for time incarcerated on this case / count before imposition of this sentence.**Credit for Time Served  
on Violation of Probation /  
Community Control:**  
(check one)☐ It is further ordered that the defendant shall be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on count(s) \_\_\_\_\_. (Offenses committed on or after January 1, 1994.)☐ It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on count(s) \_\_\_\_\_. (Offenses committed before October 1, 1989.)☐ It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) \_\_\_\_\_. (Offenses committed between October 1, 1989, and December 31, 1993.)**Prior Prison Credit:**☐ It is further ordered that the defendant shall be allowed \_\_\_\_\_ days time served between date of the original sentence being vacated to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) \_\_\_\_\_.**Forfeiture of Prior  
Gain/Good Time:**  
(check one)☐ The court deems the unforfeited gain time previously awarded on the above count(s) forfeited under section 948.06(7)

OR

☐ The court allows unforfeited gain time previously awarded on the above count(s). (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1))**Consecutive/  
Concurrent As to  
Other Counts:**  
(if Applicable)☒ It is further ordered that the sentence imposed for count(s) 2-3 shall run (check one)☒ consecutive to ☒ concurrent with the sentence set forth in count 1 of this case.**Consecutive/  
Concurrent As To  
Other Sentences:**  
(if Applicable)It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) ☐ consecutive to ☐ concurrent with the following: (check one)☐ any active sentence being served.  
☐ specific sentences: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**Retention of Jurisdiction:**☐ The court retains jurisdiction over the defendant pursuant to section 947.16(4), Florida Statutes.Page 46 of 8

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SEAN FREDERIK FRANKE, DEFENDANT

CASE NUMBER: 16-2013-CF-005674-AXXX-MA  
OBTS # \_\_\_\_\_**OTHER PROVISIONS**(As to Count(s) 2-3)**Current Jail****Credit Time:**☒ It is further ordered that the defendant shall be allowed a total of 0 days as credit for time incarcerated on this case / count before imposition of this sentence.**Credit for Time Served  
on Violation of Probation /  
Community Control:**  
(check one)☐ It is further ordered that the defendant shall be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on count(s) \_\_\_\_\_. (Offenses committed on or after January 1, 1994.)☐ It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on count(s) \_\_\_\_\_. (Offenses committed before October 1, 1989.)☐ It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) \_\_\_\_\_. (Offenses committed between October 1, 1989, and December 31, 1993.)**Prior Prison Credit:**☐ It is further ordered that the defendant shall be allowed \_\_\_\_\_ days time served between date of the original sentence being vacated to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) \_\_\_\_\_.**Forfeiture of Prior  
Gain/Good Time:**  
(check one)☐ The court deems the unforfeited gain time previously awarded on the above count(s) forfeited under section 948.06(7)

OR

☐ The court allows unforfeited gain time previously awarded on the above count(s). (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1))**Consecutive/  
Concurrent As to  
Other Counts:**  
(if Applicable)☒ It is further ordered that the sentence imposed for count(s) 3 shall run (check one)  
☐ consecutive to ☒ concurrent with the sentence set forth in count 2 of this case.**Consecutive/  
Concurrent As To  
Other Sentences:**  
(if Applicable)It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) ☐ consecutive to ☐ concurrent with the following: (check one)☐ any active sentence being served.☐ specific sentences: \_\_\_\_\_**Retention of Jurisdiction:**☐ The court retains jurisdiction over the defendant pursuant to section 947.16(4), Florida Statutes.Page 7 of 8

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1 IN THE CIRCUIT COURT OF  
2 THE FOURTH JUDICIAL CIRCUIT, IN  
AND FOR DUVAL COUNTY, FLORIDA

3 CASE NO.: 16-2013-CF-005674

4 DIVISION: CR-E

5

6 STATE OF FLORIDA

7 -vs-

8 SEAN FREDERIK FRANKE,

9 Defendant.

10

11 STATE OF FLORIDA )

12 COUNTY OF DUVAL )

13

14 Proceedings before the Honorable Tatiana Salvador,  
15 Judge of the Circuit Court, Division CR-E, as cause in this  
16 matter came to be heard on the 12th of May, 2015, at 1:30  
17 p.m., Duval County Courthouse, 501 West Adams Street,  
18 Jacksonville, Florida 32202, before Angela Sass, Florida  
19 Professional Reporter and Notary Public in and for the State  
20 of Florida at Large.

21

22

23

24 OFFICIAL REPORTERS, INC.  
421 WEST CHURCH STREET, SUITE 430  
JACKSONVILLE, FL 32202  
25 (904) 358-2090

## 1    APPEARANCES:

2            LEE SMITH, Esquire  
3            Assistant State Attorney  
4            311 West Monroe Street  
5            Jacksonville, Florida 32202

6            and

7            PATRICIA DODSON, Esquire  
8            Assistant State Attorney  
9            311 West Monroe Street  
10           Jacksonville, Florida 32202

11           Appearing on behalf of the State of Florida

12           DOUGLAS DORNER, Esquire  
13           Cohen Battisti  
14           1211 Orange Avenue, Suite 200  
15           Winter Park, Florida 32789

16           and

17           SCOTT MILLARD, Esquire  
18           Cohen Battisti  
19           1211 Orange Avenue, Suite 200  
20           Winter Park, Florida 32789

21           Appearing on behalf of the Defendant

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1 MR. SMITH: Thank you, Your Honor.

2 AUSTIN BENNETT,

3 having been produced and first duly sworn as a witness, was  
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SMITH:

7 Q Good afternoon, sir.

8 Could you please introduce yourself to the Court?

9 A Corporal Austin Bennett, Florida Highway Patrol,  
10 Jacksonville, Florida.

11 Q Corporal, how long have you been working with the  
12 Florida Highway Patrol?

13 A Approximately 13 years.

14 Q And what is your current assignment?

15 A Traffic homicide investigator.

16 Q How long have you been assigned to be a traffic  
17 homicide investigator?

18 A As of January 1st, 2010.

19 Q And describe briefly for the Court your duties and  
20 responsibilities as a traffic homicide investigator.

21 A I collect evidence on scene, record the  
22 measurements, physical evidence on the roadway, collect  
23 statements from witnesses and drivers, conduct a thorough  
24 investigation of any possible fatality -- or a fatality, and  
25 come to a conclusion in findings and write a report based on

1 that.

2 Q Okay. And we're kind of short with time, so I'm  
3 going to try to expedite some of your testimony here today.

4 Do you have kind of an estimation as to the number  
5 of traffic crash investigations -- homicide investigations  
6 you've conducted over the course of your career as a traffic  
7 homicide investigator?

8 A As my career, anywhere from 60 to 80. I've also  
9 conducted other investigations for Corporal (indiscernible).

10 Q I want to direct your attention to the date of  
11 January 1st, 2013. Were you assigned to -- did you respond  
12 to the scene of a crash that occurred near the intersection  
13 of Beach and Kernan boulevards?

14 A Yes.

15 Q And that crash actually happened on Beach  
16 Boulevard; is that correct?

17 A Yes.

18 Q Okay. How is it that you became the person who  
19 was assigned to respond to that particular crash?

20 A I was the on-call traffic homicide investigator  
21 that night. The on-call hours started from ten and to six in  
22 the morning.

23 Q Okay. Do you remember that night?

24 A Yes, sir.

25 Q It was New Year's Eve, correct?



1           A       Yes, sir.

2           Q       Describe for the Court a little bit about how busy  
3 you guys were that night.

4           A       There were numerous crashes -- traffic crashes  
5 throughout the evening. I was called to a confirmed fatality  
6 on Jammes and San Juan. Prior to this crash going out, I had  
7 just wrapped up that one. It was right around New Year's  
8 Eve -- right around New Year's.

9           Q       And that was also a traffic homicide  
10 investigation?

11          A       That was a traffic homicide. Yes, sir.

12          Q       And you were just coming off of that one when you  
13 got the call for this one?

14          A       I was putting my paperwork into the computer,  
15 listening to our fatality report and his response that we had  
16 for our investigations, and putting it in for -- our  
17 information that we needed for our dispatch. At the time I  
18 was dealing with that, I was called for this traffic  
19 homicide.

20          Q       And, actually, in fact, there was another traffic  
21 homicide that occurred in between those two; isn't that  
22 correct?

23          A       There was another one that was at Atlantic and  
24 Kernan. That was another fatality.

25          Q       And was that also -- that particular intersection

1 and that particular roadway, that's also the responsibility  
2 of the Florida Highway Patrol, correct?

3 A Yes, sir.

4 Q Did the Jacksonville Sheriff's Office actually  
5 take that particular call out because you were overloaded  
6 with your other crashes that you were investigating?

7 A Per a request from me. I was already -- and had  
8 one that I worked and on the way to the one on Beach and  
9 Kernan -- it was closer for me -- I arrived on that -- at  
10 Beach Boulevard before I arrived on that. I asked dispatch  
11 to make contact with the sergeant for traffic homicide for  
12 JSO to see if they can take that one at Atlantic and Kernan  
13 for us.

14 Q Do you generally know how it's kind of broken  
15 down, who responds where? I know they used to have a map.

16 A There's a list given. It used to be, I believe,  
17 everything inside of the 295 belt loop, but then now we have  
18 state roads, so all the state roads on certain areas are  
19 Florida Highway Patrol. Local roads are taken to JSO. All  
20 the interstates we cover.

21 They are trying to -- they're in the process now  
22 of trying to rework that coverage list.

23 Q Okay. Let's get to this particular scene.

24 A Yes, sir.

25 Q Do you know approximately what time you arrived at

1 the scene?

2 A According to the CAD, I believe it was 1:29 a.m.

3 Q Okay. By the time you arrived, had the occupants  
4 been removed from the vehicle and left the scene?

5 A Yes, sir.

6 Q Is that fairly common, for you to get to a scene  
7 after the occupants have already left or been removed?

8 A Yes, sir.

9 Q Unless there's a deceased person, correct?

10 A Unless the fatality is still in the vehicle. Yes,  
11 sir.

12 Q Okay. So it's pretty common that you've got to  
13 take testimony from other witnesses in order to figure out,  
14 kind of where people were, et cetera, inside the vehicle?

15 A Yes, sir.

16 Q Okay. Based on your observations of the scene,  
17 generally, can you tell the Court a little bit about the  
18 dynamics of this crash? And what I mean by that is, just  
19 kind of -- did you observe tire marks that led up to where  
20 the -- the final resting of the vehicle?

21 A I observed tire marks and scuff marks on the curb,  
22 also yellow marks leading up to another impact with the curb  
23 before final impact with the pole, where the vehicle came to  
24 final rest.

25 Q And were you able to determine whether or not

1 those tire marks matched or lined up with tire marks of the  
2 vehicle that you saw that had crashed?

3 A Yes, sir. The tire marks led right to the back  
4 tires.

5 Q Could -- now, obviously, at this point in time,  
6 you hadn't been able to speak to all of the witnesses or  
7 anyone else at that point, correct, when you first arrived on  
8 the scene?

9 A When I first arrived on the scene, I assessed the  
10 scene to see what I have. I usually do a quick walk-through.

11 MR. SMITH: Okay. May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MR. SMITH:

14 Q I want to show you what's been previously received  
15 into evidence as State's Exhibit 6. Would you take a look at  
16 that item?

17 A Yes, sir.

18 Q And, generally, does State's Exhibit 6 show you  
19 the path of the vehicle and where its final rest took place?

20 A Yes, sir.

21 Q And were you able to make some determinations --  
22 and I don't want to get into specifics -- but generally,  
23 about the way that that vehicle ended up and how that crash  
24 occurred?

25 A For whatever reason, the driver of the vehicle

1 lost control, and the vehicle -- that's when he started  
2 rotating, traveling off of the roadway at a right angle going  
3 north on a westbound roadway. He hit a curb and then the  
4 pole.

5 Q Okay. This photograph actually doesn't even show  
6 that the tire marks actually are further back down the road;  
7 is that correct?

8 A Yes, sir.

9 Q This is what you would define as a single car  
10 crash, correct?

11 A Yes, sir.

12 Q There was no other vehicles involved, there was no  
13 other vehicles that you saw at the scene?

14 A I never saw any other vehicles. No, sir.

15 Q Did you ever -- throughout the course of your  
16 investigation, did you ever determine whether or not there  
17 was another vehicle involved in this crash?

18 A No, sir.

19 Q I'm going to show you what's been previously  
20 received into evidence as State's Exhibit 7. Can you take a  
21 look at that item?

22 A Yes.

23 Q And what item -- what part of the truck is that  
24 that we are looking at in that particular photograph?

25 A Front left headlight, corner panel.

1 Q And is that the area of the impact that the  
2 vehicle had with the pole in question?

3 A It was the front left tire and the quarter panel  
4 leading into the roof line and windshield.

5 Q Okay. When you looked at that damage -- again,  
6 I'm not going to get into a lot of specifics at this point.  
7 But when you observed all the damage and you observed the  
8 dynamics of the crash, did you believe that speed was a  
9 factor in this case?

10 A Yes, sir, trying to negotiate the ramp.

11 Q Did you believe that this vehicle was traveling at  
12 an excessive speed in order to have created that much crush  
13 damage and everything else that you observed to the vehicle  
14 itself?

15 A Leading into the impact, I don't believe braking  
16 was involved whatsoever. So speed was a factor in this  
17 crash.

18 Q Speed was a factor in this crash?

19 A Yes, sir.

20 Q Okay. After you assessed the scene, did you look,  
21 kind of, in the driver's compartment area of the vehicle?

22 A Yes, sir.

23 MR. SMITH: Okay. May I approach, Your Honor?

24 THE COURT: Yes.

25 BY MR. SMITH:

1           Q       I'm going to show you what's been previously  
2       received into evidence as State's Exhibit 3. Do you  
3       recognize that photograph?

4           A       Yes, sir. I do.

5           Q       And does that photograph depict how you observed  
6       it when you arrived on the scene?

7           A       Yes, sir.

8           Q       And we are talking about driver's side door,  
9       correct?

10          A       Yes, sir.

11          Q       That door is open and ajar at this point, correct?

12          A       At this point, yes, sir.

13          Q       Now, there's an item that's kind of dangling,  
14       hanging out of the -- kind of the back right quarter of the  
15       door. Do you see that item that I'm referring to?

16          A       Yes, sir.

17          Q       And I'm referring to this. Do you know what that  
18       item is?

19          A       That's a seat belt webbing.

20          Q       Okay. That's the webbing of the seat belt.

21                 Were you able to determine how that seat belt was  
22       still attached to the vehicle?

23          A       That B-pillar was locked and the seat belt was cut  
24       on the top portion and attached on the bottom.

25          Q       Okay. First of all, explain what you mean by the

1 "B-pillar was locked." What does that mean?

2 A The mechanism that holds the seat belt -- the  
3 actual mechanism locked up, causing tension onto the bottom  
4 part of the seat belt, the B-pillar, locking the whole seat  
5 belt all the way through in a full extended position.

6 It was cut and also went through the loop that  
7 actually latches to the right side of your hip and goes over  
8 your waist and locks down onto the bottom of the floorboard  
9 by the B-pillar.

10 Q Was it apparent to you that this seat belt had  
11 been cut?

12 A Yes, based off the marks on the webbing.

13 Q Okay. And you said something about the seat belt  
14 locking -- the mechanism itself locking. Describe for the  
15 Court how that occurs, through your training and experience.

16 A Usually with any contortions of the vehicle, the  
17 body, it actually locks the mechanism in one place. And  
18 sometimes if you have a frontal impact or side impact, the  
19 mechanism will hit and let go, allowing the person to get out  
20 of the car.

21 If it has a severe impact towards the A, B, or C  
22 pillars, it will actually -- the mechanism will bind. The  
23 mechanism will lock that webbing up all the way through and  
24 you have a -- usually your seat belt that is not being worn  
25 is locked onto that driver's -- or passenger's side B-pillar.



1           Q     Okay. Just so we are clear. So if the seat belt  
2     was being worn and in an outright position, in other words,  
3     it's been pulled away from the wall --

4           A     Fully extended.

5           Q     -- fully extended -- okay, we'll call it that.  
6     If a person is involved in a crash and the person is wearing  
7     that seat belt, that seat belt will lock in that position; is  
8     that accurate?

9           A     Yeah, if there is enough tension on it or  
10    contortion on the body.

11          Q     Okay. And once that happens, the seat belt won't  
12    retract back into the webbing -- or back up into the --

13          A     It won't retract. No, sir.

14          Q     And in this particular vehicle was this seat  
15    belt -- this particular seat belt -- the top portion that was  
16    still there, was that in a locked position?

17          A     Yes, sir.

18          Q     It would not retract, it would not pull out,  
19    correct?

20          A     No, sir. It would not retract.

21          Q     Okay. And did you observe the latch -- and I  
22    don't know what the terminology is -- that goes actually into  
23    the buckle itself, that the seat belt is threaded through?

24          A     The D-ring, yes, sir.

25          Q     The D-ring. Thank you.

1                   The D-ring that was plugged into the latch  
2   itself --

3           A     Yes, sir.

4           Q     -- did you observe that D-ring?

5           A     It was still in the buckle itself.

6           Q     It was still located inside the buckle?

7           A     Yes, sir.

8           Q     But the seat belt had become dethreaded out of the  
9   buckle itself, correct?

10          A     It was pulled through the D-ring. Yes, sir.

11          Q     Okay. Did you also happen to check the passenger  
12   side seat belt in this case?

13          A     It was still locked in an unused position on the  
14   B-pillar on the passenger side.

15          Q     So when you say it was locked, you were unable to  
16   pull it or move it because it had also locked in that  
17   position because it was involved in a crash, correct?

18          A     Yes.

19          Q     Are you familiar with this particular type of  
20   vehicle?

21          A     Yes, sir.

22          Q     And explain to the Court about how those locking  
23   mechanisms work on this particular type of vehicle.

24          A     As in, for just a seat belt?

25          Q     Right. As in the locking mechanisms themselves

1 and what happens when a vehicle is involved in a high-impact  
2 crash.

3 A They will lock onto the B-pillar

4 Q So were you able to determine --

5 THE COURT REPORTER: I couldn't understand him.

6 MR. SMITH: Okay. You need him to --

7 I need you to speak up and slow down a little bit  
8 for the court reporter.

9 THE WITNESS: Yes, sir.

10 THE COURT: You probably need to slow down too.

11 MR. SMITH: And I need to slow down too.

12 I'm just trying to hurry, Your Honor. I  
13 apologize.

14 BY MR. SMITH:

15 Q So you were able to determine -- did you  
16 determine, based upon the positions of the seat belts, that  
17 the passenger's side seat belt had not been worn when this  
18 crash occurred?

19 A It was unused. Yes, sir.

20 Q And the driver's side seat belt?

21 A It was in use.

22 Q Did you also speak to some of the witnesses who  
23 were on the scene when you arrived?

24 A I spoke to Devin Reddick, as I was coming up, and  
25 I briefed information from him. I spoke to the -- Officer

1 Carl Oder while he was on the scene as well.

2 THE COURT: I'm sorry, officer who?

3 THE WITNESS: Carl Oder.

4 THE COURT: Okay.

5 THE WITNESS: As he was on scene.

6 I got a brief description as I was also walking  
7 through the area looking at the evidence, looking at the  
8 physical evidence left in the road, damage to the  
9 vehicle, pretty much gathering what I had for my  
10 preliminary investigation.

11 BY MR. SMITH:

12 Q Okay. Based on the conversations with Devin  
13 Reddick and Officer Oder, were you able to determine whether  
14 someone from the Jacksonville Fire Rescue Department had  
15 actually cut the seat belt when they arrived?

16 A According to Mr. Reddick and Officer Oder, both  
17 described it as JFRD cut the seat belt, as an occupant --  
18 trying to get him out of the vehicle.

19 Q And you said, "trying to get him." Did they  
20 identify to you that the person who they were trying to get  
21 out was a male passenger?

22 A No, sir.

23 Q And based upon your personal observations at the  
24 scene, were their statements that they made to you consistent  
25 with the physical observations of the seat belt having been

1 dethreaded out of the D-ring and laying outside of the  
2 vehicle?

3 A Yes, sir. If somebody was laying on the seat belt  
4 when they cut it, it would be at a full extended position.  
5 After you cut it, they'd have to unthread it to pull him out,  
6 or else pull him out and then pull the seat belt with him.

7 Q Did you also, based upon your conversations with  
8 both Devin Reddick and Carl Oder at the scene, determine  
9 whether or not alcohol may have played a factor in this  
10 crash?

11 A Officer Oder observed an odor of an alcoholic  
12 beverage inside of the vehicle. And as he was examining --  
13 or Mr. Franke was exiting the vehicle, fire rescue observed  
14 Mr. Franke's bloodshot and glassy eyes.

15 Q Okay. And did Carl Oder describe for you that he  
16 had an odor of alcohol on his breath?

17 A I believe he -- let me look back at my notes.

18 Q If you need to refresh your recollection, take  
19 your time.

20 MR. SMITH: Judge, do you have the witness  
21 statements?

22 THE COURT: I do.

23 Here you go.

24 THE WITNESS: Officer Oder did say, "I observed an  
25 odor of an alcoholic beverage coming from his breath as

1           he spoke."

2       BY MR. SMITH:

3           Q       Okay. And did you also determine -- based upon  
4       the statements from Devin Reddick and Officer Oder as to the  
5       identity -- or where the individual was positioned in the  
6       driver's side area?

7           A       He was positioned behind the steering wheel with  
8       his legs pinned underneath the dashboard, under the steering  
9       wheel, leaning out the driver's door.

10          Q       Okay. And did you obtain written witness  
11       statements from both of those witnesses at the scene that  
12       night?

13          A       Yes, I did.

14          Q       I'm going to show you what's been previously  
15       received in evidence as State's 1 and 10. One being a  
16       statement with the name Devin Reddick at the top of it, do  
17       you recognize that statement?

18          A       Yes, sir.

19          Q       Is that the statement that Devin Reddick prepared  
20       for you at the scene that night?

21          A       Yes, sir. It was.

22          Q       And is that statement consistent with what he told  
23       you at the scene that night?

24          A       Yes, sir.

25          Q       And referring to State's 10, at the top of it it

1 has the name Carl Oder. Is that also a statement that Carl  
2 Oder -- written statement that he provided to you at the  
3 scene that night?

4 A Yes, sir. It was.

5 Q Did you also make any observations about any  
6 alcoholic beverages that were at the scene as you inspected  
7 the vehicle?

8 A As I was inspecting the vehicle I found a bottom  
9 of Sangria in the back of the bed. It appeared to have a  
10 little bit of fluid left in it.

11 MR. SMITH: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MS. SMITH:

14 Q I'm going to show you what's been previously  
15 received as State's Exhibit 5. Do you recognize that?

16 A Yes, sir.

17 Q And is that a photograph of the bottle of wine, or  
18 Sangria, that you observed in the bed of the pickup truck?

19 A Yes, it is.

20 Q Based upon that information, as well as your  
21 observations of -- well, let me ask you this. Were you able  
22 to identify -- were you able to identify the individual who  
23 was described to you as seated in the driver's seat with the  
24 seat belt cut? Were you able to identify his name?

25 A I'm not sure who came up with the name at the

1 scene.

2 Q Were you able to identify his name?

3 A His name was Sean Franke.

4 Q Okay. And based upon the information that you had  
5 at that time, did you send another trooper, who was also  
6 helping you at the scene, to the hospital to make contact  
7 with an individual described to -- identified to you as Sean  
8 Franke?

9 A Yes, I did.

10 Q Okay. Who was the individual that you sent to the  
11 hospital?

12 A Trooper Michael Quade.

13 Q Was Michael Quade with you at the scene? What was  
14 his responsibility at the scene itself?

15 A He is a traffic crash investigator. He is  
16 assigned crash investigation responsibility, come up with  
17 registration for the vehicle, occupants, trying to get as  
18 much information for me as possible before I arrive.

19 Q Okay. And did you and Trooper Quade discuss who  
20 would go to the hospital in order to make contact with the  
21 driver?

22 A Yes. I advised him that he was going to go to the  
23 hospital.

24 Q And based upon -- let me ask you this. Why is it  
25 that you would send Trooper Quade to the hospital as opposed



1 to you going to the hospital yourself?

2 A Based off of I still had to photo the scene,  
3 collect all of my evidence, write down all of my information.  
4 I'm still gathering information regarding the traffic  
5 fatality. I still had a lot of legwork to do that night on  
6 the scene.

7 Q Okay. And do you know whether or not Trooper  
8 Quade then went to the hospital to make contact with Sean  
9 Franke?

10 A He did.

11 Q At some point in time did you have a conversation  
12 with Trooper Quade over your cellular telephone regarding his  
13 observations at the hospital?

14 A Yes, I did.

15 Q And coupled with your personal observations of  
16 the scene, did you believe that you had probable cause to  
17 conduct a blood draw from the person whom you believed to be  
18 the driver of the vehicle?

19 A Yes, I did.

20 Q What were some of the observations that you recall  
21 Trooper Quade making when he made contact when he was at the  
22 hospital?

23 A He advised that he also observed the odor of an  
24 alcoholic beverage coming from Mr. Franke, slurred speech,  
25 his eyes were bloodshot and glassy, and repeated obscenities

1 about the crash.

2 THE COURT: I'm sorry. What was that last part?

3 THE WITNESS: Repeated obscenities about the crash  
4 while in the hospital.

5 THE COURT: Okay.

6 BY MR. SMITH:

7 Q Do you -- let me ask you this. You are familiar  
8 with the process of obtaining a search warrant in Duval  
9 County?

10 A Yes, sir.

11 Q Tell the Court -- now, back on January 1st of  
12 2013, did, kind of, some of the policies and procedures  
13 change after that date?

14 A Yes, it has.

15 Q Okay. Has the -- was the policy in effect at the  
16 time of how you would obtain a warrant -- explain for the  
17 Court what the policy was at the time, as far as what you  
18 would have to do in order to get a search warrant signed by a  
19 judge, et cetera.

20 A Just the time period or...

21 Q Yeah. Generally, what would you have to do?

22 A I would have to take my -- stop what I'm doing on  
23 scene, assess all the information, collect my probable cause,  
24 write the warrant out, leave the scene, locate a judge that's  
25 on call, drive to that residence and have that warrant

1 signed, travel back to the hospital, execute the warrant,  
2 collect the evidence, submit it to evidence, and then drive  
3 back to the scene and continue processing it if I had not  
4 finished.

5 Q Okay. So the scene at that time would of had to  
6 remain closed the entire time, correct?

7 A Yes, sir.

8 Q And were you blocking traffic -- vehicular traffic  
9 at that time?

10 A We were blocking, I believe, two lanes.

11 Q Okay. As far as -- are you familiar with the term  
12 dissipation of alcohol?

13 A Yes.

14 Q And what does it mean? What do I mean when I say  
15 "dissipation of alcohol"?

16 A It's natural that your body burns alcohol. It's  
17 just a process. Your body burns the alcohol through a given  
18 amount of time.

19 Q Okay. And the more time that goes by, the more  
20 your body burns off alcohol, correct?

21 A Yes, sir.

22 Q Okay. And the more time that you have to wait,  
23 that dissipation of alcohol will continue to drop; is that  
24 correct?

25 A Yes, sir.

1           Q       Which will make it more challenging to obtain, as  
2       close as you can, what the individual's blood alcohol level  
3       would have been at the time of the crash; is that correct?

4           A       Yes, sir.

5           Q       Okay. Do you know approximately what time the  
6       blood was drawn in this -- there was a blood draw conducted,  
7       correct?

8           A       Yes, sir.

9           Q       And do you know approximately what time it was  
10      done?

11          A       I'll have to refer to my report.

12                   The blood draw was done at 3:12 a.m.

13          Q       Okay. And what time was the crash in this case?

14          A       I believe the crash went out at 12:46, right  
15      around 12:50 a.m.

16          Q       Okay. And you were aware that there were multiple  
17      occupants of this vehicle, correct?

18          A       Yes, sir.

19          Q       One person was deceased and three others were  
20      transported to the hospital, correct?

21          A       Yes, sir.

22          Q       Did you learn information that each of those  
23      individuals had very serious injuries?

24          A       Mr. Franke had severe leg injuries and torso  
25      injuries, along with Samantha Kasten.

1           Q       And when -- you are familiar with -- obviously  
2       when you respond -- have you responded to hospitals in order  
3       to obtain blood samples from people who you suspect of --

4           A       Yes, I have.

5           Q       -- having been involved in a crash?

6                    You're familiar with how the trauma unit is set up  
7       itself?

8           A       Yes, sir.

9           Q       And based upon your prior experience, do you --  
10       let me ask you this. Is there a concern when you are -- an  
11       individual is at the hospital, that a person may be  
12       inaccessible to highway patrol in order to obtain a blood  
13       sample from them?

14          A       If they have severe injuries and they may get  
15       taken straight to the OR, yes, they're inaccessible.

16          Q       Well, you said, "straight to the OR." Could they  
17       be taken into the OR at any time during their treatment?

18          A       Yes, sir.

19          Q       And if they are taken to the OR, would you agree  
20       with me that at that point you would not have access to them?

21          A       I would not. No, sir.

22          Q       So you would not be able to conduct any type of a  
23       blood draw on a person who's being -- under surgery in the  
24       OR?

25          A       No, sir.

1           Q       Is that part of the factor that goes into the  
2       determination as to whether or not you can wait to go and get  
3       a warrant, if you have the opportunity to take a person's  
4       blood at that time?

5           A       That's one of the factors. Yes, sir. Time is not  
6       on our side at some points.

7           Q       Would you -- how would you categorize this  
8       particular crash in the terms of seriousness?

9           A       Very serious.

10          Q       Based upon all of the factors that we have just  
11       discussed, did you, in fact, tell Trooper Quade to go ahead  
12       and get a forced blood draw?

13          A       Based off of the factors that I observed on scene,  
14       the observations there, and also from what he described at  
15       the hospital, via cell phone, yes, I advised him to go ahead  
16       and get a forced blood draw.

17                 MR. SMITH: Thank you. That's all I have.

18                 THE COURT: Thank you.

19                 Cross.

20                 MR. DORNER: I'll try to be as brief as I can,

21                 Your Honor.

22                                 CROSS-EXAMINATION

23       BY MR. DORNER:

24           Q       Good afternoon.

25                 I am going to ask you a couple of quick questions

1 based on some of the things that you've already elaborated  
2 on.

3 In regards to the seat belt, as we've been talking  
4 about at length today, did you ever -- did you personally  
5 witness the seat belt being cut?

6 A I did not.

7 Q Did you personally witness the seat belt -- any  
8 seat belt ever being unbuckled on Sean Franke?

9 A No, sir.

10 Q Did you personally witness anyone unthread a seat  
11 belt off of Sean Franke's lap?

12 A No, sir.

13 Q Did you take any testimony from any witness that  
14 stated that they unbuckled that seat belt?

15 A Nobody unbuckled the seat belt, from any --

16 Q Did you take any statements from any witnesses  
17 that stated that they unthreaded the seat belt?

18 A No, sir.

19 Q Did you take any statement from anyone that said  
20 that they observed the seat belt -- the lower portion of the  
21 seat belt being removed from Mr. Franke?

22 A No, sir.

23 Q Okay. I'm showing you what's been marked as  
24 State's 4, and I'd ask you to take a look inside of the  
25 vehicle right there. What am I pointing to?

1           A       Buckle.

2           Q       The buckle.

3                   Is the buckle in it?

4           A       It's hard to see with the shadow.

5           Q       Well, would the red be the portion that you have  
6 to depress to take it out?

7           A       The red would be the portion. That portion is  
8 (indiscernible) same kind as the webbing. So you have  
9 (indiscernible) to be able to highlight that upon closer  
10 examination of the photo.

11          Q       Okay. So you can't tell if the buckle is in or  
12 not in the repository in this photo?

13          A       Not in that photo. No, sir.

14          Q       Okay. But a blow-up would give you a better idea?

15          A       If you can blow it up and give a little more  
16 brightness to it, I think you'll see it.

17          Q       Okay. Now, when -- you got on scene at 1:29,  
18 correct?

19          A       Correct, according to the CAD notes. Yes, sir.

20          Q       CAD, as we've discussed previously, it's  
21 utilized -- you kind of give a good baseline representation  
22 of when people get there, when they leave, because things are  
23 chaotic, right?

24          A       Yes, sir.

25          Q       Okay. To the best of your knowledge, it's



1 close -- right around 1:29?

2 A That's ballpark. Yes, sir.

3 Q Okay. How long after you got there did you speak  
4 with Carl Oder?

5 A Right when I arrived on scene.

6 Q Right when you arrived on scene?

7 A I was walking about up to the car.

8 Q Okay. Did Carl Oder advise you that he knew Dara  
9 Kusiv?

10 A No, sir.

11 Q Did he at any time subsequent, in any of your  
12 investigation, advise you that he knew Dara Kusiv?

13 A Not to my knowledge. No, sir.

14 Q Did he advise you that he had some type of  
15 relationship with Dara Kusiv and/or her family?

16 A No, sir.

17 Q Is it standard procedure -- for an investigative  
18 officer or an officer on scene -- if they know one of the  
19 victims, is it standard for them to advise the lead  
20 investigator of that?

21 A I would assume he would.

22 Q You would assume he would?

23 A Yes, sir.

24 Q Is that relevant?

25 A Yes, sir.

1 Q Okay. Why is it relevant?

2 A Any investigation could show bias to a certain  
3 individual.

4 Q Okay. Now, who is responsible -- are you the top  
5 dog, the main person, everything stopped with you on scene?

6 A When I arrive on scene, it's my scene.

7 Q Okay. Who is responsible for media releases?

8 A That would be Sergeant Bryant (phonetic).

9 Q Okay. And who -- is he authorized to just say  
10 anything he wants or does it have to go through you? Who  
11 does it have to go through before --

12 A It's usually a press release sent to Sergeant  
13 Bryant for a review through one of our on-duty sergeants for  
14 the evening -- or for that night.

15 Q Okay. Do you know who was responsible for the  
16 release of information to the media on this night?

17 A I don't know who it went through. It should have  
18 gone through the on-scene supervisor. At that time it was  
19 Sergeant Joel Johnson.

20 Q Okay. So at that time Sergeant Joel Johnson would  
21 have been the one that authorized --

22 A Yes, sir. And then before, to Sergeant Bryant.

23 Q Okay. But would it be safe to say that anything  
24 that was released to the media would have been authorized?

25 A It would need to go through a review. I don't

1 know what the press release said on it. I don't have that  
2 right in front of me.

3 Q Okay. Have you -- have you had the opportunity to  
4 hear any of the press releases from that evening?

5 A From that evening, I've worked numerous times and  
6 I have not looked into that, no.

7 Q Okay. Do you have any information that would lend  
8 you to believe that there were any unauthorized media  
9 releases in regards to this incident?

10 A I would have heard about it, and I've never heard  
11 anything about unauthorized media releases.

12 Q So anything that was released would have been  
13 authorized by FHP?

14 A It would have been approved and released. Yes,  
15 sir.

16 Q Okay. Now, in regards to the Sangria bottle, you  
17 said that you discovered it that evening or that -- who was  
18 it that found it?

19 A It was in the back of the truck. I observed it  
20 there on scene.

21 Q You observed it there?

22 A Yes, sir.

23 Q When was that actually collected into evidence?

24 A I don't have a date on it. It was at the vehicle  
25 impound yard.

1           Q     And that would have been February of 2014? Does  
2     that sound right?

3           A     It sounds about right.

4           Q     So about a year and a month after the incident  
5     this bottle was collected?

6           A     Yes, sir.

7           Q     Okay. And why was it collected by the State  
8     Attorney's Office investigator, Alan Harville.

9           A     It was not. It was collected by me and it was  
10    entered into evidence by me.

11          Q     It was?

12          A     Yes, sir.

13          Q     Are you sure about that, that you entered it into  
14    evidence under your name?

15          A     Yes, sir.

16          Q     It was not entered into evidence under Alan  
17    Harville's name?

18          A     If it was entered in evidence under Alan  
19    Harville -- I'm the one that had my hands on it. I put it  
20    into evidence along with the jacket.

21          Q     All right. So it's your testimony that it would  
22    have never been entered into evidence under Alan Harville?

23          A     It shouldn't have been, but it was.

24          Q     Okay. Well, why was it?

25          A     I don't know why. I entered it into evidence

1 under my name.

2 Q So you -- you entered it into evidence, correct?

3 A Yes, sir.

4 Q So is it your testimony that you entered your own  
5 name incorrectly?

6 A No.

7 I'm trying to find my evidence property sheet that  
8 has my information on it regarding that.

9 Q While you are reviewing that, we had talked about  
10 the media release in regards to this case. I'm showing  
11 you -- actually let me show this to the State first. I  
12 apologize.

13 I'm showing you a Florida Highway Patrol media  
14 release, Troop G form.

15 A Yes, sir.

16 Q Is that the standard form for media releases that  
17 you are aware of?

18 A Yes, sir.

19 Q So this would have been the authorization for  
20 media release?

21 A This would be sent to a supervisor for approval.

22 Q Okay. Can you indicate what it says in regards to  
23 seat belt use?

24 MR. SMITH: Your Honor, I would object to the  
25 hearsay nature of this.

1 THE COURT: Okay.

2 THE WITNESS: Yes. It's --

3 THE COURT: Wait just a moment. I have to rule on  
4 the objection.

5 I'm going to sustain the objection. It's also not  
6 been moved into evidence, so I wouldn't allow it to be  
7 read at this juncture anyway.

8 But based on the hearsay objection, I'm going to  
9 sustain the objection.

10 BY MR. DORNER:

11 Q Now, you stated that you sent Trooper Quade to the  
12 hospital, correct?

13 A Yes, sir.

14 Q Is that correct?

15 A Yes, sir.

16 Q Okay. And do you know what time you sent him?

17 A I wasn't looking at my watch when I sent him, sir.

18 Q Okay. Were you aware that Mr. Franke was Baker  
19 Acted?

20 A No, sir.

21 Q Were you aware that he was Baker Acted at  
22 approximately 2:30 in the morning?

23 A No, sir.

24 Q Did Trooper Quade advise you that Mr. Franke had  
25 been Baker Acted at 2:30 in the morning?

1 A No, sir.

2 Q Okay. Do you recall -- do you have any knowledge  
3 of when the legal blood draw form was filled out?

4 A I believe the form states at 2:50.

5 Q Okay. So that would have been after the Baker  
6 Act?

7 A If he was Baker Acted at 2:30, yes, sir.

8 Q Okay. And --

9 A I don't have the property sheet on me.

10 Q That's okay.

11 If you can just take a look at that real quick.

12 A Yes, sir.

13 Q Can you identify the form that I showed you?

14 A It's a blood collection form.

15 Q Okay. Is that the standard form used for the  
16 collection of any legal blood draw?

17 A Yes, sir.

18 Q Were you involved in the filling out of this form?

19 A I was not.

20 Q But you relayed the information that was  
21 ultimately placed in this form, correct?

22 A I relayed the information to Trooper Quade, and he  
23 filled the form out.

24 Q Okay. Are you aware of what probable cause was  
25 listed on that blood collection form?

1           A       I'll have to look it up.

2           MR. DORNER: Your Honor, I believe the State and  
3 the defense are going to stipulate to the blood  
4 collection form being entered into evidence.

5           THE COURT: Okay. And this will be what number?

6           MR. DORNER: It's State's identification L.

7           THE COURT: Okay. And so then upon stipulation,  
8 State's Exhibit L for identification will be moved into  
9 evidence -- what are we on number 12 now?

10          THE CLERK: Yes, Your Honor.

11          THE COURT: -- as State's Exhibit 12.

12          (State's Exhibit 12 was marked for identification  
13 and received into evidence.)

14          MR. DORNER: Okay. Do you have a copy of that?

15          THE WITNESS: Yes, sir.

16 BY MR. DORNER:

17          Q       Now, in regards to the probable cause, could you  
18 please indicate what probable cause was listed for the blood  
19 collection form?

20          A       Fatal crash, slow speech, alcohol bottle found in  
21 vehicle driven.

22          Q       Okay. So nothing in relation to his seat belt,  
23 correct?

24          A       No, sir.

25          Q       All right. And this is what would have based the



1 probable cause for a legal blood draw, correct?

2 A Probable cause is based off of the witnesses on  
3 scene testifying that he was seat belted in the vehicle,  
4 which is relayed from me to Trooper Quade on scene.

5 When we got to the scene, he notified me of his  
6 observations of Mr. Franke at the hospital. Once he had  
7 those observations, I notified him to take the legal blood  
8 draw.

9 Q Okay. But --

10 A Seat belt wouldn't come into play, the order is  
11 justified by the witnesses that are there. They already  
12 notified me of the seat belt, advised me of the driver and  
13 his legs pinned under the steering wheel of the dashboard.

14 Q Okay. But you have listed for probable cause, a  
15 fatal crash, slurred speech, alcohol bottle found in vehicle.

16 A I don't have it listed. That list was by Trooper  
17 Quade. I did not write that form.

18 Q Would you agree that this is deficient in regards  
19 to what you are saying your investigation was?

20 A (Indiscernible.)

21 Q Okay. But this is the collection form to  
22 authorize the legal blood draw, correct?

23 A Prior to our (indiscernible) shows any alcohol or  
24 impairment observations. We made the probable cause based  
25 off of the observations that he made, also made by Officer

1     Oder, also the evidence found in the vehicle, and being  
2     behind the wheel, by witnesses.

3           Q     Okay. Now, when you said that the bottle was  
4     found in the vehicle, who advised you that it was found in  
5     the vehicle?

6           A     I just told you that it was found in the bed of  
7     the vehicle. Is that inside the vehicle? It's inside the  
8     frame of the vehicle.

9           Q     Now, you said that you personally saw it in the  
10    bed of the vehicle?

11          A     I saw it in the bed of the truck. Yes, sir.

12          Q     Were you there at the time of the crash?

13          A     No, sir.

14          Q     How many people were on scene at the time that you  
15    responded?

16          A     When I got there, there was a few officers and a  
17    couple troopers -- or one trooper, Trooper Quade.

18          Q     Ten, twelve?

19          A     Four or five.

20          Q     Four or five.

21                 Did you ask any of them whether or not they had  
22    placed the bottle in the truck?

23          A     No, sir.

24          Q     So it's just an assumption that the bottle  
25    originated in the vehicle, correct?

1 A Yes, sir.

2 Q You have no independent evidence to --

3 A I was not there.

4 Q Okay. Now, I understand now that your policy --  
5 and I believe it changed in June of 2013 in regards to  
6 requiring you to attempt to get a warrant, correct?

7 A Yes, sir.

8 Q Why was that done?

9 A Based on the (indiscernible) Missouri ruling.

10 Q Okay. Now, what system do you use when you  
11 attempt to try and get a warrant?

12 A We notify the state attorney and advise of what we  
13 have regarding possible impairment. Once we make contact  
14 with the driver, if there is a refusal -- we request  
15 voluntary blood.

16 I believe voluntary blood was requested and I  
17 believe he was unable to -- according to the blood form, it  
18 was checked unable to sign.

19 Q Okay. And do you know why he was unable to sign?

20 A I was not at the hospital, sir.

21 Q Okay. Now, did you contact the on-duty state  
22 attorney in regards to requesting a warrant in this case?

23 A On this case, no. I don't believe so.

24 Q Why not? Why didn't you?

25 A At this time we had probable cause to go for a

1 blood draw. This wasn't part of the ruling that we had back  
2 in June, following that.

3 Q I understand. I'm just asking you. Did you make  
4 any attempt to contact the State Attorney's Office to --

5 A Without looking at my phone records, I don't know.

6 Q Okay. Do you recall being denied by the State  
7 Attorney's Office to do a warrant?

8 A Not that I recall.

9 Q Okay. Did you ask Trooper Quade to attempt to get  
10 a warrant while you were on scene?

11 A I advised him to get a legal blood draw. I didn't  
12 ask him to get a warrant.

13 Q Okay. Now, what exigent circumstances,  
14 specifically in regards to this case, existed to necessitate  
15 the need not to seek a warrant?

16 A At that time we had probable cause of the  
17 vehicle -- the occupant as the driver of the vehicle, we had  
18 a witness saying that he was cut out by fire rescue from  
19 behind the steering wheel, we had him being transported with  
20 severe injuries to the lower legs, taken to the hospital. He  
21 is going to go to the OR. We don't know what time he's going  
22 to get there.

23 He sat there -- he was at the hospital with  
24 Trooper Quade. Trooper Quade advised that he had a chance to  
25 get to him. He advised me, and I told him to go ahead and

1 pull legal blood from Mr. Franke, based on the circumstances  
2 at the time, based on going into the hospital and he's going  
3 to the OR.

4 Q Did you personally contact the physicians on staff  
5 to determine what time he was going into surgery?

6 A If it was a matter of life and death, then I'd  
7 contact the trooper to stop.

8 Q It was a matter of life and death? How do you --

9 A If it was a matter of life and death.

10 They're not going to wait for a trooper to say,  
11 hey, I'm on my way to the hospital for blood.

12 Q Okay. But did you contact the hospital to make  
13 that determination?

14 A No, I did not.

15 Q Did Trooper Quade contact --

16 A I don't know what Trooper Quade -- who he  
17 discussed it with at the hospital.

18 Q Okay. But it's clear -- and let's just be clear.  
19 This incident occurred at roughly 12:30 in the morning on  
20 January 1st, correct?

21 A At 12:50 in the morning. Yes, sir.

22 Q Okay. The legal blood draw was done at 3:12,  
23 correct?

24 A Yes, sir.

25 Q So he wasn't being rushed in, life or death, was

1 he?

2 A I don't know the circumstances and I don't have  
3 the report in front of me to see what injuries -- they  
4 described the injuries at the hospital to his lower  
5 extremities. I don't know the extent of those injuries and  
6 if they're going straight to the OR to operate on him.

7 Q But did you make any attempt to get any of that  
8 information before you just went ahead and ordered Quade to  
9 do the legal blood draw?

10 A No.

11 MR. DORNER: Okay. If I can have a moment, Your  
12 Honor?

13 THE COURT: Okay.

14 MR. DORNER: That's all I have, Your Honor.

15 THE COURT: Is there any redirect?

16 MR. SMITH: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. SMITH:

19 Q Do you still have that blood collection form in  
20 front of you?

21 A Yes, sir.

22 Q All right. And is that an exhaustive list of all  
23 of the PC that's listed on that particular form, as to the PC  
24 that you had in this particular case to draw the blood?

25 A No, sir.

1           Q     It's some of the items that you relied upon, but  
2     would you agree that that is not all of the items that went  
3     into the probable cause that you developed in order to do a  
4     forceful blood draw in this case?

5           A     It's some of the items. Yes, sir.

6           Q     All right. Are you familiar with the term CT  
7     scan?

8           A     Yes, sir.

9           Q     Do you know what a CT scan is?

10          A     That vernacular...

11          Q     Fair enough.

12                 Let me ask you this. Are there additional scans,  
13     not just the surgical department, but are there other times  
14     when law enforcement will not have access to a patient who's  
15     been brought to the trauma unit for serious injuries  
16     sustained in a vehicle crash? Anything could happen while  
17     they're being treated, correct?

18          A     Yes, sir.

19          Q     And are there times when you've gone there and had  
20     no access to the person who you wanted to draw that blood  
21     from?

22          A     Numerous times.

23          Q     And was part of your concern that led to the  
24     exigent circumstances that if Mr. Franke, in this case, had  
25     been taken in for CT scans, had been taken in for surgery, by

1 the time you typed up your warrant, you woke up the state  
2 attorney, the judge, and then got -- you'd have to drive to  
3 the judge's house, correct?

4 A Yes, sir.

5 Q You would have to get the judge to sign the  
6 warrant, correct?

7 A Yes, sir.

8 Q And then by the time you got back to the hospital,  
9 a serious amount of time would have already elapsed, correct?

10 A Yes, sir.

11 Q And you would have had to leave the scene  
12 yourself, correct?

13 A Yes, sir.

14 Q And based on the amount of time -- based on that  
15 amount of time, once you got back to the hospital, would you  
16 have any assurance that at that point you would even have  
17 access to Mr. Franke in order to conduct the blood draw?

18 A No.

19 Q Is that part of the exigent circumstances that you  
20 relied upon in order to do a forcible blood draw in this  
21 case?

22 A Yes, sir.

23 MR. SMITH: That's all I have, Your Honor.

24 THE COURT: All right. Thank you.

25 MR. DORNER: May I just ask him one quick



1 question?

2 THE COURT: All right. Limit it to redirect.

3 MR. DORNER: I understand.

4 RECROSS-EXAMINATION

5 BY MR. DORNER:

6 Q What Mr. Smith was asking -- I just have a quick  
7 question, Trooper Bennett.

8 In regards to the way you are doing this  
9 procedure, it's -- and I just want to make sure I'm clear on  
10 this. You are stating that the exigent circumstance is that  
11 he may go into surgery, right?

12 A He might. Yes, sir.

13 Q Okay. But there was never an attempt to determine  
14 whether he was going into surgery?

15 A Again, I was not at the hospital. That would be  
16 relayed from Trooper Quade to me.

17 Q But your concern is, I need -- I got to get this  
18 quick before he goes into surgery or I'm not going to have  
19 the opportunity to get it. Is that what you're saying?

20 A At that point, yes.

21 Q Okay. But if you get a search warrant, you get  
22 it. Don't you?

23 A Based off of maybe a two-, three-, four-hour  
24 period getting back to the hospital.

25 Q Okay. And this legal blood draw occurred three

1 hours after the incident, correct?

2 A And then add another three hours after that to get  
3 a search warrant and get back to the hospital and get to him  
4 -- approximate.

5 Q Do you have a log that indicates that that's what  
6 the time would have been on that evening?

7 A I have to leave the scene and go to -- I don't  
8 know where -- who the on-call judge would be at the time to  
9 get a warrant, have it filled out and travel back to Shands.  
10 I don't know the time or distance. That's all miles.

11 Q Okay. But you are saying that it's three hours.  
12 You have no idea if it would be three hours?

13 A Again, I said two, three, four hours. I don't  
14 know how long it's going to be. But I still have to clear  
15 the scene, and then do the legwork, and wake people up, get  
16 the warrant, go back to the hospital, execute the warrant,  
17 put the blood into evidence, come back to the scene and  
18 finish processing my scene.

19 Q Trooper Quade can't do that for you?

20 A That's not Trooper Quade's responsibility to get  
21 the warrant. It's mine.

22 Q Okay. But once you get the warrant, can't you --

23 A I'm executing the warrant. I've done the legwork  
24 on it, I'm executing that warrant.

25 Q Is Trooper Quade qualified to execute it?

1           A       He can. Yes, sir.

2           Q       Okay. But you just -- so it's that you chose not  
3 to let him execute -- your estimation is based on you  
4 choosing not to let someone else execute it on your behalf?

5           A       No. My -- actually, my explanation of it is based  
6 on experience of previous warrants.

7           Q       Okay. But -- and I apologize. You stated that  
8 you execute the warrants that you go and get, right?

9           A       Yes, sir.

10          Q       And you also stated that Trooper Quade is  
11 qualified to execute that warrant for you, correct?

12          A       And you're assuming that I'll let Trooper Quade  
13 execute my search warrant.

14          Q       But legally he can.

15          A       Legally he can. But as a search warrant that I've  
16 written, it's one I've had approved by the judge, I'm already  
17 en route to the hospital, I'm going to execute the warrant.

18          Q       Okay. So your timetable is based on your choice,  
19 not on exigent circumstances?

20          A       Trooper Quade has to leave the hospital, locate me  
21 at whatever judge's house I'm at, pick the warrant up, head  
22 back to the hospital himself and execute the warrant.

23          Q       You have no idea what that time frame would be?

24          A       It's (indiscernible) or wherever the warrant is  
25 at -- or the judge is at.

1 MR. DORNER: Nothing further.

2 THE COURT: All right. Thank you.

3 MR. SMITH: Based on that, may I ask a couple of  
4 quick questions, Judge?

5 THE COURT: Okay. And then we have to cut this  
6 witness.

7 FURTHER DIRECT EXAMINATION

8 BY MR. SMITH:

9 Q Just going to the search warrant specifically, I  
10 think you were asked about, once you obtained the search  
11 warrant, when you show back up to the hospital, you can just  
12 go execute that warrant, you could just march right into the  
13 surgery center or anywhere else; is that true?

14 A No.

15 Q Okay. Even if you had a search warrant in hand,  
16 you're not going to go barging into a surgical team as  
17 they're operating on a patient in order to execute that  
18 warrant, correct?

19 A No, sir.

20 Q And regardless of whether it was you or Trooper  
21 Quade, there was going to be a substantial amount of time  
22 that would have elapsed between the time that that blood  
23 could have been drawn and when it was, and when it ultimately  
24 would have been had you had to go through the entire process  
25 of obtaining the search warrant?

1           A       Yes, sir.

2                   MR. SMITH:  Nothing further.

3                   THE COURT:  All right.  Thank you.

4                   May this witness be excused?

5                   MR. SMITH:  Yes, Your Honor.

6                   MR. DORNER:  Yes, Your Honor.

7                   THE COURT:  All right.  Thank you.

8                   You may step down.

9                   (The witness was excused.)

10                  THE COURT:  All right.  State, you may call your

11                  next witness.

12                  MR. SMITH:  Your Honor, the State would call

13                  Trooper Quade.

14                  THE COURT:  All right.  Trooper, please come

15                  forward to be sworn.

16                  (The witness complied and was sworn by the Clerk

17                  of the Court.)

18                  THE CLERK:  Thank you, sir.

19                  You may have a seat.

20                               MICHAEL QUADE,

21                  having been produced and first duly sworn as a witness, was

22                  examined and testified as follows:

23                               DIRECT EXAMINATION

24                  BY MS. SMITH:

25                  Q       Good afternoon, sir.

1                    Could you introduce yourself to the Court?

2            A        I'm Sergeant Michael Quade of the Florida Highway  
3 Patrol.

4            Q        Sergeant, how long have you been a sergeant?

5            A        I've been a sergeant a little over a year.

6            Q        All right. And prior to being a sergeant, what  
7 was your position with the Florida Highway Patrol?

8            A        I was an investigator for the Bureau of Criminal  
9 Investigation and Intelligence.

10          Q        All right. I want to go back to January 1st,  
11 2013. What was your position at that time?

12          A        I was a road patrol trooper.

13          Q        Okay. And on that particular date do you recall  
14 responding to a crash in the early morning of January 1st,  
15 near the intersection of Kernan and Beach boulevards?

16          A        I do.

17          Q        And you would have been a road trooper at that  
18 time, correct?

19          A        Yes.

20          Q        You were not a member of the traffic homicide  
21 unit?

22          A        No.

23          Q        You were just a road trooper at that time?

24          A        Yes.

25          Q        Okay. Was that a very busy night, as you recall?

1           A       It was.

2           Q       Had you been responding to crashes all over town?

3           A       I had. When I first came out, I responded to do a  
4 next of kin notification, trying to find somebody on another  
5 fatality. And they called me from that to another fatality  
6 on Atlantic Boulevard, which was one street over from this  
7 one, and then they called me to this next one.

8           Q       Did you get called off of the one on Atlantic and  
9 told to respond to this one instead?

10          A       I did.

11          Q       So you are not the lead investigator, correct?

12          A       I'm not.

13          Q       Who was the lead investigator in this particular  
14 crash?

15          A       That was Corporal Austin Bennett.

16          Q       Okay. And he is a traffic homicide investigator,  
17 right?

18          A       Correct.

19          Q       So you're answering to him, correct?

20          A       I am.

21          Q       When you arrived at the scene -- let me ask you  
22 this. Did you and Corporal Bennett have a conversation about  
23 the scene and the observations that you made at the scene?

24          A       Yes.

25               MR. SMITH: Okay. And may I approach, Your Honor?

1 THE COURT: Yes.

2 BY MR. SMITH:

3 Q I'm going to show you what's been previously  
4 received in evidence as State's Exhibit 3. Do you recognize  
5 that item?

6 A I do. That's the truck that was involved in the  
7 crash.

8 Q Okay. And State's 7, do you recognize that item?

9 A It looks like a different angle.

10 Q Okay. And, generally, do these photos depict what  
11 your observations were of the scene in question?

12 A They do.

13 Q Did you participate in the extrication or anything  
14 else of the occupants of that vehicle?

15 A I did not.

16 Q Okay. So what was your primary responsibility at  
17 the scene?

18 A My primary responsibility was to gather  
19 information for the traffic homicide investigator, do a basic  
20 diagram, and a basic report -- crash report.

21 Q You're required to do a crash report for any time  
22 that there is a vehicle crash, correct?

23 A I am.

24 Q Okay. And in these particular cases, when there  
25 is a homicide, are you taught to do kind of a cursory, just



1     basic crash investigation report and allow the traffic  
2     homicide investigator to do a full report?

3           A     Basically, that's what we do.  Everything I do on  
4     my crash report is cosigned with his report, kind of jiving  
5     up with what his findings are.

6           Q     Okay.  And as to this particular crash itself, did  
7     you and Detective Bennett discuss some of the witness  
8     statements as to what they observed as to the occupants of  
9     the vehicle?

10          A     Yes.

11          Q     Okay.  And did you obtain information about  
12     witness statements from Officer Carl Oder, from the  
13     Jacksonville Sheriff's Office, and a civilian witness, Devin  
14     Reddick?

15          A     I remember the statement that Austin Bennett told  
16     me that Oder made.

17          Q     Okay.  And based on the statements and your  
18     conversation with Austin Bennett, did Austin Bennett direct  
19     you to go to the hospital in order to conduct a blood draw on  
20     someone who you -- who is at that time believed to be the  
21     driver of the vehicle?

22          A     Yes.

23          Q     And did you learn the identity of the person who  
24     you were being sent to the hospital to meet?

25          A     Yes, Mr. Sean Franke.

1 Q Okay. Based upon the name, did you access -- are  
2 you familiar with the computer system, DAVID?

3 A Yes.

4 Q What is DAVID?

5 A DAVID is the Driver And Vehicle Information  
6 Database.

7 Q Okay. And does that DAVID printout, does it  
8 contain a photograph of the person from their driver's  
9 license?

10 A It does. Usually, in all -- most of the cases.  
11 Sometimes it doesn't, but most of the time it does.

12 Q Okay. And did you -- did you get access to the  
13 DAVID system and actually look at the photograph of the  
14 person identified as Sean Franke?

15 A I did.

16 Q And is that based upon the witness statements as  
17 well as what Austin Bennett told you? Is Sean Franke the  
18 person who you all believed to be the driver of the vehicle  
19 based on the information collected at the scene?

20 A That's correct.

21 Q Did you also -- do you remember running -- as  
22 you're filling out the crash report, did you obtain  
23 information as to the registered owner of the vehicle?

24 A Yes.

25 Q Okay. And did you happen to notice the address of

1 the registered owner of the vehicle?

2 A Yes. It was the same as Mr. Franke's -- Sean  
3 Franke's.

4 Q So the address on Mr. Franke's driver's license  
5 under DAVID matched the address for the vehicle in that case,  
6 correct?

7 A It did.

8 Q And was that address here in Jacksonville or was  
9 it somewhere else in the state of Florida?

10 A I believe it was in Longwood.

11 Q All right. Once you left the scene, did you drive  
12 to the hospital at that point?

13 A I did.

14 Q And which hospital did you go to?

15 A Shands UF.

16 Q It's now known as University Health?

17 A UF Health, correct.

18 Q Okay. And when you arrived at the hospital, where  
19 did you go?

20 A To the trauma center.

21 Q Okay. Were you able to locate the individual that  
22 you came to know as Sean Franke?

23 A Yes.

24 Q Was he still in the trauma center when you made  
25 contact with him?

1           A       Yes, he was.

2           Q       Now, was he being treated in the trauma unit by  
3 medical personnel?

4           A       Yes. I'm sure they were still treating him at  
5 that point.

6           Q       Okay. Do you -- is it your practice to  
7 immediately go in and make contact, or do you wait for the  
8 medical staff to provide you the opportunity?

9           A       I don't have a clear recollection exactly if I had  
10 to wait any period of time as they were working on him. I  
11 don't recall that.

12          Q       Okay. Let me ask you this. If there was  
13 indication that there were x-rays in progress on Mr. Franke  
14 during the time frame when you would have arrived at the  
15 hospital, would you have approached him at that time or would  
16 you have waited for the x-rays to have been completed?

17          A       Of course, I would have to wait.

18          Q       Okay. When you're standing there, are you able to  
19 go in at that point and then make contact with Mr. Franke?

20          A       I did make contact with him, yes.

21          Q       And do you know approximately what time you made  
22 contact with Mr. Franke?

23          A       I have it down in the paperwork. I don't recall  
24 right offhand.

25          Q       Okay. Well, let me ask you this. Was it fairly

1 quickly after you arrived at the hospital? Do you remember  
2 the time frame?

3 A I don't.

4 Q Okay. He was still -- at that point in time,  
5 however, he was in the trauma unit when you arrived, correct?

6 A That's correct.

7 Q So you had access to him. He hadn't been taken  
8 off for surgery or for CT scans or anything else?

9 A No, not at that time, I don't believe so.

10 Q Okay. When you first made contact with  
11 Mr. Franke, did he make any statements to you?

12 A I made contact with him, and I introduced myself  
13 as Trooper Quade with the Florida Highway Patrol, and that,  
14 you know, I wanted to ask him about the crash and what  
15 happened in the crash. He did make a statement.

16 Q What was the statement that he made at that time?

17 A He kind of blurted out, "You might as well kill  
18 me. I'm already dead. I'm going to spend the rest of my  
19 life in prison."

20 Q What did you take that to mean when he made the  
21 statement, "I'm already dead. I'm going to spend the rest of  
22 my life in prison."

23 A I took it to mean that he knew he was in trouble.

24 Q Did that reinforce, at that time, your opinion  
25 that you were dealing with a person who was the driver of the

1 vehicle?

2 A Yes, it did.

3 Q When you made contact with him and he made that  
4 statement, did you make any observations about his speech?

5 A I did. It was slurred.

6 Q And did you get close enough to his face at that  
7 point in time to make any observations about anything coming  
8 off of his breath?

9 A He had a real strong odor of alcoholic beverage on  
10 his breath.

11 Q Did you notice anything about his eyes?

12 A Bloodshot, watery eyes.

13 Q Okay. Based on those -- now, you've got your own  
14 personal observations; is that correct?

15 A That's correct.

16 Q And now based upon those personal observations,  
17 did you speak to Austin Bennett at some point in time?

18 A I did, afterwards.

19 Q After you made contact with him, or at some point  
20 did you speak to Trooper Bennett on your cell phone while you  
21 were at the hospital?

22 A I did.

23 Q Okay. And did you relay these observations to  
24 Officer Bennett, who was at the scene?

25 A Yes.

1           Q     And was he relaying some of his observations based  
2     upon witness statements and his observations at the scene?

3     Was there some communication between the two of you?

4           A     Yes, there was.

5           Q     And based upon all those facts, was there a  
6     determination to get a blood draw in this case?

7           A     There was.

8           Q     Did you attempt to obtain voluntary consent or a  
9     consensual blood draw from Mr. Franke in this particular  
10    case?

11          A     I continued to talk with Mr. Franke, and he ceased  
12    to speak with me. He closed his eyes and he wouldn't respond  
13    to me.

14          Q     So once he refused to respond to you anymore, did  
15    you feel at that point in time that -- and I'm not talking  
16    about outside of implied consent laws and things of that  
17    nature. I'm just talking about, generally, could you just  
18    volun- -- did he agree to let you voluntarily take a blood  
19    sample from him?

20          A     Yes, due to the exigent circumstances at that  
21    point.

22          Q     Let me ask it again. Did he voluntarily at this  
23    point say, yes, go ahead and take my blood?

24          A     He did not say anything.

25          Q     So at that point did you have to make a

1 determination, in conjunction with Trooper Bennett, that you  
2 were going to have to do what's considered a forcible blood  
3 draw on Mr. Franke?

4 A That's correct.

5 Q Okay. And did you, in fact, obtain a forcible  
6 blood draw in this case?

7 A I did.

8 MR. SMITH: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. SMITH:

11 Q Let me ask you about -- are you familiar with the  
12 term blood kit -- or blood collection kit?

13 A Yes.

14 Q What is a blood collection kit?

15 A It's a collection of two vials with coagulant --  
16 anticoagulant in it, and it has a test sample in it.

17 Q And do troopers keep those blood kits in their  
18 vehicles?

19 A We do.

20 Q And do you remember specifically -- did you obtain  
21 a blood kit in this particular case?

22 A I did.

23 Q And do you remember specifically where you  
24 obtained that blood kit from, whether it was in your car, or  
25 do they also have them at the hospital?



1           A       They also have them at the hospital, but I'm  
2   pretty sure I got it out of the trunk of my car.

3           Q       Okay. So you came into the trauma unit at that  
4   time in order to conduct a blood draw; is that right?

5           A       That's correct.

6           Q       You're familiar with -- are you able to take the  
7   blood? In other words, are you able to actually take the  
8   needle and put it in a person's arm?

9           A       No. I have to find a registered nurse to do that.

10          Q       Okay. And you're actually required to find an  
11   actual RN, correct? She has to be a registered nurse?

12          A       A doctor or a nurse, yes.

13          Q       Okay. And did you -- were you able to identify or  
14   find an RN in this hospital?

15          A       I did.

16          Q       And was her name Kim Manuel?

17          A       Yes, it was.

18          Q       And did you request that Kim Manuel then take the  
19   blood from Mr. Franke?

20          A       I did.

21                 MR. SMITH: May I approach, Your Honor?

22                 THE COURT: Yes.

23   BY MR. SMITH:

24          Q       I'm going to show you what's been previously  
25   received into evident as State's Exhibit 12.

1 Are you familiar with that document?

2 A Yes. That's the blood collection form.

3 Q And how do you recognize that particular blood  
4 collection form?

5 A It has my signature at the bottom, and it has the  
6 case number at the top, and it has Sean Frederik Franke's  
7 name at the top.

8 Q Okay. And let me ask you this. When you started  
9 filling that out, were you in the hospital in the trauma unit  
10 during the collection procedure?

11 A I was.

12 Q Okay. And are you required to fill that out  
13 contemporaneously with the blood draw itself, as much as you  
14 can?

15 A I am.

16 Q And who is the -- is there a section on there  
17 where it lists the individual who actually conducts the blood  
18 draw from the person?

19 A It does.

20 Q Okay. And who is listed in that section as the  
21 person who conducted this blood draw?

22 A Kim M. Manuel, M-a-n-u-e-l.

23 Q And did you have Ms. Kim Manuel sign that  
24 particular section in order to show that she was, in fact, a  
25 registered nurse and able to do legal blood draws?

1 A I did.

2 Q And did she, in fact, sign it?

3 A She did.

4 Q And, if you would, let's go through the process.

5 Let me ask you this. Under section two, you list  
6 the Shands trauma center and the date of the blood draw and  
7 the time. What is the time that you were actually able to do  
8 the blood draw itself?

9 A 3:12 a.m.

10 Q Okay. And that would be the time that Kim  
11 Manuel -- you're actually physically getting the blood,  
12 correct?

13 A Yes.

14 Q On there there is also a section regarding the  
15 area where the blood was taken from Mr. Franke, in the case.  
16 Do you know what arm it was taken from?

17 A The left.

18 Q And is there also a section on there that talks  
19 about probable cause?

20 A There is.

21 Q Okay. Read for me, if you would, the probable  
22 cause that you listed.

23 A Fatal crash, slurred speech, alcohol bottle found  
24 in the vehicle driven.

25 Q Would you agree with me that that is not an

1 exhaustive list of the probable cause that existed in this  
2 case when you decided to do the forcible blood draw?

3 A It's not.

4 Q There were additional factors that you could have  
5 listed, correct?

6 A Yes.

7 Q Why didn't you list every single factor on that  
8 particular form?

9 A At the time -- I deal with this form, and we start  
10 the blood collection process. I don't have a lot of time,  
11 you know, to be centered on a piece of paper and writing  
12 things.

13 So, in other words, I've got to view the whole  
14 process and I've got to check these boxes as we go. I don't  
15 have a whole lot of time to write things.

16 Q Okay. Now, the next section on the form is  
17 section three, that's the certification of the blood draw  
18 we've already covered with you having the RN sign that she is  
19 able to take the blood.

20 The next section is section four; is that right?

21 A That's correct.

22 Q And there's actually a checkoff list under that  
23 section, correct?

24 A There is.

25 Q If you would, let's start with line one. If you

1 would just read for the Court what is the first line on that  
2 checkoff list.

3 A Check the expiration date on the blood collection  
4 kit.

5 The expiration date was May 31st, 2014.

6 Q Okay. So you had to determine that the kit that  
7 you had in your possession had not expired at that point,  
8 correct?

9 A That's correct.

10 Q And you confirmed that that kit was still valid,  
11 correct?

12 A Yes.

13 Q Okay. And what is the next line?

14 A Officially requested that the blood be drawn from  
15 the subject.

16 Q And that's what we've already talked about, about  
17 you asking Mr. Franke if he could be -- if he would agree to  
18 the blood draw; is that right? I'm sorry. Repeat that  
19 again.

20 A It says, Officially requested that the blood be  
21 drawn from the subject.

22 Q Okay. And so you had asked Mr. Franke if you  
23 could take the blood, and he didn't respond to you at that  
24 point, correct?

25 A Correct.

1 Q Okay. What's the next line?

2 A Have the subject sign the consent section, section  
3 five, or mark the appropriate box.

4 Q Okay. And so under the consent section -- let's  
5 go ahead and skip down there for just a second.

6 A Okay.

7 Q Explain for the Court what is the consent section  
8 and what did you write in there?

9 A It says to print the subject's name. I wrote Sean  
10 Frederik Franke. The date and time of consent, 1/1/13, 2:50  
11 a.m.

12 And it says, I hereby do give my permission for  
13 samples of my blood to be drawn for testing. It has a  
14 signature of subject, which is blank, and it has three check  
15 boxes. One says, unable to sign, which I had checked;  
16 another one said, refused to sign; and the other said,  
17 refused the blood draw.

18 Q Do you remember why you checked the box for unable  
19 to sign as opposed to refused to sign?

20 A Because he wouldn't respond to me.

21 Q Okay. So you checked that particular box?

22 A I checked that box. I guess it could have been  
23 taken as a refusal, for him not to let me get his blood by  
24 not responding to me, but I put it under "unable."

25 Q Okay. Let's go back up to the next line in the

1 list.

2 A Make sure that the nonalcoholic swab was used --  
3 and it has, in parentheses, provided in kit.

4 Q Okay. And was there, in fact, a nonalcoholic swab  
5 provided in this particular blood kit?

6 A Yes. They have the iodine swabs included in the  
7 kit.

8 Q And do you know why that's important? Are you  
9 familiar with that?

10 A They want to make sure that the area that they  
11 drew the blood from was swabbed with this.

12 Q And did you observe that process being done by  
13 Nurse Manuel?

14 A I did.

15 Q Because at this point Nurse Manuel is actually  
16 doing -- performing these, but you are checking the list,  
17 correct?

18 A Correct.

19 Q And did you, in fact, observe Kim Manuel do that?

20 A I did.

21 Q Okay. And what's the next item on the list?

22 A Observe the entire blood collection procedure.

23 Q And did you observe Kim -- Nurse Manuel actually  
24 taking the blood from Sean Franke's left arm?

25 A I did.

1 Q Okay. What's next?

2 A Rock each vial back and forth at least ten times,  
3 mix anticoagulant.

4 Q Explain for the Court, is that a process that you  
5 actually do?

6 A That's something that the trooper does, and in  
7 this case that I did. As she handed me the vials, I rocked  
8 them back slowly ten times each.

9 Q Okay. And so she's still actually got the needle  
10 in the arm. She hands the blood vials to you, so you can  
11 rock them for her, correct?

12 A Correct.

13 Q Okay. And you did that in this case?

14 A Yes, sir.

15 Q And what's the next step?

16 A Place the specimen security seal on each of the  
17 two vials --

18 Q Did you do that in this case?

19 A I did.

20 Q And did you check that box?

21 A Yes.

22 Q What's the next step?

23 A Fill out the evidence seal and secure the  
24 collection kit.

25 Q Okay. And did you do that in this case?



1           A       I did.

2           Q       Okay. What's the next step?

3           A       Fill out all of the appropriate spaces on the  
4       investigative officer's report.

5           Q       Okay. Let's talk about the officer's  
6       investigative report. What is that? Have you learned --  
7       today, do you know what that report -- what they are  
8       referencing in that report?

9           A       Yes.

10          Q       And what is that report?

11          A       It's actually the cardboard container that the  
12       vials go back into that has -- it has the empty vial, the  
13       standard; it has the tube filled with blood that you put back  
14       in.

15                   On the back of that cardboard box, at the top of  
16       the form it says investigative officer's report and it's got  
17       a little chain of custody on there. That goes within the  
18       blood kit -- inside of the blood kit.

19          Q       Okay. And did you, in fact, fill out the  
20       pertinent data on that form?

21          A       I did.

22          Q       Okay. And what's the next item on the checklist?

23          A       Fill out the evidence seal, secure the biological  
24       specimen's box with the collection kit inside.

25          Q       And did you, in fact, do that in this case?

1           A     I did.

2           Q     Did you acknowledge by checking that box that you  
3 conducted that?

4           A     I did.

5           Q     All right. What's the next step?

6           A     I place the kit into the property evidence room --  
7 and then a control number. I've got control number  
8 G-70-13-0001.

9           Q     Okay. And so at that point in time did you seal  
10 up the blood kit and take it with you from the trauma unit?

11          A     I did.

12          Q     And did it stay in your possession the entire  
13 time, until you ultimately dropped it at the evidence locker  
14 at the Florida Highway Patrol station?

15          A     Yes, sir.

16          Q     And how -- just describe, kind of briefly, how  
17 does that -- where is that evidence locker located and how do  
18 you go about dropping it off?

19          A     It's 7322 Normandy Boulevard, which is a troop  
20 headquarters, and it's a direct deposit in the hallway and  
21 that's where you drop that in.

22          Q     Okay. And the person that you did that blood draw  
23 from, you laid eyes upon that person and you identified --  
24 did you match the photograph of that person from his driver's  
25 license -- or his DAVID photo?

1           A       I did.

2           Q       And was it the same person that you took the blood  
3       from that was listed as the name "Sean Franke" on his  
4       driver's license -- or on the DAVID photo?

5           A       Yes.

6           Q       As you look around this courtroom today, do you  
7       believe that you could still recognize the individual who you  
8       conducted that blood draw with?

9           A       Yes.

10          Q       Okay. And if you could, look around the courtroom  
11       and identify where he is located.

12          A       He's in the blue suit next to the man with a  
13       haircut like mine.

14          Q       That's a pretty good description, I guess.

15                 MR. SMITH: Judge, if the record could reflect  
16       he's identified the defendant.

17                 THE COURT: The record shall so reflect.

18                 MR. SMITH: Your Honor, that's all the questions I  
19       have.

20                 THE COURT: All right. Thank you.

21                 Cross.

22                 MR. SMITH: Thank you, ma'am.

23                 So you were referring to my haircut, right?

24                 THE WITNESS: I'm not quite there yet.

25                 MR. DORNER: Give it some time.

1 CROSS-EXAMINATION

2 BY MR. DORNER:

3 Q Okay. Just a couple of quick questions for you.

4 In regards to what Mr. Smith was asking you about  
5 your observations and recollections in the legal blood draw,  
6 do you have independent recollection of that or are you  
7 drawing your recollection based solely on your legal blood  
8 draw form?

9 A I have an independent recollection of the blood  
10 draw process.

11 Q Okay. Now, I'll get to that in a minute.

12 Now, did you ever speak with JSO Officer Oder on  
13 the scene?

14 A I did not.

15 Q You did not.

16 Okay. And you were just on scene briefly,  
17 correct?

18 A I was probably -- I don't know the exact time.

19 Q Okay. And did you -- when you were there, you had  
20 conversations with Corporal Bennett, correct?

21 A I did.

22 Q And you discussed things like seat belts and  
23 driver position and alcohol on breath and glassy, watery  
24 eyes. Did you discuss those things with him?

25 A No, not at that time, because I hadn't made

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1 contact with the defendant at that time.

2 Q Okay. What exactly did you and Corporal Bennett  
3 talk about?

4 A Well, there was several things that, like I said,  
5 I'm responsible for at the scene of a crash, helping him and  
6 gathering witness information and so on and so forth, scene  
7 information, making sure we jive up with what happened,  
8 because I've got to do this basic report.

9 Q Okay. But did you ever talk about what would have  
10 constituted probable cause while you guys were together on  
11 the scene?

12 A Well, there was a bottle of Sangria found in a  
13 bottle [sic] in or around the truck, and we discussed that  
14 bottle as well.

15 Q Okay. Did Corporal Bennett relay to you any of  
16 the observations that were relayed to him by Carl Oder?

17 A Yes. He told me that -- he basically identified  
18 that Oder -- Officer Oder witnessed the seat belt being cut  
19 off of Mr. Franke.

20 Q Okay. So at that point in time, would you agree  
21 that based on your conversations, you believed that -- would  
22 you say that at that point in time there was probable cause  
23 based on the conversation that you had with Corporal Bennett?

24 A No. I mean, probable cause that he was the  
25 driver, yes, but not to being under the influence.

1 Q Okay. Now, after that you went to the hospital,  
2 Shands, correct?

3 A I did.

4 Q Okay. Were you aware that Mr. Franke was Baker  
5 Acted at 2:30 in the morning?

6 A No.

7 Q Okay. Did you inquire -- did you talk to any  
8 medical personnel about Mr. Franke or his treatment or  
9 anything before you began this observation period?

10 A I don't recall exactly what they said, but to my  
11 knowledge, nobody told me that he was Baker Acted.

12 Q Okay. So no one told you that he was Baker Acted,  
13 right?

14 A Correct.

15 Q Okay. Did you ask what medi- -- I mean, obviously  
16 this was a serious accident with serious injuries for all  
17 parties, except for the male, Mr. Materia, on the other side  
18 of the vehicle. Correct?

19 A Yeah. I wasn't aware of that.

20 Q Okay. But in regards to Mr. Franke, it was a  
21 serious accident?

22 A Correct.

23 Q He had some serious injuries?

24 A Yes.

25 Q Okay. Did you inquire with medical personnel as

1 to what medications he was on during your observation period?

2 A I didn't.

3 Q Did you inquire as to what type of painkillers or  
4 mood altering substances -- painkillers that may cause mood  
5 altering situations, that Mr. Franke might have been on  
6 during that time?

7 A Not to my knowledge. I didn't inquire about  
8 anything like that.

9 Q Okay. Now, let's talk about the legal blood draw  
10 form that Mr. Smith had showed you previously.

11 A Yes, sir. I still have it.

12 Q You still have it. Okay. Good. And we'll just  
13 have you reference it right there. I got one for myself too.

14 In regards to the legal blood draw form, what is  
15 the purpose of the probable cause line?

16 A It just shows that you have cause to draw the  
17 blood.

18 Q Okay. Is it standard practice to be as detailed  
19 as possible?

20 A Like I said before, I mean, I'm not trying to  
21 write a lot of things. I didn't have time to make it a  
22 detailed report as far as putting everything in the list.

23 Q Okay. Did you give -- as soon as the blood was --  
24 I mean, the minute that the blood was drawn, did you have to  
25 give this form to somebody and not have the opportunity to

1 get it back?

2 A No. I took the form with me. But I'm trying to  
3 fill it out as we're collecting the blood. I've got to view  
4 the whole process. I'm having her sign things. I'm doing it  
5 as quickly as I can. I'm checking boxes as we go.

6 Q Okay. But --

7 A In other words, I don't have the time to go off to  
8 a desk somewhere and start filling out a form. I know  
9 there's a few other things I could have put on the probable  
10 cause, I just ---

11 Q And that's because you have to witness all of  
12 these things going on, right?

13 A Right. And -- yeah.

14 And I probably could have put it on there  
15 afterwards. It's an oversight on my part as far as not  
16 putting the other things on there.

17 Q Okay. So you would agree that you had the  
18 opportunity to fill this out more completely?

19 A I could have, yeah.

20 Q Okay. Now, in regards -- let's talk about section  
21 five again. You stated that he just wouldn't talk to you.  
22 Is that that he just -- that at a certain point Mr. Franke  
23 shut down and just decided he wasn't going to talk to you?

24 A Well, not at a certain point. After he blurted  
25 what he blurted to me, I continued to talk to him, and he



1 wouldn't respond to me.

2 Q Okay. Now, but would you --

3 A I mean, at a certain point. It's a very, very  
4 short time.

5 Q Okay. But would you agree that that is better  
6 characterized as a refusal to sign?

7 A It could be seen that way.

8 Q What does "unable to sign" mean? Wouldn't that  
9 constitute, like, somebody's hands are broken or they're  
10 unable to use their hands to sign something?

11 A True. Yes. And I'm not going to --

12 Q So you would admit that it's probably -- it  
13 probably isn't the correct box to have checked in regards to  
14 the situation at hand?

15 A Well, I figured at the time, you know, that he was  
16 unable to sign, as far as not getting a verbal response from  
17 him. That's the way I was looking at it.

18 Q Okay. Now, I'm assuming that you've done DUIs  
19 where people are taken to do breath results, correct?

20 A Yes.

21 Q And you've done those before?

22 A Yes.

23 Q If someone doesn't submit to the breath, because  
24 they don't want to, is that classified as an unable to submit  
25 to breath or is that a refusal to submit to breath?

1           A       No. It would be a refusal.

2           Q       So it probably --

3           A       And in the same situation, if they quit talking or  
4 something, it would be considered a refusal.

5           Q       Okay. So this should have been a refusal as  
6 opposed to unable to sign?

7           A       It's possible, yes.

8           Q       Okay. Now, going through this, in regards to the  
9 section four checklist, you stated that -- obviously, you  
10 checked off each of these, correct?

11          A       I did.

12          Q       Okay. Now, in regards to -- okay. So you checked  
13 the expiration date, you then requested the blood to be  
14 drawn, right?

15          A       Correct.

16          Q       Then you made sure that the swab was used,  
17 correct?

18          A       Yes.

19          Q       Okay. Then you observed the entire blood  
20 collection procedure?

21          A       I did.

22          Q       Okay. And is it correct to say that during that  
23 time that Nurse Manuel drew the blood from the IV that was in  
24 the left arm?

25          A       Yes. Somewhere during that time, yes, I'm

1 checking boxes, and that, and the next one, rock each vial.  
2 Somewhere right before rock each vial, you have to get the  
3 blood out of arm so I can rock the vials.

4 Q And did you rock them or did she rock them?

5 A I did.

6 Q Okay. Now, I just want to make sure. Do you  
7 recall that Mr. Franke's arm was really taped up, there was a  
8 lot of tape?

9 A I don't.

10 Q You don't recall that?

11 A I don't recall that.

12 Q Okay. But it was drawn through the IV, correct?

13 A (No response.)

14 Q The blood was drawn through the IV?

15 A I don't have any personal recollection to that.

16 Q Okay. So you have no idea where exactly the blood  
17 was drawn from?

18 A I'm sure it was either an IV or the nurse usually  
19 sticks the needle in them to get the blood out.

20 Q Okay. You say "usually," but you have no  
21 independent recollection?

22 A I don't have any independent recollection of that.

23 Q Okay. Now, did you -- after you are talking --  
24 once you determined there was probable cause for a legal  
25 blood draw, in your communications with Trooper Bennett, did

1     you seek to have a warrant issued to draw that blood?

2             A       I didn't.

3             Q       Okay. Did you ask Trooper Bennett to have a  
4     warrant issued?

5             A       No.

6             Q       Okay.

7             A       I did not.

8             Q       All right. Now, what was the reason why you  
9     didn't request a warrant?

10            A       It was already a couple of hours into the -- since  
11     the crash had occurred, now you have to call the state  
12     attorney. It's just the time, and waking up a judge was not  
13     practical at that point.

14            Q       Okay. When you say, "it's not practical," do you  
15     have any independent knowledge that it was not practical on  
16     that evening?

17            A       It was already a couple of hours into it, and I  
18     don't want to lose the blood. You have dissipating blood  
19     alcohol factors and exigent circumstances.

20            Q       Okay. So you're --

21            A       The law at the time says that I can take the  
22     blood, and that's what I did.

23            Q       So is it your testimony that the exigent  
24     circumstance, in regards to this, was your fear that the  
25     alcohol in the blood was going to dissipate?

1           A       That, yes, and you wait four or five hours for a  
2       judge to sign a warrant for it, and you've lost your  
3       evidence, absolutely.

4           Q       All right. Were you concerned that you weren't  
5       going to be able to get it because he was in surgery?

6           A       No. He wasn't in surgery. He was right in front  
7       of me, but I don't know if he is going to surgery or what  
8       other medical procedures that they had planned for him.

9           Q       Did you -- were you precluded by law or some other  
10      reason from discussing whether or not he was going --  
11      Mr. Franke was going to have any surgeries in the near  
12      future?

13          A       No, I wasn't.

14          Q       Okay. So it --

15          A       It wasn't practical at the time. Like I said, it  
16      was almost two hours from the crash that I'm doing this blood  
17      draw.

18          Q       Okay. And, again, it's because you were afraid  
19      that the alcohol level in the blood was going to dissipate?

20          A       Right. Well, that, and it could take a couple  
21      more hours just to get a judge to sign the warrant.

22          Q       Okay. But it was by your choice, then, that you  
23      didn't inquire as to whether or not Mr. Franke was scheduled  
24      for any surgeries or anything of that nature, correct?

25          A       Right, and -- yeah. That wasn't a factor for me

1 at the time.

2 MR. DORNER: Okay. If I can have a moment, Your  
3 Honor?

4 THE COURT: Okay.

5 MR. DORNER: That's all I have, Your Honor.

6 THE COURT: Okay. Any redirect?

7 MR. SMITH: No, Your Honor.

8 THE COURT: All right. May this witness be  
9 excused?

10 MR. SMITH: He may.

11 MS. DODSON: Yes, ma'am.

12 THE COURT: Thank you, Trooper.

13 You may step down.

14 THE WITNESS: Would you like your evidence back?

15 MR. SMITH: Yes, please.

16 (The witness was excused.)

17 THE COURT: All right. You have one other  
18 witness?

19 MR. SMITH: Yes, Your Honor.

20 THE COURT: All right. Let's call her.

21 MS. DODSON: Yes, Your Honor.

22 The State calls Kim Manuel to the stand.

23 (The witness entered the courtroom.)

24 MR. SMITH: Your Honor, just as a status  
25 situation, this is going to be the last witness today.