

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

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

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SPENCER ALTSCHULER,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

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

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**APPENDIX TO PETITION FOR WRIT OF CERTIORARI**

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COUNSEL FOR THE PETITIONER

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

SPENCER ALTSCHULER,

Appellant,

v.

Case No. 5D17-3937

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

Decision filed June 18, 2019

Appeal from the Circuit Court  
for Osceola County,  
Jon B. Morgan, Judge.

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

Ashley Moody, Attorney General,  
Tallahassee, and L. Charlene Matthews,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EISNAUGLE and HARRIS, JJ., and ORFINGER, M.S., Associate Judge, concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

SPENCER ALTSCHULER,

Appellant,

v.

CASE NO. 5D17-3937

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_/

DATE: July 25, 2019

**BY ORDER OF THE COURT:**

ORDERED that Appellant's Motion for Rehearing and Motion for Issuance  
of a Written Opinion, filed July 3, 2019, is denied.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

*Joanne P. Simmons*  
JOANNE P. SIMMONS, CLERK



Panel: Judges Eisnaugle, Harris, and Orfinger

cc:

Office of Attorney General

Michael Ufferman

L. Charlene Matthews



Filing # 54531798 E-Filed 04/03/2017 10:11:41 AM

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN  
AND FOR OSCEOLA COUNTY,  
FLORIDA

STATE OF FLORIDA

CASE NO.: 49-2016-CF-583  
DIVISION: 10-A

vs.

SPENCER JORDAN ALTSCHULER  
\_\_\_\_\_ /

**DEFENDANT'S MOTION TO DISMISS**

The Defendant, SPENCER JORDAN ALTSCHULER, by and through his undersigned counsel, pursuant to Rule 3.190( c) (4), Florida Rules of Criminal Procedure, moves that the charge of vehicular homicide, the charge of reckless driving causing serious bodily injury, and the charge of reckless driving causing damage to property or person be dismissed. In support of this motion, Defendant states:

**UNDISPUTED MATERIAL FACTS**

1. On February 15, 2015, at approximately 9:20 a.m., the Florida Highway Patrol was notified and responded to the scene of an automobile accident on Florida State Road 60 (SR-60) near Kenansville, FL. SR-60 is a two lane undivided highway running in an east to west direction. The posted speed limit was 60 MPH. The area is rural and the road is flat and straight. The weather was clear and sunny, the road was dry, and visibility was unrestricted.
2. V-1 was a 2005 Volkswagen Jetta. V-2 was a 2013 Hyundai Accent.
3. While traveling westbound on SR-60, V-1 came upon a slower moving vehicle being driven by Caryn Bellis. Ms. Bellis stated she was driving approximately 68 MPH when

she first noticed V-1 in her rearview mirror. She stated V-1 moved into the eastbound and started to pass her. When V-1 started to pass her, Ms. Bellis slowed down to about 65 MPH. She stated that V-1 remained beside her for a period of time and slowly started to overtake her.

4. Ms. Bellis stated that at the time that V-1 started to pass her, the area was flat and straight, and she could see a long way. She stated that in her opinion, it was safe for V-1 to pass her at that time.

5. When V-1 started to pass Ms. Bellis, the road had a broken yellow centerline indicating it was legal to pass in either direction.

6. Ms. Bellis stated that she continued to slow down to approximately 60 MPH, and reported that V-1 remained beside her in the eastbound lane for five or ten seconds before overtaking her vehicle. Ms. Bellis started honking her horn at V-1 because it remained in the eastbound lane and she started seeing V-2 coming towards V-1 in the eastbound lane.

7. V-1 traveled approximately 50 feet into an area of the road where the centerline was marked by a two solid yellow lines indicating it was not legal to pass in either direction, and then returned to the westbound lane of SR-60. At 65 MPH the time it took V-1 to travel approximately 50 feet was 0.5 seconds.

8. V-2 swerved to the left and entered the westbound lane of SR-60. V-1 and V-2 collided head-on in the westbound lane of SR-60.

9. V-1 and V-2 both sustained significant damage. The driver of V-2 was pronounced dead at the scene of the accident. The cause of death was multiple thoracic traumas as a result of the collision. There were two passengers in V-2, and both were injured by the collision and taken to the hospital by Life Flight.

10. CPL Hildreth and CPL Gensler of the Florida Highway Patrol investigated the accident and prepared written reports. They report that the speed of V-1 and V-2 could not be calculated from the evidence at the scene of the accident.

11. CPL Hildreth and CPL Gensler reported that the driver of V-1 was not under the influence of alcohol or drugs at the time of the accident, and the driver of V-1 was not texting or otherwise using a cell phone immediately before or at the time of the accident.

### LAW AND ARGUMENT

Pursuant to §782.071, Florida Statutes, vehicular homicide is defined as “the killing of a human being . . . , caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.” (2014). §316.192(3)(c)(2), Florida Statutes (2014) makes it a third degree felony to operate a vehicle in a reckless manner which causes serious bodily injury to another. §316.192(3)(c)(1), Florida Statutes (2014) makes it a first degree misdemeanor to operate a vehicle in a reckless manner and cause damage to a person or property. To sustain any of the charges in this case, the State must prove the element of reckless driving. *W.E.B. v. State*, 553 So. 2d 323 (Fla. 1<sup>st</sup> DCA 1989). §316.192, Florida Statutes (2014) defines reckless driving as “driving any vehicle in willful or wanton disregard for the safety of persons or property. Furthermore, “willful means intentionally, knowingly and purposefully, and wanton means with a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.” *Id.* at 326. Generally, the violation of a traffic regulation alone will not support a charge of reckless driving. *See e.g. House v. State* 831 So. 2d 1230 (Fla. 2<sup>nd</sup> DCA 2002).

Florida courts have heard many cases where a crash resulted in a death, but the actions of

the defendant do not rise to the level of reckless driving. In *W.E.B.*, the First DCA dealt with a similar situation. In *W.E.B.*, the defendant was driving a vehicle on a clear night on a rural stretch of highway. The defendant's vehicle entered a curve at a high rate of speed and ran off the road. The defendant overcorrected, crossed into the victim's lane, and collided with the victim's vehicle. The First DCA held the action of the driver did not rise to the level of reckless driving. The Court reasoned, "although a defendant need not have foreseen the specific circumstances causing the death of the particular victim, it is sufficient that he or she should have reasonably foreseen that the same general type of harm might occur if he or she knowingly drives the vehicle under circumstances that would likely cause the death of another." *W.E.B.* 553 So. 2d at 326. Further, the court held that even though the collision occurred in the victim's lane, "that is evidence only of simple negligence and not of willful or wanton conduct." *Id.* at 327. Most importantly, and most applicable in the present case, the Court held, "it does not follow however, that every fatality, regrettable as it may be, is accompanied by and results from conduct warranting a criminal conviction." *Id.*

In *House v. State*, 831 So. 2d 1230 (Fla. 2<sup>nd</sup> DCA 2002), the Second DCA discussed whether speed alone would justify a vehicular homicide conviction. The court held "speed alone will not justify a conviction for vehicular homicide." *Id.* at 1233. More importantly, the court held "the only evidence of the manner in which House was driving at the time he collided with Rogers is that he was speeding." *Id.* The court focused on how the defendant was actually driving when the accident occurred. Based on the actions of the defendant, the court could not find the elements of reckless driving. In the case at bar, the evidence concerning V-1's actual actions at the time of the accident is that it drove for about 0.5 seconds into a no passing zone

before returning to the proper lane. This does not rise to the level of reckless driving.

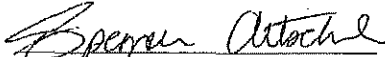
Florida courts have upheld convictions for vehicular homicide stemming from passing accidents. But, in those cases, there were always actions aside from or in addition to the action of passing that led the court to hold the totality of the actions were reckless. For example, in *Martinez v. State*, 692 So. 2d 199 (Fla. 3<sup>rd</sup> DCA 1997), the court upheld a conviction for vehicular homicide. In that case, the defendant was passing in a no passing zone on a curvy section of road when his vehicle struck a median, crossed over the road, and struck a rock wall. And, the defendant was doing approximately 70 MPH in a 30 MPH zone when the accident occurred. Additionally, in *State v. Lebron*, 954 So. 2d 52 (Fla. 5<sup>th</sup> DCA 2007), the Fifth DCA upheld a conviction for vehicular homicide where the defendant was attempting to pass on the right hand side while traveling at a high rate of speed (81 MPH in a 55 MPH zone), and veered back into her lane just prior to losing control of her vehicle. The prevailing theme in cases where a defendant's conviction is upheld involve a series of actions that, when taken together, rise to the level of reckless driving.

In *Berube v. State*, 6 So. 3d 624 (Fla. 5<sup>th</sup> DCA 1008), the defendant executed an improper left turn across oncoming traffic causing an accident in which another driver died. The defendant was not intoxicated or otherwise distracted from the road. The weather was clear and sunny. There were no obstructions to visibility. The 5<sup>th</sup> DCA reversed the conviction for vehicular homicide where the evidence at trial merely demonstrated negligence with no evidence of intoxication, speeding, or other erratic driving. The facts in *Berube* are analogous to the facts in the case at bar. Whereas the defendant in *Berube* made an improper left turn across traffic, V-1 in this case made a legal pass, but drove into a no passing zone for approximately 0.5 seconds

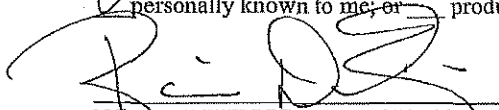
before returning to the proper lane. And, just as in *Berube*, there is no evidence the driver of V-1 was intoxicated, traveling at an excessive speed, or otherwise driving erratically. Furthermore, there is no evidence that the driver of V-1 was passing on a curve or hill, in poor visibility, or in inclement weather. There is no evidence that the driver of V-1 was texting or operating a cell phone, or otherwise operating the vehicle in a reckless manner.

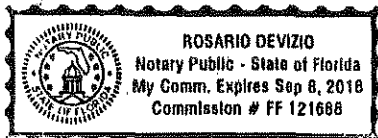
Neither carelessness nor ordinary negligence in the operation of a motor vehicle is sufficient to sustain a conviction for vehicular homicide. *Luzardo v. State*, 147 So. 3d 1083, 1086 (Fla. 3<sup>rd</sup> DCA 2014). The evidence in this case does not establish criminal conduct. The evidence in this case merely indicates that V-1 was attempting to pass a slower moving vehicle in a legal passing zone and in a manner that was safe under the conditions at the time. V-1 remained briefly (less than one second) in the eastbound lane of a no-passing zone before returning to the proper lane. And, that the accident occurred in the westbound lane after V-1 had returned to the proper lane of travel. This evidence does not rise to the level of reckless driving, and failing that, the State cannot prove any of the charges presented. The unfortunate and regrettable truth in this case is that a person died and two children were injured as a result of the accident. However, the evidence does not show that the actions rose to the level of criminal behavior.

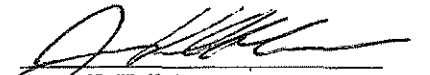
WHEREFORE, the Defendant, SPENCER JORDAN ALTSCHULER, respectfully requests that this Honorable Court enter an order dismissing all charges brought by the State in this case for failure to establish a prima facie case of the requisite elements of reckless driving necessary to prove all of the charges brought by the State's Amended Information.

  
Spencer Altschuler

Sworn to and subscribed before me this 17 day of March, 2017 by Spencer Altschuler who is  
☒ personally known to me; or ☐ produced the following identification: \_\_\_\_\_

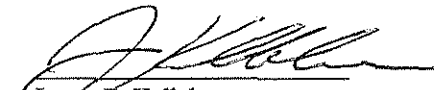
  
NOTARY PUBLIC - State of Florida



  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was filed via the Florida e-Filing Portal and served electronically on the Offices of the State attorney at [division101@sao9.org](mailto:division101@sao9.org) this \_\_\_\_ day of March, 2017.

  
James B. Kallaher  
Florida Bar No. 474290

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR OSCEOLA COUNTY, FLORIDA  
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

SPENCER ALTSCHULER,

Defendant./

CASE NO.: 2016-CF-583

DIVISION NO.: 101

MOTION TO DISMISS

BEFORE

THE HONORABLE JON B. MORGAN

Osceola County Courthouse  
2 Courthouse Square  
Kissimmee, Florida 34741  
Courtroom 5-F  
April 17, 2017

Transcribed from digital media by:  
Deborah M. Armstrong, CER

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FILED IN OFFICE  
CLERK COUNTY COURT  
OSCEOLA CO., FL  
2018 JAN 22 A 10:06  
JAN 22 2018



- - -

**P R O C E E D I N G S**

(The following proceedings commenced on Tuesday,  
April 17, 2017, at 2:25 p.m.)

**THE COURT:** All right. Let's go on record in Case  
16-CF-583, State of Florida versus Spencer Jordan  
Altschuler.

Mr. Kallaher --

**MR. KALLAHER:** Yes, Your Honor.

**THE COURT:** -- is your client present or are you  
waiving his presence?

**MR. KALLAHER:** Waive presence for today, sir.

**THE COURT:** Okay. Fair enough.

Okay. Well, the Court has reviewed the motion to  
dismiss. The State has filed a traverse. Typically  
that would end the matter on the motion to dismiss  
since the motion is filed alleging there aren't  
disputed facts. However, if the Court finds that,  
assuming the facts set forth in the State's traverse  
are true, that there isn't a -- the State can't make a  
prima facie case of guilt, then I would still be  
required to grant the motion to dismiss. So I guess,  
in effect, treating the traverse as a demurrer.

I see --

**MS. SANDERS:** I won't -- that's not from me.

Ninth Judicial Circuit  
Court Reporting Services

1           **THE COURT:** Okay. This is generally not an  
2 evidentiary hearing.

3           **MR. KALLAHER:** I know, Judge. And, actually, I  
4 was surprised when Ms. Sanders informed me that she was  
5 gonna bring witnesses. So I brought exhibits --

6           **THE COURT:** Okay.

7           **MR. KALLAHER:** -- just in case.

8           **THE COURT:** Fair enough.

9           Again, my -- my understanding is that where we  
10 stand at this point is, you filed your motion saying  
11 the material facts are not in dispute and the  
12 undisputed facts don't rise to the level necessary to  
13 prove the -- the charge.

14           The State has filed a traverse. They -- they  
15 don't really -- I'm not sure how much -- there's a  
16 factual dispute, but they've added facts that they  
17 claim they're -- the State's prepared to prove.

18           So I think at this point the Court has to look at  
19 the -- as I've said, look at the State's -- the facts  
20 as contained in your motion and the -- the State's  
21 traverse. And assuming the facts as set forth in the  
22 traverse are true, are -- for the purpose of the -- the  
23 hearing, whether they are sufficient to support a  
24 conviction in the case.

25           **MS. SANDERS:** If I may, Your Honor? I have my

1 witnesses here just in case Your Honor wanted to hear  
2 live testimony. I know different judges do different  
3 things.

4 **THE COURT:** Yeah.

5 **MS. SANDERS:** Although I did file the traverse  
6 adding additional facts, additional witnesses that were  
7 not part of defense counsel's motion to dismiss --

8 **THE COURT:** I -- I think I'm bound by the facts as  
9 set forth in the motion to dismiss and your traverse --

10 **MR. KALLAHER:** Yes, sir.

11 **THE COURT:** -- at this point.

12 **MR. KALLAHER:** Before we get too far, though, I  
13 would just wanna point out that the defense objects to  
14 the traverse in that it's not sworn. It doesn't follow  
15 the -- the rule --

16 **THE COURT:** I didn't notice.

17 **MR. KALLAHER:** -- 3.190(c)(4), and therefore is  
18 insufficient. And I would suggest and recommend that  
19 the Court just go on the motion to dismiss because it  
20 is ...

21 **THE COURT:** Well, your -- your objection is  
22 well-founded. It -- I'm looking at the traverse. It's  
23 not sworn as required by the rule. What I would do,  
24 though, is allow the State --

25 **MS. SANDERS:** I could do an amended

1 (indiscernible) --

2 **THE COURT:** -- additional time to file an amended  
3 traverse. Or if the State wishes to -- if parties  
4 don't wanna come back a different time, the State can  
5 swear to the traverse that has been filed and --

6 **MS. SANDERS:** I can --

7 **THE COURT:** -- we'll proceed.

8 **MS. SANDERS:** -- literally swear to it as soon as  
9 I send my assistant an e-mail.

10 **MR. KALLAHER:** If that would be your judge's  
11 pleasure to allow the State the time to do that, I  
12 would waive any other further requirement for notice so  
13 we could continue.

14 (Court was at ease.)

15 **THE COURT:** So assuming that the State does then  
16 remedy the situation by filing an amended traverse  
17 or -- or swearing to the traverse that has been filed,  
18 that leaves us with the -- the legal issue as to  
19 whether the facts are sufficient to support a charge of  
20 vehicular homicide. I've read, again, your motion as  
21 well as their traverse and -- and the legal arguments,  
22 but at this point I'll entertain any further argument  
23 on the --

24 **MR. KALLAHER:** Okay.

25 **MS. SANDERS:** -- on your motion.

1           **MR. KALLAHER:** Thank you, Your Honor. May it  
2 please the Court and counsel?

3           Here today on the motion to dismiss is -- as the  
4 Court has stated, and on your representation,  
5 Your Honor, that you've read both the State -- or the  
6 motion and the traverse, I will save the -- the  
7 recounting of that just to save time.

8           I -- I would point out that in the traverse, it  
9 doesn't deny any of our -- or of the -- of the facts --  
10 of the undisputed facts, but -- but does add some that  
11 were not included in the motion to dismiss. And I  
12 would suggest and submit that the facts added don't  
13 change anything.

14           The -- the simple -- the -- the simple facts of  
15 this case are that there was a -- or a car was going  
16 westbound, was passing the car on Highway 60, continued  
17 the pass, got back in his lane, and confronted a --  
18 a -- for the want of a better term, the victim's car.

19           The -- the evidence has been and is of record that  
20 the car he was passing, the driver of that car, said at  
21 the time of his passing it was flat, straight, dry, no  
22 problems passing. It was a safe pass. But for -- the  
23 testimony from that driver is for some reason the  
24 driver did not get over and back into the westbound  
25 lane as quickly as they thought they should have. When

1       confronted with another car, the vehicle did pull into  
2       the car -- or back into the westbound lane, but it was  
3       occupied by that car and that's where the crash  
4       occurred.

5               Now, the -- the points I would like to bring out  
6       in the motion -- in our motion are that just a simple  
7       violation of a traffic regulation has never been held  
8       to be reckless driving. There has to be a show of  
9       willful or wanton disregard for safety of life or  
10      property. And -- and the facts as established in this  
11      case are -- that are undisputed, don't show that.

12             All they show is someone made a pass that was safe  
13      at the time, may or may not have gotten back in the --  
14      in the westbound lane as quickly as they should,  
15      crossed into a -- a no passing zone, with just a couple  
16      of seconds back into the westbound lane when the crash  
17      occurred.

18             There isn't a lot of case law that would -- was --  
19      talk about passing. But there is significant case law  
20      on -- on the issue of a regulation -- a violation of a  
21      regulation, just alone, doesn't rise to reckless  
22      driving. And I would point out several cases, if I  
23      may.

24             *W.E.B. vs. State* -- or *W-E-B vs. State*. It's 553  
25      So.2d 323. That driver was drinking alcohol, was

1 speeding to excess, and drove off the edge of the  
2 pavement and overcorrected and hit the victim' car; not  
3 vehicular homicide.

4 *Del Rio vs. State*, 854 So.2d 696. It's a Second  
5 DCA case, 2003. Cut through a T-intersection without  
6 stopping, turning left, and as that driver turned left,  
7 hit a woman pushing a baby carriage that was crossing  
8 the road in a crosswalk. That was found not to be  
9 vehicular homicide.

10 *Luzardo vs. State* is 147 So.3d 10 -- or  
11 1038 [sic]. It's a Third DCA case from 2014. That  
12 driver was driving 83.9 miles an hour in a 55, turned  
13 left in front of crossing -- a car turned left in front  
14 of the defendant's car, crossing defendant's lane, and  
15 defendant swerved and struck that turning vehicle. And  
16 that was found not to be vehicular homicide, even  
17 though the speed was in excess and it was a two-lane  
18 road there.

19 *Stracar vs. State*, 126 So.3d 379. It's a Fourth  
20 DCA case from 2013. A vehicle left the road, traveled  
21 along a sidewalk, crossed a divided roadway, hit a sign  
22 which launched the car over a median and onto the  
23 victim's vehicle. Speed was a factor. Alcohol -- the  
24 driver was -- had alcohol in -- in her system,  
25 marijuana, oxycodone, Xanax, all in -- in the system.

1 The appellate court found that that was not vehicular  
2 homicide.

3 Continuing on, *State vs. Esposito*, 642 So.2d 25;  
4 Fourth DCA, 1994. A victim had a four-pronged cane, a  
5 walker, was crossing the road in the crosswalk.  
6 Defendant had an unobstructed view, no distracting  
7 conditions. Several witnesses say there was plenty of  
8 opportunity to see the witness -- or see the victim.  
9 Defendant didn't apply the brakes until 20 feet after  
10 impacting the victim. And that was considered not  
11 vehicular homicide. It was no more than a simple  
12 inattentiveness is that the Fourth DCA said.

13 And *State vs. May*, 670 So.2d 1002; Second DCA  
14 1996. Defendant swerved across lanes of traffic, went  
15 off the left side of the road and into a yard, drove  
16 back onto the road, collided with the victim. And --  
17 and that victim -- or that driver was under the  
18 influence of Demerol, which was proven. And the -- the  
19 appellate court found that that was not vehicular  
20 homicide.

21 Now in the present case, as I stated in my motion,  
22 the only regulation that we could find -- or that could  
23 possibly be applied to the facts of this case is going  
24 past the -- or into the double yellow line, passing at  
25 that point. But as I've said, that was only for a mere



1 couple of seconds before coming back and -- and being  
2 in the -- in the westbound lane, again, where the other  
3 car was -- had -- had already turned.

4 There was no alcohol. There was no texting.  
5 There's no evidence of excessive speed. We had a 60  
6 mile an hour speed zone there.

7 Your Honor hasn't ruled yet, but we had a motion  
8 to exclude some evidence of speed.

9 **THE COURT:** Yeah.

10 **MR. KALLAHER:** We don't have that ruling yet --

11 **THE COURT:** I'm --

12 **MR. KALLAHER:** -- but even if it were --

13 **THE COURT:** I'm granting --

14 **MR. KALLAHER:** -- the worst --

15 **THE COURT:** -- the -- the motion. Well,  
16 provisionally, absent some testimony that there's some  
17 meaning to the ...

18 **MR. KALLAHER:** Okay. Well, thank you, Your Honor.  
19 But even --

20 **THE COURT:** -- speedometer.

21 **MR. KALLAHER:** -- if we were to go to 78 -- say  
22 the worst-case scenario was 78 miles an hour, that  
23 doesn't rise to the level of excessive speed that the  
24 courts have held would be necessary. And, plus, it  
25 can't just be the speed, it's gotta be something else.

1           So, again, without any of the aggravating factors,  
2           even with the State's -- the facts in the State's  
3           traverse, we simply have a pass that started correctly  
4           and ended tragically. That does not rise to the level  
5           of reckless driving, which is -- the State is required  
6           to prove in order to carry their burden.

7           Thank you.

8           **THE COURT:** Thank you.

9           Ms. Sanders?

10          **MS. SANDERS:** Yes, Your Honor.

11          Your Honor, it's the State's contention that we  
12          have something more than basic careless and negligence  
13          in this particular case. There is a lot of disputed  
14          facts between what the defense is alleging and what the  
15          defense -- and what the State alleges.

16          And this particular case we don't only have speed  
17          of the defendant, whether it's greater than 8 miles or  
18          16 miles. In this particular case we have someone that  
19          is driving onto oncoming traffic.

20          The witnesses in the State's case say that the  
21          defendant is driving in an unsafe length of time. Some  
22          witnesses say that, you know, he -- that they were able  
23          to see oncoming traffic and the defendant made no  
24          evasive moves. He did not break. He made no effort to  
25          avoid the vehicle that's being driven by the deceased

1 in this case, Ms. Walker.

2 Defense states a lot of cases in where we're  
3 talking about speed. In this -- in our present case we  
4 don't only have speed, Your Honor, we are -- we have to  
5 look at the defendant's actions. And looking at the  
6 totality of circumstances presented in this case, his  
7 behavior was reckless. The fact that he drove on  
8 oncoming traffic for an unsafe length of time, it's  
9 inherently dangerous.

10 And that is not for the Court to decide but rather  
11 the jury. They have to decide whether his driving  
12 pattern, whether the fact that he was driving at an  
13 unsafe length of time, whether the conditions for him  
14 to pass is safe or not, they have to look at all of  
15 that in order to consider if his actions were wanton  
16 and willful in order to even get to reckless driving.  
17 That is something not for the Court to decide.

18 And the State has provided the Court with  
19 specifically, *State vs. Gensler* 929, So.2d 27; as well  
20 as *D.E. vs. State*, 904 So.2d 558; *State vs. Fordham*,  
21 which is 465 So.2d 580; and *Gensler vs. State* which is  
22 929 So.2d 27.

23 And I'll just read this, Your Honor: Whether the  
24 conduct was reckless and the proximate cause of death  
25 of the victim, those things are jury issues not

1 properly resolved on a motion to dismiss.

2 The State looked at one of defense counsel's case  
3 law, which is -- I'm probably not gonna say this  
4 correctly but -- *Berube vs. State*, which is 6 So.3d  
5 624. I reviewed the dissenting opinion in this  
6 particular matter because it's in contrary to what they  
7 looked at in *State vs. Ynocenscio*, which is 773 So.2d  
8 613; it's a Fifth DCA. In that particular case, Your  
9 Honor, the facts were that the defendant was driving --  
10 they did not consider speed in that case, but he was  
11 driving in -- where it was foggy, and he went through a  
12 passing lane and collided with the motorist.

13 And in this particular case, the dissenting  
14 opinion was that it is sufficient that the defendant --  
15 that he intended to drive as he did. There is no  
16 question in that particular matter that the defendant  
17 intended to pass the vehicle in fog. This action was  
18 more than mere negligence. Passing in fog, which  
19 restricts visibility, even in -- in an area normally  
20 safe for passing, is as reckless as passing on a curve  
21 without being able to see around the bend or passing  
22 upon approaching a hill without being able to see the  
23 above crest. Such a driver is gambling on an empty  
24 highway, potential death as -- as the stakes. The fact  
25 the defendant was not speeding, was driving on a

1 straight section of the highway, and in a vehicle which  
2 was mechanically sound, does not lessen the  
3 recklessness of his actions.

4 That's exactly what the State is saying, Your  
5 Honor.

6 **THE COURT:** But that's the dissent, correct?

7 **MS. SANDERS:** Yes. That -- it is, but I agree  
8 with the dissent --

9 **THE COURT:** Okay.

10 **MS. SANDERS:** -- because essentially all of those  
11 things, taken in totality of circumstances, goes to a  
12 jury. The jury should decide whether or not the  
13 defendant's actions were reckless, not the Court.

14 The fact that it was a clear day, the fact that  
15 the defendant was driving in an unsafe manner, or was  
16 driving above the excess speed of 60 miles per hour, or  
17 the fact that, you know, he -- he wasn't paying  
18 attention, he could've, you know, braked, he could've  
19 take some type of evasive actions. They have to listen  
20 to the witnesses. They have to listen to what all of  
21 the witnesses in the State's case has to present  
22 because those are the ones that saw him drive that day.

23 They're -- those are the ones that saw -- that can  
24 estimate his speed based upon their speed. They can  
25 estimate the -- the length that he had between their

1 car to another car. Because the defense is saying,  
2 well, you know, my guy didn't have an opportunity to  
3 move over, it was only 0.5 seconds. But that's  
4 contrary to what the State's going to present. Because  
5 I have witnesses that's gonna say, no, there was an  
6 opportunity for the defendant to move over.

7 In addition to that, Your Honor, the facts are in  
8 dispute. The fact that the defendant was driving in an  
9 unsafe length of time on -- onto oncoming traffic, it's  
10 reckless in of itself. The State has a prima facie  
11 case of vehicular homicide.

12 I think *State v. Gensler* says it the best. The  
13 State only has to show the barest prima facie case of a  
14 crime and a motion to dismiss is not the proper avenue  
15 to go around this. It has to be decided by a jury.  
16 They have to look at the facts as presented and look at  
17 the totality of the circumstances in order to determine  
18 whether or not this defendant was reckless.

19 **THE COURT:** Well, not -- not necessarily. Not if  
20 one assumes that your facts as presented in your  
21 traverse are correct and -- and those facts --  
22 accepting those facts, there isn't sufficient evidence  
23 to legally establish negligence. And it's -- the Court  
24 is duty-bound to grant the motion to dismiss.

25 I mean, if it's -- it's gotta be more than mere

1 negligence. It's gotta be recklessness.

2 **MS. SANDERS:** Correct, Your Honor.

3 **THE COURT:** So I disagree that a motion to dismiss  
4 is not a -- a proper way to -- to raise the issue.  
5 Now, the question is whether the facts here are  
6 sufficient, that if the -- a jury returned a verdict of  
7 guilty, it would be -- there's sufficient evidence to  
8 uphold that -- that verdict legally.

9 All right. Anything further, Ms. --

10 **MS. SANDERS:** No, Your Honor.

11 **THE COURT:** Okay. All right.

12 Well, vehicular homicide cases are generally very  
13 difficult cases because every time there's been a -- a  
14 horrible crash and one or more persons have -- have  
15 lost their lives due to the crash. The legislature has  
16 not criminalized negligence. And, unfortunately, we  
17 have crashes -- I don't know every day, but we have  
18 crashes many, many, many times in which a person is at  
19 fault and is negligent in causing the crash but is not  
20 criminally liable.

21 As we've discussed, and the law is pretty clear,  
22 that in order for a person to be criminally liable for  
23 vehicular homicide there has to be more than mere  
24 negligence, it has to be reckless. So that's -- that's  
25 somewhat difficult to draw the lines between culpable

1 negligence, recklessness, and negligence, and that's  
2 why you-all have cited the cases you have. The cases  
3 are very factually specific. And it's an easy test to  
4 articulate, but more difficult to apply based on the  
5 facts of a specific case and a particular one that's  
6 somewhat close.

7 The closest case I saw factually on point is *State*  
8 *vs. DePriest*, which is at 180 So.3d 1099, which is a  
9 First District Court of Appeals case. In that case,  
10 DePriest, the defendant, was on U.S. Highway 331,  
11 which, like the highway in this case, was a two-lane  
12 undivided highway. There's a speed limit of 55 miles  
13 an hour. It's a rural area with limited traffic. And  
14 the defendant was driving south and -- and came upon a  
15 slower moving van and proceeded to pass it in a legal  
16 passing area, which was, again, some of what we have  
17 here.

18 According to the appellate court, a witness  
19 traveling southbound behind DePriest also passed the  
20 van. The witness estimated they're both traveling  
21 around the speed limit of 55 miles an hour and  
22 increased to around 60 miles an hour while passing.

23 After passing the slower moving van, the witness  
24 returned to the southbound lane but DePriest remained  
25 in the northbound lane, traveling in the wrong lane for



1 approximately one-half a mile, until the head-on  
2 collision with the victim's car, which killed the  
3 driver of the -- of the victim's car. The witness saw  
4 the victim's headlights and stated that DePriest took  
5 no evasive action. Investigator determined that both  
6 vehicles were traveling at approximately 55 miles an  
7 hour at the time of the collision.

8 The facts are -- are somewhat similar to -- to  
9 this case. In this case we have a passing that was a  
10 lawful passing on a undivided two-lane road. And the  
11 defendant did not return to his lane until the last  
12 second, at by which time the -- the driver of the  
13 oncoming vehicle had understandably panicked at the  
14 oncoming headlights and moved over to the oncoming lane  
15 and the defendant returned to his lane at the last  
16 second and they -- they met there.

17 The facts contained in -- in the defendant -- in  
18 the State's traverse, which again the Court will  
19 consider demurrer for this purpose, include that a  
20 Mrs. Bellis said there's more than enough room for the  
21 defendant to get back over into his lane, the westbound  
22 lane, and they stayed in the eastbound lane for about  
23 30 seconds, which at the speed they're driving would be  
24 about a half-mile. And that she was able to notice  
25 the -- the situation and actually honked her horn to

1 get the defendant's attention to get back into the  
2 proper lane.

3 Her passenger, Mr. Bellis, apparently would  
4 testify that the defendant had to be about 60 yards  
5 ahead of their vehicle, so they had plenty of room to  
6 get over.

7 It is a -- in -- in this Court's view, a very  
8 close call based on the cases that I've reviewed. It's  
9 clear that speed alone is not sufficient. And in this  
10 case speed is not the -- really the issue. But a -- a  
11 mere violation of traffic laws by itself is not -- not  
12 sufficient to arise to the level of recklessness that  
13 is required for a vehicular homicide charge.

14 Again, the -- the Court finds that the facts as  
15 set forth in *State v. DePriest* would be fairly  
16 analogous to the facts in this case. And the First  
17 District Court of Appeals found that those facts were  
18 sufficient to support a -- a finding of -- or a charge  
19 of vehicular homicide. In that case they reversed the  
20 order dismissing the charge on a (c)(4) motion to  
21 dismiss.

22 I -- I would note a -- a jury could lawfully and  
23 reasonably decide that willfully and unnecessarily  
24 driving 55 miles an hour for a half-mile in the wrong  
25 lane of traffic, when fully capable of returning to the

1 correct lane, was a willful and wanton disregard for  
2 the safety of others.

3 Now, there is a difference in that case. And I --  
4 I think the facts will have to come out at trial more  
5 clearly. But in *DePriest* it's clear that the defendant  
6 was just staying in the left-hand lane the -- the whole  
7 half-mile when he could've gone over back into the  
8 proper lane. It's unclear in this case, although there  
9 is apparently some evidence that there is room for him  
10 to get over and he stayed in the eastbound lane for  
11 about 30 seconds; which, again, if he were driving 60  
12 miles an hour would be a half-mile.

13 So based on the -- *State v. DePriest*, I'm going to  
14 deny the motion to dismiss.

15 Thank you, folks.

16 **MR. KALLAHER:** Thank you, Judge.

17 **THE COURT:** Is there anything further we need to  
18 address in the Altschuler case?

19 **MR. KALLAHER:** I don't think so, your Honor. You  
20 said you've -- you've ruled, but --

21 **THE COURT:** I haven't entered a written order, but  
22 the Court is going to grant your motion in limine -- or  
23 motion to exclude the photograph that includes the  
24 speedometer, unless the State is able to link that to  
25 a -- to a speed. Just the picture itself, without

1       being related by evidence to a particular speed, is --  
2       is more prejudicial than -- and it's not probative of  
3       anything without that --

4               **MR. KALLAHER:** Okay, Judge.

5               **THE COURT:** -- testimony.

6               **MR. KALLAHER:** Are we off the record, sir?

7               **THE COURT:** No. No, but --

8               (Unrelated casual conversation occurs.)

9               **MR. KALLAHER:** And DePriest was acquitted.

10              **THE COURT:** Oh, was he?

11              **MR. KALLAHER:** Yes, sir.

12              **THE COURT:** Well, that --

13              **MR. KALLAHER:** Okay.

14              **THE COURT:** Like I said, it's a close case.

15       So ...

16              (The proceedings were concluded at 2:56 p.m.)

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**C E R T I F I C A T E**

1 State of Florida:

2 County of Osceola:

3 I, Deborah M. Armstrong, being a Digital Court  
4 Reporter of the Ninth Judicial Circuit, as  
5 authorized by Rule 2.535(h)(3), Florida Rules of  
6 Judicial Administration, and the Administrative  
7 Order of the Ninth Judicial Circuit Numbered  
8 07-98-44, certify that the foregoing transcription  
9 is true and correct to the best of my ability.  
10

11 Dated this 19th day of January, 2018, in the  
12 City of Kissimmee, County of Osceola, State of  
13 Florida.  
14  
15

16 s/Deborah M. Armstrong, CER  
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1 **COPY**

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR OSCEOLA COUNTY, FLORIDA  
CRIMINAL JUSTICE DIVISION

3 **STATE OF FLORIDA,**

4 Plaintiff,

5 **vs.**

CASE NO.: 2016-CF-583

6 **SPENCER JORDAN ALTSCHULER,**

7 Defendant./

DIVISION NO.: 101

8  
9 **JURY TRIAL PROCEEDINGS**

10 **BEFORE**

11 **THE HONORABLE JON B. MORGAN**

12  
13 In the Osceola County Courthouse  
Courtroom 5-F  
14 Kissimmee, Florida 34741  
October 2-4, 2017  
15 Julie Sullivan, CRC, RPR  
16

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P R O C E E D I N G S

(October 2, 2017; 9:38 a.m.)

(The following portion was transcribed from the digital recording.)

**THE COURT:** Mr. Kallaher, Ms. Sanders, are there any matters we're going to need to address before we begin jury selection in Mr. Altschuler's case?

**MR. KALLAHER:** We just -- I just have a housekeeping matter about things I want to do during opening. And we have come to an agreement to allow me to move some evidence in cross-examination rather than going to -- having to call back the officers.

**THE COURT:** Okay. Counsel approach for a minute.  
(At the bench.)

**THE COURT:** I -- I don't think this case should take too long, should it?

**MS. SANDERS:** It shouldn't take long at all.

**THE COURT:** Yeah. I mean, it's pretty horrible, but it's pretty straightforward.

**MS. SANDERS:** Yes, Your Honor.

**MR. KALLAHER:** Yeah.

**THE COURT:** You got what you got.

**MS. SANDERS:** That's right.

**THE COURT:** We'll see what that amounts to. Okay.

1           **MS. SANDERS:** I still have a joint stipulation on  
2 the identification.

3           **THE COURT:** Okay. And -- very well, then, if  
4 y'all want to file that. If at some point you want me  
5 to read it, one of you want to read it to the jury,  
6 that's fine.

7           **MS. SANDERS:** Your Honor can read it.

8           **THE COURT:** Is that what you --

9           **MR. KALLAHER:** That's fine.

10          **THE COURT:** Okay. I'll tell them at some point,  
11 maybe when we -- before opening statements or  
12 something. If one of you --

13          **MS. SANDERS:** Okay.

14          **THE COURT:** -- will remind me if I don't -- okay.  
15 So as soon as we address Mr. Davilla's case, then we'll  
16 call for a jury panel --

17          **MS. SANDERS:** Do you want to address your -- video  
18 after jury selection or --

19          **MR. KALLAHER:** Yeah, that's -- whatever. It's up  
20 to you. I have a video. It's about a minute long.  
21 Actually, I think you're gonna use it too, right?

22          **MS. SANDERS:** Yes.

23          **MR. KALLAHER:** It's authenticated through one of  
24 the officers. You know, just stipulate that it's  
25 admitted, and then we don't have to worry about that.

1 And then I want to --

2 THE COURT: -- use it in opening?

3 MS. SANDERS: My only concern is I don't want them  
4 to think it was taken at the time of the actual --

5 THE COURT: I think you make clear that that's not  
6 the --

7 MS. SANDERS: That's right. Okay.

8 THE COURT: -- video of the accident.

9 MS. SANDERS: Right.

10 THE COURT: Okay.

11 MS. SANDERS: Like, no, this is not  
12 (indiscernible).

13 THE COURT: Okay.

14 MS. SANDERS: We're good.

15 (The Court addressed unrelated matters.)

16 (The remaining trial proceedings herein were  
17 reported stenographically.)

18 THE COURT: Folks, just so you know, I've got a  
19 rules meeting at noon, so I have to break early, about  
20 11:30. Okay. So that said --

21 MS. SANDERS: Okay.

22 (Court was at ease.)

23 THE COURT: I just emailed out a draft copy of the  
24 jury instructions. You can look at them before we get  
25 to them. Do you use JKallaher@gmail.com?

1           **MR. KALLAHER:** Yes, sir.

2           **THE COURT:** Okay. We'll go on record in State of  
3           Florida versus Spencer Jordan Altschuler,  
4           Case 16-CF-583. Defendant is present, counsel and the  
5           assistant state attorneys. The jury is outside the  
6           courtroom.

7           Folks, are there any matters we need to address  
8           before we seat the jury panel and proceed?

9           **MS. SANDERS:** No, Your Honor.

10          **MR. KALLAHER:** No, ma'am.

11          **COURT DEPUTY:** He's still lining them up,  
12          Your Honor. It should be a minute.

13          (Court was at ease.)

14          **COURT DEPUTY:** He's ready, Your Honor.

15          **THE COURT:** All right. Let's seat the panel.

16          **COURT DEPUTY:** All rise for the jury.

17          (The venire enters the courtroom.)

18          (The venire was duly sworn.)

19          (Voir dire proceedings commenced, not transcribed  
20          herein.)

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**THE COURT:** All right. You may be seated.

3

4

And you need a few moments, Mr. Kallaher, to  
consult with your client?

5

**MR. KALLAHER:** Yes, sir.

6

**THE COURT:** We'll be at ease.

7

(Court was at ease.)

8

9

**THE COURT:** While they're working on that, we  
called for technical assistance.

10

Are you ready to proceed, Mr. Kallaher?

11

**MR. KALLAHER:** We are, Judge.

12

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**THE COURT:** All right. We are back on record in  
Case 16-CF-583, State of Florida versus Spencer Jordan  
Altschuler. The defendant is present with counsel, as  
well as the assistant state attorneys. The jury  
panel's outside the courtroom.

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And the way I do this, Mr. Kallaher, is I'll go by  
seat starting with the juror in Seat No. 1. I'll ask  
the defense -- or the State first on the odd-numbered  
seats and the defense first on the even-numbered seats.  
And, of course, either side can backstrike until the  
time the jury's sworn. And we'll address cause  
challenges as we get to them.

24

**MR. KALLAHER:** Okay.

25

**THE COURT:** All right. So what says the State as

1 to juror in Seat No. 1?

2 MS. SANDERS: Acceptable.

3 THE COURT: Defense?

4 MR. KALLAHER: Acceptable.

5 THE COURT: Okay. Defense as to juror in Seat 2?

6 MR. KALLAHER: A cause strike because she doesn't  
7 speak English.

8 THE COURT: State wish to be heard?

9 MS. SANDERS: No objection.

10 THE COURT: I'll grant challenge for cause.

11 And the State as to juror in Seat 3?

12 MS. SANDERS: Acceptable.

13 THE COURT: Defense?

14 MR. KALLAHER: Acceptable.

15 THE COURT: Defense as to juror in Seat 4?

16 MR. KALLAHER: Move to strike for cause; would  
17 give law enforcement more weight, and might hinder --  
18 gruesome pictures might hinder.

19 THE COURT: State wish to be heard?

20 MR. KALLAHER: No objection.

21 THE COURT: I'll grant the challenge for cause.

22 State as to juror in Seat 5?

23 MS. SANDERS: Cause, Your Honor. It would --  
24 looking at the pictures would be too emotional and also  
25 it would hinder her ability to listen to testimony.



1           **THE COURT:** Defense wish to be heard?

2           **MR. KALLAHER:** No objection.

3           **THE COURT:** I'll grant the challenge.

4           Defense as to Seat 6?

5           **MR. KALLAHER:** Acceptable. Acceptable, Judge.

6           **THE COURT:** State?

7           **MS. SANDERS:** Acceptable.

8           **THE COURT:** State as to juror in Seat 7?

9           **MS. SANDERS:** Your Honor, that would be a cause  
10 due to her medical condition. I believe she indicated  
11 she takes medication that puts her to sleep. It's a  
12 muscle relaxer.

13           **THE COURT:** Defense wish to be heard?

14           **MR. KALLAHER:** No. I believe she's a cause strike  
15 as well.

16           **THE COURT:** The strike is granted.

17           Defense, juror in Seat 8?

18           **MR. KALLAHER:** Judge, he's a cause strike as well;  
19 car accident, hard to put aside.

20           **MS. SANDERS:** No objections, Judge.

21           **THE COURT:** I'll grant the challenge for cause.

22           Defense as to juror in Seat 9?

23           **MR. KALLAHER:** I'm sorry. Did you say defense or  
24 State?

25           **THE COURT:** State, juror in Seat 9?

1 MS. SANDERS: Acceptable.

2 THE COURT: Defense?

3 MR. KALLAHER: Judge, we'd move to strike for  
4 cause. He said he'd give a law enforcement officer a  
5 little more weight than a civilian.

6 THE COURT: He did say that.

7 MS. SANDERS: I think he said "out of respect."

8 MS. ZERAN: He did say it.

9 THE COURT: He said -- he said it would be out of  
10 respect. But whether it was out of respect or for any  
11 other reason, it's the same thing.

12 Although he wasn't instructed -- or told that he  
13 would be instructed that he should weigh them the same.  
14 But I'll grant the challenge for cause.

15 Defense as to Juror in Seat 10?

16 MR. KALLAHER: He's acceptable.

17 THE COURT: State?

18 MS. SANDERS: State would strike, Your Honor.

19 MR. KALLAHER: I'm sorry. Did you say strike?

20 MS. SANDERS: Yes.

21 THE COURT: Defense -- State as to juror in  
22 Seat 11?

23 MS. SANDERS: That's a cause, Your Honor. Um, I  
24 know when defense inquired about having to hear from  
25 their side, she said that she would require it.

1           **THE COURT:** Okay. Defense wish to be heard?

2           **MR. KALLAHER:** No objection to the cause strike.

3           **THE COURT:** I'll grant the challenge.

4           Defense as to juror in Seat 12?

5           **MR. KALLAHER:** Move to strike her for cause. She  
6           said she would give more credit to law enforcement  
7           testimony.

8           **THE COURT:** I don't believe that --

9           **MS. SANDERS:** I didn't get that one.

10          **THE COURT:** She said she's got an elderly mother  
11          and a grandchild --

12          **MS. SANDERS:** Grandchild.

13          **THE COURT:** -- with an ear infection. But I don't  
14          recall the giving more weight. Let's call Ms. Thilburg  
15          back in and make inquiry.

16          **MR. KALLAHER:** Judge, I'm going to withdraw our  
17          cause.

18          **THE COURT:** Okay. But I still want to talk to her  
19          about her --

20          **MS. SANDERS:** She has multiple doctors  
21          appointments.

22          **THE COURT:** -- mother and granddaughter.

23          (Juror in Seat 12 enters the courtroom.)

24          **JUROR SEAT 12:** Right here?

25          **THE COURT:** That's fine.

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1 Welcome back, Ms. Thilburg.

2 JUROR SEAT 12: Thank you.

3 THE COURT: I just have a couple questions.

4 JUROR SEAT 12: Yes, sir.

5 THE COURT: I know you have your 84-year-old  
6 mother and you have a grandchild --

7 JUROR SEAT 12: I actually have custody of my two  
8 grandsons.

9 THE COURT: Okay.

10 JUROR SEAT 12: Usually everything's good. My  
11 husband travels for work, so this week he's in  
12 California.

13 THE COURT: Okay.

14 JUROR SEAT 12: One grandson woke up with an  
15 earache, and my mom who's visiting -- it's my turn to  
16 kind of help off-put my brother for a little bit -- she  
17 woke up with a UTI. So I just now have to figure  
18 out -- I have to get them to the doctor. I guess I can  
19 do after-hour care, or whatever. But I'm just trying  
20 to figure out whether or not I'll be here or how to  
21 get -- how to arrange that for them.

22 THE COURT: Okay. If you were selected, do you  
23 think you could arrange to get after-hour care for  
24 them?

25 JUROR SEAT 12: I don't -- well, one, TJ would

1 go -- because I work for the school district --

2 THE COURT: Right.

3 JUROR SEAT 12: -- so I would have to go during  
4 hours for his ear to the employee clinic.

5 THE COURT: Okay.

6 JUROR SEAT 12: Because they would only help  
7 during those hours. I don't know how late it would  
8 run. I know the last time I was on a case here, it ran  
9 until seven at night with us deliberating.

10 THE COURT: Well --

11 JUROR SEAT 12: I don't ever want to rush anybody  
12 or --

13 THE COURT: No. The way we work it is we work the  
14 jurors' hours, pretty much. If you were selected and  
15 need to be out of here by 5:00 or need to be out one  
16 afternoon early at 4:00, we could make that happen.

17 JUROR SEAT 12: See, that's what I would just have  
18 to know. I haven't called anybody yet because I don't  
19 know what I'm doing.

20 THE COURT: Okay. But you think if we were able  
21 to make accommodations, get you out early at least one  
22 day, that you could make arrangements?

23 JUROR SEAT 12: I can try. The only other thing I  
24 have to mention is I'm a school nurse. I have 945  
25 kids.

1           **THE COURT:** I understand.

2           **JUROR SEAT 12:** Some with low blood sugars that I  
3           literally run into the classrooms and drop sugar onto  
4           their tongues because they're going out. And there's  
5           no extra substitutes in the county right now to cover  
6           the School for the Arts. I tried. I tried to get  
7           coverage.

8           **THE COURT:** Okay.

9           **JUROR SEAT 12:** So whatever days I'm out, it's  
10          just somebody in the office taking care of someone  
11          else's kids.

12          **THE COURT:** Maybe I should call Mr. Thacker at the  
13          school board and see if he can --

14          **JUROR SEAT 12:** He needs to. It's a shortage.

15          **THE COURT:** All right. Well, bottom-line question  
16          is: If you were required to serve, despite everything  
17          on your plate, and if we made accommodations for you to  
18          take care -- get out early, at least one day early, to  
19          take care of what you need to take care of, would you  
20          be able to focus on this case or would you be so  
21          concerned about the children that you --

22          **JUROR SEAT 12:** Well, I am concerned about my mom  
23          because, you know, UTIs in an elderly, I don't want --  
24          I don't know how she's doing, like, right now.

25          **THE COURT:** Okay.

1           **JUROR SEAT 12:** So I'm kind of concerned. She  
2 starts spiking a temp tonight or whatever -- I just  
3 have to make sure I take care of them.

4           **THE COURT:** Okay.

5 All right, any questions, State?

6           **MS. SANDERS:** No, Your Honor.

7           **THE COURT:** Defense?

8           **MR. KALLAHER:** No, Your Honor.

9           **THE COURT:** Thank you, ma'am.

10          **JUROR SEAT 12:** Thank you.

11 (Juror in Seat 12 exits the courtroom.)

12          **THE COURT:** All right. What says the defense?

13          **MR. KALLAHER:** The defense would strike the lady  
14 who has a lot of excuses not to be here.

15          **THE COURT:** So --

16          **MR. KALLAHER:** I would move to strike for cause  
17 because she would not be able to concentrate  
18 sufficiently on the evidence.

19          **THE COURT:** State wish to be heard?

20          **MS. SANDERS:** No objections, Judge.

21          **THE COURT:** All right. That's borderline, but  
22 I'll grant the challenge for cause.

23 State as to juror in Seat 13?

24          **MS. SANDERS:** Acceptable.

25          **THE COURT:** Defense?

1           MR. KALLAHER: Peremptive strike.

2           THE COURT: Defense as to juror in Seat 14?

3           MR. KALLAHER: Peremptive strike.

4           THE COURT: State as to juror in Seat 15?

5           MS. SANDERS: Acceptable.

6           THE COURT: Defense?

7           MR. KALLAHER: Acceptable.

8           THE COURT: Defense as to juror in Seat 16?

9           MR. KALLAHER: Ms. Santiago -- Mr. Santiago's the  
10 one who had all the medical issues?

11          THE COURT: Correct.

12          MS. SANDERS: Yes.

13          MR. KALLAHER: I'm having difficulty reading my  
14 notes.

15                 Difficulty judging this case fairly based on his  
16 medical issues and his past experiences, so I move to  
17 strike for cause.

18          THE COURT: State wish to be heard?

19          MS. SANDERS: No objection.

20          THE COURT: Grant the challenge.

21                 Seat 17, State?

22          MS. SANDERS: State would strike, Your Honor.

23          THE COURT: 18, defense?

24          MR. KALLAHER: Just a moment, please, Judge.

25                 She's acceptable, Judge.



1           **THE COURT:** State?

2           **MS. SANDERS:** Acceptable.

3           **THE COURT:** Okay. Seat 19, State?

4           **MS. SANDERS:** Cause, Your Honor. If she sees  
5 pictures, Your Honor, it would hinder her ability to  
6 listen to testimony.

7           **THE COURT:** Defense wish to be heard?

8           **MR. KALLAHER:** No, sir.

9           **THE COURT:** All right. Seat 20, defense?

10          **MR. KALLAHER:** My notes say she had child care  
11 issues. But other than a cause challenge, she's an  
12 acceptable juror.

13          **THE COURT:** State?

14          **MS. SANDERS:** State would strike.

15          **THE COURT:** All right. Seat 21, State?

16          **MS. SANDERS:** Acceptable.

17          **THE COURT:** Defense?

18          **MR. KALLAHER:** Acceptable, Judge.

19          **THE COURT:** All right. We have six prospective  
20 jurors, those being jurors in Seats 1, 3, 6, 15, 18,  
21 and 21.

22          Any backstrikes, State?

23          **MS. SANDERS:** One moment, Your Honor.

24          **THE COURT:** Okay.

25          **MS. SANDERS:** State would strike Seat 3, Your

1 Honor.

2 MR. KALLAHER: I'm sorry, who was that?

3 MS. SANDERS: Seat 3, Valdez.

4 THE COURT: All right.

5 MR. KALLAHER: I'm sorry, Judge. How many strikes  
6 do we get?

7 THE COURT: Six.

8 MR. KALLAHER: I was working on three.

9 THE COURT: You don't have to use them all.  
10 That brings up Seat 22. What says the defense?

11 MR. KALLAHER: We'll strike No. 22.

12 THE COURT: Seat 23, State?

13 MS. SANDERS: Acceptable.

14 THE COURT: Defense?

15 MR. KALLAHER: Acceptable.

16 THE COURT: All right. We again have six; jurors  
17 in Seats 1, 6, 15, 18, 21, and 23.

18 Any backstrikes, defense?

19 MR. KALLAHER: Yes, Judge. We'd like to  
20 backstrike No. 6.

21 THE COURT: All right. That brings up juror in  
22 Seat 24. Defense?

23 MS. SANDERS: Acceptable, Your Honor, if it's my  
24 turn.

25 THE COURT: I'm sorry?

1           **MS. SANDERS:** Was it the State's turn?

2           **THE COURT:** No. Seat 24, defense.

3           **MR. KALLAHER:** Um, move for cause. It seemed like  
4 he had difficulty hearing and following the  
5 proceedings.

6           **THE COURT:** I'm gonna deny the challenge for  
7 cause. Once he got the hearing enhancement, he was  
8 able to hear and he responded appropriately, so I'll  
9 deny the challenge for cause.

10           So what says the defense?

11           **MR. KALLAHER:** Strike from the defense,  
12 peremptory.

13           **THE COURT:** That brings up juror in Seat 25,  
14 State?

15           **MS. SANDERS:** Cause for language.

16           **THE COURT:** Defense wish to be heard?

17           **MR. KALLAHER:** No, sir.

18           **THE COURT:** All right. Challenge granted.  
19 Seat 26, defense?

20           **MR. KALLAHER:** Move to strike number -- Ketty  
21 Sanchez for cause because of the gruesome pictures, she  
22 said, would hinder her ability to judge fairly.

23           **THE COURT:** State wish to be heard?

24           **MS. SANDERS:** No objection.

25           **THE COURT:** I'll grant the challenge. She also

1 said she couldn't presume the defendant innocent.

2 Seat 27, State?

3 MS. SANDERS: Acceptable.

4 THE COURT: Defense?

5 MR. KALLAHER: Acceptable.

6 THE COURT: All right. We have jurors in Seats 1,  
7 15, 18, 21, 23, and 27.

8 Any backstrikes, State?

9 MS. SANDERS: No, Your Honor.

10 THE COURT: Defense?

11 MR. KALLAHER: No, sir.

12 THE COURT: All right. Each side has one  
13 challenge as to the alternate.

14 What says the defense as to juror in Seat 28?

15 MR. KALLAHER: Um, Mr. Virnig, move to strike for  
16 cause. Mr. Virnig said he didn't know if he could be  
17 fair based on his prior traumas.

18 THE COURT: State wish to be heard?

19 MS. SANDERS: No objection.

20 THE COURT: I'll grant the cause challenge.  
21 Seat 29 as the alternate, State?

22 MS. SANDERS: Acceptable.

23 THE COURT: Defense?

24 MR. KALLAHER: Acceptable.

25 THE COURT: All right. Then our jury will be as

1 follows: Juror No. 1 will be Juror No. 155 from  
2 Seat 1. Juror No. 2 will be Juror No. 82 from Seat 15.  
3 Juror 3 will be Juror No. 206 from Seat No. 18.  
4 Juror 4 will be Juror No. 265 from Seat 21. Juror 5  
5 will be Juror 255 from Seat 23. Juror 6 will be Juror  
6 No. 84 from Seat 27. The alternate will be Juror  
7 No. 133 from Seat 29.

8 Does the State accept the jury as announced?

9 **MS. SANDERS:** Yes, Your Honor.

10 **THE COURT:** Defense?

11 **MR. KALLAHER:** Yes, sir.

12 **THE COURT:** All right. Mr. Altschuler, let me  
13 speak to you for just a moment. You've had an  
14 opportunity to participate in jury selection with your  
15 lawyers -- you can remain seated. That's fine.

16 **MR. KALLAHER:** Thank you.

17 **THE COURT:** Do you accept this jury that was just  
18 announced as the jury to try your case?

19 **THE DEFENDANT:** Yes, Your Honor.

20 **THE COURT:** Okay. Very well.

21 Then do we have -- Greg.

22 (Court was at ease.)

23 **THE COURT:** Is this video something you have on  
24 your computer as well?

25 **MS. SANDERS:** I do.

1           **THE COURT:** If we're not able to get it to  
2 connect --

3           **MS. ZERAN:** Yeah. We usually just plug directly  
4 in without using the wi-fi.

5           **THE COURT:** Right.

6           **MR. KALLAHER:** If worse comes to worst --

7           **THE COURT:** We can -- we should be able to --  
8 (Court was at ease.)

9           **THE COURT:** All right. We'll go on record in  
10 Case 16-CF-583, State of Florida versus Spencer Jordan  
11 Altschuler. The defendant is present with counsel, the  
12 assistant state attorneys.

13           Are there any matters we need to address before we  
14 return the jury -- seat and swear the jury and give  
15 preliminary instructions, from the State?

16           **MS. SANDERS:** No, Your Honor.

17           **MR. KALLAHER:** No, Your Honor.

18           **THE COURT:** And both parties have agreed that the  
19 video that the defense has on their laptop will be  
20 allowed to be shown during the defendant's opening  
21 statement?

22           **MS. SANDERS:** Yes, Your Honor.

23           **THE COURT:** Okay. Fair enough.

24           Let's return our jury panel, please.

25           (The venire enters the courtroom.)

1           **THE COURT:** Okay. You may be seated.

2           Welcome back, ladies and gentlemen. If your juror  
3           number is called by the clerk, if you would please take  
4           a seat in the jury box as directed by the court  
5           deputies.

6           **THE CLERK:** Juror No. 155. Juror No. 82. Juror  
7           No. 206. Juror No. 265. Juror No. 253. Juror No. 84  
8           and Juror No. 133.

9           **THE COURT:** All right. I would like to thank the  
10          remaining members of the panel for participating with  
11          us here today. We do recognize that it is not a  
12          particularly enjoyable task to come to a strange  
13          courtroom and answer questions put to you by the Court  
14          and by the attorneys, but it is extremely important.  
15          Without citizens such as yourself coming in and doing  
16          exactly what you have done here today, our system of  
17          justice could not function. And despite the fact that  
18          it is not a perfect system, it is the best system we as  
19          a society have devised to settle disputes among us.

20          So on behalf of the parties here today and on  
21          behalf of your fellow citizens, I thank you very much  
22          for being here today, and you are excused with our  
23          thanks. I ask that you step down into the first floor  
24          jury assembly room of the courthouse.

25          Have a great day.

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1 (The venire exits the courtroom.)

2 **THE COURT:** All right.

3 Ladies and gentlemen, at this time, if you would  
4 stand and raise your right hands to be sworn.

5 (The jury was duly sworn.)

6 **THE COURT:** Okay. You may be seated.

7 Ladies and gentlemen, you have been selected and  
8 now sworn as the jury to try the case of the State of  
9 Florida, plaintiff, versus Spencer Jordan Altschuler,  
10 defendant.

11 As we discussed earlier, the defendant, Spencer  
12 Jordan Altschuler, has been accused of the crimes of  
13 vehicular homicide, reckless driving causing serious  
14 bodily injury, and reckless driving causing damage to a  
15 property or person. The definition of the elements of  
16 each of these crimes will be explained to you later.

17 It will be your solemn responsibility to determine  
18 whether the State has proven its accusations beyond a  
19 reasonable doubt against Spencer Jordan Altschuler.  
20 Your verdicts must be based solely upon the evidence or  
21 lack of evidence and the law.

22 Now, the information or charging document is not  
23 evidence, and you are not to consider it as proof of  
24 guilt.

25 Now, as we discussed also earlier, it is the



1 judge's job to determine what laws apply in this case  
2 and to explain those laws to you. It is your  
3 responsibility as jurors to determine what the facts of  
4 the case may be and to apply the law to those facts.  
5 Thus, the province of the Court and the province of the  
6 jury are well defined, and they do not overlap. This  
7 is one of the fundamental principles of our system of  
8 justice.

9 Before proceeding further, it will be helpful if  
10 you understand how the trial will be conducted.

11 At the beginning of the trial, the attorneys will  
12 have an opportunity, if they wish, to make opening  
13 statements. The opening statements allow the attorneys  
14 to explain to you what evidence they expect to be  
15 presented during the trial. What the attorneys say is  
16 not evidence.

17 Following opening statements, witnesses will be  
18 called to testify under oath. They will be examined  
19 and cross-examined by the attorneys. Documents and  
20 other exhibits may also be produced as evidence.

21 After the evidence has been presented, the  
22 attorneys will make final arguments. Following final  
23 arguments by the attorneys, the Court will instruct you  
24 on the law. Once you've received the instructions on  
25 the law, you will then retire to consider your

1           verdicts.

2           Now, you should not form any fixed or definite  
3           opinion about the merits of this case until you've  
4           heard all of the evidence, the arguments by the  
5           attorneys, and the instructions on the law from the  
6           Court. Until that time, you are not to discuss the  
7           case among yourselves.

8           During the course of the trial, we will take  
9           recesses during which you may separate and go about  
10          your personal affairs. During these recesses, you are  
11          not to speak to anyone about the case nor should you  
12          permit anyone to speak to you or in your presence about  
13          the case.

14          If a person attempts to talk to you or in your  
15          presence about this case during the recess, let that  
16          person know that you are a member of the jury trying  
17          the case and ask the person to stop. If a person  
18          persists in attempting to speak to you or in your  
19          presence about this case, leave that person's presence  
20          at once and report the matter at your first opportunity  
21          to one of the court deputies, who will report it to me.

22          This case must be decided by you only upon the  
23          evidence presented during the trial in this courtroom  
24          and in the presence of the attorneys, the defendant,  
25          and the judge. Jurors must not conduct any

1 investigation of their own. Accordingly, you are not  
2 to visit any of the places described in the evidence  
3 and you are not to read nor listen to any reports about  
4 this case until your deliberations are concluded.

5 I don't have any reason to believe there will be  
6 any media reports about this particular case; however,  
7 if during a recess you think you see or hear anything  
8 that you think might be related to this trial, stop  
9 what you are doing and put it aside until your  
10 deliberations are concluded.

11 These days, we've all become very dependent upon  
12 our computers, smart phones, and other electronic  
13 devices. It's become second nature just to Google  
14 anything we have a question about. You are instructed  
15 that you are to use no resource whatsoever, including  
16 the internet, in order to obtain or attempt to obtain  
17 any information related to the persons, places, or  
18 events that relate to this trial.

19 The reason for that is this: Under our  
20 Constitution, in order to have a fair trial, each side  
21 is allowed the opportunity to confront any evidence or  
22 testimony presented against that side. If you were to  
23 conduct any independent investigation on your own, the  
24 attorneys would have no possible way of knowing what  
25 information or misinformation you may have been exposed

1 to; and, therefore, it would be impossible for them to  
2 correct any misinformation or place in the proper  
3 context any information you may have seen.

4 So it is absolutely imperative, for the parties in  
5 this case to receive a fair trial, that your verdict be  
6 based solely and completely upon the evidence presented  
7 during the trial in this courtroom, without being  
8 influenced by any outside factors whatsoever.

9 In every criminal proceeding, a defendant has the  
10 absolute right to remain silent. At no time is it the  
11 duty of the defendant to prove his or her innocence.  
12 From the exercise of the defendant's right to remain  
13 silent, a jury is not permitted to draw any inference  
14 of guilt. The fact that the defendant did or did not  
15 take the witness stand to testify must not influence  
16 your verdicts in any manner whatsoever.

17 Now, the attorneys are trained in the rules of  
18 evidence and trial procedure, and it is their duty to  
19 make all objections they feel are proper. When an  
20 objection is made, you should not speculate on the  
21 reason why it was made. Likewise, when an objection is  
22 sustained or upheld by me, you must not speculate on  
23 what might have occurred had the objection not been  
24 sustained or what a witness might have said had he or  
25 she been permitted to answer.

1           Just a couple other housekeeping matters before we  
2 proceed. Once again, the trial participants are  
3 instructed not to have contact or communication with  
4 you during the course of the trial. If you see any  
5 attorneys, the defendant, or witnesses around the  
6 courthouse or around town during a recess and they  
7 don't appear friendly, again, do not be offended or  
8 upset. They're not being rude, they're just following  
9 the instructions of the Court.

10           You may keep your cell phones or other electronic  
11 devices with you during the course of the trial. I  
12 just ask that they be turned off at all times when  
13 you're in the courtroom. During any recesses, you can  
14 use your cell phone for whatever you wish, other than,  
15 of course, to obtain or attempt to obtain information  
16 relating to the case.

17           However, when you retire to deliberate at the end  
18 of the trial, the law does require that there be no  
19 electronic devices in the jury room. We have a set of  
20 lockers immediately outside the doors here that the  
21 court deputies will show you how to use, and we would  
22 ask that you turn off your cell phones and place them  
23 in the locker during deliberations. If you have any  
24 concern about that, you may decide just to leave your  
25 cell phone in your car or at home on our final day of

1 court.

2 In just a moment, the court deputies will pass out  
3 notepads and pens to you. Those are for your use in  
4 taking notes during the trial, if you wish to. Of  
5 course, you're not required to take notes.

6 If you do take notes, please be careful not to  
7 become so engrossed in your notes that you fail to  
8 observe the demeanor of the witnesses as they testify.  
9 Also be aware that the notepads remain in the courtroom  
10 at all times until you retire to deliberate. So during  
11 any intervening recesses, you'll just leave your  
12 notepads on your chairs. The court deputies will  
13 ensure that no one tampers with or reads your notes.

14 When you do retire to deliberate, you can take  
15 your notepads in the jury room. Just keep in mind that  
16 once a person -- one person's notes are entitled to no  
17 greater weight than another person's recollection of  
18 what the testimony may have been.

19 At the close of the trial, the notepads are given  
20 to me, and I'll destroy any notes that remain in your  
21 notepads without reading them.

22 At this time, does the State wish to make an  
23 opening statement?

24 **MS. SANDERS:** Yes, Your Honor.

25 **THE COURT:** You may proceed, Ms. Sanders.

1           **MS. SANDERS:** Thank you.

2           **THE COURT:** As soon as the notepads are  
3 distributed.

4           You may proceed.

5           **MS. SANDERS:** Members of the jury, everyone has a  
6 choice, and every choice has a consequence. You are  
7 going to hear on February 15th, 2015, the defendant  
8 in this case, Spencer Altschuler, was on his way to  
9 work in Tampa. And in order to get to his job, he has  
10 to travel on State Road 60.

11           You are going to see pictures of State Road 60.  
12 You're going to see videos of State Road 60. But on  
13 that day, State Road 60 is a single-lane road,  
14 westbound/eastbound. And the defendant in this case  
15 was traveling westbound. It was about 9:00 a.m. in  
16 the morning. Clear skies. Roads are flat. Traffic is  
17 not so heavy, not so light.

18           And you're going to hear that while the defendant  
19 is traveling westbound that he, along with some other  
20 vehicles, merged over while it was designated to pass,  
21 onto the east side road to pass over a slower vehicle.  
22 And as they did this, the defendant's car was behind  
23 about three or four other cars that did this. And his  
24 car was the very last car to merge over.

25           As these vehicles are traveling on this eastbound

1 lane going westbound, they pass a slower vehicle, and  
2 three to four of the cars merged quickly over.

3 But you're going to hear from the State's  
4 witnesses as they tell you that the defendant remained  
5 on that road. He remained in that lane going westbound  
6 on the eastbound lane and that he was traveling side by  
7 side with one of the witnesses. And she's going to  
8 tell you that she looks up to see what he's doing, and  
9 eventually sees our victim's car -- which is driven by  
10 Ivery Jean Walker -- and our victim is driving  
11 eastbound.

12 She realizes that the defendant is still traveling  
13 on the wrong lane. He's still traveling westbound on  
14 the eastbound lane. So she honks her horn. She honks  
15 it again try to get the defendant's attention.

16 And as she's trying to get the defendant's  
17 attention, she's like, oh, my God. Oh, my God. She  
18 sees Ms. Walker's car approaching. To no avail, there  
19 is a head-on collision, which causes Ms. Walker's car  
20 to turn and flip over and lands finally on the  
21 guardrail.

22 You're going to hear from other witnesses that  
23 there's two children in Ms. Walker's vehicle:  
24 10-year-old Rodrick Burke, 4-year-old Armonie Pitts.  
25 And these witnesses get out of their car. And they're



1       rushing towards Ms. Walker's vehicle because they see  
2       it's catching on fire.

3               So they get the kids out, and they try to see if  
4       Ms. Walker's okay, but she's unresponsive. While they  
5       get the kids off to the side of the road, the car  
6       catches on fire.

7               You're going to hear from the medical examiner.  
8       He's going to tell you about Ms. Walker's fatal  
9       injuries.

10              You're going to see and hear medical records that  
11       Rodrick Burke suffered contusions and he was in the  
12       hospital for a day or so.

13              And you're going to hear from the treating  
14       physician of Armonie Pitts. And that doctor's gonna  
15       tell you that Armonie Pitts is now paralyzed from the  
16       neck down.

17              Those are the facts of the case. I ask that you  
18       listen to the facts, you look at the physical evidence  
19       that will be presented to you throughout this trial,  
20       and I ask you, at the conclusion of this case, to find  
21       the defendant guilty of all counts.

22              Thank you.

23              **THE COURT:** Thank you.

24              Ladies and gentlemen, the parties agreed --  
25       counsel approach.

1 (At the bench.)

2 **THE COURT:** You are going to be playing the video?

3 **MR. KALLAHER:** Yes.

4 **THE COURT:** I'm going to tell them it's not in  
5 evidence at this time.

6 (In open court.)

7 **THE COURT:** The parties have agreed that during  
8 part of the defense's opening statement, that a video  
9 can be played as a demonstrative aid. You are  
10 instructed that that, at this point, is not in  
11 evidence. So you are to consider it as a demonstrative  
12 aid only at this point in time.

13 So Mr. Kallaher, you may proceed.

14 **MR. KALLAHER:** Thank you. May it please the  
15 Court?

16 **THE COURT:** Yes, sir.

17 **MR. KALLAHER:** Accidents aren't crimes. The fact  
18 that a death occurred doesn't mean that a death is a  
19 crime. The fact that a little girl was tragically  
20 injured does not automatically make an accident a  
21 crime.

22 What the evidence will show is that what happened  
23 on February 15th, 2015, on Highway 60 in Osceola  
24 County, was a tragic accident, but it wasn't a crime.

25 This trial is not about assigning responsibility

1       for -- or blame for the accident. It's not gonna be  
2       your job to determine who was at fault in the accident.  
3       This trial is about whether the State can prove every  
4       element of the charges beyond and to the exclusion of a  
5       reasonable doubt. And the evidence that you will see  
6       will show you that the State cannot meet its burden.

7               What the State has to prove is that Spencer  
8       Altschuler, my client, was driving recklessly; that is,  
9       that Spencer Altschuler was driving with a willful or  
10      wanton disregard for the safety of persons -- persons  
11      or property and that such reckless driving resulted in  
12      death or serious bodily injury.

13             Now, let's talk for a minute about what evidence  
14      you won't see. Okay. There won't be any evidence that  
15      Mr. Altschuler was drunk or on drugs, because there  
16      wasn't -- it didn't happen. And there won't be any  
17      evidence that Mr. Altschuler was texting or messing  
18      around with his phone at the time of the accident,  
19      because it didn't happen.

20             The evidence is just gonna show that there was  
21      a -- an attempted pass and a collision on Highway 60.

22             And can we start the video.

23             This is a video taken not of the accident.  
24      Unfortunately there wasn't any video taken of the  
25      accident. This is the Highway 60 approaching the

1 accident scene. And what you'll see is that this  
2 piece -- or this highway -- or this accident happened  
3 on this piece of Highway 60, flat, straight, no  
4 obstructions to visibility for miles. Okay?

5 You'll hear testimony, and the evidence will show,  
6 that the weather was sunny, just like the prosecutor  
7 said; that the road was dry, just like Ms. Sanders  
8 said.

9 And you'll hear testimony from eyewitnesses that  
10 were traveling this direction, westbound. This is  
11 westbound on 60. Okay?

12 Caroline Bellis [sic] was driving westbound, and  
13 she noticed a dark-colored car approaching her from  
14 behind and start to pass. She's gonna contradict what  
15 the State just told you about a group of cars passing  
16 at the same time. Ms. Bellis said that that didn't  
17 happen.

18 Ms. Bellis is gonna testify that a dark car  
19 approached her from the back and then attempted to pass  
20 her. And at the time that the pass started, that it  
21 was safe for that dark car to start to pass. The road  
22 was flat. It was dry. The weather was unobstructed.

23 Ms. Bellis will tell you that the dark car stayed  
24 in the eastbound lane for what she thought was a long  
25 time, causing her to honk her horn to try and get the

1 driver's attention.

2 A car started coming on the eastbound, which would  
3 be towards us, looking at that part of the stopped  
4 video. And she honked her horn again to get the  
5 driver's attention.

6 The dark car reacted by returning to the westbound  
7 lane. By the time he returned there, the car coming  
8 eastbound had swerved into the westbound lane, and  
9 that's where they collided. They collided head-on in  
10 the westbound lane. You're going to hear Florida  
11 highway patrol officers tell you that. You're gonna  
12 see photos of that. That is undisputed that the  
13 accident happened in the westbound lane.

14 Now, Ivery Walker died as a result of that  
15 accident. And Armonie Pitts and Rodrick Burke were  
16 injured as a result of that accident. Those facts are  
17 not in dispute. Okay?

18 And as I said before, this trial is not about  
19 assigning the blame or the responsibility for the  
20 accident. This trial is whether or not the State can  
21 prove every element of the crime charged beyond a  
22 reasonable doubt.

23 And the evidence will show you that the pass  
24 started legally and in a safe manner. The accident  
25 happened just a few feet into a double yellow, just a

1 fraction. There will be photographic evidence, and  
2 you'll hear testimony from Florida Highway Patrol  
3 officers that the car that was doing the passing began  
4 to move back into that lane before the double yellow  
5 started. Okay?

6 There were no signs. You'll see from the video  
7 and from testimony that there are no signs on the  
8 highway warning of a double-yellow line or a no passing  
9 zone that's coming up ahead or there was a bridge or  
10 there was some type of unobstructed -- or there was  
11 some type of obstructed view.

12 There's no evidence that the driver ignored any  
13 warnings -- the driver of the dark car ignored any  
14 warnings about road conditions that may be ahead.  
15 There's no evidence that the driver of the dark car  
16 disregarded any type of weather or obstruction, or that  
17 the dark car attempted to pass in a dangerous manner  
18 due to hills or curves or whatnot, as you can see. It  
19 was flat, straight, and unobstructed.

20 The evidence merely shows that a traffic  
21 accident -- a tragic accident -- happened on  
22 February 15th, 2015. But not a crime. Okay?

23 The State will not be able to prove every element  
24 of the charges beyond a reasonable doubt. They will  
25 not be able to prove -- specifically they won't be able

1 to prove willful or wanton disregard; and, therefore,  
2 cannot prove recklessness. Since they can't prove  
3 recklessness, they can't prove their case. And,  
4 therefore, you must find Spencer Altschuler not guilty.

5 Thank you.

6 **THE COURT:** Thank you.

7 All right. Ms. Sanders, call your first witness.

8 **MS. SANDERS:** Your Honor, the State would like to  
9 call Rodrick Burke.

10 **THE COURT:** While the witness is coming forward,  
11 ladies and gentlemen, the parties have entered into a  
12 stipulation that they've requested that I read. It  
13 reads as follows:

14 The assistant state attorney, Gabrielle  
15 Nathleen-Patina Sanders, and the defendant, Spencer  
16 Jordan Altschuler, as well as his lawyer, James  
17 Kallaher, stipulate that the identity of the deceased  
18 in this case is Ivery Walker. That stipulation having  
19 been entered and they accept that as if it were proven  
20 by any other fact in a case.

21 **RODRICK BURKE**

22 was called as a witness and, having first been duly sworn,  
23 testified as follows:

24 **THE WITNESS:** I do.

25 **THE COURT:** All right. You may proceed.

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1                   **MS. SANDERS:** Thank you, Your Honor.

2                                   **DIRECT EXAMINATION**

3   **BY MS. SANDERS:**

4           **Q.** Good afternoon.

5           **A.** Good afternoon.

6           **Q.** Can you please state your full name for the  
7 record, spelling your last name?

8           **A.** Rodrick Burke, R-o-d-r-i-c-k B-u-r-k-e.

9           **Q.** And, Mr. Burke, how old are you?

10          **A.** Thirteen.

11          **Q.** What's your date of birth?

12          **A.** March 10th, 2004.

13          **Q.** And have you ever testified before?

14          **A.** No.

15          **Q.** Okay. I need you to speak -- move your chair  
16 closely for me. Speak into the mic.

17          **A.** Okay.

18          **Q.** And you just swore to tell the truth, the whole  
19 truth, and nothing but the truth, right?

20          **A.** Yes.

21          **Q.** Do you understand the difference between a truth  
22 and a lie?

23          **A.** Yes.

24          **Q.** What's the difference?

25          **A.** Truth is something that you know that happened.

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1 Lie is something you're making up.

2 Q. All right. You promise to tell us the truth  
3 today, right?

4 A. Yes.

5 Q. What school do you go to?

6 A. New Renaissance Middle School.

7 Q. Where is that?

8 A. Broward County.

9 Q. Broward County, Florida?

10 A. Yes.

11 Q. Is that where you live?

12 A. Yes.

13 Q. And what grade are you in?

14 A. 8th.

15 Q. 8th grade. How's the 8th grade going?

16 A. Good so far.

17 Q. Good so far. All right. Now, Rodrick, two years  
18 ago, you were attending a funeral?

19 A. Yes.

20 Q. Okay. And the funeral was for who?

21 A. Can't remember.

22 Q. Can't remember? That's all right. And I'm gonna  
23 tell you some names. Who's Ivery Jean Walker?

24 A. My auntie.

25 Q. Your auntie?

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1           A.    Yes.

2           Q.    And did you attend the funeral with your auntie?

3           A.    Yes.

4           Q.    And who else was there?

5           A.    It was me, my auntie, and my cousin Armonie.

6           Q.    Okay. Your cousin Armonie, how old was she back  
7   in 2015?

8           A.    Can't remember.

9           Q.    Okay. And where exactly was the funeral? Was it  
10   in Broward County or somewhere else?

11          A.    I can't remember.

12          Q.    Okay. Do you remember riding in the car with your  
13   aunt?

14          A.    Yes.

15          Q.    Okay. And where were you guys going?

16          A.    Well, after we left the funeral, we went to my  
17   Uncle Greg's house to stay the night to leave that morning.

18          Q.    Okay. So you left the next morning?

19          A.    Yes.

20          Q.    Do you remember if it was super early or was it  
21   later on in the morning?

22          A.    7:00.

23          Q.    7:00 in the morning?

24          A.    Yes.

25          Q.    So you get into your aunt's vehicle, right?

1           A.    Yes.

2           Q.    Do you remember what car she was driving?

3           A.    I can remember the color -- it was a blue color --  
4 but I don't know specifically what type of car it was.

5           Q.    And who was in the vehicle?

6           A.    My aunt was in the driver's seat.  Armonie was  
7 behind her.  And I was behind the passenger's seat.

8           Q.    And were you buckled in?

9           A.    Yes.

10          Q.    Was Armonie buckled in?

11          A.    Yes.

12          Q.    And as you guys were traveling, what were you  
13 doing in the backseat?

14          A.    We were just -- me and Armonie was conversating  
15 while my auntie was just focusing on the road, driving.

16          Q.    At any point during the time that you-all were  
17 traveling on this road, did something happen?

18          A.    Yes.

19          Q.    Tell me what happened.

20          A.    As we was driving, I was -- I was not -- I was not  
21 paying attention to the road.  I started talking with  
22 Armonie.  We was having a little conversation in the  
23 backseat.  And my auntie, she screamed.  She seen a man  
24 driving in our lane.  Um, once she screamed, I looked up and  
25 I seen a black car coming our way.  I guess she tried to

1     avoid him going into the lane he's supposed to be in.

2           Q.     Let me slow you down.   You said your auntie,  
3     that's Ms. Walker, she screamed?

4           A.     Yes.

5           Q.     And that's when you looked up?

6           A.     Yes.

7           Q.     What did you see?

8           A.     A black car in our lane coming towards us.

9           Q.     Okay.   What did your auntie do?

10          A.     Well, she hit the brakes.   As she hit the brakes,  
11     she tried to avoid going to his lane, the lane she's  
12     supposed to be in, tried to go over there.

13          Q.     She tried to go to the other lane?

14          A.     Yes.   To avoid him.

15          Q.     Okay.   What happens next?

16          A.     He turned the same way she went and collided and  
17     hit each other.   When he turned to hit her, then we flipped  
18     and it was a barricade that stopped the car.   And once we  
19     stopped, I seen her laying across the passenger -- well, the  
20     driver's seat laying over the passenger seat.   And I was  
21     shaking her like, get up, get up, to see if she was okay.  
22     But she wasn't moving.

23                 So I heard Armonie crying in the -- behind the  
24     seat.   She was laid over the seat belt crying.   So I opened  
25     the door.   And as I opened the door, people just started

1 running to the car. Once they got to the car --

2 Q. Let me stop you right there. You said that you  
3 opened the door. Was it your door or --

4 A. It was my door.

5 Q. Were you able to unbuckle your seat belt?

6 A. No.

7 Q. Okay. Did someone help you unbuckle?

8 A. Yes. They unbuckled me.

9 Q. Were those the same people you were telling us  
10 about?

11 A. Yes.

12 Q. Okay. So they helped you unbuckle, then what  
13 next?

14 A. They pulled us out the car. As they was pulling  
15 me and Armonie back, I don't know who said it, but somebody  
16 said, pull them back farther, the car is on fire.

17 Q. Did you see the car on fire?

18 A. Yes. I looked -- I looked and I seen -- it's like  
19 a little fire under the car. And I didn't see my auntie.  
20 And I was -- then it came in my mind she still was in the  
21 car. And they was trying to get her in the -- out the car  
22 while they was pulling us back. Then the man that hit us  
23 was pacing back and forth and kept asking, do you want some  
24 water.

25 Q. Let's stop right there. Once they take you out of

1 the vehicle, where did they take you exactly?

2 A. I don't remember. I just know they was pulling us  
3 back, away from the vehicle.

4 Q. Okay. You said that you saw the person that was  
5 driving in the car?

6 A. Yes, I seen him after.

7 Q. After.

8 A. Like, while they was pulling us back.

9 Q. Can you describe this person?

10 A. Mid- -- tall, light-skinned, freckles, long nose,  
11 wide ears, black hair. That's it.

12 Q. That's it? Okay.

13 And did this person ever speak to you? You talk  
14 to him?

15 A. Yes.

16 Q. Okay. Tell me what happened.

17 A. He was asking me, do you want water? He asked me  
18 the first time, I said no. Then he came back asked again, I  
19 said no. The last time he asked me, I said, no, but can I  
20 borrow your phone. Once he gave me his phone, I contacted  
21 mom, told her we had got in an accident.

22 Q. Okay. What's your mother's name?

23 A. Tony Grant.

24 Q. What number did you dial?

25 A. (954) 999-7831.

1           Q.    And you used the person that was driving the black  
2 car, his cell phone?

3           A.    Yes.

4           MR. KALLAHER:  Objection.  He testified he didn't  
5 see who was driving the car.  She's argue --

6           THE COURT:  Well, sustained.  You need to ask a  
7 conditional question, I think.

8 BY MS. SANDERS:

9           Q.    Okay.  Prior -- you said somebody kept coming back  
10 and forth --

11          A.    Yeah.

12          Q.    -- asking for water.  Do you know where that  
13 person came from?

14          A.    No.  After -- after they -- we [sic] stopped from  
15 pulling us back, I didn't know where was he going to after  
16 he walked off, like, when he asked me, do you want water?  
17 When he walked off, I didn't pay attention to where he would  
18 go.  I would just focus on Armonie and --

19          Q.    When was the first time you saw this person?

20          A.    When he walked up to me.  When he walked up to me  
21 and said, do you want water?  I said no.  That was the first  
22 time I seen him.

23          Q.    And where was he coming from that first time, do  
24 you remember?

25          A.    No, I do not remember.

1 Q. But this person allowed you to use the cell phone?

2 A. Yes.

3 Q. When this person was speaking to you, did you make  
4 any observations about his -- his face, was he injured or  
5 anything like that?

6 A. Yes. He had a nosebleed. His nose was bleeding.  
7 Had a little knot on his forehead.

8 Q. Okay. Anything else?

9 A. That's all I can remember.

10 Q. Did you speak with anyone else at the accident  
11 scene?

12 A. No.

13 Q. Now, you were eventually taken to the hospital?

14 A. Yes.

15 Q. And do you remember if you had any injuries?

16 A. Well, the nurse told me that I had abdominal pain.

17 Q. Without telling me what the nurse was saying, what  
18 did you feel?

19 A. My stomach was hurting.

20 Q. Your stomach was hurting?

21 A. That was it.

22 Q. Okay. Anything else?

23 A. No.

24 Q. Did they give you medicine for your stomach pain?

25 A. Yes.



1 Q. And how long were you in the hospital?

2 A. Can't remember.

3 MS. SANDERS: No further questions at this time.

4 THE COURT: All right.

5 Mr. Kallagher?

6 CROSS-EXAMINATION

7 BY MR. KALLAHER:

8 Q. Mr. Burke, good afternoon.

9 A. Good afternoon.

10 Q. It's very brave of you to relive this. Are you  
11 okay?

12 A. Yes.

13 Q. You testified that you did not see who was driving  
14 the car, correct?

15 A. No, I did not see who was driving the car.

16 Q. Now, when you said you looked up from the backseat  
17 of the car while you were still driving --

18 A. Yes.

19 Q. -- or while you were still riding as a passenger  
20 of the car, isn't it true that you saw in the dark car two  
21 people?

22 A. Yes.

23 Q. A man and a woman?

24 A. Yes.

25 Q. And you -- but you don't know who was driving?

1           **A.**    Yes.

2           **MR. KALLAHER:**   That's all I have.   Thank you.

3           **THE COURT:**   Okay.   Any redirect?

4                       **REDIRECT EXAMINATION**

5   **BY MS. SANDERS:**

6           **Q.**    Mr. Burke, just for clarification, did you see two  
7   people in the car or what point did you see those two  
8   people?

9           **A.**    When she screamed and I looked up, I seen the two  
10   people in the car.

11          **Q.**    In the vehicle?

12          **A.**    Yes.

13          **MS. SANDERS:**   Okay.   All right.   Thank you.

14          **THE COURT:**   All right.   Thank you.   You may step  
15   down.

16               The State my call their next witness.

17          **MS. SANDERS:**   Yes, Your Honor.   The State would  
18   like to call Ms. Karen Bellis.

19          **MR. KALLAHER:**   Your Honor, I forgot to do so, but  
20   may I invoke the rule?

21          **MS. SANDERS:**   I did it with my witnesses.

22          **THE COURT:**   Will counsel approach?

23               (At the bench.)

24          **THE COURT:**   So Mr. Burke would be an exception as  
25   an alleged victim?

1                   **MR. KALLAHER:** Yeah, that's fine.

2                   (In open court.)

3                                   **KAREN BELLIS**

4   was called as a witness and, having first been duly sworn,  
5   testified as follows:

6                   **THE WITNESS:** I do.

7                   **THE COURT:** All right. You may proceed.

8                   **MS. SANDERS:** Thank you, Your Honor.

9                                   **DIRECT EXAMINATION**

10   **BY MS. SANDERS:**

11           **Q.** Good afternoon.

12           **A.** Hi.

13           **Q.** Can you please state your full name for the  
14   record?

15           **A.** Karen Patricia Bellis.

16           **Q.** And spell your last name for us?

17           **A.** B-e-l-l-i-s.

18           **Q.** And, Ms. Bellis, where do you currently reside?

19           **A.** In Jenson Beach, Florida.

20           **Q.** And how long have you lived there?

21           **A.** Um, in Jenson Beach or in the house I'm in?

22           **Q.** Jenson Beach.

23           **A.** Three years.

24           **Q.** And what do you do for a living?

25           **A.** I'm a stay-at-home mom.

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1           Q.    And, Ms. Bellis, back on February 15th of 2015,  
2 do you remember traveling on State Road 60?

3           A.    Yes.

4           Q.    Have you ever traveled that road before?

5           A.    Not before that day, no.

6           Q.    Okay. Where were you going?

7           A.    To Legoland.

8           Q.    Okay. And who was in the vehicle with you?

9           A.    My husband and my two kids.

10          Q.    And your husband's name is?

11          A.    Steven Bellis.

12          Q.    And do you recall exactly what time you actually  
13 started your travel?

14          A.    Um, what time we left in the morning? I'm not  
15 sure --

16          Q.    Okay.

17          A.    -- exactly.

18          Q.    Not a problem.

19                   And as you were traveling on State Road 60, can  
20 you briefly describe, if you can remember, the area?

21          A.    Um, it was country fields. A lot of fields,  
22 basically; flat.

23          Q.    How was the weather that day?

24          A.    It was nice, sunny, warm. Not raining or  
25 anything.

1 Q. And the traffic?

2 A. Um, it was moderate, I guess.

3 Q. Moderate?

4 A. Not heavy.

5 Q. Okay. And do you recall the -- the speed limit on  
6 that road?

7 A. It was 65.

8 Q. Okay. And as you were traveling, do you recall if  
9 you were using cruise control or you were just not using it  
10 at all?

11 A. Not using cruise control.

12 Q. Do you recall what speed you were traveling that  
13 day?

14 A. I was doing about 68.

15 Q. At some point during your travel -- were you going  
16 westbound?

17 A. Yes.

18 Q. Okay. And can you tell us, during your route, did  
19 you, at some point, switch lanes to go over a slower car?

20 A. I did.

21 Q. Okay. And talk to us about the road. Because  
22 there's solid lines and dotted lines. Do you recall at what  
23 point you may have merged over?

24 A. Um, I don't. But I can almost be sure it was the  
25 dotted line. I don't go over a solid line. I hate passing

1 people. It makes me very nervous.

2 Q. Okay. When you passed over the dotted line, were  
3 you the only vehicle that passed or were there additional  
4 vehicles?

5 A. Um, another truck in front of me had passed that  
6 person. But he got back into his lane before I started to  
7 pass.

8 Q. Okay. How about after you? Do you remember that?

9 A. I don't. No.

10 Q. Okay. So you passed over to the eastbound lane  
11 going west, and then you quickly merged over?

12 A. Mm-hmm.

13 Q. Once you quickly merged over, did you notice  
14 anything else that was happening, either in front of you or  
15 behind you?

16 A. Not right away, no.

17 Q. Okay. How long would you say you noticed  
18 something was happening?

19 A. Maybe a minute or two later I noticed a car behind  
20 me.

21 Q. Okay. What was that car doing?

22 A. He was kind of close. He seemed like he wanted to  
23 pass. He kind of moved over to the center line like he was  
24 trying to look around me.

25 Q. Let me ask you this: Was this vehicle directly

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1 behind you?

2 A. Yes.

3 Q. Okay. Do you remember how this vehicle looked?

4 A. I remember it was black.

5 Q. Okay. Four-door, two-door?

6 A. I'm not sure exactly.

7 Q. Okay. Do you recall seeing any passengers in that  
8 vehicle?

9 A. No.

10 Q. Okay. So just one person?

11 A. Mm-hmm.

12 Q. Okay. And tell me --

13 THE COURT: I'm sorry. You have to answer yes or  
14 no.

15 THE WITNESS: I'm sorry. Yes.

16 BY MS. SANDERS:

17 Q: Okay. And can you tell me exactly what this --  
18 what this vehicle's doing?

19 A. Um, he was driving kind of close behind. He was  
20 looking to pass me.

21 Q. Okay. And at some point did he pass you?

22 A. Yeah.

23 Q. Okay. Tell me what happens from that point.

24 A. He moved into the eastbound lane and slowly  
25 started to overtake my vehicle, I guess, and then kind of

1     slowed down and sat next to me for about, like, ten seconds.  
2     And I started to slow down and he kind of started to  
3     overtake me more again until he got --

4           Q.     Why did you slow down?

5           A.     Because he was driving next to me in the wrong  
6     lane, and it was making me very nervous, trying to get him  
7     to get past me.

8           Q.     All right. So once you slow down, what does that  
9     car do?

10          A.     He got past my vehicle and he stayed in the  
11     eastbound lane and continued driving there.

12          Q.     How long would you say that vehicle stayed on that  
13     eastbound lane?

14          A.     In front of me, probably 30 seconds.

15          Q.     Thirty seconds. At that point could you remember  
16     if it was still a dotted line or a solid line?

17          A.     I do not know.

18          Q.     So the vehicle's traveling westbound in the  
19     eastbound lane for 30 seconds. What else do you see?

20          A.     Um, I eventually see a car coming towards the car  
21     driving the wrong way.

22          Q.     Okay. Do you remember what kind of car it was?

23          A.     I think it was, like, a bluish greenish color.

24          Q.     Okay. And what happens after you see this car?

25          A.     Um, they continue driving at each other, and the



1     bluish green car, um, tried to turn the wheel to get away  
2     from the car that was driving at her --

3                 **MR. KALLAHER:** Objection. Speculating.

4                 **THE COURT:** Well, if you would tell us what you  
5     observed, not what they may have been trying to do.

6                 **THE WITNESS:** Okay.

7                 **THE COURT:** Thank you.

8                 **THE WITNESS:** She turned the wheel.

9     **BY MS. SANDERS:**

10                **Q.** Okay. So you saw this bluish green car turn the  
11     wheels?

12                **A.** Yeah.

13                **Q.** Turn the wheel towards which way?

14                **A.** Towards the westbound lane.

15                **Q.** Okay. And what do you see the black car do?

16                **A.** Um, about three seconds after she turned her  
17     wheel, the black car turned his wheel to get back into the  
18     westbound lane.

19                **Q.** And you said a few seconds after the blue --  
20     bluish greenish vehicle turned?

21                **A.** Yeah. Probably -- probably about three seconds.

22                **Q.** Three seconds. And then what happens next?

23                **A.** Um, then they hit each other.

24                **Q.** Head-on?

25                **A.** Yeah.

1 Q. How far away were you from the collision?

2 A. Um, probably, like, 25 feet.

3 Q. Prior to collision -- prior to the collision, did  
4 you have a good view of that green -- I'm sorry. Let me  
5 make sure I say that -- that blue-greenish car?

6 A. Right before they hit, I did. I was more trying  
7 to watch where I was driving. I wasn't really, you know,  
8 focusing on her car so much, but I -- I did see her car.

9 Q. So nothing was obstructing your view?

10 A. No.

11 Q. Let me ask you this: Once you saw this vehicle  
12 coming towards the black car, did you do anything to try to  
13 get the black -- the black vehicle's attention?

14 A. Yeah. I had been laying on the horn a couple of  
15 times. I was screaming and yelling.

16 Q. Okay. Now, you say "laying on the horn." So,  
17 like, a constant beep or --

18 A. Probably held it down for, like, three seconds,  
19 probably three or four times.

20 Q. And when you did this, um, how soon after did the  
21 collision occur?

22 A. Um, from when I first beeped the horn 'til the  
23 accident happened?

24 Q. Yes.

25 A. Probably 20 seconds, I would say.

1           Q.    Would you say that you were laying on the horn  
2 pretty much?

3           A.    Yes.

4           Q.    Okay. Prior to the collision, did you observe the  
5 black vehicle, um, utilize the brake lights at all?

6           A.    No, I did not see any brake lights.

7           Q.    And from what you could remember, prior to the  
8 collision, was there another vehicle ahead of you?

9           A.    In the westbound lane? There was a truck quite a  
10 ways in front of me.

11          Q.    So there was enough room for this black vehicle to  
12 get over prior to the collision?

13                   MR. KALLAHER: Objection.

14                   THE COURT: Overruled.

15 BY MS. SANDERS:

16          Q.    Go ahead.

17          A.    Yes, I would say he was about probably, like, six  
18 car lengths ahead of me.

19          Q.    Six car lengths ahead.

20                   And after the collision, um, did you see anyone  
21 coming out of the black vehicle?

22          A.    I did not see anyone exit the black vehicle, no.

23          Q.    Did you ever make contact with any parties that  
24 were involved in the crash on scene?

25          A.    Yes.

1 Q. Okay. Who did you make contact with?

2 A. Um, I made contact with both of the children that  
3 were in the backseat of the greenish blue car and the -- a  
4 person that was in the black car.

5 Q. A person that was in the black car?

6 A. Yes.

7 Q. Okay. Where was this person?

8 A. Um, he was on the side of the road.

9 Q. Okay. And what were your -- what was your  
10 description of this person, if you could remember?

11 A. He had, like, sandy blonde hair, bigger build.  
12 That's pretty much -- I think he was wearing all black.

13 Q. Did you see any injuries?

14 A. Um, some scrapes, I think, on his arm.

15 Q. Okay. And you said that you spoke to him?

16 A. I did.

17 Q. Did he say anything to you?

18 A. Um, yes.

19 Q. What?

20 A. He -- I'm not sure exactly what he said.

21 Something like is -- do you need something or anything like  
22 that? Are you guys okay? Do you need anything? Something  
23 like that.

24 MS. SANDERS: Okay. No further questions at this  
25 time. Thank you.

1           **THE COURT:** All right. Thank you.

2           Cross-examination?

3                           **CROSS-EXAMINATION**

4   **BY MR. KALLAHER:**

5           **Q.** Good afternoon, Ms. Bellis. It's good to see you  
6 again.

7           **A.** Good to see you.

8           **Q.** If I can take you back to the prosecutor asked you  
9 about you passing another car. Do you remember that  
10 testimony?

11          **A.** Yes.

12          **Q.** And I believe you testified that a truck passed  
13 and then you passed?

14          **A.** Mm-hmm.

15                   **THE COURT:** I'm sorry. You have to say yes or no.

16                   **THE WITNESS:** Yes.

17   **BY MR. KALLAHER:**

18          **Q.** A little nervous?

19          **A.** A little bit.

20          **Q.** Me too. Me too.

21                   Lost my place.

22                   Okay. Did at any time you pass a car going  
23 westbound with a group of three, four, five other cars? All  
24 of you moving into the lane -- eastbound lane together  
25 passing and getting back?

1           **A.**    Um, I only know that I passed after the truck had  
2   gotten back over. I don't know who passed in front of the  
3   truck or behind me.

4           **Q.**    Or behind you. Okay.

5           **A.**    It's possible. I don't -- I don't really  
6   remember.

7           **Q.**    But you weren't consciously with a group of cars  
8   that was passing the slower car, right? You weren't -- you  
9   didn't say, oh, a bunch of people are passing, I'm going  
10  with them, right?

11          **A.**    No. I passed him because he was driving slow and  
12  I wanted to pass him.

13          **Q.**    You're familiar somewhat with Highway 60, correct?  
14  Or that was the only time you've ever driven it?

15          **A.**    Since then, I've driven it one other time.

16          **Q.**    Are you familiar with where Yeehaw Junction  
17  dissects or intersects with it?

18          **A.**    Yes.

19          **Q.**    Now, you had already passed Yeehaw Junction by the  
20  time that you passed the -- this car that we're talking  
21  about?

22          **A.**    Yes.

23          **Q.**    Okay. Do you remember passing lanes where, say,  
24  the westbound goes from one lane to two lanes and then back  
25  to one lane?

1           A.    Do I remember seeing one of those?

2           Q.    Yes.

3           A.    I do not remember seeing one.

4           Q.    At all -- that day at all?

5           A.    I don't remember.

6           Q.    You just don't recall.   Okay.   Fair enough.

7                   All right.   So the first time you remember seeing  
8   the black car, it was in your rear view mirror coming up  
9   behind you, correct?

10          A.    Yeah.

11          Q.    And you said that that black car moved into the  
12   eastbound lane to start to pass you, right?

13          A.    Yes.

14          Q.    Right?

15          A.    Yes.

16          Q.    And you never saw who was driving that car,  
17   correct?

18          A.    Um, I did not see him in the car, no.

19          Q.    Okay.   You say "him."   You don't know if it was a  
20   man or a woman, right?

21          A.    Not from seeing him in the car, no.

22          Q.    Okay.   So you can't sit here and tell the Court  
23   and the jury today who was driving that car?

24          A.    Well, he -- the only other person I saw at the  
25   accident scene with injuries, I would assume was driving the

1 car.

2 Q. Did you see who was driving that car?

3 A. No.

4 Q. Okay. And you said you saw this person at the  
5 scene that -- that had injuries. Now, you described those  
6 injuries only as little scratches, correct?

7 A. Yes.

8 Q. Did you see any blood?

9 A. Um, it was probably -- it was red. I mean, it  
10 wasn't, like, gushing blood, so there was probably some  
11 blood on it.

12 Q. Just a little scrape, correct?

13 THE COURT: I'm sorry. You have to answer out  
14 loud.

15 THE WITNESS: Yes. I'm sorry.

16 BY MR. KALLAHER:

17 Q. Now, at the time you noticed the black car in the  
18 rear view mirror and it started to pass you, move into the  
19 eastbound lane, it was safe to do so at that time, wasn't  
20 it?

21 A. Um, by what?

22 Q. The road was flat?

23 A. The road is flat, correct.

24 Q. There wasn't any traffic coming on?

25 A. I could not see any traffic, no.



1           Q.   And you could see pretty far down the road,  
2   correct?

3           A.   Um, I didn't look, but I could have if I had  
4   looked.

5           Q.   Okay.   And -- so I'm --

6           A.   I don't know what the line on the road there was.

7           Q.   Okay.

8           A.   So other than that, it would have been -- if it  
9   was a dotted line.

10          Q.   If it was a segmented line or a dashed line or  
11   dotted line, then it would have been safe to pass, right?

12          A.   Yes.

13          Q.   Okay.

14               MR. KALLAHER:   Just a minute, Your Honor.

15               That's all the questions I have.   Thank you.

16               THE COURT:   Thank you.

17               Any redirect?

18               MS. SANDERS:   Nothing further, Your Honor.

19               THE COURT:   Thank you, Ms. Bellis.   You may step  
20   down.

21               You may call your next witness.

22               MS. SANDERS:   Mr. Steven Bellis.

23                               STEVEN BELLIS

24   was called as a witness and, having first been duly sworn,  
25   testified as follows:

1           **THE WITNESS:** Yes, ma'am.

2           **THE COURT:** All right. You may proceed.

3           **MS. SANDERS:** Thank you.

4                           **DIRECT EXAMINATION**

5   **BY MS. SANDERS:**

6           **Q.** Good afternoon, sir.

7           **A.** Good afternoon.

8           **Q.** Can you please state your full name for the  
9 record, spelling your last name?

10          **A.** Steven Bellis, B-e-l-l-i-s.

11          **Q.** And, Mr. Bellis, where do you currently reside?

12          **A.** 681 Northeast Wax Myrtle Way.

13          **Q.** How long have you lived out there?

14          **A.** A little over a year, I think. Probably a year.

15          **Q.** Okay. What do you do for a living?

16          **A.** I work for a wildlife removal company.

17          **Q.** All right. Now, back on February 15th of 2015,  
18 did you and your wife, Ms. Karen Bellis, plan on going to  
19 Legoland?

20          **A.** Yes, ma'am.

21          **Q.** Okay. And did you-all drive her vehicle or your  
22 vehicle?

23          **A.** Um, it was actually my mother-in-law's vehicle.

24          **Q.** Mother-in-law's vehicle. And who -- who was all  
25 in the car?

- 1           A.    Me, my wife, and two kids.
- 2           Q.    And do you recall exactly what time you-all left?
- 3           A.    Nine in the morning, roughly. Eight in the
- 4 morning, maybe, we left. I don't really remember the time.
- 5           Q.    And you were not driving?
- 6           A.    I was not driving. Correct.
- 7           Q.    And State Road 60 is the route that you-all took?
- 8           A.    Yes, ma'am.
- 9           Q.    Have you ever traveled there before?
- 10          A.    No, that was the first time.
- 11          Q.    That particular area, what is your description of
- 12 it?
- 13          A.    Um, of the road?
- 14          Q.    Yes, sir.
- 15          A.    It was flat. Very flat, actually. Um, you want a
- 16 description of the day? Or just the road?
- 17          Q.    The day of, how -- like, was it heavy traffic?
- 18          A.    I -- I don't know. I don't want to say very heavy
- 19 traffic. I was in the passenger seat on my phone --
- 20          Q.    Okay.
- 21          A.    -- before everything happened.
- 22          Q.    Okay.
- 23          A.    The road, though, was flat, you know --
- 24          Q.    Was it raining that day?
- 25          A.    No. It was a nice day out. I do know that.

1           Q.    Now, since you just said you were on your phone,  
2   the route -- the route, at some point did you eventually  
3   look up?

4           A.    Yes, ma'am.

5           Q.    And when was that?

6           A.    When my wife said, "What is he doing?" that's the  
7   first time I looked up.  So ...

8           Q.    When you looked up, what did you see?

9           A.    At first, I didn't see anything, I just looked up.  
10   She said, "What is he doing?"  I look up.  And then she  
11   said, "What is he doing" again, and I look over and I see a  
12   car kitty-corner from us driving.

13          Q.    Can you -- do you remember how this car looked?

14          A.    The color of it, is that what you mean?

15          Q.    Yes, sir.

16          A.    Not right now, no, I can't say exactly.  I don't  
17   want to guess the color.

18          Q.    No.  It's fine.  It's been, what, two years?

19          A.    Yeah.

20          Q.    So you see this vehicle, and it's -- it's  
21   traveling what direction?

22          A.    Westbound, same as us.  I believe that was west,  
23   so ...

24          Q.    Okay.  Was it at that point a two-lane road, a  
25   single lane?

1           A.    A single lane.

2           Q.    Single lane?

3           A.    He was in the opposite lane passing.

4           Q.    Passing?

5           A.    Passing us at the time.

6           Q.    So what direction was he going to then, if you --

7           A.    The same as us, westbound.

8           Q.    Westbound?

9           A.    Correct.

10          Q.    But he was in the opposite lane?

11          A.    Yeah, correct.

12          Q.    Got it.

13                   And while you're seeing this person driving  
14 westbound in the opposite lane, do you make any other  
15 observations?

16          A.    As -- after the second time my wife says what is  
17 he doing and we're driving, I look over and see the car.  
18 And then I look down the road and I see another car coming  
19 in his lane -- it would have been her lane -- in the other  
20 lane driving towards us. So I did see the other car coming  
21 towards us while that car is passing us. So, yeah, I seen  
22 that.

23          Q.    How long would you say that this -- this other car  
24 was on the -- in the eastbound lane going west?

25          A.    The car passing us? How long was it passing us?

1 Q. Yes.

2 A. When I first noticed it -- I mean, he wasn't  
3 pulling away real fast. He was next to us about ten  
4 seconds. You know, my wife started to slow down to give  
5 some area for the car to get back over. Maybe 30 seconds  
6 total. I mean, he was in that lane for quite a while.

7 Q. How long would you say?

8 A. Thirty to 40 seconds, I would think. At least  
9 that I seen. Because I only -- again, I only seen him --  
10 when he was already past, you know, he was already 45  
11 degrees from our car, so I don't know how long he was in it  
12 before I seen it.

13 Q. So by the point -- by the time you saw him, he was  
14 already a little bit ahead of you-all?

15 A. Correct. About 45 degrees.

16 Q. And that's when you said that your wife slowed  
17 down?

18 A. Yeah. She said, "What is he doing? What is he  
19 doing?" He's 45 degrees pulling forward, so she started to  
20 slow down so he could, you know, have room to get over.

21 Q. Okay. And what do you see next?

22 A. Um, I see the car that is in the eastbound lane  
23 start to swerve a little bit because I think, um, she had  
24 been -- is it okay to say "she"? At the time I didn't know  
25 it was a she. That car, I think, had been observing the

1 other car --

2 MR. KALLAHER: Objection. Speculation.

3 THE COURT: Well, again, you can tell us what you  
4 saw.

5 THE WITNESS: Okay.

6 THE COURT: Not what you think that other person  
7 might have been thinking.

8 THE WITNESS: I saw the other car swerving back  
9 and forth slightly, staying in their lane but kind of  
10 swerving. Debating on what to do.

11 BY MS. SANDERS:

12 Q. Okay.

13 A. They were kind of going back and forth. It was  
14 noticeable.

15 Q. Okay. And the other car that was 45 degrees from  
16 you-all, what was that car doing?

17 A. Still just going along, passing us though.

18 Q. At some point do you recall your wife honking?

19 A. Yeah. When he -- when we -- when we seen the  
20 other car -- when we seen the other car and they was  
21 swerving back and forth a little bit, as we were slowing  
22 down, my wife honked two, three times to try and get the  
23 driver's attention. Didn't seem to do anything though.

24 Q. What happens once she honks and ...?

25 A. You mean everything?

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1 Q. Yes.

2 A. Okay. So -- all right. At this time we're  
3 slowing down. The car's next to us. He's gotten in front  
4 of us maybe 20 feet, roughly 20, 30 feet. My wife had  
5 honked. The other car had been swerving back and forth. It  
6 actually -- the car in the eastbound lane swerves into our  
7 lane and is about 45 degrees into our lane. The car that  
8 was passing us in the westbound lane, for some reason, at  
9 the -- two seconds after she swerved over to avoid the  
10 accident, the guy -- the gentleman passing us also swerved  
11 over and they both locked on their brakes and met at an  
12 angle at the guardrail and it's the craziest thing. But --  
13 it was just -- I mean, she went to severe, the gentleman  
14 passing, I think -- I don't even know. It just looked like  
15 he realized what was going on and he also swerved and they  
16 met at an angle at the guardrail, both locking on the brakes  
17 as it's happening. And then my wife just kind of skirted  
18 around the accident.

19 Q. Prior to the accident, was there room enough for  
20 this car that you saw passing you -- and I think you said  
21 45 degrees, was there enough space for this car to move  
22 over?

23 A. Yes, ma'am.

24 Q. And you did not notice that at any point that this  
25 vehicle attempted to move over?



1           A.    No, ma'am, not until the very end.

2           Q.    After the collision occurred, did you see anyone  
3    exiting any vehicle?

4           A.    After the collision occurred, my wife had stopped  
5    almost immediately. So I asked her to pull forward because  
6    I didn't want anyone to rear-end us. I get out and I run  
7    back to go see if I can help, and I seen a gentleman  
8    laying -- the gentleman that was passing us was laying by  
9    his vehicle kind of crawling on the ground away from it. I  
10   asked him if he was okay. He said he was fine, to help the  
11   other driver.

12          Q.    You see a gentleman crawling away from the  
13   vehicle. Do you remember how this person looks?

14          A.    No. I cannot pick him out --

15          Q.    Okay. Not a problem.

16          A.    -- to be honest. I knew what clothes he was  
17   wearing. He was wearing black clothing. I think he said he  
18   was coming from work.

19          Q.    Okay. Anything else?

20          A.    Um --

21          Q.    Did you observe any injuries?

22          A.    Yeah. Afterwards -- so I ran backwards. I spoke  
23   to the gentleman that was crawling by the car. He said to  
24   help the other car. I go to the other car, and a gentleman  
25   had beat me to the back door. He said there were kids in

1 the back. He said he couldn't get the kids out. My wife  
2 said, you need to get the kids out. If you can't, move.

3 The gentleman moves, my wife climbs in, she  
4 couldn't get the kids out. She did unbuckle them. I asked  
5 her to get out. I climbed in there. I hand out the little  
6 boy to my wife. She walks away. Then I climb back in and I  
7 get the little girl. I reach for her, I grab the little  
8 girl. I pull her out. I actually hand her to the gentleman  
9 who was originally trying to help us.

10 At that time, the car had caught fire. Another  
11 gentleman came and broke out the window. So I crawled out  
12 of the car and went up on the guardrail with him and tried  
13 to, you know, pull the lady out, but we couldn't do it.

14 Q. Okay.

15 A. So ...

16 MS. SANDERS: Thank you. No further questions.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Cross-examination?

19 CROSS-EXAMINATION

20 BY MR. KALLAHER:

21 Q. Good afternoon, Mr. Bellis.

22 A. Good afternoon.

23 Q. I'm sorry. I was distracted when you were asked  
24 this question. Isn't it -- if I'm asking a question twice,  
25 I don't mean to do that, but I might have missed the answer.

1           A.    You're fine.

2           Q.    Isn't it true that after the accident that you  
3 saw, this gentleman, you didn't see any cuts or scrapes on  
4 him, isn't that true?

5           A.    I did not. I seen him holding his stomach.

6           Q.    And isn't it true you can't identify -- you never  
7 saw who was driving the car?

8           A.    Um, I cannot sit here -- I did not see who was  
9 driving the car, correct.

10          Q.    Okay. And isn't it true that the road was flat  
11 and straight?

12          A.    Yes, sir.

13          Q.    Okay. And you were, head down playing -- I think  
14 you said you were playing Angry Birds or something on your  
15 phone?

16          A.    Yes, sir.

17          Q.    And when your wife said, "What's he doing," you  
18 looked up?

19          A.    Yes, sir.

20          Q.    And at that time you said he looked catty-corner  
21 and could see into the other car, right?

22          A.    Correct.

23          Q.    Was the person in the other car, was that person  
24 on the phone, were they texting?

25          A.    I could not see exactly what they were doing. I

1 could only see they were slightly looking off to the right.

2 MR. KALLAHER: That's all I have. Thank you.

3 THE COURT: Thank you.

4 Any redirect?

5 MS. SANDERS: Briefly.

6 REDIRECT EXAMINATION

7 BY MS. SANDERS:

8 Q. Mr. Bellis --

9 A. Yes, ma'am.

10 Q. -- could you see if there was more than one person  
11 in that vehicle?

12 A. In the driver's vehicle?

13 Q. Yes, sir.

14 A. There was -- when I ran up to it and -- there was  
15 not. There was only the one person. I asked the gentleman,  
16 I can't say I know what he looks like, but I spoke with the  
17 gentleman. I said, are you okay? I said -- he said yes. I  
18 said, there's nobody else with you? He said no. Please  
19 help the other car. Held his stomach, and then that was the  
20 last time. I was too focused on the other car.

21 MS. SANDERS: Thank you.

22 THE WITNESS: Yes, ma'am.

23 MR. KALLAHER: Just briefly, Judge.

24 THE COURT: All right.

25

1 RECROSS EXAMINATION

2 BY MR. KALLAHER:

3 Q. Mr. Bellis, you can't identify the person who made  
4 those statements?

5           A.    No, sir --

6 MS. SANDERS: Asked and answered.

7                   **THE COURT:** Sustained. That was asked and  
8                   answered.

9 THE WITNESS: -- it would be a lie to say that --

10                   **THE COURT:** Thank you. You may step down.

11 All right. Counsel approach.

12 (At the bench.)

13 MS. SANDERS: Your Honor, my two witnesses from  
14 Miami just arrived. They're changing their clothes. I  
15 was hoping we could take a short break.

16 THE COURT: Yeah, we can.

17 MS. SANDERS: Okay.

18           **THE COURT:** Are they going to be long witnesses?

19 MS. SANDERS: No. Just like these two.

20 THE COURT: Okay.

21 (In open court.)

22                   **THE COURT:** All right. Ladies and gentlemen,  
23                   we're gonna take a short recess at this time. You are  
24                   instructed that, of course, you're not yet to form any  
25                   fixed or definite opinion about the merits of this

1 case. You're not yet to discuss the case among  
2 yourselves. If you'll please leave your notepads on  
3 your chairs and accompany the court deputy.

4 **COURT DEPUTY:** All rise for the jury.

5 (The jury exits the courtroom.)

6 **THE COURT:** All right. You may be seated.

7 Is there anything we need to address before we  
8 recess?

9 **MS. SANDERS:** No, Your Honor.

10 **MR. KALLAHER:** No, sir.

11 **THE COURT:** Okay. It's 4:33. We'll take a  
12 ten-minute recess, I guess.

13 **MS. SANDERS:** Thank you.

14 (Recess taken from 4:33 p.m. to 4:41 p.m.)

15 **THE COURT:** Are your witnesses ready?

16 **MS. SANDERS:** Yes, they're ready.

17 **THE COURT:** We'll go back on the record in  
18 Case 16-CF-583, State of Florida versus Spencer  
19 Altschuler who is present with counsel, the state  
20 attorneys. The jury is outside the courtroom.

21 Are there any matters we need to address before we  
22 bring in the jury and resume testimony?

23 **MS. SANDERS:** No, Your Honor.

24 **MR. KALLAHER:** No, sir.

25 **THE COURT:** Return our jury, please.

1 (The jury enters the courtroom.)

2 **THE COURT:** All right. You may be seated.

3 Welcome back, ladies and gentlemen.

4 Does the State recognize the presence of the jury?

5 **MS. SANDERS:** Yes, Your Honor.

6 **THE COURT:** Defense?

7 **MR. KALLAHER:** Yes, sir.

8 **THE COURT:** All right.

9 Welcome back, folks.

10 State, you may call your next witness.

11 **MS. SANDERS:** Yes, Your Honor. The State would

12 like to call Angel Lendic.

13 **THE COURT:** Angel who? I'm sorry.

14 **MS. SANDERS:** Lendic.

15 **ANGEL LENDIC**

16 was called as a witness and, having first been duly sworn,

17 testified as follows:

18 **THE WITNESS:** Yes.

19 **THE COURT:** All right. You may proceed.

20 **MS. SANDERS:** Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 **BY MS. SANDERS:**

23 **Q.** Good afternoon.

24 **A.** Good afternoon.

25 **Q.** Can you please state your full name for the

**A-115**

1 record, spelling your last name?

2 A. Angel Alberto Lendic, L-e-n-d-i-c.

3 Q. And, Mr. Lendic, you currently reside where?

4 A. 19240 Christmas Road, Miami, Florida, 33156.

5 Q. All right. Thank you.

6 What do you do for a living?

7 A. I'm a maintenance -- school maintenance, Dade  
8 County Public Schools.

9 Q. How long have you been doing that?

10 A. Thirty-three years.

11 Q. And, Mr. Lendic, back on February 15th of 2015,  
12 do you recall traveling on State Road 60?

13 A. Yes.

14 Q. And have you traveled on that road before?

15 A. No.

16 Q. Okay. So that day is the first time?

17 A. Yes.

18 Q. And can you tell us if it's a single-lane road,  
19 double-lane?

20 A. It was one one-way, and -- one car on each side.  
21 Single-lane.

22 Q. Do you recall what direction you were traveling?

23 A. Um, no.

24 Q. Where were you going?

25 A. We were going to -- I think -- Orlando,



1 Kissimmee -- I'm not too -- it was a special training area  
2 in the woods, kind of thing. So we had it in the TomTom.

3 Q. Okay. And you were traveling from Miami, correct?

4 A. From Miami. Correct.

5 Q. So westbound?

6 A. I believe so.

7 Q. All right. And who was in the vehicle with you?

8 A. My son, Jacob Lendic.

9 Q. And were you the driver?

10 A. Yes, I am.

11 Q. And what kind of vehicle did you have?

12 A. A Honda Odyssey, 2002.

13 Q. And do you recall the speed limit on that road?

14 A. Sixty.

15 Q. Do you recall how many miles you were traveling?

16 A. I put it on cruise control at 60.

17 Q. And during the time that you were traveling  
18 towards Orlando, did you ever recall some vehicles passing  
19 you?

20 A. Yes, ma'am.

21 Q. Okay. How many vehicles would you say passed you?

22 A. It was, like, about three -- about -- between four  
23 and five vehicles.

24 Q. Four and five vehicles passed you.

25 And what did they do once they passed you?

1           A.    Well, I'm driving and basically they passed me and  
2   then they went back to their lane.

3           Q.    Okay.  At that point could you tell whether or not  
4   it was -- if it was a dotted line?

5           A.    I -- I can't recall.  I --

6           Q.    Not a problem.

7                   But it was four to five cars traveling?

8           A.    That passed me.

9           Q.    That passed you?

10          A.    I mean, basically I was staying, like always,  
11   behind and people were just passing me and going.

12          Q.    Okay.  All right.  And after those four to five  
13   vehicles passed you, did you make any other observations at  
14   that time?

15          A.    The last vehicle, um, passed me, but the  
16   difference that she didn't stay -- he didn't go back to our  
17   lane.  He stayed on the -- on the opposite lane.

18          Q.    Let me ask you this:  That last vehicle that  
19   you're talking about, was it part of that four or five you  
20   just told us about?

21          A.    No.  It was, like, a little group of four or five,  
22   and then he was coming.

23          Q.    Okay.  So it was a little bit after those four to  
24   five cars merged over?

25          A.    Right.

1 Q. And what did you see this other vehicle do?

2 A. Well, he -- to me -- he basically refused to get  
3 back on [sic] our lane.

4 Q. Can --

5 A. It was a clear day, so, you know, it would --  
6 looking at him, you know, it was a straight road.

7 Q. Do you recall the description of this vehicle?

8 A. It was a smaller dark-colored vehicle.

9 Q. Okay.

10 A. I couldn't tell you the brand.

11 Q. Could you tell, as this vehicle passed you, how  
12 many people were in the vehicle?

13 A. No.

14 Q. And when this vehicle passed you, was it a little  
15 far ahead of you at this time?

16 A. Okay. He basically passed me --

17 Q. Okay.

18 A. -- and stayed in the opposite lane.

19 Q. How long would you say this vehicle stayed there?

20 A. It was a good mile.

21 Q. A good mile.

22 A. Because it got us by surprise, why.

23 Q. Okay. So as you're -- you know, you're traveling,  
24 does anything else happen as you are seeing this car, you  
25 said, traveling, what, a good mile in the opposite

1 direction?

2 A. Well, that's when --

3 Q. I'm sorry. Opposite lane?

4 A. That's when I saw headlights coming -- coming, you  
5 know.

6 Q. So headlights coming east?

7 A. East. Right. Headlights were coming east. And I  
8 commented to my son why --

9 MR. KALLAHER: Objection. It's hearsay. I mean,  
10 he's talking to his son.

11 THE COURT: Sustained.

12 BY MS. SANDERS:

13 Q. You can't tell me what you said.

14 A. Okay. Can I tell you what I think, what I thought  
15 or no?

16 Q. No.

17 A. It doesn't --

18 Q. Well, let me rephrase my question.

19 A. Okay.

20 Q. So this person's actions drew your attention to  
21 say something to your son. Without telling me what it is,  
22 you said something to your son?

23 A. Right.

24 Q. Okay. What other observation do you make after  
25 that?

1           A.    That I was getting worried, why -- why not go back  
2 to the lane.

3           Q.    Let me ask you this:  You said it was a clear day,  
4 so you had a pretty good view of that other car?

5           A.    Yes.

6           Q.    Could you tell whether or not that -- the vehicle  
7 that was in the incorrect lane had an opportunity to move  
8 over?

9           A.    Definitely.

10          Q.    Definitely?

11          A.    Yes.

12          Q.    But it did not?

13          A.    Correct.

14          Q.    And eventually there was a collision?

15          A.    Right.

16          Q.    What were your observations of that collision?

17          A.    I didn't see -- I didn't hear the car on the  
18 opposite lane hit the brakes or anything.  It just like an  
19 explosion, and both cars flew up in the air and landed on  
20 the right lane -- on the lane where I was, and the white car  
21 that was traveling, I guess, eastbound --

22          Q.    Okay.

23          A.    -- it landed on top of the rails.

24          Q.    Okay.  What did you do once the collision  
25 occurred?

1           A.    Um, we were still driving.  I got into an argument  
2   with my son --

3           Q.    Okay.

4           A.    -- about pulling over.

5           Q.    Okay.

6           A.    Okay.  I didn't want to pull over.  I didn't want  
7   my son to see, you know, so ...

8           Q.    Did he eventually convince you to pull over?

9           A.    Yes.

10          Q.    Okay.  Tell me what happens once you pull over.

11          A.    Um, we got out of the vehicle, ran.  The car that  
12   was going the wrong way, um, a young man came out, you know,  
13   um, he threw himself on the floor.  He was mumbling  
14   something.

15          Q.    Did you see anyone else in that vehicle besides  
16   that young man?

17          A.    No.  That was it.  And we just stepped over him  
18   and went to the other car because the other car was -- um,  
19   it was really bad.

20          Q.    Did you help render aid to the occupants of that  
21   other car?

22          A.    Yes.  We -- we tried to open the door.  Um, the  
23   driver's side -- no, the passenger side.  There was little  
24   kids in the backseat, you know, so we opened the door.  Some  
25   people grabbed the children.  And we were screaming to the

1 lady to wake up, to wake up. My son went to get a hammer --  
2 okay -- that we had to break the windows. That didn't work  
3 out. So he -- he pulled out a flashlight and he ended up  
4 breaking two windows. And we were still trying to get her  
5 to wake up, to get up.

6 Then the car started with fire in the engine side.  
7 My son ran and got a cooler and tried to submit [sic] the  
8 fire. The fire was getting worse. Um, I was still inside  
9 the car trying to make the lady wake up.

10 Q. Okay. But she was unresponsive?

11 A. Right.

12 Q. Okay. Now, you mentioned that when you were  
13 initially running towards the collision, there was a male  
14 coming out of that vehicle. Now, could you describe this  
15 male?

16 A. It was very brief.

17 Q. Okay.

18 A. Like, it was, let's say around -- in the 20s. A  
19 little -- I don't know, not slim, you know, and not fat.

20 Q. Anything else?

21 A. Basically he just -- he came out of the car and  
22 threw himself on the floor.

23 Q. Did you see any injuries or anything like that?

24 A. I -- to be honest, I just stepped right over him  
25 and -- I was just focused basically -- I saw him coming out.

1 Once I saw him coming out, you know, then I -- we proceeded  
2 to go to the --

3 Q. To the other vehicle?

4 A. Yes.

5 MS. SANDERS: Okay. All right. Thank you. No  
6 further questions.

7 THE WITNESS: That's it?

8 THE COURT: All right. Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. KALLAHER:

11 Q. Good afternoon, Mr. Lendic.

12 A. Good afternoon.

13 Q. Good to see you again.

14 You testified on direct examination for

15 Ms. Sanders that the vehicle -- the last vehicle passing had  
16 an opportunity to move over --

17 A. Yes.

18 Q. -- correct?

19 Now, was that between your car and the car in  
20 front of you or between the car in front of you and the car  
21 in front of it?

22 A. No. Between my -- between my car and the car in  
23 front of me, there was a lot of distance. I'm talking about  
24 minimum five or six cars. I mean, there was -- there was a  
25 lot of distance. There wasn't nothing obstructing him to do



1     what everybody does, pass me, go back, and then pass -- pass  
2     the other person and go back.

3             I'm sorry.

4             Q.     That's okay.   A little nervous?

5             A.     Yes.

6             Q.     The -- you said the cars passed you.   Did they all  
7     move into the eastbound lane and pass as a group and then  
8     get over as a group?

9             A.     No.   They were just passing me one by one.

10            Q.     Passed you one by one.   Okay.

11            How far would you say was the -- the car that  
12   passed you and then the car that got in the accident?   How  
13   far down the road was the car that passed you before that  
14   accident car?

15            A.     How far was my car to the accident?

16            Q.     No.   How far was the last car that passed you  
17   before the accident car passed you --

18            A.     Right.

19            Q.     -- how far down the road was it from you?

20            A.     I can't recall.   I recall that it was -- it was --  
21   the reason that I can tell you that it was a long distance  
22   is because I was looking at the opposite lane --

23            Q.     Well, it was --

24            A.     -- and I can see it clear.

25            Q.     It was about three quarters of a mile to a mile,

1 wasn't it?

2 A. Something like that.

3 Q. Okay. And you said that car that got into the  
4 accident never got over into the westbound lane?

5 A. Correct.

6 Q. Okay. And stayed in that lane and drove that  
7 distance, three quarters of a mile to a mile --

8 A. Right.

9 Q. -- and did the incident -- the crash happen  
10 directly in front of your vehicle or the other passed  
11 vehicle? Does that make sense?

12 A. Right. Right. It wasn't near me. It was not  
13 near me. I wasn't -- I wasn't looking at the cars on my  
14 lane 'cause I was really focusing on the car that was going  
15 the illegally [sic] way and why was he going on that lane --

16 MR. KALLAHER: Objection. Move to strike that.

17 THE COURT: Well, the jury will disregard any  
18 characterizations as to legal or illegal.

19 THE WITNESS: The opposite lane.

20 BY MS. SANDERS:

21 Q. Yes.

22 A. Okay.

23 Q. The -- okay. And the accident happened about a  
24 mile down the road from you, correct?

25 A. Right. I'm saying a mile. You know, a long

1 distance.

2 Q. Right. Okay.

3 A. A long distance.

4 Q. Well, I mean, was it -- was it about a mile down  
5 the road from you?

6 A. I mean, what consists of a mile, like, ten blocks?

7 Q. I don't know. But anyway --

8 A. Right.

9 Q. -- we'll go with your characterization, a long way  
10 down the road.

11 A. Right.

12 Q. And there wasn't any car between you in your -- in  
13 the westbound lane. There wasn't any car between you and  
14 the crash; is that right?

15 A. The -- on my lane?

16 Q. Yes.

17 A. My lane? I couldn't tell you.

18 Q. Don't know.

19 And you're sure the crash happened in the  
20 eastbound lane, the wrong lane?

21 A. Yes. Yes.

22 Q. Now, when you said you saw this person get out of  
23 the car after the crash --

24 A. Right.

25 Q. -- because you had to drive about a mile to it --

1           **A.**    Right.

2           **Q.**    -- and then you -- I think you had to run some  
3 distance up to the crash site, right?

4           **A.**    Right.

5           **Q.**    So it's about a -- at least a minute between the  
6 crash and when you got there, right?

7           **A.**    Right.

8           **Q.**    You saw that person crawl out of the passenger  
9 side of the car, correct?

10          **A.**    Of the driver side.

11          **Q.**    Out of the passenger side -- you're sure it was  
12 the driver side?

13          **A.**    Yes.

14          **Q.**    Do you remember giving a sworn statement to  
15 Florida Highway Patrol right after the accident happened?

16          **A.**    Yes.

17               **MR. KALLAHER:**   Okay.   Your Honor, may I approach  
18 the witness?

19               **THE COURT:**   Ms. Sanders --

20               **MR. KALLAHER:**   Do you have a copy of his sworn  
21 statement?

22               **MS. SANDERS:**   Yes.   What page?

23               **MR. KALLAHER:**   I'll get to the line.   Let me hand  
24 it to him.   Hold on a second.

25               It's page 16.   If you could turn that page to

1 page 16, please.

2 THE WITNESS: Okay.

3 BY MR. KALLAHER:

4 Q. Do you remember giving -- after the accident,  
5 talking to a Florida Highway Patrol trooper?

6 A. Yes.

7 Q. And you gave that man a statement in the backseat  
8 of your car?

9 A. Yes.

10 Q. And that was recorded, was it not?

11 A. I believe it was.

12 Q. Were you ever shown a transcript, a copy of the  
13 transcript of that recording?

14 A. Not that I know of.

15 Q. Okay. What I'm showing you there, does that  
16 appear to be the transcript of the -- the recorded statement  
17 you gave?

18 A. I mean, if you say it is, that's ...

19 Q. Well, I'm asking you. Is that the statement you  
20 gave to the police officer?

21 A. I guess so, yeah.

22 Q. Okay. Isn't it true that at that time the officer  
23 asked you --

24 THE COURT: Counsel, approach.

25 MR. KALLAHER: Yeah.

1 (At the bench.)

2 THE COURT: You need to first ask him if that  
3 refreshes his recollection.

4 MR. KALLAHER: Yes, sir.

5 (In open court.)

6 BY MR. KALLAHER:

7 Q. Mr. Lendic, having read that, does that refresh  
8 your recollection as to what you told the police officer  
9 that day?

10 A. One second.

11 Q. Sure. Take your time.

12 A. For starters, this whole thing was extremely  
13 emotional. If I said what you're saying, that the driver  
14 came out of the passenger side, that was totally impossible.  
15 Okay? I know where the driver came out of. Okay? And if I  
16 say here -- okay -- and I'm -- I believe exactly what you're  
17 saying. And if it was recorded and I said anything  
18 otherwise, it was my mistake.

19 Q. Okay.

20 A. Okay.

21 Q. Isn't it also true that you never saw anybody  
22 behind the wheel of that car?

23 A. What do you mean?

24 Q. You never saw anybody driving that car?

25 A. Oh, I didn't -- I didn't look at -- you're saying

1     when they drove by?  When they drove by, did I look at the  
2     individual?

3           Q.     Correct.

4           A.     I didn't look.

5           Q.     So isn't it true you didn't know who was driving  
6     that car?

7           A.     No.

8           Q.     And when you're saying the driver -- in response  
9     to me --

10          A.     Right.

11          Q.     You have no basis for that statement, correct?  
12     You saw somebody crawl out of that car?

13          A.     Right.  From the driver side, he dragged out.  
14     Nobody else was there.

15          Q.     And you told the Florida Highway Patrol officer --

16          A.     Right.

17          Q.     -- that day --

18          A.     Right.

19          Q.     -- that that person crawled out of the passenger  
20     side of the car, correct?

21          A.     Then I made a mistake if that's what it says.

22                 MR. KALLAHER:  May I approach?

23                 THE COURT:  You may.

24                 MR. KALLAHER:  Just a minute, Your Honor.

25                 I have no further questions.  Thank you.

1           **THE COURT:** Thank you.

2           Any redirect?

3           **MS. SANDERS:** No further questions, Your Honor.

4           **THE COURT:** All right. Thank you, sir. You may  
5           step down.

6           State, you may call your next witness.

7           **MS. SANDERS:** Yes, Your Honor. The State would  
8           like to call Jacob Lendic.

9                           **JACOB LENDIC**

10          was called as a witness and, having first been duly sworn,  
11          testified as follows:

12               **THE WITNESS:** Yes, ma'am.

13               **THE COURT:** All right. You may proceed.

14               **MS. SANDERS:** Thank you, Your Honor.

15                           **DIRECT EXAMINATION**

16   **BY MS. SANDERS:**

17           **Q.** Good afternoon.

18           **A.** Afternoon, ma'am.

19           **Q.** Can you please state your full name for the  
20          record, spelling your last name?

21           **A.** My name is Jacob Lendic. Last name L-e-n-d-i-c.

22           **Q.** And, Mr. Lendic, you reside in Miami, Florida?

23           **A.** Yes, ma'am.

24           **Q.** And you're now an officer?

25           **A.** Yes, ma'am.



1           Q.    Okay.  Now, back in 2015, you were not an officer  
2   yet?

3           A.    No, I just applied a few days before.

4           Q.    And you currently work for the Miami-Dade Police  
5   Department?

6           A.    Yes, ma'am.

7           Q.    Now, back in February 15th, 2015, were you  
8   traveling on State Road 60 with your father?

9           A.    Yes, ma'am.

10          Q.    And where exactly were you-all going?

11          A.    We were going to a training facility in Lakeland,  
12   Florida.

13          Q.    What direction were you traveling?

14          A.    We were traveling westbound.

15          Q.    And that particular day, how was the weather?

16          A.    It was pretty clear.

17          Q.    And the traffic, was it heavy, was it light?

18          A.    I'd say maybe moderate.

19          Q.    Moderate.  Okay.

20          A.    Nothing too crazy.

21          Q.    And was your father driving or were you driving?

22          A.    Yes, ma'am.  He's the only one that drives when  
23   we're together.

24          Q.    All right.  So you father doesn't typically let  
25   you drive?

1           A.    No, ma'am.   Even now.

2           Q.    All right.   And on that date, during your route to  
3   Lakeland, did you observe anything during your route?

4           A.    Yes, ma'am.   When we were driving, we observed  
5   numerous vehicles would pass us because my dad, he drives  
6   pretty straight for the speed limit.   He doesn't drive over,  
7   he doesn't drive under.

8           Q.    Do you recall what the speed limit was?

9           A.    He sets it on cruise control.   I believe he had it  
10   set on, like, 60.

11          Q.    All right.   So 60.   So safe to say, there was some  
12   vehicles that's probably passing you-all?

13          A.    Yes, ma'am.   Quite a few.

14          Q.    All right.   And during that time, did you observe  
15   a lot of those vehicles passing you-all?

16          A.    Yes, ma'am.

17          Q.    Okay.   So you're paying attention the entire time?

18          A.    I talked to my father and stuff like that, but,  
19   yeah.

20          Q.    Okay.   At some point did you ever observe another  
21   vehicle traveling westbound in the eastbound lane?

22          A.    Yes, ma'am.   There was -- the incident in  
23   question, there was several vehicles that passed us.

24          Q.    Okay.

25          A.    But one vehicle in particular was a dark-colored

1 vehicle, black, dark, just a dark color. Maybe black. It  
2 continued westbound in the eastbound lane for quite some  
3 time. In fact, I even said to my father, I asked him, why  
4 is the vehicle keep on traveling down that way?

5 Q. Okay. And while this dark-colored vehicle's  
6 passing you, did you look over? While the vehicle was  
7 traveling, passing you, did you look over?

8 A. As it passed me?

9 Q. Yes.

10 A. I glanced, but I couldn't really make out who was  
11 driving. I just saw the cars passing us.

12 Q. Could you see whether or not multiple people were  
13 in the car, was it one person in the car?

14 A. No. Just later on in the accident, only one  
15 person was in the vehicle.

16 Q. Before we get to that --

17 A. Sure.

18 Q. -- you said that it passed you. How far do you  
19 think it was ahead of you-all?

20 A. From the impact or --

21 Q. From when it initially passed you.

22 A. Um, I'm not too sure. It came around and it was  
23 going for quite a bit going westbound in the eastbound lane.

24 Q. Okay. And were there multiple cars ahead of you  
25 at this time?

1           **A.**    Yes.  That was -- there was multiple cars that  
2    passed us, but he was the last one in that group, I guess  
3    you could say, that was -- traveled westbound in the  
4    eastbound lane.  He just continued on afterwards, after all  
5    the vehicles had merged over.

6           **Q.**    Okay.  And during that time, were you -- how was  
7    your vehicle, as far as were you able to see ahead of you at  
8    this time?

9           **A.**    Yes.  You can see -- we were able to see ahead of  
10   us, cars.

11          **Q.**    And were you also able to see other cars traveling  
12   eastbound?

13          **A.**    Yes.  That's why we -- that's why I even asked  
14   him, why is he continuing to go down that way?

15          **Q.**    At some point were -- did you see an oncoming car  
16   traveling eastbound?

17          **A.**    Yes.

18          **Q.**    Okay.  And what were your observations of that  
19   other car, the dark-colored car that passed you?  Did it  
20   attempt to move at any point?

21          **A.**    No, ma'am.

22          **Q.**    And from your vantage point, could you -- could  
23   you determine whether or not there was enough space for this  
24   dark-colored vehicle to move over?

25          **A.**    It seemed like it, yes.  I believe all he had to

1 do really, worst-case scenario, slow down. I know because  
2 of how my father drives. There's plenty of space in front  
3 of him.

4 Q. So there's plenty of space for him to move over?

5 A. Yeah.

6 Q. Or that vehicle to move over?

7 A. Yeah. All he would have to do is slow down.

8 Q. About how far would you say you-all were from the  
9 collision?

10 A. Um, I don't know. Maybe a hundred yards,  
11 200 yards. I'm not exactly sure. I wasn't -- I sprinted  
12 the distance. We were able to -- the impact happened.  
13 Discussed this lightly with my father. My father didn't  
14 want me to pull over -- I asked my father to pull over. He  
15 was driving. I asked him to pull over. He said, no, this  
16 is gonna be a really bad accident. I said, dad, we have to  
17 pull over. We have to check on them, make sure they're  
18 okay. We pulled over. And then I ran. So it wasn't -- it  
19 was enough for me to sprint the whole way to the ...

20 Q. Now, prior to the collision, were you able to see  
21 anything that the other vehicle that was traveling  
22 eastbound -- were you able to see what that vehicle was  
23 doing?

24 A. The eastbound vehicle?

25 Q. Yes.

1           A.    Um, not really.  It was just going eastbound.

2           Q.    Okay.  What about that dark-colored vehicle, did  
3   it do anything, press on its brakes --

4           A.    It continued westbound.  I don't recall.  Maybe he  
5   pressed on the brakes.  I don't know.  I just remember the  
6   impact being loud and seeing the two vehicles fly across the  
7   west side.

8           Q.    Okay.  And once the collision happened, you  
9   convinced your dad to pull over?

10          A.    Yes, ma'am.

11          Q.    What happens next?

12          A.    I ran over.  As I'm running over to the accident  
13   scene, I observed a male coming out of the dark-colored  
14   vehicle.  He was yelling.  He was in pain.  Um, he was -- I  
15   don't know if he was bleeding from his face or some sort of  
16   redness from his face.  I'm not too sure.  Maybe blood.

17          Q.    Did you see anyone else coming out of that  
18   vehicle?

19          A.    No, ma'am.  In fact, that's why I continued past  
20   it.  Since he was out of the vehicle, I already know that  
21   vehicle is fine.  He's at least -- if he's yelling, he's  
22   alert.  No one had exited out of the other vehicle, so I  
23   made my way over to them.

24          Q.    Okay.  And you rendered aid to the children in  
25   that vehicle?

1           **A.**    Attempted to.

2           **Q.**    Attempted to.    Okay.

3                   **MS. SANDERS:**   No further questions at this time.

4           Thank you.

5                   **THE COURT:**   All right.   Mr. Kallaher?

6                   **MR. KALLAHER:**   No questions, Your Honor.

7                   **THE COURT:**   All right.

8           Thank you, sir.   You may step down.

9                   All right.   Ladies and gentlemen, it's almost  
10           5:15.   We ran a little bit late this evening.   We're  
11           going to recess at this time.   I have a couple matters  
12           scheduled at 8:30 tomorrow morning.   It won't take very  
13           long.   So we're going to try to resume this trial at  
14           9:00.   I will ask you to be near the fifth floor  
15           elevators by 8:55 so we can try to start promptly at  
16           9:00.

17                   Once again, you are instructed that you are not,  
18           of course, yet to form any fixed or definite opinion  
19           about the merits of this case.   You're not yet to  
20           discuss the case among yourselves.   And you are  
21           certainly not to discuss the case with anyone else.

22                   Are there any other cautionary instructions  
23           requested by either side?

24                   **MR. KALLAHER:**   No, Your Honor.

25                   **MS. SANDERS:**   No, Your Honor.

1           **THE COURT:** All right. Have a great evening.  
2 Just leave your notepads on your chairs. We'll see you  
3 in the morning.

4           (The jury exits the courtroom.)

5           **THE COURT:** All right, folks. You may be seated.  
6 All right. Is there anything further we need to  
7 address before we recess?

8           **MS. SANDERS:** Yes, Your Honor. As far as  
9 witnesses, what time would you like them?

10          **THE COURT:** We're going to start at 9:00.

11          **MS. SANDERS:** 9:00? Okay.

12          **MR. KALLAHER:** Judge, is it fair to ask who will  
13 be first up tomorrow?

14          **THE COURT:** I'm sorry?

15          **MR. KALLAHER:** Is it fair to ask who will be first  
16 up tomorrow?

17          **MS. SANDERS:** Oh, sure. It's Trooper Gensler.

18          **MR. KALLAHER:** Thank you.

19          **THE COURT:** Fair enough.

20 All right. Unless there's something further,  
21 we'll be in recess until 8:30 tomorrow morning. It  
22 will be 9:00 in this case. So ...

23          (At the bench.)

24          **MS. SANDERS:** They moved to have excluded the  
25 pictures. Your Honor said I could use one picture and



1           that was from the scene. I just want you to know  
2           that's what my notes reflect.

3           **THE COURT:** All right.

4           **MR. KALLAHER:** I agree with that. But it was --  
5           it wasn't -- it was one that just showed it from a  
6           distance.

7           **MS. SANDERS:** Yes. And it was black and white.

8           **THE COURT:** Y'all go over the photographs.

9           **MS. SANDERS:** Sure.

10          **THE COURT:** Or whatever you're intending to offer.  
11          And then if you have any objection, we'll address that  
12          first thing in the morning.

13          (In open court.)

14          **THE COURT:** All right. Have a good night.

15          (The proceedings recessed at 5:14 p.m.)

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P R O C E E D I N G S

(October 3, 2017; 9:03 a.m.)

**THE COURT:** Okay. We're on record in Case 16-CF-583, State of Florida versus Spencer Jordan Altschuler. The defendant is present with counsel and the assistant state attorneys.

Is there anything we need to address before we return the jury and proceed with testimony?

**MS. SANDERS:** Yes. Good morning, Your Honor.

Yesterday we were debating on pictures and kind of briefly wanted to talk about it. I looked at my notes again. I did see where Your Honor indicated that the State could utilize one picture. You also requested I speak with Dr. Utz and go over some of the pictures of the specific injuries that he's going to be testifying about.

I did speak to defense counsel --

**THE COURT:** That was one picture that included of the decedent.

**MS. SANDERS:** Correct. So I have these pictures, and defense has an objection. I think he has an objection to all my pictures.

**THE COURT:** Have you had your pictures marked?

**MS. SANDERS:** Not yet because --

1           **THE COURT:** Why don't you get them marked first,  
2 and then we'll talk about it.

3           (Court was at ease.)

4           **MS. SANDERS:** May I approach, Your Honor?

5           **THE COURT:** You may.

6           All right. I've looked at State's Exhibit F for  
7 identification.

8           **MS. SANDERS:** Oh, yes. Sorry.

9           **THE COURT:** So you intend to offer these photos  
10 through the --

11          **MS. SANDERS:** Medical examiner.

12          **THE COURT:** Okay.

13          **MS. SANDERS:** The first picture -- not -- I would  
14 say that the second picture of the body in the bag is  
15 taken at the scene, and that's where the medical  
16 examiner takes the body back.

17          **THE COURT:** Right.

18          **MS. SANDERS:** So per case law -- I think we  
19 discussed this before -- if there's a picture that  
20 shows where the body's presented at the scene, then  
21 State is allowed to use it, regardless of if the  
22 defense --

23          **THE COURT:** I don't think that's accurate. But --  
24 I don't -- I don't have a problem with a single  
25 photograph showing the charred remains of the -- of

1 Ms. --

2 MS. SANDERS: -- Walker.

3 THE COURT: -- Walker at the scene. It is --  
4 well -- but I don't find that that's more prejudicial  
5 than probative, the fact that it's how the victim  
6 presented herself at the scene.

7 What's the purpose of State's Exhibits F-3 through  
8 F-9, which appear to be autopsy photos.

9 MS. SANDERS: Those are all the injuries that the  
10 victim sustained that I went through Doctor -- went  
11 through these pictures with Dr. Utz in order to help  
12 him describe what injuries she sustained due to the  
13 crash.

14 THE COURT: Mr. Kallaher, you wish to be heard?

15 MR. KALLAHER: Yes, Your Honor. First, as the  
16 Court's well aware, we've already had this hearing.  
17 And the Court disallowed all of the pictures that  
18 you're looking at right now. And the Court's ruling  
19 was we could get together and pick one of the scene  
20 with the car at a distance that included the body in  
21 it. And I've got those photos cued up if we need to go  
22 over them again.

23 The charred remains have nothing to do -- there is  
24 no probative value for those case -- or for this case.  
25 The -- Ms. Walker, the medical examiner's report,

1 indicates that she died from -- and I'll read right  
2 from it: Multiple traumatic injuries, suffering  
3 non-survivable injuries to the torso, including  
4 complete transection of the thoracic aorta, fracture of  
5 the thoracic spine, and separation of the pubic  
6 symphysis, multiple lacerations, et cetera.

7 And the M.E. also sent out the blood for  
8 chemistry -- chemical analysis, and it came back  
9 negative for carboxyhemoglobin. There was no CO in the  
10 blood that showed that she had not respired any  
11 carbon monoxide. She was deceased before the fire  
12 started.

13 So showing the charred remains of the body can  
14 have no purpose, other than to inflame the jury and  
15 play on their passions and prejudice and, therefore, it  
16 should be excluded.

17 **THE COURT:** All right. There's no dispute in this  
18 case -- it's not an issue, as far as I know or can  
19 tell, that Ivery Walker was killed as a result of the  
20 collision that her car was involved in on  
21 February 15th on Highway 60.

22 The specific manner of death, the medical examiner  
23 can testify to, but the Court does not -- does find  
24 that State's Exhibit for identification photos F-3  
25 through F-9 are -- would potentially be unnecessarily

1 prejudicial to the defendant.

2 I will allow the single photograph, F-2. But I  
3 will disallow the remaining photographs.

4 And, Ms. Sanders, if you will -- for record  
5 purposes, give Exhibit F back to the clerk. If you  
6 wanted to pull out F-2 and have that remarked as a  
7 separate numbered exhibit. But F-2 -- Exhibit F for  
8 identification, absent F-2, will be made a Court  
9 Exhibit, which will be Court 1, just for record  
10 purposes.

11 And if you want F-2 marked separately, you can do  
12 that and offer that, over objection the Court would  
13 allow that one photograph.

14 (Court Exhibit No. 1 was received in evidence.)

15 **MR. KALLAHER:** Is it necessary for me to preserve  
16 my objection during the testimony --

17 **THE COURT:** I think you've adequately preserved  
18 it. You've objected to any photograph. And in  
19 particular, F-2, which shows the -- what appears to be  
20 the charred body under a sheet.

21 **MR. KALLAHER:** -- rather than object  
22 contemporaneously so as to call more attention to it.

23 **THE COURT:** Okay.

24 Is there anything else we need to address before  
25 we return the jury?

1 MS. SANDERS: No, Your Honor.

2 THE COURT: Okay. Let's return our jury, please.

3 (The jury enters the courtroom.)

4 THE COURT: All right. You may be seated.

5 Welcome back, ladies and gentlemen.

6 Does the State recognize the presence of the jury?

7 MS. SANDERS: Yes, Your Honor.

8 THE COURT: Defense?

9 MR. KALLAHER: Yes, Your Honor.

10 THE COURT: All right. Morning, folks. I hope  
11 you had a pleasant evening. When we recessed, of  
12 course, the State was in the midst of presenting its  
13 case.

14 So, State, you may call your next witness.

15 MS. SANDERS: Yes, Your Honor. The State would  
16 like to call Corporal Brian Gensler.

17 BRIAN GENSLER

18 was called as a witness and, having first been duly sworn,  
19 testified as follows:

20 THE WITNESS: I do.

21 THE COURT: All right. You may proceed.

22 MS. SANDERS: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. SANDERS:

25 Q. Good morning, sir.

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1           **A.**    Good morning.

2           **Q.**    Can you please state your full name for the  
3 record, spelling your last name?

4           **A.**    Yes.   Master Corporal Brian Gensler.   Last name is  
5 G-e-n-s-l-e-r.

6           **Q.**    And, Corporal, who are you currently employed  
7 with?

8           **A.**    The Florida Highway Patrol.

9           **Q.**    And how long have you been with them?

10          **A.**    I've been with them since 1999, so been over 18  
11 years.

12          **Q.**    And, Master Corporal Gensler, are you a traffic  
13 homicide investigator?

14          **A.**    Yes.

15          **Q.**    And how does one become a THI?

16          **A.**    First -- to become a THI, first, of course, you  
17 become a trooper.   And to become a trooper, you have to go  
18 through the six and a half, now seven months of the Florida  
19 Highway Patrol Academy.   After that, you have a few months  
20 of training on the road as a regular trooper before being  
21 released.   You have to have at least a few years of -- as a  
22 state of Florida trooper, receive crash investigation to do  
23 basic crash investigation, to investigate crashes.

24                   After that, you have to apply to be a traffic  
25 homicide investigator.   Then go through the extensive



1 training that the Florida Highway Patrol proceeds -- or an  
2 outside agency may proceed on that training. Which, also,  
3 then you have to go through a few months of training in the  
4 field, as well, as a traffic homicide investigator.

5 Q. Not to cut you off, you're talking about training.  
6 What does that training entail? What things are you trained  
7 to do, as far as conducting a homicide investigation?

8 A. We are trained to, of course -- to reconstruct a  
9 traffic homicide, you have to know what to look for, as to  
10 certain marks, the roadway marks, to identify gouges, any  
11 type of tire marks; if there's multiple different tire  
12 marks, multiple different kinds of gouge marks, grate marks  
13 to look from. You have to take many different calculations  
14 based upon a vehicle's movements. You're also taught how to  
15 look for certain things on vehicles, how to measure crush  
16 damage, interviewing witnesses. Multiple variations of  
17 looking for all type of physical evidence.

18 Q. And how many officers are normally in this  
19 particular unit?

20 A. Well, there's a -- in this unit that I currently  
21 work with, if we're fully staffed, we have 13 traffic  
22 homicide investigators.

23 Q. And do you have to be certified as part of this  
24 unit?

25 A. Yes, you do. You have to get certifications in

1 each class. You have to get certified -- you actually have  
2 to pass a test for each course that you actually take with  
3 an 80 percent or higher to maintain the -- passing each  
4 course to maintain your certification.

5 Q. And when was the last time you were certified?

6 A. I was actually just -- actually every three years  
7 we have to go back to a reconstruction course to make sure  
8 that you maintain your attributes. And just currently went  
9 back the first week of September to get recertified again as  
10 a traffic homicide investigator.

11 Q. Now, back on February 15th, 2015, were you  
12 called out to the area of State Road 60?

13 A. Yes, I was.

14 Q. Okay. What kind road is that?

15 A. That was a two-lane road that travels in the east  
16 and the west direction that is the -- that is not divided by  
17 any median at all. It's divided -- the two lanes is divided  
18 by paint from painted lines in the roadway.

19 Q. And that particular day, do you recall what time  
20 you arrived?

21 A. Yes. I arrived just after 11:00. I believe it  
22 was 11:14 a.m.

23 Q. And were you the first officer to arrive or were  
24 there other officers on scene?

25 A. There was other officers on scene already.

1           **Q.**   And prior to you conducting a traffic homicide  
2   investigation, is there a separate investigation that's also  
3   done at the same time or prior to yours?

4           **MR. KALLAHER:**   Objection, Your Honor.   May we  
5   approach?

6           **THE COURT:**   You may.

7           (At the bench.)

8           **MR. KALLAHER:**   I'm sorry to interrupt here.   But I  
9   don't know where she's going with this, but it seems  
10   that she's going into the accident report, the traffic  
11   accident investigation report.   The judge has already  
12   ruled the evidence from that is inadmissible.

13          **THE COURT:**   She can just talk about the process,  
14   the first officers on the scene conduct a preliminary  
15   investigation and so forth.

16          **MS. SANDERS:**   That's what I was gonna do, Judge.

17          **THE COURT:**   Okay.

18          (In open court.)

19   **BY MS. SANDERS:**

20          **Q.**   Corporal Gensler, when you arrived, there was  
21   another trooper already there, correct?

22          **A.**   Correct.

23          **Q.**   Okay.   And he conducted a crash investigation?

24          **A.**   Correct.

25          **Q.**   What is the process of that?

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1           **A.**    He does a simple basic crash investigation to  
2   determine basically who's in what vehicles and what vehicles  
3   are involved, who's in the vehicles, the basic, simple  
4   crashes that basically determine where vehicles are coming  
5   from, where the impact may have occurred.

6           **Q.**    And is that separate from your investigation?

7           **A.**    Correct.

8           **Q.**    Okay.  When you started your investigation, were  
9   you primary or secondary at this time?

10          **A.**    Originally I was secondary, assisting.

11          **Q.**    Who was primary?

12          **A.**    Originally it was Corporal Kevin Hildreth.

13          **Q.**    And why did that change?

14          **A.**    Because he was -- he was a reservist for the  
15   military which then got deployed, so then I retook over as  
16   primary.

17          **Q.**    So on the date of -- initially what do you do as  
18   part of your investigation?

19          **A.**    Well, we got to -- initially we got to -- as  
20   investigators, we actually walk the scene first and  
21   determine, um -- look at all the physical evidence at the  
22   scene, what we got between vehicles, markings on the road,  
23   debris, anything that may be involved, of course.

24                 Then we start our -- we have interviews which we  
25   conduct from witnesses.  Or if there's any occupants still

1 remaining on scene, we would do that. Take sworn recorded  
2 statements. We take photographs -- photograph the whole  
3 scene. And we also take measurements on the scene, as well.  
4 And if we were to collect any physical evidence, we may  
5 collect evidence based upon what we may need for certain  
6 cases.

7 Q. And, now, you've been doing this for 13 years.  
8 How many THIs have you investigated as primary?

9 A. As a primary leader, I've investigated at least  
10 173.

11 Q. And secondary?

12 A. Over a thousand.

13 Q. And what were you tasked to do that -- that  
14 specific day?

15 A. That day, I assisted with the measurements on  
16 the -- that day. Also, I actually photographed the entire  
17 scene.

18 MS. SANDERS: May I approach defense counsel with  
19 what has been marked as State's H for identification  
20 purposes. It's a composite of 19 photographs.

21 And State's G for identification purposes. It is  
22 a composite of 18 photographs.

23 May I approach the witness, Your Honor?

24 THE COURT: You may.

25

1 BY MS. SANDERS:

2 Q. Will you look at State's H for me and let me know  
3 when you're done.

4 MR. KALLAHER: And, Your Honor, at this time we'll  
5 stipulate that they're authenticated.

6 THE COURT: I'm sorry?

7 MR. KALLAHER: We'll save time and authenticate  
8 that they're admissible.

9 THE COURT: Okay.

10 MS. SANDERS: All right.

11 May I approach the clerk, Your Honor?

12 THE COURT: Are you offering it?

13 MS. SANDERS: I am.

14 BY MS. SANDERS:

15 Q. Trooper you do recognize these photographs?

16 A. Yes.

17 Q. And you had an opportunity to review them last  
18 Friday as well as this morning?

19 A. Yes.

20 Q. Okay. And they're true and accurate?

21 A. Yes.

22 MS. SANDERS: And State -- Your Honor, State would  
23 like to introduce State's H into evidence as well as  
24 State's G into evidence.

25 THE COURT: Okay. State's H for identification

1 will be received as State's Exhibit 1, consisting of 19  
2 photographs individually labeled H-1 through H-9.

3 State's G, is it --

4 MS. SANDERS: Yes, Your Honor.

5 THE COURT: -- will be received as State's  
6 Exhibit 2 consisting of 18 photographs individually  
7 labeled G-1 through G-18.

8 (State's Exhibit Nos. 1-2 were received in  
9 evidence.)

10 MS. SANDERS: May I publish, Your Honor?

11 THE COURT: You may publish the exhibit. Just  
12 refer to which exhibit you are publishing.

13 MS. SANDERS: Yes, Your Honor.

14 BY MS. SANDERS:

15 Q. I'm showing you what has been marked as H-1.

16 Corporal, can you tell us exactly what we're  
17 looking at here?

18 A. Yes. This is the scene of the crash. This is  
19 State Road 60, which you can see it's a two-lane. I'm  
20 actually -- the point of this photo is actually standing on  
21 the northbound side, which the northbound side is right  
22 here. You're looking in an easterly direction. So you're  
23 seeing the rear of the burnt-up vehicle right here from  
24 this -- from this actual crash.

25 MS. SANDERS: And this is -- I'm sorry. For the

1 record, this is H-2.

2 THE COURT: Of State's Exhibit 1?

3 MS. SANDERS: Yes.

4 THE COURT: Okay.

5 BY MS. SANDERS:

6 Q. State's Exhibit 1, H-2. This is just a closer  
7 picture.

8 A. A closer picture. I'm actually standing up --  
9 this is the guardrail. So I'm just north of the actual  
10 guardrail. It's showing a guardrail picture.

11 Q. State's 1, H-4.

12 A. This is showing both vehicles that were involved  
13 in the crash. And this is basically their final rest from  
14 when they lost all momentum. This is me standing in the  
15 southerly side of the actual scene of 60 showing both the  
16 Volkswagen and the Hyundai in this picture.

17 Q. State's 1, H-5.

18 A. This is a close-up picture. And I'm standing just  
19 north of the Honda -- Hyundai, the burnt-up vehicle that's  
20 on top of the guardrail, showing its final rest with the  
21 tires, the left side tires over the guardrail.

22 Q. State's 1, H-8.

23 A. This is an even closer up of the actual Hyundai  
24 showing the inside area. This is from -- this will be the  
25 rear -- rear seats. This will be the front seats showing



1 the close-up of it with the seats in the right front  
2 portion.

3 Q. State's 1, H-9.

4 A. This is a close-up of the Volkswagen from the  
5 south side, showing the right side of the vehicle against  
6 the guardrail.

7 Q. State's 1, H-11.

8 A. This is me parallel to the Volkswagen on the south  
9 side, showing the -- getting more close up to the front-end  
10 damage to the Volkswagen.

11 Q. State's 1, H-13.

12 A. Then this is me standing to the east side of the  
13 Volkswagen, showing the front-end damage that occurred to  
14 the Volkswagen.

15 Q. State's 1, H-15?

16 A. This is me standing on the north side, just --  
17 barely east of the Volkswagen, showing the heavy guardrail  
18 damage along with both vehicles against the -- well, the one  
19 on top of the guardrail and the one just off the guardrail.

20 Q. During this time, you're just taking photographs,  
21 not opening any doors?

22 A. No. Not opening any doors. Just taking strictly  
23 photographs of the whole scene.

24 Q. State's 1, H-18.

25 A. Again, this is a even close-up photograph of the

1 Volkswagen front end against -- standing between the  
2 guardrail and the Volkswagen there.

3 Q. I'm now going to show you State's 2. It's my  
4 understanding that you also -- besides taking the  
5 photographs, you also took measurements at the scene?

6 A. Correct.

7 Q. Okay. I'm showing you State's 2, G-1. Can you  
8 explain what we're looking at here?

9 A. Yes. This is the -- this is actually gonna be the  
10 westbound lane right here. This is just east of the actual  
11 final rest of the vehicles. Of course, this is the -- the  
12 water's all from the fire trucks from -- that was displaced  
13 from the fire trucks. However, you see this is where the  
14 area collision occurred from -- you'll see the offset of the  
15 tire marks from the vehicles that occurred right here  
16 with -- and the -- the water. Also you'll see the gouge  
17 marks or scrape marks that occurred right through here as  
18 well, showing the area of the collision where the crash  
19 occurred.

20 Q. And are these tire marks different than brake  
21 marks?

22 A. Yes. These are -- these are offset marks where  
23 the vehicles has shifted directions. So the vehicles will  
24 now be -- the tires will actually start to widen. You'll  
25 see -- I keep hitting the microphone. You'll see the lines

1 in the tires shift to show the vehicle's actually doing a  
2 rotation and not traveling in a straightforward motion.

3 Q. Showing you State's 2, G-2.

4 A. Here is the picture of the westbound lane. This  
5 is a close-up of the gouge marks that occurred in the  
6 westbound lane at the area of collision.

7 Q. I'm showing you State's 2, G-6.

8 A. Right here, this is the -- again, this is the  
9 westbound lane in the area where the collision occurred.  
10 You can see this is where Corporal Kevin Hildreth is setting  
11 up the equipment to do the measurements on scene right here,  
12 showing that this is all occurring in the westbound lanes of  
13 State Road 60.

14 Q. State's 2, G-8. What are we looking at here?

15 A. This is an extreme close-up of the front-edge  
16 damage of the Volkswagen that was involved in a crash  
17 facing -- of course we're looking towards the west here.

18 Q. And I see the tape. So what are you measuring  
19 over here?

20 A. Yeah. This is point of line we call it -- the  
21 tape measure runs on it here. We're going to call this  
22 white line a reference line. So -- we're graphing the area  
23 of the collision. So at one point, we're going to take  
24 measurements along -- of the line. Each -- the line -- the  
25 tape measure doesn't move, so at one point, every section

1 we're -- every point of evidence, we are measuring the  
2 distance off, how far down the road it may have occurred  
3 from where it's sitting at.

4 Q. Why is that important?

5 A. To actually graph the -- multiple reasons. To  
6 actually graph the location where it occurred, where the  
7 vehicles were coming, the tire marks, where they're coming  
8 from, and all the way to their final rest position to show  
9 from where it may have started prior to the crash, at the  
10 crash, and then postcrash. So it's a three-way thing. You  
11 have a pre, during, and post.

12 Q. And later on we'll see how you use those  
13 measurements in a diagram that you formulated?

14 A. Correct.

15 Q. State's 2, G-9.

16 A. Here we're looking -- of course, this is another  
17 piece of equipment that we use to measure right here.  
18 That's a roll wheel.

19 But we're looking at the -- sitting in the  
20 westbound lane. We can see it sitting on top of the tire  
21 marks where the tires have -- you'll see the two sets of  
22 tire marks there. Shows a shift of change of the vehicle's  
23 rotation so it was actually occurring in the westbound lane.

24 Q. I'm gonna zoom in for a second there. So here the  
25 solid line means what?

1           **A.**     Double solid lines means "no passing zone." So  
2     there should be no vehicles passing, coming out of lanes.  
3     Should be staying in their lanes, not to pass a vehicle at  
4     the time.

5           **Q.**     Now, looking at this picture, where does the  
6     accident actually occur?

7           **A.**     The accident actually occurs almost right next to  
8     that yellow roller wheel right there, which is in a no  
9     passing zone. Of course, a no passing zone starts just  
10    prior to reaching that fire truck that's parked out there.

11          **Q.**     Can you utilize --

12          **A.**     The no passing zone starts right there. Trying to  
13    hold this steady. It's close, right even with the hoses  
14    right there. You'll see the hoses of the fire truck. So  
15    that's where the no passing zone actually starts.

16          **Q.**     And where would the two vehicles be?

17          **A.**     Well, the two vehicles are actually east of this  
18    point. So that -- I'm sorry -- west of this point. They're  
19    going to be on the west side, final rest. West of the  
20    roller wheel, west of the tire marks right there.

21          **Q.**     Okay. State's 2, G-10.

22          **A.**     This is a further picture of the roller wheel in  
23    the same position showing the area. This is where the area  
24    of the collision occurs. This is me standing on the north  
25    side showing that this -- that's the no passing zone. You

1 can see the -- back there is the hose, the hose of the fire  
2 truck back there. So this is just a further picture showing  
3 that view.

4 Q. State's 2, G-11.

5 A. This is actually showing the actual -- now we're  
6 looking in the westbound direction. You'll see this is the  
7 double yellow line. This is where the starting of the no  
8 passing zone begins. You'll see the hose is right here.  
9 And the cars are right here, final rest, in between the hose  
10 and the cars is the actual area of the collision. So the  
11 area of the collision will be right about there.

12 Q. State's 2, G-16.

13 So in this particular area, there's the no  
14 passing. And then further up is where the collision  
15 occurred, if I have that correct?

16 A. This starts the no passing zone. East of there is  
17 the passing zone. But over here is where the crash  
18 occurred. And then the actual no passing zone.

19 Q. Okay. Do you know how many feet it would have  
20 occurred from the no passing zone?

21 A. The actual feet that we measured was -- 74 feet  
22 would be west of the no passing zone where it started.

23 Q. Okay. Now, we talked about you taking  
24 measurements and you indicated that you drafted a diagram in  
25 order to show the accident prior, during, and after; is that

1 correct?

2 A. Correct.

3 Q. Did you also, besides this diagram, do a  
4 calculation sheet?

5 A. Yes.

6 Q. And is this calculation sheet also part of what  
7 you do as an investigator?

8 A. Correct.

9 MS. SANDERS: Your Honor, at this time State would  
10 like to introduce -- approach defense with State's C  
11 for identification purposes and State's D.

12 May I approach the witness, Your Honor?

13 THE COURT: You may.

14 BY MS. SANDERS:

15 Q. I'm gonna show you first what's been marked as  
16 State's C for identification purposes.

17 Do you recognize this document?

18 A. Yes, this is the diagram that was constructed from  
19 the reconstruction of the measurements.

20 Q. Okay. And has it been changed or altered in any  
21 way?

22 A. No.

23 MS. SANDERS: Okay. Your Honor, at this time  
24 State would like to introduce State's C as State's 3.

25 THE COURT: Mr. Kallaher?

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1           **MR. KALLAHER:** No objection.

2           **THE COURT:** Being no objection, State's C for  
3           identification will be received as State's Exhibit 3 in  
4           evidence.

5           **MS. SANDERS:** Thank you.

6           (State's Exhibit No. 3 was received in evidence.)

7   **BY MS. SANDERS:**

8           **Q.** I'm going to show you what has been marked as  
9           State's D for identification purposes.

10          **THE COURT:** Is that D or B?

11          **MS. SANDERS:** D.

12   **BY MS. SANDERS:**

13          **Q.** Do you recognize this document?

14          **A.** Yes. These are the calculations I did from this  
15          crash from this investigation.

16          **Q.** Okay. And these calculations are from the  
17          measurements that you took on scene?

18          **A.** Yes.

19          **Q.** Okay. And this is part of your investigation,  
20          this is something that you normally keep as part of your  
21          records?

22          **A.** Yes.

23          **Q.** Okay. Has this particular sheet been changed or  
24          altered in any form or manner?

25          **A.** No.



1           **MS. SANDERS:** Your Honor, at this time State would  
2           like to introduce State's D as State's 4.

3           **MR. KALLAHER:** I would object at this time to  
4           relevance and proper foundation.

5           **THE COURT:** Overruled. State's Exhibit D will be  
6           received as State's Exhibit 4 in evidence. If you'll  
7           have it marked.

8           (State's Exhibit No. 4 was received in evidence.)

9           **MS. SANDERS:** May I publish, Your Honor?

10          **THE COURT:** You may publish the exhibits.

11   **BY MS. SANDERS:**

12          **Q.** It's a little hard to read.

13                 All right. Corporal Gensler, this is the diagram  
14   we discussed earlier that was formulated by using the  
15   measurements, as well as the pictures.

16          **A.** Correct.

17          **Q.** Okay. Can you explain exactly what we're looking  
18   at here?

19          **A.** Yes. We're looking at the State Road 60, the  
20   diagram. Of course, this is -- this side will be traveling  
21   towards the west. This side will be traveling towards the  
22   east over here. What we have here is the Volkswagen here  
23   started in the eastbound lane, left a -- one tire mark  
24   starting just five feet east of the no passing zone and  
25   actually started -- the tire marks started there and

1 traveled 74 feet in -- across the double line, into the --  
2 sorry -- into the westbound lane right there.

3           You can see this is where the area -- this is the  
4 Hyundai coming in the eastbound lane going to the westbound  
5 lane. Both vehicles made contact here, leaving that gouge  
6 mark, leaving the offset tire marks. The scrape marks and  
7 tire marks then will veer up towards the north side. This  
8 will be the gravel shoulder and this will be the guardrail  
9 that's up on here.

10           The Hyundai will actually, from the impact, will  
11 be redirected back towards the west-northwest, and the left  
12 side of the undercarriage of the Hyundai will actually ride  
13 the top of the guardrail like a skateboard and come to final  
14 rest right here. The Volkswagen will rotate and come to  
15 final rest right here, half on the grass and -- with the  
16 very edge on the -- on the paved shoulder here, on the right  
17 side of the paved shoulder.

18           Q. Now, question: You said 74 feet, and is that  
19 74 feet into the no passing?

20           A. Yes. The pass -- the no passing zone starts right  
21 there, so the tire mark traveled 74 -- 74 feet into the no  
22 passing zone, which occurs right there.

23           Q. Now, you also did a calculation sheet for us. And  
24 can you explain how you obtained each of these numbers and  
25 how they work?

1           **A.**    Yes.  What I had to do is start the -- if you  
2   can -- probably hard to read.  But -- there we go.

3                   The speed we come up with --

4           **MR. KALLAHER:**  Your Honor, may we approach?

5           **THE COURT:**  You may.  If you'll take that off.

6                   (At the bench.)

7           **MR. KALLAHER:**  This is the foundation I'm talking  
8   about.  He's giving speed calculations --

9           **THE COURT:**  I thought this was distance  
10   calculations.  I'm sorry.  Could I see the exhibit?

11           **MS. SANDERS:**  Sure.

12           **THE COURT:**  Yeah.  I move to overrule myself.

13           **MS. SANDERS:**  Okay.

14           **THE COURT:**  This will come out of evidence at this  
15   point.  "This" being State's Exhibit 4, which was  
16   State's Exhibit D for identification.

17           **MS. SANDERS:**  Mm-hmm.

18           **THE COURT:**  And you're going to have to proffer  
19   that outside the presence of the jury if you want --

20           **MS. SANDERS:**  I do, Your Honor.

21           **THE COURT:**  All right.

22                   (In open court.)

23           **THE COURT:**  All right.  Ladies and gentlemen,  
24   there's a matter we're gonna need to take up outside of  
25   your presence.  So, again, you are instructed that

1       you're not yet to form any fixed or definite opinion  
2       about the merits of the case. You're not yet to  
3       discuss the case among yourselves. If you'll please  
4       just leave your notepads on your chairs and accompany  
5       the court deputy.

6               (The jury exits the courtroom.)

7               **THE COURT:** All right. You may be seated.  
8               You may proceed.

9                               **PROFFERED EXAMINATION**

10      **BY MS. SANDERS:**

11              **Q.** Corporal Gensler, how did you get that 68 miles  
12      per hour number?

13              **THE COURT:** And we're referring to State's Exhibit  
14      D for identification, which previously was State's  
15      Exhibit 4, but it's been, at this point, removed from  
16      the evidence, pending --

17              **THE WITNESS:** Based upon the witness testimony  
18      that was involved -- the independent witnesses that  
19      were involved in the crash and using also basic with  
20      the -- the actual, um, based upon my experience and  
21      from the damage on the vehicles being where they came  
22      up to final rest on this -- on this case.

23      **BY MS. SANDERS:**

24              **Q.** Okay. And from that calculation, what do you do  
25      next?

1           **A.**    The 68 feet, I have to change the velocity to get  
2   feet per second.  So 68 miles per hour, the vehicle traveled  
3   at 99.68 feet per second on that.

4           **Q.**    Okay.

5           **A.**    And the next one's the speed -- the actual --

6           **Q.**    Speed limit.

7           **A.**    -- speed limit.  So due to the fire damage, we --  
8   and no previous witnesses to the V-2, we put the V-2 at  
9   60 miles an hour.  At 60 miles an hour, you can see the  
10  vehicle would be traveling at 87 feet per second at that  
11  time.

12          **Q.**    So the 68 miles per hour is not necessarily the --  
13  because you weren't able to determine the exact speed of the  
14  defendant's vehicle?

15          **A.**    Correct.  Correct.  So it could be -- it could be  
16  higher.

17          **Q.**    Okay.  And I see 800 feet.  Where do you get that  
18  number?

19          **A.**    That is actually -- that is actually the -- from  
20  the center of the bridge where the -- or the overpass, we  
21  call it.  The center of the overpass to the actual -- to the  
22  start of the double yellow lines, no passing zone, is  
23  800 feet.

24          **Q.**    Okay.  So with that number, what do you do next?

25          **A.**    That number, we show from there that there's

1 800 feet of sight distance. Basically from there, I -- what  
2 I went on to do is show, at 68 miles an hour, how long a --  
3 possibly if it was traveling at 68, how many seconds without  
4 any braking, how long would a vehicle take to get there,  
5 traveling at the -- maintaining that speed. And it would  
6 take eight seconds of time to get to 68 -- to travel the  
7 800 feet.

8 Q. And these calculations down here are?

9 A. This is a "swerve to avoid" formula. Basically  
10 what this -- what this is, we know that from the left side  
11 of the tires, that the vehicle's actually -- left side of  
12 the Volkswagen tires is actually 9 feet from the center of  
13 the line. So the far left side tire's 9 feet.

14 We know the width of the vehicle, of the  
15 Volkswagen, is another 5 feet in width. So we're now up to  
16 13 feet to get to the center of the -- to get to the center  
17 of the westbound lane where the vehicle's parallel, would  
18 take -- would take the remaining, so that's how we got the  
19 16 feet of distance on the -- had the Volkswagen 16 would be  
20 in a straight perpendicular road fully back in the westbound  
21 lane -- shows how long it would take to actually -- no  
22 braking, just steer the vehicle doing the 68 miles an hour,  
23 steer the vehicle. So it would actually take 196 feet from  
24 the actual point it was at to get to the actual -- back into  
25 the westbound lane -- westbound lane safely.

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1           **MS. SANDERS:** Okay. That's it, Your Honor.

2           **THE COURT:** So you're offering it?

3           **MS. SANDERS:** I still am offering this into  
4 evidence, Your Honor.

5           **MR. KALLAHER:** Your Honor, I object. He's  
6 offering speed opinions, which the Court previously  
7 ruled on, cannot be admitted. There is no proper basis  
8 for the trooper to enter a speed opinion. The -- he's  
9 making an assumption that the car he's talking about  
10 was traveling 68 miles an hour based on what somebody  
11 else told him. He said it was because of his  
12 experience. But if you recall in the previous trial --  
13 or the previous hearing, he -- he wasn't able to  
14 determine the speeds. Both of these are just educated  
15 guesses.

16           And Karen Bellis testified yesterday that she  
17 slowed down when the car started to pass her, and that  
18 car stayed with her, so that car slowed down as well.  
19 If she was going slower than 68 miles per hour, she was  
20 going slower than 65, she was going slower than 60, so  
21 was that other car at that time that this all occurred.  
22 This is just speculation.

23           **MS. SANDERS:** If I may, Your Honor? That's not  
24 what the testimony was. The testimony was Ms. Bellis  
25 indicated that she was going between 65 and 68. And at

1       that point the defendant's vehicle was alongside of  
2       her. She slowed down to let him get over. He did not  
3       get over, but he continued to pass her.

4               So from his statements of saying that he spoke to  
5       witnesses, obviously he already indicated to the Court  
6       he doesn't know the exact speed of either vehicles  
7       because of the crush damage --

8               **THE COURT:** Well --

9               **MS. SANDERS:** -- but the fact that we know it's  
10       60 miles per hour on that road, the fact that  
11       Ms. Bellis indicated she was going between 65 and 68 at  
12       some point, he's -- I think that with his expertise, he  
13       could make a -- a generalized opinion about the speed  
14       that the defendant could have been going. And that's  
15       at the lower end. He could have been going faster. We  
16       don't know.

17               **THE COURT:** That's -- that's speculation. And I  
18       don't really know exactly how relevant it is whether  
19       the defendant was traveling 68 or he was traveling 70,  
20       whether he was traveling 63, whether he was traveling  
21       58.

22               What may be relevant, and what the trooper can  
23       testify to, is his -- if the defendant's -- vehicles  
24       were traveling at 60 or 65 or 70, how many feet per  
25       second at each of those speeds the vehicle would be



1 going and how much time it would take him to cover  
2 800 feet. That would be relevant, and the jury could  
3 consider that in considering what kind of reaction time  
4 the drivers may have had. Even though we don't have an  
5 exact speed, there's evidence from which they could  
6 determine an approximate speed, something greater than  
7 60 and less than 70.

8 I'm not sure that I fully understood the -- the  
9 swerving calculation. But if you're going to give that  
10 again, that would have to be for three different speeds  
11 and the trooper would have to testify, based on his  
12 investigation and the condition of the vehicles, he  
13 wasn't able to make a --

14 MS. SANDERS: That is correct.

15 THE COURT: -- a determination of what speed  
16 either vehicle was traveling specifically at the time  
17 of the crash.

18 But he can give those numbers for whatever purpose  
19 the jury may find them valuable. So I don't know if he  
20 needs some time to do those calculations at those three  
21 speeds, at 60, 65, and 70, for all of your  
22 calculations.

23 THE WITNESS: 60, 65, and 70?

24 THE COURT: Yeah.

25 MR. KALLAHER: Your Honor, I would say that -- to

1 be fair, a slower speed as well.

2 THE COURT: Okay.

3 MR. KALLAHER: Because the evidence -- we've  
4 said --

5 THE COURT: You want 55?

6 MR. KALLAHER: Yes, sir.

7 THE COURT: Okay. So 55, 60, 65, and 70.

8 THE WITNESS: Those four. It won't take me long,  
9 but I can do it.

10 THE COURT: So we'll take a ten-minute recess.

11 THE WITNESS: Ten minutes.

12 THE COURT: We can do that.

13 THE WITNESS: Yes.

14 THE COURT: All right. We'll be in recess. Is  
15 there anything further we need to address?

16 Okay. Hearing nothing, we'll be in recess.

17 (Recess taken from 9:55 a.m. to 10:04 a.m.)

18 THE COURT: Okay. We're on record in  
19 Case 16-CF-583, State of Florida versus Spencer Jordan  
20 Altschuler. The defendant is present with counsel and  
21 the assistant state attorney. The jury's outside the  
22 courtroom.

23 Do you have anything to address at this point?

24 MS. SANDERS: I'm sure you just want to look at  
25 the calculations?

1           **MR. KALLAHER:** Sure, there's that.

2           But what I was gonna ask, Judge, is just to make  
3           sure that that exhibit -- I think it was Exhibit 4 that  
4           was withdrawn, that's not going to be in evidence,  
5           correct?

6           **THE COURT:** Correct.

7           **MR. KALLAHER:** And I would ask for an instruction  
8           to disregard it.

9           **THE COURT:** Okay. I don't think -- with the  
10          numbered numbers and the amount of time it was up  
11          there, I don't know how much they were able to absorb,  
12          but I will tell them to disregard the prior exhibit.

13          **MR. KALLAHER:** Thank you.

14          You're not going to make it an exhibit?

15          **THE WITNESS:** I can write it on a separate piece  
16          of paper if you want.

17          **MS. SANDERS:** Let me get you another piece of  
18          paper.

19          **THE WITNESS:** If you want to hand me that back,  
20          I'll --

21          **MS. SANDERS:** Yeah. Absolutely.

22          **THE COURT:** Folks, depending on how things fall,  
23          I'm gonna try to break a little bit early for lunch.

24          All right. Let me see what we have here.

25          Okay. Well, the other calculation you had was in

1 feet per second.

2 THE WITNESS: Well, that was the top -- I thought  
3 you were wanting the feet to swerve to get back in the  
4 lane.

5 THE COURT: I wanted all the information we had on  
6 the 800 feet that you had marked on for whatever that  
7 was, and then the feet per second at those various  
8 speeds.

9 THE WITNESS: I'll put that on there as well.

10 THE COURT: Because the distance feet per second  
11 would be informative, I think.

12 THE WITNESS: Can I ask a question? Do you  
13 want -- now since we have four speeds, do you want to  
14 put feet per second for each four speeds? Just making  
15 sure.

16 THE COURT: Where did you put the old Exhibit 4?

17 MS. SANDERS: It's on my desk. Do you want it?

18 THE COURT: Yes.

19 MS. SANDERS: Yeah.

20 THE COURT: Okay. For the record, what had  
21 previously been marked for identification as State's  
22 Exhibit D and received into evidence as State's  
23 Exhibit 4, like I said, the Court is withdrawing from  
24 evidence, and I will mark it. Madam Clerk will leave  
25 this tag on there, just mark through it, and mark it as

A-176 .

1 Court Exhibit 2, so we have on the record what was  
2 momentarily displayed and then withdrawn.

3 (Court Exhibit No. 2 was received in evidence.)

4 **THE COURT:** And, Ms. Sanders, you want your new  
5 exhibit marked?

6 **MS. SANDERS:** Yes, Your Honor. I'll let defense  
7 counsel take a look at it.

8 **THE COURT:** And it will be marked as State's  
9 Exhibit D for identification since the original State's  
10 Exhibit D was withdrawn.

11 Does the defense have any objection to this?

12 **MR. KALLAHER:** No, sir.

13 **THE COURT:** You just have it marked by the clerk  
14 as State's Exhibit D, and then if you wish to offer  
15 it -- I guess since there's no objection, if you're  
16 offering it, we can go ahead and receive it as State's  
17 Exhibit 4. And I'll explain to the jury that we have a  
18 substitute State's Exhibit 4; they're to disregard the  
19 prior exhibit.

20 (State's Exhibit No. 4 was received in evidence.)

21 **THE COURT:** Okay. Is there anything further we  
22 need to address, then, before we return the jury?

23 **MR. KALLAHER:** No, Your Honor.

24 **THE COURT:** Okay.

25 (The jury enters the courtroom.)

1           **THE COURT:**   Okay.   You may be seated.

2           Welcome back, ladies and gentlemen.

3           Does the State recognize the presence of the jury?

4           **MS. SANDERS:**   Yes, Your Honor.

5           **THE COURT:**   Defense?

6           **MR. KALLAHER:**   Yes, Your Honor.

7           **THE COURT:**   Okay.

8           Ladies and gentlemen, there was -- before we  
9           recessed, State's Exhibit D for identification was  
10          offered and received as State's Exhibit 4 in evidence.  
11          And that was briefly displayed.   It was the document  
12          with some figures.   It was briefly displayed on the  
13          overhead projector display unit.

14          You are instructed to disregard anything you may  
15          have seen with respect to that exhibit.   That has been  
16          withdrawn and a substitute Exhibit 4 has been offered  
17          into and received into evidence, and that will be what  
18          you consider, not anything you may have seen from the  
19          prior exhibit.

20          You may proceed.

21          **MS. SANDERS:**   Thank you.

22          May I publish at this time, Your Honor?

23          **THE COURT:**   You may.

24                       **DIRECT EXAMINATION (CONTINUING)**

25

1 BY MS. SANDERS:

2 Q. All right, Corporal. What are we looking at here?

3 A. These new calculations, the top section is a  
4 vehicle traveling at four different rates of speed. How  
5 long would it take from being where the -- to travel the  
6 distance from being on one center of the lane to the next  
7 center of the lane, to make the full lane change. Each --  
8 starting at 55, 60, 65, and 70.

9 At the 55 miles an hour, you can see it's -- it  
10 can take 179 feet of distance to make the full lane change  
11 from one lane to the other. At 60 miles an hour, it's 196.  
12 At 65 miles an hour, it's 212, I believe that is. And at  
13 70 miles an hour, it's 228.

14 That's the distance -- and this is without any  
15 braking. This is just straightly making a lane change.

16 Q. And we see the 800 over here. Where do you get  
17 that from?

18 A. The 800 was measured on scene, which is the  
19 800 feet from where the no passing zone starts to the center  
20 of the overpass.

21 Below that is the four speeds, again, at 55, 60,  
22 65, and 70. This just shows if you're currently traveling  
23 at that -- each speed, how many feet would you be traveling  
24 at that per second.

25 So that's 55 miles an hour. You'll be traveling

1 at 80 feet per second. At 60, it's 67. At 65 miles an  
2 hour, it's 95 feet per second. At 70 miles an hour, it's  
3 102 feet per second. Of course, with the -- the lower the  
4 speed, the lower amount of feet, the higher the speed, the  
5 more feet it would take -- more feet you actually do for  
6 minute.

7 Q. Okay. Now, in this particular case, I know you  
8 said you normally try to calculate speeds. Normally how do  
9 you utilize both vehicles to calculate feet?

10 A. Within this type of collision, a head-on  
11 collision, we would actually use the actual angles of the --  
12 arriving -- the departure angles then the area of collision.  
13 The departure angles and to the vehicle's final rest, plus  
14 the -- we could also use the crush damage on this.

15 However, in this case, we wasn't able to do due to  
16 two situations in this case. One situation was the fire  
17 damage that ensued to the Hyundai from this, which could  
18 have actually changed the shape of the actual crush damage  
19 from the actual crash.

20 And the second damage [sic] is we didn't have a  
21 current way to get a coefficient of friction from the actual  
22 Hyundai riding on top of the guardrail like a skateboard, so  
23 we couldn't get the actual coefficient of friction like we  
24 would for a normal roadway or grass. If the vehicle were to  
25 stay flatfooted in grass or the roadway, we would be able to



1 get a coefficient of friction and work this case up.

2 Q. But because you couldn't get the calculations from  
3 that Hyundai, you were not able to determine the speed of  
4 the defendant's vehicle?

5 A. Correct.

6 Q. So the calculations that we previously have seen  
7 on your calculations sheet, those are just possible  
8 estimates?

9 A. Correct.

10 Q. At the low end as well as the high end?

11 A. Correct.

12 Q. Okay. Now, as part of your investigation, you  
13 also conducted post-collision investigation?

14 A. Correct.

15 Q. And that took place, what, two days after the  
16 crash?

17 A. Correct.

18 Q. Okay. What do you do in a post-collision  
19 investigation?

20 A. We normally look at the -- we're measuring crush  
21 damage in this case. Also we're also verifying air bag  
22 deployment, seat belt usage. We're also looking at tire  
23 pressure, tire tread depth on the vehicle. We look at  
24 the -- we can look at the brakes, see if there's any basic  
25 malfunctions with any rust damage or -- or any type of

1 un- -- warping to the -- the actual brake pad, which is  
2 something visible. Nothing to actually measure the width of  
3 the brake. Any type of -- we also look for, if it was maybe  
4 nighttime conditions, we can see if possibly the headlights  
5 were on, any hot shock, cold shock.

6 We can also look for -- also we look for,  
7 possibly, impacts, the body impacts to the actual inside of  
8 the vehicle. With body -- what they might strike. And also  
9 we can see where the first -- where the vehicles make point  
10 of collision with other vehicles or an object.

11 Q. Okay. And did you document the post-collision of  
12 the scene with photographs -- by taking photographs?

13 A. Yes. Actually Corporal Hildreth documented the  
14 photographs as I was there.

15 MS. SANDERS: Your Honor, may I approach defense  
16 counsel with what is marked as State's B for  
17 identification purposes? That is a composite of nine  
18 photographs.

19 THE COURT: You may.

20 MS. SANDERS: And State's A for identification  
21 purposes. It is a composite of 13 photographs.

22 May I approach the witness, Your Honor?

23 THE COURT: You may.

24 MR. KALLAHER: Judge, to save time, we'll  
25 stipulate to authenticity and the admissibility of both

1 exhibits.

2 MS. SANDERS: Your Honor, at this time State would  
3 like to introduce State's A and State's B into  
4 evidence.

5 THE COURT: All right. There being no objection,  
6 State's Exhibit A will be received as State's Exhibit 5  
7 in evidence, consisting of 13 photographs, individually  
8 labeled A-1 through A-13.

9 And State's Exhibit B will be received as State's  
10 Exhibit 6 in evidence, consisting of nine photographs,  
11 individually labeled B-1 through B-6.

12 (State's Exhibit Nos. 5-6 were received in  
13 evidence.)

14 MS. SANDERS: It's nine photos.

15 THE COURT: I'm sorry? Oh, yes. I'm sorry. B-1  
16 through B-9.

17 MS. SANDERS: Thank you. May I publish?

18 BY MS. SANDERS:

19 Q. I'm showing you State's 5, A-1.

20 This is the post-collision investigation conducted  
21 on the black vehicle?

22 A. Correct.

23 Q. What is the significance of this picture?

24 A. It's just showing the heavy crush damage that  
25 occurred to the front of it. With the damage overall as we

1 get there, show -- it also shows there's no basic changes  
2 from the actual pictures at the scene to here.

3 Q. During your post-collision, were you able to open  
4 any doors or anything like that?

5 A. To which --

6 Q. To the black vehicle. I'm sorry.

7 A. Oh. No.

8 Q. I'm showing you State's 5, A-6.

9 A. This is the actual headlight of the vehicle,  
10 checking for -- see if the headlights even were on during  
11 the daytime, seeing if any hot shock or cold shock was  
12 identified in this investigation.

13 Q. I'm showing you A-8 -- I'm sorry -- State's 5,  
14 A-8.

15 A. This is showing the air bag deployment from the  
16 Volkswagen there that occurred in the driver's seat.

17 Q. Was there -- besides the driver's side air bag,  
18 did you see the air bag deployed from the passenger's side?

19 A. No.

20 Q. I'm showing you A-9.

21 A. This is the close-up of the air bag, which shows  
22 the driver's side air bag from the Volkswagen, showing a  
23 bodily fluid attached to the bottom of the air bag.

24 Q. Using your laser, can you show us, please?

25 A. Sorry. The bag -- this is the bodily fluid from

1 the bottom of the air bag.

2 Q. Did you collect this piece of evidence?

3 A. Yes. This piece of evidence was collected at --  
4 during the inspection.

5 Q. Thank you.

6 Showing you A-10; State's 5, A-10.

7 A. This is the driver's handle of the driver's door  
8 of the same Volkswagen. You can see this is the seat here.  
9 This is the handle with the up-and-down switches for the  
10 window. There's bodily fluid again here, as well, that  
11 occurred from the driver's side.

12 Q. And did you also collect that piece of evidence?

13 A. Yes, I did.

14 Q. Besides the driver's area, did you -- during your  
15 investigation, did you see any other bodily fluids?

16 A. I did not see any other bodily fluids in that  
17 vehicle.

18 Q. And you also took pictures of that passenger's  
19 side?

20 A. Correct.

21 Q. And that is -- I'm sorry.

22 A-5 -- State's 5, A-11.

23 A. And that's the passenger's side. Normally the air  
24 bag -- the air bag -- front air bag would come out of that  
25 section right there, but no air bag was deployed.

A-185

1           Q.    Does that mean something -- no one was sitting  
2   there?

3           A.    Correct.  Each -- the seats monitor the -- if a  
4   person's weight is sitting there in the front seat -- the  
5   air bag will determine if there was actual pressure of  
6   someone sitting in the seat, and the air bag will deploy  
7   during the crash.  But no weight on the seat, no deployment.

8           Q.    State's 5, A-12.

9           A.    You can see this is where the air bag has been  
10  removed from the actual steering wheel now.

11          Q.    And that item was sent to FDLE?

12          A.    Correct.

13          Q.    Okay.  State's 5, A-13?

14          A.    And this is showing the driver handle where we cut  
15  the body fluid out from the door of this vehicle as well.

16          Q.    And that item was also sent to FDLE?

17          A.    Correct.

18          Q.    I'm showing State's 6, B-2.  This is the other  
19  vehicle that was involved in the crash?

20          A.    Yes.  This is the Hyundai that was burnt up from  
21  the crash.

22          Q.    Were you able to look into this vehicle in regards  
23  to the brake system, headlights, or anything like that?

24          A.    No.  This vehicle was burnt up -- had extreme  
25  heavy, burnt-up damage from the fire of the actual crash.

1 Q. Corporal, we talked about some of the evidence  
2 that were collected as we saw in the last two pictures, the  
3 air bag as well as the door panel --

4 MS. SANDERS: May I approach defense counsel with  
5 what has been marked as State's N and State's K?

6 THE COURT: You may.

7 MS. SANDERS: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MS. SANDERS:

10 Q. Without showing it to the jury, if you'll just  
11 open it and let me know when you're ready.

12 A. Okay.

13 THE COURT: Which exhibit are we talking about?

14 MS. SANDERS: I am showing State's K first.

15 THE WITNESS: Yes.

16 BY MS. SANDERS:

17 Q. Do you recognize the item?

18 A. Yes.

19 Q. How do you recognize it?

20 A. This was the -- this is what I cut out of the  
21 vehicle, personally, from the Volkswagen.

22 Q. Does it have any identifiers, as far as your  
23 agency's number?

24 A. Yes. It has the agency's case number on there  
25 with my actual -- with my name on there, as well, from that.

1 And initials above the red tape as -- as sealed by us.

2 Q. As you look at it in this bag, has the condition  
3 of this material changed at all?

4 A. This condition has not changed.

5 Q. All right. Thank you.

6 MS. SANDERS: Your Honor, at this time State would  
7 like to introduce State's K into evidence.

8 THE COURT: Mr. Kallaher?

9 MR. KALLAHER: I'm not sure what's in the bag.

10 THE COURT: I'm sorry?

11 MR. KALLAHER: I'm not sure what's in the bag.

12 THE COURT: You can approach.

13 MR. KALLAHER: No objection.

14 THE COURT: Okay. Exhibit K for identification  
15 will be received as State's Exhibit 7 in evidence. If  
16 you'll give it to the clerk, please.

17 (State's Exhibit No. 7 was received in evidence.)

18 BY MS. SANDERS:

19 Q. And, Corporal, you've had an opportunity to look  
20 inside State's N, as in Nancy. Do you recognize that piece  
21 of evidence?

22 A. Yes, I do.

23 Q. Okay. And is -- are there any identifiers on the  
24 packaging?

25 A. Yes. The same case number, different item number,



1 with my name on it, with initials across the red tape.

2 Q. And the item inside, you recognize it as that same  
3 item you collected back on February 17th, 2015?

4 A. Yes.

5 MR. KALLAHER: No objection.

6 THE COURT: I'm sorry?

7 MR. KALLAHER: No objection.

8 THE COURT: There being no objection, State's  
9 Exhibit N will be received as State's Exhibit 8 in  
10 evidence.

11 (State's Exhibit No. 8 was received in evidence.)

12 MS. SANDERS: Your Honor, may I publish both of  
13 these items?

14 THE COURT: You may.

15 THE WITNESS: This is the driver's air bag that I  
16 had cut out from the Volkswagen.

17 This is the driver's door handle which I had cut  
18 out from the Volkswagen, again.

19 MS. SANDERS: Thank you.

20 BY MS. SANDERS:

21 Q. Now, Corporal Gensler, you had an opportunity to  
22 go back to State Road 60?

23 A. Yes.

24 Q. And that road is -- that's in Osceola County,  
25 Florida, correct?

1           **A.**    Yes.

2           **Q.**    And -- actually, the day that you went back to  
3 actually film the road, was it during the day?

4           **A.**    Yes.

5           **Q.**    And the conditions of the road were what?

6           **A.**    Clear, dry, normal traffic --

7           **Q.**    Okay.

8           **A.**    -- patterns.

9           **MS. SANDERS:** Your Honor, may I approach defense  
10 counsel with what's been marked as State's E for  
11 identification purposes?

12          **MR. KALLAHER:** May we approach?

13                   (At the bench.)

14          **MR. KALLAHER:** We have competing videos. I didn't  
15 object to hers, she didn't object to mine. At this  
16 time I move they all come into evidence.

17          **MS. SANDERS:** That's fine.

18          **THE COURT:** Okay. So you have --

19          **MR. KALLAHER:** I have mine.

20          **MS. SANDERS:** That he played. And I have my own.

21          **THE COURT:** So what's the difference?

22          **MS. SANDERS:** I have my own. And it was -- it was  
23 taken during a nice, sunny day.

24          **MR. KALLAHER:** Yours comes from the other  
25 direction.

1 MS. SANDERS: I have west and east.

2 THE COURT: Okay. Well, State's Exhibit what?

3 MS. SANDERS: E.

4 THE COURT: Okay. And that will be received. And  
5 defense exhibit -- you'll need to get that marked.

6 (In open court.)

7 THE COURT: Okay. Ms. Sanders?

8 MS. SANDERS: Yes, sir.

9 THE COURT: Can you approach?

10 (At the bench.)

11 THE COURT: So do you have any objection to  
12 Defense Exhibit A coming into evidence out of order?

13 MS. SANDERS: No.

14 THE COURT: Okay. You'll have to -- okay.

15 MR. KALLAHER: Just move it as soon as I start my  
16 cross.

17 THE COURT: I'll go ahead and accept it. You can  
18 publish it at some point if you want to publish it.

19 MR. KALLAHER: Very well.

20 (In open court.)

21 THE COURT: All right. Ladies and gentlemen, by  
22 agreement of the parties, State's Exhibit E will be  
23 received as State's Exhibit 9 in evidence.

24 And Defense Exhibit A will be received out of  
25 order, since it's still the State's case at this point,

1 as Defense Exhibit 1 in evidence. If you'll give that  
2 to the clerk to be marked.

3 (State's Exhibit No. 9 was received in evidence.)

4 (Defense Exhibit No. 1 was received in evidence.)

5 **THE COURT:** All right. Ladies and gentlemen,  
6 we're going to take a brief recess and call for  
7 technical assistance, apparently.

8 Again, you're instructed you're not to form any  
9 fixed or definite opinions about the merits of the  
10 case. You're not yet to discuss the case among  
11 yourselves. Please leave your notepads on your chairs.

12 (The jury exits the courtroom.)

13 (Court was at ease.)

14 **THE COURT:** Okay. We're back on record in  
15 Case 16-CF-583, State of Florida versus Spencer Jordan  
16 Altschuler.

17 The defendant is present with counsel and the  
18 assistant state attorneys. The jury's outside the  
19 courtroom.

20 Is there anything we need to address before we  
21 return the jury?

22 **MR. KALLAHER:** No, Your Honor.

23 **MS. SANDERS:** No, Your Honor.

24 **THE COURT:** Okay. Let's return our jury, please.

25 (The jury enters the courtroom.)

1           **THE COURT:** All right. You may be seated.

2           Welcome back, again, folks.

3           Does the State recognize the presence of the jury?

4           **MS. SANDERS:** Yes, Your Honor.

5           **THE COURT:** Defense?

6           **MR. KALLAHER:** Yes, Your Honor.

7           **THE COURT:** Okay.

8           Ms. Sanders, you may proceed.

9           **MS. SANDERS:** Thank you, Your Honor.

10          At this time State would like to publish the  
11          evidence.

12          **THE COURT:** State's Exhibit 9?

13          **MS. SANDERS:** Yes.

14          **THE COURT:** You may do so.

15          (State's Exhibit 9 was published to the jury.)

16   **BY MS. SANDERS:**

17          **Q.** And this is State Road 60 going westbound?

18          **A.** Yes, this is.

19          **Q.** Can you tell us at what point -- actually, let me  
20          go back to 23 seconds.

21          So at this time, this is all a passing zone  
22          currently, except for that portion --

23          **A.** Correct.

24          **Q.** -- that we just saw?

25          **A.** You're in the no passing zone right now.

1 Q. From what we're looking at, at what point does the  
2 accident --

3 MS. SANDERS: Ms. Zeran, if you can go back to 23  
4 seconds.

5 Thank you.

6 BY MS. SANDERS:

7 Q. With your laser, if you can kind of tell us at  
8 what point does the accident occur?

9 A. It's gonna occur in the no passing zone in the  
10 beginning of the guardrails that you see.

11 Q. So about 24 seconds into the video?

12 A. About 24 seconds in. The beginning -- where the  
13 beginning of the guardrails occur is almost the same time  
14 the no passing zone starts. So you'll see that occur.

15 Q. So at the point of the crash, it was a no passing  
16 zone?

17 A. Correct.

18 Q. And that's about 70 -- I believe you testified  
19 early on it was about 74 feet?

20 A. 74 feet into the no passing zone it occurred.

21 MS. SANDERS: Thank you. No further questions at  
22 this time.

23 THE COURT: All right. Mr. Kallagher?

24 MR. KALLAHER: Yes, Your Honor. We'll play our  
25 competing video right off the top.

1           **THE COURT:** Okay. Defense Exhibit A has been  
2           received as Defense Exhibit 1, which I believe is the  
3           video that was displayed during your opening statement  
4           yesterday?

5           **MR. KALLAHER:** Yes, Your Honor.  
6           Apologies for the technical delays.

7           **THE COURT:** If you're having difficulty, we can  
8           probably play it on Ms. Sanders' equipment.

9           **MS. SANDERS:** That's fine.

10          **MR. KALLAHER:** Judge, may we publish Defense  
11          Exhibit 1?

12          **THE COURT:** This is an exact copy of what was  
13          received in evidence --

14          **MR. KALLAHER:** Yes, sir.

15          **THE COURT:** -- that you have on your computer?

16          **MR. KALLAHER:** Yes, Your Honor.

17          **THE COURT:** Okay. You may publish the exhibit.

18                           **CROSS-EXAMINATION**

19   **BY MR. KALLAHER:**

20           **Q.** Corporal Gensler, good afternoon -- or good  
21           morning. How are you this morning?

22           **A.** Good. How about yourself?

23           **Q.** You had an opportunity to view the video that's  
24           being depicted in your deposition, correct?

25           **A.** Yes.

1 Q. Was it a fair and accurate representation of the  
2 site leading up to the crash scene?

3 A. I believe it was, yes.

4 Q. Okay.

5 MR. KALLAHER: You can play it.

6 (Defendant's Exhibit 1 was published to the jury.)

7 BY MR. KALLAHER:

8 Q. While that's playing, Corporal, were there are any  
9 signs indicating no passing zones leading up to the accident  
10 scene?

11 A. I don't believe -- I don't recall any signs with  
12 no passing.

13 Q. Do you know the sign I'm talking about, the  
14 sideways triangle?

15 A. Yes. I understand what you're saying. Yes, sir.

16 Q. In the video that we previously watched from the  
17 State -- that the State entered, there were construction  
18 signs. Were those construction signs present on the day of  
19 the accident?

20 A. No, they weren't.

21 MR. KALLAHER: Okay. You can stop it there.

22 (Video stopped.)

23 BY MR. KALLAHER:

24 Q. And that double yellow and the guardrails, that's  
25 the scene of the accident?



1           A.    Yes, sir.

2           Q.    At this point we've gone past the scene of the  
3 accident, correct?

4           A.    Correct. We're reaching the top of the overpass  
5 at that point.

6           Q.    Would you agree that -- that we saw about a mile  
7 approaching -- of Highway 60 -- approaching that accident  
8 scene from the westbound?

9           A.    Yes.

10          Q.    And there were no no passing zones up to this  
11 point, correct?

12          A.    Correct.

13          Q.    So anything before this, it was legal to pass?

14          A.    Correct.

15          Q.    And isn't it true that when the accident vehicle  
16 that was headed westbound started to -- to pass, the  
17 physical evidence shows that it happened before this,  
18 correct?

19          A.    When he starts his pass, you're saying?

20          Q.    Yes.

21          A.    He would start his pass in a no passing zone -- in  
22 the passing zone.

23          Q.    In the passing zone?

24          A.    Correct.

25          Q.    And that is the start of the no passing zone?

1           A.    Correct.

2           Q.    So he was already -- or that car was already in  
3   this lane by the time it approached the no passing zone,  
4   correct?

5           A.    He was -- the west -- the Volkswagen was  
6   already -- was already in the -- as he's approaching this,  
7   he was actually in the eastbound lane.

8           Q.    So it's not like the Volkswagen was in this lane,  
9   got into the no passing zone, and then started to pass,  
10   correct?

11          A.    Correct.

12          Q.    Okay.

13               MR. KALLAHER:  You can remove that.  Thank you.

14   BY MR. KALLAHER:

15          Q.    In your investigation --

16               MR. KALLAHER:  May I approach the clerk, Judge?

17               THE COURT:  You may.

18   BY MR. KALLAHER:

19          Q.    I'm going to show you State's Exhibit 2, G-12.

20               Who's that handsome gentleman there taking notes?

21          A.    That would be Corporal Kevin Hildreth.  I'll let  
22   him know you called him handsome.

23          Q.    All right.  Before you testified that there were  
24   marks coming across the double yellow line.

25          A.    One mark.

1 Q. One mark. And that was a -- is that called a  
2 yellow mark?

3 A. No. That -- that -- well, you can consider it  
4 yellow, but that was a steer mark that was -- a yellow mark  
5 is multiple lines coming across. But that's actually a  
6 brake mark.

7 Q. Okay. Right here, the one that crossed here was a  
8 brake mark, in your opinion?

9 A. Yes.

10 Q. And there's actually a line, you can see tire  
11 marks -- didn't you testify -- all the way back to the  
12 beginning?

13 A. Yeah. It actually starts 5 feet before the actual  
14 no passing zone.

15 Q. 5 feet prior. So whoever was driving that  
16 Volkswagen or whoever was in the eastbound lane started to  
17 move back to the westbound lane before entering the double  
18 yellow, correct?

19 A. Well, he started braking 5 feet prior.

20 Q. And started to turn back to the westbound lane?

21 A. Started, yes.

22 Q. Okay. All right. Now, you testified that it was  
23 74 feet from the start of the yellow to the collision point,  
24 which is -- my guess would be probably actually somewhere  
25 down here if the picture continued?

1           A.     Correct.   It would be just off the picture.

2           Q.     Okay.   What was the distance that this tire mark  
3   is from the start of the yellow; it was about 50 feet, was  
4   it not?

5           A.     I'm sorry?

6           Q.     The tire marks that crossed the yellow line?

7           A.     Correct.

8           Q.     The distance from there, it was about 50 feet, was  
9   it not?

10          A.     You're saying 50 feet in the actual eastbound  
11   lane, is that what you're saying?

12          Q.     Yeah, I suppose so.   Well, I guess what I'm  
13   getting at is here's the start.

14          A.     Right.

15          Q.     There's the tire mark.

16          A.     Right.

17          Q.     And then the crash didn't happen until somewhere  
18   way back here --

19          A.     Correct.

20          Q.     -- right?

21                 So the car that was in the eastbound lane crossed  
22   this line about 50 feet, not necessarily 74 feet?

23          A.     The -- I'll have to look at the exact measurements  
24   on it.   But the majority of the tire mark is in the  
25   eastbound lane.

1           Q.    The majority of the tire mark is in the eastbound  
2 lane? I don't understand.

3           A.    Well, the majority of the -- the majority of the  
4 tire mark that was created from that Volkswagen --

5           Q.    Right.

6           A.    -- occurred in the eastbound lane before  
7 reentering the westbound lane.

8           Q.    Okay. I understand that. But my point is, what's  
9 the distance from where the tire mark crosses the yellow  
10 line and the beginning of the yellow line? It was about  
11 50 feet, wasn't it?

12          A.    Or more. Could have been. I'd have to look at  
13 the exact measurement.

14          Q.    But it was certainly less than the 74?

15          A.    Yes, it was less than the 74. Yes.

16          Q.    All right. Okay. You testified that you -- you  
17 observed after the -- after the crash, went to -- I guess it  
18 was the impound lot where the cars were taken after the  
19 crash, and you did the inspection; and you showed some  
20 photographs, correct?

21          A.    Correct.

22          Q.    Okay. And your testimony was that you collected  
23 all the bodily fluids that you observed?

24          A.    Correct.

25          Q.    Okay. And they were from the air bag and from the

1 door handle?

2 A. Correct.

3 Q. No other bodily fluids observed?

4 A. Correct.

5 MR. KALLAHER: Judge, may I approach counsel?

6 THE COURT: You may.

7 MR. KALLAHER: May I approach the witness?

8 THE COURT: You may.

9 BY MR. KALLAHER:

10 Q. I'm showing you what's been marked as Defense B.

11 Is that one of the photographs that was taken at the impound  
12 lot?

13 A. Yes.

14 Q. Does it fairly and accurately depict the vehicle  
15 as it appeared that day?

16 A. Yes. This is at the end of the postcrash, yes.

17 MR. KALLAHER: Move to admit Defense Exhibit B out  
18 of order through the previous stipulation.

19 MS. SANDERS: That's fine, Your Honor.

20 THE COURT: Being no objection, Defense Exhibit B  
21 will be received out of order as Defense Exhibit 2 in  
22 evidence.

23 (Defense Exhibit No. 2 was received in evidence.)

24 MR. KALLAHER: May I publish?

25 THE COURT: You may.

1 BY MR. KALLAHER:

2 Q. Okay. Again, Corporal, is that the interior of  
3 the Volkswagen at the impound lot?

4 A. Yes, it is.

5 Q. Is that a bloodstain or some type of bodily fluid  
6 stain right there?

7 A. That may be.

8 Q. That was not collected, was it?

9 A. Correct.

10 MR. KALLAHER: Pardon me. Approach the clerk to  
11 get another exhibit, Judge?

12 THE COURT: You may. If you would return the  
13 exhibits to the clerk.

14 MR. KALLAHER: Oh, sure. Thanks. I appreciate  
15 that.

16 BY MR. KALLAHER:

17 Q. I'm showing you what's been marked as -- or been  
18 entered into evidence as State's Exhibit 3. And that's the  
19 diagram that you prepared, correct --

20 A. Correct.

21 Q. -- from the measurements taken by another Florida  
22 Highway Patrol trooper?

23 A. We both did it.

24 Q. But you were there at the same time, right?

25 A. Yes. I assisted him on the measurements.

1 Q. What was the elevation or the grade of this road?

2 A. At the area of the collision?

3 Q. Yes.

4 A. The grade was zero.

5 Q. Right. So that means there was no hill, there was  
6 no rise?

7 A. At the area of collision, correct.

8 Q. And the superelevation, which is marked right  
9 here, which was zero, what does the superelevation mean?

10 A. If there's any -- any raise or lower to -- going  
11 from side by side, going from north to south.

12 Q. Again, zero. So indicating a flat road, right?

13 A. Correct.

14 Q. Let me zoom in on the measurements here. I want  
15 to highlight this.

16 Okay. This depiction of the road is north, up?

17 A. North is up, correct.

18 Q. Roughly. And so this is roughly west and that's  
19 roughly east?

20 A. Correct.

21 Q. Okay. The northern grass shoulder before the  
22 guardrail, this is five and a half feet; is that right?

23 A. To the guardrail.

24 Q. And what's the paved shoulder, how wide is that?

25 A. 5 feet, 7 inches.



1 Q. And how wide are the lanes?

2 A. Both 12 feet.

3 Q. How wide is the car?

4 A. The car is 5 feet.

5 Q. 5 feet. And then the southern paved shoulder?

6 A. 5 foot, 2 inches.

7 Q. And then the distance to the -- from the paved

8 shoulder to the guardrail?

9 A. 4 feet, 9 inches.

10 Q. Okay. All right. And, again, this -- this

11 depicts where you saw the marks, correct?

12 A. The one tire mark.

13 Q. The one tire mark right there starting before the

14 double yellow line?

15 A. Correct.

16 Q. Did you ever determine in your investigation who

17 owned the vehicle -- the Volkswagen?

18 A. Yes.

19 Q. Who was that?

20 A. I'd have to look at the actual registration.

21 Q. Do you have a document that would refresh your

22 recollection?

23 A. Yes.

24 Q. Okay.

25 A. Yes. That's a Rhonda Altschuler, if I pronounce

1 the name -- the last name as the defendant.

2 Q. And you actually collected another piece of  
3 evidence at the scene, did you not?

4 A. Yes.

5 Q. It was a SunPass?

6 A. Yes.

7 Q. Okay. Were you able to trace the owner of that  
8 SunPass?

9 A. I believe it's the same owner.

10 MR. KALLAHER: Okay. Can I have just a minute,  
11 Judge?

12 THE COURT: You may.

13 MR. KALLAHER: That's all the questions we have,  
14 Your Honor.

15 THE COURT: Any redirect?

16 MS. SANDERS: One moment, Your Honor.

17 No further questions, Your Honor.

18 THE COURT: Thank you, sir. Please step down.  
19 Call your next witness.

20 MS. ZERAN: The State would call Corporal Kevin  
21 Hildreth. He's in the witness room.

22 KEVIN HILDRETH

23 was called as a witness and, having first been duly sworn,  
24 testified as follows:

25 THE WITNESS: Yes, ma'am.

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1                   **THE COURT:** You may proceed when you're ready.

2                   **DIRECT EXAMINATION**

3   **BY MS. ZERAN:**

4           **Q.** Corporal Hildreth, will you please state your full  
5 name and spell your last name for the record?

6           **A.** Corporal Kevin Hildreth, H-i-l-d-r-e-t-h.

7           **Q.** And, Corporal Hildreth, who do you work for?

8           **A.** The Florida Highway Patrol.

9           **Q.** And how long have you worked there?

10          **A.** A little over 12 years.

11          **Q.** What position were you working in February 15th,  
12 2015?

13          **A.** I was a traffic homicide investigator out of  
14 Troop D, Orlando, covering Lake, Osceola, and Orange  
15 Counties.

16          **Q.** And how long had you been a homicide investigator  
17 at the time?

18          **A.** Between three and four months.

19          **Q.** Do you recall responding to a crash on State  
20 Road 60 on February 15th, 2015?

21          **A.** Yes.

22          **Q.** What was your role in that crash?

23          **A.** I was the lead homicide investigator, traffic  
24 homicide investigator.

25          **Q.** When you arrived to the crash scene, approximately

1 where was the scene?

2 A. I'm not sure the exact distance, but it was west  
3 of Peavine Road, in between the county lines of, I believe,  
4 Osceola and Polk Counties.

5 Q. Who was on scene when you arrived?

6 A. There was a Trooper Zito and a Corporal Brian  
7 Gensler, as well as emergency personnel from -- I believe it  
8 was Osceola County. There may have been some from the  
9 neighboring county, as well as a few deputies from Osceola  
10 County.

11 Q. Were any of the individuals involved in the crash  
12 on scene when you arrived?

13 A. Just the deceased in the vehicle.

14 Q. Did you begin to go and speak to any of the crash  
15 parties once you observed the crash scene and finished up?

16 A. Did I speak to any -- while I was on the crash  
17 scene?

18 Q. No, sir. Once you finished what you did at the  
19 crash site, did you proceed to go and attempt to speak to  
20 any of the individuals involved in the crash?

21 A. Yes. The person identified as the driver of  
22 Vehicle 1 to me was transported over to Indian River County.  
23 I don't recall the hospital. And I went en route to try and  
24 meet up with the individual at the hospital.

25 Q. While you're en route, did you place a phone call

1 to that individual?

2 A. Yes.

3 Q. Who was that individual identified as?

4 A. Spencer Altschuler, if I said his name correctly.

5 Q. At the time that you spoke -- did you get to speak  
6 to Mr. Altschuler?

7 A. Yes.

8 Q. At the time that you spoke to Mr. Altschuler, was  
9 he still at the hospital?

10 A. Excuse me?

11 Q. At the time you spoke to Mr. Altschuler, was he  
12 still at the hospital?

13 A. No, he was not.

14 Q. Did you meet with Mr. Altschuler?

15 A. That day?

16 Q. Yes, sir.

17 A. No, I did not.

18 Q. Did there come a point where you did meet the  
19 individual that was identified to you as Spencer Altschuler?

20 A. Yes.

21 Q. When was that?

22 A. It was at the -- his lawyer's office in Palm Beach  
23 County.

24 Q. Did you take a collection of Mr. Altschuler's DNA?

25 A. Yes.

1 Q. And how did you take that collection?

2 A. With two buccal swabs. They look like big Q-tips  
3 with cotton on one end, swabbing the inside of his mouth,  
4 left and right side.

5 Q. The individual that you collected the buccal swabs  
6 from, do you see that individual in the courtroom today?

7 A. Yes, ma'am.

8 Q. Can you please point to him and describe an  
9 article of clothing he's wearing?

10 A. The center table -- or the center at the table in  
11 front of me.

12 MS. ZERAN: Your Honor, please let the record  
13 reflect the witness has identified the defendant.

14 THE COURT: The record will so reflect.

15 BY MS. ZERAN:

16 Q. Once you collected the buccal swabs, what did you  
17 do with them?

18 A. I packaged them up. I returned to my patrol car.  
19 I transferred -- sealed them, transported them to the  
20 Florida Highway Patrol Station at 133 South Semoran  
21 Boulevard in Orlando.

22 MS. ZERAN: Your Honor, may I approach the  
23 witness?

24 THE COURT: You may.

25 MS. ZERAN: For the record, I'm showing the

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1 witness what's been previously marked as State's  
2 Exhibit L.

3 BY MS. ZERAN:

4 Q. Corporal Hildreth, if you'll please take a moment  
5 and review that package.

6 A. Yes.

7 Q. Do you recognize that package?

8 A. Yes. This is the one I sealed on that day.

9 Q. And how do you recognize that package?

10 A. That was my handwriting on the outside with the  
11 evidence number, the FHP case number, as well as my initials  
12 covering the evidence tape.

13 Q. And what does that package contain?

14 A. It contains one of the swabs taken, I believe.

15 Q. And does there -- is there anything about that  
16 packaging that gives you cause for concern?

17 A. No, ma'am.

18 Q. And would you also please --

19 MS. ZERAN: And, for the record, I'm showing the  
20 witness what's been previously marked as State's  
21 Exhibit M.

22 BY MS. ZERAN:

23 Q. Please review that package as well.

24 THE COURT: M?

25 MS. ZERAN: M.

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1                   **THE WITNESS:**   Okay.

2   **BY MS. ZERAN:**

3           **Q.**   And do you recognize that exhibit?

4           **A.**   Yes, ma'am.

5           **Q.**   And what do you recognize that exhibit to be?

6           **A.**   It's the second swab that was taken that day.  It  
7   has my handwriting on it, as well as my initials sealed on  
8   it.

9           **Q.**   And is there anything that gives you cause for  
10   concern regarding the package of that exhibit?

11          **A.**   That gives me what?

12          **Q.**   Cause for concern regarding that exhibit?

13          **A.**   No, ma'am.

14          **Q.**   And were both of these swabs taken from the  
15   individual identified to you as Spencer Altschuler?

16          **A.**   Yes, ma'am.

17               **MS. ZERAN:**  Your Honor, at this time we'd like to  
18   offer into evidence what's previously marked as State's  
19   Exhibit L and State's Exhibit M.

20               **THE COURT:**  Defense wish to be heard?

21               **MR. KALLAHER:**  I'm not sure they're relevant at  
22   this time.  But no objection.

23               **THE COURT:**  There being no objection, State's  
24   Exhibit L will be received as State's Exhibit 10 in  
25   evidence.  State's Exhibit M will be received as



1 State's Exhibit 11.

2 (State's Exhibit Nos. 10-11 were received in  
3 evidence.)

4 **BY MS. ZERAN:**

5 Q. After you packaged the buccal swabs, did you send  
6 them away for any analysis?

7 A. I personally didn't take them over there. But I  
8 know that they were sent away, yes.

9 Q. And where were they sent?

10 A. I believe it was Jerry Polk, our evidence  
11 technician, took them to the FDLE lab in -- I'm not sure the  
12 exact location. I've been there before. It's in Downtown  
13 Orlando.

14 Q. And when you refer to FDLE, what does that mean?

15 A. Florida Department of Law Enforcement. I'm sorry.

16 Q. Do you recall obtaining cell phone records for the  
17 number that you called on the day of the crash, to the crash  
18 individual?

19 A. Yes, ma'am.

20 Q. And do you recall that number?

21 A. I don't have it committed to memory. I believe it  
22 started with 561.

23 Q. Did you prepare an affidavit requesting the  
24 records for that phone number?

25 A. Yes.

1           **Q.**   And would reviewing that report refresh your  
2   recollection as to what the number is?

3           **A.**   Yes.

4           **MR. KALLAHER:** Judge, if I may? I've seen the  
5   records and I'll stipulate that they're the phone that  
6   they're representing them to be.

7           **THE COURT:** Okay.

8   **BY MS. ZERAN:**

9           **Q.**   So the records you obtained regarding the 561  
10   number, did those records, you believe, belong to Spencer  
11   Altschuler?

12          **A.**   Yes, ma'am.

13          **MS. ZERAN:** Just one moment, Your Honor.  
14   No further questions, Your Honor.

15          **THE COURT:** All right.

16   Cross-examination?

17          **MR. KALLAHER:** We have no questions.

18          **THE COURT:** Okay.

19   Thank you, Trooper. You may step down --  
20   Corporal.

21   You may call your next witness.

22          **MS. ZERAN:** The State would call Sheena  
23   McCaskill.

24

25

1                                   **SHEENA McCASKILL**

2       was called as a witness and, having first been duly sworn,  
3       testified as follows:

4                   **THE WITNESS:**   Yes.

5                   **THE COURT:**   All right.   You may proceed when  
6       you're ready.

7                   **MS. ZERAN:**   Thank you, Your Honor.

8                                   **DIRECT EXAMINATION**

9       **BY MS. ZERAN:**

10           **Q.**    Ms. McCaskill, will you please state your name  
11       and spell your last name for the record?

12           **A.**    Sheena McCaskill, M-c-C-a-s-k-i-l-l.

13           **Q.**    Who are you currently employed with?

14           **A.**    I work for the Osceola County Sheriff's Office.

15           **Q.**    How long have you been with the sheriff's office?

16           **A.**    I've been with the Osceola County Sheriff's Office  
17       for almost five years.

18           **Q.**    And what is your current position within the  
19       sheriff's office?

20           **A.**    I'm a senior crime analyst.

21           **Q.**    How long have you been a crime analyst?

22           **A.**    I've been a crime analyst for approximately eight  
23       years.

24           **Q.**    And what's your educational background leading up  
25       to being a crime analyst?

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1           **A.**    I have a bachelor's degree from University of  
2   Central Florida in criminal justice.

3           **Q.**    Did you have to -- have you conducted a  
4   historical -- a report regarding historical cell sites?

5           **A.**    Yes.

6           **Q.**    And can you explain what that is?

7           **A.**    Anytime your -- your phone makes a communication  
8   event, such as a text message or phone call and, nowadays,  
9   data, it has to use a cell phone tower to create that to get  
10   the signal. So the cell phone tower itself is the  
11   location-based data provided by the phone companies of the  
12   tower your phone used or the phone would have used for any  
13   communication event.

14          **Q.**    And did you have to go through any training in  
15   order to learn about historical cell sites?

16          **A.**    Yeah. I've had approximately 160 hours of  
17   training specific to cell phone analysis.

18          **Q.**    And out of that 160 hours, are those required  
19   hours or is there a certain number of hours required for  
20   this training?

21          **A.**    There's no hours required. It's the amount of  
22   hours that we are given the opportunity to utilize to be  
23   able to become experts.

24          **Q.**    And how many phones have you analyzed in the past  
25   year?

1           **A.**    For cell site reconstruction specifically, I've  
2   done approximately 50 phones.

3           **Q.**    And what type of analysis do you conduct?

4           **A.**    For just cell phones?

5           **Q.**    Yes, ma'am.

6           **A.**    For cell phones, we do two types of analyses so  
7   sometimes we're asked to analyze actual phone calls  
8   surrounding an incident or the actual location-based  
9   information surrounding an incident, as much as which towers  
10   were utilized.

11          **Q.**    And location based, would that be geographic  
12   locations?

13          **A.**    Correct.

14          **Q.**    In regards to geographic locations with cell  
15   phones, and you may have answered this, is that the 50  
16   you've done specific to locations or does the 50 include  
17   both methods?

18          **A.**    Specifically to locations.

19          **Q.**    Specifically what does the geographic location  
20   mean and consist of?

21          **A.**    The geographic location is the approximate  
22   location of the -- for these specific cases, the geographic  
23   location -- the physical location of the tower utilized for  
24   the calls or text messages.

25          **Q.**    Do you recall conducting a cell phone path on the

1 defendant, Spencer Altschuler's phone?

2 A. Yes.

3 Q. What information was provided to you in order to  
4 do your analysis?

5 A. I was provided with records from AT&T, call detail  
6 records, and I was also provided an incident report from the  
7 Florida Highway Patrol.

8 Q. And does that information contain times and  
9 locations?

10 A. Yes, it does.

11 Q. Do you recall the number that was provided to you?

12 A. The phone number itself, no.

13 Q. Did you prepare a report in regards to the  
14 information that you gleaned after providing your analysis?

15 A. Yes, I did.

16 Q. And does that report contain the phone number?

17 A. Yes.

18 Q. Once you receive the cell phone records and the  
19 incident report, walk us through that process of what you do  
20 and what you're looking at.

21 A. So what I'm predominantly looking at for this case  
22 specifically was the time frame surrounding the incident and  
23 the locations that were utilized for any calls.

24 Q. Do you change any of the data that's given to you  
25 by the cell phone company containing the records?

1           **A.**    I don't change any of the data.  But the cell  
2   phone records are provided in UTC time zone, which is  
3   actually five hours' different time zone, so I convert the  
4   times, pretty much, to reflect our Eastern Standard Time  
5   Zone.

6           **Q.**    Do you do any manipulation with the latitude and  
7   longitude that you're given?

8           **A.**    No.

9           **Q.**    Once you receive this information and you're  
10   pulling out these specific pieces, what do you -- how do you  
11   compile your report?  What do you do with it?

12          **A.**    So once I pretty much narrow down the time frame  
13   that I'm looking for in the call records themselves, I use,  
14   um, a Microsoft Office program, MapPoint, which is just a  
15   basic 2-D map, and I import all, like, centralized or  
16   statewide cell phone towers in the area, and I import those  
17   onto the map.  That's pretty much just the longitude and  
18   latitude provider for all cell phone towers for AT&T.

19                Once I do that, I take the approximate location of  
20   the incident that was provided, and then I go down the list  
21   and just -- every call event or text event during the time  
22   frame I'm looking for, I look at the longitude and latitude.  
23   I plot that onto the map.  And then I look at the azimuth  
24   provided by the phone call to create a direction that the  
25   signal has provided to the phone.

1           **Q.**   And is this computer program accessible to anyone  
2   else in the office?

3           **A.**   No.  It's Microsoft Office, so it's specific to  
4   my -- my desktop.

5           **Q.**   Once that information is plugged into the program,  
6   can anyone go in and manipulate that data?

7           **A.**   No.

8           **MS. ZERAN:**  Your Honor, may I have a moment?

9           **MR. KALLAHER:**  Your Honor, may we approach?

10          **THE COURT:**  You may.

11          (At the bench.)

12          **MR. KALLAHER:**  Why don't you go first.

13          **MS. ZERAN:**  Your Honor, essentially, basically  
14   what we're trying to do is introduce the records that  
15   she received in the creation of her report.

16          **THE COURT:**  These are the records that you've --

17          **MR. KALLAHER:**  The phone records.  The actual  
18   phone records.

19                 First of all, they have confidential data that  
20   would need to be redacted if they were entered into  
21   evidence because they contain information from other  
22   than --

23          **THE COURT:**  I thought you indicated there was no  
24   objection to the phone records?

25          **MR. KALLAHER:**  I didn't object to the phone



1 number.

2 THE COURT: I'm sorry? Okay.

3 MR. KALLAHER: But they're --

4 THE COURT: During the last witness, there was --

5 MR. KALLAHER: No. I understand. But what I'm  
6 objecting to is all of this coming in because, here's  
7 an example.

8 THE COURT: Okay.

9 MR. KALLAHER: It's irrelevant.

10 MS. SANDERS: I think we can show a call date.

11 THE COURT: What are you trying to get in that's  
12 relevant?

13 MS. ZERAN: We're establishing the link of the  
14 phone number to the report that she received.

15 MR. KALLAHER: I'll stipulate to that.

16 MS. SANDERS: That's fine.

17 MS. ZERAN: If he's going to stipulate --

18 THE COURT: If you're agreeing that the -- that  
19 phone number is the one that the trooper got, that he  
20 made contact --

21 MS. ZERAN: With the individual --

22 THE COURT: -- I believe he made contact with  
23 Mr. Altschuler on, is that what defense is --

24 MR. KALLAHER: I would stipulate to that. I don't  
25 want all this to come in.

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1           **THE COURT:**   Okay.

2           **MS. SANDERS:**   That's fine.

3           **MS. ZERAN:**    Okay.

4           **THE COURT:**    All right.

5           (In open court.)

6           **MS. ZERAN:**    May I approach the witness, Your  
7           Honor?

8           **THE COURT:**    You may.

9   **BY MS. ZERAN:**

10           **Q.**    I'm now showing the witness what's been marked as  
11           State's Exhibit J, a composite of eight pages, J-1 through  
12           J-8.

13                   Ms. McCaskill, will you please take a moment and  
14           review that document?

15                   Do you recognize that document?

16           **A.**    Yes.

17           **Q.**    And what do you recognize that document to be?

18           **A.**    This is the cell site reconstruction that I  
19           provided.

20           **Q.**    And is that the report that you created?

21           **A.**    Correct.

22           **Q.**    And this report was created by receiving the phone  
23           records that you had identified as being Spencer  
24           Altschuler's; is that correct?

25           **A.**    I didn't identify them as being his, but, yes, I

1 was provided those and told that they belonged to him.

2 MS. ZERAN: Your Honor, for -- I would like to  
3 offer into evidence what's been previously marked as  
4 State's Exhibit J, composite of eight pages, J-1  
5 through J-8.

6 MR. KALLAHER: No objection.

7 THE COURT: Being no objection, the Exhibit J will  
8 be received as State's Exhibit 12 in evidence.

9 (State's Exhibit No. 12 was received in evidence.)

10 BY MS. ZERAN:

11 Q. State's Exhibit 12 that you were just shown, was  
12 that map -- was that report made in your regular course of  
13 business?

14 A. Yes.

15 Q. And, to your knowledge, has that been changed,  
16 altered in any way --

17 A. No.

18 Q. -- from when you created it?

19 Have you ever testified in court regarding the  
20 contents of your report written with regards to cellular  
21 paths?

22 A. Yes, I have.

23 Q. Approximately how many times?

24 A. One time.

25 MS. ZERAN: Your Honor, I tender the witness to

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1 allow her to provide opinion testimony as to her  
2 findings in the report.

3 THE COURT: You may proceed. The jury will make  
4 that determination, so you may proceed.

5 MS. ZERAN: May I publish, Your Honor?

6 THE COURT: You may.

7 BY MS. ZERAN:

8 Q. Ms. McCaskill, can you please familiarize us  
9 with your report and where we're starting out?

10 A. This is just a basic summary page of what I was  
11 requested to do and the information I was provided. So the  
12 top, obviously, is the phone number that was provided to me.  
13 And it's indicated that it's an AT&T number. Cellular paths  
14 is just the verbiage that we use for the location. So the  
15 path of the cell phone.

16 Q. And what is the information that we're seeing here  
17 in the paragraph form?

18 A. That's just a summary that I use. So it just  
19 explains that I was requested to analyze call detail records  
20 provided by -- it says T-Mobile. That's an error. It's  
21 actually AT&T on the phone number provided. And that it was  
22 compared to a vehicular homicide incident that occurred on  
23 State Road 60, approximately six miles west of Peavine Road,  
24 which was provided to me in the original report, around 0902  
25 hours, Eastern Standard, which, again, the records are

1 provided in UTC, so you have to convert the time and  
2 subtract five hours from that time.

3 Q. Coming to the second page of your report -- and I  
4 can zoom in just so we can --

5 Using the pointer, and I will zoom in, and if it's  
6 helpful, I can zoom in on the individual boxes. But to  
7 begin with, what is it we're seeing right here at the top  
8 line of the report? Just the block, what information is  
9 that?

10 A. The block at the top is actually directly from the  
11 phone records. It's just copy and pasted from the phone  
12 records. It's the date and time of the call event, whether  
13 it was an incoming or outgoing call, who was involved in the  
14 communication event. And then the location.

15 Q. So we can see it a little better, let me zoom in.  
16 And if you can identify for us what each of the calls are.  
17 Are you able to read that?

18 A. Yes. So the first one that's actually off-screen  
19 is item number. That's just the -- it's just a  
20 recordkeeping number from AT&T. It's actually the item on  
21 the phone record itself.

22 The connection date was February 15th, 2015.

23 The connection time, again, is UTC, so it says  
24 1408, but in Eastern Standard Time, it would be 9:08 a.m.  
25 The seizure time is actually the amount of time that the

1 call took to connect to the tower. So it's actually, like,  
2 the lack of time when you try to make a call and it's dead  
3 air.

4 ET is actually the duration of the call, 3:37  
5 would have been 3 minutes and 37 seconds.

6 The originating number is the number that made the  
7 phone call.

8 And the terminating phone call is the number that  
9 received the phone call.

10 The IMEI and the IMSI are specific to the phone  
11 company and to the subscriber themselves. So one of them is  
12 actually the serial number or the phone -- for the phone  
13 itself, the handset. And the other number is actually  
14 the -- almost like the ID for the subscriber or the account  
15 holder for AT&T.

16 CT is actually -- it will either be mobile or  
17 originating, which is an outgoing call, or it will say MT,  
18 which is mobile terminating, which is an incoming call.

19 The feature would be -- again, specific to the  
20 phone company. It will indicate whether or not the call was  
21 completed. It will say VM if it was a voicemail or indicate  
22 a forward call.

23 And then the cell location is actually the cell  
24 tower identifying number, the latitude and longitude of the  
25 cell tower. And then what's considered an azimuth or the

1 direction of the signal from the tower.

2 Q. And let's see if we can get an overall picture.

3 So now looking at the map portion -- and I will  
4 zoom in in a moment. I'm just trying to get the entire  
5 range. Can you describe overall what we're looking at?

6 A. So the "X" is actually the approximate location of  
7 the incident. The pins are the tower locations provided for  
8 this specific call. And the arrows themselves here are  
9 actually, um, just an indicator for me to know which tower  
10 was utilized to -- to get the range of coverage for that  
11 specific call itself.

12 Q. So when we're zooming in into the area, what is  
13 this range of coverage, the swaths of area that you have,  
14 what does that indicate in regards to the accident, X?

15 A. So the way that we are trained to do range of  
16 coverage for towers is similar to a sprinkler system where  
17 you don't want to oversaturate, so you place your sprinkler  
18 heads a significant distance apart so they overlap a little  
19 so there's no gaps or overlaps of coverage. But they don't  
20 oversaturate your area.

21 So we create an approximate distance of 70 percent  
22 from the nearest tower to that azimuth or to the direction  
23 so that the signals overlap by 30 percent. That's why both  
24 of those triangles are different sizes.

25 Q. And with the locations of those different

1 triangles, specifically using this phone, the information  
2 that was given to you was that this phone was used at the  
3 accident site, correct?

4 A. The information given to me was that the phone  
5 utilized two towers that were in the area.

6 Q. Okay. Now, is it possible that this phone that  
7 utilized these two towers, that the phone was actually being  
8 utilized over here outside your range swath?

9 A. It's actually possible.

10 MS. ZERAN: For the record, I'm now showing what's  
11 been marked as State's Exhibit 12, J-7.

12 BY MS. ZERAN:

13 Q. And can you describe what we're seeing in this  
14 compilation?

15 A. This is actually similar to what we saw before.  
16 The difference is there's only one triangle, which indicates  
17 that the call was started and ended on the same tower. If  
18 there's two different tower locations for a call, it means  
19 it was started and ended on a different tower.

20 This one just indicates that between -- I can't  
21 actually read those numbers with my glasses on. So between  
22 9:25 Eastern Standard Time and 9:45 Eastern Standard Time,  
23 the phone utilized the same tower for the starting and  
24 ending of all of those calls.

25 Q. From the information that you provided, and



1 specifically you were focusing on February 15th, 2015,  
2 were you able to determine how long that phone was present  
3 in the area?

4 A. Um, I would have to, again, look at the data that  
5 was provided and then also the time frame post. I actually  
6 usually just look at an hour or so surrounding an incident.  
7 I know there were no call records provided before 9:08. And  
8 I believe I only went to 10:00. So after that, I would have  
9 to go back and look at it.

10 Q. What does it mean by tower overload?

11 A. Um, depending on how much signal is available on  
12 the tower and how much of it is being utilized on one time,  
13 a tower can be considered overloaded, which would indicate  
14 if your closest tower is being used too much at one time,  
15 you can actually jump to another tower in the area.

16 Q. In the report that you prepared in this case, did  
17 you see that?

18 A. I wouldn't be able to indicate whether a tower was  
19 overloaded at any specific time.

20 Q. Was there anything to indicate what the ranges  
21 that you had, that the towers that you've marked were  
22 anything but those towers that were utilized?

23 A. I'm sorry. You're gonna have to repeat that.

24 Q. From the ranges that you created in your report,  
25 did you indicate that there was more than the one main tower

1 in the last page that we saw on -- I believe it was J-7 of  
2 Exhibit 12, the one we just last showed, was there more than  
3 any one tower?

4 A. I believe there were multiple towers utilized  
5 during the time frame.

6 Q. How accurate is this information?

7 A. The location of the tower and the tower that was  
8 utilized for the call is a hundred percent accurate.

9 Q. Was this the extent of your involvement in this  
10 case?

11 A. Yes.

12 MS. ZERAN: No further questions at this time.

13 THE COURT: All right. Thank you.

14 Mr. Kallaher?

15 MR. KALLAHER: Do you need to take your break,  
16 Judge?

17 THE COURT: I'm sorry?

18 MR. KALLAHER: Do we need to break?

19 THE COURT: We can probably finish this witness.

20 MR. KALLAHER: Okay. Very well.

21 CROSS-EXAMINATION

22 BY MR. KALLAHER:

23 Q. Good morning, Ms. McCaskill.

24 A. Good morning.

25 Q. How are you?

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1           A.     Good.

2           MR. KALLAHER:   May I approach?

3           THE COURT:   Go ahead.

4   BY MR. KALLAHER:

5           Q.     I have some questions about your --

6           MR. KALLAHER:   I'm sorry, what exhibit was this?

7           MS. ZERAN:   12.

8   BY MR. KALLAHER:

9           Q.     Okay.   The cover page shows you said the -- it's  
10   just kind of an overview of the information, right?

11          A.     Correct.

12          Q.     So am I correct in that your understanding when  
13   the accident happened, the data that you received and used  
14   for your compilation, was after that time, was after the  
15   accident?

16          A.     When I received the information, I think it was  
17   actually two years after the incident.

18          Q.     What I'm asking is:   The time that the data that  
19   you started to use was time-stamped after the accident?

20          A.     Correct.   There were no actual calls during the  
21   time indicated by Florida Highway Patrol.

22          Q.     No calls or any other hits --

23          A.     Correct.

24          Q.     -- that you could use, correct?

25          A.     Yes.

1 Q. So that would be texting?

2 A. Correct.

3 Q. Or anything else?

4 A. Mm-hmm.

5 Q. All right. And this was the -- again, we're using  
6 Exhibit 12. And this was the cover page.

7 Now, this sort of indicates, if you just look at  
8 this as a lay person, which I am in this case --

9 A. Okay.

10 Q. -- I'm not an expert in this, you are, apparently.  
11 That would indicate to me that is a subset of the possible  
12 locations of where the cell phone hit?

13 A. The overlap itself.

14 Q. The overlap itself. That's not correct, though,  
15 is it?

16 A. The overlap -- no, it's not a hundred percent  
17 indicative in that the person would have been -- or the  
18 phone would have been in that specific area. We're truly  
19 just drawing a basic visual representation of the towers  
20 that we utilized.

21 Q. And these ranges, or I guess the distance from the  
22 tower that you have these semicircles or these pie shapes,  
23 where did the distance come from? Is that arbitrary, you  
24 just wrote that?

25 A. Um, we're trained that the phone companies are --

1 they overlap their data by approximately 30 percent of their  
2 actual coverage areas. So we look at the closest tower to  
3 the azimuth, which was 210 in these two incidences, and we  
4 approximate the distance to 70 percent.

5 Q. But really all you can go by is when you look at a  
6 cell phone hit, all you can say is that it appeared to be  
7 within this azimuth, this range from -- I guess, it would be  
8 270 to about 160.

9 A. What the phone company provides is they provide  
10 the azimuth. So we know that the phone itself used that  
11 side of the tower. And that's all that's provided by the  
12 phone company.

13 Q. Okay.

14 A. Mm-hmm.

15 Q. So you can't get -- okay. The hit was 10 miles  
16 from the tower, right?

17 A. Not in these specific records, no.

18 Q. Okay. And I guess what's depicted in this chart,  
19 you're not -- you're not saying the cell phone hit came  
20 10 miles from tower -- however far this is. All it's saying  
21 is from this tower, it was in this southeast or southwest  
22 direction, right?

23 A. Southwest directionally.

24 Q. And in this tower, it was also in the southwest  
25 direction?

1           **A.**    Correct.

2           **Q.**    So it could have been way down here, right?

3           **A.**    It could have been.

4           **Q.**    Or it could have been way over here?

5           **A.**    It could have been.

6           **Q.**    And, in fact, if you look at the next page of --  
7 well, let me -- I want to note the time here. This one is  
8 1408, Zulu? Or 908 --

9           **A.**    -- Eastern Standard.

10          **Q.**    Okay. And this one is 1412 Z or would have been  
11 9:12, so four minutes later --

12          **A.**    Correct.

13          **Q.**    -- this phone pings miles and miles away,  
14 possibly?

15          **A.**    Well, I used a tower -- I used the same tower, but  
16 it actually used a different side of the tower.

17          **Q.**    So different azimuth. So this is indicating at  
18 four minutes later that this phone that was to the southwest  
19 is now somewhere to the northwest?

20          **A.**    It doesn't necessarily indicate that.

21          **Q.**    Okay. What does that indicate then?

22          **A.**    It indicates that it used a different side of the  
23 tower, which --

24          **Q.**    My point is, though, that this isn't all that  
25 accurate, is it?

1           **A.**    The accuracy is based on the phone company itself.  
2    So it definitely used that side of the tower.

3           **Q.**    Okay. I'm not questioning the data from the phone  
4    company. I'm -- what I'm questioning is you cannot  
5    accurately put the location of that cell phone anywhere with  
6    any precision at any time, can you?

7           **A.**    The phone itself, based upon these records, you  
8    can't actually pinpoint the exact location of the phone.

9           **MR. KALLAHER:** All right.

10                   And, Judge, based on that testimony, I would move  
11    to exclude and strike that testimony -- all of her  
12    testimony isn't relevant.

13           **THE COURT:** All right. Well, that motion will be  
14    denied. The jury can certainly take it into  
15    consideration, the limits of the testimony.

16           **MR. KALLAHER:** All right. And I just have a  
17    couple more questions.

18           **THE WITNESS:** Sure.

19    **BY MR. KALLAHER:**

20           **Q.**    You don't have any information or knowledge, other  
21    than the phone number that was given to you, correct?

22           **A.**    And I have the original incident report provided  
23    by the Florida Highway Patrol.

24           **Q.**    And that's the information that you used?

25           **A.**    Correct.

1           **Q.**    But at the times that you used for your report,  
2    0908, 1412, you have no idea who was in possession of that  
3    cell phone, correct?

4           **A.**    No, I don't.

5           **MR. KALLAHER:**   That's all I have, Judge.

6           **THE COURT:**   All right.   Thank you.

7                   Any redirect?

8           **MS. ZERAN:**   No, Your Honor.

9           **THE COURT:**   Thank you.   You may step down.

10          **THE WITNESS:**   Thank you.

11          **THE COURT:**   All right.   Ladies and gentlemen, due  
12    to an unfortunate scheduling conflict, we're going to  
13    need to recess early again for lunch.   The benefit to  
14    you is you'll get an extended lunch break.   We are  
15    going to recess at this time until 1:30.   I will ask  
16    that you be back in the area of the fifth floor  
17    elevators by 1:25.

18                Again, you are instructed that you are not yet to  
19    form any fixed or definite opinion about the merits of  
20    this case.   You are not yet to discuss the case among  
21    yourselves or, of course, with anyone else.

22                Please leave your notepads on your chairs.   Have a  
23    great lunch.

24          **COURT DEPUTY:**   All rise for the jury.

25                (The jury exits the courtroom.)



1           **THE COURT:** You may be seated.

2           Is there anything we need to address before we  
3 recess, folks?

4           **MS. SANDERS:** No, Your Honor.

5           **MR. KALLAHER:** No, sir.

6           **THE COURT:** Do you know approximately how many  
7 witnesses you'll have?

8           **MS. SANDERS:** I was thinking about that. Orange  
9 County just emailed me and said that they have my  
10 doctor. So Dr. Utz won't be able to testify this  
11 afternoon. I was trying to get him to rush on over  
12 here from Orange County, but they're not giving me an  
13 estimate of how long they're gonna be utilizing him. I  
14 believe it's a first-degree murder trial.

15           So at this time, we really have just that one  
16 witness because the other doctor is not coming in until  
17 9:00 tomorrow morning. So we'll have two doctors  
18 tomorrow morning.

19           **MS. ZERAN:** Unless we get an update over lunch.

20           **MS. SANDERS:** Unless we get an update.

21           **THE COURT:** All right. So I think we'll probably  
22 discuss the jury instructions preliminarily.

23           All right. We'll be in recess until 1:30.

24           (Lunch recess taken from 11:43 a.m. to 1:33 p.m.)

25           **THE COURT:** All right. We are back on record in

1 Case 15 -- 16-CF-583, State of Florida versus Spencer  
2 Jordan Altschuler. The defendant is present with  
3 counsel, the assistant state attorneys.

4 Folks, are there any matters we need to address  
5 before we return the jury?

6 MS. SANDERS: No.

7 MR. KALLAHER: No, Your Honor.

8 THE COURT: And you only have one witness this  
9 afternoon?

10 MS. SANDERS: Ms. Wenz is going to be our last  
11 witness for today because the other two doctors are not  
12 available until tomorrow morning.

13 THE COURT: All right. Okay.

14 Let's go ahead and return our jury.

15 Mr. Altschuler [sic], do you know if you intend to  
16 present witnesses other than potentially your client?

17 MR. KALLAHER: At this time there aren't any.

18 (The jury enters the courtroom.)

19 THE COURT: You may be seated.

20 Welcome back, ladies and gentlemen.

21 Does the State recognize the presence of the jury?

22 MS. SANDERS: Yes, Your Honor.

23 THE COURT: Defense?

24 MR. KALLAHER: Yes, Your Honor.

25 THE COURT: All right. Very well.

1 State, you may call your next witness.

2 MS. ZERAN: The State calls Laura Wenz.

3 LAURA WENZ

4 was called as a witness and, having first been duly sworn,  
5 testified as follows:

6 THE WITNESS: I do.

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION

9 BY MS. ZERAN:

10 Q. Ms. Wenz, if you would please state your full name  
11 and spell your last name for the record?

12 A. My name is Laura Wenz. The last name is W-e-n-z.

13 Q. And, Ms. Wenz, who do you work for?

14 A. I work for the Florida Department of Law  
15 Enforcement. I'm a senior crime laboratory analyst in the  
16 biology/DNA section at the crime laboratory at the Orlando  
17 Regional Operations Center.

18 Q. And is the Florida Department of Law Enforcement  
19 often referred to as FDLE?

20 A. Yes, it is.

21 Q. How long have you been working with FDLE in your  
22 position?

23 A. I've been at FDLE since November of 1999.

24 Q. And how long have you been in the current position  
25 you're in?

1           **A.**    I'm sorry?

2           **Q.**    How long have you been in the current position  
3 you're in as a senior crime laboratory analyst?

4           **A.**    Since 2000 -- end of 2000, beginning of 2001.

5           **Q.**    What's your educational background that you have  
6 to obtain this position?

7           **A.**    I have a bachelor's degree in biology from the  
8 University of Kentucky. And I have approximately 50 or 60  
9 hours in graduate work in the areas of molecular biology and  
10 biochemistry.

11          **Q.**    What are some of your duties and responsibilities  
12 as a crime lab analyst?

13          **A.**    Um, my duties are to examine items of evidence for  
14 a possible source of DNA, such as hair, semen, saliva,  
15 tissue, those types of things. If I'm able to find a  
16 possible source of DNA, then I would characterize that  
17 particular item, what we call extraction.

18                 In other words, I would take the DNA out of the  
19 cells, quantify the DNA, which is determining how much DNA  
20 is present. Then I would make millions of copies using a  
21 process called amplification. It's kind of like a molecular  
22 Xerox machine. It gives me enough DNA to look at for the  
23 areas that I'm looking at. Then I would characterize it  
24 based on the particular DNA markers that are there.

25                 In DNA, you get approximately half of your DNA

1 from your mother and half from your father. So you have two  
2 copies of DNA, one from your -- each parent. The DNA is set  
3 at conception. It stays the same throughout your life.  
4 It's similar in all -- it's the same in all of the cells  
5 that have a nucleus. And it's the same, in other words, in  
6 all of the different types of tissues. So your DNA profile  
7 in your hair would be the same as the DNA profile from your  
8 skin, saliva, and so on.

9 Q. Specifically -- and you spoke to having a certain  
10 number of hours in regards to training. What type --  
11 what's -- is there any particular name assigned to  
12 specialized training to prepare you for your duties of  
13 looking at, specifically, DNA analysis?

14 A. In addition to the educational training that I've  
15 had, there's also an FDLE training program that's  
16 approximately one to two years where you are first given a  
17 lot of reading material that indicates the types of testing  
18 that you're gonna be doing, forming the basis for your later  
19 use of the laboratory.

20 Then there's also hands-on training in the  
21 laboratory for the particular procedures that we use in the  
22 lab.

23 In addition, we're required to have so many hours  
24 per year of additional training on an annual basis. We do  
25 that by attending conferences for DNA, interacting with our

1 peers, and reading literature articles.

2 Specifically, I am the literature coordinator, so  
3 I probably read at least a hundred articles a year and then  
4 select the ones that are most appropriate for the other DNA  
5 analysts in the lab to look at. I also have several  
6 publications in peer-reviewed journals relating to molecular  
7 biology and biochemistry.

8 Q. And how long have you been conducting DNA testing?

9 A. DNA testing in general? For about 38 years.  
10 Specifically for forensic DNA, approximately 18 years.

11 Q. Now, you mentioned a couple terms in describing  
12 your duties as a crime lab analyst. But specifically can  
13 you detail for us what DNA is? And you've already started  
14 to go into that. Could you please --

15 A. Yeah. Just as an "in general," DNA is the genetic  
16 material that's found in the nucleus of the cells. It's  
17 kind of a blueprint for making you who you are and different  
18 from everybody else. About 99.9 percent of our DNA is the  
19 same between individuals. That's why we all have two eyes,  
20 two arms, and we all look approximately the same. But there  
21 is a small percentage of your DNA that varies between  
22 individuals. And those are the areas that we look at.  
23 Those are called non-coding areas.

24 The type of testing that we do is called Short  
25 Tandem Repeat DNA testing. And that means we're looking at

1 areas between the, quote, genes. In other words, the things  
2 that are expressed that give you, like, blue eyes, brown  
3 hair, that type of thing.

4 So we're looking at repeats, and they're called  
5 short because they're tetramers. They're four-unit repeats.  
6 They're in tandem, meaning that they're next to each other.  
7 And they're a repeating sequences. So you can kind of think  
8 of it like boxcars on a train. As I mentioned earlier, you  
9 get some from your father and some from your mother.

10 For instance, one of the locations that I might be  
11 looking at, you might have seven repeats from your mother.  
12 So you can envision a train with seven boxcars. From your  
13 father you might have nine repeats at that location. So I  
14 would specify you as a 7, 9 at the location that I'm looking  
15 at. And that's how I would characterize a DNA profile using  
16 the processes that I indicated earlier. The extraction,  
17 quantitation, amplification, and characterization.

18 Q. And, specifically, can you tell us a little bit  
19 more about the extraction process?

20 A. Basically I'm using heat and chemicals to open up  
21 the cell and then take the DNA out, separating the DNA from  
22 the remaining portion of the cell. That is the extraction  
23 process. I do that by taking a sample of the possible  
24 source of DNA from the evidence, either a cutting or a  
25 swabbing, using a sterile cotton tip swab. It looks like a

1 Q-Tip except that they're sterile.

2 And then I would take that sample, put it in a  
3 tube, expose it to the heat and chemicals that I mentioned.  
4 And then using those heat -- that heat and chemicals and the  
5 processes that we have to take the DNA out so that I can  
6 further characterize it.

7 Q. And can you please explain a little bit more about  
8 quantification that's coming from the samples?

9 A. Quantification means we're determining how much  
10 DNA is there. That's important for the amplification  
11 process. We do that by -- a process that's called also PCR,  
12 which is polymerase chain reaction. The quantitation that  
13 we use now does make additional copies, but not the same  
14 ones that we use to develop the DNA profile.

15 So we're taking that particular sample, making  
16 millions of copies of it, and then determining how much we  
17 have based on that. And that's important going into the  
18 amplification process because the amplification requires a  
19 specific range of amount of DNA. If there's not enough,  
20 then we may not get enough DNA to characterize. If there's  
21 too much, it can overwhelm the system, and, again, we're not  
22 able to use that.

23 Q. And going to hand in hand, you've already  
24 mentioned it, is amplification. Precisely what is the  
25 amplification part of this whole process?



1           **A.**    The amplification, as I mentioned earlier, is kind  
2 of like the molecular Xerox machine. We're using the same  
3 chemicals that your body would use to make copies. You're  
4 making new cells all the time. And we're using the same  
5 chemicals that your body would use to make all of the copies  
6 of DNA.

7                    Again, we do it so that we have enough to test and  
8 characterize to develop a DNA profile.

9           **Q.**    And once you go through this entire process, take  
10 us through your actual analysis of a sample that you would  
11 have taken.

12           **A.**    So basically what we're doing, as I mentioned, is  
13 we're looking at Short Tandem Repeats. The example I gave  
14 earlier was seven copies from, say, your mother, and nine  
15 copies from your father. How we do that will be based on  
16 how quickly that particular sample moves through an electric  
17 field because it is electrically charged.

18                   Each different locus has a different -- or each  
19 different marker, each location that we look at -- we call  
20 it a locus -- has some fluorescent label attached to it as  
21 part of the amplification process.

22                   So the time that it takes for that particular  
23 sample to move through the electric field determines just  
24 how many repeats there are. And then we compare it to what  
25 we call an allelic ladder that has all of the different

1 markers that are possible. Those are compared and then  
2 that's how, when we get the specification of, say, seven and  
3 nine repeats at that particular location for that profile.

4 Then we're doing that at 15 different locations.  
5 So we're getting markers at 15 different locations and  
6 specification of what your repeat numbers are at each of  
7 those locations.

8 Q. And is there a correlation to how many repeats you  
9 get at different locations to how strong the actual profile  
10 is?

11 A. I think what she's referring to is whether or not  
12 we have a complete profile, less than a complete profile. A  
13 complete profile means that I was able to get all of the  
14 information at all 15 of those areas that we look at. If  
15 there's something less than that, it might be a partial  
16 profile, which means I wasn't able to get all of the  
17 information that would be available. Or in some cases, I'm  
18 not able to get enough information to make any comparison at  
19 all.

20 Q. When you're looking and comparing two different  
21 samples to one another for matching purposes, does it  
22 matter -- can you get a match from a partial profile?

23 A. We can get a match from a partial profile. And  
24 what we do when we have any match, either it's to a complete  
25 profile or a partial profile, is after we've determined that

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1 all of the markers are the same at those areas that we're  
2 looking at, then we determine the significance of that  
3 match. In other words, if I have a profile that every other  
4 person in the world had, it wouldn't be very significant to  
5 have a match to that profile.

6 So what we do is we determine how common or rare  
7 that particular profile is in the population. And we can do  
8 that by something that's called the product rule. It's a  
9 simple statistical premise that says independent events can  
10 be multiplied. It's kind of like what gives you the odds of  
11 winning the lottery.

12 Say, for instance, you have just a few different  
13 numbers at each one of the numbers that you have to select,  
14 but because you have to select them all, they multiply the  
15 possibility of getting any particular one. We use the same  
16 thing, called the product rule, to determine just the --  
17 what is the significance of the match. And we use that,  
18 like I said, to determine how common or rare that particular  
19 DNA profile is in a population.

20 Q. What type of controls are in place when you do  
21 your DNA testing?

22 A. We have quite a few different controls. We're  
23 accredited by the ANSI-ASQ National Accreditation Board.  
24 They require specific controls and a specific quality  
25 assurance system. We have all of that. We have been

1 accredited since 1990.

2           Some of the specific controls that we use is we  
3 use positive and negative controls. In other words, a  
4 positive control is something that we know what the result  
5 is supposed to be, and we confirm that we're able to get  
6 that positive result in each set that we're running.

7           We also have negative controls that tells us  
8 whether or not there's possible contamination. So those are  
9 supposed to be negative. In other words, have no DNA. We  
10 use specific standard operating procedures, SOPs, in other  
11 words, that are based on validated methods.

12           We have specific training for analysts. We use  
13 only one tube open at a time. We have a specific  
14 unidirectional flow in the lab so that each process that  
15 we're doing is only done in certain areas so that there's  
16 not other possibility of contamination. We have a lot of  
17 quality control checks. We have to have performance checks  
18 on our instruments so all of the instruments, processes, and  
19 everything are validated.

20           Q.    What do -- and I've heard it pronounced two  
21 different ways, buccal or buccal swabs. What are they?

22           A.    Buccal -- I call them buccal. Buccal swab means  
23 that it's the sample taken from the inside of the cheek.  
24 Basically it's using a cotton tip swab, which is basically  
25 like a Q-tip, except they're sterile. And they're used to

1 collect the skin cells on the inside of the cheek for a  
2 reference sample, a known sample. In other words, a sample  
3 that you know came from a particular individual.

4 Q. Approximately how many times have you conducted  
5 DNA testing for FDLE?

6 A. Thousands. I don't know exactly. Probably  
7 10,000. Maybe more.

8 Q. Have you ever testified in court here in Florida  
9 as an expert regarding Short Tandem Repeat DNA testing?

10 A. Yes, I have.

11 Q. Approximately how many times?

12 A. At least 30. I kind of stopped counting after  
13 that.

14 MS. ZERAN: Your Honor, at this time I would like  
15 to tender this witness as capable of giving an opinion  
16 regarding DNA analysis.

17 THE COURT: You may solicit opinion testimony from  
18 the witness.

19 MS. ZERAN: Your Honor, may I approach the  
20 witness?

21 THE COURT: You may.

22 MS. ZERAN: For the record, I'm showing the  
23 witness what's been previously entered into evidence as  
24 State's 7.

25

1 BY MS. ZERAN:

2 Q. Ms. Wenz, would you please take a look at this  
3 package and its content?

4 A. Yes. I recognize this item by the FDLE case  
5 number, the exhibit number, and my initials.

6 Q. And with the package being open, does it give you  
7 any cause for concern of the contents of the item?

8 THE WITNESS: Your Honor, I'd like to refer to my  
9 notes.

10 THE COURT: You may.

11 THE WITNESS: It looks like the same thing.

12 BY MS. ZERAN:

13 Q. And you did receive that item?

14 A. Yes, I did.

15 Q. What is that item?

16 A. This is indicated as being an air bag.

17 Q. I'm now showing you what's been previously entered  
18 into evidence as State's Exhibit 8.

19 A. And, again, I recognize this item by the FDLE case  
20 number, the exhibit number, and my initials.

21 Q. And does anything about this packaging, again,  
22 noting that it's open, cause you concern?

23 A. No. It's the same item.

24 Q. And what is that item?

25 A. It is a door handle.

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1           Q.    Now showing the witness what's been previously  
2 entered into evidence as State's Exhibit 10. Do you  
3 recognize that item, Ms. Wenz?

4           A.    Yes, I do.

5           Q.    What do you recognize that item to be?

6           A.    This is the buccal swab indicated as being from  
7 Spencer Jordan Altschuler. And, again, I recognize it by  
8 the FDLE case number, the exhibit number, and my initials.

9           Q.    And, lastly, I'm now showing the witness what's  
10 been entered into evidence as State's Exhibit 11. Please  
11 take a moment and look at that package, please.

12          A.    This is also a buccal swab indicated as being from  
13 Spencer Jordan Altschuler, although I did not do any testing  
14 on this item.

15          Q.    Out of these items -- and noting that you said you  
16 did receive this and recognize them -- what items did you  
17 actually process in your DNA analysis?

18          A.    I processed the original buccal swab, indicated as  
19 being from Spencer J. Altschuler, the air bag, and the door  
20 handle.

21          Q.    And, again, starting with the known standard, the  
22 buccal swab, what did you do with that particular item?

23          A.    As I mentioned, as far as the processing that we  
24 use for DNA, I took a sample from the buccal swab and did  
25 the extraction process, the quantitation process, and the

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1 amplification process, and then the characterization process  
2 to obtain a DNA profile.

3 Q. And did you compare that known standard to either  
4 of the other two items, the air bag and/or the door handle?

5 A. Yes, I did.

6 Q. And starting with the air bag, did you -- were you  
7 able to make a comparison with anything on the air bag?

8 A. I was not.

9 Q. And why weren't you able to?

10 A. Because the amount of DNA that I recovered from  
11 the air bag was insufficient in order for me to be able to  
12 make the comparisons.

13 Q. And did you make a comparison utilizing the door  
14 handle?

15 A. Yes, I did.

16 Q. And were you able to make a comparison with that?

17 A. Yes, I did. I was able to obtain a DNA profile,  
18 and it matched the profile that I obtained from the buccal  
19 swab represented as being from Spencer J. Altschuler.

20 Q. And were you able to get a statistical frequency  
21 in regards to that?

22 A. Yes, I did. I reported that it was greater than 1  
23 in 700 billion. That is approximately the -- 100 times the  
24 population of the Earth. Although I did obtain a statistic  
25 higher than that, we use that as a cutoff.

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1 MS. ZERAN: No further questions at this time.

2 THE COURT: All right. Counsel -- Mr. Kallaher.

3 CROSS-EXAMINATION

4 BY MR. KALLAHER:

5 Q. I'm sorry. Are you a doctor?

6 A. No.

7 Q. You're not a doctor?

8 A. No.

9 Q. I just want to make sure I address you properly.

10 A. No problem.

11 Q. Good afternoon.

12 You were not able to retrieve any usable DNA from  
13 the air bag, correct?

14 A. I wasn't able to make a comparison because of the  
15 insufficient amount.

16 Q. Okay. So you can't tell whose blood that was?  
17 You can't tell this jury whose blood that was?

18 A. That's correct.

19 Q. But you were able to tell from a blood sample  
20 received that was on the door handle?

21 A. That's correct.

22 Q. That was -- or at least compared to the swab of  
23 the guy?

24 A. That's correct.

25 Q. Were you able to tell the age of that blood from

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1 the door handle?

2 A. No, I was not.

3 Q. You were not able to tell when that blood was  
4 deposited there, were you?

5 A. I cannot.

6 Q. There's no way to do that, is there?

7 A. No.

8 MR. KALLAHER: That's all I have. Thank you.

9 THE COURT: Any redirect?

10 MS. ZERAN: No, Your Honor.

11 THE COURT: Very well. Thank you.

12 All right. Ladies and gentlemen, the State has  
13 informed us that its remaining two witnesses are tied  
14 up testifying in other courts today in another city,  
15 and so we're going to have to recess at this time until  
16 tomorrow morning. We still are on pace to conclude the  
17 case tomorrow. Just easier for your plans in that  
18 regard. But we will be recessing earlier.

19 Once again, you are instructed you're not yet, of  
20 course, to form any fixed or definite opinion about the  
21 merits of the case. You're not yet to discuss the case  
22 with anyone, including among yourselves.

23 It looks like we have a few more matters on the  
24 docket tomorrow morning than we did this morning.

25 We're going to -- I think we should be able to complete

1       them by 9:30. At least I'll make every effort to do  
2       that.

3               So I'm going to ask you to be back here in the  
4       area of the fifth floor elevators by 9:25 so we can try  
5       to start promptly at 9:30. Enjoy your afternoon off to  
6       the extent that you can.

7               If you'll please leave your notepads on your  
8       chairs and accompany the court deputy.

9               (The jury exits the courtroom.)

10       **THE COURT:** All right. You may be seated.

11               Okay. We're somewhat limited in what we can do  
12       this afternoon before we recess.

13               Mr. Altschuler, let me address you, though, for a  
14       moment. Mr. Altschuler, at some point tomorrow, the  
15       State will be resting its case. And provided the case  
16       goes beyond that point, as the defense, you have the  
17       right -- and as the defendant -- you have the right to  
18       testify in this case, if you choose to do so. You also  
19       have the right to choose not to testify.

20               Do you understand?

21       **THE DEFENDANT:** Yes, Your Honor.

22       **THE COURT:** You can remain seated. That's fine.

23       **THE DEFENDANT:** Okay, Your Honor.

24       **THE COURT:** I appreciate the professionalism of  
25       your counsel, but I don't have any problem with you

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1           being seated for this.

2           Mr. Altschuler, if you elect to testify in this  
3           case, the jury will be instructed that they are to  
4           consider your testimony applying the very same  
5           standards that we use in considering the testimony of  
6           every other witness. Do you understand?

7           **THE DEFENDANT:** Yes, Your Honor.

8           **THE COURT:** You also have the right to choose not  
9           to testify. The jury has been instructed that in every  
10          criminal proceeding, a defendant has the absolute right  
11          to remain silent, that at no time is it the duty of a  
12          defendant to prove his or her innocence.

13          They've also been instructed that the defense has  
14          no burden of proof whatsoever, and the defendant is not  
15          required to present evidence or prove anything.

16          They've further been instructed that if you elect  
17          not to testify, that they are not to allow that  
18          decision by you not to testify in any way to influence  
19          the verdict.

20          If you choose not to testify, there's another  
21          instruction along those same lines that will be given  
22          at your request, instructing the jury that your  
23          decision not to testify is the exercise of a  
24          fundamental constitutional right, and they're not to  
25          draw any inference of guilt from your exercise of that

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1 right.

2 Do you understand that?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** Okay. The reason I'm having this  
5 discussion with you is the decision to testify or not  
6 testify is a personal decision to be made by you. You  
7 have your attorneys who make most decisions for you  
8 during the course of the trial, but this is a decision  
9 for you to make, the same as the decision to plead not  
10 guilty or plead guilty.

11 Do you understand?

12 **THE DEFENDANT:** Yes, Your Honor.

13 **THE COURT:** Okay. In making that decision, you're  
14 certainly well-advised to heavily weigh any  
15 recommendation your attorneys may have in that regard,  
16 but at the end of the day, it's your call to make. I'm  
17 not going to ask you which way you intend to go at this  
18 time, but I want to make sure you fully understand your  
19 rights in this regard.

20 Do you have any questions about that?

21 **THE DEFENDANT:** Not at this time, Your Honor.

22 **THE COURT:** Well, you'll have plenty of time to  
23 consult with Mr. Kallaher and Mr. Deluca before you  
24 have to make that decision. But I just want to make  
25 sure you understand what your options are.

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1           **THE DEFENDANT:** Thank you, Your Honor.

2           **THE COURT:** Thank you.

3           Okay. I don't know that a whole lot would be  
4           gained by going over the draft instructions at this  
5           time. They've been changed somewhat from the last set  
6           I set out -- sent out.

7           I will say that as to Count 1, vehicular homicide,  
8           I included the definitions of willful and wanton, which  
9           are included in the other reckless driving charges. I  
10          don't know why it's not in the standard on vehicular  
11          homicide.

12          **MR. KALLAHER:** That was gonna be my only request  
13          from the standard. Thank you.

14          **THE COURT:** Okay. Does either side know of any  
15          additional or different instructions that they'll be  
16          requesting that are not included within the draft?

17          **MS. SANDERS:** No, Your Honor.

18          **MR. KALLAHER:** No, sir.

19          **THE COURT:** And the lesser includeds -- and I  
20          renamed Count 3 because there's no allegation of  
21          property damage. The allegation seems to be strictly  
22          personal injury to Rodrick Burke, so I renamed that  
23          reckless driving causing injury and deleted reference  
24          to property damage and included injury to the person.

25          And what I have is lesser includeds at this point,

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1 Count 1 of vehicular homicide. I had reckless driving  
2 as a lesser included, reckless driving causing serious  
3 bodily injury, I have reckless driving causing injury.  
4 And reckless driving causing injury, I have a lesser of  
5 reckless driving.

6 If anyone requests additional -- well, we can  
7 address that at the time we go through the  
8 instructions. But if you know you're gonna be  
9 requesting an additional lesser, if you can let me know  
10 so I can have that to go.

11 **MR. KALLAHER:** Yes, sir. Just so you and the  
12 State know, the only one we're thinking about is  
13 culpable negligence. But I'm not sure we're going to  
14 be asking for that.

15 **THE COURT:** Okay. I'll get that ready in the  
16 event that you do.

17 And then in 3.9, weighing the evidence, of course  
18 I give the numbered paragraphs 1 through 5. And  
19 you-all will need to let me know if you're requesting  
20 any of the paragraphs -- numbered paragraphs 6 through  
21 10. And we'll wait until the end of the testimony to  
22 see if any of those are applicable. We'll include the  
23 paragraph regarding expert witnesses and the paragraph  
24 regarding testimony of a child.

25 And then depending on Mr. Altschuler's decision,

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1 we'll either give the paragraph regarding the defendant  
2 testifying or not. And, again, based on -- depending  
3 on that decision, if the defense requests it, I will  
4 give or delete 3.9(d), defendant not testifying.

5 As to 3.9(e), defendant's statements, there really  
6 hasn't been any evidence, at least to this point, of  
7 any statement claimed to have been made by the  
8 defendant. Other than the statement that Mr. Burke  
9 said that --

10 **MS. SANDERS:** The water.

11 **THE COURT:** Or asked if he wanted water, if that  
12 was, in fact, Mr. Altschuler he was talking to. But  
13 that's not a statement that 3.9(e) would apply to.

14 So -- and I do need to include single defendant,  
15 multiple counts. I'd eliminated that when I read the  
16 wrong version of the information, so I'll put that back  
17 in.

18 Other than that, I think the instructions, when we  
19 get to that point, will be pretty straightforward.

20 So unless there's something else we need to  
21 discuss at this point regarding instructions -- is  
22 there anything else we can accomplish this afternoon?

23 **MR. KALLAHER:** Judge, we can -- we can move it  
24 along. We'll stipulate to exactly what the doctors are  
25 gonna say.



1           **THE COURT:** Well ...

2           **MR. KALLAHER:** Other than that, no, sir.

3           **THE COURT:** Okay. All right. And we're premature  
4 for the motion for judgment of acquittal, so ...

5           All right. So you have the two doctors tomorrow?

6           **MS. SANDERS:** Yes. And they are going to be here  
7 at 9:00 a.m.

8           **THE COURT:** Okay. We'll try to start up promptly  
9 at 9:30. I've got, I believe, one sentencing, one or  
10 two pleas, and then maybe a couple of arraignments and  
11 a couple jury trials.

12           **MS. ZERAN:** Trial calls. He's got at least two.

13           **THE COURT:** All right. Very well. Then I guess  
14 that's all we can accomplish this afternoon. So unless  
15 there's something further, we'll be in recess in this  
16 case until tomorrow morning at 9:30.

17           **MS. SANDERS:** Thank you, Judge.

18           **MS. ZERAN:** Thank you, Your Honor.

19           **THE COURT:** Thank you, folks.

20           (Court was recessed at 2:08 p.m.)

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**P R O C E E D I N G S**

**(October 4, 2017; 9:35 a.m.)**

**THE COURT:** Good morning.

(Court was at ease.)

**THE COURT:** All right. We're short one juror, I'm told.

(Court was at ease.)

**COURT DEPUTY:** They're coming down the hallway now.

**THE COURT:** All right. Okay. We are on record in Case 16-CF-583, State of Florida versus Spencer Jordan Altschuler. The defendant is present with counsel and the assistant state attorneys.

Our last juror is apparently walking down the hall.

Are there any matters we need to address before we return the jury and resume testimony?

**MS. SANDERS:** No, Your Honor.

**MR. KALLAHER:** No, Judge.

**THE COURT:** Okay. So as soon as -- let me know as soon as they're ready. They can bring the jury in.

(The jury enters the courtroom.)

**THE COURT:** All right. You may be seated.

Good morning, ladies and gentlemen. Welcome back.

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1 Does the State recognize the presence of the jury?

2 **MS. SANDERS:** Yes, Your Honor.

3 **THE COURT:** Defense?

4 **MR. KALLAHER:** Yes, Judge.

5 **THE COURT:** All right. Very well. Then, State,  
6 you may call your next witness.

7 **MS. SANDERS:** Yes, Your Honor. The State would  
8 like to call Dr. Gary Utz.

9 **MR. KALLAHER:** Judge, may we approach?

10 **THE COURT:** You may.

11 (At the bench.)

12 **MR. KALLAHER:** She's gonna show two photographs.  
13 I thought we agreed to one, which I objected to that  
14 one.

15 **MS. SANDERS:** It's not -- it's what the Court said  
16 I could show. And then this is the pictures of the  
17 injuries.

18 **THE COURT:** I excluded the pictures of the  
19 injuries. I find they're more prejudicial than  
20 probative since there's no dispute to the cause --  
21 manner and cause of death, depending on  
22 cross-examination.

23 **MS. SANDERS:** That's my mistake. I'll just ask  
24 him about the injuries. Can I just briefly tell him?

25 **THE COURT:** Yeah.

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1 (In open court.)

2 **THE COURT:** All right. You may proceed.

3 **MS. SANDERS:** Thank you, Judge.

4 **GARY LEE UTZ, M.D.**

5 was called as a witness and, having first been duly sworn,  
6 testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MS. SANDERS:**

9 **Q.** Good morning, sir.

10 **A.** Good morning.

11 **Q.** Can you please state your full name for the  
12 record, spelling your last name?

13 **A.** Gary Lee Utz, U-t-z.

14 **Q.** And you are a medical examiner?

15 **A.** That's correct.

16 **Q.** So, Dr. Utz, can you just briefly tell us a little  
17 bit about yourself, your background and your education?

18 **A.** Sure. So I have all of my education and training  
19 in Cincinnati, Ohio. I have a Bachelor of Science Degree  
20 from University of Cincinnati; a Doctor of Medicine Degree  
21 from the same institution; five years of training in  
22 anatomic and clinical pathology at University Hospital, also  
23 in Cincinnati; a year of training in surgical pathology,  
24 followed by a year of training in forensic pathology at the  
25 Hamilton County Coroner's Office, also in Cincinnati;

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1 certified by the American Board of Pathology in anatomic,  
2 clinical, and forensic pathology; licensed to practice  
3 medicine in the states of Ohio and Florida. I've performed  
4 over 5,000 autopsies in my career, and I've testified in  
5 criminal court proceedings several hundred times.

6 Q. And what is the role of a medical examiner? What  
7 are your duties?

8 A. Well, the medical examiner is charged in the state  
9 of Florida with investigating death; particularly those  
10 deaths that are due to violence. However, sometimes we  
11 can't tell, so we end up doing a lot of investigation of  
12 deaths which are nonviolent but simply do not have a  
13 sufficient documentation for us to allow a -- a physician  
14 who is not a medical examiner to certify the death.

15 Every person that dies in the state of Florida --  
16 and every other state -- has to have that death certified, a  
17 death certificate, and the cause and manner of death  
18 specified by the attending physician.

19 Q. And, um, Dr. Utz, you've given an opinion  
20 testimony in regards to the manner of death, as well as  
21 cause of death before?

22 A. Yes. Many times.

23 MS. SANDERS: Your Honor, at this time State would  
24 like to elicit opinion testimony from Dr. Utz.

25 THE COURT: You may elicit opinion testimony from  
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1 the witness.

2 MS. SANDERS: Thank you.

3 BY MS. SANDERS:

4 Q. Dr. Utz, back on February, I would say 15th of  
5 2015, did you perform an autopsy on Ms. Ivery Walker?

6 A. I did.

7 Q. And part of doing this autopsy, you were able to  
8 document her injuries, correct?

9 A. Correct.

10 MS. SANDERS: Your Honor, I've previously shown  
11 defense counsel the Court's Exhibit. May I also show  
12 the witness?

13 THE COURT: Okay. You may show the witness.

14 For the record, which exhibit are you referring  
15 to?

16 MS. SANDERS: My apologies. Court's Exhibit 1,  
17 F-2.

18 THE COURT: Actually, counsel approach.

19 (At the bench.)

20 THE COURT: That's not a Court's exhibit. The  
21 Court's exhibit was the photos that were excluded.

22 MS. SANDERS: Okay.

23 THE COURT: That's a State's exhibit.

24 MS. SANDERS: It's circled Court.

25 THE COURT: Then that needs to be remarked. The

1 State's Exhibit --

2 So it would be State's Exhibit, next letter in --

3 R?

4 THE CLERK: I.

5 THE COURT: I? Okay. And -- okay. So you're  
6 going to show him State's Exhibit I and then move it in  
7 when it's offered into evidence, just to avoid you  
8 having to repeat your objection. You object on the  
9 same grounds you previously raised?

10 MR. KALLAHER: Yes, sir.

11 THE COURT: So the record's preserved. You won't  
12 need to further object.

13 MR. KALLAHER: Does this colloquy go on the  
14 record?

15 THE COURT: Yes, this is on the record.

16 (In open court.)

17 MS. SANDERS: I'm going to approach, Your Honor,  
18 with State's I for identification purposes.

19 BY MS. SANDERS:

20 Q. Dr. Utz, do you recognize this document?

21 A. I do.

22 Q. And is this how you received the body?

23 A. Yes, it is.

24 MS. SANDERS: Your Honor, at this time State would  
25 like to introduce State's I into evidence.

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1           **THE COURT:** Anything further?

2           **MR. KALLAHER:** Nothing further, Your Honor.

3           **THE COURT:** Okay. State's Exhibit I will be  
4           received as previously discussed as State's Exhibit 13  
5           in evidence.

6           (State's Exhibit No. 13 was received in evidence.)

7           **MS. SANDERS:** May I publish, Your Honor?

8           **THE COURT:** You may publish the exhibit.

9   **BY MS. SANDERS:**

10          **Q.** And as stated previously, this is the body that  
11          was identified as Ms. Ivery Walker?

12          **A.** Yes, it is.

13          **Q.** Okay. And, Dr. Utz, while you were conducting  
14          your investigation, did you find a cause of death?

15          **A.** The deceased had a number of injuries, two of  
16          which independently would have accounted for the death, and  
17          those are lacerations of the aorta. She had two of them.  
18          She also had a fracture of the spine, the backbone. And she  
19          also had a fracture of the pelvis. Probably neither of  
20          those injuries would have been fatal on their own. She also  
21          had multiple rib fractures and some lacerations of the lung.  
22          Those are potentially fatal injuries in themselves.

23                 It's also possible that there were other injuries,  
24          particularly a head injury, which was not identified due to  
25          extensive charring after death by the fire.

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1           Q.    Now, you see that the body was charred.  Could you  
2   determine whether or not if Ms. Walker would have been alive  
3   if -- when she sustained those particular injuries?

4           A.    Well, certainly she was not alive for the entire  
5   amount of time that it took to produce that extensive  
6   charring.  Even if she hadn't been injured, she would have  
7   succumbed before the body was so extensively charred.  Now,  
8   can I tell you whether she was alive at the time that the  
9   fire started?  And I cannot.

10          Q.    And why is that?

11          A.    Well, in fires that occur like this in vehicles,  
12   they're often flash fires.  They don't often produce soot  
13   that we look for in the airway nor, often, carbon monoxide,  
14   which we look for in the blood to determine whether a person  
15   was breathing at the time that the fire occurred.

16                I did see some foamy material in the airway at the  
17   time of the autopsy.  However, that can sometimes be what we  
18   call a postmortem artifact when a body has been burned.  So  
19   I can't use that to say, yes, she was breathing after the  
20   accident and was alive, although fatally injured at the time  
21   of the fire.

22          Q.    So the cause of death would be what, multiple  
23   traumatic injuries?

24          A.    Yes.

25          Q.    And the manner of death would be?

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1           **A.**    Accident.

2                   **MS. SANDERS:**  Thank you, Doctor.  No further  
3           questions.

4                   **MR. KALLAHER:**  Just briefly, Judge.

5                                   **CROSS-EXAMINATION**

6   **BY MR. KALLAHER:**

7           **Q.**    Good morning, Dr. Utz.

8           **A.**    Good morning.

9           **Q.**    As part of your autopsy, did you take a blood  
10   sample from Ms. Walker's remains?

11          **A.**    I did.

12          **Q.**    And you sent that to a lab to have it analyzed?

13          **A.**    Yes.

14          **Q.**    Isn't it true that that analysis revealed that  
15   there was no CO in the blood, no carboxyhemoglobin?

16          **A.**    Correct.

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

18                   **THE COURT:**  Okay.  Any redirect?

19                   **MS. SANDERS:**  No, Your Honor.

20                   **THE COURT:**  Thank you, Doctor.  You may step down.

21                   **THE WITNESS:**  Thank you.

22                   **THE COURT:**  All right.  You may call your next  
23   witness.

24                   **MS. SANDERS:**  Yes, Your Honor.  The State would  
25   like to call Dr. Mary Farrell.

                  A-270

1                                   **MARY FARRELL, M.D.**

2       was called as a witness and, having first been duly sworn,  
3       testified as follows:

4                   **THE WITNESS:**   Yes, I do.

5                   **COURT DEPUTY:**   Over here, ma'am.   You want to get  
6       your purse or leave it there?

7                   Have a seat.   Watch your step.

8                                   **DIRECT EXAMINATION**

9       **BY MS. SANDERS:**

10           **Q.**    Good morning.   Can you please state your full name  
11       for the record, spelling your last name?

12           **A.**    Mary Majella Farrell.

13           **Q.**    And you are a medical doctor, correct?

14           **A.**    Yes.

15           **Q.**    Can you briefly just tell us your background, your  
16       education?

17           **A.**    I grew up in Ireland, and I went to medical school  
18       in Ireland and Dublin.   I graduated in 1979.   I did two  
19       years of internal medicine, and I came to the United States  
20       in 1981.   I completed a three-year residency in pediatrics,  
21       and then subsequently a two-year fellowship in pediatric  
22       critical care at Dallas Children's Hospital in Dallas.

23           **Q.**    And you currently work for?

24           **A.**    I currently work at -- I currently work for a  
25       group called Florida Pediatric Associates but is contracted

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1 to provide services to the critical care unit at Arnold  
2 Palmer Hospital.

3 Q. And how long have you been doing that?

4 A. For 28 years.

5 Q. So you specifically specialize in pediatric care?

6 A. Yes.

7 Q. Back in February 15th of 2015, did you have an  
8 opportunity to -- to examine a patient by the name of  
9 Armonie Pitts?

10 A. Yes, I did.

11 Q. And how did she come about? Like, how did she  
12 appear to you? How did she get there?

13 A. Um, I was on call for the pediatric critical care  
14 unit on the day that Armonie was admitted to the intensive  
15 care unit. I believe she was flown to the trauma unit in  
16 the emergency room department and then was subsequently  
17 admitted to the intensive care unit.

18 Q. Were you given any prior history about her  
19 conditions at that time?

20 A. Nothing except what I gleaned from the notes.

21 Q. Okay. And part of your examination, what did you  
22 find?

23 A. She had just returned from the operating room, and  
24 she was under general anesthesia at that time. She was on a  
25 ventilator being maintained by mechanical machine. And she

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1 was on -- also receiving sedation, so she was not totally  
2 awake or alert.

3 Q. And are you aware if there were any x-rays --  
4 x-rays or any other examinations done on Ms. Pitts?

5 A. Yes. She had x-rays performed when she arrived in  
6 the trauma unit.

7 Q. What were those results of the x-ray?

8 A. The x-ray results -- and I'm reading -- referring  
9 to -- I'm not a radiologist. I'm referring to the -- what's  
10 documented in the medical record.

11 Q. Of course.

12 A. She had multiple x-rays, including, I believe, a  
13 chest x-ray, a CAT scan of her abdomen, CAT scan of her  
14 cervical spine, and a CAT scan of her head.

15 Q. In regards to the cervical spine, what was the  
16 findings?

17 A. Well, initially, I believe there were no recorded  
18 findings on the cervical spine. No orthopedic injuries on  
19 the cervical spine films.

20 Q. What about the CAT scan?

21 A. Pardon?

22 Q. The CAT scan? I'm sorry.

23 A. That was the CAT scan.

24 Q. No. What were the findings?

25 A. I just said that.

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1           **Q.**    Oh.  I thought I asked you about the cervical  
2 spine.  Okay.

3                   After the scans and the x-rays were conducted,  
4 what else did you do?

5           **A.**    She was maintained on mechanical ventilator, which  
6 is an artificial machine to help her breathe because she was  
7 not able to breathe on her own.

8           **Q.**    Okay.

9           **A.**    She had support for intravenous fluids.  She also  
10 needed support for her blood pressure, as she had suffered  
11 neurogenic shock.

12          **Q.**    What is that?

13          **A.**    Neurogenic shock occurs as a result -- generally a  
14 spinal cord injury where the sympathetic nerves are altered  
15 to the blood vessels, which does not allow the patient to  
16 maintain their normal blood pressure.

17          **Q.**    Did you conduct any additional research in  
18 reference to her spinal cord injuries?

19          **A.**    She had, I believe, an MRI performed later to  
20 delineate her injuries.

21          **Q.**    What were the findings?

22          **A.**    She had a ligamentous injury of her cervical  
23 spinal cord.

24          **Q.**    What does that mean?

25          **A.**    It's injuries to the supporting tissues which

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1 align the spinal cord.

2 Q. Anything else?

3 A. She had also had fractures of her lumbar  
4 vertebrae.

5 Q. What are those -- where are those located? I'm  
6 sorry.

7 A. She had fractures at L4, lumbar vertebrae 4 and 5.

8 Q. If we're looking at the body, where would that be  
9 located?

10 A. In the lower -- in the lower back.

11 Q. Lower back. Okay. Any additional injuries?

12 A. Um, I believe she had some spinous process  
13 injuries, again, around the lower lumbar area. And her CAT  
14 scan, obviously, of her abdomen had some free fluid, which  
15 was located in the pelvis. And she had a fracture also of  
16 her left iliac wing, which is her pelvis.

17 Q. Does that mean it was crushed?

18 A. Well, a fracture, it can be a crush, but it can  
19 also just be a break.

20 Q. And what happens when this -- when there's a break  
21 in the pelvic area?

22 A. Um, generally those are not typically serious  
23 injuries. They heal on their own.

24 Q. Okay. Would you consider the fractures to the  
25 Lumbar 4 and 5 to be serious bodily injury?

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1           **A.**    Yes.

2           **Q.**    And are -- as a result of those fractures to 4 and  
3   5, did it result in paralysis?

4           **A.**    Yes.

5           **Q.**    Was that from the neck down, waist down?

6           **A.**    The ligamentous injury to her cervical cord  
7   resulted in her being paralyzed from the neck down.

8           **MS. SANDERS:** Thank you. No further questions.

9           **THE COURT:** Okay. Mr. Kallagher?

10          **MR. KALLAHER:** No questions, Judge.

11          **THE COURT:** Thank you, Doctor. You may step down.  
12   State?

13          **MS. SANDERS:** Your Honor, before the State rests,  
14   I do have medical records to submit into evidence of  
15   both Armonie Pitts as well as Rodrick Burke, and those  
16   have been submitted to defense counsel as well.

17               And I do have certified custodian records on each  
18   of these records. And I would like to admit them into  
19   evidence at this time.

20          **MR. KALLAHER:** No objection. That's fine.

21          **THE COURT:** All right. Fair enough. Have they  
22   been marked?

23          **MS. SANDERS:** They have. And, for the record, the  
24   medical records of Armonie Pitts is State's -- I think  
25   that's P for identification purposes. It's 43 pages.



1           And the medical records for Rodrick Burke is  
2           State's Q, and it's 159 pages.

3           **THE COURT:** All right. State's Exhibit P for  
4           identification will be received as State's Exhibit 14.  
5           Exhibit Q will be received as State's Exhibit 15  
6           without objection.

7           (State's Exhibit Nos. 14-15 were received in  
8           evidence.)

9           **MS. SANDERS:** The State would rest at this time,  
10          Your Honor.

11          **THE COURT:** All right.

12          Ladies and gentlemen, the State has rested its  
13          case. There are some matters we will need to take up  
14          outside of your presence, so we'll give you a recess  
15          while we do this. Once again, you're reminded that  
16          you're not yet to form any fixed or definite opinions  
17          about the merits of the case. You're not yet to  
18          discuss the case among yourselves. Leave your notepads  
19          on your chairs and accompany the court deputy.

20          **COURT DEPUTY:** All rise for the jury.

21          (The jury exits the courtroom.)

22          **THE COURT:** Okay. You may be seated.

23          All right. Mr. Kallaher, is there anything we  
24          need to address before we proceed further?

25          **MR. KALLAHER:** Yes, sir. At this time the defense

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1 would move for a judgment of acquittal. Are you  
2 prepared to hear argument?

3 **THE COURT:** Yes, sir.

4 **MR. KALLAHER:** Okay. Two elements of each of the  
5 three counts the State has failed -- as charged, the  
6 State has failed to prove, and that would be that  
7 Mr. Altschuler was actually driving the vehicle; and,  
8 two, that the vehicle operated in a reckless manner.

9 I'll start with the first. The State has not  
10 introduced sufficient evidence that Spencer Altschuler  
11 was driving at the time in question. No witness came  
12 on the stand and identified Mr. Altschuler as the --  
13 driving the vehicle, not even -- nobody could even put  
14 him at the scene of the accident. No witness could  
15 place him at the scene.

16 And the State's expert, Ms. McCaskill, did the  
17 cell phone historical analysis, and admitted that she  
18 couldn't -- she couldn't place the cell phone that was  
19 associated with Mr. Altschuler with any accuracy --  
20 accuracy. So they can't put him at the scene there.

21 And on top of that, there's no evidence in the  
22 record that Mr. Altschuler was in possession of that  
23 phone to begin with at the time.

24 And all of those hits that they were using was  
25 after the time of the accident. So that is

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1           insufficient.

2           That leaves the bloodstain on the car door handle.  
3           Officers -- I'm sorry -- the troopers collected an air  
4           bag, which they said had a bloodstain on it, but they  
5           couldn't get any DNA off of it, so there's no  
6           identification there.

7           The bloodstain on the door handle, the evidence is  
8           that the DNA matched to my client, the defendant,  
9           Mr. Altschuler. However, they cannot tell -- there is  
10          no evidence that the blood was deposited on that door  
11          handle at the time. That's not -- that area is not  
12          like an air bag where it could only get there as a  
13          result of the accident. That could have been put there  
14          months before. That could have been years before. If  
15          you look at the photograph that's in there, it's all  
16          scraped up. It's not even a bloodstain. It's --  
17          it's -- it looks like it's been there a long time.

18          In any case, there is -- there are many cases,  
19          Florida Supreme Court cases discussing this type of  
20          identification when it's circumstantial. And I'll  
21          point the Court to *Ballard*, that's 923 So.2d 475. And  
22          my associate here has case law for -- for everybody, if  
23          you'll allow him to circulate it.

24                 **THE COURT:** Okay.

25                 **MR. KALLAHER:** Okay. That's Florida Supreme Court  
                                  A-279

1       2006. That was a first-degree murder conviction that  
2       was overturned on purely circumstantial evidence of  
3       defendant's fingerprint on a waterbed frame, was  
4       insufficient because it could have been there at a  
5       different time other than the time of the crime. Okay?

6               And in this case -- or in that case, the State  
7       could not prove the fingerprint was left at the scene  
8       at the time of the crime. And that's exactly like what  
9       we have here. The bloodstain, there's no proof that  
10      that bloodstain got on that door handle at the time of  
11      the accident.

12             And *Ballard* cites an earlier Florida case, a 1982  
13      case, *Jaramillo*, which is 417 So.2d 257. Again, State  
14      could not prove prints left at the murder -- at the  
15      time of the murder, and it resulted in an overturned  
16      murder conviction.

17             And, again, this is precisely what we have in this  
18      case. The only evidence that puts Spencer Altschuler  
19      in the car at all is the blood. But the State hasn't  
20      proven that the blood was deposited at the time of the  
21      accident.

22             This, Judge, is an inference-stacking type of  
23      argument, a perioding -- it's called pyramiding or  
24      stacking. In order for the jury to find that -- that  
25      that bloodstain was sufficient -- or puts

1 Mr. Altschuler behind the wheel of the car at the time  
2 of the accident, they would have to infer that the  
3 blood was left there at the time of the accident. And  
4 on top of that inference, they would have to infer that  
5 he was driving, that he was sitting in that seat at the  
6 time. Those are two inferences that have to be stacked  
7 on each other.

8 There are multiple other explanations for how that  
9 blood got there that haven't been addressed by the  
10 evidence; and to allow the jury to infer that that  
11 bloodstain means that Mr. Altschuler was driving at the  
12 time of the accident would be improper and it would be  
13 error.

14 I would also cite the Court to *Kennedy v. State*,  
15 781 So.2d 421. It's a Fourth DCA case. And *Baugh*  
16 *v. State*, 961 So.2d 198. That's Florida Supreme Court,  
17 2002. And both those cases discuss that it's  
18 impermissible to pyramid or stack inferences in the way  
19 that the State would have to do to prove that  
20 Mr. Altschuler was driving. In the vernacular, Judge,  
21 the State doesn't have a "wheel witness," and without  
22 that, they cannot prove one of the elements of the  
23 crime.

24 The second -- the second element that I want to  
25 talk about is whether or not the vehicle was operated

1       recklessly. And this is precisely the argument we had  
2       in the motion to dismiss. And, frankly, I don't see  
3       any other evidence, other than the evidence of the  
4       injuries that was introduced here today, that would  
5       indicate that there was any recklessness. Okay?

6               The -- the evidence shows that a pass was started  
7       in a -- an area of Highway 60 where it was legal to  
8       pass, and what it shows is the accident happened mere  
9       feet -- or if you want to do it in a time component, a  
10      fraction of a second into a double yellow line. It  
11      shows really nothing more than a mere inattention,  
12      possibly, inattention at the time.

13             There's nothing to show willful or wanton. And  
14      those are the two things that the State would have to  
15      show in order to get reckless driving, which is the  
16      element that they have to prove to get to -- actually,  
17      to prove all three charges in this case.

18             And I won't belabor the case law because we've  
19      gone over it before. I will, if you'd like to, but  
20      it's all in the record, and I would just point to that  
21      case law.

22             Judge, the State has not proven its prima facie  
23      case, and I submit it would be error to send this case  
24      to the jury. And we ask that you enter a judgment of  
25      acquittal on all three counts.

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1           **THE COURT:** Thank you.

2           Ms. Sanders?

3           **MS. SANDERS:** Your Honor, in reference to the  
4           identification issues that defense counsel may think  
5           the State has, if you remember from the witnesses that  
6           was presented on Monday, as well as yesterday, all of  
7           our witnesses indicated that they saw a white male  
8           driving that black vehicle. They also indicated that,  
9           yes, they could not see his face, but they did see a  
10          white male, medium build, coming out of that vehicle.

11          In addition to that, Rodrick Burke stated that the  
12          white male had scrapes on his arms and that white male  
13          kept asking him if he wanted water, and if he wanted to  
14          use his phone. Now, Rodrick used that person's phone  
15          and called his mother, and he indicated to the Court  
16          what number he dialed.

17          Fast-forward to Ms. McCaskill's testimony. She  
18          indicated that the only way she can tell that the phone  
19          is in the area is if it's making outgoing calls or if  
20          he -- or if that person's receiving incoming calls.

21          If Your Honor remembers, the witness Rodrick Burke  
22          called his mother on the defendant's phone. That phone  
23          was pinged in that same exact location during the same  
24          time of the accident.

25          Then if Your Honor remembers from Trooper

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1 Gensler's pictures, he indicated that only the air bag  
2 from the driver's side deployed. When we looked at  
3 pictures on the passenger's side, there was nothing.  
4 There was no bodily fluids located on the passenger's  
5 side. I asked him, if someone was sitting on that  
6 passenger's side with that collision, wouldn't the air  
7 bag deploy? Yes.

8 So the only person we have in this vehicle is the  
9 defendant, Spencer Altschuler, who was also identified  
10 by Trooper Hildreth, who also testified that he called  
11 the defendant. The defendant had been released from  
12 the hospital, and later on he did speak with the  
13 defendant at his attorney's office where he obtained  
14 the buccal swab.

15 The buccal swab was sent along with that air bag  
16 with the portions of the door, and the substance, the  
17 red substance that was found on the door was compared  
18 to the defendant's buccal swab, and we now know that  
19 it's Spencer Altschuler who was driving the vehicle. I  
20 think identification of someone driving -- or  
21 identification of a perpetrator in any case goes to  
22 weight of the evidence, and that should go to the jury  
23 to consider.

24 I think the State has proven, by substantial,  
25 competent evidence that the defendant was driving in



1           this particular case.

2           Now, in reference to reckless manner, the State  
3           also agrees that it's proven by competent evidence,  
4           through its witnesses, through the evidence that was  
5           presented throughout this trial, that he was driving in  
6           a reckless manner. The fact that Ms. Bellis testified  
7           that there was ample opportunity for the defendant to  
8           move over, she was honking at him, he obviously was not  
9           paying attention because if he was, he would have  
10          realized that: No. 1, he was in a no passing zone;  
11          No. 2, he needed to change lanes quickly. But he  
12          didn't do so.

13          And as a result of him driving westbound on an  
14          eastbound lane going into, I think, Trooper Gensler  
15          indicated 74 feet into that no passing zone, his  
16          actions resulted in the death of Ms. Walker,  
17          seriously [sic] bodily injury to Armonie Pitts and  
18          injury to Rodrick Burke. I provided case law with my  
19          motion to dismiss, *State v. Gensler*, 929 So.2d 27 --

20               **THE COURT:** I'm sorry. 929?

21               **MS. SANDERS:** 929 So.2d 27. It was, like, the  
22          last paragraph of my motion to dismiss.

23          And basically that case points out that where  
24          there's reasonable minds that may fight about whether  
25          one person's actions were reckless or not, it's not for

1 the Court to determine that. That goes to the jury to  
2 decide what the defendant's actions were on that day,  
3 whether or not he was reckless. And I think from the  
4 testimony that was presented throughout the trial, in  
5 addition to the evidence presented to Your Honor, I  
6 think the State has proven its case beyond a reasonable  
7 doubt at this time, and it should go to the jury.

8 **THE COURT:** Okay. Let me address the issues in  
9 reverse order.

10 First, with respect to the sufficiency of the  
11 evidence, to establish a reckless driving to support  
12 either the vehicular homicide charge or the two  
13 reckless driving charges, this is not a case in which  
14 there's evidence of speed. The defendant -- there's no  
15 evidence that the defendant was speeding. Or even if  
16 he were speeding, it was by any substantial amount.  
17 There's no evidence of the defendant driving in any  
18 sort of erratic manner.

19 But there is evidence that the defendant went to  
20 pass Ms. Bellis' vehicle after having passed earlier  
21 Angel Lendic's vehicle.

22 They're on a straight stretch of roadway, two-lane  
23 highway. It was not a no passing zone when the  
24 defendant initiated the pass. And without some  
25 indication by signage or otherwise that a no passing

1 zone was approaching, there's nothing to put a person  
2 on notice that there is a no passing zone farther down  
3 the road.

4 And although the defendant returned -- the  
5 collision occurred in the no passing zone, it was -- as  
6 I said, it was one which the defendant would not have  
7 noticed when he initiated the pass.

8 So the defendant came up on Ms. Bellis' vehicle  
9 and then for some unknown reason, drove along beside  
10 her for some period of time without overtaking her  
11 vehicle. And it got to the point that Ms. Bellis  
12 became frantically concerned, stating twice, "What's he  
13 doing? What's he doing?" And then she began honking  
14 her horn at him to get his attention. And the driver  
15 still continued in that lane without moving over.

16 Mr. Lendic indicated that the driver drove  
17 three-quarters of a mile to a mile. Ms. Bellis said he  
18 drove 30 seconds or so in the wrong lane when he had  
19 the ability to move back into the proper lane. There  
20 was nothing to preclude him from returning to the lane.  
21 And by driving in the oncoming lane, he certainly was  
22 endangering the safety of other people and property.  
23 In the oncoming lane, people could clearly be seen  
24 coming that direction.

25 It's a closer call than many of the cases cited.

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1 And the *Gensler* case you talked about, the defendant in  
2 that case was driving 90 in a 45-mile-an-hour zone and  
3 disregarded a -- I believe a flashing yellow light.

4 But in this case, based on the cases presented at  
5 the hearing on the motion to dismiss, the Court finds  
6 that whether the defendant's actions in driving for  
7 three-quarters of a mile to a mile -- if the jury  
8 believes that statement is accurate, that testimony is  
9 accurate -- or driving after he could have passed  
10 Ms. Bellis for 30 seconds, which would be a half-mile  
11 in the wrong lane while having room to move back into  
12 the right lane, and nothing blocking him from moving  
13 into the right lane -- to the proper lane, the Court  
14 finds that that is sufficient to create a jury question  
15 as to whether that constituted reckless -- reckless  
16 driving or operating a motor vehicle willfully,  
17 wantonly, in a manner likely to cause death or injury  
18 to another.

19 On the issue of identity, again, there's no one at  
20 the scene of the crime who identified the defendant,  
21 Spencer Jordan Altschuler, as the driver. But there's  
22 testimony -- the testimony was different among the  
23 witnesses as to who was in the vehicle that was  
24 passing.

25 As I recall, Rodrick Burke believed he saw two

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1 people in the vehicle. Other witnesses said there was  
2 one or they didn't know. They couldn't see who was in  
3 the vehicle.

4 Mr. Bellis and Mr. Lendic, Angel Lendic and Jacob  
5 Lendic all said they saw the defendant exit the vehicle  
6 that was driven by the person who was passing. They  
7 didn't see anyone else in or around the vehicle.  
8 There's no evidence of anyone else in the vehicle. And  
9 when they said they saw the defendant, they did not  
10 identify the defendant, of course. They saw a white  
11 male exit that vehicle.

12 It -- there is evidence from which a jury could  
13 determine there's only one person in that vehicle. In  
14 the Court's view, as Trooper Gensler indicated, had  
15 there been weight in the passenger's seat, it operated  
16 properly, the passenger's side air bag would have  
17 deployed. If it wasn't operating, from the force of  
18 this crash, there certainly would have been -- whoever  
19 was in that passenger's seat, absent an air bag, likely  
20 would not have survived, but there certainly would have  
21 been damage to the interior components of the vehicle,  
22 the dashboard and/or the windshield.

23 So the Court finds there's sufficient evidence  
24 from which a jury could determine there was one person  
25 in the vehicle.

1           Let me get to the issue of the blood, as  
2           Mr. Kallaher points out, if the blood had been -- the  
3           defendant's blood had been identified as being on the  
4           air bag, that would have certainly been a more  
5           compelling circumstance for the State.

6           There's evidence that there was blood on the  
7           passenger -- excuse me -- on the driver door handle.  
8           There was testimony which, again, if believed by the  
9           jurors, that defendant had an injury to his arm.

10          There are three areas of blood on the driver's  
11          seat. And as defense correctly points out, other than  
12          the blood on the passenger -- excuse me -- on the air  
13          bag, there's no way to -- there's no proof as to when  
14          the other blood was deposited.

15          We have testimony that the defendant's name is  
16          Spencer Jordan Altschuler. We have testimony that the  
17          vehicle was owned by a person named Altschuler -- a  
18          different person named Altschuler. And whether or not  
19          that person is related to Mr. Altschuler or not is not  
20          in evidence. It's a fairly uncommon last name.

21          There's evidence that a phone associated with the  
22          defendant was in the general area. There's no evidence  
23          that it was in the specific area of the crash. But it  
24          was in the -- at least in the general area. Whether it  
25          was supposed to be in Fort Lauderdale or Pensacola or

1 Jacksonville, it was in the general vicinity.

2 And there's evidence that the phone that was  
3 associated with Spencer Jordan Altschuler was used by  
4 Rodrick Burke to make a phone call to a number that  
5 appears on the -- in the evidence as having been a call  
6 made to it by the phone associated with Mr. Altschuler  
7 immediately after the crash. There's evidence that  
8 within hours of the crash, Mr. Altschuler was reached  
9 by that phone by Trooper Hildreth.

10 I don't agree that this is the finding -- or the  
11 inference that the blood on the door handle occurred at  
12 the time of the accident and the defendant is driving  
13 is a stacking inference. If the blood occurred at the  
14 time of the accident, it would indicate the defendant  
15 was driving, because there's no other -- no evidence of  
16 any other individual in the vehicle.

17 Looking at the totality of the circumstances, the  
18 Court does find that there's sufficient evidence to  
19 create a jury question as to whether or not Spencer  
20 Jordan Altschuler was the individual driving the  
21 vehicle. The jury may determine it hasn't been proven  
22 beyond a reasonable doubt based on the same issues  
23 raised by the defense in this argument.

24 But I believe there's sufficient -- the evidence  
25 is sufficient in -- in the various factors that the

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1 jury can consider, which, if they concluded all of them  
2 in favor of the State -- or evaluate all of them in  
3 favor of the State, there's sufficient evidence from  
4 which they could determine that the defendant was  
5 driving the vehicle to the exclusion of anyone else.

6 So I'm going to deny the motion for judgment of  
7 acquittal.

8 Mr. Kallaheer, is the defense gonna be presenting  
9 evidence or testimony?

10 **MR. KALLAHER:** No, Your Honor.

11 **THE COURT:** Okay. What we'll do is we'll bring  
12 the jurors in. The defense can announce rest. We can  
13 excuse them for an early lunch. We'll address jury  
14 instructions and come back so it's not interrupted,  
15 argument and final instructions.

16 All right. Let's return our jury, please.

17 (The jury enters the courtroom.)

18 **THE COURT:** All right. You may be seated.

19 Does the State recognize the presence of the jury?

20 **MS. SANDERS:** Yes, Your Honor.

21 **THE COURT:** Defense?

22 **MR. KALLAHER:** Yes, Your Honor.

23 **THE COURT:** Very well. Mr. Kallaheer?

24 **MR. KALLAHER:** The defense rests.

25 **THE COURT:** Okay. Ladies and gentlemen, both the  
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1 State and the defense have rested their cases. What  
2 remains in this case is for the attorneys for each side  
3 to make their final arguments to you and for the Court  
4 to instruct you on the law and then for you to retire  
5 to consider your verdicts.

6 There are some matters that we're going to need to  
7 address regarding the jury instructions in this case,  
8 so I'm going to give you an early lunch at this time.  
9 It's 10:30. It's earlier than I hoped to, but what I  
10 want to do is have you hear the arguments, receive the  
11 instructions, and proceed with deliberations without  
12 interruption.

13 So we're going to recess until 1:00 for you. When  
14 we come back at 1:00, we'll start directly with the  
15 final arguments.

16 Once again, you are instructed that you are not  
17 yet to form any fixed or definite opinion about the  
18 merits of the case. You are not yet to discuss the  
19 case among yourselves or, of course, with anyone else.  
20 Leave your notepads on your chairs and accompany the  
21 court deputy.

22 (The jury exits the courtroom.)

23 **THE COURT:** All right. You may be seated.

24 **MR. KALLAHER:** Just a formality, defense renews  
25 its motion for judgment of acquittal.

1           **THE COURT:** Same grounds?

2           **MR. KALLAHER:** Yes, sir.

3           **THE COURT:** And the Court will enter the same  
4 ruling.

5           Okay. Let's go ahead and address the jury  
6 instructions then. And I -- just so we're all on the  
7 same page, let me print a quick copy.

8           Okay. Let's go through the instructions. What  
9 I've -- I can make another copy if you need it.

10          **MR. KALLAHER:** That's okay. I think we can all  
11 share.

12          **THE COURT:** All right. What you have is simply a  
13 draft from which we will work in our discussion. Once  
14 we finalize the instructions to be given, I'll delete  
15 the instruction number -- which are there for our  
16 benefit only -- and place each instruction on a  
17 separate page.

18          As we go through the instructions, if there are  
19 any objections or suggested additions, modifications,  
20 or deletions, if you'll let me know as we get to them,  
21 we can address it.

22          I'll give 3.1, introduction to final instruction.

23          3.2, statement of the charge. As I believe I  
24 mentioned yesterday, I changed the heading of Count 3  
25 to reckless driving causing injury because I believe

1 it's consistent with what was alleged -- or what  
2 actually was -- the evidence would support.

3 I will give 7 -- Instruction 7.9, vehicular  
4 homicide. If you'll take a look at that, see if there  
5 are any objections.

6 I included, or added to that, again, as I think we  
7 discussed yesterday, the definition of willful, as well  
8 as the definition of wanton.

9 Is there any objection to 7.9 as included, State?

10 **MS. SANDERS:** No objection.

11 **THE COURT:** Defense?

12 **MR. KALLAHER:** No objection.

13 **THE COURT:** Okay. And I will give 28.5, the  
14 definition of the elements of reckless driving causing  
15 serious bodily injury.

16 Any objection to that instruction, State?

17 **MS. SANDERS:** No objections.

18 **THE COURT:** Defense?

19 **MR. KALLAHER:** No objection.

20 **THE COURT:** Okay. And I will give 28.5, reckless  
21 driving causing injury.

22 Any objection, State?

23 **MS. SANDERS:** No, Judge.

24 **THE COURT:** Defense?

25 **MR. KALLAHER:** No, sir.

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1           **THE COURT:** And we'll have 3.4, when there are  
2           lesser included crimes or attempts. Those that I  
3           identified and included are reckless driving as a  
4           lesser of vehicular homicide and reckless driving  
5           causing injury and reckless driving, as to the charge  
6           of reckless driving causing serious bodily injury, and  
7           Count 3, reckless driving causing injury.

8           Is either side requesting any different additional  
9           or fewer lessers, State?

10          **MS. SANDERS:** No, Your Honor.

11          **MR. KALLAHER:** No, sir.

12          **THE COURT:** Okay. Then the Court will again give  
13          28.5, reckless driving causing injury as a potential  
14          lesser included offense of Count 2, which reads  
15          essentially the same as was previously -- as above.

16          And then 28.5, reckless driving as a lesser  
17          included offense of Counts 1, 2, and 3.

18          Any objections to the instructions on any of those  
19          lessers, State?

20          **MS. SANDERS:** No objection.

21          **THE COURT:** Defense?

22          **MR. KALLAHER:** No, sir.

23          **THE COURT:** Okay. I'll give 3.7, plea of not  
24          guilty, reasonable doubt, and burden of proof. This is  
25          straight from the standard. The only modification that

1 the Court has made is in the second-to-the-last  
2 paragraph, which in the standard says: If you have a  
3 reasonable doubt, you should find the defendant not  
4 guilty, I changed that to you "must" find the defendant  
5 not guilty. Other than that, it's straight from the  
6 standard.

7 Any objection, State?

8 **MS. SANDERS:** No objection.

9 **THE COURT:** Defense?

10 **MR. KALLAHER:** No objection.

11 **THE COURT:** I'll give 3.9, weighing the evidence.  
12 I'll give the numbered paragraphs 1 through 5. As to 6  
13 through 10, I'll give any requested that are supported  
14 by the evidence.

15 State, any requests?

16 **MS. SANDERS:** None, Your Honor.

17 **THE COURT:** Defense?

18 **MR. KALLAHER:** Judge, No. 8. Angel Lendic was  
19 impeached with a prior statement.

20 **THE COURT:** That would appear to be appropriate.

21 State, you wish to be heard?

22 **MS. SANDERS:** No. No objection.

23 **THE COURT:** I will give 1 through 5. I will give  
24 paragraph 8, which will be renumbered as paragraph 6.  
25 I'll delete the other numbered paragraphs.

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1 I'll give the unnumbered paragraph beginning:  
2 Whether the State has met its burden; the unnumbered  
3 paragraph that begins: The fact that a witness is  
4 employed in law enforcement; the unnumbered paragraph  
5 beginning: Expert witnesses are like other witnesses;  
6 the unnumbered paragraph beginning: You've heard the  
7 testimony of a child.

8 Since Mr. Altschuler did not testify, I'll delete  
9 the paragraph relating to defendant testifying.

10 I'll give the unnumbered paragraph beginning: It  
11 is entirely proper for a lawyer to talk to a witness;  
12 and the unnumbered paragraph beginning: You may rely  
13 upon your own conclusion about the credibility.

14 Are there any other portions of instruction 3.9  
15 that the State wants included or excluded, other than  
16 what we've discussed?

17 **MS. SANDERS:** No, Your Honor.

18 **THE COURT:** Defense?

19 **MR. KALLAHER:** No, Your Honor.

20 **THE COURT:** Okay. And as to 3.9(d), defendant not  
21 testifying. Mr. Kallaher, I will give this or give  
22 either paragraph independently of the other or not give  
23 it. Entirely your discretion.

24 **MR. KALLAHER:** I would request that 3.9(d) be  
25 given.

1           **THE COURT:**   Okay.

2           **MR. KALLAHER:**   And I don't recall any statements,  
3           so ...

4           **THE COURT:**   No.   As to 3.9(d), you want both  
5           paragraphs given?

6           **MR. KALLAHER:**   Oh, I'm sorry.  
7           Yes, sir.   Please.

8           **THE COURT:**   Okay.   3.9(e), I intend to delete  
9           unless someone has a pretty strong argument that it  
10          ought to be included.

11          **MS. SANDERS:**   No, Your Honor.

12          **THE COURT:**   Okay.   So I'll delete 3.9(e).

13                 I will give 3.10, rules for deliberation; 3.11,  
14          cautionary instruction; 3.12, verdict; 3.12(a), single  
15          defendant, multiple counts; and 3.13, submitting case  
16          to the jury.

17                 Are there -- does the State agree with the  
18          instructions as we've discussed, or are there any  
19          additional modifications you'd request?

20          **MS. SANDERS:**   No, Your Honor.

21          **THE COURT:**   Defense?

22          **MR. KALLAHER:**   No, Your Honor.

23          **THE COURT:**   Okay.   As I said, I will put each  
24          instruction on a separate page and delete the  
25          instruction numbers.

1           While we're here, before we recess,  
2           Mr. Altschuler, as we discussed yesterday, of course,  
3           you have the absolute right to become a witness and  
4           testify, as well as the absolute right to choose not to  
5           testify.

6           Mr. Altschuler, you indicated that your decision  
7           was not to testify; is that correct?

8           **THE DEFENDANT:** Yes, Your Honor.

9           **THE COURT:** And that is a decision you made after  
10          talking to your attorneys; is that correct?

11          **THE DEFENDANT:** Yes, Your Honor.

12          **THE COURT:** Anyone force you or pressure you in  
13          any way --

14          **THE DEFENDANT:** No, Your Honor.

15          **THE COURT:** -- either to testify or not testify?

16          **THE DEFENDANT:** I'm sorry. Can you repeat that?

17          **THE COURT:** Anyone pressure you in any way to  
18          testify or not testify?

19          **THE DEFENDANT:** No, Your Honor.

20          **THE COURT:** Okay. Thank you.

21          All right. Actually, that's -- I didn't realize  
22          quite how early it is, so we'll have a fairly extensive  
23          break, so I'll expect some very articulate closing  
24          arguments. You have --

25          **MR. KALLAHER:** Do we have a verdict form?

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1           **THE COURT:** I do. I'll show it to you when we get  
2 back. I haven't -- I usually do those during the  
3 closing arguments. But before it goes back to the  
4 jury, I'll show you. It will be standard.

5           We, the jury, find the defendant guilty as charged  
6 of vehicular homicide -- or guilty of vehicular  
7 homicide, as charged in Count 1 of the information.

8           We, the jury, find the defendant guilty of the  
9 lesser included offense of reckless driving.

10          We, the jury, find the defendant not guilty.

11          It will be a separate verdict form as to each  
12 count. And I'll submit them to you before they go  
13 back.

14          **MR. KALLAHER:** Okay. Thank you.

15          **THE COURT:** All right. Then if there's nothing  
16 further, we'll be in recess until 1:00.

17          (Lunch recess taken from 10:53 a.m. to 1:02 p.m.)

18          **THE COURT:** Okay. We are on record in  
19 Case 16-CF-583, State of Florida versus Spencer  
20 Altschuler. The defendant is present with counsel and  
21 the assistant state attorneys.

22          I'm told we have all our jurors. Are there any  
23 matters we need to address before we return the jury  
24 and proceed with closing argument?

25          **MS. SANDERS:** No, Your Honor.

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1           **MR. KALLAHER:** No, Your Honor.

2           **THE COURT:** Return our jury, please.

3           (The jury enters the courtroom.)

4           **THE COURT:** Okay. You may be seated.

5           Welcome back, ladies and gentlemen.

6           Does the State recognize the presence of the jury?

7           **MS. SANDERS:** Yes, Your Honor.

8           **THE COURT:** Defense?

9           **MR. KALLAHER:** Yes, sir.

10          **THE COURT:** Ladies and gentlemen, as we discussed  
11 before we recessed, both the State and defense have  
12 rested their cases. The attorneys will now make their  
13 final arguments to you. As with opening statements,  
14 what the attorneys say in final argument is not  
15 evidence, and you are not to consider it as evidence.  
16 However, please pay careful attention to the attorneys'  
17 arguments, as they are intended to aid you in your  
18 understanding of the case.

19          Each side will have equal time to make its  
20 argument to you. However, the State is entitled to  
21 divide this between an opening argument and a rebuttal  
22 argument after the defense has spoken.

23          So at this time, Ms. Sanders, does the State wish  
24 to make a final argument?

25          **MS. SANDERS:** Yes, Your Honor.

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1           **THE COURT:** You may proceed.

2           **MS. SANDERS:** May it please the Court?

3           **THE COURT:** You may proceed.

4           **MS. SANDERS:** Good afternoon.

5           As I stated earlier in this trial, everyone has a  
6           choice, and every choice has a consequence. And on  
7           February 15th, 2015, the defendant in this case,  
8           Spencer Altschuler, made a choice. He made a choice on  
9           State Road 60 to travel westbound on an eastbound lane.

10          His choice of remaining in that lane are the  
11          reasons why we are here today. His choice of remaining  
12          in that lane caused a crash which caused the life of  
13          Ivery Walker which caused seriously [sic] bodily injury  
14          to Armonie Pitts and to Rodrick Burke.

15          Now, I told you, as the State in this process, we  
16          are going to be presenting facts and physical evidence.  
17          Now that you've heard the facts, you've heard what all  
18          the witnesses had to say, you've seen the physical  
19          evidence. Things that I say are not in evidence, so I  
20          ask you to rely on what you heard from these witnesses  
21          and rely on what notes you've taken.

22          Now, I also told you that the judge is going to be  
23          giving you the law. And the law is contained in these  
24          jury instructions. And it states in Count 1, 2, as  
25          well as 3, it talks about recklessness. But before we

1 can even get there, for Count 1, we have to prove that  
2 the defendant was operating a motor vehicle.

3 We already have proven beyond a reasonable doubt  
4 that Ivery Walker is now dead. What I have to prove to  
5 you is whether or not the defendant's actions are  
6 reckless.

7 But before we can get there, we have to prove who  
8 was in the car. So I'm going to help you out here. I  
9 created a little chart.

10 **MR. KALLAHER:** Your Honor, may we approach?

11 **THE COURT:** You may.

12 (At the bench.)

13 **MR. KALLAHER:** Judge, I hadn't been given the  
14 opportunity to see the demonstrative aid, and that's  
15 what I was objecting to. Now that I've seen it, I do  
16 have an objection because it has facts that aren't in  
17 evidence. Specifically, the bottom left corner is  
18 talking about stuff in the car. The phone number is  
19 not in evidence. It wasn't argued during the JOA  
20 motion. We went back in the records, in the notes,  
21 that was never testified to.

22 **MS. SANDERS:** If I may?

23 That number, that 954 number was entered by  
24 Rodrick Burke. As the state attorney in my direct  
25 examination, the (954)999 number was the phone number

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1 of his mother, and he used the phone given to him by  
2 this male.

3 **MR. KALLAHER:** There's no evidence that that was  
4 the cell phone number that called that number. It's  
5 not in evidence.

6 **MS. SANDERS:** Well, actually the cell phone -- not  
7 the cell phone records, but the geographic cell phone,  
8 that information is on the actual top sheet.

9 **THE COURT:** On the records?

10 **MS. SANDERS:** Yes, sir.

11 **THE COURT:** Can I see that?

12 **MS. SANDERS:** Your Honor, if you look on the  
13 second page, the top. The top page has the number that  
14 was actually called.

15 **THE COURT:** It is.

16 **MR. KALLAHER:** Then I apologize, Your Honor. It's  
17 right there.

18 **THE COURT:** It's listed, (954).

19 **MR. KALLAHER:** I apologize for the interruption.

20 (In open court.)

21 **THE COURT:** Thank you. You may proceed.

22 **MS. SANDERS:** I've provided a little chart that  
23 I've created, but as I stated before, rely on your own  
24 recollection. But when we're talking about proving the  
25 identity of the person who was driving this vehicle, we

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1 know that there was a description of a white male  
2 driving in the vehicle, and that was stated by Karen  
3 Bellis. That was stated by, I believe, by Mr. Bellis  
4 and Jacob or Angel Lendic. Granted, no one can  
5 actually say how this person looked while he was  
6 driving in that lane, but they all said one person was  
7 in the car, white male.

8 And at the end of that collision, they saw the  
9 white male. Some say he was crawling out of the car.  
10 Some say they observed an individual with scratches on  
11 the arms. So we know that from those witnesses.

12 Now, something very important, if you can recall,  
13 is Rodrick Burke indicated to you while the -- after  
14 the collision, there was a white male who approached  
15 him. This white male, he believed was part of the  
16 accident.

17 He also indicated that the white male asked him if  
18 he wanted water, if he needed to use the cell phone.  
19 He said, yes, I want to use the cell phone. He called  
20 his mother. The cell phone towers are provided to you,  
21 and they are in evidence, so you'll have an opportunity  
22 to look at that.

23 But Rodrick said this male gave him the cell  
24 phone. He called the (954) number, and that's  
25 999-7831. When I asked him whose number is that,

A-306

1       that's his mother's number.

2               Now, fast-forward to Sheena McCaskill's  
3       testimony, she said the way I can determine if someone  
4       is in the area is if you're making outgoing calls or if  
5       you're receiving incoming calls. So we know from these  
6       cell phone records that the defendant is in the area  
7       after the collision. And we know that because he made  
8       one call, which was made by Rodrick to call his mother.

9               We also know that Trooper Hildreth also called  
10      this 561 number. And he received the 561 number from  
11      an individual who was alleged to be part of this  
12      accident.

13              So he calls the individual. The individual picks  
14      up and identifies himself as Spencer Altschuler. Same  
15      phone number that was utilized to contact Rodrick  
16      Burke's mother.

17              And this all brings us back to the cell towers in  
18      the same general location as the car accident. So it  
19      all points back to the defendant in this case, Spencer  
20      Altschuler.

21              Now, you've all seen the pictures, the  
22      post-collision pictures, of this dark-colored vehicle  
23      where the defendant was witnessed as coming out of.  
24      Now, defense is saying, oh, there could have been  
25      multiple people in the vehicle. But if you remember --

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1 if you remember from Trooper Gensler's testimony, he  
2 told you there was no one on that passenger's side.

3 'Cause had there been, then the air bag on the  
4 passenger's side would have been deployed. There was  
5 no pressure indicated that would allow this air bag to  
6 deploy. So, therefore, no one was there.

7 He also testified that there was no bodily fluid  
8 found on the passenger's side. The only bodily fluid  
9 that was found was on the driver's side.

10 Here is where the air bag was and where we learned  
11 that there was some type of red substance that was  
12 picked up. We also learned that there was another red  
13 substance found on the door. And we now know that that  
14 blood, that drop of blood that was testified by other  
15 witnesses that seen this male with blood coming from  
16 his face, we now know, we can now tie that blood to  
17 Spencer Altschuler.

18 All pieces of evidence point to Spencer Altschuler  
19 as the driver in this case. And the State has proven  
20 that beyond a reasonable doubt. There was no other  
21 person around the vehicle at the time of the crash.  
22 They did not identify a second male. They did not  
23 identify a female. They said it was a white male  
24 wearing dark clothing.

25 When the trooper called that number, it was a

A-308



1 person identified as Spencer Altschuler. DNA says it's  
2 Spencer Altschuler.

3 So where does that lead us next? Reckless.  
4 Whether or not you-all believe that his actions were  
5 reckless, I will submit to you that they are reckless.  
6 And in order to prove recklessness, the State has to  
7 prove that the person's actions are willful or wanton.

8 So "willfully" means intentionally, knowingly, and  
9 purposefully. So we'll go through that.

10 The fact that the defendant intentionally drove  
11 over to an incorrect lane and he knew exactly that his  
12 actions were supposed to overtake one of the vehicles  
13 and move over and he did not, so that is a willful  
14 action.

15 He knowingly did this and he purposely did this  
16 because his point of moving over to go -- to get away  
17 from the slower traffic was the fact that, hey, I'm on  
18 a passing zone. The point of being in a passing zone  
19 is just that: You pass and you get right over.

20 But that's not what he did, ladies and gentlemen.  
21 He stayed in that incorrect lane from witnesses that  
22 said it seemed like forever; perhaps half a mile,  
23 perhaps a full mile.

24 But we know that he remained in that lane when we  
25 clearly could see an oncoming vehicle from the

A-309

1 eastbound lane.

2 How do we have four witnesses that can say they  
3 saw this eastbound vehicle coming and the defendant  
4 didn't see it? I will submit to you-all it was because  
5 he wasn't paying attention. I would submit to you-all  
6 that because he wasn't paying attention, because he was  
7 driving in an incorrect lane, that those actions are  
8 the result of someone's death and seriously bodily  
9 injury.

10 The State can also prove it through wanton, which  
11 means with a conscious and intentional indifference to  
12 consequences and with knowledge that damage is likely  
13 to be done to persons or property. We have that.

14 We heard from Mrs. Bellis that while she was  
15 driving in her vehicle, she was doing about 68 miles  
16 per hour. When she sees the defendant's vehicle, he is  
17 driving alongside of her, so one would assume he's also  
18 going 68 miles per hour.

19 She slowed down to let him get over. So we're  
20 talking about maybe 68 to 65 miles per hour at this  
21 time. But he doesn't get over. He never makes any  
22 attempt during his route to get over to the correct  
23 lane. He, in fact, stays there.

24 As you heard from the Bellises, they indicated  
25 that Karen was pushing, laying on the horn, and to no

A-310

1       avail. No avail. The defendant still collided with  
2       Ms. Walker's vehicle.

3               You saw diagrams, you saw sketches. You heard  
4       from Trooper Gensler that he said that the accident  
5       happened 74 feet into the no passing lane. Prior to  
6       that, you-all saw pictures where the defendant could  
7       have -- well, he was traveling, if he had seen this  
8       car, and he was paying attention, he would have seen  
9       that there was a grassy area that he could have pulled  
10      over to avoid the collision.

11             If he was paying attention and he heard the  
12      honking of Karen Bellis, he would have seen that there  
13      was ample opportunity to move over to the correct lane.

14             But despite people honking, despite the fact that  
15      there's an oncoming vehicle, broad daylight, clear as  
16      day, the road conditions are perfect, it's dry, it's  
17      flat, despite all of this, he still decided to stay in  
18      that lane and he made no attempts to move until it was  
19      too late and the cars collided. And that is a wanton  
20      disregard for property and persons, members of the  
21      jury. And that is recklessness.

22             It is an unfortunate accident. It is. But just  
23      because that word "accident," it doesn't mean that we  
24      shouldn't hold him to the consequences of his actions.  
25      We have laws for a reason. We have traffic laws for a

A-311

1 reason.

2 Now, Counts 1 and 2 and 3 all deal with  
3 recklessness, as I said before. The State has proven  
4 its case to you beyond a reasonable doubt. The State  
5 has proven to you in Count 1 that the death -- that the  
6 victim, Ivery Walker, died; and that the death was  
7 caused by the operation of a motor vehicle by Spencer  
8 Altschuler; and that Spencer Altschuler operated the  
9 motor vehicle in a reckless manner likely to cause the  
10 death of or great bodily harm to another person.

11 The State has also proven to you that in Count 2  
12 that Armonie Pitts was seriously injured in this case.  
13 You-all heard, because of this car accident, because of  
14 the defendant's actions, his recklessness while  
15 operating this motor vehicle, that Armonie Pitts is now  
16 paralyzed from the neck down. You heard that from the  
17 doctor.

18 You also heard on Count 3, which pertains to  
19 Rodrick Burke, that because of the defendant's  
20 recklessness, because of his actions and how he  
21 operated that motor vehicle, Rodrick Burke had to go to  
22 the hospital and he was injured. He told you himself.  
23 He had abdomen pains, and he had to, um, take medicine  
24 for some time.

25 The State has presented witnesses. The State also

A-312

1 placed medical records for your viewing to see that  
2 these witnesses were injured as a consequence of his  
3 actions; that someone died because of his actions. It  
4 wasn't a moment of, oh, I looked down and, boom, I  
5 collided with someone. Absolutely not. That's not  
6 what the facts show.

7 The facts show that someone was traveling in the  
8 incorrect lane for a substantial amount of time.  
9 Enough time that you have someone behind him that's  
10 saying, what the heck is he doing? Why is he doing  
11 this? Why doesn't he just get over?

12 You have Karen Bellis who's looking at him saying,  
13 "What the heck is he doing? Oh, my God. Oh, my God.  
14 Why isn't he getting over?"

15 Four people telling you that they see this  
16 oncoming vehicle, and he does nothing. That is  
17 inherently dangerous. And that is the definition of  
18 recklessness.

19 You-all heard a lot today, and I ask that you  
20 review your notes, review the testimony, look at the  
21 physical evidence, look at the facts, look at the  
22 medical records, whatever you need to do. But you-all  
23 swore on Monday to follow the law, and I'm holding you  
24 to that. Follow the law and find the defendant guilty  
25 of all three counts.

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1           Thank you.

2           **THE COURT:** Thank you. If you'll return the  
3 evidence to the clerk.

4           **MS. SANDERS:** Yes.

5           **MR. KALLAHER:** Judge, may I approach to just grab  
6 the evidence?

7           **THE COURT:** Mr. Kallaher, you may proceed.

8           **MR. KALLAHER:** Just a moment, Your Honor.

9           **THE COURT:** That's all right. Take your time.

10          **MR. KALLAHER:** May it please the Court? Counsel.

11               Accidents aren't crimes. It's just as simple as  
12 that. A death or serious injury does not turn an  
13 accident into a crime. And what would make a crime  
14 would be evidence of recklessness. There's none before  
15 you.

16               A terrible tragedy happened on February 15th of  
17 2015, a little over two years ago. And we all feel  
18 sympathy for a little girl who's been seriously  
19 injured, and we all feel sympathy for the families.  
20 But your job is to put that aside; put that sympathy  
21 aside and weigh the facts and compare them to the law  
22 as the judge is gonna give it to you. Okay?

23               You agreed to do that at the beginning, and you  
24 took an oath to do so, and I'm confident that you will.

25               As I told you during opening, your job is not to

1 assign blame for this accident. Okay? The judge is  
2 gonna give you a verdict form, and there's not gonna be  
3 a line on there that says this is how much money  
4 this -- these people get because of this accident or  
5 this is who is at fault for this accident. That's not  
6 what this case is about.

7 This case, and your job, is about whether  
8 Ms. Sanders and the State Attorney's Office have proved  
9 beyond and to the exclusion of every reasonable doubt  
10 every element of every crime charged.

11 And the judge is gonna instruct you on what those  
12 elements are. Okay? And your job is to hold the State  
13 to that burden of proving every count beyond and to the  
14 exclusion of a reasonable doubt. You-all agreed to do  
15 so, and you took an oath to do so, and I'm confident  
16 that you will.

17 And as I told you in my opening statement, it  
18 seems like a long time ago, but it was just a couple  
19 days ago. There was a tragic death and a devastating  
20 injury as a result of the accident that we've been  
21 talking about these past few days on February 15th.  
22 And those facts aren't in dispute.

23 The remaining elements are what I want to talk to  
24 you about today. They are -- and they're the same for  
25 all three counts. Okay?

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1           The first part I want to talk about is in order  
2           for the State to convert this accident into a crime,  
3           they have to prove recklessness, which means they have  
4           to prove willful or wanton behavior. And I know you've  
5           been read it before, and you're going to be read it  
6           again, but I'm going to say it now again because it's  
7           important.

8           Willful, as will be defined by the Court, means  
9           intentionally, knowingly, and purposefully. That means  
10          whatever action was taken was done intentionally,  
11          knowingly, and purposefully. They have all three of  
12          those things. It's an "and."

13          They have to prove it was willful or it was  
14          wanton, which is conscious and intentional indifference  
15          to consequences and with knowledge that damage is  
16          likely to be done to persons or property. Okay? It's  
17          the State's burden to put evidence in before you that  
18          that is what happened and they haven't done so.

19          Karen Bellis testified -- or what the evidence  
20          shows is that at the time the pass started, the  
21          intentional act started, it was safe to pass. So where  
22          is the conscious disregard for damage of property  
23          there? It's not there.

24          There was a segmented or dashed line indicating it  
25          was okay to pass. It was legal to pass at that point.

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1       Where's the willful action or wanton action there?

2               The road was flat and straight. You've seen the  
3       video. You've seen it -- my video twice, and you've  
4       seen the State's once. It's the same: Flat, straight  
5       road. You could see -- it was, like, to infinity.

6               So there was no obstructed view, and the vehicle  
7       that was trying to pass was -- was just taking a chance  
8       that he could make it or that it could make it before  
9       somebody else came. That wasn't the case. The  
10      intentional act was starting the pass. It was safe to  
11      do so.

12              And I would submit to you that that's undisputed.  
13      All right? I think everybody that testified said that.  
14      There was no weather. The roads weren't slick. The  
15      conditions of the road didn't call for any heightened  
16      sense of caution, and there were no obstructions.  
17      There weren't any construction or anything of that  
18      nature out there.

19              So everything I just discussed to you is what  
20      Karen Bellis told you. You remember when she sat there  
21      and testified, pretty nervous. And I imagine I would  
22      be nervous too if I was in that position too. A young  
23      woman in here testifying. But her testimony was, I  
24      would submit to you, it was credible.

25              She was driving the car that was being passed.

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1 She had the best view and the best opportunity to  
2 observe exactly what was going on, as opposed to, say,  
3 Mr. Lendic. Okay? Who, by his own admission, was  
4 three-quarters of a mile or so back down the road.

5 So when you're weighing the testimony of the  
6 witnesses, those are the kind of things you take into  
7 account, who had the best opportunity to see what was  
8 happening and observe what was going on. And I submit  
9 to you that it was Karen Bellis.

10 And, again, she -- her words -- it was safe to  
11 pass at the time the pass started. Where's the willful  
12 or wanton act there? That is the intentional act, if  
13 you would. The intentional act of, okay, the pass is  
14 starting. We're going to pass this vehicle.

15 It's on a two-lane highway going westbound. To  
16 pull into the eastbound lane and to pass another  
17 vehicle, that in itself, not reckless; happens  
18 thousands of times a day, every day. Probably  
19 happening right now somewhere on the highways. The act  
20 of the pass is not reckless. And that's the only  
21 intentional act that has been proven. Okay? That act,  
22 not willful -- or not reckless driving.

23 There was no texting. All right? You heard from  
24 Sheena McCaskill who observed -- or examined the --  
25 the cell phone records of the -- of the -- of the --

1        what the State claims was Mr. Altschuler's telephone.  
2        She said, nope, no texting at the time of the crash.

3                There's no evidence of any driving under the  
4        influence of alcohol or drugs. Okay? So there wasn't  
5        any willful or conscious intent, I'm going to text on  
6        my phone while I'm driving -- while I should be paying  
7        attention to driving. It's not there.

8                There was no, I'm going to willfully choose to get  
9        in this car and drive when I'm drunk or under the  
10       influence of drugs. Wasn't there. Those are the kinds  
11       of things that would constitute willful or wanton and  
12       amount to reckless driving.

13               None of the witnesses who you heard from described  
14       any erratic driving. There wasn't 120-miles-an-hour  
15       speeding, whipping in and out of traffic. There wasn't  
16       any of that.

17               The testimony you heard was a car came up. I saw  
18       him in my rear view mirror -- or I saw the car in my  
19       rear view mirror. The car attempted to pass and stayed  
20       in the lane for too long before it got back over. And  
21       that's what the testimony was. And that was from Karen  
22       Bellis, who had the best opportunity to see what was  
23       going on, the best opportunity to observe. As well as  
24       her husband, who, obviously doesn't -- wasn't paying  
25       attention until after Mrs. Bellis called his attention

1 to it. So he can't corroborate what else is going on.

2 The only thing that Mrs. Bellis said was that he  
3 stayed in the lane, in the eastbound lane for too  
4 long -- for a long time. Enough to make her honk her  
5 horn and say to her husband, what is this guy doing?

6 Is that evidence of willful or wanton disregard?  
7 Is that evidence of recklessness? There was no  
8 evidence that -- if it was as long as she said it was,  
9 20 or 30 seconds, there was nothing more than -- then  
10 that was nothing more than lapse of concentration or  
11 attention or, put it another way, a failure to observe  
12 the duty of ordinary care owed by every driver to  
13 everybody else on the road.

14 You're going to see that -- and I word it that  
15 way -- that line that way specially because you're  
16 going to see that in the jury instructions. It's going  
17 to tell you that reckless driving is more than just the  
18 failure to observe the ordinary care. All right?

19 The testimony you've heard about the accident,  
20 that's all it was. It was -- that's all -- that was  
21 all that was brought in was that it was just nothing  
22 more than -- nothing more than a lapse of concentration  
23 or attention. Okay? That is not reckless driving.

24 The car wasn't trying to race her. It wasn't up  
25 next to her, honking and waving or trying to get her

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1 attention or anything. There's no evidence -- there's  
2 no testimony of that. That would have been reckless,  
3 especially if it was in the eastbound lane. It wasn't  
4 swerving or trying to run her off the road in any way.  
5 All right?

6 Her testimony was the car came up behind her,  
7 started to pass. She slowed down. The car slowed down  
8 with her and stayed beside her for too long. Just a  
9 lapse in concentration or attention. Tragic results,  
10 surely. But just a lapse of ordinary care -- or a  
11 breach of the ordinary care of the driver.

12 And when the car did get back into the westbound  
13 lane, that's where the accident happened. Undisputed  
14 that the accident happened in the westbound lane.

15 And I don't want to pick on Mr. Lendic. He's a  
16 fine man. I don't know him at all. I don't think he  
17 came in here to try to lie to you. But he was, like I  
18 said, by his own admission, three-quarters of a mile to  
19 a mile down the road when the accident happened. He  
20 told you it happened in the eastbound lane.

21 We know that's not true. Okay? We know it  
22 happened -- we've got physical evidence. You've seen  
23 photographs. You've seen diagrams. The two highway  
24 patrol officers came in and told you that that's what  
25 happened.

1           This accident happened after the car got back into  
2           the westbound lane. And it happened in the westbound  
3           lane because the oncoming car had moved into the  
4           westbound lane. That's where the accident happened.

5           The evidence you've seen -- you'll get the  
6           photographs, and you can take them back there. And  
7           you'll get the diagram. Actually, that's what I want  
8           to show you right now.

9           If you recall, this is the diagram that Corporal  
10          Gensler prepared from the measurements that were taken  
11          at the scene.

12          The car that was passing had no way of knowing  
13          that there was a no passing zone coming. He testified  
14          there were no signs. You-all have seen those signs.  
15          If you drive on the highways, they're the sideways  
16          yellow signs that say no passing zone up ahead, or  
17          something similar. There was nothing like that up  
18          here.

19          The only indication there was a no passing zone  
20          coming up indicated by the double yellow line was the  
21          yellow line. And the physical evidence shows that  
22          before the passing vehicle got to that point, it had  
23          already started to move back into this lane. Okay?

24          The dimensions are there. You can see that for  
25          yourself. All right?

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1           Counsel -- the assistant state attorney mentioned  
2           that all he had to do was move to this grassy knoll to  
3           avoid the accident. Well, so could the accident -- the  
4           other car as well. There was plenty of room for them  
5           to do that. Okay?

6           Making the choice to move back into the lane where  
7           he was supposed to be, that doesn't show recklessness.  
8           How does that show recklessness?

9           Again, no warning signs. No indication of a no  
10          passing zone coming ahead. That means there was no  
11          evidence that the driver of that vehicle saw those or  
12          should have seen those and just consciously disregarded  
13          them. Because they weren't there, it wasn't done.

14          The only indication that a passing [sic] zone was  
15          coming was the double yellow line in the road. And the  
16          testimony and the evidence shows that the car started  
17          to get back into the westbound lane before that yellow  
18          line started.

19          Now, it took the car a while to get there. The  
20          crash happened 74 feet. But the car passed the line  
21          around 50 feet or somewhere around there. It was  
22          certainly less than 74 feet. Okay? And at the highway  
23          speed, 60 miles an hour -- I don't have the chart that  
24          Corporal Gensler put in, but you'll have it -- that's  
25          about a half a second. 1,000th. That long is how

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1 long the car was back in this lane before it got back  
2 in the westbound lane, the double yellow.

3 Is that evidence of recklessness? No, certainly  
4 not. It wasn't like he ignored it -- the car ignored  
5 it and kept plowing on through there. That's not what  
6 happened. That does not show willful or wanton  
7 disregard.

8 The last thing I want to talk to you about -- and  
9 I won't keep you much longer -- is one of the things  
10 the State has to prove is the identity of the driver,  
11 the person who was driving the vehicle. Okay? The  
12 State has to prove that element beyond and to the  
13 exclusion of every reasonable doubt. And they have to  
14 prove that Spencer Altschuler, my client here, was the  
15 one that was driving the car.

16 Now, ask yourself, did any witness sit on that  
17 stand, any of the civilian witnesses, anybody that was  
18 at the accident, point to Mr. Altschuler and say, he  
19 was there. I saw him at the scene. And then the  
20 prosecutor asked, please let the record reflect that he  
21 identified the defendant? No. Didn't happen.

22 Nobody identified Mr. Altschuler at the scene of  
23 the accident. Okay? Everybody said they saw somebody.  
24 And the descriptions varied from person to person. All  
25 right? But nobody was able to say, I saw him. Nobody



1 saw who was driving the car. Okay? So nobody was able  
2 to sit there and say, I saw this person driving the  
3 car. I submit to you that's exactly what the State has  
4 to prove and it failed to do so. Okay?

5 So what they're trying to use is the  
6 circumstantial evidence that -- about cell phones  
7 and -- and ping and triangulation and that type of  
8 thing. And if you recall, the State used Sheena  
9 McCaskill, who was an expert on this, to -- to say,  
10 okay, these are the cell phone towers and these are  
11 where, you know -- or these are the -- the azimuth  
12 sections where these phone calls came from. But she's  
13 admitted that using this information, she couldn't tell  
14 you with any accuracy where that cell phone was. All  
15 right?

16 And on top of that, there was no evidence that at  
17 the time she was doing this, this cell phone was in  
18 Spencer Altschuler's possession. That's reasonable  
19 doubt right there.

20 Now, the prosecutor stood up and said the defense  
21 is trying to tell you that there were multiple people  
22 in the car. The defense isn't telling you that.  
23 Rodrick Burke told you that. One of the State's own  
24 witnesses told you that, that he saw two people in the  
25 car, he was sure of it. He saw two people in the car,

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1 but yet he couldn't tell you who was driving.

2 So it isn't just -- it isn't just the defense  
3 saying that multiple people were there. That  
4 information comes from the State's own witnesses.

5 The witnesses, all the descriptions were different  
6 but, again, none pointed to Mr. Altschuler as the  
7 person at the scene, and none can identify him as the  
8 driver.

9 To address the matter of the number that the  
10 trooper called -- and I believe his testimony -- that  
11 was Corporal Hildreth -- and spoke to someone who  
12 identified -- or he identified as Spencer Altschuler,  
13 that was hours later. Hours after that. So does that  
14 evidence -- is that enough to say beyond a reasonable  
15 doubt that Spencer Altschuler was driving that vehicle?  
16 No. That's reasonable doubt as well. Okay?

17 That leaves the blood on the door handle. All  
18 right? The testimony was the officers, the troopers  
19 obtained -- obtained the air bag, and it's in evidence  
20 over there. You'll be able to look at it -- that they  
21 thought had a bloodstain on it. And they sent it off  
22 to the FDLE DNA analyst, Ms. Wenz, and she testified  
23 she couldn't tell you whose blood that was. All right?

24 Is that evidence that Spencer Altschuler was  
25 driving the car? Absolutely not. That's not evidence

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1 of anything.

2 This was the left door handle. All right? And  
3 Ms. Wenz testified that she retrieved this -- or she  
4 got this sample, did her DNA work on it, and it came  
5 back to match to my client, Spencer Altschuler. Okay?  
6 But she couldn't tell you when that was put -- when  
7 that was deposited there. That could have been there  
8 months before.

9 Look at the condition of this sample. All right?  
10 You'll get to look at this picture for yourself. I  
11 just want to point this out.

12 Without the State being able to tell you beyond a  
13 reasonable doubt when that was put there, that's  
14 reasonable doubt as to the identity of who was driving.  
15 Certainly, I would submit you can't even use that  
16 evidence to make that determination. Doing so, you  
17 would have to make the inference that it was put there  
18 at the time. All right?

19 Corporal Gensler told you who -- who owned the car  
20 through his investigation: Rhonda Altschuler. All  
21 right?

22 So with no evidence of when that blood was  
23 deposited there, and the State's expert admitting that  
24 there's no way for you to tell that, and no evidence --  
25 or testimony of anybody saying, yeah, I saw -- I saw

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1        Spencer Altschuler, and he was bleeding in the car.  
2        There's not even a witness that can put him in the car.  
3        People saw him afterwards -- or they didn't point to  
4        him. But the person they saw was afterwards. All  
5        right? Was after the accident.

6                And I submit to you that is not proof of who was  
7        driving the car. All right?

8                So the State's failed to introduce the evidence  
9        beyond a reasonable doubt that: One, the actions were  
10       anything more than simple lapse of attention; and they  
11       failed to prove that my client, Mr. Altschuler, was the  
12       one that was driving the car. Failing to do both of  
13       those things, they cannot prove all the elements of the  
14       three counts charged beyond and to the exclusion of  
15       beyond a reasonable doubt.

16               And the judge is gonna instruct you on any lesser  
17       included offenses as well. They're all gonna be  
18       reckless driving. And if you can't do the identity  
19       beyond a reasonable doubt and you can't do the willful  
20       and -- or wanton -- the recklessness, you can't convict  
21       on any of those.

22               You-all promised to follow the law. I'm confident  
23       that you will. I'm gonna ask you to return a verdict  
24       of not guilty on all three counts.

25               Thank you.

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1           **THE COURT:** Thank you.

2           Ms. Sanders?

3           **MS. SANDERS:** Members of the jury, the State's not  
4           disagreeing saying that -- initially that the defendant  
5           was in a no passing zone. You heard from Mrs. Bellis.  
6           She said that she also passed. But what sticks out is  
7           just because it's okay to do something doesn't mean you  
8           should do it.

9           And I think that was displayed by all witnesses  
10          that told you-all that once he passed, we were all  
11          thinking, what the heck is he doing? Why is he still  
12          in that lane? Mrs. Bellis slowed down to let the  
13          defendant in front of her. And he didn't do so.

14          It was his actions once he passed, once he  
15          remained on that road is what made it reckless. The  
16          fact that he passed and remained, the fact that people  
17          were honking. Obviously, if all four people could see  
18          this car, why not the defendant?

19          Defense talked about that the person with the best  
20          vantage point would have been Mrs. Bellis. But if you  
21          remember from her testimony, Mrs. Bellis said that she  
22          was behind the defendant's car. Defendant,  
23          Mrs. Bellis.

24          So who had the better vantage point? Who could  
25          see the victim's car coming, I would submit to you is

1       that it's the defendant who had the better view. But  
2       he didn't see her. He didn't see her because he wasn't  
3       paying attention.

4               Actions. His actions are willful. Remaining in  
5       the lane is willful. And he did take a chance. And  
6       that chance was I'm just gonna keep driving westbound  
7       on an eastbound lane.

8               I think when we talk about recklessness, we have  
9       to look at the facts that's been presented to us. When  
10      we talked about what's reasonable in jury selection, is  
11      it reasonable to believe that the defendant did not  
12      know that there was an oncoming car? Is it reasonable  
13      to believe that while Mrs. Bellis is laying on her  
14      horn, that the defendant was aware that a car was  
15      coming, just decided he wasn't going to move? Was that  
16      reasonable or was he just not paying attention?

17              The fact that the defendant, as you saw from the  
18      diagram, could have merged over to the correct lane but  
19      chose not to do so is recklessness. The fact that he  
20      could have merged to his left where there's a grassy  
21      area is reckless. The fact that he made no attempts to  
22      move over and that -- from the diagram, he actually  
23      drove into the no passing lane, continued onto the  
24      passing lane when he realized, oh, my God, it's too  
25      late, the victim's car is coming.

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1           There was no way that the victim could have  
2           avoided the defendant's vehicle. He was in her lane of  
3           travel. Point-blank. There is no way she could have,  
4           as you-all saw from the diagram -- you'll also see from  
5           the pictures that were submitted into evidence, she had  
6           the guardrail. The guardrail was to her right. To her  
7           left was the other lane. Where was she supposed to go?  
8           Nowhere. Because the defendant did not give her a  
9           chance.

10           But he had a chance and he had choices. He could  
11           have slowed down and merged back to the correct lane,  
12           or he could have just went to the grassy area. But  
13           that is not what happened. That is the definition of  
14           recklessness.

15           And defense talked about ID. All evidence points  
16           to Mr. Altschuler, the defendant in this case. All  
17           evidence. Rely on your recollection. Look at the  
18           evidence. There was no one else in that car. No one  
19           else.

20           You-all came in here on Monday with one thing in  
21           common, and that is your common sense. Use your common  
22           sense and follow the law. And I ask that you find the  
23           defendant guilty of all three counts.

24           Thank you.

25           **THE COURT:** Thank you.

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1           Members of the jury, I thank you for your  
2           attention during this trial. Please pay attention to  
3           the instructions I'm about to give you. Excuse me.

4           Spencer Jordan Altschuler, the defendant in this  
5           case, has been accused of the crimes of vehicular  
6           homicide, reckless driving causing serious bodily  
7           injury, and reckless driving causing injury.

8           To prove the crime of vehicular homicide, the  
9           State must prove the following three elements beyond a  
10          reasonable doubt:

11          One, Ivery Jean Walker is dead.

12          Two, the death was caused by the operation of a  
13          motor vehicle by Spencer Jordan Altschuler.

14          And, three, Spencer Jordan Altschuler operated the  
15          motor vehicle in a reckless manner likely to cause the  
16          death of or great bodily harm to another person.

17          The State does not have to prove the defendant  
18          intended to harm or injure anyone. However, the  
19          reckless operation of a motor vehicle requires the  
20          State to prove more than a failure to use ordinary  
21          care. A "reckless manner" means a willful or wanton  
22          disregard for the safety of persons or property.

23          "Willful" means intentionally, knowingly, and  
24          purposely.

25          "Wanton" means with a conscious and intentional

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1 indifference to the consequences and with knowledge  
2 that damage is likely to be done to persons or  
3 property.

4 To prove the crime of reckless driving causing  
5 serious bodily injury, the State must prove the  
6 following beyond a reasonable doubt:

7 That Spencer Jordan Altschuler drove a vehicle in  
8 Florida with a willful or wanton disregard for the  
9 safety of persons or property.

10 If you find Spencer Jordan Altschuler guilty of  
11 reckless driving, you must also determine whether the  
12 State has proven beyond a reasonable doubt that he  
13 caused serious bodily injury to another; to wit:  
14 Armonie Pitts, as a result of operating the vehicle  
15 recklessly.

16 Again, "willful" means intentionally, knowingly,  
17 and purposely.

18 "Wanton" means with a conscious and intentional  
19 indifference to consequences and with knowledge that  
20 damage is likely to be done to persons or property.

21 A "vehicle" is any device in, upon, or by which  
22 any person or property is or may be transported or  
23 drawn upon a highway, except devices used exclusively  
24 upon stationary rails or tracks.

25 "Serious bodily injury" means an injury to another

1 person which consists of a physical condition that  
2 creates a substantial risk of death, a serious personal  
3 disfigurement, or protracted loss or impairment of the  
4 function of any bodily member or organ.

5 To prove the crime of reckless driving causing  
6 injury as charged in Count 3, the State must prove the  
7 following beyond a reasonable doubt:

8 Spencer Jordan Altschuler drove a vehicle in  
9 Florida with a willful or wanton disregard for the  
10 safety of persons or property.

11 If you find Spencer Jordan Altschuler guilty of  
12 reckless driving, you must also determine whether the  
13 State has proven beyond a reasonable doubt that he  
14 caused injury to the person of another; to wit:  
15 Rodrick Burke Jr. as a result of operating the vehicle  
16 recklessly.

17 Again, "willful" means intentionally, knowingly,  
18 and purposely.

19 "Wanton" means with a conscious and intentional  
20 indifference to the consequences and with knowledge  
21 that damage is likely to be done to persons or  
22 property.

23 And, again, a "vehicle" is any device in, upon, or  
24 by which any person or property is or may be  
25 transported or drawn upon a highway, except devices

1           used exclusively upon stationary rails or tracks.

2           In considering the evidence, you should consider  
3           the possibility that although the evidence may not  
4           convince you that the defendant committed the main  
5           crimes of which the defendant is accused, there may be  
6           evidence that the defendant committed other acts that  
7           would constitute a lesser included crime.

8           Therefore, if you decide that the main accusation  
9           has not been proved beyond a reasonable doubt, you will  
10          next need to decide if the defendant is guilty of any  
11          lesser included crime.

12          The lesser crime indicated in the definition of  
13          vehicular homicide is reckless driving.

14          The lesser crimes indicated in the definition of  
15          reckless driving causing serious bodily injury are  
16          reckless driving causing injury and reckless driving.

17          The lesser crime indicated in the definition of  
18          reckless driving causing injury is reckless driving.

19          To prove the crime of reckless driving causing  
20          injury as a lesser included offense of Count 2, the  
21          State must prove the following beyond a reasonable  
22          doubt:

23          That Spencer Jordan Altschuler drove a vehicle in  
24          Florida with a willful or wanton disregard for the  
25          safety of persons or property.

1           And if you find Spencer Jordan Altschuler guilty  
2 of reckless driving as to Count 2, you must also  
3 determine whether the State has proven beyond a  
4 reasonable doubt that he caused damage to the person of  
5 another. This would be specifically to Armonie --  
6 excuse me -- Armonie Pitts as a result of operating the  
7 vehicle recklessly.

8           Willful, wanton, and vehicle are as -- previously  
9 have been defined for you.

10          To prove the crime of reckless driving as a lesser  
11 included offense of Counts 1, 2, and/or 3, the State  
12 must prove the following beyond a reasonable doubt:

13          Spencer Jordan Altschuler drove a vehicle in  
14 Florida with a willful or wanton disregard for the  
15 safety of persons or property.

16          And, again, willful, wanton, and vehicle are  
17 defined as -- has been previously defined for you as to  
18 the other counts -- or other definitions.

19          The defendant has entered a plea of not guilty.  
20 This means you must presume or believe the defendant is  
21 innocent. The presumption of innocence stays with the  
22 defendant as to each material allegation in the  
23 information, through each stage of the trial, unless it  
24 has been overcome by the evidence to the exclusion of  
25 and beyond a reasonable doubt.

1           To overcome the defendant's presumption of  
2           innocence, the State has the burden of proving the  
3           crime with which the defendant is charged was  
4           committed, and the defendant is the person who  
5           committed the crime.

6           The defendant is not required to present evidence  
7           or prove anything.

8           Whenever the words reasonable doubt are used, you  
9           must consider the following:

10           A reasonable doubt is not a mere possible doubt, a  
11           speculative, imaginary, or forced doubt. Such a doubt  
12           must not influence you to return a verdict of not  
13           guilty if you have an abiding conviction of guilt. On  
14           the other hand, if after carefully considering,  
15           comparing and weighing all the evidence there is not an  
16           abiding conviction of guilt, or if having a conviction,  
17           it is one which is not stable, but one which wavers and  
18           vacillates, then the charge is not proved beyond every  
19           reasonable doubt, and you must find the defendant not  
20           guilty because the doubt is reasonable.

21           It is to the evidence introduced in this trial and  
22           to it alone that you are to look for that proof.

23           A reasonable doubt as to the guilt of the  
24           defendant may arise from the evidence, from a conflict  
25           in the evidence, or from the lack of evidence.

1           If you have a reasonable doubt, you must find the  
2 defendant not guilty. If you have no reasonable doubt,  
3 you should find the defendant guilty.

4           It is up to you to decide what evidence is  
5 reliable. You should use your common sense in deciding  
6 which is the best evidence and which evidence should  
7 not be relied upon in considering your verdicts. You  
8 may find some of the evidence not reliable or less  
9 reliable than other evidence.

10           You should consider how the witnesses acted as  
11 well as what they said. Some things you should  
12 consider are:

13           Did the witness seem to have the opportunity to  
14 see and know the things about which the witness  
15 testified?

16           Did the witness seem to have an accurate memory?

17           Was the witness honest and straightforward in  
18 answering the attorneys' questions?

19           Did the witness have some interest in how the case  
20 should be decided?

21           Does a witness's testimony agree with the other  
22 testimony and other evidence in the case?

23           Did the witness at some other time make a  
24 statement that is inconsistent with the testimony he or  
25 she gave in court?

1           Whether the State has met its burden of proof does  
2           not depend upon the number of witnesses it has called  
3           or upon the number of exhibits it has offered, but  
4           instead upon the nature and quality of the evidence  
5           presented.

6           The fact that a witness is employed in law  
7           enforcement does not mean that his or her testimony  
8           deserves more or less consideration than that of any  
9           other witness.

10          Expert witnesses are like other witnesses with one  
11          exception: The law permits an expert witness to give  
12          his or her opinion. However, an expert's opinion is  
13          only reliable when given on a subject about which you  
14          believe the witness to be an expert. Like other  
15          witnesses, you may believe or disbelieve all or any  
16          part of an expert witness's testimony.

17          You've heard the testimony of a child in this  
18          case. No witness is disqualified just because of age.  
19          There is no precise age that determines whether a  
20          witness may testify. The critical consideration is not  
21          the witness's age, but whether the witness understands  
22          the difference between what is true and what is not  
23          true and understands the duty to tell the truth.

24          It is entirely proper for a lawyer to talk to a  
25          witness about what testimony the witness would give if

1 called to the courtroom. A witness should not be  
2 discredited by talking to an attorney about his or her  
3 testimony. You may rely upon your own conclusion about  
4 the credibility of any witness. A juror may believe or  
5 disbelieve all or any part of the evidence or the  
6 testimony of any witness.

7 The Constitution requires the State to prove its  
8 accusations against the defendant. It is not necessary  
9 for the defendant to disprove anything. Nor is the  
10 defendant required to prove innocence. It is up to the  
11 State to prove the defendant's guilt by evidence.

12 The defendant exercised a fundamental right by  
13 choosing not to be a witness in this case. You must  
14 not view this as an admission of guilt or be influenced  
15 in any way by this decision. No juror should ever be  
16 concerned that the defendant did or did not take the  
17 witness stand to give testimony in the case.

18 These are some general rules that apply to your  
19 discussion. You must follow these rules in order to  
20 return a lawful verdict.

21 You must follow the law as it is set out in these  
22 instructions. If you fail to follow the law, your  
23 verdicts will be a miscarriage of justice. There is no  
24 reason for failing to follow the law in this case. All  
25 of us are depending upon you to make a wise and legal



1 decision in this matter.

2 This case must be decided by you only upon the  
3 evidence that you have heard from the testimony of the  
4 witnesses and have seen in the form of exhibits in  
5 evidence and these instructions.

6 This case must not be decided for or against  
7 anyone because you feel sorry for anyone or are angry  
8 at anyone.

9 Remember, the lawyers are not on trial, and your  
10 feelings about them should not influence your decision  
11 in this case.

12 Excuse me.

13 Your duty is to determine if the defendant has  
14 been proven guilty or not in accord with the law. It  
15 is the judge's job to determine a proper sentence if  
16 the defendant is found guilty.

17 Whatever verdicts you render must be unanimous;  
18 that is, each juror must agree to the same verdict.

19 Your verdicts should not be influenced by feelings  
20 of prejudice, bias, or sympathy. Your verdicts must be  
21 based on the evidence and the law contained in these  
22 instructions.

23 Deciding a verdict is exclusively your job. I  
24 cannot participate in that decision in any way. Please  
25 disregard anything that I may have said or done that

1       made you feel that I preferred one verdict over  
2       another.

3               You may find the defendant guilty as charged in  
4       the information or guilty of such lesser included crime  
5       as the evidence may justify, or not guilty.

6               If you return a verdict of guilty, it should be  
7       for the highest offense which has been proven beyond a  
8       reasonable doubt. If you find that no offense has been  
9       proven beyond a reasonable doubt, then, of course, your  
10      verdict must be not guilty.

11              Only one verdict may be returned as to each crime  
12      charged. This verdict must be unanimous; that is, each  
13      juror must agree to the same verdict. The verdict must  
14      be in writing, and for your convenience, the necessary  
15      forms of verdict have been prepared for you. They are  
16      as follows.

17              There are three counts. You'll have three verdict  
18      forms to consider. Each of them is headed in the  
19      Circuit Court of the Ninth Judicial Circuit, in and for  
20      Osceola County, Florida. State of Florida, plaintiff,  
21      versus Spencer Jordan Altschuler. Case No. 16-CF-583.

22              First one is headed -- at the top it says:  
23      Charge, Count 1, vehicular homicide. And it's headed  
24      Verdict as to Count 1. With respect to Count 1, there  
25      are three possible verdicts. They are:

1           We, the jury, find the defendant guilty of  
2 vehicular homicide as charged in the information.

3           Or, we, the jury, find the defendant guilty of the  
4 lesser included offense of reckless driving.

5           Or, we, the jury, find the defendant not guilty.

6           Underneath it says, so say we all. Again, your  
7 verdict must be unanimous. Dated this blank day of  
8 October, 2017. And there's a signature line for the  
9 foreperson.

10           When you've reached a unanimous decision as to  
11 your verdict as to Count 1, your foreperson needs to  
12 put a check or an "X" next to the line that is  
13 appropriate to that decision and sign and date the  
14 verdict form.

15           The second verdict form has the same caption, and  
16 it's headed Verdict as to Count 2. And Count 2 is  
17 reckless driving causing serious bodily injury. And as  
18 to Count 2, there are four possible verdicts. They  
19 are:

20           We, the jury, find the defendant guilty of  
21 reckless driving causing serious bodily injury as  
22 charged in the information.

23           Or, we, the jury, find the defendant guilty of the  
24 lesser included offense of reckless driving causing  
25 injury.

1           Or, we, the jury, find the defendant guilty of the  
2 lesser included offense of reckless driving.

3           Or, we, the jury, find the defendant not guilty.

4           Again, so say we all, dated this blank date of  
5 October, 2017.

6           And, finally, the verdict form as to Count 3 is  
7 headed verdict as to Count 3. And Count 3 was reckless  
8 driving causing injury.

9           With respect to Count 3, there are three possible  
10 verdicts which are:

11           We, the jury, find the defendant guilty of  
12 reckless driving causing injury as charged in the  
13 information.

14           Or, we, the jury, find the defendant guilty of the  
15 lesser included offense of reckless driving.

16           Or, we, the jury, find the defendant not guilty.

17           A separate crime is charged in each count of the  
18 information, and although they have been tried  
19 together, each crime and the evidence applicable to it  
20 must be considered separately and a separate verdict  
21 returned as to each. A finding of guilty or not guilty  
22 as to one crime must not affect your verdict as to the  
23 other crimes charged.

24           In just a few moments, you'll be taken to the jury  
25 room by the court deputies. The first thing you should

1 do upon retiring is select a foreperson. The  
2 foreperson will preside over your deliberations like  
3 the chair of a meeting. The foreperson should see to  
4 it that your discussions are carried on in an organized  
5 way, and that each juror has a fair opportunity to be  
6 heard. It is also the foreperson's job to sign and  
7 date the verdict forms when all of you have agreed upon  
8 verdicts, and the foreperson will bring the verdict  
9 forms back to the courtroom when you return.

10 During deliberations, jurors must communicate  
11 about this case only with one another and only when all  
12 jurors are present in the jury room. You are not to  
13 communicate with any person outside of the jury about  
14 this case.

15 Until you have reached a verdict, you must not  
16 talk about this case in person or through the  
17 telephone, writing, or electronic communication, such  
18 as blog, Twitter, email, text message, or any other  
19 means. Do not contact anyone to assist you during  
20 deliberations. These communications rules apply until  
21 you are released at the close of the trial. If you  
22 become aware of any violation of -- of these  
23 instructions or any other instructions you've been  
24 given, you need to let me know by sending a note  
25 through the court deputy.

1           If you do need to communicate with the Court  
2 during deliberations, send a note through the court  
3 deputy signed by the foreperson.

4           If you have questions, I will consult with the  
5 attorneys to determine whether the question you have is  
6 one that properly can be answered by the Court. And if  
7 so, in what form that answer should take. So that may  
8 take some time. You may continue your deliberations  
9 while awaiting the response from the Court.

10           If the question is one that the Court can respond  
11 to, I'll do so either orally back here in open court or  
12 in writing through an instruction sent back to you.

13           Your verdicts finding the defendant either guilty  
14 or not guilty must be unanimous. Each verdict must be  
15 the verdict of each juror as well as of the jury as a  
16 whole.

17           In closing, let me remind you that it is important  
18 that you follow the law spelled out in these  
19 instructions in deciding your verdicts. There are no  
20 other laws that apply to this case. Even if you do not  
21 like the laws that must be applied, you must use them.  
22 For more than two centuries, we've agreed to a  
23 Constitution and to live by the law. No juror has the  
24 right to violate these rules we all share.

25           Counsel please approach.

1 (At the bench.)

2 **THE COURT:** Is there any objection to the  
3 instructions as read or the verdict forms?

4 **MS. SANDERS:** No objection.

5 **MR. KALLAHER:** None.

6 **THE COURT:** Ms. Zeran pointed out that Count 1  
7 doesn't define -- the instruction in Count 1 doesn't  
8 define motor vehicle. I don't know that that's really  
9 an issue in this case, but if you want, I'll --

10 **MR. KALLAHER:** I think -- I think -- as it's read,  
11 it's fine. I'm not concerned about that.

12 **MS. SANDERS:** It's fine.

13 **THE COURT:** I don't think there will be any issues  
14 as to that.

15 All right. If you-all will double-check and make  
16 sure what goes back is what was -- if y'all will  
17 double-check and make sure what goes back with the jury  
18 is what was received in evidence.

19 Okay.

20 (In open court.)

21 **THE COURT:** Okay. Ladies and gentlemen, I did  
22 note one typographical error in the verdict form  
23 Count 2 heading, I wrote charge Count 2 reckless  
24 driving causing serious personal injury. And the body  
25 of the verdict form is correctly written as the

1 reckless driving causing serious bodily injury. And  
2 that's the charge, just to avoid any confusion. What  
3 is in the body of the verdict form is the correct  
4 charge, not what's on the heading.

5 In just a moment, you'll be taken back to the jury  
6 room. You may take your notepads with you. Again, you  
7 will be -- as we discussed at the outset, I believe, by  
8 law, you're not allowed to have any electronic devices  
9 with you in the jury room, and the court deputies will  
10 explain to you how to use the lockers right outside the  
11 courtroom door to store your phone, if you have one, or  
12 other device.

13 We ask that those be turned off so they're not  
14 ringing during deliberations. If anyone needs to make  
15 a quick call before beginning deliberations, the court  
16 deputies will allow you to do that before placing your  
17 phone in the -- in the locker.

18 You'll have with you, when you retire, a copy of  
19 the instructions that I just read to you, together with  
20 the verdict forms, and the evidence that was introduced  
21 during the course of the trial.

22 So at this time, if all of you, with the exception  
23 of Mr. Painter, who is an alternate, will retire to  
24 begin your deliberations.

25 Mr. Painter, I'm going to ask you to remain with



1 us for a moment.

2 (The jury retired to deliberate at 2:18 p.m.)

3 **THE COURT:** All right. You may be seated.

4 Mr. Painter, as I said, you were the alternate  
5 juror in this case. I don't know if that's good news  
6 or bad news.

7 **MR. PAINTER:** Me, either.

8 **THE COURT:** But we have to have an alternate  
9 juror, even in relatively short trials. Without an  
10 alternate, if something happens to one of the other  
11 jurors, the only option is to retry the case at  
12 significant expense to the defendant, the witnesses,  
13 and the State.

14 Since the other jurors made it through unscathed,  
15 you'll be released.

16 I find that people are often curious as to why  
17 they were the alternate, and I can tell you quite  
18 simply, we go straight down the seating chart. You  
19 were the seventh person we got to that both sides  
20 agreed would make a fair juror in this case, so you  
21 became the alternate.

22 You are released at this time from your obligation  
23 not to discuss this case. You're free to talk to  
24 whomever you want about the case. You're also free to  
25 decline. That's entirely your choice.

1           This is a public courtroom. You're more than  
2 welcome to remain in the public area of the courtroom  
3 to see what decision your fellow jurors reach in the  
4 case. If you need to or decide to leave, we'll give  
5 you a slip of paper with my judicial assistant's name  
6 and phone number on it. Feel free to call her at any  
7 time. She can tell you what the result of the trial  
8 was.

9           Having said all of that, on behalf of the parties  
10 here today and on behalf of your fellow citizens, I  
11 thank you very much for your participation with us, and  
12 you'll be excused at this time with our thanks.

13           **COURT DEPUTY:** All rise for the juror.

14           (Alternate juror released.)

15           **THE COURT:** You may be seated.

16           Mr. Altschuler, let me address you again. You can  
17 remain seated.

18           Mr. Altschuler, you've been represented by  
19 Mr. Kallaher and Mr. Deluca in this case. Are you  
20 satisfied with the representation you received from  
21 your attorneys?

22           **THE DEFENDANT:** Yes, Your Honor.

23           **THE COURT:** Is there anything that your attorneys  
24 or either of your attorneys have failed to do in  
25 representing you and you feel they should have done?

1           **THE DEFENDANT:** No, Your Honor.

2           **THE COURT:** Is there anything your attorneys have  
3 done in this case, in representing you, you feel they  
4 should not have done?

5           **THE DEFENDANT:** No, Your Honor.

6           **THE COURT:** I don't ask those questions to in any  
7 way suggest that you should have any complaints with  
8 your lawyer. It's simply that if you do have  
9 complaints, this is the stage of the proceedings where  
10 we make that a matter of record. So I take it from  
11 your responses that you are fully and completely  
12 satisfied with the representation you received; is that  
13 correct?

14          **THE DEFENDANT:** Yes, Your Honor.

15          **THE COURT:** All right. Very well. Thank you.  
16 Is there anything else we need to address, then?

17          **MR. KALLAHER:** No, Judge.

18          **MS. SANDERS:** No, Your Honor.

19          **THE COURT:** All right. Very well. We'll be in  
20 recess, then, pending the verdict or communication from  
21 the jury.

22               (Recess taken from 2:21 p.m. to 3:35 p.m. pending  
23 return of the verdict.)

24          **THE COURT:** All right. Is your client --

25          **MR. KALLAHER:** They're on their way back to the

1 courtroom, sir.

2 (Court was at ease.)

3 **THE COURT:** All right. We are on record in  
4 Case 16-CF-583, State of Florida versus Spencer Jordan  
5 Altschuler. The defendant is present with counsel and  
6 the assistant state attorneys.

7 Folks, we have been informed that the jury's  
8 reached verdicts.

9 Are there any matters that we need to address  
10 before we return the jury and receive the verdicts?

11 **MS. SANDERS:** No, Your Honor.

12 **MR. KALLAHER:** No, Your Honor.

13 **THE COURT:** And to the folks who are sitting in  
14 the courtroom, I don't think I need to say this, but I  
15 will anyway. Trials can be very emotional for people  
16 on both sides of the issues. But I do need to stress  
17 that there can be no outward expression of either  
18 agreement or disagreement with whatever the verdicts  
19 may be in the case.

20 If you feel that that would be difficult for you  
21 to comply with, if you'll please step outside before  
22 the jury returns. You can come back in immediately  
23 afterwards. Step outside if you don't believe you can  
24 handle it emotionally.

25 Let's return our jury, please.

1 (The jury enters the courtroom.)

2 **THE COURT:** You may be seated.

3 Welcome back, ladies and gentlemen.

4 Does the State recognize the presence of the jury?

5 **MS. SANDERS:** Yes, Your Honor.

6 **THE COURT:** Defense?

7 **MR. KALLAHER:** Yes, Your Honor.

8 **THE COURT:** Ladies and gentlemen, we have been  
9 informed that you have reached verdicts. If that be  
10 the case, if the foreperson would please hand the  
11 verdict forms to the court deputy.

12 Defendant and counsel, please rise.

13 The verdicts appear to be in proper form.

14 Madam Clerk, if you would please publish the  
15 verdicts.

16 **THE CLERK:** In the Circuit Court of the Ninth  
17 Judicial Circuit, in and for Osceola County, Florida,  
18 Case No. 16 CF-583, State of Florida, plaintiff,  
19 Spencer Jordan Altschuler, defendant.

20 Verdict as to Count 1: We, the jury, find the  
21 defendant guilty of vehicular homicide as charged in  
22 the information.

23 Verdict as to Count 2: We, the jury, find the  
24 defendant guilty of reckless driving causing serious  
25 bodily injury as charged in the information.

1           Verdict as to Count 3: We, the jury, find the  
2 defendant guilty of reckless driving causing injury as  
3 charged in the information.

4           So say we all. Dated this 4th day of October,  
5 2017. Signed, foreperson.

6           **THE COURT:** Thank you. You may be seated.

7           Ladies and gentlemen, the clerk is going to put a  
8 question to each of you by juror number. If you would  
9 please answer loudly and clearly.

10          **THE CLERK:** Juror No. 155, are these your  
11 verdicts?

12          **JUROR NO. 155:** Yes.

13          **THE CLERK:** Juror No. 82, are these your verdicts?

14          **JUROR NO. 82:** Yes.

15          **THE CLERK:** Juror No. 206, are these your  
16 verdicts?

17          **JUROR NO. 206:** Yes.

18          **THE CLERK:** Juror No. 265, are these your  
19 verdicts?

20          **JUROR NO. 265:** Yes.

21          **THE CLERK:** Juror No. 253, are these your  
22 verdicts?

23          **JUROR NO. 253:** Yes.

24          **THE CLERK:** Juror No. 84, are these your verdicts?

25          **JUROR NO. 84:** Yes.

1           **THE CLERK:** They are unanimous.

2           **THE COURT:** Thank you.

3           Ladies and gentleman, I wish to thank you for your  
4 time and consideration of this case. I also wish to  
5 advise you of some special privileges enjoyed by  
6 jurors.

7           Except by court order, no juror can ever be  
8 required to speak about the discussions that occurred  
9 in the jury room. For many centuries, we have relied  
10 upon juries for consideration of difficult cases. And  
11 we've recognized for hundreds of years that a jury's  
12 discussions, deliberations, and votes should remain  
13 their private affair so long as they wish it.  
14 Therefore, the law gives you a unique privilege not to  
15 speak of your work as jurors.

16           On the other hand, you are at this time released  
17 from your obligation not to discuss this case, and you  
18 are free at this time to discuss any aspect of your  
19 jury service and any aspect of this case, including,  
20 should you so choose, your discussions, deliberations,  
21 and votes with whomever you choose.

22           You should simply keep in mind that a request to  
23 speak of such matters may come from those who are  
24 curious as to your experiences as jurors or from those  
25 who wish to seek to find fault with your work as

1 jurors. It will be up to each one of you individually  
2 whether or not to preserve your rights to privacy as a  
3 juror.

4 Now having said that, on behalf of the parties in  
5 this case, and on behalf of your fellow citizens, I  
6 thank you very much for your hard efforts over the past  
7 several days, and you are excused at this time with our  
8 thanks.

9 (The jury exits the courtroom.)

10 **THE COURT:** All right. You may be seated.

11 Mr. Altschuler, if you'll approach the lectern  
12 with your counsel.

13 Spencer Jordan Altschuler, a jury of your peers  
14 having found you guilty of vehicular homicide as  
15 charged in Count 1, reckless driving causing serious  
16 bodily injury as charged in Count 2, and reckless  
17 driving causing injury as charged in Count 3, the Court  
18 at this time will adjudge you guilty on each count.

19 I'm going to order a presentence investigation in  
20 this case and set this case for sentencing on  
21 December 1st at 2:30. You will be remanded at this  
22 time pending sentencing.

23 **MR. KALLAHER:** Judge, we would ask for continuing  
24 bail. He shows no flight risk. He's been to every  
25 court appearance.



1           **THE COURT:** Bail is not good past the verdict. If  
2           you wish, you can file a motion to have bond set. But  
3           at this time he'll be remanded pending sentencing.

4           All right. Unless there's something further to  
5           address this afternoon, we'll be at recess until 8:30  
6           tomorrow morning.

7           Thank you.

8           (These proceedings concluded at 3:50 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:  
COUNTY OF OSCEOLA:

I, Julie P. Sullivan, Certified Realtime Captioner,  
Registered Professional Reporter, Official Court Reporter of  
the Ninth Judicial Circuit of Florida, do hereby certify,  
pursuant to Florida Rules of Judicial Administration  
2.535(h)(3), that I was authorized to and did report in  
stenographic shorthand the foregoing proceedings; and that  
thereafter my stenographic shorthand notes were transcribed  
to typewritten form by the process of computer-aided  
transcription; and that the foregoing pages contain a true  
and correct transcription of my shorthand notes taken  
therein.

WITNESS my hand this 17th day of October, 2017, in the  
City of Kissimmee, County of Osceola, State of Florida.

s/Julie Sullivan, CRC, RPR  
Julie Sullivan, CRC, RPR  
Official Court Reporter

1 ORIGINAL

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR OSCEOLA COUNTY, FLORIDA  
CRIMINAL JUSTICE DIVISION

3 STATE OF FLORIDA,

4 Plaintiff,

5 vs.

CASE NO.: 2016-CF-583

6 SPENCER ALTSCHULER,

7 Defendant./

DIVISION NO.: 101

9 MOTION FOR POST-TRIAL RELEASE HEARING

10 BEFORE

11 THE HONORABLE JON B. MORGAN

12 Osceola County Courthouse  
13 2 Courthouse Square  
14 Kissimmee, Florida 34741  
15 Courtroom 5-F  
16 Friday, December 8, 2017  
17 Transcribed from digital media by:  
18 Deborah M. Armstrong, CER

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

18 GABRIELLE SANDERS, ESQUIRE

19 Office of the State Attorney  
20 2 Courthouse Square  
21 Suite 3500  
22 Kissimmee, Florida 34741  
23 On behalf of the State

22 MICHAEL UFFERMAN, ESQUIRE

23 Michael Ufferman Law Firm, P.A.  
24 2022 Raymond Diehl Road #1  
25 Tallahassee, Florida 32308-3881  
On behalf of the Defendant

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CLERK COUNTY COURT  
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Ninth Judicial Circuit  
Court Reporting Services

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

(The following proceedings commenced on Friday,  
December 8, 2017, at 2:28 p.m.)

**THE COURT:** All right. Go on record in Case  
16-CF-583, State of Florida versus Spencer Altschuler.  
Defendant is present with counsel, Mr. Ufferman, and  
the assistant state attorney, Ms. Sanders. We're here  
on the defendant's motion for supersedeas bond, I  
believe.

**MR. UFFERMAN:** Thank you, Your Honor. May it  
please the Court? Michael Ufferman on behalf of  
Mr. Altschuler.

Your Honor, I know you know the standard for bail  
pending appeal. It's spelled out in Rule 3.691. It's  
also spelled out in the *Younghans* decision from the  
Florida Supreme Court. I believe that's cited in my  
motion. It is. It's -- the cite is 90 So.2d 308.  
It's a 1956 case that we continue to adhere to today.

In essence, the standard for bail pending appeal  
is two-fold. One, is the client a flight risk?  
Because the Court needs to ensure that if the judge or  
the Court grants bail pending appeal, then at the  
conclusion of the -- the appeal, if the appellate court  
affirms, that the defendant will then turn himself in

1 to serve out the sentence.

2 And, number two, is the appeal fairly debatable or  
3 nonfrivolous? And I've heard many judges about that  
4 particular standard. I've heard one judge refer to it  
5 as if -- if this was a public defender case, would they  
6 file an *Anders* brief. If the answer is yes, then it's  
7 a frivolous appeal, there's no potentially meritorious  
8 issues. If they would not, then that seemingly meets  
9 the standard.

10 I -- I always refer to former Judge Padovano, he  
11 has a Florida Appellate Practice treatise, who  
12 discusses the standard, and he says that the defendant  
13 must show that the appeal was filed in good faith, it's  
14 not frivolous, presents a question that's fairly  
15 debatable. But the defendant is not required to show  
16 that a reversal is probable to obtaining an order of  
17 pretrial release. Obviously, if that was the standard  
18 we could never win because you've already considered  
19 the issues in this case and you've ruled against the  
20 defendant and -- and that's not the standard we have to  
21 meet. We simply have to show that it's nonfrivolous.

22 Regarding that factor -- and I'll address that  
23 factor first, Your Honor -- I -- I think this is a  
24 close call on a judgment of acquittal issue. I -- and  
25 I think that's what would meet the standard for being

1           nonfrivolous and fairly debatable. There aren't many  
2           cases that I take up on appeal that have a judgment of  
3           acquittal issue.

4           It's rare that an appellate court will grant -- or  
5           overturn a judge's decision to deny a motion for  
6           judgment of acquittal, but there are some. And I think  
7           this is one of the rare cases where that is the issue  
8           on appeal.

9           And -- and I know -- and I -- I'm fortunate in  
10          this case to have a trial transcript. I don't normally  
11          have the transcripts this early. And when this issue  
12          was argued by defense counsel, I think the issue --  
13          from my understanding -- was brought up even in a  
14          motion to dismiss --

15                 **THE COURT:** Yes.

16                 **MR. UFFERMAN:** -- pretrial --

17                 **THE COURT:** It was.

18                 **MR. UFFERMAN:** -- and there was a hearing on that  
19          issue. It was the -- argued extensively by both sides.  
20          The Court made the ruling. A similar argument was made  
21          at trial.

22                 But the Court -- and -- and you -- you  
23          acknowledged -- and I appreciate you being willing to  
24          acknowledge on the record, Your Honor, that -- I'm  
25          quoting this it's page 254 of the transcript that I

1 have. It's a closer call than many of the cases cited,  
2 and you go on to talk about a couple of the cases. And  
3 ultimately you said, I still think it's a jury issue.  
4 But I think the Court has already acknowledged as much  
5 during the trial that this is a close issue.

6 It's a fine line -- and I've cited some cases --  
7 there's gonna be a lot more research for the appeal of  
8 course -- but the fine line between what's the  
9 willful-type conduct that's required for recklessness  
10 in a vehicular homicide case versus what's regular  
11 negligence that would be a mere accident and result in  
12 a civil case as opposed to a criminal case. I think  
13 the Court mentioned that there's a fine line even  
14 during the sentencing hearing last week.

15 So I submit that as far as the second factor is  
16 concerned, is this a fairly debatable appeal, on the  
17 judgment of acquittal issue I believe it is.

18 And there may be some other issues that would  
19 affect the -- the trial. I -- I think there was a  
20 photograph that was introduced; I haven't researched  
21 that issue or really looked into it. I don't know if  
22 that would ultimately have an impact on the appeal or  
23 not.

24 But I think it's significant for the JOA issue,  
25 also, from this standpoint. If the -- the appellate

1 court is to grant relief on that issue, that would mean  
2 that my client wouldn't spend any time in prison.

3 **THE COURT:** Right.

4 **MR. UFFERMAN:** And I -- and I think that's  
5 something that the Court can consider in deciding  
6 whether or not to grant bail pending appeal in this  
7 case.

8 I think if it was -- if we knew the only issue on  
9 appeal would involve potentially a new trial and the --  
10 the first jury has already come back guilty, then I  
11 could see how a Court would not be as worried about  
12 that.

13 But in an issue -- in a case where maybe a speedy  
14 trial violation and the result would be a dismissal, or  
15 like this, where the issue on appeal if we win is a  
16 home run type issue, that that's the end of the case  
17 it'd be all over, it would mean at that point in time  
18 that he should not have served any time. And,  
19 obviously, he can't get that year back. And each  
20 appeal takes about a year, sometimes even longer. So  
21 if that were to be the situation, then that would be a  
22 year of my client's life that he never should've spent  
23 in prison at all. And I think that's something that  
24 the Court can consider.

25 I'll address briefly the first issue -- I'm not



1       gonna put on any witnesses today with a thorough  
2       presentation last week from both sides. And two  
3       wonderful families; what a tragedy in this case. I  
4       think both sides talked about that. Both attorneys  
5       last week talked about that, the Court acknowledged  
6       that. But I think one thing that did come out of that  
7       is that my client's not a flight risk. I think my  
8       client has a wonderful family, a family that supports  
9       him. And if you do grant bond pending appeal, they  
10      will vouch for him the entire time.

11           Whatever conditions you would put in place, he  
12      will comply with. I don't think he's violated a single  
13      condition, that I'm aware of, of his pretrial release.  
14      I think he's continued to try to better himself.  
15      Although he's obviously been dealing with this issue  
16      from the moment of the accident, he's nevertheless  
17      continued -- he's moved back home to be close to  
18      family, which I think is a good idea in -- in this  
19      case. He's continued to work. He has a place to live.  
20      So I don't think you have to worry that he's gonna be  
21      out there getting in trouble. They will ensure that he  
22      will not get in trouble if you entrust him to their  
23      care while we pursue the appeal.

24           Obviously there's -- whatever conditions you could  
25      put in place that you feel are necessary -- the one

1 I'll suggest is, clearly, he won't drive. And any  
2 condition of bail pending appeal would be that he will  
3 not drive. He acknowledges that. You may want to put  
4 other conditions in place. There's any number of  
5 conditions that can be put in place for bail pending  
6 appeal. He -- he's willing to abide by any of those  
7 and -- and understands that it would be better for him  
8 to be under whatever conditions are imposed as opposed  
9 to spending time in prison while we pursue the appeal.

10 But, again, I don't -- he's not a flight risk.  
11 His family's here. He's not gonna go anywhere. He  
12 hasn't gone anywhere the entire time.

13 And I submit to you that there's -- hopefully,  
14 there's no question in your mind that if the appellate  
15 court does affirm his conviction, that he will  
16 immediately turn himself in to begin serving that  
17 sentence.

18 I've had clients in this situation and when I get  
19 that opinion, there may be a rehearing or not, but at  
20 that point I immediately reach out to my client and  
21 say, bad news, we've lost. We need to start preparing  
22 to turn ourselves in.

23 And the day that mandate comes out -- I'm already,  
24 prior to that, letting the Court know that we're aware  
25 of the opinion coming out. And as soon as the mandate

1 comes out, I'll notify the Court immediately so the  
2 Court can set a surrender date so my client can turn  
3 himself in at the local jail and begin serving his  
4 sentence. And that's what would happen in this case.  
5 He will do that. But I submit that he shouldn't have  
6 to do that until we hear what the appellate court says  
7 about whether or not this amounts to a crime,  
8 Your Honor.

9 So for all of those reasons, we're simply begging  
10 you to grant bail pending appeal.

11 I have a handful of clients that are out on bail  
12 pending appeal. I have a client right now that's a DUI  
13 manslaughter case. The name is Ribes, R-i-b-e-s.  
14 That's a Naples DUI manslaughter case. And Judge Hardt  
15 in that case has granted her bail pending appeal. And  
16 we're pursuing the appeal, and she's abiding by all  
17 conditions for post-trial release. And I have a  
18 handful of other clients in similar situations.

19 Many -- most don't. Many -- many of my cases are  
20 violent offenses; some don't even qualify. If you have  
21 a previous felony, obviously, you don't qualify. Some,  
22 because of the nature of the offense, it's just not an  
23 offense that I know the judge is going to grant bail  
24 pending appeal.

25 I think this is the type of offense that there are

1       some -- just like it's a type of offense that would  
2       qualify potentially for a downward departure. It's  
3       also the type of offense that I think up on -- on  
4       average around the state, those that might be getting  
5       bail pending appeal, have a similar case like this. So  
6       we'd ask you to please grant it.

7               Thank you.

8               **THE COURT:** Thank you. Ms. Sanders?

9               **MS. SANDERS:** Just briefly, Your Honor.

10              The State is familiar with the case law that  
11      counsel has provided. I do understand that it is in  
12      the Court's discretion to do so.

13              Based upon what has been outlined by counsel, I  
14      would -- I would say that most vehicular homicide cases  
15      are fairly debatable. However, to just allow every  
16      person who has been found guilty of a vehicular  
17      homicide to be let out and not serve their sentence  
18      would be a disservice, in the State's opinion.

19              In regards to local attachment, he is not from  
20      Osceola County. He is from South Florida. I do  
21      understand there are ties and his family definitely  
22      will be supporting him.

23              However, the State believes that prior to getting  
24      the conviction, and also that particular sentence of  
25      five years, there was no concerns about the defendant

1       being a flight risk. But because there is now a -- a  
2       sentence that has been given, the -- the State does  
3       have concerns that, if released, he may just remove  
4       himself from this jurisdiction.

5               **THE COURT:** All right.

6               **MS. SANDERS:** That is all, Your Honor.

7               **THE COURT:** Thank you.

8               Well, Ms. Sanders, I don't think the Court has  
9       discretion, quite frankly. If -- if the appeal is  
10      based on grounds that are fairly -- are not frivolous  
11      and are fairly debatable, then I think the defendant,  
12      on this offense and with his background, is entitled as  
13      a matter of right to the Court setting a reasonable  
14      bond pending appeal.

15              And in this case, clearly, the grounds are fairly  
16      debatable. There's, I guess, three issues that jump  
17      out. The one is the photograph. The second is whether  
18      there's sufficient evidence to prove the defendant was  
19      actually the driver of the vehicle. And I'm not so  
20      sure how -- how strong those are, but the -- they're  
21      fairly debatable.

22              But the one that is critical, and -- and the one  
23      of which I think the case would likely be decided, is  
24      the sufficiency of the driving pattern in this case to  
25      support a -- a jury finding of reckless driving

1 sufficient to support a -- a verdict of guilty of  
2 vehicular homicide, and whether the facts were  
3 sufficient to have been allowed to go to the jury. And  
4 that is a real close call. I mean, there's -- there's  
5 one case that the Court hung its hat on pretty much  
6 that had very, very similar facts, but I could see how  
7 that could go either direction.

8 So the Court does find that the appeal is taken on  
9 grounds that are fairly debatable.

10 Then the issue remains are -- are what the bonds  
11 will be and what the conditions of release are. The  
12 defendant, Mr. Altschuler, has made all court  
13 appearances pending the trial in this case. He doesn't  
14 have any ties to the Central Florida area, but he does  
15 have strong ties to Florida and to the Broward County  
16 area. And does have significant family in -- in that  
17 county and family support, as was evidenced by the  
18 number of people that showed up at his sentencing.

19 On the other hand, I -- I understand the -- the  
20 State's concern that while there may have been some  
21 incentive, perhaps, not to appear earlier, at this  
22 point, when the sentence is known, if -- if the  
23 defendant is not successful on appeal that there's, at  
24 least arguably, a greater incentive not to surrender  
25 for sentencing -- or for service of the sentence.

1 I'm going to set bond in the amount of \$50,000.  
2 It will be conditioned upon the defendant not operating  
3 or being in actual, physical control of a motor  
4 vehicle. I don't think there are any other conditions  
5 of release that really are appropriate or necessary,  
6 but I'll listen to anything the State may wish to  
7 present.

8 **MS. SANDERS:** Nothing else, Your Honor.

9 **THE COURT:** All right. So that'll be the only  
10 condition then.

11 **MR. UFFERMAN:** Your Honor, the only other thing  
12 I'll say is that there is a condition of filing the  
13 notice of appeal for him to be released on bond pending  
14 appeal.

15 **THE COURT:** Right.

16 **MR. UFFERMAN:** We've filed a notice of appeal in  
17 this case --

18 **THE COURT:** Right.

19 **MR. UFFERMAN:** -- already. So that's been  
20 satisfied.

21 **THE COURT:** Right.

22 **MR. UFFERMAN:** Thank you, Your Honor.

23 **THE COURT:** Very good. Thank you.

24 (The proceedings were concluded at 2:41 p.m.)  
25

## C E R T I F I C A T E

1  
2 State of Florida:

3 County of Osceola:

4 I, Deborah M. Armstrong, being a Digital Court  
5 Reporter of the Ninth Judicial Circuit, as  
6 authorized by Rule 2.535(h)(3), Florida Rules of  
7 Judicial Administration, and the Administrative  
8 Order of the Ninth Judicial Circuit Numbered  
9 07-98-44, certify that the foregoing transcription  
10 is true and correct to the best of my ability.

11 Dated this 19th day of January, 2018, in the  
12 City of Kissimmee, County of Osceola, State of  
13 Florida.

14

15

16 s/Deborah M. Armstrong, CER  
17 Deborah M. Armstrong, CER \*\*D-370  
18 Certified Digital Court Reporter

19

20

21

22

23

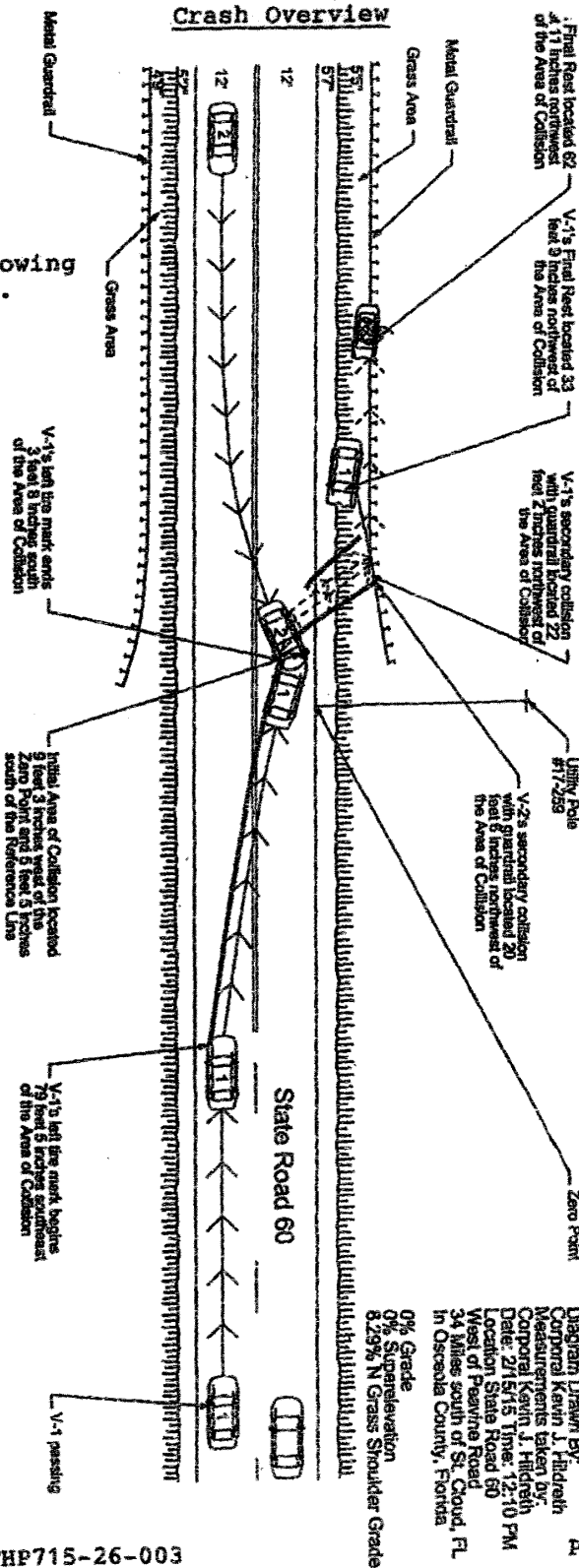
24

25

Ninth Judicial Circuit  
Court Reporting Services



# Crash Overview



## Diagram Legend

Connect the following letters together.

- A to A
- B to B

ALSTSCHULE  
CF16-583  
Page 000290

Case Number: FHP715-26-003

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR OSCEOLA COUNTY, FLORIDA

Case No: 2016 CF 000583

Date of Offense: 02/15/2015

STATE OF FLORIDA

VS

SPENCER JORDAN ALTSCHULER

1871 NW 93RD WAY

FORT LAUDERDALE, FL 33322

*Defendant*

JAMES KALLAHER

151 COLLEGE DRIVE

SUITE 1

ORANGE PARK, FL 32065

*Attorney*

CRIMINAL APPEARANCE ORDER

COURT DATES

Defendant is hereby **Ordered** to appear for:

<i>Event</i>	<i>Date</i>	<i>Time</i>	<i>Locatio</i>	<i>Judge</i>
SENTENCING	12/1/2017	2:30 PM	COURTROOM 5F	JON B MORGAN

APPEARANCE

DEFENDANT WAS TRIED BY A JURY AND FOUND GUILTY AS CHARGED ON ALL COUNTS IN THE  
INFORMATION

DEFENDANT IS ADJUDICATED GUILTY

PRE-SENTENCE INVESTIGATION ORDERED

DEEFENDANT IS REMANDED PENDING SENTENCING

DEFENSE ORAL MOTION FOR BOND - DENIED WITHOUT PREJUDICE

**DONE AND ORDERED** THIS 4TH DAY OF OCTOBER, 2017.



JON B MORGAN, CIRCUIT JUDGE

FILED IN OPEN COURT THIS 4TH day of October, 2017 By: EVA Q., DEPUTY CLERK



DEFENDANT SIGNATURE

MILLER BAIL BONDS

520 SIMPSON ROAD

KISSIMMEE, FL 34744

BONDSPERSON

Cc: [ S/A ] [ DEF ] [ DEF ATTY ] [ BOND ] [ PROB ] [ JAIL ] [ HUM SVC ] [ PTR ] [ BK ] [ CSO ] [ JWK REL ] [ REC ] [ M.HLTH ]  
[ DHSMV ] [ JD6 ]

**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Court Administration, Osceola County Courthouse, 2 Courthouse Square, Suite 6300, Kissimmee, Florida, (407) 742-2417, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.**











GENOR

*emailed to Jail*

3:48:48PM

FINGERPRINTS OF DEFENDANT

COUNT	CRIME	OFFENSE STATUTE NUMBER	DEGREE OF CRIME
1	Vehicular Homicide	782.07(1)(a)	F2
2	Reckless Driving Causing Serious Bodily Injury	316.192(3)(c)(2)	F3
3	Reckless Driving Causing Damage to Property or a Person	316.192(3)(X)(i)	1st

RIGHT THUMB	RIGHT INDEX	RIGHT MIDDLE	RIGHT RING	RIGHT LITTLE
				
LEFT THUMB	LEFT INDEX	LEFT MIDDLE	LEFT RING	LEFT LITTLE
				

Fingerprints taken by: D/S NICK HOBBY #702 / D/S ADAM WEST #946 /

Title: DEPUTY SHERIFF

I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant,  
Spencer Jordan Altschuler and that they were placed thereon by said Defendant in my  
 presence in Open Court this date.

DONE AND ORDERED at Osceola County, Florida,  
 This 4 day of October, 2017.

FILED IN OPEN COURT THIS 10/4 2017

ARMANDO RAMIREZ, CLERK OF CIRCUIT COURT

BY: [Signature] DEPUTY CLERK

COPIES:

☐ STATE ☐ DEFENDANT ☐ DEF ATTY ☐ BOND ☐ PROBATION ☐ JAIL ☐ SO ☐ PTR  
☐ CCO ☐ BK ☐ WK REL ☐ REC ☐ MTL HEALTH ☐ CASHIERS ☐ DHSMV  
 CFMFPRINT

[Signature]  
 JUDGE MORGAN, Circuit Court Judge

16 CF 583

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR OSCEOLA COUNTY, FLORIDA

Case No: 2016 CF 000583  
OBTS#: 4902116249

DEFENDANT: SPENCER JORDAN ALTSCHULER

SENTENCE

(As to Count 1)

The Defendant being personally before this court, accompanied by his/her attorney, and having been adjudicated guilty herein, 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 he/she should not be sentenced as provided by law, and no cause being shown,

and the Court having on \_\_\_\_\_ deferred imposition until this date.

and the court having previously entered a judgment in this case on \_\_\_\_\_ now resentsences the defendant.

and the Court having placed the defendant on probation/community service and having subsequently revoked the defendant's probation/community service by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

The Defendant is hereby committed to the Custody of the Department of Corrections.  
TO BE IMPRISONED

☒ For a term of Natural Life  
☒ For a term of \_\_\_\_\_

5 years

(If Split Sentence)

☒ Followed by a period of 10 yrs on probation/community service under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_, the balance of such sentence shall be suspended and the Defendant shall be placed on probation/community service for a period of \_\_\_\_\_ under the supervision of the Department of Corrections according to the terms and conditions set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

(Firearm-3 year mandatory minimum)

It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

(Drug Trafficking mandatory minimum)

It is further ordered that the \_\_\_\_\_ year mandatory minimum imprisonment provisions of F.S. 893.135(1) are hereby imposed for the sentence specified in this count.

(Retention of jurisdiction)

The Court pursuant to F.S. 947.16(4) retains jurisdiction over Defendant.

(Habitual Offender)

The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S 775.084(4) (a). The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

(Jail Credit)

☒ It is further ordered that the Defendant shall be allowed a total of 60 day(s) credit for such time as he/she has been incarcerated prior to imposition of this sentence.

(Consecutive/Concurrent as to Other Counts)

CFORDOCSNT

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR OSCEOLA COUNTY, FLORIDA

Case No: 2016 CF 000583  
OBTS#: 4902116249

DEFENDANT: SPENCER JORDAN ALTSCHULER

SENTENCE

(As to Count 2)

The Defendant being personally before this court, accompanied by his/her attorney, and having been adjudicated guilty herein, 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 he/she should not be sentenced as provided by law, and no cause being shown,

and the Court having on \_\_\_\_\_ deferred imposition 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 service and having subsequently revoked the defendant's probation/community service by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

The Defendant is hereby committed to the Custody of the Department of Corrections.  
TO BE IMPRISONED

☒ For a term of Natural Life

☒ For a term of \_\_\_\_\_

5 years

(If Split Sentence)

Followed by a period of \_\_\_\_\_ on probation/community service under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_, the balance of such sentence shall be suspended and the Defendant shall be placed on probation/community service for a period of \_\_\_\_\_ under the supervision of the Department of Corrections according to the terms and conditions set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

(Firearm-3 year mandatory minimum)

It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

(Drug Trafficking mandatory minimum)

It is further ordered that the \_\_\_\_\_ year mandatory minimum imprisonment provisions of F.S. 893.135(1) are hereby imposed for the sentence specified in this count.

(Retention of jurisdiction)

The Court pursuant to F.S. 947.16(4) retains jurisdiction over Defendant.

(Habitual Offender)

The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4) (a). The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

(Jail Credit)

It is further ordered that the Defendant shall be allowed a total of 60 day(s) credit for such time as he/she has been incarcerated prior to imposition of this sentence.

(Consecutive/Concurrent as to Other Counts)

CFORDOCSENT

✓ It is further ordered that the sentence imposed for this court shall run \_\_\_ Consecutive ✓ Concurrent with the sentence set forth in count above. → both counts  
(Consecutive//Concurrent as to Other Convictions)  
It is further ordered that the sentence imposed for this count shall run \_\_\_ Consecutive \_\_\_ Concurrent with the following:

\_\_\_ Any active sentence being served.

\_\_\_ Specific sentences \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the event the above sentence is to the Department of Corrections, the Sheriff of Osceola County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the department together with a copy of this Judgment and Sentence and any other document specified by Florida Statute.

The defendant in open Court was advised of his/her right to appeal from this Sentence by filing notice of appeal within thirty (30) days from this date with the Clerk of this court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

In imposing the above sentence, the court further orders:

\_\_\_ D.O.C. shall apply original sentence jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes

Downward Departure Sentence  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DONE AND ORDERED** THIS 1ST DAY OF DECEMBER, 2017.



\_\_\_\_\_  
JON B MORGAN, CIRCUIT JUDGE