

REPORTER'S RECORD

VOLUME 3 OF 10 VOLUMES

TRIAL COURT CAUSE NO. 1404917 FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS

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CHRISTOPHER A. PRINE
Clerk

BRITTINI KRESSIN) IN THE DISTRICT COURT
)
 Appellant)
)
)
)
 VS.) HARRIS COUNTY, TEXAS
)
)
)
 THE STATE OF TEXAS)
)
 Appellee) 351ST JUDICIAL DISTRICT

GUILT-INNOCENCE PROCEEDINGS

On the 6th day of October, 2015, the following
 proceedings came on to be heard in the above-entitled
 and numbered cause before the Honorable Terry Flenniken,
 Judge presiding, held in Houston, Harris County, Texas;
 Proceedings reported by computer-aided
 transcription/stenograph shorthand.

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VOLUME 3
(GUILT-INNOCENCE PROCEEDINGS)

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1 (Open court, defendant present, no jury.)

2 THE COURT: The Court's on the record in
3 Cause No. 1404917, the State of Texas versus Brittini
4 Kressin. It's the Court's understanding there are some
5 matters that need to be addressed prior to bringing in
6 the jury.

7 Who needs to proceed?

8 MR. ASLETT: Your Honor, I'll go ahead and
9 go first.

10 THE COURT: Go ahead.

11 MR. ASLETT: Your Honor, this morning I
12 filed a second motion in limine. This is basically
13 going to supplant our first motion. There are 12 parts
14 to the motion in limine, and the State is asking for a
15 ruling prior to opening statements on all of these.

16 Most of them concern criminal history of
17 various State's witnesses that the State does not
18 believe are impeachable or relevant to the case at hand.

19 THE COURT: All right. Is there anything
20 else?

21 MR. ASLETT: That's all I have, Judge.

22 THE COURT: All right. The motion in
23 limine is granted. Just prior -- whenever the -- if
24 there's any witnesses you want to go into any
25 convictions on, just approach and the Court will address

1 it at that time.

2 MR. RAMIREZ: Your Honor, these are nonfact
3 witnesses, right? I mean --

4 MR. ASLETT: These are factual witnesses.

5 MR. RAMIREZ: Oh, I see. Who may have
6 observed the accident or --

7 MR. ASLETT: Who did observe the accident.

8 THE COURT: One moment. If you-all would,
9 just address your remarks to the Court.

10 MR. RAMIREZ: Your Honor --

11 THE COURT: In any event, if there's any
12 witnesses that you want to go into any prior
13 convictions, just approach the Bench. We'll address it
14 at that time.

15 MR. RAMIREZ: All right, sir.

16 THE COURT: Is there anything else that
17 we --

18 MR. ASLETT: Well, Judge, does your ruling
19 also include -- several of the witnesses have either
20 pending deferred adjudications or open cases, and I'm
21 asking that no mention be made of those either.

22 THE COURT: Before going into any criminal
23 history on any witness, the Court will consider the
24 request to do so when the witness is on the witness
25 stand. Just before you go into it, if you will, just

1 approach the Bench.

2 MR. RAMIREZ: All right.

3 THE COURT: All right. Anything else?

4 MR. ASLETT: Nothing from the State, Judge.

5 MR. RAMIREZ: Judge, we, as well, filed our
6 motion in limine, if you recall, yesterday morning.
7 There are several requests that we have on that motion
8 including -- and we'd ask the Court to grant just the
9 motion in limine that -- one, that any alleged
10 extraneous offenses that the State may want to get into,
11 that we approach on that.

12 THE COURT: Have you had an opportunity to
13 review the defendant's motion in limine?

14 MR. ASLETT: I have, Your Honor.

15 THE COURT: Any objection to any portions
16 of the motion in limine?

17 MR. ASLETT: I do. I don't object to not
18 bringing up any extraneous during the guilt-innocence
19 phase. That's obviously not a problem. Under Letter B,
20 he's asking to limine out the recorded interview that
21 she gave the police. She was in custody, but she was
22 Mirandized, and it was on video. So I intended to refer
23 to parts of that in my opening statement.

24 THE COURT: Under what, under B?

25 MR. ASLETT: Under B.

1 Same thing with mentioning that a blood
2 draw warrant was issued under C. Most of the rest is
3 the retrograde extrapolation and the blood test results.
4 I'm not going to mention any number, but I was going to
5 indicate that the results showed that she was above the
6 legal limit.

7 And then -- let's see -- with respect to
8 the jail calls, we can go ahead and have a hearing
9 outside the presence of the jury prior to that. I won't
10 mention that until we get there.

11 She was employed as a bartender. I don't
12 see how that can't come up. She mentions it in her
13 interview. She was coming from a bar at the time of the
14 crash where she was drinking with one of her bartender
15 friends. So it's kind of part and parcel --

16 THE COURT: Which letter is that?

17 MR. ASLETT: "I." The fact that she was a
18 bartender. And I don't see how that's unfairly
19 prejudicial.

20 With respect to J, I won't mention anything
21 about violations of bond. And as far as K, I won't
22 mention that she has a pending intoxication assault
23 case. However, I do intend to call the intoxication
24 assault victim in the guilt-innocence phase as he is a
25 fact witness to the aftermath of the crash.

1 THE COURT: All right. As to "I" on
2 opening statement, can you not just say that she was
3 having drinks with a coworker, without going into the
4 fact that she was a bartender until as such time as we
5 get to that in the case --

6 MR. ASLETT: That's fine, Judge.

7 THE COURT: -- in the evidence?

8 All right. As to B and C, what says the
9 defendant on those?

10 MR. RAMIREZ: On the recorded interview,
11 Judge, that would be B, we would just like the
12 opportunity to object to that outside the presence of
13 the jury before they actually hear the recording.

14 MR. ASLETT: And I have no issue with that,
15 Judge, but I am going to need to mention that she did
16 give an interview. I'll try to be vague about the
17 contents of it, so as not to go into too much, just in
18 case you rule against us, but I do intend to mention
19 that she gave a statement to the police.

20 THE COURT: All right. And then?

21 MR. RAMIREZ: With respect to C, Judge,
22 that, as well, we would like the opportunity -- that's
23 based on my motion to suppress that I filed yesterday.
24 We'd like to conduct a hearing outside the presence of
25 the jury to see what the Court's ruling would be on its

1 admissibility.

2 THE COURT: What do you want to say in
3 opening statement?

4 MR. ASLETT: So with respect to the blood
5 draw, I was hoping to head off what I think may be a
6 possible defense. There were two tests done on the
7 blood. There was an initial blood that was done back in
8 2013 by an analyst who no longer works for the lab.
9 That analyst went back for further education out of
10 state. Rather than call and fly her back in for the
11 thousands of cases that she's on, the lab has retested
12 the blood in some of her cases. That blood was retested
13 in 2015. When it was retested, the results of the blood
14 analysis were slightly lower than the tests in 2013.
15 That's to be expected. Blood naturally loses ethanol
16 content over time.

17 THE COURT: What was the result?

18 MR. ASLETT: It was initially .09 and then
19 two years later it's a .07.

20 THE COURT: So do you intend in any way to
21 try to go into the initial result?

22 MR. ASLETT: Well, I feel that if -- I'm
23 not going to mention any of the results. I understand
24 that. I don't want to mention numbers before that
25 evidence comes in, but I do want to sort of head that

1 off at the pass and get the jury to understand I'm not
2 trying to hide the ball by mentioning there have been
3 two tests, that the second test results in the lower
4 result and you're going to hear why.

5 MR. RAMIREZ: If I may, Your Honor?

6 THE COURT: You may.

7 MR. RAMIREZ: Judge, I don't think -- if
8 they don't have the -- and this is why we need to have
9 the hearing outside the presence of the jury, so we can
10 decide how much of this is going to come in, or if any
11 of it. If they don't have an expert to come in and
12 testify to the first result, then I assume that they
13 have somebody for the second and most recent test. And
14 that's the one that I understand -- that's where we're
15 at if they don't have a witness on the other one.

16 THE COURT: Until that hearing is conducted
17 and the Court's able to hear the evidence and make a
18 ruling, it seems that, perhaps, you should not mention
19 the blood test in the manner in which you just stated.
20 As far as saying that the evidence is going to show, you
21 know, that there was a -- that blood was taken, and, you
22 know, mention that, but as far as telling the jury in
23 opening statement what the result of the first test was
24 and then the result of the second test --

25 MR. ASLETT: I'm not going to mention

1 specific results. If you want me to just keep it vague
2 and say that her blood was drawn and you're going to
3 hear about that testing, just cut it off --

4 THE COURT: Can you do it that way?

5 MR. ASLETT: I can do it that way, Judge.

6 THE COURT: Yeah, let's do that.

7 All right. Is there anything else?

8 MR. MARTINEZ: Your Honor, may it please
9 the Court?

10 One of the things that I thought I heard
11 the prosecutor mention was he was going to mention to
12 the jury about the retrograde extrapolation expert and
13 he was going to say the test was above the legal limit
14 based on that testimony, but I think that would be a
15 little bit misleading because the test results that we
16 have is .07. And, yes, the expert might establish at
17 the time of driving, but I think that he should mention
18 to the jury we have an expert that would indicate that
19 based on retrograde extrapolation, it would be .7 {sic}
20 as to avoid confusing the jury that somehow the expert
21 can establish definitively that it was, you know, higher
22 than .07 because that's an open question as to whether
23 or not they -- first, whether the expert is qualified,
24 and second whether the jury will believe the expert. So
25 it's a credibility issue still.

1 in?

2 MR. ASLETT: State's ready, Your Honor.

3 MR. RAMIREZ: Defense is ready.

4 THE COURT: All right. Is there any
5 objection to going off the record?

6 MR. ASLETT: No objection.

7 MR. RAMIREZ: No.

8 THE COURT: There being none, the Court's
9 off the record.

10 (Brief recess.)

11 (Open court, defendant and jury present.)

12 THE COURT: You may be seated.

13 Good morning.

14 JURORS: Good morning (in unison).

15 THE COURT: Well, excuse me. Every time I
16 try to talk, I start coughing.

17 Now that you've come in and gotten
18 comfortable, I'm going to ask you to please stand and
19 raise your right hand to take an oath.

20 (Jurors sworn.)

21 THE COURT: You may put your hands down and
22 you may be seated.

23 Mr. Aslett, would you care to present the
24 indictment?

25 MR. ASLETT: Yes, Your Honor.

1 In the name and by authority of the State
2 of Texas: The duly organized Grand Jury of Harris
3 County, Texas, presents in the District Court of Harris
4 County, Texas, that in Harris County, Texas, Brittini
5 Kressin, hereafter styled the defendant, heretofore on
6 or about October 15, 2013, did then and unlawfully, by
7 accident and mistake while operating a motor vehicle in
8 a public place while intoxicated and by reason of that
9 intoxication, cause the death of Claudia Ontiveros,
10 hereafter called the complainant, by driving her motor
11 vehicle into and causing it to collide with the motor
12 vehicle that was occupied by the complainant.

13 It is further presented that at the time
14 the defendant committed the felony offense of
15 intoxication manslaughter on or about October 15, 2013,
16 as herein above alleged, she used and exhibited a deadly
17 weapon, namely, a motor vehicle during the commission of
18 said offense and during the immediate flight from said
19 offense.

20 Against the peace and dignity of the State.

21 THE COURT: Which says the defendant,
22 guilty or not guilty?

23 THE DEFENDANT: Not guilty, Your Honor.

24 THE COURT: The record will so reflect.

25 You may be seated.

1 Does the State wish to make an opening
2 statement?

3 MR. ASLETT: Yes, Your Honor.

4 THE COURT: You may do so.

5 **STATE'S OPENING STATEMENT**

6 MR. ASLETT: Claudia Ontiveros was just
7 20 years old back in October 2013. She hadn't yet
8 gotten married. She hadn't yet had any children. She
9 still lived at home with her parents and her two younger
10 brothers. Claudia had some trouble in school and she
11 dropped out, but she was working towards getting her
12 GED. And her dream was ultimately, after getting her
13 GED, to serve her country by enlisting in the Army.

14 Claudia wanted to help support her family,
15 so she applied for and she had just gotten a brand-new
16 job working at Wal-Mart. She was supposed to start that
17 job on the morning of October 15th, 2013. On the night
18 before, October 14th, Claudia decided to hang out with
19 one of her friends, a man named Michael Etheridge.
20 Michael drove over to Claudia's house, picked her up,
21 and they went back to Michael's house where they hung
22 out together along with Michael's roommate, a man named
23 Samuel Carter.

24 They hung out for a few hours and it was
25 starting to get late. It was just after midnight on

1 October 15th, 2013. And it was time for Michael to drop
2 Claudia back off at her house. After all, she had to
3 get up early in the morning to start a new job and
4 Michael had to get up to go to his job.

5 So Michael got behind the driver's seat of
6 his green Toyota Corolla; Sam, his roommate, got in the
7 front passenger seat; and Claudia got in the backseat.
8 The route back to Claudia's house required Michael to
9 get onto I-10 and head east into downtown. It was a
10 drive he had made before. The weather was fine.
11 Traffic was normal for that time of night, just after
12 midnight. And there was nothing to indicate that this
13 drive was going to be anything but normal.

14 The evidence in this case will show that
15 all of a sudden, Michael and Sam saw the headlights of a
16 car coming down the exit ramp of North Shepherd. And
17 they watched as this car continued down the exit ramp
18 and got onto I-10 and started driving the wrong way.
19 And the car was coming straight for them. Michael
20 swerved at the last minute and was able to avoid a
21 head-on collision, but he wasn't able to avoid this car
22 striking the side of his Toyota Corolla and continuing
23 to barrel down I-10.

24 He did what he could, and he pulled over
25 onto the shoulder after the crash. He was hurt. Sam,

1 in the front passenger seat, was also hurt, but their
2 injuries weren't too bad, mostly broken glass from the
3 windshield. But when they looked behind in the back
4 passenger seat to see how Claudia was doing, she was
5 unconscious and she wasn't moving.

6 There were a couple of drivers who saw the
7 crash and stopped to help and went over and tried to
8 attend to Claudia, but there was nothing they could do.
9 See, the force of the crash was so great that it tore a
10 hole in Claudia's aorta, which is the largest artery in
11 her heart, and she bled to death very quickly.

12 Meanwhile, while all of this was going on,
13 some other drivers further back down I-10 stopped to
14 help the driver of the wrong-way car, which was now
15 disabled and sitting in multiple lanes disabled on I-10.
16 You're going to hear from those witnesses that the
17 driver of that car was the defendant, Brittini Kressin.

18 Meanwhile, while all of this was going on,
19 another man by the name of German Arias was riding his
20 motorcycle and going eastbound on I-10 back home. He'll
21 tell you that he was wearing his helmet, his protective
22 motorcycle gear, and going the speed limit when all of a
23 sudden he saw smoke and noticed the defendant's disabled
24 car on the freeway. And he did what he could to try to
25 stop and slow down and swerve out of the way, but he

1 wasn't able to do it in time. And so shortly after the
2 first crash, Mr. Arias hit the side of Brittini
3 Kressin's car, flew over, and rolled into the middle of
4 I-10 and had to be helped by some other bystanders who
5 pulled him onto the shoulder on the side of the roadway.

6 Mr. Arias will tell you that he broke his
7 femur, he broke his left hand, he had to spend three
8 days in the hospital and have surgery so he could walk
9 again.

10 After sometime, police were able to get to
11 the scene. One of the officers who responded that night
12 was Officer Sal Corral with the Houston Police
13 Department. He is a DWI officer. He is trained and
14 does nothing -- pretty much nothing but DWIs. And he
15 has investigated numerous fatal crashes involving
16 alcohol. And he'll tell you that when he came into
17 contact with the defendant; she had a strong odor of
18 alcohol on her; she had red, glassy eyes; and she spoke
19 with mumbled speech. She was uninjured. So he took her
20 to a nearby gas station so he could interview her and do
21 field sobriety tests.

22 The defendant told Officer Corral that she
23 had been drinking with a friend at Anvil, a bar on
24 Westheimer, some hours before the crash. Then she went
25 home and was going to meet a friend at a restaurant.

1 And she told Officer Corral that she thinks she may have
2 passed out in the car from all the drinking because she
3 doesn't remember how she got from the parking lot of
4 that restaurant going the wrong way down I-10.

5 So Officer Corral gave her the same
6 standardized field sobriety tests he gives to every
7 person that's suspected DWI. And you're going to learn
8 that out of the three tests he gave her, she failed two
9 of them. He even asked her to say her alphabet from A
10 to Z, and she couldn't do that correctly.

11 So Officer Corral put the defendant under
12 arrest, read her a piece of paper that basically said
13 that he was asking for a sample of her breath or her
14 blood, and if she refused that refusal could be used
15 against her in court. And she refused both a breath and
16 a blood sample. So Officer Corral went and swore out an
17 affidavit to get a search warrant, which was signed by a
18 judge and was issued. And then he brought the defendant
19 to a hospital where a nurse drew two samples of her
20 blood, one from her left arm at 4:30 in the morning and
21 one from her right arm 30 minutes later, around
22 5:00 o'clock in the morning, five hours after the crash.

23 Officer Corral recorded his interview with
24 the defendant on his police car's dash cam. And this
25 dash cam is supposed to record both audio and video, but

1 when Officer Corral went to check it, he saw that
2 although it had recorded the video, for some reason none
3 of the audio got recorded. Once they found out about
4 this, another Houston police officer, an Officer Derrick
5 Hall, went to the jail to go interview the defendant.
6 And you're going to hear about what was said on that
7 interview and how a lot of it corroborates what she told
8 Officer Corral. Unfortunately, this was nine hours
9 after the crash and the defendant had sobered up by
10 then.

11 You're going to learn that the defendant's
12 blood samples were sent to a crime laboratory, the
13 Houston Forensics Science Center where they were tested.
14 And you're going to learn about what the results of
15 those blood tests showed.

16 Folks, Claudia Ontiveros is really what
17 this case is going to be all about. And I don't want
18 you to lose sight of that. Claudia had her entire life
19 ahead of her. And the evidence in this case is going to
20 show that the defendant cut that life short by driving
21 while intoxicated. There is nothing any of us can do to
22 bring Claudia back, but at the end of this trial, there
23 is something that each and every one of you can do, and
24 that's to give justice to Claudia and to her family by
25 finding the defendant guilty of intoxication

1 manslaughter.

2 THE COURT: Does the defendant wish to make
3 an opening statement at this time?

4 MR. RAMIREZ: Yes, Your Honor, I do. Thank
5 you.

6 THE COURT: You may do so.

7 **DEFENSE OPENING STATEMENT**

8 MR. RAMIREZ: Good morning.

9 I appreciate your service here today and
10 the next few days. I think we've got a full schedule
11 before us here.

12 It's true, there was a horrible accident on
13 this night. There's no doubt. There's nobody in this
14 room that can deny that. Two families have been
15 destroyed without a doubt. There's anger, there's
16 sorrow, anxiety, remorse. All of those things and
17 everything else you can think of because this was a
18 horrible situation, and it still is.

19 We have a family that lost a daughter, a
20 loved one. We have another family that has to still be
21 here today dealing with what is now -- what we're doing
22 today and what will happen tomorrow. It's a very
23 important case. Nobody is treading through this case
24 lightly on either side. Certainly not us. But this was
25 an accident. It was an accident, but it wasn't caused

1 because of alcohol. And the intoxication is the issue
2 in this case that you primarily will be focused in on.
3 It's a very important issue.

4 I believe that there will be evidence that
5 will come right off of this witness stand that will not
6 meet the level of evidence that is necessary for the
7 State to be able to reach their evidentiary burden of
8 beyond a reasonable doubt. You will be the judges of
9 that, but it will come right off of that stand and it
10 will be "this happened" and "this happened" and also
11 "this happened." One example -- he mentioned it --
12 where is the video where she allegedly made those
13 statements? He doesn't have them. That's just one
14 example.

15 At the end of this trial, I will be asking
16 you, and I think the evidence will be asking you, and
17 almost demanding, that this is not a case where the
18 State can prove intoxication beyond a reasonable doubt.
19 And as difficult as that may be a decision to make given
20 the severity of why we're here, I think it will be the
21 only right decision for justice in this case.

22 I look forward to presenting this case to
23 you. Thank you.

24 THE COURT: Everyone who expects to testify
25 in the cause before the Court, please stand.

1 MR. ASLETT: Your Honor, the witnesses are
2 in the witness room.

3 THE COURT: Do you want to bring them in?

4 MR. ASLETT: Yes, Your Honor.

5 (Pause.)

6 THE COURT: If you're a witness in the case
7 before the Court, please raise your right hand to be
8 sworn.

9 (Witnesses sworn.)

10 THE COURT: You may put your hands down.
11 Please remain for a moment.

12 The witness rule has been invoked. That
13 means that during the testimony of anyone other than
14 yourself, you must remain outside the courtroom and
15 outside the hearing of the other person when they
16 testify. You're also instructed that you may not
17 discuss your testimony amongst yourselves or with anyone
18 else until you're released from this instruction, unless
19 you choose to speak to these lawyers. You may do so.

20 With that instruction, who will be the
21 State's first witness?

22 MR. ASLETT: Your Honor, Sergeant Bymaster
23 is our first witness.

24 THE COURT: Sergeant, if you would, please
25 come forward.

1 If the others of you would, please step
2 outside the courtroom and wait to be called.

3 (Witnesses comply.)

4 THE COURT: Sergeant, I know that you know
5 you're about to be asked some questions. Just remember
6 to keep your voice up so everyone can hear you. And let
7 these lawyers completely finish their questions before
8 you start to answer. If you're interrupted, you will be
9 given the opportunity to complete your answer, unless an
10 objection has been sustained.

11 Last, if any of these lawyers stand up
12 during your testimony to address the Court, please say
13 nothing further until you're given permission to do so.

14 Thank you.

15 THE WITNESS: All right.

16 THE COURT: You may proceed.

17 MR. ASLETT: Thank you, Your Honor.

18 **SERGEANT ROBERT BYMASTER,**

19 having been called as a witness and being first duly
20 sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 **BY MR. ASLETT:**

23 Q. Sergeant Bymaster, will you please tell the
24 jury your full name?

25 A. Robert Bymaster.

1 Q. I know this is a strange question to ask given
2 how you're dressed, but what do you do for a living,
3 Sergeant Bymaster?

4 A. City of Houston police officer.

5 Q. How long have you been a police officer with
6 the Houston Police Department?

7 A. Thirty-four years.

8 Q. Thirty-four years. So you would have started
9 in 1981?

10 A. I was only sergeant two years ago.

11 Q. Okay. But you've been with the department
12 since 1981?

13 A. Correct.

14 THE COURT: One moment.

15 How do you spell your name?

16 THE WITNESS: B, as in boy, y-m-a-s-t-e-r.

17 THE COURT: Thank you.

18 You may continue.

19 Q. (By Mr. Aslett) When do you retire?

20 A. When?

21 Q. When?

22 A. Twelve days.

23 Q. All right. What is your current assignment
24 within the police department?

25 A. Southeast jail service.

1 Q. And how long have you been doing that work?

2 A. One year.

3 Q. Is that a mandatory rotation you have to go
4 through when you become a sergeant?

5 A. Yes.

6 Q. Prior to working in a supervisory capacity in
7 the jail, what was your assignment with the Houston
8 Police Department?

9 A. My previous assignment was an accident
10 investigator.

11 Q. Okay. How long were you an accident
12 investigator?

13 A. About 13 years.

14 Q. Who sort of crimes did you investigate as an
15 accident investigator with HPD?

16 A. Our primary function was to do major accidents
17 and fatality accidents and police car accidents.

18 Q. And does that include fatal intoxication
19 manslaughter crashes?

20 A. Yes.

21 Q. Over the course of your career, how many fatal
22 crashes would you guess you've been involved in?

23 A. Been involved in as primary and not primary,
24 probably over a hundred.

25 Q. What sort of training qualifies you to be an

1 accident investigator?

2 A. I had to go to two two-week long classes,
3 accident investigation and accident reconstruction.

4 Q. And is that education that you have to keep up
5 as you continue through the department?

6 A. That lets me update classes for those.

7 Q. Pretty much stays the same; once you've taken
8 them, that's it, right?

9 A. Correct.

10 Q. Have you testified in intoxication manslaughter
11 cases?

12 A. Yes.

13 Q. On few or many occasions?

14 A. Probably a few.

15 Q. Have you testified before in other types of
16 accident cases, not necessarily involving alcohol?

17 A. Yes.

18 Q. I want to go ahead and get right to it. Back
19 on October 15th, 2013, were you on duty?

20 A. Yes.

21 Q. What shift were you working that day?

22 A. Night shift.

23 Q. When does night shift run?

24 A. My shift was 10:00 p.m. to 6:00 a.m.

25 Q. In the early morning hours of October 15th,

1 2013, did you get a call in regards to a major accident?

2 A. Yes.

3 Q. What was the location of that accident?

4 A. 5600 Katy Freeway.

5 Q. Is that also known as I-10?

6 A. Yes.

7 Q. Is the 5600-block of Katy Freeway a public
8 roadway?

9 A. Yes.

10 Q. Is it located in Harris County, Texas?

11 A. Yes.

12 Q. Okay. What did you do after you received that
13 call?

14 A. Proceeded to the scene and arrived at the scene
15 where a vehicle was disabled in the roadway, and there
16 was a motorcycle near that vehicle.

17 Q. Do you recall about what time you arrived on
18 scene?

19 A. It was about 12:30 a.m., 12:33.

20 Q. All right. So you arrived and you saw a car
21 disabled on the freeway and a motorcycle. What did you
22 do once you arrived on scene?

23 A. I tried to see -- assess the injuries of the
24 persons involved and see if anybody needed assistance.

25 Q. Okay. What did you discover in that regard?

1 A. That the person that was driving the car that
2 was disabled was sitting in another vehicle and the
3 motorcycle driver was sitting down, leaned against the
4 cement median wall.

5 Q. Okay. The driver that you came to believe was
6 the driver of the vehicle you saw, do you see that
7 person in the courtroom today?

8 A. Yes, I do.

9 Q. Would you please point her out and describe an
10 article of clothing she's wearing?

11 A. The lady with, I guess, the black sweater,
12 black shirt (indicating).

13 MR. ASLETT: Your Honor, may the record
14 reflect the witness has identified the defendant?

15 THE COURT: The record will so reflect.

16 Q. (By Mr. Aslett) Sergeant Bymaster, what did you
17 do next?

18 A. I'm sorry, what?

19 Q. What did you do next?

20 A. I discovered that -- after that, I discovered
21 there was another accident down the freeway from the one
22 I was stationed at.

23 Q. Okay. Did you go to view that second part of
24 the crash?

25 A. No. I sent another officer down there to see

1 what was going on with that accident, to see if it was
2 related to my accident.

3 Q. And from your investigation, did you determine
4 that it was related?

5 A. Yes, it was.

6 Q. Okay. While you were on that crash scene, did
7 you make contact with the defendant?

8 A. Yes.

9 Q. Tell us about that.

10 A. I was told by the person driving the car she's
11 sitting in that she was sitting in the car as the driver
12 of the car that was disabled. So I went over and opened
13 the door to the car that she was sitting in and asked
14 her if she was okay, and then she made a statement to
15 me.

16 Q. What did she tell you?

17 A. She said -- I could get the quote out of my
18 report, but she said that she -- can I read off my
19 report --

20 Q. If you want to refer to your report, you may.

21 A. -- so I can get the wording right?

22 She says: I was driving the wrong way on
23 the freeway, I got on at Shepherd. I hope that the
24 other person is okay. And she says: I'm sorry.

25 Q. Now, during your investigation, did you speak

1 with various civilian witnesses to the crash?

2 A. I actually assigned that out to other persons,
3 but I spoke to them briefly, but they got more detailed
4 statements, other officers recorded them.

5 Q. Okay. So you made brief contact and had other
6 officers do more detailed interviews?

7 A. Correct.

8 Q. Okay. During your investigation, did you start
9 to have reason to believe that the defendant was
10 intoxicated?

11 A. Yes, I did.

12 Q. Okay. What did you do when you started to
13 suspect that?

14 A. In any fatality crash, a specialized DWI unit,
15 driving while intoxicated unit, has to come to the scene
16 to assess all persons involved in the accident. It's
17 SOP.

18 Q. And was there a particular officer that you
19 called to come and evaluate the defendant for signs of
20 intoxication?

21 A. Not a particular by name, but a particular unit
22 of that type.

23 Q. Do you know ultimately which officer responded
24 to evaluate the defendant?

25 A. Officer Corral.

1 Q. Now, when you are on a crash scene like that,
2 is the scene mapped?

3 A. Eventually, yes.

4 Q. And was the scene electronically mapped that
5 night?

6 A. Yes.

7 Q. Do you also take photographs of the scene?

8 A. Yes.

9 Q. And were photographs taken that night?

10 A. Yes.

11 MR. ASLETT: Your Honor, may I approach the
12 witness?

13 THE COURT: You may.

14 Q. (By Mr. Aslett) Okay. Sergeant Bymaster, I'm
15 going to first show you what I've marked as State's
16 Exhibit 1 and State's Exhibit 2. If you could tell the
17 jury what these are (indicating).

18 A. These are -- looks like Key Map pages from a
19 Houston Key Map.

20 Q. And do these maps fairly and accurately depict
21 the area where this crash occurred?

22 A. Yes.

23 Q. I'm now going to show you what I've marked as
24 State's Exhibits 3 through 41. If you could just thumb
25 through these and tell us generally what these pictures

1 are of. Not each individual picture, but sort of
2 generally what they're of (indicating).

3 A. The first picture here is of the car and the
4 motorcycle that I came upon when I arrived at the scene.
5 And this is just another picture of the same car.

6 Q. Let me ask it in a different way. If you want
7 to thumb through them, are State's Exhibits 3 through 41
8 pictures of various parts of that crash scene that you
9 observed on October 15th, 2013?

10 A. Yes.

11 MR. ASLETT: Your Honor, at this time,
12 State offers into evidence State's Exhibits 1 through
13 41, and I tender to defense counsel for inspection.

14 **(State's Exhibit Nos. 1 through 41 Offered)**

15 MR. RAMIREZ: No objection, Your Honor.

16 THE COURT: State's Exhibits 1 through 41
17 are admitted.

18 **(State's Exhibit Nos. 1 through 41**
19 **Admitted)**

20 MR. ASLETT: Your Honor, permission to
21 publish?

22 THE COURT: Is it your request to do so on
23 the overhead?

24 MR. ASLETT: Yes, Your Honor.

25 THE COURT: You may.

1 Q. (By Mr. Aslett) Now, Sergeant Bymaster, before
2 I start showing these photographs, during your
3 investigation did you learn that there was an individual
4 who had died as a result of the crash?

5 A. Shortly after I arrived.

6 Q. And was that a person by the name of Claudia
7 Ontiveros?

8 A. Correct.

9 Q. Was she still on scene or had she been
10 transported to the hospital by the time you arrived?

11 A. She was still there.

12 Q. Okay. And while you were on scene, was she
13 later transported via ambulance off scene?

14 A. Yes.

15 Q. Okay. And during your investigation, did you
16 learn that there was another person who had been
17 severely injured in the crash?

18 A. Yes.

19 Q. Was that person still on scene when you
20 arrived?

21 A. Yes.

22 Q. While you were doing your investigation, was he
23 transported to the hospital?

24 A. No.

25 Q. Okay. Do you know if he was transported to the

1 hospital at some later point?

2 A. I don't know.

3 Q. Okay. Fair enough.

4 I'm going to go ahead and start off by
5 showing you State's Exhibit No. 1. If you could just
6 tell us generally what this shows (indicating).

7 A. It shows the Katy Freeway westbound from
8 downtown, and eastbound.

9 Q. And does this marker here of the 5600 Katy
10 Freeway, is that the location where this crash occurred?

11 A. Yes.

12 Q. State's Exhibit No. 2, is this a closer-up view
13 of the general area where the crash occurred between
14 Patterson and TC Jester (indicating)?

15 A. Could you make it a little bigger?

16 Q. Sure.

17 A. It's kind of fuzzy on my screen. It's smaller.
18 You need to make it bigger. Okay. There we go.

19 Can you ask the question again? I'm sorry.

20 Q. Is this a closer-up map of the general area
21 where the crash occurred?

22 A. Yes.

23 Q. We'll get into this a little bit more later.

24 Now, did this crash occur in the eastbound
25 or the westbound lanes of I-10?

1 A. Eastbound lanes.

2 Q. State's Exhibit No. 3. If you could tell us
3 generally what we're looking at here (indicating)?

4 A. That is the plaintiff's car and the motorcycle
5 that struck their vehicle after it was disabled.

6 Q. Okay. I think I heard you say the word
7 "plaintiff." Do you mean the defendant?

8 A. Defendant. I'm sorry.

9 Q. State's Exhibit 4. If you could just generally
10 tell us what we're looking at here (indicating).

11 A. Severe damage to the right passenger side of
12 the defendant's car.

13 Q. State's Exhibit No. 5 (indicating).

14 A. That's more of a front picture of the same car.

15 Q. State's Exhibit 6 (indicating).

16 A. Driver's side of the same car.

17 Q. State's Exhibit 7 (indicating).

18 A. Driver's side of the same car.

19 Q. State's Exhibit No. 9 {sic} (indicating).

20 A. The back of the same car and the motorcycle
21 again.

22 Q. State's Exhibit 10 {sic} (indicating).

23 A. A closer picture of the back of the car.

24 Q. State's Exhibit No. 10 (indicating).

25 A. The motorcycle again and the passenger side of

1 the same car.

2 Q. And what is this bit of fluid that we see here
3 traveling towards the car (indicating)?

4 A. From the point of the -- I call it the first
5 accident to come to the point of rest where this vehicle
6 is sitting at, it made a fluid -- from the time it hit
7 the other vehicle, it made an arcing fluid line to where
8 she came to rest right there.

9 Q. State's Exhibit No. 11 (indicating).

10 A. The motorcycle, passenger side of the car, and
11 more of the same fluid line.

12 Q. State's Exhibit No. 12 (indicating).

13 A. The back passenger of the same car, defendant's
14 car.

15 Q. And do we know what this damage was caused by?

16 A. That's where the motorcycle hit the car after
17 it was disabled.

18 Q. How are you able to tell that?

19 A. The paint transfer. You can see paint
20 transfer, and just the amount of damage. That's what
21 the motorcycle caused hitting the vehicle like that.

22 Q. And also is this damage in a completely
23 different area from the main front passenger damage?

24 A. Yes, separate.

25 Q. State's Exhibit 13 (indicating).

1 A. Interior of the same car.

2 Q. State's Exhibit 14 (indicating).

3 A. A closer picture of the same car, inside.

4 Q. State's Exhibit 15 (indicating).

5 A. A picture of the motorcycle that we can see in
6 the background of the other pictures.

7 Q. State's Exhibit 16 (indicating).

8 A. Different angle of the motorcycle.

9 Q. State's Exhibit 17 (indicating).

10 A. Another angle of the same motorcycle.

11 Q. Where is most of the damage on this motorcycle?

12 A. Front, front damage, front right, front --
13 mostly front.

14 Q. And how can we tell that?

15 A. Well, we can see the -- you kind of blew it too
16 much. You can see by the crush and the cracking and the
17 scraping of the paint and the tire being bent.

18 Q. State's Exhibit 18 (indicating).

19 A. Same car, just a different angle.

20 Q. State's Exhibit 19 (indicating).

21 A. Same motorcycle and more of a longer -- a
22 distance of the fluid arc.

23 Q. Was there a particularly long fluid trail that
24 was left by the defendant's car?

25 A. About 1300, 1400 feet.

1 Q. Did that make it relatively easy to track where
2 the initial collision had occurred?

3 A. Yes.

4 Q. State's Exhibit 20 (indicating).

5 A. More of the fluid line.

6 Q. State's Exhibit 21 (indicating).

7 A. The same -- the same fluid line.

8 Q. State's Exhibit 22 (indicating).

9 A. Same fluid line.

10 Q. State's Exhibit 23. What is this lighter mark
11 that we see here (indicating)?

12 A. That is probably -- her wheel has collapsed
13 under the car. It's probably scraping along the road as
14 it's being dragged.

15 Q. And does this, I guess what you would call a
16 gouge mark, run parallel next to the fluid trail that
17 you found there?

18 A. A scrape mark, yes.

19 Q. State's Exhibit 24. Is this more of the same
20 fluid trail (indicating)?

21 A. Yes.

22 Q. State's Exhibit 25. Again, more of the same
23 fluid trail (indicating)?

24 A. Yes.

25 Q. And zooming in a little bit farther, are we

1 starting to get close to what we call the Patterson
2 Street exit with this series of photographs?

3 A. Yes.

4 Q. State's Exhibit 26. If you could tell us what
5 we're looking at here (indicating).

6 A. These marks at the bottom of the picture, those
7 white lateral lines, those are point of maximum
8 engagements, gouge mark on the freeway.

9 Q. What's this white spot that you see up here
10 (indicating)?

11 A. I'm not 100 percent sure, but if I had to
12 guess, I'd say it's where the wheel got collapsed and
13 that's where the wheel came down on the pavement.

14 Q. And do we also see some -- what appears to be
15 glass scattered around?

16 A. Yes.

17 Q. Is the roadway evidence that we see here, this
18 collection of glass and these gouge marks, consistent
19 with where the initial impact would be?

20 A. Yes.

21 Q. About how far is the distance between where the
22 initial impact occurred and where the car came to a
23 final rest?

24 A. Between 13 to 1400 feet.

25 Q. State's Exhibit 17 (indicating).

1 A. It's the roadway --

2 Q. I'm sorry. State's Exhibit 27 (indicating).

3 A. It's the roadway getting closer to where the
4 other vehicle is located.

5 Q. And these lights that we see in the far
6 background of the picture, is that up by the secondary
7 scene with the motorcycle?

8 A. Yes.

9 Q. State's Exhibit 28 (indicating).

10 A. That's a back picture of the second vehicle
11 involved.

12 Q. State's Exhibit 29 (indicating).

13 A. Closer picture of that same vehicle.

14 Q. State's Exhibit 30 (indicating).

15 A. Closer picture of the same vehicle.

16 Q. State's Exhibit 31 (indicating).

17 A. That's the back passenger side of the green
18 vehicle.

19 Q. Do we see any tire where the back right tire of
20 this vehicle should be?

21 A. It's not there.

22 Q. State's Exhibit 32 (indicating).

23 A. More of the broadside passenger side of the
24 green vehicle.

25 Q. What does this sort of damage tell you about

1 the speed at which the collision occurred?

2 A. It's hard to determine that. Both vehicles
3 were probably traveling about freeway speed. There's
4 not a lot of crush, so it's hard to say.

5 Q. State's Exhibit No. 33 (indicating).

6 A. Same passenger side of the green vehicle.

7 Q. State's Exhibit 34 (indicating).

8 A. Same passenger side of the green vehicle.

9 Q. State's Exhibit No. 35 (indicating).

10 A. Front picture of the green vehicle.

11 Q. State's Exhibit 36 (indicating).

12 A. Front and driver's side of the green vehicle.

13 Q. 37 (indicating).

14 A. Driver's side of the green vehicle.

15 Q. 38 (indicating).

16 A. Driver's side of the green vehicle.

17 Q. Do we see any real serious damage on the
18 driver's side of this vehicle?

19 A. No.

20 Q. State's Exhibit 39 (indicating).

21 A. Driver's side back of the green vehicle.

22 Q. State's Exhibit 40 (indicating).

23 A. Interior of the green vehicle.

24 Q. And finally, State's Exhibit No. 41
25 (indicating).

1 A. Backseat of the green vehicle.

2 Q. Okay. After the photographs were taken, the
3 scene was mapped, what did you do next?

4 A. I made sure all the different steps that had to
5 take place took place, gathering information for my
6 reports.

7 Q. And after you had finished your investigation
8 of the scene, did you contact the district attorney's
9 office to accept any charges on the defendant?

10 A. I believe the D.A. made the -- the D.A. was
11 contacted. I'm not sure if she was at the scene or if
12 we contacted her at her office.

13 Q. But were charges ultimately accepted -- well,
14 let me ask you this: Did you speak with Officer Corral
15 about the results of his investigation into the
16 defendant's intoxication?

17 A. Yes.

18 Q. And without saying what those results were,
19 after you received that information from him, were
20 charges ultimately accepted by the district attorney's
21 office for intoxication manslaughter?

22 A. Yes, they were.

23 Q. Now, after you left the scene that night, did
24 you have occasion to review the 911 calls in this case?

25 A. Yes.

1 Q. Were all of the individuals that appear on the
2 911 call individuals that were interviewed by police
3 officers that night?

4 A. Yes.

5 Q. Okay. And from your investigation, did you
6 uncover any witnesses that the police should have spoken
7 to but didn't speak to that night?

8 A. No.

9 Q. Sergeant Bymaster, after listening to the 911
10 call, did you have any further involvement in this case?

11 A. Just follow-up investigations.

12 Q. Okay. Such as?

13 A. I had reviewed the 911 tapes, I had to review
14 the autopsy report, I had to update the case with
15 what -- they did the forensics on the phone, on the
16 defendant's cell phone, steps along that lines.

17 Q. And so doing all of that, did you also
18 ultimately -- without saying what they were -- review
19 the blood results in the case?

20 A. I'm sorry, say that again.

21 Q. Ultimately did you review what the blood
22 results in the case were?

23 A. Yes, I did.

24 Q. Okay. And after you reviewed all of this
25 evidence that came in after you investigated the scene,

1 did you ultimately close out the case?

2 A. Yes.

3 Q. Thank you, Sergeant Bymaster.

4 MR. ASLETT: I pass the witness, Your
5 Honor.

6 THE COURT: Any questions?

7 MR. RAMIREZ: Just a few, Judge.

8 **CROSS-EXAMINATION**

9 **BY MR. RAMIREZ:**

10 Q. Officer Bymaster, my name is Enrique Ramirez.
11 I represent Ms. Kressin in this case, obviously. Just a
12 few questions of you.

13 Just to clarify, you were not -- your
14 primary role was to investigate the accident part of
15 this case. Is that a fair statement?

16 A. That's correct.

17 Q. You weren't involved with the -- any field
18 testing of my client to determine intoxication or
19 anything like that, were you?

20 A. That's correct.

21 Q. That was done by another member of your
22 department; is that correct?

23 A. That's correct.

24 Q. All right. You testified a moment ago that
25 your opinion was that the speed was un -- not sure what

1 it was, but that it appeared they were both traveling at
2 freeway speed, the posted speed, right?

3 A. That's correct.

4 Q. All right. And a lot of pictures. Did you
5 take those pictures yourself?

6 A. No. Somebody else did.

7 Q. Okay. And so it appears like with this type of
8 case that a thorough job needs to be done. Is that a
9 fair statement?

10 A. That's correct.

11 Q. And thorough because it's a serious accident,
12 obviously?

13 A. Right.

14 Q. And you -- no mistakes, right? We need to get
15 it done correctly. Is that a fair statement?

16 A. Yes.

17 Q. And so as part of that, you made sure that all
18 of the witnesses that needed to be talked to were spoken
19 to and statements were taken, and you're comfortable
20 that that was done thoroughly?

21 A. Yes.

22 MR. RAMIREZ: Pass the witness, Judge.

23 THE COURT: Anything further?

24 MR. ASLETT: Nothing further from the
25 State, Your Honor.

1 THE COURT: Any objection to this witness
2 being excused?

3 MR. ASLETT: No, Your Honor.

4 THE COURT: Sergeant, you may step down.
5 You're free to go about your business.

6 MR. ASLETT: Your Honor, before calling its
7 next witness, the State would offer into evidence
8 State's Exhibit 42, which is a copy of the 911 calls in
9 this case along with a business record affidavit. And
10 Mr. Ramirez has received a copy, and it's been on file
11 with the Court for several months now.

12 (State's Exhibit No. 42 Offered)

13 THE COURT: Any objection?

14 MR. RAMIREZ: No objection.

15 THE COURT: State's 42 is admitted.

16 (State's Exhibit No. 42 Admitted)

17 MR. ASLETT: Permission to publish, Your
18 Honor?

19 THE COURT: You may, but you may do so
20 after a break.

21 Ladies and gentlemen, if you would, please
22 step into the jury room.

23 All rise for the jury.

24 (Open court, defendant present, no jury.)

25 THE COURT: Court will stand in recess for

1 a few minutes.

2 (Brief recess.)

3 (Open court, defendant and jury present.)

4 THE COURT: You may be seated.

5 You may call your next.

6 MR. ASLETT: Your Honor, may I publish the

7 911 calls?

8 THE COURT: You may.

9 (State's Exhibit No. 42 published.)

10 MR. ASLETT: Your Honor, State calls

11 Kenneth Young.

12 THE COURT: Sir, please come forward.

13 THE WITNESS: Good afternoon.

14 THE COURT: Sir, you were sworn in

15 previously, were you not?

16 THE WITNESS: Yes, sir.

17 THE COURT: You're about to be asked some

18 questions. Please keep your voice up so everyone can

19 hear you. Please let these lawyers completely finish

20 their questions before you begin to answer. If you're

21 interrupted, you will be given the opportunity to

22 complete your answer, unless an objection has been

23 sustained.

24 Last, if any of these lawyers stand up

25 during your testimony to address the Court, please say

1 nothing further until you're given permission to do so.

2 Thank you.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: You may proceed.

5 MR. ASLETT: Thank you, Judge.

6 **KENNETH ALLYN YOUNG,**

7 having been called as a witness and being first duly
8 sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MR. ASLETT:**

11 Q. Sir, would you please tell the jury your full
12 name?

13 A. My name is Kenneth Allyn Young.

14 Q. How old are you, Mr. Young?

15 A. Twenty-three as of last week.

16 Q. What do you do?

17 A. I was actually just laid off from National
18 Oilwell Varco. I was a quality control dimensional
19 inspector there.

20 Q. I'm sorry to hear that. When did that happen?

21 A. Yesterday.

22 Q. Okay. Thank you for coming down here
23 regardless.

24 How long had you had that job prior to
25 being laid off?

1 A. A year-and-a-half, about.

2 Q. And what did you do exactly for the oil well
3 company?

4 A. Who's ready to be bored? We -- as a
5 dimensional inspector, I would receive every single
6 metal part, rubber part, that we would get from our
7 outside vendors. I would check for their quality. I
8 would make sure that everything is up to the machining
9 standards. The mechanics -- not the mechanics -- I'm
10 sorry. The engineers would draft charts and lists and,
11 you know, paint schematics, and we'd have to look
12 through all of those.

13 I was also a process inspector. I would
14 make sure that any welding that was done was done
15 correctly, no strikes anywhere, stuff like that.
16 Basically. Just a lot of accountability-type things.

17 Q. Is that the sort of work that requires a lot of
18 attention to detail?

19 A. Yes, sir.

20 Q. Now, back in October of 2013, what sort of job
21 did you have?

22 A. Back then, I was a delivery driver for Jimmy
23 John's, the sandwich guys.

24 Q. What hours did you typically work?

25 A. We -- well, let's see. Around that time, I

1 believe I was working both at Jimmy John's and Dominos.
2 So two delivery jobs. With Jimmy John's, I would get
3 off about 2200, would go home after that. But I would
4 open the store at 04 {sic}, I believe, somewhere in
5 there.

6 Q. Primarily working at night, then?

7 A. Right. Yes, sir.

8 Q. Okay. Did you use your personal vehicle or
9 were you driving a delivery truck?

10 A. It was all a personal vehicle, sir.

11 Q. Okay. What was your personal vehicle back in
12 October 2013?

13 A. A 2008 Ford Focus coupe.

14 Q. And what area of town were you living in back
15 then?

16 A. Across the street from Hermann Park. So the
17 downtown Medical Center area. I think that's what it's
18 called.

19 Q. Have you ever had to testify before?

20 A. In court, no, sir.

21 Q. I want to go ahead and get right to it. Back
22 in the early morning hours of October 15th, 2013, did
23 you witness a car crash?

24 A. Yes, sir.

25 Q. Tell us where you were coming from and where

1 were you going to.

2 A. I had just left work. I had been talking with
3 some of my coworkers that evening and we were talking
4 about how the shift went. I came from Fry and I-10.
5 That's out near the Katy area. Well, it's in the Katy
6 area. I was headed east on I-10 to get to my apartment.

7 Q. Were you driving your personal vehicle, that
8 Ford Focus you mentioned?

9 A. Yes, sir.

10 Q. Were you going the speed limit?

11 A. Reasonably so.

12 Q. Were you going with the flow of traffic?

13 A. Yes, sir.

14 Q. Okay.

15 A. I do tend to stick to the left lanes because I
16 end up passing people. So I go a little bit faster than
17 them, but not crazy fast.

18 Q. What was the weather like that night?

19 A. As far as I can remember, it was pretty clear.
20 And it was dark, so I may have missed something.

21 Q. But as far as the lights along that section of
22 I-10, was it relatively well lit in that area?

23 A. Oh, yes, sir, it's very well lit in that area.

24 Q. And how would you describe the traffic that
25 night?

1 A. Very light. There wasn't too much activity on
2 the road.

3 Q. Tell us what you saw.

4 A. Let's see. When you get to that part of I-10,
5 you start having all these overpasses. Every single
6 intersection has an overpass instead of -- you know,
7 back in the Katy area you would go over the
8 intersection. So the ramp that you would normally take
9 to get off of the highway, there was a vehicle pointed
10 oncoming, you know, headed west, but on the eastbound
11 side.

12 Q. Let me stop you right there. Do you recall
13 what exit ramp you saw that car driving down?

14 A. I couldn't -- couldn't name an exact street. I
15 just know that it was -- oh, what was it? Like TC
16 Jester, somewhere in there, is where we finally ended
17 up. So I think it was before that. I don't know. It's
18 been so long.

19 Q. That's fine. I don't expect an exact street,
20 but the general area we're talking about, TC
21 Jester/Washington Avenue area?

22 A. Yes, sir.

23 Q. Okay. Was this car's headlights on?

24 A. The car driving onward or oncoming?

25 Q. The car --

1 A. Yes, sir.

2 Q. -- coming down the exit ramp.

3 A. Yes, both headlights were on.

4 Q. How far back were you when you noticed this car
5 getting onto I-10 the wrong way?

6 A. How far was it?

7 Q. And if you had to describe it, let's use car
8 lengths.

9 A. Car lengths would be even messier. There was
10 probably six seconds total. At 60 miles an hour, that's
11 not very far. I don't know who in here is a
12 mathematician, but I'm going to call it around 700 feet.

13 Q. Okay.

14 A. Seems like a pretty good number based on, you
15 know, how far ahead between myself and that vehicle.

16 Q. How far did this car -- how fast did this car
17 appear to be going coming down the exit ramp?

18 A. Sorry. I've been doing a lot of speculative
19 physics stuff, so relative speeds.

20 Q. I'm not asking for an exact figure.

21 A. Right.

22 Q. Let's make it more vague. Was it coming down
23 the on-ramp at a slow speed, a moderate speed, or a fast
24 speed?

25 A. It seemed moderate. It didn't seem any more --

1 any faster or slower than a normal car would be.

2 Q. Were there any cars between your car and the
3 car that you saw getting onto the freeway using --

4 A. Yes, sir.

5 Q. -- the exit ramp?

6 A. There was like a blue or green Toyota-looking
7 car, a tiny little sedan-looking thing. And that car
8 actually got hit on the right side of their car. So
9 further from me, because I was in the left lane, they
10 were in more of a middle lane, like over from me to the
11 right.

12 Q. Let me stop you right there. So you're in the
13 left lane, they're in the mid lane. About how far are
14 you from this other Toyota car that got hit?

15 A. Probably only 50 to 100 feet. We're pretty
16 close.

17 Q. So if you had to say how long that distance is
18 in car lengths, how long would you say?

19 A. Three or four -- no. That's ridiculous. Well,
20 how far was it? They were very close. Probably four to
21 five cars, maybe.

22 Q. Let me ask you --

23 A. As a diagonal.

24 Q. Let me ask you a little bit about how that
25 Toyota was driving prior to the crash. Was it going

1 roughly the speed limit or flow of traffic on I-10?

2 A. It's -- at the very least, it wasn't doing
3 anything of note. I wasn't like: Oh, hey, that's a car
4 you need to watch out for. It was just like: Okay.
5 There's another person on the road. They were driving
6 reasonably. They weren't swerving. They weren't
7 speeding. It was just another casual driver.

8 Q. And I believe you said it was six seconds
9 between the time you saw the car and the time the crash
10 happened?

11 A. Yes, sir.

12 Q. Tell us exactly how this crash happened. What
13 did you see?

14 A. The car that had been coming onward, the little
15 Chevy car -- I didn't describe it as a Chevy before, but
16 it was a Chevy car -- was headed onto the highway
17 against the flow of traffic. And it struck the right
18 side of the Toyota car. Toyota car, whatever. At that
19 point, there was an elastic collision. Sorry. Physics.
20 The two cars headed away from each other, not in -- you
21 know, you'd think they would bounce off in their
22 respective directions, but they actually -- the Toyota
23 car, the one that was hit by the oncoming vehicle, went
24 to the right side of the highway and their tire came
25 off, their whole wheel assembly came off, and they

1 skidded to a stop right next to a patch of grass near
2 the exit ramp.

3 Q. Let me break it up a little bit by asking you
4 another question. What happened to the Chevy car after
5 the collision? What did it do?

6 A. The Chevy car, it went actually fairly close to
7 my own vehicle. Whenever it hit the Toyota, it
8 continued going to its right. So if you're turned
9 around on the highway, that's to the left of the
10 highway. She -- I think that vehicle also like had some
11 sort of wheel issue because it was throwing up sparks,
12 from what I can remember, as it passed me. And...

13 Oh, God, this is a little painful.

14 Q. It's okay. What did you do immediately after
15 you saw this crash?

16 A. Honestly, I freaked out. I'd never seen a
17 collision of that magnitude -- well -- no. Of that
18 magnitude is fair. I immediately wanted to make sure
19 that everyone was fine, you know, make sure no one had
20 died or been seriously injured. And I didn't want to
21 throw my car into Reverse on the highway because that's
22 really dangerous.

23 So I passed the Cavalier, the Chevy
24 Cavalier, I passed that car. I decided that whatever
25 was going on with them, that would have to wait because

1 there's another vehicle that needs help. Went over to
2 the Toyota and two people got out. It was two guys,
3 fairly average guys.

4 Q. Did these people get out from the front
5 passenger and driver's side of the car?

6 A. Yes, sir. The front driver's side, the driver
7 got out and was unmarked. He didn't have any cuts or
8 bruises or anything going on.

9 Q. What about the front seat passenger, how did he
10 look?

11 A. The front side passenger was really beat up.
12 He had glass cuts all over his face and torso and his
13 arms were bleeding and there was blood everywhere. I
14 gave him one of my work shirts to staunch the blood, the
15 bleeding, and, you know, tried to find something else I
16 could use to help clean him up. But whenever I handed
17 him the shirt, he said: No, there's a girl in the car.
18 And this was when I finally realized, oh, hey, there's
19 another person in here.

20 Q. Did you look in the backseat?

21 A. Yes, sir. I believe I was the first person to
22 look in the back of the car at the now-deceased. And at
23 the time, I had a lot of difficulty finding a pulse on
24 her. And my mom is a nurse, been a nurse for years. I
25 know how to do that. So I was like: What's the big

1 issue, why is it so difficult to find a pulse on this
2 girl? And her pulse was so weak that you really had to
3 dig to find it. And stuff just started spinning at that
4 point. I was like: Oh, God, this person is going to
5 die.

6 Q. Let me stop you right there.

7 How was she positioned in the backseat of
8 the vehicle; standing up, lying down, in the wheel well,
9 on the seat? How was she positioned?

10 A. She was lying down on her left side kind of,
11 kind of leaning back, almost as if she was sleeping.
12 She was unconscious at the time. And I never took her
13 seatbelt off. So I don't know if that was on. I didn't
14 bother with it.

15 Q. But to the best of your recollection, she was
16 seat-belted in?

17 A. Yes.

18 Q. Okay. Do you recall if she had any visible
19 injuries to the outside of the body?

20 A. It looked like she might have had some bruising
21 on her face, but she looked especially pale. The
22 lighting was less than ideal and there was a lot of
23 smoke in the car because of the air bags. But it
24 definitely looked like she had been put through the meat
25 grinder, would be, I think, a fair thing to say.

1 Q. What did you do next?

2 A. I started checking for a pulse. I was dialing
3 911 at the time. So I was splitting attention. Didn't
4 find one. And I was going to try to pull her out of the
5 car, but these two other people came by. It was a nice
6 African-American family. The wife started talking to
7 me, so I was talking to her about the girl. And we
8 couldn't figure out what to do. We were still trying to
9 get the ambulance to help us out. But I decided I
10 didn't want to try to move the girl until -- excuse
11 me -- until someone that was more professional could
12 come and look at her because I didn't want to hurt her.

13 Q. Now, when the paramedics arrived, did they come
14 to your part of the scene first?

15 A. No, sir. They ended up at the other scene of
16 the accident with the Cavalier.

17 Q. Did the ambulance that responded to that part
18 of the scene come over to where you are or did you have
19 to wait for another ambulance to come by?

20 A. I'm unaware if it was the same ambulance. It
21 seemed to take a very small amount of time, so it's
22 likely that it was the same, but I couldn't tell you.
23 The other part of the accident was very far away from
24 where we were. It was difficult to see anyone.

25 Q. Did you ever go over to that part of the other

1 crash scene?

2 A. No, sir, I never got close to the Cavalier.

3 Q. So did you ever get to see the driver of the
4 Chevy Cavalier?

5 A. The only thing I can actually remember when I
6 was passing the vehicle was a lot of dark hair. And
7 that's it.

8 Q. Did you ever see the motorcyclist who ended up
9 being injured?

10 A. Yes. I looked back after -- like as it was
11 all -- not as it was all happening, but just like after
12 I got out of the car, there was -- I didn't see the
13 motorcyclist himself. I just saw his motorcycle. It
14 was lying on its side. And I was just like, when did a
15 motorcycle come into all of this.

16 Q. Right. And so because you're all the way
17 down --

18 A. Right.

19 Q. -- further on I-10, did you even see the
20 motorcycle part of this crash?

21 A. Not the actual collision part. Only the
22 aftereffect, the aftermath.

23 Q. Tell us what happened once the paramedics got
24 to where you were.

25 A. Let's see. They first walked over to the male

1 that was bleeding all over the place, and they were
2 trying to check him for a concussion, I believe I
3 overheard, you know, shining lights in his eyes,
4 checking pupil dilation, things like that. Then we all
5 got them to notice that, hey, there's a girl in the car
6 and she needs some serious medical attention. And
7 they -- I was so mad at the paramedic for doing this.
8 The guy that tried to pull -- the girl's name was
9 Claudia -- tried to pull Claudia out of the car, he
10 grabbed her by her wrists and just started pulling back
11 and forth. To me, it seemed like there was very little
12 regard for her potential fragility.

13 Q. What did you see happen next?

14 A. They pulled her out of the vehicle and into --
15 onto one of the -- I think they're called gurneys, the
16 medical transport. And they were talking amongst
17 themselves, and I overheard a lot of negative things. I
18 couldn't tell you exactly what they were. It's been far
19 too long. But I turned to the very bloody crash victim,
20 Sam, and I was telling him: Hey, you need to sit down,
21 I have to tell you something. And it was at this point
22 that I told him that it was very likely that his friend
23 from the backseat was dead.

24 Q. How did he react when you gave him that news?

25 A. He broke down. He felt terrible. They had

1 told me a couple of times that they had only recently
2 met this girl, at least Sam had recently met her. I
3 don't remember what the other guy said. I don't even
4 much remember the other guy. But that they were -- that
5 they had just been hanging out that night, you know,
6 just casual, like, oh, hey, you want to come chill at my
7 place, we'll have a good time. And they were taking her
8 home.

9 And so he looked terribly defeated that
10 here this woman, this -- they had plans for the next day
11 and she's getting hauled off in an ambulance presumably
12 dead.

13 Q. And you mentioned you don't remember much about
14 the driver. Do you recall anything about his emotional
15 state?

16 A. He was freaking out understandably, too, but
17 much more calm, I guess, is the word for it.

18 Q. Now, did the police arrive shortly after that?

19 THE COURT: One moment. Are you about to
20 shift to something else?

21 MR. ASLETT: I was just going to show
22 Mr. Young some of the photographs, but I'm close to
23 being finished, Judge.

24 THE COURT: All right. Go ahead, you can
25 finish.

1 Q. (By Mr. Aslett) Now, did the police arrive
2 shortly after that?

3 A. They arrived, I believe, before the paramedics
4 did. And they were asking questions, going about
5 collecting information, and...

6 Q. Did you remain on the scene?

7 A. Yes, sir. For quite a while, actually.

8 Q. And did you -- were you interviewed by the
9 police about what happened?

10 A. And by a news station. Yeah, that wasn't fun.

11 The police came by and they started asking
12 everyone questions. And my original statement was so
13 like clouded with confusion and fear and -- well, it was
14 difficult to piece everything together while there was a
15 girl in the backseat, you know, very --

16 Q. But in the days afterwards when you had time to
17 process this, did you remember more?

18 A. Yes, sir.

19 Q. Okay. I want to show you just a couple of
20 photographs so we can get a better understanding.

21 A. Okay.

22 Q. I'm showing you State's Exhibit No. 30. Is
23 this the car, the green Toyota that you're referring to
24 (indicating)?

25 A. Well, that does look blue, sir, but if we're

1 going to call it green, that's okay.

2 Q. Maybe I'll show you a better photograph that
3 will actually reflect the color. State's Exhibit 31,
4 same vehicle (indicating)?

5 A. Yeah, and that's where she was.

6 Q. And does this vehicle appear to be in the same
7 location and have the same type of damage as you saw
8 that night?

9 A. Yes, sir.

10 Q. And State's Exhibit No. 32, just so we can
11 understand this a little bit better, what part of the
12 backseat was she closest to? Was she more on the left
13 side or more on the right side?

14 A. The left.

15 Q. Do you recall whether her head or her feet were
16 towards the left side?

17 A. Her head was towards the left side.

18 Q. Mr. Young, after you spoke with the police and
19 the news, you gave your statement out at the scene, did
20 you have any further involvement in this case?

21 A. I wanted to stay there as long as possible that
22 evening to make sure that everyone received as much
23 medical attention as they could from the paramedics,
24 from myself just blotting blood up. But other than
25 that, you know, offering more information to the police,

1 no, I didn't have any more involvement with it that
2 night.

3 Q. Thank you, Mr. Young.

4 MR. ASLETT: I pass the witness, Your
5 Honor.

6 THE COURT: Will the lawyers approach?

7 (At the Bench, off the record.)

8 (Open court, defendant and jury present.)

9 THE COURT: Mr. Ramirez, are you going to
10 have any questions of this witness?

11 MR. RAMIREZ: No, sir.

12 THE COURT: Is there any objection to this
13 witness being excused?

14 MR. ASLETT: Your Honor, if I may. I just
15 have one question that I neglected to ask. If I may
16 take him on redirect for one question.

17 THE COURT: You may.

18 MR. ASLETT: May I approach the witness?

19 THE COURT: You may.

20 Q. (By Mr. Aslett) Mr. Young, I forgot to ask you
21 this, but I'm going to show you what I've marked as
22 State's Exhibit 77. Can you tell us who appears in that
23 photograph (indicating)?

24 A. That's her.

25 Q. And by "her," you're --

1 A. That's Claudia.

2 Q. Thank you, Mr. Young.

3 MR. ASLETT: I have no further questions,
4 Judge. I pass the witness.

5 THE COURT: All right. Any questions?

6 MR. RAMIREZ: No, Your Honor.

7 THE COURT: Any objection to this witness
8 being excused?

9 MR. RAMIREZ: No, Your Honor, not from the
10 defense.

11 MR. ASLETT: None from the State, Your
12 Honor.

13 THE COURT: Sir, you may step down. You're
14 free to go about your business.

15 Ladies and gentlemen, at this time you're
16 going to be given a lunch break. Remember the
17 admonitions you were previously given. Do not discuss
18 this case amongst yourselves or with anyone else.

19 With that, if you would, please step into
20 the jury room.

21 THE BAILIFF: All rise for the jury.

22 (Open court, defendant present, no jury.)

23 THE COURT: You may be seated.

24 Is there anything that needs to be
25 addressed before breaking for lunch?

1 MR. ASLETT: No, Your Honor.

2 MR. RAMIREZ: Not from the defense, Your
3 Honor.

4 THE COURT: All right. If there's no
5 objection, the Court's off the record.

6 (Lunch recess.)

7 (Open court, defendant present, no jury.)

8 THE COURT: Court's back on the record in
9 Cause No. 1404917.

10 Mr. Aslett, is there a matter to address
11 outside the presence of the jury?

12 MR. ASLETT: There is, Your Honor. One of
13 the witnesses this afternoon from the State is going to
14 be German Arias. He is the motorcycle rider. I wanted
15 to make a motion in limine. At the time of the crash,
16 he has a suspended license due to no insurance, and he
17 also had no motorcycle endorsement on his license. I
18 don't think it's relevant. To be fair, the defendant
19 also had a suspended license and I don't intend to go
20 into that. So I would ask that there be no mention made
21 of Mr. Arias' suspended license or his lack of a
22 motorcycle endorsement.

23 THE COURT: Any relevance?

24 MR. RAMIREZ: No. We'll be all right with
25 that, Judge.

1 THE COURT: All right. Anything further?

2 MR. ASLETT: That's it, Your Honor.

3 THE COURT: Ready for the jury?

4 MR. ASLETT: State's ready.

5 THE COURT: Before bringing in the jury, in
6 reviewing the file, the Court has noticed State's Second
7 Notice of Intention to Use Evidence of Prior Extraneous
8 Offenses. This appears to relate to some incidents
9 which occurred when the defendant -- after the incident
10 the basis of this indictment but while she was on bond,
11 about blowing into the in-home alcohol monitoring
12 device.

13 Does the State intend to go into that?

14 MR. ASLETT: Not in guilt-innocence, Your
15 Honor.

16 THE COURT: Okay. All right. You may
17 bring in the jury.

18 (Open court, defendant and jury present.)

19 THE COURT: Y'all may have a seat when you
20 come in and get to your chair. These people are
21 standing up for you. You-all aren't standing up for
22 them.

23 You may call your next.

24 MR. ASLETT: Your Honor, the State calls
25 Samuel Carter.

1 THE COURT: You were sworn in earlier, were
2 you not?

3 THE WITNESS: Yes, sir.

4 THE COURT: You may be seated right there
5 in that chair.

6 These lawyers are about to ask you some
7 questions. Please keep your voice up so everyone can
8 hear you.

9 THE WITNESS: Yes, sir.

10 THE COURT: And please let them finish
11 their questions before you start to answer. If you're
12 interrupted, you will be given the opportunity to
13 complete your answer, unless an objection has been
14 sustained.

15 Last, if any of these lawyers stand up to
16 address the Court, please say nothing further until
17 you're given permission to do so.

18 Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: You may proceed.

21 MR. ASLETT: Thank you, Your Honor.

22 **SAMUEL JOSHUA CARTER,**

23 having been called as a witness and being first duly
24 sworn, testified as follows:

25 **DIRECT EXAMINATION**

1 **BY MR. ASLETT:**

2 Q. Mr. Carter, would you please tell the jury your
3 full name?

4 A. Samuel Joshua Carter.

5 Q. How old are you, Mr. Carter?

6 A. I'm 21 years old.

7 Q. What do you do for a living?

8 A. I work at a granite company and I install
9 granite and make cabinets.

10 Q. How long have you held that job?

11 A. About a year now.

12 Q. Are you from the Houston area?

13 A. Born and raised, sir.

14 Q. Okay. Where did you go to school?

15 A. Scarborough High School in northwest Harris
16 County.

17 Q. Where do you live, what part of town?

18 A. I live in Spring Branch by Memorial City Mall.

19 Q. Is that the same place that you were living
20 back in October of 2013?

21 A. Yes, it was.

22 Q. Have you ever had to testify before?

23 A. No, I haven't. This is the first time for me.

24 Q. Okay. Back on October 15th, 2013, what address
25 were you living at?

1 A. I was living at 1801 Campbell.

2 Q. 1801 Campbell?

3 A. Yeah.

4 Q. And if you can tell the members of the jury
5 roughly what area of the city that is.

6 A. Right by Memorial City Mall.

7 Q. So northwest of here, then?

8 A. Uh-huh.

9 Q. Okay. Did you live with anybody at that
10 address?

11 A. I was living with Michael Etheridge and Serena
12 Sanchez.

13 Q. Now, was this location a house or an apartment?

14 A. An apartment.

15 Q. Okay. Were you roommates with Mr. Etheridge?

16 A. Yes, sir.

17 Q. How did you know Mr. Etheridge?

18 A. He was my friend from high school.

19 Q. So had y'all known each other for a fairly long
20 time?

21 A. Yes, sir, a good while.

22 Q. So back in 2013, you would have been 19 years
23 old?

24 A. Yeah, approximately.

25 Q. I want to just get right to it and talk about

1 what you did during the day of October 14th, 2015.

2 Okay?

3 A. Okay.

4 Q. That night, did Michael leave the apartment to
5 go pick up a friend of his?

6 A. Yes.

7 Q. Do you know who that friend was?

8 A. Claudia Ontiveros.

9 Q. Had you ever met Ms. Ontiveros prior to Michael
10 going over to her house to pick her up?

11 A. No, I had not.

12 Q. Did you have any idea what she did for work or
13 where she lived?

14 A. No, no idea.

15 Q. Okay. Did you go with Michael to pick Claudia
16 up or did you stay at the apartment?

17 A. I was at the apartment.

18 Q. Do you recall about what time Michael went over
19 to Claudia's house to pick her up?

20 A. A little earlier, about 7:00 or 8:00 o'clock, I
21 believe.

22 Q. Are we talking at night?

23 A. A little earlier in the night.

24 Q. Okay. And did Michael bring Claudia over to
25 the apartment?

1 A. Yes, sir.

2 Q. Was that the very first time you had met her?

3 A. Uh-huh, it was.

4 Q. What did y'all do together while you were at
5 the apartment?

6 A. We were at the apartment and she got a tattoo
7 from Michael and I was just hanging out, playing guitar,
8 and doing my usual thing.

9 Q. Was Michael training to be a tattoo artist at
10 the time?

11 A. Yes, he was.

12 Q. And do you know how Michael knew Claudia, how
13 long they had known each other?

14 A. Not very long, I'm assuming. I'm not very
15 sure.

16 Q. Okay. Was there any drinking of alcohol going
17 on?

18 A. No.

19 Q. Any drug use going on at the apartment?

20 A. Huh-uh.

21 Q. If you could say -- you're shaking your head --

22 A. No, sir.

23 Q. Okay. About how long that night did y'all hang
24 out together?

25 A. A couple of hours, two or three hours maybe.

1 Q. You mentioned there was another person that
2 lived at that address. I didn't catch her name.

3 A. Serena Sanchez was my girlfriend at the time.
4 Still my girlfriend.

5 Q. Was that Serena's -- also her first time
6 meeting Claudia?

7 A. Yes, it was.

8 Q. Okay. Did there come a time where Michael
9 needed to bring Claudia back to her house?

10 A. Yeah. It was about 10:00 o'clock. We were
11 both going to take her back.

12 Q. Okay. Did she end up staying at the apartment
13 later than 10:00 o'clock before y'all started to bring
14 her back?

15 A. It was about 10:00, just approximately 10:00
16 when we left.

17 Q. Okay. Are you sure of that?

18 A. Maybe a little earlier. I'm...

19 Q. Okay. I understand it's been awhile.

20 A. Yeah. I'm sorry.

21 Q. Did you decide to go back with Michael to
22 Claudia's house?

23 A. Yes, sir, I did.

24 Q. Okay. What kind of car did Michael have at the
25 time?

1 A. He had a Toyota Corolla.

2 Q. Tell us about what happened when y'all left to
3 go back to Claudia's house. Who is driving?

4 A. Michael Etheridge was.

5 Q. Where were you in the car?

6 A. I was in the front passenger side.

7 Q. And where was Claudia?

8 A. She was behind me in the back passenger.

9 Q. Did your girlfriend stay back at the apartment?

10 A. She did.

11 Q. Okay.

12 THE COURT: One moment.

13 Are y'all able to hear okay?

14 You may continue.

15 Q. (By Mr. Aslett) What happened next?

16 A. We were taking her home down I-10, going toward
17 I-45 North. And about TC Jester --

18 Q. Let me stop you there.

19 A. Yes, sir.

20 Q. So that area of I-10 around -- between
21 TC Jester and Patterson Street, is that a public roadway
22 that anybody can drive on?

23 A. Yes, sir.

24 Q. Is that part of I-10 located in Harris County,
25 Texas?

1 A. Yes, sir.

2 Q. What was the weather like that night?

3 A. It was clear. It was a good night, cool.

4 Q. How would you describe traffic on the roadway?

5 A. It was clear traffic. We were going at a
6 pretty good speed, about the same -- highway speed,
7 60 miles an hour.

8 Q. Do you recall what lane y'all were traveling
9 in?

10 A. I believe it was the second to the shoulder.

11 Q. So about in the middle of I-10?

12 A. Yes, sir.

13 Q. Okay. Tell us what happened next.

14 A. Well, we were going straight down and I saw the
15 headlights coming down the exit ramp. And I told my
16 friend to change lanes to get out of the way, and then
17 we got hit.

18 Q. I want to go into a little bit more detail. Do
19 you recall which exit ramp those lights were coming
20 down?

21 A. I believe it was the TC Jester exit.

22 Q. TC Jester.

23 How fast was that car, would you estimate,
24 coming down the exit ramp?

25 A. It was coming pretty fast.

1 Q. How long would you say it was between the time
2 you first saw those headlights and the time that y'all's
3 car got hit?

4 A. About ten, maybe five seconds. It was pretty
5 quick. Yeah.

6 Q. Was Michael able to swerve out of the way and
7 avoid a head-on collision?

8 A. Yeah, a head-on collision, but we got hit on
9 the side.

10 Q. What happened next?

11 A. We spun and I got out of the car and I got
12 Michael to get out of the car because I thought we might
13 get hit again and we were on the shoulder of the highway
14 and...

15 Q. When the crash happened, were you wearing your
16 seatbelt?

17 A. I was.

18 Q. Did the airbags deploy?

19 A. I believe not. I'm not sure.

20 Q. Okay. You don't remember one way or the other?

21 A. Huh-uh.

22 THE COURT: Is that a "no"?

23 THE WITNESS: No, sir.

24 Q. (By Mr. Aslett) What happened after y'all came
25 to a stop on the shoulder?

1 A. I crawled out the window because my door
2 wouldn't open. And I told Michael Etheridge to get out
3 of the car. And I saw that we were on the shoulder
4 lane, so I left Claudia there because she was
5 semi-unconscious and I didn't want to move her because
6 she wasn't responding.

7 Q. Did she look like she had any injuries to her
8 externally?

9 A. Not that I could see, no.

10 Q. You mentioned she was in the backseat. When
11 you first saw her after the crash, how was she
12 positioned in the backseat?

13 A. She was slumped over a little bit. Not moving.

14 Q. At any point did she make any comments or say
15 anything?

16 A. No, sir.

17 Q. Was she moaning or appear to be in pain at all?

18 A. No.

19 Q. Just silence then?

20 A. Yes, sir.

21 Q. Did you suffer any injuries in the crash?

22 A. I did. I was pretty bloody after it and I had
23 a cut here on my nose and glass in my face and in my
24 eyes. And my eyes were swollen shut after, but I didn't
25 get the worst of it.

1 Q. After you and Michael got out of the car and
2 saw that Claudia was unconscious, what did you-all do
3 next?

4 A. We waited for the paramedics. Everybody
5 stopped and we told them to call for us and we just
6 waited.

7 Q. Did either you or Michael Etheridge have a cell
8 phone of your own that you could have used to call 911?

9 A. I had my cell phone. And he called my
10 girlfriend and called 911 as well.

11 Q. Okay. How quickly between the time of the
12 crash and the first civilians, including Mr. Kenneth
13 Young, came over to help you?

14 A. It was relatively quick. Pretty much right
15 when it happened people stopped.

16 Q. Tell us what was going on when Mr. Young and
17 the first other civilians came over to help. What
18 happened?

19 A. Nothing. They were just making sure everybody
20 was okay and checking on everything, making sure we were
21 well and breathing, so...

22 Q. Did you ever see who the driver of the car was
23 that struck you?

24 A. No, I did not.

25 Q. Did you ever go back farther down I-10 to look

1 at the other part of the crash?

2 A. No, I couldn't even see it.

3 Q. Did you ever see a crashed motorcycle or the
4 driver of a crashed motorcycle?

5 A. No. I looked that way, but there was nothing.
6 It was pretty far.

7 Q. Did you get treated at the hospital then?

8 A. No, I did not.

9 Q. Were you asked by paramedics if you wanted to
10 go to the hospital?

11 A. I was.

12 Q. Did you refuse treatment?

13 A. Yes, I did.

14 Q. Why did you do that?

15 A. Just the adrenaline, I suppose. Just -- I was
16 more worried about Claudia. I preferred her to be taken
17 care of rather than myself.

18 Q. Do you know if Mike also refused treatment to
19 go to the hospital?

20 A. I believe so.

21 Q. Were you there when the paramedics took Claudia
22 out of the backseat and put her in the ambulance?

23 A. Yes.

24 Q. At what point did you learn that Claudia had
25 died?

1 A. It was about -- maybe when they were taking her
2 out of the car, something like that. They were -- I
3 don't know. It's hard to talk about it. I'm sorry.

4 Q. I understand. If you need a moment, just let
5 me know.

6 A. It's fine.

7 Q. Do you recall how you got the news that Claudia
8 didn't make it?

9 A. We were sitting on the side of the road and I
10 think the paramedic told us.

11 Q. Now, did you stay on the scene and talk to the
12 police?

13 A. I did.

14 Q. Did you give a statement to them?

15 A. I did.

16 Q. The next day, did you take any photographs of
17 your injuries?

18 A. Yes, sir, I did.

19 Q. Do you recall who took those photographs?

20 A. My girlfriend, Serena Sanchez.

21 MR. ASLETT: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 Sir --

25 THE WITNESS: Yes.

1 THE COURT: -- I know you're not used to
2 doing this, but do remember to keep your voice up so
3 that everyone can hear you.

4 THE WITNESS: Okay.

5 THE COURT: Thank you.

6 You may continue.

7 Q. (By Mr. Aslett) Mr. Carter, I'm showing you
8 what I've marked State's Exhibits 91 through 95. Do
9 these photographs fairly and accurately depict the
10 injuries that you suffered as they were photographed the
11 next day (indicating)?

12 A. Yes, sir, they do.

13 MR. ASLETT: Your Honor, State offers into
14 evidence State's Exhibits 91 through 95, tenders to
15 defense counsel for inspection.

16 (State's Exhibit Nos. 91 through 95
17 Offered)

18 MR. RAMIREZ: There will be no objection by
19 the defendant, Judge.

20 THE COURT: State's 91 through State's 95
21 are admitted.

22 (State's Exhibit Nos. 91 through 95
23 Admitted)

24 MR. ASLETT: Permission to publish, Your
25 Honor?

1 THE COURT: You may.

2 Q. (By Mr. Aslett) Mr. Carter, I'm going to throw
3 these up on the screen one by one, if you could just
4 tell the members of the jury what we're looking at.

5 First, State's Exhibit 91 (indicating).

6 A. Yeah, that's me. That was me after the wreck.
7 Glass and cuts in my face.

8 Q. Is that due to the glass from the car?

9 A. Yes, sir, the windshield.

10 Q. State's Exhibit 92 (indicating).

11 A. Yeah, that's me. And my eyes were swollen
12 shut.

13 Q. Did you have problems seeing in the days after
14 the crash?

15 A. Yes, sir, I did. I had glass in my eye for a
16 good little while and my pupil wouldn't dilate. It was
17 just constant pain.

18 Q. About how long did it take before you were able
19 to remove all the glass from your face?

20 A. It was about two or three months after I got
21 the glass pulled out my eye. I didn't even know it was
22 there, to be honest with you. And I still have glass in
23 my face. So I guess it's still there.

24 Q. State's Exhibit 93 (indicating).

25 A. Yeah. I tried to cover my face in the impact,

1 and that's what happened.

2 Q. State's Exhibit 94 (indicating).

3 A. Yeah. The cuts in my arms. The impact of the
4 glass, I guess, got me. Went through my shirt and
5 marked me up.

6 Q. And finally, State's Exhibit No. 95
7 (indicating).

8 A. Yeah, my chest.

9 Q. After the crash happened and you learned that
10 Claudia had died -- this is kind of a strange question
11 to ask, but I have to -- how did you react to that news?

12 A. I cried.

13 Q. What was Michael's emotional state?

14 A. Same. We were both torn up.

15 Q. Did you talk with Michael about the crash after
16 it happened?

17 A. We did, we talked about it.

18 Q. Did you-all go to Claudia's funeral?

19 A. No, it was too hard. I couldn't do it.

20 Q. From talking with Michael, did he feel some
21 sort of responsibility for the crash?

22 A. Yes.

23 Q. And is that why y'all didn't go to the funeral?

24 A. Yes, sir.

25 MR. ASLETT: May I approach the witness

1 again, Your Honor?

2 THE COURT: You may.

3 Q. (By Mr. Aslett) Just one more question,
4 Mr. Carter. I'm going to show you what I've marked as
5 State's Exhibit 77. If you could tell me who this is a
6 photograph of (indicating).

7 A. Claudia, Claudia Ontiveros.

8 Q. Thank you, Mr. Carter.

9 MR. ASLETT: I pass the witness, Your
10 Honor.

11 THE COURT: Any questions?

12 MR. RAMIREZ: No questions from the
13 defense, Your Honor.

14 THE COURT: Any objection to this witness
15 being excused?

16 MR. RAMIREZ: None from the defense, Your
17 Honor.

18 MR. ASLETT: None from the State, Your
19 Honor.

20 THE COURT: Sir, you may step down. You're
21 free to go about your business.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: You may call your next.

24 MR. ASLETT: Your Honor, State calls Kent
25 Barnes.

1 THE COURT: You were previously sworn in,
2 were you not?

3 THE WITNESS: Yes, sir.

4 THE COURT: These lawyers are about to ask
5 you some questions. Please keep your voice up so
6 everyone can hear you. And please let them complete
7 their questions before you begin to answer.

8 THE WITNESS: Yes, sir.

9 THE COURT: If you're interrupted, you will
10 be given the opportunity to complete your answer, unless
11 an objection has been sustained.

12 Last, if any of these lawyers stand up
13 during your testimony to speak to the Court, please say
14 nothing further until you're given permission to do so.
15 Thank you.

16 THE WITNESS: Yes, sir.

17 THE COURT: You may proceed.

18 MR. ASLETT: Thank you, Your Honor.

19 **KENT C. BARNES,**

20 having been called as a witness and being first duly
21 sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 **BY MR. ASLETT:**

24 Q. Mr. Barnes, would you please tell the jury your
25 full name?

1 A. Kent C. Barnes.

2 Q. What do you do for a living, Mr. Barnes?

3 A. Right now I'm currently on disability.

4 Q. Before you got on disability, what sort of work
5 did you do?

6 A. Fueling aircraft at Intercontinental Airport.

7 Q. And how long were you an aircraft mechanic at
8 the airport?

9 A. Two-and-a-half years.

10 Q. Did you end up getting injured on the job?

11 A. Yes, sir.

12 Q. Have you ever had to testify before?

13 A. No, sir.

14 Q. I want to go ahead and get right to it and have
15 you think back to October 15th of 2013 around midnight.
16 What were you doing around that time?

17 A. Okay. We was traveling east on I-10.

18 Q. Who is "we"?

19 A. Me, my brother, his wife, and my lady friend.

20 Q. Okay. Where were y'all seated in the car?

21 A. I was driving, my brother was on the passenger
22 side, my lady friend was behind me, and his wife was
23 behind him.

24 Q. And was the car you were driving yours?

25 A. It was a rental.

1 Q. Do you recall what kind of car it was?

2 A. A Chevy Impala.

3 Q. Where were y'all coming from and where were you
4 going to?

5 A. We was coming from Topgolf celebrating my
6 birthday and we was on our way home.

7 Q. Which birthday was it?

8 A. Forty-ninth.

9 Q. Okay.

10 THE COURT: They just go faster and faster.

11 THE WITNESS: Yes, sir.

12 Q. (By Mr. Aslett) And so y'all were driving
13 eastbound on I-10 back home?

14 A. Yes, sir.

15 Q. Okay. Were you traveling the speed limit?

16 A. Yes, sir.

17 Q. Do you recall which lane you were in?

18 A. I was in the center lane.

19 Q. Okay. Tell us what you remember seeing next.

20 A. Okay. We was traveling. From a distance, I
21 seen headlights coming like on our -- it's our off-ramp,
22 but the lights was coming on our off-ramp onto the
23 freeway.

24 Q. Let me stop you right there. What off-ramp was
25 it?

1 A. It's been so long, it -- it was TC Jester or in
2 between.

3 Q. So one of the off-ramps around the TC Jester
4 area?

5 A. Yes, sir.

6 Q. Tell us what happened next.

7 A. Okay. And I seen two headlights coming toward
8 us. And I told my brother, I said: Look, man. I see
9 headlights coming toward us and they shouldn't be coming
10 toward us on this side.

11 The car was traveling in the middle lane,
12 also, like a mile-and-a-half ahead of us. And I seen
13 the car swerve. And then I seen like one headlight.
14 And I said: Man, that ain't no car. That's a
15 motorcycle. And we kind of slowed down because it was
16 coming toward us. And as it was coming toward us, I was
17 driving like about 20, 25 miles an hour. And the next
18 thing I know, "Boom," and debris just started flying
19 over the freeway.

20 And my brother said: The car hit the
21 truck, man. I said: Hit what truck? I said: That
22 ain't no car, that's a motorcycle. He said it's a car.
23 We was arguing back and forth. He said: No, look, it's
24 a brown car. I couldn't pay attention to the car
25 because I was driving and I was trying to avoid debris.

1 Q. All right. Let me stop you right there and get
2 a little more detail from you.

3 Now, you said that you saw an initial
4 collision about, you say, a mile ahead of you?

5 A. Yes, sir.

6 Q. Okay. This was far enough down on the freeway.
7 Would you say it was near the horizon? Or if you had to
8 describe it in terms of looking down the freeway, how
9 far in front of you was it?

10 A. Like about a mile-and-a-half ahead of me.

11 Q. Okay. And did you -- were you able to see
12 clearly if it was a collision between cars or what
13 exactly it was?

14 A. Yes, sir. When the car came on the off-ramp,
15 it had two lights. And we seen the swerve. And I guess
16 the car hit the little car that was coming by the
17 off-ramp and it knocked the headlight out on the
18 passenger side of the car. And the car continued coming
19 our way, but it was throwing out flames. I guess it
20 bust the front tire on the passenger side of the car
21 that hit the little car that was already in the center
22 lane. And we slowed down because I didn't want to go
23 head-on with the car, didn't want the car to hit us, but
24 it proceeded toward us and it hit a truck. I can't
25 remember. I think it was another car, but then a

1 motorcycle came behind and it hit the motorcycle.

2 So they was screaming at me saying that
3 traffic was coming behind us, I needed to move. So I
4 tried to move out of the way to keep from getting hit
5 from behind. And the motorcycle was sliding. And after
6 the motorcycle started sliding, we got like right on the
7 side of the accident. And you could hear, "wom, wom,
8 wom." I said: Man, whoever in that car done hit these
9 people trying to take off.

10 Q. Let me stop you there. I want to break it down
11 just a bit.

12 When you saw the car that was coming the
13 wrong way coming towards you, did it have just one
14 headlight on?

15 A. Yes, sir.

16 Q. Okay. Was it kicking up a lot of smoke?

17 A. Yes, sir.

18 Q. Was it kicking up a lot of sparks?

19 A. Yes, sir.

20 Q. Now, you say after that initial collision down
21 the freeway with the first car, you saw the car coming
22 the wrong way hit a brown truck?

23 A. Yes, sir.

24 Q. Okay. Do you know if that brown truck stayed
25 on the scene?

1 A. Yes, sir, uh-huh.

2 Q. Okay. Are you sure about a brown truck being
3 involved in the crash?

4 A. Yes, sir.

5 Q. Okay. And then you say the wrong-way car came
6 to a complete stop?

7 A. Yes, sir.

8 Q. Okay. About how long after it stopped did you
9 see the motorcycle run into it?

10 A. It was seconds after it stopped. It wasn't
11 long at all.

12 Q. What happened to the motorcycle rider when he
13 hit that car?

14 A. He limped to the side of the freeway. He had
15 help -- I couldn't keep my eye on him because the person
16 driving the car jumped out of the car and ran in front
17 of me and I had to jam on my brakes to keep from hitting
18 her. And when she ran in front of me, I had to hit the
19 brakes. And I noticed she ran over to a vehicle that
20 was parked on the shoulder of the freeway. And she was
21 banging on the window saying: Let me in, let me in.
22 And the person -- the doors was locked on the car. So
23 she whirled and went around the backside of the car and
24 went to the driver's side. And I guess she got in the
25 car then.

1 Q. Okay. Let me stop you there. Did you see the
2 motorcyclist get thrown off his bike on the freeway?

3 A. Yes, sir. Because when he went to the side, I
4 got out of the car and ran over to him and asked him was
5 he okay. And he said: Man, my leg is broken. I said:
6 Okay. Just be patient. I said: We called the
7 paramedics already. They should be on their way.

8 Q. Did you end up pulling him over onto the
9 shoulder?

10 A. No, sir. He had help from someone else.

11 Q. Now, you mentioned that you saw the driver of
12 the wrong-way car still behind the wheel?

13 A. Yes, sir.

14 Q. And you heard her pushing on the brakes -- I'm
15 sorry -- pushing on the gas as she's trying to drive
16 away?

17 A. Yes, sir.

18 Q. Do you see the driver of that car in the
19 courtroom today?

20 A. Yes, sir.

21 Q. Would you please point her out and describe an
22 article of clothing she's wearing?

23 A. That's her in the black dress, I guess
24 (indicating).

25 MR. ASLETT: Your Honor, may the record

1 reflect the witness has identified the defendant?

2 THE COURT: The record will so reflect.

3 Q. (By Mr. Aslett) So then you saw the defendant
4 go over and try to get into this other car?

5 A. Yes, sir.

6 Q. Okay. Did she ultimately get into this other
7 car?

8 A. Yes, sir.

9 Q. Did you ever come up close to the defendant to
10 speak with her?

11 A. No, sir.

12 Q. Why not?

13 A. Because I was trying to, you know, get out --
14 my car was still in the center of the freeway. And like
15 I explained to you, everybody was screaming at me
16 saying: You need to get out of the freeway, there's
17 cars coming up behind us, they're going to hit us. So I
18 pulled over to the shoulder. Me and my brother ran back
19 to the freeway to make sure everybody was okay.
20 Everybody was saying they were okay but the motorcycle
21 rider.

22 So I went back to my car. I was going to
23 leave, but as we was passing the first car that got hit,
24 I noticed a young man standing there. He was like
25 walking in circles. And I happened to look over there

1 again and he was bleeding real bad. So I went a little
2 bit -- like three or four car lengths down the freeway
3 and I pulled over and I backed up on the shoulder. My
4 brother said: What are you doing? I said: Man, I
5 can't leave and this young man standing on the freeway
6 like this bleeding like he is. I said: I've got to
7 stop. And they kept saying: Man, come on, that ain't
8 our business. You need to go. I said: I can't do it,
9 man. I've got to go back.

10 So I went back. When we stopped, my
11 sister-in-law got out of the car first, my lady friend
12 got out of the car, and then me and my brother jumped
13 out. We ran back to the Toyota. It was a green Toyota.
14 And I had to avoid the wheel because the wheel was still
15 spinning around in the freeway. And I went to the car
16 and the young lady was back there. And there was a
17 young man on the passenger side talking to her, telling
18 her to keep still. And he --

19 Q. Let me stop you right there. Was the woman in
20 the backseat of the car moving?

21 A. No, sir. She was just laid back, like trying
22 to catch her breath. And I told her, I said: It's
23 going to be all right. I said: We have paramedics on
24 the way. My sister-in-law was talking to her saying:
25 Just be still sweetheart, don't move. And my

1 sister-in-law came and whispered in my ear and said:
2 Brother-in-law, she don't have a pulse. I said: She
3 don't have a pulse? She say: Yeah.

4 And by this time, we noticed the ambulance,
5 fire truck, and police officers stop where she hit the
6 truck. Didn't nobody know that she had hit the Corolla.
7 So me and my brother had to run a mile down the freeway
8 to get the police officers and the paramedics to let
9 them know that there was a young lady involved in that
10 same accident farther up the freeway. And the firemen
11 say: What are you saying, what are you saying? I can't
12 hear you.

13 I said: Sir, it's a young lady that was
14 involved in the same accident. I say: She need help.
15 I said: Y'all need -- he said: You mean there's
16 another car involved? I said: Yes, sir.

17 So the police officer jumped in his car,
18 the fireman jumped in the fire truck, and they went
19 down. The ambulance went behind them.

20 Q. Did you follow them back to where the Corolla
21 was?

22 A. Yes, sir, me and my brother ran back down to
23 where they was.

24 Q. What happened next?

25 A. Okay. When me and my brother made it back to

1 the Toyota, they was trying to get the passenger to go
2 to the hospital. He kept saying: No, I'm not going to
3 no hospital, I'm not going. I said: Man, you probably
4 need to go have yourself checked out. I said: You
5 don't want to stand here and bleed to death. I said:
6 You need to go. "I'm all right, I'm all right, I don't
7 need to go."

8 And after he said that, I went back to the
9 car and the paramedic was trying to get the young lady
10 out of the car. He was pulling her by her arm real
11 hard. And I turned away from him because to me he was
12 pulling on her too hard when I thought maybe he should
13 have grabbed her under her arms or something and try to
14 pull her out of the car, but he was just pulling her by
15 her arms and I couldn't take that.

16 So I went back over and asked the young
17 fellow to sit on the curb. I said: If you're not going
18 to go to the hospital, just sit on the curb. I said:
19 Because you're moving too much, you're bleeding too bad.
20 And by that time, the police officer came over to me and
21 told me he needed to get a statement from me before I
22 leave. He said: Will you be willing to give a
23 statement? I said: Yes, sir.

24 Q. Did you give the police a statement?

25 A. Yes, sir, I did.

1 Q. Were you there when they loaded Claudia
2 Ontiveros' body from the backseat of the car onto the
3 ambulance?

4 A. Yes, sir, I was.

5 Q. Okay. Just so we're clear, did you ever engage
6 the defendant in any sort of conversation?

7 A. No, sir.

8 Q. Did you ever get close enough to her that you
9 would have been able to smell what she smelled like?

10 A. No, sir.

11 Q. Okay. And after you had seen the motorcyclist
12 be helped by somebody else, did you ever go back and
13 talk to or check on the motorcyclist?

14 A. Yes, sir, I checked on him before I left.

15 Q. And do you know if he was transported to the
16 hospital? Were you there when he was transported?

17 A. Well, I was there, but I was back where the
18 Toyota was. Because he said his leg was broken and I
19 let him know that help was on the way, but I was mainly
20 concerned about the young lady that was in the back of
21 the Toyota.

22 Q. Just a couple questions more for you.

23 A. Uh-huh.

24 Q. From the time the crash happened to when the
25 motorcycle hit the car, did there appear to be enough

1 time for the motorcyclist to stop or avoid that --

2 A. No, sir.

3 Q. When you saw the defendant behind the wheel of
4 the car and running over to this other vehicle to try to
5 get inside of it, how did she appear to be acting? How
6 would you describe her affect?

7 A. Well, it was like somebody scared and was
8 trying to get away from the scene of the accident.
9 Because once she found out the car wasn't going any
10 further, she jumped out of the car, and, I mean, she
11 just darted across the freeway. She didn't look to see
12 if any other cars were coming. That's how I almost hit
13 her, because she just shot across the freeway.

14 Q. Do you think she would have kept driving down
15 the wrong way had her car not been disabled?

16 MR. RAMIREZ: Objection, Judge. That calls
17 for speculation.

18 THE COURT: That's sustained.

19 Q. (By Mr. Aslett) Thank you, Mr. Barnes.

20 A. Yes, sir.

21 MR. ASLETT: Pass the witness, Your Honor.

22 THE COURT: Any questions?

23 MR. RAMIREZ: Yes, Your Honor.

24 **CROSS-EXAMINATION**

25 **BY MR. RAMIREZ:**

1 Q. Mr. Barnes, my name is Enrique Ramirez, and
2 obviously I represent Ms. Kressin in this matter.

3 I want to ask you -- I just have a few
4 questions of you. If there's something I ask you and
5 I'm not clear about my question, please feel free to
6 stop me and I'll be more than happy to rephrase my
7 question. Can we agree to that?

8 A. Yes, sir.

9 Q. Okay. Now, you're driving down the freeway and
10 you see this horrible accident that takes place and
11 you're assisting with whatever you can to assist all
12 these people that are involved in the accident. I'd
13 like to take you back to the testimony that you just
14 made when the State asked you. You stated that you
15 thought that she was trying to take off.

16 A. Uh-huh.

17 Q. Mr. Barnes, is it possible that she was trying
18 to move the vehicle out of the way?

19 A. Sir, the vehicle was in such a bad shape, she
20 couldn't move it.

21 Q. Right. I understand that. I understand that
22 she couldn't move the vehicle, but my question is to
23 you -- you formulated an opinion regarding what you
24 think she was trying to do. My question is just simply
25 whether it's possible she just may have been trying to

1 get the vehicle out of the way?

2 A. No, sir.

3 Q. You don't think that that's possible?

4 A. No, sir.

5 Q. Now, you never -- did you ever speak to her
6 after the accident?

7 A. No, sir.

8 Q. Do you know -- do you think that perhaps your
9 recollection of the brown truck is accurate or not
10 accurate?

11 A. Accurate.

12 Q. Okay. Now, did you speak to Mr. Carter? That
13 would have been the gentleman that was bleeding.

14 A. Yes, sir.

15 Q. Okay. Did he ever mention to you anything
16 about a brown vehicle?

17 A. He was so in shock he didn't even know where he
18 was.

19 Q. Now, let me ask you: There were a lot of
20 people in shock that night, weren't there? Would you
21 agree with that?

22 A. Yes, sir, probably so.

23 Q. I mean, even yourself to a certain extent,
24 right?

25 A. Yes, sir.

1 Q. It's very traumatic to have this type of an
2 experience. Do you think that it's -- wouldn't you
3 agree with me that it is possible that even my client
4 may have been in shock after the accident?

5 A. No, sir.

6 MR. ASLETT: Objection to speculation, Your
7 Honor.

8 Q. (By Mr. Ramirez) Given the --

9 A. No, sir.

10 THE COURT: It's overruled.

11 MR. RAMIREZ: Pass the witness, Judge.

12 THE COURT: Anything further?

13 MR. ASLETT: Just one additional question,
14 Your Honor.

15 **REDIRECT EXAMINATION**

16 **BY MR. ASLETT:**

17 Q. Mr. Barnes, I'm going to show you a photograph,
18 State's Exhibit No. 3. Is this the car that you saw the
19 defendant behind the wheel of (indicating)?

20 A. Yes, sir.

21 Q. Was it in the same position in this photograph
22 as it was when the motorcycle struck the side of it?

23 A. Yes, sir.

24 Q. So it wasn't moved at all by the impact of the
25 motorcycle?

1 A. No, sir.

2 Q. Thank you, Mr. Barnes.

3 MR. ASLETT: No further questions.

4 THE COURT: Anything further?

5 MR. RAMIREZ: Nothing further from the
6 defense, Judge.

7 THE COURT: Any objection to this witness
8 being excused?

9 MR. ASLETT: None from the State, Your
10 Honor.

11 MR. RAMIREZ: None from the defense, Your
12 Honor.

13 THE COURT: Sir, you may step down. You're
14 free to go about your business.

15 THE WITNESS: Thank you, sir.

16 THE COURT: You may call your next.

17 MR. ASLETT: Your Honor, the State calls
18 Jonathan Giraldo.

19 THE COURT: You were previously sworn, were
20 you not?

21 THE WITNESS: Yes, sir.

22 THE COURT: These lawyers are getting ready
23 to ask you questions. Please keep your voice up so
24 everyone can hear you. Please let them finish their
25 questions before you begin to answer. If you're

1 interrupted, you will be given the opportunity to
2 complete your answer, unless an objection has been
3 sustained.

4 Last, if any of these lawyers stand up
5 during your testimony to speak to the Court, please say
6 nothing further until you're given permission to do so.

7 Thank you.

8 You may proceed.

9 MR. ASLETT: Thank you, Your Honor.

10 **JONATHAN GIRALDO,**

11 having been called as a witness and being first duly
12 sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. ASLETT:**

15 Q. Mr. Giraldo, would you please state your full
16 name for the jury?

17 A. Jonathan Giraldo.

18 Q. How old are you, Mr. Giraldo?

19 A. Thirty.

20 Q. What do you do for a living?

21 A. Own a soccer facility in the energy corridor.

22 Q. How long have you been involved in the business
23 of running this soccer facility?

24 A. Five years now.

25 Q. What did you do before you started running this

1 business?

2 A. I used to play soccer professionally.

3 Q. What team did you play for?

4 A. I played a little in South America, played in
5 New York most recently.

6 Q. Are you married?

7 A. Yes.

8 Q. How long have you been married?

9 A. Ten years now.

10 Q. Any children?

11 A. Two kids, yeah. Boys.

12 Q. Have you ever had to testify before?

13 A. No.

14 Q. Okay. I want to get right to it and ask you to
15 remember back to October 15th, 2013, shortly after
16 midnight on that night. What were you doing on the
17 night of -- well, let me take it back -- October 14th,
18 2013?

19 A. On that night, I was closing up my business,
20 which is usually 10:00, 11:00 p.m., depending. I was
21 driving home that night. Back then I lived over in the
22 museum district area. So I closed up, on the way home.
23 When I was on I-10, I see a car facing me with no
24 lights, see some cars swerve. So I have some distance
25 to be able to see cars swerving. So when I see that, I

1 start to scoot over to the left lane and I slowed down
2 past it.

3 When I do final pass it slowly, I see
4 there's someone inside. So, you know, I pull over all
5 the way and I back my car up past the car, say, you
6 know, 20 yards or so, so I can put my hazards so people
7 can have a better chance of seeing me. And I get out of
8 my car and walk over to the level where the car is at
9 and I see this young lady in there trying to move the
10 car. It's smashed up, there is no lights. So at that
11 point I signal for her to get out of the car and come
12 over.

13 Q. Let me stop you right there. How was this
14 woman trying to move the car?

15 A. I mean, you can tell, you know, hands on the
16 steering wheel, just doing this motion (indicating).
17 You can see some smoke coming out of the car. I forget
18 if it was the tires or the engine. Something was
19 smoking.

20 Q. Did you hear the engine revving as she was
21 doing this?

22 A. You heard the car struggling trying to move,
23 but it wasn't moving.

24 Q. The person that you saw behind the wheel of
25 that car, do you see her in the courtroom today?

1 A. Yes.

2 Q. Would you please point her out and describe an
3 article of clothing she's wearing?

4 A. Wearing the black (indicating).

5 MR. ASLETT: Your Honor, may the record
6 reflect the witness has identified the defendant?

7 THE COURT: The record will so reflect.

8 Q. (By Mr. Aslett) So you motion for her to come
9 out. What happens next?

10 A. I think there was someone else who actually ran
11 across to her to try to get her out. So when she does,
12 she runs over to my side. I take her back to my car for
13 safety, put her in the backseat. Then we get on -- I'm
14 trying to calm her down, just call 911. When I finally
15 do, I was on the phone with 911 maybe a few seconds when
16 we see a motorcycle hit her car and the guy goes flying.

17 So at that point it was kind of stunning,
18 so I gave her the phone and I get out, run over to the
19 guy who's laying in the middle of the freeway. So, you
20 know, I'm making sure there's no cars coming so I could
21 be over there and pull him off. When I finally go to
22 him, he looks like he can't move. So I grab him by the
23 shoulders, pull him back up against the -- like the
24 median of the highway and help him call whoever it was.
25 And I believe ended up staying there with him until

1 everyone just showed up.

2 Q. Let me stop you there and break it down a
3 little bit more.

4 When you arrived on the scene, did you see
5 any sort of damaged brown truck?

6 A. No. I mean, all I saw was -- I was only
7 focused on the car she was in. And then obviously once
8 the motorcycle hit, you know, it was...

9 Q. So it may have been there, may not have been
10 there, you just don't remember seeing it?

11 A. Right.

12 Q. Okay. And it sounds like you rolled up on the
13 car after both of its headlights had already gone out?

14 A. Yeah. There were absolutely no lights. That's
15 why it was kind of a big deal. The car -- you know, it
16 was a darker-colored car, so you couldn't see it really.

17 Q. Was there still smoke coming from the car when
18 you rolled up?

19 A. Yeah, there was some.

20 Q. You mentioned that she gets in the car and then
21 shortly after that is when the motorcycle collision
22 happens. If you had to put a guesstimate on how much
23 time that passed between the time she gets out of the
24 car and the time you remember the motorcycle collision
25 happening?

1 A. Not even a -- maybe a minute, maybe two
2 minutes.

3 Q. So as far as you remember, it wasn't immediate,
4 it was a little bit longer?

5 A. I mean, it happened really fast. I'm not sure,
6 but I do remember from the time, let's say, she came
7 over to me, walked back to the car, which was, I would
8 say, you know, from me to you, get her in the backseat,
9 I'm here, I get on the phone, I was able to actually
10 connect to 911 and be on the call for a few seconds
11 before that happened, so...

12 Q. When you're in the car with the defendant, does
13 she make any statements to you?

14 A. I mean, she's nervous, saying: It's my fault,
15 it's my fault. I'm telling her, you know, to calm down.
16 At this point, I have no idea what had happened. I only
17 knew this. And so I was trying to get her calmed down
18 so we can call for help.

19 Q. Her mood, how would you describe it?

20 A. Really nervous and scared, like anyone would
21 have been. I don't know. I was a little shaken, but I
22 was trying to keep her calm. She was a lot more...

23 Q. After the motorcycle crash happened and you
24 went over to help the motorcyclist, did you ever go back
25 into the car with the defendant?

1 A. No, no.

2 Q. Did she ever exit your car?

3 A. No.

4 Q. What kind of car was it?

5 A. A white BMW X5.

6 Q. So all told, between the time that she's in
7 your car and the time you have to leave your car to go
8 to the motorcyclist, are we talking only a matter of a
9 few seconds that you're right next to her?

10 A. Yeah. I mean, it wasn't more than -- like I
11 said, it couldn't be two minutes. That's stretching it
12 to the max. It would probably be less than that or so.

13 Q. All right. When you're next to her, were you
14 next to her long enough to smell anything on her?

15 A. No, not really.

16 Q. Okay. Did you speak with her long enough or
17 get to listen to her talk long enough to notice anything
18 about her speech?

19 A. No. Like I said, just really nervous. I mean,
20 like I said, it was a pretty nervous situation to be in.
21 So she was sort of freaking out and I was just trying to
22 calm her down. My whole thing was just: Calm down,
23 calm down, it's not your fault, I'm just going to make a
24 phone call. When the motorcycle hit, I mean, I left the
25 car.

1 Q. Do you know if she actually followed through on
2 that phone call and talked to 911 or if she hung up the
3 phone?

4 A. I have no idea. I remember handing her the
5 phone and just exiting the car. So I'm not sure.

6 Q. So you're outside the car with the
7 motorcyclist. What happens next?

8 A. Well, like I said, I pulled him off, I pulled
9 him back up against the median, and he tells me he can't
10 feel his legs. So I help him get his phone out of his
11 pocket. And I stayed with him, because like I said, he
12 was probably in more danger than anyone else being out
13 there. So I stayed with him until I think -- I forget
14 if it was the police or the ambulance that showed up
15 first, but they arrived pretty quickly after that.

16 Q. The defendant, did she appear to be at all
17 injured from the crash?

18 A. No, not that I remember.

19 Q. And did you stay on scene and talk with the
20 police?

21 A. Yeah, yeah. I was there for quite a while. It
22 was a long time.

23 Q. Were you even aware that there was another part
24 to this crash further up I-10?

25 A. No. I only found out when I asked the officer

1 how much longer it was going to be. And he told me:
2 Oh, we're still taking care of the stuff up there. And
3 that's when I -- I had no clue.

4 Q. Did you ever talk with or see any of the people
5 that were up in that farther part of the crash?

6 A. No.

7 Q. And after that, were you allowed to leave and
8 go home?

9 A. Yeah. I mean, it was probably an hour or so,
10 but after I spoke to the officer and gave a statement,
11 he let me go.

12 Q. Thank you, Mr. Giraldo.

13 MR. ASLETT: Pass the witness, Your Honor.

14 THE COURT: Any questions?

15 MR. RAMIREZ: Yes, Your Honor. Thank you.

16 **CROSS-EXAMINATION**

17 **BY MR. RAMIREZ:**

18 Q. Mr. Giraldo, my name is Enrique Ramirez. I
19 represent Ms. Kressin in this matter. I just have a
20 couple of short questions of you.

21 You testified that -- or let me ask you --
22 you said you were trying to calm Ms. Kressin down.
23 Would you consider that she was exhibiting some signs of
24 nervousness?

25 A. Yeah, definitely.

1 Q. Do you think that she was exhibiting -- do you
2 think she was calm?

3 A. She wasn't. She was not calm. I was trying to
4 calm her down.

5 Q. Correct.

6 And maybe even some shock in having been
7 involved in this accident at the time?

8 A. Possibly. I mean, she was nervous.

9 Q. And you're probably the one that was closest to
10 her, based on what I've read. And so you had an
11 opportunity to assist her from the point when you went
12 up to the vehicle; is that correct?

13 A. I didn't actually go to the vehicle. I was on
14 the median and called her over to me, but, yeah.

15 Q. Okay. So she was still in the vehicle and then
16 you -- is it fair to say that you motioned her to come
17 to you?

18 A. Yeah, yeah.

19 Q. Okay. Did she follow those instructions?

20 A. Yeah, she did. I mean, like I said, there was
21 somebody by her window trying to get her out of the car.
22 So when he finally did get her to get out of the car,
23 she came over.

24 Q. Do you recall who that was?

25 A. I don't.

1 Q. Okay. And so she came over to you upon your
2 motion to come over. And then did you walk -- you said
3 you walked her around -- let's see. I guess, let me see
4 if I can get a visual of this. Your vehicle is parked
5 heading in the direction of eastbound. Is that on the
6 inside lane?

7 A. Yeah, up against the median.

8 Q. And so she crossed how many lanes to get to
9 you?

10 A. She was probably near the middle.

11 Q. Okay.

12 A. So I don't know. One or two, depending on...

13 Q. So then she got to you --

14 A. Right.

15 Q. -- on that side of the vehicle.

16 Which part of the vehicle did you have her
17 sit in? Which part of your vehicle did you have her sit
18 in?

19 A. Put her in the backseat behind me.

20 Q. Behind the driver's seat?

21 A. Behind the driver's seat, yeah.

22 Q. Okay. So you walked her around the side there.
23 You spoke to her at that point, right?

24 A. Right.

25 Q. How close was she to you at that point? I

1 mean, probably -- let me rephrase this question. Was
2 she right next to you as you were walking her around to
3 put her in your vehicle behind the driver's seat?

4 A. When we were walking together? Yeah, I am
5 pretty sure I had my hand on her at some point and
6 walked closely. When she got in, she got in the
7 backseat.

8 Q. Yes.

9 A. I guess I remember her coming sort of to the
10 middle because -- let's say this is the driver's seat,
11 we're making the phone call and she's right here
12 (indicating).

13 Q. Okay. When you're speaking to her when you're
14 walking her outside of your vehicle around the -- did
15 you go around the front or the back?

16 A. No. If my car is facing east, we just walked
17 along the end of the car.

18 Q. Okay. But from the front side of the vehicle
19 or the rear of your vehicle?

20 A. No. The front. I backed up the car. Right.

21 Q. Okay. So as you're speaking to her, she turns
22 to you to respond to your question; is that right?

23 A. I didn't -- it wasn't that kind of
24 conversation. I wasn't asking her any questions. I was
25 telling her to calm down.

1 Q. You said she said it was her fault?

2 A. Once we were in the car, yeah.

3 Q. Once you are in the car.

4 Okay. So that conversation took place
5 inside --

6 A. Right.

7 Q. -- when she had moved over to the center of
8 the --

9 A. Right.

10 Q. -- of your rear seat?

11 And then when she did that, is it fair to
12 say that you turned to address her?

13 A. Yeah.

14 Q. You were just trying to keep her calm?

15 A. Right.

16 Q. And you testified a moment ago that at that
17 point, you did not smell any type of alcoholic beverages
18 on her?

19 A. No. I don't think I was close enough. I
20 didn't smell anything.

21 Q. Well, but you didn't smell any?

22 A. No, not at all.

23 Q. And is it fair to say that had she had a strong
24 odor of alcoholic beverage, that you may have been able
25 to pick it up?

1 MR. ASLETT: Objection. Speculation, Your
2 Honor.

3 THE COURT: The way the question is
4 sustained, the objection is sustained.

5 You may rephrase your question.

6 Q. (By Mr. Ramirez) So when she was in the
7 backseat and speaking to you, she was in between the two
8 seats. Let's say that this is the backseat and you've
9 got the two seats like this and you're sitting here and
10 she's speaking to you here. You're within a few inches
11 of her, right?

12 A. Yeah, but she's not leaning in to me, but
13 she's -- yeah. So it's an SUV. I'm here, she's
14 probably here (indicating.)

15 Q. And you could have smelled alcohol had it been
16 strong, right?

17 A. Might. I can't say.

18 Q. You didn't smell any alcohol, did you?

19 A. I didn't smell any alcohol.

20 Q. None at all?

21 And in your conversation with her, did you
22 detect any type of slurred speech?

23 A. No. Again, just to be clear, we didn't have a
24 drawn-out conversation. It was more of her saying
25 things nervously and I was just telling her to calm down

1 when I got on the phone. But, no, to answer your
2 question, I didn't hear any --

3 Q. No slurred speech, no -- no smell of alcohol?

4 A. (Moving head side to side.)

5 Q. Did you notice whether her eyes were all
6 bloodshot?

7 A. No. It was in the middle of the night, so I
8 didn't look at her closely.

9 Q. When she made that statement regarding the
10 accident, did it sound like a remorseful statement to
11 you, like my fault, I'm sorry?

12 MR. ASLETT: Objection. Relevance, Your
13 Honor.

14 THE COURT: It's overruled.

15 Q. (By Mr. Ramirez) You may answer the question.

16 A. I mean, yeah, she just said: It's my fault,
17 it's my fault. She's crying, so... That's what she
18 said. I was just telling her to calm down, it's okay,
19 it's okay.

20 Q. And you would agree with me that's kind of a
21 remorseful statement, isn't it?

22 A. Sure.

23 Q. Did you ever get her to calm down?

24 A. Like I said, once the motorcycle hit, we both
25 went kind of like "wow," and I just left. So I wasn't

1 around long enough to know how she reacted. I just left
2 the car.

3 MR. RAMIREZ: Pass the witness, Judge.

4 THE COURT: Anything further?

5 MR. ASLETT: Nothing from the State, Your
6 Honor.

7 THE COURT: Any objections to this witness
8 being excused?

9 MR. RAMIREZ: No objection.

10 MR. ASLETT: None from the State, Your
11 Honor.

12 THE COURT: Sir, you may step down. You're
13 free to go about your business.

14 You may call your next.

15 MR. ASLETT: Your Honor, State calls German
16 Arias.

17 THE COURT: Sir, you were previously sworn,
18 were you not?

19 THE WITNESS: I was sworn.

20 THE COURT: All right. These lawyers are
21 about to ask you some questions. Please keep your voice
22 up so everyone can hear you. And let them complete
23 their questions before you begin to answer. If you're
24 interrupted, you will be given the opportunity to finish
25 your answer, unless an objection has been sustained.

1 Last, if any of these lawyers stand up
2 during your testimony to speak to the Court, please say
3 nothing further until you're given permission to do so.

4 Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: You may proceed.

7 MR. ASLETT: Thank you, Your Honor.

8 **GERMAN ARIAS,**
9 having been called as a witness and being first duly
10 sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. ASLETT:**

13 Q. Sir, would you please tell the jury your name?

14 A. My name is German Arias.

15 Q. How old are you, Mr. Arias?

16 A. I'm 26.

17 Q. What do you do for work?

18 A. I'm a mechanic.

19 Q. What sort of mechanic are you?

20 A. Currently I'm doing diesel.

21 Q. How long have you been doing mechanic work?

22 A. Honestly, my biological father was a mechanic,
23 so literally since I was able to see anything.

24 Q. Okay. Where are you from originally?

25 A. I'm from Colombia.

1 Q. How long have you lived in Houston?

2 A. I've lived in Houston since 2004.

3 Q. Did you go to high school in Houston?

4 A. Yes, I did.

5 Q. Where did you go to high school?

6 A. Cy-Fair, Cy-Springs High School on Fry Road.

7 Q. Do you ride motorcycles?

8 A. Yes.

9 Q. Is that something that you do currently?

10 A. At this moment, no. My injuries in my body
11 don't allow me to do it anymore.

12 Q. Did you used to ride motorcycles back in 2013?

13 A. Yes, I did.

14 Q. How many motorcycles did you own?

15 A. I owned a 2005 Honda CBR-RR.

16 Q. Was that your only motorcycle?

17 A. That was my only motorcycle.

18 Q. When did you acquire that motorcycle?

19 A. I acquired it in 2008.

20 Q. Had it given you any mechanical problems at
21 all?

22 A. It never did. I always kept it in shape and I
23 always added extra things to it. I completed it to my
24 specs.

25 Q. So no problems with the steering?

1 A. Never.

2 Q. No problems with the brakes?

3 A. I had two quad high performance calipers with
4 14-inch slotted rotors, also all new pads. I changed my
5 rear tire from a 180 to 190/55-17 on the rear. And I
6 always put Pirelli Diablos tires, which are very good
7 tires.

8 Q. How long had you been riding motorcycles prior
9 to 2013?

10 A. Since I was living in Colombia. I owned a 49cc
11 motorcycle, which was just a little dirt bike.

12 Q. Mr. Arias, have you ever had to testify before?

13 A. No.

14 Q. I want to take you back to October 15th, 2013
15 shortly after midnight. Were you riding your motorcycle
16 that night?

17 A. Yes, I was.

18 Q. Where were you coming from and where were you
19 going to?

20 A. I was coming from Fry Road and I-10, and I was
21 heading to 45 South.

22 Q. Were you traveling on I-10 East?

23 A. Yes, I was.

24 Q. Were you wearing your motorcycle gear?

25 A. I was wearing a spine protector, a ride helmet,

1 Mossi jacket with shoulder and -- the side protectors
2 over here (indicating). I'm sorry. I was wearing my
3 leg protectors for my kneecaps, shoes that will cover my
4 ankles. Yeah, basically anything that you -- I had
5 everything that would protect my body.

6 Q. Were you traveling the speed limit?

7 A. I was traveling 60 miles per hour.

8 Q. Was the weather okay?

9 A. The weather was amazing. It was not raining.
10 It was not cold, but not hot. I mean, for a motorcycle
11 rider, it was one of the best weathers you could ask for
12 to ride. That's why I -- I mean, I stayed -- I cruised
13 at 60 because it was -- I was enjoying it a lot.

14 Q. Tell us what happened.

15 A. After I passed 610, I was coming close to
16 TC Jester where we have little bridges and whatnot. I
17 was coming in, and then all a sudden, there was kind of
18 like a fog and it impaired my vision. I had HID
19 headlights on my motorcycle. HID's would allow me to see
20 over 150 feet.

21 I was in my sixth gear. I lowered down to
22 fifth gear, still going 60 miles per hour. Once the
23 smoke cleared out, I saw that Chevy Cavalier with no
24 headlights and nothing really that would show that it
25 was unstable or that it was in case of an emergency.

1 Honestly, I would say when I saw it, I was about 15 to
2 20 feet, let's say.

3 Q. Was that because, I guess, your headlights were
4 going back on you because of the smoke?

5 A. Yeah. There was no visual. Literally, the car
6 was just -- it was like a magic trick, like, you know,
7 once the smoke clears out, "voilà."

8 Q. Did you have any time to apply the brakes or
9 try to swerve out of the way?

10 A. Well, there was an 18-wheeler on my right side,
11 which was the fastest way to be able to block it, but I
12 could not take that. So my other option was on the left
13 side. I hit my front brakes, downshift -- started to
14 downshift, and at the same time, I was hitting my rear
15 brakes. And once I know that I was getting way too
16 close...

17 Q. Did you end up striking the side of the car?

18 A. I had no option. I can't move. Couldn't hit
19 on the 650-pound bike. That's the last thing you want
20 behind you. So I jammed on the rear brake so the bike
21 would fishtail and then end on its side.

22 Q. Did you end up striking the car sort of
23 sliding --

24 A. Striking the car by the gas tank close to the
25 trunk.

1 Q. Did you get thrown off your motorcycle?

2 A. Once I hit on the side, the motorcycle crushed
3 my leg, momentum pushed me, my head hit the trunk. Once
4 my motorcycle moved out, I was slingshot, doing front
5 flips, landing on my back, and then spinned until I came
6 to a complete stop facing upwards. After that, I was
7 not surprised -- I mean, I was conscious all the time,
8 but I was just glancing up. The sky was clear. So I
9 was looking at the stars and that's when I decided to do
10 kind of like a shelf-check, try to move my fingers, try
11 to move my toes, see if everything was there.

12 Q. Were you able to move your fingers?

13 A. I was able to move my fingers and my toes.

14 Q. Were you in pain?

15 A. It was too much adrenaline in my body to feel
16 any type of pain. That's why I was trying to move and
17 make sure. Once I sat down, I saw another car by the
18 grass. Seemed like it was a Corolla, green, but the
19 people were moving like little ants left to right and I
20 didn't know if they were looking at me or what was going
21 on. So I cut off my attention to it and decided to look
22 back and see where my motorcycle was.

23 Q. How far --

24 THE COURT: One moment.

25 Are you able to get everything?

1 THE REPORTER: Yes.

2 THE COURT: Are y'all able to understand
3 okay?

4 You may proceed.

5 THE WITNESS: I'm sorry.

6 Q. (By Mr. Aslett) When you looked back towards
7 your bike and the car that you hit, how far had you
8 rolled from where that location was?

9 A. I'm going to say 20, 25 feet.

10 Q. What happened next?

11 A. Motorcycles have a safety system. Once the
12 motorcycle is laid to the side, it will shut off the
13 fuel pump to prevent fires. Once the system has reset,
14 it will turn on an LED Light stating that reset has been
15 completed. I was able to see that red LED, so I kind of
16 chuckled and I said: Sweet, I can get back on it.

17 But when I tried to stand up, I couldn't.
18 I felt like my leg was sinking into the ground. It was
19 just wobbling. So I never had this feeling in my life.
20 I couldn't recognize it. So I went back down and sat
21 back down and I attempted it again and I kept
22 attempting, and I couldn't understand it. So I just
23 figured my leg was damaged in a way that I cannot stand
24 up and move. So given to that effect, that's when a car
25 passed by me real fast and I was -- you know, I realized

1 I was in more danger now.

2 Q. How did you end up getting out of the middle of
3 the freeway?

4 A. There was a car that was coming at -- that was
5 coming through, passed my bike. It was heading towards
6 me. So pulled my jacket -- I had reflecting stripes on
7 my jacket and I started waving my hands to make sure
8 that he could see me. I wanted to take off my helmet
9 and throw it at him, but I figured that was the only
10 thing that was keeping me alive. So I buckled it back
11 in. He was able to stop. And I was going to turn
12 around and start crawling, but when I put my hands down,
13 that's when -- I don't know why I didn't see him --
14 somebody grabbed my left hand and started pulling me out
15 of the way. And the only thing I can do was just help
16 him with my left leg and my right hand and just try to
17 drag out, drag out until he put me on the shoulder of
18 the freeway.

19 Q. What happened after that?

20 A. Traffic start going away. My leg got swollen
21 until the pants stopped the swelling. It was
22 basically -- and I just keep looking to see what's going
23 on. I didn't fully understood it.

24 Q. Did you start to feel any pain at this point?

25 A. Just on my leg. I felt a small bug on my hand,

1 but I wasn't paying attention to it. It was just my leg
2 that was just hurting. I was able to reach to my phone
3 and made a call.

4 Q. Who did you call?

5 A. Tried calling my house, my mom, but they didn't
6 answer. I only had 5 percent. So I hanged up and I
7 decided to call my girl and my kid. And she picked up.
8 So I told her I've been involved in an accident and I
9 was in the middle of the freeway somewhere. And the
10 phone hanged up.

11 Q. Did the ambulance come sometime after that?

12 A. The ambulance did arrive. I want to say
13 probably like ten minutes, but they had to pick up
14 somebody else. So they told me if I could wait and I
15 told them yes. And then they just took off and I waited
16 for the second ambulance to come and pick me up.

17 Q. How long between?

18 A. I would say half an hour I was sitting out
19 there.

20 Q. And as you kept waiting, were you in more and
21 more pain?

22 A. It just kept growing. I had a watch on my left
23 hand. Once I took it off, my left hand started getting
24 swollen and swollen and swollen. And I didn't -- I
25 didn't understood why. I was moving it just fine.

1 After they did the X-rays, before they put me to sleep
2 to take me to surgery, which was at 8:00 o'clock in the
3 morning, that's when they told me that my hand was -- my
4 wrist was broken.

5 Q. Did you ever see the driver of the car that was
6 disabled in the freeway?

7 A. No, I did not see them.

8 Q. Did you ever get a look at the people around
9 the green Toyota Corolla and what was going on?

10 A. Like I said, once I sat down and I looked and
11 they were just -- they were moving. They were focused
12 on something else. I didn't think they see me. That's
13 why, like I said, I needed to move out of the way.

14 Q. Do you remember what hospital you went to?

15 A. Memorial Hermann.

16 Q. How long were you at Memorial Hermann?

17 A. About four days.

18 Q. What sort of injuries were you diagnosed with
19 while you were at the hospital?

20 A. My femur was moved into a 90-degree angle and
21 stitched up and it was overlapping. And one of my bones
22 in my wrist had snapped on the side. The surgery that
23 they did was to put counterweights on my leg to be able
24 to take it out, try to put it together as best as they
25 could. And did an incision on my back to put a rod

1 inside my bone with three bolts to hold it in place.
2 And my arm, nine bolts with a bracket to hold it in
3 place.

4 Q. That night, were you visited by the police in
5 the hospital?

6 A. They made me do a video.

7 Q. And did you and I watch that video statement
8 together before trial?

9 A. Yes.

10 Q. And while you were at the hospital, did you
11 have a family member of yours take photographs of your
12 injuries?

13 A. My mother, my cousin, my brother was there,
14 too, and they took pictures.

15 MR. ASLETT: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 Q. (By Mr. Aslett) Mr. Arias, first I'm going to
19 show you what I've marked as State's Exhibits 43 and 44.
20 Could you tell the jury what these are pictures of
21 (indicating)?

22 A. This is me ready to go into surgery. This is
23 all my equipment.

24 Q. And State's Exhibits 96 through 103, if you
25 could flip through these (indicating).

1 A. (Witness complies.)

2 Q. Do these photos fairly and accurately depict
3 the injuries that you had at the hospital? 67 -- I'm
4 sorry. 96, 97, 98, 99, 100, 101, 102, and 103, do they
5 fairly and accurately depict your injuries?

6 A. Yes.

7 MR. ASLETT: Your Honor, at this time,
8 State offers into evidence State's Exhibits 43 and 44,
9 and 96 to 103.

10 (State's Exhibit Nos. 43, 44, 96 through
11 103 Offered)

12 MR. RAMIREZ: No objection, Your Honor.

13 THE COURT: State's 43 and 44, 96, 97, 98,
14 99, 100, 101, and 103 are admitted {sic}.

15 (State's Exhibit Nos. 43, 44, 96 through
16 103 Admitted)

17 MR. ASLETT: Your Honor, permission to
18 publish?

19 THE COURT: You may.

20 MR. ASLETT: And just to make sure I
21 understood you correctly, Your Honor, did you say
22 Exhibits 96 through 103?

23 THE COURT: That is correct.

24 Q. (By Mr. Aslett) State's Exhibit 43, is this a
25 photograph of you in a neck brace (indicating)?

1 A. Yes, sir.

2 Q. State's Exhibit 44, is this your helmet and
3 your crash gear?

4 A. Yes, it is.

5 Q. State's Exhibit 96, is this your -- what part
6 of your left arm was broken? Was it your wrist?

7 A. These two bones and like right before the wrist
8 just snapped upwards. So they had to make an incision,
9 which they cut right here, to put a bracket on it and
10 bolt everything (indicating).

11 Q. State's Exhibit 97 (indicating).

12 A. That's the counterweights. That was the bolt
13 that was drilled on the bottom of my ankle. It was
14 forced downwards for the doctors to be able to align my
15 bone back again to a stable condition.

16 Q. So they had to drill a hole down in your leg?

17 A. To be able to put counterweights, yes.

18 Q. State's Exhibit 98 (indicating).

19 A. That is one of the cuts they did to put one of
20 the bolts.

21 THE COURT: Sir, please remember to keep
22 your voice up.

23 THE WITNESS: Okay.

24 THE COURT: I'm not fussing at you. I know
25 you're not used to doing this, but it is important for

1 everyone to hear you.

2 THE WITNESS: Okay.

3 THE COURT: You may proceed.

4 Q. (By Mr. Aslett) State's Exhibit 99
5 (indicating).

6 A. That's the incision to put the bolt in.

7 Q. State's Exhibit 100 (indicating).

8 A. Another incision for them to put the bar inside
9 my femur.

10 Q. State's Exhibit 100 (indicating).

11 A. That is my left hand after the surgery.

12 Q. State's Exhibit 102 (indicating).

13 A. That was the second day in the hospital. They
14 were checking the patches and checking the stitches.

15 Q. Finally, State's Exhibit 103 (indicating).

16 A. That's after they replaced them.

17 Q. About how long was it after you were discharged
18 from the hospital that you were able to walk normally
19 again?

20 A. One year.

21 Q. Do you have any lingering pain from this crash?

22 A. Always.

23 Q. What sort --

24 A. Including right now. The bolts on my legs are
25 not flush to my bone. So there is a piece sticking out,

1 which always catches the ligaments and flesh and it just
2 rubs. That causes a lot of pain.

3 My hand, I can't lift over 15 pounds. It
4 creates a lot of tension and it hurts. So in some
5 cases, lift up -- like, anything that hurts, your
6 reaction is to open. So I always drop things. If he
7 comes to play with me, if he grabs me by the hand -- I
8 have dropped him a couple of times because of that.

9 Q. Because you don't have full feeling in that
10 hand?

11 A. I don't have full feeling and I don't have full
12 strength in that hand anymore.

13 Q. Would you say that you, after the accident, had
14 protracted loss use of your right leg because of the
15 broken femur?

16 A. Yeah.

17 Q. And could you --

18 A. I cannot jump, have a hard time running, any
19 type of weightlifting. It just -- I just feel the
20 whole -- everything, the whole bar and everything.

21 Q. Did you also have protracted loss of use of
22 your left arm after the crash?

23 A. I have to just cope with my right hand.

24 Q. Were you out of work for a period of time while
25 you recovered?

1 A. Honestly, I started working this year.

2 Q. Would you say that motorcycling was one of your
3 favorite hobbies, or your biggest hobby?

4 A. It relieved a lot of stress. To me, it was
5 wonderful. It's a weird feeling to describe. The
6 feeling of freedom, the feeling of the engine on your
7 chest is -- it's hard to describe, but I loved it.

8 Q. And due to your injuries, are you ever able to
9 ride your motorcycle again?

10 A. Besides being scared, I don't feel safe anymore
11 to be able to operate it.

12 Q. Thank you, Mr. Arias.

13 MR. ASLETT: I pass the witness, Your
14 Honor.

15 THE COURT: Any questions?

16 MR. RAMIREZ: One second, Judge.

17 (Pause.)

18 MR. RAMIREZ: I have no questions of
19 Mr. Arias, Your Honor.

20 THE COURT: Any objection to this witness
21 being excused?

22 MR. RAMIREZ: No objection.

23 MR. ASLETT: None from the State, Your
24 Honor.

25 THE COURT: Sir, you may step down. You're

1 free to go about your business.

2 THE WITNESS: Thank you very much.

3 THE COURT: Ladies and gentlemen, at this
4 time you're going to be given a break. Please remember
5 the admonitions previously given. To not discuss this
6 case amongst yourselves or with anyone else.

7 You may step into the jury room.

8 All rise for the jury.

9 (Open court, defendant present, no jury.)

10 THE COURT: You may be seated.

11 Court will stand in recess.

12 (Brief recess.)

13 (Open court, defendant and jury present.)

14 THE COURT: You may be seated.

15 You may call your next.

16 MR. ASLETT: Your Honor, before calling its
17 next witness, the State would offer into evidence
18 State's No. 45, which are the medical records for German
19 Arias, along with a business records affidavit. These
20 records were given to Mr. Ramirez and have been on file
21 for several months prior to trial.

22 **(State's Exhibit No. 45 Offered)**

23 MR. RAMIREZ: No objection.

24 THE COURT: Would you hand them up?

25 MR. ASLETT: It's a CD, Judge.

1 THE COURT: The records are on the CD?

2 MR. ASLETT: Since they're are over 1,000
3 pages, I just kept them on the CD instead of printing
4 them out.

5 THE COURT: Okay. I don't usually let the
6 affidavit in. I think it's superfluous, but since it's
7 on the CD, that's fine.

8 MR. ASLETT: Thank you, Judge.

9 THE COURT: Admitted.

10 **(State's Exhibit No. 45 Admitted)**

11 MR. ASLETT: Permission to publish briefly,
12 Judge?

13 THE COURT: You may.

14 Ladies and gentlemen, just so that you
15 know, you will be able to take with you all the exhibits
16 into the jury room during your deliberations. And if
17 there's something that needs to be operated on a
18 computer, then you'll be provided something in order to
19 be able to look at it, a computer or something.

20 MR. ASLETT: This may be a little bit
21 difficult to see on the screen, so I'll just read it
22 out.

23 I'm reading from Page 18 of the medical
24 records, which are notes by an Amy Cockerham on
25 October 18th, 2013, which is the day that Mr. Arias was

1 discharged from the hospital.

2 It says: This is a pleasant 24-year-old
3 who was involved in a motor vehicle collision on October
4 15th, 2013, who sustained a right femur fracture and a
5 left DR fracture. He was then brought to the OR for
6 operative fixation and he is stable for discharge.

7 Page 19 are the EMS notes from that night.
8 It says they responded to a 24-year-old white male
9 complaining of possible femur fracture due to a motor
10 vehicle accident. Patient stated he was on a motorcycle
11 when he hit another vehicle that was involved in an
12 accident. The other vehicle was going the wrong way
13 down the freeway. No loss of consciousness. Patient
14 was wearing a padded jacket. No complaints of neck or
15 back pain. Patient had good color and movement. Good
16 cap refill on toes, could move all toes. Patient
17 monitored enroute and turned over to care of ER staff.

18 And finally Page 26 of the medical records,
19 which are the triage notes from Nurse Andrew G. Rains.
20 Patient was involved in a motor vehicle collision
21 traveling 40 miles an hour. Patient struck a vehicle
22 traveling on the wrong side of highway. Denies any loss
23 of consciousness. Helmet, gear. Shortening in the
24 right leg and left hand pain.

25 I won't go on any further. There are over

1 300 pages in these medical records.

2 Your Honor, State calls Michael Etheridge
3 as its next witness.

4 THE BAILIFF: He has not been sworn, Judge.

5 THE COURT: If you would, just stop right
6 in there somewhere and raise your right hand.

7 (Witness sworn.)

8 THE COURT: You may put your hand down and
9 come right on around and take a seat in the witness
10 chair.

11 Sir, these lawyers are about to ask you
12 some questions. Please keep your voice up so everyone
13 can hear you. And please let them completely finish
14 their questions before you begin to answer. If you're
15 interrupted, you will be given the opportunity to
16 complete your answer, unless an objection has been
17 sustained.

18 THE WITNESS: Yes, sir.

19 THE COURT: Last, if any of these lawyers
20 stand up during your testimony to address the Court,
21 please say nothing further until you're given permission
22 to do so.

23 Thank you.

24 You may proceed.

25 MR. ASLETT: Thank you, Judge.

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MICHAEL ETHERIDGE,

having been called as a witness and being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ASLETT:

Q. Sir, would you please tell the jury your name?

A. Michael Etheridge.

Q. How old are you, Mr. Etheridge?

A. Twenty-two.

Q. And if it's okay -- we have a court reporter who's typing down everything I say. If you wouldn't mind just waiting until I finish the question and then you can answer. Otherwise, we're talking over each other.

You said that you're 22 years old?

A. (Moving head up and down.)

Q. Where are you from originally?

A. Hobbs, New Mexico.

Q. Okay. Was there a time when you used to live in Houston, Texas?

A. Yes, sir.

Q. When did you live in Houston, Texas?

A. Since I was about 4 years old until I turned 21.

Q. When did you move away from Houston?

1 A. Right after the accident.

2 Q. Back in 2001?

3 A. Yes, sir.

4 Q. And where did you move to?

5 A. Hobbs, New Mexico.

6 Q. Did you fly from New Mexico to be in court
7 today?

8 A. Yes, sir, I did.

9 Q. What time did your flight land?

10 A. Right at 3:30, I believe. I'm not sure.

11 Q. Did you come straight from the airport down
12 here to the courtroom?

13 A. Yes, sir.

14 Q. What do you do for work?

15 A. I work for a landscape company. I run my own
16 crew.

17 Q. How long have you been doing that sort of work?

18 A. For about six months.

19 Q. Have you ever had to testify before?

20 A. No, sir.

21 Q. Before we get any further into it, I do have to
22 ask you one question. Back in February of 2013, were
23 you convicted of a felony theft?

24 A. Yes, sir.

25 Q. Does that case have anything to do with this

1 case?

2 A. No, sir.

3 Q. And did you serve all your time? Are you
4 completely done with that case?

5 A. Yes, sir.

6 Q. I want to get right into it. Did you know a
7 woman named Claudia Ontiveros?

8 A. Yes, sir, I did.

9 Q. Who was Claudia Ontiveros to you?

10 A. She was a friend of mine.

11 Q. How long had you known her?

12 A. I'd known her for about a month.

13 Q. How did y'all meet?

14 A. Through a friend of ours. And we just started
15 talking and got to know each other.

16 Q. Where were you living back in October of 2013?

17 A. I was living in an apartment with my friend Sam
18 and his girlfriend Serena.

19 Q. And by "Sam," you mean Samuel Carter?

20 A. Yes, sir.

21 Q. How long have you known Samuel Carter?

22 A. Since we were in high school.

23 Q. And had y'all been rooming together for a
24 while?

25 A. Yes, sir.

1 Q. What sort of work were you doing back in
2 Houston?

3 A. I was working for JPF Ultrasonic Technology.
4 Was in a pipe yard.

5 Q. Were you also studying to be a tattoo artist?

6 A. Yes, sir.

7 Q. How long had you been training to be a tattoo
8 artist?

9 A. Just by myself for about six months.

10 Q. And did you have your own tattooing equipment?

11 A. Yes, sir, I did.

12 Q. I want you to think back to October 15th, 2013,
13 particularly that night. What did you do that night?

14 A. I gave Claudia a tattoo, and afterwards I was
15 taking her home.

16 Q. Let's back up. Earlier in the night, did you
17 go by Claudia's house?

18 A. Yes, sir, I did.

19 Q. Did you drive there?

20 A. Yes, sir.

21 Q. Where roughly in the city is Claudia's house?

22 A. I know she was close to downtown. I don't
23 really remember the exact area.

24 Q. Okay. Do you recall what time you drove over
25 to pick her up?

1 A. No, sir, I don't.

2 Q. What kind of car did you have at that time?

3 A. Toyota Corolla.

4 Q. Okay. Is this a car that you had had for a
5 long time?

6 A. I just got it. I probably had it for about a
7 month.

8 Q. Did you have any sort of mechanical problems
9 with the car?

10 A. No, sir, I didn't.

11 Q. When you picked Claudia up from her house that
12 night, did you go inside?

13 A. No, sir, I didn't.

14 Q. Okay. Did you call her on her cell phone to
15 tell her to come out or how did that work?

16 A. I called her and she was already waiting for
17 me.

18 Q. Did you go straight back to your apartment
19 after picking her up?

20 A. Yes, sir, I did.

21 Q. Okay. Who was at the apartment when y'all got
22 back?

23 A. Just Serena, because Sam was with me whenever I
24 left.

25 Q. And what did y'all do while you were at the

1 apartment together?

2 A. I just started doing the tattoo. And that was
3 about it.

4 Q. What sort of tattoo did you give Claudia?

5 A. It was a pentagram with an eye in the middle of
6 it. That's what she wanted. She had the picture
7 already. And I just drew it up for her.

8 Q. Do you recall where on her body --

9 A. Left forearm.

10 Q. Okay. Did anybody at the house have any
11 alcohol to drink?

12 A. No, we did not.

13 Q. Was there any drug use or anything like that
14 going on?

15 A. No, sir.

16 Q. Okay. About how long would you say y'all hung
17 out together?

18 A. I think it was about four or five hours. I'm
19 assuming. I don't really remember that.

20 Q. Did there eventually come a time where you
21 needed to drop Claudia back off at her house?

22 A. Yes, sir.

23 Q. Do you recall what time that was, about?

24 A. It was really late in the evening.

25 Q. Was it after midnight?

1 A. Yes, sir.

2 Q. And when you decided to drop her back off at
3 her house, did you take your car?

4 A. Yes, sir.

5 Q. Who was driving?

6 A. I was.

7 Q. And who was in the front seat?

8 A. Sam.

9 Q. Who was in the backseat?

10 A. Claudia.

11 Q. Did you have to get up to work the next
12 morning?

13 A. Yes, sir.

14 Q. Do you know if Claudia had a job that she
15 needed to go to?

16 A. No, sir, I didn't.

17 Q. Okay. Tell us what you did after you got in
18 the car in the driveway and started to drive over to
19 Claudia's house.

20 A. We were just listening to music and I was
21 asking her the directions to go. And I kind of
22 remembered how to get to her house. And we were on the
23 Katy Freeway and we were -- me and Sam were talking in
24 the front seat. And all of a sudden, he yells at me to
25 swerve out of the way. And after that, we got hit.

1 Q. At any point did you see the headlights of a
2 car coming towards you?

3 A. After he yelled "swerve" -- when he told me to
4 swerve, I saw the headlights coming down the exit ramp
5 and I swerved to the left to try to avoid the car.

6 Q. Do you remember what exit ramp the car's
7 headlights were coming down?

8 A. No, sir, I don't.

9 Q. Was the car coming at you fast or slow?

10 A. It was coming at us pretty fast.

11 Q. Which way did you swerve to try to avoid
12 getting hit?

13 A. I went to the left because it was the farthest
14 away from the exit ramp.

15 Q. What happened next?

16 A. We got hit on the side -- on the right side of
17 my vehicle. And we spun a couple of times and ended up
18 on the side of the road. And I remember Sam bleeding
19 from his head and I was kind of a little dazed from the
20 hit. And we got out of the car and we tried to make
21 sure everybody was okay. Claudia wasn't answering us.
22 And we had someone else that stopped, saw the accident,
23 run up to the vehicle to see if we were all okay.

24 Q. Let me stop you right there. Were you wearing
25 your seatbelt?

1 A. Yes, sir.

2 Q. Was Sam wearing his seatbelt?

3 A. Yes, sir.

4 Q. To your knowledge, was Claudia wearing her
5 seatbelt?

6 A. I believe so.

7 Q. Did you ever get a look at the driver of the
8 car who hit you?

9 A. No, sir.

10 Q. At the time that you got hit, were you
11 traveling about the speed limit?

12 A. Yes, sir, I was.

13 Q. All right. So the crash happens, you get out,
14 you look at Claudia. Was she responding at all?

15 A. No, sir, she wasn't.

16 Q. What happened next?

17 A. Sam and I both sat down on the side of the road
18 because the individuals that stopped to help us, they
19 made us go sit down because we were both pretty hurt
20 bad. So we were sitting on the side of the road waiting
21 for the emergency services to come and everything like
22 that. And we were just waiting.

23 Q. Were you injured at all in the crash?

24 A. My back was messed up pretty bad. My head
25 was -- I had a concussion and I had to go to the

1 emergency room the next day.

2 Q. That night did you refuse to go to the
3 hospital?

4 A. Yes, sir, I did.

5 Q. And did Sam also refuse to go to the hospital?

6 A. Yes, sir, he did.

7 Q. Tell us what you remember as you're sitting
8 there on the side of the road about what the other
9 people were doing and then what the paramedics were
10 doing with respect to Claudia.

11 A. All I know is Sam and I were sitting on the
12 side of the road. We were trying to get ahold of Serena
13 to let her know what happened. We didn't really know
14 what was happening to Claudia. We were worried about
15 her. We were trying to make sure she was okay. Nobody
16 would tell us what was going on. And when the
17 paramedics arrived, they loaded her up pretty quickly
18 and they left. And we sat there and we were waiting to
19 see what had happened.

20 Q. Did you stay around and talk with the police?

21 A. We had to stay around, yes, sir.

22 Q. Did you ever go by the other crash location
23 where the car that hit you came to rest?

24 A. No, sir. They were pretty much farther down
25 the freeway than we were.

1 Q. Did you ever come into any contact with the
2 defendant or a motorcyclist who was involved in a crash
3 down that way?

4 A. No, sir.

5 Q. How did you end up learning that Claudia had
6 died?

7 A. A police officer told us that she had. And it
8 kind of shook me and Sam up pretty bad.

9 Q. Is that something that you learned that night?

10 A. Yes, sir, we learned that night.

11 Q. That night, did you have your cell phone on
12 you?

13 A. I think I did, but it was dead.

14 Q. And you don't know if Sam had a cell phone on
15 him or not?

16 A. Sam had his phone.

17 Q. Okay. Was he just too in shock to try to call
18 911 or --

19 A. Someone -- they had already called 911 for us.

20 Q. Okay. Did you and Sam end up going to
21 Claudia's funeral?

22 A. I was not able to go. I don't think Sam went
23 either.

24 Q. Okay. Why weren't you able to go?

25 A. I had left Houston. I just couldn't be around

1 here anymore. I didn't really want to be in Houston.

2 Q. Why did you feel that way?

3 A. I had lost a friend of mine and I felt it was
4 somewhat my fault because I was the one that was
5 driving, but -- and then, again, I've realized that it
6 wasn't my fault.

7 Q. Michael, I'm going to show you some photographs
8 real quick and I just have a few additional questions
9 for you.

10 Before I get to that, let me ask you: The
11 Toyota Corolla that you owned, did that end up being
12 totalled as a result of the crash?

13 A. Yes, sir.

14 Q. I'm showing you what's marked as State's
15 Exhibit 32. Is that your Toyota Corolla (indicating)?

16 A. Yes, sir.

17 Q. And is that roughly how you remember it looking
18 that night?

19 A. Yes, sir.

20 Q. When you got in the car and were driving, do
21 you know or do you remember if Claudia was in the back
22 left or in the back right seat?

23 A. She was in the back right.

24 Q. So she would have been next to where we see all
25 of this damage?

1 A. Yes, sir.

2 MR. ASLETT: Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 Q. (By Mr. Aslett) Mr. Etheridge, I'm going to
6 show you what I've marked as State's Exhibit 77. If you
7 could tell me who is the person in this photograph
8 (indicating)?

9 A. Claudia.

10 Q. And do you see the tattoo that you gave her
11 that night?

12 A. It's right there, sir (indicating).

13 Q. Thank you, Mr. Etheridge.

14 MR. ASLETT: I pass the witness.

15 THE COURT: Any questions?

16 MR. RAMIREZ: We have no questions, Your
17 Honor.

18 THE COURT: Is there any objection to this
19 witness being excused?

20 MR. ASLETT: None from the State, Your
21 Honor.

22 MR. RAMIREZ: I don't think so, Judge. No
23 objection.

24 THE COURT: Sir, you may step down. You're
25 free to go about your business.

1 THE WITNESS: Yes, sir.

2 THE COURT: Will the lawyers approach?

3 (At the Bench, off the record.)

4 (Open court, defendant and jury present.)

5 THE COURT: Ladies and gentlemen, that's
6 all the evidence you're going to hear today. There's
7 some matters that need to be addressed outside your
8 presence and there's just no way to complete it by a
9 reasonable time and then get you back in here. So I'm
10 going to go ahead and send you home. That may give you
11 a little bit of a jump on getting out of downtown.

12 I am going to ask you to report back
13 tomorrow morning at 10:00 o'clock. Once again, we'll
14 get started as soon as we can. Again, I have another
15 docket tomorrow morning with other matters to address.
16 I've also asked the lawyers to be here early in the
17 morning in order to address some matters that need to be
18 addressed on this case, but we'll get started as quickly
19 as we can tomorrow morning. I appreciate your
20 understanding and your patience.

21 Please remember the admonitions you were
22 previously given. Please do not discuss this case
23 amongst yourselves, and certainly not with anyone else.

24 With that, have a safe evening, and we'll
25 see you tomorrow morning at 10:00 o'clock.

1 THE BAILIFF: All rise for the jury.

2 (Open court, defendant present, no jury.)

3 THE COURT: You may be seated.

4 Is there any objection to going off the
5 record?

6 MR. ASLETT: No, Your Honor.

7 MR. RAMIREZ: No.

8 THE COURT: Court's off the record.

9 (Discussion off the record.)

10 (Open court, defendant present, no jury.)

11 THE COURT: Court's back on the record in
12 Cause No. 1404917.

13 The record will reflect that the jury has
14 been dismissed for the day. The defendant is still
15 present in the courtroom with her counsel. And, of
16 course, the State is represented by its assistant
17 district attorney.

18 What's this witness' name?

19 MR. ASLETT: Officer Sal Corral.

20 THE COURT: Sir, would you raise your right
21 hand?

22 (Witness sworn.)

23 THE COURT: You may put your hand down and
24 take a seat in that chair.

25 It's the Court's understanding that this

1 hearing is being conducted pursuant to a motion to
2 suppress blood evidence as a result of a blood draw from
3 the defendant, and also a motion to suppress a statement
4 from the defendant; is that correct?

5 MR. RAMIREZ: Yes, Judge. That's correct,
6 Your Honor.

7 THE COURT: All right. Mr. Aslett, are you
8 going first?

9 MR. ASLETT: I'll go ahead and go first.

10 THE COURT: Go ahead.

11 MR. ASLETT: I think it will be cleanest
12 that way.

13 THE COURT: Go ahead.

14 **OFFICER SALVADOR CORRAL,**

15 having been called as a witness and being first duly
16 sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 **BY MR. ASLETT:**

19 Q. Sir, will you please state your name for the
20 record?

21 A. Yes. Salvador Corral.

22 Q. And Officer Corral, what do you do for a
23 living?

24 A. I work for the Houston Police Department. And
25 I'm currently assigned to the Traffic Enforcement

1 Division.

2 Q. How long have you been with HPD?

3 A. With the Houston Police Department, since 2009.

4 Q. What is your current assignment within HPD?

5 A. I'm in the Traffic Enforcement Division, DWI
6 Task Force.

7 Q. How long have you been a member of the DWI Task
8 Force?

9 A. I've been with the task force since 2011.

10 Q. What do you do as part of the DWI Task Force?

11 A. What we do in the DWI Task Force is we check
12 moving and nonmoving violations. And upon stopping
13 those traffic violations, coming into contact with
14 people and determining if they are impaired based on the
15 signs of intoxication and driving, as well as eliminate
16 people that -- a patrol officer that does not have as
17 much training may think someone may be impaired. We
18 will come to that scene and dispel if they are
19 intoxicated.

20 Q. And are you frequently called out by patrol
21 officers who don't have specialized DWI training to do
22 this sort of investigation?

23 A. Yes, sir.

24 Q. What sort of training and qualifications do you
25 have that qualify you to be a member of the DWI Task

1 Force?

2 A. I currently hold, and prior to HPD also held, a
3 certification in DWI FST training, standardized field
4 sobriety training, through the NHTSA, through the State
5 of Texas, and through a prior state that I worked at, as
6 well as a drug recognition expert certification, which
7 is able to determine impairment through people that may
8 be impaired under not only over-the-counter drugs but
9 maybe street drugs. Also, I'm a breath test operator
10 that conducts breath tests for breath -- alcohol content
11 on individuals that are arrested for DWI.

12 I currently am an instructor at the Houston
13 Police Department Academy in DWI detection. As well as
14 the prior state that I worked with, I also taught at the
15 academy there as well. I'm a training officer to
16 officers that come to Traffic Enforcement Division and
17 are being taught how to verify and confirm impaired
18 drivers.

19 Q. Are you currently certified to perform
20 standardized field sobriety tests?

21 A. Yes, sir.

22 Q. And were you certified to do so back on
23 October 15th, 2015?

24 A. Yes, sir.

25 Q. I'm sorry. October 15th, 2013.

1 A. Yes, sir.

2 Q. You mentioned that you are a drug recognition
3 expert. Do you know how many drug recognition experts
4 work for HPD?

5 A. I believe currently there are 16 on the
6 department.

7 Q. And what sort of training do you have to
8 receive to become a certified drug recognition expert?

9 A. The drug recognition expert program, it's
10 broken up into three phases, the first phase being
11 academic, which is in a classroom setting. It takes
12 approximately -- I believe it's what they call a
13 four-day school. Upon completing that four-day school,
14 you move on to the second phase, which I believe that is
15 a five-day school or six-day school.

16 After passing that phase, you then go into
17 a practical phase where you actually go to -- you go to
18 a jail and do evaluations on people that are under the
19 influence other than alcohol.

20 Q. Now, were you a drug recognition expert back on
21 October 15th, 2013?

22 A. Yes.

23 Q. During the course of your career with HPD, have
24 you investigated fatal alcohol-related crashes?

25 A. Yes, I have, sir.

1 Q. On few or many occasions?

2 A. Many occasions.

3 Q. During your career with HPD, have you come into
4 contact with intoxicated people?

5 A. Yes, I have.

6 Q. On few or many occasions?

7 A. Many occasions.

8 Q. I want to get right into it and talk about this
9 case. Back on October 15th, 2013, were you on duty?

10 A. Yes, sir, I was.

11 Q. Were you dispatched to go to a scene of a fatal
12 crash?

13 A. Yes, sir. Correction on that. I was off and
14 got called out to come to that scene.

15 Q. So you were at your home?

16 A. I was at home, yes, sir.

17 Q. Okay. And you had to change and go out to the
18 scene?

19 A. Yes, sir.

20 Q. Was that a fatal crash in the 5600-block of the
21 Katy Freeway?

22 A. Yes, sir.

23 Q. Is that a public roadway?

24 A. Yes, sir.

25 Q. Is it located in Harris County, Texas?

1 A. Yes, sir.

2 Q. Tell us what you did when you arrived on that
3 scene.

4 A. Upon arriving on scene, I spoke to -- there
5 were patrol officers and Vehicular Crime -- VCD officers
6 there that take care of the crash portion of the
7 investigation. Upon arrival, I made contact with -- I
8 believe it was Officer Flores and learned from Officer
9 Flores the parties that were involved in this crash.

10 Q. Were you pointed in the direction of the person
11 that was identified to be the at-fault driver in the
12 crash?

13 A. Yes, sir.

14 Q. Where was this person?

15 A. This person was sitting in an SUV that belonged
16 to someone. I guess she was just waiting there till
17 someone, I guess, took care of the investigation.

18 Q. And the woman that had been identified to you
19 as the driver at the at-fault vehicle, do you see her in
20 the courtroom today?

21 A. Yes, I do.

22 Q. Please point her out and describe an article of
23 clothing that she's wearing.

24 A. Yes. She's wearing a black -- kind of a suit
25 jacket, long dark hair.

1 MR. ASLETT: Your Honor, may the record
2 reflect the witness has identified the defendant?

3 THE COURT: It will.

4 Q. (By Mr. Aslett) Tell us what you noticed when
5 you first came into contact with the defendant.

6 A. Upon initially speaking to -- after identifying
7 the female as Brittini Kressin, as I was speaking to
8 her, I got a driver's license and a Social Security card
9 that identified her of who she was. And as I began to
10 speak to her, I could smell an odor of an alcoholic
11 beverage on her person and as she spoke. Also, I was
12 able to tell -- see bloodshot, droopy eyes.

13 Q. Did you notice anything about her speech as she
14 spoke with you?

15 A. At that moment, not -- not necessarily, not
16 until we got to another location.

17 Q. And as you were speaking with her, was she
18 handcuffed or were her hands free?

19 A. She was free.

20 Q. Okay. Where did you take her to interview her?

21 A. We then moved to off the freeway. And I want
22 to say it was the exit before Washington. I'd have to
23 look at a map, but I think we were right at TC Jester,
24 or whatever that intersection is before. Off to the --
25 I guess it would be a service road area, in a service

1 gas station.

2 Q. What did you do once you arrived at that gas
3 station?

4 A. First of all, we got off the freeway due to
5 traffic, and what-have-you. We then get off into this
6 parking lot. And at this point is where I begin my DWI
7 investigation.

8 Q. What's the first part of your DWI
9 investigation?

10 A. The first portion of the investigation would be
11 what we call a face-to-face contact. At this point, I
12 heard a slurred speech, bloodshot eyes, the odor of
13 alcohol. So at this time I've began the information,
14 just where she was coming from, where she was going, if
15 she had been drinking.

16 Q. Before we get into that, did you notice any
17 sort of injuries on the defendant?

18 A. No, none at all.

19 Q. Okay. Did she agree to talk with you
20 voluntarily?

21 A. Yes, sir.

22 Q. Okay. Did you ask her where she had been
23 coming from?

24 A. Yes, sir.

25 Q. What did she say to you?

1 A. She told me she was -- first she told me she
2 was at a place called Anvil. And then she gave me an
3 address of Westheimer. And then later on, said she was
4 at Spaghetti Warehouse.

5 Q. What kind of establishment did she tell you
6 that Anvil was?

7 A. A bar.

8 Q. What did she say she was doing at Anvil?

9 A. She told me that she had been drinking.

10 Q. Did she tell you how much she had had to drink
11 at Anvil?

12 A. She told me she had three drinks.

13 Q. Did she tell you about what time those drinks
14 were consumed?

15 A. Yes, sir. She told me the first drink was at
16 4:30 and her last drink was at 5:00 p.m.

17 Q. Did she tell you what she did after she left
18 Anvil?

19 A. She said that time is when she went to meet
20 somebody at Spaghetti Warehouse.

21 Q. What is Spaghetti Warehouse?

22 A. Spaghetti Warehouse is a restaurant right here
23 downtown.

24 Q. Okay. What did she say she did when she got to
25 Spaghetti Warehouse?

1 A. At the Spaghetti Warehouse, she said that she
2 was like waiting for a friend. So she was waiting at
3 the Spaghetti Warehouse.

4 Q. Did she say about what time she was waiting for
5 that friend?

6 A. The times that I had that she gave me were
7 about 7:30 p.m.

8 Q. Did you ask her about what she did between
9 being at the Spaghetti Warehouse at 7:30 p.m. and the
10 time of the crash shortly after midnight?

11 A. Yes, sir, I did.

12 Q. What did she say?

13 A. I did indicate to her that there was a
14 four-hour gap, from 7:30 to about 11:30 or 12:00 when I
15 received the call of the crash. And she said that she
16 must have fallen asleep because she was drinking.

17 Q. Did she have any memory of the crash
18 whatsoever?

19 A. No, sir.

20 Q. Did she have any explanation for why she had
21 gotten onto the freeway the wrong way?

22 A. No, sir.

23 Q. Did she make any comments about whether the way
24 she was going on the freeway was the direction to this
25 friend's house?

1 A. She did make a comment.

2 Q. What did she say?

3 A. The comment was she didn't know why she was on
4 that freeway if -- where she -- the friend she was going
5 to meet didn't even live in that area.

6 Q. Okay. After you spoke with the defendant, what
7 did you do next?

8 A. Well, at this time I continued the DWI
9 investigation. And this is when I go into the -- what
10 would be the standardized field sobriety tests.

11 Q. Did you perform the three standardized field
12 sobriety tests on the defendant?

13 A. Yes, sir, I did.

14 Q. Did you perform the horizontal gaze nystagmus
15 test on her?

16 A. Yes, sir, I did.

17 Q. Okay. And prior to doing that, did you ask if
18 the defendant had any medical problems?

19 A. Yes, sir, I did.

20 Q. What did she say?

21 A. She indicated no physical problems.

22 Q. Did you ask her if she was injured in any way?

23 A. Yes, sir, I did.

24 Q. And did she say that she was injured in any
25 way?

1 A. No, sir.

2 Q. Okay. Did you ask her if she wore glasses or
3 contacts?

4 A. Yes, sir, I did.

5 Q. What did she say?

6 A. "No."

7 Q. Tell us what the horizontal gaze nystagmus test
8 and how you perform it.

9 A. Sir, the horizontal gaze nystagmus test, what
10 it is, is we use a stimulus and what we'll do is ask the
11 person that is being investigated to then follow that
12 stimulus as we move it from left to right. We'll move
13 that stimulus from left to right a variety of times.
14 And with that variety of times, there's designated
15 timing. That timing will eliminate other types of HGN
16 and will show what we look for in the HGN, which is the
17 horizontal gaze nystagmus. We do that test, several
18 number of passes, and then look for certain clues.

19 Q. Prior to performing the HGN test, did you check
20 to see if her pupils were of equal size?

21 A. Yes, sir.

22 Q. And were they of equal size?

23 A. Yes, sir.

24 Q. What's the point of checking that?

25 A. The equal pupil size will indicate to me that

1 there is no kind of head trauma.

2 Q. Did you also check to see if the pupils tracked
3 to your stimulus equally?

4 A. Yes, sir.

5 Q. What's the purpose of that?

6 A. The purpose of the equal tracking is to
7 indicate that someone does not have a glass eye or maybe
8 a lazy eye, something to that effect.

9 Q. Were her pupils of equal size?

10 A. Yes, sir.

11 Q. And did they track your stimulus equally?

12 A. Yes, sir.

13 Q. When you perform the HGN test, what are the
14 first two clues that you're looking for?

15 A. The first two clues in the HGN is what we call
16 the lack of smooth pursuit.

17 Q. What is lack of smooth pursuit?

18 A. The lack of smooth pursuit is as the gaze -- as
19 the eyes gaze from left to right, we look for a smooth
20 gazing of that stimulus. And we're looking for -- to
21 make sure there is no involuntary jerk of the eye as we
22 move from left to right.

23 Q. And as you did the first part of this HGN test
24 looking for lack of smooth pursuit, did you observe lack
25 of smooth pursuit in both the defendant's eyes?

1 A. Yes, sir, I did.

2 Q. After you saw lack of smooth pursuit in both
3 eyes, what did you look for next?

4 A. The next clue in the HGN that you look for is
5 what is called distinct and sustained nystagmus at
6 maximum deviation.

7 Q. All right. If you could explain briefly what
8 that is.

9 A. Yes. "DISTINCT" meaning that it's obvious and
10 "sustained" meaning that it's continuous. When we look
11 for this second clue, which should be at the fourth
12 pass, you would do this clue off to the left eye and you
13 will hold that stimulus at maximum deviation where there
14 is no more white in the eye. And you'll hold it for
15 that four-second period to see an involuntary jerk.

16 Q. Did you do that for both eyes?

17 A. Yes, sir.

18 Q. And did you observe the defendant to have
19 distinct and sustained nystagmus at maximum deviation in
20 both eyes?

21 A. Yes, sir.

22 Q. What did you check for next?

23 A. The last and final clue of HGN is going to be
24 the onset of nystagmus prior to 45 degrees.

25 Q. How do you check for that?

1 A. The onset of nystagmus prior to 45 is also the
2 same motion. You're moving that stimulus from left to
3 right. What you'll do is you'll move that stimulus at a
4 slow pace. And when you begin to see the involuntary
5 jerk, the nystagmus -- the onset of that nystagmus, then
6 you will hold to confirm that it's continuous. Once you
7 see that before 45, you also check the next eye for the
8 same thing.

9 Q. And did you observe the onset of nystagmus
10 prior to 45 degrees in both the defendant's eyes?

11 A. Yes, sir, I did.

12 Q. All right. And so in total, how many clues did
13 you observe?

14 A. Six clues, sir.

15 Q. What did you check for next?

16 A. The next thing that we check for is what we
17 call vertical nystagmus.

18 Q. What is vertical nystagmus?

19 A. Vertical nystagmus is an involuntary jerk of
20 the eye as the eye gazes upward.

21 Q. And what does vertical nystagmus indicate to
22 you if it's present?

23 A. Vertical nystagmus is an indication that
24 someone has had more than they're used to consuming of a
25 certain intoxicant.

1 Q. Did you check the defendant's eyes for vertical
2 nystagmus?

3 A. Yes, sir, I did.

4 Q. Did the defendant's eyes have vertical
5 nystagmus in each eye?

6 A. Yes, sir.

7 Q. After observing this on the defendant, did you
8 perform the walk-and-turn test?

9 A. Yes, sir, I did.

10 THE COURT: Before you get into the
11 walk-and-turn, the Court's going to stand in recess.

12 Can you be back tomorrow morning at 8:30?

13 THE WITNESS: Yes, Your Honor, I can.

14 THE COURT: Have you explained to him about
15 the witness rule?

16 MR. ASLETT: I have. He knows not to
17 discuss the case with anybody else.

18 THE COURT: If there's nothing else that
19 needs to be addressed, we'll see you tomorrow morning at
20 8:30. Thank you.

21 Court's in recess.

22 (Proceedings recessed.)

23

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1
2
3 **REPORTER'S CERTIFICATE**4
5 THE STATE OF TEXAS)
6 COUNTY OF HARRIS)7
8 I, Gayle Patterson, Deputy Official Court Reporter
9 in and for the 351st District Court of Harris County,
10 State of Texas, do hereby certify that the above and
11 foregoing contains a true and correct transcription of
12 all portions of evidence and other proceedings requested
13 in writing by counsel for the parties to be included in
14 this volume of the Reporter's Record, in the
15 above-styled and numbered cause, all of which occurred
16 in open court or in chambers and were reported by me.17
18 I further certify that this Reporter's Record of
19 the proceedings truly and correctly reflects the
20 exhibits, if any, admitted by the respective parties.21
22 WITNESS MY OFFICIAL HAND this the 8th day of
23 February, 2016.
24
2526
27 /s/ Gayle Patterson
28 Gayle Patterson, Texas CSR 3355
29 Expiration Date: 12/31/2017
30 Deputy Official Court Reporter
31 351st District Court
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