

1 the lawyers know the parameters, the limits of
2 questions that can and can't be asked. All right? But
3 if you feel, a juror feels that there is a question
4 that he or she wants to ask, whether to clarify or
5 whatever, write it down, hand it -- before the witness
6 leaves, raise your hand, hand the question to the
7 bailiff in written form or tell me to wait while you
8 write it and then I've got to show it the lawyers. If
9 it's an objectionable question, they have the right to
10 object to it. I have the right to object to it and
11 tell you simply that it's not a question or a matter
12 that can be inquired into or can be asked but if it's
13 appropriate, I'll ask the question for you.

14 A JUROR: Thank you.

15 THE COURT: Okay? Fair enough? Okay.

16 *****

17 MARSHALL SMITH

18 was called as a witness by and on behalf of the State, and
19 after being first duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. COLSTON:

23 Q Good afternoon.

24 A Good morning.

25 Q And I don't know what to call you anymore. What's

1 your title now? former Capt. Marshall Smith?

2 A I think my current title is just Investigator
3 Marshall Smith.

4 Q Where are you employed?

5 A I'm employed by the Georgia State Pardons and
6 Parole. I'm currently assigned to the GBI Metro Fugitive
7 Task Force in Atlanta.

8 Q And were you so employed in that capacity back on
9 January the 11th, 2000?

10 A No, I was not.

11 Q What were you then?

12 A I was employed by the Rome City Police Department
13 where I served as captain and commander of the Rome City
14 Detective Division.

15 Q As captain and commander of the Rome City
16 Detective Division, did you have a call out or did you
17 receive a call in an investigation that was started by your
18 department into the death of Isaac Dawkins?

19 A Yes, I did.

20 Q At what point in time were you called into that
21 case?

22 A Sometime around 8:00, I believe it was, when I got
23 called.

24 Q Eight p.m. after the wreck?

25 A That's correct.

1 Q What did you do, Capt. Smith when -- well, I'm
2 going to call you that because I've called you that for
3 years. Okay?

4 A That's perfectly okay.

5 Q All right. What did you do, Capt. Smith, when you
6 got the call at eight p.m. to go to -- or that you had a
7 possible case that you needed to look into?

8 A I went to the scene first, which was located out
9 off of 411 Highway.

10 Q Okay.

11 A And looked and viewed the scene and looked at
12 exactly what I could see there at the scene.

13 Q All right. I'm going to hand you what's been
14 marked for identification purposes as State's Exhibits One
15 through Ten and I'm going to ask you to just flip through
16 the photographs if you will and see if you can identify
17 those?

18 A Yes.

19 Q How can you identify those?

20 A This is what I observed that evening that I
21 arrived on the scene, the incident involving Isaac Dawkins.

22 Q All right. And do they -- does State's Exhibits
23 One through Ten truly and accurately depict what you saw
24 yourself at the scene where Isaac Dawkins car went off the
25 road?

1 A Yes, it does.

2 Q Have those pictures been changed or altered in any
3 way?

4 A This is exactly the way I remember it that
5 evening.

6 MS. COLSTON: I'm going to tender for admission
7 State's Exhibits One through Ten.

8 THE COURT: Counsel, any objection?

9 MR. ABERNATHY: Absolutely no objections. Let
10 them be entered without any.

11 THE COURT: One through Ten are admitted without
12 objection.

13 Q [By Ms. Colston] I'm holding out what's been
14 marked as State's Exhibit 14. I've just had it identified
15 right now. I may go into that at a later time. I'll let
16 defense counsel look at these.

17 While they're looking those, the exhibits that have
18 just been marked, Capt. Smith, looking at State's Exhibit
19 Number Nine, would you tell me what that depicts?

20 A It shows a white Toyota pickup truck with the door
21 open. It also shows a chrome plated toolbox and up to the
22 left hand behind the pine tree, it also shows the rear
23 sliding back glass window.

24 MS. COLSTON: John, I hate to ask you but would
25 you set up Elmo?

1 Q [By Ms. Colston] Is that the scene from -- from
2 where? State's Exhibit Nine is the view of the vehicle from
3 where?

4 A Just by looking at this, what I would probably say
5 would be from the main roadway into the wood line, just
6 about even with where the truck was sitting on the road.

7 Q Had the truck been moved at all since the time
8 that it came to stop with Isaac Dawkins behind the wheel?

9 A No, this is before the truck was moved.

10 THE COURT: Let's stop while all that's being
11 done. That's probably too distracting for the jury.

12 MS. COLSTON: Okay.

13 THE COURT: Mr. Gaines, would you lower the
14 screen, please, and then we'll cut off the two sets of
15 lights when they're ready to proceed. Ms. Colston,
16 while that's getting set up, come here a second.
17 Counsel.

18 [Inaudible colloquy between Court and counsel
19 outside the hearing of all others.]

20 MS. COLSTON: Are we ready, John -- Mr. Harkins?

21 MR. HARKINS: Yes.

22 MS. COLSTON: All right.

23 THE COURT: Turn the other set off too if you can.
24 Can you operate in that much light?

25 MS. COLSTON: Yes, sir.

1 THE COURT: I think the jury will be able to see
2 better if we can do that. Ladies and Gentlemen, you've
3 got either the television screen you can look at or the
4 screen up on the wall. The television has got a little
5 bit better resolution and the one on the wall,
6 obviously is a little bit bigger but whichever one you
7 feel more comfortable looking at.

8 Q [By Ms. Colston] This is State's Exhibit Nine,
9 Captain Smith. Can you explain to us what we're looking at
10 here? It's the red button.

11 A Here we go. I am sorry.

12 Q I thought every man knew how to use a laser
13 pointer.

14 A Okay. The laser -- this is the truck itself and
15 you can see that the back glass here is gone. This is a
16 toolbox that normally sits in this position here.

17 Q Okay.

18 A The dark spot here up in the hedge of the pine
19 tree is the sliding back glass window that came from here.

20 Q All right. So the toolbox and the back glass
21 window had come out of the truck when it rolled?

22 A That's correct. It was originally placed here,
23 right next to the cab like a normal toolbox goes.

24 Q Are you -- the picture depicted here, how far off
25 the road is the truck?

1 A I'm not certain.

2 Q Tell us. Orient us as to if we were the picture
3 taker here, would we be standing at the edge of the road or
4 close to it?

5 A The road is further back this way, down a little
6 bit before you get to the pavement and then the wood line is
7 off to the right.

8 Q And would the rear of that truck be facing north,
9 south or what?

10 A Rome, Georgia is this way.

11 Q So it's facing north?

12 A Right.

13 Q The rear is?

14 A That's correct.

15 Q And the front of that truck is facing into the
16 woods and south?

17 A That's correct.

18 Q All right. So is this the scene that all the
19 southbound drivers would have received on their way from
20 Rome to Cedartown, the view?

21 A That's correct.

22 Q That's correct?

23 A Yes, ma'am. Cedartown would be going this way.

24 Q All right. State's Exhibit Ten I'm fixing to put
25 on the screen, is a little closer view of the -- and I want

1 to direct you to the front --

2 MS. COLSTON: I can't move it. You move it.

3 Q -- the front of the truck. Is that how -- had the
4 truck been moved at all before State's Exhibit Ten was
5 taken?

6 A That's the way I remember looking at the truck
7 when I arrived.

8 Q So this is a closeup view of the front of the
9 truck?

10 A That's correct.

11 Q And the interior?

12 A That's correct.

13 Q State's Exhibit Eight, could you tell us what that
14 depicts?

15 A Okay. If you're southbound, Cedartown being this
16 way, it's a photo taken that way, back towards -- back
17 towards town so to speak. Like Rome is this way. Cedartown
18 is over here. It's like a photo taken from here into the
19 wood line because there's the side of the truck. There's
20 the toolbox.

21 Q Did you determine that the toolbox was actually --
22 did belong with that truck?

23 A The way I looked at the truck, yes, ma'am.

24 Q And was that toolbox turned over to the family to
25 your knowledge?

1 A Yes, ma'am.

2 Q And the marks that we see in the ground there,
3 what -- is that from y'all's vehicles or --

4 A No, ma'am.

5 Q Right here?

6 A That was from the left front or either the right
7 front tire. One of them was blowed out from hitting the
8 guardrail. The guardrail is up this way.

9 Q Okay.

10 A And that was a drag mark from one of the tires
11 because you can see there is a pine tree right here, I
12 think, is skinned. I believe one of the pine trees some
13 limbs was taken off.

14 Q So he went through the trees and into it?

15 A That is correct.

16 Q State's Exhibit Seven, is that just a further
17 view, another view of the same thing we just discussed, just
18 further away?

19 A Yes, ma'am, and you can also see the edge of the
20 pavement here as going that way. So you can see about how
21 far the truck is off the pavement.

22 Q All right. State's Exhibit Number Six, could you
23 tell us what that is?

24 A From the truck position -- if the truck was up in
25 here, this is the guardrail that -- he struck the guardrail

1 and then went that way over into the wood line.

2 Q All right.

3 A So the guardrail is really southbound from the
4 truck.

5 Q State's Exhibit Number Five, could you tell us
6 what that depicts?

7 A I believe that being the right -- the passenger
8 side of the vehicle, I think. I believe that's correct.

9 Q All right.

10 A Yes, ma'am.

11 Q And I'm putting this up here because I honestly
12 just don't know what -- what is this, that area?

13 A I'm not sure.

14 Q Okay.

15 A I'm sorry.

16 Q Is that the road possibly, just a view of the
17 road?

18 A I believe so but without the truck being in it, I
19 can't really pinpoint where it was exactly at.

20 Q Well, looking at that one again and up here,
21 Captain Smith --

22 A I believe this is the guardrail here that was tore
23 up, where the red light, where the dot is. That is correct.
24 And there being, the truck would be here.

25 Q All right. I see.

1 A Because this is southbound towards Cedartown.

2 Q Could you see it from the road at -- from the road
3 at all hardly? I mean, how much could you see from the
4 road? When you approached the scene, how much could you
5 see?

6 A You could see the truck.

7 Q What could you see?

8 A You could see the whole truck.

9 Q How much of the truck when you say the whole
10 truck?

11 A The bed of the truck and the cab of the truck, you
12 know, like the top.

13 Q All right.

14 A I believe there was a pine tree somewhere, yeah,
15 positioned to the right front. This is the right side.
16 This is the passenger's side here.

17 Q All right. So you could see everything except for
18 the front of the truck?

19 A That is correct.

20 Q I'm going to hand you what's been marked also for
21 identification purposes as State's Exhibit 13, 12 -- 11, 12
22 and 13 and 15 and I'm going to ask you first about State's
23 Exhibit 15, if we could get the lights just a hair up for
24 just a minute.

25 THE COURT: Go ahead and turn it all on.

1 MS. COLSTON: Thank you.

2 Q And I'll ask you if you can identify State's
3 Exhibit 15.

4 A This is what I'm familiar with as being a 9-1-1
5 dispatch log.

6 Q Is that a business -- is that a record that you
7 use in the regular course of business at the Rome Police
8 Department?

9 A We use it quite often, yes, ma'am.

10 Q Is that where calls are reported and where you're
11 dispatched out?

12 A Yes, ma'am.

13 Q Can you tell us from using the 9-1-1 --

14 MS. COLSTON: I'm going to tender for admission
15 State's Exhibit 15.

16 THE COURT: Any objection to State's 15?

17 MR. ABERNATHY: None, Judge.

18 THE COURT: It's admitted without objection.

19 Q Can you tell us when the call came in to the wreck
20 and -- well, can you tell us when the call came in, first,
21 from looking at that?

22 A It looks like 1920 military time. That will be
23 7:20 p.m.

24 Q All right. And I'm going to hand you what's been
25 marked as State's Exhibit 13 and ask you if you can identify

1 that?

2 A This is a dispatch card. It goes along with the
3 log that E 9-1-1 uses.

4 Q Is that also a record that's kept in the regular
5 course of business that y'all use in your investigations at
6 the Rome Police Department Detective Division?

7 A That's correct.

8 Q All right. The same question with Number 12. Do
9 you recognize that?

10 A This is a fire dispatch card.

11 Q And is that something you typically will go get
12 and look at times on and keep in the regular course of
13 business at the Rome Police Department?

14 A That is correct too.

15 Q Same question with Number 11, EMS dispatch card?

16 A Yes.

17 Q Is that something that y'all typically will
18 sometimes go get and look at and keep in the regular course
19 of business from the 9-1-1 center to your office?

20 A That is correct.

21 Q All right.

22 MS. COLSTON: I'm going to tender for admission
23 also State's Exhibit 11, 12, and 13 and --

24 THE COURT: Any objection?

25 MR. ABERNATHY: No objection, Judge.

1 THE COURT: All right. Each of these are admitted
2 without objection.

3 Q [By Ms. Colston] I have a Floyd County one but
4 you're with the City. Can you identify a Floyd County
5 E 9-1-1 record?

6 A I don't know.

7 Q That's okay. If you can, Mr. Abernathy has one
8 and if he wants to tender it, that will be fine. We'll do
9 it that way.

10 A Okay.

11 Q This State's Exhibit 15, the dispatch log, and I'm
12 going to put it up there and hopefully -- we probably won't
13 have to turn the lights down but --

14 THE COURT: Well, let's turn them down. It's
15 easier to see that way.

16 Q [By Ms. Colston] From looking at this, can you
17 tell us, can you explain to us what this stuff means?

18 THE COURT: Is that the best focus on that?

19 MS. COLSTON: No, sir, he's going to --

20 Q Capt. Smith, can you tell us -- this is the 9-1-1
21 log; correct?

22 A Yes, ma'am.

23 Q And can you tell us what time the call came in on
24 the wreck and when the first officer was dispatched?

25 A The very first line it says 1920 and you will see

1 Officer 84, I believe it's 59, 1050 I, 27 South.

2 Q 1050 I means?

3 A That's a radio -- that's a police code saying
4 there's a wreck with injuries.

5 Q A wreck with injuries and that was at 1920.
6 That's military time of 7:20 p.m.?

7 A That is correct.

8 Q Do you know who unit 59 is? 84?

9 A I believe 84 would be Taylor and I think 59 would
10 be Officer Hank Jackson.

11 Q All right. I'm going to put State's Exhibit 13 up
12 on the screen and is this also a 9-1-1 record that's kept at
13 the regular course of business on the calls that come in and
14 where they came from?

15 A Yes, ma'am.

16 MS. COLSTON: And if you could get the focus a
17 little bit better on that, John, it sure would help
18 because -- there you go.

19 Q [By Ms. Colston] Can you tell what time they -- is
20 this a record they use when a call comes in?

21 A I believe that would be correct. What it shows,
22 it shows the street, the location. Over here on the right,
23 I believe you've got the time. See, it says, 1920, time
24 dispatched?

25 Q What's the 1922 up there?

1 A I think that's the time of -- 1023 means time of
2 arrival.

3 Q Okay. Time of -- so time of the officer's arrival
4 would be 7:22 p.m.

5 A The one on the right is when they finished the
6 scene and left and I think that was 23 something, which that
7 would be 11 -- a little after 11 o'clock.

8 Q All right. Down there, time call received, Is
9 that 7:20?

10 A Here's 7:20 p.m. and there's the date.

11 Q Okay. Can you tell where the call came from or
12 who it came from?

13 A Received by -- I don't know where it came from.
14 It came by phone but I'm not sure. I can't tell really who
15 it came from.

16 Q Because it says a mobile phone, they didn't take
17 down the name?

18 A It just says a phone.

19 Q Now looking at State's Exhibit 12, which is the
20 E 9-1-1 fire dispatch card, first of all did this wreck,
21 when you first thought it was a wreck, of course, did this
22 occur in the city?

23 A Yes, it did.

24 Q So the City would have been the one to have been
25 called out to it; correct?

1 A That's correct.

2 Q And fire and ambulance and all of that would have
3 been dispatched at the same time; correct?

4 A That's correct.

5 Q Who would be called first, generally?

6 A The police and the ambulance, they usually go
7 somewhere simultaneously, at the same time and then the fire
8 -- it's all within a matter of less than a minute they all
9 get this because they are all dispatchers, all in the same
10 room.

11 Q Okay. And this being the fire dispatch card here,
12 can you tell what time the fire was dispatched, fire engines
13 were dispatched?

14 A About the same time and the arrival time is right
15 beside it.

16 Q And the arrival time is right beside it?

17 A It looks like 1923.

18 Q So they got there a minute later?

19 A That's correct. The reason the response time for
20 this is 1923 is because the fire station is only like less
21 than three-quarters of a mile from the scene.

22 Q Okay. But the police got there quicker; didn't
23 they?

24 A Yes, ma'am.

25 Q Okay. This is the EMS, the ambulance dispatch

1 card; is that not correct? This is State's Exhibit 11?

2 A Yes, ma'am.

3 Q Can you tell what time the EMS were dispatched and
4 arrived?

5 A Dispatched at 1920 also. I believe that to be --

6 Q Do you need a focus?

7 A I think it might be 1023 right there, I think.

8 Q Do you want to look at it closer?

9 A It looks like 1926. There you go, 1023.

10 Q There you go.

11 A Arrival time is 1926.

12 Q And they got to the hospital at?

13 A 1936.

14 Q 7:36? Okay. To Floyd ER. Is that what that FER
15 stands for?

16 A Yes, ma'am.

17 MS. COLSTON: We can turn the lights back on.

18 Q Now, Capt. Smith, did you besides being -- I know
19 that you -- you were the captain and you were the chief of
20 the detectives at the time. Did you assign the
21 investigation to someone?

22 A Yes, ma'am.

23 Q You assigned it to who?

24 A Detective Jim Moser.

25 Q All right. And he started working the case as a

1 homicide; is that correct?

2 A That is correct.

3 Q Now did you assist in that in the collection of
4 evidence?

5 A Yes.

6 Q And what did you secure as evidence yourself?

7 A The night after I went -- I left the scene and
8 went to the hospital just briefly. I left the hospital to
9 go back to the scene. I collected the rear window.

10 Q And you have brought that into court today?

11 A Yes, ma'am.

12 Q I'm going to -- well, actually Sgt. Sutton at my
13 direction is going to hand you what's been marked as State's
14 Exhibit 16. I'm going to ask you if you can identify that?

15 THE COURT: I assume counsel has seen this?

16 MS. COLSTON: He just --

17 MR. ABERNATHY: I have not seen it, Judge, but
18 I've got no objection. We can take a look at it.

19 THE COURT: Come up and take a look at it before
20 it's exhibited to the jury.

21 MR. ABERNATHY: That's fine. We'll just go ahead
22 and look at the other one, Judge.

23 THE COURT: No objection to State's Sixteen?

24 MR. ABERNATHY: No objection.

25 THE COURT: I'll allow it into evidence.

1 MS. COLSTON: Okay. State's Exhibit 17 has been
2 exhibited to the defense attorneys.

3 THE COURT: Yes, ma'am, what is it?

4 A JUROR: I didn't hear what --

5 THE COURT: You don't need to right yet. They'll
6 tell you all about it in just a minute. Okay? I'm just
7 dealing with some procedural things with them right
8 now.

9 MR. ABERNATHY: We have no objection to any of
10 this, Judge.

11 THE COURT: All right. Now State's Exhibit 16 and
12 17 have now been tendered.

13 MS. COLSTON: Yes, sir.

14 THE COURT: And admitted into evidence. The jury
15 can see them and you can continue your examination
16 of --

17 MS. COLSTON: Thank you, Your Honor.

18 Q [By Ms. Colston] State's Exhibit 16, would you
19 tell me what this is, Capt. Smith?

20 A This is a sliding back glass window that I
21 retrieved in the tree line as I showed you earlier. It is
22 the complete sliding back glass window minus one portion of
23 the window that slides.

24 Q Can you turn it up sideways? It's got a tint to
25 it; correct?

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1 A The window is tinted on the inside of the window.

2 Q All right. And only the center portion is
3 completely missing; is that right?

4 A That is correct.

5 Q All right. Was the center portion missing when
6 you retrieved this at the scene?

7 A No, it was not.

8 Q It was not? Where was it at? Was it still
9 intact?

10 A It was still intact.

11 Q Still intact at the scene? Why did you take it
12 out?

13 A Because it's like a BB that hits a windshield. It
14 looks like little splinters everywhere and I knew that it
15 would probably disintegrate. So I took the window, put
16 clear tape over it and then took it out and put it in this
17 bag in order to secure it.

18 Q Is that's what's contained in State's Exhibit
19 Number 17?

20 A That is correct.

21 Q And could you show us State's Exhibit 17? Okay.
22 This is two parts of the center portion of the sliding
23 windshield?

24 A That is correct.

25 Q And the one you're holding in your left hand is

1 where the bullet went through?

2 A That is correct.

3 Q Which side of the glass was it on?

4 A Driver's side.

5 Q Driver's side? So it was on the driver's side and
6 do you know whether or not -- it had to be closed; did it
7 not?

8 A That is correct.

9 Q Yeah, you're putting it back the way it's supposed
10 to be, something similar. That has shattered; correct?

11 A Yes, ma'am.

12 Q So that would be like you're holding it there and
13 this would be -- this is the passenger side, is it not, or
14 is this the inside?

15 A This is the inside.

16 Q I see.

17 A This would be on the driver's side. The window
18 tint is on the inside of the window.

19 Q Okay.

20 A You can see the window tint.

21 Q So the bullet came through the back sliding glass
22 window that is closest to the driver from center, over
23 toward the driver?

24 A That is correct.

25 MS. COLSTON: Thank you, Detective Smith.

1 THE COURT: Are you going to use this any further?

2 MS. COLSTON: No, sir, I'm not. I'm just looking
3 at my list here to see if I can sit down.

4 THE COURT: I just want to put that --

5 MS. COLSTON: Mr. Abernathy may want to.

6 THE COURT: Do you want to leave it up there where
7 he can get to it?

8 MR. ABERNATHY: I have no --

9 THE COURT: I mean, do you need it for any further
10 --

11 MR. ABERNATHY: I don't need it, Judge.

12 MS. COLSTON: All right.

13 MR. ABERNATHY: The jury has seen it to their
14 satisfactory -- whatever they want to do.

15 THE COURT: No, the jury will get a chance to see
16 it. It will be -- as I told them earlier, it will be
17 in the jury room with them later. I just want to get
18 it out of the way if we can. Put that on the table.
19 Capt. Smith, y'all may want to just prop that over
20 here, either right down there in front of the witness
21 stand or -- yeah, right in there will be fine just for
22 the moment.

23 MS. COLSTON: Thank you, Detective Smith. I have
24 no further questions.

25 THE COURT: Mr. Abernathy.

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MR. ABERNATHY: Yes, if I could. This is the
Floyd County -- you saw it a minute ago.

MS. COLSTON: Yeah, I'd love to have a copy of
that whenever you get a chance.

THE COURT: Are you going to tender that in?

MR. ABERNATHY: I am, Judge.

THE COURT: Any objection to D-1?

MS. COLSTON: The only objection I would have is
something that I didn't get their discovery and we were
looking all over for this thing and he knew it and so
I'd like to get a copy of it.

THE COURT: Well, we can get it to you from the
court reporter. The question is do you object to it
going into evidence?

MS. COLSTON: No, sir, I do not.

THE COURT: It's admitted.

CROSS-EXAMINATION

BY MR. ABERNATHY:

Q Would you look at that and see if you can identify
that, Captain Smith?

A Dispatch log. It's marked at the top Rome/Floyd
County 9-1-1.

Q Okay. And what date was that dispatch card?

A January the 11th, year 2000, day Tuesday.

1 Q The same as the others you've been looking at that
2 Ms. Colston has shown you?

3 A That's correct.

4 Q All right. And can you look down there and tell
5 me what time the 9-1-1 dispatch received this call on the
6 accident with injuries?

7 A Well, it says, time sent. The time sent?

8 Q Yes.

9 A 1919.

10 Q So --

11 A It would be 7:19?

12 Q 7:19 p.m.?

13 A That's correct.

14 Q And that's what time it was sent to whom?

15 A Unit number 71.

16 Q Okay. So they sent unit number 71 -- who is unit
17 number 71? Do you know?

18 A I'm not certain. I don't know.

19 Q Unit number 71, would that be with Rome or Floyd
20 County Police?

21 A We've got a unit 71. I don't know if the County
22 has got a unit 71 but I know the City has got one.

23 Q But the dispatch card there shows that 9-1-1
24 dispatched a unit to the scene of this accident at 7:19; is
25 that correct?

1 A This could be the first unit now.

2 Q I understand that.

3 A Okay. Like if you sent one at 1919, then you sent
4 two more at 1920, that would be -- I think that's probable.

5 Q Well, that's fine. That's what I'm looking at. I
6 don't know how many you sent out there. Do you know how
7 many units were sent?

8 A I don't know. There were several there when I got
9 there. I don't know.

10 Q All right. Well, just hold on to that just a
11 minute.

12 MR. ABERNATHY: If I could get some cooperation,
13 Judge. I don't know how to operate this.

14 MS. COLSTON: We'll be glad to do it for you.

15 THE COURT: Sure. If you want to throw that up on
16 the screen, let them have it.

17 Q If you would --

18 THE COURT: You're going to have to get that back
19 from him.

20 MR. ABERNATHY: I know, Judge. I'm looking for
21 the State's exhibits that have been marked. Here it
22 is.

23 Q Have you got your red pointer?

24 A Yes, sir, I do.

25 Q Dot pointer? Hold on and Mr. Harkins will be glad

1 to adjust that. All right. That one with the little
2 asterisk by it, 1919?

3 A That's correct.

4 Q That's the time you're talking about?

5 A Yes, sir.

6 Q All right. Now if you would, move over.

7 A That's the unit number.

8 Q That's the unit number?

9 A Seventy-one.

10 Q Now on over?

11 A It says 1050 I, 27 South.

12 Q And that's the accident we're here about today?

13 A Yes, sir, uh-huh.

14 MR. ABERNATHY: Now if you could, Mr. Harkins,
15 slide that down so we can see the top of the memo.

16 Q Okay. Now identify that document for me.

17 A That's FCPD. That stands for Floyd County Police
18 Department.

19 Q Okay. And the operator?

20 A Forty-three, it looks like Mann.

21 Q All right. Now have you in your duties as a
22 supervisor and I congratulate you on your promotion with the
23 state and I'm going to call you Capt. Smith too because
24 that's how I know you, Captain.

25 A Thank you, sir.

1 Q Captain, as your duties as a supervisor, have you
2 had an opportunity to go inside the 9-1-1 where they
3 generate these documents?

4 A Yes, sir.

5 Q And how many people work in there?

6 A I think it varies from any given times. I believe
7 you've got like a fire dispatcher. You've got an ambulance
8 dispatch. You've got county dispatch and then you've got
9 city dispatchers? You've got four to six or four to seven,
10 something like that.

11 Q Do they, in fact, generate different cards for
12 each agency like this, Floyd County Police Department? Ms.
13 Colston showed you some more.

14 A I believe that's correct, you know.

15 Q And then they have some for the ambulance, 9-1-1
16 EMS?

17 A Yes, sir.

18 Q All right. And they have different times marked
19 on each of them or times marked on each of them when they
20 take the call or dispatch the call.

21 A That's correct.

22 Q And you say this is a dispatch where they
23 dispatched unit number 71 if I'm not mistaken.

24 A I believe that to be correct, sir.

25 MR. ABERNATHY: Mr. Harkins, that's all if you

1 could give us some light and turn that off. Thank you.

2 Q Was there -- look at this document and tell me did
3 you place any lookouts on any vehicles after that accident
4 or do you recall as your duty of supervising this accident
5 that night or this shooting really -- maybe you didn't know
6 it was a shooting, but did you post any lookouts?

7 A Yeah, but I see a cancellation here of number 71.

8 Q Cancellation?

9 A Uh-huh.

10 Q Didn't go to the call?

11 A Four lines down from 1919, you see a 1922 and it
12 says, unit number 71. It says, 1022, 1050I. I believe 1022
13 means cancel. I believe that to be correct.

14 Q Okay. Now why would they cancel it because --

15 A I'd have to guess. It could be a County unit and
16 he arrived and it wound up being in the city.

17 Q Okay. That's fine. Now you say you assigned this
18 and that's all. Let me direct your attention to the time
19 1925, 7:25. What is that?

20 A It's a BOLO given out but --

21 Q What kind of vehicle?

22 A Something blue but it's way off 20 West passing
23 the Kawasaki Shop.

24 Q Okay. So you don't know what that's about?

25 A I don't have a clue, sir.

1 Q All right. Let me ask you about -- you say you
2 assigned this investigation to Investigator Moser?

3 A Yes, sir.

4 Q And he completed a report that you approved as his
5 officer, his senior officer?

6 A Was I the approving name on the right side?

7 Q Well, it doesn't have one but I thought you
8 testified you were -- you assigned him and you were the
9 captain?

10 A I assigned it but sometimes My lieutenant approves
11 the reports as well as I. I didn't know if I approved that
12 report or not.

13 Q Well, you're familiar with all the investigation
14 work --

15 A Yes, sir.

16 Q -- going on, being the captain?

17 A Yes, sir.

18 Q That's correct?

19 A Yes, sir.

20 Q Okay.

21 A Most of it, I hope, yes, sir.

22 Q And see if you can take a look at this incident
23 report and see if you've seen that before. If you look
24 through and tell me how many pages?

25 A Yes, I've read -- those are documents.

1 Q And that's the report that Investigator Moser
2 made?

3 A Different officers made that report. One officer
4 named Hank Jackson made one of them.

5 Q Okay.

6 A And I think there might be even another officer on
7 there as well.

8 Q I see Moser, Shropshire and Jackson?

9 A Yes, sir, there are three different officers made
10 three different reports there.

11 Q All right. Now did Hank Jackson -- he went out
12 there that night?

13 A Yes, sir, that's Officer 59.

14 Q Now can you tell me, did you go out there, did you
15 say? Did you tell the ladies and gentlemen you went out
16 there?

17 A Yes, I did.

18 Q How many ambulances were dispatched to that
19 location?

20 A I don't know, sir.

21 Q Well, let me show you this. See if this refreshes
22 your memory, bottom line?

23 A It looks like we had two ambulances dispatched or
24 either two ambulances is on the scene, one from Floyd and it
25 looks like one from Redmond.

1 Q All right. So two ambulances went out there that
2 night according to you?

3 A According to that report. I never saw either
4 ambulance out there.

5 Q Okay. You got there later?

6 A Yes, sir.

7 Q But there were ambulances both from Redmond and
8 Floyd Emergency Medical; is that correct?

9 A According to that report, yes, sir.

10 Q All right. And you have no reason to doubt your
11 report?

12 A No, sir.

13 Q And you were looking and told the ladies and
14 gentlemen of the jury a moment ago that you saw something on
15 the State's exhibit -- I might identify it for the purpose
16 of this trial -- that you noticed a time that the officers
17 left. I think you said 1023 or 23 something?

18 A It was 2300 hours and something. It was on one of
19 those documents. That's like a little after eleven o'clock.

20 Q All right. Let me show you what's been marked
21 State's Exhibit Number 15 and see if you can tell the ladies
22 and gentlemen of the jury what time they left?

23 A It's not on this document, sir.

24 Q Oh, it's not?

25 A No, this is just the unit number and the times

1 sent, I believe. It's on a different one.

2 A There's several pages there. Does it not include
3 the --

4 THE COURT: I think you'd find it on 11 -- no, on
5 13. I think it's on 13.

6 A It says here, time dispatched 1920. 1023 is the
7 arrival, police code, 1922. 1024 is complete, which is 2324
8 hours, which is 11:24.

9 Q All right.

10 A And that's officer 59.

11 Q And that's State's Exhibit Number 13?

12 A That's correct, sir.

13 Q So according to your records here that you've
14 identified, State's Exhibit 13, this officer was dispatched
15 at 1920?

16 A That's correct.

17 Q Arrived at 1922?

18 A Correct.

19 Q That would be 7:22 this officer arrived on the
20 scene?

21 A Yes, sir.

22 Q And then officers were there or this particular
23 officer until 11:24 p.m.?

24 A That's correct.

25 Q So they were there with this vehicle for a long

1 time; weren't they?

2 A Yes, sir. Well, there at the scene for that long,
3 yes, sir.

4 Q All right. And if someone had of been passing by
5 there say at 7:25 or 7:27, 7:30, they would have seen all
6 the lights and accident and all this investigation going on;
7 wouldn't they?

8 A What time did you say? Seven what?

9 Q 7:27?

10 A I would have thought, yes, sir, there would have
11 been some bluelights flying in the air, yes, sir.

12 Q All right. And then if they had of come back by
13 that later on between nine and ten, they would have still
14 seen them out there; wouldn't they?

15 A That's correct, sir.

16 Q Now Ms. Colston has showed you or the State has
17 shown you some photographs for the jury marked State's 1
18 through 10. Who took these photographs?

19 A I believe I recall Clyde Collier took them, sir, I
20 think.

21 Q Have you seen all of the photographs he took?

22 A I don't recall if I've seen every photograph he
23 took, no.

24 Q He took a bunch of them; didn't he?

25 A I imagine he did. He usually does.

1 Q And have you reviewed this entire investigation or
2 you were just sort of overseeing, look at the reports and
3 some photographs? What do you do?

4 A Repeat your question one more time.

5 Q Are you familiar with the entire investigation?

6 A No, sir, I'm not.

7 Q Okay. You assign that to your men and properly
8 so?

9 A That's correct.

10 Q But from the documents that you've identified, one
11 document they dispatched a unit out there at 7:19?

12 A That's correct. That was a county unit, officer
13 number 71.

14 Q And you've told the ladies and gentlemen of the
15 jury, ambulances responded from both Redmond and Floyd; is
16 that correct?

17 A According to that document that I saw, yes, sir.

18 Q All right. And you went out there about what
19 time?

20 A Somewhere approximately around 8:00, maybe a
21 little after.

22 Q All right. Hold on just a moment.

23 MR. ABERNATHY: Capt. Smith, I thank you for your
24 testimony and that's all I have. Thank you for coming
25 in.

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THE COURT: Ms. Colston, anything further?

MS. COLSTON: No, sir, nothing further.

THE COURT: Thank you, sir. You can step down and you're free to leave so long as the State can reach you.

MS. COLSTON: We know where to find him. Thank you.

THE COURT: Are those the exhibits right there? Wait a second. Whose document is that?

CAPT. SMITH: That's mine, sir.

THE COURT: That's yours? Well, fine.

CAPT. SMITH: Thank you for checking on me though, Judge.

MS. COLSTON: We call Dr. Carl Herring.
