

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

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Appeal from Spartanburg County Court of Common Pleas

SC Court of Appeals

The Honorable Grace Knie, Circuit Court Judge

Case No. 2018-CP-42-00063
Appellate Case No. 2021-001304

Betty McDade as Guardian *Ad Litem* for Matthew McDade.....Appellant,

v.

Roger Caldwell.....Respondent.

RECORD ON APPEAL

Volume I of II

Poulin | Willey | Anastopoulos, LLC

s/Roy T. Willey

Roy T. Willey, IV

S.C. Bar No.: 101010

Eric M. Poulin

S.C. Bar No.: 100209

Poulin | Willey | Anastopoulos, LLC

32 Ann Street

Charleston, South Carolina 29403

Phone (843) 614-8888

roy@akimlawfirm.com

eric@akimlawfirm.com

Attorneys for the Appellant/Plaintiff

July 1, 2022
Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
Betty McDade as Guardian <i>ad litem</i>	)	
for Matthew McDade,	)	Case No.: 2018CP4200063
Plaintiff,	)	
vs.	)	Order Regarding Plaintiff's
	)	Motion for Judgment Notwithstanding
	)	Verdict; Motion for a New Trial
	)	Absolute; and Motion for a New Trial
	)	Pursuant to the Thirteenth Juror Doctrine
Roger Caldwell,	)	
Defendant.	)	
	)	

Hearing Judge:	Grace Gilchrist Knie
Counsel for Plaintiff(s):	Roy T. Willey, IV, & Alexis W. McCumber
Counsel for Defendant(s):	Michael T. Coulter
Court Reporter:	n/a (decided on written submissions)

This matter is before the Court based upon Plaintiff's post-trial motions made pursuant to Rules 50 and 59 of the SCRCF filed with the Court on August 20th, 2021. This matter was scheduled on the Common Pleas Non-Jury docket to be heard by the Court at a hearing on September 30th, 2021, however Counsel agreed for the motions to be decided upon the record and the written submissions of Counsel without oral argument. Attorneys Roy T. Willey, IV, and Alexis W. McCumber of the Anastopoulo Law Firm, LLC, represent the Plaintiff. Attorney Michael T. Coulter of Clarkson, Walsh & Coulter, P.A., represents the Defendant.

PROCEDURAL HISTORY:

Plaintiff filed the Summons and Complaint on January 8th, 2018, alleging that on October 16th, 2015, Defendant was negligent, negligent *per se*, grossly negligent, reckless, willful and wanton when a collision resulting in injuries to Plaintiff occurred. Plaintiff requested actual and punitive damages. Defendant filed an initial Answer to the Complaint on March 13th, 2018, filed

an Amended Answer on March 22nd, 2018, and filed a Second Amended Answer on March 5th, 2021, denying the allegations of Plaintiff's Complaint and asserting comparative negligence as a complete bar to Plaintiff's recovery, and in the alternative asserting comparative negligence as a set-off to any recovery of Plaintiff. The action was tried before a jury and the jury returned its verdict on August 10th, 2021. The jury found that Defendant was not negligent.

This matter is before the Court pursuant to Plaintiff's post-trial motions filed on August 20th, 2021, the motions before the Court are Plaintiff's Motion for Judgment Notwithstanding the Verdict, Plaintiff's Motion for a New Trial Absolute, and Plaintiff's Motion for a New Trial Pursuant to the Thirteenth Juror Doctrine. Defendant replied to all motions by a responsive memorandum on August 30th, 2021.

LAW:

When ruling on a judgment notwithstanding the verdict (JNOV) motion, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. Williams Carpet Contractors, Inc., v. Skelly, 400 S.C. 320, 734 S.E.2d 177(Ct. App. 2012). When deciding a motion for new trial absolute on the ground that the verdict is excessive or inadequate, the jury's determination of damages is entitled to substantial deference. Circuit court should grant a new trial absolute on the excessiveness of the jury verdict only if the amount is so grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives. SCRCP 59 (2021); Brinkley v. South Carolina Dept. of Corrections, 386 S.C. 182, 687 S.E.2d 54 (Ct. App. 2009). The "thirteenth juror doctrine" allows the circuit court judge to grant a new trial absolute when the judge finds the

evidence does not justify the verdict. Trivelas v. South Carolina Dept. of Transp., 357 S.C. 545, 593 S.E.2d 504 (Ct. App. 2004).

ARGUMENTS OF COUNSEL:

Plaintiff submitted a Motion for Judgment Notwithstanding the Verdict (JNOV) arguing that the evidence is insufficient to support a verdict of no negligence of Defendant and the evidence affirmatively demonstrates that Defendant was negligent and Plaintiff is entitled to judgment as a matter of law on that basis and that it was error to force Plaintiff to testify despite incompetence.

The Plaintiff submitted a Motion for a New Trial Absolute arguing that the Court erred in issuing curative instructions during the trial, in allowing the Plaintiff to be called to testify by opposing counsel, in failing to qualify a witness as an expert witness in the area of accident reconstruction, in refusing to allow certain reply testimony on behalf of the Plaintiff, in refusing to permit the use of certain documents during the trial, by sustaining an objection/s as to testimony elicited regarding insurance coverage, in releasing a juror and seating the alternate, and because the Court did not have jurisdiction to conduct the trial following adjournment.

Plaintiff submitted a Motion for a New Trial pursuant to the Thirteenth Juror Doctrine arguing that the evidence reasonably supports a verdict that the Defendant was negligent and that the improperly admitted impeachment testimony of Plaintiff regarding speed was a critical factor the jury's deliberation.

Defendant submitted his response to Plaintiff's motions asserting that Plaintiff's motions should be denied because evidence of negligence as to the Defendant was not established and that reasonable persons could have, and did find, that Defendant committed zero percent (0%) of fault Defendant further argued that prior to trial, Plaintiff's counsel was properly instructed that the mention of any traffic citation/s would be improper and Plaintiff's counsel failed to comply with

that ruling. Defendant contends that the Court's charge to the jury regarding expert testimony was proper and that Plaintiff's counsel failed to object to the charge at trial. Defendant also asserts that it was necessary for the Court to give curative instructions based upon the actions of Plaintiff's Counsel. In response to Plaintiff's Counsel's assertion that the Plaintiff was incompetent, the issue of Plaintiff's incompetence was not raised until the day of the commencement of the jury trial. There was no evidence presented that a competency proceeding had ever been initiated by Plaintiff's Counsel. There was no evidence that Plaintiff was incompetent.

CONCLUSION:

The Court acknowledges and appreciates the amount of research and preparation for the issues before the Court by Counsel. After consideration of the record, memoranda of Counsel, and the applicable law, the Court, upon review of the record and all reasonable inferences to be derived therefrom, considered in the light most favorable to the non-moving party, finds that there exists no basis to grant Plaintiff's Motion for Judgment Notwithstanding the Verdict, Plaintiff's Motion for a New Trial Absolute, and Plaintiff's Motion for a New Trial Pursuant to the Thirteenth Juror Doctrine filed with the Court on August 20th, 2021, made pursuant to Rules 50, and 59, of the SCRCF, and the motions should be and are therefore denied.

IT IS SO ORDERED.

/s/Grace Gilchrist Knie

Honorable Grace Gilchrist Knie
Resident Judge, Seventh Judicial Circuit

October 8th, 2021
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Matthew Mcdade VS Roger Caldwell

Case Number: 2018CP4200063

Type: Order/JNOV

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

Electronically signed on 2021-10-08 14:57:08 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Spartanburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4200063

Matthew Mcdade
PLAINTIFF(S)

Roger Caldwell
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

That the Jury found that the Defendant was not negligent. IT IS SO ORDERED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/11/2021 .

Betty Mcdade for Matthew Mcdade
Matthew Mcdade for Betty Mcdade

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Spartanburg Common Pleas

Case Caption: Matthew Mcdade VS Roger Caldwell

Case Number: 2018CP4200063

Type: Order/Electronic Form 4

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

Electronically signed on 2021-08-11 15:46:42 page 3 of 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Betty McDade as Guardian *ad Litem*)
For Matthew McDade,)
)
Plaintiff,)
)
v.)
)
Roger Caldwell,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2018-CP-42-0063

VERDICT FORM

1. Was the defendant negligent?
____ YES - Go to Question 2
☒ NO - Stop deliberations
2. Was the defendant's negligence a proximate cause of the plaintiff's injuries?
____ YES - Go to Question 3
____ NO - Stop deliberations
3. Was the plaintiff negligent?
____ YES - Go to Question 4
____ NO - Go to Question 7
4. Was the plaintiff's negligence a proximate cause of the plaintiff's injuries?
____ YES - Go to Question 5
____ NO - Go to Question 7

5. If your answers to both questions 2 and 4 above are YES, then answer this question: Using the combined negligence that proximately caused the plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the plaintiff and what percentage is attributable to the defendant? [The percentage must add up to 100%. It is not necessary for the defendant to be assigned a percentage of negligence. It is perfectly acceptable for the defendant to be assigned a zero percentage (0%).]

Plaintiff _____ %

Defendant _____ %

Total _____ %

6. Was the plaintiff's negligence greater than fifty percent?

_____ YES - Stop deliberations

_____ NO - Go to Question 7

7. Please state the amount of damages, if any, sustained by the plaintiff. [Do not reduce the plaintiff's total damages based on the percentage of negligence by any party. After you have answered these questions, the judge will compute the amount of damages for which the defendant is responsible based on the percentage of the defendant's negligence which you have decided proximately caused the plaintiff's injuries. You are to determine only the total amount of the plaintiff's damages and enter that amount below.]

\$ _____ Actual Damages

8. Did the plaintiff prove by clear and convincing evidence that the defendant acted recklessly, willfully, or wantonly and that conduct proximately caused the damages to the plaintiff ?

_____ YES - Go to Question 9.

_____ NO - (see below)

If your answer to Question 8 is NO, Stop and End Your Deliberations, sign and date the Verdict Form below, and inform the Bailiff. If your answer to Question 8 is YES, then proceed to Question 9.

9. Please state the amount of Punitive Damages you award to the plaintiff against the defendant, if any? (You cannot award Punitive Damages unless you first awarded Actual Damages in Question 7 above)

\$ _____ Punitive Damages.

Stop and End Your Deliberations, sign and date the Verdict Form below, and inform the Bailiff.

Date: August 10th, 2021

Joseph Boyle
FOREPERSON

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
MATTHEW MCDADE

Plaintiff,

vs.

ROGER CALDWELL

Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE SEVENTH JUDICIAL CIRCUIT

CASE NO: 2018-CP-42-_____

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers, at their offices at 7087 Rivers Avenue, North Charleston, South Carolina, 29406, within forty-five (45) days after service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid judgment by default will be rendered against you for the relief demanded in the Complaint.

/s/ Kevin B. Smith
Kevin B. Smith
Hoffman Law Firm, LLC
7087 Rivers Ave.
N. Charleston, SC 29406
Phone: (843) 769-7077
Fax: (843) 769-4567
ksmith@hoffmanlaw.net
Attorney for the Plaintiff

January 8, 2018
North Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

MATTHEW MCDADE

Plaintiff,

vs.

ROGER CALDWELL

Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE SEVENTH JUDICIAL CIRCUIT

CASE NO: 2018-CP-42-_____

COMPLAINT
(Negligence Action)

Jury Trial Requested

Plaintiff, Matthew McDade, by his undersigned attorney, alleges in his complaint against Defendant, Roger Caldwell, and would respectfully show unto this Honorable Court as follows:

1. Plaintiff Matthew McDade ("Plaintiff") is a citizen and resident of County of Spartanburg, State of South Carolina.
2. Upon information and belief, Defendant Roger Caldwell ("Defendant") is a citizen and resident of County of Union, State of South Carolina.
3. On October 16, 2015, Plaintiff was driving a motorcycle in a northerly direction on Boiling Springs Road in Spartanburg, South Carolina. Defendant was driving in a southerly direction on the same road. Defendant turned his vehicle in front of Plaintiff causing a collision and the injuries and damages hereinafter alleged.
4. Defendant owed Plaintiff and other persons traveling on the roadways a duty to obey the safety rules, maintain a proper lookout, to travel at a safe rate of speed, and to operate his vehicle in a reasonable and prudent manner so as not to cause a collision or damages to Plaintiff and other similarly situation individuals.
5. Defendant was negligent, negligent *per se*, grossly negligent, reckless, willful and wanton in one or more of the following particulars:

- a. In driving a vehicle in such a manner as to indicate either a willful or wanton disregard for the rights and safety of other persons lawfully using the highway, and in particular, the rights and safety of the Plaintiff;
 - b. In failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;
 - c. In failing to take any evasive action, by any means, to keep from striking the Plaintiff's motor vehicle;
 - d. In causing a collision between Plaintiff and Defendant;
 - e. In failing to keep a proper lookout;
 - f. In driving too fast for conditions;
 - g. In violating the laws, statutes and ordinances;
 - h. In violating federal, state and industry safety rules;
 - i. In endangering others on and around the highway; and
 - j. For such other and further reasons that the evidence may show at the trial of this case.
6. As a direct and proximate result of Defendant's negligence, negligence *per se*, gross negligence, carelessness, recklessness, willfulness, and wantonness, Plaintiff has suffered in the past, and will, upon information and belief, continue to suffer physical and mental harm and permanent injuries as a result of the collision. Plaintiff has incurred and will continue to incur substantial medical bills, physical and mental pain and suffering, mental anguish and emotional distress, and loss of the enjoyment of life.

Wherefore, Plaintiff demands a trial by jury and prays for judgment against Defendant for such amount of actual and punitive damages exceeding the sum of TEN THOUSAND AND

NO/100 (\$10,000.00) DOLLARS as determined by the Trier of Fact; for the cost of this action; and for such other and further relief as may be just and proper.

Respectfully submitted,

/s/ Kevin B. Smith
Kevin B. Smith
Joshua E. Slavin
Hoffman Law Firm, LLC
7087 Rivers Avenue
North Charleston, SC 29406
Phone: 843.769-7077
Fax: 843.769-4567
Email: ksmith@hoffmanlaw.net
Attorneys for the Plaintiff

January 8, 2018
North Charleston, South Carolina

/s/ Roy T. Willey, IV
Roy T. Willey, IV
J. Camden Hodge
Eric M. Poulin
Anastopoulos Law Firm, LLC
32 Ann Street,
Charleston, SC 29403
Phone: 843.614-8888
Fax: 843. 853-2291
Email: roy@akimlawfirm.com
Email: camden@akimlawfirm.com
Email: eric@akimlawfirm.com
Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C/A NO.: 2018-CP-42-00063
Matthew McDade,	)	
	)	
Plaintiff,	)	ANSWER OF DEFENDANT
	)	
vs	)	
	)	
Roger Caldwell,	)	
	)	
Defendant.	)	
	)	

TO: PLAINTIFF NAMED ABOVE:

The above-named Defendant, Roger Caldwell, (hereinafter "Defendant") while reserving all rights afforded under any pending or concurrently filed motions contained herein, would respond to the Complaint of the Plaintiff by respectfully stating as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Defendant denies each and every allegation contained in Plaintiff's Complaint where not hereinafter specifically admitted, modified, controverted, or explained.
2. Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 1.
3. Defendant admits, upon information and belief, the allegations of Paragraph 2.
4. As to the allegations of Paragraph 3, Defendant admits that he was driving his vehicle on Boiling Springs Road in Spartanburg County, South Carolina. Defendant further admits, upon information and belief, that the Plaintiff was driving a motorcycle in the opposite direction on Boiling Springs Road, Spartanburg County, South Carolina. Defendant denies the remaining allegations of Paragraph 3.

5. As to the allegations of Paragraph 4, said allegations make legal conclusions to which no response is required from the Defendant. To the extent is required, said allegations are denied.

6. Defendant denies the allegations of Paragraph 5, including subparts (a) through (j).

7. Defendant denies the allegations of Paragraph 6.

FOR A SECOND DEFENSE
(Comparative Negligence-Total Bar)

8. Defendant adopts and repeats the responses contained in the paragraphs set forth above and incorporates them as part of this defense, where not inconsistent with this defense.

9. Defendant would assert that the Plaintiff was negligent, reckless, willful, and wanton in the operation of his vehicle and that his acts and delicts in the operation of his vehicle proximately caused any asserted injuries or damages he may have sustained in the aforementioned accident. If the Defendant was negligent in the manner in which he operated his vehicle, said acts or delicts on his part being denied but conditionally admitted for the purpose of this defense only, then the acts and delicts of the Plaintiff, which were contrary to the rules and regulations of the South Carolina Department of Highways and Public Transportation and the laws and statutes of South Carolina, were greater by comparison than any acts of delicts which this Defendant may have committed, thereby barring the Plaintiff from recovering for any asserted damages or injuries he may have sustained. If the court and jury should disagree and determine that the Defendant's asserted acts and omissions were greater than those of the Plaintiff, then the Plaintiff's recovery should be reduced in proportion to the degree of negligence attributable to the Plaintiff. The Plaintiff was negligent, reckless, willful, and wanton in the manner in which he operated his vehicle in the following respects:

- A. In failing to keep a proper lookout;
- B. In failing to take evasive action;
- C. In failing to timely apply his brakes;
- D. In failing to use a turn signal when changing lanes;
- E. In failing to maintain proper control of his vehicle;
- F. In failing to use reasonable and ordinary care, which a reasonable and prudent person would have done under the same or similar circumstances;

all of which are a direct violation of the statutory and common law of the State of South Carolina.

FOR A THIRD DEFENSE
(Comparative Negligence-Set Off)

10. Defendant adopts and repeats the responses contained in the paragraphs set forth above and incorporates them as part of this defense, where not inconsistent with this defense.

11. Even if Defendant was negligent, or careless, in any respect, and such conduct operated as a greater than fifty (50%) percent cause of any alleged injury to Plaintiff and the Plaintiff's resulting damages, if any, Defendant is entitled to a determination as to the percentage of the Plaintiff's negligence, carelessness, reckless, willfulness, and wantonness, which contributed to Plaintiff's alleged damages and to a reduction of any amount awarded to it equal to the percentage of Defendant's own negligence, carelessness, reckless, willfulness, and wantonness.

FOR A FOURTH DEFENSE
(Failure to State Facts Sufficient to Constitute a Cause of Action)

12. Defendant adopts and repeats the responses contained in the paragraphs set

forth above and incorporates them as part of this defense, where not inconsistent with this defense.

13. Pursuant to Rule 12(b)(6) South Carolina Rules of Civil Procedure, Defendant asserts that the Plaintiff has failed to state facts sufficient to constitute a cause of action under the laws of South Carolina and the United States of America.

FOR A FIFTH DEFENSE
(Waiver, Laches, Release, Estoppel)

14. Defendant adopts and repeats the responses contained in the paragraphs set forth above and incorporates them as part of this defense, where not inconsistent with this defense.

15. Plaintiff's claims are barred, in whole or in part, by the doctrines of the estoppel, waiver, release and unclean hands.

FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)

16. Defendant adopts and repeats the responses contained in the paragraphs set forth above and incorporates them as part of this defense, where not inconsistent with this defense.

17. Defendant alleges that the Plaintiff has failed to mitigate his damages in the manner provided for by law. Such failure to mitigate is thus pled as a complete defense and bar to its claim.

18. Defendant requests that the Court dismiss the Plaintiff's prayer for damages in its entirety or, in the alternative and in the event that it is determined that the Plaintiff is entitled to a judgment against this Defendant, said judgment be reduced by an appropriate amount for the Plaintiff's failure to mitigate his damages.

FOR A SEVENTH DEFENSE

19. Defendant adopts and repeats the responses contained in the paragraphs set forth above and incorporate them as part of this defense, where not inconsistent with this defense.

20. To the extent any of Plaintiff's claims are characterized or construed as claims for punitive damages, such claims are barred unless compensatory or general damages are awarded, and it is established by clear and convincing evidence that any act or omission by Defendant was the result of willful and malicious or intentionally fraudulent conduct or that Defendant acted with a knowing and reckless indifference toward and disregard of the rights of Plaintiff.

21. Defendant reserves the right to add any other defenses as they become known through discovery or investigation.

WHEREFORE, Defendant, having fully answered the Complaint of Plaintiff, prays as follows:

1. That this Court dismiss Plaintiff's Complaint with prejudice;
2. That this Court award Defendant, all expenses incurred by Defendant necessary to protect its interest in defending this claim; and,
3. For such and other further relief as this Court may deem just and equitable.

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes
 DANIEL R. HUGHES (SC Bar #72547)
 457-B Pennsylvania Avenue
 P. O. Box 449
 Greer, SC 29652-0449
 Telephone: (864) 334-2500
 Facsimile: (864) 879-0149
 ATTORNEYS FOR DEFENDANT

Dated: March 13, 2018
 Greer, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C/A NO.: 2018-CP-42-00063
Matthew McDade,	)	
	)	
Plaintiff,	)	AMENDED
	)	ANSWER OF DEFENDANT
vs	)	
	)	
Roger Caldwell,	)	
	)	
Defendant.	)	
	)	

TO: PLAINTIFF NAMED ABOVE:

The above-named Defendant, Roger Caldwell, (hereinafter "Defendant") while reserving all rights afforded under any pending or concurrently filed motions contained herein, would respond to the Complaint of the Plaintiff by respectfully stating as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Defendant denies each and every allegation contained in Plaintiff's Complaint where not hereinafter specifically admitted, modified, controverted, or explained.
2. Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 1.
3. Defendant admits, upon information and belief, the allegations of Paragraph 2.
4. As to the allegations of Paragraph 3, Defendant admits that he was driving his vehicle on Boiling Springs Road in Spartanburg County, South Carolina. Defendant further admits, upon information and belief, that the Plaintiff was driving a motorcycle in the opposite direction on Boiling Springs Road, Spartanburg County, South Carolina. Defendant denies the remaining allegations of Paragraph 3.

5. As to the allegations of Paragraph 4, said allegations make legal conclusions to which no response is required from the Defendant. To the extent is required, said allegations are denied.

6. Defendant denies the allegations of Paragraph 5, including subparts (a) through (j).

7. Defendant denies the allegations of Paragraph 6.

FOR A SECOND DEFENSE
(Comparative Negligence-Total Bar)

8. Defendant adopts and repeats the responses contained in the paragraphs set forth above and incorporates them as part of this defense, where not inconsistent with this defense.

9. Defendant would assert that the Plaintiff was negligent, reckless, willful, and wanton in the operation of his vehicle and that his acts and delicts in the operation of his vehicle proximately caused any asserted injuries or damages he may have sustained in the aforementioned accident. If the Defendant was negligent in the manner in which he operated his vehicle, said acts or delicts on his part being denied but conditionally admitted for the purpose of this defense only, then the acts and delicts of the Plaintiff, which were contrary to the rules and regulations of the South Carolina Department of Highways and Public Transportation and the laws and statutes of South Carolina, were greater by comparison than any acts of delicts which this Defendant may have committed, thereby barring the Plaintiff from recovering for any asserted damages or injuries he may have sustained. If the court and jury should disagree and determine that the Defendant's asserted acts and omissions were greater than those of the Plaintiff, then the Plaintiff's recovery should be reduced in proportion to the degree of negligence attributable to the Plaintiff. The Plaintiff was negligent, reckless, willful, and wanton in the manner in which he operated his vehicle in the following respects:

- A. In failing to keep a proper lookout;
- B. In failing to take evasive action;
- C. In failing to timely apply his brakes;
- D. In failing to use a turn signal when changing lanes;
- E. In failing to maintain proper control of his vehicle;
- F. In driving too fast for conditions;
- G. In failing to use reasonable and ordinary care, which a reasonable and prudent person would have done under the same or similar circumstances;

all of which are a direct violation of the statutory and common law of the State of South Carolina.

FOR A THIRD DEFENSE
(*Comparative Negligence-Set Off*)

10. Defendant adopts and repeats the responses contained in the paragraphs set forth above and incorporates them as part of this defense, where not inconsistent with this defense.

11. Even if Defendant was negligent, or careless, in any respect, and such conduct operated as a greater than fifty (50%) percent cause of any alleged injury to Plaintiff and the Plaintiff's resulting damages, if any, Defendant is entitled to a determination as to the percentage of the Plaintiff's negligence, carelessness, reckless, willfulness, and wantonness, which contributed to Plaintiff's alleged damages and to a reduction of any amount awarded to it equal to the percentage of Defendant's own negligence, carelessness, reckless, willfulness, and wantonness.

FOR A FOURTH DEFENSE

12. Defendant adopts and repeats the responses contained in the paragraphs set forth above and incorporate them as part of this defense, where not inconsistent with this defense.

13. To the extent any of Plaintiff's claims are characterized or construed as claims for punitive damages, such claims are barred unless compensatory or general damages are awarded, and it is established by clear and convincing evidence that any act or omission by Defendant was the result of willful and malicious or intentionally fraudulent conduct or that Defendant acted with a knowing and reckless indifference toward and disregard of the rights of Plaintiff.

14. Defendant reserves the right to add any other defenses as they become known through discovery or investigation.

WHEREFORE, Defendant, having fully answered the Complaint of Plaintiff, prays as follows:

1. That this Court dismiss Plaintiff's Complaint with prejudice;
2. That this Court award Defendant, all expenses incurred by Defendant necessary to protect its interest in defending this claim; and,
3. For such and other further relief as this Court may deem just and equitable.

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes
 DANIEL R. HUGHES (SC Bar #72547)
 457-B Pennsylvania Avenue
 P. O. Box 449
 Greer, SC 29652-0449
 Telephone: (864) 334-2500
 Facsimile: (864) 879-0149
 ATTORNEYS FOR DEFENDANT

Dated: March 22, 2018
 Greer, South Carolina

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS

3
4 MATTHEW MCDADE,)
5 PLAINTIFF,)
6 VS.)
7 ROGER CALDWELL,)
8 DEFENDANT.) 2018-CP-42-63

9
10 July 19th - 22nd, 2021
11 Spartanburg, South Carolina

12
13 B E F O R E :

14 THE HONORABLE GRACE GILCHRIST KNIE, JUDGE.

15
16 A P P E A R A N C E S :

17 ROY T. WILLEY, III and ALEXIS W. McCUMBER
18 ESQ.
Attorneys for the Plaintiff

19 MICHAEL T. COULTER
20 ESQ.
Attorney for the Defendant

21
22 PAMELA E. GREEN
23 Circuit Court Reporter
24
25

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P R O C E E D I N G S

(WHEREUPON, the following takes place within the presence of the entire jury panel.)

THE COURT: All right, now. Counsel, can y'all come up please?

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: Okay. I will share with y'all that this is the first time that I've ever handled jury selection this week -- this way when we are picking two juries in one morning. But I'm doing that to make it as simple as possible for y'all, and for the court reporter, and for the lawyers, and the folks involved from the courthouse because they have to come back over and set up again and we're going back and forth.

And, and so, the next matter that is going to require some of your assistance is Civil Action 18-63, the matter of Matthew McDade versus Roger Caldwell.

Now, a, a very brief factual backdrop to this action is that on or about October the 16th of 2015, the Plaintiff, who is Mr. Matthew McDade, was driving a motorcycle northbound on Boiling Springs Road, also known as Highway 9, in Spartanburg County, South Carolina. At the same time the Defendant, Mr. Roger Caldwell, was operating or driving an

1 automobile southbound on Highway 9 on Boiling Springs Road
2 and a collision occurred.

3 Now, I say that again because I want, and the lawyers
4 want to know, if you have any prior knowledge of this
5 accident or of this collision that happened on that date,
6 and I'm now going to read you the names of -- first why
7 don't I go ahead and give you the names of the legal
8 counsel.

9 We have Ms. Alexis W. McCumber and Mr. Roy T. Willey,
10 III. Both counsel here from the Anastopoulo, Anastopoulo
11 Law Firm, and we also have Mr. Coulter, Michael Coulter, is
12 here and he is representing the Defendant, and he is from
13 the Law Firm of Clarkson, Walsh & Coulter. I believe that
14 both law firms may have offices located throughout the
15 State.

16 All right. And is Mr. Anthony involved in this case?

17 MR. ANTHONY: I am not, Your Honor.

18 THE COURT: Okay. All right. Thank you. I just was
19 gonna make sure and introduce you if you were.

20 All right. Now, with regard to the potential
21 witnesses, they are Mr. Matthew McDade, Mr. Cald -- Roger
22 Caldwell, and Steven Hildebrand, Corporal Matthew A. Franks
23 with the South Carolina Highway Patrol, Betty McDade, Scott
24 Bishop, Paula Vance, Thomas McDade, Gerald McDevitt of
25 McDevitt & Associates, and Doctor Christopher Chittum.

1 So, with regard to first the, the law firms that I
2 introduced and the lawyers, does any member of the jury
3 panel know or have any family or business relationship with
4 any person employed by the firm of Clark -- Clarkson, Walsh
5 & Coulter and/or the firm -- the Anastopoulos Law Firm, if
6 so, please stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: No response.

9 Does any member of the jury panel or, or is any member
10 of the jury panel, do, do you have any social, personal, or
11 business relationship with any of the attorneys I have
12 named, the parties I have named, or the potential witnesses
13 that I have named, if so, please stand.

14 (WHEREUPON, there was no response.)

15 THE COURT: No response.

16 This is a civil case meaning that this is an action for
17 money damages.

18 Does any member of the jury panel have any moral,
19 religious, or personal, or political belief that would
20 prevent you from awarding money damages to the Plaintiff in
21 this case, if so, please stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: No response.

24 Does any member of the jury panel believe that there
25 should be caps on damage awards in personal injury cases, if

1 so, please stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: No response.

4 Does any member of the jury panel have any life
5 experience that would make it difficult for you to sit on a
6 jury and be impartial towards someone who claims to be
7 injured and comes into Court asking for money damages, if
8 so, please stand.

9 (WHEREUPON, one juror responds.)

10 THE COURT: Okay. Mr. Garrett?

11 THE JUROR: Yes, ma'am.

12 THE COURT: What is your juror number?

13 THE JUROR: 61.

14 THE COURT: Okay. Okay. And, sir, do you believe that
15 you could be fair and impartial in this case?

16 THE JUROR: No, ma'am, I've got far too much
17 experience---

18 THE COURT: Okay. I, I don't want you to go into too
19 much detail. Just yes or no.

20 THE JUROR: No, definitely not.

21 THE COURT: Okay. And so I am going to excuse -- this
22 is Juror 61, Mr. Garrett.

23 THE JUROR: Yes, ma'am, correct.

24 THE COURT: Okay. I'm going to excuse Mr. Garrett.

25 Sir, you may go. Thank you.

1 THE JUROR: Thank you.

2 THE COURT: Has any member of the jury panel or a
3 member of their immediate family ever had a traumatic brain
4 injury, if so, please stand.

5 (WHEREUPON, one juror responds.)

6 THE COURT: Yes, ma'am, your juror number?

7 THE JUROR: 77.

8 THE COURT: Ms. Hummel?

9 THE JUROR: Yes, ma'am.

10 THE COURT: Ma'am, would that affect your ability to be
11 fair and impartial in this case?

12 THE JUROR: No, ma'am.

13 THE COURT: Okay. Thank you. Please be seated.

14 Has any member of the jury panel or any member of their
15 family or any close friend ever suffered from what they
16 considered to be a serious personal injury, if so, please
17 stand.

18 (WHEREUPON, one juror responds.)

19 THE COURT: Yes, sir, your juror number?

20 THE JUROR: Number 1.

21 THE COURT: Mr. Allen, yes, sir.

22 would that affect your ability to be fair and impartial
23 in this case?

24 THE JUROR: Yes, ma'am, it would.

25 THE COURT: Okay. Juror Number 1 is going to be

1 excused. Thank you, sir.

2 THE JUROR: Thank you.

3 THE COURT: Has any member of the jury panel or any
4 member of your family ever been a plaintiff or a defendant
5 in a lawsuit, if so, please stand.

6 (WHEREUPON, jurors respond at this time.)

7 THE COURT: Yes, ma'am, your juror number?

8 THE JUROR: 144.

9 THE COURT: Mrs. Scott?

10 THE JUROR: Yes, ma'am.

11 THE COURT: Okay. Ma'am, can you -- do you remember
12 what type of lawsuit?

13 THE JUROR: It was my father-in-law who got into a car
14 accident.

15 THE COURT: How long ago was that?

16 THE JUROR: Three years ago.

17 THE COURT: Okay. Is that still pending?

18 THE JUROR: Yes, ma'am.

19 THE COURT: And what county is that pending in?

20 THE JUROR: Spartanburg.

21 THE COURT: And would that affect your ability to be
22 fair and impartial in this case?

23 THE JUROR: Yes, ma'am.

24 THE COURT: All right. I'm going to excuse Juror
25 Number 144.

1 Yes, ma'am, juror number?

2 Your juror number?

3 THE JUROR: 162.

4 THE COURT: Is that mic on?

5 You're Mrs. Wallace?

6 THE JUROR: Yes, ma'am.

7 THE COURT: Okay. And do you know what type of lawsuit
8 it was, ma'am?

9 THE JUROR: It was against vocational rehabilitation in
10 regards to a family member.

11 THE COURT: Okay. It's a civil action?

12 THE JUROR: Yeah.

13 THE COURT: Okay. And the family member, it was not
14 you?

15 Who?

16 THE JUROR: No, it was my sister.

17 THE COURT: Okay. And, ma'am, would that affect your
18 ability to be fair and impartial in this case?

19 THE JUROR: No. No, ma'am.

20 THE COURT: And is that action concluded?

21 THE JUROR: Yes, ma'am.

22 THE COURT: It's over with.

23 All right. Thank you, ma'am. I'm gonna allow you to
24 stay.

25 That would be Juror Number 162.

1 Yes, sir.

2 THE JUROR: 141.

3 THE COURT: Yes, sir.

4 Mr. Sanders?

5 THE JUROR: Yes, ma'am.

6 THE COURT: Sir, what type of action was it?

7 THE JUROR: It was a lawn mower accident, accident
8 involving my younger brother.

9 THE COURT: And how long ago was that, sir?

10 THE JUROR: It's been about 30 years ago.

11 THE COURT: So, it has been concluded?

12 THE JUROR: Yes, ma'am.

13 THE COURT: And, sir, would that affect your ability to
14 be fair and impartial in this case?

15 THE JUROR: Yes, ma'am.

16 THE COURT: Okay. Juror Number 141 is excused from
17 this case.

18 Okay. And so Ms. Joan?

19 THE BAILIFF: Yes, Your Honor.

20 THE COURT: You're telling them to call -- they're
21 gonna call back in?

22 THE BAILIFF: Yes, ma'am.

23 THE COURT: Thank you.

24 All right. Has any member of, of the jury panel or any
25 member of your family ever filed a claim for damages

1 including a worker's compensation claim, if so, please
2 stand.

3 (WHEREUPON, jurors respond at this time.)

4 THE COURT: Okay. We're starting in the back.
5 Yes, sir.

6 THE JUROR: I'm Juror Number 97. I filed a worker's
7 comp claim about four years ago after I suffered an injury.
8 That, that matter has been settled now.

9 THE COURT: Okay. Mr. -- is it Leong?

10 THE JUROR: Leong.

11 THE COURT: Leong.

12 Sir, would that affect your ability to be fair and
13 impartial in this case?

14 THE JUROR: No.

15 THE COURT: All right. Thank you. Please be seated.
16 Mr. Owens.

17 THE JUROR: Yes, Juror 151. I had a workman's comp
18 back in the 1980s. It would not affect me today.

19 THE COURT: Okay. Thank you.

20 THE JUROR: 108.

21 THE COURT: Yes, sir.

22 THE JUROR: I myself had a worker's comp claim.

23 THE COURT: You're Mr. Mims?

24 THE JUROR: Yes, ma'am.

25 THE COURT: Okay. And is that over with?

1 THE JUROR: Yes, ma'am.

2 THE COURT: Okay. Would that affect your ability to be
3 fair and impartial in this case?

4 THE JUROR: No, ma'am.

5 THE COURT: All right. Thank you.

6 Yes, sir, in the front.

7 THE JUROR: 123.

8 THE COURT: Mr. Poplin?

9 THE JUROR: Yes, ma'am.

10 THE COURT: Yes, sir.

11 THE JUROR: Worker's comp claim about two years ago.

12 THE COURT: Has it been resolved?

13 THE JUROR: Yes.

14 THE COURT: Okay. Would that affect your ability to be
15 fair and impartial in this case?

16 THE JUROR: No, ma'am.

17 THE COURT: Okay. Thank you.

18 Yes, ma'am, Ms. Wallace.

19 THE JUROR: Yes, 162.

20 THE COURT: Yes, ma'am.

21 THE JUROR: And it was the same, it was the same case
22 that was settled with vocational rehabilitation services for
23 my---

24 THE COURT: Okay. Regarding your sister?

25 THE JUROR: Yes, ma'am.

1 THE COURT: Okay. Ma'am, would that affect your
2 ability to be fair and impartial in this case?

3 THE JUROR: No, ma'am.

4 THE COURT: All right. Thank you.
5 Yes, sir.

6 THE JUROR: Juror Number 18. I've had a couple
7 workman's comp claims. One about 30 years ago and one about
8 five years ago.

9 THE COURT: Mr. Bond.

10 THE JUROR: Yes.

11 THE COURT: Okay. Sir, would that affect your ability
12 to be fair and impartial in this case?

13 THE JUROR: No, ma'am.

14 THE COURT: Okay. Thank you.

15 Has any member of the jury panel or any member of their
16 family ever been prescribed the medication Keppra, Fioricet,
17 or Norco, if so, please stand.

18 (WHEREUPON, jurors respond at this time.)

19 THE COURT: Okay. Yes, sir.

20 THE JUROR: 100.

21 THE COURT: And---

22 THE JUROR: My wife's on Keppra as we speak.

23 THE COURT: And wait just one second. I just want to
24 make sure I get your name.

25 Okay. Mr. Marr?

1 THE JUROR: Yes, ma'am.

2 THE COURT: All right. Thank you. You may be seated.
3 Okay. Mr. Owens.

4 THE JUROR: Yes, I, years ago, I had Norco.

5 THE COURT: And you're Number 115, correct?

6 THE JUROR: 115, yes.

7 THE COURT: Okay. Yes, sir. You may be seated.

8 THE JUROR: Juror 6. I have taken Fioricet. I
9 currently have it prescribed.

10 THE COURT: Mr. Arledge?

11 THE JUROR: Yes.

12 THE COURT: Okay. Thank you.

13 THE JUROR: 46.

14 THE COURT: Yes, sir.

15 THE JUROR: My wife was on Norco a few years ago but is
16 not currently.

17 THE COURT: I'm sorry. I couldn't hear you. One more
18 --.

19 THE JUROR: My wife was on Norco a few years ago but is
20 not currently.

21 THE COURT: Okay. And you're Mr. Cribb?

22 THE JUROR: Yes.

23 THE COURT: Okay. Thank you.

24 Yes, sir.

25 THE JUROR: Your Honor, Number 20. I was prescribed

1 Norco with -- in January of this year for an operation.

2 THE COURT: Okay. Thank you.

3 THE JUROR: Juror Number 97. I was -- I've never
4 actually taken any of the above named medicines but, as a
5 physician, I do routinely prescribe the, the medicines that
6 you've named.

7 THE COURT: Okay. Thank you. I hope I pronounced them
8 correctly.

9 THE JUROR: Yes, you have.

10 THE COURT: All right. Good.

11 All right. Yes, ma'am.

12 THE JUROR: Yes, I've been prescribed Norco due to a
13 tooth infection.

14 THE COURT: Ma'am, what's your juror number?

15 THE JUROR: Oh, I'm sorry. 164.

16 THE COURT: 164. Okay. Thank you, ma'am.

17 THE JUROR: You welcome.

18 THE COURT: All right. Has any member of the jury
19 panel or any member of their family been treated at
20 Spartanburg Medical Center, Carolina Orthopedic &
21 Neurosurgery Associates, MGC North Grove, Greenville
22 Memorial Hospital, Keller Eye Care, Sparkle City Dental, or
23 by Doctor Christopher Chittum, if so, please stand.

24 (WHEREUPON, jurors respond at this time.)

25 THE COURT: Yes, ma'am, your juror number?

1 THE JUROR: 122.

2 THE COURT: And so I guess, as a follow up question,
3 apparently medical records from these groups or someone
4 representing these groups may be testifying in this matter.

5 Would that affect your ability to be fair and impartial
6 in this case?

7 THE JUROR: No, ma'am.

8 THE COURT: All right. Thank you. That's Juror 122.

9 THE JUROR: Juror 115. I've been treated at
10 Spartanburg Regional and also had surgeries at Greenville.

11 THE COURT: And, sir, would that affect your ability to
12 be fair and impartial---

13 THE JUROR: No.

14 THE COURT: ---in this case?

15 THE JUROR: No.

16 THE COURT: Okay. Thank you. Please be seated.

17 Yes, ma'am.

18 THE JUROR: Juror Number 161. I have been treated at
19 Spartanburg Regional and I'm a physician who does do cases
20 there sometimes, and my mother has been treated there, and
21 also at Greenville Memorial.

22 THE COURT: Ma'am, would that affect your ability to be
23 fair and impartial in this case?

24 THE JUROR: No, ma'am.

25 THE COURT: Okay. That's Juror 161, correct?

1 THE JUROR: Yes, ma'am.

2 THE COURT: Mrs. Varn?

3 THE JUROR: Yes, ma'am.

4 THE COURT: Okay. Thank you.

5 Yes, sir.

6 THE JUROR: 42.

7 THE COURT: Yes, sir.

8 THE JUROR: I believe I or my family's been treated at
9 all of them except for the last one but I don't think it
10 will be --.

11 THE COURT: Do you believe that you can be fair and
12 impartial?

13 THE JUROR: Yes, Your Honor.

14 THE COURT: Okay. Thank you.

15 Yes, sir.

16 THE JUROR: Juror 172. I've, I've had surgery at
17 Greenville Hospital.

18 THE COURT: Okay. Sir, would that affect your ability
19 to be fair and impartial---

20 THE JUROR: No.

21 THE COURT: ---in this matter?

22 THE JUROR: No.

23 THE COURT: Okay. Thank you. That's Juror 172.

24 Yes, ma'am, in the back.

25 THE JUROR: 49. I have been treated at several of

1 those places. But I believe I can still be fair and
2 impartial.

3 THE COURT: Okay. Thank you. That's Juror 49.

4 Yes, ma'am.

5 THE JUROR: Juror Number 178. I have---

6 THE COURT: 178.

7 THE JUROR: 178. Neurosurgery and physical therapy.

8 THE COURT: Ma'am, would that affect your ability to be
9 fair and impartial in this case?

10 THE JUROR: No.

11 THE COURT: Okay. Thank you.

12 Yes, ma'am, in the back.

13 THE JUROR: Juror 164. My immediate family have been
14 treated at Spartanburg Regional.

15 THE COURT: Ma'am---

16 THE JUROR: It was---

17 THE COURT: ---would that affect your ability to be
18 fair and impartial in this case?

19 THE JUROR: No.

20 THE COURT: Okay. Thank you.

21 THE JUROR: You welcome.

22 THE JUROR: Juror 121. I've been treated at
23 Spartanburg Regional and Greenville Memorial.

24 THE COURT: 121?

25 THE JUROR: (Nods affirmatively.)

1 THE COURT: Ma'am, would that affect your ability to be
2 fair and impartial in this case?

3 THE JUROR: No, ma'am.

4 THE COURT: All right. Thank you.
5 In the back.

6 THE JUROR: Juror 145. I believe my mother and
7 stepmother have been treated at Spartanburg Regional, and my
8 ex works at Spart -- Spartanburg Regional. I don't think it
9 would affect me.

10 THE COURT: Okay. All right. Thank you.
11 That's Juror 145.

12 Yes, sir.

13 THE JUROR: Juror Number 97. I'm a full-time employee
14 employed by Spartanburg Regional.

15 THE COURT: Currently employed?

16 THE JUROR: Yes, ma'am.

17 THE COURT: Okay. Sir, would that affect your ability
18 to be fair and impartial in this case?

19 THE JUROR: No, ma'am.

20 THE COURT: Okay. Thank you, sir.

21 Has any member of the jury panel have a member of the
22 legal profession within their close family or group of
23 friends?

24 That would be attorney, paralegal, legal secretary, law
25 student, court reporter, work clerk, law clerk, or judge, if

1 so, I need for you to state your relationship, okay, and the
2 occupation of the person.

3 Does that apply to anyone?

4 (WHEREUPON, there was no response.)

5 THE COURT: No response.

6 As I explained to you a little earlier, apparently the
7 incident that, that we are here about involved a motorcycle
8 and an, an automobile. I don't know if it was a truck or a
9 car but one, one of the vehicles was a motorcycle.

10 Does anyone in the jury panel have any preconceived
11 notion, whether positive or negative, about motorcycles
12 and/or the people who ride them, if so, please stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: No response.

15 Has any member of the jury panel ever been injured
16 while operating or riding on a motorcycle?

17 (WHEREUPON, one juror responds at this time.)

18 THE JUROR: Yes, ma'am.

19 THE COURT: Sir, your juror number again?

20 THE JUROR: 145.

21 THE COURT: Okay. And your name again?

22 I'm sorry.

23 THE JUROR: Jack Sellers. I was hit while I was
24 stopped at a red light if that matters.

25 THE COURT: Sir, would that affect your ability to be

1 fair and impartial---

2 THE JUROR: No.

3 THE COURT: ---in this case?

4 THE JUROR: No.

5 THE COURT: Okay. Has any member of the jury panel --
6 do you personally or do you have a close friend or family
7 member that rides motorcycles at least once a month, if so,
8 please stand.

9 (WHEREUPON, jurors respond at this time.)

10 THE JUROR: 178.

11 THE COURT: Yes, ma'am.

12 THE JUROR: I have a cousin who was in a motorcycle
13 club right now downtown, a motorcycle club. I have a cousin
14 that had an accident on a motorcycle.

15 THE COURT: Okay. And this -- you're Juror 178?

16 THE JUROR: Yes.

17 THE COURT: Correct?

18 Ma'am, would that affect your ability to be fair and
19 impartial---

20 THE JUROR: No.

21 THE COURT: ---in this case?

22 THE JUROR: No.

23 THE COURT: Okay. Thank you.

24 Let's go to the back since the mic is there.

25 Yes, ma'am.

1 THE JUROR: 49.

2 THE COURT: Yes.

3 THE JUROR: My brother rides a motorcycle. I believe I
4 could be fair and impartial.

5 THE COURT: Thank you very much. Juror Number 49.

6 Yes, ma'am.

7 THE JUROR: 143. I have several friends that ride
8 motorcycles regularly.

9 THE COURT: Ma'am, would that affect your ability to be
10 fair and impartial in this case?

11 THE JUROR: No.

12 THE COURT: Okay. Thank you.

13 THE JUROR: 115.

14 THE COURT: Yes, sir.

15 THE JUROR: I have a son and several friends that ride
16 motorcycles and I don't think it would affect me.

17 THE COURT: Okay. Thank you.

18 Yes, ma'am.

19 THE JUROR: 122. I have uncles and very close friends
20 that ride motorcycles.

21 THE COURT: Would that affect your ability to be fair
22 and impartial in this case?

23 THE JUROR: No, ma'am.

24 THE COURT: Okay. Thank you.

25 Has any member of the jury panel ever been injured in

1 an automobile accident, if so, please stand.

2 (WHEREUPON, jurors respond at this time.)

3 THE COURT: Okay. I'm trying to be fair and not always
4 start over here but I'm just gonna start over here cause the
5 mic is over here.

6 All right. Yes, ma'am, in the front.

7 THE JUROR: 143. About nine years ago I had a minor
8 injury. It was a collision and I -- my back was -- I had
9 like a sprain.

10 THE COURT: Ma'am, would that affect your ability to be
11 fair and impartial in this case?

12 THE JUROR: No.

13 MR. WILLEY: Can we approach?

14 THE COURT: Yes, sir.
15 Counsel.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 THE COURT: And, as a second -- excuse me.

19 As a second part of this question, was there a claim
20 for damages made.

21 THE JUROR: There was a claim. It never went to Court.

22 THE COURT: Okay.

23 THE JUROR: There was but it never went to Court. It
24 was a minor claim that was settled.

25 THE COURT: Okay. Ma'am, would that affect your

1 ability to be fair and impartial in this case?

2 THE JUROR: No.

3 THE COURT: All right. That's Juror 143.

4 Let me go back to the back.

5 Yes, ma'am.

6 THE JUROR: 49. I have been injured in an automobile
7 accident that resulted in a claim against insurance. And I
8 also need to back up and say that my grandmother was killed
9 in a car accident. My mother was severely injured in a, in
10 a car accident years ago.

11 THE COURT: Ma'am, would that, would that affect your
12 ability to be fair and impartial in this case?

13 THE JUROR: No, it will not.

14 THE COURT: Okay. That's Juror 49, correct?

15 THE JUROR: 49.

16 THE COURT: Okay.

17 THE JUROR: 123.

18 THE COURT: Yes, sir.

19 THE JUROR: I've been involved in a couple of minor
20 accidents where I had minor injuries. No real claim though.
21 Just property damage. Nothing.

22 THE COURT: Okay. Sir, would that affect your ability
23 to be fair and impartial in this case?

24 THE JUROR: No, ma'am.

25 THE COURT: All right. Thank you.

1 THE JUROR: Juror 23. Many years ago I was involved in
2 an accident that I was injured in. A claim was made. It's
3 been settled since. It would not impair my ability to be
4 fair and impartial.

5 THE COURT: Thank you. That's Juror Number 23.
6 Yes, ma'am.

7 THE JUROR: Juror Number 125. I was in an accident
8 back in 2008 which resulted in a back injury. There was a
9 claim but it never went to Court and it never was resolved.

10 THE COURT: Okay. okay. Juror 121.

11 All right, ma'am. Would that affect your ability to be
12 fair and impartial in this case?

13 THE JUROR: No, ma'am.

14 THE COURT: All right. Thank you.

15 THE JUROR: 162. Ms. Wallace.

16 THE COURT: Yes, ma'am.

17 THE JUROR: I was in a car accident when I was in
18 college 20 plus years ago, and I was injured, but it would
19 not affect my ability to be impartial---

20 THE COURT: Okay. Thank you.

21 THE JUROR: ---impartial.

22 THE COURT: Thank you. That's Juror 162.

23 Yes, ma'am.

24 THE JUROR: 178.

25 THE COURT: Yes, ma'am.

1 THE JUROR: I was in a car accident back in April of
2 this year and it's still going on.

3 THE COURT: Okay. Would that affect your ability to be
4 fair and impartial---

5 THE JUROR: No, ma'am.

6 THE COURT: ---in this case?

7 THE JUROR: No.

8 THE COURT: Okay. Thank you. That's Juror 178.

9 THE JUROR: Yes.

10 THE JUROR: Juror 77.

11 THE COURT: Yes, ma'am.

12 THE JUROR: I have been in two accidents.

13 THE COURT: And, ma'am, was there any claim for
14 damages?

15 THE JUROR: Just to the vehicles.

16 THE COURT: Would that affect your ability to be fair
17 and impartial in this case?

18 THE JUROR: No, ma'am.

19 THE COURT: All right. Thank you.
20 Yes, sir.

21 THE JUROR: 145, Jack Sellers. I had a previous
22 accident. I was on a motorcycle and was struck by a car.
23 There was injuries but settled out of Court and it won't
24 affect my decision.

25 THE COURT: You're -- well, can you be fair and

1 impartial, sir?

2 THE JUROR: Yes.

3 THE COURT: Okay.

4 THE JUROR: Yes, Your Honor.

5 THE COURT: Thank you. That's Juror 145.

6 THE JUROR: Juror Number 36.

7 THE COURT: Yes, ma'am.

8 THE JUROR: My daughters were in accident -- accidents.

9 THE COURT: And, ma'am, was there a claim made for
10 damages?

11 THE JUROR: Yes, and it's closed.

12 THE COURT: Would that affect your ability to be fair
13 and impartial in this case?

14 THE JUROR: No, ma'am.

15 THE COURT: All right. Thank you. That's Juror 36.

16 Juror 115, Mr. Owens.

17 THE JUROR: Yes, I've been involved in several
18 accidents, and had several family members involved in them
19 that resulted in insurance claims. I don't think anything
20 went forward.

21 THE COURT: Okay. Sir, would that affect your ability
22 to be fair and impartial in this case?

23 THE JUROR: No, it will not.

24 THE COURT: Okay. Thank you, sir.

25 Has any member of the jury panel been employed by a law

1 firm that handles primarily plaintiff's cases, if so, please
2 stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: No response.

5 Does any member of the jury panel know of any reason
6 whatsoever why he or she should not serve as a juror in this
7 case with particular emphasis being placed on your ability
8 to be fair and impartial to both sides, the Plaintiff and
9 the Defendant, if so, please stand.

10 (WHEREUPON, there was no response.)

11 THE COURT: Okay. Counsel, can y'all come up?

12 (WHEREUPON, a bench conference was held out of the
13 hearing of the jury at this time.)

14 THE COURT: Okay. And so as you-all observed
15 previously, we're going to take 15 minutes now to allow the
16 list to be printed for the attorneys to look over it, and
17 then you-all will come back in for the second selection.

18 Okay. Thank you.

19 (WHEREUPON, a short recess was taken at this time.)

20 THE JUROR: If you-all will come up just a moment.

21 (WHEREUPON, a bench conference was held out of the
22 hearing of the jury at this time.)

23 THE COURT: At this time I will call upon our Deputy
24 Clerk of Court to begin the jury selection process.

25 Thank you.

1 (WHEREUPON, the jury panel was seated at this time.)

2 THE COURT: Counsel, can y'all come up please?

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: Okay. Madam Clerk.

6 (Pause.)

7 THE COURT: Okay. Ladies and gentlemen that have been
8 chosen to serve, we're calling you jury number two for
9 simplicity.

10 Okay. You-all are going to report tomorrow at two
11 o'clock to the Spartanburg County Courthouse, which means
12 that this afternoon and tomorrow we're going to be trying
13 another case.

14 All right. But then this matter will start at two
15 o'clock tomorrow, and the, the bailiffs are going to give
16 you a white sheet of paper with phone numbers on it. But
17 they will also give you the time that you're to report, two
18 o'clock, like the peace sign, two o'clock, and you will be
19 jury number two. You all will park in our, in our new
20 parking garage on Library Street, and come through that
21 entrance into the courthouse, the Library Street on the side
22 of the building.

23 Okay. Now, you-all need to maybe bring a sweater and
24 maybe -- are they allowed to bring snacks over too if they
25 want?

1 THE BAILIFF: In the jury room only.

2 THE COURT: In the jury room only. But so just, just
3 think about it like you thought about this morning. There
4 might be a little bit of down time tomorrow. But we're
5 trying to be as efficient as possible and use your time most
6 efficiently rather than having you show up in the morning.

7 okay. And so you will be there tomorrow at 2:00 and we
8 will be ready to go.

9 Now, a couple of things. Don't talk about this case
10 with anyone. Right now you don't know anything about it.

11 Okay. And to begin discussing it would be unfair to
12 everyone involved in the case. It is a very important
13 matter and you need to get all of the information concerning
14 the case from the courtroom, okay, from the evidence that is
15 presented in the courtroom.

16 So, again, don't do any searches. Don't talk to
17 anybody about it. Not even among yourselves.

18 All right. And so tomorrow, when you-all get there,
19 I'm going to swear y'all in and we're gonna pick a
20 foreperson after y'all get into the courtroom.

21 All right. I'm saying that so, if I don't do that,
22 y'all are gonna say wait, weren't we suppose to do a couple
23 of things before we got started.

24 All right. So, with that, I'm gonna let y'all follow
25 Mr. Alford and Mr. James out into the lobby.

1 Okay. Do they need to call back tonight?

2 THE CLERK: They do not.

3 THE COURT: Okay. Y'all don't need to call back this
4 evening. Just report tomorrow at 2:00.

5 Okay. Thank you.

6

7 (WHEREUPON, this case was in recess for the day.)

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1 Tuesday, July 20th, 2021

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3 THE COURT: Okay. Have y'all already agreed on your
4 exhibits and gotten Pam to premark those?

5 MR. WILLEY: We have not but we have -- we started
6 talking about them just as the question came out. So we --.

7 THE COURT: Okay. Well, y'all carry on with that if
8 you think that would be the most beneficial thing for y'all
9 to do first and then y'all were gonna hand up --?

10 MR. WILLEY: Yeah, we---

11 THE COURT: Where is my notebook on y'all's case?

12 MR. WILLEY: Yeah, we can do that. We have
13 relatively -- sentence actually -- I'm going to get her to
14 mark these as Court's Exhibit and then hand them up.

15 THE COURT: And I, I have received the Defendant's
16 Motions in Limine, and it could be that the Plaintiff has
17 forwarded me something that I haven't opened up today.
18 So --.

19 MR. WILLEY: I'm gonna give you paper --

20 THE COURT: Okay.

21 MR. WILLEY: -- if that's okay.

22 THE COURT: Yeah.

23 MS. MCCUMBER: I can also forward it to you via email.
24 Would you like me to forward it to your email?

25 THE COURT: How about both? That will be fine but the

1 paper will -- I'll put them in my trial notebook. But I
2 would like to be looking at those motions right now.

3 Have you given those to Mr. Coulter?

4 MR. WILLEY: Yes.

5 THE COURT: Okay. Yes.

6 MR. WILLEY: I just need seven Court's Exhibits.

7 THE COURT: For your motions?

8 MR. WILLEY: Yes.

9 THE COURT: You're making your motions Court's
10 Exhibits?

11 MR. WILLEY: That's what I typically do, yeah, since
12 they're not filed since we're making them in Court.

13 THE COURT: Let -- we've got Ms. Martinez here.

14 Ms. Martinez, normally they would just be filed,
15 correct?

16 THE CLERK: Any motions, yes.

17 THE COURT: Okay.

18 THE CLERK: Yes, ma'am.

19 THE COURT: Okay. Rather than being made a Court's
20 Exhibit.

21 And so, right now, I don't object to you handing them
22 up --

23 MR. WILLEY: Sure.

24 THE COURT: -- and we'll just number them like motions
25 one through whatever, and, Mr. Coulter, any objection to

1 that for now?

2 MR. COULTER: No.

3 THE COURT: But when I'm talking about y'all marking
4 exhibits, I'm meaning trial exhibits.

5 MR. WILLEY: Right.

6 THE COURT: Okay. So we can get ahead of the game for
7 tomorrow.

8 MR. WILLEY: Right. We just typically make the motions
9 made in open Court as Court's Exhibits. But we'd rather the
10 Clerk's Office file them, I'm fine with that. I just need
11 them on the record.

12 THE COURT: Yes, sir, I understand.

13 MR. WILLEY: So, 1 through 6 are agreed to and 7 is the
14 only one that we need to talk about.

15 THE COURT: Okay.

16 MR. WILLEY: And I have one oral motion as well.

17 (Pause.)

18 THE COURT: Okay. And so, Mr. Coulter, sir, have you
19 reviewed these seven motions?

20 MR. COULTER: I have, Judge.

21 THE COURT: Okay. And so are we ready to go forward
22 with argument on these?

23 MR. COULTER: Yes, Judge, and I agree with Mr. Willey,
24 as far as the first six goes, I don't have any problem with
25 those --

1 THE COURT: Okay.

2 MR. COULTER: -- as long as the fifth one, which
3 references the prior criminal convictions, as long as that
4 applies to both sides. My client has very remote
5 convictions himself. Provided both sides agree to that and
6 mine as well.

7 MR. WILLEY: Yeah, Your Honor. We agree.

8 THE COURT: Okay.

9 MR. COULTER: So the only thing that's---

10 THE COURT: And, you know, I guess I got ahead of
11 myself. I know y'all are very famous throughout the State.
12 But let's go ahead and identify yourselves for the record
13 please.

14 MR. WILLEY: Your Honor, Roy Willey along with Alexis
15 McCumber for the Plaintiffs and his parents are present, the
16 guardian ad litem, Mr. and Mrs. McDade.

17 THE COURT: Okay. Good afternoon and welcome. Thank
18 you.

19 MR. COULTER: And I'm Mike Coulter representing Roger
20 Caldwell.

21 THE COURT: Okay. Thank you.

22 And so first let me back up and thank you-all for your
23 patience. I know that I've probably -- my assistant has
24 been talking to y'all more than y'all have talked to your
25 own family members in the last week, and we -- for the

1 benefit of the, the parties who were here, we're building a
2 new courthouse and, with COVID being another complicating
3 factor, we are doing our jury selection and qualification at
4 the Spartanburg Auditorium, which is very convenient, just
5 down the street. But not convenient when we're trying to
6 shuffle people back and forth and have a court reporter
7 that's got equipment -- she has equipment moving back and
8 forth. Not that she's ever complained but I just thought it
9 was easier to pick two juries at once, one right after the
10 other, and I kept trying to time everything, and I'm just
11 very poor at that apparently.

12 So -- but we've been in communication with y'all, and
13 kept pushing back the time for y'all to appear today. And
14 thank you for coming to the courthouse. Thank your counsel
15 for being patient.

16 And, Mr. Coulter, thank you, sir, we well.

17 Also, I've been in communication with the lawyers prior
18 to this week and last week even, and have received pretrial
19 briefs, their voir dire, and other documents that have, that
20 have been helpful to me in preparing for the trial.

21 So, with that, as I understand it then, we have seven
22 motions from the Plaintiff and three or two from the
23 Defendant.

24 MR. COULTER: Actually it's two written and then one
25 oral that the Plaintiff's attorney and I have agreed on as

1 well. So, that should be pretty, pretty quick.

2 MR. WILLEY: And I have one additional oral, which is
3 just based on some deposition designations that we received
4 this morning.

5 THE COURT: Okay. okay. All right. So, first, what
6 I'll do, with regard to Plaintiff's Motions 1 through 6, Mr.
7 Willey, what I can have you, I can probably just mark --
8 have these marked as one Court's Exhibit and one, because
9 they're agreed to, and then we'll have Plaintiff's No. 7
10 marked separately. But why don't you go through these first
11 six for the record.

12 MR. WILLEY: Sure.

13 THE COURT: Okay.

14 MR. WILLEY: Thank you, Your Honor.

15 These motions seem pretty straightforward and are
16 really based on experiences with other counsel, not Mr.
17 Coulter, but I make these in every case as a result of those
18 experiences.

19 So, the first motion in limine is just a motion to
20 exclude any reference to the existing -- existence or filing
21 of a motion in limine to attempt to exclude evidence which
22 Mr. Coulter has agreed to.

23 The second is a motion in limine which just excludes
24 any comment regarding attorney advertising or our firm's
25 advertising.

1 The third is a motion in limine to exclude any comment
2 or reference or analogy about the Plaintiff's bar and the
3 trying of tort cases.

4 The fourth motion in limine deals with collateral
5 sources.

6 The fifth motion in limine is, is excluding Plaintiff's
7 public record. He has some prior things that have nothing
8 to do with this matter and Mr. Coulter's client also has
9 some prior public record that doesn't have anything to do
10 with -- directly with this matter at this point.

11 Sixth motion in limine is to exclude hearsay testimony
12 of witnesses by Defendant Roger Caldwell, and this just
13 deals with -- there was a section in his deposition and
14 Mr. Coulter did not represent him at the time. So, I wanted
15 to draw this to his attention so he could instruct him that
16 he can not talk about testimony that was allegedly provided
17 to him by witnesses at the scene. Those witnesses have not
18 been identified in discovery or otherwise discovered and
19 will not be presented at trial. And so he can not talk
20 about what those witnesses see -- saw or allegedly.

21 His testimony is that he never saw the motorcycle until
22 it hit him. And so, during his deposition, he said other
23 witnesses told him that the motorcycle was moving quickly
24 and things like that. And so that's what we're trying to
25 exclude. But that's agreed to. I just wanted Mr. Coulter

1 to clear that up with him.

2 And the seventh motion in limine, which is not agreed
3 to, is to exclude the testimony of, of Mr. McDade.
4 Mr. McDade, during his deposition -- well, first let me give
5 you a little back story.

6 So, this case came to me through a number of attorneys
7 and last was referred to me by an attorney for purposes of
8 litigating it, and another attorney attended the deposition
9 of, of Mr. McDade, and it became evident to him, during the
10 course of that deposition, that Mr. McDade was not competent
11 to testify for a variety of reasons. Mr. McDade could not
12 remember, and these are outlined in our motion, during that
13 deposition very basic information such as his age, his son's
14 age---

15 THE COURT: Are we moving onto the contested motion?

16 MR. WILLEY: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. WILLEY: I apologize.

19 THE COURT: Give me just one minute.

20 MR. WILLEY: Okay.

21 THE COURT: All right. So the -- this -- all right.
22 Plaintiff's Motion, Motions in Limine 1 through 6 will be
23 marked as Court's Exhibit 1-A through G.

24 Okay. And, Tommy, hand those to Pam.

25 I've got a sticker down on that, Pam, so we can do that

1 later.

2 Okay. And so let me confirm, Mr. Coulter, sir, do you
3 agree with the statements by Mr. Willey as to Plaintiff's
4 Motions in Limine 1 through 6?

5 MR. WILLEY: Yes, ma'am.

6 THE COURT: Okay. With the understanding that Number 5
7 will be mutual?

8 MR. WILLEY: Correct.

9 MR. COULTER: Correct.

10 THE COURT: All right. And then, before we get to the
11 meaty things, let me -- I'm just trying to get through the
12 pleasantries.

13 Why don't we see what we can agree to with
14 Mr. Coulter's motions?

15 Okay. Let me find those.

16 MR. WILLEY: And, and I have reviewed those, Your
17 Honor. Now, the first was -- and I may be getting these
18 reversed, but one of the motions was any reference---

19 THE COURT: Well, I, I can hear from him on that.

20 MR. WILLEY: Okay.

21 THE COURT: Okay. Thank you.

22 Let me -- I have a motion in limine to exclude police
23 report and traffic citation.

24 Any objection to that?

25 MR. WILLEY: Yes, but a limited objection. Agree to

1 some of it but not another part.

2 THE COURT: All right. Well, let's move on to
3 something I think we can agree to.

4 Motion in limine to exclude testimony regarding
5 insurance.

6 MR. WILLEY: We, we will agree that insurance will not
7 be uttered for the purposes of establishing liability, which
8 is what, which is what the rule says.

9 MR. COULTER: Judge, I never make this motion in, in
10 limine because I think it's universally accepted that
11 doesn't come up. The last trial I had with Mr. Willey, he
12 made a direct question to my client on the stand about his
13 insurance coverage, okay, and that's why I'm making this,
14 this motion now because I don't want to see that happen
15 again.

16 MR. WILLEY: In, in that case---

17 MR. COULTER: Yeah, the judge ruled that it was
18 improper.

19 MR. WILLEY: That's -- I, I don't recall how the judge
20 ruled. But, in that case, the purpose of it was to show
21 ownership of the vehicle, and it is allowed under the rule,
22 if you read the rule, for that purpose.

23 MR. COULTER: That's absolutely misleading. The judge
24 ruled with me and we talked about whether or not we should
25 instruct the jury or not on the fact about insurance. He

1 did not rule that that was an admissible question at all.
2 So, I'm doing this proactively because I'm just worried,
3 Judge, that's the kind of thing that will come up.

4 THE COURT: Okay. So, counsel, let me go ahead and be
5 clear.

6 Normally, when the word insurance is uttered in any
7 courtroom, it seems like everything stops. My heart skips a
8 beat, okay, and I think the clock on the wall stops. When
9 it happened during jury selection at the auditorium a couple
10 of times by potential jurors, I tried not to show in my -- I
11 tried to have, you know, the poker face. But I really like
12 to try to avoid the word at any cost because you can't
13 unring that bell, and I know it's difficult, and I know, in
14 lots of cases, it's the elephant in the room.

15 But I would prefer that you-all attempt, in any way,
16 okay, not to use the term in the courtroom.

17 All right. Because if you do, and I have to fuss,
18 whether it's your client or a witness, it does not bode well
19 for anyone in the case, okay, and it, and it makes it look
20 like I've been -- got an opinion for or against one party,
21 which I really don't like to do, and you-all will find -- I
22 know that Mr. Willey and Ms. McCumber have not tried cases
23 in front of me yet just because of where you're
24 geographically located, and we haven't been traveling much
25 lately.

1 But Mr. Coulter has been in the courtroom with me, and
2 I will avoid chastising you-all in front of a jury at all
3 costs. But, you know, once that bell is rung, it, it will
4 be extremely difficult to unring that and y'all have put a
5 lot of effort into getting here.

6 Okay. Okay. So, are we agreed right now that you-all
7 are going to avoid using that word?

8 Yes.

9 Okay. Yes.

10 All right. And, Mr. Coulter, sir---

11 MR. COULTER: Yes, ma'am.

12 THE COURT: ---is, is that clear enough for you?

13 MR. COULTER: Yes, ma'am.

14 THE COURT: Okay.

15 MR. COULTER: Yes, it is.

16 THE COURT: Okay. All right. So, now, with the police
17 report and the traffic citation, the law's pretty clear,
18 okay, and I know y'all are experts at what you do. I know.
19 And this is what y'all do.

20 Do y'all have a copy of the document or is there a --
21 do you -- this is something you're proposing, right?

22 And so do y'all have a copy of the citation?

23 MR. WILLEY: Yes. But we're not actually getting in
24 the citation. That's the part that we agreed with. We're
25 only getting in a certified copy of the plea that he paid

1 the ticket.

2 THE COURT: Did---

3 MR. WILLEY: Not the actual citation.

4 THE COURT: Okay. Did he go there and plead or was it
5 like a bond forfeit -- I mean did he pay a fine?

6 MR. WILLEY: He paid a fine.

7 THE COURT: Let me hear from Mr. Coulter on that.

8 MR. COULTER: He paid a fine, Judge. That's exactly
9 right. But there's no admission against interest and the
10 statute is very clear. And I, I mentioned it in, in my
11 brief or my motion in limine. 56-5-6160 states that it
12 prohibits any evidence of a conviction of any person for any
13 violation of the traffic statutes in any Court in any civil
14 action.

15 This was a payment of a fine. I understand there could
16 be an exception if the, if the defendant were to plead
17 guilty in front of a judge. I get that. That's an
18 admission against interest. That's not what happened here.

19 He went up to the clerk, he paid a fine, and he walked
20 away. That's all there is to it. No admission. So, it
21 would be inadmissible.

22 THE COURT: Okay. And so, Mr. Willey, I'm gonna let
23 you tell me what you want to, but my -- so what you're
24 wanting to do is to question the Defendant regarding fault
25 with -- and being cited by a, a law enforcement officer and,

1 and, and basically admitting fault that way?

2 MR. WILLEY: Well, I don't think it's admitting fault.
3 I think he's entitled to explain it under the law, and I
4 agree with Mr. Coulter that, if he had gone to Court and had
5 been convicted, that I would not be able to go -- come in.
6 However, when you plea or when you pay and admit fault and
7 you are not convicted, that can come in as an admission
8 against interest.

9 Further, in this case, we are asking for punitive
10 damages. And so, one of the elements under the punitive
11 damages is, you know, how, how much the Defendant paid as a
12 result of the incident in a fine or civil forfeiture and
13 anything else. And so that's another way that it is
14 relevant to this case.

15 But the Defendant is entitled to explain. He can say,
16 and, and this often happens, yes, I went down there and paid
17 the ticket because I didn't want to deal with it. That --
18 that's his entitlement. I've had clients explain the same
19 thing. But when you go and plea, that is an admission
20 against interest, which is admissible.

21 I agree with him that if he was convicted, which is why
22 I have all my clients go and contest it now, that would not
23 be admissible under the statute.

24 THE COURT: Okay. But, in this matter, did he actually
25 appear in front of a judge?

1 MR. COULTER: No, he did not.

2 THE COURT: So this is a Municipal Court or magistrate
3 level offense?

4 what, what was -- it was---

5 MR. COULTER: It's failing to yield the right of way,
6 Judge.

7 THE COURT: Okay. Failing to yield.

8 MR. COULTER: Paid \$166.00 fine by going up to the
9 Clerk of Court and paying it. I mean I've heard people, you
10 know, describe that in depositions why they didn't challenge
11 it. Well, they didn't want to hire an attorney. They
12 know -- but that gets into a whole different realm and he --
13 there is no admission here. I mean I've never had this
14 argument come up before because the statute is so clear.

15 The first time I've ever heard that trying to get
16 around it by saying oh, it's a plea because he paid a fine
17 when clearly the statute says it's not admissible.

18 MR. WILLEY: Well, I, I don't know, first of all, that
19 he just went to the counter and paid a fine. I don't know
20 if he went before a judge. I don't know the answer to that.
21 It's not in the deposition testimony as far as I recall
22 reading it.

23 So, even if that were the case---

24 THE COURT: Well, do you have the disposition?

25 MR. WILLEY: We do. We have a certified copy of the

1 disposition, and it's a, it's a paid from the Spartanburg,
2 you know, stamped certified copy and it will be here
3 tomorrow. It's not here today cause we didn't want to leave
4 it in the back room but --.

5 THE COURT: Okay.

6 MR. WILLEY: Mr. Coulter has seen it. We produced a
7 copy of it and it is---

8 THE COURT: Okay.

9 MR. WILLEY: ---what I say it is. So --.

10 THE COURT: Okay. Okay. Anything else on that issue
11 and I want to look at that document?

12 Okay. That, that will tell me I think what I need to
13 know.

14 All right. Okay. So, that's the first thing that I'll
15 rule on tomorrow.

16 Okay. All right. So --.

17 MR. WILLEY: And as far as the police report, just to
18 address that briefly, we agree as to hearsay statements.
19 But the officer who conducted the investigation is actually
20 going to come in and testify. And so, to the extent that he
21 uses his police report for his testimony, obviously we think
22 that---

23 THE COURT: Well, to refresh his recollection.

24 MR. WILLEY: I'm not gonna, I'm not gonna put it into
25 evidence.

1 THE COURT: You're not gonna put it in?

2 MR. WILLEY: Right. Right. Right. Right.

3 THE COURT: Okay. All right.

4 MR. COULTER: And I have one last one, Judge, that I
5 think is agreed to. My client went into Roger C. Peace some
6 20 years ago for some alcohol rehabilitation, and they
7 suggested that they won't go into that either.

8 THE COURT: Is that correct?

9 MR. WILLEY: Yes, as long as, you know, he, he doesn't
10 make it relevant, I have no intention of bringing that up.
11 I think, you know, it's not particularly relevant unless he
12 makes it relevant and says I never drank alcohol or
13 something crazy like that. But I don't think that's gonna
14 be an issue.

15 THE COURT: He wasn't charged as a driving under the
16 influence---

17 MR. WILLEY: No, it's not---

18 THE COURT: ---for this, right?

19 There was no allegation about that?

20 MR. WILLEY: It, it would only -- it would only, in my
21 view, be relevant if, if it was used for impeachment for
22 some reason.

23 THE COURT: Okay.

24 MR. WILLEY: But I don't think he's gonna bring it up.

25 THE COURT: Okay. So that's agreed to.

1 Okay. And then you said, Mr. Willey, you have an oral
2 motion?

3 MR. WILLEY: I do. I have an oral motion which deals
4 with some deposition designations that were made by Mr.
5 Coulter today, and in -- this is the doctor's deposition,
6 and, at one point in the doctor's deposition, he's reading a
7 record from another provider. And he says, based on that
8 record, that the Plaintiff, at one point after the wreck,
9 okay, so this is a subsequent follow-up treatment, not at
10 the time of the wreck, but subsequent to the wreck, had THC
11 in his system and there's no chain of custody that's been
12 established on that. There's been no showing that that is
13 relevant in any way to the facts or circumstances of this
14 case.

15 And so we are asking, we are asking that -- we are
16 asking that that portion of the testimony, which is about
17 four lines, just be excluded because, on those grounds, and,
18 of course, it's more prejudicial than probative we think.

19 THE COURT: Okay.

20 MR. COULTER: Judge, I think the reason I think it is
21 relevant is because it was versed to his medical treatment
22 and goes to mitigation of damages. He's smoking cigarettes,
23 smoking marijuana, all against the, the, the direction of
24 his physician because the physician said that if he
25 continued to test positive he was gonna -- wasn't gonna

1 treat him anymore. So, that would be the only reason.

2 I tell you what though. There are some other issues
3 that I think are more important here, and I will be okay
4 with leaving that out.

5 THE COURT: Okay. So, y'all are gonna mention tobacco
6 smoking but not marijuana or -- okay. So, the, the only
7 thing that you're seeking to exclude is THC?

8 MR. WILLEY: Yeah, and the mention of cannabis. There
9 was a question about cannabis, a question about THC. But
10 anything related to marijuana and I can---

11 MR. COULTER: And that's fine, Judge. It's like three
12 lines in the deposition. I don't have any problem with
13 that.

14 THE COURT: All right.

15 MR. COULTER: That's fine.

16 THE COURT: If y'all will be sure to get line and page.
17 Okay. We just don't want to get for something --
18 because this is coming in through --?

19 MR. WILLEY: Video.

20 THE COURT: -- video deposition with Doctor Chittum?

21 MR. WILLEY: Correct.

22 THE COURT: Okay. So y'all are gonna redact?

23 MR. WILLEY: I'm cutting -- my office is cutting the
24 video.

25 THE COURT: Thank goodness to do that.

1 MR. WILLEY: We're not gonna be doing the play pause
2 thing.

3 THE COURT: Okay.

4 MR. WILLEY: I don't do that.

5 THE COURT: All right. And so -- okay. Okay. So,
6 y'all agree on that and y'all just be sure to get on the
7 same page about that.

8 Okay. Okay. Yes, sir.

9 MR. COULTER: No, I'm done. I just didn't know if you
10 wanted to do the verdict.

11 THE COURT: All right. And so is that it for the oral
12 motions?

13 MR. WILLEY: Yes, Your Honor. That just leaves Number
14 7, which you have.

15 THE COURT: Okay. Now I've been told that I have a
16 verdict.

17 Is that---

18 THE BAILIFF: Yes.

19 THE COURT: Is that correct?

20 THE BAILIFF: Yes, Your Honor.

21 THE COURT: Okay. Counsel, is this going to be --
22 okay. So why don't we go ahead and -- I hate for y'all to
23 play musical chairs---

24 MR. WILLEY: That's okay.

25 THE COURT: ---again.

1 MR. WILLEY: That's fine.

2 THE COURT: But, if you don't mind, let's go ahead and,
3 and do that.

4 (WHEREUPON, a short recess was taken in this case at
5 this time.)

6 THE COURT: Okay. Counsel, what I would like for
7 you-all to do, I have a copy of your written motion with the
8 attachments and I understand it's quite lengthy.

9 And so, what I would like -- and we're back on the
10 record with regard to the matter of McDade versus Caldwell.
11 I would like for each of you to summarize your positions
12 understanding that I will review this and the attached
13 documents this evening.

14 All right. So, Mr. -- let's see. Mr. Coulter, sir,
15 you stated that you do not consent to this motion.

16 Is that correct?

17 MR. COULTER: That's correct.

18 THE COURT: All right. So, Mr. Willey, again, sir, I'm
19 going to review it but I'm happy for you to summarize
20 briefly your position and then I will allow Mr. Coulter to
21 do the same.

22 MR. WILLEY: Yes, Your Honor.

23 Briefly, our position is Mr. McDade suffered a
24 traumatic brain injury as a result of this wreck, and that
25 traumatic brain injury resulted in his having a craniectomy

1 where approximately one-quarter of his skull has been
2 removed and is still removed. As a result of his traumatic
3 brain injury, he suffers from retrograde amnesia, fits of
4 emotion and anger. He requires 24 hour care, which his
5 parents provide. He's no longer self-sufficient and able to
6 live on his own. He's no longer able to work as he
7 previously worked as a mechanic. However, he does accompany
8 his father to the shop still each day where his father keeps
9 an eye on him and they spend time together.

10 During the deposition it became evident to the lawyer
11 taking the deposition that Mr. McDade was incompetent, and
12 the lawyer promptly filed for a guardian ad litem
13 appointment based upon that, submitted medical records, and
14 obtained appointment of his mother as guardian ad litem.
15 She is still serving as guardian ad litem.

16 There's evidence in our motion from Doctor Chittum's
17 testimony that any recovery for such an injury occurs within
18 two years of the injury. His deposition was after that
19 date.

20 Just to be absolutely sure about this, I actually went
21 to dinner last night with Mr. McDade and his family, and it
22 is evident to me, I brought his parents to testify if you
23 have any questions for them, that he remains incompetent.
24 As one example, during the meal, while he's able to talk, we
25 were having a conversation and he was asked if he was gonna

1 finish his steak and he said yes, as soon as I find my fork.
2 His fork was in his hand at the time.

3 During the deposition, and we've included excerpts of
4 this, he was not able to correctly testify as to his
5 birthday, his son's birthday, what his employment was prior
6 to the wreck. He, in fact, even testified that he did not
7 suffer a head injury. As is evident from the picture in the
8 motion and you saw him today, he clearly suffered a very
9 significant head injury.

10 And so, for all these reasons, including the testimony
11 of the neurosurgeon, and any testimony that you'd like to
12 have from his parents, we would ask that, you know, in, in
13 the Court's discretion, because he's already been deemed
14 incompetent and appointment of a guardian ad litem, that
15 that continue, that his deposition testimony be excluded,
16 and further that he not testify or be required to testify in
17 this matter, and, in fact, Your Honor, he, he is so
18 emotional about this, it's my intent to not have him present
19 for the majority of the trial.

20 I will bring him at some point so that the jury can see
21 him, and, of course, we will explain to the jury in opening
22 what our intentions are in that regard. But I think him
23 just being here would be disruptive, not, not intentionally
24 to him, as I said he has a traumatic brain injury and can
25 not control it, but that -- that's our intent with respect

1 to this matter and we think, under the law, it's, it's
2 required.

3 THE COURT: Okay. And just to be clear, so Doctor
4 Chittum's testimony in the deposition, would that
5 corroborate your position?

6 MR. WILLEY: Yes. Yes, Your Honor. Doctor Chittum's
7 testimony, which we've included in an exhibit for you of a
8 portion of---

9 THE COURT: Exhibit C, right?

10 MR. WILLEY: I don't know.

11 THE COURT: Well, no, I'm sorry. That's a medical
12 record. Let me keep moving.

13 MR. WILLEY: I believe it's Exhibit F. Let me find it
14 here.

15 Yeah, the Exhibit F. So definitely a -- two years
16 you're more or less a traumatically brain injury person
17 reached maximum medical improvement. He says usually. He
18 later says he holds that to a reasonable degree of medical
19 certainty, all of his opinions, and at this point of the
20 deposition we're past that. And, of course, as I state, the
21 Court has already appointed him a guardian ad litem
22 determining that he can not handle his own affairs.

23 And if the Court is not inclined to grant it on the
24 current record, that's why I brought the parents here today
25 so that you can take testimony from them about his current

1 condition as well. But certainly, at the time of the
2 deposition, based on the record, he was incompetent and we
3 believe that, because of that time he would of reached
4 maximum medical improvement, that that incompetency
5 continues. And, as I noted, it -- it's evident in his lack
6 of ability to carry on daily life and remember really basic
7 things.

8 THE COURT: What is the date of the deposition?

9 MR. WILLEY: Mr. McDade's deposition was taken on
10 November 7th, 2018, and this wreck occurred on
11 October 16th of 2015.

12 THE COURT: What is the date of the appointment of the
13 guardian ad litem?

14 MR. WILLEY: Some---

15 MR. COULTER: It's 2019, Judge.

16 MR. WILLEY: Subsequent -- yeah, subsequent to the
17 deposition as soon as we can get it done.

18 THE COURT: Okay. Thank you.

19 Does Doctor Chittum's deposition or his testimony go as
20 far as saying that this gentleman is incompetent?

21 MR. WILLEY: Doctor Chittum had not seen the gentleman
22 subsequent to the surgeries. So, no, it does not. But what
23 it -- what the testimony talks about is the maximum medical
24 improvement with an injury like his being within that two
25 year timeframe, and the deposition testimony that we have I

1 think clearly establishes not being able to remember very
2 basic facts, that that retrograde amnesia continued beyond
3 three years since the deposition was more than three years
4 from the incident, and the reason I brought them is
5 obviously you can take testimony if you'd like. But it
6 continues today, and, as I indicated, I witnessed it myself
7 last evening and they can testify---

8 THE COURT: But is there additional medical testimony
9 that's going to be presented concerning his competency?

10 MR. WILLEY: No, and I don't think that additional
11 medical testimony is required because the guardian ad litem
12 appointment has not been rescinded. So, the Court has
13 already found him incompetent to execute his own affairs and
14 that continues. That is still in place. And so his mother
15 is here in his place as a Plaintiff in the case.

16 THE COURT: Let me hear from Mr. Coulter.

17 MR. COULTER: Thank you, Judge.

18 You got right to the point of the matter and that is is
19 there medical testimony that he's incompetent and the answer
20 to that is no. Mr. Willey didn't say that. He said yes,
21 there's supporting documentation or supporting testimony.
22 That's not the case.

23 No doctor has ever found him to be incompetent. It --
24 the law, as I understand, requires that, if there's going to
25 be some incompetency, that it be deemed at the time of

1 what's called the transaction. In this case it would be the
2 deposition that was taken back in 2018. He was not deemed
3 incompetent at that time.

4 Okay. He -- it wasn't even an issue. It wasn't even
5 brought up. It was Camden Hodge, Mr. Willey's partner, who
6 was there at the deposition. It was never brought up about
7 this issue and the reason they're wanting to keep the
8 deposition out, Judge, is because the Plaintiff testified
9 that he was going 70 miles an hour before this accident
10 occurred in a 40 mile an hour zone.

11 They're trying to completely gut the defense of this
12 case claiming now -- and, by the way, this case happened in
13 2015. This deposition was taken in 2018. They've never
14 moved for him to be incompetent until today, the day of the
15 trial.

16 It, it, it just -- it's absolutely attempting to take
17 away any -- and, by the way, going back now, I hope you keep
18 this in mind, they're pursuing punitive damages against my
19 client and they want to keep out evidence of significant
20 speed in this 40 mile an hour zone and still punish my
21 client?

22 I mean that's what they're trying to do and, and is --
23 does the Plaintiff have a brain injury?

24 There isn't any question about it. I'm the guardian
25 for a person who has a brain injury too. If he's gonna talk

1 about what his position is, I have one too.

2 Is he incompetent?

3 No.

4 Do I need to help him?

5 Yes.

6 But he's not incompetent. The Plaintiff actually goes
7 to his father's and does break downs of engines. He takes
8 them apart, puts them back together.

9 You've talked about, a minute ago, about evidence of
10 THC in his bloodstream. So, he's able to go out and procure
11 marijuana. Okay. But now he's all of a sudden incompetent
12 and can't testify. I've got---

13 THE COURT: Now -- and the, the record concerning
14 marijuana being in his system is subsequent -- I'm, I'm not
15 sure what records y'all are referring to or Doctor Chittum
16 had been treating him for something else before all this
17 happened, and I know -- all right. So, what is the date of
18 the THC in the system?

19 MR. WILLEY: It, it is subsequent. But THC is actually
20 legal and not only obtainable through marijuana, and there's
21 no testimony or evidence of that in the record.

22 MR. COULTER: Okay. I'll, I'll take that part of the
23 argument out.

24 THE COURT: Okay.

25 MR. COULTER: Bottom line, he said he's going 70 miles

1 an hour. There was no incompetency found at the time that
2 that deposition was taken. There was no objection made to
3 his competency at the time, and today's the first time
4 that's happened in six years. They've had three years since
5 the time of that deposition to make that motion. Haven't
6 done it. And it's my understanding that the, that the, the
7 only Court that can make a determination as to competency
8 based on the case law I saw today is Probate Court.

9 MR. WILLEY: Well---

10 MR. COULTER: Okay. So even this guardian ad litem
11 appointment would not, in effect, deem him to be
12 incompetent. That would have to be done by Probate Court.
13 So, it still hasn't been done, and, and providing testimony
14 from the parents is gonna have absolutely no help to
15 determine that basis at all. It would have to be a medical
16 provider which has not been done.

17 Doctor Chittum was deposed directly. They could of
18 deposed any doctor they wanted to. He's currently under
19 treatment. If they want to do -- done that, they could of
20 done it years ago.

21 MR. WILLEY: So, Your Honor, there's a lot to unpack in
22 there.

23 First of all, Probate Court is not the only Court that
24 can deem someone incompetent or appoint a guardian ad litem.
25 In fact, the order appointed Mrs. McDade as his guardian ad

1 litem is in the record and the Circuit Court did it. In
2 fact, on Page 2 of our record, on Page 2 of our motion we
3 cite the relevant case law. But the Trial Court is the only
4 Court that can determine incompetency for purposes of the
5 testimony. And going all the way back to 1899, a person
6 rendered incompetent for any legal cause may be prevented
7 from testifying after being sworn and their testimony struck
8 from the record.

9 And so actually Mr. McDade was put up and determined
10 incompetent. We could go back and strike that testimony
11 from the record at the Trial Court level. The Trial Court
12 has discretion to do that. That's the State v. Summer case,
13 55 S.C. 32, and the other cases cited in there.

14 And so the idea that well, this is never been brought
15 up, there's no time to bring it up prior to trial because it
16 is a Trial Court's decision. And so that is what we are
17 asking Your, Your Honor to do, and I think, if you read the
18 case law that we have cited there, it becomes very clear,
19 once a guardian ad litem is appointed to a person
20 rendered incompetent, then, then that continues.

21 We have cited as also later in the motion the, the
22 literature on traumatic brain injury, and, and the State v.
23 Summer case goes on, which is on Page 3 of your motion, a
24 person adjudicated incompetent enjoys the presumption of
25 incompetence. And so it would be up to them to show

1 something else.

2 What I will tell you is, if the record is not clear
3 enough, the reason we brought the parents, for example, is
4 what Mr. Coulter just said is totally incorrect. Mr. McDade
5 does not break down engines with his father, and his father
6 obviously can testify to that.

7 THE COURT: Okay. Okay.

8 MR. WILLEY: So --.

9 THE COURT: And so, as I understand it, the order
10 appointing Mrs. Betty McDade as the guardian ad litem for
11 Matthew was signed by the Clerk's Office on December the
12 18th of 2019. I'm assuming that all that was required for
13 that was, I guess, the consent of Mr. McDade.

14 MR. WILLEY: It is the -- so there's a petition that is
15 in there. But it wasn't contested.

16 THE COURT: Right.

17 MR. WILLEY: And so in an uncontested appointment,
18 which the prior---

19 THE COURT: And so appointing someone as the guardian
20 ad litem doesn't equal incompetence. It doesn't make them
21 incompetent. They -- he has agreed for this so happen.

22 Okay?

23 MR. WILLEY: He has agreed that he is that -- well, he
24 has not agreed. There was a petition made---

25 THE COURT: Right.

1 MR. WILLEY: ---and an order signed because the
2 Defendant -- no one, no one opposed that order. That
3 order---

4 THE COURT: Okay. Including Mr. McDade.

5 MR. WILLEY: Correct.

6 THE COURT: Okay. All right. So -- and, and I'm
7 not -- I'm -- what I want to do is read all of this --

8 MR. WILLEY: Right.

9 THE COURT: -- and it is a lot for, for me to read
10 tonight. It's very interesting and I do applaud y'all's
11 efforts and thank you for the hard copy. I'm old fashioned.
12 I do like a hard copy.

13 All right. So, Mr. Coulter, Mr. Willey, I am, at this
14 time, I'm not gonna take testimony on this but let me ask
15 you something.

16 Now, in your openings and the testimony that you-all
17 are calling initially, will this affect that?

18 MR. WILLEY: It, it will, Your Honor, because I feel
19 like if he is to testify, then I need to have him here the
20 entire time so that the jury can observe how brain damaged
21 he is. I mean it's very evident in his motions and his
22 constant fidgeting and that sort of thing, and I think that
23 if he is going to be forced to testify, that it's important
24 that they see that and he may very well be the first
25 witness.

1 I'll also just say this.

2 THE COURT: And, again, he's not being forced to
3 testify. Of course, of course, he can -- I mean there are
4 plenty of actions where plaintiffs and defendants don't
5 testify in Civil Court. I -- no one -- I mean has he been
6 subpoenaed?

7 MR. COULTER: I don't plan to call him cause if, you
8 know---

9 THE COURT: But this is about the deposition testimony?

10 MR. WILLEY: Right.

11 MR. COULTER: That's right.

12 MR. WILLEY: Right.

13 MR. COULTER: And only because, as you recall, if I
14 could just say this, as you recall, on Monday when we did
15 the jury qualification, he was listed as a witness in this
16 case. I assumed, until I got this email at 10:41 this
17 morning, that he was going to be a witness. I've been
18 working on cross-examination on him, you know, for a long
19 time. This is the first notice I got.

20 So now I have to do something regarding his deposition.
21 I'm not gonna call him. I'll just put in his deposition.
22 That's fine.

23 MR. WILLEY: Well, two, two things.

24 One the -- regarding the speed, we have an expert
25 that's gonna come in. It's impossible for -- everyone

1 agrees there was a red light, and everyone agrees where this
2 wreck occurred. And it was impossible for this motorcycle
3 to get to 70 miles per hour before the wreck---

4 THE COURT: Okay.

5 MR. WILLEY: ---and, in fact, just---

6 THE COURT: And that would be up to the testimony that
7 y'all present.

8 MR. WILLEY: Of course.

9 THE COURT: Okay.

10 MR. WILLEY: And I'll just say this from the
11 deposition, just to direct your attention there, he did not
12 say he was going 70. What he said was I was going the speed
13 limit and then he said 70. The speed limit was not 70.
14 It's not 70 on any road in, in that area. So, clearly
15 that's actually another example of, of his incompetence and
16 in, inability to remember basic things.

17 MR. COULTER: Judge, I just want to point out what he
18 said because this is not accurate. It says how fast were
19 you going before you started locking the bike down.

20 I think, if I remember, like 70 something. That's what
21 he said. Not the speed limit. He said 70 something.

22 MR. WILLEY: He also said he was going the speed
23 limit---

24 THE COURT: Yes, sir.

25 MR. WILLEY: ---and I, I can find it.

1 MS. MCCUMBER: He does not---

2 THE COURT: Okay. Okay. Okay.

3 MR. COULTER: Okay.

4 MS. MCCUMBER: He does not---

5 THE COURT: Everybody take a breath. Everybody take a
6 breath.

7 All right. So, the -- I am going to have to consider
8 this and review it, okay, and my, my fear is that that may
9 delay us in y'all doing your openings in the morning when we
10 have to maybe argue this more and have testimony regarding
11 it if I do that.

12 Okay. And so, again, I'm just trying -- I'm thinking
13 about the jury.

14 Okay. And so my, my first question is, is can you-all
15 conduct your openings prior to me ruling on this because,
16 as -- so you want me to exclude the testimony of Mr. McDade
17 from a deposition. I, I don't control whether you would
18 call him in your case in chief.

19 All right. But, again, y'all know your cases much
20 better than I will ever know them. And so I'm just wanting
21 to know that answer right now.

22 MR. WILLEY: I -- and the answer is yes. We need a
23 ruling on this prior to opening because it will affect the
24 case strategy.

25 THE COURT: Of whether or not the deposition can be

1 excluded?

2 MR. WILLEY: Yes.

3 THE COURT: Because you're saying that he was
4 incompetent at the time?

5 MR. WILLEY: Correct. And that is the only available
6 defense to the statement that he read. And so that will
7 have to be addressed prior and, and --.

8 THE COURT: Okay. And I, I wish that -- I know that
9 y'all are gonna worry about your opening statements tonight
10 just like I would. But I really want to review everything
11 before I issue---

12 MR. WILLEY: And that's fine.

13 THE COURT: ---my ruling. And so I will read
14 everything and issue my ruling first thing in the morning.

15 Okay. All right.

16 MR. COULTER: Yes, ma'am.

17 MR. WILLEY: And would you like us to send you a full
18 copy of his deposition?

19 Obviously we've taken excerpts which are in our motion
20 but --.

21 THE COURT: Yes, you can.

22 MR. COULTER: I thought it was attached. I got -- I
23 think it's attached.

24 THE COURT: You've got it or --?

25 MR. COULTER: Yeah, you could have my copy, Judge.

1 THE COURT: Okay. Thank you.

2 Okay. And so anything else before we adjourn?

3 MR. WILLEY: Not from us, Your Honor.

4 MR. COULTER: No, Judge.

5 THE COURT: Okay. All right. Well, thank you all, and
6 due to the late hour, I guess I would suggest that we mark
7 any agreed upon exhibits tomorrow. If you-all have an
8 exhibit list, that might help too.

9 Okay. Have y'all exchanged all of your exhibits?

10 MR. WILLEY: I believe we discussed them all and it's
11 just a matter of marking them.

12 THE COURT: Okay.

13 MR. WILLEY: But we can confer again in the hallway
14 just to make sure. When we come in in the morning, we can
15 get that done.

16 THE COURT: Okay.

17 MS. MCCUMBER: Your Honor, one brief housekeeping
18 matter just with regards to technology in the courtroom.

19 How do we connect to that TV if we want to use it?

20 THE COURT: It would be the equipment that is on that
21 table, and, Pam, we can go off the record now.

22 (WHEREUPON, the motions were marked as Court's Exhibit
23 Nos. 1-A through 1-F for identification purposes only at
24 this time.)

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(WHEREUPON, Court was in recess for the evening.)

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1 Wednesday, July 21st, 2021

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3 (WHEREUPON, Plaintiff's Exhibit Nos. 1 through 5 were
4 marked for identification purposes only at this time.
5 Defendant's Exhibit No. 1 was marked for identification
6 purposes at this time.)

7 THE COURT: Okay. Good morning. Y'all be at ease for
8 just a moment.

9 Okay?

10 (Pause.)

11 THE COURT: Morning, everyone.

12 MR. WILLEY: Morning.

13 THE COURT: I was trying to get settled and make sure
14 you-all were settled.

15 I'm Judge Knie. I believe there's some more folks with
16 us today than were with us yesterday. Welcome.

17 We are on the record with regard to the matter of
18 McDade versus Caldwell is how you-all refer to the case.

19 Okay. Civil Action Number 1863. I'm informed that all
20 of the jurors---

21 THE BAILIFF: Yes, sir, Your Honor.

22 THE COURT: ---are here and I'll, I'll go ahead and
23 explain. Normally they would be using their jury room right
24 outside this door. Like you go out this door and you go to
25 the right. It's right there. And, because of COVID, they

1 are actually using the jury assembly room as their jury
2 deliberation room and, and their room to report to, which is
3 on the far -- located at the far corner of the courthouse,
4 and they have to come through a hallway with the public and
5 single file just like when you were in grammar school,
6 elementary school, with a bailiff at the front and at the
7 end to get here.

8 Okay. And so it, it takes a few moments anytime that
9 we take a break for any reason and I have to do things
10 outside their presence.

11 All right. And, and so I say that just to say that it,
12 it make take a little bit of time for them to get back and
13 forth during the trial. That's the first thing.

14 Secondly, and the attorneys will understand what this
15 means, if there are objections made during the trial, there
16 will be no speaking objections.

17 Okay. I'm gonna ask you to come up here. I turn off
18 the mic and we talk. I have a separate sheet of paper for
19 objections, sometimes sheets of paper, for objections, okay,
20 and then we come back on the record at a break and I put on
21 the record the time of the objection and my ruling and the
22 jury will hear, will hear me say overruled or sustained,
23 okay, and that is to discourage any opportunity to try to
24 get a witness to go one way or the other, okay, during their
25 testimony.

1 All right. Even though that might not be your intent,
2 that might happen.

3 Okay. And so are there -- is there a motion or are
4 there motions regarding sequestering your potential
5 witnesses by either side?

6 MR. WILLEY: No, Your Honor.

7 MR. COULTER: No, Judge.

8 THE COURT: Okay. And so I don't need to be nervous
9 when I can see people entering or exiting and y'all can't.

10 Okay. All right. Now, on, on yesterday afternoon I
11 took up a couple of motions that were not agreed upon and I,
12 I need to go ahead and issue a ruling.

13 With regard to the motion concerning the traffic
14 citation of Mr. Caldwell -- let me find my notes on that. I
15 did, in my review of the other motion that I'm going to rule
16 on concerning exclusion of testimony of Mr. McDade, I did
17 see, at Page 15, the disposition of the traffic citation as
18 being a forfeiture. And so, based on the case of Samuel
19 versus Mouzon, 1984, I am excluding the citation or
20 references to that during the trial, and I believe that
21 y'all said y'all had a certified copy of that, right?

22 MR. WILLEY: We do. It's marked.

23 THE COURT: And I, and I don't -- I mean I'm happy to
24 look at it but I think this, this states the, the
25 disposition.

1 Is there any other argument -- yes, sir.

2 Any other argument with regard to that motion by the
3 Plaintiff?

4 MR. WILLEY: The only thing that I would say, Your
5 Honor, is that in the Defendant's deposition he said that
6 he, he paid the ticket and he, he wished that he had fought
7 it but that he did not. And so I think, based on the
8 deposition testimony and the payment of the ticket, that's
9 an admission against interest that should be presented to
10 the jury. But I understand Your Honor's ruling based on the
11 case you've cited.

12 THE COURT: Yes, sir, and this shows Judge Kesler.
13 Judge Kesler is a magistrate downstairs.

14 Okay. But it, it, it also shows forfeiture of a
15 criminal traffic under this printout, and this looks -- this
16 is a different document or in a different format. But both
17 of the, both of the documents that I'm looking at show the
18 word forfeiture.

19 Anything else on that, Mr. Coulter?

20 MR. COULTER: Judge, I'm a little concerned. I didn't
21 know that had been marked, and I certainly don't want that
22 to get confused with the -- with other things. I, I did not
23 agree to have that marked.

24 THE COURT: Okay.

25 MR. COULTER: And so I just want to be sure that that's

1 not part of any---

2 MR. WILLEY: And, based on your ruling, we can unmark
3 it I guess.

4 THE COURT: Well, what, what you can do, and I know
5 it's hard to premark things if y'all haven't agreed to
6 everything, but what we'll do at the end, the court reporter
7 will go through with y'all if one, five, ten, and eleven
8 come in and then put on the record that the others were not
9 entered.

10 Okay. All right. So, now, with regard to the motion
11 concerning exclusion of testimony of Mr. McDade due to him
12 being incompetent, I, I read everything, did a little bit of
13 research myself last night regarding this issue. And based
14 on the arguments that I heard yesterday, there's no medical
15 testimony, no medical evidence, to state that Mr. Caldwell
16 was incompetent now or during -- at the time of his
17 deposition, which is the way I interpret the law, that it
18 would have -- his determination -- because that, that is
19 something that can be changed.

20 Okay. That is a status, as I understand it, that can
21 change and -- but as of the date of his deposition, November
22 the 7th of 2018, there is not any medical evidence at or
23 around that time to show that he was incompetent.

24 Am I correct in that, counsel?

25 MR. WILLEY: No, Your Honor. I disagree with that.

1 THE COURT: Okay. Is there medical evidence stating
2 that he is incompetent and was there an action -- any
3 petition in Probate Court to have him determined to be
4 incompetent?

5 MR. WILLEY: Well, competency is a question for the
6 Trial Court. There's medical testimony about his injury and
7 the extent of his injury and---

8 THE COURT: Sir -- no, sir. You've asked me to
9 determine that he is incompetent and that he was incompetent
10 on the date of his deposition three years ago, and I'm
11 asking if there is any -- again, cause yesterday you said
12 there wasn't other than a statement from Doctor Chittum that
13 his medical condition is unlikely to change after two years.
14 I think that's what he said.

15 Right?

16 MR. WILLEY: Correct.

17 THE COURT: And so, sir -- and, again, don't think I'm,
18 I'm, I'm being overly short with you. But we've got a lot
19 to do in the next three days.

20 MR. WILLEY: Right.

21 THE COURT: Okay. All right. And---

22 MR. WILLEY: Sure.

23 THE COURT: ---I spent a lot of time on this last
24 night. I understand this motion was requested two weeks
25 ago. I requested all pretrial motions to be sent to me two

1 weeks ago.

2 Do you remember that?

3 MR. WILLEY: I do, I do not recall that.

4 THE COURT: Okay. There was---

5 MR. MCCUMBER: I apologize.

6 THE COURT: ---an email from my office asking for any
7 pretrial motions, and this motion was served yesterday on
8 opposing counsel yesterday morning via email.

9 Correct?

10 MR. WILLEY: Yes, it was done -- it was finished
11 yesterday.

12 THE COURT: Morning. Okay. Yes.

13 Okay. And so when I got it yesterday afternoon for the
14 first time --

15 MR. WILLEY: Right, which is when I got---

16 THE COURT: -- around 4:30 or five o'clock, then I have
17 reviewed this.

18 Okay?

19 MR. WILLEY: After I met with Mr. McDade, he, he---

20 THE COURT: Yes. Yes, sir, I understand and I
21 understand that y'all are very busy and you've got a lot of
22 balls in the air. There's no jury in here right now.

23 MR. WILLEY: I understand.

24 THE COURT: Okay.

25 MR. WILLEY: I understand.

1 THE COURT: But, sir, we've got a lot to do.

2 MR. WILLEY: Right.

3 THE COURT: And, and so, I am telling you that my
4 understanding of the law is in order to have someone found
5 to be incompetent, not having an agreement about a guardian
6 ad litem appointment that will expire after this case ends.

7 Okay?

8 MR. WILLEY: Right.

9 THE COURT: All right. I understand that his mother
10 has been appointed as his guardian ad litem for the purposes
11 of this litigation, okay, and that, and that was not opposed
12 by counsel.

13 MR. WILLEY: Right.

14 THE COURT: But -- but, sir, I don't have the authority
15 to find him to be incompetent, all right, first.

16 Secondly, you haven't presented me with any evidence to
17 show that he is, and, in your brief, you're asking me to, to
18 schedule a hearing to find him incompetent?

19 MR. WILLEY: Well, the alternative relief is, if you
20 don't believe on the record that there is enough evidence,
21 which we submit there is, but I understand your position on
22 that, then I would ask you to schedule a hearing, and we
23 would subpoena his psychiatrist who is---

24 THE COURT: Okay, sir. This case is six years -- I
25 mean the facts of this case are six years old.

1 MR. WILLEY: Right. We can do it today. I mean we
2 could do a hearing today. but---

3 THE COURT: No. No, sir, I'm going to deny the motion.
4 Spec -- respectfully with regard to that.

5 But, again, putting on the record, sir, I am denying
6 the motion based on my review of everything that, that has
7 been submitted and, and not going to exclude his deposition
8 testimony.

9 Now, it's up to you whether or not you call him in the
10 trial of the case. It's up to you or opposing counsel. But
11 I'm not excluding the deposition testimony, which I'm
12 assuming would be used for the purposes of impeachment.

13 Okay. I, I don't -- I'm assuming that. I don't know.

14 But let me hear from Mr. Coulter.

15 MR. COULTER: Judge, if, if, if they're not gonna be
16 calling him as a witness, I sent them the excerpt that I'd
17 like to present to the Court or to the jury, which I think
18 would be a proper use of a deposition in any respect. I
19 mean that is that he made this statement that he was
20 traveling 70 miles an hour before he laid his bike down. So
21 --.

22 THE COURT: Was this deposition taken for discovery
23 purposes?

24 MR. COULTER: It was.

25 THE COURT: Let me hear from you about the admission of

1 the deposition.

2 MR. WILLEY: I, I don't believe that the admission of
3 the deposition is appropriate under those circumstances. I
4 think the deposition, as Your Honor stated, could be used
5 for impeachment if he was called as a witness. But I mean,
6 honestly, I mean Mr. McDade is here. His testimony -- I
7 mean he could get on the stand, and I'm not -- this is not
8 hyperbole and say he was going 2 miles an hour, saying he
9 was going 200 miles per hour. He doesn't remember. He has
10 no -- he has retrograde amnesia.

11 THE COURT: Okay. Then that can go to the weight of
12 the evidence.

13 MR. WILLEY: It, it could.

14 THE COURT: He can say that he doesn't remember. I'm
15 assuming---

16 MR. WILLEY: But I don't think the -- you could just
17 cherry-pick a statement out of a deposition and submit for
18 the jury. I think that would, that would be improper unless
19 he was testifying.

20 MR. COULTER: Judge, I think that the use of the
21 deposition is pretty broad and wide open. Now, we can, we
22 can go ahead and call him as a witness. That's fine. I can
23 call him as a witness. But all I'm wanting to do is get to
24 this meat of this, this issue, and I'm not trying to put him
25 in a bad spot or make anything difficult.

1 He said -- we said, said what he said and I think it
2 should be presented to the jury. If they're gonna require
3 me to call him as a witness, then I'll call him as a witness
4 but I think the use of a deposition is very, very broad, and
5 I could do it, you know, simply publishing it or, you know,
6 the other way. I think it's simpler the, the first way and
7 that is publishing it. But if they object to that, then
8 I'll call him as a witness.

9 THE COURT: I think you're gonna have to call him as a
10 witness.

11 MR. COULTER: That's fine.

12 THE COURT: Okay. I don't think that you can just put
13 a statement in the -- if the witness is here and available.

14 okay?

15 MR. COULTER: Sure.

16 THE COURT: All right. And so you-all understand my
17 rulings?

18 MR. WILLEY: Yes.

19 THE COURT: Okay. Anything else before we have the
20 jury come in?

21 MR. COULTER: Unfortunately, Judge, my client is not
22 here. He was confused as to the time. I'm not asking the
23 Court to wait. I'm just letting you know that he's on his
24 way. I've got my phone off. I'm hoping that he knows where
25 to go but I'm just letting the Court know.

1 THE COURT: Okay. Did he think we were starting at
2 9:30?

3 MR. COULTER: I'm not sure what his complication was.
4 I called him four or five times this first morning. Got him
5 on the fifth time.

6 THE COURT: Okay.

7 MR. COULTER: So --.

8 THE COURT: Okay. And that would be Mr. Caldwell?

9 MR. COULTER: Caldwell.

10 THE COURT: Okay. And so the gentleman in the
11 courtroom behind -- I don't know any of these folks.

12 So, he's not Mr. Caldwell?

13 MR. COULTER: No.

14 THE COURT: Okay. All right. All right. So what I
15 was going to do anyway is give y'all a chance to catch your
16 breath for just a few minutes. I told y'all that I would
17 rule on these matters before y'all got started and that it
18 may impact your opening statements. I do have a brief
19 opening that I give that maybe takes about 10 minutes, and
20 then we will start with the Plaintiff and with Mr. Coulter.
21 I can introduce y'all if y'all want me to again, okay, since
22 it's been a couple of days.

23 So why don't y'all take a few minutes, get some water,
24 use the restroom, and, Mr. Coulter, you can step out and see
25 if you can find him.

1 okay?

2 MR. COULTER: Yes. Yes, ma'am.

3 THE COURT: And to your folks that are here with you,
4 once we start the opening statements, even though this is
5 not a criminal case, I traditionally don't like for folks to
6 come in and out. So, if y'all -- and openings usually take
7 at least an hour, maybe more.

8 Okay. And, and so I just want y'all to know that, if
9 y'all do need to use the restroom or step out, now might be
10 a good time for y'all to do it.

11 okay. All right. Thank you.

12 MR. WILLEY: Your Honor?

13 THE COURT: And then we'll bring the jury around.

14 MR. WILLEY: Your Honor, as you're considering, I know
15 it's up to you, I have no issue with waiting for
16 Mr. Coulter's client to get here. I mean I've been there
17 before. So, I don't mind but it's obviously up to you.

18 THE COURT: Okay. Well and, again, I'm not saying that
19 we will wait. It, it -- I don't know that it will have --
20 but right now why don't you go out and give me up -- an
21 update.

22 okay?

23 MR. COULTER: I'll try, Judge, yes.

24 THE COURT: All right.

25 MR. COULTER: Thank you.

1 THE COURT: And we'll be at ease for about 10 minutes.
2 okay.

3 (WHEREUPON, a short recess was taken at this time.)

4 THE COURT: Okay. If y'all are ready, we are now going
5 to bring the jury in.

6 Are these folks behind you witnesses or attorneys or---

7 MR. WILLEY: This is Matthew Foss. He's an attorney at
8 my office, and this is Jerry McDevitt.

9 MS. MCCUMBER: He's our expert.

10 MR. WILLEY: He's an expert reconstructionist.

11 THE COURT: Okay.

12 MR. WILLEY: From Mount Pleasant, right.

13 MR. McDEVITT: Yes, ma'am.

14 THE COURT: All right. Thank you. Well welcome again,
15 and unless there's -- and what I'm going to do, after -- and
16 for the party's understanding, I know the attorneys
17 understand, but I instruct the jurors not to begin
18 deliberations, not to talk about the case, to do so -- and
19 I, you know, I sound like a broken record I say it so many
20 times during the trial. But I, I say that now to tell you I
21 will select the foreperson rather than them having to take a
22 break to do that to go back for at least, at least 30
23 minutes. But I'm gonna do it a little later in the, in the
24 day.

25 Okay. And I'm gonna say to the clerk don't let me

1 forget to do that.

2 All right. So, unless there's anything else, we will
3 now have the jury come in.

4 Okay.

5 THE BAILIFF: Yes, ma'am.

6 THE COURT: And Mr. Plexico understands that the
7 Defendant and another gentleman will be coming in that door
8 at some point.

9 Okay. And I have everybody rise and sit, okay, when
10 the jury comes in, in and when they exit.

11 MS. MCCUMBER: Your Honor, what do you want us to do
12 about masks?

13 THE COURT: You-all will wear them -- okay. One more
14 thing. You-all will wear them unless you're speaking and
15 this podium needs to be moved back. I didn't know it had
16 been moved forward.

17 MS. MCCUMBER: Sorry. The only reason I moved it
18 forward is cause I use my phone for like a remote.

19 THE COURT: I need for you to move it back---

20 MS. MCCUMBER: Okay.

21 THE COURT: ---to the other corner right there.

22 Okay. And you can use your phone.

23 MS. MCCUMBER: It doesn't work back there.

24 THE COURT: It doesn't work back there?

25 MS. MCCUMBER: It's, it's finicky. For the remote to

1 my laptop, it just, for some reason, doesn't work. That's
2 the only --.

3 THE COURT: Okay. Well see how far you can move it
4 back with it working.

5 MS. MCCUMBER: It's, it's fine. Roy will do it for me.
6 No big deal.

7 MR. WILLEY: You can test it again.

8 THE COURT: And the witness stand will be wiped off,
9 sprayed after each witness.

10 Okay?

11 MS. MCCUMBER: Okay.

12 THE COURT: So, we're fine.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE BAILIFF: All rise.

16 THE COURT: Good morning. I am Judge Knie and it's
17 nice to see you-all again. You look very different in this
18 close-up. You-all have found your way to the right
19 building. You've found parking places obviously. And so
20 it's all downhill from here.

21 Okay. I know you-all received a phone call not to be
22 here yesterday but to be here this morning, and I hope that
23 didn't cause you-all too much inconvenience. We were trying
24 to, again, be efficient with your time. The lawyers,
25 however, were working very hard yesterday and they were here

1 with me for most of the afternoon and into the evening.

2 Okay. Now, a couple of things before we get started.

3 I want to make sure that our alternate, Ms. Bynum, is seated
4 in that chair, and, ma'am, that's where, where you will

5 remain throughout the trial unless we need for you to become

6 part of the jury. But you will go on breaks. You will be

7 in the jury room with everyone just like a regular juror.

8 But if, if you are not called into duty at the conclusion of
9 the trial, before you-all begin your deliberations, Ms.

10 Bynum will come out.

11 Okay. Don't let you forget that either. Okay.

12 All right. Now, so, before we get started, I need for
13 you-all to be sworn in by our clerk. And so, our deputy
14 clerk for Common Pleas, Ms. Martinez, will swear you-all in
15 at this time.

16 Okay. If you-all will please rise.

17 (WHEREUPON, the jury panel was placed under oath at
18 this time.)

19 THE COURT: Okay. Now, again, since it's been since
20 Monday that I introduced these folks to you, I thought I
21 would do it again. This is the civil action of Matthew
22 McDade versus Roger Caldwell. Action Number 1863. And
23 seated at Plaintiff's table are attorney Ms. McCumber on the
24 end, and attorney Mr. Willey on the other end, all right,
25 and I believe that his client is there with him as well as

1 his client's parents.

2 Okay. All right. And then -- you may be seated. And
3 then over here we have Mr. Coulter who represents
4 Mr. Caldwell, and I understand that Mr. Caldwell is gonna be
5 here in just a minute. So --.

6 MR. COULTER: That's right.

7 THE COURT: All right. And, and so, with that, I want
8 to give you-all some, some housekeeping rules before we
9 begin.

10 Now you-all already know one of them, that you-all are
11 to be prompt because we can not begin until y'all are here,
12 and the bailiffs communicate with me regularly beginning --
13 at about 8:30 this morning I began asking. You know, people
14 kind of show up early and whatnot, how it's going, is
15 everybody here, was there any emergency with anyone, and I
16 was also made aware of the time that everybody got here and
17 you-all were very prompt and I really appreciate that.

18 The next thing is that you-all are not going to discuss
19 this case even with each other while you're hearing
20 testimony and evidence. You will not begin discussing the
21 case until you have all of the evidence and you go into your
22 jury room and begin deliberations. To do anything
23 otherwise, whether you're talking with your spouse about it,
24 a friend, a co-worker, a child, or each other, would be
25 unfair to these parties because you're not going to hear the

1 whole story and receive all of the evidence until the case
2 is concluded.

3 All right. And, and so, again, out of fairness to
4 everyone, please listen attentively, which you-all seem to
5 be doing right now, and give everyone your full attention.
6 Don't do any independent research. Don't look up any
7 attorneys or parties or terms or go to a location. Again,
8 to do so would be unfair to everyone.

9 All of the evidence that you need will be provided to
10 you from this courtroom and from this witness stand or by
11 exhibits that are agreed to come in or either that I rule
12 will come in during the case.

13 Okay. Now, throughout the case, you may hear that the
14 attorneys are coming up and talking to me, and they may say
15 Your Honor, we've got something we need to take up
16 off-the-record, and they'll come up here and talk with me.
17 And there may be some things you-all don't need to hear, and
18 that's the reason that we're doing that, okay, and that
19 happens in every trial.

20 All right. So, in just a moment I am going to give
21 you-all some pre -- some more preliminary charges is what we
22 call them before we have what is called opening statements
23 from the lawyers, and also, a little later in the day, I
24 will choose your foreperson and that person is going to be
25 the person that sits right here in the first chair.

1 Okay. Now, anything counsel before I begin with my
2 initial, excuse me, my initial remarks?

3 MR. WILLEY: Nothing from the Plaintiff, Your Honor.

4 MR. COULTER: Not from, not from the defense, Your
5 Honor.

6 THE COURT: Okay. Thank you.

7 And so, I, I also want to explain to y'all, and I think
8 y'all will understand, we've tried to be extremely careful
9 because of COVID and that's the plexiglass around you-all
10 and our deputy clerk is going to wipe down this witness
11 stand before and after each witness and she has already done
12 that this morning.

13 Further, the attorneys, it's not that they don't want
14 to be close to you, they're following my instructions, and
15 they are going to stand at least this far away from you.

16 All right. Any exhibits that are placed into evidence,
17 we're not going to pass those around right now. Anything
18 that is placed into evidence will be given to you at the
19 conclusion of the case and brought to you into your
20 deliberation room.

21 And so, if there's a photo or something, we're not
22 gonna be passing it right now because of two things. You
23 need to be paying attention to the next testimony, all
24 right, and it takes a while to pass evidence to 13 people.

25 All right. But you will have an opportunity to have

1 all of that with you in your deliberation room or if there's
2 something, I don't know, that is going to be maybe part of a
3 presentation on the computer, it may be that you'll need to
4 come back in here and review it. Again, I'm, I'm not
5 exactly sure how the evidence is going to be presented to
6 you completely but don't worry about the fact that our court
7 reporter is keeping the exhibits next to her. She is
8 marking them during the trial.

9 Okay. So, this is our court reporter, Mrs. Green, and
10 she is taking down everything. She is the hardest working
11 person in the courthouse. She had to take her equipment
12 over to the auditorium and then bring it back over here and
13 set up. We are a Court of record. And so there is a
14 recording and a transcript being made of everything that's
15 being said.

16 Okay. And, further, you-all have met the bailiffs.
17 Ms. Jones is here. Mr. Alford is there, Mr. Plexico, and
18 then our summer intern, who is the happiest bailiff I've
19 ever seen, he wants to be a lawyer one day or a police
20 officer I think, right?

21 Either one?

22 THE BAILIFF: Lawyer.

23 THE COURT: Yeah. And he, he's excited to be here.

24 And so -- and we also have a deputy here and I've
25 already explained Mrs. Martinez.

1 So, again, there will be breaks midmorning for about 15
2 minutes. You-all will return to your room. You can use the
3 restroom, get some water or coffee, and then we'll come back
4 in. There will be a lunch break that will be probably an
5 hour and 15 minutes to an hour and a half in the middle of
6 the day, and then they'll be an afternoon break
7 midafternoon, and I will do my best to let y'all get out of
8 here by five o'clock everyday. I will try to keep y'all
9 informed in case anyone needs to make a phone call about
10 that if we're gonna go over 10 or 15 minutes.

11 Okay. So, if we're in the middle of a, of a witnesses
12 testimony that will end by 10 after 5:00, we will do our
13 best to do that. But I'm not gonna keep y'all here late
14 unless it is absolutely necessary.

15 All right. And so now, before we begin this trial, I
16 want to tell you that this trial probably will be different
17 from what you might expect. Many people do not have the
18 chance to attend actual Court sessions as you-all are doing
19 now and may think, from watching television, or movies, or
20 reading books, that trials are always full of high drama,
21 intense action, and rivetting circumstances. While all of
22 these things may be true at times, this trial is not for
23 entertainment.

24 It is a fundamental part of our democracy, an effort to
25 make sure that justice is done between the parties before

1 the Court. Making sure that justice is done is often slow,
2 deliberate, and repetitive, the opposite of what you may
3 have seen on television or in movies or read in books.

4 This courtroom is a place of honor dedicated to the
5 protection and preservation of citizen's rights through what
6 many have called the greatest justice system ever created.
7 The attorneys appearing before you are advocates for the
8 parties that they are representing. But first and foremost,
9 they are officers of the Court sworn to uphold the integrity
10 and fairness of our judicial system and to help you in the
11 search for the truth. You should expect them to be
12 professional, competent, and ethical in the representation
13 of their client's interest.

14 Remember that you have taken an oath to try the case
15 and reach a fair and just verdict, and you are also expected
16 to be professional, reasonable, and ethical. Thank you
17 again for accepting the important responsibility of jury
18 service and for your contribution today to our justice
19 system.

20 Now, what I say to you now is meant to serve as an
21 introduction to the trial of the case. These remarks are
22 not a charge on the law in this case. I will instruct you
23 on the law at the end of the trial before you retire to
24 decide the case.

25 Now -- and, and the order of the trial is you will hear

1 opening statements from the attorneys, and then you will
2 hear from witnesses, first from the Plaintiff and then from
3 the Defendant, and then you will have closing arguments and
4 then I will charge you on the law that you apply to the
5 facts, okay, and then you go into your jury room, and I'll
6 give you the verdict form, and one -- the foreperson will
7 complete that but your verdict has to be unanimous.

8 All right. Now, you have been selected as fair and
9 impartial jurors whose purpose is to find and determine the
10 facts. You are the sole judges of the facts. If at anytime
11 I make any comment regarding the facts, you must disregard
12 that comment. You are to determine the facts from the
13 testimony you hear and any other evidence that is presented.
14 You should not be influenced by any opinions or statements
15 you may have heard outside the courtroom.

16 It is especially important that you perform your duty
17 of determining the facts diligently and conscientiously
18 because, ordinarily, there is no way to correct an erroneous
19 determination of the facts by a jury. When you comply with
20 your oath to impartially determine the facts of the case,
21 you will have fulfilled your duty as jurors and no one will
22 have the right to criticize your verdict.

23 On the other hand, and with equal emphasis, the same
24 law that makes you the judges of the facts makes me the
25 judge of the law. The law is given -- that is given by the

1 Court -- I'm sorry. The law, as given by the Court, is the
2 only law you may consider. You must accept and follow it
3 even though you may disagree with it.

4 I can not tell you what the facts are and you can not
5 disagree with me about what the law is or what it should be.
6 Your job is to take the law as I give it to you and apply it
7 to the facts as you find them from the testimony of the
8 witnesses and any other evidence that is presented. After
9 doing that, you will render your verdict under the solemn
10 oath that you took as jurors.

11 Until I advise you to begin your deliberations you must
12 not discuss the case with anyone. That would, again,
13 include family members, friends, coworkers, or your fellow
14 jurors, and do not do any research regarding this action,
15 whether that be on a cell phone, a blog, a newspaper, the
16 media, and, of course, you-all -- this isn't a case where
17 you-all are gonna be kept overnight in a hotel, that kind of
18 thing that you see on movies.

19 And so, in the evenings, at your lunch break, in the
20 mornings before you come here, please do not do any research
21 about the case, and that would include research concerning a
22 party, a witness, an attorney, a Court officer, news
23 accounts about the case, research on any topics raised, and
24 any topics you may think would be helpful in deciding the
25 case or any testimony presented by any witness.

1 During the trial, do not read, listen to, or watch any
2 news reports about the case. And, again, this would be
3 anything on television, newspapers, in a blog, or any other
4 source. After the case is submitted to you, you must
5 discuss it only in the jury room with your fellow jurors.

6 The attorneys and parties in this case have been
7 advised that they are not to talk with you-all at all. And
8 so, if you see them coming in and out of the building, if
9 they're going to the restroom, if y'all are going to the
10 parking lot, don't think that they're being rude by not
11 speaking to you. That is very serious. And they are
12 following my instructions in not speaking with you.

13 All right. It is important that you keep an open mind
14 and not decide any issue in the case until all of the
15 evidence has been presented and the parties have made their
16 closing arguments and I have instructed you on the law.

17 Now, in just a moment, as I explained, the lawyers are
18 going to make what is called an opening statement. They
19 will explain to you the issues in the case, and I want you
20 to understand that what they are telling you, during these
21 opening statements, is not evidence in the case.

22 Okay. It is their contention as to what the issues
23 are. The evidence in this case will be presented to you by
24 the testimony of sworn witnesses from the witness stand
25 and/or exhibits that may be introduced into evidence.

1 Now, as I explained, from time to time during the
2 trial, you may hear one of the lawyers say Your Honor, can
3 we approach, I believe we have a question that we need to
4 take up at the bench. Again, that is normal and what we're
5 trying to avoid is sending you-all back to your jury room
6 every time that happens.

7 Okay. So, so, don't, don't be concerned about that and
8 especially it may be necessary for me to make a statement
9 and that may -- I'm not suppose to tell you what I think the
10 facts are, and I don't want y'all to overhear something and
11 think that I have made a -- that I have an opinion about the
12 facts.

13 All right. Now, in terms -- in determining what the
14 facts are in the case, you must decide whether or not the
15 testimony of the witnesses is believable. It will be my
16 responsibility to rule as a matter of law as to whether
17 certain testimony is admissible. But once the testimony is
18 admitted, whether or not you believe it is solely for you to
19 determine.

20 Now, in deciding whether to believe a witness, you have
21 a right to consider whether the witness has an interest in
22 the result of the trial, whether the witness is prejudiced
23 toward either the plaintiff or the defendant, the
24 opportunity for the witness to have seen the matters and
25 things about which the witness may testify, and the way the

1 witness acts on the witness stand. You have the right to
2 consider anything that is in the record that will help you
3 evaluate the testimony of the witnesses. That means it is
4 your duty to pay close attention to the witnesses, to
5 observe the witnesses, to listen to them, and pay close
6 attention to the attorneys, attorneys and to me. Don't let
7 your thoughts wonder but pay attention to the testimony so
8 that, at the end of the trial, you will be able to determine
9 what the true facts are, to apply the law to those facts,
10 and render your verdict.

11 All right. Now, in order to preserve everyone's
12 rights, I will give the parties an opportunity to object to
13 anything that I have just said to you.

14 Are there any except -- exceptions to anything that I
15 have said to the jury by the Plaintiff?

16 MR. WILLEY: No, Your Honor.

17 THE COURT: By the Defendant?

18 MR. COULTER: No, Your Honor.

19 THE COURT: Okay. All right. And so we will now have
20 opening statements by the Plaintiff.

21 Okay.

22 MS. MCCUMBER: Thank you, Your Honor.

23 May it please the Court?

24 THE COURT: Yes, ma'am.

25 MS. MCCUMBER: Good morning.

1 All right. Drivers are never allowed to needlessly
2 endanger others on the road. Oh, sorry, that's my child.

3 Drivers are always suppose to yield the right of way
4 when turning left and keep a proper lookout for others on
5 the road. If a driver fails to follow these simple common
6 safety rules, and, as a result, somebody is injured, well
7 then that driver is responsible for that harm.

8 Now, let me tell you the story of what happened in this
9 case. Go back with me almost six years to October 16th,
10 2015. It's a Friday night here in Spartanburg just a little
11 after 9:00PM. A driver is driving north in his 2001
12 Mitsubishi Galant to go meet a lady friend, and then he gets
13 a phone call and she has broken off their date. So, he
14 turns around and he is then heading south on Boiling,
15 Boiling Springs Road.

16 He sees a gas station, Pure Gas Station up on the left,
17 and he decides he wants to stop there. So, his eyes are on
18 the gas station. He proceeds left. He sees traffic coming
19 his way but he thinks he can make it when bam, a collision
20 occurred. He collides with an innocent motorcyclist.

21 That innocent, innocent motorcyclist is Matthew McDade,
22 my client, and that is his mama, Betty McDade, and my name
23 is Alexis McCumber and I, along with Roy Willey, represent
24 the McDade's, and that driver who was going to meet his lady
25 friend, who had his eye on the gas station and not the

1 traffic in front of him, is Roger Caldwell, the Defendant,
2 and he's not here right now but I anticipate you will have
3 the opportunity to meet him later in this trial.

4 So, why did we bring this claim?

5 Well, the first reason we brought this claim against
6 the Defendant is that he chose to violate the safety rule
7 that requires a driver, driver to drive with due care. The
8 second reason we brought this claim is because Defendant
9 Caldwell violated the law that requires drivers to yield
10 when turning left. The third reason we brought this claim
11 against Defendant Caldwell is that he admits -- he will
12 admit that he had a duty to follow the law and obey the
13 rules of the road but he will not admit fault for this
14 collision.

15 So, why do we have rules?

16 Well, to keep the general population safe. Also every
17 single person who operates a vehicle on South Carolina roads
18 must abide by these rules. Failure, failure to follow
19 simple, common safety rules and laws needlessly endangers
20 the public at large.

21 So, what did the Defendant do wrong in this case?

22 What did Roger Caldwell do wrong?

23 Well, instead of simply waiting for traffic to pass, he
24 tried to make it and obviously didn't. Instead of following
25 simple safety rules and the law, Mr. Caldwell chose, chose

1 to pull out in front of oncoming traffic. And when he did
2 this, he needlessly endangered everyone on the road and he
3 changed Mr. McDade and his family's life forever.

4 So, what could the Defendant have done in this
5 situation?

6 Oh, we already had this slide. Sorry.

7 So, this incident was thrust into Mr. McDade's life and
8 his family life -- family's life. He didn't ask for it. It
9 was just thrust into his life, and before bringing this
10 claim, we obviously had to do our homework, Mr. Willey and
11 I, and we had to determine if there was any other
12 explanation for how this collision occurred. After all, if
13 Mr. Caldwell had did -- done nothing wrong, it would be
14 wrong of us to stand up in front of you and ask to find him
15 at fault.

16 So, first we had to see if Mr. McDade had any
17 responsibility for this collision, and we spoke with
18 Mr. McDade, we spoke with his family, and you will hear from
19 them today, and he has no memory of the collision.

20 So, we spoke to the investigating officer and what did
21 he say?

22 He's been with the Highway Patrol for 21 years you will
23 hear from him tomorrow. His name is Trooper Matthew Franks.
24 So, he's been with the Highway Patrol for 21 years. He will
25 testify that Mr. Caldwell was more focused on making his

1 turn than oncoming traffic. He will also testify that
2 speed -- so Mr. McDade's speed was no factor in this
3 collision. He will, he will testify that the Defendant told
4 him that he never saw Mr. McDade until the collision
5 occurred, and, finally, he will tell you that this is a cut
6 and dried case.

7 Then you will hear from our expert accident
8 reconstructionist, Mr. McDevitt, who's actually in the
9 courtroom right now, and he will tell you that he is a
10 former Air Force and police officer, that Mr. McDade was
11 following the rules of the road that day and the law. He
12 agrees with all of the Trooper Franks's findings. He was a
13 national police officer of the year. He will tell you that
14 one person was following the law that day, and one person
15 was not following the law that day, and then he will also
16 tell you if speed was a factor, and Mr. McDade would have
17 died in this collision.

18 So, at the end of this case, the Judge will instruct
19 you on the law. And you will go back to the jury room with
20 a verdict form, and it's just a piece of paper, and it's the
21 most important piece of paper in Mr. McDade's life.

22 And what do you have to take into account when you go
23 back into the jury room and you start your deliberations?

24 well, all you can take into account are the harms and
25 losses that this has caused Mr. McDade and his family, and

1 the verdict form will simply ask you how much money you will
2 allow for Mr. McDade in this case. And, to figure that out,
3 you can only take into account harms and losses. Everything
4 else is outside that box.

5 Okay. So, any type of preconceived notions you have
6 about motorcyclist, that's outside the box. Everything else
7 is outside that box. You have to take into account only the
8 evidence that is in front of you in the next couple of days.

9 So, it's our duty, Mr. Willey and I, to show you what
10 those harms and losses are, and how they have impacted
11 Mr. McDade and his family's life. And you need to know this
12 for a basis for your final decision.

13 So, what are the harms and losses?

14 Well, before this collision, go to the next one,
15 Mr. McDade was a hard working country boy. He worked in
16 mechanics fixing up cars and bikes his entire life. He
17 loved his son, this is Hayden, who was six years old at the
18 time of the collision, and to the right there that's his
19 brother, Thomas, T.J. He lived by himself. He was helping
20 to raise his son, Hayden. He was just a normal hard working
21 guy.

22 He loved motorcycles. He's loved them his whole life.
23 He and his dad have worked on them their, their whole lives
24 along with fixing cars, and you'll, you'll hear was an avid
25 rider, a experienced motorcycle rider. In fact, on the day

1 of this collision, Mr. McDade was actually heading to a --
2 the funeral home to drop off some hats that he had made for
3 his friend who had just died but he never made it to that
4 funeral home, and he has missed a lot of life since then.
5 He was actually suppose to be the pallbearer in that
6 funeral.

7 So, he -- you will hear his family testify he is a
8 shell of what he once was, and you will see, when Roger
9 Caldwell pulled his car out in front of Matthew's
10 motorcycle, Matthew had almost no time to react. His body
11 hit Mr. Caldwell's car and Mr. Caldwell will testify that,
12 when he left his vehicle to check on Matthew, he was
13 convulsing, that there was a lot of blood, and that it was a
14 horrible scene. You'll see the impact that, that Mr. McDade
15 had to suffer from, and what he suffered from what is called
16 a traumatic brain injury.

17 So, you'll hear the testimony of a doctor and it will
18 be over video, and he will, he will testify, this is Doctor
19 Christopher Chittum, he's a neurosurgeon, and he actually
20 performed the surgeries on Mr. McDade. And you will hear
21 about the traumatic brain injury and about the cognitive
22 issues that Mr. McDade suffers from today, concentration
23 issues, memory dysfunction, coordination impairment, and
24 that it takes two years to, to improve if anybody has a, a
25 TBI. You'll hear that term, TBI, traumatic brain injury,

1 and that Mr. McDade is never going to improve.

2 So, he actually did the surgeries. He did a
3 craniectomy and he will, he will explain it way better than
4 I can. But basically a fourth of Mr. McDade's skull was
5 removed, as you can, as you can see, and part of his brain
6 was removed, and, interestingly, the skull was put into his
7 abdomen, which you probably saw in the picture, that's the,
8 the abdomen picture that y'all just saw, to preserve it to
9 put it back on his head. That ended up not working for
10 various reasons. So, he actually had to have another
11 surgery where a plastic piece was put in his head. But
12 you'll hear all that from Doctor Chittum. Again, he will,
13 he will explain it way better than I, than I do, and you'll
14 hear from Mr. McDade's family, and they will tell you how
15 Mr. McDade's life has changed.

16 So, they, they will tell you about the same things that
17 Doctor Chittum says about his concentration issues, memory
18 distinction, coordination is off. His physical appearance
19 is obviously quite different than what it once was. He
20 suffers from headaches, seizures, anxiety. He has trouble
21 sleeping meaning it's just an awful way to live. This is
22 completely changed his life.

23 So, I can honestly say to you this is one of the most
24 tragic cases I've ever dealt with, and it's most frustrating
25 too because it didn't have to happen. This was thrust into

1 his life and he did not ask for it.

2 So, next slide. So, we have to prove our case by the
3 preponderance of the evidence and what that means is more
4 likely than not. So, I'm sure, as the Judge was talking
5 about earlier, when you have seen TV shows, it's beyond a
6 reasonable doubt. That's the criminal standard. We are in
7 civil Court today. So, it's more likely than not.

8 So, we have to prove that it's more likely than not, I
9 mean just a tip of the scale, that this was Mr. Caldwell's
10 fault and not Mr. McDade's fault, and I believe that we will
11 prove that to you. The Judge will instruct you at -- on the
12 law at the end of the case. But I believe that you will
13 see, through the evidence presented, that this is a cut and
14 dry case.

15 So, by the end of the case, you'll see that the
16 evidence, the facts, and the truth makes this the kind of
17 case where you will have to come back and return a large
18 verdict in favor of Mr. McDade. Your verdict must be based
19 on the evidence that you hear in the courtroom. You must
20 follow the law and this is Matthew McDade's only day in
21 Court. He does not get another chance to come back in front
22 of another jury and ask for more money to be made whole.

23 You'll hear about Mr. McDade's medical bills, which are
24 in the \$700,000 range, and you'll hear about all the
25 follow-up treatment that he has to get as a result of this

1 collision.

2 So, once you see and hear all the evidence and
3 testimony, you will know what kind of case this is and I'm
4 confident that you will know what to do. And it's not
5 really about what he gets. It's about what was taken.

6 Thank you.

7 THE COURT: Okay. Mr. Coulter.

8 MR. COULTER: Thank you, Judge.

9 May it please the Court?

10 THE COURT: Yes, sir.

11 MR. COULTER: Good morning, everybody. It's nice to
12 see you again. It's been a couple days.

13 Again, my name is Mike Coulter. I represent Roger
14 Caldwell in this case. Roger's not here. We got our waters
15 crossed to time. He's gonna be here in just a minute. It's
16 a very important case to him as well. Not only to the
17 Plaintiff but to him as well.

18 To go back a little bit, there's, there's two different
19 kind of Courts we have in South Carolina. We have General
20 Sessions Court, which is criminal court.

21 Okay. Someone's charged with a crime. Y'all
22 deliberate, find him guilty or not guilty, and then there's
23 your Common Pleas Court, which is Civil Court, which is what
24 this is, and Common Pleas Court, civil court, it's about
25 money. That's what it's about. Eventually they're gonna be

1 asking you to return a verdict for money for the client.

2 Now, what I -- one thing I want to emphasize greatly
3 right now is what I'm telling you and about to tell you
4 about the facts of this case is not evidence. The Judge
5 told you that just a minute ago. When the opening
6 statements are made, what we say is not evidence. What Ms.
7 McCumber just said to you is not evidence.

8 There was a lot of things I will tell that were posted
9 on that screen just a minute ago which will not jive, in my
10 opinion, with the testimony you will hear from this stand.

11 Okay. So, I'm asking you to reserve, believing
12 everything you saw up there, until you hear it right here
13 from this stand because that's what you make your decision
14 on, evidence, and that's testimony, that's exhibits, and all
15 these things you'll look at and see together.

16 Now, going over the facts. I want to be very brief
17 because I do want to get to the evidence.

18 Okay. But so this happened on October 16th, 2015, over
19 six years ago, around six years ago. And, and most of what
20 Plaintiff's attorney said I'll agree with. My client was
21 working. He worked at Standard Textiles. He's a
22 mechanical -- he does mechanics works there. He'd worked
23 8:00 to 5:00 shift that day. He's come home. He was going
24 to see a friend in Boiling Springs. He lives in Union.

25 So, he was taking Highway 9 and he did get a call and

1 the person told him listen, I can't come out. And so he
2 decided he'd just turn around and go back to Union. So, he
3 does and he's on Highway 9.

4 Now, this, this is Defense Exhibit No. 1 and this is an
5 overview of this area where the accident occurred. I can't
6 do that kind of stuff. As soon as I try I'm gonna mess it
7 up. So, I always blow them up like this.

8 Okay. And, and I can't get too close. I hope
9 everybody can see that.

10 But what happened this day, I submit to you that you'll
11 hear in just a minute, is that my client was driving down
12 this way, noticed that he was low on gas, and decided to
13 stop at this gas station. So, he's in this turning lane
14 right here. He's looking down the road here and he sees
15 cars stopped right here at this intersection. There's a
16 traffic light right here.

17 He looks down this way. This is over a football field
18 away, 325 feet I submit to you you will hear, and he sees
19 that, as he looks down here, and they're cars in these two
20 lanes, no motorcycles, cars, he sees the light turns green.
21 He's back here. Has plenty of time to make the turn into
22 the parking lot. Plenty of time. These cars had not even
23 moved yet.

24 So, he begins to make the turn, and as soon as he makes
25 that turn, and you're gonna see photographs, he barely gets

1 into the first lane. This -- as you can see, this is a --
2 where the, where the Plaintiff is gonna be coming from is
3 this area right here. So, there's two lanes right here.

4 As my client gets into that first lane, he then hears
5 squealing of tires. Squealing. He looks and the Plaintiff
6 is laying down his motorcycle, okay, laying down. He stops.
7 He freezes. He never saw a motorcycle at all. This is nine
8 o'clock at night by the way.

9 Okay. It's dark. He sees cars. No motorcycle. And
10 then the guy -- the, the Plaintiff strikes the side of his
11 car.

12 Now, how, how could that happen?

13 Speed.

14 Okay. Speed, I submit to you, was a factor in this
15 case. You're gonna be presented with expert testimony that
16 says it wasn't, okay, but I think that you'll see, I think
17 on examination, that what was done to investigate it wasn't
18 a whole lot. It wasn't a whole lot. In fact, the Plaintiff
19 has testified already in a deposition and a deposition is
20 where you go into a room, a person's put under oath just
21 like they're in trial, told to tell the truth, the whole
22 truth.

23 Does the Plaintiff have problems with memory?

24 There's absolutely no question about it. No doubt
25 about it. But when asked how fast he was going before he

1 laid that bike down, he said 70 miles an hour, and you'll
2 hear Roger, eventually, say that his whole steel frame of
3 his vehicle, it was hit so, so hard it was bent. Couldn't
4 move the vehicle at all after this accidents.

5 Now, did Roger have some fault in this accident?

6 Yes. Yes.

7 But did the Plaintiff also have some fault in the
8 accident?

9 Yes.

10 And, and, look, we see accidents all the time.
11 Everyday. We all -- all of us make mistakes. I can't begin
12 to tell you how many I've made in my life.

13 Okay. We're all human. We make mistakes. And the
14 reason this is so important to understand and keep in mind
15 is because not only are the Plaintiffs gonna be asking you
16 to return a verdict for money for damages for the injury,
17 but they're also gonna want you to bring back money for
18 punitive damages meaning to punish Roger, to punish him, and
19 that's why it's so important to keep in mind.

20 These mistakes were not just one fold. It wasn't just
21 one side. It was a combined effort that led to this
22 terrible, terrible situation and it is. They're -- I'm
23 not -- there's nothing to hide about that. It's terrible.
24 It's unfortunate but it was a contribution of fault that led
25 to this.

1 Okay. And we can't change the things that happened
2 although we wish we could.

3 But, again, don't want to take up too much of your time
4 because I do want you to hear this from here.

5 So, thank you for your attention. Appreciate it.

6 THE COURT: Okay. Is the Plaintiff ready?

7 MR. WILLEY: May we approach, Your Honor?

8 THE COURT: Yes, sir.

9 (WHEREUPON, a bench conference was held out of the
10 hearing of the jury at this time.)

11 THE COURT: Before we get started, let me explain that,
12 during my first trial, it was so cold in here that you could
13 see people like this.

14 Okay. And so we did call maintenance or Mrs. Martinez
15 did and she must be very powerful because now it seems like
16 it might be a -- it's -- might be a little warm.

17 But are y'all okay?

18 (WHEREUPON, the jurors nod affirmatively.)

19 THE COURT: Okay. All right. So good. Thank Mrs.
20 Martinez.

21 All right. We were talking about the temperature in
22 the room.

23 Okay. Are you-all comfortable?

24 MR. WILLEY: Yes, much more so than in the auditorium.

25 THE COURT: Okay.

1 MR. WILLEY: You could hang meat in there I think. So
2 --.

3 THE COURT: All right. So, counsel, can y'all come
4 back up real quick?

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: All right. And so, at this time, I'm going
8 to let you-all go ahead and have a break, all right, and you
9 can follow Ms. Joan and Mr., Mr. Alford back to your jury
10 room. I understand the Grand Jury is here today too. So,
11 there's a lot going on in that back hallway, right?

12 THE BAILIFF: Yes.

13 THE COURT: Okay. Anyway, y'all just follow them and
14 we'll come back in at 10:45.

15 All right. No discussions.

16 All right. Thank you.

17 All rise.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: We'll be at ease for 15 minutes, y'all.

21 The bathrooms you know are right there. I wish there was a
22 coffee shop but there's not.

23 All right.

24 (WHEREUPON, a short recess was taken at this time.)

25 THE COURT: Counsel, anything before we get started?

1 MR. COULTER: No, ma'am, not from the defense.

2 MR. WILLEY: No.

3 THE COURT: Okay. Then I will instruct our bailiff to,
4 to bring the jury around.

5 okay?

6 THE BAILIFF: Yes, Your Honor.

7 THE COURT: Thank you, ma'am.

8 Again, be reminded that we do stand when the jury comes
9 in.

10 Okay. Oh, counsel, let me -- Tommy, can you hand this
11 to everybody?

12 That's Mr. Coulter.

13 Y'all be careful with those pitchers. I have seen---

14 MS. MCCUMBER: They just come out?

15 THE COURT: Waterfalls.

16 MS. MCCUMBER: Waterfalls.

17 THE COURT: Yeah. I just handed y'all the verdict
18 forms. Just take a glance when y'all have a minute.

19 Okay?

20 MS. MCCUMBER: Okay. Thank you.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE BAILIFF: All rise.

24 THE COURT: Okay. Members of the jury, are we ready to
25 go?

1 (WHEREUPON, the jurors nod affirmatively.)

2 THE COURT: All right. Thank you.

3 I will now call upon counsel for the Plaintiff.

4 Counsel, are we ready?

5 MR. WILLEY: We are, Your Honor.

6 THE COURT: Yes, sir.

7 MR. WILLEY: May it please the Court?

8 THE COURT: If you'll call your first witness.

9 MR. WILLEY: We call the Defendant, Roger Caldwell.

10 THE COURT: Okay. Good morning, sir. If you'll please
11 come forward. I'm going to have our clerk swear you in.

12 Okay.

13 THE BAILIFF: Sir, just come down this way.

14 THE COURT: You can come over here.

15 THE BAILIFF: Right over there.

16 THE COURT: And this area has been wiped down and
17 sprayed.

18 Okay?

19 THE WITNESS: Thank you.

20 THE COURT: All right. Thank you.

21 THE CLERK: If you'll raise your right hand.

22 ROGER CALDWELL, being first duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. WILLEY:

Roger Caldwell - Direct examination
By Mr. Willey

1 Q Good morning.

2 A Good morning.

3 Q I know you weren't here for openings. So, I'm gonna
4 retread a little bit of that and just ask you a few
5 questions and see if you agree with me.

6 Is that, is that okay?

7 A Yes.

8 Q Great.

9 Mr. Caldwell, do you agree with me that a driver is
10 never allowed to turn left in front of oncoming traffic when
11 it's unsafe to do so?

12 A Yes.

13 Q And do you agree with me that, in this case, you did
14 turn left in front of oncoming traffic when it was unsafe to
15 do so?

16 A No.

17 Q Mr. Caldwell, let's go back then to October 16th of
18 2015.

19 what time did this wreck occur?

20 A I ain't sure exactly what time it was.

21 Q Okay. What time of day was it?

22 A It was late in the evening.

23 Q It was late in the evening?

24 A Later in the evening.

25 Q Okay. Do you remember giving a deposition in this

Roger Caldwell - Direct examination
By Mr. Willey

1 case?

2 A Not exactly.

3 Q You do not remember?

4 A Not exactly, no.

5 Q Okay. Do you remember sitting down and being sworn in
6 by a court reporter to give testimony about this case?

7 A Was it a meeting with the lawyers, yes.

8 Q Where they asked you questions.

9 A Yes.

10 Q And do you recall at that deposition that you took an
11 oath just like the oath you took here today to tell the
12 truth and the whole truth?

13 A Yes.

14 Q All right. And so if I'm understanding you, your
15 testimony today is that this wreck, wreck occurred late in
16 the evening?

17 A It's somewhere in that area. I'm not sure exactly.

18 MR. WILLEY: Okay. Your Honor, may we open this
19 deposition transcript?

20 THE COURT: Yes, sir, I will open it. Well, I thought
21 I was gonna open it.

22 MR. WILLEY: I know.

23 THE COURT: Okay. For the record, I have unsealed the
24 deposition of Roger Dale Caldwell of November the 7th, 2018.

25 MR. WILLEY: Thank you.

Roger Caldwell - Direct examination
By Mr. Willey

1 THE COURT: Thank you.

2 Q Mr. Caldwell, I'm gonna draw your attention to Page 35
3 of your deposition, Line 6, where the question was asked and
4 at the time of the collision itself was it completely dark
5 outside. I'm gonna ask you what your answer was starting at
6 Line 8.

7 A It was getting dark.

8 Q All right. Does it say here that's what I'm saying.
9 It was dusk or whatever you want to call it. It was getting
10 dark.

11 A Starting to, yeah.

12 Q Okay. So at the time of this collision it wasn't later
13 in the evening. It was just starting to get dark.

14 Is that correct?

15 A That---

16 Q Or---

17 A That---

18 Q ---is your testimony---

19 A That's what I consider it to be.

20 THE COURT: All right. Sir, please let the witness
21 fully answer the questions and then you can ask your next
22 question. Again, our court reporter can only take down one
23 at a time.

24 MR. WILLEY: Sure.

25 THE COURT: All right. Thank you.

Roger Caldwell - Direct examination
By Mr. Willey

1 Q So, Mr Caldwell, which was it?

2 Was it dusk?

3 A That's what I consider later in the evening.

4 Q Dusk?

5 A Get -- starting to get dark, yeah.

6 Q Okay. And you would agree with me that that part of
7 the road is, is well lit?

8 A Yes.

9 Q All right. There's a lot of businesses around there?

10 A Yes.

11 Q Do you know the businesses that are around that area?

12 A I'm not familiar with that area. So, to me -- I'm not
13 gonna live up in that area but I had a friend I was going to
14 see.

15 Q Okay. And the friend you were going to see, what, what
16 was that individual's name?

17 A Wendy.

18 Q And her last name?

19 A I can't remember her last name.

20 Q Okay. Was it Moody?

21 A Yes.

22 Q Okay. And you told us you were going to see Ms. Moody.
23 Did you ever --?

24 A She canceled.

25 Q She canceled?

Roger Caldwell - Direct examination
By Mr. Willey

1 A Uh-huh. (Affirmative).

2 Q And did she cancel on you prior to this wreck
3 occurring?

4 A Yes.

5 Q All right. And had you already made a, a turnaround?

6 A Yes.

7 Q All right. And did you make that turnaround in a
8 parking lot or a private driveway?

9 A I turned into a business.

10 Q Okay. And that business was on this same stretch of
11 road.

12 Is that correct?

13 A Yes, sir.

14 Q Okay. And I am familiar with this stretch of road.

15 So, I'll just see if you disagree with me. But this is the
16 Pizza Hut, Zaxby's, gas station, McDonald's.

17 okay?

18 A Okay.

19 Q All right. And you, you originally were headed in this
20 direction, right?

21 A I -- yes.

22 Q Okay. And you turned around somewhere over here,
23 correct?

24 A I'm not sure of that cause I don't even know where
25 that's at.

Roger Caldwell - Direct examination
By Mr. Willey

1 Q Okay. Here's the gas -- this is where the wreck
2 occurred.

3 A Yeah.

4 Q Okay. But originally you were going in this direction?

5 A Yeah.

6 Q And you turned around somewhere --

7 A Somewhere up the road.

8 Q -- over here?

9 Okay. And when you came back out of that business, you
10 proceeded in this direction---

11 A Uh-huh. (Affirmative).

12 Q ---into the center and attempting to turn left,
13 correct?

14 A I'm -- where did you say that wreck was?

15 Q Right here.

16 A Yeah, I was, I was in this lane --

17 Q Okay.

18 A -- or in the center lane.

19 Q So, you came out, you came over, and you were
20 basically---

21 A I was just to -- starting to turn.

22 Q Okay. And when you were starting to turn, you saw that
23 these vehicles had a green light, correct?

24 A There was two -- there was cars out -- two cars out
25 there at the red light. Just turned green.

Roger Caldwell - Direct examination
By Mr. Willey

1 Q Okay.

2 A I seen it turn and I know that they was well away from
3 me and I had plenty of time.

4 Q So, when you saw that light turn green, you started to
5 make your left turn?

6 A No, when I seen the cars just starting to take off, I
7 knowed I had plenty of time because they hadn't even started
8 moving yet.

9 Q Right.

10 A So I had plenty of time to turn.

11 Q So, so, when you -- so, let me get this straight.

12 So, when you were making your left turn, you knew that
13 they had a green light then?

14 A I seen the light turn.

15 Q Okay. And, Mr. Caldwell, isn't it true that your
16 testimony has been you'd never saw the motorcycle until it
17 hit you.

18 Is that right?

19 A Exactly.

20 Q Right.

21 Now, prior to the motorcycle hitting you, there were a
22 couple of cars that passed by, correct?

23 A I don't know.

24 Q You don't know?

25 A Like I said, I looked up there and seen them turn -- I

Roger Caldwell - Direct examination
By Mr. Willey

1 mean seen the red light turn. When it turned, they was two
2 cars sitting there starting to take off, and I had plenty of
3 time to turn. And, when I turned, before I -- when I
4 turned, I knowed they couldn't be nobody that close cause
5 they was just starting to take off and that was a couple
6 hundred yards up the road, up the road.

7 So, I had plenty of time. But as soon as I turned,
8 they -- I heard tires start squealing and I just hit my
9 brakes and stopped cause I didn't know where it was coming
10 from and that's when he hit me in the side.

11 Q Right.

12 But prior to you making the left turn, my point is
13 there were cars that went through there, correct, by you?

14 A I don't know.

15 Q Okay. Let me show you your deposition again. It's
16 Page 50 and, again, this deposition was taken on
17 November 7th of 2018.

18 So, would you say that your memory about the wreck was
19 better in 2018 or better today?

20 A I would say back then.

21 Q Okay. Just tell---

22 THE COURT: And, sir, if you'll show him the lines that
23 you're referring to, allow him to review it---

24 MR. WILLEY: Yes.

25 THE COURT: ---and then ask him not necessarily to

Roger Caldwell - Direct examination
By Mr. Willey

1 publish that but ask him the question again, okay, if his
2 recollection is refreshed.

3 MR. WILLEY: Yes.

4 THE COURT: Thank you.

5 Q So, we are looking here at Lines 2, 3, and 4. Just
6 that first sentence.

7 THE COURT: What page, sir?

8 MR. WILLEY: Page 50.

9 A I've read it.

10 Q Okay. And so didn't you tell us in your deposition,
11 that before you made the left turn, there was traffic coming
12 through there?

13 A Yes.

14 Q Correct?

15 A I had stopped and looking and checking on, waiting on
16 the traffic to pass, and they was still a red light up
17 there. It just turned and they was---

18 Q And you thought you had enough time to make your turn?

19 A Exactly.

20 Q But, obviously, you didn't, right?

21 A Well, I'm not sure where he came from.

22 Q Okay. But a wreck occurred?

23 A Uh-huh. (Affirmative).

24 Q Correct?

25 A Yes.

Roger Caldwell - Direct examination
By Mr. Willey

1 Q All right. And, in your deposition, do you remember
2 you couldn't recall the gas station?

3 Do you, do you recall now that it was a gas station?

4 A I was just turning into a parking lot. I didn't look
5 to see what it was. It's just a -- well, I did see what it
6 was cause I was pulling in to get gas. My bad.

7 Q You were pulling in to do what?

8 A I was pulling in to get gas. That's what I was pulling
9 in -- turning in for.

10 Q Okay. And, in your deposition, you couldn't recall
11 anything around the, the gas station that day.

12 Do you---

13 A Yes, sir.

14 Q ---recall anything now?

15 A No, sir.

16 Q Okay. Do you recall any of the cars that passed by,
17 what color they were, what kind they were?

18 A No, sir.

19 Q No.

20 Okay. Do you have any recollection about the cars that
21 you say had the green light that you saw?

22 A No, sir.

23 Q Okay. Were you on any type of medication that day?

24 A No, sir.

25 Q Okay. Were you on alcohol or drugs?

Roger Caldwell - Direct examination
By Mr. Willey

1 A No, sir.

2 Q Okay. Do you remember in your deposition how far you
3 said you were from that light when you made the turn?

4 A I said a few hundred yards. I don't know exactly.

5 Q All right. You said a few hundred yards is what your
6 testimony is today?

7 A Football field or so.

8 Q Okay. When's the first time you met Mr. Coulter?

9 A I'm not sure. It's probably been---

10 MR. COULTER: Judge, I'm, I'm gonna object.

11 THE COURT: Come up.

12 MR. COULTER: Can we approach?

13 THE COURT: Come up.

14 (WHEREUPON, a bench conference was held out of the
15 hearing of the jury at this time.)

16 THE COURT: That is overruled at this time.

17 MR. WILLEY: Thank you, Your Honor.

18 Q So, when, when was the first time you met Mr. Coulter?

19 A It's probably been a few months ago. I'd say -- I'm
20 just guessing. I'm not sure exactly.

21 Q Okay. And this wreck was about six years ago?

22 A It's been a while, yes, sir.

23 Q Okay. And your deposition was in November of 2018.

24 Is that right?

25 A I guess.

Roger Caldwell - Direct examination
By Mr. Willey

1 Q Okay. And your testimony today is that you were a few
2 hundred yards from that stoplight when you made the left
3 turn?

4 A Somewhere in that area, yes.

5 Q Okay.

6 A I mean I had to make -- I had no measurements or
7 nothing to go by.

8 Q Right.

9 Let me show you your deposition from 20 -- 2018, Page
10 49, and ask you to read Lines 9 through 17.

11 A Because I never got---

12 Q No, you don't have to read them out loud. Just read
13 them to yourself and then I'll ask you a question.

14 MR. COULTER: What page are you on?

15 MR. WILLEY: 49.

16 MR. COULTER: Line?

17 Q Just let us know when you're done, Mr. Caldwell.

18 THE COURT: What is the line number?

19 MR. WILLEY: I believe it's 9 through 17.

20 So, Mr. Caldwell, do you recall in your deposition
21 telling us that it was about two or three firetrucks to the
22 stoplight?

23 A Somewhere in that area, yeah.

24 Q Okay. And your testimony today it was a few hundred
25 yards.

Roger Caldwell - Direct examination
By Mr. Willey

1 So which is it?

2 A It -- like I said, it's just around abouts figure. I
3 don't know exactly.

4 Q Okay. But you would -- okay. Do you think a firetruck
5 is as long as a football field?

6 A They different sizes.

7 Q Okay. All right. The wreck, when it occurred, what
8 did you do?

9 A I just put on brakes and stopped cause I couldn't tell
10 which direction it was coming from to me -- so, I didn't --
11 I just stopped and give him a chance to make an adjustment
12 cause I didn't know which way to go.

13 Q Okay. And did you call 9-1-1?

14 A No, I seen a bystander dialing when they -- they told
15 me they called.

16 Q Okay. Did you go over to Mr. McDade and check on him?

17 A I went to look at him but they wasn't nothing I could
18 do. I didn't know what to do.

19 Q Okay. Did you do anything to render aid or, or to help
20 him---

21 A I just---

22 Q ---talk to him at all?

23 A I just made sure they -- somebody called.

24 Q Okay. And then you set about taking photographs,
25 right?

Roger Caldwell - Direct examination
By Mr. Willey

1 A Yes.

2 Q Okay. I'm gonna show you Plaintiff's Exhibit 4. Ask
3 you if those are the photographs that you took.

4 THE COURT: How many photographs are there?

5 MR. WILLEY: It's stapled. A bunch. I'll tell you in
6 just a second.

7 A Seven here.

8 Q Seven?

9 A Uh-huh. (Affirmative.)

10 Q Okay.

11 THE COURT: Thank you.

12 THE WITNESS: You welcome.

13 Q Are those the photographs you took, Mr. Caldwell?

14 A They appear to be.

15 Q Okay. And do they show your vehicle?

16 A Yes.

17 Q And that's the white Mitsubishi Galant?

18 A Yes, sir.

19 Q And they show my client's vehicle?

20 That's the motorcycle?

21 A Yes, sir.

22 Q Okay. And when the---

23 THE COURT: Mr. Coulter, do you need to see these?

24 MR. COULTER: I've seen them, Judge.

25 THE COURT: Okay.

Roger Caldwell - Direct examination
By Mr. Willey

1 MR. COULTER: Thank you.

2 THE COURT: Thank you.

3 Go ahead.

4 MR. WILLEY: And, so, at this time, Your Honor, we
5 would move Plaintiff's Exhibit into evidence.

6 THE COURT: What number was that?

7 MR. WILLEY: Four.

8 THE COURT: What number?

9 MR. WILLEY: Plaintiff's Exhibit 4.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Seven photos.

12 Okay. Any objection?

13 MR. COULTER: No objection.

14 THE COURT: Okay. Plaintiff's No. 4 is moved into
15 evidence without objection.

16 Q And so Mr.---

17 THE COURT: I'm sorry to keep interrupting you.

18 Has that already been marked?

19 MR. WILLEY: It has. Yes, Your Honor.

20 THE COURT: Okay. Thank you.

21 (WHEREUPON, Plaintiff's Exhibit No. 4 was received into
22 evidence at this time.)

23 Q And so, Mr. Caldwell, at the time of the wreck when the
24 motorcycle and my client came to rest, where was my client
25 relative to your vehicle?

Roger Caldwell - Direct examination
By Mr. Willey

1 A To my vehicle, he was behind it.

2 Q Okay. He was on the back -- his body was on the back
3 end of your vehicle?

4 A It was back behind the vehicle, yes.

5 Q Okay. And was he laying on the roadway?

6 A Yes.

7 Q Was he bleeding?

8 A Yes.

9 Q Was he making any noises?

10 A He was just -- he was in -- I, I don't really know what
11 you'd call it. But he was moving a little bit but very
12 little.

13 Q Okay. Were you able to observe his injuries?

14 A No, I just -- I couldn't tell.

15 Q Okay. And during that period of time, you -- how did
16 you take these photographs?

17 A This was after everything had been -- they had done got
18 him up in the ambulance and gone, and I just made a few
19 videos -- pictures of the scene where they put the paint and
20 all and the marks --

21 Q Okay.

22 A -- before moving my car.

23 MR. WILLEY: All right. And the jury will have these
24 photographs but I understand we're not going to pass them
25 around, correct?

Roger Caldwell - Direct examination
By Mr. Willey

1 THE COURT: Yes, sir.

2 MR. WILLEY: Okay.

3 THE COURT: That is correct. I mean you're happy --
4 I'm happy for you to show them on the overhead if you want
5 to --

6 MR. WILLEY: That's okay.

7 THE COURT: -- or through your computer.

8 MR. WILLEY: Yeah. Well, we can do that.

9 THE COURT: But, again, I'm -- it's up to you, sir.

10 MR. COULTER: Judge, do the witnesses have to wear the
11 mask when they testify?

12 THE COURT: No. No, sir.

13 MR. COULTER: Okay.

14 THE COURT: You can take yours off. It's hard to talk
15 with them.

16 THE WITNESS: Yeah.

17 THE COURT: Thank you.

18 Q So, Mr. Caldwell, reviewing those photographs, would
19 you agree with me your vehicle was pretty well fully in the
20 oncoming traffic lane?

21 A Well not -- maybe not fully. By the pictures you can
22 see it's still touching the line I think --

23 MR. WILLEY: Yeah.

24 A -- or moved -- just past -- down -- over the line I
25 think.

Roger Caldwell - Direct examination
By Mr. Willey

1 Q All right. But it takes up that first lane, right?

2 A Most of it, yeah.

3 Q Okay. So, you weren't barely in the oncoming traffic
4 lane, correct?

5 A I, I just started turning, yes.

6 Q Okay. Well -- in, in opening, and I know you weren't
7 here for that, we heard that you had barely started your
8 turn.

9 But you would agree with me that you were mostly in the
10 oncoming traffic lane at the time of the wreck, right?

11 A It appears to be, yes, sir.

12 Q Okay. And that's a two lane road?

13 So, in other words---

14 A Yes.

15 Q Okay. And so you would of had -- on the other side as
16 well is two lanes, correct?

17 A Do what now?

18 Q On the other side of the road is two lanes, the way
19 that you were traveling?

20 A Yes.

21 Q And so --.

22 A He would of had room on both -- front or back behind
23 me---

24 Q Right.

25 A ---to go.

Roger Caldwell - Direct examination
By Mr. Willey

1 Q So, when -- so when you went up and, and turned around,
2 you actually had to come across three lanes to make this
3 left at some point, right?

4 A But I done got over in the far lane -- center lane
5 before I got to that area---

6 Q Right.

7 A ---of the---

8 Q And then you were here and the lane we're looking at
9 there is actually this lane, correct?

10 A Yes.

11 Q Okay. You had an opportunity at the scene to talk with
12 the cop, right?

13 A I don't remember exactly what was said or nothing.

14 Q Do you remember talking to the cop?

15 A Well, he had -- he got me -- he talked to me to give me
16 a ticket.

17 Q Okay. And do you remember -- have you reviewed the,
18 the police report and documentation in the case?

19 A Not recently.

20 Q Have you at some point in time?

21 A Not really.

22 Q Okay. Did, did -- did you have the opportunity, ever
23 before today, to see my client again?

24 A Yes, I actually tried to visit him but they told me --
25 I was told that they'd rather me not.

Roger Caldwell - Direct examination
By Mr. Willey

1 Q Okay. And so was that when he was in the hospital?

2 A Yes, sir.

3 Q Okay. And since that time in this case -- this case
4 has been going on for quite a while?

5 Yeah?

6 A Yes.

7 Q Agreed?

8 A Yes, sir.

9 Q Okay. Do you -- have you had the opportunity to review
10 the, the answer that your lawyer's filed in the case?

11 A No, I've had a chance. I just hadn't looked at it yet.

12 Q Okay. I'm just going to hand you that and, and draw
13 your attention to what it says for the first defense, and do
14 you see where it says general denial?

15 A Uh-huh. (Affirmative).

16 Yes, sir.

17 Q Okay. Mr. Caldwell, in opening your lawyer said that
18 you had some fault for this wreck.

19 Do you accept some responsibility for this wreck?

20 A I'm not -- I don't think so.

21 Q You don't?

22 A No.

23 Q You don't accept any responsibility at all?

24 A Well, I ain't gonna say I don't accept any
25 responsibility. But I, I don't think any of it was my, my,

Roger Caldwell - Direct examination
By Mr. Willey

1 my accident -- mistake.

2 Q So, when this answer was filed with a general denial
3 saying that you didn't do anything wrong, do you agree with
4 that?

5 A I don't understand the question there.

6 Q Well, do you think you did anything wrong when you
7 turned left in front of oncoming traffic---

8 A After---

9 Q ---without having the right of way?

10 A After I seen it was clear, no.

11 Q Well, it wasn't clear, was it?

12 A Well, it was when I looked.

13 Q Well, it wasn't when you turned.

14 Can we agree on that?

15 A I don't know about that.

16 Q You don't know if it was clear?

17 A Well, they was going too fast cause, when I looked, it
18 was clear.

19 Q Well, you, you never saw the motorcycle though, did
20 you?

21 A Cause he was going so fast. He didn't get there until
22 after I looked and turned my head back, and going 70 miles
23 an hour, you gone get there a lot -- real quick. It ain't
24 gonna take but just a few seconds.

25 Q But you didn't see him, right?

Roger Caldwell - Direct examination
By Mr. Willey

1 A Because he was going so fast. He was way up the road.

2 Q But you don't know how fast he was going, do you?

3 A He told me.

4 Q Well, in the deposition?

5 A Yep.

6 Q So, you think that my brain injured client who has
7 retrograde amnesia's testimony he remembers exactly?

8 A Well, I know I looked and I know what my eyes see and
9 I, I ain't got no bad vision.

10 Q Did you read his entire deposition?

11 A I have not.

12 Q Did you see in there where he said he was an age that's
13 different from his actual age?

14 A I didn't.

15 Q Did you see in there---

16 MR. COULTER: Judge---

17 THE COURT: Counsel.

18 MR. COULTER: ---I'm gonna object.

19 THE COURT: Come up.

20 (WHEREUPON, a bench conference was held out of the
21 hearing of the jury at this time.)

22 Q Okay. Mr. Caldwell, did you read anything else in
23 the -- my client's deposition?

24 A No, sir.

25 Q Okay. And with respect to this wreck, you never saw

Roger Caldwell - Direct examination
By Mr. Willey

- 1 the motorcycle until after the impact, correct?
- 2 A No, sir.
- 3 Q Is that correct?
- 4 A That's right.
- 5 Q All right. When you made that left, you intentionally
- 6 did that, right?
- 7 A Once I looked and seen it was clear.
- 8 Q But you intentionally made that left?
- 9 A Yes.
- 10 Q Okay. And with respect to the person that you were
- 11 going to see, had you seen that person before?
- 12 A Yes.
- 13 Q Okay. And how long had you known that individual?
- 14 A Several years.
- 15 Q Okay. And she canceled on you?
- 16 A Uh-huh. (Affirmative).
- 17 Q She canceled on you?
- 18 A I didn't hear you.
- 19 Q She, she canceled on you, correct?
- 20 A Oh yes.
- 21 Q Okay. And so what were you gonna do with the remainder
- 22 of your evening?
- 23 A I was going home.
- 24 Q Okay. How did, how did you leave the scene?
- 25 A I had a tow truck come pick my car up.

Roger Caldwell - Direct examination
By Mr. Willey

1 Q Okay. And the tow truck gave you a ride home?

2 A Yes.

3 Q Okay. You didn't have any injuries as a result of
4 this?

5 A No.

6 Q All right. What were the damages to your vehicle?

7 A It pushed the tire rim, brakes, and all that up into my
8 motor breaking the belts and all, the engine, and when I
9 went to try to crank it to move it, it was -- welding stuff
10 was rubbing up against the inside of the fender weld up
11 toward -- against the motor and all where it wouldn't roll.
12 So, I had to have it towed. It was totaled.

13 Q Okay. It was totaled?

14 A Yes.

15 Q I want to show you what's been marked as Plaintiff's
16 Exhibit 5.

17 Have you ever seen the property condition report for
18 your vehicle before?

19 A Not this.

20 Q Okay. Do you see where it indicates what vehicle it
21 was and that you were the owner?

22 A But where does this come from?

23 Q This is the property condition report.

24 A From who?

25 Q It was produced by your attorney to us.

Roger Caldwell - Direct examination
By Mr. Willey

1 You've never seen that?

2 A No.

3 Q Okay. And so do you see at the top up here, let me
4 just find it for you, where it says property condition
5 repairable?

6 A I see what it says.

7 Q Okay. You'd never seen that before?

8 A But I work at a body shop. I worked -- I know what a
9 totaled car is.

10 Q Okay. And did you ever have the opportunity to talk to
11 anyone about the condition of your vehicle or did it get
12 towed to, to your shop?

13 I understand you have a body shop.

14 A Yeah, it was towed to my place.

15 Q Okay. And you had never seen that before, correct?

16 A Not that I can remember.

17 Q Okay.

18 THE COURT: Is that being offered?

19 Is that -- is it---

20 MR. WILLEY: Yeah.

21 THE COURT: ---exhibit number -- Plaintiff's Exhibit
22 No. 5?

23 MR. WILLEY: We'll put Plaintiff's Exhibit 5 in.

24 THE COURT: Mr. Coulter, have you seen that, sir?

25 MR. COULTER: I have. That's fine, Judge. No

Roger Caldwell - Direct examination
By Mr. Willey

1 objection.

2 THE COURT: Okay. Plaintiff's Exhibit No. 5 is in
3 without objection and that is a property condition report?

4 Is that correct, counsel?

5 MR. WILLEY: That is correct.

6 THE COURT: All right. Thank you.

7 (WHEREUPON, Plaintiff's Exhibit No. 5 was received into
8 evidence at this time.)

9 Q Mr. Caldwell, you understand obviously that my client
10 was catastrophically injured as a result of this, right?

11 A He looked bad, yeah.

12 Q You understand that he has substantial medical bills as
13 a result of this wreck?

14 A I do.

15 Q And this is something he's gonna have to live with for
16 the rest of his life?

17 A I do.

18 Q Do you believe that he should be compensated for that?

19 A Not from me.

20 Q Do you believe that, in this case, the jury should
21 render a verdict for him?

22 A I wouldn't see why.

23 Q And is your wouldn't see why based on the fact that you
24 didn't see the motorcycle before, you didn't remember
25 anything about the cars at the light, you didn't remember

Roger Caldwell - Direct examination
By Mr. Willey

1 the businesses that, that were around, but because it
2 happened, it must of been his fault?

3 A No, because when I looked, it was clear. The cars were
4 just starting to take off and he had to go around them to
5 get to me. There was no way he could of been in front of
6 them or at that red light and -- cause I looked and I seen
7 it was clear.

8 Q But you admitted to us that other cars had just passed
9 by, correct?

10 A That's -- I was waiting on them to pass by cause they
11 was just -- when I pulled up..

12 Q And had those cars turned onto the road?

13 A I actually came to a complete stop and looked and then
14 started to turn.

15 Q Right.

16 Do you know where those cars came from?

17 A Not exactly. They just --.

18 Q They didn't come through the red light, right?

19 A Well, of course not.

20 Q And by the time that you were going to make your turn,
21 that light had already turned green again, right?

22 A Yeah, they's a long stretch right there in-between
23 there. They could of -- they were just pulling out or
24 whatnot. I don't know.

25 Q A long stretch, three football fields?

Roger Caldwell - Direct examination
By Mr. Willey

1 A That's, that's a pretty good little stretch there.

2 Q That's three football fields?

3 That's your testimony?

4 A That's, that's a long stretch. That's all I can tell
5 you.

6 Q Thank you, sir.

7 THE COURT: Mr. Coulter.

8 MR. COULTER: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. COULTER:

11 Q Good morning, Roger.

12 A Good morning.

13 Q I'm gonna have you give the, the jury a little bit of
14 background about you.

15 Okay. Where, where are you from?

16 A Union, South Carolina.

17 Q Okay. Is that where you live now?

18 A Yes, sir.

19 Q Okay. And you pretty much grew up there your whole
20 life?

21 A Yes, sir.

22 Q Okay. Where'd you go to high school?

23 A Union High School.

24 Q Okay. Did you graduate from there?

25 A Yes, sir.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 Q Do you remember what year?

2 A '89.

3 Q '89.

4 Okay. All right. Have you ever served in the
5 military?

6 A Yes, I served 10 years.

7 Q In, in what?

8 what branch?

9 A National Guards.

10 Q Okay. What did you do in the National Guard?

11 A Maintenance.

12 Q What type of maintenance?

13 A 45 Tango turret, a turret mechanic.

14 Q Okay. Tell the jury what that means.

15 A That's the hydraulics and electronics on the Bradley
16 Fighting Vehicle System. It involves the turret, the actual
17 gun. It's -- that, that turns and un-laps. It's got
18 hydraulics that lifts to launches the tow missile. But it's
19 basically just all hydraulics and electronics.

20 Q All right. And that's the things you would repair
21 while --

22 A Yes.

23 Q -- in the National Guard?

24 A Yes, sir.

25 Q And how long did you serve?

Roger Caldwell - Cross-examination
By Mr. Coulter

- 1 A Ten years.
- 2 Q Okay. And what type of discharge did you get?
- 3 A Honorable.
- 4 Q All right. And what rank did you achieve in the
- 5 National Guard?
- 6 A It was a specialist.
- 7 Q Okay.
- 8 A A E-4.
- 9 Q E-4.
- 10 Okay. All right. Now, when you were in high school,
- 11 was there particular types of courses that you focused on?
- 12 A I took mechanics and computer classes.
- 13 Q Okay. Did you ever take any automobile repair classes?
- 14 A Yes, I took auto mechanics.
- 15 Q Okay. Let's talk about your employment history.
- 16 Are you employed now?
- 17 A Not at the moment.
- 18 Q Okay. Where was the last employment you had?
- 19 A It was at Piedmont Mechanical.
- 20 Q Okay. And what did you do for them?
- 21 A They done duct work and pipe fitting.
- 22 Q Okay. Have you ever had an opportunity to work at
- 23 automobile dealerships?
- 24 A Yeah, I've worked there for, off and on, for 20 years
- 25 probably.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 Q All right. What type of work did you do at the --
2 automobile dealerships?

3 A Mechanic.

4 Q Okay. So you repaired vehicles?

5 A Yes, sir.

6 Q All right. And for a time did you also have your own
7 body shop?

8 A I've worked on my own for like five years just working
9 on cars and stuff.

10 Q And how many cars do you think you've worked on in your
11 career?

12 A I wouldn't even begin to count.

13 Q Okay. Thousands?

14 A Oh yeah.

15 Q Okay. Do you do mostly your own repair work when you
16 get---

17 A I do all the repair work.

18 Q All right. Okay. Did you have any education after you
19 went through high school?

20 A I done three years of Spartanburg Tech. Got an
21 Associate's Degree in Computer Technology, a plumbing
22 systems support, certificate in web design, and I started
23 taking partial part -- I took about half the courses for
24 Cisco networking.

25 Q Okay. Now, on the day of this accident back in 2015,

Roger Caldwell - Cross-examination
By Mr. Coulter

1 do you remember where you were working around that time?

2 A Let's see. Yeah, I was still working at -- as a
3 maintenance person at -- I think it was Park Place Assisted
4 Living I think it was.

5 Q Okay. All right. And so do you remember that day,
6 October 16th of 2015?

7 You been working that day as I understand it, right?

8 A Yes, I worked a regular shift.

9 Q Okay. And that shift would of been eight o'clock to
10 five o'clock.

11 Is that right?

12 A Somewhere in that area. Around four, five o'clock.

13 Q Okay. And you worked that day?

14 You worked a full shift?

15 A Uh-huh. (Affirmative).

16 Q Okay. And then you have driven back home?

17 A Uh-huh. (Affirmative).

18 Q And that takes about an hour as I understand?

19 A 45 minutes, yeah.

20 Q All right. What did you do once you got home?

21 A Eat me something, got a shower.

22 Q Okay. Did you have anything to drink?

23 A No, I had a Pepsi.

24 Q Okay. Did you take any prescription medication?

25 A No, sir.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 Q Okay. And then you were going to meet Wendy?

2 A Yes.

3 Q Okay. And so you were leaving Union to go in what
4 direction in order to go see, see Wendy?

5 A I was going towards Spartanburg.

6 Q Okay. All right. And so you were traveling on Highway
7 9 as I understand at some point?

8 A Yes, sir.

9 Q Okay. And then at some point, as was -- been
10 discussed, you get a call from Wendy and she can't go out?

11 A Yes, sir.

12 Q Okay. So you decide to turn around and head back to
13 Union?

14 A Yes, sir.

15 Q All right. Now, this is Defense Exhibit No. 1 again,
16 and I'm gonna try to hold this so everybody can see.

17 Is that -- does that look familiar to you?

18 A I mean it does now that I'm thinking about it but it's
19 been so long, yes.

20 Q Okay.

21 A It's just --.

22 Q I don't even know if you -- have you, have you ever
23 seen an overhead of this area?

24 A No, sir.

25 Q Okay. All right. So kind of get familiar with it.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 A Uh-huh. (Affirmative).

2 Q You were asked a lot of questions about different
3 areas, but, as I understand, this is the gas station, the
4 area where you were pulling into to get gas.

5 Does that look about right?

6 A Yes.

7 Q All right. And so you would of been traveling in this
8 direction --

9 A Uh-huh. (Affirmative).

10 Q -- down towards -- I don't even know what direction
11 that would be.

12 A Yes.

13 Q But, anyways, down towards the bottom right side of
14 this diagram?

15 A Yes.

16 Q Correct?

17 A Yes, sir.

18 Q All right. And so do you recall which of these
19 different driveways you were pulling into?

20 A I think it was this one here.

21 Q Okay. All right. So you're pulling into the
22 farthest---

23 A Uh-huh. (Affirmative).

24 Q ---driveway?

25 A And that would of been in this center lane way back

Roger Caldwell - Cross-examination
By Mr. Coulter

1 here.

2 Q Okay. So, do you get -- you get into this area here to
3 make the turn?

4 A I don't think so.

5 Q Okay. All right.

6 A Not till I started to pull forward and turn actually.

7 Q I got you.

8 So you're pulling forward this way to turn in?

9 A Yes, sir. Yes, sir.

10 Q Okay. Now, when you said you looked down to see if
11 traffic was clear, what area were you looking down towards?

12 A Down through here.

13 Q Okay. And this intersection right here, is that what
14 you were looking at?

15 A Yes.

16 Q Okay. And this intersection is controlled by traffic
17 signal?

18 A Uh-huh. (Affirmative).

19 Q Is that right?

20 A Yes, sir.

21 Q Okay. Now, when you looked down here at these -- this
22 area where the stop bar is, what did you see?

23 A I had two -- there was two cars sitting right here and
24 just bright lights just changed. I seen it changing and I
25 seen them start to take off.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 Q Okay. So there were two cars there?

2 A Two cars.

3 Q Was there a motorcycle there?

4 A No, sir.

5 Q Okay. Now, the Plaintiff's attorney asked you a minute
6 ago about other cars passing.

7 Did either of those cars that were at that stop line,
8 when you saw them, did they pass you?

9 A No.

10 Q Okay. Did they get anywhere near you?

11 A No, sir.

12 Q Okay. So, whatever distance this is is the distance
13 that had to be passed in order to get to where you were at,
14 correct?

15 A Yes.

16 Q And have you ever measured that?

17 A No, sir.

18 Q And you've never walked it off or done anything like
19 that?

20 A No, sir.

21 Q All right. So, when you did decide it was clear, and
22 begin to make your left turn, what's the -- what's -- what
23 happens next?

24 what's the next thing that happened?

25 A Well, when you start to turn, after you done looked and

Roger Caldwell - Cross-examination
By Mr. Coulter

1 seen that was clear, you, you go ahead and turn. You sort
2 of looking where you're going---

3 Q Okay.

4 A ---when you turn. You just get on across the road so
5 you don't take no -- too long and something else come up and
6 hit you I guess.

7 Q Okay. Did you have your blinker on to make that turn?

8 A Yes, sir, I did have it on.

9 Q Okay. So, you had your indicator on to people coming
10 forward that you were making a left turn?

11 A Uh-huh. (Affirmative).

12 Q That's a yes?

13 A Yes, sir.

14 Q Okay. All right. And so as you make that left turn,
15 what's the next thing you hear?

16 A I hear tires screeching --

17 Q Okay.

18 A -- and --.

19 Q Now, as far as where you were when the, the vehicle,
20 your vehicle got struck -- just took this down. I'm sorry.
21 But, Judge, and I'm gonna take it down.

22 You, you would of been in, in this lane of travel when
23 you got struck.

24 Is that right?

25 A Yes.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 Q Okay. All right. So, was there room on --?

2 A There was a full lane on this side and all this lane's
3 on this side's --

4 Q Okay.

5 A -- clear.

6 Q So if anybody wanted to try to take any evasive action,
7 did they have room to go around you?

8 A Both sides.

9 Q Okay.

10 A Cause I was at a complete stop once I heard the tires
11 screech.

12 Q All right. Now, as far as after the accident, you saw
13 the Plaintiff on the road?

14 A (Witness nods affirmatively.)

15 Q You gonna have to answer it. I'm sorry.

16 A Yes.

17 Q Okay. And you saw that -- you mentioned in -- on, on
18 cross by the Plaintiff's attorney that you saw the Plaintiff
19 bleeding?

20 A Yes.

21 Q Okay. Where was he bleeding from?

22 A It was just around his head area.

23 Q Okay. So, he was bleeding from the head.

24 Now, you've done a lot of mechanical over your time.

25 Have you ever been -- had any type of---

Roger Caldwell - Cross-examination
By Mr. Coulter

- 1 A No, sir.
- 2 Q Well, wait a sec. Let me finish.
- 3 A Medical, no, sir. Medical training, no.
- 4 Q No medical training?
- 5 A Hu huh. (Negative).
- 6 Q EMS training?
- 7 A Oh, I have like first -- just basic first aid but
- 8 nothing that severe.
- 9 Q Okay. Were you scared to even try to move him?
- 10 A Oh, definitely.
- 11 Q Okay. Did you know if he had any type of a neck injury
- 12 at all?
- 13 A No, sir.
- 14 Q Okay. But when you got out, you were, you were already
- 15 under the in -- you were already told people who knew what
- 16 to do were on their way?
- 17 A I'd seen somebody on the phone and they said they done
- 18 called.
- 19 Q Okay.
- 20 A Yes, that was my only concern at the moment was just
- 21 getting him an ambulance there.
- 22 Q What was your concern?
- 23 A Getting him an ambulance there.
- 24 Q Okay. All right. All right. Now, as far as the
- 25 accident time, we went over that.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 Somewhere around nine o'clock sound about right?

2 A It sounds good.

3 Q Okay. That's what you call late -- later in the
4 evening?

5 A Yes, sir.

6 Q Okay. Now, how long did you stay there at the accident
7 scene?

8 Do you remember?

9 A Not exactly but pretty late.

10 Q Pretty late?

11 A Uh-huh. (Affirmative).

12 Q Now, did you start taking those photographs immediately
13 after the accident?

14 A No, I never took a picture until after they done got
15 him in the ambulance and got him took care of and whatever
16 they could do for him.

17 Q So he was being cared for?

18 A Uh-huh. (Affirmative).

19 Q Was he even there when you started taking those
20 photographs?

21 A I doubt it.

22 Q Okay.

23 A I don't think he was.

24 Q All right. Now, you mentioned about wanting to go to
25 the hospital to see him.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 A Yes, sir.

2 Q Okay. How did you, how did you find out that they felt
3 like you shouldn't come to the hospital?

4 A My ex-wife knew some of their people and talked to
5 them.

6 Q Okay. All right. So, you tried to reach out?

7 A Yes, sir.

8 Q Okay. Now, let's talk about the damage to -- that was
9 caused first to your vehicle as a result of this accident.
10 You were shown some report that says repairable.

11 Was your vehicle repairable?

12 A No, sir, not within the means of what it was worth.

13 Q Okay. Tell me what type of damage that your vehicle
14 had.

15 A Well, it'd been -- where the brakes and the wheel mount
16 at, it bent all of that stuff up into the frame and all
17 towards the motor. So, it -- it wasn't really nothing you
18 could do to actually fix that vehicle. It was -- I mean
19 you -- it -- even putting it on a frame machine, it would
20 still never be right from there on out.

21 Q Okay.

22 A It's gonna wear tires, stuff like that. It just
23 wasn't, wasn't fixable.

24 Q Okay. Was the, was the frame of that vehicle, was
25 that---

Roger Caldwell - Cross-examination
By Mr. Coulter

1 A Yes.

2 Q ---damaged?

3 A Oh yes.

4 Q Okay. It -- so it was bent?

5 A Yes.

6 Q Did you ever try to correct the frame?

7 A I hooked a logging chain and attempted to pull it out.

8 Q Well, tell, tell me about that, hooked a logging chain.

9 A I hooked it to a large tree and actually used the car
10 and tried to floor it in reverse and just snatch it out. It
11 wouldn't even budge it.

12 Q Have you done that before?

13 A Yes.

14 Q So that -- has it worked before?

15 A It has before.

16 Q Okay. But wouldn't even working this time?

17 A No.

18 Q Okay. All right. How about -- and, of course, it had
19 to be towed from the scene?

20 A Yes.

21 Q All right. How about the damage to the Plaintiff's
22 motorcycle?

23 Do you remember seeing that when it was -- were you on
24 the scene when that was removed?

25 A Yes, sir.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 Q Okay. Tell what type of damage that had.

2 A Well, when they picked it up to try to roll it off the
3 scene, the front end and the motorcycle itself, the front,
4 just sort of just split it. It was broke in half.

5 Q So, the front -- I don't know what you call that is---

6 A The forks and the steering wheel, they had broke in
7 half from the body of the motorcycle.

8 Q Okay. That snapped in half?

9 A Uh-huh. (Affirmative).

10 Q Okay. So --.

11 A The only thing that was holding it together I believe
12 was just the brake cables and driver cables and stuff like
13 that, the wiring.

14 Q Okay. And these have been marked as Plaintiff's
15 Exhibit No. 3, and just look through those because there's a
16 photograph in there I think that shows the, the motorcycle
17 upright.

18 A Uh-huh. (Affirmative).

19 Q And just let me know when you get there.

20 THE COURT: Are those already in?

21 MR. WILLEY: Those are not in.

22 THE COURT: Any objection---

23 MR. WILLEY: I can move them in.

24 THE COURT: Any objection to them coming in?

25 MR. WILLEY: No, Your Honor.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 THE COURT: Okay. Mr. Coulter, any objection?

2 MR. COULTER: No objection, Judge.

3 THE COURT: All right. Plaintiff's -- and they're
4 marked as No. 3.

5 They're photographs?

6 MR. WILLEY: Yes.

7 THE COURT: Of what?

8 MR. WILLEY: The motorcycle.

9 THE COURT: Are in without objection.

10 (WHEREUPON, Plaintiff's Exhibit No. 3 was received into
11 evidence at this time.)

12 THE COURT: And while we're talking about exhibits,
13 Defendant's No. 1 is in without objection?

14 MR. WILLEY: No objection.

15 THE COURT: Thank you.

16 (WHEREUPON, Defendant's Exhibit No. 1 was received into
17 evidence at this time.)

18 Q Okay. Got -- you've got to one, to one of them where
19 it's actually upright?

20 A Yes, it's upright.

21 Q Okay. Was that the condition that it was when it was
22 at the scene?

23 A This part here and that part there was broke in half.

24 Q Okay.

25 A It's --.

Roger Caldwell - Cross-examination
By Mr. Coulter

1 Q Just being together by you say the wiring?

2 A Yes.

3 Q Okay. But snapped in half?

4 A Yes.

5 Q Okay. Thank you, Roger.

6 A Uh-huh. (Affirmative).

7 THE COURT: Any reply?

8 MR. WILLEY: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. WILLEY:

11 Q Mr. Caldwell, you just testified that the cars that you
12 had to wait to pass had already long passed and that the
13 cars you saw at the stop light had just started to go when
14 you started to make that left.

15 Is that right?

16 A Can you run that by me again?

17 Q I believe your testimony just now, I just want to make
18 sure I'm getting this right, was that when you were sitting
19 here, the cars that had already passed you were somewhere up
20 here and these cars had just started to go, just got the
21 green light.

22 Is that right?

23 A They just got the green light.

24 Q All right.

25 A They was just starting to pull off.

Roger Caldwell - Redirect examination
By Mr. Willey

1 Q And when these folks had a, had a red light, you would
2 agree with me that these folks probably had a green light to
3 go across traffic, right?

4 A I would say so.

5 Q All right. Do you know the name of this road, this
6 cross street?

7 A No, sir.

8 Q Okay. The cars that are in this lane, they can turn
9 right, right?

10 A Uh-huh. (Affirmative).

11 Q And so do you know if the cars had already passed if
12 they had turned right?

13 A This is just turning -- if that one just turned green
14 and then turned red, they could of been on -- a car turned
15 on it but they wasn't --

16 Q Right. And---

17 A -- cause I was looking up through there.

18 Q Right.

19 And if they had turned on it like those other cars,
20 then you would---

21 A I would of seen.

22 Q ---agree with me they would of had the right of way,
23 right?

24 A Yes, I would of seen them.

25 Q Okay. And your testimony now is that those cars were

Roger Caldwell - Redirect examination
By Mr. Willey

1 well up ahead at the time that you entered the oncoming
2 traffic lane?

3 A They just had passed I guess.

4 Q Sir?

5 A They just had passed but they would of been past me,
6 yes.

7 Q They just had passed, okay, and they would of been
8 passed you. So, let me show you a photograph from
9 Plaintiff's Exhibit 4 that you took.

10 You see that stopped car, the car that stopped when the
11 wreck occurred right there?

12 A Not when the wreck -- did I see the car, yeah.

13 Q Yes see that car?

14 A Uh-huh. (Affirmative).

15 Q And that car is in that second travel lane, right?

16 A It appears to be. It looks like it.

17 Q And so in order for you to go into that second travel
18 lane and complete your turn, that car would of had to move a
19 little bit, right?

20 A A little maybe.

21 Q So, Mr. Caldwell, isn't it possible that you were
22 stopped in that oncoming traffic line waiting for that car
23 to pass so you could complete your turn when this wreck
24 occurred?

25 A No, that car wasn't there.

Roger Caldwell - Redirect examination
By Mr. Willey

1 Q So, your testimony is that you did it---

2 A They was no traffic there when I turned. Not in -- it
3 might of been passed but it wasn't in there.

4 Q So, after the wreck occurred when all these people
5 stopped and these firetrucks showed up by the McDonald's and
6 all that, your testimony is that car just appeared some time
7 after that?

8 A I don't know what that car sitting there would of --
9 what about -- I don't know what---

10 Q You don't remember it from that day, do you?

11 A Not that car, no.

12 Q Right.

13 You don't remember a lot from that particular day, do
14 you?

15 A Well, it's about six years ago.

16 Q All right. Thank you, sir.

17 THE COURT: Counsel, what exhibit is that that's on the
18 projector now?

19 MR. WILLEY: This is Plaintiff's Exhibit 4. It's seven
20 photographs.

21 THE COURT: Okay. Already in evidence.

22 MR. WILLEY: Already in evidence.

23 THE COURT: Thank you.

24 Any objection to Mr. Caldwell stepping down?

25 MR. COULTER: Could, could I just have one follow-up

Roger Caldwell - Redirect examination
By Mr. Willey

1 question, Judge?

2 THE COURT: Yes, sir, and then I may have to allow
3 counsel the same opportunity.

4 okay?

5 MR. COULTER: Okay. I -- just, just about that.

6 RECROSS EXAMINATION

7 BY MR. COULTER:

8 Q Those photographs that were just put on the screen --

9 A Uh-huh. (Affirmative).

10 Q -- those were taken hours after the accident happened,
11 right?

12 A Yeah, cause they had painted markers and all around it
13 and vehicles all moved all around it at that time.

14 Q Okay. So that, that vehicle you're looking at---

15 A Uh-huh. (Affirmative).

16 Q ----that they claim was stopped a minute ago---

17 A Yes.

18 Q ---was that there at the time of the accident?

19 A No.

20 Q No.

21 Okay. Thank you.

22 MR. WILLEY: So---

23 THE COURT: Okay. So now anything else, Mr. Willey?

24 MR. WILLEY: Yes, Your Honor.

25 REDIRECT EXAMINATION

Roger Caldwell - Redirect examination
By Mr. Willey

1 BY MR. WILLEY:

2 Q So, these firetrucks were there after the wreck and
3 these ambulances, right?

4 A You see those?

5 A After the wreck, yes.

6 Q Okay. And you see that McDonald's sign?

7 A Yeah.

8 Q That McDonald's is right here, right?

9 A I guess.

10 Q Okay. So, those firetrucks, which are in your lane,
11 are in this lane over here blocking the lane, right?

12 A No.

13 Q These firetrucks are not in the oncoming traffic line?

14 A They was on these lines over here.

15 Q The wreck occurred here.

16 A They was parked over here.

17 Q And so they're over here, right, by the McDonald's?

18 A I can't -- I can't see nothing but, but -- right.

19 Right.

20 Q Okay. You see that McDonald's sign up at the top?

21 A I see the sign. I can't see what's over there.

22 Q You can't see the back of the firetruck?

23 A Oh, yeah, I see it.

24 Q Okay. And so your testimony now---

25 A Well, it---

Roger Caldwell - Redirect examination
By Mr. Willey

1 Q ---that I showed you photographs---

2 THE COURT: Wait a second.

3 A You can't see---

4 THE COURT: Sir?

5 A ---the picture to tell what's what.

6 THE COURT: Sir?

7 MR. WILLEY: Yes.

8 THE COURT: I'm sorry.

9 Mr. Caldwell, I think he was trying to answer your
10 question but you had turned your back.

11 THE WITNESS: He took---

12 THE COURT: If you'll allow him to answer, I'll let you
13 ask the next question, which was a follow-up I believe.

14 MR. WILLEY: I just asked if it was a firetruck and he
15 said yes.

16 THE WITNESS: But you took the picture and put your
17 head up there. I couldn't see it.

18 Q Do you want to see this again?

19 A Yes.

20 Q Okay. These -- you saw the firetrucks though, correct?

21 A Well you done changed the picture now.

22 Q Right.

23 But you saw the firetrucks?

24 A I can't see it now.

25 Q Okay. Show the firetrucks.

Roger Caldwell - Redirect examination
By Mr. Willey

1 You see that firetruck?

2 A Uh-huh. (Affirmative).

3 Let's see.

4 Q Or is it just me?

5 Am I the only one that can see those firetrucks?

6 I mean you see it?

7 A Yeah, I see the truck.

8 Q Okay.

9 A I was trying to look at the orientation to everything.

10 Q It's not as long as a football field either, is it?

11 A I ain't said nothing about it.

12 Q Okay.

13 THE COURT: All right. Counsel, you will ask questions
14 and not make comments and you will ask the question of the
15 witness.

16 MR. WILLEY: Sure.

17 Is that fire---

18 THE COURT: Do not make comments to anyone else in the
19 room.

20 Q Is that firetruck as long as a football---

21 THE COURT: Sir, do you understand?

22 MR. WILLEY: Yes.

23 THE COURT: Thank you.

24 Q Is that firetruck as---

25 A I'm still working on another -- the first question you

Roger Caldwell - Redirect examination
By Mr. Willey

1 was looking at asking.

2 Now where did you say the McDonald's was?

3 Was it on this picture here?

4 Q (WHEREUPON, Mr. Willey points on the picture.)

5 A Okay.

6 Q Pizza Hut, Zaxby's, gas station, McDonald's.

7 A Where's that McDonald's sign at?

8 Where do you see the McDonald's sign?

9 Q It's on this side of the road and you don't see it on
10 the overhead.

11 A I don't see it.

12 Q Right.

13 A I can't---

14 Q All right.

15 A I can't tell it.

16 Q Oh.

17 A Not from this picture there.

18 Q All right. But you can see the firetruck?

19 A I can see the back end of the firetruck but I---

20 Q Okay.

21 A I can answer that other question I think.

22 Q And would you agree that there were firetrucks on the
23 scene?

24 A They were firetrucks, yeah.

25 Q Okay. And those firetrucks weren't as long as a

Roger Caldwell - Redirect examination
By Mr. Willey

1 football field, right?

2 A No, of course they ain't.

3 Q Okay. And your testimony, as I understand it, is
4 despite all of that, the firetrucks, the cops, the tow truck
5 not having moved your vehicle yet, that somehow, in the
6 midst of all that, this car just appeared after the wreck?

7 Is that your testimony?

8 A They was all kind of cars moving around after the
9 wreck, yes.

10 Q Okay. Thank you, sir.

11 THE COURT: Okay. Sir, you may step down. Thank you.
12 Watch your step.

13 The next witness please.

14 MS. McCUMBER: Yes, Plaintiff calls Jerry McDevitt.

15 THE COURT: Give her just a moment---

16 THE WITNESS: Yes, ma'am.

17 THE COURT: ---to wipe this down.

18 Okay. One more minute.

19 THE CLERK: Sorry.

20 THE WITNESS: Sorry.

21 THE COURT: Maybe wipe it down again.

22 MS. McCUMBER: Your Honor, can I have a moment?

23 (Pause.)

24 JERRY McDEVITT, being first duly
25 sworn, testified as follows:

Jerry McDevitt - Direct examination
By MS. McCumber

1 THE CLERK: Thank you. You may be seated.

2 THE COURT: All right.

3 THE CLERK: Mr.---

4 THE COURT: Sir, if you will, state your full name
5 spelling your last for the record.

6 THE WITNESS: Yes, ma'am, Gerald McDevitt. M-C Capital
7 D-E, V as in Victor, I-T-T.

8 THE COURT: Thank you, sir.

9 THE WITNESS: I go by Jerry though --

10 THE COURT: Yes, sir.

11 THE WITNESS: -- unless I'm in trouble.

12 THE COURT: Counsel.

13 DIRECT EXAMINATION

14 BY MS. MCCUMBER:

15 Q All right. May I call you Jerry?

16 A Yes, ma'am.

17 Q Okay. And where do you call home, Mr. -- Jerry?

18 A I live in Mount Pleasant, South Carolina.

19 Q Okay. Did you -- but you grew up around here?

20 A I grew up in Clemson. Went to Daniel High School and
21 went to Clemson University.

22 Q And after going to Clemson, what did you do?

23 A Went into the military, U.S. Air -- special forces Unit
24 in the Air Force.

25 Q Okay. What, what did you do in special forces?

Jerry McDevitt - Direct examination
By Ms. McCumber

1 A I was a pararescueman.

2 Q If you don't mind just telling the jury -- I know all
3 these things.

4 A Pararescueman.

5 Q Okay. And, after that, what did you do?

6 A Once I got an honorable discharge I went to -- back
7 home to Charleston where my family was and got a job as a
8 police officer with the City of Charleston.

9 Q When was that?

10 A '92.

11 Q How long did you work for the City of Charleston Police
12 Department?

13 A Eighteen years and then medically retired.

14 Q And while you were at the Charleston City Police
15 Department, what was your job description?

16 A First two years I was a patrol officer. The last 16
17 years I was assigned to the traffic division and was the
18 sergeant over the traffic division responsible for basically
19 all the accident, fatal accidents, and reconstruction, along
20 with the motor unit.

21 Q So you investigated accidents for 16 years?

22 A Yes, ma'am.

23 Q How many accidents would you say that you've
24 investigated?

25 A I honestly, after 10 -- I stopped counting I guess

Jerry McDevitt - Direct examination
By Ms. McCumber

1 after about 10,000.

2 Q And what percentage of those collisions were motorcycle
3 collisions?

4 A I -- about 25.

5 Q And you yourself are a motorcyclist.
6 Is that correct?

7 A I am. I was a motor officer for the department and
8 motor instructor and I've operated motorcycles my whole
9 life.

10 Q Okay. How long have you been out, out of the police
11 force?

12 A I retired in 2010.

13 Q Okay. And what have you been doing since then?

14 A I started a reconstruction company and so I'm a -- I do
15 accident reconstruction and forensic reconstruction.

16 Q So, all in all, how long have you been investigating
17 collisions and then reconstructing them?

18 A Twenty-seven years roughly.

19 Q And what does it mean to -- and have you had training
20 in reconstruction?

21 A I have. I've been through all certification courses
22 for the state along with additional advanced courses at IPTM
23 and Northwestern.

24 Q And what type of -- what is -- what does reconstruction
25 mean?

Jerry McDevitt - Direct examination
By Ms. McCumber

1 So kind of just explain to the jury what an accident
2 reconstruction is.

3 A Basically accident reconstructionist will determine the
4 sequence of events that occurred during a collision. So,
5 we'll determine what happened.

6 Q And what type of things do you investigate
7 specifically?

8 A You mean -- I'm sorry.

9 Q So, what do you look at at the scene, what do you
10 review, that type of stuff?

11 A Basically as much information as we can. We go to the
12 scene. We investigate the evidence at the scene. We
13 investigate the evidence of the two vehicles or any of the
14 vehicles involved, police reports, photographs. We apply
15 industry standard mathematics and physics to calculate, you
16 know, speeds, delta-v's, crush, all that stuff.

17 Q All right. And I see that you brought a binder with
18 you today.

19 Is this---

20 A Yes, ma'am.

21 Q Is that your case file for this case?

22 A Yes, ma'am, this was everything that was provided to me
23 and along with information that I produced when I went to
24 the scene.

25 Q Okay. And what all is contained in there?

Jerry McDevitt - Direct examination
By Ms. McCumber

1 A Basically this has the trooper's accident report. It
2 has the photographs that were taken at the scene. It has
3 damage estimates of both vehicles, depositions for all the
4 parties involved, in -- including me, and pretty much
5 that's -- along with the photographs that I took at the
6 scene.

7 Q Okay. And is that typical of what you would do in an
8 accident reconstruction case?

9 A Yes.

10 Q Okay. And what else would you normally do?
11 would you inspect the vehicles?

12 A Yes.

13 Q Okay. Did you have a chance to inspect the vehicles in
14 this case?

15 A I did not.

16 Q Okay. And why is -- why didn't you?

17 A It's my understanding, when I read the depositions, the
18 trooper's deposition was that this was, you know, it, it was
19 a cut and dry case, his statement, and that it appeared to
20 me that it looked like it had been resolved. And, at a
21 later date, based on Mr. Caldwell's deposition, I guess he
22 retained a law firm and I guess decided to --.

23 Q So, it just was too late in time to inspect it?

24 A Yes, time -- a lot of time had passed.

25 Q Would you have liked to inspect it?

Jerry McDevitt - Direct examination
By Ms. McCumber

1 A Yes, ma'am.

2 Q Okay.

3 A I would have.

4 Q But you were still able, even though you did not
5 inspect the vehicles, to do a full reconstruction on this
6 case?

7 A Yes, there was enough evidence for me to, to opine --

8 Q All right.

9 A -- come up with conclusions.

10 MS. McCUMBER: All right. At this time, Your Honor, we
11 would move Mr. McDevitt in as an expert in the field of
12 accident reconstruction.

13 THE COURT: Any objection, counsel?

14 MR. COULTER: No objection.

15 THE COURT: All right. Okay. So let me address the
16 jury briefly.

17 Okay. Ladies -- and it's accident reconstruction and
18 this would be Mr. McDevitt.

19 Okay. Normally a person can not give opinion
20 testimony. When a person testifies, they must testify as to
21 what they either saw, heard, or sensed by smell or something
22 like that. However, there is an exception. When someone is
23 qualified because of education or experience, they are
24 permitted to give their opinion in certain areas if the
25 Court qualifies them that way.

Jerry McDevitt - Direct examination
By Ms. McCumber

1 In this case, you-all have heard there is no objection
2 to Mr. Gerald McDevitt being qualified as an expert in the
3 area of accident reconstruction to give opinion testimony in
4 that area. That does not mean that you must accept the
5 opinion. But it is evidence for you to use in any way that
6 you see fit.

7 Thank you, ma'am. Please continue.

8 MS. MCCUMBER: Thank you.

9 All right. In your expert opinion, what, what
10 conclusions did you come to in this case?

11 A My conclusions was that this was a clear and cut
12 failure to yield type collision and there was no speed
13 involved.

14 Q All right. And how did you come to those conclusions?

15 So, let's just kind of break that down, speed, and
16 you've heard a lot -- you've been sitting here all day?

17 A Uh-huh. (Affirmative).

18 Q Why did you come to the conclusion that speed was not a
19 factor in this case?

20 A Because of the damage profile of the two vehicles,
21 the -- there's a -- the lack of a debris pattern or debris
22 field because of the collision, the final rest of the two
23 vehicles, the fact that the Mercury -- the Mitsubishi Galant
24 did not have any rotation because an impact. If there's
25 been velocity involved in this collision, and it impacted

Jerry McDevitt - Direct examination
By Ms. McCumber

1 the right front corner of the driver -- of the vehicle, it
2 would of caused that vehicle to rotate counterclockwise.
3 That's just basic physics and that was not apparent in this
4 collision, and also the trooper's investigation.

5 Again, all I -- he has seven -- at the time, 17 years
6 of experience working collisions and he---

7 MR. COULTER: Judge, can I enter an objection?

8 THE COURT: Please come forward.

9 (WHEREUPON, a bench conference was held out of the
10 hearing of the jury at this time.)

11 THE COURT: Please continue.

12 Q All right. Mr. McDevitt?

13 A Yes, ma'am.

14 Q Jerry. Sorry. Something I didn't touch on earlier. I
15 just wanted to make sure the jury heard it.

16 Did you have any certificates or accolades or anything
17 like that during your time with the force?

18 A Yes, I did. I, I received or was awarded police
19 officer of the year for the nation.

20 Q Okay. And what was that a result of?

21 Did you do something special?

22 A I, I guess I decided to be a fireman for a day, and
23 there was a house fire while I was working an accident, and
24 it was fully engulfed, and I couldn't wait for the fire
25 department to get there. So, I entered in and brought out

Jerry McDevitt - Direct examination
By Ms. McCumber

1 mother, father, and two kids.

2 Q Okay. And I forget to tell you this earlier. Thank
3 you for your service.

4 A Yes, sir.

5 Q What kind of motorcycle was Mr. McDade riding on the
6 day of this collision?

7 A Harley Davidson.

8 Q Okay. Are you familiar with that type of motorcycle?

9 A Very, yes, ma'am.

10 Q And you're familiar with its capabilities?

11 A I am.

12 Q Would a motorcycle that -- the Harley Davidson, I, I
13 think it was called a V-Rod?

14 A Yes, ma'am.

15 Q Would that be able to -- let me back up actually. Let
16 me recall from evidence Defendant's Exhibit 1.

17 Do you mind if I approach?

18 A No, fine.

19 Q Oh, sorry. Trying to orient myself.

20 Okay. And let's go ahead and assume Mr. Caldwell is
21 telling the truth.

22 Okay?

23 A Uh-huh. (Affirmative).

24 Q And that Mr. McDade was stopped behind the vehicle back
25 here.

Jerry McDevitt - Direct examination
By Ms. McCumber

1 A Correct.

2 Q Okay. Would that motorcycle, that Harley Davidson
3 V-Rod that was stopped here completely, and the collision
4 occurred right here, is that your understanding?

5 A Yes, ma'am.

6 Q Okay.

7 A True.

8 Q Would it be---

9 A Actually more up here.

10 Q Okay. Thank you.

11 Would it be able to reach a speed of 70 miles per hour?

12 A It would not be able to, no.

13 Q Okay. Okay. How many feet are from -- sorry. This --
14 what is this, a stop bar --

15 A Stop bar line, yes, ma'am.

16 Q -- to the place of the collision.

17 A From the stop bar line to the collision point is
18 325 feet.

19 Q Okay. So you did the calculations with your knowledge
20 of the Harley Davidson V-Rod and that distance to determine
21 there's no possibility that it could reach a speed of 70---

22 A That---

23 Q ---70 miles per hour?

24 A That particular vehicle does not have the capability to
25 reach that speed in that distance.

Jerry McDevitt - Direct examination
By Ms. McCumber

1 Q Okay. And you had -- again, you said you reviewed all
2 the pictures. You reviewed the police reports.

3 Did you review the, let's see, the collision report of
4 Mr. Caldwell's vehicle?

5 A I'm sorry. Are you -- the accident report or the
6 damage---

7 Q The collision -- the damage.

8 A Yes, I did.

9 Q Okay. All right. And you got to see the damage of the
10 motorcycle as well?

11 A Yes, ma'am.

12 Q Okay. So, in your expert opinion, do you believe that
13 Mr. McDade was going at or below the speed limit at the time
14 of the collision?

15 A Yes, it is.

16 Q Okay. And what is the speed limit on that road?

17 A 40.

18 Q 40.

19 If he had been going 70, would this collision look like
20 it does in all these pictures?

21 A No, ma'am, it wouldn't.

22 Q Okay.

23 A It would be much more severe.

24 Q So, did you -- strike that. Was the motorcycle
25 totaled?

Jerry McDevitt - Direct examination
By Ms. McCumber

1 A Yes, it was based on that documentation.

2 Q Okay. And do you know how much damage was done to it?

3 A Just under \$8,000 I believe.

4 Q Okay. And you heard Mr. Caldwell saying that he
5 reviewed the pictures as well or maybe took them, and, and
6 that part of it broke in half?

7 A I believe he was talking about what we call the triple
8 tree, which is where the front forks are, and that they had
9 become dislodged, which would not surprise me based on this
10 collision.

11 Q And it wouldn't surprise you even for a 40 mile per
12 hour collision?

13 A Yeah, that could happen at 20.

14 Q Okay. And you had the opportunity to review the
15 pictures and you've seen them today with the, the firetruck?

16 Did you see the firetruck?

17 A Yes, I have.

18 Q And is that customary to secure a scene like that?

19 A Yes. No, that's protocol.

20 Q Okay. So would there have been cars traveling all over
21 that road after somebody's injured like that?

22 A Not likely while they -- the individual's still there
23 or if they're still working the scene, usually traffic is
24 diverted around. They'll set up a different pattern.

25 Q Okay. I think that's all for now.

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 A Yes, ma'am.

2 THE COURT: Cross-examination, Mr. Coulter.

3 MR. COULTER: Thank you, Judge.

4 CROSS-EXAMINATION

5 BY MR. COULTER:

6 Q Good afternoon, Mr. McDevitt.

7 A Yes, sir.

8 Q Is that -- am I pronouncing that correctly?

9 A Yes, sir, you're right.

10 Q All right.

11 A You can call me Jerry.

12 Q Good afternoon.

13 As far as this particular photograph, did you know that
14 this was taken hours after the accident occurred?

15 A Based -- I believe, from what I've heard today, that it
16 was.

17 Q Yeah.

18 And, and it wouldn't be unusual, after the, the person
19 who is injured was taken away, is that they open a lane of
20 travel so traffic could get through?

21 A Yeah, it -- that, that can happen some time afterwards,
22 yes.

23 Q Sure.

24 I mean you got to let the traffic through at some
25 point?

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 A At -- well, normally the proper protocol would be to
2 divert traffic around the scene so---

3 Q Sure.

4 A ---you know, if -- that, that -- this diversion pattern
5 they set up -- I don't know.

6 Q So, does that vehicle that's up in the left corner,
7 does that appear to be stopped or moving?

8 A You know, it's hard to tell with this kind of a
9 picture. I mean I, I honestly can't answer that. It, it
10 appears to me to be in the same focal lane that, you know,
11 as in it's not as -- they're both in focus. So, I would --
12 if that vehicle was moving, it had to be going very slow.

13 Q Okay. It -- is that the fact -- is that vehicle that's
14 in the left corner, does that have any relevance to this
15 accident at all?

16 A No, that didn't. No, I don't believe so.

17 Q All right. Okay. Now, just some, some background. I,
18 I got your information regarding your education and so
19 forth.

20 As far as your work background, what you've done, as I
21 understand from reviewing your deposition, you've, you've
22 done as many as 15 different accident reconstructions for
23 the Anastopoulos Law Firm?

24 A I would -- yeah, that's a ballpark. I mean I --
25 honestly I'd have to go back and look at my records but

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 somewhere in that vicinity---

2 Q Okay.

3 A ---alone, yes.

4 Q Well, you -- and, and I wasn't there but you gave a
5 deposition some time ago in October of 2020.

6 Does that sound right?

7 A Yes, sir.

8 Q Somewhere in that range.

9 A Yes.

10 Q Okay. And if you need to look at it I got it right
11 here.

12 A Okay.

13 Q I got it.

14 A Either way.

15 Q Okay. All right. That sounds good.

16 A Whichever you prefer.

17 Q All right. So -- but you don't disagree that, in your
18 deposition, you said that you may have done as many as 15
19 for the Anastopoulos Law Firm?

20 A Yes.

21 Q Okay. All right. And as far as your fee, what type of
22 fee do you have?

23 what's your arrangement with them?

24 A I have a retainer fee and then, once that is used up,
25 I -- it's an hourly rate.

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 Q Okay. What's your retainer fee?

2 A 2,500.

3 Q Okay. And what's your hourly rate?

4 A 200 an hour.

5 Q Okay. And so do you know how much you've actually
6 billed on this case to date?

7 A I can -- I'm pretty sure it's just the 2,500 at this
8 point. I mean I've got my -- well that and along with
9 whatever I charge for the deposition, which was charged I --
10 to your firm --

11 Q Okay.

12 A -- or --

13 Q Understood.

14 A -- the other guy's firm. Whoever---

15 Q Yeah.

16 A ---deposed me.

17 Q All right. So that's fine.

18 Now, it, it -- since the time of your deposition in
19 October of 2020, have you done any other investigation in
20 this case?

21 A Other than talking to the trooper himself, and, and no
22 additional investigation. Just reviewing what I've done and
23 speaking to the trooper.

24 Q Okay. All right. Now, normally I understand that one
25 of the things you would do when you first do an accident

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 reconstruction is you want to get to the scene.

2 A In a perfect world, yes, that would be great. As a
3 police officer, that's expected, but when you're on the
4 private side, it rarely happens.

5 Q Right.

6 And normally what you would like to do is get there
7 within just a few days of the accident, correct?

8 A Yes.

9 Q Okay. And in this particular case, I understand you
10 went to the scene in September of 2019?

11 A That's correct.

12 Q So, you didn't even get to the scene until some four
13 years after the accident occurred?

14 A That's correct.

15 Q That's not ideal, is it?

16 A I would prefer to be there sooner. That's --.

17 Q Okay.

18 A Yeah.

19 Q One of the other things you would like to do when you
20 go to an accident scene is you'd like to look at the length
21 of any skid marks that were there?

22 A Correct.

23 Q Okay. And did you do that?

24 A I -- no, I was not able to do that. They had actually
25 put a Jersey barrier up at this -- the location where this

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 had happened. So, they put concrete over.

2 Q And the reason you want to look at length of skid
3 marks, that's something you would take into consideration in
4 doing your calculations, correct?

5 A Correct.

6 Q Okay. Did you -- normally you would like to look at
7 any gouges that may be in the road?

8 A Yes, if I went to the scene, yes.

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

10 A No, they were covered by the concrete Jersey barrier.

11 Q Okay. That's something you'd take into consideration
12 in reaching an opinion, correct?

13 A Yes, sir.

14 Q Okay. You would like to also take measurements of the
15 resting position of the vehicles involved?

16 A You mean -- oh, I, I would definitely place them, yes.
17 I'd like to know their orientation.

18 Q Okay. And did you do any measurements regarding the
19 resting position of the vehicles?

20 A No. Obviously no.

21 Q All right. And that's something you'd take into
22 consideration in reaching an opinion?

23 A Among other things, yes, sir.

24 Q Okay. And then as far as witnesses, you would like to
25 interview witnesses in the case?

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 A Yes, if there were witnesses available. I believe the
2 one witness that was there was not -- we couldn't locate.

3 Q Okay.

4 A Nobody could locate that witness.

5 Q Or, or the parties.

6 A Normally, yes. In this case it was a little bit
7 different.

8 Q Okay. All right. And you mentioned a minute ago, of
9 course, certainly you would like to look at what -- what's
10 called the damage profile or the actual damage to the
11 vehicles involved in the accident itself?

12 A You'd be -- yeah, you could do that with looking at the
13 vehicle or you could have photographs that would help you
14 depict that.

15 Q Okay. And you weren't able to look at either of the
16 vehicles in this accident---

17 A No.

18 Q ---correct?

19 A I had, I had the photographs.

20 Q And the damages that you would see on these vehicles,
21 that would help assist you in reaching an opinion in this,
22 right?

23 A I was able to ascertain the damages based on the
24 pictures. So --.

25 Q The, the pictures that's been shown, these grainy

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 photographs?

2 A Yes.

3 Q Okay. The grainy photographs which you would agree are
4 of poor quality, correct?

5 A They were from -- a cell phone. Appears to be cell
6 phone pictures.

7 Q Okay. And you're able to assess the damage to my
8 client's vehicle based on these photographs?

9 A You can, you can see the damage in the pictures, yes---

10 Q Okay.

11 A ---and the final rest of the vehicles---

12 Q All right.

13 A ---their orientation to each other.

14 Q Okay. And is that the ideal way to, to do an accident
15 reconstruction is by looking at cell phone photographs?

16 A No. Again, you would prefer to -- the ideal way
17 with -- for me to be there shortly after the accident
18 happened in a perfect world.

19 Q Okay. All right. And you've also heard that my
20 client's vehicle was not even operable after this accident,
21 correct?

22 A I've heard his testimony, yes.

23 Q Do you disagree with that?

24 A Based on the evidence that was provided to me, it's not
25 consistent with the damage that was listed in the

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 documentation.

2 Q So, you're saying that his vehicle did not have a bent
3 frame?

4 A I don't have any evidence provided to me that indicates
5 that the vehicle had anything other than body damage.

6 Q You don't have -- you don't, don't believe that his
7 tire was pushed up into the engine block?

8 A If I -- I, I can't opine cause I don't have any
9 evidence to indicate that and---

10 Q Well, you got evidence from Mr. Caldwell, do you not?

11 A Yes.

12 Q Did you completely disregard everything Mr. Caldwell
13 said about the damage to his vehicle?

14 A No, I listened.

15 Q Okay. So, you're not saying that's not true?

16 A No, I -- no, I'm not saying it's not true.

17 Q Okay. And that's pretty substantial damage to a
18 vehicle, is it not?

19 A To cause a frame bend, yes, it's -- that's a very --
20 that's a, that's a, a large delta-v collision.

21 Q That is a large collision?

22 A Yes.

23 Q And you heard Mr. Caldwell testify that he even took a
24 chain and tried to unbend that by hooking it to a tree?

25 A Yes, that was his testimony.

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 Q Right.

2 And you don't discount that, do you?

3 A I can't sit here and say he's a liar. I don't, I don't
4 think it's consistent with the evidence that I've seen.

5 Q The evidence you've seen.

6 Do you know where that evidence came from?

7 A The, the photographs that I've seen.

8 Q Oh, that's the, that's the evidence you're talking
9 about?

10 A No, the other documentation that y'all entered in as
11 I'm not sure which --.

12 Q What, the one that said repairable?

13 A Yes.

14 Q Do you know where that came from?

15 A I -- I'm assuming it, it was a---

16 Q Well---

17 A ---an inspector.

18 Q Okay. Now, you've had an opportunity to read all the
19 depositions in the case?

20 A Yes, I have.

21 Q Okay. And you understood that Roger, my client, was
22 making that left turn into a gas station?

23 A Yes, sir.

24 Q And you've read the, the Plaintiff's deposition,
25 correct?

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 A Yes.

2 Q And it's your understanding -- and let me look at this.
3 It's Defense Exhibit No 1.

4 And is it your understanding that the Plaintiff
5 testified that he was traveling from this direction towards
6 this area?

7 A Yes, sir.

8 Q Okay. All right. So, he was coming from the area of
9 where this intersection is and coming this way?

10 A That's -- yes, that's my understanding.

11 Q That's your understanding.

12 Okay. All right. And in reading those depositions,
13 you agree that both the Plaintiff and Mr. Caldwell said that
14 he, the Plaintiff, was not the first vehicle at that stopped
15 intersection?

16 A Yeah, I believe it's stated that there was two vehicles
17 stopped in each lane in front of him.

18 Q Two cars?

19 A Yes, that's how I understand the deposition.

20 Q Okay. And you can't dispute that?

21 A No.

22 Q Okay. And you just said a minute ago that it was
23 325 feet from the stop line to where the accident occurred
24 as you understand?

25 A From the stop bar line, yes.

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 Q Stop bar line.

2 Okay. And so obviously a football field plus 25 feet?

3 A Correct.

4 Q Okay. And did you also understand that when, prior to
5 this impact, the Plaintiff completely locked down his brakes
6 on that motorcycle?

7 A I am aware that he would of locked down his rear tire,
8 which would of caused him to fishtail and lay the bike down.
9 I am -- there, there was no evidence provided to me from
10 either the trooper's depositions or photographs or anything
11 else that the front tire was come -- the bike was completely
12 locked down.

13 Q Okay. No doubt that he applied his brakes?

14 A No doubt.

15 Q Okay. And you also understand that there's no doubt,
16 that prior to him reaching impact with my client's vehicle,
17 that the Plaintiff laid the bike down?

18 A I believe the bike was in the process of going down.
19 But based on the photographs that I see where it shows the
20 paint marks that were put by the trooper, it shows the end
21 of the skid and the beginning of the gouges, and then where
22 the bike came to rest and its orientation to the vehicle is
23 about 8 to 10-feet. So, it appears to me, based also on the
24 pictures of the bike, that the floorboard of his bike was
25 starting to engage the roadway, and that's where he was at

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 the point of being ejected off the bike.

2 Q Okay.

3 A Laid down -- so from a reconstruction standpoint, laid
4 down basically means that the bike is completely on its
5 sides and sliding leaving gouges across the span of the
6 motorcycle.

7 MR. COULTER: Okay. Judge, could we open this
8 deposition please?

9 THE COURT: Yes, sir.

10 Okay. For the record, I have unsealed the deposition
11 of Gerald McDevitt taken on Tuesday, October the 27th, of
12 2020.

13 MR. COULTER: Thank you.

14 All right. You can just take that?

15 A Yes, sir.

16 Q And I'm gonna ask you to go to Page 28 of your
17 deposition from back in October.

18 A Yes, sir, I'm there.

19 MS. MCCUMBER: Can I see?

20 MR. COULTER: Excuse me?

21 MS. MCCUMBER: Can I see what you're talking about?

22 MR. COULTER: Yeah, let me get you a line. Page 28,
23 Line 5 through 9.

24 MS. MCCUMBER: Okay.

25 Q All right. And the question was, if you look at three,

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 Line 3, the question do -- to you was, again, based on the
2 photos that you have and can you make any determination --
3 let me back up.

4 Both parties also I think agreed and testified that
5 Mr. McDade actually laid his bike down prior to the
6 collision. And your response was what?

7 A Yes.

8 Q Okay. And then you were asked about a determination as
9 to where the bike was laid down. It says do you have -- and
10 this is Page -- Line 17.

11 Do you have any way to determine, at this point, where
12 the motorcycle would of been laid down and your response is
13 what?

14 A I said no, sir, because there's a concrete median there
15 at the time.

16 Q Okay. So, you did -- did you just a second ago, did
17 you testify to how far away it was that---

18 A Based on the---

19 Q ---he laid it down?

20 A Based on the photographs.

21 Q And this question here was do you have any way to
22 determine at this point where the motorcycle would of been
23 laid down. Your answer was no, sir.

24 A well, it's more than -- it says no, sir, because there
25 was a concrete median there when I went to do the

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 inspection. So, I can't give you a measurement.

2 Q Well, you had photographs, those photographs when you
3 gave this deposition?

4 A Correct.

5 Q Okay. So now you're saying you can determine how far
6 away he was?

7 A No, I can tell you that there, there was gouge marks on
8 the roadway, and then I can make an estimation based on the
9 picture, but I'm not -- I can't give you a, like I said a
10 minute ago, 8 to 10 feet. I can't tell you exactly because
11 I was unable to measure --

12 Q Okay.

13 A -- because there had been roadwork -- redesign of the
14 roadway.

15 Q Okay. All right. And was there any way for you to
16 determine how fast the Plaintiff was going before he applied
17 his brakes in this case?

18 A I could not give you a speed, no.

19 Q Okay. To any reasonable certainty could you?

20 A No, not without actually having the measurements -- the
21 actual measurements of the skids.

22 Q Right.

23 Okay. So, you do agree that if a person was
24 accelerating as I understand that it would take 5.5 seconds
25 to 5.6 seconds to go 325 feet in this particular motorcycle?

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 A Yes.

2 Q At normal acceleration?

3 A Actually, no, that is at high end acceleration.

4 Q Well, would you agree that this particular vehicle,
5 this motorcycle, can get up to 60 miles an hour in three and
6 a half seconds?

7 A I don't believe I -- actually, no. I believe that this
8 bike takes a -- it takes five -- from my calculations from
9 what I remember, it took more than like 5.6 seconds to get
10 to 60.

11 Q All right. Let's go to Page 27 if you would. Just let
12 me know when you're there.

13 A I'm there, sir.

14 Q All right. And I'm reading the question starting on
15 Line 17. If the Plaintiff were to just go in, accelerate
16 extremely fast from the stop bar or from the intersection,
17 how quickly could he travel 325 feet?

18 And your answer is what.

19 A Within a matter of seconds. A 2004 Harley Davidson
20 V-Rod in a quarter mile can get to 60 miles an hour in 3.5
21 seconds.

22 Q Okay. As far as my client's speed, as I understand,
23 there was no evidence that, that my client attempted to
24 accelerate quickly to beat traffic?

25 A No.

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 Q All right. And as a matter of fact, I think it was
2 your testimony that my client would of been traveling at an
3 appropriate speed in attempting to make this left turn,
4 correct?

5 A Yes.

6 Q Okay. Certainly no evidence of any type of
7 recklessness on the part of my client, is there?

8 A No, just the failure to yield.

9 Q No. In fact, I think you would agree that it's fairly
10 common, fairly common, for this type of, of an accident with
11 a motorcycle being driven at nighttime?

12 A I'm not exactly sure. I mean are you stating that --
13 oh, I'm -- can you rephrase that question?

14 Q Sure.

15 A Cause it -- there's an implication there I'm not sure.

16 Q I think you would agree that it's not uncommon for this
17 type of accident to happen with an automobile and a
18 motorcycle at night, this type of accident?

19 A Yeah, it's not uncommon because of -- I mean
20 motorcycles are not as easy to see as cars.

21 Q Okay. Thank you.

22 A Yes, sir.

23 THE COURT: Any redirect?

24 MS. MCCUMBER: Yes, Your Honor.

25 May I consult with counsel a second?

Jerry McDevitt - Cross-examination
By Mr. Coulter

1 I didn't ask, you know, to bring these pictures in.

2 THE COURT: Yes, ma'am.

3 MS. MCCUMBER: All right. I'm gonna mark these three
4 pictures, Your Honor, for identification purposes only at
5 this point as Plaintiff's Exhibit -- what?

6 THE COURT REPORTER: Six, seven, and eight.

7 MS. MCCUMBER: Six, seven, and eight.

8 And while she's doing that, I'll just -- I'm sorry.

9 You can't do both at once. Sorry. Okay. Nevermind.

10 (WHEREUPON, the three photographs were marked as
11 Plaintiff's Exhibit Nos. 6 through 8 for identification
12 purposes only at this time.)

13 REDIRECT EXAMINATION

14 BY MS. MCCUMBER:

15 Q Okay. Mr. McDevitt, I'm handing to you what's been
16 marked as Plaintiff's 6, 7, and 8. Let me know when you've
17 had a chance to review those.

18 A Okay. Yes, ma'am.

19 Q And did you review those pictures as part of your
20 investigation?

21 A Yes, I did.

22 Q Along with these pictures that we have had up over here
23 on the screen --

24 A Yes, the cones.

25 Q -- just marked as Plaintiff's Exhibit 4?

Jerry McDevitt - Redirect examination
By Ms. McCumber

1 Is that a yes?

2 A Yes.

3 Q Sorry. I didn't hear you.

4 A Yes, I've had a chance.

5 Q Okay. Great.

6 And you recognize those to be pictures that I just
7 handed you, six, seven, and eight, of the vehicles -- Mr.
8 Caldwell's vehicle?

9 A Yeah, those are the final rest of -- on the top left.
10 That's the actual final rest at the right rear tire of Mr.
11 Caldwell's vehicle.

12 Q Uh-huh. (Affirmative).

13 A The---

14 Q I'm sorry. I'll move it.

15 A There, yeah.

16 Q Uh-huh. (Affirmative).

17 A So that's -- yes. That's the picture of the final rest
18 of the vehicles---

19 Q This---

20 A ---along with, with what the trooper painted for
21 evidence on the road.

22 Q And what is this picture?

23 A That looks to be the fog line, which would be the
24 right -- it's the white line along the right side of the
25 roadway.

Jerry McDevitt - Redirect examination
By Ms. McCumber

1 Q Okay. And does it have any significance?

2 No?

3 A No idea.

4 Q Okay. I---

5 A It's not anywhere near where this collision happened.

6 Q What are the dots in the picture?

7 A The -- the -- on the right?

8 Q Yes.

9 A So those are the marks, the paint, that the trooper put
10 on the roadway to mark evidence.

11 Q And do know what that evidence is?

12 A Yes, the one on the right that has the dot and the
13 semicircle is the end of a skid mark.

14 Q Uh-huh. (Affirmative).

15 A The dots on the left are scrapes on the roadway that
16 were left from the motorcycle in the process of being laid
17 down.

18 Q And that's -- those are the gouge marks?

19 Is that---

20 A Those are the gouge marks, yes, ma'am.

21 Q And you reviewed those in order to come to your
22 ultimate conclusions?

23 A Yes.

24 Q And you said you just weren't able to see them again
25 when you went out to the scene?

Jerry McDevitt - Redirect examination
By Ms. McCumber

1 A No, ma'am, this -- literally where this is there is a
2 concrete Jersey barrier there now.

3 Q And Mr. -- sorry. I need to, I need to move this in
4 evidence. I apologize. I've been jumping around.

5 A You needed to do what?

6 MS. MCCUMBER: Your Honor?

7 A Oh.

8 THE COURT: Any objection, Mr. Coulter, to Plaintiff's
9 6---

10 MR. COULTER: No.

11 THE COURT: ---7 and 8?

12 MR. COULTER: No, ma'am.

13 MS. MCCUMBER: Okay.

14 THE COURT: Okay. Plaintiff's photographs 6, 7, and 8
15 are in without objection.

16 (WHEREUPON, Plaintiff's 6 through 8 were received into
17 evidence at this time.)

18 MS. MCCUMBER: Thank you.

19 And you listened to Mr. Caldwell's testimony before
20 about how his car was inoperable after this collision.

21 Is that correct?

22 A Yes.

23 Q Because it wasn't just body damage. It was -- this is
24 Plaintiff's Exhibit 8 that we're looking at.

25 A Correct.

Jerry McDevitt - Redirect examination
By Ms. McCumber

1 Q And what -- did you review this photograph as part of
2 your investigation?

3 A I did.

4 Q And is this consistent with what we talked about
5 earlier that it was just body damage?

6 A This photograph along with the documentation that we
7 discussed earlier.

8 Q Okay. And then I think you -- did you hear him say his
9 tire went into his engine?

10 A Yes, I heard -- understood he said that.

11 Q And this first photograph, which is Plaintiff's Exhibit
12 6, do you see any tires in any engines?

13 A You can't see any damage like that on this photograph.
14 I believe there's a color picture of it that's better than
15 what we're looking at here. But based on that photograph,
16 you can't see -- you see damage to the, to the front bumper
17 and the quarter panel, and then you see damage to the
18 passenger side back-door. The tire seems to be in tact and
19 not dislodged. And I would expect, if there was that much
20 damage to the axle, the, the rim would be chipped. The tire
21 would be deflated.

22 Q Okay. And then this is Plaintiff's Exhibit 7.

23 Did you have a chance to review this photo?

24 A Yes.

25 Q And what kind of conclusions did you reach in this

Jerry McDevitt - Redirect examination
By Ms. McCumber

1 photo?

2 A I see body work damage to the right -- to the front of
3 the car and the right front corner of the car and the
4 headlight.

5 Q Is this debilitating damage?

6 A No.

7 Q Okay. Was the -- would that be where the bike hit?

8 A That's where the bike -- that's where the bike hit,
9 yes.

10 Q Okay. And is it your understanding that Plaintiff's
11 Exhibit 8 that we just looked at, that's where Mr. McDade's
12 body hit?

13 A Yes, that's the impact from Mr. McDade.

14 Q Okay. And, again, if he had been going in an excess
15 rate of speed over the speed limit, where would his body
16 have landed?

17 A It, it would of been a little bit more close to the
18 front tire---

19 Q Uh-huh. (Affirmative).

20 A ---cause there wouldn't have been as much separation.
21 He would of traveled more down the road than to the left,
22 and the damage profile, the dent, would be much deeper than
23 what we see her.

24 Q Okay. Could he have gone over the vehicle?

25 A At a high rate of speed and he was more in line with

Jerry McDevitt - Redirect examination
By Ms. McCumber

1 the vehicle, I would of expected him to have at least
2 engaged at the right front tire. It's possible he could of
3 gone over. But the bike was in the process of going down.
4 So, it's likely he would have gone -- it would of been an
5 under ride. He would of gone under the vehicle.

6 Q Okay. But his body ended up resting next to the
7 vehicle?

8 A Yeah, I -- based on I think the testimony today, he was
9 more towards the back, which is consistent cause when he, he
10 had motion when he hit that door, and, you know, and he
11 didn't just stop at the door. He bounced off.

12 Q Uh-huh. (Affirmative).

13 A So, I would of expected him to come to rest more toward
14 this tire or even a little bit father down.

15 Q Okay. And Mr. Coulter mentioned that you have 15 --
16 you -- we've hired you 15 times on cases.

17 A I'm, I'm -- that was an estimate. But yes, it's --
18 I'm -- ball park I guess.

19 Q Right.

20 And, and have I ever called you for a case and you said
21 I can't do it?

22 A More times than not honestly.

23 Q So you give me an honest opinion when I call you about
24 a case?

25 A Yes.

Jerry McDevitt - Redirect examination
By Ms. McCumber

1 Q Okay. And we actually are opposing on some of our
2 cases, aren't we?

3 A Yes, ma'am, we are.

4 Q All right. And would you agree with me that, when
5 someone fails to yield when they turn left in front of
6 oncoming traffic, that actually is reckless behavior?

7 A Well, it's, it's -- under the criminal code, it's
8 failure to yield right of way. So, it's a, it's a failure
9 to yield. It's, it's careless driving. It's in,
10 inattentiveness or however you want to call it. But -- so
11 it's, it's a failure to yield.

12 Q Oh, gosh, this is just legalese I got to do at the end.
13 Do you hold all of your opinions today to a reasonable
14 degree of accident reconstruction certainty?

15 A I do.

16 Q All right.

17 A Yes, ma'am.

18 Q Thank you.

19 THE COURT: Okay. Any objection to releasing Mr.
20 McDevitt?

21 MS. MCCUMBER: No objection from us.

22 MR. COULTER: No.

23 THE COURT: Thank you, sir. You may step down.
24 That will be a Court's Exhibit.

25 MR. COULTER: Thank you, Judge.

1 THE COURT: And so will the other one, the deposition
2 of Mr. Caldwell.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you, sir.

5 THE WITNESS: Yes, ma'am. Thank you.

6 THE COURT: Okay. So, Pam, that will be Court's
7 Exhibit 2 and 3?

8 THE COURT REPORTER: Yes, ma'am.

9 THE COURT: Okay. All right. Counsel approach
10 regarding scheduling.

11 (WHEREUPON, a bench conference was held out of the
12 hearing of the jury at this time.)

13 (WHEREUPON, the two depositions were marked as Court's
14 Exhibit Nos. 2 and 3 for identification purposes only at
15 this time.)

16 THE COURT: All right. Thank you-all.

17 MS. MCCUMBER: Thank you.

18 THE COURT: Okay. So, ladies and gentlemen of the
19 jury, we have concluded our morning session, and I am going
20 to now allow you-all to go to lunch. It is, according to
21 the clock on the wall that I can see, it says that it is
22 12:37. However, I believe that it may be a little bit later
23 than that. 12:38.

24 Okay. So, why don't, why don't we do this. Let me
25 just have you-all come back then at 2:00. That will give

1 you time to leave, get some lunch, stretch, and come back.
2 And when we return, I am going to ask if Juror Number 20,
3 sir, if you will move to the foreperson's seat, and you will
4 sit where this young lady is sitting right now.

5 All right?

6 THE JUROR: All right.

7 THE COURT: Anything further before I allow the jury to
8 go to lunch until two o'clock?

9 MS. MCCUMBER: No, Your Honor.

10 MR. COULTER: No, ma'am.

11 THE COURT: All right. Thank you-all.

12 Again, no discussion. Talk about the weather,
13 wonderful restaurants, beautiful downtown Spartanburg, our
14 new parking garage, the construction, but not about the
15 case.

16 All right. Thank you.

17 All rise.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: Okay. Please be seated.

21 Let me put the objections on the record before we
22 recess for lunch.

23 At 11:10AM today there was an objection by Mr. Coulter
24 concerning communications with Mr. Mc -- or potential -- it
25 was in anticipation of testimony regarding the Defendant's

1 privileged communications between counsel and Mr. Caldwell,
2 and counsel agreed that they were not -- that -- that would
3 of been by Mr. Willey. Agreed that they would only get into
4 a timeline of events as to the date that they met and, and
5 so on. So, I overruled that objection at that time.

6 At 11:23 there was an objection by Mr. Coulter as to
7 what the Plaintiff testified to in deposition and I
8 sustained that.

9 There was, at 12:03, an objection by Mr. Coulter, let's
10 see, during the testimony of Mr. McDevitt on direct
11 examination not to get into the trooper's use of a term or,
12 or referring to a trooper's opinion as being cut and dry.
13 The trooper was not an expert in accident reconstruction
14 testimony and I sustained that.

15 All right. Thank you-all.

16 Anything else before we go to lunch?

17 MR. COULTER: No, ma'am.

18 THE COURT: Okay. And so at two o'clock, I mean I'm
19 not trying to get into y'all's strategy or interfere with
20 it, but do y'all know who you are calling at 2:00?

21 MR. WILLEY: I suspect that I will play---

22 THE COURT: I'm not asking -- you don't have to tell
23 me.

24 MR. WILLEY: No, I'll tell you.

25 THE COURT: Do you know who---

1 MR. WILLEY: I don't mind. I'm not the hide the ball
2 type. I suspect we'll play the doctor's video. I believe
3 that's ready to go.

4 THE COURT: Doctor Chittum's.

5 And have y'all redacted what you needed to redact?

6 MR. WILLEY: Yes.

7 THE COURT: Okay.

8 MR. WILLEY: They have informed me they've uploaded the
9 copy. So --.

10 THE COURT: Okay. Do y'all want to test that out
11 before you go?

12 MS. MCCUMBER: Yes, I was gonna do that.

13 THE COURT: Okay. And how long is Doctor Chittum's
14 deposition?

15 MR. WILLEY: I do not know.

16 MS. MCCUMBER: I don't know. It's not very long.

17 MR. WILLEY: I, I would suspect 40 minutes ish but I
18 don't know to be honest.

19 THE COURT: Okay. All right. And so then -- so do
20 y'all know who you've got lined up after that?

21 I just want to make sure y'all have somebody lined up.

22 MR. WILLEY: We do.

23 THE COURT: Okay.

24 MR. WILLEY: We -- we've got folks lined up.

25 THE COURT: Okay. All right. Thank you.

1 So we will be adjourned until 2:00 and this room will
2 be locked.

3 All right. And so I will -- I won't be in here thought
4 protecting anything. So -- but it will be locked.

5 All right.

6 (WHEREUPON, Court was in recess for the lunch break.)

7 THE COURT: Okay. The attorneys have told me that with
8 the upcoming deposition of Doctor Chittum I will not be
9 required to rule on any of the objections during the
10 deposition. Those have been resolved and I disclosed that
11 Doctor Chittum is my husband's surgeon as of December of, of
12 2020, okay, and no one objects to the deposition being
13 presented.

14 MR. WILLEY: I'm going to switch the order a little,
15 Judge, and put Tom, the father, up first so that he can go
16 get his MRI, okay, and then we'll do the video after. He is
17 park -- he's parking.

18 (Pause.)

19 THE COURT: Okay. Counsel, are we ready to go?

20 MS. MCCUMBER: Yes.

21 MR. WILLEY: We are, Your Honor. Thank you for your
22 patience.

23 THE COURT: Okay. Trying to make sure I don't start
24 talking before my court reporter is ready.

25 Okay. So, Madam Bailiff, if we can have the jury?

1 THE BAILIFF: Yes, Your Honor.

2 THE COURT: Okay. Thank you.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE BAILIFF: All rise.

6 THE COURT: Okay. Mr. Foreman, and members of the
7 jury, are we ready?

8 (WHEREUPON, the foreman nods affirmatively.)

9 THE COURT: All right. Thank you. Thank you-all again
10 for being prompt. I hope you had an opportunity to get
11 outside, it wasn't terribly hot, and get something to eat,
12 and we are now going to continue on in the matter of Matthew
13 McDade versus Roger Caldwell. We are still in the
14 Plaintiff's case and I would ask if counsel will call their
15 next witness.

16 MR. WILLEY: Thank you, Your Honor.

17 The Plaintiff would call Tom McDade.

18 TOM MCDADE, being first duly
19 sworn, testified as follows:

20 THE CLERK: Thank you. You may be seated.

21 THE COURT: Sir, make yourself comfortable, and, if you
22 will, state your full name for the record.

23 THE WITNESS: Thomas Arthur McDade.

24 THE COURT: Counsel.

25 DIRECT EXAMINATION

Tom McDade - Direct examination
By Mr. Willey

1 BY MR. WILLEY:

2 Q Tom, thanks for being here. Tell the jury how, how you
3 know Matthew.

4 A Matthew's my son, my youngest son.

5 Q How many children do you have?

6 A I have two.

7 Q And---

8 A He's, he's the youngest.

9 Q And have you and Matthew been pretty close?

10 A Yes. Matthew always helped me when the other one
11 wouldn't, the oldest one. Matthew was always there.

12 Q What do you do for a living?

13 A I build transmissions by trade, automatics.

14 Q How long have you been doing that?

15 A Since '86.

16 Q Okay. And prior to the wreck, what, what was Matthew's
17 occupation?

18 A He's a mechanic too. He built straight drives more
19 than auto -- more Honda straight drives. He didn't want to
20 mess with automatics cause all his buddies had straight
21 drives and they'd tear them up and he'd fix them.

22 Q And at the time of the wreck, how long had he been
23 doing that type of work?

24 A For about five years.

25 Q Okay. And his birthday is October 17th of 1990.

Tom McDade - Direct examination
By Mr. Willey

1 Is that right?

2 A Yes.

3 Q And this wreck occurred on October 16th of 2015?

4 A Yes, sir.

5 Q So that, that would of been the day before his
6 25th birthday?

7 A Yes, sir.

8 Q Okay. So, had he been pretty well working in an
9 occupation since he'd gotten out of school?

10 A Yes, sir.

11 Q Okay. And prior to the wreck, did you-all work
12 together at all?

13 A Yes, sir, a lot.

14 Q Tell, tell the jury about your working arrangement.

15 A Well, before he moved to the shop where he's at, me and
16 him had shops beside each other. But we couldn't get cars
17 in and out, couldn't get rollbacks in and out. So, we
18 moved. I went to a big shop and rented a, a bay with a lift
19 and a flat, and he rented a shop, and I give him an extra
20 lift. He had a big, big lift and I give him an extra lift.
21 And he's doing real well changing motors and transmissions
22 for the guy across the street cause he was covered up, and
23 he, he stayed real busy right there.

24 Q And once you-all made that move to the, to the bigger
25 shops, about how much money was he making?

Tom McDade - Direct examination
By Mr. Willey

1 A He -- it, it -- anywhere from a grand to 2,000 a week.

2 Q Okay. And that was pretty consistent?

3 He was staying busy?

4 A Yes, sir.

5 Q And how did you first find out about the wreck?

6 A My wife told me. She got a phone call and she told me
7 he had been in an accident and we took off to the hospital.

8 Q And when you got to the hospital, what, what did you --
9 what did you see?

10 A He's in bad shape. They, they had already done that
11 cranium and they had tubes -- a tube running here and he's
12 all lit up with all kind of hardware and stuff.

13 Q Do you recall about how long he was in the hospital?

14 A I'm not sure. I was thinking like four months.

15 Q And when he got out of the hospital, where did, where
16 did he go?

17 A He come to our house.

18 Q Prior to the wreck, was he living with you?

19 A No, he had a house up at the lake.

20 Q And he also has a child, right?

21 A Yes, sir.

22 Q Tell the jury about -- a little bit about his child.

23 A Yeah, his name's Hayden. He was a -- I believe he was
24 six and he kept him every weekend, and we always done things
25 together with the child.

Tom McDade - Direct examination
By Mr. Willey

1 Q And so when he got out of the hospital and came back to
2 your house, tell the jury what that was like, what he was
3 like at that point.

4 A Well, he couldn't walk. He couldn't hardly talk. He
5 couldn't feed himself and he's in a wheelchair, and I took
6 him everywhere that I could take him, and, and he didn't
7 want to try to walking. But finally one day she had -- my
8 wife had went to the store and I said when are you gonna try
9 walking on that walker and he said give it here. And so he,
10 he started then and he was on it till he learned how to walk
11 real good.

12 Q And did he, did he teach himself how to walk again?

13 A Yes, sir.

14 Q What is -- does, does, does he still live with you?

15 A Yes, sir.

16 Q Okay. And as far as work now, what, what is that like?

17 A He'll go to the shop with me and sometimes he'll be
18 there 15 minutes and then want to go back home. He has mood
19 swings. He can't concentrate. He's got a big tool box and
20 stuff. He'll go back there and sit and just mess with his
21 tools and he can take things apart. Like anything that's
22 got bolts and nuts in it he'll take it apart but it's not
23 putting it back together. He don't -- he's not -- he can't
24 do it.

25 Q And prior to the wreck that's what he did for a living,

Tom McDade - Direct examination
By Mr. Willey

1 right?

2 A Yes, sir.

3 Q The shop that you-all go to now, is that the shop that
4 you were at prior to the wreck?

5 A No, that was his shop.

6 Q All right. So, tell the jury about that, after the
7 wreck, how your business arrangements changed.

8 A It's more or less a place for me and him to hang out
9 and I'll take small jobs and do them, and he might help me
10 take tires off of a car or something like that. But as far
11 as going in and, and taking heads off a car or transmission,
12 he, he can't do nothing like that.

13 Q And so, after the wreck, you gave up your shop and went
14 to his?

15 A Yes, sir.

16 Q Okay. Is he able to earn an income now?

17 A No.

18 Q Okay. And when he is around, around the shop, is there
19 a reason that you went to his shop instead of taking him to
20 your shop everyday?

21 A Yes, cause I give him a lift. He had a, a big lift,
22 like a 12,000-pound lift, and I give him a 9,000-pound to
23 take with him. And he's got so much tools and equipment
24 that I don't -- we didn't know what to do with it, and
25 that's why we didn't move, move it. I did -- it's all I can

Tom McDade - Direct examination
By Mr. Willey

1 do to make the bills now and just to keep that place up.

2 Q And, at this point in time, who is providing
3 financially for Matthew?

4 A He gets a -- some kind of Medi -- Medicaid or
5 something. I don't know a whole lot about that.

6 Q Okay.

7 A But if he wants something to eat or anything like that,
8 anything he wants, I try to provide for him.

9 Q All right. So, you and your wife basically are
10 providing for him at this point?

11 A Yes, sir.

12 Q And, Tom, as far as -- you talked a little bit about
13 his mood swings and things like that that you see throughout
14 the day.

15 A Uh-huh. (Affirmative).

16 Q Can you tell the jury a little bit about Matthew's
17 ability to remember things around the shop and his ability
18 to just, you know, help you with basic tasks and that sort
19 of thing?

20 A Yeah. If I'm doing something and I need a screwdriver,
21 I'll tell Matthew go get me a flathead screwdriver. And
22 before he gets to the tool cart or the box, he'll forget
23 what he's going after.

24 Q And we went to dinner the other night and you were
25 telling me about his general confusion and just remembering

Tom McDade - Direct examination
By Mr. Willey

1 basic information.

2 Tell the jury a little bit about that.

3 A Oh, you can ask him about a Hummer and he can tell you,
4 he can tell you what size motors and all that. But he gets
5 confused on some of that stuff and starts making up some of
6 it. But most of it he, he use to know real good --

7 Q Okay.

8 A -- what motor swaps with one and transmissions and all
9 that stuff.

10 Q And just so the jury's aware, you're gonna be leaving
11 in a little while, right?

12 A Yes, sir.

13 Q Tell them just where you're going so they understand.

14 A I'm going to get another MRI on my shoulder.

15 Q Right.

16 And that's not related to this, of course, but---

17 A No.

18 Q ---just so they know.

19 what do you think's been the, the hardest thing for
20 Matthew as a result of this?

21 A We -- he stays at the house all the time unless we go
22 to the shop, and then sometimes when he gets to the shop he
23 gets -- he'll get mad or something like that and I have to
24 take him back home or get my wife to come get him.

25 Q Do you have to supervise him around the clock?

Tom McDade - Direct examination
By Mr. Willey

1 A Yes, sir.

2 Q Thank you, sir.

3 A Uh-huh. (Affirmative).

4 Q Please answer any questions Mr. Coulter may have for
5 you.

6 THE COURT: Cross-examination.

7 MR. COULTER: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY MR. COULTER:

10 Q Good afternoon, Mr. McDade.

11 A Yes, sir.

12 Q Yeah, I've got no questions.

13 A Thank you.

14 Q All right.

15 THE COURT: Okay. Any objection to Mr. McDade being
16 excused?

17 MR. WILLEY: No.

18 MR. COULTER: None from defense.

19 THE COURT: Okay. Thank you, sir. Watch your step.

20 THE WITNESS: Thank you, ma'am.

21 THE COURT: All right.

22 MR. WILLEY: We're now gonna do the video deposition,
23 Your Honor.

24 THE COURT: Okay. So let me give the jury some
25 information about that.

1 Testimony is now going to be presented to you in the
2 form of a deposition. Now, in this case, or in this
3 instance, as I understand it, it is a video deposition and
4 that is permitted by -- under our rules of the South
5 Carolina Rules of Civil Procedure specifically 30(h), and
6 this -- a, a deposition is sworn testimony that is given by
7 a witness outside of Court in the, in the presence of
8 lawyers for each party who may ask questions of the witness.

9 Now, as I understand it, if there were any questions
10 that were objected to at -- during this video deposition,
11 the lawyers have worked that out. So, if y'all hear
12 somebody object during or the word objection during the
13 deposition, it's my understanding that there's no need for
14 me to rule on that, that they have resolved those
15 objections.

16 Now, this type of testimony is entitled to the same
17 consideration and is to be judged as to credibility and
18 weighed by you in the same way as if the witness were
19 present and gave the testimony about to be shown to you from
20 this witness stand. It is then for you, the jury, to
21 determine the effect, value, weight, and truth of the
22 testimony given in this video deposition.

23 As I understand it, it is the deposition of Doctor
24 Chittum and this is much easier than trying to schedule, I
25 guess, that person to be here.

1 All right. And so, with that -- and just so they have
2 some idea, do y'all know approximately how long this will
3 take?

4 MR. WILLEY: It's an hour -- right at an hour.

5 THE COURT: Okay. The first thing I want to make sure
6 of is that everybody can see and everybody can hear.

7 (WHEREUPON, the jurors nod affirmatively.)

8 THE COURT: All right. Especially these folks on the
9 end. If you-all -- if you can't see, you can stand up if,
10 if you need to, okay, and is there -- y'all -- you're just
11 gonna---

12 MS. MCCUMBER: It just---

13 MR. WILLEY: Use that one --

14 THE COURT: Okay.

15 MR. WILLEY: -- so you can see it.

16 THE COURT: All right. And I've got one right here.
17 Okay. And I don't know if it would help to dim the
18 lights.

19 MR. WILLEY: I had a burger for lunch. So I might go
20 to sleep.

21 THE COURT: Okay.

22 (WHEREUPON, the playing of the deposition began at this
23 time.)

24 THE COURT: Okay. Can you pause that just one second?
25 Can, can every member of the jury see?

1 (WHEREUPON, the jurors nod affirmatively.)

2 THE COURT: Can you hear okay?

3 (WHEREUPON, some jurors nod affirmatively and some
4 jurors nod negatively.)

5 THE COURT: I'm getting a little iffy.

6 Can we turn the volume up just a little bit please,
7 ma'am?

8 Thank you.

9 (WHEREUPON, the deposition of Doctor Christopher
10 Chittum was played for the jury at this time.)

11 THE COURT: Counsel, is everything okay?

12 MS. MCCUMBER: Yeah, it's just the Internet connection.

13 THE COURT: Okay. Why don't we stand up for just a
14 minute?

15 I know everybody had lunch and might be -- things still
16 might be hard right now. Stretch. I will too. I did sit
17 in those chairs one day just to see how comfortable they
18 were.

19 Okay. And so, y'all okay?

20 (WHEREUPON, the jurors nods affirmatively.)

21 THE COURT: Everybody all right?

22 (WHEREUPON, the jurors nods affirmatively.)

23 THE COURT: Okay then. Thank you.

24 (WHEREUPON, the deposition was continued to be played
25 at this time.)

1 THE COURT: Ms. McCumber, can we pause this for just a
2 moment please, ma'am?

3 why don't we all stand up for just a moment again and
4 everybody stretch?

5 (WHEREUPON, the jurors comply.)

6 THE COURT: All right. Thank you. Please resume.

7 (WHEREUPON, the remainder of the deposition was played
8 at this time.)

9 THE COURT: Okay.

10 MS. MCCUMBER: That concludes the deposition.

11 THE COURT: All right. Thank you.

12 It is time for our afternoon break. And so I am going
13 to ask the bailiffs to escort our foreman and the members of
14 our jury to their jury assembly room, okay, for a break and
15 we'll come back in at five till, five till 4:00.

16 All right. Thank you-all for your attention.

17 All right.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: Okay. Thank you. We'll be at ease until
21 five till.

22 All right.

23 (WHEREUPON, a short recess was taken at this time.)

24 THE COURT: Okay. Counsel, are y'all ready to go?

25 MR. WILLEY: We are, Your Honor, and just a little bit

1 of scheduling so you know where we are. We have a witness
2 that's probably going to take about 30 minutes.

3 THE COURT: Okay.

4 MR. WILLEY: Then it would be our plan to break for the
5 day. Tomorrow we will have two witnesses and Mr. Coulter
6 has informed me that he will have one witness. So, I
7 suspect that we would finish before lunch tomorrow. Then we
8 could close after lunch if that was Your Honor's preference.

9 The reason that I don't want to put Mrs. McDade up
10 today is as she's pretty shaken up from the little fender
11 bender. We were just talking to her in the hallway, and I
12 just think it would be smoother if we could do that
13 tomorrow. She's also gonna be a relatively lengthy witness
14 just because she's the primary caretaker in terms of the
15 medicals and things like that.

16 THE COURT: Okay. Let me hear from Mr. Coulter.

17 Is that your understanding, sir?

18 MR. COULTER: Yeah, Judge. That's fine with me.

19 THE COURT: Okay. And so another thing that we need to
20 discuss is going to be the charge and that will take -- it
21 might take us about an hour, okay, to -- I don't give y'all
22 a copy of it. But I do give you the in -- an index so that
23 y'all can keep up with what's in there.

24 Okay. And so we need to figure out when we're gonna do
25 that, and I don't, I don't know that I'm ready to do it this

1 afternoon. I've got to get the index revised. And so --
2 but I do -- so maybe we can do that -- if we break tomorrow
3 midday for lunch, we may, we may give the jurors a little
4 more time at lunch, okay, and then we come back and close
5 and charge.

6 We'll, we'll see how it's going on timing. I don't
7 want y'all to feel pushed.

8 Okay. All right. So, I did make one little change to
9 the verdict form, and I can give y'all -- if y'all just want
10 to tear that one up, okay, and it's Mr. McDade's name. Of
11 course I was typing it and I don't have a law clerk right
12 now.

13 MR. WILLEY: Okay.

14 THE COURT: And I put one T in Matthew.

15 MR. WILLEY: And I was gonna say so, the caption now is
16 actually Betty McDade as guardian ad litem for Matthew
17 McDade. That's one of the things I circled when we were
18 gonna go over it, and there's one other -- I have a few, a
19 few --.

20 THE COURT: Okay. Why don't y'all take your time
21 tonight because---

22 MR. WILLEY: Sure.

23 THE COURT: ---you really do have to think about it---

24 MR. WILLEY: Yeah.

25 THE COURT: ---and go through it --

1 MR. WILLEY: Will do.

2 THE COURT: -- mindfully and then we can take that up
3 tomorrow as well. In the morning y'all can just hand those
4 to me.

5 okay?

6 MR. WILLEY: Yes.

7 THE COURT: Okay. With your revisions on them. Make
8 sure you've shown them to the other person.

9 All right. So, are y'all ready to go now?

10 MR. COULTER: Yes, ma'am.

11 MR. WILLEY: Yes.

12 THE COURT: Okay. And so one more thing.

13 So y'all believe that we will be finished before 5:00.

14 So I don't need to let these folks make a phone call now?

15 MR. WILLEY: No. The -- Your Honor, this witness will
16 be 30 minutes tops.

17 MR. COULTER: Yeah. Not that -- yeah. I think we will
18 definitely be done before 5:00 unless I hear something
19 strange.

20 MR. WILLEY: Yeah, it's a damages witness.

21 MR. COULTER: Right.

22 MR. WILLEY: I don't --.

23 THE COURT: Okay. And so it may be that we could go --
24 we can start going through the charge this afternoon.

25 MR. WILLEY: That's fine.

1 THE COURT: Okay. All right.

2 Okay. And so, at this time, I will ask our bailiff to
3 bring in the jury.

4 THE BAILIFF: Yes, Your Honor.

5 THE COURT: Thank you.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE BAILIFF: All rise.

9 THE COURT: Okay. Mr. Foreman, and members of the
10 jury, are we ready to go?

11 THE FOREMAN: Yes.

12 THE COURT: Okay. And I believe that I told y'all when
13 you-all were going through qualification and select at the
14 auditorium, if, during the trial you-all feel the need to
15 stand up, and you can do so without interfering with the
16 person in front of you or behind you or beside you's view of
17 just standing up just a moment, if you feel the need while
18 you're seated in the box, please do so.

19 All right. And so, with that, I will now call upon the
20 Plaintiff.

21 Are you ready to go, sir?

22 MR. WILLEY: We are, Your Honor.

23 THE COURT: Okay. The next witness.

24 MR. WILLEY: Plaintiff calls Thomas McDade.

25 THE COURT: Yes, sir, please come forward. You need to

1 be sworn by our clerk.

2 okay?

3 THE CLERK: You need to stand right over there.

4 THOMAS MCDADE, being first duly
5 sworn, testified as follows:

6 THE CLERK: Okay. Thank you. You may have a---

7 THE COURT: Sir, make yourself comfortable and we have
8 tried to sanitize---

9 THE WITNESS: Okay.

10 THE COURT: ---that area by wiping it down and spraying
11 it during the break.

12 okay?

13 THE WITNESS: All right.

14 THE COURT: If you'll state your full name and spell
15 your last name for the record.

16 THE WITNESS: Thomas Arthur McDade, Junior.
17 M-C-D-A-D-E.

18 THE COURT: Counsel.

19 DIRECT EXAMINATION

20 BY MR. WILLEY:

21 Q Mr. McDade, tell the jury how you know Matthew.

22 A That's my brother, my little brother.

23 Q He's your older brother?

24 A Little brother.

25 Q Little brother. Gotcha. I was gonna say -- and you

Thomas McDade - Direct examination
By Mr. Willey

1 know that we're here about a wreck that occurred in 2015?

2 A Yes.

3 Q All right. And tell, tell the jury what you know about
4 that wreck, where your brother was coming from, where he was
5 going.

6 A He was -- actually had a friend that'd passed away
7 prior and had went and got some hats made to give out at the
8 funeral and stuff. And he'd just come back from getting the
9 hats made when the accident happened.

10 Q And where, where -- are you -- where were you born and
11 raised?

12 A Here in Spartanburg.

13 Q Okay. Where did you go to school?

14 A Loan Oak Elementary and then Boiling Springs.

15 Q All right. So you've -- pretty familiar with the area
16 where the wreck occurred?

17 A Definitely.

18 Q All right. And, on that particular day, you indicated
19 that he had just picked up the hats and was headed to the
20 funeral home?

21 A Uh-huh. (Affirmative).

22 Yeah.

23 Q All right. And what were you doing at that time?

24 A I was actually at the house with my fiancée at the time
25 and just relaxing when I got the phone call.

Thomas McDade - Direct examination
By Mr. Willey

1 Q Okay. And what, what did you do for work at that
2 period of time?

3 A I was at Cotton Transmission here in Spartanburg where
4 I'm still at.

5 Q Your dad teach you how to work on transmissions?

6 A Yes.

7 Q And you still do that?

8 A Oh yeah.

9 Q So you were at the house when you got the call?

10 A Yes, sir.

11 Q Okay. And did you have any plans for later that
12 evening what you were gonna be doing?

13 A Not much of nothing. I had to pick up my brother's son
14 the next morning cause he was gonna be at the funeral for
15 his friend that had passed.

16 Q Okay. And this wreck happened, you remember what day
17 of the week it was?

18 A I believe it was a Friday.

19 Q Friday.

20 And so he was getting Hayden for the weekend the next
21 morning?

22 A Correct.

23 Q And you were gonna pick up Hayden because he was gonna
24 be at the funeral?

25 A Correct.

Thomas McDade - Direct examination
By Mr. Willey

1 Q All right. And did you pick up Hayden the next
2 morning?

3 A No, I did not.

4 Q Okay. And have you picked up Hayden for your brother
5 since then?

6 A I have not. He hasn't got to see him since the
7 accident.

8 Q Okay. And is that as a result of the accident and his
9 injuries?

10 A Partially between that and his mother.

11 Q With respect to when your brother would get Hayden
12 before the accident, he lived on his own, right?

13 A Correct.

14 Q All right. And Hayden would stay at this house?

15 A Correct.

16 Q And he would take care of him?

17 A Yes, sir.

18 Q Okay. And at that point in time he was six years old?

19 A Yes.

20 Q So he's 11 now?

21 A Yes, sir.

22 Q And in those years between 2015 and now, Hayden hasn't
23 been able to stay with your brother anymore?

24 A No, sir.

25 Q Okay. Were you and your brother pretty close growing

Thomas McDade - Direct examination
By Mr. Willey

1 up?

2 A Definitely.

3 Q Tell the jury about what types of activities that he
4 liked to do before the wreck.

5 A Between motorcycles and dirt bikes and we, we built the
6 Honda Civics in the import scene, building cars and fixing
7 them, and fishing. Anything two brothers in their twenties
8 would typically do. And now it's like -- it's hit or miss
9 what we can do because of how his moods are and whether he's
10 tired or not.

11 Q And before the wreck, would you say he was pretty
12 active?

13 A Definitely.

14 Q Okay. Not somebody that liked to sit around the home?

15 A He had -- twice as energetic as I am.

16 Q And has that also changed?

17 A Oh, yes, at -- there's not much he really wants to do
18 now. Every now and then they want to do something, he'll
19 get tired and just want to go back home, hang out there.

20 Q And when we all went to supper the other evening I had
21 the opportunity to observe you two.

22 Tell, tell the jury some of what you've had to do to
23 adapt in terms of having a relationship with your brother
24 and his mood changes and things like that.

25 A I've had to cope with his -- you know, we've always

Thomas McDade - Direct examination
By Mr. Willey

1 been brothers and, you know, you talk your junk back and
2 forth as brothers. But since that, then it's more hostile,
3 more direct. It's just -- and because of the attitude and
4 the mindset he's always in, it makes everything more
5 negative around.

6 Q And in terms of your response and adaptation to that,
7 as best I can, you pretty well just take it?

8 A Yeah, I look at it as tough love on his part.

9 Q Yeah.

10 Is there anything else that you'd like to tell the jury
11 about your brother and how he's changed since the wreck?

12 A It's pretty much all around. It's completely
13 different. I mean I've had to learn what I can say and what
14 I can't say that's gonna trigger his mood swings and -- but
15 I've dealt with it cause I -- I've still got him here. I'd
16 rather have to take care of him for the rest of my life then
17 not have him.

18 Q Thank you.

19 THE COURT: Cross-examination.

20 MR. COULTER: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. COULTER:

23 Q Good afternoon, Mr. McDade. I don't have any
24 questions.

25 A All right. Thank you.

1 THE COURT: well, thank you.

2 Sir, you may step down.

3 THE WITNESS: Okay.

4 THE COURT: Thank you for being here.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Okay. Any objection to Mr. McDade leaving?

7 MR. WILLEY: No.

8 MR. COULTER: None.

9 THE COURT: Okay. All right. Counsel, do y'all want
10 to approach?

11 (WHEREUPON, a bench conference was held out of the
12 hearing of the jury at this time.)

13 THE COURT: Okay. Ladies and gentlemen of the jury, my
14 hesitation is again I'm getting ready to let y'all go for
15 the day, and I'm just trying to think about the best time
16 for y'all to come back in the morning. And if I need to
17 take up some things with the lawyers before y'all get here,
18 I don't want y'all to have to be waiting in your jury
19 assembly room on that.

20 Counsel, do y'all agree with 9:30 in the morning for
21 the jury --

22 MR. WILLEY: Yes, Your Honor. That's fine.

23 THE COURT: -- in case we need to review some other
24 documents --

25 MR. COULTER: That will be fine.

1 THE COURT: -- that I'm putting together?

2 Okay. All right. Okay. And so, Mr. Foreman, and
3 members of the jury, thank you-all so much for your service
4 today. I've watched you-all very carefully and I know that
5 you-all are interested in what is going on, and I hope that
6 you're finding this to be an educational experience.

7 I'm gonna, like I said, let y'all go in just a moment.
8 I want y'all to be back in the morning at the jury assembly
9 room. You'll -- are they all coming in the Library Street
10 or the front and Library?

11 THE BAILIFF: They're coming through Library Street.

12 THE COURT: Okay. And you know how to pick these folks
13 out now. You know why they red -- wear these red jackets.

14 Okay. The only other time I've seen jackets like this
15 are Christmastime at my church.

16 Okay. But anyways so they're easy to pick out and, and
17 so look for them. Tell them that you're on my jury and
18 they'll get you back to where you need to be.

19 Again, please don't discuss this with anyone. Don't do
20 any independent research. I am gonna go home tonight and
21 tell my husband that I've just met these wonderful new
22 jurors and they seem to be so interested in everything
23 that's going on, and I am not going to discuss with him the
24 specifics about this case nor should you.

25 Again, to do so would be fundamentally unfair to both

1 sides. Right now you-all have not heard even all of the
2 Plaintiff's case. Okay. You have just maybe this much of a
3 whole amount of information.

4 All right. And so no independent research. No
5 discussions with anyone. Not even between you-all. Get
6 some rest and I'll see y'all at 9:30 in the morning.

7 Okay. Thank you.

8 All rise please.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Okay. Everyone please be seated.

12 I know y'all might need to talk to your folks for just
13 a few minutes.

14 Why don't -- I'll come back in here and I'll just sit
15 at one of these tables with counsel and we'll go through the
16 charge after you talk to your folks.

17 Why don't we give it about 10 minutes.

18 Okay?

19

20 (WHEREUPON, Court was in recess for the evening.)

21

22

23

24

25

1 Thursday, July 22nd, 2021

2
3 THE COURT: Okay. We are back on the record with
4 regard to the matter of, find my heading, McDade versus
5 Caldwell. This is Civil Action Number 1863.

6 I have conferred with counsel today and now will be
7 putting on the record, outside the presence of the jury,
8 that I was alerted this morning that one of the members of
9 the jury contacted our jury coordinator early this morning
10 and stated that he had been exposed to someone that had
11 tested positive, tested positive for COVID and that it was a
12 member of his residence.

13 So, he was then apparently had tested or was going to
14 be tested at that time, and has since the time that I
15 immediately conferred with counsel, has reported that he has
16 tested positive. And so I have been conferring with counsel
17 about the best way to handle this for the purposes of a
18 trial that you-all have already spent several days here with
19 us on.

20 Okay. And the consensus would be that we will adjourn
21 the trial at this time and reconvene with the same jury at a
22 time that will work with everyone's schedule but not before
23 10 days from today. And I want to make sure that I'm
24 sitting that correctly.

25 Mr. Willey, Ms. McCumber.

1 MR. WILLEY: That -- that's correct, Your Honor.

2 That's our discussion.

3 THE COURT: Okay. Mr. Coulter.

4 MR. COULTER: That's my understanding, yes, Your Honor.

5 THE COURT: Okay. And so, further, I now am going to
6 have the jury come in and we will explain this to them. I
7 am also going to tell them that I would suggest that they be
8 tested and that there are facilities in Spartanburg that can
9 test with rapid test results, with a more delayed test
10 result. Some of these facilities are at no cost. Some of
11 them cost if you don't have insurance, okay, and that, that
12 would be our reason for waiting at least 10 days.

13 Okay. The dates that I am looking for -- looking at
14 right now would be Monday, August the 2nd or August the
15 23rd. The week of August the 2nd or week of August the
16 23rd.

17 Okay. And so is there anything else before I have the
18 jury come back in?

19 MR. WILLEY: Nothing from the Plaintiff.

20 MR. COULTER: Nothing from the defense.

21 THE COURT: Okay. We'll have the jury.

22 Are y'all okay with me telling them that we think the
23 remainder would take about a day and a half?

24 MR. COULTER: Yes.

25 MR. WILLEY: Yes.

1 THE COURT: Okay.

2 (WHEREUPON, the following takes place within the
3 presence of the jury.)

4 THE COURT: Okay. Good morning, Mr. Foreman and
5 members of the jury.

6 I have an update for you. I want to thank you-all for
7 your patience. I know that the bailiff informed you on at
8 least two occasions, Ms. Dills, that there were some matters
9 I was taking up with the lawyers that were delaying us this
10 morning. I know that y'all were here at 9:30 and thank you.
11 Thank you for that.

12 There has been a development in, in the case that I
13 need to talk with y'all about, and I want y'all to
14 understand that this is a very difficult situation, and one
15 that I've tried to put a lot of thought into before bringing
16 you-all out, and I have had input from the counsel for the
17 parties.

18 All right. One of your fellow jurors called this
19 morning, and informed the Court that he had been exposed to
20 COVID through a household member, and I, I learned of that
21 at about -- well, early, early. And, and so -- then started
22 trying to get -- communicate with everyone here and then, as
23 the morning wore on, he contacted our jury liaison to
24 explain that he had been tested and his test was positive.
25 And so, again, had to react to that and update.

1 Okay. And so, after talking with the lawyers and
2 giving this much thought, and understanding that I've
3 practiced law for almost 30 years, just like these folks are
4 doing here today, a lot of time and effort has gone into
5 this trial. And so, in an effort to be as practical and
6 efficient as possible, I am going to adjourn the trial,
7 okay, and we are going to reconvene.

8 I have talked to the lawyers and they believe that it
9 may take a day and a half to two days for us to conclude.
10 And if everything had gone smooth sailing, you know, we
11 would of had all the evidence in by probably lunchtime or
12 midmorning tomorrow for y'all to begin your deliberations.
13 That was the plan. Of course, I'm not holding anybody to
14 that.

15 Okay. I mean you never know exactly to the moment how
16 long folks will testify. But, with that, we are looking
17 at -- and understand this too, that these lawyers, their
18 schedules are booked up. I'm scheduled to be in a different
19 circuit in the lower part of the State next week, and
20 there's these -- trial dockets are normally published at
21 least 30 days in advance.

22 We, we are looking at moving some dockets to reconvene
23 this either for Monday, August the 2nd and 3rd or, or, you
24 know, that week. Okay. So, it would be that week. Or
25 August the 23rd. And I know that school is starting.

1 Vacations usually are planned around that time and I'm not
2 trying to disrupt your lives, okay, any more than they have
3 to be for this very important case to be finished.

4 Likewise, the lawyers have trial schedules and plans
5 and we're all juggling, okay, trying to figure it out.

6 So, that's the first thing and then the second thing is
7 I would encourage each of you to be tested, and there are --
8 I'm sure that y'all are aware that there are facilities
9 available where you can be tested by driving your car in, in
10 a parking lot. You know, different types of tests at CVS,
11 Walgreens. There were testing sites set up at Lowe's and
12 then at Medicare Urgent Care right near Starbucks or that --
13 in -- on Pine Street behind the hospital. I know that, that
14 facility charges for a rapid test unless you have insurance.

15 Okay. But the reason that we're waiting and, and not
16 saying y'all go get a rapid test and come back in the
17 morning is because everybody's situation is a little
18 different, and, of course, there may be a delayed reaction,
19 you know, if, if you have been exposed and may have symptoms
20 a few days from now.

21 So, with all of that, I wanted you-all to understand
22 that -- how frustrated I am right now but this can not be
23 helped and I have actually, you know, just put tremendous
24 thought into this, and had input from some other folks on
25 the bench as to how these things can be handled even with

1 the -- our Court Administration trying to, trying to make
2 sure that I covered every base.

3 And so, I, I wonder if it would be best -- I'm, I'm not
4 suppose to talk with y'all, you know, in the jury room or
5 anything without having the lawyers in, in there. And so
6 what I, I -- I think that would be inappropriate. But what
7 I think is that if you-all want to discuss what I just said
8 very briefly and come back in?

9 Counsel, are y'all okay with that?

10 MR. WILLEY: Yes, Your Honor. That's fine.

11 MR. COULTER: That's fine.

12 THE COURT: Rather than me sitting here asking each of
13 you right now how you feel about it, that would be very
14 informative and insightful for me.

15 Okay. And so, if y'all will now follow Ms. Dills and
16 go back to the assembly room, discuss this for just a few
17 moments, and then, Mr. Foreman, if you can let me know
18 whatever everyone's thoughts are. Again, I sincerely
19 appreciate your efforts to talk about this and reach some
20 kind of consensus okay.

21 All right. Thank you-all.

22 Please rise.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: Okay. Y'all can be at ease.

1 (Pause.)

2 THE COURT: My assistant did come in here this morning
3 and wipe everything down with Lysol and she probably used a
4 whole bottle of disinfectant spray once we learned of this
5 situation, okay, in addition to what we've already been
6 doing.

7 Okay.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: Okay. Can y'all come up here for just a
10 moment?

11 Okay?

12 (WHEREUPON, a bench conference was held at this time.)

13 THE COURT: All right. Okay. Okay. why don't y'all
14 come with me?

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: Okay. How many Court Exhibits do we have,
17 five?

18 THE COURT REPORTER: Three.

19 THE COURT: Okay. So, this will be four.

20 THE COURT REPORTER: Okay.

21 THE COURT: And so, everyone, August the 9th?

22 MR. COULTER: Yes, ma'am.

23 MR. WILLEY: Yes, ma'am.

24 MS. MCCUMBER: Yes, Your Honor.

25 MR. WILLEY: Yes, ma'am.

1 THE COURT: Okay. Let's have the jury.

2 MR. WILLEY: One thing I just thought, and this is not
3 gonna interfere with that, but how we deal with the infected
4 individual since he won't still have it by then assuming he
5 survives and is fine.

6 THE COURT: Why don't we talk about that after we let
7 them go?

8 MR. WILLEY: Okay. I just wanted to raise it.

9 THE COURT: Okay. I have given that a little bit of
10 thought but --.

11 And also if y'all look at your calendars if I need to
12 call some people for y'all.

13 Okay?

14 MR. WILLEY: If we are on a roster, I'll just tell that
15 judge that we're actually in the middle of a trial. So --.

16 THE COURT: I think I'm gonna tell them 9:30 that day
17 only in case --

18 MR. WILLEY: We have something.

19 THE COURT: -- you know that -- y'all can be here at
20 9:00. We'll be here at 9:00. They can be here at 9:30 just
21 to make sure we're all on the same page.

22 Okay?

23 (WHEREUPON, the following takes place within the
24 presence of the jury panel.)

25 THE BAILIFF: All rise.

1 THE COURT: Okay. First, thank you. I, I have your
2 note and it was very detailed. I have shared it with
3 counsel and it will be marked as our Court's Exhibit No. 4
4 in just a moment.

5 I, I understand that, that, that y'all have set aside
6 this week mentally and want to have as much accomplished as
7 possible. However, I believe, out of an abundance of
8 caution, and have also conferred with counsel about this,
9 that we will need to break and allow you-all to be tested if
10 you wish to be and reconvene. Everyone has moved mountains
11 and made several phone calls for the second week of August,
12 which would be August the 9th.

13 Again, we don't anticipate, based on what they're
14 telling me, that this would take more than two to three
15 days.

16 Okay. I'm not trying to cut y'all short on your
17 deliberation time either.

18 Okay. But, their part of it, they're telling me, would
19 not go into maybe more than Tuesday.

20 Okay. And so, with that in mind, I'm getting ready to
21 release y'all and y'all are to come back at 9:30 on Monday,
22 August the 9th. We will be here earlier but taking up
23 things that you just can't foresee. My grandmother use to
24 say get up early cause you never know what you're gonna have
25 to face, okay, and sweep the floor cause you never know

1 who's coming over, all right, but -- meaning get ready.

2 And so thank you-all so much for your service. It's so
3 important in this matter to these parties, and I want to
4 stress to you-all, and, and I'm sure you have been made
5 aware that the Clerk's Office here and the State, our, our
6 Judicial Branch, Spartanburg County has tried to make every
7 effort to make your safety a priority by having you complete
8 questionnaires, by asking you questions, by installing
9 plexiglass, by having you wear masks, by disinfecting this
10 room, which was disinfected -- the whole room, my, my
11 assistant came in this morning as soon as she learned --
12 received a phone call and wiped down everything in, in the
13 room and sprayed it down. I want y'all to know that
14 sometimes things just happen, and they -- we're not
15 clairvoyant and not in control.

16 But you-all are not to discuss the case with anyone or
17 among yourselves. That will continue.

18 Okay. You still only have part of the evidence in the
19 case, all right, and if you-all are wishing to get a test,
20 to have a test, if you are not able to get one on your own,
21 I have talked to your Clerk of Court, Mrs. Cox, and the
22 county will pay for you to have a test if you wish to have
23 one and can not -- you know, don't have means to get one or
24 your insurance won't pay for it or something like that.

25 Okay. And so -- and you would need to talk to Ms.

1 Shaw, Ms. Carrie Shaw, who is the jury coordinator. Her
2 information was on your little sheet of paper that you
3 received on Monday. She's also the lady that you-all have
4 probably seen walking back and forth. But if you-all need
5 her contact information, you tell Mrs. Dills or Mr. Bogan
6 and they will get that for you before you leave today.

7 Okay. All right. And so I'm knocking on wood that I'm
8 gonna see y'all on August the 9th, that's a Monday, okay, at
9 9:30. If anything comes up, an emergency, please contact
10 the Clerk's Office.

11 Thank you so much.

12 THE BAILIFF: All rise please.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 (WHEREUPON, the note from the jury was marked as
16 Court's Exhibit No. 4 for identification purposes only at
17 this time.)

18 THE COURT: Okay. Now, is there anything that I can
19 assist you-all with in moving our trial date?

20 Okay.

21 MR. COULTER: Not here.

22 THE COURT: Now, I'm happy to hear from you-all with
23 your comments regarding the gentleman that has tested
24 positive. I, I will further inform you that apparently the
25 coordinator, the jury coordinator, did try to call him again

1 I think after learning of the positive test and has not been
2 able to get him on the phone, okay, and, and that's maybe
3 where that stands.

4 So, I'm happy to hear from y'all on regard -- on how to
5 handle that juror.

6 MR. COULTER: I've got no clue.

7 THE COURT: And, and what I mean is excusing him,
8 releasing him from service completely, or having him return
9 on the 9th, and I'm not a medical doctor. I would maybe
10 have to do some research on it to know if he's positive --
11 my inclination is to release him.

12 Okay. That's my inclination because of all -- I mean
13 all kind of reasons but, again, I just don't know, if, if
14 he's positive, how long he is contagious and a carrier and
15 can infect others.

16 MR. WILLEY: I think just go with your gut.

17 MR. COULTER: Yeah, I'm fine with that.

18 MR. WILLEY: Yeah.

19 MR. COULTER: I'm fine with having him excused. I --
20 I'm no doctor either. So, I have no idea but better safe
21 than sorry certainly I would think.

22 MR. WILLEY: I mean also presumably, you know, he
23 wasn't totally forthcoming on the questions. So, that would
24 be another reason.

25 THE COURT: Or I mean we just don't know the

1 circumstances.

2 MR. WILLEY: Or don't know or whatever.

3 THE COURT: We, we don't know the circumstances.

4 MR. WILLEY: We don't know.

5 THE COURT: And I don't have that information -- all of
6 that information.

7 MR. WILLEY: Right.

8 THE COURT: And I, I certainly don't want to prejudge
9 that. But I think, for simplicity, that the easiest thing
10 to do would be to release him because we are coming back --
11 let's see. It's nine days. We're coming back within --.

12 MR. WILLEY: It's outside of the 14 day window, which I
13 think is the current guideline. The, the one thing that I
14 would say about releasing him is perhaps we wait on that
15 because we don't have any alternates. So, if we have an
16 issue with one juror, then we're gonna be in a bad position.
17 So, that, that would be in a -- I don't have an issue with
18 that.

19 THE COURT: So, it's 18 days from today but when will
20 he be---

21 MR. WILLEY: That's right.

22 THE COURT: I mean it's got to be 10 days I think from
23 the date of having a negative test --

24 MR. WILLEY: Okay. I have no idea.

25 THE COURT: -- again.

1 MR. WILLEY: Yeah.

2 THE COURT: And so I think protocol was 10 days anyway.

3 And so I, I think that we, we release him.

4 okay?

5 MR. COULTER: That's fine, judge.

6 MR. WILLEY: No, that's fine.

7 THE COURT: Okay. And so I will instruct Ms. Shaw to
8 call him and just tell him he was released from further
9 service, and, and I know that he probably doesn't understand
10 what we're doing I mean as far as reconvening, okay, anyway,
11 and would assume that he -- he may of already assumed he was
12 released thinking we were going forward today.

13 okay. okay. Anything else before we break?

14 I've got your proposed charges, the property damage,
15 and the wage lost. I understand the property damage hasn't
16 yet been presented in testimony by the Plaintiff. But we
17 can take that up before I charge and the no helmet charge is
18 okay.

19 MR. COULTER: That's fine with me, Judge.

20 THE COURT: Okay. So, as far as y'all know, the charge
21 is okay?

22 MS. MCCUMBER: Yes.

23 THE COURT: All right. And we worked on that a long
24 time last night and if y'all can send me -- y'all can even
25 just scan to me, or if you have it now, your proposed

1 revisions to the verdict form.

2 MR. WILLEY: I can send you that.

3 THE COURT: Send it to each other as well.

4 MR. WILLEY: Each other.

5 THE COURT: Okay.

6 MR. WILLEY: And we can talk before maybe.

7 THE COURT: Okay. Yeah, don't dillydally though.

8 Let's just go ahead while we're focused on this and y'all do

9 have a little bit of time today. That would be helpful.

10 okay. Well, if anything changes, y'all let me know.

11 Is anybody in this room under subpoena?

12 MS. MCCUMBER: No.

13 THE COURT: Okay. So I was gonna say that normally

14 that would continue but they're not.

15 okay. All right.

16 MS. MCCUMBER: Thank you, Judge.

17 MR. COULTER: Thank you, Judge.

18 THE COURT: Thank you.

19

20 (WHEREUPON, Court was in recess in this case.)

21

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

24

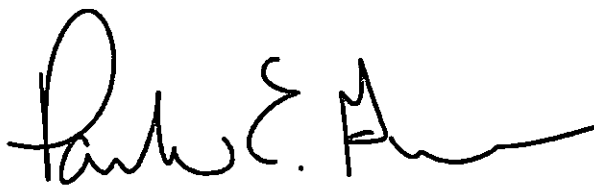
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 19th, 20th, 21st, and 22nd days of July, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 10th, 2021

A handwritten signature in black ink, appearing to read 'Pamela E. Green', written over a horizontal line.

PAMELA E. GREEN, Court Reporter