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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2019-001943
Civil Action No. 2018-CP-10-666

Therese Hood.....Appellant
v.
United Services Automobile Association.....Respondent

SUPPLEMENTAL RECORD ON APPEAL – VOLUME 1

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1 In the Court of Common Pleas for the
2 State of South Carolina, County of Jasper

3

4 Case No.: 2015CP2700119\

5 Therese Hood,

6 Plaintiff,

7 vs.

Transcript of Record

8 Antoine Johnson,

9 Defendant.

10

11

12

13

VOLUME 1

14

15 September 5, 2017

16 Ridgeland, South Carolina

17

18

19

20

21 BEFORE:

22 The Honorable CARMEN T. MULLEN

23

24

25

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1 PROCEEDINGS

2 THE COURT: Good morning. Okay. Well,
3 there's a number of pre-trial motions in this
4 case. I say we start. The jury is coming in
5 at 11:00. Obviously, we need to take up as
6 many motions as we possibly can. I can tell
7 you I've read everything.

8 Some of them I may need some type of
9 proffer before I'm able to make a decision, or
10 get a little more argument. Just a couple of
11 them I wasn't quite clear about what had been
12 done.

13 But I know that we need to start with
14 Mr. Lee, who is sitting out in the back. He
15 wants to get back to work.

16 So I understand, Mr. Lee, that you were
17 the one that made the 911 call following the
18 accident. My understanding is the Plaintiff is
19 going to call you as a witness in the trial of
20 this case, correct?

21 MR. SMITH: Yes, ma'am.

22 THE COURT: All right. So let me tell you
23 what my thoughts are as far as timing is
24 concerned and how this is going to unfold.
25 Because he would be, I guess, a fact witness.

PRE-TRIAL MOTIONS

1 To begin with, pull the jury at 11, it
2 will take us till 12. I probably anticipate
3 that I would send them to lunch at that point.
4 I know it'll be a little bit. But instead of
5 just doing opening statements and then sending
6 them, I think we'll probably just pull the
7 jury, send them to lunch, bring them back. I
8 guess my hope then, if we can get a jury
9 roughly by 12:30-ish, 1:00, 1:30-ish.

10 Mr. Lee, I'm thinking we have you back
11 here at 1:30. Is that okay with you, sir?

12 MR. LEE: I have a 608 Merits hearing in
13 Allendale County at 2 o'clock. Then I have at
14 9 o'clock in the morning a 608 Merits hearing
15 at 9:00 a.m. in the morning. They kind of call
16 them like general sessions cases. You get
17 there, and you don't know when the Judge is
18 going to call them. So that's what I'm -- I'm
19 trying to express that to both sides.

20 THE COURT: What Judge is that?

21 MR. LEE: I believe in Allendale, it's
22 Judge Jenkinson today. And then --

23 THE COURT: Is that a magistrate Judge?

24 MR. LEE: No, it's a family court Judge.
25 It's a 608 family court merits hearing for

PRE-TRIAL MOTIONS

1 abuse and neglect case. I'm a 608 contract
2 attorney for five counties. And I think that's
3 got --

4 THE COURT: Okay. Do they start -- do
5 they have many cases on a roster, or what do
6 they have?

7 MR. LEE: I don't know how many they have
8 now. To tell you the truth, this is my first
9 appointment in two years there. So as far as
10 today, I'm not sure. It starts at 2:00. It's
11 a solid hour drive. I just don't know -- it's
12 our initial merits hearing. Basically, the
13 case just got filed last week. I got appointed
14 on Wednesday morning.

15 THE COURT: Were you subpoenaed to be here
16 today?

17 MR. LEE: Excuse me?

18 THE COURT: Were you subpoenaed to be here
19 today?

20 MR. LEE: I was subpoenaed by both sides
21 to be here today, just throughout the entire
22 week. So I've got --

23 THE COURT: Well, obviously, I'm going to
24 release you from the entire week. But I want
25 your testimony, I need to get it up today.

PRE-TRIAL MOTIONS

1 So yes, sir.

2 MR. WILLEY: We could -- if you wanted to
3 come back after that hearing, we could call him
4 late this afternoon. That would work.

5 MR. LEE: I could do that.

6 MR. WILLEY: We could commit to that.

7 THE COURT: Is that easiest for you?

8 MR. LEE: That would be the easiest. I
9 just don't know exactly when I'll get out of
10 there because if we start exactly 2:00 and it
11 goes half an hour, hop in my car, I still might
12 not be back here until 4:00.

13 THE COURT: And that's fine. I think
14 that's fine. And I plan to go today until at
15 least 5:00. So that works separately.

16 MR. LEE: I just can't promise when I'll
17 be out of there because that --

18 THE COURT: That's okay, because I can
19 call Judge Jenkinson and have him send you. So
20 just make sure you leave from Allendale and
21 come straight back here.

22 MR. LEE: I will.

23 THE COURT: Okay? And we'll go from
24 there.

25 And quickly, I would like to get you up

PRE-TRIAL MOTIONS

1 and done today so we don't have to worry about
2 you the rest of the week. Okay? Then you can
3 go on about your schedule. Okay?

4 MR. LEE: All right.

5 THE COURT: Mr. Lee, does someone here
6 have good cell phone numbers for you?

7 MR. LEE: I believe both sides have my
8 cell phone number. I just changed providers so
9 I could hopefully get service out in Allendale
10 over the weekend. So --

11 THE COURT: Okay. So we should be fine.

12 All right. As long as we have a number
13 for you. Obviously, we'll give you a call, Mr.
14 Lee. Go on your way right now, we'll see you
15 back later this afternoon. And we'll get you
16 up today. Okay?

17 MR. LEE: All right. Thank you very much.

18 THE COURT: Thank you, sir.

19 MR. SMITH: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 All right. Well, that takes care of that
22 issue.

23 Oh, Mr. Lee, one other thing before you
24 come today. Just so you understand, when
25 you're in court this afternoon you're going to

PRE-TRIAL MOTIONS

1 be addressed as Mr. Lee, not as Judge Lee. And
2 when asked what your job is, you are a lawyer.
3 You don't say anything about being a judge or a
4 magistrate judge in any way. It's not lying to
5 the jury because you are, in fact, a lawyer,
6 and you're a practicing lawyer. So we're just
7 going to be relaxed saying anything about you
8 being a judge. Okay?

9 MR. LEE: The only reason I asked that, I
10 was directly asked in the deposition. So --

11 THE COURT: And that's fine. The lawyers
12 in this case aren't going to raise that in any
13 way, shape, or form. It wouldn't be
14 appropriate. I know it does bring into
15 influence, you know, on your testimony if you
16 are called a judge and Your Honor. So we're
17 just going to refer to you as Mr. Lee. That's
18 it. And we'll go from there. Okay?

19 MR. LEE: Thank you.

20 THE COURT: Thank you.

21 MR. LEE: I'll see you back this
22 afternoon. Thanks.

23 THE COURT: Okay. Let's start going
24 through the motions.

25 MR. SMITH: Yes, ma'am.

PRE-TRIAL MOTIONS

1 THE COURT: I think maybe the best place
2 to start might be the Motion to Bifurcate. I
3 understand that there is a motion to go ahead
4 and try to split this case.

5 My understanding, just from what I've read
6 and everything I've heard, I'm quite familiar
7 with this intersection. It's about two miles
8 from my house. And I hate to say it, we are
9 frequent flyers of Dunkin' Donuts and Yummy
10 House, which is right there, and also The
11 Batter's Box there, which is batting cages.
12 And I'll go ahead and say it, we have a monthly
13 contract with them because I have a little girl
14 who plays softball, and plays softball there.
15 So I'm familiar with where it is, and what's
16 going on.

17 I understand, and I'm kind of seeing as
18 far as this case is concerned, you know, I have
19 just -- could Plaintiff's tell me in a nutshell
20 what their idea of liability is, if you would.
21 And I want to hear from Defense counsel of what
22 your contentions are. Like, for instance, I
23 know that one of your things that you've said
24 is that allegedly she didn't have her
25 headlights on, so driving without a light.

PRE-TRIAL MOTIONS

1 I just kind of want to hear from your
2 point of view what you would put up and from
3 your point of view what you offer for that.
4 Not really going to need anything, but whether
5 or not certain things are admitted. I just
6 wanted to know. Okay?

7 So let's go ahead and start with you.

8 MR. WILLEY: Your Honor, Roy Willey
9 representing the Plaintiff.

10 Liability in this case is actually pretty
11 clear despite all of the pretrial filings.
12 What happened is, Ms. Hood was traveling down
13 278, going east, and Mr. Johnson was at the
14 stop sign, exiting Dunkin' Donuts.

15 And when Ms. Hood was in the lane closest
16 to the median, so the farthest lane from him,
17 he proceeded through the stop sign and T-boned
18 her vehicle. And there's actually photographs.
19 Obviously, this is his vehicle with the
20 front-end damage, and here's a photograph of
21 her car, where he impacted her.

22 THE COURT: Okay.

23 MR. WILLEY: And what happened after that
24 is Ms. Hood was diverted into the oncoming lane
25 of traffic, across that small grass median

PRE-TRIAL MOTIONS

1 there.

2 THE COURT: So she went up through that
3 whole grass median.

4 MR. WILLEY: Correct.

5 THE COURT: Okay.

6 MR. WILLEY: And they head-on -- had a
7 head-on collision with somebody coming --

8 THE COURT: With the Kucks -- tell me --

9 MR. WILLEY: Yes, the Kucks, yes. The
10 Kucks, coming in the opposite direction, hit
11 her head on. So liability in this case you
12 know, as far as that goes is fairly clear.

13 Now, there is an assertion by the
14 Defendants that Ms. Hood did not have her
15 headlights on, and, therefore, she would have
16 been hard to see. But it's undisputed in this
17 case that she did, in fact, have her running
18 lights on. And, in fact, as the expert
19 testimony will show that at the point of --

20 THE COURT: So you have this expert
21 testimony? Who's your expert witness?

22 MR. WILLEY: We have a combination of
23 experts. We have Woody Poplin, Ken Richardson,
24 and Stephanie Borzendowski. And the
25 combination of those experts testify as to --

PRE-TRIAL MOTIONS

1 when obviously there's a statute that deals
2 specifically with headlights, and when it's
3 required, 30 minutes before sunrise and up to
4 30 minutes after sunset. And in this case, we
5 actually have the data about sunset from that
6 exact intersection.

7 And what the, you know, evidence will show
8 is at this time she wasn't required to have her
9 headlights on. She says that she does have her
10 headlights on anyway. And so that -- that's
11 their issue for comparative negligence.

12 The only problem with that is that the
13 impact in the case happened to the side of her
14 vehicle. And, obviously, immediately before
15 impact he would have had to see her because she
16 was directly in front of him. Either that or
17 he didn't have his headlights on or he wasn't
18 able, you know, to see what was going on. So
19 that's basically liability in a nutshell in
20 this case --

21 THE COURT: Are they alleging speed is an
22 issue at all?

23 MR. WILLEY: Speed is not a proximate
24 cause or a potential proximate cause.

25 THE COURT: I mean, are they alleging it?

PRE-TRIAL MOTIONS

1 Is the Defense alleging it?

2 MR. WILLEY: They have raised that, and
3 it's sort of derisive so, you know, scenario
4 that --

5 THE COURT: So the speed limit there is 45
6 miles per hour?

7 MR. WILLEY: Right.

8 THE COURT: What are they putting your
9 lady at allegedly?

10 In my experience, there was -- there was
11 some type of black box that was out of
12 someone's car, in this case. Was it the
13 Plaintiff's, Defendant's, or anyone's?

14 MR. WILLEY: Plaintiff's.

15 THE COURT: It was the Plaintiff's car.
16 Okay. Was that something you got in your
17 discovery that you pulled it out of your --

18 MR. WILLEY: It's sort of interesting
19 because initially Mr. Poplin was hired by USAA
20 to defend Ms. Hood in another case resulting
21 from this wreck. So he was actually USAA's
22 expert.

23 THE COURT: So did the Kucks sue her?

24 MR. SMITH: Yes.

25 THE COURT: Is that what happened?

PRE-TRIAL MOTIONS

1 MR. WILLEY: Yes.

2 THE COURT: Excellent.

3 MR. SMITH: And Mr. Johnson.

4 MR. WILLEY: And Mr. Johnson.

5 So whose expert is who is sort of for
6 anyone to guess.

7 THE COURT: Okay. So in that case,
8 Mr. Poplin got her -- correct me if I'm
9 wrong -- Ms. Hood's box out of her car; is that
10 correct?

11 MR. WILLEY: Yes, ma'am.

12 THE COURT: Okay. Okay. Interesting. I
13 was wondering why. It's somehow a little odd
14 how it came about in this case.

15 Okay. And what does that black box have
16 her going at? Or do we have -- I guess there's
17 two points of impact, and I'm not sure how the
18 black box does that. It's the first impact
19 with the Defendant in this case, and then also
20 the impact with the Kucks.

21 MR. WILLEY: And that's what makes that
22 unreliable in this case. The actual black box
23 reading puts her about 60 miles an hour. But
24 the black box they go -- you know, it's
25 completely unreliable because of the nature of

PRE-TRIAL MOTIONS

1 the wreck. And this particular case, even if
2 it's not unreliable, it's still not a proximate
3 cause of the wreck because she was T-boned.
4 This is not a situation where she ran into him.

5 So just the fact that her speed, whether
6 it was 35 miles an hour or 75 miles per hour,
7 put her in that position at that specific time
8 is in no way a proximate cause. We deal with
9 that in one of our pretrial motions that Your
10 Honor has read.

11 THE COURT: Okay. All right. Happy to
12 hear again.

13 Yes.

14 MS SUTTIE: Yes, Your Honor. I'm Madison
15 Suttie for the Defendant. I'm just going to go
16 and address our arguments in order.

17 As to the lack of headlights, I think it's
18 more than just an assertion by the Defense.
19 We're going to present eyewitness testimony
20 from four witnesses who put Mrs. Hood as
21 driving on 278 without her lights operating.

22 We also have the investigating officer who
23 checked her in-car video and saw that she
24 didn't have her headlights operating at the
25 time.

PRE-TRIAL MOTIONS

1 THE COURT: How does your in-car video say
2 that you don't have headlights on?

3 MS SUTTIE: She -- the officer's in-car
4 video shows that the running lights were on,
5 which means that the parking lights were off.
6 I have to look at the exact --

7 THE COURT: So it's just in --

8 MR. DANIEL: It's not here.

9 THE COURT: Is this on every time the
10 investigating officer --

11 MS SUTTIE: No, in the investigating
12 officer's Officer Welch.

13 MR. DANIEL: It's destroyed though. She's
14 -- you're not actually going to see it. You're
15 going to --

16 MR. WILLEY: And it was after the wreck.

17 THE COURT: Okay.

18 MS SUTTIE: She went back and she put it
19 in her report that as -- so the headlights are
20 probably a primary issue, but also the speeding
21 as not being proximate cause. There will be
22 testimony from Plaintiff's own experts and also
23 from the officer that, you know, the speed did
24 have an impact on the Plaintiff's ability to
25 react, to avoid the incident, to, you know --

PRE-TRIAL MOTIONS

1 she closed the distance in a shorter amount of
2 time, but --

3 THE COURT: Did she say she ever saw the
4 Defendant's car?

5 MS SUTTIE: No.

6 MR. SMITH: No.

7 THE COURT: So she didn't see his car and
8 he didn't see her car. Is that correct? Is
9 that the testimony in all this?

10 MR. DANIEL: Yes.

11 MS SUTTIE: Yes, ma'am.

12 THE COURT: And this happened at 5:59 at
13 night in November -- okay.

14 MR. WILLEY: And one piece on that, Your
15 Honor. Mr. Lee, who was actually traveling
16 behind Ms. Hood will testify that he was able
17 to see her car in front of him, and also the
18 Defendant's car, which he estimates was several
19 hundred feet away from him when the wreck
20 occurred. So he could clearly see everything
21 that was going on.

22 MS SUTTIE: Well, I mean, Mr. Lee had his
23 headlights on.

24 But after the expert reliability of the
25 black box data, it records by events. So the

PRE-TRIAL MOTIONS

1 first -- when if something triggers a -- you
2 know, an event, like unusual braking or
3 something, it records in .5 second intervals
4 before. So Plaintiff's expert took both of
5 them and testified that as to the speeds, up to
6 event one, and even speeds leading to event
7 two, they have no reason to dispute the
8 accuracy, and they place her at up to 63 miles
9 per hour right up until the point of collision
10 with Mr. Johnson's vehicle. And not only that,
11 but the data shows that she didn't hit her
12 brakes at all prior to Event One.

13 THE COURT: Which would make sense if she
14 never saw him.

15 MR. SMITH: Yes, ma'am.

16 THE COURT: Okay. All right. And do we
17 have any kind of black box out of your client's
18 car? Mr. Lee's car?

19 MS SUTTIE: Oh, our client is Mr. Johnson,
20 but, no, Your Honor --

21 THE COURT: Mr. Johnson. I apologize.

22 MS SUTTIE: You're fine.

23 THE COURT: Okay. Well, at least, now, I
24 know what some of the issues are, which I had
25 no idea from pretrial briefs.

PRE-TRIAL MOTIONS

1 THE WITNESS: Well, let's go ahead and
2 start with -- you know what, let's not. Let's
3 wait for bifurcation issue until we get a
4 little further down, I hear a little more facts
5 in the case.

6 But let's go ahead and start -- I can tell
7 you that you both have given me some
8 proposed -- well, let's go ahead and talk about
9 the motion for Plaintiff to do -- or
10 participate in voir dire. I don't think I need
11 to hear anything on that motion, I just don't
12 allow anyone to do it. I just think the
13 arguments, obviously, about this case do it.
14 I'll even go ahead and go so far as to tell you
15 that I have at one point allowed in a railroad
16 case the attorneys, not necessarily to ask the
17 questions, but to do some follow-up. And my
18 experience has been in that case, is that the
19 lawyers will either try to, if they want the
20 witness rehabilitated, to bring them back to
21 their side or try to push them so far out that
22 they have to be struck for cause.

23 So I've learned that lesson, I've learned
24 it well. I don't let lawyers do voir dire.

25 I can tell you, I've gone through both the

PRE-TRIAL MOTIONS

1 Plaintiff's voir dire and the Defendant's. I
2 scratched out a lot. I'll get into obviously
3 my standard that asks a lot of normal questions
4 that you'd want to know. So I'm comfortable
5 that we don't need to discuss that anymore.
6 It's pretty excessive.

7 MR. SMITH: Can I make one request, Your
8 Honor?

9 THE COURT: Sure.

10 MR. SMITH: If a witness does present an
11 answer or an issue that you deem this -- there
12 may be an issue with, could we just ask that
13 the witness not be rehabilitated by any sort of
14 a leading question? For instance, "Well, you
15 can be fair and impartial, can't you?" "Well,
16 you can apply to the law, can't you?" Just, we
17 would just ask that that not be done on leading
18 questions.

19 THE COURT: Okay. Well, I will ask that.
20 One of my tailored questions is, is the issue
21 is not yes or no, but it's whether or not you
22 can be fair and impartial in the trial of this
23 case. And not being one way or the other.

24 So while I don't necessarily think it's as
25 leading, I think it does ask the question of

PRE-TRIAL MOTIONS

1 whether or not they can be fair and impartial.

2 MR. SMITH: Sure.

3 THE COURT: So to the extent I hope it's
4 not leading, but I'm the one asking it, and so
5 I can ask it any way I want.

6 MR. SMITH: All right. Sure.

7 THE COURT: Okay. All right. So that
8 takes us past voir dire.

9 I'm next looking at Plaintiff's Motion in
10 Support -- or to preclude certain evidence and
11 arguments.

12 First off, we talked about the Plaintiff's
13 speed, braking time, and other similar or black
14 box data.

15 Let me just ask you this: So my
16 understanding is from the Plaintiffs, you are
17 going to have Woody Poplin testify. You are
18 going to have Kim Richardson testify, both as
19 engineers. And then you're going to have the
20 human factor, or attempt to have the human
21 factor witness testify.

22 MR. SMITH: Yes, ma'am.

23 THE COURT: Well, tell me, I understand
24 what Woody Poplin and Kim Richardson will
25 testify to. I've seen them testify a number of

PRE-TRIAL MOTIONS

1 times. What is it -- what is the human factors
2 expert going to testify to?

3 MR. SMITH: Your Honor, there's a side
4 issue involved here, and it's distraction --
5 distracted driving due to some cell phone use.
6 We have a time line in this case that puts the
7 wreck at 5:57 p.m. We have an incoming text to
8 the Defendant at 5:57 p.m.

9 Ms. Borzendowski is going to talk about
10 distracted driving, what's been referred to as
11 "inattentional blindness," and how that works.
12 So --

13 THE COURT: Do we have anyone who can say,
14 a witness, that they saw him either holding a
15 phone or looking down at a phone?

16 MR. SMITH: No, ma'am. There's no read
17 receipts. I mean, we have the record of the
18 incoming call. And what we will show, we have
19 the rest of his text messages as well.

20 THE COURT: Yeah. Is it a call or a text
21 message?

22 MR. SMITH: It's a text message.

23 THE COURT: So it's a text message. And
24 I'm assuming you have that text message printed
25 out? Downloaded? Yes?

PRE-TRIAL MOTIONS

1 MR. SMITH: We do. We do.

2 THE COURT: Okay. Okay.

3 MR. SMITH: And, Your Honor, we have -- we
4 have a day of -- what, a hundred and -- how
5 many is it?

6 MS SUTTIE: 170-some.

7 MR. SMITH: A hundred and seventy. So
8 we've got a phone activity during a workday of
9 about 170-plus activities throughout the day.
10 So, you know, at the end of the day the jury is
11 going to see the time line between the 911
12 caller and all the things that happened before
13 she got on the phone. We know the exact time
14 the 911 call, the first one, came in.

15 And we're going to contend that puts it at
16 5:57. The jury's going to see an incoming text
17 at 5:57, and they're going to be asked -- one
18 of the things they're going to be asked to
19 determine is, do you think he was looking at
20 it? Is that the reason he didn't see Ms. Hood
21 coming down the road with her -- with at least
22 her running lights on? And so --

23 THE COURT: How many of these text
24 messages did you try to get in? Like I could
25 go ahead and just tell you right now, I was

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1 worried that anything that occurred right
2 before and during the accident I think would be
3 relevant.

4 In other words, when I say "right before,"
5 I mean, like within a minute before. Because I
6 could see someone could be checking their phone
7 at a stop light. He could have been checking
8 his phone when he was at Dunkin' Donuts. And
9 I'm not going to have her testify that
10 something might have happened at -- if he's got
11 170 text messages, he's looking at them all day
12 long.

13 MR. SMITH: Oh, she's --

14 THE COURT: And she can't say he looked at
15 them back to back. I was worried that I think
16 it's fair game for her to testify that 30
17 seconds before this, if there was any text
18 messages, if what you say is 5:57 there is a
19 message that came in, you're saying the point
20 of impact is 5:57 for, I'm guessing, the black
21 box, is how you do that time -- or is it by
22 911?

23 MR. SMITH: It's the 911 call.

24 THE COURT: It's by 911. I think that is
25 relevant. And I do think, obviously, there's a

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1 question about violation of the statute at that
2 point.

3 But other than that, what else -- yes.

4 MR. WILLEY: Just to clear up one thing.
5 The actual substance of the text messages,
6 we're not intending to admit. We're only
7 intending to admit the actual time line and use
8 of the cell phone. And part of the reason in
9 this case as well, is that we need more of that
10 whole history as when it starts. So he starts
11 his phone activity --

12 MR. SMITH: 4:44 a.m.

13 MR. WILLEY: 4:44 a.m. in the morning,
14 goes and works a landscaping job. Obviously
15 this record occurs some 14 hours later. And so
16 that sort of plays into the theory as well with
17 the human factors expert, how that period of
18 time, you know, would factor into a person's
19 attentiveness and alert -- alert --

20 THE COURT: I don't see how that's just
21 not pure speculation on her behalf. I just
22 don't see how she could testify to any type of
23 scientific, security, knowledge, in any way,
24 shape, or form.

25 Like I said, I could see it being relevant

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1 at the time of the accident, directly before
2 the accident, but not what his pattern is, you
3 know, up until that -- you would ask him
4 whether or not he wore his seatbelt all day
5 long beforehand, or Ms. Hood was wearing her
6 seatbelt all day long, as to habit or whether
7 or not she was wearing it when this occurred.
8 I think that's pure speculation.

9 We can address that if we need to when she
10 testifies. Again, I understand you said you
11 don't have any interest in the context, but I
12 can tell you this: If you want the context of
13 it, if they're going to get into it, I'm going
14 to let you put the context in.

15 In other words, if the text message is
16 something specific. I don't know if it's
17 anything either one of you want to get into.

18 MR. SMITH: No one has it. We don't know
19 what it is.

20 MR. DANIEL: Your Honor, and I was just
21 checking. I don't think we actually have the
22 substantive text messages.

23 THE COURT: Okay.

24 MR. SMITH: We don't.

25 MR. DANIEL: And it just shows that, you

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1 know, there's an incoming text that -- you
2 know.

3 THE COURT: At 5:57 p.m. that night.

4 MR. DANIEL: Right. And I don't even
5 think it really even verifies whether the text
6 has been read. It's just -- it could be like
7 an email in your inbox.

8 THE COURT: Well, there's no way to tell
9 if a text message is read or not. You can't go
10 back. So -- unless he replied to it and then I
11 think that would be even worse for you.

12 So, anyway -- all right. Well, to that
13 extent then, I will tell you just in looking at
14 everything, I'm assuming you have an expert
15 that is going to make speed relevant, correct?

16 MR. SMITH: No.

17 MR. DANIEL: Your Honor, we can actually
18 draw that out through the officer who's a
19 certified accident reconstruction -- yeah,
20 she's certified in it, which it's a special
21 education --

22 THE COURT: She didn't see the accident,
23 correct? She came onto it afterward.

24 MR. DANIEL: She did not. But we have the
25 speed that's verified by the crash data that

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1 their experts pulled, and have testified to in
2 their depositions.

3 THE COURT: And I'm going to assume that
4 Woody Poplin and Kim Richardson are testifying
5 that speed had absolutely no proximate -- he
6 can't talk about proximate cause because he
7 didn't -- that wasn't a factor contributing to
8 this accident. Am I correct on that? Is my
9 hypothesis correct?

10 MR. SMITH: Well, if we even take it down
11 to a further baseline level, no accident
12 reconstruction has ever been done in this case.
13 The officer didn't do it. Kim didn't do it.
14 Woody didn't do it. Borzendowski didn't do it.

15 I know they'd been talking to an expert,
16 but presumably he didn't do it either. It has
17 not been done, so essentially what they're
18 asking the jury to do is do their own accident
19 reconstruction here live in court.

20 You know, to make speed a proximate cause
21 you've got to talk about braking time, and the
22 human reaction time, and do all that. So the
23 starting point would at least be someone who
24 has done an accident reconstruction. No one
25 from either side has done one, Your Honor.

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1 THE COURT: The only problem I have is
2 that if you think speed is relevant most of the
3 time. And I have a hard time believing I'm
4 going to tie their hands and not allow them to
5 talk about speed.

6 I'm going to assume his speed potentially
7 is an issue as well. I know he's pulling out
8 allegedly -- is there a question of whether or
9 not he stopped at the stop sign or if he just
10 went through the stop sign pulling out? Do we
11 know?

12 MR. DANIEL: We don't know either way.

13 THE COURT: Do your people say anything?

14 MR. DANIEL: We don't know either way.

15 THE COURT: Okay.

16 MR. SMITH: And, Your Honor, I know you've
17 read the briefs. And, you know, the only thing
18 that we can -- well, the cases that talk about
19 this and the cases that talk about it's
20 reversible error to admit something like this,
21 they talk about the requirement fraction of
22 reconstruction. You've got to bring something
23 to proximate cause.

24 You know, the fact that speed -- all speed
25 did is -- that we know about, is bring these

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1 two people together. If she's going 80 miles
2 an hour, accident doesn't happen. If she's
3 going 14 miles an hour, accident doesn't
4 happen. If she hits snooze on her alarm clock
5 this morning, accident doesn't happen.

6 But the case law talks about the need to
7 bring science in to draw this proximate cause.
8 Because, Your Honor, this is the exact reason
9 the 403, I think, is in place. Speed could be
10 such a toxic issue for the jury that they're
11 going to see just a bad driver, an out of
12 control driver, and they're going to assume for
13 themselves that it had something to do with it.

14 Trying to draw these legal arguments about
15 cause and effect to a jury that it wouldn't
16 have happened if she was going slower or it
17 wouldn't have happened if she was going faster,
18 neither one of them saw each other, so it
19 didn't affect any sort of reaction time.

20 Asking the jury to make these legal
21 arguments, Judge, I'm worried about it.
22 Because, you know, this is a legal issue and
23 these go to not only, you know, our claim, but
24 it goes to comparative negligence.

25 So both sides had an opportunity to do

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1 accident reconstruction. Both sides had an
2 opportunity to call a doctor and say, hey, if
3 she was going slower, would the injuries have
4 been this severe?

5 No one did that either. I mean, it's not
6 -- you know, clearly, under the case law it
7 wouldn't be admissible under proximate cause
8 for liability. But as far as damages, too, are
9 they going to ask the jury now to infer from a
10 legal -- from a medical standpoint, do you
11 think her ankle would have been shattered so
12 severely if she was going slower?

13 I mean, this is -- this is expert
14 testimony that's required, Judge, and I --
15 asking the jury to do this, I -- we all know
16 what they're likely to do with speed without
17 expert testimony. They're going to interpret
18 it as a bad driver and -- who knows what
19 they're going to do.

20 THE COURT: All right. Well, I'm assuming
21 you're going to ask their experts whether or
22 not speed played a factor into this, if you
23 don't have your own saying there's any issue.

24 MR. DANIEL: Your Honor, we will, and we
25 can ask the -- just the officer, generally, can

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1 speed be a factor? And I think we can elicit
2 enough testimony.

3 The case law though does -- I mean, we can
4 provide opinions, some South Carolina
5 decisions.

6 There's really -- there's no requirement
7 that you need an accident reconstruction expert
8 to talk about speed. I mean, speed and
9 persons -- a person has a general duty to drive
10 at the appropriate speed to keep their car
11 under control. It's a general jury
12 instruction.

13 I think there will be testimony, even from
14 fact witnesses, that she was speeding. Mr. Lee
15 is -- that was just excused by the Court -- was
16 driving, and she was tailgating him. He pulled
17 to the side. His normal standard, and what he
18 testified and will testify to, he testified to
19 in his deposition, is he goes about five over,
20 she passed him, and then the accident happened.

21 And then you have this crash data, where
22 their experts verify in their testimony,
23 deposition testimony that's usually accurate
24 within about a mile or an hour or two. There
25 might be a little variance, but they have no

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1 reason to dispute it. And there was speed just
2 before the first event, which is the right side
3 impact --

4 THE COURT: Well, I don't know how just
5 before, because what I understood in that
6 motion in reference to Mr. Lee, it's something
7 about she was tailgating him and passing him.
8 It's kind of the same thing as the cell phone,
9 and whether or not a text was coming.

10 I don't care if she was tailgating him
11 five miles behind. I don't care if she was
12 tailgating him up to the light before then.
13 That doesn't matter. What matters is what
14 happened at this wreck.

15 And that, to me, is testified to. So I
16 don't think we can conclude that she had a bad
17 motive to her in some way.

18 So you need to be careful of what Mr.
19 Lee's testimony is going to be. I'm not
20 exactly sure. He can say that at the time of
21 this accident, she passed me. But one of the
22 things you just said is he normally goes
23 five miles over the speed limit. Again, I
24 don't care what he normally does, I want to
25 know what he was doing on this occasion.

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1 I want to know what speed he says he was
2 going, and what he knows and what he can
3 testify to, and what he can swear to under
4 oath. So, again --

5 MR. DANIEL: Well, he does -- well, he --
6 I think he will give competent testimony that
7 she was going in excess of the speed limit when
8 she passed him, and the accident happens
9 moments later. She doesn't have her headlights
10 on, he observes that as she passes him, which
11 would be certainly directly relevant to whether
12 her headlights were on and corroborates
13 Mr. Johnson's testimony position like, "I never
14 saw anything, I never saw headlights."

15 And then what another witness says they
16 saw as she actually hits this third vehicle,
17 which is the -- really the severe impact.

18 And that's really -- to put it all in
19 context, Your Honor, what you haven't really
20 heard so far is that there's this sort of
21 sideswiping, scraping, impact. It's not a very
22 severe impact, a minor impact, their experts
23 concede that, between Mr. Johnson's vehicle and
24 the Plaintiff's vehicle.

25 And then she goes over a hundred feet

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1 across a lane or two of travel and a median,
2 and hits another vehicle head on. And that
3 damage is the significant damage in the case.
4 That is what caused injury here. And so her
5 speed is directly relevant to damages, it's
6 directly relevant to her ability to control her
7 vehicle, make an appropriate, evasive maneuver,
8 swerve, keep her vehicle under control to avoid
9 hitting that second SUV, the third car involved
10 in this accident.

11 THE COURT: So was that case settled?
12 What happened with that case?

13 MR. DANIEL: That case is still pending,
14 Your Honor. And I do take -- just to be clear,
15 Mr. Poplin was hired on behalf of Mrs. Hood,
16 the Plaintiff, in this case. And he went and
17 inspected her vehicle and pulled this crash
18 data. Mr. Richardson has reviewed the crash
19 data. They both testified under oath in
20 depositions about how it reads, what it reads,
21 and what that means about her vehicle speed.
22 So we should be allowed to have ask some
23 questions about that.

24 MR. WILLEY: Just to be clear, Your Honor,
25 so you don't think I misrepresented something

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1 important. This is a UIM case with USAA
2 defending. So when I said USAA hired Mr.
3 Poplin, that was accurate, on behalf of Ms.
4 Hood when they were defending her in that case.

5 THE COURT: I understand.

6 MR. SMITH: Mr. Johnson originally had a
7 counterclaim. And that's why Chris was here.

8 THE COURT: Okay. I certainly understand
9 that. Okay. That is --

10 MR. SMITH: Your Honor, if I could maybe
11 just direct your attention to the -- I think
12 the most instructive case out of everything
13 that we filed is probably the Odum case. And
14 in that case, Your Honor, Defendant was stopped
15 at a stop sign, just like Mr. Johnson,
16 testified he did not see Plaintiff's vehicle
17 approaching from the left, just like
18 Mr. Johnson, when he attempted to pull out
19 through the intersection to make a left turn,
20 exactly like Mr. Johnson.

21 He testified even that he was
22 approximately two car lengths away when this
23 happened. So he's even giving further
24 information, it's not even so sudden and
25 direct. And then the Defendant's vehicle

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1 struck the front left fender, just like
2 Mr. Johnson.

3 The Court knows, the Supreme Court held
4 that excessive speed was not a proximate cause
5 because he pulled directly into traffic. They
6 also looked at who's got the right of way in
7 these situations. And in that case, that's the
8 one where the Supreme Court held that directed
9 verdict on liability was reversible error, not
10 to have granted that speed was not a proximate
11 cause.

12 And, Your Honor, that's our argument.
13 It's not a proximate cause, and if it's not,
14 it's irrelevant. And any probative value is --
15 is grossly outweighed by the prejudicial
16 effect.

17 THE COURT: All right. Well, I'm just
18 going to have to hear testimony obviously from
19 the witnesses to see. I can tell you that I
20 understand your argument that -- you know,
21 obviously it doesn't matter. The only
22 testimony is that speed did not matter. That
23 would be one thing. But I would be arguing
24 that speed was at issue. Someone is going to
25 link speed to the issue.

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1 Regardless, I also think it's probative.
2 It's prejudicial, but I agree that someone's
3 got to give me some type of idea what the speed
4 did or did not do. And I've heard you argue
5 that, you know, even though you can't see the
6 impact, that speed had to have been a reason
7 why he didn't see her car. And I haven't heard
8 the issues, and I don't have any answers to
9 that yet.

10 MR. DANIEL: And it sounds like you've
11 already kind of decided which way you'll go
12 with it. I just want to add one more thing
13 about speed, that it has to be sort of taken in
14 context. Like the fact that there were two
15 impacts, and that this impact with this third
16 vehicle a good ways down the road.

17 There's also the speed coupled with the
18 lighting issue. And what you'll hear, and I
19 think what a jury can draw, based on their
20 common sense, the conclusion they can draw is
21 if this lady, the Plaintiff, is going 62 miles
22 an hour, and Mr. Johnson's at an intersection
23 where he's at the T, if she's going that fast,
24 62 versus 45, she's going to be a lot farther
25 back down the road at that intersection, as

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1 it's getting dusk, as it's dark. And the
2 farther back she is, we all know the farther
3 something is away, the harder it is to see.
4 And when you compound that issue with darkness,
5 I mean, it's directly relevant to his defense
6 for liability and it's also -- I mean, the
7 comparative fault and comparative negligence of
8 the Plaintiff. So the speed and the lighting,
9 you almost can't talk about one without the
10 other, is our position.

11 THE COURT: I certainly understand your
12 position. I am a bit concerned about what
13 you're going to have this officer testify to.
14 She didn't do an accident reconstruction. She
15 can testify to information she gathered, but I
16 think that you're going to have to be very
17 careful with her reaching her conclusions about
18 what occurred when she wasn't there.

19 So we're just going to have to cross that
20 road when we come to it, but I am concerned.
21 You know, she may have been -- she may be
22 qualified as an accident reconstructionist.
23 She may tell me that she's done 500 accident
24 reconstructions, but she didn't do a
25 reconstruction in this case is what I'm

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1 hearing. She may have gotten her facts, but
2 we'll just kind of go from there and see where
3 she is and how she'll testify.

4 Who is the officer in this case?

5 MR. SMITH: Officer Laurel.

6 MR. DANIEL: Now, Laurel Welch.

7 THE COURT: Welch. Okay.

8 MR. SMITH: Your Honor, since we're going
9 to approach this issue when we get into it and
10 we have the appropriate testimony, I assume
11 that this is not something that should come out
12 in opening statements because --

13 THE COURT: Exactly.

14 MR. SMITH: Okay.

15 THE COURT: We're not going to -- I will
16 say this though. I'm assuming we're getting to
17 the speed at some point, and I think I will let
18 him -- I'm going to let him testify to speed in
19 this case.

20 MR. SMITH: We'll see how it proceeds,
21 sure, but --

22 THE COURT: Speed and lighting. But I
23 think you need to be careful as far as what
24 your experts are going to testify to based on
25 that limitation. Okay?

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1 MR. SMITH: Thank you, Your Honor.

2 THE COURT: I think that somewhat talks
3 about --

4 MR. SMITH: That would cover basically our
5 motion for speed and probably his directed
6 verdict or motion for partial summary judgment.
7 I would imagine that would settle both of your
8 rulings.

9 THE COURT: I'm good, yeah. I'm not going
10 to grant summary judgment to anything at this
11 point. We're going to let the jury hear it.
12 So -- okay.

13 MR. SMITH: Our next issue, Your Honor, is
14 certain limitations, which you've already
15 touched upon with Dustin Lee. And, basically,
16 you know, there's just a lot of information
17 there.

18 I mean, he was trying to be helpful, and
19 God bless him for that, but, you know, there's
20 a difference between making a very helpful 911
21 call and offering opinion testimony.

22 THE COURT: I'm not going to let this guy
23 get away -- I'm not going to let him give
24 opinions. I'm quite confident he is not an
25 accident reconstructionist unless there's more

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1 that I don't know.

2 But then again, all's I can tell you, even
3 though I know him as a lawyer, I didn't know he
4 was a magistrate lawyer. So -- I think I swore
5 him in, but I don't know that.

6 So, anyway, we ought to be careful with
7 that. I completely agree with you. He can't
8 give his testimony --

9 MR. SMITH: I'm not going to elicit those
10 responses, and I imagine Jack won't as well.

11 MR. DANIEL: Your Honor, just to be clear
12 on that, so that, you know, we don't run afoul
13 of any rulings. There is in the 911 call, he
14 makes the statement and he's talking -- he's
15 just seen this event, and his testimony is that
16 he pulls over. As soon as he's clear off the
17 roadway, he dials 911. And whatever length of
18 time, it may have been a minute, however long
19 it takes to connect, he's then talking about
20 what he just saw and describing the details of
21 it.

22 And he gives good -- he actually gets the
23 type of license plate that the Plaintiff has.
24 He gets that right. There's a lot of
25 information in there, I do agree with Kevin

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1 about that.

2 He doesn't -- and I'm not going to ask him
3 questions like, Do you think that the Plaintiff
4 was negligent? Do you think that she caused
5 the accident? I'm staying away from that. But
6 there's a -- what our position is, there's a
7 clear, present sense impression this 911 call
8 was made right after the accident. So it --
9 you know, the case law on that and the reason
10 why that is admissible is because it tends to
11 be factually accurate and not just an honest --

12 THE COURT: I have heard the 911 tape.

13 MR. DANIEL: We can play it, we --

14 THE COURT: He can testify as to facts.
15 He can testify as to facts, but I'm not going
16 to allow him to testify as to conclusions.

17 MR. DANIEL: Well, what -- one thing --
18 one thing he says in the 911 call, and I just
19 wanted to draw Your Honor's attention to it,
20 because he actually says -- he describes the
21 SUV that passes him, which turns out to be the
22 Plaintiff's vehicle. And he talks about the
23 car that's crossing 278, which we know is
24 Mr. Johnson's vehicle. And he says, "I don't
25 think the car -- or "the car probably couldn't

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1 have seen that vehicle coming."

2 THE COURT: Well, that portion isn't
3 coming in, because that's pure speculation.
4 Unless we all agree that he says he didn't see
5 it. But I -- it's his opinion, and I think
6 that's their own defense.

7 So, yeah, I don't know how you're going to
8 redact the 911 tape. If you plan on using it,
9 you're going to have to deal with that when you
10 get to it. But him speculating -- he can't
11 speculate. He just can't. He can't say what
12 he saw. I assume he's going to testify he
13 never saw her, which is what you all are
14 telling me, and that she never saw him. So I
15 don't think that's fair game. I think he can
16 state actually what he saw.

17 MR. DANIEL: If we redact that from the
18 911 call, Your Honor, do you have any
19 opposition to us bringing that call and
20 introducing it into evidence?

21 THE COURT: I haven't heard it in its
22 totality. You could just play it for me, you
23 could tell me what portions that you object to.

24 MR. SMITH: There is a lot to redact.

25 THE COURT: I think it's relevant. I

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1 think it can be. I mean, I think typically it
2 would come in. A 911 call, contemporaneously
3 saying what had just occurred. However, if
4 there's anything that he's talking about that
5 runs to a fact -- I'm sorry, an opinion in some
6 way, some type of speculation, I'm not letting
7 that part come in. So you're going to have to
8 cut it or do something. Okay?

9 MR. DANIEL: Yes, Your Honor. And we can
10 play it for you before he testifies.

11 THE COURT: And that's fine. We'll just
12 do that when we get to it. Okay?

13 All right. What else do we have?

14 MR. SMITH: The letter to the Kucks. This
15 is --

16 THE COURT: Okay. Tell me about that.

17 MR. SMITH: This is a little strange.
18 Okay?

19 THE COURT: Tell me how that is relevant
20 in any way.

21 MR. SMITH: So initially what happens is,
22 you know, the Kucks are the vehicle that were
23 hit head on. Right? That they were coming in
24 the opposite way of traffic.

25 The Kucks initially give a recorded

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1 statement where the driver says to the
2 insurance company, "Ma'am, all I seen was
3 headlights coming right at me." He says it
4 three different times. Right?

5 THE COURT: Okay.

6 MR. SMITH: This image is just burned into
7 his brain. Therese Hood is barreling down on
8 him and all he's seeing is headlights coming
9 right at him. Right?

10 THE COURT: Okay.

11 MR. SMITH: Well, subsequent to that, the
12 Kucks hire a lawyer. We're in contact with
13 them to try and get an affidavit saying the
14 same thing, right? So at this time, we don't
15 have a statement yet. We're just trying to get
16 a statement from him that the lights were on,
17 right, because we understand that's what
18 they're going to say.

19 Well, they get a lawyer, statement comes
20 out, and also then the Kucks learn Therese
21 carries \$500,000 per person, so a million for
22 the Kucks. Ms. Johnson carries 25. The Kucks
23 story has now changed.

24 THE COURT: Okay.

25 MR. SMITH: Okay. No more headlights.

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1 Right?

2 They are -- so Therese writes them a
3 letter, explaining again the insurance. Now,
4 she -- she gets it backwards. Okay? She gets
5 it backwards. She says how much insurance
6 she's got with USAA, she says how much
7 insurance he's got with GEICO. But she says,
8 "If you say the same thing, if you say my
9 lights were on, like you said before, you'll
10 get more money." Which it would actually work
11 in the opposite, and she was just very
12 confused.

13 But that's what that letter was. It's
14 explaining the insurance money, it's saying,
15 "Please tell the truth." They're waffling at
16 this point, and they're changing their
17 testimony -- well, not testimony at this point,
18 but they're changing their story after the
19 event about insurance.

20 THE COURT: Who wants to enter this
21 letter?

22 MR. SMITH: He does.

23 MR. DANIEL: Your Honor, we -- I mean --

24 MR. SMITH: Well, if he didn't want to,
25 it's not an issue.

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1 MR. DANIEL: I don't think that we will go
2 there or need to go there other than if they
3 start talking about I don't think that the
4 issue with Mr. Kuck and the fact that there's
5 insurance there, when she actually
6 misrepresented how it would work and told them
7 there would be more money if they sided with
8 her and said Antoine Johnson was at fault.

9 MR. SMITH: But it's all on her.

10 MR. DANIEL: That's what she says in the
11 letter, but I really -- I didn't -- I don't
12 plan on going there. I also don't think --

13 THE COURT: I don't think --

14 MR. DANIEL: I also don't think --

15 THE COURT: That letter is relevant in any
16 way unless you tell me it's for some -- I don't
17 even know what purpose it could be.

18 So as of right now, we're not talking
19 about the letter, it's not coming in. If
20 someone wants to try to put it in, you need to
21 address it with me first during the proffer.

22 MR. DANIEL: Yes, ma'am.

23 THE COURT: You need to take a break, I
24 need to look at this because I'm going to try
25 to use this. I don't remember what for --

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1 impeachment purposes? I don't know. But,
2 again, right there on --

3 MR. SMITH: All right. Roy has our last
4 issue, so I'm going to sit down.

5 MR. WILLEY: The last issue, Your Honor,
6 comes from Page 4 of the Defendant's pretrial
7 brief. There's a sentence in there that says,
8 "Mr. Lee will further testify that it was dark
9 enough outside to require the use of
10 headlights."

11 THE COURT: And, of course, that's a legal
12 conclusion, which he will not be able to
13 testify to. So he'll be able to say it's dark
14 outside, but he can't make the jump to go that
15 it requires. Because, again, there's a statute
16 that says 30 minutes -- it's 30 minutes before
17 and 30 minutes after?

18 MR. WILLEY: Thirty minutes after sunset,
19 30 minutes before sunrise.

20 MR. DANIEL: But, Your Honor, I mean, it
21 would be, just to be clear about our position,
22 we're not going to ask him questions in the
23 legal context of, you know, were you legally
24 required --

25 THE COURT: You can ask him --

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1 MR. DANIEL: I think we can ask him was it
2 dark? And, two -- was it dark, and was it hard
3 to see? And did you need your headlights to
4 see? I think those are the --

5 THE COURT: He can testify to that. Those
6 are factual issues, he just can't give you
7 ultimate conclusion of, "I think it's required
8 by law to have the headlights on."

9 MR. DANIEL: We'll fashion the questions
10 properly.

11 MR. WILLEY: And the key piece that I just
12 want to hit on there, it's the Key v.
13 Charleston, a railroad case, 144 SC164, is
14 making sure that not only can he not make the
15 jump, but that he cannot say it was dark enough
16 where he felt like he should have his
17 headlights on.

18 So darkness is not an issue. The issue
19 with respect to headlights as to the statute is
20 timing. Whether or not it was 30 minutes after
21 sunset or whether it wasn't. There's no --
22 there's no other option for that except with
23 respect, for example, it talks about
24 environmental factors. So if you have an
25 eclipse, obviously if you have an eclipse, you

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1 might need to have your headlights on. It
2 deals with that.

3 But with respect to the normal course of
4 day and night, the statute specifically lays
5 out when you are required to have headlights
6 on. And I don't think that he can testify in
7 contrary to the law on that point. The Court
8 will give them the law. He can -- of course,
9 he can say he can have his headlights on.
10 That's fine.

11 THE COURT: And I can guess he had his
12 headlights on at the time, correct? And he's
13 going to testify to that.

14 MR. WILLEY: Correct.

15 MR. DANIEL: Yes, Your Honor. But I mean,
16 I think it is 701 type lay witness testimony
17 where, you know, you were out there, was it
18 dark? It was -- it was dark. Did you think
19 you needed your headlights on? Yeah, I needed
20 my headlights on to see.

21 I mean, that's not a -- that's a
22 conclusion that a driver, a licensed driver in
23 the state of South Carolina, or really
24 anywhere, can attest to.

25 THE COURT: He can say I had my headlights

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1 on. I even think he can say, I needed my
2 headlights at that exact time to be able to
3 appropriately see.

4 I just -- I'm worried about him
5 extrapolating and going from whatever his
6 experience is to the next one.

7 MR. DANIEL: We're not going to ask --

8 THE COURT: So he needs to be really
9 careful.

10 MR. DANIEL: We're not going to ask him to
11 make legal conclusions or phrase it of, you
12 know, in the way of, you know, statutorily were
13 you required. It's just a general perception
14 thing, and as a driver what his common
15 knowledge is.

16 THE COURT: Just be careful. If not, you
17 need to object when it occurs or if it goes too
18 far, and I'll make a ruling on it.

19 MR. WILLEY: Can we -- can we at least
20 remove that from opening until we see what he's
21 going to testify to, as to specifically the
22 headlights? And, again, I'm relying on this
23 case. This is actually a railroad case which
24 --

25 THE COURT: I don't think anyone in their

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1 opening statement better put any words into
2 Mr. Lee's mouth, because I don't know. But I'm
3 getting the feeling in this that he's a little
4 all over the board.

5 MR. WILLEY: Correct.

6 THE COURT: And I might be wrong on that,
7 but that's what I'm gathering.

8 MR. SMITH: We do all agree that one thing
9 he says, and this is his observation, and we
10 don't have any objection to this, but he
11 observed Therese in his rearview mirror, and as
12 she's passing him, he says that she had her
13 running lights on and no headlights.

14 MR. WILLEY: As she was passing him.

15 MR. SMITH: There's no getting around
16 that. He saw it, Your Honor, and -- you know.
17 There's nothing --

18 MR. WILLEY: That's fine.

19 MR. SMITH: And he had his headlights on
20 at the time. So I know those two facts, those
21 are his observations, we can't argue with that.
22 But all this other stuff is obviously --

23 THE COURT: That's all I'm going to say is
24 in the opening statement, you can say what, you
25 know, you believe the evidence is going to

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1 prove. But I would be careful on putting words
2 in anyone's mouth. But, of course, that's to
3 your own peril. Because if you promise
4 something that doesn't get delivered by a
5 witness, then you are the one that looks bad.
6 So --

7 MR. SMITH: Yes, ma'am.

8 THE COURT: Again, I think everyone needs
9 to be so careful. But, like I said, apparently
10 that's an issue in this case potentially. So
11 to the extent you need to use it, again, I just
12 wouldn't be putting words in people's mouths.

13 MR. WILLEY: So for purposes of that
14 motion granted as to opening and held dependent
15 on what the testimony shows?

16 THE COURT: What I just granted is the
17 opening to specifics. I think they can say
18 what's going to be argued. Again, I don't
19 think he can say this is specific to Mr. Lee.
20 But I think he can say the evidence is going to
21 show.

22 MR. WILLEY: So it's denied?

23 THE COURT: I think it's denied.

24 MR. WILLEY: Okay. And for purposes of
25 our pretrial motions, do you have printed

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1 copies for the record, or would you like us to
2 provide them?

3 THE COURT: You need to go ahead and
4 provide.

5 MR. WILLEY: Okay. And we will do that at
6 a break.

7 THE COURT: All right. What else do you
8 have?

9 MR. SMITH: I could probably -- these are
10 it for our motions, Your Honor. I could
11 probably tell you which of his that we don't
12 have objection to, which may shorten his
13 presentation.

14 THE COURT: Perfect.

15 MR. SMITH: Your Honor, this would be in
16 the master Motion in Limine filed by Mr.
17 Daniel.

18 THE COURT: Yes. Go ahead.

19 MR. SMITH: And it will be Issue No. 2,
20 testimony of Dr. Hanlon regarding the
21 exacerbation of Plaintiff's bipolar disorder
22 and mental health issues.

23 Also, I imagine it will be Parkinson's in
24 there as well, because that was really the
25 subject of her testimony.

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1 Your Honor, we agree that the Plaintiff's
2 mental condition, bipolar disease, depression,
3 and Parkinson's Disease is irrelevant. We're
4 not going to bring it into trial.

5 THE COURT: Are you not claiming that it
6 was exacerbated by this accident?

7 MR. SMITH: No, ma'am.

8 THE COURT: Okay.

9 I guess I'll just hear from you.

10 MS SUTTIE: Yes, Your Honor. It is
11 relevant though to the issue of the extent of
12 her damages. I mean, this depends on a ruling
13 on the Motion to Bifurcate, but the Parkinson's
14 may come in.

15 THE COURT: Well, they say they're not
16 putting it in. So I think to the extent though
17 that -- I mean, we have to take her as she
18 comes. I mean, with whatever she's got. I
19 mean, I think that's going to be certainly a
20 jury charge in this case.

21 I don't think anyone should touch on the
22 issue, I don't think we need to go there.

23 MR. SMITH: Yes, ma'am.

24 THE COURT: If you open the door on
25 bipolar and depression, that's a whole 'nother

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1 issue. I think the Parkinson's a little
2 different. I think it's fair game.

3 If you have a medical doctor testify, if
4 must be something. But you don't want to open
5 the door on bipolar or any depression or
6 anything along these lines. If you open that
7 door up, they'll come all day long and go
8 through it.

9 MR. SMITH: Yes, ma'am.

10 MS SUTTIE: Yes, Your Honor. Just the
11 Parkinson's, I think, for maybe liability
12 purposes will get brought up, and that's the
13 only other inference I could potentially see.

14 MR. SMITH: You don't want us to bring it
15 up for damages, but you want to bring it up --
16 if it's irrelevant, it's irrelevant.

17 MS SUTTIE: Well, it could come up for
18 damages, too, but Dr. Hanlon can't talk about
19 that.

20 THE COURT: I don't think potentially
21 Parkinson's could be. I don't know what the
22 doctors say. But, I mean, my understanding is,
23 she had a very badly shattered ankle and as
24 well as she some fractures of her cervical and
25 her lower back, correct?

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1 MR. SMITH: Yes, ma'am.

2 THE COURT: Okay. Well, obviously the
3 relevant doctors will testify as to what they
4 can in those cases they saw and what they did
5 or what their treatment is.

6 And if one of them can't opine the
7 Parkinson's had something to do or made things
8 more difficult, I think that's fair game for
9 you to testify to.

10 And are you telling me that Kim Richardson
11 or Woody Poplin's going to talk about her
12 Parkinson's, the effect? I mean, she does have
13 a valid driver's license, correct?

14 MR. SMITH: Yes, ma'am.

15 THE COURT: I mean, she can drive a car.
16 So, again, I don't know where anyone's going
17 through the door on that one, so --

18 MR. SMITH: We won't. So we agree that
19 those issues are irrelevant. You won't hear
20 those words out of our mouth, and we would also
21 ask that that --

22 THE COURT: I will say this. It's
23 probably fair game to bring it up. Because I
24 will say this, and I don't mean any disrespect.
25 I can see you shaking a little bit, and I think

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1 people would wonder maybe, just a little bit,
2 what that is.

3 So, again, it's very subtle. But, again,
4 I don't think it's completely out of bounds
5 here. I think it can be mentioned, but unless
6 you got someone saying that somehow that
7 affects her -- and I don't see that because I
8 don't hear you brought an expert witness. And
9 any way that's there, we're not going through
10 that door. Okay?

11 MR. SMITH: Your Honor, on Issue No. 4, on
12 Defendant's master Motion in Limine, Charmane
13 Bonham (phonetic), we've never been able to
14 find Ms. Bonham, so we're not going to offer
15 her hearsay testimony.

16 THE COURT: Okay. That shouldn't be a
17 problem.

18 MR. SMITH: Yes, ma'am.

19 THE COURT: Okay. What else?

20 MR. SMITH: And Issues No. 5 and 6 are
21 kind of intertwined. And they have to do with
22 the Defendant's criminal record and driving
23 record.

24 Your Honor, we'll agree initially that
25 those would certainly be irrelevant. However,

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1 if the Defendant testifies that he's always a
2 safe driver and always has been a safe driver,
3 or he testifies that he has always told the
4 truth, there's a crime of dishonesty in his
5 criminal record. So if he stays away from that
6 --

7 THE COURT: You can't ask him that
8 question either. You can't ask that question.

9 MR. SMITH: I'm not. I'm not going to set
10 him up. I'm not going to set him up.

11 THE COURT: Okay. All right. Just don't
12 open the door on it. Okay?

13 MR. SMITH: Right. Failed attempts at
14 settlement.

15 THE COURT: Obviously it's irrelevant.

16 MR. SMITH: We're not bringing any numbers
17 into this.

18 THE COURT: Okay.

19 MR. SMITH: And --

20 THE COURT: The reptile theory?

21 MR. SMITH: Yeah. I don't know, you may
22 have seen this before, Judge. It's a Golden
23 Rule argument. Roy and I, this ain't our first
24 day in court. If we approach the Golden Rule,
25 let us know. We're very aware of the rule.

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1 But -- and that's a little similar to Jack's
2 argument about we can't refer to the vehicle
3 being totaled. You know, you've seen the -- I
4 mean, they were crunched up.

5 THE COURT: Right. It certainly wasn't
6 totaled in this part of the wreck.

7 MR. SMITH: Right. So, anyway, so, those
8 are what we agreed on so far, and I'll give
9 Jack the floor to go over the remainders.

10 THE COURT: All right. Are you ready?

11 MS SUTTIE: Yes, Your Honor. We have
12 another one. The first one, and now a master
13 motion, is to exclude the video testimony of
14 Dr. David Jaskwhich regarding Plaintiff's other
15 medical conditions.

16 In his video deposition, Mr. Smith asked
17 him general questions, such as, "Were
18 Plaintiff's injuries related to the subject
19 accident and --"

20 THE COURT: Correct me if I'm wrong, Dr.
21 Jaskwhich is an orthopedic surgeon?

22 MS SUTTIE: Orthopedic surgeon. He just
23 treated her ankle.

24 THE COURT: He had nothing to do with her
25 back?

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1 MS SUTTIE: Nothing to do with the back,
2 spine, ribs, anything else.

3 THE COURT: He treated her for her spine,
4 her fractures and that?

5 MR. SMITH: Hilton Head Hospital.

6 THE COURT: Hilton Head Hospital, just
7 directly after the accident? Did she have any
8 follow-up?

9 MR. SMITH: She did have some follow-up.
10 She saw a neurologist. These were -- these
11 were fractures in her cervical and lumbar
12 spine. You know, you either get a kyphoplasty
13 or you deal with the pain.

14 THE COURT: Exactly.

15 MR. SMITH: So she had some follow-ups.
16 But these are --

17 THE COURT: Epidurals? Or what did she
18 have done?

19 MR. SMITH: She did -- these are emergency
20 room diagnoses that happened. They were a
21 little bit more concerned, she had a dissection
22 of the vertebral artery near the level of the
23 cervical fracture. They were a little bit more
24 concerned with that.

25 But there were follow-ups. So

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1 Dr. Jaskwhich is reading the records about what
2 Dr. Tobin did, where he popped the ankle, then
3 he did the surgery, and all the other diagnoses
4 that come along with it.

5 THE COURT: Okay. So you don't want
6 Jaskwhich to be able to testify to anything
7 other than the ankle?

8 MS SUTTIE: No, ma'am.

9 THE COURT: And do you agree with that? I
10 mean, I don't think her looking at other
11 things -- or him looking at other things, I
12 think he can bring up. He treated her for the
13 ankle.

14 Now, how do you intend on getting in
15 injuries? Who's going to get in for you the
16 injuries for cervical and her lower back?

17 MR. SMITH: Well, Dr. Jaskwhich is her
18 treating doctor. He reviewed the records from
19 Hilton Head, he relied on those records in
20 formulating his treatment plan. He discussed
21 the injuries in his treatment notes, not only
22 the ankle injury, but all the other injuries
23 with Ms. Hood.

24 THE COURT: I mean, I'm just reading what
25 they gave me as far as the testimony.

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1 MR. SMITH: Right. We're not -- we're not
2 going with him any further than that. He's not
3 talking about any future treatment, epidurals,
4 facets for the neck, for the low back. He's
5 not doing any of that kind of stuff.

6 But he is competent to testify as a
7 treating medical doctor that he relied upon
8 those records, and based upon what he knows and
9 his medical training and his examination of
10 her, that those appear to be related to the
11 wreck.

12 I mean, the wreck happens and she gets
13 diagnosed with all these things. We've got her
14 records before, she didn't have cervical
15 fractures, rib fractures, lumbar fractures, a
16 concussion, which is really it, in addition to
17 --

18 THE COURT: Well, let me ask you, when he
19 does a physical of her, and he didn't treat her
20 at Hilton Head Hospital, correct? He treated
21 her in Charleston?

22 MR. SMITH: That's right. She lives in
23 Goose Creek.

24 THE COURT: So he didn't treat her at
25 Hilton Head Hospital, but when she saw him as

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1 an orthopedic surgeon, I don't know what he
2 specializes in, whether it's ankles, arms,
3 backs, whatever. But does he actually do a
4 physical exam of her cervical or lower back?

5 MR. SMITH: He does a physical
6 examination, head to toe, yes, ma'am.

7 THE COURT: I mean, does he in his notes,
8 write obviously, that she had a fracture to her
9 cervical whatever number and whatever level?

10 MR. SMITH: Yes, ma'am.

11 THE COURT: Same thing with the --

12 MR. SMITH: Yes.

13 THE COURT: So who -- are you having an ER
14 doctor testify?

15 MR. SMITH: No, ma'am.

16 THE COURT: And are you having Dr. Tobin
17 testify?

18 MR. SMITH: No, ma'am.

19 THE COURT: Okay. Okay. I think to some
20 extent he can say that he is her treating
21 doctor, and they did discuss her cervical, her
22 lower back. And I don't know what the written
23 medical records show. It just depends on how
24 in-depth. I think if he does testify -- I
25 think he can testify to some extent that

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1 something caused it, he's relying on the
2 record. I just don't know that the situation
3 was with her back, either cervical or her low
4 back, prior to this accident.

5 MR. SMITH: He doesn't go any further than
6 that, Your Honor.

7 THE COURT: Who's treating her -- who
8 treats her for her Parkinson's?

9 MR. SMITH: Ma'am?

10 THE COURT: Who treats her for her
11 Parkinson's?

12 MR. SMITH: Her family doctor at the VA.

13 MS SUTTIE: That's actually a
14 misrepresentation. She's primarily treated for
15 her Parkinson's by a neurologist at the VA who
16 -- not Dr. Hanlon, who's her primary care
17 physician.

18 And to clarify some points that were
19 raised, Dr. Jaskwich didn't have the entire
20 Hilton Head records. He had Dr. Tobin's
21 records from the ankle surgery. And so Mr.
22 Smith asked him on the record, "Were these
23 injuries caused by this accident?"

24 He didn't clarify, you know, the first
25 impact with Mr. Johnson, the second impact with

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1 the Kucks. Objected to the questions and
2 offered him an opportunity to correct the
3 former question, maybe get back verification.

4 But I think if Dr. Jaskwhich's testimony
5 about her other injuries are allowed to come
6 in, it could -- it's unfairly prejudicial and
7 outside the scope of his expert testimony.

8 THE COURT: I think it comes, as far as
9 Dr. Jaskwhich feels comfortable, he can
10 testify. So most of the time a doctor will
11 say, well, you know, I can say as a medical
12 doctor that this accident caused her problems
13 that -- you know, whatever and whatever. Then
14 they can say, I treated her back, I didn't take
15 care of that. You're telling me --

16 MR. SMITH: He says all that.

17 THE COURT: -- he won't testify to any
18 futures, anything along those lines?

19 MR. SMITH: That's right.

20 THE COURT: As long as he qualifies it, I
21 think he can. He's a medical doctor. And I
22 think it goes to the weight, not admissibility.
23 So I think he can testify to that.

24 MR. SMITH: Yes, ma'am. And all those
25 questions that you just brought up, those were

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1 all asked during cross. So that is all
2 highlighted that he's not treating that and --
3 you know.

4 THE COURT: Okay. I mean, do you have
5 anything as far as pre-existing, that she had
6 other previous back injuries?

7 MS SUTTIE: Yes, Your Honor. She had a
8 prior cervical injury, she had -- just
9 significant fall risk. We know there's a lot
10 of --

11 THE COURT: Is that as a result of the
12 Parkinson's or is that from the back?

13 MS SUTTIE: The -- I mean, close in time
14 to the Parkinson's, but I don't think the back
15 injury is a result of Parkinson's. But perhaps
16 prior right ankle foot injury as well. I mean,
17 there's extensive pre-existing issues.

18 THE COURT: Okay.

19 MS SUTTIE: The next one that we have was
20 during Dr. Jaskwhich's video deposition for
21 trial. Mr. Smith introduced the actual
22 hardware that was placed in Mrs. Hood's ankle,
23 and then subsequently removed by Dr. Jaskwhich,
24 in addition to an x-ray that clearly shows, you
25 know, the hardware in there.

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1 Dr. Jaskwhich had already testified as to
2 what was placed in the ankle, what was removed
3 from the ankle.

4 THE COURT: Do you plan on trying to get
5 the hardware in?

6 MR. SMITH: Yes, ma'am.

7 THE COURT: I don't know what it looks
8 like, so show me.

9 MR. SMITH: Sure.

10 THE COURT: So how long was this in?

11 MR. SMITH: Actually it was November of
12 2014, it was removed about three months ago.

13 THE COURT: Okay. Your premise is that
14 it's prejudicial?

15 MS SUTTIE: And it's duplicative, and they
16 have x-rays showing exactly that in the x-ray.
17 And then Dr. Jaskwhich has already testified,
18 showing on the x-ray what each piece of
19 hardware is. And I think it's just -- the only
20 purpose of that needs to come in is to, you
21 know, invite sympathy and prejudice the jury.
22 I just don't see the purpose of it.

23 THE COURT: I think it can come in. It
24 shows what was in her ankle.

25 Okay. What else?

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1 MS SUTTIE: The next one may be --

2 MR. DANIEL: One of them, Your Honor, is
3 the -- we got -- we filed a Motion in Limine as
4 to the video, presenting the video testimony of
5 William and Mary Kuck, the drivers from --

6 MS SUTTIE: No objection.

7 MR. SMITH: They are coming live. I mean,
8 there may be cross examination of theirs, but
9 we don't -- we're not just going to throw it --
10 they don't qualify under the statute. Unless
11 they don't show up, because they've been
12 subpoenaed.

13 THE COURT: Then we'll cross that when we
14 get it to.

15 Okay. What else?

16 MR. DANIEL: Then there's the motion to
17 exclude the mention of insurance in the case,
18 which, I mean, this is a --

19 THE COURT: We always agree, right.

20 MR. DANIEL: I'm sorry?

21 THE COURT: We always agree.

22 MR. SMITH: Unless, of course, he says he
23 has to pay a verdict, and then it's relevant.
24 Because he doesn't.

25 MR. DANIEL: Right. But there's also,

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1 there's a specific issue as to Mr. Kuck and --

2 THE COURT: We're not going to talk about
3 the other lawsuit. We're not going to talk
4 about any of that. We're not going into that.

5 MR. DANIEL: Okay. I just -- the
6 Plaintiff's counsel, in Mr. Kuck's deposition
7 asked -- I mean, probably a couple hours worth
8 of questions about this prior statement that
9 Mr. Kuck gave.

10 THE COURT: We're not talking about that.
11 We're not going into it. And whoever let
12 Mr. Kuck know, I want to make sure that you
13 tell him ahead of time, everybody tells the
14 witnesses ahead of time, no mention of
15 insurance. If they think for some reason their
16 question has to be responsive to it, they need
17 to say, stop, and look at me, and say we need
18 to take break. Okay?

19 MR. DANIEL: Yes, Your Honor.

20 You've ruled on the Motion for Partial
21 Summary Judgment. And we did file a Motion to
22 Exclude Mrs. Borzendowski just because of the
23 timing of it, Your Honor. She was named about
24 --

25 THE COURT: I saw July 17th, is what I

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1 saw.

2 MR. DANIEL: Yes, Your Honor. And the --

3 THE COURT: Did you have a chance to
4 depose her -- did you have a chance to depose
5 her?

6 MR. DANIEL: We deposed her just five days
7 ago.

8 THE COURT: Okay. But you deposed her.
9 Okay.

10 I'm not even sure if she is -- I don't
11 know what her testimony is. Actually, that's
12 one that I might want to between now and when
13 you put her up, I don't whether you intend on
14 putting her up, but let me take a look at her
15 deposition.

16 MR. SMITH: It will be sometime tomorrow,
17 Your Honor.

18 THE COURT: Okay. Well, then you can give
19 me a copy of her deposition, let me take a look
20 at it.

21 MR. WILLEY: I'll email it first --

22 THE COURT: But you have deposed her,
23 right?

24 MR. DANIEL: We have, Your Honor. It's
25 just from the Defense position, we did --

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1 THE COURT: Did you have a scheduling
2 order?

3 MR. DANIEL: We did, and we had this date
4 certain trial that was set --

5 THE COURT: And did your scheduling order
6 cut off discovery at some point?

7 MR. DANIEL: It did. I'd have to go look
8 at it. Well, it didn't cut off discovery, I
9 think there were deadlines to name experts at
10 one point.

11 MS SUTTIE: We just had a date certain
12 trial, a mediation trial deadline.

13 THE COURT: Okay. Then you got to live
14 with what you have. And if you guys didn't put
15 it in there, then, like I said, the discovery
16 goes to the date of trial.

17 And as long as -- I would be more
18 concerned if you hadn't deposed her. But it
19 sounds like you deposed her, so -- and there
20 was no cut-offs for naming of experts and there
21 was no cut-offs for doing discovery, so --

22 MR. DANIEL: There's also a Motion to
23 Compel that we filed. Mrs. Borzendowski, when
24 we deposed her five days ago, said that she had
25 been provided a summary of Ken Richardson's

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1 deposition testimony. We asked for a copy of
2 that because I think we're entitled --

3 THE COURT: I think you're entitled to
4 have whatever she was given.

5 MR. SMITH: It was a mistake, Your Honor.
6 My office did a summary, and they included the
7 abstract of my work product instead.

8 THE COURT: It was provided and looked at
9 it and they're entitled to it.

10 MR. SMITH: All right. I'll give it to
11 them.

12 THE COURT: So you need to get that to
13 them, and you need to get it to them today.

14 MR. SMITH: Yes, ma'am.

15 MS SUTTIE: And I think our last one
16 before the Motion to Bifurcate is the exclusion
17 of punity, which is on the grounds that
18 Plaintiff hasn't produced evidence of -- clear
19 and convincing evidence that Mr. Johnson was
20 driving --

21 THE COURT: Okay. I'm not going to make a
22 decision on human damages until I actually hear
23 and we have a decision on just liability first.
24 So that's the first thing we're going to do.

25 I'm trying to think about how and

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1 potentially where to bifurcate this case. I
2 want to make sure that if we were to do that,
3 it would make the case go more quickly.

4 Again, it's usually based for me on
5 whether or not there's a real issue as to
6 liability.

7 Just so I understand, I want to make sure
8 that there is no duplicative witnesses. We're
9 going to bifurcate liability and damages, I
10 want to make sure that there will be no
11 witnesses that have to testify twice. Is that
12 correct?

13 MS SUTTIE: That's my understanding. But
14 we don't have an objection to the Plaintiff,
15 just so she only has to testify once, if she
16 would like to testify about her injuries.

17 THE COURT: Well, of course, if that's
18 what's going to happen.

19 MS SUTTIE: I mean, that's the only
20 witness I would think who could testify to both
21 issues unless --

22 MR. WILLEY: Your Honor, that's actually
23 not accurate. There would be multiple
24 crossover.

25 THE COURT: Who? Who?

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1 MR. WILLEY: So, as an initial matter, the
2 cop would be a crossover, property damages as
3 an element of damage, and she testifies about
4 the damage that she saw when she --

5 THE COURT: We're going to have property
6 damage in this case?

7 MR. WILLEY: Yes. We're talking about all
8 the damages that are recoverable, yes, ma'am.

9 THE COURT: Okay. That does not matter.
10 I'm more worried, obviously Ms. Hood will have
11 to testify again. Who else besides that? Who
12 else besides the police officer?

13 MR. WILLEY: The cop would have to testify
14 again. Potentially the Defendant, when we're
15 talking about mechanism of injury and where
16 exactly the impact occurred.

17 THE COURT: Yeah. He would not testify
18 twice.

19 He doesn't need to. Okay. Who else?

20 MR. WILLEY: And then, again, obviously
21 the doctors that are going to be coming in for
22 that just specifically.

23 But we have limited -- their concern with
24 the bifurcation was our amount of treating
25 physicians, and we have really narrowed that

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1 back. I mean, I don't think -- with the door
2 openings, the door closings, I actually think
3 we have time.

4 THE COURT: I'll tell you what I'm
5 concerned is, I see treating physicians, but I
6 also see some type of RN, which I'm going to
7 assume is a life care planner. Am I correct on
8 that? I saw Tricia Yount on there, who -- I
9 mean, it doesn't matter, she used to be my
10 accountant. Probably worked forever, from
11 years and years ago. But -- so Tricia Yount
12 obviously.

13 Who else as far as the damages expert?

14 MR. WILLEY: We are actually -- we're
15 going to go ahead and take out -- okay.

16 Judge, we'll actually remove the life care
17 plan, which will also obviate the need for
18 Ms. Yount, which takes the damages witnesses
19 just down to -- if we don't bifurcate, just
20 takes the damages witnesses down to the
21 doctors, who are about an hour. They're on --
22 that's on video obviously.

23 THE COURT: When you say "doctors," who
24 are we talking about?

25 MR. WILLEY: Dr. Jaskwhich.

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1 THE COURT: And what about Dr. Hanlon?
2 Are you bringing her?

3 MR. WILLEY: She's short.

4 THE COURT: But she's coming.

5 MR. SMITH: We -- yeah. Well, there's
6 some limits on what she can testify to, Your
7 Honor. We're going to consider. But if she
8 comes, she's coming live. There's no video,
9 but we're going to have to think about --

10 THE COURT: So if you took out the life
11 care planner, if you took out Tricia Yount, I
12 just need to know who is -- I mean, who's going
13 to testify as medical experts?

14 In other words, it would be David
15 Jaskwhich, Dr. Ann Hanlon. Anyone else?

16 MR. WILLEY: No. And, I mean, talking
17 about less than two hours. If we limit it down
18 to that, which we're willing to do if we don't
19 bifurcate.

20 MS SUTTIE: Your Honor, I wanted to
21 clarify one point.

22 THE COURT: Sure.

23 MS SUTTIE: If the Plaintiffs are willing
24 to strike the safety and the life care planner,
25 from what I'm hearing, Dr. Hanlon said maybe --

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1 if they're going to strike their claim for
2 future damages.

3 MR. WILLEY: Well, you don't strike them.

4 THE COURT: Based on this, she's got
5 permanent injuries as a result.

6 MR. SMITH: Yes, ma'am. That's all over
7 Dr. Jaskwhich's --

8 MS SUTTIE: As to her ankle.

9 MR. WILLEY: Which gets us to the future
10 damages, which is all we can get to. Because
11 we don't have to prove them to a mathematical
12 certainty, which, of course, is the purpose of
13 a life care planner.

14 THE COURT: But someone's got to be able
15 to testify that she is going to need -- if it's
16 just permanency for pain, or is it permanency
17 for other treatment?

18 MR. SMITH: Well, what his testimony is,
19 is that she's going to require more treatment
20 for her ankle. And he's going to talk about
21 that.

22 THE COURT: What type of treatment? I
23 mean, is she going to have to have more
24 hardware put --

25 MR. SMITH: Well, what she's got is, she's

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1 got severe post traumatic arthritis, she's got
2 scar tissue, and she's got a broken, you know,
3 healed ankle.

4 THE COURT: And the future medical
5 treatment, I want to know if this doctor has --

6 MR. SMITH: Injections, physical therapy,
7 ankle braces, and possibly 20 percent chance of
8 an ankle fusion.

9 THE COURT: And does he put a dollar
10 amount on this?

11 MR. SMITH: No, ma'am.

12 THE COURT: Well, then how do get the
13 dollar amount, because she can't speculate?

14 MR. WILLEY: We're not required to have a
15 -- all we're required to do to submit future
16 damages to the Court.

17 THE COURT: You got to have some kind of
18 way to make a claim to say she's going to have
19 to have an injection. Someone has to be able
20 to testify the injection costs roughly X amount
21 of dollars. If your life care planner was the
22 one that did that, then I think you have to
23 have your life care planner.

24 But a doctor, absolutely can testify as to
25 an injection that roughly costs \$400, whatever

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1 it is.

2 MR. SMITH: Yeah. Your Honor, it's really
3 not the focus of, I guess, that. You know,
4 our future damages that we're focused on is
5 this woman's retirement, right?

6 THE COURT: Okay.

7 MR. SMITH: So going back and forth to the
8 doctor to go get injections. Limited mobility
9 --

10 THE COURT: For pain suffering and her
11 time. Obviously she can testify as to value of
12 her time.

13 MR. SMITH: Yes, ma'am. Yes, ma'am.

14 MR. WILLEY: We're not interested in a
15 dollar amount on specific features in terms of
16 cost amount.

17 MR. SMITH: No ma'am. I mean, they're
18 going to hear she's a veteran.

19 THE COURT: I mean, I have a problem, just
20 so we're all clear -- I have a problem. If
21 you're going to stand up and say this woman
22 needs future X, Y, and Z, I can't have the jury
23 speculating on what the cost of that medical
24 procedures will be.

25 I would agree that goes to additional pain

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1 and suffering for her. Going back and forth to
2 the doctor, having to live through the
3 injections. I agree that's all for them and
4 there's no number that you can attach to that.
5 But I -- you just need to be careful because
6 I'm not going to let you sit and say, you know,
7 we're asking for whatever medical damages are.

8 As long as you limit it to the pain and
9 suffering part, I just can't let the jury just
10 grasp in the air of what an injection costs.

11 MR. SMITH: Yes, ma'am. And we're on the
12 same page.

13 MR. WILLEY: We're on the same page.

14 MR. SMITH: And if we want to bring in the
15 costs, we'll bring in the nurse at the life
16 care plan. Otherwise --

17 THE COURT: Well, that's the difference
18 though. I need to know that now. It's like I
19 said, if you're going to have Patricia -- or
20 Tricia Yount in, a life care planner, I am
21 going to bifurcate it. If you're not, I'm
22 inclined to just put it all over. If there
23 really is just the two doctors, then I would
24 agree it's probably more efficient --

25 MR. SMITH: We're going to scratch it.

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1 MR. WILLEY: We'll withdraw those in
2 exchange for not bifurcating.

3 THE COURT: Okay. All right. So that's
4 what we'll do then. Okay. So we're not going
5 to bifurcate the case but we're not --

6 MR. SMITH: Sorry about that.

7 THE COURT: That's okay.

8 MS SUTTIE: I do have one final issue,
9 your Honor, and it's not in our motions. But
10 I've noticed some type of full courtroom back
11 here. I would like to point out that
12 Plaintiff's counsel brought a number of people
13 from their firm with them and have had them sit
14 on the outside of the courtroom. And for the
15 purposes of jury selection and trial, I want to
16 ask that they sit on their side.

17 THE COURT: That's okay with me, because I
18 don't know how much room we're going to have.

19 I will say this. Where's Margaret?
20 Margaret's not here. Y'all are going to have
21 to like go for a corner. I don't know how many
22 people she's got coming, but I have to let them
23 in for right now.

24 MR. SMITH: And, Judge, you do have some
25 403s. Those are the --

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1 THE COURT: Okay. And that's perfect. I
2 just need everybody -- I don't need you while
3 we're addressing the jury. So what I'm going
4 to ask is those of you that are here, I'm just
5 going to stick you all -- you want to come over
6 here?

7 It's strange, too -- I will admit I don't
8 want to do this. I'm going to put you all in
9 the far corner. Is that okay for right now?
10 Once I get rid of all my jurors, of course
11 you're welcome to sit wherever you want.

12 Margaret, would you want them sitting in
13 the gallery here that are not jurors? I'm just
14 going to ask them all to go to the far corners.
15 I don't know how many people you've got coming
16 in. But I just need to know, if we're going to
17 start on this side, we'll line people up left
18 and get them as close as we can over here to
19 this side. Okay?

20 MR. DANIEL: One last issue. Mr. Hood is
21 here as well, and he's not a party. You know,
22 I'd just ask that Your Honor sequester
23 witnesses. I think he may be testifying.

24 MR. SMITH: He's not testifying about
25 anything to do with --

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1 THE COURT: Was he in the accident?

2 MR. SMITH: No.

3 MR. DANIEL: No, ma'am.

4 THE COURT: Well, then, I mean --

5 MR. SMITH: He's here for moral support.

6 THE COURT: Is he testifying at all?

7 MR. DANIEL: Your Honor, he's on our
8 witness list. If we need him, we're going to
9 call him. If we don't, we won't. It's not
10 generally something that I do, as far as
11 damages go.

12 THE COURT: You don't need to. If he was
13 in a wreck, that might be one thing, his
14 liability is an issue. But all he's going to
15 testify to is that, you know, the difficult
16 time she's had afterwards. So -- okay?

17 All right. Thank you all for doing that.

18 I'm going to step down, Margaret is going
19 to go ahead and do roll call with them. I'm
20 going to come out and qualify.

21 Margaret, my intent, it's going to be all
22 week.

23 THE CLERK: I'll try to get three.

24 THE COURT: Okay. If we can, we'll go for
25 three; if not, we'll go for two. And if not,

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1 we'll just go with one. Okay? So that's what
2 we're going to try to do.

3 MR. WILLEY: And, Your Honor, I am done,
4 but these are our pretrial motions. I'll just
5 mark this binder as a Court's exhibit with the
6 --

7 THE COURT: Okay. I'm going to step down.

8 Before I go off, I want to see if any of
9 these people we can cross off this witness
10 list. It's a combined witness list, I want to
11 know if there's any people we can cross off,
12 then the less people I'm calling out the
13 better.

14 MR. SMITH: Well, yes, ma'am. And I will
15 say that if you noticed in my pretrial brief, I
16 listed specifically every witness the Defendant
17 has listed since the beginning of this case.
18 Most of them are --

19 THE COURT: I saw that. That's why I'm
20 asking the two of you to look at this and cross
21 off anyone that you're the one that named
22 that's not coming. Just so I get a short list,
23 right? Okay?

24 (Recess.)

25 THE COURT: Good morning, ladies and

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1 gentlemen. It's a pleasure to see you. My
2 name is Carmen Mullen. I am the resident
3 circuit court Judge here in the Fourteenth
4 Judicial Circuit, which includes not only
5 Jasper County, but also Beaufort, Hampton,
6 Allendale, and Colleton Counties.

7 Ladies and gentlemen, it's my pleasure
8 this week to be trying or holding a term of
9 civil court here, and as I'm sure you've seen
10 in front of you we do have the first case on
11 our roster ready to begin.

12 Ladies and gentlemen, what this means for
13 you is that if you are chosen as a juror in the
14 trial of this first case, you can expect to be
15 with me for the week, ladies and gentlemen.
16 And when I say, "for the week," I mean through
17 Friday. And I will also tell you that we
18 typically have court from roughly 9:30 or 10:00
19 in the morning until 5:00, 5:30 in the
20 afternoon. That's just to let you know what to
21 expect while you are here performing jury duty.

22 Ladies and gentlemen, I also want you to
23 know that if you had a dispute or a matter, you
24 would hope that the good people of Jasper
25 County would be here to help you decide these

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1 issues. What I always tell jurors is you will
2 know and readily understand 12 heads are always
3 better than one.

4 And that's why we want and need citizens
5 of Jasper County to decide these matters. All
6 right?

7 So with that said, ladies and gentlemen, I
8 need to go through and ask you a number of
9 questions in regards to your jury service.

10 Have you sworn them in yet?

11 THE CLERK: No.

12 THE COURT: So we're going to ask you all
13 to stand and we're going to swear you in as a
14 jury pool in this case. The result of that,
15 ladies and gentlemen, is that you're required
16 to answer questions that pertain to you.

17 So let's go ahead and get you sworn in and
18 then I'll start asking you questions.

19 (The jury panel is sworn by the Clerk of
20 Court.)

21 THE COURT: Thank you.

22 Now, ladies and gentlemen, I have certain
23 questions that I am required by law to ask you
24 in regards to your jury service. If you need
25 to respond to one of these questions, I ask

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1 that you stand. We'll bring a microphone to
2 you, because sometimes it's a little difficult
3 to hear in this courtroom, and if you need to
4 respond to the question.

5 Also, ladies and gentlemen, I want you to
6 know that some of the questions I'm required to
7 ask can be a bit personal. If you don't feel
8 comfortable standing up and announcing whatever
9 you have to tell me in front of all your
10 jurors, or all your fellow jurors, what you can
11 simply do is stand, give me your name and juror
12 number, and then ask to approach.

13 You and I will have a conversation over
14 here next to the court reporter, and I can tell
15 you it's in relative private. Because, number
16 one, she has to put it on the record, and the
17 attorneys trying this case are also entitled to
18 hear what you have to say. All right?

19 So ladies and gentlemen, I just remind you
20 that this is a civil term of court, we're not
21 hearing any criminal matters this week. And
22 the first case before us that we are expected
23 to try this week is an automobile accident
24 case. All right? Just to give you a bit of an
25 idea about what we're doing.

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1 So, ladies and gentlemen, if you need to
2 respond to my questions, again, simply stand.
3 Give me your name and juror number, and then go
4 ahead and respond to my question.

5 Is there any member of the jury panel
6 that's not a citizen of the United States? If
7 so, would you please stand?

8 (No response.)

9 THE COURT: Is there any member of the
10 jury panel who is not a resident and citizen of
11 Jasper County? If so, please stand.

12 (No response.)

13 THE COURT: Is any member of the jury
14 panel unable to read, write, speak, or
15 understand the English language? If so, would
16 you please stand.

17 (No response.)

18 THE COURT: If you can't understand the
19 English language, I have no idea how you're
20 supposed to respond to that question, but I'm
21 required to ask it.

22 Ladies and gentlemen, does any member of
23 the jury panel have less than a sixth grade
24 education or its equivalent?

25 Now, ladies and gentlemen, if you've

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1 raised a family, held a job, and paid your
2 bills, you have more than a sixth grade
3 education. But I want to make sure you feel
4 comfortable sitting as a juror.

5 If you have any concerns about this
6 question or any of the other questions, I will
7 at the very end ask a catch-all question that
8 simply says if for any reason whatsoever you
9 need to discuss your jury service with me,
10 now's the time to do it. Because after that,
11 ladies and gentlemen, you will be qualified as
12 a potential juror.

13 So is there anyone that wants to respond
14 to this question? If so, please stand.

15 (No response.)

16 THE COURT: Is there any member of the
17 jury panel who is unable because of mental or
18 physical infirmities to render efficient jury
19 service?

20 Ladies and gentlemen, again, you're going
21 to be sitting as a juror up here in the jury
22 box --

23 THE CLERK: Someone's standing.

24 THE COURT: Thank you, Margaret. Up here
25 in the jury box, you're typically going to be

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1 here roughly an hour at a time or so. We will
2 stand up and take stretches. If anyone is
3 diabetic, you can certainly make sure you have
4 juice and candy. But this is for people who
5 just simply cannot sit in a jury box primarily
6 an hour at a time, and you brought a doctor's
7 note with you today.

8 Go ahead and give her the -- does she want
9 a microphone? Give her the microphone.

10 Ma'am, would you give me your name and
11 juror number.

12 JUROR: Oradell Lee, 97.

13 THE COURT: Yes, ma'am.

14 JUROR: Yes. I suffer with bipolar
15 disorder and manic depression.

16 THE COURT: Okay. And you're unable to
17 sit? Did you bring a doctor's note today?

18 JUROR: No, ma'am.

19 THE COURT: All right. And you don't
20 think you're able to sit during the trial of
21 this case; is that correct?

22 JUROR: No, ma'am. That's correct.

23 THE COURT: All right. Ma'am, I will go
24 ahead and excuse you. Thank you for being
25 here.

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1 JUROR: Thank you.

2 THE COURT: Anyone else?

3 (No response.)

4 THE COURT: Has any member of the jury
5 panel been convicted by guilty plea or trial in
6 a state or federal court of record for a crime
7 punishable by imprisonment for more than one
8 year, and your civil rights have not been
9 restored by pardon or amnesty? If so, please
10 stand.

11 Sir, your name and juror number.

12 JUROR: Mike Foley, 56.

13 THE COURT: Mr. Foley, do you know what
14 you were convicted of or plead guilty to?

15 JUROR: I don't. This last time I was
16 here in court, the Judge told me I had been, so
17 --

18 THE COURT: That you had been. Do you
19 know what it was?

20 JUROR: That I'd been convicted of
21 something that carried a penalty of one year.
22 I didn't do any time.

23 THE COURT: Okay. How long ago was that?

24 JUROR: 1987.

25 THE COURT: You weren't under the age of

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1 18, were you?

2 JUROR: Ma'am?

3 THE COURT: Were you under the age of 18
4 at the time?

5 JUROR: No, ma'am.

6 THE COURT: Okay. All right. Sir, well,
7 if you tell me that another judge has excused
8 you, and you don't know exactly what it was,
9 I'll go ahead and excuse you. Thank you for
10 being here, sir.

11 JUROR: Yes, ma'am.

12 THE COURT: Anyone else?

13 (No response.)

14 THE COURT: Is any member of the jury
15 panel a clerk or deputy clerk of court,
16 constable, sheriff, or other commissioned law
17 enforcement officer, probate judge, county
18 commissioner, magistrate, or other county
19 officer, or employed within the walls of any
20 courthouse? If so, please stand.

21 Yes, ma'am. Your name and juror number.

22 JUROR: Susan Waite, 155.

23 THE COURT: Yes, ma'am.

24 JUROR: Employed as a county assessor.

25 THE COURT: A county assessor. Very good.

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1 Are you in the building behind us?

2 JUROR: Yes.

3 THE COURT: All right. Ma'am, I'm going
4 to go ahead and excuse you, but I appreciate
5 you being here. Thank you.

6 Anyone else?

7 (No response.)

8 THE COURT: Ladies and gentlemen, is there
9 anyone on jury duty who's previously served up
10 here in circuit court, not magistrate's court,
11 municipal court, or Federal court, during the
12 last calendar year? If so, please stand.

13 (No response.)

14 THE COURT: Has anyone served as a member
15 of the Jasper County grand jury during the past
16 several years? If so, please stand.

17 (No response.)

18 THE COURT: Ladies and gentlemen, we now
19 move to jury exemptions. State law provides
20 for several exemptions to jury service.

21 An exemption does not mean you are not
22 qualified to serve; it means you may choose not
23 to serve. But I, ladies and gentlemen,
24 encourage you if you are at all inclined to
25 stay with us, we'd love to have you.

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1 Do I have anyone who is 65 years of age or
2 older who does not wish to serve with me this
3 week? If so, please stand.

4 All right. Ma'am, name and juror number.

5 JUROR: Arlene Smith, 144.

6 THE COURT: And, Ms. Smith, you don't wish
7 to stay this week?

8 JUROR: I have two doctors appointments on
9 Thursday. One of them took me two months to
10 get.

11 THE COURT: Okay. Ma'am, I'll go ahead
12 and excuse you. Thank you for being here.

13 Yes, ma'am.

14 JUROR: Virginia Garbade. I'm not sure of
15 my number.

16 THE CLERK: Sixty-three.

17 THE COURT: And you don't wish to stay?

18 JUROR: Not really, if I don't have to.

19 THE COURT: All right. Ms. Garbade, I'll
20 excuse you. Thank you.

21 Yes, ma'am.

22 JUROR: My name is Ethel Walker. I have a
23 sick husband with a feeding tube, and I have
24 the only car that we have.

25 THE COURT: Okay. Ma'am, I'm going to go

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1 ahead and excuse you as well. Thank you.

2 THE CLERK: That would be 40 right there.

3 THE COURT: Forty. Okay.

4 Another exemption concerns prior jury
5 service. No person is required to serve as a
6 juror more often than once every three calendar
7 years. Therefore, is there anyone who has
8 served up here in the last couple of years who
9 wishes to be excused this week? If so, please
10 stand.

11 (No response.)

12 THE COURT: Ladies and gentlemen, those of
13 you who have served as grand jurors during the
14 last five calendar years may also be exempted.
15 Do I have anyone who served on a grand jury?

16 (No response.)

17 THE COURT: The next exemption of law says
18 if you have small children, it has four parts,
19 all of which must apply, ladies and gentlemen,
20 for you to be able to claim this exemption.

21 You may be exempted from jury service if
22 you have a small child or small children under
23 the age of seven for which you have legal
24 custody of that child or children; and you have
25 the principal care, custody, and control of

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1 that child or children; and lastly, you are
2 unable to make adequate arrangements for the
3 care of your child or children while performing
4 jury duty.

5 Ladies and gentlemen, if you take your
6 children to school or take them to daycare and
7 go to work, it's presumed you can do the exact
8 same thing while you're here. All right?

9 So if anyone needs to claim this
10 exemption, if so, please stand.

11 (No response.)

12 THE COURT: The next exemption involves
13 those of you who may be attending school at
14 this time or working in some capacity with a
15 school. Now, if this exemption applies to you,
16 what I can do is transfer your jury service to
17 a term of court that doesn't conflict with your
18 school responsibilities.

19 In other words, the holiday break, spring
20 break, or the summer break.

21 So is there anyone here who is a full-time
22 student, school teacher, school crossing guard,
23 school bus driver, or who serves in any other
24 school related function and as a result of your
25 school involvement you are unable to sit on

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1 jury duty this week? If so, please stand.

2 Okay. Yes, ma'am. Your name and juror
3 number.

4 JUROR: Paige Peoples, I'm Juror 120. I
5 am the head volleyball coach at Legacy
6 Christian Academy, and we have games on
7 Thursday and Friday at 5 o'clock, and I need to
8 be there with the girls at 3:30 to begin
9 warm-up.

10 THE COURT: Okay. I'm going to ask you to
11 sit tight with me. I may need you. And so I'm
12 a little bit concerned. But sit tight, and
13 I'll let me see what I can do.

14 Give me her number again, Margaret.

15 THE CLERK: One-twenty.

16 THE COURT: Okay. I can tell you right
17 now, if y'all are teachers and they can get
18 assistants and substitute teachers, I'm going
19 to tell them they have to do that.

20 Now, let's start with you. Your name and
21 juror number.

22 JUROR: My name is Gloria Williams. I am
23 an assistant teacher at Beaufort Jasper PCO.

24 THE COURT: Okay. Ma'am, I'm going to
25 tell you that I'm going to have to have you

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1 stay. They're going to have to get somebody to
2 come in and substitute for you. If you get
3 chosen, I just -- I need you all. I've got to
4 tell you right now, I am down to, I believe,
5 it's 39 people. And I need enough people to
6 choose a jury from.

7 So, sir, your name and juror number.

8 JUROR: I don't know my juror number.

9 It's Gregg Wright.

10 THE CLERK: One-seventy-three.

11 THE COURT: Yes, sir.

12 JUROR: Ma'am, I'm contracted with four
13 different school districts. I respond to all
14 the crises that happens in school. I'm
15 contracted with them.

16 THE COURT: What kind of crises?

17 JUROR: Well, we manage behavioral issues,
18 emotional issues, all these things. And
19 typically, I respond to all the crises. I'm
20 like the clinical back-up. So I have a meeting
21 in the morning that -- in Colleton that's
22 extremely important to helping them with their
23 school system in setting up this programming at
24 school. So I don't know -- and also, I have a
25 relationship with the Solicitor's office, as

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1 well. A program that I provide for them.

2 THE COURT: And that doesn't matter. This
3 is not criminal court. So that's irrelevant.

4 Sir, give me your number.

5 JUROR: One-seventy-three.

6 THE COURT: All right. Sit tight, sir.

7 Let me see what I can do. If I can transfer
8 you, I will. But if I need enough people,
9 again, I may have to keep you.

10 Go ahead.

11 JUROR: Davaron Edwards, Juror No. 51.

12 I'm director of band at the high school.

13 THE COURT: Director of what?

14 JUROR: Band. The problem is, on a school
15 day, the problem is after school. We have band
16 practice. There is -- I do have some support
17 staff, but they are at the Hardeeville campus.
18 So they will not get to the Ridgeland campus
19 until about 4:30, if at all. And we have a
20 home football game Friday night, so I really
21 need to have band practice this week, if I can.

22 THE COURT: Is it your first home game
23 this year?

24 JUROR: No, it's the second.

25 THE COURT: It's the second one. Give me

JURY QUALIFICATION

1 your number.

2 JUROR: Fifty-one.

3 THE COURT: All right. Sit tight. I
4 don't know what I can do yet. If I can help
5 you, I will. But I'm losing a lot of people,
6 so I'm concerned.

7 All right. Yes, sir.

8 JUROR: William Rutland. I'm supposed to
9 be teaching a short course up in Athens,
10 Georgia next week, I've been doing planning for
11 it this week. So -- and I'm Juror 131. If
12 there's anything you can do, I'd appreciate it.

13 THE COURT: All right. Sir, I can't
14 transfer you. This is next week. You're going
15 to have to -- it's in between. But I can tell
16 you this. Bring your materials with you,
17 there's going to be some downtime if you get
18 chosen as a juror. Typically, I don't let
19 people bring computers, but if I need to make
20 an exception for you, as long as you promise
21 not to use it in any way, if you do this as a
22 juror, I'll let you bring whatever you need so
23 during your downtime you can prepare. Okay?

24 I appreciate it, sir, though. Thank you.
25 Sit tight.

JURY QUALIFICATION

1 Yes, sir.

2 JUROR: How you doing, Your Honor. My
3 name is Horace Eady, I'm not sure of my jury
4 number.

5 THE CLERK: Fifty.

6 JUROR: I work for Thomas Hayes Fence of
7 Hilton Head.

8 THE COURT: Who do you work for?

9 JUROR: Thomas Hayes Fence at Hilton Head,
10 278. And I've just been approved to start
11 training as an auto check. And I start school
12 for training this week, Monday.

13 THE COURT: Okay. Where is that training
14 at? Is it in Hilton Head or elsewhere?

15 JUROR: I'm not sure. I'm not sure
16 exactly where it's at right now.

17 THE COURT: And you say "this Monday,"
18 that mean next Monday?

19 JUROR: This Monday coming up.

20 THE COURT: You'll be out of here in time,
21 so you're fine. I'm not worried about it. Sit
22 tight. We're going to finish the trial by
23 then, I can assure you of that. All right. So
24 sit tight with me.

25 Okay. Everyone. Is there anyone here

JURY QUALIFICATION

1 who's employed with the Department of
2 Corrections at a penitentiary? If so, please
3 stand.

4 (No response.)

5 THE COURT: Ladies and gentlemen, is there
6 any juror who performs services for a business,
7 commercial, or agricultural enterprise that
8 you're so essential to the operation of that
9 business or enterprise that if you are required
10 to perform jury duty, that business or
11 enterprise would have to shut its doors?

12 Ladies and gentlemen, what in the world
13 does that mean? It means that I understand a
14 lot of you have jobs, and you have a need to be
15 elsewhere. However, ladies and gentlemen, I
16 have to have enough people to pull this jury.
17 So do I have anyone because of work that they
18 are absolutely not able to stay this week? And
19 I got to tell you, if you own your own
20 business, I'm going to tell you, do you have
21 any support staff? If you say you work for
22 someone and you're the only one on this day,
23 tell your boss to go hire more people. Okay?

24 Ladies and gentlemen, I need jurors, and
25 I'm not kidding when I say that. Okay? But I

JURY QUALIFICATION

1 certainly understand that sometimes this is the
2 absolute worst week in all 52 that you could
3 have been assigned here.

4 I also may remind you that this is a short
5 week. You could have been here five days,
6 you're here four days, ladies and gentlemen.
7 And these lawyers know that I told them they
8 need to take this case up now and down in that
9 time period.

10 I'll tell you, from my experience there
11 are good weeks and bad weeks to serve on jury
12 duty. This is a very good week because of the
13 shortened week. You could be on a case that
14 could last longer than a week, it could go two
15 or three, which happens. So, again, it's a
16 good week to serve if you are able.

17 However, ladies and gentlemen, again I
18 remind you I understand that this can be an
19 incredibly bad week for you.

20 Ladies and gentlemen, if anyone wants me
21 to entertain a transfer of your jury service, I
22 can do that. But I got to tell you, the
23 chances are that I'm going to hold it in my
24 back pocket for a bit until I know I've got
25 enough people to go ahead and pull this jury.

JURY QUALIFICATION

1 But, again, if you have a compelling
2 reason, and ladies and gentlemen, general
3 inconvenience is not enough, I know sometimes
4 it's difficult, but if you have a truly
5 compelling reason to transfer your jury service
6 to another week, I will entertain it. All
7 right?

8 Do I have anyone that wants me to consider
9 a transfer? If so, please stand.

10 JUROR: Oh, yes.

11 THE COURT: Yes, sir.

12 JUROR: Like I said, I have an extremely
13 important meeting --

14 THE COURT: Okay. Anything additional to
15 what you've already told me?

16 JUROR: No. And, well, here's the thing.
17 I -- no one else can go to this meeting. I
18 mean, I don't have a boss, I am the boss. So
19 --

20 THE COURT: All right. Take a seat, sir.
21 Yes, ma'am.

22 JUROR: My brother has a -- I'm sorry.

23 THE COURT: You're my volleyball coach,
24 right?

25 JUROR: Yes. But my brother, he has a

JURY QUALIFICATION

1 court hearing in Beaufort County that I have an
2 affidavit involved in.

3 THE COURT: I can take care of that. If
4 it's just an affidavit, no one's going to let
5 you testify. They just want the affidavits. I
6 can take care of that. Don't worry about it.

7 Yes, ma'am.

8 JUROR: May I talk to you privately?

9 THE COURT: Of course. Come on with me.

10 (Juror and Judge speak privately.)

11 THE COURT: It's okay. I'll transfer you.
12 What number are you?

13 THE CLERK: Twenty-nine.

14 THE COURT: All right. I'm going to
15 excuse you.

16 THE CLERK: We have a juror that just went
17 out the door.

18 THE COURT: Who just went out the door?

19 THE CLERK: Mr. Wright.

20 THE COURT: Tell him to get back in here.

21 You're fine. You're fine. You're
22 excused.

23 THE CLERK: Twenty-nine.

24 THE COURT: Is excused.

25 Ladies and gentlemen, does anyone else

JURY QUALIFICATION

1 need to speak with me regarding jury service?

2 Yes, sir.

3 JUROR: Can I come up?

4 THE COURT: Of course you can come up.

5 Anyone else? Come on up.

6 Yes, sir.

7 THE CLERK: No. 174.

8 JUROR: I went to school with the
9 Defendant.

10 THE COURT: You consider yourself close
11 friends?

12 JUROR: We grew up together. His family
13 is close with my family.

14 THE COURT: I'll excuse you from the trial
15 of this case, No. 174. It's for cause.

16 Come on up. How are you?

17 JUROR: I'm doing great.

18 THE CLERK: Number 60.

19 THE COURT: Number 60, I'm going to go
20 ahead and excuse 60 for cause as well. Okay?

21 Come on up. Yes, ma'am.

22 JUROR: I am a relative. Mary Dupont.

23 THE COURT: How are you related to him?

24 JUROR: We are like second cousins, his
25 mom and my mom are first cousins.

JURY QUALIFICATION

1 THE COURT: Okay. What is her number?

2 THE CLERK: Forty-eight.

3 THE COURT: All right. Forty-eight is
4 struck for cause as well.

5 Anyone else?

6 You can go ahead and leave, sir. I'm
7 going to go ahead and excuse you. It's okay.
8 You can go ahead and go. Okay?

9 THE CLERK: That's 174, 60, and 48.

10 THE COURT: Okay. Is there anyone else?

11 I'm going to go ahead and just ask my
12 questions for voir dire as to this case, and
13 then we'll talk about cross-offs. Okay?

14 All right. Ladies and gentlemen, I am now
15 going to ask you some questions more
16 particularly directed to the trial in this
17 case, including the parties, potential
18 witnesses, those types of things, ladies and
19 gentlemen. If you need to respond to a
20 question, like you just did before, simply
21 stand, give me your name and juror number, and
22 you can go ahead and respond. All right?

23 I do find at this point, this panel
24 qualified, Margaret. I apologize, I should
25 have told you that.

JURY SELECTION

1 Ladies and gentlemen, we are about to call
2 the case entitled Therese Hood versus Antoine
3 Johnson. Ladies and gentlemen, this case
4 allegedly occurred on November 7th of 2014 at
5 the intersection of Highway 278 and Southwood
6 Park Drive on Hilton Head Island.

7 Southwood Park Drive is right where the
8 Dunkin' Donuts comes out and also there's a
9 restaurant called The Yummy House and the
10 Batters Box are right along there, and a shoe
11 repair shop.

12 Ladies and gentlemen, I know that this
13 occurred back in 2014, but I need to know if
14 any of you have any personal knowledge about
15 this case whatsoever. In other words, you
16 happened to be there at the time, or you know
17 someone that knows something about this case.
18 If so, please stand.

19 (No response.)

20 THE COURT: Additionally, I'm going to ask
21 the Plaintiff's attorneys to introduce their
22 clients as well as themselves and their law
23 firm. Ladies and gentlemen, my question is
24 going to be, are you related by blood,
25 connected by marriage, have a close personal

JURY SELECTION

1 friend, or social relationship with any of
2 these people, or are you kin to any of these
3 people? And then I'm going to ask Defendant's
4 counsel to do the exact same thing, ladies and
5 gentlemen. Okay?

6 Additionally, when it comes to the
7 lawyers, I'm also going to ask if you've ever
8 been represented by them, sued by them,
9 employed by them in any way, shape, or form.
10 Okay?

11 So, gentlemen, I'll go ahead and start
12 with the Plaintiff, if you would.

13 MR. WILLEY: Good afternoon. Roy Willey,
14 and I am one of the attorneys that has the
15 pleasure of representing Ms. Therese Hood.

16 MR. SMITH: And I'm Kevin Smith, I
17 represent Ms. Hood as well.

18 MS. STEARNS: Amanda Stearns, I represent
19 Ms. Hood.

20 THE COURT: All right. Will someone
21 introduce Ms. Hood for us, please. And she
22 doesn't need to stand up, she's fine.

23 MR. SMITH: This is Therese, Ms. Therese
24 Hood. She goes by Terry.

25 THE COURT: Thank you.

JURY SELECTION

1 All right. Mr. Daniel.

2 MR. DANIEL: Jack Daniel, appearing on
3 behalf of the Defendant. This is the
4 Defendant, Antoine Johnson, in this case.

5 MS SUTTIE: And Madison Suttie, also
6 appearing on behalf of Mr. Johnson.

7 THE COURT: All right. Mr. Johnson, would
8 you stand for the jury, if you would. Sir,
9 thank you.

10 Thank you, sir. You all may be seated.

11 Ladies and gentlemen, to begin with,
12 anyone related by blood, connected by marriage,
13 have a close personal relationship, or a
14 special friendship with either the Plaintiff in
15 this case, Ms. Therese Hood, or the Defendant
16 in this case, Antoine Johnson? If so, please
17 stand.

18 (No response.)

19 THE COURT: Ladies and gentlemen, you have
20 been introduced to the attorneys that are
21 trying this case. Again, you have to answer
22 are you related by blood, connected by
23 marriage, have a close personal relationship,
24 or special friendship with any of these
25 attorneys? Or have you ever been represented

JURY SELECTION

1 by, sued by, or employed by, or anyone in your
2 immediate family been employed by any of these
3 attorneys? If so, please stand.

4 (No response.)

5 THE COURT: Bear with me, ladies and
6 gentlemen.

7 Ladies and gentlemen, the following is a
8 list of potential witnesses in the trial of
9 this case. And if any of these people are here
10 in the courtroom, I'm going to ask that you
11 please stand and face the jury panel, although
12 I don't think anyone is here. Maybe one or
13 two.

14 Ladies and gentlemen, potential witnesses
15 in this case are, of course: Ms. Hood, the
16 Plaintiff; the Defendant, Mr. Johnson; William
17 Kuck; Mary Elizabeth Kuck; Corporal Jennifer
18 Welch, formerly known as Jennifer Worrell.

19 Dr. David Jaskwich; Cary Tanrath; Woody
20 Poplin; Ken Richardson; Cindy Brian; Nilda
21 Fowler; Therese Milligan; Helen Hernandez.
22 Christine Hood Davis; Stanley Davis; Rosa
23 Almeda; David Hood.

24 Thank you, Mr. Hood. Thank you, sir.

25 Tami Melnick; Dustin Lee; Stephanie

JURY SELECTION

1 Whetsel Borzendowski; Tasha Haupt; Alison
2 Morenio; Clint Thomas.

3 Ladies and gentlemen, the question is, is
4 anyone related by blood, connected by marriage,
5 have a close personal friendship, or special
6 relationship with any of these potential
7 witnesses? If so, please stand.

8 Yes, ma'am. Your name and juror number.

9 JUROR: Cara Koerner, 93.

10 THE COURT: Who do you know?

11 JUROR: Tasha Haupt.

12 THE COURT: How do you know her?

13 JUROR: She worked with my sister-in-law.

14 She was a manager for dispatch at Beaufort
15 County 911. They're best friends, so we've had
16 several encounters with each at family
17 gatherings and just different sort of things
18 like that.

19 THE COURT: Okay. May I see the
20 attorneys?

21 Let me ask you, do you know anything about
22 this case? Have you ever had any information
23 in regards to this case?

24 JUROR: No, ma'am.

25 THE COURT: Okay. Let me see the

JURY SELECTION

1 attorneys.

2 (Off-the-record discussion held.)

3 THE COURT: Ma'am, I'm going to go ahead
4 and keep you. It's my guess, and I just spoke
5 with the attorneys, that she may have been the
6 person that accepted the phone call at 911, or
7 maybe just a records custodian. So, I'm not
8 going to star her. Her testimony may just
9 simply be what comes in.

10 So, again, I appreciate you disclosing
11 that and letting us know.

12 All right. Anyone else?

13 (No response.)

14 THE COURT: Ladies and gentlemen, has any
15 member of the jury panel ever been involved in
16 an automobile accident that resulted in either
17 a claim being made or a lawsuit? If so, please
18 stand.

19 All right. Mr. Wright, I'm going to start
20 with you. Give me your name, sir, and juror
21 number again.

22 JUROR: Gregg Wright, 173.

23 THE COURT: Okay. You were in an
24 automobile accident?

25 JUROR: Yes, ma'am.

JURY SELECTION

1 THE COURT: Okay. Were you the Plaintiff
2 or the Defendant?

3 JUROR: Help me out -- plaintiff,
4 plaintiff.

5 THE COURT: Did you bring the case or did
6 someone bring a case against you?

7 JUROR: Somebody brought a case against
8 me.

9 THE COURT: Okay. Were you injured in
10 that accident?

11 JUROR: No, I wasn't.

12 THE COURT: Okay. And has that case been
13 resolved?

14 JUROR: Yes.

15 THE COURT: Okay. Thank you. You may be
16 seated.

17 Sir, your name and juror number.

18 JUROR: Robin Cane, Juror No. is 26. I
19 was sued for a kid on a bicycle when they
20 crossed the road and I hit him. And I was
21 sued.

22 THE COURT: Has that case been resolved?

23 JUROR: Yes, ma'am.

24 THE COURT: Okay. Thank you, sir. You
25 may be seated.

JURY SELECTION

1 And I keep calling you my volleyball
2 coach. I'm sorry.

3 JUROR: That's all right.

4 THE COURT: Yes, ma'am.

5 JUROR: Paige Peoples, Juror No. 120. I
6 was a Plaintiff in a case, a gentleman ran a
7 stop sign and T-boned my car into a ditch.

8 THE COURT: How long ago was that?

9 JUROR: Two years ago.

10 THE COURT: And did you bring a claim?

11 JUROR: Yes, ma'am, I did.

12 THE COURT: And what were your injuries as
13 a result of that?

14 JUROR: A neck injury.

15 THE COURT: Are those resolved?

16 JUROR: They are now, yes, ma'am.

17 THE COURT: And is the claim resolved?

18 JUROR: Yes.

19 THE COURT: Okay. Very good. Thank you.
20 You may be seated.

21 Yes, ma'am.

22 JUROR: I'm Erica Horton, 78. And this
23 was a few years ago, someone ran a red light
24 and I T-boned a -- it was a pleasure truck. I
25 had a neck injury and a shoulder injury. All

JURY SELECTION

1 that's resolved now, and the claim is resolved,
2 too.

3 THE COURT: And that's resolved as well?

4 JUROR: Yes.

5 THE COURT: Yes, ma'am.

6 JUROR: All right. Ma'am, thank you. You
7 may be seated.

8 Yes, ma'am.

9 JUROR: Surenda Burrison, Juror No. 21. I
10 brought a case against someone. They hit me,
11 and I had a neck injury, hip replacement, and a
12 little bit of everything.

13 THE COURT: How long ago was that?

14 JUROR: About 2011.

15 THE COURT: And has that case been
16 resolved?

17 JUROR: Yes.

18 THE COURT: Okay. Thank you, ma'am. You
19 may be seated.

20 Yes, ma'am.

21 JUROR: Linette Laszlo, Juror No. 96. I
22 was hit in the back about several years ago,
23 sustained back injury and neck. And that case
24 is resolved.

25 THE COURT: Resolved. Thank you, ma'am.

JURY SELECTION

1 I appreciate that.

2 JUROR: You're welcome.

3 THE COURT: Yes, ma'am.

4 JUROR: Deborah Harper, No. 69. I was a
5 Plaintiff in 2013, it's been resolved.

6 THE COURT: Okay. And what were your
7 injuries as a result of that?

8 JUROR: My cheek, my face was broke, my
9 cheekbone was broke, and I had some back
10 problems.

11 THE COURT: And some back problems. Okay.
12 Thank you. You may be seated.

13 Ladies and gentlemen, has any member of
14 the jury panel or any member of your immediate
15 family ever been treated by Dr. Ann Hanlon of
16 the Ralph Johnson V.A. Medical Center in
17 Charleston, South Carolina? If so, please
18 stand.

19 (No response.)

20 THE COURT: Ladies and gentlemen, has any
21 member of the jury panel or any member of your
22 immediate family ever been treated by Dr. David
23 Jaskwhich of LowCountry Orthopedics in North
24 Charleston or Dr. Joseph Tobin of Tobin
25 joint -- excuse me, Bone and Joint Surgery on

JURY SELECTION

1 Hilton Head Island, South Carolina?

2 JUROR: My mother was a patient of
3 Dr. Tobin for a long time.

4 THE COURT: Ma'am, give me your name and
5 juror number again.

6 JUROR: Cara Koerner, No. 93.

7 THE COURT: Your mother was a patient
8 there?

9 JUROR: Yes, ma'am.

10 THE COURT: Is she still treated by Dr.
11 Tobin?

12 JUROR: No, ma'am. There was some
13 discrepancies with the doctor that they had, so
14 she withdrew from that practice.

15 THE COURT: Okay. And can you tell me,
16 did you ever carry your mother to that doctor's
17 office?

18 JUROR: Yes, ma'am.

19 THE COURT: Okay. All right. Thank you,
20 ma'am. You may be seated.

21 Has anyone in the jury panel ever been
22 treated by or any member of your immediate
23 family ever been treated by Dr. Habib Rizk of
24 the Medical University of South Carolina in
25 Charleston? If so, please stand.

JURY SELECTION

1 (No response.)

2 THE COURT: Ladies and gentlemen, is any
3 member of the jury panel, or any member of your
4 immediate family, any member of the Immaculate
5 Conception Ladies Guild? If so, please stand.

6 (No response.)

7 THE COURT: Ladies and gentlemen, I'm
8 going to ask this question a little more
9 broadly. This would be other than someone
10 involved in an automobile accident.

11 Has any member of the jury panel, or any
12 member of your immediate family, ever been a
13 plaintiff or a defendant in a lawsuit other
14 than an automobile accident?

15 It could be a breach of contract. It
16 could be just about anything. It could be
17 potentially a workman's compensation issue.
18 Anything along those lines other than an
19 automobile accident.

20 Sir, your name and jury number.

21 JUROR: Cody Clevinger, Juror. 30. My
22 mother was a plaintiff in an assault case from
23 her work.

24 THE COURT: I'm sorry, at her work? Is
25 that what you said?

JURY SELECTION

1 JUROR: Yes.

2 THE COURT: Do you know, is that case
3 resolved?

4 JUROR: Yes.

5 THE COURT: Thank you, sir. You may be
6 seated.

7 Yes, ma'am.

8 JUROR: Tyra Johnson, 85.

9 THE COURT: Yes, Ms. Johnson. Sure, come
10 on up.

11 (Juror and Judge confer at the Bench.)

12 JUROR: My mom had a case, it was
13 involving my sister, step, my sister's father.
14 He molested me and they had that. He just got
15 charged.

16 THE COURT: It's a criminal case.

17 JUROR: Yes. I just --

18 THE COURT: Thank you. I appreciate you
19 disclosing that to me. Thank you. And it's
20 just now starting.

21 JUROR: No, he just got charged, but, I
22 guess, I went to the courthouse in Hampton,
23 they sent my mom a letter like last year and I
24 guess at the end of the year he got charged.
25 They resolved it. He took a plea deal.

JURY SELECTION

1 THE COURT: Okay. To resolve it. Okay.

2 Thank you.

3 Sir?

4 JUROR: Yes, ma'am. James Lynch, Juror
5 102. My youngest daughter was a plaintiff in a
6 lawsuit in regards to a physical handicap.

7 THE COURT: I'm sorry. I missed this.
8 Physical what?

9 JUROR: Her hand was crushed when a table
10 fell on it.

11 THE COURT: Okay. And has that case been
12 resolved?

13 JUROR: Yes, ma'am.

14 THE COURT: All right. How long ago was
15 that, roughly, sir?

16 JUROR: 2005 -- excuse me, 2010.

17 THE COURT: Okay. Thank you, sir. I
18 appreciate it.

19 Yes, ma'am.

20 JUROR: My mom has a lot of medical
21 problems, so when it comes to doctors, she was
22 recently in a body mesh lawsuit with a doctor
23 in Savannah that she had going on. That one's
24 still kind of like lingering in the air. She's
25 got a partial settlement from him, but it

JURY SELECTION

1 hasn't completely been disclosed.

2 THE COURT: Okay. And give me your name
3 and juror number, ma'am.

4 JUROR: Cara Koerner, No. 93.

5 THE COURT: Thank you, ma'am. Okay.

6 Ladies and gentlemen, has any member of
7 the jury panel ever previously served on a
8 jury? If so, please stand.

9 All right. Ma'am, I'm going to start with
10 you, you're closest to me. Give me your name
11 and juror number.

12 JUROR: Yes. Claudia Brown, I'm not sure
13 what my number was.

14 THE CLERK: Eighteen.

15 THE COURT: All right. Ms. Brown, where
16 did you previously serve on a jury? Was it
17 here in Jasper County?

18 JUROR: Here.

19 THE COURT: And how long ago was that
20 roughly?

21 JUROR: About 15 years ago.

22 THE COURT: Fifteen years ago. Okay. It
23 was one of my predecessors then.

24 Do you remember what the case was about at
25 all? Or do you know if it was civil or

JURY SELECTION

1 criminal?

2 JUROR: It was civil. They basically did
3 a lot of reading. The people had already died,
4 and the family members were here, and they kept
5 us in that back room most of the time.

6 THE COURT: Into the jury room. Okay.

7 JUROR: Yeah. They sent us to lunch and
8 then we'd come back in and sat back in the jury
9 room, and then they said "go home."

10 THE COURT: Okay. So it sounds like the
11 case must have resolved. All right.

12 Is there anything about that experience
13 other than being sent back in the jury room,
14 anything about that experience that would
15 affect your ability to be fair and impartial in
16 the trial of this case?

17 JUROR: No.

18 THE COURT: No, for the record. All
19 right. Thank you, ma'am. You may be seated.

20 I'm going to go ahead and -- do you have a
21 juror number?

22 JUROR: It's Yvette Smith, and I believe
23 my number was 147.

24 THE COURT: All right. What kind of case
25 did you sit on?

JURY SELECTION

1 JUROR: I really do not remember it, it's
2 been that long ago. But it was right here, and
3 I probably sat like over there.

4 THE COURT: And you don't remember if it
5 was civil or criminal?

6 JUROR: No.

7 THE COURT: So if you can't remember the
8 case, I can't imagine there was anything that
9 affected your ability to be fair and impartial
10 in this case.

11 JUROR: Correct.

12 THE COURT: That's not unusual at all. I
13 can tell you that. So please be seated.

14 THE CLERK: 147.

15 THE COURT: Sir?

16 JUROR: James Lynch, 102.

17 THE COURT: Yes, sir.

18 JUROR: It was a civil case in regards to
19 a lawsuit for property damage.

20 THE COURT: Okay. How long was ago it?

21 JUROR: It's been several years.

22 THE COURT: Anything that would affect
23 your ability to be fair and impartial in the
24 trial of this case?

25 JUROR: No, ma'am.

JURY SELECTION

1 THE COURT: Thank you, sir. I appreciate
2 it.

3 Ms. Turner?

4 MS SUTTIE: Koerner.

5 THE COURT: Koerner. Sorry. Okay. When
6 did you serve on jury duty?

7 JUROR: Two years ago. I believe it was
8 criminal, it was a child abuse case.

9 THE COURT: Okay. Was I the Judge, by any
10 chance?

11 JUROR: No.

12 THE COURT: No. Okay. Well, that's good.
13 Because I should remember you then.

14 All right. Anything about that experience
15 that would affect your ability to be fair and
16 impartial?

17 JUROR: No, ma'am.

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

19 Sir in the very back of the room, sure.
20 Yes.

21 JUROR: Travis Holden, Juror No. 76. I
22 was here last year.

23 THE COURT: You were here last year?

24 JUROR: Last year. I think it was like
25 around September or October.

JURY SELECTION

1 THE COURT: What kind of case?

2 MS SUTTIE: It didn't last long, like two
3 days. I guess it got resolved and so --

4 THE COURT: Okay. You don't remember what
5 kind of case it was?

6 JUROR: No, I'm sorry.

7 THE COURT: That's all right. So nothing
8 about it would affect your ability to be fair
9 and impartial in the trial of this case,
10 correct?

11 JUROR: No.

12 THE COURT: All right. Thank you. You
13 may be seated, Mr. Holden.

14 All right. Yes, sir, in the very back, in
15 the striped shirt.

16 JUROR: Edwin Harvey, Juror 112.

17 THE COURT: Yes, sir.

18 JUROR: It's been right at six years. It
19 was criminal.

20 THE COURT: Okay. Do you remember what
21 the person was charged with?

22 JUROR: It involved -- he was charged with
23 robbing a lady at an ATM in Hardeeville.

24 THE COURT: Okay. So anything about that
25 process that would affect your ability to be

JURY SELECTION

1 fair and impartial in this case?

2 JUROR: No, ma'am.

3 THE COURT: Thank you, sir. You may be
4 seated.

5 Yes, ma'am.

6 JUROR: Deborah Harper, 69. It was a
7 civil case, and it was a long time ago.

8 THE COURT: A long time ago. Okay.
9 Anything that would affect your ability to be
10 fair and impartial in the trial of this case?

11 JUROR: No, ma'am.

12 THE COURT: Thank you. You may be seated.
13 Yes, ma'am.

14 JUROR: Brenda Dooley, 43. It was also a
15 car accident case, 15 years ago.

16 THE COURT: Was it here?

17 JUROR: Nebraska.

18 THE COURT: In Nebraska. Okay. Anything
19 about that case that would affect your ability
20 to be fair and impartial in the trial of this
21 one?

22 JUROR: No.

23 THE COURT: All right. Thank you.

24 Ladies and gentlemen, does any person on
25 this jury panel, or any member of their

JURY SELECTION

1 immediate family, who is a disabled veteran?

2 If so, please stand.

3 (No response.)

4 THE COURT: It could you or your spouse or
5 maybe a child. It wouldn't be, I guess a child
6 anymore, but I guess an adult. Anyone?

7 Sir, your name and juror number.

8 JUROR: Ryan Barker, No. 5.

9 *Note to Mona: He's clearly saying Ryan
10 Barker, but the jury list says Ryan Baker.

11 THE COURT: Yes, sir. Who's this?

12 JUROR: I'm a disabled vet.

13 THE COURT: You are, sir?

14 JUROR: Yes.

15 THE COURT: Let me ask you, are you
16 getting treatment in Charleston?

17 JUROR: I got my initial disability
18 statement.

19 THE COURT: Up in Charleston?

20 JUROR: Through them, yes.

21 THE COURT: All right. So that's okay.
22 That's what I need to know. Thank you. You
23 may be seated.

24 Again, ladies and gentlemen, I know you
25 know very little about this case. It's an

JURY SELECTION

1 allegation that this accident occurred. Give
2 me one minute. I'm seeing two conflicting
3 dates on this last question.

4 On November 7th of 2014, ladies and
5 gentlemen, in the evening, it was on Highway
6 278, which is also known as William Hilton
7 Parkway, it's the one way where you go to
8 Hilton Head. And, I apologize, someone remind
9 me of the crossroad?

10 MR. DANIEL: Southwood Park Drive.

11 THE COURT: Southwood Park Drive, ladies
12 and gentlemen.

13 Again, it happened in 2014. Does anyone
14 have independent knowledge, anyone saw the
15 case, talked to anyone that saw the case, know
16 anything about the case, whatsoever? If so,
17 please stand.

18 (No response.)

19 THE COURT: All right. Is there any
20 further questions required of this panel from
21 the Plaintiff?

22 MR. SMITH: No, Your Honor.

23 THE COURT: From the Defense?

24 MR. DANIEL: No, Your Honor.

25 THE COURT: Thank you.

JURY SELECTION

1 Ladies and gentlemen, what's going to
2 happen at this time is all your names are being
3 placed into a random computer list. It is
4 going to draw a list for me. What's going to
5 happen is the lawyers are going to be given
6 this list, they're going to have around 15
7 minutes to look at them in order to choose this
8 jury panel.

9 Margaret will tell you where you can go,
10 wherever you're able to, while they're look at
11 the list.

12 So, ladies and gentlemen, what I'm going
13 to do is this: I'm giving you a break till 20
14 till 1:00.

15 I also want to tell you, at 1 o'clock,
16 regardless if you get chosen or not, I'm going
17 to send you to lunch. So I'm going to tell you
18 to go grab a bite to eat, so I don't want
19 anyone concerned if their stomach is starting
20 to growl. Okay?

21 Either way, if you're chosen or not,
22 you're going to be able to be free to go about
23 your business after we pull this jury.

24 If you are seated on this jury, I'm going
25 to ask you to come back this afternoon. We're

JURY SELECTION

1 going to go ahead and start the trial of this
2 case. But, again, I don't want you to be
3 concerned. You're free right now to go refresh
4 yourselves.

5 The only thing I ask, if you have to go
6 outside the courthouse to smoke or something
7 along those lines, please tell one of the
8 bailiffs or deputy so we know. Because we're
9 going to be looking for you. I can't start
10 until you all are back.

11 So I just ask you, there's a clock at the
12 back of the courtroom, the top of the exit
13 sign, if you're back at 20 minutes till 1:00,
14 we'll go ahead and pull this jury. Okay?

15 Margaret, can I talk to you a second?

16 (Discussion off the record.)

17 THE COURT: Sir, you need to sit tight.
18 Okay? Thank you.

19 JUROR: Can I see you a minute?

20 THE COURT: Sir, if it's about you sitting
21 on jury duty, I needed you all to talk to me
22 beforehand.

23 JUROR: Oh, okay. All right. I'm sorry.

24 THE COURT: Are you sure?

25 JUROR: Yes.

JURY SELECTION

1 THE COURT: Okay. Sit tight.

2 Sir, give me your name and juror number,
3 just so I know.

4 JUROR: It's Terry Keith, 87.

5 THE CLERK: Eighty-seven.

6 THE COURT: Eighty-seven, okay.

7 (Pause.)

8 MR. SMITH: Is it okay for Ms. Hood to
9 leave and go to work?

10 THE COURT: That's fine. The only thing I
11 need to tell her and Mr. Johnson is they are
12 not to have any conversation with the jury.
13 She's completely welcome to leave, she just
14 can't talk to any jurors. And I mean, she
15 can't even say hello, good-bye, or isn't it
16 gorgeous outside. Okay?

17 MR. SMITH: Your Honor, 1 o'clock. Is
18 that a good time, is she coming back, or
19 quarter till?

20 THE COURT: No, we're going to break for
21 lunch. So, it's probably going to be 2
22 o'clock.

23 Mr. Hood, the same thing for you. You
24 can't speak to any jurors.

25 MR. HOOD: Yes, ma'am. I understand.

JURY SELECTION

1 THE COURT: Okay, sir.

2 (Pause.)

3 All right. Ladies and gentlemen, I will
4 tell you that you all have all been reassigned
5 new numbers. So if you think you've heard your
6 number struck, you have not.

7 Once the lawyers go through and strike the
8 numbers, we will then call off the list as
9 jurors. Bring all your belongings with you if
10 your name is called and you can come on up.
11 And you understand you're going to take a seat
12 in the jury box, you'll know you're a juror
13 then. All right?

14 So with that said, Margaret.

15 THE CLERK: Plaintiff strikes first using
16 the new assigned number on the left.

17 THE COURT: Between one and 20.

18 MR. WILLEY: Plaintiff strikes Number 18.

19 MR. DANIEL: Your Honor, we need one
20 moment.

21 MS SUTTIE: I think I left my sheet
22 outside. I can run. Thank you.

23 (Pause.)

24 MR. DANIEL: Your Honor, Defendant strikes
25 93.

JURY SELECTION

1 THE COURT: Okay. We're using the numbers
2 to the left. So between one and 20, on the
3 left.

4 MR. DANIEL: No. 27.

5 THE COURT: One through 20. Do you have
6 the right list?

7 MR. DANIEL: We do, Your Honor. Just bear
8 with us.

9 No. 18, Your Honor.

10 THE COURT: Okay. They already struck 18,
11 so --

12 MR. DANIEL: Okay. Your Honor, Defendant
13 strikes No. 8.

14 MR. WILLEY: Plaintiff strikes No. 2.

15 MR. DANIEL: Defendant strikes No. 22.

16 THE COURT: Between one and 20.

17 MR. DANIEL: Defendant strikes No. 9.

18 THE COURT: Okay.

19 MR. WILLEY: Plaintiff strikes No. 1.

20 MR. DANIEL: Defendant strikes No. 5, Your
21 Honor.

22 MR. WILLEY: Plaintiff strikes No. 20.

23 MR. DANIEL: Defendant strikes No. 14.

24 THE COURT: All right. The first
25 alternate. One strike each side for numbers

JURY SELECTION

1 21, 22, and 23.

2 MR. WILLEY: Plaintiff strikes No. 21.

3 And I'm done.

4 MR. DANIEL: Defendant strikes No. 22.

5 THE COURT: Next one is between 24, 25,
6 and 26.

7 MR. WILLEY: Plaintiff strikes No. 25.

8 THE COURT: Between --

9 MR. DANIEL: Your Honor, defendant strikes
10 26, Your Honor.

11 THE COURT: All right. Then the next one
12 is between 27, 28, and 29.

13 MR. WILLEY: The Plaintiff will strike No.
14 28, Your Honor.

15 MR. DANIEL: The Defendant will strike No.
16 27.

17 THE COURT: You don't need to call them.
18 Just call the names.

19 THE CLERK: As I call your name, please
20 come forward.

21 Juror No. 163, Brian Williams. Juror No.
22 151, Lashaun Taylor. Have a seat in the jury
23 box.

24 Juror No. 85, Tyra Johnson-Swafford.

25 Juror No. 57, Mary Lou Ford. Juror No. 38,

JURY SELECTION

1 Jeffrey Davis. Juror No. 149, Sylvia Stoney.

2 Juror No. 50, Horace Eady.

3 Juror No. 121, Alexis Pinkney. Juror No.

4 147, Yvette Smith. Juror No. 164, Gloria

5 Williams. Juror No. 30, Cody Clevinger. Juror

6 No. 117, Betty Paisley.

7 Alternate One, Linette Lazslo. Alternate

8 Two, Rosemary Hamilton Aiken. Alternate Three,

9 Erica Horton.

10 THE COURT: Is there any matters of law

11 that we need to take up about the jury

12 selection process from the Plaintiffs?

13 MR. SMITH: No, Your Honor.

14 THE COURT: From the Defense?

15 MR. DANIEL: No, Your Honor.

16 THE COURT: Very good.

17 Ladies and gentlemen, welcome. You're

18 going to be my jury for the trial of this case.

19 If you will sit tight for just a minute,

20 I'll give you a few instructions and then I'm

21 going to send you to lunch. All right?

22 Ladies and gentlemen, those of you back in

23 the back -- ladies and gentlemen, in the back,

24 I get to give you the good news that you are

25 excused for the week. Thank you for being

JURY SELECTION

1 here. We appreciate it. If you need a work
2 excuse, go down to the Clerk of Court's office.
3 All right? Thank you.

4 (Remaining members of proposed jury panel
5 excused.)

6 THE COURT: All right. Let's get that
7 door shut. Thank you.

8 Ladies and gentlemen, again, welcome. I
9 want to thank you for being here. I want to
10 thank you for helping us determine this case.

11 I will tell you this, ladies and
12 gentlemen, I recognize that it's a short week,
13 and I'm going to get this case finished this
14 week. So we're going to work hard, but, of
15 course, I can only work as hard as the jury is
16 willing to work.

17 If at any time during this process you
18 need a break, need a Coke, coffee, whatever it
19 takes, you raise your hands and let me know.
20 If you need a restroom break, let me know.

21 We will take breaks, ladies and gentlemen,
22 but sometimes we'll have someone who needs a
23 little more or something, let other people know
24 or just get my attention, or let the bailiff
25 know or the court reporter, and we are going to

INSTRUCTIONS TO THE JURY PANEL

1 take care of you.

2 I will tell you this: You have the best
3 Clerk of Court in the state. Every courthouse
4 has a Clerk of Court, but Margaret is
5 phenomenal. She takes care of her jurors,
6 ladies and gentlemen. If you need anything,
7 please ask her or her staff, and we'll take
8 care of you.

9 I need to give you a couple of ground
10 rules before we break for lunch. And then once
11 we do, I'm going to ask you to return back to
12 the jury room at 2:30, where we're going to
13 begin the trial of this case.

14 We'll also tell you we'll run until
15 roughly 5:00-ish. But that is dictated by you,
16 ladies and gentlemen. It's depends on how you
17 tell me you're feeling and what's going on.
18 Roughly that's how we're going to run this case
19 is roughly about 9:30 or 10:00, and until about
20 5:00.

21 If someone has somewhere they need to be
22 before that, I need you to tell me. All right?
23 And I'll have you tell the bailiff, when we
24 break.

25 Ladies and gentlemen, just a couple of

INSTRUCTIONS TO THE JURY PANEL

1 things to begin. Number one, if you were able
2 to get in the courthouse with a cell phone, I'm
3 going to ask that you leave it back in your car
4 or hand it to the bailiff when you come in.

5 And the reason why is you can get so much
6 information off of a cell phone. I don't want
7 you Googling anything or trying to figure out
8 anything in reference to the case. Out of
9 abundance of caution, I tell you to leave it
10 back in the car.

11 Also, if you need to use a phone while
12 you're here, simply ask the bailiff. She'll
13 take you to a phone.

14 Also, if you're worried about someone
15 needing to reach emergently while you are here,
16 simply tell them to call the Clerk of Court's
17 office and say your name and that you are a
18 juror, and I promise you someone will sprint up
19 here and talk to me and I will get you. All
20 right?

21 Also, I want you to know the attorneys,
22 the witnesses in this case, have been
23 instructed not to speak to you in coming and
24 going from the courthouse. And the reason is
25 this: Even an innocent conversation out in the

INSTRUCTIONS TO THE JURY PANEL

1 parking lot -- isn't it beautiful outside, or
2 it just looks like it might rain -- will be
3 reported back. And, again, ladies and
4 gentlemen, you are not to talk to them in any
5 way, shape, or form. So in an abundance of
6 caution I told them not even to speak to you.
7 So if you pass them in the hallway during the
8 lunch hour or in the evening and they don't
9 even say hello, don't be offended. They are
10 not being rude, they are just following my
11 instructions.

12 Additionally, ladies and gentlemen, you
13 are going to be given everything you need to
14 decide this case right here in this courtroom.
15 Therefore, it'll be highly inappropriate for
16 you to do any of your own research or to talk
17 to anyone about this case.

18 Over the lunch hour, or tonight when you
19 go home, the only thing you are permitted to
20 say to a loved one, a spouse, a child, family
21 member, is that you've been chosen as a juror
22 in a trial of a civil case. You're not to say
23 the parties involved, what kind of case it is,
24 or the attorneys. And the reason is this: In
25 every case, someone's going to try to tell you

INSTRUCTIONS TO THE JURY PANEL

1 something about something when they know
2 nothing about this case.

3 And, again, because I wouldn't want you to
4 be influenced in any way, out of an abundance
5 of caution, I tell you not even to discuss it.

6 And I also tell you that I don't think
7 there's going to be anything in the news, the
8 newspaper, or the radio about this case. But
9 out of an abundance of caution, if you turn on
10 the news tonight or if in reading the newspaper
11 you see anything about this case, you are not
12 to read it or look at it or be told or talk
13 about it. If there is something, I'm going to
14 ask you under oath whether or not you looked at
15 it. All right?

16 So, ladies and gentlemen, with that said,
17 the only thing I ask is you grab a bite to eat.
18 Come back. Please understand I cannot start
19 until all 15 of you are here. So if anyone
20 runs into car trouble, decides they're having a
21 problem getting back here, know that I am going
22 to send a sheriff's deputy to find you. All
23 right? That is how important this is. I want
24 you to understand that.

25 You're going to retire back to your jury

INSTRUCTIONS TO THE JURY PANEL

1 room. They're going to tell you that you
2 report back at 2:30, ladies and gentlemen. We
3 are going to get numbers for you, good
4 addresses. I want to know exactly where you're
5 sleeping the next three or four nights. And
6 it's not just prying into your personal
7 business. If we can't find you if there's some
8 problem, we are going to come looking for you.

9 Also, if for any reason you fall ill
10 during this trial and you call in, call in and
11 tell us and leave us a message. And it better
12 be pretty serious, ladies and gentlemen, you
13 better tell me you're either in the hospital or
14 you are just deathly ill. Because, again, I
15 need you here. I need you to be able to
16 resolve this matter for us. All right?

17 The last thing I'm going to ask you to do,
18 when you go back to your jury room before you
19 break for lunch, I need you to elect a
20 foreperson. A foreperson doesn't have any more
21 say than anyone else, they're simply the person
22 that's going to communicate with me regarding
23 scheduling.

24 And they're also the person that when I
25 send the case to you for your deliberations,

INSTRUCTIONS TO THE JURY PANEL

1 they get the ball rolling, and make sure
2 everybody's contributing. All right?

3 I'm going to ask that foreperson to take
4 this front seat right here every time in the
5 jury room. For the rest of you, as you come
6 and go, you can move around in your seats.
7 It's not a problem if you don't move around too
8 much. The only thing I want to do is tell my
9 alternates I need you to sit where you are
10 among those three seats so I can always find
11 you. Okay?

12 Ladies and gentlemen, again, thank you.
13 You are excused back to your jury room. You'll
14 get a few more instructions. I look forward to
15 seeing you all back in your jury room at 2:30.
16 If you're running just a couple minutes late,
17 don't worry. It's not a big deal. But after
18 that, like I said, I'm going to be scouring for
19 you. So - and I mean that. And,
20 unfortunately, I got to do that. Actually I've
21 had people that didn't show up, I've had to
22 send them to their work, to their home,
23 whatever. We need you here. Okay, ladies and
24 gentlemen?

25 Go grab a bite to eat and we'll see you

INSTRUCTIONS TO THE JURY PANEL

1 back at 2:30. Thank you.

2 JUROR: Ms. Bostick, I need to talk to the
3 Judge.

4 THE CLERK: If you go in the back,
5 Mr. Eady, she'll bring you back out.

6 (Whereupon, the jury exits the courtroom.)

7 THE COURT: She's just going back there.

8 Apparently one of them was supposed to
9 pick up a wife from work or something right at
10 2:30. So they're trying to arrange to get
11 someone else to grab her for him. Okay? Sit
12 down.

13 THE CLERK: Excuse me. He says this is
14 something else.

15 THE COURT: No, I'm not for three
16 different things. You can find out what it is
17 and bring it to my attention, but other than
18 that --

19 All right. For the rest of y'all, is
20 there anything we need to take up? I mean, I
21 think we pretty much have done a good bit of
22 the pretrials. I saw that you gave me the
23 human factors expert's deposition back there.
24 At least Crystal gave me a copy. I'm going to
25 look at that over lunch.

PRE-TRIAL MATTERS

1 Anything else you all want me to look at
2 over lunch? And I guess another question is,
3 are you going to use -- anybody going to use
4 any kind of technology up here in the opening
5 statement that you need to --

6 MR. SMITH: I am. I went over with Jack,
7 I showed him all the pictures I'm going to use.
8 There's only one that he has an objection to,
9 and I'll show it to Your Honor.

10 THE COURT: Okay. I'll look at that, and
11 then also you need to talk to Margaret about
12 getting it all turned on before they all come
13 back in.

14 MR. WILLEY: I just have one other small
15 thing.

16 THE COURT: Okay. Let me take care of
17 this first, let's just put it on the record and
18 we'll see what it is.

19 MR. SMITH: So this is the Google of the
20 intersection, to explain to the jury how it
21 happened. Mr. and Mrs. Johnson come out of
22 Southwood Park, and Ms. Hood is on the inside,
23 he hits her there on the passenger side, she
24 hits the Kucks head on. This is just
25 demonstrative to show them.

PRE-TRIAL MATTERS

1 MR. DANIEL: Yeah. The one is, it's kind
2 of an animation. And there's been no accident
3 reconstruction.

4 THE COURT: Yeah, I understand that. I
5 don't want you using that in opening statement.
6 And I don't know, I mean, you're going to
7 somehow lay some kind of foundation for that.

8 You know, I'm fine with just a photograph,
9 but you didn't have anyone create this, so I
10 don't know how you're using it.

11 I don't know how you do that as to where
12 everybody was.

13 But, I guess, I'm probably okay with just
14 the first picture, saying this is where it
15 started. But you telling me that that's where
16 point of impact was, it doesn't do anything
17 without an accident reconstructionist.

18 You can say -- you're just laying a
19 picture, this is where it is, this is what it
20 looks like.

21 MR. SMITH: Sure. No problem.

22 MR. WILLEY: My only thing is, Mr. Eady, I
23 don't know what his latest thing is, but he had
24 two things during voir dire, and now another
25 thing. I mean, I would rather just go ahead

PRE-TRIAL MATTERS

1 and sit an alternate. Because I think he's
2 going to be an ongoing problem.

3 THE COURT: And I'm going to have Ms.
4 Bostick tell me what his problem is.

5 THE CLERK: His problem is, he can't miss
6 work. He has a loan, he won't be able to pay
7 his bills. He has to pick up his wife. That
8 was it.

9 MR. WILLEY: I would prefer just to go
10 ahead and let him go. We've got three
11 alternates, that will leave us with two.

12 THE COURT: Okay. I will only agree to
13 that if you all will agree to go down as low as
14 ten jurors. I mean, we won't go below that.
15 But if we lose just vast amounts of people, I
16 need you to be able to agree to at least ten.
17 You're fine with that. It's a civil case.

18 MR. WILLEY: I think that's fine, just to
19 cut him loose. Otherwise, we're going to be
20 having an alternate in the middle -- I mean,
21 something is going to happen. Clearly.

22 THE COURT: I'm afraid you're right. I'm
23 afraid you're right.

24 MR. WILLEY: One excuse is one thing, but
25 every three minutes?

PRE-TRIAL MATTERS

1 THE COURT: Okay. So you can agree. If
2 Plaintiffs don't agree to ten --

3 MR. WILLEY: Yeah, we can agree to that.

4 MR. SMITH: Yes, ma'am.

5 THE COURT: That's losing a lot of people.
6 That's getting everybody in the car together
7 and then getting hit at lunch.

8 Mr. Daniel, what about you?

9 MR. DANIEL: Yeah, we'd just rather play
10 it by ear for maybe another day, but --

11 THE COURT: He's just going to be a
12 problem, so let's just let him go. Let's do
13 that.

14 Okay, Margaret, just cut him loose.

15 There's no "S" on it, and I apologize, Mr.
16 Daniel. I will not put an "S" on your name
17 again. You have a sense of humor about it.

18 MR. DANIEL: I'm the third, so -- yeah.
19 My dad has no sense of humor, but --

20 (Discussion off the record.)

21 THE COURT: Anything else y'all need?
22 Thank you. We're good.

23 MR. SMITH: No. We should just come back
24 a little early, need to make sure the TVs are
25 on and --

PRE-TRIAL MATTERS

1 THE COURT: Well, we'll talk to Margaret.
2 2:15 for you all to be back here. Okay? And I
3 will make sure the technology is working,
4 everything's on and no problems. Okay?

5 And I'm going to tell you guys, too, it's
6 kind of funky with all of this over here. And
7 I'm not saying you particularly, but in every
8 trial we have this problem with all kinds of
9 junk. So I just want to make sure that you all
10 kind of --

11 MR. SMITH: Oh, you're talking about our
12 corner of junk?

13 THE COURT: No, I'm not worried about
14 that, it's that screen. I just want to make
15 sure, sometimes it's difficult for the jurors
16 in that far corner to be looking this way. I'm
17 just giving you a heads up just because that
18 screen is strange right there. I'm just saying
19 just be cognizant. If you don't want them
20 looking at --

21 MR. WILLEY: I think we'll move it around.

22 MR. SMITH: All right. We'll move it
23 around. Thank you.

24 THE COURT: Just so you know. It's very
25 awkward at times. So just a heads up. Okay?

PRE-TRIAL MATTERS

1 All right. We'll see you all at 2:15.

2 (Lunch recess.)

3 (Proceedings continued in Volume 2.)

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PRE-TRIAL MATTERS

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2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 3rd day of January, 2018.

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Mona L. Manley /s/
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1 In the Court of Common Pleas for the
2 State of South Carolina, County of Jasper
3 Case No.: 2015CP2700119

4 Therese Hood,

5 Plaintiff,

6 vs.

Transcript of Record

7 Antoine Johnson,

8 Defendant.

9

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11

12 **VOLUME 2**

13

14 September 5, 2017

15 Ridgeland, South Carolina

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19

20 BEFORE:

21 The Honorable CARMEN T. MULLEN

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APPEARANCE PAGE

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1 PROCEEDINGS

2 THE COURT: All right. I think we're just a
3 little bit early for the jury. But I just wanted to
4 know if there is anything else we need to take up
5 before we go ahead and start right in? And do you
6 mind, I'm not asking you to turn over everyone, but
7 just tell me the first couple witnesses you have,
8 looking out for if there is a need to get through
9 anyone today?

10 MR. WILLEY: Well, Sergeant Welch is here. We
11 plan to call her. We plan to do the 911 person,
12 Haupt, or representative, whoever. They got like
13 three people here, so --

14 THE COURT: Okay. So Sergeant Welch, 911
15 person, obviously, Dustin Lee.

16 MR. WILLEY: Melnick, which is a video, and
17 Dustin Lee. And then we can be prepared to go
18 farther than that. We'll have people here, but --

19 THE COURT: And then -- yes.

20 MR. DANIEL: Just a couple things. As far as
21 the 911 operators or witnesses, if we were going to
22 introduce some of the recorded calls, and given what
23 Your Honor has said about Dustin Lee's call in
24 particular, and that we might need to redact a
25 portion of that, we may need to recall one or two of

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1 those witnesses to get that evidence in. We might
2 not be able to agree to excuse those witnesses today.
3 We might have to recall one or two of them.

4 MR. WILLEY: I mean, if they get them under
5 subpoena, that's fine.

6 THE COURT: Yeah.

7 MR. DANIEL: Yeah, I'm just making Your Honor
8 aware of that issue. And then Officer Worrell, I
9 believe, there might be a couple of things that she
10 can testify to that, at this point, would be -- might
11 be hearsay, about what people have said. But
12 depending on how this plays out, we might need to
13 recall her for those limitations, too.

14 THE COURT: Okay. And you've got her under
15 subpoena.

16 MR. DANIEL: Yes, Your Honor.

17 THE COURT: Okay. All right.

18 Anything else? You've got everything,
19 technology, in working order, and got all this queued
20 up and ready to go?

21 MR. SMITH: As far as we know. It won't break
22 until two minutes before we start, so --

23 THE COURT: Okay. I'm just asking. Anyway --
24 okay. I just want to make sure we're good to go.

25 Okay. Well, I'm going to step down until all

INSTRUCTIONS TO THE JURY

1 the rest of the jurors are here. If there's anything
2 that comes up, I just wanted to make sure we were
3 ready to go at 2:30. And I don't remember ahead of
4 time on opening statements, but I think we are in
5 this case. So we're ready to go.

6 Oh, I do want to ask you all, tomorrow morning,
7 are we okay to start at 9:30? Everyone?

8 MR. SMITH: Sure.

9 THE COURT: If the jury allows me to, I'd like
10 to start by 9:30. And I hate to say it, but I can
11 start as early as 8:30, but it's up to them. I don't
12 want to push anyone too much. So I'll ask them for
13 9:00, 9:30, maybe even 10:00, but --

14 No one else has any other problems or
15 commitments in the evenings, do they? Is everyone
16 okay? Y'all are good?

17 MR. DANIEL: We're good, Your Honor.

18 THE COURT: I guess I'm just looking at the
19 clients and the attorneys, just to make sure no one's
20 got to coach a team or something. Okay.

21 MR. WILLEY: We're allowed to have -- trial
22 lawyers are allowed to have extracurriculars?

23 THE COURT: You are.

24 (Pause.)

25 THE COURT: All right. Let's bring the jury in.

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1 Yes. Do you need me?

2 MR. WILLEY: Yeah. Just one quick matter that I
3 thought of after you left.

4 When Mr. Lee gets here, I will need a few
5 minutes with him to prep him on Your Honor's rulings
6 on the motions in limine since they go directly to
7 his testimony. Just wanted to make the Court aware
8 of that.

9 THE COURT: Okay. That's fine. We'll take care
10 of that. Okay?

11 If you want to be standing there and ask him
12 when he does it, you may also.

13 MR. DANIEL: Okay.

14 THE CLERK: And they chose a foreperson. They
15 chose a foreperson, Betty Paisley, Juror No. 117 she
16 was the last juror.

17 (Jury enters the courtroom.)

18 THE CLERK: We have to seat Alternate One.

19 THE COURT: All right. Thank you. I apologize.
20 Who is it, Margaret?

21 THE CLERK: Alternate One is Linette Lazslo.

22 THE COURT: Ms. Lazslo, ma'am, I have already
23 removed one person from the jury, so I need to put
24 you actually as part of the 12-person jury. So I'm
25 going to ask you to go ahead and take a seat next to

INSTRUCTIONS TO THE JURY

1 our foreperson. And I want to thank you for being
2 willing to serve.

3 Ladies, gentlemen, scoot on up. This is why we
4 have alternates. Okay? So thank you again.

5 All right. Ladies and gentlemen, just very
6 briefly, I want to tell you what we're going to do.

7 First off, Ms. Bostick, the Clerk of Court, is
8 going to swear you in as the jury in the trial of
9 this case. After that, I'm going to make just some
10 very brief comments, just about how a trial kind of
11 unfolds. And then the attorneys are going to make
12 their opening statements. All right?

13 So at this time, if you'd please pay attention
14 to Ms. Bostick, and she's going to administer the
15 juror's oath.

16 (Jurors sworn.)

17 THE COURT: Ladies and gentlemen, I want to
18 explain to you the procedure that we're going to use
19 so you can better understand what's happening during
20 the trial of this case.

21 You've been selected as fair and impartial
22 jurors whose purpose it is to find and determine the
23 facts. You, the jury, are the sole judge of all the
24 facts in this case. If at any time I make any
25 comment regarding the facts of this case, you must

INSTRUCTIONS TO THE JURY

1 disregard it. And as jurors, you are to determine
2 the facts from the testimony that you're going to
3 hear from the witness stand, as well as any other
4 evidence that's introduced in this case.

5 You should you be influenced by any opinions or
6 statements you may have heard outside this courtroom.
7 And please understand that it is especially important
8 that you perform your duty in determining the facts
9 diligently and conscientiously because ordinarily
10 there's no way to correct an erroneous determination
11 of the facts by a jury.

12 On the other hand, the same law that makes you,
13 the jury, the judge of the facts makes me the judge
14 of the law. The law given by the Court is the only
15 law that you may consider.

16 You must accept the law and apply the law as I
17 give it to you. I cannot tell you what the facts of
18 the case are, and you cannot disagree with me about
19 what the law is or what you think the law ought to
20 be. Your job is to take the law as I give it to you
21 and apply it to the facts as you find them, and from
22 there, render a true and just verdict in the trial.

23 Now, until I advise you to begin your
24 deliberations, you must not discuss this case with
25 anyone, and that includes your fellow jurors or

INSTRUCTIONS TO THE JURY

1 anyone at home, ladies and gentlemen. I remind you
2 again, you are going to have everything you need to
3 determine this case right here in this courtroom, and
4 it would be highly inappropriate for you to be
5 influenced by any outside source.

6 I also remind you, although I don't think
7 there's going to be anything on the television, the
8 news, or the radio, or the papers, again, in an
9 abundance of caution I have to warn you, you are not
10 to read anything, view anything, or listen to
11 anything in regards to this case.

12 Ladies and gentlemen, please remember that it's
13 important that you keep an open mind and not decide
14 any issue in this case until all the evidence has
15 been produced, you've heard the closing arguments
16 from the lawyers, and I've charged you on the law
17 after this case, which I will do at the very end of
18 the trial.

19 Now, I want you to know that in just a minute,
20 the attorneys are going to make what are called
21 opening statements. And what I want you to
22 understand is, these opening statements are not
23 evidence in this case. They are simply contention of
24 what they believe, the lawyers believe, issues will
25 be in this case.

INSTRUCTIONS TO THE JURY

1 Again, I remind you, the evidence comes from the
2 witness stand and the other evidence that's
3 introduced.

4 I also want you to know that from time to time,
5 you may hear the lawyers say something like, Your
6 Honor, there's a matter of law we need to take up, or
7 I make a motion on the floor. I may have a short
8 sidebar with them.

9 I want you to understand something. We're not
10 hiding anything from you. Often times when I have to
11 rule as a matter of law whether or not certain
12 testimony is admitted, ladies and gentlemen, I may
13 make a comment on the facts of the case. And because
14 I do not want anything I do to influence you in your
15 determination of the facts, out of an abundance of
16 caution, we just do that outside of your presence.

17 Now, in determining what the true facts are in
18 this case, you must decide whether or not the
19 testimony of the witnesses is believable. It's my
20 responsibility to rule as a matter of law whether or
21 not certain testimony is admitted. But once it is
22 admitted, whether or not you believe it is for you to
23 determine.

24 In deciding whether to believe a witness, you
25 have the right to consider if the witness has an

INSTRUCTIONS TO THE JURY

1 interest in the outcome of the case. You can look at
2 whether the witness is prejudiced towards either the
3 Plaintiff or the Defendant. And you can hear and
4 listen to the opportunity that witness had to have
5 seen and known some things about which they're
6 testifying.

7 And you can also look at the way the witness
8 acts on the witness stand. You have the right to use
9 anything in the record that will help you judge that
10 witness' testimony. Therefore, I ask that you pay
11 close attention while they testify, ladies and
12 gentlemen, so you can accurately remember the
13 testimony when you go back to your deliberations, or
14 in your jury room to deliberate.

15 Now, ladies and gentlemen, in order to preserve
16 everyone's rights, I'm going to ask the attorneys if
17 there's anything that they would like me to further
18 instruct you on. If not, we're going to go ahead and
19 begin the trial of this case.

20 The Plaintiff is allowed to make the opening
21 statement first, and then the Defense attorney is
22 allowed to make the opening statement.

23 Any additions?

24 MR. SMITH: No, ma'am.

25 THE COURT: Anything from Defense?

INSTRUCTIONS TO THE JURY

1 MR. DANIEL: No, Your Honor.

2 THE COURT: Ladies and gentlemen, we'll begin
3 the trial. Thank you.

4 Mr. Smith.

5 MR. SMITH: Thank you, Your Honor.

6 OPENING STATEMENT BY PLAINTIFF

7 MR. SMITH: Every nine minutes a person is
8 injured in South Carolina due to an automobile
9 collision. This is according to the South Carolina
10 Department of Public Safety.

11 What brings us together in the Jasper County
12 courthouse are the safety rules that protect each and
13 every one of us. They protect us as we are driving
14 or riding alongside or walking any highway, any
15 street, or the interstate, right down the way.

16 Now, the only way that these safety rules can
17 protect us is if juries choose to enforce them.
18 There are two basic safety rules that apply to this
19 case.

20 Safety rule number one, all drivers must pay
21 attention to the road to prevent injury or death to
22 other people using the road.

23 Safety rule number two, all drivers must look
24 before crossing a busy highway to prevent injury or
25 death to other people using the road.

OPENING STATEMENT BY THE PLAINTIFF

1 So these are simple rules. Pay attention, look
2 before crossing.

3 This case is about a driver who crossed Highway
4 278 without looking to make sure it was safe. And so
5 we can orient you folks on exactly where this
6 happened, this is Highway 278 running along here
7 towards the beach. Right? And this is the Dunkin'
8 Donuts that you've heard the Judge speak about.

9 Also in there is this -- The Batters' Box, My
10 Yummy House. And what I want to do for you now is
11 I'm going to draw up a little diagram to show you
12 exactly what happened.

13 Now, I was not an art major, but I'm going to do
14 my best.

15 Okay. So to get everybody oriented a little
16 bit -- can everybody see this okay? Y'all see it
17 okay on the end?

18 So Highway 278, right, headed towards the beach.
19 Okay. First car that I would like to point out for
20 you was right here, and we're going to put a "J" for
21 Mr. Johnson.

22 The second vehicle here -- I'm sorry, I think I
23 told you that way is the beach. This way is the
24 beach. This is Mrs. Hood. I'll put an "H" for
25 Ms. Hood. Okay?

OPENING STATEMENT BY THE PLAINTIFF

1 Third vehicle I draw for you is Mr. and
2 Mrs. Kuck. You're going to hear from them later.
3 Okay?

4 What happens is, Mr. Johnson, it's his intention
5 to cross Highway 278 and make a left. All right.
6 But before he does that, he's going to stop in the
7 median.

8 What happens is, Ms. Hood is coming along this
9 direction. As she gets to about here, Mr. Johnson
10 pulls out, and he hits her right here on the front
11 passenger side of her vehicle. The force of the
12 impact causes Ms. Hood to head across the median and
13 strike this vehicle head-on.

14 Important to note, stop sign here. All right?
15 No traffic lights or stop signs anywhere in the area
16 that I've drawn.

17 Now, the person that he hit, my client -- sorry,
18 Therese Hood. It was a few minutes before 6 o'clock
19 in the afternoon on a Friday. People are getting off
20 work, driving home. Families are heading to the
21 beach for the weekend. It's a busy road filled with
22 locals, tourists, and people just passing through.

23 Now, we've brought a lawsuit against Antoine
24 Johnson for three reasons. The first reason is
25 because he wasn't paying attention to the road. The

OPENING STATEMENT BY THE PLAINTIFF

1 evidence will show that Therese Hood wasn't far from
2 him when he pulled out across the highway, and if he
3 was paying attention, he would have seen her.

4 The second reason is because he didn't look
5 before crossing a major highway. If you remember one
6 thing, it's that Therese Hood had the right-of-way.

7 We know Ms. Hood was in the inside lane, and
8 there was another car in the outside lane not far
9 behind her, sort of down here in this direction.

10 Mr. Johnson testified that he looked left. He
11 didn't see Ms. Hood's car or the other car. Had he
12 truly looked to his left before crossing out the busy
13 highway, we will ask you to decide if he should have
14 seen both Ms. Hood and the other vehicle not far
15 behind her.

16 Now, the third reason is because Mr. Johnson
17 refuses to accept responsibility, so we are forced to
18 bring him to trial.

19 Now, before we decided to come to trial, certain
20 things had to be determined. We had to determine
21 what the defense would say, and we also wanted to
22 know what questions you folks would have. So the
23 first thing we needed to know was who hit who.

24 We spoke to Mr. Johnson, himself, and he
25 testified under oath that he, in fact, hit Therese

OPENING STATEMENT BY THE PLAINTIFF

1 Hood's vehicle. Ms. Hood told us the same thing.
2 And to take it even further, here's a picture of
3 Mr. Johnson's car, the front damage to his car that
4 shows a front impact. And this is a picture of the
5 side of Ms. Hood's car. It shows a side impact, and
6 that's how we determined who hit who.

7 Next, we needed to determine if there was
8 anything blocking Mr. Johnson's vision. The people
9 involved have told us the weather was clear, dry, the
10 road was straight, and nothing was blocking his
11 vision. This is the Dunkin' Donuts where he is
12 coming out of that lands him on 278.

13 And at the stop bar, where Mr. Johnson is, this
14 is his view looking left. And as he's pulling out
15 across one lane, this is his view looking left.

16 Once we determined that nothing was blocking his
17 vision, the next thing we wanted to know, what's the
18 visibility at almost 6 o'clock in the afternoon? We
19 know Ms. Hood had her running lights on at the time
20 Mr. Johnson hit her. So we looked up the law about
21 when headlights are required. It says, "Drivers must
22 have their headlights on 30 minutes after sunset.
23 You must have your headlights turned on at night, and
24 from a half hour after sunset to a half hour before
25 sunrise, and at any other time when you have to use

OPENING STATEMENT BY THE PLAINTIFF

1 your windshield wipers."

2 So we wanted to know what time sunset was. This
3 is an image --

4 MR. DANIEL: Your Honor, I mean, this is not in
5 evidence.

6 MR. SMITH: Your Honor, I went over all these
7 exhibits with Mr. Daniel before we started.

8 MR. DANIEL: I did -- I did not -- I did not see
9 this one.

10 MR. SMITH: I went over every exhibit. It's a
11 Power Point.

12 THE COURT: Okay. I don't need you arguing
13 today in front of the jury. So do you need to
14 approach?

15 MR. SMITH: Yes, ma'am. Sorry.

16 THE COURT: Come on up.

17 (Off-the-record discussion held.)

18 MR. SMITH: Excuse us for that.

19 Sunset. This is the GPS coordinates for the
20 intersection where the collision happened, and it put
21 sunset at 1729, all right, which is 5:29. Thirty
22 minutes after is going to be 5:59 in the afternoon.
23 5:59 p.m., right?

24 Now, there's another source for sunset that puts
25 it at 5:58 p.m., and you'll hear about that as well.

OPENING STATEMENT BY THE PLAINTIFF

1 You'll hear the difference between the two is one, is
2 the exact GPS coordinates, one is from another
3 source. Mr. Daniel will tell you all about that.

4 What we do know is that the first 911 call came
5 in at 5:58 and 46 seconds. Okay? That was the time
6 the first 911 call was recorded that came in. And we
7 also know several things happened before that call
8 came in. And that's going to be important for you
9 guys to see for yourselves and look at.

10 We know that the first collision with
11 Mr. Johnson happened. We know the second collision
12 happened. We know people get out of their cars. We
13 know that people are already helping. And all this
14 again is what's happening before 5:58 and 46 seconds.

15 We know that the people that have stopped to
16 help and render aid, we know they've already gotten
17 at least one person out of that vehicle. We know the
18 caller is at the Dunkin' Donuts over here, and she's
19 out on the patio taking a break. She leaves the
20 patio, she goes inside, she goes behind the counter,
21 she dials 911.

22 But when she first dials 911, she doesn't get
23 Beaufort dispatch, she gets Hilton Head. When she
24 starts talking to the first dispatcher, before this
25 time starts, she testifies the phone rings a couple

OPENING STATEMENT BY THE PLAINTIFF

1 of times and that the Hilton Head dispatcher answers.
2 She speaks to the dispatcher. She describes where it
3 happened, she describes what happened, she obviously
4 gives them her name.

5 And then at that point the Hilton Head dispatch
6 calls the first responders. Now, like I said, when
7 this call comes in, all of this had already happened.

8 Well, you can easily see that if you find the
9 more reliable -- the time for sunset y'all are going
10 to depend on is 5:59, question answered. We know the
11 first call came in before that, headlights are not
12 required.

13 But if we use the other source, 5:58, then the
14 question that's going to be in your mind is, did all
15 of this take 47 seconds or more? If all of this took
16 more than 47 seconds to take place, then the wreck
17 happened before 5:58 p.m., and the law did not
18 require headlights on at the time.

19 Now, keep in mind, she had her running lights
20 on, but the law did not require headlights. And
21 we're going to address this with you with the very
22 first two witnesses. We're going to show you the 911
23 call, we're going to show you who made it, we're
24 going to show you what time it came in. And then
25 we're going to have video testimony from the person

OPENING STATEMENT BY THE PLAINTIFF

1 who made that call, and she's going to tell you about
2 all these things happening.

3 We believe the evidence will show the wreck
4 happened before 5:58; therefore, no headlights were
5 required by law. But we didn't stop there.

6 Being this close to the requirement for
7 headlights, we wanted to take it a step further. We
8 needed to determine whether or not Mr. Johnson should
9 have seen her. We started by asking the people
10 involved about lighting conditions. We spoke to
11 Mr. Johnson first. He said it wasn't totally dark.
12 A passenger in the vehicle that Ms. Hood hit head-on,
13 up here, told us that it was just beginning to turn
14 dark, that there was enough light to see the median,
15 enough light to see the trees alongside the road, and
16 enough light to see other vehicles, with or without
17 headlights.

18 So, why didn't he see her? Why didn't he see
19 the other car behind her with its headlights shining
20 on her?

21 So in the end, the evidence will show, number
22 one, Therese Hood had the right-of-way. Number two,
23 that she was not required to have any headlights on.
24 Number three, that Ms. Hood's vehicle was clearly
25 visible had Mr. Johnson looked before crossing

OPENING STATEMENT BY THE PLAINTIFF

1 Highway 278. And four, the reason he didn't see her
2 is because he either didn't look, or he was
3 distracted by something.

4 You'll see that he only went a few feet, barely
5 crossing a single lane, before he ran into the side
6 of Ms. Hood's car, pushing her into oncoming traffic.
7 Y'all will have to decide if he was paying attention.
8 That's why we're here.

9 Now, the last thing we needed to determine is
10 what Therese's injuries were. Before presenting her
11 injuries and damages to you, we needed to figure out
12 if the things that she described were caused by the
13 wreck.

14 We know from emergency responders that Therese
15 and the other people up here were injured. Therese's
16 ankle was shattered, she fractured two vertebrae in
17 her neck. She fractured one vertebrae in her lower
18 back. She had multiple rib fractures. And she was
19 diagnosed with a dissection of her left vertebral
20 artery. And this is an artery that runs up along the
21 neck, close to where the neck fracture was.

22 For her shattered ankle, Therese has gone
23 through a total of three surgeries so far. First,
24 they were able to put her ankle back together, and
25 then another surgery where they put in a steel plate

OPENING STATEMENT BY THE PLAINTIFF

1 and screws. This is an x-ray of the surgical pins
2 and screws.

3 Now, it's a long road from there, hardly any
4 mobility. She was confined to her house. She had to
5 depend on others to get where she needed to be. It's
6 been three years since the wreck, and she's still
7 being treated by her doctors. Now, her last surgery
8 to remove these pins and screws was just a few months
9 ago.

10 You will hear that she continues to be in pain,
11 that she has limitations on what she can do. And
12 Ms. Hood's treating doctor will go over the medical
13 treatment she's got and what she'll have to deal with
14 as time passes. This same doctor that treated her
15 shattered ankle will explain that while the surgery
16 was a success, the wreck also caused post traumatic
17 arthritis.

18 He told us that post traumatic arthritis is not
19 just causing problems now, but it's going to worsen
20 over time. The result over time is worsening
21 stiffness, increased pain, and even less mobility.
22 This is what the future holds for Therese Hood. This
23 is the sworn testimony of her treating doctor.

24 Now, before all this, Therese Hood served her
25 country in the Army for 20 years. After her service,

OPENING STATEMENT BY THE PLAINTIFF

1 she went back to school, got a degree in economics,
2 and a Masters in education. From there, she went to
3 work as a teacher for young children. When she
4 retired from teaching, Therese looked forward to
5 spending more time with her family, and volunteering
6 with her church. This was her vision for retirement.

7 Before the wreck with Mr. Johnson, Therese loved
8 to get together with her family and cook for them.
9 At church, she volunteered a lot. She gave
10 communion, and she was a member of a ladies' guild.
11 You will hear how she was good at getting events at
12 church organized, and was someone they could always
13 count on when they needed a volunteer.

14 Where she was headed that day was a timeshare.
15 Her timeshare in Hilton Head was her get-away. It
16 wasn't much, but it's where she went when she had
17 time to relax. Therese's life was about serving her
18 family and her church.

19 Now, at the end of trial we will ask you to
20 decide how much money should be in the verdict. It's
21 one of the hardest jobs you'll have this week, to
22 decide on an amount of money to make up for all the
23 harms, the losses, and the permanent damage to
24 Therese's body.

25 So we're here for two reasons. All right?

OPENING STATEMENT BY THE PLAINTIFF

1 We're here to fix, and we're here to make up for it.

2 The first thing to do is fix. That deals with
3 the cost of the medical treatment that Therese has
4 gotten. Her medical bills total just over \$220,000.
5 That's how much her treatment has cost, and it's an
6 easy fix because you'll see exactly how her bills add
7 up to that amount. And that's an important number,
8 \$220,000, but it pales in comparison to the real
9 damages here. And that brings us to the second part,
10 to make up for it.

11 This is one of the most important and the
12 hardest tasks that you will have as jurors, to try
13 and decide how to assign an amount of money on the
14 worst part of her injuries and damages. You see,
15 Therese is permanently injured, and her doctor is
16 going to explain that. She's going to live with
17 chronic pain for the rest of her life. And as her
18 treating doctor will explain, it's only going to get
19 worse as time goes on. And as it does, it will
20 become harder and harder to get around, to walk, to
21 do the things that she used to enjoy doing.

22 So every time that Therese can't do something
23 like she used to, or just can't do it at all, like
24 stand and give communion at church, like volunteer
25 with her church, like put together a big spread in

OPENING STATEMENT BY THE PLAINTIFF

1 the kitchen. Y'all know how much time that takes on
2 your feet.

3 Or when she's awoken at night because of the
4 pain and feels tired the next day. Or when she's got
5 to stop, she's got to elevate her ankle, she's got to
6 soak it in ice, soak it in Epsom Salts just to endure
7 the pain from moving it.

8 And most importantly, every time she is stuck at
9 home, rather than enjoying the life and the
10 retirement that she has earned, you can't fix that.
11 You can't even help it. But you can make up for
12 that.

13 Now, it's my job to give you the tools to do
14 just that. It's also my job to suggest what that
15 number ought to be. It's too early. You haven't
16 seen the whole case. But I will be up front with you
17 and tell you the number will be significant.

18 Now, I'm not sure what the lawyer sitting at
19 Mr. Johnson's table will say when he gets up here in
20 a few minutes. I anticipate it will range from it's
21 not Mr. Johnson's fault, it's all Therese's fault.
22 But even if it is a little bit Mr. Johnson's fault,
23 it really wasn't that bad. He may even say he's
24 sorry.

25 Well, ladies and gentlemen, time to say sorry

OPENING STATEMENT BY THE PLAINTIFF

1 has passed. Sorry doesn't fix, it doesn't make up
2 for it, and it doesn't tell Mr. Johnson to look
3 before crossing a busy highway.

4 As of today, that's your job. You not only have
5 the right, but you have the power to fix what was
6 broken and to make up for what cannot be fixed. And
7 by doing this, you enforce the safety rules in your
8 community, and you fulfill your oath to administer
9 justice.

10 Thank you.

11 THE COURT: Mr. Daniel.

12 MR. DANIEL: Thank you, Your Honor.

13 OPENING STATEMENT BY DEFENSE

14 MR. DANIEL: We can't see in the dark. We, as
15 human beings, all have limitations, and that's a fact
16 of life.

17 Antoine Johnson, the Defendant in this case, can
18 only be held to the standard of what a reasonable
19 person can do, what an ordinary driver being careful
20 and paying attention can do.

21 You just heard a lot about safety rules and
22 avoiding killing somebody. Let's get one thing
23 clear. No one died in this accident, fortunately.
24 And I'll be up front, yeah, I don't hide from it, I
25 am sorry that we're here. I'm not hiding that.

OPENING STATEMENT BY THE DEFENSE

1 Antoine Johnson doesn't want to be here. He's not
2 happy that Mrs. Hood was hurt. We're not -- we're
3 not trying to hide that fact either.

4 There was a lot about this intersection. One
5 thing I want you to keep in mind is that where this J
6 is, where Antoine Johnson is, it is lawful -- lawful
7 to make a left turn there. You're allowed to make a
8 left turn if you check traffic, and there's nothing
9 there.

10 Now, you heard me object, and that's usually
11 considered bad form in opening statement, but the law
12 is not about what's posted on some website. Counsel
13 read from some manual over there, but that's not law.

14 Your Honor is the expert and authority on the
15 law. She's going to tell you what the law is and
16 what rules to apply to the facts in this case. I
17 don't get to decide that, and Mr. Smith doesn't get
18 to decide that.

19 But the reality is, why we chose you as jurors,
20 is you all have common sense. You didn't leave it at
21 your house when you left and came to the courthouse
22 today. You all have the everyday experience. What
23 you know is that on a dark road, at night, when
24 something's coming from a distance, and if there
25 aren't headlights on, you know, we all have limited

OPENING STATEMENT BY THE DEFENSE

1 ability to see things. Antoine Johnson, there'll be
2 testimony, and there's claims that he was texting or
3 he was on the phone, he wasn't paying attention. I
4 remind you to pay close attention to that. There's
5 going to be no proof, there's to be no -- they're the
6 ones, the Plaintiff, is the ones with the burden of
7 proof in this case. There should be no one to say
8 that they saw him texting on his phone or calling
9 somebody or reading a text.

10 What you will hear is, he'll get on the stand,
11 he'll tell you he looked to the left, and he was
12 honest, it wasn't totally dark. But you listen to
13 all the factual witnesses, all the witnesses that saw
14 this, and you decide. I submit to you credible
15 evidence was that it was pretty well dark out there.

16 And Hilton Head, at that intersection, at around
17 6:00, at around 5:50, 5:55, whatever the general time
18 is, whatever these witnesses say, it'll be crystal
19 clear to you it was pretty well dark. Antoine
20 Johnson checked to his left, he didn't see anything
21 because there were no headlights on.

22 There will be independent witnesses. Your Honor
23 has talked about you being the judges of credibility.
24 You got to think about bias. There will be witnesses
25 that take the stand that have nothing to gain from

OPENING STATEMENT BY THE DEFENSE

1 being here, and they'll tell you they didn't see
2 headlights either. And they'll verify what Antoine
3 Johnson says, that Mrs. Johnson (sic) did not have
4 her headlights on, and that it was dark.

5 You may hear other things about the accident and
6 things that you can use your common sense to draw
7 conclusions from. What have you just seen? You've
8 seen pictures of the side of this vehicle, what looks
9 like a scraping motion, a sideswipe sort of impact.
10 There's no one that's going to tell you Antoine
11 Johnson was speeding. And Plaintiffs hired
12 engineers, they characterized that impact as a minor
13 one.

14 The real accident happened down the road,
15 several hundred feet down the road, between Mrs. Hood
16 and a Chevy Tahoe. Her Equinox went clear across
17 traffic and hit a Chevy Tahoe head-on causing severe
18 damage to the front of her vehicle and severe damage
19 to the Kucks' vehicle, causing injury both to her and
20 both to William and Mary Kuck.

21 William and Mary Kuck will testify, and listen
22 to what they have to say about the headlights, too.

23 The Plaintiff has the burden of proof in this
24 case, not Antoine Johnson. The Plaintiff has to
25 prove to you more likely than not that Mr. Johnson is

OPENING STATEMENT BY THE DEFENSE

1 the reason why this accident happened. What he did
2 caused the accident. I submit to you that when the
3 evidence has ended, and you've heard from the
4 witnesses, it'll be the opposite way around.

5 You will see that more likely than not the
6 Plaintiff unfortunately is the one that caused this
7 accident, and she is responsible for her own
8 injuries. And you'll hear from some engineers, they
9 may call these engineers that they've hired, and
10 they'll talk about science and some issues with
11 headlights and headlight bulbs. I ask you to keep an
12 open mind about that, and to -- can you cut that off,
13 please.

14 MR. SMITH: The TV is just on. Do you want me
15 to turn it off?

16 MR. DANIEL: I ask you to keep an open mind.
17 Think to yourself at the end of the day to the
18 unanswered questions, Does what they say add up? Did
19 they, the experts, do all the investigation they were
20 supposed to do before they came to certain
21 conclusions about these headlights.

22 As far as when the 911 call was made, what time,
23 whether it was 5:58, 5:57, 5:59, it doesn't matter.
24 It's what the conditions on the roadway were at the
25 time. It's whether there was the ability to see this

OPENING STATEMENT BY THE DEFENSE

1 car coming on a dark road, no street lights, it's
2 tree lined, as the sun, by the way, is already set.
3 Sunset was at 5:20-something, 5:30 that day.

4 Antoine Johnson will get up on the stand, and
5 he'll tell what he saw. He'll tell you the truth.
6 You get to judge the credibility of all these
7 witnesses. The fact witnesses that have no stake in
8 this matter, they will tell you what they saw. And
9 incredibly, the unbiased evidence will be that
10 Mr. Johnson didn't cause the accident. You cannot be
11 held responsible for seeing something through
12 darkness at a distance.

13 Now, Mr. Johnson has been named as Defendant.
14 Again, there was some talk about the Plaintiff's
15 medical bills, and we can all have sympathy for her.
16 There's nothing wrong with that. But a judgment for
17 Plaintiff is also a judgment against the Defendant,
18 and when you swore to be a member of this jury you
19 agreed to be fair to both sides. You can't award
20 money damages in this case, you cannot render a
21 verdict against the Defendant unless you believe that
22 he is the reason why the accident happened, and he is
23 the reason -- and his actions are what caused the
24 wreck.

25 If you decide the Plaintiff, at the very least

OPENING STATEMENT BY THE DEFENSE

1 is -- her actions were a greater cause, you can end
2 up deciding maybe they're both a little bit at fault.
3 But if she was more responsible for the accident than
4 Antoine Johnson was, then you also, again, under the
5 law, have to render a verdict for the Defendant in
6 this case.

7 There will be witnesses that, again, have
8 nothing to gain by what they say. They will tell you
9 what they saw that night. On that road, where
10 there's no streetlights, and what the objective
11 evidence will bear out, will be that Antoine Johnson
12 did not cause this wreck. And because of that,
13 you'll have to render a verdict for the Defendant.

14 THE COURT: Thank you. Plaintiffs call your
15 first witness.

16 MR. SMITH: Yes, ma'am. Plaintiffs call Tasha
17 Haupt.

18 THE COURT: Come forward, Ms. Haupt. Right
19 around here.

20 Thereupon,

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

24 DIRECT EXAMINATION

25

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

1 BY MR. SMITH:

2 Q Good morning. Good afternoon. Can you tell us
3 your name, please?

4 A Tasha Haupt.

5 Q Ms. Haupt, my name is Kevin Smith. Thank you
6 for being here today.

7 A Okay.

8 Q Did you used to work for the Beaufort County
9 dispatch?

10 A The Sheriff's Office, yes.

11 Q Sheriff's Office. And the reason we've called
12 you -- what was your job?

13 A I was the records custodian.

14 Q Okay. The reason we've called you here today is
15 to identify some records and tell us a little bit about
16 it. Okay?

17 A Okay.

18 Q All right. Did you get a request to produce and
19 print some information from the 911 calls that came in
20 about the wreck that we're here about today?

21 A Yes, sir.

22 Q Okay.

23 MR. SMITH: May I approach the witness, Your
24 Honor?

25 THE COURT: You may.

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

1 BY MR. SMITH

2 Q Ms. Haupt, do you recognize that?

3 A Yes, sir.

4 Q And, in fact, does it have an indication on
5 those records as to who printed them?

6 A Yes, sir.

7 Q And who is that?

8 A Myself.

9 Q All right. Do they appear genuine to you?

10 A Yes, sir.

11 Q All right. And were these records kept in the
12 ordinary course of business where you work?

13 A Yes, sir.

14 Q Will they be helpful to you in explaining the
15 timing of the 911 calls?

16 A Yes, sir.

17 MR. SMITH: Your Honor, at this time, I'll offer
18 to admit this into evidence as Exhibit No. 1.

19 THE COURT: Has Mr. Daniel seen it?

20 MR. SMITH: Yes, ma'am. He's got a copy.

21 MR. DANIEL: I have no objection.

22 THE COURT: Without objection, it's in evidence.

23 MR. SMITH: Thank you.

24 *(Whereupon, Plaintiff's Exhibit No(s). 1 marked*
25 *for identification and received in evidence.)*

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

1 BY MR. SMITH:

2 Q Ms. Haupt, let's begin on Page 1. I believe I
3 had a copy up here, too.

4 Okay. We'll start on Page 1. Is that what
5 you're looking at?

6 A Yes.

7 Q So did Beaufort dispatch receive a call, a 911
8 call, from a lady named Tami Melnick?

9 A Yes, sir.

10 Q All right. And you see Tami's name on the sheet
11 itself?

12 A Yes, sir.

13 Q Okay. Is -- does it indicate where she was
14 calling from?

15 A I'm looking now. I -- it says in the remarks,
16 "at Dunkin' Donuts."

17 Q Okay. Also says down there under business name,
18 "Dunkin' Donuts."

19 A Yes.

20 Q All right. And was this the first 911 call that
21 came in?

22 A It appears so, yes, sir.

23 Q All right. And if we turn around -- if you can
24 turn to the back page for me, the very last page. We see
25 a listing of the different 911 calls.

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

1 A Yes, sir.

2 Q All right. And E-911-7 looks like it came in at
3 5:58 and 46 seconds; do you see that?

4 A Yes, sir.

5 Q Is that the first 911 call that came in that
6 Ms. Melnick made?

7 A Yes.

8 MR. DANIEL: Where are we now?

9 MR. SMITH: Last page, first entry. Can we blow
10 that up at all?

11 I don't know if that's going to be terribly
12 visible to y'all.

13 BY MR. SMITH

14 Q All right. So first call, 5:58 and 46 seconds,
15 true?

16 A Yes, sir.

17 MR. SMITH: That's all the questions I have,
18 ma'am. Thank you.

19 THE COURT: Anything?

20 MR. DANIEL: Ms. Haupt? Yes, briefly.

21 CROSS EXAMINATION

22 BY MR. DANIEL:

23 Q How do you pronounce your last name? Just --

24 A Haupt.

25 Q Okay. That first page of this record has

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 Ms. Melnick's name on there. Is there a time that
2 actually indicates on this page when she called in?

3 A When she actually called in the phone system,
4 no, sir, I can tell that the call was created at the
5 Dunkin' Donuts, what time that was created.

6 Q Right. There are a number of calls, I'm looking
7 on the last page, with different times. The one that
8 says, 5:58 and 46 seconds?

9 A Yes, sir.

10 Q That does not have a name by it, does it?

11 A No, not on that one.

12 Q But none of them do; is that right?

13 A Correct.

14 Q How many calls are on that page?

15 A One, two, three, four -- five.

16 Q Okay. Is this -- is someone -- are you the
17 person that inputs who called, or the record of --

18 A No, sir.

19 Q Who does that?

20 A The dispatchers in the 911 center.

21 Q Someone other than you?

22 A Yes, sir.

23 Q So really as far as Ms. Melnick or, say, a
24 gentleman named Dustin Lee, or one of the three or four
25 people -- other people that saw this accident and actually

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 called 911, you can't say whether Ms. Melnick was the
2 first one to call? You --

3 A I can't, other than comparing the times and
4 listening to the phone call.

5 Q And the times -- right. And, again, the last
6 page, the one that has 5:58 there as the listed time,
7 there's nothing to indicate that Ms. Melnick was the one
8 that called at 5:58; do you agree?

9 A Not on that page, no.

10 Q What was there -- is there a designated time
11 next to her name anywhere in this document?

12 A Other than on that first page when the call was
13 created.

14 Q Right. When the call was created, and someone
15 else creates this record other than you?

16 A The information that's put into the CAD system
17 --

18 Q Someone else does that?

19 A The dispatchers, as they get the information.

20 Q All right. And it's possible that, you know,
21 someone else could have called first, but that dispatcher,
22 as they're going through, and there's five or six
23 different people that called in, they may have put Tami
24 Melnick in there as one of the callers, and she's just
25 listed right there when they create the CAD document.

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 A No, sir. For each call, there should be a
2 designated CAD call in the system.

3 Q Okay. Well, where's the designated CAD call for
4 the other -- for the -- these are the entire set of
5 records that your offices has. Where are the designated
6 CAD calls for the other --

7 A It looks like there is narrative. There are
8 other calls that were received.

9 Q Right.

10 A On Page 3.

11 Q What was the -- the record actually for this
12 alarm time, Tami Melnick, do you see up here it says, 1759
13 on the front page?

14 A Yes, sir.

15 Q So that's actually 5:59 when the alarm on this
16 first page that has Tami Melnick's name, that's what it
17 says.

18 A Yes, correct.

19 Q So there's nothing really that definitively says
20 Tami Melnick called in at 5:58?

21 A Other than listening to the phone call and when
22 it comes into the system.

23 Q Okay. And have you done that?

24 A When I created the call, correct.

25 Q When you created this?

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 A When I created the copy of the call, yes, on the
2 disk.

3 Q Where is that?

4 A I don't know.

5 Q Okay. But you haven't -- is that on the audio,
6 or is that in another document somewhere?

7 A No, that's audio.

8 Q Okay. And we haven't heard that. That hasn't
9 been played?

10 A Okay.

11 Q Right? I mean, today?

12 A Correct, yes.

13 Q Okay. That's in the -- that's in the audio, the
14 actual recorded call?

15 A The name, yes, that she gives.

16 Q I'm talking about the time.

17 A No, the time is not time stamped in the audio.

18 Q Right. So would you agree with me though that
19 there's no -- there's no designated time on this sheet of
20 paper right here, the front sheet that has Tami Melnick's
21 name on it that says 5:58, that's when she called?

22 A No, there's not.

23 Q And the different phone calls on here from the
24 last page, there's no name assigned to those -- those
25 phone calls that were made. You know, this person called

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 911 versus this one called at this time?

2 A Not on that page, no.

3 Q Is there a specific time listed for other
4 callers?

5 A Yes.

6 Q Okay.

7 A Page 3, 1801, a call was put in from Dustin Lee
8 about an accident. That's pretty much the only other call
9 that I see.

10 Q Where does it say 1801?

11 A 1855 there was --

12 Q Where does it say 1801 for Dustin Lee?

13 A See narrative No. 3 toward the bottom.

14 Q And doesn't it say 1800 above that?

15 A I'm sorry?

16 Q Doesn't it say 1800 above that? 38?

17 A At the very top. But that --

18 Q Yeah, right about right --

19 A It's a completely different narrative. Look
20 toward the bottom where it says, "Created by Garnes,
21 Matthew, date 11/7, time 1801."

22 Q Okay. Is that when he enters it, Garnes?

23 A Correct. That's putting the information in from
24 the call into the system.

25 Q Okay. So that's when the dispatcher is actually

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 typing the man's name in?

2 A Correct.

3 Q So did you know that Dustin Lee actually was
4 transferred -- he was actually transferred from another
5 dispatch to central dispatch to your unit? And so he was
6 on the call longer before someone probably actually doing
7 data entry?

8 A I'm not aware of that, no.

9 Q Would that be unusual though?

10 A No. Because it's on Hilton Head.

11 Q It's certainly possible?

12 A Yes, anything is possible.

13 Q And as far as Tami Melnick, the page that has
14 her name on it, actually says, 5:59, doesn't it?

15 A Correct.

16 Q Okay. So, that's when that --

17 A That initial call was created in the CAD system.
18 That has nothing to do with the phone system.

19 MR. DANIEL: Thank you.

20 THE WITNESS: You're welcome.

21

22 REDIRECT EXAMINATION

23 BY MR. SMITH:

24 Q Ms. Haupt, it's on the last page -- now, first
25 of all, was it Mr. Daniel's office that requested these

REDIRECT EXAMINATION OF HAUPT BY MR. SMITH

1 records in the first place?

2 A I'm not sure who requested. I don't have access
3 to any of those records anymore.

4 Q Okay. But you provided them a long time ago
5 before today, right?

6 A To someone, yes.

7 Q Okay. Now, on that last page again, each call
8 is given a resource number; is that right?

9 A Yes.

10 Q And that E-911-7?

11 A Yes. That is actual 911 line. And it would be
12 Line 7 in the 911 system.

13 Q And did you listen to the audio recording for
14 E-911-7?

15 A Yes, sir.

16 Q And did the person state her name on E-911-7?

17 A Yes, sir.

18 Q And what did the person say her name was?

19 A Tami Melnick.

20 Q All right. Does that tell you that Tami Melnick
21 was connected to the Beaufort dispatch at 5:58 and 46
22 seconds?

23 A Yes, sir.

24 Q Are you sure about that?

25 A Yes, sir.

REDIRECT EXAMINATION OF HAUPT BY MR. SMITH

1 Q Thank you.

2 RE-CROSS EXAMINATION

3 BY MR. DANIEL:

4 Q Do you agree that that -- that doesn't affect
5 when some of these other people may have called 911?

6 A Her calling?

7 Q Right.

8 A It doesn't affect it, no.

9 Q And that E -- that time, as far as the -- that's
10 the start time of the call?

11 A Correct.

12 Q Do you know how quickly she got to the phone?

13 A I do not.

14 MR. DANIEL: Thank you.

15 THE COURT: Anything further from the witness?

16 MR. SMITH: No, ma'am.

17 THE COURT: Any objection to her being excused?

18 MR. DANIEL: No, Your Honor.

19 THE COURT: You're excused. Thank you.

20 Ladies and gentlemen of the jury, we're going to
21 take a very brief recess. Again, do not discuss this
22 case. It would be inappropriate to do so.

23 And I would like to know from the foreperson,
24 when you go back to the jury room, how late the jury
25 is willing to stay. I would like to get to 5

RECROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 o'clock, or even a little later than that.

2 But probably more importantly than that, I need
3 to know what time you all are willing to start
4 working tomorrow morning. We can start at 9:00,
5 9:30, or 10:00. Any of those times, you just let me
6 know.

7 Again, just realize that we're going to be here
8 all day. Okay?

9 So, again, you're excused to go back to the jury
10 room. Do not discuss this case.

11 (Jury exits the courtroom.)

12 THE COURT: All right. We're going to be at
13 ease. Mr. Lee just came back, I'm going to give you
14 an opportunity to talk to him. We'll probably go
15 ahead and get him up, if you can.

16 Mr. Lee, there were just a couple of things that
17 I had spoken to them about, what you can testify or
18 not testify to. The most important one is probably
19 that no one is to address you as "Judge." If they
20 ask you what you do and who you are, you're a lawyer.
21 Okay?

22 And, again, it doesn't really matter if you're a
23 plaintiff's lawyer, defense lawyer, or what exactly
24 that you do. But anyway, there's to be no mention of
25 being a judge.

RECROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 There's a couple other things that I stated that
2 I didn't want you testifying to. Obviously, you
3 can't come to conclusions and you certainly can't
4 testify as to the law.

5 But Mr. Wiley is going to talk to you -- or Mr.
6 Willey, I apologize, is going to talk to you about
7 what you can or cannot do.

8 Like I said, Mr. Daniel, if he does start
9 testifying to something that is objectionable, just
10 say "objection" for the record. The good news is Mr.
11 Lee will understand my ruling. So he'll know what he
12 can or cannot say.

13 So how about if we're going to take a break just
14 very quickly. Five minutes. Okay? Thank you.

15 (Whereupon, a brief recess was taken.)

16 MR. WILLEY: Judge, not to alarm you. But just
17 as I would in live testimony, during the course of
18 the video, when she refers to something I will check
19 it off. I would do that if she were live, but she's
20 not.

21 THE COURT: Who are we talking about?

22 MR. SMITH: Tami Melnick, she is next by video.
23 And then we will get Dustin Lee out of here. And
24 then after Dustin Lee, it is the officer, and is that
25 is what we plan on today.

RECROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 (The jury enters the courtroom.)

2 THE COURT: All right. Y'all may be seated.

3 Welcome back. At this point in time the next witness
4 is Tami Melnich. My understanding is that it's by
5 deposition.

6 MR. SMITH: Yes, ma'am.

7 THE COURT: Ladies and gentlemen, a deposition
8 is simply testimony given by a witness. It is
9 usually taken at a lawyer's office or the courthouse
10 where everyone has an opportunity to ask that witness
11 questions.

12 And again, you are to judge that just as if she
13 were sitting here testifying. Are you ready?

14 MR. SMITH: Yes, ma'am.

15 THE COURT: Okay, let's go ahead and play it.

16 (Video deposition being played of Tami Melnick.)

17 MR. DANIEL: Your Honor, may we approach about
18 one thing while this is being queued up?

19 THE COURT: You may.

20 MR. WILLEY: I don't know how high it is. If
21 it's too loud. Let us know on the volume.

22 (Off-the-record discussion held.)

23 THE COURT: It is their witness, if they want it
24 up there, they can have it up. Just play it.

25 THE COURT: Okay. Turn that off and call your

RECROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 next witness.

2 MR. WILLEY: We call Dustin Lee.

3 Thereupon,

4 DUSTIN LEE

5 was called as a witness, having been first duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WILLEY:

9 Q Mr. Lee, would you please introduce yourself to
10 this jury?

11 A I'm Dustin Lee.

12 Q And, Mr. Lee, what do you do for a living?

13 A I have a private law firm on Hilton Head. So
14 I'm a solo practitioner.

15 Q Okay. How long have you been a lawyer?

16 A I got sworn in, I believe it was November 17th
17 of 2008. So that puts me not quite at nine years yet.

18 Q Okay. And are you married?

19 A Yes.

20 Q And where do y'all live?

21 A We live in Bluffton.

22 Q And you are here today because you were a
23 witness to a wreck that occurred on November 7th, 2014; is
24 that correct?

25 A Yes.

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Q And are you familiar with the area on 278 where
2 this occurred?

3 A Yes. I was raised on Hilton Head in the area,
4 so I am. Thank you.

5 Q You travel that road frequently?

6 A I do.

7 Q You know there's a Yummy House, Batters' Box,
8 and Dunkin' Donuts all to the right down frontage road?

9 A I definitely know that Dunkin' Donuts is still
10 there, but --

11 Q Okay. Fair enough.

12 And earlier we had a drawing. I'll just
13 show this to you as best I can. You -- with the Judge's
14 permission, you can actually step down, if that's
15 agreeable.

16 THE COURT: Certainly, if he'd like to.

17 THE WITNESS: All right.

18 (Witness complies.)

19 BY MR. WILLEY

20 Q Mr. Lee, I will submit to you that this is 278.
21 Okay? And back over here is the Dunkin' Donuts. All
22 right.

23 And this is roughly a fair depiction of
24 that intersection as you remember it?

25 A Basically, yes. Of course, this is South Park

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Road, it's kind of a frontage road right here in front of
2 Dunkin' Donuts.

3 Q Right.

4 A It kind of goes parallel with 278.

5 Q Right. Let me see if we have a picture.

6 A Basically that curves around the front there.

7 Q Are you talking about this right here, this is
8 Southwood Park Drive?

9 A Yes.

10 Q You got the Yummy House here, correct?

11 A Yes.

12 Q And the Dunkin' Donuts back over here.

13 A Yes. I knew that the Dunkin' Donuts was there.
14 The Yummy House is new to me.

15 Q Okay. The Dunkin' Donuts has a front patio here
16 with some umbrellas on it. Is that what you recall? Do
17 you recall that?

18 A I don't recall going in that direction. That's
19 kind of new in my general vicinity of where I was.

20 Q All right. And on this particular day,
21 November 7th, 2014, you're headed east on 278, correct?

22 A Yes. Kind of deeper onto the island. I think I
23 was going to where Sam's Club used to be in Port Royal
24 Plaza.

25 Q Right. So if we take this, put it like that,

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 this is the Defendant, Mr. Johnson's vehicle. And you
2 recall seeing his vehicle at that time, correct?

3 A Yes.

4 Q Okay. And this "H" depicts Ms. Hood's vehicle.
5 And you recall seeing her vehicle?

6 A Yes.

7 Q Okay. And then down here, on the other lane,
8 the outside lane here, we've drawn a box, and who would
9 that be?

10 A That would probably be me.

11 Q Okay. And between and you Ms. Hood, there were
12 no other vehicles, correct?

13 A None that I recall.

14 Q Okay. As you recall, it was you in the outside
15 lane, her up ahead-on the inside lane, correct?

16 A Yes.

17 Q Okay. And prior to this wreck, had you seen
18 Ms. Hood's vehicle?

19 A I was in the right lane and her vehicle had
20 passed me heading the same direction, just a little while
21 before.

22 Q Okay. And as she passed, were you able to
23 discern anything about -- about her vehicle?

24 A I remember it was South Carolina veterans
25 license plate, and it was kind of a third row, a crossover

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 type vehicle. It reminded me a lot of -- I have a best
2 friend from growing up, his wife has a Chrysler Pacifica,
3 not the new minivan one, but kind of the older style, so
4 it looked like that, kind of curved in back, third row,
5 darker color, crossover vehicle.

6 Q And this -- this picture here is all banged up,
7 but this is roughly what you remember as her vehicle
8 before the wreck?

9 A Yes. And as I said, I saw on the back, the
10 South Carolina veterans license plate.

11 Q Correct. Okay. You can take your seat.

12 A Yes, sir. Excuse me.

13 Q Now, Mr. Lee, as you were traveling down 278,
14 your vehicle had automatic headlights, correct?

15 A Yes, I -- I had them on.

16 Q Okay. And what kind of vehicle were you driving
17 at the time?

18 A It's a Genesis. It's got -- I believe they're
19 Xenon headlights. So it's a four-door sedan, rear wheel
20 drive. It's silver in color.

21 Q Okay. And those Xenon headlights, why -- why is
22 that important to you? What is a Xenon headlight?

23 A Xenon headlights are -- they're a bit brighter,
24 in my opinion. I don't know, there's the marketing out
25 there, but I've got a truck that I got back when I was in

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 college, and so generally I drive a car with better
2 headlights when I'm at night just because -- especially if
3 I'm going in back roads or, you know, during the
4 wintertime, or if I'm going somewhere kind of on island.
5 It's not very well lit in the low country at night, so it
6 just lights up the road a little bit better because my
7 truck, I got to put the fog lights on to kind of compare a
8 little bit.

9 Q And on this particular day, where were you
10 headed to?

11 A I was either going to Sam's Club or to Kroger,
12 or both. There's a Kroger kind of mid-island, where the
13 mall used to be a long time ago.

14 Q Okay. So you were going out to do some grocery
15 shopping and whatnot?

16 A Exactly.

17 Q All right. So you planned to be out for a
18 little while, right?

19 A For, you know, however long it'd take me to go
20 through those stores exactly.

21 Q Past dark?

22 A Yes.

23 Q Okay. And at the time of this wreck, you did
24 not see anything after the first collision, correct?

25 A I did not.

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Q Okay. And why is that?

2 A I was -- I know you got your --

3 Q You can come show it, if you want. You can step
4 down if that's easier for you.

5 A Okay. It may make better sense with the photo.

6 Q Right.

7 A So I was coming up this direction. I don't know
8 if this is accurate as to distance, per se. But as I was
9 coming up here, I saw -- there was a vehicle kind of
10 coming out, I kind of -- just a bad feeling as I saw
11 something going on there. I started hitting my brakes.

12 This vehicle, the H vehicle, kind of went
13 over. This car was here -- I was able -- this kind of -- it
14 happened really quickly, because I was still at -- I guess I
15 was slowing down, but I was close enough where I was kind of
16 myself trying to avoid this accident. I was -- I glanced
17 very, very quickly at this J vehicle. I saw it was a car.
18 Of course, I'd seen this car was pulling out, but then this
19 car went kind of over, and there are bushes and some other
20 stuff right here, so then my visibility wasn't there.

21 After that, I kind of pulled up to the right
22 so I could -- my adrenaline was really pumping, but I pulled
23 over to the right so I could try to call 911, so I got all
24 the way off the road.

25 Did I answer your question?

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Q Yes. And in this picture, you can actually see
2 those bushes a little bit better than in my co-counsel's
3 drawing. He didn't go to art school, as he said.

4 So at the time of this wreck, you were
5 actually so close that you thought you might be involved
6 in it; is that accurate?

7 MR. DANIEL: Objection. Mischaracterization.

8 THE COURT: Okay. Rephrase it, if you would.

9 BY MR. WILLEY

10 Q Okay. Explain, again, why -- why you were
11 slowing down as you saw that car come out?

12 A It looked like there was going to be, in my
13 opinion, some type of potential collision, so I slowed
14 down to get out of the way, as far as whether --

15 Q Okay. And you had your headlights on, your
16 Xenon headlights on?

17 A Yes. I have a little green indicator on my dash
18 that was on that showed my lights were on. My car, I keep
19 in the auto position unless I'm going in a gated
20 community.

21 Q Right. And at this particular entrance on the
22 278, this intersection, Mr. Johnson would have had a stop
23 sign there. Are you familiar with that or not? If not,
24 just say, "not."

25 A I am from maybe a year ago. At that particular

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 time, I don't know whether it was there or not.

2 Q Okay. You haven't been there recently. Okay.

3 Thank you, sir. Take your seat.

4 A (Witness complies.)

5 Q And so after you saw the wreck, you indicated
6 that you went up 700 or so feet or --

7 A I don't know exactly how far it would be. I
8 believe it was before. There's a community there called
9 The Oaks that has their sign. I think I was before that
10 sign. I don't know exactly how far that would be, but I
11 pulled all the way over right to get out of 278 William
12 Hilton Parkway completely, and parked on the side of the
13 road.

14 Q All right. And we -- we've heard that somebody
15 beat you to the 911 call. But explain your sequence of
16 trying to dial -- to try to dial 911.

17 A I had that car for about a month, so I pressed a
18 little button, and I think I said, "Call 911." And it
19 said, "I'm sorry, I don't get it. Call 911. I'm sorry."

20 So then -- then I said, "Call Beaufort County
21 dispatch." Because through my private law practice,
22 sometimes I have to call law enforcement, et cetera, so I
23 pressed the button and said, "Call Beaufort County
24 dispatch." Same thing. So I had -- I parked the car, I
25 turned off the radio, and then I had to dig. I have -- it's

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 kind of in the charger between the console thing, so I had
2 to, I think, pull the thing out, unlock the phone, go
3 through the whole process, and then call. I don't know if I
4 dialed 911 or if I dialed Beaufort County dispatch, which I
5 think goes to the same place. But that was kind of the
6 delay.

7 Q And when you got finally connected through, what
8 did -- what did you learn?

9 A Well, I spoke with someone, I don't remember if
10 it was Hilton Head or what, and then I remember hearing
11 something along the lines of we're going to -- "this
12 person saw the accident." I believe they connected me to
13 someone else that kind of asked me what happened.

14 Q Okay. And when did you first hear the sirens
15 and the first responders?

16 A I don't remember exactly. It was before I
17 pulled out completely. I don't remember if I stayed an
18 extra minute or two afterwards, because as I said, my
19 adrenaline was really pumping. And just trying to --
20 because after I left, I end up going to Starbucks not too
21 far and getting a hot chocolate, just kind of sit down and
22 calm down a little bit.

23 Q And, Mr. Lee, at the time that Mr. Johnson
24 pulled out, you -- you could clearly see Ms. Hood's SUV,
25 correct?

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 A They were both still in my sight.

2 Q Okay. And at the time that Mr. Johnson pulled
3 out, you were able to see Mr. Johnson, correct?

4 A I was able to see, again, that it was a car. I
5 couldn't tell you what type or make, model, of car, but I
6 knew there was a car pulling out. I could see the H
7 vehicle as well.

8 Q Okay. And Ms. Hood would have actually been
9 closer in distance to Ms. Johnson than you were at that
10 point, correct? You were behind her?

11 A Yes, I was behind her.

12 MR. WILLEY: Thank you, sir.

13 CROSS EXAMINATION

14 BY MS. SUTTIE:

15 Q Good afternoon, Mr. Lee.

16 A Good afternoon.

17 Q I'm Madison Suttie, I'm here for the Defendant.

18 You answered a number of questions about
19 what you witnessed. I want to start from kind of the end,
20 if you will.

21 You called 911, correct?

22 A Yes.

23 Q Would it have been within one or two minutes of
24 you witnessing the accident?

25 A I thought it was very close. When I pulled

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 over, as I said, however long it took me to kind of get
2 over, press the buttons on the car a few times, and
3 actually connect. And if I had to guess, I'd say it was
4 within that two-minute time period.

5 Q In other words, it was a fast turnaround, the
6 connection.

7 A It was kind of as fast as I could, again, pull
8 over, park, do all that with my adrenaline pumping.

9 Q And you're familiar with that stretch of road on
10 Highway 278?

11 A Yes.

12 Q Okay. And are there any streetlights on in that
13 area?

14 A Not that I recall. Hilton Head is not very well
15 known for having a lot of kind of -- I went to school at
16 USC in Columbia. And when you kind of leave there, you
17 got those big overhead lights. Again, I don't recall any
18 then, and I still don't really remember any now.

19 Q I did, too. You're right about that.

20 But does it get fairly dark at night along
21 those stretches of road?

22 A Yes. And in kind of in general, again, there
23 aren't any overhead streetlights. So you're kind of on
24 your own as far as that's concerned.

25 Q And from what you recall, at the time of the

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 accident, was it getting dark?

2 A Yes, it was getting dark.

3 Q In your opinion, as a driver on the road at that
4 night, did you feel like you had to have your headlights
5 on --

6 MR. WILLEY: I'm going to object, Your Honor.
7 He's not an expert witness. He's not qualified to
8 give opinion testimony. She can ask him about his
9 observations, what he saw or heard.

10 THE COURT: Agreed. Sustained.

11 BY MS. SUTTIE:

12 Q Were there other vehicles on the road that night
13 besides you and Mrs. Hood and Mr. Johnson?

14 A There were. There was some traffic coming the
15 other way, and there were -- I don't remember, at the
16 exact time if there were cars behind me. But there were,
17 of course, other cars on the road as a general principle.

18 Q Of all those other vehicles, did anyone else
19 have their headlights off, from what you recall?

20 A Not that I recall. Everyone, again, that I
21 recall immediately seeing around me had their headlights
22 on.

23 Q That brings me back. When did you first notice
24 this vehicle?

25 A I was in the right lane, and it passed me on the

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 left-hand side.

2 Q And was she tailgating?

3 MR. WILLEY: Objection, Your Honor.

4 THE COURT: Okay. Sustained. It's not
5 appropriate.

6 Ladies and gentlemen, just strike that question.

7 BY MS. SUTTIE

8 Q When Mrs. Hood's vehicle passed you, you said
9 that you had looked and you noticed a veterans tag; is
10 that correct?

11 A Yes. There was a South Carolina veterans tag.

12 Q What made you notice her veterans tag?

13 A It was, again, something that I just recall
14 specifically on that particular evening. I guess when I
15 was younger, I actually watched, it was like a Jason
16 Bourne movie. I saw him remember all the license plates
17 when he came out. So certain cars, I would, for better,
18 for worse, kind of just remember license plates. So it as
19 that, you know, again, going past me, I remember that
20 particular vehicle again.

21 I don't know if that answers your question.

22 Q Is there -- it kind of does.

23 But did you notice that the Plaintiff's SUV
24 traveling behind you didn't have lights on; is that
25 correct?

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 A As I was traveling, again, east on 278, the -- I
2 guess the H car --

3 Q We can pull this out. Okay?

4 A No, it's fine. I -- I remember that.

5 The H car, I don't remember having the
6 headlights on. I remember it was either daytime running
7 lights or it was parking lights. I couldn't tell you which,
8 but I -- I remember it did not have its headlights on.

9 Q And you were shown a photo of Mrs. Hood's
10 vehicle. It was a darker in color vehicle, right?

11 A Yes.

12 Q And did you agree it was difficult to see at the
13 time; is that correct? When it was behind you. Sorry,
14 when it was behind.

15 A Yes, it was -- it was difficult to see.

16 Q Was that because the headlights weren't on?

17 A Again, that certainly made it quite a bit more
18 difficult to not see. And, again, it was dark in color
19 and the headlights were not on. So, again, it was kind of
20 there.

21 Q You let Mrs. Hood's vehicle pass you. You moved
22 into the right lane and let her pass. Do you -- can you
23 estimate how many cars lengths ahead of you that she got
24 by the time the collision had happened? I mean, was there
25 a fair distance or --

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 A It was -- I mean, I could still see everything.
2 I played baseball growing up, so I kind of said it was at
3 least three pitcher's mounds, which I think is 60,
4 65 feet. So we're looking at more -- probably at least
5 200 feet in front of me. But I couldn't tell you -- and
6 it wasn't, you know, two miles down the road. It was
7 definitely still clear, but it was however many cars can
8 fit in that. If you've got a car that's 15 feet long,
9 then you've got a minimum of ten cars to be 150 feet if
10 that's --

11 Q So ten cars between you and --

12 A That would be probably a minimum. But, again,
13 it wasn't a mile or anything like that. I could still see
14 it well enough.

15 Q But there was a fair distance between the point
16 -- between you and the Plaintiff's vehicle after she had
17 passed you and the collision; is that fair?

18 A Yes.

19 Q At any point from the moment you first noticed
20 Mrs. Hood's vehicle to the moment that you called 911, did
21 you ever see the vehicle with its low beams on?

22 A As far as the H vehicle?

23 MR. WILLEY: Objection, Your Honor. Calls for
24 speculation. The vehicle was up ahead of him. I
25 don't know --

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 THE COURT: Okay. He can answer if he knows.

2 BY MS. SUTTIE

3 Q Based on your observation.

4 A As far as the H vehicle, the Ms. Hood vehicle, I
5 never saw that vehicle with its headlights on. Just that
6 I saw it with its either daytime running lights or its
7 parking lots on.

8 Q Did those daytime running lights or parking
9 lots, in your opinion, what you observed, did they
10 illuminate the vehicle at all?

11 MR. WILLEY: I'm going to object, Your Honor.

12 THE COURT: Okay. At this point, I'm not sure
13 he can answer that.

14 MS. SUTTIE: Okay. Let me confer with --

15 (Off-the-record discussion held.)

16 MS. SUTTIE: Sorry for the brief intermission.

17 BY MS. SUTTIE

18 Q As a licensed driver, did you feel that you
19 needed --

20 MR. WILLEY: Objection, Your Honor. This is the
21 same question with a different wording.

22 MS. SUTTIE: I'm asking about his opinion --
23 observation of his surroundings.

24 THE COURT: Again, I think it calls for
25 speculation. I think you need to move on.

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 MS. SUTTIE: Okay.

2 (Pause.)

3 BY MS. SUTTIE

4 Q You called 911 after this accident, correct?

5 A Yes, or the Beaufort County dispatch, because I
6 believe it goes to the same general line.

7 Q Sure. And did you tell 911 dispatch or the
8 operator that Ms. Hood's vehicle only had its parking
9 lights on, or running lights?

10 A I believe I told them it only had either it's
11 parking lights or daytime running lights. I may have said
12 DRL, but I don't -- just daytime running lights. But --

13 Q Okay. Why did you feel that was -- why did you
14 do that? Why did you tell the operator that it only had
15 daytime running lights on?

16 A Again, I don't recall other than, you know, it
17 was kind of that almost dark, not quite dark time, and it
18 just kind of hit me based on other vehicles on the road
19 had their headlights on at that time that I saw.

20 MS. SUTTIE: No further questions. Thank you.

21 MR. WILLEY: Just briefly, Mr. Lee.

22 REDIRECT EXAMINATION

23 BY MR. WILLEY:

24 Q Back to my trusty Picasso here.

25 No doubt in your mind that Ms. Hood's

REDIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 vehicle had its running lights on when it was up ahead of
2 you, correct?

3 A As it was, I guess, passing me, it had either
4 its daytime running lights or its parking lights on. As
5 far as what it had on at the time, I'm not sure. It was
6 ahead of me.

7 Q Correct. And you don't recall the exact timing
8 of how long it had been since the SUV passed you when the
9 wreck occurred, correct?

10 A The exact time, no, I don't.

11 Q Well, it -- what you know is that enough time
12 had elapsed for her to at least get a ten-car length, a
13 gap, between you and herself, correct?

14 A Yes.

15 Q Probably more?

16 A Again, it wasn't 200 cars, but it was --

17 Q Right. But at that point, you could still see
18 her?

19 A I could -- could I -- I could still see the back
20 of her vehicle, and I could see, I believe, you have as
21 the J car coming out.

22 Q So at that point, where she's a minimum ten car
23 lengths away from you, you could still see her up ahead,
24 correct?

25 A Yes.

REDIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Q And you could see the Defendant's vehicle, which
2 was even farther away, correct?

3 A Yes.

4 Q Okay. And if you had not had your headlights
5 on, do you believe that you still would have been able to
6 read her license plate as she went by?

7 A I recall reading her license plate initially,
8 when it was right almost next to me. So it would probably
9 be like this court reporter's head. So it was very close
10 in distance when I first read it.

11 So, again, I had my -- my headlights on. So
12 I think -- and, again, if I didn't, I don't know, but I had
13 my lights on, and I saw it passing me. So I'll let that
14 answer your question.

15 Q Do you remember saying that without the lights,
16 you think you still could have read the license plate?

17 A Well, again, I initially paid attention to it
18 when it was right at the hood of my car.

19 Q And is that because at that particular point, it
20 wasn't a hundred percent dark yet, correct?

21 A It was probably 90 percent, but not a hundred
22 percent. It was -- it was getting there, but it wasn't
23 quite. It wasn't pitch black, by any means.

24 Q Right. And Ms. Hood's vehicle would have been
25 closer to Mr. Johnson at the point of impact, when he ran

REDIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 into the side of her, than it would have been to you,
2 correct?

3 A Again, I was farther back. So were those two
4 cars closer together, absolutely.

5 Q So at the point of impact, clearly Ms. Hood's
6 car was closer to Mr. Johnson, correct?

7 A Yes. Again, I was in that right lane. I
8 eventually got in the left lane to get around it.

9 Q And at that time, you could still see Ms. Hood's
10 vehicle, correct?

11 A At the --

12 Q Before the time --

13 A Right before the collision occurred, I could
14 still see the two vehicles.

15 Q Right. You could still see Mr. Johnson's
16 vehicle, right?

17 A Yes, with my -- again, I had my headlights on,
18 but I could see them.

19 Q Right. And when this wreck occurred, you
20 slammed on your brakes, I think you testified, to get over
21 because you didn't want to get caught up in it, correct?

22 A I don't know if I slammed, but I definitely
23 decelerated and kind of -- it was more than a standard,
24 just kind of turn the cruise control off or something type
25 slow down. It was more of a deliberate slow down, but I

REDIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 don't -- I don't think that I slammed on the brakes, like
2 to squeal or anything like that.

3 Q My point is, as you went by this collision, the
4 second collision, you didn't look over. You were focused
5 on what you were doing to try to stay out of it, correct?

6 A The -- I saw the H vehicle hit kind of that
7 median section --

8 Q Right.

9 A -- and then kind of right after that I was
10 focused on making sure I got around whatever this was
11 without hitting anyone, damaging any property. And then I
12 thought as soon as the second I kind of got past there,
13 pull over, let's call 911.

14 Q Thank you, sir.

15 THE COURT: Anything further?

16 RE-CROSS EXAMINATION

17 BY MS. SUTTIE:

18 Q Mr. Lee, do you recall whether the accident
19 happened within moments of Ms. Hood's vehicle passing your
20 vehicle?

21 A Moments, like two or three seconds, no.

22 Q How many seconds; do you recall?

23 A I -- again, I don't recall exactly. I'd say
24 probably a minimum of 25, 30 seconds, a maximum of maybe a
25 minute and a half, somewhere in that time range. And,

RE CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 again, it's -- it was --

2 Q Two years ago?

3 A Three -- almost three years ago.

4 Q More, yeah. But it was a short time frame,
5 correct?

6 A It was a relatively short time frame, yes.

7 Q Do you recall how fast you were going that
8 evening?

9 MR. WILLEY: I'm going to object, Your Honor.

10 It's not relevant how fast Mr. Lee was going.

11 THE COURT: Can you tell me what the relevance
12 is? Do you need to approach?

13 MR. DANIEL: I think so.

14 THE COURT: Sure.

15 (Off-the-record discussion held.)

16 THE COURT: You can answer the question,
17 Mr. Lee.

18 THE WITNESS: Okay.

19 BY MS. SUTTIE

20 Q Do you recall how fast you were going?

21 A I had my cruise control set at 49 miles per
22 hour.

23 Q What made you choose 49 miles per hour?

24 A It's -- again, I have these weird things. It's
25 kind of like I don't like to tell people necessarily to be

RE CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 somewhere at 9 o'clock, because they might be five, ten
2 minutes late either way. So you say be there at 9:03.
3 But in my private practice, when I have clients, they kind
4 of joke, and they say "I only go five miles per hour over
5 the speed limit." I say, "just go four over."

6 Or they say, "Cops don't mess with me at
7 five." I say, "go four over." So it's kind of a practice
8 what you preach type thing. So, as I said, I try to really
9 -- it's just kind of a habit I always get into.

10 Q What's the speed limit on that stretch of road
11 where the accident happened?

12 A It was 45 miles per hour.

13 Q And the accident happened within, you know, 25
14 to 30, and less than a minute of Mrs. Hood's vehicle
15 passing you, correct?

16 A Yes.

17 Q And she was ten car vehicles, at minimum, ahead
18 of you; is that what you testified?

19 A I believe so, yes, if you kind of calculate
20 about 15 feet per vehicle.

21 Q And you were going four over the speed limit?

22 A Yes. I was -- I was basically speeding
23 four miles per hour over, yes.

24 Q Mr. Lee, one further question.

25 Do you recall if Mr. Johnson's vehicle had

RE CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 its headlights on?

2 A Is that the J car that was crossing?

3 Q Yes.

4 A I don't necessarily. As I said, I saw from a
5 distance, from whatever distance that was, that there was
6 a car coming across. But, you know, it's almost three
7 years ago. I noticed the car from that distance coming
8 across, and as I said, I just don't recall at this point
9 why I kind of had that feeling that something was going to
10 happen kind of immediately thereafter.

11 MS. SUTTIE: No further questions, Your Honor.

12 THE COURT: Anything further?

13 MR. WILLEY: May the witness be excused?

14 THE COURT: Any objection?

15 MR. DANIEL: Your Honor, just what we discussed
16 earlier.

17 THE COURT: Okay. Mr. Lee, you're excused. If
18 I need you, I'll find you. Thank you.

19 THE WITNESS: All right. Thank you.

20 THE COURT: All right. Call your next witness.

21 MR. WILLEY: Plaintiff calls Sergeant Welch.

22 THE COURT: Come on, Sergeant Welch.

23 Thereupon,

24 SERGEANT JENNIFER WELCH

25 was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WILLEY:

4 Q Sergeant Welch, will you introduce yourself to
5 the jury.

6 A Sergeant Jennifer Welch. I've been with the
7 Beaufort County Sheriff's Office since 2007, which is
8 about ten years in August. Been working the road south
9 and north for those ten years.

10 Q And Sergeant Welch, are you still with the
11 Beaufort County Sheriff's Office?

12 A Yes, sir.

13 Q I assumed they didn't let you borrow the uniform
14 just for the day.

15 Where did you go to college?

16 A Delaware Valley College in Pennsylvania.

17 Q Okay. And where did you attend the criminal
18 justice academy?

19 A Here in South Carolina, in Columbia.

20 Q And when -- when approximately were you there?

21 A That was February of 2008.

22 Q And when you got out of the academy, where was
23 your first job?

24 A With Beaufort County.

25 Q And at the time of November 7th, 2014, what was

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 your rank?

2 A In 2007?

3 Q November 7th, 2014.

4 A '14, I was corporal.

5 Q And so you have elevated through the ranks since
6 that time?

7 A Yes, sir.

8 Q When you were a corporal in 2014, what were some
9 of your primary duties with the sheriff's department?

10 A Mainly the same as now, to respond to calls for
11 service, 911 calls, motor vehicle collisions, traffic
12 enforcement.

13 Q And at that time, were you certified in accident
14 reconstruction?

15 A Yes.

16 Q And what does that mean, just for the benefit of
17 the jury?

18 A Basically it's -- there are three classes.
19 There's three phases. Both are two weeks long each, and
20 it teaches you about the physics and basically all the
21 math you have to do to figure out what happened in a
22 collision.

23 Q And is that obviously important to what you do
24 with the Sheriff's Department?

25 A Yes.

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 Q And respect to motor vehicle wrecks, what are
2 your roles and responsibilities?

3 A First and foremost would be injuries, and then
4 making sure that the scene is safe and that no more
5 injuries occur once we arrive. Then I would interview all
6 parties, whether it be on scene or at the hospital, if
7 they get transported. And then I would either complete a
8 report, issue a ticket, if I felt need be.

9 Q And Sergeant Welch, I'm going to hand you a copy
10 of a code section, South Carolina code section. As part
11 of your roles and responsibilities, are you --

12 THE COURT: Hold on a second. Can I take a look
13 at that?

14 Do y'all need to come talk to me?

15 (Off-the-record discussion held.)

16 BY MR. WILLEY

17 Q All right. Sergeant Welch, you would agree with
18 me that when a driver is on the roadway they have certain
19 responsibilities that -- you know, that they've got to
20 look after, correct?

21 A Correct.

22 Q Like look where you're going, right?

23 A Yes.

24 Q Make sure it's safe before you cross a busy
25 highway, correct?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Correct.

2 Q Okay. And those things are important to prevent
3 harm to other folks, correct?

4 A Correct.

5 Q Now, I know it's been almost three years, but do
6 you recall, based on reviewing your notes and report, this
7 wreck that we're here about today?

8 A Yes.

9 Q Okay.

10 MR. WILLEY: Your Honor, may Sergeant Welch step
11 down?

12 THE COURT: Yes.

13 BY MR. WILLEY

14 Q Sergeant Welch, can you describe to the jury,
15 you know, what this image shows?

16 A Yes. Right here in the middle, it is labeled
17 William Hilton Parkway at 278. This direction towards me
18 would be eastbound. This side would be westbound.
19 Southwood Park Drive runs, as they discussed earlier, in
20 front of Dunkin' Donuts and Yummy House, parallel to 278.

21 Q And you were notified -- how did you get
22 notified about this wreck?

23 A By dispatch.

24 Q And do you have any idea what happened prior to
25 dispatch notifying you? Or do you -- you just get the

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 call straight from dispatch?

2 A Straight from dispatch.

3 Q Okay. And when you arrived, what did you see?

4 A I saw the -- if we want to stick with the same
5 picture that you have, the J vehicle was right around in
6 here. And then Ms. Hood's vehicle had left skid marks
7 across the grass, and then hit another vehicle over around
8 in here somewhere, head-on.

9 Q And did you interview all the witnesses at the
10 scene?

11 A Yes. The ones that stayed, yes.

12 Q You didn't interview Mr. Lee, for example?

13 A No, I didn't know who he was.

14 Q Okay. But you were able to interview the
15 Defendant, Mr. Johnson?

16 A Yes.

17 Q You were able to interview the Kucks?

18 A Correct. I'm not sure if that was at the
19 hospital or both on scene.

20 Q Okay. And you were able to also interview
21 Ms. Hood at the hospital?

22 A Correct.

23 Q Okay. And as far as when you got there, how
24 would you describe the damage to Ms. Hood's vehicle? What
25 did you observe?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A It was major damage.

2 Q Was Ms. Hood already gone in the EMS when you
3 arrived?

4 A If I remember correctly, I believe she was on
5 the grass right about here, where they were treating her,
6 but I didn't have an opportunity to speak with her because
7 they were treating her.

8 Q Okay. And you spoke with her later?

9 A Yes.

10 Q All right. Thank you.

11 Sergeant Welch, I'm just going to show this
12 photograph here. Do you recognize this image?

13 A Yeah. That would be the passenger side of
14 Ms. Hood's vehicle.

15 Q Okay. And is that a fair and accurate
16 representation of the damage to Ms. Hood's vehicle as you
17 observed it that day?

18 A Yes, the damage to the side, yeah.

19 Q To the side, correct.

20 A Yeah.

21 MR. WILLEY: Your Honor, at this time, we would
22 move Plaintiff's Exhibit 3 into evidence.

23 THE COURT: Any objection?

24 MR. DANIEL: The side view?

25 THE COURT: Just look at it.

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 MR. DANIEL: The side view, no.

2 THE COURT: Any objection?

3 MS. SUTTIE: No objection, Your Honor.

4 THE COURT: Without objection, it's in evidence.

5 *(Whereupon, Plaintiff's Exhibit No(s). 3 marked*
6 *for identification and received in evidence.)*

7 BY MR. WILLEY:

8 Q And Sergeant Welch, you were able to ascertain
9 what about this damage? What did this damage tell you?

10 A With my experience in I couldn't tell you how
11 many accidents I've, it appeared to me that another
12 vehicle, which I believe was Mr. Johnson's vehicle, hit
13 that vehicle in the front passenger side close to the
14 wheel. And due to her traveling, it then created the
15 scratch marks down the end of the vehicle.

16 Q And how many motor vehicle wrecks would you say
17 you've investigated?

18 A Being that I was on the traffic team for two
19 years, I -- hundreds. I couldn't -- maybe even a
20 thousand. I couldn't put a number on it.

21 Q And you're still investigating traffic wrecks,
22 correct?

23 A Yes.

24 Q More than your fair share of those wrecks for
25 every nine minutes, according to your Department of Public

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 Safety?

2 A Yes.

3 Q Okay. Were you also able to get a look at this
4 vehicle?

5 A Yes.

6 Q Okay. And was this a picture of Mr. Johnson's
7 vehicle as you remember it?

8 A Correct, yes.

9 Q And was all -- this front-end damage existing to
10 his vehicle at the time that you saw it?

11 A Yes.

12 Q Okay. And is this a fair and accurate
13 representation of his vehicle, as you saw it?

14 A Yes.

15 MR. WILLEY: At this time, we would move to
16 enter into evidence Plaintiff's Exhibit No. 4.

17 THE COURT: Any objection?

18 MS. SUTTIE: No objection, Your Honor.

19 THE COURT: Without objection, it's in evidence.

20 *(Whereupon, Plaintiff's Exhibit No(s). 4 marked*
21 *for identification and received in evidence.)*

22 BY MR. WILLEY:

23 Q And just -- just so we're clear, was it your
24 understanding that the entirety of this damage was caused
25 by his impact with Ms. Hood?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Yes.

2 Q Okay. As far as you know, Mr. Johnson did not
3 impact another vehicle or object on the roadway that day?

4 A Correct.

5 Q I'll show you what I'll mark for ID as
6 Plaintiff's 5. And this is an image of 278 looking down
7 the eastbound lane. And this is the intersection area,
8 and you're familiar with that intersection?

9 A Yes.

10 Q Okay. And can you -- let me step over here.
11 Can you show the jury where Mr. Johnson's vehicle would
12 have been located?

13 A He would have been down here at the stop line
14 and pulled out into this first lane.

15 Q Okay. So as he began to pull out to the first
16 lane, if you look left, this would be his view basically?

17 A Correct, yes.

18 Q And is this photograph a fair and accurate
19 representation of that?

20 A Yes.

21 MR. WILLEY: Your Honor, at this time, we're
22 going to move to enter into evidence Plaintiff's
23 Exhibit 5.

24 MS. SUTTIE: No objection, Your Honor.

25 THE COURT: It's without objection. It's in

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 evidence.

2 *(Whereupon, Plaintiff's Exhibit No(s). 5 marked*
3 *for identification and received in evidence.)*

4 BY MR. WILLEY:

5 Q And Sergeant Welch, this book was talked about
6 during opening. You familiar with the South Carolina
7 Driver's Manual?

8 A I've never actually held one or seen one, but --

9 Q Okay.

10 A I know they're one.

11 Q I'm going to hand you one.

12 What does that book say on the cover?

13 A South Carolina Driver's Manual.

14 Q Okay. And does that appear to be a fair and
15 accurate copy of the driver's manual? Or are you just not
16 familiar enough with it to say?

17 A I'm just not familiar because I didn't -- I
18 didn't get a license in South Carolina.

19 Q Okay. That's fine.

20 But you are familiar with the law as it
21 relates to headlight usage in South Carolina, correct?

22 A Correct.

23 Q Okay. And one of your responsibilities in
24 investigating a traffic accident, would be to cite a
25 driver who wasn't following the law, correct?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Correct.

2 Q Okay. And that statute requires, correct me if
3 I am wrong, but it requires headlight use 30 minutes after
4 sunset and 30 minutes before sunrise, correct?

5 A Correct.

6 Q Okay. And it also gives a list of other times
7 when headlight usage might be required. You're familiar
8 with that?

9 A Yes.

10 Q Okay. And can you tell this jury when some of
11 those -- what those times are?

12 A It would depend on the circumstance, such as
13 maybe fog or snow. Rain is the big one. If there were
14 some other kind of circumstance, like there was a fire in
15 the area and you couldn't see the road maybe. Just as
16 some examples.

17 Q Okay. So the big one is when you have your
18 windshield wipers on, correct?

19 A Correct.

20 Q Except if you have them on just intermittently
21 for misting, then you're not required to, right?

22 A I'm not familiar if it's got a subsection about
23 that in there.

24 Q But the other environmental factors that are
25 spelled out are like fog and smoke, correct?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Correct, yeah.

2 Q The statute specifically deals with when you
3 have to have them on with respect to nighttime, correct?

4 A Correct.

5 Q All right. Another example might be, for
6 example, if it got dark in the middle of the day, like, if
7 we had an eclipse, right?

8 A Correct.

9 Q That would be an environmental factor that would
10 require you to have your lights on, right? And we just
11 had one of those.

12 So let me ask you: On this particular day,
13 at this particular time, was there any fog in the area?

14 A No.

15 Q Was there any snow in the area?

16 A No.

17 Q Was there any rain in the area?

18 A No.

19 Q Okay. Was there a fire nearby such as that it
20 was creating smoke?

21 A No.

22 Q Okay. And finally, we didn't have an eclipse
23 just before dark that day, did we?

24 A No.

25 Q Okay. So the only factor that, in this case

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 would have required the headlights, is whether or not it
2 was 30 minutes after sunset, according to the statute,
3 correct?

4 A Correct.

5 Q And in this case, when you spoke with
6 Mr. Johnson, isn't it true that he actually told you that
7 Ms. Hood hit him?

8 A Yes.

9 Q You remember -- you have that in your notes and
10 remember that?

11 A Yes.

12 Q And upon looking at the damage from their
13 vehicles, is there any doubt in your mind that actually he
14 hit Ms. Hood?

15 A No, there's no doubt in my mind.

16 Q Based on your investigation in this case, how
17 fast was Ms. Hood traveling?

18 A I just put an estimated, which is what the
19 actual speed limit of the road was. Because of the extent
20 of the damage, I knew it was at least 45.

21 Q You estimate around 45 miles an hour?

22 A Correct.

23 Q And there was no evidence in your investigation
24 statement or otherwise that led you to believe that she
25 was speeding, correct?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 MS. SUTTIE: Objection.

2 THE COURT: Well, she can answer the question if
3 she can answer it.

4 THE WITNESS: Correct.

5 BY MR. WILLEY:

6 Q There was no information in your investigation,
7 based on your investigation, that led you to believe she
8 was speeding, correct?

9 A Correct. There were not any skid marks behind
10 the car.

11 Q And you did not write Ms. Hood a citation for
12 this incident, did you?

13 A No.

14 MR. WILLEY: Thank you. Nothing further, Your
15 Honor.

16 MR. DANIEL: May we approach?

17 THE COURT: You may.

18 (Off-the-record discussion held.)

19 CROSS EXAMINATION

20 BY MS. SUTTIE:

21 Q Hello. I'm Madison Suttie.

22 You were asked a number of questions about
23 statute, 30 minutes, and all of this kind of stuff, when
24 you should have your headlights on; is that correct?

25 A Yes, yes.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 Q You can pull people over for having no
2 headlights on; is that fair?

3 A Yes.

4 Q And does the visibility of a vehicle go into
5 that determination?

6 A Yes.

7 Q So if you were having trouble seeing a vehicle
8 on a roadway, you'd pull it over; is that fair?

9 A Correct, yeah.

10 Q If it is 28 minutes past sunset, and you've
11 having issues seeing that vehicle and you assume other
12 drivers on the road have the same difficulty, would you
13 pull that vehicle over?

14 A Yes.

15 Q You were shown some pictures of damage that you
16 would assume that Mr. Johnson and Mrs. Hood's vehicle, by
17 Mr. Willey -- bear with me one second.

18 Do you recall off of the top of your head
19 the tag on Mrs. Hood's vehicle?

20 A The license plates, no.

21 Q Would you like to see a copy of your accident
22 report to refresh your recollection as to the license
23 plate?

24 A If you wanted the exact number, yes.

25 MR. WILLEY: We can stipulate to the license

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 plate number.

2 MR. SMITH: She can just read it, Your Honor.

3 MR. WILLEY: Yeah, she can just read it. That's
4 fine.

5 BY MS. SUTTIE

6 Q Here you go. Can you read the license plate for
7 me for Mrs. Hood's vehicle?

8 A It's V32138.

9 Q Okay. And I'm going to show you a picture and
10 ask you if that is the same license plate number on that
11 vehicle.

12 A Yes.

13 Q Okay. So fair to say, does that look like the
14 Plaintiff's vehicle in that photo I just handed to you?

15 A Yes.

16 Q Okay. You can keep that photo in front of you.

17 You were also shown -- this is Plaintiff's
18 exhibit, but I can show you on the large copy -- this is
19 the damage to the side of Mrs. Hood's vehicle, correct?

20 A Yes.

21 Q And that was the damage you found contributed --
22 caused by the collision with Mr. Johnson's vehicle; is
23 that fair?

24 A Yes.

25 Q Okay. There was another impact in this

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 incident, correct?

2 A Yes.

3 Q And that was with Mrs. Hood's vehicle and the
4 vehicle belonging to the Kucks?

5 A Correct.

6 Q Okay. I'm going to show you a photo and ask you
7 if that looks representative of the damage to the front of
8 the Plaintiff's vehicle caused by the collision with the
9 Kucks?

10 A Yes, correct.

11 Q Little more severe than the one with
12 Mr. Johnson; is that fair?

13 A Yes, very fair.

14 Q And you were shown a photo of Mr. Johnson's
15 vehicle after the accident. Do you remember all these
16 years later whether his front bumper had fallen off or
17 not, in the accident?

18 A I remember there being debris on the roadway,
19 but I don't remember specifically a bumper on the road.

20 Q Okay. And then the third vehicle, belonging to
21 the Kucks, does this look like that vehicle to you?

22 A Yes.

23 Q That's pretty severe damage, correct?

24 A Correct, yes.

25 Q Okay. And that was caused by the collision with

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 the Plaintiff's vehicle and the Kucks; is that fair?

2 A Correct, yes.

3 Q You were asked by Plaintiff's counsel whether or
4 not you performed a full accident reconstruction, and you
5 didn't in this case, correct?

6 A Correct.

7 Q Okay. So you wouldn't have any opinion on
8 whether Mrs. Hood was pushed into oncoming traffic or
9 whether she overcorrected; is that fair?

10 A I don't think that I would need to take
11 measurements to form that opinion.

12 Q Okay. Is it correct to say that it could have
13 been a bit of both?

14 A Both what?

15 Q Of being -- of overcorrecting and also from the
16 collision with Mr. Johnson?

17 A Yes, I would say they both contributed.

18 Q Okay. Can you say how much either one of those
19 contributed to the --

20 A To that, I would need to do the math for.

21 Q And you didn't do the math in this?

22 A No, ma'am.

23 Q What time did you arrive at the subject -- at
24 the accident scene?

25 A Is it okay to refer to the report?

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 Q Yes, of course.

2 A Arrived at 1809, which would be 6:09.

3 Q Okay. 6:09, and from what I understood,
4 Mr. Hood was still there sitting on the grass; is that
5 correct?

6 A Correct.

7 Q Okay. When you arrived on the scene, was
8 Mrs. Hood's vehicle still running?

9 A I believe it was, yes.

10 Q And how did you make that determination?

11 A I could hear it running. The engine was on.

12 Q Does your squad car have an in-car video?

13 A Yes.

14 Q Did you review your in-car video prior to
15 completing your accident report?

16 A I did.

17 Q Why did you do that?

18 A Because there were -- there was discussion about
19 her lights being on, and I had different stories about --
20 they weren't all matching.

21 Q The Plaintiff's running lights weren't on in
22 that video; is that correct?

23 A Correct.

24 Q What does that indicate to you about her
25 headlights?

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 A That the headlights were not on.

2 Q And that they were not on that night?

3 A Correct.

4 Q So her car was still on after the accident, but
5 her headlights weren't on?

6 A Correct.

7 Q But the running lights were still on?

8 A When I referred to the camera, the running
9 lights were not on, which would be consistent with the
10 brake lights, because I pulled in behind her when I
11 arrived on scene.

12 Q Bear with me one second.

13 You were shown an aerial view of the
14 intersection.

15 MS. SUTTIE: You've already marked it?

16 MR. WILLEY: I had marked it.

17 MS. SUTTIE: Okay. Would you mind if I showed
18 the witness?

19 MR. WILLEY: No, sure.

20 MS. SUTTIE: Thank you very much.

21 BY MS. SUTTIE

22 Q Can you see this okay?

23 A Yeah, I can -- for the most part, I can see it.
24 I know the intersection well enough.

25 Q Okay. So Mr. Johnson made his turn starting

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 here on Southwood Park Drive; is that correct?

2 A Correct.

3 Q And it is legal to make a left turn onto this
4 westbound lane of 278?

5 A Correct.

6 Q As long as you check for any oncoming hazards,
7 fair?

8 A Yes.

9 Q That are visible, fair?

10 A Yes.

11 Q So was Mrs. Hood's vehicle traveling in this --
12 what lane would you call this on eastbound?

13 A I call it the number one lane.

14 Q Number one lane. Okay. She was traveling here.

15 When you arrived at the accident, where was
16 this vehicle?

17 A It was on the white lines on the other side of
18 the road.

19 Q All the way over here?

20 A Yes, ma'am.

21 Q So she went over to -- in lane one, she went
22 over this median; is that correct?

23 A Correct, yes.

24 Q And this turning lane?

25 A Yes.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 Q And landed all the way over here?

2 A Yeah. A little farther down on the road,
3 probably down by where that -- in between the two arrows.

4 Q Okay. Oh, so all the way down here?

5 A Yes, ma'am.

6 Q And so if Mr. Johnson was trying to come
7 straight across, that collision happened around here; is
8 that fair?

9 A Yes.

10 Q And she ended up between the two arrows?

11 A Somewhere around that area, yes.

12 Q Thank you.

13 Did you give Mr. Johnson a citation for
14 this incident?

15 A I don't recall. Not according to the report. I
16 would have listed it on the report.

17 Q And did you note on your report how many yards
18 away Ms. Hood's vehicle ended up from the collision with
19 Mr. Johnson?

20 A I did not.

21 Q Would it have been about, if you were to
22 estimate based on what we discussed from the picture,
23 about 100 hundred to 200 yards?

24 A I would say around a hundred.

25 Q And do you recall what speed Mr. Johnson was

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 going at the time of the accident?

2 A I put 15. It's hard to accelerate from a stop
3 sign that fast, so --

4 Q Right. And you can't really gain that much
5 motion.

6 A Right.

7 Q And you put 45 on your accident report, correct?

8 A For the speed limit?

9 Q For Ms. Hood's speed limit.

10 A Right, as an estimate.

11 Q And that was just an estimate based on the speed
12 limit that was posted?

13 A Correct. I take that into account and the
14 damage, so it could have been faster or slower.

15 MS. SUTTIE: I'd like to offer in the photo that
16 I have shown earlier into evidence.

17 THE COURT: Which ones are they? Have you
18 marked them?

19 MR. SMITH: May I see them?

20 MS. SUTTIE: Yeah, sure.

21 THE COURT: These aren't duplicates of what's
22 already in evidence?

23 MR. WILLEY: No, ma'am.

24 THE COURT: Okay. Any objection?

25 MR. WILLEY: To those three, no.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 THE COURT: Okay. So let's go ahead and mark
2 those for the court reporter. Just go give them to
3 the court reporter.

4 *(Whereupon, Defendant's Exhibit No(s). 1-3*
5 *marked for identification and received in evidence.)*

6

7 THE COURT: Anything, Mr. Willey?

8 MR. WILLEY: Just briefly.

9 THE COURT: Yes, sir.

10

11 REDIRECT EXAMINATION

12 BY MR. WILLEY:

13 Q So Sergeant Welch, she asked you whether or not
14 if there had been overcorrecting, if that could have also
15 contributed along with the impact of Mr. Johnson.

16 In this case, did you find any evidence
17 that Ms. Hood overcorrected?

18 There were no skid marks, correct?

19 A Well, she -- correct.

20 Q And she ended up just over the median in this
21 other lane down aways, correct?

22 A Correct.

23 Q Okay. The physical evidence clearly establishes
24 that the impact between her vehicle and Mr. Johnson's
25 vehicle was quite an impact, correct?

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 MS. SUTTIE: Objection.

2 MR. WILLEY: Basis?

3 MS. SUTTIE: Mischaracterization.

4 THE COURT: Okay. I don't know if she actually
5 testified as to that.

6 MR. WILLEY: I'll rephrase it.

7 BY MR. WILLEY

8 Q Sergeant Welch, how would you characterize the
9 impact, based on these photos, between Mr. Johnson's
10 vehicle and Ms. Hood's vehicle?

11 A If it were just those two alone, I would
12 consider it to be minor.

13 Q Okay. And in this particular case, his front
14 end is smashed in, correct?

15 A Correct.

16 Q And the inside of her door along the wheel well
17 is smashed in, correct?

18 A Correct.

19 Q And that impact is enough to move a vehicle
20 that's traveling that speed; you would agree with that?

21 A Yes.

22 Q Okay. And that's -- in this case, her vehicle
23 did move, correct?

24 A Yes.

25 Q You arrived just after 6 o'clock -- 6:09,

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 correct?

2 A Yes.

3 Q Where did you come from?

4 A I don't remember where I was originally, but I
5 know that I came -- I was headed eastbound on 278.

6 Q Okay. But you were not right there at that
7 particular intersection, correct?

8 A Correct. It took me about three minutes to get
9 there.

10 Q You had a three-minute transit time from the
11 time you got the call?

12 A Correct.

13 Q You don't know what happened prior to that?

14 A No.

15 THE COURT: Is that a "no," for the record?

16 THE WITNESS: No. Sorry. It was a little
17 quiet.

18 BY MR. WILLEY

19 Q And when you arrived at 6:09, which was sometime
20 after the wreck, there was still some light visibility,
21 correct?

22 A Correct.

23 Q Okay. And as you sit here today, and as you
24 told us in your deposition, you cannot say one way or the
25 other, whether or not, at the time of the wreck, Ms. Hood

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 had her lights on, lights off, running lights on, running
2 lights off, any of that, can you?

3 A Other than what I pulled up on the video.

4 Q Right. When you arrived at 6:09.

5 A Right. I was not paying attention.

6 Q And at that particular time, she had already
7 been extracted from the vehicle, correct?

8 A Yes.

9 Q And she was laying over on the grass being
10 treated?

11 A Correct.

12 Q Do you have any information as to whether she
13 changed anything in the vehicle as she was getting out or
14 anything that she did prior to being extracted by the
15 paramedics?

16 A No.

17 Q Okay. And in this particular case, there's a
18 stop sign here at the end of Southwood Park Drive,
19 correct?

20 A Yes.

21 Q And who would have had that stop sign?

22 A Mr. Johnson.

23 Q All right. And if a vehicle is traveling east
24 on 278 and a vehicle was stopped at that stop sign
25 attempting to cross, who would have the right-of-way?

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Ms. Hood would.

2 Q Thank you.

3 RE-CROSS EXAMINATION

4 BY MS. SUTTIE:

5 Q Officer Welch, is it fair to say that Ms. Hood
6 would only have the roadway if her vehicle were visible?

7 MR. WILLEY: Object. It's a mischaracterization
8 of the law.

9 THE COURT: You can ask the question.

10 If you can answer it, answer it.

11 THE WITNESS: Can you ask it again?

12 BY MS. SUTTIE

13 Q Is it fair to say that Mrs. Hood would only have
14 the right-of-way if her vehicle were visible? Or I can
15 rephrase it.

16 Do you have to give way to oncoming traffic
17 that you cannot see?

18 A I would say that would make it difficult.

19 Q Great. You were asked by Mr. Willey whether you
20 can say one way or the other whether she overcorrected or
21 whether she was pushed. Actually, you list it in your
22 accident report that she overcorrected, correct?

23 A Correct.

24 MS. SUTTIE: No further questions.

25 THE COURT: Anything further?

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1

2

FURTHER REDIRECT EXAMINATION

3

BY MR. WILLEY:

4

Q Just the one portion in the accident report.

5

That was one data point in your investigation, correct?

6

A Yes.

7

Q Okay. And in this accident, you actually had

8

pretty good physical evidence, which we don't always have,

9

correct?

10

A Correct.

11

Q And there were no skid marks in this case?

12

A No.

13

Q Okay. There was no indication from skid marks

14

or otherwise that she made a sharp maneuver to the left,

15

correct?

16

A Correct.

17

Q Other than the fact that her vehicle crossed the

18

median, correct?

19

A Correct.

20

Q And, again, you did not have the benefit of

21

talking to Mr. Lee, who indicated that once the vehicle

22

entered that median, it got a little airborne, correct?

23

A Correct.

24

Q Thank you.

25

THE COURT: Anything further?

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 MS. SUTTIE: No, Your Honor.

2 THE COURT: Okay. Any objection to Sergeant
3 Welch being excused from anyone?

4 MR. WILLEY: None.

5 THE COURT: You're excused. Thank you.

6 All right. Ladies and gentlemen, I think this
7 is a very good time to wrap up for the evening.

8 Madam Foreperson, I do not want to start as
9 early as 9 o'clock tomorrow morning because, in fact,
10 I was reminded I have a conference call.

11 THE FOREPERSON: Well, we had decided on ten, if
12 that works for you.

13 THE COURT: Absolutely. 10 o'clock sounds good.

14 Ladies and gentlemen, I need to remind you, do
15 not discuss this case. It would be inappropriate to
16 do so. Don't do any independent research. Ladies
17 and gentlemen, don't go look at the scene. If you
18 happen to have to drive by to go home, just drive by
19 it. All right?

20 I look forward to seeing you all at 10:00 a.m.
21 tomorrow morning. I expect to run to roughly 5
22 o'clock again tomorrow, ladies and gentlemen. So I
23 suggest get a good night's sleep, have a good
24 breakfast. We look forward to seeing you.

25 Also, it was real cold in here earlier today.

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 They warned me as I walked in. They told me it was
2 64 degrees. But I have the benefit of wearing a
3 robe. So bring a sweater or a jacket or something,
4 ladies and gentlemen. I know we're on the tail end
5 of summer, but I suggest bringing the same thing, so
6 you can shed it if it gets hot in here.

7 And, again, we look forward to seeing you all at
8 10:00 a.m tomorrow morning. You all are excused.
9 Thank you.

10 (Jury exits the courtroom at 5:22 p.m.)

11 THE COURT: All right. Any exceptions or
12 additions from anyone?

13 Anything to add? Anything that you need to
14 place on the record?

15 MR. SMITH: No, Your Honor.

16 MR. DANIEL: No.

17 THE COURT: Yes, ma'am.

18 THE CLERK: There's a juror that says he needs
19 to speak with you because he has made his decision
20 already. He's biased.

21 THE COURT: Okay. Well, I'll take that up
22 afterwards. So you can pull him out of the jury room
23 and go stick him somewhere separate, if you can.
24 Okay?

25 THE CLERK: Everybody else has gone now.

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 THE COURT: Yeah, he can't stay in there right
2 now though. You need to take him out and put him in
3 the hall.

4 THE CLERK: The other people have gone
5 downstairs.

6 THE COURT: Oh, they are. Okay. He can sit
7 right there.

8 Anything else? Tomorrow morning, if they want
9 to start at 10 o'clock, so we will begin and you all
10 can be here by roughly 9:45. Is that acceptable to
11 everybody? Okay?

12 MR. SMITH: Yes, ma'am.

13 THE COURT: Anything else from anyone? No? All
14 right.

15 Well, I'm going to talk to this juror. You're
16 welcome to sit tight while I speak with him. The
17 rest of you, if you want to leave, you're welcome to,
18 whichever way.

19 So let's bring him out.

20 (Juror enters the courtroom.)

21 THE CLERK: This is Mr. Clevinger.

22 JUROR: Yes, where would you like me to stand?

23 THE COURT: Right where you are.

24 JUROR: I don't want to disrespect your court
25 any, but I've come to a biased information, and I've

JUROR EXCUSED FROM THE JURY

1 already made my decision and know which way I would
2 like to go with this, based on the information that's
3 already been provided.

4 THE COURT: You weren't able to follow my
5 instruction that I told you at the beginning of this
6 case that you weren't to make any decisions until
7 you've heard all the evidence?

8 JUROR: I can't help that. I can't help that.

9 THE COURT: You can't help that?

10 JUROR: No. Being and --

11 THE COURT: So you can't follow the law?

12 JUROR: No. Being an intelligent human being,
13 I've just come to my decision based on the
14 information provided.

15 THE COURT: Okay. Well, with all due respect,
16 that's not the law. So to qualify this being an
17 intelligent human being would be a
18 mischaracterization.

19 I am going to remove you from the jury of this
20 case, but I am going to have you sit and watch the
21 rest of the trial with us.

22 JUROR: Yes, ma'am.

23 THE COURT: So I look forward to seeing you back
24 at 10:00 a.m. I trust that you didn't say any of
25 that to any of the other jurors.

JUROR EXCUSED FROM THE JURY

1 JUROR: Not at all, ma'am.

2 THE COURT: All right. Well, we look forward to
3 seeing you back at 10:00 a.m. back in the gallery.
4 Thank you.

5 JUROR: Thank you so much.

6 MR. WILLEY: Your Honor, will you instruct him
7 not to talk to any other jurors.

8 JUROR: No, you have my word. I won't do that.

9 THE COURT: He knows that. You were right, Mr.
10 Willey.

11 You can just go out the front door.

12 JUROR: Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. DANIEL: No, Your Honor. Not from the
15 Defendant.

16 THE COURT: All right. We'll see you here
17 tomorrow morning.

18 MR. SMITH: Thank you.

19 (Whereupon, the Court was in recess for the
20 day.)

21

22

23

24

25

JUROR EXCUSED FROM THE JURY

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the
8 foregoing proceedings and that the transcript is a true
and complete record of my stenographic notes.

8

DATED this 3rd day of January, 2018.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

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1 In the Court of Common Pleas for the
2 State of South Carolina, County of Jasper

3

4 Case No.: 2015CP2700119

5 Therese Hood,

6 Plaintiff,

7 vs.

Transcript of Record

8 Antoine Johnson,

9 Defendant.

10

11

12

13

VOLUME 3

14

15

September 6, 2017

16

Ridgeland, South Carolina

17

18

19

20

21 BEFORE:

22

The Honorable CARMEN T. MULLEN

23

24

25

APPEARANCES**REPRESENTING PLAINTIFF:**

Roy T. Willey, IV, Esquire
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AND

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1 PROCEEDINGS

2 THE COURT: Good morning. What do we want to
3 take up before the jury comes in this morning?

4 MR. SMITH: Nothing.

5 THE COURT: Nothing.

6 MR. DANIEL: Your Honor, one matter.

7 THE COURT: Yes, sir.

8 MR. DANIEL: There's an expert witness in the
9 courtroom that's been retained by the Plaintiffs.
10 Unless she's called first, I wouldn't have any
11 objection to her obviously being in the courtroom
12 right now. But if we've got some fact witnesses that
13 are going to testify, I would again renew my motion
14 to sequester witnesses. A retained expert --

15 MR. WILLEY: Your Honor, sequestration isn't
16 appropriate for experts. They're able to rely on
17 testimony at trial, that's why we brought her here
18 today, so she can hear the first few witnesses.

19 THE COURT: Okay. Thank you. I would agree
20 with Mr. Willey. She can't rely on what their
21 testimony is, so she can remain.

22 Anything else this morning?

23 MR. WILLEY: Now, I would just tell the Court we
24 do have our first four witnesses that are in or
25 around the courthouse, and we are attempting to get

1 more here so we can move through this expeditiously.

2 THE COURT: Very good. So who are your first
3 four witnesses for this morning? And how long do you
4 expect each of them to --

5 MR. WILLEY: We expect to have enough folks here
6 to go through lunchtime.

7 THE COURT: Okay. Very good. Let's bring the
8 jury in.

9 (Jury enters the courtroom.)

10 THE COURT: Good morning, ladies and gentlemen.
11 Good morning. You all may be seated.

12 Ms. Hamilton, ma'am, I lost another juror. So
13 you are now part of this jury as well. I'm going to
14 go ahead and place you up here if you would.

15 Are we missing someone?

16 THE CLERK: Someone must be up in there.

17 THE COURT: Come on. And then there were 13.
18 All right.

19 . Well, again, good morning ladies and
20 gentlemen. At this time we're going to go ahead and
21 continue with the Plaintiff's case.

22 Mr. Willey, or gentlemen, if you'll call your
23 first witness for this morning.

24 MR. SMITH: Yes, ma'am. The Plaintiff calls
25 Mary Kuck.

1 THE COURT: All right. Come on forward,
2 Ms. Kuck, to be sworn. Right here.

3 Thereupon,

4 MARY E. KUCK

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

7 DIRECT EXAMINATION

8 BY MR. SMITH:

9 Q Good morning.

10 A Good morning.

11 Q Tell us your name.

12 A Mary Elizabeth Ira Kuck.

13 Q Ms. Kuck, thank you for being here today. Where
14 did you drive in from?

15 A Orangeburg.

16 Q All right. And are you married?

17 A Yes, sir.

18 Q And is that your husband back there?

19 A Yes, sir.

20 Q What do y'all do for work?

21 A I'm a school nurse at Orangeburg Preparatory
22 Schools in Orangeburg. And he is -- he works for The
23 Kuckery, which is a local restaurant and catering company.

24 Q That's y'all's restaurant?

25 A No, sir. It's his daughter's restaurant.

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 Q Oh, okay. I'm going to be very brief with you
2 and get you guys out of here very quickly. But what I
3 want to ask you about is the wreck back in November
4 of 2014. Okay?

5 A Yes, sir.

6 Q And was one of -- were you in one of the
7 vehicles that was involved in that wreck?

8 A Yes, sir.

9 Q We've been referring to this flip chart for a
10 while now. Can you see it from there okay?

11 A Yes, sir.

12 Q Is that podium blocking you?

13 A A little bit.

14 Q Would you mind just stepping down for just a
15 minute?

16 THE COURT: You're welcome, Ms. Kuck, to go
17 ahead and step down to better see it.

18 MR. SMITH: It'll be just a second.

19 A (Witness complies.)

20 Q So, Ms. Kuck, this is something that we've drawn
21 up here. Okay?

22 A Yes, sir.

23 Q And you weren't here to hear everyone else's
24 explanation, but this is right where the Dunkin' Donuts is
25 and Southwood Park Drive, and where Mr. Johnson's vehicle

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 was coming out. And Ms. Hood, we've got an "H" for her
2 car. She's coming up this way. There was a collision
3 into oncoming traffic. I've got that "K" there.

4 Is that the vehicle that you were riding
5 in?

6 A Yes, sir.

7 Q All right. You can go ahead and take your seat.
8 Sorry.

9 A Okay. (Witness complies.)

10 Q Ms. Kuck, now, what type of vehicle were you in
11 that day?

12 A A Chevrolet Tahoe.

13 Q And where were y'all coming from and going to at
14 the time?

15 A We had left the Hampton Inn, and we were going
16 to our grandson's ballgame.

17 Q Where was the ballgame?

18 A At Hilton Head Christian School.

19 Q And as we described here, you're riding along
20 Highway 278. Did another vehicle cross the center line
21 and hit y'all?

22 A Yes, sir.

23 Q All right. Ms. Kuck, I'd like to hand you a
24 photo.

25 MR. SMITH: May I approach the witness, Your

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 Honor?

2 THE COURT: You may.

3 BY MR. SMITH

4 Q I know it's hard, but do you recognize that
5 picture?

6 A Yes, sir.

7 Q Is that the vehicle that you and your husband
8 were riding in?

9 A Yes, sir.

10 Q Does that picture fairly and accurately describe
11 the damage from the wreck?

12 A Yes, sir.

13 MR. SMITH: At this time, Your Honor, I'd like
14 to admit as Plaintiff's Exhibit -- I don't know what
15 number though -- Number 6.

16 THE COURT: Any objection?

17 MR. DANIEL: No, Your Honor.

18 THE COURT: Without objection, it's in evidence.

19 *(Whereupon, Plaintiff's Exhibit No(s). 6 marked*
20 *for identification and received in evidence.)*

21 MR. SMITH: Your Honor, may I publish the
22 picture to the jury?

23 THE COURT: You may.

24 (Plaintiff's Exhibit No. 6 published to jury.)

25 BY MR. SMITH

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 Q Ms. Kuck, were you hurt?

2 A Yes, sir.

3 Q Was your husband hurt?

4 A Yes, sir.

5 Q I'm sorry that happened to both of you.

6 What I'd like to ask you about are the
7 lighting conditions that day. And I've asked you these
8 same questions before. Do you recall that?

9 A Yes, sir.

10 Q Okay. We're going to go through this very
11 shortly.

12 Was it just beginning to turn dark?

13 A Yes, sir.

14 Q Was it totally dark yet?

15 A No, sir.

16 Q Was it enough light outside to see the median?

17 A Yes, sir.

18 Q Was it enough light outside that you could see
19 the trees lining the highway?

20 A Yes, sir.

21 Q And was it light enough outside that you could
22 see other vehicles on the road?

23 A Yes, sir.

24 Q And that would be vehicles with or without
25 headlights on?

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 A Yes, sir.

2 Q Ms. Kuck, that's all the questions I have for
3 you. Thank you for your time today.

4 A Thank you.

5 THE COURT: Sit tight. Go ahead.

6 MR. DANIEL: I'm sorry. Thank you, Your Honor.

7 THE COURT: Mr. Daniel, whenever you're ready,
8 sir.

9 MR. DANIEL: Your Honor, may I approach the
10 witness?

11 THE COURT: You may.

12 CROSS EXAMINATION

13 BY MR. DANIEL:

14 Q Good morning, Mrs. Kuck. I'm just going to hand
15 you two more while we're -- for efficiency purposes.

16 A Okay.

17 Q You were just shown some photos of your Tahoe
18 you were in. Those two photographs that I just handed
19 you, do those look like additional photographs of the same
20 Tahoe that you were riding in on the night, or evening,
21 late afternoon of this accident?

22 A Yes, sir.

23 Q Okay.

24 MR. DANIEL: At this time, I'd like to have
25 these marked as Defendant's 4.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 *(Whereupon, Defendant's Exhibit No(s). 4 marked*
2 *for identification.)*

3 BY MR. DANIEL

4 Q Now, you were just asked some questions about
5 the lighting outside at the time of this accident. You
6 said it wasn't all the way dark, and I'm paraphrasing.

7 Was it pretty dark out there?

8 A It -- it was hard to see because there's no
9 lights on the road.

10 Q Yes, ma'am. And you -- the Plaintiff's counsel
11 was asking you questions about this diagram.

12 First of all, it's not -- as far as where
13 the vehicle with this -- with a K on it, you agree this
14 thing is not necessarily drawn to scale, right?

15 A Not necessarily.

16 Q The vehicle with a K could have been even
17 farther back down the road; is that right?

18 A Yes, sir.

19 Q Could it be --

20 MR. SMITH: Jack, Jack, Jack, Jack. You're
21 drawing on my exhibit. Draw on your own.

22 MR. DANIEL: Okay. Your Honor -- it could have
23 been farther back now -- I think I can use it, Your
24 Honor.

25 THE COURT: Actually he can refer to it, he just

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 can't write on it. That's fine. He can't write on
2 it.

3 MR. SMITH: We don't mind him using it.

4 MR. WILLEY: Because we have to use it for our
5 expert.

6 THE COURT: He just can't write on it. That's
7 fine.

8 MR. SMITH: Thank you.

9 BY MR. DANIEL

10 Q But where this K is, I'll do this so, you know,
11 you can see it and the jury can see it clearly.

12 Where this K is, that's not necessarily
13 where your Tahoe was at the time it was hit; do you agree?

14 A Yes, sir.

15 Q And, ma'am, it could have been farther up back
16 down the road on US 278; is that right?

17 A Yes, sir.

18 Q Okay. And trees lined this roadway; is that
19 right?

20 A I believe so.

21 Q It's Hilton Head, there's trees -- this is like
22 a frontage road. You know, they don't allow them to have
23 like a lot of commercial businesses right on -- right up
24 on the highway; is that right? Is that your understanding
25 of how Hilton Head works?

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 A Yes, sir.

2 Q And I can show you some -- some other
3 photographs that have been marked as exhibits.

4 Looking at Plaintiff's Exhibit 5, now,
5 ma'am, I'm not asking you to identify the intersection,
6 but there's been testimony already yesterday establishing
7 that this is the intersection of where Southwood Park
8 Drive is and US 278.

9 Now, for the purposes of this series of
10 questions, if you're back farther down the road this way,
11 outside of the picture, over to the left from where the
12 little sticker is, Exhibit 5 on the bottom, the bottom
13 side of this corner, you see all these trees right there,
14 right?

15 A Yes, sir.

16 Q And they're pretty tall trees, right?

17 A Yes, sir.

18 Q And once the sun starts going down, just common
19 sense, those trees, they're going to obstruct sunlight; do
20 you agree?

21 A Yes, sir.

22 MR. SMITH: Objection, Your Honor. Excuse me.
23 Objection, Your Honor. I think without a proper
24 foundation of the positioning of the sun and what
25 this witness' point of view is, this calls for

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 speculation.

2 THE COURT: Well, if she can answer, she can
3 answer the question. So, go ahead.

4 BY MR. DANIEL

5 Q When this accident happened, had the sun started
6 to go down?

7 A Yes, sir.

8 Q It was starting to get dark, wasn't it?

9 A Yes, sir.

10 Q The sun was a good well on its way down?

11 A Yes, sir.

12 Q And when the sun starts going down, you'd agree
13 that just common sense, what people know is that once it
14 starts going down below trees it's going to make that
15 roadway even darker; is that right?

16 A Yes, sir.

17 Q Okay. Do you see any streetlights in this
18 photo?

19 A No, sir.

20 Q Okay. Do you remember giving a deposition --

21 A Yes, sir.

22 Q -- in this case that was noticed by the
23 Plaintiff's attorney, Mr. Smith, and he had you on video
24 and all that? Do you remember that?

25 A Yes, sir.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 Q And you were there for pretty much the whole
2 day; is that right?

3 A Yes, sir.

4 Q Do you remember describing what you saw right
5 before you were hit head on?

6 A Yes, sir.

7 Q Okay. Tell the jury what you saw.

8 A I just saw an object coming towards us very
9 fast, and then it was only a matter of seconds and we were
10 hit.

11 Q Okay. And you were in that Chevy Tahoe, we got
12 photos there; is that right?

13 A Yes, sir.

14 Q Was your husband driving?

15 A Yes, sir.

16 Q And what is your husband's name?

17 A William Kuck.

18 Q Where were you?

19 A I was in the passenger seat.

20 Q And you said an object coming at you fast. Your
21 husband, did he have his headlights on?

22 A He did.

23 Q Okay. Could you make out what was coming at
24 you, whether it was a car? SUV?

25 A I didn't -- I -- no, sir. I did not know what

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 was coming, but I could see something coming fast.

2 Q Mrs. Kuck, did you see headlights coming at you
3 in the moments before you were hit?

4 A No, sir.

5 Q So that -- then you found out after the fact
6 what ended up hitting you, it was another SUV; was it not?

7 A Yes, sir.

8 Q Was it your understanding that SUV was driven by
9 the Plaintiff in this case, Mrs. Hood?

10 A Yes, sir.

11 Q You'd agree with me those photos there, there's
12 some severe damage to your vehicle?

13 A Yes, sir.

14 Q Just based on what you know, common sense as a
15 driver and the impact you experienced, you believe that
16 Mrs. Hood was traveling at a high rate of speed?

17 A Yes, sir.

18 Q And you never saw headlights?

19 A No, sir.

20 Q In your deposition, and I didn't ask these
21 questions, Plaintiff's counsel did, it was on video, but I
22 think he tried to go through the timing --

23 MR. SMITH: Your Honor, I object. I don't know
24 what exactly he's doing with the deposition here. I
25 believe the proper procedure would be to use it for

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 impeachment in some way, but not simply to review the
2 questions that I asked.

3 THE COURT: I agree. You have to ask her a
4 question. And once you've asked her the question, if
5 it's something different than she answered in the
6 deposition, then you impeach her with it.

7 MR. DANIEL: Yes, ma'am.

8 BY MR. DANIEL

9 Q Mrs. Kuck, you saw something coming at you, and
10 you said it was moving fast?

11 A Yes, sir.

12 MR. SMITH: Your Honor, he just did it again.
13 He just said what she said in the deposition, despite
14 the instruction.

15 THE COURT: Okay. He can ask the question, but
16 you can't say, "in your deposition." You just need
17 to ask the question.

18 MR. SMITH: I didn't say it.

19 THE COURT: Okay. Well, go ahead.

20 BY MR. DANIEL

21 Q I'll just put it this way: What was coming, was
22 it coming slow?

23 A No, sir.

24 Q And you didn't see headlights, we've established
25 that.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 A That's correct.

2 Q Okay. Now, as far as the time frame, at some
3 point you first noticed something coming down the roadway
4 at you; is that correct?

5 A Yes, sir.

6 Q How long was it in your view before it hit?

7 A A few seconds.

8 Q Do you think it was longer than one second?

9 A Yes, sir.

10 Q Did -- where was the object coming from? If you
11 were -- I'm not going to draw on this. But if you were in
12 the vehicle labeled K, you're farther back down the road
13 or somewhere there, just for demonstrative purposes, this
14 vehicle that is identified with a K, in which direction
15 was the object coming from that struck you?

16 A It came this way (indicating.)

17 Q Will you come down here and just show the jury?

18 A (Witness complies.)

19 Q You can just point, don't mark on it.

20 A Okay. It was coming down this way.

21 Q So something was coming from the direction where
22 this vehicle labeled with an H is?

23 A Yes, sir.

24 Q And then struck you head on --

25 A Right.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 Q -- on the other side of traffic?

2 A Yes.

3 Q Okay. Y'all were not stopped; is that right?

4 A No, sir.

5 Q You were driving somewhere, and did -- were you
6 looking -- was your husband looking at GPS or anything
7 like that?

8 A No, sir. I was -- I was navigating. I mean, I
9 was telling him where to go.

10 Q We just looked at this basic diagram. You're in
11 the passenger seat.

12 A Right.

13 Q What we now know, based on what you saw that
14 evening, late afternoon, as the sun's going down, is an
15 object coming at you from what would be your left, headed
16 toward you at an angle?

17 A Right.

18 Q And striking your vehicle head on; is that
19 right?

20 A Yes. Yes, sir.

21 Q And you believe that you saw that object for
22 more than one second?

23 A Yes, sir.

24 Q Was it more than two seconds?

25 A It was probably around three seconds.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 Q So -- so one, 1,000; two, 1,000; three, 1,000 --

2 A Boom.

3 Q Did you have time to say anything before you
4 were hit?

5 A No, sir.

6 Q Do you think your husband had time to avoid this
7 accident?

8 A No, sir.

9 Q As far as what happened with vehicles farther up
10 the road, before this other SUV came and struck yours, did
11 you see anything take place?

12 A No, sir.

13 Q Antoine Johnson is the Defendant named in this
14 case, sitting over at the table next to Ms. Suttie. Do
15 you know him?

16 A No, sir.

17 Q Okay. Never talked to him? Never met him
18 before?

19 A No, sir.

20 Q Okay. I'll represent to you that he was in a
21 vehicle that night, and there was another impact between
22 his vehicle and Mrs. Hood's vehicle. Did you see that
23 take place?

24 A No, sir.

25 Q Did you ever talk with me before that deposition

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 that's been, I don't know, months ago, maybe a year? It's
2 been a while.

3 A No, sir.

4 MR. DANIEL: That's all I have.

5 MR. SMITH: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. SMITH:

8 Q Ms. Kuck, you didn't speak to me either before
9 that deposition, did you?

10 A No, sir.

11 Q I want to go back to the basics. Mr. Daniel
12 just talked about what we all know, right? We all know
13 about the trees and the sun.

14 Ms. Kuck, is it true that the sun rises in
15 the east and sets in the west?

16 A I don't know.

17 Q If we assume that's true, the sun rises in the
18 east and sets in the west -- now, y'all were going west on
19 Highway 278, right?

20 A Yes, sir.

21 Q And the road, Highway 278, runs east to west;
22 right?

23 A Yes, sir.

24 Q So if the sun sets in the west, the sun wasn't
25 behind all these trees, the sun was right in front of you,

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 wasn't it? As it was setting.

2 MR. DANIEL: Objection, Your Honor.

3 THE WITNESS: I don't recall.

4 MR. DANIEL: What's the objection?

5 THE COURT: Okay. Let's just ask the question.

6 That's fine.

7 MR. SMITH: I withdraw it.

8 BY MR. SMITH

9 Q Now, Ms. Kuck, in this case, your testimony, no
10 headlights, right?

11 A Yes, sir.

12 Q One of the issues that we have, and the
13 testimony that we will receive, and the argument so far is
14 Mr. Johnson couldn't see Ms. Hood's vehicle because she
15 didn't have headlights on. Is that what you understand
16 this to be about?

17 A You said Ms. Kuck's vehicle?

18 Q I'm sorry, Ms. Hood. Right?

19 One of the issues is Mr. Johnson says he
20 couldn't see her because her headlights weren't on. Do
21 you understand that?

22 A Yes, sir.

23 Q And that goes back to my questions that I asked
24 you in the very beginning. There was enough light outside
25 for you to see vehicles, vehicles with or without

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 headlights? Is that your testimony?

2 A Yes, sir.

3 Q And is that the truth?

4 A Yes, sir.

5 Q And no matter what Mr. Daniel comes up here and
6 says to you, are you going to change that testimony for
7 him in any way?

8 A No, sir.

9 MR. SMITH: Okay. Thank you.

10 THE COURT: Anything further?

11 MR. DANIEL: Yeah. I just want --

12 THE COURT: Ms. Kuck, you need to speak up a
13 little bit. Okay?

14 THE WITNESS: Okay.

15 RE-CROSS EXAMINATION

16 BY MR. DANIEL:

17 Q I want to put a little finer point on that
18 though. I'm not asking you to change your testimony, but
19 what you did testify to is, you saw an object coming at
20 you. You couldn't even -- it was dark enough out where
21 you couldn't tell whether it was a truck or car; is that
22 right?

23 A True.

24 Q It was dark enough out where you couldn't make
25 details of what was coming; is that right?

RECROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 A Yes, sir. Yes, sir.

2 Q And you agree with me that as things get farther
3 away in the dark, or in dark conditions, it's hard to see
4 them?

5 A Yes, sir.

6 Q And you're not here to testify to what Antoine
7 Johnson could or couldn't see at the time of this
8 accident; is that right?

9 A Yes, sir.

10 Q Would you agree with me that Exhibit 5 that's
11 been entered by the Plaintiffs, it was a heck of lot
12 darker out by the time of this accident than what
13 Exhibit 5 depicts?

14 A Yes, sir.

15 Q Okay. Did you see running lights or parking
16 lights lit up, or anything lit up on the object that hit
17 your vehicle?

18 A No, sir.

19 MR. DANIEL: Thank you.

20 THE COURT: Anything further of this witness?

21 MR. SMITH: Just one question, Your Honor.

22 THE COURT: Yes.

23 REDIRECT EXAMINATION

24 BY MR. SMITH:

25 Q I'm not going to ask you what Mr. Johnson could

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 see. But you, as one of the people there that day, one of
2 the vehicles involved, not far away from all this that's
3 happening, you, yourself, you could see other vehicles
4 with or without headlights on. Right?

5 A I -- I could not.

6 Q Okay. I'm sorry. You could see other -- there
7 was enough light outside that you, not Mr. Johnson I'm
8 talking about, but there was enough light outside that you
9 could see vehicles with or without headlights?

10 A No, sir, I could not.

11 Q Are you confused by the question? I've asked
12 you that, it seems, three or four times. Am I confusing
13 you with the question?

14 THE COURT: You need to rephrase it. You need
15 to rephrase it.

16 THE WITNESS: No.

17 BY MR. SMITH

18 Q Let me just ask the original question I asked
19 you from before.

20 Was it light enough outside that you could
21 see other vehicles on the road?

22 A No, sir.

23 Q You don't remember testifying under direct with
24 me just now that there was enough light outside that you
25 could see other vehicles on the road?

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 A I guess I didn't understand what you was asking.

2 Q Did you understand it when I asked it in your
3 deposition as well?

4 A (No response.)

5 Q I asked you this question before, didn't I?

6 A Yes, sir.

7 Q In your deposition, the exact same question,
8 word for word; did I not?

9 A Yes, sir.

10 Q And you told me in your deposition, when you
11 swore to tell the truth, you told me that there was enough
12 light outside that you could see other vehicles with or
13 without headlights. That was your sworn testimony; was it
14 not?

15 A Yes, sir.

16 Q And again, today, you took the same oath, and
17 your sworn testimony was, "it was just beginning to turn
18 dark, there was enough light outside you could see the
19 median. There was enough light outside you could see the
20 trees lining the highway. And there was enough light
21 outside you could see other vehicles on the road with or
22 without headlights."

23 That was your sworn testimony when you got
24 up on the stand, right?

25 A Yes, sir.

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 Q And then you told me you were not going to
2 change that testimony, no matter what Mr. Daniel had
3 asked; you remember that?

4 A Yes, sir.

5 Q But now you're changing that testimony?

6 A I was --

7 MR. DANIEL: Objection, Your Honor,
8 argumentative.

9 THE COURT: Okay. Agreed. Don't argue with
10 her. Just ask the question.

11 BY MR. SMITH

12 Q Okay. Were you confused by my --

13 A Yes, sir.

14 Q -- last question?

15 A Yes, sir.

16 Q Do you stand by your original response?

17 A Yes, sir.

18 MR. SMITH: I'm sorry. Thank you.

19 MR. DANIEL: Very briefly, Your Honor. I just
20 want to put a finer point on this.

21 FURTHER RE-CROSS EXAMINATION

22 BY MR. DANIEL:

23 Q You were confused. You were asked a general
24 question, "Could you see vehicles out there?"

25 A Right.

FURTHER RECROSS EXAMINATION OF MS. KUCK BY MR.
DANIEL

1 Q Now, that question was not prefaced with
2 vehicles 10 feet from you, 15 feet from you, 20 or 30 feet
3 from you, 100 yards from you. That question was not
4 prefaced in that manner, was it?

5 A No, sir.

6 Q And you could see the trees lining the roadway.
7 He didn't ask you, you know, was it dark where those trees
8 -- was it dark when you looked at the trees, or was the
9 sun shining on the trees? He didn't ask you that
10 question, did he?

11 A No, sir.

12 Q And was the sun shining on those trees at that
13 time of day?

14 A No, sir.

15 Q Was the sun setting at that time of day?

16 A It was.

17 Q Was the sun in your husband's face, or in your
18 face, as y'all were headed off of Hilton Head Island
19 towards Beaufort at the time of this accident?

20 A No, sir.

21 Q So you would agree that a vehicle on this road
22 that's getting dark, or pretty well dark, if it's off in
23 the distance from you might be pretty hard to see; is that
24 right? If it didn't have its headlights on.

25 A Yes, sir.

FURTHER RECROSS EXAMINATION OF MS. KUCK BY MR.
DANIEL

1 MR. DANIEL: Thank you.

2 THE COURT: Anything further?

3 MR. SMITH: No, ma'am.

4 THE COURT: Okay. You may step down.

5 THE WITNESS: Thank you.

6 THE COURT: Call your next witness.

7 MR. SMITH: Plaintiff calls Antoine Johnson.

8 Your Honor, may this witness be excused?

9 THE COURT: He may.

10 Thereupon,

11 ANTOINE JOHNSON

12 was called as a witness, having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SMITH

16 Q Mr. Johnson, good morning.

17 A Good morning.

18 Q How are you doing today?

19 A Pretty good.

20 Q I want to start out with some basics with you.

21 Okay?

22 Do you believe all drivers must pay
23 attention to the road to prevent injury or death to other
24 people?

25 A Yes, sir.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 MR. DANIEL: Objection, Your Honor.

2 THE COURT: Basis?

3 MR. DANIEL: May we approach?

4 THE COURT: You may.

5 (Off-the-record discussion held.)

6 BY MR. SMITH:

7 Q Mr. Johnson, do you believe all drivers must pay
8 attention to the road to prevent injury or death to other
9 people using the road?

10 A Yes, sir.

11 Q Could you speak up for us, please?

12 A Yes, sir.

13 Q Do you believe all drivers must look before
14 crossing a busy highway to prevent injury or death to
15 other people using the road?

16 A Yes, sir.

17 Q These are the rules of the road; are they not?

18 A Yes.

19 Q Rules everyone must follow?

20 A Yes.

21 Q And, Mr. Johnson, if these rules aren't
22 enforced, they don't mean anything, do they?

23 A Yes.

24 Q Now, the first thing we need to do is, we need
25 to establish who hit who. Okay?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: Is that a question?

2 MR. DANIEL: Well, just telling --

3 THE COURT: Okay. You need to ask a question.

4 Okay? I know he's an adverse witness, I know you can
5 lead him. But, again, ask him a question.

6 MR. SMITH: Yes, ma'am.

7 BY MR. SMITH

8 Q Mr. Johnson, who hit who? Did you hit Ms. Hood,
9 or did she hit your vehicle?

10 A I hit Ms. Hood.

11 Q All right. Now, that's not what you told the
12 police officer, is it?

13 A I don't recall.

14 Q If the police officer testified you told her at
15 the scene that Ms. Hood hit you, would you have any reason
16 to disagree with that?

17 A She can say anything, but I don't recall what I
18 told her at the time.

19 Q Okay. Don't know either way?

20 A I don't recall.

21 Q Okay. And the next thing that happened after
22 the collision was Ms. Hood's car was sent across the
23 median into oncoming traffic, true?

24 A Yes.

25 MR. DANIEL: Objection, Your Honor. Facts not

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 in evidence.

2 THE COURT: And, again, I haven't heard it. So
3 I don't know.

4 MR. SMITH: Well, I'm asking him. After he hit
5 Ms. Hood, her office (SIC) went across the median
6 into oncoming traffic.

7 MR. DANIEL: He said "sent."

8 THE COURT: Okay. You can say "did." But go
9 ahead, ask him a question.

10 BY MR. SMITH

11 Q After you hit Ms. Hood's vehicle, did her car go
12 across into oncoming traffic?

13 A Yes.

14 Q Just like what's pictured here?

15 A Yes.

16 Q I know this isn't to scale, but does this
17 generally represent what happened?

18 A Yes, sir.

19 Q I'm sorry?

20 A Yes.

21 Q Okay. And what caused Ms. Hood's car to go into
22 oncoming traffic? Was it because you hit her?

23 A I can't be the one to call that.

24 Q When I took your deposition, you took the same
25 oath that you took here today; do you remember that?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A I do.

2 Q "And what do you think caused her direction
3 change to have her careen across the highway?"

4 Answer: "I guess us colliding."

5 Does that sound correct?

6 A If that's what the deposition said, then I guess
7 that's my statement.

8 Q Okay. It had nothing to do with overcorrecting,
9 did it?

10 A I don't know.

11 Q It was a bad wreck, a head-on collision?

12 A Yes.

13 Q From what you saw, someone could have died,
14 true?

15 MR. DANIEL: Objection, Your Honor, speculation.

16 THE COURT: Well, it's irrelevant as well.

17 So move on. It's not an appropriate question.

18 BY MR. SMITH:

19 Q Did you see smoke?

20 A I don't recall.

21 Q But you did not immediately get out of your car,
22 did you?

23 A I don't believe so.

24 Q But you were able to get out of your car,
25 weren't you?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Yeah.

2 Q But you chose not to.

3 A No.

4 Q You chose not to render aid or go check on the
5 people involved?

6 MR. DANIEL: Objection, Your Honor, relevance.

7 MR. SMITH: Your Honor, there's going to be a
8 jury charge on this.

9 THE COURT: Well, just go ahead and if he can
10 answer the question, he can answer the question.

11 BY MR. SMITH:

12 Q You chose not to go check on the people or
13 render aid after this happened, true?

14 A I called help for myself.

15 Q For yourself. But you did not get out of your
16 vehicle to go check on the people?

17 A No.

18 Q And you called help for yourself, but you did
19 not call 911? You did not call an ambulance, did you?

20 A No.

21 Q You sat in the car?

22 A Yeah.

23 Q And you got on the phone, right?

24 A I did.

25 Q And when you finally got out of the car, the

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 reason you got out of the car was to check the damage to
2 your own vehicle; is that true?

3 A I don't recall.

4 (Pause.)

5 BY MR. SMITH:

6 Q Mr. Johnson, is this a copy of the deposition
7 transcript from when you testified previously?

8 A Yes.

9 Q Okay. Could you turn to Page 126 for me, sir?
10 Are you there?

11 A Almost.

12 Q Okay.

13 A All right.

14 Q Can you see the little numbers down on the left
15 side of the page?

16 A Yes, sir.

17 Q Those are line numbers. Okay?

18 So, I'd like -- I'm going to ask you about
19 Page 126, lines 20 to 24. Okay? I'm going to ask the
20 question and you read the answer.

21 "Where was the first place you -- what was
22 the first reason you got out of your vehicle; do you
23 remember?"

24 And what was your answer, sir?

25 A "To check the damage."

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Keep going.

2 A "To check the damage to my car."

3 Q To check the damage to your car. Does that
4 refresh your recollection as to why you finally got out of
5 your vehicle?

6 A Yeah.

7 Q Who had the stop sign in front of them, was it
8 you or Ms. Hood?

9 A I did.

10 Q And you can put that down. I'm sorry.

11 Who had the responsibility to yield to
12 traffic, would that have been you or Ms. Hood?

13 A Me.

14 Q Now, just before the wreck, you were at Dunkin'
15 Donuts, right?

16 A Yes.

17 Q Okay. And you were dropping off your cousin,
18 Scooby.

19 A Yeah.

20 Q Because somebody else was coming to pick him up?

21 A Yeah.

22 Q I'm sorry. Can you say that again?

23 A Yes.

24 Q And your plan, if we refer to this chart over
25 here, your plan was, you were going to turn left and go

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 west on Highway 278.

2 A Yes.

3 Q Right? But before you were going to make this
4 left onto that road, was your intention to get to the
5 median, stop, and then proceed the rest of the way
6 through?

7 A Yes.

8 MR. DANIEL: I just want to be able to see.

9 THE COURT: Pardon?

10 MR. DANIEL: I just want to be able to see.

11 THE COURT: That's fine.

12 BY MR. SMITH

13 Q Now, when you reached the stop sign -- when you
14 looked left, that would have been your point of view;
15 would it not?

16 A Yes.

17 Q Nothing obstructing your vision at this
18 intersection, right?

19 A No.

20 Q And left, this is where Ms. Hood was coming
21 from, right?

22 A Yes.

23 Q Now, you've been to this intersection before?

24 A Yes.

25 Q And you know it's a busy road.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Yes.

2 Q And you knew you needed to look very carefully
3 before crossing?

4 A Yes.

5 Q Yes?

6 A Yes.

7 Q Not just glance, but really look, right?

8 A Right.

9 MR. DANIEL: Objection, Your Honor.

10 THE COURT: Basis?

11 MR. DANIEL: He's asked and answered the
12 question.

13 THE COURT: Okay. Overruled. Go ahead.

14 BY MR. SMITH:

15 Q And at the time that this happened, your
16 testimony is it wasn't totally dark, there was still a
17 little bit of light out, right?

18 A Right.

19 Q But you didn't see anyone coming?

20 A I waited for one car to pass me, but then I
21 looked left again.

22 Q Yeah. But after that car had passed you, I
23 think you said it was a Hyundai or something, right?

24 A All I know, it was a silver car.

25 Q Okay. After the silver car passed and you

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 looked left, you didn't see anyone?

2 A Nothing.

3 Q You didn't see a car with running lights in the
4 left lane?

5 A Not at all.

6 Q Coming down this inside lane to the median?

7 A Not at all.

8 Q And you didn't see a car with Xenon headlights
9 about ten car lengths back, with full headlights on,
10 coming from the outside lane, did you?

11 A No.

12 Q You didn't see either one of them.

13 A They probably was at that stop light, I don't
14 know.

15 Q And when you hit the gas and decided to cross
16 Highway 278, you had no idea two vehicles were approaching
17 from your left, did you?

18 A I didn't see two vehicles.

19 Q You had no idea who was in those cars.

20 A Not at all.

21 Q You didn't know if it was a man, woman, mother,
22 daughter, grandmother? Had no idea who was coming down
23 the road?

24 A I didn't see no car.

25 Q But as soon as you pulled out, she was right

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 there?

2 A Yeah.

3 Q Never sounded your horn?

4 A No.

5 Q You had no time to react whatsoever?

6 A No.

7 Q Now, you started from a complete stop; did you
8 not?

9 A I did.

10 Q Okay. And you were accelerating toward the
11 median?

12 A I was.

13 Q All right. Now, I just want to make absolutely
14 certain here, okay, to this point. This is not a
15 situation where you saw Ms. Hood but misjudged how much
16 time you had and ended up hitting her?

17 A Rephrase the question.

18 Q This is not the situation where you saw her,
19 misjudged how much distance you had, or how much time you
20 had to get in front, and ended up being wrong about that.
21 You just never saw her in the first place.

22 A I never saw her at all.

23 Q Okay. And when you decided to hit the gas and
24 cross the road, you can't say how close Ms. Hood was
25 because you never saw her?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A No.

2 Q Or Dustin Lee, you don't know how close he was
3 either?

4 MR. DANIEL: Asked and answered, Judge.

5 MR. SMITH: I'll withdraw it, Your Honor.

6 BY MR. SMITH:

7 Q So you don't know what lights Ms. Hood had on.
8 You're just assuming they were off because you say, if she
9 had headlights on, you think you would have seen her; is
10 that true?

11 MR. DANIEL: Objection, Your Honor,
12 mischaracterization. He didn't testify to that.

13 THE COURT: Okay. You need to rephrase the
14 question.

15 BY MR. SMITH:

16 Q Mr. Johnson, are you assuming that Ms. Hood's
17 headlights were off?

18 A I didn't see no headlights.

19 Q But you didn't see her car, period, right?

20 A If I would have seen her headlights, I would
21 have seen her car.

22 Q But my question is: You didn't see her car, so
23 you don't know if her headlights were on or off. You're
24 just assuming they were off because you -- that's why you
25 didn't see her.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A I didn't see no headlights, so I didn't see no
2 car.

3 Q Do you remember telling the police officer that
4 you saw her car and that she did not have headlights on?

5 A I don't recall.

6 Q You might have said that. You don't recall
7 either way.

8 A I don't recall.

9 Q Mr. Johnson, do you have a cell phone?

10 A I do.

11 Q Is the phone number (843)338-4115?

12 A It was.

13 Q Sprint?

14 A It was.

15 Q Is that a smart phone?

16 A It is.

17 Q Does it have a keyboard for texting?

18 A Yeah.

19 Q Are you on that phone a lot?

20 A Sort of, yeah.

21 Q Sort of?

22 A Yeah.

23 Q Mostly texting?

24 A I do a little of everything.

25 Q And you had your phone on you at the time of the

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 wreck, didn't you?

2 A My phone's always on.

3 Q No, I mean it was -- it was with you?

4 A Yeah.

5 Q And you had it in your car?

6 A It was.

7 Q Now, at the time of the wreck, were you feeling
8 alert?

9 A I was very alert.

10 Q Very alert?

11 A Yes.

12 Q You were not tired or drowsy?

13 A Not at all.

14 Q Do you remember how late you were up the night
15 before?

16 A Probably until about -- I can't even say.

17 Q Do you recall getting off the phone the night
18 before at 12:17 a.m.?

19 A Don't recall.

20 Q A three-hour call?

21 A Don't recall.

22 MR. SMITH: Your Honor, may I approach?

23 THE COURT: You may.

24 MR. DANIEL: May I approach, Your Honor?

25 THE COURT: Sure.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 MR. DANIEL: At least look at what he's handing
2 the witness.

3 MR. SMITH: Oh, I'm sorry. Can you give Jack a
4 copy?

5 MR. WILLEY: You have all of the copies. He's
6 seen it before.

7 BY MR. SMITH

8 Q Mr. Johnson, is your phone number (843)338-4115?

9 A That was the number I had at the time.

10 Q Okay. And if we start here in this first entry,
11 on 11-6-2014, so that would be November the 6th, 2014, the
12 night before the wreck, right?

13 A Uh-huh.

14 Q Is that a "yes"?

15 A Yes.

16 Q We see a call that starts -- a voice call that
17 starts at 2114. That 's 9:14, right?

18 A Yes.

19 Q And that's a three-hour call that ends at 0017.
20 That's at 12:17 a.m., just after midnight.

21 A Yeah.

22 Q All right. So if you hung up the phone at
23 12:17, just after midnight the day before the wreck, does
24 that refresh your recollection as to how late you were up
25 that night?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A It doesn't show that I hung up the phone though.
2 The caller on the other end could have hung up the phone.
3 I could have been sleeping.

4 Q So you're saying that this entry for an inbound
5 call -- right?

6 A Yeah. I answered the call, but that doesn't
7 mean I ended the call though.

8 Q Okay. So you're saying what may have happened
9 was, you didn't talk to this person, you just answered the
10 phone and you sat the phone down for three hours and
11 didn't talk to them --

12 A I could have had a phone conversation and fell
13 asleep on the phone. I'm known for doing that.

14 Q Okay. What do you think's more likely? That
15 you had a conversation until just after midnight, or that
16 you fell asleep during the phone call?

17 A I don't know what happened. I can't tell you.

18 Q Well, let me ask you this: Do you remember who
19 is 473-5686? Who were you talking to?

20 A Don't recall.

21 Q You don't know who that number is?

22 A I don't recall. I haven't had that number in
23 three years.

24 Q No, no, no. Your number -- I'm sorry.

25 A That's the caller's number.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Do you remember calling --

2 A That's the caller number. I didn't have this
3 phone in three years, so I don't remember whose number
4 that is.

5 Q Okay. But, what you want the jury to believe is
6 that this voice call that came in from this number that
7 lasted three hours, that you don't think you were on the
8 phone that late, you went to bed earlier. Is that what
9 you're saying?

10 MR. DANIEL: Objection, mischaracterization.

11 BY MR. SMITH:

12 Q Well, what are you saying?

13 A I could have been on the phone, but I don't know
14 how long I was on the phone. I don't know if I ended the
15 call or not.

16 Q Well, if you were on the phone, as these records
17 suggest through just after midnight -- I mean, do you stay
18 up after midnight? Is that unusual for you?

19 A Sometimes, depending on the time of the week.

20 Q Okay. Now, Mr. Johnson, do you recall what time
21 you woke up that morning?

22 A I usually get up for work about 6:00.

23 Q Okay. You see here, the next entry, 11-7, okay,
24 it's the day of the wreck, we've got an outbound call. So
25 that is -- I'm sorry, an outbound text.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Do you see that next entry?

2 A Yep.

3 Q So that is your sending a text. And what time
4 of the morning are you sending your first text of the day?

5 A 4:44.

6 Q 4:44 in the morning?

7 A Yeah.

8 Q So, about four and a half hours between the last
9 call and the first text in the morning. Would you agree
10 with that?

11 A Yes.

12 Q Mr. Johnson, is it fair to say that the last
13 thing that you did at night was hang up the phone, and the
14 very first thing you did in the morning was grab your
15 phone?

16 A I can't say that far that the first thing I did
17 in the morning was grab my phone.

18 THE COURT: Mr. Johnson, you need to sit up and
19 get the microphone to your mouth, sir, so we can hear
20 you.

21 BY MR. SMITH:

22 Q Can you tell us?

23 A I can't say that the last thing I did was hang
24 up the phone, but I know the first thing I did was pick up
25 the phone. That's usually what I do in the morning.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Is that normal for you? The second you wake up,
2 you reach for that phone and you either make a call or
3 send a text?

4 A After I do what I got to do, yeah, I usually go
5 to my phone.

6 Q Okay. And you went to work that day sometime
7 between 5:00 and 7:00 a.m., true?

8 A I usually get to work about 6:45.

9 Q Sometime between 5:00 and 7:00 a.m.?

10 A About 6:45.

11 Q Okay. Between 7:30 and 9:30, did you use your
12 phone 26 times?

13 A I guess.

14 Q Okay. I mean, we can go through them and count
15 them up, if you like.

16 So between 7:30 a.m. and 9:30 a.m. --

17 MR. DANIEL: Your Honor, I'm going to object to

18 --

19 THE COURT: What's your objection?

20 MR. DANIEL: Can we approach unless you want me
21 to make the objection?

22 THE COURT: Sure.

23 (Off-the-record discussion held.)

24 BY MR. SMITH:

25 Q So Mr. Johnson -- I'm sorry. Would you come

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 down here, please? I don't think you're going to be able
2 to see it from up there.

3 A (Witness complies.)

4 Q So the question was: Between 7:30 in the
5 morning to 9:30 in the morning, I count 26 phone
6 activities, one of those being a voice call.

7 Does that seem right to you?

8 A I guess.

9 Q I'm sorry. Can you -- you got to speak up.

10 A I guess.

11 Q Okay. The court reporter is right behind you as
12 well, and she's going to need to hear you. Okay?

13 And then from 10:25 a.m. through
14 11:56 a.m., I count another 35 times. You're welcome to
15 count them if you like.

16 Does that seem accurate to you?

17 A Okay.

18 Q Okay. And now from 11:57 a.m. through
19 3:50 p.m., we're getting into military time here, 350, we
20 got another 25 times.

21 Does that seem correct?

22 A Correct.

23 Q And you got off work at 4:00 that day; is that
24 true?

25 A About 2:30, 3:30.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Okay. So from 7:00 a.m. to 4:00 p.m -- well,
2 from 7:30 a.m. to 4:00 p.m., we've got 26, 35, and 25.
3 That's 93 times, 93 uses of the phone up to this point; is
4 that right?

5 A Yes.

6 Q And this is while you're at work, right? Yes?

7 A Right.

8 Q Okay. And then you went home.

9 A No, I didn't.

10 Q Okay. You went to go cut Scooby's hair?

11 A Yeah.

12 Q And from 4:02 through 4:26 -- I'm sorry. From
13 4:02 to 4:26, another 29 times.

14 Does that seem correct?

15 A Correct.

16 Q And then you got back in the car to take Scooby
17 up to Dunkin' Donuts a little after 4:30 -- well, after
18 4:30; is that fair to say?

19 A I don't really recall what time we left the
20 house.

21 Q Okay. So we know the wreck happened somewhere
22 around 6 o'clock at night, right?

23 A Yeah.

24 Q Okay. And it happened at just outside the
25 Dunkin' Donuts, right?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Yes.

2 Q Okay. So is it fair to say -- you don't live an
3 hour and a half away from Dunkin' Donuts, do you?

4 A About an hour -- about 45 minutes.

5 Q About 45 minutes. So you would have gone up to
6 -- and you didn't get anything to eat at Dunkin' Donuts,
7 right?

8 A No.

9 Q You were just dropping him off, right?

10 A Yes.

11 Q So sometime after 4:30 is when you went to
12 Dunkin' Donuts to go drop Scooby off?

13 A Yeah, sometime after that.

14 Q And then as we start getting a little closer in
15 time here we see voice calls at 4:42, 4:50, and 5:43; you
16 see that?

17 A That's a text message.

18 Q Okay. Text message there.

19 And these two text messages here, they're
20 just 16 seconds apart at 5:43 p.m.; do you see that? It's
21 got the seconds on here, 5:43:12 and 5:43:28.

22 A Okay.

23 Q Did you say "okay"?

24 A Right.

25 Q I'm not trying to be rude, I'm just making sure

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 the court reporter can hear you. Okay?

2 And at this point, from the time you went
3 to work, right -- from the time you went to work, you had
4 used your phone 93 plus 29 plus 2 -- that's 124 times.

5 MR. DANIEL: Objection, Your Honor. This
6 document doesn't show that he's using the phone every
7 time. A lot of it --

8 THE COURT: That's a mischaracterization.

9 MR. DANIEL: Yes, ma'am. Some of these are
10 inbound texts. I'll deal with it with a question,
11 but objection.

12 THE COURT: Okay.

13 BY MR. SMITH:

14 Q Mr. Johnson, is it true that generally when you
15 receive a text message, you look at it?

16 A Not always.

17 Q Not always? If you used your phone -- well, if
18 your phone log shows phone activity 124 times from the
19 time you went to work at 5:45, your testimony is
20 "sometimes you look at them, sometimes you don't."

21 A I mean, I look at them, but not always right
22 away.

23 Q Okay. And then at 5:57, you receive a text
24 message; do you not?

25 A I do.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q And you understand that we contend this is when
2 the wreck happened, at 5:57 or earlier?

3 A I can't recall.

4 Q You've been sitting here through the trial. You
5 don't know that that's --

6 A I don't know the actual time of the wreck.

7 Q All right. Mr. Johnson, can you see how some
8 people might believe that explains why you didn't see the
9 vehicles coming down the road, because you were looking at
10 this text that came in in the exact minute of the wreck?

11 MR. DANIEL: Objection, speculation.

12 THE WITNESS: There's no guarantee I opened the
13 text message though.

14 BY MR. SMITH

15 Q I'm sorry?

16 A There's no guarantee I opened the text message.

17 Q No, there's no guarantee, but my question is:
18 Can you see how people might think that explains why you
19 didn't see Ms. Hood coming down the road to your left, and
20 why you didn't see Dustin Lee with his Xenon headlights
21 ten car lengths behind?

22 MR. DANIEL: Your Honor, objection. He's asking
23 the witness to speculate.

24 THE COURT: Agreed. It's a speculative
25 question.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 BY MR. SMITH:

2 Q Mr. Johnson, do you expect the jury to believe
3 that you were not looking at your phone as you crossed
4 Highway 278 at 5:57 p.m.?

5 A Say that again?

6 Q Do you expect the jury to believe that you were
7 not looking at your phone when you crossed the highway at
8 5:57 p.m.?

9 A I can't think for the jury.

10 Q Are you asking them to believe that? You
11 understand that's one of the things that we're claiming,
12 right?

13 A I don't know.

14 Q I want to get -- you know, I want to be straight
15 with you and tell -- and give you an opportunity to answer
16 this question because this is what we're claiming. All
17 right?

18 A Okay.

19 Q And so my question to you is: Is that what you
20 want the jury to believe? Do you want the jury to believe
21 you were not looking at this text at 5:57, when you
22 crossed Highway 278?

23 A I wasn't.

24 Q You were not?

25 A I wasn't.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Okay. Then what were you looking at?

2 A The road.

3 Q Can you offer any other reason why you didn't
4 see Ms. Hood coming down the road with her running lights
5 on, and Mr. Dustin Lee ten car lengths behind with his
6 Xenon lights on?

7 A If I would have seen her with her running lights
8 on, I would have stayed at the stop sign.

9 Q Mr. Johnson, is it possible that maybe you just
10 didn't look as close as you needed to?

11 A Not at all, because I looked twice.

12 THE COURT: Okay. If you're done with whatever
13 your exhibit is, come take a seat, sir.

14 MR. SMITH: I'm sorry.

15 THE WITNESS: (Complies.)

16 BY MR. SMITH:

17 Q Mr. Johnson, is it possible you just didn't look
18 as close as you needed to? Maybe it was more of a glance?

19 A I looked twice. There was a silver car that
20 passed me before I pulled out, and I didn't see no cars
21 passing after that.

22 Q So you looked two times then?

23 A Yes.

24 Q And neither one of those times you saw either
25 one, Ms. Hood, or the Xenon headlight, Dustin Lee?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A I seen a silver car pass me first.

2 MR. SMITH: May I have just a moment, Your
3 Honor?

4 THE COURT: You may.

5 (Pause.)

6 BY MR. SMITH:

7 Q Mr. Johnson, I want to ask you one more thing
8 about the last slide. You can stay where you are. I'll
9 come to you.

10 We talked earlier about after the wreck
11 happened and you stayed in your car and you made a phone
12 call. Do you remember that?

13 A Yes.

14 Q Okay. You made that phone call -- this is the
15 next entry we've got at 5:59:04.

16 A Correct.

17 Q Right? So -- and who was it that you called?
18 Who's 837-1126?

19 A My mama.

20 Q Okay. But you didn't stop there, did you?

21 A No.

22 Q You sat in your car and continued to make phone
23 calls, send text messages through 6:48 p.m.?

24 A After the time I was in the hospital.

25 Q How long did it take you -- if the wreck was at

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 5:57, how long did it take you to get to the hospital or
2 leave the scene? How would -- they didn't come to you
3 first, did they?

4 A I don't recall.

5 Q All right. They treated Ms. Hood and the Kucks,
6 I imagine, before they came to you?

7 A Correct.

8 Q All right. So how quickly do you think you left
9 the scene? Because from 5:59 -- 25 minutes? You think it
10 took them 25 minutes to talk to you and get you away? Or
11 do you think that it was 48 minutes? Or somewhere in
12 between?

13 MR. DANIEL: Your Honor, speculation.

14 MR. SMITH: I'm just asking.

15 THE COURT: Ask him "do you know?"

16 BY MR. SMITH

17 Q Do you know?

18 A I don't recall.

19 Q Okay. But you would agree with me, these
20 records show that 5:59 through 6:48, one, two, three,
21 four, five, six, seven, eight, nine, ten, 11, 12, 13, 14,
22 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 -- 27.

23 So in the 48 minutes after the wreck, your
24 phone records show 27 activities. Does that sound
25 correct?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Uh-huh. (Indicating affirmatively.)

2 Q You sat in your car and used your phone a lot,
3 right?

4 A I wasn't on my phone while I was in the car.

5 Q Okay. Were you in your car at 17 -- at 5:59,
6 when you called your mom?

7 A I made two calls while I was in the car, and I
8 didn't have my phone until I got back in the hospital.
9 And that was to my mom and my brother.

10 Q Okay. You called at 5:59. You made another
11 call at 6 o'clock, another call at 6:03. I'm sorry, a
12 text at 6:03, another text at 6:03, another text at 6:03.
13 None of these were in your car?

14 A That was to my brother. He lives -- he was
15 living across the street, so I was telling him what was
16 going on.

17 Q I know, but what I'm saying is, you sat in your
18 car and started talking on the phone and sending text
19 messages.

20 MR. DANIEL: Objection, leading.

21 THE COURT: He can. He's an adverse witness.
22 He can. Go ahead.

23 BY MR. SMITH:

24 Q Mr. Johnson, you sat in your car after the
25 wreck, and got on the phone and start sending text

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 messages. Right?

2 A You can say that, I guess.

3 Q Well, I don't want to say that, I'm not
4 testifying. If you know, you know. The records are the
5 records.

6 A You can say that.

7 Q Well, okay. Well, these are your records; are
8 they not?

9 A They are.

10 Q I sent these to your lawyer well in advance of
11 today, right? And he agrees these are genuine accurate
12 records of your phone.

13 A Correct.

14 Q Okay. And you don't argue with the accuracy of
15 those records, do you?

16 A Not at all.

17 Q All right.

18 MR. SMITH: And, Your Honor, I'd like to offer
19 these exhibits as 7 through 12.

20 MR. DANIEL: No objection.

21 THE COURT: Without objection.

22 *(Whereupon, Plaintiff's Exhibit No(s). 7-12*
23 *marked for identification and received in evidence.)*

24 MR. SMITH: I have no further questions, Your
25 Honor.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: Okay. Anything, Mr. Daniel?

2 MR. SMITH: Go ahead. I'm sorry.

3 CROSS EXAMINATION

4 BY MR. DANIEL:

5 Q Antoine, I'm 40 years old. How are you -- how
6 old are you?

7 A Twenty-three.

8 Q I text some, but, you've grown up with it,
9 right?

10 A Yes.

11 Q They haven't shown you a single substantive text
12 in this series of texts --

13 MR. SMITH: Objection, leading.

14 MR. DANIEL: Your Honor, he called the witness.

15 THE COURT: He's your witness. Don't lead him.

16 BY MR. DANIEL:

17 Q Okay. Did they show you any texts, actual texts
18 that were sent back and forth in this call log that we're
19 looking at?

20 A No.

21 Q Who's your cell phone carrier?

22 A Sprint.

23 Q Looking at Exhibit 7, the one that Mr. Smith was
24 asking you questions about, where this thing's highlighted
25 right at 175743, it says, that's a -- is that a text?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 175743? You see call type?

2 A Correct.

3 Q What does it say?

4 A A text to me, too.

5 Q And then what does it say over here on this
6 side?

7 A Inbound.

8 Q So that's someone sending you a text?

9 A Correct.

10 Q Do you see -- you're not sending a text back to
11 that number?

12 MR. SMITH: Your Honor, object, leading.

13 THE COURT: Basis -- to some extent, just ask
14 the question.

15 BY MR. DANIEL:

16 Q When's the next time on this record we looked at
17 where you send an outbound text?

18 A 1803.

19 Q 1803 is 6:03; is that right?

20 A Correct.

21 Q Had you called your mom before that?

22 A Correct.

23 Q Because you had just gotten in an accident?

24 A Correct.

25 Q You wanted to let -- did you want to let her

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 know?

2 A Yeah.

3 Q And then who did you text?

4 A My brother.

5 Q Can you text fast?

6 A Pretty so.

7 Q Are your messages brief?

8 A Yeah.

9 Q When you're working during the course of the
10 day, is there downtime?

11 A All the time.

12 Q How old were you at the time?

13 A Nineteen, I believe.

14 Q So sometimes you stay up till midnight?

15 A Depending on the time of the day.

16 Q That text that was at -- that they were asking
17 you about at 4-something in the morning, do you know if
18 that was something that -- do you ever wake up in the
19 middle of the night and see something and send a text and
20 go back to sleep?

21 A Yes. Sometime I stay up.

22 Q Do you know that morning, and this happened a
23 long time ago, do you know that morning, at 4:40, whatever
24 the time was, whether you sent that text and then you
25 started doing things that morning, or whether you rolled

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 back over and went back to sleep?

2 A I don't recall.

3 Q Do you keep your phone right there by your
4 bedside?

5 A Yeah.

6 Q Is it possible you just looked at something and
7 went back to sleep?

8 MR. SMITH: Objection, leading.

9 THE COURT: It's not a leading question. He
10 said, "Is it possible".

11 THE WITNESS: Say again.

12 BY MR. DANIEL

13 Q Is it possible that you looked at something,
14 sent a text, and then rolled over and went back to sleep?

15 A It could happen.

16 Q Have you ever done that before?

17 A Yes.

18 Q You would agree that just -- he's asking you,
19 you've said, you know, the jury, you can't speak for the
20 jury. That's what you just testified to, right?

21 A Yes.

22 Q But I want to ask you, and I want you to be very
23 clear because it's important. Were you reading a text
24 when you pulled out to make that left-hand turn?

25 A No.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q How many times did you check traffic before you
2 pulled out to make that left-hand turn?

3 A Twice.

4 Q You heard that lawyer testify yesterday. You
5 were in the courtroom, right, Antoine?

6 A Yes.

7 Q Do you remember what he said about how dark it
8 was?

9 MR. SMITH: Your Honor, I object. Pitting
10 witnesses, lay witnesses.

11 THE COURT: Okay. Let's not pit witnesses.

12 But, again, you did some to that extent as well,

13 Mr. Smith. So --

14 THE WITNESS: Say again?

15 BY MR. DANIEL

16 Q Do you remember hearing the lawyer testify about
17 how dark it was when this accident happened?

18 A Yes.

19 Q Do you remember hearing him put a percentage on
20 it?

21 A Yes.

22 Q What did he say?

23 A I believe it was like 90 percent or something
24 like that.

25 MR. SMITH: I -- I'm sorry. I --

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 THE COURT: Okay. You just need to repeat his
2 testimony, and you can refer to him as Mr. Lee.

3 BY MR. DANIEL

4 Q Do you remember what Mr. Lee said?

5 A I believe it was 90 percent dark.

6 Q Do you know Mr. Lee?

7 A Not at all.

8 Q Have you ever met him before this accident?

9 A Not at all.

10 Q Did -- have you ever met him since the accident?

11 A Not at all.

12 Q Exhibit 5, is that the intersection where you
13 were when this accident happened?

14 A Yes.

15 Q Where were you? Were you at --

16 A I was by -- at the stop sign.

17 Q Okay. Did you have to pull up to -- do you see
18 that white line down there?

19 A Yes.

20 Q Is that a stop bar?

21 A Yes.

22 Q Did you pull up to that?

23 A Yes.

24 Q I guess you -- it looks like -- would you have
25 to ease up even a little farther to see?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 A A little bit more, yes.

2 Q So you had to do that. And, again, you checked
3 traffic how many times?

4 A Twice.

5 Q The first time you checked traffic, what did you
6 see?

7 A A silver car.

8 Q Was it pretty dark when you saw that silver car
9 go by?

10 A Yes.

11 Q Did the silver car have its lights on?

12 A I don't recall.

13 Q Did you have your lights on?

14 A Yes.

15 Q You have a mobile phone. Do you have a headset
16 or Bluetooth in your car?

17 A Yes.

18 Q Did you have one in your Honda at the time of
19 the accident?

20 A Yes.

21 Q Now, this intersection, there's -- is there a
22 median?

23 A Yes.

24 Q Okay. And --

25 MR. DANIEL: Your Honor, may I approach?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 THE COURT: You may.

2 MR. DANIEL: Antoine, I'm just handing you a
3 black and white photo. Take your time and look at
4 that for a second.

5 MR. SMITH: May I?

6 MR. DANIEL: Here, you can look.

7 MR. SMITH: You don't have one for me? I just
8 want to follow along.

9 BY MR. DANIEL:

10 Q I'll just stand right here.

11 Have you looked at it?

12 A Yes.

13 Q Do you see in the top left of the photo, it's
14 kind of upside down, but you see what that -- can you read
15 what that writing says?

16 A Have I asked them?

17 Q I'm looking at the top left. Top left.

18 A Oh, the William -- William Hilton Parkway.

19 Q No. It's upside down, right -- you've got it
20 turned the other way. Right -- right there. Or -- yeah,
21 just turn it this way. Sorry.

22 A Southwood Park -- Southwood Park Trail.

23 Q What road were you on?

24 A Southwood Park Drive.

25 Q And there's that stop bar right there, and then

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 like the little walkway, right?

2 A Yes.

3 Q So this is the picture where the accident
4 happened, an overhead view?

5 A Yes.

6 MR. DANIEL: Your Honor, at this time I'd admit
7 that as Defendant's Exhibit 5.

8 THE COURT: Okay. Any objection?

9 MR. SMITH: No. No, ma'am.

10 THE COURT: It's in evidence then.

11 *(Whereupon, Defendant's Exhibit No(s). 5 marked*
12 *for identification and received in evidence.)*

13 BY MR. DANIEL:

14 Q You see in this photograph that there's this
15 median, and when you look at it you can answer. And then
16 in the Google overhead view, there's like a little white
17 car where the median is; do you see that?

18 A Correct.

19 Q Were you going to turn right or left?

20 A Turn left.

21 Q Turn left from Southwood Park Drive?

22 A Yes.

23 Q Okay. To head back off Hilton Head Island
24 toward Beaufort?

25 A Back toward Ridgeland. Towards Ridgeland.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q Toward Ridgeland.

2 A Yep.

3 Q Okay. So you check traffic to your left.

4 You've already said you checked it twice. You start to

5 move. Did you ever check traffic to the right, what's

6 coming across the other way, over on the other side of

7 that median?

8 A Yes.

9 Q What did you see?

10 A More cars.

11 Q There were -- there were cars coming?

12 A Yes.

13 Q Okay. So those cars would have been coming from

14 your right, but on the other side of the road?

15 A Yes.

16 Q Do you remember seeing some cars with headlights

17 on?

18 A Yes.

19 Q So the cars over there had their headlights on?

20 A Yes.

21 Q So when you looked to your left and didn't see

22 anything, and you started to move forward, was your focus

23 moving forward just to get to that median?

24 A To get to the median and come to another stop.

25 Q Because there were cars on the side?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 A Coming up.

2 Q Do you know whether you may have hit Mrs. Hood
3 on her front tire? Or that's where the contact was? You
4 didn't know?

5 A I don't know. I just know it was on the front
6 passenger side somewhere.

7 Q You've seen these photos. Have you been able to
8 look at the photos from where you're sitting of her
9 vehicle?

10 A Yes.

11 Q The impact was up front; do you agree?

12 A Yes.

13 Q Were you driving fast?

14 A No.

15 Q Had you barely hit the gas?

16 A Barely, yes.

17 Q Were you -- were you into that left lane? Or
18 was most of your car still in that right lane? Do you
19 know where you were as far as the body of your car in that
20 overhead view?

21 A I want to say I was still in the right lane a
22 little bit.

23 Q Okay. You didn't hit -- did you hit her hard
24 enough to spin her around?

25 A I don't believe so.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q The vehicle that you made contact with, did it
2 keep going down the road, or did it spin like a top?

3 A I don't recall.

4 Q You didn't -- once you hit it, you -- it went --
5 did it go down the road out of your vision?

6 A Yeah.

7 Q Were people on the scene quickly --

8 A Yeah.

9 Q Or did it take a while?

10 A They was there pretty quick.

11 Q Did you see the impact between Mrs. Hood's
12 vehicle and the Tahoe that some witnesses have been
13 talking about earlier this morning?

14 A No, I just heard it.

15 Q Was it too far down the road for you to see, or
16 was it too dark to see?

17 A It was farther down the road, so I could barely
18 see what was going on.

19 Q Did you see people around those vehicles going
20 to help?

21 A Yes.

22 Q How quickly were those people there?

23 A I can't put an estimated time on how fast they
24 got there, but it was -- I guess you could say pretty
25 quick.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q Are you familiar with that intersection?

2 A Yes.

3 Q Is it straight as far as the eye can see? Is
4 there a bend?

5 A It's pretty straight.

6 Q Yeah. Is there a gradual bend though, do you
7 think?

8 A Yeah.

9 Q You didn't see anything coming when you looked
10 left?

11 A No.

12 Q Your cousin, you cut his hair that day?

13 A Yes.

14 Q Were you cutting his hair the whole time or --
15 when you went to his house?

16 A No.

17 Q Okay. What do you remember doing? I know it
18 was a long time ago.

19 A I got off from work, cut his hair, and played
20 like this a game of Madden, I believe.

21 MR. SMITH: Played what?

22 THE WITNESS: Madden.

23 BY MR. DANIEL:

24 Q Is it the Madden football?

25 A Yeah, I believe.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q Okay. And I just started right in with the text
2 messages, Antoine. Tell me about yourself. Where did you
3 grow up?

4 A Hardeeville and Ridgeland.

5 Q Have you lived in Hardeeville and Ridgeland all
6 your life?

7 A Ten years.

8 Q Okay. Where did you go to high school?

9 A Ridgeland High.

10 Q Did you play sports?

11 A Football and track.

12 Q Football and track?

13 A Yes.

14 Q Did you -- what did you -- what events did you
15 compete in in track?

16 A A 110-meter hurdles and 400 hurdles, four by
17 one, 200, and the four by four.

18 Q Did you go to State in track?

19 A For the 110 hurdles, 400 hurdles, and the four
20 by four.

21 Q Did you win or place in any event?

22 A Placed top three in all. I won the 110.

23 Q You won the State champion in the 110?

24 A Yeah.

25 Q You were working at the time of this accident?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

- 1 A Correct.
- 2 Q Where were you working?
- 3 A The Greenery.
- 4 Q And is that a landscaping business?
- 5 A Yes.
- 6 Q You working now?
- 7 A Yes.
- 8 Q Where are you working?
- 9 A I detail cars in the auto mall.
- 10 Q How long -- how long have you been working
- 11 there?
- 12 A I just started back working there, so about two
- 13 months.
- 14 Q You were there before?
- 15 A Yes.
- 16 Q Why did you leave?
- 17 A I was going back to school.
- 18 Q What were you going to school for?
- 19 A Barbering.
- 20 Q Who do you live with?
- 21 A My mama and daddy.
- 22 Q And what are their names?
- 23 A Richard and Lativia Johnson.
- 24 Q How long have you lived there?
- 25 A All my life.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q Those text messages that were inbound that
2 Mr. Smith was asking you about, looking at -- are you
3 looking at those phone records now?

4 A Yes.

5 Q Does it say whether you were reading them?

6 A No.

7 Q The text messages that you sent that were
8 outbound, does that record say how long those messages
9 were, or how long you were on the phone?

10 A No. As far as how long --

11 Q How long the text message is, or how long it
12 took you to send it?

13 A Oh, no.

14 Q Do you ever answer "yes", "okay," or "no,"
15 "can't", things like that?

16 A All the time.

17 Q Short. Sometimes your texts are pretty short?

18 A Yes.

19 Q Are your texts usually short?

20 A All the time mostly.

21 Q So you looked to your left, didn't see anything,
22 Antoine, you looked -- you looked to your left, you didn't
23 see anything, you started to move forward to make a left
24 turn?

25 A I looked to the left, and I looked again after

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 the car passed, then I looked again, then I tried to move
2 forward.

3 Q Okay. You didn't see a vehicle when you started
4 to move forward and hit the gas; is that right?

5 A No.

6 Q And then a vehicle was just there?

7 A Yes.

8 Q Have you seen the color of that vehicle now,
9 after the fact?

10 A Yes, sir.

11 Q Is it dark in color?

12 A Yes, sir.

13 Q And I realize this happened fast but -- and I
14 don't want to put words in your mouth, but was what ended
15 up being right in front of you the car you made contact
16 with, that SUV, going slow? Fast? Do you have any idea?

17 A I don't recall.

18 Q How quick did that contact happen?

19 A Pretty quick.

20 Q They have some photos of your Honda.

21 Is Exhibit 4, is that your car?

22 A Yes.

23 Q Do you remember whether your bumper was torn off
24 at the scene?

25 A During -- during the accident?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q Yes. Yes.

2 A I don't believe it were.

3 Q Is this at the scene?

4 A No.

5 Q It looks like it's at a tow yard somewhere,
6 right?

7 A Correct.

8 Q There was damage to your vehicle, but you
9 don't -- as far as you remember, the bumper wasn't
10 completely off?

11 A No.

12 Q Mr. Smith asked you about not getting out to
13 help people. When you looked over and saw that there had
14 been another accident, were people already there rendering
15 aid?

16 A Yes.

17 MR. DANIEL: Thank you, Antoine.

18 THE COURT: Anything further?

19 MR. SMITH: Yes, ma'am.

20 REDIRECT EXAMINATION

21 BY MR. SMITH:

22 Q Mr. Johnson, I want to try to get something
23 straight, a couple of things here.

24 Number one, you said that during the day
25 you got breaks, right?

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Yeah.

2 Q But if we review these records from the time you
3 were at work --

4 MR. SMITH: Just put them up one through --
5 yeah. Okay.

6 BY MR. SMITH:

7 Q If we review these records from while you were
8 at work -- sorry.

9 You said you got to work around what time?

10 A About 6:45.

11 Q Six-forty-five. So did you have a break at
12 7:29? At 7:42? At 7:49? At 8:13? At 8:14? At 8:30:
13 At 8:34? At 8:35? At eight -- did you have a break all
14 those times?

15 A The job description I had at the time, it was a
16 lot of us standing around. So if there is nothing going
17 on, we can be on our phones.

18 Q So what you're asking the jury to believe -- you
19 understand the jury is -- they're assessing credibility
20 today; do you understand that?

21 A Yes.

22 Q Okay. And you -- but you want the jury to
23 believe, when they receive these phone records and they go
24 back to the jury box and they're looking at them, you want
25 them to believe that every entry between 7:30 in the

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 morning and 4 o'clock in the afternoon, 90-something
2 times, that each one of those, you were on a break?

3 A Probably was one of my free periods.

4 Q I'm sorry?

5 A Probably was one of my free periods, when there
6 wasn't nothing going on. I was on the pine straw crew at
7 the time, so if our job was done we ain't have nothing to
8 do but ride the clock out.

9 Q Okay. Mr. Johnson, I also want to ask you about
10 the call you made the night before, the one -- the call
11 that you made the night before, or the entry that we see
12 for the night before, the three-hour phone call -- I'm
13 sorry. No. My mistake.

14 The 4:44 entry, the day of the collision,
15 the very first activity on your cell phone that day, who
16 are you getting a text from?

17 A I'm sending a text.

18 Q Okay. Who are you sending a text to at
19 4:44 a.m., the day of the wreck?

20 A To one of my friends.

21 Q 1200?

22 A Yeah.

23 Q Okay. That's one of your friends?

24 A Yeah.

25 Q And you know that. What's that friend's name?

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A I don't think --

2 Q What's that?

3 A Travia.

4 Q Tray what?

5 A Travia.

6 Q Okay. Now, you said this text that came in at
7 5:57 p.m., when we say the wreck happened, you say you
8 didn't look at that text, right?

9 A Correct.

10 Q And that's from the same number, 1200, isn't it?

11 A Correct.

12 Q So the very first thing you do in the morning,
13 the day of, is reach for your phone and you send a text to
14 this person. The very first thing.

15 A You can't say that's the first thing that I did
16 that morning.

17 Q How -- when did you wake up?

18 A There's no telling when I got up.

19 Q Well, we know the first text you sent was at
20 4:44 a.m. Did you wake up -- well, let me rephrase the
21 question.

22 Do you recall waking up sooner than
23 4:44 a.m., or was that about when you woke up that day?

24 A I tend to get up in the middle of the night at
25 random times between 2:00 and 3:00 -- between 2:00 and

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 4:00 in the morning. So there's no telling when I got up.
2 I could have got up, went back to sleep, and then got back
3 up and started messaging. I don't know.

4 Q Well, if you got up at 2 o'clock in the morning,
5 and your last phone call ended at 12 -- just after
6 midnight, that gives you about an hour and 45 minutes of
7 sleep the night --

8 A Well, like I said the first time, there's no,
9 guarantee that I ended that phone call at 12 o'clock. I'm
10 known for getting on the phone and going to sleep on the
11 phone.

12 Q I get you. But Mr. Johnson, your memory is not
13 perfect back to this day and what time you got up and all
14 that; would you -- is that fair to say?

15 A Correct.

16 Q Okay. And all that we have to rely on here is
17 your cell phone records; is that correct?

18 A Correct.

19 Q All right. And those cell phone records show
20 that at 4:44 a.m. you called this number, you sent a text
21 to this fellow, Travia.

22 A Female, yeah.

23 Q Right?

24 A Correct.

25 Q Okay. That was the first activity on your phone

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 that day, the very first activity we see on your phone
2 that day, right?

3 A Correct.

4 Q All right. And that same exact person, who was
5 your first activity, that exact same person was the one
6 that sent you the text at 5:57, when we contend you were
7 crossing Highway 278. And you want the jury to believe
8 you didn't read that text that came from the same person
9 that your very first activity of the day was with.

10 A Correct.

11 Q That you grabbed that phone and sent a text?

12 A Correct.

13 THE COURT: All right. Let's move on, y'all.

14 MR. SMITH: Okay. Your Honor, may I ask one
15 more question?

16 THE COURT: One.

17 BY MR. SMITH:

18 Q Who's Travia?

19 MR. DANIEL: Your Honor, relevance.

20 THE COURT: Okay. Go ahead and ask that.

21 THE WITNESS: That was my girlfriend.

22 BY MR. SMITH:

23 Q I thought you met your girlfriend in the
24 hospital after the wreck?

25 A At the time she was my girlfriend.

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Okay. Okay. Thank you.

2 THE COURT: Anything further?

3 MR. DANIEL: No, Your Honor.

4 THE COURT: You may step down, sir.

5 Ladies and gentlemen, this is a good time for a
6 break.

7 Again, do not discuss the case. It would be
8 inappropriate to do so.

9 Depending on how long the next witness is, I
10 have to get the next witness up and then break for
11 lunch. Or if there's another short witness, we're
12 likely to do that.

13 But I'm looking at somewhere between 12:30 and
14 1:30 breaking for lunch today. Okay? Just to let
15 you know.

16 Go back, get a coffee, ladies and gentlemen,
17 stretch your legs. We'll be back with you. Do not
18 discuss this case, it would be inappropriate to do
19 that.

20 (Jury exits the courtroom.)

21 THE COURT: All right. Anything on the record
22 before we go on break for just about ten minutes,
23 from the Plaintiff?

24 MR. WILLEY: Yeah, we -- before our expert is
25 called we will have some matters of law that we just

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 want to discuss and get out of the way.

2 THE COURT: Okay. Which expert?

3 MR. WILLEY: Ms. Borzendowski --

4 Dr. Borzendowski.

5 THE COURT: Okay. Your human factors expert; is
6 that correct?

7 MR. WILLEY: Yes, ma'am.

8 THE COURT: Okay. Well, y'all take a
9 five-minute break and we'll come back and we'll talk
10 about her testimony. Okay?

11 MR. WILLEY: Okay. Thank you.

12 (Whereupon, the Court stood in recess.)

13 THE COURT: All right. Anything you need to put
14 on the record, Mr. Willey?

15 MR. WILLEY: Yes, ma'am. We -- our second
16 witness that we will call is Dr. Stephanie
17 Borzendowski. In pretrial we moved in limine to
18 prohibit counsel from making any reference to any
19 black box data until those witnesses came forward or
20 any witness as to the speed, as it's not a proximate
21 cause and for other reasons.

22 And in this case, when we call Ms. Borzendowski
23 we expect, because he just told us as much, him to
24 make reference to the speed of the vehicles. And in
25 her deposition, specifically on Pages 22 through --

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: He's not going to say "the speed
2 from the black box said." He's going to ask her if
3 she considered speed in making her -- or forming her
4 opinion as to this case. Read her deposition, she
5 says "no."

6 MR. WILLEY: Right. And our position is that's
7 as far as they can go. Because what happened
8 yesterday is Your Honor ruled that they cannot
9 mention tailgating. And on the third question it
10 specifically came out with that word from counsel
11 about that specific incident. And I'm afraid that's
12 going to happen again because before that occurred, I
13 believe Mr. Daniel is going to address this witness,
14 Ms. Suttie went over to him, and I believe based on
15 what I could hear instructed her to do that.

16 So I want to make sure that this is not going to
17 happen with this witness. If she says no, that will
18 be the end of that as to speed.

19 MR. DANIEL: Your Honor, we did talk about this
20 briefly in chambers. It's our position that, and I
21 don't believe Your Honor has ruled on it, it's a
22 standard jury instruction, or standard instruction on
23 speed. It is certainly our position that speed is a
24 factor in this case, that speed -- the jury can draw,
25 based on their own common knowledge and common sense,

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 that speed may have been a contributing cause or
2 proximate cause of the accident.

3 This witness, this particular expert, provided a
4 number of things, not by us. Plaintiff's expert
5 provided a number of things that are in reply,
6 including Woody Poplin's deposition. I simply wanted
7 to ask her if in her testimony she testifies that she
8 read his deposition and recalls certain things about
9 what Woody Poplin found, what he pulled from the
10 vehicle.

11 I should be able to at least ask her what Woody
12 Poplin found, what he documented, and whether she
13 considered it.

14 THE COURT: Okay. What I'm going to let you do
15 is, you can ask to the extent in Woody Poplin's
16 deposition he talks about or testifies to speed. I'm
17 not going to let you say, "Did you consider that in
18 forming your opinion?"

19 And she's going to say yes or no.

20 But, again, you can't testify as to what Woody
21 Poplin found in his deposition until and unless Woody
22 Poplin testifies to that. Okay?

23 MR. DANIEL: Your Honor, just -- I do think that
24 if she's going to be evaluating and drawing
25 conclusions and inferences from --

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: If she says she didn't use it, then
2 she isn't.

3 MR. DANIEL: You're right. But, Your Honor, I
4 think it is admissible what evidence an expert did
5 not consider that's in the record.

6 THE COURT: You get that in there by saying --

7 MR. DANIEL: She has documentation --

8 THE COURT: Don't talk over me.

9 You get that in there by saying you didn't
10 consider speed in this case.

11 Let's bring the jury in.

12 MR. WILLEY: Okay. One more thing, Your Honor,
13 as to that witness, and that's as to the Parkinson's,
14 because it's the same concern. You already ruled on
15 it, but again we got into it with the tailgating.
16 She says in her deposition on Page 86 and 87 she
17 didn't consider it, she didn't even know she had it.
18 It played no role at all in her analysis and would
19 not play a role. So I just want to make it perfectly
20 clear that they're not able to bring that out through
21 this witness without some medical testimony to say
22 that it played a role or otherwise. We're not
23 claiming exacerbation or anything else.

24 MR. DANIEL: Your Honor, she's a human factors
25 expert. And she can say she's not a medical doctor,

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 but there's some things that people have common
2 knowledge of that affect driving. I think we should
3 be allowed to at least show her a few medical
4 records, not going to be a lot, but a few things and
5 ask her whether she considered it.

6 THE COURT: She didn't consider. I think the
7 only thing you -- I think you can ask whether or not
8 you considered whether her Parkinson's and any
9 residual side effects had an effect. She's either
10 going to say one of two things. She is either going
11 to say, "No, I didn't consider it;" or "No, I'm not a
12 medical doctor, and that's not an appropriate thing
13 for me to consider."

14 Or she's going to say, "I flat out didn't
15 consider it."

16 MR. DANIEL: I'll try and lay a foundation for
17 things, if it's improper.

18 THE COURT: That's fine.

19 MR. WILLEY: Your Honor, I just want to --

20 THE COURT: That's fine. He just does it at his
21 own peril.

22 MR. WILLEY: Well, I also, just to be clear,
23 just in the case he's going to introduce some medical
24 records through a non-medical expert. I don't think
25 you can do that.

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: You're not going to give her any
2 medical records on her Parkinson's. Unless she tells
3 me -- listen, you tell me you've got an expert in
4 this case that's gong to say her Parkinson's caused
5 this wreck or in some way affected her ability?

6 MR. DANIEL: That's not what I have.

7 THE COURT: Well, I don't know what you have.

8 MR. DANIEL: I can -- I can proffer it now. And
9 it's records they have as well. They stipulated to
10 the authentication of them, they're --

11 MR. WILLEY: We what?

12 MR. DANIEL: Stipulated to the authentication of
13 these records before trial. They're the Plaintiff's
14 VA records that say she had -- she was complaining of
15 blurred vision on the morning of the accident.

16 THE COURT: Okay. And, again, you tell me how
17 that affects her being in her lane bound straight,
18 blurred vision. If I were alleging speed on her
19 behalf --

20 MR. DANIEL: Also, too, you can keep a proper
21 lookout as well. I mean, it's not my decision.

22 Your Honor, I don't have -- the Defendant
23 doesn't have the burden of proof. There's a record
24 --

25 MR. WILLEY: You do as to affirmative defenses,

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Mr. Daniel.

2 THE COURT: Okay. Let's just do this. We're
3 going to bring -- let's just bring the jury out, put
4 the next witness up, and then --

5 MR. WILLEY: Can I get just a preliminary ruling
6 on the Parkinson's one way or the other? I don't
7 think he can use the medical records, and once he
8 does it, we're prejudiced by it.

9 THE COURT: Well, I think that would have been
10 more properly asked a question of her when she was up
11 on the stand. Did you or did you not complain about,
12 you know, you had blurred vision on the morning of
13 this accident to a doctor?

14 It's not appropriate to put it in through the
15 human factors expert. Okay.

16 MR. WILLEY: Thank you.

17 (The jury enters the courtroom at 12:18 p.m.)

18 THE COURT: Welcome back, ladies and gentlemen.

19 All right. Call your next witness.

20 MR. SMITH: Ma'am, we call Cindy Bryan.

21 Thereupon,

22 CINDY BRYAN

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

25 MR. SMITH: Judge, before we begin, I've been

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 seeing a lot of shiver up here. Is there any way we
2 could bring the AC down a little bit?

3 THE CLERK: I'm texting them now.

4 MR. SMITH: Okay. Thanks.

5 DIRECT EXAMINATION

6 BY MR. SMITH:

7 Q Ms. Bryan, please tell us your name.

8 A Cindy Bryan.

9 Q Ms. Bryan, where do you live?

10 A In Goose Creek.

11 Q And what do you do for work?

12 A I work for the Diocese of Charleston.

13 Q How long have you been doing that kind of thing?

14 A Going on 19 years.

15 Q All right. Do you know Therese Hood?

16 A I do.

17 Q Where do you know Therese from?

18 A I know Therese from church.

19 Q All right. And what church is that?

20 A Immaculate Conception Church in Goose Creek.

21 Q Are you what's called a Eucharistic minister?

22 A I am.

23 Q And what does a Eucharistic minister do? What's
24 the function?

25 A They help the priest at Mass to distribute

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 communion to all the parishioners.

2 Q And when you say "communion", what are you
3 distributing?

4 A We believe that the -- at the time when
5 communion is distributed, Jesus is actually physically
6 present in the wine and in the host, in the bread.

7 Q Let me stop you for just a second. We don't
8 need to go -- I don't know who here is Catholic and who
9 here is not.

10 So, communion, what are you distributing?
11 I know you're about to tell us what it stands for, but
12 what --

13 A You would know it as bread and wine. We
14 distribute the bread and wine.

15 Q Okay. So the Eucharistic minister helps the
16 priest distribute the bread and wine, which is the
17 communion.

18 A Yes.

19 Q Now, is that something that you can just
20 volunteer for or do? Or is it something that has to be
21 approved?

22 A You can try to volunteer, but the priest has to
23 know something about you and would approve it.

24 Q Okay. Now, I guess that's for -- we're are not
25 all Catholics here, not everybody knows what it means to

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 be a Eucharistic minister, so I want to give you an
2 opportunity just to explain that to the jury, as a
3 Catholic, and a church member with Ms. Hood, what does it
4 mean to be a Eucharistic minister? And just talk to them.

5 A Okay. You would almost have to have a calling.
6 You feel that this is where Jesus is leading you to be
7 able to help the priest to distribute Holy Communion.

8 And at the time of the distribution of
9 communion, we believe -- there's a point in the Mass where
10 the priest will consecrate the bread and the wine to where
11 Jesus actually becomes physically present in the bread and
12 the wine. And so you're actually holding Jesus in your
13 hands when you are doing this.

14 Q Now, you take your faith very seriously?

15 A I do.

16 Q All right. And from what you have observed
17 through your observations of Therese Hood, does she take
18 her faith very seriously as well?

19 A Yes, she does.

20 Q Okay. And you mentioned "a calling." Did you
21 yourself feel the calling to become a Eucharistic
22 minister?

23 MR. DANIEL: Your Honor, relevance.

24 THE COURT: Okay. You need to the wrap this up
25 pretty quick as far as relevance is concerned, I

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 would agree. Let's go.

2 BY MR. SMITH

3 Q Ms. Bryan, how would you feel if the privilege
4 of being a Eucharistic minister was taken away from you?

5 A I would feel a loss, a hurt, because I'm drawn
6 to that ministry. And for it to be taken away, I would
7 miss it, and it would be hard to sit there in church every
8 week and watch other people that have that calling and
9 just not be able to participate actively anymore.

10 Q Would there be a void in your life?

11 A I believe so.

12 Q Now, you visited Therese at her house after the
13 wreck sometime. What did do you that for?

14 A I had to take communion to her for about a month
15 when she couldn't get to church.

16 Q And what could you -- what could you see? Or
17 how did she appear?

18 A She was in a wheelchair. I think at the very
19 beginning she had, like, a brace on her -- I think that it
20 was her right leg. I don't remember which leg, but it was
21 in a cast. And there were pins and -- in her ankles and
22 everything. It looked very painful.

23 Q Okay. All right. That's all the questions I
24 have for you. Thank you.

25 CROSS EXAMINATION

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

1 BY MR. DANIEL:

2 Q I'm sorry. Just could you -- so you took
3 communion to Mrs. Hood for how many -- how long was the
4 period?

5 A About three or four weeks.

6 Q Okay. Was she able to come back to church after
7 that three- or four-week period?

8 A It might have been another week or so, but yeah,
9 she eventually returned back to church.

10 Q And she's given a deposition in the case. I'll
11 represent to you that she says that she --

12 MR. SMITH: Your Honor.

13 THE COURT: Okay. Again, that's improper use of
14 a deposition. So --

15 MR. DANIEL: Yes, ma'am.

16 BY MR. DANIEL:

17 Q Is it your understanding that she has also
18 volunteered as a Eucharistic minister after this accident?

19 A She has.

20 Q And that involves standing up as the entire, I
21 guess, members of the church, everybody in your church,
22 the Catholic faith, they walk in a procession line to
23 receive communion, right?

24 A Yes.

25 Q So if it's a busy Sunday or Saturday evening,

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

1 whenever y'all have Mass, the person handing out
2 communion, the Eucharistic minister, they have to be on
3 their feet for a while?

4 A Probably around ten, 15 minutes at the most, I
5 would think.

6 Q Okay. But Mrs. Hood has been able to do that
7 and can manage that after this accident?

8 A I believe she has for a little while.

9 Q Okay. And she is your friend?

10 A We're not close friends, we're just more like
11 acquaintances. We're involved in some things, but not a
12 lot of things together.

13 Q How often do you see her?

14 A Probably on a monthly basis.

15 Q Once a month? Is that -- I'm trying to be rude.
16 Is that a "yes"? The court reporter has to write it down.

17 A I'd say about once a month.

18 Q Okay. You're not around her day-to-day
19 everyday?

20 A No.

21 Q You don't know what medication she takes?

22 A No.

23 Q You don't know what medication she took before
24 this accident?

25 A No.

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

1 Q You don't know what her health issues were
2 before this accident?

3 A I know a little bit.

4 Q Okay. What do you know?

5 A I know --

6 MR. SMITH: Your Honor, I would object for
7 relevance. I don't know exactly where he's going
8 with this.

9 THE COURT: Okay. Come up and approach.

10 (Off-the-record discussion held.)

11 BY MR. DANIEL

12 Q And, Ms. Bryan, before the objection, I just --
13 you do know a little bit about Mrs. Hood's health
14 condition, or conditions, before this accident?

15 A A little bit, yes.

16 Q Okay. Just tell us what you know.

17 A I just know she had MS.

18 THE COURT: Anything further?

19 BY MR. DANIEL

20 Q Do you live near Ms. Hood?

21 A It would probably take me -- not real close. It
22 would probably take me about ten minutes, 15 minutes to
23 get to her house.

24 Q And as far as how frequently you would see her,
25 you would see her about once a month before the accident

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

1 as well?

2 A Yes.

3 MR. DANIEL: Thank you, ma'am.

4 REDIRECT EXAMINATION

5 BY MR. SMITH:

6 Q Ms. Bryan, that once a month that you saw her,
7 was that at church?

8 A Yes.

9 Q I mean, y'all ain't going over to each other's
10 house, getting together for dinner, and stuff like that.
11 You're seeing each other at church, right?

12 A Yes.

13 Q And you're also in the ladies guild and she was
14 in the ladies guild as well, right?

15 A Yes.

16 Q But Therese is not a Eucharistic minister
17 anymore, is she?

18 A No, she's not.

19 Q She had an incident where her leg got shaky and
20 she spilled the wine, the blood of Christ; did she not?

21 A That's what I was told.

22 Q Right. And the priest said, "You are no longer
23 to do that function," right?

24 A Exactly.

25 Q And that's because Catholics regard the wine in

REDIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 that process as the actual blood of Christ. That's what
2 you believe.

3 A Oh, yes. That's --

4 Q How do you think it felt for Therese to be
5 standing there and spill the blood of Christ?

6 THE COURT: Calls for speculation. That's just
7 not a good question. You need to move on.

8 MR. SMITH: I withdraw it. No more questions.

9 RE-CROSS EXAMINATION

10 BY MR. DANIEL:

11 Q Ma'am, were you there for that incident?

12 A No, I wasn't.

13 THE COURT: Anything further?

14 MR. SMITH: No, ma'am.

15 THE COURT: Anything objection to this witness
16 being excused?

17 MR. SMITH: No objection.

18 THE COURT: You're excused, ma'am. Thank you.
19 Call your next witness.

20 MR. WILLEY: The Plaintiff calls Dr. Stephanie
21 Borzendowski.

22 THE COURT: Come on forward.

23 Thereupon,

24 DR. STEPHANIE BORZENDOWSKI

25 was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WILLEY:

4 Q Dr. Borzendowski, would you introduce yourself
5 to the jury?

6 A Absolutely. I am Stephanie Wetzel Borzendowski.

7 Q And where do you live?

8 A I live in Summerville.

9 Q And how long have you lived in Summerville?

10 A A little over two years.

11 Q And do you do for work?

12 A I'm a human factors consultant with a company
13 called Applied Building Sciences.

14 Q What does Applied Building Sciences do
15 generally?

16 A A pretty wide range of things. But we do a lot
17 of consultation on matters that are in litigation or have
18 the potential to be in litigation.

19 Q And as part of your work, you mention that you
20 have an expertise in human factors. What is that?
21 Explain that to the jury.

22 A Human factors is basically the study of human
23 interaction with their environment, and that can take the
24 form of a lot of different things, including driving or
25 walking.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q And tell the jury the educational background
2 that you had to go through in order to become a doctorate
3 in that field.

4 A Sure. I got my Bachelor's in Psychology from
5 Hartwick College, which is in upstate New York. And I
6 then got my Masters in Applied Psychology with a
7 concentration in human factors from Clemson University.
8 And I earned my Ph.D. in Human Factors Psychology also
9 from Clemson University.

10 Q And what is applied psychology? How would you
11 describe that?

12 A So my masters was in applied psychology and, in
13 a nutshell, that's basically taking the principles of
14 psychology and applying them to sort of real world
15 problems.

16 Q So, is it fair to say that basically you look at
17 how people act and react in different circumstances?

18 A Yes.

19 Q And you do that based on science and data?

20 A Correct.

21 Q And, Dr. Borzendowski, how long, including
22 college, you know, did you have to go to school in order
23 to get your doctorate in human factors?

24 A From college through graduate school. I was in
25 school for nine years.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q And that's why we call you Doctor. You earned
2 it, right?

3 A Yeah. Try not to enforce it, people don't call
4 me that too often.

5 Q Tell the jury a little bit about your experience
6 in the field of human factors.

7 A Starting with graduate school?

8 Q Starting with graduate school.

9 A Okay. So while I was in graduate school, I
10 worked in a visual perception lab, and I also served as a
11 teaching assistant and later as an instructor. And my
12 primary research area was in the nighttime conspicuity of
13 pedestrians as well as driving safety kind of broadly at
14 night.

15 Q And where was that lab? Where did you do those
16 courses?

17 A That was all at Clemson University.

18 Q And we won't hold that against -- or for you.

19 A Oh, I think I sense some bitterness.

20 Q "Conspicuity" you mentioned. Will you explain
21 to -- I think I said it right, "conspicuity"?

22 A You did.

23 Q I'll have to break it down each time.

24 Will you tell the jury what that is?

25 A Conspicuity, simple stated, is the extent to

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 which an object stands out from it's background.

2 Q And what sort of factors deal with conspicuity?
3 What are you looking at specifically when you deal with
4 that?

5 A There's a number of factors that you would
6 consider, including the background or the environment in
7 which the object is being viewed, as well as properties of
8 the objects such as size, brightness, color.

9 Q And we deal with this field a lot in motor
10 vehicle wrecks, correct?

11 A We do.

12 Q And is a portion of that conspicuity analysis
13 also, you know, who was looking? The individual that is
14 actually looking at the object?

15 A Yes, as far as characteristics associated with
16 that individual.

17 Q And in terms of motor vehicle wrecks, what are
18 some of the characteristics that you look for when you're
19 making an analysis of the situation?

20 A We might look at things such as visual health.
21 Do they wear corrective lenses? Were there any
22 extenuating environment factors? Was the driver
23 reasonably attentive? Things like that.

24 Q And in terms of your field, you have done both
25 lab training and also field training, correct?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A I've conducted studies in both settings, yes.

2 Q And when we say, "field training," that just
3 sort of means out -- out in the world, right?

4 A Yes. I've conducted a number of studies that
5 were out on the road.

6 Q And have you been published in these fields?

7 A I have.

8 Q And have you been qualified as an expert in the
9 fields of human factors, conspicuity before?

10 A Yes.

11 Q And for purposes of this matter, did you have
12 the opportunity to review a lot of deposition transcripts,
13 data points, and things like that?

14 A I did.

15 Q And in this case, did you have the data to
16 analyze that would be normally accepted in the field in
17 coming to a determination?

18 A Yes.

19 MR. WILLEY: Your Honor, at this time, we would
20 move to qualify Dr. Borzendowski as an expert in the
21 field of human factors with a specialty in
22 conspicuity and attentiveness.

23 THE COURT: Okay. Do you have any voir dire for
24 her?

25 MR. DANIEL: Your Honor, no. I just -- just an

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 expert in human factors, I believe.

2 THE COURT: And I agree with that.

3 Ladies and gentlemen, in this case, this witness
4 is being qualified as an expert in human factors.

5 That allows her to give her opinion and the reasons
6 for her opinion. And that's for you to use as you
7 see appropriate, and to assist you in any way as
8 compared to other evidence in this case.

9 MR. WILLEY: She's qualified?

10 THE COURT: I just did.

11 BY MR. WILLEY

12 Q Dr. Borzendowski, you've had the opportunity to
13 review the Department of Public Safety document in this
14 case, the statistic?

15 A I have seen the page I think you're about to
16 show me.

17 Q Okay. And Department of Public Safety says that
18 an injury wreck occurs in South Carolina every nine
19 minutes; is that accurate?

20 A Yes.

21 MR. DANIEL: I haven't seen this, Your Honor, as
22 far as statistics.

23 THE COURT: Okay. If she can testify to that
24 and she knows it of her own personal knowledge, fine.

25 BY MR. WILLEY:

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q Let me ask you this, Dr. Borzendowski, are
2 statistics from the Department of Public Safety something
3 you rely on in your field?

4 A A lot of times -- excuse me.

5 A lot of times I would rely on national data
6 from the DOT and Federal Highway.

7 Q When you're looking at specific state instances,
8 would you sometimes also look in that specific state's
9 data relative to motor vehicle wrecks and timing and that
10 sort of thing?

11 A If it's available.

12 Q And in this case, the data from the South
13 Carolina Department of Public Safety is available,
14 correct?

15 A I'm looking at it.

16 Q Okay. And what does it say about how often we
17 have an injury wreck in South Carolina?

18 A According to this, in 2015, one person was
19 injured every nine minutes.

20 Q So the point of that is, we keep you pretty
21 busy, don't we?

22 A Yes.

23 Q In these sorts of cases. And you make your
24 living analyzing these types of cases, both of a civil and
25 criminal nature for the Court, correct?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A Primarily, yes.

2 Q And you're paid for that?

3 A I am.

4 Q And how much are you being paid?

5 A My hourly rate for non-testimony time is \$190,
6 and my hourly rate for testimony time is \$290.

7 Q You were also paid, when Mr. Daniel took your
8 deposition by him, correct?

9 A I don't know if he's cut the check yet, but he
10 has an invoice, I think.

11 Q Okay. And that's how you pay your bills, right?

12 A Those checks are paid to my company, and I am a
13 salaried employee.

14 Q Just wanted to get that out of the way. It's
15 paid for the deposition.

16 So in this case, did you have an
17 opportunity to review the depositions of the parties that
18 were involved?

19 A I did.

20 Q And did you have the opportunity to review the
21 live testimony here this morning?

22 A Yes.

23 Q And in addition to the parties involved, did you
24 also have the opportunity to review the depositions of
25 witnesses and engineers?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A A number of other individuals, yes.

2 Q And in those depositions from the engineers, did
3 you -- what did you rely upon on those depositions?

4 A Primarily on their testimony regarding the
5 timing and sequence of the events associated with the two
6 collisions we're here about today.

7 Q Okay. And in terms of that, that was primarily
8 just how the wreck occurred, basically who hit who first,
9 second, third?

10 A Right.

11 Q And I'll show you this. I'll tell you what, for
12 bad artwork it is sure getting some playing time here.

13 But this is a diagram that Kevin,
14 Mr. Smith, drew in his opening statement which shows
15 Ms. Hood's vehicle down here in the inside lane,
16 Mr. Johnson's vehicle at the stop sign, and Mr. Lee's
17 vehicle down here in the outside lane. Okay?

18 And is it your general understanding that
19 the way this wreck occurred is Ms. Hood was broadsided by
20 Mr. Johnson?

21 A That's my understanding, yes.

22 Q And then she was pushed over into another lane
23 of travel?

24 A That's my understanding.

25 Q And that's what you use the accident

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 reconstruction depositions for, correct?

2 A Primarily.

3 Q Okay. Now, in terms of -- you had the
4 opportunity in this case to review the cell phone records,
5 correct, of the Defendant and testimony about those?

6 A Yes.

7 Q Okay. And so you are aware that at 12 -- well,
8 let me ask you this. I'll step over here so you can see a
9 little better.

10 At what time did his last call on 11/6
11 officially end?

12 A It looks like it ended at 12:17 a.m. on November
13 7th.

14 Q Okay. And the duration of that call in seconds?

15 A 10,978.

16 Q Okay. That's about three hours?

17 A I believe so.

18 Q Okay. And on 11/7, his first activity was at
19 what time?

20 A 4:44 a.m.

21 Q Okay. And what was that?

22 A It appears to have been an outbound text
23 message.

24 Q Okay. So that's a text message that he would
25 have actually typed out?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A Presumably, yes.

2 Q And you had the opportunity in this case to
3 review Ms. Melnick's deposition, correct?

4 A Yes.

5 Q And that's the exact same deposition that the
6 jury saw, just saw it via video. So when I refer to
7 testimony or deposition, it's the same. Okay.

8 And you also had the opportunity to review
9 the 911 records, correct?

10 A I did.

11 Q And you were able to determine who made the
12 first 911 call?

13 A I don't recall off of the top of my head, but
14 there's a time stamp associated with it. I know that.

15 Q Okay. And I'll show you Plaintiff's Exhibit 1,
16 which are those.

17 You understand that individual was
18 Ms. Melnick?

19 A Yes.

20 Q Okay. Now, in reviewing Ms. Melnick's
21 deposition, were you able to see some of the things
22 between the time that she saw the wreck and actually made
23 the 911 call that she did?

24 A Yes. I believe she described kind of what she
25 did after she heard and saw the collision.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q Okay. And describe for us, you know, basically,
2 Ms. Melnick, what you remember about that.

3 A From what I recall, she was an employee of the
4 Dunkin' Donuts along two -- the frontage road off 278, and
5 she was putting umbrellas down, I believe and --

6 Q Let me stop you there.

7 MR. WILLEY: May the witness step down?

8 THE COURT: She may.

9 (Witness complies.)

10 BY MR. WILLEY:

11 Q The jury already knows what this is, we talked
12 about it ad nauseam. Okay.

13 But up here is the Dunkin' Donuts. So just
14 continue. Thought it might be helpful to have a visual.

15 A Okay. So my understanding is that she was out
16 in this front patio area, and that she was putting
17 umbrellas down. And I think the first thing she said is
18 that she heard some kind of collision, and then looked
19 through the trees and saw what she described as the
20 aftermath. And then she --

21 Q So is it your understanding, based on her
22 testimony, that that was the first impact, and that she
23 saw the aftermath after the second impact?

24 MR. DANIEL: Objection, leading, Your Honor.

25 THE COURT: Sustained. Don't lead her.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 BY MR. WILLEY:

2 Q Okay. What is your understanding about what
3 aftermath she was referring to?

4 A Given the timing of events and the location of
5 the Dunkin' Donuts, presumably the aftermath of Ms. Hood's
6 collision with the Kuck's vehicle.

7 Q All right. And continue.

8 A So after she heard and saw collision activity, I
9 believe Ms. Melnick testified that she had to go back
10 inside the Dunkin' Donuts in order to call 911, and that
11 involved going around a counter to get to the phone that
12 was within the restaurant, coffeehouse.

13 Q Okay. So she left the patio, went inside and
14 went behind the counter is your understanding?

15 A Correct.

16 Q Okay. And when Ms. Melnick testified that she
17 was able to see the aftermath. Did she give any
18 indication about whether people were out there and that
19 sort of thing, by that point, that you recall?

20 A My recollection is that she could see that there
21 were already some bystanders, perhaps, that were
22 responding.

23 Q And when she got in off the patio, inside,
24 around the counter, in the back, what did she do?

25 A I believe she then called 911.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q And what time was that call?

2 A I believe the 911 numbers indicate 5:58.

3 Q And as a human factors expert, and just person
4 with common sense, what does that tell you about the time
5 of the wreck in this case, the initial wreck?

6 A That would suggest that at least some time had
7 elapsed from the initial wreck to the 911 call, given that
8 two wrecks had to happen and she had to witness the
9 aftermath and get inside the restaurant before dialing
10 911.

11 Q Okay. Now, as part of this, you also had the
12 opportunity -- excuse me -- to review what Mr. Johnson did
13 after the wreck, correct?

14 A With his cell phone records.

15 Q In terms of his cell phone records.

16 A Yes.

17 Q I'll show you what's in evidence as Plaintiff's
18 Exhibit No. 7. And what were you able, in your field of
19 expertise, to gather from this wreck?

20 A Primarily that there was an inbound text message
21 that arrived at Mr. Johnson's phone close in proximity to
22 the time of the first impact.

23 Q And based on the timing of the 911 call at
24 5:58:46, about how long before that 911 call did that text
25 message come in?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A It looks like almost exactly the minute.

2 Q And based on your expertise and human factors
3 and about, you know, how long things would take, what do
4 you then notice about the next -- next call log on his
5 record?

6 A The next item is an outbound call at 1759, or
7 5:59.

8 Q And that call is basically, at 5:59 and four
9 seconds. So right at 5:59?

10 A Yes.

11 Q And you had the opportunity to hear
12 Mr. Johnson's testimony?

13 A I did.

14 Q And you, based on that, are able to obviously
15 determine, he admitted, that that was after the wreck,
16 correct?

17 A Correct. I believe he said he was calling his
18 mother.

19 Q Okay. So we now walk through, basically, the
20 wreck sequence and what occurred thereafter. And in terms
21 of making your analyses in this case, what other data was
22 important to you?

23 A Primarily the timing of the two collisions as
24 well as any information about witness recollection from
25 that time period.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q And prior to this CAD record of 5:58:46, you
2 were able to review this testimony about what Ms. Melnick
3 went through before she got connected, correct?

4 A Correct.

5 Q And what was your understanding of that process?
6 Was it she called and they just picked up? Or describe it
7 for the jury.

8 A My recollection is that the phone obviously
9 rang. And then I believe she was transferred at least
10 once, perhaps, between operators.

11 Q All right. Before she spoke with someone?

12 A Correct.

13 Q And then, again, that would take additional
14 time, correct?

15 A One would assume so, yes.

16 Q Okay. Now, with respect to the data, I'm going
17 to show you a smaller version of what we are going to mark
18 as Plaintiff's Exhibit 12 -- 13.

19 Are you familiar with that document?

20 A Yes.

21 Q And describe for the jury what it is.

22 A It is basically a map of the intersection where
23 the collision occurred and off to the side of the map, we
24 can see some data about sunrise and sunset on the day of
25 impact.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q Okay. And where does that data come from?

2 A This is from a website called "SunCalc."

3 MR. DANIEL: Your Honor, may we approach?

4 THE COURT: You may.

5 (Off-the-record discussion held.)

6 BY MR. WILLEY:

7 Q Okay. So, Dr. Borzendowski, this document in
8 front of you you recognize?

9 A Yes.

10 Q It is from SunCalc, correct?

11 A Yes.

12 Q And what does SunCalc do? What does that
13 document do?

14 A It basically provides information about the
15 timing of sunrise and sunset, the day of the collision.

16 Q And is that a website that you would normally
17 rely on in your field?

18 A I've used it before, yes.

19 Q You've used it before in other matters?

20 A Yes.

21 Q And there is another source as well that
22 provides sunset and sunrise data. You are familiar with
23 that?

24 A Yes.

25 Q Okay. Tell the jury about that source.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A Can I refer to the document, so I don't mess up
2 the acronym?

3 Q Right. Just who puts out that data.

4 A I believe it is the Naval Observatory. The U.S.
5 Naval Observatory.

6 Q Right. And is that data more general or more
7 specific than SunCalc?

8 A So the Naval observatory data allows you to put
9 in a kind of general location, such as Hilton Head
10 broadly, whereas SunCalc you are able to pinpoint a more
11 specific location.

12 Q Okay. So the SunCalc is more specific. And
13 where does SunCalc derive their data?

14 A My understanding is that it's based on a
15 European astronomy formula.

16 Q And in your deposition, you weren't able to
17 specifically recall that, correct?

18 A Correct.

19 Q Were you able to go back and research that?

20 A Yes.

21 Q And as you sit here today, do you know exactly
22 where the Naval Observatory derives their information?

23 A My understanding is it's a similar formula.

24 Q And that formula is accepted by experts in your
25 field, correct?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A I certainly am not going to say I'm qualified to
2 perform it myself. But we rely on this type of data
3 regularly.

4 Q Okay. And that smaller version of Plaintiff's
5 Exhibit 13 that you have, is that a fair and accurate
6 representation of the SunCalc data, data point, for the
7 particular day of this wreck?

8 A Yes.

9 MR. WILLEY: Your Honor, at this time we would
10 move to enter into evidence the Plaintiff's Exhibit
11 13.

12 MR. DANIEL: This is the SunCalc record or the
13 Naval Observatory?

14 MR. WILLEY: The SunCalc, the specific one.

15 MR. DANIEL: No objection.

16 THE COURT: With no objection, it's in evidence.

17 *(Whereupon, Plaintiff's Exhibit No(s). 13 marked*
18 *for identification and received in evidence.)*

19 BY MR. WILLEY:

20 Q Dr. Borzendowski, would you mind stepping down?
21 The jury is going to have this back in the jury room, so
22 will you just explain to them what they're looking at
23 here.

24 A So hopefully what you can see here is this is a
25 map of the intersection where the both collisions

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 occurred, actually, approximately. So we can see here
2 Southwood Park Drive, which is where Mr. Johnson's vehicle
3 was stopped. And then we have William Hilton Parkway,
4 where Ms. Hood was traveling east.

5 And over here in this little box, we can see
6 some data regarding dawn, sunrise, noon, sunset, and dusk
7 for this particular geographic location.

8 Q And with respect to sunset for this location,
9 what does it saying?

10 A It is identified as having occurred at 1729,
11 which would be 5:29 p.m.

12 Q And William Hilton Parkway, 278, that road runs
13 east to west, correct?

14 A Yes.

15 Q And how does the -- where does the sun set?

16 A West.

17 Q In the west. So the sun would be setting closer
18 to you than it is to me, correct?

19 A If I were driving here, yes.

20 Q And with respect to specific geographic
21 coordinates, obviously those are more specific than just
22 giving it for an entire town, correct?

23 A Right.

24 Q Is it fair to say that if you were somewhere
25 else on Hilton Head, the sunset may be at a different

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 time?

2 A It's going to be slightly different, yes.

3 Q A minute or two?

4 A Possibly.

5 Q And in this particular case, you relied on this
6 document, correct?

7 A Correct.

8 Q And the sunset again was at 5:29.

9 A Correct.

10 Q Okay. Thank you. Just to be clear, as the sun
11 was setting in the west, it would be setting down on this
12 end of the road, right?

13 A Yes.

14 Q It wouldn't be setting behind these trees or
15 setting behind these trees, correct?

16 A It would be somewhere into that direction.

17 Q This direction. Okay.

18 So those are the data points that you use
19 at arriving at your opinions in this case, correct?

20 A Correct.

21 Q And briefly, just before we break here, would
22 you tell the jury your opinions in this case?

23 A Absolutely. The first being that, given the
24 time of sunset --

25 MR. DANIEL: Your Honor, I object.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 THE COURT: Basis?

2 MR. DANIEL: May we approach?

3 THE COURT: Sure.

4 (Off-the-record discussion held.)

5 BY MR. WILLEY

6 Q All right. Dr. Borzendowski, all right, will
7 you tell -- we'll go through them later, but will you just
8 tell the jury the opinions that you've reached in this
9 matter.

10 THE COURT: Is this -- are you wrapping up
11 everything with her or not?

12 MR. WILLEY: No.

13 THE COURT: Okay. Well, then now might be a
14 very good time for us to break for lunch. It is
15 close to 1 o'clock.

16 Ladies and gentlemen of the jury, you are not to
17 discuss this case. It wouldn't be appropriate to do
18 so. Go grab a bite to eat, I'm asking you to be back
19 in your jury room by 2:15, when we're going to go
20 ahead and continue the trial of this case. All
21 right?

22 Have a nice lunch, everyone.

23 (The Jury exits the courtroom.)

24 THE COURT: Okay. We're going to go ahead and
25 break for lunch. I know you know this, what they're

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 concerned about is you testifying to the law in some
2 way, shape, or form that somebody is required by law
3 from where the other two -- do something or do not do
4 something. You're a professional, you're an expert.
5 Presumably trained by Ellen Campbell, and the rest of
6 the progeny. You know that you can't testify as to
7 the law. The Court can probably say that you can
8 just give your opinions based on your expertise in
9 human factors.

10 I'm not concerned about what you're going to
11 testify to, but apparently everyone else in this room
12 is.

13 So with that said, I'm going to go ahead and
14 we're going to excuse everyone for lunch. We'll be
15 back just a little after 2 o'clock. If there's
16 anything else we need to talk about, we'll go ahead
17 and discuss that at that time.

18 If you have any questions or any concerns about
19 you crossing the line -- but I can tell you that if
20 you start to, he's going to object, I'm going to
21 sustain it, and we'll go from there.

22 But I think we're fine. All right? Let's stick
23 to what her expertise is. Okay?

24 MR. WILLEY: If you stick to the three things we
25 talked about, in those words, you'll be fine.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 MR. DANIEL: The one concern is whether someone
2 was legally required or not required.

3 THE COURT: And she can't testify to that.
4 Okay.?

5 THE WITNESS: Yes.

6 THE COURT: All right. She understands that.

7 Okay. We'll break for lunch. We'll see y'all
8 just a little after 2:00. Okay.

9 MR. WILLEY: Any objection to me talking to her
10 during lunch, so we can be clear on the exact
11 wording, so it's not tactful for you?

12 MR. DANIEL: No. I mean, I can ask her what you
13 talked about, but I --

14 THE COURT: Don't talk about it. Because he'll
15 ask her.

16 MR. SMITH: This afternoon, we're going to go a
17 little bit out of order. I'm having witnesses come
18 in instead of tomorrow, today. So we'll going to
19 take them a little bit out of order just to get
20 through it. Okay?

21 THE COURT: Doesn't matter to me.

22 MR. SMITH: Okay. I mean, it may seem a little
23 unusual, but I'm trying to fit it in.

24 THE COURT: Okay.

25 (Whereupon, the Court was in lunch recess.)

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 (Proceedings continue in Volume 4.)

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DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the
8 foregoing proceedings and that the transcript is a true
and complete record of my stenographic notes.

8

DATED this 4th day of January, 2018.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

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1 In the Court of Common Pleas for the
2 State of South Carolina, County of Jasper

3

4 Case No.: 2015CP2700119

5 Therese Hood,

6 Plaintiff,

7 vs.

Transcript of Record

8 Antoine Johnson,

9 Defendant.

10

11

12

13

VOLUME 4

14

15 September 6, 2017

16 Ridgeland, South Carolina

17

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19

20

21 BEFORE:

22 The Honorable CARMEN T. MULLEN

23

24

25

APPEARANCES**REPRESENTING PLAINTIFF:**

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AND

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1 PROCEEDINGS

2 THE COURT: Okay. Let's bring the jury
3 out.

4 (The jury enters the courtroom.)

5 THE COURT: Welcome back ladies and
6 gentlemen. I'm going to go ahead and tell you
7 right now that, interestingly enough, Jasper
8 County Courthouse is controlled, the AC system,
9 is controlled in Virginia. That happens all
10 over this state. I can tell you that anytime
11 that the courthouse has been redone or is fancy
12 or brand new, which ours is, it gets controlled
13 elsewhere. Because apparently they don't trust
14 us to keep it.

15 But the good news is we'll -- go ahead,
16 y'all can be seated.

17 The good news is that we do have running
18 water, we do have hot water, so -- which was a
19 problem we had for a few years back. Margaret
20 knows that.

21 So anyway, I trust you all had a good
22 lunch. We're going to keep moving forward. I
23 just wanted to let you all know we've been
24 watching just what's going on with Hurricane
25 Irma. And we will let you know if there's

1 anything that you need to be concerned about
2 whatsoever. It's absolutely fine right now, so
3 let's not worry. But in case any of you are
4 watching the weather, I just want you to know
5 that we are on top of it and making sure
6 everything is fine. Okay?

7 With that said, please go ahead and
8 continue with this witness. Ladies and
9 gentlemen, I just reminded her before you came
10 in that she's still under oath and she knows
11 that.

12 So Mr. Willey, whenever you're ready.

13 MR. WILLEY: Thank you, Judge.

14 **Thereupon,**

15 DR. STEPHANIE BORZENDOWSKI
16 was called as a witness, having been previously duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION CONTINUED

19 BY MR. WILLEY:

20 Q Dr. Borzendowski, before lunch we went
21 through your education and expertise and the data
22 and information you relied on in this case, right?

23 A We did.

24 Q Okay. And just before we broke for lunch,
25 you were about to tell us your findings of expert

1 opinions in this case, correct?

2 A Yes.

3 Q And, of course, during lunch, you and I
4 had lunch together; correct?

5 A We did.

6 Q And we had -- what did we have?

7 A Wendy's.

8 Q Okay. There were a bunch of other people
9 around, right?

10 A Yes.

11 Q And we -- did we discuss your testimony in
12 any substantive way?

13 A Other than just making sure that we came
14 up with wording that was comfortable for everyone.

15 Q Okay. So we wouldn't have another
16 objection, right?

17 A Correct.

18 Q So with that said, will you tell the jury
19 what your findings were in this case?

20 A Yes. The first being that this first
21 collision occurred at 5:58 p.m. or earlier on the
22 day of the collision. That Ms. Hood's -- that the
23 vehicle would have been visible to Mr. Johnson. And
24 that if Mr. Johnson were distracted at the time
25 leading up to impact, that would have contributed to

1 his inability to avoid it.

2 Q Okay. So the first one was that the
3 collision occurred at 5:58 or earlier, correct?

4 A Correct.

5 Q The second one was Hood's vehicle would
6 have been visible to Johnson if he were looking,
7 correct?

8 A Correct.

9 Q All right. And what was the third one?

10 A That if Mr. Johnson were distracted at the
11 time of impact or shortly before that, it would have
12 contributed to his ability to avoid a collision.

13 Q All right. And do you have any other
14 findings in this matter at this time?

15 A Those are the primary findings.

16 Q Okay. Let me see what I wrote -- I
17 basically just wrote what you said, but is this
18 accurate as to what you said?

19 A It appears to be.

20 Q Okay. Handwriting is not the best.

21 With respect to your first opinion
22 that the collision happened at 5:58 or earlier, what
23 specifically did you base that upon?

24 A That's based primarily on the first 911
25 call in response to the collision.

1 Q And we know that that 911 call was placed
2 when?

3 A 5:58 and 46 seconds, I believe.

4 Q Okay. And that 911 call was placed by
5 Ms. Melnick?

6 A Yes.

7 Q And Ms. Melnick did all these things prior
8 to placing that call, correct?

9 A That's my understanding, yes.

10 Q And obviously got transferred a few times
11 before it was logged?

12 A That's her testimony, yes.

13 Q So in your opinion today, you are
14 estimating that obviously that took longer -- all of
15 this took longer than 46 seconds?

16 A I believe it would have.

17 Q Okay. And that's based on her testimony
18 and your experience in human factors, correct?

19 A Correct.

20 Q With respect to your second opinion of
21 that, Ms. Hood's vehicle would have been visible to
22 Johnson if he was looking, what -- what did you base
23 that up? Which specific data point helped you reach
24 that conclusion?

25 A In part that it was not completely dark

1 outside based on the timing of the collision; and,
2 therefore, there still would have been some
3 illumination at the scene. And that there was also
4 another vehicle coming from that direction of travel
5 that would have been -- should have been visible to
6 Mr. Johnson, and per his testimony, he did not see
7 that one either.

8 Q And with respect to Mr. Lee's testimony,
9 did you put any weight on the fact that he said he
10 was able to see both the Plaintiff and the
11 Defendant?

12 A Yes. So he did testify that he could see
13 both vehicles prior to impact.

14 Q And today you had the opportunity to hear
15 Ms. Kuck's testimony?

16 A Yes. Which was that they did see an
17 object approaching them prior to impact with
18 Ms. Hood's vehicle, and that it was light enough to
19 see the roadway entry and other vehicles.

20 Q And specifically she said other vehicles
21 with or without headlights?

22 A She did, yes.

23 Q And does that support your second opinion?

24 A It does.

25 Q And with respect to your third -- well,

1 let's stick there for a second.

2 So you also had the opportunity to
3 hear Mr. Johnson's testimony today, correct?

4 A I did.

5 Q And Mr. Johnson testified that he did not
6 see Ms. Hood's vehicle at all, correct?

7 A Yes.

8 Q Is that important when you are analyzing
9 and reaching a finding on why something occurred?

10 In other words, an individual,
11 whether they saw something and it was specifically
12 one way, or just didn't see it at all? I mean, do
13 you take that into account?

14 A In the sense that if there was visual
15 information available, and that that observer failed
16 to observe it, then that's an indicator of some
17 extenuating factor potentially, yes.

18 Q Okay. And in this case, were you able to
19 use the data available to you and the testimony of
20 the parties and witnesses in order to reach a
21 finding about potentially why Mr. Johnson did not
22 see Ms. Hood?

23 A Potentially that he was distracted and did
24 not -- either did not attend to that area of the
25 intersection or failed to perceive it as a result of

1 the distraction.

2 Q And Dr. Borzendowski, I believe you
3 prepared a demonstrative that deals with your third
4 opinion?

5 A Yes.

6 Q Which you provided to Mr. Daniel last
7 night, correct?

8 A I did.

9 Q And which he's, I assume, fine with you
10 using.

11 So would you step down at this point
12 with a copy of that exhibit? Do you have it?

13 A I do.

14 Q Okay.

15 A (Witness complies.)

16 Q And would you explain to the jury what it
17 is that you prepared here?

18 A I apologize, it's kind of small. Bear
19 with me.

20 Basically it's just illustrating some
21 of the more common causes of distracted driving. So
22 up at the top you'll see someone texting on a phone,
23 and I think that's probably one that many people are
24 familiar with, that texting while driving can be
25 distracting, and this data supports that.

1 Similarly, reading text messages. So
2 typing and reading text messages are goal activities
3 that take your attention away from the task of
4 driving.

5 And then talking on the phone,
6 hopefully many people are familiar with that one.
7 They are -- not in South Carolina, but other states
8 do regulate cell phone use in vehicles because of
9 the issues associated with distraction of talking
10 while driving.

11 One that some of the ladies might be
12 more familiar with, which is putting on makeup in
13 the car. So that is certainly an activity that is
14 going to take your attention away from the roadway.

15 And eating and drinking while
16 driving, and not just alcohol. That -- again,
17 that's a task that requires some physical abilities,
18 obviously, and I don't know if you guys can see in
19 this photo, this person is juggling a soda and a
20 burger. But, again, it's taking away some visual
21 and cognitive abilities as well.

22 And finally, there's data to suggest
23 that interacting with voice commands in your vehicle
24 can also distract you while you're driving.

25 Q And when you're talking about voice

1 commands, specifically that's dealing with the
2 in-car system.

3 A Right. So if you have Bluetooth in your
4 car and you can voice dial your contacts and things
5 like that.

6 Q And in this particular case, which of
7 these did you find to be relevant?

8 A The most relevant would be reading a text
9 while driving, because we know that there is a
10 record of an inbound text message prior to the
11 collision.

12 Q And you had the opportunity to review the
13 totality of Mr. Johnson's cell phone usage from that
14 particular day and the evening before, correct?

15 A Correct.

16 Q And were you able to make any analysis of
17 that? In other words, when you looked at that, what
18 did you -- what did you see?

19 A Primarily what I think everyone heard
20 during testimony this morning, which was that he had
21 been using his phone pretty actively throughout the
22 day, including up to shortly before the first
23 collision.

24 Q Okay. And when you looked at the phone
25 numbers that he was texting to, were you able to see

1 any similarities or draw any --

2 A My recollection is that there was one
3 number in particular that there was correspondence
4 between throughout the day.

5 Q And is that the 1200 -- ends in 1200?

6 A That sounds familiar, yes.

7 Q Okay. When you look at his texts in
8 detail, is this the number you're talking about,
9 this 305-1200?

10 A Yes.

11 Q Okay. And in terms of this record,
12 obviously this is calling and called. So whoever
13 sent the text would be here, whoever received it --

14 A Right.

15 Q What were you able to determine about his
16 interaction with that person throughout the day?

17 A It seemed to be sort of a give and take
18 conversation. We can see that there's a pretty
19 healthy mix of inbound and outbound, indicating
20 correspondence between Mr. Johnson and that party.

21 Q And was that the individual also that he
22 texted at 4:40 that morning?

23 A I do not recall off of the top of my head,
24 but I think it might be this one.

25 And that's 4:44, yes.

1 Q And at the time of this wreck, is that
2 also the individual that he was --

3 A So he received a text from that individual
4 at 5:57:43.

5 Q Okay. And we now know that individual was
6 his girlfriend?

7 A From his testimony, it sounds that way.

8 Q Thank you.

9 Dr. Borzendowski, can you tell the
10 jury a little bit about how reading the text from a
11 scientific perspective, because I think, you know, a
12 lot of folks think, well, if I just glance, it's not
13 that big of a deal. But will you explain to them
14 from a scientific perspective how that works in
15 terms of actually distracting you and the effects on
16 your body?

17 A Sure. For most of the activity that we
18 just talked about on that diagram, there are
19 multiple components to the distraction that they
20 cause. So some of it is the obvious, the physical
21 handling of a phone or a makeup brush, for example,
22 is taking a hand away from the steering wheel and
23 other controls in the vehicle.

24 There's the visual component with
25 reading a text message. For example, where you do

1 have to make a glance to the phone to read the
2 message and that time that you spend reading the
3 text message is time that your eyes are not on the
4 roadway. And as many of us know, all it takes is a
5 brief period of time where you're not attending to
6 the roadway where something unexpected can happen.

7 And the third kind of big issue with
8 these type of distracting tasks is the cognitive
9 factor. So once you've read that text message, your
10 brain has to kind of process the message. You might
11 start thinking about how you're going to respond,
12 what you're going to say back. And so when you're
13 using your cognitive and attentional resources on
14 that task, that's attentional resources that are no
15 longer available for attending to the roadway and
16 the other tasks associated with driving.

17 Q And, Dr. Borzendowski, does that reading a
18 text, looking at a text, looking at your phone have
19 a similar impact as the other items on the
20 demonstrative that you put together?

21 A It does.

22 MR. WILLEY: Your Honor, at this time
23 we're going to mark this as Plaintiff's exhibit
24 and go ahead and move it into evidence for
25 demonstrative.

1 MR. DANIEL: Your Honor, as long as I can
2 use it and talk to her about it, I don't have
3 an objection.

4 THE COURT: Okay. He's just putting it
5 into evidence. So if you're fine with that,
6 then, of course you can use it.

7 MR. DANIEL: That's fine.

8 THE COURT: It's in evidence, and you can
9 use it all you want to.

10 *(Whereupon, Plaintiff's Exhibit No(s). 14*
11 *marked for identification and received in*
12 *evidence.)*

13 BY MR. WILLEY:

14 Q Dr. Borzendowski, we've heard a lot, and
15 you've heard a lot today, about alleged speed of
16 Ms. Hood. And did you consider that in any way in
17 your analysis today?

18 A And it didn't factor into my opinions
19 really in this matter.

20 Q Okay. And tell this jury why you believe
21 speed is not a factor -- did not factor into your
22 opinion in this matter.

23 A If we look at my three opinions as they're
24 posted on the board there, none of them have
25 anything to do with speed. It really wouldn't have

1 impacted those factors.

2 Q And you had the opportunity, obviously, to
3 review the photographs on the reconstruction -- or
4 the testimony, correct?

5 A Yes.

6 Q Okay. And you were obviously able to
7 determine that Mr. Johnson actually struck Ms. Hood,
8 correct?

9 A Based on the evidence available.

10 Q Pretty obvious, right?

11 A It appears to be, yes.

12 Q And so whether or not Ms. Hood was
13 traveling 25 or 85, it wouldn't have mattered,
14 correct?

15 A Given the mechanism of the collision, no.

16 Q The only thing that that may not have done
17 is put her in that place at that time, correct?

18 A Right. It would have changed the time it
19 would take her to traverse that section.

20 Q Which if she had set her snooze button
21 that morning and got up five minutes later, the
22 wreck wouldn't have happened either, correct?

23 A Potentially.

24 MR. WILLEY: Thank you. Please answer any
25 questions Mr. Daniel may have.

1 CROSS EXAMINATION

2 BY MR. DANIEL:

3 Q Ms. Borzendowski -- did I say it right?

4 A You did.

5 Q I just want to make sure I heard you
6 correctly with what you said just now.

7 Is it your testimony and your opinion
8 that speed was not a factor in this accident?

9 A I said that speed was not a factor, in my
10 opinion, related to this matter.

11 Q Speed was not a factor, in your opinion.

12 A Correct.

13 Q As an expert in this case?

14 A To my specific opinions that I just
15 offered.

16 Q Right. And you have considered
17 information about speed as part of your
18 investigation in this case, being hired as an expert
19 on behalf of the Plaintiff; is that right?

20 A I did not conduct an independent analysis
21 of Ms. Hood's speed personally, no.

22 Q You just ruled it out though as a factor,
23 in your opinion. That's what you just testified to.

24 A It's not related to my opinions that I'm
25 offering today.

1 Q You just said speed is not a factor in
2 your opinion. That's what you told the jury.

3 A What I am intending to say is that of the
4 three opinions I've offered, that speed is not
5 related to those three opinions.

6 Q Okay. But you're commenting on speed, and
7 you just gave an opinion about speed not being a
8 factor; do you agree?

9 A Again, I testified that speed was not a
10 factor in my opinions that I'm offering today.

11 MR. DANIEL: Madame -- Mrs. Bostick, can
12 we pull this up?

13 MR. WILLEY: Your Honor, can we approach?

14 THE COURT: Sure.

15 MR. WILLEY: I think that you've already
16 ruled on this, but --

17 (Off-the-record discussion held.)

18 BY MR. DANIEL:

19 Q Bear with me. I'm not as tech savvy as
20 some of the other folks here.

21 (Pause.)

22 BY MR. DANIEL:

23 Q You read Woody Poplin's deposition. Isn't
24 that correct, ma'am?

25 A I did.

1 Q That was provided to you?

2 THE COURT: Okay. Come back up here.

3 MR. DANIEL: I got to ask the questions,

4 Your Honor.

5 THE COURT: Come back up here.

6 (Off-the-record discussion held.)

7 BY MR. DANIEL:

8 Q Was information provided to you about the
9 crash data taken from -- I'll use the slang term, "a
10 computer chip" in the Plaintiff's vehicle?

11 A I don't have that specific data, no.

12 Q But have you seen testimony about it?

13 A I have.

14 Q From an engineer; is that right?

15 A Correct.

16 Q Someone that specializes in accident
17 reconstruction, something you don't do?

18 A Correct. I am not an accident
19 reconstructionist.

20 Q Do you remember what the testimony is
21 about the documented speed of Ms. Hood's vehicle
22 just before impact with Mr. Johnson's vehicle?

23 MR. WILLEY: Your Honor, I'm going to
24 object. These are facts not in evidence.
25 There's no documents showing her speed.

1 MR. DANIEL: I'm asking her if she
2 remembers.

3 MR. WILLEY: He can call the witness, if
4 he has a witness to say that. He doesn't get
5 to just make it up.

6 THE COURT: Okay. Ladies and gentlemen of
7 the jury, I'm going to send you back to your
8 jury room. Do not discuss this case, it
9 wouldn't be appropriate to do so at this time.
10 We'll be right back with you. Okay?

11 (The jury exits the courtroom.)

12 THE COURT: Okay. Do either one of you
13 list Woody Poplin as a potential witness in
14 this case, on their pretrial brief?

15 MR. WILLEY: Everyone did.

16 THE COURT: Okay. So you did. So he
17 potentially could be your witness. You're
18 sitting here saying he was hired by USAA, which
19 he may have been originally, but you now deem
20 him as a witness as well.

21 Secondly, you've asked her a question of
22 whether or not she thinks speed was considered.
23 She said no. You can't get out Woody Poplin's
24 testimony through her if she says she didn't
25 consider it. You got to move on. She said she

1 didn't consider it.

2 The only other way to go ahead and use
3 that against her is if you put Woody Poplin on
4 the stand, or somebody does, and says, "You
5 consider speed important, don't you?"

6 Because at this point, you are pitting her
7 against a witness that hasn't even testified in
8 this case.

9 MR. DANIEL: Yes, Your Honor. But as an
10 expert witness, she's considering testimony in
11 what Ms. Melnick said, fact witness. She was
12 also provided testimony about what this expert
13 said he did. So she's considering hearsay in
14 testimonies --

15 THE COURT: She said she didn't consider
16 the speed. She said she didn't consider it.

17 MR. DANIEL: Well, she actually just
18 testified that, in her opinion, speed is not a
19 factor, and she knows what the documented speed
20 was. We can call Woody Poplin, but she
21 actually testified in her deposition that she
22 saw what the documentation and the electronic
23 --

24 THE COURT: So just ask her what the speed
25 is. You're sitting here trying to impeach her

1 on something that is not even impeachable at
2 this point.

3 MR. WILLEY: But Your Honor --

4 THE COURT: She's going to say the
5 documented speed according to the black box was
6 62 or 63 miles an hour. So when she testifies
7 to that, she's going to go ahead and then give
8 her answer and explain that yeah, and I still
9 didn't consider it, and this is why.

10 MR. WILLEY: But, Your Honor, she doesn't
11 know that. She did not get actually, as she
12 testified, get that data to look at the data,
13 which he could have given her to look at. He
14 did not do that, we're already --

15 THE COURT: But she read Woody Poplin's
16 deposition.

17 MR. WILLEY: Yeah, but she doesn't -- she
18 can't -- we can't get in testimony from another
19 witness without bringing in all the testimony
20 --

21 THE COURT: She can though because that's
22 something she reviewed in coming to her
23 opinion. She reviewed it. What I'm hearing
24 from her is she reviewed it, but it still
25 doesn't make a bit of difference to her.

1 That's what I'm hearing.

2 MR. WILLEY: I that what she actually said
3 is that she only reviewed that deposition for
4 purposes of trying to figure out the accident
5 sequence.

6 And if you look at the abstract, that she
7 actually sent Mr. Daniel last night after he
8 won his motion at his request, the only
9 portions that were highlighted for her to read
10 dealt with the sequencing and lighting. We
11 didn't deal at all. She didn't look at it.
12 End of deposition. I was there, this was five
13 days ago. He's showing her portions of the
14 deposition trying to get her to regurgitate
15 what someone else said. It's totally
16 inappropriate. You cannot pit witnesses like
17 that, and it's prejudicial.

18 Woody Poplin is -- he can call him. We
19 can call him, and it's proper then. But it's
20 not proper to discredit her based on something
21 that someone else said that she didn't even
22 consider.

23 THE COURT: And all she has to do is say
24 she didn't consider it.

25 MR. WILLEY: She already said that. And

1 now he's going in to trying to get prejudicial
2 information, after she's already said on my
3 direct and his cross, she didn't consider it,
4 review it, count on it. Hasn't even received
5 the data at all. She said that. I mean, you
6 know, it's totally, totally improper.

7 What he could do, you know -- it's the
8 equivalent -- I mean, it's the equivalent of me
9 getting my Plaintiff up there and having my
10 Plaintiff testify about what some doctor said
11 in their deposition about her medical
12 condition. I mean, it's totally improper. You
13 have to bring the witness of the subject to
14 cross examination unless you had a deposition
15 for trial.

16 THE COURT: It's an expert witness that
17 you relied on.

18 MR. WILLEY: But she did not consider that
19 information. She's already said it, and he's
20 trying to get the evidence in through her even
21 though she's already said, No, I didn't look at
22 it, didn't consider it.

23 MR. DANIEL: Your -- I'll be very brief,
24 Your Honor.

25 THE COURT: Go ahead.

1 MR. DANIEL: She considered Tammy
2 Melnick's testimony. We just heard that. We
3 just heard about this, oh, this lady was on
4 this porch.

5 THE COURT: Because Tammy Melnick
6 testified already. She's already testified.

7 MR. DANIEL: Well, she can consider
8 deposition testimony or live testimony.
9 Experts are allowed to do that. They can't
10 have it both ways. They provided Woody
11 Poplin's deposition to her.

12 THE COURT: This is the problem. You keep
13 asking her questions, and basically you're
14 feeding what Woody Poplin's testimony was, when
15 she says she didn't rely on it. We need to go
16 one step farther. She needs to say she didn't
17 rely on it because of this reason. And once
18 she says "because of this reason," you have got
19 to move on.

20 MR. WILLEY: And, Your Honor, I would
21 submit to the Court that in direct when we just
22 went through that, she did. She said because
23 whether she was going 25 or 80, she was
24 T-boned, the sequence of the wreck, it played
25 no role. The same role that would have

1 happened if the Plaintiff hit the snooze button
2 that morning and was not there at that time.
3 It's a res ipsa argument.

4 MR. DANIEL: And from a craftsman
5 perspective, Your Honor, so that I don't raise
6 any more issues, can I at least ask her if she
7 knows what the documented speed was? That
8 question.

9 MR. WILLEY: No. She already said no.

10 THE COURT: Already, she said no, she
11 didn't.

12 MR. WILLEY: We're just rehashing --

13 MR. DANIEL: She actually testified that
14 she did in the deposition.

15 MR. WILLEY: You showed it, yes. When you
16 showed it to her.

17 MR. DANIEL: She knows it secondhand
18 through their expert. She's looked at what he
19 said.

20 MR. WILLEY: But you don't get to --

21 MR. DANIEL: You want me to read it -- I
22 can read --

23 THE COURT: I don't want you to read
24 anything. I want you to ask her an appropriate
25 question. I think she needs to answer it. If

1 you, in a deposition, turned around and said,
2 "In fact, in a deposition, didn't I hand you
3 the document that Woody Poplin said it's 62
4 miles per an hour?" And you said, Well, at
5 that point, yes. But she can then still say
6 after that, "but it's not important because."
7 And I expect her to do that, which she's going
8 to do.

9 MR. WILLEY: And just briefly, I mean, the
10 other issue with that is, it wasn't a discovery
11 deposition, so he gets way more leeway. It
12 would not have been admissible if it were a
13 trial deposition anymore than it's admissible
14 now. What some --

15 THE COURT: Mr. Willey, this witness was
16 disclosed on July 17th. Correct me if I'm
17 wrong. Yes? Of this year.

18 MR. DANIEL: Yes, that's correct.

19 MR. WILLEY: Yes, ma'am.

20 THE COURT: This wreck happened in 2014.
21 You already made a motion to try to eliminate
22 her testimony, exclude it. So you need to be
23 careful.

24 Again, I could have just kept her out
25 completely. So, again, I think this is fair

1 game. I think he can ask the question. We
2 don't beat a dead horse.

3 She said it is not a factor, and I expect
4 her now, once again, I'm sure, to say why, and
5 tell these people why it's not a factor, and
6 then move on. Okay?

7 MR. DANIEL: Can I --

8 MR. WILLEY: My only objection is to
9 saying the speed because there's no reliable
10 evidence that was the speed. It's what some
11 other person said. She has not seen the data,
12 there is no foundation for it, nor expert
13 testimony. Not anyone that actually reviewed
14 the black box has testified yet to establish
15 it.

16 And so asking her what some other document
17 says --

18 THE COURT: So you're not bringing Woody
19 Poplin; is that what I'm hearing you say?

20 MR. WILLEY: At this moment, he's -- I
21 mean, he's on our list, but he's not here.

22 THE COURT: You're not bringing him.
23 Either yes or no. You're either bringing him
24 or not bringing him. And if you're not
25 bringing him, I can't imagine why you wouldn't.

1 MR. DANIEL: I have him under subpoena,
2 Your Honor, and we can just -- we could just
3 cut to the chase and ask her what she remembers
4 that speed being, per Woody Poplin, and she can
5 answer that the way she wants.

6 MR. WILLEY: No, that's improper. When we
7 call him -- when we call him or when he calls
8 him, he can ask him. And then Mr. Poplin is
9 subject to redirect by --

10 THE COURT: Okay. I'm going to let you go
11 ahead and ask her if she remembers what the
12 speed is, that's fine. If she doesn't, you
13 could say, "In the deposition, in fact, didn't
14 I show you what the downloaded black box is."

15 And I'm assuming -- and she's going to
16 turn around and say, "Yes, but again that's
17 irrelevant to me because." That's what she can
18 testify to. So let's just move on.

19 But what you're not going to do is say all
20 these things that Woody Poplin considered, who
21 hasn't even testified yet. Okay?

22 MR. DANIEL: I will keep it as brief and
23 --

24 THE COURT: Well, that's great, because if
25 you don't I'm going to cut you off. Okay?

1 MR. DANIEL: Yes, ma'am.

2 THE COURT: Let's bring the jury back now.

3 (The jury enters the courtroom.)

4 THE COURT: All right. Mr. Daniel, ask
5 your question. Let's go.

6 BY MR. DANIEL:

7 Q You were talking about sunset. I'm going
8 to come back to the questions we were just -- the
9 topic we were on. But you were talking about sunset
10 and what time it was based on some data, based on
11 some European equation.

12 What country in Europe; do you know?

13 A I believe that SunCalc website links to
14 the University of Netherlands.

15 Q Okay. So that's what people in Holland
16 say about sunset in Bluffton or Hilton Head?

17 A No. It's a formula grounded in physics
18 and astronomy.

19 Q But the U.S. Navy also has a similar
20 formula, right?

21 A I'm certain they do.

22 Q And didn't -- do you remember telling me
23 in your deposition that you more often than not rely
24 on the U.S. Naval Observatory data when pulling
25 times for sunset. Do you agree?

1 A That I typically use the Navel
2 Observatory, yes, for a general area.

3 Q Okay.

4 MR. DANIEL: Your Honor, may I approach?

5 THE COURT: You.

6 MR. DANIEL: We'll mark this in just a
7 second.

8 *(Whereupon, Defendant's Exhibit No(s). 6*
9 *marked for identification.)*

10 BY MR. DANIEL:

11 Q Can you tell the jury what that is?

12 A That is sun and moon data for the date of
13 the collision from the U.S. Naval Observatory.

14 Q And what does that say about the sunset?

15 A That it occurred at 5:28.

16 Q 5:28 p.m. that day?

17 A Correct.

18 Q Was the official time per the Naval
19 Observatory in Hilton Head.

20 A In Hilton Head, yes.

21 Q Okay. This accident happened on Hilton
22 Head Island, right?

23 A It did.

24 Q Okay. So your -- one of your opinions is
25 that no lay -- either 5:58 or earlier was the time

1 of this accident; isn't that what we just had up in
2 this demonstrative?

3 A Correct.

4 Q 5:58. So it would be, per the Naval
5 Observatory, if you do the math, 5:58 is 30 minutes
6 after sunset in Hilton Head?

7 A Exactly 30 minutes, yes.

8 Q Okay.

9 BY MR. DANIEL:

10 Q Okay. Defendant's 6. This will be
11 Defendant's 6.

12 Is that considered a more official
13 source -- is that considered a more official source
14 for sunrise and sunset times?

15 A I would say that that is certainly an
16 official source. It's the U.S. Naval Observatory,
17 but the SanCalc website as well is relying on the
18 same physics to calculate sunset.

19 Q But physics in a formula that you don't --
20 you don't really know exactly how they do it, right?

21 A I'm not a physicist, so, no.

22 Q And would you agree -- I mean, you're not
23 a law enforcement officer?

24 A No, I'm not.

25 Q I mean, one of those obvious lawyer

1 questions, but just -- I'm going to get there.

2 As far as making a determination of
3 whether it's pretty dark out and someone should have
4 their headlights on, and whether someone should be
5 pulled over for that and given a ticket, you agree
6 that that's the discretion of the officer on patrol,
7 right?

8 A A one-person officer would make that call,
9 yes.

10 Q And you weren't not out there that night
11 -- that evening, 25 minutes after sunset, 35 minutes
12 after sunset on the night of this accident?

13 A I was not.

14 Q Would you agree with me 5:50, 5:53, in the
15 evening, on November 7th, that time of year in
16 Hilton Head, it's relatively dark outside?

17 A Relative to daylight, yes.

18 Q Well, relative to daylight. You've looked
19 at Google photos, there are no street lights --
20 there are no street lights at this intersection, are
21 there?

22 A Not that I've seen.

23 Q Yeah. So -- and there's trees up here,
24 right?

25 A There are.

1 Q So once the sun starts going down these
2 trees can -- they're to block some of the natural
3 light once the sun starts setting; would you say?

4 A They may.

5 Q All right. They may? That's a fact.

6 A I mean, it depends on where the sun is
7 setting relative to the trees. But, yes, it would
8 block sunlight in that area.

9 Q Right. There have been -- I mean, you've
10 been in a big city, those tall buildings, they can
11 block out the sun. It's just a fact of life. A
12 fact of light and life; do you agree?

13 A That the sun can create shadows when there
14 are objects in the way, yes.

15 Q Right. And trees -- trees cast shadows,
16 don't they?

17 A They can.

18 Q And there are no street lights in that
19 intersection.

20 A Not that I've seen.

21 Q And one of the opinions --

22 MR. DANIEL: Your Honor, I don't want to
23 -- just demonstrative. I'm just going to show
24 it to her, I'm not going to write on it. I
25 don't --

1 THE COURT: Go ahead.

2 BY MR. DANIEL:

3 Q Okay. I want to make sure everybody can
4 see this.

5 One of the opinions, your opinion two
6 that is written down here Mr. Willey asked you
7 about. Hood's vehicle would have been visible to
8 Johnson, if looking, right?

9 A Correct.

10 Q And do you agree that that's a little bit
11 different than what you testified to in your
12 deposition just about a week ago -- less than a week
13 ago?

14 A If you will refer me to a specific page,
15 I'll be happy to compare.

16 Q Page 18, last line, 25. You see that?
17 You gave three opinions in your deposition, too.
18 Just a week ago.

19 A Yes.

20 Q Okay. The second opinion, which is this
21 opinion. If you want to come down here and compare,
22 you can.

23 A I can see.

24 Q I'm going to read it to you and I want you
25 to tell --

1 THE COURT: Give her a page and line
2 first.

3 BY MR. DANIEL:

4 Q Okay. I'm starting at Page 18, line 25.
5 Then you go to 19.

6 A Okay.

7 Q Your testimony, as far as your second
8 opinion, second being that any lights that she did
9 have activated on her vehicle would have been
10 visible to Mr. Johnson.

11 A Correct.

12 Q So we should add "lights would have been
13 visible."

14 A On her vehicle, yes.

15 Q Yeah. It's not this simple -- at least
16 five days ago, six days ago, it wasn't this simple.
17 You didn't say he should have seen her vehicle,
18 lights or no lights.

19 Your sworn testimony, under oath, as
20 an expert, being paid \$290 an hour was that if she
21 had lights activated they would have been visible to
22 Mr. Johnson.

23 A Yes.

24 Q That was opinion two.

25 A Yes.

1 Q Not this opinion. It wasn't this simple;
2 do you agree?

3 A They're not identical, I agree.

4 Q And they're not the same.

5 A That her vehicle, at some point, yes,
6 would have been visible. It's not the same as what
7 you're reading here, no.

8 Q At some point -- so you agree distance
9 matters?

10 A In a sense it does matter when viewing
11 certain objects, yes.

12 Q And the faster you go at a given point in
13 time, if you're going 30 miles an hour versus
14 60 miles an hour, in a one-second period, all things
15 being equal, if you're going 60 you travel a farther
16 distance, don't you?

17 A Yes, in one second.

18 Q So when you do the math backwards, if
19 someone's going 60 miles an hour, they're a lot
20 farther back down the road from a given point to
21 where they end up in a second, a second later, than
22 if they're going 30, right?

23 A If I understand your question correctly,
24 yes. A vehicle traveling 60 miles an hour will
25 travel a longer distance in one second than one

1 going 30.

2 Q So speed can be a factor in an accident;
3 do you agree?

4 A Yes, I agree.

5 Q And do you remember, or do you know from
6 your review in records provided to you by
7 Plaintiff's counsel, what the computer chip data
8 said about Mrs. Hood's speed?

9 MR. WILLEY: Your Honor, objection, lack
10 of foundation, relevance, hearsay, and 403. If
11 he has the data, he can bring it per an expert.

12 THE COURT: Denied. Go ahead, you can
13 answer the question.

14 THE WITNESS: I've seen the specific data
15 that you're referring to. I have seen
16 testimony about speed.

17 BY MR. DANIEL:

18 Q Have you seen Mr. Poplin's testimony about
19 speed?

20 A I have.

21 Q And what did he say?

22 A My recollection is that he downloaded the
23 data from the vehicle and per his information that
24 the speed was 62 to 63, I believe.

25 Q Speed of whose vehicle?

1 A Ms. Hood's.

2 Q The Plaintiff?

3 A I believe that's who you were asking
4 about.

5 Q Yes. I'm just making sure we're clear.
6 So --

7 A But that, as I said before, isn't a factor
8 in my opinions.

9 Q Was it 62 to 63?

10 A That's my recollection.

11 Q And in your opinion -- in your opinion as
12 a human factors expert, it's not an issue?

13 A That is not my testimony.

14 Q Okay. It could be a factor then?

15 A As far as the distance that you travel in
16 the time that you covered it, and in general as far
17 as damage to vehicles, speed can be a factor. But
18 as far as my opinions that I'm offering today, I'm
19 not relying on speed for that.

20 Q If she's a lot farther back down the road
21 because she's driving a lot -- you know, 30 as
22 opposed to 62, 63 miles an hour. If someone is
23 driving 62 miles an hour, this is not a specific
24 distance, but if they are back towards this back
25 door back here versus right here on a dark roadway,

1 that can affect visibility; do you agree?

2 A The speed?

3 Q Yep.

4 A No. Visibility is based on the properties
5 of the object that you're trying to view.

6 Q Okay. And you testified in your
7 deposition that as things get farther away, or at a
8 distance, even in bright conditions, even in daytime
9 conditions, we don't have unlimited sight as things
10 get farther away from you. You lose the ability to
11 see details of those objects, do you agree?

12 A Because they appear visually smaller, yes.

13 Q Right. And I mean, oversimplification,
14 but if it's like if you look at a plane in the sky,
15 as it starts going away, even in daytime, eventually
16 that plane's gone. You can't see it anymore, right?
17 Basic level, do you agree?

18 A At some point it may reach an altitude
19 where it would become very difficult to see, yes.

20 Q At some point, you can't see it. That's a
21 fact; do you agree?

22 A Yes, for a number of reasons.

23 Q I just want to make sure we're on the same
24 page.

25 So on a dark road, if a vehicle is

1 going 62 miles an hour covering however many feet,
2 where there's no lights shining on it and there's no
3 lights on, and it's a dark vehicle, you're saying
4 that's not a factor how far back down the road it
5 is, and that doesn't affect visibility?

6 A But the speed doesn't matter in that
7 situation, because at the end of the day she's still
8 has to come from half mile, four miles, however many
9 miles back. It doesn't matter what speed at which
10 she's traversing that distance. It doesn't change
11 the visibility of that object.

12 Q I got you. Okay.

13 Well, did you hear Mrs. Kuck earlier
14 this morning?

15 A I was hear for her testimony, yes.

16 Q Yeah. She couldn't even make out whether
17 it was a sedan, or an SUV, or what was coming at
18 her, and that thing hit her car.

19 A That's her testimony.

20 Q That might have -- you agree that, you
21 know, as far as how dark it was, it seems like it
22 was getting pretty dark by the time of this
23 accident?

24 A The sun had set at that point, yes.

25 Q Okay. And what have you done -- you

1 looked at this website that has calculations from a
2 university in Europe, the Naval Observatory records.
3 Have you gone to the scene?

4 A For this case, no.

5 Q Okay. Have you gone out there to
6 put yourself in -- haven't gone out there to put
7 yourself in Antoine Johnson's perspective, have you?

8 A I have not.

9 Q And you agree that it's a heck of a lot
10 darker out at this intersection at 5:50 in November
11 than what we see here in Exhibit 5, right?

12 A It would be darker, yes.

13 Q And your understanding is that Antoine
14 Johnson, he would be right around where that white
15 stop bar is, or right here by this crosswalk looking
16 at --

17 A Assuming that's Southwood Park Drive, yes.

18 Q Okay. And you haven't gone out there to
19 take photos or document how dark that intersection
20 gets and how dark it is looking down the road at
21 5:45 at night, 6:00 at night, 20 minutes after
22 sunset, 30 minutes after sunset, 27 minutes after
23 sunset. You haven't done any of that?

24 A I don't have that data, no.

25 Q And you could do that, if you were asked

1 to do that?

2 A If I were asked to do that, yes.

3 Q And you have people in your office that do
4 speed calculations; is that correct?

5 A I have engineers that are capable of it.
6 I don't have an accident reconstructionist, if
7 that's what you're asking.

8 Q You don't have a single person that does
9 accident reconstruction in your firm?

10 A I do not have a certified accident
11 reconstructionist, no.

12 Q Okay. Well, Woody Poplin is a certified
13 accident reconstructionist, right? Would you agree?

14 A I can't speak to his specific
15 qualifications, but I understand that he is an
16 expert in accident reconstruction.

17 Q Okay. And you did read his testimony and
18 what he said?

19 A I read his testimony.

20 Q Right. So you've done nothing to put
21 yourself in Antoine Johnson's perspective, but
22 you're going to comment about what he should have
23 been able to see?

24 A I did not place myself in his spot at the
25 scene, but I have extensive experience in nighttime

1 driving as well as the appearance of headlamps and
2 vehicles at night.

3 Q Do you agree that at nighttime, we as
4 people have a limited ability to see?

5 A We do.

6 Q You don't have any opinion about whether
7 Ms. Hood's headlights were on or off, do you?

8 A I have not conducted an independent
9 analysis of that.

10 Q Would you agree that it's dangerous at a
11 certain time once it starts getting dark to operate
12 your vehicle without your headlights on?

13 A It can be, yes.

14 Q Would you agree that that can pose a risk
15 to you as the driver, if you're driving without your
16 headlights on, and pose a risk to others on the
17 roadway if you're driving without your headlights on
18 at night?

19 A It can.

20 Q And you've already said it gets relatively
21 dark at about 5:50, 5:53 p.m. in Hilton Head, South
22 Carolina, the area where this accident occurred; is
23 that right?

24 A At that time of year, yes.

25 Q All right. And you went to Clemson to get

1 your Ph.D.

2 A I did.

3 Q And one of the professors that you studied
4 under, and I think you said one of the reasons why
5 you went there is Dr. Tyrrell.

6 A Dr. Rick Tyrrell, yes.

7 Q Dr. Rick Tyrrell. All right. Do you
8 think he's an authority in human factors?

9 A He is certainly a well-published and
10 well-researched individual, absolutely.

11 Q Do you respect his opinions as someone who
12 was your professor and taught you on the subject of
13 human factors?

14 A I certainly respect his opinion.

15 Q Okay.

16 MR. DANIEL: We went to Clemson --

17 MR. WILLEY: I haven't seen this, Judge.
18 I didn't see it before he shows it to the jury.
19 And I object to this, it wasn't produced in
20 discovery.

21 MR. DANIEL: Impeachment, Your Honor.

22 MR. WILLEY: It's not -- it's not proper.
23 He can call Dr. Tyrrell about this case if he
24 wants.

25 THE COURT: You can ask her if she's

1 familiar with it. If she's not familiar with
2 it, she's not familiar with it. But it's not
3 for you to just go ahead and show them.

4 MR. DANIEL: Yes, ma'am.

5 BY MR. DANIEL:

6 Q Have you ever been to Clemson's website?

7 A I have been to Clemson's website.

8 Q Have you ever seen this quote on
9 Dr. Tyrrell's page, "You can't see a damn thing in
10 the dark."

11 A I have.

12 Q You have seen this?

13 A Can I explain?

14 Q Well, yeah.

15 A Okay. That was a quote from Dr. Tyrrell's
16 graduate advisor, and it is a clever little thing
17 that we use as sort of -- again, a clever thing that
18 guided our research for why nighttime conspicuity
19 was important.

20 Q And I mean, if I'm looking at it -- it's
21 got headlights in it. You've seen this picture,
22 right? You've seen this --

23 A I haven't seen his website recently. So I
24 don't know if I've seen that photo.

25 Q But you've heard of his quote, "You can't

1 see a damn thing in the dark."

2 A Again, it's a clever saying, and, yes.

3 Q And that's something Dr. Tyrrell taught
4 you?

5 A Yes.

6 Q Okay. So you didn't look at the vehicle
7 damage to assess speed. That's not something that
8 you do, an accident reconstructionist would do that.

9 A Yes.

10 Q There was testimony, and I believe it was
11 the way the question was worded, not necessarily the
12 way you answered it, but that the impact between
13 Antoine Johnson's Honda and the Plaintiff's Equinox
14 pushed her over into the other oncoming lanes.

15 Since you didn't do an accident
16 reconstruction, you really -- you can't testify to
17 that, can you?

18 A No, I did not offer any opinions about
19 that.

20 Q She could have overcorrected?

21 A I suppose that's possible.

22 Q And, I mean, just common sense, if you're
23 going 30 versus 60 and you jerk the wheel hard, it
24 can be a lot worse at 60; do you agree?

25 A I'm not sure what you mean by "worse."

1 Q All right. Well, if you're going 10 miles
2 an hour and you start to turn the wheel of your
3 vehicle, in your experience, can you give it a
4 little more of a tug versus 60? You got to be
5 really careful about how hard you turn your wheel?

6 A I'm not an accident reconstructionist, I'm
7 not going to speak to that.

8 Q You're not going to go there even though
9 you drive everyday, right?

10 A I do.

11 Q You actually have a Chevy Equinox, don't
12 you?

13 A I do.

14 Q Same vehicle as the Plaintiff; is that
15 right?

16 A Different year.

17 Q Yeah. 2015. Do you know if the lighting
18 on that has changed?

19 A I don't.

20 Q You haven't gone out to the scene to go
21 out there and take a photo or something as it's
22 getting dark with just the parking lights on, or
23 running lights on, have you?

24 A As you just pointed out, I don't know
25 what's changed from '11 to '15.

1 Q Okay. As far as texting and driving, or
2 distractions, do you think -- I mean, you've got
3 that -- this exhibit here, Plaintiff's 14, is there
4 any information that you have that Antoine Johnson
5 was eating something when this accident happened?

6 A No.

7 Q So that would be pure speculation there?

8 A As far as whether or not he was doing it,
9 yes. As far as whether or not it's a cause of
10 distraction while driving, no.

11 Q Well, we're here about Antoine Johnson.
12 Makeup, he's probably not putting on makeup?

13 MR. WILLEY: We stipulate that the only
14 one that's relevant is the one that she said
15 was relevant, reading the text, instead of
16 going through all eight of them. Can we agree
17 on that? The relevant one in this case is
18 reading the texts.

19 THE COURT: That's fine.

20 BY MR. DANIEL:

21 Q And that cell phone record, Exhibit 7, if
22 you want to come down and look at it, you can. But
23 you've seen it, right?

24 A I guess. Depends on what your question
25 is.

1 Q I invite you to come down and look at it
2 if you're unsure. You haven't checked with the cell
3 phone carrier about what all this information means?

4 A Which information?

5 Q This information in this exhibit.

6 A I mean, some of it is fairly
7 self-explanatory. But if you have a specific
8 question.

9 Q This is -- you're suggesting a question.
10 You haven't checked with the cell phone carrier
11 about what this information means?

12 A I have not checked with the cell phone
13 carrier, no.

14 Q All right. And Mr. Johnson received a
15 text at 5:57:43; is that what that says?

16 A It does.

17 Q Does that mean he was necessarily reading
18 that text?

19 A No. There's no indication of that.

20 Q And you know of no witness that says that
21 he was reading -- yes, ma'am.

22 You know of no witness that says he
23 was reading a text, or there's nothing showing that
24 he sent a text at that time, right?

25 A Correct.

1 Q That could just mean that that text came
2 in at that time and was on his phone, like email in
3 your inbox on Outlook or something, right?

4 A It could.

5 Q Or mail in the mailbox. Once it's there,
6 it's electronically documented. That could be what
7 that means.

8 A It could.

9 Q You don't know one way or the other.

10 A No.

11 Q And Mr. Johnson said, you know, he had
12 just been involved in the accident. The first thing
13 he did, he lives with his mom, he's a young age, he
14 called his mom, right?

15 A That's what he testified to, yes.

16 Q You were here?

17 A Yes.

18 Q He did that right after the accident?

19 A That's what he testified, yes.

20 Q If his phone's right there, that wouldn't
21 take but as long as it takes to pick up the phone,
22 and I've got mom on there, I'm calling mom.

23 A Sorry?

24 Q It could be within moments, right?

25 A Potentially.

1 Q You can't put a precise time on when this
2 accident happened, can you?

3 A A precise time, no. But I think in my
4 deposition, we both agreed that the phone records
5 between, I think it was, 43 and 57, were before the
6 collision. So that gives us an approximate range.

7 Q I'm not -- I don't know that we agreed to
8 anything, but I'm not -- I certainly didn't say -- I
9 mean, this 57 is just a text that maybe came in,
10 right? It doesn't mean that Antoine Johnson is
11 doing anything with his phone at 5:57:43. That
12 doesn't show you that Antoine is doing anything with
13 his phone. You agree?

14 A It does not indicate what he was doing
15 with his phone, no.

16 Q We do know that he made an outbound call
17 at what looks like 6 o'clock and eight seconds,
18 right?

19 A I can't read that from here. But I trust
20 that that's what you're reading me.

21 Q I want to make sure you can read it.

22 A I can. Thank you, I'm not that blind.

23 Q All right. Six o'clock and eight seconds.

24 A Yes.

25 Q Okay. So the accident could have happened

1 at 5:58 p.m.?

2 A It could have.

3 Q And do you have any reason to dispute that
4 Mrs. Hood may have been traveling at 62, 63 miles an
5 hour just before this accident?

6 A I don't have any evidence either way, but
7 I have reviewed.

8 Q You've reviewed the testimony of an
9 engineer?

10 A I've reviewed the testimony of an
11 engineer.

12 Q And we've already talked about what that
13 testimony was?

14 A I believe so.

15 MR. DANIEL: Thank you.

16 REDIRECT EXAMINATION

17 BY MR. WILLEY:

18 Q You can't see a darn thing in the dark --
19 but let's start at the end.

20 MR. WILLEY: And, Ms. Margaret, would you
21 be so kind as to turn on this screen?

22 BY MR. WILLEY:

23 Q You mentioned a piece of your deposition.
24 Y'all agreed.

25 What -- what page were you referring

1 to there?

2 A Page 66.

3 Q Okay. And during your deposition
4 Mr. Daniel was the one asking you the questions?

5 A He was.

6 Q Okay.

7 THE CLERK: What do you have it hooked up
8 to?

9 MR. WILLEY: Airplay.

10 BY MR. WILLEY:

11 Q And what -- what lines were you referring
12 to?

13 A Lines five through ten.

14 Q Okay. And --

15 MR. DANIEL: I think it's number one.

16 It's from Apple TV. You've got the DVD on.

17 BY MR. WILLEY:

18 Q It's not on this one, but let me see if I
19 can get it up here. Lines 11 through -- or what did
20 you say?

21 A Five through ten.

22 Q Five through ten. Okay. Let's call those
23 out.

24 And that's Mr. Daniel asking you the
25 question. What did he say?

1 A Would you like me to just read it?

2 Q Yeah, that would be great.

3 A "And the time frame, we kind of talked
4 about it, but the guestimate to the time frame in
5 the records in the 1743 to 1757 would be the most --
6 the ones closest in time to this accident based on
7 what we know."

8 Q And you answered?

9 A "Yes."

10 Q So you accurately reflected your
11 deposition when he asked you that, right?

12 A I believe so.

13 Q Y'all agreed on that, 4357, right?

14 A Yes.

15 Q And you're familiar with this book. It
16 might be the first person in the whole trial that's
17 seen it before.

18 A Yes.

19 Q Okay. And what is this?

20 A The South Carolina driver's manual.

21 Q All right. We've been through a few here.

22 And is this, in your line of work, a
23 publication that you use and rely on to gather
24 information?

25 A It is.

1 Q Okay. And does this document give you
2 some indication about when, in South Carolina, you
3 know, it's dark, so to speak?

4 A Yes.

5 MR. DANIEL: Your Honor.

6 THE COURT: Do you have an objection?
7 What's the basis?

8 MR. DANIEL: I'll wait for the question.

9 BY MR. WILLEY:

10 Q Okay. What does it say about when it's
11 dark?

12 A Based on the driver's manual, it would be
13 dark 30 minutes before sunrise and 30 minutes after
14 sunset.

15 Q Okay. And what does the driver's manual
16 say that you should do when it is dark?

17 A Activate your headlights.

18 Q Does it give other circumstances, other
19 than that 30 minutes after sunset or 30 minutes
20 before sunrise, when you should activate your
21 headlights?

22 A It does.

23 Q And what does it call those things?

24 A Environmental factors, I believe.

25 Q Okay. And I added the eclipse earlier to

1 be fun, but these top four, are these the four that
2 it lists out as environmental factors?

3 A I definitely recall the first three, yes.

4 Q Okay. So it specifically deals with
5 darkness, right?

6 A Independent of the environmental factors,
7 yes.

8 Q Okay. And in this case your opinion was
9 that the collision was at 5:58 or earlier, correct?

10 A Correct.

11 Q And in your deposition you and Mr. Daniel
12 agree that it was between 43 and 57, based on what
13 we have there, correct?

14 A Those records were the closest to the
15 collision, yes.

16 Q Right. And if we take his U.S. Naval
17 Observatory, which, again, is for the whole town,
18 that's the average for the whole town, correct?

19 A Correct.

20 Q When would it have been 30 minutes after
21 sunset?

22 A 5:58.

23 Q After this wreck?

24 A Yes, around that time.

25 Q With the only possible exception being if

1 this wreck occurred exactly at 5:58, right?

2 A Right.

3 Q But in this case, you actually went a step
4 further and got a more specific data point, correct?

5 A It's using more precise coordinates, yes.

6 Q And the precise coordinates put sunset at
7 that exact intersection at what time?

8 A Five fifty-nine, I believe.

9 Q And this data point and this data point is
10 using the same exact physics, correct?

11 A That's my understanding, yes.

12 Q Okay. This one is more general for the
13 whole town. This one's more specific, correct?

14 A Specific to the location of the collision,
15 yes.

16 Q And according to this data point, this
17 specific data point, when would it have been 30
18 minutes after sunset at that intersection where this
19 wreck occurred?

20 A Five fifty-nine.

21 Q And that would have been the point at
22 which headlights would have been required?

23 MR. DANIEL: Objection, Your Honor.

24 BY MR. WILLEY:

25 Q According to the driver's manual.

1 A Based on the driver's manual.

2 THE COURT: Okay. Based on the driver's
3 manual. Go ahead.

4 BY MR. WILLEY:

5 Q And presumably, folks that have automatic
6 headlights, they come on at a specific time;
7 correct?

8 A It's based on the lighting in the
9 environment.

10 Q And generally they click on when it's time
11 or whatever.

12 A When it's dark.

13 Q And since you've been -- I didn't bring
14 this up because I don't really -- didn't think it
15 was relevant. But we went into this Poplin fellow's
16 deposition. You reviewed his deposition, correct?

17 A I did.

18 Q What did -- what did he say about
19 Ms. Hood's headlights?

20 A There is --

21 MR. DANIEL: Objection, Your Honor.

22 THE COURT: Basis?

23 MR. DANIEL: Lack of foundation. She's
24 not giving an opinion about headlights.

25 MR. WILLEY: I'm just asking her what she

1 said. He asked her what she said about a
2 thousand things.

3 THE COURT: You asked her questions about
4 lights, so go ahead.

5 MR. WILLEY: I, mean, I actually, for the
6 record, agree with the objection.

7 BY MR. WILLEY:

8 Q What did he say about the headlights?

9 A He indicated that at some point the high
10 beam assembly had been activated prior to impact.

11 Q Along with the running lights, correct?

12 A I believe that either he or another
13 engineer had testified to that, yes.

14 Q Okay. But according to the driver's
15 manual, assuming what we all agree on, that this
16 wreck occurred before 5:58, she wouldn't have been
17 required to have anything on, correct?

18 A Based on the driver's manual, that's
19 correct.

20 Q This specific point, this intersection,
21 this road runs east to west; correct? We've gone
22 through this.

23 A It does.

24 Q Okay. And the sun sets where?

25 A West.

1 Q Okay. So the sun would be setting on this
2 side, correct?

3 A This side.

4 Q Right. Would that, in your -- you know,
5 field of expertise provide some reason why this
6 intersection might have a little later sunset than
7 somewhere in the middle of the trees in Hilton Head,
8 for example?

9 A Yes. I believe there's a section on the
10 U.S. Naval Observatory's website that discusses that
11 there can be minor variations in sunset time based
12 on where exactly the data's from because there's
13 differences in elevation and the horizon and things
14 like that.

15 Q And so in this case, you know, it's an
16 open road and the sunset in the west, there would
17 have been more light potentially than other places
18 on Hilton Head?

19 A Depending on where it was calculated from,
20 yes.

21 Q And you were here, we were all here, we've
22 all been here all week. You heard Ms. Melnick's
23 testimony, correct?

24 A I read her testimony.

25 Q You read. Okay. And you -- will you step

1 down, please?

2 A Oh, yes.

3 Q Where is it -- you know, your
4 understanding Ms. Melnick was putting down the
5 umbrellas. Where was she?

6 A In this area.

7 Q Okay. And roughly, where was the
8 aftermath that she was able to see?

9 A My understanding is that she was looking
10 through the trees from this area, so somewhere in
11 this vicinity.

12 Q And based on your review of, you know, her
13 testimony, she was able to identify roughly the
14 number of vehicles involved, correct?

15 A That's my recollection.

16 Q And people were helping and all that sort
17 of thing?

18 A That's what she testified to.

19 Q And she was able to see that through these
20 trees?

21 A Yes.

22 Q Now, based on your expertise in human
23 factors and conspicuity, would she have had better
24 or worse ambient lighting looking through the trees,
25 through the woods, than an individual would have had

1 stopped at the stop sign on the open highway?

2 A She may have had some shadowing, for
3 example, from the trees in that area. So that may
4 have changed things from her perspective versus
5 being in the open area at the intersection.

6 Q But she was able to see the vehicles out
7 there on the highway.

8 A Yes, she did in her deposition.

9 Q As far as we know, she didn't have
10 headlights on.

11 A No, to my understanding.

12 Q Okay.

13 Just so we're clear on that.

14 Now, your second opinion, there was
15 some talk about that, so let's just deal with that.
16 You did not have the benefit of a live testimony
17 like this morning prior to your deposition, correct?

18 A I'm sorry?

19 Q The testimony that you heard this morning
20 as you sat in the courtroom, obviously you had not
21 heard that prior to your deposition, correct?

22 A Right.

23 Q Okay. And we talked about some of the
24 factors, but obviously this morning you heard
25 Mr. Lee say that the Xenon headlights he had on,

1 correct?

2 MR. DANIEL: Objection. Mr. Lee didn't
3 testify to that.

4 BY MR. WILLEY:

5 Q Oh, excuse me. In his deposition.

6 A Yes, I was going to say, in his
7 deposition.

8 Q Okay. What I was saying is this morning
9 you heard Mr. Johnson say that he could not -- he
10 also did not see Mr. Lee, correct?

11 A He indicated he did not see any vehicles.

12 Q So what did that -- what does that tell
13 you in your expert opinion about the importance of
14 headlights to Mr. Johnson's ability to see cars
15 coming?

16 A It would indicate that he either was not
17 looking in that direction, or failed to perceive
18 information in that direction because headlights in
19 general are a fairly conspicuous visual queue. And
20 I think that many people have experience with the
21 Xenon or the blue lights in particular. They have
22 the appearance of being quite bright.

23 Q And he didn't even -- he didn't see those?

24 A He testified that he did not.

25 Q Does that support your third finding as to

1 distractiveness and inattentiveness?

2 A It did.

3 Q And based upon that, were you able to find
4 to a reasonable degree of professional certainty,
5 most probably that Mr. Johnson being distracted at
6 the time contributed to the inability to see
7 Ms. Hood?

8 MR. DANIEL: Objection,
9 mischaracterization.

10 MR. WILLEY: She can say yes or no.

11 THE COURT: Okay. Go ahead and answer it.

12 THE WITNESS: That would be the most
13 probable explanation.

14 MR. WILLEY: Thank you, Doctor.

15 RE-CROSS EXAMINATION

16 BY MR. DANIEL:

17 Q And, Doctor, your opinion actually is if -
18 if -- I mean, we can underline it. I don't want to
19 mark their demonstrative up -- but if Johnson was
20 distracted, so you're assuming -- that's an
21 assumption, right?

22 A Based on the evidence available, that is
23 what is suggested.

24 Q That's an assumption, though, that you
25 have to make?

1 A To some extent.

2 Q And you don't know -- you didn't hear
3 Dustin Lee testify, you don't know what he said
4 about how far back down the road he was, whether it
5 was -- and he's really giving a guesstimation, it
6 was ten car lengths, 12 car lengths, how far back
7 down the road he was, do you?

8 A I was not here for his testimony, no.

9 Q And you don't know whether at the time,
10 really what Antoine Johnson saw was -- there is
11 nothing right in front of me, there may be a vehicle
12 way back there, 100, 200 yards back with lights on,
13 but I can get through to this median and pass, and
14 get to the median before that vehicle back there
15 with lights gets here.

16 You don't -- you don't know what his
17 process was actually at the time, do you?

18 A I'm sorry?

19 Q You can't go -- you can't go back and see
20 what he saw; is that right?

21 A None of us can.

22 Q Right. And obviously Dustin Lee did not
23 hit Mr. Johnson's vehicle; do you agree?

24 A That is correct.

25 Q We know that. That's a fact. That's not

1 an assumption, that's a fact?

2 A That is a fact.

3 Q And so he was far enough back to safely
4 either stop or stop in time to avoid making contact
5 with Mr. Johnson, who was in the middle of this
6 roadway; do you agree?

7 A Can you repeat that?

8 Q Yeah. Dustin Lee was far enough back on
9 William Hilton Parkway, 278, that -- do you see the
10 shade right there?

11 A I do.

12 Q Yeah. That's in the photo, aerial shot
13 here. He was far enough back to stop in time to
14 avoid hitting Mr. Johnson; do you agree?

15 A I do agree. He could also see him.

16 Q Yeah. And he's being asked to recall
17 exact specifics three years later. He knows he
18 didn't see any headlights, he didn't see anything
19 right in front of him. He's definitely testified to
20 that; do you agree?

21 A Who?

22 Q Antoine Johnson.

23 A Sorry. I thought we were still talking
24 about Mr. Lee. Can you repeat that?

25 Q Yeah.

1 Antoine Johnson, if he says he didn't
2 see any headlights or anything right there that
3 would have made it unsafe for him to pull out, you
4 don't have really any reason to disagree with that?

5 A He testified he didn't see any vehicles.
6 But I have no reason to disagree with his testimony
7 about that.

8 Q There could have been a vehicle though
9 with lights on well back of him, Dustin Lee, and if
10 it's far enough back, as a driver, you agree, if you
11 see headlights that are way down the road, a couple
12 hundred yards away, you can get through two lanes of
13 travel, right? If you -- do you agree?

14 A I'm sorry?

15 Q You're a driver. You drive?

16 A I do. I'm sorry, I'm not understanding
17 your question. I'm asking you to repeat it.

18 Q Have you ever made a left turn? Have you
19 ever made a left turn like this, when you saw
20 headlights down the road from you, but they were off
21 in the distance?

22 A Yes.

23 Q Okay. And what we have established is you
24 don't know whether Antoine Johnson was reading a
25 text, right?

1 A We can't say for certain, no.

2 Q There's at least one source that you
3 actually used more often that says sunset is at
4 5:58, 30 minutes after sunset in Hilton Head, right?

5 A I'm --

6 Q U.S. Naval Observatory says that it's 30
7 minutes after sunset at 5:58 p.m. on the day of this
8 accident, right?

9 A Yes, that was unclear in your first
10 question.

11 Q You're right, poorly worded question.

12 But the sun has been going down, and
13 it's down. It's been 30 minutes after sunset, per
14 the Naval Observatory, at 5:58 p.m. on the day of
15 this accident?

16 A Per the Naval Observatory, for the general
17 Hilton Head area, yes.

18 Q And 27 minutes after sunset it's pretty
19 dark with conditions like this; do you agree?

20 A It is getting dark.

21 Q Yeah. You haven't gone out there and
22 recreated it and shown how dark that actually is?

23 A I have not recreated it, no.

24 Q You don't have any photos of any vehicles
25 with their headlights on or off at a time like that,

1 20 minutes, 25 minutes, 30 minutes after sunset?

2 A For this case, no. For studies I've
3 conducted in the past, yes.

4 Q So you could show studies to the jury with
5 pictures like that that they could see, to see how
6 dark it is; but you're not doing it here today?

7 A I have photos showing how conspicuous
8 headlights are under those circumstances.

9 Q You didn't bring any of those type photos
10 with you?

11 A I don't have them with me, no.

12 Q Okay. You could have brought them.

13 A I suppose.

14 Q Right. And you could have talked to the
15 witnesses about what they observed?

16 A I could have, I suppose, yes.

17 Q You didn't do that?

18 A No. I relied on their sworn testimony.

19 Q Right. Have you considered the deposition
20 testimony of Cary Tanrath?

21 A I didn't see deposition testimony of Cary
22 Tanrath.

23 Q You don't even know who he is?

24 A I know who he is. I did not see his
25 deposition.

1 Q What do you know about Cary Tanrath?

2 A He was a witness to the collision. He
3 gave a statement after the collision.

4 Q Do you know specifically what he says
5 about headlights?

6 A My recollection is that he said he did not
7 see headlights on Ms. Hood's vehicle.

8 Q Do you know where he was?

9 A I don't recall specifically.

10 Q And you agree that you're not a police
11 officer?

12 MR. WILLEY: Your Honor, we're going way
13 outside the scope. We've got down this road,
14 she's not a police officer, she's not a doctor.
15 We agree to all of that. She is a doctorate in
16 human factors.

17 THE COURT: Let's just move on with it,
18 okay?

19 MR. DANIEL: Yes, ma'am.

20 THE COURT: Thank you.

21 BY MR. DANIEL:

22 Q You were shown the driver's ed or some
23 kind of South Carolina driving guide. You agree
24 that that's not the actual law on what is required
25 as far as headlights in South Carolina?

1 A No, it is not the law.

2 Q Have you read the law at this point before
3 today?

4 A I have not.

5 Q You have not?

6 A No.

7 MR. WILLEY: Your Honor.

8 THE COURT: Okay. We are starting to get
9 into territory. She can't testify to law, you
10 know that.

11 MR. WILLEY: I will show her the law.

12 THE COURT: Let's move on. Let's go.

13 MR. DANIEL: Yes, Your Honor.

14 BY MR. DANIEL:

15 Q And do you agree that environmental
16 conditions, though, dictate when you should or
17 should not have your headlights on?

18 A In part, yes.

19 Q And you should have your headlights on
20 when it starts getting hard for you to see other
21 drivers on the roadway or other drivers to see you;
22 do you agree?

23 A I don't recall how specific it's in there.

24 Q Does that make sense?

25 A It makes common sense, yes.

1 MR. DANIEL: Thank you.

2

3 REDIRECT EXAMINATION

4 BY MR. WILLEY:

5 Q Briefly, Your Honor.

6 Dr. Borzendowski, is this the page
7 from the driver's manual you were relying on in your
8 testimony that he just questioned you about?

9 MR. DANIEL: Your Honor, I didn't question
10 her about that driver's manual.

11 MR. WILLEY: You did.

12 THE COURT: ASK the question.

13 MR. WILLEY: Thank you, Your Honor.

14 BY MR. WILLEY:

15 Q It is a fair and accurate representation
16 of the page from the driver's manual?

17 A Yes.

18 Q Is it in fact an exact copy of the page
19 from the driver's manual?

20 A It appears to be.

21 MR. WILLEY: Your Honor, at this time we
22 would move to admit the evidence of this page
23 from the driver's manual.

24 MR. DANIEL: Objection.

25 THE COURT: You can object. No, it's not

1 going in evidence. Let's move on.

2 BY MR. WILLEY:

3 Q Experts in your field rely on that?

4 A They do.

5 Q And just briefly, once again, you read
6 Mr. Lee's testimony, correct?

7 A I did.

8 Q Mr. Lee testified that he could see
9 Ms. Hood, correct?

10 A Yes.

11 Q And he also testified that he was close
12 enough to see Mr. Johnson, correct?

13 A He testified that he could see
14 Mr. Johnson's vehicle, yes.

15 Q And Mr. Lee would have been farther away
16 from Mr. Johnson than Ms. Hood would have been from
17 Mr. Johnson, correct?

18 A Based on Mr. Lee's testimony, yes.

19 Q He was an eye witness?

20 A Yes.

21 Q Without a stake in the matter, as far as
22 you know; correct?

23 A As far as I know.

24 Q And did you use that testimony, that data
25 point, to aid you in your opinion that Ms. Hood

1 should have been visible to Ms. Johnson?

2 A In part, yes.

3 Q Thank you.

4 THE COURT: Anything further?

5 MR. DANIEL: No, Your Honor.

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

8 MR. WILLEY: Not from the Plaintiff.

9 THE COURT: You're excused. Thank you.

10 MR. SMITH: Can we take a short break?

11 THE COURT: Ladies and gentlemen, we will
12 go ahead and take a short break at this time.
13 Do not discuss this case. It would be
14 inappropriate to do so. We will be right back
15 with you.

16 (Whereupon, a brief recess was taken.)

17 (Jury exits the courtroom at 4:48 p.m.)

18 MR. WILLEY: Your Honor, and just for --
19 just so my conscience is clear, I do realize
20 that it was the driver's manual, but when he
21 brought it up, I felt like it was necessary not
22 to think that I was hiding anything from them.
23 So --

24 THE COURT: All right.

25 What's next, a video?

1 MR. SMITH: Treating doctor.

2 THE COURT: How long is that video?

3 MR. SMITH: Forty minutes.

4 THE COURT: Okay. Let's get it queued up.
5 We're going to take about ten minutes. What is
6 after that?

7 MR. SMITH: I have probably -- I have
8 lined up.

9 THE COURT: How many?

10 MR. SMITH: I know two are outside,
11 possibly three.

12 THE COURT: And how short? You said two
13 briefly. My question is: Can we get all that
14 done by 5 o'clock today, or do you want to
15 bring some back later?

16 MR. WILLEY: Maybe, briefly in the morning
17 will be fine.

18 THE COURT: Just asking.

19 MR. SMITH: I think we can get it done. I
20 mean, whenever you want to call it, we can call
21 it. But these two witnesses I expect will be
22 ten, 15 minutes each.

23 THE COURT: Each, okay.

24 MR. WILLEY: And we have witnesses lined
25 up for first thing in the morning, as early as

1 9:00. So at your --

2 THE COURT: That's fine. I don't want to
3 start till 10:00, so that's fine.

4 MR. SMITH: But, Your Honor, one last
5 thing. I object, I made the representation,
6 they've got Woody Poplin under subpoena. I've
7 asked for a copy of the subpoena.

8 MS. SUTTIE: I have it here.

9 MR. SMITH: I just want to see it.

10 THE COURT: Okay. We're just going to be
11 at ease for about ten minutes. Be here a
12 couple of minutes before 4:00. Make sure it's
13 queued up and you've already tried the
14 deposition and it's ready to go.

15 (Whereupon, a brief recess was taken.)

16 THE COURT: Okay. Tell the jury to come
17 on out.

18 (Jury enters the courtroom at 4:10 p.m.)

19 THE COURT: Go ahead and queue it up. Who
20 is this a deposition of?

21 MR. SMITH: Dr. David Jaskwhich, a doctor
22 in this case.

23 THE COURT: What we are going to do, like
24 you saw prior with Ms. Melnick, there is a
25 video deposition of the treating doctor in this

1 case. Again, that is for you to use like the
2 doctor is testifying right here.

3 As I said before, this deposition is taken
4 in a lawyer's or doctor's office, and it is
5 like any testimony, it is for y'all to judge.
6 And if you need to stand up and stretch, let me
7 know and we will pause it for a minute.

8 On the back row, you will not block anyone
9 but I know that it becomes rough. This one is
10 roughly 40 minutes, and I can tell you that it
11 will also take us to the end of the day. Okay?

12 (Video deposition being played.)

13 MR. SMITH: Judge, we have two very short
14 witnesses that drove up. I promise the first
15 one is maybe less than five minutes. And then
16 we could squeeze them in before the end of the
17 day.

18 THE COURT: Are y'all okay?

19 JURORS: No.

20 THE COURT: That is what I wanted to hear.
21 Y'all have spoke. We will break for the end of
22 the day. Again, do not discuss the case. We
23 will return at 10 in the morning is that's
24 acceptable to everybody?

25 JURORS: Yes.

1 THE COURT: Stay dry. Don't do
2 independent research or discuss this case and
3 have a good evening. Get some rest and have a
4 good evening. See you tomorrow at 10:00 a.m.

5 MR. WILLEY: We have a few things for
6 housekeeping. In the first video we marked and
7 entered into evidence the flash drive of the
8 call, called Exhibit 1. So, for housekeeping
9 purposes we will move that and the video in as
10 Exhibit 2 for purposes of this trial.
11 Ms. Melnick's video.

12 MR. DANIEL: Is that an exhibit?

13 THE COURT: It is in evidence, so it would
14 be an exhibit, yes.

15 *(Whereupon, Plaintiff's Exhibit No(s). 2*
16 *marked for identification and received in*
17 *evidence.)*

18 MR. DANIEL: So, then, we could also have
19 the jury, I guess, look at the deposition
20 testimony if we wanted to move that into
21 evidence.

22 MR. SMITH: Just the video used at trial.

23 MR. DANIEL: I would object to the actual
24 video being an exhibit. Maybe the flash drive
25 of the 911 call. I didn't hear that they were

1 moving the entire video testimony of a witness
2 into evidence as an exhibit.

3 MR. WILLEY: Your Honor, a video
4 deposition always comes into evidence. It is
5 for use at trial. There is time to object and
6 that is when it's noticed. That is fine. It
7 is here. Wouldn't it normally be an exhibit if
8 testimony needed to be played back Mona would
9 bring them out and play it. If deposition
10 testimony needs to be played. It is just like
11 a deposition at trial. We would have to come
12 back and play the entire testimony. I don't
13 know if it was an exhibit. I think that it was
14 already a part -- it was published. That would
15 be duplicative. They have seen it once and it
16 goes back to them again. I would say no. It
17 needs to be marked as a Court's exhibit for
18 sure, but it doesn't go to the jury as a jury
19 exhibit. It is a Court's exhibit, correct?
20 That is what we are saying.

21 MR. WILLEY: We need that as a Court's
22 exhibit. We need Exhibit 1 moved in actually.

23 THE COURT: That would go in as an
24 exhibit. That would be an exhibit.

25 *(Whereupon, Court's Exhibit No(s). 2*

1 *marked for identification and received in*
2 *evidence.)*

3 MR. WILLEY: For purposes of what we did.
4 This was referred to also as an exhibit,
5 Plaintiff's 15, which would be in evidence.
6 And Plaintiff's 2 referred to in the
7 deposition, a packet of bolts and screws would
8 be Exhibit 16 for Plaintiff so that the record
9 is clear.

10 *(Whereupon, Court's Exhibit No(s). 3*
11 *marked for identification and received in*
12 *evidence.)*

13 THE COURT: No one has testified that
14 those were the bolts and that were in her --

15 MR. WILLEY: Yes, Mr. Jaskowich did.
16 They were moved in without objection into
17 evidence.

18 MR. SUTTIE: I objected in the transcript.
19 We had a motions hearing.

20 THE COURT: I ruled before that they could
21 come in. I think that they can both come in.
22 That is fine.

23 MR. WILLEY: I'm clarifying the numbers.

24 THE COURT: Okay. What else?

25 MR. WILLEY: That is all that I have.

1 *(Whereupon, Plaintiff's Exhibit No(s). 15*
2 *marked for identification and received in*
3 *evidence.)*

4 *(Whereupon, Plaintiff's Exhibit No(s). 16*
5 *marked for identification and received in*
6 *evidence.)*

7 MR. DANIEL: One thing about housekeeping,
8 if you have two short witnesses, we would like
9 to the get our witness right away. Is that how
10 many.

11 THE COURT: How many do you have left?

12 MR. WILLEY: You should be prepared to go
13 by -- what time are you starting, we will go at
14 least through lunch.

15 THE COURT: Okay. Well, then then, tell
16 me how many witnesses you have if you are going
17 through lunch?

18 MR. WILLEY: Potentially four or five.

19 THE COURT: Some of them are lengthy?

20 MR. WILLEY: We have the Plaintiff.

21 MR. SMITH: She would be the most lengthy.
22 A before and after person.

23 THE COURT: I would have one person before
24 lunch, if I were you. Just -- okay. If you
25 can.

1 MR. DANIEL: Sure.

2 THE COURT: All right. We will see you in
3 the morning.

4 (Court adjourned for the day.)

5 (Whereupon, the trial proceedings continue
6 in Volume 5.)

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CERTIFICATE

STATE OF SOUTH CAROLINA:
COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of January, 2018.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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In the Court of Common Pleas for the

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State of South Carolina, County of Jasper

4

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Case No.: 2015CP2700119

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Therese Hood,

7

Plaintiff,

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vs.

Transcript of Record

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Antoine Johnson,

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Defendant.

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VOLUME 5

15

16

September 7, 2017

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Ridgeland, South Carolina

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BEFORE:

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The Honorable CARMEN T. MULLEN

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1 PROCEEDINGS

2 THE COURT: Good morning, ladies and gentlemen.
3 Obviously, the news has been very exciting. I don't
4 know if exciting is the right word for it. But you all
5 are from Ridgeland and from the area and we have
6 experienced the last couple of hurricanes that had come
7 through. Let me tell you what I am hoping to do. And
8 again, I say "hope". I have talked to the attorneys,
9 they are streamlining their case. We are going to try
10 very hard to finish this case today. And that means
11 that we are going to push and I mean push. And I'm
12 going to tell you that right now. Okay?

13 For some reason we are unable to finish, we just
14 can't wrap it up I'll have to make a different decision
15 at the end of the day. I just want you to sit back and
16 relax and there will be evidence put in front of you.
17 This is what we are going to attempt to do today.
18 Okay?

19 So, I don't want anyone concerned. If anyone has
20 any problems at home. All of the schools are still in
21 in Beaufort County, which is where I come from so no
22 one should have problems with kids being home. And,
23 again, the weather is still fine so we are good.

24 My understanding is if it were to hit this area it
25 won't be here until Monday. That is what I'm being

1 told by SLED and my Sheriff. So, everyone sit back and
2 relax and we will get it done as best as we can and we
3 will go forward from there.

4 Okay. Again, good morning, ladies and gentlemen.
5 And if the plaintiffs want to call their next witness
6 for this morning.

7 MR. SMITH: Yes, ma'am, the plaintiffs call Nelda
8 Fowler.

9 Thereupon,

10 NELDA FOWLER

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

13 DIRECT EXAMINATION

14 BY MR. SMITH:

15 Q Good morning.

16 A Good morning.

17 Q All right. Tell us your name please.

18 A Nelda Fowler.

19 Q Ms. Fowler, are you married?

20 A Yes, I am.

21 Q How long have you been married?

22 A 47 years.

23 Q Congratulations.

24 A Thank you.

25 Q Do you have kids?

TESTIMONY OF NELDA FOWLER

1 A Yes.

2 Q How many kids you got?

3 A Four.

4 Q All right. Where do you live?

5 A I live in Goose Creek, South Carolina.

6 Q Okay, all right. You know Therese Hood, Terry?

7 A Yes, I know.

8 Q Okay. ANd where do you know her from?

9 A I know her from church.

10 Q All right. Ms. Fowler, we had planned a whole
11 presentation here today. But I'm just going to get right to
12 it with you, okay?

13 A Okay.

14 Q What I would like for you to do is tell the jury
15 the story of why Therese is no longer a Eucharistic
16 Minister.

17 A Okay. Well, Therese was a Eucharistic Minister,
18 that means that -- that means we help the priest give the
19 blood of Christ and the body of Christ to the congregation.
20 It is a very important role. We have to be commissioned for
21 that. If there's something that Father does not -- does
22 think that should be stopped, he does tell us. So, Therese
23 was giving communion, the wine or the blood of Christ,
24 apparently I was not there but apparently she, her leg was
25 giving out on her.

TESTIMONY OF NELDA FOWLER

1 MR. DANIEL: Objection, Your Honor, hearsay.

2 THE COURT: Okay. kind of redirect her, if you
3 could. You can't say things that someone else has told
4 you, that you have heard. You just have to say things
5 that you know.

6 BY MR. SMITH:

7 Q Yes, ma'am. What is your understanding of why
8 Therese -- what happened?

9 A My understanding is that she spilled the blood of
10 Christ.

11 Q Okay. Was that the talk of the church?

12 A That was the talk of the church.

13 Q Everybody knew about it?

14 A Everybody knew about it.

15 Q And was Therese basically fired from that job by
16 father?

17 A Right.

18 MR. SMITH: Thank you.

19 CROSS EXAMINATION

20 BY MR. DANIEL:

21 Q Ms. Fowler, how long have you known Therese?

22 A Probably about five years.

23 Q Did she serve as Eucharistic Minister after you
24 know about when this accident happened?

25 A Maybe about three years.

TESTIMONY OF NELDA FOWLER

1 Q When did the incident happen with the --

2 A It happened about a year -- just prior to her --
3 it happened after her accident.

4 Q Do you know about her medical conditions or any
5 issues that she had before this accident?

6 A She was -- she is -- she was a real outgoing
7 person and willing to cooperate with everything. She
8 volunteer most of everything that we have in church.

9 Q Yes, ma'am. But do you know if she had any
10 medical issues before this accident?

11 A No.

12 Q You are not aware of any?

13 A No.

14 Q Do you ever spend time with her at her house?

15 A Yes, after the accident, I went to her house and
16 visited with her for a while.

17 Q Do you know what neighborhood she lives in?

18 A Excuse me.

19 Q What is the name of the neighborhood where she
20 lives?

21 A That she lives in?

22 Q Yes, ma'am.

23 A Um -- I am having a senior moment.

24 Q Do you live near her?

25 A It is right across from the church. Right across

TESTIMONY OF NELDA FOWLER

1 there is a subdivision back there.

2 Q Does she still go to church?

3 A Yes, she goes to church. Sometimes she does not
4 go, but most of the time she is there.

5 MR. DANIEL: Okay, thank you.

6 MR. SMITH: No questions, Your Honor.

7 THE COURT: All right. You may step down. Thank
8 you.

9 MR. SMITH: Yes, the plaintiff calls Helen
10 Hernandez.

11 Thereupon,

12 HELEN HERNANDEZ

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SMITH:

17 Q Good morning.

18 A Good morning.

19 Q Please tell us your name.

20 A Helen Hernandez.

21 Q Ms. Hernandez, do you know Terry?

22 A I do.

23 Q Where do you know Terry from?

24 A Church.

25 Q Okay. Do you know Terry outside of church?

TESTIMONY OF HELEN HERNANDEZ

1 A Not really. No.

2 Q Okay.

3 A Everything that I have done with her has been at
4 the church.

5 Q And at church, were you a member of the Ladies
6 Guild?

7 A Yes.

8 Q Are you still?

9 A Non active right now.

10 Q And was Therese?

11 A Yes.

12 Q Okay. What does the Ladies Guild do?

13 A We do everything, bake sales, dinners, lunches.
14 You name it, the Ladies Guild is involved.

15 Q Okay. And when the Ladies Guild is looking for
16 people to do certain things, do y'all go through and assign
17 the task or do you ask for volunteers?

18 A We volunteer.

19 Q Before the wreck that we are here about, three
20 years ago, how often did your -- did Terry -- how often did
21 she volunteer?

22 A Almost always. We about lived there. We were
23 there a lot.

24 Q Did Terry serve as the secretary at some point as
25 well?

TESTIMONY OF HELEN HERNANDEZ

1 A Yes, she was, she was the secretary.

2 Q OKay.

3 A But she was also -- if I can answer?

4 Q Sure.

5 A She was also involved in our Pro Life and our
6 youth group. We were -- our teenagers were going to Poland
7 and she helped us arrange things for fund raisers. And any
8 time that we needed anything, she was there. I mean --

9 Q It sounded like Therese was someone that y'all
10 could count on?

11 A Yes.

12 Q And tell me about the church service. Tell me
13 about afterwards. Did y'all rush out to go get brunch, or
14 what did y'all do?

15 A Most people can't wait to get out of church. They
16 couldn't get us away from church. We would visit, talk
17 about church, talk about the upcoming events that we had.
18 You know, just kind of check on everyone. If anyone at the
19 church needed anything we would talk about how we could
20 serve.

21 Q Okay. And did Therese seem to enjoy this
22 fellowship?

23 A Yes.

24 Q And was she ever in a rush to leave?

25 A No.

TESTIMONY OF HELEN HERNANDEZ

1 Q I will just get right to it with you as well.

2 Okay?

3 A Uh-huh.

4 Q Nowadays, do you still see Therese at church; does
5 she still attend the service?

6 A Not as much as before.

7 Q Okay.

8 A Whenever the accident happened, you know, of
9 course we didn't see her and then when we did see her it was
10 sporadic. Her husband would bring her in. She was never
11 the same afterwards.

12 Q Do you still hang around after church like you
13 used to and enjoy the fellowship?

14 A Yes.

15 Q Tell me about Therese.

16 A I don't see her as much anymore. Usually she's
17 leaving. She doesn't spend a whole lot of time there.

18 Q Do you try to engage her?

19 A Yes.

20 Q What happens?

21 A Well, we talk but she's -- I don't want to use the
22 word "depressed," but she's not -- her whole being changed.
23 I think that the thing that I noticed the most was her
24 facial expressions. It was kind of like, I'm here, I want
25 to be part of it, but not being able to follow through. If

TESTIMONY OF HELEN HERNANDEZ

1 that makes sense.

2 Q Yeah. And when you -- this facial expression that
3 you said when you see her, it's sort of like, I'm here?

4 A Yes, it's not like before. Before it was a smile,
5 you know, it was engaging and it was like -- but now it's
6 like, I want to talk to you but maybe not -- I don't know
7 how to put it into words. Instead of being like smiling,
8 it's almost like she's hesitant or maybe not as comfortable.
9 Maybe that is the word that I need.

10 MR. SMITH: Ma'am, that is all of the questions
11 that I have for you.

12 THE WITNESS: Okay.

13 CROSS EXAMINATION

14 BY MR. DANIEL:

15 Q Mrs. Hernandez, do you know Antoine Johnson?

16 A I do not.

17 Q Do you know whether he goes to church?

18 A I have no idea.

19 Q You don't know his family?

20 A No.

21 Q Do you know whether Mrs. Hood suffered from
22 depression at any point before this accident?

23 A Never saw her sad, never saw her upset.

24 Q Do you know anything about her medical treatment
25 or any conditions?

TESTIMONY OF HELEN HERNANDEZ

1 A No.

2 Q It's already been testified to that she may have
3 had MS before the accident --

4 MR. SMITH: Objection. Well, go ahead, you can
5 ask her.

6 A No, I don't have any idea.

7 Q Do you know that she had MS or Parkinson's before?

8 A No, I never saw her with anything that made me
9 think that something was wrong.

10 Q Does she still go to church?

11 A Yes, she does. Not as often.

12 Q With her husband?

13 A When I see her, it is with her husband.

14 MR. SMITH: Nothing further.

15 THE COURT: You may step down. Thank you.

16 Thereupon,

17 THERESE HOOD

18 was called as a witness, having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SMITH:

22 Q Take three long breaths for me, in your nose, out
23 your mouth. Let it go. Okay?

24 A Okay.

25 Q We are going to tell your story today, all right?

TESTIMONY OF THERESE HOOD

1 A Okay.

2 Q We need your name. Tell us your name.

3 A My name is Therese Hood.

4 Q Are you nervous?

5 A A little. My first time.

6 Q You have never been through anything like this
7 before, have you?

8 A No.

9 Q Have you waited a long time for this day to get
10 here?

11 A Yes, two years and ten months.

12 Q All right. Before we tell your story I want to
13 get the jury -- let them get to know you a little bit. We
14 have seen you sit in this chair. We have heard about you,
15 but I want to give them a very abbreviated version. Okay?
16 Just a little background information. The first question is
17 irregular but I need to ask you this because the Judge later
18 will address the jury on life expectancy. So, please tell
19 us your age, ma'am.

20 A My age is 63 years old.

21 Q Therese, do you have any brothers or sisters?

22 A I have one brother. My sister passed away.

23 Q What did your parents do for work?

24 A My mother worked in the shoe mill and my father
25 was a carpenter.

TESTIMONY OF THERESE HOOD

1 Q Where did you go to high school?

2 A I went to St. Dominic's Regional Catholic high
3 School.

4 Q Where was that?

5 A That was in Lewiston, Maine.

6 Q What did you do after that?

7 A I went into the military.

8 Q What branch was it?

9 A I was in the Army.

10 Q How old were you when you joined the Army?

11 A I was 18.

12 Q Did you do that for 20 years?

13 A I did that for 20 years.

14 Q Were you honorably discharged?

15 A Yes, I was.

16 Q What was your rank?

17 A Sergeant First Class.

18 Q Okay. And after the Army, did you go back to
19 school?

20 A Yes, I did.

21 Q What degrees did you get at school?

22 A I got my bachelors in elementary education, a
23 bachelors in economics, and a masters in elementary
24 education.

25 Q Did you go to teach kids after that?

TESTIMONY OF THERESE HOOD

1 A Yes, for ten years.

2 Q What ages?

3 A Five through eight and 12 through 14.

4 Q Okay. And did you retire from teaching at some
5 point?

6 A Yes, ten years later.

7 Q All right. And tell me, what is your husband's
8 name?

9 A David Hood.

10 Q All right. And David, he has been sitting here in
11 the audience, hasn't he?

12 A Yes, he has.

13 Q He's gone to get Christene, your daughter now,
14 right?

15 A Yes.

16 Q She has got two young kids?

17 A A two month old and a two year old.

18 Q All right. And we are going to hear from
19 Christine after you. But do you have -- so we know
20 Christene. What other children do you have?

21 A I have another daughter, Stephanie, and she's 35
22 years old.

23 Q I don't know if I asked you this, how long have
24 you and David been married?

25 A Forty-two years.

TESTIMONY OF THERESE HOOD

1 Q Okay. Grandchildren, do you have any?

2 A I have five.

3 Q And tell me what their ages are.

4 A My daughter, Stephanie, has a three year old, a
5 five year old and an 11 year old. All girls.

6 Q Okay. And you told us Christene has a two month
7 old and a two year old?

8 A Yes.

9 Q OKay. ARe you a proud grandmother?

10 A Yes.

11 Q Mrs. Hood, do you have MS?

12 A No.

13 Q Now we understand that you are Catholic, and we
14 have heard a lot about that this week, and you are a member
15 of the Church of the Immaculate Conception?

16 A Yes.

17 Q In Goose Creek?

18 A Yes.

19 Q With the ladies that we heard from today?

20 A Yes.

21 Q How long have you been a member of that church?

22 A Eleven years.

23 Q Have you always been active?

24 A Yes.

25 Q We heard a little bit about giving communion and

TESTIMONY OF THERESE HOOD

1 serving in the Ladies Guild, any other -- well, we also
2 heard some other activities from Ms. Hernandez, but anything
3 else that you can think of with regards to your activities
4 with the church and volunteering?

5 A Not at the moment.

6 Q Ladies Guild takes up a lot of time?

7 A Yes.

8 Q Okay. Mrs. Hood, what were your plans for
9 retirement? It is okay.

10 A I meant to travel, spend time with my
11 grandchildren, to help more in the church community. And I
12 have military organizations that I participate in that I
13 could continue too.

14 Q Okay. That was your vision?

15 A Yes.

16 Q I want to talk to you about the wreck.

17 A Okay.

18 Q That was poor timing, I had no idea that I was
19 going to get an emotional response. But we have made an
20 abbreviated version here, okay?

21 A Okay.

22 Q So, I want to show you the flip chart that we have
23 been getting a lot of miles out of this week. Now, what
24 I'll do so everybody can see, I'll not ask you to come down,
25 but I'll hold it here. Can you see okay?

TESTIMONY OF THERESE HOOD

1 A Yes.

2 Q Ms. Hood, we started out in opening statement by
3 drawing this diagram here. And we have got Highway 278, all
4 right?

5 A Okay.

6 Q Heading towards the beach, heading away from the
7 beach. And we have this car right here is you with the H?

8 A Right.

9 Q And Mr. Johnson coming off of Southwood Park
10 Drive.

11 A Yes.

12 Q Dunkin' Donuts back here. And then we have the
13 Kuck vehicle up here. Okay?

14 A Yes.

15 Q This was another fellow that I don't know was in
16 your sight.

17 A Okay.

18 Q So, is this -- does this accurately describe what
19 happened?

20 A Yes.

21 Q That you were coming up here, Mr. Johnson pulled
22 out and hit you on the front right side about where your
23 tire was and sent you into traffic where you had a head-on
24 collision?

25 A Yes.