

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Sep 15 2022
SC 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 2

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TESTIMONY OF THERESE HOOD

1 Q Okay. Mrs. Hood, did you have any time to react?

2 A No.

3 Q When you saw him for the first time, was it right
4 before he hit you?

5 A Yes.

6 Q And how would you -- well, let me ask you this:
7 Did you see him pull out?

8 A No.

9 Q Okay. And the visibility at that time, we have
10 heard a lot of people talk about it, was it getting darker
11 outside?

12 A It was.

13 Q Okay. Was there still some light out?

14 A Yes.

15 Q Could you see the median?

16 A Yes.

17 Q Could you see the trees and the businesses
18 alongside the highway?

19 A Yes.

20 Q Could you see other vehicles?

21 A Yes.

22 Q Okay. And as you are driving did it seem like to
23 you you didn't have your headlights on?

24 A No, I always have my headlights on. I have a
25 newer vehicle that has automatic lights and I don't turn

TESTIMONY OF THERESE HOOD

1 them off.

2 Q All right. You don't remember switching it to
3 running lights?

4 A No.

5 Q All right. Mrs. Hood, we heard from a lot of
6 people this week, people saying no headlights but running
7 lights. Mrs. Hood, if that's the testimony and we have
8 heard that over and over again, are you going to disagree
9 with that?

10 A No, I'm not.

11 Q Can you accept that?

12 A Yes, I can.

13 Q How is your eyesight?

14 A I just had my eyes checked in June of this year
15 and I have 20/25 vision. I see perfectly.

16 Q Wear glasses, contacts?

17 A I wear no glasses, no contacts.

18 Q And moving along. Your car, is that where
19 Mr. Johnson hit you?

20 A Yes.

21 Q You have got to speak up for us.

22 A Yes.

23 Q And you can move a little closer and use the
24 microphone if it's uncomfortable, okay. Sorry.

25 A Okay.

TESTIMONY OF THERESE HOOD

1 Q Mrs. Hood, what caused you to veer into on-coming
2 traffic after he hit you?

3 A My tires shifted to the left and I couldn't turn
4 them to the right.

5 Q Did you do your best to avoid crossing over?

6 A Yes, I did my best to the point where I felt the
7 brake went through the bottom of my car and shattered my
8 ankle and my foot broken completely in half.

9 Q Ms. Hood, what did it feel like for those moments
10 as your car is out of control and you are heading into
11 on-coming traffic?

12 A I knew I was going to die so Catholics believe if
13 you say "Our father" or some sort of prayer before you die
14 that God absolves you of your sins, so I was doing that
15 before I hit the Kucks.

16 Q Were you wearing your seat belt at the time?

17 A Yes, I was.

18 Q Did your air bags go off?

19 A Yes.

20 Q What did that sound like?

21 A What did it sound like?

22 Q What did it sound like, the air bags, for those of
23 us who have never had it happen, including me?

24 A It had a strong odor and it was a strong push that
25 pushed me back into my car seat.

TESTIMONY OF THERESE HOOD

1 Q Okay. Do you remember hitting the SUV head on?

2 A No.

3 Q And I want to just take a moment and see if we put
4 these pictures in. Yeah. All right, so we have already
5 seen pictures of the front of your car, right? Is that it?

6 A Yes.

7 Q Okay. And this is the Defendant's Exhibit No. 2.
8 And this is the Kuck's car, defendant No. 3?

9 A Yes, I didn't see it though.

10 Q Well, we are not going -- we are not going to go
11 back over those. At the scene, what is the first thing that
12 you remember after the wreck?

13 A On Star called me and told me that I had been in
14 an accident and that they were going to call the ambulance
15 and the police.

16 Q Okay. And now, how were you feeling?

17 A I was in so much pain I don't know.

18 Q Okay. Did the ambulance take you away?

19 A Yes, they did.

20 Q And where did they take you to?

21 A Hilton Head Emergency Hospital.

22 Q Okay. And were you transferred to Hilton Head by
23 ambulance over to Savannah Memorial?

24 A Yes, I was transferred from there because Hilton
25 Head could not deal with the fracture in my neck.

TESTIMONY OF THERESE HOOD

1 Q Okay. Now, Ms. Hood, I know that this is a lot to
2 remember, but I would like for you to tell us what your
3 injuries were, and if you could just organize that by
4 starting at the top of your head and let's go down to the
5 bottom of your feet. Okay? Tell the jury what your
6 injuries were.

7 A My injuries were I had a black eye. What felt the
8 worst which really wasn't the worst is I fractured all of my
9 ribs, I had a fracture in my neck, I had a fracture in my
10 lower spine, and of course, you know, I shattered my foot in
11 half and my ankle.

12 Q Was there some mention of a dissection of your
13 left vertebral artery?

14 A Yes, the Savannah Memorial Trauma Center found
15 that.

16 Q Okay. You went into surgery?

17 A Yes, I did.

18 Q Okay. And after Savannah Memorial, where did they
19 take you after that?

20 A They transferred me to a nursing home in Moncks
21 Corner, which is supposed to be a rehab center as well.

22 Q How did it feel being in a nursing home?

23 A There's no words to explain it.

24 Q There's people there rehabbing and there are
25 people there to stay?

TESTIMONY OF THERESE HOOD

1 A They put me in the section that was a nursing home
2 and there was one therapist that would come help me with
3 therapy once a day.

4 Q Let's talk about when you finally got home. Day
5 before Thanksgiving you went home?

6 A Yes.

7 Q Able to get around?

8 A No.

9 Q Can you tell us about Thanksgiving that year.

10 A Thanksgiving that year was horrible. I couldn't
11 get up. I had a neck brace, a body brace, a leg brace. I
12 couldn't move. My daughter from -- she had just come back
13 from Germany. She stayed with me for three weeks. My
14 husband attended to me, and my younger daughter. I had to
15 move downstairs in our sunroom. My bedroom is upstairs. We
16 have -- our sunroom is pretty much lit like this so we had
17 to put blinders up. And I had to have a clothes rack so I
18 could have clothes, but I couldn't dress myself. I couldn't
19 eat by myself. I couldn't go to the bathroom by myself. I
20 really couldn't do anything by myself.

21 Q Could you bathe yourself?

22 A No, that was the most humiliating part. Our
23 bathroom was upstairs, and of course I couldn't go upstairs
24 so they would wheel me to the bottom of the stairs.

25 Q Ms. Hood let's --

TESTIMONY OF THERESE HOOD

1 A I would have to sit on the stairs and back myself
2 up to the top of the stairs and somebody would have to pick
3 me up and bring me to the tub and put a chair in there and
4 then help me step over the tub to get into the chair and
5 then they would have to watch me. And that was so
6 humiliating. I'm such a proud person.

7 I just felt so helpless and humiliated and I
8 always tried to do something and I couldn't do anything.

9 Q Thank God for your family.

10 A Thank God.

11 Q They were there for you?

12 A Yes, they were.

13 Q And Dr. Jaskowich, you thank God for him as well?

14 A Yes, he was a life saver.

15 Q Now you eventually started walking again, did you
16 not?

17 A Yes, I had a boot that come up to my ankle that
18 completely confined my foot so that they tried to fuse the
19 bone of the ankle together. And I wore that for months. I
20 finally was able to wear just an ankle brace in late May of
21 2015.

22 Q And when you did start walking again, I imagine it
23 was a progressional sort of thing.

24 A Yes.

25 Q And even when you were back on your feet without a

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1 cane or a walker --

2 A I had to have a cane.

3 Q Well, let's say after all of that. How was
4 walking after that point?

5 A It was difficult. I couldn't walk very far. I
6 was so scared that I would fall. I walked very, very
7 slowly. I had to walk with somebody assisting me. And I
8 finally was -- I tried and was able to go to church. I
9 couldn't kneel down. I had to sit on the bench and prop my
10 foot up through the whole service.

11 Q Could you feel the plates and screws underneath
12 your skin?

13 A Yes.

14 Q Did you eventually have those taken out?

15 A I had the first one taken out in June of 2016. It
16 was a 5-inch screw holding the top part of my ankle to where
17 your foot and your ankle meet. So, I couldn't lift my foot
18 up. You know, your toes forward because that screw just
19 hurt so bad. And so maybe in 2016 I had that one screw
20 taken out. And --

21 Q I think that it was this February you had the rest
22 of them taken out, right?

23 A In April.

24 Q Okay.

25 A April of this year I had the others taken out,

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1 which were --

2 Q Is that these?

3 A Yes.

4 Q You gave these to me, didn't you?

5 A Yes, I did. They let me save them.

6 Q What did it feel like -- so you could -- what did
7 it feel like to wear shoes? And what did it feel like to
8 live with this hardware for three years?

9 A It was very painful. I could -- I didn't have any
10 support. Why I had the screws taken out, they were 5 inches
11 like scissors holding my ankle together and they started
12 protruding on either side of my ankle and it really hurt
13 more. So, I talked to Dr. Jaskowich and he said that he
14 would take them out. But he said that it wouldn't make that
15 much of a difference because my leg was so already damaged
16 and my bones had fused together and it probably never would.

17 Q Okay.

18 A So I'm crippled.

19 Q Now let's -- we are getting there. This is the
20 last part, okay?

21 A Okay.

22 Q Let's talk about how you are doing now, okay? AND
23 I don't mean as we sit here now, I'm talking about the
24 present as opposed to the past that we have been talking
25 about. How does your ankle feel?

TESTIMONY OF THERESE HOOD

1 A My ankle hurts all of the time. It either feels
2 like there's needles jabbing into it, it throbs, it swells.
3 Like when I was sitting at the table, I can't sit with my
4 foot down very long so I have been propping it up on a box.

5 Q Is this the box that you have been using all week?

6 A Yes. And when it is -- when it swells my ankles
7 overlap my shoe, which is a -- I have to buy special shoes
8 with ankle support.

9 Q Okay.

10 A And so when it gets to that point I can barely
11 take my shoe off, so I wear ankle support slippers.

12 Q Now, Ms. Hood, we heard from Dr. Jaskowich
13 talking about getting off of your feet, elevating your
14 ankle, soaking in Epsom salt, soaking in ice, taking
15 medications, antiinflammatory medications, pain medications,
16 all of that. Is that what you do when it gets bad?

17 A Well, since it hurts most of the time and my
18 family doctor has prescribed 800-milligram Motrin for the
19 swelling and the pain, but that doesn't help with the
20 swelling.

21 Q Now, Ms. Hood, this seems obvious but I have got
22 to ask you: Are you able to wear heels anymore?

23 A No, I can't wear skirts anymore, I can't wear
24 heels anymore. I have two pairs of shoes. I have my
25 support, my support slippers, the tennis shoes that I have

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1 been wearing and I wear one other shoe that seems like a
2 presentable shoe so I don't always have to be in my slippers
3 or my tennis shoes.

4 Q Did you used to exercise before all of this
5 happened to you?

6 A Yes.

7 Q What did you do for exercise?

8 A I walked on a treadmill. I walked with my
9 friends. I walked the dog.

10 Q Are you able to do those things anymore, or do
11 like you used to?

12 A No. What I do now, I take the dogs out and sit
13 with them, but I'm sure that they miss the long walks.

14 Q Ms. Hood, do you know what the future holds for
15 you?

16 A I'm crippled for life.

17 Q Dr. Jaskowich, when he started to talk about the
18 future in the last visit, he was talking about, Well, we are
19 rounding all of this up. It seems like he's kind of done
20 with the things, the help and the fix at this point.

21 A Yes, but I still have a standing appointment with
22 him because he, as time progresses my bones won't fuse
23 completely together so he could do an ankle fusion if he
24 thinks that would help.

25 Q Okay. Last resort, right?

TESTIMONY OF THERESE HOOD

1 A Yes.

2 MR. SMITH: May I approach?

3 THE COURT: You may.

4 BY MR. SMITH:

5 Q Ms. Hood, I hand you what's been marked as
6 Plaintiff's Exhibit No. 17. Is that a summary of the places
7 you went, the dates, and the costs of the medical treatment?

8 A It appears to be so.

9 Q Okay. And did you help us put that together?

10 A Yes.

11 Q And does that fairly and accurately show the cost
12 of the medical treatment that you received after the wreck?

13 A Yes, I provided you the bills.

14 Q Okay. And was all of that treatment related to
15 the injuries that you received in the wreck?

16 A Yes.

17 Q Okay.

18 MR. SMITH: Your Honor, at this time I move to
19 introduce the document as Plaintiff's Exhibit No. 17.

20 MR. DANIEL: No objection, Your Honor.

21 THE COURT: Okay. Without objection, it is in
22 evidence.

23 *(Whereupon, Plaintiff's Exhibit No(s). 17 marked*
24 *for identification and received in evidence.)*

25

TESTIMONY OF THERESE HOOD

1 BY MR. SMITH:

2 Q I'm not going over the communion story, but I just
3 want to ask you, was what we heard true?

4 A Yes.

5 Q Was that a loss in your life?

6 A Yes, I feel since it was a calling I feel torn
7 because I feel like I'm not as close to God and I'm ashamed
8 that I dropped blood because for a Catholic that is an
9 extremely traumatic thing, it is so sacred and I dropped it
10 because I tripped.

11 Q Ms. Hood you know -- you know that that wasn't
12 your fault, right?

13 A I know but it is still hard --

14 Q Well you know that God forgives you, right?

15 A -- to accept. Yes, I'm sure.

16 Q Okay. But you miss being able to do that?

17 A Yes.

18 Q Now, aside from your family and your church, did
19 you have many friends?

20 A Not many. I had mostly acquaintances.

21 Q And was that okay with you?

22 A That was fine with me.

23 Q We heard Ms. Hernandez talk about you still go to
24 church, not quite as much, but you still go. But what she
25 talked about was, you don't hang around after, you don't

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1 have the fellowship. And tell the jury what it's like not
2 to have that part of your life and why you are not -- why
3 you are not doing that?

4 A I really don't want to go through the story all of
5 the time so I don't really like to be asked about it. And I
6 am in pain and so our service is an hour, hour and 15
7 minutes, and I just -- I'm just not the same person.

8 Q Let's switch gears for a moment, okay.

9 A Okay.

10 Q Now he's not here, but tell us about David. David
11 has been with you for 46 years?

12 A Forty-two years.

13 Q Right. Was y'all's relationship affected by this?

14 A Yes.

15 Q Can you tell us about that please?

16 A It was -- it was -- it has been hard for my
17 husband to deal with my injuries. He would get frustrated.
18 He would sleep and he was my main caregiver so it ended up
19 that we separated for a while. And my youngest daughter, I
20 went to live with her for a while and she could help me.
21 But then we -- I worked things out with my husband and he
22 came back and now he helps me walk, as you have seen. He
23 helps me go shopping because I can't go shopping alone. I
24 can't stand for more than an hour, an hour and a half.

25 Q Is David your rock?

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1 A Yes, he is.

2 Q Have you ever thought about, with how you are now,
3 what would happen if you lost him?

4 A I wouldn't be alive.

5 Q Now, I want to talk about your grandchildren. It
6 sounds like I think I heard an 11, 5, 3, maybe two 2 year
7 olds and a two month old.

8 A One two year old and a two month old.

9 Q Ms. Hood, you know, in my house grandmommy's job
10 is to spoil the grandchildren, and when my child goes over
11 to grandmommy's house her feet don't touch the ground and
12 she picks up very bad habits. And that is the price that
13 you pay for going out to dinner and having a good time,
14 right? But what is your interaction like with your
15 grandchildren?

16 A The three, the three children that live in Alabama
17 with my oldest daughter, when I go visit and when we do
18 anything there's a lot that I can't do with them. And it
19 seems like they get so upset and frustrated with me because
20 I can't do things with them. And they -- I'm from French,
21 I'm French, so they call me Meme. They say, Meme, Why don't
22 you do this with us, don't you love us any more.

23 Q Well, they are young, and they will understand.
24 Right?

25 A I think that sometimes they do. The two year old

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1 is very attached to me. I can't bring them up and down the
2 stairs and I can't carry him anywhere. And the two month
3 old, my daughter won't even let me carry him because she's
4 afraid that I'll fall, so she carries him to me in the
5 chair.

6 Q Ms. Hood, do you find yourself at home a lot now?

7 A Yes, I do. I don't have doctors' appointments
8 very often, but I go to my appointments and since WalMart is
9 only a light away I can go to WalMart and get a few things.
10 And that is where I do my grocery shopping as well.

11 Q When you are at home, are you alone a lot?

12 A I am alone all of the time. My oldest daughter
13 comes to visit me, to check on me, to see how I am doing.
14 My husband calls me every day at noon to make sure that I'm
15 okay. But other than that, I'm completely alone.

16 MR. SMITH: I think that we can end there. All
17 right. Keep your seat. Please answer any questions
18 counsel may have.

19 THE WITNESS: Okay.

20 CROSS EXAMINATION

21 BY MR. DANIEL:

22 Q Mrs. Hood, are you okay to keep going?

23 A Yes, I'm fine.

24 MR. DANIEL: Madam Reporter, could you hand her a
25 sealed copy of her deposition?

TESTIMONY OF THERESE HOOD

1 COURT REPORTER: Okay.

2 BY MR. DANIEL:

3 Q Mrs. Hood, we may refer to that here and there to
4 refresh your memory and clarify things. So, I'll ask you to
5 look at a page if you need to and you can just Let me know
6 when you are there; is that fair?

7 A Okay.

8 Q Okay. Do you remember sitting for deposition in
9 this case?

10 A Yes.

11 Q If you look on the front of that. That was
12 April 27, 2016?

13 A Yes.

14 Q Do you remember showing up and being there for
15 Antoine Johnson's deposition that your lawyer took in this
16 case before yours on January 25th, 2016?

17 A Yes, I believe so.

18 Q If I heard you earlier, if I heard it correctly,
19 you are now, what you say, If other people say that I did
20 not have headlights on, I am not going to dispute that.

21 A I understand.

22 Q I'm asking you your testimony. What do -- if they
23 say that you didn't have your headlights on, are you no
24 longer disputing that?

25 A I am no longer disputing that I had running lights

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1 on.

2 Q You are no longer disputing that you had --

3 A Running lights on.

4 Q Right. Are you disputing that you did not have
5 your headlights on?

6 A I drive with my lights on automatic all of the
7 time. I don't recall touching them.

8 Q Okay. I'll turn your attention to Page 63 of your
9 deposition. Sixty-three, and actually the bottom of 62.
10 Let's just start there.

11 A Okay.

12 Q See the last line, 25?

13 A Yes.

14 MR. SMITH: What is the line number?

15 MR. DANIEL: Twenty-five.

16 BY MR. DANIEL:

17 Q Were you aware that this gentleman, Dustin Lee,
18 witnessed the accident?

19 MR. SMITH: I am sorry, did you say 63?

20 MR. DANIEL: Sixty-two, Line 25.

21 Q "Are you aware that this gentleman, Dustin Lee,
22 witnessed this accident? Your answer: No, sir."

23 A Yes.

24 Q Is that your testimony?

25 A Yes.

TESTIMONY OF THERESE HOOD

1 Q You swore under oath in your deposition just like
2 you did here today, right?

3 A Yes.

4 Q "Okay. So you listened to the recorded 911 calls
5 for this accident? Your answer: No, sir." All right?

6 A Yes.

7 Q Following me?

8 A Yes.

9 Q "So, you wouldn't have any specifics, personal
10 knowledge, and I'll represent to you that he made a point to
11 say that you were driving and didn't have your headlights on
12 at the time, so you disagree with that? And your answer
13 was: I would disagree with that?"

14 A Yes.

15 Q And I was asking you about your headlights, so at
16 the time you disputed -- your contention was you had your
17 headlights on; is that right?

18 A That's correct.

19 Q You are now changing your story and saying, you
20 know, I don't dispute any more if people say I didn't have
21 my headlights on, maybe I just didn't have them on; is that
22 fair?

23 A Yes. I go by the testimony of the experts.

24 Q Well, you swore under oath that you remembered
25 this accident in your deposition?

TESTIMONY OF THERESE HOOD

1 A Yes.

2 Q And you told me that you didn't do anything wrong,
3 that you were driving in a safe manner?

4 A Yes.

5 Q You swore all of that under oath, right?

6 A Yes.

7 Q And you swore under oath in your deposition that
8 it was your position that you had your headlights on; is
9 that right?

10 A Yes.

11 Q What you told me under oath is everybody else got
12 it wrong, I had my headlights on, I am the one that got it
13 right; that is what you said?

14 A Basically that is what I thought.

15 Q That is what you thought but, you know, that is
16 what you testified to and now maybe you are not sure about
17 it; right?

18 A No, I'm sure. I am sure that I thought that I had
19 my headlights on.

20 Q But now you think that you may have been mistaken?

21 A Yes, sir.

22 Q What about what these witnesses have said about
23 how dark it was at the time of the accident?

24 A I agree with them, it was. It wasn't that dark,
25 but I would have had my headlights on. I could see the

TESTIMONY OF THERESE HOOD

1 trees. I could see ahead of me very well.

2 Q Dustin Lee testified that you were here, that it
3 was 90 percent dark; you disagree with that?

4 MR. SMITH: Your Honor, I think I have to object
5 for pitting the witness.

6 THE COURT: Sustained. Don't pit witnesses.

7 BY MR. DANIEL:

8 Q Okay. Do you agree that it was 90 percent dark?

9 A I don't believe that. I don't think so.

10 Q If you had to put a percentage on it, what
11 percentage would you put?

12 A Maybe 80 from where my vehicle was.

13 Q Is 80 percent pretty dark?

14 A Yes, it is fairly.

15 Q Fairly?

16 A Fairly dark.

17 Q And you were headed to your condo, your time share
18 condo on Hilton Head?

19 A Yes, I was, sir.

20 Q You went down maybe two, or three, maybe four
21 times a year is what you testified to in your deposition?

22 A That's correct.

23 Q And so you are somewhat familiar with this area;
24 is that right? Hilton Head?

25 A Oh, with Hilton Head itself, yes.

TESTIMONY OF THERESE HOOD

1 Q You don't drive that road everyday, or you didn't
2 at the time?

3 A And my husband normally drives when we go there.

4 Q You were by yourself driving?

5 A That day, yes, sir.

6 Q Would you agree that it gets dark in Hilton Head
7 in early November, the date of this accident was
8 November 7th, it is pretty dark by around 5:50?

9 A I'm not sure if that's the occasion all of the
10 time.

11 Q Do you remember testifying -- I understand that
12 you just took an eye exam and you don't have any vision
13 problems right now. What I am going to ask you so we are
14 clear, at the time of this accident did you have any vision
15 problems?

16 A No.

17 Q When did this accident happen?

18 A November 7, 2014.

19 Q And you are sure about that?

20 A Of course.

21 Q I understand that.

22 MR. DANIEL: May I approach, Your Honor?

23 THE COURT: Yes.

24 *(Whereupon, Defendant's Exhibit No(s). 7 marked*
25 *for identification.)*

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1 MR. DANIEL: Your Honor, I'm handing what's been
2 marked as Defendant's 7 for identification purposes.

3 THE COURT: Thank you.

4 BY MR. DANIEL:

5 Q Tell me when you -- you have looked at this now?
6 Seven, you are looking at it?

7 A Yes.

8 Q In the bottom left-hand corner, is that your name?

9 A Yes, it is.

10 Q And that is -- this Goose Creek address, 832
11 North, is that Alsberry. How do you pronounce that?

12 A North Alsberry.

13 Q Is that your address?

14 A Yes, it is.

15 Q Does this appear to be a medical record for you?

16 A Yes.

17 Q Do you see the date -- I think that it's
18 highlighted for you, date of note down near the bottom?

19 A Yes.

20 Q And it says, November 7th, 2014; do you see that?

21 A Yes.

22 Q And it says, 1109 right there; do you see that?

23 A Yes.

24 Q And down a little bit farther I have got another
25 statement that is highlighted. It says, Patient requesting

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1 eye exam for blurred vision. Can you see that?

2 A Yes, sir.

3 Q So, is this a record of you calling to the VA on
4 the day of the accident, the morning of the accident,
5 complaining of blurred vision?

6 A I went to the doctor's office, yes, sir.

7 Q You went in that morning?

8 A Yes, sir.

9 Q Is there a record of that? Because I haven't seen
10 it.

11 MR. SMITH: I think I would object to Mr. Daniel
12 testifying as to his personal knowledge.

13 THE COURT: Okay, if there's a question, ask her.

14 MR. DANIEL: Yes, ma'am.

15 BY MR. DANIEL:

16 Q Your lawyer, do you understand, produced documents
17 to us?

18 A Yes, sir.

19 Q Are you personally aware of a record of you going
20 in to visit to have your eyes checked on this date, November
21 7th, 2014?

22 A Yes, sir.

23 Q You are aware of a record existing?

24 A I believe so. They record appointments.

25 Q You see that there's an addendum. If you look on

TESTIMONY OF THERESE HOOD

1 the next page it actually looks -- you see at the top,
2 December 12th, 2014?

3 MR. SMITH: Is that Page 2? Did you just flip the
4 page?

5 BY MR. DANIEL:

6 Q I just flipped the page, so at the bottom just so
7 you follow with me, Mrs. Hood; you see that 3112?

8 A I have Page 94.

9 Q 3112 in bold. I'll help you.

10 (Pause.)

11 Q You agree this is your medical record, Exhibit 7
12 that we are looking at?

13 A Yes, I agree.

14 Q It says that you hadn't had an eye exam in two
15 years; do you see that?

16 A Yes, sir.

17 MR. DANIEL: At this time we offer Defendant's 7
18 into evidence.

19 THE COURT: Any objection?

20 MR. SMITH: Can I just have a moment to look at
21 it. He's only asked her about two lines and there is
22 several pages.

23 THE COURT: Sure. But let's move on with her,
24 let's keep going with her, if you could. Keep going.

25

TESTIMONY OF THERESE HOOD

1 BY MR. DANIEL:

2 Q Do you agree that you had -- ma'am, I'm not trying
3 to make light of your conditions. I understand that you
4 were hurt and I want to be clear about that.

5 A Yes, sir.

6 Q But you were -- you had been diagnosed with
7 Parkinson's disease before this accident?

8 A Yes, sir.

9 Q You had had incidents where you had fallen before
10 this accident?

11 A Yes, sir.

12 Q And do you remember that you actually before this
13 accident, I guess in August of 2012, had been evaluated for
14 walking aids?

15 A I don't recall.

16 Q Ms. Hood, I'm handing you what's marked as
17 Defendant's 8. And I only have one. I'm not trying to
18 hover, but do you agree that that is your name in the bottom
19 left?

20 A Yes.

21 Q We are looking at Defendant's 8 for ID purposes.
22 Go to the second page, which is 134 -- VA134. It has got a
23 date here, August 6, 2012; do you see that?

24 A Yes, sir.

25 Q And you see where the highlighted language it

TESTIMONY OF THERESE HOOD

1 says, Patient educated that when she receives her MRI
2 appointment. So you were going for an MRI?

3 A Yes.

4 Q She may also come to PT as a walker --

5 MR. SMITH: Your Honor, I have to object to the
6 reading of medical records. And this document is not
7 in evidence. I don't know what is going on here. The
8 relevance is -- I am sorry.

9 MR. DANIEL: Your Honor.

10 THE COURT: Do you need to come talk to me?

11 MR. DANIEL: I can.

12 THE COURT: Okay.

13 (Off-the-record discussion held.)

14 *(Whereupon, Defendant's Exhibit No(s). 8 marked*
15 *for identification.)*

16 BY MR. DANIEL:

17 Q Does Defendant's 8 for ID purposes now refresh
18 your recollection that in August of the same year as the
19 accident, so a few months before, you went to the doctor and
20 were advised about getting walking --

21 MR. SMITH: Your Honor, same objection. He is
22 just recanting exactly what -- he is just reading the
23 medical record without reading it.

24 THE COURT: Okay. Ask her a question about her
25 treatment. Don't ask her about the medical record.

TESTIMONY OF THERESE HOOD

1 Ask her about her treatment.

2 BY MR. DANIEL:

3 Q Ma'am, in August of 2014 you were advised that you
4 could get walking aids; is that correct?

5 MR. SMITH: Your Honor, objection, hearsay.

6 THE COURT: Just ask her the question, Were you
7 advised.

8 BY MR. DANIEL:

9 Q Were you advised that you should have walking
10 aids?

11 A Yes, because at that time I was taking duplicate
12 medication which was causing me to be more unstable. My
13 psychiatrist and my neurologist had given me
14 contraindication medications. Now I no longer tremble
15 because I only take Adderall.

16 Q But you had had balance issues and you had fallen
17 in the past, right?

18 A Yes.

19 Q And what you testified to is in church that day,
20 I'm not trying to embarrass you, but when you spilled the
21 wine you had tripped; is that right?

22 A That's correct.

23 Q Okay. So, you were having blurred vision at least
24 when -- maybe went to the doctor that day, the day of the
25 accident, maybe not, but you were having blurred vision that

TESTIMONY OF THERESE HOOD

1 day; right?

2 A I don't recall the blurred vision. But I do
3 recall going to the doctors and having my eyes checked
4 because I was reading a document, several documents and
5 magazines, and I was having difficulty seeing the words
6 whatever, so because I felt that you know my eyes might be a
7 little blurry. So I went to have my eyes checked that day
8 to make sure that there was nothing serious, and they did an
9 eye check and found that there was nothing there; I had
10 perfect eye vision.

11 Q But you went in to the doctor about blurred vision
12 the day of the accident, and that is up at the VA in
13 Charleston, right?

14 A Yes.

15 Q And you chose -- the same day you chose to drive
16 down in the afternoon by yourself to Hilton Head; is that
17 right?

18 A Yes. And that was based on the findings of my eye
19 exam.

20 Q You testified that you now no longer dispute if
21 others say you didn't have your headlights on, you don't
22 dispute that?

23 A I am sorry?

24 Q If others say that you didn't have your headlights
25 on at the time of the accident like Antoine Johnson, you

TESTIMONY OF THERESE HOOD

1 don't dispute that?

2 MR. SMITH: Objection, asked and answered.

3 MR. DANIEL: Just trying to make sure.

4 THE COURT: Move along, get going.

5 BY MR. DANIEL:

6 Q Do you realize that this is the first time that
7 Antoine Johnson has ever heard you say that you didn't have
8 your headlights on?

9 MR. SMITH: Your Honor, I don't think --

10 THE COURT: Again, this is not relevant. Move on.

11 BY MR. DANIEL:

12 Q Did you see the sedan, the vehicle, pulling out
13 before you were impacted on your right side?

14 A No, sir.

15 Q You never saw it. Do you know how fast you were
16 going?

17 A I was following traffic.

18 Q Do you remember telling me in your deposition you
19 were only going 35 miles an hour?

20 A I wasn't sure about the speed. And I had been in
21 there for five hours.

22 Q Do you have your deposition there?

23 A Yes, sir.

24 Q Look in your deposition, I want you to start at
25 Line 18.

TESTIMONY OF THERESE HOOD

1 A Yes, sir.

2 Q See it?

3 A Yes, sir. Okay.

4 Q I want you to start at Line 18.

5 A Eighteen?

6 Q You see it?

7 A Yes, sir.

8 Q I want you to read, that is my question, starting
9 with my question, and read for the jury down through 32, go
10 to -- just read the whole page and then turn the page and
11 keep reading until Line 12.

12 A "How fast do you think you were going at the time
13 when the accident happened?

14 About 30 miles per hour.

15 Why do you say 30?

16 Because the Equinox has in the console a
17 place where -- has a place for the speed to be and it shows
18 you numerically what speed you are going.

19 When do you remember looking at your speed
20 before the accident?"

21 Oh, was it "Do you remember"?

22 Q That is right, do you remember.

23 A "Do you remember looking at your speed before the
24 accident?

25 Yes.

TESTIMONY OF THERESE HOOD

1 When did you look at it?

2 I always look at it.

3 Really? Do you think that you were looking
4 at it at the time that you were hit or when?

5 No, I wasn't looking at it then."

6 I was confused with that question as you
7 remember before. I believe that at this deposition I was
8 confused with many of your questions. I am reading what I
9 wrote -- what I said.

10 Q Do you see that question of, "How frequently do
11 you look at your speed?"

12 A Yes.

13 Q What did you say?

14 A I said, "In the case of one minute, probably 20
15 times."

16 Q Do you agree that that is a pretty simple
17 question, "How frequently do you look at your speed?"

18 A I don't look at my speed every minute. I look at
19 it maybe every three or four minutes. I'm always aware of
20 my speed.

21 Q But in your deposition you testified differently;
22 is that right?

23 A Yes, sir, I was very nervous at the deposition.
24 And you confused me a lot, which I -- if you look at the
25 deposition I have noted that.

TESTIMONY OF THERESE HOOD

1 Q Okay. In your deposition, didn't I instruct you
2 to answer my questions and if you didn't understand a
3 question to let me know?

4 A Yes, you did.

5 Q And you didn't tell me that you didn't understand
6 that question; is that right?

7 A Yes, I did. I was afraid. It was my first
8 deposition. I had no experience and somehow I felt
9 intimidated by you. And I, I just really wanted to get it
10 over with.

11 Q Do you think that you may have been speeding at
12 the time of the accident?

13 A At the time of the accident, I remember following
14 traffic. I believe that the speed limit was 45. From past
15 experience of driving down that road, I don't believe that
16 many people go 45. But based on the time of day there's --
17 especially that time of day, there's more traffic going to
18 Hilton Head, so the flow of traffic.

19 Q So, people were speeding and you were speeding?

20 A I can't attest for that, for who is speeding and
21 who is not.

22 Q But if you were following traffic and if they were
23 speeding you may have been speeding?

24 A I don't want to say that they were speeding, I
25 have no fact.

TESTIMONY OF THERESE HOOD

1 Q Were you aware that your lawyers hired an
2 engineer, two engineers?

3 MR. SMITH: Your Honor, I don't have any idea.

4 THE COURT: I assume it is an objection. It is
5 sustained. Move on.

6 MR. DANIEL: Yes, Your Honor.

7 BY MR. DANIEL:

8 Q If Antoine Johnson said he was at that stop sign
9 and checked to his left before he pulled out, you didn't see
10 him, you didn't see his vehicle; is that right?

11 A No, sir.

12 Q And you can't dispute that based on your
13 knowledge, can you?

14 A Based on my knowledge, I didn't see him.

15 MR. DANIEL: Thank you. Well, one more, a few
16 more things.

17 BY MR. DANIEL:

18 Q As far as your expenses, the medical expenses that
19 you have, do you agree that you were regularly seeing
20 doctors before this accident for different medical
21 conditions?

22 A Yes, sir.

23 Q And I'm not trying to make light, but you were on
24 a number of medications; is that right, before this
25 accident?

TESTIMONY OF THERESE HOOD

1 A Yes, sir, the medications that I had been on for
2 years.

3 Q What medications are those?

4 A They would be thyroid, cholesterol, a sleeping
5 sedative.

6 Q Trazodone or --

7 A Trazodone, which that is a sedative.

8 MR. SMITH: I object to relevance, Your Honor.

9 MR. DANIEL: I am going to get there.

10 THE COURT: Overruled. You can ask it.

11 BY MR. DANIEL:

12 Q You have taken those medications after the
13 accident too, right?

14 A Actually I stopped taking the Parkinson's
15 medication because it was making me tremble, and at that
16 time the neurologist was experimenting with a drug,
17 Adderall, which I take for my attention deficit and they
18 were the same, they did the same thing, which was causing me
19 to tremble. So, as soon as I stopped taking it my trembling
20 went away.

21 Q At your deposition, though, do you remember
22 telling me that you were taking the same medications after
23 the accident as you were before the accident?

24 A Yes, I only stopped taking Parkinson's medication
25 when they asked me to participate in the study about

TESTIMONY OF THERESE HOOD

1 Adderall and just taking that, and I said I wouldn't profit
2 from that because I already take it.

3 Q Okay. And do you agree, do you remember telling
4 me that the only thing different after the accident, as of
5 your deposition in April of 2016, two years later, was that
6 you took Motrin for pain when your leg, pain in your leg
7 from time to time would get unbearable, is that right?

8 A Yes, sir.

9 Q And you told me that -- I said, Well, how often do
10 you have to take Motrin; do you remember that?

11 A Yes.

12 Q Do you remember really telling me, "Really only
13 about once every two months"?

14 A No, sir.

15 Q You don't remember that? Okay. If you will turn
16 to Page 98 of your deposition?

17 A Okay.

18 Q Okay. You see on line 12 there. I'll read this.
19 I want you to tell me if what I'm reading is accurate.

20 "Question: How often do you take Motrin?

21 Answer: I try not to take it too often. I
22 probably take as needed.

23 Question: And that would be once a week,
24 three times a week, once a month?

25 Answer: When my foot is unbearable in pain,

TESTIMONY OF THERESE HOOD

1 which I can't exactly say when it occurs. I haven't taken
2 it very many since so --

3 Best guess? My question.

4 Maybe once.

5 Once a month or once a week, best guess?

6 It would be like once every two months."

7 That was your answer.

8 A I see that.

9 Q Is that what you testified to?

10 A That is what I testified to.

11 Q If you didn't have your lights on and you were
12 speeding and it was 80 percent dark out, do you believe that
13 you may bear some responsibility for the accident that
14 happened?

15 A I have the right-of-way and he hit me.

16 Q You don't believe that you did anything wrong?

17 A No, sir.

18 MR. DANIEL: No further questions.

19 THE COURT: Anything further?

20 MR. SMITH: Yes, ma'am, very briefly.

21 REDIRECT EXAMINATION

22 BY MR. SMITH:

23 Q Ms. Hood, the medical bill summary, now the
24 medications that you were taking before all of this, did you
25 get those through the VA?

TESTIMONY OF THERESE HOOD

1 A Yes.

2 Q Okay. Is the VA anywhere on here? Are you asking
3 for reimbursement for any drugs supplied by the VA?

4 A No, sir.

5 Q Do you see the VA for your personal health
6 conditions?

7 A Yes.

8 Q Before and after the wreck, right?

9 A Yes.

10 Q Is the VA, for those personal health conditions,
11 anywhere on this summary?

12 A No, sir.

13 Q And Ms. Hood, we have heard about your eyesight.
14 Were you able to read that deposition that Mr. Daniel was
15 giving you?

16 A Very well, yes, sir.

17 Q All right. And when you felt like your eyes were
18 blurry, what was the remedy?

19 A What was the remedy?

20 Q Yes.

21 A They gave me eye drops.

22 Q Because your eyes were dry?

23 A My eyes are constantly dry.

24 Q Okay.

25 MR. SMITH: Nothing further.

TESTIMONY OF THERESE HOOD

1 THE COURT: Anything further, Mr. Daniel?

2 RE-CROSS EXAMINATION

3 BY MR. DANIEL:

4 Q Mrs. Hood, this exhibit with your medical bills on
5 it --

6 A I don't have that here with me.

7 Q It is the one here. Would you agree that a number
8 of the bills on there are related to treatment for
9 dizziness?

10 MR. SMITH: Your Honor, I have to object. This is
11 outside my redirect. I asked her if any bills from the
12 VA were on there and she said no.

13 THE COURT: He can ask it, is it on there or not.

14 THE WITNESS: No.

15 BY MR. DANIEL:

16 Q Who do you see for neurological problems?

17 A Dr. Henlon.

18 Q Which group is he with?

19 A It is a she. And she is with the neurology
20 department at the VA.

21 Q Where?

22 A At the VA in Charleston.

23 Q Okay. Did you see the folks at MUSC about
24 dizziness? There is a bill for \$64,000. Did you get
25 treatment?

TESTIMONY OF THERESE HOOD

1 A Yes, sir. The dizziness I was experiencing was
2 from the fracture in my neck because the fracture in my neck
3 was causing to push the artery in my neck so that I wasn't
4 getting the oxygen that I had after the accident.

5 Q But you would agree that you are not a medical
6 doctor?

7 A No, sir, but they performed an angiogram.

8 Q But you can't give a medical opinion?

9 A No, sir.

10 Q And you actually testified in your deposition when
11 I asked you, Did they ever figure out what was causing your
12 dizziness, you agree that you told me, No, they have not,
13 they have not figured it out?

14 A No, they hadn't.

15 Q And you had dizziness before this accident, from
16 Parkinson's, you had dizziness before this accident?

17 A Not from Parkinson's.

18 Q Had you complained of dizziness to doctors before
19 this accident?

20 A I don't believe so.

21 MR. SMITH: Your Honor, are we still within the
22 course of redirect? I tried to just let it play out,
23 but I think that we are a little further.

24 THE COURT: How much further do we have?

25

TESTIMONY OF THERESE HOOD

1 BY MR. DANIEL:

2 Q You would dispute that you were treated for
3 dizziness before, before the accident?

4 A I don't recall, sir.

5 MR. DANIEL: Okay. No further questions.

6 THE COURT: Anything further?

7 MR. SMITH: No, ma'am.

8 THE COURT: You may step down, Ms. Hood.

9 Ms. Suttie and Mr. Willey, come on up.

10 (Off-the-record discussion held.)

11 THE COURT: Ladies and gentlemen, do not discuss
12 this case. It wouldn't be appropriate to do so. We
13 will be right back with you. We are trying to figure
14 out scheduling-wise how we are going to keep going,
15 okay.

16 (Brief recess.)

17 (The jury enters the courtroom.)

18 THE COURT: Ladies and gentlemen of the jury,
19 we're going to keep moving on. Just to let you know,
20 we are trying to get through this quickly today.

21 Ms. Bostick, I think, has ordered pizza -- am I
22 correct in saying pizza -- for lunch. So we're just
23 going to keep running until it gets here, so it's hot,
24 ladies and gentlemen. Just to let you know, that's
25 what we intend to do. We'll then only break for maybe

TESTIMONY OF THERESE HOOD

1 20 minutes, 30 minutes, then keep going. Okay?

2 All right. Go ahead and call your next witness.

3 MR. SMITH: Your Honor, plaintiff's final witness
4 will be Christine Hood.

5 THE COURT: Okay. Come on forward, Ms. Hood.

6 MR. SMITH: Christine Davis, sorry.

7 **Thereupon,**

8 CHRISTINE DAVIS

9 was called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 WITNESS: This is intimidating.

12 DIRECT EXAMINATION

13 BY MR. SMITH:

14 Q Please tell us your name.

15 A Christina Davis.

16 Q You've been married recently?

17 A Yes.

18 Q Sorry.

19 A Yeah.

20 Q Who's your mom?

21 A Terry Hood.

22 Q Christine, I'd like for you to tell us about the
23 family reunion, when it was, what happened. Talk to the
24 jury about that experience.

25 A Okay. So I'll give you a little bit of back

TESTIMONY OF CHRISTINE DAVIS

1 history. In 2010, 2011, we went on a trip to Germany, and
2 that was prior to the accident. We traveled from Germany to
3 France. My dad was actually working there at the time. And
4 she -- we were up and about, we walked everywhere, we did
5 everything we wanted to do. We got to see so many different
6 sites, it was amazing.

7 So fast forward till after the accident,
8 we've actually been here, to Georgia, twice. Most recently
9 was Helen, Georgia. We went on a trip to WalMart because we
10 stayed in a cabin.

11 Q Just to give us some perspective, when was this?

12 A This was two, three days ago. So it was just
13 recent. It was this vacation.

14 Q Let's slow down just a little bit. So this was a
15 family reunion, right?

16 A Uh-huh. (Indicating affirmatively.)

17 Q And what was the -- in Georgia somewhere?

18 A Helen, Georgia, yes, sir.

19 Q Okay. Y'all got a big family?

20 A Immediate. It's my sister, with her three
21 children and her husband and myself with my two children and
22 my husband. So, it's immediate family.

23 Q Y'all stay in a lodge together?

24 A Uh-huh. (Indicating affirmatively.)

25 Q Okay.

TESTIMONY OF CHRISTINE DAVIS

1 THE COURT: Is that a "yes," for the record?

2 THE WITNESS: Yes, sorry.

3 BY MR. SMITH:

4 Q Explain it to them from there.

5 A Okay. So we went to WalMart to get some of our
6 supplies, some food for the trip that we were going to make
7 food there to save money and things like that. And that was
8 basically the excursion that she got to enjoy. She went --
9 we -- it was me and my sister that went to WalMart, and we
10 actually had to cut our WalMart trip short because her leg
11 was really starting to bother her and hurt her.

12 The next morning we woke up and we all
13 decided that we were going to go to walk up to a waterfall
14 which was only a half mile. And she wasn't able to go
15 because she couldn't walk. It pains her to walk.

16 The same thing -- and then the thing happened
17 throughout the rest of the vacation we were there, she had
18 to limit everything that she does because she physically
19 can't move past a certain point. She can only do maybe one
20 excursion, and that's it for the rest of -- for a few days.

21 So it may sound like, you know, nothing big,
22 but it's huge in your daily life when you can't go out on a
23 daily basis.

24 The same, we went previous, maybe a month.
25 July of last year, we went to Stone Mountain, and she

TESTIMONY OF CHRISTINE DAVIS

1 couldn't do anything pretty much. It was on a hill, and she
2 went walking around, but we explored the entire area and she
3 was confined to a hotel room. And that's no fun.

4 MR. SMITH: Thank you.

5 MR. DANIEL: No questions, Your Honor.

6 THE COURT: You may step down. Thank you.

7 WITNESS: Thank you.

8 MR. SMITH: The plaintiff rests, Your Honor.

9 THE COURT: Ladies and gentlemen, at this time the
10 Plaintiffs have rested their case. There's a matter of
11 law I need to take up with the attorneys. And I'm
12 sorry I'm shouting, my microphone is off.

13 I'm going to send you back to your jury room very
14 briefly. Do not discuss this case, it wouldn't be
15 appropriate to do so. We'll bring you right back out.

16 Like I said, we're just going to keep going until
17 that pizza gets here. Okay? Thank you.

18 (The jury exits the courtroom.)

19 THE COURT: Okay. Y'all need to see this. Any
20 motions?

21 MR. DANIEL: Yes, Your Honor. At this time, the
22 defendant moves for a directed verdict based on the
23 testimony about liability and headlights. At best, the
24 testimony now is that it was 80 percent dark, and she
25 figured she might not have headlights on, and there's

TESTIMONY OF CHRISTINE DAVIS

1 also evidence of the plaintiff speeding and damage, and
2 there is testimony from their expert about what the
3 likely speed was. That's it, Your Honor.

4 THE COURT: Okay. Mr. Willey, do you want to
5 respond?

6 MR. WILLEY: I don't understand his question
7 frankly. I guess -- is it to headlights or is it to
8 liability in general? I mean, I don't understand what
9 his motion is.

10 THE COURT: Okay.

11 MR. DANIEL: Your Honor, our position is that
12 reasonable minds differ on the issue of the liability
13 in this case based upon the testimony.

14 MR. WILLEY: Okay. And I will just briefly
15 address that. Obviously, in this case the plaintiff
16 has the burden of proof. We have to prove that its
17 more likely than not that the defendant had a duty and
18 a breach of duty proximately caused some injury in'
19 this case. The statute laws of South Carolina
20 obviously applies. It's been testified to at the time
21 of the wreck the plaintiff had the right-of-way, that
22 defendant after leaving the stop sign entering the
23 highway struck her, which obviously is negligence. And
24 there has been testimony from a doctor that she was
25 proximately caused injuries as a result of the wreck.

TESTIMONY OF CHRISTINE DAVIS

1 So, at this time directing your verdict as to liability
2 and negligence, of course, would be improper,
3 particularly for the defendant. But we will make our
4 motions at the appropriate time.

5 THE COURT: Thank you. All right, respectfully, I
6 think given the evidence in the case there's evidence
7 obviously that your client failed to yield the
8 right-of-way. I think that it is a jury issue in this
9 case. We are definitely going to charge comparative
10 negotiations. So, with that said, I am going to
11 respectfully deny your motion.

12 MR. DANIEL: The defendant also moves for directed
13 verdict on punitive damages. And, just briefly, the
14 basis for that being that there's no one that said that
15 Antoine Johnson was actually texting, reading a text,
16 sending a text or on his phone. The only evidence in
17 the record is that he checked twice before he drove
18 into the intersection and there's obviously
19 witnesses -- Dustin Lee's testimony is that there was a
20 vehicle coming without headlights, so we would move for
21 directed verdict.

22 THE COURT: All right. Yes, sir.

23 MR. WILLEY: Your Honor, the law as you know in
24 South Carolina is that violation of s statute gives
25 rise as evidence of punitive damages can be used to

TESTIMONY OF CHRISTINE DAVIS

1 establish recklessness. In this case we have the
2 defendants by like several statutes which we will go
3 through when we go through the jury charge, so directed
4 verdict as to punitive damages would be improper.

5 THE COURT: I agree, and we are going to have to
6 charge punitive damages. And I think there's damages,
7 obviously, by violation of a state statute. Failure to
8 yield the right-of-way, failure to keep proper lookout,
9 among other things that would allow this jury to return
10 a punitive damages award, so I will allow it. Anything
11 else?

12 MR. WILLEY: Not from the plaintiff.

13 MR. DANIEL: No, Your Honor.

14 THE COURT: How many witnesses do you have?

15 MR. DANIEL: One.

16 THE COURT: Just one.

17 MS. SUTTIE: I can get him.

18 THE COURT: How long will that be?

19 MR. DANIEL: Short.

20 THE COURT: Short, okay. Margaret, how long till
21 the pizza is here?

22 THE CLERK: It says it is out. That was seven
23 minutes ago, so it was may be downstairs.

24 THE COURT: That would be great.

25 MR. WILLEY: Can we finish the cases and then

TESTIMONY OF CHRISTINE DAVIS

1 perhaps --

2 THE COURT: That is what I'm going to try to see.
3 I'm worried that the people won't be here when we need
4 to take a break. So, that is fine. We have to work on
5 the jury charge.

6 MR. WILLEY: I have never seen a schedule work out
7 like this.

8 THE COURT: Okay. Let's bring the jury back in,
9 we will sit through one witness and then you can rest
10 as well. And you need to let me know if you have any
11 rebuttal witnesses.

12 MR. WILLEY: We do not, Your Honor, based on who
13 they are calling.

14 THE COURT: All right. Let's bring them out.

15 THE BAILIFF: If you could come into the
16 courtroom, please.

17 (The Jury enters the courtroom.)

18 THE COURT: Welcome back, ladies and gentlemen.

19 MR. DANIEL: Your Honor, I need a moment.

20 THE COURT: Okay.

21 (Pause.)

22 THE COURT: Ready to go, Mr. Daniel?

23 MR. DANIEL: Just a second.

24 THE COURT: Okay.

25 (Pause.)

TESTIMONY OF CHRISTINE DAVIS

1 THE COURT: Okay?

2 Thereupon,

3 CARY TANRATH

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. DANIEL:

8 Q Mr. Tanrath, good afternoon.

9 A Good afternoon, sir.

10 Q Could you just please state your name, and full
11 name for members of the jury?

12 A Cary Thad Tanrath.

13 Q And thank you for coming today. Where did you
14 come in from?

15 A Savannah, Georgia, sir.

16 Q Did you drive up this morning?

17 A Yes, sir.

18 Q Tell us a little bit about yourself. I'm trying
19 to be brief. Where are you from originally?

20 A I was a military brat, born in Clark Air Force,
21 the Philippines. Spent 20 years, five months, 11 days in
22 uniform, and currently have a handyman service in the
23 Savannah, Georgia area.

24 Q What branch of the military?

25 A U.S. Army, sir.

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1 Q How many years did you serve?

2 A Twenty years, five months, 11 days.

3 Q And are you married?

4 A Yes, sir.

5 Q How long have you been married?

6 A Married for 13 years come this December, sir.

7 Q Have any children?

8 A Three daughters.

9 Q And, sir, we're here about an accident. Did you
10 witness an accident on November 7th, 2014?

11 A Yes, sir.

12 Q Could you -- what were you doing at the time, that
13 day?

14 A I was leaving Hilton Head. At the time, I was
15 employed by a company called Clearview Window Cleaning and
16 Pressure Washing. Headed back from Sean Pines, I believe,
17 sometime after 5:00, 5:30, because it was dark out.

18 For those of you not familiar with the Hilton
19 Head area, 278 has three lanes that run eastbound, three
20 lanes that run westbound. I was in the far left lane of the
21 eastbound traffic, and traveling home, and witnessed a
22 vehicle hitting another vehicle that was directly in front
23 of me.

24 Q That stretch of road, with the company you were
25 working with, did you have to travel that frequently at the

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1 time?

2 A I traveled to Hilton Head anywhere from three to
3 four days a week.

4 Q And what -- this happened when? In November?

5 A Yes, sir.

6 Q You said that it was dark out. How dark?

7 A Dark enough that the lights -- that I had my
8 lights on. November, yeah, it's dark by 5:30, because we
9 got to get out of Plantations because you can't work after
10 dark, so --

11 Q You had your headlights on?

12 A Yes, sir.

13 Q Did -- the impact that you described, we've had
14 this up for -- while the jury has been very patient,
15 probably tired of seeing this, but could you tell me, the
16 orient of the jury, where were you, if this -- if this is
17 headed westbound off of Hilton Head?

18 A Westbound off of Hilton Head, the vehicle, I would
19 be behind the vehicle that's got the X in front of it.

20 Q Okay. What kind of vehicle -- so you saw an
21 impact just between two cars?

22 A Yes, sir.

23 Q Two vehicles?

24 A Yes, sir.

25 Q What type of vehicles?

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1 A The vehicle in front of me was an SUV. The one
2 that impacted, I believe, was an SUV. All I caught was the
3 front glimpse of it.

4 Q Okay. Was there more than one person in that
5 vehicle?

6 A That, the vehicle in front of me, there were two
7 people. The vehicle that hit them, I do not know how many
8 people were in that vehicle, sir.

9 Q What did you do once you saw this collision?

10 A I don't follow directly behind anybody. I follow
11 at about -- when I went through driver's ed, the way I was
12 taught to -- when you're driving down the highway, you have
13 a two-count between you and the vehicle in front of you.

14 So -- and if you've driven the road in Hilton
15 Head, you don't follow directly behind somebody because you
16 can't see the taillights in front of them. So I usually
17 stagger a little bit off to the side of them, and then back
18 far enough that it gives myself braking time.

19 What I saw is I'm driving and it was one of
20 those -- oh, no, moments. When you see the vehicle coming
21 towards you, and it was somebody's going to get hit. And
22 the vehicle in front of me got hit, debris started flying up
23 over the vehicle and onto the right-of-way.

24 I slowed down and pulled off to the side of
25 the road, and there was smoke and fluid all over the

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1 highway. So I helped extract the driver, pulled his door
2 open, and then myself and another individual opened the
3 passenger side door. If I remember correctly, her seat belt
4 would not come undone, so that had to get cut to extract her
5 from the vehicle. And then some other people were helping
6 the vehicle that impacted the vehicle in front of me.

7 Q So the vehicle where you -- that you stopped as
8 soon as you saw the impact?

9 A I started to slow down once I knew that there was
10 going to be an accident.

11 Q Okay. Did you run to render aid right away?

12 A Yes, sir. Once I stopped my vehicle and pulled
13 off to the side of the road.

14 Q And other people were there and started to help as
15 well?

16 A Yes, sir.

17 Q And that happened as soon as the -- right after
18 the accident?

19 A Yes, sir.

20 Q So you were behind -- based on what we've been
21 discussing, behind the vehicle, in this depiction, vehicle
22 K?

23 A Yes, sir.

24 Q There were two people in there?

25 A Yes, sir.

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1 Q Okay. Did that vehicle, do you remember, did it
2 have its headlights on?

3 A The vehicle in front of me?

4 Q Yes, sir.

5 A I can't say if it had its headlights on. I know
6 its taillights were on, and it's braking lights were
7 working.

8 Q The other vehicle, the one that --

9 A That impacted?

10 Q -- impacted the one with label K. Can you tell us
11 -- can you come down and tell us where it was coming from
12 and where you first noticed it?

13 A This is 278 westbound. I was following behind
14 this vehicle K. This vehicle here traveling -- and all of a
15 sudden, you just see the oblique side of the vehicle. So it
16 wasn't turned completely sideways, but it wasn't head on
17 from where I was, and it starts to veer into the westbound
18 lanes, and that's when it was "Oh sh", somebody's going to
19 get hit. And that's when I hit -- hit my brakes, pull off
20 to the side of the road. And by the time it was done, there
21 was debris everywhere, two smashed cars, and like I said,
22 fluid and steam or smoke rising up from everywhere.

23 That's why I was more worried about the
24 people in the vehicle getting burnt than somebody having an
25 injury that you shouldn't move them, so --

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1 Q So the vehicle labeled -- that would be labeled H,
2 you saw that vehicle --

3 A Here.

4 Q -- come across the median?

5 A Yes, sir.

6 Q And there's actually -- is there a turn lane? You
7 described three lanes. There's actually a turn lane right
8 here, isn't there?

9 A There's three lanes of traffic going each
10 direction, and then there's an intersection where you can
11 pull into the intersection so that you can cut across to go
12 to one of the side streets or make a U turn.

13 Q Is it possible that the actual accident that you
14 saw, the impact between the K and this H vehicle, happened
15 farther back than what's depicted in this drawing?

16 A What I remember is where the wreckage was would be
17 closer to where you would actually start to turn in to make
18 the turn. But I didn't measure it or anything like that.

19 That's what I remember is it was up farther.
20 Closer to the end of the island, I guess is how I would
21 describe it.

22 Q You didn't do any measurements or anything?

23 A No, sir. No.

24 Q You could go ahead and sit down. I'm sorry, Mr.
25 Tanrath.

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1 A (Witness complies.)

2 Q Were there any vehicles between you and the one
3 that was hit?

4 A No, sir.

5 Q You had a clear view of the vehicle in front of
6 you?

7 A Yes, sir.

8 Q And you saw this vehicle come across the median
9 and directly impact the vehicle in front of you head on?

10 A Not head -- it came in at an angle, but, yes, sir.

11 Q Did the front of those two vehicles --

12 A Yes. The front of the two vehicles did collide.

13 Q Was it a violent collision?

14 A Yes, sir.

15 Q You said there was smoke?

16 A Well, there was steam rising up, so I don't know
17 if it was smoke from a fire or just steam from radiator --
18 hot radiator fluid escaping and -- but there was debris all
19 over the road.

20 Q The vehicle that came across traffic, not holding
21 you to anything, was it moving slowly? Fast?

22 A That, I cannot -- it was one of those -- it was a
23 blink of an eye. Oh, sh -- pardon my expression, ma'am, oh,
24 shit moments, when you know that something is going to
25 happen. I mean, it wasn't -- when your senses are

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1 heightened time seems to move slower, but it was one of
2 those, this is going to happen, it's going to happen now.
3 And it was smash, and then pull off the side of the road and
4 render aid.

5 Q Mr. Tanrath, this has already been entered into
6 evidence. The smaller version has been offered into
7 evidence, but the vehicle in front of you, do you -- was it
8 perhaps a Chevy Tahoe?

9 A In front of me? It was an SUV, I can't tell you
10 what brand it was, sir.

11 Q Okay. Would that -- would -- if people have
12 already testified that the vehicle labeled K was driven by
13 William Kuck, and Mary Kuck was the passenger in this
14 vehicle, would you have any reason to dispute that?

15 A No, sir.

16 Q And would the damage you see here be consistent
17 with the type of impact and collision you witnessed that
18 evening?

19 A Yes, sir.

20 Q Okay. Now, you saw the vehicle coming across
21 traffic sort of at an angle; is that correct?

22 A Yes, sir.

23 Q Were you able to see the front of that vehicle?

24 A Not the entire front, no, sir.

25 Q Were you able to see a portion of the front of

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1 that vehicle?

2 A Yes, sir.

3 Q Can you come down and just, Mr. Tanrath, draw what
4 the front of the car looks like?

5 A (Witness complies.)

6 This is the vehicle in front of me.

7 Q All right. And not to scale, but --

8 MR. SMITH: Your Honor, may I address the Court
9 very briefly?

10 THE COURT: You may.

11 MR. SMITH: If this witness is going to testify
12 that Ms. Hood did not have her headlights on, we
13 stipulate to that.

14 THE COURT: Okay. He can still testify to
15 whatever he needs to. That's fine.

16 MR. SMITH: Yes, ma'am. Okay.

17 THE WITNESS: So as far as this, so I did not see
18 the entire curve of the vehicle, but I did see from
19 that area on. Because, like I mentioned, I was
20 staggered behind the vehicle probably more like that.

21 So I wasn't directly behind the vehicle, but I saw
22 an oblique side of the vehicle that hit the vehicle in
23 front of me, and a little portion of the front.

24 BY MR. WILLEY:

25 Q Okay. And the -- so you're looking at the -- this

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1 is the vehicle that would be labeled H. You're now the
2 other way around, right? You put an H on there?

3 A (Witness complies.)

4 BY MR. DANIEL:

5 Q And then your vehicle, T for Tanrath.

6 A (Witness complies.)

7 Q Go ahead. And could you see at least a portion of
8 the front passenger side of the H vehicle?

9 A Yes, sir.

10 Q Could you see the area where the headlights are
11 positioned?

12 A Yes, sir.

13 Q Were those headlights on?

14 A I do not remember seeing headlights.

15 Q And do you remember giving a statement about a
16 week or two after the accident?

17 MR. SMITH: Your Honor, I don't know if he's
18 impeaching this witness with the statement, at this
19 point, but --

20 THE COURT: Ask him the question, and then if he
21 says something different then --

22 BY MR. DANIEL:

23 Q Do you remember telling someone that the
24 headlights, the passenger side headlights on that vehicle,
25 were not on?

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1 MR. SMITH: Your Honor.

2 BY MR. DANIEL:

3 Q I'm just asking the question.

4 MR. SMITH: No, you're --

5 THE COURT: Okay. Just ask the question. Let's
6 go.

7 BY MR. DANIEL:

8 Q It's a straight question. Do you remember telling
9 somebody that the headlights on the passenger side of that
10 vehicle were not on?

11 MR. SMITH: Objection, hearsay.

12 THE WITNESS: I do not remember seeing headlights.

13 BY MR. DANIEL:

14 Q Okay. And you actually stayed behind and talked
15 to the police?

16 A Yes, sir.

17 Q Did you tell the police, as far as the headlights
18 on the H vehicle, did you talk to the police officer about
19 that?

20 A I did talk to a police officer, yes, sir.

21 Q And what do you remember saying?

22 MR. SMITH: Objection, Your Honor, hearsay.

23 THE WITNESS: The best I can -- best I can
24 remember, sir, is there were no -- I did not witness
25 any headlights.

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1 THE COURT: This is what he said, correct? That's
2 not hearsay. He can say what he said.

3 THE WITNESS: I don't remember there being any
4 headlights. I don't remember what the police officers
5 question was to me.

6 BY MR. DANIEL:

7 Q I'm not asking you for a direct quote of what you
8 said but do you -- did you offer that information to the
9 police?

10 A Yes, sir.

11 Q And did you feel that was an important thing to
12 mention?

13 A Yes, sir.

14 Q And was that because it was dark outside?

15 A Yes, sir.

16 MR. DANIEL: That's all I have. Thank you.

17 THE COURT: Any cross?

18 CROSS EXAMINATION

19 BY MR. SMITH:

20 Q Mr. Tanrath, you don't know either way whether or
21 not Ms. Hood had any running lights on at the time, do you?

22 A I do not. I -- I don't remember any lights being
23 on.

24 Q All right. But you don't know either way whether
25 the running lights were on. Can't say yes, can't say no,

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1 don't remember either way; is that correct?

2 A Correct.

3 MR. SMITH: Thank you. No other questions.

4

5 REDIRECT EXAMINATION

6 BY MR. DANIEL:

7 Q Do you remember -- you don't remember seeing
8 running lights illuminated, do you?

9 A I don't remember seeing any lights.

10 THE COURT: All right. Anything further?

11 MR. SMITH: No, ma'am.

12 THE COURT: All right. You may be excused, sir.

13 Thank you.

14 You're going to rest, correct?

15 MR. DANIEL: Yes, Your Honor.

16 THE COURT: Ladies and gentlemen, at this time,
17 the Defense also rests their case. And the pizza is
18 here. I'm going to send you back.

19 Ladies and gentlemen, knock on the door and let me
20 know when y'all are finished eating. All right? And
21 at that point I'll see where we are. There's some
22 matters that the lawyers and I need to take up while
23 you all are eating. But we're going to hopefully get
24 this case wrapped up for you. Okay? Thank you.

25 (The jury exits the courtroom.)

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1 THE COURT: We are going to be at ease for about
2 15 minutes or so. We are working on the jury charge.
3 I know we need motions at this point. I guess it's
4 going to be motions first and then we'll take a break.
5 And then after that, I want to talk to Mr. Clevinger
6 real quick. Okay? All right.

7 So any motions?

8 MR. WILLEY: Yes, Your Honor.

9 Your Honor, we do have motions and I will --

10 MR. DANIEL: Your Honor, one thing before motions,
11 as a housekeeping matter. We have blow-ups of some of
12 the exhibits.

13 MR. WILLEY: You've already rested, and we don't
14 consent.

15 MR. DANIEL: We would move these, the bigger
16 exhibits we have, they have some of the same size.

17 MR. WILLEY: You've already wrapped.

18 THE COURT: You haven't agreed to it and you have
19 already rested without moving them in.

20 All right. Motions?

21 MR. WILLEY: Yes. Your honor, we're going to
22 start with Motion for Directed Verdict as to the issue
23 of plaintiff's headlights usage. And this deals with
24 two separate things. First the legal duty, and then to
25 proximate cause.

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1 With respect to the legal duty, all of the
2 testimony in the case -- all of the testimony, and this
3 is important -- is that the wreck occurred sometime
4 prior to 5:58 p.m. Which no matter which source, no
5 matter which source you take, whether you take the
6 Naval Observatory or you take SunCalc, would place this
7 wreck within that 30-minute window after sunset. And,
8 of course, there's a case on point which says that the
9 law cannot require anything other than what the law
10 requires. And when the Legislature speaks on a piece
11 of law via statute, it should be strictly construed.

12 We have referred throughout the week -- we have
13 referred throughout the week to the statute that
14 requires headlight use, and that is 56-5-4450, which is
15 times when vehicles must be equipped with headlights.
16 And with respect to ordinary darkness, sunrise and
17 sunset, it specifically says, 30 minutes after sunset.

18 Therefore, the jury, in order to find within the
19 law, would have to find that plaintiff did not have a
20 legal duty at the time of this wreck to have her
21 headlights on. There's been no testimony, zero
22 testimony, that this wreck occurred anything other than
23 before 5:58 p.m.

24 And so on that basis, our motion as to headlights
25 should be granted. Directed verdict as to headlight

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1 usage, plaintiff not having a legal duty.

2 Second --

3 THE COURT: Okay. Let her respond. Go ahead.

4 MS. SUTTIE: Your Honor, we would point to the
5 rest of the headlight statute, which also mentions that
6 headlights need to be on when environmental 56-5-4450
7 -- which also says that headlights are required to be
8 on, when environmental factors reduce the ability to
9 see persons and/or vehicles on street or highway at
10 distances of 500 feet ahead. I think that there is a
11 question as to whether the defendant was able to see
12 Mrs. Hood's vehicle, whether the environmental
13 conditions, you know, allowed her vehicle to be
14 invisible and, you know, how far away she was when the
15 defendant was looking to make the turn and that speed
16 comes into that as well. So, I think that it is a
17 question of fact.

18 MR. WILLEY: Your Honor, with respect to
19 environmental factors, we did go through with our
20 expert, obviously to the extent that the statute
21 specifically deals with lightness and darkness, which
22 it does in this case, it speaks to that, specifically
23 it has to be strictly construed as to that piece.

24 In addition to that, we actually went through with
25 our expert environmental factors, and with the police

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1 officer, environmental factors that may be included:
2 Fog, snow, rain, smoke, and just for fun, the eclipse,
3 obviously.

4 But as to normal light and darkness, sunrise and
5 sunset, the statute and the Legislature has
6 specifically said, 30 minutes and 30 minutes. And the
7 uncontroverted testimony in this case is that this
8 happened before that 30-minute window. And, therefore,
9 plaintiff did not have a legal duty to have her
10 headlights on.

11 THE COURT: May I have a copy of the whole
12 stature, please?

13 MR. WILLEY: Yes, ma'am. And Your Honor, I'm
14 sorry --

15 THE COURT: That's okay.

16 MS. SUTTIE: Your Honor, I think it's not
17 uncontroverted that the accident happened outside of
18 that 30-minute window. The plaintiff's own expert, Ms.
19 Borzendowski testified that it had occurred at 5:58
20 which is within the window, or could have occurred at
21 5:58.

22 THE COURT: Okay. Well, I think the catch-all in
23 this statute where it says, "Or environmental factors
24 severely reduce the ability to clearly discern persons
25 and vehicles on a street or highway at a distance of

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1 500 feet ahead as required. Again, I think that that
2 might be a jury issue. I heard some testimony as to
3 the distance, but I also think too that y'all were
4 talking about there is a bit of a curve from the
5 direction that she was coming in.

6 So, respectfully, I'm going to deny your motion as
7 to that issue.

8 MR. WILLEY: Okay. Your Honor, the second piece
9 of our motion as to headlights deals with proximate
10 cause. The uncontroverted testimony in this case,
11 including from the defendant, is that he did not see
12 any other vehicles coming from his left, which would
13 include Mr. Dustin Lee who testified that he was, you
14 know, ten car lengths behind plaintiff in the inside
15 lane, closer therefore to Mr. Johnson, had his Xenon
16 headlights on, could see plaintiff, and could see
17 defendant's vehicle.

18 And that, in fact, when this wreck occurred, as he
19 approached it, he had to decelerate and move aside in
20 order to avoid the aftermath of the wreck.

21 The testimony from the defendant in this case is
22 that not only did he not look and see the plaintiff,
23 but that he did not look and see Mr. Lee who had his
24 headlights on. Therefore, without any evidence to the
25 contrary, the headlight usage by her cannot be

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1 proximately cause of this wreck. Because if he was
2 unable to see the Xenon headlights of Mr. Lee, he would
3 not have been able to see the headlights of the
4 plaintiff. And that's clear from the testimony.
5 There's been no evidence presented to the contrary,
6 Your Honor.

7 THE COURT: Okay. Mr. Daniel.

8 MR. DANIEL: Your Honor, the witness is
9 actually -- seems fairly conclusive that she did not
10 have her headlights on. The only testimony by Antoine
11 Johnson was that he testified before the jury that he
12 checked twice. And the jury is allowed to draw the
13 common sense implication that if he saw a car coming
14 with headlights that was an immediate hazard to him he
15 would not have pulled into the intersection. The way
16 was clear, and that's why he proceeded.

17 So it's clearly an issue of fact. And the fact
18 that this plaintiff did not have her headlights on is
19 something the jury should -- that's what the whole case
20 is about. They should be allowed to evaluate that and
21 instructed that on negligence and negligence of the
22 plaintiff for not having her headlights on.

23 And the other thing is about the speed, but I
24 think this is definitely an issue of fact.

25 MR. WILLEY: Your Honor, with respect to that, the

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1 defendant's own testimony cannot stand on its own. It
2 has to be taken, you know, in the light -- you can't
3 just simply stand up and say, in the face of everything
4 else, that I didn't do it or it wasn't me.

5 The evidence has to be taken from all of the
6 witnesses, which in this case is clear. In fact, the
7 defendant has admitted that he did not see Mr. Lee,
8 that he did not see the plaintiff. It is
9 uncontroverted, Mr. Lee was close enough to the scene
10 that he had to move over to defer himself so he wasn't
11 caught up in it, as he put it. And Mr. Johnson
12 admitted that he saw neither of them. So the headlight
13 usage cannot be a proximate cause of the wreck here.

14 In addition, you know, to that, he hit her. He --
15 his testimony is that he didn't even see her prior to
16 hitting her, and she obviously crossed in front of his
17 vehicle because the evidence in the case, the
18 photograph, clearly shows that he broadsided her. So,
19 she's not required to, certainly, have headlights on
20 the side of her car, and he still indicates that he
21 didn't see her.

22 Of course, we know why he didn't see her, but
23 that's really not an issue. The issue in this case is
24 that the headlight usage cannot be a proximate cause of
25 this particular wreck.

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1 THE COURT: I'm going to deny that motion. I
2 think it's a jury issue.

3 MR. WILLEY: All right. Our second -- third. We
4 also have a motion as to speed in this case. And we
5 would direct the Court's attention to the Odom case,
6 which is citation Odom V Steigerwald, which is 260
7 South Carolina 422, a 1973 case, Supreme Court. In
8 that case the defendant was stopped at a stop sign, and
9 he testified that he did not see the Plaintiffs's
10 vehicle approaching from the left when he attempted to
11 pull through the intersection to make a left turn.

12 Odom, the plaintiff, testified the defendant was
13 approximately two car lengths away when this happened.

14 THE COURT: What's your motion?

15 MR. WILLEY: My motion is to direct a verdict as
16 to comparative negligence with regard to speed, because
17 it's not --

18 THE COURT: As to speed, right? That's what I was
19 looking for. Okay.

20 MR. WILLEY: Yes, ma'am. And in the Odom case,
21 the plaintiff testified the defendant was approximately
22 two car lengths away when this happened. Odom's
23 vehicle struck the front left fender of the defendant's
24 vehicle.

25 So in that case you actually had the plaintiff

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1 hitting the defendant, which in this case it's the
2 other way around. But even in that case the Supreme
3 Court held that the plaintiff's excessive speed was not
4 a proximate cause of the wreck, because the defendant
5 pulled into oncoming traffic. The trial court's denial
6 of the Plaintiff's motion for directed verdict on
7 liability in that case was reversed and the case was
8 remanded and sent back down for a retrial.

9 In the present matter, we have a very similar
10 factual scenario, except it's actually stronger from
11 the plaintiff's standpoint. Plaintiff was traveling in
12 her proper lane legally, allegedly in excess of the
13 speed. We don't even have any definitive testimony as
14 to that. But as she approached the intersection of 278
15 and Southwood Park Drive, the defendant's vehicle
16 pulled out into the highway, colliding with plaintiff's
17 front passenger side.

18 Just as a note, the defendant testified he did not
19 see plaintiff's vehicle approaching from the left when
20 he pulled out and caused the wreck. Odom is clear
21 precedent in this case and instructs that the
22 plaintiff's vehicle is not a proximate cause of the
23 wreck.

24 And I think a clear distinction here that the
25 Supreme Court drew, and correctly, obviously I think,

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1 is that in a case where you have a defendant who says,
2 "Yes, I saw the plaintiff coming, I pulled out and I
3 misjudged it and the plaintiff was speeding."

4 Obviously speed would play a role in that wreck. It
5 would potentially be a proximate cause for comparative
6 negligence purposes.

7 In this case, we have a defendant who said he
8 didn't see her, just like in Odom. And, in fact, in
9 Odom, where the plaintiff struck the defendant, in this
10 case the defendant actually struck the plaintiff, so it
11 is a stronger factual scenario in this case.

12 And in addition to that, you know, we have the
13 testimony obviously from the sole expert that was
14 called in the case that said the speed played no role
15 in forming her opinions and that she actually drew the
16 comparison, which is essentially -- they're attempting
17 to make a res ipsa argument. Well, she was there, and
18 because she was allegedly speeding to get there, that
19 caused it. But that doesn't work. Because obviously
20 that would apply to if she had hit her snooze button
21 that morning and been delayed three minutes it wouldn't
22 have happened. So they don't get that.

23 THE COURT: Mr. Daniel, you want to be heard in
24 response?

25 MR. DANIEL: Your Honor, I think Dustin Lee

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1 testified that it's his routine to go 49. He was
2 traveling 49. Mrs. Hood's vehicle, he saw her.

3 THE COURT: Yeah, but how is the speed the
4 proximate cause of this accident?

5 MR. DANIEL: Well, Judge, there's also their
6 expert that testified and the jury heard that an
7 engineer pulled the computer chip data and that this,
8 the plaintiff in this case, was going 62, 63 miles per
9 hour.

10 THE COURT: Again, I understand that she was going
11 that speed, allegedly. The question is, though, how
12 was that speed a proximate cause of this wreck?

13 I could see it potentially affecting the damages
14 in this case.

15 MR. DANIEL: Your Honor, it could affect the
16 damages and -- it could affect the damages and
17 liability, because at this intersection there is a bend
18 in the road. You heard the trooper testify to that,
19 the officer did. And a vehicle without its lights on,
20 traveling at a high rate of speed, the jury can draw a
21 conclusion about this vehicle was going at a high rate
22 of speed, the plaintiff's vehicle, based on the damage
23 alone. But there's also testimony from an eyewitness
24 about that.

25 The fact that Antoine Johnson is making a left

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1 turn on a dark road and there's a vehicle that could be
2 hundreds of yards or hundreds of feet down the road
3 without its lights on approaching at 62 miles an hour,
4 that speed -- the speed there is absolutely an issue
5 and could be a contributing cause of the wreck.

6 If she's going 30 or 25, you know, in this
7 circumstance, she would be a lot more -- a lot closer
8 to him in the roadway and perhaps he sees her. So the
9 speed and how fast she might be going, that's directly
10 related to liability; it's an issue for the jury.

11 The human factors expert actually in basic terms
12 just said that speed -- she admitted that the faster
13 you're going the more ground you cover in a given set
14 of time.

15 So the jury can, from that, draw their own
16 conclusion. It's common sense. If you're going
17 62 miles an hour you cover a lot more ground in one
18 second than you do if you're going 30. It plays a
19 direct role in the visibility of the plaintiff's
20 vehicle. And if her vehicle wasn't visible, then
21 Antoine Johnson, a reasonable and ordinary, prudent
22 driver in his situation would look left and assume the
23 way is clear.

24 So, that's why speed is absolutely an issue in
25 this case. And it's a contributing cause. Perhaps the

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1 primary cause. That, coupled with no headlights.

2 MR. WILLEY: And, Your Honor, that's all good and
3 well. It's the same arguments they made actually in
4 Odom, but in this case those facts aren't present here
5 because the defendant hit the plaintiff and she crossed
6 in front of his path of travel prior to the impact.
7 And he still says he didn't see her. So it's even a
8 stronger case than Odom.

9 And if you look at it, I mean, they can make the
10 argument, of course, that if this, and if this. They
11 had the opportunity to call an expert to say that it
12 played a role based on an accident reconstruction.
13 They didn't do that.

14 I mean, they hired a -- I mean, I've got the check
15 where the, you know, company hired an expert. They
16 could have called the expert in here to do a
17 reconstruction that played a role. They didn't do it.

18 And as to damages, that's a separate issue which
19 we can deal with, but they would have to have expert
20 testimony to talk about the speed and the fact that
21 that could cause a worse mechanism of injury than if
22 she were going 10 miles an hour slower. They did not
23 do that in this case, and therefore, it's even weaker.
24 It's even weaker than the Odom case.

25 MR. DANIEL: There are -- I can cite some cases

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1 that don't require expert testimony. There is
2 Livingston v Oakman, which is 251 S.C. 611. There's
3 Lynch v TDE (phonetic) 204 SC 537. Expert testimony is
4 not necessary for speed to be presented as an issue to
5 the jury.

6 MR. WILLEY: That's not the argument. Correct.
7 We agree.

8 MR. DANIEL: I'm not done yet.

9 THE COURT: Let him finish.

10 MR. SMITH: Okay.

11 MR. WILLEY: Really. I've been -- Your Honor,
12 we've got an eyewitness that says that the plaintiff
13 was speeding. It's common sense that you cover more
14 ground in a given period of time the faster you go.

15 Visibility is the issue here. If the driver is
16 making a left turn on a dark road and actually checks
17 to their left and traffic is clear, or they don't see
18 anything an ordinary person with the appropriate level
19 of vision, there's been no allegation that this young
20 man has a vision problem. If they look, the way is
21 clear, it's safe to assume they can go. The fact that
22 his vehicle made contact withs Mrs. Hood's on the front
23 tire or just a foot down the front of the -- side of
24 the vehicle is irrelevant if she's doing 63 miles an
25 hour. Which there's testimony before the jury that she

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1 may have been going that fast. There's a bend in the
2 road. It is directly related.

3 THE COURT: Okay. You are retreading old ground.
4 Is there anything new? You've already been through and
5 covered that.

6 All right. I think it's a jury issue in this
7 case. I'm going to let it go to the jury, and I'm
8 going to deny that motion.

9 Any other motions?

10 MR. WILLEY: Yes, ma'am. Yes, Your Honor. We
11 also have a motion for directed verdict on proximate
12 cause as to the ankle injury. It's uncontroverted in
13 this case. There's been no testimony to show that her
14 ankle injury came from anything other than this wreck.

15 The doctor's testimony in this case establishes to
16 a reasonable degree of medical certainty most probably
17 that the ankle injury came from this wreck. There's
18 been no testimony from any other expert that says the
19 ankle injury could have occurred any other way. And so
20 we would move for a directed verdict on proximate cause
21 as to the ankle injury.

22 MS. SUTTIE: Your Honor, I think there's a
23 question as to whether the ankle injury occurred in the
24 collision with Johnson's vehicle or the collision with
25 the Kucks and whether or not the collision with the

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1 Kucks is Mr. Johnson's fault is at issue too.

2 MR. WILLEY: And, Your Honor, when you -- as you
3 well know, when you charge the jury on negligence and
4 the causal chain, the charge is and the law is that the
5 first act of negligence that leads to the causal chain,
6 which was the second wreck, the first actor is
7 responsible for that. In this case, the plaintiff has
8 elected to sue Mr. Johnson. Clearly, if they find him
9 negligent, then he is also negligent and responsible
10 for the second wreck. And all we're looking for is
11 proximate cause as to the ankle injury resulting from
12 this wreck, the sequence of events.

13 THE COURT: I think it's a jury issue. What else?

14 MR. WILLEY: I would move on those same grounds as
15 to the neck and the back injury from the doctor's
16 testimony as well.

17 THE COURT: Respectfully, I'm going to deny those
18 as well. Anything else?

19 MS. SUTTIE: I think in your consideration of jury
20 charges we would like to request a standard jury charge
21 on speed as well.

22 MR. DANIEL: Your Honor, I don't know in the
23 standard charge if there's anything about religion.
24 There was a lot about religion in the testimony.

25 THE COURT: If you have a charge on religion, I

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1 would be happy to look at it.

2 MR. WILLEY: We do have additional from what was
3 submitted prior, just three additional.

4 THE COURT: Okay. Anything?

5 I'm going to tell you, I'm going to charge the
6 Bench book just like I always do. Everything that you
7 all have requested from both sides, for the most part,
8 I have got a standard charge on it from the Bench book
9 which I'm going to use.

10 Yeah. The duty of care, duty for information, and
11 rendering aid, I'm not charging that.

12 MR. WILLEY: Which one's that, Your Honor?

13 THE COURT: Whatever you just handed me. This
14 duty to give information and render aid. And immediate
15 report of accidents resulting in personal injury or
16 death. I don't think that there's any question that
17 someone made a report.

18 Making false complaint to law enforcement officer,
19 giving false information to rescue squad.

20 MR. WILLEY: May I be heard on those, Your Honor?

21 THE COURT: Actually, what I'm going to do is
22 this: I am going to just mark -- the first one, the
23 duty of care is in my standard charge. So that's
24 there.

25 We are just going to mark as a Court's exhibit

TESTIMONY OF CARY TANRATH

1 these three. You didn't number them, so I'm going to
2 have to them marked as a Court's exhibit and I don't
3 need to hear anything on them. We'll just mark it, and
4 it is preserved for the record that I'm not going to
5 charge the three of these.

6 Also you all also requested a spoliation of
7 evidence charge.

8 MR. WILLEY: Briefly, Your Honor. I just want to
9 make sure that the record includes that these are all
10 based on statutory code sections and punitive damages
11 will be charged in this case.

12 Uncontroverted defendant violated these statutes,
13 and so we're requesting them on the basis that they go
14 to punitive damages.

15 THE COURT: All right. Respectfully, not charging
16 them. Go ahead and mark those. Go ahead.

17 MR. WILLEY: And with respect to the spoliation of
18 evidence on our behalf, there was testimony that the
19 actual content of the text messages was not preserved
20 by the defendant. In this case there was also the
21 black box, but we didn't get into that because we
22 didn't call the expert. So just with respect to this,
23 it's the actual content of the text messages. At first
24 he pretended not to know who sent it. He eventually
25 told us, but still did not preserve what they actually

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1 said, which is relevant and probative.

2 THE COURT: Did you send him a non-spoliation
3 letter requesting that he not delete text messages?

4 MR. WILLEY: The case -- the case was in a
5 posture, Your Honor, that it was within the time frame
6 where he could have retrieved them. In fact, we were
7 able to retrieve these actual records, but obviously
8 that --

9 THE COURT: Did you request that he do it?

10 MR. SMITH: In the discovery request, it's
11 anything -- and I could get you the exact request, but
12 it is included. I mean, we don't -- we don't send a
13 letter as soon as a wreck happens, but it's within --
14 it is within the time frame.

15 THE COURT: Yes.

16 MR. DANIEL: Your Honor, they're not -- they're
17 cell phone records from the carrier. The records that
18 you're talking about are Antoine Johnson's records.

19 MR. WILLEY: Right. They wouldn't even give us
20 those, we had to subpoena them from the carrier.

21 THE COURT: I don't think a spoliation charge is
22 appropriate in this case. I'm not going to charge it
23 anyway. But thank you for putting it on the record.

24 Is there anything else that I had a question on?

25 You had a motion for a duty to mitigate for

TESTIMONY OF CARY TANRATH

1 damages. And I don't know where that's coming from.
2 Why did you ask for that?

3 MR. DANIEL: We will withdraw that, Your Honor.

4 THE COURT: Okay.

5 MR. DANIEL: We actually requested spoliation
6 charge as well and --

7 THE COURT: For what?

8 MR. DANIEL: We could present to Your Honor, if
9 you would like to review Woody Poplin's testimony and
10 then Ken Richards' testimony, the two engineers that
11 were hired by plaintiff's counsel and then not called.

12 They inspected -- Woody Poplin inspected his
13 vehicle well into the lawsuit, several months after
14 suit was filed. Probably, I think, six months. I can
15 get the specific date for you.

16 THE COURT: That was on behalf of the insurance
17 company?

18 MR. DANIEL: That was on behalf -- that was on
19 behalf of and at the instruction of a lawyer that was
20 representing Mrs. Hood. I believe it is -- I can't
21 speak to --

22 MR. SMITH: Tell her who hired Woody.

23 MR. DANIEL: Chris Nichols, who was representing
24 Ms. Hood hired --

25 MR. SMITH: Who paid him?

TESTIMONY OF CARY TANRATH

1 MR. DANIEL: Can I finish?

2 MR. SMITH: Tell her who paid him. That's what
3 she wants to know.

4 THE COURT: Guys. This is embarrassing at this
5 point. Really, it's embarrassing.

6 We're going to go ahead and we're going to take
7 about a 15-minute break. Y'all grab a bite to eat.
8 We'll come back and we will finish up our discussion on
9 the charges. And I have noted for the record what you
10 all have requested. I'll make those lists exhibits.
11 And I'm going to charge what I'm going to charge.

12 So with that said, y'all go grab a bite to eat and
13 we'll come back and I will tell you what I'm going to
14 charge and we'll go forward with the closing. Okay?
15 Thank you.

16 MR. WILLEY: Will we also, at that time, Your
17 Honor, have a chance to review the verdict form?

18 THE COURT: Yes, I'll have a copy.

19 MR. WILLEY: Thank you.

20 MR. DANIEL: Thanks, Your Honor.

21 (Whereupon, the Court stood in recess.)

22 (Proceedings continue in Volume 6.)

23

24

25

TESTIMONY OF CARY TANRATH

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 foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 16th day of January, 2018.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

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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 6**

14

15 September 7, 2017

16 Ridgeland, South Carolina

17

18

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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REPRESENTING DEFENDANT:

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PROCEEDINGS

1
2 THE COURT: We are still working on the
3 charge. I will ask you to do closing arguments
4 and then we will take a small break and then
5 I'll charge. But to let you know, I'll charge
6 as to the finder of facts, the judge of the
7 law. The direct evidence and circumstantial
8 evidence. Obviously, the burden of proof in
9 this case, as to negligence is by preponderance
10 of the evidence.

11 Going to the charge, expert witness charge,
12 deposition testimony charge. I am going to charge
13 negligence, comparative negligence. I am going to
14 charge the duty to yield a right-of-way when you are
15 entering a roadway. I am going to charge that every
16 driver of a vehicle approaching a stop sign, stop at
17 the stop sign and then it goes on to say basically see
18 if the other cars are coming before you enter the
19 roadway.

20 The duty of proper lookout. The duty to keep a
21 car under control. It is improper to use a wireless
22 apparatus statute. And the headlight statute,
23 56-5-4450.

24 I'm going to charge the other is speed,
25 56-5-1520. I'm going to charge negligence, per se.

1 As far as the actual damages, medical bills, pain and
2 suffering, mental anguish and permanent injuries as
3 define them as the past present and future, obviously.
4 Damages, in this case, typically, only get one award.
5 And burden of proof again as to actual damages. And
6 explain that it is obviously by preponderance of the
7 evidence. I will talk about that you can't recover
8 from perspective damages, although it's not required
9 to be proven by mathematical certainty.

10 I'll charge the life expectancy. In this case,
11 at 63 years old her life expectancy is 21.68 years.

12 And then I am going to charge punitive damages,
13 obviously. Those must be proven by clear and
14 convincing. And then at the end I will charge
15 typical, don't owe your support or sympathy to anyone.
16 The verdict must be unanimous.

17 The verdict form is the typical, comparative
18 negligence. It is in the Bench book. Other than
19 that, I am not charging spoliation or the three that
20 you have passed up today. We have marked those as
21 Court's exhibits hopefully. Anything else that you
22 can think of?

23 *(Whereupon, Court's Exhibit No(s). 1 marked for*
24 *identification and received in evidence.)*

25 *(Whereupon, Court's Exhibit No(s). 4 marked for*

1 *identification and received in evidence.)*

2 *(Whereupon, Court's Exhibit No(s). 5 marked for*
3 *identification and received in evidence.)*

4 MR. SMITH: Your Honor, I believe that
5 it's been submitted but I don't think that it
6 was mentioned. You can't find someone
7 negligent for not doing more than the law
8 requires. If they find that it didn't require
9 headlights, they cannot find her negligent for
10 not having headlights when the law did not
11 require them.

12 THE COURT: The problem though, with that
13 statute, is what we talked about with directed
14 verdict is because it also says, other
15 environmental factors reducing someone's
16 ability to see, which there would have been in
17 this situation, required that she had
18 headlights on. It didn't have to be strictly
19 the time period but also as to the other
20 environmental factors. And I loved the
21 eclipse.

22 MR. WILLEY: The key there is if, I think
23 that what he's attempting to say is because of
24 darkness and environmental factors it wasn't
25 required. They could not find negligence.

1 They have to find that one of those apply.
2 There's a jury charge on point about not
3 finding negligence for something other than the
4 law.

5 MR. SMITH: If they find that.

6 THE COURT: Give me --

7 MR. DANIEL: Your Honor --

8 THE COURT: Hold on a second.

9 (Pause.)

10 THE COURT: I agree with them, to the
11 extent that I think that they can find that her
12 speed was a factor and she was driving too fast
13 for conditions. But can somebody give me a
14 proposed copy of the charge that you are asking
15 for?

16 MR. WILLEY: It was enclosed in our
17 charge.

18 THE COURT: I don't think this whole
19 charge is appropriate. I think that portions
20 of -- that a person cannot breach a duty when
21 they are in compliance with the law, and the
22 Court cannot require a person to do more than
23 what the law requires.

24 That would be the only portion I would feel
25 comfortable with.

1 MR. SMITH: Sure.

2 MR. WILLEY: And that's what we're looking
3 for.

4 THE COURT: Okay. I'll put that in.
5 What else?

6 MR. WILLEY: Okay. One other question on
7 the actual -- I'm not sure exactly what charge
8 you're using, but our act -- from the Bench
9 book, I just want to make sure these are in
10 there. It's out-of-pocket expenses, medical
11 expenses, psychological trauma, mental anguish.

12 THE COURT: Hold on a second. Hold on a
13 second.

14 So I think that's something that you can argue.
15 I think by the end we will cover it fine. I think you
16 can go down the list of what I expected from you in
17 front of the jury and include all this. I think my
18 damages charge is fine, and it is good enough on the
19 damages that I don't say -- and I want you to know
20 that I don't say, "including out of pocket damages,"
21 you know.

22 I go through -- I tried very hard, I'm going to
23 tell you this, to try to narrow this down somewhat.
24 Any time you are charging comparative negligence and
25 punitive damages, it is one long charge. And I know

1 you all know that.

2 So I've tried very hard to kind of make this to
3 the point where they can understand it, you know, and
4 stay with me. And I think it's pretty good. I think
5 it's a proper charge on the law. I do ask about
6 actual damages, and I do want medical expenses and
7 costs. I don't say out of pocket costs. That's going
8 to be for you to argue.

9 MR. WILLEY: Do you do mental anguish,
10 anxiety, depression, pain, suffering,
11 disfigurement?

12 THE COURT: Hold on.

13 I do. Mental anguish, loss of enjoyment of
14 life -- what is the third one?

15 MR. WILLEY: Pain and suffering.

16 THE COURT: I've already got pain and
17 suffering.

18 MR. WILLEY: Depression.

19 THE COURT: I don't think depression
20 specifically.

21 MR. WILLEY: When she talked about that.

22 THE COURT: Right. I think you need to be
23 very careful though. Because when we had
24 issues before when you said you were not
25 claiming an exacerbation of any bipolar issues,

1 and I agree. Her testimony did clearly cover
2 depression. So I think that's a comment on the
3 facts, but I wouldn't specifically address
4 anything particular, like depression or bipolar
5 or anything along those lines. I think you
6 already covered it.

7 MR. WILLEY: Okay. And then anxiety. She
8 specifically testified about her anxiety during
9 the day.

10 THE COURT: I think that goes to -- I
11 don't specifically say anxiety, I think you
12 could argue it, but I --

13 MR. WILLEY: Okay. And then the other two
14 were disfigurement and property damage. She's
15 permanently disfigured, by the doctor's
16 testimony. I mean, so I think that one is
17 proper, and property damage, obviously it --

18 THE COURT: Okay. You know what, it says
19 "permanent injury." I'm going to say, "and
20 disfigurement."

21 And I apologize, I missed the testimony about
22 property damage. So the car was never paid for?

23 MR. DANIEL: I thought it was.

24 MR. WILLEY: So there's no evidence in the
25 record about any accordant satisfaction. They

1 didn't raise it, so we're claiming it.

2 THE COURT: Was there any testimony about
3 the cost of the car? Did I miss that?

4 MR. WILLEY: No, but you can see the
5 property damage.

6 THE COURT: Doesn't matter though. They
7 can't just -- I have no idea, I can't tell --
8 well, it tells you what kind of wreck this was.
9 But I can't tell what kind of car that was.

10 MR. WILLEY: All right. I'll take that
11 one out. I'm not going to argue over that one.

12 Two final things. Potentially an insurance
13 charge, if you would charge an insurance, you're not
14 being considered any --

15 THE COURT: The insurance word has not
16 been used in this, like miraculously.

17 MR. WILLEY: Here's why. He specifically
18 brought in the VA. People generally know that
19 the VA treatment is not paid for by the
20 plaintiff. And so we think it's important that
21 the Court instruct them that they are not to
22 consider that. They are only to consider the
23 testimony before them. I mean, everybody knows
24 you don't pay when you go to the VA. And he
25 specifically brought that in. We specifically

1 didn't bring it in.

2 MR. DANIEL: It wasn't objected to, Your
3 Honor. I didn't say "insurance." I don't
4 think people know that in general, and I also
5 think they want specific charge --

6 THE COURT: I think it's more a collateral
7 source rule than anything. I mean, it's more
8 of a collateral source charge that I would
9 request, if I were you.

10 MR. WILLEY: Well, we're fine with it if
11 you do --

12 THE COURT: I'm not going to say the word
13 "insurance."

14 MR. WILLEY: As long as you say, you know,
15 health benefits and, you know, whatever.

16 THE COURT: I know, but that's commenting
17 on the facts. I can tell you, what you're
18 asking for is collateral source charge. If you
19 want me to charge that, I will charge that.
20 Because I would agree with you with any VA
21 talk.

22 MR. WILLEY: Okay. We'll take the
23 collateral source charge. That's perfect.

24 THE COURT: Hold on a second. Okay.

25 MR. WILLEY: And then the final thing,

1 Your Honor, which --

2 THE COURT: Hold on a second.

3 MR. WILLEY: Okay. Take your time.

4 THE COURT: Yes, the time thing, he ruled
5 on the Woody Poplin. You ruled on the
6 tailgating.

7 MR. DANIEL: And Your Honor. Yes, the
8 final thing which he raised this issue of who
9 hired Mr. Poplin, I just want to bring it to
10 the Court's attention because you ruled on
11 tailgating, they brought that in; you ruled on
12 Parkinson's, he brought that in today against
13 your ruling. And I'm just putting the Court on
14 notice that I have a check here that USAA paid
15 Mr. Poplin's retainer, and if he raises that,
16 I'm going to ask the Court for sanctions.
17 Because it is not true, and if he says we hired
18 Mr. Poplin and didn't call him, not only is
19 that in violation of the Davis v Sparks case,
20 which says, "a party cannot be prejudiced by
21 it's failure to call a witness or hire a
22 witness that it doesn't call."

23 But it's also just not true. And, Your Honor,
24 it's a UIM case, so the way UIM works, I had -- I had
25 no involvement in defending that case and hiring

1 Mr. Poplin.

2 USAA had a duty to defend Mrs. Hood, who had
3 counterclaims from Mr. Johnson, which we haven't
4 brought up. We stayed out of that. Counterclaims
5 that have been paid on by USAA to protect her
6 interest.

7 USAA from that physician through a lawyer hired
8 to defend her, Chris Nichols, and that's all I said,
9 "a lawyer hired on her behalf," Mr. Nichols hired
10 Woody Poplin.

11 THE COURT: But you're not going to
12 discuss it in closing argument is what we're
13 going to do. You're not going to talk about
14 it. Okay.

15 MR. DANIEL: Your Honor, I would just, for
16 the record, I made an objection to that.

17 THE COURT: Okay. And, again, you're not
18 going to talk about it. It's
19 mischaracterization. It's misleading the jury.
20 It's a trial in search of the truth, and it
21 misleads the jury. And we can't get into that
22 without getting into insurance issues, and you
23 can't talk about insurance. So you can't use
24 that as a great fact or use it against her.

25 So, anything else?

1 MR. WILLEY: Nothing from the plaintiff,
2 Your Honor.

3 THE COURT: Okay.

4 All right. That's what the proposed verdict form
5 is. And I got to tell you, I have not read it all the
6 way through, so y'all need to read it carefully and
7 I'll read it.

8 (Pause.)

9 THE COURT: All right. Who's doing the
10 closing for the plaintiff?

11 MR. WILLEY: I am.

12 THE COURT: And who's doing it for the
13 Defense?

14 MR. DANIEL: I am, Your Honor.

15 THE COURT: She's just making a couple of
16 changes to a portion at the end. What else? I
17 know the jury is ready to go.

18 MR. WILLEY: I just need that to use it in
19 closing, but other than that, I'm ready.

20 THE COURT: Okay.

21 MR. DANIEL: And, Your Honor, just for the
22 record, as far as the collateral source charge,
23 we object to that charge.

24 THE COURT: Okay. Yeah, you're the one
25 that brought the VA into it, so it's

1 appropriate.

2 Anything else?

3 MR. SMITH: Nothing from the plaintiff.

4 THE COURT: Okay. So we're just going to
5 wait. Mr. Willey needs a copy of this then.

6 MR. DANIEL: One other thing, Your Honor.
7 I haven't seen their Power Point yet.

8 MR. WILLEY: You can object
9 contemporaneously. Paula has that.

10 MR. DANIEL: Well, I do know that it's
11 their practice to put the per diem, some kind
12 of per diem amount up.

13 MR. WILLEY: Correct. And I will do that.

14 MR. DANIEL: Which if he does that, I just
15 want to make it clear that it's for the jury to
16 decide if that's appropriate.

17 MR. WILLEY: And I'll make it clear.

18 THE COURT: He's going to say that.

19 And also, just so we're clear, I know once you're
20 finished, you're removing all of that?

21 MR. WILLEY: Yes, all of this has to come
22 down.

23 THE COURT: Okay. Before he can pass.
24 Okay?

25 MR. SMITH: Oh, yes. Yes. Yes, I will.

1 THE COURT: Do it like that.

2 MR. SMITH: I will.

3 THE COURT: I don't want to sit and have
4 to wait. Certainly don't want to make the jury
5 wait. Okay?

6 MR. SMITH: Okay.

7 THE COURT: All right. We're ready to go.
8 Gentlemen, yes? Let's bring the jury out.

9 (The jury enters the courtroom.)

10 THE COURT: Welcome back, ladies and
11 gentlemen. I trust y'all got a bite to eat.

12 At this time, what we're going to is hear the
13 closing arguments from the lawyers. After that, we're
14 going to take a very brief break, and then I'm going
15 to come back and charge you on the law.

16 My charge usually takes roughly about 20 minutes
17 or so, just want to let y'all know and warn you. So
18 we're going to go ahead and pay attention to the
19 attorneys at this time, and like I said, we'll take a
20 break before I charge you on the law, and then we're
21 going to send the case to you, okay, for your
22 deliberations.

23 Mr. Willey, whenever you're ready, sir.

24 CLOSING ARGUMENT BY PLAINTIFF

25 MR. WILLEY: Good afternoon.

CLOSING ARGUMENT BY PLAINTIFF

1 Every nine minutes in South Carolina, a driver is
2 injured in an automobile wreck. The majority of those
3 wrecks are caused by distracted driving.

4 Ladies and gentlemen, in a little while, you'll
5 go back through that door one last time and you'll
6 have three jobs. The first job is going to be to
7 answer the questions that the Judge gives you. Those
8 questions will be laid out on the verdict form.

9 Your second job will be to make sure that
10 everyone else on the jury follows the law as the judge
11 instructs you on it. Because you will have to reach a
12 unanimous verdict. And no one juror can make you
13 serve on a jury that doesn't follow the law, because
14 you all took an oath to follow the law.

15 And third, before you answer those questions, of
16 course, you'll have a conversation, and you'll have to
17 explain to each other why you as individuals feel the
18 way that you do about your personal answer to those
19 questions. Because, again, the verdict will have to
20 be unanimous.

21 So for the next few minutes, I'd like to give you
22 some ways to think about those questions and some
23 things to think about that came in during the course
24 of this trial.

25 You'll remember that we were forced to bring this

CLOSING ARGUMENT BY PLAINTIFF

1 claim -- Ms. Hood was forced to bring this claim, we
2 were all forced to be here this week for three basic
3 reasons.

4 The first reason is that Mr. Johnson did not pay
5 attention to the roadway in front of him before
6 crossing the highway.

7 The second reason is that Mr. Johnson violated
8 the safety rule requiring all drivers to look before
9 crossing a busy highway. As a result of those
10 actions, Ms. Hood was injured. And that's the third
11 reason that we were forced to be here this week,
12 because they have refused to accept full
13 responsibility for his actions.

14 And so that's why we're here. We're here with
15 you, as members of the community, as representatives
16 of the community, on this particular day, this
17 particular week, to determine whether or not when an
18 individual in this community injures another
19 individual, whether or not the injured individual
20 should be compensated for those injuries.

21 1,035 days is how many days it has been since
22 November 7th, 2014. For 1,035 days Therese Hood, my
23 client, who you've met, has gotten up in the morning
24 in pain, gone to bed at night in pain, and lives her
25 days and nights in pain.

CLOSING ARGUMENT BY PLAINTIFF

1 For 1,035 days, there hasn't been an apology, a
2 check-in, hey, how you doing, a lending of a helping
3 hand. For 1,035 days, they have said exactly what
4 Mr. Daniel said to you in their opening statement,
5 "the plaintiff caused this wreck."

6 And now, the 12 of you know what Ms. Hood has
7 known for 1,035 days, and what I've known for a period
8 shorter than that, that that's not the truth. This
9 wreck occurred because when Mr. Johnson pulled away
10 from the stop sign he didn't pay attention to the
11 road. He didn't look to the left to see what was
12 coming.

13 And as Ms. Hood traveled to spend the weekend
14 with family in Hilton Head she was hit by Mr. Johnson
15 on the side, broadsided, locking her wheel, as she
16 testified, and pushing her to the left into oncoming
17 traffic. It's as simple as that. It's as simple as
18 that. When you cross a busy highway, you have to
19 look.

20 Mr. Johnson himself was honest with you. He was
21 honest. He said, "I didn't see her, and I didn't see
22 Dustin Lee."

23 Dustin Lee, who we know has Xenon headlights, the
24 bright, real bright headlights, kind of annoying
25 actually when somebody's coming from the opposite

CLOSING ARGUMENT BY PLAINTIFF

1 direction with them.

2 So you have to use your common sense. Why didn't
3 he see them? Why didn't he see Ms. Hood even
4 immediately before he broadsided her? Why didn't he
5 see Dustin Lee, who testified he had to decelerate
6 quickly and veer around so that he didn't get caught
7 up in it; he was that close. Why didn't he see?

8 I would submit to you, and we don't have to prove
9 why he didn't see, but in this case we have some
10 evidence. He didn't see because he was on his cell
11 phone, ladies and gentlemen. The evidence in this
12 case is, the night before, at 9:14 he got on the
13 phone, 5:22 -- or excuse me, at 1722, 17 minutes after
14 midnight, he got off the phone.

15 The evidence in the case is that the next morning
16 at 4:44, as soon as he woke up, he sent a message.
17 And the last call the night before ends just after
18 midnight. A three-hour call. The next morning, four
19 and a half hours later, at 4:44 a.m., he sends his
20 first text message of the day to the number ending in
21 1200, who for 1,035 days they haven't told us who that
22 was.

23 Finally under oath, Mr. Johnson admitted that was
24 his girlfriend. Reasonable thing to send your
25 girlfriend the first text message of the day. Between

CLOSING ARGUMENT BY PLAINTIFF

1 5:00 and 7:00 a.m., he goes to work. While at work,
2 he uses his cell phone 93 times. That's what these
3 records show. Ninety-three incoming or outgoing text
4 messages or phone calls. Fifty-seven of those -- 57
5 of those to or from his girlfriend. They're having a
6 conversation throughout the day, back and forth.
7 Normal thing to do. We've all done it.

8 4:00 p.m., he gets off work. Between 4:00 and
9 4:50 p.m., 50 minutes, he uses his phone another 29
10 times. Another 29 times he uses his phone between
11 4:00 and 4:50 p.m. He testified that he gets off
12 work, cuts his cousin's hair, and then he takes Scooby
13 to meet somebody at Dunkin' Donuts, just dropping off
14 Scooby at the Dunkin' Donuts to meet somebody after he
15 gets his hair cut.

16 5:43 p.m., the defendant, Mr. Johnson, sends a
17 text message. Now, we're all the way over here. We
18 have gone through this board, 26 messages that day.
19 Gone through this board, while at work, another 53
20 messages to the girlfriend. Total of 93 messages
21 between these two boards, over 50 of which were to the
22 girlfriend.

23 And we've gone through this board. Another 29
24 either messages, four calls, I believe on there, maybe
25 five. And these will be back in the jury room with

CLOSING ARGUMENT BY PLAINTIFF

1 you, and you can analyze them and look at them and
2 read them. See how many of these messages are from
3 1200. This is the calling or texting number, this is
4 the calling or texted number. Okay. Just so you know
5 how to look at it. His number is the 4155. You'll
6 notice it appears in every single entry, because these
7 are his phone records. So obviously he's either
8 texting or being texted, calling or being called. And
9 we've gone through that board.

10 Now, at 5:43, we're into the hundreds now. Sends
11 another text message. 16 seconds later, sends another
12 text message, 5:43:12, 5:43:28.

13 And then at 5:57, the girlfriend that he's been
14 having a conversation with all day, back and forth,
15 back and forth, back and forth, back and forth, back
16 and forth, back and forth, back and forth, almost a
17 hundred times, back and forth, while at work, gets a
18 text message from number 1200. And, bam, he
19 broadside with this vehicle Ms. Hood.

20 That's what happened in this case. And you know
21 that. Ms. Hood has known for 1,035 days this wasn't
22 her fault. She didn't know about the text messages.
23 Mr. Johnson knew, they knew. We had to go to the cell
24 phone carrier to get the records, but eventually we
25 found out. And now you know.

CLOSING ARGUMENT BY PLAINTIFF

1 At 5:58, and you'll have records back there,
2 Plaintiff's Exhibit 1, these are the CAD 911 records
3 that you heard testified to. If you go to the last
4 page, which has all of the 911 calls. As y'all know,
5 frequently, when a wreck or something happens, a bunch
6 of people call 911, so they log each one.

7 And you will see quite clearly on here that the
8 very first 911 call came in at 5:58 and 46 seconds,
9 relative to this wreck. Very first 911 call. 5:58
10 and 46 seconds, and you will have this back there,
11 Plaintiff's Exhibit 1.

12 And you heard the testimony in this case from
13 Tasha Haupt, who was the records custodian for
14 Beaufort 911. She testified to you that that first
15 caller, based on the records and based on the actual
16 recording of the call was Tammy Melnick. And you will
17 have that call back there, Plaintiff's Exhibit 2. If
18 you want to hear it, the Court will make it available
19 to you, but you've already heard it. And you've heard
20 Ms. Melnick testify. And Ms. Melnick has testified
21 that prior to making -- getting somebody on that call,
22 which Tasha said once the person picks up, that's when
23 it logs, that's when the CAD entry logs. It's
24 obviously not when the person dials the number, right?
25 All of this happens before she talks to someone in

CLOSING ARGUMENT BY PLAINTIFF

1 dispatch.

2 The first wreck, broadsided. Second wreck, where
3 she was pushed into the Kucks. People got out, you
4 heard from Mr. Tanrath today. He got out of his
5 vehicle. Other people were out. People were already
6 out. She could see them through the trees.

7 She left the patio. You remember, Ms. Melnick
8 was out here by these the umbrellas. She testified
9 she was putting down the umbrellas, having a
10 cigarette. It was towards the end of her shift. And
11 through these trees she could see people getting out
12 in the wreck. She left the patio, she went inside the
13 Dunkin' Donuts, she went into the back, behind the
14 counter, to the phone, dialed 911, and you heard. It
15 rang two times. There was an initial pick up to the
16 local dispatch. She described what and where it
17 happened. She was transferred and then she finally
18 got through to the right person Hilton Head first
19 responders were dispatched at 5:58:46, when that CAD
20 call is there.

21 Clearly, in this case, the wreck occurred prior
22 to 5:58:46. And all of this had to occur before
23 5:58:46, but after the wreck. So you can use your
24 common sense to figure out that it made sense that
25 that would be around a minute. Or would it be a few

CLOSING ARGUMENT BY PLAINTIFF

1 more minutes than a minute, which would be the other
2 text message? Or two more minutes than that minute,
3 which would be the other text message? It really
4 doesn't matter. The text messages are all going to
5 agree.

6 Now, in this case you've heard a lot of evidence,
7 and you've heard the defense say a few things, and I
8 want to make sure I get them right.

9 Mr. Daniel has said he looked. If you go back
10 there and somebody says he can't be at fault because
11 he looked, I want you to remind them of what the Judge
12 is going to charge you. And the Judge is going to
13 charge you that the driver of a vehicle about to enter
14 or cross a roadway from anyplace other than another
15 roadway shall -- shall, not may -- yield the right of
16 way to all vehicles approaching on the roadway to be
17 entered or crossed. That's South Carolina Code
18 Section 5652350. The duty is to look, see, and to
19 yield.

20 In this case, it's uncontroverted, not in dispute
21 that Mr. Johnson did not yield, not in dispute that
22 Ms. Hood had the right of way. You heard the cop
23 testify to that, heard Ms. Hood testify to that.

24 You've also heard him say but "he didn't see any
25 cars," neither Ms. Hood or Dustin Lee. We know Dustin

CLOSING ARGUMENT BY PLAINTIFF

1 Lee had Xenon headlights on. Somebody says that, say,
2 well, the only way he didn't see him, he didn't look.
3 He didn't look. We know why he didn't look, which you
4 don't have in a lot of cases, but we have in this
5 case.

6 The Defense has said, "well, she was speeding."
7 Talked about some other person that was going to
8 testify to that in the opening. We never heard from
9 that person.

10 Ladies and gentlemen, even if she had been
11 speeding, the only effect speeding would have had --
12 if she was going a little bit faster, she might have
13 got through there before he got that text message and
14 broadsided her. This isn't a case where she hit him
15 because she was going too fast to react. The only
16 thing speed has to do with it is she just happened to
17 be here. Well, I'll submit to you, if she was going
18 45 or 48 or 65, or whatever -- any speed but the speed
19 she wasn't going -- this wouldn't have happened. Same
20 thing would have been true if she was going 105. Same
21 thing would be true if, when her alarm clock went off
22 that morning, she hit snooze and slept in two minutes.

23 Speed played no role in this wreck at all. You
24 didn't hear any valid testimony about it. But even if
25 you had, it didn't cause anything. The only thing

CLOSING ARGUMENT BY PLAINTIFF

1 that caused this wreck is the defendant not paying
2 attention. And he said, "Ms. Hood didn't have
3 functioning headlights on."

4 And in law, we call this the kitchen sink
5 approach. That's, they teach you in law school, trial
6 advocacy, they say, "if you got the facts on your
7 side, hammer the facts. If you got the law on your
8 side, hammer the law. And if you got neither one on
9 your side, just throw it all out there and see what
10 sticks."

11 And that's what you've seen here this week.
12 You've seen a lot of throwing it all out there, trying
13 to get something to stick.

14 Let's talk about the headlights. It doesn't
15 matter. Doesn't matter. The law on headlights, the
16 Judge is going to instruct you -- and I'll read you
17 the law because the law and the facts happen to be on
18 our side -- South Carolina Code Section 56-5-4450,
19 times when vehicles must be equipped with lights. And
20 the Judge will read this to you as well.

21 "Every vehicle upon a street or a highway within
22 this state shall display lighted lamps and
23 illuminating devices, excluding parking lights, from a
24 half hour after sunset to a half hour before sunrise,
25 and at any other time when windshield wipers are in

CLOSING ARGUMENT BY PLAINTIFF

1 use as a result of rain, sleet, snow, or when
2 inclement weather or environmental factors severely
3 reduce the ability to clearly discern persons and
4 vehicles on the street or highway at a distance of 500
5 feet ahead, as required in this article."

6 You heard from Dr. Borzendowski, an expert in
7 human factors. Came in here and testified before you,
8 and she testified that she had used a source, which
9 used physics to determine, exactly in that
10 intersection when sunset was on this particular day.
11 Okay.

12 Sunset at that intersection on this particular
13 day was 1729. That means 30 minutes after that,
14 according to the law of South Carolina, half hour
15 after sunset, 5:59, you would be required to have your
16 headlights on. They click on automatically at that
17 time if it gets dark enough. Okay?

18 We know this wreck occurred before 5:59 because
19 we have a 911 call that came in at 5:58 and 46
20 seconds. So at the time of this wreck, whether she
21 had headlights on or whether she had headlights off,
22 or whether she didn't have headlights connected to her
23 vehicle doesn't matter. And the Judge will instruct
24 you on the law, when she reads to you about the duty
25 of care, you cannot hold somebody responsible for a

CLOSING ARGUMENT BY PLAINTIFF

1 duty that the law does not create. And the law in
2 this case tells you when you need headlights. And in
3 this case, at the time of this wreck, she didn't need
4 them.

5 So they did something else. Another one of these
6 kitchen sinks. They brought in another source, and I
7 don't know if it went into evidence or not. Not a lot
8 went into evidence that they -- that was talked about.

9 I don't see it here but -- oh, here it is.
10 "Hilton Head, U.S. Naval Observatory, sunset at 5:28."
11 Okay. And you remember Dr. Borzendowski's
12 conversation about this. This would have been the
13 average for the whole town of Hilton Head. Okay.

14 And if you take a look at it, I mean you can
15 clearly see that it's Hilton Head, you know, as a
16 whole. Sunset 1728, which means that 30 minutes after
17 would have been at 5:58. Okay. But we've got a more
18 exact source.

19 But even if -- even if you take this at face
20 value, that means, to buy their kitchen sink approach,
21 all of that, first wreck, second wreck, people get
22 out, people helping, helping people out of the
23 vehicles, leaving the patio, Ms. Melnick going inside,
24 Ms. Melnick going in the back, Ms. Melnick going
25 behind the counter, Ms. Melnick making the call. Two

CLOSING ARGUMENT BY PLAINTIFF

1 rings on the phone, speaking, being transferred,
2 describing where and what happened. The dispatch at
3 5:58:46, that means all of that would have had to have
4 taken less than 46 seconds to happen after 5:58. Use
5 your common sense.

6 Now, the final thing, which, frankly, I was a
7 little bit shocked by, but we heard, was she wasn't
8 injured. That's the kitchen sink, see? Wreck's her
9 fault. Even if it's not her fault, she bears some
10 fault because she might have been speeding, although
11 we didn't bring in who we talked about the whole time
12 to say that. She might have not had her headlights
13 on, although we can't prove that. We're just going
14 off what people said. By the way, all those people
15 said they could see her vehicle without her headlights
16 on. Okay. Everybody apparently except Mr. Johnson.

17 And -- and now, we get all the way down to "well,
18 even if she wasn't at fault, even if he was at fault,
19 she's not injured." Whew! That's a lot to cover.

20 You heard from the doctor. You heard from the
21 doctor. You saw -- you saw the screws and plates, and
22 they'll be back in the jury room with you, that she
23 has in her ankle, as a result of this wreck, 5-inch
24 screws, all these little screws holding this plate on,
25 holding her foot and her ankle to her leg. And you

CLOSING ARGUMENT BY PLAINTIFF

1 heard the doctors say to a reasonable degree of
2 medical certainty this was caused by the wreck.
3 Obviously, it was caused by the wreck. She wasn't
4 driving down the roadway with her right foot hanging
5 off.

6 And if she was, she was sure as heck wasn't
7 pushing it hard enough on the accelerator to be
8 speeding. So which way do they want it?

9 She was injured because of this wreck. And in
10 this wreck, her medical bills to date for the three
11 surgeries, the injections, the trips back and forth,
12 physical therapy, the nursing home, which she
13 testified to was humiliating, \$222,475.47 to date. To
14 date. That's her out of pocket medical expenses
15 because of what they will not accept responsibility
16 for in this case.

17 And the Judge is going instruct you, and you'll
18 see there was something about the VA. She gets her
19 primary care at the VA, you won't see that on here.
20 Okay. They're just going to instruct you that any
21 collateral source is not to be considered.

22 Consider the facts in evidence. This is what's
23 in evidence before you. We didn't submit anything
24 from the VA. Okay.

25 Now, you can also remind somebody if they say,

CLOSING ARGUMENT BY PLAINTIFF

1 "well, I just believe he looked and he didn't see
2 her," that nobody else said that. Nobody else except
3 the defendant in this case said he could not see that
4 night.

5 You heard from Ms. Melnick. Ms. Melnick, who was
6 standing back here on the patio, who testified and
7 made the 911 call accurately, which you heard. Three
8 cars in a wreck. She could see them through these
9 trees.

10 Ms. Melnick could see them through these trees.
11 You heard from Mr. Lee, who you will remember was
12 farther back in this outside lane behind Ms. Hood. He
13 testified not only could he see Ms. Hood, he could see
14 Mr. Johnson.

15 Well, if Mr. Johnson had looked, certainly,
16 Mr. Lee was way back here, with his Xenon headlights
17 shining this way, and he could see him, Mr. Johnson
18 should have been able to see Ms. Hood and Mr. Lee.

19 You heard testimony from Ms. Kuck. Ms. Kuck, the
20 other unfortunate party injured in this case, had to
21 be cut out of the car. What did she tell you? She
22 could see other cars on the roadway, whether or not
23 they had headlights on. She could see the trees
24 clearly on the side of the median. She could see.

25 Ms. Hood, at this time, 60-year-old lady, good

CLOSING ARGUMENT BY PLAINTIFF

1 vision, she could see. She didn't get in a wreck.

2 She didn't run into nobody. He ran into her.

3 They called for you one witness, Cary Tanrath,
4 who frankly we would have called, but thought it was
5 kind of duplicative. Because what did he tell you?

6 He could see. He's behind the Kucks. He was
7 behind the Kucks. He had a Chevrolet Tahoe in front
8 of him. She gets shot on over here, and he can see
9 around that Tahoe and see her vehicle, even though she
10 didn't have her headlights on. He could see her.
11 Their own witness. Everybody could see if they
12 looked. Okay.

13 Now, the Judge instructs you on the law. She's
14 going to tell you that the plaintiff, as to our
15 claims, has the burden of proof in this case, and that
16 the defendant, as to any affirmative defenses, such as
17 some called comparative negligence that they raised,
18 they have the burden of proof.

19 Preponderance of evidence simply means this:
20 What is more likely than not. And if you think about
21 it, you always see the set of scales, you know, in the
22 legal system. And in a civil case, the burden of
23 proof is a preponderance of the evidence, and that
24 means if the scales tip ever so slightly, one grain of
25 sand in favor of the plaintiff, the plaintiff has met

CLOSING ARGUMENT BY PLAINTIFF

1 her burden as to that cause of action as to that
2 claim.

3 And the Judge will tell you that simply means it
4 is more likely true than not true? She's going to
5 instruct you on negligence. This is a negligence
6 case. Negligence means that a person has done
7 something that a reasonable person would not have
8 done, or has failed to do something that a reasonable
9 person would have done in the same situation.

10 Duty, breach, causation, damages. The duty is
11 created by the statutes, and she's going to tell you
12 that -- about entering a roadway, about turning left,
13 about looking where you're going. And if you find in
14 this case that it's more likely than not that scale
15 tips ever so slightly that Mr. Johnson was negligent,
16 then you'll find for the plaintiff in this case.
17 Okay.

18 And she's going to tell you about proximate
19 cause, which is an element of that. And proximate
20 cause is something that produces a chain of events,
21 which in the end brings about the injury. Proximate
22 cause does not mean the only cause. The defendant's
23 act can be a proximate cause of the plaintiff's injury
24 if it was at least one of the direct causes of the
25 injury. Okay.

CLOSING ARGUMENT BY PLAINTIFF

1 So that means if you find that Mr. Johnson
2 pulling out and broadsiding her was negligent, and
3 that she was injured as a result of that, then any way
4 that happened, first impact, second impact, whatever,
5 was proximately caused by him. Okay. His negligent
6 act caused the chain of events, which in the end
7 brings about the injury.

8 Oh, I forgot this. There's been so much, but
9 there's this mention of this overcorrecting. Remember
10 that? Saying maybe she overcorrected. Well, if you
11 get hit broadside, the defendant doesn't get to tell
12 you what to do about it. Okay? They don't get to
13 say, well, you should have done X, you should have
14 done Y. You just got to do the best you can in that
15 circumstance.

16 And what she testified was that she tried to get
17 her wheel back right because she didn't want anybody
18 else to get hurt, but it was locked over. Well, if
19 you look at the damage you can understand why that
20 might have been. It's right there at the back of the
21 wheel base. Okay. Common sense.

22 But even if she had, it doesn't matter because
23 proximate cause is something that produces a chain of
24 events, which in the end brings about the injury,
25 which is what we have in this case.

CLOSING ARGUMENT BY PLAINTIFF

1 Negligence as a matter of law. This one's
2 important. So if you find that the defendant violated
3 a statute, that's negligence as a matter of law.
4 She's going to tell you that the failure to follow any
5 of these statutory rules is negligence as a matter of
6 law. So if you find it more likely than not,
7 preponderance of the evidence, that he violated any of
8 these, he's negligent as a matter of law. Those
9 statutes, vehicle entering the roadway shall yield the
10 right of way to all vehicles approaching on the
11 roadway. Okay.

12 Duty to keep a proper lookout. The driver must
13 keep a proper lookout for other vehicles, pedestrians
14 on or along the roadway.

15 Unlawful use of cell phones. It is unlawful for
16 a person to use a wireless electronic communication
17 device to compose, send, or read a text based
18 communication while operating a motor vehicle on the
19 public streets and highways of this state.

20 Unlawful to turn or move upon roadway unless and
21 until such movement can be made with reasonable safety
22 nor without giving an appropriate signal. No evidence
23 in this case he gave a signal he was turning left.
24 Zero.

25 Vehicle turning left. The driver of a vehicle

CLOSING ARGUMENT BY PLAINTIFF

1 intending to turn left within an intersection or into
2 an alley, private road, or driveway, shall yield the
3 right of way to any vehicle approaching from the
4 opposite direction, which is in the intersection or so
5 close thereto as to constitute an immediate hazard.
6 Testimony is Mr. Johnson was attempting to take a left
7 across the intersection. Therefore, according to the
8 statute, he had a duty to yield the right of way. If
9 anybody approaching so close as to create or
10 constitute an immediate hazard. If you find more
11 likely than not he violated that, that's negligence as
12 a matter of law.

13 Stop signs. Except when directed to proceed by a
14 police officer, every driver of a vehicle approaching
15 a stop sign shall stop at a clearly marked stop line.
16 But if none, before entering the crosswalk on the near
17 side of the intersection, which, in this case, we do
18 have a clearly marked stop line, which you can see
19 here in the diagram, so he had to stop there. And
20 after having stopped, the driver shall yield the right
21 of way to any vehicle in the intersection or
22 approaching on another roadway so closely as to
23 constitute an immediate hazard. During such time,
24 when the driver is using a cross or within the
25 intersection or junction of roadways.

CLOSING ARGUMENT BY PLAINTIFF

1 Those are some of the statutory rules that she is
2 going to instruct you on. If you find he violated one
3 of those, we have negligence as a matter of law. I
4 will submit to you that he violated them all.

5 Now, with respect to damages, the damages in this
6 case, Mr. Smith told you in opening, are substantial.
7 You've had the opportunity to hear the testimony,
8 which prior to hearing the testimony when you walked
9 in, seen Ms. Hood sitting there with her legs under
10 the table, you didn't have full knowledge of what she
11 has been through and her damages. Now, you do.

12 And the actual damages in this case are required
13 to be proved by the same standard of negligence, just
14 more likely than not. So if you find on each element
15 of damages that she proved more likely than not she
16 suffered that damage, the law requires you to award
17 her a money verdict on that element of damages.

18 The elements of actual damages, as the Judge will
19 instruct you, put medical expenses, which are out of
20 pocket expenses, trauma, mental anguish, of which she
21 had anxiety, depression, pain and suffering,
22 disfigurement, and loss of enjoyment of life. Those
23 are the components that make up actual damages, that
24 all go into actual damages.

25 And when you're considering actual damages,

CLOSING ARGUMENT BY PLAINTIFF

1 you're going to look at past actual damages, present
2 actual damages, and future actual damages, which we
3 will go through.

4 Now, medical expenses, \$222,475.47. You'll have
5 this back there with you. This money all goes to
6 other people to pay for Therese's care. She testified
7 to you that she felt like her doctors, and Dr.
8 Jaskwhich, were really heroes. They saved her foot,
9 were able to put it back on with those plates and
10 screws. And although it's not perfect, she feels as
11 though they did the best job that they could under the
12 circumstances. And this money goes to pay them for
13 what they did for her.

14 But in a case like this, and you'll notice,
15 frankly, when Judge Mullen instructs you on the law,
16 she spends a lot more time on the other damages than
17 on medical expenses. And that's because in South
18 Carolina and in our civil justice system, we value the
19 other damages as much or more than the medical
20 expenses, because we value, in this community and in
21 this state, a person's life. A person's quality of
22 life.

23 And so when you go through these damages, you're
24 going to go through each element, and you're going to
25 talk about it. And so I want to just give you a way

CLOSING ARGUMENT BY PLAINTIFF

1 to think about a couple of these. And the first is
2 pain and suffering. And pain that lasts for a short
3 time, a few weeks, maybe a month, is pretty low on the
4 scale of pain. The twisted ankle, the banged elbow.
5 It takes just a little bit to make up for that level
6 of pain. And so that might be the kind of case where
7 someone went to a chiropractor, and so I'm asking you
8 for 20- or \$30,000 for that level of pain.

9 But what if it lasts for two or three years, and
10 it's high on the pain scale? What if the level of
11 pain is, as Ms. Hood testified to you, everyday when
12 she wakes up in the morning, she feels it? And what
13 if that pain is everyday with every step she takes she
14 feels it? And what if that pain is the type of pain
15 that robs someone of the enjoyment of the rest of
16 their life? What is that pain worth?

17 She doesn't have, ladies and gentlemen, the one
18 thing that a lot of people have, and that we have
19 sometimes when we get hurt, and that's a hope that
20 we'll get better. Therese doesn't have that. And you
21 heard her surgeon, Dr. Jaskwhich, who she goes to
22 follow-up, say she will never get better. She will
23 get worse. She will get worse.

24 So the woman whose daughter testified last week
25 was able to at least travel to Georgia and make the

CLOSING ARGUMENT BY PLAINTIFF

1 trip to the WalMart, short trip, but couldn't do
2 anything else on the family reunion, that woman, only
3 three years out, is going to get worse.

4 So you have to think about what it takes to
5 compensate her for the rest of her life for that kind
6 of pain. Health and physical impairment,
7 disfigurement is much the same thing. What impairment
8 does somebody have? Not the physical sensation of the
9 pain every time she takes a step, the flinch, but the
10 impairment, the things that it keeps her from doing is
11 a separate element.

12 And you know in this case, the impairment that
13 she has, because you've heard it not only from her,
14 but from the folks at the church, and from her
15 daughter. The biggest impairment, one of the biggest
16 impairments to her personally, was being able to
17 administer the communion. That's an impairment to her
18 quality of life. It may not be to mine, it may not be
19 to yours, you may have other things. But to her,
20 that's a huge impairment. And she told you it
21 humiliates her, and she feels like she's let God down
22 by not being able to fulfill that which he has called
23 her to do in administering that communion. What is
24 that impairment worth? What is that impairment worth?

25 So I tell you all that to just say that if,

CLOSING ARGUMENT BY PLAINTIFF

1 during deliberations, someone says, "well, I don't
2 think we should award money for that element of actual
3 damages," you remind them that you took an oath to
4 follow the law. And if she has proven that it's more
5 likely than not that she has pain and suffering past,
6 present, and future, that she has disfigurement past,
7 present, and future, that she has loss of enjoyment of
8 life past, present, and future, that she has mental
9 anguish past, present, and future, then as a jury you
10 are compelled by law to award money damages for that
11 injury. And nobody can make you break the law. Your
12 verdict has to be unanimous.

13 And so there are a lot of ways to think about
14 calculating -- calculating loss. There are a lot of
15 ways to think about it. You can think about it in
16 terms of assigning a number. You don't have to prove
17 it to a mathematical certainty.

18 Well, what about her past and present, take the
19 medical bills, the 222,475.47, which are obviously
20 proven. They're in evidence. And you take the 1,035
21 days since the wreck, and you say that every step of
22 every day of being alone at home, the husband leaving
23 her, coming back from being isolated, her worrying
24 when she wakes up in the middle of the night, going to
25 the restroom, she might fall down, so she has to wake

CLOSING ARGUMENT BY PLAINTIFF

1 someone else up. The humiliation, having to have her
2 children bathe her, a proud woman.

3 The humiliation not being able to use a bathroom
4 on her own for several months. Is that worth \$10 an
5 hour for pain and suffering? \$10 an hour for mental
6 anguish? \$10 an hour of loss and enjoyment of life?
7 If it is, if you find it's only worth \$10 an hour,
8 then her past and present actual damages, not
9 including the medical bills, come to \$2 million,
10 235,600, if you award her \$10 an hour for her past and
11 present pain and suffering, \$10 an hour for her past
12 and present mental anguish, and on down.

13 And when you get back there, if somebody says, "I
14 think that's too much," talk about it. Why? If you
15 get back there and somebody says "that's too little,"
16 talk about it. Why do they feel that way? You have
17 to come to a unanimous agreement.

18 So I picked a round number to show you what it
19 looks like at \$10 an hour. If you take \$10 an hour
20 plus the medical bills, you get past and present
21 damages of \$2 million, 458,075.47. That's the max.
22 And I used the calculator.

23 Now, when you're looking at future damages, it's
24 -- what does it say for the rest of her life? And the
25 Judge will instruct you that in South Carolina, for

CLOSING ARGUMENT BY PLAINTIFF

1 better or worse, we have allowed our Legislature to
2 determine how long we are expected to live. And they
3 do that using an actuarial table.

4 And the actuarial table we call life expectancy
5 base. And in South Carolina, what that tells us for a
6 63-year-old woman, which is why it was important that
7 we get her to admit her age even though Mr. Smith knew
8 his mother would probably crack his knuckles if he
9 asked a woman that, gives her 21.68 years to live.
10 She could live more than that, she could live less
11 than that. That's the going rate, as they say --
12 21.68 years, which is 190,000 hours, a little over. A
13 hundred and 90,000 hours of everyday she wakes up,
14 puts her right foot down, feeling pain. A hundred and
15 90,000 hours of every time she takes a step,
16 everywhere she goes, worrying about falling down,
17 about her ankle giving out. A hundred and 90,000
18 hours of when she's with her grandkids not being able
19 to pick them up or do the things she wanted and would
20 be able to do but for this wreck. A hundred and
21 90,000 hours of it getting worse every day.

22 You've heard the testimony that now her husband
23 helps her around the house. So this is her one day in
24 court. She doesn't get to come back, if she loses
25 David, and ask for more. This is it.

CLOSING ARGUMENT BY PLAINTIFF

1 So the choice for you is who should bear that
2 risk? Who should bear that risk of the additional
3 pain, if she loses him, of being isolated and having
4 to do it alone? Should it be Ms. Hood? Or should it
5 be them?

6 And if you take future, which we know is going to
7 be worse, because the doctor has testified to it,
8 everyone has testified to it, and you define each
9 element of actual damages at \$2 an hour -- \$2 an hour,
10 a cup of coffee. Oh, you're worried about falling
11 down everywhere you go? Here's a cup of coffee.

12 Oh, you're worried about your ankle giving out
13 and you falling down while your husband's at work and
14 not being able to reach the phone? Here's a pack of
15 gum.

16 Oh, you're worried about getting up in the middle
17 of the night and falling in the bathroom and hitting
18 your head? Here's a chicken -- chicken breast. Two
19 dollars.

20 If that's worth \$2 an hour, that's \$3 million,
21 420,843.84. If you think that's at least worth a
22 Happy Meal, which my son who's 11 months old, turns a
23 year next month, I'm not quite in the Happy Meal stage
24 yet, but I understand they're about \$5. If you think
25 that's at least worth a Happy Meal, then for future

CLOSING ARGUMENT BY PLAINTIFF

1 damages you'd award \$8 million, 552,109.60.

2 But if you get back there and somebody says, "I
3 don't think future damages are worth anything," you
4 ask them, "Didn't you hear the doctor testify that the
5 cartilage between her foot and her leg and her ankle
6 joint is wearing away because of this wreck? Because
7 he had to take -- he had to take the plate and screws
8 out because they were protruding through the skin.
9 And eventually, it's going to be bone on bone?"

10 Bone on bone is like when you bite into a bone.
11 You know what that feels like, when you just common
12 everyday experience what that feeling feels like.
13 That's what those bones are going to do. So he
14 testified he thinks it's more likely than that, to a
15 reasonable degree of certainty she's going to need
16 future surgery or a fusion.

17 So if you get back there and somebody says,
18 "that's not worth a Happy Meal every hour," talk about
19 it. Talk about it.

20 If you take those things and add them up, past
21 related medical bills, \$10 an hour for past and
22 present pain and suffering, mental anguish, loss of
23 enjoyment of life, disfigurement, on down, it's
24 \$2,458,075.47 cents for past and present. If you look
25 at the future at \$2 an hour, and add those two numbers

CLOSING ARGUMENT BY PLAINTIFF

1 together, you get \$5 million, 878,919.31.

2 If you think the future damages, the pain and
3 suffering which is going to get worse, the loss of
4 enjoyment of life, the fear of losing David and being
5 alone and having to live with this on her own is worth
6 \$5 an hour, then you're going to get \$11 million,
7 10,185.07.

8 And you don't have to find one of these numbers.
9 You can find less, you can find more. I use it to
10 demonstrate a point. I use this to demonstrate that
11 in this case, the pain, the anxiety, which you saw
12 some of, when she sat up here on this stand and had
13 the opportunity to testify to you, she looked at you
14 when she could, but the rest of the time she was
15 looking at the table, as we instructed her to do if
16 she felt herself get too emotional. She was getting
17 too emotional because this is her one day forever.
18 She doesn't get to come back, no matter what happens.
19 This is it.

20 And if you believe that God puts everyone
21 somewhere for a reason, which I do, then you were all
22 put here to decide what her being stripped of her
23 future retirement, what she planned to do, travel,
24 spend time with her grandkids, what that's worth.

25 And so at the end, you can get a verdict form. I

CLOSING ARGUMENT BY PLAINTIFF

1 don't believe in playing hide the ball, I like to show
2 you everything. So here's what it's going to look
3 like. It's going to look just like this.

4 And Madam Forelady is going to be the person
5 responsible for filling it out and actually writing it
6 in. But you all have to agree on the answers, talk
7 about them and agree to them.

8 The first question is: Was defendant, Antoine
9 Johnson, negligent, and has such negligence
10 proximately caused the plaintiff's injury? Obviously,
11 the answer to that is "yes."

12 Was plaintiff, Therese Hood, negligent? And that
13 such negligence proximately caused her injuries.
14 Answer to that, "no."

15 However, No. 3 is: If your answers to both
16 questions, No. 1 and No. 2 are "yes," if you answered
17 both yes, somehow they're both negligent of proximate
18 cause, then you would answer this question: Using the
19 combined negligence that proximately caused
20 plaintiff's injuries was one hundred percent, what
21 percentage of that negligence is attributable to
22 defendant Johnson, and what percentage is attributable
23 to plaintiff Hood? And, of course, the percentage
24 must add up to 100.

25 And in that instance, if you found that Ms. Hood

CLOSING ARGUMENT BY PLAINTIFF

1 was negligent for some reason, not hitting the snooze
2 button, which wouldn't be a proper reason under the
3 law, or speeding, which we know didn't play a role in
4 the wreck because he broadsided her, you would assign
5 a percentage.

6 If plaintiff Hood's percentage of the combined
7 negligence was greater than 50 percent, you would
8 stop, because that would mean she would get nothing.
9 She would not recover anything for her injuries. That
10 would be like if someone goes out, jumps off a bridge,
11 they would be responsible. So, obviously, they can't
12 recover. It's their negligence. Obviously, that's
13 not the case here. She had the right-of-way, he hit
14 her.

15 If plaintiff Hood's percentage of the combined
16 negligence is greater than 50, than less, then you
17 would go on to the next. And this is damages.

18 Please state the total amount of damages, if any,
19 sustained by the plaintiff, Therese Hood. Do not
20 reduce the plaintiff's total damages based on the
21 percentage of negligence by any party.

22 What that basically means is that if you found
23 them both negligent for a percentage you wouldn't
24 reduce the damages by that amount. You'd still have
25 to award her the full amount of damages. Then the

CLOSING ARGUMENT BY PLAINTIFF

1 Judge goes back, based on that percentage, and reduces
2 the number. If you reduce it, it's going to get
3 actually reduced twice. So you just award the full
4 damages that you find.

5 After you've answered these questions and it
6 tells you that the Judge will compute the amount of
7 damages for which the defendant or plaintiff are
8 responsible, based on the percentage of the respective
9 party's negligence, she will decide the proximate
10 cause of the plaintiff's injuries. You are to
11 determine only the total amount of damages and enter
12 it below.

13 There's then a line for punitive damages. And
14 the Judge will talk to you about punitive damages.

15 Punitive damages have a different standard.
16 Punitive damages have to be proved by something called
17 clear and convincing evidence, which is not quite
18 beyond a reasonable doubt, but just a criminal
19 standard. A little bit lower, but a little bit higher
20 than civil. Has to be clear and convincing evidence.

21 She's going to tell you that punitive damages can
22 be awarded if someone broke a statute, that they
23 violated a law that is to protect the State against
24 the public. And punitive damages are out there as a
25 message to the community. Punitive damage award is

CLOSING ARGUMENT BY PLAINTIFF

1 awarded, it tells the community that in this
2 community, if you break the law and injure somebody,
3 not only are we going to compensate that person, but
4 there's going to be punishment civilly associated with
5 it. That's why it's a little higher standard, which
6 she'll talk to you about.

7 You, Madam Forelady, will then certify that this
8 is the unanimous decision of the jury, signing here,
9 dating there, and, of course, notifying the bailiff.

10 I'm going to sit down, and Mr. Daniel's going to
11 get up here. And we've talked about every item in the
12 kitchen sink that has been turned so far. But I have
13 no control over what he's going to say.

14 No matter what he says, I want you to remember
15 six questions. If he talks about headlights and
16 darkness, when does he contend the sunset was? We
17 know sunset was at 5:59 at this particular
18 intersection. And we know that it was at 5:58
19 generally. If he has another time, listen to when he
20 says it is.

21 When does he contend the wreck occurred? Is he
22 willing to argue to you against the clear letter of
23 the law that Ms. Hood was required to have her
24 headlights on at the time of this wreck?

25 Listen to see if he tells you what the text from

CLOSING ARGUMENT BY PLAINTIFF

1 Mr. Johnson's girlfriend said anyway.

2 And, finally, he's going to attack these numbers
3 or arrange a suggestion. But remember the kitchen
4 sink approach. Listen to see how much does he think
5 is appropriate for them to compensate Ms. Hood for the
6 lifelong injuries that she sustained in this wreck.
7 Does he give you an alternative? Don't let him just
8 attack, listen to see if he gives you a plausible
9 explanation. I bet he won't.

10 It's like that old story about when the cookie
11 goes missing from the cookie jar, and they ask the
12 kid, "did you take the cookie?" The kid doesn't say
13 yes, the kid doesn't say no, because he knows better
14 than to lie. So he just keeps talking. And the more
15 he talks, the more you'll know the truth.

16 Ladies and gentlemen, you know the truth of what
17 happened in this case. And you know -- you know how
18 badly that woman was injured. Please do her justice.
19 Thank you.

20 THE COURT: Whenever you are ready, sir.

21 CLOSING ARGUMENT BY DEFENDANT

22 MR. DANIEL: Your Honor, may it please the
23 Court.

24 Ladies and gentlemen, this ain't about kids and
25 it ain't about cookie jars. Everybody -- everybody in

CLOSING ARGUMENT BY DEFENDANT

1 this country has the right to a defense.

2 At the beginning of this closing, which was
3 pretty lengthy, there was something about a thousand
4 days. I just want to make it clear, if anybody in
5 this country has been sued and accused of doing
6 something wrong in court, whether criminal or civil,
7 they have a right to challenge those allegations. And
8 that's what Antoine Johnson's done. He didn't do
9 anything wrong, and he has every right to a trial. He
10 doesn't have to apologize for that. And, hopefully, I
11 think you would agree that I don't have to apologize
12 for that.

13 I've tried to be as brief as I can through the
14 course of this week. I know there's a storm coming,
15 and I know that everybody has families and their own
16 life going on. I appreciate your patience.

17 I do have to cover topics. There's been starts
18 and stops, and I apologize for that, but you can't
19 hold that against Antoine Johnson because just like
20 anybody, regardless of whether they're Catholic,
21 whatever their creed may be, he has a right to a
22 defense.

23 And I don't know about kids and cookie jars, we
24 saw some numbers up there, but this is a serious case.
25 We're not hiding from that. He just threw up numbers

CLOSING ARGUMENT BY DEFENDANT

1 like \$11 million, \$2 million, and let's get one other
2 thing clear. They have the burden of proof. You
3 don't get to damages unless you decide Antoine Johnson
4 was more than 50 percent -- well, 50 percent or more
5 at fault in this case. He doesn't have the burden of
6 proof. He didn't have to prove anything this week.
7 But he got up there on the stand, and he told you what
8 happened. He told you what he did. And a lot of
9 other people got up on the stand and they told you
10 what they saw.

11 And if I misstate facts, you're the judge of the
12 facts. You heard the evidence. I'm going to do my
13 best right now to remind you of some things that we
14 heard. If I'm inaccurate, y'all deliberate, and you
15 decide what the evidence was. But I'm just going to
16 go through some things and hit some highlights for
17 you.

18 First of all, before we get to that, but I want
19 to talk about the law. Your Honor, again, said in
20 openings, she is the authority and expert on the law.
21 She will charge you on things like speeding, things
22 like the right-of-way, things like when you need to
23 have your headlights on.

24 And Antoine Johnson's position, our position, the
25 defendant's position in this case that speed was a

CLOSING ARGUMENT BY DEFENDANT

1 primary cause of Mrs. Hood's injuries, and that the
2 fact that she didn't have her headlights on was also
3 the real reason why this whole accident and sequence
4 of two impacts happened in the first place.

5 You heard from Dustin Lee, and Dustin Lee said
6 that he was driving on 278 headed towards -- he was
7 headed in this direction. He got to Southwood Park
8 Drive right here. That's where Antoine Johnson, and
9 we had those diagrams with the H and K, all of those
10 letters. J was for Johnson, H was for Hood. She was
11 this way. And Dustin Lee, he's back here. This is
12 not some static thing. Traffic is a fluid situation.

13 He's back here on William Hilton Parkway, 278,
14 when he first sees the car behind him -- not far
15 behind him, but behind him, and there's no headlights
16 on. He notices that because it's dark. At some point
17 someone asked him the question, I don't remember
18 whether it was Ms. Suttie or whether it was Mr.
19 Willey, but that he got to the point, "well, how dark
20 was it?"

21 "It was 90 percent dark."

22 The plaintiff on the stand said 80 percent.
23 We've heard from -- I mean, it's been redundant, but
24 you need to hear what all the witnesses out there saw.
25 I think that everybody's in collective agreement, it

CLOSING ARGUMENT BY DEFENDANT

1 was pretty well dark out.

2 So you've got a vehicle driven by a plaintiff,
3 Mrs. Hood, with no lights on, coming in this
4 direction. You got these tall trees up here. And
5 whether it's one minute, two minutes, three minutes
6 before sunset, driving conditions -- and you'll hear
7 from the judge, environmental conditions is a
8 phrase -- driving conditions are difficult because
9 it's getting dark. It's really dark.

10 And what the law actually says is, you have a
11 duty to turn your headlights on when environmental
12 conditions significantly reduce your ability to see
13 people in the road, other cars in the road, or vice
14 versa. If it significantly reduces people in the road
15 or other drivers, with their ability to see you.

16 There was a lot of talk about Antoine Johnson.
17 But no one -- I didn't see Mr. Willey really walk you
18 through the scenario. But he's on this street, at a
19 stop sign, turning left. No one said he wasn't
20 stopped. He stopped, checked once, there's a car goes
21 by, he checks again. It's dark out. We know there's
22 a vehicle coming without its headlights on. You've
23 got to ask yourself would an ordinary driver see that
24 vehicle? Would an ordinary driver see that vehicle?

25 Their expert, being paid \$290 an hour, said she

CLOSING ARGUMENT BY DEFENDANT

1 didn't consider speed. She admitted speed can be a
2 factor in an accident, and why is that? Because we
3 all know that the faster you go in a given period of
4 time, one second, two seconds, the more ground you
5 cover. You're going to go a lot farther when you're
6 traveling at 60 miles an hour versus 30 in one second,
7 two seconds --

8 MR. WILLEY: Your Honor, I just want to
9 the preserve my objection for the record that
10 that's a misstatement of the law as it applies
11 to this case. She was broadsided hit.

12 THE COURT: Noted for the record. Thank
13 you.

14 MR. DANIEL: We all know that speed can be
15 a factor in an accident. And the reason why
16 it's a major factor here is, if you've got a
17 vehicle coming down the road -- and they don't
18 want to show you how dark it was, we don't have
19 any pictures of that -- but if you've got a
20 vehicle coming down the road and that vehicle
21 is going, say, 60 miles an hour, versus 40 or
22 45, two seconds before Antoine Johnson starts
23 to pull into this roadway at 60, she's going to
24 be a lot farther back. A lot farther back, and
25 there's a bend way back here. You heard the

CLOSING ARGUMENT BY DEFENDANT

1 officer testify about that.

2 There are these trees up here, the sun's going
3 down, and her car, she doesn't even say that her car
4 has any lights on. She doesn't contest that. Says,
5 "if people say I didn't have my headlights on, I
6 didn't have them on." That's what -- that's what she
7 said here today, and she didn't say that in her
8 deposition. She said she had her headlights on.
9 She's now changed her story on that.

10 And when Antoine Johnson was deposed, she was
11 maintaining the position that she had her headlights
12 on. Why is that?

13 You heard the expert, the human factors expert,
14 testify about an engineer that pulled a computer chip
15 from Mrs. Hood's vehicle, and that computer chip said
16 that she was either going 62 or 63 miles an hour. You
17 heard the officer say that the posted speed limit on
18 that road is 45 miles an hour.

19 So if that computer chip is right, we haven't
20 heard anybody dispute that it's wrong --

21 MR. WILLEY: Your Honor, I object. The
22 computer chip is not in evidence. He's the
23 only one that talked about it.

24 THE COURT: Move on.

25 MR. WILLEY: I move to strike that

CLOSING ARGUMENT BY DEFENDANT

1 sentence about it.

2 THE COURT: Okay. There was a discussion
3 about it in trial. You can continue.

4 MR. DANIEL: If her speed was 62 miles an
5 hour, if it was 60 miles an hours, she was
6 going 14, 15 -- 17 miles an hour over the
7 posted speed limit. The officer told you that
8 the speed limit on that road is 45. And
9 there's going to be an instruction about speed.

10 Speed affects your ability to maintain control of
11 your vehicle. Speed affects your ability to stop, to
12 avoid someone who can't see you because it's dark and
13 you don't have your headlights on. Speed causes --
14 and there was a demonstrative exhibit that shows you,
15 it's not in evidence, there's a smaller version that
16 are in evidence.

17 Are you able to see it? Speed causes things like
18 this.

19 No one said Antoine Johnson was speeding. He was
20 just trying to get through that median, and you've
21 seen the pictures of the side of her vehicle. You've
22 seen the pictures of the side of her vehicle, and
23 you've heard what the officer said, that impact was
24 minor. The injuries that Mrs. Hood sustained were due
25 to her speed, due to her not having her lights on, and

CLOSING ARGUMENT BY DEFENDANT

1 due to her not being able to stop in time, and due to
2 her actions, not having her lights on, speeding.
3 Antoine, when checked, like any reasonable driver with
4 normal sight couldn't see her.

5 Now, their expert said a lot of things, but she
6 wanted you to make assumptions. She wanted you to
7 make assumptions about the visibility at that
8 intersection. I asked her -- she actually has a Chevy
9 Equinox, the same type of car as the plaintiff. I
10 said, have you even been out there when it's 20
11 minutes before -- or 20 minutes after, excuse me --
12 sunset that day. What we do know is actual sunset was
13 at 5:20 -- or 5:28 or 5:29. Thirty minutes after
14 sunset, I don't dispute what they say was either 5:59
15 or 5:58. It doesn't matter, it's about how dark it
16 was.

17 They're the ones -- plaintiff is the one with the
18 burden of proof. The Plaintiffs, Mr. Willey, Mr.
19 Smith, plaintiff's counsel, they're the ones who are
20 supposed to prove the case to you.

21 Has anyone shown you how dark that intersection
22 can be 20 minutes, 25 minutes after sunset?

23 Antoine Johnson has every right to challenge the
24 allegations in the case. He's been honest with you.
25 He's a young man, he texts a lot. He was on the

CLOSING ARGUMENT BY DEFENDANT

1 phone, he hadn't -- said he had downtime during that
2 day. There's no one that's been here to challenge
3 that. They're asking you to assume that he was on the
4 phone at 5:57 -- their exhibit, Plaintiff's 7 -- at
5 5:57 and 43 seconds, when cell phone records say an
6 inbound text came in.

7 Now, they're the ones that subpoenaed the
8 records. They could get text messages. It's not
9 Antoine Johnson's fault that they don't have whatever
10 the substantive message is. But even -- even if they
11 did, this record doesn't show you anything other than
12 that a text came in at that time. Their own expert
13 said, yeah, I don't -- that doesn't tell me that he
14 was reading a text. That doesn't tell me that he was
15 sending a text. That doesn't tell me that he was on
16 the phone.

17 What we do know is he was up front with you. The
18 first thing he did after the accident was call his
19 mom, and that was at 1808. Or 1808, which is 6
20 o'clock, which is military time. It's 6 o'clock at
21 night. So if he did that a minute later, then maybe
22 it is 5:59 or 5:58 when the accident happened, which
23 would be 30 minutes after sunset, which would mean
24 Mrs. Hood was actually, per se, violating the
25 headlight law. That's for you to decide.

CLOSING ARGUMENT BY DEFENDANT

1 But your common sense tells you that it was dark
2 out there, based on what all the witnesses say.
3 Common sense tells you that she was speeding, based on
4 the damage, and based on what we heard about her
5 potential speed. And all I'm asking, and all
6 Antoine's asking is for you to use your common sense.

7 And, you know, I did ask Mrs. Hood some questions
8 about her health. And don't hold that against
9 Antoine. I'm doing my job. Because what she was like
10 before the accident versus after, that does matter.

11 There's a record that she had blurred vision and
12 she was complaining of blurred vision that day.
13 That's something I think you should consider. She
14 admitted that she had had falls before this accident.
15 That's unfortunate, I'm not trying to beat up on her.
16 But she had Parkinson's before this accident, and
17 that's something you can consider for the purposes of
18 what kind of condition she was in on the day she was
19 driving. That's only fair to the defendant. We're
20 not asking you to do more than be fair.

21 It's okay. It's okay to feel sorry for her.
22 There's nothing wrong with that, but what's not okay,
23 what's not okay is to render a judgment against the
24 defendant here if you don't think he's the primary
25 reason why the accident happened.

CLOSING ARGUMENT BY DEFENDANT

1 Cary Tanrath, he said he didn't see headlights on
2 that one corner. Seemed like a credible guy,
3 military, very precise. He told you he's got to be
4 out of there off Hilton Head Island when he was
5 working there by 5:30 because it gets dark. He said
6 it was dark at the time of the accident.

7 But what they haven't explained and what they
8 haven't clarified, I'm trying to be brief, hope you
9 heard it, at least I can stress the point now, he had
10 his headlights on, Mrs. Kuck, who was in the vehicle
11 ahead, she said, "my husband had his headlights on."

12 Well, their headlights were shining directly at
13 Mrs. Hood's vehicle, that H vehicle, as it's coming
14 down the road directly at them. Antoine Johnson
15 didn't have that benefit, because Antoine Johnson is
16 turning left. Antoine Johnson has his headlights
17 looking at that median. And once he looks and it's
18 clear, you heard the officer say, if somebody with
19 ordinary sight looks and sees it's clear at a stop
20 sign, yeah, at that intersection, they can make a
21 left. You can't put more on him than what is required
22 under the law. It's about what a reasonable driver
23 would do under the circumstances.

24 And there's just not enough proof here about this
25 lady's visibility in the road, how conspicuous that

CLOSING ARGUMENT BY DEFENDANT

1 were -- how visible her vehicle was at the time. The
2 credible evidence and what all of these people have
3 said, strongly suggests it wasn't visible. It was an
4 issue, all of these people felt it was an issue,
5 that's why they told the police about it. That's why
6 Dustin Lee called 911. That's why Cary Tanrath stayed
7 behind and told the police officers about the fact
8 that that vehicle that came across the highway didn't
9 have its lights on.

10 Cary Tanrath doesn't -- didn't know Antoine
11 Johnson. He's got nothing to gain by being here. He
12 wasn't being paid \$290 an hour to testify.

13 Dustin Lee, same thing. Never met Antoine
14 Johnson, didn't see him at the -- never met him at the
15 scene, hasn't met him or ever talked to him after the
16 accident. Nothing to gain by being here and
17 testifying.

18 You get to judge witness credibility, and Your
19 Honor is going to instruct you about experts. And
20 she's going to tell you that you can consider expert
21 testimony just like eyewitness testimony. You don't
22 have to give it any more emphasis or weight. It's
23 about what you decide, and what you believe is true,
24 and what most likely happened.

25 Now, it is -- it is a tough situation here

CLOSING ARGUMENT BY DEFENDANT

1 because it's okay to feel sorry for Mrs. Hood, but
2 you've got to do something as a jury sometimes when
3 you have cases with tough facts. You can't let your
4 sympathy outweigh what's right or wrong under the law.
5 Your Honor is going to instruct you that you cannot
6 render a verdict based on sympathy, and that's your
7 obligation.

8 You have to decide the case based on facts.
9 Credible evidence and facts in this case show that it
10 was actually flight of speed, whether she was going
11 52, 62 -- we know Dustin Lee said he was going 49, and
12 she passed by him. So she's going over the speed
13 limit. So speed, plus the fact that she doesn't have
14 her lights on, that's why this young man here couldn't
15 see her when he went to turn left.

16 Ladies and gentlemen, I said I would be brief.
17 And I just submit to you the credible evidence and the
18 right verdict in this case is one for the defendant.

19 Now, they showed you the verdict form, and I want
20 you to realize that even if you decide that Antoine
21 bears some responsibility, you cannot render damages
22 against the defendant if his share of the
23 responsibility is 49 percent, 48, lower than that.
24 The credible evidence is even if he shares a little
25 bit, if it's a small percentage like that, you can't

CLOSING ARGUMENT BY DEFENDANT

1 render a judgment against the defendant. And I submit
2 to you that the credible evidence shows that an
3 ordinary person at that intersection, looking left at
4 that time of the evening wouldn't see a vehicle from
5 that far back coming that fast without its headlights
6 on.

7 Thank you. I appreciate your patience, and I
8 hope everybody gets home safe.

9 FURTHER CLOSING ARGUMENT BY PLAINTIFF

10 MR. WILLEY: Now, she's lying. That's
11 what he just said.

12 Now she is a liar because in her deposition she
13 told me she thought her headlights were on. Today she
14 said she wasn't going to disagree with people if they
15 said they were off. She told you quite clearly her
16 headlights are always on automatic. She never
17 switches them off automatic. She could see fine. She
18 couldn't see her headlights, obviously, she was in the
19 car.

20 The statute on headlights is important. Half an
21 hour after sunset, and we've talked a lot about that,
22 I'm not going to talk about it again. But you will
23 remember, with the expert, we specifically talked
24 about those environmental factors. With the cop we
25 specifically talked about those environmental factors

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 that are covered in the statute. And those
2 environmental factors are fog, snow, rain, smoke,
3 maybe an eclipse. Maybe we add Irma to the bottom of
4 that, although that would probably fall under rain.
5 None of those things were present here.

6 The only question as to headlight usage is: Did
7 this wreck occur less than 30 minutes after sunset?

8 I told you to listen very closely for six things,
9 because a lot would be thrown up. When does he
10 contend sunset was? Okay. You know, in that
11 particular spot, 5:29, which would make 30 minutes
12 later 5:59, which is after the 911 call.

13 When does he contend the wreck occurred? Won't
14 tell you. Didn't tell you. Won't tell you because if
15 you look at those cell phone records, whether it
16 happened before or after he was on the phone. If it
17 happened after, he was making a call because that was
18 to his mom. I mean, two minutes later.

19 Is he willing to argue that she was required to
20 have her headlights on? He said because of the
21 environmental factors. The environmental factors
22 didn't exist in this case. According to everybody who
23 testified, none of these things occurred.

24 And if so, does he explain Mr. Johnson's failure
25 to see Mr. Lee's car with the Xenon headlights on? He

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 didn't even mention Mr. Lee.

2 Remember, Mr. Lee -- Ms. Hood -- in this lane
3 Mr. Lee is back here with his Xenon headlights on,
4 shining on her car, by the way. He's behind her. He
5 can see her, he can see Mr. Johnson. Mr. Johnson says
6 he can't see him. Headlights don't matter anyway.

7 Everybody that's testified has testified they
8 could see cars with or without their headlights on.
9 Everybody. Even Mr. Tanrath.

10 Still didn't tell us what the text said. He
11 didn't give us an alternate number.

12 Now, ladies and gentlemen, I don't usually tell a
13 story at the end, but she's not a liar. Okay. Said
14 she's old, she fell down before in her life. Well,
15 everybody's fallen down. The question is: Every time
16 you take a step on your right foot, do you feel like
17 you're going to fall down? She does, because of this
18 wreck.

19 My father died earlier this year. And I'm Roy
20 Thomas Willey, the fourth. He was Roy Thomas Willey,
21 the third, and we called him "Tom", and I didn't have
22 a great relationship with him. My parents divorced
23 when I was young, Mom remarried, and I was pretty much
24 raised by them.

25 But my dad was one of those people who always

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 knew exactly the right thing to say. When you were
2 having the worst day, you could call him, he would
3 tell you what to think. He would tell you whatever it
4 took to make you feel better. If he thought you were
5 getting a little too high on your horse, he'd knock
6 you down with just the right comment.

7 So yesterday, I said, it's like a rat giving
8 birth to an elephant, it's painful to watch. You
9 laughed. I haven't heard that in a while. My dad
10 said that. That's where I got that.

11 But often before closing arguments, when I know
12 that the case is important to my client, I would call
13 my dad and I'd say, "Dad, here's the case, what should
14 I tell these jurors?"

15 Can't do that. But I did ask him last night --
16 and you know how sometimes you feel like somebody is
17 giving you a sign, that God's giving you a sign? I
18 usually don't talk about religion in closing
19 arguments, because I know not everybody is Christian
20 or religious. They're good stories, good lessons to
21 live by. And I'm not a perfect Christian, I try to
22 read a little bit of scripture everyday, but don't
23 always get to it, particularly in days of trial.

24 Last night I asked him, "What should I tell this
25 jury?" And this morning when I went out to the

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 driveway, I found three nails. He was Roy Thomas
2 Willey, the third. And I took the first nail, I threw
3 it onto the house. Took the second nail, threw it
4 onto the house. When I found the third nail, I said,
5 you know, the thought occurred to me to hold onto
6 that. So I did, and I carried it in my pocket all
7 day.

8 And when I got here this morning, I always -- if
9 you look at the sign-in sheet, I always get here
10 early, because I like to see the courtroom with nobody
11 in it. Because things get tense throughout the day.
12 I like to have a minute to reflect.

13 And when I got here this morning, I saw this
14 Bible up here that everybody swore on all week, all
15 the witnesses who said they could see her and
16 everything else, and I realized I hadn't read my
17 scripture this morning. And so I came up here and I
18 opened it. And it went to the book of John, Chapter
19 20. And about that time, Ms. Mona walked in, she's
20 the court reporter, she was the next person here. And
21 I read the rest of that book, and that's the book
22 about doubting Thomas.

23 For those of you that have had time to read
24 scripture, you'll remember that when they had Jesus in
25 the tomb and he rose, it was the women who went to the

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 tomb and first discovered he wasn't there. And the
2 women came back and told the disciples, "Jesus has
3 risen."

4 And back then, women were considered lower in
5 society. And so the disciples said, "I got to
6 verify." So they went and looked, and they found his
7 linen. Thomas didn't go. It was the disciples. They
8 came back and they told Thomas, they said, "Thomas,
9 the Lord has risen. The Lord has risen."

10 And Thomas said, "I will not believe it until I
11 can feel the holes in his hands and I can touch his
12 side."

13 And Jesus came later, and he went up to Thomas
14 and he said, "Thomas, feel the holes in my hands
15 caused by those nails, touch my side."

16 And Thomas said, "My Lord and my God. I
17 believe."

18 Now, at the start of the trial this week, you
19 heard opening statements, some of you were like those
20 women that first discovered and believed. Some of you
21 are like those disciples that came along later, after
22 you saw more of the evidence. And I think when I
23 found these nails this morning and opened that Bible,
24 I think my daddy was reminding me that some of you
25 would be like Thomas. And we would have to show you.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 And we did show you.

2 So my challenge to you is that when you come back
3 out through that door, Thomas was the first person in
4 the Bible to say that Jesus Christ is not only Lord,
5 but he's God. Doubting Thomas was the first one to
6 claim that when he believed.

7 And I hope that you were Thomas at the beginning
8 of this week. When you come out, you will tell this
9 community the truth. You can tell Ms. Hood that her
10 life, this woman's life, is worth something. Please
11 do that.

12 THE COURT: All right. Ladies and
13 gentlemen, as I told you, I'm going to give you
14 just a brief break to go refresh yourselves.
15 My charge takes about 20 minutes.

16 And I can tell you that it's hard to listen after
17 you've been talked to for a while, so go back there,
18 Madam Foreperson, and when y'all are ready to come
19 back out, knock on the door. Grab a drink of water,
20 and we'll bring y'all right back out. Okay?

21 Do not discuss the case yet. You haven't heard
22 my charge. Okay?

23 (Jury exits the courtroom.)

24 THE COURT: All right. I'm just going to
25 wait for a couple minutes for them to come

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 back. I just want to give them a break. Okay?

2 All right. Be back in five minutes.

3 (Brief recess.)

4 THE COURT: We're going to bring the jury
5 out. You all may be seated.

6 (The jury enters the courtroom.)

7 JURY CHARGE

8 THE COURT: Madam Foreperson, members of
9 the jury. You've heard the argument and the
10 evidence in this case. I'm now going to
11 explain to you the law that applies to this
12 case.

13 The plaintiff has claimed she was injured or
14 damaged by the actions of the defendant. In bringing
15 this lawsuit, the plaintiff claims the defendant
16 should compensate her for her injuries, or damages.

17 Now, under our constitution and code of laws,
18 only you, the jury, can make the findings of fact in
19 this case. I'm not permitted to tell you how I feel
20 about the evidence which has been presented. And
21 throughout this trial, I have attempted to be fair and
22 impartial to both sides.

23 Ladies and gentlemen, to the tone of this
24 accident in the case, you will have to evaluate the
25 credibility or believability of the witnesses.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 I've already discussed with you some of the
2 things that you may consider as you decide whether or
3 not to believe a witness' testimony about a particular
4 matter. You can believe as much or as little of each
5 witness' testimony as you think proper.

6 You may believe the testimony of a single witness
7 against that of many witnesses, or just the opposite.
8 You may believe a part of a witness' testimony and
9 disbelieve the rest. You should not determine the
10 truth merely by counting the number of witnesses
11 presented by each side.

12 And throughout this trial, you had but one
13 objective, and that is to seek the truth regardless of
14 its source.

15 Now, in a trial, evidence may be either direct or
16 circumstantial. Direct evidence is testimony by a
17 witness about what the witness personally saw, heard,
18 or did. Circumstantial evidence is indirect evidence.
19 That is, it is proof of one or more facts in which one
20 can find another fact.

21 You are to consider both direct and
22 circumstantial evidence. The law permits you to give
23 equal weight to both. But, again, it's for you to
24 decide how much weight to give any evidence.

25 Now, the standard role in constitution, which

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 makes you the jury, the finders of fact, making me the
2 judge of the law. You must accept the law as I give
3 it to you. If I'm wrong, there's another place and
4 time for that error to be considered, and if
5 necessary, corrected.

6 But for now, you must accept the law as I give it
7 to you. This means that you should not be concerned
8 what you think the law should be, but only with what I
9 charge you the law is.

10 Now, the plaintiff in this case has the burden of
11 proving her claim. Now, the burden of proof in this
12 case is by what we call a preponderance of the
13 evidence.

14 A preponderance of the evidence simply means the
15 greater weight of the evidence, which as a whole shows
16 that the facts sought to be proven is more likely true
17 than not true.

18 This can be illustrated by an imaginative set of
19 scales. When a case begins, the scales are even. And
20 after all the evidence has been presented, if the
21 scales should remain even, or if they should tip even
22 slightly in favor of the defendant, then the plaintiff
23 will have failed to meet her burden of proof and would
24 not be entitled to recover in the case, and your
25 verdict would be for the defendant.

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1 If, on the other hand, those scales tip even
2 slightly in favor of the plaintiff, then she will have
3 met her burden of proof and you should return a
4 verdict for the plaintiff.

5 Now, ladies and gentlemen, normally a person
6 cannot give opinion testimony. Normally when a person
7 testifies, they must testify as to what they either
8 saw, heard, or sensed by smell or something of that
9 nature.

10 However, there is an exception when someone
11 qualifies with education or experience as an expert in
12 some area. These expert witnesses are permitted to
13 give their opinions in certain areas, if the Court
14 qualifies them as such.

15 Ladies and gentlemen, this does not mean you have
16 to accept their opinion. Again, it is just evidence
17 that you can use in any way you feel appropriate, and
18 as compared to other evidence in the case.

19 Now, ladies and gentlemen, in this case testimony
20 was presented to you by way of a video deposition. A
21 deposition is a recording containing sworn testimony
22 that's given by a witness outside of court in the
23 presence of lawyers for each party who may ask
24 questions of the witness.

25 This testimony is entitled to the same

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 consideration and is to be judged as to credibility
2 and weighed by you in the same way as if that witness
3 were present and gave that testimony to you right from
4 the witness stand.

5 I remind you that it is for you to determine the
6 effect, the value, the weight, and the truth of the
7 testimony that's given in a deposition.

8 Now, the plaintiff, Ms. Hood, claims defendant
9 was negligent, and that the defendant should
10 compensate her for the injuries she suffered as a
11 result of the defendant's negligence.

12 Now, in order to prove that the defendant was
13 negligent, the plaintiff must prove by a preponderance
14 or greater weight of the evidence four things.

15 First, the plaintiff must prove by preponderance
16 or greater weight of the evidence the defendant owes
17 the plaintiff a duty of care.

18 A duty of care is a legal obligation which is
19 imposed on an individual requiring adherence to a
20 standard of reasonable care of performing any act that
21 could foreseeably harm others. A person cannot breach
22 a duty when they are in compliance with the law. And
23 the court cannot require a person to do more than what
24 the law requires.

25 Now, next, the plaintiff must prove by a

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1 preponderance or greater weight of the evidence the
2 defendant breached that duty by a negligent act or
3 omission.

4 Negligence means that a person has done something
5 that a reasonable person would not have done, or
6 failed to do something that a reasonable person would
7 have done in the same situation.

8 Third, the plaintiff must also prove by a
9 preponderance or greater weight of the evidence that
10 she suffered damages as a result of the defendant's
11 breach of duty.

12 And, finally, the plaintiff must prove by a
13 preponderance or greater weight of the evidence that
14 the damages were proximately caused by defendant's
15 breach of duty.

16 Proximate cause is something that produces a
17 natural chain of events, which in the end brings about
18 the injury. It's the direct cause of the injury. To
19 prove defendant's negligence proximately caused the
20 plaintiff's injuries, the plaintiff must prove
21 causation in fact. This is proven by showing the
22 injury would not have occurred but for the defendant's
23 negligence.

24 The plaintiff must also prove legal cause. Legal
25 cause is proven by showing the injury was foreseeable.

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1 They do not have to prove that the particular injury
2 that occurred was foreseeable.

3 However, the defendant cannot be held responsible
4 for things which cannot be expected to happen. And
5 proximate cause does not mean the only cause. The
6 defendant's act can be a proximate cause of the
7 plaintiff's injuries if it was at least one of the
8 direct concurring causes of the injury.

9 Now, in this case, the defendant claims that the
10 plaintiff's own negligence proximately caused her
11 injury. If you find that the defendant was negligent
12 in this case, you must then find whether the plaintiff
13 was also negligent.

14 The defendant must prove by a preponderance or
15 greater weight of the evidence that the plaintiff
16 breached the duty of care which proximately caused her
17 injury.

18 Now, the same law, which I told you you'd use in
19 deciding whether the defendant was negligent should be
20 used in deciding whether the plaintiff was negligent.
21 If you find the negligence of both the plaintiff and
22 the defendant proximately caused the plaintiff's
23 injuries, you must then decide how much the negligence
24 of the plaintiff contributed to the plaintiff's
25 injuries and how much the defendant's negligence

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1 contributed to the plaintiff's injuries.

2 In deciding the percentages of negligence of the
3 plaintiff and the defendant, you may consider, among
4 other things, the following factors: Whether each
5 party's conduct was only inadvertent, or whether it
6 was engaged in with an awareness of the danger
7 involved.

8 The magnitude of the risk created by each party's
9 conduct, including the number of persons endangered in
10 the possible -- excuse me, and the possible severity
11 of the injury. The significance of the goal that each
12 party was trying to reach and the need to achieve the
13 goals in that manner.

14 Each party's capabilities and abilities to
15 realize and eliminate the risk involved.

16 Now, particular circumstances confronting each
17 party at the time the conduct occurred, such as the
18 existence of an emergency requiring a quick decision.
19 The relative closeness of the causal relationship of
20 the negligent conduct of the defendant and the harm to
21 the plaintiff. And whether the conduct of either
22 party involved a violation of a safety statute or
23 regulation.

24 Now, I charge you that it is the law of this
25 state that the driver of a vehicle about to enter or

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1 cross a roadway from any place other than another
2 roadway, shall yield the right-of-way to all vehicles
3 approaching on the roadway to be entered or crossed.

4 It is also the law of this state that every
5 driver of a vehicle approaching a stop sign shall stop
6 at a clearly marked stop line. But if there is none,
7 before entering the crosswalk on the near side of the
8 intersection, or if there is no crosswalk, then at a
9 point nearest the intersecting roadway where the
10 driver has a view of approaching traffic on the
11 intersecting road before entering it.

12 After coming to a stop, the driver shall yield
13 the right-of-way to any vehicle in the intersection or
14 approaching on another roadway so closely as to
15 constitute an immediate hazard during the time when
16 such driver is moving across or within the
17 intersection or junction of a roadway.

18 Now, it is also the law of this state that the
19 operator of the motor vehicle is required to use the
20 same care that would be used by a person of ordinary
21 reason and prudence, if that person were driving the
22 same vehicle at the same time and place and under the
23 same circumstances.

24 It is also the law of this state that the driver
25 of an automobile had a duty to keep a proper lookout

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1 for other vehicles on the road. This duty requires
2 the driver to watch attentively so that the driver
3 will be able to see a person or object on the highway.

4 It is also the law of this state that the driver
5 of an automobile also has a duty to keep the
6 automobile under proper control so that the driver is
7 able to slow down, stop, or turn the automobile to
8 avoid colliding with other vehicles, pedestrians, and
9 objects lawfully on the road.

10 It is also the law of this state that it is
11 unlawful for a person to use a wireless, electronic
12 communication device to compose, send, or read a text
13 -- excuse me, a text-based communication while
14 operating a motor vehicle on the public streets and
15 highways of this state.

16 It is also the law of this state that every
17 vehicle upon the street or highway within this state
18 shall display lighted lamps and illuminating devices,
19 excluding parking lights, from a half hour after
20 sunset to a half hour before sunrise. Or when
21 inclement weather or environmental factors severely
22 reduce the ability to clearly discern persons and
23 vehicles on the street or highway at a distance of 500
24 feet ahead.

25 It is also the law of this state that a person

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1 shall not drive a vehicle on a highway at a speed
2 greater than is reasonable and prudent under the
3 conditions and having regard to actual and potential
4 hazards in existence.

5 Speed must be so controlled to avoid colliding
6 with a person, a vehicle, or other conveyance on or
7 entering the highway in compliance with legal
8 requirements and the duty of a person to use care.

9 The driver of a vehicle shall drive consistent
10 with the requirements of the Section above, at an
11 appropriate reduced speed when approaching and
12 crossing an intersection, or railway grade crossing,
13 when approaching and going around a curve, approaching
14 a hill crest, when traveling on a narrow bridge,
15 narrow or winding roadway, and when special hazard
16 exists with respect to pedestrians or other traffic,
17 or by reason of weather or highway conditions.

18 Now, I charge you that the failure to follow a
19 statutory rule is negligence as a matter of law. If
20 you find that a party failed to follow a statutory
21 rule, you must then decide if the failure proximately
22 caused the plaintiff's injury.

23 Now, ladies and gentlemen, if you decide that the
24 plaintiff is entitled to a verdict in this case, your
25 next step would be to decide how much money the

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1 defendant should be required to pay. And these are
2 what we call actual damages.

3 Actual damages are to compensate the plaintiff
4 for the plaintiff's injuries, or loss, and to put the
5 plaintiff in as near as possible the same position
6 that she was in before the accident occurred.

7 In other words, actual damages would be the
8 actual losses and expenses which the plaintiff has
9 suffered because of the defendant's negligence.

10 Now, ladies and gentlemen, the following are
11 actual damages for you to consider in this case:
12 Medical bills, pain and suffering, mental anguish,
13 loss of enjoyment of life, and permanent injury and
14 disfigurement.

15 Now, in personal injury actions, the general rule
16 is that the plaintiff may recover for the necessary
17 and reasonable expenses caused by the injury. This
18 doesn't mean necessarily incurred, for medicine,
19 medical services, treatment, and any other
20 out-of-pocket expenses.

21 If you determine from the evidence and the law,
22 as I've instructed you, that the plaintiff is entitled
23 to recover damages, including medical or other
24 healthcare costs, then the plaintiff can only recover
25 such sums as you, the jury, determine from the

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 evidence, being both reasonable and necessary.

2 And while the amount charged and incurred may be
3 considered by you, you're not bound by that amount.
4 You must find only such sums as is reasonable and
5 necessary.

6 Now, ladies and gentlemen, pain and suffering
7 compensates a plaintiff for physical discomfort and
8 emotional responses to sensations of pain caused by
9 the injury itself. And there is no definite standard
10 by which to compensate the plaintiff for pain and
11 suffering. You, the jury, have the authority to
12 determine the amount, if any, to be allowed for pain
13 and suffering, using calm and reasonable judgment to
14 ensure that the damages are just and reasonable in
15 light of the testimony and evidence presented in this
16 case.

17 Now, loss of enjoyment of life compensates a
18 plaintiff for limitations on a plaintiff's ability to
19 participate in and derive pleasure from the normal
20 activities of daily life.

21 Now, an injured party may also recover for mental
22 anguish brought about by bodily injuries and
23 suffering. Where a party's negligence is directly
24 responsible for physical injury to another, the
25 injured party may recover both for the actual physical

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 injury sustained and for the concomitant mental and
2 emotional suffering which is a natural consequence of
3 the wrongful act.

4 When connected with a physical injury, the term
5 "mental anguish" includes both the resulting mental
6 sensation of pain and also the accompanying feelings
7 of distress, fright, and anxiety. That is, mental
8 anguish covers not only the pain associated with the
9 injury, but also the mental reaction to that pain, and
10 to the possible consequences of the injury.

11 Ladies and gentlemen, mental anguish is more than
12 mere disappointment, anger, worry, resentment, or
13 embarrassment, although it may include all of these
14 things. And it includes mental sensation of pain
15 resulting in such emotion as grief, severe
16 disappointment, indignation, wounded pride, shame,
17 despair, and humiliation.

18 Now, ladies and gentlemen, a plaintiff is never
19 entitled to recover conjectural or speculative
20 damages. But if you find the plaintiff is entitled to
21 a verdict for actual damages, your verdict should
22 include an amount to cover any past, present, and
23 future damages which were proximately caused by the
24 defendant, and have been proven by a preponderance of
25 the evidence in this case.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 Again, actual damages may not be proven to a
2 mathematical certainty or be based on evidence of the
3 precise amount of damages the plaintiff has suffered.
4 Instead, the evidence must allow you to determine what
5 amount of damages including past, present, and future,
6 are fair, just, and reasonable.

7 Now, I remind you, ladies and gentlemen, that if
8 you do award future damages, you must reduce them to
9 present day value.

10 Ladies and gentlemen, if you find that the
11 plaintiff, Ms. Hood, was permanently injured as a
12 result of the defendant's actions, you must then
13 decide how, if at all, that injury will affect the
14 rest of Ms. Hood's life.

15 A person's life expectancy is determined by a
16 life expectancy table, which is a part of the laws in
17 this state. The life expectancy table is only an
18 estimate of the probable average remaining length of
19 the life of all persons in our state at a given age.

20 Now, in this case, the plaintiff is a 63-year-old
21 female with a life expectancy of 21.68 years. This
22 fact is to be considered by you along with any other
23 fact and circumstances in evidence bearing on the
24 plaintiff's life expectancy including occupation,
25 habits, and health at the time of the injury, when

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 deciding what amount of damages to be awarded to the
2 plaintiff.

3 Now, compensation received by an injured party
4 from a source wholly independent of the defendant will
5 not reduce the amount of damages owed by the
6 defendant. In other words, under the collateral
7 source rule, which is what we call it, if an injured
8 plaintiff receives compensation for their injuries
9 from a source wholly independent of the defendant,
10 that payment wouldn't be deducted from the damages
11 which they would otherwise collect from the defendant.
12 The only requirement for qualification of a collateral
13 source is that the source be wholly independent of the
14 wrongdoer. A defendant cannot take advantage of
15 payments or services rendered by a collateral source
16 for the plaintiff's benefit.

17 Ladies and gentlemen, in this case, the plaintiff
18 also seeks what are called punitive damages in
19 addition to actual damages. Punitive damages are
20 imposed as punishment. They're not intended to
21 compensate.

22 Punitive damages are allowed in the interest of
23 society as a warning and an example to deter a
24 wrongdoer and others from committing like offenses in
25 the future. Moreover, they serve to vindicate by

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 requiring the wrongdoer to pay money to the injured
2 party.

3 Ladies and gentlemen, punitive damages serve at
4 least three important purposes: Punishment of the
5 defendant's reckless, willful, wanton, or malicious
6 conduct; deterrence of similar future conduct by the
7 defendant or others; and compensation for the reckless
8 or willful invasion of the plaintiff's private rights.

9 What would justify an award of punitive damages?
10 First, ladies and gentlemen, you must realize that the
11 highest burden of proof known in civil law is required
12 to prove punitive damages. And that is what we call
13 by clear and convincing evidence.

14 Again, any civil action where punitive damages
15 are claimed, the claimant has the burden of proving
16 those damages by clear and convincing evidence. And
17 punitive damages can only be awarded where the
18 plaintiff proves by clear and convincing evidence that
19 the defendant's actions were willful, wanton,
20 malicious, or in reckless disregard of the plaintiff's
21 rights.

22 A conscious failure to exercise due care
23 constitutes willfulness. It is the present
24 consciousness of wrongdoing that justifies the
25 assessment of punitive damages against a wrongdoer.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 Punitive damages will be allowed even when the
2 defendant does not realize that they are invading a
3 plaintiff's rights, so long as the act is committed in
4 such a manner that a person of ordinary prudence would
5 conclude it was done in reckless disregard of the
6 rights of another.

7 The plaintiff cannot recover punitive damages
8 based on negligent conduct. I remind you again that
9 negligence is the doing of some act which a person of
10 ordinary prudence would not have done under similar
11 circumstances, or failure to do what a person of
12 ordinary prudence would have done under similar
13 circumstances.

14 Again, I remind you, to recover punitive damages,
15 the plaintiff must prove by clear and convincing
16 evidence that the defendant's actions were willful,
17 wanton, or reckless. And the words, "reckless,
18 willfulness, and wantonness" are synonymous. The
19 terms are used to describe the conscious failure to
20 exercise and observe reasonable or due care.

21 Again, so you understand, recklessness is
22 distinguished from negligence. It's different.
23 Again, negligence is failure by omission or commission
24 to exercise due care as a person of ordinary reason
25 and prudence would exercise in the same circumstances.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 Recklessness is a higher degree of culpability
2 and responsibility. Recklessness signifies a
3 conscious failure to exercise due care. Recklessness
4 is a conscious indifference to the rights of a
5 plaintiff or a reckless disregard of the rights of a
6 plaintiff. Recklessness is an awareness of the
7 wrongful conduct and a continuation to act regardless
8 of consequences.

9 Ladies and gentlemen, before you can consider
10 punitive damages, you must first find the plaintiff
11 entitled to actual damages in this case. There must
12 be an award of actual damages for a verdict of
13 punitive damages to be considered and supported. This
14 rule is premised on the fact that liability must be
15 established before plaintiff can receive punitive
16 damages.

17 Therefore, I remind you, Madam Foreperson, if you
18 do not award actual damages in this case to the
19 plaintiff, you cannot consider an award of punitive
20 damages.

21 Now, there is no formula or standard that can be
22 used as a measure for assessing punitive damages.
23 However, factors relevant to your consideration of
24 punitive damages are: The character of the
25 defendant's acts; the nature and extent of the harm to

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 the plaintiff which the defendant caused or intended
2 to cause; the defendant's degree of culpability; the
3 punishment that should be imposed; the duration of the
4 conduct; the defendant's awareness or concealment; the
5 existence of similar past conduct; likelihood the
6 award will deter the defendant or others from like
7 conduct; whether the award is reasonably related to
8 the harm likely to result from such conduct; and the
9 defendant's wealth or ability to pay.

10 The financial condition of a defendant is a
11 factor you should consider in awarding punitive
12 damages. However, there is no requirement that the
13 defendant be a person of means before you are
14 justified in awarding punitive damages. And while the
15 wealth of the defendant is a relevant factor in
16 assessing punitive damages, it is not necessarily
17 controlling.

18 Now, the fact that a person is more susceptible
19 to injury or death because of pre-existing conditions
20 or weakness does not serve to excuse an otherwise
21 negligent defendant who has caused the injury or
22 allowed an injury to happen when there is a duty to
23 prevent it.

24 A negligent defendant takes a plaintiff as he
25 finds her, whether plaintiff be in perfect health, in

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 poor health, or somewhere in between. An injured
2 person is entitled to recover all damages caused by
3 the defendant's negligence. When a plaintiff's
4 pre-existing physical condition is aggravated or
5 activated by a subsequent act, the defendant is liable
6 to the extent that their wrongful act proximately and
7 naturally aggravated or activated the plaintiff's
8 pre-existing condition.

9 The plaintiff can recover her pre-existing
10 injuries only to the extent they were aggravated by
11 the defendant's actions. Any portion of the injury
12 which was not caused by an act or omission on the part
13 of the defendant is not compensable. You can award
14 damages for any aggravation of a pre-existing
15 condition, but not for the original condition or
16 injury itself.

17 If you find that a plaintiff received an injury
18 as a result of the negligence of the defendant, so
19 that they are entitled to recover for that injury, the
20 fact that a plaintiff had a pre-existing injury or
21 defect would not defeat their recovery.

22 It is the law of this state that when someone
23 negligently inflicts a personal injury on another,
24 they are responsible for all ill effects which,
25 considering the condition of health in which the

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 plaintiff was in when they received the injury
2 naturally and necessarily follows that injury.

3 Therefore, a defendant's liability is in no way
4 lessened or affected by reason of the fact that the
5 injury was not the resultant had the plaintiff been in
6 good health or that they were aggravated and rendered
7 more difficult to cure by reason of the fact that they
8 were not in good health.

9 In other words, ladies and gentlemen, if the
10 presence of a pre-existing illness or physical
11 condition aggravated or prolonged the injury, and
12 correspondingly increases the damages, such increased
13 or added damages may be recovered.

14 Madam Foreperson, members of the jury, as you
15 retire to begin your deliberations in this case, let's
16 just spread the hope that each of you are mindful of
17 the importance of your job here today. You're not
18 called upon very often to serve as jurors very often
19 and the proper performance of that duty requires that
20 each of you reach the height of freeing your minds of
21 all improper influences.

22 In fact, do not think I tried to intimate to you
23 how I think you should decide this case. As I've
24 already told you, under the laws of this state, you,
25 the jury, are the sole judge of all questions of fact.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 And it would be highly improper for me to influence
2 you in your performance of that duty.

3 Further, ladies and gentlemen, I am vitally
4 concerned that every verdict you reach will be the
5 result of you going back into that jury room and
6 confining your consideration and deliberation to the
7 evidence and the law that you've heard here in this
8 courtroom, weighing it fairly and impartially. I have
9 every confidence you will.

10 Ladies and gentlemen, everyone is entitled to
11 justice in this case, both the plaintiff and the
12 defendant. You owe no support or sympathy to anyone.
13 The Court is of the firm opinion that whatever verdict
14 you reach will represent truth and justice for all
15 parties concerned.

16 Now, Madam Foreperson, I remind you, your verdict
17 must be unanimous. It must be the verdict of all 12
18 jurors. And to that end, my law clerk has prepared a
19 verdict form. It simply has the case caption on it.
20 It says, "Therese Hood, plaintiff versus Antoine
21 Johnson, defendant." And it just simply says
22 "Verdict."

23 The first question is, "Was the defendant,
24 Antoine Johnson, negligent, and that such negligence
25 proximately caused the plaintiff's injuries?"

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 And the answer is either yes or no.

2 If you answer yes, you may go on to answer
3 Question No. 2. If your answer is no, you stop and
4 deliberate no further. You have found for the
5 defendant.

6 If it was yes, and you go on to Question No. 2,
7 you answer, "Was the plaintiff, Therese Hood,
8 negligent, and that such negligence proximately caused
9 her injuries?"

10 And, again, the answer is either yes, if it's
11 yes, go to Question No. 3, or if it's no, you go
12 straight to Question No. 4.

13 Again, if you answer yes, it then asks you, "If
14 your answers to both Questions 1 and Question No. 2
15 are yes, then answer this question."

16 It says, "Using the combined negligence that
17 proximately caused the plaintiff's injuries as 100
18 percent, what percentage of that negligence is
19 attributable to defendant Johnson, and what percentage
20 is attributable to plaintiff Hood?"

21 Now, I remind you, percentages must add up to 100
22 percent. All right?

23 Now, please understand, if the plaintiff Hood's
24 percentage of the combined negligence is more than 50
25 percent, you are to stop and deliberate no further.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 That means you would not find for the plaintiff in
2 this case, and you wouldn't even consider any damages.

3 Ladies and gentlemen, if plaintiff Hood's
4 percentage of the combined negligence is 50 percent or
5 less, all the way to zero, you would go to question
6 No. 4. Okay? And that question says, "Please state
7 the total amount of damages sustained by plaintiff
8 Therese Hood."

9 Now, do not reduce for damages based on the
10 percentage of negligence by any party. You are to
11 award the considered actual damages for her and award
12 them for her. You are to award her her total amount
13 of damages. At the very end, I will reduce the amount
14 of damages that would be appropriate for her based on
15 the percentages. You are to only consider the full
16 amount of damages in this case that you feel were
17 proximately caused by the defendant. Do you
18 understand that?

19 JURORS: Yes.

20 THE COURT: Now, that leaves the two lines
21 under No. 4. The first is for actual damages.
22 As I reminded you before, those are for the
23 medical bills and expenses. They're for pain
24 and suffering, they're for mental anguish.
25 They're for permanent impairment and permanent

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 disfigurement.

2 Ladies and gentlemen, those, again, are actual
3 damages. And you would put the dollar amount for
4 those actual damages, and I remind you that they must
5 be proven by a preponderance of the evidence, which
6 just means more likely than not.

7 You then may consider punitive damages, although
8 you are not required to award them. I remind you
9 again that you can only award punitive damages if you
10 have first awarded Ms. Hood actual damages. And I
11 remind you yet again that punitive damages have to be
12 proven by even a higher standard. It's what we call
13 clear and convincing evidence. Okay?

14 So you would not award a punitive damages amount
15 until and unless you actually awarded actual damages
16 to Ms. Hood, and then only if you found punitive
17 damages are appropriate in this case, given the
18 factors that I discussed with you earlier.

19 And I remind you again, they're meant to punish,
20 they're not meant to compensate. All right?

21 After that, Madam Foreperson, there is a line for
22 your name, you would sign this when you've reached a
23 verdict, a unanimous verdict, and date this. And then
24 you will knock on your jury room door. At that point,
25 we can expect you back into this courtroom to take

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 your verdict.

2 Madam Foreperson and members of the jury, I am
3 going to ask you for the very last time that you go
4 back to your jury room and not begin discussing this
5 case. If there's something further on the law that
6 the lawyers want me to charge you, I'm going to bring
7 you back out and I'm going to charge you further on
8 the law.

9 Then you're on, Madam Foreperson. What I'm going
10 to do is send this verdict form and the evidence that
11 was entered into this case back into the jury room,
12 and that's going to be your signal to begin your
13 deliberations. And I remind you, you are to get
14 everybody discussing and talking in this case, all 12
15 of you. All right?

16 JURY FOREPERSON: Your Honor, do we get
17 any paper to write notes or anything like that?

18 THE COURT: Whatever you need, simply ask
19 the bailiff and she will give it to you.
20 Whatever you need. All right?

21 Again, do not begin discussing the case until
22 you've received the verdict form. I may need to bring
23 you back out here and charge you further. But, again,
24 if not, you'll get the evidence and that will be your
25 queue to start. Okay? Thank you.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 (The jury exits the courtroom at 4:30 p.m.)

2 THE COURT: All right. Yeah, you may be
3 seated.

4 Any exceptions or due diligence additions from
5 the plaintiff?

6 MR. WILLEY: Briefly, Your Honor. We
7 obviously would take exception to the previous
8 charges that we submitted not being included,
9 just for preservation.

10 THE COURT: And we made those Court's
11 exhibits, and they will have them.

12 MR. WILLEY: Yes. And in addition to
13 that, I do think it's now an appropriate time
14 to charge the jury -- you ruled pretrial that
15 the Defense would not be able to argue that the
16 defendant would have to pay a verdict. And, of
17 course, we did not get to see your charge prior
18 to you reading it, but you did say three times
19 in your charge that the defendant would
20 compensate her.

21 And in this case, the defendant will not
22 compensate her. And so it's actually a misreading of
23 what will happen. Her own insurance carrier, USAA, or
24 UIM, will be the one compensating her. The defendant
25 has a covenant not to execute. So, in no way, will he

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 be responsible for any amount at any time. And so, we
2 would ask for a curative instruction to the jury that
3 he will not be responsible for paying the amount of
4 actual damages in this case.

5 THE COURT: Respectfully, I'm going to
6 deny that motion. It's not appropriate.

7 MR. WILLEY: And the final thing is, just
8 once again, take exception to the verdict form,
9 as we believe the Court should have directed
10 liability against the defendant and directed
11 comparative negligence in favor of the
12 plaintiff.

13 THE COURT: Thank you.

14 MR. WILLEY: And denied, right?

15 THE COURT: Denied, yes.

16 Any exception or additions?

17 MR. DANIEL: No exceptions or additions,
18 Your Honor.

19 THE COURT: Okay. Y'all, let's make sure
20 we have the evidence. My Rule 403 people, and
21 Mr. Clevinger come on up as well. I'd like to
22 speak with you for just a minute.

23 (Whereupon, the trial was concluded.)
24
25

FURTHER CLOSING ARGUMENT BY PLAINTIFF

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 foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 15th day of January, 2018.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Supplemental Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

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September 15, 2022

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