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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT

V.

BRYAN C. POWERS,

APPELLANT.

APPELLATE CASE NO 2022-000226

RECORD ON APPEAL

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

WILLIAM M. BLITCH
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT NO. 1 (CD – BODY CAM)

State of South Carolina
 County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2020-GS-32-00382
	)	
Bryan Christopher Powers	)	
	)	
<u>Defendant.</u>	)	

February 7 - 9, 2022
 Lexington, South Carolina

B E F O R E:

The Honorable Debra McCaslin, Judge; and a
 jury.

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

Todd Wagoner, Assistant Solicitor
 Jordan Cox, Assistant Solicitor
 Attorneys for the State

Michael Atwater, Esquire
 Attorney for the Defendant

Bethanie K. Creppon
 Circuit Court Reporter

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P R O C E E D I N G S
* * *

THE COURT: All right. Ladies and gentlemen, we're getting ready to pick the first jury. Let me ask, Mr. Solicitor would you like to call your case?

MR. WAGONER: Yes, Your Honor. State would call Indictment 2020-GS-32-00382, the State of South Carolina versus Bryan Christopher Powers. It's an indictment for reckless vehicular homicide.

THE COURT: Thank you.

All right. Ladies and gentlemen of the jury, before we select the jury, there's going to be several questions that I need to ask you. If you need to answer any of these questions, please stand and I'll call on you individually. Do not blurt out an answer. I'll call on your individually, and I might call you up to the bench. I'll have the clerk swear the jury panel as a whole.

THE CLERK: Please stand and raise your right hands.

(Jury pool sworn.)

THE CLERK: Be seated, please.

Was there anyone not able to take the oath as it was just administered? If so, please stand.

They are under oath, Your Honor.

1 THE COURT: All right. I'm now going to turn
2 to the individual attorneys in this case and ask
3 them to introduce themselves to you and anyone else
4 assisting them in their case.

5 So let me turn to the State first.

6 Mr. Wagoner?

7 MR. WAGONER: Good afternoon. I'm Todd
8 Wagoner. I'm one of the assistant solicitors here
9 in 11th Circuit which comprises of Lexington,
10 Edgefiled, Saluda, and McCormick. Obviously, we're
11 here in Lexington. With me is assistant solicitor
12 Jordan Cox. Also assisting would be investigator
13 James Sullivan, and we refer to him as Sully.

14 THE COURT: Mr. Atwater?

15 MR. ATWATER: Thank you, Your Honor.

16 Good afternoon, ladies and gentlemen. I'm
17 Michael Atwater. I practice here in Richland County
18 and throughout the state. I've been practicing
19 about 30 years. I'm retired from the military and
20 then went to law school and have been practicing in
21 South Carolina. I'm here with my client Bryan
22 Christopher Powers.

23 THE COURT: Okay. Thank you.

24 All right. Let me ask the jury panel: Has any
25 member of the jury panel ever been represented by

1 any of the attorneys involved in this case or their
2 law firms? If so, please stand.

3 Is any member of the jury panel related by
4 blood or marriage, know personally, or have any
5 religious, political, social, or business
6 association with any of the attorneys involved in
7 this case or anyone in their law firms? If so,
8 please stand.

9 Is any member of the jury panel related by
10 blood or marriage, or have a close personal,
11 professional, or social relationship to Bryan
12 Christopher Powers? If so, please stand.

13 The following is a list of possible witnesses
14 in the case. I'm going to -- there's like 17 of
15 them. I'm going to call their names. If you know
16 any of these witnesses, please stand. W. J. Cook,
17 who is with the South Carolina Highway Patrol; Adam
18 Crouch with the South Carolina Highway Patrol;
19 Robert Rowe, formerly of the South Carolina Highway
20 Patrol; Jeremy Sisler with the South Carolina
21 Highway Patrol, specifically on the MAIT Team;
22 Calvin Rikard, formerly of the South Carolina
23 Highway Patrol; Matthew Nix with the South Carolina
24 Highway Patrol; Grant Cooke, South Carolina Highway
25 Patrol, also the MAIT team; a Benjamin Treaster with

1 the Lexington County Sheriff's Department; a C. D.
2 Smith with the Lexington County Sheriff's
3 Department; a Dave Kopenhaver with the Richland
4 County Sheriff's Department; Elizabeth Moffatt, who
5 is a doctor with the Lexington Medical Center;
6 Clinton Hoover, George Adams, Timothy Rainey, Tom
7 Rees, and he's from StayAlert; Johnny Powell, and a
8 Harley Trimnal.

9 Let me ask the jury panel, is any member of the
10 jury panel related by blood or marriage, know
11 personally, or have any religious, political,
12 social, or business association with any of the
13 witnesses that I just called in this case? If so,
14 please stand.

15 Is any juror related by blood or marriage to
16 any law enforcement officer, state constable, or any
17 other person having authority to enforce the laws of
18 this state, county, or city? If so, please stand.

19 Yes, sir. Your juror number?

20 PROSPECTIVE JUROR: Juror No. 98. My --

21 THE COURT: I don't want anybody blurt ing
22 anything out. I'm going to get to you.

23 That's Mr. Kimble.

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: Who do you know?

1 PROSPECTIVE JUROR: My nephew.

2 THE COURT: Okay. Let me ask you this: If you
3 were chosen as a juror in this case, could you be
4 fair and impartial to both the State and the
5 defense?

6 PROSPECTIVE JUROR: Yes, ma'am.

7 THE COURT: Thank you.

8 Anybody else?

9 MR. ATWATER: Your Honor, may we approach for a
10 moment?

11 (Sidebar conference.)

12 THE COURT: Anybody else? I'm sorry. I was
13 interrupted.

14 Let me ask about three more witnesses. If
15 anyone knows these witnesses, please stand. A Lilah
16 Kirby, Bryan Christopher Powers, or a Ricky Powers.
17 If any member of the jury panel is related or a
18 close personal friend, please stand.

19 Have you, a relative, a close friend, now or in
20 the past, ever been a member of a law enforcement
21 agency, whether it's federal, state, county, city,
22 or military? Please stand.

23 All right. Let me start here. Your juror
24 number?

25 PROSPECTIVE JUROR: 80.

1 THE COURT: Can you tell me what law
2 enforcement agency you belong to?

3 PROSPECTIVE JUROR: I spent a career in the
4 United States Navy and then part-time security
5 forces for three years.

6 THE COURT: All right. Let me ask you
7 Mr. Hewitt, if you were chosen as a juror in this
8 case, could you be fair and impartial to both the
9 State and the defense?

10 PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: Thank you.
12 Your juror number?

13 PROSPECTIVE JUROR: 14, Your Honor.

14 THE COURT: Number 14, that's Ms. Barfield.

15 PROSPECTIVE JUROR: Yes, ma'am. I served 21
16 years in the United States Air Force.

17 THE COURT: All right. Having served in the
18 Air Force, if you were chosen as a juror in this
19 case, could you be fair and impartial to both sides?

20 PROSPECTIVE JUROR: Yes, Your Honor.

21 THE COURT: Thank you.
22 Yes, ma'am, on the front row.

23 PROSPECTIVE JUROR: 86.

24 THE COURT: Juror No. 86. Can I come up front?

25 THE CLERK: What is your last name, ma'am?

1 PROSPECTIVE JUROR: Howell.

2 THE CLERK: 84.

3 (Ms. Howell comes forward.)

4 THE COURT: All right. Did you work for law
5 enforcement?

6 PROSPECTIVE JUROR: My father did.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: He worked for Columbia
9 Police Department, but he's also a high-ranking
10 general in the military.

11 THE COURT: All right. Let me ask you this:
12 Knowing that, can you be fair and impartial to both
13 the State and the defense?

14 PROSPECTIVE JUROR: Yes. I just can't say that
15 about him.

16 THE COURT: Okay. Everybody hear?

17 All right. I'm keeping her. Thank you,
18 Ms. Howell.

19 Yes, ma'am.

20 PROSPECTIVE JUROR: 202.

21 THE COURT: 202. That would be Ms. -- is it
22 Totani? What agency were you with?

23 PROSPECTIVE JUROR: I was with the treasury,
24 IRS, special agent.

25 THE COURT: I got you down.

1 PROSPECTIVE JUROR: And, currently, I'm
2 contracted with the FBI as an investigator.

3 THE COURT: If you were chosen as a juror in
4 this case, can you be fair and impartial to both the
5 State and the defense?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Thank you.

8 Yes, ma'am. Your juror number?

9 PROSPECTIVE JUROR: 55. However, I
10 misunderstood your question, so I do not qualify for
11 that.

12 THE COURT: Okay. Thank you.

13 All right. Is any member of the jury panel or
14 a member of your immediate family involved in any
15 group such as MADD, which is mothers against drunk
16 drivers; SADD; Al Anon; or any other similar
17 organization who is opposed to the consumption of
18 alcohol? If so, please stand.

19 Yes, ma'am. Your juror number?

20 PROSPECTIVE JUROR: 177.

21 THE COURT: Ms. Sanders. And, yes, ma'am. I
22 want you to come up and talk to me.

23 PROSPECTIVE JUROR: (Inaudible.)

24 THE COURT: All right. Ms. Sanders, I think
25 I'm going to go ahead and excuse you. I'll tell you

1 the first case up might have alcohol in it. The
2 second case does not, but, obviously, this brings up
3 bad memories for you.

4 PROSPECTIVE JUROR: Thank you.

5 THE COURT: I'm going to go ahead and excuse
6 you. Okay? That would be number 177.

7 Anybody else?

8 Have you or any close member of your family
9 ever been involved in a vehicle collision involving
10 someone being injured? If so, please stand.

11 Your juror number?

12 PROSPECTIVE JUROR: Number 34.

13 THE CLERK: Ms. Carter?

14 THE COURT: All right. Ms. Carter, let me ask
15 you, with you having a member of you or your family
16 involved in a vehicle accident, if you were chosen
17 as a juror in this case, could you be fair and
18 impartial to both the State and the defense?

19 PROSPECTIVE JUROR: Yes, Your Honor.

20 THE COURT: Thank you.

21 In the black shirt, juror number?

22 PROSPECTIVE JUROR: Me?

23 THE COURT: Yes.

24 PROSPECTIVE JUROR: Number 11.

25 THE COURT: Ms. Ayer?

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: Let me ask you, if you were chosen
3 as a juror, could you be fair and impartial to both
4 the State and the defense?

5 PROSPECTIVE JUROR: Yes, Your Honor.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR: Juror No. 54.

8 THE COURT: Ms. Duckworth?

9 PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: I'm going to ask you the same: If
11 you were chosen as a juror in this case, could you
12 be fair and impartial to both the State and the
13 defense?

14 PROSPECTIVE JUROR: Yes, Your Honor.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR: 202.

17 THE COURT: 202, Ms. Totani. Let me ask you,
18 if you were chosen as a juror in this case, could
19 you be fair and impartial to both the State and the
20 defense?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Thank you.

23 All right. Have you or a close member of your
24 family ever been involved in a vehicle collision
25 that resulted in a fatality? If so, please stand.

1 Same group here.

2 Your juror number?

3 PROSPECTIVE JUROR: 14.

4 THE COURT: Number 14, Ms. Barfield. Knowing
5 that, if you were chosen as a juror, could you be
6 fair and impartial to both the State and the
7 defense?

8 PROSPECTIVE JUROR: Yes, Your Honor.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR: Number 34.

11 THE COURT: Ms. Carter again. Let me ask you,
12 if you were chosen as a juror, could you be fair and
13 impartial to both the State and the defense?

14 PROSPECTIVE JUROR: Yes, Your Honor.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR: Number 11.

17 THE COURT: Number 11, Ms. Ayer. If you were
18 chosen as a juror, could you be fair and impartial
19 to both the State and the defense?

20 PROSPECTIVE JUROR: Yes, Your Honor.

21 THE COURT: Thank you. And Juror No. 202,
22 Ms. Totani. If you were chosen as a juror, could
23 you be fair and impartial to both the State and the
24 defense?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Thank you.

2 All right. Have you or a close member of your
3 family ever been charged with a crime as a result of
4 a motor vehicle collision? If so, please stand.

5 Does any member of the jury panel hold a strong
6 opinion or belief that the results of a law
7 enforcement investigation are always correct? If
8 so, please stand.

9 Does any member of the jury panel hold a strong
10 opinion or belief that if a person is severely
11 injured or dies as a result of being in a motor
12 vehicle accident, that someone must be held
13 criminally liable? If so, please stand.

14 Have you or a close member of your family ever
15 been employed working on road construction projects,
16 including but not limited to grading, widening, and
17 repaving? If so, please stand.

18 Yes, ma'am. Your juror number?

19 PROSPECTIVE JUROR: 49.

20 THE COURT: Number 49, Ms. Cunningham.

21 Somebody in your family work on roads?

22 PROSPECTIVE JUROR: My dad worked for DOT.

23 THE COURT: Does that in any way influence your
24 opinion if you were chosen as a juror -- let me ask
25 you, could you be fair and impartial to both the

1 State and the defense?

2 PROSPECTIVE JUROR: Yes, ma'am.

3 THE COURT: Thank you.

4 Yes, sir?

5 PROSPECTIVE JUROR: 221.

6 THE COURT: Mr. Williamson. Mr. Williamson,
7 you work for the Town of Lexington?

8 PROSPECTIVE JUROR: Yes, ma'am.

9 THE COURT: Somebody in your family work on the
10 roadways?

11 PROSPECTIVE JUROR: I do.

12 THE COURT: If you were chosen as a juror,
13 could you be fair and impartial to both the State
14 and the defense?

15 PROSPECTIVE JUROR: Yes, ma'am.

16 THE COURT: Thank you.

17 Ms. Ayer, right?

18 PROSPECTIVE JUROR: No. 54.

19 THE COURT: Ms. Duckworth. Ms. Duckworth, if
20 you were chosen as a juror in this case, could you
21 be fair and impartial to both the State and the
22 defense?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Thank you.

25 Does anyone believe someone is guilty of a

1 crime simply because he or she was arrested? If so,
2 please stand.

3 Has anyone formed or expressed an opinion about
4 any matter involved in this case?

5 Let me tell you, this case, the date of the
6 offense was June 14th of 2019. It was at U.S. 178
7 and Fairview Road near Fogle Road, in the Pelion
8 area of Lexington County. Has anyone heard about
9 this, formed an opinion about it, any kind of news
10 media? If so, please stand, if you know anything
11 about this case.

12 All right. Your juror number?

13 PROSPECTIVE JUROR: 49.

14 THE COURT: And your juror number.

15 PROSPECTIVE JUROR: 119.

16 THE COURT: Let me ask y'all to come up.

17 Ms. Cunningham?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Ms. Cunningham.

20 PROSPECTIVE JUROR: I lived in the Pelion area
21 my whole life and, unfortunately, I'm very aware of
22 this incident. And, yeah, I know about it from news
23 reports and stuff.

24 THE COURT: Let me ask you this: If you were
25 chosen as a juror, can you be fair and impartial to

1 both the State and the defense?

2 PROSPECTIVE JUROR: I can.

3 THE COURT: She's heard about it, but you
4 haven't formed an opinion about it.

5 MR. ATWATER: She stated she's formed an
6 opinion already, but didn't know what it was.

7 PROSPECTIVE JUROR: But yeah.

8 THE COURT: Let me tell you this: Number 49,
9 I'm not going to put you in this case. I'll put you
10 in the jury pool for the second case. Okay? I'm
11 going to get you to stay with us.

12 PROSPECTIVE JUROR: 119.

13 THE COURT: 119, Mr. McCormick.

14 PROSPECTIVE JUROR: Yes, ma'am. I live in
15 Pelion and I live about three miles from where that
16 incident occurred. And I seen the -- I didn't see
17 the wreck, but I seen the aftermath of the car still
18 on the scene.

19 THE COURT: Have you formed an opinion about
20 this case?

21 PROSPECTIVE JUROR: I did, but I can't say if
22 it was right or wrong.

23 THE COURT: If you were chosen as a juror,
24 could you be fair and impartial to both the State
25 and the defense?

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: Out of an abundance of caution, I'm
3 going to put you on the second jury, so don't go
4 anywhere.

5 PROSPECTIVE JUROR: Oh, I'm not.

6 MR. ATWATER: Your Honor, if you wouldn't mind,
7 if you'll call these two people back up and ask
8 those two if they'll not discuss the details of this
9 case with the other jurors?

10 THE COURT: Yes.

11 May I see number 49 and 119 again?

12 I'm going to ask that you not discuss this case
13 with this jury panel.

14 PROSPECTIVE JUROR: Yes, ma'am.

15 THE COURT: In fact, I'm ordering it.

16 PROSPECTIVE JUROR: All right.

17 THE COURT: Don't have a discussion about this
18 case or any of your opinions. Okay?

19 PROSPECTIVE JUROR: Yes, ma'am.

20 PROSPECTIVE JUROR: Absolutely.

21 THE COURT: Has any member of the jury panel
22 ever been the victim of a burglary? Please stand.

23 Okay. Let me go again.

24 PROSPECTIVE JUROR: 14.

25 THE COURT: Ms. Barfield, if you were chosen as

1 a juror, could you be fair and impartial to both the
2 State and the defense?

3 PROSPECTIVE JUROR: Yes, Your Honor.

4 THE COURT: Thank you.

5 PROSPECTIVE JUROR: 16.

6 THE COURT: Ms. Beavers, if you were chosen as
7 a juror in this case, could you be fair and
8 impartial to both the State and the defense?

9 PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: Thank you.

11 PROSPECTIVE JUROR: 71.

12 THE COURT: Ms. Hair. I'll ask you, if you
13 were chosen as a juror in this case, could you be
14 fair and impartial to both the State and the
15 defense?

16 PROSPECTIVE JUROR: Yes, Your Honor.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR: 55.

19 THE COURT: That's Ms. Duke. Ms. Duke, if you
20 were chosen as a juror, could you be fair and
21 impartial to both the State and the defense?

22 PROSPECTIVE JUROR: No, ma'am.

23 THE COURT: Okay. I'm going to put her on the
24 first jury panel, not the second.

25 THE CLERK: Yes, ma'am.

1 THE COURT: Has any member of the jury panel
2 been the victim of an arson? If so, please stand.

3 All right. During the course of this trial,
4 all the jurors will be asked to listen carefully to
5 testimony from witnesses, review and carefully
6 consider exhibits that get admitted as evidence, and
7 follow my instructions on the law in this case.

8 Is there any member of the jury panel who feels
9 that they will not be able to listen carefully to
10 testimony from witnesses, review and consider
11 various evidence, and listen to my instructions on
12 the law? Let me know if you can't do this. Please
13 stand.

14 Is any member of the jury panel aware of any
15 bias or prejudice towards either the State or the
16 defendant in this case? If so, please stand.

17 Does any member of the jury panel know of any
18 reason whatsoever why he or she should not serve as
19 a juror in this case, with particular emphasis being
20 placed on your ability to be fair and impartial to
21 both the State and the defendant? If so, please
22 stand.

23 The State -- Mr. Wagoner, do you have any
24 additional questions you would like to have asked?

25 MR. WAGONER: Nothing further from the State,

1 Your Honor.

2 THE COURT: Let me ask, Mr. Atwater, are there
3 any additional questions you'd like to have asked?

4 MR. ATWATER: No, Your Honor.

5 THE COURT: Mr. Watson, when you pick your
6 jury, I'll ask you if there's any other additional
7 questions.

8 All right. At this time -- we're crossing our
9 fingers to make sure that the jury list prints. And
10 then we're going to select Jury No. 1.

11 All right. While they're finishing on the
12 printer, let me tell all of y'all, we're going to
13 pick two juries. But I don't want anybody to get
14 upset if you don't get picked. We are going to have
15 jury trials all year long. Please feel free to come
16 back and join us. We would welcome you. But,
17 believe it or not, some people get really upset if
18 they don't get picked. I will tell you, once we
19 select these two juries, the other jurors who are
20 left, I'm going to excuse you.

21 The second jury panel is going to call back in
22 to find out what day to come in.

23 I'm selecting both of them, Angela. You're
24 looking at me funny.

25 MS. MARTIN: May we approach?

1 THE COURT: Yes.

2 (Sidebar conference.)

3 THE COURT: All right. Like I said, we're
4 going to select the 1st jury. That jury will report
5 tomorrow at 9:00 a.m. Please be in your jury room
6 early, like at 8:45. We're going to get started
7 early. The second jury will call in starting
8 Tuesday night to find out when to report. The rest
9 of the jurors, I'm going to excuse. You won't have
10 to come back.

11 THE CLERK: Have them call after 6:00 tomorrow
12 night.

13 THE COURT: You need to call after 6:00 p.m. I
14 think there's a number on your card. Because if
15 you're selected for the second jury, you need to
16 call back in after 6:00 to find out when to report.

17 THE CLERK: They'll be called Panel No. 2.

18 THE COURT: You'll be called Panel No. 2. And
19 I'll probably say that about ten more times before
20 y'all leave here so y'all will know you're
21 Panel No. 2.

22 All right. The clerk is going to call the
23 jurors.

24 THE CLERK: As I call your name, come up to the
25 podium, turn around like Ron is doing right now, and

1 stand there until I give you instructions whether to
2 return to your seat or have a seat in the jury box.
3 Please bring your items with you in case you go this
4 way instead of back that way.

5 Number 34, Michelle Carter.

6 (Ms. Carter comes forward.)

7 THE CLERK: What say for the State?

8 MR. WAGONER: Please present Ms. Carter.

9 THE CLERK: What say for the defense?

10 MR. ATWATER: Please excuse Ms. Carter.

11 THE CLERK: Return to your seat, please.

12 Number 206, Matthew Walker.

13 (Mr. Walker comes forward.)

14 THE CLERK: What say for the State?

15 MR. WAGONER: Please excuse Mr. Walker.

16 THE CLERK: Return to your seat, please, sir.

17 71, Kimberley Hair.

18 (Ms. Hair comes forward.)

19 THE CLERK: What say for the State?

20 MR. WAGONER: Please present Ms. Hair.

21 THE CLERK: What say for the defense?

22 MR. ATWATER: Please present Ms. Hair.

23 THE CLERK: Have a seat in the jury box, ma'am.

24 55, Catherine Duke.

25 (Ms. Duke comes forward.)

1 THE CLERK: What say for the State?
2 MR. WAGONER: Please present Ms. Duke.
3 THE CLERK: What say for the defense?
4 MR. ATWATER: Please excuse Ms. Duke.
5 THE CLERK: Return to your seat, please, ma'am.
6 209 Yu Wang.
7 (Ms. Yang comes forward.)
8 THE CLERK: What say for the State?
9 MR. WAGONER: Please excuse this juror.
10 THE CLERK: Return to your seat, please, ma'am.
11 220, James Williamson.
12 (Mr. Williamson comes forward.)
13 THE CLERK: What say for the State?
14 MR. WAGONER: Please present Mr. Williamson.
15 THE CLERK: What say for the defense?
16 MR. ATWATER: Please present Mr. Williamson.
17 THE CLERK: Have a seat in the jury box.
18 Number 53, Renosia Duckson.
19 (Ms. Duckson comes forward.)
20 THE CLERK: What say for the State?
21 MR. WAGONER: Please present Ms. Duckson.
22 THE CLERK: What say for the defense?
23 MR. ATWATER: Please present Ms. Duckson.
24 THE CLERK: Have a seat in the jury box, ma'am.
25 Number 13, Alfred Baquiran.

1 (Mr. Baquiran comes forward.)
2 THE CLERK: What say for the State?
3 MR. WAGONER: Please present Mr. Baquiran.
4 THE CLERK: What say for the defense?
5 MR. ATWATER: Please present Mr. Baquiran.
6 THE CLERK: Have a seat in the jury box, sir.
7 Juror 154, Angela Patnaude.
8 (Ms. Patnaude comes forward.)
9 THE CLERK: What say for the State?
10 MR. WAGONER: Please present Ms. Patnaude.
11 THE CLERK: What say for the defense?
12 MR. ATWATER: Please seat Ms. Patnaude.
13 THE CLERK: Have a seat in the jury box, ma'am.
14 Number 124, Richard McKissick.
15 (Mr. McKissick comes forward.)
16 THE CLERK: What say for the State?
17 MR. WAGONER: Please present Mr. McKissick.
18 THE CLERK: What say for the defense?
19 MR. ATWATER: Please seat Mr. McKissick.
20 THE CLERK: Have a seat in the jury box, sir.
21 36, Huyen Chen.
22 (Ms. Chen comes forward.)
23 THE CLERK: What say for the State?
24 MR. WAGONER: Please present Ms. Chen.
25 THE CLERK: What say for the defense?

1 MR. ATWATER: Please seat Ms. Chen.

2 THE CLERK: Have a seat in the jury box, ma'am.

3 Number 17, Brittany Bell.

4 (Ms. Bell comes forward.)

5 THE CLERK: What say for the State?

6 MR. WAGONER: Please present Ms. Bell.

7 THE CLERK: What say for the defense?

8 MR. ATWATER: Please present Ms. Bell.

9 THE CLERK: Have a seat in the jury box, ma'am.

10 102, Regina Lake.

11 (Ms. Lake comes forward.)

12 THE CLERK: What say for the State? Beg the

13 Court's indulgence? May we approach?

14 (Sidebar conference.)

15 MR. WAGONER: Please present Ms. Lake.

16 THE CLERK: What say for the defense?

17 MR. ATWATER: What was that number again?

18 THE CLERK: 102.

19 MR. ATWATER: Please excuse Ms. Lake.

20 THE CLERK: Return to your seat, please, ma'am.

21 145, Jessica Neel.

22 (Ms. Neel comes forward.)

23 THE CLERK: What say for the State?

24 MR. WAGONER: Please present Ms. Neel.

25 THE CLERK: What say for the defense?

1 MR. ATWATER: Please present Ms. Neel.
2 THE CLERK: Have a seat in the jury box, ma'am.
3 Number 9, William Attaway.
4 (Mr. Attaway comes forward.)
5 THE CLERK: What say for the State?
6 MR. WAGONER: Please present Mr. Attaway.
7 THE CLERK: What say for the defense?
8 MR. ATWATER: Please seat Mr. Attaway.
9 THE CLERK: Have a seat in the jury box.
10 174, Corey Rose.
11 (Mr. Rose comes forward.)
12 THE CLERK: What say for the State?
13 MR. WAGONER: Please present Mr. Rose.
14 THE CLERK: What say for the defense?
15 MR. ATWATER: Please excuse Mr. Rose.
16 THE CLERK: Return to your seat, please, sir.
17 73, Susan Hall.
18 (Ms. Hall comes forward.)
19 THE CLERK: What say for the State?
20 MR. WAGONER: Please present Ms. Hall.
21 THE CLERK: What say for the defense?
22 MR. ATWATER: Please seat Ms. Hall.
23 THE CLERK: Have a seat in the jury box, ma'am.
24 108, Matthew Lucas.
25 (Mr. Lucas comes forward.)

1 THE CLERK: What say for the State?

2 MR. WAGONER: Please excuse Mr. Lucas.

3 THE CLERK: Return to your seat, please, sir.

4 150, Beth Ozenghar.

5 (Ms. Ozenghar comes forward.)

6 THE CLERK: What say for the State?

7 MR. WAGONER: Please present Ms. Ozenghar.

8 THE CLERK: What say for the defense?

9 MR. ATWATER: Please seat Ms. Ozenghar.

10 THE CLERK: Have a seat in the jury box, ma'am.

11 Alternates, Your Honor?

12 THE COURT: Two.

13 MR. WAGONER: I'm fine with two alternates.

14 THE COURT: Let's do two.

15 THE CLERK: 210, Marilyn Washington.

16 (Ms. Washington comes forward.)

17 THE CLERK: What say for the State?

18 MR. WAGONER: Please present Ms. Washington.

19 THE CLERK: What say for the defense?

20 MR. ATWATER: Please seat Ms. Washington.

21 THE CLERK: Have a seat in the jury box, ma'am.

22 That's Alternate No. 1.

23 Number 1, Carlos Ables.

24 (Mr. Ables comes forward.)

25 THE CLERK: What say for the State?

1 MR. WAGONER: Please present Mr. Ables.

2 THE CLERK: What say for the defense?

3 MR. ATWATER: Please seat Mr. Ables.

4 THE CLERK: Have a seat in the jury box, sir.

5 That's Alternate No. 2.

6 THE COURT: Thank you.

7 Can I see the lawyers in this case just for a
8 second?

9 (Sidebar conference.)

10 THE COURT: Y'all are lucky you get to stay
11 with us for a couple of days. So let me give you
12 some housekeeping rules real quickly: No cell
13 phones in the courtroom. I'm going to tell you,
14 when you see these lawyers -- they're great lawyers;
15 I've known them for 30 years plus -- they're not
16 going to talk to you because they're under orders
17 from me not to talk to you. So if you see them in
18 the elevator and they go the other way, please don't
19 think they're rude, because they're not.

20 I do not allow note-taking during a jury trial,
21 so there will be no notes. Your cell phones must be
22 left in the jury room when you're in the courtroom.
23 They're not allowed in the courtroom whatsoever.

24 We're going to start court at 9:00 a.m. in the
25 morning. So I'm asking that all of you be here at

1 8:45. I will tell you, if one of you is late, we
2 can't start. So do not be late, please. Be
3 conscientious of every -- your fellow jurors' time
4 and of the Court's time. We cannot start without
5 you.

6 The bailiff is going to take you downstairs.
7 He's going to show you the jury room where you are
8 to report in the morning. He will also give you a
9 juror badge. Wear it proudly. That way, all of us
10 in the courthouse know that you are a juror. Okay?

11 I'm trying to think. Is there anything else
12 that I need to tell them? Anything else from the
13 State? The defense?

14 MR. WAGONER: Nothing from the State on the
15 jury.

16 MR. ATWATER: No, Your Honor.

17 THE COURT: Okay. 8:45 in the morning. We're
18 going to start this case promptly and get through
19 it. Okay? Thank you for being jurors. Thank you
20 for being patient with us today. I will tell you,
21 Mr. McKissick, will you do me the honor of being the
22 foreman of this jury?

23 THE FOREPERSON: Yes, ma'am.

24 THE COURT: You'll have a special chair to sit
25 in when you come back. And I'll talk to y'all in

1 the morning. Thank you.

2 Do not -- one other thing: Do not discuss this
3 case at all. I know y'all don't know anything about
4 it. Don't go look up the lawyers on the internet;
5 don't go home and tell your wife, hey, I'm on the
6 jury. You're not allowed to talk about this case at
7 all, period, until I tell you that you can. Okay?

8 So don't go look up anything on the internet;
9 don't go try to find something out. You're not
10 allowed to do that. You're not even allowed to
11 discuss this case amongst yourselves until I tell
12 you to. Everybody understand?

13 THE JURY (collectively): Yes, Your Honor.

14 THE COURT: Have a good evening. I'll see you
15 in the morning.

16 (The jury exits the courtroom at 3:01 PM.)

17

18 THE COURT: All right. Are y'all ready to
19 proceed?

20 MR. WAGONER: Yes, Your Honor. We have a quick
21 Jackson v. Denno.

22 THE COURT: Okay.

23 MR. WAGONER: Your Honor, for those purposes,
24 we'd call Lieutenant Treaster.

25 BENJAMIN TREASTER

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Have a seat, sir. Once you're
4 seated, state your full -- you can remove your mask.
5 State your full name, spelling your last.

6 THE WITNESS: My name is Ben Treaster. Last
7 name T-R-E-A-S-T-E-R.

8 DIRECT EXAMINATION

9 BY MR. WAGONER:

10 Q. Lieutenant Treaster, are you employed with the
11 Lexington County Sheriff's Department?

12 A. Yes.

13 Q. How long have you been employed there?

14 A. Almost 12 years.

15 Q. And on June 14th, 2019, what was your role with
16 the Lexington County Sheriff's Department?

17 A. I was a road supervisor in the south region.

18 Q. Were you called out to a scene on June 14th,
19 2019, at U.S. 178 at Fogle Road?

20 A. Yes.

21 Q. What did you do when you got to that scene?

22 A. When I got to the scene, I immediately assessed
23 the situation and started rendering medical aid and
24 triaging to the parties involved.

25 Q. Did you approach a Bryan Christopher Powers?

1 A. Yes.

2 Q. Did you speak to a Bryan Christopher Powers?

3 A. Yes.

4 Q. Did you ask him anything?

5 A. Yes.

6 Q. What did you ask him?

7 A. I asked him basic factfinding questions and

8 quick medical assessment questions.

9 Q. Was he under arrest at any point?

10 A. No.

11 Q. What was the purpose of your questions?

12 A. The purpose of my questions was to find out

13 what happened and see what injuries he may have so

14 that we could get him proper care.

15 Q. Did he seem to understand your questions?

16 A. Yes.

17 Q. Did he seem to answer them logically?

18 A. Yes.

19 Q. Were you equipped with a body-worn camera at

20 that time?

21 A. Yes.

22 Q. Was that interaction recorded on that body-worn

23 camera?

24 A. Yes.

25 Q. Have you had an opportunity to review that

1 interaction on your body-worn camera?

2 A. Yes.

3 Q. Handing you what's been marked as State's
4 Exhibit 1. What does that appear to be?

5 A. Body-worn camera footage that I viewed and
6 signed for.

7 Q. And did you initial that particular disk?

8 A. Yes.

9 MR. WAGONER: Your Honor, at this point, I'd
10 like to play the body-worn camera as part of the
11 Jackson v. Denno.

12 THE COURT: Okay.

13 (State's Exhibit No. 1 admitted into evidence.)

14 (State's Exhibit No. 1 video played.)

15 BY MR. WAGONER:

16 Q. Was he forced to answer any questions?

17 A. No, sir.

18 Q. And he was able to answer any questions that
19 you had?

20 A. Yes.

21 Q. No further questions.

22 THE COURT: All right. Mr. Atwater.

23 MR. ATWATER: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. ATWATER:

1 Q. Hello, Lieutenant Treaster. How are you?

2 A. Good, sir.

3 Q. I think it's been a while since we've seen each

4 other. You doing well?

5 A. Yes, sir.

6 Q. Okay. On the date of this accident, you were

7 dispatched by the Lexington County dispatch?

8 A. Yes, sir.

9 Q. And you were also listening to the South

10 Carolina Highway Patrol on that radio?

11 A. No, sir.

12 Q. Okay. At any point in time, were you -- did

13 you become aware that the South Carolina Highway

14 Patrol was also responding to this accident?

15 A. Yes.

16 Q. Did that happen before or after you got to the

17 accident scene?

18 A. I was the first law enforcement officer to

19 arrive on scene.

20 Q. Okay. When you were listening to the dispatch

21 from the south -- from the Lexington County

22 dispatcher --

23 A. Yes.

24 Q. -- you were informed that there was a fatality

25 on the scene, correct?

1 A. When I arrived on scene, I did not know it was
2 a fatality yet. I knew the person was unresponsive.

3 Q. Okay. You had been informed that there were
4 serious injuries on the scene, correct?

5 A. Yes.

6 Q. And you had -- had you also been informed that
7 it was a suspected DUI? Correct?

8 A. I don't recall that.

9 Q. Have you listened to the tape from the
10 dispatcher?

11 A. No, sir.

12 Q. Okay. So you don't recall whether or not, at
13 the time you went out there, you had been told it
14 was a suspected DUI?

15 A. I don't recall that.

16 Q. Okay. Now, the body cam video that we just
17 saw --

18 A. Yes, sir.

19 Q. -- that was taken at the time of the incident?

20 A. Yes, sir.

21 Q. Okay. And that particular part of the body cam
22 video we saw is not the entire body cam video that
23 you took that day, is it?

24 A. No, sir.

25 Q. That's not where it started, correct?

1 A. Correct.

2 Q. And it's not where it ended, correct?

3 A. Yes, sir.

4 Q. And there was a lot more things that you saw
5 and did there that were recorded on that body cam
6 video that was provided to the Solicitor's Office
7 and provided to me in discovery, correct?

8 A. Yes, sir.

9 Q. Okay. You were -- were you in a uniform at the
10 time you approached Mr. Powers?

11 A. Yes, sir.

12 Q. Okay. And did you have the indicia of a badge,
13 a gun, law enforcement?

14 A. Yes, sir.

15 Q. Were you actually, in fact, investigating the
16 scene and the accident?

17 A. I was not investigating. I was just doing
18 basic factfinding questions to find out who needed
19 medical care, and get just a general understanding
20 of what had occurred.

21 Q. Okay. So your idea of asking questions and
22 factfinding does not fall under your definition of
23 an investigation?

24 A. I don't investigate collisions. It was -- that
25 was just immediate information needed to find out

1 who needed medical care.

2 Q. Okay. What was the purpose of you asking
3 questions of Mr. Powers on that date?

4 A. Based on everybody else that was on scene,
5 there were serious injuries. If he had been
6 involved with the other folks that were seriously
7 injured, he could be suffering serious injuries as
8 well.

9 After a serious collision, people do go into
10 shock. And I wanted to make sure that he was okay
11 and that I didn't need to upgrade his treatment
12 status. I did have medical personnel on scene who
13 were rendering aid. And if they needed to divert to
14 him because he was experiencing greater signs of
15 symptoms, they could do that.

16 Q. And at the time -- during the time that you
17 were at the accident scene, you didn't ever
18 interview any of the other drivers, did you?

19 A. Other than just basic factfinding stuff, just
20 like I did with Mr. Powers.

21 MR. ATWATER: Okay. That's all I have. Thank
22 you.

23 THE WITNESS: Thank you.

24 MR. WAGONER: No redirect, Your Honor.

25 THE COURT: Okay. Anything else, Mr. Atwater?

1 I was going to let Officer Treaster down if --

2 MR. ATWATER: Nothing else for him, Your Honor.

3 THE COURT: Thank you.

4 All right. I'll be glad to hear from you,
5 Mr. Atwater.

6 MR. ATWATER: Your Honor, it's our contention
7 that at the time of the accident, the South
8 Carolina -- or the Lexington County dispatch had
9 informed when Officer Treaster was sent out there;
10 had informed him that this was a possible DUI; that
11 he was investigating a DUI crime that Mr. Powers
12 would've been the target of that, and to approach
13 him with that, and giving him his Miranda warnings
14 would have been improper.

15 THE COURT: All right. I think he testified he
16 doesn't remember any of that, is what I heard him
17 say. But I understand.

18 Let me hear from you, Mr. Wagoner.

19 MR. WAGONER: Yes, Your Honor.

20 As it's clear, a traffic accident had just
21 occurred into this particular case, and there was a
22 routine investigation. And Treaster's role in this
23 particular one was to assess the medical treatment.

24 State v Morgan is a case where the traffic
25 collision had just occurred, a routine investigation

1 into the cause, Miranda is not required. And I'll
2 hand that out shortly.

3 You also have Fradella v Town of Mount
4 Pleasant, Your Honor, which is law enforcement went
5 to a defendant's home 20 minutes after a collision
6 where the defendant admitted to being the driver.
7 Also, he was not in custody for purposes of Miranda
8 on that particular one.

9 Your Honor, I'll hand these two up, Fradella
10 Town of Mount Pleasant, which is SC -- 325 S.C. 469,
11 and State v Morgan, which is 282 S.C. 409.

12 Your Honor, furthermore, under -- there's two
13 prongs to this: I think it's clear that he is not
14 in custody for purposes of Miranda. As for
15 voluntariness, Your Honor, it's clear that he
16 understood the questions and was able to give a -- a
17 thoughtful answer, Your Honor.

18 I'm handing State v White, which is a case
19 where there's two statements. The second statement
20 in that particular case was taken while the
21 individual was on a gurney and cuffed to a gurney.

22 While this was after Miranda, it was also after
23 pentothal had been administered to the defendant in
24 that case where there's no -- no evidence that the
25 questioning was either extended or coercive.

1 We saw the extent of the questioning in this
2 particular case. And that also Mr. White, in this
3 particular case, appeared to understand what was
4 said to him and then aware of what the troopers were
5 asking. And they, of course, found that as
6 voluntary.

7 Your Honor, again, this is not an extended
8 questioning. This is merely an assessment on
9 whether or not he needed medical treatment. His
10 answers were logical and, therefore, voluntary, Your
11 Honor.

12 THE COURT: Anything else, Mr. Atwater?

13 MR. ATWATER: No, Your Honor. We would just
14 submit that, as to voluntariness, Lieutenant
15 Treater was carrying all of the indicia of law
16 enforcement, and it would -- Mr. Powers did not --
17 would not have known whether or not he was required
18 to answer those statements.

19 On the other part of that, Your Honor, we would
20 ask that if this video is going to be put into
21 evidence, that the other parts surrounding it also
22 be put into evidence so the jury can get an entire
23 picture.

24 THE COURT: Well, I mean, you've got a copy of
25 the video, right?

1 MR. ATWATER: Yes, ma'am.

2 THE COURT: Well, then I guess you could put
3 into --

4 MR. WAGONER: And, Judge, the video --

5 THE COURT: -- evidence whatever part you want
6 to put in.

7 MR. WAGONER: -- contains efforts to CPR and
8 shows the victim. And so that's why we're limiting
9 the body-worn camera to just his statement. That's
10 why we've limited it in such a matter.

11 THE COURT: Okay. But, you know Mr. Atwater,
12 in his defense, might want to play the entire video.

13 MR. WAGONER: Absolutely. Absolutely.

14 THE COURT: You know. But I'm not going to
15 stop him from doing that.

16 MR. ATWATER: Yes, ma'am.

17 THE COURT: But I'm going to tell you, looking
18 at all the totality of all the circumstances
19 surrounding this statement, there's testimony he's
20 the first officer on the scene, it is a noncustodial
21 statement. It looks to me like a basic, routine
22 assessment to see if this gentleman needed any help.
23 He asked if he was hurting; what happened. I find
24 it to be voluntarily made. The standard of proof in
25 this is the preponderance of the evidence, so I'm

1 going to allow it under those circumstances.

2 Anything else?

3 MR. ATWATER: Your honor, I do have a motion in
4 limine. We had -- I had -- I think I filed it the
5 first hearing. But it relates to testimony
6 regarding whether or not Mr. Powers showed remorse
7 at the scene.

8 I believe that the State intends to put into
9 evidence the testimony of the flagger who was on the
10 scene holding up the flag. And in his statements
11 that he gave at the scene to the officer and in a
12 written statement he has made subsequent to that, he
13 not only tells the facts of what he saw, which he
14 can absolutely do, but he makes it a point to say
15 that he thinks Mr. Powers -- that he thinks it's
16 absolutely revolting that Mr. Powers didn't rush
17 over and res- -- give aid to everybody else. And
18 State v Reed clearly says --

19 THE COURT: Somebody else is saying that?

20 MR. ATWATER: Yes. Yes, ma'am.

21 THE COURT: I don't know why that wouldn't be
22 hearsay. Right?

23 Are you planning on putting that in,
24 Mr. Wagoner?

25 MR. WAGONER: Mr. Rainey, who is the flagman,

1 will be testifying. He does say that in his
2 statements to there. I don't anticipate introducing
3 his recorded statements in our case in chief, Your
4 Honor.

5 I would point out that under State -- you know,
6 we have to prove that he had a conscious disregard
7 for the safety of others.

8 State v Horton kind of goes into the fact that
9 the individual was unemotional. This was in a
10 felony DUI, and also a reckless homicide case, Your
11 Honor. That's State v Horton.

12 At minimum, we'll have Mr. Rainey speak about
13 the defendant's actions after the collision, where
14 he went to the side of the road to show, kind of,
15 how Treaster then got to speak with the defendant.

16 MR. ATWATER: Your Honor, I can't -- I clearly
17 can't say anything about him testifying as to the
18 actions that he saw, but deriving an opinion from
19 them that my client failed to show remorse because
20 with a head injury and a hip injury, he got out of
21 the car and went over and sat down or did whatever
22 he did is opinion testimony from this witness
23 Mr. Rainey. And State v Reed is dead on point on
24 this case.

25 The Appellate Court clearly said that it was

1 error to allow that type of testimony to say that
2 the defendant did not show remorse, and to do so
3 caused a retrial.

4 Your Honor, we would ask that any testimony
5 that Mr. Rainey intends to give relating to what he
6 thinks that meant, Mr. Powers' actions were meant,
7 should not be allowed. He can clearly testify to
8 what he saw. I don't think he can say he didn't
9 show any remorse for these people.

10 THE COURT: All right. Did you share this
11 case, State v Reed, with the State?

12 MR. ATWATER: Yes, Your Honor.

13 THE COURT: All right. I've listened to your
14 arguments. I'll -- which -- which witness is this
15 that's going to testify to it?

16 MR. WAGONER: Timothy Rainey.

17 THE COURT: Okay. Y'all just let me know
18 before you put him on the stand, and I'll rule on
19 it.

20 MR. WAGONER: He'll be our first witness.

21 THE COURT: He is going to be your first
22 witness? Okay.

23 I don't know about the Raney case -- I mean,
24 the Reed case. I'm reading it.

25 Have you read it, Mr. Wagoner?

1 MR. WAGONER: The only thing I'd say on the
2 Reed, is it appears it was the officer, so law
3 enforcement, that responded that the defendant never
4 asked anything about them at all. All he wanted to
5 know that day at the scene was what he was being
6 charged with. So that would --

7 THE COURT: I read it about his silence.

8 MR. WAGONER: Yeah. That would be -- sorry.
9 That would be in reference to State questioning, and
10 then the State, through Officer Rowe, testifying
11 that and commenting that he never asked anything
12 about the witnesses or the victims that were in the
13 vehicle.

14 THE COURT: Okay. Anything else, Mr. Atwater?

15 MR. ATWATER: Yes, Your Honor. That's also --
16 that's part of it. I don't want the State asking
17 questions as to whether or not he inquired about any
18 of them whatsoever, or Mr. Rainey making that
19 statement. Because if he asked that statement -- if
20 the State asked that statement of anybody else in
21 the trial, that will elicit this type of testimony.

22 So if the -- part of my motion in limine is
23 that the State does not ask anyone whether or not
24 Mr. Powers went over to provide aid, because he was
25 injured himself, or whether or not he made any

1 statements regarding anybody else's injuries at the
2 scene. I think Reed is clear on that.

3 And the basic tentative reading on the second
4 page of it, Your Honor, says references to a
5 defendant's lack of remorse are also improper and
6 violative of the defendant's 5th, 4th, and 8th
7 amendment rights.

8 THE COURT: Okay. All right. We'll get
9 through openings, and then I'll rule on it. I'm
10 going to let my law clerk read these two cases and
11 then I'll let y'all know.

12 Any other motions from the State?

13 MR. WAGONER: No, Your Honor.

14 THE COURT: Anything from the defense?

15 MR. ATWATER: No, Your Honor.

16 THE COURT: Can I bring the jury in? Everybody
17 ready?

18 MR. WAGONER: The State is ready.

19 THE COURT: All right. I'm going to swear them
20 in, give them an opening charge. And then y'all
21 prepared with your opening statements?

22 MR. ATWATER: Yes, Your Honor.

23 THE COURT: All right. Let's bring the jury
24 in. We've got everybody, right?

25 THE BAILIFF: Yes, ma'am.

1 THE COURT: All right.

2 (The jury enters the courtroom at 9:27 AM)

3 THE COURT: All right. Good morning.

4 THE JURY: Good morning.

5 THE COURT: I hope y'all had a good evening.

6 Ready to get started for the day?

7 I'm going to get the clerk to swear in the
8 jury.

9 THE CLERK: Please stand and raise your right
10 hand.

11 (Jury sworn.)

12 THE CLERK: Was there anyone not able to take
13 the oath? If so, please stand.

14 Panel under oath, Your Honor.

15 THE COURT: All right. Can I have also the
16 indictment?

17 THE CLERK: Yes, ma'am. I laid it up here and
18 didn't even give it to you.

19 THE COURT: Thank you.

20 All right. Before we can get started, let me
21 just go over a little housekeeping rules.

22 Witnesses, when they testify and they come up
23 to the stand, I want them to take their mask off so
24 the jury can see their entire face and we can hear
25 them. Okay?

1 The lawyers, I will tell you, it is optional
2 for y'all if you want to wear a mask. You have the
3 right to do so. If you choose not to wear a mask,
4 that's fine too. I would ask that when you're
5 speaking to the jury, that you talk loud so they can
6 hear you, if you choose to leave your mask on. This
7 case is too important to both sides for you not to
8 hear.

9 Second, especially y'all on the back row, I
10 want to make sure you can hear these lawyers.
11 You're not the first jury to sit there. And I've
12 had several hands go up, telling me they cannot
13 hear.

14 If at any time you cannot hear, please raise
15 your hand. I promise I will spot you, so these
16 lawyers can stop and I can let them know to repeat
17 it so we can go forward. Okay? Everybody
18 understand?

19 We'll try to take a break on the hour.

20 I'm trying to think. Is there anything else I
21 need to go over?

22 Can you think of anything, from the State,
23 before I read this preliminary charge?

24 MR. WAGONER: Not from the State.

25 THE COURT: Anything from the defense?

1 MR. ATWATER: Not at this time, Your Honor.

2 THE COURT: Okay. Good.

3 All right. Ladies and gentlemen, the case
4 we're about to try is the State of South Carolina
5 versus Bryan Christopher Powers. And before we
6 begin this trial, I want to tell you that this trial
7 probably will be different from what you might
8 expect. Many people do not have the chance to
9 attend actual court sessions, as you're doing now,
10 and may think, from watching TV or movies, or
11 reading books, that trials are always full of high
12 drama, intense action, and riveting circumstances.

13 While all of these things may be true at times,
14 this trial is not for entertainment. It is a
15 fundamental part of our democracy; a search for the
16 truth in an effort to make sure that justice is done
17 between the parties before the Court.

18 Searching for the truth and making sure justice
19 is done is often slow, deliberate, and repetitive,
20 the opposite of what you may have seen on TV or in
21 the movies or read in books.

22 This courtroom is a place of honor, dedicated
23 to the protection and preservation of citizens'
24 rights, through what many have called the greatest
25 justice system ever created. The attorneys

1 appearing before you are advocates for the parties
2 they represent. But, first and foremost, they are
3 officers of the Court, sworn to uphold the integrity
4 and fairness of our judicial system, and to help you
5 in the search for the truth. You should expect them
6 to be professional, competent, and ethical in the
7 representation of their clients' interest.

8 Remember that you have just taken an oath to
9 try this case and reach a fair and just verdict.
10 And you are also expected to be professional,
11 reasonable, and ethical.

12 I'd like to thank you for accepting this
13 important responsibility of jury service, and for
14 your contribution today to our justice system.

15 What I'm going to say now is intended to serve
16 as an introduction to the trial of this case. These
17 remarks are not a charge on the law in this case. I
18 will instruct you on the law applicable to this case
19 at the end of the trial before you retire to
20 consider your verdict. This is merely an
21 explanation of the procedure that we will follow in
22 the trial of this case so that you may better
23 understand what may be happening.

24 The defendant is charged by an indictment filed
25 in this court with the crime of reckless vehicular

1 homicide, the elements of which will be explained to
2 you later.

3 The indictment is simply the charge by which
4 the case is brought into court, and it is not in any
5 sense evidence of any allegations it contains.

6 The defendant has pled not guilty to this
7 indictment; the State, therefore, has the burden of
8 proving each of the elements of the indictment
9 beyond a reasonable doubt, and it will be your duty
10 to decide whether the State has met that burden.

11 Your purpose as jurors is to find and determine
12 the facts. You are the sole judge of the facts. If
13 at any time I make any comment regarding the facts,
14 you must disregard it. You are to determine the
15 facts from the testimony you hear and other evidence
16 introduced into court. It is up to you to determine
17 the inferences which you may feel properly be drawn
18 from the evidence.

19 It is especially important that you perform
20 your duty of determining the facts diligently and
21 conscientiously because, ordinarily, there is no way
22 to correct an erroneous determination of the facts
23 by a jury.

24 On the other hand, and with equal emphasis, the
25 same law that makes you the judges of the facts

1 makes me the judge of the law. The law as given by
2 the Court is the only law that you may consider.
3 You must accept and follow it, even though you may
4 disagree with it. I cannot tell you what the facts
5 are and you cannot disagree with me about what the
6 law is or should be.

7 Your job is to take the law as I give it to you
8 and apply it to the facts as you find them from the
9 testimony of witnesses and any other evidence that
10 is introduced.

11 After doing that, you will render your verdict,
12 a true and just verdict under the solemn oath that
13 you just took as jurors.

14 Until I advise you to begin your deliberations,
15 you must not discuss this case with anyone,
16 including your fellow jurors, friends, family
17 members, and anyone involved in this case. This
18 includes discussions face-to-face, by telephone,
19 email, text, blogs, or any other method of
20 communication. You may not use a computer, a cell
21 phone, or other electronic device with communication
22 capabilities at any time while in the courtroom or
23 during deliberations.

24 During your breaks, you may use these devices;
25 however, you may not, at any time, use these devices

1 to get or send information about the case. This
2 includes information about a party, a witness, an
3 attorney, or a court officer, or news accounts about
4 the case, research on any topics raised, or any
5 topics you may think would be helpful in deciding
6 the case, or any testimony presented by any witness.

7 During the trial, do not read, listen to, or
8 watch any news reports about this case. This
9 includes anything that may be in the newspaper, or
10 on the internet, radio, television; you must not
11 consider anything you may have read or heard about
12 the case outside of this courtroom, whether before
13 or during the trial.

14 After the case is submitted to you, you must
15 discuss it only in the jury room with your fellow
16 jurors.

17 The attorneys and parties in this case, as I
18 told you yesterday, have been advised that they are
19 not to talk to you at all. So if you see anyone
20 involved in the case and they do not even say hello,
21 they are not being unfriendly, they are just
22 following my instructions.

23 It is important that you keep an open mind and
24 not decide any issue in this case until all of the
25 evidence has been presented, the parties have made

1 their closing arguments, and I have instructed you
2 on the law in this case.

3 It is your solemn responsibility to determine
4 the guilt or innocence of the defendant, and your
5 verdict must be based solely on the evidence as it
6 is presented to you in this trial and on the law as
7 I instruct you during and at the close of this
8 trial.

9 In just a moment, the solicitor will make
10 what's called an opening statement, in which the
11 solicitor will explain to you the issues in this
12 case, or at least what the solicitor thinks the
13 issues are in this case.

14 The attorney for the defendant may also make an
15 opening statement, although he is not required to do
16 so. What the attorneys tell you during their opening
17 statements is not evidence in this case. It is only
18 their contention as to what the issues are.

19 The evidence in this case will be presented to
20 you by the testimony of sworn witnesses from this
21 witness stand, and/or by exhibits that may be
22 introduced into evidence.

23 From time to time during the trial -- and I can
24 promise you this will happen, happens in every
25 trial -- you may hear one of the lawyers say

1 something like, "Your Honor, I believe I have a
2 question of law or a matter of law to discuss with
3 you," or "may we approach the bench?" Or sometimes
4 I might find it necessary to excuse you from the
5 courtroom for a short while so the attorneys and I
6 can discuss a matter of law.

7 The reason for this is because you're the
8 judges of the facts in this case. And sometimes,
9 when I'm discussing matters of law with the
10 attorneys, it may be necessary for me to make some
11 comment as to the facts in connection with the
12 ruling whether or not a particular law applies.

13 I am not supposed to tell you what I think the
14 facts are, so I will excuse you from the courtroom
15 while these discussions take place so that in no way
16 will you be influenced by anything that I might say
17 or do in connection with the facts.

18 In determining what the true facts are in this
19 case, you must decide whether or not the testimony
20 of the witness is believable. It may be my
21 responsibility to rule, as a matter of law, as to
22 whether certain testimony is admissible at all or
23 not. But once the testimony is admitted, whether or
24 not you believe it is solely for you to determine.

25 In deciding whether to believe a witness, you

1 have the right to consider the interest of any
2 witness, the bias of any witness, the prejudice of
3 any witness; the opportunity for the witness to have
4 seen the matters and things about which the witness
5 may testify, and the way the witness acts on the
6 witness stand.

7 You have the right to consider anything that is
8 in the record that will help you evaluate the
9 testimony of the witnesses. That means that it is
10 your duty to pay close attention to these witnesses,
11 to observe the witnesses, listen to them, and pay
12 close attention to the attorneys and to the Court.

13 Don't let your thoughts wander, but give strict
14 attention to the testimony in this case so that at
15 the end of all the testimony, after the arguments of
16 counsel and the charge on the law by the Court, you
17 will then be in a position to determine what the
18 true facts are and to apply the law to those facts
19 and, thus, render a true and just verdict.

20 It is your added duty, Mr. Foreman, to preside
21 in the jury room, and to be the jury 's spokesperson
22 here in court. It will also be your duty to write
23 the verdict, but I will give you further
24 instructions about that at the conclusion of this
25 case.

1 All right. In order to preserve everyone's
2 rights, I will give the parties an opportunity to
3 object to anything I've said.

4 Any exceptions to anything that I've said to
5 the jury, by the State?

6 MR. WAGONER: Nothing from the State.

7 THE COURT: Anything by the defendant?

8 MR. ATWATER: No objections or exceptions, Your
9 Honor.

10 THE COURT: Thank you.

11 We are now going to begin this case. Ready?

12 MR. COX: Thank you, Your Honor.

13 THE COURT: Mr. Cox?

14 MR. COX: May it please the Court?

15 THE COURT: Yes, sir.

16 MR. COX: Mr. Atwater.

17 "I didn't have time to stop. There was nothing
18 I could do."

19 Members of the jury, those are the words that
20 you will hear the defendant use moments after he
21 slammed his Silverado into two stopped cars at a
22 construction site.

23 MR. WAGONER: Your Honor, may we approach?

24 THE COURT: This is one of those times.

25 (Sidebar conference.)

1 MR. ATWATER: Thank you, Your Honor.

2 THE COURT: Mr. Cox, start over, if you would,
3 please.

4 MR. COX: Thank you, Your Honor.

5 Members of the jury: "I didn't have time to
6 stop. There was nothing I could do." Those words,
7 those words, members of the jury, are the words you
8 are going to hear in this trial, moments after the
9 defendant slammed his Silverado into two stopped
10 cars at a construction site, a crash that ultimately
11 took the life of Mildred Smith. That's why you're
12 here today.

13 You're going to learn in this trial that back
14 in 2019, on Highway 178 -- you're going to hear this
15 is a busy highway in between Batesburg and Pelion
16 right here in Lexington County. Like most roads in
17 South Carolina, needed a little bit of work on it.

18 So in the summer of 2019, a rather large
19 construction project was going on. And
20 particularly, on June 14th, 2019, you're going to
21 hear that a team with Stay Alert and other
22 construction workers were completing a one-lane
23 paving project; that they had to shut off some of
24 the traffic, divert traffic, put warning signs,
25 cones, traffic control devices.

1 In fact, a flagman himself, likely that you've
2 seen yourself, holding up a stop sign trying to
3 direct traffic, stopping cars coming through so that
4 traffic could come the other way, keeping everyone
5 safe, keeping everyone aware, you're going to learn
6 that Mr. Rainey, our flagman, just before 6:00, had
7 a sign turned to stop because it was his turn. It
8 was his turn to keep people safe; it was his turn to
9 let cars come to a complete stop to protect the
10 workers, to protect other drivers.

11 And a red Ford Ranger approached, drove past
12 warning signs, drove past speed limit signs, drove
13 directly up to Mr. Rainey and followed directions
14 and came to a stop. Everyone was safe because the
15 red Ford Ranger followed directions.

16 Just moments after him, another truck
17 approached, drove through the same signs, drove
18 through the same speed limit zone, approached the
19 same stop sign being held by Mr. Rainey, and also
20 followed directions, also kept everyone safe. The
21 second truck being driven by the man named Nick
22 Clinton Hoover.

23 And when Mr. Hoover, you'll learn that with his
24 sister Mildred, they just left Shealy's Barbecue.
25 They were heading home. They just had a nice

1 dinner, just now ending the night.

2 Members of the jury, unfortunately, those were
3 not the only two trucks on the road that day.
4 You're going to learn there was also a Silverado.
5 The Silverado was headed in the same direction on
6 the same highway at the same time, drove through the
7 same warning signs, approached the same flagman,
8 approached the same stop sign.

9 Members of the jury, he didn't stop. No, that
10 vehicle, you're going to learn, was driven by
11 Mr. Bryan Powers. And it slammed into the back of
12 Mr. Hoover's truck. And you're going to learn it
13 flung Mr. Hoover's truck directly into the back of
14 the first stopped vehicle, causing a chaotic scene
15 and, ultimately, a deadly crash, one that ultimately
16 took the life of Mildred Smith. Members of the
17 jury, that is why we are here today.

18 Mr. Bryan Powers is sitting here before you
19 charged with reckless vehicular homicide. As the
20 Judge pointed out to you earlier, she is going to
21 give you the state law on reckless vehicular
22 homicide. But it is our job, mine and Mr. Wagoner's
23 for the State of South Carolina, to prove to you
24 four elements.

25 We have to prove to you that Mr. Powers was

1 driving his truck in a reckless disregard for the
2 safety of others and that he caused injury to
3 Ms. Mildred Smith, ultimately leading to her death.
4 Those are the four things we have to prove to you
5 today -- well, today and throughout the rest of this
6 trial.

7 Likely, you've heard what our burden of proof
8 is. You've probably heard the term beyond a
9 reasonable doubt. That is the law. That is what my
10 job and Mr. Wagoner's job is. We have to prove each
11 one of those elements beyond a reasonable doubt.

12 Again, at the end of this trial, the Judge is
13 going to tell you exactly what the law states beyond
14 a reasonable doubt is. I'd like to think of it as
15 any reasonable doubt. If we prove our elements
16 beyond a reasonable doubt, we have proven these
17 elements, leaving you firmly convinced of the
18 defendant's guilt.

19 So as you sit through this trial and you hear
20 the witnesses and you see the evidence, I want you
21 to have that in the back of your mind. We're going
22 to ask you to listen to the evidence, to listen to
23 the people who take this stand and tell you what
24 happened that day. And we believe we're going to
25 leave you firmly convinced of Mr. Powers' guilt.

1 Now, what you can expect in this trial from our
2 side, we are going to bring before you witnesses who
3 are going to take that stand, and they are going to
4 tell you, specifically, those who were involved in
5 this crash.

6 You're going to hear from individuals who were
7 there that day, who saw it with their own eyes, who
8 experienced this crash themselves. You're going to
9 hear from the doctor who performed an exam on
10 Ms. Mildred Smith. She's going to tell you the
11 injuries she sustained and, ultimately, explain what
12 led to her death.

13 You're also going to hear from law enforcement
14 officers from the Highway Patrol, from the Sheriff's
15 Department who responded to the scene, who did their
16 investigation, and how, through their investigation
17 and the evidence that they put forth, combined with
18 the rest of the testimony, you're going to hear in
19 this trial.

20 Members of the jury, you are going to see
21 exactly what Mr. Powers disregarded. You're going
22 to see the warning signs he disregarded; you're
23 going to see the speed limit that he disregarded;
24 you're going to see the life of Mildred Smith he
25 disregarded.

1 That is why, at the end of this trial, we're
2 going to come back before you and ask you to hold
3 Mr. Bryan Powers accountable and find him guilty.
4 Thank you.

5 THE COURT: Thank you, Mr. Cox.

6 MR. COX: Thank you, Your Honor.

7 THE COURT: Mr. Atwater.

8 MR. ATWATER: Thank you, Your Honor.

9 Ladies and gentlemen of the jury, good morning.
10 My name is Michael Atwater. I'm representing Bryan
11 Powers in this case that the State has just laid out
12 for you as it relates to what their view of the
13 evidence in this case will show you.

14 I'm here to talk to you about listening to the
15 evidence in this case, understanding it completely,
16 and at that point in time, rendering a fair and just
17 verdict that speaks the truth to the evidence that
18 you hear in this case.

19 As Judge McCaslin has told you, nothing that
20 Mr. Cox or I say during our opening arguments is
21 evidence in this case. The evidence in this case
22 that you hear will come from the witness stand. It
23 will be the testimony of witnesses who will talk
24 about what they saw, what they heard, whatever they
25 investigated, what they did. It would also be

1 documents that are entered into evidence; it will be
2 anything else that comes in entered into evidence
3 for your consideration.

4 At the end of this trial, after we have
5 finished our closing arguments and Judge McCaslin
6 has charged you on the law of this case, that will
7 be the first time when you should actually start
8 deliberating. And to deliberate means to start
9 considering, looking at the evidence, making up your
10 mind.

11 No time during this trial whatsoever, from the
12 beginning to the end, will you have the complete
13 evidence, the appropriate evidence, the proper
14 evidence to even start forming an opinion as to the
15 guilt or innocence of Mr. Powers relating to the
16 charge of reckless homicide.

17 He is charged with reckless homicide. Homicide
18 means murder. This was an accident, as the State
19 has told you, happened on --

20 MR. COX: Your Honor, may we approach?

21 (Sidebar conference.)

22 THE COURT: All right. Let me address the jury
23 just for a second.

24 I am the Judge in this case and also the Judge
25 of the law, as I explained to you earlier. I will

1 define reckless homicide to you. So, please,
2 disregard anything that you just heard about
3 reckless homicide. I will tell you what the law is.
4 Okay? Thank you.

5 MR. ATWATER: Thank you, Your Honor.

6 So in this case, you're going to hear evidence
7 regarding what happened on that date, June 14th of
8 2019.

9 Now, the State has told you about people
10 disregarding signs, disregarding highway warnings,
11 disregarding stop signs, those types of things.
12 This case is about an accident. Now, I want you to
13 keep that in mind. On almost any accident that you
14 ever see, someone disregarded a stop sign; someone
15 disregarded the speed limit; someone disregarded
16 something that caused the accident.

17 It may have been their attention may have been
18 diverted; there may have been something that caught
19 their attention; there may have been a lot of
20 things. But the mere fact that in almost every
21 accident that happens, something is disregarded,
22 does not make it a reckless case.

23 And when you hear the charge from Judge
24 McCaslin at the end of this case and she tells you
25 what that term reckless means, that is what you need

1 to consider as it relates to determining the facts
2 of this case and applying it to the law that she
3 gives you at the end of this case.

4 Now, you're going to hear testimony, as the
5 State has told you, from law enforcement. Law
6 enforcement, it is their job to arrive to the scene
7 of the accident and investigate an accident.
8 They're called out to almost all accidents. They
9 fill out reports, which are called traffic incident
10 reports. And the traffic incident reports are taken
11 for the purpose of giving statistical information to
12 the South Carolina Department of Transportation.
13 That's the purpose for the law enforcement officer
14 being there.

15 A mere fact that a law enforcement officer
16 arrived at a scene of an accident does not mean that
17 a crime has occurred. The mere fact that he
18 investigated the accident does not mean that a crime
19 has occurred. The mere fact that he fills out an
20 accident report and gives it to the Highway Patrol
21 does not mean that a crime has occurred. All of
22 those duties are done for investigation and driving
23 statistical data that is given to the Department of
24 Transportation.

25 The purpose of the law enforcement for being

1 there is to make sure that everything is evaluated,
2 if there has been a crime occurred, if there's
3 something that is going to court, whether it be in a
4 criminal case or a civil case where someone is being
5 sued over injuries or something like that, that is
6 the reason they are there. They are not there
7 simply because a crime has occurred. So I want you
8 to keep that in mind when you're listening to the
9 evidence in this case and listening to the testimony
10 of law enforcement officers.

11 You're going to hear, as the State has told
12 you, a medical examiner, a doctor, testify as it
13 relates to the injuries of Mildred Smith. Now,
14 Mildred Smith was injured at the scene of this
15 accident; Mildred Smith did tragically die in this
16 accident. And the loss of a life is a tragic loss
17 to any person anywhere at anytime.

18 We ask that you pay attention throughout the
19 entire case, listen to the evidence that the State
20 puts up, listen to the evidence that the defense
21 puts up, if it does, and wait until the end when
22 you've been charged on the law in this case, to
23 deliberate on the case. And, at that point in time,
24 we ask that you render a just and true verdict that
25 speaks to the facts of this case. Thank you.

1 THE COURT: Thank you, Mr. Atwater.

2 I'm going to give the jury, Mr. Foreman, a
3 short break, about ten minutes. I'm going to take
4 up a matter with the attorneys, and then I'll call
5 you back in. Okay? Thank you.

6 (The jury exits the courtroom at 10:00 AM.)

7 THE COURT: Okay. All right. Back to this
8 issue before we call the next witness. Mr. Wagoner?

9 MR. WAGONER: Yes, Your Honor.

10 THE COURT: Can you tell me exactly what it is
11 that you're trying to get in and why?

12 MR. WAGONER: Ultimately, the fact that after
13 the collision, that a man in jeans and a t-shirt
14 exited the vehicle and went to the side of the road.
15 And that's -- the purpose of that is to explain,
16 ultimately, why Treaster went to talk to this
17 defendant.

18 In the statements that defense counsel did
19 mention, meaning the -- I think it was the statement
20 he gave to William Cook and the dash cam, also to
21 the MAIT investigator. He did say that all he did
22 was walk away, smoke a cigarette like it was
23 nothing. Our intent is not to go into that.

24 I don't know if he opens the door to anything
25 like that, but we've explained to Mr. Rainey we're

1 trying to limit his testimony to basically someone
2 got out there, what they were wearing, and where
3 they went.

4 MR. ATWATER: Your Honor, I have no problem
5 with that whatsoever. Mr. Rainey, in his
6 statements, specifically said he didn't care
7 whatsoever about that woman.

8 THE COURT: Well, and I'm not going to let that
9 in.

10 MR. ATWATER: And he also -- so I ask that his
11 testimony be limited.

12 Also, Your Honor, in State v Reid, it makes
13 reference to Unites States Supreme Court case
14 State versus Johnson where it says: Even comments
15 by the prosecution upon the accused failure to
16 express remorse would allow the jury to draw an
17 adverse inference where -- because the defendant did
18 not appear panicked.

19 THE COURT: I've read it. That's what we were
20 up here doing. And I agree with you, Mr. Atwater.
21 I'm not going to let it in.

22 MR. ATWATER: Thank you.

23 THE COURT: Don't open the door.

24 MR. ATWATER: I get it, Your Honor.

25 THE COURT: If you open the door, it's free

1 game.

2 MR. ATWATER: I get it, Your Honor.

3 THE COURT: You understand, Mr. Wagoner?

4 MR. WAGONER: Yes, Your Honor.

5 THE COURT: I think the law is pretty clear in
6 the Reid case.

7 MR. WAGONER: And, Judge, just for clarity, I
8 may lead him and say, after the collision, don't --
9 we don't -- something after the collision --
10 don't -- I'm trying to think exactly how to word it.

11 After the collision, was -- did someone exit
12 the vehicle? What were they wearing? Where did
13 they go? I'm trying to think how to lead it to
14 limit him. I've already explained that to him, I
15 just don't want him to slip.

16 MR. ATWATER: Your Honor, I would just ask that
17 the State specifically tell him not to make any
18 comments on Bryan's thought at the time or --

19 THE COURT: I agree, because he can't do that.

20 I'm going to give y'all ten minutes. I'm going
21 to give you time, because he's our first witness up,
22 right?

23 MR. COX: That's right, Your Honor.

24 THE COURT: Mr. Cox, I'm going to give you
25 about ten minutes so y'all can talk to him in

1 private.

2 MR. COX: Okay.

3 THE COURT: Because I really don't want any
4 slipups, if we can help it here.

5 MR. COX: Neither do we, Your Honor.

6 THE COURT: Because it's going to open some
7 doors that y'all might not want to have open.

8 All right. We're going to be in recess for ten
9 minutes. I'm going to get the jury back at a
10 quarter after.

11 MR. WAGONER: Thank you, Your Honor.

12 (Recess taken.)

13 THE COURT: Are we ready to bring the jury in?

14 MR. ATWATER: The motion that we had in
15 chambers relating to the concurrent civil action and
16 any bias based upon anybody who's going to testify
17 that is a party to the civil action.

18 MR. WAGONER: I'd also point out, and I don't
19 have the statute in front of me. We're trying to
20 get someone to grab it. It's under 56-1 -- I think
21 it's like 6150 off the top of my head. It states
22 that a criminal conviction for a 56 Code violation,
23 is not admissible in civil court, therefore I don't
24 believe that the civil action should be admissible
25 within criminal court, since if he is convicted of

1 this, that can't be used in the civil cause of
2 action.

3 Obviously, I guess, negotiations --

4 MR. ATWATER: Oh, I'd love to see that statute.

5 THE COURT: 56 -- what do you think it is.

6 MR. WAGONER: It's -- I think it's -- again,
7 this is off the top of my head, 56-5 516- -- I
8 thought I brought it in.

9 THE COURT: 5160?

10 MR. WAGONER: 56-5- -- do you have the 56 Code?

11 THE CLERK: Yeah. I'm pulling it up right now.

12 THE COURT: We're pulling it up right now.

13 THE CLERK: I'm in Section 56. You think it's
14 60?

15 MR. WAGONER: Off the top of my head, it's
16 6150, but I could be wrong.

17 THE CLERK: 6150, okay.

18 MR. WAGONER: Sorry. It's 6160. If I may
19 approach?

20 THE COURT: You may.

21 Anything else?

22 MR. ATWATER: I do, Your Honor.

23 In State versus McFarland 279 S.C. 327,
24 attacking the witnesses for their bias was allowed
25 when the witness was engaged in other litigation

1 with one of the other parties.

2 In State versus Brown -- I'm sorry. Yes, in
3 Perry versus Jeffries 61 S.C. 292, witness's prior
4 testimony against a party in another case allowed
5 for bias. We have witnesses in this case who have
6 already given deposition testimony in another case.

7 State versus Sherard, it was allowed -- witness
8 bias was allowed because the prior testimony in a
9 prior lawsuit.

10 It's also allowed when a person has a pecuniary
11 interest in another matter, which would exist in
12 this case.

13 And also, Your Honor, whether it -- whether it
14 is admissible as it relates to -- I've actually had
15 this happen to me in civil court many times, once a
16 trial has happened and it's a matter of public
17 record and it's res judicata. But, Your Honor, I
18 believe this would speak to punitive damages in the
19 other action as well.

20 THE COURT: Mr. Wagoner, I'd be glad to hear
21 anything that you have to say.

22 MR. WAGONER: I just believe that it, again,
23 it's irrelevant under 401. And furthermore, could
24 lead to confusion of the jury of the issues in this,
25 that this has nothing to do with the civil case.

1 This is whether or not he committed the crime of
2 reckless vehicular homicide, Your Honor.

3 THE COURT: No. I think he's going to their
4 testimony, as far as being biased that they have a
5 pending civil suit, if I'm understanding correctly.
6 And I'm going to agree with Mr. Atwater. In fact, I
7 think I even did it myself when I was practicing law
8 on a case.

9 So I'm going to allow it. I just don't -- I'm
10 not going to allow for you to go into detail. This
11 is a pending action. It hasn't been settled, has
12 it?

13 MR. ATWATER: No, Your Honor.

14 THE COURT: To anybody's knowledge?

15 MR. WAGONER: Not to my knowledge.

16 THE COURT: So, you know, I'm not letting you
17 go into great detail about it at all. If there's a
18 pending suit, there's a pending suit. Other than
19 that, there's no need to comment on it. I think the
20 point is made.

21 MR. ATWATER: There actually have been offers
22 in settlement. And I believe there's a partial
23 settlement, Your Honor, but I agree with you 100
24 percent.

25 THE COURT: I am not going into any offers, any

1 amount of money, none of that.

2 MR. ATWATER: I agree, Your Honor.

3 THE COURT: Then I'll allow it as far as that
4 there is a pending suit. Again, we're not going
5 into details. It's still pending.

6 MR. ATWATER: Yes, Your Honor.

7 THE COURT: All right. We ready to bring the
8 jury in?

9 MR. WAGONER: The State is ready, Your Honor.

10 MR. ATWATER: Yes, Your Honor.

11 THE COURT: Let's bring them in.

12 Is everybody okay before the jury comes in to
13 break for lunch 12:00 to 1:00?

14 MR. ATWATER: That works for me, Your Honor.

15 MR. WAGONER: The only thing I'd ask, is that
16 we do have the doctor here. We did have her come a
17 little earlier than we had anticipated. I do
18 believe that we would be done with her testimony by
19 noon. I'd just would ask that we can get her done.

20 THE COURT: Okay. Absolutely.

21 (The jury enters the courtroom at 10:28 AM.)

22 THE COURT: Mr. Foreman, are we ready to
23 proceed?

24 THE FOREPERSON: Yes, Your Honor.

25 THE COURT: Okay. Call your first witness.

1 MR. WAGONER: The State would call Timothy
2 Rainey.

3 TIMOTHY RAINEY

4 being first duly sworn, testified as follows:

5 THE WITNESS: I do. I swear.

6 THE CLERK: Have a seat over there, please.
7 State your name, please, and spell your last name
8 for the record.

9 DIRECT EXAMINATION

10 BY MR. WAGONER:

11 Q. If you could state your name and spell your
12 last name for the court reporter, please.

13 A. Timothy Rainey, R-A-I-N-E-Y.

14 THE COURT: Mr. Rainey, you can adjust that
15 mic. There you go. That way you don't have to lean
16 up in that chair.

17 BY MR. WAGONER:

18 Q. Good morning, Mr. Rainey.

19 A. Good morning.

20 Q. Could you start out by introducing yourself to
21 the jury a little bit, specifically where you're
22 from and what kind -- what you do?

23 A. Actually, I'm from a small town York, South
24 Carolina, but made Columbia my home. I've been here
25 in Columbia, South Carolina for 27 years.

1 Q. And back in 2019, where were you employed?

2 A. Through Hire Quest at Stay Alert.

3 Q. And were you working for like a subcontractor,
4 or were you working for a staffing service?

5 A. Actually, a staffing company.

6 Q. And what staffing company would that be?

7 A. It was now it's Hire Quest.

8 Q. Okay. And what were you doing with Stay Alert
9 in 2019?

10 A. Certified flagger.

11 Q. Okay. Kind of, could you tell the jury, kind
12 of, your experience, and what experience you have as
13 a flagger, and what is a flagger?

14 A. Basically protect people's lives and you
15 control traffic while they're doing sorts of road
16 work.

17 Q. And on June 19th of -- excuse me -- June 14th
18 of 2019, were you working a job?

19 A. Yes.

20 Q. And was that job on 178?

21 A. Correct.

22 Q. And, kind of, tell the jury, kind of, what you
23 were doing on 178 on June 14th, 2019.

24 A. Actually, I was controlling traffic and had
25 vehicles on hold, on stop, and --

1 Q. Kind of, what was you use to control traffic as
2 you testified?

3 A. What they call a paddle stick with a stop and a
4 go on it.

5 Q. Would it aid the jury to see the -- a paddle
6 stick? Do you believe it would aid the jury to see
7 a paddle stick?

8 A. Actually, yes, if you have one.

9 MR. WAGONER: Your Honor, if I may?

10 THE COURT: You may.

11 BY MR. WAGONER:

12 Q. Mr. Rainey, what is this?

13 A. It's a paddle stick.

14 Q. And is this what you were using on June 14th,
15 2019, as you were controlling traffic?

16 A. Yes.

17 Q. Did you witness an incident around 6:00 p.m. on
18 June 14th, 2019?

19 A. Yes.

20 Q. Would you tell the jury what you were doing
21 prior to that incident?

22 A. I was holding the sign, not trying to be funny,
23 just like you were holding it, and I had vehicles, a
24 truck, and a second vehicle, another truck --

25 Q. What was the first vehicle -- there was a

1 vehicle stopped for you?

2 A. It was already had stopped. It was stopped.

3 Q. Do you recall what type of vehicle that was?

4 A. A red short-bed pickup truck.

5 Q. And was there a second vehicle stopped for you?

6 A. Yes.

7 Q. And do you recall what type of vehicle that
8 was?

9 A. It was another pickup truck.

10 Q. Okay. How long had they been stopped?

11 A. About 15 minutes at the most.

12 Q. Okay. And what did you see -- what did you
13 see -- did you witness a collision?

14 A. Yes.

15 Q. What did you see immediately prior to that
16 collision?

17 A. Another pickup truck approaching me excessive
18 speed. And from a distance, I could see him coming,
19 but we got to a point where it wasn't no breaking.
20 He had you know, stop. Stop. But --

21 Q. Would it help -- would it assist the jury for
22 you to show them exactly what you tried to do?

23 A. Yes.

24 MR. WAGONER: Your Honor, may the witness stand
25 down?

1 THE COURT: He may.

2 You can stand down, Mr. Rainey.

3 BY MR. WAGONER:

4 Q. As you saw that vehicle approaching, can you
5 show the jury what you did?

6 A. As it was approaching, and it got to the point
7 where the vehicle looked like it wasn't going to
8 stop, I was stop. Stop. Stop. Didn't stop.

9 Q. Okay. And what happened after it did not stop?

10 A. Collided straight into the back of the
11 vehicles, the second vehicle.

12 Q. That third vehicle, did you see an individual
13 leave the third vehicle?

14 A. Yeah. Could you, please, repeat that?

15 Q. Yeah. The third vehicle, the third truck, did
16 you see an individual leave that vehicle?

17 A. Yes. After the collision.

18 Q. And what was he wearing?

19 A. If I'm not mistaken, blue jeans and a t-shirt.

20 Q. Okay. And where did he go, physically, after
21 that collision?

22 A. He just exited his vehicle.

23 MR. WAGONER: Beg the Court's indulgence.

24 THE COURT: Take your time.

25 MR. WAGONER: No further questions. Please

1 answer any questions of Mr. Atwater.

2 THE WITNESS: Sure.

3 THE COURT: Mr. Atwater.

4 MR. ATWATER: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. ATWATER:

7 Q. Good morning, Mr. Rainey.

8 A. Good morning.

9 Q. Mr. Rainey, on the date of this car accident on
10 Highway 178, how long had you been out there on
11 Highway 178 that day?

12 A. I had been out there on that road working a
13 bunch of different occasions. This just happened to
14 be another time they had me out there working on
15 that road there.

16 Q. Yes, sir. But I'm asking you on the day that
17 this accident happened -- can you hear me, sir?

18 A. Yeah. Go on and ask me again. What now?

19 Q. Yes. On the day that this accident happened,
20 how long had you been on Highway 178 at that
21 location that day?

22 A. From that morning all the way until the end of
23 the day, about 12 hours.

24 Q. Okay. And at the time when this accident
25 happened, you were standing approximately about 15

1 feet in front of the red truck that was stopped,
2 correct?

3 A. No.

4 Q. Okay. Where were you standing?

5 A. I was standing there where my cone start at, at
6 my post.

7 Q. Okay. And your cone was off of the side of the
8 road, correct, you weren't standing in the highway?

9 A. There was -- there was set up like a taper,
10 what I call a taper, but that's where I was supposed
11 to stand at my post to control the traffic. The
12 cones stop them from going any further. I stand
13 right there.

14 Q. Yes, sir.

15 A. To acknowledge me and the cones.

16 Q. So you were some distance ahead of the red
17 truck that had stopped?

18 A. No. I was right there at the -- that's where
19 he stopped right there at the cones, and I was right
20 there with my paddle pole.

21 Q. So he was sitting next to you?

22 A. He was right there in front of me at the cones.

23 Q. In front of you?

24 A. I was out front of the cones.

25 Q. Okay. And now, on Highway 178, you were

1 standing on one side of the highway. Was there
2 traffic moving on the other side of the highway?

3 A. Actually, they had released traffic. Traffic
4 was coming from miles up the road, and the next lane
5 over. I was holding the traffic proceeding the
6 other way.

7 Q. Okay. And so at the scene of the accident
8 where this happened, you were the only flagger that
9 was there. There was no other flaggers there at
10 that time, correct?

11 A. Correct.

12 Q. Okay. And where were you were standing, if you
13 would've turned around and looked either direction
14 down the highway, you couldn't see any other flagger
15 or any other crew member of your team, could you?

16 A. No, I couldn't.

17 Q. Okay. And, in fact, that afternoon, prior to
18 this accident happening, crew members had gone out
19 and started presetting up for another operation on
20 Monday, relating to that construction, correct?

21 A. I don't have no -- I don't have no -- I don't
22 know nothing about that.

23 Q. Okay. Were there other people from your crew
24 nearby?

25 A. Not as I know of. We was getting ready to go

1 home. We did our job. We was getting our stuff and
2 getting ready to go home.

3 Q. Yes, sir. Y'all were packing up and getting
4 ready to leave, correct?

5 A. Correct.

6 Q. Pulling up thing for the day and getting ready
7 to go on, be finished, correct?

8 A. Correct.

9 Q. As a matter of fact, the part of the highway
10 that you were working on there, was completed by
11 that time, right? The repairs were completed,
12 correct?

13 A. Well, we just did our job. I don't know how
14 far the contract was proceeding to. Just give me my
15 daily work.

16 Q. All right. But immediately prior to this
17 accident happening, the part of the roadway where
18 you were standing at where they were doing the
19 repairs, those repairs had been finished, correct?

20 A. I don't know the contract -- the road. I don't
21 know how far they was going. They just we got to
22 the road at certain times. What they did, we worked
23 for the day, we was getting out the road. So I
24 don't know how far they were going to run down the
25 road doing the contract work they was doing.

1 Q. Okay. Do you recall giving a statement to a
2 police officer and sitting in his car and giving him
3 a statement?

4 A. I talked to a trooper.

5 Q. Do you recall telling him that there was
6 another truck out and they were out picking up
7 equipment?

8 A. No. They didn't get to pick up the equipment.
9 My supervisor was passing me, about to attend to
10 that. In the process, the accident happened.

11 Q. Okay. So it's your testimony today that you
12 never told anybody that they were picking up
13 equipment, correct?

14 A. They never did pick up no equipment.

15 Q. Did you ever tell the police officer or any
16 other person, that they were out setting up
17 equipment?

18 A. No, I didn't.

19 Q. So it's your testimony today that you never
20 told anyone that they were out presetting for
21 another day's work?

22 A. No, I didn't.

23 Q. Okay. Who else was out there at that scene
24 that day from your crew?

25 A. Actually, I don't know anybody's name. And --

1 and just my supervisor that was out there, and the
2 other guys that was out there doing the flagmanship.

3 Q. Okay. And you testified earlier that you were
4 working through a temporary company?

5 A. Yeah. Hire Quest.

6 Q. Okay. On the date of this accident, not
7 afterwards, but on the date of this accident, had
8 you completed certified flagging training and had a
9 certificate at that date?

10 A. I was certified flag holder for over 15 years.

11 Q. Okay. Did you ever provide a copy of your
12 certified flagger certification to -- to --

13 A. High Quest?

14 Q. To the Highway Department?

15 A. Oh, they're supposed to have all that already
16 registered by me having my certification.

17 Q. Yeah. Did you ever provide a copy of your
18 certification to the State, to Mr. Cox or Mr.
19 Wagoner in this case?

20 A. Stay Alert has a copy of my certification, and
21 I had a copy -- might still have a copy. But Hire
22 Quest should -- they should have a copy of it,
23 because I flagged for them many years ago. So I
24 don't know if they still have a copy of it.

25 Q. Okay. But all those people you just named,

1 that's not either one of these two gentlemen, right?

2 A. What counsel you asked me for a copy?

3 Q. Well, have you ever given a copy to either Mr.

4 Cox or Mr. Wagoner?

5 A. They never requested it.

6 Q. Okay.

7 MR. ATWATER: Thank you. That's all I have,

8 Your Honor.

9 THE COURT: Okay. Any redirect, Mr. Wagoner?

10 REDIRECT EXAMINATION

11 BY MR. WAGONER:

12 Q. You were out there with -- there were other
13 people on the work crew?

14 A. Correct.

15 Q. And did you notify them of the collision? Did
16 you notify them that there was a collision?

17 A. Yes. Immediately as it occurred, I stayed on
18 alert for them to control traffic because there were
19 so many other cars coming.

20 Q. And some of those work for Stay Alert? Some of
21 those individuals work for Stay Alert, the company?

22 A. Correct.

23 Q. There may have been other temps on the job?

24 A. Correct.

25 Q. And you were a temp on the job?

1 A. Yes.

2 MR. WAGONER: I beg the Court's indulgence.

3 THE COURT: Take your time.

4 MR. WAGONER: No further questions.

5 THE COURT: May I excuse -- any redirect?

6 MR. ATWATER: No, Your Honor.

7 THE COURT: Can I excuse Mr. Rainey?

8 MR. WAGONER: May he be excused, Your Honor?

9 THE COURT: Mr. Rainey, thank you for coming.

10 You may be excused.

11 MR. WAGONER: May it please the Court?

12 THE COURT: Go ahead.

13 MR. WAGONER: The State would call Clinton

14 Hoover.

15 CLINTON HOOVER,

16 being first duly sworn, testified as follows:

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Thank you, sir. Go ahead and have

19 a seat up there. Once you're seated, state your

20 full name, spelling your last, please.

21 THE WITNESS: My name is Clinton E Hoover,

22 H-O-O-V-E-R.

23 DIRECT EXAMINATION

24 BY WAGONER:

25 Q. Good morning, Mr. Hoover.

1 A. Good morning, sir.

2 Q. Would you start out by introducing yourself to
3 the jury? Specifically, where you're from, where
4 you went to high school, and what you've, kind of,
5 done after high school?

6 A. Oh, I'm retired. And I went to Pelion High
7 School. And after high school, I went in the army.
8 Then I got out and went in the Navy for 17 years and
9 retired from the Navy in '89, December of 89. And
10 I've been working in welding places since then up
11 until '90 when my wife got sick with diabetes.

12 Q. How young of a man are you?

13 A. Ma'am -- sir?

14 Q. How young of a man are you?

15 A. Oh, I'm 78.

16 Q. Back on June 14th, 2019, can you tell me what
17 you did that day.

18 A. Yeah, we went to Shealy's. I picked my sister
19 up in Pelion, that's where she -- Mildred. Then we
20 went by, and she wanted to get Ginger, my other
21 sister's daughter, and we went to Shealy's because
22 Mildred had a birthday coming up, was in about a
23 week, and I bought her supper up there.

24 Q. Can you tell the jury about the route you would
25 have taken from Mildred's and Ginger's to get to

1 Shealy's?

2 A. Yes. Up 178 towards Batesburg.

3 Q. Do you recall any sort of construction going on
4 178?

5 A. Yes, sir. I was flagged around. They were
6 paving the road up there. I was going up the right
7 side and they flagged me around the left side.

8 Q. Now, what can you recall about the weather on
9 June 14, 2019?

10 A. It was sunny and clear.

11 Q. That construction area you just talked about on
12 178, do you know what county that's in?

13 A. In Lexington.

14 Q. Did you make it to Shealy's?

15 A. Yes, sir.

16 Q. Can you tell me after you had that great
17 barbecue, what did you do?

18 A. Well, we started back to take them home in
19 Pelion, and we come down -- well, we got back out
20 and got to 178. I turned left on 178, and that's
21 where my memory stops right there.

22 Q. I'm going to take you back to leaving Shealy's.
23 Who all were you with again?

24 A. Mildred. Mildred, that's my sister, and Ginger
25 Lee Smith, my other sister's daughter.

1 Q. And do you refer to Mildred as any other name?

2 A. Tootsy.

3 Q. Tootsy. As you were leaving Shealy's, was
4 everyone walking on their own?

5 A. Yes, sir.

6 Q. Can you recall what seat Ginger got into
7 leaving that -- once you left Shealy's?

8 A. She was in the right front.

9 Q. Okay. And where was Mildred or Tootsy seated?

10 A. In the back right.

11 Q. Okay. And what type of vehicle were you
12 driving?

13 A. 1990 Colorado four-door pickup truck.

14 Q. And with your knowledge of 178, heading towards
15 Pelion -- where were you going?

16 A. I was going to take them back home to Pelion.

17 Q. Okay. Once you turn on to 178, what direction
18 would you be traveling?

19 A. Sir?

20 Q. What direction would you be traveling on 178 to
21 take Mildred home?

22 A. Oh, I'd be traveling east.

23 MR. WAGONER: Beg the Court's indulgence.

24 No further questions.

25 THE COURT: Mr. Atwater.

1 MR. ATWATER: Yes, ma'am.

2 CROSS-EXAMINATION

3 BY MR. ATWATER:

4 Q. Mr. Hoover, are you -- you have given testimony
5 about this accident before today, correct?

6 A. Yes.

7 Q. In fact, you gave your testimony relating to a
8 civil lawsuit, where you're suing Mr. Powers in
9 civil court, correct?

10 A. No. Not as far as I know of. It was a
11 deposition at a lawyer's office, is all I know.

12 Q. Yes, sir. And that is a lawsuit to recover
13 money for injuries from this accident, right?

14 A. Yes, for the insurance.

15 Q. Yes, sir. And it's related to -- and Mr.
16 Powers is named as the defendant in that lawsuit,
17 isn't he?

18 A. Yes.

19 MR. ATWATER: That's all I have, Your Honor.

20 THE COURT: Okay. Thank you.

21 Any redirect?

22 MR. WAGONER: No redirect, Your Honor.

23 THE COURT: May I let Mr. Hoover be excused?

24 MR. WAGONER: Yes, Your Honor. Obviously he
25 may be seated, but I believe him and his sons have

1 some other appointments and whatnot. So he needs to
2 be excused from his subpoena, however he may be here
3 throughout, if that makes sense.

4 THE COURT: Do you hear that, Mr. Hoover, you
5 might be staying with us.

6 MR. WAGONER: He doesn't have to.

7 THE COURT: We're going to let you down from
8 the stand though. Okay? Thank you.

9 MR. ATWATER: Your Honor, just as it relates to
10 being excused from his subpoena, if he happens to be
11 in the courtroom at sometime during the latter part
12 of the trial and I need him on redirect, I would
13 like to reserve the right to call him.

14 THE COURT: Okay. I'm not going to let Mr.
15 Hoover go too far without letting the State know.
16 Okay?

17 MR. WAGONER: And, Judge, we can get him back,
18 you know, if he decides to take a constitution. We
19 can get him back. We have plenty of contact with
20 the family.

21 THE COURT: Okay. That's fine.

22 Is that all right with you, Mr. Atwater?

23 MR. ATWATER: It is, Your Honor.

24 THE COURT: Okay. State can call their next
25 witness.

1 MR. COX: The State calls Elizabeth Moffatt.

2 ELIZABETH MOFFATT,

3 being first duly sworn, testified as follows:

4 THE WITNESS: I do.

5 THE CLERK: Thank you, ma'am. Once you're
6 seated, you can take off your mask. State your full
7 name, spelling your last, please.

8 THE WITNESS: Full name is Elizabeth Jane
9 Moffatt, M-O-F-F-A-T-T.

10 DIRECT EXAMINATION

11 BY MR. COX:

12 Q. Dr. Moffatt, if you could just, kind of, state
13 for the jury who you are, what you do for a living,
14 and where do you work?

15 A. I'm a pathologist. I practiced at Lexington
16 Medical Center for over 20 years. And we do
17 surgical pathology, anatomic pathology. Anatomic
18 pathology includes the county autopsies, and we do
19 clinical pathology and lab work.

20 Q. And, Dr. Moffatt, was it in this role as a
21 pathologist that you became involved in this case?

22 A. Yes.

23 Q. Okay. Without going into -- before we get into
24 any details of your work in this case, what
25 specifically did you do in this case?

1 A. I went over the history with the coroner when
2 they -- when he got to the morgue. That's standard
3 procedure. And by history, I mean, the events
4 leading up to the death. And then I examined the
5 body. They had ordered an external examination and
6 toxicology of the body. So I stuck to that, and I
7 did an external examination of the body. I also got
8 imaging studies, post mortem imaging studies, to
9 further evaluate for trial.

10 Q. Dr. Moffatt, I want to, kind of, go through
11 your background a little bit.

12 As a pathologist, did you have to go to any --
13 did you got to college, go to any other schooling?

14 A. College, medical school, and then residency,
15 which is five years, and then a fellowship for
16 another year.

17 Q. Okay. Where did you go to med school?

18 A. East Tennessee State University.

19 Q. Where did you complete your residency?

20 A. Duke University.

21 Q. As a pathologist, do you have to go through any
22 -- after medical school and your residencies, do you
23 have to go through any certifications?

24 A. You have to be boarded in order to practice
25 with pathology boards. And that includes -- most

1 pathologists have to have anatomical boards and
2 clinical pathology boards, so I have those. I also
3 have cytopathology boards.

4 And then once you're boarded, you have to be
5 licensed to practice. And then periodically you
6 have to be updated with continuing education.

7 Q. How does one become board certified in the
8 areas that you are?

9 A. You apply for -- you have to complete so many
10 years of training. So you couldn't just go take the
11 boards without training. So you complete your
12 residency training, and then you take the board
13 examinations by the National Board of Medical
14 Examiners and Pathology boards. And there are a lot
15 of board exams. You go to a place and you take the
16 examination.

17 Q. Dr. Moffatt, how long have you been board
18 certified in anatomic clinical and cytopathology?

19 A. Since 1996.

20 Q. How long have you been working at Lexington
21 Medical Center?

22 A. Since 1998.

23 Q. You mentioned as a part of your work, you
24 perform autopsies and external examinations.

25 If you could walk us through, what does an

1 external examination entail?

2 A. We-- the main thing we're looking for is signs
3 of external injury. We document the height, the
4 weight, the phenotypical or outward physical
5 appearance of the body, look for skin wounds,
6 bruises, anything abnormal. And then that's pretty
7 much the external examination. So you're just
8 looking carefully over the body front, back,
9 everything. The body is unclothed on the bench,
10 so...

11 Q. How long have you been performing external
12 examinations like this?

13 A. I've been doing autopsies since I started in
14 1998, so...

15 Q. Okay. And you also mentioned that upon doing
16 the external examination, you rely on something
17 called coroner's history?

18 A. Yes.

19 Q. Before you get into, you know, any work on this
20 case, what is a coroner's history that you rely on
21 in an external examination?

22 A. The coroner's examination is key. I would
23 never do an autopsy or start an autopsy without
24 knowledge, would not go in there blindly, and
25 examine the body without knowing the circumstances

1 that led up to the death. So it's very important
2 that they're there with you in the morgue, and that
3 they have the information from the scene, as much as
4 is possible.

5 You know, we do those autopsies pretty quickly
6 after the death, so we rely on the information that
7 they have at that time to tell us. And it's a
8 verbal conversation, and then it's documented in
9 writing, the history.

10 Q. Thank you, Dr. Moffatt.

11 MR. COX: Your Honor, at this time, we'd offer
12 Dr. Moffatt as an expert in anatomical and clinical
13 pathology.

14 THE COURT: Any objection?

15 MR. ATWATER: No, Your Honor.

16 THE COURT: Okay. I'm going to declare her an
17 expert. If you don't mind, I'm going to let the
18 jury know what that means.

19 All right. So I want y'all to listen to me,
20 please.

21 Normally a person cannot give opinion
22 testimony. Normally, when a person testifies, they
23 must testify to what they either saw, heard, sensed
24 by smell, or something of that nature. However,
25 there is an exception when someone is qualified

1 because of education or experience, as in this case.
2 They are permitted to give their opinion in certain
3 areas if the Court qualifies them that way. This
4 witness will be qualified in the area of clinical
5 and external autopsies; is that correct?

6 MR. COX: Anatomic pathology -- anatomic and
7 clinical pathology.

8 THE COURT: And clinical pathology. And she
9 will give opinion testimony in that area. That does
10 not mean that you must accept the opinion, but it is
11 evidence for you to use in any way you see fit.

12 Okay. Go ahead.

13 BY MR. COX:

14 Q. Dr. Moffatt, if you could, very briefly, give
15 us the context that you came into this case, the
16 coroner's history, if you would.

17 A. The context was that the decedent was in the
18 back seat of an automobile that was stopped at a
19 road construction site and was hit from behind. The
20 vehicle was hit from behind by an oncoming vehicle.

21 Q. And, Dr. Moffatt, when you began your
22 examination, what were the first observations for
23 the decedent?

24 A. The body of Ms. Smith looked terrible. It was
25 badly bruised, bruises throughout the body,

1 abrasions. The head -- her head was turned at an
2 unnatural angle, suggesting, you know, cervical
3 fracture. She had what looked like vomitous,
4 possibly with blood in the nasal and oral orifices.
5 She had a horrendous large laceration on her right
6 arm, fresh, a fresh laceration and deep. She had a
7 left wrist fracture, and she looked -- it looked
8 like she had some distortion of the chest wall, and
9 you could tell she had rib fractures just by
10 palpation. And then she had bruising and some
11 lacerations on the lower extremities.

12 Q. As part of your external examination, were
13 there any other findings that you were able to
14 determine from your examination?

15 A. I think that she had a left wrist fracture. I
16 don't know if I mentioned that or not, left wrist
17 fracture. Those were -- those were the findings
18 from the external exam.

19 Q. What was the next step in your examination of
20 the decedent?

21 And, I'm sorry, Dr. Moffatt, when we refer to
22 the decedent, who was the -- who were you performing
23 the external examination on?

24 A. Mildred Smith.

25 The next step was -- the other thing I did, was

1 palpate for subcutaneous air, or subcutaneous
2 emphysema, to see if she had a pneumothorax, which
3 is puncturing of a pleural cavity, because of the
4 rib fractures. And I could -- I could tell there was
5 subcutaneous air in the subcutaneous space coming
6 from the lungs. So she had been punctured. The
7 pleural cavity had been punctured.

8 Q. Dr. Moffatt, when you say you were doing
9 palpitations, what exactly do you mean by -- what
10 were you doing?

11 A. You press on the upper -- the skin around the
12 pleural cavity around the lungs, and it's spongy.
13 And it's not normally spongy. And it tells you that
14 there's some air that has escaped from the pleural
15 cavity or the lung cavity into the air space as a
16 result of the injury.

17 The next thing is we get imaging. We get
18 post-mortem imaging before we move the body around
19 anymore. So the main things we got were head, neck,
20 and chest.

21 Q. And what were your findings from the imaging
22 done in this case?

23 A. Well, first of all, the report came later that
24 day. I spoke to the radiologist who, sort of,
25 summarized the findings, and said number 1, the

1 lungs look terrible. She's got bilateral rib
2 fractures, she may or may not have a cervical spine
3 fracture. He couldn't be sure.

4 And I'll just digress a little. The trouble
5 with getting x-rays in someone who is post-mortem in
6 a decedent, is that especially a cervical fracture,
7 if you're doing this in a person who is alive, you
8 need to position them in order to see all of the
9 bones in the vertebrae. And if they're not alive,
10 you can't position them. And she, as I said, was
11 already kind of turned in an unnatural angle. So he
12 was limited -- the radiologist was limited in terms
13 of what he could see on the x-ray. But he did say I
14 cannot exclude there is a cervical fracture.

15 And then in terms of the lungs, do you want me
16 to go on with his findings?

17 Q. Absolutely.

18 A. In terms of the lungs, he had -- he said she
19 had bilateral pulmonary opacities, which were
20 probably contusions, which are basically bruises in
21 the lungs. And so that means that the lungs, which
22 usually contain air, now contain blood. So there's
23 blood in the alveolar spaces of the lung s instead
24 of air. So that's what makes it look like it's
25 opaque on the x-ray. And both lungs throughout were

1 affected, and a pneumothorax.

2 Q. Could you explain to the jury what a
3 pneumothorax is?

4 A. It's when there is an escape of air from the
5 lungs into the chest cavity around the lungs. So
6 it's the lungs have somehow been injured, and in
7 this case, most likely, rib fractures, because the
8 ribs broke and probably punctured the pleural cavity
9 around the lungs, and the air escapes into the air
10 -- the cavity around it. And the radiologist can
11 see that on the chest x-ray.

12 Q. Dr. Moffatt, after the imaging results and the
13 external examination, does this complete your
14 examination of Ms. Smith?

15 A. Yes. And we drew blood from the toxicology
16 studies.

17 Q. Okay. Were there results from the toxicology
18 study?

19 A. Yes. She had antihistamines. She had an
20 antidepressant. She had Ambien. None of those
21 things were toxic levels.

22 Q. Dr. Moffatt, were you able to determine a cause
23 of death in this case?

24 A. Yes.

25 Q. And your opinion, Dr. Moffatt, to a reasonable

1 degree of scientific certainty, could you provide us
2 what your -- what you found to be the cause of death
3 in this case?

4 A. Blunt force trauma to chest organs, mainly
5 lungs, and possibly a cervical fracture,
6 pneumothorax. But mainly the chest organs, the
7 lungs, the vital organs.

8 Q. And, Dr. Moffatt, based on your findings, as
9 well as the context you provided on this case, what
10 caused Mildred Smith's death?

11 A. In my report, I said accidental versus
12 vehicular homicide. And that's because I have to --
13 I can't make that distinction. But the cause of the
14 injuries was blunt force trauma as a result of the
15 rear-end collision.

16 MR. COX: Your Honor, if I could have just a
17 moment.

18 Thank you, Dr. Moffatt. I have no further
19 questions at this time.

20 THE COURT: Mr. Atwater.

21 MR. ATWATER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. ATWATER:

24 Q. Good afternoon, Dr. Moffatt.

25 A. Good morning.

1 Q. Dr. Moffatt, in your testimony, and in your
2 observations, you said that the head was turned at
3 an unnatural angle when you saw her at the hospital?

4 A. Yes, sir.

5 Q. Do you -- were -- in your taking of a history,
6 I think you said you spoke to the coroner?

7 A. Yes.

8 Q. And that history, you said, is key to your
9 investigation, correct? Is that correct?

10 A. Yes, sir.

11 Q. Okay. And in that history with the coroner,
12 you didn't have any information as it related to
13 what was done to Ms. Smith at the scene of the
14 accident by any EMS personnel, correct?

15 A. Well, I knew that they tried to resuscitate
16 her.

17 Q. Okay. Did you know whether or not she was
18 taken from the vehicle by EMS personnel or anybody,
19 or whether or not she was out of the vehicle
20 already?

21 A. My understanding is that she was taken out of
22 the vehicle.

23 Q. Okay. So she was -- and do you know who did
24 that?

25 A. No.

1 Q. Okay. And do you have any understanding as to
2 any resuscitative efforts that were done at the
3 scene of the accident?

4 A. Beyond what I said, I understand that they
5 tried to resuscitate her.

6 Q. Okay. And when you say they, you're referring
7 to who?

8 A. EMS.

9 Q. Okay. And do you know where they did that at
10 the scene of the accident?

11 A. Not really.

12 Q. So you don't know whether they did that on the
13 asphalt or off the roadway or anything?

14 A. Correct. I don't know that.

15 Q. Okay. Have you ever seen, in your career,
16 whether or not resuscitation efforts can cause rib
17 fractures?

18 A. Not multiple bilateral rib fractures.

19 Q. Okay. And were you informed as -- now, when
20 you were given the history of this accident, were
21 you told where Ms. Smith was located in the vehicle
22 prior to the occurrence of the accident?

23 A. In the back seat.

24 Q. Okay. Were you given any information as to
25 whether or not she had a seat belt on?

1 A. Yes. She was not -- did not have a seat belt.

2 Q. Okay. And did your examination show injuries
3 consistent with not having been seat belted?

4 A. Specifically not having been seat belted?

5 Q. Yes, ma'am. You spoke about injuries to the
6 lower extremities for example.

7 A. I don't know that changed it. I don't know
8 that lack of seatbelt changed it.

9 Q. Okay. So it's your testimony today that you
10 were not aware of whether or not if she had been
11 wearing restraints?

12 A. I was aware that she was not seat belted.

13 Q. Okay. My question to you is whether or not you
14 know whether she had been wearing restraints she
15 would have suffered all of those injuries that
16 you've testified to today?

17 A. She would've.

18 Q. Okay. And why is that?

19 A. Because of the where the injuries are, and the
20 fact that I have the history that the car was
21 impacted from behind, that she was pushed and --
22 into the seat, and that she suffered chest trauma as
23 a result of that.

24 Q. And when you say pushed into the seat, you're
25 talking about the seat in front of her, correct?

1 A. Correct.

2 MR. ATWATER: I don't have any further
3 questions?

4 THE COURT: Any redirect, Mr. Cox?

5 MR. COX: No redirect, Your Honor.

6 THE COURT: May I excuse Dr. Moffatt?

7 MR. COX: Yes, Your Honor.

8 THE COURT: Dr. Moffatt, thank you for coming.

9 MR. COX: Your Honor, the State's next witness,
10 we're going to call Tom Rees, whenever...

11 THE CLERK: Right over here, sir. Place your
12 left and raise your right.

13 TOM REES

14 being first duly sworn, testified as follows:

15 THE WITNESS: I do.

16 THE CLERK: Have a seat please, sir. You can
17 take your mask off once you're seated. State your
18 full name spelling your last, please.

19 THE WITNESS: My name is Tom Rees, R-E-E-S.

20 DIRECT EXAMINATION

21 BY MR. COX:

22 Q. Mr. Rees, if you would just, kind of, introduce
23 yourself to the jury, where you're from and what do
24 you do for a living.

25 A. My name is Tom. I work for a company called

1 Stay Alert Safety Services out of west Columbia.

2 I'm originally from North Carolina. I've been here
3 for about four years, and I'm the operations manager
4 there.

5 Q. And what kind of company is Stay Alert?

6 A. We do traffic control, anything from interstate
7 lane closures, flagging operations, detours,
8 permanent construction signs. Anything you see on
9 the side of the road that's orange is ours.

10 Q. And in your role as operations manager, what is
11 your day to day? What do you do for Stay Alert?

12 A. At the moment, I largely administrative and,
13 sort of, back-end management. I do billing, EEO,
14 stage type inspections, manage our fleet equipment,
15 stuff like that.

16 Q. For projects -- the projects like you described
17 that Stay Alert is involved in, in your role, are
18 you familiar with the layout of the projects and
19 what measures are put in place?

20 A. Yeah. My first role at Stay Alert was
21 assistant operations manager. I was the manager of
22 the flagging division. So I'm very familiar with
23 flagging operations setup. The other two divisions
24 are lane closure and permanent construction signs.
25 I've also managed the permanent construction sign

1 division. Lane closure I know less about,
2 specifically interstate, but I would still be
3 comfortable in a closure.

4 Q. Were -- you were with Stay Alert back in June
5 of 2019?

6 A. Correct.

7 Q. Are you aware of a collision at one of your
8 sites back on June 14th of 2019?

9 A. Yes.

10 Q. What is your -- tell us what happened from your
11 prospective on June 14th, 2019?

12 A. I don't remember exactly where I was. We had
13 been on the job on 178 between Pelion and Batesburg
14 for months, I think, at that point. We were out
15 there five days a week.

16 I got a call from Harley, who is a lead on the
17 job, and he said there's been an accident and
18 somebody has passed away.

19 So of course getting that call, I think I was
20 at our office in west Columbia. I drove out to the
21 job site and just helped in whatever way I could
22 from there.

23 From what I understood at the time, we had
24 stopped traffic and a road user had failed to stop,
25 hitting a car that we had stopped with our flagging

1 operation.

2 Q. What -- and specifically on this date on 178,
3 what was the type of roadwork, construction, what
4 was going on on that project?

5 A. So the prime contractor Blithe Construction was
6 repaving the two-lane road from Batesburg to Pelion.
7 So we were -- it's a two-lane road. We were running
8 a flagging operation. This is something we do five
9 days a week. We do this every day of the year.

10 So they're repaving. They repave with traffic.
11 We close one lane and let traffic go one direction
12 at a time, as not to cause an -- a head to head
13 collision in the one open lane while Blithe is
14 working in the closed lane.

15 Q. Okay. Within the area of the actual
16 construction what type of -- what type of signage,
17 what type of -- did you set anything up to help
18 control the traffic?

19 A. So, yeah. Starting at the work zone and moving
20 back, we have -- well, actually let's go -- coming
21 into the work zone, you'll see what we call advanced
22 warning signs. The standard for SCDOT is three
23 signs, three rollup signs. Those signs are roadwork
24 ahead, the first sign you'll see; the second sign is
25 one lane road ahead, is the second sign you'll see.

1 And the third is a symbolic flagman, just a picture
2 of a man holding a paddle.

3 So we had those three signs for a speed limit
4 on that road 55 miles an hour. The interval in
5 between each sign would be 500 foot. So we had that
6 going in each direction away from the work zone. So
7 that would meet our DOT speck.

8 And then on that road, since we know it to be a
9 road where people speed, we had an additional sign,
10 a be prepared to stop sign, which would have added
11 an additional 500 foot of advanced work zone signs
12 in the direction, I believe it was going towards
13 Pelion away from Batesburg.

14 Q. Which side of the road if I'm traveling towards
15 your construction zone leaving Pelion, which side of
16 the road would these four advanced warning signs
17 have been?

18 A. On the right.

19 Q. Okay. And I believe you said -- and how far
20 apart are each of these signs?

21 A. For a road of 55 miles an hour, they would have
22 been 500 foot apart.

23 Q. Okay. So once you get past -- well, once you
24 find the fourth sign, tell us more about -- as a
25 driver who passes these signs, what do you see as

1 you approach the signs?

2 A. So you'll see -- so 500 foot past your final
3 advanced warning sign, 500 foot past that sign,
4 you'll see a man wearing a vest on the side of the
5 road holding a slow stop paddle. You've probably
6 all seen him.

7 After that, there would be what we call a taper
8 and it's at the minimum of five cones, just making a
9 diagonal line across either the closed lane, or if
10 you're coming from the other direction, it would be
11 in the lane opposite you, still the closed lane. So
12 you'll see the flagger, you'll see the taper, and
13 then you'll see cones down the center line of the
14 two-lane road, eventually meeting up with the other
15 taper on the other side of the road.

16 Q. Mr. Rees, on the date of this incident, did you
17 go out to the scene?

18 A. I did.

19 Q. Did you approach from the Pelion area?

20 A. I don't remember. If I would guess, I would
21 say that I would. That's the way I'd go from our
22 office. Yeah, I did.

23 Q. Okay. As you approached the job site after the
24 collision, did you see the signage that you just
25 described for us?

1 A. I did.

2 Q. Okay. Would you recognize it if I showed it to
3 you?

4 A. Yes.

5 MR. COX: Your Honor, if I could have just a
6 moment?

7 THE COURT: Take your time.

8 BY MR. COX:

9 Q. Mr. Rees, I'm showing you what has been
10 previously marked as State's Exhibits 1 through 5.

11 A. Okay.

12 Q. If you could take a look at those and let me
13 know when you're done.

14 MR. COX: Your Honor, once he's done reviewing,
15 I'll need to edit the numbers.

16 Just for the record, what he's actually looking
17 at are State's Exhibits 2 through 6.

18 THE COURT: I don't have a Number 1 yet.

19 (Sidebar conference.)

20 BY MR. COX:

21 Q. Mr. Rees, do you recognize what is in -- what's
22 in front of you?

23 A. Yes.

24 Q. Okay. Briefly tell us what is in those photos.

25 A. This looks to me to be our advanced warning

1 signs on 178 that day in the direction coming from
2 Batesburg towards Pelion.

3 Q. And do those --

4 A. And this is post -- this is post accident,
5 because we would never have a truck like that in the
6 middle of the road if there wasn't -- a no passing
7 situation. So this is post accident.

8 Q. Before we start going into more details of
9 photos, do those photos fairly and accurately depict
10 the signage and the job site traveling from
11 Batesburg into Pelion on June 14th, 2019?

12 A. From what I remember and what our speck is,
13 they look accurate.

14 MR. COX: Your Honor, at this time, the State
15 offers 2 through 6 into evidence.

16 THE COURT: Any objection?

17 MR. ATWATER: No, Your Honor.

18 THE COURT: They're admitted.

19 (State's Exhibit Numbers 2 through 6 admitted
20 into evidence.)

21 BY MR. COX:

22 Q. Mr. Rees, if you would, I know we've gone over
23 it a little bit, but for this specific job site,
24 what in those photos were the four advanced warning
25 signs going into -- as a driver, what were the

1 warning signs you would have seen?

2 A. It looks like the first one would be a be
3 prepared to stop, the second would be a roadwork
4 ahead, the third would be one-lane road ahead, and
5 the fourth would be a symbolic flagger sign.

6 Q. You referred to them as rollup signs, I
7 believe?

8 A. That is correct.

9 Q. What exactly is a rollup sign?

10 A. A rollup sign is simply a sign made of
11 reflective fabric that has two perpendicular ribs in
12 the back, which you can fold to make parallel and
13 then rollup the sign for storage.

14 Q. And exactly how far apart will you say were
15 each of those four rollup signs?

16 A. Approximately 500 foot apart.

17 Q. So from the beginning of the work zone -- from
18 the first advanced warning sign you would've seen on
19 Highway 178, to the flagman, how far of a distance
20 would that have been?

21 A. 2000 feet, give or take.

22 MR. COX: Okay. Your Honor, if I could publish
23 these photos to the jury so they can review them?

24 THE COURT: Absolutely.

25 MR. ATWATER: Are the numbers corrected?

1 THE COURT: He wants to hand them to the jury.

2 Any objection to that, Mr. Atwater.

3 MR. ATWATER: No, Your Honor.

4 THE COURT: You can do that.

5 MR. COX: I do need to correct the numbers,

6 Your Honor.

7 BY MR. COX:

8 Q. Mr. Rees, if you could, how large are these
9 signs?

10 A. They're four foot by four foot.

11 Q. Would it assist the jury to see one of these in
12 person?

13 A. I don't know that I'm qualified to make that
14 assessment.

15 Q. Okay. How large, I guess -- I know you, kind
16 of, described the footage of these signs, but how
17 large if you were standing next to one, how large
18 would you describe this to be?

19 A. They're large signs.

20 Q. Okay. Mr. Rees, would it aid the jury to see
21 an actual example of one of these rolled up signs to
22 see how large they are?

23 MR. ATWATER: Objection. Asked and answered,
24 Your Honor.

25 THE COURT: I'm going allow it. Go ahead.

1 THE WITNESS: They seem larger in -- they're
2 large signs. They're surprisingly large signs. I'm
3 not sure what the --

4 MR. COX: Your Honor, if I may have a moment,
5 I'm going to try to clear up this question real
6 quick.

7 MR. ATWATER: Your Honor, if I may, I don't
8 care if they pull the sign out and show it to the
9 jury.

10 MR. COX: Your Honor, may I ask for permission
11 to grab the demonstrative?

12 THE COURT: You may.

13 BY MR. COX:

14 Q. Mr. Rees, did you provide a -- as part of this
15 case, did you provide our office with an example, an
16 actual example, of one of these signs?

17 A. I did.

18 MR. COX: Your Honor, if I may retrieve the
19 sign?

20 THE COURT: You may.

21 Thank you, Mr. Atwater.

22 MR. ATWATER: Yes, Your Honor.

23 BY MR. COX:

24 Q. Okay. Mr. Rees, does this appear to be similar
25 or the same kind of sign that was out on Highway 178

1 that day?

2 A. That would be something exactly like we would
3 use. We would use something just like that.

4 Q. Okay. And so if you were driving down 178,
5 where would you have seen this sign, on what side of
6 the road?

7 A. You'd see it on the right side.

8 Q. Okay. And specifically, was a sign placed out
9 there that said be prepared to stop?

10 A. Yes.

11 Q. Okay. And how far back from the collision
12 location would a driver have seen this sign?

13 A. Approximately 2000 feet.

14 MR. COX: Your Honor, I have no further
15 questions.

16 THE COURT: Thank you.

17 Mr. Atwater.

18 MR. ATWATER: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. ATWATER:

21 Q. Good morning, Mr. Rees.

22 A. Good morning.

23 Q. Mr. Rees, on the day of this accident, until
24 you received a call that something -- that an
25 accident had happened out there, you hadn't happened

1 to run out to that scene that day, had you?

2 A. No, sir.

3 Q. Nor the day before?

4 A. I'm unaware of the day before. I often go out
5 there in the mornings, so I don't know about the day
6 before.

7 Q. Okay. Well, you wouldn't have been present
8 when any of these signs were put out?

9 A. I may have been present while the signs are
10 putting out. It's a big manpower job, and we often
11 had trouble getting the amount of people we needed,
12 so I would often run people out during setup.

13 Q. Okay. So when would the setup of these signs
14 have occurred?

15 A. Early morning. If I had to guess, I would say
16 7:00, 7:30 a.m.

17 Q. Okay. Is it your testimony here today that
18 these signs are put out and taken backup every
19 single solitary day?

20 A. Yes, sir.

21 Q. Okay. Without fail?

22 A. Yes, sir.

23 Q. Okay. You don't know of any incidents where
24 these signs have been left out after the crew moved
25 when they were going to be working in the same place

1 the next day? Is that your testimony here today?

2 A. Where they have not been left overnight?

3 Q. Yes, sir.

4 A. Facing the roadway?

5 Q. Yes, sir?

6 A. Correct. They would never have been facing the
7 roadway at night.

8 Q. Okay. Now, when you say that this particular
9 sign that we just saw was 2000 feet back from the
10 scene of the accident?

11 A. Yes.

12 Q. That's based upon, you say, from what our speck
13 is?

14 A. Yes.

15 Q. Okay. And you also testified that those
16 photographs that you saw appeared to be what would
17 have been out there that day based on what your
18 speck is, correct?

19 A. And what I saw that day, correct.

20 Q. What you saw that day after the accident scene,
21 correct?

22 A. Correct.

23 Q. Okay. Were there any other people out there
24 who were setting up for another day?

25 A. No. They -- they would not have setup for the

1 previous day -- I mean for the following day.

2 Q. Okay. So if someone testified they were off
3 setting up for Monday, putting out cones for the
4 next day, that would not be truthful, is that your
5 testimony?

6 A. It -- setting out cones, absolutely not.

7 Q. Okay. The photographs that you looked at
8 today, you didn't take those photographs, did you?

9 A. I don't think so. I took similar photographs,
10 but I don't believe these to be my photographs.

11 Q. Okay. And so you wouldn't know when the
12 photographs were taken, would you?

13 A. That's correct.

14 Q. Okay. Thank you.

15 THE COURT: Any redirect?

16 MR. COX: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. COX:

19 Q. Mr. Rees, you didn't take those photographs,
20 but they appear to -- those photos show what you saw
21 when you arrived on scene that day, correct?

22 A. That's correct.

23 Q. And when would that have been in relation to
24 the collision in this case?

25 A. I'm not sure specifically. It would have been

1 after the accident, of course, probably within --
2 probably within two hours.

3 Q. So after the accident in this case, where were
4 those advanced warning signs going into the project
5 located?

6 A. On the right side of the road.

7 Q. Still in place?

8 A. Yes, sir. Yeah.

9 Q. Mr. Rees, what -- when we hear presetting for
10 the next job for someone with Stay Alert, what does
11 that mean? What does presetting the next job mean?

12 A. So it could mean two different things. I think
13 in this incident that we're talking about today, on
14 a quick moving job, such as the 178 job, it's --
15 they're paving the road. The operation is moving,
16 therefore, the closure has to move with the paving
17 operation. Therefore, from time to time, what we
18 would do, is we call it a piggy back. So we would
19 put more advanced warning signs out before we'd move
20 the closure, and then move the closure up to the new
21 warning signs and pull the old warning signs down.

22 That would be the only point at which we had a
23 current operation up and running, and we were also
24 simultaneously putting out more advanced warning
25 signs.

1 MR. COX: Your Honor, no further questions.

2 THE COURT: Anything, Mr. Atwater?

3 MR. ATWATER: No, Your Honor.

4 THE COURT: May I excuse Mr. Rees?

5 MR. COX: Please, Your Honor.

6 MR. ATWATER: Your Honor, the State has
7 identified other witnesses from his company.
8 Because they haven't testified, I may need to call
9 him on rebuttal.

10 THE COURT: Mr. Rees --

11 MR. ATWATER: I don't need him to be in the
12 courtroom the whole time, Your Honor, but --

13 THE COURT: Can you leave a phone number with
14 the State in case that we need you to come back to
15 testify, you'll be able, I'll remind you -- I don't
16 know if you're under subpoena, but if you are, I'll
17 remind you that you are.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Okay. Thank you.

20 Let me see counsel just for a second.

21 (Sidebar conference.)

22 THE COURT: We have another, Mr. Foreman, short
23 witness. We're going to do that, and then I'm going
24 to break for lunch for y'all. Okay?

25 THE FOREPERSON: Okay.

1 MR. WAGONER: The State would call Harley
2 Trimnal.

3 HARLEY TRIMNAL,
4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

6 THE CLERK: Have a seat right there, sir. Once
7 you're seated, take off your mask, state your full
8 name, spelling your last, please.

9 THE WITNESS: Good morning. My name is Harley
10 McSweeny Trimnal IV. Trimnal, T-R-I-M-N-A-L.

11 DIRECT EXAMINATION

12 BY MR. WAGONER:

13 Q. Good morning, Mr. Trimnal.

14 A. Good morning.

15 Q. Do you also go by Mack?

16 A. Yes, sir.

17 Q. But you are known more from Stay Alert as
18 Harley; is that correct?

19 A. Yes, sir.

20 Q. Mack, would you introduce yourself to the jury
21 specifically, where you're from and where you went
22 to high school?

23 A. Yeah. I was born and raised in Sumter County.
24 I went to Sumter High, graduated in 1984. I moved
25 to Columbia back in 2014 to be closer my son. I'm

1 an only child.

2 Q. So you're a Sumter game cock?

3 A. Yes, sir.

4 Q. Where are you currently employed?

5 A. Stay Alert Safety Services.

6 Q. And how long have you been with Stay Alert?

7 A. Five years.

8 Q. And do you have experience with traffic safety

9 prior to going to Stay Alert?

10 A. Yes, sir.

11 Q. What were your responsibilities in June 14th of

12 2019, at Stay Alert?

13 A. I'm a senior league in the flagging division,

14 so my job entails to make sure that the signage is

15 correct, make sure all my guys is in place properly,

16 they have all their PPE on.

17 Q. What is PPE?

18 A. Hard hat --

19 Q. Well, no. What does PPE stand for?

20 A. Protective personal -- personal protective

21 equipment.

22 Q. And tell me about the 178 job. What county was

23 that located in?

24 A. I think Pelion is in Lexington.

25 Q. On June 14th, 2019, was there an incident that

1 occurred?

2 A. Yes, sir.

3 Q. Did you receive some sort of phone call or
4 radio call as it relates to that incident?

5 A. Yes, sir. We got a walkie-talkie call from a
6 Tim Rainey.

7 Q. Where were you located when you received that
8 walkie-talkie call?

9 A. I was presetting signs for Monday.

10 Q. What is presetting signs mean?

11 A. Where they stopped, I was going to preset the
12 signs where they were going to start and where they
13 were going to end.

14 Q. Were you putting up signs, or what were you
15 doing. Was it just the framing or --

16 MR. ATWATER: Objection, Your Honor. Leading.

17 THE COURT: It is leading. Rephrase it.

18 BY MR. WAGONER:

19 Q. In detail, what would have been placed up with
20 presetting signs?

21 A. When I'm presetting, that means I'm just
22 setting it out, clocking it out, and I'm going to
23 preset my signs, but I'm not actually putting them
24 up.

25 Q. So you're not actually putting up the orange

1 signs?

2 A. No. I'm just setting my signs and my stands
3 15, 20 feet off the road, so when we come in there
4 that next day or following that Monday, we would
5 just set up the signs.

6 Q. Based on those stands that you put up?

7 A. Right.

8 MR. WAGONER: Beg the Court's indulgence. If I
9 may approach the witness?

10 BY MR. WAGONER:

11 Q. I'm handing you State's 2 through 6. These are
12 already in evidence. What do those -- what are
13 those?

14 A. Let me get my glasses. I'm getting old.

15 This is how the signs was put out earlier that
16 morning.

17 Q. In relation to those signs, where were you
18 located when you got the call?

19 A. I was right beside maybe -- maybe 100 yards
20 past, going back towards Batesburg from where the
21 prepare to stop sign was. So I was kind of around
22 the curve, because it's a small curve, and then it
23 dips down over a hill and goes into a valley.

24 Q. In relation to the be prepared to stop sign,
25 where is the curve?

1 A. Probably --

2 Q. Is it towards Pelion or towards Batesburg?

3 A. Repeat the question again.

4 Q. The curve you're referring to, in relation to
5 the be prepared stop sign, would that be towards
6 Pelion or towards Batesburg?

7 A. Well, where the prepared stop sign is kind of
8 like in between Pelion and Batesburg, so but it was
9 in visibility where a pedestrian, a driver, could
10 see the sign.

11 Q. When you got the call from Mr. Rainey, were all
12 four of those signs still up?

13 A. Yes, sir.

14 MR. WAGONER: Beg the Court's indulgence.

15 No further questions.

16 THE COURT: Mr. Atwater.

17 MR. ATWATER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY ATWATER:

20 Q. Hey, Mack.

21 A. Good morning.

22 Q. How are you today?

23 A. I'm doing fine.

24 Q. Mack, have you -- on the date of this car
25 accident, you gave a handwritten statement; is that

1 correct?

2 A. Yes, sir.

3 Q. And you said that you were out with Johnny
4 Powers?

5 A. No. Johnny was on the other end and I was on
6 the -- Johnny was on Pelion's end and I was on
7 Batesburg's end going to set out the presetting
8 signs.

9 Q. So you guys weren't together?

10 A. No. He was on one end and I was on the other
11 end.

12 Q. And so based on the testimony you just gave,
13 you would have been heading towards Batesburg away
14 from the scene of the accident?

15 A. Yes, sir.

16 Q. Beyond where these signs that are shown in that
17 picture had been put up that morning?

18 A. I was right at the prepare to stop sign, and
19 he's going back towards Pelion.

20 Q. You were going -- according to those signs, the
21 prepare to stop sign, would have been the first sign
22 heading towards Pelion, correct?

23 A. Yep.

24 Q. So going away from the prepare to stop sign
25 going towards Batesburg, you were putting up cones

1 for Monday, right?

2 A. Signs. Not cones, signs.

3 Q. You didn't use cones to measure where the signs
4 should go?

5 A. I use the tape on the speedometer that every
6 click is 500 feet. And how you measure out your
7 signs, is every click .1 is 500 feet, and you go by
8 the speed limit on the road that is how many feet
9 the signs are supposed to be far apart. So I just
10 put 500, because the speed out there is 55, and
11 these pedestrians, they do like 70, 80 miles an hour
12 out there.

13 Q. Okay. So it's your testimony today that Johnny
14 Powers would have been beyond this accident scene
15 heading towards Pelion, and he would have been out
16 there beyond any signs that were already out there,
17 measuring presetting for new signs that were going
18 to go up on Monday, right, is that your testimony?

19 A. Possibly.

20 Q. Okay. Now, that was because the area where the
21 construction had been going on on Friday had been
22 completed and there was going to be new areas of
23 construction, right?

24 A. Right. Correct.

25 Q. Okay. So the new areas of construction, by

1 your testimony today, were going to extend farther
2 back towards Batesburg, and farther back towards
3 Pelion, correct?

4 A. Well, where they stopped at, they would start
5 that Monday or the following day, and then on my
6 end, they would be extending out almost two miles.

7 Q. Two miles of new construction?

8 A. Yeah.

9 Q. On your end?

10 A. Yep.

11 Q. And is it your testimony that they were also
12 going to be doing two miles of new construction on
13 the other end as well?

14 A. Nope. They already --

15 Q. So what was Johnny presetting for?

16 A. Signs for the flagger for that end.

17 Q. Okay. But if Johnny was setting out signs for
18 the flagger on that end, and the construction was
19 moving towards Batesburg away from Pelion instead,
20 why would Johnny be setting out signs farther away
21 from where the new construction was going to start?
22 Wouldn't he have been setting out signs closer to
23 where the new construction was going to start
24 heading out towards Batesburg?

25 A. No. That's where the flagger starts at. He

1 just sets out one set of signs for the flagger
2 that's going to start at the very beginning of the
3 job, going back towards this way or that way, you
4 know, depending on which way we're going. We're
5 going back towards Batesburg. So that means I would
6 have to put out more signage than -- than Johnny
7 would. All Johnny is doing is putting out one set.
8 That's for the flagger that's going to be there.
9 And I would put out multiple flags going back
10 towards Batesburg.

11 Q. So it's your testimony that traffic coming from
12 Pelion towards the new construction site that was
13 going to start on Monday, would not see the same
14 signs coming in that direction as traffic coming in
15 the other direction would see?

16 A. No. They just see one sign.

17 Q. Okay. What does that sign say?

18 A. Three signs, maybe four. I put four out there
19 because the speed limit out there, these people
20 doing 60, 70, 80 miles an hour, so I put an extra
21 sign out, which is optional, is to slow the traffic
22 down, try to slow them down, be prepared to stop.
23 Which sometimes it helps, sometimes it doesn't, but
24 I put it out there.

25 Q. On the date of this accident of June 14th of

1 2019, weren't there three signs on the Pelion side
2 of the construction and four signs on the Batesburg
3 side of the construction?

4 A. I can't recall that day. I know on my end
5 there was four. I can't recall what end -- on
6 Johnny's end, on the Batesburg side. Should be
7 already four on each end, but...

8 Q. So how would there only be one on the other
9 side come Monday?

10 A. I don't follow your question.

11 Q. You testified that there would be -- come
12 Monday, there would be four signs on the Batesburg
13 side, and only one on the Pelion side. And I asked
14 you whether you recalled -- or I asked you why there
15 were four signs on the Batesburg side and three
16 signs on the Pelion side on Friday. When you
17 testified --

18 A. Normally when I'm setting out signs, I just
19 don't put three on this end and four on this end. I
20 put the same amount of signs on both sides.

21 Q. Did you put out all the signs on Friday
22 morning?

23 A. Yep. As far as I know.

24 Q. Both sides of the accident? Is that a yes?

25 A. Yep.

1 Q. You're saying you personally did that, is that
2 your testimony?

3 A. Yep.

4 Q. Okay. So y'all were setting out these -- you
5 saw that sign they brought out here earlier today,
6 correct?

7 Well, let me ask you: That sign would be
8 sitting on top of a pole that has four legs to it,
9 right?

10 A. Yep.

11 Q. Okay.

12 A. At least.

13 Q. Yes, sir. What you were doing was setting
14 out -- your testimony is you were setting out the
15 pole that has the four legs to it on Friday?

16 A. Yep.

17 Q. Without a sign stuck on top if it?

18 A. Right.

19 Q. Because y'all were going to take the signs off
20 the other one?

21 A. When I go and preset these signs, I put a cone
22 there. That's if I don't have the stands. If I got
23 the stands and stuff, sometimes I put the stands and
24 the signs beside the road.

25 Q. So, Mack, was it the cones or the stands?

1 Which one was it?

2 A. Stands and cones and signs.

3 Q. So you put out the stands on Friday for the
4 construction that was going to happen on Monday,
5 correct?

6 A. Correct.

7 Q. And that's what Johnny Powers was doing out on
8 the other end also, right?

9 A. Yep.

10 Q. Okay. You weren't anywhere near the accident
11 scene when the accident happened, right?

12 A. No, sir.

13 Q. You didn't see the accident?

14 A. Didn't see the accident.

15 Q. Okay. Don't have any recollection of Mr.
16 Powers driving by you?

17 A. (Shakes head.)

18 Q. And you heard Mr. Rees testify that those signs
19 themselves, not talking about the stand, but the
20 sign itself, never stays out there overnight,
21 correct?

22 MR. WAGONER: Your Honor, I'm going to object.
23 He was not in here during the testimony.

24 MR. ATWATER: I'm sorry.

25 THE COURT: I agree.

1 MR. ATWATER: I'll withdraw the question, Your
2 Honor.

3 THE COURT: Thank you.

4 BY MR. ATWATER:

5 Q. I will tell you that Mr. Rees testified that
6 those signs that sit on top of that four-legged
7 stand never stay out overnight whatsoever. Is that
8 your understanding as well?

9 A. Yep. We take the signs down at the end of the
10 job.

11 Q. At the end of the day?

12 A. At the end of the day.

13 MR. ATWATER: I have no further questions.

14 THE COURT: And redirect?

15 MR. WAGONER: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. WAGONER:

18 Q. If this is Pelion, that wall would be
19 Batesburg. What end were you on when you got the
20 call from Mr. Rainey?

21 A. On this end.

22 Q. The Batesburg end?

23 A. Yep.

24 Q. And which direction did you travel to get to
25 the collision?

1 A. To get where?

2 Q. To get to the collision site? Towards Pelion?

3 A. Yep.

4 Q. Now, if this is the collision site, and this is

5 Mr. Rainey, would all this be construction? And

6 then at the other end there's another Mr. Rainey, if

7 you will, I don't know his name, but another Mr.

8 Rainey with traffic heading towards Batesburg?

9 A. Yep.

10 Q. When you got the call, when you were on the

11 Batesburg side, how many signs were up?

12 A. Four.

13 Q. And did you take them down after the collision?

14 A. No.

15 Q. Did you take them before law enforcement?

16 A. No.

17 Q. Were they up?

18 A. Yes.

19 MR. WAGONER: No further questions.

20 THE COURT: Any redirect?

21 MR. ATWATER: No, Your Honor.

22 THE COURT: May I let Mr. Trimnal be excused?

23 MR. WAGONER: Your Honor, please excuse Mr.

24 Trimnal.

25 MR. ATWATER: Please excuse Mr. Trimnal.

1 THE COURT: Mr. Trimnal, thank you for coming.

2 THE WITNESS: Thank you.

3 THE COURT: All right. Let me see counsel real
4 quick. And I'm going to let this jury go to lunch.

5 (Sidebar conference.)

6 THE COURT: All right. Mr. Foreman, I'm going
7 to let y'all go to lunch. I'm going to ask you to
8 come back at 1:15 in the jury room. We're going to
9 start right at 1:30 and work through what we can.
10 Okay?

11 THE FOREPERSON: Yes, ma'am.

12 THE COURT: Now, let me remind y'all, there's
13 no talking about this case even amongst yourselves
14 when you're in the jury room. Don't call anybody
15 about this case. I'm probably going to say it ten
16 times to y'all. Every time y'all leave my sight,
17 I'm going to tell y'all, please don't do that.
18 Okay?

19 All right. Thank you. I'll see you at 1:30.

20 (The jury exits the courtroom at 11:53 AM.)

21 THE COURT: All right. Anything from the
22 State?

23 MR. WAGONER: Judge, just, kind of, to put on
24 the record what we discussed yesterday in regards
25 kind of the developments we had with some of our

1 witnesses. That would be Grant Cooke. That's Cooke
2 with an "E" C-O-O-K-E, where he did test positive
3 for Covid yesterday.

4 As we discussed in chambers, Calvin Rikard, who
5 was the team leader of the MAIT team, is prepared to
6 testify as to the minimum speed calculations and
7 that role in the case. He will be qualified as an
8 expert, and we'll go through that.

9 Mr. Rikard does have a -- had a copy of his
10 file the entire time, was provided all the new
11 information, because this was a case where Grant
12 Cooke discovered a variable that was off, and now
13 redid the calculation based on that. Rikard has
14 been notified of that, given all that information,
15 and will be able to testify as to that.

16 THE COURT: Well, it's my understanding that
17 wasn't a problem; is that right, Mr. Atwater?

18 MR. ATWATER: Your Honor, subject to the
19 pre-qualification questions that the State puts
20 Mr. Rikard to. He was on the MAIT Team, and I know
21 that he is qualified to interpret those
22 calculations. They are part of the MAIT report. If
23 he has reviewed them, its is my opinion and
24 understanding that any member of the MAIT Team
25 that's qualified to do it, can testify to the work

1 of that team.

2 THE COURT: Okay.

3 MR. ATWATER: Even if he's not there anymore,
4 as long as he's looked at it.

5 THE COURT: All right. So I don't think that's
6 a problem.

7 Anything else from the State?

8 MR. WAGONER: Nothing from the State. I just
9 wanted to put that on the record.

10 THE COURT: Okay. Mr. Atwater, anything from
11 the defense?

12 MR. ATWATER: No, Your Honor.

13 THE COURT: All right. We're going to be in
14 recess until 1:30. We're going to start at 1:30
15 sharp. Thank you.

16 (Luncheon recess 11:59 AM - 1:30 PM.)

17 THE COURT: Y'all ready?

18 MR. WAGONER: Yes, ma'am.

19 THE COURT: Anything I need to take up before
20 we get started from the State?

21 Your Honor, I believe we do need to address, or
22 at least get an actual ruling on the record
23 pertaining to the records and the -- for the trooper
24 that we discussed in chambers, track Trooper Matt
25 Knicks, the possibility of -- I'm anticipating

1 defense wishes to ask questions dealing with the
2 investigation, the article that we've reviewed.

3 MR. ATWATER: I thought we cleared that up in
4 chambers.

5 THE COURT: I thought we cleared it up, but I'm
6 going to put it on the record.

7 I was submitted some personnel files from a
8 City Trooper Knicks. I've read these files. I'm
9 not going to release those files; however, I also
10 know that there's some video on the internet. I've
11 also reviewed that. Unless the State opens the door
12 during testimony, I'm not allowing it.

13 Mr. Atwater.

14 MR. ATWATER: When you say you're not allowing
15 it, Your Honor, you're talking about any reference
16 to that incident, correct?

17 THE COURT: Yes. Unless the State opens the
18 door on it, I'm not going to allow it. I don't see
19 it relevant in this case. I don't see any
20 connection, unless there's something that y'all
21 opened the door to.

22 MR. COX: Your Honor, I guess --

23 THE COURT: If there's some kind of impeachment
24 then I'm going to allow it.

25 MR. COX: Okay. Thank you, Your Honor.

1 MR. WAGONER: And just housekeeping -- this is
2 unrelated to that. Just housekeeping wise, I let
3 Mr. Atwater know that once we start getting into law
4 enforcement, we'll have Calvin Rikard sitting
5 through that. That may expedite qualifying him at
6 the appropriate time when his chance to testify is
7 up.

8 THE COURT: Are y'all going to agree?

9 MR. ATWATER: Your Honor, I look at it the same
10 as having a case agent present. You know, when I
11 asked to have, you know, witnesses sequestered or
12 something like that, the case agent, who was the
13 main person investigating, was always allowed to
14 stay in anyway. This is Calvin Rikard's
15 investigation right on it.

16 MR. WAGONER: And, to me, that's not an
17 objection. I just wanted to give you the heads-up
18 when you see another individual sitting there,
19 you'll have a heads-up.

20 MR. ATWATER: That was not on objection.

21 THE COURT: Okay. Good. Good. Good. Good.
22 All right. Anything else that we need to take
23 up?

24 MR. WAGONER: Nothing from the State.

25 MR. ATWATER: No, Your Honor.

1 THE COURT: Let's bring the jury in.

2 MR. COX: Your Honor, may we approach for one
3 quick second?

4 MR. ATWATER: Well, we can just do it now right
5 before the door opens.

6 Your Honor, just concerning the possible if the
7 door is opened, the possible use of the Matthew Nix
8 information for possible impeachment purposes, I
9 just ask that if Mr. Atwater believes that we have
10 opened a door on direct examination, he would let us
11 and the Court know before beginning his cross so we
12 don't have to interrupt in the middle of his cross,
13 if I have an objection of him going into it, that
14 way we don't have to do that in of the jury and we
15 won't be interrupting his cross-examination.

16 THE COURT: I mean, it's pretty
17 straightforward. You either open the door or you
18 don't. That's the only --

19 MR. ATWATER: I mean, the only -- I ask almost
20 anyone who investigates something over and over and
21 over if they're always right, if they've ever made a
22 mistake.

23 THE COURT: And if he answers no, the door is
24 open.

25 MR. ATWATER: But other than that -- yeah, if I

1 think he's opened the door, I'll be happy to tell
2 these fellas. We seem to work together pretty well.

3 THE COURT: I think you do. And I appreciate
4 it.

5 MR. WAGONER: Thank you, Your Honor.

6 (The jury enters the courtroom at 1:40 PM.)

7 THE COURT: All right. I got a feeling, Mr.
8 Foreman, you've got a question for me. Just say yes
9 or no.

10 THE FOREPERSON: Well, I've got a comment I
11 guess. I want to ask you a question.

12 THE COURT: Nope. Don't ask. I'm going to
13 send the jury back out. There's a certain way that
14 we do this. If you've got a question for me, I need
15 you to write it down on a piece of paper.
16 Everything we do goes on the record. So I'll have
17 to get you to do that. So I'll let you go back to
18 your jury room.

19 If the bailiff could, please, get the foreman.
20 Even as trivial as it might be, I'm just telling you
21 I need it in writing.

22 THE BAILIFF: That was covered.

23 THE COURT: Okay.

24 THE BAILIFF: Let's go.

25 (The jury exits the courtroom at 1:41 PM.)

1 But let me ask, because we've got smokers on
2 the jury, the bailiff will let you go out and smoke.
3 I get that question all the time.

4 All right. Y'all go on back down stairs and
5 let me know, or you can just go out in the hall and
6 do it right quick.

7 (The jury exits the courtroom at 1:42 PM.)

8 THE COURT: You know -- I'm going to tell this
9 story. I remember on one trial that I think we had
10 more object- -- I mean, more notes from the jury
11 than we did objections. And I hope this isn't going
12 to be a repeat.

13 Note: "Please ask the attorneys to speak
14 loudly."

15 Bring them back in. I'm going to make that an
16 exhibit. Court's Exhibit Number 1, Mrs. Bethanie.

17 (Court's Exhibit Number 1 was marked.)

18 THE COURT: All right. Mr. Foreman, I received
19 your note. As silly as it may seem that y'all would
20 have to write me a note to tell me that, you must,
21 because we really do put everything on the record.

22 I have asked the lawyers to speak louder.

23 Again, let me tell y'all, especially the people
24 on the back row, if you can't hear them, go like
25 this. I'll see you. And I'll know that that means

1 for them to talk louder. Okay? I mean, it's just
2 imperative that you be able to hear. This case is
3 too important to both sides. Okay?

4 All right. You want to call your next witness.

5 MR. COX: Your Honor, the State calls George
6 Adams.

7 GEORGE ADAMS,

8 being first duly sworn, testified as follows:

9 THE WITNESS: I do.

10 THE CLERK: Thank you, sir.

11 Once you're seated, you can take off your mask.
12 I need you to state your full name and spell your
13 last on the record, please.

14 THE WITNESS: George Adams, Jr.

15 DIRECT EXAMINATION

16 BY MR. COX: Mr. Adams, if you could spell your last
17 name for the court reporter, please.

18 A. Spell?

19 Q. Spell it, please.

20 A. Oh, A-D-A-M-S.

21 Q. Mr. Adams, if you could, just by way of
22 introducing yourself to the jury, tell us where
23 you're from, where you live, and what you do for a
24 living.

25 A. I'm from, I guess, you could say Batesburg

1 Leesville. I get my mail from Batesburg and I'm on
2 the school district. And I live -- it's not really
3 in the town. It's between Batesburg, Leesville, and
4 Pelion. And I work at something in Columbia. I'm a
5 pressman.

6 Q. You said you're a presser?

7 A. A pressman for a printing company.

8 Q. Okay. How long have you lived, kind of, in
9 between Batesburg and Pelion?

10 A. I was in Columbia for two years. I was in
11 college for two years, about 49 years.

12 Q. And on your way to work, how do you go to work?
13 How do you get to your job in Columbia from your
14 home?

15 A. Well, that day, I leave my -- I leave my house.
16 I go down 178 to Pelion. Then from Pelion, I take
17 Fish Hatchery Road all the way out to 77. And from
18 77, I take it all the way down to Bluff Road. And I
19 take Bluff Road to Key Road. And I work off of Key
20 Road.

21 Q. Would it be fair to say you're pretty familiar
22 with Highway 178?

23 A. Yes.

24 Q. Mr. Adams, you mentioned that day, were you
25 involved in a collision on June 14th, 2019?

1 A. Yes.

2 Q. Okay. Where were you going that day?

3 A. I was going to work.

4 Q. What time of day was this?

5 A. It was after 5:00. Probably around 5:30 or
6 after.

7 Q. In the morning or evening?

8 A. Evening.

9 Q. Okay. What kind of vehicle were you driving?

10 A. Ford Ranger, 2006.

11 Q. And you described, kind of, the way you went to
12 work, and the way you go to work. On that day, can
13 you, kind of, describe for the jury what was going
14 on on 178?

15 A. It was a -- well, they was paving 178 from
16 Pelion to Batesburg. And that day, on the way to
17 work, I come to the sign, letting you know that it
18 was construction zone. I came -- I saw the flagman.
19 He had the flag turned around to stop, so I came to
20 a stop. So while I was sitting there, I noticed
21 this vehicle came up behind me. I didn't really
22 think nothing about it, you know? When you get to a
23 stop, you stop. And after sitting there and
24 everything, the traffic wasn't coming towards me,
25 and me and the vehicle was stopped. All the sudden

1 I heard a loud crash and I went forward.

2 Q. Just so I'm clear, Mr. Adams, you came to a
3 stop at a flagman, and a second vehicle also came to
4 a stop behind you?

5 A. Yes.

6 Q. How long were you stopped at the flagman on
7 Highway 178?

8 A. It's been over two years. It's been a while.
9 I guess about 15, 20 minutes, maybe.

10 Q. As you were approaching the place where you
11 eventually came to a stop, you mentioned you saw
12 some of the traffic signs. Did you have any trouble
13 seeing these signs?

14 A. No. You see them plain as day before you get
15 there.

16 Q. Did you have any trouble seeing the flagman?

17 A. No. I was close enough to see his face.

18 Q. Mr. Adams, living where you do and driving that
19 road, how long would you say this construction had
20 been going on on Highway 178?

21 A. Oh, boy. It's been a while. I'm thinking
22 couple months.

23 Q. It had -- the construction had been going on
24 for a couple months before your crash?

25 A. Yes.

1 Q. Okay. Mr. Adams, was there anything -- or was
2 there anything in your line of sight or in your view
3 that made it difficult to see what was in front of
4 you?

5 A. No. You could pretty much see what was going
6 on even before you get there.

7 Q. Mr. Adams, where was the sun at the time of
8 your crash?

9 A. It wasn't -- I wasn't driving directly into it,
10 but the sun was out.

11 Q. It was out?

12 A. I mean, it was a normal, clear day.

13 MR. COX: Your Honor, no further questions at
14 this time.

15 THE COURT: Thank you.

16 Mr. Atwater.

17 MR. ATWATER: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. ATWATER:

20 Q. Good afternoon, Mr. Adams.

21 A. Good afternoon.

22 Q. How are you today?

23 A. Oh, I'm fine.

24 Q. Mr. Adams, do you recall a -- an officer or
25 state trooper coming to your residence to take a

1 statement from you?

2 A. Yes.

3 Q. Okay. And do you recall in that statement when
4 you talked to him, you told him that you heard a
5 screeching and then you got hit?

6 A. It was a -- it was a noise. Yeah, it was a
7 noise. But I -- I guess a scurving, screeching,
8 like, for a second or two.

9 Q. Yes, sir.

10 A. Yes.

11 Q. And you heard that first and then you got hit?

12 A. Yes.

13 Q. Yes, sir.

14 MR ATWATER: That's all I have.

15 THE COURT: Okay. Any redirect?

16 MR. COX: No redirect, Your Honor. And we ask
17 that Mr. Adams be excused.

18 THE COURT: Mr. Adams, you can be excused and
19 thank you for coming.

20 THE WITNESS: Thank you.

21 THE COURT: Call your next witness.

22 MR. WAGONER: The State would call William
23 Cooke.

24 WILLIAM COOKE

25 being first duly sworn, testified as follows:

1 THE WITNESS: Yes, ma'am. I do.

2 THE CLERK: Have a seat, please, sir. You can
3 remove your mask. Once you're seated, state your
4 full name spelling your last, please.

5 THE WITNESS: Trooper William James Cook,
6 C-O-O-K.

7 DIRECT EXAMINATION

8 BY MR. WAGONER:

9 Q. Good afternoon, Trooper Cook. Would you start
10 out introducing yourself to the jury, specifically
11 where you're from, where you went to high school,
12 and what you've done after high school?

13 A. Yes. I'm from Lexington, South Carolina, born
14 and raised here. I went to Lexington High School,
15 graduated in 2014.

16 After I graduated in 2014, I went into the Army
17 and served four years in the military police corp in
18 Fort Leonard Wood in Missouri. After that, I got
19 out in 2018 and went to Highway Patrol.

20 Q. Okay. And did you do any training as part of
21 the Highway Patrol?

22 A. Yes, sir. I went to the South Carolina
23 Criminal Justice Academy August of 2018, graduated
24 from the Criminal Justice Academy in November of
25 2018. Did some time on the road, went back to the

1 South Carolina Highway Patrol school in February of
2 2019, and graduated that in March of 2019.

3 Q. Were you on duty on June 14th of 2019?

4 A. Yes, sir. I was.

5 Q. And were you dispatched to the scene of a
6 collision?

7 A. Yes, sir. I was.

8 Q. And do you recall where that collision was?

9 A. Yes, sir. The collision occurred on U.S. 178
10 near Fogle Road, right outside of Pelion.

11 Q. What county is that in?

12 A. It's in Lexington County.

13 Q. Okay. Were you the first trooper on the scene?

14 A. Yes, sir. I was.

15 Q. Can you tell the jury what was the day like?

16 A. On the day of the collision, I believe it was
17 somewhere around 6:30 in the afternoon. It was a
18 bright, sunny day, clear skies. Very, very good
19 weather.

20 Q. When you got to the scene, were the drivers
21 still on scene?

22 A. No, sir. None of the drivers that were
23 involved in the collision were on scene when I
24 arrived.

25 Q. So they'd already been transported?

1 A. That's correct.

2 Q. Did you walk around the collision scene?

3 A. Yes, sir. When I arrived on scene, I walked
4 around the scene, kind of, summarized the scene to
5 myself, as well as taking pictures of the scene.

6 MR. WAGONER: If I may approach the witness?

7 THE COURT: You may.

8 BY MR. WAGONER:

9 Q. Handing you what's been marked as States
10 Exhibits 7 and 8, what does that appear to be?

11 A. The photos are pictures of, on the record board
12 as labeled as unit 2.

13 Q. And what -- what type of vehicle is that?

14 A. It's a Chevrolet Colorado pickup truck silver
15 in color.

16 Q. And are you referring to State's 7? Is that
17 the -- does State's 7 only show that Colorado?

18 A. State's 7, yes, sir it does.

19 Q. And does that fairly and accurately depict the
20 damage to the Colorado?

21 A. That's correct, sir.

22 MR. WAGONER: Your Honor, I move State's
23 Exhibit 7 into evidence.

24 THE COURT: Any objection?

25 MR. ATWATER: No, Your Honor.

1 THE COURT: Okay. Thank you. It's admitted.

2 (State's Exhibit Number 7 admitted into
3 evidence.)

4 BY MR. WAGONER:

5 Q. Moving on to State's 8, what does that appear
6 to be?

7 A. State's Exhibit 8 is a picture of the
8 previously stated Chevy Colorado, as well as a white
9 pickup truck, and a red Ford Ranger pickup truck.

10 Q. Does that fairly and accurately depict the
11 collision scene on June 14th, 2019?

12 A. That's correct, sir.

13 MR. WAGONER: Your Honor, I move State's 8 into
14 evidence.

15 MR. ATWATER: No objection.

16 THE COURT: All right. It's admitted.

17 (State's Exhibit Number 8 admitted into
18 evidence.)

19 MR. WAGONER: Your Honor, permission to
20 publish?

21 THE COURT: You may.

22 MR. WAGONER: For the record, I'm publishing
23 State's 8.

24 THE COURT: Okay.

25 BY MR. WAGONER:

1 Q. Did you speak with any witnesses?

2 A. Yes, sir. I did speak with a witness.

3 Q. All right. Who did you speak with?

4 A. Mr. Rainey, he was the flagman for the
5 construction company.

6 Q. What was your role at this scene?

7 A. When I initially arrived on scene, I was the
8 primary investigating officer. My duties were to
9 secure the scene, interview any witnesses that were
10 still on scene, as well as start taking pictures of
11 the collision scene.

12 Q. Were you waiting for someone else?

13 A. At the time, I was waiting on my supervisor to
14 arrive, sir.

15 Q. Did you wait on the scene for other
16 investigators to arrive?

17 A. After my supervisor arrived on scene, we were
18 waiting for the advanced collision reconstruction
19 team.

20 Q. Were you investigating the entirety of the
21 collision?

22 A. No, sir.

23 Q. Okay. Did you also drive the scene?

24 A. Yes, sir. I did.

25 Q. Did that -- what did that entail?

1 A. When I was on scene, I noticed that there were
2 several signs, temporary signs that were set up by
3 the construction company. I then got in my patrol
4 car, drove to the start of where the signs began,
5 and then drove U.S. 178 eastbound to get video and
6 pictures of the signs leading up to the collision.

7 MR. WAGONER: If I may approach the witness?

8 THE COURT: You may.

9 BY MR. WAGONER:

10 Q. Those are State's 2 through 6. Those are
11 already admitted into evidence.

12 Did you talk those photos?

13 A. Yes, I did.

14 MR. WAGONER: Permission to publish?

15 THE COURT: You may.

16 BY MR. WAGONER:

17 Q. Starting with State's 2, kind of take me
18 through what you're seeing.

19 Do you need a laser pointer?

20 A. I think I can cover it.

21 Q. Okay.

22 A. This is U.S. 178. The way my patrol car is
23 facing, I'm taking it from my driver's seat. We
24 were facing towards Pelion or eastbound on 178.
25 That is the start of the construction zone. That

1 first sign there would be the start of this warning
2 of construction ahead. Prior to the point of
3 collision, which you can kind of see at the end of
4 the road with the blue lights down there.

5 Q. And did you move closer to the collision site?

6 A. I did.

7 Q. State's 3, is that a photo you took?

8 A. That's correct.

9 Q. And what is that depicting?

10 A. That's a subsequent photo from the first. I
11 took several as I proceeded east bound on U.S. 178.
12 Again, this is from the driver's seat of my parole
13 car.

14 Q. State's 4?

15 A. That would be the same thing, another picture.
16 There were several signs, I believe four signs, as
17 you proceeded east down 178. Each picture should
18 depict --

19 Q. Now, you weren't taking these immediately,
20 because you had already testified it was a clear
21 day. Tell me why is it darker?

22 A. At that point, we had secured the scene. We
23 were waiting for the MAIT Team to arrive. I had
24 already interviewed Mr. Rainey and taken some
25 pictures of the scene itself.

1 Q. Was that the closest one you took?

2 A. Yes, sir. That is. That is one of the trucks
3 from the construction company blocking the roadway
4 there.

5 Q. And what direction are you traveling?

6 A. East bound on 178.

7 Q. And what county is that in?

8 A. Lexington County.

9 MR. WAGONER: Beg the Court's indulgence.

10 No further questions.

11 THE COURT: Mr. Atwater.

12 MR. ATWATER: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. ATWATER:

15 Q. Trooper Cook, you're not the Investigator Cooke
16 whose last name has an "E" on it and identified as a
17 MAIT Team, are you?

18 A. No, sir. That's not me.

19 Q. What time did you arrive on the scene of this
20 accident?

21 A. I arrived at 18:39 hours or 6:39 p.m.

22 Q. Okay. So if the accident report shows that the
23 accident occurred at 17:54, you would have gotten
24 there 45 minutes after the accident occurred,
25 correct?

1 A. Yes, sir. That's correct.

2 MR. ATWATER: That's all I have.

3 THE COURT: Any redirect.

4 REDIRECT EXAMINATION

5 BY MR. WAGONER:

6 Q. Where did you come from to respond to the
7 collision?

8 A. I was at the Posey -- I have a parole office in
9 Lexington. It's at 111 Maiden Lane in downtown
10 Lexington.

11 Q. Is that right outside?

12 A. That's correct, sir.

13 MR. WAGONER: No further questions.

14 THE COURT: Can I excuse Trooper Cook?

15 MR. WAGONER: I'm sorry. I always keep
16 forgetting that.

17 Will you, please, excuse Trooper Cook?

18 THE COURT: Trooper Cook, you are excused.

19 Call your next witness.

20 MR. COX: Thank you, Your Honor. We call
21 Trooper Matt Nix.

22 MATT NIX

23 being first duly sworn, testified as follows:

24 THE WITNESS: I do.

25 THE CLERK: Thank you, sir. Have a seat right

1 up there. Once you're seated, you can remove your
2 mask. State your full name and spell your last,
3 please.

4 THE WITNESS: Corporal Matthew Raymond Nix,
5 N-I-X.

6 DIRECT EXAMINATION

7 BY MR. COX:

8 Q. Corporal Nix, if you could, just tell us where
9 you're from and how long you've been with the
10 Highway Patrol?

11 A. I currently live in Bishopville, South
12 Carolina. I've been on the Highway Patrol since
13 July of 2005, so going on 17 years.

14 Q. Have you been with any other law enforcement
15 agencies before?

16 A. No. Just highway patrol.

17 Q. And specifically with the Highway Patrol, are
18 you part of any kind of special units or
19 investigative teams?

20 A. Yes. Starting in March of 2013, I transferred
21 from Aiken County, where I was a road trooper, moved
22 to the Midland's MAIT Team in March of '13.

23 Q. And what is a MAIT Team stand for?

24 A. The Multidisciplinary Acts Investigation Team.

25 Q. And what exactly is -- what is the role of the

1 MAIT Team for the Highway Patrol?

2 A. Doing any type of in-depth investigations of
3 collisions that occur, whether it be a fatal
4 collision, multiple car collision, anything that
5 needs speed calculations or any type of in-depth
6 investigation dealing with motor vehicles.

7 Q. What type of training do you go through before
8 you begin with MAIT?

9 A. It's quite intensive. Me, personally, I have
10 totally from the Highway Patrol over 1900 hours
11 worth of training. Now, some of that is not MAIT
12 related or reconstruction related, but all the
13 members probably have at least close to 1,000 hours
14 of reconstruction training.

15 Q. Were you part of an investigation to a
16 collision on June 14th, 2019?

17 A. Yes, sir.

18 Q. Okay. Your role -- what was your specific role
19 in this investigation?

20 A. My specific role was to take photographs of the
21 scene, do a forensic mapping, and start on the
22 airbag control module downloads on the vehicles if
23 supported.

24 Q. If you could, Corporal Nix, just kind of
25 explain to us how MAIT does a forensic mapping?

1 A. In this particular case, we -- well, if we're
2 going to do forensic mapping on any case actually,
3 we have different types of computer equipment that
4 utilizes either lasers, or in this case, we use a
5 new unit that uses a GPS technology.

6 Q. And how do you operate the unit? How does it
7 work?

8 A. It's basically a little handheld computer about
9 twice the size of a cell phone that attaches to a
10 pole with an antenna on top that looks kind of like
11 a dinner plate. And that computer, that handheld
12 unit, tracks satellites from space and tells you
13 exactly where you are on the earth's surface.
14 That's pretty basic, but...

15 Q. In using this GPS technology, what are you
16 mapping out at the scene of the -- in this scene,
17 what were you mapping out?

18 A. The roadway itself, any type of evidence on the
19 roadway, such as tire marks, gouges, final rest of
20 the vehicle, fluid trails, anything pertaining to
21 the actual collision itself within that specific
22 area.

23 Q. And what is the purpose of getting this data?

24 A. For measurements, and just to get a -- like a
25 bird 's eye view of the actual wreck scene, because

1 you can bring that data and impose it into a
2 program, a CAD program, computer aided drawing, and
3 physically see it on a piece of paper.

4 Q. Did you actually take the data from the mapping
5 you did on the scene and create a CAD?

6 A. I did not. I just put the data from the
7 handheld unit on to our server so another
8 investigator could do the actual CAD program.

9 Q. So you just collected the data?

10 A. That's it. Yes, sir.

11 Q. You mentioned airbag control module. Could you
12 explain for the jury what that is?

13 A. It's a type of computer in a vehicle that's --
14 I'm not going to get too in depth with it. I'm not
15 an analyst. I'm just a technician when it comes to
16 that. But it basically tells the car to make the
17 airbags deploy, and it records data that's the speed
18 of the vehicle, whether the brakes were on, and the
19 other things, based on the model, it could be a
20 number of different things, but, basically, it's a
21 small computer that tells the airbags to go off at
22 an impact.

23 Q. Did you collect any of the modules from this
24 scene?

25 A. I don't believe we actually physically

1 collected them. I think it was we actually
2 downloaded them on scene and left them in the
3 vehicle. But both of the Chevrolet, the Silverado
4 and the Colorado, I downloaded on the scene.

5 Q. Was there another vehicle on the scene?

6 A. Yes, sir, a Ford Ranger.

7 Q. Okay. Did you observe collection of the module
8 for the Ford Ranger?

9 A. Yes, sir. I actually photographed the other
10 investigator, retired Corporal Mark Turner, I
11 photographed him doing exactly what I did for the
12 other Chevrolets.

13 Q. And, kind of, I asked you a question as I asked
14 for a forensic mapping, did you actually analyze
15 this data, or just collect it for another person?

16 A. Just collected it. Collected it and downloaded
17 it to our server.

18 MR. COX: Your Honor, beg the Court's
19 indulgence.

20 THE COURT: Take your time.

21 BY MR. COX:

22 Q. Corporal Nix, the forensic mapping device that
23 you testified to, what is this system called?

24 A. The manufacturer are Trimble. It's been two
25 years since I've actually held it in my hand,

1 because since this collision, I transferred from the
2 MAIT Team and went to the Central Evidence Unit. So
3 it's been since November of '19 since I've actually
4 physically held it in my hand, so...

5 Q. Well, at that time, how familiar were you with
6 this device?

7 A. Very familiar, very familiar.

8 Q. How were you familiar with the device?

9 A. Like I said, this was actually the first time
10 that our team has used this unit on an active team.
11 We had to pretty much field test this unit multiple
12 times whenever we investigated to make sure we were
13 familiar on how to use it, as far as the collection
14 part of it, so if any -- we could troubleshoot if it
15 wouldn't cut on, how to get it to work and make sure
16 it's working properly. And that unit actually has,
17 like a self-test check system that if it's not
18 right, it won't even come on, it won't collect
19 nothing. So until it checks itself and says I'm
20 okay, then it allows us to start using it and
21 collect data from it.

22 Q. Did you rely on all that troubleshooting
23 training and use of it prior to using --

24 A. Oh, absolutely. Yeah.

25 MR. COX: No further questions at this time.

1 THE COURT: Thank you, Mr. Cox.

2 Mr. Atwater.

3 MR. ATWATER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. ATWATER:

6 Q. Good afternoon, Trooper Nix.

7 A. Good afternoon.

8 Q. Doing well today?

9 A. Yes, sir.

10 Q. You testified that you did the airbag control
11 module download on both the Chevy Colorado and the
12 Chevy Silverado?

13 A. Yes, sir.

14 Q. And do you know which one of those vehicles Mr.
15 Powers was driving?

16 A. The Silverado.

17 Q. Okay. And did you ever see the data whatsoever
18 that you downloaded?

19 A. Yes, sir. We have to actually save it on there
20 and print off a PDF copy of it to save it to a --
21 what we use on the scene, is like a thumb drive, a
22 flash drive, save that data on that particular flash
23 drive and then put it on our server at the office
24 the next business day. So I did visibly see it,
25 yes, sir.

1 Q. So you saw the data from the airbag control
2 module that showed no airbag deployment, right, from
3 his vehicle?

4 A. Right. Because you could see it in the
5 photographs there was no airbag deployment.

6 Q. That was going to be my next question.

7 A. Right.

8 Q. You actually went to the vehicle, obviously,
9 and looked at it as well?

10 A. Yes, sir.

11 Q. And there was no airbag deployment, correct?

12 A. That's correct.

13 Q. This GPS computer thing you're talking about,
14 you said it can talk to satellites and tell us where
15 we are?

16 A. Pretty much in a nutshell, yes, sir.

17 Q. Kind of like my phone can do?

18 A. A little bit more accurate, but, yes, sir.

19 Q. I have a program on here that tells me when my
20 daughter arrives at my house.

21 A. Yes, sir. I do too. Not your daughter, but my
22 daughter.

23 Q. Yes, sir. Thank you.

24 So basically, what, within a meter or two?

25 A. The --

1 Q. It kind of does what this does?

2 A. The cell phone within a meter or two? I would
3 say yes. The system that we have, I don't know the
4 exact number, but it's pretty much within a few,
5 say, millimeters.

6 Q. Yes, sir.

7 A. So it's very accurate.

8 Q. And you said that was the first time y'all had
9 actually used that device?

10 A. That was the first time I'd used it on the
11 scene.

12 Q. In your investigation, you actually did a --
13 created some audio notes, correct?

14 A. Yes, sir.

15 Q. And you provided them to the other members of
16 the MAIT Team?

17 A. Yes, sir.

18 Q. And you also provided them to the Solicitor's
19 Office, correct?

20 A. I'm assuming they have all the notes that were
21 in the MAIT file.

22 Q. And do you recall how long that audio notes
23 recording was?

24 A. No, sir, not right off-hand.

25 Q. Okay. I'm going to ask you some questions

1 relating to that audio notes.

2 A. Okay.

3 Q. And I've heard it. Okay?

4 A. Yes, sir.

5 Q. It has a timestamp on it. And from what my
6 review of it was, at one minute and 12 seconds, you
7 said this accident happened just over at Hill Crest;
8 is that right?

9 A. That's right.

10 Q. And then at the same time, you said that this
11 wreck happened around 17:30, and you said picking up
12 traffic cones eastbound?

13 A. Okay. Yes, sir.

14 Q. Correct? Okay.

15 And then at three minutes into it, your notes
16 say -- or you spoke into this -- these notes, that
17 it happened as the white Silverado topped the hill,
18 correct?

19 A. Yes, sir.

20 Q. At 4:40 into these notes, you said the driver
21 of the Silverado was apparently under the influence
22 of drugs; is that correct?

23 A. According to the troopers on scene, because Mr.
24 Powers and all the rest of the occupants of all the
25 vehicles ha been transported before my arrival so --

1 Q. So somebody told you that?

2 A. Yeah, hearsay pretty much.

3 Q. Okay. You didn't -- okay. Somebody said that
4 to you, you didn't observe it?

5 A. Correct. Right.

6 Q. At 6:10, apparently you were looking at the
7 Silverado, and you made the note there was more
8 damage to the right than the left, the driver of the
9 Silverado tried to cut to the left at the last
10 minute. That's what you said, correct?

11 A. Okay. Yes, sir.

12 Q. And then 6:50, you were looking at the
13 Colorado, and you said damage to the Colorado on the
14 left was consistent with the driver of the Silverado
15 trying to swerve at the last minute, correct?

16 A. Yes, sir.

17 Q. Okay. How long had you been on the MAIT Team
18 when this accident occurred?

19 A. Six years.

20 Q. And then at the nine-minute mark in your audio
21 notes, you made the statement that the roadway was
22 mapped to establish the hill crest, correct?

23 A. Yes. I think I did say that, yes, sir.

24 Q. And you were using that little device that we
25 talked about to do the roadway mapping?

1 A. Correct.

2 Q. Have you reviewed the MAIT report that was --

3 A. No, sir. Since I left the MAIT Team in
4 November of 2019, I'm not privy to every specific
5 detail on the reports anymore.

6 Q. So did you ever see the final MAIT report from
7 this wreck?

8 A. No, sir.

9 MR. ATWATER: That's all I have.

10 THE COURT: Thank you.

11 Any redirect.

12 MR. COX: No redirect, Your Honor. We ask
13 Corporal Nix be excused.

14 MR. ATWATER: Without objection, Your Honor.

15 THE COURT: You're excused.

16 MR. COX: Your Honor, for our next witness,
17 we'll call Trooper Sisler.

18 THE COURT: Okay.

19 JEREMY SISLER

20 being first duly sworn, testified as follows:

21 THE WITNESS: I do.

22 THE CLERK: Have a seat right up there, please,
23 sir. Once you're seated, you can take your mask
24 off. State your full name spelling your last,
25 please.

1 THE WITNESS: Jeremy David Sisler, S-I-S-L-E-R.

2 DIRECT EXAMINATION

3 BY MR. COX:

4 Q. Thank you, Trooper Sisler. If you would, just
5 kind of introduce yourself to the jury, where do you
6 currently work and where do you live?

7 A. I live in Lancaster County on the state line.
8 I'm with the Midlands Disciplinary Investigations
9 Team with the Highway Patrol.

10 Q. Is that the MAIT Team?

11 A. Yes.

12 Q. How long have you been a part of the MAIT Team
13 with the Highway Patrol?

14 A. Since 2009.

15 Q. Were you in law enforcement before then?

16 A. Yes, sir. I started law enforcement in '98
17 with the Richland County Sheriff's Office, and then,
18 2000, came to the Highway Patrol.

19 Q. Trooper, if you could, just kind of in your own
20 words, just explain what MAIT is and what your role
21 a part of that team is?

22 A. So MAIT is tasked for the Highway Patrol of
23 assisting the road troopers with investigating more
24 complex collisions, things that they don't have the
25 training to do, we get specialized training to be

1 able to find out answers they can't answer
2 themselves. My current role is the team leader for
3 the Midlands Unit.

4 Q. What kind of specialized training do you get on
5 the MAIT Team as opposed to other troopers?

6 A. The training I've had, right now, since 2001,
7 is about 1,500 hours of specialized training in
8 collision reconstruction, from being able to
9 determine speeds of vehicles using momentum of
10 defined speeds vehicles, interview interrogation
11 techniques, computer-aided drawing techniques, all
12 kinds of different things to be able to facilitate
13 us in reconstructing crashes.

14 Q. And have you ever testified as an expert?

15 A. Yes.

16 Q. In General Sessions court?

17 A. Yes.

18 Q. In what area?

19 A. In York Solicitor's District, Lancaster
20 Solicitor's District.

21 Q. What were you qualified as an expert in?

22 A. In general reconstruction, or collision
23 reconstruction.

24 Q. As part of -- you mentioned computer-aided
25 drawings, what is a computer-aided drawing?

1 A. It used the -- when we're in a collision scene,
2 you use hardware of some sort to map what's out
3 there, and it puts it in a computer program, and I
4 can use that program to very accurately show what
5 was out at the scene that day.

6 MR. COX: Your Honor, at this time, we'd offer
7 Trooper Sisler as an expert in general collision
8 reconstruction.

9 THE COURT: Any objection?

10 MR. ATWATER: No, Your Honor.

11 THE COURT: All right. Well, let me tell the
12 jury again: This is going to be expert testimony.
13 I told you earlier, usually a person just testifies
14 to what they've seen, heard, or smelled, but through
15 education and experience, an expert can offer their
16 opinion. And, in this case, this witness is going
17 to be an expert in general reconstruction. You can
18 give that testimony the weight that you see fit.
19 It's up to you. Okay? Thank you.

20 MR. COX: Thank you, Your Honor.

21 BY MR. COX:

22 Q. Trooper Sisler, were you part of an
23 investigation to a collision from June 14th, 2019?

24 A. Yes, sir.

25 Q. Okay. And that was a collision that MAIT

1 investigated?

2 A. Yes, sir.

3 Q. What specifically did you do as a part of that
4 investigation?

5 A. A few days after the collision, I went back out
6 to the collision scene and took video of what was
7 out there, photographs of what was out there, and
8 then went to the wrecker yard and did a mechanical
9 examination and took photographs of the at-fault
10 vehicle involved.

11 Q. Which one did you determine was the at-fault
12 vehicle?

13 A. The white Chevy Silverado.

14 Q. You said you went out there a few days later to
15 look at the scene, what was at the scene when you
16 documented that day?

17 A. Went I went back out there, there was tire
18 marks in the road, there was scratches or gouges in
19 the road, and then there's the paint that the
20 responding officers or the responding troopers went
21 out there and they marked all that. So I go back
22 out there, because it was daytime when I went back
23 out, you're looking to see if there was anything
24 they couldn't see in the dark that night that I
25 could see later.

1 Q. This is during the daytime?

2 A. Yes.

3 Q. Okay. After visiting the scene and comparing
4 and documenting what had been done already, what
5 else did you do as part a of this investigation?

6 A. Like I said, I went to the wrecker service and
7 took photographs of that vehicle and did a
8 mechanical exam.

9 Q. What did you find for your mechanical exam of
10 the Silverado?

11 A. Of the three wheels I could pull off -- because
12 of the damage, I couldn't pull off one of the front
13 wheels. But the other three wheels, I looked at the
14 brake system and steering of the vehicle, and there
15 was nothing that wasn't caused by the collision
16 wrong with the vehicle. Everything was in working
17 order. Or would've been in working order prior to
18 the collision.

19 Q. And you said that was for the brakes and the
20 steering?

21 A. Yes.

22 Q. Okay. Did you perform a computer-aided drawing
23 for this case?

24 A. Yes.

25 Q. What information or what part of the

1 investigation did you rely on in order to help make
2 this drawing?

3 A. So the initial MAIT officers that responded, I
4 believe it was Trooper Nicks, mapped the scene with
5 a Genesis Mapping System that uses satellites and
6 global positioning to map the evidence out there.
7 It puts that in a data collector. That data
8 collector is just put on a computer, and then our
9 software connects all those dots, like a
10 connect-the-dots drawing for kids, it connects all
11 those dots.

12 I take them and essentially take all the lines
13 that they're in and make it look more like a
14 picture. I'll make something that they say is a
15 skid mark at the scene, it comes in like a
16 single-point line. Well, I'll it that that's an
17 actual skid mark, so it makes it a little bit wider
18 and black like a skid mark.

19 If it's the roadway, I'll surface between two
20 lines and say all right, this is a road, so it puts
21 a surface that looks like asphalt. And then once
22 you have the roadway built and the evidence on top
23 of it, then I'll put the vehicles where they were
24 mapped that day of the collision where they came to
25 their final rest at, and then using the evidence,

1 back them up to where their impact locations were,
2 and then I move them from to where they were just
3 before the collision occurred.

4 Q. Outside of the data that was collected by
5 Corporal Nix, did you rely on anything else while
6 making this CAD drawing?

7 A. Yes, sir. So I would look at the photographs
8 that were taken that night at the scene from the
9 road trooper that initially went, the MAIT Team that
10 took pictures out there, my pictures were in the
11 daytime to compare and make sure we're all seeing
12 the same thing, because there's different lighting
13 conditions and things can look different in
14 different lighting conditions. And then I also have
15 all the statistics of the wheel, the length of the
16 vehicle, the wheel base, wheel track, everything.
17 So when I'm putting these CAD in there, they match
18 the vehicles that were out there that night. So
19 I'll have different screens or different monitors on
20 my computer with different information on there, so
21 while I'm building the CAD on one screen, I can see
22 the vehicle stats and the photographs to make sure
23 what I'm doing matches what was mapped.

24 MR. COX: Beg the Court's indulgence, Your
25 Honor.

1 BY MR. COX:

2 Q. Trooper Sisler, handing you up what's been
3 previously marked as Exhibit 9.

4 Do you recognize that?

5 A. Yes.

6 Q. And were you able to review that disk before
7 today?

8 A. Yes.

9 Q. Okay. Did you initial it?

10 A. I did.

11 Q. Okay. What is -- before going into the
12 details, what did that contain?

13 A. It was the finished CAD drawing that I
14 finished, and then the raw files from the data
15 collector were also on there.

16 Q. Does that copy fairly and accurately depict the
17 CAD that you did in this case?

18 A. Yes.

19 MR. COX: Your Honor, at this time, we offer
20 State's Exhibit 9 into evidence.

21 THE COURT: Any objection?

22 MR. ATWATER: No, Your Honor.

23 (State's Exhibit No. 9 admitted into evidence.)

24 MR. COX: Your Honor, we're going to set up.

25 This is a disk, and this has some items on it we

1 wish to publish to the jury.

2 THE COURT: Okay. That's fine.

3 BY MR. COX:

4 Q. Trooper Sisler, how many drawings were done as
5 a part of this CAD?

6 A. There are four different -- or five plates or
7 PDF prints of it. There's only one CAD drawing.
8 It's just there's -- the PDF is kind of like a
9 screen shot or a print of different layers of
10 different things turned on or off.

11 MR. COX: Your Honor, at this point in his
12 testimony, I ask that Trooper Sisler be allowed to
13 step down and go through --

14 THE COURT: Absolutely. He may step down.

15 BY MR. COX:

16 Q. Trooper Sisler, if you would, as you begin,
17 tell us what we're looking at with these slides.

18 A. Full screen?

19 Q. So the first thing I'm doing when I get this,
20 is building the roadway. So when they're at the
21 scene that night, they map lines. So the edge and
22 paving where the grass meets the roadway --

23 MR. COX: Your Honor, now that he's kind of
24 away from the jury, can he pull his mask down?

25 THE COURT: Yes, please.

1 THE WITNESS: So the troopers that night, the
2 MAIT members, will map these lines down the road.
3 So where the pavement meets the grass, the edge of
4 the pavement, the fog line, the double yellow line,
5 then the passing yellow line, and then the other fog
6 line into pavement.

7 The edges of the pavement, I'll click on both
8 of them say, hey create a surface between the
9 asphalt, and it makes that gray surface between.
10 Then take the lines, click on them, tell them hey,
11 this is a yellow line, this is a white line, and it
12 does that. And the same thing out here putting
13 grass on the side so it looks like it did out there
14 that day.

15 The second page is the first impact that
16 occurred. So you'd have the white truck, the
17 silver, and the red all on there. This is the first
18 impact that occurred, there's no evidence before
19 that, so the evidence is going to be from this point
20 forward. So that was the first impact with the
21 second vehicle or the red vehicle, where it's at, at
22 that point in time still stopped.

23 So as the white vehicle impacts the other
24 pickup truck, it pushes that silver truck or blue
25 truck into the red one. As it's being pushed

1 forward, the white truck is starting to rotate
2 clockwise around and going into the oncoming lane of
3 traffic at that point. And you can see a little bit
4 of tire marks now that were left from the initial
5 impact and just after that impact. And this is the
6 evidence of final rest.

7 So after the vehicles have traveled out to
8 where they were at the end of the collision, those
9 positions were mapped the same in the roadway, along
10 with all this evidence. That's everything they
11 mapped out there.

12 Then the last one is a sequence of events, so
13 it's just putting each vehicle at different points
14 as it goes from impact to just after impact, to
15 creating tire marks all the way to its final rest,
16 and same with the other vehicles. It shows just the
17 sequence of how they got from before impact, impact,
18 then all the way to where they stopped.

19 BY MR. COX:

20 Q. Trooper Sisler, you mentioned on page 2 that
21 there was no evidence of a -- no evidence before
22 this. Could you explain what you mean by there was
23 no evidence before?

24 A. So if the white truck here -- so the top right
25 two vehicles are stopped, they're sitting in

1 traffic. The white vehicle, if he would have
2 skidded into the impact, there would be skid marks
3 leading up to that first impact. That would show
4 here on that plate. There's no skid marks up to
5 that point, so there's no evidence showing. The
6 evidence hasn't been creat- -- there's no skid marks
7 or down marks that have been created yet, because
8 this is where the vehicles had first touched. They
9 haven't started even pushing each other yet to
10 created any evidence on the roadway. So at this
11 point, there's nothing other than those vehicles,
12 there's no scratches, gouges, tire marks, anything.

13 MR. COX: Trooper Sisler, thank you.

14 Your Honor, no further questions.

15 Trooper Sisler, if you could have a seat.

16 THE COURT: All right. Mr. Atwater?

17 CROSS-EXAMINATION

18 BY MR. ATWATER:

19 Q. Trooper Sisler, good afternoon.

20 A. Good afternoon, sir.

21 Q. You said you reside in Lancaster County?

22 A. I do.

23 Q. Is that -- that's where the MAIT headquarters
24 is also, isn't it?

25 A. No, sir.

1 Q. Is it up in Rock Hill?

2 A. We have one office in Rock Hill, that's our
3 regional office, then we have our main office here
4 in Columbia.

5 Q. Okay. Now, you said -- I believe you testified
6 that the MAIT is called out to investigate more
7 complicated collisions?

8 A. Yes.

9 Q. Okay. This is a collision where two vehicles
10 were stopped, one vehicle came up behind it and hit
11 the second vehicle, correct?

12 A. Yes, sir.

13 Q. Would you consider that a complicated wreck?

14 A. No.

15 Q. Now, you're a Master Trooper, J.D. Sisler?

16 A. I'm Sergeant Sisler now.

17 Q. Is there another Sisler besides you?

18 A. No, sir.

19 Q. Are your initials J.D. Sisler?

20 A. Yes, sir.

21 Q. If I'm looking at a MAIT investigation team
22 report that says M/TRP J.D. Sisler, would that be
23 you?

24 A. That was, yes, sir.

25 Q. Okay.

1 A. That was just a different rank years ago.

2 Q. I gotcha. Back at that time you were Master
3 Trooper Sisler.

4 A. Yes, sir.

5 Q. All right. You had an occasion in your
6 investigation of this accident to interview
7 Mr. George Adams?

8 A. I believe so. That was the driver of the --

9 Q. The front vehicle?

10 A. Yeah, the red truck.

11 Q. Do you remember interviewing him?

12 A. Yes. I listened to the interview again.

13 Q. Okay. And you made some interview notes that
14 were included in the highway -- the MAIT accident
15 report?

16 A. Yes.

17 Q. And in those interview notes, says you took
18 them on July 17th of 2019, does that sound right?

19 A. It sounds correct. I'd have to --

20 Q. About 10:00 in the morning?

21 A. It's what's on the page. I don't have any
22 independent recollection of what time it was, but,
23 yes, sir.

24 Q. Okay. And in your notes, you put down "left
25 home to go to work." Did he tell you that?

1 A. That he left home to go to work?

2 Q. Yeah. It says left home to go to work. Is
3 that him telling you that's what he did?

4 A. Yes.

5 Q. Okay. Then it says: "Stopped when the flagman
6 turned the sign to stop." That's what he told you
7 he did?

8 A. Yes.

9 Q. And then it says: "A white pickup stopped
10 behind me." That would be the second vehicle?

11 A. Yes.

12 Q. Was it a white pickup?

13 A. I believe it was actually a silver-ish.

14 Q. Okay. And then he told you, and you put in
15 your notes, "I heard screeching and then I got hit"?

16 A. Yes.

17 Q. That's what he told you?

18 A. Yes.

19 Q. Okay. You said you pulled three of the four
20 wheels on the Silverado?

21 A. Yes.

22 Q. Okay. And why did you pull those?

23 A. To check the brakes.

24 Q. Okay. Did you do any of the investigation or
25 make any notes as it related to pinning of the

1 wheels?

2 A. The wheels being pinned?

3 Q. Yes, sir.

4 A. No, sir. That would be the general vehicle
5 exam.

6 Q. Okay. Do you know who did that?

7 A. I don't.

8 MR. ATWATER: Okay. Now, Your Honor, could I
9 ask Sergeant Sisler to step back down, please?

10 THE COURT: Absolutely.

11 BY MR. ATWATER:

12 Q. Now, in this -- is this your first diagram here
13 of the series?

14 A. That's page 2. The first one is just the
15 roadway itself with no vehicles on it.

16 Q. Just the roadway. Okay. And this is basically
17 a PDF picture of what a satellite picture would look
18 like of that roadway, right?

19 A. Yes.

20 Q. Is there any reason why y'all didn't use the
21 satellite picture instead?

22 A. You're not going to get any accuracy with
23 satellite pictures of Google, or --

24 THE COURT: Can the jury hear? Can you ask
25 that question again.

1 BY MR. ATWATER:

2 Q. Is there any reason why you didn't use a
3 satellite picture in your investigation?

4 A. Yes. The Google Earth free version isn't
5 accurate. It's blurry when you zoom in on it. This
6 I can zoom all the way in to individual marks.

7 Q. Do you have access to the County's GS mapping?

8 A. I do not.

9 Q. In this picture, it shows, from what I can
10 tell, and you tell me if I'm wrong, shows the third
11 vehicle being directly behind the second vehicle,
12 immediately prior to the wreck, right?

13 A. It's offset a little to the left.

14 THE COURT: All right. I've got a juror that
15 can't hear. Can y'all repeat that, please?

16 When y'all are talking, if you can talk towards
17 the jury.

18 MR. ATWATER: Yes, ma'am.

19 BY MR. ATWATER:

20 Q. In this picture, I asked Sergeant Sisler
21 whether it showed the white vehicle directly in line
22 with the second vehicle in front of it?

23 A. No. It's offset slightly to the left.

24 Q. So that would be the white vehicle slightly to
25 the left of the second vehicle, correct?

1 A. Correct.

2 Q. All right. And you can take the stand.

3 A. Thank you, sir.

4 Q. I believe you testified that in this
5 photograph, it didn't show any evidence of any
6 markings on the road or anything that -- in this
7 particular diagram?

8 A. Correct.

9 Q. As far as it was behind the white vehicle,
10 correct?

11 A. Correct.

12 Q. Okay. Now, vehicles can brake without creating
13 skid marks; isn't that true?

14 A. Yes, sir.

15 Q. And, in actuality, normal-day operation,
16 braking doesn't create skid marks unless it's so
17 hard that the wheels lock up, correct?

18 A. Correct.

19 MR. ATWATER: That's all I have, Your Honor.

20 THE COURT: Any redirect?

21 MR. COX: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. COX:

24 Q. Your Honor, I'm zooming in on the photo or the
25 CAD drawing that's already in evidence, that way

1 Sergeant Sisler doesn't have to get back down.

2 Sergeant Sisler, at this point, in the drawing
3 what are we looking at? At what point at the scene
4 is this?

5 A. Where the first two vehicles touch each other.

6 Q. This is the first time these two vehicles
7 touch?

8 A. Yes, sir.

9 Q. With there being no markings behind the white
10 Silverado, in your opinion, what is that indicative
11 of for this scene?

12 A. There was no emergency braking done before
13 impact.

14 Q. Okay. And that is why -- or at that point,
15 when we go to this one, these markings here, what is
16 that indicative of?

17 A. For the Silverado, that that vehicle is
18 sideways. When the vehicle starts leaving tire
19 marks, the tires are sliding sideways, so it doesn't
20 matter if he's on the brakes or not, they're going
21 to leave marks at that point.

22 Q. And, again, these marks here, at what point did
23 these marks begin to form?

24 A. After the first two vehicles hit.

25 MR. COX: Your Honor, no further questions.

1 THE COURT: Anything else, Mr. Atwater?

2 MR. ATWATER: No, Your Honor.

3 MR. COX: We'd ask Sergeant Sisler be excused.

4 THE COURT: Yes.

5 Sergeant Sisler, thank you for coming.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Mr. Foreman, we okay to go through
8 another witness?

9 THE FOREPERSON: Yes, ma'am.

10 MR. WAGONER: And, Judge, just for the record,
11 I believe the next witness may be a little
12 lengthier, so I don't know if that --

13 THE COURT: Y'all want to take a break now and
14 we'll do one more, or y'all want to go through it?
15 They're ready to go.

16 MR. WAGONER: The State calls Calvin Rikard.

17 JAMES CALVIN RIKARD, JR.

18 being first duly sworn, testified as follows:

19 THE WITNESS: Yes, ma'am, I do.

20 THE CLERK: Have a seat, please, sir. Once
21 you're seated, you can remove mask. State your full
22 name and spell your last.

23 MR. WAGONER: Your Honor, may I approach the
24 witness before he sits?

25 THE COURT: You may.

1 MR. WAGONER: For the record, I had to give him
2 water.

3 THE COURT: That's good to know.
4 Go ahead, Mr. Wagoner.

5 THE WITNESS: My name is James Calvin Rikard,
6 Jr.; R-I-K-A-R-D.

7 DIRECT EXAMINATION

8 BY MR. WAGONER:

9 Q. Good afternoon. I almost said good morning.
10 But good afternoon.

11 Could you introduce yourself to the jury,
12 specifically where you're from, where you went to
13 high school, what you've done after high school?

14 A. Yes, sir. My name is Calvin Rikard, Jr. I am
15 from Lexington. I live in Lexington now off of Old
16 Chapin Road. I'm originally from Saluda, South
17 Carolina near the traffic circle area. I went to
18 high school in Saluda; graduated Saluda High School
19 in 1994. I went to Midlands Technical College here
20 in Lexington, the Airport campus; graduated there in
21 1997 with a degree in criminal justice.

22 In 1997, I also attended the South Carolina
23 Criminal Justice academy. I was employed with the
24 Saluda County Sheriff's Office as a road deputy.
25 And then, in 1999, I left there and was employed

1 with the South Carolina Highway Patrol. And I went
2 back to the academy because I enjoyed it so much for
3 another 20 weeks for the Highway Patrol's basic
4 training.

5 Q. And as part of your -- were you a part of the
6 MAIT Team?

7 A. Yes, I was.

8 Q. And when did you first join the MAIT Team?

9 A. So in 2004, I was temporarily assigned to the
10 MAIT unit. And that was in September. I believe it
11 was March of the following year I became a full-time
12 member of MAIT and stayed there up until my
13 retirement of 2020.

14 Q. Now, did you take a -- at one point, were you
15 the traffic safety director of the national --
16 excuse me, of the South Carolina National Safety
17 Counsel?

18 A. I did take a short break from the Highway
19 Patrol. I thought it would be better for my family
20 to take a job at the national safety counsel as a
21 traffic safety director. I was only gone for about
22 five minutes. I actually was able to come back to
23 the Highway Patrol, and went straight back onto the
24 MAIT unit at that time.

25 Q. In 2019, what was your rank with the MAIT team

1 or with the Highway Patrol?

2 A. 2019, I was a sergeant. I was deemed or termed
3 the team leader of the Midlands Unit, which we cover
4 14 counties from the North Carolina line all the way
5 down to the Georgia line.

6 Q. And you already stated up to your retirement.
7 What are you currently doing?

8 A. So February of 2020, before the pandemic, I was
9 offered a job with Duncan-Parnell out of Charlotte,
10 North Carolina in regards to selling, training,
11 providing support on forensic mapping equipment to
12 all law enforcement agencies that were going to go
13 towards the Trimble brand, because they're a
14 distributor for Trimble, from Virginia all the way
15 down to Florida.

16 So that's my territory currently where I'm
17 training officers to use forensic mapping equipment
18 and software.

19 Q. Even prior to your retirement, were you
20 teaching officers as part of your job?

21 A. That is correct.

22 Q. And what type of classes were you teaching?

23 A. I was involved in several reconstruction
24 classes. One of those was the CDR or the ACM
25 technician class that y'all heard of earlier. So I

1 was responsible for teaching all MAIT members that
2 had just come on, and also an annual inservice where
3 they could get recertified in that data and
4 technology.

5 Q. Can you explain to the jury any professional
6 organizations you're a member of or any
7 certifications you do have?

8 A. Currently, I'm associated with three different
9 collision reconstruction organizations: NAPARS,
10 SCARS. So NAPARS is a national one; SCARS is a more
11 local one. And then there's and ACTAR which is --
12 holds some weight in the collision reconstruction
13 world. It is actually the accreditation commission
14 of traffic accident reconstruction.

15 And what they do is basically -- because you --
16 there's really not a state test or an accreditation
17 or accreditation, but this organization gives you a
18 test on general reconstruction skills. So you have
19 a 75-question theory test, and then you have a
20 25-question practical test where they have staged a
21 traffic crash.

22 They know all the variables that are involved
23 in that, and so they test what your knowledge is
24 based on general reconstruction and technology. So
25 that is a worldwide organization, and I was able to

1 take that test and actually successfully passed it
2 on the first try, thankfully, back in 2007.

3 Q. And do you have to maintain that certification?

4 A. Yes, you do. So you have to get 80 CEU hours
5 in a five-year period. So you have to have
6 continuing education during that time.

7 Q. And have you testified in court before?

8 A. Yes, sir, I have.

9 Q. Have you been qualified as an expert in
10 collision reconstruction before?

11 A. Yes, sir, I have.

12 Q. How many times?

13 A. Eight times.

14 MR. WAGONER: Your Honor, I would offer James
15 Calvin Rikard as an expert in collision
16 reconstruction.

17 THE COURT: Any objection?

18 MR. ATWATER: Is that general collision
19 reconstruction?

20 MR. WAGONER: Collision reconstruction.

21 THE COURT: Okay. I'll remind the jury again
22 that Trooper Rikard will be qualified as an expert
23 in the field of collision reconstruction because of
24 his education and experience. That does not mean
25 that you must accept the opinion, but it is evidence

1 for you to use any way you see fit.

2 Mr. Wagoner?

3 BY MR. WAGONER:

4 Q. Were you able to go over the mapping data that
5 Trooper Nix talked about in his testimony?

6 A. Yes, sir, I was.

7 Q. Were you able to determine -- were you able to
8 I guess, check over it?

9 A. Yes. Yes, sir.

10 Q. And did it appear to be, you know, used
11 properly?

12 A. Trooper Nix used the equipment the way that he
13 was taught. The way I know that is I taught him how
14 to use that equipment because I was in the process
15 of actually getting that equipment for the Highway
16 Patrol when I was actually offered the job that I'm
17 currently in. So he performed what he was told and
18 what he was taught; that those steps were followed
19 to make sure that the data he was actually receiving
20 from the satellites was true and accurate so that
21 when the drawing was made, that it was a true and
22 accurate representation of what they saw and what
23 they mapped at the collision scene that night. Yes,
24 sir.

25 Q. And, ultimately, what are those measurements

1 used for -- obviously, with more variables. But,
2 ultimately, what are those measurements used for?

3 A. The measurements are used to, again, create a
4 true and accurate representation of what they found
5 at the scene or felt like was important. So you got
6 roadway features; you got roadway evidence; you got
7 final rest of vehicles, and any other thing -- you
8 know, points of interest that they wanted to mark,
9 that they felt like was important.

10 When all that is done and brought back to the
11 office, then that CAD, the drawing, is actually
12 produced. And then from there, you can take that a
13 next step forward and you can get accurate
14 measurements off of that CAD drawing.

15 In this case, we would have done that to get
16 speed calculations of the vehicles involved in the
17 crash.

18 Q. And before we get to that, there had been prior
19 testimony about certain signage. There are three
20 signs at 1500 feet and 2000 feet. What's that in
21 yards approximately?

22 A. Repeat that one more time.

23 Q. What is 1500 feet in yards?

24 A. So 1500 feet, there's three feet in a yard, so
25 1500 yards is about 500 feet -- or 500 yards, if my

1 math is right.

2 Q. So approximately -- how many yards is
3 approximately 2000, approximately?

4 A. That would be close to -- 2000 feet?

5 Q. Yes.

6 A. Between 6- and 700 yards.

7 Q. And did you review the videos involved in this
8 case?

9 A. Yes, sir, I did.

10 Q. And did you review as to where the signage was
11 in this particular case?

12 A. Yes, sir, I did.

13 Q. And part of your review of those videos, where
14 was the first sign located?

15 A. The first sign was located at around house
16 number [REDACTED] Fairview Road and about
17 approximately around 2700 feet back from the
18 collision scene location.

19 Q. And how are you getting those distances?

20 A. That was actually because we didn't map back
21 that far with our GNSS system. That was actually
22 used off of Google Earth as an approximate distance.

23 Q. So approximately how many yards is that first
24 sign from the collision location?

25 A. That's going to be close to -- and if I said

1 2750, I apologize. It was 2450, so around 2500
2 yards. It was around eight -- or 2400 feet, which
3 is around 800 yards, which is about eight football
4 fields.

5 Q. Did you analyze the airbag control modules in
6 this case?

7 A. Yes, sir, I did.

8 Q. What can you tell me about the Ranger as
9 specific to this wreck?

10 A. There's no data on his vehicle -- on the Ford
11 Ranger's vehicle that was related to this crash.

12 Q. Was there any data on the Silverado?

13 A. The Silverado did not record any events. No,
14 sir.

15 Q. And which vehicle in the sequence of events was
16 the Silverado?

17 A. Looking at the drawing, it would have been the
18 first vehicle, the white vehicle that struck the
19 rear of the silver-bluish vehicle that y'all saw on
20 the screen.

21 Q. Did you analyze the airbag control module of
22 the Colorado?

23 A. I did. Yes, sir.

24 Q. And which vehicle, in relation to those three
25 vehicles, would that be?

1 A. That's the one in the middle.

2 Q. Okay. With your analysis of that airbag
3 control module, can you tell us what was significant
4 in that data?

5 A. So different airbag modules record different
6 information. So in respects to the Colorado's ACM
7 data, it actually -- for the braking, it actually
8 recorded eight seconds prior to what they call AE,
9 which is algorithm enabled. So that's when the
10 decision of that module is made to, hey, I need to
11 blow the airbags because something really bad has
12 happened or I need to monitor this, and then if it's
13 not that bad, I can kind of go back to sleep, for a
14 lack of better terms.

15 So there was eight seconds of braking in the
16 brake switch that was recorded. And so it was off
17 until the last second. So the one second prior to
18 that algorithm enable, or AE, the brake switch went
19 from -- I'm sorry. It was on and then it came off
20 for that last second.

21 The other variables that was recorded was
22 speed, RPMs. I don't have the report right in front
23 of me, but those were the ones that we were looking
24 at. It only recorded five seconds up to the AE.
25 And it basically had that he was zero percent -- I

1 meant zero miles an hour. His RPMs were basically
2 consistent like he was in an idle state. So we know
3 that he was stopped at least for five seconds, and
4 he had his foot on the brake eight seconds prior to
5 that hour of the enable until that last second where
6 the foot actually had come up off the brake.

7 And so when it's looking at that brake switch
8 status, all it is, is it's enough pressure to turn
9 the lights in the back of your vehicle, then that
10 switches from off to on or vice versa. It doesn't
11 tell us how much pressure he's actually pushing down
12 on the pedal; it's just letting us know that that
13 circuit has been closed or it's open, and whether or
14 not that foot is -- you know, the lights are on, on
15 the back of the vehicle, or not.

16 Q. And you said the event recorded. What type of
17 event was recorded? Would it assist you to see that
18 printout?

19 A. I do believe it was a deployment event. So
20 there's two different events that these ACMS -- what
21 we call airbag control modules, so ACM for short --
22 two events are recorded. One is a deployment event
23 and one is a non-deployment event. And so, as I was
24 stating earlier, if it's a deployment event, that's
25 when it says, hey, I need to deploy the airbags.

1 And the non-deployment event is something where
2 it wakes that system up; it monitors all this data
3 that is being inputted into that module, and then it
4 says, okay, it really wasn't as bad as I thought it
5 was, and it kind of goes back to sleep at that
6 point. So that is termed a non-deployment event.

7 Q. And what type of event do you recall being in
8 this one?

9 A. For the Colorado, it was a -- a deployment
10 event.

11 MR. WAGONER: Your Honor, if I may approach?

12 THE COURT: You may.

13 BY MR. WAGONER:

14 Q. If you can, use that to refresh your
15 recollection.

16 A. All righty. It was -- where it says events
17 recorded, it says that it was a non-deployment
18 event. So I misspoke. I apologize.

19 Q. Using that information from the airbag control
20 module, the mapping, and all the other -- the
21 variables, were you able to do a minimum-speed
22 calculation of the vehicles?

23 A. I will say that a minimum-speed calculation was
24 done in this case. I did not personally do it. At
25 that time, my job was kind of to manage the team and

1 the aspects of the collision investigation. So
2 another trooper had done those calculations. So
3 there was minimum-speed calculations done in this,
4 but I did not personally do those.

5 Q. And based on your review of the file as the
6 expert, was that speed calculation done a second
7 time?

8 A. Yes. So during trial prep, there's certain
9 variables. So when we do minimum-speed equations --
10 so when we're trying to determine how fast a vehicle
11 is going based on tire marks that are left on the
12 roadway, we look at distance that they travel; we
13 look at, like, the friction value of the roadway,
14 and we look at how many of the vehicles' tires were
15 actually braking or retarding during that sequence.

16 So during review, during pretrial prep, there's
17 certain percentages that are assigned to front wheel
18 tires and rear wheel tires, based on the weight
19 distribution, and there was a percentage that was
20 given that was inaccurate. It was given, you know,
21 to the front wheels instead of the rear wheels. And
22 so that was redone, and gave us a speed of 63 miles
23 an hour at impact.

24 So we knew that in this sequence, there's three
25 vehicles involved, the first two are stopped. So

1 everything that happened after that had to come from
2 the Silverado or the last vehicle, the white truck,
3 that was involved in the collision, because
4 everything that happened after that came from how
5 much energy he was actually bringing into that
6 equation.

7 So if we have airbag control modules, we
8 usually don't have to work on speed equations
9 because we have that data that's actually coming
10 out. But since nothing was recorded from the
11 Silverado's ACM, that's where we went and took that
12 next step to look at what the vehicles did
13 post-impact, so after they got hit, so that we could
14 come up with a minimum speed of the Silverado which
15 started that chain of events.

16 Q. And what was that minimum speed of the
17 Silverado?

18 A. 63 miles an hour.

19 Q. No further questions.

20 THE COURT: Mr. Atwater?

21 MR. ATWATER: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MR. ATWATER:

24 Q. Good afternoon, Mr. Rikard.

25 A. Good afternoon, sir.

1 Q. You were talking about ACTAR -- being ACTAR
2 certified; that's correct?

3 A. That's correct. Yes, sir.

4 Q. And that is not a state of South Carolina or
5 and type of government certification, is it?

6 A. No, sir, it is not.

7 Q. And, actually, it's not a Highway Patrol
8 certification, is it? Does the South Carolina
9 Highway Patrol issue ACTAR certification?

10 A. No, they do not.

11 Q. Okay. Does it -- that's done by a private
12 organization, right?

13 A. It's an organization that is comprised of
14 different law enforcement agencies or different
15 reconstruction groups to perform these tests and --
16 you know, the crash test and the actual theory
17 tests, they actually comprise those all together.
18 And South Carolina Highway Patrol is one of those
19 participating organizations that is part of that
20 group that puts on these tests for everybody else to
21 take.

22 Q. Okay. Now, you were testifying as to the ACMs
23 or airbag control modules of the three vehicles,
24 correct?

25 A. Yes, sir.

1 Q. And, ultimately, it was your determination that
2 the Ranger, which was the very front vehicle, the
3 data that was downloaded for that did not provide
4 you any information, did it?

5 A. It provided information, but it was not
6 associated with this crash.

7 Q. Okay. So the data that was downloaded with the
8 airbag control manual did not give you any
9 information associated with the wreck that we're
10 talking about here today, right?

11 A. For the Ranger?

12 Q. Yes, sir.

13 A. That's correct. Yes, sir.

14 Q. Okay. Do you know why?

15 A. Repeat your question one more time.

16 Q. Do you know why it did not provide you with --
17 isn't it supposed to provide you with that data?

18 A. It's not supposed to provide us with data. Its
19 job is to determine whether or not the airbags
20 needed to be deployed in that event.

21 This technology started in the early '90s and
22 has progressed over the years. And now there's a
23 federal mandate on what data is supposed to be given
24 from these modules. Prior to that, it was the
25 manufacturer's decision on what data to get and to

1 store or to actually -- that you could retrieve out
2 of there.

3 So the older four ACMS only gave us data when
4 there was a frontal impact involved with that
5 vehicle. So since this was a rear impact, it didn't
6 give us any of that data that was associated with
7 this crash. And so, if you look at the data,
8 there's positives and negatives that you look at in
9 the numbers that's in that report. And when it says
10 negative -- there's a negative, to me, that means
11 that change in velocity or change in speed that that
12 vehicle is experiencing in that crash actually came
13 from the front of the vehicle to the rear of the
14 vehicle.

15 Well, in this sequence that we know to be true
16 from this crash, he was hit from the rear, so we
17 automatically knew that that was not associated with
18 this crash; that it was something that Ford would
19 have implemented at that time on what they were
20 going to release and record for those specific
21 modules for that particular year, make, model of
22 that vehicle.

23 Q. The information that you just testified to, as
24 it relates to the fact that the Ranger's ACM, at
25 that time, would not provide any information for a

1 rear impact vehicle, correct?

2 A. Correct.

3 Q. You knew that back in 2019, right?

4 A. Yes, sir.

5 Q. Okay. Why would you have downloaded that data?

6 A. Because that is standard operating procedure,
7 that if that vehicle has an airbag control module
8 and it is supported with the system, then we're
9 going to download that or -- I don't like to say
10 download because we're not really taking anything
11 off that module. But we're making an image of that
12 data that's on that module that was standard
13 operating procedure that our command staff put in
14 place.

15 Q. Okay. Now, as it relates to the third car in
16 the collision, the Silverado --

17 A. Yes, sir.

18 Q. -- that airbag control module was also imaged,
19 correct?

20 A. That is correct.

21 Q. Okay. And that vehicle was actually, to your
22 understanding, moving at the time of the accident,
23 right?

24 A. Correct.

25 Q. And it did have a frontal impact collision,

1 didn't it?

2 A. It did.

3 Q. But you were not able to extract any data as to

4 the sequence of events for this accident from that

5 ACM, correct?

6 A. That is not correct.

7 Q. Okay. What did you get from -- of that?

8 A. We got data off of there, and it said that

9 there was no events that was recorded on that

10 module. So there was not actually physical data on

11 there, but the data that is telling us there was no

12 data on the module. So we got something off of

13 there; it's just telling us that there was nothing

14 actually on that module.

15 Q. So you got data saying I don't have any data?

16 A. Correct.

17 Q. Is that correct?

18 A. Yes, sir.

19 Q. Okay. Do you know why?

20 A. No, sir.

21 Q. Could that have been an error as it related to

22 someone trying to image that data?

23 A. No, sir.

24 Q. Why not?

25 A. Because we would not have gotten that report.

1 If we would have done that process, in the set-up in
2 that imaging of the data, we never would have gotten
3 that PDF document or the document with -- stating
4 that there was no events on that module.

5 Q. Do you have any understanding as to why there
6 wouldn't have been any information on that module?

7 A. That is something that you would have to get
8 with General Motors to look at to determine why the
9 airbags did not deploy or that there was no events
10 recorded on that module.

11 Q. That was going to be my next question. There
12 was no airbag deployment on the Silverado either,
13 was there?

14 A. None that I saw. No, sir.

15 Q. Did your investigation do anything to determine
16 whether or not there were sensors on the front
17 bumper that would have called for an airbag
18 deployment?

19 A. No, sir.

20 Q. Why not?

21 A. That is -- goes beyond the scope of our
22 training, when looking at those sensors. We know
23 that we have a list of vehicles that are supported
24 by the system that we use that gives us data off of
25 those ACMs, and that vehicle was on that list. We

1 imaged it. It said there was no data, you know, on
2 that module. And why there's no data, we do not
3 have the training to go in to look at those sensors
4 and determine why it did not or would have actually
5 deployed the airbags.

6 Q. Okay. Let me rephrase my question. Did you do
7 any investigation to determine whether there were
8 actually any sensors --

9 A. No, sir.

10 Q. -- on the front of the Silverado?

11 A. No, sir.

12 Q. Why not?

13 A. I do not have training to look for sensors on
14 the front of the vehicles in regards to airbag
15 control modules or deployment of airbags.

16 Q. Does anyone on the MAIT team have that type of
17 training?

18 A. The mechanics usually do just a general review
19 of the vehicle with braking, steering, to see if
20 anything would have contributed to the actual
21 stopping of the vehicle or contributed to the
22 collision overall. But I don't think any of them
23 actually have training with those sensors.

24 Q. Okay. And as it related to the Chevy Colorado
25 and the ACM, you said that it gave you eight seconds

1 of information.

2 A. In regards to the brake switch status, yes,
3 sir.

4 Q. And -- but that did not result in any
5 information that you were able to use as it relates
6 to calculating speeds, correct?

7 A. No. We used that information. Yes, sir.

8 Q. What information was in that? Well, you said
9 it didn't give you any pressure info, right?

10 A. It doesn't tell us, like, how hard somebody is
11 pressing the brake, it just tells us whether or not
12 that brake switch status is on or off. And what
13 that basically means, was it enough pressure to
14 activate your brake lights?

15 Q. There are other ways to determine whether or
16 not the brakes were -- or foot pressure was on the
17 brake at the time of a rear-end collision, correct?

18 A. Say that one more time.

19 Q. There's other ways to determine whether or not
20 the driver had foot pressure on the a brake at the
21 time of a rear-end collision, aren't there? If
22 you're not --

23 A. I mean, if the vehicle is sitting still,
24 whether -- I mean --

25 Q. Whether the brake lights were on at the time of

1 the accident.

2 A. I mean, if somebody would have saw the brake
3 lights on.

4 Q. Okay.

5 A. I mean, I guess there's other ways. I'm not
6 sure what you --

7 Q. Are you familiar with a test wherein you remove
8 the brake light, you examine the -- fill them in
9 under a -- are you familiar with that?

10 A. Yes, sir.

11 Q. Okay. Did y'all do that?

12 A. I do not think a bulb examination was done in
13 this case.

14 Q. Do you know whether anybody collected the bulbs
15 to do a bulb examination?

16 A. I would have to look back through the file. I
17 do not recall that right offhand. No, sir.

18 Q. Do you know why a bulb examination would not
19 have been done to determine whether or not the
20 brakes were actually --

21 A. Well, we had a witness there. The flagman had
22 stated that both vehicles had stopped. When we
23 imaged the airbag control module, we see that his
24 speed is zero for five seconds prior to AE, and it
25 corresponds with brake switch being on for, you

1 know, seven of the eight seconds that was recorded.
2 So we did not actually pull the bulbs.

3 If we did -- I don't know if we did. I would
4 have to look at our case notes to verify that. But
5 if we didn't, that would be one of the reasons that
6 we did not take that information and house it
7 because we already had data here, along with witness
8 testimony.

9 Q. Would it make a difference in your calculations
10 of speed whether or not the Chevy Colorado was in
11 park versus having a foot on the brake at the time
12 of the collision?

13 A. It would make a difference in the speed
14 calculations.

15 Q. Okay. And did you ever inquire as to the
16 driver of the Chevy Colorado -- let me ask you, did
17 you see any of the testimony or hear any of the
18 information relating to the fact that the two cars
19 that were sitting there had been sitting there
20 anywhere from 15 to 20 minutes before the wreck
21 occurred?

22 A. No, sir.

23 Q. Okay. So is it possible that they could have
24 put their car in park instead of having their feet
25 on the brake during that period of time for waiting

1 so long?

2 A. That is possible, yes, sir.

3 Q. Okay.

4 A. Can I add to that or -- I don't want to.

5 Q. Okay. And you testified that in part of the

6 calculations as to the speed of the Chevy Silverado,

7 along with this data that you got from the Colorado,

8 you also would have been looking at things like

9 marks on the roadway, skid marks?

10 A. Skid marks or scuff marks, yes, sir.

11 Q. Okay. Both?

12 A. Both.

13 Q. Both were present at this scene, correct?

14 A. I don't know that -- yes, they're -- I believe

15 both were present at the scene. Yes, sir.

16 Q. Okay. Did you see the diagram that Trooper

17 Sisler testified to?

18 A. Yes, sir, I did.

19 Q. Are you familiar with it? Have you looked at

20 it before?

21 A. Yes, sir.

22 Q. In that diagram it showed the white Chevy

23 Silverado actually spinning around backwards and

24 ending up facing in the opposite direction, correct?

25 A. That's correct, yes, sir.

1 Q. Okay. Those types of tire marks on the road
2 are called curve marks or yaw marks? What do you
3 call those, when the wheel is turning instead of
4 just going straight ahead?

5 A. So a skid mark is a locked tire that is not
6 rotating, and a scuff mark would be a rotating tire
7 that is leaving a mark. So he had one vehicle --
8 one tire that was pinned, so you could say that that
9 was a skid mark. And then the other ones would have
10 been scuff marks. As that vehicle is rotating
11 around, the friction heats up and is slowing down
12 that vehicle and is leaving a mark as that tire is
13 traversing over that roadway surface.

14 Q. And if you're using those turning marks to
15 calculate the speed of his vehicle prior to the
16 collision, the calculations for those turning marks
17 would be a different calculation than the
18 calculation for the skid mark would be, correct?

19 A. You said before the collision. And all of that
20 was post-impact, so all of that was after the
21 collision.

22 Q. But you're trying to determine his speed was
23 before the collision; that's what I was saying.

24 A. At impact, yes, sir.

25 Q. Yes, sir.

1 So if you're trying to determine his speed
2 before at impact, before the collision, or right at
3 impact, and you're looking at these skid marks, the
4 straight skid marks themselves versus the turning
5 and curving skid marks, there is a separate
6 mathematical formula for determining the speed of a
7 vehicle based on whether those are straight skid
8 marks or whether those are or curving skid marks,
9 right?

10 A. That is -- not in this case. It was the same
11 mathematical formula.

12 Q. So your testimony is that the MAIT team applied
13 the same mathematical formula to those two different
14 types of road marks?

15 A. We used a minimum-speed formula because it --
16 those marks didn't fall into -- you mentioned yaw
17 marks earlier.

18 Q. Yes, sir.

19 A. So it does not fall into that category of being
20 an actual yaw mark. So we used a minimum-speed
21 formula which uses distance, roadway friction, and
22 braking percentages for that vehicle as it traversed
23 over that certain amount of distance.

24 Q. Okay.

25 A. For both vehicles.

1 Q. If the Chevy Silverado was facing in this
2 direction and, as it was going forward and leaving
3 those marks, it was turning like this -- correct?

4 A. Correct.

5 Q. Why would those not be yaw marked?

6 A. So if we're talking about yaw marks --

7 Q. The marks that were being left as those wheels
8 were sliding across the pavement in a turning --

9 A. Correct.

10 Q. Yes, sir.

11 A. But if we're wanting to learn what the
12 technical definition of a yaw mark is, that is a
13 steering-induced mark. That is not the case in
14 this.

15 This was a mark made from a collision, so it's
16 not like you're running off the run or you see a
17 hazard in the roadway and you actually make an
18 evasive action.

19 We also have to have a decreasing radius on
20 that mark. So if that mark is not long enough and
21 we cannot pull a significant amount to determine if
22 that radius is actually decreasing and not
23 accelerating, then that's not a true yaw mark.

24 They have to be curved in nature. So some of
25 those were curved in nature. The other thing we

1 have to look for is called striations. So
2 striations is basically, if you look at some black
3 marks, you'll see that there's, like, stripes in
4 that. And that is that vehicle's tire actually
5 rotating as it's going sideways, and it creates
6 those stripes in that mark itself.

7 And I do not recall those striations being in
8 any of those marks. So based on that -- just based,
9 Mr. Atwater, on this being in a collision and then
10 the vehicle starts to rotate around, I would never
11 apply the critical speed formula that gives us the
12 speed off a yaw mark because it's not steering
13 induced, and that's one of the first things that
14 we're actually looking for. It was a curve mark,
15 because he struck a vehicle that was stopped in the
16 roadway.

17 Q. Okay. The striations that you were making
18 reference to, that's actually the tire surface
19 leaving the surface of the road, correct?

20 A. Say that one more time.

21 Q. When you get those marks in the -- the
22 striations that you were referring to, when you get
23 those marks where, basically, you've got tire
24 material in the road -- and then there's a space
25 where there's no tire material in the road, right?

1 I mean, that's what leaves the vacant mark, right?

2 A. No, sir.

3 Q. No? Okay. What causes that tire material to
4 not be on the road in those spaces in the
5 striations?

6 A. There is some tire material out there. But the
7 majority of that is actually the heat buildup as the
8 oils that are being brought up to the surface
9 because of the heat buildup as that tire is sliding
10 across that surface. It's called bituminous
11 material. But it's not just like a rubber patch
12 that is laid down across that surface and that's the
13 only thing that's creating that black mark on that
14 roadway surface.

15 Q. And that would be also relative to the friction
16 value of the roadway?

17 A. Say that one more time.

18 Q. That -- the way that mark occurs would also
19 be -- you talked about the road heating up, right?

20 A. Yes, sir.

21 Q. Okay. So that has to do with the composite
22 material in the road, correct?

23 A. Yes. Yes, sir.

24 Q. All right. And so -- and that's part of how
25 you calculate the friction value of the roadway,

1 right?

2 A. We calculate the friction value of the roadway
3 one of two ways: One way is published values. So
4 people have done testing over the years with asphalt
5 surfaces, concrete surfaces, you know, grass,
6 whatever the case might be. And sometimes you'll
7 see people out there with a half of a tire that's
8 filled with concrete and they drag it across that
9 surface, and it gives us a friction value. In this
10 case, we used published values.

11 Q. And that's exactly where I was going to.
12 That's called a drag test, correct?

13 A. Well, it's a drag sled. I guess you could --

14 Q. Use a drag sled, perform a drag test. If you
15 do that, it gives you the actual friction value of
16 the roadway for that place based upon a known value
17 that you've put there.

18 But, in this case, instead of doing the drag
19 test, you guys went on published values of what that
20 type of roadway might be made of, correct?

21 A. Correct.

22 Q. Okay. And we're talking about a roadway that
23 was under repair, correct?

24 A. It was under construction. I wouldn't say it
25 was being repaired. I think the guy said that they

1 were laying a second layer of asphalt on the
2 roadway.

3 Q. Okay. Where they were laying a second layer of
4 asphalt on the roadway was in front of where this
5 occurred, correct?

6 A. Correct. I think they had already finished
7 where the vehicles had stopped.

8 Q. It's your testimony that at the place where the
9 vehicles were stopped on the date of this accident,
10 that part of the roadway had already been repaired?

11 A. I don't know that.

12 Q. Okay. The calculations -- you testified
13 earlier that the speed calculations that were done
14 in this case were done improperly at first, correct?

15 A. That is correct.

16 Q. Okay. And then the error was found and
17 recalculated and you came up with this 63 miles per
18 hour, correct?

19 A. That is correct. Yes, sir.

20 Q. And the information that -- the more
21 information that goes into this critical speed form
22 that had determined the impact speed of the rear
23 vehicle also has to do with weights of the vehicle,
24 doesn't it?

25 A. No, sir.

1 Q. So the weight of the vehicle that is traveling
2 down the road, it's your testimony, has no impact
3 whatsoever on the speed at which it causes the
4 vehicle in front of it to move?

5 A. That is exactly what I'm saying.

6 Q. Okay. So --

7 A. And can I explain?

8 Q. Okay. Well, let me ask you another question
9 very quickly.

10 So, basically, if that is the case, a bicycle
11 traveling 63 miles per hour behind and hitting this
12 Chevy Colorado would have caused the same damage and
13 caused it to move the same distance that it did?

14 A. I won't say it would cause the same damage.
15 And that's what I was wanting to try to explain.

16 Q. Let me ask you, would it cause it to move the
17 same distance that it did?

18 A. At 63 miles an hour?

19 Q. A bicycle. Yes, sir.

20 A. Sliding to a stop, yes, sir.

21 MR. ATWATER: That's all I have.

22 THE COURT: Any redirect Mr. Wagoner?

23 REDIRECT EXAMINATION

24 BY MR. WAGONER:

25 Q. Would you please explain --

1 A. Thank you.

2 Q. -- why the issue with the weights with the
3 vehicle?

4 A. Yes. I've taught many troopers, including MAIT
5 members, in this general reconstruction. There's
6 three different phases that we go through: At
7 scene, advanced, and then the reconstruction phase.
8 It's one of the hardest concepts -- it was for me
9 and for anybody else that I teach or that I've
10 trained since then is to understand that weight has
11 absolutely no bearing on how far a car slides to a
12 stop.

13 The reasoning is this: Gravity works on us the
14 same, regardless of our size. It is at 32.2 feet
15 per second squared that gravity is pulling us
16 towards the center of this earth. So if we have a
17 Ford pickup truck or we have Fiat and we got them up
18 in, you know, real-world conditions and everything
19 was the same -- and that's the thing that we have to
20 think about, is that all systems are the same; we
21 were able to apply the brakes at the same spot; we
22 had the same braking efficiency in both of those
23 vehicles' systems, then those vehicles would slide
24 to a stop at the same distance.

25 It's the old adage that if you were standing on

1 top of a building and I had a lead ball or I had a
2 ball that was a piece of paper and I just wrapped it
3 up with tape and I dropped it, which one is going to
4 hit the ground first?

5 There has been test after test after test, and
6 they hit the ground about, basically, the same time,
7 and that is because gravity is pulling on us at the
8 same rate, regardless of our size.

9 So when we look at the minimum speed formula,
10 and we can derive it from Newton's second law of
11 motion, which is force equals mass times
12 acceleration, but about halfway through there, you
13 have mass on each side of the equal sign, and so
14 they cancel themselves out.

15 So the weight of that does not matter to us
16 when we're looking at these minimum speed formulas,
17 because the formula itself is the square root of 30
18 times the distance that that object travels and the
19 friction value of that roadway.

20 It has nothing to do with weight. And I know
21 it is hard to understand. It took me from Saluda,
22 South Carolina, young guy, it took me a while to
23 understand and grasp that concept. But one I saw it
24 worked out from Newton's second law, the equation
25 that I just showed you, the weight gets canceled

1 out. And then it is literally the distance that
2 it's traveled over that roadway surface and
3 basically how sticky that surface is.

4 And that is what we used in this equation -- in
5 this collision to determine how fast that vehicle
6 was going at the beginning of that sequence of
7 events.

8 Q. Just a couple more questions. Back to the
9 Colorado brake switch that you testified on cross,
10 that seven out of the eight seconds the brake status
11 was activated, which of the eight seconds was it
12 not?

13 A. The one second prior to AE.

14 Q. What is that indicative of?

15 A. That he had his foot on the brake from eight
16 seconds, seven, six, five, four, three, two, and
17 then at one, it showed that it came off, so his foot
18 had come off the brake at that point.

19 MR. WAGONER: No further questions.

20 THE COURT: Mr. Atwater?

21 MR. ATWATER: Yes, Your Honor.

22 THE COURT: Mr. Atwater?

23 MR. ATWATER: Yes, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. ATWATER:

1 Q. When you were giving that description as it
2 relates to weight not mattering and you talked about
3 force equals mass times acceleration, you made a
4 reference to the fact that it also depends on the
5 sticky surface, right?

6 A. The friction value of the surface. Yes, sir.

7 Q. And that's what you testified earlier to, that
8 you just pulled that value out of a book, based on
9 what you thought the composite of the roadway was;
10 isn't that correct?

11 A. Yes, we pulled it out of a book. We use
12 published values that a lot of reconstruction -- it
13 is not out of the norm or out of scientific
14 certainty that a lot of reconstruction has used
15 published values.

16 Because the drag sled has had so much
17 controversy over the years on how people pull it and
18 how it is actually it is made. So a lot of people
19 want to refer to published values because there's
20 been skid testing, other instrumentations put in
21 vehicles to determine what that friction value is
22 instead of somebody, you know, pulling a drag sled
23 across the roadway surface, because it has to be
24 dead level. If I pull up or I pull down on it, then
25 it's not giving me the true drag factor of that

1 actual surface.

2 Q. And if I understood correctly, your explanation
3 for weight having no bearing in how far that second
4 vehicle would go, based upon the weight of the
5 vehicle that hit it, you said that is because of
6 gravity, a downward force, and not inertia or
7 momentum, a forward force. Is that correct?

8 A. No. If I can explain, The minimum-speed
9 formula has no bearing with the weight of that
10 vehicle. Now, we take those values that we use from
11 the minimum speed because we know those two vehicles
12 are stopped. Everything that happens after that, we
13 get their distances that we traveled, we use the
14 published values, and when you look at the braking
15 percentage that's assessed to each one of those
16 wheels that are on that vehicle, once we get those
17 minimum-speed values, then we put it in what we call
18 a linear or a conservation momentum where weight is
19 involved in the calculation of determining how fast
20 the Silverado was going at the beginning of that
21 collision.

22 But the skid-to-a-stop or the slide-to-a-stop
23 that happened post-impact, we did not -- weight is
24 not even in the formula itself.

25 Q. Thank you for clarifying that.

1 You spoke of linear calculation momentum?

2 A. Well, like I said, linear conservation --
3 conservation of linear momentum. Yes, sir.

4 Q. Okay. That was part of your calculation that
5 brought you to the determination of the speed that
6 the Silverado was going, correct?

7 A. That is correct. Yes, sir.

8 Q. Okay. And you did just say that weight matters
9 in that, didn't you?

10 A. In that formula, weight does matter. Yes, sir.

11 Q. And that was -- that formula was used to
12 determine the speed of -- that you testified to of
13 63 miles an hour, right?

14 A. Correct.

15 Q. Okay.

16 A. But when you asked me earlier and we were
17 talking about that sliding to a stop with those
18 tires being pinned or the yaw marks, in that
19 section, we did not. We just used a minimum speed.
20 And weight does not bear in those equations.

21 Q. Okay. So did you do two separate calculations
22 or did you include the same information in -- the
23 information from the movement of the Colorado and
24 the linear momentum, was that all in one calculation
25 to determine the speed of 63?

1 A. No, sir. There were several steps, because
2 there's three vehicles involved in this collision.
3 There were several different steps that got us back
4 up to that conservation linear momentum to get us to
5 the 63 miles per hour.

6 Q. Okay. And the part of that related to the
7 movement of the Colorado, correct, because you did
8 take into consideration how far the Colorado moved
9 in determining what the speed of Mr. Powers' vehicle
10 was, correct?

11 A. Correct. Yes, sir.

12 Q. Okay. All right. And so in the portion of the
13 calculation that you did, added to your formula and,
14 ultimately result in this 63-miles-per-hour opinion,
15 what weight did you assign to Mr. Powers' vehicle?

16 A. What weight?

17 Q. Yeah.

18 A. Can I look through my notes?

19 Q. Sure.

20 A. It looks like the Silverado had a weight of
21 4,326 pounds.

22 Q. Okay. You'll agree with me that nobody put
23 that truck on a scale to get that weight, right?

24 A. That's correct. Yes, sir.

25 Q. Where did you get the weight from?

1 A. So one of the other programs that we use is
2 called AutoStats. So they look at what the curb
3 weight of those vehicles are. So it has a multitude
4 of vehicles in there, so we just pull up year, make,
5 model; it gives us the curb weight as it comes off
6 the assembly line, and then his -- the occupant of
7 the vehicle, we try to pull their driver's license,
8 and we get whatever weight is on the driver's
9 license. And then we add those together to,
10 usually, come up with that weight.

11 Q. And that's how you got that weight?

12 A. That is the normal process of us getting
13 weights involved in these collisions. Yes, sir.

14 Q. Were you aware that he was driving a plumbing
15 truck? Were you aware of that?

16 A. I was not aware of that.

17 Q. Were you aware that that truck was equipped
18 with hundreds of pounds of equipment of tools on it
19 at the time of this wreck?

20 A. I was not aware of that. No, sir.

21 Q. So, if I can summarize, the investigation that
22 the MAIT Team did resulted in telling us that the
23 two cars were sitting still, and Mr. Powers came up
24 and hit the second car, correct?

25 A. Correct.

1 Q. Thank you.

2 At the speed that you testified to, correct?

3 A. 63 miles per hour.

4 Q. Okay.

5 A. That was -- that's the minimum speed that he
6 would have been traveling to make those vehicles go
7 the distance that they went post-impact?

8 Q. Based upon the weight values that you put into
9 the formula?

10 A. Based on the distance that they traveled --

11 Q. Yes, sir.

12 A. -- based on the friction value of the roadways
13 --

14 Q. Yes, sir.

15 A. -- and based on the weight values, yes.

16 Q. The friction value of the roadway that you got
17 from a published source and the weight value that
18 you said was only the truck off the assembly line
19 and his body, correct?

20 A. Correct.

21 Q. Thank you.

22 MR. WAGONER: Nothing further.

23 THE COURT: Okay. May I excuse this witness?

24 MR. WAGONER: Yes.

25 THE COURT: All right. I think we're going to

1 take a quick break. Let me talk to the lawyers, see
2 where we are, so I can keep you informed of what's
3 going on.

4 So let's take a 15-minute break. Okay?

5 THE FOREPERSON: Okay.

6 (The jury exits the courtroom at 3:37 PM.)

7 THE COURT: Okay. Let me ask the State, where
8 are we?

9 MR. WAGONER: We have one additional witness.

10 THE COURT: How long is that witness going to
11 be?

12 MR. WAGONER: I believe it's going to be a
13 short witness. It would be Treaster who testified
14 in pretrial.

15 THE COURT: Okay. Then I say we go ahead and
16 do it. Then I'm assuming y'all are resting?

17 MR. WAGONER: Correct.

18 THE COURT: And then, that way, it will give
19 Mr. Atwater time to for you to speak to your client
20 and decide what y'all are going to do and we'll
21 start in the morning. Does that suit you?

22 MR. ATWATER: Yes, Your Honor.

23 THE COURT: I think it might be easier to do it
24 that way.

25 MR. ATWATER: Yes, Your Honor. It's much

1 easier for me, Your Honor.

2 THE COURT: Okay. Well, it's a major decision.

3 All right. Let's be in recess for 15 minutes.

4 We'll come back and do the last witness.

5 MR. ATWATER: Your Honor, if I may, based upon
6 how this trial has gone, I believe that we could
7 possibly finish tomorrow.

8 THE COURT: I am anticipating us finishing by
9 lunch time. I would think that I would be charging
10 the jury hopefully by lunch.

11 MR. ATWATER: I might be a little lengthy in
12 closing, Your Honor. I apologize in advance.

13 THE COURT: Let me tell you, Mr. Atwater, we'll
14 start at 9:00. I hope you're not that lengthy.

15 MR. ATWATER: I'm going to put up three
16 witnesses, Your Honor, and then we will close.

17 THE COURT: Okay. Because I think I'm going to
18 have my other jury come in tomorrow afternoon.
19 Because once I charge, I'm going to get started on
20 them.

21 How long do you anticipate your three witnesses
22 being, long of short?

23 MR. ATWATER: Short.

24 MR. WAGONER: And, Judge, just for the record,
25 are you imposing and sort of time limits on closing?

1 I don't anticipate being lengthy.

2 THE COURT: Well, I'm going to tell y'all right
3 now, I will not listen to that -- I think that I
4 probably will. If y'all are going to tell me I'm
5 going to be listening to an hour and a half
6 closing --

7 MR. WAGONER: I don't anticipate that on my
8 end. Just trying to --

9 THE COURT: An hour and a closing, we're not
10 going to do an hour and a half closing, Mr. Atwater.
11 Just thought I'd let you know. Under -- wait a
12 minute, I'm going to tell you. I've been dying to
13 use this rule.

14 There is a rule that I get to run court
15 efficiently. And I'm going to tell you that I've
16 got another jury out. Not that this case isn't
17 important, but I can't imagine anything that can be
18 said that you can't say within an hour about this
19 case. It's taken one day to try it. So I'll let
20 you work on that tonight and we'll discuss it in the
21 morning.

22 MR. ATWATER: Thank you, Your Honor.
23 Anything else?

24 MR. WAGONER: I just got to go.

25 THE COURT: We're in recess. 15 minutes.

1 (Recess taken)

2 THE COURT: All right. Are we ready? Let's
3 bring them in.

4 MR. WAGONER: The State is ready.

5 MR. ATWATER: Ready, Your Honor.

6 THE COURT: Are you going to rest today or do
7 you want to rest in the morning?

8 MR. WAGONER: I think we will rest today. I
9 mean, I don't think there's any reason for us to --
10 I don't anticipate any further witnesses.
11 Depending, of course, on how defense witnesses go,
12 we may have one reply, but I don't anticipate that.
13 If we do have a reply, it will be extremely short.

14 THE COURT: Okay. Well, you know, it was just
15 as easy to rest in the morning.

16 MR. WAGONER: Whatever you want me to do.
17 Because I do think you have to talk to the jury
18 about some stuff after I rest. I mean, we can do
19 that today and that way tomorrow might go smoother,
20 go straight in to you advising what his decision is
21 and go from there.

22 THE COURT: Well, what I was going to do, is
23 excuse the jury, then I'm going to talk to this
24 defendant.

25 MR. WAGONER: We'll do that and I can rest in

1 the morning. That's absolutely fine.

2 THE COURT: And then he can have time with his
3 lawyer overnight, give me a decision, and they can
4 see what they're going to do.

5 MR. WAGONER: Okay. So you'd like me to rest
6 tomorrow morning? No problem.

7 MR. ATWATER: And then I will have a short
8 motion after the State rests.

9 THE COURT: Right. And I'll hear that. I
10 figured y'all were going to do that.

11 MR. ATWATER: Do you prefer that I just -- that
12 I put it on the record in full, or just tell you
13 that I'm making the motion at that time, the
14 directed verdict motion.

15 THE COURT: Yeah, we'll do that in the morning.

16 MR. ATWATER: Okay.

17 THE COURT: That way I'll give you overnight
18 for y'all to think about it.

19 (The jury enters the courtroom at 4:09 PM.)

20 THE COURT: All right. Mr. Foreman, is the
21 jury up for one short witness?

22 THE FOREPERSON: Yep. Bring them on.

23 MR. WAGONER: The State calls Benjamin
24 Treaster.

25 BENJAMIN TREASTER

1 being first duly sworn, testified as follows:

2 THE WITNESS: Yes, ma'am.

3 THE CLERK: Have a seat. Once you have a seat,
4 please state our name, spelling your last, please.

5 THE WITNESS: My name is Ben Treaster,
6 T-R-E-A-S-T-E-R.

7 DIRECT EXAMINATION

8 BY MR. WAGONER:

9 Q. Good afternoon.

10 A. Hello.

11 Q. Could you start out by introducing yourself to
12 the jury, specifically where you're from and where
13 you're employed?

14 A. My name is Ben Treaster. I'm from Pelion,
15 South Carolina. I'm employed with the Lexington
16 County Sheriff's Department.

17 Q. How long have you been with the Lexington
18 County Sheriff's Department?

19 A. Going on 12 years.

20 Q. What was your role in Lexington County
21 Sheriff's Department in June of 2019?

22 A. In June of 2019, I was assigned to the south
23 region as a parole supervisor.

24 Q. And where is the south region headquarters --
25 or office located?

1 A. The south region headquarters is located at 102
2 Airport Road in Pelion, South Carolina.

3 Q. You said you're from Pelion, do you still
4 currently live in Pelion?

5 A. I do. I technically live in Gaston, but I live
6 right on the outskirts of town.

7 Q. How long have you lived in the Pelion area?

8 A. 25 years.

9 Q. Are you familiar with 178?

10 A. Yes.

11 Q. Were you familiar with construction going on in
12 2019 on 178?

13 A. Yeah. Yes. The construction on 178 was the
14 biggest thing that happened in town in a while.

15 Q. Approximately how long had it been going on
16 when this incident occurred?

17 A. It had been going on -- it had been discussed
18 for a couple of years, it had been going on about a
19 year at this time.

20 Q. On June 14th, 2019, did you receive
21 notification of a collision?

22 A. Yes.

23 Q. And where was that collision located?

24 A. The collision was on Highway 178 outside of the
25 town of Pelion, near Fogle Road.

1 Q. Are you familiar with that area of 178?

2 A. Yes.

3 Q. What is the speed limit at that area of 178?

4 A. That area of 178, the speed limit is 55 miles
5 an hour.

6 Q. Which direction would you have arrived to the
7 collision location from?

8 A. I would've been coming from the town of Pelion.

9 Q. Which direction would that be, east, north,
10 southeast, west?

11 A. I would be coming west heading east.

12 Q. When you got there, were you directed to a
13 driver of a white Silverado?

14 A. I was.

15 Q. And where was he located when you arrived at
16 the scene?

17 A. He was sitting on the side of the road near the
18 wood line.

19 Q. Were you the first law enforcement officer on
20 the scene?

21 A. Yes.

22 Q. Did you approach the individual -- the driver
23 of the Silverado?

24 A. Yes.

25 Q. Why did you approach him?

1 A. When I arrived on scene, there were a lot of
2 injuries, and I was doing a quick triage assessment
3 to see who needed medical treatment.

4 Q. Did you talk with the driver of the Silverado?

5 A. Yes.

6 Q. And did you have any sort of video recording
7 system with you?

8 A. Yes. I had my issued body-worn camera.

9 Q. And was that working June 14th of 2019?

10 A. Yes.

11 Q. Did that capture the interaction you had with
12 the driver of the Silverado?

13 A. Yes.

14 MR. WAGONER: Your Honor, if I may approach?

15 THE COURT: You may.

16 MR. WAGONER: Beg the Court's indulgence.

17 BY MR. WAGONER:

18 Q. Handing you what's been marked State's Exhibit

19 1.

20 A. Yes.

21 Q. Do you recognize that?

22 A. I do.

23 Q. Did you have the opportunity to review that?

24 A. I did.

25 Q. Did you initial what you reviewed?

1 A. Yes.

2 Q. Or the disk?

3 A. Yes.

4 Q. And what is that?

5 A. That is a segment of my body camera footage

6 from the day of the incident.

7 Q. And is that your interaction with the driver of
8 the Silverado?

9 A. Yes.

10 MR. WAGONER: Your Honor, I would move State's
11 1 into evidence.

12 THE COURT: Any objection?

13 MR. ATWATER: Not at this time, Your Honor.

14 THE COURT: Okay. It's admitted.

15 (States Exhibit Number 1 admitted into
16 evidence.)

17 MR. WAGONER: Permission to publish?

18 THE COURT: You may.

19 BY MR. WAGONER:

20 Q. Do you recall what the driver of the Silverado
21 was wearing?

22 A. I believe he was wearing blue jeans and a
23 shirt.

24 Q. And after your review of that video we're about
25 to play, do you recognize that individual in the

1 courtroom today?

2 A. Yes.

3 Q. And where is he located?

4 A. Seated at that table over there.

5 MR. WAGONER: And, Your Honor, would the record
6 reflect that the witness has identified the
7 defendant?

8 THE COURT: And it is so noted for the record.

9 (State's Exhibit 1 was played.)

10 BY MR. WAGONER:

11 Q. Did you also observe -- take a look at all of
12 the vehicles involved in this collision?

13 A. Yes.

14 Q. At some point, did you have an opportunity to
15 take a closer look at the Silverado?

16 A. Yes.

17 Q. Were there any contents of significance in that
18 Silverado?

19 A. No, nothing more than a bag of maybe some tools
20 and stuff, nothing in the bed or anything.

21 Q. Okay.

22 MR. WAGONER: No further questions. Please
23 answer anything from Mr. Atwater?

24 CROSS-EXAMINATION

25 BY MR. ATWATER:

1 Q. I'm sorry. Was it Deputy Treaster?

2 A. Yes, sir.

3 Q. Okay. Now, you testified that what we just saw
4 was a segment of your body cam video, correct?

5 A. Yes, sir.

6 Q. And in actuality, there's a body cam video that
7 is much, much, much longer than that segment,
8 correct?

9 A. Yes.

10 Q. Okay. And in the body cam video that is much
11 longer with that segment, it also shows you having a
12 conversation with Bryan's grandmother, doesn't it?

13 A. Yes.

14 Q. At the truck, doesn't it?

15 A. Yes.

16 Q. And she's talking about asking you whether
17 she --

18 MR. WAGONER: Objection, Your Honor.

19 THE COURT: What is the basis?

20 MR. WAGONER: Hearsay.

21 MR. ATWATER: It's part of his investigation.

22 THE COURT: I mean what is the basis of the
23 objection.

24 MR. WAGONER: Again, he's asking what another
25 individual said, so that's hearsay.

1 THE COURT: You need to rephrase it, Mr.
2 Atwater.

3 MR. ATWATER: Your Honor, I'll withdraw the
4 question and save it for another witness.

5 BY MR. ATWATER:

6 Q. Deputy Treaster, without playing this entire
7 body cam video this afternoon, would you agree with
8 me that immediately at the beginning of this segment
9 we just saw, that when you were asking about Mr.
10 Powers setting over there, right before that,
11 someone pointed over there and said the guy over
12 there with blood on his head?

13 A. I remember asking, I believe it was one of the
14 responders that was there, who was driving the white
15 truck.

16 Q. Yes, sir.

17 A. And they pointed to the gentleman at the wood
18 line. I don't remember a comment being made about
19 blood. There was a comment made at the beginning of
20 the segment by someone else on scene.

21 Q. Okay. When you were there with Mr. Powers, did
22 you notice that he had a cut over his eye?

23 A. I noticed that he had a cut, and that's when I
24 asked about the seatbelt -- or his head hitting the
25 steering wheel and him wearing a seatbelt.

1 Q. Okay. Did you notice that he had a cut on his
2 lip?

3 A. I don't remember that.

4 Q. Okay. You didn't see him up and walking
5 around, did you?

6 A. No. When I interacted with him, he was seated
7 at the wood line.

8 MR. ATWATER: That's all I have.

9 MR. WAGONER: Brief redirect.

10 REDIRECT EXAMINATION

11 BY MR. WAGONER:

12 Q. Your body cam, the full footage, that shows you
13 rendering aid to Mildred Smith?

14 A. Yes.

15 MR. WAGONER: No further questions.

16 THE COURT: Is that all?

17 RECROSS-EXAMINATION

18 BY MR. ATWATER:

19 Q. That's not all it shows, is it, Deputy
20 Treaster? It shows you doing a lot more things than
21 just rendering aid, correct?

22 A. Yes.

23 MR. ATWATER: Okay. Thank you.

24 THE COURT: Okay.

25 MR. WAGONER: May this witness be excused?

1 THE COURT: Yes. Deputy Treaster, Thank you.

2 All right. Mr. Foreman, I think that's going
3 to be the last witness for the day so I can get
4 y'all home at a descent hour. I anticipate that
5 this trial hopefully we will finish tomorrow.

6 So I need to warn y'all, when you go home, no
7 talking about this case to your family, your spouse,
8 don't call your best friend, don't look up anything
9 on the computer. If you read anything or if you see
10 anything in the newspaper, do not read it.

11 Everybody understand?

12 All right. The bailiff is going to take you
13 back to the jury room so you can gather all your
14 belongings. You'll leave your juror badge with him,
15 you'll collect it in the morning. We're going to
16 start at 9:00. And let's be here at a quarter till.

17 Remember, I can't start unless all y'all are
18 here. Y'all have been pretty good. Thank you. I
19 hope you have a good evening.

20 (The jury exits the courtroom at 4:22 PM.)

21 THE COURT: All right. First off for y'all, I
22 have a proposed set of jury charges for y'all for
23 homework. I'm going to tell you, I did not put in
24 whether the witness testified or did not testify,
25 because I hadn't gotten that far. But I just wanted

1 y'all to go over it and look at it tonight and we'll
2 talk about it in the morning.

3 MR. WAGONER: No problem.

4 THE COURT: That's your copy to keep.

5 MR. ATWATER: Thank you, Judge.

6 THE COURT: Just trying to be prepared.

7 MR. ATWATER: Yes, ma'am. Well appreciated.

8 THE COURT: Okay. It's my understanding that
9 the State is going to rest in the morning, but I'm
10 going to tell you, Mr. Atwater, I'd like to go ahead
11 and address your client about his right to testify.

12 MR. ATWATER: Yes, Your Honor.

13 THE COURT: If that's okay.

14 MR. ATWATER: Absolutely.

15 THE COURT: Mr. Powers, if I can get you to
16 stand for me. I want you to listen to me. And I
17 need the clerk to put him under oath, please.

18 BRYAN POWERS

19 being first duly sworn, testified as follows:

20 THE DEFENDANT: I do.

21 THE CLERK: Thank you.

22 THE COURT: All right. Mr. Powers, at this
23 time, I'm going to explain to you certain of your
24 rights. If you do not understand anything I say,
25 please let me know. If you want me to explain

1 anything in more detail, please let me know.

2 Do you understand.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: We've now reached the stage of the
5 trail where you may present your defense. You have
6 the right to claim the protections given to you by
7 the 5th Amendment to the Constitution of the United
8 States.

9 This amendment states, in part, no person shall
10 be compelled in any criminal case to be a witness
11 against himself. This means that you cannot be
12 required to testify in this case. You have the
13 right to testify on your own behalf; however, no one
14 can make you testify. This is a personal right and
15 no one can waive this right except you. If you
16 decide to testify, you will be subject to the same
17 rules that govern other witnesses, and you may be
18 examined and cross-examined on any relevant issue in
19 this case.

20 In addition, if you have any convictions
21 involving dishonesty or false statements, or for
22 crimes punishable by imprisonment for more than one
23 year, and this Court determines that the probative
24 value of admitting this evidence outweighs its
25 prejudicial effect to you, the solicitor will be

1 able to introduce your record to attack your
2 credibility.

3 If you decide to testify, this decision must be
4 freely, voluntarily, and intelligently made with
5 knowledge of the protections given to you by the 5th
6 Amendment and the consequences of your decision to
7 testify.

8 If you decide not to testify, I will instruct
9 the jurors that they cannot give the fact that you
10 did not testify any consideration whatsoever, and
11 that there is to be absolutely no prejudice to you
12 because you did not testify.

13 It is left entirely up to you whether or not to
14 testify. You may talk with your attorney, your
15 family and friends, or anyone else, but the final
16 decision will be left entirely up to you.

17 Do you understand what I have explained to you?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you have any questions about
20 what I've explained to you?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: And have you discussed with your
23 lawyer whether you should or should not testify?

24 THE DEFENDANT: We briefly discussed it.

25 THE COURT: Okay. Well, I'm going to tell you,

1 I'm going to leave it there, because I'm going to
2 let you talk to your lawyer.

3 THE DEFENDANT: Thank you.

4 THE COURT: And then I'm going to ask you in
5 the morning whether you wish to testify or not.
6 Okay?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: So I want you to know that you have
9 all the safeguards of the Constitution. I've
10 explained it to you, and I'm sure your lawyer will
11 explain it to you more, and then we'll talk about it
12 in the morning. Okay?

13 MR. WAGONER: Thank you, ma'am.

14 THE COURT: Thank you.

15 MR. ATWATER: Thank you, Your Honor.

16 THE COURT: All right. Anything from the
17 State?

18 MR. WAGONER: Nothing from the State, other
19 than what time do you need us back?

20 THE COURT: Y'all want to start at 9:00?

21 MR. WAGONER: I'm at your leisure.

22 THE COURT: This is my plan: The State is
23 going to rest, we'll wait and see what Mr. Atwater
24 is going to do. I want y'all to look at the jury
25 charges so I can have those prepared and ready to

1 go. If anything needs to be added, deleted,
2 changed, we'll talk about it in the morning. Okay?

3 MR. WAGONER: Sounds good.

4 THE COURT: And I'll hear motions as soon as
5 the State rests. Okay?

6 Anything else?

7 MR. WAGONER: Nothing from the State.

8 THE COURT: All right. Everybody have a good
9 evening. Thank you.

10 MR. ATWATER: Is 9:15 all right, Judge?

11 THE COURT: Well, I got a jury. I'll tell you
12 what, you're cutting out on your closing argument.

13 MR. ATWATER: I'll do my best. Thank you.

14 THE COURT: You know I'm joking, Mr. Atwater.

15 (The following proceedings were held February
16 9, 2022.)

17 THE COURT: All right. Mr. Wagoner, did you
18 show Mr. Atwater your additional --

19 MR. WAGONER: I did copy him on the email, but
20 I'll give him a hardcopy. This was my only copy.

21 MR. ATWATER: I got an email?

22 MR. WAGONER: Yeah. I just added some language
23 to the proximate cause.

24 MR. ATWATER: What are we doing?

25 THE COURT: I just wanted to make sure that you

1 had the changes that Mr. Wagoner had to the jury
2 charges, and I was going to ask you if you had any
3 changes.

4 MR. ATWATER: I have none, Your Honor. But I
5 need to review his. And I'm sure we're going to
6 talk about those, right?

7 THE COURT: Right. I want to make sure that
8 you had a copy of it, because I want to be prepared.
9 I will tell you that Mr. Wagoner's change on the
10 proximate cause is the same charge that I have in my
11 judge's book.

12 MR. WAGONER: And the only reason I asked for
13 that change was due to the fact that there was a
14 line of questioning on cross-examination of the
15 doctor as it relates to injuries that may have been
16 suffered during resuscitation efforts.

17 THE COURT: Right. And I remember the
18 testimony. I'll give Mr. Atwater time to look at
19 that, and we'll talk about it during a break.

20 Can I bring the jury in? My understanding, the
21 State is going to rest. I'll have to take the jury
22 back out, then I'll hear any motions. And then I'll
23 hear from Mr. Powers as to whether he wants to
24 testify or not.

25 Any objection to that format?

1 MR. WAGONER: No, Your Honor.

2 MR. ATWATER: No, Your Honor.

3 THE COURT: All right. Let's bring the jury
4 in.

5 (The jury enters the courtroom at 9:18 AM.)

6 THE COURT: All right. Good morning, ladies
7 and gentlemen of the jury.

8 Mr. Foreman, are we ready to proceed?

9 THE FOREMAN: Yes, ma'am, we are.

10 THE COURT: The State can call its next
11 witness.

12 MR. WAGONER: Your Honor, at this time, the
13 State of South Carolina rests its case.

14 THE COURT: Okay.

15 All right. Let me tell the jury.

16 Now that the State has rested, I need to take
17 up something with the lawyers, so I'm going to send
18 you back to the jury room. Remember, no talking
19 about this case amongst yourselves or with anybody
20 else. And I'll call you back in, in just a few
21 minutes.

22 (The jury exits the courtroom at 9:19 AM.)

23 THE COURT: All right. Let me ask the State,
24 do you have any motions?

25 MR. WAGONER: Nothing from the State.

1 THE COURT: Any motions from the defense?

2 MR. ATWATER: Yes, Your Honor.

3 We would move for a directed verdict based upon
4 our belief that the evidence that has been presented
5 to the jury on behalf of the State, if looked at
6 even in the light most favorable to the State, has
7 failed to reach the burden of proving beyond a
8 reasonable doubt that Bryan Powers, on the date of
9 this incident and for the charge he is charged with,
10 had a reckless mindset or intent, as required by the
11 statute, for reckless homicide.

12 THE COURT: Okay.

13 Any response?

14 MR. WAGONER: Yes, Your Honor.

15 First of all, we have that evidence in the
16 light most favorable to the State that he was
17 operating a motor vehicle; that being a Chevy
18 Silverado. That is shown by the identification of
19 Deputy Treaster and, also, the defendant's own
20 statement.

21 We have evidence of the speed. While the speed
22 is a factor, what we have is the visibility of the
23 signs. And that, in and of itself, in the light
24 most favorable to the State, is evidence of
25 recklessness. We don't have to prove that he

1 intended to cause a collision. He was acting with
2 the reckless disregard for the safety of others,
3 Your Honor.

4 Again, it does not lie in the speed alone, but
5 in that and all other attendant circumstances which
6 tend to show a reckless disregard of the
7 consequences of this -- a disregard of the
8 consequences of his actions.

9 In this particular case, we had evidence
10 showing that there was notice approximately eight
11 football fields in advance of the collision site.
12 State v. Rachels is what I'm referring to about the
13 not in speed alone. That is 61 S.E.2d 249, Your
14 Honor. We have proximate cause of death, Your
15 Honor, based on the testimony of Dr. Moffatt.

16 Your Honor, in the light most favorable to the
17 State, I would submit that there is sufficient
18 evidence that he did act with the conscious failure
19 to exercise due care, a conscious indifference for
20 the rights and safety of others; namely, Mildred
21 Smith in this case. And there's sufficient evidence
22 to send to the jury.

23 THE COURT: Mr. Atwater, any response?

24 MR. ATWATER: May it please the Court, Your
25 Honor? If I wrote my notes right, the very first

1 thing that the State said was the fact that he was
2 driving. Driving, alone, is not evidence beyond a
3 reasonable doubt that there was any reckless intent
4 or that the -- that there was reckless driving.

5 The next thing they stated was speed. The only
6 testimony we have in this entire case is from the
7 MAIT Team, which, by its calculations, which the
8 jury will do whatever they want to with, said he was
9 going 63 miles an hour. There is no other evidence
10 of any speed whatsoever, other than 63 miles per
11 hour, Your Honor. And we would submit that 63 miles
12 per hour, by statute, does not constitute reckless
13 driving.

14 The next thing the State said was "by his own
15 statement," but they didn't say what that statement
16 was. So I'd ask the State if -- if they're going to
17 allow the argument that part of the reason is by his
18 own statement, that they say what the statement was.

19 MR. WAGONER: Again, we have to prove operating
20 a motor vehicle. That is proof --

21 THE COURT: I'm sitting here underlining it
22 right now. Go ahead.

23 MR. WAGONER: His statement was: I came over
24 the hill; there was nothing I could do. That shows
25 that he was behind the driver's seat. The fact that

1 he failed to -- that he acted with reckless
2 disregard for the safety of others, that is shown by
3 not only the speed, not only the speed, but the
4 disregarding those four signs, disregarding the two
5 parked vehicles that had been there for 10 or 15
6 minutes, disregarding Timothy Rainey with the stop
7 sign, disregarding Timothy Rainey yelling at him,
8 hey, hey, hey, and Timothy Rainey's own statement,
9 "he never slowed."

10 Also, Your Honor, the testimony of Jeremy
11 Sisler who stated that there were no marks
12 pre-impact, Your Honor. That shows a reckless
13 disregard for the safety of others. It's not only
14 speed; it's all of these factors.

15 THE COURT: Okay.

16 Mr. Atwater?

17 MR. ATWATER: Yes, Your Honor. His own
18 statement basically being, "I came over the hill; I
19 didn't have time to stop" does not show a reckless
20 intent for a mental impression, which is necessary
21 to be shown to the jury beyond a reasonable doubt
22 that he intended or was acting with a -- an
23 intentional mental reckless disregard of any other
24 person on the highway or himself.

25 And finally, Your Honor, I think the State

1 argued that the wreck was the proximate cause of
2 death. Of course it was. And we'll talk about that
3 a little bit more once we get to the jury charge we
4 asked for.

5 But the fact that somebody died in a wreck does
6 not mean that somebody was reckless and it does not
7 show that the person was reckless, had a reckless
8 mindset, simply because somebody died.

9 THE COURT: Right. Okay. I'm just going to
10 tell you, I disagree with you, Mr. Atwater, because
11 I've listened to the testimony. The State has to
12 prove that he was operating -- Mr. Powers was
13 operating a vehicle. I think there is testimony to
14 that effect from an officer. There was also a
15 flagman on the scene. There were four signs placed
16 up 500 -- if I'm not mistaken, 500 feet from each
17 other, which makes 2,000 feet.

18 There was also testimony from an expert about
19 no skid marks leading up until the impact. There
20 was also testimony from an expert that the minimal,
21 minimal speed, if I remember correctly, was 67, 64,
22 somewhere around there. Then I've had another
23 expert testify about the cause of death.

24 In the light most favorable to the State, I
25 believe all of this is a jury question. It is for

1 them to determine the facts in this case. But I do
2 believe that there is enough evidence presented that
3 it goes to the jury. So, therefore, I'm going to
4 deny that motion, Mr. Atwater.

5 MR. ATWATER: Thank you, Your Honor.

6 THE COURT: All right.

7 Now let me turn to you, Mr. Powers, because,
8 yesterday, I read you your rights as to whether you
9 wanted to testify or not to testify. And if you'd
10 like for me to read those to you again, I will.

11 THE DEFENDANT: No, ma'am.

12 THE COURT: And you were going to speak with
13 your lawyer and your family last night and decide.

14 So let me ask you, have you had enough time to
15 speak with your lawyer concerning your right to
16 testify or not to?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And can you tell me your decision?
19 Do you wish to testify?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Okay. Thank you.

22 Let me see the lawyers just for one second.

23 (Sidebar conference.)

24 THE COURT: All right. Let's bring the jury
25 back in.

DIRECT EXAMINATION OF LILAH KIRBY BY MR. ATWATER

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1 THE BAILIFF: Yes, Your Honor.

2 (The jury enters the courtroom at 9:31 AM.)

3 THE COURT: Mr. Foreman, are we ready?

4 MR. WAGONER: Yes, ma'am. We're ready.

5 THE COURT: All right. Mr. Atwater, are you
6 ready to proceed?

7 MR. ATWATER: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. ATWATER: Your Honor, the Defense would
10 call Lilah Kirby.

11 LILAH KIRBY

12 being first duly sworn, testified as follows:

13 THE WITNESS: I do.

14 THE CLERK: You can take your mask off. If you
15 will, go up there and have a seat, and say and spell
16 your last name, please.

17 THE WITNESS: My name is Lilah Kirby,
18 K-I-R-B-Y.

19 DIRECT EXAMINATION

20 BY MR. ATWATER:

21 Q. Good morning, Lilah. Would you tell the jury
22 your relationship to Bryan Powers?

23 A. He is my oldest grandson.

24 Q. And on the date that this accident occurred, do
25 you know where Bryan was living?

1 A. He was living next door to me in a mobile home.

2 Q. On the date that this accident occurred, do you
3 know where Bryan had been that day?

4 A. Work.

5 Q. And do you know what type of work he was doing?

6 A. Plumbing.

7 Q. Do you know where he had worked that day?

8 A. Augusta.

9 Q. And this was on a Friday. Do you know whether
10 he had worked the rest of the week also?

11 A. Oh, yes, sir. He had worked all week.

12 Q. Lilah, how did you learn about this wreck?

13 A. He had called me and told me that he had been
14 in a wreck.

15 Q. Okay. And what did you do when you heard that?

16 A. I took off out there where he was at.

17 Q. Did you actually go to the scene of the wreck?

18 A. I did.

19 Q. Did you see Bryan at the wreck scene?

20 A. Yes, sir.

21 Q. What, if anything, did you notice about him?

22 A. To me, he was kind of disoriented. He was --
23 had a gash over his eye, and his lip was busted.

24 Q. Okay. At the scene, did you talk to any law
25 enforcement or anything like that?

1 A. No, sir.

2 MR. ATWATER: Your Honor, that's all I have.

3 Please answer any questions that the State has.

4 THE COURT: Mr. Wagoner or Mr. Cox?

5 MR. ATWATER: Your Honor, I do have one

6 follow-up. May I?

7 THE COURT: Yeah.

8 Y'all hold on. He's got a follow-up.

9 MR. WAGONER: Yep.

10 BY MR. ATWATER:

11 Q. Lilah, when I said law enforcement, did you
12 talk to anybody who was wearing a deputy's uniform
13 while you were at the scene of the accident?

14 A. When I walked up to the truck, one of them told
15 me, you know, there was something of mine in the
16 truck. And I was going to get it, and he said, no,
17 I couldn't do that.

18 Q. Okay. Thank you.

19 CROSS-EXAMINATION

20 BY MR. COX:

21 Q. Good morning, Ms. Kirby.

22 A. Good morning.

23 Q. Do you need water or anything?

24 A. No, sir. I'm just nervous.

25 Q. I understand. I just have a few questions for

1 you.

2 Ms. Kirby, how long -- you said your grandson
3 lived right next door to you.

4 A. Yes, sir.

5 Q. And that's just in Pelion?

6 A. Yes, sir.

7 Q. So when he was on 178 that day, he was heading
8 towards your house?

9 A. Yes, sir.

10 Q. And that would be east into Pelion, right?

11 A. Right.

12 Q. How long had he been living at that home?

13 A. A week.

14 Q. He'd been living there a week?

15 A. Uh-huh.

16 Q. Okay. How long have you been living in this
17 area?

18 A. Well, I've been living in Pelion since 1980.

19 Q. Okay. But you and your grandson -- you're
20 familiar with Highway 178 in the Pelion area?

21 A. A little.

22 Q. A little?

23 A. I don't go down that road very much.

24 MR. COX: Okay.

25 Thank you, Your Honor. No further questions.

1 THE COURT: Any redirect?

2 MR. ATWATER: No, Your Honor. We'd ask that
3 Ms. Kirby be excused.

4 THE COURT: Absolutely.

5 Ms. Kirby, you may step down.

6 THE WITNESS: Thank you.

7 THE COURT: You're welcome.

8 MR. ATWATER: Your Honor, the Defense rests.

9 THE COURT: Okay.

10 All right. At this time, I'm going -- I have
11 to take up a few matters. I'm going to excuse you
12 to the jury room. When I bring you back in,
13 we'll -- I'll charge the jury on the law. Okay?

14 Thank you, Mr. Foreman. Remember, no talking
15 about this case amongst yourselves at all.

16 (The jury exits the courtroom at 9:37 AM.)

17 THE COURT: All right. Anything from the
18 State?

19 MR. WAGONER: Nothing from the State.

20 THE COURT: Anything from the Defense, other
21 than renewing your objection for a directed verdict?

22 MR. ATWATER: Yes, Your Honor. That's it.

23 THE COURT: Okay. So noted for the record.
24 Okay. Let's talk about these jury charges.

25 MR. ATWATER: Your Honor, I've had an

1 opportunity to review the State's modifications to
2 the jury charge. And as it relates to the first two
3 pages of it -- I see the language that he's changed
4 in the proximate cause language, all the way down to
5 the bottom of the page, and the State vs. Clary
6 notification.

7 Although I think that your charge covered all
8 of these things, it just added some extra verbiage.
9 I don't have any objection to that added verbiage on
10 the second page whatsoever; however, the -- when it
11 gets on the third page, I object to everything on
12 that page.

13 I don't think it's -- there's no medical
14 malpractice in this case whatsoever. There's no
15 allegations that anything that anybody did
16 afterwards contributed to Ms. Smith's death
17 whatsoever. I don't think that --

18 THE COURT: Well, are you talking about the
19 paragraph where it starts "it is not a defense to
20 show that the victim might have recovered"?

21 MR. ATWATER: Yeah. We haven't argued that she
22 might have recovered from that.

23 MR. WAGONER: The only reason I mentioned that
24 is when he elicited testimony about the seatbelt.
25 But --

1 THE COURT: Right. I kind of agree,
2 Mr. Wagoner, only because this is a case that she
3 didn't recover.

4 MR. WAGONER: No problem.

5 THE COURT: I mean --

6 MR. WAGONER: Yeah. I mean --

7 THE COURT: -- unfortunately, it was a
8 fatality.

9 MR. WAGONER: I agree. This is not a
10 two-and-a-half-years later --

11 THE COURT: Right. I mean, from my
12 understanding, she died that day --

13 MR. WAGONER: Yes.

14 THE COURT: -- immediately.

15 So I'd be inclined, Mr. Atwater, to agree with
16 you and take out "it is not a defense," down.

17 MR. ATWATER: Yes, Your Honor.

18 THE COURT: And we're going to end it with "the
19 defendant's act need not be the sole cause of the
20 death, but must be the proximate cause contributing
21 to the death."

22 MR. ATWATER: I think that's appropriate, Your
23 Honor.

24 THE COURT: All right. Then I'm going to leave
25 all of page 2 in.

1 I'm also adding the charge about Mr. Powers not
2 testifying.

3 MR. ATWATER: Yes, Your Honor.

4 THE COURT: Todd, you submitted me a --

5 MR. WAGONER: Yeah, I --

6 THE COURT: -- charge on accident.

7 MR. WAGONER: And that really depends on kind
8 of what is elicited during closing.

9 MR. ATWATER: May I see that?

10 THE COURT: It was in your email, but I have a
11 copy of it. I wanted to talk about that. I don't
12 know what is in the closing; if that is a charge and
13 where y'all are going with that. I have heard no
14 testimony that it was an accident.

15 MR. WAGONER: I beg the -- I'm sorry?

16 MR. ATWATER: I mean, it was a car wreck.

17 THE COURT: Right. Other than a car accident.
18 I'm sure that's probably going to be in your --

19 MR. ATWATER: Yes, ma'am.

20 THE COURT: -- closing. So you probably need
21 to read this charge, Mr. Atwater.

22 MR. ATWATER: Yes, Your Honor. And the third
23 paragraph of this charge, it begins and says: "The
24 burden is upon the State to prove beyond a
25 reasonable doubt that the act was not an accident."

1 And I agree with that. But it says: "But was
2 caused by the negligence and carelessness," and I
3 think that requires it to say the recklessness.

4 MR. WAGONER: I don't have a problem with that
5 change.

6 THE COURT: Well, and I think -- Mr. Atwater, I
7 agree with you also, because if we went through --
8 should we put "the burden is upon the State to prove
9 beyond a reasonable doubt that the act was not an
10 accident, but was caused by the --"

11 MR. ATWATER: I would say by a reckless act of
12 the defendant.

13 And, Your Honor, I was going to ask that all
14 the words after defendant be taken out.

15 THE COURT: I agree.

16 Do you have any problem with that, Mr. Atwater?

17 MR. WAGONER: Judge, just that that language
18 makes it clear in that it's the reckless act in the
19 handling of the vehicle.

20 THE COURT: You want me to say in the handling
21 of a dangerous --

22 MR. WAGONER: In the handling of the vehicle.

23 THE COURT: In the handling of -- I want to say
24 in the operation of the vehicle.

25 MR. ATWATER: Your Honor, if we could say it

1 was not an accident but was caused by the reckless
2 operation of a motor vehicle by the defendant.

3 THE COURT: Any objection to that?

4 MR. WAGONER: No objection.

5 THE COURT: All right.

6 Now, Mr. Atwater, we're fixing that as you
7 speak. So could you say that again for us so that
8 we can --

9 MR. ATWATER: Yes, Your Honor. I was saying
10 that it would say that the burden is on the State to
11 prove, beyond a reasonable doubt, that -- and then
12 it should say the act was not an accident, but was
13 caused by the reckless operation of the motor
14 vehicle by the defendant.

15 THE COURT: Then we'll take out the other
16 stuff. That makes it perfectly clear.

17 MR. WAGONER: And, Judge, order-wise, I believe
18 that should go right before the charge of reckless
19 vehicular homicide, in the order of the charges.

20 THE COURT: All right. And that is before the
21 charge of the reckless vehicle.

22 All right. Any objection to me reading the
23 defendant's right to remain silent after the expert
24 witness charge, or do you want me to do it very
25 last? I don't think that it matters, but I try to

1 make it flow.

2 MR. ATWATER: If it would be last, Your Honor,
3 that would be --

4 THE COURT: I think I'll do it right after the
5 reckless vehicular homicide charge, because then it
6 will go into sympathy and duty to deliberate, is
7 usually where I like to put it.

8 All right. We're going to get you a final
9 copy, because before I bring the jury back in, I
10 want to be able to do closings and go straight into
11 charge.

12 MR. ATWATER: Yes, Your Honor.

13 (Brief pause in the proceedings.)

14 MR. COX: Your Honor, when we broke, after the
15 jury stepped out, one of our -- we were notified
16 that one of our paralegals, Miss Jennifer Jones of
17 our office -- she's been sitting here since
18 Tuesday -- that she did recognize one of the jurors
19 in the jury box. She wasn't here Monday during jury
20 selection. She's actually been out of our office
21 for the last two weeks.

22 She -- and it's Juror No. 220, Mr. Williams,
23 our paralegal recognized him. He is -- to her
24 belief, he is married to her former step-sister, and
25 that's how she recognized him. And she did not

1 recognize him until today.

2 THE COURT: Mr. Atwater?

3 MR. ATWATER: Your Honor, before you came in,
4 the State disclosed this to us. And we've
5 considered the fact that -- whether we had that
6 information during jury selection at that time,
7 whether or not it would've made a difference to us
8 at that point in time.

9 I also came back and discussed it with Bryan in
10 great detail. We talked about what the State had
11 disclosed to us and the fact that she had been
12 sitting out there, and we also went over the fact
13 that if we asked for the juror to be removed, that
14 they'd be replaced with Alternate No. 1, which is
15 Number 210. And went through the jury list and
16 talked about all of those things.

17 After talking to Bryan, we don't have any
18 desire to disqualify a witness [sic] and replace
19 them with an alternate.

20 THE COURT: Okay. Does anybody want me to
21 question the witness? Or are we going to leave it
22 as is? I mean, the juror.

23 MR. COX: Your Honor, if I may, from our
24 perspective, to protect the record, obviously
25 protect this case, I think if we brought in that

1 juror and you simply asked him if, through the
2 course of this trial, after being selected on the
3 jury, he did recognize anyone in the courtroom on
4 either side.

5 And you don't need to specify if you recognize
6 anyone on the State or the defense, or if you want
7 to say both, I'm sure that's fine, Your Honor. But
8 just to protect the record in this case, I believe
9 it would be safest just to bring him in.

10 THE COURT: Is that okay with you, Mr. Atwater,
11 if I do that?

12 MR. ATWATER: Yes, Your Honor.

13 THE COURT: Y'all want to bring me
14 Mr. Williams, Juror No. 220?

15 MR. WAGONER: I think it's Williamson.

16 THE COURT: Williamson.

17 MR. COX: James Williamson, Your Honor.

18 THE COURT: James Williamson.

19 So you just want me to ask him does he
20 recognize anyone in the courtroom?

21 MR. ATWATER: If, during the pendency of the
22 trial, he has seen anybody in the courtroom that he
23 knows or, if at least at this moment, he sees
24 anybody that he knows.

25 THE COURT: Okay.

1 MR. WAGONER: And, Judge, I just received a
2 text message from that paralegal, stating that the
3 same juror knows Holbrook, who is Tim Holbrook, who
4 is -- I think it's the son of Clinton Hoover who was
5 sitting with Clinton, and their daughters played
6 softball together. I just received that three
7 minutes ago.

8 THE COURT: Okay. And who is Mr. Holbrook?

9 MR. COX: Mr. Holbrook, Your Honor -- Clinton
10 Hoover, who was one of the witnesses who testified,
11 also the brother of the victim in this case,
12 Mr. Holbrook is Clinton's son. So he was sitting
13 with Mr. Hoover throughout yesterday.

14 THE COURT: All right. Well, if I'm asking him
15 during this trial have you recognized anyone in the
16 courtroom, that should cover it, shouldn't it?

17 MR. WAGONER: Absolutely. I just wanted to
18 make sure that we had disclosed that as well.

19 MR. ATWATER: And if he has, then I'm going to
20 ask him --

21 MR. WAGONER: Your Honor, based on that, we'd
22 ask that he be substituted. I mean, if he's
23 actually friends with a family member of the
24 deceased, I think -- I don't know if that means
25 they're friends. But, again, the text message that

1 I received at 10:13 a.m., from paralegal Jennifer
2 Jones, says: He also knows Holbrook; their
3 daughters played softball together. So...

4 MR. ATWATER: The nature of this case, Your
5 Honor, and the family connection, friend --

6 THE COURT: Let me ask him first if he's
7 recognized anyone, and then we'll move on to see
8 about replacing him.

9 MR. ATWATER: Well, Your Honor, could you also
10 ask him if he knows Mr. Holbrook?

11 THE COURT: Yeah, I will.

12 MR. COX: That's Tim Holbrook, Your Honor.

13 THE COURT: Tim Holbrook. Thank you.

14 All right. Everybody look at the jury charges?
15 We're okay with them?

16 MR. WAGONER: Yes, Your Honor.

17 MR. ATWATER: Yes, Your Honor.

18 THE COURT: You've got a final version?

19 MR. ATWATER: Yes, Your Honor.

20 THE COURT: Okay.

21 Hello, Mr. Williamson. Come on over here.
22 You're not in any trouble. You know it's never good
23 when the judge calls you in, is it?

24 THE JURY: Yes, ma'am.

25 THE COURT: I just need to ask you something.

1 During this trial, meaning, all day yesterday
2 and today, have you recognized anyone in the
3 courtroom?

4 JUROR: Not to my knowledge. I haven't. They
5 might recognize me, but I don't know if I recognize
6 them.

7 THE COURT: All right. Let me ask you this:
8 And do you know a Tim Holbrook?

9 JUROR: Tim Holbrook? Yes, I do.

10 THE COURT: Okay. And can you tell me how you
11 know Mr. Holbrook?

12 JUROR: His daughter and my daughter played
13 softball together and went to school together at
14 White Knoll, and they played travel ball together.
15 I actually coached his daughter at White Knoll High
16 School.

17 THE COURT: Okay. With that said, can you be
18 fair and impartial in making a decision in this case
19 to both the State and the defense?

20 JUROR: Sure. I know Mr. Holbrook. He was --
21 I think he was law enforcement or something too.
22 I'm not sure. But that's how I know him.

23 THE COURT: Is he somebody that came over to
24 your house for dinner or --

25 JUROR: No, he never did. His daughter and my

1 daughter, they hung out together. She came over
2 sometimes. They were friends and all.

3 THE COURT: Okay. All right. Let me talk to
4 the lawyers, because it came to our attention. And
5 let me speak with them and then I'll come back to
6 you. Okay?

7 JUROR: Yes, ma'am.

8 THE COURT: Just keep him around the corner for
9 me, please.

10 What says the State?

11 MR. COX: Your Honor, you asked this juror if
12 he recognized anyone in the courtroom. He said he
13 didn't, but he did recognize the name; talked about
14 the past, I guess, relationship his daughter and
15 Mr. Holbrook's daughter have. And he did report to
16 the Court he could be fair and impartial. So that
17 would be the State's position.

18 THE COURT: And, again, who is Mr. Holbrook to
19 this case?

20 MR. COX: He is the son of Mr. Clinton Hoover,
21 who was a witness in this case, the brother of the
22 deceased, Ms. Mildred Smith. He was also the driver
23 of the Colorado, which there was testimony that was
24 the second vehicle in the collision.

25 THE COURT: Mr. Atwater?

1 MR. ATWATER: Your Honor, I was never, as I
2 said, concerned about whether he recognized someone
3 in the courtroom or not. This is the nephew of the
4 woman who died, Tim Holbrook is. And he is also the
5 son of the man who was operating the vehicle in
6 which the woman died.

7 And so Tim Holbrook, who Mr. Williamson has
8 this relationship with, would have -- I mean, I
9 just -- I think that it's very dangerous to let him
10 stay on the stand. I'd ask that he be replaced with
11 Juror No. 2. It would create prejudice to the case.

12 THE COURT: Mr. Atwater, I'm probably going to
13 agree with you, if it was some kind of distant
14 family member, I wouldn't think. But when you're
15 the nephew of the deceased, out of an abundance of
16 caution, I'm going to excuse him and substitute
17 Juror No., I believe, 210.

18 And do you have that list in front of you?

19 MR. COX: Would you like the name of
20 Juror No. 210, Your Honor?

21 MR. WAGONER: It's Marilyn Washington.

22 THE COURT: Marilyn Washington.

23 All right. I'm going to bring Mr. Williamson
24 back in and explain to him why I'm letting him go.
25 Okay?

1 MR. ATWATER: And, Your Honor, if the State
2 doesn't have any objection, since we still have
3 another alternate, we wouldn't have any objection to
4 him being released.

5 MR. WAGONER: Of course. Yeah. I mean, if
6 you're excusing him, we're fine with him being
7 excused, however you want to handle it.

8 THE COURT: Yeah. I have another alternate. I
9 was just going to let him go.

10 All right. Mr. Williamson?

11 JUROR: Yes, ma'am.

12 THE COURT: I'm going to -- I'm going to excuse
13 you from this case.

14 JUROR: Okay.

15 THE COURT: It being not that you have done
16 anything wrong whatsoever; it's just that
17 Mr. Holbrook is the nephew of the deceased in this
18 case.

19 THE JURY: Oh, see, I didn't know that.

20 THE COURT: And it's kind of too close,
21 family-wise. So out of an abundance of caution,
22 again, it's not anything that you've done
23 whatsoever --

24 JUROR: Yes, ma'am.

25 THE COURT: -- that I'm going to excuse you. I

1 just think the relationship is just too close.

2 JUROR: I can understand that. I understand
3 that fully. Yes, ma'am.

4 THE COURT: So I'm going to let you go. But I
5 want to thank you so much. You've been a very
6 attentive juror. You've paid attention, and I
7 appreciate it.

8 JUROR: Yes, ma'am. It was a good experience.

9 THE COURT: The good news for you is that you
10 don't have to be on a jury for the next three years.

11 JUROR: That's the good thing. But, like I
12 said, it was a good experience; like you said, it
13 would be something you would remember, so I'll
14 remember. It was a good experience to actually see
15 it in person.

16 THE COURT: Right. It's something to see.
17 It's educational.

18 JUROR: Yes, ma'am.

19 THE COURT: So please tell all your friends who
20 are scared of jury duty that it's okay.

21 JUROR: I'll be sure to tell them it's fine.

22 THE COURT: I have people who dodge jury duty.
23 So I do appreciate it, from the bottom of my heart.
24 Thank you so much.

25 JUROR: Thank you. I appreciate it. I

1 understand.

2 THE COURT: And he can get his things and leave
3 if he wants.

4 Or if you want to hang around and see what
5 happens, you can join us in the courtroom. You're
6 welcome to do that.

7 JUROR: Okay.

8 THE COURT: I think they've ordered everybody
9 Chick-fil-a for lunch. So if you want to hang
10 around, you're welcome to. We'd love to have you.

11 JUROR: Well, I do appreciate it. Thank you,
12 ma'am.

13 THE COURT: Thank you, Mr. Williamson. Have a
14 good day.

15 Okay. Are we ready to bring the jury back in?

16 MR. WAGONER: I believe we're ready.

17 MR. ATWATER: Your Honor, I just need to step
18 out for like a minute and a half.

19 THE COURT: Absolutely. You go. Matter of
20 fact, let me step out too. We'll start in about
21 five minutes.

22 MR. COX: Okay. Thank you, Your Honor.

23 (Brief recess.)

24 THE COURT: All right. Everybody ready for
25 closings? There's not anything that you need to do?

1 MR. WAGONER: And, Judge, just by, I guess,
2 housekeeping matters, you know, obviously, since the
3 defense presented witnesses, I will be closing, and
4 then he will give his closing, and then I have a
5 reply.

6 THE COURT: Right. I know that there's been
7 lawyers that come in here and ask for something
8 different. I'm from the old school. That's the way
9 I was taught to do it. And that's just -- I know,
10 Mr. Atwater, you're probably with me.

11 MR. ATWATER: Yes, ma'am.

12 THE COURT: That was just the way we were
13 taught to do it, and that's what I go by. I've seen
14 so much, since I've become Judge, that has changed
15 from the young lawyers that is amazing to me.

16 MR. ATWATER: It truly is.

17 THE COURT: All right. Bring them in.

18 MR. WAGONER: Judge, I've shown defense counsel
19 the demonstrative I'll be using; one being a blow-up
20 of State's 3, and the other one being a map that's
21 kind of using the -- or several of the photographs,
22 and, also, just the -- you know, like an element
23 checklist type deal.

24 THE COURT: Okay.

25 And you've looked at that, Mr. Atwater?

1 MR. ATWATER: Yes, Your Honor.

2 THE COURT: Everything good with you?

3 MR. ATWATER: I'll probably use it too.

4 THE COURT: Okay. There you go. Y'all are
5 going to share.

6 MR. WAGONER: Judge, all I ask is that he just
7 not mark them.

8 MR. ATWATER: No problem.

9 THE COURT: Yes. You know you have to state
10 that objection. I watched one lawyer, she worked so
11 hard in this courtroom putting up all her beautiful
12 stuff, and the defense lawyer came and marked it all
13 up. And I learned that lesson the hard way, being a
14 trial lawyer. And I couldn't help but laugh. And
15 the look on her face was like I cannot believe you
16 did that to me. And I was like, well, you didn't
17 preserve it; you have to move to preserve that.

18 (The jury enters the courtroom at 10:48 AM.)

19 THE COURT: All right. Mr. Forewoman, are we
20 ready?

21 THE FOREPERSON: Yes, ma'am.

22 THE COURT: I'll let you know that we have
23 ordered lunch for y'all, Chick-Fil-A. Us ordering
24 lunch is always a good sign that we're almost
25 through. All right. We're going to move on to

1 closings now.

2 The State ready?

3 MR. WAGONER: The State is ready, Your Honor.

4 THE COURT: I'm glad to hear from you.

5 MR. WAGONER: Every day on the road, we observe
6 signs; every day on the road, we have to be prepared
7 for what's coming down the road. We have to be
8 prepared for construction; we have to be prepared
9 for other motorists; we have to be prepared to take
10 action.

11 You heard from Timothy Rainey, that white truck
12 did not slow. You saw and heard about all the
13 signage, four signs, at least 500 feet apart,
14 starting 500 feet from Mr. Rainey who held his stop
15 sign, saw that truck coming towards him with his
16 eyes; saw it coming; hey, hey, hey, stop. But that
17 white truck did not stop.

18 The defendant said to Treaster: I didn't have
19 time to stop.

20 George Adams had time to stop; saw Mr. Rainey,
21 saw the signs. He had time to stop. He told you he
22 was stopped there for at least ten minutes.

23 Clinton Hoover, he had time to stop. You heard
24 the testimony that the brakes were initiated eight
25 seconds before the non-deployment event; that he was

1 stationary. In Mr. Hoover's vehicle is Ginger Smith
2 and Mildred Smith, Tootsy.

3 The defendant is charged with reckless
4 vehicular homicide. To kind of start out, what is
5 reckless vehicular homicide?

6 Again, the State needs to prove that the
7 defendant operated a vehicle in reckless disregard
8 for the safety of others, caused injury to the
9 victim, and the victim died as a proximate result of
10 these injuries within.

11 You are the Judge of the credibility and the
12 believability of the witnesses in this case. It's
13 the State's burden to prove to you beyond a
14 reasonable doubt that the defendant committed the
15 crime of reckless vehicular homicide beyond a
16 reasonable doubt. That's the kind of evidence that
17 leaves you firmly convinced.

18 I'll put it another way: Years ago, when my
19 niece was three years old, I was visiting her for
20 Christmas. She liked to play with puzzles. And as
21 children do, they lose pieces of the puzzle. We're
22 putting this puzzle together piece by piece. There
23 are pieces missing. But the image emerged, pink
24 polka-dot dress, big black ears, white glove. I
25 knew what the picture was of, but I wanted to know

1 if my niece did. So I said, Callie, who's this?

2 She stepped back, looked at me like I was the

3 biggest idiot, and said, that's Mini Mouse.

4 That is what you do as a juror; you put the
5 pieces of the evidence together, the pieces of the
6 puzzle together until it forms a picture.

7 Another way to look at it is if you're at an
8 art museum with impressionist painting. If you get
9 up real close to the painting, all you may see is
10 brush strokes or dots, but if you take a step back
11 and look at the entire picture, that is when you see
12 your Starry Night; that is when you see your Iris
13 Field. I ask you to step back.

14 This is a blow-up of State's 3. This is the
15 direction the defendant was traveling. And this is
16 after the sign "be prepared to stop." Mr. Rainey
17 told you that two vehicles were stopped for at least
18 ten minutes. The white truck did not slow.

19 Clinton Hoover went to Shealy's, recalls seeing
20 the construction on the way to Shealy's on 178. He
21 was going for his sister's birthday, Mildred Smith,
22 Tootsy. After walking out of Shealy's, they all
23 walked to the car. Mildred sat in the back seat.
24 He remembers heading back towards Pelion, east.

25 You heard from Dr. Moffatt. Mildred Smith's

1 lung was punctured; suffered blunt force trauma to
2 the chest; multiple bilateral fractures of her ribs,
3 and she died as a result of those injuries, as the
4 result of a rear-end collision. This is the vehicle
5 Clinton Hoover was driving.

6 You heard from Tom Rees, who explained what the
7 signs were; that the first sign they would've come
8 to, at least 2,000 feet from Mr. Rainey, be prepared
9 to stop; 500 more feet, road work ahead; 500 more
10 feet, one-lane road ahead; 500 feet from that, the
11 image and the symbol of the flagger; 500 feet from
12 that is Mr. Rainey, the last line of defense,
13 holding that sign, holding that sign, holding up
14 traffic, keeping the people safe. The approach to
15 it, clear line of sight, clear line of sight.

16 You heard from Harley or Mack, Mr. Trimnal. He
17 was on the Batesburg side, which would be on this
18 side. He testified he was beyond those signs; that
19 those signs were still up when he got the call that
20 there was the collision. "By the time I seen them
21 all stop, wasn't nothing I could do," is what the
22 defendant told Treaster. You can see the collision
23 in State's 3; the collision site, straight line of
24 sight.

25 You heard from George Adams. He said something

1 that's really stuck with me: When you get to a
2 stop, you stop. He heard the loud crash. "I had no
3 trouble seeing signs. You see them plain as day."

4 William Cook arrived on scene at about 3:40 in
5 the evening. It's clear as day, still daylight;
6 secured the scene, drove the scene, and took these
7 photos, showing you what a straight shot it was;
8 showing you how clear these signs are; showing you
9 the route of the defendant; showing you everything
10 he ignored, everything he recklessly disregarded;
11 showing you his disregard for the safety of others.

12 You heard from Jeremy Sisler who took the
13 information that Nix gathered from the GPS system,
14 generated the CAD report; showed the diagrams, kind
15 of showing how the collision happened, where the
16 Silverado hit the Colorado going into the Ranger;
17 did the mechanical exam of the defendant's vehicle.

18 And what did he say? The brakes were
19 operational; the steering was operational. You know
20 who else's brakes were operational? George Adams,
21 Clinton Hoover.

22 You heard from Calvin Rikard. He analyzed the
23 airbag control module of the Colorado, which showed
24 that Clinton Hoover's Colorado was stationary for at
25 least five seconds prior to that collision. The

1 brake status, that brake was pressed eight seconds
2 prior, seven seconds prior, six seconds prior, five
3 seconds prior, four seconds prior, three seconds
4 prior, two seconds prior, and then at one second
5 prior, the brake light is not activated. I submit
6 to you, that's because he saw the defendant coming.
7 That makes perfect sense.

8 You heard Calvin Rikard being qualified as an
9 expert, telling you that the minimum -- and that's
10 important -- the minimum speed of the Silverado, the
11 defendant's vehicle, was 63 miles an hour. He even
12 went and watched the video of Cook taking these
13 photos.

14 And what did he tell you? That the first sign
15 was approximately 2,450 feet from the collision
16 location, 800 yards; 800 yards, eight football
17 fields; eight fields at Williams Brice; eight fields
18 at Death Valley; eight fields at Pelion High School.

19 You heard from Deputy Treaster who identified
20 the defendant. So I talked to him. He's pointing
21 there, and you heard the defendant say "there was
22 nothing I could do, nothing I could do." It's
23 ridiculous.

24 "I come over the hill, didn't have time to
25 stop. By the time I seen them stopped, there was

1 nothing I could do." Look at the photographs. He
2 had time from the beginning, but he willfully
3 disregarded all those signs, all those signs. He
4 demonstrated a conscious indifference to the safety
5 of anyone on that road, ultimately resulting in the
6 death of Mildred Smith, Tootsy.

7 You heard from the defendant's grandmother that
8 he had been driving towards her. She lived in
9 Pelion. He lived right next to her in Pelion for at
10 least a week prior. You heard from -- what did
11 Deputy Treaster tell you about this construction
12 project? It's the biggest thing to happen in Pelion
13 in a while.

14 All the evidence points to one conclusion, one
15 conclusion that the defendant, when he was operating
16 his Silverado, he did so with the reckless disregard
17 for the safety of others; that he caused injury to
18 Mildred Smith, to Tootsy; and that she died because
19 of that. She died from his conscious indifference,
20 his willful disregard of those signs; that, as
21 George Adams told you, you could see them plain as
22 day.

23 You'll now hear from Mr. Atwater. After
24 Mr. Atwater is done, I'll be able to reply to what
25 his argument is, and then I will ask you to find

1 Bryan Powers guilty of reckless vehicular homicide.

2 THE COURT: Thank you, Mr. Wagoner.

3 Mr. Atwater?

4 MR. ATWATER: Thank you, Your Honor. May it
5 please the Court?

6 THE COURT: Yes, sir.

7 MR. WAGONER: Your Honor, if we may approach?

8 THE COURT: Sure.

9 (Sidebar conference.)

10 THE COURT: All right. Mr. Atwater, we'll hear
11 from you.

12 MR. ATWATER: Thank you, Your Honor.

13 Ladies and gentlemen of the jury, thank you for
14 your patience and attentiveness in this case. Your
15 job is the most important job in this entire
16 proceeding. You are the judges of the facts in this
17 case. There are 12 -- 13 judges in this courtroom.
18 Judge McCaslin is the judge of the law in this case.

19 At the end of our arguments, she will give you
20 the law in this case and she will tell you that you
21 are required to abide by that law and apply that law
22 to the facts of this case.

23 But as it relates to the facts of this case
24 itself and making a determination of what facts are
25 to be applied to that law, it is within your sole

1 province to do so.

2 You have sat here patiently, attentively, for
3 two days; sat through the testimony of numerous
4 witnesses; seen documents, pictures, things like
5 that put into evidence.

6 And Judge McCaslin is going to tell you that
7 nothing that Mr. Cox [sic] said or that Mr. Jordan
8 said or that I said when we were asking questions or
9 in our closing arguments is evidence in this case.
10 So let me tell you what the evidence in this case
11 is. Okay?

12 There are nine pieces of evidence in this case
13 at this point in time. You have these photographs
14 that were placed into evidence by the State, and
15 we'll take some time to talk about these during my
16 closing.

17 The evidence, you can tell, is all marked with
18 little stickers that say exhibits for evidence. You
19 have two compact discs from which you watched the
20 videos during the trial, and these will go back with
21 you. If you need to see them, you'll be allowed to
22 see them. They're evidence in this case.

23 And then you've seen other things in this case
24 that is not evidence in this case. You looked at
25 these demonstrative exhibits that Mr. Cox used

1 during his closing to give you his explanation of
2 what he believes happened in this case.

3 These are not evidence in this case; they've
4 not been entered into evidence; they will not go
5 back to the jury room with you; and they're not to
6 be considered as evidence in this case. They're
7 used for him making his explanation. I may even use
8 them myself. But they're not evidence in this case.

9 This sign back here was brought into the case
10 to just show you what one looks like. I'm sure you
11 already knew what one looked like before, but to
12 show you what one looked like, in the courtroom, it
13 has the aspect of making you think it is a whole lot
14 bigger than it is what you see when you're out there
15 on the road.

16 Because we all know that when you see something
17 from a distance, it's a whole lot smaller; someone
18 brings it into the courtroom and goes like this, you
19 think, wow, that thing is huge. Okay? But
20 perspective -- perspective is very important as it
21 relates to every piece of evidence in this case.

22 And I'll ask you to keep that in mind when you
23 go back into the jury room and do your deliberations
24 and determine what is and what is not evidence in
25 this case and what is and what is not the facts of

1 this case.

2 Again, we've got this little sign down here on
3 the floor. It's not evidence in this case. It is a
4 demonstrative piece of property that was used to
5 show you what one looks like, or what Mr. Rainey
6 would have been holding in his hand on the date that
7 this accident occurred. And we do submit to you
8 that this was an accident. So let's talk about what
9 you heard and the facts of this case.

10 In addition to the evidence, by the way,
11 whatever the witnesses said on the stand is
12 evidence. Okay? So that's also for you to consider
13 when you're going back and doing your deliberations.

14 Now, Judge McCaslin is going to charge you on
15 the law in this case. And in her charges on the law
16 in this case, she's going to tell you that you don't
17 have to accept everything anybody on the stand says;
18 that when you're sitting here discussing it and
19 you're using your common sense and you're applying
20 the facts of this case and you're going through your
21 deliberate process, that you can sit here and say,
22 well, this witness said this, but this witness said
23 this, and those two things don't go together.

24 Well, let's look at all of these other things.
25 What do we think? Which one do we think makes more

1 sense? And that's your job. That's called
2 deliberating. And that's what you will do during
3 your deliberations.

4 So in your deliberations, it is perfectly
5 acceptable, and it is actually required, that if you
6 see two things that don't make sense and put them
7 together, that you are allowed to disregard one of
8 them. You don't have to take it as being the gospel
9 truth simply because someone got up there and swore
10 to it. Okay?

11 Now, in this case, we also had several
12 witnesses who were qualified as expert witnesses.
13 And they were qualified as expert witnesses in
14 certain things. Dr. Moffatt was qualified as an
15 expert witness, I believe, as it related to
16 anatomical investigation and determinations. The
17 rest of them were members of the MAIT Team, I'm
18 pretty sure, and they were all qualified as being
19 experts in what the MAIT Team does, basically
20 because they have been doing it so long.

21 So in Judge McCaslin's instructions to you, you
22 will hear her say that simply because they're
23 experts, you don't have to give their opinion any
24 more weight than you would to anybody else's opinion
25 whatsoever.

1 I would suggest that in certain areas of life,
2 every member on this jury panel and probably
3 everybody in this courtroom is an expert at
4 something. Because our legal definition as an
5 expert is that you are qualified to be called an
6 expert and give an opinion based upon either your
7 education, experience, or knowledge. And so you
8 can, in any field that any of you work in, and if
9 you've been doing it long enough, you're real good
10 at it, you could qualify as an expert in that field.
11 Okay?

12 Now, I'm not going to talk to you about puzzles
13 or abstract art, because I don't think that that has
14 anything to do with the evidence in this case. But
15 what I am going to talk to you about is what
16 happened on June 14th of 2019.

17 And on that day, Bryan Powers had gone to work
18 very early that morning because he had to go all the
19 way to Augusta. He had to be on his job early in
20 the morning. And he worked all day long; worked
21 about an eight-, nine-, ten-hour day. And then he
22 drove back from Augusta, heading back to go home
23 next door to his grandmother Lilah Kirby. And I
24 tell you that because the State contends that Bryan
25 Powers was driving in reckless disregard of the

1 safety of others on that day.

2 So I want you to consider, first off, how long
3 he'd been driving, where he was coming from. I
4 don't know how many of you have been to Augusta
5 before. I'm sure you have a general idea of where
6 it is.

7 So driving back up from Augusta, you would have
8 to go through roads and streets and highways and
9 stop signs and traffic signs and entrances to
10 interstates and going on the interstate, coming off
11 the interstate, staying in his lane, traveling down
12 the road, being aware of cars around him and
13 everything like that that are coming around him and
14 passing him and this type of stuff; getting all the
15 way back to where he would get onto 178 and start
16 coming across, and then driving on 178, which is a
17 two-lane road, staying in the right lane.

18 There's no evidence he ever did anything other
19 than that. There's absolutely no evidence in this
20 case whatsoever that at any point, other than when
21 the State contends that the site where this accident
22 happened, that Bryan Powers was driving along in
23 reckless disregard for the safety of others. Okay?

24 Now, reckless disregard means he's driving
25 along, saying that he doesn't matter what his

1 driving does; he doesn't care if it causes injury.
2 And, implicitly, that means he doesn't care if he
3 causes injury to himself.

4 So when you're considering and deliberating
5 whether or not Bryan Powers was driving along in
6 reckless disregard, I want you to take into
7 consideration that he was injured in this accident
8 and that his vehicle was damaged in this accident.

9 Now, that doesn't take anything away whatsoever
10 from all of the other damages from this accident.
11 There were other vehicles damaged, other people
12 injured and, ultimately, Ms. Smith died as a result
13 of this wreck, sitting in the back seat of
14 Mr. Hoover's truck without her seatbelt. Okay?

15 So during this trial, we heard the testimony of
16 several people. And I believe that the first person
17 who testified was Mr. Rees. And he testified he's
18 the safety operations manager for Stay Alert. And
19 that's the business that had all of these workers
20 out there on the road that day. Okay?

21 Mr. Rees, I asked how he learned about this
22 wreck, and he said he got a phone call at his
23 office; that he was at his office and was asked to
24 come out to the scene.

25 So what does that tell us immediately? He

1 wasn't there; he doesn't know how this wreck
2 happened; he ain't got nothing to tell us about how
3 this wreck happened whatsoever. I asked him if he
4 was there when the signs were put up that day. He
5 said no. Was he there during the operation that
6 day? He said no. I asked him if he was there the
7 day before. He didn't really remember.

8 But what I did ask him and what he talked about
9 was whether they take those signs up at the end of
10 the day or whether they leave them out there
11 overnight.

12 I wanted you to have a very clear
13 understanding, so I asked him several times in
14 several different ways whether they take those signs
15 up at night or not. And he was absolutely adamant;
16 we take them signs up at the end of the workday,
17 every single solitary day. That's what he said. So
18 what time of the workday was it when this wreck
19 happened? It was the end of the day.

20 We had the testimony of Timothy Rainey. And
21 Timothy was the guy who was up there holding this
22 sign right here. And where did Timothy testify that
23 he was standing at the time that he was holding that
24 sign? He said he was up near the taper. And he
25 described what the taper was. It's basically where

1 they start putting out these highway safety cones to
2 block off one lane of traffic. So he said he was up
3 near the taper and that's where he was standing off
4 the side of the road with this sign.

5 I'm going to get a little bit more into what
6 was going on farther up the road, but at that time,
7 we've heard testimony from not only the video that
8 Deputy Treaster put into evidence of Bryan saying "I
9 didn't have time to stop," to at least three other
10 witnesses saying that this accident happened down
11 the hill, around the curve.

12 Now, I've told you that you need to pay
13 attention to perspective because, again, when we
14 look at these things up here up close in the
15 courtroom, they look really big and we can see them
16 very well.

17 And when the State decides to put in evidence
18 and pictures and things like that of a scene, they
19 try to give us their perspective.

20 I will tell you first that this big picture
21 here, where you're looking at the background and
22 everything like that, I was informed by Mr. Cox that
23 this is from Google Earth. Okay? And we heard
24 somebody yesterday, I think it was Sisler, say you
25 can't trust Google Earth; you can't trust their

1 measurements; you can't trust their -- anything
2 they've got on it whatsoever. But, later on,
3 actually, another member of the MAIT Team talked
4 about using Google Earth.

5 So this is meant to show you as a demonstrative
6 exhibit; again, not evidence from the State; that it
7 is their opinion, based upon the testimony of the
8 State's witnesses, that there were signs in these
9 places here before the accident scene. Okay?

10 Now, again, it was the end of the day. Timothy
11 Rainey testified in here yesterday that that was not
12 the first time that we had heard from Timothy
13 Rainey. And I believe you heard me talk to a couple
14 police officers about what he told them earlier.
15 Timothy Rainey had been spoken to and given a
16 statement at least two times, if not three.

17 MR. WAGONER: Objection.

18 THE COURT: Okay.

19 MR. ATWATER: I asked on the stand about the
20 statements the officers took, Your Honor. So I'm
21 not going outside of what they said he told them. I
22 will not go outside of what they said.

23 THE COURT: I think there was testimony to
24 that, Mr. Wagoner.

25 MR. WAGONER: I just don't want him to go

1 outside that.

2 THE COURT: As long as we're not going outside
3 of what was testified to, go ahead.

4 MR. ATWATER: Yes, Your Honor.

5 Timothy Rainey, I mean, obviously we didn't
6 just learn about this case at the beginning of this
7 trial. The solicitor and myself have known about it
8 for a very long time, and we've seen reports and
9 talked to people and reviewed things that were done
10 during the investigation. And that's what I'm
11 talking to you about right now.

12 In the investigation, people that testified
13 here in this trial had already talked to Timothy
14 Rainey before. They weren't listening to what he
15 had to say for the first time when he got up there
16 on the stand. Okay? So I asked him about that.
17 And Timothy Rainey told them that at the time that
18 he stopped Mr. Adams' vehicle and Mr. Hoover's
19 vehicle, his crew was out picking up cones and
20 closing up for the end of the day. Okay?

21 Now, Mr. Rees had told us they take them signs
22 down at the end of the day. They're gone. So we
23 know from the testimony of Mr. Rainey, who said I
24 had these two vehicle s stopped here for at least 15
25 minutes. That was his testimony.

1 And then Mr. Clinton Hoover, who was the driver
2 of the second vehicle, who testified other than the
3 fact that he said when he left Shealy's and turned
4 onto 178, he had no recollection of anything else
5 whatsoever except for what he testified to about
6 having sat there at the time of the accident. And
7 when he said that, he testified in direct response
8 to the State's question, How long were you there?
9 He said about 15 or 20 minutes.

10 Now I'd like you to look at that clock over
11 there. Pay attention to what the time is right now,
12 and just keep a conscious record of when 15 or 20
13 minutes has passed by. Okay? Because we submit to
14 you that what Mr. Adams encountered when he pulled
15 up to that stop and what Clinton Hoover encountered
16 when he pulled up to that stop was not what Bryan
17 Powers encountered when he pulled up to that stop;
18 that that scene was different, and it had 15 or 20
19 minutes to become different. And Mr. Rainey told us
20 they were out there moving things around. He said
21 it, and so did Harley.

22 Now, when Mr. Cox was up here talking to you,
23 he correctly told you what Harley testified to, Mack
24 testified to, as it related to where he was when
25 this wreck happened.

1 Using the demonstrative exhibit that the State
2 gave us, let's see if I can orient it correctly
3 whatsoever. By Mr. Mack's testimony, at the time
4 that this wreck actually happened, he stated he was
5 out here --

6 MR. WAGONER: Objection --

7 MR. ATWATER: -- beyond --

8 MR. WAGONER: Objection.

9 THE COURT: Hold on. He's got an objection.

10 MR. WAGONER: Mischaracterization of testimony.

11 THE COURT: All right. Let me see the lawyers.

12 (Sidebar conference.)

13 THE COURT: All right. We're going to restate
14 that.

15 MR. ATWATER: Ladies and gentlemen, when I was
16 looking at this, I was presuming, but I guess I
17 should've seen this little dot right here as being
18 the place where the wreck happened. So forgive me.
19 I was presuming that he was up here somewhere.

20 And, actually, Harley testified not there, down
21 here. Okay? What I was meaning to tell you, was he
22 beyond all four of these signs that are shown on
23 this demonstrative exhibit that the State had
24 prepared. Harley said he was down here past all
25 that stuff at the moment that the wreck happened.

1 Okay? Very important. Because what was he doing?
2 He was presetting signs for Monday. That's what he
3 was doing.

4 He was out there and he had come past these
5 signs, and he was going out because they were going
6 to be moving this construction site farther away.
7 Okay? And he was presetting signs for Monday. And
8 we went into a little bit of back-and-forth about
9 him putting up -- using cones and stuff like that.
10 For a while, he wanted to argue with me saying they
11 never use cones. And then he ended up saying, yeah,
12 we use cones. So keep that in mind.

13 What was he out there doing? He was setting
14 the signs, the quadrangular bases in place; that
15 thing over there and other ones like it were going
16 to be put on it.

17 Now, where did he get those stands from that he
18 was putting out here for Monday farther down the
19 road? Okay? He was finishing operations for
20 Friday, and we always take the signs down at the end
21 of operations, and he was setting up operations for
22 Monday.

23 I submit to you that those four signs he had
24 taken down; he had taken those stands and was moving
25 them up the road so that he could put the signs back

1 on them come Monday.

2 He said that he had placed new four-legged
3 things farther down. He never testified he carried
4 extra sets of them. That would be assuming. So
5 that's what they were doing out there that day.

6 I asked him -- trust your own memories on
7 anything I asked and you heard -- I asked him, Did
8 you see Bryan come driving by you? No, I didn't
9 whatsoever. Which is credible to believe because he
10 was out there doing stuff on the side of the road,
11 but he was clearly beyond where all of these signs
12 had been when Mr. Adams and Mr. Hoover had come up,
13 and out there in a closing-down, end-of-the-day
14 operation. Okay?

15 If he was going to be closing down for today
16 and preparing for Monday, why would he go past and
17 leave all these signs here? And where would he get
18 those stands to be putting up here where he
19 testified he was putting them out? I submit to you
20 that those signs weren't there when Bryan came by.
21 Okay? And there was plenty -- keep your eye on the
22 clock -- plenty of time from when Mr. Adams and
23 Mr. Hoover stopped for those signs to be moved.

24 We know by their own testimony that those signs
25 were going to be moved at the end of the day. We

1 know by their own testimony it was the end of the
2 day.

3 Now, after Mr. Rees testified about those signs
4 coming up every single solitary day, Timothy Rainey
5 got on the stand and testified, and he's the one
6 that told you he was standing up there with this
7 sign here and he was out at the taper and he was in
8 front of -- or I never really could get it straight
9 whether he was in front of Mr. Adams' car or right
10 next to the car, but he made it clear he was way up
11 near the taper. And by the testimony of other
12 witnesses in this case, we know that was beyond the
13 hill that Bryan was coming down at the time of the
14 wreck.

15 So he testified that he stood there, he saw
16 Bryan coming, he kind of stomped the sign a little
17 bit, and he says he was yelling. I'll leave it up
18 to you to determine whether anybody believes Bryan
19 could have heard him yelling, or possibly even seen
20 him with that sign on this side of the crest of the
21 hill, standing there with two vehicles in front of
22 him.

23 I'm not disputing that Timothy Rainey was
24 standing up there at the taper with that sign. But
25 I am very much calling into question whether those

1 other four signs were out there on the road when
2 Mr. -- when Harley was out there past those signs,
3 closing down for the day and setting up for Monday.

4 Now, we heard the testimony of Mr. Hoover. As
5 we know, he was the driver of the vehicle that
6 Bryan's car collided directly into the back of, and
7 the only thing that Mr. Hoover could tell us was he
8 knew he'd been sitting there for a while and where
9 he had been to eat. But as it relates to anything
10 whatsoever that Bryan did or Bryan's driving, he
11 didn't testify to any of that.

12 Now, you did hear Mr. Cox suggest that
13 Mr. Hoover might have taken his foot off the brake
14 while he was sitting there. The testimony is that
15 Mr. Hoover was sitting directly behind Mr. Adams.
16 So first off -- and I'm going to go a little bit
17 more into this MAIT stuff and all their testing and
18 everything -- we heard from Mr. Hoover that he was
19 sitting directly behind Mr. Adams. He was sitting
20 there 15 or 20 minutes.

21 And so you're being asked to decide whether or
22 not, based upon the suggestion that he took his foot
23 off the brake a second before, that he sat there for
24 15 or 20 minutes, stopped with his foot on the
25 brake. I wouldn't do that, but I don't think

1 there's any evidence either way about it whatsoever.

2 After Mr. Hoover testified, we heard from the
3 medical examiner, Elizabeth Jane Moffatt.
4 Dr. Moffatt testified as to her examination of
5 Ms. Smith after the collision and after Ms. Smith
6 was transported to the hospital for her examination,
7 and she told us about the injuries that Ms. Smith
8 had. And she opined that they were related to the
9 accident.

10 I haven't any reason to question whether they
11 were or not, and I haven't seen any evidence to the
12 contrary whatsoever. I think that whatever she saw
13 was what happened to her in the wreck from being in
14 the back seat and not having a seatbelt on.

15 Now, we came to Harley from Stay Alert. And
16 I've been talking about Harley a little bit.
17 Correct me if I'm wrong. Is that the one that's
18 called Mack? Mack. And I've kind of gone into
19 detail about what Mack and I went back and forth
20 about and what he testified to and what we believe
21 that means.

22 But he also stated something that was very
23 peculiar to me and didn't make any sense. One of
24 them, he said there were four signs on one side of
25 this work zone, and only one sign on the other

1 side --

2 MR. WAGONER: Objection. That's
3 mischaracterization of the testimony.

4 MR. ATWATER: Your Honor, we can play his
5 testimony. That's what I heard. That's my note
6 from the testimony. And the jury --

7 THE COURT: All right. Let me see counsel --

8 All right. Ladies and gentlemen of the jury,
9 just let me remind you that it's your recollection
10 of what you remember the witness said that counts.
11 I'm going to let counsel finish.

12 Go ahead, Mr. Atwater.

13 MR. ATWATER: Thank you.

14 And, yes, ladies and gentlemen of the jury, I
15 sat over here just like y'all do and I listen to the
16 evidence from the witness stand just the same as you
17 do. But I'm not a member of the jury, so when it
18 comes to you deliberating in the jury room, if I say
19 something here that I believe I heard and the 12 of
20 you together say we didn't really hear that, then
21 you're not bound by what I say in this closing
22 argument. Okay?

23 Same for what the State says. It's all based
24 upon your recollection of what evidence there was.
25 And if you want to hear the evidence of a witness,

1 you're allowed to ask for it as well.

2 I put in my notes that when Harley was
3 testifying, I wrote one on the other side because he
4 was talking about the differences of the signs and
5 this that, so bear upon your memory of it. That's
6 what I wrote in my notes.

7 The other thing I found peculiar about what he
8 was talking about was -- and he kept going back and
9 forth about this, was that on Monday, they were
10 going to be extending the signs towards Batesburg
11 and towards Pelion. Now, I knew they were extending
12 them towards Batesburg, because that's what he was
13 out doing that afternoon. He was out there
14 extending them farther out because the construction
15 zone was going to move, and that's why he was moving
16 these bases to these signs and at the time he was
17 supposed to be out there also taking these signs
18 down.

19 So I asked him about that. And it seemed very
20 peculiar to me that he was talking about extending
21 in both directions like that, when my understanding
22 of Mr. Rees's testimony or other testimony was that
23 the construction was going to be moving towards
24 Batesburg and away from Pelion. So just keep that
25 in mind when you're doing your deliberations.

1 We heard from George Adams next. And Mr. Adams
2 was the person who was in the very first vehicle at
3 the front near the taper right where Mr. Rainey was.
4 He was driving the red truck. And Mr. Adams told us
5 that he stopped and he's -- I wrote it down here,
6 put two exclamation points next to it -- he was
7 stopped at least 15 or 20 minutes.

8 And that -- again, this wasn't the first time
9 that Mr. Adams talked to law enforcement. He had
10 been interviewed in this case before. And I had
11 asked the officers about what he had told them too.
12 We'll get to that when I get to their testimony.

13 But I asked him if he had -- if he had ever
14 told anybody that, prior to this wreck, his
15 recollection from it, because he was facing forward,
16 he didn't see anybody coming from behind, what he
17 sensed or heard. And he said that he heard a
18 screeching sound and then a crash. Okay? Wasn't
19 the first time saying it yesterday. It kind of took
20 me a little bit of pulling it out of him yesterday.
21 He wanted to say the other thing, but he finally
22 admitted that he told these other officers in their
23 interviews that he had said that he had heard a
24 screeching sound and then the bang.

25 Now, his vehicle wasn't moving. Clinton's

1 vehicle wasn't moving. We don't have any testimony
2 of any other Stay Alert's vehicle near whatsoever.
3 I submit to you that the only reasonable conclusion
4 you can get from that is when he heard the
5 screeching; is when Bryan became aware of the danger
6 in front of him and hit his brakes and tried to
7 swerve.

8 Now, there's evidence of him trying to swerve.
9 Even the MAIT Team acknowledged that. There's
10 evidence of Bryan trying to swerve and avoid this
11 accident. But everybody tries to say he never
12 touched his brakes. And I submit to you that's
13 where this screeching sound came from, and that's
14 evidence of the fact that he absolutely did.

15 Now let's talk about why the State's witnesses
16 said they want you to consider that Bryan was
17 driving recklessly because he never hit his brakes.
18 So they want you to believe he didn't hit his brakes
19 and find him guilty of reckless driving because he
20 didn't hit his brakes. Ignore the fact that he
21 swerved and tried to miss the accident, but just
22 look at the fact that he never hit his brakes.

23 And what is their evidence, the State's
24 evidence, that he never hit his brakes? We saw
25 another thing that is a demonstrative thing that

1 they put up here when Sisler was testifying, and it
2 was that PDF that they talked to us for a very long
3 time about how all this technology they used to come
4 up with that tiny little drawing.

5 And in that tiny little drawing, Sisler showed
6 skid marks, yaw marks, scuff marks, all types of
7 things. And I'll talk a little bit more about that
8 also. But they were all from where he showed the
9 point of impact and going forward. And it was his
10 testimony that because his drawing didn't show any
11 skid marks, and that this was, by his testimony, an
12 accurate representation of what he saw when he went
13 out there -- let me not get this wrong -- a few days
14 after the accident, not the day of the accident,
15 that that means Bryan never hit his brakes. We got
16 evidence of the contrary. We've got the screeching
17 sound; no other vehicles moving whatsoever.

18 Now, I'm going to assume that every member of
19 this jury panel has driven a vehicle before. And
20 I'm going to assume that you have been out on the
21 highways and the roadways and byways of South
22 Carolina, and probably beyond, driving around, and
23 that you have, from time to time, encountered
24 conditions when you have had to apply your brakes,
25 probably sometimes pretty quickly to respond to

1 something that happened that you didn't expect, or
2 something you came upon that wasn't there before, or
3 something somebody did that caused you to have to
4 react.

5 And I'll ask you, when you hit your brakes --
6 because I have to hit my brakes every time I come up
7 to a stop sign. I hit my brakes. It doesn't leave
8 a skid mark. The entire time from when I apply my
9 foot pressure on that brake, until I come to a stop
10 at a stop sign, I get out of my car, go behind and I
11 don't see a skid mark anywhere.

12 Because what causes a skid mark? A skid mark
13 isn't evidence that at the point the skid mark
14 starts, you finally touched your brakes. No. It's
15 evidence that your wheels, which were rolling down
16 the highway, based upon the motor driving that drive
17 train, getting you going, had had friction applied
18 to them by a brake, and caused them to try to slow
19 down from rolling to stop, which is what you want to
20 do.

21 Now, when those brakes are able to make those
22 wheels come to a stop, if your vehicle, by its
23 momentum, is continuing to drag along the front of
24 that road, you're going to have some skid marks.
25 That's what causes them: When your wheels lock up,

1 not when your first touch your brake.

2 So a person can step on their brakes due to an
3 emergency; somebody pulled out in front of them or
4 something; something happened in front of them, a
5 deer pulled out or something like that, and for the
6 entire distance of when they put on their brake
7 until they finally got there, there may be nothing,
8 nothing, nothing, nothing, nothing, and skid mark.
9 Okay? And the skid mark came because their tires
10 locked up.

11 There's no evidence in this case that Bryan's
12 vehicle ever came -- or his wheels ever came to a
13 locked position or a stopped position prior to the
14 impact. So, of course, of course there weren't any
15 skid marks. But I submit to you that to say simply
16 because there were no skid marks, is conclusive
17 evidence that he didn't touch his brakes, strains
18 the conscience.

19 We know he tried to swerve. It's inarguable.
20 Why wouldn't he put on his brakes when he tried to
21 swerve? Doesn't make any sense.

22 Then we heard from Trooper William James Cook.
23 Trooper Cook testified that he arrived at the scene
24 about 45 minutes after the accident occurred.
25 Matter of fact, I think it was at least 35 minutes

1 after the accident occurred before any law
2 enforcement whatsoever were on the scene.

3 And that is a lot of time for people on the
4 scene who are charged with controlling the traffic
5 and everything like that to do stuff. Okay? At the
6 time when this wreck occurred, Stay Alert's people
7 were out there closing down for the day and taking
8 stuff up and taking it away.

9 MR. WAGONER: Objection. Not the testimony.

10 THE COURT: All right. Let me see the lawyers
11 again.

12 (Sidebar conference.)

13 THE COURT: All right. Ladies and gentlemen,
14 there's a dispute as to what was put into evidence
15 here. I think we're splitting fine hairs. Again,
16 I'm going to instruct the jury, it is your
17 recollection of what was said on this witness stand,
18 not what these lawyers say it is. It's what you
19 remember. Okay? Thank you.

20 MR. ATWATER: Thank you, Your Honor.

21 Tim Rainey was -- was that his name? Tim? Tim
22 Rainey. Tim Rainey was out there that day doing
23 traffic control. That is inarguable. He testified
24 that he worked for a staffing company, but he was
25 out there that day with Stay Alert. So if I said he

1 was working for Stay Alert, that's what I heard.

2 Next we heard from Trooper Nix. Trooper Nix
3 talked to us about having done the airbag control
4 modules download, and this is when we started
5 getting into a lot of this MAIT testimony that gets
6 into all of this mechanical stuff about how they
7 went through a very lengthy investigation and used
8 complicated GPS technology and CAD -- I'm not even
9 sure what that stands for -- but some type of CAD
10 design software and everything to come up with this
11 little design that Mr. Sisler showed us up there on
12 the stand.

13 Again, I want you to keep in mind the
14 perspective, because that design that he made, as it
15 was given to us for evidentiary purposes, was about
16 six inches long in the MAIT report. And then when
17 you saw it up there blown up, up there, I'm sure it
18 was bigger than that. But what it was supposed to
19 represent was what the State has called thousands of
20 feet of highway.

21 So I want you to keep that in mind when you're
22 looking -- if you start thinking about that little
23 PDF that you saw up there, and you start looking up
24 about this not-in-evidence Google map exhibit that
25 we are trying to -- the MAIT Team was trying to do

1 within six inches. And the State is trying to,
2 within whatever that is, I'm not going to try guess
3 it, tell you what these distances were as they
4 relate to a 2,000 feet or more or less section of
5 highway and what goes on in that highway.

6 Now, this map here doesn't show you any what is
7 called relief. I'm going to tell you that term
8 means whether elevation of the highway goes up or
9 down in elevation. This doesn't show that. And I
10 can't even tell you whether this correctly shows
11 based upon it being blown up because -- if I get
12 this wrong, correct me, Mr. Cox -- but I'm sure this
13 was taken off the computer screen and then blown up
14 to make it big for this exhibit. And so it cannot
15 accurately show you how that highway curved, and it
16 does not even attempt to show you how that hill was.

17 So it was Trooper Nix who talked about getting
18 information from the airbag control modules to come
19 up with this MAIT report that they came up with, and
20 basically told you that from at least two of the
21 vehicles, they got nothing whatsoever from the
22 airbag control modules, so there's computer
23 technology for you.

24 I can tell you one thing that might explain why
25 that happened with George Adams' vehicle, but that

1 would only be speculation on my part, because if you
2 turn your car off, then it's not going to give you
3 any information.

4 MR. WAGONER: Objection.

5 THE COURT: Okay. Let me see the lawyers one
6 more time.

7 (Sidebar conference.)

8 MR. ATWATER: So all that testimony about the
9 airbag control modules, basically gave us no
10 information whatsoever, because what Trooper Nix
11 testified to was they went and downloaded it and
12 they didn't get any information, it didn't add or
13 subtract anything that he knew about the accident
14 whatsoever.

15 He did testify that he got some information
16 from the airbag control module for Mr. Hoover's
17 vehicle, and I've already discussed that with you.
18 That's relating to what Mr. Cox suggested or
19 speculated that Mr. Hoover might have taken his foot
20 off of the brake. And there ain't no evidence in
21 this case about that either whatsoever.

22 When Mr. Hoover was on the stand, I did ask
23 him, because I wanted you to know, you need to know,
24 that he and several other people related to this
25 accident are presently suing my client in civil

1 court, common pleas court. It's the same
2 courthouse, just civil, not criminal. And they're
3 suing my client over this wreck. And they will get
4 their day in court. They have an absolute right to
5 it and they'll get it. And that civil lawsuit has
6 mechanisms in them. One, Mr. Hoover testified to as
7 it related to him giving a deposition in that case,
8 in which he testified he had no recollection of the
9 wreck itself.

10 So that process is ongoing, started already, it
11 will continue, and no matter what the outcome of
12 this case is, will keep going on. They'll get their
13 day in court to get a civil remedy from this wreck.
14 But that's a different thing entirely than someone
15 going to prison --

16 MR. WAGONER: Objection.

17 MR. ATWATER: -- for being convicted of
18 reckless endangerment.

19 THE COURT: All right. I got another
20 objection. Let me see the lawyers over here.

21 (Sidebar conference.)

22 THE COURT: All right. If I could have the
23 jury's attention, I'm going to -- and also,
24 Bethanie, I'm going to strike the last sentence of
25 that, any prison, that is not for y'all to consider.

1 Thank you.

2 MR. ATWATER: Thank you, Your Honor.

3 As I was telling you, there is a civil
4 proceeding going on. This is not that. This is a
5 criminal proceeding, which is totally different,
6 completely different whatsoever. And one has
7 different juries, different evidence to be
8 considered, and different consequences.

9 So the bottom line is this: You've heard all
10 the evidence in this case. The people who
11 testified, that's evidence, what they said. You
12 have a right to believe what anybody says or not
13 believe what anybody says. If it doesn't make any
14 sense what one person said when you apply it to what
15 you see as evidence, or if it doesn't make sense
16 what one person said when you relied on what
17 somebody else said, you can reject it. You have a
18 right to reject the testimony of any witness in this
19 entire case whether they were designated an expert
20 or not, if you think that it didn't add anything to
21 what you need to know to come to a fair and just
22 determination in this case.

23 These pictures that you've been given in
24 evidence were not taken at the time of the accident.
25 They were taken hours later after the people on the

1 scene were closing up for the day, and they were
2 taken hours later after law enforcement had shown
3 up. They do not show the scene of this accident at
4 the time that the accident occurred.

5 Specifically State's Exhibit 5, when all these
6 other photographs were taken, this one was taken at
7 the same time. This one shows a vehicle, that is a
8 Stay Alert vehicle, sitting across the road blocking
9 the road from any traffic to be able to come to
10 where the scene of the accident was. Okay? That's
11 not what was existing at the time of this accident,
12 and neither are any of those other photographs.

13 Ladies and gentlemen of the jury, I thank you
14 for your time and I thank you for your attention, I
15 thank you for your duty. I ask that you take into
16 consideration all of the facts in this case as you
17 determine them to be based upon the evidence that
18 you heard from witnesses on that stand, based upon
19 the evidence that came into evidence as
20 demonstrative evidence or not demonstrative evidence
21 but was admitted into evidence, that you're allowed
22 to take back to your jury room and consider, ask
23 that you apply all of that evidence using your
24 common sense and knowledge in a deliberative process
25 where you work together to come to a conclusion in

1 this case, applying the law as Judge McCaslin gives
2 it to you. And I ask that you deliberate and return
3 a fair and true verdict. I am confident that when
4 you do that, justice will have been done, and I'm
5 asking that when you do that, you come to a
6 determination that there is not evidence in this
7 case that will firmly convince you beyond a
8 reasonable doubt that Bryan Powers was driving that
9 day in reckless disregard with the mental intent of
10 not caring whether he hurt anybody else or whether
11 he got hurt. Thank you.

12 THE COURT: Thank you, Mr. Atwater.

13 Mr. Wagoner.

14 MR. WAGONER: Yes, Your Honor. May it please
15 the Court?

16 THE COURT: Yes, sir.

17 MR. WAGONER: This is the State of South
18 Carolina's day in court. The State versus Bryan
19 Powers.

20 MR. ATWATER: Objection, Your Honor. This is
21 Bryan Powers day in court.

22 MR. WAGONER: It's the State's day in court as
23 well. I agree that it is Mr. Powers' day in court
24 as well.

25 THE COURT: It is both parties day in court.

1 This case is important to both sides. Let me make
2 that clear to the jury.

3 MR. WAGONER: Again, reckless vehicular
4 homicide, the State has to prove the defendant
5 operated a vehicle, that the defendant's operation
6 of the vehicle caused injury to the victim, Mildred
7 Smith, that the victim died as a proximate result of
8 the collision. It all comes down to the reckless
9 disregard for the safety of others, the reckless
10 indifference to the consequences of his actions,
11 conscious indifference to the rights and safety of
12 others.

13 Again, what was the testimony of Mack, Harley
14 Trimnal? If you recall, this was Pelion, that's
15 Batesburg. Harley was on the Batesburg side
16 beyond -- I think his testimony was actually he was
17 right near that first sign, the be prepared to stop.
18 There was stuff before that. He was presetting
19 signs. What did he say that meant? He was putting
20 the frames up. There was even more notice than the
21 2,000 feet. There's stuff beyond the be prepared to
22 stop.

23 Again, I'm not going to put it up there, that
24 diagram that he was talking about, that's State's 9.
25 You'll have a computer in there. You can review

1 that. What you'll see, and what Trooper Sisler
2 testified to, is that he took all the data points
3 that Trooper Nix got with the GPS thing, which was
4 more accurate within millimeters I think he
5 testified to was the system was more accurate than a
6 cell phone. Use that information to map the scene
7 create those diagrams. There was no markings before
8 the Silverado struck the Colorado. There were
9 markings after.

10 I submit to you that's the screech that George
11 Adams heard. Clinton Hoover didn't tell you he was
12 sitting there for ten, 15 minutes. What did Clinton
13 Hoover tell you? I remember leaving Shealy's, I
14 remember turning on to 178, I remember I was heading
15 east. It's about all I remember.

16 Look at the photographs, look at the evidence.
17 Again, it's clear the victim died as a proximate
18 result of this collision.

19 Again, you heard the qualifications of the
20 experts, you heard their trainings, you heard that
21 they'd been prior qualified to testify as an expert.
22 You heard the role of Sisler, what he did. You
23 heard the role of Calvin Rikard.

24 At the point of impact of the Silverado and the
25 Colorado, the minimum speed to cause that damage was

1 63 miles an hour. I submit to you really, does the
2 speed really matter in this case?

3 It's all about the visibility, all about the
4 visibility, all about the signage, all about this
5 line of sight. He was a reckless disregard from the
6 moment he passed not just one, but four signs.

7 It was Adams that said I been sitting there a
8 long time. A reasonable inference from the airbag
9 control module, which says that Clinton Hoover's
10 vehicle had his brake light activated I think it was
11 eight seconds prior, except for that one second
12 prior. That's a reasonable inference that you guys
13 can connect that he took his foot off the brake.

14 Perspective --

15 MR. ATWATER: Your Honor, I'm going to object
16 to that testimony as being speculative. There is
17 nothing in the testimony of any witness whatsoever,
18 there's nothing on the ACM, which says he took his
19 foot off the brake period.

20 MR. WAGONER: The way I termed it, it's a
21 reasonable inference they can make.

22 MR. ATWATER: And I'm calling it speculation.

23 THE COURT: I'm going to allow it. Go ahead.

24 MR. WAGONER: Perspective. We actually have
25 this perspective in this case. We have the

1 prospective. Yeah, this is demonstrative, we blew
2 this up. But you'll have this in your jury room,
3 smaller version, State's 3. This is the
4 prospective. This is the direction the defendant
5 was traveling. This is his line of sight. This is
6 what he missed. This is what he disregarded. All
7 the evidence points to one factor, that he acted in
8 reckless disregard for the safety of others. Look
9 at the CAD, make your own determination.

10 Beg the Court's indulgence.

11 He says he was coming down a hill. Look at the
12 evidence. What hill? What hill? They say that a
13 picture is worth a thousand words.

14 In this case, the evidence, the statement of
15 the defendant on the body cam, the CAD, and those
16 pictures as it relates to reckless vehicular
17 homicide, say but one word, one word, and that word
18 is guilty. Thank you.

19 THE COURT: Thank you, Mr. Wagoner.

20 Mr. Foreman, let me ask, because closing has
21 been a little long, do you need a quick break before
22 I charge the jury? It's going to take me about 20,
23 25 minutes to charge you. Want to see if anybody
24 needs a break before I go into that.

25 THE FOREPERSON: We're good.

1 THE COURT: Okay. All right.

2 Members of the jury, it is now my duty as the
3 trial judge to instruct you on the law applicable to
4 this case. And in that regard, it is your duty as
5 jurors to accept and apply the law as I now state it
6 to you. Furthermore, it is your exclusive duty to
7 decide all the issues of fact in this case, and to
8 determine the effect, value, weight, and truth of
9 the evidence. All the parties have the right to
10 expect that you will carefully consider and evaluate
11 the evidence and apply the law of this case to it,
12 so that in the end, all parties will receive a fair
13 and impartial trial.

14 The indictment charges the defendant with
15 reckless vehicular homicide. I remind you, that the
16 fact that the defendant was arrested, charged, and
17 indicted in this case is not evidence and cannot be
18 considered by you as evidence of guilt in this case,
19 nor does it create any presumption or inference of
20 guilt. This document, the indictment, is simply the
21 formal written instrument which contains the charge
22 made against the defendant. It is the formal
23 document by which this case is brought into this
24 court.

25 During this trial, you and I have separate

1 duties to perform. As a trial judge, it is my
2 responsibility to preside over the trial of this
3 case. And I also have the duty to rule on the
4 admissibility of the evidence offered during the
5 trial.

6 You are to consider only the competent evidence
7 before you. If there was any testimony ordered
8 stricken from the record in this case during the
9 trial, you must disregard that testimony. And I did
10 strike some testimony in the closing arguments.

11 You are to consider only the testimony which
12 has been presented from this witness stand, and any
13 exhibits which have been made part of the record in
14 this case.

15 I have the additional duty to charge you the
16 law on this case. As the presiding judge, I'm the
17 sole judge of the law in this case, and it is your
18 duty as jurors to accept and apply the law as I now
19 state it to you.

20 If you already have an idea as to what the law
21 is or what the law ought to be, and it does not
22 agree with what I now tell you, the law is you must
23 abandon this idea because you are sworn to accept
24 the law and apply the law exactly as I state it to
25 you.

1 In every case tried in this court before a
2 jury, the jury becomes the sole and exclusive judge
3 of the facts.

4 A trial judge cannot state, comment on, or make
5 any statement to a trial jury about the facts in
6 this case. Since you the jury are the sole judge of
7 the facts in this case, you are not to infer from
8 what I have said during the progress of this trial
9 in ruling upon the admissibility of evidence or
10 otherwise, or anything that I say now during the
11 course of this instruction to you that I have any
12 opinion about the facts in this case.

13 The law does not allow me to have an opinion
14 about the facts. This is a matter solely for you,
15 the jury, to determine.

16 As jurors, it is your duty to determine the
17 effect, value, and weight of the evidence presented
18 during this trial.

19 The defendant has pled not guilty to this
20 indictment, and that plea puts the burden on the
21 State to prove the defendant guilty.

22 A person charged with committing a criminal
23 offense in South Carolina, is never required to
24 prove himself innocent. I charge you that this is
25 an important rule of law; that the defendant in a

1 criminal trial, no matter what the seriousness of
2 the charge may be, will always be presumed to be
3 innocent of the crime for which the indictment was
4 issued, unless guilt has been proven by evidence
5 satisfying you of that guilt beyond a reasonable
6 doubt.

7 This presumption of innocence does not end when
8 you begin your deliberations, but it accompanies the
9 defendant throughout the trial until you reach a
10 verdict of guilt based on the evidence satisfying
11 you of that guilt beyond a reasonable doubt.

12 The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the
14 defendant, which remains with the defendant until it
15 has been stripped from the defendant by evidence
16 satisfying you of the defendant's guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is not a mere
19 legal theory. It is not just a legal phrase. It is
20 a substantial right to which every defendant is
21 entitled to, unless you the jury are satisfied from
22 the evidence of the defendant's guilt beyond a
23 reasonable doubt.

24 The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt. Some of

1 you may have served in civil cases where you were
2 told that it is only necessary to prove that a fact
3 is more likely true than not, such as the greater
4 weight or preponderance of the evidence.

5 In criminal cases, and this is a criminal case,
6 the State's proof must be more powerful than that.
7 It must be beyond a reasonable doubt.

8 Proof beyond a reasonable doubt, is proof that
9 leaves you firmly convinced of the defendant's
10 guilt. There are very few things in this world that
11 we know with absolute certainty. And in criminal
12 cases, the law does not require proof that overcomes
13 every possible doubt.

14 If based on your consideration of the evidence,
15 you are firmly convinced that the defendant is
16 guilty of the crime charged, you must find the
17 defendant guilty. If on the other hand, you think
18 there is a real possibility that the defendant is
19 not guilty, you must give the defendant the benefit
20 of the doubt and find him not guilty.

21 The following things are not evidence, and you
22 must not consider them as evidence in deciding the
23 facts of this case: Statements and arguments of the
24 attorneys, questions and objections of the
25 attorneys, and testimony that I instruct you to

1 disregard, these things are not evidence.

2 There are two types of evidence which are
3 generally presented during a trial, direct evidence
4 and circumstantial evidence.

5 Direct evidence proves the existence of a fact
6 and does not require deduction.

7 Circumstantial evidence is proof of a chain of
8 facts and circumstances indicating the existence of
9 a fact.

10 Crimes may be proven by circumstantial
11 evidence. The law makes no distinction between the
12 weight or value to be given to either direct or
13 circumstantial evidence.

14 However, to the extent the State relies on
15 circumstantial evidence, all of the circumstances
16 must be consistent with each other, and when taken
17 together point conclusively to the guilt of the
18 accused beyond a reasonable doubt. If the
19 circumstances merely portray the defendant's
20 behavior as suspicious, the proof has failed.

21 The State has the burden of proving the
22 defendant guilty beyond a reasonable doubt. This
23 burden rests with the State regardless of whether
24 the State relies on direct evidence, circumstantial
25 evidence, or some combination of the two.

1 You must also determine the credibility of
2 witnesses who have testified in this case.

3 Credibility simply means believability. It
4 becomes your duty as jurors to analyze and to
5 evaluate the evidence.

6 In determining the believability of witnesses
7 who have testified, you may believe one witness over
8 several witnesses, or several witnesses over one
9 witness. You may believe a part of the testimony of
10 a witness and reject the remaining part of the
11 testimony of that same witness. You may believe the
12 testimony of a witness in its entirety, or reject
13 the testimony of a witness in its entirety. You may
14 consider whether any witness has exhibited to you
15 any interest, bias, prejudice, or other motive in
16 this case. You may also consider the appearance and
17 manner of a witness while on the witness stand.

18 The rules of evidence, ordinarily, do not
19 permit witnesses to testify to opinions or
20 conclusions. An exception to this rule exists for
21 what we call expert witnesses, a witness who by
22 education and experience, has become an expert in
23 some art, science, or profession, in which the
24 witness claims to be an expert and may also state
25 the reasons for the opinion.

1 You should consider any expert opinion received
2 in evidence in this case, and like any other
3 evidence, give it the weight you think it deserves.
4 It you decide that the opinion of an expert witness
5 is not based on sufficient education and experience,
6 or if you conclude that the reasons given in support
7 of the opinion are not sound or that the opinion is
8 outweighed by other evidence, you may disregard the
9 opinion in its entirety.

10 An expert witness's testimony is to be given no
11 greater weight than that of other witnesses simply
12 because the witness is an expert. Further, you are
13 not required to accept an expert's opinion even
14 though it is not contradicted.

15 In order to establish criminal liability,
16 criminal intent is required. For example, the
17 mental state required to be proven by the State for
18 a particular crime might be purpose, intent,
19 knowledge, recklessness, or criminal negligence.

20 Criminal intent must be proven by the State
21 beyond a reasonable doubt. Criminal intent is
22 always a matter that must be determined by the jury
23 from the circumstances surrounding the situation.
24 There is no way to prove intent to a mathematical
25 certainty. There is no way medical science can

1 dissect a person's brain and determine what that
2 person had in mind. So the law says that criminal
3 intent may be inferred from the circumstances shown
4 to have existed. This is how you make a
5 determination of whether or not the element
6 requiring intent was present. It is not necessary
7 to establish intent by direct and positive evidence.
8 But intent may be established by inference in the
9 same way as any other fact by taking into
10 consideration the acts of the parties, and all the
11 facts and circumstances of the case.

12 Criminal intent is a mental state, a conscious
13 wrongdoing. It is up to you to determine what the
14 defendant intended to do based on the circumstances
15 shown to have existed.

16 Criminal intent can arise from action or a
17 failure to act. It may arise from negligence,
18 recklessness, or an indifference to duty, or to
19 consequences that is considered by law to be the
20 equivalent of criminal intent.

21 The defendant has raised the defense of
22 accident. An act may be excused on the grounds of
23 accident if it is shown that the act was
24 unintentional, that the defendant was acting
25 lawfully, and that reasonable care was used by the

1 defendant in the handling of the vehicle.

2 For example, if a person is lawfully armed in
3 self defense and the gun accidentally discharges, the
4 defense of accident would apply.

5 The burden is on the state to prove beyond a
6 reasonable doubt, that the act was not an accident,
7 but was caused by the reckless operation of the
8 motor vehicle by the defendant.

9 The defendant is charged with reckless
10 vehicular homicide. The State must first prove
11 beyond a reasonable doubt that the defendant was
12 operating a vehicle with reckless disregard for the
13 safety of others.

14 Reckless disregard for the safety of others
15 means an indifference to the consequences or results
16 of one's acts, a conscious indifference to the
17 rights and safety of others, or a conscious failure
18 to exercise ordinary care. Reckless disregard for
19 the safety of others is something more than mere
20 negligence or carelessness. The State must also
21 prove beyond a reasonable doubt that a person was
22 injured and died within three years of the date of
23 injury.

24 Finally, the State must prove beyond a
25 reasonable doubt that the injury to the victim from

1 the defendant's reckless operation, was the
2 proximate cause of the victim's death.

3 Proximate cause is the direct cause. It is the
4 immediate cause. It is the efficient cause. It is
5 that cause without which the death of the victim
6 would not have resulted.

7 There must be a chain of causation from the
8 time of the injury inflicted by the defendant, until
9 the time of the victim's death.

10 Proximate cause does not necessarily mean that
11 it occurred immediately prior to death. There may
12 be more than one proximate cause. The acts of two
13 or more persons may combine together to be a
14 proximate cause of the death of a person.

15 The defendant's act may be regarded as a
16 proximate cause if it is a contributing cause of the
17 death of the victim. The fact that other causes
18 also contribute to the death of the victim, does not
19 relieve the defendant from responsibility. The
20 defendant's act need not be the sole cause of the
21 death, but must be a proximate cause contributing to
22 the death of the victim.

23 I instruct you and emphasize, that the fact
24 that the defendant did not testify is not a factor
25 to be considered by you in any way in your

1 deliberations and in your consideration on the
2 question of the guilt or innocence of the defendant.
3 It must not be considered by you in any manner
4 whatsoever.

5 A defendant has the constitutional rights to
6 remain silent, and the assertion of this right must
7 not be considered by you in your deliberations.

8 I repeat, under your oath, you are to draw no
9 conclusion whatsoever from the fact that the
10 defendant in this case did not testify. The fact
11 that this defendant did not testify, should not even
12 be discussed in the jury room. The burden of proof
13 as I've stated before, is on the State. The
14 defendant is not required to prove his innocence.

15 The burden of proof remains on the State to
16 prove guilt beyond a reasonable doubt.

17 A verdict in this case cannot be based upon
18 sympathy, passion, prejudice, or emotion, or some
19 other consideration not found in the evidence.

20 Let me say something about your deliberations:

21 Deliberation is defined as a careful
22 consideration, weighing up with a view to decision.
23 The genius of our jury system, is that it allows 12
24 good men and women from 12 different backgrounds,
25 life experiences, and perspectives to consider the

1 evidence, talk about it, and ultimately reach a
2 verdict. We call them deliberations for a reason.

3 You are to consider the evidence in this case
4 carefully and deliberately, and discuss it in a
5 calm, thorough, and courteous manner. Remember, you
6 are not partisans or advocates for either side.
7 Favoring one side over the other. You are judges;
8 you're judges of the facts. Please listen to the
9 views of all your fellow jurors, consider other
10 people's points and points of view, and talk through
11 and discuss the evidence. And remember, if you are
12 doing something deliberately, you are not in a big
13 hurry, and you should not be in a hurry here. This
14 case is very important to both sides, and this is
15 their only day in court.

16 When you retire to the jury room, you should
17 discuss the case with your fellow jurors to reach an
18 agreement if you can do so. Your verdict must be
19 unanimous.

20 Each of you must decide the case for yourself.
21 But you should do so only after you have impartially
22 considered all the evidence, discussed it fully with
23 your other jurors, and listened to the views of your
24 fellow jurors. Do not be afraid to change your
25 opinion if the discussion persuades you that you

1 should. But do not come to a decision simply
2 because other jurors thinks it's right.

3 It is important that you attempt to reach a
4 unanimous verdict. But, of course, only if each of
5 you can do so after having made your own decision.
6 Do not change an honest belief about the weight and
7 effect of the evidence simply to reach a verdict.
8 In other words, do not change your opinion solely
9 for the sake of reaching a unanimous verdict.

10 There are two possible verdicts which you may
11 find in this case: Guilty or not guilty. There is
12 no significance whatsoever in the order in which I
13 state these possible verdicts. It's simply that one
14 must be stated first.

15 Ladies and gentlemen, your verdict must be
16 unanimous.

17 Mr. Foreperson, when the jury agrees on the
18 verdict, you will write the verdict on the verdict
19 form, sign and date the verdict form, then knock on
20 the jury room door and inform the bailiff you've
21 reached a verdict, and at that time I'll take you
22 back into the courtroom. I'm going to send you back
23 to the jury room, but do not start deliberations
24 yet.

25 I've got one announcement I need to make.

1 Ms. Washington, Juror No. 210, you are now
2 Juror No. 12. You will participate in the
3 deliberations.

4 JUROR NO. 12: Yes, ma'am.

5 THE COURT: The alternates, when the jury
6 begins to deliberate, you are not allowed. If
7 you'll wait out, the bailiff will put you out in the
8 hall and believe it or not, I'm going to come talk
9 to you.

10 We are going to gather up all the evidence.

11 Mr. Foreman, I don't want anybody discussing or
12 deliberating about this case until we bring you back
13 the evidence and the bailiff will let you know when
14 you can start. Okay?

15 If, Mr. Foreman, there are any questions,
16 please write them for me. They will find me and I
17 will -- we'll do our best to answer what you need.

18 With that said, thank you for paying attention
19 and I'm going to let you go back to your jury room.

20 (The jury exits the courtroom at 12:35 PM.)

21 THE COURT: Anything from the State?

22 MR. WAGONER: No exceptions from the State.

23 I did notice the part about the verdict form
24 when you were reading through it. It's been a while
25 since we did send an indictment back, I just noticed

1 that.

2 THE COURT: I saw it coming and so I just did
3 it by memory.

4 Any objection, Mr. Atwater?

5 MR. ATWATER: Your Honor, I listened carefully,
6 intently as far as I possibly could, followed along
7 with your reading and everything. It was my
8 observation that on page 2 of the jury charges, at
9 the end of line 4, where it starts and says if you
10 have any idea as to what the law is...

11 MR. WAGONER: I think that may be from
12 yesterday. I don't see that -- oh, okay. On the
13 second paragraph. Okay.

14 THE COURT: If you already have any idea what
15 the law is or what the law ought to be, it does not
16 agree with -- I'll tell you the law is you must
17 abandon this idea.

18 Did I skip that or something?

19 MR. ATWATER: You did.

20 MR. WAGONER: I didn't notice anything skipped.

21 THE COURT: Did I skip it? Can we look right
22 quick? It's going to be right when I started.

23 (Reporter clarified the record.)

24 MR. ATWATER: The only other thing, Your Honor,
25 and it's totally at your discretion, you told the

1 jury that you did strike some testimony.

2 THE COURT: That was in -- and I told them
3 closing.

4 MR. ATWATER: Yeah. I don't know if they need
5 to know have you tell them exactly that you struck
6 the word prison when I was saying that in closing,
7 and that it wasn't testimony that was stricken.

8 THE COURT: Well, it's not even evidence.

9 MR. ATWATER: That's my point, it's not
10 evidence.

11 THE COURT: It's not even evidence.

12 MR. ATWATER: I don't want them to think you
13 struck evidence, that's all.

14 THE COURT: That's right. If you want me to
15 clarify that with them, I will before they start
16 deliberations.

17 MR. WAGONER: Judge, the only thing I would
18 say, is if you do want to clarify that, I would just
19 say that if anything was stricken from the record
20 during closings, they're not to consider that and
21 don't use what was stricken.

22 THE COURT: Well, I think that I already told
23 them not to use anything that I said was struck.

24 MR. ATWATER: I think you said that as well,
25 Your Honor. I just don't want them to be confused

1 that it might have been evidence.

2 MR. WAGONER: I don't think you need to clarify
3 with them. However, if you do feel you need to
4 clarify it, I would just not -- I would ask that you
5 not --

6 THE COURT: Well, I told them closing is not
7 evidence, and that I struck -- and when I said the
8 part about striking, I said I struck something in
9 closing, and that they're not even supposed to
10 consider closing. I hate to --

11 MR. WAGONER: The only other question I have
12 for you, because I don't think I've tried a case
13 before you, do you send a copy back to the jury or
14 not?

15 MR. ATWATER: That was my question.

16 THE COURT: I do not. I do on occasion, but
17 only when the lawyers consent, and usually it's a
18 pretty complicated case. But --

19 MR. WAGONER: I don't think it's necessary, but
20 I don't have an objection.

21 MR. ATWATER: Well, that would resolve this,
22 Your Honor. As long as they don't have this back
23 there to read where it says if there was any
24 testimony --

25 MR. WAGONER: Then we won't. No problem.

1 MR. ATWATER: Because I don't want to confuse
2 them.

3 THE COURT: Okay. Well, I would never send
4 jury instructions back to the jury without consent
5 of the lawyers, I can promise you.

6 Then I think we'll just leave it as it is. I
7 think it's covered. I told them not to consider
8 closing. It's not evidence and that's where it was
9 struck. And I think both counsels agree.

10 MR. COX: I think so, Your Honor.

11 THE COURT: Okay.

12 MR. COX: I think we just reviewed the
13 evidence.

14 MR. WAGONER: I just reviewed evidence with
15 Mr. Atwater.

16 MR. COX: We have nine exhibits.

17 THE COURT: Right. That's what I have on my
18 sheet.

19 MR. WAGONER: Did he need to review the verdict
20 form?

21 THE COURT: Yes. Y'all need to review the
22 verdict form.

23 Now, do we have a blank computer to send --

24 MR. WAGONER: Yes. This is a court laptop that
25 has no internet access and nothing on it other than

1 the Adobe in order to play the exhibit, and also, I
2 think, VLCA, a video player, basically.

3 MR. ATWATER: Making reference to that code
4 section, do they have a copy of that code section?

5 THE COURT: No.

6 MR. ATWATER: I guess if they wanted, they
7 could ask for it.

8 THE COURT: I don't know that I've ever put a
9 code section in --

10 MR. ATWATER: I haven't seen it before either.

11 MR. COX: No, they were reading the law during
12 the jury charges.

13 THE COURT: Let's just take it out and we won't
14 worry about it.

15 Y'all have done a great job.

16 (Exhibits and verdict form taken to the jury).

17 THE COURT: All right. Y'all got cell phone
18 numbers that I can get in case somebody calls?

19 (Jury begins deliberations at 12:43 p.m.)

20 THE COURT: Okay. I got a note from the jury.
21 It says: "Please clarify the term reckless by law."
22 That's question number 1.

23 Number 2: "Is intent required as part of
24 reckless determination"?

25 So I'm going to make this Exhibit 2 as a Court

1 Exhibit. My gut instinct is to read them the
2 charge, because I think that's all I can do, the
3 general criminal intent charge that's required in
4 any criminal case is what we read them. I think I
5 need to read that again, along with the reckless
6 vehicular homicide charge, unless somebody's got
7 another idea.

8 (Court's Exhibit No. 2 marked for
9 identification.)

10 MR. WAGONER: That's kind of what -- my
11 suggestion was going to be that.

12 MR. ATWATER: Same here, Your Honor.

13 THE COURT: And do you want me to go all the
14 way through the reckless charge where -- to
15 proximate cause? You want me to read the whole
16 thing?

17 MR. WAGONER: If we may approach, I don't have
18 it in front of me right now.

19 (Sidebar conference.)

20 THE COURT: All right. For the record, there's
21 no objection. I'm going to read them the general
22 intent, and I'm going to read the portion of it
23 reckless vehicular homicide charge to them, with all
24 the elements, less the proximate cause. It sounds
25 to me like maybe they have that. I think we all

1 agree on that.

2 All right. With consent, that's what we're
3 going to do. Let's bring the jury in.

4 (The jury enters the courtroom at 2:03 PM.)

5 THE COURT: All right. Mr. Foreman, I've got
6 your note. And I cannot answer y'all's question on
7 my own. What I can do and will do is read you the
8 law on intent and the reckless vehicular homicide,
9 just those two charges in hopes that that will help
10 y'all. Okay? So listen carefully.

11 In order to establish criminal liability,
12 criminal intent is required. For example, the
13 mental state required to be proven by the State for
14 a particular crime might be purpose, intent,
15 knowledge, recklessness, or criminal negligence.

16 Criminal intent must be proven by the State
17 beyond a reasonable doubt. Criminal intent is
18 always a matter that must be determined by the jury
19 from the circumstances surrounding the situation.
20 There is no way to prove intent to a mathematical
21 certainty. There is no way medical science can
22 dissect a person's brain and determine what the
23 person had in mind. So the law says that criminal
24 intent may be inferred from the circumstances shown
25 to have existed. This is how you make a

1 determination of whether or not the element
2 requiring intent was present.

3 It is not necessary to establish intent by
4 direct and positive evidence. But intent may be
5 established by inference, in the same way as any
6 other fact by taking into consideration the acts of
7 the parties and all the facts and circumstances of
8 the case.

9 Criminal intent is a mental state, a conscious
10 wrongdoing. It is up to you to determine what the
11 defendant intended to do based on the circumstances
12 shown to have existed.

13 Criminal intent can arise from action or a
14 failure to act. It may arise from negligence,
15 recklessness, or an indifference to duty or to
16 consequences that is considered by the law to be the
17 equivalent of criminal intent.

18 The defendant is charged with reckless
19 vehicular homicide. The State must first prove
20 beyond a reasonable doubt that the defendant was
21 operating a vehicle with reckless disregard for the
22 safety of others.

23 Reckless disregard for the safety of others,
24 means an indifference to the consequences or results
25 of one's acts, a conscious indifference to the

1 rights and safety of others, or a conscious failure
2 to exercise ordinary care. Reckless disregard for
3 the safety of others, is something more than mere
4 negligence or carelessness.

5 The State must also prove beyond a reasonable
6 doubt that a person was injured and died within
7 three years of the date of injury. And finally, the
8 State must prove beyond a reasonable doubt that the
9 injury to the victim from the defendant's reckless
10 operation was the proximate cause of the victim's
11 death.

12 I hope that helps. I'm going to let you go
13 back, Mr. Foreman, and continue deliberating.

14 THE FOREPERSON: Yes, ma'am.

15 (The jury exits the courtroom at 2:08 PM.)

16 THE COURT: Anything from the State?

17 MR. WAGONER: Nothing from the State.

18 THE COURT: Anything from the defense?

19 MR. ATWATER: No, Your Honor.

20 THE COURT: I think that will help them. It's
21 nice to know that they're thinking.

22 (The jury enters the courtroom at 3:31 PM.)

23 THE COURT: All right. Mr. Foreman, has the
24 jury reached a verdict?

25 THE FOREPERSON: Yes, Your Honor.

1 THE COURT: If you could hand it to the
2 bailiff, please.

3 I think we filled out two because you got two
4 copies.

5 THE FOREPERSON: They gave me two, I didn't
6 know what to do.

7 THE COURT: You did well, there was only one
8 charge.

9 If the clerk could read the verdict, please.
10 Let me ask the defendant to stand.

11 THE CLERK: 2020-GS-32-382, the State versus
12 Bryan Christopher Powers.

13 As a reasonable doubt that Bryan Christopher
14 Powers committed the act of reckless vehicular
15 homicide, we the jury unanimously find guilty.

16 The State has proven beyond a reasonable doubt
17 that the defendant, Bryan Christopher Powers,
18 committed the act of reckless vehicular homicide,
19 and it is so signed by the Foreman McKissick,
20 February 9th, 2022.

21 Mr. Foreman, ladies and gentlemen of the jury,
22 if this so be your verdict, please indicate each of
23 you by raising your right hand.

24 All hands raised, Your Honor.

25 THE COURT: Thank you.

1 Anybody would like the jury polled, the State?

2 MR. WAGONER: Not from the State.

3 THE COURT: The defense?

4 MR. ATWATER: No, Your Honor.

5 THE COURT: Let me thank y'all for your
6 service, very much so.

7 Like I told you, the justice system doesn't
8 work without a jury. It's a must. I'm going to
9 excuse you, let you go back to your jury room. I
10 know me, I'll be down in a minute to come talk to
11 you and then I'll release you. Okay?

12 THE FOREPERSON: Yes, ma'am.

13 THE COURT: Thank you so much for your service.
14 Y'all paid attention. I was very impressed.

15 And, Mr. Foreman, we need you just a moment for
16 paperwork.

17 (The jury exits the courtroom at 3:33 PM.)

18 THE COURT: All right. Anything from the
19 State?

20 MR. WAGONER: Nothing from the State.

21 THE COURT: Anything from the defense?

22 MR. ATWATER: We'd just renew our motion for
23 a --

24 THE COURT: The directed verdict?

25 MR. ATWATER: Yes, Your Honor.

1 THE COURT: Absolutely, and so noted for
2 record.

3 Now, Mr. Atwater, I know that Mr. Powers'
4 family is not here. I do want to go into
5 sentencing, but I will give them time to get here.
6 I'm in the middle of another trial. I might call a
7 witness or two.

8 Will you notify me when his family appears?

9 MR. ATWATER: Yes, ma'am. I've already
10 notified them and they're coming.

11 MR. WAGONER: Judge, I do have one matter. It
12 does not have to do with the verdict, though, Your
13 Honor.

14 With this being a direct presentment, I will
15 have an order for you to sign to ensure that he does
16 get fingerprinted on this charge. This is one where
17 when we served the direct presentment indictment in
18 front of Judge Newman, he gave a PR bond, but did
19 not require him to be booked. I'll have something
20 for you to sign.

21 THE COURT: Okay. That will be fine. That
22 seems like that happens sometimes, it's rather
23 common.

24 How long do you think it will take them to get
25 here, Mr. Atwater?

1 MR. ATWATER: About 25 minutes, Your Honor.

2 THE COURT: All right. I'm going to go
3 downstairs and release the jury if there's no
4 objection.

5 MR. WAGONER: No objection from the State as to
6 the jury in State v. Bryan Powers.

7 THE COURT: Right. Thank you. I'm going to do
8 that and I'm going to get Angela's group back in
9 here and call my first witness. Let me see how long
10 that witness is going to be.

11 MR. WAGONER: If I may approach?

12 THE COURT: Yes.

13 MR. WAGONER: And what I'm handing up is the
14 order that I was discussing. Some of the things may
15 need to be handwritten in, because I did not want to
16 be presumptuous, a sentencing sheet, also the
17 driver's license form.

18 THE COURT: Did you show this to Mr. Atwater?

19 MR. ATWATER: Yes.

20 THE COURT: And you're okay with the finger?

21 MR. ATWATER: Yes, Your Honor.

22 MR. WAGONER: I'd just ask that you add the
23 date. Again, I did not fill in all of the
24 information.

25 THE COURT: All right. Can you get me Angela

1 right quick? I want to know how long her witness is
2 going to be, on whether I want to take a break and
3 give Mr. Atwater time to talk to his client and to
4 make sure that Mr. Powers' family is here.

5 MR. WAGONER: Absolutely.

6 THE COURT: Because I might could tell her to
7 take a break and we'll start back at about 4:15.

8 (Recess taken)

9 THE COURT: Let me ask right quick, is he on
10 probation, Mr. Atwater?

11 MR. ATWATER: No, Your Honor.

12 THE COURT: No?

13 MR. ATWATER: No, Your Honor.

14 THE COURT: What happened to the burg second in
15 2020?

16 MR. WAGONER: Judge, did you need his record
17 now?

18 It's my understanding that he has a 2020
19 burglary conviction where he had five years,
20 suspended to 18 months probation PTUP. Then in
21 January of 2021, he pled, I believe, it was a guilty
22 plea, I apologize, to a burglary second nonviolent
23 and a domestic violence second degree in Kershaw
24 County. That is what that PSI is for.

25 THE COURT: Are those still pending?

1 MR. WAGONER: He was sentenced on that, on the
2 burglary second degree, the domestic violence second
3 degree, in Kershaw County, I'm showing April 22nd of
4 2021. I would assume that the probation matter
5 would have been handled at that sentencing.

6 MR. ATWATER: That's all true, Your Honor.
7 He's serving on that sentence now. This report was
8 considered by Judge Benjamin at that sentence,
9 because I spoke to this --

10 THE COURT: I gotcha. So the probation
11 violation was already handled when he picked up the
12 burg second and the DV second?

13 MR. ATWATER: It was already done and over
14 with.

15 THE COURT: Done.

16 MR. WAGONER: And, Judge, it would be the
17 State's contention that it not necessarily was
18 followed, the PSI, because the victims were never a
19 part of that. There was no victim impact. They've
20 never been able to address the judge, to Your Honor,
21 or any judge. They are prepared to do that today.

22 THE COURT: Okay.

23 MR. WAGONER: And I'm no problem still waiting.

24 THE COURT: Y'all explain to me what was the
25 sentence on 4/22/21?

1 MR. WAGONER: 4/22/21, I believe he got a
2 four-year sentence on the burglary, and a three-year
3 sentence on the domestic violence to run concurrent.
4 I do have a certified copy of those.

5 THE COURT: So is that what he's serving time
6 on now?

7 MR. ATWATER: That is correct. That is my
8 understanding.

9 THE COURT: So he's at the Department of
10 Corrections?

11 MR. ATWATER: Yes, Your Honor.

12 THE COURT: All right. I just didn't realize
13 that.

14 All right. Let me ask you one more question.
15 I just want to make sure I'm informed and I know
16 what's going on here. The burg second and the CDV,
17 the criminal domestic violence, those occurred --

18 MR. WAGONER: After this incident.

19 THE COURT: After this incident?

20 MR. WAGONER: Yes, Your Honor.

21 MR. ATWATER: That's correct, Your Honor. And
22 if you want anymore facts related to the burg second
23 or anything --

24 MR. WAGONER: And the Kershaw County charges
25 happened after this incident. There was a pending

1 burglary out of Bishopville at the time of this
2 incident, subsequent conviction in 2021.

3 THE COURT: And what happened to that charge?

4 MR. WAGONER: That was the five years suspended
5 to 18 months probation PTUP, and I believe that the
6 violation would've been taken care of in Kershaw
7 County.

8 MR. ATWATER: It was, on the PTUP.

9 THE COURT: So all these happened while he was
10 on probation for this charge -- I mean, bond?

11 MR. WAGONER: Your Honor, it appears that the
12 burglary from Bishopville, the arrest date on that
13 was April 18th of 2019. So he was on bond for that
14 when this incident occurred. Subsequent to this
15 incident, he had a May 24th, 2020 arrest for a
16 domestic violence, that's in Kershaw County, and a
17 July 10th, 2020, arrest for burglary out of Kershaw
18 County.

19 THE COURT: So to answer my question, he was on
20 bond for --

21 MR. WAGONER: He was on bond for --

22 THE COURT: For at least two of them?

23 MR. WAGONER: Yes.

24 THE COURT: When this incident occurred?

25 MR. WAGONER: Correct.

1 MR. ATWATER: For the DV in Kershaw County and
2 for the burglary. He was trying to recover his
3 tools from his boss's office, yes, Your Honor.

4 THE COURT: And let me ask, Mr. Atwater, have
5 you read this presentence investigation report?

6 MR. ATWATER: I looked over it fairly quickly,
7 Your Honor. At the time this was being done, he was
8 being represented by the public defender over in
9 Kershaw County. But I was in contact several times
10 with his probation officer, because I was trying to
11 get him information related to it. And he just kept
12 telling me he didn't want anything from me
13 whatsoever. He was going to contact the Solicitor's
14 office and get the information about this case. And
15 I told him that this didn't have anything to do with
16 that over there.

17 But Judge Benjamin, by the comments that were
18 made and everything like that, took this into great
19 consideration into his sentencing over there.

20 THE COURT: Okay.

21 MR. WAGONER: And, Judge, just for the record,
22 I don't know the exact date, there was a time where
23 I was reached out to by a member of Triple P, which
24 is the Probation Department and Parole. I called
25 that agent, I assume, the agent that wrote that

1 report. I was asked about this case. I told them
2 he -- the charge is a reckless vehicular homicide,
3 it carries ten years. He asked for more facts, I
4 said this case is a reckless vehicular homicide,
5 it's a pending case, it carries the maximum of ten
6 years, that's all I will answer.

7 MR. ATWATER: But, Your Honor, for the Court's
8 edification and for the State, I do know where he
9 got this, what he calls the official version of this
10 from, he actually got a copy of the MAIT report.

11 THE COURT: Okay. I see they're recommending
12 seven years for him.

13 MR. WAGONER: And, Judge, again, that
14 recommendation was made without any input --

15 THE COURT: Victim input. I got it. I got it.

16 Somebody want to check the kiosk and see if his
17 grandmother has come in yet, because I'm ready to
18 go.

19 MR. WAGONER: And, Judge, just for clarity, I
20 believe, again, even though it's the header of the
21 subject on the PSI does say this particular case,
22 the recommendation would have been for the seven
23 years on a burglary that he got four years --

24 THE COURT: On the burglary and the DV?

25 MR. ATWATER: Yes, Your Honor.

1 MR. WAGONER: Yes.

2 MR. ATWATER: That recommendation was related
3 to the Kershaw charges, not for this case
4 whatsoever. But the strongly recommended it,
5 because you can see there's no other information on
6 here about those other charges. They wrote all this
7 to the judge, and then said we think he needs to be
8 held liable for this, that's what it says at the
9 bottom, and then recommended seven years taking all
10 this into consideration.

11 THE COURT: And he's doing four years now?

12 MR. ATWATER: Yes, Your Honor.

13 THE COURT: And how much time -- he's done
14 almost a year on that time?

15 MR. ATWATER: Yes, Your Honor. Plus he's got
16 53 days --

17 THE COURT: On this charge?

18 MR. ATWATER: Well --

19 MR. WAGONER: We were consenting, because there
20 was a -- and I don't want to get too far in the
21 weeds on this, there was another charge that
22 eventually -- that he did serve some time on related
23 to this incident, when the direct presentment was
24 made -- do you mind?

25 MR. ATWATER: No. Go ahead.

1 MR. WAGONER: Okay. Originally, what did not
2 come out at trial, purposely, there was a drug
3 recognition expert called in who originally was
4 charged with felony DUI causing death.

5 THE COURT: That's what he was charged with?

6 MR. WAGONER: Originally. The blood sample
7 went to SLED. While his medical records did show
8 positive drug screen for opiates, the SLED draw, the
9 law enforcement draw, did not come back with
10 anything usable in that analysis. Therefore, that
11 is why we consented to a PR bond, I believe, within
12 a day or two after I got the report. That would
13 have been after about 53 days that he served on that
14 felony DUI. And then I think it was February 25th
15 of 2020, is when the direct presentment was served
16 on him in front of Judge Newman.

17 THE COURT: And then you reduced the felony DUI
18 to a vehicular homicide?

19 MR. WAGONER: Because it's not a lesser
20 included, we do it as a straight indictment, yes.

21 THE COURT: And, therefore, that's why he got
22 the PR bond and I'm signing this order?

23 MR. WAGONER: Correct.

24 THE COURT: All right. I got it.

25 MR. ATWATER: He, originally, when he was

1 indicted for the felony DUI, got no bond. And then
2 I came in and asked for one and then -- that -- I
3 think he got \$150,000 secured.

4 MR. WAGONER: I believe there was a hearing
5 before Judge McLeod, he denied bond. However, as
6 soon as the SLED came back, I contacted Mr. Atwater.
7 We did a -- I don't even know if I had him sign a
8 consent order. I did -- I let him know I was
9 getting with the judge to have him ordered on a PR
10 bond to allow him not to stay in there on a felony
11 DUI.

12 THE COURT: All right. So just --

13 MR. ATWATER: Your Honor, I just want to make
14 one comment on the -- as it relates to the SLED
15 report and the hospital report.

16 The hospital report came back related to the
17 opiates, because he had been give a pain killer, and
18 that was on a blood test that the hospital took
19 separately from what the SLED. What the SLED came
20 back with 0.0 for any alcohol, any opiates, any
21 Benzodiazepine, anything they looked for, it came
22 back 0.0.

23 THE COURT: Okay. Did I see any of the family
24 members come in?

25 MR. WAGONER: Not on the defense side. Sorry.

1 THE COURT: All right. I'm going to tell you,
2 Mr. Atwater, I'm ready. Is his father here?

3 MR. ATWATER: He went outside to smoke, Your
4 Honor, but I can go get him.

5 THE COURT: All right. If you'll check right
6 quick, I'm ready to go forward.

7 MR. WAGONER: Judge, we'll have two speakers.
8 I'll have them come to the podium.

9 THE COURT: Okay. I'd rather get started on
10 that as soon as Mr. Atwater get back, and then hear
11 from these victims. They've waited a long time to
12 tell me what they want to tell me.

13 MR. WAGONER: Your Honor, the other family
14 members have just come through the kiosk and are on
15 their way up.

16 THE COURT: Great. The other family members
17 are on their way up.

18 But at least I have the record clear, the
19 presentence report clear, and I understand where I
20 am.

21 Now, Mr. Wagoner, let me ask you one question.
22 Is this something I can run concurrent, or does it
23 have to be consecutive?

24 MR. WAGONER: Again --

25 THE COURT: Or is it my discretion?

1 MR. WAGONER: Can we wait for Mr. Atwater on
2 that? I'm sorry. It's because it deals with
3 sentencing, I don't feel comfortable answering that
4 in his absence.

5 THE COURT: All right. Mr. Atwater, let me ask
6 you one quick question.

7 MR. ATWATER: Yes, Your Honor.

8 THE COURT: Is this something in sentencing
9 since he's serving time at the Department of
10 Corrections right now, is this something that I'm
11 allowed to run concurrent, do I have to run it
12 consecutive, or is it in my discretion?

13 MR. ATWATER: I believe you can run it
14 concurrent, Your Honor.

15 THE COURT: Okay.

16 MR. WAGONER: Judge, it is in your discretion.
17 Again, you asked that question while he was absent
18 and I did not want to answer that.

19 THE COURT: I just wanted to make sure before
20 we get started.

21 Now, let me tell you, before we get started, I
22 know I've got family members here, I know it's a
23 very sensitive case, I know there's a loss in this
24 case, but I don't want any outbursts or anything
25 like that. So if you feel like you must, then I'm

1 going to ask you to go outside. Okay?

2 Everybody understand? Everybody over here
3 understand? Okay.

4 All right. Tell me about it, Mr. Wagoner.

5 MR. WAGONER: And, Judge, obviously you've sat
6 through the trial, so you heard the facts. I will
7 not rehash those.

8 THE COURT: Thank you.

9 MR. WAGONER: As for prior record, in addition
10 to what we'd already -- well, since his parents are
11 here, I'll go through the entire record.

12 THE COURT: Please.

13 MR. WAGONER: 2005, he has a simple possession
14 of marijuana. When this offense occurred, he was
15 out on bond for a burglary second degree out of
16 Bishopville. That arrest was, I think, in April of
17 2019.

18 In 2020, he was convicted of that burglary
19 second degree nonviolent, received five years
20 suspended to 18 months' probation with a PTUP
21 provision.

22 On May 24th, 2020, he has an arrest for
23 domestic violence out of Kershaw County.

24 On July 10th of 2020, he has an arrest for
25 burglary second nonviolent out of Kershaw County.

1 In 2021, it appears that he appeared before
2 Judge Benjamin, pled guilty in Kershaw County to a
3 burglary second, nonviolent, and the domestic
4 violence second degree.

5 A PSI, presentence investigation was ordered.
6 That is before you, Your Honor. Again, that was not
7 part of this particular case.

8 He was then sentenced on April 22nd, '21, on
9 that burglary and domestic violence out of Kershaw
10 County to four years on the burglary, three years on
11 the domestic violence second degree to run
12 concurrently, and that's where he's currently
13 located.

14 Your Honor, we have two members of the victim's
15 family that would like to address you.

16 If you'll come on up.

17 MS. SMITH: Yes, Your Honor. My name is Alicia
18 Smith, S-M-I-T-H.

19 THE COURT: Thank you for coming, Ms. Smith.

20 MS. SMITH: Thank you for y'all's work.

21 I'm here for my grandmother, Mildred Smith.
22 She was a hard worker, she worked all of her life
23 starting in the service, as she called it, and then
24 she went to Alide, which everybody kind of knows
25 from around here. She raised her babies, and then

1 she turned around and helped raise me and my
2 brothers, and she was working on her third
3 generation, my nieces and nephews, when this
4 unfortunately happened.

5 And I just wanted to say that she didn't
6 deserve this. This was her twilight time. She was
7 still in really good health. She should be
8 surrounded by her family, a lot of people that loved
9 her.

10 She had a really special relationship with one
11 of my nephews who is autistic. She wasn't just his
12 caregiver, she was his best friend too. And he's
13 taking this really, really hard. He has a -- we
14 made a granny doll for him out of some of her
15 clothing, and he carries that with him and talks
16 about it all the time, and just doesn't understand
17 why she's not here.

18 I just wanted to say that -- that you would
19 take that into consideration; that even though she
20 was towards her golden years, that she still had a
21 lot of good time left.

22 THE COURT: Tell me, how old was she?

23 MS. SMITH: She was 79 when she passed. She
24 had had a long life that she had worked hard, and
25 this was the part where she should've been enjoying

1 it.

2 She was really our backbone for our family. My
3 mother died when I was 20, so she really stepped up
4 for my brothers and I. She was our last living
5 grandparent, so she kind of fulfilled that roll of a
6 grandparent for the next generation too, because
7 otherwise we wouldn't know anyone from that side of
8 the family. And she did her best to try to stay out
9 of everyone's business and do no harm to anyone
10 else. She just was a good old girl, a country girl
11 from Pelion, so...

12 THE COURT: Well, I'm so sorry for your loss.
13 I'll tell you, grandparents are special people.

14 MS. SMITH: They really are.

15 THE COURT: No doubt about it. I just became a
16 grandmother.

17 MS. SMITH: Well, congratulations.

18 THE COURT: I hate it for you. I really do. I
19 hope this puts some closure.

20 MS. SMITH: That's what I'm hoping too for us.
21 It got dragged out so long, I think it was a little
22 hard for us in terms of moving forward.

23 She was so close to home, she almost made it,
24 but hopefully today will be a little bit more
25 closure for us as a family.

1 THE COURT: Thank you so much, Ms. Smith, for
2 coming, and I certainly will take it into
3 consideration.

4 MS. SMITH: Thank you.

5 MR. SMITH: Tyson Smith. The three people in
6 the accident, in the truck, were my uncle and both
7 my aunts. And the aunt that was in the passenger's
8 seat, she was kind of like my mom, or is, you know.

9 And she went from taking care of my kids -- I
10 have infants and a two- and a three-year-old at the
11 time. She went from doing all her own stuff, taking
12 care of herself, she just recently retired, and she
13 went from taking care of them to me taking care of
14 her with her injuries she sustained from the wreck.
15 So I'm taking care of her, changing her diapers,
16 taking care of her housely duties, her finances. I
17 just want to let you know about that.

18 And Aunt Tootsy, Mildred, she was at my house
19 the afternoon before. We were a real close family.
20 We all hang out, and she was there, you know, and
21 she's not there for my kids anymore, my nephews.

22 And Clint, he was touch and go for a while, and
23 then after he gets out of the hospital, he had a
24 severe brain bleed, and they had to remove part of
25 his skull, and we thought we were going to lose him

1 as well, but, you know, he's doing way better, but
2 he's still not the same person. Neither one of them
3 are the same person.

4 Our families are effected now and will be
5 affected tremendously forever just because of the
6 poor choices one person made, you know, and I don't
7 know what else to say about that. Just got to think
8 about what you do before you do it. There's always
9 an outcome.

10 THE COURT: Right. Thank you so much for
11 coming.

12 MR. SMITH: Yes, ma'am.

13 MR. WAGONER: And, Judge, just in conclusion,
14 on behalf of the State and on behalf of the family
15 involved in this -- and Clinton Hoover had had some
16 medical appointments today, that's why he could not
17 be here today.

18 THE COURT: Now, that was the brother of
19 Ms. Mildred that testified, right?

20 MR. WAGONER: Correct. But on behalf of the
21 family and behalf of the State, we'd like to thank
22 the jury for their verdict.

23 THE COURT: Do you want to speak as to
24 sentencing?

25 MR. WAGONER: Judge, I believe the victims have

1 said their peace. We ask that you construct a
2 sentence that is appropriate in this particular
3 case.

4 THE COURT: Thank you.

5 I'll be glad to hear from you, Mr. Atwater.

6 MR. ATWATER: Thank you, Your Honor.

7 May it please the Court? You heard all the
8 facts and evidence in this case. And, again, just
9 the same as Todd said, I don't think I need to
10 reiterate them whatsoever.

11 Bryan had been going to work that day and he
12 was coming home from work, and the evidence is what
13 it is. I've represented him since, I think, the day
14 after this wreck. And we met several times before
15 we even went to the first bond hearing, and I have
16 never had one instance when we didn't sit down and
17 talk about this case. When anytime I started
18 talking about Ms. Smith, he'd just lose it and get
19 tearful.

20 As a matter of fact, at his bond hearing, and
21 Todd was there, he couldn't even hold his head up
22 for sobbing as hard as he was.

23 He didn't intend -- I mean, obviously it's not
24 murder. He didn't intend to do this. But it's a
25 tragic, tragic loss as Miss Mildred Smith died.

1 She was -- I stood up here when we were asking
2 for his bond and spoke about her, because the very
3 day we were coming up here for his bond hearing
4 after we had had the SLED report you had talked
5 about, we had this thing that came out in the
6 newspaper.

7 And it wasn't her funeral, but they were going
8 to be holding a memorial for her at this social club
9 that she belonged to. It was a very beautiful
10 thing, and I had talked to Bryan about it, and we
11 had talked about it to the judge and everything like
12 that. And at that point in time, Bryan told the
13 family that he was very, very, very sorry, and he
14 would say that again today. He's never intended to
15 take anybody's life whatsoever. It's not in his
16 nature to do that.

17 Your Honor, Bryan has three daughters. They're
18 ten, eight, and four years old. They're Breanna,
19 Zoe and Tassy, and they're presently in foster care.

20 I was involved in that case for a while until I
21 got Bryan out of the case completely. He's not a
22 part of that case whatsoever, but he can't obviously
23 do anything to see his children or help his children
24 or support his daughters while he's incarcerated.
25 And that was what his sole mission was at the time.

1 He was working before, and everything went to his
2 daughters.

3 There was a charge of DV related that you heard
4 about. And I will tell you, Bryan had these three
5 young girls. The oldest one, Breanna, 10-year-old
6 who has autism, who is just a precious girl, loves
7 her father. All of them do.

8 At the time he had all three of these girls
9 with a girl named Jessica Wagon. They were never
10 married. Actually, at one point in time at the
11 beginning of this, she asked me to perform that, but
12 he got incarcerated. So at the time, Your Honor, he
13 was working every single day.

14 Presently, you know that he's incarcerated. In
15 his present sentence, he's working seven days a
16 week. All of his reports over there are very good.

17 When he goes -- whenever he has any opportunity
18 to go back into the community, Your Honor, he has a
19 guaranteed job waiting for him in plumbing. He's a
20 master plumber. He has a place to stay in the
21 county, and he has, as you've been able to tell and
22 will be able to tell, he has very strong family
23 support. Bryan is a lifelong resident of Lexington
24 County.

25 Your Honor, I would like to ask his father,

1 Ricky Powers, to come up.

2 THE COURT: I've noticed they've been here
3 throughout the trial.

4 MR. ATWATER: And, again, Your Honor, on behalf
5 of the family, every one of these was present. As
6 you heard Ms. Kirby testify to, she was actually at
7 the scene there on the day that this happened. And
8 when she learned about the fatality involved and
9 everything, she -- I've met with all three of them
10 and it has torn them apart.

11 MR. POWERS: May I say something to the family?

12 THE COURT: Well, tell me who you are first.

13 MR. POWERS: My name is Ricky Powers. I am
14 Bryan's father.

15 THE COURT: Okay. Probably no need for you to
16 look at them. You just look and talk to me.

17 MR. POWERS: I'd like to give my sincere
18 apologies. We never dreamed anything like this
19 could happen. I know Bryan didn't intend on doing
20 it, but I can't change it. All I can do is just
21 give my support and hope and pray that they can move
22 forward. I know it's difficult. And if there's
23 anything I can do for the family, I'm happy to do
24 it. Like I said, Bryan can stay with me when he
25 gets out. Very good support.

1 My main concern right now is those children.
2 We've been trying to get them out of foster care and
3 they won't let us because of the mother. And the
4 only person who can do it is Bryan. I don't have
5 anything else to say.

6 THE COURT: Well, thank you for coming.
7 Anybody else, Mr. Atwater?

8 MR. ATWATER: Your Honor, this is Crystal,
9 Bryan's mother.

10 THE COURT: You can state your full name for
11 the court reporter, please.

12 MS. HOWARD: My name is Crystal Howard. I'm
13 Bryan Powers' mother.

14 First of all, I'd like to say very much
15 condolences to the family for what had happened.
16 Like it's also been said, this was an accident, a
17 very sad accident. He did not intend on coming home
18 that day for anything like this to happen. And I
19 just ask for your leniency on him when you do
20 sentencing. He's had a hard time, and I would love
21 for him to come home soon so he can be with us and
22 be with his grandchildren.

23 And, again, my deepest condolences to the
24 victim's family. Thank you.

25 MR. ATWATER: Your Honor, I believe she meant

1 her grandchildren, his daughters.

2 THE COURT: Right.

3 MR. ATWATER: And, Your Honor, this is Lilah
4 Kirby. You heard from her earlier today.

5 THE COURT: I did, the grandmother.

6 MR. ATWATER: Bryan's paternal grandmother.

7 THE COURT: Right. And he lived next door.

8 MR. ATWATER: Yes, ma'am.

9 THE COURT: I remember.

10 Yes, ma'am. I'd be glad to hear from you.

11 MS. KIRBY: My name is Lilah Kirby. Your
12 Honor, I'm his grandmother. And my heartfelt
13 sympathy goes to the family. If it was my sister,
14 you'd probably just have to go ahead and put me in
15 there with her, because I couldn't live without her.

16 But like they said, Bryan has three beautiful
17 girls, and they need their daddy. So, you know, I
18 just ask you to be, you know...

19 THE COURT: Thank you, Ms. Kirby.

20 Anything else, Mr. Atwater?

21 MR. ATWATER: Your Honor, Bryan would like to
22 be heard.

23 THE COURT: It would be your time. Come
24 around, Mr. Powers.

25 THE DEFENDANT: I'd like to give my condolences

1 to the family. I never meant anything like this to
2 happen. I was trying to get home to my family. And
3 I had a little rough patch trying to accept
4 responsibility for that and move on with my life.
5 And if you, please, have some leniency so I can get
6 back to my family, I would very much appreciate it.

7 THE COURT: Thank you, Mr. Powers.

8 MR. ATWATER: Your Honor, I did want to state,
9 just because of the nature of our justice system,
10 and when you have a prosecutor, you have a defense
11 attorney and that type of thing, I did hear when the
12 family was talking about how painful it's been
13 because of how long this has been drawn out.

14 And, obviously, there could be some, you know,
15 concern or blame on the defense attorney or
16 something like that. And I just want them to
17 understand that, you know, I have a duty, and it's
18 my responsibility to make sure that we get here and
19 make sure that everything gets done right, so when
20 justice is served, justice is served properly. And
21 it does not say anything whatsoever about how I feel
22 about the loss of Ms. Smith, because I think I've
23 made that clear at every hearing I've come to.

24 THE COURT: Right. Well, you know, I'll just
25 tell everybody, the justice system does move slow.

1 And with COVID, it has been a nightmare. It's not
2 the prosecutor's fault; it's not the defense
3 lawyer's fault. We are so backlogged in cases
4 because of COVID, that I'm trying them back to back.
5 It's nobody's fault at all.

6 And I don't believe that this family would
7 think that. I think they probably just miss their
8 grandmother, you know. So it's always a sad case
9 when somebody ends up passing away.

10 Come up here, Mr. Powers.

11 MR. ATWATER: Your Honor, I will say that when
12 Bryan is back in the community, I will be assisting
13 him every way I can to get him reunited with his
14 daughters.

15 THE COURT: Well, good. You know, Mr. Powers,
16 it looks like you got great family support. I did
17 read some things that concerned me in this
18 presentencing report, but that's neither here nor
19 there, and probably not for today.

20 I'm just going to tell you that you're lucky
21 you didn't kill two other people and maybe yourself.
22 You know, in my head, 2,000 feet is a long way to
23 go, and it's just sad and it's senseless. I don't
24 think it's something that you got up in the morning
25 and intended to do. It's just what it is; it's

1 reckless. And you endangered somebody else and, in
2 fact, you killed somebody else. And I really think
3 you're lucky it wasn't you and the other two people
4 that were in that truck.

5 MR. ATWATER: Your Honor, if you're willing to
6 consider as part of his sentencing, if he could
7 serve time in the community and serve it that way
8 under intensive supervision or anything like that,
9 we --

10 THE COURT: I'm not even going to give him
11 probation. I'm not going to put him on probation.
12 I'm just going to give him a straight sentence.
13 He's already serving four at the Department of
14 Corrections. I don't see any need to do that.

15 And I'm looking at Judge Benjamin's sentencing
16 sheet. She's got him with ATU before he gets out,
17 that he's got to serve on that.

18 Just going to tell you -- how many days did he
19 serve?

20 MR. ATWATER: On the felony DUI, Your Honor?

21 THE COURT: Uh-huh.

22 MR. ATWATER: 53.

23 MR. WAGONER: And, Judge, we do consent to that
24 53 days' credit because of that pretrial
25 incarceration we discussed.

1 All right. Anything else from the State?

2 MR. WAGONER: Nothing from the State, Your
3 Honor.

4 THE COURT: Anything else from the defense?

5 MR. WAGONER: No, Your Honor.

6 THE COURT: All right. Mr. Powers, I hope you
7 change your life around. I hope you get out, take
8 care of your girls; probably what you need to do. I
9 hope your family stands by you and helps you get
10 where you need to be.

11 Sentence of the Court is that you be committed
12 to the State Department of Corrections for a period
13 of eight years. I will run that concurrent with
14 what you're doing now.

15 MR. ATWATER: Thank you, Your Honor.

16 THE COURT: Thank you.

17 Let me also speak to the lawyers. I want to
18 commend both of y'all for being professional, being
19 ethical. I think both sides have done a great job.
20 Makes my life a whole lot easier when I got good
21 lawyers. And both of y'all did an excellent job for
22 your clients.

23 MR. WAGONER: Thank you, Your Honor.

24 THE COURT: And your client being the State,
25 Mr. Wagoner.

1 MR. ATWATER: Thank you, Judge.

2 -- END OF TRANSCRIPT OF PROCEEDINGS --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 7th, 8th, 9th of February, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 22, 2022

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

DOCKET NO. 2020GS3200382

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2020

THE STATE

vs.

Bryan Christopher Powers

CDR #: 3097

Indictment for

Reckless Vehicular Homicide

§ 56-05-2910

S.R. Hubbard III, SOLICITOR

WITNESSES

S.C. Highway Patrol Headquarters

Adam H Crouch

Law Enforcement Case #: 19BW124994HP32

TMW

ARREST WARRANT NUMBER

20-STR-00013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Reckless Vehicular Homicide

§ 56-05-2910

At a Court of General Sessions, convened on February 2020, the Grand Jurors of Lexington County present upon their oath:

That **Bryan Christopher Powers** did in Lexington County, South Carolina, on or about June 14, 2019, drive a vehicle in reckless disregard of the safety of others, and Mildred Smith died on June 14, 2019 as a proximate result of an injury received by such reckless driving in violation of Section 56-5-2910, South Carolina Code of Laws 1976 (as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington

STATE

VS.

INDICTMENT/CASE#: 2020 - GS - 32 - 00382Bryan Christopher PowersAW#: 20-STR-00013

AKA:

Date of Offense: 6/14/2019Race: White Sex: M Age: 36S.C. Code §: 56-05-2910DOB: [REDACTED]-1985 SS#: [REDACTED]CDR Code #: 3097Address: Robinson Town RdCity, State, Zip: Cassatt, SC 29032-9395DL#* [REDACTED] SID# [REDACTED]

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Homicide / Reckless Homicide, death results within 3 yrs. caused by injury from vehicleIn violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Tedd [Signature] 70206

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 8 days/months/years/Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2020 GS 280820☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.
53 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Bryan Christopher Powers INDICTMENT/CASE#: 2020 - GS - 32 - 00382

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
§14-1-206 (Assessments 107.5%)			\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ 100
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$ _____
§56-5-2995 (DUI Assessment)		\$12	\$ _____
§56-1-286 (DUI Breath Test)		\$25	\$ _____
§14-1-212 (Law Enforce. Funding)		\$25	\$ 25
§14-1-213 (Drug Court Surcharge)		\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)		\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$ _____
3% to County (if paid in installments)		TBD	\$ _____
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$ _____

TOTAL \$ 125.00

Clerk of Court/Deputy Clerk: Lisa Comer EB
Court Reporter: Bethanie CreppanPresiding Judge: Debra McCaslen
Judge Code: 2169
Sentence Date: 2/9/2022

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Dec 20 2022

SC Court of Appeals



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of December, 2022.

RECEIVED

Dec 20 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

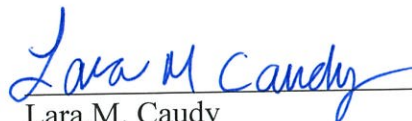
V.

BRYAN C. POWERS,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon William M. Blich, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 20th day of December, 2022.



Lara M. Caudy
Appellate Defender