

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
Court of General Sessions

William H. Seals, Jr., Circuit Court Judge

Appellate Case No: **2022-000748**

RECEIVED

MAY 31 2023

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Stephen William Flood,

Appellant.

RECORD ON APPEAL

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INDEX

VOLUME I OF II

INDEX	i
TRIAL TRANSCRIPT VOL. I OF IV	1
DATED MAY 16, 2022	
JURY VOIR DIRE	5
JURY SELECTION.....	39
PRE-TRIAL MOTIONS	49
OPENING STATEMENT BY	65
OPENING STATEMENT BY.....	74
TESTIMONY	
SERGRANT ELIZABETH ORLANDO	
Direct Examination by Mr. Clements	88
Cross Examination by Mr. Bouchette.....	99
Redirect Examination by Mr. Clements.....	123
CORPORAL CHRSTOPHER MAXIM	
Direct Examination by Mr. Clements	131
Cross Examination by Mr. Bouchette.....	138
Redirect Examination by Mr. Clements.....	145
Recross Examination by Mr. Bouchette	148
LANCE CORPORAL RUSSELL HERRING	
Direct Examination by Mr. Clements	149
Cross Examination by Mr. Bouchette.....	155
Redirect Examination by Mr. Clements.....	159
TRIAL TRANSCRIPT VOL. II OF IV	163
DATED MAY 17, 2022	
TESTIMONY (CONTINUED)	
DEPUTY TONY HAYES	
Direct Examination by Mr. Clements	168
Proffered Direct Examination by Mr. Clements	173
Cross Examination by Mr. Bouchette.....	175

DEPUTY LATIFIAH WITHERSPOON	
Direct Examination by Mr. Clements	179
Cross Examination by Mr. Bouchette	184
Redirect Examination by Mr. Clements.....	189
Recross Examination by Mr. Bouchette	190
Further Redirect Examination by Mr. Clements.....	190
DEPUTY BRUCE CRAWFORD	
Direct Examination by Mr. Clements	191
Cross Examination by Mr. Bouchette	196
SANDEE ROGERS	
Direct Examination by Mr. Clements	201
Cross Examination by Mr. Bouchette	216
Redirect Examination by Mr. Clements.....	225
Recross Examination by Mr. Bouchette	227
MAYOR LAWSON BATTLE	
Direct Examination by Mr. Clements	231
Cross Examination by Mr. Bouchette	246
DYLAN OATES	
Direct Examination by Mr. Clements	252
Cross Examination by Mr. Bouchette	267
Redirect Examination by Mr. Clements.....	275
Recross Examination by Mr. Bouchette	280
WILL DUNCAN	
Direct Examination by Mr. Clements	284
Cross Examination by Mr. Bouchette	300
Redirect Examination by Mr. Clements.....	305
Recross Examination by Mr. Bouchette	307
ZACHERY ESKEW	
Direct Examination by Mr. Clements	310
Cross Examination by Mr. Bouchette	319
Redirect Examination by Mr. Clements.....	353
Recross Examination by Mr. Bouchette	358
CAPTAIN JEREMY LEACH	
Direct Examination by Mr. Clements	359
Cross Examination by Mr. Bouchette	362
DEPUTY EDDIE PAGE	
Direct Examination by Mr. Clements	363
Cross Examination by Mr. Bouchette	373

DESMOND JENKINS	
Direct Examination by Mr. Clements	374
Cross Examination by Mr. Bouchette	379
TRIAL TRANSCRIPT VOL. III OF IV	384
DATED MAY 18, 2022	
DAVID DORIO	
Direct Examination by Mr. Clements	400
Cross Examination by Mr. Bouchette	411
MATTHEW RICE	
Direct Examination by Mr. Clements	413
Cross Examination by Mr. Bouchette	419
HANNAH BURGHARD	
Direct Examination by Mr. Clements	421
Cross Examination by Mr. Bouchette	426
Redirect Examination by Mr. Clements	430
DR. THOMAS BEAVER	
Direct Examination by Mr. Jepertinger	432
Cross Examination by Mr. Bouchette	441
BATTALION CHIEF ALAN STARNES	
Direct Examination by Mr. Clements	443
Cross Examination by Mr. Bouchette	453
Redirect Examination by Mr. Clements	459
MELINDA WORLEY	
Direct Examination by Mr. Clements	460
Cross Examination by Mr. Bouchette	464
Redirect Examination by Mr. Clements	465
DAVID BRITTON "BRITT" DOVE	
Direct Examination by Mr. Clements	466
RHIANNON HERRING	
Direct Examination by Mr. Clements	471
Cross Examination by Mr. Bouchette	477
LT. STEPHEN HOWELL	
Direct Examination by Mr. Clements	486

VOLUME II OF II

TESTIMONY (CONTINUED)

LT. STEPHEN HOWELL

Cross Examination by Mr. Bouchette.....509
Redirect Examination by Mr. Clements.....538
Recross Examination by Mr. Bouchette539

DIRECTED VERDICT MOTION541

DEFENDANT’S RIGHTS.....546

TRIAL TRANSCRIPT VOL. IV OF IV.....551
DATED MAY 19, 2022

CLOSING ARGUMENT BY MR. CLEMENTS.....566

CLOSING ARGUMENT BY MR. BOUCHETTE.....595

JURY INSTRUCTIONS.....612

VERDICT629

SENTENCING645

STATE’S EXHIBITS 5A-C (PHOTOGRAPHS FROM SANDEE ROGERS).....647

STATE’S EXHIBITS 7A-D (PHOTOGRAPHS FROM DYLAN OATES)650

STATE’S EXHIBITS 8A-D (PHOTOGRAPHS FROM WILL DUNCAN).....654

STATE’S EXHIBITS 9A-B (PHOTOGRAPHS FROM ALAN STARNES)657

HEARING TRANSCRIPT659
DATED MAY 20, 2022

SENTENCING SHEETS AND INDICTMENTS667

CERTIFICATE OF COUNSEL678

THE FOLLOWING EXHIBITS ARE ON FILE WITH THE MARION COUNTY CLERK OF COURT’S OFFICE: STATE’S EXHIBIT #4 (VIDEO FROM SANDEE ROGERS); STATE’S EXHIBIT #10 (DRONE VIDEO).

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS
)
COUNTY OF MARION) TRANSCRIPT OF RECORD

-----x
STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
vs.) Case No. 2019-GS-33-00239
)
STEPHEN WILLIAM FLOOD,)
)
Defendant.)
-----x

May 16, 2022

JURY TRIAL - VOLUME 1 of 4

B E F O R E:

The Honorable William H. Seals, Jr., Presiding Judge;
and a jury.

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

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John Jepertinger, Esq.
Solicitors for the Plaintiff/State

Jared Bouchette, Esq.
Marissa Drost, Esq.
Attorneys for the Defendant

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
Jury Voir Dire	5
Jury Selection	39
Pre-Trial Motions	49
Opening Statement on Behalf of the State	65
Opening Statement on Behalf of the Defendant	74
Sergeant Elizabeth Orlando	
Direct Examination By Mr. Clements	88
Cross-Examination By Mr. Bouchette	99
Redirect Examination By Mr. Clements	123
Corporal Christopher Maxim	
Direct Examination By Mr. Clements	131
Cross-Examination By Mr. Bouchette	138
Redirect Examination By Mr. Clements	145
Recross-Examination By Mr. Bouchette	148
Lance Corporal Russell Herring	
Direct Examination By Mr. Clements	149
Cross-Examination By Mr. Bouchette	155
Redirect Examination By Mr. Clements	159

E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

State's Exhibit

No.	Description	ID.	REC'D
1	Map of Town	48	62
2	Map of Alternate Route	48	62
3A	Photograph of Transportation Office	49	98
3B	Photograph of Transportation Office	49	98
3C	Photograph of Transportation Office	49	98
3D	Photograph of Transportation Office	49	98
3E	Photograph of Transportation Office	49	98
4	Video from Sandee Rogers	49	
5A	Photographs from Sandee Rogers	49	
5B	Photographs from Sandee Rogers	49	
5C	Photographs from Sandee Rogers	49	
6A	Photographs from Mayor Battle	49	--
6B	Photographs from Mayor Battle	49	--
7A	Photograph from Dylan Oates	49	
7B	Photograph from Dylan Oates	49	
7C	Photograph from Dylan Oates	49	--
7D	Photograph from Dylan Oates	49	--
8A	Photographs from Will Duncan	49	
8B	Photographs from Will Duncan	49	
9A	Photographs from Alan Starnes	49	
9B	Photographs from Alan Starnes	49	

1	10	Drone Video	49
2	13	Photograph of High Water Vehicle	49
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
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21			
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1 P R O C E E D I N G S

2 (Whereupon, the following proceedings started at 11:15 a.m.):

3 THE COURT: If the State of South Carolina would call
4 your first case.

5 MR. CLEMENTS: Your Honor, we call the State versus
6 Stephen Flood, Indictment No. 2019-GS-33-239.

7 THE COURT: Thank you.

8 JURY VOIR DIRE

9 THE COURT: All right. Members of the jury panel, I'm
10 going to ask you another series of questions to make sure that
11 you're qualified to serve on this particular case. If any of
12 these questions apply to you, I need for you to stand and
13 respond to me.

14 The case that we're getting ready to try is a case
15 whereby the State of South Carolina alleges that Stephen
16 William Flood did, in Marion County, on or about September 18,
17 2018, unintentionally killed Wendy Newton and Nicolette Green
18 without malice but while engaged in an unlawful activity not
19 naturally intending to cause death or great bodily harm or
20 while engaged in a lawful activity with reckless disregard for
21 the safety of others while driving a van and transporting
22 these individuals in Marion County, showed reckless disregard
23 for the safety of others by ignoring a clear and present
24 danger of impassable waters and drove the van into visibly
25 life-threatening floods or water, thereby resulting in death.

1 Therefore, he's been charged with two counts of voluntary
2 manslaughter. He has also been charged with reckless
3 homicide, two counts of that as well.

4 Has any member of the jury panel heard anything about
5 this case, read anything about this case, talked to anybody
6 about this case, seen anything on the news about this case or
7 on social media? If you have any knowledge, no matter how
8 insignificant you think it might be, I need for you to please
9 stand.

10 (Several stand.)

11 THE COURT: We're going to take you one by one up here,
12 and I'm going to talk to each one of you.

13 THE DEPUTY: Order, please. Order, please.

14 (Juror No. 30 approaches.)

15 JUROR NO. 30: Hey.

16 THE COURT: Good morning. First of all, give me your
17 name and your number.

18 JUROR NO. 30: Kayla Brady. I don't know my number.

19 THE COURT: Let's look it up real quick. You got it?

20 MR. JEPERTINGER: That's No. 30.

21 THE COURT: No. 30. All right. Tell me what you know.

22 JUROR NO. 30: Just what you hear on the news. Nothing
23 significant.

24 THE COURT: All right. We're taking that into account.

25 If you were selected to serve on the jury in this case, could

1 you be fair and impartial to the State?

2 JUROR NO. 30: Yes, sir.

3 THE COURT: And the defendant?

4 JUROR NO. 30: Yes, sir.

5 THE COURT: Would you be fair and impartial to both
6 sides?

7 JUROR NO. 30: Yes, sir.

8 THE COURT: Thank you. Appreciate you coming forward.
9 (Juror No. 203 approaches.)

10 THE COURT: All right. If you would, give me your name
11 and your number.

12 JUROR NO. 203: Richard Moore. 203.

13 THE COURT: 203. Okay. And what do you know?

14 JUROR NO. 203: I was living in Nichols when it happened.
15 I live in Nichols, South Carolina. I know about the floods.
16 My wife -- not my wife, but my brother-in-law, he works for
17 the fire department. He had to go out there and save those
18 people -- try to save those people, so I know what happened.
19 They did something stupid, drove that van through that water,
20 and killed those young ladies.

21 THE COURT: All right. Well, let me ask you this: If
22 you were seated on this jury, could you listen to the evidence
23 and the testimony presented and make a decision, being fair
24 and impartial --

25 JUROR NO. 203: Well, what I know about --

1 THE COURT: -- to the State and the defense?

2 JUROR NO. 203: What I know about it and what they did,
3 they're guilty.

4 THE COURT: All right. I'll excuse you for the purposes
5 of this trial. If you'll just go have a seat. You can leave
6 when the process is over, but you don't have to stay in for
7 anything else.

8 JUROR NO. 203: Okay.

9 (Juror No. 164 approaches.)

10 THE COURT: And that was No. 203?

11 Good morning.

12 JUROR NO. 164: How are you?

13 THE COURT: Give me your name and your number.

14 JUROR NO. 164: Denise Kluge, 164.

15 THE COURT: 164. Okay. What do you know?

16 JUROR NO. 164: I followed the whole thing on the news.

17 THE COURT: All right. Taking that into account, if you
18 were selected to serve on the jury in this case, could you be
19 fair and impartial to the State --

20 JUROR NO. 164: Mm-hmm.

21 THE COURT: -- and the defendant?

22 JUROR NO. 164: Sure.

23 THE COURT: Would you be fair and impartial to both
24 sides?

25 JUROR NO. 164: Yes. But the other thing I need to

1 mention: My father was a police officer, so everybody sends
2 me home anyway.

3 THE COURT: Okay. I understand. Thank you. You can
4 have a seat.

5 (Juror No. 271 approaches.)

6 THE COURT: Give me your name and your number.

7 JUROR NO. 271: I'm Janie Thomas. And I don't know what
8 my number is.

9 THE COURT: Let's look your number up real quick.

10 MR. CLEMENTS: What was the name?

11 JUROR NO. 271: Janie Thomas.

12 MR. JEPERTINGER: That was 271.

13 THE COURT: 271. Okay. How does that question apply to
14 you?

15 JUROR NO. 271: I heard about it on the news.

16 THE COURT: We're taking that into account. If you were
17 selected to serve on the jury in this case, could you be fair
18 and impartial to the State and the defendant?

19 JUROR NO. 271: Yes, sir.

20 THE COURT: Would you be fair and impartial to both
21 sides?

22 JUROR NO. 271: Yes, sir.

23 THE COURT: Thank you. Appreciate you coming forward.

24 (Juror No. 102 approaches.)

25 THE BAILIFF: No. 102.

1 THE COURT: Give me your name and your number.
2 JUROR NO. 102: Kayla Estes, 102.
3 THE COURT: 102? Okay. Tell me how you...
4 JUROR NO. 102: I just heard about it from the news.
5 THE COURT: Taking that into account, if you were
6 selected to serve on the jury in this case, could you be fair
7 and impartial to the State and the defendant?
8 JUROR NO. 102: Yes.
9 THE COURT: Would you be fair and impartial to both
10 sides?
11 JUROR NO. 102: Mm-hmm.
12 THE COURT: Is that a yes?
13 JUROR NO. 102: Yes, sir.
14 THE COURT: Thank you. Appreciate you coming forward.
15 (Juror No. 162 approaches.)
16 THE BAILIFF: Tammy King.
17 THE COURT: Give me your name and your number.
18 JUROR NO. 162: I don't know my number, but it's Tammy
19 King.
20 THE CLERK: 162.
21 THE COURT: 162. Okay.
22 JUROR NO. 162: I just think I heard, like, a long time
23 ago something about it. My mama maybe mentioned it or
24 something. But I'm going to be honest, I mean, I don't know
25 who the people are, where it happened at, or anything like

1 that.

2 THE COURT: Taking that into account, if you were
3 selected to serve on the jury in this case, could you be fair
4 and impartial to the State of South Carolina and the
5 defendant?

6 JUROR NO. 162: Yes.

7 THE COURT: Would you be fair and impartial to both
8 sides?

9 JUROR NO. 162: Yes.

10 THE COURT: Thank you. Appreciate you coming forward.

11 (Juror No. 261 approaches.)

12 THE BAILIFF: Lisa Smith.

13 MR. JEPERTINGER: Lisa Smith is 261.

14 THE COURT: Tell me --

15 JUROR NO. 261: Just news. That's all. I think that
16 probably was most of the people in here's probably heard it
17 from.

18 THE COURT: Okay. Taking that into account, if you were
19 selected to serve on the jury in this case, could you be fair
20 and impartial to the State and the defendant?

21 JUROR NO. 261: Yes.

22 THE COURT: Would you be fair and impartial to both
23 sides?

24 JUROR NO. 261: Yes.

25 THE COURT: Thank you. Appreciate you coming forward.

1 JUROR NO. 261: Thank you.

2 (Juror No. 21 approaches.)

3 THE BAILIFF: Angie Bennett.

4 MR. JEPERTINGER: This is No. 21.

5 THE COURT: I'm going to get to know you pretty good by
6 the time we get through with this jury selection process.

7 JUROR NO. 21: I just seen it on the news. That's all.

8 THE COURT: Well, taking that into account, if you were
9 selected to serve on the jury in this case, could you be fair
10 and impartial to the State and the defendant?

11 JUROR NO. 21: Yeah, I could.

12 THE COURT: All right. Thank you.

13 (Juror No. 112 approaches.)

14 THE BAILIFF: Joyce Foxworth.

15 THE COURT: What number is this?

16 MR. JEPERTINGER: 112.

17 THE COURT: All right. Tell me what you know.

18 JUROR NO. 112: I seen it on the news where two Horry
19 deputies were transporting the victims. The road was
20 barricaded from the hurricane, and they went around the
21 barricade.

22 THE COURT: Well, taking that into account, if you were
23 selected to be on the jury in this case, could you be fair and
24 impartial to the State and the defendant?

25 JUROR NO. 122: I think so.

1 THE COURT: Is that a yes?

2 JUROR NO. 122: Yeah.

3 THE COURT: Would you be fair and impartial to both
4 sides?

5 JUROR NO. 112: Yes.

6 (Juror No. 211 approaches.)

7 THE BAILIFF: Peter Newell.

8 MR. CLEMENTS: What was the number?

9 THE CLERK: 211.

10 MR. CLEMENTS: Thank you.

11 THE COURT: Tell me what you know.

12 JUROR NO. 211: Basically, the van transported those two
13 people out of there in the flood.

14 THE COURT: Did you get it from the news?

15 JUROR NO. 211: Yes, sir. Read the news stories, talked
16 about it. That's about it.

17 THE COURT: Taking that into account, if you were
18 selected to serve on the jury in this case, could you be fair
19 and impartial to the State and the defendant?

20 JUROR NO. 211: Yes, sir.

21 THE COURT: Would you be fair and impartial to both
22 sides?

23 JUROR NO. 211: Yes, sir.

24 THE COURT: Thank you. Appreciate you coming forward.

25 (Juror No. 291 approaches.)

1 THE BAILIFF: Mark Williams.

2 MR. JEPERTINGER: 291.

3 JUROR NO. 291: I heard about it on the news.

4 THE COURT: Taking that into account, if you were
5 selected to serve on the jury in this case, could you be fair
6 and impartial to the State and the defendant?

7 JUROR NO. 291: Yes, sir.

8 THE COURT: Is that a yes?

9 JUROR NO. 291: Yes, sir.

10 THE COURT: Would you be fair and impartial to both
11 sides?

12 JUROR NO. 291: Yes, sir.

13 THE COURT: Thank you. Appreciate you coming forward.

14 (Juror No. 175 approaches.)

15 THE BAILIFF: Daniel Lewis.

16 MR. JEPERTINGER: 175.

17 MR. CLEMENTS: 175.

18 THE COURT: All right. Did you hear it on the news?

19 JUROR NO. 175: Yes, sir, on the news.

20 THE COURT: Taking that into account, if you were
21 selected to serve on the jury in this case, could you be fair
22 and impartial to the State and the defendant?

23 JUROR NO. 175: Of course.

24 THE COURT: Would you be fair and impartial to both
25 sides?

1 JUROR NO. 175: Yes, sir.

2 THE COURT: Thank you. Appreciate you coming forward.

3 (Juror No. 47 approaches.)

4 THE BAILIFF: Kimberly Campbell.

5 MR. JEPERTINGER: 47.

6 JUROR NO. 47: Hi.

7 THE COURT: Hello.

8 JUROR NO. 47: I was currently aware of the situation. I
9 worked at the Department of Social Services in Horry County
10 last year when the incident took place.

11 THE COURT: Okay. You heard about it at work or on the
12 news?

13 JUROR NO. 47: Yes, sir, because they had to make us
14 aware of it, both the news and our agency.

15 THE COURT: Taking that into account, if you were
16 selected to serve on the jury in this case, could you be fair
17 and impartial to the State and the defendant?

18 JUROR NO. 47: Yes, sir.

19 THE COURT: Would you be fair and impartial to both
20 sides?

21 JUROR NO. 47: Yes.

22 THE COURT: Thank you. Appreciate you coming forward.

23 JUROR NO. 47: You're welcome.

24 (Juror No. 73 approaches.)

25 THE BAILIFF: Brandy Davis.

1 MR. JEPERTINGER: 73.

2 THE COURT: All right. And where did you hear about it?

3 JUROR NO. 73: On the news.

4 THE COURT: On the news?

5 JUROR NO. 73: Yes, sir.

6 THE COURT: Taking that into account, if you were
7 selected to serve on the jury in this case, could you be fair
8 and impartial to the State and the defendant?

9 JUROR NO. 73: Yes.

10 THE COURT: Would you be fair and impartial to both
11 sides?

12 JUROR NO. 73: Yes, sir.

13 THE COURT: Thank you. Appreciate you coming forward.

14 (Juror No. 128 approaches.)

15 THE BAILIFF: Suzie Godbolt.

16 MR. BOUCHETTE: If one of these jurors gets called to
17 identify -- when he comes up -- if one of these jurors gets
18 called that's --

19 THE COURT: Are you talking about this one?

20 MR. BOUCHETTE: When they come up --

21 COURT REPORTER: Is this going to be on the record? I
22 can't hear.

23 BENCH CONFERENCE

24 (The following bench conference occurred outside the
25 hearing of the jury panel and others:)

1 MR. BOUCHETTE: If one of these jurors comes up or gets
2 called and indicated they have heard about the case, would the
3 Court allow us to voir dire as to how much or where they
4 received this additional information? I know they said the
5 news and they told Your Honor, but they just said "the news."
6 If somebody gets called for potential selection, I'd like, if
7 possible, to be able to inquire briefly as to perhaps how much
8 and where and how long ago and things of that nature.

9 THE COURT: Are you talking about when they're called up
10 front one at a time?

11 MR. BOUCHETTE: That's correct. We have marked down who
12 has indicated to the Court that they have heard about the
13 case, but, at the appropriate time, we'd like to -- because,
14 again, if they just heard about it on -- maybe last week, that
15 might be different than somebody that recalls it two years
16 ago, or from what source they heard about it, things of that
17 nature. I don't think it will take very long but should one
18 of these folks gets called --

19 THE COURT: So you want to know when they heard about it?

20 MR. BOUCHETTE: Yes, sir.

21 THE COURT: From what source?

22 MR. BOUCHETTE: That's correct.

23 THE COURT: And that's it?

24 Everybody's heard about it.

25 MR. BOUCHETTE: Yes, sir. Well -- and that's kind of a

1 unique situation. I haven't had this much of the jury pool be
2 aware of it. If they are, what I'd like to get at is how much
3 of the factual allegations they have heard about. I don't
4 know a way to do that without sort of engaging --

5 THE COURT: Everything that we have heard them say, they
6 all heard about it. I'm positive when they said the news
7 what...

8 MR. BOUCHETTE: All right. Well, if nothing else, maybe
9 those two inquiries, should they get called. I'd request
10 that.

11 THE COURT: When and what source?

12 MR. BOUCHETTE: That's correct.

13 THE COURT: All right.

14 (Open court resumes:)

15 MR. JEPERTINGER: Name?

16 JUROR NO. 128: Suzie Godbolt.

17 MR. CLEMENTS: 128.

18 THE COURT: And, Jarrett, if you want to come over here,
19 you're welcome to. You might be able to hear and see better.

20 All right. And tell me what you know.

21 JUROR NO. 128: Just from hearing it on the news. That's
22 about it.

23 THE COURT: Taking that into account, if you were
24 selected to serve on the jury in this case, would you be fair
25 and impartial to the State and the defendant?

1 JUROR NO. 128: Yes, I would.

2 THE COURT: Would you be fair and impartial to both
3 sides?

4 JUROR NO. 128: Yes.

5 THE COURT: And when did you hear about it? Was it
6 recently or years ago?

7 JUROR NO. 128: Years ago.

8 THE COURT: Just on TV?

9 JUROR NO. 128: Yes. Just on TV.

10 THE COURT: All right. Thank you.

11 Good enough? At least for her anyway?

12 MR. BOUCHETTE: That's right.

13 (Juror No. 65 approaches.)

14 THE BAILIFF: Jo Ann Crawford.

15 MR. JEPERTINGER: That's 65.

16 THE COURT: All right. Tell me what you know.

17 JUROR NO. 65: Well, I just heard about the crash and --

18 THE COURT: Where did you hear about it?

19 JUROR NO. 65: On the TV and people talking.

20 THE COURT: Was that a long time ago you heard about it?

21 JUROR NO. 65: Mm-hmm.

22 THE COURT: Anything recently?

23 JUROR NO. 65: No.

24 THE COURT: Taking that into account, if you were
25 selected to serve on the jury in this case, could you be fair

1 and impartial to the State and the defendant?

2 JUROR NO. 65: Mm-hmm.

3 THE COURT: Is that a yes?

4 JUROR NO. 65: Yes, sir.

5 THE COURT: Would you be fair and impartial to both
6 sides?

7 JUROR NO. 65: Yes, sir.

8 THE COURT: Thank you. Appreciate you coming forward.

9 (Juror No. 43 approaches.)

10 THE BAILIFF: Janye Caesar.

11 THE COURT: Tell me, where did you hear about this case?

12 JUROR NO. 43: I saw it on the news when it happened and
13 several times after it happened. And I talked with some of my
14 co-workers. We talked about it. That's about it.

15 THE COURT: Have you heard about it recently or was that
16 a long time ago?

17 JUROR NO. 43: It was a good while ago.

18 THE COURT: Taking that into account, if you were
19 selected to serve on the jury in this case, could you be fair
20 and impartial to the State and the defendant?

21 JUROR NO. 43: Yes.

22 THE COURT: Would you be fair and impartial to both
23 sides?

24 JUROR NO. 43: Yes.

25 THE COURT: Thank you.

1 (Juror No. 50 approaches.)

2 THE BAILIFF: Jesse Catlett.

3 MR. JEPERTINGER: 50.

4 THE COURT: What number?

5 MR. JEPERTINGER: 50.

6 THE COURT: Tell me what you know, and where did you hear
7 about it?

8 JUROR NO. 50: I heard about it on the news and all that
9 stuff. But my brother works for Nichols Fire Department, and
10 he does -- helping Horry County Fire Department and retrieved
11 the bodies and all that stuff in the van with the dive team.

12 THE COURT: I'll excuse you from this trial. You don't
13 have to stand up for anything else. You can go when the
14 process is over.

15 JUROR NO. 50: Thank you. I appreciate it.

16 (Juror No. 217 approaches.)

17 THE BAILIFF: Delsey Owens.

18 MR. JEPERTINGER: 217.

19 THE COURT: Tell me what you know. Where did you hear
20 about it?

21 JUROR NO. 217: Just TV. I didn't really get into it,
22 but everybody, you know, gossip, but I don't like to do that,
23 so I didn't really listen. I don't know 'em.

24 THE COURT: All right. Did you hear about it on the
25 news?

1 JUROR NO. 217: Mm-hmm.

2 THE COURT: Was that a long time ago?

3 JUROR NO. 217: Yes.

4 THE COURT: Taking that into account, if you were
5 selected to serve on the jury in this case, could you be fair
6 and impartial to the State and the defendant?

7 JUROR NO. 217: I would.

8 THE COURT: Is that a yes?

9 JUROR NO. 217: Yes.

10 THE COURT: Would you be fair and impartial to both
11 sides?

12 JUROR NO. 217: Both sides.

13 THE COURT: Thank you. Appreciate you coming forward.

14 JUROR NO. 217: Thank you.

15 (Juror No. 196 approaches.)

16 THE BAILIFF: No. 196.

17 THE COURT: All right.

18 JUROR NO. 196: I just recall it being on the news.

19 THE COURT: Heard about it on the news?

20 JUROR NO. 196: Yes.

21 THE COURT: Was that a long time ago?

22 JUROR NO. 196: It was.

23 THE COURT: Taking that into account, if you were
24 selected to serve on the jury in this case, could you be fair
25 and impartial to the State and the defendant?

1 JUROR NO. 196: I'm not sure. I think I'll be a little
2 biased.

3 THE COURT: For who?

4 JUROR NO. 196: Sir?

5 THE COURT: For who? Who would you be biased for?

6 JUROR NO. 196: Well, being that I used to work for a
7 company that would actually transport, so I think I'll be
8 biased.

9 THE COURT: Towards the transport company?

10 JUROR NO. 196: Yes.

11 THE COURT: All right. I'll excuse you from this trial.
12 If you'll just have a seat. You can go when the process is
13 over.

14 JUROR NO. 196: Okay. Thank you.

15 MR. CLEMENTS: What did she say?

16 MR. JEPERTINGER: She'd be biased towards the transport
17 company, whatever that means. But she'd just be biased so
18 she's excused.

19 (Juror No. 90 approaches.)

20 THE BAILIFF: No. 90.

21 MR. JEPERTINGER: This is Carla Dozier.

22 JUROR NO. 90: Good morning. I don't have a social media
23 account or anything. I have just seen the news articles and
24 the news broadcast.

25 THE COURT: Was that a long time ago?

1 JUROR NO. 90: It was, yep. Nothing recent.

2 THE COURT: Taking that into account, if you were
3 selected to serve on the jury in this case, could you be fair
4 and impartial to the State and the defendant?

5 JUROR NO. 90: Yes.

6 THE COURT: Would you be fair to both sides?

7 JUROR NO. 90: Yes.

8 THE COURT: Thank you.

9 JUROR NO. 90: Thank you.

10 (Juror No. 46 approaches.)

11 THE BAILIFF: Ashley Campbell.

12 MR. JEPERTINGER: And that's 46.

13 JUROR NO. 46: Hey, good morning. I just read about it
14 on Facebook.

15 THE COURT: Was that a long time ago? Recently?

16 JUROR NO. 46: It was. It was probably back when it
17 happened. I just remember the story.

18 THE COURT: Taking that into account, if you were
19 selected to serve on the jury in this case, could you be fair
20 and impartial to the State and the defendant?

21 JUROR NO. 46: Oh, absolutely.

22 THE COURT: Would you be fair to both sides?

23 JUROR NO. 46: Yes, sir.

24 THE COURT: Thank you.

25 (Juror No. 52 approaches.)

1 THE BAILIFF: No. 52. Kecia Coleman.

2 JUROR NO. 52: I'm a cosmetologist. I hear everything in
3 the beauty salon.

4 THE COURT: You're a what?

5 JUROR NO. 52: Cosmetologist. And I seen it on the news.

6 THE COURT: All right. Have you heard anything recently,
7 or was that a long time ago?

8 JUROR NO. 52: Just saw it when it was going on.

9 THE COURT: Taking that into account, if you were
10 selected to serve on the jury in this case, could you be fair
11 and impartial to the State and the defendant?

12 JUROR NO. 52: I think I can.

13 THE COURT: You'd be fair to both sides?

14 JUROR NO. 52: I think I can.

15 THE COURT: Is that a yes or a no?

16 JUROR NO. 52: Yes.

17 THE COURT: All right. Thank you.

18 BENCH CONFERENCE

19 (The following bench conference occurred outside the
20 hearing of the jury panel and others:)

21 THE COURT: Is there anyone in particular you wanted?

22 MR. BOUCHETTE: Well, a couple of these had said they had
23 spoken -- they had been talking to other people about it and
24 that kind of thing. I don't have to get into it without going
25 into the whole intense voir diring. At this particular time,

1 I don't think I have anything else.

2 MR. JEPERTINGER: They said they'd be fair and impartial.

3 MR. CLEMENTS: You don't believe it's a strike?

4 THE COURT: Anything else?

5 MR. JEPERTINGER: Was there any voir dire?

6 THE COURT: I have got a whole lot more questions to ask.

7 If you think of something, let me know.

8 MR. JEPERTINGER: I gotcha.

9 (Open court resumes as follows:)

10 THE COURT: All right. Would the defendant, Stephen
11 William Floyd [verbatim], please stand and just face the jury
12 panel.

13 (The defendant complies.)

14 THE COURT: All right. You may have a seat.

15 Is any member of the jury panel related by blood or
16 marriage or has a close personal or social relationship with
17 Mr. Stephen Flood? If so, please stand.

18 (No response given.)

19 THE COURT: And the solicitor, Mr. Clements, would you
20 stand and introduce yourself and any members at your table and
21 on your staff.

22 MR. CLEMENTS: Yes, sir, Your Honor. Thank you very
23 much.

24 Good morning.

25 JURORS: Good morning.

1 MR. CLEMENTS: My name is Ed Clements. I'm the solicitor
2 for the 12th Judicial Circuit, which is comprised of Florence
3 and Marion County.

4 Here is some of my staff: Deputy Solicitor John
5 Jepertinger, Assistant Solicitor Jamie Scruggs, and Victim
6 Witness Advocate, Vicky Singletary; SLED is represented here
7 by Mr. Stephen Howell; Ashley Anderson, an investigator in my
8 office, is here; and the last but the very best, not the
9 least, Ms. Angel Daniels, Assistant Solicitor.

10 THE COURT: All right. Thank you.

11 Is any member of the jury panel related by blood or
12 marriage or has a close personal or social relationship with
13 any of these individuals? If so, please stand.

14 (No response given.)

15 THE COURT: And, Mr. Bouchette, if you would, please,
16 stand and introduce yourself and the lawyers at your table.

17 MR. BOUCHETTE: Thank you, Your Honor.

18 Good morning, ladies and gentlemen. My name is Jarrett
19 Bouchette. I'm an attorney who practices primarily in Horry
20 and Georgetown County. It is my great pleasure here to be
21 with you this week. I represent Mr. Stephen Flood, who is
22 seated here at counsel table.

23 Also seated here is Ms. Marissa Drost, who will be
24 working with me on the case.

25 THE COURT: All right. Thank you.

1 Is any member of the jury panel related by blood or
2 marriage or has a close personal or social relationship with
3 either of these lawyers or has been represented by them at any
4 point in time? If so, please stand.

5 (No response given.)

6 THE COURT: All right. The witnesses on behalf of the
7 State of South Carolina are as follows: Sergeant Elizabeth
8 Orlando, Corporal Christopher Maxim, Lieutenant Corporal
9 Russell Herring, Deputy Tony Hayes, Deputy Rodney Jordan,
10 Lieutenant Corporal Latifiah Witherspoon, Lieutenant Corporal
11 Bruce Crawford, Sandee Rogers, Lawson Battle, Dylan Oates,
12 Will Duncan, Zachery Eskew, Deputy Eddie Page, Desmond
13 Jenkins, Hannah Burghard, Chief Alan Starnes, Matthew Rice,
14 David Dorio, Rhiannon Herring, Melinda Worley, Britt Dove,
15 Captain J.T. Leach, Dr. Thomas Beaver, Lieutenant Stephen
16 Howell, and Stephen Bishop.

17 In this regard, is any member of the jury panel related
18 by blood or marriage or has a close personal or social
19 relationship with any of the State's witnesses? If so, please
20 stand.

21 (No response given.)

22 THE COURT: The witnesses on behalf of the defendant will
23 be: Harold Collins, Joshua Bishop, Schaefer Stephens, Jenny
24 Azzarella, Page Harrelson, Thomas Swan, Rhiannon Hanlon,
25 Johnny Gardner, Stephen Gosnell, Stephen Howell, Johnny Abram,

1 Richard Gregory, Alan Starnes, Stan Bailey, Jerry Jackson, Ray
2 George, Alisha Jones, Marcus Rhodes, Dwayne Rogers, Suzann
3 Cromer, Johnny Rissoto, Catherine Powell, Joey Price, and Alan
4 Tankersly.

5 In this regard, is any member of the jury panel related
6 by blood or marriage or has a close personal or social
7 relationship with any of the defense witnesses? If so, please
8 stand.

9 JUROR NO. 112: The names you called before, did you say
10 Lawson Battle?

11 THE COURT: Yes.

12 JUROR NO. 112: My husband -- okay.

13 (Juror No. 112 approaches.)

14 THE COURT: All right. Your name and your number.

15 JUROR NO. 112: Joyce Foxworth.

16 THE COURT: What number?

17 JUROR NO. 112: I'm not sure. 111.

18 THE COURT: 111?

19 THE CLERK: 112.

20 JUROR NO. 112: 112. Sorry.

21 Okay. He does some work for him, like, car work.

22 THE COURT: He does car work for you?

23 JUROR NO. 112: No. My husband does for Lawson.

24 Bodywork and stuff, so...

25 THE COURT: Well, taking that into account, if you were

1 to testify [verbatim], could you still be fair and impartial
2 to both sides --

3 JUROR NO. 112: Yeah, I just wanted to...

4 THE COURT: -- to the State and the defense?

5 JUROR NO. 112: Yes.

6 THE COURT: Thank you.

7 I think he's the mayor of Nichols, isn't he?

8 MS. DROST: Yes.

9 MR. CLEMENTS: He is.

10 (Juror No. 102 approaches.)

11 THE BAILIFF: Juror No. 102.

12 JUROR NO. 102: Did you say Joey Price?

13 THE COURT: I did.

14 JUROR NO. 102: With Marion County EMS? My dad's
15 employed with Marion County EMS and has a close relationship
16 with him.

17 MR. CLEMENTS: Is he on Marion County EMS?

18 THE COURT: Is that right?

19 MR. BOUCHETTE: What was the name?

20 MR. CLEMENTS: Joey Price.

21 MS. DROST: I think we took him off our witness list.
22 Yeah, that was the draft one. We took that one off.

23 MR. BOUCHETTE: We've taken him off?

24 MS. DROST: I'm pretty sure we did.

25 THE COURT: He's not on the State's list either.

1 MS. DROST: I think that's our old list. I think that's
2 the proposed one. And we have removed him.

3 JUROR NO. 102: Okay. Thank you.

4 THE COURT: Taking that into account, if were you
5 selected to serve on this case, could you be fair to both
6 sides?

7 JUROR NO. 102: Yes, sir.

8 THE COURT: All right. Thank you.

9 MR. BOUCHETTE: Your Honor, Ms. Drost just reminded me, I
10 think we had added one name that might have gotten lost in the
11 shuffle: Jane Mizer, J-a-n-e, M-i-z-e-r.

12 THE COURT: M-i-z-e-r?

13 MS. DROST: Yes.

14 MR. BOUCHETTE: Yes, sir.

15 THE COURT: And who is he?

16 MS. DROST: She. She's a witness.

17 THE COURT: Okay. Jane.

18 MS. DROST: Jane.

19 MR. CLEMENTS: Who is this?

20 MS. DROST: Jane Mizer.

21 (Open court resumes:)

22 THE COURT: There's been one more witness added to the
23 defendant's witness list named Jane Mizer. Does anybody know
24 Jane Mizer?

25 (No response given.)

1 THE COURT: Is any member of the jury panel related by
2 blood or marriage to any law enforcement officer? If so,
3 please stand. That could be a city policeman, sheriff's
4 deputy, SLED, FBI. Any law enforcement officer you're related
5 to, please stand.

6 THE CLERK: 164.

7 (Juror No. 164 approaches.)

8 JUROR NO. 164: I knew I'd be back.

9 THE COURT: I've seen you before. Who are you related
10 to?

11 JUROR NO. 164: My father is a retired New York state
12 trooper.

13 THE COURT: Taking that into account, if you were
14 selected to serve on this case, could you be fair to the State
15 and the defendant?

16 JUROR NO. 164: Yes.

17 MR. JEPERTINGER: Now, which number -- what's that again?

18 JUROR NO. 164: Oh, 164. Denise Kluge.

19 MR. JEPERTINGER: Yes, ma'am. Yes, ma'am. Father is a
20 police officer. Got it.

21 (Juror No. 211 approaches.)

22 MR. JEPERTINGER: And this is Mr. Newell.

23 THE BAILIFF: Peter Newell.

24 MR. JEPERTINGER: And this is 211.

25 JUROR NO. 211: Judge, my first cousin and good friend is

1 a highway patrolman.

2 THE COURT: Who is that?

3 JUROR NO. 211: John Floyd.

4 THE COURT: Here in South Carolina?

5 JUROR NO. 211: Yes, sir.

6 THE COURT: Taking that into account, if you were
7 selected to serve on the jury in this case, could you set that
8 relationship aside and be fair and impartial to the State and
9 the defendant?

10 JUROR NO. 211: Yes, sir.

11 THE COURT: Thank you.

12 MR. JEPERTINGER: Is John Floyd -- he's a highway
13 patrolman. He didn't say which district.

14 THE COURT: That's his first cousin.

15 MR. JEPERTINGER: That's his first cousin and dear
16 friend.

17 MR. BOUCHETTE: The two aren't always the same.

18 MR. JEPERTINGER: Yeah.

19 (Juror No. 196 approaches.)

20 THE COURT: Your name and your number?

21 JUROR NO. 196: Aseanda Moody, 196.

22 THE COURT: 196. Okay. Who do you know?

23 JUROR NO. 196: First cousin, Clemson Legatt (ph).

24 THE COURT: All right. Taking that into account, if you
25 were selected to serve on the jury in this case, could you be

1 fair and impartial to the State and the defendant?

2 JUROR NO. 196: Yes.

3 THE COURT: Is that a yes?

4 JUROR NO. 196: Yes.

5 MR. JEPERTINGER: Judge, we didn't hear who it was.

6 THE COURT: Clemson Legett.

7 MR. JEPERTINGER: Oh, Clemson, yeah.

8 THE COURT: Marion County Sheriff's Office.

9 MR. JEPERTINGER: Yeah, Clemson should be in here
10 somewhere.

11 MR. BOUCHETTE: And what was the relationship, Your
12 Honor?

13 JUROR NO. 196: First cousin.

14 MR. CLEMENTS: He's not involved in the case in any way.

15 MR. JEPERTINGER: No.

16 THE COURT: You can have a seat.

17 (Juror No. 43 approaches.)

18 THE BAILIFF: No. 43. Janye Caesar.

19 MR. JEPERTINGER: She was excused anyhow. 196 was.

20 THE COURT: Are you 196?

21 MR. JEPERTINGER: No, the last one we dealt with.
22 Clemson's cousin.

23 JUROR NO. 43: I'm also Clemson's cousin. We're first
24 cousins.

25 THE COURT: What's your juror number?

1 JUROR NO. 43: 43.

2 MR. JEPERTINGER: Everybody is related to Clemson.

3 MR. CLEMENTS: What's her juror number?

4 MR. JEPERTINGER: 43.

5 THE COURT: Taking that into account, if you were
6 selected to serve on the jury in this case, could you be fair
7 and impartial to both sides?

8 JUROR NO. 43: Yes.

9 THE COURT: To the State and the defendant?

10 JUROR NO. 43: Yes.

11 THE COURT: All right. Thank you.

12 MR. JEPERTINGER: Large family. Everybody is related to
13 Clemson.

14 (Juror No. 30 approaches.)

15 THE BAILIFF: Kayla Brady.

16 MR. JEPERTINGER: That's No. 30.

17 THE COURT: All right.

18 JUROR NO. 30: I have several that are state troopers.

19 THE COURT: Who are they? Are they around this district?

20 JUROR NO. 30: Two work in Horry County and the other
21 one, I think, Georgetown.

22 THE COURT: Do you know their names?

23 JUROR NO. 30: Timmy Jacobs, Hannah Lewis, and Mark
24 Lewis.

25 THE COURT: Taking that into account, if you were

1 selected to serve on the jury in this case, could you be fair
2 and impartial to the State and the defendant?

3 JUROR NO. 30: Yes, sir.

4 MR. BOUCHETTE: And, Your Honor, may I inquire as to the
5 relationship with those folks?

6 JUROR NO. 30: Cousins.

7 MR. BOUCHETTE: Thank you.

8 THE BAILIFF: Tammy King.

9 MS. DROST: 162.

10 JUROR NO. 162: Might not be nothing but my cousin
11 started at the -- she's, like, the nurse at the sheriff's
12 office in Marion, so I just wanted to make sure --

13 THE COURT: What's her name?

14 JUROR NO. 162: Cheryl Clarity. I think that's her last
15 name now. She might be divorced, but I just wanted to make
16 sure y'all knew that.

17 THE COURT: Taking that into account, if you were
18 selected to serve on the jury in this case, could you be fair
19 and impartial to the State and the defendant?

20 JUROR NO. 162: Yes.

21 THE COURT: Thank you. Appreciate you coming up.

22 MR. JEPERTINGER: I don't even know if the nurses are
23 part of the sheriff's department. I doubt it.

24 MS. DROST: Contract. She was a contract nurse.

25 MR. JEPERTINGER: Contract, yeah.

1 (Open court resumes:)

2 THE COURT: All right. Is any member of the jury panel
3 aware of any bias or prejudice for or against the State of
4 South Carolina? If so, please stand.

5 (No response given.)

6 THE COURT: Has any member of the jury panel formed an
7 opinion as to the guilt or innocence of the defendant, Stephen
8 Flood, in this case? If so, please stand.

9 (No response given.)

10 THE COURT: Is there any member of the jury panel who is
11 a member of or a contributor to any group which has, as its
12 primary concern, the promotion of law enforcement or victims'
13 rights? These groups would include but certainly not be
14 limited to MADD, SADD, or CAVE, Citizens Against Violent
15 Crimes, the Fraternal Order of Police, or the South Carolina
16 Law Enforcement Association. If so, please stand.

17 (No response given.)

18 THE COURT: Is there any member of the jury panel who
19 knows of any reason whatsoever why they could not give the
20 parties in this case a fair and impartial trial? If so,
21 please stand.

22 (No response given.)

23 THE COURT: Has any member of the jury panel or any
24 member of their family ever been prosecuted by this solicitor
25 or any member of the solicitor's staff regardless of whether

1 the case was dismissed or not? If so, please stand.

2 (No response given.)

3 THE COURT: Have you or any member of your family ever
4 been the victims of criminal conduct? If so, please stand.

5 (No response given.)

6 THE COURT: Do any members of the jury panel, either
7 directly or indirectly through family members, have strong
8 feelings regarding mental health treatment? If so, please
9 stand.

10 (No response given.)

11 THE COURT: All right. Anything further from the State?

12 MR. CLEMENTS: No, Your Honor.

13 THE COURT: Anything further from the defense?

14 MR. BOUCHETTE: No, Your Honor.

15 THE COURT: All right. I find the jury panel qualified
16 in this case.

17 MR. CLEMENTS: Your Honor, may we approach?

18 BENCH CONFERENCE

19 (The following bench conference occurred outside the
20 hearing of the jury panel and others:)

21 MR. CLEMENTS: I'm sorry this is not a good time, but as
22 time goes on, my girth increases and my bladder shrinks. If
23 we can take a quick break.

24 THE COURT: Do you want to take a break now?

25 MR. CLEMENTS: Well, I'll need to real quick.

1 THE COURT: You can step back there if you need to.

2 MR. BOUCHETTE: Judge, are we recessing or just giving
3 him a minute?

4 THE COURT: Let's just take a little break. I'd hate to
5 get all these people out.

6 (Open court resumes:)

7 JURY SELECTION

8 THE CLERK: When I call your name, if you'll come up
9 front, stand right here in front of me, and turn back and face
10 the audience, please. I'll be calling by your juror number.

11 Juror No. 211, Peter Newell.

12 (Juror No. 211; a white male, presents.)

13 THE CLERK: What say the State?

14 MR. CLEMENTS: Please present Mr. Newell.

15 THE COURT: What say the defense?

16 MR. BOUCHETTE: Please present the juror.

17 THE CLERK: Mr. Newell, if you'll take a seat in the jury
18 box.

19 Juror No. 268, Alla Tankhilevitch.

20 (Juror No. 268, a white female, presents.)

21 BENCH CONFERENCE

22 (The following bench conference was held outside the hearing
23 of the jury and others:)

24 MR. CLEMENTS: Because of her medical and physical
25 conditions with her rheumatoid arthritis, we move to strike

1 her for cause. I don't think she would be comfortable sitting
2 or standing or anything.

3 MR. BOUCHETTE: I think the Court has already inquired
4 into her ability to do it or not, so I don't think it's
5 justified for cause. They can strike use a strike if they
6 want to.

7 THE COURT: Thank you.

8 (Open court resumes:)

9 THE CLERK: What say the state?

10 MR. CLEMENTS: Court's indulgence.

11 Present the juror, please.

12 THE COURT: What say the defense?

13 MR. BOUCHETTE: Please seat this juror.

14 THE CLERK: Ms. Tankhilevitch, if you'll take a seat in
15 the jury box, please.

16 Juror No. 129, Terry Godbolt.

17 (Juror No. 129, a white male, presents.)

18 THE CLERK: What say the State?

19 MR. CLEMENTS: Please excuse the juror.

20 THE CLERK: Mr. Godbolt, you can go ahead and take a seat
21 back down. Thank you.

22 Juror No. 90, Carla Dozier.

23 (Juror No. 90, a white female, presents.)

24 THE CLERK: What say the State?

25 MR. CLEMENTS: Please present Ms. Dozier.

1 THE CLERK: What say the defense?

2 MR. BOUCHETTE: Court's indulgence.

3 Madam Clerk, please thank Ms. Dozier, but we'll be
4 excusing her from the service of this trial.

5 THE CLERK: Juror No. 58, Justice Cooper.

6 (Juror No. 58, a black female, presents.)

7 THE CLERK: What say the State?

8 MR. CLEMENTS: Please excuse Ms. Cooper from the trial of
9 this case.

10 THE CLERK: Ms. Cooper, you can take a seat back out.
11 Thank you.

12 Juror No. 84, Shantella Dieujuste.

13 (Juror No. 84, a black female, presents.)

14 MR. CLEMENTS: Please excuse the juror from this trial.

15 THE CLERK: Thank you, Ms. Dieujuste.

16 Juror No. 217, Delsey Owens.

17 (Juror No. 217, a white female, presents.)

18 THE CLERK: What say the State?

19 MR. CLEMENTS: Please present Ms. Owens.

20 THE CLERK: What say the defense?

21 MR. BOUCHETTE: We'll excuse Ms. Owens.

22 THE CLERK: You can take a seat back.

23 Juror No. 168, Larry Larrimore.

24 (Juror No. 168, a white male, presents.)

25 THE CLERK: What say the State?

1 MR. CLEMENTS: Please present Mr. Larrimore.
2 THE CLERK: What say the defense?
3 MR. BOUCHETTE: Court's indulgence.
4 JUROR NO. 168: I don't understand.
5 THE CLERK: It's okay.
6 MR. BOUCHETTE: Please thank and excuse Mr. Larrimore
7 from serving on this case.
8 THE CLERK: Mr. Larrimore, you can take a seat back in
9 the audience.
10 Juror No. 111, Angel Foxworth.
11 (Juror No. 111, a black female, presents.)
12 THE CLERK: What say the State?
13 MR. CLEMENTS: Please present Ms. Foxworth.
14 THE CLERK: What say the defense?
15 MR. BOUCHETTE: Please present this juror -- seat this
16 juror.
17 THE CLERK: If you'll take a seat.
18 Juror No. 271, Janie Thomas.
19 (Juror No. 271, a black female, presents.)
20 THE CLERK: What say the State?
21 MR. CLEMENTS: Please present Ms. Thomas.
22 THE CLERK: What say the defense?
23 MR. BOUCHETTE: Please seat Ms. Thomas.
24 THE COURT: If you'll take a seat in the jury box,
25 please.

1 Juror No. 20, Latisha Benbow.

2 (Juror No. 20, a black female, presents.)

3 THE CLERK: What say the State?

4 MR. CLEMENTS: Please present Ms. Benbow.

5 THE COURT: What say Defense?

6 MR. BOUCHETTE: Please seat this juror.

7 THE COURT: Ms. Benbow, if you'll take a seat in the jury
8 box, please.

9 Juror No. 209, Ebony Murray.

10 (Juror No. 209, a black female, presents.)

11 THE CLERK: What say the State?

12 MR. CLEMENTS: Please present Ms. Murray.

13 THE CLERK: What say the defense?

14 MR. BOUCHETTE: Please seat Ms. Murray.

15 THE CLERK: If you'll take a seat in the jury box,
16 please.

17 Juror No. 124, William Gilliard.

18 (Juror No. 124, a black male, presents.)

19 MR. CLEMENTS: Please present Ms. Gilliard.

20 THE CLERK: What say the defense?

21 MR. BOUCHETTE: Please thank and excuse Mr. Gilliard from
22 serving on this trial.

23 THE CLERK: You can take a seat back out in the audience.

24 Thank you.

25 Juror No. 109, Byron Fowler.

1 (Juror No. 109, a white male, presents.)
2 THE CLERK: What say the State?
3 JUROR NO. 109: South Carolina.
4 THE CLERK: No, I'm speaking with them. I'm sorry.
5 MR. CLEMENTS: Please present Mr. Fowler.
6 THE CLERK: What say the defense?
7 MR. BOUCHETTE: Please seat Mr. Fowler.
8 THE COURT: Mr. Fowler, if you'll take a seat in the jury
9 box, please.
10 THE CLERK: Juror No. 112, Joyce Foxworth.
11 (Juror No. 112, a white female, presents.)
12 MR. JEPERTINGER: What number is this? 112?
13 THE CLERK: Yes, sir. 112.
14 What say the State?
15 MR. CLEMENTS: Please present Ms. Foxworth.
16 THE CLERK: What say the defense?
17 MR. BOUCHETTE: Please thank and excuse Ms. Foxworth for
18 her service in this trial.
19 THE CLERK: Please take a seat back out in the audience.
20 Thank you.
21 Juror No. 291, Mark Williams.
22 (Juror No. 291, a black male, presents.)
23 MR. CLEMENTS: Please present Mr. Williams.
24 THE CLERK: What say the defense?
25 MR. BOUCHETTE: Court's indulgence.

1 Please seat Mr. Williams.

2 THE CLERK: Mr. Williams, if you'll take a seat in the
3 jury box, please.

4 Juror No. 66, Miriam Crawford.

5 (Juror No. 66, a black female, presents.)

6 THE CLERK: What say the State?

7 MR. CLEMENTS: Please present Ms. Crawford.

8 THE CLERK: What say the defense?

9 MR. BOUCHETTE: Please seat Ms. Crawford.

10 THE CLERK: If you'll take a seat in the jury box,
11 please.

12 Juror No. 21, Angie Bennett.

13 (Juror No. 21, a black female, presents.)

14 THE CLERK: What say the State?

15 MR. CLEMENTS: Please present Ms. Bennett.

16 THE CLERK: What say the defense?

17 MR. BOUCHETTE: Court's indulgence.

18 Please seat Ms. Bennett.

19 THE CLERK: If you'll take a seat in the jury box,
20 please.

21 Juror No. 72, Charles David.

22 (Juror No. 72, a white male, presents.)

23 MR. CLEMENTS: Please present Mr. David.

24 THE CLERK: What say the defense?

25 MR. BOUCHETTE: Please thank and excuse Mr. David from

1 service.

2 THE CLERK: If you'll take a seat back out in the
3 audience. Thank you.

4 Juror No. 30, Kayla Brady.

5 (Juror No. 30, a white female, presents.)

6 THE CLERK: What say the State?

7 MR. CLEMENTS: Please present Ms. Brady.

8 THE COURT: What say the defense?

9 MR. BOUCHETTE: Please present Ms. Brady.

10 THE CLERK: Take a seat in the jury box, please.

11 Juror No. 65, Joanne Crawford.

12 (Juror No. 65, a black female, presents.)

13 THE CLERK: What say the State?

14 MR. CLEMENTS: Please present Ms. Crawford.

15 THE CLERK: What says the defense?

16 MR. BOUCHETTE: Please seat Ms. Crawford.

17 THE COURT: If you'll take a seat in the jury box,
18 please.

19 THE CLERK: Two alternates?

20 MR. JEPERTINGER: One and two?

21 THE CLERK: And for the alternates, 275, April Todd.

22 (Juror No. 275, a white female, presents.)

23 THE CLERK: What say the State?

24 MR. CLEMENTS: Please present Ms. Todd.

25 THE CLERK: What say the defense?

1 MR. BOUCHETTE: Please thank and excuse Ms. Todd from the
2 service of this trial.

3 THE CLERK: Thank you, Ms. Todd.

4 Juror No. 102, Kayla Estes.

5 (Juror No. 102, a white female, presents.)

6 THE CLERK: What say the State?

7 MR. CLEMENTS: Please present Ms. Estes.

8 THE CLERK: What say the defense?

9 MR. BOUCHETTE: Please seat this juror.

10 THE CLERK: Juror No. 67, De'andre Cribb.

11 (Juror No. 67, a mixed-race male, presents.)

12 THE CLERK: What say the State?

13 MR. CLEMENTS: Please present Mr. Cribb.

14 THE CLERK: What say the defense?

15 MR. BOUCHETTE: Please seat Mr. Cribb.

16 THE COURT: Any objections to the jury process from which
17 they were drawn? What says the State?

18 MR. CLEMENTS: Nothing from the State, Your Honor.

19 THE COURT: And defense?

20 MR. BOUCHETTE: No, Your Honor.

21 THE COURT: All right. Do you want to have the rest of
22 the jury panel call back after 6:00?

23 MR. CLEMENTS: Yes.

24 THE COURT: The remainder of the jury panel, you're
25 excused for the day. If you would, call back in after 6:00

1 this evening to see if there are any further instructions for
2 you. You may go at this time.

3 (All remaining jurors exited the courtroom at 12:18 p.m.)

4 THE COURT: All right. Members of the jury, I'm going to
5 excuse you until 2:30. We're going to start this trial at
6 2:30. However, I want to instruct you and order you not to
7 talk about this case with anybody. Don't talk about it among
8 yourselves, with your family members, with anybody in the
9 public. Do not get on the internet and Google this case and
10 research it and look it up. And do not look at the news media
11 or any social media at this time. I'm going to give you
12 further instructions on that a little bit later before we
13 begin this trial, but, over lunch, do not do that. I want you
14 to go, I want you to relax, eat lunch, get a little fresh air
15 and come back at 2:30. All right? You're excused.

16 Everybody else remain seated.

17 (The jury exited the courtroom at 12:18 p.m.)

18 THE COURT: Let's take a 15-minute break and come back
19 and do pretrial and then we'll take a lunch break. Does that
20 suit you-all?

21 (A brief recess was taken at 12:19 p.m.)

22 (State's Exhibit No. 1, Map of Town, marked for
23 identification.)

24 (State's Exhibit No. 2, Map of Alternate Route, marked
25 for identification.)

1 (State's Exhibit Nos. 3A-E, Photo of Transportation
2 Office, marked for identification.)

3 (State's Exhibit No. 4, Video from Sandee Rogers, marked
4 for identification.)

5 (State's Exhibit Nos. 5A-C, Photographs from Sandee
6 Rogers, marked for identification.)

7 (State's Exhibit Nos. 6A-B, Photographs from Mayor
8 Battle, marked for identification.)

9 (State's Exhibit Nos. 7A-D, Photographs from Dylan Oates,
10 marked for identification.)

11 (State's Exhibit Nos. 8A and B, Photographs from Will
12 Duncan, marked for identification.)

13 (State's Exhibit Nos. 9A and B, Photographs from Alan
14 Starnes, marked for identification.)

15 (State's Exhibit No. 10, Drone Video from Rice and Dorio,
16 marked for identification.)

17 (State's Exhibit No. 13, Photograph of High Water
18 Vehicle, marked for identification.)

19 PRE-TRIAL MOTIONS

20 THE COURT: Any pretrial motions from the State?

21 MR. CLEMENTS: Your Honor, we would have just one
22 pretrial motion to be taken up at this time and one more we'll
23 put on the record, to be taken up at a later date.

24 Your Honor, our motion in limine would be, as to the
25 evidence of the civil lawsuit, I understand it might be --

1 creep in either by design or unintentionally, but some of
2 those issues might come up and be discussed in front of the
3 jury, and it has no relevance to the criminal charges. And
4 we're worried about, No. 1, it's not relevant to get it before
5 the jury, and No. 2, if it is relevant, it would be a
6 violation of the rules based on the fact that it would be
7 outweighed substantially -- any probative value would be
8 substantially outweighed by danger or unfair prejudice.

9 There is also the danger of confusion of the issues with
10 the juries and the misleading the jury or by undue delay,
11 wasted time, or needless presentation of cumulative evidence.
12 So we would move -- at any time that crops up, we plan on
13 objecting to it.

14 THE COURT: Any response to that?

15 MR. BOUCHETTE: Yes, Your Honor. With regard to the
16 evidence in the civil case, we don't intend to try to
17 prosecute the civil case -- we're under a different
18 standard -- but we contend that one of the central issues, if
19 not the central issue in the case is the proximate causation
20 of the death; that is, the legal causation.

21 Now, what we would intend to get into is the fact that an
22 outside entity -- in this case Horry County Government as
23 opposed to the employer of Mr. Flood, by Mr. Flood, and not
24 who his employer is, we would contend, essentially has taken
25 ownership and has taken liability for the proximate causation

1 of these deaths.

2 Now, they're not as to the sole cause of death. I mean,
3 that will be a jury instruction at the correct time. We think
4 it's a fair inquiry to go in to say some other entity, other
5 than this guy sitting here, has accepted and taken up
6 proximate causation and liability for these folks' death.

7 So I think, one, it's certainly relevant. I don't think
8 -- we can't say it's not relevant to why we're here. To the
9 extent it's prejudicial or probative, it's only prejudicial in
10 the fact that it's prejudicial to the State's case that he is
11 the proximate cause.

12 I can't think of another case where the State would not
13 want us to get into another action with a lower burden of
14 proof. In this case, I think it would certainly be a fair
15 analysis with the proper witness to say, listen, an outside
16 entity -- like I said, in this case, the folks that were
17 responsible for the van and the cage insert where these folks
18 were stuck, they have, in effect, taken responsibility for it
19 and have acknowledged their role in being the proximate cause
20 for these folks.

21 We would ask, again, not -- they would have to otherwise
22 fit into the rules but strictly as a blanket prohibition under
23 403, again, certainly, it is relevant, and it's not more
24 prejudicial than probative on its face except for the fact
25 that it points to additional liability or culpability

1 somewhere else.

2 So, on that basis, we would -- I'd ask that the Court not
3 rule on that at this time and let us get into what the --
4 whenever and where it may come up.

5 MR. CLEMENTS: Well, Your Honor, it's surprising to me
6 because I didn't have any of these people come to me and say,
7 "Solicitor, we're guilty. Don't prosecute us. We've done --"
8 and I don't know of anybody that's accepted criminal
9 liability.

10 As far as civil liability, it's based on a different
11 standard, also based on different facts. What we're concerned
12 with is when Mr. Flood left and the choices he had to make
13 that he ended up making, the last being which, when he looked
14 out across that vast expanse of water, he decided it was fit
15 and proper for him to just go ahead and drive on through
16 there, even though he had two people in a cage that he had to
17 protect and he was supposed to take safely to where they were
18 going.

19 And we're concerned with that, up until that point to
20 where they got stopped and swept away and then the water
21 washed all the dirt out from under it and it submerged and
22 those two poor ladies drowned. That's the end of our issue.
23 Once they drowned, that's it. All the other evidence that's
24 been worked out civilly on the construction of the cage, the
25 way things were set up, all those things, they were all after

1 the fact. So none of it has any bearing on what we're doing.
2 What we're doing is deciding what he did when he drove that
3 van through that water, whether there was a criminal act or
4 not. This is not a who-done-it. We know who did it. It's
5 what is it.

6 And we believe it's gross negligence and doesn't have
7 anything to do with all those issues about money being paid on
8 the civil side or investigation of how things were constructed
9 and proximate liability on the civil side. All that doesn't
10 touch us. Our time frame is over with once they drowned.
11 That's it.

12 MR. BOUCHETTE: Very briefly, Your Honor. We contend
13 that it is relevant, and once -- even once the vehicle becomes
14 disabled. The Court issue is what caused these ladies' death.
15 The evidence is going to come in that this vehicle was there
16 over an hour, and we contend that what happens during that
17 hour and what prevented two trained police officers, with
18 weapons and firearms and shooting off locks and everything
19 else that the evidence is going to show, why were they unable
20 to get this lady out.

21 At a minimum, it's relevant. It goes to the factor of
22 causation. And so, no, the analysis doesn't stop when you
23 approach the flood water because we still have to determine
24 that his analysis and his decision to go into that area was
25 the actual cause of the death.

1 Like I said, I don't want to stipulate that somehow, at
2 that point, the case ends because it really doesn't. That
3 additional hour may be the most important part of the case,
4 but it's a certainly a relevant portion of the case.

5 THE COURT: We'll cross that bridge when it comes up.

6 MR. CLEMENTS: Yes, sir.

7 THE COURT: But in regards to involuntary manslaughter,
8 there does have to be proximate cause to cause the death.

9 MR. CLEMENTS: And we believe the proximate cause was him
10 driving into the water.

11 THE COURT: I understand.

12 MR. CLEMENTS: Nobody was there that told him to do it.
13 These other factors that came after the fact was after he
14 proximally caused it. They would have never been there --
15 those issues with the construction of the van and the cages
16 would have never been looked at but for Mr. Flood's actions
17 with driving that car into that water and it being disabled.

18 THE COURT: I got it. All right.

19 MR. BOUCHETTE: I would just content that's a question of
20 fact for the jury.

21 THE COURT: All right. We'll take it up when it comes
22 up. Anything else?

23 MR. CLEMENTS: Your Honor, we would also make a motion to
24 allow the jury to view the scene. This has been marked for
25 identification as State's Exhibit No. 1. Hasn't been moved

1 into evidence yet. But, Your Honor, what we think would be
2 beneficial -- because this is such a wide, big area, the jury
3 may be lost in trying to look at the whole scene, and we are
4 going to move that in at the presentation of the State's case
5 and they be allowed to go and look from this -- where they
6 encountered the barricades on Highway 9 and 76 and drove into
7 town, they drove here, they drove past the ballpark and the
8 grain bins, and then here's where the drowning took place --
9 that they be able to go and just drive and be taken through
10 that path with no audio -- nobody telling them anything, just
11 that what they gathered from the testimony they've listened
12 to, and then they go and look at that scene from beginning to
13 end.

14 THE COURT: Any objections?

15 MR. BOUCHETTE: I would -- my ability to have an
16 objection after the close of the State's case, but based on
17 what I'm hearing now, I have got a couple of concerns. One,
18 what's the relevance? We're going to show -- we're going to
19 show the road. It's clearly not anywhere near the similar
20 conditions that it was on the night of that -- or the
21 afternoon of that accident.

22 There has been some changes to the exact location where
23 the accident occurred. I understand there may have been some
24 slight road changes further on up the road. So my concern
25 would be -- I have been out there. It's been a little while.

1 My concern is that we end up going out there and there's some
2 change that we can't unring that bell once we have taken the
3 jury out there. And I don't think we even have to get there
4 because I don't see what additional value it is. They'll
5 certainly have pictures. They'll have the map giving a point
6 of reference. I'm sure they have got distances annotated.
7 But, you know, you're going to take them out when conditions
8 are not the same, when there's been modifications to the
9 roadway. So at least at this time, I would object on that
10 basis.

11 THE COURT: All right. Let's see where it goes, but I'm
12 inclined to let them go. I think whether or not he was
13 reckless is a part of it, what he perceives and what he saw
14 and what he did. Maybe after hearing all the evidence and
15 they actually see the scene, it will help them perceive what
16 happened.

17 MR. BOUCHETTE: I understand.

18 THE COURT: And certainly I can't talk now --

19 MR. BOUCHETTE: I understand.

20 MR. CLEMENTS: Your Honor, I understand what I hear from
21 you. I probably should sit down and shut up based on what you
22 just said, but let me say two things. The two things that
23 have not changed, what's important to us, is the length of
24 that ride and where it's located. Those two things have not
25 changed. The road is still there in the same place, and it's

1 not any longer or any shorter. That's what we wanted the jury
2 to see.

3 THE COURT: All right. Thank you.

4 Any pretrial from you, the defense?

5 MR. BOUCHETTE: Yes, Your Honor. The first one, I make
6 the motion cognizant of the reason that we're here and this
7 tragedy that has occurred. In looking out for Mr. Flood in
8 this case, I make a motion that the Court exclude the State
9 and from the Court to refrain from referring to the two
10 decedents in this case with any prejudicial terms, and
11 specifically, I'm referencing to -- or asking the Court to
12 refrain from use of the word "victim."

13 Now, in most General Sessions cases, it's undisputed a
14 crime occurred and there is, in fact, a victim. The question
15 is whether or not the defendant is the one that committed the
16 crime.

17 In this case, we have a threshold issue as to whether or
18 not the facts constitute a crime. And so if we start calling
19 them or referencing "the victim" from the beginning, before
20 the State has met its burden to establish that it was, in
21 fact, a crime, we believe that not only shifts the burden, it
22 gets into the province of the jury. That's a factual
23 determination for them to make, and it's only if they can
24 determine that a crime, in fact, has occurred that a victim
25 exists.

1 And so we would ask that the State be prevented from
2 referring to Ms. Newton and Ms. Green as victims; instead,
3 "passengers," "deceased," "alleged victims," if necessary, but
4 some term other than "victim" or any other term that does not
5 presuppose a crime in its definition.

6 THE COURT: Mr. Clements?

7 MR. CLEMENTS: Your Honor, I didn't know that the word
8 "victim" and the usage -- the definition of it was limited
9 only to criminal situations. Now, I believe you can be a
10 victim and it not be a criminal situation, but these ladies
11 definitely were victims regardless of whether somebody
12 determines a crime occurred. If the crime didn't occur and it
13 was just a terrible, horrible accident, they were victims of
14 that accident. So I don't see where it makes anything -- a
15 hill of beans to call them victims, because they are victims.

16 The jury is smart enough that they're going to know what
17 you mean by the word "victim" and the usage of it. And it
18 goes beyond criminal; it goes to the civil side as well.
19 That's what Mr. Bouchette has said is they have somebody else
20 that's responsible. So if somebody is responsible, they're
21 responsible for the victimization of Ms. Green and Ms. Newton.

22 MR. BOUCHETTE: Very briefly in reply, Your Honor. The
23 only thing I would say to that is that our State constitution,
24 in identifying a crime's victim, does, in fact, define what a
25 victim is. A victim is "a person who suffers direct or

1 threatened physical, psychological, or financial harm as a
2 result of the commission or attempted commission of a crime
3 against him." That's how we defined it in this state.

4 So, again, I think it's pretty well -- particularly in
5 this context, that, if you're referring to somebody, as a
6 victim, there has been a crime by definition, and we want to
7 get up ahead of that. Thank you, Your Honor.

8 THE COURT: I'm going to deny that motion. The State
9 still has to prove their case. Whether they're victims or
10 not, that's up to them to prove or prove if he did it or not.

11 MR. BOUCHETTE: Thank you, Your Honor.

12 My only other motion is -- I'm not really asking the
13 Court to make a determination at this time, but we have got
14 some concern about the number of the witnesses, specifically
15 it would be Corporal Herring, Joshua [verbatim] Oates, Lawson
16 Battle, Will Duncan, Sandee Rogers, and Matt Rice. Your
17 Honor, we anticipate that these witnesses will seek to testify
18 about the road conditions, water levels, water conditions with
19 the implication that the jury can draw certain inferences from
20 that at the time Mr. Flood encountered that roadway.

21 Now, what will be undisputed is that there were no
22 eyewitnesses to the disabling of this vehicle when it got
23 stranded. The State has presented no expert witness to
24 recreate the same. Normally, in a vehicle reckless homicide
25 case, you'd have a situation where an accident

1 reconstructionist would come back and they'd say, all right,
2 he was going 50 miles over the speed limit, he failed to
3 deploy brakes five seconds after impact, he was under the
4 influence, and recreate the scene.

5 Here, there is nobody to recreate the scene, and there's
6 no eyewitnesss other than him. The State is going to seek to
7 have people that weren't there, not even within an hour or
8 several hours, in some cases. Sometimes some of these
9 witnesses are the night before or the day before.

10 And so we're concerned that what they're going to do by
11 having these folks testify on is to essentially try to shift
12 the burden to say Mr. Flood -- the vehicle got stranded in
13 flood water; therefore, you try to explain to us how that
14 could happen but for negligence. It's sort of the -- as we
15 say in civil court -- the res ipsa principle, and that's what
16 we're worried that we're going to get into.

17 And all we're asking for at this point is, when these
18 witnesses are called -- and they're going to testify about
19 flood waters or pictures or what they saw regarding -- just
20 regarding the level of water and the roadway conditions, that
21 the Court excuse the jury and allow us to go briefly into that
22 set of issues and the Court determine -- and exercise its
23 gatekeeping function as to whether or not that witness's
24 testimony is sufficiently close in time to be reliable, is it
25 relevant? If it's not close enough in time, it doesn't even

1 matter.

2 And to the extent it would be relevant, would it be more
3 prejudicial than probative to infer that it was a certain way
4 when they really don't have personal knowledge even within a
5 reasonable time period of when they encountered them.

6 THE COURT: We don't know if they have personal knowledge
7 or not. But, either way, you just object at the time, and
8 we'll hear the testimony outside the purview of the jury, and
9 I'll make the decision at that time.

10 MR. BOUCHETTE: Would the proper way be to, when the
11 State calls the witness first or just when they start to go
12 into that, make the objection, raise it?

13 THE COURT: Whatever suits you.

14 MR. BOUCHETTE: Thank you.

15 MR. CLEMENTS: Thank you, Your Honor.

16 THE COURT: Anything else?

17 MR. BOUCHETTE: Nothing from the defense.

18 THE COURT: We'll take a lunch break until 2:30. We'll
19 see you then.

20 MR. CLEMENTS: Thank you, Your Honor.

21 (A lunch recess was taken at 12:55 p.m. to 2:30 p.m.)

22 THE COURT: Anything we need to take up before we begin
23 from the State?

24 MR. CLEMENTS: Your Honor, we have two maps on poster
25 boards marked State's Exhibit No. 1 and State's Exhibit No. 2.

1 I believe they're without objection and we'd move these into
2 evidence. I believe they're without objection.

3 THE COURT: Is that right?

4 State's No. 1 and 2?

5 MR. BOUCHETTE: That's correct.

6 THE COURT: Okay. Thank you.

7 (State's Exhibit No. 1 was received into evidence.)

8 (State's Exhibit No. 2 was received into evidence.)

9 THE COURT: Anything we need to take up from the defense?

10 MR. BOUCHETTE: No, Your Honor.

11 (The jury entered the courtroom at 2:32 p.m.)

12 THE COURT: Ms. Foxworth, I'm going to make you the
13 foreman of the jury. If you will come around here and take
14 the first seat on the front row.

15 JUROR NO. 111: Me?

16 THE COURT: Yes, ma'am. Thank you.

17 If you'll swear in the jury.

18 THE CLERK: Ladies and gentlemen, if you'll please stand
19 and raise your right hand.

20 (The jury duly sworn.)

21 THE COURT: Ladies and gentlemen of the jury, we're
22 getting ready to start this case, but before we do, I just
23 want to go over a few things with you to give you a little bit
24 of working knowledge to put in your back pocket to sit on as
25 we go forward.

1 The first thing I want to tell you is that the State of
2 South Carolina has the burden of proof in this case. They
3 have to prove their case beyond a reasonable doubt. At the
4 very end of this trial, I will explain that to you in great
5 detail.

6 The second thing I want to tell you is that at no point
7 in time during this trial do you need to start discussing this
8 case. That would be improper and premature. Before you begin
9 your deliberations, you need to hear from everything the State
10 has to tell you, everything the defense has to tell you, and
11 you need to hear the charge from me, and that will be at the
12 very, very end of this trial. And, at that time, I'll
13 specifically tell you to begin your deliberations, and that's
14 when you can start talking about this case.

15 Furthermore, I want to explain to you that you-all are
16 the judge of the facts. I am the judge of the law. You may
17 ask yourselves what does that mean, how do those roles differ.
18 You all being the judge of the facts means that you and you
19 alone determine what the facts of this case are. Not me, not
20 my clerk, nobody in the audience. Just you.

21 You ask yourselves: Well, how do we determine what the
22 facts are? Simply by looking at the evidence.

23 The evidence can be made up of the witness stand -- the
24 witnesses who come here, they take that stand. They're sworn
25 in, and they testify. It can be made up of any exhibits

1 admitted into the record as evidence. Photographs, reports,
2 things of that nature.

3 That is where you-all will determine what the facts of
4 the case are. I, in turn, am here to give the parties a fair
5 trial, and two, at the very end of this trial, I'm going to
6 charge on the law applicable to this case. I'm going to read
7 it to you in great detail. And then, when I tell you to begin
8 your deliberations, you'll take the facts as you find them,
9 the law as I give it to you. You'll put the two together and
10 make a decision therefrom. A lot of common sense in that
11 process.

12 Furthermore, during the pendency of this trial, as I
13 instructed you earlier, I'm going to instruct you again and
14 order that you not watch the news. The trial will be done by
15 Friday, if not before, but during this short period of time,
16 don't watch the news, do not read the news, don't get on
17 social media and read social media. Do not post anything on
18 social media. I need to make sure that you get everything you
19 need the proper way, the right way, right here in court to
20 make a good decision. That's very, very important.

21 When you ask yourselves -- if you take a break and we're
22 back there in the jury room and we're taking something up out
23 here -- "What can we talk about?" You can talk about the
24 weather. You can talk about sports, talk about yourselves,
25 anything you want to but not this case.

1 Furthermore, at any point in time, if we're trucking
2 along and it's getting kind of long and you're uncomfortable,
3 one of you need to use the restroom or you need something to
4 eat or something to drink or whatever, just catch my attention
5 with your hand, and I'll try to make sure you're taken care
6 of.

7 Right now, I want you to relax, I want you to sit back,
8 and I want you to give your attention to the solicitor for his
9 opening statement.

10 OPENING STATEMENT ON BEHALF OF THE STATE

11 MR. CLEMENTS: Thank you, Your Honor. If it please the
12 Court?

13 THE COURT: Thank you. Yes, sir.

14 MR. CLEMENTS: Ladies and gentlemen of the jury, how are
15 you doing today? I want to tell you how much we appreciate
16 you and how much we thank for doing your civic duties and
17 coming to serve as a juror. I think it was Winston Churchill
18 who said that the greatest service a person can give their
19 country in times of peace is to serve on the jury. So thank
20 you for coming. Thank you for being here.

21 Now, along with that, I want to warn you a little bit.
22 You know how we all get aggravated sometimes and talk smack
23 about the government? Well, guess what? You're part of the
24 government now. At least while you're on this jury, you're
25 part of the judicial branch.

1 I want to move this and use this. I'm getting to be an
2 old man. I ain't as old as Billy Wade and don't have all his
3 money.

4 Now, Madam Clerk, may I hold the indictment? Sorry about
5 that. Caught them off guard. I want to take a little look at
6 this indictment and see what we're doing here and what this is
7 all about.

8 We have an indictment here charging Mr. Stephen William
9 Flood, seated at the table with his lawyers, with four counts
10 -- four criminal counts. There are two different charges, and
11 there are two sets of charges for each victim. Mr. Flood is
12 charged with two counts of involuntary manslaughter and two
13 counts of reckless homicide. And there's two counts to each
14 victim in the case: Wendy Newton and Nicolette Green.

15 So what does that mean? All this is is a charging paper.
16 There's no evidence been presented yet. These are just the
17 charges that he's answering to today.

18 Mr. Flood, you will find as you hear the testimony come
19 forward in this case, is a driver of a van of Horry County
20 Sheriff's Office, and Mr. Bishop, the other person charged in
21 this case, was a passenger, and they were transporting two
22 patients, one to Darlington and one to Lancaster, coming from
23 Conway right after Hurricane Florence. And they came through,
24 driving through, and never got past the Little Pee Dee River.
25 They didn't get quite to it. The car stalled out, was swept

1 away against the guardrail, and then water continued to rush
2 under it and around it, and the water got higher and the van
3 got lower until it got over the top of the van, and they were
4 unable to rescue the two ladies for a variety of reasons.

5 But, Mr. Flood, he was the controller. He had the
6 controls. He had the steering wheel. He had the gas pedal.
7 He had the brake pedal, and he was in control of that car.

8 Mr. Bishop was riding with him, and he got charged with
9 the sin of omission. He failed to do something. He failed to
10 get Mr. Flood to stop in all that water. But his case and his
11 facts and his problem is for another day. So, today, we're
12 going to concentrate on Mr. Flood.

13 Involuntary manslaughter and reckless homicide, what are
14 they? What's reckless homicide? It's defined in
15 Section 56-5-2910 of the South Carolina Code of Laws, and it's
16 got different elements to it. The elements of reckless
17 homicide are driving a vehicle in reckless disregard for the
18 safety of others, resulting in injury to another or others;
19 that the injury results in death and is proximately caused by
20 the person charged.

21 Proximately caused -- at the end of this case, the judge
22 is going to charge you on the law. He's going to define
23 things like "proximate cause," "reckless disregard," "willful
24 and wanton," and so you will know how to apply those laws that
25 he gives you to the facts in this case.

1 I would submit to you that Mr. Flood was driving that
2 vehicle in a reckless fashion. He went across where nobody
3 exercising good judgment would try to go across in water, and
4 he went and drove in the water and drove in the water and
5 drove in the water, and it got deeper and deeper. That was
6 the proximate cause. Other things might have added to it, but
7 nothing would have happened to those people if he had not
8 chosen to drive through that water. They would have been safe
9 and alive today. But he didn't. He didn't stop.

10 He had four opportunities, four chances, and he didn't
11 take them. The first opportunity he had was when they were
12 getting ready to go, leave, and do their mission, which was to
13 transport those two medical patients, and they talked in the
14 office, the transportation office where everybody comes and
15 goes when they're leaving a shift or when they're starting a
16 new shift. They come there and they're passing by and they
17 talk about things, and they talked about it in that office.
18 And they talked about not taking that road -- not taking No. 9
19 to the No. 76 because you could not go through Nichols because
20 the flood's out.

21 There were several people involved in that conversation.
22 When they dispersed and Mr. Flood and Mr. Bishop left, no one
23 mentioned anything negative. Nobody said, "No, you can't do
24 that" or "We're not going to do what you suggested; We're
25 going to go on No. 9 and 76." There was no disagreement. No

1 evidence by facial expressions or voice or words or anything.

2 So, later on, they got caught where he was when he was
3 stuck in that van with those ladies that he could not get out.

4 Now also charged, along with reckless homicide, is the
5 charge called involuntary manslaughter. Manslaughter is the
6 taking of someone's life illegally, and involuntary
7 manslaughter is an unintentional killing of a person without
8 malice while engaged in a lawful activity with reckless
9 disregard for the safety of others.

10 It was a lawful activity for Mr. Flood to be driving that
11 van and delivering those patients to Darlington and Lancaster,
12 but what it was that makes it reckless and involuntary
13 manslaughter is that he was doing that lawful activity in a
14 reckless fashion with total disregard for the safety of
15 others, and he did what his negligent -- was gross negligence.

16 You got negligence of regular old, plain negligence of
17 somebody is being reckless or not being careful, and that's a
18 civil negligence. And then you have got criminal. You have
19 got negligence that's called gross negligence that rises to
20 the level that is willful and wanton and is reckless disregard
21 for the safety and life of others, and that is the kind of --
22 that is the kind of negligence that Mr. Flood was exhibiting.

23 Recklessness is a state of mind where the actor is aware
24 of his action and his conduct, yet, he consciously disregards
25 a risk created by his conduct. The judge is going to charge

1 you on the law, and I believe that will be part of what's
2 included there, that he had a disregard, and he caused a risk.
3 Mr. Flood created a risk to those two ladies in that van by
4 driving through that water.

5 Now, if he had gone the other route, they'd be safe.
6 They would have been alive today, but he disregarded that
7 risk, looking at what he saw in front of him, and he continued
8 to drive on.

9 He could have listened and changed his mind and not made
10 that faithful, horrible decision that resulted in those two
11 deaths of those innocent people, but he didn't, because, as he
12 mentions, he wanted to get home a little earlier and get home
13 not late and save some time.

14 He had four chances to do the right thing, but he didn't
15 take them. The first chance was when they were there and
16 talking about which route to take and which not route to take.
17 He could have taken the route he knew was going to be safe
18 instead of the route he knew was going to be dangerous.
19 That's Chance No. 1.

20 The second chance came when he pulled up to the town of
21 Nichols, and they had barricades there, and he went around
22 them. That was his second chance. He blew it.

23 And then he stopped and he talked to National Guard and a
24 sheriff deputy over there on the route trying to keep people
25 from coming into town and not going back out the same way

1 because they couldn't go through, but they were letting local
2 people in to get their stuff, and they had to come back out
3 the same way they went in. He didn't do that. He wanted to
4 go see the water, and he went to see the water, and he never
5 came back.

6 Then the fourth chance is when he pulled around and saw
7 what he saw, and he decided to go ahead. And you're going to
8 get to see that. We have video footage from a drone that,
9 while they were trying to get the van out of the water -- or
10 save the women and get them out of the van, is what I meant to
11 say, and they had the drone over that. And then the drone
12 backs up and backs away and shows the panorama of the whole
13 area. And all you can see is water everywhere. Everywhere.

14 Once he got in there and once he got stuck, there was
15 nothing he could do. He couldn't get the women out. He
16 almost drowned himself; Bishop had to save him.

17 But it was stubbornness. I'd hate to call somebody
18 stupid, but this was a stupid act that took two lives of
19 innocent ladies. And he had a duty. He had a badge, and that
20 badge means he's to serve and protect people. And he had a
21 duty when he was driving that van. That duty they all had was
22 to transport those people safely, to get them delivered
23 safely, to watch out for their well-being, take care of them.
24 He ignored every one of those priorities, because he wanted to
25 go the short way. And it turned out to be death's way.

1 You're going to hear from witnesses, the co-workers of
2 Mr. Flood about how they do their job, exactly what was going
3 on that day. You'll hear from people about Nichols. You're
4 going to hear a bunch of them from the witness stand that live
5 in Nichols, who can explain how they were keeping track of the
6 water and it was rising, slowly but surely rising up. And
7 they can testify to the conditions that Mr. Flood can see when
8 he pulled up there. And they had been monitoring this all
9 day. This wasn't anything different. They knew what was
10 going on. That's why they were only letting people go in that
11 lived in Nichols and get their stuff and get out because it
12 was too dangerous.

13 To serve and protect and the duty that goes along with
14 that badge is to not put someone in harm's way, and that's
15 exactly what Mr. Flood did. He stubbornly drove through water
16 that he was told not to take, and he drove through and then
17 those ladies got trapped.

18 Can you imagine what it would be like to be in a cage
19 with the water rising, how horrible that was to be there? It
20 was rising, and there was nothing they could do because the
21 fate had already been casted when they rolled that dice and
22 took that trip across and through that water. And there, they
23 died. Couldn't get them out.

24 But for the actions of Flood, they would be alive. His
25 action was a proximate cause. His choice was signing a death

1 warrant for them. He didn't know they wouldn't be able to get
2 the cages open. He didn't know how that van was constructed
3 and there were flaws in it, but what he did know was that that
4 was a very, very dangerous situation that he was taking that
5 van into. And when he went down, he kept driving, and he went
6 past the point of no return, there was no return. No return.
7 He went past it.

8 And when he did, Nicolette Green is not here today, not
9 here to be with her family who misses her greatly, and the
10 whole reason they're gone is because of Mr. Flood.

11 You can talk about all these other issues that had some
12 contribution to what happened -- mechanical failures, design
13 failures, design flaws -- but none of that would have
14 mattered. That van would still be going today if nothing like
15 that happened and pointed out those failings in the design of
16 that van. And it was clear that he drove the van there. No
17 one told him to go there. And that decision was all him.
18 And, unfortunately, here he is in court today, and he's got to
19 answer to that decision. He was reckless, he ignored their
20 safety, and he proximately caused their death.

21 And when you hear all the evidence and you make your
22 decision back in that jury room, you apply the law to these
23 facts, I'm sure that you're going to find Mr. Flood guilty and
24 shake your head about what might have been if he had just not
25 been so stubborn. Thank you.

1 THE COURT: All right. The defense is recognized.

2 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

3 MR. BOUCHETTE: Thank you, Your Honor. If it please the
4 Court?

5 THE COURT: Yes.

6 MR. BOUCHETTE: Madam Court Reporter, Solicitor Clements,
7 to our jury, good afternoon.

8 A lot of times, defense lawyers will come in here to tell
9 you that it's an honor to be able to come to represent
10 somebody. Let me tell you something: When I say that, I
11 don't want you to roll your eyes, I don't want you to think
12 that's something he just says. You come here today -- I'm
13 thankful that you're all here not just because, as Solicitor
14 Clements says, it's an extraordinary act of service to give up
15 your time and to be here today, because it's an honor to be
16 able to represent that man right there, Steve Flood. Because,
17 folks, that is a good man. That is a good man. You know how
18 you tell he's a good man? Because he spent a lifetime doing
19 good things.

20 You're all here today, obviously, not by choice; I'm sure
21 there's other places you'd like to be, other things you could
22 have been doing. Steve Flood never thought in his life he'd
23 be here. He's not here because he robbed somebody, sold
24 drugs, did any of the things that you think might end up in a
25 courtroom. He's here today to tell us of an accident, and you

1 have heard the allegations in the indictment and what the
2 State intends to prove.

3 But, folks, I have been involved in this case for a
4 while, and it's still difficult to listen to, as I'm sure it's
5 difficult for you-all to listen to it the first time here
6 today. Nobody is going to deny that what happened on
7 September 18th, 2018, was a human tragedy. Steve doesn't deny
8 it. You don't have to tell him. He was there. It happened
9 almost four years ago, but that incident -- September 18th is
10 with him every day. It's with him as he sits at the defense
11 table. It will be with him tonight when he has dinner with
12 his wife, Jackie, and his three daughters, who are here with
13 us in the courtroom today. If he's able to sleep, it will be
14 with him in his dreams.

15 Steve Flood's heart is heavy with burdens of sadness,
16 with empathy, because he was there when it happened. There
17 will be no other witness that will come and take that stand
18 and tell you what it was like that day and what was going on.

19 I expect, as the case proceeds, you're going to have some
20 of those same feelings. But, at the conclusion of the case,
21 once all the evidence is in, once you have heard everything, I
22 suspect that what you're going to conclude is that what
23 happened on September 18th, 2018, is certainly a tragedy.
24 Folks, it was an accident. It was an accident, and it wasn't
25 a crime. It was tragic, but it wasn't a crime, and Steve

1 Flood is not guilty.

2 Now, you have heard the solicitor's take on what he
3 expects the evidence to show, but we wouldn't be here or ask
4 you-all here and we wouldn't have waited this long to be able
5 to have you all here if we agreed with the solicitor. All
6 right? Because, like everything else, there's always two
7 sides to a story, and we believe, once you have all the
8 information, that the solicitor didn't spend a lot of time
9 talking about, you're going to see those facts a little bit
10 differently.

11 You're going to see that Steve Flood was first ordered on
12 a route and to go on a road he had no business taking. The
13 superiors knew the roads were dangerous. They knew the roads
14 were getting increasingly dangerous. The folks they were
15 transporting, they were not inmates, there was no court order
16 telling them to go anywhere, there was no medical emergency.
17 There was no reason for them to be on the road. If it was up
18 to Steve, he wouldn't have gone. But it wasn't up to him.
19 Just like the rest of us, he's got a boss, and somebody told
20 him, this is what you're going to do today, so he went.

21 Now, when he took the route, you're going to hear a lot
22 of about National Guards and the Marion County sheriffs that
23 he encountered -- all right -- the folks that waved him
24 through. And we're going to talk about that, and the reality
25 is nobody was attempting to prevent him. They waived him

1 through. These were people he was expecting to give him
2 information about what he was about to encounter.

3 When the vehicle became disabled, he immediately contacts
4 emergency services. He's looking for help. Now, mind you,
5 the water level is rising. You heard the solicitor say
6 earlier, Steve Flood almost lost his life that day. This is a
7 man, folks, he can't swim. He was sitting there, as the water
8 rose, but he stayed at his post, and he's calling for help.
9 He didn't try to get back. He's there. He stayed the whole
10 time. He was calling -- he was asking for help.

11 And yet, somehow, for almost an hour -- in 2018, for
12 almost an hour, this vehicle sits at this location with the
13 water levels rising, even though the National Guard and the
14 Marion County Sheriff had just passed about two miles and two
15 minutes before, somehow couldn't manage to get there. They
16 were about one mile and one minute from the Nichols Town Hall,
17 where help eventually arrived from. And the whole time,
18 they're on the phone with multiple emergency agencies, going
19 back and forth, trying to get help, yet nobody can do it.
20 Nobody can seem to provide aid. Nobody can seem to get them
21 out of this.

22 If that was the only thing that went wrong, if all that
23 had happened, the story ended there, we'd still be here today.
24 The question you're going to have for yourself is: Why is it
25 that two law enforcement officials with guns somehow couldn't

1 manage to get these folks out of this van over the course of
2 an hour? The answer to that is going to be that the van they
3 were driving is a literal death trap.

4 See, what happened was, the vehicle they were driving had
5 what we'll refer to currently -- and we'll talk about that --
6 as an insert. That's a metal cage, in effect, that goes in
7 the van so that you can have male inmates on one side and
8 female inmates on the other. But it's an insert inside a van
9 that you see driving down the road. Now, the problem is, the
10 sheriff's department had taken that insert out of an old
11 vehicle years ago and put it in this new one.

12 Now, again, if that was the only thing that went wrong,
13 we wouldn't be here today. The problem was, whenever they
14 took the insert out and put it in the new vehicle, two things:
15 They didn't create any kind of emergency release, like you see
16 on the school buses with things that pop up on the top.
17 There's no other emergency release. And more important than
18 that, they never got the key to be able to let the people out
19 of the one release hatch that there was. They had been
20 sending the drivers out, like Steve, for years. No key. It
21 had been that way for years, and nobody -- we don't know where
22 it's at.

23 Now, I don't anticipate those facts to be disputed. What
24 I just told you I don't think is going to be in dispute, yet
25 Steve Flood -- and his passenger is not here today, Brandon

1 Bishop, are being charged with the cause of these ladies'
2 death. And your question is going to be: Well, why is that?
3 Were they the sole cause? I don't think so.

4 I think you're going to look at this and find and
5 conclude the reason we're here today is a completely
6 understandable reason. When something bad happens, when
7 tragedy happens -- and there's no doubt that this is a
8 tragedy -- what happens is our instinct is to kind of look for
9 somebody to blame, try to hold somebody to blame. Sometimes
10 we rush to judgment. And I think that's what we're going to
11 see here.

12 What you're going to see, ladies and gentlemen, is that,
13 by asking you to return a verdict of guilty, the State is
14 hoping they can make Steve Flood the scapegoat for this
15 terrible, tragic accident. And that's all it was, was an
16 accident.

17 Now, I want to spend just a moment -- you're going to
18 hear the evidence from the stand, but I want to give you sort
19 of preview, kind of like you go to the movies and get a
20 preview before you see the film. I want to give you a little
21 bit of an outline of what I anticipate we'll see. Again, the
22 State is going to put their case on. I don't know exactly
23 what it will be, but I think we're going to see a few items
24 that I want to go through.

25 The first thing we're going to go through and talk about

1 is: Where does Stephen Flood work and who is he? Now, you
2 have heard that he was a sheriff -- he was a county sheriff,
3 and he did -- he worked for -- please forgive my handwriting.
4 This is Horry County Sheriff's Office. Okay?

5 Now, you probably think that, by working there, he's a
6 police officer like you might think he responds to calls, runs
7 traffic, arrests people, back and forth. That's not what he
8 does. Not only is that not what he does; that's not what the
9 Horry County Sheriff's Office does. Those functions, these
10 things are taken care of by the Horry County Police
11 Department.

12 Now, that's really unusual. I think there's maybe one
13 other county in the state that does this. All right? I won't
14 go into the reason why that is, but it's a long backstory to
15 say it was political years ago, but the county sheriff,
16 generally speaking, does not handle these types of functions
17 that you would think of by most police systems.

18 Steve Flood, going to the police academy, he didn't go to
19 be a street cop. He went to be a corrections officer and
20 later in the transport. Because that's what the county
21 sheriff does is essentially oversee the jail, security at the
22 courthouses. They do civil process. When somebody gets sued
23 and you have got to go serve somebody, they do that. All
24 right? And they do transportation of people going to and from
25 court. That's pretty much all they do. So, as we get

1 started, that's who we're dealing with.

2 One other thing: The vehicles that they drive, that they
3 have their officers driving, those are purchased, maintained,
4 and coordinated by Horry County P.D. It's something we call
5 Fleet Services. That's who maintained the vehicle that he had
6 driving that day. That's what they had. All right?

7 So there was a lot mentioned in direct by the State that
8 Mr. Flood is stubborn. Folks, we look forward to being able
9 to put forth his professional history in this case, because a
10 stubborn person displays stubborn actions over time. And I'm
11 going to challenge the State to put forth evidence, documents,
12 employment records showing him listed as stubborn. That's not
13 the case. He had a sterling record as a police officer.

14 Now, he got into law enforcement a little bit later. He
15 had been in the military when he was a young man, and when he
16 got in -- I think it was his late 40s. He had a sterling
17 record. He had no issues whatsoever.

18 And so when we come to the day of September 18th, 2018,
19 that's the person you have got to have in your head. All
20 right? You heard the solicitor say there was a communication
21 with some other officers. He goes and checks in that day,
22 like he always did, and there's going to be a lot of dispute
23 about what was conveyed and why and things of that nature, but
24 I think it's going to be undisputed that his superiors knew
25 that this was going to be a dangerous road condition. They

1 researched the ability to check and see what was happening.

2 It was minimal. But they sent him out anyway. All right?

3 He went the route he normally went. Why did he go the
4 route he normally went? Because you always want to go the
5 most efficient route. These are county vehicles. Taxpayers
6 are paying for it. The more time you're on the road, the more
7 likely you are to get in a wreck. They're always told to try
8 to go the most efficient route. All right?

9 So he goes and he encounters a National Guardsman and
10 sheriff's department. And what happens? Is he waved through,
11 like everybody else that's in an emergency vehicle or a police
12 vehicle? He stops. What does he stop to do? He doesn't ask
13 about the ball game or what's happening. He's asking what are
14 the conditions like.

15 And there's going to be some dispute about exactly was
16 said, but, nonetheless, these folks, who claim to have
17 knowledge about what was happening, they took no -- certainly
18 no extraordinary efforts, and I think the evidence is going to
19 show almost no efforts, neither one nor two, to ensure that
20 this vehicle got through safely.

21 They knew where he was going. This was a transport
22 vehicle. What does the sheriff's transport vehicle transport?
23 It transports people. So there's no dispute about what he was
24 trying to do and what he was trying to achieve. All right?

25 So you're then going to hear where he drives into the

1 town roughly about a mile or so, and, yeah, there's water on
2 the ground. No question about that. It was after a storm.
3 There had been a lot of rain. Folks, you can't live in Marion
4 County, Florence County, Georgetown County, parts of Horry
5 County, and others without encountering water on the roads at
6 some point. He saw water. There's no question about it. But
7 it was not clearly hazardous, clearly life threatening until
8 he got around the curve just past the Nichols Town Hall, that
9 we'll talk to you a little bit more.

10 Now, at that point, he could tell it was getting deeper.
11 He knew there was a problem. All right? But, at that point,
12 he's got a decision to make. He can stop and back up, but now
13 you don't really know. What happens if you back up and maybe
14 you go in a ditch? What happens if you do something like
15 that?

16 But he can see dry land down the road, and he makes the
17 decision that "I'm going to try to -- I'm going to get
18 through, I'm going to get to the high land, and then I'll be
19 okay." Again, he's using his judgment based on those
20 circumstances at that time. All right?

21 The first bridge you're going to see, that this area that
22 he passed essentially started to collapse, and these flood
23 waters -- you all have seen it -- the river was cresting at
24 that point, unfortunately. These are not normal conditions.
25 And the reality was the ground literally shifted under their

1 feet.

2 How do we know that things were changing and how fast
3 they were changing and how dynamic it was going to be?
4 Because, from the time they get disabled, it's about an hour
5 before anybody comes. The water level would have gone from
6 roughly a little below the tire to over the top of the
7 vehicle. That's how fast the water was going. That's how
8 fast it was rising. That's how much it was changing.

9 And it was very difficult -- I would argue, impossible --
10 for somebody to sit here today in a dry courtroom,
11 air-conditioned courtroom, and really understand just what was
12 happening, how Mother Nature was creating those scenes at that
13 time. The only person that knows or at least the only person
14 that can testify is going to be Steve Flood and the
15 co-defendant in this case, who has not been brought to trial
16 this week.

17 Now, again, had that been all that happened, Mr. Flood
18 and Mr. Bishop would have been able to save these ladies. It
19 would have been wet, it would have been an inconvenience, but
20 they would have been okay.

21 Mr. Bishop is able to go to the back of this van. He
22 opens the doors. Now, he tries to get in through one escape
23 hatch there is, like I said, but it's locked. It's got locks
24 on the outside, and it's got locks on the inside. The locks
25 on the outside -- this man takes a gun and shoots the locks

1 off, but he still can't get them out. These are officers
2 doing everything. These are extraordinary efforts to save
3 these ladies, but they can't because they're being prevented
4 from doing it, not because of anything they did.

5 Folks, I think when you get into the cause of this --
6 what was the proximate cause? What caused the death of these
7 ladies -- I think we'll have to talk about that a great deal.
8 There's no dispute this is a tragedy of errors. There's no
9 dispute that a number of things went wrong in this case.

10 Folks, Steve Flood is a good man. He's not a stubborn
11 man that disregards or doesn't care about people. The
12 evidence is going to show he cares deeply. And why does that
13 matter? That matters because that's essentially why we're
14 here today. The State is saying that that man just didn't
15 care, that he just wanted to get home early.

16 Show me one incident in his ten years at the Sheriff's
17 Office where he had done that. This man got paid by the hour.
18 He was working two part-time jobs: One at McDonald's and the
19 other.

20 At the end of this case, the State is going to ask that
21 you conclude that this man just had a death wish, didn't care.
22 I don't think that's going to be the case. And so I ask you,
23 during the course of this case, to remember that burden of
24 proof. Again, it's not unusual in a trial that there may be
25 murky testimony or people kind of change their stories,

1 whatever the case may be, but the State has the burden of
2 proof in this case, and that burden of proof is the
3 defendant's burden. But I submit to you, it's also for
4 you-all, because I have the difficult job to come here today
5 and try to defend somebody that's been accused of a crime.
6 Solicitor Clements has a difficult job to try to meet his
7 burden of proof. And Judge Seals has to try to referee us and
8 try to give you the right law at the end of the day. But a
9 lot of people forget about how difficult your job is.

10 See, up until now, Steve Flood has kind of been in my
11 care. I've been promising him that we would present the
12 evidence, present the law to people that would look at it, and
13 we have been working through this case. And now, as we begin
14 the evidence portion of this case, I'm going to turn the
15 evidence over to you. That evidence is now on you.

16 And it's not often talked about, but as you sit here as a
17 juror, I know how heavy that responsibility can be. You don't
18 want to wake up and wonder years from now if you made a wrong
19 decision. And that's why that burden of proof -- like I said,
20 it's the defendant 's right, but it's for you-all, so that you
21 can have a clear conscious and sleep well at the end of this
22 week.

23 So, during the course of this case, if they ask you to
24 make inferences or speculate or draw conclusions that you
25 don't think are there, don't you dare let them take that away

1 from you. That burden of proof is there to protect you too.

2 And I think, as we conclude, as you start looking to the
3 evidence, again, think about what is undisputed. Think about
4 Steve and who he is, what he know happened. And you think
5 about some of these other folks. We have got the Horry County
6 Sheriff's Office, Horry County P.D. We're going to hear about
7 the National Guard that was there. We have got Marion County
8 Sheriff's Office. Who else? SLED was there nearby. The DNR,
9 that's the game wardens. Again, please forgive my
10 handwriting.

11 Nobody seemed to be able to save these ladies, and, yet,
12 Steve Flood sits here. The question would be: Why? I think
13 the most important abbreviation or acronym that we're going to
14 have during this case is this: CYA. Y'all know what that
15 means. I'm not going to say it in court, but I think they're
16 going to be shifting the blame throughout the course of this
17 case, and try to shift the blame and make this accident --
18 make Steve the scapegoat for this accident.

19 Again, all I ask is, one -- thank you again for your
20 time, if I didn't do that earlier, but I'd ask that you just
21 wait until all the evidence has been presented for you to come
22 to any conclusions and apply the law that the judge gives you.
23 And I think, if you do that and you hold him to that burden of
24 proof, then you will be able to make sure that we leave
25 here -- you don't wake up years from now wondering if you got

1 it wrong.

2 So thank you so much for your time.

3 THE COURT: The State will call your first witness.

4 MR. CLEMENTS: Thank you, Your Honor.

5 Your Honor, we would call Sergeant Elizabeth Orlando,
6 Horry County Sheriff's Office transport.

7 SERGEANT ELIZABETH ORLANDO,

8 after having been duly sworn, was examined and testified
9 to as follows:

10 DIRECT EXAMINATION

11 BY MR. CLEMENTS:

12 Q Sergeant Orlando, how are you doing today?

13 A Better? Okay.

14 Q Can you please tell this jury what your job is and what
15 rank you are and what your duties are in your job?

16 A I am employed by the Horry County Sheriff's Office at
17 J. Reuben Long Detention Center as a sergeant over
18 transportation. So I am the direct supervisor that supervises
19 the day-to-day operations for transportation.

20 Q And how many people work under you?

21 A I'm supposed to have about 18.

22 Q Are you, like, short-staffed like everybody else these
23 days?

24 A Yes, sir.

25 Q Excuse me. Do you remember back to September 18th, 2018?

1 A Yes, sir.

2 Q Why does that day stand out to you?

3 A It was the date of the incident that occurred. The
4 reason why we're here.

5 Q And do you recall where you were that day when this kind
6 of started?

7 A Yes, sir.

8 Q Tell me about where you were.

9 A I was at work.

10 Q Where at work?

11 A In my office. In our office.

12 Q And where is your -- what's right outside your office?

13 A Right outside of my office is a big room that the
14 transportation officers -- we have a table and where we sit
15 and -- when we're not busy and talk, eat, make plans.

16 Q What did you talk about? Anything talked about regarding
17 routes to take?

18 A In the reference to this incident?

19 Q Just in general first.

20 A Normally, it's the officer's discretion on routes to
21 take, but with the occurrences that were going around -- going
22 on in North Carolina and the upper part of Horry County, we
23 discussed routes that day.

24 Q And for what purpose?

25 A For the safety of those we're transporting and the

1 officers who were transporting.

2 Q I'm going to show you what's been marked State's
3 Exhibit 3-A, B, C, D, and E. If you can, if you would, refer
4 to these by number and see if you can identify those for me.

5 A 3-A is the view of our office, the big room that we call
6 it, when you come into the transportation office from another
7 area of the detention center.

8 Q On that day, was it substantially like it is in that
9 picture or was it something different?

10 A The only thing that's different is we did not have the TV
11 monitor.

12 Q But everything else is the same?

13 A Everything else is the same.

14 Q All right. That's 3-A. How about 3-B?

15 A 3-B is a different view. This door right here is the
16 door that we enter the transportation office. This door right
17 here is the door that goes into my office. And then this door
18 goes to the kitchen and another office.

19 Q How about 3-C?

20 A 3-C is the view of the big room after you walk out of my
21 office.

22 Q And 3-D?

23 A 3-D is the view from the big room into my office.

24 Q And, lastly, 3-E?

25 A 3-E is pretty much the same view as 3-A.

1 Q Okay. Are there lockers and things in that room?

2 A Yes. Opposite the wall where the TV monitor is, there
3 are lockers for each officer's personal items.

4 Q When people are coming onto their shift or either leaving
5 their shift, where do they usually wind up?

6 A In that room.

7 Q Okay. And on the date of September 18th, 2018, were
8 people in that room?

9 A Yes.

10 Q Can you tell us, if you recall, who some of these people
11 were in that room?

12 A Myself, Corporal Maxim, Officer Herring, Flood, and
13 Bishop. And then someone else walked in later, and I didn't
14 know who that was until a later date.

15 Q Okay. Was there any discussion going on?

16 A Yes. We had two mental health patients that needed to be
17 transported from -- one was from Waccamaw Mental Health in
18 Conway, and the other, from Loris Hospital in Loris, to go to
19 Darlington McLeod Behavioral Health and a facility in
20 Lancaster, South Carolina.

21 Q Okay. And who did you send to do that transport?

22 A The evening shift officers were Flood and Bishop.

23 Q Do you usually send two?

24 A No.

25 Q Why did you send two on this occasion?

1 **A** We knew the conditions were changing, and just for safety
2 purposes, it was a longer trip, we were sending two.

3 **Q** Had you made a similar decision earlier in the day with a
4 couple of the other officers?

5 **A** Yes.

6 **Q** Who were they?

7 **A** Officers Witherspoon and Crawford.

8 **Q** Where were they going?

9 **A** They went to take a mental health patient from, I
10 believe, Loris to Mary Black, which is in Spartanburg, and to
11 pick up either at Spartanburg or Greenville County Detention
12 Center, an inmate to be brought to us.

13 **Q** And who did you send on that trip?

14 **A** Officers Witherspoon and Crawford.

15 **Q** Okay. I'm going to show you what's been marked and
16 entered into evidence without objection -- so I guess I can
17 turn it so they can see it.

18 Does that look at all familiar to you or not?

19 **A** Yes, sir.

20 **Q** Tell me what this is.

21 **A** This is a map of the routes that were given and the route
22 that was taken.

23 **Q** Was this given out on this shape or just by voice and
24 vocal?

25 **A** Voice and vocal. We discussed it.

1 Q All right. And who all was involved in that discussion?

2 A Myself, Corporal Maxim, Corporal Herring, and Bishop and
3 Flood were there. We were discussing it with them. Herring
4 is from the Loris area, so he's very familiar with No. 9 and
5 how it will flood and knew that No. 9 was -- there was a
6 barricade because of flooding issues, so we knew we needed to
7 avoid that route.

8 Q And what other routes did you suggest? Well, first, let
9 me ask you to step down here.

10 MR. CLEMENTS: Can everybody see?

11 BY MR. CLEMENTS:

12 Q Did you talk about a route that you didn't want them to
13 take?

14 A Yes.

15 Q And can you point that out on this map?

16 A This red No. 9. No. 9 was closed. It was flooded. It
17 was closed.

18 Q And No. 9 was 76; right?

19 A It went into 76, correct.

20 Q Well, what did you do, if anything -- checking the DOT
21 website or anything like that, checking up on the roads?

22 A We have a map on our wall, and it's a map of the state of
23 South Carolina. I also checked -- and Corporal Maxim was
24 there -- trying to figure out the best route, and I was
25 checking road closures on the DOT website, the 511 website.

1 Q Can you tell me what is this blue right over here?

2 A This blue route is the route that is what I really wanted
3 them to take. This was the route, which was shorter than the
4 green, and from Loris Hospital back down 701 across 22 and up
5 501 towards Darlington.

6 Q Is that longer than the red route would have been?

7 A Yes.

8 Q Tell me about this green route here.

9 A There had been a green route because we had officers --
10 two other officers that came from Florence earlier in the
11 afternoon, and they said the water --

12 MR. BOUCHETTE: Objection to the hearsay, Your Honor.

13 THE COURT: Sustained.

14 BY MR. CLEMENTS:

15 Q All right. After the conversation with him, what did you
16 do?

17 A We made the decision to tell them, if the river had --
18 was rising at the Marion and Horry County line, that they were
19 to turn around and come back to 378 and around to Darlington
20 through Lake City.

21 Q So Conway through 378 to Lake City?

22 A Which is a much longer route. But we weren't sure about
23 the river, and roads were closing and opening every five
24 minutes.

25 Q Okay. You can have a seat back down.

1 Was Flood present there when y'all were having these
2 discussions?

3 **A** Yes, sir.

4 **Q** Did he make any comments or say anything?

5 **A** No, sir.

6 **Q** In agreement or disagreement?

7 **A** No, sir.

8 **Q** Let me back up a little bit. Now, can you explain to
9 me -- and I don't want do get into Horry County policies, but
10 you work for the Horry County Sheriff's Office; is that
11 correct?

12 **A** Yes, sir.

13 **Q** And that sheriff's department is a county-funded
14 department; correct?

15 **A** Correct.

16 **Q** And you're a transportation officer there; correct?

17 **A** Correct.

18 **Q** How long have you been a transportation officer?

19 **A** I have been in the transportation division -- I went in
20 as a corporal in 2014.

21 **Q** Were you ever a corrections officer?

22 **A** Yes, sir.

23 **Q** How long were you a corrections officer?

24 **A** I have been with the Sheriff's Office as a corrections
25 officer since 1996. 25 years.

1 Q What do you think the duty you have -- or do you have a
2 duty to the public when you put on that badge in the morning?

3 A Yes.

4 Q How would you describe that duty that you have?

5 A To protect and to serve.

6 Q Now, as transportation officers, what do y'all do to try
7 to prioritize the safety of your cargo, the people you
8 transport?

9 A How do we prioritize it?

10 Q Yes, ma'am.

11 A It's the number one priority: The safety of those that
12 we transport and the officers that are transporting.

13 Q So there's no priority to finish routes quicker or
14 anything like that?

15 A No.

16 Q You said there was a discussion and others involved with
17 it about this route, what not to take and which route to take.
18 Did you stay there? Did everybody disburse, or did you leave,
19 step out of the transportation room office?

20 A I stayed later to have the discussion, so I left to go
21 home for the day.

22 Q Okay. And when you left, what was your understanding was
23 going to happen?

24 A That they were going to go to Loris, pick up the patient
25 from Loris, come back down 701 to 22 to 501 and go to

1 Darlington.

2 Q Okay. Do you remember getting a phone call -- or let me
3 ask you this: Did you hear later about the van having a
4 problem?

5 A Yes.

6 Q How did you hear about that?

7 A I received a phone call from another sergeant --

8 Q What did you do, if anything?

9 A -- wanting to know where they were.

10 Q Okay. And what did you tell him?

11 A I told them the route that they were supposed to be on.

12 Q Did you try to respond yourself?

13 A I did.

14 Q Was there trouble finding them?

15 A Yes. When I found out that's not the way they went, I
16 had a lot of trouble finding them.

17 Q Ultimately, did you get to Nichols?

18 A Yes. Well, I got to where the water was.

19 Q As close to Nichols.

20 Were there a lot other agencies involved in this?

21 A Yes.

22 Q Do you know how that van got there?

23 A Do I know how the van got there?

24 Q Yes. Who was driving it?

25 A I don't know if I knew at the time who was driving, but

1 Officer Flood.

2 Q But it could have been -- once they leave, you didn't
3 tell any particular person to drive. It could be either one
4 of them?

5 A Correct.

6 Q And did you order them to take the route suggested or was
7 it just strongly suggested?

8 A It wasn't ordered because the road was closed.

9 Q So you didn't think they would have gone there anyway?

10 A No.

11 MR. CLEMENTS: Beg the Court's indulgence.

12 BY MR. CLEMENTS:

13 Q Again, who was in the transportation room with you?

14 A Myself, Corporal Maxim, Officer Herring, Flood, Bishop.

15 MR. CLEMENTS: At this time, I'd move into evidence
16 State's Exhibits 3-A, 3-B, 3-C, 3-D, 3-E.

17 THE COURT: Any objections?

18 MR. BOUCHETTE: No objection.

19 THE COURT: 3-A, B, C, D, and E are in evidence without
20 objection.

21 (State's Exhibit Nos. 3-A to 3-E were received into
22 evidence.)

23 MR. CLEMENTS: Sergeant Orlando, please answer any
24 questions that the defense may have. Thank you for coming.

25 MR. BOUCHETTE: Court's indulgence just a moment.

1 CROSS-EXAMINATION

2 BY MR. BOUCHETTE:

3 Q Sergeant Orlando -- I'm sorry. It's sergeant; is that
4 right?

5 A Yes, sir.

6 Q Go through a little bit again your role -- well, let me
7 back up a little bit.

8 Horry County Sheriff's, that's where you work; is that
9 right? And where you were working at the time?

10 A I work for Horry County Sheriff's Office, but I am
11 assigned to J. Reuben Long Detention Center.

12 Q And, again, over in Transportation; is that right?

13 A Yes, sir.

14 Q All right. Now, that is different -- Horry County Police
15 is the entity that, more often than not, is out there making
16 arrests and responding to calls and things of that nature; is
17 that right?

18 A Correct.

19 Q Okay. And you mentioned that you're over at the jail or
20 responsible at the jail; is that right?

21 A My responsibilities are at the jail, correct.

22 Q And what was your position at the time of this incident?

23 A I was a sergeant of Transportation.

24 Q So was anybody above you?

25 A Yes.

1 Q And who was that?

2 A Captain Grate.

3 Q Captain Grate. Okay.

4 But other than Captain Grate, was anybody else superior
5 to you in that position?

6 A There was no lieutenant, and that's the only rank between
7 myself and Captain Grate.

8 Q So is that a no?

9 A There's a lot of people superior to me, but directly, no.

10 Q Okay. All right. And your responsibilities are
11 responsible for hiring and firing people?

12 A No.

13 Q Do you perform the performance evaluations?

14 A I do.

15 Q Okay. All right. And those performance evaluations are
16 fairly important; is that right?

17 A Yes.

18 Q All right. You do those because you don't want anybody
19 working for you that's not up to par; is that right?

20 A Correct. We're required to do them.

21 Q So you fill those out completely and truthfully?

22 A Yes.

23 Q Okay. Now, you mentioned before that -- I think you said
24 in your direct testimony that roads were closing and opening
25 all during the day; is that right?

1 A Correct.

2 Q And, to be fair, you were not particularly familiar with
3 either one of these routes; is that right?

4 A Correct.

5 Q I think you -- well, let me ask you: You don't
6 generally, yourself, go on transportation routes; is that
7 right?

8 A Correct.

9 Q I think, at this time, you had only been on one yourself?

10 A No, I had been on more than one.

11 Q Okay. But you don't go regularly; is that right?

12 A No.

13 Q Now, so safe to say, you didn't have any knowledge -- any
14 personal knowledge about road conditions or flood conditions
15 anywhere between Conway and Darlington or Conway and
16 Lancaster; is that right?

17 A I looked it up on the website and saw it on the website.

18 Q When you say, "the website," the DOT website?

19 A The DOT 511 website that shows --

20 Q And that shows you that Highway 9 was closed heading out
21 of Nichols; right?

22 A Highway 9 between Loris and Nichols was closed.

23 Q Highway 9 between Loris and Nichols.

24 So let me go back through. These ladies that were in the
25 vehicle, how did they come to be transported?

1 **A** They were committed by a doctor at the hospitals -- one
2 was -- and the other was Waccamaw Mental Health.

3 **Q** And you were providing what's called a courtesy
4 transport; is that right?

5 **A** Actually, the law states that we're required to do that.

6 **Q** But this is not a court order of people being committed
7 to a mental health facility; is that right?

8 **A** They're committed by the doctor, and it goes under the
9 law.

10 **Q** You do not have a court order directing you to --

11 **A** Probate order? No, sir.

12 **Q** You didn't have any court order; correct?

13 **A** The emergency commitment paperwork that is filled out at
14 the hospitals or by doctors is followed -- it goes under the
15 law for a commitment -- for emergency commitments.

16 **Q** So is that a no, that there was no court order requiring
17 this transport to occur at this time?

18 **A** No.

19 **Q** Okay. Now, I understand what you have testified a moment
20 ago. The facilities they were coming from, Grand Strand and
21 the other hospital, were those facilities in danger of either
22 flooding or having any kind of ramifications from the storm?

23 **A** It was Waccamaw Mental Health, not Grand Strand.

24 **Q** Was that facility in danger of flooding or power outage
25 or anything like that?

1 A I can't answer that question. I don't know.

2 Q Do you have any reason to believe there was any problem
3 or difficult- -- issues with those facilities?

4 A No, I don't know.

5 Q So -- and this was not a -- these folks were not being
6 transported due to any type of medical emergency that you were
7 aware of?

8 A Correct.

9 Q So when we get into the afternoon of September 18th,
10 2018, safe to say that you knew that the road conditions were
11 going to continue to deteriorate throughout the course of the
12 day? Would that be safe to say?

13 A Different areas, correct.

14 Q Well, let me ask you in a minute. That's why you had
15 Mr. Flood being accompanied by Mr. Bishop, is that right?

16 A For safety reasons, correct.

17 Q Okay. Safety related to flooding; right?

18 A Yes.

19 Q And the road conditions?

20 A Absolutely.

21 Q You knew that, no matter which way you went, it was -- or
22 which way these guys went, they might encounter danger;
23 correct?

24 A I knew that the one route that they went, they would
25 encounter danger. The other two routes were safe.

- 1 Q So you're telling me you knew without any question of
2 doubt they would encounter no danger on any other route?
- 3 A No danger? No.
- 4 Q Okay. Of course --
- 5 A Flooding wasn't an issue, though, on 378.
- 6 Q Well, to the best of your knowledge right?
- 7 A Yes.
- 8 Q Because you still sent a second person to go with him?
- 9 A Correct.
- 10 Q Specifically for the issue of danger related to flooding
11 on whatever route they ended up taking; correct?
- 12 A Correct.
- 13 Q Because -- I'm going to go back to this. All right. You
14 said y'all discussed going up Highway 9 and up to Darlington;
15 right?
- 16 A We discussed not to go Highway 9 up to Darlington.
- 17 Q All right. But you discussed, and then you say, well,
18 you have got this other route, which is annotated in blue.
19 All right. That's a route that you say that you thought they
20 were going to go or encouraged them to go?
- 21 A Correct.
- 22 Q All right. But then you said, Well, if there's a problem
23 there -- then you gave them another backup route; correct?
- 24 A Correct, if the road was closed to --
- 25 Q So it was entirely possible and in your understanding at

1 that time they might encounter problems even on this other
2 route?

3 A They could have, if the road was closed. They were
4 closing the roads.

5 Q You didn't know --

6 A I mean, they couldn't drive through the roads.

7 Q But the reality is, you sent another person with him
8 because you thought it was at least possible, if not probable,
9 that they might encounter problems on this road as well;
10 right?

11 A At 501 in Marion, correct.

12 Q Okay. And, as an additional precaution, you gave them a
13 final backup route; correct?

14 A Correct.

15 Q All right. Now, 378 into Florence, that goes through --

16 A Lake City.

17 Q -- goes through Lake City.

18 A It doesn't go through Florence. It goes around.

19 Q Eventually it goes up to Florence; right?

20 A I can't see that far.

21 Q Are you familiar with that route?

22 A Through the map, yes.

23 Q Through the map.

24 You've never been on it yourself?

25 A No.

- 1 Q Have you been on this route yourself?
- 2 A With a mental patient?
- 3 Q Right.
- 4 A Or by myself?
- 5 Q With a mental patient, as part of your official duties.
- 6 A No.
- 7 Q A lot of low-lying areas between Conway to Lake City to
8 Florence; right? You'd agree with that?
- 9 A I agree.
- 10 Q Okay. Potential for flooding even on that second
11 alternate route; correct?
- 12 A Yes.
- 13 Q Still dangerous even on the third alternate route;
14 correct?
- 15 A I guess.
- 16 Q Okay. So the reality is, they left -- the Route 1, if
17 they ran into problems, try another route, and after that,
18 they were on their own; right?
- 19 A No.
- 20 Q Well, they were ordered to go on this route; right? That
21 was an order --
- 22 A And they could have called if there were issues.
- 23 Q Yes or no: Was that an order from you to go on this
24 route?
- 25 A An order?

1 Q Correct.

2 A I told them not to go the route they went. The order was
3 not to go that specific route, the blue route or the green
4 route -- the red route, was not to go that way.

5 Q So, to be very clear: Was this -- did you order them to
6 go this route, which is annotated in blue; yes or no?

7 A Yes.

8 Q You did? That's your testimony today?

9 A Yes.

10 Q So if anybody else that was in the room said it was not
11 an order, they would be lying?

12 A It wasn't a specific order: You are to go this way.

13 Q Is there some other kind of order?

14 A I don't order my staff. I'm not that type of supervisor.
15 "This is the way you need to go."

16 Q You gave them guidance; would that be fair?

17 A Absolutely. Except for the No. 9.

18 Q All right. So taking this aside, under normal
19 circumstances, would you agree with me that drivers are
20 encouraged to go the most efficient route from location to
21 location?

22 A They're actually encouraged to take more main roads than
23 76 is.

24 Q That didn't really answer my question. The general
25 rule --

1 A Well, you're pointing to that route.

2 Q Well, as a general rule, is it Department policy to
3 encourage officers to go the most efficient route from one
4 location to another, all other things being equal?

5 A As long as it's not going on back roads.

6 Q So is that a yes?

7 A So, no.

8 Q So, no, you don't want them to go the most efficient
9 route?

10 A Not necessarily.

11 Q Okay. All right. Well, have you monitored the routes
12 that drivers go?

13 A Yes.

14 Q Okay. All right. Now, these guys normally, you said,
15 had the discretion to determine their route?

16 A Yes.

17 Q So, normally, they're going to be on their own in terms
18 of finding out how to get from Point A to Point B. Do you
19 agree with that?

20 A Normally, they know how to get from Point A to Point B.
21 They're not on their own.

22 Q So they know the way to get there. All right.

23 MR. BOUCHETTE: For some reason, I didn't print off my
24 notes for this witness.

25 BY MR. BOUCHETTE:

1 Q Now, you mentioned before that safety is the No. 1
2 priority; is that right?

3 A Absolutely.

4 Q Okay. Had it ever been brought up before about -- let me
5 ask it this way: Had you ever conducted any training with
6 those that reported to you regarding emergency exits of any of
7 the transport vehicles that your employees would be driving?

8 A No.

9 Prior to 2018, I'm assuming you're asking.

10 Q That's right. Prior to 2018, you have never done that?

11 A No.

12 Q Okay. Now, the vehicle that they were driving had no,
13 like, exit through the roof; is that right?

14 A Correct.

15 Q The accessibility -- let me ask you this: Are you
16 familiar with the van and its layout?

17 A Yes.

18 Q So if I'm looking at -- if I'm envisioning the van -- and
19 the side has, like, a sliding door; is that right?

20 A Correct.

21 Q When I slide that door open, just like I'm sliding into a
22 minivan, there will be a metal cage right there; correct?

23 A The insert, yes, sir.

24 Q The insert. All right.

25 And that has -- that's sort of one compartment; is that

1 right?

2 **A** Yes, sir.

3 **Q** If I walk around to the back of the van and I open those
4 doors out, I'll see another metal door; right?

5 **A** Correct.

6 **Q** That's a separate -- that's another compartment?

7 **A** Correct.

8 **Q** All right. And the divider between those two
9 compartments contained a lock on it, didn't it?

10 **A** Correct.

11 **Q** Where was the key?

12 **A** I can't answer that question.

13 **Q** Do you know when that insert was put in that vehicle?

14 **A** I believe 2017, 2016.

15 **Q** Did it get put in there from an old vehicle, an old car?

16 **A** From what I understand, yes.

17 **MR. CLEMENTS:** Your Honor, we have got an issue of law.

18 **THE COURT:** Y'all come around here.

19 **BENCH CONFERENCE**

20 (A bench conference was held off the record and outside of
21 the hearing of the jury and others.)

22 (Open court resumes as follows:)

23 **BY MR. BOUCHETTE:**

24 **Q** We just talked about the van and the transport vehicle.

25 Is it safe to say that was an unsafe vehicle? Would you agree

1 with me on that?

2 A Without the key to the locks, correct.

3 Q Whose job, if you know, was it to check and see if there
4 was -- or to maintain or ensure that there were those locks
5 available?

6 A To maintain the vehicles? Horry County Fleet Services.

7 Q Okay. How about to ensure that the locks -- that
8 somebody had the locks before the vehicles went out?

9 A That someone had the key to the locks?

10 Q The key, that's correct.

11 THE COURT: Hold on one second, ma'am.

12 I'm sorry, we have a jury -- do you need something to
13 drink?

14 Why don't we step into the jury room, take a short break.
15 Do not discuss the case. We'll be back with you in just a
16 minute.

17 If the bailiff would lead them in, wherever the bailiff
18 is.

19 (The jury exited the courtroom at 3:50 p.m.)

20 THE COURT: We're going to take a brief recess.

21 (A brief recess was taken from 3:50 p.m. to 3:55 p.m.)

22 THE COURT: And I'm just going to put on the record about
23 the civil suit objection that you brought up. As far as civil
24 suit is involved, I'm not going to allow you to bring in the
25 fact that the civil suit was filed and money is being sought,

1 and I'm not going to allow the civil suit from the deposition.
2 However, as far as the facts go in the case, such as a faulty
3 locker or van, that could weigh in as to the proximate cause
4 of the death.

5 MR. CLEMENTS: He didn't drive -- it didn't matter.

6 THE COURT: I understand. Still, that's a fact question.

7 MR. BOUCHETTE: Obviously, I'm still allowed to -- should
8 be allowed to impeach with the deposition testimony should the
9 opportunity to arise.

10 THE COURT: We'll cross that bridge when we get there.

11 MR. BOUCHETTE: How would Your Honor like me to broach
12 that? I don't want to inadvertently--

13 THE COURT: Whenever a witness comes up and you think,
14 that would be fine.

15 MR. BOUCHETTE: Let the Court know we have a matter of
16 law?

17 THE COURT: Yeah.

18 MR. BOUCHETTE: Okay.

19 (A brief recess was taken from 3:56 p.m. to 3:59 p.m.)

20 (The jury entered the courtroom at 3:59 p.m.)

21 THE COURT: You may continue.

22 BY MR. BOUCHETTE:

23 Q Before we broke, I asked you if it would be safe to say
24 that this vehicle was an unsafe vehicle.

25 A Finding out later, yes.

1 Q As we sit here today with your testimony, you have now
2 testified that that was an unsafe vehicle; is that correct?

3 A Yes.

4 Q Okay. Who would have been responsible for ensuring that
5 the vehicle that these guys were driving that day was safe?

6 A Can you be more specific?

7 Q Well, do you agree with me that somebody had a
8 responsibility to ensure that the vehicles that were being
9 used by people like Mr. Flood to transport the passengers was
10 a safe vehicle?

11 A Our vehicles are supplied by Horry County Fleet Services.
12 It would have been Horry County Fleet Services, to make sure
13 our vehicles are safe.

14 Q So let me get it straight. The vehicle was unsafe and
15 County Fleet Services was responsible for ensuring it was
16 safe; is that right?

17 A County Fleet Services, who orders our vehicles, who
18 stocks our vehicles, installs everything in the vehicles, and
19 does all service on the vehicles.

20 Q Okay. Now, how about you, as head of Transport, do you
21 have any responsibility to ensure that that vehicle was safe
22 before drivers go out in it?

23 A Sure.

24 Q You do?

25 Is it safe to say that you failed in making sure that

1 that vehicle was safe before Mr. Flood took it out with those
2 ladies in it?

3 **A** Sure.

4 **Q** I want to talk about the discussion you had once
5 Mr. Flood arrived to work that day. Now, you didn't call
6 ahead of time or make any special precautions or -- let me
7 rephrase that.

8 Was there a special meeting called? In other words,
9 y'all get to work early and let's talk about a few things?

10 **A** I was already at work. He was an evening shift officer.
11 So he wasn't responsible for coming into work until 2:00.
12 Officer Bishop didn't come in until 3:00 normally. That day,
13 Flood was late, so they got there around the same time. I'm
14 not sure who got there first or how late he was.

15 **Q** So Flood and Bishop arrived at basically the same time.
16 Let me rephrase that. Basically their usual time; is that
17 right?

18 **A** No, Bishop -- or Flood was late.

19 **Q** He ran into traffic because of the storm on the way
20 coming in; right?

21 **A** Because of 501 being closed because of the barricades
22 they were building. 501, they were building the barricades at
23 Lake Busbee, so the lanes were closing.

24 **Q** So, wait a minute. On his way coming into work, coming
25 from the beach into Conway, 501, they were having to close

1 roads there too?

2 **A** It was in preparation of what could happen, they
3 expected, in about three days.

4 **Q** But there were flood conditions on 501?

5 **A** Not at that time.

6 **Q** That's why he got delayed; right?

7 **A** Because of traffic, yes.

8 **Q** Now, was there any kind of email or memo or anything
9 memorializing this discussion that you say you had?

10 **A** No.

11 **Q** Is it safe to say this is a more kind of an informal
12 discussion than a meeting?

13 **A** It was a verbal discussion.

14 **Q** It was a what?

15 **A** Verbal. We talked about it. It wasn't something that we
16 said, "Oh, everybody sit down and let's discuss it." It was
17 impromptu. Before I left to go home, let's discuss this
18 because these runs came up.

19 **Q** It was impromptu. It was kind of an informal kind of
20 thing. Safe to say?

21 **A** Yes.

22 **Q** Now, you may have talked about this with the solicitor,
23 but in these photographs, 3-A, I see a TV monitor. That was
24 not there at the time of the --

25 **A** Correct. And I stated that when I explained the photos.

1 That was not there.

2 **Q** I see a camera there. Was this meeting recorded?

3 **A** No. This -- our office is an old medical office, so back
4 in the early 2000s/late 1990s, that camera was in there
5 because it was somebody else's office, and when they made that
6 the medical department, they disconnected the cameras. And
7 the cameras have been updated since then. So that camera is
8 not used at all.

9 **Q** All right. So there was no -- you didn't formalize your
10 advice or guidance or instructions or whatever you want to
11 call it in either an email, a memo, or any kind of writing?

12 **A** Correct, no.

13 **Q** All right. Is it safe to say that, when the meeting
14 concluded and Mr. Flood and Mr. Bishop went on their route,
15 you yourself had no clue what type of conditions they would
16 encounter; is that right?

17 **A** No, because they weren't supposed to go that way.

18 **Q** I'm not asking if they were supposed to go that way. I'm
19 asking your knowledge of what they might encounter, or lack
20 thereof.

21 Did you have any knowledge about what any of these routes
22 might be like when these drivers got on the road?

23 **A** No.

24 **Q** So, as you testify here today, these alternative routes
25 that we spent so much time on, you had no clue, no idea at the

1 time you're having this meeting that the route annotated as
2 the blue route was a safe route?

3 **A** Correct. And we explained to them that, if it was
4 closed, like it could have happened, to turn around and take
5 the other route, which should not have been affected at all.

6 **Q** Well, you weren't there, were you?

7 **A** I was not.

8 **Q** Okay. All right. So if they went in and they
9 encountered a problem, didn't they have to respond to what
10 that problem was, right, and go on this third route?

11 **A** If they came to a road being blocked, then they would
12 turn around and go a different way.

13 **Q** Safe to say they kind of had to play it by ear and see
14 what the road conditions were when they left that day?

15 **A** No.

16 **Q** No? They were not to make any kind of modification based
17 on the conditions they encountered?

18 **A** If they encountered conditions. If they encountered road
19 closures, like blocked roads.

20 **Q** Are you aware of the road closure of Highway 9 going up
21 to Dillon?

22 **A** There was a road closure before you got to 76 -- between
23 Loris Hospital and 76.

24 **Q** Had you gone there?

25 **A** That's the one that was closed when I looked it up and

- 1 told them not to go that way.
- 2 Q Again, you didn't order them not to go that way; right?
- 3 A I said you shouldn't go that way.
- 4 Q You're the --
- 5 A Well, I mean --
- 6 Q You're their supervisor; correct?
- 7 A I would also -- I don't think I should tell somebody
- 8 don't go through a road -- a blocked road.
- 9 Q Well, listen, you're the supervisor; correct?
- 10 A Correct.
- 11 Q The very fact that they were out on this road was because
- 12 of your direction; correct?
- 13 A Not on that road, no, sir.
- 14 Q But on the route -- on the transport?
- 15 A Not on that route. On that transport, yes, sir.
- 16 Q I'm asking, for them being on the road, was that a result
- 17 of an order you had given them to undertake the transport on
- 18 September 18th, 2018?
- 19 A Yes.
- 20 Q Yes. All right.
- 21 So you know when to give an order; right?
- 22 A Correct.
- 23 Q You know how to give an order; right?
- 24 A Correct.
- 25 Q You can give an order; right?

1 **A** Yes.

2 MR. CLEMENTS: Objection. This has been asked and
3 answered numerous times. It comes out one way and goes in
4 another.

5 THE COURT: It's probably time to kind of wind it on
6 around, if you would.

7 BY MR. BOUCHETTE:

8 **Q** Ms. Orlando, would you agree with me that Steve Flood is
9 somebody with high integrity?

10 **A** Before 2018?

11 **Q** Yeah. As of -- at the time of September -- of 2018,
12 would you have considered Mr. Flood somebody of high
13 integrity?

14 **A** Yes. I would have thought so.

15 **Q** Somebody that followed procedures; correct?

16 **A** For the most part.

17 **Q** Well, you say "for the most part." If he was deficient
18 in following procedures, you would have made sure to have
19 reprimanded him or annotated or taken some kind of action
20 against him; correct?

21 **A** Every reprimand isn't documented. When there's
22 discussions for correction, those are discussions.

23 **Q** Okay. All right. But you never -- nothing rose to the
24 level that would warrant formal reprimand?

25 **A** Not while I was in there, no.

1 Q Not while you were there. Okay.

2 And you'd agree with me, that's probably a tough thing to
3 do if you're employed in the police department for a long
4 time, isn't it?

5 A What would be? To reprimand someone?

6 Q Well, to go without being reprimanded.

7 A I don't know that he wasn't reprimanded prior to my
8 arrival in Transportation. He was in there longer than I was
9 at that time.

10 Q But you were a supervisor there for -- at the time in
11 2018; right?

12 A Yes.

13 Q Okay. And, so, at that time at least?

14 A Right.

15 Q Okay. All right. Very good.

16 Now --

17 MR. BOUCHETTE: Court's indulgence.

18 BY MR. BOUCHETTE:

19 Q Ms. Orlando, you understand that Mr. Flood's view and
20 characterization of this interaction you-all had before he
21 went out on the transport on September of 2018 was a little
22 bit different than yours?

23 A Absolutely.

24 Q Okay. So you're essentially putting your credibility --

25 MR. CLEMENTS: Objection to pitting the witnesses, Your

1 Honor.

2 THE COURT: Sustained.

3 BY MR. BOUCHETTE:

4 **Q** Ms. Orlando, have you ever been reprimanded or received
5 disciplinary actions?

6 MR. CLEMENTS: Objection to relevance.

7 THE COURT: How is that relevant?

8 MR. BOUCHETTE: It goes directly to credibility, Your
9 Honor.

10 THE COURT: Go ahead and ask your question.

11 BY MR. BOUCHETTE:

12 **Q** Have you yourself ever been disciplined or received a
13 disciplinary report for something in the course of your --

14 MR. CLEMENTS: Objection again on the basis of relevance.

15 THE COURT: Overruled.

16 Go ahead.

17 **A** Yes, sir. I have been with the -- I have been employed
18 there for 25 years. Absolutely, I have.

19 BY MR. BOUCHETTE:

20 **Q** Do you recall an incident in 2013 where an individual was
21 brought in that had attempted suicide prior to his arrest for
22 which you were reprimanded?

23 **A** Yes.

24 **Q** Okay. Tell us about that incident.

25 MR. CLEMENTS: Objection to relevance on that, Judge.

1 THE COURT: I think that's far enough.

2 BY MR. BOUCHETTE:

3 Q Did you receive a reprimand in 2013 regarding the release
4 of an inmate prematurely?

5 A Yes.

6 Q Did you receive a reprimand in 2012, again, for the
7 release of an inmate prematurely?

8 A Is that a formal reprimand or informal?

9 Q Did you receive either?

10 A I'm sure. I'm not going to disagree on any reprimands
11 that I may have gotten in the last 25 years.

12 Q So we acknowledge at least two regarding early release of
13 inmates and one regarding failure to respond to a suicide
14 attempt?

15 A It wasn't a failure to respond to a suicide attempt.

16 Q What was it?

17 A May I see it?

18 MR. CLEMENTS: Objection, Your Honor.

19 THE COURT: I think you've asked -- I think you've made
20 your point.

21 MR. BOUCHETTE: Court's indulgence, Your Honor.

22 No further questions.

23 THE COURT: Redirect?
24
25

1 REDIRECT EXAMINATION

2 BY MR. CLEMENTS:

3 Q Sergeant Orlando --

4 A Yes, sir.

5 Q -- can you tell me what in the world does any reprimands
6 you have received in years past got to do with that man right
7 there driving through that flood?

8 MR. BOUCHETTE: Objection.

9 THE COURT: What grounds?

10 MR. BOUCHETTE: Calls for a legal conclusion. The jury
11 should also determine the relevance and lack of relevance.

12 THE COURT: You brought it up. You opened the door. I'm
13 going to at least let him ask a question or two.

14 MR. CLEMENTS: Your Honor, I'm sorry; I'm getting old and
15 deaf. Can you say that one more time?

16 THE COURT: Go ahead and ask your question.

17 MR. CLEMENTS: Thank you, sir.

18 BY MR. CLEMENTS:

19 Q Mr. Bouchette was asking you about the unsafe vehicle.
20 When Mr. Flood and Mr. Bishop went on that unsafe vehicle --
21 or on that vehicle and they drove to Loris Hospital and back,
22 is it safe to do that?

23 A Loris Hospital and back from where?

24 Q After picking up the other medical transportee.

25 A To Loris Hospital? It was safe to do that.

1 Q It was safe to do that?

2 A Yes.

3 Q Now, when you told them to go on Highway 22, was it safe
4 to do that?

5 A Yes.

6 Q When you told them to go on Highway 501, was it safe to
7 do that?

8 A Yes.

9 Q When you told them to drive on 378, was it safe to do
10 that?

11 A Yes.

12 Q Do you recall anything, any knowledge whatsoever, about
13 anybody drowning on 378 that day?

14 A No, sir.

15 Q Do you recall anything about somebody drowning on 501
16 that day?

17 A No, sir.

18 Q Or 22?

19 A No, sir.

20 Q Did it become unsafe when they got in that flood water?

21 A Yes, sir.

22 MR. CLEMENTS: Beg the Court's indulgence.

23 BY MR. CLEMENTS:

24 Q Let me ask this again, and pause when you answer it,
25 because I might be stepping off the mark, so don't let me do

1 that or allow the judge to not let me do that.

2 What, if anything, did any reprimands you have ever had
3 -- had that do with Mr. Flood driving that day through that
4 flood water?

5 A I can't answer that question. They're trying to put the
6 blame on me.

7 Q Okay. I believe that's it. Thank you.

8 THE COURT: All right. Any follow up?

9 MR. BOUCHETTE: No, sir.

10 THE COURT: All right. You may step down. Thank you.

11 MR. CLEMENTS: Your Honor. May we have a side bar over
12 there?

13 BENCH CONFERENCE

14 (The following bench conference was held outside the hearing
15 of the jury and others.)

16 MR. CLEMENTS: He has clearly -- clearly put this man's
17 character into evidence, and I'm going to go after him.

18 THE COURT: Flood's character?

19 MR. CLEMENTS: Yeah. He asked her, "Isn't he a man of
20 integrity."

21 THE COURT: Where do you intend to go after him?

22 MR. CLEMENTS: Just some things they -- other co-workers
23 had about him being stubborn and doing things this way.

24 MR. BOUCHETTE: Judge, I asked his supervisor about that,
25 in her role as a supervisor. Talked about his character in

1 opening arguments or opening statements. That's not evidence.
2 I think they started doing -- I think they start -- open up
3 Pandora's box and start going into just character evidence
4 without him having taken the stand.

5 MR. CLEMENTS: Well, in all his opening statement, he was
6 putting it all in the -- out there for the man's integrity,
7 being a good man, a man of integrity and all that, but I knew
8 also that that was not evidence. I was waiting on him to put
9 it in, and he brought it into evidence because he asked
10 directly about it to the deputy.

11 MR. BOUCHETTE: Well, and she responded affirmatively.
12 Now, it's not in dispute. I mean...

13 MR. CLEMENTS: There's some other questions that could
14 have been asked of her. I'm going to ask these other
15 witnesses.

16 THE COURT: That's true. She said he was a good
17 character.

18 MR. CLEMENTS: Yeah.

19 THE COURT: And that's really all that came in.

20 MR. BOUCHETTE: Yeah.

21 THE COURT: And that works in their favor.

22 MR. CLEMENTS: It gives me an opportunity to go after
23 him. I'll tell you exactly what I'm going to do. His
24 co-workers had this thing about "That's Flood being Flood."
25 When things happen, he's going to do things -- I asked them,

1 "What does that mean when y'all say 'Flood being Flood'" --

2 THE COURT: Shh...

3 MR. CLEMENTS: -- it means, he's going to do things his
4 way.

5 MR. BOUCHETTE: I don't know.

6 THE COURT: I'd prefer we stay --

7 MR. BOUCHETTE: Yeah.

8 THE COURT: -- slim on the character stuff.

9 MR. CLEMENTS: Well, I mean, that's all I'm going to ask
10 about is isn't he stubborn.

11 THE COURT: That's your only question?

12 MR. CLEMENTS: That's my only -- that's my only --

13 THE COURT: And who are you going to ask that of?

14 MR. CLEMENTS: I'm going to ask Corporal Maxim. I was
15 going to ask Corporal Herring. I'm going to ask Crawford and
16 Witherspoon and also Deputy -- what's his name?

17 MR. BOUCHETTE: While you're thinking about that, I would
18 want to note our objection to --

19 MR. CLEMENTS: They all --

20 MR. BOUCHETTE: -- earlier -- oh, okay. Good deal. You
21 know, I'd have to see exactly what it is, but, again, you
22 start -- you know, if he's going into general character, you
23 know, propensity evidence, which is what it sounds like, that
24 he's generally stubborn, therefore, he's trying to get that
25 he's stubborn, he did it this way in this case, then I think

1 we set up an issue that we don't really need to go down.

2 MR. CLEMENTS: It goes -- it goes directly down the road
3 it should go down.

4 MS. DROST: I brought the evidence book too. I brought
5 it.

6 MR. BOUCHETTE: Yeah, mine's sitting on my desk there.

7 THE COURT: What's the rule --

8 MR. BOUCHETTE: We start getting down to 404 --

9 MR. CLEMENTS: Let me go find it.

10 THE COURT: I want to look at it.

11 MR. CLEMENTS: You can show by a different action --

12 THE COURT: 106 is -- drop it on down.

13 MR. CLEMENTS: John, grab that blue book and come here.

14 THE COURT: You don't need it. I got it right here.

15 MR. CLEMENTS: Never mind.

16 THE COURT: There's your rule: Character evidence
17 generally is not admissible except character of an accused,
18 evidence of a pertinent trait or character offered by an
19 accused about prosecution to rebut the same.

20 MR. BOUCHETTE: Right.

21 MR. CLEMENTS: So I'm rebutting it.

22 MR. BOUCHETTE: Yeah, but we get to rebut you, not the
23 other way around.

24 THE COURT: So y'all are just going to open it up and
25 roll with it?

1 MR. BOUCHETTE: Well, if our client was to take the
2 stand, then they would certainly be able to ask him about
3 prior incidents that might indicate similarity or otherwise
4 comport with the rule, but for them just offer it directly
5 into evidence that he is of a general character that is --

6 THE COURT: From other people.

7 MR. BOUCHETTE: That's right. I think --

8 THE COURT: Who tend to think so as well.

9 MR. BOUCHETTE: I think that's where you get into that
10 issue.

11 THE COURT: It's not admissible, but if you get up under
12 404(1)...

13 MR. CLEMENTS: Well, he's put up evidence that he's a
14 good man, he has integrity, and I'm -- by prosecuting or
15 rebutting it by saying he's stubborn as a mule.

16 MR. BOUCHETTE: If he takes the stand and says, "I'm a
17 good guy," then, yeah, they can definitely cross-examine about
18 specific instances.

19 MR. CLEMENTS: He's already argued it in opening
20 statement and --

21 THE COURT: Well, I think you can ask him, the accused.

22 MR. BOUCHETTE: Yeah.

23 THE COURT: But preferably not patrolmen and all these
24 other people.

25 MR. CLEMENTS: Well...

1 THE COURT: Because, generally, it's not admissible.

2 MR. CLEMENTS: But that's --

3 THE COURT: There are some exceptions. I'd hate to screw
4 up this trial.

5 MR. CLEMENTS: I know, but that rule, talking about being
6 admissible without character being put into evidence already.
7 That's when character has not been put into evidence. Here,
8 he's put it into evidence.

9 THE COURT: It's not admissible for the purpose of
10 proving actions therewith. That's exactly what you're trying
11 to do, put in that he's stubborn and that --

12 MR. BOUCHETTE: That, therefore, he did a stubborn thing.

13 THE COURT: He's conforming therewith being stubborn.

14 MR. BOUCHETTE: That's right.

15 THE COURT: That's the way I see it. Why don't we just
16 be real cautious about that.

17 MR. CLEMENTS: Well, I won't do it today. I'll do some
18 more research.

19 THE COURT: That will be fine.

20 MR. CLEMENTS: But he -- he's arguing all that in opening
21 statement, and I was sitting there floored by all that.

22 THE COURT: And that will all (inaudible). We'll check
23 it out.

24 (Open court resumes as follows:)

25 MR. CLEMENTS: Your Honor, we call Corporal Christopher

1 Maxim.

2 CORPORAL CHRISTOPHER MAXIM,

3 after having been duly sworn, was examined and testified
4 to as follows:

5 DIRECT EXAMINATION

6 BY MR. CLEMENTS:

7 Q Can you please state your name for the record and spell
8 your last name.

9 A It's Corporal Christopher Maxim. M-a-x-i-m.

10 Q And where do you work, Corporal Maxim?

11 A I work for the Horry County Sheriff's Office,
12 Transportation Division.

13 Q Would that make you a county employee?

14 A Yes, sir.

15 Q How long have you worked for Horry County Transportation?

16 A Transportation? Since 2013.

17 Q And where did you work before that?

18 A I worked inside the jail.

19 Q As a corrections officer at Ruben B. Long [verbatim]?

20 A Yes, sir.

21 Q How long have you worked in law enforcement total?

22 A Since 2009.

23 Q Do you remember the date of September 18th, 2018?

24 A Yes, sir.

25 Q Tell us what you remember about it. Tell the jury.

1 **A** Well, I arrived at work -- I was supposed to work 3:00 to
2 11:30. I arrived there I think about 2:30, quarter to 3:00.
3 And I talked to Sergeant Orlando first, and she told me about
4 the plans that we had as far as transports for that night.
5 And she said our orders were to check the road conditions. So
6 both of us got on, and we were checking SCDOT website for road
7 conditions.

8 And then Mr. Flood and Mr. Bishop arrived about the same
9 time which she stated. As they were getting dressed and
10 ready, we kind of met in the -- at our table.

11 **Q** I'm going to show you what's been marked as State's
12 Exhibit 3-A. Tell me what that is. It's in evidence.

13 **A** That's a view coming into our office from the jail.

14 **Q** Do you remember where anyone was situated during that
15 time when you had this discussion?

16 **A** Not exactly, but I think Mr. Flood and Mr. Bishop were at
17 this end of this table, and I believe Mr. Herring was over on
18 this side. And I can't remember where Sarge and I were
19 standing at the time exactly.

20 **Q** And as far as rank, you rank above Flood or above Bishop?

21 **A** Yes, sir.

22 **Q** You were talking to Sergeant Orlando about the different
23 transports you had to do that evening; is that correct?

24 **A** Correct.

25 **Q** What transports did you have on your plate when you got

1 there?

2 **A** Well, Officer Wright was on her way from Waccamaw Mental
3 Health to the jail at that time, and Mr. Flood and Mr. Bishop
4 were going to take over, take that vehicle, go to Loris
5 Hospital, and then transport to Darlington and then to
6 Lancaster.

7 **Q** Okay. Do you know which person was going to Darlington?
8 Was it Ms. Green or Ms. --

9 **A** At that time, I did not know.

10 **Q** Okay. When you were discussing routes to go, what, if
11 any, discussion was there regarding on Highway 9 and 76
12 through Nichols and who was involved in that?

13 **A** Well, I remember Officer Herring speaking about --

14 MR. BOUCHETTE: Objection to the hearsay.

15 THE COURT: Don't say what somebody else said.

16 BY MR. CLEMENTS:

17 **Q** What was the subject of the conversation?

18 **A** How you can't drive through 9 because it was underwater
19 the last two storms.

20 **Q** And how did you react to that information?

21 **A** I believe we -- we came to the conclusion that the best
22 way to go would be north on 701 to Loris Hospital and back
23 down south, 22, 22 out to 501.

24 **Q** Okay. Did you hear about anything about anybody drowning
25 on 501 that day?

1 A No, sir.

2 Q Did you hear anybody having any kind of accidents from
3 flooding over the roads on 22 or 501 that day?

4 A No, sir.

5 Q Did you hear anything about anybody having floods or
6 injuries or drownings or any sort of disaster on 378?

7 MR. BOUCHETTE: Objection, Your Honor.

8 THE COURT: What grounds?

9 MR. BOUCHETTE: Objection to relevance.

10 THE COURT: Overruled. Go ahead.

11 A No, sir.

12 BY MR. CLEMENTS:

13 Q None whatsoever?

14 A No, sir.

15 Q When y'all -- who was in that group with you around that
16 table that was from the area and had kinfolk in the area of
17 Nichols?

18 A Mr. Herring.

19 Q How would you feel or how would you defer -- how would
20 you hold what Herring would have to say about that situation?

21 A Well, Herring --

22 MR. BOUCHETTE: Objection to the extent he's asking about
23 Mr. Herring's credibility, pitting witnesses.

24 THE COURT: What was the question again?

25 MR. CLEMENTS: I was asking him what he would do or how

1 he would have held Mr. Herring's -- what he had to say about
2 it because he's from that area, how would he respect it or how
3 would he deal with it.

4 THE COURT: All right. Overruled. Go ahead.

5 A Well, he was born and raised in Loris, so I would expect
6 that he would have a better grasp of the area than I would.

7 BY MR. CLEMENTS:

8 Q All right. And about how long did you talk about it, the
9 route choice?

10 A Maybe 10 or 15 minutes.

11 Q Was anything heated?

12 A No, sir.

13 Q Nobody disagreed with anything?

14 A Not that I'm aware of.

15 Q Nobody showed any kind of attitude, they weren't going to
16 be part of that group decision?

17 A No, sir.

18 Q When you got ready to leave, who was still sitting there
19 at the table or standing around the table?

20 A Who was still there?

21 Q Yeah.

22 A I believe Mr. Flood and Mr. Bishop were still there. And
23 I'm not sure if Mr. Herring was still there or not.

24 Q Can you recall what you said when you exited that
25 conversation?

1 **A** Well, I'm not sure if it was me, but somebody said,
2 "well, that's the plan then," "sounds like a plan then,"
3 something to that effect.

4 **Q** Okay. And when did you find out what wasn't the plan?

5 **A** When we were trying to get rescue people to the van.

6 **Q** Okay. Now, when you first heard that they needed rescue
7 people, where did you think they were, and why?

8 **A** Well, I wasn't sure where they were, because we couldn't
9 locate them. I thought they were going to travel the route
10 that we had discussed. So I wasn't quite sure where they
11 were.

12 **Q** Did you have any reason to think they were on 9 and 76?

13 **A** I believe -- not until they got on the radio. We were on
14 the radio and telephone trying to get people to them, and
15 that's when I found out they had gone that way.

16 **Q** And, again, was that the route that y'all said don't go
17 on, 9 and 76?

18 **A** I can't remember if she said don't go on it. I don't
19 know if that was a direct order or not, but it was definitely
20 understood that that was not the way to go.

21 **Q** Okay. Let me see. What is the chief duty of the
22 transport officers to the public?

23 **A** To transport inmates and patients from one point to
24 another safely.

25 **Q** Safely?

1 A Yes, sir.

2 Q That didn't happen on the 18th, did it?

3 A No, sir.

4 MR. CLEMENTS: Beg the Court's indulgence.

5 BY MR. CLEMENTS:

6 Q How safe would you say those vans are in situations where
7 they're not filled up with water?

8 MR. BOUCHETTE: Objection.

9 THE COURT: What grounds?

10 MR. BOUCHETTE: He's asking the witness to essentially
11 speculate as to some unknown situation.

12 THE COURT: I think he's following it up from one of the
13 questions you asked regarding safety of the vans. Overruled.
14 Go ahead.

15 A Mechanically, and as far as security, I think they're
16 very safe. Obviously, the padlocks, which we thought, I
17 guess, were all keyed the same with all the other padlocks we
18 that had, but, obviously, they weren't. But as far as
19 everything else, it was mechanically sound and safe.

20 BY MR. CLEMENTS:

21 Q All right. How about any of your vans, if you drive in
22 that much water, what happens?

23 A Sir, I have no idea what happens. I think they would all
24 stall out the same way. I would speculate.

25 Q Did you notice any indication that they weren't going to

1 take -- that they were going to take the route that they said
2 they were going to take?

3 **A** No.

4 **Q** Now, in your job, not only do you supervise drivers but
5 you're a driver as well?

6 **A** Yes.

7 **Q** When you're going -- transporting mental health patients,
8 medical patients or inmates, either one, is there ever any
9 conversation given to saving a few dollars on gas or saving a
10 few minutes in time?

11 **A** No, sir.

12 **Q** That's improper?

13 **A** The sheriff always says he has a gas card. I'm not going
14 to worry about, you know...

15 **Q** Please answer any questions that Mr. Bouchette has.

16 **A** Thank you.

17 CROSS-EXAMINATION

18 BY MR. BOUCHETTE:

19 **Q** How are you doing?

20 **A** Good. How are you?

21 **Q** Good. Good to see you.

22 **A** You too.

23 **Q** Tell me a little bit about this room here, this
24 conference room. Do y'all have your lockers in there?

25 **A** I don't have one in there, but, yeah.

1 Q So, a shift change, people are coming in for the new
2 shift; is that right?

3 A Yes, sir.

4 Q Okay. And whoever is on the old shift is moving out?

5 A (Witness nodding.)

6 Q People that come in and start a shift, there's kind of a
7 to-do list before you get in; is that right?

8 A A to-do list?

9 Q Well, you've got to get your belt --

10 A There's your assignments. I mean, you have got to get
11 your equipment on, sure.

12 Q Got to get your equipment, check for your assignments?

13 A Right.

14 Q So you come in and you have got some things to do when
15 you first get in the office. Got to clock in?

16 A Right. Well, we clock in on the way in, but -- into the
17 office.

18 Q And people leaving are probably putting their belts back
19 in and checking out, doing the exiting checklist; is that a
20 safe way to characterize it?

21 A Yes.

22 Q So all that's going on in this room here at about the
23 time this discussion would have been going on; is that right?

24 A Yes.

25 Q The vehicle that Ms. Newton and Ms. Green were ultimately

1 transported in, that vehicle was selected by Ms. Wright when
2 she did the earlier transport in the day; is that right?

3 **A** Yes.

4 **Q** And so this vehicle that Mr. Wright chose to have these
5 folks in, was that the only one? Was that the only transport
6 vehicle you-all had?

7 **A** No, sir. About 20 total.

8 **Q** About 20 total. Were they all like this? Were they all
9 like the van with the cage thing?

10 **A** We have got about ten vans, I believe.

11 **Q** So you had about ten vans that had the cage --

12 **A** Inserts, yeah.

13 **Q** Do you have any, like, Crown Victorias?

14 **A** Sure.

15 **Q** Sedans?

16 **A** Mm-hmm.

17 **Q** Do you have any Tahoes?

18 **A** We do.

19 **Q** And so the decision to use this particular vehicle wasn't
20 Mr. Flood's; would that be fair to say?

21 **A** No, I don't believe it was.

22 **Q** Okay. When he arrived to work, are you familiar with the
23 timeline from when he arrived until the time he left, roughly?

24 **A** Roughly. I know he had to wait -- they had to wait for
25 Ms. Wright to get there for awhile.

1 Q All right. And so Ms. Wright is sitting out in the
2 vehicle, I guess right outside the office there?

3 A It's a little ways away, but it's in the sally port,
4 yeah, in the yard.

5 Q So you have got a passenger out there waiting while this
6 discussion is going on?

7 A No. I believe Ms. Wright had not arrived at the jail at
8 that point, I don't believe. She was still on the way.

9 Q But it was understood that, when she arrived, the
10 transport would need to go ahead and get moving?

11 A Yes.

12 Q Because they were running a little bit behind?

13 A No, I don't think there was -- running behind at all, no.

14 Q Well, Steve had been delayed coming in; right?

15 A But there wasn't a fixed time of when they had to be
16 there. They had 72 hours.

17 Q Okay. Well, I'm going to ask you about that in a minute,
18 but with regard to this point when the meeting concluded, was
19 Ms. Wright with the passenger in the sally port?

20 A No, I believe she was on the way from Waccamaw Mental
21 Health to the jail still.

22 Q Okay. All right. You would agree with me that, during
23 the time this discussion was happening, there was a fair
24 amount of people coming and going?

25 A I believe there was, yeah.

1 Q Okay. Now, you're aware -- or is it your understanding
2 that the rivers, particularly around Lancaster, if not other
3 places, were cresting around that time; is that right?

4 A That's right.

5 Q So you knew that?

6 A Yes.

7 Q Did Sergeant Orlando know that?

8 A I can't -- I can't say what she knows or knew at the
9 time.

10 Q But you knew that -- I don't want to put words in your
11 mouth, but is it safe to say that whatever route they went,
12 given that we knew that the rivers were cresting at about that
13 time, that they were tasked with essentially trying to outrun
14 those cresting flood waters? Would that be a fair way to kind
15 of characterize that?

16 A No, not necessarily. It's coming from North Carolina
17 down, so...

18 Q That's right. I mean, it's coming down. You know it's
19 coming down; right? And when I say "you" --

20 A I mean, all over the state, yeah.

21 Q And when I say "you," I'm not necessarily talking about
22 you personally, but I mean, what we know --

23 A Yeah.

24 Q That's right. So it's coming down, and Sergeant Orlando
25 is hoping to have Mr. Flood go complete the transport and come

1 back before those waters catch him on one of these routes?

2 Would that be a safe way to characterize it?

3 **A** I have no idea how the water was going to affect the
4 roadways.

5 **Q** You didn't know, but you knew they might affect the
6 roadways; right?

7 **A** That's correct.

8 **Q** And you knew it was likely that they would affect the
9 roadways in some way, shape, or form?

10 **A** I can't say how likely.

11 **Q** It's possible?

12 **A** At the time we checked on the website, they weren't
13 affected at that point.

14 **Q** Okay. All right. Now, would it be safe to -- did you
15 hear Sergeant Orlando ever give Mr. Flood an order to go any
16 particular route?

17 **A** I'm not sure what an order is, but we talked -- we had a
18 discussion about which way to go and which way not to go.

19 **Q** That doesn't really answer my question. Do you think she
20 gave him an order or not?

21 **A** I can't really say. I mean, we had the discussion. Like
22 I said, I'm not really -- I couldn't really remember exactly
23 who said what the whole time, but we were having a discussion
24 back and forth.

25 **Q** Kind of an informal kind of thing?

1 **A** Yes.

2 **Q** A discussion. Okay.

3 Now, there was some -- you were asked earlier by the
4 solicitor about whether or not -- something about saving a few
5 dollars on gas or something along those lines. Are drivers
6 generally encouraged to take the most effective -- the most
7 efficient route in terms of distance going from one location
8 to another?

9 **A** I would say that they're encouraged to use the safest
10 route.

11 **Q** So you're saying that distance has no bearing on it?

12 **A** It does.

13 **Q** All right. So, again, under normal circumstances, all
14 right, they're encouraged to take the most efficient route,
15 assuming there are no known safety issues? Would that be a
16 safe way to characterize it?

17 **A** I would assume, yes.

18 **Q** Okay. You were also asked a little while -- well, let me
19 strike that question.

20 Mr. Maxim, given, one, there was no order, and two, that
21 the drivers are generally instructed to follow the most
22 efficient route assuming there are no safety issues and you
23 have to see what you run into, is it possible that Mr. Flood
24 would have left this interaction with the impression that he
25 was to attempt the most efficient route and, if he ran into

1 problems, then proceed upon an alternate route?

2 MR. CLEMENTS: Calls for speculation, Your Honor.

3 THE COURT: Sustained.

4 BY MR. BOUCHETTE:

5 Q You were asked about the van. Given what we know now,
6 would you characterize that as an unsafe vehicle?

7 A I would say the locks were unsafe. I would say the
8 vehicle was unsafe.

9 Q I'm not necessarily asking about the tires or the motor
10 or the engine. I'm asking you that that vehicle, insofar as
11 it's being used as a government-issued transport vehicle for
12 mentally ill or inmates or anybody else, was it unsafe given
13 the lack of key to the one escape hatch that you had?

14 A In the incident that occurred, it was -- I would say it
15 was unsafe.

16 MR. BOUCHETTE: No further questions, Your Honor.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. CLEMENTS:

20 Q Corporal Maxim, that was not a regular day, was it?

21 A No, sir.

22 Q That was not your run-of-the-mill, official route, was
23 it?

24 A No, sir.

25 Q And you said, I believe, that it wasn't the most

1 efficient route but you were hunting towards the safest route?

2 **A** Correct.

3 **Q** Mr. Bouchette asked you about the rivers cresting in
4 Lancaster. Y'all didn't look that far ahead, did you?

5 **A** I can't remember where I got that information, but I did
6 see that information somewhere. I can't remember if it was on
7 that website or somewhere else.

8 **Q** Did you see anything about the Little Pee Dee or the
9 Lumbee River?

10 **A** Not that I remember.

11 **Q** You already had any information on that being unsafe,
12 didn't you?

13 **A** In that area being unsafe?

14 **Q** Yeah.

15 **A** Yeah, we saw that on the website.

16 **Q** In your attempt to get on the website and find out --
17 find an alternative to No. 9 and 76; is that correct?

18 **A** We did, yes.

19 **Q** And was that safe to drive on 22 and 501 with no water?

20 **A** With no water, under those conditions, yes, I would say
21 it is.

22 **Q** And just like it would be unsafe to drive through a bunch
23 of water, what about driving through a bunch of fire? That
24 wouldn't be safe either, would it?

25 **A** No, sir.

1 Q That's not what those vans are made for, is it?

2 A No, sir.

3 Q Are those vans made to run through floods?

4 A No, sir.

5 MR. CLEMENTS: Beg the Court's indulgence.

6 BY MR. CLEMENTS:

7 Q Y'all had other transports going out that day too as
8 well; did you not?

9 A We did.

10 Q Do you recall any of those -- the transport routes --

11 A That was before I came in. They were on their way back.
12 Witherspoon and Officer Crawford had taken that --

13 Q Were they in Spartanburg?

14 A Spartanburg. And they were on their way back at that
15 point.

16 I believe Officer Herring had another -- I believe he and
17 somebody else had taken another one.

18 Q And when you sent them out, what you were expecting them
19 to do and the routes you were expecting them to take, you
20 didn't have any fear or apprehension in your heart about them,
21 did you?

22 A No, I didn't.

23 Q You thought they were going to be safe?

24 A I did.

25 Q But you thought they were going to do what was suggested?

1 **A** I did.

2 **Q** Whether it was ordered or not, it was offered to them as
3 to the right thing to do; is that correct?

4 **A** Yes, sir.

5 **Q** Okay. Thank you.

6 **A** You're welcome.

7 MR. BOUCHETTE: Very brief.

8 RE CROSS-EXAMINATION

9 BY MR. BOUCHETTE:

10 **Q** Corporal, you were just asked about a few hypothetical
11 scenarios involving the safety of the vehicle in different
12 situations. We know now that there was no key to be able to
13 get from the front compartment to the back compartment; is
14 that correct?

15 **A** Correct.

16 **Q** Now, we're talking about these different scenarios. If
17 the vehicle had been in a wreck on a road that pinned the door
18 as the sole escape hatch for the first compartment, would
19 somebody still have been unable to get from the first
20 compartment out into the second compartment?

21 **A** I can't say. Probably not, if they don't have the key.

22 **Q** So a wreck or something that caused a vehicle to be
23 engulfed in flames, under those scenarios, you still would
24 have had no mechanism to get these folks out; is that correct?

25 **A** If the one exit was inoperable?

1 Q Correct.

2 A You're correct.

3 Q So there was more than one scenario which could have
4 happened which would have resulted in somebody in that first
5 compartment not being able to escape should they needed to in
6 the event of an emergency?

7 A That's true. I believe some of those modules don't have
8 any escape hatches, though.

9 MR. BOUCHETTE: No further questions.

10 MR. CLEMENTS: Thank you, Your Honor. We ask that
11 Corporal Maxim be excused from his subpoena.

12 THE COURT: Any objection?

13 MR. BOUCHETTE: No objection.

14 THE COURT: You have a good day.

15 MR. CLEMENTS: We'd like to call Lance Corporal Herring.
16 Russell Herring.

17 LANCE CORPORAL RUSSELL HERRING,

18 after having been duly sworn, was examined and testified
19 to as follows:

20 DIRECT EXAMINATION

21 BY MR. CLEMENTS:

22 Q Can you please state your name for the record.

23 A Russell Herring. H-e-r-r-i-n-g.

24 Q And who do you work for?

25 A Horry County Sheriff's Department.

- 1 Q And you're a lance corporal --
- 2 A Yes, sir.
- 3 Q -- with the sheriff's department?
- 4 What are your duties?
- 5 A Transport inmates, mental health patients, back and
6 forth, keep them safe.
- 7 Q How long have you been doing that?
- 8 A This will be my -- going on seven years.
- 9 Q Do you know Mr. Stephen Flood?
- 10 A Yes, sir.
- 11 Q Can you point him out to us?
- 12 A Yes, sir. (Indicating.)
- 13 Q How long have you worked with him?
- 14 A Well, I came in -- probably worked with Mr. Flood three
15 or four years.
- 16 Q Do you remember -- first, let me ask you this: Do you
17 have kinfolk in Marion County?
- 18 A Yes, sir.
- 19 Q Where?
- 20 A Before you get to Nichols, on the left.
- 21 Q And what kin are they to you?
- 22 A My mama's sister.
- 23 Q Are you familiar with that area?
- 24 A Yes, sir.
- 25 Q Would you say you're somewhat familiar or very familiar?

1 **A** Very.

2 **Q** And that's right there next to what river?

3 **A** Lumbee River.

4 **Q** And what's the other river there?

5 **A** Little Pee Dee.

6 **Q** Do you remember going to work on September 18th, 2018?

7 **A** Yes, sir.

8 **Q** Tell us what you remember about it and where were you.

9 **A** I was coming from home. And I always listen to 99.5 talk
10 radio, and they were talking about spots in Nichols that was
11 already --

12 **MR. BOUCHETTE:** Objection to the hearsay.

13 **THE COURT:** Sustained. Don't say what anybody else said.

14 **MR. CLEMENTS:** May we approach, Your Honor?

15 **BENCH CONFERENCE**

16 (The following bench conference was held outside the hearing
17 of the jury and others:)

18 **MR. CLEMENTS:** It's in the nature of a news announcement.
19 It's still hearsay.

20 **THE COURT:** I think the news is hearsay. Why would it
21 not be?

22 **MR. BOUCHETTE:** Yeah, I think it's clearly -- it's
23 clearly a statement by somebody other than the decedent for
24 the deponent for the truth of the matter asserted.

25 **THE COURT:** I mean, this is hearsay; right?

1 MR. CLEMENTS: Well, with the media we've got today...

2 THE COURT: I appreciate you asking.

3 MR. CLEMENTS: All right.

4 (Open court resumes:)

5 BY MR. CLEMENTS:

6 Q I'm going to show you State's Exhibit 3-C. Do you
7 recognize this?

8 A Yes, sir.

9 Q What is that?

10 A That's our office, the main part, coming in from the
11 jail.

12 Q And you came in listening to the radio and you got to the
13 jail, what did you do?

14 A I got ready to go on my run. I had a federal run to
15 Florence and back.

16 Q To take federal inmates?

17 A Yes, sir.

18 Q Okay. And what did you have to do to prepare to do that?

19 A When I got to my vehicle, I put my equipment on first,
20 and me and my partner left the jail and went 22 to 501 to the
21 courthouse here in Florence.

22 Q Okay. And did you have a partner with you?

23 A Yes.

24 Q Is that because the feds are picky?

25 A Yes, sir. You need two.

1 Q You've got to have two for them.

2 So you went and just dropped them off at the federal
3 courthouse?

4 A Yes, sir. They have a later appointment, so we came back
5 to help if they need anything else done.

6 Q Okay. When you got there, do you remember having any
7 discussions about routes to take or not to take?

8 A Yeah. Later on that evening when we got back, because we
9 went back to Florence to pick them up and we got back.

10 Q When you got back, who was there?

11 A I think it was Corporal Maxim, Sergeant Orlando, and
12 myself. I don't remember if Mr. Flood and Bishop was in there
13 at the time or not, if they came in before or after me.

14 Q Okay. But do you remember them being there at some point
15 in time?

16 A Yes, sir.

17 Q What, if anything, did you tell them about the route on
18 No. 9 and 76?

19 A Well, I suggested, because I come to work from Loris, and
20 the road was washed away in the Allsbrook community. So I
21 said there's a detour, we just have to go around and come
22 right back on 701. So I would say, you know, when we leave
23 the jail, go up there, take the detour. You come up at
24 Allsbrook store. Go to Loris Hospital. Come back the same
25 way. Hit 22 to 501, and you'll be good, because I already

1 done it twice that day.

2 Q All right. What did you know about -- at this time,
3 about No. 9 and 76?

4 A That it -- well, I mean, like I say, I heard --

5 MR. BOUCHETTE: Objection to hearsay.

6 BY MR. CLEMENTS:

7 A Don't tell me what you heard. Do you have any knowledge
8 of it?

9 A I just know it always floods with a little bit of rain.

10 Q It always floods?

11 Did you show anybody on the map how they'd have to go?

12 A Yeah. I just pointed out, like, the way to go to the
13 hospital, come back, 22 to 501.

14 Q Let me ask you, if you don't mind, to step down and look
15 at State's Exhibit 2. Stand on this side so the jury can hear
16 you.

17 What did you point out? Back up just a little bit so
18 these jurors can hear you.

19 A The route I suggested to take? Let's see, the jail's
20 here. This is 701. And this is the -- from the jail at 701
21 to Loris, right in here I would say, the road was washed away.
22 When you come up, do this, go to Loris. Do the same thing
23 coming back, hit 22 to 501, and then on in to Florence.

24 Q Okay. And that was the safe route?

25 A Yes, sir.

1 Q What was the most important at that time? Was it
2 efficiency or safety?

3 A Safety.

4 Q You spoke from personal experience when you were telling
5 them about the difficulty going through Nichols; is that
6 correct?

7 A Yes, sir.

8 Q Do you recall exactly what you said?

9 A I can't recall exactly. I just said I know, when it
10 comes a decedent size rain, it's going to flood through there.
11 I seen it too many times.

12 Q You told them not to go that way?

13 A I suggested for them not to go that way. I didn't tell
14 them, you know...

15 Q All right. Please answer any questions Mr. Bouchette
16 has.

17 A Yes, sir.

18 THE COURT: Cross?

19 MR. BOUCHETTE: Court's indulgence.

20 CROSS-EXAMINATION

21 BY MR. BOUCHETTE:

22 Q Prior to the conclusion of your shift, were you under the
23 impression for any reason that transports might not be going
24 forward that day?

25 A I don't know. They got something, like, OPCON whatever

1 it was, 1, 2, 3, 4, and 5, but I don't know what we were, so I
2 don't know.

3 Q Well, what I'm asking is: Was there any point before you
4 left the office that day, was there anything that made you
5 think that transports might not be going forward in the
6 evening shift, the nighttime shift?

7 A I don't recall anything.

8 Q Anything regarding Corporal Connor?

9 A He's the one that took the phone call from Loris
10 Hospital.

11 Q And who is Corporal Connor?

12 A He was a corporal in Transportation at the time.

13 Q Was he superior to you?

14 A Yes, sir.

15 Q Was he superior to Mr. Flood?

16 A Yes, sir.

17 Q All right. Well, tell me about that. What was he doing
18 -- what was Corporal Connor doing prior to the conclusion of
19 your shift as it relates to transports?

20 A Well, the phone call came in to pick up the transport
21 from Loris.

22 Q Right.

23 A He told her it probably -- you know, it was going to get
24 dark and might wait until tomorrow to do it. And then I don't
25 recall if Sarge came in or what. I think she came in and

1 said, you know, we're too busy, and we'll send two ahead, and
2 we'll get it done this evening.

3 **Q** Well, let's talk about that. So Corporal Connor was
4 taking the position, prior to the conclusion of your shift,
5 that we're not going to send folks out this evening to do the
6 transports; is that right?

7 **A** Right.

8 **MR. CLEMENTS:** That's hearsay, Your Honor. I would
9 object to that.

10 **MR. BOUCHETTE:** Well, it was -- I was asking a
11 present-sense impression in terms of --

12 **THE COURT:** What was the question again? Or rephrase the
13 question. How about that?

14 **MR. BOUCHETTE:** I'll rephrase the question.

15 **BY MR. BOUCHETTE:**

16 **Q** Was it your impression, prior to the conclusion of your
17 shift, that Corporal Connor was going to suspend or not
18 proceed with transports in the evening shift?

19 **MR. CLEMENTS:** Calls for speculation. I'd object.

20 **MR. BOUCHETTE:** He spoke to him. He was there. He can
21 have a present-sense impression.

22 **THE COURT:** Sustained. Go ahead and ask it in different
23 terms. Lay the groundwork for it.

24 **MR. BOUCHETTE:** Let me circle back through this.

25

1 BY MR. BOUCHETTE:

2 Q Was there anything that made you believe that the evening
3 shift might not proceed with transports?

4 A No, because, before I left, they were both going. We
5 were planning the route.

6 Q How about earlier in the shift?

7 A I was just -- you know, what he said.

8 Q At some point, that changed from Corporal Connor to
9 Sergeant Orlando?

10 A Well, like I said, he said that he didn't -- thought he'd
11 wait because he didn't know how the roads were.

12 MR. CLEMENTS: Your Honor, that calls for hearsay.

13 THE COURT: Sustained.

14 MR. BOUCHETTE: Court's indulgence.

15 BY MR. BOUCHETTE:

16 Q Regarding this discussion that you had, you gave an
17 interview to SLED Agent Howell, who is seated in the
18 courtroom, shortly after the incident; right?

19 A Yes, sir.

20 Q And did you describe that to him then as a -- just
21 talking randomly? Is that how you characterized this
22 interaction?

23 A You're talking about the way we talked about going?

24 Q That's right.

25 A Yes, sir.

1 Q All right. So y'all were just talking randomly at the
2 shift change?

3 A Yes, sir.

4 MR. BOUCHETTE: No further questions for this witness,
5 Your Honor.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. CLEMENTS:

9 Q Is it unusual for y'all to be talking at a shift change
10 about the routes taking and the routes not taking and the
11 condition of the roads?

12 A Is it unusual?

13 Q Is it unusual or is it usual, what you do?

14 A No, it's -- we just usually come in, you know, and take
15 our runs and go. But I guess, that day, you know, we needed
16 to talk about which way we needed to do things.

17 Q Is that because of the weather?

18 A Yes, sir.

19 Q Thank you.

20 MR. CLEMENTS: No further questions.

21 THE COURT: Any follow up to that?

22 MR. BOUCHETTE: No, Your Honor.

23 THE COURT: All right. You may step down. Thank you.

24 Is that your last witness for the day?

25 MR. CLEMENTS: That's our last witness for the day, Your

1 Honor.

2 THE COURT: All right. Members of the jury, I'm going to
3 have you come back at 9:30 in the morning. We'll resume in
4 the morning. But as I told you earlier, do not discuss the
5 case among yourselves or with your families. And if you would
6 for this week, stay off the news, stay off social media. Just
7 go home, rest, relax, get something to eat. We'll see you in
8 the morning.

9 Everybody else stay seated while the jury is excused.

10 (The jury exited the courtroom at 5:04 p.m.)

11 THE COURT: See you-all at 9:30 in the morning.

12 MR. CLEMENTS: Give me one second, Your Honor. We might
13 have something for the Court.

14 (Pause in the proceedings.)

15 MR. CLEMENTS: Your Honor, if it please the Court?

16 THE COURT: Sure.

17 MR. CLEMENTS: On Rule 404(a) 1, character evidence, it
18 says here that, "Character of Accused. Evidence of a
19 pertinent trait of character offered by an accused, or by the
20 prosecution to rebut the same." He offered the man's
21 integrity in question and some other questions, and we believe
22 he's opened the door.

23 THE COURT: The way I look at it --

24 MR. CLEMENTS: We respond to -- our response to it will
25 be, by the prosecution, to rebut the same.

1 THE COURT: I understand that. The defense offered
2 evidence of the defendant having integrity. He didn't say
3 anything about being stubborn or anything like that. So I
4 think you can rebut integrity but not being stubborn. There's
5 nothing in evidence about him being stubborn.

6 MR. CLEMENTS: I understand, Your Honor.

7 THE COURT: But integrity is in.

8 All right. We'll see you in the morning.

9 (At 5:06 p.m., the trial was adjourned until Tuesday,
10 May 17, 2022, at 9:30 a.m.)

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CERTIFICATE OF COURT REPORTER

State of South Carolina)
County of Marion)

RE: *State of SC v. Stephen Flood (Day 1)*

I, Bobbi J. Fisher, Registered Professional Reporter (RPR) and Official Court Reporter III for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case in the *Court of General Sessions for Marion County, South Carolina*, on the *16th of May, 2022*.

Submitted: *October 3, 2022*

Bobbi Fisher

 /s/ Bobbi Fisher

Bobbi J. Fisher, RPR

Official Court Reporter III

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
)
 2 COUNTY OF MARION) TRANSCRIPT OF RECORD

3 -----x
 4 STATE OF SOUTH CAROLINA,)
)
 5 Plaintiff,)
)
 6 vs.) Case No. 2019-GS-33-00239
)
 7 STEPHEN WILLIAM FLOOD,)
)
 8 Defendant.)
 9 -----x

May 17, 2022

JURY TRIAL - VOLUME 2 of 4

B E F O R E:

The Honorable William H. Seals, Jr., Presiding Judge;
and a jury.

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

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John Jepertinger, Esq.
Solicitors for the Plaintiff/State

Jared Bouchette, Esq.
Marissa Drost, Esq.
Attorneys for the Defendant

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
Deputy Tony Hayes	
Direct Examination By Mr. Clements	168
Proffered Direct Examination By Mr. Clements	173
Cross-Examination by Mr. Bouchette	175
Deputy Latifah Witherspoon	
Direct Examination By Mr. Clements	179
Cross-Examination By Mr. Bouchette	184
Redirect Examination By Mr. Clements	189
Recross-Examination by Mr. Bouchette	190
Further Redirect Examination By Mr. Clements	190
Deputy Bruce Crawford	
Direct Examination By Mr. Clements	191
Cross-Examination By Mr. Bouchette	196
Sandee Rogers	
Direct Examination By Mr. Clements	201
Cross-Examination By Mr. Bouchette	216
Redirect Examination By Mr. Clements	225
Recross-Examination By Mr. Bouchette	227
Mayor Lawson Battle	
Direct Examination By Mr. Clements	231
Cross-Examination By Mr. Bouchette	246

1	Dylan Oates	
2	Direct Examination By Mr. Clements	252
3	Cross-Examination By Mr. Bouchette	267
4	Redirect Examination By Mr. Clements	275
5	Recross-Examination By Mr. Bouchette	280
6	Will Duncan	
7	Direct Examination By Mr. Clements	284
8	Cross-Examination By Mr. Bouchette	300
9	Redirect Examination By Mr. Clements	305
10	Cross-Examination By Mr. Bouchette	307
11	Zachery Eskew	
12	Direct Examination By Mr. Clements	310
13	Cross-Examination By Mr. Bouchette	319
14	Redirect Examination By Mr. Clements	353
15	Recross-Examination By Mr. Bouchette	358
16	Captain Jeremy Leach	
17	Direct Examination By Mr. Clements	359
18	Cross-Examination By Mr. Bouchette	362
19	Deputy Eddie Page	
20	Direct Examination By Mr. Clements	363
21	Cross-Examination By Mr. Bouchette	373
22	Desmond Jenkins	
23	Direct Examination By Mr. Clements	374
24	Cross-Examination By Mr. Bouchette	379
25		

E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

State's Exhibit

	No.	Description	ID.	REC'D
5	4	Video from Sandee Rogers		207
6	5A	Photograph from Sandee Rogers		207
7	5B	Photograph from Sandee Rogers		207
8	5C	Photograph from Sandee Rogers		207
9	7A	Photograph from Dylan Oates		278
10	7B	Photograph from Dylan Oates		278
11	8A	Photograph from Will Duncan	283	296
12	8B	Photograph from Will Duncan	283	296
13	8C	Photograph from Will Duncan	283	296
14	8D	Photograph from Will Duncan	283	296

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P R O C E E D I N G S

(The proceedings commenced at 9:37 a.m.)

THE COURT: Is the State ready to proceed?

MR. CLEMENTS: Yes, sir, Your Honor. The State is ready to proceed.

THE COURT: Defense ready?

MR. BOUCHETTE: Your Honor, the defense is ready. The only thing I would bring to the Court's attention, I think we'll -- I'll try to get through a number today, and we discussed -- I think several of these witnesses will go into the issue discussed about testifying about where the water was at different times and different places. So I don't know how Your Honor would like to do that, but I think probably the most efficient way would be, if Mr. Clements is going to call one of those people, then to, at that point, do the examination outside the presence of the jury before he provides any testimony so he's not accidentally getting into that.

THE COURT: In other words, you want to do it first? Is that what you're saying?

MR. BOUCHETTE: Correct. I'd rather do it before we initiate the examination.

THE COURT: All right. And you know which witnesses those will be?

MR. BOUCHETTE: Yes, sir.

1 THE COURT: Okay. Are you ready to bring the jury in, or
2 is the first witness going to be one?

3 MR. BOUCHETTE: I'm not sure.

4 MR. CLEMENTS: No, sir, Your Honor. The first three
5 witnesses aren't testifying anything about the water levels.

6 THE COURT: All right. Go ahead and bring in the jury.

7 (The jury entered the courtroom at 9:39 a.m.)

8 THE COURT: The State would call your next witness.

9 MR. CLEMENTS: Thank you, Your Honor. If it pleases the
10 Court, the State would call Deputy Tony Hayes.

11 DEPUTY TONY HAYES,
12 after having been duly sworn, was examined and testified
13 to as follows:

14 DIRECT EXAMINATION

15 BY MR. CLEMENTS:

16 Q Will you please state your name for the record.

17 A Deputy Tony J. Hayes.

18 Q And, Deputy Hayes, who do you work for?

19 A Horry County Sheriff's Office.

20 Q And how long have you worked for the sheriff in Horry
21 County?

22 A Six years.

23 Q And in what capacity do you work for him?

24 A I'm assigned to the deputy transport unit.

25 Q Are you a county employee?

1 A Yes, I am.

2 Q Were you working on September 18th, 2018?

3 A Yes, I was.

4 Q Do you remember that day?

5 A Yes, I do.

6 Q What stands out about that day?

7 A That's the day we had an incident with one of our
8 transport vans.

9 Q And what was the conditions and issues you were dealing
10 with as far as weather?

11 A It was a hurricane, was dealing with a lot of flood area
12 in Horry County. So we were trying to see would we still be
13 transporting at that particular time, but it didn't affect the
14 unit that I was actually assigned to.

15 Q Okay. And y'all transport people every day?

16 A Yes, we do.

17 Q This was not a usual type of day, was it?

18 A No, it wasn't.

19 Q Now, what type of individuals do y'all transport? What
20 are they there with y'all for?

21 A Our unit -- the entire unit, we transport mental health
22 patients to the various mental hospitals. I am assigned to
23 deputy transport. We transport mostly incarcerated persons
24 from one detention center to the next, only in Horry County.

25 Q And do you remember walking into the transportation room

1 that day?

2 **A** Yes, I do.

3 **Q** Okay. I want to show you what's been marked as State's
4 Exhibits 3-A, 3-B, 3-C, 3-D, and 3-E. Can you look at these
5 for me and tell me if they're familiar to you. And, if so,
6 why?

7 **A** These are pictures of our transport office where we keep
8 all our paperwork, various transports, where we meet and
9 discuss things. It's basically our office.

10 **Q** When you're going onto a shift, do you go through that
11 office or that room doing that -- when you go on to your
12 shift?

13 **A** Yes.

14 **Q** When you're coming off your shift, do you also come
15 through that office?

16 **A** Yes.

17 **Q** Okay. And is that -- that's where you have discussions
18 about what's on your agenda for the day and what you're
19 dealing with?

20 **A** Yes.

21 **Q** You remember coming in, you said, to that. Was that --
22 at this point in time, were you coming on the shift or coming
23 off the shift?

24 **A** I was coming on the shift.

25 **Q** And do you recall who was in the transportation room?

1 **A** Going off my memory, Sergeant Orlando, Corporal Maxim,
2 Mr. Flood, Mr. Bishop, Lance Corporal Jordan, and myself.
3 That's vaguely what I remember.

4 **Q** And do you remember what the issue was when you came in?

5 **A** Apparently, they were discussing routes for the transport
6 that was about to take place.

7 **Q** Okay. Did you get involved in the conversation?

8 **A** No, sir.

9 **Q** Do you recall any roads that were discussed or mentioned?

10 **A** The only numbers that I remember being called out was,
11 like, come back out of Loris, get on 22 to 526 --

12 MR. BOUCHETTE: Objection to the extent it's hearsay,
13 Your Honor.

14 THE COURT: Don't say what somebody else said.

15 BY MR. CLEMENTS:

16 **Q** But they were all local roads in Horry County?

17 **A** Roads, yes.

18 **Q** All right. What were the weather conditions that were
19 being checked on?

20 MR. BOUCHETTE: Objection. Lack of foundation.

21 THE COURT: What was the question again? What was the
22 weather conditions?

23 BY MR. CLEMENTS:

24 **Q** What were the weather conditions, were those being
25 checked?

1 THE COURT: Overruled.

2 Go ahead. You can answer that.

3 A They would check -- as far as my knowledge and memory,
4 they was checking on the road conditions.

5 BY MR. CLEMENTS:

6 Q Okay. And that was due to the weather?

7 A Due to the weather that we had had.

8 Q All right. And you didn't get involved in the
9 investigation -- I mean, in the discussion of that? You just
10 came in and heard that was the topic?

11 A That was the topic, and I didn't get involved in the
12 discussion.

13 Q All right.

14 MR. CLEMENTS: At this time, I have an issue of law, Your
15 Honor, I'd like to take up.

16 THE COURT: All right. Members of the jury, if you would
17 step into the jury room.

18 (The jury exited the courtroom at 9:45 a.m.)

19 MR. CLEMENTS: Your Honor, at this time, I have a small
20 bit of testimony I'd like to proffer.

21 THE COURT: All right.

22 MR. CLEMENTS: This is the best time to do that.

23 THE COURT: Okay.

24 MR. BOUCHETTE: No objection to proffered testimony.

25

1 PROFFERED DIRECT EXAMINATION

2 BY MR. CLEMENTS:

3 Q Deputy Hayes, have you ever used the term or used the
4 term "That's Flood being Flood"?

5 A Yes.

6 Q And what does that mean to you?

7 A He's -- Mr. Flood is an older gentleman. He's kind of
8 set in his ways and like to do things he like to do. And he
9 would be kind of stubborn. We'd probably say, "That's just
10 Flood being Flood" rather than, you know, I don't know, taking
11 directions from one of the supervisors or another officer.
12 Flood is going to be Flood. We'd just say that.13 MR. CLEMENTS: Your Honor, at this time, that's all we
14 have to proffer. I imagine that cross-examination -- he'd
15 like to go ahead and do his cross-examination, finish it, and
16 then we'd bring the jury back out. And I will say "no further
17 questions," and then he can cross-examination him on the other
18 testimony.

19 THE COURT: Anything from the defense?

20 MR. BOUCHETTE: To the extent, he's just offering that as
21 a proffer and is not intending to elicit that testimony when
22 we conclude or in conferring, I think that's important at this
23 time to do cross.24 THE COURT: I think you intend on introducing that;
25 right?

1 MR. CLEMENTS: Your Honor, I intend to introduce that if
2 and when we get to the proper threshold -- which I believe we
3 have reached on his character being put into evidence. We
4 believe Mr. Bouchette talked about him being a man of
5 integrity. That goes beyond he's just a good guy.

6 So we feel like he's put his character in evidence, and
7 that's why we wanted, at this time -- if it comes to the
8 judge's conclusion that we have reached that threshold, I
9 don't want to have to call this witness back. I want to go
10 ahead and proffer it so you would know what I will be talking
11 about.

12 MR. BOUCHETTE: I'm a little confused on what we're
13 doing. To the extent the State is seeking at this time to
14 introduce currently what this witness has just stated
15 regarding his propensity to be stubborn or reputation for
16 stubbornness, I would vehemently object based on what's
17 already been discussed at length on the record.

18 Now, to the extent that the solicitor is trying to
19 preserve his testimony and, at some point, and, I guess,
20 introduces the transcript at some point based on whatever the
21 trial may happen [verbatim] at that point, then, obviously, I
22 don't have any response.

23 THE COURT: Is that correct?

24 MR. CLEMENTS: That's correct, Your Honor. I'm trying to
25 preserve it --

1 THE COURT: Okay, gotcha.

2 MR. CLEMENTS: And present it later, if I can, by
3 transcript or calling this deputy back. I'd hate to have to
4 call him back if I don't have to. That's my whole purpose for
5 presenting him at this time.

6 THE COURT: I gotcha. All right. Good.

7 Let's go ahead and bring out the jury.

8 (The jury entered the courtroom at 9:49 a.m.)

9 BY MR. CLEMENTS:

10 Q Deputy Hayes, I appreciate that.. Please answer any
11 questions Mr. Bouchette has.

12 MR. BOUCHETTE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BOUCHETTE:

15 Q Just one clarification. You mentioned, during the storm,
16 the hurricane passed a few days before; is that right?

17 A That's correct.

18 Q That's correct. So what we're dealing with was the
19 conditions in flooding that occurred after the storm has
20 passed?

21 A That's correct.

22 Q Now, in the office that we have talked a lot about,
23 that's where there's lockers in there; is that right?

24 A Yes, that's correct.

25 Q It's in State's No. 3.

1 So when people are coming in and coming out of shift,
2 they're in that room?

3 **A** Yes.

4 **Q** They're clocking in or checking in for the shift?

5 **A** We don't clock in in that particular room, no, sir.

6 **Q** But when they come in, after they've clocked in, they
7 have to get their tool belt? Or I say "tool belt," but their
8 duty belt?

9 **A** Some officers do need a duty belt and vest and other gear
10 in there.

11 **Q** That's at least part of the point of the locker; right?

12 **A** Correct.

13 **Q** Okay. Very good.

14 And so people checking out or leaving out would be doing
15 the same thing?

16 **A** Correct.

17 **Q** All in that same room?

18 **A** Yes.

19 **Q** Okay. All right. And that's when this conversation took
20 place?

21 **A** The part of the conversation I heard, that's where this
22 took place.

23 **Q** Because you weren't there during the whole conversation.

24 **A** No, sir.

25 **Q** You left at some point during the conversation?

1 A I left at the end of the conversation.

2 Q Okay. Now, I understand that you were interviewed by
3 SLED Agent Mr. Howell, who is seated over here, on 18th April
4 -- excuse me, April 17th of 2019. Does that sound correct?

5 A It sounds correct.

6 Q So they interviewed you about six months after this had
7 happened?

8 A Yes.

9 Q Had you still been working at the sheriff's department
10 continuously since September 18th?

11 A Yes.

12 Q Had you had any periods from, say, 2016 forward where you
13 hadn't been working at the sheriff's office?

14 A Where I hadn't been working?

15 Q Right.

16 A No, sir.

17 Q So you had been working there continuously for a number
18 of years?

19 A Yes.

20 Q Okay. All right. And you weren't interviewed until
21 about six months after the incident?

22 A Yes.

23 MR. BOUCHETTE: Court's indulgence.

24 BY MR. BOUCHETTE:

25 Q You mentioned that Detective Orlando was in the room; is

1 that correct?

2 A Sergeant Orlando?

3 Q Excuse me. Sergeant Orlando, that's correct.

4 A Yes.

5 Q Mr. Maxim?

6 A Yes.

7 Q You said Mr. Flood and Mr. Bishop; right?

8 A That's correct.

9 Q You didn't mention Mr. Herring. Do you have any
10 recollection as to whether or not he was in the room that day?

11 A As memory serves, at that time, I don't remember seeing
12 Mr. Herring in the room.

13 Q Okay. You don't recall seeing him there?

14 A Mm-mmm.

15 Q Okay.

16 MR. BOUCHETTE: I don't have any further questions for
17 this witness, Your Honor.

18 THE COURT: All right. Any redirect?

19 MR. CLEMENTS: Your Honor, we ask Mr. Hayes be -- has his
20 subpoena lifted so he won't be under --

21 THE COURT: Any objection?

22 MR. BOUCHETTE: No, sir.

23 THE COURT: All right. You have a good day.

24 THE WITNESS: Okay. Thank you.

25 THE COURT: Call your next witness.

1 MR. CLEMENTS: Your Honor, the next witness that I have
2 would be Deputy Latifiah Witherspoon.

3 MR. BOUCHETTE: And, Your Honor, sidebar?

4 THE COURT: Sure.

5 BENCH CONFERENCE

6 (The following bench conference was held outside the hearing
7 of the jury and others.)

8 MR. BOUCHETTE: Your Honor, this is a witness that,
9 again, her statement specifically makes a reference to "Flood
10 being Flood," so I want to make sure that, again, we're not
11 eliciting that --

12 THE COURT: He said he ain't going down that road unless
13 the door is opened.

14 MR. BOUCHETTE: Okay.

15 MR. CLEMENTS: Yeah. She would tell the exact same thing
16 about Flood being Flood.

17 THE COURT: I understand.

18 (Open court resumes:)

19 DEPUTY LATIFIAH WITHERSPOON,

20 after having been duly sworn, was examined and testified
21 to as follows:

22 DIRECT EXAMINATION

23 BY MR. CLEMENTS:

24 Q Would you please state your name for the record and spell
25 your name, please, ma'am.

1 **A** Latifiah Witherspoon. L-a-t-i-f-i-a-h
2 W-i-t-h-e-r-s-p-o-o-n.

3 **Q** And where do you work?

4 **A** For the Horry County Sheriff's Office.

5 **Q** In what capacity?

6 **A** Assigned to the transportation unit at the J. Reuben Long
7 Detention Center.

8 **Q** And how long have you worked for the sheriff in that
9 capacity?

10 **A** Nine years.

11 **Q** Do you have any prior law enforcement experience?

12 **A** No.

13 **Q** So all your experience has been with the transportation
14 office?

15 **A** And the jail. I was a corrections officer down the hall
16 as well.

17 **Q** And the transportation office is right there at the jail,
18 as part of the jail structure?

19 **A** Yes.

20 **Q** Do you recall the day of September 18th, 2018?

21 **A** Yes.

22 **Q** What stands out to you about that day?

23 **A** That's the incident we had with one of our vans and two
24 of our officers when one of the vans -- we lost...

25 **Q** Yes, ma'am.

1 And you had nothing to do with that situation as far as
2 setting up the route or talking about a route or driving that
3 van --

4 **A** No, sir.

5 **Q** -- correct?

6 **A** No, sir.

7 **Q** All right. Did you do a transport that day?

8 **A** Yes, I did.

9 **Q** And can you tell us what you transported where and how
10 you did it?

11 **A** My partner and I that morning, we got assigned to a
12 mental health run pick up from Seacoast Hospital to take to
13 Mary Black Hospital in Spartanburg.

14 **Q** Okay. And there was one transportee?

15 **A** Yes. On the way going, yes.

16 **Q** And did you bring somebody back?

17 **A** Yes. We got a phone call saying, Hey, we needed a
18 pickup -- we also was assigned to a pickup in Laurens, South
19 Carolina. So we had to pick up one in Laurens and bring back
20 to the jail.

21 **Q** Okay. Who was your partner?

22 **A** Bruce Crawford.

23 **Q** Why did they send two?

24 **A** Due to the weather -- well, I can't really say the
25 weather, but due to the road conditions, there was two

1 officers.

2 Q Did distance have anything to play?

3 A That, too, because picking up from Seacoast and going to
4 Spartanburg, that's a four-hour trip one way.

5 Q In your job, do y'all have any type of training about
6 driving as to different vehicles or driving situations you can
7 find yourself in?

8 A At that particular time, no, we didn't.

9 Q But you do now?

10 A But we do now.

11 Q Do you recall when you first had knowledge that y'all had
12 a van in distress?

13 A Yes.

14 Q Where were you?

15 A My partner and I were coming back from Laurens. We were
16 right by the boat plant, coming back on 501.

17 Q By Beneteau?

18 A Yes.

19 Q Or what used to be the --

20 A What used to be the boat plant.

21 Q And do you recall getting information as to what your
22 response was? Did you say anything to anybody over the radio
23 or telephone or anything?

24 A Yes. When I heard it on the radio, I picked up my
25 personal phone. I called Officer Bishop and let him know,

1 "Hey, they're calling you guys over the radio." He passed his
2 phone to Officer Flood. I asked for -- I told Flood that
3 "they were calling you guys over the radio," and he told me
4 the radio was up under the water.

5 Q At that point, did you have any other discussions or
6 thoughts about trying to go help them?

7 A Yes. I hung up with him. I told him to hold tight, hang
8 tight. I hung up with him. I called into the office,
9 notified the supervisor that was in the office. They were in
10 route to him because I could hear the sirens. I asked the
11 supervisor, "Do you want us to head that way?" because we were
12 right here. At first, she said yes, and then she said, no,
13 because you have a 95 in the back. And I was like, "You're
14 right."

15 Q And that was the person you were transporting?

16 A Right.

17 Q So you proceeded to go on back to J. Reuben Long?

18 A Yes, sir.

19 MR. CLEMENTS: Beg the Court's indulgence.

20 BY MR. CLEMENTS:

21 Q Just a couple more questions: When you and Deputy
22 Crawford left that morning on the road, what was the road you
23 were leaving to head towards Spartanburg on?

24 A We were initially supposed to leave out and go down --
25 leave from Seacoast Hospital in Little River and head back

1 towards 22. It's natural for me -- we're so used to doing it,
2 that I went down 9. When I got to 9 and we ran into road
3 signs, I turned around. Being that I'm familiar with the road
4 out there towards Green Sea/Loris, we turned around and came
5 back up through Tabor City, which took us 45 minutes to an
6 hour out of the way to come back through Highway 22 and just
7 make our way to Spartanburg that way.

8 Q When you were driving vehicles for the sheriff and making
9 transports and y'all come up on blockades or road barricades,
10 what are you supposed to do?

11 A Not go through.

12 Q So that would mean you do what?

13 A You find an alternate route. You turn around, and you
14 find an alternate route.

15 Q And that's exactly what you did that morning?

16 A Yes, sir.

17 MR. CLEMENTS: Beg the Court's indulgence again.

18 BY MR. CLEMENTS:

19 Q Thank you, Deputy Witherspoon. I'm going to ask you to
20 answer any questions Mr. Bouchette has.

21 A Yes, sir.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. BOUCHETTE:

25 Q Good morning. How are you?

1 A Fine. And yourself?

2 Q Good.

3 A couple of questions. Your route that morning, you did
4 not go through the town of Nichols or the surrounding areas as
5 part of your travel that day; is that correct?

6 A That's correct.

7 Q All right. You weren't in the vicinity where this
8 accident ultimately occurred on that day?

9 A No.

10 Q Okay. But I understand you're from around the Nichols
11 area, aren't you?

12 A No. I used to live around that way, but I'm not from
13 there.

14 Q Okay. Fair enough. But you lived there for awhile?

15 A I used to live out in Green Sea, yes.

16 Q Okay. All right. And so you were on the phone with
17 Mr. Flood during the time that the vehicle had gotten
18 stranded; is that right?

19 A Right.

20 Q And he was given you direction as to where he was
21 located?

22 A Yes.

23 Q All right. And you, as somebody that was familiar with
24 the town and familiar the area, you were able to ascertain
25 where you believed he was?

- 1 **A** Right.
- 2 **Q** All right. And that was fairly early on in the phone
3 call?
- 4 **A** Right.
- 5 **Q** And that was on Highway 76 outside the town of Nichols
6 between Mullins and Nichols?
- 7 **A** Mm-hmm, right.
- 8 **Q** Okay. All right. Now, did you convey that location with
9 your specific and personal knowledge of the location to Marion
10 County 911 or anybody else that was on the scene?
- 11 **A** I did not talk to Marion County 911. The only persons
12 that I talked to were the supervisors in the office, and when
13 they left out -- I talked to them twice. And I talked to
14 Sergeant Orlando as she was headed that way, and I told her
15 this is the vicinity that they're in.
- 16 **Q** Okay. Would that have been about 6:15?
- 17 **A** Honestly, I don't know the time.
- 18 **Q** Okay. But do you recall about what time you got back to
19 the jail?
- 20 **A** No, sir, I don't. I know it was late, but I don't know
21 what time it was.
- 22 **Q** But once you got back, you told Ms. Orlando that, "Hey, I
23 know where these guys are"?
- 24 **A** She wasn't there when we got back. I spoke to her on the
25 phone on our way back.

1 Q I gotcha. So, at some point before you arrived back to
2 J. Reuben Long, you phone-called Ms. Orlando to tell them
3 about Mr. Flood's location?

4 A Right.

5 Q And the location, did you use any markers or anything
6 that you were familiar with to kind of help tell them
7 precisely where he was?

8 A I told them, the way that I would have went, there's only
9 one way you can go that way, in my eyes. And I told them that
10 way, and I said this is the route you need to go to get to
11 them. And that was it.

12 Q So you conveyed that to Ms. Orlando pretty much as soon
13 as you got off the phone with Mr. Flood?

14 A Right.

15 MR. BOUCHETTE: Court's indulgence.

16 THE COURT: Mm-hmm.

17 BY MR. BOUCHETTE:

18 Q On that point, once you concluded your conversation
19 whatever time that was, be safe to say that Mr. Flood and
20 Mr. Bishop knew where they were at?

21 A Repeat that.

22 Q Okay. Is it safe to say that, whenever you concluded
23 your phone call with Mr. Flood, you knew precisely where they
24 were?

25 A No.

1 MR. CLEMENTS: Objection, Your Honor. Calls for
2 speculation.

3 THE COURT: Overruled. She can answer if she knew.

4 A I did not know exactly where they were at. I knew what
5 vicinity they should have been in.

6 BY MR. BOUCHETTE:

7 Q Okay. So fair enough, but you knew that it was on
8 Highway 76 between Mullins and Nichols, outside the town of
9 Nichols?

10 A Right.

11 Q And you conveyed that, like I say, to Ms. Orlando. Did
12 you convey it to anybody else?

13 A No. She was the only person I had talked to. She was
14 the last person that I talked to.

15 Q Did you convey it to anybody else?

16 A Besides my partner when we were in the vehicle on the way
17 coming back.

18 Q So if we were to say that there was confusion about where
19 these folks were located, there was no confusion in your
20 mind's eye? Would that be safe to say?

21 A I knew the vicinity that they were in. I can't say they
22 were right here, right there.

23 Q I'm not asking for, like I say, like GPS coordinates, but
24 you had a good idea on where they were located along the road?

25 A I had a good idea --

1 MR. CLEMENTS: Asked and answered, Your Honor.

2 THE COURT: Sustained.

3 MR. BOUCHETTE: Very good.

4 BY MR. BOUCHETTE:

5 Q Early in the morning, were you ordered to take any
6 particular route early in the morning when you did your
7 transport?

8 A It was said to come back down, take 22. And it was a
9 habit for me to -- we were talking. It was a habit for me to
10 leave out of Seacoast and make the left and go down No. 9.

11 Q That was the way you normally went?

12 A Right.

13 MR. BOUCHETTE: I don't have any further questions.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MR. CLEMENTS:

17 Q And when -- you went down No. 9 until you did what? What
18 did you encounter?

19 A Until I ran into a road closure sign. I was driving, so
20 me and my partner turned around.

21 Q That's what you're supposed to do; right?

22 A Right.

23 Q You're not supposed to come up on the road barricades and
24 just drive around them and drive through them?

25 A No, sir.

1 Q Okay. Ms. Witherspoon, thank you.

2 MR. CLEMENTS: I'd ask that she be released from her
3 subpoena.

4 MR. BOUCHETTE: Very brief follow up on that point.

5 RECROSS-EXAMINATION

6 BY MR. BOUCHETTE:

7 Q Ms. Witherspoon, if a road closure is being manned by,
8 say, a National Guard and some other authority and was waving
9 you through, after requesting guidance, would you, under those
10 circumstances, perhaps proceed past that route?

11 A If somebody is manning it and waved me through?

12 Q Right.

13 A I probably would go through.

14 Q Okay.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. CLEMENTS:

17 Q If you encountered something that, in your vision, in
18 your thought, in your mind was a dangerous situation or
19 dangerous landscape, whether it be flood waters or anything
20 else, would you stop or would you turn and go back?

21 A I would stop and turn around and go back.

22 Q You wouldn't proceed right through it --

23 A No.

24 Q -- just because someone waved you through?

25 A Right. No, I would turn around.

1 Q You have your own independent judgment; right?

2 A Right.

3 Q And you're supposed to exercise that in your job; is that
4 correct?

5 A Correct.

6 Q And the priority would be for the safety of the
7 passengers; is that right?

8 A Correct.

9 MR. CLEMENTS: Thank you.

10 THE COURT: Anything further?

11 MR. BOUCHETTE: Nothing further.

12 THE COURT: All right. You may step down.

13 MR. CLEMENTS: Your Honor, may she be released from her
14 subpoena?

15 THE COURT: Any objection?

16 MR. BOUCHETTE: No objection.

17 THE COURT: Yes.

18 MR. CLEMENTS: We next call Deputy Bruce Crawford.

19 DEPUTY BRUCE CRAWFORD,

20 after having been duly sworn, was examined and testified
21 to as follows:

22 DIRECT EXAMINATION

23 BY MR. CLEMENTS:

24 Q Can you please state your name for the record.

25 A Bruce Crawford.

1 Q And can you tell us -- Deputy Crawford, can you tell us
2 where you work?

3 A Pardon me, sir?

4 Q Can you tell us where you work?

5 A I work for Horry County Sheriff.

6 Q And are you a county employee?

7 A Yes, sir.

8 Q In what capacity do you work for the sheriff?

9 A Transport officer for the Transportation Department at
10 J. Reuben Long.

11 Q Can you explain to me what being a transport officer --
12 what does all that mean?

13 A It means we -- we're responsible for transporting
14 inmates, juveniles, mental health patients throughout the
15 county, and we do extraditions where we pick up from other
16 departments and bring them back to J. Reuben.

17 We do court duty as far as taking juveniles to court from
18 DJJ or taking juveniles to DJJ when they get arrested, and we
19 transport mental health patients to mental health facilities.

20 Q And, on September 18th, 2018, you were working that day?

21 A Yes.

22 Q And do you do your job times by yourself and sometimes
23 with a partner?

24 A Right. We do.

25 Q What makes up the situations where you use a partnership

1 instead of a single person?

2 **A** Conditions and distance determines if you're going to
3 have a partner or not, and availability as well. But mainly
4 conditions and -- mainly conditions and distance.

5 **Q** Okay. Like road conditions?

6 **A** Right.

7 **Q** Who was your partner that day?

8 **A** Deputy Witherspoon.

9 **Q** And what type of transport were y'all making?

10 **A** We had a mental health patient from Seacoast to Mary
11 Black facility up in Spartanburg, and we also had an
12 extradition from Laurens County Detention Center back to
13 J. Reuben.

14 **Q** And y'all accomplished both those transports that day?

15 **A** Yes, sir.

16 **Q** Without incident?

17 **A** Without incident. We had to turn around and do a detour.

18 **Q** Tell us about that.

19 **A** Once we left Seacoast, after we picked up the patient, we
20 were coming down No. 9, and it was closed off. There was a
21 barricade. We had to turn around and take an alternate route.

22 **Q** What are you supposed to do when you see a barricade?

23 **A** We're supposed to -- well, we're supposed to turn around
24 and take an alternate route. We also call in and try to make
25 the office aware that that road is closed off, and if we know

1 the route -- a different route already. And we kind of knew a
2 route. But we do want to make the team aware that this road
3 is closed off or barricaded off.

4 Q And that was No. 9 that was barricaded off?

5 A Yes.

6 Q And how do you eventually go to Spartanburg?

7 A We -- we went -- turned around on No. 9 and came back in,
8 took some back roads, that I recall the name of the roads,
9 and we ended up in Tabor City, North Carolina, and then worked
10 our way through the back roads. I don't know all the names of
11 the roads because I grew up out in that area, but I'm not
12 familiar with the names of all the different country roads.
13 But we eventually worked our way back to Florence and on up to
14 Spartanburg.

15 Q About how much extra time did this cost you?

16 A Quite a bit. Probably an hour.

17 Q Okay. And as part of what you do is try to take the most
18 efficient route; is that correct?

19 A Yes, sir.

20 Q What's more of a priority: The efficiency of a route or
21 the safety of a route?

22 A Definitely the safety.

23 Q Is the fastest always efficient or not?

24 A No, it's not.

25 Q And so y'all -- in the interest of safety, y'all did what

1 you're supposed to do: Turn around in that roadblock and
2 found another route?

3 **A** Yes, sir.

4 **Q** What is the number one priority to your understanding
5 when you're transporting people?

6 **A** Safety and security.

7 **Q** Okay. Were y'all safe and secure that day?

8 **A** Yes, sir.

9 **Q** When you got back, do you remember getting any news that
10 was alarming?

11 **A** Yeah. We heard the transmissions on the radio about a
12 van being -- taking on water, I think. Basically, they
13 were -- I can't remember distinctly what was being said on the
14 radio --

15 **Q** That's fine.

16 **A** -- because I was kind of -- once I got a grasp of what
17 was really going on, then -- my memory is not really good with
18 the details, you know, after initially hearing what was --
19 the -- you know, the magnitude of what was going on.

20 **Q** Yes, sir. I understand.

21 **A** And it's also been four years.

22 **Q** No problem.

23 Let me ask you this: Y'all got communications by the
24 radio. Y'all always have radios with you; is that correct?

25 **A** Yes, sir.

1 Q Was there also any communication going on by cell phone?

2 A Yes. My partner was -- she was -- because there wasn't a
3 response from Flood and Bishop when Central was radioing them.
4 I think initially -- initially, at the beginning, may have
5 heard Bishop respond on the radio, but I'm not sure. But I do
6 know that "Spoon" immediately got on -- well, Deputy
7 Witherspoon immediately got on the phone and started making
8 phone calls directly to the guys that Central was trying to
9 locate or Central was trying to communicate with.

10 Q And Central, you're talking about a radio?

11 A Yes.

12 Q Was there a lot of different entities involved?

13 A Yes.

14 MR. CLEMENTS: Beg the Court's indulgence. Beg the
15 Court, for just a minute, indulgence.

16 BY MR. CLEMENTS:

17 Q That's all the questions I have. Please answer any
18 questions defense may have.

19 THE COURT: Cross?

20 CROSS-EXAMINATION

21 BY MR. BOUCHETTE:

22 Q Good morning.

23 A Good morning. How are you?

24 Q Good.

25 I just want to make sure -- I'm pretty sure I know the

1 answer to the question, but you and Ms. Witherspoon, during
2 the course of that day, September 18th, 2018, did not come
3 into the town of Nichols at any point during that day?

4 **A** No, we didn't.

5 **Q** You did not encounter or witness or observe any
6 conditions on the area of Highway 9 or Highway 76 between the
7 town of Nichols and Mullins?

8 **A** No.

9 **Q** Okay. All right. Now, I want to touch on something the
10 solicitor asked you about earlier. He said that the route you
11 took, or excuse me -- had planned to take earlier when y'all
12 were going to Spartanburg and were coming back, that you ran
13 into a problem and you chose an alternate route. Do you
14 recall testifying to that?

15 **A** Yes, I do.

16 **Q** The route that you were initially going -- let me back up
17 a little bit further. There were two officers there with you
18 that day, which was a little bit unusual; is that right?

19 **A** Say again.

20 **Q** Well, the fact that you had two officers as opposed to
21 one.

22 **A** Okay.

23 **Q** That's not something you always did; right?

24 **A** Yeah, it is something that we did. Like I said, it
25 depends on the -- it depends on the weather or the distance if

1 we're going to send one officer or two officers.

2 Q Fair enough. The decision in this case to send two as
3 opposed to one was made part because of the road conditions
4 that day or what was anticipated to be road conditions?

5 A Correct.

6 Q Okay. So safe to say that, when you went out that
7 morning, you knew and anybody that directed you on that route
8 knew that the road conditions could at least potentially be
9 dangerous or problematic?

10 A Correct.

11 Q Okay. All right. And so knowing those road conditions,
12 you and Ms. Witherspoon proceeded upon the route that you
13 normally take when you go that particular route?

14 A Correct.

15 Q All right. And so, when you were on that route, let me
16 ask you this, that route is the most efficient way that you
17 know of to get from Conway at J. Reuben Long to wherever you
18 were headed?

19 A Oh, yes.

20 Q Okay. Because that's the path you chose to go and you
21 ran into a problem; right?

22 A You mean after we turned around? Initially, we came --
23 going to Seacoast, we took 22, and once we picked up the
24 patient at Seacoast, we came down No. 9, which is pretty
25 efficient.

1 Q Right.

2 A But we encountered -- like I said, we encountered the
3 flood closure.

4 Q Once you encountered the road closure, then, at that
5 point, you proceeded upon an alternate route?

6 A Right.

7 Q Was there any official -- whether it be National Guard or
8 law enforcement or any official -- at that particular road
9 closure?

10 A No, there wasn't.

11 MR. BOUCHETTE: No further questions.

12 THE COURT: All right. Redirect?

13 MR. CLEMENTS: Your Honor, we'd just ask that Deputy
14 Crawford be excused from his subpoena.

15 THE COURT: Any objections?

16 MR. BOUCHETTE: No, Your Honor.

17 THE COURT: All right. You have a good day.

18 Call your next witness.

19 MR. CLEMENTS: Your Honor, our witness is going to take a
20 little bit of technical preparation. I would submit that it
21 might be a good time for the morning break.

22 THE COURT: Members of the jury, if you would step into
23 the jury room. Do not discuss the case.

24 (The jury exited the courtroom at 10:22 a.m.)

25

1 BENCH CONFERENCE

2 (The following bench conference was held outside the hearing
3 of the jury and others.)

4 MR. JEPERTINGER: Dudley passed away. We'd like to all
5 go to the funeral on Thursday afternoon. So I'd anticipate
6 this case being over by then.

7 MR. BOUCHETTE: If not, I have not objection to pausing.

8 MR. JEPERTINGER: Yeah.

9 THE COURT: Just remind me.

10 MR. JEPERTINGER: Okay.

11 THE COURT: Don't forget.

12 (Open court resumes:)

13 (A brief recess was taken from 10:23 a.m. to 10:42 a.m.)

14 THE COURT: Is the State ready?

15 MR. CLEMENTS: Yes, sir.

16 THE COURT: Let's go ahead and bring in the jury.

17 (The jury entered the courtroom at 10:43 a.m.)

18 THE COURT: All right. If you'll call your next witness.

19 MR. CLEMENTS: If it please the Court, Your Honor, we
20 would call Ms. Sandee Rogers, the town administrator for the
21 town of Nichols.

22 SANDEE ROGERS,

23 after having been duly sworn, was examined and testified
24 to as follows:

25

1 DIRECT EXAMINATION

2 BY MR. CLEMENTS:

3 Q Would you please state your name and spell your name for
4 the record.

5 A Yes. Sandra Elizabeth Summerford Rogers. I go by
6 Sandee, S-a-n-d-e-e, Rogers, R-o-g-e-r-s.

7 Q Where do you work?

8 A I work at the town hall in Nichols.

9 Q And what's your job title?

10 A I was appointed by the mayor, and I do anything that
11 keeps the town running. Basically, the administrator. Make
12 sure everything is taken care of, in place, all of the
13 activities, our street department, police department, the
14 finances, and everything.

15 Q What do you do in your spare time?

16 A There is none.

17 Q Sounds like it.

18 Ms. Rogers, you have worked there in that capacity for
19 how long?

20 A I have been there almost 13 years.

21 Q And where is Nichols?

22 A Nichols is in -- it's actually a beautiful location right
23 in a tri-county area. We're in Marion County. Dillon County
24 is on one side. Horry County is on the other. It's in the
25 northern section of the Marion County area.

- 1 Q So Nichols is in Marion County, South Carolina?
- 2 A It is.
- 3 Q All right. Now, do you recall the events of March --
- 4 excuse me, not March -- September the 18th, 2018?
- 5 A I do.
- 6 Q And why do you recall those events? What was going on
- 7 then?
- 8 A Nichols was preparing for another major flood.
- 9 Q They had a major flood how much earlier?
- 10 A 2016.
- 11 Q Okay. And that was from Hurricane --
- 12 A Matthew.
- 13 Q And this was Hurricane --
- 14 A Florence.
- 15 Q When you were preparing, what does that mean? Who all
- 16 was preparing? What entities were involved?
- 17 A There were a lot of entities involved, and we were basing
- 18 our actions off of what happened with Hurricane Matthew. We
- 19 knew the water was coming in. The entities involved were DNR.
- 20 Q Is that the Department of Natural Resources?
- 21 A Yes.
- 22 SLED, guards -- National Guard, state guard. Anybody
- 23 that could help was stationed at the town hall in Nichols.
- 24 Q Did you have any help who came from out of town, out of
- 25 state?

1 **A** Some of the guards -- well, I'm not sure. I don't know.

2 **Q** Okay. Was there -- can you tell me this, if you know
3 this or not, was there an outfit there with boats that came
4 from Tennessee Swift Water Rescue?

5 **A** I recall hearing of that. I did not see it.

6 **Q** During that day on the 18th, take us back to when you
7 came to work, what you found, what you saw, and how your day
8 transpired from there.

9 **A** Okay. When I came in, we had been prepared for the water
10 rising. So when I came in that morning around 9:30, I noticed
11 that, around the perimeters of the town, the water was indeed
12 coming up. So part of my job, through what FEMA has trained
13 us to do with the first flood, is to archive as much as we
14 can. So what I was doing was taking pictures of areas around
15 the town of how the water was coming up.

16 **Q** And how did you take those pictures?

17 **A** With my phone.

18 **Q** Okay. I'm going to show you what's been marked as
19 State's Exhibit 5-A, B, and 5-C.

20 **A** Okay.

21 **Q** Can you identify those and tell where those came from?

22 **A** These are the pictures from my phone.

23 **Q** Those were taken by you?

24 **A** Yes, they were.

25 **Q** All right. Did you also take video?

1 **A** I did.

2 **Q** Was the information off your phone reduced to a disc for
3 court?

4 **A** It looks like it was.

5 **Q** Okay.

6 MR. CLEMENTS: Your Honor, I'd move these items into
7 evidence.

8 THE COURT: Any objections?

9 MR. BOUCHETTE: Matter of law, Your Honor. Matter of
10 law.

11 BENCH CONFERENCE

12 (The following bench conference was held outside the hearing
13 of the jury and others.)

14 MR. BOUCHETTE: I did not anticipate this necessarily as
15 to the pictures, but I think there needs to be a little bit
16 more foundation laid as to the location of the -- of where she
17 took those, what the pictures show. Because if she's showing
18 what I thought was the exact location, but if they're showing
19 pictures of other areas, that, one, I at least want to know
20 that; two, it might be something I'd have an objection to, but
21 I anticipate --

22 MR. CLEMENTS: I was going to do that, but I'll go ahead
23 and do that now.

24 THE COURT: Okay. That sounds good. Thank you.

25 (Open court resumes:)

1 BY MR. CLEMENTS:

2 Q Ms. Rogers --

3 A Yes.

4 Q -- can you tell me, State's Exhibit 5-A, where that is
5 and about what time it was that you took that picture?

6 A That was around 9:45 a.m. as I come into town. If you
7 follow that road straight as you're pointing, you're going to
8 go into Mullins. This is about a half a mile from the town
9 hall.

10 Q Okay. All right. And how about 5-B?

11 A That is the city center.

12 Q Where is that located?

13 A That is -- there is a crossroads to Highway 9 and
14 Highway 76, and they come together here and converge. You can
15 disburse to Horry County, Dillon County, or Marion County from
16 these roads, and this was taken right in the center of that
17 intersection around 12:30.

18 Q What's that building?

19 A That's the Pace's Pharmacy or Bridge's Pharmacy.

20 Q How about Item 5-C?

21 A I believe this is part of the video. This is when I was
22 leaving, the National Guard was taking me to my car because
23 the water had risen so much, I could not drive it. And as I
24 was leaving the town or the area, I was videoing and taking
25 pictures, there again, archiving for history sake and for us

1 to learn in the future what could remedy this problem.

2 And as I was videoing, I look up, and I see this young
3 man running down the road, and then I see cars parked beyond
4 him.

5 Q And that was about what time?

6 A It was around 7 p.m., if I'm not mistaken.

7 Q And it was taken where?

8 A In Nichols.

9 Q Where in Nichols?

10 A Right at that intersection where the roads converge on
11 Highway 76.

12 Q Is that what we call the split?

13 A No. We actually just call it the curve in the road.

14 Q Okay. All right. I want to ask you to step down in a
15 minute and show these to the jury. But first --

16 THE COURT: Any objection from the defense after that?

17 MR. BOUCHETTE: Is he moving them --

18 THE COURT: Are you moving those into evidence?

19 MR. CLEMENTS: I was going to wait to publish them. But
20 since we're already talking about them, I might as well move
21 them into evidence at this time.

22 THE COURT: Any objections?

23 MR. BOUCHETTE: No, Your Honor.

24 THE COURT: That would be 5-A, B, and C.

25 MR. CLEMENTS: And also Item No. 4, the DVD.

1 THE COURT: And Item No. 4 is in evidence without
2 objection.

3 (State's Exhibit Nos. 5-A, B, and C and State's Exhibit
4 No. 4 were received into evidence.)

5 BY MR. CLEMENTS:

6 Q All right. You came -- you drove your vehicle and about
7 9:30 in the morning, you reached the town hall; is that
8 correct?

9 A Yes.

10 Q All right. Tell me what else happened that morning.
11 What were you doing?

12 A I was handling all the affairs of everything coming in
13 and out. Namely, we had evacuated the town, and we wanted to
14 make sure that no one was coming in, taking property that
15 didn't belong to them. I was working with the National Guard
16 and was stationed there. I can't explain to you the chaos
17 that was going on at that time, so what I was doing was
18 probably 20 things at one time, just making sure that the
19 event did the least amount of damage possible.

20 Q Now, in midday, what did you do as far as moving
21 anything?

22 A I had to move my car.

23 Q Why?

24 A The water was coming up so fast, if I didn't get it out
25 of the town of Nichols, then I was going to be trapped there

1 and wouldn't be able to go home. So I took my car to a safe
2 location.

3 Q And who brought you back?

4 A One of the guardsmen.

5 Q In what type of vehicle?

6 A In one of their high-water vehicle -- their high-water
7 rescue vehicles.

8 Q I'm going to show you what's been marked for
9 identification only, State's Exhibit 13-A and 13-B. Did it or
10 did it not look like that?

11 A Oh, yeah. Ridden in that many a time.

12 Q Okay. Do you recall, in midday or any time in the
13 afternoon, seeing a Horry County van during the middle of the
14 day when you were riding with the guardsman?

15 A I did not.

16 Q Did not?

17 A No, sir.

18 Q Okay. Now, were you also working with SCDOT?

19 A Yes. They automatically come in.

20 Q Okay. Did they put out barricades or signs -- "road
21 closed" signs in different places?

22 A I did not actually see them put out, but I could only
23 assume that it was the DOT that put them because --

24 Q Somebody put them?

25 A Yes, sir.

1 Q Were they moved around during the day?

2 A Yes, sir. They had to be.

3 Q And what would cause them to have to be moved around?

4 A The flood water coming up so fast, you'd have to move
5 them in conjunction with the water rising to keep people from
6 going further. You didn't want the water that was coming in
7 with such swift movement to knock them over and not do their
8 job, which is to keep people from that area.

9 MR. CLEMENTS: At this time, Your Honor, we would request
10 permission to allow the witness to step down.

11 BY MR. CLEMENTS:

12 Q First, I'd like to show you State's Exhibit No. 1. It's
13 already in evidence.

14 THE COURT: Chris, do you have any way that I can see as
15 well?

16 TECH SPECIALIST: I can turn it around.

17 THE COURT: That'll work.

18 BY MR. CLEMENTS:

19 Q Is this familiar to you?

20 A Yes, it is.

21 Q Is this an accurate representation of this portion of the
22 town of Nichols?

23 A Yes.

24 Q Where is the town hall?

25 A Right here on 706.

1 Q Where are the grain bins?

2 A They were about a mile down, right there on 76 as well.

3 Q Where is the ballpark?

4 A Right in the center.

5 Q And where was the drowning location?

6 A I don't know exactly. It was at a bridge right down from
7 that, but I don't know if I could point it out. Right there,
8 76.

9 Q All right. 13-A, let's look at that. Excuse me, not
10 13-A. 5-A. If you'll put that on the screen.

11 Can you tell us what road that's a picture of and where
12 was it taken and what time?

13 A That is Highway 76 going to Mullins. It was taken around
14 9:45 a.m.

15 Q And is that a route -- is that water clear across the
16 road?

17 A Yes.

18 Q How about off to the side? Is it way off to the side as
19 well?

20 A Yes. But it comes in and engulfs everything.

21 Q Can you point out to us the right side of the road --

22 A Right here.

23 Q -- how high the water is way off the road?

24 A How high it is?

25 Q It covers the ground way off the side of the road,

1 doesn't it?

2 **A** Yes, it does. And it goes -- depending on the
3 topography -- of course, when the water comes up slowly, it's
4 going to --

5 **Q** Cover all the low areas first?

6 **A** Yes. And then disburse.

7 **Q** In the distance here, what is that? Is that water all
8 the way across there?

9 **A** Yes, it is. That is water all the way down the road. It
10 starts here and goes as far as you can see. And --

11 **Q** And that's Highway 76; right?

12 **A** Yes.

13 **Q** What is that right there?

14 **A** That is a man.

15 **Q** He's walking down the road?

16 **A** Yes, he is.

17 **Q** As far in the distance as you can see, did you see any
18 dry land in the distance?

19 **A** No.

20 **Q** When you took the video of this area, is that where
21 this -- where was the video taken?

22 **A** The video was taken later in the day at another location.

23 **Q** Let's look at 5-B.

24 **MR. BOUCHETTE:** Can everybody see this or am I in your
25 way?

1 BY MR. CLEMENTS:

2 Q Explain to us where that is and what time that is at.

3 A That is around 12:30 in the day. That is, as we spoke
4 earlier, there's the Pace's Pharmacy. That's where Highway 9
5 and 76 converge.

6 Q Okay. And can you point that out on State's Exhibit 1?

7 A It is right here.

8 Q So water is already up to there?

9 A Yeah, it's coming in from this direction. This is Main
10 Street going towards Lake View, and the water is already
11 coming into that intersection where it's dispersed.

12 Q Is there anywhere in Nichols that doesn't have a water
13 problem?

14 A Not with a 1000-year flood.

15 Q Now, what is this?

16 A That's a barricade.

17 Q Those are the ones that you were talking about earlier
18 that you assumed that SCDOT put them out?

19 A That's correct. Those are their signs.

20 Q Okay. And that water, is that just in one area or does
21 that go along the road in both directions?

22 A When it comes in from this direction, at that time of
23 day, it had not gone further. It's creeping its way in from
24 the local river in this picture.

25 Q But in the picture that was 5-A, that water goes all the

1 way back to where the Little Pee Dee River is?

2 **A** I could not see that far. As far as I could see.

3 **Q** Okay. And that was at 1:00?

4 **A** That was early morning. 9:30.

5 **Q** And this is midday?

6 **A** That's right.

7 **Q** All right. Let's look at 5-C. All right. Explain what
8 direction that's looking in and what road that's on and what
9 time that is.

10 **A** Okay. That's around 7 p.m. If you had the other picture
11 up here, that intersection where the barricade is would be
12 right about here.

13 **Q** Over here?

14 **A** Yes, sir. And so what you can see now is where it is
15 just in the road, it is now covering the entire area. The
16 road is a high point, but we have got a lot going on.

17 **Q** And it's all in the yards and everywhere else?

18 **A** It's taking over everything.

19 **Q** Do you know who that man was running?

20 **A** I do know his name. I did meet him. I was in the
21 National Guard truck. They were taking me to my car that
22 evening. There again, I was videoing and archiving for
23 posterity sake.

24 **Q** And he's not an official. He's not a guy --

25 **A** That is correct.

1 So when we got to that point and I was filming, I saw him
2 running down the road.

3 Q Let's look at the video, which is State's Exhibit No. 4.

4 MR. BOUCHETTE: One moment.

5 BENCH CONFERENCE

6 (The following bench conference was held outside the hearing
7 of the jury and others.)

8 MR. BOUCHETTE: I apologize; we have may have dealt with
9 this, but I don't think -- with the video, I don't think we
10 laid a foundation for where she took the video and --

11 MR. CLEMENTS: It's going to be the same place as that
12 picture. That picture is on the video.

13 MR. BOUCHETTE: The one that was just -- that's 5-C?

14 MR. CLEMENTS: Yeah. It's a still-shot from the video.

15 MR. BOUCHETTE: It's duplicative. I don't know why it
16 would be necessary.

17 MR. CLEMENTS: It's already been marked. I'll ask a
18 couple of questions just to qualify it.

19 THE COURT: Okay.

20 (Open court resumes:)

21 BY MR. CLEMENTS:

22 Q Ms. Rogers, let me be sure I understood you. The last
23 picture we viewed, which is State's 5-C, did I understand you
24 correctly to say that that was a still-shot from the video
25 that was taken?

1 A Yes.

2 Q So you took the video in that same area as that picture?

3 A At a different time. Well, this is part of the video.

4 This is a still-shot from the video, yes.

5 Q So that was taken around 6-something?

6 A Around 7:00, if I'm not mistaken.

7 Q And it was on the Main Street?

8 A It is on Highway 76 headed towards Horry County.

9 Q Coming back this way would be coming back towards Little
10 Pee Dee River and Mullins?

11 A Following this way, it was.

12 Q And there's a curve around this way?

13 A Yeah, it curved -- it starts back there where those cars
14 are. Once you get around this curve, you're headed to Horry
15 County. You come this way, you're headed to Marion, to
16 Mullins.

17 Q All right.

18 MR. CLEMENTS: Your Honor, request permission to publish
19 the video.

20 THE COURT: Any objections?

21 MR. BOUCHETTE: No objection.

22 THE COURT: All right.

23 (Video, State's Exhibit 5-B, playing.)

24 BY MR. CLEMENTS:

25 Q Where is that?

1 **A** That's Highway 76 as I was heading out of town Horry
2 County.

3 **Q** Do you know who the guardsman was?

4 **A** I do not know his name.

5 **Q** Okay. But --

6 **A** Can we stop it there? That is that Pace's Pharmacy.
7 This is where that DOT sign was at 12:30 that afternoon. And,
8 of course, with the water coming up so much, that sign was
9 moved. I'm not sure where that was in the flood. But
10 everything is completely engulfed now, six hours later.

11 **Q** Okay. All right. You can have a seat.

12 Please answer any questions Mr. Bouchette has.

13 **A** Okay.

14 CROSS-EXAMINATION

15 BY MR. BOUCHETTE:

16 **Q** Good morning, Ms. Rogers. How are you? I was looking
17 for Exhibit No. 1 here.

18 **A** Okay.

19 **Q** All right. Now, for point of reference, all right, make
20 sure -- this is State's Exhibit 1, and it is annotated here as
21 the Nichols Town Hall. That's where you were located; is that
22 correct?

23 **A** That's where I work during the day.

24 **Q** Okay. And you mentioned earlier that, during the day, I
25 believe you had folks from the National Guard, they were there

1 during the course of the day?

2 **A** Yes.

3 **Q** Did you have a staff that was there with you during the
4 day?

5 **A** A very small staff, yes.

6 **Q** A staff with you.

7 I think you said DNR? Was DNR there?

8 **A** Yes.

9 **Q** I think Marion County Sheriff's folks, were they there?

10 **A** Yes.

11 **Q** They were all in this location, town hall?

12 **A** At one point or another.

13 **Q** Okay. All right. Now, the town hall, that's also the
14 police station there, isn't it?

15 **A** It is.

16 **Q** All right. So that's the usual Nichols Police Station in
17 this location, is noted as town hall?

18 **A** That's right.

19 **Q** Okay. All right. Now, let me talk a little about -- you
20 got into the office about -- your office is at the town hall.
21 You got there at about 9:30 that morning?

22 **A** It was probably closer to 10:00.

23 **Q** Okay. So about 10:00. How did you get there?

24 **A** My car.

25 **Q** You drove there; right?

- 1 **A** Yes.
- 2 **Q** Okay. All right. So is it safe to say that, at about
3 10:00 on the morning of September 18th, 2018, that, at least
4 in this location, the Nichols Town Hall and the police station
5 is -- is that that section of Highway 76 did not possess
6 clearly life-threatening flood waters?
- 7 **A** And that was where?
- 8 **Q** At the town hall.
- 9 **A** Not at the town hall.
- 10 **Q** Okay. All right. Now, at around noon -- and correct me
11 if I'm wrong -- I think you said around noon, you left the
12 town hall to go move your vehicle; is that right?
- 13 **A** Yes.
- 14 **Q** All right. And you drove it to somewhere outside of
15 town?
- 16 **A** I did.
- 17 **Q** Okay. All right. So is it fair to say, then, that at
18 noon on September 18th, 2018, that the section of Highway 76,
19 at least up to this point where the Nichols Town Hall is, did
20 not possess visibly life-threatening flood waters, at least at
21 that time?
- 22 **A** I can't say that.
- 23 **Q** Okay. Well, are you telling us that you drove through
24 what was visibly life-threatening flood waters?
- 25 **A** I did not. But I don't know about this direction. I

1 didn't go that direction.

2 Q And that's fair enough. I'm not asking you about 76
3 going towards Mullins. I'm asking, at least as to the area
4 right in front of the Nichols Town Hall.

5 A Yes, it was coming in quick, but right then, we could
6 drive out.

7 Q Okay. All right. Now, we also saw some -- well, there
8 were some photographs introduced as well as the video that
9 showed you -- whenever you left the town hall location heading
10 back -- again, I'm trying to -- for the benefit of the jury,
11 they probably know, but for the benefit of the record, you
12 will be heading from what's annotated as Nichols Town Hall
13 heading back to what's annotated as the Battle Oil Company,
14 headed back towards Conway?

15 A Yes, mm-hmm.

16 Q And you went in that direction at about 7 p.m., you said,
17 or thereabouts?

18 A At 7 p.m., I was in a guard vehicle.

19 Q Okay. But you went from Nichols Town Hall to here around
20 that time, in the guard vehicle; is that right?

21 A Yes. I could not have done it in a car.

22 Q Okay. When I'm looking at the video and the photographs,
23 at least at that location, we saw where there was a fellow
24 running down the road. Did you see that?

25 A I did.

1 Q All right. About ankle deep?

2 A I would imagine, yes.

3 Q At least at that location, it's about ankle deep at about
4 7 p.m. or thereabouts?

5 A Yes.

6 Q Okay. And you could see the middle line markings -- lane
7 markings in the roadway as you're exiting?

8 A In that area, yes.

9 Q In that area. All right.

10 So is it safe to say, then -- I'm not asking about
11 further down the road because I know you weren't there, but as
12 of 7 p.m. on September 18th, 2018, would it be safe to say
13 that the roadway, at least right in front of the Nichols Town
14 Hall, did not possess visibly, clearly life-threatening flood
15 waters?

16 A Not if I was in a guard vehicle, but in a vehicle, it may
17 have.

18 Q Well, how deep was the water? Ankle deep?

19 A In places. I mean, it's -- in some areas, it was deeper
20 than that.

21 Q Well, what we have shown here seems to be at least --
22 whatever depth it was, you could see the markers in the middle
23 of the road.

24 A That's early in the morning.

25 Q Well, on the video that you showed.

1 **A** Mm-hmm.

2 **Q** So we could see the middle lane markers; right?

3 **A** Yes.

4 **Q** Okay. And we could see a fellow running that was about
5 ankle deep?

6 **A** Yes.

7 **Q** All right. So is it your testimony, at least at that
8 location, the location that you have introduced into
9 evidence -- or, excuse me, that the solicitor has introduced
10 into evidence, is it safe to say that at least at that
11 location at that time that area did not possess what you would
12 call visibly life-threatening flood waters?

13 **A** I can't answer that. I mean, I don't know what is
14 visibly life threatening. I know that you can see the yellow
15 sign or the yellow mark in the road, but it's visibly flooded
16 on each side. I can't tell you it was life threatening or not
17 life threatening.

18 **Q** And I'm not asking you to -- and I'm not asking you to
19 say if -- that -- if it could be life threatening. I'm
20 looking to see is there anything that made it clearly life
21 threatening.

22 **A** Yes.

23 MR. CLEMENTS: Your Honor, I'm going to object. This is
24 has been asked and answered several times. He's trying to
25 push her to a conclusion she doesn't -- says she can't make.

1 THE COURT: I'm going to let him cross-examine her a
2 little bit.

3 Make your point.

4 BY MR. BOUCHETTE:

5 Q Well, is it your position, then, with the water level at
6 about ankle deep with the middle lines visible -- and you said
7 the roadway was a little bit higher than the areas beside it;
8 right?

9 A Yeah, the road has a curve. So the apex in the center
10 is, of course, going to be higher, but a car is much wider
11 than the center of the road.

12 Q So let's say this: I know that you -- you're not sure
13 what hazard could have occurred, but are you telling us that
14 you were driving through an area that appeared to be visibly
15 life threatening?

16 A I wasn't driving through that. The guardsman was taking
17 me through that because it wasn't safe for me to go.

18 Q But, nonetheless, I mean, we don't have a dispute about
19 the depth of that water; right? I mean, we're talking about
20 ankle deep water.

21 A Sure, in that one area in the center of the road.

22 Q Okay. All right. Well, you see it all the way at least
23 from the town hall back to Nichols; right? That's what your
24 video showed. That's what you were showing on the video.

25 A No, you didn't see all of it. That was not the entire

1 video from town hall to that area. It was a small portion of
2 a video right in the center of town.

3 Q That's the section that's been introduced, and you don't
4 dispute that that fairly reflects at least that area right
5 around town hall, do you?

6 A No, not in that one picture where you see the lines in
7 the road.

8 Q Okay. All right. One final thing: I want to clarify a
9 few things. There was a photograph that's State's 5-B, and
10 that is the -- that shows a barricade of some kind. I want to
11 make sure that we have all got our point of reference correct.

12 If I understand you correctly, that is -- when I say
13 "facing," in other words -- well, let's ask it -- 5-B contains
14 a vehicle; right?

15 A Mm-hmm.

16 Q And it's driving through some water; is that right?

17 A That is correct.

18 Q All right. It looks like it's, I don't know, maybe an
19 inch, inch-and-some-change high?

20 A The water?

21 Q Right.

22 A No. That's at least six inches high. It's coming up to
23 his front bumper. You can see.

24 Q Well, I can't really -- it's up to the bumper, but he's
25 driving through. Did that vehicle get disabled? Do you have

1 any knowledge about that?

2 **A** I do not know.

3 **Q** So the barricade that is being shown, all right, the
4 white section is facing the camera.

5 **A** Right.

6 **Q** So the opposite side of that would be facing Highway 9;
7 is that right?

8 **A** Yes.

9 **Q** Okay.

10 **A** Going towards Lake View.

11 **Q** That's right. Okay. So what I'm trying to clarify here
12 -- and, again, I'm referring for the record for -- this is
13 State's Exhibit No. 1. So if I'm coming into the town of
14 Nichols, coming in here, there's a blue dot that is annotated.

15 **A** Yes.

16 **Q** So 76 starts to split off and veer; is that right?

17 **A** It does.

18 **Q** Or I could go -- I guess it's kind of straight -- or veer
19 right, and I would be on Highway 9.

20 **A** Mm-hmm.

21 **Q** All right. These barricades that are being shown are
22 blocking off, at least at this point, the section of right
23 here, which would be from Highway 9 going towards Main Street
24 up into Lake View?

25 **A** Yeah.

1 Q That's what it's blocking off is that road right there.

2 A Yes.

3 Q Okay. I don't think I have any further questions.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. CLEMENTS:

7 Q Sandee, if you'll step down for me.

8 A Sure.

9 Q This is the area where you said there's a curve in the
10 road?

11 A Yes.

12 Q By the pharmacy?

13 A That's right.

14 Q And how far is Nichols Town Hall?

15 A Probably a mile, maybe shorter.

16 Q And is Nichols Town Hall, is that one of the highest
17 points in the town?

18 A It is one of the areas that are higher on that piece of
19 land.

20 Q Now, anybody that's familiar with the topography of this
21 area -- and you are familiar with the topography; are you not?

22 A Yes.

23 Q -- the further west you go on 76, what does the
24 topography do?

25 A Drops.

1 MR. BOUCHETTE: Objection, Your Honor, to the extent he's
2 asking about what anybody else would know.

3 THE COURT: What was your question again?

4 MR. CLEMENTS: I asked her if she's familiar with the
5 topography. She said she was. I said, "Following the
6 topography, if you go west, what happens?" And she says, "It
7 gets deeps" or --

8 THE WITNESS: Drops.

9 MR. CLEMENTS: Drops. Excuse me.

10 THE COURT: Any objection?

11 MR. BOUCHETTE: No, Your Honor.

12 BY MR. CLEMENTS:

13 Q Now, it drops down all the way to the Little Pee Dee
14 River; is that correct?

15 A That is correct.

16 Q And is it an insignificant drop or is it a pretty good
17 drop?

18 A You'd have to define "significant."

19 Q An inch or two.

20 A Oh, yeah, it's at least that.

21 Q Several feet?

22 A I would imagine.

23 Q All right. And you never ventured down there that day?

24 A Could not. Couldn't get through.

25 Q Even with the high-water vehicles?

1 **A** I didn't try that. No sense in putting them in that
2 situation.

3 **Q** And were people being evacuated from town during this
4 time period?

5 **A** We had already evacuated the town. That had come days
6 before. We were allowing, through a checkpoint, people to
7 come in and out and gather some of their things or check on
8 their property at certain points. But that was coming in from
9 Horry County where it was much higher.

10 **Q** You couldn't come in from Marion County that way, could
11 you?

12 **A** No, sir. In fact, I had to drive -- where it would have
13 been just a short trip for me from Mullins in, I had to drive
14 all the way in through Aynor and take the Horry County section
15 in and around.

16 **Q** All right. Thank you. You can sit down.

17 **A** Wrong seat. Sorry.

18 MR. BOUCHETTE: Very briefly.

19 RE-CROSS-EXAMINATION

20 BY MR. BOUCHETTE:

21 **Q** Ms. Rogers, this area where you identified the topography
22 changes, to your knowledge, was there a barricade on this side
23 of the Little Pee Dee River where the topography changes
24 between Nichols Town Hall?

25 **A** Can I get up and show you?

1 Q Sure.

2 A Okay. And can I use a picture?

3 Q Sure.

4 A Right here. Okay. That morning, I came in --

5 MR. CLEMENTS: Just refer to the number of the picture.

6 THE WITNESS: 5-A. I'm on Picture 5-A.

7 A It is about 9:45 that morning. We are -- this area right
8 here is going this direction.

9 BY MR. BOUCHETTE:

10 Q Correct.

11 A So here's the town hall, and about here is where you're
12 seeing the road, right before Tower Court. About halfway
13 between the grain bins and town hall. There was a barricade
14 here. When I got there that morning, I had to go around it to
15 take the picture.

16 Q You went around the barricade at that point?

17 A I did. I had to. And the reason I did that -- and
18 that's not normally something I do -- there was a gentleman in
19 the back. We had evacuated the town. Property safety was the
20 highest concern.

21 So I took a picture of the gentleman to take it back to
22 our police department to make sure that they knew he was there
23 and to see if he was doing what he was supposed to be doing.

24 Q Okay. At some point, did that barricade get moved?

25 A It must have. The water came up. Just like the one that

1 was in the center section here, once the water comes up, you
2 have to move it to another location that warns the vehicles,
3 and as the water came up here, it was moved as well.

4 Q So, again, all I'm asking is that, around 6 p.m. or
5 thereabouts on September 18th, 2018, was there a barricade
6 down around here where you annotated that the topography
7 starts to change; to your knowledge?

8 A To my knowledge, no. The water would have been too high.

9 MR. BOUCHETTE: No further questions, Your Honor.

10 MR. CLEMENTS: Your Honor, we'd ask she be excused from
11 her subpoena and released.

12 THE COURT: Any objections?

13 MR. BOUCHETTE: No, Your Honor.

14 THE COURT: All right. You have a good day. Thank you
15 for coming.

16 THE WITNESS: Thank you.

17 THE COURT: If you'll call your next witness.

18 MR. CLEMENTS: Your Honor, we call Mayor Lawson Battle.

19 MAYOR LAWSON BATTLE,

20 after having been duly sworn, was examined and testified
21 to as follows:

22 BENCH CONFERENCE

23 (The following bench conference was held outside the hearing
24 of the jury and others.)

25 MR. CLEMENTS: Let me start by saying I don't know if I'm

1 going to need this if you're going to object to it.

2 MR. BOUCHETTE: Yeah, for the record, he's identified
3 something as 6-A and 6-B. Those photographs appear to have
4 been taken way after the fact, and so I'm not sure of the
5 relevance and then 403, to the extent it would be relevant.

6 MR. CLEMENTS: It just shows what -- part of what Lawson
7 Battle was doing during that day, that evening.

8 THE COURT: Are you going to introduce those?

9 MR. CLEMENTS: I'm thinking about it.

10 THE COURT: And what are these now? These are pictures
11 that were taken after the accident happened?

12 MR. BOUCHETTE: Way after the fact.

13 THE COURT: Like how far after? Hours? Days? Months?

14 MR. CLEMENTS: As soon as it was dark and they left.
15 Because it was dark down by the river.

16 THE COURT: The same day?

17 MR. CLEMENTS: The same day, yeah.

18 THE COURT: September 18, 2018? I don't see why --

19 MS. DROST: I mean, it's pitch black outside.

20 MR. CLEMENTS: I don't see where there's any prejudicial
21 effect really.

22 THE COURT: It just shows the barricade. You can't even
23 see the water. All right. That's fine.

24 MR. BOUCHETTE: All right.

25 MR. CLEMENTS: I may not introduce it.

1 MR. BOUCHETTE: Okay.

2 (Open courts resumes:)

3 DIRECT EXAMINATION

4 BY MR. CLEMENTS:

5 Q Mayor, thank you for your patience. Can you please tell
6 this jury your name and spell your name for the record.

7 A Lawson Battle. L-a-w-s-o-n B-a-t-t-l-e.

8 Q Now, what do you do for a living?

9 A I'm the mayor of the town of Nichols, and I have a
10 business.

11 Q And your business is Battle Oil Company?

12 A Correct.

13 Q How long have you been the mayor of Nichols?

14 A Almost 14 years.

15 Q So, on September 18th, 2018, you were the mayor and you
16 were the mayor with an experience of fighting floods; were you
17 not?

18 A Correct.

19 Q When was the last major flood you had?

20 A October the 8th of 2016.

21 Q And then --

22 A Oh, the last --

23 Q Before this one.

24 A Excuse me. Before this one was on September the 16th of
25 2018.

1 Q And that was the hurricane before this event?

2 A Correct.

3 Q Okay.

4 A The hurricane happened on the 16th. The incident
5 happened on the 18th.

6 Q Okay. Now, can you tell us, on the morning of the 18th,
7 what the conditions were there in Nichols and how did you
8 know?

9 A Well, because I was staying at the town hall with
10 personnel that was placed there with us, and the conditions --
11 the water was coming up pretty good that day. I was riding
12 around, marking areas throughout the town with spray paint on
13 the road and some trees so I could keep up with the levels
14 myself. Like I said, the water was rising significantly
15 throughout the day.

16 Q What was happening on Main Street with the vehicles?

17 A Later in the day, there were vehicles starting to flood
18 out some.

19 Q Okay. Did you meet with any emergency personnel during
20 the time you were checking water levels and checking the town
21 out?

22 A Throughout the day, yes, sir.

23 Q Was it your job to coordinate anybody other than your
24 local citizens, as far as SCDOT or --

25 A No, sir.

1 Q -- SLED?

2 A I don't have that -- no, sir, I don't have that
3 authority.

4 Q Okay. Did you have any other -- anybody with you that
5 day going around checking barricades and checking water during
6 the afternoon?

7 A Yes. Throughout the middle of the day, I had an off-duty
8 SLED agent, Will Duncan was with me, and the other parts of
9 the day, I had two National Guard members riding with me.

10 Q Okay. What were you riding in?

11 A My personal vehicle.

12 Q Okay. And that kind of vehicle was what?

13 A A four-wheel-drive pickup.

14 Q Big pickup?

15 A Yes, sir.

16 Q At what point did you go talk with national guardsman
17 that were with Eddie Page, or did you?

18 A Yes. I remember speaking with them sometime in the
19 afternoon, you know, just talking, asking if they knew
20 anything because I was in and out of the town. The only time
21 I left the town was I did go to Fair Bluff that morning to
22 check the water levels and came back.

23 Q Okay. And when you got up with Will and y'all were walk
24 -- y'all were driving around town; is that correct?

25 A Yes, sir.

1 Q Did you go anywhere down to the Fort Ridge (ph) area or
2 anywhere close to the Little Pee Dee?

3 A No, sir.

4 Q Why not?

5 A Because, that morning, that was one of the first areas I
6 marked. I mean, you could see all the way down that it was
7 flooded. And I have been there my whole life. I know what it
8 does the further it goes that way.

9 Now, I did mark on the other side of the sign that
10 morning, the barrier, and I do -- there was a white pickup
11 truck way down the road already in a ditch.

12 Q Backed in or drove straight in?

13 A I don't -- I just saw the truck in the ditch. It was a
14 white F-250. I don't know if they were trying to turn around
15 or if they floated in. I mean, I don't know.

16 Q Come down, if you may, with the Court's permission. Keep
17 your voice up for the court reporter, so she can hear you.

18 A Okay.

19 Q Let's back up a little bit here. Are you familiar with
20 this area?

21 A Very.

22 Q Can you -- I don't think -- no one's done this yet.

23 Let's walk down all the notated landmarks on this. This is a
24 map of what?

25 A This is a map of the part of the town of Nichols, the

1 route that was supposedly taken.

2 Q Okay. And what is that right there?

3 A That's my business, Battle Oil Company.

4 Q Is that where your offices are?

5 A Correct.

6 Q Okay. And take it from here and walk us all the way
7 through this area and explain this area and what's in the town
8 until we get to Little Pee Dee.

9 A Right here, now, this is all Horry County until you get
10 here to the river. This -- both roads were barricaded with
11 MPs and deputies from the Marion County Sheriff's Department.

12 When you come in, that's the Marion/Horry County line
13 right there on the river, and then you come into the town.
14 That's the Sunny Mart convenience store right there in town.

15 That was the center part y'all were talking about where
16 9, you can take a right and go towards Lake View. That was
17 closed down as well. That part of town was already closed
18 down at about the town limit sign or a little bit before
19 because you couldn't go out -- you couldn't enter or go out
20 that way either.

21 Q Okay.

22 A All right. If you come on this way, that changes right
23 here in the middle of the road, what y'all refer to as the
24 town center at 76. That's the Nichols Town Hall, and that's
25 the Nichols park.

- 1 Q All right. About how far is the Nichols park from the
2 town hall? You got any idea? If you don't, that's fine.
- 3 A Probably -- yeah, about 400 yards.
- 4 Q Okay. And then about how far is it; if you know? What's
5 the next landmark listed there?
- 6 A The park, which is right there is the line -- county line
7 and then Nichols line.
- 8 Q Okay. Still Marion County, just not the town of Nichols?
- 9 A Correct.
- 10 Q Okay. All right. Keep going on the road for us.
- 11 A All right. If you come on down, you have got the grain
12 bins that are another three, four hundred yards down the road.
13 And then here's the incident -- I mean, the location where the
14 incident occurred, which is almost right at 9/10ths, I think,
15 of a mile.
- 16 Q And all that was under water; is that correct?
- 17 A From the park to there, yes, sir.
- 18 Q Okay. And then --
- 19 A There was even some water back up this way the morning
20 when I marked it.
- 21 Q How about over here in this area?
- 22 A Yes, sir, there was water on these streets. That street
23 was already covered about 9:00 that morning, right in front of
24 Nichols Town Hall. Maple Street was already covered in water.
25 And it was starting to come down Martin Luther King to 76 that

1 morning.

2 Q All right. And were conditions getting better or were
3 they getting worse?

4 A Definitely getting worse.

5 Q Did you see Eddie Page that day?

6 A Pardon me?

7 Q Did you see Eddie Page?

8 A Yes, sir, I did.

9 Q Who is Eddie Page?

10 A He's a deputy that works for the Marion County Sheriff's
11 Office.

12 Q Where did you see him?

13 A In the Horry County -- where the barricades were a couple
14 of times and then standing on the islands later in the day.

15 Q What are the islands? Explain that to me.

16 A Right there is where 76 and No. 9 come together.

17 Q Right here?

18 A No, sir. The edge of Horry County. Right, yes, sir.

19 Q Actually, they split apart in two places, don't they?

20 A Yes.

21 Q Okay. So that was about right here?

22 A Yes.

23 Q And you call that the islands?

24 A Well, I mean -- yeah.

25 Q Concrete islands?

1 **A** Yeah. Yes, sir.

2 **Q** And they were posted there?

3 **A** They were standing there. The high-water vehicles were
4 off to the right on the edge of a field.

5 **Q** And --

6 **A** But the barricades were still up right there behind them
7 in Horry County.

8 **Q** So they were pulled -- they weren't right at the
9 barricades. They were pulled in a little bit?

10 **A** Yes, sir, they were, but there was still some guardsmen
11 at the barricades.

12 **Q** I'm going to show you what's been marked for State's
13 Identification No. 13-A. Do you recognize that? Tell me what
14 that is.

15 **A** That's what we call, when you've been on way too much, a
16 high-water rescue vehicle with the National Guards.

17 **Q** Okay. How about State's 13-B?

18 **A** Same thing.

19 **Q** How about the size of these jokers?

20 **A** They're pretty massive. You know, you can fit -- but
21 they're hard to get in for a big person like me, but you can
22 fit probably 15 to 18 people in the back of them, and they sit
23 a good bit off the road. I think they have breathers that
24 they said could, you know, run -- I forget but it was in
25 pretty significant water.

1 MR. CLEMENTS: Your Honor, I'd move State's Exhibit 13-A
2 and B into evidence.

3 THE COURT: Any objections?

4 MR. BOUCHETTE: A matter of law, Your Honor.

5 BENCH CONFERENCE

6 (The following bench conference was held outside the hearing
7 of the jury and others.)

8 MR. BOUCHETTE: My only objection, Judge, is that we did
9 not see these or get these in discovery. I know -- I'm not
10 saying he concealed it. We made a lot of efforts to try to
11 make sure we had everything, but we hadn't seen it until we
12 saw it, I think, yesterday. And I know he's laid the
13 foundation for it, but my only concern about that is, had I
14 known a little bit in advance when I was preparing for trial,
15 I could have had more information about, you know, how far
16 could they have gone in the water, how high were they, could
17 they have been used to mitigate any rescue efforts. I would
18 have had a lot more questions that I could have followed up
19 either with this witness or with some other witness regarding
20 these vehicles had I had these.

21 I concede he has laid a foundation for it, but based on
22 -- basically, I have not had an opportunity to prepare for it,
23 but I'd ask that it be excluded.

24 THE COURT: It's my understanding that you went and
25 reviewed the file.

1 MR. BOUCHETTE: We did.

2 MS. DROST: We did.

3 THE COURT: The whole file?

4 MR. BOUCHETTE: That's right.

5 THE COURT: That was not in the file?

6 MR. BOUCHETTE: I believe -- we certainly didn't see it.

7 MR. CLEMENTS: It was in one of those addendums. I know
8 I sent -- but I didn't get it until not a day before. And I
9 said, I wonder if we can get a picture of it, the National
10 Guard, and we went out and took a picture, which they could
11 have done that on their own if they wanted to look at these
12 vehicles, particularly if they thought it would mitigate
13 something.

14 But it's just -- I'm just putting it in for how high it
15 is and how it looks. I'm not going to go into all these other
16 technical issues or mechanical issues about its abilities.

17 THE COURT: So you're done with all you're going to do?

18 MR. CLEMENTS: I'm done with all my pictures, yeah.

19 MR. BOUCHETTE: Yeah. Just note my objection, but I
20 certainly understand the Court's ruling if the Court wants to
21 let it in.

22 THE COURT: Well, I haven't ruled yet. I've just got to
23 think it through as to what's fair.

24 MR. BOUCHETTE: Like I said, I certainly don't say
25 he's --

1 THE COURT: Did he have access to the addendum to the
2 file?

3 MR. CLEMENTS: Yeah, we sent the addendum. That was
4 supposed to be in there, as far as I know?

5 MS. DROST: Which addendum is this part of?

6 MR. CLEMENTS: I don't know. There was a couple of them
7 that I remember.

8 MR. BOUCHETTE: I think it got lost in the shuffle in the
9 last few addendums.

10 MR. CLEMENTS: I remember Stephen saying something about
11 it.

12 MS. DROST: I know that we got the video from one of the
13 deputies. We got two videos, because that's what we realized
14 we were missing and then the one interview that was done after
15 the fact, but I just don't remember seeing those.

16 THE COURT: Does that mean you didn't see them or you
17 just don't remember not seeing them?

18 MS. DROST: I mean, I can pull the trial binder. We've
19 pulled all the discovery we've gotten.

20 MR. BOUCHETTE: I can tell you, neither one of us had
21 seen those prior to -- I think it was yesterday.

22 MS. DROST: Yesterday.

23 MR. BOUCHETTE: Not in advance, so...

24 MR. CLEMENTS: I thought they had seen it.

25 MR. BOUCHETTE: That's right.

1 THE COURT: I tell you what, if they weren't provided in
2 discovery, why don't we just leave the testimony like it is,
3 basically the pictures themselves.

4 MR. CLEMENTS: That's fine.

5 MR. BOUCHETTE: Okay. Sounds good.

6 THE COURT: That way, everybody knows.

7 MS. DROST: Thank you, Your Honor.

8 MR. BOUCHETTE: Appreciate that.

9 (Open court resumes:)

10 BY MR. CLEMENTS:

11 Q I'd ask you to step down, Mayor. Stand over here and
12 keep your voice up. And I'll get to my side.

13 When you're going around town, checking the whole town
14 out, the further you went this direction, what did you
15 encounter?

16 A Well, I never made it that far.

17 Q And why not?

18 A Because the water.

19 Q Too high?

20 A Yes, sir.

21 Q As far as you can see from that direction, you went to
22 the park, and that's as far as you went?

23 A That -- I went there that morning, and then, when the
24 incident occurred and I was notified about it, I went back
25 there, yes.

1 Q And never went in further west?

2 A No, sir.

3 Q Because?

4 A I knew the water was too high.

5 Q If you look back in this direction down 76, what did you
6 see?

7 A Water.

8 Q And what else? More water?

9 A I mean, yeah, you could still see the houses and stuff,
10 but, I mean, water in the yards and completely down the
11 highway.

12 Q All right. You can have a seat back down.

13 What, if any, instructions or requests did you make of
14 Eddie Page at the National Guards regarding the local
15 population?

16 A Well, we just talked about, if they could check their IDs
17 to make sure that they were citizens of Nichols, not outside
18 of Nichols, that they could go in earlier that day and get
19 some of their items, but they'd have to come back out the same
20 way.

21 Q There wasn't any other way out, was there?

22 A No, sir.

23 Q And did Eddie seem to understand that, what you wanted
24 done?

25 A Yes, sir.

1 Q And you didn't have any authority over the national
2 guardsman or anybody else other than the people within the
3 town of Nichols?

4 A Correct.

5 Q So this was a request from you?

6 A Yes. I mean, that's why I called, you know, for help and
7 asked for the sheriff department's help and all that. And
8 this was in Horry County anyway. I mean...

9 Q Where they were set up?

10 A Correct.

11 Q You didn't have any authority there.

12 A No, sir. We just didn't want people coming in and, you
13 know, stealing, because we had a lot of problems with that
14 with the first.

15 Q The first being flood, you had a lot of looting problems?

16 A Yes, sir. We lost -- I mean, it was for safety purposes
17 as well.

18 Q Did Will Duncan stay with you or did he go home to do
19 other things?

20 A Later on that afternoon, he was doing other things. He
21 was not -- he was with me mostly in the middle of the day.

22 Q About what time was it when y'all were at the islands
23 talking to Eddie Page and the national guardsmen?

24 A Mid afternoon.

25 Q 4:00 or 4:30?

1 **A** No, sir, it wasn't that late. I'm going to say 3:00,
2 3:30.

3 **Q** And that's your best guesstimate?

4 **A** Well, there was so much going on, but I mean, that's not
5 exact time that --

6 **Q** And that's the best you can come up with?

7 **A** Yes, sir.

8 **Q** Okay. When did you find out a vehicle was in distress?

9 **A** I went home. I drove my truck around some side roads to
10 get to my house, and they had already cut all the power off to
11 the town previously because they knew what was coming. And I
12 had a generator running and I needed to cut that off, and I
13 went home to take a shower. And I had to wear -- I remember
14 having to wear a pair of muck boots because the water was
15 already coming in my family (ph) room where I took the shower
16 with -- I went home to take a shower, and when I got out, I
17 had several missed calls. And so I made some phone calls to
18 find out what was going on.

19 **Q** And that was basically it for you that evening?

20 **A** Pardon me?

21 **Q** Was that basically it for you that evening as far as the
22 rescue attempts? You weren't participating in that?

23 **A** No, sir. I did go back to the town hall and called -- I
24 could hear the traffic on the radio, and I did call Lieutenant
25 Miles with the sheriff's department because we had a

1 high-water rescue team from out of town stationed at the town
2 hall, and I asked permission to launch them to go down there.

3 Q And you did that -- you did that -- launched a team?

4 A Yes, sir, after I got permission from Lieutenant Miles.

5 Q Were your efforts successful or unsuccessful?

6 A Unsuccessful.

7 Q Please answer any questions Mr. Bouchette has.

8 CROSS-EXAMINATION

9 BY MR. BOUCHETTE:

10 Q Good afternoon. Just a few questions for you I want to
11 make clear.

12 Earlier in the day, you had been driving around all this
13 area here from -- starting from the Nichols Town Hall back
14 through kind of on the other side of the Sunny Mart; is that
15 right?

16 A Yes. On the main route, yes, sir. Some roads that
17 morning already had water on them.

18 Q But you're not testifying that you were anywhere south
19 of, say, the Nichols Town Hall at around 6:00 p.m. on
20 September 18th of 2018?

21 A Oh, yes. I went to the park when I was notified of the
22 incident.

23 Q Okay. You made it to the park once you were notified of
24 the incident?

25 A Yes.

1 Q All right. So you made it to here at that point?

2 A Yes.

3 Q And that would have been after 6:00; does that sound
4 about right?

5 A About right, yes, sir.

6 Q Okay. How did you get there?

7 A I drove my personal truck.

8 Q You drove your personal truck to here?

9 A Well, right at the park, yes, sir.

10 Q Okay. All right. And --

11 A And there was water on the road there.

12 Q Okay. But you were certainly able to drive up to this
13 point?

14 A That was as far, yes.

15 Q Okay. All right.

16 A point of clarification; I may have misheard you. Over
17 at the spot here where you mentioned that the national
18 guardsmen were -- and, again, for the purposes of the record,
19 I'm annotating just on the -- this is the intersection of
20 Highway 76 and Highway 9 near the Battle Oil. Whenever you
21 said some police officers were stationed here, you're saying
22 this area was in Horry County?

23 A Yes, sir. They were turning -- what they were doing was,
24 you know, not letting vehicles in for safety purposes and
25 turning vehicles around.

- 1 Q Okay. But they let some vehicles in; right?
- 2 A The citizens earlier in the day that were citizens in the
3 town of Nichols. But, I mean, only to certain points.
- 4 Q The citizens and any official trucks like emergency
5 vehicles?
- 6 A Emergency vehicles, yes, they were allowing them in.
7 Anything to do storm related.
- 8 Q I'm just making sure we're not missing anybody. So there
9 wasn't any Horry County officials here at this spot that was
10 in Horry County?
- 11 A Not at that spot. I think on the next road, which is
12 Running Creek or Rice Field Road, right there before you get
13 into Marion County, I think there was one posted there.
- 14 Q Let me make sure I understood your testimony. So you're
15 saying that the high-water rescue team that ultimately
16 responded to this incident, they were stationed here at the
17 town hall?
- 18 A Yes.
- 19 Q Okay. And they didn't deploy until you called them?
- 20 A Yes.
- 21 Q Okay. And do you recall when you called them?
- 22 A Pardon me?
- 23 Q Bad question. Do you remember whenever you called them?
- 24 A Not the exact time. I mean, I jumped in the shower and
25 jumped out because it wasn't real comfortable taking one in

1 boots. So it was pretty soon. Like I said, I called
2 Lieutenant Miles and asked for permission because, I mean, it
3 was going -- I didn't have, you know, authority to do that,
4 and he gave me permission, and I went.

5 Q And you say "soon." It was soon after you heard about
6 it; right?

7 A Correct. But, I mean, in -- in a matter of minutes.

8 Q Okay. From the time you heard about it?

9 A Yes.

10 Q Okay. Because, again, when the vehicle actually became
11 disabled, you were back at your house?

12 A Correct.

13 Q All right. I don't think I have any further questions.

14 THE COURT: Any redirect?

15 MR. CLEMENTS: Nothing, Your Honor. I'd ask that the
16 mayor be released from his subpoena.

17 THE COURT: Any objections?

18 MR. BOUCHETTE: Not at all.

19 THE COURT: You have a good day.

20 THE WITNESS: Thank you.

21 THE COURT: Let's take a 15-minute break, and then we'll
22 come back and finish with the last witness before lunch.

23 Please go back to the jury room. Do not discuss the
24 case.

25 (The jury exited the courtroom at 11:53 a.m.)

1 (A brief recess was taken at 11:53 a.m. to 12:11 p.m.)

2 THE COURT: Is the State ready?

3 MR. CLEMENTS: Yes, sir.

4 THE COURT: Let's go ahead and bring in the jury.

5 (The jury entered the courtroom at 12:12 p.m.)

6 THE COURT: If you'll call your next witness.

7 MR. CLEMENTS: If it please the Court?

8 THE COURT: Sure.

9 MR. CLEMENTS: We would call Officer Dylan Oates.

10 MR. BOUCHETTE: Your Honor, if it please the Court?

11 THE COURT: Yes.

12 MR. BOUCHETTE: I wasn't aware of which witness they were
13 going to call, but I think this witness needs to -- we need to
14 have the hearing that we discussed.

15 THE COURT: I tell you what, come over here and let's
16 just talk a second.

17 Just stand right there, if you would.

18 BENCH CONFERENCE

19 (The following bench conference was held outside the hearing
20 of the jury and others.)

21 THE COURT: Just so we know ahead of time, what's he
22 going to testify to?

23 MR. CLEMENTS: He's going to testify to -- he lives in
24 the area. He's going to testify to the conditions. He's
25 checked out the 17th, that evening, what conditions he found

1 during the day on the 18th. Will Duncan took his boat and
2 were going around checking things out.

3 THE COURT: The 17th and 18th is what we're talking
4 about?

5 MR. CLEMENTS: Yeah, 17th and 18th, yeah.

6 MR. BOUCHETTE: What I'm worried about is he's going to
7 testify about conditions the night before and what we've
8 already heard about the change in circumstances. You know,
9 its relevance related to the following day, almost 24 hours or
10 so later because he says he went through the night --

11 THE COURT: 17th, 18th, and 19th?

12 MR. BOUCHETTE: No. He says he went through that exact
13 location on the 17th, so the night before, 24 hours before.

14 THE COURT: Okay.

15 MR. BOUCHETTE: So that's a substantially separated time.

16 MR. CLEMENTS: No, it wasn't 24 hours before. I think it
17 was a little less than that. Might have been 20 or so.

18 THE COURT: Either way, it seems to me, the whole crux of
19 this trial is the changing weather conditions. That's even in
20 the crux of your cross-examination.

21 MR. CLEMENTS: Exactly.

22 THE COURT: So anybody testifying about the day before
23 the day of or the day after, all of that is relevant, I would
24 think. I mean, we can do -- but, I mean, it seems to be
25 wasting time.

1 MR. BOUCHETTE: Well --

2 THE COURT: I mean, if he pops up and says a week before,
3 we'll stop.

4 MR. BOUCHETTE: Okay. All right.

5 THE COURT: You see what I'm saying? It's going to be
6 the same thing we've heard from the other witness.

7 MR. BOUCHETTE: Sounds good.

8 THE COURT: Fair enough?

9 MR. BOUCHETTE: Yes, sir.

10 (Open court resumes:)

11 THE COURT: Go ahead and swear the witness.

12 DYLAN OATES,

13 after having been duly sworn, was examined and testified
14 to as follows:

15 DIRECT EXAMINATION

16 BY MR. CLEMENTS:

17 Q Can you please tell us your name and spell your name for
18 the record.

19 A Yes. Dylan Oates. D-y-l-a-n O-a-t-e-s.

20 Q Where do you work now?

21 A I work for the State Law Enforcement Division. SLED.

22 Q Back in 2018, can you tell us where you were working?

23 A I worked for South Carolina Department of Natural
24 Resources as a game warden on the law enforcement side.

25 Q If I touch this thing again, it's going to fall. Sorry.

1 What were you doing with DNR when you were working with
2 them? What were your duties?

3 **A** Strictly law enforcement. I was on that side of it.
4 There's the biology side, fishery side, and then you have the
5 game warden, which is the law enforcement.

6 **Q** So you were with the game warden?

7 **A** Yes, sir.

8 **Q** Anybody ever call you a mud marshal?

9 **A** Many times.

10 **Q** Okay. Where were you living during that time?

11 **A** I was actually -- for the beginning of the hurricane
12 there, I actually was staying with the mayor during that time,
13 but I also have a house in Mullins.

14 **Q** So you stayed with Lawson?

15 **A** Yes, sir.

16 **Q** What were you doing -- let me ask this: Did you travel
17 the roads in that area -- and which roads did you travel on
18 the evening of the 17th?

19 **A** On the 17th, prior to, we were deployed -- we were in
20 Myrtle Beach, but we came back to Nichols. I was staying with
21 the mayor for, like, a quick response deal. If we had
22 anything come up super fast, like it did in the prior flood in
23 2016, I would have been there and rapidly deployed.

24 But I traveled the road on Highway 76 to Mullins to
25 Nichols repeatedly because we were in an enforcement capacity

1 at that time, and we were making sure there was nothing --
2 nobody really doing anything bad in town because a lot of
3 people had already been evacuated because we already gave them
4 a forewarning that it was going to flood again. So we were
5 traveling back and forth from there. If I needed anything to
6 eat, I'd go back to Mullins. But as far as Nichols, we were
7 just more of a security deal, and if something needed -- need
8 to be a rescue team as well.

9 **Q** What did you notice, if anything, about the roadways on
10 17?

11 **A** They were quickly deteriorating. They were quickly
12 getting flooded. The water was --

13 **Q** How could you tell that?

14 **A** I visually observed the water across the road. It
15 started off, you know, backing up against the roadway and then
16 across the roadway, and that would have been closer to the
17 Mullins side of 76 near the Little Pee Dee Bridge.

18 **Q** When was the last time you traveled that 76 and why?

19 **A** The night of the 17th was the last time I traveled
20 Highway 76 from Mullins to Nichols. I was actually coming
21 from Nichols, going back towards Mullins, and as I crossed it,
22 I could visually see the bank sheering off right there of
23 where the incident occurred with the van. I could see it.
24 From the edge of the roadway down, the bank was gone, and I
25 was like, it's not safe to travel this road anymore.

1 As I got to the other side -- I was by myself, but as I
2 got to the other side, I talked to the few people that were
3 stationed there at Pee Dee Nightlife, letting them know, Hey,
4 you can't go that road. From now on, you have to go 9 -- at
5 least go 917 to Nichols Highway and then come back in on 76,
6 back into the other side of Nichols from Horry County.

7 **Q** Do you remember the day of the 18th?

8 **A** So the morning of, we had -- I had traveled from Mullins
9 around, went the back way as I just stated, and I come into
10 the town. We had a meeting, kind of some security stuff, just
11 checking property, driving down the main drag of 76. We were
12 meeting at the Sunny Mart, and I visually observed water
13 coming into the Sunny Mart parking lot. So we knew the water
14 was quickly rising, as it was engulfing the parking lot.

15 But we did a lot of security sweeps and such and then
16 just kind of -- just kind of maintaining right there for a
17 little while. I talked to SLED Agent Duncan, and I informed
18 him I was probably going to get on the water and start
19 checking flooded properties from the water side with my boat
20 and that's where I probably would be for the rest of the day.
21 And he asked if he could join, and I obliged, obviously.

22 **Q** So he went with you in your boat?

23 **A** That's correct.

24 **Q** About what time in the afternoon were y'all out there on
25 the water?

1 **A** It was in the afternoon. I'm going to say mid afternoon
2 we were out there. We had actually put in at Nichols Bridge,
3 which is 76 going out of Nichols towards Horry County. We put
4 in right there at the bridge, traveling down the Drowning
5 Creek or Ricefield Cove, whichever you want to call it, and we
6 starting doing property checks there. Those houses were
7 already inundated with water. The roads, you couldn't even
8 drive. The ramp wasn't visible. The canal was no longer
9 visible. You couldn't see anything but water all the way down
10 through there.

11 So we motored up to each house to make sure -- you know,
12 we're always going to knock and check and make sure nobody is
13 in there, something is not left behind that they forgot,
14 whether it's a pet or a person. We're going to make sure
15 everybody is safe.

16 After we got done checking that, we proceeded down river
17 to an area called Fort Rich (ph), and we started doing
18 property checks there when a rain shower ensued, and we
19 actually pulled up underneath a house in the boat, and we sat
20 there for awhile as it passed.

21 **Q** Okay. After it passed, what did you to?

22 **A** We were continuing with our checks. We were going to
23 continue checking.

24 **Q** This is afternoon or evening?

25 **A** This is afternoon going towards evening.

1 Q Okay.

2 A We were going to continue with our checks. We had a
3 couple of residents at Fort Rich that were staying. Their
4 houses were on stilts. They had generators and propane and
5 different things. They knew they could survive for the time
6 being, and they also had access to boats if they needed to
7 leave.

8 So we're checking on them, checking on other houses to
9 make sure there was no boats going up under these houses,
10 taking anything. And that's when I received a phone call from
11 one of the sergeants from DNR, Sergeant Brady Brown, and he
12 informed me of a vehicle that was possibly submerged somewhere
13 in that general area, but they were trying to work on a
14 location.

15 And then, as time progressed, they were giving out
16 different locations, and I was trying to direct -- well, with
17 me being local -- I was assigned from Marion from 2011 until
18 that point. So I knew the area better than a lot of people
19 that were deployed to our area from out of town. So I was
20 more or less kind of directing people.

21 As they were giving me -- at one point, they told me 917
22 and the Auction Barn. Well, I knew, from Fort Rich, on a
23 boat, to get to 917 and Auction Barn -- or 917 would take me a
24 long time versus someone just driving their vehicle, pulling a
25 boat, down to where they saw water and dropping the boat off

1 in the water there and going.

2 Q So y'all went back and loaded the boat back up?

3 A So, from there, as they were giving out different areas,
4 as it was coming to them -- and I was, again, saying, "Hey,
5 this area doesn't make sense. There shouldn't be water." At
6 one point, we were told Pee Dee Highway up towards 917, which
7 I knew there shouldn't be water there.

8 So we started back up towards my vehicle where the
9 trailer was. We got about halfway, and they called back and
10 said, "How about Pee Dee Island (ph) Road?" I said that's
11 literally right where everybody is staged at pretty much.
12 That's where the flood waters started at, from the Little Pee
13 Dee.

14 So we, from there, drove the boat straight back to my
15 truck, put it on the trailer. And Officer Travis -- I can't
16 think of Travis's last name at the time. Anyway, he drove me
17 through town, me and Office Duncan -- or Agent Duncan --
18 through town, and we started turning the boat around and
19 started backing into the water.

20 Q Was that Travis Green?

21 A Travis Green, that's correct.

22 Q Y'all started backing the boat into the water where?

23 A We had made it around the curve from the Horry County
24 side, and we were right there at the police department, turned
25 around, and started backing. And we were backing into the --

1 there was water before that point. So, at the curb, there was
2 already water.

3 Q I'm going to point to State's Exhibit 1 where it says
4 Nichols Town Hall. What else is there?

5 A At the town hall? The library is also there. The police
6 department is also there.

7 Q So that's where you pulled to?

8 A So we turned around roughly in that area.

9 Q And you said there was water all around here?

10 A All -- at the curb, back up right there, there was water
11 all on there.

12 Q This direction? In this direction there was water?

13 A There's water there.

14 Q And that direction there was water?

15 A That's correct.

16 Q This direction?

17 A For a piece going up that way.

18 Q Okay. All right. So why were you backing in there at
19 the police station?

20 A So we turned the boat around or turned the truck around,
21 and we were backing the boat so we could take the boat back
22 off the trailer and go towards the incident location.

23 Q What kind of boat is that?

24 A It is a Gator Trax boat, surface drive, with a 44 horse
25 motor on the back.

1 Q How heavy is that boat?

2 A Really heavy. It's really well built. It's a 125-gauge
3 hull. So it's really, really, really heavy. It's built to go
4 across dry land if need be.

5 Q How about your trailer you had? Was it heavy?

6 A No, it's actually really light, so it kind of -- one goes
7 against the other. But the trailer was a tubular trailer.
8 It's made out of aluminum. So if you backed it into the water
9 really fast, air actually goes up into the tube portion of
10 that trailer, and it will float the trailer up. It will
11 actually pick the boat up. So it's hard to get the boat off
12 the trailer sometimes.

13 Q What did y'all have to wind up doing to get the boat off
14 the trailer?

15 A So, as we backed in -- we kept backing back in.
16 Actually, Agent Duncan got out of the boat, crawled in the
17 back of the truck, asked Officer Graham to move over. He
18 continued backing back towards the park. We got roughly
19 around the park, and he tried to pull me off in the ditch.
20 The trailer was floating.

21 At that point, the high-water vehicle actually was coming
22 past us with some rescue team members. I can't tell you
23 exactly how many, but it was at least, I'm going to say two,
24 maybe three. And I asked -- at that point, I asked that
25 high-water vehicle to hook a rope from that vehicle to my boat

1 and pull me off the trailer so I can get that boat off the
2 trailer.

3 Q And they did that?

4 A They did that.

5 And, from that point, me and Agent Duncan drove from
6 there straight down the highway, straight to the incident
7 location. At that point, the vehicle -- you could only see
8 the top part of the actual Horry County van. It was basically
9 submerged.

10 Q Did you see the two deputies?

11 A Yes.

12 Q Where were they?

13 A They were already in a rescue boat. I believe it was a
14 white aluminum-style boat.

15 Q So y'all weren't the first ones on the scene.

16 A We were not. It was an out-of-town group.

17 Q Tennessee Swift Water?

18 A Yes, that's correct. Millington. I believe that's
19 correct.

20 And they were there. They had some Zodiac-style boats.
21 And it was actually -- they had already incurred an -- I was
22 going to say injury, but that's probably not the right word,
23 but they had already incurred -- something happened to the
24 front of that Zodiac and popped the front of it and there was
25 a hole in it.

1 Q What kind of boat is a Zodiac? Inflatable?

2 A It's a rigid inflatable. So it's made to kind of bump
3 off of certain things, but it's also full of air. So if you
4 hit something sharp enough, it's going to pop it.

5 Q Okay.

6 A But they were pulled up. We pulled actually into the
7 woods because the current was pushing us really fast. And we
8 went through the woods and nosed our boat up onto the
9 guardrail, or what was left of the guardrail, because it was
10 free-swinging with the current where the bank had completely
11 sheered away, was washed and gone.

12 Q So there's water coming over the top, and there's water
13 washing out dirt underneath?

14 A That's correct. There's water basically going over the
15 guardrail. There was just enough guardrail for us to run the
16 nose of the boat up on it and hold us there for awhile, not
17 all night, but it was there. You know, it held us there while
18 we were observing what was going on.

19 We observed the rescue team actually pulled out whatever
20 tool, whether it was an ax or something else, and they cut the
21 top of the van open kind of like a sardine can. They peeled
22 it back and realized there's a cage inside there, and they
23 said there's nothing we can do here. This is no longer a
24 rescue. This is a recovery.

25 In the time -- realistically in the time I was informed,

1 if I would have had the correct location from the start, six
2 to ten minutes, I could have been, but I don't....

3 Q You could have got there from Fort Rich (ph) --

4 A Fort Rich to the incident --

5 Q Six to ten minutes?

6 A Six to ten minutes, but I don't know anybody that can
7 hold their breath for six to ten minutes.

8 Q No, I don't either.

9 So once they declared that it was now a recovery, what
10 happened?

11 A When they declared it was no longer a rescue, it was a
12 recovery, they deemed it and said, "This is not safe, guys.
13 We're pulling out." So they actually --

14 Q Why was it not safe?

15 A Because the water was quickly rising. It was continuing
16 to rise. It had already -- you know, from the night before
17 when I had driven through, it was already high or I'd say
18 high. It was not -- it was travelable then, but it had gotten
19 way higher in whatever that is, probably 16 hours.

20 Q Not safe to drive?

21 A Not safe to drive anymore.

22 And I had also observed where the bank was sheering off
23 and the road was washing away. So they said it was no longer
24 safe, the water was -- they were going to get swept off into
25 the woods, and some of them being in those rigid inflatable

1 boats and one that had already incurred damage, they were
2 like, "We're pulling out."

3 We seen a high-water vehicle come a good bit further, but
4 it stopped because the water was getting so high. It was up
5 on the bumper of it, so...

6 They stopped. We actually made some phone calls, and we
7 were informed to stay there, that that was potentially an
8 active crime scene. So they told us to stay right where we
9 were at and make sure nobody approaches that vehicle, whether
10 it be by water or by air, for all we knew. So we stayed right
11 there with it for several hours. The water actually
12 eventually swept us off of the guardrail. It got up high
13 enough where it swept us away and it swept us kind of into the
14 woods. Fired the motor back up, and we went back towards
15 Mullins, just a small piece, and tied off to a light pole.
16 And we stayed there until we eventually had to be -- they
17 released us from there.

18 Q Let me back up a minute. Can I ask you to step down for
19 a minute?

20 A Yes.

21 Q You backed up as far as you could, and that was to the
22 ballpark?

23 A Roughly -- roughly around the park.

24 Q And were there other vehicles there?

25 A Yes. There was other vehicles in this general area

1 around the park, and they were kind of nosed up. There was
2 water on the road, and there was -- all this back here was in
3 water. All this. And there was actually water on the road
4 starting back here. There was some dry spots in the middle
5 because the road does actually crest back here. So the high
6 spots -- the further you travel down, it's completely
7 inundated with water. So, actually, people would pull up on
8 the little small banks, and that's where people would park at.

9 Q Were there any more boat trailers there in the ballpark
10 area?

11 A I cannot recall.

12 Q You weren't focused on that. You were focused on quickly
13 getting there?

14 A That's correct. Time is of the essence when it's -- as a
15 rescue effort.

16 Q All right. Thank you. Have a seat.

17 That afternoon of the 18th, was Highway 76 passable?

18 A It depended on where you're talking about on 76.

19 Q Let's say where 9 turns off there and heads towards I
20 think Lake View or Dillon County.

21 A Yes, that's correct.

22 Q That area of 76 right here, same question: With all the
23 landmark marks, was that passable?

24 A No, sir. Not at all.

25 Q Would you drive across that stretch on Highway 76?

- 1 **A** On that date?
- 2 **Q** On that date.
- 3 **A** No, sir. No chance.
- 4 **Q** Let me ask you this: Was it clearly dangerous or was it
5 kind of sneaky trouble that you maybe wouldn't notice?
- 6 **A** So, obviously, in town, back closer to the curve there
7 where 9 breaks off, it was, obviously, shallower because you
8 could see the crest in the road. But as you proceeded
9 forward, you could obviously tell it was getting deeper and
10 deeper. The way I define Nichols is it's the town between two
11 rivers. All that water is coming from both sides, and the
12 further you're traveling towards Mullins, you're going head on
13 towards a river that is coming up very, very swiftly.
- 14 **Q** You are familiar with that area and drive that route many
15 times, but you wouldn't have attempted to drive through it
16 that day?
- 17 **A** No, sir. No chance.
- 18 **Q** Please answer any questions Mr. Bouchette -- oh, hold on.
19 The incident location, the town, Highway 76, the ballpark
20 there in Nichols, and then where the drowning took place
21 between the ballpark and the grain bins and the Little Pee Dee
22 Lodge, where is that located?
- 23 **A** In Marion County on 76. The drowning location?
- 24 **Q** Yes.
- 25 **A** It's right -- real close to Pee Dee Island Road.

1 Q And when you attempted to drive through here, all this
2 area, is it in Nichols or in Marion County?

3 A So, once you cross over the bridge there on 76, where you
4 can see the river clearly marked, once you cross in that's
5 Marion County. Everything to your left and right there was --
6 it looked like a lake. It was completely inundated. What is
7 normally a cut down that you can see dry ground in and you can
8 drive -- because when I was an active DNR law enforcement
9 officer, I drove all through that. I patrolled that. At that
10 time, it was feet under water.

11 Q Please answer any questions the other side may have.

12 CROSS-EXAMINATION

13 BY MR. BOUCHETTE:

14 Q Mr. Oates, good morning. Or good afternoon.

15 A Good afternoon.

16 Q Listen, would you agree with me that, on the late
17 afternoon of September 17th, 2018, through the evening of
18 September 18th, 2018, that the conditions in and around this
19 area were changing dramatically?

20 A I mean, it was becoming inundated with water.

21 Q Right. So it was changing?

22 A That's correct. It was changing.

23 Q Because it had changed dramatically from the night or the
24 evening before when you came into this area until the next
25 day?

1 **A** So, if you look at the gauge at Galivants Ferry during
2 that time --

3 **Q** Well, let me stop you there. I'm asking about your
4 observations.

5 **A** Okay.

6 **Q** Based on your observations --

7 **A** Okay.

8 **Q** -- there was a dramatic change from the evening when you
9 passed this location to whenever you first arrived at the
10 scene to provide aid -- the accident scene?

11 **A** Yes. I mean, it was a good bit higher.

12 **Q** Right. And then, in fact, while you were waiting there,
13 during the time you were waiting there, the water rose even
14 further; right?

15 **A** That's correct.

16 **Q** And it rose dramatically further?

17 **A** It rose far enough to sweep us off that guardrail where
18 we had the surface drive boat.

19 **Q** So, during that late evening of September 18th, 2018,
20 this whole area -- and I'm talking about from -- well, in and
21 around the accident location, that water level was rising
22 quickly?

23 **A** Correct.

24 **Q** The underlying road conditions were changing
25 dramatically?

1 **A** The underlying road conditions?

2 **Q** Right. You said it had been sheered; right?

3 **A** It had been sheered right there where the incident
4 location was.

5 **Q** Okay. All right.

6 **A** I don't know what's happening under the road, obviously,
7 because I can't see it. But I can tell you that it would be
8 egregious for anyone to travel that road.

9 **Q** What I'm asking for is -- so, within an hour, this whole
10 area was changing pretty quickly?

11 **A** I can't say the whole area. I can say, where I was
12 parked at, the water was -- it rose enough to sweep me off the
13 guardrail, so that's a matter of inches.

14 **Q** And how long a period of time is that?

15 **A** Several hours.

16 **Q** Okay. So it was rising across that area inches within
17 just a few hours?

18 **A** Correct.

19 **Q** So let's talk about how much of a change that occurred.
20 So you pass -- if I understand your testimony, you passed
21 through the ultimate drowning location the previous --

22 **A** The evening before, that's correct.

23 **Q** Were you driving your own truck?

24 **A** A State truck.

25 **Q** A State truck. All right.

1 I guess you're tasked with being careful in a State
2 truck?

3 **A** Yes. And, obviously, security for the town of Nichols
4 and any kind of enforcement I may have to take.

5 **Q** That's right. I mean, you don't want to a company
6 vehicle to get stranded or get messed up or damaged or
7 anything like that if you can help it; right?

8 **A** That's correct. I mean, I would do what I have to do to
9 rescue somebody.

10 **Q** Yeah, absolutely. But you weren't doing that the night
11 before; right?

12 **A** Yeah, I was coming back from security.

13 **Q** That's right. So as you came back the night before, you
14 saw that there was water on the road?

15 **A** Correct.

16 **Q** Now, given that -- well, let me ask you this: You saw
17 water on the road. You ultimately made the decision to pass
18 through the water here in the area where the drowning location
19 was; is that correct?

20 **A** Correct.

21 **Q** All right. Given that all other things being equal, you
22 try to take good care of the company vehicle, and for your own
23 safety, is it safe to say that on the evening of
24 September 17th, 2018, that the location where the drowning
25 occurred did not contain visibly life-threatening waters at

1 that time?

2 **A** Define "visibly life-threatening." Because you can drown
3 in three inches of water.

4 **Q** All right. Fair enough.

5 Would you drive through something that was visibly life
6 threatening to you?

7 **A** Depending upon the circumstances.

8 **Q** All right. What --

9 **A** If I'm rescuing you, would you want me to drive through
10 it?

11 **Q** Well, that's fair enough.

12 What were you doing that day, on the evening of the 17th?

13 **A** I'm leaving from security.

14 **Q** So you were leaving. All right. Were you responding to
15 a call when you passed through the drowning location?

16 **A** No.

17 **Q** All right. So you still passed through the location.

18 Was there any circumstance that you would have knowingly
19 driven through visibly life-threatening flood waters on the
20 evening of September 17th?

21 **A** Going -- leaving shift?

22 **Q** Correct.

23 **A** No.

24 **Q** So, then, like I say, on the evening of September 17th,
25 which I think you said was about 16 hours before --

- 1 **A** That's roughly.
- 2 **Q** Roughly, sure. And I'm not holding you exactly to it.
- 3 But the evening before, this location did not, at least
- 4 to you, possess visibly life-threatening flood waters whenever
- 5 you passed through?
- 6 **A** Again, define "threatening flood waters," because you can
- 7 drown in three inches. I could visually observe the bank
- 8 sheering away. It was actually on the same side of where the
- 9 van was submerged.
- 10 **Q** When you approached the ultimate drowning location and
- 11 you observed it --
- 12 **A** I proceeded through quickly.
- 13 **Q** Okay. And you did that because, at least at that time to
- 14 you, it did not appear to be a visibly life-threatening
- 15 situation at that location; is that correct?
- 16 **A** It could be potentially life threatening.
- 17 **Q** Did you think your life was going to be in danger
- 18 whenever you made the decision to drive through it then?
- 19 **A** No, not at the time.
- 20 **Q** Now, another thing on that, when you ultimately got
- 21 through, is it safe to say that it turned out to be a little
- 22 deeper than you initially perceived it before you made the
- 23 decision to drive through?
- 24 **A** Ask that one more time. When I got through from where?
- 25 **Q** The drowning location.

1 When you got -- when you came through the water and you
2 ultimately made it into the town of Nichols, you got past the
3 area where this drowning occurred, did you look back --

4 **A** Is this going into town or leaving back from end of
5 shift?

6 **Q** I'm talking about the evening of September 17th.

7 **A** So I had been leaving Nichols, coming back towards
8 Mullins.

9 **Q** Correct. Whatever it was you passed -- you testified you
10 passed this location --

11 **A** That's correct.

12 **Q** -- on the evening of September 17th.

13 **A** That's correct. Coming from Nichols, going towards
14 Mullins.

15 **Q** Okay. All right. Whenever you made a decision to pass
16 through that area, you ultimately then arrived on higher
17 ground?

18 **A** That's correct.

19 **Q** Is it safe to say that, as you were going through the
20 area where the drowning occurred, that water turned out to be
21 deeper than you initially perceived it to be before making the
22 decision to drive through?

23 **A** I'm not going to say it's going to be deeper than I
24 perceived. I mean, I knew the water was rising. That's why
25 -- that was the last time I went back through there.

- 1 Q That's what I'm saying. But you drove through; right?
- 2 A I drove through.
- 3 Q You found it to be very, very deep -- right? -- at least
- 4 according to you?
- 5 A Very -- on 17?
- 6 Q Right.
- 7 A It was deep enough I knew, based off watching what was
- 8 happening to my side, that you shouldn't drive back through
- 9 there that night.
- 10 Q Well, I'm going to go back. So was it that you were
- 11 anticipating additional flood waters coming in whenever you
- 12 say --
- 13 A Yes. I mean, based off of what we were being told by our
- 14 hydrologist, there was more water coming our way.
- 15 Q All right. So, then, was it easily passable on the
- 16 evening of the 17th?
- 17 A I drove straight through on the 17th.
- 18 Q All right. So you drove through it easily on the evening
- 19 of the 17th. So, no issues; right?
- 20 A I mean, I wasn't running a hundred, if that's what you're
- 21 asking.
- 22 Q Driving like ordinary course?
- 23 A I mean, I wasn't driving 55 like the speed limit. Maybe
- 24 15 miles an hour.
- 25 Q Other than slowing down -- taking the precaution to slow

1 down, no other problems with getting through this location the
2 night before?

3 **A** No, sir.

4 **Q** All right. So, from the night before, no problems other
5 than the need to slow down a little bit for safety, it had
6 changed from whatever the depth was there to, by the end of
7 the rescue, the water was up above this --

8 **A** It was above the guardrail.

9 **Q** Above the guardrail.

10 **A** On the -- I guess the current flowing side. So we nosed
11 up on the guardrail on the down flow side, which had been on
12 the actual incident. Where the van was, we were on the actual
13 incident -- where the van was, we were on that side of the
14 road, which would have been the eastbound side.

15 **Q** All right.

16 MR. BOUCHETTE: Court's indulgence.

17 No further questions for this witness, Your Honor.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. CLEMENTS:

21 **Q** Mr. Dylan --

22 **A** Yes, sir.

23 **Q** -- trying not to be confused here. See if we can clear
24 this up.

25 Now, he kept asking you about which way you were driving,

1 and I got confused. Were you leaving Mullins, coming to
2 Nichols or leaving Nichols, going to Mullins?

3 **A** On the evening on the 17th?

4 **Q** 17th.

5 **A** Leaving Nichols, coming to Mullins.

6 **Q** Leaving Nichols, coming to Mullins. Mullins is that way.
7 I'm driving my car. I'm over here in my lane over here.
8 Where was the road sheering off: Here or over in the other
9 lane over there?

10 **A** Other lane, to the left. And that would have been -- the
11 eastbound side was starting to sheer off. I could see the
12 bank was gone.

13 **Q** You saw that, so you were threatened by it so much that
14 you would not go that way again, but you were not threatened
15 so much that you would stop because you were on the other side
16 of it; right?

17 **A** That's correct.

18 **Q** So you were safe?

19 **A** That's correct.

20 **Q** There weren't any visibly life-threatening waters then
21 because the bank wasn't sheering off on your side, it was on
22 the other side?

23 **A** Correct.

24 **Q** I'm going to show you what's been marked State's 7-A. Do
25 you recognize that?

1 A Yes.

2 Q Who took that picture?

3 A I did.

4 Q All right. Set it right here. Flip it over.

5 7-B. Did you take that picture?

6 A I did. That is of my patrol vehicle.

7 Q When?

8 A That would have been -- I believe that's the 17th or it
9 could be the 18th. No, it's the 18th. That's the date where
10 it was actually inundating right there at 76 and 9, where 9
11 branches off, going towards Lake View. So all that, you could
12 see -- you wouldn't even drive that way on 9. That's a real
13 low spot in town. So you can actually see the crest in the
14 road there, but everything on the sides of it was flooded.

15 Q All right. I appreciate the answer. Let's just identify
16 it and move on.

17 A Okay.

18 Q 7-C can you identify that?

19 A Yes. I took that picture as well.

20 Q 7-D?

21 A Yes. I took that picture as well.

22 MR. CLEMENTS: State is seeking to enter these into
23 evidence, Your Honor.

24 THE COURT: Any objections?

25 MR. BOUCHETTE: I think we're getting beyond the scope of

1 cross. We're getting into -- getting back, trying to
2 redirect -- actually getting back into things that he didn't
3 raise in direct. They were limited to what we brought up on
4 cross. Seems like they're trying to go back into a different
5 area.

6 THE COURT: Any reply to that?

7 MR. CLEMENTS: I think there were some things he was
8 asking about on his cross-examination that were explained by
9 these pictures, or at least two of them, which would be 7-A
10 and B. 7-C and D, I'm not sure that he asked anything on
11 cross-examination about that.

12 THE COURT: All right.

13 MR. CLEMENTS: I don't think you said anything on
14 cross-examination about that. But these two, you did. You
15 asked him about the roadways.

16 MR. BOUCHETTE: Again, Your Honor, I'd just say the whole
17 line of questioning is beyond the scope of cross. I'd object
18 on that ground. I don't necessarily have any objection to the
19 underlying photos, but I think just the whole line of
20 questions.

21 THE COURT: I'm going to overrule. I'm going to allow
22 7-A and B but not C and D.

23 MR. SCRUGGS: Judge, what was that?

24 MR. CLEMENTS: 7-A and B are in. C and D are not.

25 (State's Exhibit Nos. 7-A and 7-B were received into

1 evidence.)

2 (State's Exhibit Nos. 7-C and 7-D were denied.)

3 MR. CLEMENTS: Can I get you to step down one second?
4 Why don't you stand over here so your voice can carry. Back
5 up just a little bit that way. You're a lot more svelte than
6 I am. I'm blocking half of the jury's view.

7 BY MR. CLEMENTS:

8 Q That's 7-A. Do you know who took that picture?

9 A I did.

10 Q Can you explain to us why you took that picture and what
11 does it depict involving water on the road?

12 A Obviously, I was sending kind of realtime photos to our
13 hydrologist so they could see the inundation that was
14 happening so they had realtime knowledge of what was going on.
15 That was taken from 76 close to the Little Pee Dee Bridge
16 basically back towards Nichols to the curve. So right around
17 the curve would have been Pee Lee Island Road there on your
18 left, which is close to the incident location.

19 Q Where is that right there taken from?

20 A That's 76 just across the Little Pee Dee Bridge coming
21 from Mullins, facing towards Nichols.

22 Q And that's on the 17th or the 18th?

23 A That's on the 17th.

24 Q Let's see 7-B. Explain that for us.

25 A 18th. This is the day of the 18th. That's my patrol

1 vehicle. That was just to show how much water had actually
2 come into town that day, that we had kind of a good marker.
3 There's my patrol vehicle, and they could see that these
4 routes were actually -- what's shown as hurricane routes, were
5 actually inundated. You couldn't travel on them. And you
6 could see the high heel, what I call the apex of the road.
7 And then everything on either side of it was --

8 Q Flooded out?

9 A -- flooded out, was inundated.

10 I mean, there were dry patches on the ground on either
11 side kind of in certain places, but as far as the roadway,
12 both sides were flooded except for the middle.

13 Q And this was where?

14 A This was 76 and 9. That's where 9 goes towards Lake
15 View, but that's in the town of Nichols, and this would be
16 facing in the direction heading towards Mullins. This would
17 be towards the incident location.

18 Q All right. Please answer any questions Mr. Bouchette has
19 regarding this.

20 RE-CROSS-EXAMINATION

21 BY MR. BOUCHETTE:

22 Q So now we're at -- this is showing this location?

23 A That's correct.

24 Q Now, see a vehicle there? Pretty much, at least at this
25 location, as the roadway -- as we're making this turn coming

1 into 76, we still have almost two lanes of visible roadway at
2 least at that point.

3 **A** Not two lanes. You have the middle part, so this would
4 be the center lane. You have an apex in the road, very
5 middle.

6 **Q** And you've got water going up 9, up this way.

7 **A** That's correct.

8 **Q** So we have got roadway at this point. And when was this
9 picture taken?

10 **A** This was September 17th. I mean, excuse me. I
11 apologize. The 18th.

12 **Q** That was on the 18th. So, at this point, we've got
13 visible roadway?

14 **A** That's correct. Going 76 west.

15 **Q** West being the direction of Mullins?

16 **A** That's correct.

17 **Q** Okay. All right. Now, you mentioned earlier before
18 there were few -- in between the curb up there, this
19 photograph is showing -- in between that location and the
20 ultimate drowning location, you mentioned there were a couple
21 of high spots.

22 **A** So I was referring to this actually right here, this apex
23 in the road. So as you make a turn, there's -- I guess "apex"
24 is a bad word. Crown in the road. The way it was wheeled.
25 So it's low on each side, and the middle was built up.

1 Q I know you're familiar because you live in the area and
2 you're in the boats a good bit and the waterways a fair
3 amount. When you come back around through here and start to
4 make this turn and start to come back around in the direction
5 towards town hall --

6 A That's correct.

7 Q -- would it be safe to say that that was not, at that
8 point, visibly life threatening up until this location?

9 A Yeah, I would agree. It wasn't visibly life threatening
10 up until where you just pointed.

11 Q All right. And we have heard testimony about the
12 condition of town hall later on in the day, but your testimony
13 is it was not visibly life threatening at this intersection at
14 that time?

15 A Traveling here on this.

16 Q I understand. You can have a seat.

17 No further questions for this witness, Your Honor.

18 THE COURT: Any redirect?

19 MR. CLEMENTS: Your Honor, we'd ask he be released from
20 his subpoena.

21 THE COURT: Any objections?

22 MR. BOUCHETTE: No.

23 MR. CLEMENTS: And that's all the witnesses we had
24 scheduled for this morning.

25 THE COURT: You may step down.

1 THE WITNESS: Thank you.

2 THE COURT: Thank you. Have a good day.

3 All right. Members of the jury, we're going to take a
4 lunch break until 2:30. As I have said before, do not discuss
5 your case, do not watch the news or any social media. You go
6 and enjoy your lunch.

7 Everybody else remain seated while the jury is excused.

8 (The jury exited the courtroom at 12:53 p.m.)

9 THE COURT: All right. We'll reconvene at 2:30.

10 MR. BOUCHETTE: Thank you, Your Honor.

11 (A lunch recess was taken at 12:55 p.m. to 2:35 p.m.)

12 (State's Exhibit No. 8-A to 8-D was marked for
13 identification.)

14 THE COURT: Good afternoon. Everybody have a seat.

15 Is the State ready?

16 MR. CLEMENTS: We are, Your Honor.

17 THE COURT: Defense ready?

18 MR. BOUCHETTE: Yes, sir.

19 THE COURT: Bring them out.

20 (The jury entered the courtroom at 2:35 p.m.)

21 THE COURT: If you'll call your witness.

22 MR. CLEMENTS: Your Honor, the first witness of the
23 afternoon would be Will Duncan from SLED.

24 WILL DUNCAN,

25 after having been duly sworn, was examined and testified

1 to as follows:

2 DIRECT EXAMINATION

3 BY MR. CLEMENTS:

4 Q Please state your name and tell us where you work.

5 A My name is Will Duncan. I work for the State Law
6 Enforcement Division, SLED.

7 Q And how long have you worked for SLED?

8 A Nine years.

9 Q Do you have any prior law enforcement experience before
10 SLED?

11 A Yes, sir. I did five years at the Horry County Police
12 and five years in Georgia.

13 Q Do you recall the events of the day of September 18th,
14 2018?

15 A I do.

16 Q What was unusual about that time period?

17 A There was a big flood in Nichols, South Carolina.

18 Q Where do you live?

19 A I live in Green Sea.

20 Q How far is that from Nichols?

21 A It is about eight to ten miles.

22 Q Are you well familiar with the territory around Nichols?

23 A Yes, sir, I am.

24 Q Lived in that area most of your life?

25 A All my life except for the five years I lived in Georgia.

1 Q What were you doing -- were you working on the 18th?

2 A Sir?

3 Q Were you working on September 18th?

4 A I was not working on that day. I was off, but I did go
5 into town to see if I could assist anybody.

6 Q See if you could what?

7 A Assist anybody. Assist the mayor or other law
8 enforcement up there.

9 Q Were you able to do that?

10 A Yes, sir, I was.

11 Q Who did you get up with?

12 A Well, I met with the mayor to start with, and we went
13 around and checked on some things. And then the water started
14 to come into the town and rises in the middle of the town
15 first every time that it's flooded there. And I saw the water
16 coming up through the storm drains, and there was still
17 traffic coming up Highway 9 from the Lake View area. So I
18 called the EOC and had them send some assistance out to stop
19 the traffic from entering town because the water was rising.

20 Q What is the EOC?

21 A It's the Emergency Operations Center for the county.

22 And then I met with -- at the time, it was DNR Officer
23 Dylan Oates. And he had a boat with him. He was going down
24 to the river to survey what was going on, and I rode with him
25 to do that.

1 Q Did you ever -- while you were with Mayor Battle, did you
2 encounter any national guardsmen or Deputy Eddie Page?

3 A Yes, sir, I did.

4 Q Tell me about that.

5 A The national guardsmen and Deputy Page were setting up on
6 the Horry County side on Highway 9, where Highway 9 and 76
7 come together, out by Riverside Cemetery and Battle Oil
8 Company, assisting traffic and getting around there, turning
9 around, not to go into Nichols except for residency and stuff
10 like that.

11 Q Can I get you to step down for a minute.

12 A Yes, sir.

13 Q If you would, please, point out to the jury where you
14 were talking and what you just recently said.

15 A So this is the town of Nichols. This is the river. And
16 this is the -- what we call the Horry County side. This is
17 Riverside Cemetery, Battle Oil Company, the National Guard,
18 along with other officers setting up right here, directing
19 traffic back out of Nichols.

20 Q Did you see any standing water or anything around there?
21 Any flood on this side?

22 A No, sir.

23 Q Now, did you stay there or did you go somewhere else?

24 A All day, I was back and forth through Nichols, surveying
25 stuff, directing traffic right here where 76 and 9 join again

1 in the town of Nichols right here and out this way as far as
2 we could go. And I eventually rode the river with Officer
3 Oates.

4 Q And when you saw Eddie Page and the national guardsmen,
5 where was that?

6 A Up here.

7 Q Okay. Did you have the occasion to talk with them?

8 A I spoke to them in passing, yes, sir.

9 Q Did they have conversations with Mayor Battle?

10 A They did.

11 Q What were you-all trying to do as far as the conditions
12 for local folks that had houses in the flooded areas?

13 A We were trying to -- they were trying to let them in to
14 get what they could before the water got too high and they
15 couldn't get back out.

16 Q Go ahead. I'm sorry.

17 A They were trying to let people in to get their stuff out
18 before the water rose into the -- caused any more damage than
19 what it was going to cause to save what property they could
20 and come out.

21 Q The same way they went in?

22 A Yes, sir.

23 Q Was there any other way out other than that, safely?

24 A No, not to my knowledge.

25 Q Okay. Have a seat.

1 Now, I think you were about to tell us that you were
2 getting up with Dylan Oates, was it?

3 **A** Yes, sir.

4 **Q** Where did Dylan Oates work back then?

5 **A** The South Carolina Department of Natural Resources.

6 **Q** Where does he work now?

7 **A** He works for SLED.

8 **Q** Same place you do?

9 **A** Yes, sir.

10 **Q** You got up with him, and what did you-all do?

11 **A** We took his boat and, again, came back up Highway 9
12 towards Horry County to the river and unloaded the boat at --
13 we used to call it The Bathhouse, but it's a landing on
14 Highway 9 when you're leaving out of Nichols, going back to
15 Horry County. You just pull off to the right and unload right
16 there.

17 **Q** And after you-all got in the boat and started going,
18 where did you go?

19 **A** We traveled -- I guess it would be south, down towards
20 Fort Rich.

21 **Q** And what was your purpose for doing that?

22 **A** There's a lot of residential property and houses down
23 there, and we went to see -- you know, checking for anybody
24 who might be leaving anything, what kind of damage there might
25 need to be addressed.

1 Q Did you find anything? Was everything okay?

2 A We found a lot of water. It was really high. There was
3 nobody that we saw down there at that time, except for a
4 couple of people riding the river.

5 Q What did you do next?

6 A We -- well, we rode down to Fort Rich. We rode around a
7 little bit, just looking at things. A little rain shower came
8 up, and we pulled up under the porch of one of the river
9 houses to get out of the rain. And he got a call saying there
10 was an emergency vehicle, a van -- a prisoner transport van in
11 the water. And they didn't have a good location on it, but
12 the first thing they told us was it was possibly Sandy Bluff,
13 which is over on 917 going into Marion County from the Horry
14 County side over there.

15 We were too far away. He called another officer with DNR
16 and told them -- he thought may be closer and told them to go
17 check and see if they could find it. And he advised people
18 that called us that we just were too far away to get to that.
19 So we stayed, and we were waiting out the rain. He got
20 another call and said that it was possibly at -- near Pee Dee
21 Island Road, which -- well, we had left -- we had left the
22 house and we were headed back to the landing up at Highway 9
23 right outside of Nichols. We were going to load the boat back
24 up and get out of the river so if we were needed for anything.

25 On the way back, he got another call and said that they

1 believed they were near Pee Dee Island Road, which is over by
2 the Little Pee Dee Lodge on Highway 76 where the van was
3 actually at. When they said Pee Dee Island Road, we knew
4 exactly where to go, but we were halfway up the river.

5 So we went on up, loaded the boat, and went back through
6 Nichols and attempted to unload the boat on Highway 76 going
7 back towards the scene of the van.

8 **Q** If I can get you to step down, please.

9 Can you point out to this jury where Pee Dee Island Road
10 is?

11 **A** Pee Dee Island Road is right here.

12 **Q** And where were y'all?

13 **A** Originally, we were down in this area when the call first
14 came in. We were right in here. And then, after we
15 determined we were too far away to help in the rain, we were
16 coming up the river about midways, and we got a call saying it
17 was over here.

18 So we went back up here, loaded back up the boat where we
19 originally unloaded it. Once we got on the trailer, we drove
20 back to Nichols. When we got to about right here, Holly
21 Street and the park right here, the water -- the highway was
22 completely covered in water and everything was underwater.

23 **Q** Right at the Nichols Town Hall?

24 **A** Yes, sir. Well, right here. In between the town hall
25 and the park.

1 Q And everything was covered with water?

2 A Everything was completely underwater all the way down.
3 So we had to -- we turned the truck around and started backing
4 the trailer down Highway 76, trying to unload the boat. It
5 was a very -- the boat was very heavy. We couldn't get it off
6 the trailer just pushing it. So one of the National Guard
7 high-water rescue vehicles, they were coming as well. They
8 came by, so we stopped them, and they pulled the boat off of
9 the trailer, and then we proceeded down Highway 9 --
10 Highway 76 in the boat in the water to the drowning location.

11 Q You got the boat off the water?

12 A Yes, sir. Got the boat -- I'm sorry.

13 Q Got the boat out of the water?

14 A Yeah, we got the boat out of the water and --

15 Q Which direction did you go?

16 A When we took it out of the water, we put it on the
17 trailer and came back through Nichols. When we put it back in
18 the water, we went towards the Little Pee Dee Lodge, towards
19 Mullins on Highway 76, away from Nichols.

20 Q What did you find when you went down 76?

21 A Water. It was a lot of water. When we got down to the
22 location, we found the van submerged in water. The two
23 deputies were -- there was a swift water rescue crew from
24 another jurisdiction there with an inflatable boat. They had
25 gotten there right before us, and they had the deputies in

1 that boat with them, and they were attempting to open the top
2 of the van to get into it.

3 Q How were they attempting to get in the van?

4 A They had some kind of -- cutting into it with like an ax
5 or something like that. They were chopping the top out of it,
6 trying to get in it.

7 Q Where were you-all able to set up? First let me ask
8 this: How swift was the current?

9 A It was very, very swift. It was breaking -- it was
10 coming out of the swamp, breaking across the guardrails. You
11 could see it moving. It was almost white-capping. And it was
12 all we could do -- we pulled our boat around. Dylan parked
13 it, got it wedged kind of on top of the guardrail. We were
14 sitting in the water, and stayed there for a second, and the
15 water actually -- the current actually pushed us off into the
16 woods in the boat, and we had to turn around and reset the
17 boat so we could stay there.

18 Q Now, while you were here riding in the boat, did you take
19 any pictures?

20 A I did.

21 Q I'm going to show you what's been marked for
22 identification as State's Exhibit 8-A. Tell me if you
23 recognize that.

24 A Yes, sir. That is the sharp curve in Nichols where the
25 water initially started coming out of the storm drains.

1 That's Highway 9 and Highway 76. To the left is Mullins, and
2 if you were to go straight through the curve, that's Lake
3 View.

4 Q And who took that picture?

5 A I did.

6 Q And, in the direction of Mullins, what did you do?

7 MR. BOUCHETTE: Your Honor, I'm going to object to --

8 A Water.

9 MR. BOUCHETTE: -- showing the picture before it's been
10 admitted into evidence.

11 THE COURT: He's just asking the witness questions. He
12 hasn't -- he's not given it to the jury.

13 Are you?

14 Is that what you're asking?

15 MR. BOUCHETTE: It looked like he was displaying it to
16 the jury, but if he's not then --

17 THE COURT: Yeah, I don't think so.

18 BY MR. CLEMENTS:

19 Q 8-B, can you identify that?

20 A That -- that is the corner of our boat sitting in the
21 middle of Highway 76 looking back towards Nichols with the
22 swift water rescue boat beside the van with the rescue team
23 members on top of the van attempting to open it.

24 Q Did you take this picture?

25 A I did.

1 Q Let me show you what's been marked as State's Exhibit 8-C
2 and 8-D. Can you identify that for me?

3 A That is an up-close picture -- a closer picture of the
4 rescue boat with the swift water rescue team on top of the
5 van, and that is a picture of the van itself submerged in
6 water with them standing on top of it next to the guardrail
7 with the water breaking across the guardrail, looking back
8 towards Nichols.

9 Q And you made this picture as well?

10 A Yes, sir, I did.

11 Q Made it -- took them?

12 A Took them, yes, sir.

13 Q All right.

14 MR. CLEMENTS: Your Honor, at this time, we move to have
15 these entered into evidence.

16 MR. BOUCHETTE: Your Honor, I have no objection to 8-A.
17 I do have an objection to B through D for the reason that it
18 appears these were taken significantly after the fact that the
19 vehicle encountered the flood waters, based on the testimony
20 giving how fast things were changing.

21 Matter of law.

22 THE COURT: You want to come over here and let's talk
23 about it?

24 BENCH CONFERENCE

25 (The following bench conference was held outside the hearing

1 of the jury and others.)

2 THE COURT: All right. So 8-A -- and this is where it
3 happened; is that right?

4 MR. CLEMENTS: That's where that's leading.

5 THE COURT: Leading to it. Okay. 8-B?

6 MR. BOUCHETTE: These were all kind of the rescue team.
7 To the extent it's trying to show --

8 THE COURT: Hold on.

9 MR. BOUCHETTE: So these are showing water which was
10 significantly deeper than it was whenever they encountered
11 that area of the county. And so I know they're doing --
12 because they were responding to the rescue, but to the extent
13 that tries to imply how deep it is, it's so different an hour
14 later than it would have been when they encountered it. I
15 think it's more prejudicial than probative.

16 THE COURT: It seems to me these pictures are just
17 factual. They're laying the groundwork for how deep the water
18 was when the event happened. It might be a little while after
19 or a little while before or during, but, obviously, that's
20 during the event.

21 MR. CLEMENTS: When they were trying to effect the
22 rescue.

23 MR. BOUCHETTE: That's right. My only concern is the
24 implication of the depth of the water at the time. Now,
25 obviously, there was a rescue, but given how deep that water

1 is showing there --

2 THE COURT: Yeah, but that's the whole fact that's in
3 dispute in this case, how deep the water was, how fast it was
4 moving, and was he prudent or not in trying to go through it.

5 MR. BOUCHETTE: Okay.

6 THE COURT: He has to prove his case, and I think it does
7 assist him in trying to prove his case.

8 MR. BOUCHETTE: Okay.

9 THE COURT: So I'm going to overrule the objection.

10 (Open court resumes:)

11 THE COURT: 8-A, B, C, and D are in evidence.

12 (State's Exhibit Nos. 8-A, B, C, and D were received into
13 evidence.)

14 BY MR. CLEMENTS:

15 Q Could we have 8-A, please?

16 Can you tell us, Mr. Duncan, why you took this picture,
17 what does it depict? What were you trying to depict, what
18 these signs were?

19 A This is Highway 9 coming from Horry County back this way.
20 It goes towards Mullins. Horry County is back this way. This
21 is Highway 9. This is Nichols, Mullins. This is Highway 9
22 and 76. Lake View is straight through.

23 I took the picture to be able to show the amount of
24 water, how it was rising, and the amount of water coming
25 across the highway to provide, if anybody needed to see it in

1 the EOC or anywhere else. At the time that I took it, it
2 shows that the highway was not safe to travel on.

3 Q Okay. Can we have 8-B?

4 Tell us what that depicts and what was going on there.

5 A So this is Highway 76. This is the boat we were in.

6 Mullins is back this way. And that is Nichols. This is the
7 top of the van, and they're standing on it in the water. This
8 is the rescue team on top of the van, trying to open it. This
9 is one of their rescue boats that they had drove down.

10 Q And you said y'all were wedged on the guardrail?

11 A At this point, we were down past the guardrail. He is up
12 here, beside the van, up under this. It's right in here.

13 Q All right. Tell me, what is this down the road a good
14 ways?

15 A This is a high-water rescue vehicle. Again, this is the
16 highway traveling on down, some open fields and all. This is
17 a high-water rescue vehicle that stopped actually because the
18 water -- when we traveled down past them with the boat, the
19 water was too deep. They were scared they were going to drown
20 it out, so they stopped back here.

21 Q So even the high-water vehicles were having a problem?

22 A Yes, sir.

23 Q Okay. 8-C and D. What's 8-D?

24 A This is the transport van. Here's the guardrail, and the
25 water and the current is running across here. It was running

1 across the top of the guardrail. That is the hole that they
2 cut into the top, trying to get into the cage in the van.
3 There's the floodlights, your headlights. There's the
4 high-water rescue vehicle, and the highway going around.

5 Q Okay. 8-C?

6 A That is the closer-up picture of one of the previous ones
7 that we took of the high-water rescue vehicle, the highway
8 going back towards Nichols. This is their boat. This is them
9 standing on it. Again, at that time, they were working on it,
10 trying to get it open to get into it.

11 Q And this is all recent, right? This activity that was
12 going on?

13 A Yes, sir.

14 Q When y'all got closer and y'all got the call?

15 A Yes, sir. When we showed up, they were cutting the top
16 open.

17 Q Okay. Have a seat.

18 Now, y'all tied off -- y'all got pushed off of the
19 guardrail; is that correct?

20 A By the current, yes, sir.

21 Q And you had to work your way around to where it was
22 stable?

23 A Yes, sir.

24 Q And then you took pictures then when you were stable?

25 A Yes, sir. One of the pictures was when we showed up,

1 circled around, and then after we got stable next to it, I
2 took the last pictures.

3 Q And then, after that, you went back to dry land?

4 A No, sir. The rescue -- everybody was there for a short
5 time. The rescue team determined that it was unsafe to be
6 there, so they left the scene.

7 Q Getting close to dark?

8 A Yes, sir. It was getting close to dark. The water was
9 still rising, and they determined it was unsafe and determined
10 that it was a recovery and not a rescue, so they left. We
11 contacted our supervisors, and they advised us to stay to
12 preserve the scene, and we stayed until a good ways after
13 dark.

14 Q Why were you preserving the scene?

15 A Because it was a -- there were two people that drowned in
16 the van, still inside of it and hadn't been recovered.

17 Q A potential criminal scene?

18 A Yes, sir.

19 Q Would you have tried to have driven anywhere across that
20 stretch of land?

21 A No, sir. No, it was -- from where the water started in
22 Nichols, it was nearly a mile down to where the van got lodged
23 and went underwater. It was completely -- everything, as far
24 as you could see in either direction from the town of Nichols
25 headed that way to the river, was completely underwater, and

1 the grade of the land goes down, so I knew it would get deeper
2 and deeper. There's no way I would have drove through it.

3 Q And you said there was water in every direction?

4 A Every direction.

5 Q Please answer any questions Mr. Bouchette has.

6 CROSS-EXAMINATION

7 BY MR. BOUCHETTE:

8 Q Good afternoon. We have heard from Officer Oates before
9 we broke for lunch, so I don't plan on having a lot of
10 questions for you, but would you agree with me that, on the
11 mid-morning and afternoon, September 18th, 2018, that the
12 water conditions were changing dramatically in the area in and
13 around the town of Nichols?

14 A Yes. They were changing, yes.

15 Q Changing. They were changing dramatically; right?

16 A Yeah.

17 Q Throughout the course of the day?

18 A Yes, sir.

19 Q Okay. So probably a lot of difference between even an
20 hour's worth of time? Things could have changed?

21 A It was changing, like you said, continuously, but the
22 water -- the water level in the direction we were going in was
23 closed down for some time. It was untravelable.

24 Q But what I'm asking about is -- excuse me just a second.

25 Let me ask you specifically about what was shown to you

1 as 8-B and D. All right? Now, you took those photographs
2 after the vehicle had become disabled; right?

3 **A** Yes, sir.

4 **Q** All right. And do you have any idea when the vehicle
5 became disabled?

6 **A** I don't recall the exact time, no.

7 **Q** Do you have any idea on how long it had been there before
8 you arrived?

9 **A** I do not.

10 **Q** An hour? More than an hour?

11 **A** From the time we got the call that it was there, that
12 they were calling in for help, it was less than an hour.

13 **Q** Okay. But presumably longer than that from the time it
14 actually became disabled?

15 **A** I don't know when it actually became disabled and went
16 underwater.

17 **Q** Well, given that conditions were changing so rapidly and
18 changing so quickly, it would be safe to say that the water
19 was not that deep at the time the vehicle became disabled; is
20 that correct?

21 **A** Well, it was rising, so yeah.

22 **Q** It was rising, so it was lower than that when the vehicle
23 became disabled?

24 **A** It had to be lower, but how low, I don't know.

25 **Q** Okay. It was not over the top of the roof whenever it

1 got disabled?

2 **A** I don't know.

3 **Q** Okay. But it was something lower than that; is that
4 right?

5 **A** It was rising, so it would have to be something lower
6 than that, but how low, I don't know, because that is when I
7 got there.

8 **Q** Okay. And now 8-A, I couldn't recall your testimony, but
9 when did you take that photograph?

10 **A** I can't tell you the exact time I took it. It was
11 earlier during the day.

12 **Q** Late afternoon?

13 **A** I would say midday.

14 **Q** So that's around midday. That's here at this -- again,
15 the intersection of 76 and 9; is that right?

16 **A** Yes, sir.

17 **Q** Now, for purposes -- so I'm looking at 8-A. The
18 right-hand lane would be heading from the intersection of 76
19 and 9 along 76 towards Mullins; is that right?

20 **A** Yes, sir.

21 **Q** As I'm looking at this photograph, this right-hand lane,
22 that would be the direction a car would be traveling going
23 from this intersection?

24 **A** You're pointing at the -- let me see it. You're pointing
25 at the left-hand lane going back towards Horry County. This

1 is the lane they would have been traveling in.

2 Q So at least at this point we have roads still visible at
3 least at the time you took this picture?

4 A Yeah. In the opposite direction they were going.

5 Q Now, if the water was on the road, do you have any idea
6 how deep that was at that point?

7 A I didn't get out and measure it. In different spots, it
8 was different depths --

9 Q Was it drivable?

10 A -- because of the grade of the road.

11 Q Was it drivable?

12 A No, we weren't -- other than helping people right in
13 town, I mean, we weren't letting anybody go through.

14 Q I'm not asking if you were letting anybody go through.
15 I'm saying, were you able to pass it, driving?

16 A Yes. We passed it, yes.

17 Q And during the course of the day, you were driving up in
18 here. Did you ever drive down to the Nichols Town Hall?

19 A I did.

20 Q So this was drivable to Nichols Town Hall.

21 Did you ever drive down to the park down here in Nichols?

22 A I'm sure we drove down to it to look, but that's as far
23 as we went because it was under water.

24 Q Do you recall at what point you got down to the park in
25 Nichols?

1 **A** Like I said, I was in town all day back and forth trying
2 to help people, so I can't tell you an exact time of when I
3 went and never went back.

4 **Q** So you were going back and forth through this area all
5 during the day?

6 **A** I was, yes.

7 **Q** That's all I'm asking.

8 So is it safe to say, then -- well, let me ask you this:
9 When was the last time you got -- approximately -- that you
10 went down to this area, the park in Nichols?

11 **A** When we unloaded the boat to go to the vehicle
12 underwater.

13 **Q** Okay. So that's 6:00? 7:00? 8:00?

14 **A** I can't remember. We can check the dispatch tapes to
15 know for sure, but I don't know.

16 **Q** Late afternoon. All right.

17 It was safe to say that, during the course of the day,
18 this area here -- and I'm noting from the intersection of 9
19 and 76 down to somewhere around this park in Nichols, did not
20 contain clearly life-threatening flood waters; would you agree
21 with that?

22 **A** It depends on what you determine to be life threatening.

23 **Q** Well, you're the one driving. Did you think it was
24 visibly life-threatening flood waters to be driving back and
25 forth through there?

1 **A** Through that quarter-mile stretch in town?

2 **Q** For the purposes of my question, I'm just referencing the
3 point of the intersection of 9 and 76 down toward where we've
4 identified the park in Nichols.

5 **A** I think it was unsafe. That's why I closed it earlier in
6 the day and took that picture.

7 **Q** I didn't ask you -- I asked you: Was it visibly and
8 clearly life threatening to you as you were driving through
9 it?

10 **A** To me? No.

11 MR. BOUCHETTE: Court's indulgence.

12 No further questions of this witness, Your Honor.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. CLEMENTS:

16 **Q** Will, if I understand correctly, Mr. Bouchette was asking
17 you about waters that were in this area; is that correct?

18 **A** Yes, sir.

19 **Q** And whether that was life threatening -- visibly life
20 threatening?

21 **A** Yes, sir.

22 **Q** And you testified that it was unsafe?

23 **A** Yes, sir.

24 **Q** Okay. Nobody drowned up here, did they?

25 **A** No, sir. They drowned a mile through the water below it.

1 Q And from this point here to this point here, how does
2 that topography run: Up or down?

3 A Down.

4 Q How much of a rate down?

5 A It's a good bit because it's sloping toward the river. I
6 don't know the exact elevation. I do not know, sir.

7 Q But you know it goes down?

8 A Yes, sir.

9 Q And with anybody that's in any way informed about this
10 area or used to this area, is there anything about that that
11 they wouldn't realize?

12 A No, sir.

13 MR. BOUCHETTE: Objection. That's speculation.

14 THE COURT: Sustained.

15 BY MR. CLEMENTS:

16 Q Would you -- let me ask you: On the increase of the flow
17 of the water and the water rising, what would be more
18 accurate? Steadily? Rapidly? How would you determine?

19 A Steadily.

20 Q Steadily?

21 A Yes, sir.

22 MR. CLEMENTS: Beg the Court's indulgence.

23 BY MR. CLEMENTS:

24 Q You watched the Tennessee Swift Water Rescue tried to get
25 into that van; did you not?

1 A Yes, sir.

2 Q And how did they try to do it?

3 A With a cutting tool of some kind. A rescue ax or a
4 Halligan or something like that.

5 Q Did anybody -- did you ever see anybody to try to pull on
6 the sliding side door towards the water?

7 A I did not, no, sir.

8 Q So you don't know if they tried to get the door open that
9 way or not?

10 A No, sir.

11 Q And the driver's side was actually pinned over to the
12 guardrail? You saw that?

13 A Yes, sir, I saw that.

14 MR. CLEMENTS: I don't have any further questions.

15 MR. BOUCHETTE: Very brief follow-up.

16 CROSS-EXAMINATION

17 BY MR. BOUCHETTE:

18 Q You had been asked -- a few people have testified so far.
19 Can you tell me where along this stretch that it says that the
20 grade is going down -- at a downward angle? Were there
21 warning signs or anything that indicates that this elevation
22 is heading downward?

23 A Any competent person can see it with their eyes. There's
24 no sign.

25 Q If there's water on the road, do they ever see it?

1 **A** Yeah.

2 **Q** Now, you're from this area; right?

3 **A** Yes, sir.

4 **Q** Okay. All right. Where is the warning sign or anything
5 else that would indicate that you're heading toward a downward
6 slope?

7 **A** I just said there's no sign, but any competent person can
8 see it.

9 **Q** Well, have you taken any kind of measurements?

10 **A** No.

11 MR. CLEMENTS: Your Honor, I believe this is beyond the
12 redirect.

13 THE COURT: I'm going to overrule it. Go ahead.

14 BY MR. BOUCHETTE:

15 **Q** You said any competent person. What's the exact grade?

16 **A** I don't measure those types of things. I can't tell you
17 that.

18 **Q** You don't have any idea what that grade is do you, sir?

19 **A** It's a downward grade.

20 **Q** It's a downward grade. And you can't tell us with any
21 kind of degree of certainty what grade that is or how it would
22 have been visible to somebody that did not travel that route
23 frequently, can you?

24 **A** You can see it.

25 **Q** Well, answer my question. Do you have any --

1 A It's very clear, when the water is getting deeper on the
2 side of your vehicle, that you're doing down.

3 Q That's not my question, sir. My question is --

4 A You're asking me if anybody can tell it.

5 Q I asked you, do you have any idea of what the exact grade
6 of that area is?

7 A I have told you three times, I do not.

8 Q You were also asked about the recovery. When they got
9 into the vehicle, they encountered this metal cage; is that
10 right?

11 A Yes, sir.

12 Q And everybody that was there, we had a -- SLED was there?
13 Because you were with SLED; right?

14 A Yes, sir.

15 Q DNR was there?

16 A Yeah.

17 Q The National Guard was there, eventually?

18 A The National Guard never made it down there to it because
19 they had to stop the high-water rescue vehicle because it was
20 too deep for it.

21 Q Anybody else other than SLED and DNR?

22 A The swift water rescue team.

23 Q Swift water rescue team. Where did they come from?

24 A I believe somewhere in Tennessee, but I'm not positive.

25 Q The National Guard was from Tennessee; right?

1 **A** I don't know where the National Guard was from. The
2 swift water rescue team was not National Guard.

3 **Q** Okay. But it was some group from Tennessee?

4 **A** Yeah.

5 **Q** Rescue team from Tennessee. And so those entities were
6 all unable, despite having tools, despite having all these
7 efforts, they weren't able to somehow manage to get through
8 that cage that day, were they?

9 **A** They did not get into it while I was there, no.

10 MR. BOUCHETTE: I don't have anything further.

11 MR. CLEMENTS: We'd like to ask if Mr. Duncan can be
12 excused from his subpoena.

13 MR. BOUCHETTE: No objection.

14 THE COURT: Have a good day.

15 Call your next witness.

16 MR. CLEMENTS: Your Honor, we would call Zachery Eskew.

17 ZACHERY ESKEW,

18 after having been duly sworn, was examined and testified
19 to as follows:

20 DIRECT EXAMINATION

21 BY MR. CLEMENTS:

22 **Q** Can you please state your name and spell it for the
23 record.

24 **A** My name is Zachery Eskew. Z-a-c-h-e-r-y, E-s-k-e-w.

25 **Q** And who do you work for?

1 A Right now, I work for the Nashville Police Department.

2 Q All right. I'm going to ask you if you would bend that
3 microphone down to you. You're soft spoken, so we can all
4 hear you.

5 A Is this better?

6 Q That's better. Thank you, sir.

7 Tell me where you work one more time.

8 A Nashville Police Department.

9 Q National --

10 A Nashville Police Department.

11 Q All right. Nashville Police Department.

12 A Yes, sir.

13 Q And what job do you have with Nashville Police
14 Department?

15 A I'm a police officer trainee.

16 Q Okay. And have you been in South Carolina before?

17 A Yes, sir.

18 Q Were you in South Carolina, September 18th, 2018?

19 A Yes, sir.

20 Q What were you doing here in South Carolina?

21 A At that time, I was working with the National Guard. We
22 came down here to assist, I guess, this area with the flood.

23 Q And were there many people from your unit that came here
24 or just you and a couple?

25 A No, sir, it was about 30 of us from Tennessee.

1 Q What type of work did they have you doing on
2 September 18th?

3 A I was over a highway in front of a city, and we were told
4 to let all emergency vehicles through and citizens who live
5 there through. The only way we know that they were citizens
6 were because of their license or if they had a letter showing
7 their residence.

8 Q And they were allowed to go to their houses for what
9 purpose?

10 A To gather belongings and anything else they need of
11 sentimental value.

12 Q Where were they informed to get out of the area and
13 leave?

14 A Everybody was informed to come back through my side
15 because the other side was flooded.

16 Q Were you -- and what kind of vehicle were you in?

17 A An LMTV. It's a light medium tactical vehicle. It's
18 kind of like a big truck, but...

19 Q Kind of like what?

20 A A huge truck.

21 Q Huge?

22 A Yes, sir.

23 Q How tall are the tires?

24 A I think they come up to about where I am right now.

25 Q And they're just a big, massive vehicle?

1 A Yes, sir.

2 Q And you had one of those that you were driving?

3 A Yes, sir.

4 Q All right. Who was assigned to that vehicle with you?

5 A There was me and a national guardsman from South Carolina
6 and a sheriff deputy from -- I don't know what county he was
7 from exactly.

8 Q Okay. But he was a county law enforcement?

9 A Yes, sir.

10 Q And do you recall exactly where y'all were parked at or
11 posted at?

12 A I don't know street names because I'm not from here. I
13 just know that we were on a concrete slab on a highway. It
14 was kind of like a Y.

15 Q Okay. How would y'all deal with people coming? Would
16 you take turns? How did y'all do that?

17 A Yes, sir, we switched out that day because it was very
18 hot outside, and the vehicle was the only thing that had air,
19 so we were switching out back and forth.

20 Q Taking turns?

21 A Yes, sir.

22 Q Okay. Did you ever encounter or recall encountering
23 Mr. Flood?

24 A Yes, sir.

25 Q Can you tell us about that?

1 **A** They pulled up, and I asked them how they were doing.
2 They told me what they were doing. They were in a sheriff
3 department van. So, as I was told, all emergency vehicles got
4 to go through. They said they just -- well, he said he just
5 wanted to see the city. I said, "Okay, but you have to come
6 back through my side because the other side is flooded," just
7 like I told everybody else. And that was it.

8 And he did -- while we were talking, he asked me how it
9 was, and I told him, "Well, I tried to go through it with my
10 vehicle," and I told pointed at my vehicle, and I told him I
11 couldn't. And that was it. It was just like, "Have a good
12 day," and that was it.

13 **Q** And he kind of laughed --

14 **A** Yes, sir.

15 **Q** -- of you not being able to do it?

16 **A** You said what, sir?

17 **Q** Did he kind of laugh at you not being able to do it? Did
18 he laugh during the conversation?

19 **A** Yes, sir.

20 **Q** Now, can you explain to the jury how you tried to get
21 across and what made you stop and back up and where you were,
22 if you know the name of the street?

23 **A** I don't necessarily. I just know we were on -- I guess
24 that would be the Marion County side. I just know there was,
25 like, a small -- I don't know if it was, like, a club or like

1 a VFW type of building over there. But we tried to come down,
2 going towards Nichols, and we felt the LTV move. So, at that
3 time, it was deemed necessary we weren't going to make it
4 because the water was up to our doors, like the bottom of our
5 door, and that's pretty high for us, and we couldn't see the
6 road. I mean, there was no way for us to know where we were
7 at on the road or if we were sliding off.

8 Q You said it was moving. Was it, like, kind of moving by
9 the pressure of the water moving it or wiggling it?

10 A Yes, sir.

11 Q Is that correct? Does that describe it?

12 A Yes, sir.

13 Q Okay. And how did y'all get back out of that area where
14 you were moving around?

15 A We could not turn around. We had to back up straight
16 back. There was nowhere for us to turn around, so...

17 Q So you backed the vehicle all the way back?

18 A Yes, sir.

19 Q How were you able to do that and see the lines of the
20 road and see where the road was?

21 A So the other national guardsman, he had his head -- he
22 was -- basically, half his body was hanging out the window to
23 tell me what side -- which way I needed to turn, and the
24 officer was kind of looking straight down to make sure we were
25 on the -- to see whatever we could see to tell if we were on

1 the straight line back and forth.

2 Q Was that a hairy situation?

3 A Yes, sir.

4 Q But y'all made it?

5 A Yes, sir.

6 Q Did you notice where you were -- could you tell if the
7 conditions were changing any or not when you were posted out
8 on the highway?

9 A No, sir.

10 Q Okay. So you don't know how much worse it got when you
11 tried to go across yourself? What time was that? In the
12 morning time?

13 A I don't know exactly what time, but it was early in the
14 morning.

15 Q Early in the morning?

16 A Yes, sir.

17 Q And about how much hours between that did you encounter
18 Mr. Flood?

19 A It was probably, like, midday I'm guessing. The sun was
20 still up, so it wasn't nighttime. It was about midday.

21 Q So several hours?

22 A Yes, sir.

23 Q Okay. Were there barricades up where you could see them?

24 A Yes, sir.

25 Q Where at?

1 **A** There was a barricade up on the Nichols side and also on
2 the -- I guess the Marion County side, I guess that's what
3 that is. The other side of the highway.

4 **Q** And it wasn't y'all's job to deal with the barricades,
5 was it?

6 **A** No, sir.

7 **Q** Did you ever notice them having been moved?

8 **A** No, sir.

9 **Q** Were you paying that much attention to the barricades?

10 **A** Yes, sir.

11 **Q** Did you ever tell Mr. Flood he was clear?

12 **A** No, sir.

13 **Q** But you let the locals in?

14 **A** Yes, sir.

15 **Q** And official vehicles?

16 **A** Yes, sir.

17 **Q** Did you have any authority to stop an official vehicle?

18 **A** No, sir.

19 **Q** You advised the locals what to do, to enter in and come
20 back out?

21 **A** Yes, sir.

22 **Q** Did you tell Mr. Flood anything different than what you
23 told them?

24 **A** No, sir.

25 **Q** Can you recall when you first got word that there was a

- 1 van or a vehicle in distress?
- 2 **A** I was on my way back so I --
- 3 **Q** Back to --
- 4 **A** Back to the unit that we were staying at. I was off
- 5 shift at the time.
- 6 **Q** Okay. And that's when you heard?
- 7 **A** Yes, sir.
- 8 **Q** When you got back?
- 9 **A** Yes, sir.
- 10 **Q** Did you have any idea at the time it was Mr. Flood?
- 11 **A** No, sir.
- 12 **MR. CLEMENTS:** Beg the Court's indulgence.
- 13 **BY MR. CLEMENTS:**
- 14 **Q** When Mr. Flood came up, did you see if he had anybody
- 15 with him?
- 16 **A** He had a passenger with him. That was it.
- 17 **Q** Another officer?
- 18 **A** Yes, sir.
- 19 **Q** Did you see anybody being transported in the van?
- 20 **A** No, sir.
- 21 **Q** Did he tell you he was transporting anybody?
- 22 **A** No, sir.
- 23 **Q** Please answer any questions Mr. Bouchette may have.
- 24 **A** Yes, sir.
- 25

1 CROSS-EXAMINATION

2 BY MR. BOUCHETTE:

3 Q Mr. Eskew, good afternoon. Let me start off -- back in
4 2018, how long had you been with the National Guard?

5 A About three years.

6 Q And at that time, you were 22? 23?

7 A Yes, sir.

8 Q All right. Did you have any other job at that time, or
9 was National Guard your full-time job?

10 A No, sir. It was part time. I worked at the sheriff's
11 department in Davidson County.

12 Q You have been in law enforcement since you got out of
13 high school?

14 A No, sir.

15 Q How long had you been in law enforcement prior to
16 September 18th of 2018?

17 A That was actually my first year being in law enforcement.

18 Q Okay. And you have been in law enforcement since that
19 time?

20 A Yes, sir.

21 Q Okay. All right. Now, as part of law enforcement, I
22 suppose, you -- let me ask you this: Did you attend the
23 criminal justice academy or police academy?

24 A Not working with the sheriff's department, no.

25 Q Have you done it since then?

1 A Yes, sir. I'm still in it right now, currently in it.

2 Q Okay. All right. Do you have to prepare any reports as
3 part of being a police officer?

4 A Yes, sir.

5 Q All right. Did they talk about that at the police
6 academy, I guess?

7 A Yes, sir.

8 Q You have to prepare reports. And they have to be
9 complete and accurate; right?

10 A Yes, sir.

11 Q And you want them to be complete because sometimes you
12 might have to testify about something months or years down the
13 road that you might not recall at that time?

14 A Yes, sir.

15 Q All right. And, obviously, you want to be accurate
16 because prosecutors are relying on them and attorneys might be
17 relying on them; fair to say?

18 A Yes, sir.

19 Q All right. Now, prior to this unfortunate accident, had
20 you been in South Carolina or the Pee Dee area before?

21 A No, sir.

22 MR. CLEMENTS: Your Honor, we have a point of law we need
23 to take up.

24 BENCH CONFERENCE

25 (The following bench conference was held outside the hearing

1 of the jury and others.)

2 MR. CLEMENTS: Two things. Number one is I think he's
3 got a deposition that I don't have any knowledge about. I
4 wasn't there to actually ask any questions or answer any
5 questions, in front of me. So I don't know anything about
6 that. And I was wanting him to not be allowed to read from
7 that or quote from that.

8 And the second thing is, I need to go to the bathroom.

9 THE COURT: Was a deposition taken?

10 MR. BOUCHETTE: No, sir. What I intend to ask him about
11 -- and there may be an issue in which I can impeach him with
12 his interview -- his actual interview that was given to the
13 investigating officers from SLED should we get into that.

14 Now, at some point, I still reserve the right to be able
15 to impeach him with the deposition should it come up, and I'm
16 not trying to bring that in at this point. What I'll do is,
17 should I feel like I want to impeach him with the deposition,
18 I'll ask for a sidebar, if that's okay with Your Honor.

19 THE COURT: Okay. And you need a bathroom break?

20 MR. CLEMENTS: Yeah, I need a bathroom break. It will be
21 quick.

22 (Open court resumes:)

23 THE COURT: Members of the jury, let's take a quick
24 break, and we'll be back with you in a few minutes.

25 (The jury exited the courtroom at 3:26 p.m.)

1 THE COURT: If you don't mind, just stay right there and
2 don't talk to anybody.

3 THE WITNESS: Yes, sir.

4 (A brief recess was taken from 3:36 p.m. to 3:40 p.m.)

5 THE COURT: Let's have the jury.

6 (The jury entered the courtroom at 3:40 p.m.)

7 BENCH CONFERENCE

8 (The following bench conference was held outside the hearing
9 of the jury and others.)

10 MR. CLEMENTS: All right. Just looking at Rule 5, and
11 he's got a deposition that he plans to use. It's a writing.
12 I'm entitled to it under reciprocal discovery.

13 THE COURT: Using it under his -- it's the same as a
14 prior inconsistent statement is what you're talking about;
15 right?

16 MR. BOUCHETTE: If he makes a prior inconsistency.

17 THE COURT: And I think that would be fine, if he makes a
18 prior inconsistent statement.

19 MR. CLEMENTS: But it wouldn't be in writing. I think
20 I'm entitled to it, under Rule 5, reciprocal discovery.

21 MS. DROST: I have a copy we can give you.

22 MR. CLEMENTS: Yeah, that would be great.

23 MS. DROST: I have a copy I can give you, too, if you
24 want it, Your Honor.

25 THE COURT: I appreciate that.

1 MS. DROST: Do you want me to go ahead and hand it up?

2 MR. CLEMENTS: Well, if Larkin (ph) was a good law clerk,
3 he'd run around and grab them and bring them over here and let
4 you look at them and then go take them back.

5 THE COURT: What'd you say?

6 MR. CLEMENTS: I said, if Larkin was any kind of law
7 clerk, he'd give them over to you and take them back.

8 THE COURT: That's good. Thank you for offering.

9 MR. BOUCHETTE: Did you want to hand those up or go ahead
10 and proceed?

11 THE COURT: Go ahead.

12 (Open court resumes:)

13 MR. BOUCHETTE: Your Honor, did you want us to hand those
14 up or to go ahead and proceed?

15 THE COURT: Go ahead.

16 BY MR. BOUCHETTE:

17 Q All right, Mr. Eskew. Before we broke, I was asking you
18 about the preparation of police reports or reports of that
19 nature. You said you prepared those or had those prepared as
20 part of being a police officer?

21 A I have never done one myself, no.

22 Q But you know what they are?

23 A I do. I know of them.

24 Q I think your testimony was that they're supposed to be
25 complete and accurate; right?

- 1 **A** Mm-hmm.
- 2 **Q** Okay. You said sometimes it may be on down the road
3 where you got referred to report back to it and it's important
4 to have that recollection recorded at that time?
- 5 **A** Mm-hmm.
- 6 **Q** Okay. Because your memory might be better closer to the
7 incident or closer to the event than it would be a year or two
8 years or three years later; right?
- 9 **A** Yes, sir.
- 10 **Q** Okay. All right. Now -- and you were not -- you have
11 never been to South Carolina or the Pee Dee area before this
12 deployment; is that right?
- 13 **A** Yes, sir.
- 14 **Q** So it's safe to say you were not particularly familiar
15 with Nichols or the area right around Nichols prior to your
16 arrival that day?
- 17 **A** Correct.
- 18 **Q** Did you give a test- -- or did you give an interview to
19 Mr. Howell -- Lieutenant Howell with SLED on September 19th of
20 2018?
- 21 **A** Yes, sir.
- 22 **Q** About the day after this event happened?
- 23 **A** Yes, sir.
- 24 **Q** Now, at that point, you were aware that there had been an
25 incident of some kind the previous night; is that right?

1 A Yes, sir.

2 Q And you understood that Agent Howell was preparing a
3 report in conjunction with that incident?

4 A Yes, sir.

5 Q All right. And we talked about and you understood what a
6 report is and the different things that you wanted to make
7 sure you had in that report?

8 A Yes, sir.

9 Q And, at this point, you were being a witness, even though
10 you weren't preparing the report?

11 A Yes, sir.

12 Q But you knew what he was doing. You knew what he was
13 preparing and what he was attempting to accomplish?

14 A No, sir.

15 Q But you knew he was preparing a report?

16 A I knew something had happened, and that was it. I know I
17 was being called into an RV. All I knew was SLED agents
18 talked to me and that was it.

19 Q Okay. Well, he was getting your information related to
20 any knowledge you may have about an incident that just
21 occurred the night before; right?

22 A Mm-hmm.

23 Q Okay. All right. Again, this was the day after the
24 unfortunate drownings?

25 A Yes, sir.

1 Q All right. Now, when you were at the -- up there at the
2 barricades or the posts, people were still being let through;
3 is that right?

4 A Yes, sir.

5 Q Okay. So people would come up to you and they would
6 either be let through or they'd be turned around?

7 A Yes, sir.

8 Q All right. And you saw what was clearly a marked Horry
9 County vehicle approach where you were positioned; right?

10 A Yes, sir.

11 Q Do you know where Horry County is in relation to Marion
12 County?

13 A No, sir.

14 Q You knew it was a different county than the one you were
15 in?

16 A Yes, sir.

17 Q Okay. All right. And would it be safe to say that that
18 was clearly a transport vehicle?

19 A No, sir.

20 Q Well, was it a police cruiser?

21 A No, sir.

22 Q Well, it looked like it was transporting something;
23 right?

24 A You're asking me questions outside of my knowledge. I
25 don't know what a transport vehicle was at that time. I had

1 not idea what a transport vehicle was.

2 Q Do you have any idea what a transport vehicle is now,
3 after working in the police department for several years?

4 A I don't work there. I'm in training, so...

5 But, yeah, I do know what a police vehicle is.

6 Q You're telling me you know what one is now, but, at the
7 time, you didn't know what a transport vehicle was?

8 A No, I didn't.

9 Q You had been working for the police department about a
10 year and didn't know what a transport vehicle was?

11 A I never said I was working for them for about a year.

12 Q Okay. How long had you been a police officer prior to
13 this incident?

14 A I wasn't a police officer. I just got started that year
15 that I was down here.

16 Q But you had worked in the jail prior to this; right?

17 A No.

18 Q You worked in law enforcement prior to this time?

19 A Are you talking about right now or are you talking about
20 the incident?

21 Q Prior to the incident.

22 A No. I never worked for a police department prior to the
23 incident.

24 Q But you work there now; right?

25 A Yeah.

- 1 Q The vehicle that passed is clearly a transport vehicle;
2 would you agree with that?
- 3 A Yeah. Now, I do.
- 4 Q Okay. All right. Now, when an emergency vehicle or any
5 kind of government vehicle approached, is it safe to say that
6 you were basically just allowing those to pass through
7 automatically?
- 8 A Yes, sir.
- 9 Q Well, let's talk about that now. So a vehicle comes up
10 that's marked from another entity, that was coming up to where
11 you were and where other people were coming. Given that it
12 was marked, you would have just waved it through?
- 13 A I didn't wave everybody through. Everybody stopped and
14 talked to me.
- 15 Q But you weren't specifically stopping them if they were a
16 marked vehicle; right?
- 17 A No, not necessarily.
- 18 Q Okay. Didn't you tell Officer Howell that, with
19 emergency vehicles, you were just waving them through? Didn't
20 you tell him that?
- 21 A Not like that. Waving them through? No. I didn't wave
22 them. It wasn't like a physical, "Hey, you just can come on
23 through" like this (indicating), no.
- 24 Q Well, did you tell them? I mean, were those the words
25 you used with Lieutenant Howell or not?

1 **A** Those are words that I used with Lieutenant Howell, but
2 that is not what I meant. That is not the definition of what
3 I meant by "waving through." I didn't say "wave through" and
4 give the motion like that, no.

5 **Q** Okay. But that's what you said. You said that, with
6 emergency vehicles, you were just waving them through;
7 correct?

8 **A** Yes.

9 **Q** Okay. All right. So given that -- well, let me ask you
10 this: Steve Flood ultimately stopped his vehicle and
11 initiated a conversation with you; is that correct?

12 **A** Yes.

13 **Q** All right. So had he not stopped and initiated the
14 conversation with you, you would have just waved him through;
15 right?

16 **A** I would have let him go through, yes.

17 **Q** Okay. All right. He would have gone through without any
18 discussion, interaction, warning, conversation in any way
19 whatsoever; right?

20 **A** That's correct.

21 **Q** Okay. So let's talk about that. Whenever he stops and
22 you'll have this conversation, he asks you, "How is it looking
23 out there?"

24 **A** Mm-hmm.

25 **Q** So he's inquiring about the road conditions at the time

1 he encounters you at the intersection of Highway 9 and
2 Highway 76?

3 **A** I don't recall him asking, "How it's looking out there?"

4 **Q** Do you recall telling Lieutenant Howell that that's what
5 he told you?

6 **A** Not off the top of my head, no.

7 **Q** Is it possible that what's you told him?

8 **A** It's possible.

9 **Q** Okay. And, again, that would have been your recollection
10 closer in time to when this event happened; right?

11 **A** Yes.

12 **Q** All right. Now, didn't you also tell Steve, whenever he
13 inquired or when y'all were having this conversation, that,
14 quote, "You can go through there now, but don't come back
15 through this way later because it's probably going to be worse
16 than it is now." Did you tell him that?

17 **A** Yes. But -- yeah, I did say that.

18 **Q** Okay. Let's get that straight. That's a little
19 different than what was said on your cross-examination.

20 When Steve stops and inquires to you about the road
21 conditions, your words to him at that time are, "You can go
22 through there now, but don't come back this way later because
23 it's probably going to be worse than it is now."

24 **A** Yes.

25 **Q** Okay.

1 MR. CLEMENTS: Objection, Your Honor. He's reading from
2 a document that we just got provided just a few minutes ago.

3 MR. BOUCHETTE: I'm looking at my notes, Judge.

4 THE COURT: Y'all come on over here and we'll talk about
5 it.

6 BENCH CONFERENCE

7 (The following bench conference was held outside the hearing
8 of the jury and others.)

9 MR. CLEMENTS: He's clearly reading from a document.

10 MS. DROST: It's from the SLED interview.

11 MR. BOUCHETTE: With all respect, this particular reading
12 is not from the deposition. This is from what he told
13 Lieutenant Howell, which I know because it was provided to
14 us --

15 THE COURT: Discovery.

16 MR. BOUCHETTE: That's correct.

17 MS. DROST: Yeah. It's in the recording anyway.

18 MR. CLEMENTS: It just seems it goes beyond that to me --
19 and being supplemented by information.

20 THE COURT: He's just giving a history, but I don't think
21 he's doing anything wrong. He's not even using a deposition.
22 He's given no prior inconsistent statements to impeach him
23 with.

24 MR. BOUCHETTE: Yeah, not at this point.

25 THE COURT: He's just answering straight up.

1 MR. CLEMENTS: Okay. All right. As long as it's nothing
2 from the deposition.

3 (Open court resumes:)

4 BY MR. BOUCHETTE:

5 Q Before we stopped, you were saying that your words to
6 Mr. Flood was, "You can go through there now, but don't come
7 back through this way later because it's probably going to be
8 worse than it is now"?

9 A Yes.

10 Q All right. Mr. Eskew, doesn't that sound like you were
11 telling Mr. Flood that you can go through there, meaning the
12 town, but don't come back -- i.e., don't come back through
13 town later because it's probably going to be worse?

14 A As far as timing, don't come back later on because it's
15 going to be worse, so get back here before it gets late.

16 Q Later on; right? So this was a transport van from
17 another jurisdiction going somewhere else; right?

18 A Yes.

19 Q And you're saying you can go -- you telling him, "You can
20 go through there now," meaning the direction of the town --

21 A He wanted to check out the city, is what he said.

22 Q Well, answer my question.

23 A I'm answering your question, if you let me.

24 Q So he can go through there now -- and you're referring to
25 the town of Nichols; right?

1 A Mm-hmm.

2 Q "You can go through there now, but don't come back
3 through there later"?

4 A As far as timing, correct.

5 Q Well, is it possible, under those circumstances, that he
6 interpreted what you mean to --

7 MR. CLEMENTS: Objection. That calls for speculation.

8 THE COURT: Sustained.

9 BY MR. BOUCHETTE:

10 Q You did not say, "Do not turn on Highway 76 and turn back
11 around and come back." Those weren't words -- your words to
12 him?

13 A No.

14 Q They could have been; correct?

15 A No. I don't know what Highway 76 is. You're talking
16 about an area -- I'm not from here, so no, I don't know.

17 Q Are you familiar with where the accident location is?

18 A No. I didn't go there.

19 Q So over four years later, and you're not familiar with
20 where this accident took place?

21 A Four years where?

22 Q From the date of the accident, you're not familiar with
23 where the accident occurred?

24 A I know it happened in between Nichols and the Marion
25 County side. That's it.

1 Q All right. Now, you mentioned a moment ago that you said
2 Steve had approached you and/or had told you, I think you said
3 on cross-examination, that he wanted to check it out; is that
4 correct?

5 A Mm-hmm.

6 Q All right. And he said he wanted -- according to you, he
7 wanted to check it out. Did you think he was going
8 sightseeing?

9 A I don't know what he was doing.

10 MR. CLEMENTS: Again, that calls for speculation.

11 THE COURT: Sustained.

12 BY MR. BOUCHETTE:

13 Q But how many miles was it from your post into town?

14 A I don't know that to be exact.

15 Q A mile maybe?

16 A I don't know that to be exact.

17 Q I'm not asking you to be exact. Do you have any idea how
18 far it was?

19 A A couple of miles, I guess.

20 Q Okay. All right. So, according to you, Steve told you
21 that he was going to check it out, which I presume you
22 understood to mean he was just going to go into town and come
23 back to your post; is that right?

24 A Yes, sir.

25 Q Well, how long were you at the post before you left your

1 shift?

2 **A** Maybe about 30 minutes. 30 minutes to an hour.

3 **Q** Okay. And in that 30 minutes to an hour, Mr. Flood had
4 not returned?

5 **A** No.

6 **Q** How long does it take to drive a couple of miles,
7 Mr. Eskew, and come back?

8 **A** I don't know.

9 **Q** A few minutes?

10 **A** Depending on what you're doing.

11 **Q** Fair enough.

12 At the end of the half an hour that passed from the time
13 you met with him until the time you left, you had no
14 communication or otherwise heard from Mr. Flood; right?

15 **A** No.

16 **Q** And you went ahead and left and ended your shift that
17 day?

18 **A** Yes, sir.

19 **Q** Did it concern you at all that a gentleman that was
20 supposedly just driving to check out an area a couple of miles
21 away had come back -- had not gone and come back within a half
22 an hour?

23 **A** No.

24 **Q** Didn't that cause you any kind of alarm?

25 **A** No. It was an emergency vehicle. No. A lot of them

1 came through and were there for hours at a time.

2 Q Okay. But, according to your testimony, this was a
3 vehicle that was just going in to check it out; right?

4 A That's correct.

5 Q So, according to you, he did not say he was going to do
6 anything but check it out?

7 A Emergency vehicles. If anything happens, they can stop
8 at any time. It's an emergency vehicle.

9 Q Well, I'm not asking you that. I'm asking if you, during
10 the course of that period, had any reason to be concerned,
11 given that he had told he was just going to check it out.

12 A I didn't have any concern for any emergency vehicles.

13 Q All right. You didn't inquire why this car, that had
14 just gone supposedly to go there and circle back around and
15 come back, hadn't managed to do within a half hour?

16 A That's not my job to ask questions about emergency
17 vehicles and what they're doing.

18 Q It wasn't your job; is that right?

19 A No.

20 Q So you just -- that was nowhere in your mind whenever you
21 got off shift that day?

22 A No.

23 Q No concern at all?

24 A I didn't have any concern for any emergency vehicles. I
25 was told to let all the emergency vehicles through and

1 civilians that lived there. That was my job.

2 Q Now, in your testimony earlier on direct examination, you
3 testified that you had given a description to Steve about your
4 interactions and your encounters with the water on Highway 76
5 earlier that day. Do you recall saying that?

6 A Yes.

7 Q You did not tell that to Lieutenant Howell on
8 September 19th, 2019, did you?

9 A No.

10 Q So this conversation that happened where you supposedly
11 told Mr. Flood specifically about the danger of where the
12 accident occurred, you didn't tell that to Lieutenant Howell
13 the day after it occurred?

14 A I didn't tell him anything about where the accident
15 occurred because what I explained to the officer was on the
16 other side of the river, not where you are talking about.

17 Q That's not what I'm asking. What I'm asking you is, did
18 you relay to Lieutenant Howell this conversation that you say
19 you had with Steve Flood regarding your earlier encounters
20 with water around the area where the accident occurred?

21 A Yes.

22 Q You told that to Lieutenant --

23 A No, I didn't.

24 Q You did not.

25 All right. Did you convey it to him at some later point?

1 **A** Yes, when he called me.

2 **Q** It was about a month, a month and a half later; right?

3 **A** I don't know the exact time.

4 **Q** Does that sound about right?

5 **A** I don't know.

6 **Q** Okay. Your testimony is that that was -- that somehow
7 you recalled it a month, month and a half or so later; is that
8 right?

9 **A** Yes.

10 **Q** And you were referencing that conversation, according to
11 what you relayed to Lieutenant Howell a month or so later, was
12 that you had discussed your high-water vehicle; is that right?

13 **A** Yes.

14 MR. BOUCHETTE: Your Honor, matter of law.

15 BENCH CONFERENCE

16 (The following bench conference was held outside the hearing
17 of the jury and others.)

18 MR. BOUCHETTE: I think now, at this point, I've shown
19 some inconsistent testimony. I do intend to impeach him with
20 what he said in his -- a very narrow section of his
21 deposition, because he denied having talked about the
22 high-water vehicles in his deposition.

23 MR. CLEMENTS: I'm going to object to anything about a
24 deposition.

25 THE COURT: He can impeach him by deposition, can't he?

1 Prior inconsistent statements. He's on the stand, testifying.

2 MR. CLEMENTS: But I asked for discovery a long time ago,
3 and none of that's been provided to me until a minute ago.

4 MR. BOUCHETTE: Two things. One, I fully anticipated him
5 to tell the truth and didn't think I would need it. Again,
6 it's for impeachment purposes. So if we were to introduce it
7 in our case in chief, then, yeah, it probably would be -- that
8 would probably be true. But this is strictly -- he's given
9 testimony. I've had to react to what he said. And, now, I've
10 got to go back to --

11 MR. CLEMENTS: He's got Stephen Howell's interview with
12 him that's typed up and he can give him. He's got that he can
13 impeach him with. But I don't think --

14 MR. BOUCHETTE: Can't impeach him with somebody else's
15 report. I can only impeach him with his words and what his
16 words --

17 MR. CLEMENTS: Yeah, but you can ask him -- you can tell
18 him, Lieutenant this or that.

19 MR. BOUCHETTE: Which I have. And so he says one thing
20 close to the incident. He then comes back and supplements it,
21 and he says that that's truthful. I wanted to introduce
22 subsequent testimony where he is in a deposition and says
23 something that I believe to be inconsistent with what he just
24 said.

25 THE COURT: The deposition would show it's inconsistent?

1 MR. BOUCHETTE: We'd like to put it on the -- yes, I do.
2 I can show you what I've --

3 THE COURT: Do you want to look at it real quick?

4 MR. CLEMENTS: I got it, and it's not something you can
5 look at real quick. It's certainly not --

6 THE COURT: Well, the question should be.

7 MR. BOUCHETTE: Yeah. I mean, that's what I intend to go
8 through, would be fairly quick. So I'd be happy to take a
9 break or --

10 THE COURT: Shouldn't be only two questions at the most,
11 I would assume.

12 MR. BOUCHETTE: That's right, yeah.

13 THE COURT: For the deposition.

14 MR. BOUCHETTE: That's correct.

15 MR. CLEMENTS: I just -- he's being sandbagged.

16 MR. BOUCHETTE: I don't agree with that. I don't agree
17 he's being sandbagged at all. I mean, you know, the lawsuit's
18 been there. He's had equal access to lawyers and everybody
19 else. And, you know, like I said, I've not introduced it.
20 I've not referenced lawsuits in any way, shape, or form. I've
21 stayed with the Court's ruling on that, but this is one -- one
22 guy who -- this issue -- and it's a critical issue -- as to
23 what he said about what notice he put the defendant on
24 regarding the scene where the vehicle encountered trouble.

25 So, you know, I think we, in whole deference, should be

1 able to reach any credibility regarding that.

2 MR. CLEMENTS: The only depositions I would --

3 MR. SCRUGGS: If he hasn't had a chance to review over
4 what kind of discovery problem -- what kind of problems as far
5 as that goes, if they haven't had a chance to review over --

6 THE COURT: But they would give you time to look at it.
7 We can come back tomorrow if we get to it.

8 MR. CLEMENTS: He's got a flight back to Tennessee.

9 THE COURT: Do you want to take a break and look at it?

10 MR. CLEMENTS: Yeah, I will certainly take a look at it.
11 Judge, I'll just say this woefully -- we'll just woefully -- I
12 can't think of the word I'm looking for -- woefully short of
13 what I need to be able to deal with it. Number one, I was
14 only able to get a couple of depositions from the -- starting
15 with Orlando, and I provided that to them. They sent me,
16 through reciprocal discovery, said, "Oh, I didn't remember I
17 got these." Supposed to show these to the solicitor, but they
18 didn't.

19 MR. BOUCHETTE: Well, perhaps I'm wrong with this, but I
20 don't think the solicitor has provided us with any of the
21 depositions. We got the depositions from the civil lawyers
22 just to have in case --

23 MR. CLEMENTS: Probably had them before I ever had them,
24 because the last time we did a consultation (ph), I went in
25 and told you that we had that, and before, I told you we had

1 it.

2 MR. BOUCHETTE: And so I knew he had depositions.

3 Granted, I didn't keep a tally of them.

4 THE COURT: I still think it's a credible issue.

5 MR. CLEMENTS: Yeah.

6 THE COURT: And, in all fairness, you need time to review
7 it. I'll give you as long as you need.

8 MR. CLEMENTS: Well, let me review it.

9 THE COURT: Let me send the jury out. You just take your
10 time to look at it.

11 MR. CLEMENTS: Yeah.

12 THE COURT: Take your time.

13 (Open court resumes:)

14 THE COURT: All right. Members of the jury, we have to
15 take up a matter out here. If you would step into the jury
16 room, we'll be back with you in a minute.

17 (The jury exited the courtroom at 4:04 p.m.)

18 (Counsel confer off the record.)

19 MR. CLEMENTS: Your Honor, I would like to draw the
20 Court's attention to Rule 106, the remainder of or related
21 writings of statements. He's using part of it.

22 MR. BOUCHETTE: Your Honor, to the extent we're going to
23 talk about where we're going with the witness, he might not
24 need to be here.

25 THE COURT: Why don't we come over here.

1 BENCH CONFERENCE

2 (A bench conference was held off the record and outside of
3 the hearing of the jury.)

4 THE COURT: All right. That's an old book right there.

5 MR. CLEMENTS: Yeah, but it's a good one.

6 THE COURT: Jack Swerling wrote that book, didn't he?

7 MR. CLEMENTS: Yeah. Jack Swerling had somebody do it,
8 and he put his name on it.

9 THE COURT: That's right. 106, you said?

10 MR. CLEMENTS: 106.

11 THE COURT: See if I can find it. 106, okay. "Where a
12 writing or a recorded statement or a part thereof is
13 introduced by a party, an adverse party may require the
14 introduction at the time of any other part or any other
15 playing of the recorded statement which appears to be
16 considered."

17 So what do you want to do?

18 MR. CLEMENTS: I would -- I would move to have this
19 information suppressed.

20 THE COURT: Yeah, we're sitting here talking about it --

21 MR. CLEMENTS: Rule 5.

22 THE COURT: -- just a few minutes ago. The problem that
23 I have is a self-reported issue, which is the crux of the
24 case, and I hate to bump something out under a technicality
25 where it's that important in fairness.

1 MR. CLEMENTS: Well, to me --

2 THE COURT: And I wanted to give you all the time in the
3 world so you can look at it and review it and come up with
4 something else if you want. We can hold this guy over if you
5 need him.

6 MR. BOUCHETTE: And, Judge, if I may. As I read that
7 rule, I think what that pertains to is if I'm seeking the
8 writing -- the writing itself. That doesn't prevent me from
9 asking him about it, and having him refresh his recollection
10 and have him respond as to testimony. If I was to produce a
11 document with this writing, I think that's when that rule
12 starts to trigger.

13 THE COURT: Yeah.

14 MR. BOUCHETTE: Because it says a writing or recorded
15 statement introduced by a party, introduced into evidence.

16 THE COURT: That's right. You're not introducing it.

17 MR. BOUCHETTE: That's right.

18 THE COURT: You're just doing a prior inconsistent
19 statement.

20 MR. BOUCHETTE: That's correct.

21 THE COURT: I agree.

22 MR. CLEMENTS: It's being introduced by --

23 THE COURT: It's not coming into evidence. It's just
24 coming in through --

25 MR. CLEMENTS: But it's being introduced by reference

1 verbally.

2 THE COURT: And it fits the rule perfectly. Declarant
3 testifies at trial, it's subject to cross-examination
4 concerning the statement, and the statement is inconsistent.
5 So it's not even hearsay.

6 MR. CLEMENTS: Well, I wasn't arguing it was hearsay. I
7 was just arguing he's sandbagging.

8 THE COURT: I understand Rule 5.

9 MR. CLEMENTS: Yeah.

10 THE COURT: Like I said, if you need time, you got it.

11 MR. CLEMENTS: Judge, I trust you. If you're comfortable
12 with your ruling, I'm not going to kick my --

13 THE COURT: And it may not be that big of a deal. You
14 probably made it more than it --

15 MR. BOUCHETTE: I don't think it's going to be -- I think
16 it's important -- I think it's important and I think the jury
17 needs to hear it, but in the context of --

18 THE COURT: It's been admitted already, pretty much.

19 MR. BOUCHETTE: I think so. But, like I said, I'd still
20 like to -- it shouldn't take more than just a couple of
21 minutes. I've limited -- I've shown him just about seven,
22 eight, nine lines.

23 THE COURT: And that's it.

24 MR. BOUCHETTE: That's correct.

25 MR. CLEMENTS: Maybe, like, five lines.

1 THE COURT: Okay. Let's get the jury in, unless you need
2 more time, Ed. He's good.

3 (Open court resumes:)

4 THE COURT: All right. Go ahead and bring them out.

5 MR. CLEMENTS: Your Honor, one more thing we need on the
6 sidebar.

7 BENCH CONFERENCE

8 (The following bench conference was held outside the hearing
9 of the jury and others.)

10 MR. CLEMENTS: One of the major problems with me not
11 having his deposition ahead of time to go through it is the
12 fact that he can use his deposition or is using his deposition
13 to refute one statement. There's probably oodles and oodles
14 of statements in that deposition that I could use to bolster
15 testimony of this witness.

16 THE COURT: It couldn't be used because of the hearsay.
17 It has to be a prior inconsistent statement. That's the only
18 way.

19 MR. CLEMENTS: I'm talking about prior consistent
20 statements, that I could have gone down the list of all his
21 consistent statements. He could have --

22 MR. BOUCHETTE: I would agree on the narrow issue I bring
23 up about inconsistent statement, and that inconsistent
24 statement to then go back and show a prior consistent
25 statement, then you trigger it.

1 THE COURT: That's right. Then we can bring him back.

2 MR. BOUCHETTE: Judge, I also don't mind -- to the extent
3 it would help, I don't object to taking a little bit longer
4 break. I knew we took a -- take a 15-, 30-minute break and
5 have him be the last witness of the day. I'm okay with that.

6 MR. CLEMENTS: We got some other witnesses we've got to
7 put up today, and he's got transportation to go back home.

8 THE COURT: Well, we can tie him up.

9 MR. CLEMENTS: I don't want to do that. I'm going to
10 forge ahead.

11 THE COURT: It's probably more a big deal back here than
12 it is to the jury anyway.

13 (Open court resumes:)

14 BY MR. BOUCHETTE:

15 Q Mr. Eskew, going back to -- I don't want to ask the same
16 question, but since we took a break, we acknowledged that, in
17 your initial discussion with Lieutenant Howell, you did not
18 convey to him this conversation that you say you had with
19 Steve regarding your earlier encounter at the accident
20 location; correct?

21 A Correct.

22 Q Your testimony is that, subsequent to that, 30, 45 days,
23 sometime later on, you then conveyed that information; is that
24 correct?

25 A Correct.

1 Q And that information you conveyed to him was that, in
2 your conversation with Steve, you had made reference to your
3 high-water vehicle; right?

4 A Correct.

5 Q And that that high-water vehicle was used as an
6 indication of how high the water was whenever you went and
7 encountered the area where the accident location was at; is
8 that correct?

9 A Correct.

10 Q And is that truthful testimony?

11 A Yes.

12 Q All right. Now, at some point subsequent to that second
13 interview with Lieutenant Howell, did you give a deposition?

14 A Yes.

15 Q And that deposition, for members of the jury, that's
16 testimony that's under oath?

17 A Yes.

18 Q Under penalty of perjury?

19 A Yes.

20 Q Okay. And you told truthful testimony in that
21 deposition?

22 A Yes.

23 Q Okay. Handing up a copy of the transcript from that
24 deposition, Mr. Eskew. What I'd like you to do is, if you'll
25 flip to -- what you'll notice is -- each individual page is

1 numbered. If you'll turn to it for me on page 35.

2 A Mm-hmm.

3 Q Okay. All right. Now, page 35, do you see at line 10?

4 A Mm-hmm.

5 Q Okay. Now, I'd like you to read for me for line 10

6 through around line 18 for me.

7 A Do you want me to say the letter, the Q and A?

8 Q Just read it first.

9 A (Witness complies) "Okay. When you spoke to the
10 deputies at the checkpoint" --

11 Q I'm just asking you to read it at this point.

12 THE COURT: Just read it to yourself.

13 BY MR. BOUCHETTE:

14 Q Just read it to yourself to refresh your memory.

15 A Oh, okay.

16 Q And, again, that's line 10 through 18 on page 35.

17 A (Witness complies.) Mm-hmm.

18 Q So, at that deposition, were you asked if you made any
19 reference to your high-water vehicle during the conversation
20 with Mr. Flood?

21 A Yes.

22 Q Okay. And your response was no; correct?

23 A Correct.

24 Q So let me make sure I have got the timeline right.

25 September 19th, the day after this happened, the events were

1 fresh in your memory, and you did not reference this
2 conversation at all; correct?

3 A Correct.

4 Q All right. A couple of months later, you then remember
5 or supplement your testimony with Mr. Howell and say that it
6 did happen; right?

7 A Mm-hmm.

8 Q Then, on August 12th of 2021, when asked under oath,
9 under penalty of perjury, you say that you had never made
10 reference to any high-water vehicle; correct?

11 A Correct.

12 MR. BOUCHETTE: Your Honor, I do hate to do this, but I
13 do have a matter of law.

14 BENCH CONFERENCE

15 (The following bench conference was held outside the hearing
16 of the jury and others.)

17 THE COURT: Take me down what happened. The day after
18 the accident, there was no reference to what?

19 MR. BOUCHETTE: There was no reference to his
20 conversation with Steve Flood regarding his earlier encounter
21 at the accident site.

22 THE COURT: Okay.

23 MR. BOUCHETTE: All right?

24 THE COURT: Then two months later --

25 MR. CLEMENTS: He (indiscernible) that accident site.

1 MR. BOUCHETTE: His testimony was that -- was that he
2 told Steve earlier in the day he had tried to go through that
3 same area in the high-water vehicle. Right?

4 THE COURT: Mm-hmm.

5 MR. BOUCHETTE: And then, when he was telling Steve, he
6 said, "Hey, I tried to go there in this big, old truck, and I
7 couldn't make it." Right? That's what his testimony is.

8 THE COURT: Right.

9 MR. BOUCHETTE: So he does not relay that --

10 THE COURT: First conversation --

11 MR. CLEMENTS: First conversation with Steven Howell.

12 MS. DROST: The day after.

13 MR. BOUCHETTE: A couple of months later, he does. Okay?

14 Then, at least as to the issue of the high-water vehicle,
15 he says he had no discussion with him in April of '21. Okay?
16 That's what he just said.

17 MS. DROST: One hundred [verbatim].

18 MR. BOUCHETTE: Right. So, now --

19 THE COURT: So he's all over the place.

20 MR. BOUCHETTE: Well -- and, again, I've not been trying
21 to hide the ball and be truthful on this. I've now shown
22 inconsistent statements. I've now -- multiple inconsistent --
23 or at least one inconsistent statement. I think now I'm
24 allowed to talk about the motive for why that might be the
25 case.

1 THE COURT: Why?

2 MR. BOUCHETTE: Fear of civil liability.

3 MR. CLEMENTS: Either way --

4 THE COURT: -- (indiscernible; overlapping conversation)
5 done a good job of stopping there.

6 MR. CLEMENTS: The way he's characterized -- the way he's
7 characterized what's in the deposition, I would have read it a
8 different way and another explanation for it.

9 THE COURT: You can redirect. All right.

10 MR. BOUCHETTE: Thank you.

11 (Open court resumes:)

12 MR. BOUCHETTE: Court's indulgence.

13 Very briefly before I finish, Your Honor.

14 BY MR. BOUCHETTE:

15 Q I'll grab that. Thank you.

16 You encountered Mr. Flood a little before 6:00?

17 A I don't remember the exact time.

18 Q All right. About 30 minutes before the shift change?

19 A Mm-hmm.

20 THE COURT: Is that a yes?

21 A I don't know when shift change was either. It wasn't a
22 certain time.

23 BY MR. BOUCHETTE:

24 Q How long was the day's work or a day shift generally?

25 A Depending on the calls.

1 Q Did it average around 12 hours or so?

2 A I don't know.

3 Q How long was your shift the prior day?

4 A Like I said, it differs. I mean, you're asking me
5 something that I can't give you an exact answer to.

6 Q Well, you're testifying about some pretty important
7 things, and if you don't recall, that's okay, but if I'm
8 understanding you right, you're telling me that you don't even
9 recall how long your shift was that day?

10 A Uh-uh, I don't.

11 Q You don't recall how long it would have been the prior
12 day?

13 A Uh-huh.

14 Q You don't recall how long you would have normally been
15 working while you were deployed in this area?

16 A It's not a normal area. It's not like I was there the
17 whole time. I was everywhere.

18 Q No clue about that?

19 A No, not as far as time goes, no.

20 MR. BOUCHETTE: Nothing further for this witness, Your
21 Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. CLEMENTS:

25 Q Mr. Eskew, Mr. Bouchette has asked you about talking to

1 Lieutenant Howell with SLED; did he not?

2 A Yes, sir.

3 Q And you talked to him two times; is that correct?

4 A Yes, sir.

5 Q One time was right -- the day right after it happened in
6 one of the vehicles?

7 A Yes, sir.

8 Q Was that a lengthy conversation or was that a very short
9 conversation?

10 A It was short.

11 Q And then, some time later, Lieutenant Howell called you
12 back up and got you on the phone and talked to you further
13 about it and went into more detail; is that correct?

14 A Yes, sir.

15 Q And what was your understanding of his purpose in calling
16 you that second time?

17 A To ask me more questions. I'm guessing he had talked to
18 other people that were around me at that time, so it was to
19 get more clarification on what happened.

20 Q And did you cooperate with him to clarify?

21 A Yes, sir.

22 Q Is what you told him the truth?

23 A Yes, sir.

24 Q Now, a couple of years later, I just found out today that
25 there was a deposition made of you; is that correct?

1 A Yes, sir.

2 Q And Mr. Bouchette has talked to you about that, and he
3 asked you a question that you never said something, that
4 that's not exactly what it reads in this deposition, does it?

5 A No, sir.

6 Q Can you start for me right there "I heard some time."
7 Read that.

8 A Where did you say start at?

9 Q Right there. Not the bold but read that.

10 A Okay. Want me to read it out loud?

11 Q Read it out loud, yeah. Just that sentence.

12 A "I heard some time" --

13 MR. BOUCHETTE: Objection.

14 THE COURT: Why don't we refer to what page and lines
15 you're talking about, to start with.

16 MR. CLEMENTS: Okay. Page 35, line 2.

17 THE COURT: I don't think we went over line 2. We did 10
18 through 18.

19 MR. BOUCHETTE: Sidebar then.

20 BENCH CONFERENCE

21 (The following bench conference was held outside the hearing
22 of the jury and others.)

23 MR. CLEMENTS: That's exactly what he just asked him
24 about, Rule 35, this part right here.

25 THE COURT: You know an easier way to do it might be just

1 to ask him to explain himself.

2 MR. CLEMENTS: I was going to do that, but I was going to
3 put the words --

4 THE COURT: Because those were not used for the
5 impeachment. There's no prior inconsistent statement. But
6 you can get him to explain it.

7 MR. CLEMENTS: Okay.

8 THE COURT: Take your time.

9 (Open court resumes:)

10 BY MR. CLEMENTS:

11 Q Let me see if this is more palatable. Okay? Line No. 5
12 on page 35: "Okay. What is your understanding of how that
13 van got stuck?" And what was your answer?

14 A "I heard sometime later that a van did get stuck and that
15 the other LMTV was responding."

16 Q Okay. All right. What does it say right there at
17 number 7, 8, and 9? Read that for me.

18 A "I don't have any understanding. I didn't see the
19 accident nor did I see any picture or anything like that,
20 so..."

21 Q So you didn't know by that?

22 A No, sir.

23 Q And had no understanding of how the van got stuck?

24 A No, sir.

25 Q All right. Then the question was posed: "Okay. When

1 you spoke to the deputies at the checkpoint, did you say or do
2 anything to suggest that, if he went down that road and got
3 stuck, that someone would come rescue them in a high-water
4 vehicle"?

5 **A** No, sir.

6 **Q** Had you ever told Stephen Howell or anybody that you told
7 them that someone would come rescue them in a high-water
8 vehicle?

9 **A** No, sir.

10 **Q** You never said that, did you?

11 **A** No, sir.

12 **Q** And your answer, of course, then, was no.

13 **A** Correct, sir.

14 **Q** And then the question was, "Did you make any reference to
15 your high-water vehicle?"

16 **A** Correct.

17 **Q** And the answer was, "No"?

18 **A** Yes, sir.

19 **Q** Were you answering that question in the context of
20 telling somebody that somebody would go help them and rescue
21 them?

22 **A** Yes, sir.

23 **Q** That's the context you were telling them with?

24 **A** Yes, sir.

25 **Q** So, let me ask you this: Did you tell them that you

1 couldn't get through with your vehicle?

2 A Correct, sir.

3 Q You stand by that, that that's what you said?

4 A Yes, sir.

5 Q And your response here was about telling them, if they
6 went down the road and got stuck, that someone would come
7 rescue them in a high-water vehicle. That's something you
8 never said; is that right?

9 A Correct, sir.

10 Q Okay. That's all I got for you. Thank you, sir.

11 MR. BOUCHETTE: Very briefly, Your Honor.

12 RE-CROSS-EXAMINATION

13 BY MR. BOUCHETTE:

14 Q I hate to keep going back, but I'll ask that you flip
15 back to page 35. It was mentioned to you a second ago. You
16 were asked -- I'm sorry; are you there?

17 A Yeah, I'm right here.

18 Q All right. The question: "Okay. When you spoke to the
19 deputies at the checkpoint, did you say or do anything to
20 suggest, if they went down that road and got stuck, that
21 someone would come rescue them in a high-water vehicle?"

22 Your response was?

23 A "No."

24 Q Now, the next question: "Did you make any reference to
25 your high-water vehicle?"

1 And your response?

2 **A** "No."

3 **Q** Okay.

4 MR. BOUCHETTE: No further questions, Your Honor.

5 THE COURT: All right. Are you done?

6 All right. You can have a good day.

7 MR. CLEMENTS: We would ask Officer Eskew to be released
8 from his subpoena.

9 And thank you for coming all this way.

10 MR. BOUCHETTE: Same, Your Honor.

11 THE COURT: All right. You have a good day.

12 THE WITNESS: Thank you.

13 THE COURT: If you'll call your next witness.

14 MR. CLEMENT: Your Honor, we've got one witness we'll
15 take out of order because of prior commitments with their job,
16 and that would be Captain Leach of the South Carolina Highway
17 Patrol MAIT Unit.

18 CAPTAIN JEREMY LEACH,

19 after having been duly sworn, was examined and testified
20 to as follows:

21 DIRECT EXAMINATION

22 BY MR. CLEMENTS:

23 **Q** Good afternoon, Captain Leach.

24 **A** Good afternoon.

25 **Q** Would you please introduce yourself to the jury and tell

1 us how to spell your name for the court reporter.

2 **A** My name is Jeremy Leach. It's J-e-r-e-m-y L-e-a-c-h.

3 I'm with the South Carolina Highway Patrol MAIT Unit.

4 **Q** How long have you been with the South Carolina patrol?

5 **A** I have been with the patrol since 2000.

6 **Q** How long have you been with the MAIT team?

7 **A** Since 2009.

8 **Q** Can you please explain to this jury what the MAIT team
9 is, who is it comprised of, and what you do?

10 **A** Yes, sir. We are a -- MAIT stands for Multidisciplinary
11 Accident Investigation Team. We are the investigative branch
12 of the highway patrol. We investigate and reconstruct felony
13 DUI with deaths, hit and run with deaths, the more serious and
14 severe collisions.

15 With what we do, being a state investigative unit, we
16 also get involved with a lot of other police departments in
17 assisting with a variety of different criminal investigations,
18 missing persons, homicides, pretty well everything.
19 Shootings. If it's generally -- if they can tie it to a
20 vehicle in some way or another, that they have a specific
21 issue with a vehicle, trying to identify a vehicle,
22 information from a vehicle, we get a phone call and are asked
23 to help.

24 **Q** Now, did you get called out on a death that happened in a
25 van on September 18th, 2018 --

1 **A** Yes, sir.

2 **Q** -- that resulted in a drowning?

3 **A** Yes, sir.

4 **Q** And what participation did you-all take in that
5 investigation?

6 **A** The vehicles are equipped with what are referred to as
7 air bag control modules. It's a computer sensing equipment in
8 a vehicle that decides whether or not to deploy air bags in a
9 crash. We were called by SLED, asked to come image the air
10 bag control module from the sheriff's van to determine if
11 there was any data on the particular model.

12 **Q** Did you -- were you able to -- I'll think about my next
13 question, and you might have already answered this. Did you
14 explain to them how y'all examined electronic equipment
15 related to vehicles?

16 **A** Yes, sir. They're familiar -- we have assisted SLED in
17 the past in a number of different cases. So they were aware
18 that we had the ability to do this, which is why they reached
19 out and called us.

20 **Q** And what did you do to do that?

21 **A** Because this vehicle had been submerged in water, that
22 generally compromises the electronics within the vehicle. We
23 went actually to the van and removed that particular module.

24 **Q** On the site?

25 **A** No, at Grant's Wrecker Service in Marion --

1 Q Okay.

2 A -- after the vehicle had been removed from the site.
3 Went and removed the actual module itself to allow it to try
4 to dry out so that we could hook up our equipment to it to see
5 if it would image.

6 Q Were you able to do that?

7 A We were able to hook up to it and attempt to image it,
8 but the module itself had been destroyed from being submerged
9 in the water.

10 Q Okay. And you tried that back then. Have you tried it
11 any time more recently?

12 A We tried it, actually, on May 2nd. We kept the module in
13 our central evidence facility, so I had actually tried at the
14 beginning of the month, and it still does not work.

15 Q So there's no evidence or information you gained from
16 that?

17 A That's correct.

18 Q Please answer any questions that Mr. Bouchette may have.

19 CROSS-EXAMINATION

20 BY MR. BOUCHETTE:

21 Q So you weren't able to get anything from the vehicle?

22 A That's correct.

23 MR. BOUCHETTE: That's all I have.

24 THE COURT: You may have a good day.

25 MR. CLEMENTS: May he be released from his subpoena, Your

1 Honor.

2 THE COURT: Any objections?

3 MR. BOUCHETTE: No.

4 MR. CLEMENT: Thank you, Captain.

5 Your Honor, next, we'd like to call Deputy Eddie Page.

6 DEPUTY EDDIE PAGE,

7 after having been duly sworn, was examined and testified

8 to as follows:

9 DIRECT EXAMINATION

10 BY MR. CLEMENTS:

11 Q Good afternoon, Deputy Page.

12 A Good afternoon.

13 Q Today must be purple day.

14 A Well, my wife laid out for me what to wear this morning.

15 Q She did a good job.

16 Can you tell us where you work, where you're from, and
17 how long you have been here and been so employed?

18 A I work with Marion County Sheriff's Department. I'm from
19 Marion County, and I have been employed with the sheriff's
20 department about four years.

21 Q And, before then, what kind of law enforcement service
22 were you giving to this community?

23 A I retired from the highway patrol, and I worked for a few
24 years with Mullins P.D. after my retirement before joining the
25 sheriff's department.

1 Q Just can't get enough, can you?

2 A Got bills to pay.

3 Q Yeah. Now, you were out serving the citizens on
4 September 18th, 2018?

5 A That's correct.

6 Q Can you tell us what was going on then?

7 A We were having a pretty catastrophic flood at the time.

8 Q And Sheriff Wallace assigned you to work with who?

9 A I had two MPs with me. And we were assigned to a
10 high-water rescue vehicle.

11 Q Do you know their names?

12 A Eskew was one, and -- hold on a second. Eskew and maybe
13 the other one --

14 Q First name, Desmond?

15 A Jenkins. Eskew and Jenkins.

16 Q Did y'all have any kind of special equipment y'all were
17 working with?

18 A Just we were assigned to a high-water vehicle.

19 Q High-water vehicle?

20 A Yeah.

21 Q And what were you-all doing with that high-water vehicle?

22 A We would attempt rescue -- do rescue attempts if we
23 needed to anywhere where water was rising, if we felt
24 comfortable with going in and doing our patrols or helping and
25 assisting in any way.

- 1 Q Are you familiar with Nichols?
- 2 A Yes, I am.
- 3 Q Are you familiar pretty much with the topography of that
- 4 land?
- 5 A Yes, I am.
- 6 Q What two rivers are there in Nichols?
- 7 A Got Lumber River and the Little Pee Dee River.
- 8 Q Okay. Earlier, had you tried to cross Highway 76 between
- 9 Mullins and Nichols in that vehicle?
- 10 A Yes, we did.
- 11 Q And who was driving the vehicle?
- 12 A I believe it was MP Eskew.
- 13 Q And how about MP Jenkins, where was he?
- 14 A He was -- we were sitting inside the vehicle. I can't
- 15 tell you exactly where. He was in the back or I was in the
- 16 back or front. I couldn't tell you. I think he was in the
- 17 back.
- 18 Q What were you looking for?
- 19 Well, wait a minute, that's a little bit early.
- 20 A Okay.
- 21 Q Y'all got on the bridge and got on that road, 76; is that
- 22 correct?
- 23 A Correct.
- 24 Q And then what did you feel in the high-water vehicle?
- 25 A I really couldn't feel a whole lot. I wasn't driving it.

1 But as we were going in more, it kept getting deeper and
2 deeper. And I talked with Eskew. There was no need in going
3 that way. It would have taken us a little bit longer to go
4 the 917 route to get to our post, and I said, "Let's just
5 don't try it. Let's back back out and let's go the 917 route
6 to get to Riverside."

7 Q Was the van moving on you?

8 A I could hear the water running. I really couldn't feel a
9 whole lot. This is a pretty good-size vehicle. The water was
10 rushing up against the side of it pretty hard.

11 Q Okay. Were y'all able to drive straight out of there or
12 did you have to back up and back out?

13 A When we were backing back out, we were -- me and the
14 other MP were watching the sides to make sure he stayed in the
15 roadway, and he did kept veering over, and I kept telling him
16 get over, get over, get over.

17 Q Was that due to the movement, you found out, or not?

18 A Found out later on that's what it was. We didn't talk
19 about it then, but later on, while we were talking, he said it
20 was due to the movement of the water.

21 Q And where were you looking for road lines at? From the
22 back or from the front or from the side?

23 A From the side.

24 Q Okay. And how about MP Jenkins?

25 A He was probably looking on the other side.

1 Q Okay. Where did y'all end up being posted?

2 A At the intersection of 76 and Highway 9, what they call
3 Riverside.

4 Q Got any idea why y'all were posted there?

5 A Because it's convenient to turn vehicles around and not
6 let them go into the flood waters. There's nowhere else past
7 that point to turn anybody around.

8 Q I'm going to ask if you can step down a moment. You're
9 talking about 18-wheelers and vehicles of that nature; right?

10 A Correct, yeah.

11 Q Let me give you my fancy pointer with the numbers on it.

12 A Okay.

13 Q Can you show us where you were close to?

14 A We were right here in this intersection.

15 Q Okay. And that's close to where? The mayor's office?

16 A Yes. Right here is Battle Oil Company.

17 Q Did he come and see you while you've over there at that
18 post?

19 A Yes, he did.

20 Q Okay. Now, did y'all stay here right in the middle of
21 the road or did you back up a ways?

22 A We got right there in that intersection probably on the
23 Nichols side. That way, we could turn people around.

24 Q Have ever heard of the term "concrete islands"?

25 A Yes, sir.

- 1 Q Is that where you were?
- 2 A Yes, sir. I believe we were parked on top of the
3 concrete islands, if I remember correctly.
- 4 Q And it was hot that day, wasn't it?
- 5 A Yeah, it was. It was.
- 6 Q Y'all were encountering traffic that was coming
7 through -- coming and going?
- 8 A Mostly, it was trying to come in. There was a few
9 vehicles coming out that were trying to get places.
- 10 Q Yes, sir. Now, did y'all take turns that day?
- 11 A Sitting in the roadway, correct, yeah.
- 12 Q Okay. Can you point out for us where you -- just a
13 little bit explain about y'all and the high-water vehicle and
14 y'all had to back it out. Do you see that on that map?
- 15 A Yes. We were back up this way. We were right there on
16 the bridge at --
- 17 Q Little Pee Dee River?
- 18 A Yeah. We had just gone across the bridge and then we
19 started backing back out.
- 20 Q All right. Thank you. You can have a seat.
21 Did you have occasion to see Lawson Battle?
- 22 A Yes, I did.
- 23 Q Did you have occasion to see Will Duncan? Don't know?
- 24 A I don't know.
- 25 Q It's been a number of years, hasn't it?

1 **A** It has.

2 **Q** Okay. Now, did y'all get any instructions or requests
3 from Mayor Battle?

4 **A** Mayor Battle just asked if we could to let the people
5 that were going to the properties to get their valuables, kind
6 of -- if we could let them go down there and do what they
7 could.

8 **Q** They go in by you. Which way were they supposed to come
9 back out?

10 **A** We were advising them to come back out the same way.

11 **Q** Okay. And that was due to what?

12 **A** Because the water was rising on that other side of us.

13 **Q** How about official vehicles like law enforcement, fire
14 department, any kind of sheriff's vehicles or anything like
15 that? What did you do with those?

16 **A** We would stop them and talk to them. If they were on a
17 mission, you know, we'd let them go on through.

18 **Q** If they weren't on a mission, would you give them any
19 type of warning?

20 **A** Oh, yeah. They were given warnings anyway.

21 **Q** What was that?

22 **A** That the water was rising fairly quickly, and it wouldn't
23 be probably much longer that the town of Nichols would be shut
24 down.

25 **Q** And this was pretty much all through the day?

- 1 **A** Yes, sir.
- 2 **Q** Did you encounter or have occasion to see a Horry County
3 Sheriff's Office van come up?
- 4 **A** Yes, I did.
- 5 **Q** Were you standing outside then or in the vehicle or do
6 you remember?
- 7 **A** I was inside the high-water vehicle.
- 8 **Q** Running air-conditioning?
- 9 **A** Probably was, yeah.
- 10 **Q** I know I would have been.
- 11 **A** Yeah, I think we were.
- 12 **Q** When you saw that vehicle drive over, with Horry County
13 posted on the side of it, did you have any conversations with
14 the gentleman driving the car?
- 15 **A** No, I didn't.
- 16 **Q** Could you tell if anybody else was in there with him?
- 17 **A** No, I couldn't.
- 18 **Q** Were you able to hear any conversation between him and
19 Zack?
- 20 **A** I heard MP Eskew --
- 21 MR. BOUCHETTE: Objection to the hearsay, Your Honor.
- 22 THE COURT: What was the question?
- 23 MR. CLEMENTS: If he heard or could hear any
24 conversations between Zachery Eskew and Mr. Flood.
- 25 THE COURT: Only what they said, if you heard any

1 conversations.

2 THE WITNESS: Yeah, I did.

3 THE COURT: Go ahead and answer.

4 A I heard MP Eskew --

5 MR. BOUCHETTE: Objection.

6 THE COURT: Not what they said.

7 A I heard M --

8 THE WITNESS: Go ahead?

9 THE COURT: Don't say what they said.

10 BY MR. CLEMENTS:

11 Q Don't say what they said, but I can tell who you can tell
12 me what he said, and that is Mr. Flood. Tell me what he said.

13 A I couldn't hear a word Mr. Flood said.

14 Q Okay. Was he there long?

15 A Very short period.

16 Q Did he go down towards where the flood waters were?

17 A Yes. He took off and went down that direction.

18 Q Is that the last time you saw him?

19 A Yes, it was.

20 Q Let me ask you about the people in Nichols. Do you know
21 most of them?

22 A I know a lot of them.

23 Q So did you encounter a lot of the people you know coming
24 through the checkpoint?

25 A Yes, sir.

- 1 Q So you knew who they were and where they were going, and
2 it was legitimate; right?
- 3 A Yes, sir.
- 4 Q Okay. And the other people you didn't know, what did you
5 do?
- 6 A Well, a lot of other people were tourists coming back
7 from the beach and trying to get back to 95 or something, and
8 we were just turning them around and telling them to pull the
9 Google Maps up and try get around the best they could.
- 10 Q What was your understanding of what the van driver wanted
11 to do, if you know at all?
- 12 A I can tell you what Eskew told me. That's all I know.
- 13 MR. BOUCHETTE: Objection.
- 14 BY MR. CLEMENTS:
- 15 Q I don't think we can do that.
- 16 A Sorry?
- 17 Q I don't think we can do that.
- 18 A Because I asked him, and then he told me.
- 19 Q Let me ask you this: Was it anything different much to
20 what other people were doing?
- 21 A Other public safety?
- 22 Q Yes.
- 23 A No. We were allowing public safety. They were on
24 missions. They were going in and out.
- 25 Q Okay. Did you know any mission that Mr. Flood might have

1 been on?

2 **A** I have no -- no, I don't.

3 **Q** Do you know if there was anybody else in the van with
4 him?

5 **A** I have no idea. All I saw was the profile of the driver.
6 And I was probably 6 foot up in the air -- 6 to 8 feet up in
7 the air. We were way up in the air, and all I could do was
8 look down and see his profile.

9 **Q** All right.

10 MR. CLEMENTS: Beg the Court's indulgence for a moment.

11 BY MR. CLEMENTS:

12 **Q** Deputy Page, would you please answer any questions the
13 defense may have.

14 MR. BOUCHETTE: Very briefly Your Honor.

15 THE COURT: Go ahead.

16 CROSS-EXAMINATION

17 BY MR. BOUCHETTE:

18 **Q** I want to make sure -- Deputy Page, you didn't have a
19 conversation with Mr. Flood?

20 **A** No, I didn't.

21 **Q** The person talking to him was a fellow from out of town,
22 Mr. Eskew?

23 **A** The MP.

24 **Q** All right.

25 MR. BOUCHETTE: I don't have any further questions for

1 this witness, Your Honor.

2 THE COURT: All right.

3 MR. CLEMENTS: Your Honor, we'd like to ask him to be
4 excused from his subpoenas.

5 THE COURT: Any objections?

6 MR. BOUCHETTE: No.

7 THE COURT: You have a good day.

8 MR. CLEMENTS: And we would like to call Mr. Desmond
9 Jenkins.

10 DESMOND JENKINS,

11 after having been duly sworn, was examined and testified
12 to as follows:

13 DIRECT EXAMINATION

14 BY MR. CLEMENTS:

15 Q Good afternoon.

16 A Good afternoon, sir.

17 Q Please tell us your name and spell your name for us if
18 you may, please.

19 A Desmond Jenkins. D-e-s-m-o-n-d, J-e-n-k-i-n-s.

20 Q All right. And, Mr. Jenkins, are you currently serving
21 in any branch of the military?

22 A Yes. U.S. Army.

23 Q Tell us about that.

24 A I went active duty about two months ago. I'm currently
25 right now in Fort Story. That's Virginia Beach, so I do serve

1 in the Army.

2 Q And what position do you serve on the sand?

3 A Well, I am -- I'm a staff sergeant, so I'm a section
4 chief. So I have about 15 to 30 young soldiers underneath me.

5 Q And you train them; right?

6 A Yes, sir, to an extent.

7 Q All right. Were you serving in the National Guard back
8 in September of 2018?

9 A Yes, sir, I was.

10 Q And did you have occasion to be in South Carolina on
11 September 18th, 2018?

12 A Yes, sir, I was.

13 Q Why were you in South Carolina?

14 A To conduct a mission to help with this flood.

15 Q Were you -- what town were you in on the 18th of
16 September?

17 A What town? I guess Nichols in Marion County.

18 Q Okay. And who were you assigned to work with that day?

19 A The officer that just came up. I don't know his name.

20 Q Officer Page?

21 A Roger that, sir.

22 Q And who else? Anybody else?

23 A And I think he was a -- Private Eskew or Specialist Eskew
24 at the time.

25 Q Okay. And what did y'all do that day mostly?

- 1 **A** Mostly, that day, we stood by a barrier to not let anyone
2 in Nichols.
- 3 **Q** And why was that?
- 4 **A** What was that, sir?
- 5 **Q** Why was that y'all kept people from coming in?
- 6 **A** Oh, why? I believe how bad it was going to get in the
7 town of Nichols, how the water was rising.
- 8 **Q** And did you let people in -- other people?
- 9 **A** Yes, sir. People who live -- residents there, to get
10 their belongings and come out, and also any emergency vehicles
11 that need to go in there.
- 12 **Q** Okay. And were you aware at all of what the water
13 situation was like or looked like?
- 14 **A** Not at that time when we were staged there.
- 15 **Q** Were you-all staged at the high ground part?
- 16 **A** Yes, sir.
- 17 **Q** How long were you there that day?
- 18 **A** I would say a couple of hours.
- 19 **Q** Did you ever encounter or remember talking to Mayor
20 Battle from Nichols?
- 21 **A** Yes, sir.
- 22 **Q** Okay. Did he have any special requests or something he
23 needed you to do?
- 24 **A** Just let any emergency vehicles through and, also, if any
25 residents need to get any belongings, they have to show their

1 ID to make sure that they do live there, and then tell them to
2 come back out the same direction.

3 Q Do you recall having a Horry County sheriff's office van
4 pull up?

5 A Roger that, sir.

6 Q Were you in the vehicle or outside the vehicle?

7 A I was outside, on the right-hand side. Basically, the
8 passenger side, so I did not have any contact.

9 Q Did you ultimately climb back up in the vehicle?

10 A Yes, sir.

11 Q Before Mr. Flood left?

12 A Yes, sir.

13 Q What did Flood tell you, if anything, about what they
14 were doing?

15 A He didn't -- I didn't speak to him, so I didn't -- I
16 didn't know, sir.

17 Q Did you notice if he had passengers they were
18 transporting?

19 A No, sir.

20 Q Did you notice if he had another law enforcement officer
21 riding with him?

22 A Negative. We were sitting too high, so I couldn't see
23 the passenger side of the vehicle.

24 Q Okay. You're not aware of any conversations that was
25 held between Zachery and Mr. Flood?

1 **A** The only thing I --

2 MR. BOUCHETTE: Objection to the hearsay, Your Honor.

3 THE COURT: Sustained.

4 BY MR. CLEMENTS:

5 **Q** Don't tell me what they said, but who did you hear
6 talking?

7 **A** Officer Flood.

8 **Q** Okay.

9 MR. CLEMENTS: Your Honor, I think Mr. Flood [verbatim]
10 can answer what he said.

11 MR. BOUCHETTE: I think he can -- if he's only going to
12 testify as to what Mr. Flood said, that's true, but not what
13 anybody else said.

14 THE COURT: Right.

15 BY MR. CLEMENTS:

16 **Q** Can you tell me what Mr. Flood said?

17 **A** He just wanted to see how bad it had gotten.

18 **Q** So kind of sightseeing?

19 **A** I guess so, the way I took it.

20 **Q** Any other indication he gave of being on a mission of any
21 sort?

22 **A** No, sir.

23 MR. CLEMENTS: Beg the Court's indulgence one moment.

24 BY MR. CLEMENTS:

25 **Q** Will you please answer any questions the defense may

1 have.

2 A Yes, sir.

3 Q Thank you so much for coming --

4 A Yes, sir.

5 Q -- and for serving our country.

6 A Cool. Thank you for your support.

7 MR. BOUCHETTE: Court's indulgence.

8 CROSS-EXAMINATION

9 BY MR. BOUCHETTE:

10 Q Very briefly. You didn't engage Mr. Flood in a
11 conversation at this time, did you?

12 A Negative, sir.

13 Q You didn't have any conversation with him at all?

14 A Negative, sir.

15 Q You were up in the vehicle at least for part of the
16 conversation?

17 A Yes, sir.

18 Q And they were on the outside of the vehicle at some point
19 later on?

20 A Yes, sir.

21 MR. BOUCHETTE: I don't have any further questions for
22 this witness.

23 THE COURT: Any objection as to him being excused?

24 MR. BOUCHETTE: No, Your Honor.

25 MR. CLEMENTS: No. Thank you again for serving our

1 country.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Have a good day.

4 MR. CLEMENTS: Beg the Court's indulgence for a moment.

5 Your Honor, may we approach?

6 THE COURT: Yes.

7 BENCH CONFERENCE

8 (The following bench conference was held outside the hearing
9 of the jury and others.)

10 MR. CLEMENTS: We've got Ms. Burghard. She's here from
11 Alabama, but she said she's fine to go and wait until
12 tomorrow. I didn't know what y'all wanted to do. I'm getting
13 a little tired, but I can go another witness.

14 THE COURT: We can do anything you want to do.

15 MR. BOUCHETTE: I'm a little tired too.

16 MS. DROST: I'm a little hungry.

17 MR. BOUCHETTE: Yeah. All things being equal, I'd just
18 assume -- if that doesn't -- if that's all right with you.

19 THE COURT: Just put her off until tomorrow?

20 MR. CLEMENTS: Yeah.

21 MR. BOUCHETTE: Yeah, that'd be great.

22 THE COURT: Want to call it a day?

23 MR. CLEMENTS: Let's call it a day.

24 THE COURT: And then what do you want to do tomorrow?

25 You've got these witnesses --

1 MR. CLEMENTS: I'm going to start off -- I'm going to
2 call them and pull those off a little bit. But I've got
3 Rhiannon and Burghard. I could really put them any place. I
4 can put them after some witnesses or before some witnesses.
5 That's what I've got to figure out when we leave out of here.

6 THE COURT: All right. Is this going to be a long
7 witness?

8 MR. CLEMENTS: Stephen Howell?

9 THE COURT: Yeah.

10 MR. CLEMENTS: He's going to be my clean-up man. It
11 depends on how much of a mess Jarrett makes.

12 MR. BOUCHETTE: I anticipate --

13 THE COURT: When do you want to go out?

14 MR. BOUCHETTE: I anticipate a big mess, Judge. I think
15 it might take a little while.

16 MS. DROST: Quite a while.

17 THE COURT: When do you want to go out and see the scene?

18 MR. CLEMENTS: I guess after we finish putting up all the
19 testimony.

20 THE COURT: Tomorrow?

21 MR. CLEMENTS: If we got all the testimony done. I'll do
22 whatever you say.

23 THE COURT: Because I know you had a funeral Thursday.

24 MR. CLEMENTS: At 3:00, yeah.

25 THE COURT: Okay. All right. Well, good. So we're done

1 for the day.

2 MR. CLEMENTS: Yes, sir.

3 THE COURT: Go get some food.

4 MS. DROST: Thank you.

5 (Open court resumes:)

6 THE COURT: All right. Members of the jury, we're going
7 to break for the day. Do not discuss the case or watch the
8 news. Have a good night, and I'll see you in the morning at
9 9:30.

10 (The jury exited the courtroom at 4:55 p.m.)

11 THE COURT: See you at 9:30 in the morning. Have a good
12 night.

13 (At 4:55 p.m., the trial was adjourned until Wednesday,
14 May 18, 2022, at 9:30 a.m.)

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
)
 2 COUNTY OF MARION) TRANSCRIPT OF RECORD
)
 3 -----x
 4 STATE OF SOUTH CAROLINA,)
)
 5 Plaintiff,)
)
 6 vs.) Case No. 2019-GS-33-00239
)
 7 STEPHEN WILLIAM FLOOD,)
)
 8 Defendant.)
 9 -----x

May 18, 2022

JURY TRIAL - VOLUME 3 of 4

B E F O R E:

The Honorable William H. Seals, Jr., Presiding Judge;
and a jury.

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

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John Jupertinger, Esq.
Solicitors for the Plaintiff/State

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Attorneys for the Defendant

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

1	<u>I N D E X</u>	
2	<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
3		
4	David Dorio	
5	Direct Examination By Mr. Clements	400
6	Cross-Examination By Mr. Bouchette	411
7	Matthew Rice	
8	Direct Examination By Mr. Clements	413
9	Cross-Examination By Mr. Bouchette	419
10	Hannah Burghard	
11	Direct Examination By Mr. Clements	421
12	Cross-Examination By Mr. Bouchette	426
13	Redirect Examination By Mr. Clements	430
14	Dr. Thomas Beaver	
15	Direct Examination By Mr. Jepertinger	432
16	Cross-Examination By Mr. Bouchette	441
17	Battalion Chief Alan Starnes	
18	Direct Examination By Mr. Clements	443
19	Cross-Examination By Mr. Bouchette	453
20	Redirect Examination By Mr. Clements	459
21	Melinda Worley	
22	Direct Examination By Mr. Clements	460
23	Cross-Examination By Mr. Bouchette	464
24	Redirect Examination By Mr. Clements	465
25		

1	David Britton "Britt" Dove	
2	Direct Examination By Mr. Clements	466
3	Rhiannon Herring	
4	Direct Examination By Mr. Clements	471
5	Cross-Examination By Mr. Bouchette	477
6	Lt. Stephen Howell	
7	Direct Examination By Mr. Clements	486
8	Cross-Examination By Mr. Bouchette	509
9	Redirect Examination By Mr. Clements	538
10	Recross-Examination By Mr. Bouchette	539
11	Directed Verdict Motion	158
12	Defendant's Rights	163
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
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E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

State's Exhibit

No.	Description	ID.	REC'D
9A	Photograph from Alan Starnes		452
9B	Photograph from Alan Starnes		452
10	Drone Video		407

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

2 (The proceedings commenced at 9:46 a.m.)

3 THE COURT: Is the State ready to proceed?

4 MR. CLEMENTS: We are, Your Honor.

5 THE COURT: Defense?

6 MR. BOUCHETTE: Your Honor, we have a couple of matters
7 for the Court. The first is really kind of an administrative
8 matter. We had an investigator, Mr. Jay Stephens, present in
9 the courtroom today. He's been present in, I think, just one
10 other hearing. He's never sat with us at counsel table or
11 otherwise been seen by the jury and interacted with us as far
12 as I'm aware.

13 Prior to the start of today, he did inform me that, as he
14 was coming into the parking lot, that he was parked next to
15 one of the jurors, and I think they were exiting about the
16 same time, as I understand it. There was a very brief
17 conversation. I believe the juror referenced that she had
18 wished she could bring her dog or animal or something, and I
19 think showed him a photograph of whatever that was, and that
20 was pretty much the extent of the conversation.

21 I mentioned it to Mr. Clements. I don't think either of
22 us see an issue, but we just bring that to the Court's
23 attention. He is here.

24 Let the record reflect that there is not a distinguishing
25 seating area between victims' side or defendant's side in

1 terms of the witness. During the course of this, I want to
2 say he was here yesterday briefly at some point during the
3 day, I think just in the morning session. He's never been at
4 the bar or seated with counsel. I don't think any inference
5 would be drawn, but I'd give that up to Your Honor to do
6 whatever -- what, if anything, that you'd like to do.

7 THE COURT: Whose witness is he: The State's or your
8 witness?

9 MR. BOUCHETTE: He not a witness. He's our investigator.

10 THE COURT: He's your investigator?

11 MR. BOUCHETTE: That's correct.

12 THE COURT: Do you have a problem with that,
13 Mr. Clements?

14 MR. CLEMENTS: I'm sitting here playing ping-pong in my
15 brain. If we address it and draw attention to it, that might
16 be worse than if we just ignore it. So I'll just, Your Honor,
17 leave it to your sound discretion.

18 THE COURT: Do you want him to tell us what happened and,
19 that way, we can put it on the record?

20 MR. BOUCHETTE: I've heard it. If the Court would like
21 to --

22 THE COURT: Where is he? Have him come up here?

23 MR. BOUCHETTE: He's right here.

24 THE COURT: Come on up.

25 MR. BOUCHETTE: Step up here, and she'll swear you in.

1 THE COURT: If you would. Go ahead.

2 JATHER STEVENS,

3 after having been duly sworn, was examined and testified
4 to as follows:

5 THE COURT: All right. Why don't you give us your name.

6 THE WITNESS: First name is actually Jather. Last name,
7 Stevens. S-t-e-v-e-n-s.

8 THE COURT: All right. Tell us what happened.

9 THE WITNESS: I pulled in this morning. It's like a dirt
10 lot behind the courthouse. There's a van backed in over
11 there. I pulled in straight. I got out, opened up the --
12 it's a four-door pickup truck. Opened up the back door and
13 was putting my jacket on.

14 A lady in the van next to me opened up the door and said,
15 "Hey, isn't he cute?" And I kind of looked at her, and she
16 showed me her phone. It was a little dog in a picture on the
17 phone. And she said, "I wish I could have brought him to
18 court with me today. He wanted to be here but he can't. They
19 won't let him in."

20 I said, "Oh, yeah, he's cute."

21 And then I walked to the other side of my truck to try to
22 get some distance. I recognized her because of her
23 sunglasses, but I don't think she recognized me at all.

24 I walked to the other side of my truck and basically
25 waited to see if she was going to go in or I could go, because

1 I didn't want to walk in with her. She was doing something in
2 her vehicle, so I went ahead and came in and was seated over
3 there. She came in the courtroom a short time after that.

4 THE COURT: That's all that happened?

5 THE WITNESS: That's it.

6 THE COURT: I don't have a problem with that.

7 Do you, Solicitor.

8 MR. CLEMENTS: We're good, Judge.

9 THE COURT: All right. Sounds good. Thank you.

10 Anything else?

11 MR. BOUCHETTE: The only other matter, just for
12 housekeeping, I anticipate a couple of witnesses being called
13 today: Matthew Rice and David Dorio. I anticipate them to
14 testify and try to go into sort of drone footage that
15 captures -- and this is an area where we're going to have to
16 have some objections.

17 So I think when the State is ready to get to those folks,
18 I would ask for the hearing we discussed outside the presence
19 of the jury to go through the admissibility of that video and
20 let us address those objections at that time.

21 THE COURT: All right. Anything else?

22 MR. BOUCHETTE: The other only thing is, I have spoken
23 with the solicitor. I think we have got it worked out, but
24 between the TV and the screen and the boards and all
25 yesterday, we weren't able to see the jury. I know we're

1 trying to work through that today, but I'd just ask that the
2 solicitor try to move the screen as far to my left as possible
3 so they can see us and we can see the jury.

4 MR. CLEMENTS: We're doing it, and we're working under
5 the same hardship because we can't see the jurors either.

6 THE COURT: All right. We'll deal with today.

7 All right. Thank you. You ready?

8 MR. BOUCHETTE: Yes, sir.

9 THE COURT: Go ahead and bring them out.

10 (The jury entered the courtroom at 9:50 a.m.)

11 THE COURT: Good morning. State will call your next
12 witness.

13 MR. CLEMENTS: Thank you, Your Honor. If it please the
14 Court, we'd call Mr. David Dorio.

15 THE COURT: Do you want to take up something before?

16 MR. BOUCHETTE: Yes, Your Honor. This was a little out
17 of order. I didn't realize he was going to be called first.

18 THE COURT: Members of the jury, we have to take up some
19 matters out here that you cannot hear at this time, so if you
20 would step inside.

21 (The jury exited the courtroom at 9:51 a.m.)

22 THE COURT: All right. Yes, sir.

23 MR. BOUCHETTE: Probably the best way would be to -- I
24 don't know if the Court wants to actually see the drone video,
25 but I anticipate Mr. Dorio and Mr. Rice, they are folks --

1 their only involvement was that they deployed drone footage
2 that, at various times -- I think two different ones -- that
3 circled above the accident scene, one of which was fairly
4 close in time to the recovery period when Mr. Flood and
5 Mr. Bishop were recovered from the scene. Another one, I
6 think, was done sometime later. The other one was done the
7 next morning.

8 Now, we've got a couple of concerns with this. The first
9 is that this evidence is really duplicative because we have in
10 evidence photos from the scene, from all relevant points in
11 the scene, and it's really, I would contend, better evidence
12 because it is at ground level. It is closer to what would
13 have been perceived by all the witnesses, what would have been
14 the perception of the defendant at around those times.
15 Moreover, that this drone footage that we're showing, the
16 problem with it is, not only is it not closer to eye level and
17 closer to what the witnesses would have actually been
18 observing at the time the events occurred, but it's so high up
19 that it shows flooding of the general geography and other
20 areas which would not have been in the perception of the
21 defendant during the time the event occurred.

22 Now, the reason why it's important is, like any of these
23 things, you start off the relevancy. Why is it relevant? We
24 have got a scene identified by photographs that are already
25 into evidence showing where we were and the flood levels at

1 all relevant time periods.

2 The only thing I can think that would be relevant would
3 be to try to get the evidence before the jury of the breadth
4 of flooding in the greater area, which we believe to be not
5 relevant because the indictment in this case alleges that
6 Mr. Flood went past visibly life-threatening flood waters.

7 So the only relevant life-threatening flood waters is
8 those areas he encountered and what he encountered at or
9 around ten minutes to 6:00 on September 18th, 2018.

10 So any image which would show flooding in somewhere else
11 other than the precise area would be irrelevant. To the
12 extent it is relevant, it would be more prejudicial than
13 probative because it's at a bird's-eye view. We won't be able
14 to gauge distance. We have got that in the extent that that's
15 included in the photographs. That's already there.

16 The second video, I believe, was taken the next day
17 and --

18 MR. CLEMENTS: We're not going to show that.

19 MR. BOUCHETTE: I'm sorry?

20 MR. CLEMENTS: We're not going to show that.

21 MR. BOUCHETTE: All right. The State's stipulated
22 they're not going to show the next day, so we shouldn't have
23 an issue there. But the first one was shown, I believe, at
24 the time of pickup: 6:50 p.m. to 7:32 p.m. So that is
25 basically at around the time of the pickup that continues on

1 for about 40 minutes after the time of pickup.

2 And we have heard about the level of water rising, and we
3 have had numerous witnesses say that the conditions were
4 changing. So anything that happens -- certainly -- not only
5 up until after he encounters it, but certainly after he
6 becomes disabled and then is rescued, certainly doesn't become
7 relevant. That is -- you know, it's misleading to the jury to
8 say -- to look at the water levels at 7:30, 7:15, and try to
9 imply that that's what he was perceiving and what he saw
10 around 6:00.

11 THE COURT: But wouldn't that go to the fact of showing
12 how fast the water was changing? Like a day before, boom,
13 it's creeping up, creeping up, creeping up, the action
14 happened, and it's still creeping up. That's a fact issue
15 that I think the State has to prove.

16 MR. BOUCHETTE: Well, it certainly could; however, what
17 we contend is that that is already in through the photographs
18 and that the drone -- the problem with the drone footage is we
19 think that will show it -- that will make it seem even deeper.
20 It will make it seem -- it will give a misleading impression
21 as to what the level of water was at the time that they were
22 rescued.

23 THE COURT: How long after the accident was the footage
24 taken?

25 MR. BOUCHETTE: So the drone footage starts at 6:50 p.m.

1 approximately, and it continues on until about 7:23 p.m.

2 THE COURT: And when did the accident happen?

3 MR. BOUCHETTE: The accident -- he first calls dispatch,
4 I believe, right at -- between 10 till and 5 till 6:00 p.m.
5 So this video initiates about an hour after he first calls
6 911.

7 THE COURT: I see.

8 MR. BOUCHETTE: And he's rescued about -- right about
9 6:50 p.m. So this video initiates at the point of rescue,
10 which is sort of the end of our factual scenario, and then it
11 continues on for another 30 minutes when he was no longer
12 there, when he was no longer on the scene.

13 THE COURT: I understand.

14 All right. Does the State want to reply?

15 MR. CLEMENTS: Your Honor, I think, when you see this,
16 you'll see it's the most relevant evidence in the entire case.
17 It happens at just a few minutes after they called and said
18 they were in trouble. Mr. Bouchette has been talking about
19 how fast things change, how fast things change all throughout
20 this trial.

21 That would show -- the only time we would show a passage
22 in time to show this on the video. And rather than talking
23 about it in the dark, so to speak, I would like to make the
24 rest of my argument after you have a chance to view the video.

25 THE COURT: All right. Let's see it.

1 (Video plays.)

2 THE COURT: All right. Is that it?

3 MR. CLEMENTS: That's it Your Honor.

4 THE COURT: Additional statements?

5 MR. CLEMENTS: It's the most relevant piece of evidence
6 in this trial. It gives the view that needs to be given to
7 deal with the issues here, what somebody perceives of what
8 they're looking at. There have been several witnesses that
9 talked about they can see water as far as they can see. It
10 corroborates those witnesses. It corroborates Will Duncan and
11 Dylan Oates. It pretty much puts everything in a box and
12 holds it together. It's the most relevant piece of evidence
13 there is.

14 THE COURT: Happy to give you the last word.

15 MR. BOUCHETTE: I would strongly disagree with that, Your
16 Honor. Respectively, of course, the most relevant piece of
17 evidence and most relevant inquiry is what were the
18 conditions -- what was he perceiving at the time he became
19 disabled? This video, you'll see, is basically a 30-minute
20 video of a recovery, which you've already heard, which I can
21 only imagine, at least in part, is going to the sympathy of
22 the jury.

23 And then the later part is a wide view of the greater
24 Nichols area, and to a certain extent, of the route that was
25 taken, and that is meant to imply that these were the

1 conditions that he encountered over roughly an hour or so --
2 hour, and a half or so --

3 THE COURT: Certainly you can cross-examine in that
4 regard.

5 MR. BOUCHETTE: And I certainly would be able to, but the
6 prejudice may have already been done at that point. Because
7 we've got two different issues. We have got the fact that it
8 doesn't show the accurate reflective conditions at the time,
9 and this is even further out than other testimony we have
10 heard. Other testimony we've heard, that's been closer in
11 time than these to the accident.

12 Now, we have got a situation where we are looking at
13 basically about 20 minutes or so of the recovery that's -- the
14 recovery is not relevant to show the condition of the roads,
15 show any actions that he took. That recovery is not relevant
16 to show any mitigating or aggravating factors. That recovery
17 has already been attested to and established as to when it did
18 and how it did and what all was going on.

19 So the recovery part, to me, like I said, they're clearly
20 not trying to get it in to show that they were recovered from
21 the vehicle. What they're trying to do is to get into
22 evidence what you just saw. I think the whole point of it is
23 that zoom-out footages.

24 THE COURT: Well, the way I see it is, the issues in this
25 trial are changing water over time, how fast did it change,

1 was the water level life-threatening? This video, in my
2 opinion, tends to support what these witnesses have said, and
3 it tends to support the pictures. You cannot get a view or a
4 feel for what happened that day close in time to the point in
5 time when it did happen. You cannot get that feel from
6 pictures. It supplements the pictures, in my opinion.

7 This is a factual issue that the solicitor has to prove
8 his case, and I think the picture, the testimony, and the
9 video all go into support of him trying to prove his case.

10 It may be cumulative, but it's certainly not pictures.
11 It is video footage of what happened, and it does show the
12 magnitude of the water level shortly after the accident
13 happened, which is critical to this case and to the judgment
14 call this individual made.

15 You can certainly cross-examine that it was afterwards
16 and that what went through his mind is what he saw right there
17 on the road and not all that other stuff. You can
18 cross-examine him until you're tired. But I think it's
19 allowable, and I think it's very relevant and very probative.
20 There's no bodies, there's no gore, there's no blood. I mean,
21 there's nothing to offend the jury. It just shows the water,
22 the vehicle, and the massive flooding around it. So I'm going
23 to allow it.

24 MR. BOUCHETTE: Thank you, Your Honor.

25 THE COURT: All right. Go ahead and bring them out.

1 (The jury entered the courtroom at 10:17 a.m.)

2 THE COURT: All right. Call your witness.

3 MR. CLEMENTS: Thank you, Your Honor. If it pleases the
4 State, we call David Dorio.

5 DAVID DORIO,

6 after having been duly sworn, was examined and testified
7 to as follows:

8 DIRECT EXAMINATION

9 BY MR. CLEMENTS:

10 Q Can you please state your name for the record and spell
11 your name, please.

12 A David Dorio. Last name is spelled D-o-r-i-o.

13 Q And where do you work?

14 A I work for Horry County Fire & Rescue.

15 Q What do you do with Horry County Fire & Rescue?

16 A I'm a fire investigator.

17 Q Do you have any other special abilities that you use?

18 A I'm a firefighter and an EMT as well.

19 Q Okay. Do you work with another officer in regards to
20 filming scenes and gathering information by drone?

21 A Yes, sir.

22 Q Who is that officer?

23 A That was Captain Rice.

24 Q Okay. And how long have you been working with the Fire &
25 Rescue of Horry County?

1 **A** Currently, I have been with the County for about seven
2 and a half years.

3 **Q** And how long have you been working with drones?

4 **A** About four years now.

5 **Q** Okay. Were you working with drones on September 18,
6 2018?

7 **A** Yes.

8 **Q** Did you get occasion to be called out to a scene in
9 Nichols, South Carolina?

10 **A** Yes.

11 **Q** Can you explain a little bit to the jury about how the
12 drones operate? Do y'all operate -- is it just one guy with a
13 drone or do you operate as a team or how do you operate?

14 **A** Well, this particular drone would be operating as a team.
15 One person acts as a pilot, and the other acts as a camera
16 operator. And they have two separate controllers. I was a
17 camera operator on this particular flight.

18 **Q** You were the camera operator?

19 **A** Yes. At that time, I wasn't a very good pilot, so...

20 **Q** And who was the pilot then?

21 **A** Captain Rice.

22 **Q** Okay. What do you seek to find out with a drone? What
23 do you try to use the drone for?

24 **A** Normally -- I mean, for that particular couple of weeks,
25 we were using it to observe flood waters and other dangers

- 1 with post-hurricane flooding.
- 2 Q Did you have an occasion to come out to Highway 76,
3 running through Nichols and Mullins?
- 4 A We -- at that day, we were filming bridges out there and
5 checking the level of the water on the bridges.
- 6 Q Earlier on the 18th?
- 7 A Earlier on, when we happened to be in that area.
- 8 Q Okay. When did you get a call involving a distressed
9 vehicle?
- 10 A We were at a Mount Olive EMS station uploading pictures
11 from prior in the day, and I was outside, and I was informed
12 that a van was in the water.
- 13 Q So did anybody ask you to or tell you to, or did y'all
14 just decided "we're going to go help"?
- 15 A We decided to go and help.
- 16 Q Okay. And what exactly did you do?
- 17 A We -- I mean, we launched a drone to locate the van in
18 the water.
- 19 Q Were you able to locate the van in the water?
- 20 A Yes.
- 21 Q Were y'all the first ones that were able to locate the
22 van in the water?
- 23 A I believe we were.
- 24 Q Okay. And then what did you do after you located it?
- 25 A We remained hovering and kept our cameras on scene until

1 our batteries became low and we had to come back and change
2 batteries.

3 Q Did you do -- take any pictures that would be like kind
4 of a bird's-eye view of the whole area?

5 A I know we had the video rolling. I don't remember if
6 there were stills.

7 Q The video was rolling when you went back to where you
8 launched the drone in the first place?

9 A In the approximate area, yes.

10 Q And that was to get new batteries?

11 A Yes.

12 Q Where did you launch the drone at and what type of area
13 do you need to launch a drone? Can you launch it in the water
14 or not?

15 A No. We needed dry land. We launched from the road
16 surface as far as we could get in the -- I guess in the
17 Village of Nichols. So it was basically the downtown of
18 Nichols, and we launched in that general area.

19 Q So you got as close as you could?

20 A Yes.

21 Q Okay. Did you launch from dirt or pavement or where did
22 you launch from?

23 A We lunched from pavement. It was on the road surface.

24 Q Do you know whereabouts on the road it was at?

25 A Approximately by a park. Like, are you asking --

1 Q Yes.

2 A Okay. It was in downtown Nichols by a park. That's all
3 I can...

4 Q Do you know where the town hall or police department in
5 Nichols was?

6 A Vaguely.

7 Q Was that in that same area?

8 A It was. It was just past it, I believe.

9 MR. CLEMENTS: All right. Beg the Court's indulgence.

10 BY MR. CLEMENTS:

11 Q Officer Dorio, what did y'all do after you took the
12 footage? What did you do to maintain the footage for court or
13 for proceedings or anything else?

14 A The drone camera actually has a SIM -- a little card that
15 saves the data. We brought it back to our main headquarters
16 where we were told to hand it over to -- well, we handed it to
17 my lead boss, and then I believe they handed it to SLED.

18 Q All right. As the camera operator, I want to go ahead
19 and enter this video into evidence through you to get you to
20 explain a little bit about it for us. And it's been put on a
21 disc, which is State's Exhibit No. 10, which I move into
22 evidence at this time.

23 THE COURT: Any objections?

24 MR. BOUCHETTE: Your Honor, I have got a matter that's
25 just come to mind based on what the witness has just testified

1 to that I need to take it.

2 THE COURT: Can you do it over here?

3 MR. BOUCHETTE: I think so.

4 BENCH CONFERENCE

5 (A bench conference was held off the record and outside of
6 the hearing of the jury.)

7 MR. BOUCHETTE: Judge, based on what he's saying, I think
8 we my have a chain of custody issue. He got it and provided
9 it to SLED, but it's coming in through him. He didn't
10 maintain control of this SIM card.

11 THE COURT: Do you want to lay a little bit more
12 groundwork as to the chain?

13 MR. CLEMENTS: Yeah, but the last part of the chain would
14 be Stephen Howell.

15 THE COURT: Okay.

16 MR. BOUCHETTE: What is a little bit different is that he
17 can't say that he has -- that he can say that the picture of
18 the drone fairly and accurately depicts the scene because he
19 wasn't there.

20 MR. CLEMENTS: And I don't think I need a chain of
21 custody. I laid the foundation where it came from, and that's
22 from him, because it's not a fungible item.

23 THE COURT: How is it any different than pictures, if
24 somebody took a picture and put it into evidence?

25 MR. BOUCHETTE: Well, the picture -- if I take a picture,

1 number one, I can say, "Does that picture -- is that a fair
2 and accurate representation of where we put the" --

3 THE COURT: It's the same thing for --

4 MR. BOUCHETTE: No, except for the fact that he was about
5 a half-mile or so away. He knows that there was a drone --

6 THE COURT: But he's operating the camera.

7 MR. CLEMENTS: He's operating the camera.

8 MR. BOUCHETTE: Well, the thing -- that's still a little
9 bit different than what he's having personal knowledge of, he
10 is operating the drone and he's --

11 THE COURT: No, he's operating the camera.

12 MR. BOUCHETTE: Operating the camera.

13 THE COURT: There's two. There's a pilot and there's a
14 camera operator. He took the pictures.

15 MR. BOUCHETTE: You know, it may be splitting hairs, but
16 I think he can say that that's what the camera is showing, but
17 unlike with a picture, the picture says this is a photograph
18 and I personally know what -- that that's what it looked like.

19 Here, he's a half-mile away, and he's got the drone
20 that's doing it, and then he gives the SIM card to SLED.

21 Like I say, I might be overthinking it, but I think
22 that's a chain of custody issue.

23 MR. CLEMENTS: The way he's operating the camera, he's
24 got to be looking at it the entire time.

25 THE COURT: You need to ask those questions.

1 MR. CLEMENTS: I am.

2 (Open court resumes:)

3 BY MR. CLEMENTS:

4 Q Officer Dorio, when you're operating the camera, you're
5 looking at what the camera is showing you the entire time; is
6 that correct?

7 A That's correct.

8 Q And is what you recorded and what you were looking at, is
9 that a fair and accurate, reasonable view of what you saw that
10 day?

11 A Yes. The camera shows exactly what was on the screen
12 other than we would have more readouts on speed, distance, and
13 altitude, but it's the same video on the screen of the monitor
14 that I'm looking at as it would be when it's recorded.

15 Q And it's an accurate representation?

16 A Yes.

17 MR. CLEMENTS: Your Honor, at this time, I would move and
18 enter it into evidence.

19 THE COURT: Any objections?

20 MR. BOUCHETTE: Just objections already stated.

21 THE COURT: All right. I'm going to move No. 10 into
22 evidence and overrule it.

23 (State's Exhibit No. 10 was received into evidence.)

24 BY MR. CLEMENTS:

25 Q And while it's running -- you can't see that from there,

1 can you?

2 THE COURT: Go ahead and step down, if you'd like.

3 MR. CLEMENTS: He can turn it. And while this video is
4 playing, if there's anything you need explained, tell the jury
5 about what they're seeing and what you -- in regards to what
6 you were trying to film and what you tried to capture on the
7 video.

8 MR. BOUCHETTE: Your Honor, may I request that it be
9 pushed back a little bit further so my client might be able to
10 see while it's being played?

11 THE COURT: All right.

12 MR. CLEMENTS: Can all y'all see? Anybody having trouble
13 seeing?

14 (Video plays.)

15 MR. CLEMENTS: Pause it.

16 BY MR. CLEMENTS:

17 Q Officer Dorio, do you know what type of vehicles those
18 were on that picture?

19 A I believe they're, like, RVs. I can't really tell. RVs,
20 possibly. I can't --

21 Q Deep water vehicles?

22 A Those? No, they're -- yeah, they look like the National
23 Guard LMTVs.

24 Q Military vehicles? And where were they; do you recall?

25 A They were at one of the stations.

1 Q Could you get that far to launch your video drone or you
2 had to back up?

3 A No, we were back farther.

4 Q Those were the military vehicles?

5 A Yes.

6 MR. CLEMENTS: Keep going.

7 (Video plays.)

8 BY MR. CLEMENTS:

9 Q What was that other singular looking vehicle -- singular
10 looking?

11 A That is a pickup truck that had been there earlier. We
12 were told by somebody that was -- where we launched, somebody
13 came up and said there's a --

14 MR. BOUCHETTE: Objection to the hearsay, Your Honor.

15 THE COURT: Sustained.

16 BY MR. CLEMENTS:

17 Q Doesn't matter what anybody else said. You saw a vehicle
18 there?

19 A Yes.

20 Q What kind of vehicle?

21 A It was a pickup truck.

22 Q Okay.

23 MR. CLEMENTS: All right. Keep going.

24 (Video continues to play.)

25

1 BY MR. CLEMENTS:

2 Q Off to the left there, do you know what that is?

3 A I believe it's a peanut packing plant.

4 Q And is that a ball field area? A park? All of this area

5 was underwater? Sir?

6 A Yes, sir.

7 (Video continues to play.)

8 BY MR. CLEMENTS:

9 Q And that was where you had launched from?

10 A Yes.

11 Q Now, if you look through that camera, as you operated it,

12 you could see what was out there, and you knew what was on the

13 screen?

14 A Yes, sir.

15 Q And as far as you could see, what could you see?

16 A When we were flying?

17 Q Sir?

18 A Depending on how far I zoomed out, I could see a wide --

19 Q On this video right here, what could you see?

20 A I could see where the van was in the water.

21 Q Where did you see water at?

22 A Everywhere.

23 Q Everywhere? Okay.

24 Please answer any questions Mr. Bouchette has.

25 MR. BOUCHETTE: Court's indulgence.

1 CROSS-EXAMINATION

2 BY MR. BOUCHETTE:

3 Q Mr. Dorio, very briefly. I wanted to make sure, the
4 location where you launched was, you said, just past the town
5 hall; correct?

6 A I believe so, yes.

7 Q So you were able to drive up to the town hall without --
8 before you encountered any water at that time?

9 A As I recall. I mean, I'm not familiar with the town that
10 well.

11 Q Okay. All right. Is that your best recollection?

12 A That's my best recollection.

13 Q That's fine.

14 Now, whenever you engaged or initiated this drone footage
15 that we just saw, that was after the vehicle had already been
16 submerged; is that right?

17 A Yes.

18 Q Okay. Do you have any idea when the vehicle first
19 encountered?

20 A You would have to at least use radio timestamps.

21 Q We have heard --

22 A I couldn't tell you. I mean...

23 Q You're not testifying to the jury that you know what
24 the -- any personal knowledge or any evidence or anything
25 about the level of water, what the conditions were an hour or

1 two hours before; correct?

2 **A** I guess, if you look at our previous pictures from
3 earlier in the day on the bridge, that's about all I can --

4 **Q** So I'm talking about from this video here.

5 **A** From this video? It was basically a search effort. Once
6 we located, we turned the camera on.

7 **Q** Safe to say that this video we just watched, that started
8 at -- roughly about 6:50 p.m.? Does that sound about right?

9 **A** That's -- yeah, I wasn't paying attention to the time
10 when this came across, but yes, it was the evening.

11 **Q** Okay. Very good.

12 Mr. Dorio, could you tell from the video whether or not
13 the water was continuing to rise during the half an hour or so
14 that this video was playing or were you too high up to be able
15 to see that?

16 **A** Well, we zoomed in enough that you can see where the
17 water level is from the beginning of the flight where -- what
18 we recorded until when we left. You can observe if it came up
19 or not during that time.

20 **Q** Okay. Did it continue to rise, or do you not know one
21 way or another?

22 **A** Honestly, I think maybe less rising and more sinking of
23 the vehicle possibly. I couldn't tell you what the
24 underground was, but it could have been a combination of both.

25 **Q** It could have been some sinking of the road and water

1 increasing during this window -- this 30-minute window or so?

2 **A** Possibly.

3 **Q** Okay.

4 **MR. BOUCHETTE:** I don't think I have any further
5 questions for the witness, Your Honor.

6 **THE COURT:** Any redirect?

7 **MR. CLEMENTS:** Your Honor, we just want to thank Officer
8 Dorio for coming and ask that he be excused and released from
9 his subpoena.

10 **MR. BOUCHETTE:** No objections.

11 **THE COURT:** Have a good day.

12 Call your next witness.

13 **MR. CLEMENTS:** Your Honor, our next witness would be
14 Matthew Rice.

15 **MATTHEW RICE,**

16 after having been duly sworn, was examined and testified
17 to as follows:

18 **DIRECT EXAMINATION**

19 **BY MR. CLEMENTS:**

20 **Q** Good morning.

21 **A** Good morning, sir.

22 **Q** Could you please tell us your name and where you work and
23 in what capacity?

24 **A** My name is Matthew Rice. I'm a captain assigned to the
25 Fire Investigation Unit with Horry County Fire & Rescue.

- 1 Q How long have you worked with Horry County Fire & Rescue?
- 2 A Since 2005.
- 3 Q Since 2005?
- 4 A Yes, sir.
- 5 Q And, as a captain, you supervise other officers; is that
6 correct?
- 7 A Yes. Just Officer Dorio, who was my partner.
- 8 Q So y'all are a two-man team on the drones?
- 9 A Yes.
- 10 Q And you're the commanding officer?
- 11 A Yes.
- 12 Q And it's just the two of y'all?
- 13 A Yes.
- 14 Q Do you recall coming to Nichols on September 18th, 2018?
- 15 A Yes.
- 16 Q And tell us why you came and what you found when you got
17 here.
- 18 A While we were in the area providing updates on flooding
19 and pictures for the emergency operations center, I heard a
20 call on the radio for a vehicle sinking in the water. We were
21 in the area of Green Sea, and we had orders that, if we heard
22 something on the radio that we thought we could be of
23 assistance to, we would proceed and help them, and that's what
24 we did.
- 25 Q Well, you said something interesting to me. You said a

1 report of a sinking. Is that because something was coming out
2 from underneath it or over top?

3 **A** It was just what came over the radio that there was a
4 vehicle in the water, sinking, and very limited information.
5 And we responded as part of the search and rescue effort.

6 **Q** Who were the first ones in the search and rescue effort
7 to be able to locate this van?

8 **A** To my knowledge, we were.

9 **Q** Okay.

10 THE COURT: Do you mind speaking up just a little bit?

11 THE WITNESS: Excuse me, sir?

12 THE COURT: Speak up just a little bit.

13 BY MR. CLEMENTS:

14 **Q** Do you know the approximate time between you getting the
15 call -- receiving the call about a vehicle in distress and you
16 actually locating it?

17 **A** I'm sorry. Repeat that. I was distracted for a minute.

18 **Q** Okay. Let me rephrase. Do you recall the passage of
19 time between Point A, when you got the report over the radio
20 that there was a van in distress, and Point B, when you
21 located the van?

22 **A** There was a good amount of time in between those two
23 points. There was confusion about where the vehicle was. We
24 checked several roads before finally deciding that, on our
25 final launch point and to check that road, we drove multiple

1 roads in the area searching for the vehicle.

2 Q Okay. When you found the vehicle, then what did you do?

3 A We reported the location over our radio so that it could
4 be relayed to anybody else responding there, and we maintained
5 visual contact so that, if anything changed, we could report
6 any updates.

7 Q And you recorded all the evidence?

8 A Yes.

9 Q Now, let me ask you this: Have you seen this video?

10 A Yes, sir.

11 Q When it fades out away from the scene, does it come down
12 and lands on the asphalt?

13 A Yes, sir.

14 Q What was your purpose for coming back in and landing on
15 that asphalt?

16 A We had to change out our batteries.

17 Q Okay. All right. But as far as this site where this
18 event occurred, did you take any more video of it,
19 specifically of that?

20 A We flew a couple flights of it, and then we were told to
21 come back to Conway and we turned everything over. So we have
22 the video that we turned over.

23 Q And, on that video, you saw that with your own eyes;
24 right?

25 A Yes, sir.

1 Q Is that -- what on that video, is that an accurate
2 depiction of what was out there?

3 A Yes, sir.

4 Q Is that an accurate depiction of how much water was
5 there?

6 A Yes, sir.

7 Q Is it an accurate depiction of where all the water was?

8 A Yes, sir.

9 MR. CLEMENTS: Beg the Court's indulgence.

10 BY MR. CLEMENTS:

11 Q Lastly, Captain Rice, when you viewed what you found with
12 that van in distress, is there any part of that section that
13 you would have attempted to cross with the vehicle?

14 MR. BOUCHETTE: Objection.

15 THE COURT: What was that question again?

16 MR. CLEMENTS: If there was any area depicted in that
17 video that he would have tried to cross in a road vehicle.

18 THE COURT: What's your objection?

19 MR. BOUCHETTE: One, relevance. Two, lack of personal
20 knowledge. He's looking at it from a camera about 500 feet in
21 the air. He wasn't driving it and wouldn't have sufficient
22 knowledge of whether or not -- how far he would drive and
23 where he would drive or any of those factors that require him
24 to have knowledge to answer that question.

25 MR. CLEMENTS: Your Honor, he also had his own personal

1 perception of where they were on the road where they launched
2 the drone as well.

3 THE COURT: Why don't you lay a little bit more
4 foundation also to where he came from and where he went, etc.,
5 etc.

6 BY MR. CLEMENTS:

7 Q Are you familiar with the road that you were in on
8 Nichols?

9 A Yes, sir.

10 Q What road was that?

11 A It's highway 76.

12 Q Okay. And are you familiar -- of did you become familiar
13 during those few days of that area on Highway 76 between town
14 hall and the bridge?

15 A Yes, sir.

16 Q Okay. And, from your perceptions of what you saw by your
17 own eye and on the video from the drone, is there any section
18 of that that you would have thought would have been safe for
19 you to carry across anyone with a road vehicle?

20 A No.

21 MR. BOUCHETTE: Same objection.

22 THE COURT: Overruled. Go ahead.

23 A No. We went as far as I felt safe going and then
24 launched from that point. I did not feel safe going any
25 further down the road.

1 Q Okay. Please answer any questions Mr. Bouchette has.

2 CROSS-EXAMINATION

3 BY MR. BOUCHETTE:

4 Q Mr. Rice, very briefly. You stated earlier that there
5 was -- well, let me back up. You said that this video that
6 you took was the first to locate the distressed vehicle; is
7 that right?

8 A Yes, sir.

9 Q At least to your knowledge?

10 A To my knowledge.

11 Q You got any idea about what time that was?

12 A Whatever is time-stamped on the video is what I would go
13 with. I was not, honestly, paying attention to my watch. I
14 was more worried about --

15 Q About ten minutes to 7:00? Sound about right to you?

16 A Yes, sir.

17 Q Okay. All right. At any time prior to that, had you
18 received any call or gotten any information from Sergeant
19 Orlando?

20 A Not to my recollection, sir.

21 Q Had you gotten or received any information from a
22 Mr. [Verbatim] Witherspoon?

23 A Not to my recollection, sir.

24 Q Okay. All right. And, again, this video we watched only
25 depicts the events once you initiated the drone at around, I

- 1 believe, 6:50 p.m.?
- 2 **A** Yes.
- 3 **Q** Okay. I believe I asked you if you received any
4 information from a Mr. Witherspoon, but, I meant, corporal or
5 Mrs. Witherspoon.
- 6 **A** No, sir. We had our radio, and the only people we were
7 talking to were the fire dispatchers from dispatch.
- 8 **Q** And the fire dispatchers didn't contact you until
9 approximately what time, if you know?
- 10 **A** 6:30 maybe, but I couldn't give you an exact time.
- 11 **Q** You weren't even contacted until sometime around 6:30 or
12 thereabouts?
- 13 **A** Yeah, we spent some time -- I'd have to go back to the
14 call report to see what time we were actually dispatched to
15 it.
- 16 **Q** Okay. Very good.
- 17 **MR. BOUCHETTE:** No further questions.
- 18 **THE COURT:** Any redirect?
- 19 **MR. CLEMENTS:** No, Your Honor. I'd ask he be released
20 from his subpoena.
- 21 **THE COURT:** Any objections?
- 22 **MR. BOUCHETTE:** No objections.
- 23 **THE COURT:** Have a good day.
- 24 **THE WITNESS:** Thank you, sir.
- 25 **THE COURT:** All right. Let's take one more witness, and

1 then we'll take a short break.

2 MR. CLEMENTS: Sir?

3 THE COURT: Let's take one more witness, and then we'll
4 take a short break.

5 MR. CLEMENTS: We would call Hannah Burghard, Your Honor.

6 HANNAH BURGHARD,

7 after having been duly sworn, was examined and testified
8 to as follows:

9 DIRECT EXAMINATION

10 BY MR. CLEMENTS:

11 Q Good morning.

12 A Good morning.

13 Q Do you mind stating your name for the record and spelling
14 your last name.

15 A My name is Hannah Burghard. B-u-r-g-h-a-r-d.

16 Q And you're a two "H", Hannah; right?

17 A Yep, front and back.

18 Q Okay. Where do you live now, Hannah?

19 A I currently live in Birmingham, Alabama, but I grew up in
20 South Carolina.

21 Q Were you living in South Carolina on September 18, 2018?

22 A Yes, sir.

23 Q Can you please tell the jury where you worked, what you
24 did?

25 A At the time, I was employed by Horry County Sheriff's

1 Department working at J. Reuben Long Detention Center. On
2 that day, I was assigned to work Central, which is a post that
3 controls all radio transmissions between state radio for our
4 transportation officers, and they monitor all video footage
5 within the facility.

6 Q Okay. And do you recall getting a call that -- or
7 finding some information out about one of your vans being in
8 distress?

9 A Yes, sir.

10 Q When was that?

11 A That was on September 18th. It was -- the first time I
12 spoke with them?

13 Q No. When you first found out that there was a vehicle in
14 distress, what time was that?

15 A That was at 5:49.

16 Q 5:49 p.m.?

17 A Yeah.

18 Q And earlier in the day, people would clock in or check in
19 and given their assignments; is that correct?

20 A Yes, sir.

21 Q Do you know Mr. Bishop and Mr. Flood?

22 A I do.

23 Q Okay. And are you aware of an assignment they had that
24 day?

25 A Yes, sir.

1 Q What was it? How did that assignment start out?

2 A I'm not sure how it originally started out, but I do know
3 that they had left the facility with one female, and they were
4 going to Loris Hospital to pick up another female.

5 Q Okay.

6 A And then take them both to Darlington Behavioral
7 Facility.

8 Q Now, do you know, was part of your duty monitoring all
9 the radio and communications in the state; right?

10 A Yes, sir.

11 Q Do you know the time that they left Loris Hospital when
12 they had both medical transports with them?

13 A At 5:07 p.m.

14 Q 5:07 p.m.?

15 A Yes, sir.

16 Q And they started out to Darlington, you say?

17 A Yes, sir.

18 Q Would it be possible that one of them was going to
19 Darlington and one of them was going to Lancaster?

20 A That could be possible, yes, sir.

21 Q But you know they were going to Darlington?

22 A Yes. I know that they had two females, and they -- at
23 least the first stop was in Darlington.

24 Q Okay. And that was, you said, 5:05?

25 A 5:07 is when they radioed into Central and said they were

1 exiting, and they would be in route to Darlington.

2 Q So from 5:07 forward, when was the next time you heard
3 from them?

4 A At 5:49.

5 Q And who did you hear from?

6 A From Officer Bishop.

7 Q And what did he relay to you?

8 A That he had hit flood waters and they need help.

9 Q And when was the next time you heard from him again?

10 A Continuously. We didn't -- we maintained communications
11 for an hour and 38 minutes.

12 Q And when did he relate to you that he sought help and
13 that help had arrived?

14 A Probably about six -- like 6:50.

15 Q Was that help arriving too late? What, if anything, did
16 he communicate to you about the two transportees?

17 A Two minutes prior to -- I'm going to back up for a
18 second. He said that he could hear sirens and what sounded to
19 be like engines from the boat, like hearing a boat motor, but
20 that it sounded like they were going the opposite way. It was
21 getting further.

22 Q And let me ask you this: Was there a lot of confusion
23 going on? There was a lot of people on the airways?

24 A Yeah.

25 Q How many, if you can --

1 **A** So --

2 **Q** -- make a guess?

3 **A** -- there was probably about seven people that I worked
4 with from the jail, most of command staff. They left the
5 facility as soon as it happened to respond. So I was in
6 constant contact with them, along with Marion County and Horry
7 County EOC and Dispatch. And then there were random people
8 throughout both counties that were familiar with the area, and
9 so they were calling the -- once the van hit the water, they
10 lost -- they lost signal with the State radio. So we had to
11 communicate on our detention radio. And I would just go back
12 and forth with Bishop. Whatever he told me, I would then tell
13 all the other responses in dispatch.

14 So everything that -- everything that I could hear, they
15 could not. So I would have to start here and then relay all
16 that.

17 **Q** Okay. What was the last thing you remember hearing from
18 him and the time of that call when he stated what conditions
19 or how the ladies were?

20 **A** Do you mind if I refer back to look at the time?

21 **Q** Please do. That's your report?

22 **A** Yes, sir.

23 At 1859, Bishop said to be advised that he could no
24 longer hear the females.

25 **Q** Okay. And how much of passage of time was that when he

1 first told you that he was in distress?

2 **A** About an hour and ten minutes.

3 **Q** Please answer any questions Mr. Bouchette has.

4 **MR. BOUCHETTE:** Court's indulgence.

5 **CROSS-EXAMINATION**

6 **BY MR. BOUCHETTE:**

7 **Q** Ms. Burghard, very briefly. During -- I want to make
8 sure we've got our timeline correct. So you first received
9 the distress call, from what I understood -- excuse me. Let
10 me back up.

11 You said they left J. Reuben Long going towards the first
12 part of their route about 5:07 p.m.?

13 **A** That's when they were leaving Loris.

14 **Q** Okay. Leaving Loris?

15 **A** Yes, sir.

16 **Q** Okay. Good deal.

17 Now, the first call you received or distress call you get
18 from Mr. Bishop is at 5:49 p.m.?

19 **A** Yes, sir.

20 **Q** And, again, that arrives at about 6:50 p.m.?

21 **A** Yes, sir.

22 **Q** So there's roughly an hour that the vehicle was there
23 before help arrives?

24 **A** Yes, sir.

25 **Q** All right. During the course of this time, did you ever

1 talk to Lieutenant Corporal Witherspoon, by chance?

2 **A** I did not. Not that I can recall. I know we have
3 certain command staff, and I knew exactly who they were, but
4 then there were some voices that I wasn't sure exactly who
5 they were.

6 **Q** You don't recall a person saying anything to the effect
7 of, you know, "I know the area, I'm from Nichols, I think I
8 know where they are," or anything along those lines?

9 **A** There was somebody --

10 **MR. CLEMENTS:** Your Honor, I would object to hearsay,
11 particularly if she doesn't know who the identification is of
12 the speaker.

13 **MR. BOUCHETTE:** I think she's clarifying that. She's
14 heard and acted upon somebody telling her if --

15 **THE COURT:** What was your question again?

16 **MR. BOUCHETTE:** My question was, did she ever receive
17 information from somebody who indicated that they knew the
18 area and thought they knew where the van was.

19 **A** So I received a phone number. I have a phone number, but
20 I don't -- I gave it over the radio because someone was
21 familiar with the area, and they could possibly know more
22 details about their location. And so I gave that phone number
23 over the radio for one of the responding units to contact, but
24 I have no idea whose number it was.

25 **Q** Do you know who you conveyed that number to?

1 **A** So I -- sometimes I would be on the phone with
2 individuals and I know exactly who they were.

3 **Q** Right.

4 **A** And then, other times, I would talk over the radio for
5 everyone and anyone.

6 **Q** So this kind of just went out to --

7 **A** Yep.

8 **Q** -- whoever was responding?

9 **A** Yes, sir.

10 **Q** Is there an emergency button on the radios?

11 **A** Yes, sir.

12 **Q** All right. Was there an emergency button that was
13 supposed to pinpoint locations?

14 **A** Yes, sir.

15 **Q** So, hold on. So, in the vehicles, there's a button they
16 press when they're in distress?

17 **A** The vehicles, I'm not familiar with.

18 **Q** But on the radios?

19 **A** But on the radios, yes, sir.

20 **Q** That the officer has?

21 **A** Yes, sir.

22 **Q** And that is supposed to send back a signal to Dispatch as
23 to where the officer is at?

24 **A** It is. At the time, how those radios were designed, when
25 you press your orange button, your emergency duress, it is

1 supposed to pinpoint location, and then it's supposed to pick
2 up all audio and immediately start recording to county
3 dispatch, and it did not.

4 **Q** Okay. Was that -- is it safe to say that that
5 contributed to the delay in responding to the vehicle?

6 **A** It could have possibly delayed it, but I think the
7 biggest issue was that they did not know where they were, and
8 it was hard to see them with the water.

9 **Q** Well, you say it possibly could have, but this -- I
10 think, as I understand it, had it been -- well, let me back
11 up.

12 Is it safe to say that that function was not working
13 properly that day?

14 **A** Yes, sir.

15 **Q** All right. And if it had been working properly, you
16 would have had a location, a fairly accurate one, as soon as
17 they pressed it, or thereabouts?

18 **A** Could have, yes. It would have come up with a code, and
19 Dispatch would have known the codes or give you an area.

20 **Q** And, again, respectfully, you say it could have, but,
21 again, if fact, it was working properly, it would have;
22 correct?

23 **A** Yes, sir. I contacted County Dispatch and asked them if
24 they -- and let them know that the signal had been pressed.
25 And they said that they hadn't received it.

1 Q Okay. No further questions for this witness.

2 THE COURT: Redirect?

3 MR. CLEMENTS: Briefly. Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. CLEMENTS:

6 Q You told Mr. Bouchette you never talked to Witherspoon.

7 Did you ever talk to Flood?

8 A No.

9 Q Didn't talk to him all during this time?

10 A No, sir.

11 Q As a matter of fact, at the time of all this

12 communication, when it got started, was it after Mr. Flood had

13 put the van into the water and Mr. Bishop made the call for

14 help?

15 A Yes, sir.

16 Q So they were already in duress, already in the water

17 before y'all had any information?

18 A Yes, sir. He told me that it had went underwater --

19 MR. BOUCHETTE: Objection to hearsay, Your Honor.

20 THE COURT: Sustained.

21 MR. CLEMENTS: Your Honor, Mr. Bishop -- and I would

22 submit that he'd be probably under res gestae and excited

23 utterance at this point in time.

24 MR. BOUCHETTE: He asked --

25 THE COURT: What was your question again? Let's hear it.

1 MR. CLEMENTS: It slipped my mind, Your Honor.

2 THE COURT: Then why don't you ask another one.

3 BY MR. CLEMENTS:

4 Q All this was after Mr. Flood had put the van in the
5 water, that you didn't receive any communications, and that
6 didn't start up until after that was -- say an old adage --
7 after the horse was out of the barn?

8 MR. BOUCHETTE: I'm going to object to the form of the
9 question, Your Honor. I'm not sure --

10 THE COURT: You can rephrase that, if you'd like, please.

11 MR. CLEMENTS: Sir?

12 THE COURT: Rephrase that.

13 MR. CLEMENTS: I'm sorry, Your Honor. I thought
14 everybody knew that.

15 BY MR. CLEMENTS:

16 Q That communication between everyone, because of the
17 distress, happened after Mr. Flood put the van in the water;
18 is that correct?

19 A Yes, sir.

20 MR. CLEMENTS: Thank you.

21 THE COURT: Anything further?

22 MR. BOUCHETTE: No further questions.

23 MR. CLEMENTS: Your Honor, we want to thank her for
24 coming and ask that she be released from her subpoena.

25 THE COURT: Any objections?

1 MR. BOUCHETTE: Not at all.

2 THE COURT: Have a good day.

3 THE WITNESS: Thank you. You too.

4 THE COURT: Let's take a 15-minute break. Do not discuss
5 the case.

6 (The jury exited the courtroom at 11:14 a.m.)

7 (A brief recess was taken from 11:14 a.m. to 11:36 a.m.)

8 THE COURT: Good afternoon. Everybody have a seat.

9 (The jury entered the courtroom at 11:41 a.m.)

10 THE COURT: All right. Call your next witness.

11 MR. CLEMENTS: Thank you, Your Honor. The State would
12 call Dr. Thomas Beaver, Medical University of South Carolina.

13 MR. JEPERTINGER: Your Honor, Mr. Clements asked me to do
14 the examination of Dr. Beaver.

15 THE COURT: All right.

16 DR. THOMAS BEAVER,

17 after having been duly sworn, was examined and testified
18 to as follows:

19 DIRECT EXAMINATION

20 BY MR. JEPERTINGER:

21 Q Good morning, Dr. Beaver.

22 A Good morning.

23 Q Could you please state your name for the record and spell
24 it as well.

25 A Yes, sir. My name is Thomas Beaver. B-e-a-v-e-r just

1 like the animal.

2 Q And for whom do you currently work, Dr. Beaver?

3 A I work for the Medical University of South Carolina in
4 Charleston.

5 Q Okay. And how long have you been employed by the Medical
6 University of South Carolina?

7 A It will be four years in June. I started in 2018.

8 Q Okay. And what do you do for the Medical University of
9 South Carolina?

10 A I do the service work performing autopsies, but I also
11 teach residents, and I teach second-year medical students.

12 Q And what field do you teach them in?

13 A The medical students are in a seminar tutorial, which is
14 an integrated pathway. So it ends up being a little bit of
15 everything. Some pathology but also a little bit of
16 everything. For the residents that I teach in forensic
17 pathology, I teach them the autopsy pathology.

18 Q And how long have you been involved with forensic
19 pathology, Doctor?

20 A I completed fellowship in '91, so I think we're looking
21 at about 30 years.

22 Q All right. Could you tell the ladies and gentlemen of
23 the jury a little bit about your background in terms of
24 education.

25 A Yes, sir. So I have an undergraduate degree from the

1 University of California, Los Angeles. I have a medical
2 degree from St. George's University School of Medicine. And I
3 completed a five-year training program in anatomic and
4 clinical pathology at the University of Colorado in Denver.

5 I completed a fellowship in forensic path at the Denver
6 County Coroner's Office, and this is affiliated with the
7 University of Colorado. I completed the certifying
8 examinations that are given by the American Board of Pathology
9 in anatomic pathology, clinical pathology, and forensic
10 pathology, passing all those exams on the first attempt.

11 Q In your career as a forensic pathologist, approximately
12 how many autopsies have you conducted?

13 A I don't keep an exact count, but it's approaching 20,000.

14 Q And have you testified as a forensic pathologist in court
15 before?

16 A Yes, sir.

17 Q About how many times, if you could give us a guesstimate?

18 A Yeah, I would say hundreds.

19 Q All right. And has it been solely in the United States?

20 A Yes. Predominantly in the United States. I have been
21 qualified as an expert and testified for forensic pathology in
22 California, in Texas, in Florida, in Georgia, in the state of
23 New York, as well as the state of South Carolina.

24 Q Has there ever been a time where you have been
25 disqualified to offer expert testimony?

1 MR. JEPERTINGER: Yeah. I mean, that's what -- I think
2 part of it was a toxicology report that would have been
3 included, but that would be it.

4 MR. BOUCHETTE: Okay. All right. That's fine.

5 THE COURT: All right.

6 (Open court resumes:)

7 BY MR. JEPERTINGER:

8 Q Okay. Dr. Beaver, unfortunately, we had two decedents in
9 this particular -- this case; correct?

10 A Yes, sir.

11 Q And you performed the autopsies on both of these
12 individuals; correct?

13 A Yes, sir, I did.

14 Q Okay. Now, when a forensic pathologist is conducting an
15 autopsy, there are usually two standards that we're looking
16 at: Causes of death and manners of death; isn't that correct?

17 A Yes, sir.

18 Q All right. In terms of each individual, can you tell the
19 ladies and gentlemen of the jury, as to each individual -- and
20 state the name of the individual, please, that you did the
21 autopsy on -- as to cause of death first, please?

22 A Okay. So, on Nicolette Green, I made the cause of death
23 drowning.

24 Q And, excuse me, Doctor.

25 MR. JEPERTINGER: Did you make a ruling in terms of the

1 expert qualification?

2 THE COURT: Your motion is granted without objection.

3 MR. JEPERTINGER: Thank you.

4 BY MR. JEPERTINGER:

5 Q I'm sorry; I interrupted you, and that was my fault.

6 A No worries.

7 Q Please continue.

8 A No worries.

9 So, on Nicolette Green, I made the cause of death as
10 drowning. And, on Wendy Newton, I made the cause of death
11 drowning.

12 Q All right. Did you find anything unusual in terms of
13 cause of death in regards -- how did you come to that
14 conclusion, sir?

15 A Yes, sir. So, for a forensic pathology, we don't have a
16 diagnostic test for drowning. And so drowning for us, even in
17 2022, remains a diagnosis of exclusion. We call it the
18 diagnosis of exclusion. We exclude everything else, and if
19 the circumstances are correct, then we say drowning. So that
20 means no other cause of death, nothing else wrong.

21 So, in this case -- and you might think there are tests
22 for water but there isn't. Water in the lungs means nothing.
23 Water in the stomach means nothing. There's no diagnostic
24 test. And we have searched.

25 So, in this case, I did autopsies on both of these

1 ladies, and I found nothing else wrong with them. They don't
2 have any injuries. They actually don't even have any bruises
3 on their bodies.

4 One of them, I believe it's -- if I might look at my
5 report, I will -- yes, it's Nicolette Green. She had some
6 scalp contusions, but that was it. There was no skull
7 fracture. No injury to her brain. No other injuries. And
8 they weren't even visible on the surface. They're only
9 visible underneath.

10 And we took photos. When we do the autopsy, we take
11 photos every step of the way, so there are photos of all of
12 this.

13 Q Now -- so, the cause of death for both individuals was
14 drowning; is that correct?

15 A Yes, sir.

16 Q All right. Now, the next aspect that a forensic
17 pathologist would notate on his report would be manner of
18 death; isn't that correct?

19 A Yes, sir.

20 Q Okay. Now, how many possible manners of death are there?

21 A Well, we only get -- there's only five, and we use five
22 words. You can't use any modifiers, you can't change the
23 words up in any way, and the words are: Homicide, suicide,
24 natural, accident, and undetermined.

25 So we have to pick one of those five words to assign the

1 manner of death. And they all have definitions. So suicide
2 is death by one's own hand. Accident is for death that's
3 uncontrolled. Homicide is defined as death at the hands of
4 another. And, of course, natural would be a natural cause of
5 death like a heart attack, a stroke, or something like that.

6 And then we leave a little bit of wiggle room
7 undetermined for those cases where we just don't have enough
8 information to make -- we just don't have enough information
9 to make a determination that would be reliable.

10 **Q** All right. Now, in this particular case, I believe your
11 report indicated that you marked their manner of death as
12 being accidental; is that correct?

13 **A** Yes, sir. I made the manner of death accident in this
14 case. And this brings us into a bit of a quandary as far as
15 manner of death goes. By definition, death at the hands of
16 another is a homicide, and the definition is constructed --
17 it's not a legal definition. It's a forensic pathology
18 definition, and it's constructed to be intent neutral.

19 So -- but it brings us into some difficulties because,
20 when you have a car accident -- let's say two cars hit each
21 other and someone dies, then, if we make that a homicide, it
22 inflames people because they don't understand our definition.

23 So, we, by convention -- by social convention we make
24 most car accidents an accident. And drowning, most of the
25 time -- unless somebody holds you under the water, drowning is

1 also an accident. You fall in the water, you can't swim, or
2 you get exhausted or intoxicated and you drown, that's an
3 accident.

4 So -- but there is a convention where we sometimes will
5 deviate from our death at the hands of another and make it an
6 accident just to avoid the inflammatory nature of the word
7 "homicide" on a death certificate. You might think of an
8 example, let's say a family is in a car, husband is driving,
9 wife is passenger. Car gets in a wreck. Wife is dead,
10 husband lives, and we call it a homicide, that's going to
11 cause some problems.

12 So, to avoid that, we just say accident, and everybody is
13 more comfortable. But it is -- the definition would be death
14 at the hands of another.

15 **Q** Now, in this particular case involving these two
16 decedents, what information had you been provided for you to
17 come to the conclusion that the manner of death was accident?
18 What information were you given?

19 **A** Sure. We get the information from the coroner. And I
20 can read exactly as it is. This is exactly what I have:
21 "According to the Marion County Coroner, the decedent in this
22 case, Nicolette Green, is a 43-year-old female who was being
23 transported via the Horry County Sheriff's Office van when it
24 encountered flood waters due to Hurricane Florence." That's
25 all the information I have.

1 Q Okay. Had you been given, say, more information that the
2 driver of the vehicle had driven into deep water or flood
3 waters, would that have changed your manner of death?

4 A Yes, sir, it would. If there was a volitional act that
5 led to the death of someone, I would call that a homicide.

6 Q So, in this case, if that scenario proves true, that
7 someone did drive into deep waters or flood waters, this would
8 be death at the hands of another or homicide?

9 A Yes, sir.

10 Q Okay. As to both individuals?

11 A Yes, sir.

12 Q Thank you, Doctor. Please answer any questions that the
13 defense attorney may have for you.

14 THE COURT: Mr. Scruggs, why don't you move that TV over
15 by the door, if you would.

16 MR. SCRUGGS: Sure.

17 MR. BOUCHETTE: Very briefly.

18 THE COURT: Hold one on second. Let him move that TV.
19 He couldn't even hear your objection earlier because the TV
20 was blocking.

21 MR. BOUCHETTE: That's why we discussed it earlier.

22 Very briefly, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. BOUCHETTE:

25 Q I don't think there was any dispute as to the cause of

1 death in this case, but let me briefly touch on your testimony
2 regarding the manner of death. Again, those terms that you
3 used that you discussed at length with Mr. Jepertinger, those
4 are not intended to be legal definitions?

5 **A** No, sir. Those are primarily for purposes of the death
6 certificate, of certifying the death.

7 **Q** And your original report had accident as the manner of
8 death?

9 **A** Yes, sir.

10 **Q** Okay. All right. And, again, nowhere in your autopsy is
11 there any allegation or any evidence that indicates, to use
12 your example earlier, that there was a physical drowning by
13 one person upon another?

14 **A** Correct, yes.

15 **Q** So the distinction of the change from the manner of death
16 that you spent some time talking about makes no difference in
17 terms of the cause of death.

18 **A** Correct.

19 **MR. BOUCHETTE:** Okay. I don't think I have anything
20 else.

21 **THE COURT:** Redirect?

22 **MR. JEPERTINGER:** Judge, I don't think so. I think that
23 will be fine. I'd ask that Dr. Beaver go back to Charleston.

24 **THE COURT:** Any objections?

25 **MR. BOUCHETTE:** No objection.

1 THE COURT: All right. Have a good day.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Thank you.

4 If you'll call your next witness.

5 MR. CLEMENTS: Your Honor, we call Alan Starnes.

6 Your Honor, our next witness came from out of town. He's
7 downstairs. I apologize.

8 THE COURT: Okay. That will be fine.

9 (Pause in the proceedings.)

10 BATTALION CHIEF ALAN STARNES,

11 after having been duly sworn, was examined and testified
12 to as follows:

13 DIRECT EXAMINATION

14 BY MR. CLEMENTS:

15 Q Could you please state your name and spell your name for
16 the record.

17 A Battalion Chief Alan Starnes.

18 Q And you spell that S-t-a-r-n-e-s?

19 A Yes, sir.

20 Q Okay. And is it proper to call you chief?

21 A Chief.

22 Q Chief Starnes, where do you live?

23 A I live about 25 miles north of Memphis, Tennessee. And I
24 work at Millington Fire Department, which is in between the
25 two.

- 1 Q And how long have you worked for the fire department?
- 2 A I have been with the fire department for 20 years.
- 3 Q And you're battalion chief at the fire department where
4 you live?
- 5 A Yes, sir.
- 6 Q What is Tennessee Swift Water Rescue?
- 7 A Each state has an emergency management team that can be
8 sent to adjoining states. That's how I wound up in South
9 Carolina in 2018. We were sent over here as a task force to
10 operate there in Hurricane Florence.
- 11 Q And how many people were with your crew that came to
12 Tennessee?
- 13 A I think there was in the neighborhood of 180, something
14 like that. I'm not sure.
- 15 Q And they were deployed all up and down the coast?
- 16 A We started out at South Carolina Fire Academy, and then
17 we were disbursed from there. We actually went to Lake City
18 to stage before the hurricane hit.
- 19 Q Did you have a chance to be in Nichols on the 18th of
20 September?
- 21 A I did.
- 22 Q What were you doing on the 18th of December -- excuse me,
23 September?
- 24 A We were sent over the day -- the night before as part of
25 a strike team, which was a 12-man team, to do water

1 evacuations and any possible water rescues that needed to be
2 done.

3 Q What kind of equipment did y'all carry with you?

4 A We had -- we carried a 17-foot aluminum boat and also, we
5 have a 12-foot Zodiac rubber inflatable boat, and then we have
6 a self-sustainment truck, where we're self-sustainable for 72
7 hours.

8 Q I'm going to show you State's Exhibit 8-B. Do you
9 recognize that? Can you identify it?

10 A That looks like the rescue boat that I was operating. I
11 was the boat captain of that boat.

12 Q I'm going to show you State's 8-C. Is that a better
13 angle for you?

14 A Yes, sir. It says, "Millington Fire Department" on the
15 boat. That is the boat that I was operating in. I do believe
16 that that was myself that was standing right there.

17 And the other picture is the top of the van after we had
18 operated there. I had left the van at this time getting crews
19 and getting the two deputies back to the high-water vehicle.

20 Q And that's 8-D? That last picture was 8-D?

21 A 8-D, that's correct.

22 Q Thank you, sir.

23 Where were you-all staged at in the town of Nichols?

24 A We arrived -- it was after dark. We were staged at the
25 city hall.

- 1 Q Is that a pretty big building?
- 2 A Sir?
- 3 Q Pretty good size building?
- 4 A It may be the size of this courtroom.
- 5 Q And was anyone else staged there along as your people --
- 6 along with your people? Excuse me.
- 7 A There were some National Guard troops that was also
- 8 staying there.
- 9 Q When did you get the call that there was a vehicle in
- 10 distress?
- 11 A It was late the afternoon of the rescue. Maybe in the
- 12 6:00 hour or so. I'm not for sure.
- 13 Q As a result of that call, what did y'all do?
- 14 A We was notified that a van -- possibly a sheriff's
- 15 department van with prisoners was located -- I believe it was
- 16 south of our location that was in distress, in water, and
- 17 needed some rescues.
- 18 Q Did y'all know the exact area?
- 19 A I had looked at a map the day of and the night before
- 20 just trying to familiarize myself with the area. They
- 21 mentioned that they was passed the grain bins, so I kind of
- 22 knew generally which area they was in.
- 23 Q All right. Who were the first ones to them?
- 24 A It would have been our boat crew.
- 25 Q Okay. And what did you find when you got there?

1 **A** When we got there -- we located the van. We could see
2 the van from a distance, and there seemed to be somebody
3 standing on top of the van at that time. And so, with the
4 water current as fast as it was, we wasn't able to go directly
5 to them. We tried to go directly to them, but we had to come
6 back and through some woods and come up on the backside of
7 them.

8 **Q** Where was the van itself located?

9 **A** Sir?

10 **Q** Where was the van itself located?

11 **A** It was in water, which it liked about maybe 8 inches
12 coming over the roof of the van. You could just barely see
13 the top of the van plus the guy standing on it. It seemed to
14 be some guardrails right there. So I'm going to say it was in
15 the area of a creek. It was in a purge.

16 **Q** Was it pinned on the guardrails?

17 **A** It appeared to be. The van was stationery. It was not
18 moving. So, from looking at the water conditions, I figured
19 that it was caught on the guardrail. Because I could see the
20 end of the guardrail barely -- just barely under water but
21 that's what was making the ripples. So I chose not to go in
22 front of the guardrails because of the current, so we actually
23 went through the woods and come around behind it.

24 **Q** All right. Did anybody try to get through into the van
25 on the passenger side?

1 **A** No, sir. We -- when we got there, the first thing we did
2 was come in behind the van, is what's called an eddy. There's
3 no current in that area there. We pulled up behind the van.
4 The younger officer was standing on top of the van. We got
5 him and put the life jackets on him, put him in the boat.

6 The older gentleman, the deputy was in the water. He was
7 pinned against the door -- the current --

8 **Q** The back door?

9 **A** Yes, the back door of the van. I believe it was the back
10 driver's side door was open. He was pinned against it, and
11 the water was up to about his neck right here.

12 So two of my crew members assisted him and got him out of
13 the water, and at that time, we started cutting the roof off
14 the van trying to get to the -- we was told that there was
15 prisoners in the van.

16 **Q** You had to cut through the roof. Why didn't anybody try
17 the door on the side, on the passenger's back side?

18 **A** One, we couldn't see the doors. Just knowing a van, I
19 figured there was doors on that side of the van, but the
20 current was on -- that was the current side. We would not
21 have been able to open those doors.

22 **Q** From the inside or the outside?

23 **A** Not likely, not with the -- I don't know exactly what the
24 speed of the water was, but, I mean, it's a lot of force
25 pinning on the doors.

1 Q So y'all then proceeded to cut through the roof?

2 A We was able to cut through the top of the roof. We took
3 an ax, and we actually -- if you opened a sardine can, that's
4 exactly what we did. We just cut out three sides and flapped
5 that part back, and then that's where we ran into -- looked
6 like some vent pipes maybe for an air conditioner or
7 something. Had a lot of foam insulation. We was able to get
8 through that. And then we hit metal, which I appeared --
9 assumed to be the cage itself.

10 Q Were you able to get any headway with the cage?

11 A We worked on the cage. Another crew was able to get over
12 to us. A second boat was making their way to us. They got
13 caught by the current. They was in a rubber boat. The rubber
14 boat was thrown across the top of the guardrail. It cut the
15 front out of that rubber boat, and that boat was hung, but two
16 of the swimmers was able to get ahold of the guardrail to get
17 over to us and help us. And we actually got maybe a one-foot
18 square hole in the top of it. At that time, the water like
19 maybe two or three inches coming over the top.

20 Q Could you hear anything?

21 A No, sir. We did not hear anything the whole time we were
22 there.

23 Q At that point in time, did you happen to make any type of
24 judgment call?

25 A Yes, sir, I did. I had to make a decision to get the

1 deputies out and get the crew members that lost their boat,
2 also my crew to get everybody out. It was getting dark, and
3 the conditions were deteriorating pretty fast.

4 Q The current too strong?

5 A Sir?

6 Q The current was too strong to deal with?

7 A The current was also increasing, but the water level was
8 actually coming up over top of the van.

9 Q Was the van also possibly sinking at the same time the
10 water was rising up?

11 A I don't believe the van was sinking because we were
12 standing on top of the van. The van seems to be real stable.
13 That was a concern of mine the whole time we was operating on
14 top of it because, in a moving water like that, the vehicles
15 can shift.

16 Q Okay. So you determined this was no longer a rescue?

17 A We had people that we needed to complete a rescue on, but
18 as far as the victims that was in the van, at this point, it
19 would have been a recovery. We was not equipped to do
20 underwater recovery.

21 Q All right. Did y'all do everything within your power?

22 A I felt like we did. I had crew members that wanted to
23 continue, but being the senior officer on the scene at the
24 time, I had to make a decision, you know, the risk versus the
25 reward type of thing.

1 Q And, again, you don't remember hearing anything from
2 these ladies?

3 A At no time -- we was -- of course we was trying to
4 communicate the whole time we was cutting the roof off the
5 van, but I never once heard a voice or anything come out of
6 the van from the time we arrived.

7 Q All right.

8 MR. CLEMENTS: Beg the Court's indulgence one moment.

9 BY MR. CLEMENTS:

10 Q I'm going to show you State's Exhibit 9-A. Can you
11 identify that? And if you can, can you tell us what it is?

12 A That was one of the last pictures that we possibly took.
13 I don't know where this picture come from, but after we had
14 got the personnel back to the high-water truck, which you
15 could see down there at the top of the picture, I went and got
16 my team leader, that was actually over the whole strike team,
17 and carried him back down there so we could actually get
18 photos of what we had done.

19 Q Let me show you State's -- and that is a clear and
20 accurate representation?

21 A And that's a life jacket that I had one of my crew
22 members tie on because I knew the water was steadily rising,
23 and I wanted there to be some type of identifiable object
24 there for the crews that would have to return, the recovery
25 crews.

1 Q And is that an accurate representation of that?

2 A Yes, sir.

3 Q Okay. State's Exhibit 9-B, do you recognize that? Can
4 you tell us what that is?

5 A That looks like the last picture we took there before we
6 backed away from the van.

7 Q And it was about dark?

8 A Yes, sir. It was getting dark.

9 MR. CLEMENTS: Your Honor, at this time, we move State's
10 Exhibit 9-A and B into evidence.

11 THE COURT: Any objections?

12 MR. BOUCHETTE: Let me take a look at them real quick.

13 I thought I heard him say that he didn't take these
14 photos, so I object on that ground, but otherwise --

15 MR. CLEMENTS: He's testified they were reasonable
16 depictions and are accurate depictions of what was there.

17 THE COURT: Did you take those photos?

18 THE WITNESS: My team leader could have taken those
19 pictures. I did not take them, but I did take him back down
20 there so that he could get photos. I seen my name on the
21 bottom of them, so...

22 THE COURT: All right. I'm going to overrule the
23 objection and allow the photos. 9-A and B are in evidence.

24 (State's Exhibit Nos. 9-A and 9-B were received into
25 evidence.)

1 MR. CLEMENTS: Chief Starnes, I'd like to tell you how
2 much Marion County appreciated what y'all did and what y'all
3 tried to do.

4 And, Your Honor, I'd ask that he be released from his
5 subpoena.

6 THE COURT: Any objections?

7 MR. BOUCHETTE: I haven't asked him any questions.

8 THE COURT: You go ahead and ask your questions.

9 CROSS-EXAMINATION

10 BY MR. BOUCHETTE:

11 Q Just a few questions. You said you were stationed at the
12 town hall; is that right?

13 A Yes, sir.

14 Q In the town of Nichols? And you said the National Guard
15 was there with you too?

16 A There were some National Guard members. They actually
17 did not stay inside with us. We set up cots and our sleeping
18 quarters in there the night before when we arrived.

19 Q So you had been there about all day?

20 A I had been there all day.

21 Q Okay. You mentioned that you said that you think you got
22 the call somewhere around 6:00 but it was sometime late
23 afternoon; is that right?

24 A I wouldn't call it late afternoon. It was 6:00, 7:00
25 somewhere, because during the operation, it was getting dark.

1 Q You're not really sure about what time, but it was about
2 dark?

3 A I'm sure that my team leader could tell you exactly what
4 time we got the call, but...

5 Q You don't particularly remember at this point other than
6 maybe 6:00 or 7:00?

7 A It was late in the afternoon. It was possibly around
8 6:00. Somewhere in that area.

9 Q Do you recall where the call came -- where you received
10 the call that prompted you to proceed towards the rescue?

11 A Well, we was standing outside of the city hall in our
12 staging area where our equipment was. And it may have been
13 the sheriff, the town police chief, the mayor, somebody. I'm
14 not sure. They just said that a van had been located, which
15 we had heard earlier that they was looking for the van.

16 Q Okay. All right. So we have heard prior testimony about
17 when the first -- who first located the van. So it's safe to
18 say that you would have responded after you received word from
19 whoever that person was?

20 A We was there to immediately respond to any call -- rescue
21 that we got.

22 Q And you responded pretty much as soon as you got the
23 word?

24 A Within four or five minutes, we was in the truck going.

25 Q Had you received that call an hour before, would you have

1 responded promptly at that time?

2 **A** Whenever the -- whenever we received the call, we tried
3 to gather what pertinent information we can and take off.

4 **Q** You wouldn't have had any delay. Once you know where you
5 was, you would have gone; right?

6 **A** Correct.

7 **Q** All right. Okay. Now, how far again was the town hall
8 from where the vehicle was?

9 **A** It might have been a mile, mile and a half. It's hard to
10 tell the judgment, and I have never been in that area, you
11 know.

12 **Q** Safe to say, pretty close?

13 **A** I would say, yeah. I would say it probably took us, from
14 the time we got the call to the time we got to them, it was in
15 the 15-minute mark. 20 minutes maybe.

16 **Q** Okay. Now, you mentioned something before. You said --
17 I believe you said the conditions were getting worse; is that
18 correct?

19 **A** That's correct.

20 **Q** All right. You said the water was rising?

21 **A** Yes, sir.

22 **Q** All right. The waters were getting swifter?

23 **A** Yes, sir.

24 **Q** Okay. And that was happening from the time you first
25 arrived until the time you completed the rescue of Mr. Flood;

1 is that right?

2 **A** Yes, sir.

3 **Q** Okay. And how long would that have been, roughly?

4 **A** From what -- what time you talking about?

5 **Q** From the time you arrived on the scene until the time you
6 completed your rescue.

7 **A** The rescue was done within two minutes probably. Now,
8 after the rescue -- after we secured the two deputies, they
9 stayed in our boat while we attempted to get to the victims.

10 **Q** But during the time you were on the scene, how long was
11 that approximately?

12 **A** 30 minutes to 45 minutes maybe.

13 **Q** And in that 30-minute window, you observed, even during
14 that period of time, water getting much higher?

15 **A** I wouldn't say much higher, but it was rising. Like I
16 said before, when we got there, the water was 6 to 8 inches.
17 When we took those last pictures, water was flapping over top
18 of the van.

19 **Q** All right. And, like I said, we see the water conditions
20 were also getting swifter in addition to them getting higher?

21 **A** I didn't notice as much swiftness because I was not in
22 the water at that time, but when you get a large -- as the
23 volume increases, a lot of times, the speed will increase.

24 **Q** Okay. Is that what you think happened here or was
25 happening here?

1 MR. CLEMENTS: Object to speculation.

2 THE COURT: Sustained.

3 BY MR. BOUCHETTE:

4 Q Let me ask you about this: When you got to the vehicle,
5 you had some tools with you -- some recovery tools; is that
6 right?

7 A Not recovery tools but entry tools.

8 Q Entry tools. That's fair enough.

9 But it was able to cut open the top of the vehicle?

10 A We had an ax and a pry bar.

11 Q Okay. So you were able to pry that back, and I think
12 somebody's described it, pulling it back like a sardine can;
13 is that --

14 A I stated that. We cut it three-sided, took the pry bar,
15 flipped it back.

16 Q And when you pulled it back, you encountered a metal cage
17 of some kind; is that right?

18 A We encountered a lot of insulation, some ventilation
19 pipes. And then, once we cleared that, every time we'd make a
20 strike with the tools, we was hitting steel.

21 Q Weren't able to get through it?

22 A We eventually got through it.

23 Q Through the cage?

24 A It was through the roof of the cage. I'm not going to
25 say it was the cage wire. I'm going to say it was maybe a

1 solid metal material.

2 Q So you were eventually able to get into the compartment?

3 A We didn't get into it but we made an opening in the top
4 of it.

5 Q If you had gotten there a little bit earlier, do you
6 think you would have been able to make more progress on making
7 that opening?

8 A I would have hoped that we could have got into it.

9 Q Okay. You said Mr. Flood, when you came in, was at the
10 rear of the van; is that right?

11 A That's correct.

12 Q Now, this was a van where they -- two doors open like
13 this?

14 A Yes, sir.

15 Q Did you observe any -- the inside of the van from the
16 inside of those two doors?

17 A The inside of the van was full of water.

18 Q But Mr. Flood was back there at that rear entrance into
19 the van?

20 A He was -- from what I gathered looking, he was probably
21 standing in the rear of the van, because like I said, the
22 water was up to his neck, and he was pinned against the back
23 door on the driver's side.

24 Q He wasn't on top of the van?

25 A No, sir. The other deputy was on top, standing.

1 Mr. Flood was -- at that time, I don't believe he was able to
2 move. He was just -- he was there in the water.

3 MR. BOUCHETTE: Okay. Judge, I don't think I have any
4 other questions for this witness.

5 THE COURT: Any redirect?

6 MR. CLEMENTS: Just a couple, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. CLEMENTS:

9 Q Chief Starnes, Mr. Bouchette asked you about how far you
10 were away from the town hall.

11 A I was at the town hall when we received the call. Are
12 you talking about how far was the incident?

13 Q Well, answer both questions, if you can.

14 A I was staged at the town hall. I was in the parking lot
15 when we got the notification.

16 Q And how far were you from the incident?

17 A I would say mile, mile and a half. It's hard for me to
18 say.

19 Q How did you launch your boat? Where did you launch it
20 at?

21 A We launched it in a ditch. We left town hall -- I'm not
22 sure about the direction, but I'm pretty sure we went south of
23 our location. There was a barricade there. We went around
24 the barricade. We started driving in the water until the
25 water started coming in the doors. At that time, we backed

1 the truck into the ditch and launched the boat in the ditch
2 and took off.

3 Q Left your truck there?

4 A Yes, sir. We left the truck sitting in the water.

5 MR. CLEMENTS: No further questions.

6 THE COURT: Anything further?

7 MR. BOUCHETTE: Court's indulgence.

8 No further questions of this witness, Your Honor. I
9 don't object to him being released.

10 THE COURT: You have a good day. Appreciate you coming.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Call your next witness.

13 MR. CLEMENTS: Our next witness is from out of town,

14 SLED, Melinda Worley. We're going to get her from downstairs.

15 THE COURT: Okay.

16 (Pause in the proceedings.)

17 MELINDA WORLEY,

18 after having been duly sworn, was examined and testified
19 to as follows:

20 DIRECT EXAMINATION

21 BY MR. CLEMENTS:

22 Q Good afternoon.

23 A Good afternoon.

24 Q Could you please state your name and spell your name for
25 the court reporter.

1 A Melinda Worley. W-o-r-l-e-y.

2 Q And where do you work?

3 A The South Carolina Law Enforcement Division.

4 Q Are you a special agent?

5 A Yes, sir.

6 Q What types of crime do you investigate? What are your
7 duties?

8 A I'm in the Crime Scene Unit at SLED, so we investigate
9 mostly death investigations. It ranges: Death
10 investigations, suicides, officer-involved shootings. Mostly
11 violent crimes.

12 Q At lot of forensics involved in what you do?

13 A Yes, sir.

14 Q Were you called out regarding two deaths, a double
15 homicide, on September 18th, 2018?

16 A I was.

17 Q Can you tell us about that?

18 A We were requested to respond to Marion in reference to
19 two females who had died inside a sheriff's office van in the
20 flood waters. We responded that night of the 18th. It was
21 late, I think, by the time we arrived. The van was still
22 submerged in the water, and it was too dangerous still to get
23 to it, plus it was dark.

24 So we spent the night there that night and came back
25 first thing the next morning.

- 1 Q Did you take any pictures that night?
- 2 A No, sir.
- 3 Q Did you do any examination on anything that night?
- 4 A No, sir.
- 5 Q When you came back on the 19th, who did you meet with?
- 6 What other agency?
- 7 A Agency?
- 8 Q Did you meet with DNR?
- 9 A Yes, sir.
- 10 Q And what was the purpose of that?
- 11 A They were going to take me out on a boat to where the van
- 12 was located in the water so that I could take pictures of the
- 13 area.
- 14 Q Were the ladies recovered at that time?
- 15 A They weren't recovered while I was in the area of the
- 16 van. They took me out to take photos of the area, and then
- 17 they took me back to shore, and then they went back out and
- 18 recovered them from the van.
- 19 Q Was there anything really to process?
- 20 A No.
- 21 Q Did you gather up any type of electronics or anything
- 22 like that?
- 23 A Not at that time. We returned several days later when
- 24 the flood water had receded.
- 25 Q Was that on the 24th?

1 **A** Yes, sir. The van wasn't removed from the water until
2 the 24th after the water receded and it was safer to remove
3 it. And then we processed the van for any evidence. At that
4 time, we recovered an electronic device from the van.

5 **Q** And what did you recover those electronic devices for?
6 What were you going to do with them?

7 **A** We collected them and transferred them in order for them
8 to be submitted, I guess, to Computer Crimes at SLED to try to
9 be examined, if possible.

10 **Q** Did you recover anything else?

11 **A** There were five cartridge cases in the very back of the
12 van on the floor and two padlocks.

13 **Q** So it appeared to be the padlocks were shot off?

14 **A** Yes.

15 **Q** When you recovered those, what did you do with those?

16 **A** We submitted those to the lab at SLED.

17 **Q** Okay. Who did you submit the electronics to?

18 **A** The electronics were transferred, chain of custody, to
19 Lieutenant Stephen Howell on the scene. And then I'm not sure
20 -- I assume he submitted them to Computer Crimes.

21 **Q** And what in particular did you recover? Did you recover
22 two body cameras?

23 **A** Yes.

24 **Q** Did you recover a cell phone?

25 **A** Yes.

1 Q Did you recover a Fortress mobile recording device?

2 A Yes.

3 Q Anything else that you recovered electronically?

4 A Not that I'm aware of.

5 Q Okay. The electronics, what kind of condition were they
6 in when you recovered them?

7 A They were still attached. I don't know if they were --
8 if they turned on or were functional at all or if we tried to
9 or not.

10 Q Were they waterlogged?

11 A I mean, they had been submerged in water for an extended
12 period of time, so yes.

13 Q If you would, please answer any questions Mr. Bouchette
14 has.

15 MR. BOUCHETTE: Very briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BOUCHETTE:

18 Q So the locks had been shot off inside the vehicle?

19 A Yes, as far as we could tell.

20 Q Okay. And the area where these ladies were located was
21 still inaccessible until some later point when they were taken
22 out?

23 A I'm not sure exactly how -- when they were actually
24 removed from the van, how they went about that. But as far as
25 after the van was removed from the water, that area was

1 accessible.

2 Q All right. And you weren't able to recover anything of
3 evidentiary value from these other items that you looked at?

4 A No.

5 MR. BOUCHETTE: No further questions for this witness.

6 THE COURT: Any redirect from the State?

7 MR. CLEMENTS: Beg. the Court's indulgence.

8 REDIRECT EXAMINATION

9 BY MR. CLEMENTS:

10 Q Agent Worley, do you know where those locks were?

11 A They were on the floor in the very back compartment of
12 the van.

13 Q And what was there in the van that you saw that the locks
14 would have been used with?

15 A There was -- the compartments in the van in the very back
16 was where male inmates would be held, and in the middle was
17 where females would be held. So there was this a big grate in
18 between, and the two padlocks were up at the top toward the
19 ceiling of the van to keep it secure.

20 Q It wasn't on the sliding doors to exit the vehicle?

21 A No.

22 Q It was strictly on the cages?

23 A Yes.

24 MR. CLEMENTS: Thank you. That's all the questions I
25 have.

1 THE COURT: Anything else?

2 MR. BOUCHETTE: No.

3 THE COURT: You have a good day.

4 MR. CLEMENTS: Can I ask that she be excused from her
5 subpoena?

6 MR. BOUCHETTE: No objection.

7 MR. CLEMENTS: We call Britt Dove from SLED.

8 DAVID BRITTON "BRITT" DOVE,
9 after having been duly sworn, was examined and testified
10 to as follows:

11 DIRECT EXAMINATION

12 BY MR. CLEMENTS:

13 Q State your name for the record, please, and spell your
14 name.

15 A Yes, sir. It's David Britton Dove. D-o-v-e.

16 Q And where do you work?

17 A I work for the South Carolina Law Enforcement Division in
18 the Computer Crimes Center.

19 Q Is this what's commonly referred to as SLED?

20 A Yes, sir, it is.

21 Q And you work in the Computer Crimes area?

22 A Yes, sir, I do.

23 Q How long have you been with SLED?

24 A June 2nd of this year will be 14 years with SLED.

25 Q How many of that has been spent with computer crimes?

1 **A** The whole time. I started in computer crimes, and I have
2 been there since.

3 **Q** Okay. What are some of the things that a computer crimes
4 agent would do on any given day?

5 **A** On any given day, it really ranges from doing forensics
6 -- digital forensics on a tower, laptop, iPads, cell phones,
7 DVR systems, to investigate network intrusions, internet
8 crimes against children, internet fraud. We really have a
9 mixed bag of investigations on the digital side.

10 **Q** And digital applications that might be recovered in a
11 crime scene are submitted to y'all, and y'all run tests on
12 those as well?

13 **A** Yes, sir, we do. Anything that's submitted from one of
14 our agents or our local agent, we'll go through and do
15 forensics on it in the sense that we'll go through and examine
16 it and see if there's any information that's able to be
17 recovered from it.

18 **Q** Were you provided anything from September 18th, 2018, on
19 the drowning -- double drowning in Nichols from any other SLED
20 agent?

21 **A** Yes, sir, we were.

22 **Q** Who provided you with that information?

23 **A** I believe Lieutenant Howell was the one who submitted it
24 to SLED.

25 **Q** Stephen Howell?

1 **A** Yes, sir.

2 **Q** And what exactly was submitted?

3 **A** We had a Samsung cell phone, we had two Axon body
4 cameras, and then a DVR system that came out of a vehicle.

5 **Q** All right. What did you do with the cell phone?

6 **A** With the cell phone, since the items were -- still had
7 moisture to them, we secured them into sealed plastic
8 containers with silicon packets in it in an attempt to help
9 draw out any moisture that may still be inside of it and let
10 them sit for a period of time before we hooked any power to
11 it, because usually power and water do not mix, and we didn't
12 want to take a chance of damaging them any way further.

13 **Q** Ultimately, were you able to recover anything from them?

14 **A** No, sir, we were not. I removed the cell phone, and I
15 plugged it in and allowed it to sit for several hours on the
16 charger, and it would never take a charge or power on.

17 **Q** All right. Tell me about the two body-worn cameras.

18 **A** The two body-worn cameras, I researched them and checked
19 them. They did not have an SD card in there that I could
20 remove and process. I received a docking station that I could
21 connect, and they were submitted through the internet to the
22 cloud system that stores that kind of body camera footage.
23 And at that time and after that upload was complete, I went in
24 and I researched to see if there were any videos that had been
25 uploaded from those cameras.

1 Q From the 18th?

2 A Yes, sir.

3 Q Did you find anything?

4 A Not from the 18th, no, sir.

5 Q Not anything afterwards?

6 A No, sir.

7 Q Okay. And the electronic box, what was that in
8 particular?

9 A It appeared to be a recording device, much like a DVR,
10 that was inside the vehicle. Once I--

11 Q It's a recording box?

12 A Yes, sir.

13 Q Okay.

14 A Once I opened it, I removed the internal hard drive from
15 it, placed that into a plastic container with silicone packets
16 in an attempt to dry it thoroughly before I attempted to hook
17 it up and see if I could extract any information.

18 Q And what would the Fortress mobile recording device be
19 used for in a van like that?

20 A It appeared, from my research on that brand, that it was
21 used to record incidents, potentially locations of where the
22 van may have been, and then it also was used to record anyone
23 that was inside the van in case of an incident.

24 Q But you never could retrieve anything from it?

25 A No, sir, I never did. I attempted several times to power

1 the hard drive up in order to try to recover information. The
2 hard drive just quit working, at one point where it would not
3 even power up or spin the disc up inside it.

4 Q And, ultimately, you did everything you could?

5 A Yes, sir, I did everything I could. Worked on it several
6 different times, several ways, used different software, and
7 could not recover anything from it.

8 MR. CLEMENTS: Thank you, Agent Dove. Please answer any
9 questions Mr. Bouchette has.

10 MR. BOUCHETTE: I don't think I have any questions for
11 this witness.

12 MR. CLEMENTS: We ask that he be released from his
13 subpoena.

14 THE COURT: Any objections?

15 MR. BOUCHETTE: No objection.

16 THE COURT: Thank you. Have a good day.

17 Good time for lunch?

18 MR. CLEMENTS: Yes, sir.

19 THE COURT: Members of the jury, be back at 2:30. Do not
20 research the case. Do not discuss the case.

21 Everybody else remain seated while the jury is excused.

22 (The jury exited the courtroom at 12:40 p.m.)

23 THE COURT: All right. We'll see you at 2:30.

24 When do you plan on going to the scene?

25 MR. CLEMENTS: That's what I was discussing.

1 (A lunch recess was taken from 12:43 p.m. to 2:43 p.m.)

2 THE COURT: Good afternoon. Have a seat.

3 Do you want to go check and see if he needs any help?

4 (Mr. Scruggs leaves courtroom.)

5 (Pause in the proceedings.)

6 MR. JEPERTINGER: May I approach?

7 BENCH CONFERENCE

8 (A bench conference was held off the record and outside of
9 the hearing of the jury.)

10 THE COURT: Be at ease until the solicitor gets back in
11 the courtroom.

12 (A brief recess was taken from 2:47 p.m. to 2:57 p.m.)

13 THE COURT: Take your seat. Bring out the jury.

14 (The jury entered the courtroom at 2:57 p.m.)

15 THE COURT: State will call your next witness.

16 MR. CLEMENTS: If Your Honor, please, the State would
17 call Rhiannon Herring.

18 RHIANNON HERRING,

19 after having been duly sworn, was examined and testified
20 to as follows:

21 DIRECT EXAMINATION

22 BY MR. CLEMENTS:

23 **Q** Can you please state your name and spell it for the
24 record.

25 **A** Rhiannon Herring. R-h-i-a-n-n-o-n, H-e-r-r-i-n-g.

1 Q Rhiannon, I know you're kind of soft spoken so I'm going
2 to back way over here. If I can hear you, they can hear you.
3 Okay? So speak up and into the microphone.

4 A Yes, sir.

5 Q Rhiannon, we have been doing this a long time together,
6 haven't we?

7 A Yes, sir, we have. Almost 19 years.

8 Q Yes. And you have been with the Marion County Sheriff's
9 Office that entire 19 years?

10 A Yes, sir, I have.

11 Q What particular position do you hold in the sheriff's
12 department?

13 A My main duties every day is I'm with the civil division
14 and warrants division. That's my everyday duties, but I'm
15 also a certified victims advocate, and I'm also assigned to
16 the Emergency Operations Center as a liaison for the Marion
17 County Sheriff's Department.

18 Q Can you please explain to this jury what Marion EOC is?

19 A The Emergency Operations Center, I like to explain it, is
20 a backup for the E-911 central dispatch center. It's actually
21 a centralized location for emergency response and recovery
22 support for any major incident such as weather-related
23 incidents, ice storms, snowstorms, hurricanes, sometimes major
24 brush fires -- or doesn't have to necessarily be a brush fire
25 -- woods fire. Unfortunately, at times, there are school

1 shootings. The EOC is open up for things to that nature.

2 Q Do you recall September 18th, 2018?

3 A Yes, I do.

4 Q What were you doing that day?

5 A I was assigned to the Marion County Emergency Operations
6 Center, working as a liaison for the Marion County Sheriff's
7 Department during the hurricane.

8 Q Now, there was also an Horry County EOC involved with
9 this at the same time, was there not?

10 A Yes, sir.

11 Q And the sheriff's department for Marion, the sheriff's
12 department for Horry?

13 A The sheriff's department for Horry was not in our EOC.
14 They were open --

15 Q They were in this event.

16 A Yes, sir. Each county has their own Emergency Operation
17 Center, and they are open, running their county during the --
18 whatever incident, whether it's weather related or whether
19 it's a shooting or whatever major incident is going on at that
20 time. Each county has their operation center that's open and
21 running.

22 Q What was going on that day?

23 A It was the hurricane.

24 Q The flood in Nichols?

25 A Yes, at the time.

1 Q And you were working with the EOC. Where were you
2 located at physically?

3 A We are located in the Marion County Administration
4 Building, which we like to call it the old Walmart center
5 located out on East Highway 76. 2523 East Highway 76 in
6 Marion, which is located at the old Walmart building, as
7 everybody knows it.

8 Q Now, there were a lot of law enforcement entities
9 involved in this as well; is that correct?

10 A Yes, sir.

11 Q Marion County Sheriff, Horry County Sheriff, SLED, DNR?

12 A Yes, sir.

13 Q National Guard?

14 A Yes, sir.

15 Q What was your priority duty that day? Gathering what?

16 A I would gather information that would come into our
17 Emergency Operations Center, and then I would forward it out
18 to my emergency personnel that was out working during this
19 emergency operation.

20 Q And 911 calls are always recorded; is that correct?

21 A Yes, sir. They are recorded in the E-911 central
22 dispatch center.

23 Q But the EOC, your line was not recorded; am I correct on
24 that?

25 A That is correct. They are not recorded in the Emergency

1 Operations Center.

2 Q Did you have an occasion to talk to a driver from Horry
3 County transport on that day of the 18th?

4 A Yes, sir, I did.

5 Q What was his name?

6 A Mr. Flood.

7 Q What did Mr. Flood tell you?

8 A Mr. Flood advised me that he was driving a transport
9 vehicle. He had two inmates in the back that were still
10 inside of the vehicle. There was two guards, which he was
11 included as one, and another guard was with him. They were
12 out of the vehicle. They were stuck in water up against a
13 guardrail. They were out of the vehicle, on top of the
14 vehicle.

15 Q At this time, was there a lot of confusion about where
16 they might be?

17 A Yes, sir, there was.

18 Q Where were they?

19 A They -- after everything was said and done, they were
20 actually out on 76 coming out of Nichols, not -- right at the
21 Pee Dee Island Road, which is not far from the Little Pee Dee
22 Lodge -- the old Little Pee Dee Lodge.

23 Q And the information you received from him, you pushed it
24 out to the other responders?

25 A Yes, sir. To our emergency personnel.

1 Q In talking to Mr. Flood, what, if anything, did he ever
2 say about his supervisor being mad at him?

3 A During our conversation on the -- over the telephone, he
4 told me that he had to put me on hold because he had a call
5 coming in from his supervisor. And I actually lost him, but
6 he called me right back and advised me that it was his
7 supervisor, and she wasn't very happy at the time.

8 Q Okay. Did he ever tell you -- let me ask you this first:
9 What did you tell him about a supervisor being mad at him?

10 A I advised him that, at that point in time, I really did
11 not care what his supervisor was because it was not my concern
12 what it was at that time. My job was to stay on the phone
13 with him, keep him on the phone with me to get him safety, to
14 get him out to dry land to safety, and along with his partner
15 at the time, because it was a recovery situation at that time.

16 Q What, if anything, did he say additionally after that
17 about his supervisor?

18 A During the recovery part of this situation, as they were
19 coming out, Sheriff Wallace, which is my sheriff of Marion
20 County, was out with Sheriff Thompson, which is the sheriff of
21 Horry County. They were at the little command post that was
22 set up, and that's where -- my understanding is where
23 Mr. Flood and Mr. Bishop were going to be brought out to.

24 And I advised Mr. Flood that he was going to be brought
25 out to meet his sheriff, and he advised me that he would

1 rather meet me instead of him regarding his sheriff, Sheriff
2 Thompson.

3 Q Did he ever say more than one time that his supervisor
4 would be mad at him?

5 A He just stated to me that she was not very happy.

6 Q All right.

7 MR. CLEMENTS: Beg the Court's indulgence.

8 BY MR. CLEMENTS:

9 Q Please answer any questions Mr. Jarrett Bouchette would
10 have.

11 A Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. BOUCHETTE:

14 Q Ms. Herring, good afternoon.

15 A Good afternoon.

16 Q You're employed by Marion County; is that correct?

17 A Yes, sir. Marion County Sheriff's Department under
18 Sheriff Brian Wallace.

19 Q Okay. Do you live in Marion County?

20 A I do.

21 Q All right. You've lived here a long time?

22 A I have. All 38 years.

23 Q All 38 years.

24 A Yes, sir.

25 Q So you've lived here a long time.

1 Was there a -- the town hall and police station, do you
2 know where that's located?

3 **A** I do.

4 **Q** Okay. That's on Highway 76 approximately a mile or so
5 from the accident location; correct?

6 **A** Yes, sir.

7 **Q** All right. Now, there was an old town hall that closed
8 down about two years before that; right?

9 **A** Yes, sir.

10 **Q** That had had some damage from one of the prior floods a
11 couple of years; right?

12 **A** Yes, sir.

13 **Q** All right. Now, in this interaction and this discussion
14 with Mr. Flood, did you mistake his reference to being near
15 the police station to be that old town hall or that old police
16 station?

17 **A** During my communication with Mr. Flood over the
18 telephone, as I was questioning him, trying to get his
19 location, I asked him if he had passed the police department.
20 He advised me, yes. I still put the police department at the
21 old police -- police department, which is the one you just
22 said that was there two years ago. But when I talked to him
23 about -- I corrected it and advised it was at the new town
24 hall.

25 **Q** Well -- so, initially, you were given direction based on

1 your belief that he was referring to the old police station;
2 correct?

3 **A** At one time, yes.

4 **Q** Okay. All right. And that turned out not to be the
5 case; correct?

6 **A** Yes.

7 **Q** All right. Now, the initial phone call you received from
8 Mr. Flood, he asked if you could get ahold of the National
9 Guard; did he not?

10 **A** I don't recall that.

11 **Q** You don't recall him asking -- you don't recall him
12 saying, "This is Officer Bishop with Horry County Sheriff's
13 Department. Can you get ahold of the National Guard?"

14 **A** No, sir.

15 **Q** You don't recall that?

16 **A** I don't.

17 **Q** All right. Do you recall anybody referring that to you?

18 **A** No, sir. I initially received the call from my dispatch
19 center, which was -- one of my dispatchers in Marion County,
20 and I was provided with Mr. Flood's number.

21 **Q** Okay. You first received a call from Mr. Bishop; is that
22 correct? The initial phone call?

23 **A** No, sir. I received the initial call from my Marion
24 County central dispatch center dispatch advising me of the
25 situation, and I was given Mr. Flood's number and I contacted

1 him.

2 Q Okay. So you called Mr. Flood. And we have been talking
3 a lot about this confusion, and it sounds like there was a lot
4 of confusion going on. Were you on the phone with him when he
5 said, "We're on 76. We're underwater"?

6 A Not when he initially called 911, no, sir.

7 Q Were you with him when -- did you ask him, "Okay. Where
8 are you on 76?"

9 A During our conversation, I asked him multiple questions.

10 Q Okay.

11 A But during the initial 911 call, no, sir, that was not
12 me.

13 Q At any point, did you during your conversation?

14 A Did I ask -- I did ask him his location, what he had
15 passed. I asked him multiple questions.

16 Q All right. And he had indicated to you, at some point
17 during this conversation, that he had passed the police
18 station?

19 A Correct.

20 Q All right. At some point, he told you, "Yeah, we just
21 came out of Nichols. We're heading to Mullins." Correct?

22 A He did.

23 Q Would that be about 6:15 that afternoon? Sound right?

24 A It was within -- I know it was between 5:30 -- my shift
25 ended at 7:00, and it was within about an hour and a half,

1 two-hour span from my shift getting off. So, yes, sir, that
2 would be about right.

3 **Q** All right. So at 6:15, he made clear to you that he had
4 just passed the police station; correct?

5 **A** I can't tell you he had just passed it, but during our
6 conversation while I was on the phone with him, he had advised
7 me that he had passed the police station.

8 **Q** What I'm asking for is, about 6:15, you had been
9 instructed or provided information that he had just passed the
10 police station on 76?

11 **A** I can't tell you the time, but I can tell you, during our
12 conversation, he had passed the police station during his
13 route to where he was stuck when I got on the phone with him.

14 **Q** Well, you just said that 6:15 was approximately the
15 correct time. So, at that point, he had conveyed to you that
16 he had just passed the police station; correct?

17 **A** Around 6:15, we would have been on the phone together,
18 yes.

19 **Q** Okay, yes. And also around that same time, he told you
20 that he was on 76 between Nichols and Mullins; correct?

21 **A** That was determined during our conversation, correct.

22 **Q** Okay. Determined during the conversation. It was
23 relayed to you at or around 6:15; correct?

24 **A** I can't tell you that specific question and answer was at
25 6:15, but we were on the phone at 6:15 going through multiple

1 questions and answers trying to find out his location.

2 **Q** All right. So around 6:15, is it possible that that
3 information was conveyed to you at that time?

4 **MR. CLEMENTS:** Asked and answered, Your Honor.

5 **MR. BOUCHETTE:** She's trying to -- she's not being
6 responsive to my question, Your Honor.

7 **THE COURT:** Overruled. Go ahead.

8 **BY MR. BOUCHETTE:**

9 **Q** I'd ask you again: At around 6:15 -- I understand a lot
10 of information was conveyed. My question to you is: Was some
11 of that information, number one, the fact that he had just
12 passed the police station?

13 **A** He had passed the police station in route to the location
14 where he was stuck at during his conversation with me.

15 **Q** And that was part of the information that was conveyed to
16 you at or around 6:15?

17 **A** Yes, during our conversation.

18 **Q** And is some of the information that would have been
19 conveyed to you at or around 6:15 was the fact that he was on
20 76 between Nichols and Mullins?

21 **A** He was.

22 **Q** Okay. I'm not asking if that's where he was. I'm asking
23 you, is that the information he conveyed to you at or around
24 that time?

25 **A** Yes.

1 Q All right. Is it safe to say that at least part of the
2 confusion caused in this delay was your understanding or
3 belief that Mr. Flood was at the old Nichols town station on
4 Highway 9 as opposed to --

5 MR. CLEMENTS: Asked and answered, Your Honor.

6 THE COURT: Ask it one more time.

7 BY MR. BOUCHETTE:

8 Q Ms. Herring, is it safe to say that at least part of the
9 confusion that contributed to the delay in getting responding
10 units to this vehicle was that your belief that, when you
11 heard that he was at the police station, you took that to mean
12 the old police station which was shut down up on Highway 9?

13 A Absolutely not.

14 Q That had nothing to do with it?

15 A Absolutely not.

16 Q No?

17 But you relayed that information to someone else; did you
18 not?

19 A I relayed the information that he gave to me, I relayed
20 via radio to my emergency personnel that was responding to the
21 area.

22 Q Right. So whatever -- whatever you knew or perceived or
23 thought you knew, you were relaying that information out to
24 the other parties; correct?

25 A Correct.

1 Q Now, did you also have any conversation with Brandon
2 Bishop?

3 A No, sir, I did not.

4 Q At any point, it didn't happen?

5 A No, sir.

6 Q Okay.

7 MR. CLEMENTS: Did he say Brandon Bishop?

8 THE COURT: Hold on; he might not be through. Let's see.

9 MR. CLEMENTS: I'm sorry.

10 BY MR. BOUCHETTE:

11 Q I'm sorry. I said Brandon Bishop. I meant Joshua
12 Bishop.

13 A No, sir, I never had any contact with anyone like that.

14 MR. BOUCHETTE: Court's indulgence, Your Honor.

15 BY MR. BOUCHETTE:

16 Q Very briefly. During this -- if I understand you
17 correctly, at some point, you were on the phone with Horry
18 County folks at some point?

19 A Yes, sir.

20 Q Y'all were kind of going back and forth as these events
21 were unfolding?

22 A I talked with an officer that had previously been
23 employed with the Mullins Police Department who was now
24 employed or at that time was employed with the Horry County
25 Sheriff's Department who had contacted me to advise what they

1 had understood to be going on in our jurisdiction.

2 Q All right. So the back and forth between officers from
3 the adjacent jurisdiction and your jurisdiction was going on
4 during this period of time?

5 A That conversation was before I had even gotten Mr. Flood
6 on the telephone.

7 Q All right. Did you have any other conversations with
8 anybody from Horry County or Horry County EOC or any other
9 officials?

10 A No, sir, I did not.

11 Q Okay. Did you ever talk to or were you ever connected
12 with a Sergeant Orlando?

13 A No, sir. I was not ever connected with her.

14 Q How about a Lieutenant Corporal Witherspoon?

15 A No, sir, I was not.

16 MR. BOUCHETTE: I don't have anything further for this
17 witness, Your Honor.

18 THE COURT: Any redirect?

19 MR. CLEMENTS: Your Honor, we'd like her to be dismissed
20 from her subpoena.

21 THE COURT: Any objections?

22 MR. BOUCHETTE: No, sir.

23 THE COURT: You may step down.

24 If you'd call your next witness.

25 MR. CLEMENTS: Your Honor, we'd call Agent Stephen Howell

1 from SLED.

2 LT. STEPHEN HOWELL,

3 after having been duly sworn, was examined and testified
4 to as follows:

5 DIRECT EXAMINATION

6 BY MR. CLEMENTS:

7 Q How are you doing?

8 A Doing well. Thank you.

9 Q State your name and spell it, please, for the record.

10 A My name is Stephen Howell. S-t-e-p-h-e-n, H-o-w-e-l-l.

11 Q Where do you work?

12 A I work for the South Carolina Law Enforcement Division,
13 also known as SLED.

14 Q Are you a lieutenant with the Pee Dee Region?

15 A That is correct.

16 Q So this is your region that you work?

17 A That is correct.

18 Q Were you working with SLED on September 18th, 2018?

19 A I was.

20 Q At that point in time, how long had you been a SLED
21 agent? Probably be easier to ask how long have you been a
22 SLED agent from today?

23 A Approximately 14 years.

24 Q Do you recall that day of September 18th?

25 A I do.

1 Q Tell us what was going on.

2 A During that time, there was a flooding situation. There
3 had been a hurricane, and so, as part of the response to that,
4 SLED had been asked to do several different missions, so we
5 were rotating people in and out down at the beach and giving
6 them some breaks and stuff back and forth regarding that.

7 Q And when did you receive a call to come to Nichols?

8 A I received -- we received a request to come investigate a
9 situation where two individuals that were in a Horry County
10 transport van had deceased in flood waters.

11 Q And when did you receive that request?

12 A That was later that evening on -- afternoon/evening on
13 the 18th.

14 Q So right early on?

15 A Yes, sir.

16 Q So when you got that request, at that time, you were
17 under Captain Abraham?

18 A That is correct.

19 Q Tell us what y'all did.

20 A We responded out to the situation or at least we got as
21 close as we could, which was right there at the bridge, which
22 is close to Pee Dee Night Life, which is on the Mullins side
23 of 76 heading back toward Nichols.

24 Q So you couldn't get any further than the river?

25 A No, sir.

1 Q How high was it on the Mullins side as compared to the
2 Nichols side?

3 A I'm not sure. I know that, when we dipped down, the
4 water was already at the bottom of the bridge itself and was
5 rising, you know, kind of beside the bridge.

6 Q That's as far as y'all went?

7 A Correct. We stopped there. There was water on the road.

8 Q Did you take another route and go on to Nichols, or did
9 you stay there on the Mullins side?

10 A We stayed there that evening.

11 Q And anybody else call in for SLED for various things?
12 Crime scene or anything of that nature?

13 A Yes, sir. I mean, our crime scene agents would be called
14 in to head out that way. Of course, there was nothing they
15 could do that evening once they got there. We also had an
16 agent that was in a boat with a DNR officer, and I remember
17 seeing them later that evening.

18 Q Would that be Will Duncan?

19 A Correct.

20 Q So how did you begin your investigation, and what were
21 you trying to ascertain?

22 A We were asked to look into the situation involving the
23 transport. So what I tried to ascertain was what were the
24 details surrounding the transport, and to the best that I
25 could do, what were the environmental conditions during that

1 time. So the way we started with that was, of course, we knew
2 it was a transport, so we started at the transportation unit
3 and began speaking with people there, developing other people
4 to speak with from the ones that we already talked to.

5 **Q** And approximately how many people did you speak to in the
6 transportation unit?

7 **A** I could look it up and see. I'm not sure. Probably six
8 or seven, ultimately.

9 **Q** How about as far as the town of Nichols?

10 **A** Part of that, as they had come through there, was we
11 interviewed several people that were involved there at the
12 town of Nichols to try to find out if there was any
13 information regarding the -- again, the environmental
14 conditions. We talked to the town administrator, we talked to
15 the mayor, and, you know, various folks like that.

16 **Q** Okay. Did you talk to any DNR officers?

17 **A** Yes. We became -- of course, with the DNR, Will Duncan
18 was with a DNR officer, who is now currently working with us,
19 Dylan Oates. I interviewed him. I also, of course,
20 interviewed those who were at the barricades on the Horry
21 County side of -- Horry County side of the situation.

22 **Q** And when did you begin to find out who was driving the
23 van?

24 **A** We knew early on that the transport was with Officers
25 Bishop and Flood and that Flood was driving.

1 Q What was your determination as far as -- and why? What
2 was your determinations and why, about the road conditions and
3 the flood conditions around 6:00 on the 18th, if any
4 conclusions had been drawn?

5 A You know, in collecting the information and talking with
6 people, of course when we talk to -- when I talked to Sandee
7 Rogers, I found out about the photos she had taken. She
8 showed me those photos, so I saw what the conditions were kind
9 of around that town that morning.

10 And we also found out, of course, that there was -- a
11 part of the rescue effort was that there was a drone that had
12 gone up. And of course we saw that, and we saw what that was,
13 even though that picture was, you know, from afterwards.

14 Q It wasn't from very long after it, was it?

15 A Oh, no. But, I mean, as far as the actual incident.

16 So there also -- we had pictures that were taken by the
17 officers that were there in the boats, both the DNR officer
18 and the SLED agent were there. We also had a couple of photos
19 that were taken by Tennessee Swift Water folks, who we also
20 interviewed.

21 I'm trying to think.

22 Q Did you interview any national guardsmen?

23 A Yes. That was in the interviews that we did regarding
24 the barricades that were set up there near the cemetery where
25 76 and 9 come together from outside the Horry County side. I

1 spoke with Zachery Eskew. I also ended up speaking with
2 Desmond Jenkins. And then we also, of course, talked with the
3 officers who was with him, Eddie Page.

4 Q I'm going to ask you, if you would, to step down here or
5 stand up there right where you are.

6 A Okay.

7 Q Can you point out to these jurors -- come here beside me.

8 A Tell me what you need.

9 Q Point out where you just talked about barricades and
10 Battle Oil Company.

11 A Okay. So Battle Oil Company is located here. There
12 is -- this, of course, is where 9 and 76 come in. And they
13 gather together here before going into town. There's a
14 crossroads -- it's kind of hard to see what the red is, but
15 this portion of the road doesn't have a name, but it crosses
16 here. There was a barricade set up here and there was a
17 barricade set up here, blocking traffic going here and here
18 but allowing you to kind of go around that little cut-through
19 if you needed to turn around.

20 Q Is that for what -- basically what they wanted to protect
21 people's vehicles?

22 A Yeah, I mean, you would need --

23 MR. BOUCHETTE: Your Honor, I'm going to object on a lack
24 of personal knowledge for this.

25 THE COURT: What was the question? Or rephrase the

1 question.

2 MR. CLEMENTS: How he set up in running the traffic. The
3 question specifically was, was if a big vehicle -- area for
4 them to turn around.

5 MR. BOUCHETTE: I think we've heard from the people that
6 were there. I don't think his own knowledge is --

7 THE COURT: Why don't you lay a foundation for it.

8 MR. CLEMENTS: It doesn't really mean anything, Judge.
9 We'll move on from that.

10 THE WITNESS: All right. What else can I tell you?

11 BY MR. CLEMENTS:

12 Q Tell us what else you found out, other than about big
13 vehicles turning around.

14 A Okay. Well, basically, we came through here, and you can
15 see, coming in, where everything is located. We discovered,
16 of course, that the route was through here. We came down. Of
17 course the location was here. That night when we came in, we
18 had to stop basically down here at the bridge, and that was as
19 far as we were able to go. As you've heard before with other
20 testimony, things happened later, as far as, like, crime
21 scene.

22 Q So you couldn't cross over here to get into this area?

23 A No. You'd come up to the bridge, and that was as far as
24 you wanted to go.

25 Q Okay. So, that night, about how many people do you think

1 you talked to, if anybody, that night?

2 **A** That night, I don't think we spoke to anybody. I think
3 it was, again, the next morning when we came in and started
4 with Eskew and then we went to Page and then started on from
5 there.

6 **Q** And did the investigation continue over a period of
7 several days? Several weeks?

8 **A** It continued a lot longer than that, yes, sir.

9 **Q** Okay. Did you ever have opportunity to talk with
10 Mr. Bishop or Mr. Flood?

11 **A** I have not spoken with Mr. Flood. We did speak with
12 Mr. Bishop.

13 **Q** Okay. Now, did Mr. Flood present to you a statement?

14 **A** Mr. Flood provided a statement to SLED. SLED, in turn,
15 provided some follow-up questions, and Mr. Flood, in turn,
16 provided responses to those questions.

17 **MR. CLEMENTS:** Okay. Out of an abundance of caution,
18 Your Honor, may we approach the bench?

19 **THE COURT:** Yes, sir.

20 **BENCH CONFERENCE**

21 (The following bench conference was held outside the hearing
22 of the jury and others.)

23 **MR. CLEMENTS:** My understanding was, he was not in
24 custody, so this would not be a *Jackson v. Denno* situation at
25 all, and I want to get into what was said -- what was the

1 information that Mr. Flood sent to SLED in his statement and
2 in answering of those questions.

3 THE COURT: Are you in agreement with that?

4 MR. BOUCHETTE: Yes, sir.

5 THE COURT: Okay. No objection?

6 MR. BOUCHETTE: I didn't hear the specific question, but
7 I think it goes to -- as to what was relayed to Mr. Flood. I
8 don't have an objection to that.

9 THE COURT: I think it's those statements he's talking
10 about.

11 MR. BOUCHETTE: That's correct.

12 THE COURT: Okay. Good.

13 (Open court resumes:)

14 BY MR. CLEMENTS:

15 Q Did you receive a statement made by Mr. Flood dated
16 9/25/18 from his attorney?

17 A Yes, sir, I did.

18 Q And it was notarized; is that correct?

19 A That is correct.

20 Q So what that really means is it was a sworn statement?

21 A Correct.

22 Q Do you have a copy of that statement with you?

23 A I do.

24 Q I'll refer you to page 1 of that statement.

25 A Okay.

1 Q I would ask you, about halfway down the page, Mr. Flood
2 talks about leaving Loris and starting his trip. Can you read
3 that first part to us?

4 A "We left Loris ER and started going to McLeod Mental
5 Health in Darlington by way of Highway 9. The trip was
6 uneventful until we got to Nichols, where we were stopped by
7 barricades."

8 Q So they were stopped by barricades on No. 9 in Nichols?

9 A According to this, yes.

10 Q Then does he go on to describe what was there at that
11 scene in the barricades?

12 A He does.

13 Q Please read that to us.

14 A "There was a National Guard truck with three soldiers:
15 Two in the truck and one standing on the ground. I stopped
16 the van at the checkpoint and started talking to the soldier
17 on the ground. We stayed at the checkpoint for a few minutes
18 talking to the national guardsman. We asked him, because the
19 road was blocked, the best way to Darlington, and he said that
20 we could go through."

21 Q Okay. They asked him, because the road was blocked, the
22 best way to Darlington, and he said they could go through,
23 even though it was blocked?

24 A Mr. Flood indicates, it said, "We asked him, because the
25 road was blocked, the best way to Darlington, and he said that

1 we could go through."

2 Q Okay. What was his response to that? Please read that
3 to us.

4 A "I was surprised but happy because it would save us a lot
5 of time."

6 Q Then what did he say he did?

7 A "I drove around the barricades and drove down the road."

8 Q Go on a little further. Because they stayed on the road
9 and went by the Nichols police station. What did he then say?

10 A "I drove by an old abandoned lodge on the right and a
11 mill on the left. There was some water on the road, but it
12 wasn't that high. I drove slow because the water was right at
13 the bottom of the houses that we passed. I didn't want to
14 wake the water and splash it against the houses along the
15 road."

16 Q So the water was on the road, but it wasn't high, but it
17 was high enough to make waves?

18 A "I didn't want to wake the water and splash it against
19 the houses along the road."

20 Q Okay. Then it states how far he drove.

21 A "I drove about two miles before we came upon a clearing
22 in the trees."

23 Q And then the last line beginning on -- with line 4 at the
24 end of the "clearing in the trees." What does it say he did?

25 A "I looked down the road, and it looked like we were about

1 to come out of the water."

2 Q Looked down the road and it looked like they were about
3 to come out of the water; is that correct?

4 A Correct.

5 Q And then he says, onto the next page, it looked like
6 what?

7 A "It looked like it was about a quarter mile away."

8 Q And then what did he say he did?

9 A "I kept driving when, all of a sudden, the van started to
10 float."

11 Q The van started floating? And then what?

12 A "The water pushed us to the left, and the van was pushed
13 into the guardrail."

14 Q And then what?

15 A "The water was rushing in, and Officer Bishop was able to
16 open his door."

17 Q Continue.

18 A "As the water rushed in, I tried to put my window down
19 because I knew the door couldn't be opened. The water was
20 rushing in so fast that the power went out with my window
21 halfway down. Bishop had already jumped out and tried opening
22 the side sliding door. I tried going out the half-open window
23 and got stuck."

24 Q Go to page 3, the fifth line.

25 A Beginning with the sentence there?

- 1 Q Beginning with "Bishop."
- 2 A "Bishop saved my life. Without him, I would be dead
3 also."
- 4 Q And later on down the page, right after the part where
5 the fire chief, he said they started cutting into the roof of
6 the van. Read there forward.
- 7 A "They started cutting into the roof of the van when the
8 fire chief said, 'This is not a rescue. It is now a
9 recovery.' At that point, I finally realized that the females
10 were dead. I had been talking to them through this whole
11 thing, trying to get them to stay calm."
- 12 Q And this is Mr. Flood's admissions?
- 13 A Yes, sir. This is from Mr. Flood.
- 14 Q That he drove into the water, and the van started to
15 float, and it was pushed to the side and pinned against the
16 guardrail? That's his admission?
- 17 A That's correct.
- 18 Q And that he was glad to go through -- he was happy to go
19 through. What did he say about that?
- 20 A "I was surprised but happy because it would save a lot"
21 -- excuse me. "I was surprised but happy because it would
22 save us a lot of time."
- 23 Q All right. After receiving this statement from Mr. Flood
24 through his attorney, what was your response?
- 25 A In response to this, we submitted a series of follow-up

1 questions based on this statement.

2 Q Why did you send questions? Because you weren't able to
3 talk with him?

4 A Correct. We were operating through his attorney.

5 Q And you still had questions because of things you
6 couldn't ask about that he had written down?

7 A Correct.

8 Q Do you have copies of the questions with you?

9 A I do.

10 Q Do you have copies of the answers with you?

11 A I do.

12 Q I think it would be easier if I ask the question and you
13 tell us the answer. How about that?

14 I'm going to ask you Question No. 5: "Who was the senior
15 officer on the transport?"

16 A "Me."

17 Q And then the Question No. 9: "What specific instructions
18 did Sergeant Orlando give you regarding the transport and/or
19 route?"

20 A "She told us to be careful but did not tell us what route
21 to take."

22 Q Question No. 11: "Did Officer Herring tell you that you
23 could not go through Nichols because of the flooding? Did he
24 offer any further explanation? If so, what he did say?"

25 And his response?

- 1 **A** "No, I can't remember Officer Herring being in the room."
- 2 **Q** Question 13: "When you and Bishop left from speaking
3 with Sergeant Orlando and the others, what was your
4 understanding about which route you were going to take for
5 this transport?"
- 6 **A** "As I was senior officer and the driver, I picked the
7 route that I always travel."
- 8 **Q** The route he always travels.
- 9 Let me back up to Question No. 12: "Did Corporal Maxim
10 have any input to the route you would take?"
- 11 **A** "No."
- 12 **Q** Bear with me, please.
- 13 No. 15: "Did Bishop have any say or input into choosing
14 this route of travel, Highway 9 in Nichols?"
- 15 **A** "No, not at all."
- 16 **Q** No. 16: "Did you discuss the route with Bishop after
17 leaving the presence of Sergeant Orlando, Corporal Maxim, and
18 Officer Herring?"
- 19 **A** "No. We talked small talk, but I can't remember what."
- 20 **Q** 17: "Did you speak with anyone else about the route?"
- 21 **A** "No."
- 22 **Q** Question No. 22: "Were the personnel manning the
23 barricades located directly by the barricades, or did you have
24 to drive around the barricades and driver further down to
25 where they were located?"