

VOLUME II OF II

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

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SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Stephen William Flood,

Appellant.

RECORD ON APPEAL

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**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).**

1 **A** "The national guardsmen were manning the barricades at
2 the barricades."

3 **Q** "Not a little down the road?"

4 **A** "The national guardsmen were manning the barricades at
5 the barricades."

6 **Q** Question No. 23: "Why did you drive around the
7 barricades instead of rerouting?"

8 **A** "The national guardsmen told us we were clear to go
9 around the barricades."

10 **Q** The national guardsmen? Is that plural?

11 **A** Yes.

12 **Q** Because we were clear to go around the barricades.

13 Question No. 24: "Was there a sheriff's deputy with the
14 National Guard personnel manning the barricades? What agency
15 was he from?"

16 **A** "There was no law enforcement officer with the National
17 Guard personnel at the barricades."

18 **Q** No. 25: "What was the entire conversation you had with
19 the National Guard soldier? Try to detail the whole
20 conversation."

21 **A** "It was small talk; i.e., weather, where they were
22 staying. We told the guardsman that we were going to
23 Darlington, and he told us we were clear to go around the
24 barricades."

25 **Q** Question No. 28: "Was anything said about the ability to

1 make it through the water?"

2 **A** "No. There was no mention of any water in the road."

3 **Q** No mention of any water in the road. Okay.

4 Question No. 29: "You stated that you asked the National
5 Guard soldier the best way to Darlington. Did you ask the
6 question or did Bishop? What was his response? And did he
7 tell you where he was from?"

8 **A** "I asked the soldier a question about going to
9 Darlington. His response was that we were clear to go through
10 Nichols. He did not tell us anything about any flooding."

11 **Q** Question No. 30: "Did you see and/or pass any of the
12 barricades while traveling through Nichols?"

13 **A** "We did not pass any other barricades in the road."

14 **Q** Question 31: "Did you see any other vehicles traveling
15 on the roadway while driving through Nichols?"

16 **A** "We did not see any other vehicles other than the cars
17 parked at the Nichols police station."

18 **Q** "What involvement did Bishop have in the conversation
19 with the National Guard soldier?" Question 27.

20 **A** "Both Bishop and I talked to him in the small talk part."

21 **Q** Question 32: "Where did you first see water covering the
22 road?"

23 **A** "We first saw water in the road about three-quarters of a
24 mile after the barricades. The water was about one-half inch
25 deep."

1 Q Half-inch deep; is that correct?

2 A "The water was about one-half inch deep."

3 Q Question No. 33: "When you saw water covering the road,
4 why didn't you turn around?"

5 A "I didn't turn around because it wasn't that deep."

6 Q Question 34: "So you proceeded. Can you describe the
7 depth of the water? Can you describe how the depth changed
8 and where it began to change?"

9 A "The road was higher than the ground where the houses
10 were. The water was very shallow on the road. When we got to
11 the Pee Dee River, the road dipped down, and that's where it
12 got high. It seemed to crest as we got to the river."

13 Q Seemed to crest as they got to the river.

14 Question 35: "You stated that there was some water on
15 the road but that it wasn't that high. Can you describe
16 exactly how high it was? Maybe give a depth relevant to the
17 van, how high it was on the van."

18 A "I would say that, before we got to the river, the water
19 was at the bottom of the rim. I would say a half-inch to
20 three-quarters of an inch."

21 Q So half-inch to three-quarters of an inch deep.

22 A "I would say one-half inch to three-quarters of an inch."

23 Q Question No. 36: "Did you and Bishop have any
24 conversation about water being on the road? Did you or he
25 ever discuss any concern about the water at any point?"

1 **A** "Before we got to the river, I told Bishop that I was
2 going slow because the water was at the bottom of the houses.
3 I did not want to cause a wake of water going into the
4 houses."

5 **Q** So the water -- well, okay. Didn't want to cause a wake
6 going into the houses.

7 37: "You spoke of driving through water for about two
8 miles. Why didn't you turn around?"

9 **A** "The water wasn't that high. I couldn't see the edge of
10 the road, and if I backed up to turn around, I could end up in
11 a ditch. When I got to just before the river, I could see dry
12 road just beyond the guardrails."

13 **Q** Question 38: "What speed were you driving when you
14 encountered the water on the road? Did you maintain the same
15 speed through the water until such time as the van began
16 floating?"

17 **A** "My speed was about 5 to 10 miles per hour. I did not
18 want to cause a wake."

19 **Q** Question No. 40: "After the van began to float and was
20 pushed against the railing, did you ever feel the vehicle
21 drop?"

22 **A** "Not that I can remember."

23 **Q** Question 41: "How exactly did Bishop exit the vehicle?
24 Did he open the door and get out? Did he climb through a
25 window? Be as specific as possible."

1 **A** "When the van started to float, he was able to get his
2 passenger side door open."

3 **Q** "What happened to the van keys? Did you have them? Did
4 you give them to Bishop? If so, when and why? Did Bishop
5 have them? Did he give them back to you? If, so when?"

6 **A** Could you give me the number for that?

7 **Q** I'm sorry; 42.

8 **A** "Bishop asked for the keys to get the girls out. I gave
9 them to Bishop, and when we were in the back of the National
10 Guard truck going to the ambulance, he gave them back to me.
11 I believe, at the hospital, I gave them to Captain Grate."

12 **Q** Question 43: "How were you aware of all the actions
13 Bishop was taking while you were trapped in the window? Did
14 he tell you while you were trapped or later?"

15 **A** "Officer Bishop tried his hardest to get the girls out.
16 Everything he did, he told me as he was doing out [verbatim]."

17 **Q** Question No. 44: "Were you still stuck in the window
18 when Bishop shot the locks off?"

19 **A** "Yes. As the van got closer to the guardrail, I was
20 putting my window down. When the window was about halfway
21 down, we lost power in the van."

22 **Q** Question 45: "About how long do you think it was from
23 the time that the van floated and was pushed into the
24 guardrail to the time Bishop radioed into the detention center
25 that you were in trouble?"

1 **A** "It's hard to say, but if I had to guess, I would say
2 one-half to three-quarters of an hour."

3 **Q** So 30 to 45 minutes?

4 **A** "I would say one-half to three-quarters of an hour."

5 **Q** Bear with me just a minute.

6 Question No. 50. Wait a minute. Question No. 49: "Did
7 you call 911 to get in contact with the Marion County
8 Sheriffs's Office?"

9 **A** "Bishop had them on the phone before he gave me the
10 phone."

11 **Q** And let's back up one to 48: "Were you speaking on the
12 phone while you were still trapped in the window or was it
13 after you had been freed from the window?"

14 **A** "I got on the phone after Bishop freed me from the
15 driver's side window."

16 **Q** And Question No. 50: "Did you speak with Officer
17 Witherspoon during the incident? What was the conversation?"

18 **A** "I did not talk to Witherspoon at all, that I can
19 remember. I talked to a female at Marion County Sheriff's
20 Office by the name of Luann."

21 **Q** Have you looked or compared other people's statements and
22 testimony they have given to see how much is congruent or
23 incongruent with the statements made by Officer Flood and the
24 answers to the questions made by Officer Flood?

25 **A** I have. I have.

1 Q Okay. And after doing all that, was that before or after
2 you got charges made?

3 A That was before.

4 Q Can you tell us what else pertinent went on there on your
5 investigation prior to the arrest, if anything else?

6 A Nothing that I can think of directly.

7 Q Did you still continue to have that investigation going
8 forward?

9 A Yes. At any time any information came forward that there
10 was anyone else who had information, we would continue. I
11 would go to that person and try to collect that information.

12 Q And that would be up until today; right?

13 A Correct.

14 MR. CLEMENTS: Beg the Court's indulgence one moment.

15 BY MR. CLEMENTS:

16 Q Lieutenant Howell, that's all I have for you right now.
17 Please answer questions of the defense counsel, and I'll be
18 back with you in a minute.

19 MR. BOUCHETTE: Court's indulgence.

20 THE COURT: Let me speak with the solicitor real quick
21 over here on the side. And let me see that deputy over there
22 in that corner.

23 BENCH CONFERENCE

24 (A bench conference was held off the record and outside of
25 the hearing of the jury.)

1 MR. CLEMENTS: What did I do wrong?

2 THE COURT: During your direct examination, one of the
3 victim's family members -- I don't know if it's mama, sister,
4 or what, she got angry and she walked out of this courtroom.
5 He saw her.

6 MS. DROST: I saw her.

7 THE COURT: And she said something to the defendant's
8 family. What did she say? Did you follow?

9 DEPUTY: No, sir, not at this time.

10 THE COURT: But what I gathered now, she's shocked and
11 upset and you escorted her on out; is that right?

12 DEPUTY: I stood up and said, "We're not going to do
13 that. Go ahead and step out the courtroom."

14 MR. CLEMENTS: Is she outside the courtroom or inside the
15 courtroom?

16 THE COURT: She said something sassy and it upset them
17 big time.

18 DEPUTY: I know she went out the door, but I don't know
19 if she already left.

20 MR. CLEMENTS: Want to go off the record and address it,
21 Judge?

22 THE COURT: I think what we need to do is, if she comes
23 back in the courtroom, you just stand between her and
24 defendant's family and walk her over to her seat.

25 DEPUTY: Yes, sir.

1 THE COURT: And then, when we take a break after this,
2 you talk to them.

3 MR. CLEMENTS: They didn't have a word to say to me all
4 week. They're the most ungrateful people I've ever seen.

5 THE COURT: Tell them, when it comes time for a verdict,
6 we're not going to have that again.

7 MR. CLEMENTS: Yeah.

8 THE COURT: You understand?

9 DEPUTY: Yes, sir.

10 (Open court resumes:)

11 CROSS-EXAMINATION

12 BY MR. BOUCHETTE:

13 Q Mr. Howell, good afternoon.

14 A Mr. Bouchette.

15 Q Let me start off, you spent a fair amount of time
16 preparing and investigating this incident; did you not?

17 A I'd say that's accurate.

18 Q Put together a report regarding the incident?

19 A I did.

20 Q It's a big report; right? All the boxes and stuff we see
21 over there, that's what you put together for your report?

22 A That's multiple copies.

23 Q Copies? All right.

24 Lots of pages, including attachments and all?

25 A That is correct.

1 Q All right. And is that something you do often as a SLED
2 agent; correct?

3 A It is.

4 Q All right. We have heard from some other officers, but
5 when you prepare a report like that, you want to make it
6 complete and accurate; right?

7 A Yes, sir, we do.

8 Q You want to get as much information as you can as early
9 as you can; right?

10 A That's correct.

11 Q You want to make sure that there's not anything in that
12 report of any significance or, rather, that there's not any
13 information of any significance which would not be included in
14 your report; would that be fair to say?

15 A That is the goal.

16 Q All right. Let me go through and talk about, did you
17 interview a Mr. Kenny Grate, Ms. Orlando's supervisor?

18 A I did not.

19 Q All right. Did you interview Mr. -- Corporal Kahn (ph)?

20 A I did not.

21 Q Or Sheriff Thompson, Horry County Sheriff Thompson?

22 A I did not.

23 Q Okay. From your report, how did you -- who requested
24 your initial involvement?

25 A I want to say that our initial request was from the Horry

1 County Sheriff's Office.

2 Q So the request came from Horry County?

3 A I believe that was the initial.

4 Q But the accident happened over here in Marion?

5 A Correct.

6 Q When we start off, I want to make sure that, during the
7 course of your investigation, you identified no witnesses
8 other than the two defendants who provided you testimony
9 regarding the roadway at the precise time the vehicle became
10 disabled; is that correct?

11 A Other than the victims, they were the only ones there.

12 Q The only people you could interview were the two
13 defendants; correct?

14 A That would be correct as far as at that location at that
15 time.

16 Q There were no witnesses other than the two defendants who
17 provided you testimony as to the water level at the time the
18 vehicle became disabled; correct?

19 A That would be accurate.

20 Q No witnesses other than the defendant who provided you
21 with testimony regarding the visibility or drivability of the
22 roadway at the time the vehicle became disabled; is that
23 correct?

24 A Just to make sure I'm clear in what you're asking me,
25 because I want to answer your question accurately.

1 Q Okay.

2 A We had information, basically, as I have said before,
3 through photos and other things of that area beforehand. And
4 so that would sort of be a bookmark, at least what it was
5 before and then what it was at that time.

6 Am I understanding correctly?

7 Q Let me ask you the next question. Did you engage with
8 any experts from SLED or anybody to recreate and tell you
9 precisely what the conditions would have been at around --
10 prior to 6:00 on September 18th, 2018?

11 A No, sir. No, sir. We don't have any hydrologists or
12 anything like that employed by SLED.

13 Q Okay. So it's safe to say that your entire report and
14 any conclusions which have been drawn therefrom are based off
15 of lay witness testimony, people who were not present at the
16 scene when this vehicle became disabled?

17 A In addition to non-witness testimony, such as
18 photographs, such as drone footage, such as other things that
19 are not testimonial in nature as far as from a person.

20 Q So is that yes?

21 A That would be a no, the way you asked it.

22 Q Let me ask it again to make sure we're on the same page.
23 There's no -- in your entire report, all the folks you
24 interviewed, that binder over there, there's no witness
25 testimony regarding the incident location at the time the

1 vehicle became disabled?

2 **A** At that specific location at that specific time, it would
3 just be from the officers who were there, because no one else
4 was around.

5 **Q** All right. Now, you testified earlier that part of your
6 investigation was evaluating the statements made by Mr. Flood
7 and Mr. Bishop as well as any other statements that were
8 provided by other individuals. Is it fair to say that the
9 testimony provided by Mr. Bishop was substantially the same as
10 that of Mr. Flood?

11 **MR. CLEMENTS:** Objection to hearsay, Your Honor.

12 **MR. BOUCHETTE:** It's his conclusion that he reached as
13 part of --

14 **THE COURT:** What was your question again?

15 **MR. BOUCHETTE:** I asked, during the course of the
16 investigation, if the statement of defense was substantially
17 similar to that of Mr. Flood.

18 **THE COURT:** Did the State's what? Say it a little bit
19 louder.

20 **MR. BOUCHETTE:** My question was whether or not the
21 information he received from Mr. Bishop was substantially the
22 same as the statements he had received from Mr. Flood.

23 **THE COURT:** How would that not be hearsay?

24 **MR. BOUCHETTE:** He can make conclusions based on the
25 evaluations of all the --

1 THE COURT: He can say what he concluded but not what
2 Mr. Bishop said.

3 BY MR. BOUCHETTE:

4 Q Did Mr. Bishop contradict Mr. Flood's statement?

5 MR. CLEMENTS: Objection, Your Honor. Same grounds.

6 BY MR. BOUCHETTE:

7 Q I'll ask it this way: Would you have taken action had
8 Mr. Bishop's testimony been substantially different than that
9 of Mr. Flood?

10 A What action?

11 Q Well, any action.

12 A I have no idea.

13 Q Well, given that this resulted in a charge against both
14 of them -- all right?

15 A Correct.

16 Q -- because you testified earlier that, ultimately, you
17 pursued charges against Mr. Bishop and Mr. Flood correct?

18 A That's correct.

19 Q Then, is it safe to say that you based that decision off
20 of the facts of their -- or off of your conclusion that the
21 version of events was the same by Mr. Flood and by Mr. Bishop?

22 A I'm sorry; I'm a little confused. Try that one more time
23 maybe a little differently.

24 Q You ultimately made a decision to --

25 A Yes. We ultimately charged both Mr. Flood and

1 Mr. Bishop.

2 Q And that was based, at least in part, on the testimony by
3 both Mr. Flood and Mr. Bishop?

4 A It was based on probable cause from the investigation,
5 yes.

6 Q Which included testimony from both Mr. Flood and
7 Mr. Bishop?

8 A It did, it did. The investigation does include their
9 testimony.

10 Q Okay. All right. Now, is it safe to say that you made
11 that conclusion based on the fact that both of these men had
12 substantially the same version of events?

13 A No, that was not the sole way of making that conclusion.

14 Q Was it part of your conclusion?

15 A Well, every piece of information is part of the
16 conclusion.

17 Q So is that a yes?

18 A It would be part of the conclusion. Their statements
19 would be part of the report which was used to form the
20 probable cause that had resulted in the charges, yes.

21 Q Yes. Okay. Very good.

22 A To what I understand.

23 Q All right. Now, did you do any investigation as to how
24 these young ladies came to be transported by Mr. Flood and
25 Mr. Bishop?

- 1 **A** No.
- 2 **Q** You have no knowledge as to --
- 3 **A** Other than they were assigned the transport. Our
4 investigation on the transport, basically, is bookmarked at
5 the beginning, the assignment of the transport, which has been
6 discussed, and the termination when the transport was flooded
7 out.
- 8 **Q** But, I mean, you know that these ladies were not inmates;
9 correct?
- 10 **A** That's correct. They were mental health patients.
- 11 **Q** That's right. And these were not folks under any kind of
12 court order to be transferred.
- 13 **A** That -- I'm not into that, so I can't give you any
14 information on that. I don't have any paperwork regarding
15 that.
- 16 **Q** And you didn't review that as part of your investigation?
- 17 **A** No. My concern was how those ladies got into flood
18 waters, not necessarily how they got in the van.
- 19 **Q** Okay. So you didn't review that.
20 Did you interview Ms. Witherspoon?
- 21 **A** I did.
- 22 **Q** And she conveyed to you that she had -- was familiar with
23 where the van was located?
- 24 **A** Let me verify that. I'm not saying that's wrong. I
25 always want to be careful when I'm putting words in someone

1 else's mouth. (Reviewing notes.)

2 I apologize. Ask that again, please.

3 Q You had a conversation with Ms. Witherspoon; is that
4 right?

5 A Yes, that's right.

6 Q And so that indicated that she -- after hearing the radio
7 information, she had a good idea of where the vehicles were
8 [verbatim] located?

9 A It appears that way, yes.

10 Q Okay. All right. You also interviewed Mr. Eskew?
11 National Guardsman Eskew?

12 A I did.

13 Q Now, I understand he gave -- you had a couple of
14 different interviews with him; is that right?

15 A I spoke with him twice.

16 Q Okay. Was the second time before or after May 21st of
17 2021? Or, excuse me, April 21st of 2021?

18 A I will tell you in just a second.

19 Q Okay.

20 A (Reviewing notes.) And, again, you were asking about the
21 second time I spoke with him?

22 Q Well, when was the second time you spoke with him?

23 A October 29th, 2018.

24 Q So roughly a month or so after you first spoke with him?

25 A That looks right, yeah.

1 Q Okay. Did you speak with him at any time after that?

2 A I don't believe so.

3 Q So any subsequent testimony he may have given, that was
4 not included in your report?

5 A Not that I have.

6 Q Okay. Now, you listened to the 911 recordings as part of
7 your investigation?

8 A Yes, sir. I have listened to them, yes.

9 Q There's been a lot of talk about whether or not there was
10 some confusion going on. Does Mr. Flood, fairly early on in
11 that video, tell 911 -- or, excuse me, that audio -- that he
12 is on Highway 76 between Nichols and Mullins?

13 MR. CLEMENTS: That's not in evidence, Your Honor.

14 THE COURT: I'm going to let him ask the question.

15 Go ahead and ask it.

16 A This is in the 911 audio?

17 BY MR. BOUCHETTE:

18 Q That's correct.

19 A I don't have a definite memory, so let me look and see if
20 I have got a notation. (Reviewing notes.) I'm going to check
21 one more place.

22 Q Okay.

23 A (Reviewing notes.) I don't have any notations on that.

24 Q Okay. Do you recall anything from your review of the 911
25 tapes?

1 **A** My impression was that there was confusion over where
2 they were located.

3 **Q** Did you review or did you evaluate, as part of your
4 investigation, the vehicle that was involved in this accident?

5 **A** I did not.

6 **Q** Did you -- well, you didn't review the actual vehicle in
7 the case?

8 **A** I didn't -- in what manner do you mean, "review"?

9 **Q** Did you go out and look at it?

10 **A** Yes. I was there when it was pulled out of the water.

11 **Q** Okay. Later, did you look at another one that was
12 substantially similar?

13 **A** No, I didn't. Earlier, we received -- earlier, we
14 received some photos because we didn't know, because the van
15 was completely submerged, what it looked like.

16 Keep going, I'm sorry.

17 **Q** Fair enough. So, beforehand, you reviewed photos that
18 were substantially similar to the vehicle in the accident, and
19 then you reviewed the actual vehicle that was in the accident;
20 is that right?

21 **A** I saw them, yes. I didn't review them as far as trying
22 to make any kind of determination on the vehicle. I didn't
23 review them.

24 **Q** I'm just asking if you observed them.

25 **A** Yes, I observed those.

1 Q So, again, we have heard some talk about, but this --
2 again, this vehicle was sort of a van-type vehicle?

3 A It was a regular -- like a passenger van like you would
4 see.

5 Q So you've got a sliding door on the passenger side;
6 correct?

7 A Correct. There's a sliding door on the passenger side.

8 Q All right. And when you slide open that passenger side
9 door, what do you run into?

10 A Inside the back of the van there is basically a steel
11 insert. It's a transport insert.

12 Q You say an insert. It's like a cage; right?

13 A Basically, yes.

14 Q All right. So then you go around the back of the van and
15 you open the doors --

16 A Correct. It's barn-type doors on the back, so they open
17 up side to side on each side.

18 Q Okay. When you open up those back doors, what do you run
19 into?

20 A There's another compartment, a rear compartment, that is
21 also part of that insert system. And there's a door there
22 that opens up into that.

23 Q Now, in the course of your investigation, you determined
24 that, when the vehicle in this case became disabled, they were
25 unable to -- I say, "they," Mr. Flood and Mr. Bishop were

1 unable to access the sliding side door to access the first
2 compartment; is that correct?

3 A That is the information that I received.

4 Q And, under normal circumstances, would this be a door
5 that would sort of pop out and slide?

6 A I would imagine it would be.

7 Q Okay. All right. So, because of the conditions that
8 day, they were not able to make that side compartment pop out
9 and slide to get to the cage door that was beyond it; is that
10 right?

11 A That is my understanding.

12 Q Okay. All right. Now, in this particular case, if they
13 were to pop the door out and come to that first cage door, in
14 your investigation, did it indicate that that cage was locked?

15 A No. My understanding is they never locked the doors,
16 whether it's on the side or the back of the interior insert,
17 that those doors were never locked.

18 Q So the door to the cage wasn't locked, but they couldn't
19 get in through the sliding door into that one portion of the
20 insert.

21 A I'm trying to be careful because this is testimonial in
22 the sense of my information comes from others. I wasn't there
23 to know that, but yes, my understanding is that the door was
24 not able to be opened.

25 Q Okay. And part of your investigation indicated that,

1 after the vehicle became disabled, Mr. Flood and Mr. Bishop or
2 one or the other went to the back of the van; correct?

3 A That is -- yes, that's my understanding.

4 Q They were able to access the back of the van; correct?

5 A That is my understanding.

6 Q They got to the back of the van, and they were unable to
7 access the front compartment from the rear compartment that
8 they had entered; is that correct?

9 A That's my understanding.

10 Q Okay. And based on your investigation, what prevented
11 them from being able to access that front compartment from the
12 rear compartment where they had been able to access?

13 A My understanding was that they could not get the middle
14 partition, which was a grate that's located on a piano-style
15 hinge, to come down. It was in between the two of them. They
16 could not get that down.

17 Q Did you determine why they were unable to get that down?

18 A I can only tell you what was said, and that's kind of --
19 I wasn't there. It was not able -- they did not get that
20 down.

21 Q They were unable to do it?

22 A Well, I guess. Actually, all I can really say is they
23 didn't do it. Or it didn't happen. I'm not saying they
24 didn't try. It didn't happen.

25 Q Right. Because there were locks on the outside of that

1 grate; correct?

2 **A** Correct. Well, there were locks -- the way it worked,
3 the piano hinge was on the bottom. It rolls up like a window
4 basically, and at the top, there were two padlocks that
5 secured the top so that the top wouldn't come down.

6 MR. CLEMENTS: Your Honor, we have a point of law.

7 BENCH CONFERENCE

8 (A bench conference was held off the record and outside of
9 the hearing of the jury.)

10 MR. CLEMENTS: Your Honor, I think we're going way over
11 into the civil aspects of it because of the --

12 THE COURT: What was the last question?

13 MR. CLEMENTS: The products liability, poor design, all
14 that stuff, goes to the civil.

15 THE COURT: What was your question?

16 MR. BOUCHETTE: My line of question was simply him
17 evaluating the vehicle, why they weren't able to get them out,
18 what prevented them from getting them out. I'm not mentioning
19 or trying to get into the civil aspect. It's a causation
20 issue.

21 THE COURT: That's the way I understand it too.

22 MR. CLEMENTS: He didn't investigate that part of it.

23 MR. BOUCHETTE: Well, he said that he observed prior
24 photographs that showed substantially similar -- and then the
25 one --

1 THE COURT: I think he can ask the question. If he
2 doesn't know, he can just say, I don't know.

3 MR. CLEMENTS: Okay. She got some information.

4 MS. DROST: I did ask our PI, who was sitting over there,
5 what was said, and he said, "I caught the end of it." She
6 pointed her finger at Tina, one of his daughters, and said,
7 "I'll kill him."

8 THE COURT: I'll have a nice talk to 'em before everybody
9 comes back.

10 MS. DROST: Okay.

11 THE COURT: If that happens again, I'll have a nice talk
12 to --

13 MS. DROST: Just slightly concerning.

14 (Open court resumes:)

15 BY MR. BOUCHETTE:

16 Q All right. I think before we broke I was asking you
17 about the transport van. So I apologize if I repeat myself,
18 but the -- your investigation indicated that Mr. Bishop had
19 shot off, with his firearm, two locks that were on this grate
20 which separated the front compartment and the back
21 compartment; is that correct?

22 A That is correct.

23 Q And despite doing that, there was still an obstruction of
24 some kind that prevented him, Mr. Flood, from being able to
25 access the front compartment where the two passengers were

1 located?

2 A I believe that's accurate.

3 Q Did you ever determine, as part of your investigation, as
4 to why these two officers were still unable to get to that
5 front compartment?

6 A No.

7 Q No idea?

8 A No.

9 Q Was there ever any discussion about a key, or lack
10 thereof, that kept them from being able to access that front
11 compartment?

12 A Okay. I'm sorry. You said he shot the locks off and
13 then could not get through, and I responded yes, and you're
14 asking me about a key to the locks.

15 Q Well, I'm asking you if there was anything -- let me back
16 up.

17 A Okay. Go ahead.

18 Q Did you ultimately review any information that gave you
19 an understanding as to why they were not able to access that
20 front compartment after shooting off the back locks?

21 A No, not after shooting off the locks.

22 Q You're saying you had no idea?

23 A After they shot the locks off, there should have been no
24 reason why it didn't come open. There was nothing else
25 holding it.

1 Q But it ultimately didn't open; right?

2 A My -- yes, I believe that it did not open. Or my
3 understanding is it did not open, obviously. As to why, I
4 can't tell you.

5 Q Well, given that aspect of the vehicle, would you say
6 that that was a safe vehicle?

7 A I'm not -- I'm not -- I'm not someone who can speak to
8 whether that's the case or not.

9 Q You have no opinion as to whether or not that would be a
10 safe --

11 MR. CLEMENTS: Your Honor, he can't ask him for an
12 opinion because he hasn't been qualified as an expert.

13 THE COURT: I think he'd be speculating on that as well.
14 You've made your point.

15 BY MR. BOUCHETTE:

16 Q Let me go to -- you spent some time referencing the
17 statement that was provided by Mr. Flood's attorney. That was
18 not me. You and I did not discuss this to prepare his
19 responses; right?

20 A No, we did not.

21 Q Right. Now, I want to make -- you made reference to a
22 particular portion, and I want to direct your attention to the
23 first page, about halfway down.

24 A Okay.

25 Q This is on his affidavit.

1 A All right.

2 Q So they talk about going to pick up the transport.

3 Then they talk -- it describes running into Mr. Eskew. Do you
4 see that? Speaking with Mr. Eskew?

5 A If you'll tell me about where to start.

6 Q Starts with, "There was a National Guard truck with three
7 soldiers."

8 A Yes, I'm exactly where you're at. Go ahead.

9 Q Okay. We now know there weren't three solders; right?

10 MR. CLEMENTS: I would object. He didn't mention any
11 names. How he would have known if they didn't mention any
12 names? He's saying did he talk with Eskew. We don't know
13 because Eskew and one of the other -- post there.

14 THE COURT: I think he's just reading from the same thing
15 you read from. Flood's statement.

16 BY MR. BOUCHETTE:

17 Q If you'll look with me, the sentence stating, "There was
18 a National Guard's truck with three soldiers: Two in the
19 truck and one standing on the ground."

20 A Correct.

21 Q All right. We now know that that was not three soldiers
22 but it was two National Guards and at least one Marion County
23 sheriff.

24 A Yeah, this is wrong.

25 Q So we know -- we do believe there was at least one

1 national guardsman that he spoke with?

2 A That's correct.

3 Q Okay. So he was mistaken as to whether or not they were
4 soldiers or other law enforcement there?

5 A Oh, yeah. This is wrong.

6 Q Okay. All right. Regarding his conversation with the
7 person he spoke with at the -- with the National Guard,
8 Mr. Flood told you -- he asked him, "Because the road was
9 blocked, the best way to Darlington, and he said we could go
10 through." Right?

11 A That is the quote, yes.

12 Q That's what he said.

13 Now, he also says, "I was surprised." Right? He said
14 that?

15 A Yes.

16 Q Given that it said that he was surprised, would that
17 indicate to you that, had he received different information,
18 he would have gone a different route?

19 MR. CLEMENTS: That calls for speculation.

20 THE COURT: Sustained.

21 MR. BOUCHETTE: He made a determination based on that
22 statement.

23 THE COURT: He didn't.

24 MR. CLEMENTS: Calls for speculation.

25 THE COURT: That's right.

1 MR. BOUCHETTE: All right.

2 BY MR. BOUCHETTE:

3 Q Just want to direct your attention now to three lines
4 from the bottom. Do you see where he says, "I can't swim and
5 have a phobia about my head being under water"?

6 A Which page are you on, Mr. Bouchette?

7 Q Oh, I'm sorry. Page 2.

8 A Yes.

9 Q So he conveyed to you that he was unable to swim?

10 A "I can't swim and have a phobia about my head being under
11 water."

12 Q During your testimony, you mentioned about -- I think it
13 was page -- or Question 42 in your supplemental question and
14 follow-up question. You asked about keys.

15 A Are you asking the question or the response?

16 Q I just want you to go back and look at it first.

17 A Yes.

18 Q All right. In direct examination, you mentioned that his
19 response was that he had given the keys to Bishop; correct?

20 A That's correct.

21 Q That was referring to the actual -- the van keys?

22 A That's correct, van keys.

23 Q Not the keys to the cage or any compartment there.

24 A Well, he said keys. I assume he meant van keys.

25 Q All right. Very good.

1 Now, is it safe to say that one of the reasons at least
2 they were unable to get Ms. Newton and Ms. Green out of the
3 van as the flood waters rose was because of their inability to
4 access the first compartment from the rear compartment?

5 MR. CLEMENTS: Your Honor, I think this would call for
6 speculation as well.

7 THE COURT: What was your question again?

8 MR. BOUCHETTE: I asked him did the inability to access
9 the front compartment to the rear compartment, was that at
10 least a contributing factor, in his view, in their inability
11 to get them out of the flood water. He made a determination
12 based on that.

13 MR. CLEMENTS: I don't know why it's relevant to what
14 we're dealing with.

15 THE COURT: Tell me that question one more time.

16 MR. BOUCHETTE: Based on --

17 THE COURT: You asked him.

18 MR. BOUCHETTE: Right. So the inability for Mr. Flood
19 and Mr. Bishop to enter the first compartment from the rear
20 compartment, if that was a contributing factor in their
21 inability to retrieve them prior to being overtaken by the
22 flood.

23 THE COURT: Why don't you lay a foundation for that
24 question.

25 MR. BOUCHETTE: All right.

1 BY MR. BOUCHETTE:

2 Q Mr. Howell, as you were investigating this case, was one
3 of the issues that you determined was why Mr. Flood and Mr.
4 Bishop were unable to get Ms. Newton and Ms. Green out of that
5 front compartment?

6 A I'm sorry; try it one more time.

7 Q Was one of the issues you investigated as part of this
8 massive review --

9 A I tried to obtain information on the entire event from
10 the time it started to the end, so yes.

11 Q So, in doing that, did you then make a determination
12 that, at least part of the reason why these two officers were
13 unable to get those two ladies out of the front compartment of
14 that van was because they were unable to access it from the
15 rear grate?

16 A I think that was -- yes, I think that would be accurate.

17 Q And, again, this van had no other type of emergency exit,
18 based on your observations?

19 A No, they were -- no.

20 Q It didn't have one of those roofs that lift up like on
21 the school buses that you see?

22 A No.

23 Q Okay. All right. You also reviewed medical records of
24 Mr. Flood; correct?

25 A I'm going to get there --

1 MR. CLEMENTS: Did he ask about medical records of
2 Mr. Flood?

3 THE WITNESS: He did.

4 THE COURT: Your question was --

5 MR. CLEMENTS: I'll object to that, Your Honor, on
6 relevance.

7 THE COURT: Your question was what?

8 MR. BOUCHETTE: I just asked him if he also reviewed
9 medical records of Mr. Flood.

10 THE COURT: He can answer.

11 A Yes, sir. Go ahead with your questions.

12 BY MR. BOUCHETTE:

13 Q And, based on that, there was no indication of any kind
14 of impairment or anything during the course of this?

15 A No. No.

16 Q Okay. Would you agree with me, sir, that Mr. Bishop
17 and/or Mr. Flood did everything that was within their power to
18 do to retrieve Ms. Newton and Ms. Green once the vehicle
19 became disabled?

20 A After the vehicle was flooded out.

21 Q Once the vehicle became disabled, would you agree with
22 that?

23 A Are you asking on Mr. Bishop's behalf or Mr. Flood's
24 behalf?

25 Q Well, both.

1 **A** I really can't answer that they did all they could do.

2 **Q** Was there something else they could have done, once the
3 vehicle became disabled, to get Ms. Green and Ms. Newton out?

4 **A** I don't know what else they could have done.

5 MR. BOUCHETTE: Court's indulgence.

6 Your Honor, matter of law.

7 BENCH CONFERENCE

8 (The following bench conference was held outside the hearing
9 of the jury and others.)

10 MR. BOUCHETTE: Now, this is where -- I had hoped to
11 address it earlier based on a stipulation that Mr. Bishop was
12 going to be unavailable, so I'm running into a hearsay issue
13 now, and I have every belief that he would assert the Fifth,
14 and then I am able to get into the statements with this
15 witness.

16 MR. CLEMENTS: I can follow it up.

17 MR. BOUCHETTE: Right. Mr. Bishop, the co-defendant in
18 this case --

19 THE COURT: Right.

20 MR. BOUCHETTE: -- we believe to be unavailable based on
21 his taking the Fifth.

22 THE COURT: Well, he hasn't been here to take the Fifth.

23 MR. BOUCHETTE: So what I had -- I guess what I'm saying
24 is, I should be able to establish or show that he is taking
25 the Fifth so that I can get through with this witness without

1 calling him specifically to just take the Fifth and then --

2 THE COURT: What is it you want to get in?

3 MR. BOUCHETTE: Well, I want to get in Bishop's
4 statements that was made to him, to this guy. So if the
5 Court's ruling is that I cannot do that until such time as we
6 put on a case calling -- he takes the Fifth and then recalls
7 some witnesses to get in his statement, then I can understand,
8 but I want to make sure I flesh this out and either -- if I'm
9 wrong on that, then, okay, but --

10 THE COURT: So you just want to get in Bishop's
11 statement.

12 MR. BOUCHETTE: That's correct.

13 MR. CLEMENTS: I haven't looked at Bishop's statement in
14 a while because I was trying Flood. I think he's got to call
15 him and have him take the Fifth if he's around. I got a
16 subpoena, and I think he has him subpoenaed as well.

17 MR. BOUCHETTE: Yeah, the only -- they're both on the
18 roster. So, I mean --

19 THE COURT: We can hear it in the morning.

20 MR. BOUCHETTE: Well, have him take the Fifth and assert
21 it, and then we'll still be able to cross this witness? Or do
22 I have to conclude with this witness and then begin my case in
23 chief?

24 THE COURT: Recall this witness?

25 MR. BOUCHETTE: In my case in chief.

1 MR. CLEMENTS: Well, if he calls him and he takes the
2 Fifth, that's one thing. But if he calls him and he doesn't
3 take the Fifth, he can answer all the questions he wants to
4 ask about his statement.

5 THE COURT: And then if you need to call him back, you
6 can.

7 MR. BOUCHETTE: I guess I want to make sure that the
8 Court's ruling is that I would need to --

9 THE COURT: I think we need to establish that he's
10 unavailable. Right now, it hasn't been established. You
11 haven't called him. The solicitor hasn't called him.

12 MR.. BOUCHETTE: Okay. But I guess --

13 THE COURT: Unless he consents, which, apparently, he
14 doesn't.

15 MR. BOUCHETTE: But I guess I would have -- I'm obligated
16 to conclude with this witness without being -- and then, if
17 the State does not call him, then I would have the -- it would
18 be my burden in my case in chief in order to call him, take
19 the Fifth, and then recall him still in our case.

20 THE COURT: That's my --

21 MR. BOUCHETTE: Well, is that the --

22 THE COURT: That's fine with me.

23 MR. BOUCHETTE: I would rather not do that. I mean, I
24 would rather do it without the defense --

25 THE COURT: Unless he's unavailable.

1 MR. BOUCHETTE: I don't know if we could pause the
2 proceedings in order to call and see if he will, in fact,
3 intends to take the Fifth --

4 THE COURT: They got to get him on the record.

5 MR. BOUCHETTE: What's that?

6 THE COURT: We got to get him on the record, unless he
7 consents.

8 MR. BOUCHETTE: Well, that's -- if we were to pause with
9 this witness in order to call him and -- him, with his
10 attorney, to assert the Fifth, and then allow us to resume
11 with this witness.

12 THE COURT: We haven't called him. I think you're
13 obligated to call him.

14 MR. BOUCHETTE: Okay. As a --

15 THE COURT: If you want him. Just because he put it on a
16 piece of paper doesn't mean he'll call him as a witness.

17 MR. BOUCHETTE: Well, let me make sure I understand the
18 Court's ruling. So, procedurally, what the Court is saying is
19 that I could -- prior to concluding my cross-examination, I
20 could ask for a --

21 THE COURT: Or you could conclude and recall him.

22 MR. BOUCHETTE: But in my case in chief.

23 THE COURT: Yep.

24 MR. BOUCHETTE: So the only way -- and I think that's
25 what I'm trying to get at with the Court's ruling is that, in

1 order for me to go back into -- have him declared unavailable
2 is that we were going to have to begin our case in chief; in
3 other words, put on a case --

4 THE COURT: We've got to make him unavailable. Find out.
5 Nobody's called him.

6 MR. BOUCHETTE: Okay.

7 MR. CLEMENTS: Additionally, we might not have fell off
8 the edge yet, but we're right on the precipice, looking over
9 the side, of falling into the civil matter.

10 THE COURT: Do what now?

11 MR. CLEMENTS: I said we might not have fallen into it
12 yet, but we're right on the precipice about falling into the
13 civil stuff.

14 THE COURT: Well, that's -- but that's his case. That's
15 the crux of his case pretty much.

16 MR. BOUCHETTE: Well, not --

17 THE COURT: We haven't gotten into it. I mean, what
18 caused the death is what caused the death.

19 MR. BOUCHETTE: Yeah, it's all about causation, so...

20 THE COURT: What caused it.

21 MR. BOUCHETTE: That's right. I'm not bringing up the
22 civil case.

23 THE COURT: Clear it with him and --

24 MR. BOUCHETTE: Just a couple of minutes and then
25 we'll --

1 THE COURT: Not trying to take it.

2 MR. CLEMENTS: I won't do it again. I promise.

3 THE COURT: And then, when you're finished with this guy,
4 then you're going to rest for the day; is that right?

5 MR. CLEMENTS: Yes, sir.

6 THE COURT: And we'll go over motions, maybe the
7 defendant's rights, and then he can tell me tomorrow if he
8 wishes to testify.

9 MR. CLEMENTS: Sounds good.

10 (Open court resumes:)

11 MR. BOUCHETTE: Your Honor, we don't have any further
12 questions for this witness.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. CLEMENTS:

16 Q Agent Howell?

17 A Yes, sir.

18 Q What does construction of the van got to do, if anything
19 at all, with Mr. Flood driving that van up into that water?

20 A Absolutely nothing.

21 Q And all the other stuff Mr. Bouchette was asking you
22 about as far as construction and shooting locks off and side
23 doors coming open, what's that got to do with Mr. Flood
24 driving into those flood waters, getting stalled out, and
25 swept away?

1 **A** Nothing.

2 **Q** Thank you.

3 THE COURT: Anything further?

4 MR. BOUCHETTE: One moment, Judge.

5 RECROSS-EXAMINATION

6 BY MR. BOUCHETTE:

7 **Q** You said a moment ago that the inability for these
8 gentlemen to access the front compartment from the rear
9 compartment was at least part of the contributing factor in
10 their inability to retrieve these women --

11 MR. CLEMENTS: Beyond the scope of recross.

12 THE COURT: I think he's responding to what you said.

13 MR. BOUCHETTE: He brought it up.

14 BY MR. BOUCHETTE:

15 **Q** Again, a moment ago, you indicated that, at least part of
16 the reason Mr. Flood and Mr. Bishop were unable to retrieve
17 Ms. Green and Ms. Newton was because of their inability to
18 access the front compartment from the rear compartment once
19 the vehicle became disabled. Is that what you said?

20 **A** That is accurate.

21 **Q** Okay. So it had something to do with their ability to
22 retrieve and get Ms. Green and Ms. Newton out?

23 **A** After they reached the point of no return, yes, but it
24 has nothing to do with him driving into those flood waters.

25 **Q** Well, I understand you're saying once he drove into the

1 flood waters, but the reality is, had he been able to access
2 that front compartment, he would have been able to retrieve
3 them prior to the vehicle being overtaken by water; correct?

4 **A** Depending on how fast that happened, yes, I think that's
5 accurate.

6 **Q** So it's not that it doesn't have anything to do with it?

7 **A** It doesn't have anything to do with him making the
8 decision to drive into those waters. The design of the van
9 has nothing to do with him deciding to drive in all that
10 water.

11 **Q** This is a case about their death. I'm asking you about
12 their death. It had something to do with the reason they
13 died; correct?

14 **A** And their death was a result of him driving into that
15 water.

16 **Q** And he would have retrieved them had he been able to
17 access the rear compartment; right? Again, you said it had
18 nothing to do with it.

19 **A** We hope. I don't know.

20 **MR. BOUCHETTE:** No further questions.

21 **THE COURT:** All right. You may step down. Thank you.
22 You can call your next witness.

23 **MR. CLEMENTS:** Your Honor, the State rests.

24 **THE COURT:** All right. Thank you.

25 Members of the jury, we're going to break for the day.

1 Be back at 9:30 in the morning. Do not research the case. Do
2 not discuss the case.

3 Everybody else remain seated.

4 MR. CLEMENTS: Judge, did you say 9:00 or 9:30?

5 THE COURT: 9:30.

6 (The jury exited the courtroom at 4:40 p.m.)

7 THE COURT: All right. Any motions?

8 DIRECTED VERDICT MOTION

9 MR. BOUCHETTE: Your Honor, at this time, the defense
10 moves for a directed verdict. Your Honor, I keep going back
11 to the indictments in this case. As to the involuntary
12 manslaughter, the issue is whether or not there's more to
13 clear and present danger of impassable waters and he drove the
14 van into visibly life-threatening flood waters.

15 Your Honor, normally, in these types of cases involving a
16 vehicle and an accident and that kind of thing, there is some
17 indication or some testimony from somebody as to the actual
18 conditions at the time the accident occurred. Usual example
19 would be the accident reconstructionist in a DUI case, said he
20 was going over the speed limit, he swerved, he didn't deploy
21 the brakes until five seconds after impact, might have been
22 under the influence. They can point to those things that are
23 indications of recklessness at the time.

24 Now, I understand the State's theory is that it's a
25 circumstantial case that circumstances around -- should

1 indicate what the conditions were at that time. The reality
2 is, we do haven't any eyewitness. We have no direct testimony
3 as to the flood waters directly during the time he encountered
4 them and, at least as to that location, not for some period of
5 time before.

6 Moreover, the State is proceeding upon the theory that,
7 particularly as to the reckless homicide, that they ignored
8 admonitions. Now, that's a critical part of the indictment:
9 They ignored admonitions.

10 The first three witnesses we heard were Ms. Orlando and
11 then Mr. Maxim, both of whom were supervisors. Mr. Maxim
12 classified this as sort of a general discussion, wasn't an
13 order. Ms. Orlando ultimately decided it was -- told us that
14 it was not an order.

15 Being an admonition, that indicates to me having some
16 type of authority over something, not just a general warning.
17 It doesn't say just we're giving notice. It says, ignored
18 admonitions. So I don't think the first set of folks could
19 qualify as an admonition.

20 Then when we go to Mr. Eskew, who is the guard at the
21 gate, I think that's who they're intending to be another
22 admonition. But the testimony was from Mr. Eskew that he said
23 you can go through there now but don't come back the same way
24 later. That's corroborated by the testimony from Mr. Flood
25 that came in through the affidavit, that he was waved through.

1 Now, the -- so the admonition part is undisputed that
2 there was no admonition. There's not any testimony about
3 anybody coming in with any kind of legal authority, whether
4 legal or other authority, to constitute an admonition that he
5 ignored.

6 So I think particularly as to reckless homicide, there is
7 nothing to substantiate that portion of the indictment, and
8 the overwhelming majority of the evidence is that Mr. Flood
9 passed after being told he could go through town. Mr. Eskew
10 confirmed on cross-examination that he can go through town;
11 that once he went, he encountered waters, the vehicle was
12 disabled, that that was obviously a tragic accident.

13 But the State's case -- the reason they are proceeding is
14 that he should have been on notice because he was warned.
15 Well, he wasn't. There was no evidence that he was warned or
16 admonished by anybody with any authority. Like I said,
17 neither from the superiors before he left or from the national
18 guardsmen outside the drowning incident.

19 And if we look at these cases that go back to deal with
20 involuntary in this circumstance or reckless homicide in this
21 circumstance, the vast majority of them have something more
22 along the lines of what I have just described: Speeding,
23 blood alcohol, accident reconstruction. I think this case is
24 more along the lines of the case of *Interest of Stacy Ray*,
25 which is 303 S.C. 291. It dealt with the Supreme Court on

1 different grounds. But, essentially, that case was one where
2 there was an accident. It was a bad accident; I believe
3 somebody passed away. And the Court said that just the fact
4 that there was a bad accident and it occurred and there were
5 no eyewitnesses -- a point in fact, there were no witnesses as
6 to the scene or any indication, any indication of
7 recklessness, intoxication, speeding, etc., etc., that that
8 was insufficient to proceed on that charge.

9 And you have got kind of, obviously, a spectrum, and I'd
10 submit that *Stacy Ray* is kind of on one end of the spectrum
11 and your usual DUI case might be on the other end. But I'd
12 submit that this case is much more along the lines of the
13 *In re: Stacy* case, because, ultimately, like I said, I think
14 what the State is trying to do here is to say that this
15 vehicle managed to be overcome by flood waters, and,
16 therefore, Mr. Flood, you show us how you can do that but for
17 negligence. Like I said, when you don't have the eyewitnesss,
18 when you don't have people really within a sufficient distance
19 and a sufficient time period, and that's what they're doing.

20 So I would submit that the State has failed to put forth
21 the existence of evidence, particularly as to the reckless
22 homicide of a death case given that just the face of the
23 indictment, I submit, has now been shown not to be true. No
24 admonitions, no eyewitnesss, or otherwise indicating visibly
25 dangerous and particularly life-threatening flood waters. I

1 asked that of a number of witnesses, you know, "Was there
2 anybody there?" I just asked the last witness, "Any
3 eyewitnesses?"

4 So we would ask for a directed verdict on the counts
5 against Mr. Flood.

6 THE COURT: All right. Reply to that?

7 MR. CLEMENTS: Your Honor, it turned out that the flood
8 waters, whether Mr. Bouchette likes it or not, were
9 life-threatening. It took two lives.

10 He's talking about there was no eyewitnesss and
11 everything was moving in time. The response, Your Honor, from
12 the people trying to rescue them was all within an hour or so
13 of getting there or responding, even though they were far away
14 and they had confusion as to the location.

15 But they got there, and they were working there, and they
16 were responding to the calls of Mr. Flood and Mr. Bishop, who
17 were about to almost become tragedies themselves. So that
18 was -- it was all right there with one issue. You can't take
19 one split second out of time and pull it out and say, Well,
20 you can't tell us this particular segment of time is dangerous
21 waters, then you can't go forward. That's all a continuum,
22 Your Honor.

23 We had people testify that the waters were rising, but
24 they were doing it steadily, not rapidly. I could continue to
25 argue it, unless you want to hear something more, I'll stop

1 right now.

2 THE COURT: I think, based on everything I have heard,
3 all of the witnesses, all of the testimony, I think there's
4 more than enough to have a strong question of fact to submit
5 it to the jury. They even had meetings at the very beginning
6 about what route he was supposed to take and not take and then
7 what route he did take.

8 We knew a hurricane was coming. We knew a flood was
9 coming. We had response teams coming from other states as
10 well as our own National Guard. The sheriff's departments
11 from both counties there. I mean, it was a big deal. It was
12 a big issue. And he made the decision to drive through this
13 water, taking everything into account. But whether that's
14 reckless or not, that's for them to decide. But I'm going to
15 deny the motion, respectfully.

16 Do you want to go over his Fifth Amendment rights right
17 now and then y'all can talk about it overnight?

18 MR. BOUCHETTE: Yes, Your Honor.

19 DEFENDANT'S RIGHTS

20 THE COURT: Mr. Flood, if you would stand up.

21 I want you to understand that this is your case, and if
22 you want to come over here and you want to take the witness
23 stand and you want to be sworn in and you want to testify, you
24 can. However, I want to let you know that, if you do testify,
25 you may be cross-examined on any and all relevant issues in

1 connection with your case.

2 Furthermore, if you have a criminal record that involves
3 crimes of dishonesty or false statements or crimes that carry
4 a punishment of more than one year and I determine that the
5 probative value substantially outweighs its prejudicial
6 effect, then your criminal record will be introduced to attack
7 your credibility. Do you understand all that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Furthermore, do you understand that you have
10 the constitutional right to remain silent, and if you chose to
11 exercise that right, I would tell that jury they cannot use
12 that against you in any way. I would even go so far as to
13 tell the jury they cannot talk about that fact in the jury
14 room. The fact that you did not testify is to have absolutely
15 no prejudice against you.

16 Do you understand your right to remain silent?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Do you have any questions for me
19 about what I just told you?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Overnight, you can talk with your
22 lawyers, and y'all discuss it, and you let me know in the
23 morning what you decide.

24 THE DEFENDANT: Yes, sir.

25 MR. BOUCHETTE: And, obviously -- I think you told the

1 jury to be here at 9:30. Did you want us --

2 THE COURT: Do you want to take a look at the charge and
3 the verdict form right now, just get a brief overview of it?

4 MR. BOUCHETTE: My understanding from our conversation in
5 chambers was that we were going to conclude it today, given
6 that the solicitor's office has the obligation tomorrow
7 afternoon.

8 THE COURT: What I thought I might do -- the jury has
9 been here all week, and I hate to tie them up for a whole day
10 where they're doing nothing. So let's come back in the
11 morning. If you don't have anything to put up, then we can go
12 right into arguing and charge, and we should be done in plenty
13 of time for them to go to the funeral.

14 If you put up something and we're trucking along, I'm
15 going to let Ms. Daniels and Mr. Scruggs take over. They've
16 been here all week and they know what they're doing. So I
17 think we can just keep on going.

18 MR. BOUCHETTE: Very good.

19 THE COURT: All right?

20 MR. JEPERTINGER: Your Honor, I think Probation may have
21 a matter for you at 9:00. I don't know if they still have it,
22 but you might want to check with Probation.

23 THE COURT: I'll be here at 9:30.

24 MR. JEPERTINGER: But I think they may have spoken with
25 Larkin. I'm not sure. Cancel it?

1 THE COURT: Do you want to take a look at the charge real
2 quick, just to get an idea as to what we might be doing, and
3 you can let me know if you want to add something to it?

4 MR. BOUCHETTE: Yes, sir. We can submit any additional
5 requests, printed out tomorrow.

6 THE COURT: That's right.

7 (Pause in the proceedings.)

8 THE COURT: Let me speak with deputy. Mr. Leggett?

9 (Pause in the proceedings.)

10 THE COURT: We'll be adjourned for the day.

11 (At 5:05 p.m., the trial was adjourned until Thursday,
12 May 19, 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 3)*

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 18th 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 19, 2022

JURY TRIAL - VOLUME 4 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:

Edward Clements, Esq.
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

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E X H I B I T S

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

Court's Exhibits

No.	Description	REC'D
1	Jury Question	625

P R O C E E D I N G S

(The proceedings commenced at 9:35 a.m.)

THE COURT: Good morning. Everybody have a seat.

And, Mr. Bouchette, does your client wish to testify?

MR. BOUCHETTE: Your Honor, I spoke with my client, and he's indicated that he does not wish to testify, and we invoke the Fifth Amendment rights. And, with that, I intend to conclude the case.

THE COURT: Is that correct, Mr. Flood?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And I'll make the finding that he did so freely, intelligently, and with the advice of competent counsel.

Are you going to put up any other testimony?

MR. BOUCHETTE: No, Your Honor.

THE COURT: All right. What we'll do is, let's go ahead and go over this charge one final time and the verdict form.

BENCH CONFERENCE

(A bench conference was held outside of the hearing of the jury.)

THE COURT: Okay. Let's go over the charge.

MS. DROST: I'm looking for my consent order. Okay.

THE COURT: I have added in the part that you wanted for the reckless.

MR. BOUCHETTE: This one, regarding the *In re: Stacy*

1 addition?

2 THE COURT: Yeah, you'll see that.

3 MR. BOUCHETTE: Okay. Perfect.

4 THE COURT: I'm leaving the reasonable doubt as it is.

5 MR. BOUCHETTE: Okay.

6 THE COURT: And, apparently, they wanted --

7 MS. DROST: So the second email I sent said we would also
8 like this language added with the proximate cause sections,
9 "Foreseeability of some injury from an act or omission is a
10 prerequisite to its being a proximate cause of the injury for
11 which recover is sought."

12 THE COURT: That one paragraph is what you want?

13 MS. DROST: Yes, added into the proximate cause sections.
14 I think there were two of them: One for reckless and one for
15 involuntary.

16 And then my third email, my last, was the intervening
17 act, and the proposed language was, "If between negligence and
18 injury there is intervening crime or willful and malicious act
19 of a third person producing injury and it could not have been
20 reasonably foreseen by the defendant, the causal chain is
21 broken between the original negligence and the accident is
22 broken precluding conviction of Defendant."

23 THE COURT: Okay. How do y'all feel about that?

24 MS. DROST: Sorry, I was talking real fast.

25 MR. CLEMENTS: Don't like it.

1 THE COURT: You don't like it?

2 MR. CLEMENTS: This is the first time I'm hearing about
3 it.

4 THE COURT: Where did you get it? Did you get it from a
5 criminal charge or a civil charge?

6 MR. CLEMENTS: Sounds like a civil charge, too.

7 MR. BOUCHETTE: Yeah, I think we got it from a civil
8 charge.

9 THE COURT: I think if you look carefully at the charge
10 I've got, everything you've said pretty much is in there.

11 MR. BOUCHETTE: Okay. Multiple --

12 THE COURT: Yeah, I read it twice this morning.

13 MR. CLEMENTS: I know (indiscernible) says it's criminal
14 or civil or not. Can't substitute a different --

15 THE COURT: That's the same --

16 MS. DROST: Yeah, that's all the same. Okay.

17 MR. BOUCHETTE: Direct and circumstantial, and that was
18 the -- we updated that. Experts? Do we even have --

19 MS. DROST: We have the coroner.

20 MR. BOUCHETTE: All right. Involuntary --

21 THE COURT: That's where it starts. Start right there.

22 By the time you finish with proximate cause and
23 involuntary and reckless, it says everything you want it to
24 say.

25 MS. DROST: We want it to be crystal clear.

1 THE COURT: It will be crystal clear.

2 MR. BOUCHETTE: Regarding this -- and I know this
3 language -- and I think it's in Ralph King Anderson's book
4 regarding the second paragraph --

5 MR. CLEMENTS: Speak up, please.

6 MR. BOUCHETTE: Regarding this -- I'm looking at your --
7 it says, "...is not a defense to show the victim might have
8 been recovered had he or she been treated." I know that's
9 from Ralph King Anderson's book. It kind of sounds like a
10 medical --

11 THE COURT: It does. And I wondered -- I didn't even
12 know if we needed that, if it's important matter or not.

13 MR. BOUCHETTE: I don't think. I think it might --

14 THE COURT: Because that's like if a doctor steps in and
15 the doctor screws up, then you can blame it on the doctor.

16 MS. DROST: Yeah, I don't know that it's --

17 THE COURT: I'm good with scratching that.

18 MR. BOUCHETTE: I don't want them thinking that the only
19 intervening act could be --

20 MR. SUGGS: Yeah, that's --

21 MR. BOUCHETTE: -- a doctor's mistake or something.

22 THE COURT: That's not even an issue in this case, in my
23 opinion.

24 MR. CLEMENTS: Yeah.

25 MS. DROST: Are we okay to get rid of it?

1 MR. CLEMENTS: Yeah.

2 THE COURT: I'll put a sticky on top of that. I'm not
3 going to read it. She got a sticky? Thank you. Mark that
4 before you get going.

5 MR. CLEMENTS: What page are we on? It's not paginated.

6 MS. DROST: It has *State v. Clary* at the bottom, if that
7 helps. It's just problem after problem.

8 THE COURT: Okay. So you do not want -- because it
9 carries over to the second page right there.

10 MR. BOUCHETTE: I believe so.

11 THE COURT: Just that top part.

12 MR. BOUCHETTE: I think (indiscernible) an allegation of
13 violation of a statute does not --

14 THE COURT: So what part of that are you not -- good with
15 that. Go ahead and look at it. Okay.

16 MR. CLEMENTS: I don't think there's any -- what I've
17 got.

18 THE COURT: I'll let you look at it.

19 MR. BOUCHETTE: Trying not to make a mess. "Defendant's
20 charged with reckless..." I like that. Okay. I'm good with
21 the reckless homicide charge that contains our addition.

22 Ed, did you need to see that?

23 MR. CLEMENTS: Yeah, if you would do that. If you added
24 anything, yeah, I do.

25 MR. SUGGS: Where was that language about medical stuff?

1 THE COURT: Let him finish that before you -- he wanted
2 to look at it.

3 All right. Ed, come on over here and look at it.

4 MS. DROST: And you said we could add the proximate cause
5 language in or that it's --

6 THE COURT: It's in there. I'm not saying that --

7 MR. BOUCHETTE: I think, on the proximate cause -- on the
8 intervening act, was there an intervening act or intervening
9 act charge for a criminal case?

10 THE COURT: Not that I know of.

11 MR. CLEMENTS: There's not. I checked.

12 MR. BOUCHETTE: All right. We would -- even though
13 there's not one that's standard, we would submit that a charge
14 on intervening act would be appropriate in this particular
15 case. I certainly understand that there's not one that's
16 normally used in a civil -- or, excuse me, a criminal case,
17 but given that the nature of this -- the facts in this
18 particular case, we'd argue that some type of instruction for
19 intervening act would be appropriate.

20 MR. CLEMENTS: There's something in there -- can't be
21 used -- want to pull from that book?

22 (Overlapping conversation.)

23 MR. BOUCHETTE: I'll leave that to Your Honor to make the
24 decision.

25 THE COURT: I don't think that we need it. Proximate

1 cause is an issue, and that's what you're arguing anyway,
2 which, in essence, is the intervening act with the cage and
3 the van and the malfunctions of the lock.

4 MR. CLEMENTS: But the way I read the law is it's a
5 contributing cause. It's still part of proximate cause.

6 THE COURT: That's fine. All right. So I think we're
7 good. I mean, you can argue. That's what you've argued.

8 Ed, let me show you what we -- all the changes.

9 MR. CLEMENTS: All right.

10 THE COURT: Okay. That's the same. That's all the same.
11 We just took out the part about if a doctor treats somebody,
12 grossly negligent.

13 MR. CLEMENTS: That wasn't in what I had anyway.

14 THE COURT: So I took that out. And then we just added
15 that to the doctor stuff.

16 MR. CLEMENTS: Okay.

17 THE COURT: And then we added that at the defense's
18 request, which is long.

19 MR. CLEMENTS: Okay.

20 THE COURT: And that's really it.

21 MR. CLEMENTS: Then nothing down in the bottom -- nothing
22 down in this part changed, just at the top.

23 THE COURT: That's all we added.

24 MR. CLEMENTS: Okay.

25 THE COURT: And then accident, the same thing we had

1 yesterday.

2 MR. CLEMENTS: Let me see that.

3 THE COURT: All the rest are standard.

4 MR. CLEMENTS: Yeah.

5 THE COURT: Okay?

6 MR. CLEMENTS: Okay.

7 THE COURT: And the verdict form. Y'all both take a look
8 at that.

9 MR. CLEMENTS: Yeah, I've looked at that. That's fine.

10 THE COURT: That's good? Defense good?

11 MR. BOUCHETTE: Good.

12 THE COURT: The State good with that?

13 MR. CLEMENTS: I'm good with that.

14 THE COURT: All right. Everybody ready to roll? Why
15 don't we -- you got out there and renew your motions, add any
16 new ones if you have it, and then we'll come back out, call
17 your first witness, you rest, and then the State's closing.

18 MR. BOUCHETTE: That's fine, Your Honor, at that time.
19 The only thing I would add, too, I know you've asked the jury
20 each day not to watch, etc.

21 THE COURT: Right.

22 MR. BOUCHETTE: Before we go in, ask that they affirm
23 that nobody has --

24 MS. DROST: Read the news.

25 MR. BOUCHETTE: -- read the news, watched TV in

1 between -- particular with this --

2 MS. DROST: Just to preserve it in case --

3 MR. BOUCHETTE: Particularly with this particular one.

4 THE COURT: How do you feel about it?

5 MR. CLEMENTS: If they listed or saw something
6 intentionally, that's a problem. If they did it
7 unintentionally, as long as it doesn't cause them to be biased
8 in any way, still would be able to judge this from the facts
9 and evidence, and with that, we're all right.

10 THE COURT: I'm wondering if I couldn't just assume that
11 the followed my orders.

12 MR. CLEMENTS: I got no problem with that.

13 MR. BOUCHETTE: Normally, that would be -- that would be
14 the case. When you have, obviously, above normal, you know,
15 exposure and all, that's what causes me concern.

16 THE COURT: (Indiscernible) to do it again.

17 MR. BOUCHETTE: I'll defer to the Court, but -- I don't
18 want to do it again either, but I also don't want somebody
19 convicted because of some outside knowledge they have if that
20 would have an effect on them, but...

21 Like I say, I defer to Your Honor, but --

22 THE COURT: I prefer not to open that can of worms. I've
23 seen the news every night and read the news, and it's not
24 adding anything different. If anything, it might be favorable
25 to you.

1 MR. CLEMENTS: It normally is, in the media.

2 MR. BOUCHETTE: I don't know about that.

3 MS. DROST: I don't know about that either.

4 THE COURT: And being honest with you, I haven't seen
5 anything that they haven't heard.

6 MR. BOUCHETTE: Okay. Well, like I said, if that's the
7 Court's ruling, that's the Court's ruling. I'm not object --
8 I'm not arguing.

9 THE COURT: I mean, if you want to put a new charge in
10 there...

11 MR. BOUCHETTE: I don't think it would be a charge.
12 You've asked them every day. If the Court would rather not
13 ask them to affirm that they have not, you know, done
14 anything, then I certainly -- you know, that's the Court's
15 decision.

16 THE COURT: When do we want to do that?

17 MR. CLEMENTS: Right when they first come out, I guess.

18 MR. BOUCHETTE: I don't know if there's a -- just at some
19 point before they start deliberations. I don't know if
20 there's an ideal time.

21 THE COURT: You know, I've ordered them not to look at
22 the news, not to watch the news, not to read social media, not
23 to post anything on social media. Nothing's been brought to
24 my attention to indicate that that has been violated. I'm
25 just going to assume that they have followed my order. If

1 something pops up, we'll call them out and deal with it at
2 that time.

3 MR. BOUCHETTE: Okay.

4 MS. DROST: And, also, one last thing while we're up
5 here, I was told that the woman who made the comment yesterday
6 and left the courtroom is back in the courtroom.

7 THE COURT: Oh, I'm going to talk to her at the
8 appropriate time.

9 MS. DROST: Just wanted to make sure. Thank you, Your
10 Honor.

11 THE COURT: We're good? All right.

12 (Open court resumes:)

13 THE COURT: I have gone over the charge and the verdict
14 form with the defendant and the State.

15 Are both of you good with it?

16 MR. BOUCHETTE: Defendant is good, Your Honor.

17 THE COURT: State good with it?

18 MR. CLEMENTS: State is fine, Your Honor.

19 THE COURT: All right. And would the defense like to go
20 ahead and renew all of your motions and objections?

21 MR. BOUCHETTE: Yes, sir. We renew prior -- all our
22 prior motions. We renew, in particular, the directed verdict
23 motion that we made yesterday, specifically with regard to the
24 reference of how this case was -- one, started off as a
25 circumstantial case. There's no eyewitnesss, no expert

1 testimony to recreate the scene that you would normally have
2 in some type of reckless or involuntary type of case.

3 What the State is intended to do or has attempted to do
4 is, like we said, shift the burden to ask Mr. Flood to explain
5 how he could have become disabled and engulfed in water but
6 for negligence, and they have implied that, because it was
7 flooding in and around the area, that there was water on the
8 road, that that is indicative of what was in his perception at
9 the time he encountered the waters, and no one has taken the
10 stand, no witness identified by the SLED agent that could
11 testify to that, so we just renew our position for a directed
12 verdict on that basis.

13 THE COURT: I'm going to respectfully deny those motions.
14 I'm going to bring out the jury and let you rest on the
15 record. And then you'll be ready to close?

16 Okay. Let's go ahead and bring out the jury.

17 (The jury entered the courtroom at 9:49 a.m.)

18 THE COURT: All right. If the defense will call your
19 first witness.

20 MR. BOUCHETTE: Your Honor, the defense rests.

21 THE COURT: All right. Thank you.

22 The State is recognized for your closing statement.

23 MR. CLEMENTS: Thank you, Your Honor. Let me get set up
24 here.

25 (Pause in the proceedings.)

1 CLOSING ARGUMENT ON BEHALF OF THE STATE

2 MR. CLEMENTS: Good morning. How is everybody feeling
3 this morning? Fine. All right. We have gotten almost to the
4 end of our journey. There's been a lot packed into several
5 days here. I want to thank you for your attention, for giving
6 consideration to both the State and the defense, and paying
7 close attention to what's going on, and I want to thank you
8 for going and deliberating in this case at the end and making
9 a decision.

10 This is what is called closing arguments. Sometimes -- I
11 don't know why it's called argument because we're not up here
12 arguing with each other. We're just making a closing
13 statement.

14 You have heard the facts. You have seen the witnesses
15 testify. You have seen the exhibits, and so those are the
16 pieces of evidence that you will use to make a decision. It
17 doesn't matter what I say or what Mr. Bouchette says. We're
18 going to give you our version of the facts -- of what we think
19 the facts imply or infer, and if we state something wrong or
20 get something mixed up, don't hold it against our clients, the
21 State of South Carolina, and don't hold it against Mr. Flood
22 because we're doing the best job we can. If we mess something
23 up, we don't want to mislead you. So if we hear us something
24 say the way we recollect that is not the way you recollect it,
25 you listen to your own heart and head and particularly when

1 you're back there discussing it, with those 12 minds. I'm
2 sure y'all won't miss a thing.

3 So, first, I'd like to go over the law. This is my last
4 opportunity to be in front of you, and I don't want to go on
5 too long, but I don't want to miss anything, because this is
6 so important to both the State and to Mr. Flood and the
7 families of the victims and the family of Mr. Flood.

8 The law is going to be given to you by the judge, and if
9 I say anything different than what the judge says, the judge
10 is right.

11 Now, I talked to you on our opening statements and told
12 you that we charged Mr. Flood with two charges on each victim:
13 Involuntary manslaughter and reckless homicide. I talked to
14 you a little bit about what those are. But they're separate
15 charges, two to each individual victim, and I want to talk to
16 you about the law and what that means -- what those charges
17 mean.

18 Y'all are going to be, as the Judge will tell you, you
19 will be the sole judge of the facts, and he's going to be the
20 sole judge of the law, and he will give you the law that you
21 will apply to the facts as you find them, and then you need to
22 make a decision beyond a reasonable doubt.

23 And the defendant in any case in South Carolina is
24 presumed to be innocent, and that presumption of innocence
25 carries all the way to when you go into that jury room for the

1 last time to deliberate. And that presumption of innocence
2 stays with that defendant unless you decide that the State,
3 me, have done my duty and done what I needed to do to reach my
4 standard of proof, which is beyond a reasonable doubt. And so
5 that's the way you view the defendant, and that's the way
6 you're supposed to view the defendant is everybody is innocent
7 until proven guilty beyond a reasonable doubt.

8 Reasonable doubt is a doubt that leaves you firmly
9 convinced of the defendant's guilt. There are few things in
10 this world we know with absolute certainty. So even though
11 we've brung a case, the law does not require that overcomes
12 every possible doubt; however, based on your consideration of
13 the evidence, if you are firmly convinced that the defendant
14 is guilty of the charges -- crimes charged, you must find him
15 guilty. On the other hand, if there's a real possibility he's
16 not guilty, you must give him the benefit of the doubt and
17 find him not guilty.

18 Reasonable doubt may arise with evidence which has been
19 presented in this case or from the lack of evidence. It's
20 your responsibility to determine whether or not reasonable
21 doubt exists.

22 The defendant is not required to prove his innocence.
23 That's my burden of proof as far as guilt. He doesn't have to
24 prove anything, and that's as it should be. So hold me to the
25 fire. When you go back there and say, "Ed, you didn't meet

1 your burden of proof," that's what you got to decide. But I
2 would think, as you go back there and consider all the
3 evidence, it's very clear that we met our burden of proof.
4 It's very clear that we presented evidence beyond a reasonable
5 doubt.

6 You're going to hear two kinds of evidence: Direct
7 evidence of a fact that does not require any deduction.
8 Circumstantial evidence is proof of a chain of facts and
9 circumstances indicating the existence of a fact.

10 I think we have direct evidence in this case, and what it
11 is that is so direct is that video. You saw what was
12 happening at that time. You saw what Mr. Flood saw. You
13 encountered that visually what he saw, and that's direct --
14 direct evidence.

15 And you've got plenty of circumstantial evidence from
16 other people's testimony. We had -- we called a lot of
17 witnesses who gave a little bit here and a little bit there to
18 put the picture together. Those are parts of that chain of
19 circumstantial evidence.

20 You heard lay witnesses, most of the people employed in
21 some type of law enforcement, and one expert, and that was the
22 pathologist. And he was here, and he testified that, at first
23 he said this was accident, a drowning, no indication of how it
24 occurred. What happened when he got other facts and saw that
25 it was a volitional act of someone driving them into that

1 water? Then that changed, and he said it's homicide, which
2 means death by the hands of another.

3 So what we have here, according to the expert witness who
4 did the autopsy, says we have a double homicide: Ms. Newton
5 and Ms. Green. Possible homicides. Death by hands of
6 another, which would be Mr. Flood when he drove them into that
7 water. That's our only expert. And he testified, I believe,
8 it was the volitional act makes it homicide.

9 Involuntary manslaughter is the charge that I will talk
10 to you about first. Involuntary manslaughter, to prove that,
11 the State's got to prove beyond a reasonable doubt that the
12 defendant intentionally -- excuse me, unintentionally killed
13 the victim without malice but while engaged in a lawful act
14 not naturally tending to cause death or great bodily harm
15 or -- and I'll get to the "or" in a minute.

16 We're not alleging that Mr. Flood committed or engaged in
17 an unlawful act, but we are alleging that he unintentionally
18 killed the victim without malice, but he did it while engaged
19 in a lawful activity, driving a van, transport, with reckless
20 disregard for the safety of others. And you're to decide the
21 reckless regard, if what he did, ignoring all the warnings and
22 admonitions he had, at several spots he had the chance to turn
23 around but he did not. He went on with reckless disregard,
24 and I submit to you, under those circumstances that day, what
25 he encountered, that that was absolutely reckless disregard.

1 Unintentional means that the defendant did not intend for
2 anyone to be killed or seriously injured. And I don't believe
3 Mr. Flood intended for anybody to come to harm. He just made
4 a horrible, terrible reckless decision, but that wasn't --
5 that does not mean that he intended for those two persons to
6 die. It was unintended by him, and nevertheless, it happened,
7 and he's responsible. We're not trying to say he's a bad
8 person or not a good person. We're saying that, on this
9 occasion and on this day, the choices he made in the line that
10 he pursued led to two homicides.

11 And what we're talking about here is gross negligence.
12 We're not talking about just normal carelessness. Reckless
13 disregard for the safety of others is more than mere
14 negligence or carelessness. It's a conscious failure to use
15 ordinary care. Reckless disregard for the safety of others
16 means that you are not interested in the consequences of your
17 acts for the rights and the safety of others. And those
18 others were two innocent women. Two innocent women. And they
19 had no control, and he just forged ahead, with no regard with
20 how they felt or what they were about to encounter.

21 If a person fails to use precautions without concern, the
22 person's acts are considered reckless. Ordinary care requires
23 certain precautions to be taken for the safety of others when
24 using a dangerous instrumentality, such as a gun or a car.
25 When the person fails to use precautions without concern, the

1 person's actions are considered reckless.

2 If you have a gun that's on the table and you pick it up
3 and you're playing around with it and it accidentally
4 discharges and shoots your best friend that's in the room with
5 you and they die, that's involuntary manslaughter. That is a
6 careless disregard.

7 A car. If you're in a car and you're driving 100 miles
8 an hour and somebody pulls out in front of you and you hit
9 them, you're at fault because you're going recklessly 100
10 miles an hour, even if somebody pulls out in front of you.
11 Driving 100 miles an hour, you don't have any regard for
12 people on the road with you.

13 Another example would be, if you drive drunk, you don't
14 have any care for what's going to happen to other people.
15 That's reckless disregard.

16 What we have got to prove beyond a reasonable doubt is
17 that the defendant's act -- Mr. Flood's act of driving into
18 that flood was the proximate cause of death. And proximate
19 cause means it's the direct cause, it's the immediate cause,
20 it's the efficient cause, it is that cause without which the
21 death of the victim would not have resulted. There must be a
22 chain of causation from the time of the injury inflicted by
23 the defendant until the time of the death.

24 Proximate cause is the direct cause, it's immediate
25 cause, it is the efficient cause, and it is a contributing

1 cause. It is that cause without with the death of the victim
2 would not have resulted.

3 And I'm here to tell you, but for -- but for Mr. Flood
4 deciding he was going to ignore what they was talking about
5 back in the transportation office and proceed on No. 9 to 76,
6 getting on that Little -- coming to that Little Pee Dee River
7 bridge and that van beginning to float and then getting swept
8 away into the other side of the highway on the guardrail, but
9 for him doing that, putting that care in that position -- that
10 van in that position, these ladies would be alive today. It
11 doesn't matter about all the things they talked about. It's
12 about civil issues -- regarding civil issues in this
13 situation.

14 Yeah, they had problems -- design problems with the van.
15 They couldn't get the doors open because of it being pinched
16 in between the guardrails on the driver's side and the force
17 of the water on the other side. And you heard Chief Starnes
18 talk about he wouldn't let his people go down under there. It
19 wasn't safe because of the rush of water underneath that van,
20 which also pinned those doors shut -- those sliding doors on
21 that side. It might be -- you might find those other issues a
22 contributing cause of what happened, but it does not excuse
23 the defendant.

24 The proximate cause of the act of the defendant does not
25 have to be the sole cause of death, and the fact that other

1 causes contributed to the death does not relieve Mr. Flood,
2 the defendant, of his responsibility. He's still responsible.
3 He's still proximately caused, whether it's contributed by
4 other factors or not.

5 Go down here to involuntary manslaughter. It's clear.
6 If you have got part of the proximate cause, you're
7 responsible. Some intervening cause doesn't make you no
8 longer responsible.

9 The defendant is charged with reckless homicide. The
10 State must first prove that, number one, he drove the vehicle.
11 Well, we all know that. He was rescued from that vehicle by
12 Tennessee Swift Water crew. But he drove the vehicle and he
13 drove it with reckless disregard for the safety of others.
14 And we knew he got in that position where he got, and I would
15 submit to you there's no way on earth you would get into some
16 situation like that unless you were reckless.

17 Reckless disregard for the safety of others means an
18 indifference to the consequences or results on one's acts, a
19 consequence indifference to the rights and safety of others,
20 or a conscious failure to exercise ordinary care. Reckless
21 disregard for the safety of others is something more than mere
22 negligence or carelessness.

23 The defense has raised the defense of accident. An act
24 may be excused on the ground of accident if it is shown that,
25 number one, the act was unintentional. And I would submit to

1 you the act was intentional. The consequences were not
2 intentional, but the act was.

3 The defendant was acting lawfully -- number two -- and
4 reasonable care was used by the defendant. Well, we don't
5 dispute that he was acting lawfully. We don't think he was
6 out there breaking any speed statutes or illegal parking or
7 anything like that. He was engaged in a lawful activity, as
8 we discussed earlier, but the act was unintentional. Excuse
9 me. The act was intentional. The consequences were
10 unintentional. So he no longer has a defense of accident.
11 Can't be defined that way.

12 If a person is lawfully armed in self-defense and the gun
13 accidentally discharges, the defense of accident would apply.
14 The burden is on the State, on me, to prove beyond a
15 reasonable doubt the act was not an accident but was caused by
16 the negligence or carelessness on the part of the defendant,
17 and we submit that we have done that. We have shown Mr. Flood
18 driving where he had no business being on that day, with two
19 women locked in a container who had no way of helping
20 themselves.

21 You're going to be told about the law of the statement of
22 the defendant, and if the defendant made a statement, you have
23 got to determine whether the statement was made by the
24 defendant voluntarily and of his own free will. But he didn't
25 give a statement by coming in and talking to Agent Howell.

1 What he did was he sent a written statement made by himself
2 that was notarized and signed, like a sworn statement. And
3 you heard about that. We went through a lot of that
4 statement. And he submitted that. So of course it's
5 voluntary, and it is of his own free will. So that being the
6 case, you can take and consider what he said because it was of
7 his own free will and voluntary. He was not coerced in any
8 way.

9 Thank you for allowing me to go through the law with you
10 on this matter.

11 Just a few more things I need to discuss with you, and I
12 appreciate your attention. The testimony in this case came
13 from that witness stand by persons under oath, and you heard
14 them, and you had the chance to judge their credibility. You
15 had the chance to see whether they're believable or not.
16 That's what credibility means is they're believable.

17 Started out with Sergeant Orlando from the Transportation
18 Department of Sheriff Thompson's outfit. And she was the
19 supervisor of Mr. Flood, and she told you that they were
20 concerned and they got together, and they talked about routes
21 to take and routes not to take.

22 And this is what we showed here on State's Exhibit No. 2.
23 They talked about the route going from Loris, No. 9, and then
24 trying to get to Mullins. And they talked about not taking
25 that route. They gave not one but two alternate routes. Said

1 to go on down 22 to 501 and then, when you get past Marion,
2 head on 76 then. And if they had ran into trouble there, what
3 they could do was go all the way down 701, get on 378, go
4 around Lake City and around Florence to get to Darlington,
5 which is a long way around, but if they encountered problems,
6 that's what they're supposed to do. And they talked about
7 that.

8 Who talked about it? Sheriff Orlando, Corporal Maxim.
9 Said we talked about it for about 15 minutes. Officer Herring
10 came in there and said he had kinfolk in that area and knew
11 the area and it was under flood several times before in the
12 past. "You can't go there. You won't be able to go there.
13 It will be flooded."

14 I believe he went to the map to show, if I understand the
15 testimony correctly. But if you don't remember that, well,
16 that's -- we're going on your memory. That's why I always
17 make closing statements to hopefully help you remember.

18 But you had -- Orlando was in charge as the sergeant;
19 Christopher Maxim, who was the corporal; Officer Herring;
20 Officer Hayes came in. And I remember this testimony was --
21 there was some talk about a route -- taking a route. And so
22 he's just that part of the puzzle. He wasn't even involved in
23 it directly but he observed it.

24 So we know there was discussions. We know that Orlando
25 was there and Maxim was there, Herring was there, and that

1 Mr. Flood and Mr. Bishop were getting ready to go on their
2 shift and go pick up the two people they had to transport. So
3 we know that went on. We know that was on his mind.

4 You heard Deputy Latifah Witherspoon and Bruce Crawford,
5 and they testified they had gone around -- and they were going
6 to Spartanburg. And they took out that day, and what they
7 were supposed to do, when they ran into a barricade is exactly
8 what they did. If they were going to hit that barricade, they
9 turned around, backed up, rerouted. Safety was the priority.

10 I would submit to you, when Mr. Flood hit the barricades,
11 he went around them or went through or claimed somebody waved
12 him through, totally disregarding the safety and welfare of
13 those two ladies he had. And that was his duty. That's what
14 all those deputies said. Their duty was to serve and protect
15 and safety and delivery of their transportees was the
16 priority, to keep them safe. That was the first day.

17 The second day, we have Witherspoon and Crawford. You
18 remember them. You remember Ms. Crawford talked about, if she
19 had seen -- regardless of what anybody would tell you, go this
20 route, go that route, choose your own route, whatever. Said
21 if you see something that you know is dangerous or could be
22 dangerous, you should stop. Just use your own common sense.

23 She said she had her own independent will, and she was
24 going to make a decision, and that decision was going to be
25 based on the safety of the passengers she had. I submit to

1 you Mr. Flood did not do that.

2 The next group of people you heard from was including
3 Sandee Rogers from the town administration. She was the town
4 administrator.

5 If I'm blocking anybody's view, please tell me.

6 She said the Nichols Town Hall is where her office was
7 and where a lot of law enforcement was staged there, staying
8 there. She went out during the day. She took photographs.
9 She said her duty was to archive things. So she took some
10 photographs, and they're into evidence. You can look at those
11 if you want to.

12 She took a short video. She took them at different
13 times. And you'll take them back there. You'll look at them
14 and see what they depict, but there was water coming up, and
15 it was coming up steadily. Throughout the day, they would
16 move or DOT or somebody was moving barricades around based on
17 where the storm waters were coming from. And they'd rise up
18 to an area and shut off and move it -- move the barricades and
19 shut those areas off. We don't know who was doing that,
20 because -- it was somebody from South Carolina DOT, but we
21 don't know who, but they maintain the barricades.

22 Lawson Battle, the mayor, talked about going and checking
23 -- he informed you that he would go, he would put spray paint
24 on the trees and roads to see how far and how quickly the
25 waters were moving up, and they were gradually and steadily

1 moving up that entire day.

2 And Mr. Battle also explained to you about what they were
3 doing with the high-water vehicles and the National Guard and
4 law enforcement -- local law enforcement deputies working
5 together with the National Guard. Told you about going up and
6 talking to Eddie Page and Eskew. And the gist of it all was
7 they were going to let the people that came in, to prove they
8 were a resident of Nichols, to get in there and get their
9 stuff before the flood waters got it. But if they went in
10 that direction, they were going to have to go back out the way
11 they came.

12 And emergency vehicles -- emergency vehicles, official
13 vehicles, if they're on a mission, they're supposed to be
14 going through and do what they did, and they were supposed to
15 come back out the other side, the same side they had gone in.

16 So you heard that from Mayor Battle, and that was his
17 request. That's what they were doing. They were checking
18 people. And you had to have a driver's license or a piece of
19 mail with their address and name on it. But Eddie Page said
20 really it wasn't that big a deal because he knew about 90
21 percent of them, so he was okay with them. The MPs with the
22 National Guard were checking people.

23 Next, we heard from Dylan Oates who worked with DNR, now
24 with SLED, and he talked about going around in his boat, he
25 and Will Duncan, and how, ultimately, they were all over that

1 area, and they got the call that there was a vehicle in
2 distress and they finally figured out where it was. And when
3 they got there, what they found was an awful, terrible
4 situation. Had two deputies that were about to drown and two
5 ladies that did not get out of the van.

6 But before we get there, let me back up a minute. Flood
7 came through, said he talked to Eskew, and he got waved on.
8 Well, he was an emergency vehicle -- I mean, not an emergency
9 vehicle. He was an official vehicle. So, if they waved him
10 on, that would be why.

11 He said in his statement nobody said anything about
12 water. Well, Eskew and Page and Jenkins all let you know they
13 knew about water, and they said it's going to be worse, you
14 know, if you come back through, you can go check it out -- he
15 just wanted to check it out.

16 Why would he want to go to just check it out? Did he
17 think that he could get through and go -- get through a little
18 bit of water and go on and get to Darlington and not have to
19 go around and take out a lot of extra time? Remember in his
20 statement he said, "Well, I was surprised they let me go
21 through, but I was real happy because it saved time." Well,
22 if he was surprised, that means something was going on. He
23 wouldn't be surprised if they told him to go on and there was
24 no water anywhere, like he said. So that's -- you know that's
25 some bull there.

1 We had Captain Leach came in and Greg Dove and Melinda
2 Worley with SLED, and they all talked about -- they gathered
3 all the electronic communications and electronic recording
4 devices they had in that van, tested them out, and everything
5 was pretty much trashed by the water. So there was nothing
6 there to develop any evidence about what went on inside that
7 van.

8 The fact that Will Duncan -- he and Dylan Oates got in
9 the boat, and you saw that on the video. I think Mr. Duncan
10 had on a green shirt in the video. But they went to the area
11 and had to circle around because the current was so strong,
12 and they took pictures -- a couple of pictures of what was
13 there and gave you an accurate view of what was going on
14 there.

15 I think the defense attorney may have suggested that was
16 way too long a period of time. It was no longer than an hour
17 at most, and the water was coming up steadily. It wasn't like
18 a flash flood. There was nothing there and then, all of a
19 sudden, boom. That's not even what Mr. Flood said in his
20 statement that he wrote himself.

21 Captain Leach testified about the MAIT team and what they
22 did and SLED.

23 And then we got to Ms. Burghard, and she was the one that
24 was taking down all the Horry County transportation, all the
25 radio footage, the radio traffic and phone calls and

1 everything she could. She was putting out all that
2 information. And she gave us the time when she first heard
3 from Joshua Bishop and he said, "We're in trouble. We're
4 stuck and we're in trouble."

5 Then she got a couple more calls back and, ultimately,
6 she got the call that "I don't hear them anymore. I don't
7 hear them anymore." I can't imagine how horrible that would
8 have been for Bishop to have to try every way he can think of
9 and there was nothing he could do because the horse was
10 already out of the barn, folks.

11 You know, when that van lifted up and floated over and it
12 was pushed by that current and pinned against that guardrail
13 and they were stuck there and couldn't get the doors open so
14 they couldn't get the cages open, they could try everything
15 they could try, and Mr. Bishop did, but it was too late. The
16 horse was out of the barn.

17 The horse was out of the barn because Mr. Flood said,
18 "I'm not going to pay attention to them in Transportation. I
19 know my way over here. This is the way I always take."
20 That's what he said, "This is the why I normally take."

21 So why in the world would he not know, that being the way
22 he normally takes about, if there was a little bit of water on
23 Main Street, how much deeper it was going to be when he went
24 down there towards the Pee Dee Little [verbatim] bridge -- the
25 Little Pee Dee River bridge. Excuse me. He would have known

1 that if that's the way he took all the time. He would have
2 said, "This is reckless. I'm not going to do this." But he
3 didn't.

4 He saw what he saw. You can tell on the drone what the
5 overall view looked like. To me, it looked like it was water
6 wherever you looked. Water as far as you could see. I think
7 a couple of witnesses might have said that. Look through that
8 camera, that footage, or look with your eyes without a camera,
9 and what do you see looking towards Mullins? Water.

10 And then a little bit to the north? Water. Little bit
11 to the south? Water. As far as you can see, water.

12 How much water you got to have before you know you can't
13 take the van and turn it into a submarine? How much water you
14 got to have in front of you and you're viewing -- before you
15 say, "I'm going to turn around"? "I can't turn around, I
16 don't know where the edges of the road are. Lord have mercy,
17 I can't turn around. I guess that's because I came too far.
18 Well, maybe I can back up. Oh, Lord, no. I can't back up.
19 I'm pinned against the rail."

20 Or if he decided before he started to float that he tried
21 to back up. He couldn't see the edges of the road. Didn't
22 want to run off into the ditch. But it's too late. He had
23 gone too far.

24 You haven't heard the old saying, "He's past the point of
25 no return"? He was past the point of no return, and just

1 being past the point of no return meant doom for Ms. Green,
2 meant doom for Ms. Newton. They were doomed. They were in
3 that container, in that van, pinned in by the force of that
4 water against that guardrail, and there was nothing they could
5 do. Nothing they could do.

6 Mr. Bishop did what he could, but it was woefully
7 inadequate. He wasn't in a position where he could do
8 anything. It was already too late.

9 And how awful must that have been to sit there and wait
10 for your own death and you see it coming, and it's coming up
11 here, and it's getting closer and you're saying, "Somebody
12 help me. Please help me." And here it goes. Right on up.

13 I think there's a lot of big to-do been made about the
14 confusion on all the different radios and 911s and two
15 different 911s and the EOCs and law enforcement and people
16 calling in and saying, "They're on No. 9. No, they're not.
17 They're on 76. Well, okay, they're on No. 9." A lot of
18 confusion. A lot of to-do has been made about that, but
19 that's not why those ladies died.

20 Will Duncan was driving Dylan Oates, and Dylan said he
21 could have gotten there in about six to ten minutes if he knew
22 the right way. But he also said, "I don't know anybody that
23 can hold their breath for six to ten minutes." He was too
24 late.

25 When the call went out, "We're stuck, come help us," it

1 was too late. And the reason it was too late is because
2 Mr. Flood stubbornly, for some reason, God knows what, decided
3 he could drive across the ocean, because that's what it looked
4 like. It looked like going into a giant lake.

5 I could go on and on, but I'm just going to cover a
6 little bit more, because y'all have got good common sense and
7 you're fair and impartial people, and I'm asking you to give
8 Mr. Flood a fair trial, but I'm asking you to give the State a
9 fair trial. Give the victims a fair trial.

10 Mr. Flood, all we know and he had to say about it is what
11 we could get out of his answers from the questions Stephen
12 Howell sent him and his statement that he sent to Stephen
13 Howell.

14 On Question 13, he said, "I was the senior officer and
15 the driver. I picked the route that I always travel." That
16 makes no sense to me, people. "I pick the route that I always
17 travel." Then why in the world did he not know that was a low
18 area, and the further he went, the worse it would get? Did he
19 just ignore that?

20 "Every time I go to Loris ER to Darlington, I always go
21 by Highway 9 to Nichols."

22 "National Guard tells me we were clear to go around the
23 barricades. There was no law enforcement officer with the
24 National Guard personnel at the barricades." We know that's
25 false. Eddie Page was there.

1 This is a case where something terrible happened,
2 something horrible happened, and there was somebody going,
3 "How can I shift the blame? How can I get out from underneath
4 it? It was the van's fault. It wasn't my fault. It was my
5 superior's office fault. They didn't make it clear that I was
6 ordered. They just said to do it. They didn't order me to do
7 it. They said, Avoid No. 9 and 76. They didn't say, You are
8 ordered to not go on 9 and 76."

9 Who needs an order when you've got people that you work
10 with and that's your job and you discuss it and you're hearing
11 one of your co-workers say, "Can't go that way," up on the
12 map. And then, according to the map, said they pulled up the
13 DOT website and checked all that. And he just ignored all
14 that. I just don't understand it. There's a lot of other
15 things he said in answer to the questions, but I covered those
16 with Lieutenant Howell. I won't go back -- and you go back
17 and talk about what you remembered about it in the jury room.

18 But this is one thing that I didn't understand either.
19 He said, "We saw water in the road about three-quarters of a
20 mile after the barricades. The water was about half-inch
21 deep." How in the world, driving a van, you're going to tell
22 the water is half-inch deep? It's got to be deeper than that.

23 "I didn't turn because it wasn't that deep." But then he
24 said, "I want to go slow." On 34, he said, "The road was
25 higher than the ground where the houses were. The water was

1 very shallow on the road. When we got to the Pee Dee River,
2 the road dipped down, and that's where it got high. It seemed
3 to crest as we got to the river." But he didn't stop. He
4 kept going.

5 "All of a sudden, before we got to the river, the water
6 was at the bottom of the rim, I'd say half, three-quarters of
7 an inch." I don't know how he came up with them numbers.

8 "The water wasn't that high I couldn't see the edge of
9 the road, and if I backed up to turn around, I could end up in
10 the ditch. When I got there just before the river, I could
11 see dry road just beyond the guardrails." I don't know where
12 he's seeing that unless he's seeing high ground on the other
13 side of the river, on the Mullins side.

14 Check out that drone footage. You can run it slow, you
15 can run it fast, you can take it frame by frame, but you won't
16 to see any dry land that he could get to.

17 He didn't want to cause a wake of water going into the
18 houses. Well, houses, most of them had steps and porches and
19 entry doors a little bit up of off the ground. So if he's got
20 this half or three-quarters inch of water, how is he going to
21 make a wave? How is he going to cause waves to happen? Got
22 to have a lot more water than that. Got to have it.

23 He couldn't see the edge of the road so he didn't want to
24 back up. He was stuck is what he was. He couldn't back up.
25 He couldn't pull off. The only thing he could do is either

1 stop and call for help and wait for somebody to come get him
2 or try to get his way through, and that's what he tried to do.
3 Maybe it wounded his pride or he was stubborn. I don't know.
4 But he pushed forward into water that was not just standing
5 and a tall puddle, ponding like it was in town, but it was
6 rushing across the guardrail and on into the woods and merging
7 in with the Little Pee Dee River. All that was the Little Pee
8 Dee River.

9 And then, last, it's hard to say, but if I had to guess,
10 I would say a half to three-quarters of an inch. Excuse me,
11 three-quarters of an hour. They asked him how long did it
12 take them to get before they called and before getting stuck,
13 and he said, "That's hard to say. I'd say half to
14 three-quarters of an hour." That's a long time to wait to get
15 rescued. A long time to wait to call.

16 Those were his questions, and those were his answers.

17 Thank you for your patience, but this is important.

18 "We left Loris ER and started going to McLeod Mental
19 Health in Darlington by way of Highway 9. The trip was
20 uneventful until we got to Nichols where we were stopped by
21 barricades, and the National Guard truck with three soldiers:
22 Two in the truck and one standing on the ground. I stopped
23 the man at the checkpoint and started talking to the soldier
24 on the ground. We stayed at the checkpoint for a few minutes,
25 talking to the national guardsman. We asked him, because the

1 road was blocked, the best way to Darlington." Well, the road
2 was blocked -- he knew the road was blocked, so why didn't he
3 stop right there?

4 "He said that we could go through. I was surprised but
5 happy because it would save us a lot of time." He wasn't
6 interested in the safety of his passengers. He was interested
7 in making good time so he could get on back and come off his
8 shift.

9 And why was he surprised that they waved him through when
10 he knew there was trouble ahead? He knew there was water.

11 "I drove slow because the water was right at the bottom
12 of the houses when we passed. I didn't want to make the water
13 splash against the houses. I drove about two miles. I looked
14 down the road, and it looked like we were about to come out of
15 the water." And he was wrong on that.

16 "It looked like it was about a quarter of a mile away. I
17 kept driving when, all of a sudden, the van started to float.
18 The water pushed us to the left, and the van was pushed into
19 the guardrail. The water was rushing in, and Officer Bishop
20 opened was able to open his door. As the water rushed in, I
21 tried to put my window up because I knew the door couldn't be
22 opened. The water was rushing in so fast that the power went
23 out, with my window halfway down."

24 "Bishop saved my life. Without him, I'd be dead also."
25 And then he said this, after the fire chief said they rescued

1 Flood and Bishop, and they tried to cut into the van, "When
2 the fire chief said, 'This is not a rescue; it is now a
3 recovery,' at that point, I finally realized that the females
4 were dead. I had been talking to them through this whole
5 thing, to get them to stay calm.

6 Ladies and gentlemen, why didn't he stop when the
7 National Guard said, "You can't go through. We couldn't get
8 our big vehicles across -- we tried to cross over into the
9 Mullins side, and we couldn't get there." Why didn't he turn
10 around? Why didn't he go for another route?

11 He knew something was wrong. He knew he was facing some
12 kind of water. And the further he drove -- I imagine he drove
13 two miles, like he said, in water. Think about how far that
14 is. That's about two miles all the way there to where the
15 drowning location is.

16 But they came through these barricades right here, and he
17 talked to these guardsman and he drove and drove and turned,
18 and then you have seen pictures, in the middle of the day --
19 this is later afternoon -- water was already there, getting
20 steadily high.

21 And everybody talked about where they would try to put
22 their boats in and where they parked their cars. They
23 couldn't get any closer than here. If you look on the video,
24 you can see, over here, there's the high-water vehicles lined
25 up. They couldn't go any further. Couldn't go past the grain

1 bins. There was too much current, too much water.

2 And then he was on the phone with Rhiannon Herring. What
3 did Rhiannon say? She said, "He told me that my supervisor is
4 going to be upset with me." And I said, "Don't worry about
5 that. We're just trying to get you home."

6 "My supervisor is going to be upset with me."

7 "I don't want to see Sheriff Thompson. I'd rather see
8 you."

9 Why would a supervisor be upset with you if they just had
10 something that was nobody's fault that just occurred, like
11 somebody backed into them when they pulled into a parking lot
12 and hit somebody? You know, that's not a big deal. You're in
13 a situation like this, he said, "My supervisor is going to be
14 upset with me." Why is the supervisor going to be upset with
15 him? Because what did she tell him to do? "Go this route.
16 Don't go No. 9 and 76." And he knew that he did not follow
17 those directions.

18 He didn't want to see the sheriff. He didn't want to
19 talk to the supervisor. There's no other explanation for him
20 worrying about that or being mad in that kind of a
21 life-threatening situation because he had too many more
22 weighty things on his mind than whether a supervisor would be
23 angry if he did -- you know, got pulled for speeding or
24 something. But this is different. This is completely and
25 totally different.

1 Now, part of our burden of proof on the issue of what the
2 action was when you put on the indictment that he drove into
3 visibly life-threatening water and the defense has said we
4 haven't done that -- that we've said that and we haven't met
5 that burden of proof. Well, I want to invite him and y'all to
6 see on that video where Flood is and see where Bishop is. If
7 they're not in a life-threatening situation, then I'll eat my
8 hat.

9 They were in a life-threatening situation. Those were
10 life-threatening flood waters. And even guys in the boats had
11 trouble. And that isn't just all because, all of a sudden,
12 jump up in a flash flood and sneak up on Mr. Flood and become
13 a big wave of water that swept them away. That didn't happen
14 instantaneously. That was steadily going on.

15 And you can see that water rushing in the current in the
16 video. The video speaks a lot eloquently because it shows you
17 exactly what happened while it was happening. And I'm going
18 to ask you to look at that. Look at that. As a matter of
19 fact, I'm going to ask my favorite IT person, Mr. Keith
20 Godbolt, if he would go ahead and start that video now and
21 y'all look at this and that will close my closing statement.

22 (Video plays.)

23 There are the high-water vehicles. See them? There's
24 that vehicle that they said early on, way earlier in the day,
25 a big Ford truck, I think, that was backed into the water and

1 was stuck, ran off the driveway -- ran off the road. Several
2 of them. You can see where it was ponding everywhere, all
3 around. There are the grain bins described on that map.
4 Still water, water, water, water.

5 (Video continues to play.)

6 There are people right there from the Tennessee Swift
7 Water. See that red inflatable boat?

8 (Video continues to play.)

9 And there's another trailer and a vehicle that was
10 hauling the boat. Look up here and see the water, just
11 everywhere.

12 Finally, we have got where you can see road and there's
13 the van, and that's where they lunched over by the park.

14 If you want to see that again and you need to verify
15 anything, just let the bailiffs know. You can look at it.
16 You have got the pictures to take back with you, the still
17 shots of the conditions around that town that day.

18 And I'm sorry. You know, I feel sorry. My heart breaks
19 for the victims' families, but I have to say I feel sorry for
20 Mr. Flood. He made a tremendously reckless decision,
21 disregarding the safety of others, disregarding what he was
22 told to do by his superiors, disregarding his common sense,
23 and disregarding people telling him, "You can't go that way.
24 You can go around and there and look, but you got to turn
25 around come back, come in our side."

1 He disregarded the safety for Wendy Newton and Ms. Green.

2 Thank you for listening. Thank you for weighing out this
3 evidence and reaching the decision that speaks the truth, and
4 that decision will be Mr. Flood is guilty on involuntary
5 manslaughter on Ms. Green and guilty of involuntary
6 manslaughter on Ms. Newton and also guilty of reckless
7 homicide on Ms. Green and Ms. Newton. Thank you.

8 THE COURT: All right. Members of the jury, we're going
9 to proceed with the defense closing statement. Do you need a
10 quick break before we do that? You do?

11 All right. If you would, take a 15-minute break. Do not
12 discuss the case at all.

13 (The jury exited the courtroom at 10:45 a.m.)

14 THE COURT: 15-minute recess. Go ahead and set up.

15 (A brief recess was taken from 10:45 a.m. to 11:03 a.m.)

16 THE COURT: Bring the jury out.

17 (The jury entered the courtroom at 11:03 a.m.)

18 THE COURT: All right. Defense is recognized.

19 MR. BOUCHETTE: Your Honor, may it please the Court?

20 THE COURT: Yes, sir.

21 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

22 MR. BOUCHETTE: Ladies and gentlemen of our jury, good
23 morning. I know all week you have been thanked for your
24 service and told how important it is. I know Mr. Clements did
25 earlier. We did in our opening statements. I'm sure the

1 judge has conveyed that to you. Madam Clerk, I'm sure, has
2 done that. Mr. Wayne, I'm sure, has let you know how
3 appreciative everyone is and how thankful everyone is for your
4 service, but to the extent we haven't made that abundantly
5 clear, please let me tell me that your service here today and
6 your willingness to give up your time is greatly appreciated
7 by that man right there, Mr. Stephen Flood, and by myself and
8 Ms. Drost.

9 Now, it's a long week. We've had a long drive back and
10 forth to court every day. You've listened to testimony that,
11 at times, has been maybe a little slow to get into, and you've
12 been very patient, and we want to thank you for that.

13 Now, this is a case where the defendant is charged with
14 recklessness. We'll talk about that that is. The judge is
15 going to give you a specific instruction on it. But there's a
16 little bit of difference, the judge is going to tell you,
17 between recklessness and negligence.

18 Solicitor Clements spent some time talking about civil
19 cases, and y'all probably heard civil cases. People in those
20 cases, they're just arguing about money. All right? So it's
21 a lower standard. Negligence is what somebody else might
22 would do under those similar circumstances. All right? The
23 consequence that, if you're negligent, you pay some money.

24 And the burden of proof, we talk about the scales of
25 justice, and if it tips every so slightly in one way or the

1 other, then you find for that party. But, here, we're both
2 dealing with a different standard. We're talking about
3 recklessness. That's somebody disregarding human life,
4 somebody that just doesn't care. And we've got to prove that
5 beyond a reasonable doubt on all charges.

6 And the solicitor told you in his opening statement -- I
7 wrote -- I took the time to jot it down, that he was going to
8 show you that Mr. Flood had four opportunities in which to
9 change his mind or change his decision and to turn around.
10 And the first one was at the office. And, again, please
11 forgive my handwriting. All right? The second one is he
12 talked about at the barricades. All right? He then said when
13 he encountered the National Guard. Then he said whenever he
14 encountered water. All right?

15 So let's talk about what the evidence shows as we went
16 through this case. What happened at the office? All right?
17 At the office, you had Ms. Orlando. You had Mr. Maxim. All
18 right? Two supervisors.

19 Now, everyone knew that, number one, the road conditions
20 were dangerous. Now, I submit to you -- this is State's
21 No. 2. You see these alternate routes. What is that in these
22 low-lying areas? Folks, that's creeks, that's swamps, that's
23 water. Okay? All in this area was dangerous. No matter
24 where you went, it was dangerous. That's the point.

25 They didn't need to leave in the first place. This was

1 no medical emergency. There was no court order. He didn't
2 have a choice to leave out or not. He was told to go and he
3 was essentially ordered to go. She knew how to order him to
4 go. There's no dispute about that.

5 So that's what's happening as he leaves the office. Now,
6 again, there's differing testimony about, you know, how much
7 instruction or what all was given, but you heard also from --
8 it was Mr. Bruce Crawford that said, "Yeah, normally you'll go
9 on the most efficient route. If you run into problems, then
10 you change course." That's what he and Ms. Witherspoon did
11 that day.

12 And Ms. Witherspoon said that, in the same situation, if
13 she encountered guards or guardrails, but if she was waved
14 through after inquiring about it, then she would proceed.

15 So, I submit to you that, when he leaves the office, the
16 evidence is clear, the record is clear, that what he is
17 intending to do is what he told Lieutenant Howell, that he is
18 leaving the office, he is proceeding on what is normally the
19 most efficient route. Again, he's leaving not at his choice
20 but he's leaving on what is normally the most efficient route
21 with the intent that, should he run into problems, he will
22 then revert and stop on another route. All right? He's not
23 reckless. He's not looking to hurt anybody at that point.
24 All right? He didn't turn in the office. All right?

25 Then we talk about the barricades and the National

1 Guards. All right? That was Mr. Eskew. Got a lot to talk
2 about, Mr. Eskew. What did he say? All right? He said that
3 he was -- any emergency vehicles would come along normally,
4 he'd just waive them through automatically without any thought
5 or consideration. He wouldn't have said anything to him.

6 But what happened? He stopped. He asked, "How does it
7 look out there?" He acknowledged that Steve was inquiring
8 about the road conditions past the point of the National Guard
9 area.

10 So he gets here. He talks to Mr. Eskew. He is, at that
11 point, looking out for his safety. All right? He's inquiring
12 about the road conditions. He's seeking it out from somebody
13 who has been there all day.

14 And what does Mr. Eskew say? It kind of took
15 cross-examination to get him out of it, but eventually, he
16 acknowledged that his words were, "You can go through there
17 but don't come back through later because it's going to be
18 worse than it is now."

19 Folks, that's not just vague or ambiguous or confusing
20 instructions. That is a directive from a guy who is
21 stationed, who is seated there by the State of South Carolina
22 telling him you can go through there, that you can get through
23 town.

24 So he goes. What do we see? There's no second
25 barricades. The barricade blocked off Nichols going up Main

1 Street and out of town towards Dillon. There's no barricade
2 there. So he continues to go.

3 All right. So, is he being reckless? Is he disregarding
4 human life? Does he not care at the time he interacts at the
5 barricades and with the national guardsmen? No. Not one of
6 those happened.

7 Now, the State says, whenever he encountered water, he
8 had an opportunity to stop. What did we hear from Ms. Rogers?
9 She's down here at the town hall. She says that 9:00, at
10 noon, even by 7:00 up here at this Nichols town hall does not
11 contain clearly life-threatening flood waters.

12 So he gets from here to there. Now, I have no doubt
13 there's water on the road, but the point is, you're going out
14 during a flooding situation. All these areas are low lying.
15 Lake City, one of the alternate routes, do you know why they
16 call it Lake City? There's no lake in Lake City. It's lake
17 swamp. There's water all the way around there. He would have
18 likely encountered water no where [verbatim] he went.

19 So the fact that there was water on the ground doesn't
20 mean he was reckless. Again, he wouldn't have liked to have
21 been out there in the first place but he had to.

22 And, so, as he sees water, it's not life-threatening.
23 It's not visibly life-threatening. People are driving through
24 there all day up until the point of the town hall. Okay?

25 Now, you say may -- you may go back in the jury room and

1 say, Okay, well, somewhere between the town hall and before
2 the accident site, you know, he could have stopped. Maybe me,
3 in that situation, I might have stopped, I might have turned
4 around. You-all weren't there that day. And that sounds
5 like, to me, if you start talking like that and say, "Well, I
6 would have done it," and you start talking about negligence.
7 All right. This is recklessness. This is somebody acting
8 like they don't care, that disregard for human life.

9 I submit to you that's not what he's doing. It's
10 certainly not what he's doing up until the point he hits the
11 town hall? And so why is he at the town hall at that point?
12 Is he there because he doesn't care because he's, you know,
13 just trying to get there quicker? No. He's there because he
14 stops to ask about the conditions. Not only was he given a
15 neutral response or just waved through, he was specifically
16 told you can make it through.

17 So as you think about that, as to whether or not you
18 would have maybe stopped, called, think about that. He had
19 just been told by somebody that you can make it through. All
20 right?

21 Now, you heard about -- there was some reference about
22 this conversation that Mr. Eskew initially said on the stand
23 that he told him earlier with the high-water vehicle. Now,
24 what did we have to do? We had to ask him about subsequent
25 testimony to say, oh, yeah, at a later point, when he's under

1 oath, under the penalty of perjury, yeah, he never mentioned
2 the high-water vehicles.

3 Folks, there wasn't any conversation. The sole
4 conversation -- this was the end of the shift. This young man
5 had come from out of town, and he acknowledges what he told
6 him: "You can go through there now, but don't come back later
7 because it's going to be worse later when you come back
8 through." This was clearly a transport vehicle. This was a
9 transport vehicle from Horry County going somewhere else, and
10 he knew that. He knew he was relying on that.

11 And so I submit to you that he did not establish --
12 perhaps he could have stopped, but he's not reckless. He's
13 not willful indifference to human life at the time he
14 encountered the water.

15 Also mentioned, you know, they talked about being
16 stubborn. And they reiterate what's in the indictment that he
17 ignored admonitions. Again, please forgive my handwriting.
18 All right? Who gave him an admonition? I mean, that's
19 contained in the indictment, that's contained in the opening
20 statements and the closing arguments.

21 Who got on this stand and gave him any kind of
22 admonition? When he left, Orlando and everybody else that was
23 in a position to do it, they were in a position to give him an
24 order him to come to work that day and go out. They didn't
25 give him an admonition. They won't acknowledge, after

1 multiple questions, that, yeah, it wasn't an order. I could
2 have. Could have said, "Go this way. Please go this way."
3 They didn't do that.

4 Did the national guardsman give him any kind of
5 admonition? No. He just said he specifically waved him
6 through and gave him the information that you can make it
7 there. There's no admonition there.

8 They repeatedly brought up to you and they said it in
9 closing that the sole reason was because he was stubborn.
10 Folks, I challenged him in opening statements to put somebody
11 up regarding being stubborn. We heard from Ms. Orlando, the
12 very first witness, that she found him to be a man of
13 integrity on September 18th, 2018.

14 And everything you have seen up here, a stubborn person
15 doesn't stop and ask for directions and inquire about the
16 conditions when he goes. That's not stubborn. There's
17 nothing in the record to say that he's stubborn.

18 Now, the judge is going to instruct you on the burden of
19 proof, but human nature being what it is, you might think,
20 "Well, why didn't the defense call witnesses?" Well, what
21 witnesses would we call? Their witnesses. The ones they
22 called have admitted all these things. They read you in what
23 he said shortly after the accident, which corroborated
24 Mr. Eskew; that he went, he interacted with him. Eskew waved
25 him through, which, again, is what he said.

1 Now, he said he was surprised. Mr. Clements construes
2 that to mean something negative. What does that mean? If he
3 was surprised, that means he was not going to go through but
4 for the instruction by Mr. Eskew. That's what "surprised"
5 means. He's not stubborn. He was going to ask the person
6 there and then turn around to an alternate route had somebody
7 said something different to him. That all came from their
8 witnesses. That's not in dispute.

9 The major issue in this case is going to be the proximate
10 cause. And when we talk about proximate cause, particularly
11 in this case -- I don't know if you've ever been on a team or
12 supervised people or were responsible for people at work.
13 There's a saying that "Victory has a thousand fathers, but
14 defeat is an orphan." And that normally means, when something
15 good happens, everybody had a part of it, but when something
16 bad happens, nobody had anything to do with it. All right?

17 That's kind of the case that we have got in this tragic
18 accident, and unfortunately, the proximate cause -- it's true,
19 you don't have to be the sole cause, but you have to be the
20 cause that you're willing to assign criminal culpability to.
21 And if there's another cause, then the verdict is not guilty.
22 You can acknowledge that it's a tragedy. You can acknowledge
23 that it's an accident. You can acknowledge they might have
24 been right or wrong, but if he's not the cause you're willing
25 to assign that culpability to, then it doesn't have the

1 proximate cause for the death. And this case, unfortunately,
2 overflows with cause -- causes of this accident.

3 We first heard from Ms. Orlando. And, in her testimony,
4 she acknowledged that the vehicle that she was responsible --
5 ultimately responsible for was unsafe. Then she said, "Well,
6 Horry County Police Department was responsible to make it
7 safe." That might have been true.

8 So Horry County Police Department, her, once she got in
9 the vehicle to make sure it was safe before drivers took it
10 out, she acknowledged that was her responsibility.

11 She knew the roads in that area were going to be unsafe.
12 And, folks, I pointed to the map. When you go back and look
13 at that video -- go back and look at that video. The
14 solicitor spent the better part of two days showing you that
15 everywhere was covered in water. You see how fast it showed
16 -- or how far back it showed up? That's the point. That is
17 the whole point, that, if everywhere was covered with water,
18 why would they send them out in the first place?

19 Do you want to tell me there's a reasonable certainty
20 that they couldn't encounter water somewhere else? That was
21 an accident waiting to happen. That wasn't his choice but
22 what he was ordered to do.

23 Then we hear from Mr. Eskew. Like I said, not only waved
24 him through but specifically, when asked, told him he can make
25 it. Moreover -- and this is where -- this is the reason why

1 the jury system is so good, because y'all saw him sit here,
2 and when I asked him, you know, if he thought he was just
3 going to check it out, just go sightseeing, whatever he
4 thought it was, you know, why didn't you become alarmed when,
5 after 30 minutes, this vehicle hadn't gone two miles and come
6 back?

7 And what did he say? That wasn't his job. He didn't
8 care. That didn't bother him. Saying, "That's not my job,"
9 you know what that is in that situation? Do you know what
10 that is? He's a national guardsman. He's here monitoring for
11 flood waters. He's there for one job. He's got nothing else
12 going on. He's got one job. Do you know what that is?
13 That's indifference. That's indifference to people's lives.
14 That wasn't his job.

15 Then heard from Hannah Burghard. She told us that there
16 was a GPS monitor -- I'm saying GPS monitor -- there was a
17 sensor of some kind on their body cameras that Mr. Bishop
18 pressed at the time of the accident, and had it worked
19 properly, they would have known right where they were or
20 thereabouts immediately. But that wasn't working. Whose
21 responsibility was that? That's not theirs.

22 And that's significant because over an hour passes. Over
23 an hour passes while the waters are rising before help
24 ultimately gets there. And we heard from Chief Starnes that
25 he was able -- during the brief time he was there, he got

1 through the main roof, and he was getting into the cage. He
2 said, had he been able to get there earlier, he probably could
3 have got through. So that delay -- no, that delay is
4 significant because they did what they could up and to that
5 point, but the delay is ultimately one of the factors that
6 kept these ladies from being able to be safe.

7 Then we heard from Ms. Herring. Now, for some reason,
8 during the conversation with Steve -- and he is telling
9 here -- what's he telling her? She acknowledges that, at
10 about 6:14, he is telling them that he's passed the police
11 station, he's on 76 between Nichols and Mullins. All right?
12 So he's here.

13 And what is she doing? For some reason, she thinking
14 he's talking about the old police station up here that flooded
15 out years ago. When I asked her if that contributed to the
16 delay, what was the answer? Yes.

17 So the signal doesn't work. Dispatch is telling people
18 the wrong direction.

19 Steve and Bishop, they knew where they were from the very
20 beginning. They knew where they were early. This confusion
21 in opening statements has sort of implied that it was
22 confusion from Bishop and Flood because they didn't know where
23 they were at. No, they knew where they were at earlier. It
24 was everyone else that, for some reason, wasn't listening,
25 couldn't hear them, whatever it was --

1 MR. CLEMENTS: Your Honor, I'm objecting to arguing facts
2 that are not in evidence.

3 MR. BOUCHETTE: Well, that came in about Ms. Herring and
4 the others.

5 THE COURT: That's overruled.

6 MR. CLEMENTS: Not talking about Ms. Herring. I'm
7 talking about Mr. Flood and Mr. Bishop knowing where they
8 were.

9 MR. BOUCHETTE: That's an inference from the fact, Your
10 Honor.

11 THE COURT: Overruled. Go ahead.

12 MR. BOUCHETTE: And we come back to the van. You heard
13 from Ms. Orlando that this vehicle -- first of all, you heard
14 from one of the other witnesses there were a number of
15 transport vehicles. There were sedans, Tahoes. One of the
16 other -- I think it was Ms. Wright picked up the first
17 passenger, and that's why they ended up in this particular
18 van.

19 But this van had a cage in it, and I told you in opening
20 statements that that van with that cage is a literal death
21 trap. It was an accident waiting to happen. There was no
22 emergency escape. There was no way to get into the escape
23 hatch if it did have it.

24 And it was not just the flooding that could have
25 happened. You know, we have heard that there was only one way

1 out with this one compartment. So what if there was a wreck
2 that bent the side or a fire started? They would have run
3 into the same thing. They wouldn't have been able to get them
4 out because there was only one way in and one way out. It was
5 an accident waiting to happen.

6 I told you in opening statements that Steve Flood --
7 Steve Flood is a good man. He is. I told you in opening
8 statements that the way you tell a good man is they do good
9 things. At least as of September 18th, 2018, his supervisor,
10 who has taken the stand here, says she thought of him as a man
11 of integrity.

12 And what does the statement say that he gives to
13 Lieutenant Howell? A phobia of water, a man that can't swim.
14 What was he doing when they arrived? Is he on the top of the
15 van? Is he standing on top? He's back there -- he says he's
16 trying to console the passengers. He's trying to talk to
17 them. He's neck deep in water. He was stuck. He's talking
18 to the passengers. He's doing what he can. That's a sign of
19 a good man.

20 Nobody here believes that Steve Flood wanted any harm to
21 come to these ladies. The solicitor told you that. I ask
22 that you resist the urge to try to give justice to these two
23 young ladies by doing an injustice to a very good man.

24 I told you in opening statements that I believe what we'd
25 see was that this good man is being made a scapegoat for this

1 accident. And I think if you look at -- who were the most
2 combative witnesses that we dealt with on the stand? The
3 first witness, Ms. Orlando. Had no problem with him before
4 September 18th, 2018. Mr. Eskew, the next one, and
5 Ms. Herring.

6 So they don't have a dog in this fight. Why are they so
7 combative? Well, I submit to you it's what we talked about in
8 opening statement: CYA. If the blame is on him, then it's
9 not on anybody else. They want to place all the blame on
10 Steve Flood.

11 And why that's important? Again, it's proximate cause.
12 The solicitor was interested in holding those responsible for
13 the cause of this death -- these deaths, you wouldn't just
14 have Steve Flood sitting over there. You'd be -- sitting
15 beside Steve Flood would be about four or five other people,
16 anybody that designed, had anything to do with the vehicle,
17 anybody that sent them out during that day, anybody that
18 caused the delay, anybody that kept him from being able to
19 access the vehicle, because that's all the path,
20 unfortunately. But we're not there. We're just looking at
21 Mr. Flood.

22 If they were concerned about what caused this accident,
23 there wouldn't be one man sitting over there. I submit to you
24 that is evidence in and of itself that they want to make him a
25 scapegoat for this accident.

1 Ladies and gentlemen, I believe with all my heart today
2 that Steve Flood is not guilty of this crime.

3 And if I've done anything during the course of this trial
4 to embarrass him, I do hope you won't hold that against him.
5 I don't hesitate when I say that, that I believe he's not
6 guilty. If you go back in that jury room and start to come
7 back with a verdict and start to make a decision and you're
8 not quite sure, you have that little pause, that pause -- that
9 hesitation to act is what we call reasonable doubt. That is
10 reasonable doubt, that hesitation to act.

11 Ladies and gentlemen, you heard about what was going on
12 that day. You heard, when they arrived on the scene, Steve's
13 neck deep in water. You heard that he was trying to comfort
14 the victims. His body was rescued that day, but four years
15 later, his heart, his soul is still there at that lowly
16 intersection, that lowly spot on Highway 76. It's been with
17 him four years. It will be with him forever. It's been with
18 him in large part because of this case.

19 Whenever we started, I told you that I was handing Steve
20 out of my care and in to yours. Now that you have heard the
21 evidence, now that you have heard this good man and what he
22 did and what he didn't do, I ask that you give him back to me.
23 I ask that you let this man know that, after four years, that
24 it's finally time to leave that man behind and go home. I ask
25 that you give him back to me. Give him back to me and finally

1 let him go home. Thank you.

2 JURY INSTRUCTIONS

3 THE COURT: Members of the jury, it is now my duty to
4 instruct you on the law applicable to this case, and it is
5 your duty as jurors to accept and apply the law as I now state
6 it to you. Furthermore, it is your exclusive duty to decide
7 all the issues of fact in this case and to determine the
8 effect, value, and weight of the evidence presented.

9 Both the State and the defendant have the right to expect
10 that you will carefully consider and evaluate the evidence and
11 apply the law of this case to it so that, in the end, both the
12 State of South Carolina and this defendant will have received
13 a fair and impartial trial.

14 I want you to understand that when I use the word
15 "defendant," I am referring Mr. Stephen William Flood.

16 The State in this case alleges several different offenses
17 against the defendant. The defendant's charges are: Two
18 counts of involuntary manslaughter and two counts of reckless
19 homicide. Each charge is a separate and distinct offense.
20 You must decide each charge separately on the evidence and the
21 law applicable to it uninfluenced by your decision as to any
22 of the other charges.

23 The defendant may be convicted or acquitted on any or all
24 of the offenses charged. You will be asked to write a
25 separate verdict of guilty or not guilty on each charge. To

1 these charges, the defendant has entered a plea of not guilty.
2 These pleas of not guilty places the burden of proof on the
3 State of South Carolina to prove the defendant guilty beyond a
4 reasonable doubt on each and every charge.

5 It is vital to understand that the defendant is presumed
6 under the law to be innocent of the charges. It is a
7 fundamental rule of our law that the defendant, regardless of
8 the seriousness of the charges against him, is always presumed
9 innocent of the crimes for which he is charged unless and
10 until his guilt has been proven by evidence that satisfies you
11 beyond a reasonable doubt.

12 The presumption of innocent is not a mere legal theory or
13 legal phrase. The presumption of innocence is very important,
14 and you need to understand that this presumption accompanies
15 the defendant from the time of his arrest and appearance in
16 this court and continues with the defendant even after you
17 retire to the jury room to deliberate. In other words, a
18 defendant receives the benefit of the presumption of innocence
19 until the very end of this trial when you, the jury, will
20 deliberate upon the evidence and decide whether the State has
21 proven his guilt on each and every charge beyond a reasonable
22 doubt.

23 During this trial, you and I have separate duties to
24 perform. As the trial judge, it is my responsibility to
25 preside over this trial; therefore, I have the duty to rule

1 upon the admissibility of the evidence offered during the
2 trial. In that regard, you are to consider only the testimony
3 which has been presented from this witness stand together with
4 any exhibits admitted into the record of this case.

5 Furthermore, I have the additional duty to charge you on
6 the law applicable to this case, and in that regard, it is
7 your duty to accept and apply the law as I now state it to
8 you. If you have any preconceived ideas as to what you think
9 the law is or what the law ought to be and it does not agree
10 with what I tell you the law is, then you are obligated to
11 abandon those preconceptions and accept the law as I now state
12 it to you.

13 In this trial, you are the sole and exclusive judge of
14 the facts, and I am the judge of the law. Do not infer that I
15 have an opinion about the facts in this case from anything I
16 have said during the course of this trial. In this regard,
17 the law simply does not permit to have an opinion about the
18 facts. As jurors, it is your duty alone to determine the
19 effect, value, and weight of the evidence presented during the
20 course of this trial.

21 Furthermore, it is your job as jurors to determine the
22 credibility and believability of witnesses who have testified
23 in this case. You must evaluate the evidence and determine
24 which evidence convinces you.

25 In determining the believability of witnesses who have

1 testified in this trial, you may believe one witness over many
2 or many other one. You may believe a part of the testimony of
3 a witness and reject the remaining part. You may believe the
4 testimony of a witness in its entirety or reject it in full.
5 You may consider whether the consider whether the witness has
6 an interest in the result of the trial, whether the witness is
7 prejudiced toward either party, the opportunity for the
8 witness to have seen the matters and things about which the
9 witness may testify, and the way the witness acts on the
10 witness stand.

11 Proof beyond a reasonable doubt is proof that leaves you
12 firmly convinced of the defendant's guilt. There are few
13 things in this world that we know with absolute certainty. So
14 even in criminal cases, the law does not require proof that
15 overcomes every possible doubt. However, if, based upon your
16 consideration of the evidence, you are firmly convinced that
17 the defendant is guilty of the crimes charged, you must find
18 him guilty.

19 If, on the other hand, you think there's a real
20 possibility that he is not guilty, you must give him the
21 benefit of the doubt and find him not guilty.

22 Please understand that reasonable doubt may arise from
23 the evidence which has been presented in this case or from the
24 lack of evidence in this case. It is your responsibility to
25 determine whether or not reasonable doubt exists as to the

1 guilt of this defendant on each and every charge.

2 I charge you that the defendant is entitled to every
3 reasonable doubt arising in the whole case. If, upon any
4 issue of fact essential to conviction and a verdict of guilty,
5 you have a reasonable doubt as to how that issue would be
6 revolved, it would be your duty to resolve that reasonable
7 doubt in favor of the defendant. Thus, in summary, it's
8 important to understand that the defendant is not required to
9 prove his innocence. Instead, the State is required by law to
10 prove every essential element of the charges against the
11 defendant by evidence which satisfies you of his guilt beyond
12 a reasonable doubt. Only then can you convict the defendant
13 and find him guilty.

14 There are two types of evidence which are generally
15 presented during the course of a trial: That is direct
16 evidence and circumstantial evidence. Direct evidence
17 directly proves the existence of a fact and does not require
18 deduction. Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of a fact.
20 Crimes may be proven by circumstantial evidence.

21 The law makes no distinction between the weight or value
22 to be given to either direct or circumstantial evidence.
23 However, to the extent the State relies on circumstantial
24 evidence, all of the circumstances must be consistent with
25 each other, and when taken together, point conclusively to the

1 guilt of the accused beyond a reasonable doubt.

2 If the circumstances merely portray the defendant's
3 behavior as suspicious, the proof has failed. The State has
4 the burden of proving the defendant guilty beyond a reasonable
5 doubt. This burden rests with the State regardless of whether
6 the State relies on direct evidence or circumstantial evidence
7 or some combination of the two.

8 The Rules of Evidence ordinarily do not permit witnesses
9 to testify to opinions or conclusions. An exception to this
10 rule exists for witnesses we call expert witnesses, a witness
11 who, by education and experience, may state an opinion as to
12 the relevant and material matter in which the witness claims
13 to be an expert and may also state the reasons for the
14 opinion.

15 You should consider an expert's opinion received in
16 evidence in this case, and like any other evidence, give it
17 the weight you think it deserves. If you decide that the
18 opinion of an expert is not based on sufficient education and
19 experience or if you conclude that the reasons given in
20 support of the opinion are not sound or that the opinion is
21 outweighed by other evidence, you may disregard the opinion
22 entirely.

23 An expert witness's testimony should be given no greater
24 weight than that of any other witness simply because the
25 witness is an expert. Furthermore, you are not required to

1 accept an expert's opinion even though it is not contradicted.

2 To prove involuntary manslaughter, the State must prove
3 beyond a reasonable doubt that the defendant unintentionally
4 killed the victim without malice but while engaged in an
5 unlawful activity not naturally tending to cause death or
6 great bodily harm, or that the defendant unintentionally
7 killed the victim with malice -- without malice while engaged
8 in a lawful activity with reckless disregard for the safety of
9 other. Unintentional means that the defendant did not intend
10 for anyone to be killed or seriously injured.

11 Reckless disregard for the safety of others is more than
12 mere negligence or carelessness. Mere negligence or
13 carelessness is the failure to use the care that a person of
14 ordinary reason would use under the same circumstances.
15 Recklessness is a conscious failure to use ordinary care.
16 Reckless disregard for the safety of others means that you are
17 not interested in the consequences of your acts or the rights
18 and safety of others.

19 If a person who knows or should know that ordinary care
20 requires certain precautions to be taken for the safety of
21 others when using a dangerous instrument, such as a gun or a
22 car, but that person fails to use those precautions without
23 concern, the person's actions are considered reckless.

24 The State must also prove beyond a reasonable doubt that
25 the defendant's acts was a proximate cause of the death.

1 Proximate cause is a direct cause. It is the immediate cause.
2 It is the efficient cause. It is that cause without which the
3 death of the victim would not have resulted.

4 There must be a chain of causation from the time of the
5 injury inflicted by the defendant until the time of the
6 victim's death. Proximate cause does not necessarily mean
7 that it occurred immediately prior to death.

8 There may be more than one proximate cause. The acts of
9 two or more persons may combine together to be the proximate
10 cause of the death of a person. The defendant's act may be
11 regarded as a proximate cause if it is a contributing cause of
12 the death of the victim. The fact that other causes also
13 contributed to the death of the victim does not relieve the
14 defendant from responsibility. The defendant's act need not
15 be the sole cause of the death but must be a proximate cause
16 contributing to the death of the victim.

17 The defendant is charged with reckless homicide. The
18 mere fact that an accident with death occurred does not, by
19 itself, mean there is sufficient evidence to prove reckless
20 homicide. The State must first prove beyond a reasonable
21 doubt that the defendant drove a vehicle with reckless
22 disregard for the safety of others. Reckless disregard for
23 the safety of others means an indifference to the consequences
24 or results of one's acts, a conscious indifference to the
25 rights and safety of others, or a conscious failure to

1 exercise ordinary care.

2 Reckless disregard for the safety of others is something
3 more than mere negligence or carelessness. The State must
4 also prove beyond a reasonable doubt that a person was injured
5 and died within one year of the date of the injury.

6 Finally, the State must prove beyond a reasonable doubt
7 that the injury to the victim from the defendant's reckless
8 driving was the proximate cause of the victims' death.
9 Proximate cause is the direct cause. It is the immediate
10 cause. It is the efficient cause. It is a contributing
11 cause. It is that cause without which the death of the victim
12 would not have resulted.

13 Proximate cause does not necessarily mean that it
14 occurred immediately prior to death. To be the proximate
15 cause, the act of the defendant does not have to be the sole
16 cause of death, and the fact that other causes contributed to
17 the death does not relieve the defendant of responsibility.

18 The defendant has raised the defense of accident. An act
19 may be excused on the ground of accident if it is shown that
20 the act was unintentional, that the defendant was acting
21 lawfully, and that reasonable care was used by the defendant.
22 For example, if a person is unlawfully armed in self-defense
23 and a gun accidentally discharges, the defense of accident
24 would apply.

25 The burden is on the State to prove beyond a reasonable

1 doubt that act was not an accident but was caused by the
2 negligence or carelessness on the part of the defendant or by
3 unlawful activity by the defendant.

4 I further instruct you, the fact that the defendant in
5 this trial did not testify on his behalf is not a factor to be
6 considered by you in any way during your deliberations or in
7 your consideration on the question of guilt or innocence. In
8 this regard, the defendant has the constitutional right to
9 remain silent. Any exercise of this right must not be
10 considered by you in your deliberations. The fact that the
11 defendant did not testify should not even be discussed in the
12 jury room.

13 Ladies and gentlemen, I'm now drawing the near end of my
14 charge, and I want you to clearly understand that you are not
15 partisans or advocates for the State or the defendant. You do
16 not serve as juror towards your friends or punish your
17 enemies. In this regard, you have been selected by both the
18 State and the defendant to be fair and impartial jurors. It
19 is your duty, by your joint deliberations, to determine the
20 facts in this case, giving the defendant of every reasonable
21 doubt on each and every issue. Then, to the facts which you
22 determine to be correct, you should take and apply the law
23 which has been given to you by this Court and thus arrive at
24 the verdict.

25 Thus, when you have accomplished your responsibilities,

1 you will have satisfied your oath as jurors, and you will have
2 discharged your duty to this Court.

3 Now, Ms. Clerk, if you would be so kind as to give the
4 forelady the verdict form. Thank you.

5 Now, Ms. Forelady, I have handed you the verdict form.
6 When you arrive at a verdict in this case, you'll write your
7 verdict on the form, sign and date it. For the charges, if
8 the State has failed to prove the defendant beyond a
9 reasonable doubt, your verdict will be two words: Not guilty.
10 However, should the State have proved their case against the
11 defendant beyond a reasonable doubt, then your verdict would
12 be one word: Guilty.

13 Ms. Forelady, once you have reached a decision, just
14 check your choices, sign and date it.

15 Also, please understand that the verdict that you render
16 in this case must be the verdict of each and every juror. It
17 must be a unanimous verdict. All 12 jurors must agree on the
18 verdict which you authorize the forelady to write.

19 Now, Ms. Forelady and members of the jury, I want you to
20 further understand that the order in which the choices of
21 verdict appear on the verdict form are not suggestive of any
22 verdict on the part of this Court. The verdict in this case
23 is to be determined by you and not this Court.

24 Furthermore, ladies and gentlemen, please understand
25 that, even though I have given the verdict form to the

1 forelady, it is not her verdict alone. It is the verdict of
2 all 12 of you, and I emphasize again that the verdict must be
3 unanimous.

4 Now, you will retire to the jury room. However, I would
5 ask that you do not -- do not begin your deliberations at this
6 time. The law requires that I consult with the attorneys
7 first. After I have done so, the bailiff will bring in the
8 items of evidence and instruct you to begin your deliberations
9 at that time.

10 Also, should you have any questions during your
11 deliberations, you must put them in writing and send them to
12 me by way of the bailiff. The court bailiff will be placed
13 immediately outside the jury room door to provide security and
14 assistance for you during your deliberations.

15 Once you have reached your verdict, please knock on the
16 jury room door and ask the bailiff to advise the Court that
17 you have reached a verdict, and we will return you to the
18 courtroom as promptly as possible thereafter.

19 Thank you. You may retire to the jury room, but again,
20 do not begin your deliberations until told to do so.

21 (The jury exited the courtroom at 11:49 a.m.)

22 THE COURT: Any objections to the charge from the State?

23 MR. CLEMENTS: No, Your Honor.

24 THE COURT: Any from the defense?

25 MR. BOUCHETTE: No, Your Honor.

1 THE COURT: All right. Why don't you take a look at the
2 items that are in evidence and make sure they're in order,
3 and, if they are, we'll send them back.

4 (Court reporter reviews exhibits with counsel.)

5 THE COURT: Everything in order?

6 MR. BOUCHETTE: Yes, sir.

7 MR. CLEMENTS: Yes, Your Honor.

8 THE COURT: Do we have a bailiff over here?

9 BAILIFF: Yes, sir.

10 THE COURT: Let's send in the items of evidence. Tell
11 the alternates to come out, and tell them to begin.

12 (Pause in the proceedings. The alternate jurors enter
13 the courtroom.)

14 THE COURT: All right. I want to thank the two of you
15 for being here this week as a backup quarterback. We had to
16 have 12 people on the team. If somebody got hurt, somebody
17 got sick, somebody couldn't make it here, you had to step in
18 and fill in as a juror. Luckily, we have all 12 people, so
19 you have done your duty, and you are excused.

20 I thank you for being here, and you'll be paid for being
21 here. If you don't like how much it is, you can blame that
22 man right here. Hope you have a good day. Thank you. You're
23 excused for the week.

24 ALTERNATE JUROR: Thank you.

25 (Alternates excused from the courtroom.)

1 THE COURT: All right. We'll be at ease until we have a
2 question or a verdict.

3 (A brief recess was taken at 11:53 a.m.)

4 JURY QUESTION

5 THE COURT: We have our first question.

6 MR. BOUCHETTE: Your Honor, my client has stepped out.

7 THE COURT: Do you want to go get him?

8 MS. DROST: We're trying.

9 (Pause in the proceedings.)

10 THE COURT: The question that we have, the forelady
11 simply wrote: "The definition of 'involuntary manslaughter'
12 and 'reckless homicide'?" Do you want me to just read that to
13 them again?

14 MR. BOUCHETTE: Have to just read the charge back to them
15 again?

16 THE COURT: Just that part.

17 MR. CLEMENTS: Or give them the statute from each one of
18 those.

19 MR. BOUCHETTE: I think do the charge, including the
20 additional language.

21 THE COURT: I'll just read it to them.

22 (Court Exhibit No. 1, Jury Question, was marked for
23 identification and received into the record.)

24 (The jury entered the courtroom at 12:15 p.m.)

25 THE COURT: I'm going to go over involuntary manslaughter

1 and reckless homicide with you again.

2 To prove involuntary manslaughter, the State must prove
3 beyond a reasonable doubt that the defendant unintentionally
4 killed the victim without malice but while engaged in an
5 unlawful activity not naturally tending to cause death or
6 great bodily harm or that the defendant unintentionally killed
7 the victim without malice while engaged in a lawful activity
8 with reckless disregard for the safety of others.

9 Unintentional means that the defendant did not intend for
10 anybody to be killed or seriously injured. Reckless disregard
11 for the safety of others is more than mere negligence or
12 carelessness. Mere negligence or carelessness is the failure
13 to use the care that a person of ordinary reason would use
14 under the same circumstances.

15 Recklessness is a conscious failure to use ordinary care.
16 Reckless disregard for the safety of others means that you are
17 not interested in the consequences of your acts or the rights
18 and safety of others.

19 If a person who knows or should know that ordinary care
20 requires certain precautions but taken for the safety of
21 others when using a dangerous instrument, such a gun or car,
22 but that person fails to use those precautions without
23 concern, the person's actions are considered reckless.

24 The State must also prove beyond a reasonable doubt that
25 the defendant's acts was a proximate cause of the death.

1 Proximate cause is the direct cause. It is the immediate
2 cause. It is the efficient cause. It is that cause without
3 which the death of the victim would not have resulted.

4 There must be a chain of causation from the time of the
5 injury inflicted by the defendant until the time of the
6 victim's death. Proximate cause does not necessarily mean
7 that it occurred immediately prior to the death.

8 There may be more than one proximate cause. The acts of
9 two or more persons may combine together to be a proximate
10 cause of the death of a person. The defendant's act may be
11 regarded as a proximate cause if it is a contributing cause of
12 the death of the victim. The fact that other causes also
13 contributed to the death of the victim does not relieve the
14 defendant from responsibility. The defendant's act need not
15 be the sole cause of the death but must be a proximate cause
16 contributing to the death of the victim.

17 The defendant is charged with reckless homicide. The
18 mere fact that an accident with death occurred does not by
19 itself mean there is sufficient evidence to prove reckless
20 homicide. In this regard, the State must first prove beyond a
21 reasonable doubt that the defendant drove a vehicle with
22 reckless disregard for the safety of others.

23 Reckless disregard for the safety of others means an
24 indifference to the consequences or results of one's acts, a
25 conscious indifference to the rights and safety of others, or

1 a conscious failure to exercise ordinary care. Reckless
2 disregard for the safety of others is something more than mere
3 negligence or carelessness.

4 The State must also prove beyond a reasonable doubt that
5 a person was injured and died within one year of the date of
6 the injury.

7 Finally, the State must prove beyond a reasonable doubt
8 that the injury to the victim from the defendant's reckless
9 driving was a proximate cause of the defendant's death.
10 Proximate cause is the direct cause. It is the immediate
11 cause. It is the efficient cause. It is a contributing
12 cause. It is that cause without which the death of the victim
13 would not have resulted.

14 Proximate cause does not necessarily mean that it
15 occurred immediately prior to death. To be the proximate
16 cause, the act of the defendant does not have to be the sole
17 cause of death, and the fact that other causes contributed to
18 the death does not relieve the defendant of responsibility.

19 All right. With that being said, if you would go back
20 into the jury room, but do not begin your deliberations until
21 we tell you to again; I have to check with the lawyers.

22 (The jury exited the courtroom at 12:20 p.m.)

23 THE COURT: Any objections from the State?

24 MR. CLEMENTS: None, Your Honor.

25 THE COURT: From the defense?

1 MR. BOUCHETTE: No, sir.

2 THE COURT: If you'll go tell them they can begin again.
3 We'll be at ease until something happens.

4 (A brief recess was taken from 12:21 p.m. to 2:33 p.m.)

5 THE COURT: It's my understanding that we have a verdict,
6 but before I bring in the jury and I have the verdict read, I
7 want everybody in the audience to understand that I don't want
8 any audible noises from anybody. Somebody might be mad,
9 somebody might be sad, somebody might be happy, but I don't
10 want to hear a word from anybody.

11 That jury has a hard job. They don't need any pressure
12 from any of you-all, so I want you to be quiet. If you can't
13 do that or you think you can't do that, go ahead and leave.
14 Because, if I hear something, I'm going to lock you up. So if
15 everybody wants to stay? You're good?

16 All right. Bring out the jury.

17 (The jury entered the courtroom at 2:34 p.m.)

18 VERDICT

19 THE COURT: Ms. Forelady, if you would hand the verdict
20 form to the bailiff. Thank you.

21 All right. I find the verdict form is in order. I'll
22 have the clerk of court publish it.

23 THE CLERK: State of South Carolina, County of Marion,
24 the State of South Carolina versus Stephen William Flood, in
25 the Court of General Sessions, 12th Judicial Circuit,

1 Indictment No. 2019-GS-33-00239, as to the charge of
2 involuntary manslaughter of Wendy Newton, we, the jury,
3 unanimously find the defendant, Stephen William Flood, guilty.

4 As to the charge of involuntary manslaughter of Nicolette
5 Green, we, the jury, unanimously find the defendant, Stephen
6 William Flood, guilty.

7 As to the charge of reckless homicide of Wendy Newton,
8 we, the jury, unanimously find the defendant, Stephen William
9 Flood, guilty.

10 As to the charge of reckless homicide of Nicolette Green,
11 we, the jury, unanimously find the defendant, Stephen William
12 Flood, guilty.

13 Signed May 19th, 2022, Marion, South Carolina, by
14 Foreperson Angela Foxworth.

15 If this is your verdict, please signify by the raising of
16 your hand.

17 (All jurors raise hands.)

18 THE COURT: All right. Need for further polling from the
19 defense?

20 MR. BOUCHETTE: No, sir.

21 THE COURT: All right. Thank you.

22 All right. Members of the jury, I want to thank you for
23 your service this week. You have had a hard job, you've had a
24 hard case. You have been every day, and you have worked, and
25 I thank you. You'll be paid a little sum of money, which will

1 be a token of our appreciation for you being here. You've
2 earned a three-year exemption from further jury service in
3 this court.

4 But I sincerely thank you all on behalf of the State of
5 South Carolina. You can stay if you would like or you can go
6 home if you would like. We thank you.

7 (The jury exited the courtroom at 2:36 p.m.)

8 (Pause in the proceedings.)

9 THE COURT: Is that everybody?

10 BAILIFF: Yes, sir.

11 THE COURT: Any motions from the defense?

12 MR. BOUCHETTE: No, sir. Just when the Court is ready
13 for mitigation.

14 THE COURT: All right. I'm ready to hear from you. You
15 got your sentencing sheets ready?

16 MR. CLEMENTS: No, sir.

17 THE COURT: Why don't you go ahead and do that.

18 (Pause in the proceedings.)

19 MR. CLEMENTS: Your Honor, just to let you know, we have
20 two victim impact statements from each family. At the
21 appropriate time, they'd like to read to them to Your Honor.

22 (Pause in the proceedings.)

23 MR. CLEMENTS: Your Honor, do you want to sign it when we
24 get done or sign it now?

25 THE COURT: Either way you want to do it is fine with me.

1 MR. CLEMENTS: Here they are, Your Honor. I'll sign them
2 when we're done.

3 THE COURT: Thank you.

4 All right. Be glad to hear from you first if you'd like.

5 MR. CLEMENTS: Your Honor, at this point in time, after a
6 full-blown trial, I don't think it's necessary for me to say
7 much because you have heard all the evidence. You know the
8 case inside and out now. And I would just direct you to our
9 families who have been heartbroken in a way to have an
10 opportunity to express how this has affected to them to the
11 Court. I would defer all my comments and ask that you just
12 pay close attention to them, as I know you will.

13 THE COURT: All right. I'll be glad to.

14 MR. CLEMENTS: And, Vicky, how do you know to do this?

15 MS. GREEN: Your Honor, I'm Linda Green, the mother of
16 Nicolette Green. How do I explain to you what it means to
17 lose my child, Nicki, forever? This is a grief that, for me,
18 has no closure. There is only the beginning of the rest of my
19 life, just knowing that my Nicki won't be coming back to us
20 forever. No matter what happens with this trial or the
21 outcome, she is forever going to be missing in my life and in
22 my family's life. I'll never see that incredible smile again.
23 We will never sit at a table and have a meal together again.
24 There won't be anymore hugs or kisses ever again.

25 Every day and every night, I see in my mind my image of

1 my daughter Nicki in the horror and terror she must have been
2 feeling with the water rising in a cage that she couldn't
3 escape, flood waters that kept going higher and higher, and
4 she's screaming. I see this in my mind every day and night.
5 She's screaming. I can see her.

6 And as the water comes to her nose, I know she's
7 screaming that she wants to be seen with her children again.
8 She doesn't want to leave them. This is just a part, Your
9 Honor, of the emotional wreckage that this man has left me
10 with.

11 This is a wrong for me that can never be made right. It
12 can't be fixed. It can't be mended. And I can't even cry it
13 away. This journey is the worst mental, emotional, and
14 physical pain of a parent that a parent can ever have. It is
15 beyond words to describe. Thank you.

16 THE COURT: Thank you.

17 MS. BERGER: I'm Rose Harris Berger (ph). I'm Nicolette
18 Green's daughter. Your Honor, I honestly can't find the
19 words. My mother was a loving and compassionate woman. My
20 mother didn't have a chance to watch my siblings grow up. My
21 sister was supposed to have our mother at her graduation. My
22 brother was supposed to have our mother as he grew up. None
23 of us will ever be able to hear her say she loves us again.
24 None of us will be -- she will never be able to hold her
25 children. We will never have the chance to have her in our

1 weddings. She will never see our children.

2 My mother had so much life ahead of her. My mother's
3 last moments must have been terrifying, and that's something
4 I'll never be able to get over.

5 I was with my mother the morning of the 18th. A brief
6 hug and a kiss on the cheek and "I love you" is my last memory
7 with her. We agreed, when she'd come home, we'd have a family
8 night with my siblings and I when she was released from
9 Darlington, but she never came home.

10 Every day, I miss her. Every day, my brother and sister
11 have to go through the constant pain and remainder that our
12 mother was taken from us in such an unfair way. This is a
13 pain you cannot will released from. My mother is gone
14 forever, and that is something that cannot be changed. My mom
15 didn't deserve any of that pain, and she definitely didn't
16 deserve to die.

17 MS. GREEN-JOHNSON: Your Honor, I'm Denella (ph)
18 Green-Johnson. I'm Nicki's sister. Nicki had four children,
19 three still living today. Rose is the oldest, then there's
20 Erica, who is also in the audience, and she had lost a child
21 to bone cancer when he was very young. And then my family and
22 I are raising her son, who was six when she was taken from us.

23 I must have written and rewritten this statement I don't
24 know how many times. It's been written in anger. It's been
25 written in abject despair, disbelief, all of that over and

1 over again.

2 But I'm standing here with a mixture of all those
3 emotions today, and I'm simply asking that you do what the law
4 allows and impose the maximum sentence for each count to be
5 served consecutively. And I'm asking for my sister, who was
6 my very first best friend in life.

7 She deserves this justice, as does Wendy and Wendy's
8 family. My sister was a tortured soul on earth. She was.
9 But her life was meaningful to a great many people. Our death
10 hit our family and our friends in the community very, very
11 hard. She struggled with mental health issues her entire
12 adult life, and she was no stranger to grief or tragedy. As I
13 said, she lost a son who was very young, to bone cancer.

14 I cannot even tell you how much our family has suffered
15 every day for the three years, eight months, and one day that
16 she was taken from us. That's almost 1,340 nights that her
17 young son went to bed without his mother, that her loving arms
18 weren't there to give them a hug, and she wasn't there to give
19 them a smile.

20 I also write this statement on behalf of my father who
21 died, quite frankly, of a broken heart almost a year to the
22 day that we lost Nicki. We buried him on the one-year
23 anniversary of her death. I know it was a broken heart
24 because he had a heart attack the day after her burial, and he
25 never recovered. This was a man who survived Marine Corps,

1 Vietnam, lost a lung, but he could not handle the heartache of
2 losing Nicki in this manner.

3 I write this on behalf of her son and remembering the
4 moments that I had to tell him that his mom was never coming
5 back. My husband and I delivered the news to my parents and
6 to her three kids.

7 Stephen Flood has had three-plus years with his family
8 since the killings. His daughter getting married, births,
9 birthdays. He's been through -- he's seen it all. He's had
10 that luxury.

11 This was a deliberate act set into motion by a pompous,
12 stubborn man, who was supposed to be a trained professional.
13 He swore to serve and protect. Instead, he abused the trust
14 that my sister, Nicki, Wendy, and the State of South Carolina
15 entrusted him with. And why? For what? To save some time?
16 Or because "Flood was being Flood?"

17 He decimated our family with his reckless behavior and
18 took two people from this earth. And I'm sure his family will
19 talk about how he suffered, but I call that living with a
20 guilty conscious. He knowingly and wantonly made decisions as
21 a trained police officer that directly resulted in the two
22 deaths. Any actions he took after that fact were irrelevant
23 and do not diminish our pain. I'm begging the Court to serve
24 justice and give our family a modicum closure.

25 His soul is in the hands of God almighty, and I honestly

1 forgive him. I have forgiven him for what he's done to our
2 family, from what he's taken from us. I have to, for my own
3 mental health. I had to get to that point where I can look at
4 him and say I forgive you for what you have done. We will
5 pick up the pieces, and we will move on. But, again, I'm
6 asking the Court to serve justice.

7 I'm raising her son for the rest of his life, and our
8 grief has no end, but please, sir, help us heal by knowing
9 that justice was served completely.

10 THE COURT: All right. Thank you.

11 MR. HAYWOOD: Your Honor, my name is Matt Haywood. I got
12 a letter that we wrote in my pocket, but I'm not going to read
13 from it. Wendy was my sister that I loved very dearly. We
14 played as children. We grew up as young adults, went our
15 separate ways in adulthood but always loved each other from a
16 distance.

17 I was on the same river two and a half hours away when I
18 found out my sister was gone. I do line work and I travel.
19 It broke my heart, made me angry of how in the world could two
20 police officers be capable of doing what I have heard. But I
21 have confidence in you and the great State of South Carolina
22 to do what's right in this case. I want to thank each and
23 everybody that's here. That's about all I have got to say,
24 Judge. Thank you.

25 THE COURT: All right. Thank you.

1 MS. GREEN: Hello, Your Honor. I'm Wendy's mom. And I
2 know I was emotional yesterday and I am so sorry. I
3 apologize.

4 But I lost my little girl on September the 18th, 2018.
5 And I have my son, which I am so thankful for, and I have her
6 children. But Wendy, as Denella (ph) said, Wendy, as she
7 became in her 20s, had a troubled life, and the Lord was
8 blessed -- she was blessed by the Lord because she had her
9 three children, and they're all healthy except for her oldest,
10 but we're dealing with her also.

11 But Wendy was not here to help her or help Chase and his
12 problems and all of them. And I hate it. And I hate it for
13 him. I had to make myself forgive him. I try to live a good
14 life but, you know, sometimes things are hard, and it was very
15 hard. But I know that he has to get up and look in that
16 mirror every day, and, you know, there's a poem about that,
17 and we all have to look at ourselves. I had to look at myself
18 today for not being the person I needed to be yesterday.

19 But I do ask that you realize that this is a family that
20 has really been tormented and grandchildren that will never
21 know -- the three of them will never know their grandmother.
22 And I just pray that you make the right decisions in this
23 case, and I think you will. Whether they suit me or whether
24 they don't, I feel like you will do what you need to do.

25 And I do pray for all of us, everybody in here, because

1 we never know, when we walk and turn that way, what may come
2 up in our lives that we never thought would come. Thank you.

3 THE COURT: Thank you.

4 MR. NEWTON: I'm Charles Newton. I'm Wendy's son. And I
5 did write a little something. Let's just say mistakes were
6 made and accidents do happen, but this wasn't an accident to
7 drive into flood waters. I understand it would have made him
8 happy to cut down some time when you were driving with my mom
9 and Ms. Nicki in the back, but now my whole family is not
10 family because your decisions cut all my mom's time and took
11 her life away from her and us.

12 I'm not going to sit up here and drill you, Mr. Flood,
13 and tell you how much I dislike/hate you, but I will say some
14 of my family members will never forgive you, but I cannot live
15 with a grudge in my heart, so I will say I do forgive you for
16 the decisions you made that caused the death of my mom, but I
17 will never forget. I will have this burnt into my brain
18 forever, and I say unto you, Mr. Flood, good luck on your
19 future endeavors. I hope you make better decisions in your
20 life from here on out.

21 I also want to say thank you to everyone who was involved
22 in this case. We're all grateful for all the hard work that
23 you have done.

24 So I will close by saying I cannot -- I can forgive but I
25 cannot forget, but fortunately, I will remember my mom as a

1 happy woman, a joyful woman, and who loved her family, but
2 you, Mr. Flood, will remember my mom by hearing her screams as
3 her and Ms. Green drowned to death in the back of that van.

4 So I say to you: Make better decisions in your life, use
5 common sense, and follow the rules. This case does show you
6 how your decisions in not following the rules affects other
7 people. Thank you.

8 THE COURT: That's it? All right.

9 Be glad to hear from you.

10 MR. BOUCHETTE: May it please the Court, Your Honor? My
11 client is approximately 70 years old. No criminal record. He
12 stands here today with significant health issues. We have got
13 medical records. I have not had a chance to redact those
14 records, but at the right time, I can present them up to the
15 Court, if necessary. A number of stents, heart issues, to say
16 the least.

17 Judge, regarding the facts of the case, I think it's safe
18 to say, at a minimum, there's substantial mitigating factors
19 that came out in the trial. The jury heard those and came up
20 with a decision, but I would submit that now the Court can
21 take those -- not as to guilt or innocence but as to
22 mitigation or aggravation.

23 There's no dispute that Mr. Flood had any ill intent in
24 his heart, that he had not had any pattern of any kind of
25 reckless or dangerous behavior that's come to the Court's

1 attention.

2 When he arrived at the intersection with the national
3 guardsman, again, I submit to the Court that he exercised a
4 degree of caution in stopping to ask what was going on, and
5 based on that guidance, that got him -- that's what took him
6 down that road.

7 Now, obviously, at some point, the jury has decided that
8 he should have stopped or should have taken some other action,
9 but I submit that is significant mitigation and differentiates
10 it from the way the case may have initially been presented,
11 like going around and concealing or taking efforts to evade
12 and ultimately end up in the flood waters. I think it's two
13 different scenarios.

14 Judge, we have got a number of things. One, his
15 substantial health issues; basically, his entire lifetime of
16 no criminal record whatsoever; his former law enforcement. I
17 know we don't have formal guidelines, but on that point, the
18 federal court formally acknowledges, for purposes of a law
19 enforcement officer, somebody in badly health or condition to
20 be a discouraging factor for any kind of active incarceration.

21 I would submit that, should the Court be inclined towards
22 some type of incarceration or confinement, to consider the
23 house arrest statute. I think it's 24-13-1530. We often use
24 that for home detention pretrial, but as the Court is probably
25 aware of, I believe the statute does allow for post-conviction

1 house arrest detainment. The most likely place for him to be
2 able to get sufficient medical care he needs would be that in
3 scenario. It could still be a substantial restriction. The
4 Court can do it for, I believe -- consistent with the --
5 whatever the sentence would be under any of the charges, so
6 it's not something that gets him out of any kind of lesser
7 sentence.

8 Judge, we would request that the Court examine that. I
9 think that is the appropriate thing, given all the factors.
10 Again, there's no intention of any ill will in any way, shape,
11 or form with Mr. Flood. Should the Court decide that is not
12 appropriate, we'd also ask that the Court consider a PR bond
13 or have one in place, allow us to request that at the
14 appropriate time.

15 But, again, in terms of the actual punishment for this
16 person that had managed to go the better part of seven decades
17 with no issues, not even a case where you may see a normal
18 reckless homicide or involuntary manslaughter-type case or
19 maybe the person's got two DUIs from a few years ago or some
20 type of pattern or behavior, there is nothing in the record to
21 substantiate that.

22 What we have was, at the time, of about a 65-year-old man
23 who was tasked with transport; that, at some point, the jury
24 has found he should have stopped and taken other actions. But
25 given his age, given his background in law enforcement, Judge,

1 we think that punishment can be done by way of a house arrest
2 under the statute, and we'd ask that the Court consider that.

3 THE COURT: And, Solicitor, involuntary carries up to
4 five; is that right?

5 MR. CLEMENTS: Your Honor, it is zero to five.

6 If I might comment on two things, Your Honor.

7 THE COURT: And how about the reckless? What does it
8 carry up to? The reckless homicide?

9 MR. CLEMENTS: Zero to ten.

10 THE COURT: Okay. Go ahead.

11 MR. CLEMENTS: What I'd like to draw the Court's
12 attention to is, we have proffered some testimony, and one of
13 his co-workers -- and I could have had all of his co-workers
14 -- was going to explain to the Court what they mean when they
15 say, "That's Bishop being" -- excuse me, "That's Flood being
16 Flood," because he had a reputation of doing things his way,
17 wanting to do it his way, and being very bull-headed.

18 That didn't get in front of the jury, but I think it's
19 appropriate to let you know, as far as sentencing, that he has
20 not anything like this happen, but he's had plenty of
21 opportunity where probably something could have like that
22 happened, because he was always bound and determined to do it
23 his own way.

24 As far as being incarcerated in your own house, my
25 children would call that being on restriction. This is way,

1 way too serious a case, Your Honor, to think about putting
2 somebody on restriction. He needs to have more appropriate
3 punishment. But that home detention, I can see it possibly
4 for pretrial matters, when you're not out on bond or that
5 becomes part of the conditions of your bond, but certainly not
6 for sentencing on this day on these four convictions.

7 THE COURT: All right. Anything further from the
8 defense?

9 MR. BOUCHETTE: I think our client wanted to briefly
10 address the Court.

11 THE DEFENDANT: Your Honor, it's been a hard couple of
12 days, and I just want the Court to know that I worked as hard
13 as I could for the Horry County Sheriff's Office. I did
14 everything humanly possible with the inmates and the mental
15 health patients to treat them with dignity and respect. And
16 even while we were stuck in the water, I was talking to the
17 girls, trying to comfort them, calm them down, and that we had
18 a conversation while we were there before the water got any
19 higher, and we had a good rapport.

20 And I never, ever intended to do anything to make this
21 happen the way it did. It was a series of mistakes on my part
22 and other people that led me to that point in time and date,
23 and that I'm sorry for what happened to the girls. And I
24 know, no matter what happens otherwise, nothing is going to
25 bring them girls back, but I do have the utmost respect for

1 them, and I have cried for the loss of the girls. And that's
2 about it. Thank you.

SENTENCING

3
4 THE COURT: All right. The sentence of the Court on the
5 first involuntary manslaughter is a sentence of five years.
6 I'm going to run that consecutive to the second involuntary
7 manslaughter of five years. I'm going to run that consecutive
8 to the reckless homicide of four years. And the second
9 reckless homicide will be consecutive, and it will be four
10 years as well.

11 MR. CLEMENTS: Thank you, Your Honor.

12 THE COURT: Thank you. We are adjourned for the day.

13 (The above trial concluded at 3:11 p.m.)
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1 CERTIFICATE OF COURT REPORTER

2
3 State of South Carolina)
4 County of Marion)

5
6 RE: *State of SC v. Stephen Flood (Day 4)*

7 I, Bobbi J. Fisher, Registered Professional Reporter
8 (RPR) and Official Court Reporter III for the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the proceedings
11 had and evidence introduced in the trial of the captioned case
12 in the *Court of General Sessions for Marion County, South*
13 *Carolina, on the 19th of May, 2022.*

14
15 Submitted: *October 3, 2022.*

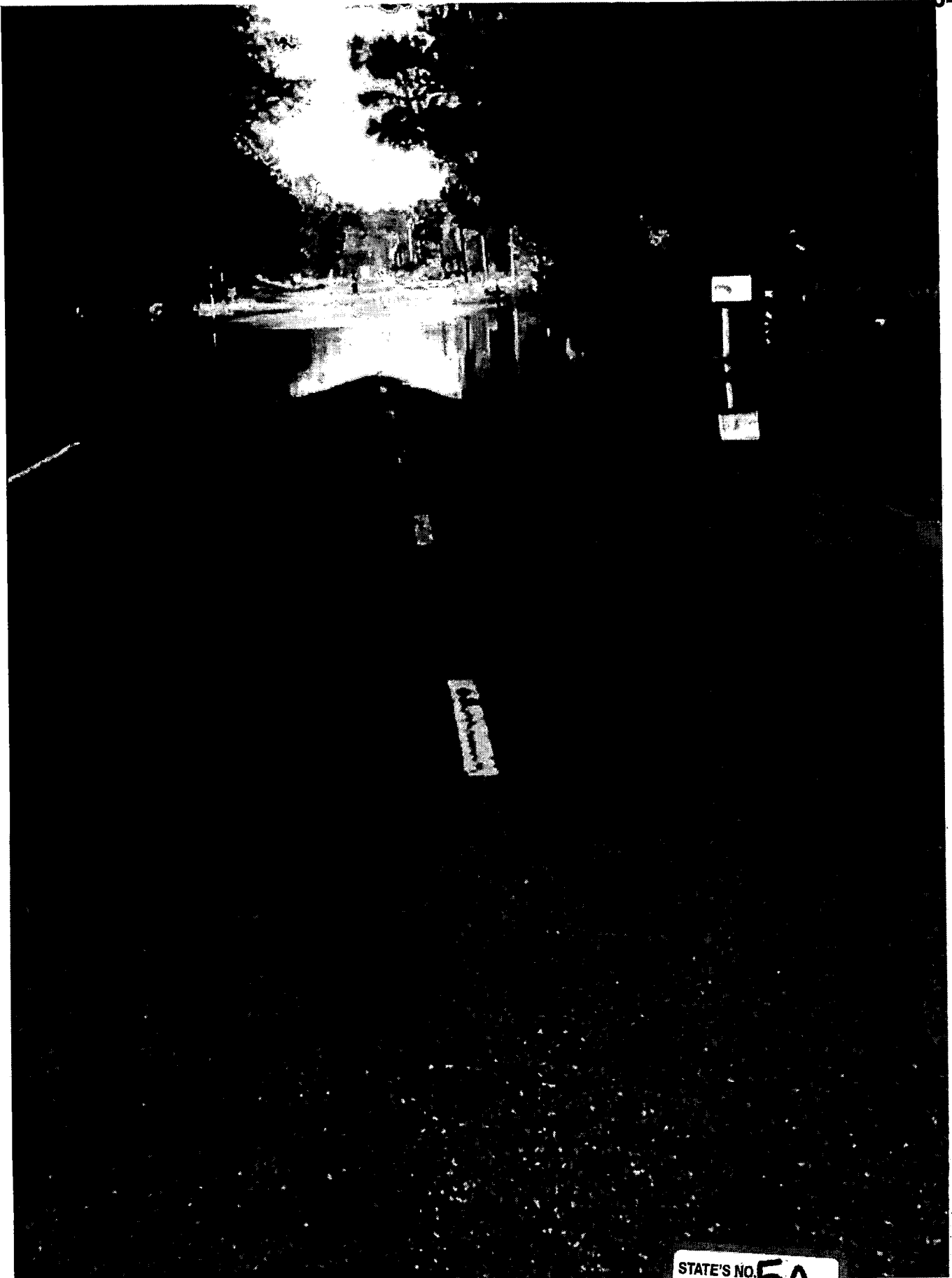
16 *Bobbi Fisher*

17
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19 /s/ Bobbi Fisher

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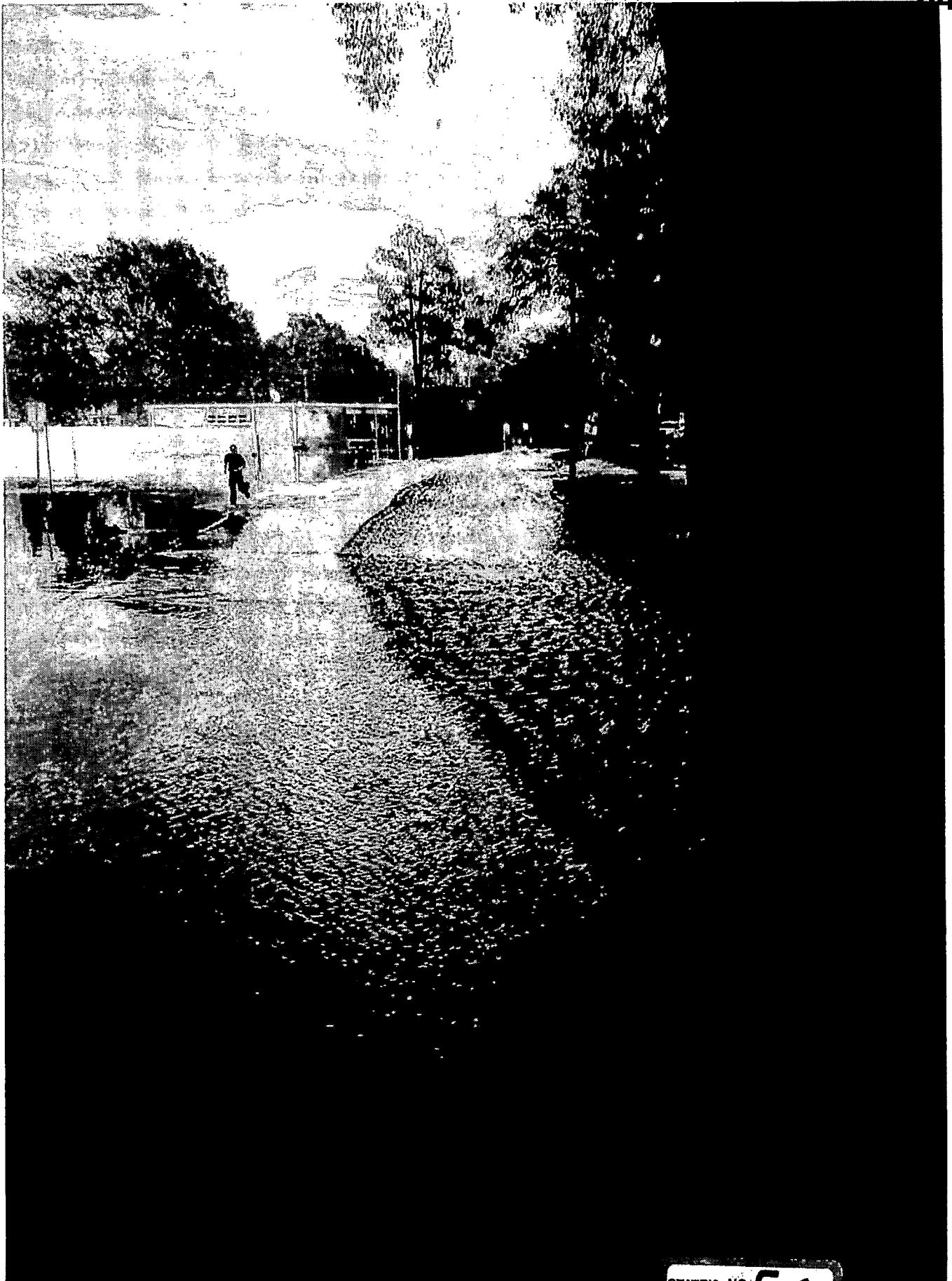
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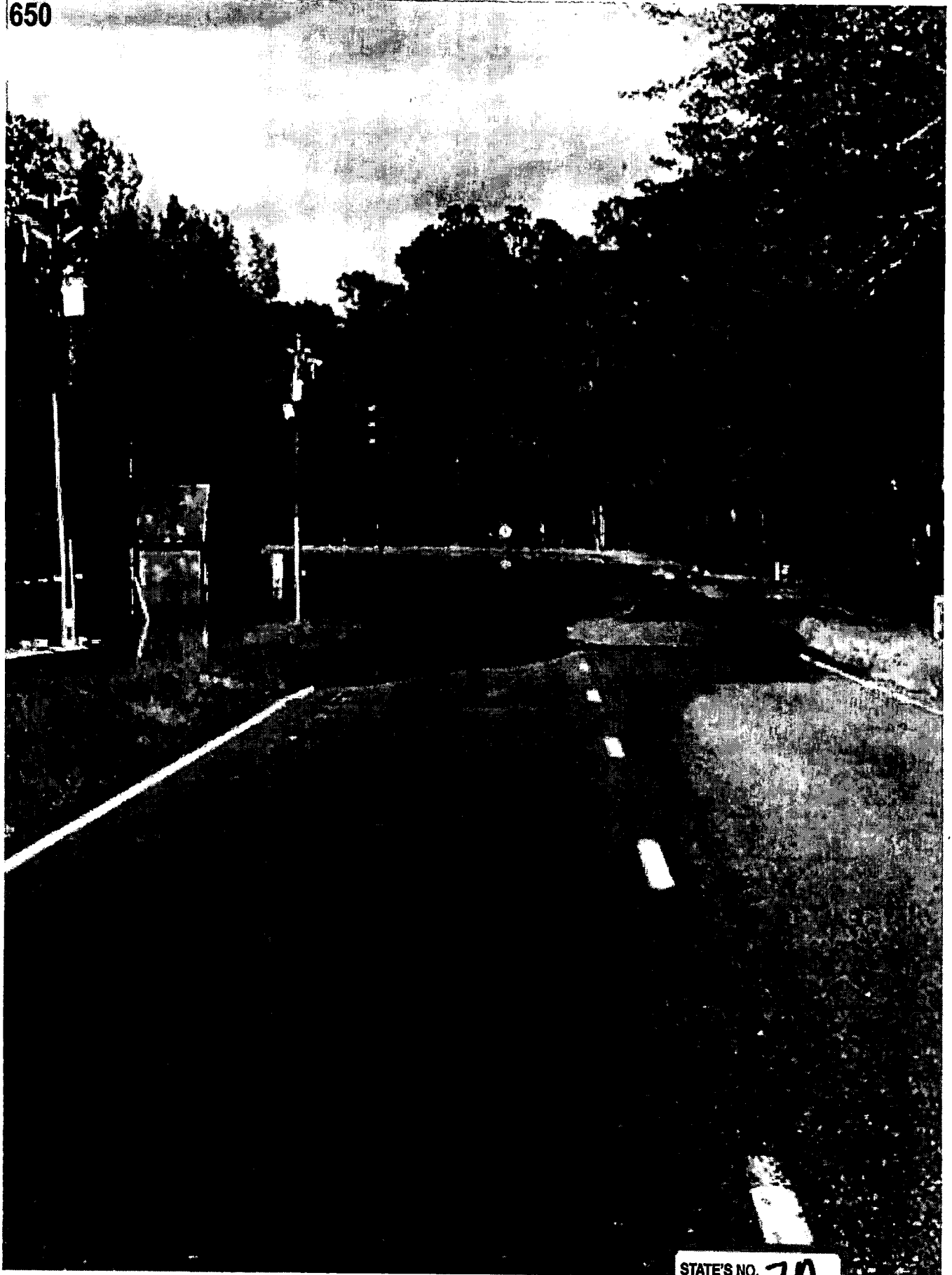
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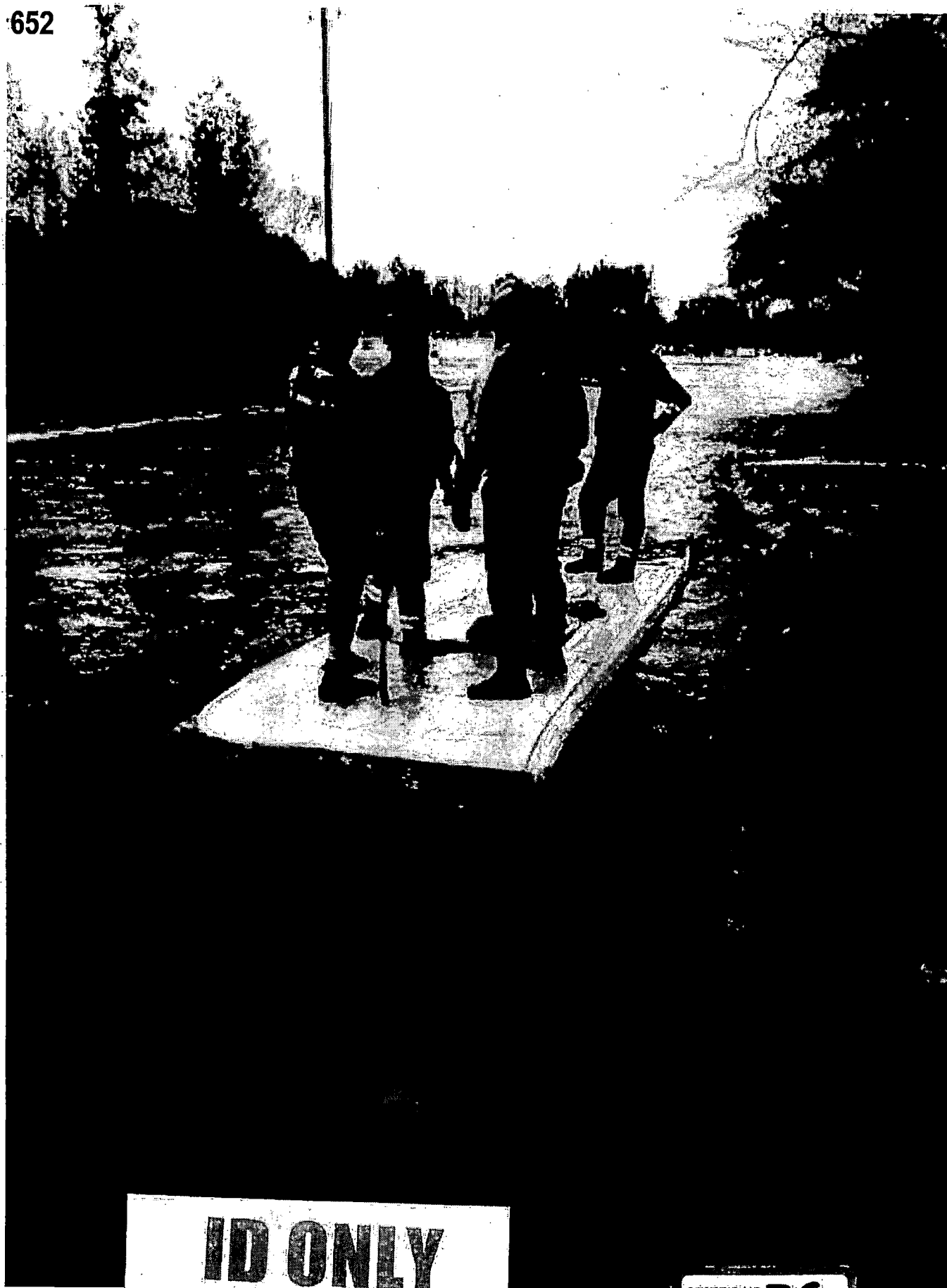
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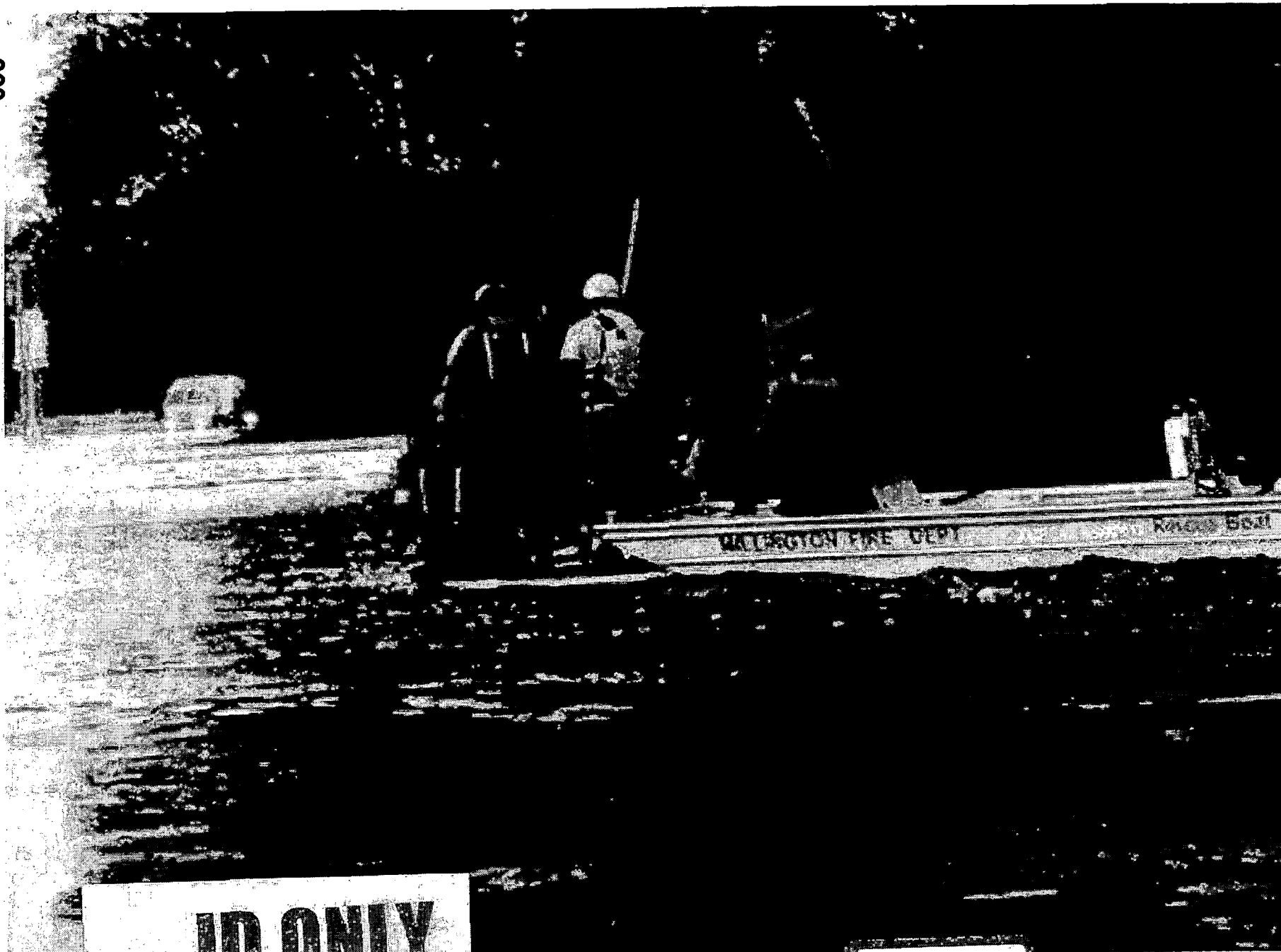


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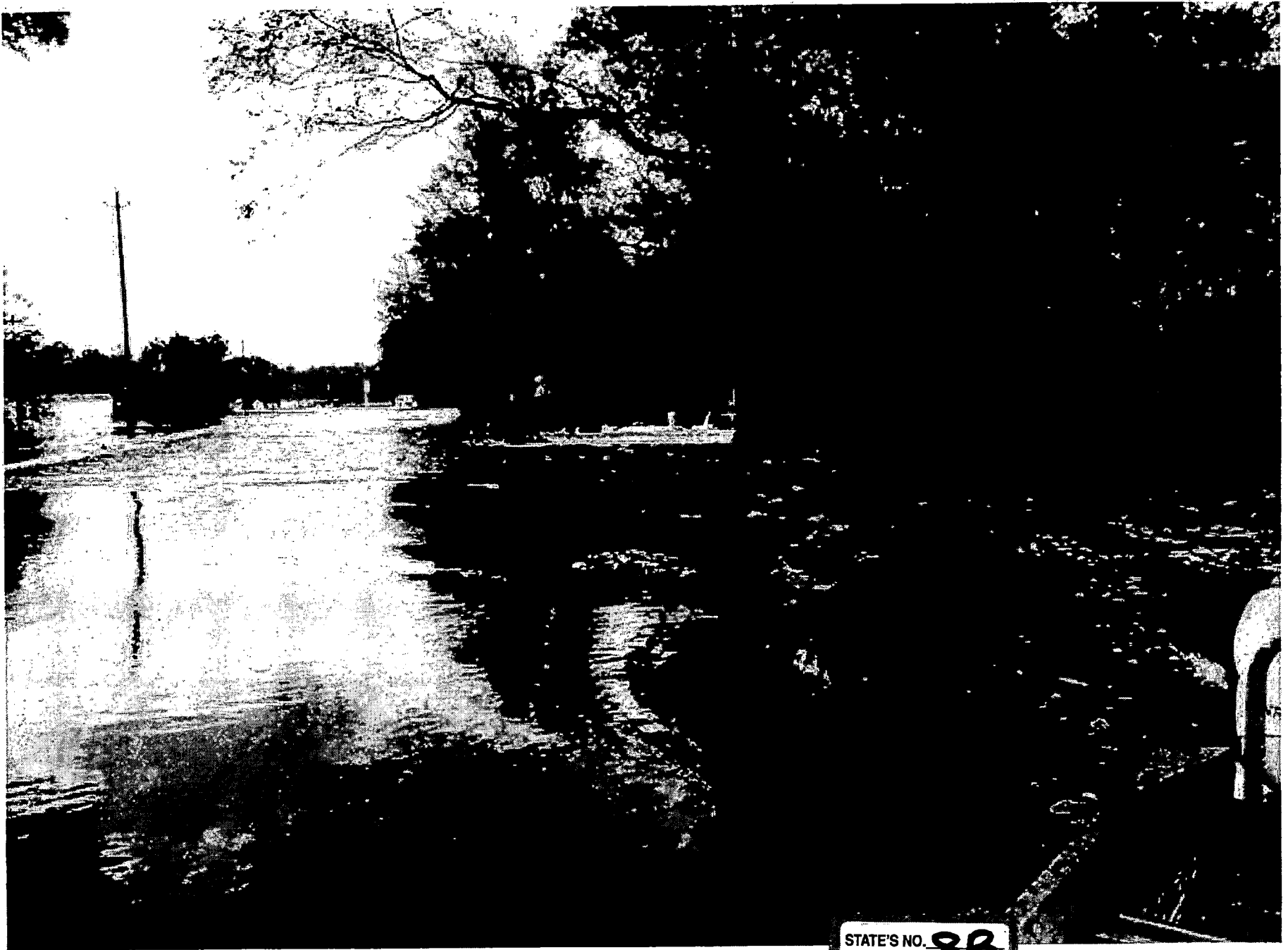
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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
2 COUNTY OF MARION) TRANSCRIPT OF RECORD

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 20, 2022

HEARING

B E F O R E:

The Honorable William H. Seals, Jr., Presiding Judge.

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

Edward Clements, 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

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I N D E X

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WITNESS/DESCRIPTION

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Hearing/Proceedings

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P R O C E E D I N G S

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2 THE COURT: Mr. Bouchette, we're back on the record
3 regarding the *Flood* case. Anything the solicitor would like
4 to bring to my attention?

5 MR. CLEMENTS: Yes, Your Honor. It occurred, I think, to
6 several of us last night and later on, we had an issue on the
7 sentencing because of *State v. Green*, which is a fairly recent
8 case. The legislature manifestly has authorized that we can
9 bring multiple homicide charges, that that's not the issue.
10 The issue is, once you get a conviction for more than one of
11 them, that the issue is that you cannot give two punishments
12 for one body. So kind of like one homicide/one body rule.

13 Here, that would require us going back and you somehow,
14 in your capacity sua sponte -- I believe you have the
15 authority to do so -- to go and amend the sentence or conform
16 the sentence to *State vs. Green*. You gave the sentence that,
17 ultimately, the total of the years that you gave were 18
18 years. If you -- if that's your intent -- if that was your
19 intent, I would humbly suggest, Your Honor, if you've got an
20 opportunity to do that, by vacating two of these charges, the
21 involuntary manslaughter charges, and vacating those
22 convictions and those sentences and then conforming the
23 sentence between the two reckless homicides which you have
24 left to match what your intent was, which, I believe, was 18
25 years, because that's what you handed down yesterday.

1 I don't think there's a hearing required. I don't think
2 there's any kind of issues. You heard all the mitigation from
3 the defense yesterday. You heard all the aggravation from the
4 victims yesterday. We're still in the same term of court and
5 it's still before you and it's ultimately your decision. We
6 just want to be sure that we have a sentence that conforms
7 with the statutory case law.

8 THE COURT: All right. Thank you.

9 Mr. Bouchette?

10 MR. BOUCHETTE: That's correct, Your Honor. Like I said,
11 under *Green*, certainly consecutive sentences for the --
12 without violating the one body/one crime rule. Moreover, like
13 I said, it appears it really should have had both charges
14 submitted to the jury. Now, there's not a lot of follow-up
15 case law. This is relatively recent. So it's somewhat new
16 territory here, but to the -- if the Court has the authority
17 to, sua sponte, vacate one of -- I guess it would have to be
18 two of the convictions, then that would supposedly cure the
19 issue of the fact that they were submitted to the jury.

20 My only concern that I want to make sure I preserve is --
21 I don't know if the Court has authority to unilaterally pick
22 which charge to vacate, you know, vacate the one with the
23 lesser maximum sentence as opposed to the one with the higher
24 maximum sentence. I understand what they're trying to do is
25 to be able to do that so that you can still conform to the

1 number of years, but I want to make sure I preserve that in
2 case I'm incorrect on it.

3 Moreover, I would submit that, to the extent that what
4 Your Honor is doing is vacating sentences, the -- I would
5 submit that you would vacate the conviction with the
6 corresponding sentence which you attributed to that sentence
7 as opposed to reconfiguring it because now we're dealing with
8 two convictions as opposed to four convictions. So, again, I
9 don't have any case law to cite authority or lack thereof, but
10 I want to make sure I preserve those and ask Your Honor to
11 consider and we'd request Your Honor do it that way.

12 THE COURT: In order to comply with the *Green* case, I'm
13 going to vacate both involuntary manslaughter sentences and
14 convictions. I'm going to modify both reckless homicide
15 sentences to comply with my original intent, which was 18
16 years. Thus, I'm going to sentence on each reckless homicide
17 conviction to nine years and run them both consecutive. In
18 essence, there's no prejudice to the defendant because it's
19 the exact same sentence. It's just done a little different to
20 comply with *Green*.

21 MR. CLEMENTS: And, Your Honor, let me put something on
22 the record just for housekeeping. I respectfully disagree
23 with a little of what Mr. Bouchette said. I don't think
24 there's anything precluding us from presenting both charges to
25 the jury and indicting him before the grand jury and

1 presenting him at the trial before the jury, because they
2 could have found either way or between the two.

3 What our problem is, when they convicted on both of them,
4 then the sentencing issue kicks in. And I don't think there's
5 anything wrong in the presentation of the case.

6 MR. BOUCHETTE: I slightly disagree. They certainly
7 could charge -- if you send both to the jury, Green says the
8 proper way to address that was to have an instruction.
9 Basically, you could find on one, none, or the other but not
10 on both. So I guess that's correct. We could have gone with
11 an appropriate jury charge. And, even that, as I speak it out
12 loud, if that was to be the proper jury charge, then had they
13 been instructed that they had to pick one or the other but not
14 both, we're in a situation or would they have picked voluntary
15 or reckless had that been presented to them.

16 And, so, like I said, this is somewhat a new area, so I'm
17 not sure what exactly the answer is, but I wanted to bring
18 that to the Court's attention and just clarify that.

19 THE COURT: All right. I have stated my position, and
20 that's what I'm doing to do.

21 MR. BOUCHETTE: Certainly, Your Honor. Thank you, Judge.

22 MR. CLEMENTS: Your Honor, do you want us to prepare an
23 order to that effect or does Mr. Larkin got that?

24 THE COURT: Or how about the sentencing sheet? Can y'all
25 just amend that?

1 MR. CLEMENTS: If something needs to be done with the
2 sentencing sheet, yeah, just amend that. I think that will
3 take care of it.

4 MR. BOUCHETTE: I would -- I'm not trying to put any more
5 work on anybody, but I think probably an order for this issue
6 would probably be better, out of an abundance of caution.

7 THE COURT: Do you want me to prepare me a short order?

8 MR. CLEMENTS: Your Honor, we can.

9 THE COURT: All right. And I'll amend the sentencing
10 sheets as well. Vacate both involuntary manslaughters and
11 just change the numbers on the reckless homicide.

12 MR. CLEMENTS: Yes, sir.

13 THE COURT: Do you have those?

14 THE CLERK: They are across the street. I'll go grab
15 them.

16 THE COURT: Somebody get those, and we'll do that. And
17 make sure that you look at the order and keep it short.

18 MR. BOUCHETTE: Will do.

19 (At 10:45 a.m., the above hearing concluded.)
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CERTIFICATE OF COURT REPORTER

State of South Carolina)
)
County of Marion)

RE: *State v. Stephen Flood*

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 hearing of the captioned
case in the *Court of General Sessions for Marion County, South*
Carolina, on the 20th of May, 2022.

Submitted: *October 24, 2022*

 /s/ Bobbi Fisher

Bobbi J. Fisher, RPR

Official Court Reporter III

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT
REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR
FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL
REQUESTS FOR COPIES (FORM 800) OF THE ATTACHED TRANSCRIPT FROM
OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT
BFISHER@SCCOURTS.ORG.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marion

STATE

VS.

INDICTMENT/CASE# 2019-GS-33-00239Stephen William FloodA/W#: 2019A3310100017

AKA:

Date of Offense: 9/18/2018Race: White Sex: M Age: 69S.C. Code §: 56-05-2910DOB: SS#:CDR Code #: 3097

Address:

City, State, Zip:

DL#:

SID#

SENTENCE SET

RECEIVED**MAY 31 2022****SC Court of Appeals***CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF orTO: Homicide / Reckless HomicideIn violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory Gender ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 4 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: today

- ☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. days/months
- ☐ To include time spent on monitored house arrest prior to trial and sentencing.
- ☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE
BOOK PAGE *Christy M. Gray*
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

FILED
2022 MAY 19 PM 2:53
MARION COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

STATE VS. Stephen William Flood INDICTMENT/CASE# 2019-GS-33-00239**SPECIAL CONDITIONS:**☐ PTUP after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____		\$ _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ _____
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ _____
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ _____
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
TOTAL		\$ _____

Clerk of Court/Deputy Clerk: Christy M. Gray
Court Reporter: Bobbi FisherPresiding Judge: W. H. Brubaker
Judge Code: 2131
Sentence Date: 5/19/2022

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marion

STATE

VS.

INDICTMENT/CASE# 2019-GS-33-002399**RECEIVED**Stephen William FloodA/W#: 2019A3310100016**MAY 31 2022**

AKA: _____

Date of Offense: 9/18/2018Race: White Sex: M Age: 69S.C. Code §: 16-03-0060

DOB: _____ SS#: _____

CDR Code #: 0218

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

SC Court of Appeals

SENTENCE

MARION COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

2022 MAY 19 PM 2:33

FILED*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF orTO: Manslaughter / Involuntary ManslaughterIn violation of § 16-03-0060 of the S.C. Code of Laws, bearing CDR Code # 0218☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 4 days/months/years/Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: today☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. _____ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

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ORIGINAL FILED IN THIS OFFICE

BOOK _____ PAGE _____

*Christy M. Gray*CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

STATE VS. Stephen William Flood INDICTMENT/CASE# 2019-GS-33-00239

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly prmts. of \$ _____ Beginning _____	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§56-1-286 (DUI Breath Test)	\$25 \$ _____
§14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150 \$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41 \$ _____
§50-21-114 (BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	TBD \$ <u>3.75</u>
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500 \$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD \$ _____
TOTAL	\$ <u>128.75</u>

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____Christy M. Gray
Dorri Fisher

Presiding Judge: _____

Judge Code: _____

Sentence Date: _____

W. H. Smith
2157
7/19/2022

STATE OF SOUTH CAROLINA

COUNTY OF Marion

STATE

VS.

Stephen William Flood

AKA:

Race: White Sex: M Age: 69DOB: SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Homicide / Reckless Homicide, Death ResultsIn violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

 Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #
WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: today☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2019-GS-33-00239A/W#: 2019A331010001Date of Offense: 9/18/2018S.C. Code §: 56-05-2910CDR Code #: 3097**RECEIVED****MAY 31 2022****SC Court of Appeals****FILED****22 MAY 19 PM 2:33****CLERK OF COURT****CHRISTY M. GRAY****MARION COUNTY SC**A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICEBOOK PAGE *Christy M. Gray*
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

STATE VS. Stephen William Flood INDICTMENT/CASE# 2019-GS-33-00239

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
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§14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150 \$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41 \$ _____
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§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	TBD \$ <u>3.75</u>
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500 \$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD \$ _____
TOTAL	\$ <u>128.75</u>

Clerk of Court/Deputy Clerk: Christina Gray
Court Reporter: Bobbi FisherPresiding Judge: W. K. B. B.
Judge Code: 2157
Sentence Date: 5/19/2022

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marion

STATE

VS.

Stephen William Flood

AKA:

Race: White Sex: M Age: 69DOB: SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Manslaughter / Involuntary ManslaughterIn violation of § 16-03-0060 of the S.C. Code of Laws, bearing CDR Code # 0218
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

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The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: today's other involuntary charges
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
 _____ days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

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ORIGINAL FILED IN THIS OFFICE

BOOK _____ PAGE _____

Christy M. Gray
 CLERK OF COURT, MARION COUNTY
 SOUTH CAROLINA

RECEIVED

MAY 31 2022

SC Court of Appeals

SENTENCE SHEET

MARION COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

2022 MAY 19 PM 2:32

FILED

WRS

WRS

STATE VS. Stephen William Flood INDICTMENT/CASE# 2019-GS-33-00239

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly prmts. of \$ _____ Beginning _____	\$ _____
§14-1-206 (Assessments 107.5%)	\$ _____
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§14-1-211 (A)(2)(DUI Surcharge)	\$100 \$ _____
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§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	TBD \$ <u>3.75</u>
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500 \$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD \$ _____
TOTAL	\$ <u>128.75</u>

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____

Christy M. Gray
Bobbi Fisher

Presiding Judge: _____
Judge Code: _____
Sentence Date: 5/19/2022

WITNESSES

Stephen L Howell State Law Enforcement Division

DOCKET NO. 2019-GS-33-00239

The State of South Carolina

County of

MARION

FILED

2019 MAY -9 PM 1:09

MARION COUNTY SC
CHRISTY M GRAY
CLERK OF COURT

COURT OF GENERAL SESSIONS

MAY TERM 2019

THE STATE

vs.

STEPHEN WILLIAM FLOOD

E. L. Clements, III

ARREST WARRANT NUMBER

2019A3310100013 2019A3310100016

2019A3310100014

2019A3310100017

Indictment for

INVOLUNTARY MANSLAUGHTER

(TWO COUNTS)

RECKLESS HOMICIDE WITH DEATH

(TWO COUNTS)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date

VERDICT

Foreperson of Petit Jury

Date:

SC Court of Appeals

MAY 31 2022

RECEIVED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)

INDICTMENT FOR
 INVOLUNTARY MANSLAUGHTER
 (TWO COUNTS)
 RECKLESS HOMICIDE WITH DEATH
 (TWO COUNTS)

At a Court of General Sessions, convened on MAY 9, 2019 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- INVOLUNTARY MANSLAUGHTER

CDR: 0218 16-3-60

That **STEPHEN WILLIAM FLOOD** did in Marion County on or about September 18, 2018, unintentionally kill [REDACTED] without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily injury, or while engaged in a lawful activity with reckless disregard for the safety of others, while driving a van and transporting [REDACTED] into Marion County showed reckless disregard for the safety of others by ignoring a clear and present danger of impassable waters and drove the van into visibly life threatening flood waters resulting in the death of Wendy Newton in violation of Section 16-03-0060, S. C. Code of Laws, 1976, as amended.

COUNT TWO- INVOLUNTARY MANSLAUGHTER

CDR: 0218 16-3-60

That **STEPHEN WILLIAM FLOOD** did in Marion County on or about September 18, 2018, unintentionally kill [REDACTED] without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily injury, or while engaged in a lawful activity with reckless disregard for the safety of others, while driving a van and transporting [REDACTED] into Marion County showed reckless disregard for the safety of others by ignoring a clear and present danger of impassable waters and drove the van into visibly life threatening flood waters resulting in the death of Nicholette Green, in violation of Section 16-03-0060, S. C. Code of Laws, 1976, as amended

COUNT THREE - RECKLESS HOMICIDE WITH DEATH

CDR: 3097 56-05-2910

That **STEPHEN WILLIAM FLOOD** did in Marion County on or about September 18, 2018, drive a vehicle in reckless disregard of the safety of others, and that the death of [REDACTED] ensued as a proximate result of injury received by the defendant's driving of such vehicle, he ignored admonitions to avoid the route he took and he drove into clearly visible dangerous and life threatening flood waters, resulting in the death of [REDACTED] in violation of Section 56-05-2910, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR BANK FRAUD, AND FORGERY (TWO COUNTS), WITH THE AFORESAID NAMES(S) OF HENRY PEPPER DANIELS SHOWN THEREON:

COUNT FOUR- RECKLESS HOMICIDE WITH DEATH

CDR: 3097 56-05-2910

That **STEPHEN WILLIAM FLOOD** did in Marion County on or about September 18, 2018, drive a vehicle in reckless disregard of the safety of others, and that the death of [REDACTED] ensued as a proximate result of injury received by the defendant's driving of such vehicle, he ignored admonitions to avoid the route he took and he drove into clearly visible dangerous and life threatening flood waters, resulting in the death of [REDACTED] in violation of Section 56-05-2910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in black ink, appearing to read "Dayne C. Phillips", is written over a horizontal line.

Dayne C. Phillips, Esq.

SC Bar No. 77712

Price Benowitz LLP

1614 Taylor Street, Suite D

Columbia, SC 29201

(803) 807-0234

ATTORNEY FOR APPELLANT

May 30, 2023