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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Hon. Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2023-000718

DARLEEN RASH, Individually and as Personal Representative
for the ESTATE OF BRONSON HARLEY RASH.....Appellant-Respondent,

v.

DOMINION ENERGY (formerly SOUTH CAROLINA
ELECTRIC & GAS COMPANY); ANTHONY M. AKBAR;
AND PAUL QUATTLEBAUM, ...Respondent-Appellants.

RECORD ON APPEAL
VOLUME 3

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1 of the jury.)

2 THE COURT: Yes, sir.

3 You all may be seated.

4 Mr. Johnson?

5 MR. JOHNSON: Your Honor, I think now is the time for
6 those consequences that you mentioned earlier. Everybody
7 knows that part of the Murdaugh trial was the phone -- the
8 wife's phone being thrown out the window, how it was found,
9 and just talking about whether it was flipped up or flipped
10 down. And Mr. Willey intentionally just now brought that up
11 about a phone being thrown out a window, which is clearly
12 from the Murdaugh trial.

13 THE COURT: Why is that relevant, Mr. Willey? And why
14 do you persist in testing the Court's patience?

15 MR. WILLEY: I am not attempting to test the Court's
16 patience.

17 THE COURT: You are attempting to --

18 MR. WILLEY: What --

19 THE COURT: Yeah. You don't follow directions well.

20 MR. WILLEY: I didn't --

21 THE COURT: And the consequences will be dire if I have
22 to institute them. And I have been inordinately patient, and
23 I have not treated you any differently than I have treated
24 your opposing and co-counsel. And you just seem to have a
25 real challenge with instructions.

1 What does throwing anything out of a window have --
2 remotely have to do with this case?

3 MR. WILLEY: Well, he actually just said it. He said,
4 "My expertise is freshman physic." And so all of this
5 goes --

6 THE COURT: No. What he said was --

7 MR. WILLEY: -- to the weight --

8 THE COURT: Basically, what he did very kindly in
9 answering your question is tell you that your question made
10 no sense and it's a matter of freshman physics --

11 MR. WILLEY: That's correct.

12 THE COURT: -- is what he basically just said to you.

13 MR. WILLEY: And --

14 THE COURT: But it still doesn't make it relevant. What
15 is it relevant to in this case?

16 MR. WILLEY: It goes to the weight and credibility of
17 his opinions. His opinions -- all this man does is literally
18 come into court and testify about whatever he's paid to
19 testify about, with no basis in fact, no methodology, and no
20 science. And the jury's --

21 THE COURT: I've already found that that is not the
22 case.

23 MR. WILLEY: I understand that. But he just testified
24 that his expertise in this area, which he admitted he holds
25 himself as an expert in, is simple freshman physics. Well --

1 THE COURT: That's not what he said.

2 MR. WILLEY: That is what he said.

3 THE COURT: Do not debate with this Court. And that's
4 the last time I'm going to tell you that. If I have to have
5 any further dialogue with you, I'm going to clear this
6 courtroom of everybody except the deputies, and then the
7 conversation's going to go a little further. You understand
8 what I'm trying to say to you very simply?

9 MR. WILLEY: I do.

10 THE COURT: And I hope that you're taking it very
11 seriously because I am.

12 MR. WILLEY: I am as well.

13 THE COURT: Now, you need to ask questions that are
14 germane to his expertise. I gave you the opportunity to voir
15 dire him on his expertise. I found that he's an expert. I
16 did it subject to your objection. I found that your
17 objection had no validity, that it had no weight, nor was it
18 premised on anything that was found. If you want to question
19 the weight of his opinions, do that. You are entitled to go
20 into his expertise to the extent that you want it to bear on
21 his credibility.

22 But do not make any further references to the Murdaugh
23 trial. If you do, I will do what I said I was going to do.
24 Are we clear?

25 Are we clear?

1 MR. WILLEY: Yes.

2 THE COURT: Anything else before we go forward,
3 Mr. Johnson, Mr. Ford, or Ms. Wesley?

4 MR. JOHNSON: No, your Honor.

5 MS. WESLEY: No, your Honor.

6 MR. FORD: No.

7 THE COURT: All right. Please bring in the jury.

8 THE BAILIFF: Yes, your Honor.

9 (The jury entered the courtroom at 4:21 p.m.)

10 THE BAILIFF: Judge, all jurors are present.

11 THE COURT: Thank you.

12 You may be seated.

13 Ladies and gentlemen, we appreciate your patience.

14 You may continue questioning the witness.

15 MR. WILLEY: Thank you, your Honor.

16 THE COURT: You're welcome.

17 BY MR. WILLEY:

18 Q. So Mr. Sutton, ballistics, acoustics, trains, planes,
19 automobiles, and earlier you mentioned boats. Tell us about
20 your expertise as it relates to boats.

21 A. Well, it would be similar to the others. Boat accidents
22 involve physics: impact mechanics, time and distance speed,
23 visibility, operator actions, that kind of thing. So
24 investigating a boat crash is very similar to any other
25 motor-vehicle accident except instead of tires and roadway

1 and skid marks you have concerns about, you know, how a boat
2 goes through the water. It's physics, but it's a different
3 branch of physics.

4 Q. And now today -- well, first of all, did I forget
5 anything? Anything else you're an expert in other than
6 ballistics, acoustics, trains, planes, automobiles, boats?

7 A. Well, we could go on for a long time. All of this fits
8 underneath mechanical engineering and accident
9 reconstruction, which I've done for 36 years. I've probably
10 looked at 5,000 or so accidents and failures. I've looked at
11 a lot of things that happen over and over and over again.
12 Sometimes you look at stuff that's unique. But you're doing
13 the same thing every time.

14 You know, after you do this job for a long time, then
15 you start to understand the language of physical evidence.
16 And when we say "physical evidence," the evidence that's left
17 over after an accident. Okay? And to somebody like me, I
18 can find significance with things that happen after an
19 accident, where I can look at that and understand, you know,
20 what is that telling me.

21 For instance, in a car wreck, you might see a set of
22 skid marks. You know, it may look like a set of skid marks
23 to you, but to me, you know, I can tell it's a certain size
24 truck and the truck was yawing or out of control, that sort
25 of thing. So I've looked at enough accidents that I can use

1 that to put myself in a position to explain to people how
2 things happen.

3 But all this stuff is mechanical engineering. Anything
4 that has a basis in physics -- which is anything that moves
5 or hits each other or falls -- is founded in physics and it
6 can be explained.

7 Q. You done?

8 A. Yes.

9 Q. All right. But you didn't do that in this case. You
10 didn't put yourself out there at the incident scene when
11 those videos were taken, right?

12 A. Well, I certainly did what I was saying. I did that
13 with every aspect of this case. I was not present at the
14 anniversary reconstruction, which is something that happens
15 quite a bit.

16 Q. Mm-hmm.

17 A. You know, sometimes when engineers in my office can't
18 handle something, I take their place; they take my place.
19 You know, you have schedules and you can't be everywhere at
20 the same time. But I rely heavily upon my engineers because
21 they do good work.

22 Q. Right.

23 A. And I can use the work that my engineers do just as well
24 as the work that I do.

25 Q. I think you told the Court earlier it's not a

1 reconstruction. Is it?

2 A. Well, I call them "reconstructions," but this was just a
3 demonstration.

4 Q. Right.

5 A. The video that you saw, I was not trying to show how the
6 wreck happened.

7 Q. Right.

8 A. In other words, I didn't move the truck out into the
9 road and that sort of thing. It was to illustrate the sight
10 distance because there have been other people talk about the
11 sight distance that was just not correct.

12 Q. All right.

13 A. So I wanted to make sure that that was corrected.

14 Q. Right. And you weren't here when Mr. McJunkin
15 testified?

16 A. I was not.

17 Q. Okay.

18 A. I have ready his deposition and reviewed his file
19 thoroughly.

20 Q. Right.

21 A. I've looked at Mr. Richardson's file, read his
22 deposition. I looked at Mr. Teague's file, read his
23 deposition. So I understand what their opinions are in the
24 case.

25 Q. Okay. Plaintiff's Exhibit 1 is where Mr. McJunkin drew

1 that he stopped -- okay? -- right at the stop bar. You see
2 that?

3 A. Yes. In his deposition, that's correct.

4 Q. Uh-huh. And he testified the same to this jury about
5 that. Okay? I'll represent that to you.

6 A. Yes. I read his trial transcript.

7 Q. The video that was taken that you weren't out at, that
8 was not taken from what his position would have been if he
9 was says stopped at the stop bar, correct?

10 A. Well, when he says he stopped --

11 Q. Just answer my question, sir. You can explain, but let
12 me ask you this. Is the video --

13 MR. JOHNSON: Your Honor --

14 BY MR. WILLEY:

15 Q. -- that you just --

16 MR. JOHNSON: -- he should be allowed to answer the
17 question.

18 THE COURT: Sir, I need you to answer the question yes
19 or not. Then you may explain your answer.

20 THE WITNESS: All right.

21 THE COURT: Please repeat the question.

22 BY MR. WILLEY:

23 Q. Yes or no, the video --

24 THE COURT: I need you to repeat the question.

25 MR. WILLEY: The demonstrative --

1 THE COURT: And don't give the witness directions. The
2 Court has already instructed the witness.

3 BY MR. WILLEY:

4 Q. The demonstrative video that you played for this jury
5 was not played from the perspective that Mr. McJunkin would
6 have had stopped at that stop bar, was it?

7 A. No.

8 THE COURT: Sir, you may explain your answer.

9 BY MR. WILLEY:

10 Q. Now --

11 MR. FORD: Let him explain.

12 MR. WILLEY: He said --

13 THE COURT: He can explain his answer. I instructed him
14 to answer yes or no, then he may explain his answer if he has
15 an explanation.

16 BY MR. WILLEY:

17 Q. Okay. How about it?

18 A. I said it earlier that I shot the video -- or my
19 engineers shot the video from a place that if you pull up you
20 have a clear view of the curve.

21 Q. And in all of your areas of expertise, zoning
22 regulations is not one of them, right?

23 A. No, I'm not an expert in zoning. I was talking about
24 that particular sheet or that drawing --

25 Q. Right?

1 A. -- because it talks about sight triangles, which I did
2 study --

3 Q. Mm-hmm.

4 A. -- in this case, and I had never seen that take --

5 MR. WILLEY:

6 Q. Right.

7 A. -- on a sight triangle. I was looking at other
8 documents. So I was shown that and asked to explain -- asked
9 to explain the size of the sight triangle in the North
10 Charleston zoning.

11 Q. In that diaphragm of North Charleston zoning
12 regulations, right?

13 A. Yes.

14 Q. All right. But that slide also directed you to North
15 Charleston city ordinance 4-13. Do you recall that?

16 A. You'd have to put it back up. It wouldn't surprise me.

17 Q. And North Charleston's city ordinance 4-13, do you see
18 the word "sight triangle" in that ordinance?

19 A. Yes. It talks about the triangle area bounded by two
20 sides with a street or railway right-of-way lines.

21 Q. All right. What does it say before that? It says, "No
22 structure or planting shall be permitted at any point between
23 a height of 2 and one-half and 10 feet above the upper face
24 of the nearest curb, or street center line if no curb exists,
25 and within the triangular area bounded on two sides by the

1 street or railway right-of-way lines." Is that what it says?

2 A. Yes.

3 Q. Okay. Now, this is what Mr. Ford wrote down as you were
4 testifying. Do you recall that?

5 A. Yes.

6 Q. Okay. Those are your opinions in this case, right?

7 A. Some of them.

8 Q. There are more?

9 There are more?

10 A. Yeah. We've talked about a lot of things today.

11 Q. Okay. All right. Well, I reckon those musts have been
12 the most important to him since he wrote them down. Would
13 you agree with that?

14 A. You'd have to ask him.

15 Q. Okay. All right. Let's talk first about Number 2,
16 speed. Okay? How did you -- in order to determine that
17 number in this case, you had to assume some things, right?

18 A. I wouldn't call it "assuming." I think I explained how
19 I got there. I'd be glad to explain it again.

20 Q. All right. Well, let's agree on this. You would agree
21 with me that your opinions can't be based on assumptions or
22 guesses because that's not good engineering opinion, right?

23 A. That's correct.

24 Q. Okay. And so if your opinions are based on assumptions
25 or guesses, you would agree with me that they're not good

1 engineers opinions?

2 A. Yes.

3 Q. Okay. So in order to reach your speed opinion in this
4 case, I think you indicated to the jury that the best
5 evidence would be electronic data, right?

6 A. That's the easiest and probably the best.

7 Q. And we don't have that in this case?

8 A. We do not.

9 Q. Okay. The next best way would be the laws of physics
10 and impact mechanics; is that right?

11 A. Yes.

12 Q. All right. And we have some of that in this case?

13 A. Yes.

14 Q. Okay. And in this particular case, what we have is a
15 motorcycle and truck collision. You looked at the damage to
16 the side of the pickup and the motorcycle to reach your
17 opinions, right?

18 A. Yes.

19 Q. Okay. And I think you testified that you relied on a
20 very specific article. Do you recall that?

21 A. Yes.

22 (Exhibit displayed.)

23 BY MR. WILLEY:

24 Q. And that article is the SAE article that is up on the
25 screen; is that fair?

1 A. Yes.

2 Q. Okay. 2018-01-0517; is that right?

3 A. Yes.

4 Q. All right. And this article is the basis for the
5 formula that you used to reach your opinion in this case,
6 right?

7 A. Yes. There are previous articles, but I relied upon
8 this one because this one's been updated.

9 Q. And you've read this article thoroughly?

10 A. Yes.

11 Q. All right. Now, in order to get to your opinion in this
12 case, I think you testified that the actual range of
13 Mr. Rash's speed at impact was 38 to 41 miles per hour; is
14 that right?

15 A. Yes. I had that in my deposition.

16 Q. Okay.

17 MR. FORD: Your Honor, I'm going to cite the
18 "Goose-Gander Rule" for not marking on each other's exhibits.
19 I'd ask he not mark on mine.

20 MR. WILLEY: I'm not.

21 MR. FORD: I understand. But --

22 THE COURT: Please don't mark --

23 MR. FORD: -- you're messing with --

24 THE COURT: -- on his exhibit. Thank you.

25

1 BY MR. WILLEY:

2 Q. Okay. So at impact, you say the speed was 38 to 41
3 miles per hour?

4 A. That was from my deposition.

5 Q. Have you changed -- has physics changed since your
6 deposition was taken?

7 A. No. Physics has not changed.

8 Q. Okay.

9 A. So I testified to the jury today that it fits a speed
10 range of 35 to 40, and that could be could plus or minus 5
11 miles per hour.

12 Q. Oh, wow. Okay. So today your opinion is that at
13 impact, Mr. Rash could have been traveling 35 to 45 miles per
14 hour, correct?

15 A. Well, it actually would be 30 to 40.

16 Q. Thirty. You said he could be -- okay. Now we're
17 getting somewhere. So at impact, Mr. Rash could have been
18 traveling 30 to 40 miles per hour; is that your testimony?

19 A. Yes.

20 Q. Okay. It's amazing what a little time will do to bring
21 us closer together.

22 So you said if he was traveling 30 to 40 miles per hour
23 at impact, that would be plus or minus 5, right?

24 A. I added the plus or minus 5 in there. So it's 35 to 40,
25 so it would be 30 to 45 would be the range, whatever --

1 Q. Okay. Let's back up because I'm not an engineer so I
2 want to make sure I get this right. You just told this jury
3 that your number today is at impact, Bronson was traveling 30
4 to 40 miles per hour, correct?

5 A. Well, the upper end is 40, so it would be all the way up
6 to 45. So it would be in that range.

7 Q. Right. But it's 30 to 40 plus or minus 5, or it's just
8 30 to 40?

9 A. Thirty-five to 40, plus or minus 5.

10 Q. Thirty-five to 40.

11 A. Right. So you take 35 --

12 Q. I understand.

13 A. -- 5 less -- that range would be 30 to 40.

14 Q. Okay.

15 A. And then if you take 40, it would be 35 to 45.

16 Q. Okay. Thirty-five to 40 plus or minus 5. Is that it?

17 A. I think we've got it now.

18 Q. Okay. So at impact, he could have been traveling 30
19 miles an hour, even based on your calculation?

20 A. Yes.

21 Q. All right.

22 A. And like I said before, one of the things you can do is
23 look at the hundred crash tests here and look at impacts into
24 the door.

25 Q. Yep.

1 A. And when you have 9 inches of crush to the door and, you
2 know, 7 to 11 inches of damage to the motorcycle, and you
3 look at that --

4 Q. Right.

5 A. -- and for motorcycles of all different weight
6 classifications, that is the range. In other words, it can
7 be a 15 or 20 mile-per-hour impact. There's too much damage
8 done.

9 Q. Okay. So if at the time of impact he was going
10 somewhere between 30 and 40 miles per hour, that means in
11 order to get to your opinion that at some point he was
12 traveling 50 to 65, there had to be some braking in there?

13 A. I've said that one or two seconds of braking, based on
14 the timing of the accident.

15 Q. Okay. Let's talk about braking. How much braking?

16 A. I used .725 g's, which would be easily achievable with
17 this bike.

18 Q. Okay. So .725 g's would be one to two seconds of
19 braking?

20 A. Yes.

21 Q. All right. Now, evidence of braking. Let's talk about
22 evidence. So one piece of evidence of braking could be skid
23 marks, right?

24 A. Yes.

25 Q. Okay. Another piece of the evidence of braking could be

1 electronic data, right?

2 A. Yes.

3 Q. Okay. Another piece of evidence of braking could be
4 deformation or wear gouging on the brake pads; is that fair?

5 A. Not really necessarily in an accident. That would be
6 fairly rare to be able to determine that.

7 Q. To be able to determine what?

8 A. That brakes were applied based on gouging to a brake
9 pad.

10 Q. Okay. On a motorcycle like this, if somebody just
11 locked it up at 65, you're not going to see any deformation
12 on the brake pads; is that your testimony?

13 A. Well, you wouldn't have, like, sometimes you flat spot a
14 motorcycle tire, just like you probably did as a kid riding
15 your bike. But the issue here is this bike has ABS, so the
16 tires will not lock.

17 Q. All right. And does this bike's ABS allow it to be
18 turned on and off?

19 A. I don't know.

20 Q. You don't know?

21 A. I just know that it has ABS.

22 Q. You didn't read the owner's manual that Mr. Ford put up
23 on the screen?

24 A. No.

25 Q. Well, part of your opinion in this case is that Bronson

1 broke -- hit the brakes, right?

2 A. Well, that's because there's evidence of it, which I
3 explained before, which would be what I think is the diving
4 of the headlight --

5 Q. Right. We're going to get to that.

6 A. -- and the time that he would have had to brake, he
7 should have been able to get on the brakes, which is where
8 the one to two seconds comes from.

9 And the third thing is you have Mr. McJunkin saying he
10 never saw the bike. And it's really difficult to square his
11 testimony -- which he's always maintained that he never saw
12 the bike. If the motorcycle is going 35 miles per hour, it's
13 visible for five or six seconds. So I can understand
14 Mr. McJunkin maybe missing the motorcycle for a couple of
15 seconds, but it's hard to imagine him missing the motorcycle
16 for five or six.

17 But if the motorcycle's going faster, then it would only
18 be visible for, say, three seconds. Then that would make
19 Mr. McJunkin's testimony that he's always stood with make a
20 lot more sense. In other words, the bike wasn't visible for
21 that long because it was above the speed limit.

22 Q. I think you just said it would be reasonable for
23 Mr. McJunkin to miss the motorcycle for a couple of seconds?
24 Did I hear that right?

25 A. Because he testified that he looked left and right. So

1 if he's looking right and then he starts to accelerate
2 forward, it's going to take him one or two seconds to get to
3 the edge of the road before he enters the road. So if he's
4 looking where he's going, he should be able to see a
5 motorcycle. Okay?

6 Q. How many --

7 A. So and that's at, you know, pulling into the road, let's
8 say three and a half seconds or so, around that time.
9 However, if it takes him three and a half seconds to pull in
10 the road and the motorcycle is only visible for three seconds
11 and if he looked left and right but never back to the left,
12 he may never see the bike.

13 That's why, to me, those three facts -- which are the
14 position of the headlight; the fact this bike had ABS, the
15 fact that Mr. Rash should have been braking due to this
16 hazard because he had five or six seconds of visibility of
17 this pickup truck coming out of that road; and Mr. McJunkin's
18 testimony -- I think that all of those elements together show
19 that Mr. Rash hit the brakes. So when you look at his impact
20 speed, you would expect his traveling speed to be a little
21 bit higher than that.

22 Q. I understand. And you're the only person in the world
23 that I've heard say he had five to six seconds, so we're
24 going to come back to that.

25 But what I want to focus on right now is your statement

1 that Mr. McJunkin could miss the motorcycle for a couple of
2 seconds; that would be reasonable. That's what you said,
3 right?

4 A. I don't think it would be reasonable, but it's
5 understandable because he wasn't looking back and forth as he
6 entered the roadway.

7 Q. Okay. How many seconds?

8 A. He should have never missed -- he should never miss the
9 motorcycle because, again -- and you don't have to go to the
10 driver's handbook to know this. But when you stop and you
11 look both ways, you still got to be paying attention and
12 enter the road safely. Right? Once you stop and look, do
13 you stop looking where you're going and you just pull into
14 the road blindly? I don't think drivers do that. I think
15 drivers continue to look where they're going.

16 And he's turning towards Mr. Rash, so his vision should
17 be heading toward Mr. Rash's position coming at him. So
18 again, what would make sense is he looks to the left and to
19 the right and then keeps looking right as he's pulling out,
20 and the motor vehicle is only visible for a few seconds.

21 Q. Okay. So you're not willing to quantify "a couple of
22 seconds," what you mean by that?

23 A. Well, I don't think Mr. McJunkin should have ever missed
24 the motorcycle.

25 Q. Oh. So you're change -- you're retracting the statement

1 that you made?

2 A. No. I can repeat what I said.

3 Q. Okay.

4 A. He testified that he looked to the left, looked to the
5 right, but never looked back to the left. If somebody
6 chooses to enter a roadway like that, they may miss a
7 motorcycle. But I would not expect a driver paying attention
8 to miss a motorcycle under these conditions. And it is five
9 or six seconds.

10 Q. If the jury listens to his testimony as he testified in
11 court and that's not what he said, would your opinion change?

12 A. Yeah. If he says something different, I'd be glad to
13 discuss that.

14 Q. Okay. And you've said different things since your
15 deposition; isn't that right?

16 A. Yes.

17 Q. Okay?

18 A. I've explained that.

19 Q. All right. So braking. Evidence of braking. Evidence.
20 Skid marks, electronic data, flat spot tire. What are some
21 other types of evidence of braking?

22 A. Eyewitness testimony.

23 Q. Okay. Eyewitness testimony. What else?

24 A. The elements that I just discussed in this case.

25 Q. Okay. A headlight impact point?

1 A. Yes.

2 Q. Okay. All right. And you would agree with me that in
3 this -- have you ever seen Bronson?

4 A. Yes.

5 (Exhibit displayed.)

6 BY MR. WILLEY:

7 Q. Yeah. This is Bronson. And these are Bronson's
8 parents. I don't think you've ever met them.

9 A. No, I have not.

10 Q. Any other evidence of braking that we could look for for
11 doing a reconstruction?

12 A. Not that we haven't already discussed.

13 Q. Okay. What about skid skips? You know, a motorcycle,
14 like when you really lock it up and you might -- it's not a
15 straight skid mark, but you might see where the tire hit and
16 kind of bounced a little bit. Is that something you've seen?

17 A. I think that's not typical.

18 Q. Have you seen it?

19 A. Not for a motorcycle. Usually you see a rear tire skid.
20 With a motorcycle you rarely see a front.

21 Q. Okay.

22 A. ABS can leave some faint marks. Sometimes ABS does not
23 leave marks.

24 Q. All right. And what would you -- how would you describe
25 it? I call them skid skips, but what would you call them?

1 A. When I think of skid skips, I think of an empty
2 trailer --

3 Q. Okay.

4 A. -- that's bouncing.

5 Q. Sure.

6 A. I mean, maybe if you had a motorcycle with a worn-out
7 suspension you might get something like that.

8 Q. Okay. But what would you call it, is what I'm asking?

9 A. Intermittent skidding.

10 Q. Okay. Intermittent skidding. And that's the same faint
11 marks you're talking about that sometimes you would get with
12 ABS brakes?

13 A. No.

14 Q. Okay. Tell me what these faint marks that you might
15 sometimes get with ABS brakes, how would you call them?

16 A. ABS --

17 Q. Just how would you call them?

18 A. Yeah, just ABS brake marks. They like skid marks but
19 they're much lighter. And they typically don't last long.

20 Q. Okay. ABS brake marks. And lighter skid marks or
21 lighter intermittent skidding?

22 A. Yes.

23 Q. Okay. All right. So braking is a key part of your
24 opinion here -- we can agree on that -- as to speed?

25 A. Yes, as far as coming up with a speed. Yes.

1 Q. All right. Because, I mean, if Bronson didn't have the
2 opportunity to ever hit his brakes or didn't hit his brakes,
3 he was only running 30 to 40?

4 A. Correct. If he did not brake, then you would conclude
5 his original traveling speed was 30 to 40.

6 Q. No evidence of skid marks that you saw, right?

7 A. That is correct.

8 Q. No electronic data?

9 A. Correct.

10 Q. Were either of his tires flat spotted?

11 A. They shouldn't be because there were no skid marks.

12 Q. Were they? They weren't, right?

13 A. No.

14 Q. Okay. No eye- -- any eyewitness testimony about a
15 braking?

16 A. No.

17 Q. Your position is that the headlight impact point gives
18 you some evidence, right?

19 A. Yes.

20 Q. Okay.

21 A. And for the other elements that I described. Those are
22 the reasons that I think more likely than not he hit the
23 brakes.

24 Q. Well, the -- I mean, the other -- okay. So let's get
25 into that. Because the other elements you described are not

1 really evidence of braking. They're your opinions of what
2 should have happened. So let's just cover that real quick.

3 You would agree with me that when Bronson Rash was going
4 up Meeting Street Road, he had the right-of-way, right?

5 A. Yes.

6 Q. He had no duty to break, correct?

7 A. Correct.

8 Q. Okay.

9 A. Well --

10 Q. No. What duty does he have to brake if he has the
11 right-of-way?

12 A. Well, sometimes you have to adjust the speed of your
13 vehicle for traffic. So I would expect a person to adjust th
14 speed of their vehicle instead of getting into a crash.

15 Q. Sure. But if that truck's not out in the middle of the
16 road by the time he gets to it, you wouldn't expect him to
17 brake, right?

18 A. Well, yeah. And we discussed that before. So what you
19 would have to do is you would have to have that pickup truck
20 move to the point of impact in, say, two seconds.

21 Q. Right.

22 A. And --

23 Q. We're going to come back to that.

24 A. So if it's --

25 Q. But go ahead.

1 A. I just don't think that that's realistic.

2 Q. You don't think it's realistic that the pickup truck
3 could start moving in two seconds?

4 A. Go from the position that we've been talking about to
5 the point of impact in two seconds. That would be very rapid
6 acceleration.

7 Q. Okay. All right. In this case, did you look for
8 intermittent skidding?

9 A. It's my understanding that there were no skid marks found
10 except one for the truck.

11 Q. Well, and I -- what is your understanding from? Is it
12 from what the Dominion lawyers told you? Or did you look at
13 the photographs that were collected the day after? I mean,
14 the scan data that was collected three and a half days later?
15 Where does this under- -- when you say "my understanding,"
16 did you do anything to investigate it or did you just rely on
17 other people to tell you what they thought?

18 A. I looked at the trooper's pictures that were taken in
19 the daylight. Sometimes you don't see marks at night.

20 Q. And --

21 A. The next morning.

22 Q. -- did you look at Mr. McCullough's scan data that's
23 accurate to two millimeters, as we demonstrated for the jury?

24 A. It would probably be difficult to pick up light skids in
25 scan data.

1 Q. Okay.

2 A. But the best evidence that we have would be the daytime
3 pictures taken the day after the crash.

4 Q. Sure. And did you look at the photographs and video
5 that Mr. McCullough took of the intersection and the scene?

6 A. Yes.

7 Q. Okay. And in any of those things, did you see any
8 evidence of intermittent skidding?

9 A. No.

10 Q. Okay. And in everything that we just talked about and
11 you looked at, did you see any evidence of ABS brake marks?

12 A. No.

13 Q. So the entire basis of your braking opinion as it
14 relates to actual evidence of braking comes down to this
15 headlight impact point; is that fair?

16 A. No.

17 Q. Okay. Tell us what other physical evidence we can look
18 at to understand your opinion.

19 A. The headlight impact is lower, which would be consistent
20 with a hard brake application. Mr. McJunkin never saw the
21 motorcycle, which one of the reasons for that is the bike
22 wasn't visible for five or six seconds. It was visible for a
23 lesser amount of time. I think it takes more than two
24 seconds for the pickup truck to enter the roadway and be an
25 immediate hazard. So Mr. Rash should have been able to apply

1 the brakes. He should be able to see the truck and apply the
2 brakes for a wide range of time as the truck enters the
3 roadway.

4 Q. I understand your "shoulda, woulda, coulda" what you
5 think should have happened. What I asked you for is if there
6 is any other physical evidence that we can look at to support
7 your position?

8 A. I don't think so.

9 Q. Okay. So the only physical evidence that forms the
10 basis of your opinion is the headlight impact point?

11 A. Yes.

12 Q. Okay. Now, just to be clear, if Mr. Rash was not
13 braking, it is more likely than not that he was going at or
14 below the speed limit. Would you agree with that?

15 A. Yes.

16 Q. Are you aware of FARO scan data, FARO scanners, the data
17 it collects?

18 A. Yes.

19 Q. Okay. You've used that, right?

20 A. Yes.

21 Q. All right. And you would agree with Mr. McCullough that
22 it's accurate to two millimeters or so?

23 A. It's close to that but a little bit more. I mean, it's
24 accurate within inches.

25 Q. Okay. And the -- you understand there was FARO scan

1 data from 2017 immediately after the incident?

2 A. Yes, of the intersection.

3 Q. Okay. But you didn't use that FARO scan data in
4 reaching your opinions, did you?

5 A. No.

6 Q. Okay. You went out and took your own FARO scan data,
7 right?

8 A. Yes.

9 Q. And when did you do that?

10 A. About mid April 2019.

11 Q. All right. So a little after -- a little over two years
12 after this collision you went out and did a FARO scan?

13 A. Yes.

14 Q. And by that time, some things at the intersection had
15 changed, right?

16 A. Yes.

17 Q. The vegetation that was on the corner wasn't there when
18 you went out, was it?

19 A. That is incorrect.

20 Q. That's incorrect?

21 A. Yes.

22 Q. Okay. When you went out in April of 2019, is that what
23 the vegetation looked like?

24 A. If that's one of my pictures, then yes.

25 Q. This is one of Mr. McCullough's pictures from just three

1 and a half days after?

2 A. If that's not my picture, then that -- it wouldn't have
3 looked that way. The day that I went, there was vegetation
4 on the fence.

5 Q. Okay. And that vegetation that was on the fence the day
6 you went, do you have any pictures of it with you? Did you
7 bring your file?

8 A. Yes.

9 Q. Okay. Is that what that stack of paper is up there?

10 A. No. My pictures would be on my laptop.

11 Q. Okay.

12 A. If you want to look at them.

13 Q. Sure. If you'll pull one up, that'd be great.

14 A. What do you want to see?

15 Q. Just a picture of the bush on the corner the day you
16 were out there.

17 A. You want me to show it to you?

18 Q. Yeah.

19 All right. So the day you were out there was in April.
20 The bush was -- just tell me if this is fair -- a little bit
21 shorter? You agree it's shorter?

22 A. I would say so.

23 Q. It's about fence height in your picture, right?

24 A. Maybe 18 inches about the fence.

25 Q. Okay. And a little bit fuller, right? Little bit more

1 foliage?

2 A. Yes, because it's in April.

3 Q. Okay. So not quite as tall. And how about how far does
4 it stick out from the fence?

5 A. About a foot.

6 Q. Okay. Sticks out about a foot from the fence. So it
7 probably sticks out a little less than it does in these
8 photographs, right?

9 A. Yes.

10 Q. Okay. It's been trimmed back?

11 A. Yes.

12 Q. Okay. And that was in April of 2019?

13 A. Yes.

14 Q. Okay. And you took -- you took a FARO scan, right?

15 A. Yes.

16 Q. Okay. And how many scans did you do?

17 A. Eight.

18 Q. Okay. So you took eight scans in April of 2019. And
19 about how many photographs? A hundred? Two hundred?
20 Twelve?

21 A. I'd say a hundred.

22 Q. About a hundred. Okay. And do you recall telling us at
23 your deposition you had no plans to go back at that point?

24 A. I don't recall, but that would --

25 MS. WESLEY: Objection, your Honor. False impeachment.

1 MR. WILLEY: I asked him a question.

2 THE COURT: I need the original sealed copy.

3 BY MR. WILLEY:

4 Q. Mr. Sutton, is it true --

5 THE COURT: You cannot ask any questions yet.

6 MR. WILLEY: Okay.

7 THE COURT: Mark it as a Court's exhibit and give it to
8 the witness for me.

9 MR. WILLEY: Yes, ma'am.

10 (Court's Exhibit Number 26 marked for the record.)

11 BY MR. WILLEY:

12 Q. Page 74. Let's start at line 7.

13 THE COURT: You need to ask the exact question, give him
14 the opportunity to answer it consistently or inconsistently,
15 and then you can use the deposition.

16 BY MR. WILLEY:

17 Q. Okay. Other than when you visited the scene in April of
18 2019, have you been back?

19 A. And I answered no.

20 Q. Do you have any plans to go back?

21 A. And the answer is no.

22 Q. Okay. But you did go back?

23 A. Yes.

24 Q. And you went back when?

25 A. Well, people in my office went back. I never went back.

1 Q. People in your office went back?

2 A. Yes, sir.

3 Q. In February 2023?

4 A. Yes.

5 Q. And the video that you showed this jury is just that.

6 It's a video taken from where?

7 A. It's taken 12 feet off the road, which is the center of
8 the stop bar that existed on the night of the accident. It's
9 taken from a Toyota Tundra, from that position -- er, the
10 driver of the Tundra's head is at that position.

11 Q. And the video is taken from the middle of the stop bar;
12 is that right? As it existed in 2017?

13 A. That is correct.

14 Q. Okay. So where Mr. McJunkin testified his bumper might
15 be?

16 A. Well, it's my impression that he stopped and he pulled
17 forward.

18 Q. Okay. But he testified he stopped at the stop bar. And
19 where you took the video would actually be -- or where your
20 office took the video would be in front of his bumper, right?

21 A. Yes.

22 Q. And you had scan data, right? At that time?

23 A. Yes.

24 Q. And you're able to, I assume, like we did with other
25 witnesses, manipulate and interface with the environment in

1 order to put yourself in the position that Mr. McJunkin said
2 he was in, right?

3 A. Well, you could put the pickup truck anywhere there.

4 Q. Right.

5 A. I chose from a place that would be the place that a
6 driver would stop such that they could see around the objects
7 in the intersection because that's what people do.

8 Q. Right. But that's not my point. My point is you
9 already had scan data that Mr. McCullough three and a half
10 days after the wreck and you had your own scan data from 2019
11 that you could have used to show this jury the line of sight,
12 right?

13 A. I think that's what I've done.

14 Q. Yeah. Well, and what you could have done is you could
15 have used that scan data to actually take a sight-distance
16 measurement, right?

17 A. Yes. And that's -- and if you recall back to the
18 deposition, there were several graphics of the truck in
19 different positions, and it had the sight distance from the
20 pickup truck under different conditions. And so all that was
21 presented at my deposition.

22 Q. But that's not what you presented to this jury, is it?

23 A. No. There's a lot of stuff in my file that isn't
24 presented. What I tried to do is get the stuff that was most
25 concise. It's a big file. We could stay here all day. I

1 guess we have. But I have not shown every single exhibit
2 that I made regarding this case.

3 Q. Most concise and most favorable to the defendants?

4 MS. WESLEY: Objection, your Honor.

5 THE COURT: Basis?

6 MS. WESLEY: Argumentative.

7 THE COURT: Sustained. Argumentative. Rephrase the
8 question.

9 BY MR. WILLEY:

10 A. I'm explaining the accident the way that I see it, which
11 -- and I think that I've tried to explain it the best way
12 that I can.

13 Q. But you didn't show the jury the perspective from where
14 Mr. McJunkin said he actually stopped, which is where the law
15 requires him to stop, at the stop bar, did you?

16 A. No. Because --

17 Q. And you could have?

18 A. Yes, if I believed that that's where he was.

19 Q. Would you agree with me that the AASHTO standards and
20 guidelines are safer than what is present at this
21 intersection in February of 2017?

22 A. No.

23 Q. You would not?

24 A. No.

25 Q. Okay. You would say this intersection is safer than the

1 guidelines?

2 A. Well, I can just read you from the AASHTO.

3 Q. Well, no. I'm not asking to read. I'm just asking yes
4 or no. Do you think this intersection in February 19 of 2017
5 was safer than the AASHTO guidelines?

6 A. At this intersection, the way that it was laid out --

7 Q. I'm asking for yes or no, and then you may explain.

8 A. Yes. It's not less or more safer. It's just as safe.
9 And the reason is the AASHTO guidelines give you seven and a
10 half seconds to pull out. Okay? But even with seven and a
11 half seconds, depending on how the drivers are behaving, it
12 may not be enough to not have a collision. AASHTO says for
13 the purposes of avoiding collisions at an intersection just
14 like this, even though AASHTO doesn't apply -- and I could
15 read it to you -- the stopping sight distance is sufficient,
16 which is 250 feet. And what 250 feet gives you in a 35
17 mile-per-hour zone is you have a five-second gap to get out.
18 And --

19 Q. That's not seven and a half, is it?

20 A. It's not seven and a half but --

21 Q. But that's safer?

22 A. It doesn't -- five seconds to pull out, seven and a half
23 seconds to pull out, there should be no reason that a person
24 couldn't enter the roadway in five seconds or seven and a
25 half seconds. And I think -- and I've said this a couple of

1 times today, that I think that is shown in the lack of any
2 significant collision history at this intersection. So
3 people have been using this intersection, at least the
4 records I looked at, all the way back to 2001. And there is
5 almost no collisions there, certainly of a left-turn variety.

6 So again, even AASHTO says that you only need 250. That
7 390 is there for other movements through the intersection.

8 Q. Were you here when Ms. Richardson, who lives right here
9 on this corner closest to the intersection, testified that
10 she never uses it?

11 A. No. I understand that people have complained about the
12 intersection, but the history does not show that it's a
13 dangerous intersection.

14 Q. Were you here when she testified that she tells all of
15 her friends and family --

16 MR. JOHNSON: Objection, your Honor. Pitting.

17 THE COURT: What's the objection?

18 MR. JOHNSON: Pitting.

19 THE COURT: Sustained. Pitting.

20 MR. WILLEY: I --

21 THE COURT: It's pitting.

22 MR. WILLEY: Okay.

23 THE COURT: Move on.

24 BY MR. WILLEY:

25 Q. Were you here when she testified?

1 A. No.

2 Q. Did you take anything that she said into consideration
3 when looking at the relative safety of this intersection?

4 A. If that information was given to me, I would consider
5 what people say. But if you look at this intersection and
6 there's certain design elements there, the way you check to
7 see if those design elements are working, you can compare it
8 against a standard or a book or a policy, but you can also
9 look at the crash history because that's the real safety of
10 the intersection.

11 If you talking about it meeting some sort of a policy,
12 that's nominal safety. It's in name only. But the actual
13 intersection, if there's no crashes there, then how can it be
14 a dangerous intersection if nobody crashes there.

15 Q. Well, you testified that there were crashes there.

16 A. Maybe one a year. Sometimes zero a year. And in 19
17 years, there was only one other left-turn accident there.

18 Q. Right. And how -- what period of time did you look at
19 crash history over?

20 A. 2001 to 2019.

21 Q. Okay. And isn't it true that over that period of time
22 there was just one too few crashes to make it be deemed a
23 dangerous intersection?

24 A. Again, there's not a large crash history there. So it
25 wouldn't be something that would trigger anybody to change

1 the layout or the intersection or to think something was
2 wrong with the intersection. There are many intersections in
3 North Charleston, and I'm sure there's plenty with poles and
4 shrubbery. And it comes down to yes, there are poles and
5 shrubbery at this intersection, but as I've talked to the
6 jury, it doesn't cut down the visibility.

7 The problem there is the curve in the road. And it's
8 not out in middle of the country where you have nothing
9 blocking your view. It is a typical urban environment where
10 the curvature of the road -- which has existed as long as
11 that road has existed -- cuts your sight distance down at
12 that particular intersection.

13 But you can enter that road safely. If you've got five
14 to six seconds, there's not reason a motorist can't enter
15 that road safely.

16 Q. And I didn't ask you any of that. What I asked you is,
17 isn't it true that over that period of time there was one
18 fewer crash than necessary to make it be deemed a dangerous
19 intersection?

20 A. I would have to go back and look at exactly how that
21 would trigger.

22 Q. You didn't add them up?

23 A. Well, I think it would be much more than one because I
24 think Mr. Teague testified that five crashes of the same in a
25 12-month period.

1 Q. Did you add them up? Yes or no? Either you --

2 A. I think there were 11 crashes there in 19 years.

3 Q. So you added them up?

4 A. Yes.

5 Q. So you're testifying about that?

6 A. It's in my notes. I don't have everything memorized.

7 But Mr. Teague said to be classifies as a hazardous
8 intersection you would have five left-turn crashes -- not of
9 all cashes. In this case we had two -- including Mr. Rash's
10 crash, two, by my notes, in a 19-year period. What you would
11 have to do is for all 19 years you would have to have five
12 every year of left turn, not just all crashes.

13 Q. Right.

14 A. So I don't see how five -- just adding one more crash
15 would have triggered any kind of countermeasures at this
16 particular intersection.

17 Q. But a left-turn crash in the studies is document when
18 you actually have somebody going left and there's a crash,
19 right? If someone leaves the roadway, that's not documented
20 as a left-turn crash, right?

21 A. No. It's --

22 Q. Al right.

23 A. -- categorized as "left the roadway." So there were
24 rear-end collisions there and things like that.

25 Q. Right. Somebody pulled out and somebody else left the

1 roadway, it's not documented as a left-turn crash; it's
2 documented as a left the roadway. Right?

3 A. You would have to look at individual accident reports to
4 get that close.

5 Q. Did you look at them?

6 A. No.

7 Q. Okay. And did you take into account if people aren't
8 using this road in the neighborhood, that it would stand to
9 reason that there's going to be fewer crashes?

10 A. That could be a reason. Like, if --

11 Q. Right.

12 A. You know, if that's a road used by the neighborhood and
13 nobody in the neighborhood uses that, you would just have to
14 talk to people in the neighborhood to see if that could be
15 one of the reasons.

16 Q. Right. Because when we're looking at crash history,
17 we're looking at two inputs, correct? We're looking at the
18 traffic on Meeting Street Road, right?

19 A. Yes.

20 Q. And we're looking at the traffic on Hedgewood?

21 A. Yes.

22 Q. And so if people in this neighborhood don't use
23 Hedgewood as a primary means of ingress or egress, you would
24 expect that crash history to be lower, correct?

25 A. Right. If no cars use that intersection, then yes, you

1 would have less accidents.

2 Q. And you didn't take that into account; you didn't talk
3 to anybody in the neighborhood, right?

4 A. I did not.

5 Q. Including the lady that lives closest to it after
6 Mr. Quattlebaum, you didn't talk to her, did you?

7 A. No. The only information, I saw Mr. Akbar testify
8 yesterday.

9 Q. Right. Mr. Akbar testified. You saw him testify?

10 A. Yes.

11 Q. He uses it all the time, right? That was his testimony?

12 A. I think that's what he said.

13 Q. Tells his friends and family to use it, right?

14 A. He what?

15 Q. He tells his friends and family to use it?

16 A. I don't remember that.

17 Q. In your sight-distance analysis, did you use the scan
18 data to remove the poles or the fences or the trees to
19 determine what the sight distance would be without those
20 obstructions?

21 A. No.

22 Q. You could have done that, right?

23 A. Yes. It could be done.

24 Q. Okay. And you would agree with me that the two poles --
25 utility poles that we've talked about are in the line of

1 sight in that intersection?

2 A. Yes, they are.

3 MR. WILLEY: Your Honor, I have a bit more. Just to --

4 THE COURT: You need to continue.

5 MR. WILLEY: Okay.

6 Q. [By Mr. Willey] This -- getting back to this article,
7 first we have to believe there was braking to get to your
8 speed analysis, right?

9 A. Yes.

10 Q. And then we have to believe that the formula provided in
11 this article is applicable, right?

12 A. Yes. I used the formula in this paper. Which the
13 formula, what it does is compares your crash -- in this case,
14 this crash -- to all the other tests, which I think is about
15 a hundred.

16 Q. And this paper dealt with Harley-Davidson motorcycles?

17 A. What they did was they added Harley-Davidsons to the
18 test set.

19 Q. Okay.

20 A. Which I think -- I can't remember the number. Maybe 11
21 more tests -- I'd have to read it again -- to the already
22 existing data set. And that data set's been building since
23 the 1960s.

24 Q. Right.

25 A. And different people have tried different things to come

1 up with the formula.

2 Q. Right. That data set doesn't contain any BMW
3 motorcycles; you would agree with that?

4 A. I didn't see any.

5 Q. Okay. And Harley-Davidson motorcycles, are they
6 generally heavier or lighter than BMW motorcycles?

7 A. Depends on the model. But, you know, you have some BMWs
8 that are heavy and some that are light.

9 Q. Right.

10 A. The lightest Harley is still pretty heavy compared to,
11 say, an import bike standard. So Harleys are heavier.

12 Q. All right. And Harleys are generally heavier because
13 they're made of more metal; is that fair?

14 A. More or less. It's just a design philosophy. And the
15 age of their designs typically gets a little bit heavier.
16 But this article here has motorcycles of all kinds of
17 weights.

18 Q. Right. But -- I mean, BMW uses a lot of composite
19 material to make the bikes lighter, right?

20 A. Well, that bike weighs about 500 pounds --

21 Q. Okay.

22 A. -- with a tank of gas. And it's not as lightweight as,
23 say, a high performance sport bike. You can get pretty large
24 displacement in sport bikes that are a little bit less than
25 that. But yes, I would expect a BMW to use lighter materials

1 than a lot of motorcycles. They're very expensive and well
2 made.

3 Q. Okay. And this paper -- and I didn't blow up this part,
4 but it says there's an average error of 3 and a half miles
5 per hour. Do you agree that it says that?

6 A. Well, that is true in the way it's listed there, but I
7 think when I read the results of this paper, it's closer to
8 say 5 miles an hour.

9 Q. Okay. And that error --

10 A. It's 5. It's a little bit more. Yeah, the error. So
11 that's why I was -- when I gave you that range --

12 Q. Okay.

13 A. -- I looked at the -- you know, what is the range that
14 it probably would be in.

15 Q. Okay. And this study, the motorcycles were actually put
16 on a dolly, right? They weren't actually ridden into the
17 side of the vehicles; is that fair?

18 A. For this particular paper. It's been done several
19 different ways. But they put it on a dolly, they brake the
20 vehicle that's carrying the dolly, and then the motorcycle
21 coasts into the side of the car.

22 Q. All right. And they strike the side of a stationary
23 vehicle, right?

24 A. That's correct.

25 Q. Okay. And a stationary vehicle means one that is not

1 moving?

2 A. Correct.

3 Q. Okay. And they strike that vehicle at a perpendicular
4 orientation, right?

5 A. I believe so for this test. There are a lot of other
6 tests here, and some of those are at different angles.

7 Q. Okay. This test, the test you relied on to get the
8 formula, the motorcycle on the dolly strikes a stopped
9 vehicle at a 90 degree angle, right? That's what a
10 perpendicular orientation is?

11 A. Well, that's partially true. But remember that all they
12 did was they added Harleys to the data set. Most of the
13 bikes were Japanese bikes: Hondas, Suzukis, Kawasakis. So
14 they added some American-made machines to see if there was
15 any difference, and there really wasn't any difference. They
16 added in the weights of the bikes, and they found out that it
17 really doesn't make the equations any better when you add the
18 weight in. But the whole paper is based on all of the crash
19 tests that have been done since the '60s.

20 Q. Okay. I didn't ask anything about American or foreign
21 bikes. What I asked you is that in this study, they
22 consistently struck the vehicle, the motorcycle, at a 90
23 degree angle, correct?

24 A. Yes.

25 Q. A perfect T-bone?

1 A. Yes.

2 Q. Okay. That's not what we had in this case. You would
3 agree with that?

4 A. No. There was an angle in this collision. When I say
5 "an angle," the pickup truck was making a left turn so it was
6 angles.

7 Q. All right. So the pickup truck is making a left turn
8 and Bronson is coming this way, right?

9 A. Yes. But it's not that steep of an angle. The other
10 issue is that if you look at where the officers marked the
11 point of impact, it was near the double yellow line. And,
12 you know, in a right-hand curve, that would be an odd place
13 to be riding the bike. I think that he was in the curve and
14 had to break, so he straightened the bike upwards so he could
15 apply the brakes.

16 Q. Okay.

17 A. And then because he straightened the bike up, he's going
18 to straighten out the curve, so he's going to head toward the
19 center line. So I think that also contributed to the angle
20 of the impact.

21 Q. All right. But it was not a 90 degree angle, right?

22 A. No, it was not.

23 Q. Okay. And Bronson's motorcycle was not delivered on a
24 dolly?

25 A. No.

1 Q. And Mr. McJunkin's truck was not stationary?

2 A. No.

3 Q. Okay. And I think you would agree with me that these --
4 what do you call that in engineering? Like, the "initial
5 conditions"?

6 A. Yes.

7 Q. The initial conditions?

8 A. Yes.

9 Q. Initial conditions are really important when you're
10 running a test, right?

11 A. Well, they can be.

12 Q. Right. Well, I mean, when you're doing a ballistics
13 analysis, you're going to make sure you have the same gun
14 that the shooter had, right?

15 A. I don't understand the question.

16 Q. If you're doing a ballistics analysis about how a bullet
17 acts after it leaves the gun, you're going to make sure you
18 have the same gun and the same bullet, right?

19 A. Not necessarily. Depends on what question you're asked.

20 Q. Well, if you're trying to figure out where somebody shot
21 somebody from -- okay? -- and that person that shot somebody
22 used a rifle, you're not going to go run that test using a
23 shotgun full of birdshot, right?

24 A. I really don't follow this question.

25 Q. Okay. Are initial conditions important?

1 A. It depends on the question that you're asked.

2 Q. Okay. And if the question asked is "How much damage is
3 done to two vehicles in a collision?" is it important the
4 angle of impact of those two vehicles when they collide?

5 A. Well, there can be factors with that, but not the way
6 that I've applied it in this particular case.

7 Q. Well, in physics, angles matter, right?

8 A. They can, yes.

9 Q. Okay. And in physics, whether one object is moving or
10 both objects are moving matters, right?

11 A. Depends on the question.

12 Q. Okay.

13 A. I mean, it's such a vague question. But I understand
14 what you're saying. But I did consider the fact that the
15 pickup truck was moving, so there was a component of movement
16 towards Mr. Rash --

17 Q. Right.

18 A. -- as he's making that left turn. And there's a moment
19 straight ahead. So did consider that that when I looked at
20 this particular crash.

21 Q. All right. But that's not what --

22 A. The damage on the pickup truck is straight in. It
23 doesn't look angled at all. The handlebar impressions on the
24 driver's door: symmetric, equal. The headlight imprint:
25 perfect circle. Right? So what that tells me is that there

1 wasn't a significant angle in this crash. So something had
2 to be going on, what I've seen based on where the officers
3 marked the point of impact.

4 Q. Right.

5 A. I think Mr. Rash straightened the bike up so he could
6 apply the brakes hard. You don't want to apply the brakes
7 hard if he's leaning through the curve.

8 Q. Sure. You would agree with me initial conditions
9 matter, correct?

10 MS. WESLEY: Asked and answered, your Honor.

11 THE COURT: Sustained.

12 BY MR. WILLEY:

13 Q. And the initial conditions of this collision and what
14 this study uses are not the same; is that accurate?

15 A. They are different. That is correct.

16 Q. Okay. Now, there are a few other things with respect to
17 this study. And it says, "The nature of the struck object or
18 vehicle is important to the analysis." You would agree with
19 that?

20 A. Yes.

21 Q. Okay. And when it says "the nature" means what?

22 A. Okay. So when you do a crash test, you do -- a lot of
23 times you do a crash test into a barrier, like a concrete
24 barrier. And what they're saying there, in impact mechanics,
25 the stiffness and mass ratios of the two objects should be

1 proportional. Okay? So for instance, if I -- I don't know
2 what kind of car you drive, but let's just say you drive,
3 like, a Honda Accord. If I take that Honda Accord and drive
4 it into a concrete wall at 35 miles an hour, we can expect a
5 certain amount of damage. And the reason is because the wall
6 has -- compared to the car -- infinite mass, infinite
7 stiffness. Right? So that kind of test is useful. So
8 driving vehicles in to barriers are useful.

9 Q. Right.

10 A. If I take that car at 35 miles an hour and drive it into
11 a corn field and it comes to a stop, like something real
12 fluffy --

13 Q. Right.

14 A. -- there's not going to be much damage, but the speed
15 change is the same --

16 Q. Right.

17 A. -- at 35. So yes, so the nature of the object here,
18 it's a crushable vehicle, a big weight --

19 Q. Right.

20 A. -- striking a crushable vehicle of less weight.

21 Q. Right. And so you would look at the nature of the
22 motorcycle, whether it's completely metal or partially
23 composite as part of the nature of that struck object,
24 correct?

25 A. Yes. And that's wrapped up in, again, because these

1 equations are fitting the data set of other tests to the
2 speed.

3 Q. All right. So it also says that "One limitation of any
4 motorcycle crush analysis is its inherent insensitivity at
5 higher speeds. After the front wheel and fork have collapsed
6 to the frame and engine block, there is little additional
7 motorcycle deformation possible."

8 Do you agree with that?

9 A. I do.

10 Q. Okay. And "The mass of the automobile and eccentricity
11 of the collision will affect the maximum possible target
12 vehicle crush depth."

13 Do you agree with that?

14 A. I do.

15 Q. All right. In addition, if you're looking at -- in this
16 study, what it said is "Permanent wheelbase reduction for car
17 side impacts was at anything over 21 miles per hour."

18 Do you agree with that?

19 A. That's what it says here, but --

20 Q. Now you disagree with the SAE study that you relied on?

21 A. It depends on the different studies. People --
22 different people who have done these studies have found that
23 on-set speed to be different. I've seen that speed at
24 around, say, 15 or so, maybe 20, based on way that it was
25 tested.

1 Q. Okay. And all that means is that at that speed -- here
2 it's 21 miles per hour; maybe it's 15 -- you can have a
3 permanent wheelbase reduction in that vehicle, right?

4 A. Yes.

5 Q. And explain what a "permanent wheelbase reduction" is?

6 A. The forks are bent.

7 Q. Right?

8 A. So if the forks are bent on a bike, and going by what
9 he's shown there, you can take away from that that the bike,
10 the impact speed was at least 21.

11 Q. Right. And that can happen at as little as 21 miles per
12 hour. Now, this is actually one of the tests that they ran.
13 Did you review this?

14 A. At one point in time I did.

15 Q. Okay. And the reason I picked this one is because it
16 was pretty close to the speed that you used in your analysis.
17 And it says that the Harley-Davidson Low Rider was delivered
18 into the right-hand door of a Dodge Durango at 42.9 miles per
19 hour. Do you see that?

20 A. Yes.

21 Q. Wheelbase reduction on that Harley-Davidson was 10.7
22 inches, and maximum crush to the Dodge was 10.3. Do you see
23 that?

24 A. Yes.

25 Q. Total of 21 inches of crush, right?

1 A. Yes.

2 Q. Okay. And this is a Harley-Davidson, right?

3 A. Yes.

4 Q. Okay. And a Dodge Durango?

5 A. Yes.

6 Q. Dodge Durango, fairly similar in terms of stiffness
7 value to a Toyota Tundra in the front door?

8 A. I don't know.

9 Q. Okay. Do you recall that in this study, the left inner
10 fork of the Harley-Davidson was actually partially torn
11 during the test?

12 A. I see it right there.

13 Q. Yeah. The leading portion of that actually failed and
14 with the rest staying intact. Do you see that?

15 A. Yes.

16 Q. And you can actually see in the photograph, but it
17 always says the front wheel was deformed and the left side of
18 the rim was fractured, right?

19 A. Okay.

20 Q. You see that?

21 A. Yes.

22 Q. Okay. And that's on a Harley-Davidson, right?

23 A. Yes.

24 Q. That's a pretty big -- would you agree with me that that
25 front wheel is back pretty good in that picture at 42 miles

1 an hour?

2 A. Yes they say 10.7 inches.

3 Q. I'll show you one more. Test Number 5, this is the
4 other one that's close in speed. This was a Harley that was
5 delivered into a stationary 2006 Nissan Maxima at 36.9 miles
6 per hour, resulting in a wheelbase reduction of 12.8 inches
7 and a maximum crush to the Nissan of 8.6 inches, for a total
8 of 21.4 inches. Do you see that?

9 A. Yes.

10 Q. All right. And is that damage fairly consistent with
11 the damage to the Toyota Tundra?

12 A. It's hard to tell just by looking at the picture, but
13 they're both hit in the door.

14 Q. Well, you measured it, didn't you?

15 A. There was 9 inches of crush to the Tundra.

16 Q. There was 9 inches of crush to the Tundra. And what is
17 the crush to this Nissan sedan?

18 A. Eight point six. The main difference is it doesn't look
19 like the rocker panel was crushed. The Toyota is higher, so
20 the motorcycle front interacted with the lower part of the
21 Tundra. Here it's a small car, so it looks like the wheel
22 came in above the floor.

23 Q. Right. And we're plus or minus 5 miles an hour on
24 these; is that what you said?

25 A. Yes.

1 Q. All right. So it could have been going 31 miles an
2 hour?

3 A. Yes.

4 Q. That motorcycle, my word, that's a pretty deformed front
5 tire. Would you agree with that?

6 A. Yes.

7 Q. And that's a Harley-Davidson?

8 A. Yes.

9 Q. All right. Is that front tire more deformed than it is
10 on this BMW motorcycle?

11 A. Looks like it.

12 Q. You would also agree that this study says that if one of
13 the forks breaks for whatever reason, that the formula in
14 this study is not as reliable?

15 A. That is correct.

16 Q. Okay. And in this case, one of the forks did break,
17 right?

18 A. It did. Because it's clear the wheel went pretty far
19 back. It's a -- I think I've already explained. The wheel
20 crushed a pipe on the front of the engine.

21 Q. All right.

22 A. And in order to do that, you're looking at about 12
23 inches.

24 Q. Right.

25 A. But the fork itself that was bent, which was on the left

1 side, was bent -- depending on exactly how you measure, it's
2 between 7 and 11 inches. The other one was bent further and
3 it fractured and it broke. So what I did was I considered
4 what it said here, but what I did was I took the bent fork --
5 because the other fork just bent more and broke. So I took
6 the amount of crush to the bent fork, which was on the left
7 side.

8 Q. And you looked at this motorcycle when?

9 A. I looked at it in June of 2019, but all the measurements
10 I took were from Mr. McCullough's scans.

11 Q. And the measurements that you took from Mr. McCullough's
12 scans were when the bike was leaning up against a tree?

13 A. Yes.

14 Q. Okay. The bike wasn't pull out on a dolly and fully
15 scanned all the way around, was it?

16 A. No.

17 Q. Okay. And when you're scanning any item, is it
18 important to be able to get a full scan on all sides of the
19 bike if you're able to or going to rely on the measurements?

20 A. Depends on what the question is. But the side that you
21 could use in a case like this would be that side.

22 Q. Okay.

23 A. So I relied upon his scans because the -- as I
24 mentioned, I think before, if you look at the police
25 pictures, you can't see that fractured fork. The forks are

1 still intact. I'm assuming that fork broke in the accident
2 but I can't say for sure. But I used the bent fork that
3 existed in that picture right there.

4 Q. And that's the left fork or the right fork?

5 A. The left fork.

6 Q. Uh-huh. And did you have any scans of that fork where
7 the sleeve was actually pulled down in order to get a
8 measurement?

9 A. No. I just took the reduction of the wheelbase.

10 Q. So you don't know if that fork is potentially also
11 broken, do you?

12 A. It was not. I had to stand the bike up when I was --
13 when I looked at it in the salvage yard.

14 Q. Two years after, it was not broken?

15 A. Yes.

16 Q. Okay. And so you indicated that when you saw the bike
17 in the police photographs, the forks were not broken, right?

18 A. It doesn't look like it. It looks like both those
19 rubber boots are intact.

20 Q. Okay. And is fork deformation -- is the rubber boot
21 what we mean when we say "fork deformation"?

22 A. No. I'm just comparing it to the --

23 Q. Right?

24 A. -- pictures like Mr. McCullough's pictures.

25 Q. Fork deformation is actually the bend of the metal

1 that's inside of the sleeve, right?

2 A. That is correct.

3 Q. Okay. And you did not have any scan data or use any
4 photographs of that sleeve removed, right?

5 A. No.

6 Q. Okay. So you just guessed what that bend was inside of
7 that sleeve based on the data you had?

8 A. No, that's not correct. I used Mr. McCullough's
9 scans --

10 Q. Uh-huh.

11 A. -- and I drew a line from the center of the front axle
12 to the center of the rear axle.

13 Q. Mr. McCullough testified that he did not hypothecate
14 or --

15 MR. JOHNSON: Objection. Pitting.

16 THE COURT: Sustained. Pitting.

17 BY MR. WILLEY:

18 Q. Okay. In the scan data that you used, was the sleeve
19 removed?

20 A. No. I used his scan data.

21 Q. But the sleeve was not removed, correct?

22 A. That's correct. It would --

23 Q. Did you -- go ahead.

24 A. The scan looks just like that. So when I took that
25 measurement -- and again, you're adding that to the crush

1 depth of the pickup truck. So I took into account that
2 because I was using McCullough's data, I looked at a range of
3 inches of crush. And then when you compare it to the paper
4 and you're looking at 9 inches of crush on a door and
5 somewhere between 7 to, you know, 10 inches of crush on the
6 motorcycle, it puts it in the range that we've discussed
7 today.

8 Q. All right. And you were never able to get a measurement
9 on the metal that's inside of that sleeve, right?

10 A. That is correct.

11 Q. But in the study, that's exactly what they did, right?

12 A. I'd have to go back and read it.

13 Q. You don't recall how they measured fork deformation in a
14 fork deformation study that you're basing the entirety of
15 your opinion on?

16 A. I would have to go back and read that.

17 Q. Now, this video that you did -- or people in your office
18 did, this is not in evidence, right?

19 A. The video?

20 MR. JOHNSON: Objection.

21 THE COURT: Basis? It's not an appropriate question.

22 MR. WILLEY: Okay.

23 THE COURT: That's outside of his purview. The
24 objection is sustained.

25 Ladies and gentlemen, you are to disregard the last

1 question in its entirety and give it absolutely no
2 consideration in your deliberations.

3 BY MR. WILLEY:

4 Q. This is not a re-creation.

5 A. No.

6 Q. Okay. And it's not an animation?

7 A. No.

8 Q. And it's not done to scale with the scan data?

9 A. Well, the scan was used to produce this video. This is
10 a demonstration of the sight distance.

11 Q. Right. The scan was used because when your people went
12 out there to take the video, those bushes weren't there
13 anymore, right?

14 A. That's correct.

15 Q. And so you cut and pasted bushes from the police photo
16 into the video, right?

17 A. Yes.

18 Q. And you weren't able to re-create the occlusion that is
19 the bushes to a hundred percent accuracy, right?

20 A. No, but I did it in a very accurate way that would
21 portray that it was very similar to the night of the
22 accident.

23 Q. So what you did -- what you actually did is you took
24 photographs -- as I understand it, and correct me if I'm
25 wrong -- of the bushes and you just copy and pasted them into

1 the video, right?

2 A. It's a little bit more complicated than that. We used
3 the scan and we inserted the bushes from the police
4 photographs into the video so that the fence would have
5 vegetation on it. And so we used the same vegetation that
6 was there the night of the accident.

7 Q. Right.

8 A. Then what we did, because we had pictures of the police
9 car behind the bushes where you can see the lights, as I've
10 showed before, they showed you you can see through the
11 bushes.

12 Q. Right.

13 A. So what we did was we moved the -- we call it the
14 "opacity," but how much you can see through the bush --

15 Q. Right?

16 A. -- till it was similar or, you know, worse than what you
17 could you see in the actual police picture. So we adjusted
18 that such that you could see a light through the bush.

19 Q. Right. And opacity is when you take a picture and you
20 determine how transparent you want the entire picture to be,
21 right?

22 A. Yes.

23 Q. And so what you did in this case, because you didn't
24 want to use the scan data, is you took those photographs,
25 overlaid them into the video, and then made the entire

1 photograph 90 percent opacity, right?

2 A. Yes.

3 Q. And you can see light through 90 percent opacity, right?

4 A. Yes. Because, again, the bushes were mostly sticks.

5 Q. Right. And sticks are 100 percent opaque. You cannot
6 see light through a stick. You would agree with that?

7 A. Correct.

8 Q. And --

9 A. But you can see the police car through the bushes, so
10 the vegetation was not completely blocking the lights because
11 you can see the front of the police car.

12 Q. And you -- a leaf is a hundred percent opaque. You
13 can't see light through a leaf, right?

14 A. Correct.

15 (Exhibit displayed.)

16 BY MR. WILLEY:

17 Q. Okay. And the image that you're relying to say you
18 could see the police car is this one, right?

19 A. Well, I think there's three of them.

20 Q. Right. But --

21 A. I think we looked at them earlier.

22 Q. That's not taken from the stop bar, is it?

23 THE COURT: Please make sure you're referring to the
24 exhibit number.

25

1 BY MR. WILLEY:

2 Q. Defendant's 2, is that taken from the stop bar.

3 A. It might be. It would be pretty close to it.

4 Q. That would be pretty close to the stop bar?

5 (Exhibit displayed.)

6 BY MR. WILLEY:

7 Q. Do you see the stop bar in this photograph?

8 A. Yes.

9 Q. Okay. That's not pretty close to the stop bar, is it?

10 A. Well, the stop bar is in front of that near power pole.

11 Q. Uh-huh.

12 A. So it's -- I'm looking at the angle here. I think that
13 that's pretty close to the stop bar.

14 Q. All right. But your video wasn't taken from the stop
15 bar anyway, right? Because you measured?

16 A. Yes, the video was taken from the stop bar.

17 Q. The video was taken from the stop bar. From the middle
18 of the stop bar, right?

19 A. Yes.

20 Q. Okay. It was not taken from where Mr. McJunkin would
21 have had his view if he stopped at the stop bar, right?

22 A. Yeah, I think we've been over this. If his front bumper
23 was still at the stop bar and he had not pulled forward.

24 Q. Okay. The other issue with the video you showed is the
25 -- there's no frame of the window. So is the video taken

1 from the perspective of somebody sticking their head out the
2 window? Or how does that work?

3 A. No. It was taken from the driver's face. You can see
4 the top of the door.

5 Q. Mm-hmm.

6 A. And you can see the mirror in the video, if you look.

7 Q. Right.

8 A. So -- and that was done purposely to frame the video.

9 Q. Okay. And you can see it a little better than the jury
10 can, but I just -- I'm just going to circle it here. That's
11 the full street sign, right?

12 A. Yes, that's a street sign.

13 Q. Okay. And that fist pole is way back there, right?

14 A. That's what it looks like.

15 Q. And the view from that stop bar, you would agree with me
16 that the -- if you're right at the stop bar, the pole
17 intersects that street sign, doesn't it?

18 A. That's what it looks like.

19 Q. And the closer you are to Meeting Street, the longer the
20 line of sight would be, right?

21 A. Yes.

22 Q. Thank you, sir. That's all I have.

23 THE COURT: Ladies and gentlemen, would it cause you any
24 great convenience for us to attempt to finish this witness
25 today?

1 MR. FORD: I'm going to be quick.

2 THE COURT: Does anybody have any conflicts maybe with
3 another 10 or 15 minutes?

4 Okay. Any cross-examination of the witness,
5 Mr. Johnson?

6 MR. JOHNSON: No, your Honor.

7 THE COURT: Ms. Wesley?

8 MS. WESLEY: No, your Honor.

9 THE COURT: Any redirect, Mr. Ford?

10 MR. FORD: Very briefly.

11 THE COURT: You may proceed.

12 MR. FORD: Thank you.

13 THE COURT: You're welcome.

14 REDIRECT EXAMINATION

15 BY MR. FORD:

16 Q. Mike, I know you're tired. We're all tired.

17 To recap, is it accurate to say the City of North
18 Charleston defines the sight triangle as 3 by 3 by 3 on the
19 corner?

20 A. In that document that we looked at, yes.

21 Q. Fair enough. Was there any poles or bushes or fences in
22 that area at this intersection at the time of the accident?

23 A. No.

24 Q. Okay. Mr. Willey has asked you a lot about your opinion
25 today. That's his job. Has anything he's asked you today

1 changed any of your opinions?

2 A. No.

3 Q. Okay. Do you still hold to a reasonable degree of
4 engineering certainty that the sight distance was 300 feet,
5 depending on where you were pulled up?

6 A. It could be as much as that.

7 Q. Okay. Do you still hold to a reasonable degree of
8 engineering certainty that before he started to brake,
9 Bronson was going between 50 and 65 miles per hour?

10 A. Yes.

11 Q. Okay. Do you still hold to a reasonable degree of
12 engineer certainty that the primary and only causes of this
13 accident were Mr. Rash's speed and Mr. McJunkin's
14 inattentiveness?

15 A. Yes.

16 Q. Thank you very much.

17 THE COURT: Any objection to the witness being excused
18 from the plaintiff?

19 MR. WILLEY: No, your Honor.

20 THE COURT: Prom am defense, Mr. Johnson?

21 MR. JOHNSON: No, your Honor.

22 THE COURT: From the defense, Mr. Ford?

23 MR. FORD: No, your Honor.

24 THE COURT: From the defense, Ms. Wesley?

25 MS. WESLEY: No, your Honor.

1 THE COURT: Sir, you're excused.

2 THE WITNESS: Thank you.

3 THE COURT: You're welcome.

4 (Witness excused.)

5 MS. HONEYCUTT: Your Honor, would you like me to call
6 him?

7 THE COURT: Was there anything else? Did someone stand
8 up and ask a question?

9 MS. HONEYCUTT: Yes, ma'am.

10 THE COURT: And what was that question?

11 MS. HONEYCUTT: The witness from the DMV has been
12 waiting.

13 THE COURT: Ladies and gentlemen, would you all
14 accommodate us with a witness that will take about five
15 minutes? Would that cause --

16 MR. WILLEY: Your Honor, I have a matter of law as to
17 that witness.

18 THE COURT: I think all together it will be another 15
19 minutes. Would that cause anybody any scheduling conflicts?

20 Sir, is that about you getting to your residence?

21 JUROR: Yeah.

22 THE COURT: We'll take care of that. And they've told
23 us it's not going to be a challenge if you get there after
24 6:00. But I'll make sure that we call. Okay? Would that
25 make you feel better?

1 JUROR: Yeah.

2 THE COURT: Okay. Sir, when you step out into the
3 hallway for this matter of law, I'm going to have the clerk
4 get that phone number from you and we'll make sure we call
5 and I'll make sure I have a deputy take you home this
6 evening. Okay?

7 If you all will indulge us while we take care of this
8 matter of law, I appreciate it.

9 (The jury exited the courtroom at 5:44 p.m.)

10 (The following proceedings were had outside the presence
11 of the jury.)

12 THE COURT: You may be seated.

13 Okay. What is this next witness going to testify to?

14 MS. HONEYCUTT: Your Honor, this is Ms. Wearing, who's
15 coming down from Blythewood, the SCDMV witness who's going to
16 testify about the record and the limitations on the
17 beginner's permit held by Mr. Bronson Rash.

18 THE COURT: All right. And what's the objection?

19 MR. WILLEY: Your Honor, may I approach?

20 THE COURT: Mm-hmm.

21 MR. WILLEY: This is a memo. It was filed, your Honor.
22 And the basis of the objection is that the evidence is not
23 admissible under 402 and 401, and there is a bevy of case law
24 in other states as it --

25 THE COURT: I don't need to look to other states. One

1 of the issues in this case is his ability to master the use
2 of the motor vehicle. As the case is postured now, he had a
3 duty to keep -- to look -- to keep a clear lookout for other
4 objects and cars that may enter the roadway. So the decision
5 about whether it's relevant, probative, and more prejudicial
6 or more probative than prejudicial is one for this Court to
7 make. I do not need to look outside of our jurisdiction for
8 guidance on that.

9 MR. WILLEY: And your Honor, he did --

10 THE COURT: So I need to know, for what purpose are you
11 seeking to offer the testimony, Ms. Honeycutt?

12 MS. HONEYCUTT: Your Honor, the actual license record
13 itself, as well as the limitations specifically that --

14 THE COURT: And tell me what exactly it is you're
15 purporting to use.

16 MS. HONEYCUTT: The license -- this is a --

17 THE COURT: Let me see what it is.

18 MS. HONEYCUTT: Yes, ma'am.

19 THE COURT: That would be helpful. I guess I should
20 have just asked that more clearly. I apologize.

21 Is this his licensure and his driving record?

22 MS. HONEYCUTT: Yes, ma'am, your Honor. If you look at
23 the third page, it's a certified record.

24 THE COURT: All right. Just hang on for one second.

25 And so for what purpose are you seeking to have this

1 evidence admitted?

2 MS. HONEYCUTT: To establish that he was not licensed to
3 drive a motorcycle at that time, or if he even was licensed,
4 at the time of day.

5 THE COURT: So what type license did he have? And what
6 is this purporting to show?

7 MS. HONEYCUTT: He had a regular driver's license. A
8 week prior to this, his beginner's permit to drive a
9 motorcycle expired and he never had --

10 THE COURT: So where does that reflect that on this
11 exhibit?

12 Where does that reflect that on this exhibit?

13 MS. HONEYCUTT: Right there under -- see next to class?
14 See "BP"? That's a beginner's permit.

15 THE COURT: Am I not seeing something?

16 MS. HONEYCUTT: Right where your finger is.

17 THE COURT: License to -- okay. Class D. It says,
18 "function modify issued 10/25/16, expires 9/26/2026. First
19 issued 2/8/16."

20 MS. HONEYCUTT: Yes. That's his driver's license.

21 THE COURT: Okay. Got that part.

22 MS. HONEYCUTT: But when you look at prior --

23 THE COURT: Prior. What does "BP" stand for?

24 MS. HONEYCUTT: Beginner's permit.

25 THE COURT: And that's for motorcycle M?

1 MS. HONEYCUTT: Yes, ma'am.

2 THE COURT: "Function returned 2/8/16." And it expired
3 2/8/17.

4 MS. HONEYCUTT: Yes.

5 THE COURT: First issued 2/8/16. No restrictions. No
6 endorsements.

7 MS. HONEYCUTT: Correct.

8 THE COURT: But it was a beginner's permit, and there
9 are restrictions on a beginner's permit.

10 MS. HONEYCUTT: Yes.

11 THE COURT: And what are the restrictions on a
12 motorcycle beginner's permit?

13 MS. HONEYCUTT: You're not allowed to drive after 6:00
14 p.m. unassisted -- er, without another driver, is what she
15 will testify.

16 THE COURT: And so for what purpose are you seeking to
17 admit this?

18 MS. HONEYCUTT: To establish that he was not licensed to
19 drive at the time a motorcycle.

20 THE COURT: And so what does that tend to prove that's
21 of consequence?

22 MS. HONEYCUTT: Comparative negligence in this case,
23 your Honor, is our --

24 THE COURT: I'm sorry. I couldn't hear you.

25 MS. HONEYCUTT: Comparative negligence and the empty

1 chair.

2 THE COURT: Well, no. You all have pled comparative
3 negligence. He was the driver of the car, so he would -- his
4 comparative negligence the jury would have to determine.
5 Because they brought a survivor's action, and that action
6 inures to the parents. They stand in his shoes. They claim
7 that he had conscious pain and suffering. So he plays into
8 that analysis of whether they're -- because the jury could
9 find that his percentage of fault was greater than theirs,
10 which means that would be a burden for the defense on a
11 comparative negligence theory because there's been no
12 admission of liability.

13 So you are offering it for what purpose again?

14 MS. HONEYCUTT: To prove that comparative negligence,
15 your Honor. And it's negligence per se, so it's a violation
16 of statute.

17 THE COURT: And is it the statute that says what the
18 regulations are and the limitations for this permit?

19 MS. HONEYCUTT: Yes. At the end of --

20 THE COURT: And what statute is that?

21 MS. HONEYCUTT: 56-1-50, applicable 2016 to '17.

22 THE COURT: All right. Does Dominion have any objection
23 to this testimony?

24 And what's the young lady's name who's coming?

25 MS. HONEYCUTT: Marie Wearing, W-E-A-R-I-N-G.

1 THE COURT: You said Marie Wearing?

2 MS. HONEYCUTT: Yes, ma'am.

3 THE COURT: Uh-huh. Yes, sir, Mr. Johnson.

4 MR. JOHNSON: No objection, your Honor.

5 THE COURT: Any objection, Mr. Ford?

6 MR. FORD: No, your Honor.

7 THE COURT: And what is the basis of your objection,
8 Mr. Willey?

9 MR. WILLEY: The basis of our objection is that the
10 South Carolina court has looked at this before.

11 THE COURT: In what context?

12 MR. WILLEY: If the Court looks at *Kennedy v. Griffin*.
13 In that case it was a motor-vehicle wreck that showed
14 marijuana in the toxicology results in the driver's --

15 THE COURT: That's not analogous because the Supreme
16 Court has already determined that issues of that kind are not
17 generally admissible. Your driving -- the status of your
18 license and whether you were impaired are two different
19 things.

20 MR. WILLEY: And I --

21 THE COURT: So I need to know a case that's on point
22 about a driver's license.

23 MR. WILLEY: It does not look to driver's conventions,
24 but the analysis in those cases is important because in those
25 cases it is also negligence per se and negligence to use

1 those items and drive.

2 THE COURT: It's not the same as your driver's license.
3 Your driver's license dictates your ability to be on the
4 highway period.

5 MR. WILLEY: And I'll --

6 THE COURT: It is not about being high and driving.

7 MR. WILLEY: Our Supreme Court has said, your Honor,
8 that there has to be a causal link between the two. What the
9 defendants seek to do here is essentially make a res ipsa
10 argument in sheep's clothing. What they essentially contend
11 is if he had not violated his beginner's permit, he would not
12 have been on --

13 THE COURT: No. That's not how I take the argument.
14 What I hear them saying is it goes to his ability to navigate
15 the motorcycle --

16 MR. WILLEY: But that's --

17 THE COURT: -- which is directly related to comparative
18 negligence.

19 MR. WILLEY: But that's actually not accurate because
20 all you have to do in order to get past the beginner's permit
21 is go back down there and pay the fine. He had already had
22 it and --

23 THE COURT: But he didn't. And it's just like if your
24 child was driving a car with a beginner's permit and they hit
25 somebody, they're going to be cited and their license is

1 going to be suspended.

2 You're not supposed to drive after a certain time.
3 There's a reason you have beginner's. There's a reason you
4 have a permit. It's because the law presumes that your
5 capacity to navigate that vehicle is limited, and it imposes
6 limitations, which is directly relevant to your ability to
7 navigate, whether it's a car, whether it's a motorcycle.

8 Now I think you're required to have a license for
9 mopeds. I think. I'm not sure. Because a lot of people had
10 been driving them because their other license got suspended.
11 Yeah, they can post a new limitation on mopeds for the plates
12 on them as well as your ability to navigate them because of
13 the -- I don't know why, but for public policy I guess
14 because so many people have been driving them.

15 But you being -- having a toxi- -- well, toxicology
16 could be relevant too. I don't know what facts are in this
17 case that you're referring to.

18 MR. WILLEY: The same.

19 THE COURT: But I'd have to look at it. But --

20 MR. WILLEY: *Kennedy v. Griffin*, your Honor.

21 THE COURT: Yeah, but your ability to navigate a vehicle
22 on the roads of this state is always relevant, especially if
23 you have violated the statute by driving after the
24 limitations imposed. It's no different than if a truck
25 driver had a regular license but is required to have a CDL

1 and out there driving an 18-wheeler, which happens every day.

2 MR. WILLEY: Right.

3 THE COURT: And they cause accidents. And bet you dimes
4 to donuts that you would want to admit that if you were
5 representing somebody who hit somebody who was driving an
6 18-wheeler but had their regular license but not a CDL.
7 Because technically, they didn't have a right to be in that
8 vehicle on the highway at that time. It directly goes to
9 your ability to navigate the vehicle that you're driving.

10 MR. WILLEY: So in this particular circumstance, your
11 Honor, it is slightly different, even from that hypothetical,
12 in that Mr. Rash had exceeded -- he got his motorcycle
13 beginner's permit on February 8, 2016, more than a full-year
14 before the incident. Under our law, you keep that permit for
15 a 180-day probationary period, and if you are not fined,
16 cited, or otherwise -- which he was not -- you are then
17 eligible simply to go in and get the full permit.

18 Beyond that, Mr. Rash prior to this actually had a full
19 commercial driver's license in the state of Georgia. When
20 you transfer your license, you lose all of those endorsements
21 and you start over. And so that is what the case is here.

22 But what they would have to show to get around res ipsa
23 is that there's some specialized training, you know, that he
24 did not have, which they're not able to do. And that is what
25 the case law says. Even if he was -- even if you're driving

1 drunk and you get rear-ended, the fact that you were drunk
2 can --

3 THE COURT: It depends. That's not a good analogy
4 because if you stop -- if somebody stops short --

5 MR. WILLEY: Well, let me say --

6 THE COURT: -- in the middle of the highway and there's
7 nothing that impeded them and they were impaired, they're
8 going to be charged with DUI.

9 MR. WILLEY: If they stopped short.

10 THE COURT: And it may well come in as a part of their
11 capacity to have operated the motor vehicle on the roads of
12 this state. Not a good -- it's not analogous.

13 MR. WILLEY: Stopped at a stop light -- how about that?
14 -- and they're drunk and they get rear-ended, the fact that
15 they're drunk, negligent per se, does not --

16 THE COURT: That's -- I don't think that's the best
17 analogy.

18 MR. WILLEY: Well, the case that we've cited is a
19 marijuana case, and you can't smoke marijuana and drive your
20 car.

21 THE COURT: Yeah, I don't know what the facts are in
22 that case.

23 MR. WILLEY: The facts are right on point, your Honor.

24 THE COURT: Well, I don't know that I can --

25 MR. WILLEY: There were in the driver's system --

1 THE COURT: -- take that at face value.

2 MR. WILLEY: -- after the collision.

3 THE COURT: I'll have to read it and see.

4 MR. WILLEY: Understood. And all they're seeking to do
5 is make a res ipsa argument. Mr. Rash should not have been
6 there at that particular time based on this driver's license.
7 And if he wasn't, this wreck would not have happened.

8 THE COURT: I don't think that's what they're arguing.
9 I think that they are -- and correct me -- well, I need to
10 know what arguing.

11 MS. HONEYCUTT: Your Honor, negligence per se.

12 THE COURT: The case that you've mentioned, I don't see
13 it in your memo.

14 MR. WILLEY: It is on page number 3, your Honor, at the
15 very top. 358 S.C. 122. And there are other cases --

16 THE COURT: Is there a reason you're just giving this to
17 me now although it was filed March 29 at 10:32?

18 MR. WILLEY: It just came up. I don't --

19 THE COURT: No. It was mentioned earlier. And we knew
20 that this witness was coming in any event.

21 Go ahead, Ms. Honeycutt.

22 MS. HONEYCUTT: Sure. Your Honor, there is a rebuttable
23 presumption here that the plaintiff would then have the
24 burden of rebutting and their case is closed. And so as to
25 negligence per se, this can also be evidence of why Mr. Rash

1 was in a hurry if he was trying to beat his curfew. So our
2 theory is he was speeding and, you know, he --

3 THE COURT: If curfew is at 5:30, this is about him
4 driving well after 5:30.

5 MS. HONEYCUTT: I believe 6:00 is actually what they
6 said.

7 THE COURT: Yeah, that's 30 minutes. I mean, that's --
8 go ahead. I'm listening. For what purpose are you seeking
9 to introduce this?

10 MS. HONEYCUTT: Yes, your Honor. It is for that
11 purposes. The navigation of the bike and his experience on
12 the bike, and only holding a beginner's permit is an issue in
13 this case. And the fact that he only holds a beginner's
14 permit does not allow him to be on the road after 6:00. And
15 there's a reason, because 6:00 it gets dark, as it did here,
16 and it can cause, you know, issues for driving with a
17 beginner's permit.

18 THE COURT: But you're not going to argue that because
19 he didn't have a license that's why this happened. I didn't
20 say it accurately. The way Mr. Willey is saying you're
21 arguing it, is that --

22 MS. HONEYCUTT: It's not res ipsa.

23 THE COURT: -- the way you intend to introduce it?

24 MS. HONEYCUTT: No.

25 THE COURT: And the problem, Mr. Willey, is that you all

1 opened the door when you started talking about his interest
2 in motorcycles, his capacity to want to be involved in this
3 specialized unit, as well as his capacity to operate this
4 motor vehicle.

5 MR. WILLEY: Well, and --

6 THE COURT: Because the issue is his capacity to operate
7 the motor vehicle, his experience in operating it, his
8 ability to respond to hazards, and his ability in terms of
9 his duty of a proper lookout. Because he does have a
10 corresponding duty to proper lookout.

11 Whether you're coming down and you have the
12 right-of-way, the traffic rules and statutes require that
13 when you're approaching an intersection, even if you have a
14 green light, you're supposed to slow down before you go
15 across any traversing road or into an intersection. In
16 other words, the law basically presumes that you should
17 expect people to run lights and to pull out of intersections.
18 Although, it doesn't trump in terms of responsibility the
19 fact that you have the right-of-way, but it is something that
20 is appropriately considered.

21 MR. WILLEY: But the distinction here is that he had a
22 full driver's license, so he knew all of those --

23 THE COURT: But he wasn't in a car.

24 MR. WILLEY: If I may finish. He knew all of the normal
25 duties of the road and had gone through the motorcycle

1 training. The only thing that you have to do in South
2 Carolina when you get a motorcycle permit is wait for 180-day
3 probationary period to make sure you're not cited, and then
4 you're eligible for a full. And just --

5 THE COURT: But he didn't do it.

6 MR. WILLEY: Yeah, but he's not --

7 THE COURT: I can't consider what didn't happen.

8 MR. WILLEY: But it doesn't go to make any fact here
9 more relevant other than if he were abiding by the beginner
10 permit, he would not have been on that road on that
11 motorcycle at that time.

12 THE COURT: But I would never allow them to argue that.
13 But I think it does go to his capacity and experience to
14 operate this motor vehicle, where they have claimed
15 comparative negligence, and his ability to respond, navigate
16 that vehicle and to have kept it under control under the
17 circumstances.

18 MR. WILLEY: But there's no basis for that, your Honor,
19 boss there's no --

20 THE COURT: If he didn't get his license after 180 days,
21 I can't look into what he did or didn't do. The point is I
22 have to look at what was, which is he had a beginner's
23 permit. He did not have a license to ride the motorcycle
24 absent the endorsements. And he was not supposed to be
25 driving after 5:30.

1 MR. WILLEY: Which is the only difference. The only
2 difference in the beginner's permit and the regular is what
3 time you can drive after. And so the only reason you could
4 raise that he has a beginner's permit is to say "He should
5 not be on the road at that particular time." He had the
6 training. You can't get a beginner's permit --

7 THE COURT: That's an argument you can make.

8 MR. WILLEY: No. That's not -- your Honor --

9 THE COURT: Yes, ma'am.

10 MS. HONEYCUTT: That's also misstating because the
11 permit had expired. This witness is going to testify he
12 didn't even have a motorcycle beginner's permit. He was not
13 allowed to be on a motorcycle, period, any time of day. It
14 was expired.

15 MR. WILLEY: The probationary period had expired, but it
16 doesn't do anything to prove --

17 THE COURT: If your probationary period has expired, you
18 can't operate the vehicle.

19 MR. WILLEY: But the --

20 THE COURT: That's like saying if your child has a
21 beginner's permit and it expired, that they can drive your
22 car. They cannot.

23 MR. WILLEY: But the point is, your Honor, he had
24 already gone through all the training to operate the
25 motorcycle in two states. The only restriction is you can't

1 drive --

2 THE COURT: But he didn't live in those states. He
3 lived here. And there were --

4 MR. WILLEY: No. Including in this state to get --

5 THE COURT: He has not completed what he needed to
6 complete.

7 MR. WILLEY: You can -- but the only difference is you
8 can't drive it at that particular time, which is a straight
9 res ipsa argument. There is non distinction.

10 THE COURT: He didn't have the ability to drive at all.
11 It was suspended.

12 MR. WILLEY: And in a motor-vehicle case, a suspended
13 license cannot come into evidence.

14 THE COURT: I don't have any cases that say that. And
15 it comes in all the time.

16 MR. WILLEY: I guess this might be the first.

17 THE COURT: No, it's not a first.

18 Ms. Honeycutt, is there anything further?

19 MS. HONEYCUTT: No, ma'am.

20 THE COURT: Tell me again for what purpose you're
21 seeking to admit this evidence.

22 MS. HONEYCUTT: Again, this is a violation of the safety
23 statute. Negligence per se is a defense that's been raised i
24 this case. And he is not licensed to drive, and that is --
25 he had a beginner's permit only, which is limited for very

1 specific reasons, and he ended up getting in an accident at
2 the very time he would have been limited to drive if he had
3 even had the valid motorcycle permit.

4 So comparative negligence, your Honor.

5 THE COURT: Yeah, this case is not analogous. What it
6 talks about is a gentleman who was coming down a highway, a
7 truck darted out in front of him, an 18-wheeler, slammed on
8 brakes and then blocked the lanes, which forced him to slam
9 on his brakes and cause an accident. And what is dispositive
10 in this case and what the gravamen of the Court's ruling is
11 is that as a part of a routine test to make sure if they
12 administered any medications to Mr. Kennedy, they performed a
13 blood test on him.

14 But what is crystal clear in this opinion and what it
15 turns on is that the results of the test indicates the
16 presence of marijuana, but they don't indicate the level in
17 his system, how long they'd been in his system, nor did it
18 indicate that it was found in or around his vehicle, which
19 means in bottom-line analysis that they couldn't prove that
20 it would have affected his ability to operate the motor
21 vehicle.

22 Because as we know, which is totally not analogous to
23 this case, marijuana metabolizes in your system at a
24 different rate depending on your height, your weight, your --
25 whether you've had food, whether you've had something to

1 drink or not, your age -- a lot of factors affect how quickly
2 your body metabolizes any kind of substance. As we know,
3 opiates metabolize quicker. And if that would have -- and
4 the way I read this is if they had more evidence, it would
5 have come in because they could have proven that it would
6 have affected his ability to drive, as well as his reaction
7 times.

8 The case is clearly not analogous. Our laws are very
9 clear; you're required to have a license to navigate a
10 vehicle on the roads of this state. His motorcycle license
11 was a beginner's permit, which goes to the jury's ability to
12 judge his ability to navigate this vehicle, to keep it under
13 proper control, and his experience in using the vehicle. And
14 in addition to that, it was suspended.

15 And it had limitations on it, which is he wasn't
16 supposed to be out after a certain amount of time. And those
17 limitations are put in place for a reason. Those limitations
18 acknowledge that people of limited experience will not have
19 the same amount of ability to navigate the roads in a vehicle
20 as a person who has a license without restrictions.

21 And so this is clearly not analogous regarding the
22 influence of drugs or alcohol. And clearly this gentleman
23 was not even charged with driving while impaired. And so it
24 was not -- I agree with them; this should not have been
25 admitted to establish negligence by a violation of the safety

1 statute.

2 But the status of his license is relevant. It is
3 probative. It is not outweighed by any unfair prejudice.
4 And you can, of course, cross-examine the witness or ask
5 additional witnesses, which you have already done, about his
6 ability to navigate the motorcycle. You went into great
7 detail about the safety gear that he used when he navigated
8 the vehicle. All of which goes into his ability to navigate
9 this vehicle, which is relevant to the issue of comparative
10 negligence, which is the defense that has been propounded by
11 each defendant in this case.

12 MR. WILLEY: Three final points, your Honor.

13 Mr. Rash was also not charged or ticketed or cited in
14 this matter.

15 THE COURT: Of course he wasn't. He was in the ICU.

16 MR. WILLEY: Well, they do that all the time.

17 THE COURT: No, they don't. Not in near -- as grave a
18 condition as he was in, they were not going to charge him.

19 MR. WILLEY: His license was not actually suspended.

20 And the third thing is they're --

21 THE COURT: How do you prove that based on that printout
22 from DMV?

23 MR. WILLEY: It doesn't say -- it doesn't -- it had
24 expired.

25 MS. HONEYCUTT: It was expired.

1 THE COURT: Expired.

2 MR. WILLEY: The 180-day probationary --

3 THE COURT: Expired --

4 MR. WILLEY: Right.

5 THE COURT: -- suspended, same difference.

6 MR. WILLEY: He needed -- well it's different. He had
7 to turn it in. "Suspended" means you lose it for a reason.

8 THE COURT: "Expired" means you can't use it. If my
9 license was expired, i could not drive my car. And if i did,
10 I can assure you that the police, when they stopped me, would
11 pick me up, they would ask me to have somebody come get my
12 car or drive it because they would not let me leave the scene
13 and drive.

14 MR. WILLEY: Yes, but if you got in a wreck, it couldn't
15 be used against you.

16 The third thing I was --

17 THE COURT: I -- no. They'd have done the very same
18 thing. They would have told me to call somebody to come get
19 my car or have it towed. But they would not let me drive my
20 car from that scene --

21 MR. WILLEY: Right.

22 THE COURT: -- with a suspended license.

23 MR. WILLEY: But you could --

24 THE COURT: I have no authority to be on the roads of
25 this state without a valid driver's license.

1 MR. WILLEY: Yeah, but that's a res ipsa argument.

2 The third thing I would say is this: Comparative
3 negligence, their theory on that is speeding. Whether or
4 not --

5 THE COURT: I don't know what their theory is on it. It
6 hasn't fully developed.

7 MR. WILLEY: Well, whether or not he was on the road at
8 a particular time is not a valid theory for comparative
9 negligence because they have to show some causal connection.
10 Otherwise, it is simply res ipsa. And that is what I will
11 say on that.

12 THE COURT: What is the causal connection between --

13 MS. HONEYCUTT: His ability to navigate at night, your
14 Honor, is in question because he didn't have a full license
15 that enabled him to travel the roadway after 6:00 p.m. as it
16 got dark. That's the very reason. And we saw from the
17 videos today that it was pretty dark.

18 MR. WILLEY: But it was -- at the time of the wreck it
19 was not the end of civil twilight, so it was not pretty dark.
20 I would not that for the record.

21 THE COURT: Yes, ma'am. You want to share something
22 else with me?

23 MS. HONEYCUTT: Last thing is only that causation is a
24 jury issue, your Honor.

25 THE COURT: The objection is noted and overruled. The

1 status of Mr. Rash's driver's license is probative, it is
2 relevant, and any probative value is not outweighed by the
3 chance of unfair prejudice. It is relevant. It serves to
4 make more or less probable his ability to navigate the
5 motorcycle to keep it under control under the conditions
6 under which this incident took place. His capacity to
7 navigate the vehicle is probative. It is relevant. And the
8 conditions or limitations on his license are directly
9 relevant and probative.

10 The State of South Carolina, in its infinite wisdom,
11 has determined that there are certain classifications of
12 licenses, and ability -- which is a direct reflection on the
13 ability to navigate the vehicle. It takes into account
14 experience, age, and other factors. For example, a
15 beginners's permit for a car has the exact same limitations,
16 and those limitations recognize a driver's immaturity in
17 certain situations without being supervised on the highways
18 of this state.

19 I do not perceive that they are making a res ipsa
20 argument. I do not perceive that they are going to argue,
21 nor would I let them argue, that because he didn't have the
22 right to be on the road that this accident would not have
23 happened. What I perceive the argument of the defense to be
24 is that it relates directly to his ability to navigate the
25 motorcycle on this particular evening under the conditions

1 which this took place, his ability to react to known hazards,
2 which is all relevant and probative.

3 The cases cited in the memo are not analogous. They are
4 not on point. And I am looking specifically at the case of
5 -- that was cited, which is *Kennedy versus Griffin*, which I
6 agree with its holding. The toxicology results in this case
7 were not relevant. They could not be pinpointed as to time
8 and place, how long the marijuana had been in the gentleman's
9 system, or whether it in fact impacted his ability to
10 navigate his vehicle.

11 The other cases cited are all from other jurisdictions,
12 and I do not need to look to another jurisdiction when in a
13 comparative negligence case, if there are any violations of
14 any safety statutes, which your licensure is a safety
15 statute. It is put in place for the purpose of public
16 policy, to protect those who are navigating the roads of this
17 state. That's why licensure is required. Otherwise, we
18 could just get in a car and drive it. We could get on a
19 motorcycle and drive, get on a moped and drive it on the
20 public roads. These rules have a definite purpose.

21 And I have not had the opportunity, because I was not
22 given this memo until just now, regarding looking at the
23 facts of these other cases and whether they've been subject
24 to appellate review in other states or whether they're even
25 analogous to this particular situation. But the one South

1 Carolina case is clear not.

2 MR. WILLEY: We have only cited appellate cases, your
3 Honor.

4 THE COURT: Yeah, but I don't know the facts of those
5 cases. And I did ask for all of this stuff in advance before
6 we got started when this issue first came up and y'all said
7 y'all were going to file something. And it looks like you
8 did file it in on March 29. And certainly -- well, it was
9 10:32 last night, so I guess you could have given it to me
10 this morning.

11 MR. WILLEY: Yeah, I guess we could have. If I had
12 known this witness was coming, I certainly would have. And
13 apologize for that, your Honor.

14 THE COURT: Did you all have the ability to look at this
15 memo, Ms. Honeycutt?

16 MS. HONEYCUTT: Your Honor, I have not.

17 THE COURT: Do you have a copy of it?

18 MS. HONEYCUTT: I was just handed a copy. Yes, ma'am.

19 THE COURT: You want to take a few minutes to look at
20 it?

21 MS. HONEYCUTT: Your Honor, just in glancing over it, I
22 think your Honor is right; this is admissible information so
23 it is relevant. It's also -- it's also not --

24 THE COURT: Yeah, I wouldn't -- and I just need to be
25 clear for the record that you all are not going to argue the

1 mere fact that he didn't have a license as evidence of
2 negligence.

3 MS. HONEYCUTT: That is correct. We intend to argue --

4 THE COURT: Because I do think that that would not -- I
5 don't think you can make an argument that because his license
6 had expired that he didn't have the right to be on the
7 highway.

8 MS. HONEYCUTT: Correct, your Honor. That is not the
9 argument we intend to make.

10 THE COURT: Yeah. And even the Florida case that you
11 cited, it says, "A person's violating a traffic regulation is
12 admissible evidence only if it tends to prove that the person
13 has negligently operated an automobile."

14 Yeah. I see the rest of it, but I do think they can
15 establish it because it really goes directly to his ability
16 to operate this motorcycle. There are limitations on
17 licenses for a reason, which recognize your ability and
18 capacity to operate under certain circumstances. But I would
19 not allow them to argue that because his -- it had expired or
20 that it was a beginner's permit that somehow he was precluded
21 from being on the road and, therefore, if he had adhered to
22 those limitations, that this accident would not have
23 happened. I don't think that would be proper.

24 And the status of -- the fact -- and for me, frankly,
25 his license being suspended, expired is irrelevant. The

1 point is that there were endorsements and limitations on his
2 ability to operate that vehicle during certain times of the
3 day and under certain conditions. And it goes directly to
4 his ability to navigate the vehicle as it relates to
5 comparative negligence, but not to his capacity and ability
6 to be on the highway.

7 All right. Are we ready to forward?

8 MS. HONEYCUTT: Yes, your Honor.

9 THE COURT: Please get the jury for me, because I think
10 they're a little tired of us at this point and it is 6:17.

11 And for the record and out of an abundance of caution,
12 at the risk of repeating myself, I think there is a causal
13 connection between the limitations on his license, his
14 ability to navigate the vehicle, and on the issue as it is
15 related to the defense that it is interposed, which is
16 comparative negligence, based on his experience and ability
17 to navigate that machine.

18 You can bring them in.

19 (The jury entered the courtroom at 6:17 p.m.)

20 THE BAILIFF: All jurors are present, Judge.

21 THE COURT: Thank you.

22 Call your next witness.

23 MS. HONEYCUTT: Defense calls Marie Wearing.

24 THE COURT: Is Ms. Wearing in the hallway or is she
25 right there?

1 MS. HONEYCUTT: She's right here.

2 THE COURT: Okay. Ms. Wearing, we appreciate your
3 patience. If you would come forward for us, ma'am to be
4 sworn.

5 CLERK OF THE COURT: Place your left hand on the Bible
6 and raise your right.

7 (Witness sworn.)

8 CLERK OF THE COURT: Please be seated for me.

9 If you would state your full name for the record and
10 spell your last name, please.

11 THE WITNESS: Okay. It's Marie Wearing, W-E-A-R-I-N-G.

12 MARIE WEARING,
13 called as a witness on behalf of the Defendants, being first
14 duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. HONEYCUTT:

17 Q. Good evening, Ms. Wearing. Where do you work?

18 A. South Carolina Department of Motor Vehicles.

19 Q. How long have you worked for the DMV?

20 A. Thirty-three years.

21 Q. Where is your office?

22 A. Located in Blythewood, South Carolina.

23 Q. And you traveled from there today?

24 A. Yes.

25 Q. Thank you. And what do you do for the DMV?

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1 us to not change the geometry of the wires that it's
2 supporting. So the new pole will be set. A lineman will go
3 up, typically in a bucket truck, and they will move the
4 energized conductors at the top of that pole from the old one
5 to the new one. And then they will remove the old pole.

6 At times it's actually necessary to support the wires
7 temporarily, remove the old pole, set the new pole in the
8 same hole the old pole was, and then transfer the wires at
9 the top.

10 Q. Mr. Knight, you're an engineer, but you're not -- are
11 you a highway engineer?

12 A. No, sir. I am not.

13 Q. Is Dominion qualified to design roads and intersections?

14 A. We are not.

15 Q. Are you qualified to design and install infrastructure
16 for utility transfers?

17 A. Yes.

18 Q. Is there a national standard for safe construction of
19 utility infrastructure, or do you just kind of make it up as
20 you go?

21 A. There is a national standard. It's the NESC, which
22 stands for the National Electric Safety Code. It's been in
23 development since I believe 1913, so it is the national
24 industry standard for safe operation of the electric utility
25 industry.

1 Q. And have you, at our request, gone back and researched
2 older versions of the National Electric Safety Code?

3 A. I have.

4 Q. And what have you determined about the development of
5 the code over the years?

6 A. Well, like I said, the initial development started in
7 1913. I believe the first publication in its current form
8 was 1973. And it is revised and updated from time to time.

9 Q. Okay. Were you able to find the one that was in
10 effect when this pole closest to the intersection was
11 installed?

12 A. Yes, sir. I believe that is the 1990 version of the
13 NESC.

14 Q. Okay. Now, let me just divert you for a second. Have
15 you been able to find 1950 or 1940 version of the National
16 Electric Safety Code?

17 A. I have not.

18 Q. Okay. So we're just -- we're talking about at the time
19 that this pole was replaced in 1999, you were able to locate
20 that version of the National Electric Safety Code?

21 A. That's correct.

22 Q. Okay. And I'm going to show you, not the whole thing,
23 but the cover and one page, if we can pull that. And let me
24 ask you if you can identify that?

25 A. This is the 1990 National Electric Safety Code. Yes,

1 sir.

2 Q. All right.

3 THE COURT: Has that been marked for ID?

4 MR. COOKE: I'd like to introduce it into evidence.

5 THE COURT: Well, for right now it will be marked for
6 ID.

7 MR. COOKE: All right.

8 THE COURT: What number would that be, Madam Court
9 Reporter?

10 COURT REPORTER: Fifty-five.

11 THE COURT: Dominion Energy 55, ID only.

12 (Defendant Dominion Energy's Exhibit Number 55 marked
13 for identification.)

14 THE COURT: You may proceed.

15 MR. COOKE: Thank you, your Honor.

16 THE COURT: You're welcome.

17 (Exhibit displayed.)

18 BY MR. COOKE:

19 Q. Tell the jury a little bit more about what the National
20 Electric Safety Code covers.

21 A. So the National Electric Safety Code is how utility
22 industries across the nation are able to -- it is the
23 guidelines and the code and the rules of how to install,
24 maintain, construct, and operate electric utility
25 infrastructure.

1 Q. And what organization puts this together?

2 A. I believe this is put together by I triple E and ANSI.

3 THE COURT: Could you tell us what those acronyms mean,
4 sir?

5 THE WITNESS: I triple E is the Institute of Electrical
6 and Electronics Engineers. And ANSI I believe is the
7 American National Institute for Standards. I may have that
8 wrong.

9 BY MR. COOKE:

10 Q. American National Standards Institute?

11 A. There you go. ANSI.

12 Q. Okay. Thank you.

13 A. Yeah.

14 THE COURT: If you could give that acronym to the court
15 reporter, please. How it's spelled.

16 THE WITNESS: The acronym is A-N-S-I.

17 THE COURT: You may continue.

18 BY MR. COOKE:

19 Q. And is that a recognized organization that sets national
20 standards?

21 A. It is. Yes, sir.

22 Q. Have you reviewed the National Electric Safety Code to
23 determine whether it makes any provision for the safe
24 placement of utility poles?

25 A. I have reviewed that. Yes, sir.

1 Q. All right. And have you been able to find the section
2 of this code that would have governed the placement of poles
3 in 1999?

4 A. Yes. I have section 231.

5 Q. And it appears from this section that it governs the
6 placement of what they refer to as "support structures"?

7 A. A support structure is the same as a power pole.

8 Q. Okay. We call it "pole." They call it "support
9 structure."

10 From different things. Looks like fire hydrants,
11 railroad tracks, other things as well. Correct?

12 A. That's correct.

13 Q. Does it have a provision for how close it should be
14 placed to streets, roads, and highways?

15 A. Yes, sir. It does.

16 Q. Okay. Would you tell the jury what that says, please?

17 A. So in section B in regards to placement at streets,
18 roads, and highways, Number 1, if there is a curve present,
19 this specifies that the pole should be placed so that they
20 are behind the curve and avoid contact by ordinary vehicles
21 using and located on the traveled way.

22 Section 2 talks about if there is no curve present, the
23 supporting structure or pole should be located a sufficient
24 distance from the roadway to avoid contact by ordinary
25 vehicles using and located on the traveled way.

1 Q. And there's some other provisions that don't apply here?

2 A. Correct. Item 3 talks about the location of overhead
3 utilities on roads, streets, and highways with narrow
4 rights-of-way, and closely abutting improvements "are special
5 cases that must be resolved in a manner consistent with the
6 prevailing limitations and conditions." That typically is
7 going to apply to a more urban area, similar to the peninsula
8 of Charleston.

9 Q. Now, we've only shown the jury a page here. Have you
10 been through the whole National Electric Safety Code to see
11 if there's anything else in there that would place on
12 utilities any responsibility to design roads or intersections
13 or to maximize lines of sight from roads?

14 A. Correct. I have reviewed the National Electric Safety
15 Code. This section is the only one that referred to the
16 placement of poles. The National Electric Safety Code does
17 not have information about how to design the roadways or
18 intersection.

19 Q. And does it have any requirements at all for utilities
20 to maintain sight corridors?

21 A. It does not.

22 Q. What I -- just to give the jury an idea of the
23 comprehensiveness of the National Electric Safety Code, we've
24 only given them a couple of pages but about how thick is the
25 whole manual?

1 A. This book is approximately 10 inches by 12-inch book,
2 similar to a phone book. It's several hundred pages long.
3 It's probably approximately an inch to inch and a half thick.

4 Q. Does it cover every safety aspect of utility
5 transmission that one could imagine?

6 A. It does not?

7 Q. What does it not cover?

8 A. It's not going to talk about placing utility poles
9 directly adjacent to fences, directly adjacent to trees. It
10 doesn't -- it does talk about placing utility poles in
11 regards to buildings and billboards and those type of things.

12 Q. All right. And in addition to the placement of poles,
13 obviously it covers things like insulators, the types of
14 wires you're supposed to use and so forth?

15 A. It does.

16 Q. All right. How is the size of the pole decided?

17 A. So the size of the pole, the diameter of the pole, is
18 decided based off of what it is intended to support. So the
19 wires, equipment. Does it have transformers? Does it have a
20 switch on it? That's how the size of the pole is determined.

21 Q. And what was the diameter of these two poles?

22 A. Less than 12 inches, but I believe it was somewhere in
23 the 11 and a half to 11 and and three-quarters.

24 Q. According to the code and the standards that you
25 applied, were those the appropriate size for the load that

1 they were carrying?

2 A. They are.

3 Q. Okay. Does Dominion have a preference -- if you were
4 designing the system from scratch, putting in a new line
5 somewhere, does Dominion have a preference for whether to
6 place its lines on private property versus public utility --
7 er, public rights-of-way?

8 A. It does. For new installations, Dominion or SCE&G's
9 preference is to place the poles on private property under
10 protection of any -- well, that is our preference.

11 Q. Why is that?

12 A. That is because if we have an easement, we have
13 permission from the property owner. It is permanent. It
14 allows us to occupy that space, and we would not have to move
15 it in the future.

16 Q. So these poles, for example, if the highway department
17 came to you and said, "We want you to move them," what would
18 you have to do?

19 A. We would have to move them.

20 Q. Okay. But if you had purchased your own easement, say
21 from Mr. Quattlebaum, and put it in his yard, you wouldn't
22 have to?

23 A. That's correct. The easement would protect our --
24 protect the placement of our poles.

25 Q. Okay. Is there a safety component to that preference

1 THE WITNESS: Paul Nolan Quattlebaum,
2 Q-U-A-T-T-L-E-B-A-U-M.

3 THE COURT: You may proceed.

4 PAUL QUATTLEBAUM,
5 called as a witness on his own behalf, being first duly
6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. WESLEY:

9 Q. Hey, Paul. Can you hear me okay?

10 A. Yes.

11 Q. Okay. Paul do you have an understanding of why you're
12 here today?

13 A. Yes.

14 Q. What is that understanding?

15 A. I'm being blamed for the death of Bronson Rash.

16 Q. Okay. I want you to tell the jury a little bit about
17 yourself. Are you a native Charlestonian?

18 A. Yes. I was born in Florence. I've been here since
19 1996.

20 Q. But you've lived in South Carolina your whole life?

21 A. Yes.

22 Q. Okay. Do you have family here?

23 A. I do.

24 Q. And who is that?

25 A. I'm fortunate to have a lot of cousins in Charleston and

1 lots of aunts, uncles. My mom was born in Thomasville,
2 Georgia. She died when I was 11, but my dad is remarried and
3 they live close by too.

4 Q. You want to speak up just a little bit?

5 A. Sure.

6 Q. It's okay if you're nervous. You can have some water,
7 but just speak up.

8 Okay. Are you married?

9 A. I'm engaged.

10 Q. And tell us how you earn your living?

11 A. I'm a professional guitarist.

12 Q. Are you in a band?

13 A. Quite a few.

14 Q. Okay. Do your bands play around the Charleston area?

15 A. We do.

16 Q. Do y'all play -- what -- do you play clubs? Weddings?
17 What do you play?

18 A. Lots of weddings, clubs, yes.

19 Q. Do you ever play in any churches?

20 A. I have, yes.

21 Q. Do you remember the churches you played in?

22 A. Sure. I've played Unitarian Church on Archdale Street,
23 Unity Church on Leeds Avenue, Seacoast many times, the Dream
24 Center.

25 Q. Okay. You heard that Mr. Rash, who unfortunately

1 perished in this accident, was also a guitarist. Did you
2 ever have a chance to play with him?

3 A. No.

4 Q. Okay. Now, you live in -- I'm going to probably say
5 this wrong because I'm not a native Charlestonian. But you
6 live in the Whipper Barony neighborhood; is that correct?

7 A. That is correct.

8 Q. Okay. What address is your home in that neighborhood?

9 A. 3895 Walnut Street.

10 Q. Okay and when did you buy that home?

11 A. 2014.

12 Q. Do you remember what you paid for that home?

13 A. Seventy-seven thousand dollars.

14 Q. Okay. I'm going to put this -- I'm trying to use this,
15 but I may not be successful. I'm trying to show you what's
16 been marked as Akbar 84.

17 (Exhibit displayed.)

18 BY MS. WESLEY:

19 Q. Okay. I think we can probably tell from that. I'm
20 trying to show you Meeting Street Road too.

21 All right. Can you see this plat, Paul?

22 A. Yes.

23 Q. Okay. Do you see a street called Dogwood?

24 A. I do.

25 Q. Okay. When you moved into the neighborhood in 2014, was

1 that street named Dogwood?

2 A. No.

3 Q. Do you know what the name of it is?

4 A. Hedgewood.

5 Q. Okay. And the street intersecting with Hedgewood --
6 which is marked Dogwood on this plat -- what is that street?

7 A. There's Walnut, and then at the bottom Meeting Street.

8 Q. Meeting Street Road?

9 A. Yes. Old Meeting Street Road.

10 Q. Okay. Do you recognize the location of your home in
11 Whipper Barony there?

12 A. I do.

13 Q. Can you circle it?

14 A. (Indicated.)

15 Q. Okay. So your home is actually at the intersection of
16 Hedgewood and Meeting Street Road; is that correct?

17 A. Yes.

18 Q. All right. Does the front or the back of your house
19 back up to Meeting Street Road?

20 A. The back.

21 Q. All right. Now, is there a formal homeowners
22 association associated with this neighborhood?

23 A. No.

24 Q. Okay. But you've heard that there's some informal
25 neighbor gatherings and so forth; is that correct?

1 A. That's correct.

2 Q. Have you ever attended those?

3 A. No.

4 Q. Why is that?

5 A. Because I work at night, and it's not convenient for me.

6 Q. Okay. So your hours are kind of flipped?

7 A. Indeed.

8 Q. All right. And how did you learn about the accident
9 that we're here about today?

10 A. I was served with a lawsuit.

11 Q. Did you read the lawsuit?

12 A. Yes.

13 Q. Okay. Do you remember how you felt when you read the
14 lawsuit?

15 MR. THOENSEN: Objection. Relevance.

16 THE COURT: Yeah, I'm trying to figure out how that's
17 relevant, Ms. Wesley. The objection is sustained. Move on.

18 BY MS. WESLEY:

19 Q. Okay. What did you learn from reading the lawsuit?

20 THE COURT: Be very careful with that question.

21 BY MS. WESLEY:

22 A. Just that I was being blamed for the death of Bronson
23 Rash.

24 Q. Okay. Do you understand as a property owner that you've
25 got certain obligations to maintain your property?

1 A. I do.

2 Q. All right. What are those obligations?

3 A. Cut my grass, trim my bushes.

4 Q. I'm going to show you you a bunch of pictures. Make
5 sure you can see them and make sure the jury can see them.

6 (Exhibit displayed.)

7 BY MS. WESLEY:

8 Q. I'm going to show you what's been marked for ID as
9 Quattlebaum 15. I don't know -- are you going to be able to
10 see from that angle? And if you need to come around to look,
11 because I do want the jury to be able to see them as well.

12 A. I can see.

13 Q. Okay. I'm sure they can see?

14 THE COURT: Has that been admitted or is that ID only?

15 MS. WESLEY: It's ID only for now, your Honor.

16 THE COURT: ID only, as well as 84.

17 MS. WESLEY: It was marked as 15, and not 84.

18 THE COURT: No. I was referring to another one that was
19 ID only.

20 MS. WESLEY: Oh, pardon me.

21 THE COURT: That's okay.

22 (Exhibit previously marked for identification.)

23 BY MS. WESLEY:

24 Q. All right. So I'm going to try not to block you or
25 block them. Can you see that okay?

1 A. Yes.

2 Q. Okay. Do you recognize this?

3 A. I do.

4 Q. And do you recognize this intersection?

5 A. Yes.

6 Q. Do you recognize this area here?

7 A. Yes.

8 Q. The fence, the shrub, the grass -- how do you recognize
9 that?

10 A. It's my back yard at the intersection.

11 Q. Is that how that property looked around February 19,
12 2017?

13 A. Yes.

14 Q. Okay. I'm going to show you what's been marked as
15 Quattlebaum 17.

16 MS. WESLEY: Your Honor, I'm going to show him several
17 pictures, and if I may place them around so that the jury can
18 see them as they're --

19 THE COURT: Why not just use the ELM0?

20 MS. WESLEY: I'm sorry. I didn't hear you.

21 THE COURT: I said why not just use the ELM0?

22 MS. WESLEY: I was just --

23 THE COURT: Do you not have smaller versions of the
24 pictures.

25 MS. WESLEY: There are some smaller versions, but most

1 of these are blowups. I can lean them against the table or
2 however your Honor wants to proceed.

3 THE COURT: You need to make sure you refer to the
4 number of each exhibit you're referring to.

5 BY MS. WESLEY:

6 Q. Okay. Quattlebaum 17, can you see this, Paul?

7 A. I can.

8 Q. And do you recognize what this is?

9 A. Yes.

10 Q. Okay. Is this -- do you recognize this as being -- what
11 road is this right here that I'm referring to on 17?

12 A. Old Meeting Street Road.

13 Q. Are we looking north or south?

14 A. North.

15 Q. Okay. And do you recognize this grassy area that I'm
16 referring to here to the right of the road?

17 A. Yes.

18 Q. Okay. And this fence here and this shrub?

19 A. Yes.

20 Q. And this kind of vegetation on the fence?

21 A. Yes.

22 Q. All right. And what is this?

23 A. This is the view looking north on Old Meeting Street
24 Road.

25 Q. Is that -- is your property reflected in that picture?

1 A. It is, yes.

2 Q. Okay. And is that how your property looked around
3 February 19, 2017?

4 A. It is.

5 Q. Okay. I'm going to show you another picture that has
6 been marked Dominion Number 50.

7 (Exhibit displayed.)

8 BY MS. WESLEY:

9 Q. Can you see that, Paul? And do you know what -- or how
10 do you -- do you recognize this?

11 A. I do.

12 Q. And how do you recognize it?

13 A. It's another view heading north on Old Meeting Street
14 Road.

15 Q. Okay. Do you see your back yard in this picture?

16 A. Yes.

17 Q. Do you recognize your back yard in this picture?

18 A. I do, yes.

19 Q. Is this how the property looked around February 19,
20 2017?

21 A. Yes.

22 Q. I'll show you this one.

23 (Exhibit displayed.)

24 BY MS. WESLEY:

25 Q. This one is merely marked Defendant's Exhibit 5. I

1 assume it's Dominion. We're going to call this Dominion
2 Exhibit 5. Do you recognize -- can you see this, Paul?

3 A. I can, yes.

4 Q. Okay. Do you recognize this -- what's depicted in this
5 picture?

6 A. Yes.

7 Q. How do you recognize it?

8 A. It's looking down Hedgewood from Old Meeting Street
9 Road. I can see my back yard.

10 Q. Is this how your property looked around February 19,
11 2017?

12 A. Yes.

13 (Exhibit displayed.)

14 BY MS. WESLEY:

15 Q. This one is marked Defendant's Exhibit 3. I believe
16 it's Dominion Exhibit 3. Can you see that, Paul?

17 A. Yes.

18 Q. Okay. Do you recognize that.

19 A. I do. It's --

20 Q. And -- I'm sorry. I didn't mean to interrupt you.

21 A. It's looking south on Old Meeting Street Road. I can
22 see my back yard.

23 Q. Okay. And is this how your property looked around
24 February 19, 2017?

25 A. Yes.

1 (Exhibit displayed.)

2 BY MS. WESLEY:

3 Q. Okay. I'm showing you this one. This is Defendant's
4 52, which is Dominion 52. This is a Google Earth photo. Can
5 you see this, Paul?

6 A. Yes.

7 Q. Okay. And do you recognize what you're seeing in that
8 picture?

9 A. I do.

10 Q. What is it?

11 A. It's the view from where I would normally pull out into
12 the road turning left to go right on Old Meeting Street Road
13 from Hedgewood.

14 Q. Okay. And --

15 THE COURT: What number is that, please?

16 MS. WESLEY: It is Defendant 52.

17 THE COURT: Which defendant?

18 MS. WESLEY: Dominion.

19 THE COURT: Okay.

20 BY MS. WESLEY:

21 Q. Do you recognize your back yard in this?

22 A. Yes.

23 Q. In Defendant's 52?

24 A. Yes.

25 Q. Okay. And is this how your yard looked -- you all want

1 to see it. I'm sorry. My apologies.

2 Is this how your yard looked on --

3 A. Mm-hmm.

4 Q. Well, let me ask the day -- February 19, 2017?

5 A. Yes.

6 (Exhibit displayed.)

7 BY MS. WESLEY:

8 Q. Okay. Let me show you Defendant's 53. This is Dominion
9 53. It's another Google Earth photo. Can you see that,
10 Paul?

11 A. Yes.

12 Q. Okay. And do you recognize what's in this photo?

13 A. Yes. Another view north -- heading north on Old Meeting
14 Street Road. I can see my back yard, Mr. Akbar's back yard.

15 Q. Okay. And again --

16 A. Yes.

17 Q. -- if you can keep your voice up.

18 This is a little further up Meeting Street, so do you
19 see your back yard in this photo?

20 A. I think so.

21 Q. Okay. And if -- do you -- otherwise, though, you do
22 recognize this as being near your property?

23 A. Yes.

24 Q. Okay. And is this how this area looked around
25 February 19, 2017?

1 A. Yes.

2 Q. I've shown you a lot of pictures. Have you -- is one of
3 the ways -- well, let me ask you this. Is one of the ways
4 you recognize these areas is because you've driven this road
5 since living in that neighborhood?

6 MR. THOENSEN: Objection. Leading.

7 BY MS. WESLEY:

8 A. Correct.

9 THE COURT: Watch the leading, please.

10 MS. WESLEY: Sorry. I'm just trying to move it along.

11 (Exhibit displayed.)

12 BY MS. WESLEY:

13 Q. So Defendant's Exhibit 6, this is Dominion. Okay? Do
14 you recognize what's in this photograph?

15 A. I do.

16 Q. Okay. And what does this depict?

17 A. It looks like another view looking north on Old Meeting
18 Street Road.

19 Q. Okay. And do you see your back yard in this picture?

20 A. Yes.

21 THE COURT: What number is that, please?

22 MS. WESLEY: This is Defendant's 6, which is Dominion's.

23 Q. [By Ms. WEsley] Right. And is this how the property
24 looked about February 19, 2017?

25 A. Yes.

1 (Exhibit displayed.)

2 BY MS. WESLEY:

3 Q. Okay. I'm going to show you this one. Can you see
4 that, Paul?

5 A. Yes.

6 Q. This is Defendant's 51, which is Dominion. Now, can you
7 see anything that you recognize in this photograph?

8 A. Those businesses to the left -- that's also Old Meeting
9 Street Road. Those businesses to the left are further south
10 from my neighborhood.

11 Q. Okay. So have you had an opportunity to see this
12 35-mile-an-hour speed limit sign when you've driven Meeting
13 Street Road?

14 A. Yes.

15 Q. Okay. So do you recognize then this area in the
16 photograph?

17 A. Yes.

18 Q. Would you recognize this as how this area looked in
19 February 19, 2017?

20 A. Yes.

21 (Exhibit displayed.)

22 BY MS. WESLEY:

23 Q. And this is Defendant's Exhibit 2, which is Dominion.
24 Can you see this, Paul?

25 A. I can.

1 Q. Okay. And do you recognize your back yard in this
2 photograph?

3 A. Yes.

4 Q. Okay. Now, this one's at night, or after the sun has
5 set. Do you see that?

6 A. Correct.

7 Q. Okay. Have you driven this area either at dusk or at
8 nighttime?

9 A. Both.

10 Q. Okay. And so do you recognize this to be your back yard
11 at this time of night?

12 A. Yes.

13 Q. Do you recognize it at this time of evening or dusk on
14 or around February 19, 2017?

15 A. Yes.

16 Q. All right. I'm going to put back up Quattlebaum 17.
17 You know what? I'll put this one right here. There's got to
18 be a right way to do this.

19 (Exhibits displayed.)

20 BY MS. WESLEY:

21 Q. If I put this picture over here on this second easel,
22 Paul, can you see it? Just tell me if you can or can't.
23 I'll adjust it.

24 A. No.

25 Q. Okay.

1 MS. WESLEY: Madam Court Reporter, does this block you?

2 COURT REPORTER: It depends on where you're standing.

3 BY MS. WESLEY:

4 Q. Can you see that, Paul?

5 A. Yes.

6 MS. WESLEY: Your Honor, does this block you?

7 THE COURT: I'm fine.

8 BY MS. WESLEY:

9 Q. And you can see the second easel as well; is that right?

10 A. Yes.

11 THE COURT: What number is that?

12 MS. WESLEY: The second one -- let me make sure I've
13 told you correctly. We've got Quattlebaum 15, and we've got
14 Quattlebaum 17. And they have been identified.

15 Q. [By Ms. Wesley] All right. So in Quattlebaum 15, do
16 you recognize this intersection?

17 A. I do.

18 Q. Yeah. And you've already spoken to this, but is this
19 your fence and your back yard?

20 A. It is.

21 Q. Was that fence there when you bought the property?

22 A. It was.

23 Q. Have you ever altered the fence?

24 A. No.

25 Q. Do you see that shrub at the corner?

1 A. Yes.

2 Q. And was this how the fence looked on February 19, 2017?

3 A. Yes.

4 Q. Okay. Do you see this shrub here on the corner of the
5 fence?

6 A. Yes.

7 Q. Okay. Is that in your back yard?

8 A. Yes.

9 Q. Okay. Is this how this shrub looked on February 19,
10 2017?

11 A. Yes.

12 Q. Okay. Did you plant that shrub?

13 A. No.

14 Q. Was it there when you moved in?

15 A. Yes.

16 Q. Okay. Why did you keep it there?

17 A. I like a natural look to my yard.

18 Q. Okay. Do you ever trim or cut that shrub?

19 A. I do.

20 Q. When is that?

21 A. As needed. And throughout the seasons.

22 Q. Okay. Do you see the area in Quattlebaum 15, this
23 glassy area here that actually abuts Meeting Street Road and
24 a little bit of Hedgewood?

25 A. Yes.

1 Q. Okay. Is this also your property?

2 A. It is.

3 Q. Do you have -- er, let me ask you, on February 19, 2017,
4 did you have any shrubs planted in that area?

5 A. No.

6 Q. Now, you've lived in this neighborhood continuously
7 since 2014; is that right?

8 A. That's right.

9 Q. Okay. And have you had an occasion to use the
10 intersection of Hedgewood and Meeting Street Road?

11 A. A thousand times.

12 Q. Okay. So have you ever had trouble making a left-hand
13 turn onto --

14 A. (Indicated.)

15 Q. Let me finish. I know you're going to ask -- I mean, I
16 know you know what I'm going to ask, but let me finish.

17 Have you ever had trouble turning left onto Meeting
18 Street Road, I believe going south, off of Hedgewood?

19 A. No.

20 Q. Okay. But you, yourself, have called this intersection
21 dangerous; is that right?

22 A. That's correct.

23 Q. Why is it dangerous?

24 A. Because of the curve coming -- when you're heading
25 north, because of the curve. And the fact that people drive

1 too fast.

2 Q. Drive too fast where?

3 A. Coming around that curve.

4 Q. On Meeting Street Road South?

5 A. Yes.

6 Q. Oh, I keep wanting to call it "South." Meeting Street
7 Road?

8 A. That's correct.

9 Q. Okay. So when they're coming north, they're speeding
10 and coming too fast?

11 A. Correct.

12 MR. THOENSEN: Objection. Leading. Relevance.

13 THE COURT: Sustained. Leading. And it is relevant.
14 Overruled.

15 MR. THOENSEN: Okay.

16 THE COURT: But watch the leading.

17 BY MS. WESLEY:

18 Q. Okay. How do you make a left-hand turn at this
19 intersection?

20 A. I stop at that stop bar, and then I pull my car up until
21 I can get a clear view of what's coming in both directions.

22 Q. Okay. Of what's coming north on Meeting Street Road as
23 well?

24 A. Yes.

25 Q. Okay. And is there enough room for you to pull your car

1 from the stop bar to the edge of Meeting Street Road without
2 actually being in the road?

3 A. Yes.

4 MR. THOENSEN: Objection. Leading.

5 MS. WESLEY: Okay.

6 THE COURT: Sustained. Leading. Rephrase.

7 BY MS. WESLEY:

8 Q. Okay. Is there --

9 MS. WESLEY: I'm asking, is there enough room?

10 THE COURT: It's still a leading question.

11 BY MS. WESLEY:

12 Q. Okay. So how much room is there from the stop bar to
13 the edge of the road?

14 A. I heard 14 feet. I have no reason to doubt that, but I
15 can fit my car --

16 Q. When --

17 A. -- in between.

18 Q. Okay. And does your car ever poke out into Meeting
19 Street Road when you're doing that?

20 A. No.

21 Q. Okay. And is there -- have you had sufficient room to
22 pull forward and make your left on Meeting Street Road?

23 A. I have.

24 Q. When you were turning left onto Meeting Street Road, did
25 your fence ever block your view?

1 A. No.

2 Q. When you were turning left at any time -- and I'm
3 talking about the whole time you've used this intersection --

4 A. Never.

5 Q. -- did that shrub ever block your view turning left onto
6 Meeting Street Road?

7 A. Never.

8 Q. Okay. You know that your fence and Mr. Akbar's fence
9 are one solid line, correct?

10 A. Correct.

11 Q. Okay. When you turned left, has Mr. Akbar's fence ever
12 blocked your view?

13 A. Never.

14 Q. Has any vegetation other than that shrub, either on your
15 proper or Mr. Akbar's property, ever blocked your view in
16 turning left?

17 A. Never.

18 Q. Okay. Have you ever had an accident turning left onto
19 Meeting Street Road?

20 A. Never.

21 Q. Have you ever seen an accident of anyone turning left on
22 Meeting Street Road?

23 A. Never.

24 Q. Okay. So in all the years that you've lived there,
25 you've had time in making your left-hand turns to form some

1 observations about the people coming north on Meeting Street
2 Road?

3 A. Yes.

4 Q. And what are those observations?

5 A. That many, many people like to speed and could also be
6 otherwise distracted with their phone or --

7 Q. Well, I don't want you to guess about that.

8 A. Right.

9 Q. I'm just asking what your experience is?

10 A. My experience is people speed.

11 Q. Was that the case in February of 2017?

12 MR. THOENSEN: Objection.

13 THE COURT: Basis?

14 MR. THOENSEN: Foundation.

15 THE COURT: Overruled.

16 BY MS. WESLEY:

17 Q. Was that a yes?

18 A. Yes.

19 Q. Okay. Now, going left on Meeting Street Road, you've
20 driven, I assume, south on Meeting Street Road -- or just
21 tell the jury how many times have you continued to drive
22 south on Meeting Street Road to wherever you're going?

23 A. More than I can count. It would probably be over a
24 thousand.

25 Q. Are you familiar with where the first streetlight that

1 you would encounter going south on Meeting Street Road is?

2 A. From my house, yes.

3 Q. Where would that be?

4 A. Dorchester.

5 Q. About how far from Hedgewood is that?

6 A. It's a little under a mile.

7 Q. Okay. And then have you turned right onto Meeting
8 Street Road from Hedgewood?

9 A. Many, many times.

10 Q. And have you gone past Melbourne when going north on
11 Meeting Street Road?

12 A. I have.

13 Q. Okay. Is there a light at Melbourne?

14 A. No.

15 Q. Was there a light -- was the light at Dorchester that
16 we've talked about, was that there in February of 2017?

17 MR. THOENSEN: Objection. Leading.

18 THE COURT: Sustained. Leading. Rephrase.

19 BY MS. WESLEY:

20 Q. When did that -- do you have any knowledge of if that
21 light was not there at Dorchester in February of 2017?

22 A. It's been there as long as I can remember.

23 Q. Okay. And that was a better way to say it. I should
24 have asked you that.

25 The light -- pardon me. Since you've lived there, has

1 there ever been a light at Melbourne?

2 A. No.

3 Q. Okay. And was there a light on Melbourne around
4 February of 2017?

5 A. No.

6 Q. Okay. So going from -- you've heard the testimony that
7 Mr. Rash was only about a quarter-mile from work from
8 Hedgewood; is that right?

9 A. That's right.

10 Q. Okay. So do you have any idea about the distance
11 between the light at Dorchester and Melbourne Road? Do you
12 know how far that would be on Meeting Street Road?

13 A. I think right at a mile.

14 Q. Okay.

15 MS. WESLEY: Your Honor, at this time, we would like to
16 move these pictures into evidence.

17 THE COURT: I'll deal with them later.

18 MS. WESLEY: And if you need, I can reread them.

19 THE COURT: I'll deal with them later. I've kept track
20 of them.

21 MS. WESLEY: Okay. Thank you, your Honor.

22 THE COURT: Mm-hmm.

23 MS. WESLEY: I didn't -- did I do -- I did do
24 Defendant's 2, didn't I?

25 COURT REPORTER: Yes.

1 MS. WESLEY: That's all I have, your Honor.

2 THE COURT: Any questions, Mr. Johnson?

3 MR. JOHNSON: Yes, your Honor.

4 THE COURT: If you would take that picture down for me,
5 please, Ms. Wesley.

6 MS. WESLEY: Oh, yes.

7 THE COURT: Thank you.

8 CROSS-EXAMINATION

9 BY MR. JOHNSON:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. My name is George Johnson, and I represent Dominion
13 Energy. I have a couple of followup questions for you.

14 You mentioned that the foliage at the corner didn't
15 block your view, correct?

16 A. That's right.

17 Q. And the fencing didn't block your view, correct?

18 A. That's right.

19 Q. And did the poles block your view?

20 A. No.

21 Q. All right.

22 (Exhibit displayed.)

23 BY MR. JOHNSON:

24 Q. And looking at Defendant's Exhibit 6 --

25 THE COURT: Which defendant?

1 MR. JOHNSON: Dominion.

2 THE COURT: Thank you.

3 BY MR. JOHNSON:

4 Q. Do you see a blue car at the intersection?

5 A. Yes.

6 Q. Okay. Is that your car?

7 A. No.

8 Q. Okay. Is that what -- when you were describing pulling
9 up to look both ways, is this what you're describing?

10 A. Yes.

11 MR. JOHNSON: No further questions, your Honor.

12 THE COURT: Mr. Ford, any questions for the witness?

13 MR. FORD: No, your Honor.

14 THE COURT: Mr. Willey any questions -- or Mr. Thoensen,
15 any questions for the witness?

16 MR. THOENSEN: Yes, your Honor.

17 THE COURT: You may proceed.

18 MR. THOENSEN: Thank you, your Honor.

19 THE COURT: You're welcome.

20 CROSS-EXAMINATION

21 BY MR. THOENSEN:

22 Q. Mr. Quattlebaum, Ms. Wesley showed you a series of
23 photos, and I'm just going to pick up on that and show you a
24 couple as well.

25 (Exhibit displayed.)

1 BY MR. THOENSEN:

2 Q. I'm showing you Plaintiff's Exhibit Number 10,
3 Mr. Quattlebaum. That's the shrub in your yard, is it not?

4 A. It is.

5 MS. WESLEY: Your Honor?

6 THE COURT: Yes.

7 MS. WESLEY: I can't see.

8 THE COURT: Turn it so that he can -- so that Ms. Wesley
9 standing over there can see it, please.

10 Thank you.

11 MR. THOENSEN: Standing over -- I gotcha.

12 THE COURT: Or do you have a picture where you can put
13 it on the ELM0?

14 (Exhibit displayed.)

15 BY MR. THOENSEN:

16 Q. Mr. Quattlebaum, I'm going to show you Plaintiff's
17 Exhibit Number 5. That's also your shrub at the corner of
18 Hedgewood and Meeting, isn't it?

19 A. Yes.

20 Q. Okay. Do you have an understanding that your fence is
21 outside of your property line?

22 A. No.

23 Q. You don't? Okay.

24 A. My property line goes to the road.

25 (Exhibit displayed.)

1 BY MR. THOENSEN:

2 Q. I'm showing you what's been marked for identification
3 purposes as Plaintiff's 185. Can you see that,
4 Mr. Quattlebaum?

5 A. I can see that.

6 Q. And do you agree that your property is labeled "Property
7 Number 1" there?

8 A. Yes.

9 Q. And I'll represent to you that this is GIS data
10 reflecting the property lines.

11 MS. WESLEY: Your Honor, objection. I think we have an
12 issue of law.

13 THE COURT: Mr. Foreman, ladies and gentlemen -- well --

14 MS. WESLEY: I can tell you right now if you'd like.

15 THE COURT: I have a brief matter of law to take up with
16 counsel. During the break, please do not discuss the case.
17 Please leave your notepads in your seats. Your lunch is
18 here. It is in the jury room. As soon as we're done with
19 this witness, we're going to take a lunch break.

20 (The jury exited the courtroom at 12:11 p.m.)

21 (The following proceedings were had outside the presence
22 of the jury.)

23 THE COURT: What's the objection, Ms. Wesley?

24 MS. WESLEY: Your Honor, this picture, I'm pretty sure,
25 is based on Mr. McCullough's orange scan -- the wall that you

1 ruled was inadmissible. It's also GIS information, which we
2 already objected to as not being reliable. It's not --

3 THE COURT: Is it the property line?

4 MS. WESLEY: It is not.

5 THE COURT: How can you confirm that this is, in fact,
6 the property line?

7 MR. THOENSEN: Mr. McCullough explained his process.
8 This is part of his --

9 THE COURT: Mr. McCullough is not a surveyor and he does
10 not have -- survey records -- as you know, if you buy a
11 house, part of the closing is you get a survey. You have a
12 qualified licensed surveyor who takes down the lines.
13 Oftentimes the lines that you think are the lines are not
14 once you get your survey. It can even affect whether a sale
15 is consummated or not.

16 So you would have to have an official document showing
17 the survey lines, which is available at the RMC office. It's
18 probably online now because of COVID; I'm not sure. But if
19 you want to refer to the property lines, you need a document
20 that is the actual official property lines for this property,
21 not what somebody estimates them to be.

22 MR. THOENSEN: My understanding is this is not an
23 estimate. This is based on GIS data.

24 THE COURT: You have heard my instructions. Get
25 something with the actual survey lines on it. And until you

1 have that -- once you have that, then we can use that. I'm
2 not using someone else's estimated survey lines based on GIS
3 data when we know it's a matter of public record and notice.
4 All survey lines and property lines are documented, because
5 all property records are notice documents and they're
6 required to be filed. So the survey lines will be right
7 there along with the other documents at the RMC site, or if
8 you need to walk over there and get a copy.

9 MR. THOENSEN: Understood. Our position is this is
10 accurate data. Understand your ruling.

11 THE COURT: The Court has ruled?

12 MR. FORD: May I be heard?

13 THE COURT: Unless you can establish the appropriate
14 foundation that this is actually the property lines, you
15 cannot use it, especially when we have official documents
16 that notate where the survey lines are.

17 Yes, sir.

18 MR. FORD: Just I'm looking at the South Carolina,
19 Charleston County GIS website, and it says as follows:
20 "Charleston County, South Carolina, disclaimer: This map is
21 a graphic representation and should only be used for
22 illustrative purposes. In no way should this map be used for
23 exact locations."

24 We use this to support the objection and make our own
25 objection that this is inaccurate and doesn't have

1 foundation. It's just an inaccurate document for
2 establishing properly lines.

3 THE COURT: Did anybody subpoena or ask in discovery for
4 the surveys?

5 MS. WESLEY: We did not, your Honor.

6 THE COURT: Did you?

7 MR. THOENSEN: I am not sure.

8 THE COURT: Mr. Ford, did you?

9 MR. FORD: No.

10 THE COURT: Did Dominion?

11 MR. COX: No, your Honor.

12 MS. WESLEY: The plat shows the property lines.

13 THE COURT: Which plat is that?

14 MS. WESLEY: Akbar -- I'm sorry; I don't remember the
15 exhibit number. The map of Whipper Barony.

16 THE COURT: Where is that located?

17 MR. FORD: We do have the plat in evidence, and it shows
18 the property line.

19 THE COURT: You said it's not in evidence/.

20 MR. FORD: It is.

21 MS. WESLEY: It is.

22 THE COURT: It is in evidence. What number is that?

23 MS. WESLEY: I think it's on that table, your Honor.

24 THE COURT: You can get it.

25 MR. THOENSEN: That is in evidence, but it doesn't show

1 the fence and the shrubs.

2 THE COURT: I'm not going to debate this.

3 MS. WESLEY: It's --

4 THE COURT: You know where the lines are. There are
5 records. All property transactions are notice documents
6 because owners, sellers, buyers are charged with notice.
7 They can't come back later and say, "I didn't know." So if
8 you want the actual property lines, they are available to
9 you. You need to get them. I'm not using any estimated
10 lines, any guesstimated lines, any what-might-be lines.

11 MS. WESLEY: It's Akbar 84, your Honor.

12 THE COURT: But is that actually the property lines or
13 is that just a subdivision drawing? Because that's not
14 always accurate either.

15 MR. THOENSEN: It's a drawing.

16 MS. TILLMAN: The plat does accurately depict the
17 property lines because we also admitted Mr. Akbar's deed into
18 evidence, which refers to the plat for the abuttings and
19 boundaries of his property.

20 THE COURT: So I would assume you all also have
21 Mr. Quattlebaum's deed.

22 MS. WESLEY: I do. I just didn't show it to him. But I
23 can, your Honor, if you like. Or even maybe --

24 THE COURT: I just think to get --

25 MS. WESLEY: -- you could take judicial notice.

1 THE COURT: -- the accurate survey lines.

2 MR. THOENSEN: I understand.

3 THE COURT: I'm sure when you bought your house you got
4 a survey so you can know where your lines were so when you
5 put your fences up and everything your neighbors can't
6 complain. Everybody gets a survey. Somebody comes out with
7 the equipment. They measure your property.

8 And oftentimes people are surprised because they think
9 their property is one way. They also get notice of all the
10 easements. Because what they think is theirs isn't. So you
11 have to -- when you purchase property, you have to purchase
12 it eyes wide open because you can't come back later and
13 complain. That's why all those documents are notice
14 documents. And the case law supports that.

15 So if you get an accurate document, that is on file,
16 that reflects the property lines, you can use that. But you
17 will not be using anyone's guesstimate of the lines who's not
18 a surveyor. And it does not accurately reflect the
19 Charleston County data.

20 Do you need a few minutes to get that or does somebody
21 have it? I would have assumed that that would have been one
22 of the first things y'all got in discovery.

23 MR. THOENSEN: This was taken by a civil engineer.

24 THE COURT: I've been very clear. And I'm not rehashing
25 it and I'm not re-arguing it. The Court's ruled. So if you

1 want time to go get the accurate survey or if you want to
2 look at these plats and see if they're accurate, you're
3 welcome to utilize those.

4 But while we have the jury out, let me deal with a
5 couple of other exhibits that have been noted as we've been
6 going through testimony that I'm not sure whether they're in
7 or out.

8 Okay. I have -- we had Defendant's 54, Dominion Energy,
9 was marked for ID only. I've admitted that pursuant to
10 803(6), which was the compilation of customer-service
11 records.

12 Then that took us to -- okay. I had Quattlebaum 6, ID
13 only, which is a picture that was with Mr. McKnight. Has
14 that already been admitted, Quattlebaum 6? Is there any
15 exception to to Quattlebaum Number 6 being admitted?

16 MR. WILLEY: I'm not sure what it is.

17 MR. COOKE: Your Honor, we published that but --

18 THE COURT: You withdrew it?

19 MR. COOKE: Yes, your Honor.

20 THE COURT: Okay.

21 MR. COOKE: I switched to a different exhibit.

22 THE COURT: Okay. That -- but I think later on
23 Ms. Wesley tried to use that.

24 MS. WESLEY: I did.

25 THE COURT: So I need to know if there's an exception to

1 Quattlebaum 6.

2 MR. WILLEY: I think it was just demonstrative. She
3 didn't use it.

4 MS. HONEYCUTT: Yes, ma'am, she did.

5 THE COURT: All -- I haven't dealt with -- she tried to
6 move them all in. I told her I would deal with them later
7 because I --

8 MR. WILLEY: Oh.

9 THE COURT: -- didn't want to do it in the presence of
10 the jury.

11 MR. WILLEY: Yes, we would except to this one.

12 THE COURT: What is Quattlebaum 6? It's an accurate
13 depiction of the intersection.

14 MR. WILLEY: But the -- so the -- this --

15 THE COURT: I don't think it matters. It's
16 self-authenticating. It's a picture. Unless you have a
17 good-faith argument that somehow it's been hypothecated and
18 it's not an accurate picture.

19 MR. WILLEY: We just don't think it shows what happened
20 in this case.

21 THE COURT: It doesn't have to show. It shows the area.
22 (Defendant Quattlebaum's Exhibit Number 6 admitted into
23 evidence.)

24 Please don't approach the bench. You can talk -- I'm
25 not meaning anything wrong.

1 MR. WILLEY: No, it's fine.

2 THE COURT: I don't know who's vaccinate and not.

3 MR. WILLEY: I am.

4 THE COURT: I've been healthy this long for a reason.

5 MR. WILLEY: Okay.

6 THE COURT: Thank you. All right.

7 MR. WILLEY: I haven't been boosted.

8 THE COURT: Well, even vaccinated, it doesn't keep you
9 from getting it; it just keeps you from being deathly ill.
10 Yeah. It's flu season, allergy season, everything. It's not
11 personal.

12 All right. Defendant ID 47A was the SCDOT work plan.
13 And have we reached a conclusion about that? Was there any
14 exception to 47A being admitted not that Mr. Knight has
15 identified that there are poles on that and we have the
16 certification from SCDOT that is, in fact, their public
17 record of this area?

18 MR. WILLEY: There is.

19 THE COURT: And what's the basis of the objection.

20 MR. WILLEY: It -- reliability, relevance, 401 and 403.
21 That is a plan for the road. That is not what the road
22 actually looked like in 1950. So it only serves to confuse
23 the jury that that was the condition of the road in 1950.
24 There's been no testimony about that. And for that reason,
25 we don't think it should come in.

1 THE COURT: What would be the basis for offering the
2 document? Actually, it was coming in through Mr. Knight, so
3 who's going to argue. It was offered through you,
4 Mr. Johnson, but I don't think -- I think now that we've had
5 the overlay of the testimony and Mr. Knight's direct exam,
6 for what purpose is it being offered?

7 MR. COOKE: It's been offered by Mr. Knight to indicate
8 how he concluded that there were poles in that location back
9 at least as far as 1950. And he concluded that based on
10 symbols that he recognized on that plat.

11 THE COURT: Any exception, Mr. Ford or Ms. Wesley?

12 MR. FORD: No, your Honor.

13 MS. WESLEY: No, your Honor.

14 THE COURT: The objection is noted and overruled.
15 Defendant 47A is admitted subject to the objection. It is
16 relevant. It is probative. It is reflective of the
17 historical data and Mr. Knight's research regarding the
18 historical placement of the poles on this location of the
19 road. It is not -- it's probative value is not outweighed by
20 any prejudicial effect, and the document has been
21 authenticated by those who maintain it, that being the
22 affidavits presented by SCDOT, which the Court has had marked
23 as a Court's exhibit because it would not be appropriately
24 given to the jury.

25 (Defendant Dominion Energy's Exhibit 47A admitted into

1 evidence.)

2 That then takes us -- is Akbar Number 6 in evidence or
3 was that ID only?

4 MR. COOKE: That's in evidence.

5 THE COURT: Okay. Is that what your records reflect?

6 COURT REPORTER: I show that as ID only.

7 THE COURT: Yeah, I had it as ID only as well. What is
8 Defendant Akbar 6? Is that a picture?

9 MS. WESLEY: It's the plat.

10 THE COURT: You said it's the plat?

11 MS. WESLEY: It is not. I misspoke.

12 THE COURT: What is Defendant Akbar 6? You can show me
13 what it is. Is that a picture?

14 MR. FORD: It is, your Honor. And I think we moved it
15 into evidence. He testified.

16 THE COURT: The court reporter's record does not reflect
17 that it's in evidence.

18 MR. COOKE: It's got her initials on it, though.

19 THE COURT: Her list says it --

20 COURT REPORTER: Oh, I'm sorry. Akbar 6?

21 THE COURT: Yeah.

22 COURT REPORTER: I'm sorry. I looked at the wrong one.
23 Yes, Akbar 6 is in evidence.

24 THE COURT: So Akbar 6 is already in evidence. So
25 that's a nonissue.

1 Please I need quiet in the courtroom.

2 I had Dominion Energy South Carolina 55, ID only. Is
3 there an exception to the national code regarding the
4 guidelines for the installation, maintenance, and
5 construction of utility infrastructure? It was during
6 Mr. Knight's testimony.

7 Is there any exception to the admission of the document?

8 MR. THOENSEN: Which document was that?

9 THE COURT: Number 55, Dominion Energy South Carolina.

10 MR. WILLEY: It's the NESC?

11 MR. THOENSEN: The National Electric Safety Code?

12 THE COURT: Mm-mmm.

13 MR. THOENSEN: We do object.

14 THE COURT: What's the basis?

15 MR. THOENSEN: Well, it's a portion of a manual or a
16 treatise, and we'd like the entire thing entered if it's
17 going to be entered.

18 THE COURT: Why would you enter an entire document that
19 does not have relevance and has the potential to confuse the
20 jury when it's hundreds of pages and there are only two pages
21 actually that make reference to what's relevant to this case?

22 MR. THOENSEN: It would be in the interest of
23 completeness, and it could be confusing to them as to why
24 they only got two pages of a manual that's hundreds of pages.

25 THE COURT: I don't think that argument has any merit.

1 For what purpose is it being offered?

2 MR. COOKE: It was offered because the witness
3 identified it as setting the standard -- national standard.

4 THE COURT: Does it really need to come into evidence,
5 or was it being used demonstratively to aid his testimony?

6 MR. COOKE: We would like to offer it into evidence.

7 THE COURT: Yeah, most treatises, which would be in the
8 nature of what this document is, don't come in. They usually
9 only aid testimony.

10 MR. COOKE: Well, it's an industry standard.

11 THE COURT: Still, it's usually just testified to. It's
12 usually not entered into evidence. It will be marked for ID
13 only.

14 That takes us to Dominion Energy SC -- that's 55 again.
15 We're done with that.

16 Number 84 Akbar. Is there any exception to that? I
17 think that's a photo, is it not?

18 MR. FORD: What number?

19 THE COURT: Eighty-four is what was referred to.

20 MR. THOENSEN: Is that the plat?

21 COURT REPORTER: That's already been admitted.

22 THE COURT: Defendant Akbar 84 has already been
23 admitted?

24 COURT REPORTER: Akbar 84, yes.

25 THE COURT: Okay. So that's already been admitted.

1 Defendant Quattlebaum 15, which is a picture. Any
2 exception?

3 MR. WILLEY: No.

4 THE COURT: So it will be marked and -- I assume there's
5 no exception from either defendant?

6 MR. FORD: No, your Honor.

7 MR. JOHNSON: No, your Honor.

8 THE COURT: It's 15, marked and admitted without
9 objection.

10 (Defendant Quattlebaum Exhibit Number 15 admitted into
11 evidence.)

12 THE COURT: Number 17, which is likewise a photograph.
13 Any exception.

14 MR. WILLEY: It needs to be redacted.

15 THE COURT: Redacted how?

16 MR. WILLEY: It has labels from SCDPS on it.

17 THE COURT: Will you -- I don't know if people even know
18 what that means.

19 MS. WESLEY: What is the objection?

20 THE COURT: The annotation at the top of the picture.

21 MS. WESLEY: Well, we can take that off.

22 THE COURT: Okay. So it will be -- is there any
23 exception once that is redacted?

24 MR. WILLEY: Well --

25 MR. THOENSEN: No.

1 MR. WILLEY: -- I would just point out too --

2 THE COURT: Please don't --

3 MS. WESLEY: That one's already been marked off.

4 THE COURT: I'm feeling -- I need to y'all get -- I need
5 you to answer my questions.

6 Number 17, is there any exception, which is a
7 photograph.

8 MR. WILLEY: If it is permanently redacted, no. But
9 what we did with --

10 THE COURT: I assume they have a way of redacting it. I
11 really think it just calls attention to something that's
12 superfluous and doesn't make a difference. Unless you tell
13 the jury what that means, they're not going to know and it
14 doesn't -- they wouldn't have a clue what that means.

15 MR. WILLEY: This one says another party -- a prior
16 party.

17 THE COURT: Yeah, but that one's going to be dealt with.
18 But this one that just has that notation at the top, I don't
19 think it makes a difference really.

20 MS. WESLEY: It's a Bates number, right?

21 THE COURT: They don't know exact -- they won't know
22 that that's a Bates number unless you tell them that.

23 It will be marked and admitted.

24 MS. WESLEY: Thank you.

25 (Defendant Quattlebaum's Exhibit Number 17 admitted into

1 evidence.)

2 THE COURT: Number 50, which was Dominion Energy South
3 Carolina, which was also a picture, is there any exception to
4 the admission of that document?

5 MR. WILLEY: No.

6 THE COURT: It will be marked and admitted without
7 objection, Dominion Energy Number 50.

8 (Defendant Dominion Energy's Exhibit Number 50 admitted
9 into evidence.)

10 THE COURT: And then we had Number 5. Has that already
11 been admitted, Dominion Energy, which is a picture of
12 Hedgewood to Old Meeting Street Road?

13 COURT REPORTER: No, ma'am.

14 THE COURT: Okay. Is there any exception to the
15 admission of Dominion Energy SC Number 5?

16 MR. WILLEY: Yes

17 THE COURT: And what's the objection?

18 MR. WILLEY: It doesn't show anybody's vantage point in
19 this.

20 THE COURT: That the subject of your interpretation.
21 It's an accurate self-authenticating picture of the
22 intersection. Overruled. Marked and admitted.

23 (Defendant Dominion Energy's Exhibit Number 5 admitted
24 into evidence.)

25 THE COURT: Dominion Energy Number 3, is there any

1 exception to the admission of that picture?

2 MR. WILLEY: Yes.

3 THE COURT: What's the objection?

4 MR. WILLEY: Relevance.

5 THE COURT: I need to see it, please.

6 MR. WILLEY: Same issue. It doesn't show any
7 perspective of anybody in this collision.

8 THE COURT: It's marked and admitted. It is a
9 self-authenticating picture of the intersection.

10 (Defendant Dominion Energy's Exhibit Number 3 admitted
11 into evidence.)

12 THE COURT: Dominion Energy Number 6 was marked for ID
13 only. Or is that already in evidence, Madam Court Reporter?

14 COURT REPORTER: Dominion 6?

15 THE COURT: Yes, Dominion.

16 COURT REPORTER: It is not.

17 THE COURT: It is not?

18 COURT REPORTER: It is not.

19 THE COURT: What is Number 6, please?

20 MS. WESLEY: Your Honor, may I look at these?

21 THE COURT: Yes. I need to know what Dominion Energy
22 Number 6 is, please.

23 MS. WESLEY: I'm trying to find it.

24 MR. WILLEY: I got it. Same objection. Relevance.

25 THE COURT: Marked and admitted. It's

1 self-authenticating. It is an accurate reflection of the
2 intersection and the area approaching the intersection.

3 (Defendant Dominion Energy's Exhibit Number 6 admitted
4 into evidence.)

5 THE COURT: Dominion Energy Number 2, any exception?

6 COURT REPORTER: That's already been admitted.

7 THE COURT: That's already been admitted. Thank you,
8 Madam Court Reporter.

9 Quattlebaum 17 and 15, we've already dealt with those,
10 correct?

11 COURT REPORTER: Yes.

12 THE COURT: Fifteen and 17 have already been admitted.

13 MS. WESLEY: Your Honor, may I jus make sure with Madam
14 Court Reporter that I did not -- all the numbers that I
15 listed have now been admitted?

16 THE COURT: She's going through them with me as I'm
17 doing it.

18 MS. WESLEY: Okay. Thank you.

19 THE COURT: That's why I'm doing it. You're welcome.
20 Dominion Energy 6 has already been admitted.

21 And Plaintiff's Number 10, which are shrub pictures, any
22 exception?

23 MS. WESLEY: Other than it's a completely --

24 THE COURT: I need to see the picture, please.

25 COURT REPORTER: Plaintiff's --

1 THE COURT: It's a close-up. That's a factual issue.
2 You can argue that.

3 MS. WESLEY: We did, your Honor.

4 COURT REPORTER: Plaintiff's 10 is already admitted.

5 MR. THOENSEN: That's already in.

6 THE COURT: Ten is already in?

7 COURT REPORTER: Plaintiff's 10, yes.

8 THE COURT: The blowup --

9 MR. THOENSEN: Yes.

10 THE COURT: -- is already admitted?

11 MR. WILLEY: That's fine.

12 MR. THOENSEN: I think everything against the jury box
13 is admitted.

14 THE COURT: Well, I'm making sure.

15 MR. THOENSEN: Okay.

16 COURT REPORTER: Yes, Plaintiff's 10 has been admitted.

17 THE COURT: Do you show what day that was entered?

18 MR. THOENSEN: March 21.

19 THE COURT: No. I'm asking the court reporter.

20 MR. THOENSEN: Oh, I'm sorry.

21 THE COURT: That's okay.

22 COURT REPORTER: Yes, March 21.

23 THE COURT: And are you -- has Number 5 been admitted?

24 COURT REPORTER: Yes.

25 THE COURT: And what --

1 COURT REPORTER: The same day.

2 THE COURT: -- date is -- the same day.

3 And Plaintiff's 185, what is that?

4 MR. THOENSEN: That is what is up on the screen.

5 THE COURT: That's the GIS data, which I've already
6 dealt with, and I have sustained the objection.

7 Do you need time or do you need to send somebody over to
8 the RMC office or to the plat office to get a copy of the
9 actual survey?

10 MR. WILLEY: We'll handle -- we may, your Honor. I've
11 already reached out to my office during the break to see if
12 that's possible.

13 THE COURT: It's in this building. All you've got to do
14 is walk next door. They'll copy it for you.

15 All right. Are we ready to go forward with the witness?

16 MS. WESLEY: Your Honor, the only last comment I would
17 make for Madam Court Reporter and for --

18 THE COURT: It's in the old part of the building.

19 Go ahead. I'm listening.

20 MS. WESLEY: -- is that we've been advised that y'all do
21 not have storage room for these big exhibits, and we would
22 just like permission to substitute normal-size pictures for
23 the exhibits.

24 CLERK OF THE COURT: They can go to the jury. When this
25 is over and done with is what I meant.

1 MS. WESLEY: Oh. That's what I meant is I just want to
2 make that clear that --

3 THE COURT: I'll deal with that at the end of the trial.

4 MS. WESLEY: Okay.

5 THE COURT: All right.

6 MR. COOKE: Your Honor, I did have a question.

7 THE COURT: Yes, sir.

8 MR. COOKE: We've debating on our side. During closing,
9 can we still show the jury --

10 THE COURT: I'm not dealing with anything until we get
11 to that stage of the trial.

12 MR. COOKE: Well, I was going to fight harder for that
13 National Electric Safety Code if we can't show it to the
14 jury.

15 THE COURT: I think you can talk about it and you can
16 make reference to it and what his testimony was, but it's the
17 same as any other treatise. It wouldn't come in. It was
18 used to aid his testimony and to corroborate the fact that,
19 in fact, there was a standard he adhered to. I think you can
20 -- I don't know. I'll cross that bridge when I come to it.
21 If there's an objection, I'll have to deal with it. I don't
22 know.

23 MR. COOKE: It will be Mr. Johnson's problem, but I was
24 just wondering if we could put it on the projector to show
25 it.

1 THE COURT: Well, you know, unless there's an objection,
2 do whatever you want.

3 CLERK OF THE COURT: Your Honor?

4 THE COURT: Yes.

5 CLERK OF THE COURT: If I might comment --

6 THE COURT: I can't hear you.

7 CLERK OF THE COURT: If I might comment on the poster
8 board she was just mentioning?

9 THE COURT: Uh-huh.

10 CLERK OF THE COURT: They have to be pictures of the
11 actual poster board with the original number on it.

12 MS. WESLEY: Okay.

13 CLERK OF THE COURT: It can't be the same picture on a
14 piece of paper.

15 MS. WESLEY: I understand.

16 THE COURT: All right.

17 MR. JOHNSON: Your Honor, real quick?

18 THE COURT: Yes, sir.

19 MR. JOHNSON: Numbering on your list of exhibits,
20 Quattlebaum 6, was that admitted?

21 COURT REPORTER: Yes.

22 THE COURT: Yes.

23 MR. JOHNSON: And was there a Quattlebaum 16?

24 COURT REPORTER: I've got it marked for ID.

25 THE COURT: Let me go back. I might have --

1 MS. WESLEY: Your Honor, may I look? I'm not sure I
2 used that.

3 COURT REPORTER: That was actually --

4 THE COURT: Wait one second for me.

5 COURT REPORTER: That was actually marked for ID
6 yesterday, not today.

7 THE COURT: Yeah, but I need y'all to just -- that's the
8 -- I took Defendant Dominion 21 -- no. That's Defendant
9 Quattlebaum 21 under advisement yesterday.

10 Which other one are y'all talking about from yesterday?

11 COURT REPORTER: Sixteen.

12 THE COURT: Whose testimony was that?

13 MR. COOKE: I think it was Mr. Sutton.

14 THE COURT: Mr. Sutton? And what was it?

15 MS. WESLEY: Your Honor, may I --

16 THE COURT: Wasn't it the same one that we've already
17 admitted now that we've had Mr. Knight's testimony?

18 COURT REPORTER: Are you asking about 16 or 21?

19 THE COURT: Oh, I already -- no, I have a notation. I
20 haven't dealt with 21 yet. I'm going to deal with that one
21 later.

22 COURT REPORTER: Okay.

23 THE COURT: But I'm asking isn't 16 the same document
24 we've already admitted? Isn't that the same intersection?

25 COURT REPORTER: You just have a photo number. I don't

1 know.

2 MS. WESLEY: May I look at the exhibits, your Honor?

3 THE COURT: Yes.

4 All right. We'll deal with that later. I need to
5 finish this testimony.

6 MS. WESLEY: Okay.

7 THE COURT: We'll come back to that.

8 Is there anything else that we need to deal with before
9 we conclude this witness's testimony from the plaintiff?

10 MR. THOENSEN: No, your Honor.

11 THE COURT: From the defense, Mr. Johnson?

12 MR. JOHNSON: No, your Honor.

13 THE COURT: Mr. Ford?

14 MR. FORD: No, your Honor.

15 THE COURT: Ms. Wesley?

16 MS. WESLEY: No, your Honor.

17 THE COURT: All right. Please bring in the jury.

18 THE BAILIFF: Yes, your Honor.

19 MR. FORD: Your Honor, can they remove that from the
20 ELMO if it's not coming in?

21 THE COURT: Yes. It needs to come off the ELMO.

22 (The jury entered the courtroom at 12:36 p.m.)

23 THE BAILIFF: Judge, all jurors are present.

24 THE COURT: Thank you. You may be seated.

25 We'll now resume the cross-examination of the witness.

1 You may proceed, Mr. Thoensen.

2 MR. THOENSEN: Thank you, your Honor.

3 THE COURT: You're welcome.

4 BY MR. THOENSEN:

5 Q. Mr. Quattlebaum, before we broke, we were talking about
6 the property line at the back of your property, correct?

7 A. Correct.

8 Q. And you have been made aware that it is your
9 responsibility to maintain that property all the way to the
10 street, even outside of your fence, correct?

11 MS. WESLEY: I'm going to object, your Honor.

12 THE COURT: Basis?

13 MS. WESLEY: A matter of law.

14 THE COURT: Mr. Foreman, ladies and gentlemen, I
15 apologize. We have a matter of law we need to take up. If
16 you can just stand right outside in the hallway for me. I
17 appreciate your patience.

18 (The jury exited the courtroom at 12:38 p.m.)

19 (The following proceedings were had outside the presence
20 of the jury.)

21 THE COURT: What's the objection?

22 MS. WESLEY: Your Honor, he's getting into the city told
23 him to keep the grass cut there.

24 THE COURT: I don't think so. He's talking about his
25 boundaries and what his responsibilities are.

1 MS. WESLEY: He said, "You've been made aware," and he's
2 going into his deposition.

3 THE COURT: Is that what you're trying to go into?

4 MR. THOENSEN: No. And this is the exact same question
5 that Mr. Akbar was asked that was acceptable to the Court at
6 that time.

7 THE COURT: I don't know. I can't backtrack. I don't
8 know what the scope of the testimony was. An objection's
9 been made. I have to rule contemporaneously.

10 MR. THOENSEN: I'm --

11 MS. WESLEY: Mr. --

12 THE COURT: So what are you making reference to?

13 MR. THOENSEN: Simply the fact that he's been made aware
14 of his responsibilities with regard to the maintenance of his
15 property.

16 THE COURT: How is that --

17 MS. WESLEY: Code enforcement will not be used.

18 MS. WESLEY: In his deposition -- not Mr. Akbar's -- he
19 had a conversation with a city official about the grass
20 outside of his fence. That's our concern is that we don't --

21 THE COURT: But he's already testified that he knew that
22 was his responsibility, so it's really asked and answered. I
23 guess I'm trying to figure out why you're asking again.

24 MR. THOENSEN: I don't believe I had gotten --

25 THE COURT: You said fence to the outside property line

1 is his responsibility, and he said yes.

2 MR. THOENSEN: I thought that was subject to the
3 objection here. But that is the question.

4 THE COURT: You'd already asked it twice and he's
5 already answered it.

6 MR. THOENSEN: I believe I just asked it once. It was
7 the first question I asked.

8 THE COURT: No, sir. I take notes of everything y'all
9 were saying. Sometimes lawyers, you know, we tend to repeat
10 ourselves. We don't realize it because we think if we say it
11 once, we need to say it twice, and sometimes three, four,
12 five times. But I'm objective, so I'm listening. You've
13 asked the question.

14 MR. THOENSEN: Is the objection sustained or overruled?

15 THE COURT: The objection is sustained. You've already
16 asked it. And make no reference to any previous notice he
17 may have gotten from the city about violations to keep his
18 property. I've already rules that those are remote and you
19 cannot produce the other witness for me to hear about whether
20 the other notice of 10/18/16 is relevant.

21 MR. THOENSEN: Understood. And I have no intention of
22 asking him anything about code enforcement or any violations.
23 I understand that those subjects have been -- have been ruled
24 upon by the Court already. I'm not going to --

25 THE COURT: You've already asked him if the property

1 outside the fence was his responsibility all the way to the
2 road, and he said yes.

3 MR. THOENSEN: And I may ask him additional questions
4 about what he has been made aware of but I would not say --

5 THE COURT: No, sir, because it makes reference to the
6 ordinance. And unless you have a foundation for the
7 question, you're violating the Court's ruling. You've
8 already asked the question. It's already been answered.
9 He's already answered it in the affirmative. Move on.

10 Bring the jury for me, please.

11 The objection is sustained.

12 MS. WESLEY: Thank you, your Honor.

13 (The jury entered the courtroom at 12:41 p.m.)

14 THE BAILIFF: All jurors are present, your Honor.

15 THE COURT: You may be seated. We appreciate your
16 patience.

17 Please resume your questions, Mr. Thoensen.

18 MR. THOENSEN: Thank you, your Honor.

19 THE COURT: You're welcome.

20 BY MR. THOENSEN:

21 Q. Mr. Quattlebaum, before we broke, we were discussing
22 your responsibility for maintaining your yard, correct?

23 A. Correct.

24 Q. And you agree that this part of your shrub here, even
25 though it is over your fence line, that it is your

1 responsibility to maintain that, correct?

2 A. Yes.

3 Q. Mr. Quattlebaum, you testified that when you make a left
4 turn from Hedgewood onto what you refer to as Old Meeting
5 Street, that you stop at the stop sign, correct?

6 A. I said I stop at the stop bar.

7 Q. At the stop bar. And then you pull up to get a better
8 view of traffic, correct?

9 A. (Indicated.)

10 Q. So if your view is not blocked by anything, why do you
11 pull forward from the stop bar before entering the
12 intersection?

13 A. Because if I were -- repeat the question.

14 Q. If your view is not blocked by anything while you're at
15 the stop bar, why do you pull forward to get a better view
16 before you enter the intersection?

17 A. I always pull forward to get a better view. It's safe.

18 Q. Because your view at the stop bar is not a good one,
19 right?

20 A. It's not the best.

21 Q. You have a certain aesthetic that you like with regard
22 to your landscaping, correct?

23 A. That's right.

24 Q. And you think that the way that this shrub on your
25 property looked in February of 2017 is good, right?

1 A. It's okay.

2 Q. You like that?

3 A. Yes.

4 Q. Even though it's over the fence line?

5 MS. WESLEY: Asked and answered, your Honor.

6 THE COURT: I'm going to give him a little latitude.

7 Sir you may answer the question to the best of your
8 ability.

9 BY MR. THOENSEN:

10 A. Yes.

11 Q. And even though it could block motorists' views on
12 Meeting Street, right?

13 MS. WESLEY: Objection, your Honor. Argumentative.

14 THE COURT: Overruled.

15 BY MR. THOENSEN:

16 A. It's never blocked my view.

17 (Exhibit displayed.)

18 BY MR. THOENSEN:

19 Q. If we look at Plaintiff's Exhibit 10 here, do you see
20 how these structures in the background are obscured by that
21 shrub?

22 THE COURT: What number are you looking at?

23 MR. THOENSEN: Number 10.

24 THE COURT: Which Number 10?

25 MR. THOENSEN: Plaintiff's.

1 THE COURT: Thank you.

2 BY MR. THOENSEN:

3 A. Minimally obscured, I would say.

4 Q. Okay. You talked to Ms. Wesley about this intersection
5 of Hedgewood and Meeting being dangerous and you told
6 Ms. Wesley it's dangerous because people tend to speed on
7 Meeting Street. Do you recall that?

8 A. I do.

9 Q. But you also understand that this intersection can be
10 dangerous if someone who is at the stop sign on Hedgewood
11 does not move out into the intersection quickly enough,
12 correct?

13 A. Yes.

14 MS. WESLEY: Objection, your Honor.

15 THE COURT: Basis?

16 MS. WESLEY: Lay opinion.

17 THE COURT: He can render a lay opinion as long as it's
18 based on his rational perception. I think it's appropriate
19 in cross in light of the direct exam.

20 Sir, you may answer the question.

21 But you need to make sure it assumes facts in evidence
22 and is not a hypothetical. He's not qualified to answer
23 hypothetically. But you need to rephrase the question.

24 BY MR. THOENSEN:

25 Q. Well, you testified in your deposition that you believe

1 this intersection is dangerous because if someone doesn't
2 pull out from the stop sign on Hedgewood quickly enough, they
3 could have a problem, right?

4 MS. WESLEY: False impeachment, your Honor.

5 THE COURT: Sustained. Rephrase the question.

6 MS. WESLEY: Your Honor, I would ask that one attorney
7 question Mr. Quattlebaum.

8 THE COURT: I think he can consult with his co-counsel.

9 MS. WESLEY: Okay.

10 THE COURT: You may proceed.

11 BY MR. THOENSEN:

12 Q. Mr. Quattlebaum, if somebody is not speeding coming
13 around that curve on Meeting Street, would you still agree
14 that the intersection is dangerous?

15 A. Yeah. I think all intersections are dangerous.

16 Q. And why is this one dangerous even if someone is not
17 speeding on Meeting Street?

18 A. The curve in the road.

19 MS. WESLEY: Your Honor, I'd like to present the witness
20 with his deposition transcript as a Court exhibit.

21 THE COURT: Not unless you've asked -- followed the
22 impeachment rules. He doesn't get to just read from his
23 deposition. There are rules regarding that. Not unless you
24 can prove to this Court he's answered inconsistently. You
25 need to ask the exact question, give him the ability to admit

1 or refute, and then you can impeach with the question.

2 MS. WESLEY: I just did ask him the exact question from
3 his deposition, and he gave --

4 THE COURT: That's not necessarily make it admissible.

5 Mr. Foreman, ladies and gentlemen, I have a brief matter
6 of law to take up with counsel. During the break, please do
7 not discuss the case. And please leave your notepads in your
8 seats. We should not be out long.

9 (The jury exited the courtroom at 12:47 p.m.)

10 (The following proceedings were had outside the presence
11 of the jury.)

12 THE COURT: You may be seated.

13 What was the question that was asked at the deposition?

14 MR. THOENSEN: "Question: If somebody is not speeding
15 coming around that curve that we've talked about earlier,
16 would you still agree that this is a dangerous intersection?"

17 THE COURT: And he answered that question.

18 MR. THOENSEN: He did, but he gave an answer today
19 that's different from what he said to that same question in
20 his deposition.

21 THE COURT: And what was the answer?

22 MR. THOENSEN: The answer in his deposition was,
23 "Answer: If someone is at the stop sign and they don't move
24 quickly enough, then that can be dangerous as well. So yes,
25 it's a dangerous intersection, speed or no."

1 THE COURT: Did he not answer your question that he
2 thought the intersection was dangerous whether someone was
3 speeding or not?

4 MR. THOENSEN: He said it was because of the curve. In
5 his deposition, he said if someone's at the stop sign and
6 they don't move quickly enough --

7 THE COURT: I think you --

8 MR. THOENSEN: -- that's the danger.

9 THE COURT: I think you need to ask the question
10 differently. Just because you asked a question in a
11 deposition does not mean that it's necessarily admissible at
12 trial. It's a compound question. It poses a hypothetical.
13 It's problematic. You need to ask the question differently,
14 the way it's allowed at trial. A lot of things slide at
15 depositions that you can't do in open court.

16 MR. THOENSEN: I will. I --

17 THE COURT: That doesn't necessarily make it subject to
18 impeachment. It's problematic the way it's phrased. You
19 need to rephrase it.

20 MR. THOENSEN: I believe initially I did rephrase the
21 question, and you told me --

22 THE COURT: It's still a compound question with a
23 hypothetical. He's a lay witness. He's not an expert. You
24 need to break it down and ask it differently.

25 MR. THOENSEN: I --

1 THE COURT: Achieve the same effect.

2 MR. THOENSEN: I understand. I believe initially I did,
3 and then I was instructed --

4 THE COURT: No, sir.

5 MR. THOENSEN: -- to read from the deposition.

6 THE COURT: It was long. It was compound. And it was
7 in the nature of a hypothetical. It was not appropriate.
8 That's why I sustained the objection.

9 MR. THOENSEN: I can rephrase the question.

10 THE COURT: Please get the jury. Thank you.

11 THE BAILIFF: Yes, your Honor.

12 (The jury entered the courtroom at 12:49 p.m.)

13 THE BAILIFF: All jurors are present, your Honor.

14 THE COURT: You may be seated.

15 You may continue your questions of the witness.

16 MR. THOENSEN: Thank you, your Honor.

17 THE COURT: You're welcome.

18 BY MR. THOENSEN:

19 Q. Mr. Quattlebaum, before we broke, we were talking about
20 the intersection of Hedgewood and Meeting Street and the fact
21 that you find it dangerous, right?

22 A. That's right.

23 Q. And you would agree with me that if someone is at the
24 stop sign on Hedgewood and they don't move into the
25 intersection quickly enough, that that can be dangerous,

1 right?

2 A. Anytime you're not assertive driving, that's dangerous.

3 Q. And that can be dangerous regardless of whether anyone
4 is speeding on Meeting Street, right?

5 A. It's possible.

6 Q. So we've talked a lot in this trial about the two power
7 poles that, as you come out of Hedgewood and turn left on
8 Meeting Street, are on the left side on your property side,
9 correct?

10 A. That's right.

11 Q. And you agree that there are also power poles on the
12 other side of the road, right?

13 A. I think so, yeah.

14 THE COURT: I'm sorry, sir. I need you to speak up,
15 please, and speak directly into the microphone.

16 BY MR. THOENSEN:

17 A. I think so.

18 Q. Thank you, Mr. Quattlebaum.

19 THE COURT: Any redirect of the witness?

20 MS. WESLEY: Yes, your Honor.

21 THE COURT: Well, actually I need to ask --

22 MS. WESLEY: Pardon me.

23 THE COURT: I already asked if they wanted to
24 cross-examine the witness.

25 Yes, ma'am. Redirect. You may proceed.

1 REDIRECT EXAMINATION

2 BY MS. WESLEY:

3 Q. Paul, when you turn from this intersection onto Meeting
4 Street, has your face ever been this close to the bush?

5 A. No.

6 Q. I mean, you'd be standing next to the bush maybe?

7 A. Yeah, you'd be on the sidewalk.

8 Q. Okay. The pictures that I showed you -- let's see if I
9 can put my hands on it.

10 (Exhibit displayed.)

11 BY MS. WESLEY:

12 Q. Let me show you Quattlebaum 15, which has been admitted.
13 Can you see this, Paul?

14 A. Yes.

15 Q. Do you see the stop sign in this picture?

16 A. No.

17 Q. Mr. Thoensen asked you a lot of questions about the stop
18 sign. Do you remember or do you have any knowledge about
19 where the stop sign is in relation to the stop bar in this
20 intersection?

21 A. I can't tell from the picture.

22 Q. Okay. If you turned -- I believe you testified you turn
23 from the stop bar, correct? Or not turn from the stop bar,
24 but that's where you stop?

25 A. I stop first at the stop bar.

1 Q. Okay. So when you turn left onto Meeting Street Road,
2 do you ever stop at the stop sign? Obviously you don't want
3 to break the law, but can you turn from the stop sign?

4 A. No. If I did that, I would end up in my back yard.

5 Q. If you turn from the stop bar here and didn't pull
6 forward, where would you end up?

7 A. Also in my back yard.

8 MS. WESLEY: I think that's all I have, your Honor.

9 THE COURT: Sir, you may step down.

10 (Witness excused.)

11 THE COURT: Mr. Foreman, ladies and gentlemen, we're
12 going to take advantage of this break in testimony to take
13 our lunch break. It is 12:54. We'll resume at 2:00. Your
14 lunch is already in your jury room. You are welcome, as
15 we've done on other days, to walk around, get some air if you
16 would like. You can utilize your telephones. Just return
17 promptly to your jury room by 2:00 so that we can resume
18 testimony.

19 Please do not discuss the case. Please don't have any
20 contact with anyone in or about the courthouse or do any
21 independent research on your telephones.

22 We appreciated your patience. Enjoy your lunch.

23 (The jury was released for lunch and exited the
24 courtroom at 12:54 p.m.)

25 (The following proceedings were had outside the presence

1 of the jury.)

2 THE COURT: You may be seated.

3 The Number 16 had -- the reason -- let me go back to
4 where I was. That was Dominion Energy -- was it Dominion
5 Energy?

6 MS. WESLEY: I think it was Quattlebaum you were
7 referring to, your Honor.

8 THE COURT: Sixteen. It was supposed to be redacted.
9 That's why I was it was ID only. And y'all were supposed to
10 agree on removing the -- y'all put some stickies over it.

11 MS. WESLEY: Yes, your Honor.

12 THE COURT: But I think that the rub was -- that they
13 didn't have a problem with it coming in, but they wanted that
14 language redacted making reference to Snyder. And putting a
15 sticky on it isn't going to fix it because the jury can bend
16 those stickies back. Unless you have something more
17 permanent that you can put over it -- I don't know if
18 White-Out will work.

19 MR. WILLEY: We would just --

20 THE COURT: White-Out tape or something.

21 MR. WILLEY: We would consent, your Honor, to just
22 cutting off the little piece of the photo. It's just dark
23 area. It doesn't --

24 THE COURT: As long as y'all can fix it, I don't have a
25 problem with it. And y'all can figure it out.

1 MS. WESLEY: May I approach, your Honor?

2 THE COURT: Yes, ma'am. And then it'll be marked and
3 admitted subject to the redaction that y'all have agreed
4 upon.

5 MS. WESLEY: Do y'all have a box cutter?

6 THE COURT: Pardon me?

7 MS. WESLEY: I don't have a box cutter.

8 THE COURT: Can't you just separate the paper from it?
9 I don't think you have to cut the whole thing out.

10 MR. WILLEY: Well, that's what I'm talking about.

11 THE COURT: I think all you have to do is score that
12 paper --

13 MR. WILLEY: Correct.

14 THE COURT: -- and it will come right off the foam core
15 board.

16 MR. WILLEY: That's correct.

17 THE COURT: Same way you'd peel a sticker off. I think
18 you just need to score it and peel it off.

19 MR. WILLEY: Yeah. This picture is basically, like,
20 pasted to the foam board.

21 MS. WESLEY: That's fine, your Honor. I think we can
22 probably get that done with some scissors. We'll get that
23 done.

24 THE COURT: Okay. So then that will be marked and
25 admitted with the redaction.

1 MS. WESLEY: Thank you, your Honor.

2 THE COURT: Quattlebaum 16.

3 (Defendant Quattlebaum's Exhibit Number 16 admitted into
4 evidence.)

5 THE COURT: All right. Is there anything else we need
6 to take up before we break for lunch from the plaintiff?

7 MR. WILLEY: No, your Honor.

8 THE COURT: From the defense?

9 MR. JOHNSON: No, your Honor.

10 MR. FORD: No, your Honor.

11 THE COURT: And from the defense?

12 Yes, ma'am.

13 MS. HONEYCUTT: The exhibit that was under advisement
14 yesterday from yesterday?

15 THE COURT: That's the --

16 MS. HONEYCUTT: Driving record.

17 THE COURT: I'm still thinking about those. I haven't
18 forgotten. I keep a list. Yeah.

19 All right. Have a good lunch. See you at 2:00. You
20 can leave anything in the courtroom that you don't need. The
21 room will be locked.

22 (Court recessed.)

23 (Court resumed outside the presence of the jury.)

24 THE COURT: You may be seated.

25 Plaintiff ready to proceed?

1 MR. WILLEY: We are.

2 THE COURT: Is the defense ready to proceed?

3 MR. COX: Yes, your Honor.

4 THE COURT: And who's your next witness?

5 MR. COX: Dominion rests, your Honor. When you bring
6 the jury in, Dominion will rest.

7 THE COURT: And Mr. Ford, do you have any additional
8 witnesses?

9 MR. FORD: We do not. Akbar rests.

10 THE COURT: Ms. Wesley, do you have any additional
11 witnesses?

12 MS. WESLEY: No, your Honor. Quattlebaum rests as well.

13 THE COURT: So you all have then -- let me look at this
14 list right quick.

15 So y'all have decided not to call Dr. Borzendowski?

16 MR. COX: Correct, your Honor.

17 THE COURT: And that would have been the last witness,
18 correct?

19 MR. COX: Correct, your Honor.

20 THE COURT: Okay. So I'll let you rest in front of the
21 jury. I'll reserve motions.

22 And then do you have any rebuttal witnesses?

23 MR. WILLEY: Your Honor, we will have two rebuttal
24 witnesses.

25 THE COURT: And are they present.

1 MR. WILLEY: The first one is. The second one got a
2 flat tire, but I'm informed he should be here by 2:50.

3 MR. COX: We haven't been told who that is, your Honor.

4 THE COURT: Who is that? Who are your rebuttal
5 witnesses?

6 MR. WILLEY: Ken Richardson and Dr. White.

7 THE COURT: Please bring in the jury. Thank you.

8 THE BAILIFF: Yes, ma'am.

9 (The jury entered the courtroom at 2:15 p.m.)

10 THE BAILIFF: Judge, all jurors are present.

11 THE COURT: You may be seated.

12 Mr. Cox, you may proceed.

13 MR. COX: Your Honor, Dominion rests. Thank you.

14 THE COURT: Mr. Ford, you may proceed.

15 MR. FORD: Mr. Akbar rests.

16 THE COURT: Ms. Wesley, you may proceed.

17 MS. WESLEY: Mr. Quattlebaum rests, your Honor.

18 THE COURT: We'll reserve motions.

19 Are there any rebuttal witnesses?

20 MR. WILLEY: There are, your Honor.

21 THE COURT: You may proceed.

22 MR. WILLEY: I call Ken Richardson.

23 THE COURT: Sir, if you could come to the stand and be
24 sworn.

25 CLERK OF THE COURT: Place your left hand on the Bible

1 that the damages are causally related. There's been
2 absolutely zero refutation with respect to the medical bills
3 specifically and those bills are clearly causally related to
4 the incident and so we would ask for a directed verdict as
5 to causation.

6 We would also ask for a directed verdict as to the
7 medical bills, specifically the amount listed in Exhibit 181,
8 which is \$173,994.30. There's been no evidence or testimony
9 that those bills were not incurred by the estate. And so we
10 would ask that a verdict be directed as to those bills
11 specifically.

12 With respect to damages per se, there is evidence in the
13 case that these defendants violated the North Charleston
14 ordinance with respect to visibility at intersections. And
15 so we would ask for a directed verdict as to negligence per
16 se on that, and also a directed verdict as to the individual
17 defendants on the nuisance ordinance, which the Court has and
18 has reviewed.

19 I think that covers it for us.

20 THE COURT: Who wants to go first?

21 MR. COOKE: I think it will be me.

22 THE COURT: You're the man of the hour, Dawes.

23 MR. COOKE: Yeah, they're all pointing at me, your
24 Honor. I did such a good job the first time, they --

25 THE COURT: They delegated it to you.

1 Yes, sir. Be glad to hear from you.

2 MR. COOKE: Thank you, your Honor. And I'll try not to
3 take too much time. But this is really --

4 THE COURT: That's okay. Do what you need to do.

5 MR. COOKE: It's very important for us, your Honor.

6 THE COURT: Yes, sir.

7 MR. COOKE: I would start by incorporating by reference
8 the memorandum of authorities that we filed and argued in the
9 first motion, but we would incorporate it here.

10 The first and probably the most important thing that I
11 would like to bring to the Court's attention is that the
12 plaintiff mischaracterized, if not directly misquoted, the
13 testimony of Mr. McJunkin. And your Honor's notes, when you
14 read while you were denying our motion, appeared to reflect
15 the characterization that Mr. Willey had given of what they
16 thought Mr. McJunkin was going to testify to. So if you'll
17 indulge me, I'd like to actually read -- and this is very
18 short.

19 THE COURT: That's fine.

20 MR. COOKE: We have the transcript. Thank you to the
21 court reporter for providing this to us.

22 On page 12: "Mr. McJunkin, do you recall" -- this is
23 direct testimony.

24 "Do you recall having your deposition taken in December
25 of 2019?"

1 "I do."

2 "And when you had your deposition taken in December of
3 2019, did you swear an oath to tell the truth at that time?"

4 "I did."

5 "And during that December 2019 deposition, do you recall
6 saying that nothing obstructed your view at that intersection
7 on February 19, 2017?"

8 "I did."

9 Now, your Honor, the mischaracterization was that
10 Mr. Willey argued that Mr. McJunkin testified that he -- when
11 he went back to visit the site later, he had refreshed his
12 recollection as to things that obstructed his view. That is
13 not what he testified to. He testified that -- it's almost
14 exactly the opposite.

15 He said, page 14: "Sure. Mr. McJunkin, when you
16 returned to this intersection after your deposition had been
17 taken in 2019, tell us what you observed there."

18 "Answer: When I returned, there are utility poles.
19 There are fences or vegetation in or about that area."

20 "Question: Did returning to that intersection after
21 your deposition had been taken, did that refresh your
22 recollection as to what that intersection looked like?"

23 "Answer: It -- I don't know that any condition
24 changed."

25 "Question: Let let me ask you this. During your

1 deposition in December 2019, was your testimony true and
2 accurate to the best of your recollection at that time?"

3 "Answer: Yes, sir."

4 "Question: And is your testimony here today true and
5 accurate to the best of your recollection today?"

6 "Yes, sir."

7 And your Honor, the plaintiffs, ever since they were
8 negotiating a settlement with Mr. McJunkin, have been trying
9 to get him to say that he was wrong in his deposition and
10 that he had his memory, quote, "refreshed" by going back to
11 the scene. But he refused to do that, your Honor. He
12 testified truthfully that what he said in his deposition was
13 true and accurate. He said when he went back, he saw that
14 there was a pole there. We stipulate that there was a pole
15 there. He said there was bushes and a fence there, but
16 never, never did he testify that it blocked his view.
17 Without that, the plaintiffs cannot create an issue of fact.

18 I'd like to address briefly the concept of concurring
19 cause. Concurring cause doesn't allow you to just jumble
20 possible causes together and when you can't tell which one
21 was the cause, call them all concurring causes. And for it
22 to be a concurring cause, it must be an efficient cause. And
23 that means that without that particular cause, but for that
24 particular cause, the accident most probably would not have
25 occurred.

1 There's absolutely no evidence to support that. I went
2 through before all the things that could have contributed.
3 It could have been the curvature in the road, the placement
4 of the stop bar, the absence of a traffic light, the bushes,
5 the fence, dusk, the size of the motorcycle, the speed of
6 Mr. Rash's vehicle, or the lack of vigilance of Mr. McJunkin.

7 In order for the poles -- and I'm not -- I don't care
8 about the bushes. I don't care about the fence. I don't
9 care about the curvature of the road. In order for either of
10 our two 1-foot-wide poles to have been the cause of
11 Mr. McJunkin not seeing Mr. Rash or Mr. Rash not seeing
12 Mr. McJunkin, Mr. Rash's headlight would have had to have
13 somehow been behind one of those poles at the -- for -- which
14 it was for less than a fraction of the blink of an eye.

15 The plaintiff would have to convince this jury that the
16 moment -- the one moment that Mr. McJunkin looked in
17 Mr. Rash's direction, his motorcycle headlight was behind one
18 of those two poles. And there's absolutely no evidence from
19 which they can conclude that.

20 And that's where the *Messier versus Adicks* language
21 comes to play: "Where the cause of plaintiff's injury may be
22 as reasonably attributed to an act for which defendant is not
23 liable as to one for which he is liable, Plaintiff has failed
24 to carry the burden of establishing that his injuries were
25 the result of Defendant's negligence." And your Honor, that

1 means that the cause for which we were at fault -- that is
2 that we obscured the view of Mr. Rash for the one fraction of
3 a second that Mr. McJunkin looked in his direction -- that
4 would have to be more likely than all the other possible
5 causes together, all the other possible causes combined.

6 And your Honor, in the *Messier* case, the Court let the
7 case go to the jury, and the Supreme Court reversed the
8 refusal to grant a JNOV. And that is the law. It's one of
9 the most difficult things that plaintiffs have to deal with.

10 The second point is lack of a duty. It is undisputed
11 that the only law that relates in any way -- and I know the
12 others are going to argue about whether this is even a real
13 law or whether it's a zoning law -- but it's the only thing
14 that the plaintiffs offer that addresses our pole, and it's
15 the North Charleston ordinance which explicitly says that you
16 may place a pole of less than 12 inches in the sight view, or
17 whatever they call that corner area.

18 THE COURT: Sight triangle.

19 MR. COOKE: Thank you, your Honor.

20 THE COURT: You're welcome.

21 MR. COOKE: For the jury to conclude otherwise would be
22 -- er, would require the jury to nullify that black-and-white
23 law by saying, "No, you may not place a pole less than 12
24 inches in that sight corridor."

25 And your Honor, the standard of care, the plaintiff's

1 going to say, "Well, it's the reasonable-man standard."
2 Well, not for us it's not. It's the reasonable utility
3 company standard. And this jury is not a utility company.
4 And how do you inform a jury of what the standard of care is
5 for something that they're not familiar with? You call an
6 expert. You bring a utility expert to come and testify that
7 they deviated somehow from the standard of care. Not just
8 that they obscured the line of sight; you have to establish a
9 duty.

10 Where is -- where did the plaintiffs establish any duty
11 on the part of Dominion to protect the sight lines from an
12 intersection? The testimony of Mr. Knight, which is
13 unrefuted, is that the National Electric Safety Code is their
14 bible. It's what guides the whole industry, not just
15 Dominion. And it makes no requirements whatsoever for the
16 utility to guard sight lines.

17 How is the sight line protected? When they get their
18 permission from the owner of that highway, the owner of the
19 highway tells them if it's okay to put their poles where they
20 put them. And that is the standard of care. Mr. Teague even
21 admitted that poles are allowed to be in the sight corridor.

22 There's -- so the plaintiffs have completely failed to
23 establish the existence of a duty. And your Honor, the
24 existence or nonexistence of a duty is a matter of law for
25 the Court and not for the jury. There's no way that they can

1 establish there was a breach of duty when the duty itself has
2 not been established.

3 And we respectfully submit that when we have complied
4 with the law, when we have complied with the industry stand,
5 when the plaintiffs have failed to call an expert to
6 establish a different standard of care, it's just like the
7 *Nelson versus Piggly Wiggly* case that was cited previously
8 where the plaintiff's expert criticized the design of the
9 parking stops but could not say that it deviated from the
10 industry standard. Here we don't even have an expert who
11 criticized the decision to put the poles there. All they did
12 was tell you what the sight lines were.

13 And finally, your Honor, I'm going to -- for the record
14 we would move for a directed verdict on the survival action
15 because we contended that Dr. White was not competent to
16 testify as to hospital -- based on hospital records because
17 he doesn't have hospital privileges and hasn't practiced in a
18 hospital and because he failed to read all of the records.
19 And to preserve that, we would move for a directed verdict on
20 the survival action as well.

21 Thank you.

22 THE COURT: You're welcome.

23 Mr. Ford?

24 MR. FORD: My law partner Ms. Tillman's going to argue
25 it.

1 THE COURT: Ms. Tillman, be glad to hear from you.

2 MS. TILLMAN: It's hard to follow Dawes. However, we
3 join in Mr. Cooke's argument about survival, join in that
4 argument moving for a directed verdict on that cause of
5 action.

6 We also join in Mr. Cooke's argument on causation. And
7 we would point out on that that the plaintiffs never
8 established that an object on Mr. Akbar's property -- in
9 fact, the plaintiff never established what Mr. Akbar's
10 property line was, what his property boundary was. And that
11 was his burden.

12 Beyond that, he never established that any object that
13 was physically on Mr. Akbar's property contributed in any way
14 to this accident. He never even identified what that might
15 have been, where it was located, and where Mr. Akbar's
16 property lines were. And all of those things would have been
17 necessary for him to establish that something on Mr. Akbar's
18 property caused this accident.

19 And so in addition to those arguments, we also want to
20 make an argument on duty. And your Honor knows that the
21 existence and the scope of a duty are both questions of law
22 for the Court. They are not fact questions. They never go
23 to the jury. And so the time for your Honor to decide them
24 is now.

25 And it is on Mr. Willey to have pointed out to the Court

1 what that duty is, what's the source of that duty. And what
2 Mr. Willey has told us is that there are two possible sources
3 of that duty. It's either that "Visibility At Intersections"
4 zoning ordinance or, alternatively, it's the nuisance
5 ordinance.

6 COURT REPORTER: Can she speak up, please?

7 THE COURT: She needs you to speak up.

8 MS. TILLMAN: Alternatively, it's been -- Mr. Willey has
9 identified two possible sources for duty for Mr. Akbar. The
10 first is either the 4.13 zoning ordinance that goes to
11 visibility at intersections, and the second one Mr. Willey
12 has identified are the nuisance ordinances, the City of North
13 Charleston's nuisance ordinances. And your Honor, as a
14 matter of law, neither of them imposes a duty on Mr. Akbar
15 that would give rise to a civil tort action for negligence.
16 And here's why.

17 The first one, the 4.13 "Visibility At Intersections"
18 ordinance, does not apply to Mr. Akbar's property. It is
19 visibility at intersections. Mr. Akbar's property is not at
20 the intersection. He is one lot down from the corner lot.
21 So under a plain reading of that ordinance, Mr. Akbar has no
22 duty whatsoever, so that could not be the source of a duty
23 for Mr. Akbar.

24 We argued that previously on directed verdict, and we
25 incorporate all of our arguments on that zoning ordinance,

1 including a depiction of the sight-visibility triangle by the
2 City of North Charleston itself. It is undisputed that
3 Mr. Akbar has no property within that 3-by-3 sight-visibility
4 triangle at all. That's not his lot. He's down the road
5 from it.

6 Then the other source of a possible duty that Mr. Willey
7 identifies are the nuisance statutes -- er, ordinances from
8 the City of North Charleston. This is sort of a new argument
9 by Mr. Willey. But for this Court's purposes, the way that
10 this Court would analyze whether those nuisance ordinances
11 would give rise to a duty by Mr. Akbar to a passing-by
12 motorist on the highway is it would look at three cases. I'm
13 going to point to the three cases, your Honor.

14 The first one is *Dorman versus Aiken Communications*.
15 It's 303 South Carolina -- or S.C. 63. That is a Supreme
16 Court case that pointed out that when it's determining
17 private rights, as a general rule in this state, a statute
18 which does not purport itself to establish a civil liability,
19 but merely makes a provision to secure the safety or general
20 welfare of the public as an entity, is not subject to a
21 construction establishing a civil liability.

22 Now, that's the general rule.

23 THE COURT: That's the private-duty rule, but I don't
24 think it's applicable in this case. It's apples and oranges.
25 One is whether you've creating a private cause of action for

1 which you can sue somebody in civil court, and the other side
2 of that coin is where ordinances can create a duty because
3 they're passed for the benefit of society and to protect
4 society. Two different things.

5 MS. TILLMAN: That's right. And --

6 THE COURT: And so they're not suing on the statute
7 saying that it created a private cause of action. So I don't
8 think the public-duty rule is even applicable.

9 MS. TILLMAN: I think that's exactly what they're doing.
10 They are claiming that there is a -- that this is negligence
11 per se, that there is a duty that arises from that zoning
12 ordinance. And I just ask you respectfully --

13 THE COURT: Ordinances create duties all the time.

14 MS. TILLMAN: But -- and they do. And so that --

15 THE COURT: We charge them all the time and we instruct
16 them all the time.

17 MS. TILLMAN: They do. And that's my second point.

18 Okay? That's the next case that I'm going to point your
19 Honor to. And that is *Whitlaw versus Kroger*, which is 306
20 S.C. 51. And you're not wrong that oftentimes ordinances do
21 give rise to a duty -- to a civil duty. That can happen.
22 But it's in *Whitlaw versus Kroger* and also *Hurst versus*
23 *Sandy*, which is 329 S.C. 471, that our courts gave you, your
24 Honor, the framework to decide whether an ordinance, like the
25 City of North Charleston's nuisance ordinance, gives rise to

1 that kind of duty.

2 And here's the analysis that this Court is to do in
3 order to discern whether these ordinances give rise to a
4 duty. And that is, one, this Court has to look to see
5 whether the essential purpose of the statute is to protect
6 from the kind of harm that the plaintiff has suffered; and
7 two, whether the plaintiff is a member of the class of
8 persons that the.

9 Statute is intended to protect; and then three, whether
10 there is a causal link between a violation of the statute and
11 the injury that the plaintiff experienced. That's the
12 framework.

13 And then here's the third case, your Honor. The third
14 case that put this framework into action in the context of a
15 nuisance law is *Overcash versus SCE&G*, and that is 364 S.C.
16 569. That's a case I want to talk about with your Honor
17 because in that case, a boater was injured because of a dock
18 that extended out into a lake. And the plaintiff sued for
19 their personal injuries -- sued the owners of the dock for
20 their personal injuries arising out of a crash between the
21 boat and the dock.

22 And their theory -- their negligence theories for where
23 the duty -- where did the duty arise on the part of the dock
24 owner was a nuisance statute. And you can see it in the case
25 when you read *Overcash versus SCE&G*. It was a nuisance

1 statute that said -- and I'll read it to you.

2 THE COURT: And *Overcash* I don't think -- I'm familiar
3 with *Overcash*. I don't think the *Overcash* ordinance is the
4 same as this ordinance.

5 MS. TILLMAN: Well, and --

6 THE COURT: Because in this ordinance, you can be
7 charged with a misdemeanor. In *Overcash*, you could not be
8 charged with anything. You would just have to remediate what
9 happened with the dock. You couldn't even be cited in
10 *Overcash*, if I recall the facts.

11 MS. TILLMAN: And actually -- and so that's why I would
12 ask you to take a minute to review the facts because -- and
13 if you'll just let me make my record because --

14 THE COURT: Well, I'm not interrupting you. I'm just
15 pointing out to you what you need to distinguish, because in
16 *Overcash*, it's not the same type of ordinance. And that's
17 what would be dispositive, not the facts.

18 MS. TILLMAN: Okay. Great.

19 THE COURT: Yeah.

20 MS. TILLMAN: So if you look to the end of *Overcash*,
21 toward the end -- and I'll give you the page number in one
22 moment -- because the violation was a misdemeanor -- or it
23 was issued a misdemeanor for the violation. So it says --
24 and this is at page 622, so it's 614 S.E. 2d 622. And it
25 says -- and they're looking to analyze whether the

1 legislative intent of that nuisance order was to give rise to
2 a private cause of action, which is the analysis that this
3 Court needs to do here.

4 And what the Court said is, "We find that section
5 49-1-10 reveals no legislative intent to create a private
6 cause of action because it's found within the section
7 entitled 'Waters, Water Resources, and Drainage' and the
8 section contains criminal penalties and allows for abatement
9 of the nuisance. The statute is primarily for the benefit
10 and protection of the public in general, and we conclude that
11 no private right of action exists for its violation."

12 And the Court also held in *Overcash*, again looking at a
13 nuisance statute, that -- one moment. Sorry.

14 The Court of Appeals -- and they were -- this is the
15 Supreme Court reversing the Court of Appeals. They said,
16 "The Court of Appeals concluded that Overcash's personal
17 injuries constitute direct and special injuries which support
18 a private tort cause of action for public nuisance. We
19 decline to venture into what William Prosser has termed to be
20 the 'impenetrable jungle,' electing instead to follow the
21 well-beaten path to which South Carolina nuisance
22 jurisprudence has long adhered."

23 And they went on to say that nuisance law, your Honor,
24 is in the realm of property law. And in order to to have a
25 civil cause of action under a nuisance ordinance of any sort,

1 you have to have an injury to the property. You cannot have
2 a personal injury such as --

3 THE COURT: I think these cases, though, are factually
4 dissimilar that you're relying on. And I agree with the
5 opinions in those cases because what they brought their
6 causes of action on were based on those statutes. They could
7 not set -- this cause of action was brought for negligence.
8 It was not brought in nuisance.

9 And what they're simply saying is that in addition to a
10 common-law duty, that they're relying on the statute which
11 has -- this ordinance, zoning regulation, which has been
12 reduced from the common law, which is what the history
13 reflects from the City of North Charleston. I would agree
14 with you that what they did was they brought an action that
15 said, "Based on this particular ordinance, you are
16 responsible to us."

17 That's not how this is couched and that's not how it was
18 styled, but that's how those cases are styled. Because in
19 that case, it is brought on the theory of negligence, citing
20 that ordinance as the basis for the lawsuit, which is a
21 direct violation of the public-duty rule. Because unless a
22 statute says that you can bring a cause of action or an
23 ordinance or otherwise based on that, I agree; it is not
24 applicable and it would not be appropriate.

25 But that's not how their cause of action is brought.

1 It's not brought premised simply on that ordinance.

2 MS. TILLMAN: Well, actually, Mr. Willey said --

3 THE COURT: I mean, not ordinance; zoning regulation.
4 I'm sorry. I'm using the terms interchangeably.

5 MS. TILLMAN: Well, and you're -- no, you're right.
6 There are two different -- Mr. Willey said in his directed
7 verdict argument that this is a negligence per se case. In
8 order for there to be negligence per se, it's got to arise
9 from some sort of statutory duty as to negligence and --

10 THE COURT: Statute, common law, or ordinance.

11 MS. TILLMAN: That's right.

12 THE COURT: Or zoning regulation.

13 MS. TILLMAN: That's right. And so -- and we agree.
14 And so Mr. Willey himself has said that the duty arises from
15 an ordinance. Right? And he's identified two ordinances.
16 One is a zoning ordinance and the other is a nuisance
17 ordinance, and they are different. The zoning ordinance does
18 not apply to Mr. Akbar. The nuisance ordinance is not
19 designed to give rise to a personal civil negligence cause of
20 action.

21 And that, your Honor, is my argument. That's the *Dorman*
22 *versus Aiken Communications*. In order to have a civil
23 negligence that arises from an ordinance or a statute or any
24 sort of law, in order to have negligence per se, you have got
25 to first have -- you've got to undergo that framework that's

1 set forth by our Supreme Court.

2 And the reason that I brought up *Overcash* is because
3 it's in the context of a nuisance law. And so it -- not only
4 does it make the framework really easier for your Honor to
5 evaluate because it shows that nuisance laws are property
6 laws and so they can only support a negligence per se
7 action-type thing if the injury is to the property -- because
8 that is the class that those ordinances are designed to
9 protect. They're designed to protect property. They're not
10 designed to protect people who are motorcycling by on the
11 highway.

12 And so that's the distinction, your Honor. And I ask
13 you to carefully read that --

14 THE COURT: I'm familiar with *Overcash*. I had a really
15 big public-duty case, and I studied all the public-duty laws.
16 It was out of Myrtle Beach actually -- actually it was
17 Conway, which I spent about ten days trying too. So I'm very
18 familiar with the public-duty rule and all the arguments that
19 are attendant to it.

20 *Overcash* is dissimilar from this case because *Overcash*
21 was brought solely in the nuisance law. That was their
22 entire premise of their cause of action, based on the dock
23 that jettied out into the lake. And they sued SCE&G because,
24 as we know, that's an artificial structure created by them to
25 create power. And they also -- but their entire summons and

1 complaint is based in nuisance. And it cites that ordinance,
2 safety regulation, common law, as the sole basis of their
3 cause of action in saying that the Overcashes' dock created a
4 nuisance and that they were injured as a result.

5 And I just don't think factually it's analogous. I
6 mean, I've read *Overcash* a lot of times. I don't -- and I
7 reviewed the facts again just now to make sure that my memory
8 was accurate.

9 MS. TILLMAN: So would you, nonetheless, agree that the
10 source of this that Mr. Willey claims exists here is an
11 ordinance or a statute?

12 THE COURT: I don't know. He's going to have to respond
13 to your argument.

14 MS. TILLMAN: Okay. And so I ask that if he does
15 respond that it is and that has been his theory of the case
16 throughout this trial -- he's been flashing up pictures of
17 4.13 on the screen. He's been talking about whether you cut
18 your grass. All of those things arise out of the ordinances
19 from the City of North Charleston. So then the question
20 becomes, do the City of North Charleston ordinances give rise
21 to a negligence action, a duty to support a negligence
22 action? And who are those City of North Charleston
23 ordinances designed to protect?

24 And the answer as to zoning is they're designed to
25 protect property and property rights. The answer as to the

1 garbage, trash, and refuse ordinance is that those ordinances
2 are -- it's not designed to protect a passerby on a
3 motorcycle from the sort of harm that arose here. It's --
4 it's -- that is not the purpose of the statute.

5 And then one other thing about the nuisance statute that
6 is really important here is the nuisance statute -- actually,
7 the City of North Charleston identifies the penalty for
8 violating it. And the penalty for violating it, your Honor,
9 it's in 9-68, and it identifies the penalty for violating
10 that statute as a misdemeanor.

11 And so that is further -- not evidence, but further --
12 that goes further to your Honor's analysis as to, what is
13 this ordinance that Mr. Willey is relying on? What is it
14 designed to do? Who is it designed to protect? And what are
15 the penalties for it? Can it give rise to a negligence suit?
16 And the statute answers that question because it says no. It
17 gives rise to a misdemeanor, is the penalty for violating it.

18 And so I think under the framework that is promulgated
19 by *Dorman versus Aiken Communications* and *Whitlaw versus*
20 *Kroger*, this Court should not find that there -- that there
21 is a duty on Mr. Akbar under those ordinances that Mr. Willey
22 has talked about throughout this case. There is no duty on
23 Mr. Akbar down the road that would -- to a motorist on the
24 highway who is not a resident of the City of North
25 Charleston, is not -- you know, does not own property in

1 North Charleston. He is a passerby. And there is no duty
2 arising out of the City of North Charleston ordinance on
3 Mr. Akbar as to that.

4 And so we ask that your Honor would find that as a
5 matter of law, because ultimately your Honor is going to need
6 to instruct, one way or another, this jury as to whether or
7 not there's a duty and what it is. We don't believe there is
8 one, and the law does not support that there is one. So we'd
9 ask your Honor to find that.

10 And so joining again in Mr. Cooke's arguments and
11 reiterating our prior ones, I've had my say -- and adopting
12 my prior arguments.

13 THE COURT: Ms. Wesley or Ms. Honeycutt, who wants to
14 argue on behalf of Quattlebaum?

15 MS. WESLEY: Your Honor, obviously we adopt our previous
16 arguments on directed verdict, as well as the case law in our
17 motion for summary judgment and our colleague's arguments
18 with respect to duty and the directed verdict on conscious
19 pain and suffering.

20 I would point out this is just a very -- actually, it's
21 -- a bunch of stuff has been thrown at the wall to see what
22 sticks. I agree with that. This is actually -- it's quite
23 simple and you just kind of have to go back to simple reading
24 and interpretation of law that the specific is going to
25 control the general. And when two things conflict, you're

1 going to have to look at the specifics.

2 So he -- Mr. Willey said that our fence --
3 Mr. Quattlebaum's fence is higher than 2 and a half feet;
4 therefore, he violated his duty. Well, causation aside that
5 he has to say that, the problem for him is under 4-13, as I
6 pointed out -- I can't even remember now because the days
7 have run together. I don't know if it was yesterday or not.

8 THE COURT: I understand.

9 MS. WESLEY: But it is conjunctive. It is general and
10 subjective in 4.13. And unfortunately for the City of North
11 Charleston, I know its versions, but sometimes cities don't
12 do a great job. And they pass things and then they pass some
13 more things and they conflict. So 4-13 directly conflicts
14 with a specific ordinance that he is also trying to rely on,
15 4-7.

16 So under 4-13, it says that no structure -- meaning the
17 fence, I think he's referring to -- shall be permitted at any
18 point between 2 and a half feet and 10 feet from the curb and
19 within the triangular area. Well, the triangular area is in
20 4.7. That's the 3.3.3. There's absolutely no doubt, not
21 only from Mr. Quattlebaum's testimony, but from the pictures
22 you can see the fence is not in that area. And he testified
23 no shrubs are in that area. So 4 point -- I keep saying
24 "point." It's 4 dash 13, and I apologize for that.

25 THE COURT: That's okay.

1 MS. WESLEY: So 4-13 also conflicts with the specifics
2 of 4.7, which is quite specific. No fence shall exceed 10
3 feet in height -- that's allowed under 4.7 -- except as
4 provided in appendix A. And perhaps something in appendix A
5 may apply, but his fence isn't 10 feet high. It's -- I think
6 they said it was 3 and three-quarters or 3 and a half; I just
7 don't remember at this moment.

8 Four point -- 4-7 also has the triangular -- as I said,
9 the 3 by 3 at the intersection -- that's a -- for people at
10 intersections -- there's no doubt Mr. Quattlebaum's at the
11 intersection. We're not going to win that. I get it. But
12 he has to do something wrong. I mean, his shrub may be ugly
13 and maybe everyone in here hates it -- and I've had that talk
14 with him -- but he's allowed to have an ugly shrub.

15 THE COURT: That's his aesthetic.

16 MS. WESLEY: It's his castle. You know? And he gets to
17 to do that, and he marches to the beat of his own drum, and
18 that's what he wants.

19 So we've had -- as I said, causation aside, 4-13 really
20 cannot come into play here because it is trumped by the
21 specific that deals with the exact same thing but is
22 specific. And the specific must control. And if your Honor
23 would like -- because we cannot have a general subjective
24 ordinance that can be punitive, which would also be
25 unconstitutional. It cannot be general and subjective and

1 conflict with something more specific and be penal. It's got
2 to be narrowly tailored, it's got to be interpreted narrowly.

3 So in any event, whether -- and I understand that it may
4 not be a misdemeanor to violate 4-13, but it is penal. You
5 can get -- whether it's a civil, a ticket, or whatever, it's
6 got to be specific enough to put a property owner on notice
7 of exactly what their rights are. 4-7 does that. He doesn't
8 violate any of that.

9 Then with respect to 9-67, again, this conflicts with
10 4-7 because -- and I agree with Ms. Tillman's argument about
11 nuisance. Obviously we all remember Torts 101. It is a
12 property cause of action. Because you don't want to look at
13 your neighbor's ugly lawn, so that's why we have these
14 nuisance statutes. Just like, you know, Ms. Richardson came
15 in here -- and I know what this is all about. She doesn't
16 like Mr. Quattlebaum's lawn. I get it. I've had neighbors
17 with ugly lawns too. We all have.

18 THE COURT: I don't know that she said that.

19 MS. WESLEY: Well, I think that was the gist. But in
20 any event, she has different aesthetic tastes from him, I'm
21 sure.

22 But under 9-67, the problem again is this conflicts with
23 4-7. This says that -- first of all, if you read the intro
24 of it: "The following are declared to be unhealthy," da, da,
25 da. I'm not going to bore you with all it of. "And property

1 of the entire community." Then it goes on to read,
2 "including, but not limited to: briars, brush, and plants
3 more than 1 foot in height except when cultivated or
4 maintained." Well under 4-13, he's allowed to have something
5 2 and a half feet -- I mean, pardon me.

6 THE COURT: That specifically --

7 MS. WESLEY: Under 2 and a half -- er, not within --

8 THE COURT: Does that not --

9 MS. WESLEY: -- 2 and a half to 10 feet.

10 THE COURT: -- specifically refer to a fence.

11 MS. WESLEY: There's no mention of --

12 THE COURT: Fences and brush --

13 MS. WESLEY: -- fence in 9-67.

14 THE COURT: -- are two different things, aren't they?

15 MS. WESLEY: I'm sorry?

16 THE COURT: Doesn't one refer to brush -- to fences and
17 one refers to vegetation?

18 MS. WESLEY: I don't see anything about fences --
19 correct me if I'm wrong -- in 9-67.

20 THE COURT: I'm going to find it.

21 MS. WESLEY: I think this is only vegetation, trash,
22 etc.

23 THE COURT: Which one are you referring to again?

24 MS. WESLEY: 9-67. I don't see anything about fence. I
25 could be wrong.

1 THE COURT: No, you're saying it's in conflict with --

2 MS. WESLEY: With --

3 THE COURT: -- the other one.

4 MS. WESLEY: With 4-13 because this is saying not only
5 can you not have it between 2 and a half and 10 feet, now it
6 has to be 1 foot. So that's in conflict.

7 THE COURT: Not really.

8 MS. WESLEY: Except --

9 THE COURT: Only one deals with fence, building, wall,
10 or other structure.

11 MS. WESLEY: Well, it deals with --

12 THE COURT: And then the other deals with --

13 MS. WESLEY: -- plantings as well.

14 THE COURT: Well, it vaguely makes a reference to
15 plantings --

16 MS. WESLEY: I agree, your Honor.

17 THE COURT: -- but it more specifically says --

18 MS. WESLEY: I agree.

19 THE COURT: -- "No fence, building, wall, or other
20 structure shall be constructed after the effective date of
21 this ordinance in such a way as to obstruct visibility at
22 intersections. No structure or planting shall be permitted
23 at any point between a height of 2 and one-half feet and 10
24 feet above the upper face of the nearest, or street center
25 line if no curb exists, and within the triangular area

1 bounded on two sides by the street or railway right-of-way
2 lines. However, poles and support structures less than 12
3 inches in diameter may be permitted in such areas."

4 And I really -- I don't see your conflict.

5 MS. WESLEY: Well --

6 THE COURT: One imposes a height restriction. One does
7 not. One deals with "grass, noxious weeds, vegetable growth,
8 briars, brush, and plants more than 1 foot in height except
9 when cultivated or maintained."

10 MS. WESLEY: Right.

11 THE COURT: Another deals with plantings. And the other
12 one is more specifically targeted at an intersection, and one
13 is not. One is generalized. One is specific.

14 MS. WESLEY: So which one are you --

15 THE COURT: I just looked at --

16 MS. WESLEY: Are you saying 9-67 is more generalized.

17 THE COURT: 9-67 is generalized.

18 MS. WESLEY: Yeah, I agree.

19 THE COURT: And 4.13 deals specifically with
20 intersections.

21 MS. WESLEY: I agree, your Honor. And that's another
22 problem because 9-67 is penal. It's actually penal. It's
23 criminal.

24 THE COURT: Yeah, but the jury doesn't know that.

25 MS. WESLEY: Well, I understand, but that's why I'm

1 telling you this.

2 THE COURT: A speeding ticket's penal.

3 MS. WESLEY: Well --

4 THE COURT: And they pay to do it.

5 MS. WESLEY: The problem is, though, if you create a
6 penal statute, it has to be narrowly tailored. It has to
7 tell you what you're going to do that's going to put you on
8 notice. So I'm allowed -- and I can --

9 THE COURT: I don't it's vague. I think it's a plain
10 and ordinary language that tells you you've got to keep your
11 yard in order and it shouldn't be overgrown.

12 MS. WESLEY: Well --

13 THE COURT: It's not vague and it's not --

14 MS. WESLEY: -- 4-13 allow you to do one thing. And
15 9-67 --

16 THE COURT: They're not in conflict. One deals with an
17 intersection. One deals with your yard in general.

18 MS. WESLEY: Well, what if you own both, like he does?
19 You're at an intersection, and --

20 THE COURT: Then you need to look at one part of your
21 yard and make sure it's in compliance, and look at the part
22 that deals with the intersection and be in compliance. I
23 don't think --

24 MS. WESLEY: Okay. So your Honor --

25 THE COURT: I don't think it's in conflict, and it's not

1 vague. It's plain on its face what it's targeted at.

2 MS. WESLEY: Okay. So your Honor is reading them as
3 having dual duties? In other words, you could satisfy both.

4 THE COURT: I think you could very easily. Because the
5 whole part of your property is not at an intersection.
6 Intersections usually come to a point. They come to a point
7 in your yard where it's usually facing or abutting a street.
8 They're right -- you know, if you've got an acre, one part of
9 your yard could be on an intersection and the whole other
10 side of your yard, theoretically, if you live in a triangle,
11 could abut a whole 'nother street that's not an intersection.

12 MS. WESLEY: I understand what your Honor is saying, but
13 you still can't solve the conflict of 4-13 and 4-7 that
14 breaks --

15 THE COURT: 4-7 --

16 MS. WESLEY: -- it up and deals --

17 THE COURT: I don't think --

18 MS. WESLEY: -- with intersections.

19 THE COURT: I don't think anybody -- 4-7 or 4-13?

20 MS. WESLEY: 4-7. He's avoiding 4-7 because --

21 THE COURT: I don't think he's asked --

22 MS. WESLEY: That doesn't help --

23 THE COURT: -- that 4-7 be considered, did he?

24 MS. WESLEY: Well, but it applies.

25 THE COURT: It wasn't handed up.

1 MS. WESLEY: The reason he's not asking is because --

2 THE COURT: Well, y'all didn't ask either.

3 MS. WESLEY: Yes, we did, your Honor. We did --

4 THE COURT: Did you?

5 MS. WESLEY: We did ask.

6 THE COURT: I pulled all of the statutes out and I don't
7 remember that being one of them. Grab it for me so I can
8 look.

9 MS. WESLEY: Yeah, we did a jury --

10 THE COURT: Let me --

11 MS. WESLEY: We did a jury instruction on that.

12 THE COURT: I'll look at it again and make sure I didn't
13 overlook it.

14 MS. WESLEY: Okay. And please tell me if you don't have
15 it, and we'll correct that.

16 THE COURT: They're right there. Bring me the whole
17 stack.

18 MS. WESLEY: And the reason that -- and I have them here
19 as well, your Honor.

20 THE COURT: I already have them.

21 MS. WESLEY: Okay.

22 THE COURT: Mm-hmm.

23 MS. WESLEY: The reason that he's ignoring it is because
24 it gets Mr. Quattlebaum off the hook.

25 THE COURT: What number is that request you're referring

1 to?

2 MS. WESLEY: Um, that's right here. Yeah, bear with me
3 one second. We had this confusion the other day about it.
4 We buried it.

5 THE COURT: I have 4-13.

6 MS. WESLEY: Yeah, I don't know why yours says animals
7 or something.

8 THE COURT: I have 4-5, which is nonconforming uses,
9 buildings, structures, lots.

10 MS. WESLEY: Yes, ma'am. That's it. "Structures and
11 Projections Into Required Yards and Setback Areas"?

12 THE COURT: Yeah, but you didn't give me the whole --
13 you gave me some selective language that really is not
14 applicable to this situation. What you cited was the City of
15 North Charleston zoning ordinance section 4-5, titled
16 "Nonconforming uses, buildings, structures, conditions, and
17 lots." It states, "To avoid undue hardship" --

18 MS. WESLEY: I think that's Mr. Akbar's --

19 THE COURT: -- "the law" --

20 MS. WESLEY: -- perhaps.

21 THE COURT: This was given to me as joint instructions.

22 MS. WESLEY: It may be joint. And --

23 THE COURT: And in this stack I have a separate for --

24 MS. WESLEY: I'll admit --

25 THE COURT: -- Mr. Akbar's individual requests.

1 MS. WESLEY: 4-7 -- I'm not focused on 4-5.

2 THE COURT: Okay. So then --

3 MS. WESLEY: 4-7 is it.

4 THE COURT: I'm just telling you what I have.

5 MS. WESLEY: I understand.

6 THE COURT: So then you skip to the electrical safety
7 code, which is Number 7.

8 MS. WESLEY: Your Honor, I don't have it in front of me,
9 but I'm being told that 4-5 is not in the joint --

10 THE COURT: I'm sorry. I didn't hear you. Are you
11 saying you did not include 4-7?

12 MS. WESLEY: 4-5.

13 THE COURT: No, 4-5 is in here.

14 MS. WESLEY: Is it?

15 THE COURT: 4-7 is not in here. Because I pulled out
16 every single one of them that each of you cited that dealt
17 with --

18 MS. WESLEY: Oh, I see. I understand.

19 -THE COURT: --an ordinance or a --

20 MS. WESLEY: I understand now what the confusion is.
21 And this -- I don't know if I caused it or I don't know what
22 happened. But we were under the impression that 4-7 was
23 going in the joints, and we --

24 THE COURT: But I don't have it. All I have --

25 MS. WESLEY: It was in --

1 THE COURT: -- is 4-5.

2 MS. WESLEY: -- Mr. Akbar's apparently.

3 THE COURT: Well, let me look at that right quick. Hold
4 on one second. Bear with me one moment.

5 MS. WESLEY: And if your Honor will allow us to amend
6 that and add that to --

7 THE COURT: I have 4-13 from Mr. Akbar. And I have
8 section 3-2, which is nonconformity, and 4-5, which is the
9 same as what you had.

10 Actually, Mr. Akbar does have 4-7, which deals with the
11 City of North Charleston zoning ordinance. Section 4-7,
12 titled "Structures and Projections into Required Yards and
13 Setback Areas," references section 4-13 and contains
14 illustrations of the section sight triangle.

15 See, I would -- I'm going to tell you why I skipped over
16 this. If I'm going to use an ordinance, I'm going to use the
17 exact verbiage. Interpretations of the verbiage, that's why
18 I skipped over it. That's why I didn't have it out.

19 MS. WESLEY: Well, I didn't realize it was
20 interpretation. We certainly --

21 THE COURT: It was not the exact verbiage. So I --

22 MS. WESLEY: May we --

23 THE COURT: And the way it's written is confusing. I
24 barely can understand it, so I know a jury wouldn't.

25 MS. WESLEY: May we get that to you?

1 THE COURT: Yeah, you can.

2 MS. WESLEY: Thank you.

3 THE COURT: I'll be glad to look at it.

4 MS. WESLEY: So I'll get that. Is that what -- and I
5 have to take responsibility if I didn't make that clear. The
6 -- what I'm trying to say, though, is now that we all have
7 4.7 in front of us, this is Mr. -- there's two kinds.
8 There's Mr. Quattlebaum's house is not this. It is not
9 diagonal to the intersection.

10 Do y'all me to wait and see what's up?

11 THE COURT: Yeah, let me look at 4-7 right quick. I
12 apologize.

13 MS. WESLEY: All right. And I've got --

14 THE COURT: It says, "Every building or structure
15 hereafter erected or established shall be located within the
16 buildable areas as defined by this section, and in no case
17 shall such buildings extend beyond the buildable area into
18 the respective front, side, rear yards or other setbacks
19 required for the district in which the lot is located, except
20 for the following." It deals with ornaments, eaves,
21 chimneys, cornices -- none of which is applicable. Two is
22 reserved. Then it goes to three, which is "fences and walls,
23 provided that no such structure when located in an R-1, R-1A,
24 R-2, or R-3 zoning district shall measure more than 4
25 vertical feet in height when located in a front yard," which

1 is not applicable in this instance.

2 MS. WESLEY: Right.

3 THE COURT: "Fences or walls proposed on residentially
4 zoned parcels located adjacent to dissimilarly residentially"
5 -- that's not applicable.

6 "Fences and walls for places of worship, schools, and
7 other non" -- that's not applicable.

8 "Flag lots and lots" -- that's not applicable.

9 "No such structure" -- which part are you relying on?

10 MR. WILLEY: G. Go to G.

11 THE COURT: Because this is long.

12 MS. WESLEY: Well --

13 MR. WILLEY: G solves it for you.

14 MS. WESLEY: I would also --

15 THE COURT: "No fence or wall shall impede visibility as
16 required by section 4-13."

17 MR. WILLEY: Right.

18 THE COURT: And 4-13 says --

19 MS. WESLEY: No, your Honor.

20 THE COURT: -- "Visibility at railroad and" --

21 MS. WESLEY: I'm a little confused.

22 THE COURT: -- "street intersections" --

23 MS. WESLEY: Did you read 3(c)? "No fence shall exceed
24 10 feet from the finished grade"?

25 THE COURT: 3(c): "No such structure when located in an

1 industrial" --

2 MS. WESLEY: Oh, I -- you know what? I think you're
3 looking at at the wrong year actually.

4 THE COURT: Am I?

5 MR. WILLEY: No, this is what --

6 THE COURT: I'm looking at the most current.

7 MS. WESLEY: You're looking at the one that is current
8 -- er, pardon me --

9 THE COURT: Mine is current --

10 MS. WESLEY: -- the one that was passed in --

11 THE COURT: -- through June 6, 2022.

12 MS. WESLEY: I have -- well, but this is back in 2017.

13 THE COURT: Okay.

14 MS. WESLEY: We are looking -- so would you like to see
15 our copy, your Honor? I believe --

16 THE COURT: I can look it up.

17 MS. WESLEY: Okay.

18 THE COURT: Which year? 2017?

19 MS. HONEYCUTT: 2016 because it --

20 THE COURT: Well, it would be applicable when the
21 accident happened.

22 MS. HONEYCUTT: Yes.

23 THE COURT: So it would be --

24 MS. WESLEY: 2017 but I -- yes, ma'am. The --

25 MS. HONEYCUTT: I think it's October 25, 2016, archived.

1 THE COURT: But there's one in 2017.

2 MS. HONEYCUTT: I think that would have been after --

3 THE COURT: 10/25/16 is supplement 58. And then 7/25/17
4 is supplement 59. But that would have been after --

5 MS. HONEYCUTT: After.

6 THE COURT: -- the incident.

7 MS. WESLEY: Yes.

8 MS. HONEYCUTT: Correct.

9 THE COURT: So look at 10/25/16. Okay.

10 MR. WILLEY: And there's Number 4 of the --

11 THE COURT: Section 4-7, "Structures."

12 MR. WILLEY: Go to 4.

13 THE COURT: What was the section you were relying on,
14 Ms. Wesley?

15 MS. WESLEY: I was looking at the fences --

16 THE COURT: I'm looking at that.

17 MS. WESLEY: -- which is 3.

18 THE COURT: But that has a bunch of subparts. So which
19 one are you relying on?

20 MS. WESLEY: It does. It's 3(c).

21 THE COURT: 3(c): "No fence shall exceed 10 feet in
22 height measured from the finished grade of the lot or
23 property upon which the fence is being erected except as
24 otherwise provided in appendix A, zoning ordinance. Fences
25 at athletic facilities are exempt from this provision."

1 MS. WESLEY: So that's conflicting with 4-13.

2 MR. WILLEY: Read section 4, your Honor.

3 MS. WESLEY: Yeah, that's hedges.

4 MR. WILLEY: Or structures.

5 MS. WESLEY: "Provided that no such structure or hedge
6 shall impeded visibility as required by 4-13."

7 But that's talking about hedges, and it's not -- if
8 that's the case and they've added in "structure," now it's
9 conflicting again. Because you can't allow a height and
10 then, in another section, say you can't have it.

11 THE COURT: I don't think it's conflicting, but go ahead
12 and make your argument.

13 MS. WESLEY: Yeah, for sure.

14 THE COURT: Yeah.

15 MS. WESLEY: Yeah, F is corner lots. And that's what I
16 was trying to -- that's what I was trying to point out here.
17 Your Honor, are you -- can you see that?

18 THE COURT: I'm going to print the whole thing.

19 MS. WESLEY: Oh, okay.

20 THE COURT: But you would never send an appendix to the
21 jury.

22 MR. WILLEY: I'm sorry?

23 THE COURT: You would never send an appendix of an
24 ordinance to a jury.

25 MS. WESLEY: Yeah, I just wanted to make sure you and I

1 were on the same page.

2 THE COURT: Yeah, I'm on -- I just read exact -- I went
3 back to the supplement 58, which is the one that took place
4 in 2016.

5 Yes, sir, Mr. Johnson?

6 MR. JOHNSON: Can my client be excused?

7 THE COURT: Absolutely. Anybody that doesn't -- yeah.
8 I mean, I don't know that they want to be here for all this
9 part.

10 MS. WESLEY: Oh, I sent Mr. Quattlebaum home because he
11 hadn't slept.

12 THE COURT: They can -- I mean, anybody that wants to be
13 excused that's not involved in the legal argument is
14 certainly welcome to excuse themselves.

15 Okay, Ms. Wesley. I'm listening.

16 MS. WESLEY: No, your Honor. I'm willing to wait until
17 you kind of --

18 THE COURT: I've already read it. He's going to print
19 it for me too.

20 MS. WESLEY: Okay. So we were pointing out in (f)
21 "Corner lots," obviously in (f)(1), that's not our
22 configuration. We're not diagonal -- Mr. Quattlebaum. He's
23 in -- I don't want to misspeak here. He is in (2), "Where
24 house faces one street front directly." This is him. This
25 is he. His house faces this way, not -- oh, it does -- it

1 looks like and they're showing the dotted red line around
2 Number 2 -- (f)(2). It says "maximum height of 10 feet," the
3 fence, right there. Does that make sense?

4 THE COURT: I'm confused. What are you asking?

5 MS. WESLEY: Your Honor, may I hold this up? I don't
6 know if you can see.

7 THE COURT: I've already seen that. It's been used
8 multiple times and it was attached to --

9 MS. WESLEY: Okay.

10 THE COURT: -- almost everything that was submitted
11 before we started the case, which is the the sight triangle.

12 MS. WESLEY: Well, this is what I'm trying to --

13 THE COURT: Mm-hmm.

14 MS. WESLEY: -- to make a connection, and then you have
15 a failing because it's right --

16 THE COURT: That's all right. Take your time.

17 MS. WESLEY: But here, the dotted red lines here, in the
18 legend it's telling you maximum height of 10 feet right
19 there, and that's on the intersection. So that's why I'm
20 trying to explain that 4-13 now contradicts this, when this
21 is this specific. And his house faces Meeting Street Road
22 this way, and this configuration, that's the 3 by 3 by 3. So
23 you know that he had no shrubs there. You know his fence is
24 not there and his fence is not 10 feet.

25 So what we are trying to establish is that if you want

1 to use an ordinance for duty, 4-13 is contradicted by this,
2 4-7, which is the specific. And he is not within this
3 specific. That's what we were trying to show your Honor. So
4 we don't believe that either one of those statutes can give a
5 duty.

6 Your Honor does not look convinced.

7 THE COURT: Yeah, I wouldn't try to read my face. I've
8 mastered the poker face. I learned a long time ago juries
9 try to -- I might be thinking about my grocery list and they
10 think I'm reacting to the testimony. So I do my best --

11 MS. WESLEY: Well, at least you're not thinking about
12 your grocery list now.

13 THE COURT: I do my best not to have any reactions at
14 all.

15 MS. WESLEY: So that is what I am arguing. So it's just
16 -- in a wrongful death case, we've got to be completely
17 accurate about what the duty is, especially when it's an auto
18 wreck and my client was not in the auto wreck -- did not
19 drive a car, did not own a car, was not on the road.

20 And so the duty has got to be exact. It cannot be some
21 amorphous "Well, everyone knows you've got to cut your
22 grass." That is not going to cut it in a wrongful death
23 case. So if they want to charge a homeowner, then they have
24 got to have a specific duty for that homeowner. That is in
25 4-7, which he is, on its face, exempt from.

1 THE COURT: How is he exempt from 4-7?

2 MS. WESLEY: Because his fence is not over 10 feet. He
3 is not within the sight triangle. So on its face, he is --

4 THE COURT: Isn't that more of an argument about jury
5 charge, not about his duty.

6 MS. WESLEY: Well, I think your Honor can take, you
7 know, a new directed-verdict motion or on this motion, since
8 I don't think we were on the same page perhaps when I was
9 arguing my directed verdict. He just doesn't fit within this
10 statue. But not only that, as Ms. -- I'm going to say your
11 name wrong. It's Tinsley?

12 MR. FORD: Tillman.

13 MS. WESLEY: Tillman. I'm sorry. I just met her, so I
14 apologize.

15 THE COURT: That's all right. I think she's forgiven
16 you.

17 MS. WESLEY: And it's late on Friday. I'm telling you,
18 it's taken its toll.

19 As she pointed out, these are purely property statutes.
20 This is not a premises-liability case. It is not. Premises
21 liability is a whole different animal. Nobody tripped on his
22 property. None of that. I mean, maybe the person who stuck
23 their face in the bush to take a photo maybe poked an eye
24 out, but nobody, you know, died on his property.

25 So premises liability, auto wreck -- two completely

1 different things. It's about what the two drivers did or how
2 they were affected. And how they were affected has to be --
3 if you want to show -- I've had shrub cases before. I've had
4 intersection cases before. No ordinance was used.

5 It's the duties of the drivers to show that if they
6 failed to see the car that -- he had a duty to look for
7 oncoming traffic. The motorcycle had a duty to make sure the
8 inter- -- that no one was going to potentially pull in front
9 of him because he has to defensively drive. They've got to
10 show that the homeowner actively interfered with those
11 duties, not that somebody violated a zoning ordinance or
12 something else.

13 THE COURT: I don't think that's what they're saying.
14 They're saying he failed to maintain his yard, his bush
15 actively obscured the gentleman who was at Hedgewood's view,
16 that he had to pull up beyond the stop bar to see, and that
17 that occluded his view. And in addition to that, that it
18 likewise occluded Mr. Rash's view. I don't think that they
19 have premised their cause of action to nuisance or failure to
20 comply with the ordinance. What they're saying is that he
21 had a bush that was out of control, he didn't trim it, and it
22 occluded other people's view. I'm common parlance.

23 MS. WESLEY: I understand --

24 THE COURT: I'm not using --

25 MS. WESLEY: -- what you're saying.

1 THE COURT: -- any flowery language.

2 MS. WESLEY: I understand.

3 THE COURT: And that that was a violation of an
4 ordinance and that he should have been aware that he should
5 have kept his property within a certain way. And that bush,
6 while it may not be in the sight triangle, it is at the
7 intersection of his property with that street.

8 MS. WESLEY: Right. But your Honor, that's when we come
9 back to 4-13, being general and subjective. And it cannot
10 control the specific of 4-7. It cannot.

11 THE COURT: I think all these are jury-charge issues,
12 not directed-verdict issues. It's what standard of duty
13 would apply. And I do not -- well, I think you all have
14 argued it vigorously, and I do not think there's any case law
15 that supports that an ordinance or statute or public-safety
16 rule cannot establish it. You can't -- it can't establish a
17 private cause of action, which is totally different. A
18 speeding statute, if you get a ticket, there's a violation
19 and you pay the ticket. But there's a statute on speeding,
20 and that could --

21 It's really up to the jury to decide whether you
22 violated the duty or not, and whether the duty, in fact,
23 exists. Whether there was a duty -- well, I'm sorry. I
24 misstated that. I'm sorry. I'm tired. It's 6:13.

25 Whether the duty existed and whether there was a

1 violation of the duty and violation of a safety standard of
2 -- I've charged ordinances more times than I can count. I've
3 charged them from the City of Mount Pleasant. I've charged
4 them from the City of Charleston. Ordinances can create a
5 duty. An ordinance -- ordinances are passed, and while I
6 agree it does not create a private cause of action, it can be
7 evidence of negligence.

8 MS. WESLEY: Well, but your Honor is finding that duty;
9 is that my understanding? I just want to make sure the jury
10 does not decide the duty. They may decide if it's been
11 violated.

12 THE COURT: The elements of negligence is that the
13 plaintiff has to establish that there was a duty, that the
14 duty was breached, that there was proximate cause of damages,
15 and that they, in fact, have damages.

16 MS. WESLEY: I don't disagree.

17 THE COURT: So they can't get to the end of the
18 negligence analysis unless it is established with the jury
19 that there is a duty and that the duty was breached. And the
20 law is very clear; they must prove by a preponderance of the
21 evidence that there was a duty; that the duty was breached;
22 that there's proximate cause, which is foreseeability and
23 duty in the -- legal duty; and that there are damages as a
24 proximate result. And I think that's black-letter negligence
25 tort.

1 MS. WESLEY: I think we all agree on that. We shall get
2 you an amended jury -- er, an additional jury instruction for
3 4.7.

4 THE COURT: I don't think you need to. I have the
5 ordinance. I've printed it.

6 MS. WESLEY: I see. So -- okay.

7 THE COURT: So I mean, I don't instruct interpretations
8 of ordinances. If I'm going to instruct a statute or
9 ordinance, I read exactly what it says.

10 MS. WESLEY: Thank you, your Honor.

11 THE COURT: You're welcome.

12 All right. Anything in response, Mr. Willey?

13 MR. WILLEY: Yes, your Honor.

14 THE COURT: You may proceed.

15 MR. WILLEY: Let me start at the end and clear up this
16 confusion about 4-7 and 4-13.

17 4-7, your Honor, if you look at 4 under the version that
18 was in existence in 2016, it specifically says this: "Hedges
19 provided that no such structure or hedge shall impede
20 visibility as required by section 4-13." In South Carolina,
21 we read statutes. And if there are two statute that are in
22 conflict, such as one that says you may have a fence that is
23 10 feet and one that says you may have a fence that is 2 and
24 a half feet or shorter, you go to the more specific. Here --
25 unless the legislative intent says otherwise.

1 Here, it specifically says that if this conflicts with
2 4-13, 4-13 applies. You look at the visibility as required
3 in 4-13. So that takes care of that.

4 With respect to this duty argument as to Mr. Akbar and
5 Mr. Quattlebaum, your Honor is correct, and I'll hand up if
6 may -- may I hand this to you?

7 THE COURT: What is it?

8 MR. WILLEY: This is just an additional jury charge that
9 we would ask based on their argument. And it just deals with
10 a landowner's duty in South Carolina, and it comes directly
11 from the *Underwood* case that they cite.

12 THE COURT: Yeah, but this wasn't a tree. And I'm
13 familiar with that case. Didn't a tree fall on somebody
14 because it was rotten or something.

15 MR. WILLEY: No.

16 THE COURT: Tell me what that case was about.

17 MR. WILLEY: So in --

18 THE COURT: Maybe I'm confusing that with a case I
19 tried --

20 MR. WILLEY: Yeah.

21 THE COURT: -- where a rotten tree fell.

22 MR. WILLEY: Yeah, that case was different. In that
23 case, it was a case -- that case was a -- did not go for the
24 plaintiff. But in that case, there was a tree obstructing a
25 stop sign. The problem there was the person specifically

1 testified they weren't even looking for a stop sign. So in
2 that case, it did not apply.

3 But what that case says, citing the *Staples* case and
4 *Prosser and Keeton on the Law of Torts*, is that urban
5 landowners have a duty of reasonable care to inspect the
6 trees on their property and make sure they are safe. We went
7 back and added "bushes" as it applies to this case.

8 THE COURT: Yeah, but if the case don't say "bushes" --

9 MR. WILLEY: Also --

10 THE COURT: If the case doesn't say "bushes," I'm not
11 instructing what the case doesn't says. You don't get to
12 extrapolate.

13 MR. WILLEY: Well, we would ask your Honor to --

14 THE COURT: And trees and bushes are two different
15 things. I've tried tree cases, and you have it as a whole
16 different duty with tree.

17 MR. WILLEY: And we can have -- we can provide
18 additional information on that from *Prosser and Keeton on the*
19 *Law of Torts*.

20 THE COURT: I don't need to look to that. I have case
21 law on that. Trees and bushes are different. And a
22 different set of case law applies to trees. You have an
23 affirmative duty to inspect trees on your property, because
24 it's anticipated and foreseeable that they can fall over, the
25 could rot, they could --

1 MR. WILLEY: That's a separate thing.

2 THE COURT: Yeah.

3 MR. WILLEY: And here, though, what we're talking
4 about --

5 THE COURT: But I don't extrapolate from cases.

6 MR. WILLEY: It's the landowners --

7 THE COURT: If it doesn't say it, I'm not instructing
8 them.

9 MR. WILLEY: Right. It's the landowners that have a
10 duty of reasonable care to make sure they've safe for
11 travelers of streets adjoining their land. And that's
12 directly from *Underwood*.

13 THE COURT: But it says "trees." *Underwood* specifically
14 says "trees."

15 MR. WILLEY: Because it was a tree in that case.

16 THE COURT: Yeah, I don't know. But cases -- every case
17 is fact specific, and I don't extrapolate. I'm a bit of a
18 strict instructionist.

19 MR. WILLEY: Well, we'll ask --

20 THE COURT: If it doesn't say it, it doesn't say it. I
21 don't extrapolate to make it say something it didn't say.

22 MR. WILLEY: Okay. Well, we would ask that --

23 THE COURT: I don't think that I'm allowed to do that.

24 MR. WILLEY: We'll bring that up at the charge
25 conference. But --

1 THE COURT: We're about to have charge conference. I've
2 already dealt with it.

3 MR. WILLEY: We would also incorporate our prior
4 arguments and memorandum as to our responses to summary
5 judgment and to earlier directed verdict. But I think on the
6 4-7, 4-13, there is not a conflict. 4-13 is what applies to
7 Mr. Quattlebaum. And the Court is, of course, correct that
8 ordinances can inform the duty analysis.

9 With respect to Mr. Akbar, it was said that his property
10 boundary was never established, but he did testify when I
11 asked him that that portion of his fence was outside of his
12 property line. Of course that doesn't really have anything
13 to do with --

14 THE COURT: I don't recall him saying that, but my
15 memory's not infallible.

16 MR. WILLEY: Well, I wrote that down so we --

17 THE COURT: Yeah, lawyers write a lot of things down.
18 And then when I look back at the record, it doesn't always
19 bear that out. I think sometime because you're an advocate,
20 you hear things -- you know, you hear things a little
21 differently sometimes than they're said. And then when we go
22 back -- I just don't recall him saying that. I mean, I --
23 I'm open to going back and looking at the record if I need
24 to, but I don't recall that being the testimony. But if I'm
25 wrong, I'm wrong.

1 MR. WILLEY: Right. And he specifically testified that
2 the fence and the bushes there were his, of course, and we
3 walked through the analysis as to the wooden fence and the
4 chain-link fence.

5 With respect to Ms. Tillman's argument regarding we're
6 only relying on the two ordinances for a duty, that's not
7 true. We're relying on all the common law and the additional
8 ordinances that were submitted, not just the two. I moved
9 for those two specifically during my directed-verdict motion
10 because I don't think they provided any evidence from which
11 an inference could be arrived at that Mr. Akbar or
12 Mr. Quattlebaum did not violate the duties prescribed by
13 those ordinances.

14 With respect to the conversation about Mr. McJunkin,
15 what was read for the Court was when he was specifically
16 being asked about his deposition testimony. As the Court
17 knows, his testimony in court was slightly different from the
18 deposition. However, he did not say -- or lie and say he
19 said something different in his deposition.

20 And the expert testimony in this case has specifically
21 -- not one, not two, but three engineers have specifically
22 said that the bushes of Mr. Akbar and Mr. Quattlebaum and
23 their fences contributed and were causative factors,
24 concurring causes in this collision. We also have photos and
25 scan data in evidence which the jury could use to reach the

1 same conclusion.

2 With respect to the Dominion argument, just a couple of
3 things there. Mr. Knight also testified that in the
4 placement of poles, they rely on the common sense of the
5 technical specialists or the engineer that is out in the
6 field. And again, we have had multiple engineers -- civil
7 engineers testify that those poles were unreasonably placed
8 in the view corridor. And we even presented evidence of what
9 could be done to remediate that, although we're not required
10 to to meet our burden.

11 So for those reasons and all the reasons previously
12 stated when we argued directed verdict, motion for summary
13 judgment, and the memorandums incorporated therein, we would
14 ask the Court to deny the defendants' motions in full and
15 grant as much of our motion as the Court deems appropriate.

16 THE COURT: Yeah. And *Underwood* is not applicable
17 factually or otherwise. This is not the holding in
18 *Underwood*. It's dicta. *Underwood* deals with somebody that
19 ran a stop sign. And actually, her testimony in that case
20 was that she thought she was on another road --

21 MR. WILLEY: Right.

22 THE COURT: -- that didn't have stop signs, not that she
23 didn't see the stop sign because it was obscured by limbs.

24 MR. WILLEY: Correct.

25 THE COURT: There are cases directly on point that deal

1 with trees that have a little bit different to the homeowner.
2 And in some instances, as in this instance, it would have
3 been DOT's responsibility to trim back that tree, not hers.

4 MS. WESLEY: Your Honor, I'm sorry. Am I --

5 THE COURT: And this was -- and it was a summary
6 judgment case, and they found it was error to have even
7 granted the summary judgment.

8 Yes, ma'am.

9 MS. WESLEY: I'm sorry. I needed to make one more point
10 I neglected.

11 THE COURT: Sure.

12 MS. WESLEY: As I said, I apologize.

13 THE COURT: That's okay.

14 MS. WESLEY: Under 4-13, the fence -- if the way that I
15 read the ordinance is it was the plaintiff's burden to
16 establish when the fences went up and they never did, I think
17 the fences are grandfathered in.

18 THE COURT: Actually, what they said -- and according to
19 the testimony from from both defendants -- well, at least
20 from Mr. Akbar, that I remember, he said the fence was there
21 when he bought the house in 1996 or '8.

22 MS. WESLEY: He -- and the fence was also there when
23 Mr. Quattlebaum bought it. So we don't -- but it was the
24 plaintiff's burden to show when the fence went in, and I
25 think that should -- I think they're both grandfathered in on

1 that because the plaintiff didn't cure their burden on that.
2 And I apologize for --

3 THE COURT: But is there any evidence that these fences
4 are noncompliant? That's my question because I don't recall
5 any testimony that they were.

6 MS. WESLEY: Well, according to Mr. Willey, he's saying
7 under 4-13 because the fence is over 2 and a half feet, and
8 he's ignoring the triangle part.

9 THE COURT: Well, when was this ordinance effective
10 and --

11 MS. HONEYCUTT: 1998.

12 MS. WESLEY: 1998.

13 THE COURT: But when was the ordinance effective that
14 would have applied to this fence.

15 MS. HONEYCUTT: It was 1998.

16 THE COURT: No, no. If it was put in before he bought
17 the house, it would be effective when --

18 MS. WESLEY: Oh, I see what you're saying.

19 THE COURT: -- the house was built and then the fence
20 was put in.

21 MS. WESLEY: Well, I think that's their burden, and I
22 haven't seen it.

23 MS. TILLMAN: And your Honor, if I could interject?

24 THE COURT: Yes, ma'am.

25 MS. TILLMAN: The building ordinance for the City of

1 North Charleston was not enacted until 1990.

2 THE COURT: Mm-hmm.

3 MS. TILLMAN: The visibility -- er, sorry, it's -- yeah,
4 1990. And there's no legislative history of what would have
5 been in effect. But Mr. Akbar did testify the fence had been
6 there for a long time. And there is no legislative history
7 on an ordinance that would prohibit the fence from any time
8 since that 1998 time when Mr. Akbar bought his property.

9 And in fact, Mr. Akbar testified that all along the
10 road, all the fences in that neighborhood are all lined up.
11 And so surely if they were all lined up and violated some
12 zoning ordinance, the City of North Charleston would --

13 THE COURT: I think all those are factual arguments you
14 can apply. If it doesn't apply, that they didn't -- all of
15 that is about absence of evidence and failure to meet the
16 requirements of the statute. All of it's factual.

17 In the interest of time, because I already ruled very
18 specifically regarding these motions, the motion for directed
19 verdict by the plaintiff is denied. Everything in the
20 arguments are questions of fact whether there was negligence,
21 duty, breach, and causation. While there's evidence of the
22 medical bills, it's for the jury to determine if they were
23 reasonable and necessary, and even more importantly, whether
24 the actions that they have -- that they contend are the
25 actual proximate cause of Mr. Rash's death. So everything

1 that he has raised are questions of fact, and the motion is
2 denied.

3 Dominion, in essence, renewed its original motion. The
4 Court will stand on its original findings regarding the
5 questions of fact that exist and deny the motion. And even
6 more -- and more specifically, the request that, based on
7 Dr. White's testimony, that the survival action be dismissed
8 on directed verdict, that would be inappropriate. They're
9 two dueling experts regarding whether there was conscious
10 pain and suffering. The motion is denied.

11 Whether there was negligence is also a question of fact.
12 Whether there was compliance or noncompliance with the safety
13 ordinances and statutes are also questions of fact. Whether
14 there was a breach of the duty is also a question of fact.
15 And again, the Court adopts its original findings and
16 incorporates them into this portion of the record so that I
17 would not be redundant.

18 Whether there was visibility, whether there was some
19 obstruction to the sight line are also all questions of fact.
20 And you all are free to -- it's a chain-link fence. I've
21 seen -- y'all can argue you can see through it. I mean, all
22 these things are questions of fact for the jury within their
23 province to decide whether, in fact, the plaintiffs have met
24 their burden of proof. The motions for directed verdict are
25 denied.

1 And again, I think I went into great detail about those
2 motions the other day when they were made, and these are
3 renewals of those motions, which in essence are based -- have
4 the same basis and legal argument in fact. And just in the
5 interest of time, because it's 6:27, I'm not going to go back
6 through them.

7 And just so that Mr. Willey is clear, the *Underwood* case
8 is not applicable. I'll have your request marked as a
9 Court's exhibit, but I will not be instructing it. It's not
10 factually applicable, nor is the holding in that case
11 supported in terms of being applicable to this case. And
12 that's *Underwood versus Coponen*, C-O-P-O-N-E-N.

13 And Madam Court Reporter, if you could mark this along
14 with the other. You can just mark it when you get a chance.

15 COURT REPORTER: Okay.

16 THE COURT: Yeah, you don't have to rush it.

17 MS. WESLEY: Your Honor?

18 THE COURT: Yes.

19 MS. WESLEY: I thought that this -- pardon me. I
20 thought that this charge also had been given to you.

21 THE COURT: Which one is that?

22 MS. WESLEY: It's spoliation.

23 THE COURT: What evidence is there of spoliation?

24 MS. WESLEY: Well, the phone. The phone that was wiped.

25 THE COURT: I don't know that that's spoliation. I

1 think anybody that's had an iPhone, if you've had a teenager
2 that forgot their password and got locked out of their phone,
3 when you get in the phone they wipe it. You don't have an
4 option.

5 MS. WESLEY: We didn't bring it up. We didn't want
6 to --

7 THE COURT: But I don't think it rises to the level of
8 spoliation. Spoliation is when you deliberately go into a
9 device and you do something to it with the intention of
10 destroying evidence.

11 MS. WESLEY: We don't know.

12 THE COURT: I don't think the testimony rises to that
13 level.

14 MS. WESLEY: Mr. Quattlebaum's parents lost a
15 22-year-old. They got the phone open. And it can be done.

16 THE COURT: My niece's phone got wiped at the Apple
17 Store downtown when she got locked out of it. Thank God she
18 saved her stuff to the cloud. I don't deal with iPhones, but
19 that is their policy. Even if you own the phone, when you go
20 into Apple, if you can't remember your code, your option is
21 to either remember your code or for them to reset your phone.
22 That's your only option. And it wipes everything. It takes
23 it back to its original factory settings.

24 MS. WESLEY: Well, they said --

25 THE COURT: And if you haven't saved it in the cloud,

1 you can't get it back. There's a function that you can use
2 where you can get all your information back if you've saved
3 it or if you've done it within a certain amount of time.

4 And the only reason I know that is because I had to deal
5 with a teenager who thought she was going to die because she
6 thought she lost everything in that precious little iPhone.
7 And I spent an hour at Apple trying to persuade them to
8 please let my child in her phone. And they told me
9 absolutely no, under no circumstances, that our options were
10 to wipe it and pray she'd some of it to the cloud or --

11 And actually I learned in that process that Apple has an
12 automatic saving function, that when you do certain things
13 within a certain window, it automatically saves it to the
14 cloud for you, but you've got to recapture it before it's
15 deleted.

16 MS. WESLEY: Well, I --

17 THE COURT: But all of that's extraneous. I'm just
18 saying that based on -- and it's not evidence and I wouldn't
19 consider it in making a decision. But the bottom line is I
20 don't think the evidence rises to the level of spoliation.
21 Spoliation is the concept when you deliberately have
22 destroyed something, lost it, hypothecated it such that you
23 believe there's something detrimental or contrary to your
24 interests such that you've destroyed it because you don't
25 want it to be discoverable.

1 And the testimony from Mrs. Rash is that they were
2 trying to get into the phone. They went to Apple -- which
3 Apple tells the police the exact same thing, even with a
4 warrant. They ain't giving you the passwords. You got two
5 options: You can figure out a password, you can reset the
6 password, or they going to wipe it back to its original
7 factory settings. Those are your only options. That's one
8 of those peculiarities of that phone.

9 So her testimony was that they only gave her two
10 options. Well, one option, which was either to try to figure
11 out -- my words, not hers -- to try to figure out that
12 password or to wipe it back to its original factory settings.
13 And that's what they did. And I don't -- and there really
14 was not testimony elicited as to what would have been on the
15 phone that would have been contrary or would have risen to the
16 level of, you know, some admission against interest or
17 otherwise.

18 And as I explained to you all, and you all could have
19 availed yourself of it, under the federal closed storage act,
20 nothing you put on those phones belongs to you. And they
21 keep it all. So if you wanted it, you could have subpoenaed
22 it and they would have been more than happy to have provided
23 it to you -- for the locations, the IP addresses, which
24 phones they came from, and who did it. They keep it all.

25 It's that little print, you know, on the those apps that

1 says, "None of your information belongs to you. It belongs
2 to us." As a matter of fact, when you use those apps on your
3 phone, especially an iPhone, you give the government the
4 ability to troll through your phone without a warrant and to
5 use anything they find against you. But nobody reads the
6 small print, and that's probably why I'm such a dunce when it
7 comes to technology, why I don't use it, and why I always
8 feel like they're stalking me.

9 But you would have had the ability -- you could have
10 gotten anything -- you could have gotten -- if there's
11 anything from any social media site -- Facebook, IG, TikTok,
12 all -- well, I don't know about TikTok. I guess it's --

13 MR. WILLEY: Chinese.

14 THE COURT: They're owned by -- I don't know how you
15 would get their stuff. I've never encountered somebody
16 trying to get something from TikTok. But you can get it from
17 Facebook. You can get it from Instagram. You can get it
18 from Twitter. They keep it all, and they can tell you
19 exactly where -- who took it, what phone it came from, the
20 exact location that was being utilized on a map by
21 geocoordinates where it was taken. And usually an address,
22 if you send the right inquiry with a subpoena, but it
23 requires a circuit court to sign that order because it
24 requires a court of record to sign an order to get those
25 records.

1 But the bottom line is I haven't heard any evidence that
2 would rise to the level of spoliation. But if you want to
3 hand it to me, I'll be glad to look at it and mark it as a
4 Court's exhibit.

5 MR. COX: Your Honor?

6 THE COURT: Y'all can look at them. I'm going to --
7 they're all marked as Court's exhibits.

8 Yes, ma'am -- yes, sir. I'm sorry. I didn't mean to
9 call you ma'am.

10 MR. COX: While you are receiving jury charges, we sent
11 a set on --

12 THE COURT: Yeah, you know what? I did my charge at
13 lunchtime. I've been working on it for three days. That's
14 why I asked you for it Monday.

15 MR. COX: Well, we --

16 THE COURT: So everything you all have given me I've had
17 marked. And I'm going to go through every single one of
18 them.

19 MR. COX: Well, we have three additional ones. If you
20 don't mind me handing them up, we'd like to include them.

21 THE COURT: Are you bringing them to me?

22 MR. COX: I'll hand them up.

23 THE COURT: Thank you, sir.

24 MR. COX: Can you, I guess, mark it as a Court's
25 exhibit?

1 THE COURT: I'll have to mark them next in line in
2 accordance with what I already have.

3 Actually, I'm going to add these to what they've already
4 given me so that you don't have to do any numbers.

5 COURT REPORTER: Okay.

6 THE COURT: So this is Akbar. This is the plaintiff's,
7 I believe. Yeah, I may have to. This will be Quattlebaum
8 Number 1. So that will be marked.

9 (Court's Exhibit Number 28 marked for the record.)

10 (The Court conferred with the court reporter.)

11 THE COURT: Okay. The ones that you handed up, Mr. Cox,
12 I've just added them to Court's exhibit because they were
13 sequential in number, so they went along with what you'd
14 already given me.

15 MR. COX: That's right, your Honor.

16 THE COURT: And then I added Quattlebaum Number 1, which
17 is the spoliation instruction, which I've already ruled is
18 not applicable in this case. There's no evidence of
19 spoliation or that would rise to the level of spoliation.
20 But certainly that doesn't prohibit you from arguing, you
21 know, within the evidence about the phone.

22 And then I have Defendant Anthony Akbar's request that I
23 have numbered because they didn't have numbers on them.
24 Well, they have numbers on them, but they're one continuous
25 document instead of separated out, that are numbered 1

1 through -- it's 1, but it has five subparts. And then
2 there's an additional one that I've marked as 2, which is
3 entitled "Duty."

4 And then I have the plaintiff's requests that are 1
5 through -- they numbered something 11A, but that's not
6 accurate. It's Number 18 sequentially in what has already
7 been presented to the Court, which deals with *Underwood*,
8 which I've already ruled is not applicable factually to this
9 case.

10 All right. And when I say that I have -- that I'll go
11 through your requests, but I'm going to go through mine
12 first. And then -- not my requests; the instructions first.
13 And then when I go through yours, if I say that I'm using my
14 standard instruction, that means the concept is covered. It
15 does not mean I'm using your language.

16 I'll give a general instruction regarding the jury's
17 responsibility and my responsibility, which will include the
18 definition of a wrongful death cause of action.

19 I'll give them a general instruction that they are the
20 finders of the facts and just some general language regarding
21 how they're to judge witness credibility and believability.

22 I'll give them a general instruction on deposition
23 testimony, which is exactly like the instruction I gave prior
24 to the evidence being played.

25 I will then instruct on -- give a general instruction on

1 expert witness testimony, as well as when the opinions of an
2 expert is relied on.

3 I'm using the "most probably" standard, but that
4 language in and of itself does not exactly have to be
5 employed.

6 I will give a general instruction on direct and
7 circumstantial evidence, which is that there are two types of
8 evidence: direct and circumstantial; that there's no
9 distinction made between the two. However, to the extent
10 that either party relies on circumstantial evidence, all of
11 the circumstances must be consistent with each other and,
12 when taken together, point conclusively to the facts sought
13 to be proven.

14 I'll give a general instruction regarding corporation as
15 a person, which is: "In our courts, no distinction is made
16 between a corporation and an individual. A corporation is a
17 person in the eyes of the law. And a corporation is entitled
18 to the same fair and impartial consideration and to justice
19 by the same legal standards as an individual."

20 And a general instruction, which is basically that a
21 corporation can only act through its agents or employees.
22 Therefore, a corporation is responsible for any negligent
23 acts or omissions of its agents or employees while acting
24 within the scope of their employment, which proximately
25 caused injury to another person. Although -- well, the

1 person that put the posts up, I guess theoretically that
2 could be applicable.

3 I'll then instruct them that the same -- that they must
4 apply the law as I instruct it, that they can't set up an
5 arbitrary standard.

6 I'll then instruct on the burden of proof, which again
7 uses and employs the scales in defining a preponderance of
8 the evidence, which is the greater weight of the evidence.

9 I'll then give them a general instruction regarding what
10 a wrongful death cause of action is, which is that this is a
11 wrongful death cause of action. It is provided for by South
12 Carolina Code sections 15-51-10 through 15-51-60. And that
13 in a wrongful death cause of action, there are three
14 essential elements that the plaintiff must prove by a
15 preponderance of the evidence.

16 Well, actually, what I'll say is "In a wrongful death
17 cause of action, there are three essential elements of the
18 plaintiff's cause of action, which are denied by the
19 defendant in this case. First, that the defendant was
20 negligent. Second, that the deceased came to his untimely
21 death as a consequence of that alleged wrongful conduct. And
22 third, that the defendant's negligence in one or more of the
23 ways alleged -- well, I apologize. Third, that the
24 defendant's negligence in one or more of the specifications
25 of wrongful conduct as alleged was the proximate cause of the

1 death of the plaintiff's intestate.

2 I will then instruct on negligence, which is that the
3 plaintiff claims that the defendants were negligent and
4 should compensate the plaintiffs for the injuries they've
5 suffered as a result of the defendants' negligence. In order
6 to prove that the defendants were negligent, the plaintiff
7 must prove by a preponderance or greater weight of the
8 evidence four things.

9 And I think we know what the elements of negligence are.
10 First, that the defendant owed the plaintiff a duty of care.
11 Next, that the plaintiff must prove that the duty was
12 breached by a negligent act or omission. And I'm going to
13 come back around to what I'm going to instruct under that
14 section. That the plaintiff must also prove by the greater
15 weight of the evidence that they suffered damages as a result
16 of the breach.

17 And also within those elements, I will define
18 negligence. And negligence is defined: "Negligence means
19 that a person did not use the same amount of care that a
20 person of ordinary care and reason and prudence would have
21 exercised in the same circumstances. The word 'careless'
22 means the same thing."

23 MS. TILLMAN: Your Honor, respectfully, I'm going to
24 object to that.

25 THE COURT: I'm going to give you a chance to take

1 exception.

2 MS. TILLMAN: Okay. I'm sorry.

3 THE COURT: Yeah, I need you to listen to the whole
4 thing.

5 And then negligent act or omission, because we use that
6 general language and then we go to the specifics of the
7 duties, so your concern will be alleviated, I think that you
8 have.

9 MS. TILLMAN: Just tell me when I may make my objection.

10 THE COURT: Because that reasonable-man standard does
11 apply to Akbar and Quattlebaum. And a corporation is a
12 person. But I'll deal with that later. I need you to listen
13 to the whole thing before you react.

14 "And that they must prove damages were proximately
15 caused by the breach." And of course we know proximate cause
16 is both causation in fact as well as foreseeability. And a
17 proximate cause is not the only cause, that there can be
18 concurring causes to an injury.

19 And then within the duty section, I will instruct the
20 following -- preliminarily, because I need to hear -- and I
21 might -- I'm going to come back to this because I'm going to
22 go through all your instructions because I need to know if
23 anybody objects to some of what has been submitted. And if
24 there's no objection, then I will instruct it.

25 I will instruct that our common-law rules of the road

1 require the operator of a motor vehicle to use the same care
2 that would have been exercised by a person of ordinary reason
3 and prudence if they were driving the same vehicle, same
4 place, same conditions. And that includes proper lookout,
5 duty to keep the vehicle under control.

6 I will instruct right-of-way, which is 56-55-80.

7 I will instruct 56-55-1520, which is speed.

8 I will instruct subsection (a) as well as sub -- the
9 applicable portion of subsection (f), which is that a driver
10 of a vehicle shall drive consistent with the requirements of
11 subsection (a) at an appropriate reduced speed when
12 approaching an going around a curve.

13 And then a lot of ordinances were submitted, and I need
14 to know -- I have 9-42, which is "Every occupant, tenant, and
15 owner of every building" -- and this is Plaintiff's Number 5
16 -- "and/or the holder of any possessory interest in any
17 vacant lot abutting on a sidewalk or road right-of-way in the
18 city shall jointly and severally keep and maintain such
19 sidewalk to the curb line thereof, or if there is no sidewalk
20 then to the edge of the road, in a clean and proper condition
21 and free from trash, ashes, rubbish, and unsightly grass and
22 weeds."

23 And I don't know if there's any evidence that a sidewalk
24 was not maintained.

25 MR. WILLEY: It's the second part about to the edge of

1 the road.

2 THE COURT: Yeah, but there's no evidence that there was
3 trash, ashes, rubbish, or unsightly grass or weeds.

4 MR. WILLEY: Weeds.

5 THE COURT: There was no weeds. A tree is not a weed.

6 MR. WILLEY: The bushes we would contend --

7 THE COURT: The bush is not a weed. I looked at it.
8 It's not a weed. It might be unsightly. It might be
9 overgrown, but it's not a weed.

10 MR. WILLEY: I think the other part of that is
11 applicable, and we could strike, obviously, the trash, ashes,
12 and all that. But it's the responsibility to maintain to the
13 edge of the road, and joint and several.

14 THE COURT: I just that it has to be factually
15 applicable, which means there would have to be the presence
16 of trash, ashes, rubbish, and unsightly grass and weeds. You
17 can't separate that sentence. It's conditioned on certain
18 things. And there's no evidence in the record that there was
19 trash, ashes, rubbish, or unsightly grass and weeds in that
20 area. There is evidence that there was a tree there. You
21 might consider it unsightly, but that doesn't come within the
22 definition of 9-42.

23 MR. WILLEY: We do think it meets the definition of
24 "weeds."

25 THE COURT: Weeds are very specific things. They're not

1 an ugly tree.

2 MS. WESLEY: Well, this is the first we're hearing about
3 weeds caused this accident.

4 THE COURT: Well, yeah, that's why I said there's no
5 evidence of that. Yeah, and I -- that -- what I saw in that
6 picture is not a weed. It's a tree. It might not be trimmed
7 to your satisfaction. It may be ugly because it's February
8 and it lost its foliage. But it's not a weed.

9 MR. WILLEY: Your Honor --

10 THE COURT: And then 4-13, which is --

11 MR. WILLEY: Your Honor?

12 THE COURT: Yes.

13 MR. WILLEY: Just briefly, if I may be heard on that.
14 So "weed" is defined in the dictionary as a --

15 THE COURT: I can't look at the dictionary. If they
16 didn't define it in this statute, it doesn't exist.

17 MR. WILLEY: Then we go to the next --

18 THE COURT: No. A weed is not ambiguous. I don't need
19 to look to an alternative source to define it.

20 MR. WILLEY: Well, I would just like to say --

21 THE COURT: That's the only time you look outside of the
22 plain and ordinary language of a provision is when it's
23 ambiguous. And "weed" is not ambiguous.

24 MR. WILLEY: I would just like to put this on the record
25 that a "weed" is defined by Merriam-Webster as a plant that

1 is not valued where it is growing and is usually of vigorous
2 growth.

3 THE COURT: He said he valued his tree.

4 MR. WILLEY: Two, a weedy growth of plant.

5 THE COURT: He said he valued his tree. It was his
6 aesthetic and he liked it. And it's a tree. It's not a
7 weed. So that real is not applicable.

8 4-13, which is "Visibility at railroad and street
9 intersections shall be unobstructed" --

10 And again, for the record, the Court does not look to
11 Merriam-Webster or other sources to define what is commonly
12 -- what is unambiguous. I don't need to look at a secondary
13 source to know what a weed is. And it's a tree. And that's
14 been all the testimony. It's unsightly, according to some
15 people's interpretations. And it wasn't trimmed to other
16 folks' satisfaction. But it's a tree.

17 Ordinance 4-13, "Visibility at railroad and street
18 intersections shall be unobstructed. No planting shall be
19 placed or maintained and no fence, building, wall, or other
20 structure shall be constructed after the effective date of
21 this ordinance." And I think one of Mr. Ford's submissions
22 says when this ordinance -- I forget the date. I looked at
23 this a moment ago. Because a lot of his requests say the
24 effective date.

25 What is the effective date of 4-13 again?

1 MS. TILLMAN: It's 1998, your Honor. And --

2 THE COURT: At which -- "the effective date of this
3 ordinance in such a manner as to obstruct visibility at
4 intersections. No structure or planting shall be permitted
5 at any point between a height of 2 and one-half feet and 10
6 feet above the upper face of the nearest curb, or street
7 center line if no curb exists, and within the triangular area
8 bounded on two sides by the street or railway right-of-way
9 line. However, poles and support structures less than 12
10 inches in diameter may be permitted."

11 How is this applicable to this property if the effective
12 date was 1998 and the fences clearly existed prior to 1998?

13 MR. WILLEY: Because it says erected or maintained, and
14 so it's not just whether or not it was put in at that
15 particular time. It's whether it's maintained after that
16 time. And here we have --

17 THE COURT: There's no testimony the fence wasn't
18 maintained. There's testimony that the fence in and of
19 itself was a visual obstruction.

20 MR. WILLEY: We're not saying that the fence wasn't
21 maintained. But maintained in the location is what this
22 ordinance refers to. And it also refers to fences, or
23 plantings, you know, trees, as your Honor said, etc.

24 THE COURT: That's not what this says. "Visibility at
25 railroad and street intersections shall be unobstructed. No

1 planting shall be placed or maintained" --

2 MR. WILLEY: Right.

3 THE COURT: -- "and no fence" -- but there's not
4 evidence in the record that this tree and this fence was
5 postdated 1998. The only evidence in the record is that it
6 predated 1998. The plain and ordinary language of this
7 ordinance has restrictions on it. It's only applicable to
8 what happened after its effective date.

9 MR. WILLEY: And "erected," it was not erected. But
10 "maintained." It was certainly --

11 THE COURT: That's not --

12 MR. WILLEY: -- maintained after that date because it --

13 THE COURT: This says, "No planting shall be placed or
14 maintained" --

15 MR. WILLEY: Right/.

16 THE COURT: -- "and no fence, building, wall, or other
17 structure shall be constructed after the effective date of
18 this ordinance." And if I read the plain and ordinary
19 verbiage, it means that you couldn't maintain this fence
20 after 1998, and in some way it should have been removed. I
21 guess it was probably grandfathered in because it was built
22 when the house was built.

23 MR. WILLEY: There's been no evidence of that.

24 THE COURT: I think it's your burden to prove that this
25 is applicable.

1 MR. WILLEY: And we did. And there was testimony that
2 these were maintained by --

3 THE COURT: I don't think that's a fair reading of this.
4 It says "after the effective date of this ordinance."

5 MR. WILLEY: Right. And the testimony in this case from
6 both the individuals was that their property was maintained
7 after 1998. And so we acknowledge the fence was not erected
8 necessarily; there's no evidence of that. But "maintained"
9 is what gets us there.

10 THE COURT: Well, that's not what this says. It says,
11 "No planting shall be placed or maintained" -- that's
12 planting -- "and no fence, building, wall, or other structure
13 shall be constructed." It doesn't say anything about
14 maintaining.

15 MR. WILLEY: Right. So --

16 THE COURT: It says you shouldn't construct after the
17 effective date, and no planting should be planted or
18 maintained after this effective date. That's what this
19 ordinance says. You're reading --

20 MR. WILLEY: No, we're agreeing. I don't think we're
21 disagreeing about what it says.

22 THE COURT: So it would not be applicable.

23 MR. WILLEY: No, it --

24 THE COURT: There's no evidence in the record that this
25 was planted after 1998.

1 MR. WILLEY: "Or maintained." And the testimony is that
2 they maintained the plantings.

3 THE COURT: I'll have to think about that over the
4 weekend.

5 MR. WILLEY: That's the testimony in the case.

6 And I would also point out to the Court, obviously there
7 was -- North Charleston I think is one of the oldest -- well,
8 we can go and look back at that. But "maintained" is the key
9 word there.

10 MS. TILLMAN: And your Honor, just --

11 THE COURT: But I don't think the "fence, building, or
12 wall," that part of the sentence, is not applicable. It's
13 totally separate. It's not talking about maintenance. It
14 says, "and no fence, building, wall, or other structure shall
15 be constructed after the effective date of this ordinance.
16 So it would not apply to fences after 19- -- unless they were
17 put in after 1998. The wording is very clear.

18 So the only portion of this conceivably that would be
19 applicable would be "Visibility at railroad and street
20 intersections shall be unobstructed. No planting shall be
21 placed or maintained after the effective date of this
22 ordinance in such a manner as to obstruct visibility at
23 intersections." And the rest of that would not be applicable
24 because the fence was not placed after.

25 And it says, "No fence, building, wall, or other

1 structure shall be constructed after." The "maintain" part
2 only goes to plantings. It does not apply to fences. That's
3 what the structure of the sentence supports. So the rest of
4 this would not be applicable to the fence. This was after
5 1998. The fence was put in prior to 1998.

6 MS. TILLMAN: And your Honor, just to make the record,
7 Mr. Akbar objects to the Plaintiff's Requested Charge Number
8 5 because Mr. Akbar's property is not at the intersection.
9 And therefore, this --

10 THE COURT: Well, I can't just separate out. I can't
11 say, "This applies to Akbar. This applies to Quattlebaum."
12 That's for you to argue.

13 MS. TILLMAN: Certainly. I'm making my record of the
14 objection.

15 THE COURT: Yeah, but there's no way for the Court to
16 segment that out without making an inappropriate comment on
17 the facts. But the only portion of this ordinance that could
18 conceivably be applicable would be "No planting shall be
19 placed or maintained." And then the rest of that is not
20 applicable because it deals with fences after the effective
21 date of this ordinance "in such a manner as to obstruct
22 visibility at intersections."

23 So I think it goes without saying that Mr. Akbar's
24 property is not at the intersection so it couldn't be
25 applicable to him. And that's for you all to argue that.

1 But I can't charge something -- I can't say "Only these are
2 applicable." I can't make that inappropriate comment on the
3 facts about -- that's for you all to argue whether it applies
4 to your client and what doesn't.

5 MS. TILLMAN: Yes, it -- your Honor, and it sort of goes
6 along with our argument that he does not have a duty under --

7 THE COURT: I've already heard that and I've ruled on
8 it.

9 MS. TILLMAN: You're right.

10 THE COURT: Yeah. So the only part that I would
11 instruct -- and I'm going to think about it over the
12 weekend -- is that "Visibility at railroad and street
13 intersections shall unobstructed. No planting shall be
14 placed or maintained in such a manner as to obstruct
15 visibility at intersections." And that's the only part of it
16 that's applicable because everything else deals with building
17 a fence, building, wall or structure after the effective date
18 of this ordinance, which is 1998. And clearly these fences
19 were constructed much earlier than that.

20 MR. COX: Your Honor, before you move on --

21 THE COURT: Mm-hmm.

22 MR. COX: -- that last sentence is sort of important to
23 Dominion.

24 THE COURT: Which sentence is that?

25 MR. COX: "However, 12-inch poles."

1 THE COURT: Oh, yeah. I -- well, that's how it -- there
2 was testimony that they were installed after 1998 --

3 MR. COX: No, no.

4 MR. WILLEY: Correct.

5 THE COURT: -- because they were replace.

6 MR. COOKE: We want that in there.

7 MR. COX: No, we want that in there.

8 THE COURT: That's what I'm saying. It is -- it would
9 be applicable because there's testimony that the poles were
10 replaced after 1998.

11 MR. WILLEY: Right.

12 THE COURT: Yeah. "However, poles and support
13 structures less than 12 inches in diameter may be permitted
14 in such areas." I think that would be appropriate.

15 MR. COX: Right. Thank you, your Honor.

16 THE COURT: You're welcome.

17 Now, there's some other things --

18 MR. COX: I want to hold up my ruler when you say that.

19 MS. TILLMAN: And your Honor, I would as if you're going
20 to charge that ordinance at all --

21 THE COURT: Uh-huh.

22 MS. TILLMAN: -- if you would charge it in its entirety
23 rather than --

24 THE COURT: No, because all of it doesn't apply. The
25 fences don't apply because it was after 1998, and the only

1 testimony in the record is that they were placed when the
2 subdivision was designed and constructed. So why would I
3 instruct something and confuse the jury about something that
4 doesn't apply to this? It would be imposing a duty on you
5 that doesn't exist.

6 MS. TILLMAN: Okay.

7 THE COURT: You want me to charge a duty that doesn't
8 exist?

9 MR. FORD: No.

10 MS. TILLMAN: No.

11 THE COURT: Okay.

12 MS. TILLMAN: I don't.

13 MR. FORD: There are no --

14 MS. TILLMAN: I just wanted clarity on what -- I'm
15 sorry, your Honor. I just wanted clarity on what you would
16 charge of that ordinance.

17 THE COURT: "Visibility at railroad and street
18 intersections shall be unobstructed. No planting shall be
19 placed or maintained in such a manner as to obstruct
20 visibility at intersections. However, poles and support
21 structures less than 12 inches in diameter may be permitted
22 in such areas."

23 MS. TILLMAN: So respectfully, I think I would like the
24 part about the visibility triangle, the triangular --

25 THE COURT: No, ma'am. That would never go back to a

1 jury. That's a matter -- the visibility triangle doesn't go
2 with this in any event. This goes --

3 MS. TILLMAN: No. No.

4 THE COURT: -- with something else.

5 MS. TILLMAN: Yes, your Honor. So it's that the
6 ordinance in 4.13 talks about the triangular --

7 MS. WESLEY: It's got the triangular area.

8 MS. TILLMAN: -- area bounded on two sides by the --

9 MR. WILLEY: No. That's 4 -- that's a different --

10 MS. TILLMAN: No. The --

11 MS. WESLEY: That's the triangle that was mentioned.

12 MS. TILLMAN: Let me find the ordinance for you.

13 THE COURT: No, I have them all printed. Where's the
14 other one I had that deals with -- the triangle deals with
15 4.7, not 4.13.

16 MS. TILLMAN: So 4-7 contains a visual depiction of
17 4.13. And 4.13 says -- and I don't have it in front of me.

18 MS. WESLEY: I do. Here you go.

19 THE COURT: But 4.13 isn't applicable -- is only
20 applicable after 1998.

21 MS. TILLMAN: So 4.13, the portion of it that is
22 important is this part about "and within the triangular area
23 bounded on two sides by the street or railway right-of-way.

24 THE COURT: I have to look at it.

25 MS. TILLMAN: Yes. And that's what I'm -- and so that

1 description of the triangular area is very important to our
2 case, your Honor because it gives context to what we're
3 talking about here, which is that the ordinance "Visibility
4 at Intersections" applies to the triangular area bordered on
5 two sides by the street. And so to edit that portion of
6 the --

7 THE COURT: What portion are you referring to?

8 MS. TILLMAN: So it's the second clause within --

9 THE COURT: I need you to tell me what section you're
10 referring to.

11 MS. TILLMAN: The second clause within the --

12 MS. WESLEY: In 4-13.

13 MS. HONEYCUTT: 4-13.

14 MS. TILLMAN: -- section of 4.13. And the second clause
15 -- oh. Oh. I see. It's not in Mr. Willey's charge.

16 THE COURT: Yeah.

17 MS. TILLMAN: He edited the statute.

18 THE COURT: Well, no. But I'm pull -- I printed the
19 whole statute.

20 MS. TILLMAN: Okay.

21 THE COURT: Er, the ordinance. I printed the entire
22 thing. I'm just looking for it.

23 MS. TILLMAN: So let me read it.

24 THE COURT: No, no. I'm going to look it up.

25 MS. TILLMAN: It's the third sentence of the second

1 clause.

2 THE COURT: So in 4.13, tell me exactly what you mean as
3 it existed.

4 MS. TILLMAN: All right. So --

5 THE COURT: So what section are you referring to?

6 MS. TILLMAN: May I approach the bench and --

7 THE COURT: Just tell me the section. I have it up on
8 the computer.

9 MS. TILLMAN: Okay. It is the third sentence --

10 THE COURT: Oh, I see what you're talking about.

11 MS. TILLMAN: -- of the second clause.

12 THE COURT: That was elimin- -- well, but this is not
13 exactly --

14 MS. TILLMAN: "And the triangular area."

15 MS. WESLEY: If I may, your Honor? It's just poorly
16 worded.

17 MS. TILLMAN: It is very poorly worded.

18 THE COURT: No, you know what the problem is?

19 (The Court read quietly to herself.)

20 THE COURT: No, but the problem is that applies to what
21 was built after 1998.

22 MS. TILLMAN: Well, no.

23 THE COURT: And so you want me to instruct that? I had
24 that it wasn't submitted.

25 MS. TILLMAN: Where are you getting that it --

1 THE COURT: I'm looking at the actual ordinance 4-13.
2 And I see the language you're pointing to. It's right before
3 it talks about the 12-inch-diameter poles.

4 MS. TILLMAN: Yes. And so the 12-inch-poles -- er,
5 poles that are under 12 inches in diameter are allowed in the
6 triangular area. And as is -- but what is not allowed -- and
7 your Honor, I'll tell you I was an English major and I stayed
8 up for hours trying to understand this part.

9 THE COURT: Yeah, I have the version as it existed in
10 2013. Give me -- I mean, 2018. So I'll print it.

11 No, no. I don't need you to bring it to me. I can
12 print my own copy.

13 MS. TILLMAN: Okay.

14 THE COURT: Yeah. And we'll come back to that once I've
15 printed it.

16 MS. TILLMAN: What is important to be within the charge,
17 if your Honor is going to charge this --

18 THE COURT: I want to read it and then --

19 MS. TILLMAN: -- is the triangular area language.

20 THE COURT: I want to read it.

21 Yeah, go print it for me, please.

22 And then I'll have the full totality of what it said in
23 2018, and then we'll come back to that in a moment.

24 Now, I need to know if there is any exception to
25 instructing Mr. Akbar's request, which is -- well, that's

1 already 4-13, so we already have that. And that includes the
2 12 inches diameter, which now that's a duplicate because we
3 already have that.

4 MR. COOKE: We don't mind it being duplicated.

5 THE COURT: Huh?

6 MS. WESLEY: I'm sure you don't.

7 THE COURT: I've already -- yeah, I've already said that
8 4-5 -- wait, let me see.

9 There's too many pieces of paper. Let's see here.

10 Yeah, I think this is -- I'm looking at Defendant's
11 Request Number 6. I pulled out everything that made
12 reference to the zoning ordinance from the requests, and I
13 made copies. And so 4-13 is visibility, which we just
14 covered. And we've already talked about the 12 inches in
15 diameter.

16 And 3-2, why would we need nonconformity? What's this
17 all about? Is that really applicable? "In existence."
18 Well, it might be.

19 MS. TILLMAN: Yes.

20 THE COURT: But there's really been no testimony about
21 not -- well, there kind of has been.

22 MS. TILLMAN: Your Honor, it's in there to show that
23 things that were in place before --

24 THE COURT: I would imagine there's no exception to
25 that.

1 MR. WILLEY: There is, your Honor.

2 THE COURT: Tell me why.

3 MR. WILLEY: Well, there's no evidence of it. The only
4 reference to it was when Mr. --

5 THE COURT: He testified that it was there when he
6 bought it.

7 MR. WILLEY: No. Mr. Ford was arguing about
8 nonconforming vegetation, which your Honor will note is not
9 mentioned. This is nonconformity, and this -- I mean,
10 there's just no evidence of it. Whether or not it was there
11 when he bought it doesn't make it conforming or nonconforming
12 to the ordinance.

13 MS. TILLMAN: And your Honor --

14 THE COURT: But the problem is all of this stuff existed
15 before 1998. And so it is, to some extent, grandfathered in
16 as a nonconforming use. And I think it probably would be
17 appropriate to instruct 3-2.

18 MR. WILLEY: But there's no evidence -- there's no
19 evidence of --

20 THE COURT: There is evidence. Mr. Akbar testified that
21 everything was there when he bought the house.

22 MR. WILLEY: No evidence of the --

23 THE COURT: And Mr. Quattlebaum likewise testified to
24 the same thing.

25 MR. WILLEY: We object to 3-2.

1 THE COURT: Noted. Can't leave the jury with the
2 impression that somehow something applies to them that
3 doesn't.

4 MR. WILLEY: Well, they're not going to know the dates
5 on these ordinances. I can't allow you to argue that
6 something that's not actually -- they are allowed to argue
7 that all this stuff existed before what you argued existed
8 and it's a nonconforming use.

9 Okay. "Visibility at railroad and street intersections
10 shall be unobstructed. No planting shall be placed or
11 maintained in such a manner as to obstruct visibility at
12 intersections."

13 See, the problem Ms. Tillman that I'm struggling with is
14 what you're talking about the triangle, that exists after
15 1998. I can't instruct back without instructing the rest of
16 it, which would impose an obligation on your client that
17 doesn't exist. His fence was -- predates 1998.

18 MS. TILLMAN: I think -- and I'm sure Dominion would
19 agree -- that the triangular area language is very important
20 to the defense of --

21 THE COURT: I got that, but I can't charge part of that
22 sentence without all of it because it all reads together.

23 "No structure or planting shall be permitted at any
24 point between a height of 2 and one-half feet and 10 feet
25 above the upper face of the nearest curb, or street center

1 line if no curb exists, and within the triangular area
2 bounded on two sides by the street or railway right-of-way
3 lines."

4 You can't separate that from the sentence that says, "No
5 fence, building, wall, or other structure shall be
6 constructed after the effective date of this ordinance in
7 such a manner as to obstruct visibility at intersections. No
8 structure or planting shall be permitted." And then it gives
9 you the height definitions that really are not applicable to
10 you because this was passed after 1998 and the fences were
11 put in before that. So I cannot instruct about the
12 triangular area without talking about the height of these
13 fences because the sentence is all read together. It is not
14 separated with separate obligations.

15 MS. TILLMAN: So your Honor, I think I must just be
16 confused.

17 THE COURT: Mm-hmm.

18 MS. TILLMAN: But you're -- you're saying that the -- it
19 doesn't apply to things that were in place before 1998. Does
20 that mean --

21 THE COURT: That's clearly what this says.

22 MS. TILLMAN: And the way that I read that is the entire
23 ordinance 4-13 does not apply to anything in place --

24 THE COURT: That's not correct.

25 MS. TILLMAN: -- before 1998.

1 THE COURT: Because "no planting shall be place or
2 maintained."

3 MS. TILLMAN: "Within the triangular area."

4 THE COURT: That -- no, that's not what this says.
5 Well, it does say "No structure or planting" --

6 MS. TILLMAN: Yeah.

7 THE COURT: -- "shall be permitted at any" -- but I
8 can't instruct part of the sentence and not all of it.

9 MS. TILLMAN: Well --

10 THE COURT: So it's all or nothing. So you either get
11 the 2 and a half and 10 feet and the triangular area -- I'm
12 not instructing the triangular area without the rest of that
13 sentence. Because the sentence is read together as one
14 consummate requirement.

15 MS. TILLMAN: And I think the whole ordinance would be
16 read. And so --

17 THE COURT: You want me to charge -- you want me to
18 instruct the whole ordinance?

19 MS. TILLMAN: I -- well, I --

20 THE COURT: I don't think your colleagues want that.

21 MS. WESLEY: I would disagree with that, your Honor.

22 THE COURT: Y'all might want to huddle before you make
23 that statement to bind you. I don't know that it really
24 benefits you.

25 (Defense counsel conferred.)

1 MS. WESLEY: We're talking, your Honor.

2 THE COURT: Y'all talk. I'm going to think about it
3 over the weekend anyway.

4 All right. Then we go to section 4-7, which is
5 "Structures and Projections into Required yards and Setback
6 Areas," which is "Every building or structure hereafter
7 erected or established shall be located within the buildable
8 areas as defined by this section, and in no case shall such
9 buildings extend beyond the buildable area into the
10 respective front, side, rear yards or other setbacks required
11 for the district in which the lot is located except for the
12 following: Fences and walls that" -- I think, Ms. Wesley,
13 you were referring to section 4-7(3).

14 MR. WILLEY: It's 4.

15 MS. WESLEY: No. Mr. Willey is referring to 4. I was
16 referring to -- you're in 4-7, your Honor? Is that where you
17 are?

18 THE COURT: I'm sorry. Say that for me one more time.

19 MS. WESLEY: Are you in 4-7?

20 THE COURT: Yes, ma'am.

21 MS. WESLEY: Yes, it's 4-7(3) that fences are allowed to
22 be 10 feet in height.

23 THE COURT: But what subsection is that?

24 MS. WESLEY: C. 3(c).

25 THE COURT: "No fence shall exceed 10 feet in height

1 measured from the finished grade of the lot or property upon
2 which the fence is being erected except as otherwise provided
3 in appendix A, zoning ordinance. Fences at athletic
4 facilities are exempt from this provision."

5 But I don't recall any testimony that any of these
6 fences exceeded 10 feet. So I'm trying to figure out why --

7 MS. WESLEY: There wasn't, but Mr. Willey is making the
8 argument that under 4-13, the fence has to be 2 and a half
9 feet.

10 THE COURT: I don't think that's applicable, and I think
11 I've been clear about that. It was after 1998. It only
12 applies if it was after 1998, so that ordinance would not
13 apply to property owners who had their fences in place before
14 1998. It's not retroactive. It doesn't say it is. So it
15 wouldn't be applicable. So I don't think 4-7 is applicable
16 either. Correct?

17 MS. WESLEY: I don't think --

18 MR. WILLEY: We don't believe 4-7 is applicable because
19 of subsection 4 which says, "Hedges, provided that no such
20 structure or hedge shall impede visibility as required by
21 section 4-13."

22 MS. WESLEY: What is "such structure"?

23 MR. WILLEY: Fences -- that's what the whole --

24 MS. WESLEY: "Such structure."

25 THE COURT: Yeah, but I need to know what date this was

1 applicable. Because if it's after the effective date, then
2 it would not be applicable. I mean, if this predates the
3 effective date -- and 4-13 was 1998, so ergo, this would be
4 1998 as well. Correct?

5 MS. TILLMAN: I'm looking it up right now, your Honor.

6 MS. WESLEY: So your Honor --

7 THE COURT: Well, it's very general, though. It just
8 says, "Hedges, provided that no such structure or hedge shall
9 impede visibility as required by 4-13," which is really
10 cumulative because you're already saying that a hedge can't
11 -- but if this is relying on 4-13, it was from 1998.

12 MS. TILLMAN: So it says -- the legislative history on
13 4-7 --

14 THE COURT: Mm-hmm.

15 MS. TILLMAN: -- says it was enacted in 1998.

16 THE COURT: Mm-hmm. It would have to be -- if it
17 created reference to the other statute, it would make sense
18 they were the same date.

19 MR. WILLEY: Well, and that's when -- that was the first
20 date of North Charleston's current ordinance.

21 THE COURT: I got that. But you can't make it
22 retroactive.

23 MR. WILLEY: No. And I'm not --

24 THE COURT: That's an ex post facto violation.

25 MR. WILLEY: -- saying you should read 4-7. I mean, I

1 agree with you. I'm just --

2 THE COURT: Are we agreeing then that 4-7 does not
3 apply?

4 MS. WESLEY: No. The sight triangle definitely applies.

5 THE COURT: How does it apply if it's after 1998?

6 MS. WESLEY: Well, but this isn't limited to 1998.

7 THE COURT: If you rely on 4 dash -- the one that it
8 references, it says --

9 MS. WESLEY: But that's only in that one section. The
10 actual ordinance does not --

11 THE COURT: So which section are you relying on,
12 Ms. Wesley?

13 MS. WESLEY: 4-7.

14 THE COURT: Which subsection? It's got a bunch a
15 subsections.

16 MS. WESLEY: If you look at -- and I apologize, your
17 Honor. I am sitting because now my medicine has giving
18 out --

19 THE COURT: That's all right.

20 MS. WESLEY: -- and my foot is hurting.

21 THE COURT: I told you you could sit at any time your
22 foot was --

23 MS. WESLEY: Well, I'm addressing the Court.

24 It's 4-7(f), "Corner lots," (2), "Where house faces one
25 street front directly" -- here you go. This is what

1 Mr. Quattlebaum --

2 THE COURT: Yeah, I'm trying to figure out which one
3 you're referring to. We pulled the one from 20- -- the last
4 time it was --

5 MS. WESLEY: No. I actually have the one fro 1/22/2015.
6 I can look up the 2016, but I don't think --

7 THE COURT: It would be the one that would be in effect
8 at the time of this incident.

9 MS. WESLEY: I think that's --

10 THE COURT: Or most immediately.

11 MS. WESLEY: -- probably the 2016.

12 MS. TILLMAN: It's 2016. It's October 25, 2016.

13 MS. WESLEY: Yeah. Hold on. Let me make sure that my
14 section numbers are correct.

15 THE COURT: So let's go see. It goes to (c).

16 Wait a minute. I might not have been looking at the
17 right page.

18 Which -- tell me the section again.

19 MS. WESLEY: I'm looking it up to make sure that we --

20 THE COURT: You're talking about (f), "Corner lots"?

21 MS. WESLEY: Yes, I am. And it's -- mine is section 2,
22 which is "Where corner lot faces street directly," which
23 would be Mr. Quattlebaum, not on the diagonal. I am looking
24 it up to make sure that I am -- that your section is not
25 numbered differently from mine.

1 And on it --

2 THE COURT: Oh, and then 2, where one house faces
3 directly.

4 MS. WESLEY: And what that shows, your Honor, the dotted
5 line, if you look at the legend, it says maximum height of 10
6 feet. That's showing you that this --

7 THE COURT: But when was this effective?

8 MS. WESLEY: It's effective, I assume, immediately upon
9 passage.

10 THE COURT: Yeah, but it would only apply after. It
11 doesn't apply before. Ordinances are never retroactive.

12 MS. WESLEY: Right. But the triangular area would be
13 effective as of 2017.

14 THE COURT: But it wouldn't apply retroactively to your
15 client's house.

16 MS. WESLEY: But it doesn't need to. That's why I think
17 we're --

18 THE COURT: I don't understand what you're saying.

19 MS. WESLEY: So one of the things they're talking about
20 are shrubs.

21 THE COURT: Mm-hmm.

22 MS. WESLEY: There are no shrubs in that triangular
23 area --

24 THE COURT: Mm-hmm.

25 MS. WESLEY: -- the 3 by 3 by 3 at this intersection in

1 2017.

2 THE COURT: Mm-hmm. But this ordinance would only be
3 applicable from the date it was passed forward.

4 MS. WESLEY: Right.

5 THE COURT: Ordinances are not retroactive. So --

6 MS. WESLEY: I just don't understand, your Honor.

7 THE COURT: That would be a violation of ex post facto,
8 especially if it's punitive, which means if it were applied
9 retroactively and he had something in that triangle, he'd
10 have to take it down, which they can't require you to do. So
11 all things are prospective. So this would only apply
12 prospectively from the date it was passed forward.

13 MS. TILLMAN: And your Honor --

14 MS. WESLEY: So --

15 MS. TILLMAN: -- that's exactly why we would like to
16 have this section charged because it is a visual depiction of
17 the sight --

18 THE COURT: Yeah, but I would never give them this
19 diagram. It would have to be reduced to writing. You could
20 argue it. But, you know, the Court is required to charge the
21 applicable law. I don't give diagrams to juries, and I don't
22 give actual statutes to juries. I have to be able to
23 verbalize it for them.

24 MS. TILLMAN: Oh, I --

25 THE COURT: So I would only give them the dimensions. I

1 would never show them this diagram.

2 MS. WESLEY: Let me --

3 THE COURT: Nor would I give it to them.

4 MS. TILLMAN: Well, it is a codified --

5 THE COURT: It is, but I'm required to reduce it to
6 writing. I don't give diagrams to juries. It's just like I
7 would never give them the actual 15-5-1520. I read them the
8 applicable portions of it. And I don't give juries my
9 instructions.

10 MR. WILLEY: Just as further support for the Court's --

11 THE COURT: Well, I tell you what. If y'all can agree
12 on something, I'll consider it. But I don't think it's
13 appropriate to give the jury a diagram.

14 MS. TILLMAN: Your Honor, I --

15 MR. WILLEY: Just for the Court --

16 THE COURT: You can argue it.

17 MS. TILLMAN: -- respectfully object to that because it
18 is a codified --

19 THE COURT: I understand that, but I'm required to
20 reduce that codification to wording. I'm not showing the
21 jury a diagram in my instructions. It will be reduced to the
22 writing that is in that ordinance, and that's it. I don't --
23 you don't give a copy of the statute to a jury.

24 MS. TILLMAN: Your Honor, in that case, we would ask --
25 we object -- respectfully disagree that because it is a

1 statute for the --

2 THE COURT: It's actually a -- it's an ordinance. It's
3 not a statute.

4 MS. TILLMAN: It's an ordinance.

5 THE COURT: And I'm required to reduce it to writing
6 that the jury can understand. But I'm not giving them -- you
7 can show it to them. You can argue it. But I'm not going to
8 give it to them. And I'm not going to attempt to try to
9 stand before them with an ELMO and explain that to them.
10 There are words on here, and I will --

11 MS. TILLMAN: Yes.

12 THE COURT: -- reduce those to what is capable of being
13 understood, but I'm not showing them a diagram.

14 MS. TILLMAN: And that's what I was going to say. We
15 would respectfully ask that you would read the words from the
16 picture.

17 THE COURT: Do y'all agree to --

18 MR. WILLEY: No.

19 THE COURT: -- this being applicable?

20 MR. WILLEY: No.

21 THE COURT: Why don't you agree to it being applicable?

22 MR. WILLEY: The reason the Court has stated. Ex post
23 facto, it is -- in 1998, those things were not in force. And
24 also, the diagram is not accurate. That's not what we have
25 here. What we have is Mr. Quattlebaum's house is actually

1 bounded by three streets, not two streets. There is a street
2 directly in front, not a house. And that's what this applies
3 to if you had access --

4 THE COURT: Well, actually, Mr. Akbar's house is right
5 next to his, and that is what this diagram depicts. It
6 depicts a house, then it depicts a lot that's on the corner
7 bounded by a sidewalk and a street, and then a house right
8 behind it.

9 MR. WILLEY: But that is not what we have here. What we
10 have here is a house bounded by three streets: Walnut
11 Street, Hedgewood Street, and Meeting Street Road.

12 MS. WESLEY: No.

13 MR. WILLEY: Mr. Akbar's street is bounded on two --
14 yes, ma'am.

15 Mr. Akbar's street is bounded --

16 THE COURT: Mr. Akbar's house is on Meeting Street and
17 it faces another street. So it's not even applicable to his
18 house.

19 MR. WILLEY: Right. I'll show your Honor --

20 THE COURT: Then Mr. -- I've looked at the -- I've been
21 here for the last --

22 MR. WILLEY: Okay.

23 THE COURT: -- how many ever days. I've been paying
24 attention. I know what it looks like. And Mr. Quattlebaum's
25 house is on the corner --

1 MR. WILLEY: Right.

2 THE COURT: -- bounded by Meeting Street and Hedgewood.

3 MR. WILLEY: Right. And this does not apply. You know,
4 because they were there in 1969 was the testimony.

5 THE COURT: Yes, ma'am?

6 MS. HONEYCUTT: I think I may be missing the whole point
7 here, but it's --

8 THE COURT: I think I'm missing it too.

9 MS. HONEYCUTT: If 4-7 doesn't apply --

10 THE COURT: If you can elucidate, I'd be glad to --

11 MS. HONEYCUTT: -- then 4-13 doesn't apply.

12 MS. WESLEY: We were just discussing that.

13 MS. HONEYCUTT: Those are all 1998. They were adopted
14 at the same time.

15 MS. WESLEY: We were discussing that, your Honor,
16 because --

17 THE COURT: That's why I said I was going to think about
18 it.

19 MS. HONEYCUTT: Okay.

20 THE COURT: Yeah.

21 MS. WESLEY: I see. Because the --

22 THE COURT: Because there's no prospective application
23 of an ordinance.

24 MS. WESLEY: So -

25 THE COURT: Once an ordinance -- because if that were

1 the case then, you know, people could come in and say, "Your
2 stuff is not in compliance and you've got to tear it down,"
3 and you can't do that. That's why statutes, ordinances,
4 everything is always prospective. It's never -- unless it
5 says, "We're making this statute retroactive."

6 MR. WILLEY: 4-13 says "maintained" after the date --

7 THE COURT: I don't --

8 MR. WILLEY: -- not just planted.

9 THE COURT: I don't think you can read that -- that's
10 why I said I'm going to think about it. It says "planted and
11 maintained."

12 MR. WILLEY: "Or." "Or."

13 THE COURT: Let me see what that says again. I'm so
14 tired. I'm sorry.

15 MS. WESLEY: Along those lines, your Honor, "planted or
16 maintained," what I took that to mean and that's why you have
17 the hedge and so forth is that people do buy homes that do
18 have these existing things. And you're right; they would
19 have to be ripped out.

20 THE COURT: "No planting shall be placed or maintained."
21 I don't know. I'll have to think about it.

22 MR. WILLEY: All right.

23 THE COURT: And I'm not going to pretend to you that I
24 have the brain matter to do that right now.

25 Yes, sir?

1 MR. COX: On behalf of Dominion, we would like 4-13 --

2 THE COURT: Because you want the poles. Yeah.

3 MR. COX: Right.

4 THE COURT: The 11 inches, which is industry standard as
5 well, according to the testimony.

6 MR. COX: It is.

7 THE COURT: Okay. Is there any exception to Defendant's
8 Number 7, which is the National Electrical Safety Code?

9 MS. WESLEY: Your Honor, may I --

10 MR. WILLEY: Yes.

11 THE COURT: And what's the objection?

12 MR. WILLEY: It's not a law, statute, or regulation.

13 THE COURT: But it's a safety --

14 MR. WILLEY: No.

15 THE COURT: It's a safety --

16 MR. WILLEY: It's a guideline.

17 THE COURT: -- guideline, which still --

18 MR. WILLEY: And the testimony --

19 THE COURT: -- can have the force and effect of a safety
20 -- of an ordinance, statute, or -- and I've had this
21 similarly in a case not like this, but with a swimming pool
22 where some minds brighter than mine said it was appropriate
23 to charge the industry standard on diving boards even though
24 it wasn't a statute or ordinance.

25 MR. WILLEY: And that may be appropriate --

1 THE COURT: And it actually was upheld on appeal.

2 MR. WILLEY: And that may be appropriate if there is not
3 a statute or ordinance that already deals with it. But the
4 testimony --

5 THE COURT: I don't know.

6 MR. WILLEY: -- in the case, including from Mr. Knight,
7 was that where there is law that is more stringent, they have
8 a responsibility --

9 THE COURT: There is no law about this.

10 MR. WILLEY: There's a law about the placement of power
11 poles and visibility at intersections.

12 THE COURT: Where?

13 MR. WILLEY: 4-13 that we've been talking about.

14 THE COURT: That's not what that says.

15 MR. WILLEY: That is.

16 THE COURT: That is not -- it does not say anything
17 about power poles. I've been very clear; I'm not writing
18 anything into a statute, an ordinance, or anything that it
19 does not say. And it does not say "power poles." And
20 "structure" is not a power pole. A structure is like a
21 house, a shed. It's -- a structure is something that
22 contains something. It's not a power pole.

23 MR. WILLEY: Well, I respectfully disagree, which is why
24 I think it says, "However, poles and support structures" --
25 there's the word "structures" -- "less than 12 inches in

1 diameter may be" --

2 THE COURT: It says that at the end of it.

3 MR. WILLEY: Correct. But that's referring back to the
4 original --

5 THE COURT: No, it's not.

6 MR. WILLEY: -- notation on structures.

7 THE COURT: It's a standalone sentence, which they
8 clearly intended to include poles that way.

9 MR. WILLEY: Well, I think we agree you should read that
10 in, but this deals with the visibility at the intersection
11 with respect to the poles.

12 THE COURT: I don't know. You know, generally, when you
13 have stuff like this you get to argue it, but the Court
14 doesn't necessarily instruct it.

15 What would be the purpose of instructing Defendant's
16 Number 7? And how does it rise to the level of being a
17 safety statute, an ordinance, or other -- what's the word
18 that I'm looking for? What other guidelines do we have about
19 the placement of electrical poles?

20 MR. COOKE: The testimony is that this is the guiding
21 national standard.

22 THE COURT: That's what I'm asking. Is there any -- I'm
23 not aware of any -- is there any other document that provides
24 guidance for --

25 MR. COOKE: No, this is it. And Mr. Willey's argument

1 at the beginning was, "Pay no attention to the ordinance that
2 says you may put poles less than 12 inches in that space,"
3 and that you would be referring to some other standard.
4 Well, this is the other standard. This is the only other
5 standard that applies.

6 THE COURT: This is -- if it's an industry standard, you
7 can instruct it.

8 MR. WILLEY: Your Honor, my position is that we should
9 read the sentence about the 12-inch poles. I never took a
10 position contrary to that. In fact, I explained --

11 THE COURT: Well, why wouldn't this be an industry
12 standard that would be applicable? Because there's no
13 statute on it.

14 MR. WILLEY: There's been --

15 THE COURT: There's no rule on it. And so this would be
16 -- industry standards are appropriate to establish duty.

17 MR. WILLEY: If, as Mr. Knight indicated, there is not a
18 law or ordinance that is more stringent. And there is in
19 this case a law or ordinance directly on point. This just
20 seeks to confuse the issues. I could never bring a case
21 under the National Electric Safety Code or rely on that as
22 some basis, you know, in this particular situation. And what
23 this really actually deals with --

24 MS. HONEYCUTT: That was recorded, what you just told
25 ua.

1 MR. WILLEY: What?

2 MS. WESLEY: Keep going. You could never bridge a case
3 like that.

4 MR. WILLEY: Not a case like this. I could not bring a
5 case like this under the National Electric Safety Code.
6 There's an ordinance right on point. And this deals with the
7 overhead utility installations.

8 THE COURT: But the 4-7 doesn't talk about where it's
9 placed. It just talks about the diameter.

10 MR. WILLEY: 4-13, your Honor. I'm talking about 4-13,
11 "Visibility at Intersections." And it does.

12 THE COURT: It doesn't.

13 MR. WILLEY: And the reason it's mentioned there --

14 THE COURT: It says --

15 MR. WILLEY: -- is because --

16 THE COURT: -- about diameter. It does not say anything
17 about how far it's supposed to be from where it's supposed to
18 be.

19 MR. WILLEY: But that's the first sentence of that --
20 let me get to it.

21 THE COURT: There is no other sentences --

22 MR. WILLEY: "Visibility" --

23 THE COURT: -- in 4-13.

24 MR. WILLEY: "Visibility at railroad and street
25 intersections shall be unobstructed." It goes on later to

1 qualify that and say, "However, poles and support structures
2 less than 12 inches in diameter may" --

3 THE COURT: That's not the same thing. This talks about
4 how far it should be from the pavement. Two different
5 things. One says about the diameter of the pole, and the
6 other talks about how far it's supposed to be from the curb.

7 MR. WILLEY: This deals with visibility at
8 intersections. What the National Electric Safety Code does
9 is deal with the overhead weirs and the safety of those wires
10 and how close they can be to the road. It has nothing to do
11 with this case.

12 THE COURT: This is totally different. It does have to
13 do with whether they have complied with the placement of the
14 poles. And there has been testimony about how far the poles
15 were from the street.

16 THE COURT: This jury charge does not even use the word
17 "poles." It talks about supporting structures and overhead
18 utility installations.

19 MR. COOKE: A pole is a supporting structure.

20 MR. WILLEY: It is a structure? We agree with that now?

21 MR. COOKE: Under the --

22 THE COURT: "Or equipment attached thereto."
23 Don't speak to one another.

24 MR. WILLEY: We both -- we both --

25 THE COURT: I said do not speak to one another.

1 MR. WILLEY: I wasn't speaking -- I was addressing the
2 Court. That's why I was standing.

3 THE COURT: No, you were turned toward Mr. Cooke.

4 MR. WILLEY: I just wanted him to hear it.

5 THE COURT: I have wonderful peripheral vision.

6 MR. WILLEY: I wanted him to hear it.

7 MS. WESLEY: Your Honor, I'm sorry. The only other
8 thing I would say is if they -- if it's a recognized industry
9 standard and they get to have that charge, then 4-13 is just
10 duplicative. I don't want to split --

11 THE COURT: Well, no. This is a defense request. This
12 isn't his request.

13 MS. WESLEY: I understand. I don't want to split ways
14 with Dominion. We're just saying if 4-13 is going to be left
15 out, we don't want it to come in simply for the poles.

16 THE COURT: Well, y'all need to figure that out, because
17 it sounds like y'all have some conflicting views about it.

18 MR. COOKE: And your Honor, I would also add, you know,
19 we offered it as an exhibit. The Court wouldn't let it in.

20 THE COURT: Well, it's like a treatise. It doesn't come
21 in.

22 MR. COOKE: Well, we're --

23 THE COURT: You can use it for demonstrative purposes,
24 and you can argue it later. You can say, "Our client
25 testified blah, blah, blah, blah, blah, blah, blah."

1 MR. COOKE: Right.

2 THE COURT: "And this is the standard."

3 MR. COOKE: We think it becomes a matter of law when it
4 is the industry standard. And I think your Honor was correct
5 to charge it -- that you should charge it.

6 THE COURT: I don't know. I'll think about it. Because
7 I think you can argue this within your case, that they --
8 because really this is the -- this is used to support the
9 testimony that they placed the poles. And also, as I read
10 it, this really deals with the power company's main
11 directive, which is to make sure nobody hits the pole.
12 That's their main concern, and that was their testimony, that
13 that's what guides their placement of poles. Not sight line,
14 but whether somebody's going to have basically a wreck --
15 either one or two cars -- and come and collide with the pole,
16 for safety purposes.

17 MR. COOKE: Right. Which is our point. And I think the
18 testimony was that the National Electric Safety Code does not
19 make utilities responsible for sight lines.

20 THE COURT: Yeah, I think you can argue that, though,
21 but I'm not going to make any comment about a factual issue
22 in the case.

23 I'll think about it over the weekend.

24 And then 9-67, which is "Nuisances declared."

25 MS. TILLMAN: Your Honor, if this --

1 (The Court read to herself.)

2 MS. TILLMAN: Your Honor, whose charge is this?

3 THE COURT: I'll let you know when I want the benefit of
4 your thoughts. Bear with me.

5 I don't know that 9-67 is necessary if I'm going to
6 instruct 4-13. They basically say the same thing, which
7 deals with plantings that obscure a view. And nuisance, I
8 don't know that there's any evidence of a nuisance.
9 Nuisances really deal with -- and the purpose of this statute
10 deals with keeping your yard -- and I'm paraphrasing --
11 keeping your yard in a condition such that you do not risk
12 disease, fire, safety hazards, and other means, including but
13 not limited to grass, noxious weeds, vegetable growth,
14 briars, brush, and plants more than 1 foot in height except
15 when cultivated or maintained.

16 That's why I wanted to hear from Mr. Barfield to see
17 exactly what he was talking about. But I don't necessarily
18 think that's applicable if 4-13 is.

19 MR. WILLEY: May I be heard?

20 THE COURT: Sure.

21 MR. WILLEY: My understanding is 4-13 does not apply to
22 Mr. Akbar, whereas this one would. And what this ordinance
23 specifically says is that "The following are declared to be
24 unhealthy and unsafe" --

25 THE COURT: What is it on Mr. Akbar's property you are

1 contending impaired with the sight line?

2 MR. WILLEY: The briars, brush, and plants more than 1
3 foot in height.

4 THE COURT: Are there any pictures that support that?

5 MR. WILLEY: There are.

6 THE COURT: Where?

7 MR. WILLEY: He indicated that they were his bushes
8 on --

9 THE COURT: Somebody measured them? I don't recall
10 there being testimony --

11 MR. WILLEY: They're higher than --

12 THE COURT: -- about how high they are.

13 MR. WILLEY: -- the fence, which was measured at 3 point
14 -- I believe 3.37 feet or 3.87 feet.

15 THE COURT: Well, this talks about grass.

16 MR. WILLEY: No. It talks about briars, brush and --
17 these are the -- these bushes are actually on both of their
18 property.

19 THE COURT: Those aren't briars and brush.

20 MR. WILLEY: It's a bush.

21 THE COURT: That's a tree.

22 MR. FORD: And there's no evidence of the property line.

23 THE COURT: That looks just like the other tree that's
24 on the corner.

25 MR. WILLEY: This is not. This was testified to that he

1 specifically said --

2 THE COURT: That's not grass. It's not a noxious weed.

3 MR. WILLEY: It's not grass. I agree.

4 THE COURT: And it's not a briar. It's not a brush.

5 It's more like a tree. It's not jus a plant.

6 MR. WILLEY: Your Honor --

7 MR. FORD: And there's no evidence whose property
8 they're on.

9 MR. WILLEY: Your Honor, Plaintiff's 6, the --

10 THE COURT: That's not a weed. And it ain't brush. It
11 looks like a tree that hasn't been trimmed.

12 MR. WILLEY: But he testified to that, that those --

13 THE COURT: I'll look back at the testimony --

14 MR. WILLEY: Those are his.

15 THE COURT: -- but he never said it was a weed.

16 MR. WILLEY: No. He said "brush," "shrubs," "bushes"
17 were the words that we used in his testimony. And he
18 identified those as --

19 THE COURT: I'm not sure that statute applies. I'll
20 think about it. Er, that ordinance, rather.

21 MS. TILLMAN: And your Honor --

22 THE COURT: Because that really is designed for the
23 public interest about keeping your property safe so that you
24 don't end up with bugs, reptiles, or other vermin in your
25 yard that then becomes a problem for other people.

1 MR. WILLEY: But that's --

2 THE COURT: It's not about --

3 MR. WILLEY: -- what this says.

4 THE COURT: -- sight line.

5 MR. WILLEY: It says "safety."

6 THE COURT: That's not what "nuisance" is about.

7 Nuisance is about keeping your yard safe so that you don't
8 have rodents, and in our neck of the woods, alligators, and
9 other vermin that are attracted -- snakes, that are attracted
10 to brush.

11 MR. WILLEY: And it --

12 THE COURT: And you keeping it clean.

13 MR. WILLEY: And it does specifically call out those
14 things, but it does more than that.

15 THE COURT: That's not the purpose of the statute, and I
16 think it would be misleading. I think 4-13 covers it, if I
17 decide to instruct it. I don't think "Nuisance" does. And I
18 don't think that's the purpose for which that provision was
19 enacted.

20 MR. WILLEY: It does say --

21 THE COURT: That's for the public good. It's to make
22 sure that your property doesn't become a nuisance to your
23 adjoining property owners.

24 MR. WILLEY: Well, and I would just like to call out for
25 the Court's consideration that it does say, after the colon,

1 "Conditions which afford a breeding place for and/or attract
2 insects, rodents, or reptiles, or otherwise create a
3 substantial risk of danger to health and/or safety through
4 disease, fire, safety hazard, or other means."

5 And then it --

6 THE COURT: That's not the purpose of that statute.

7 MR. WILLEY: And then it specifically says, "including
8 but not limited to," and calls out brush and plants. It
9 doesn't just say --

10 THE COURT: That's not for the general public. That's
11 for your neighbors, to make sure your yard doesn't become a
12 nuisance to them.

13 MR. WILLEY: Your Honor, it specifically says "for the
14 entire community" in the ordinance. It says, "for" --

15 THE COURT: "Entire community" means not people passing
16 by your house. Your community means the people in your
17 neighborhood.

18 MR. WILLEY: Correct. The entire --

19 THE COURT: And people who might be walking on the
20 sidewalk because they don't want to get bit by a snake or a
21 rat or whatever. But I don't think that that statute -- and
22 I know that's funny, but in downtown Charleston, if you ever
23 went near the pool during certain times in the summer, there
24 are rats as big as cats up on that wall by that pool over on
25 Fishburn Street. So for Charlestonians, that is not that out

1 of -- and if you go over there right now, you might encounter
2 some that are huge.

3 MR. WILLEY: I would just ask the Court to review and
4 consider it over the weekend. We do think it applies.

5 THE COURT: I'll think about it, but I'm telling you
6 ahead of time and giving you a heads-up, I don't think it
7 applies.

8 MS. TILLMAN: And your Honor?

9 THE COURT: Yes.

10 MS. TILLMAN: Just making the record --

11 THE COURT: Mm-hmm.

12 MS. TILLMAN: -- Mr. Akbar objects to that section,
13 9.67, being read because it is misleading.

14 THE COURT: Thank you.

15 All right. Then I will give the general instruction
16 regarding that "This is a wrongful death action. The
17 plaintiff is the personal representative of the deceased's
18 estate and claims that the deceased wrongfully died as a
19 result of the negligent acts or omissions of the defendants.
20 Whenever the death of a person is proximately caused by the
21 wrongful act or neglect of another and the act or neglect is
22 one which would have entitled the deceased to recover damages
23 if the deceased had not died, the personal representative of
24 the estate of the deceased may bring an action for wrongful
25 death.

1 "The personal representative has the right to recover
2 compensatory damages for the wrongful death. It is not
3 necessary to show the money value of the deceased's life
4 since direct proof of the value of human life is not
5 possible. What is reasonable compensation is left to your
6 sound discretion and judgment.

7 "The damages in an action for wrongful death include:
8 mental shock and suffering; wounded feelings; grief and
9 sorrow; loss of companionship; loss of the use and comfort of
10 the deceased's society, including the loss of the deceased's
11 experience, knowledge, and judgment in managing the affairs
12 of the deceased and his beneficiaries; medical and funeral
13 expenses. It is not necessary to show the exact amount of
14 damages suffered by the beneficiaries or that the
15 beneficiaries suffered a monetary loss.

16 "In addition, the person for whose benefit the action is
17 brought does not have to be dependent on the deceased for
18 support."

19 I'll then instruct in that regard, "The injured party
20 may also recover for future damages as it is with reasonable
21 certainty will of necessity result from the injury. The
22 principle underlying the compensation for future damages is
23 that only one action can be brought and, therefore, only one
24 recovery had.

25 "It is proper to include in the estimate of future

1 damages compensation for future wounded feeling, grief and
2 sorrow, loss of companionship, mental shock and suffering as
3 will with reasonable certainty result. Any future damages
4 must be reasonably calculated to have resulted from the
5 alleged injury or damage sustained in this case. Future
6 damages must be reduced to their present-day cash value."

7 I'll then instruct the life expectancy table, which for
8 Ms. Rash is 22.47 years and Mr. Rash is 17.54 years.

9 I will then instruct that "The plaintiff has also
10 brought what is called a survival action. And whenever the
11 death of a person is proximately caused by the wrongful act
12 or neglect of another and the act or neglect is one which
13 would have entitled the deceased to recover damages if the
14 deceased had not died, the personal representative of the
15 estate of the deceased may bring an action for survival.

16 "In this action, the plaintiff has brought a survival
17 claim. The damages for a survival claim are distinct. The
18 damages that are recoverable under the survival claim are on
19 behalf of the deceased and his estate. In considering
20 survival damages, you may consider medical bills" --

21 Actually, that's not accurate. Well, yeah, it is. And
22 actually I need to take that out of the wrongful death part.
23 Well, no, it can stay in both because, technically, the
24 estate could be responsible for the medical bills.

25 I'm going to take it out of one place or the other. I'm

1 not going to instruct both because I don't want to run the
2 risk of a double recovery if they were to determine that the
3 medical bills were appropriate. I think I'm just going to
4 take that out since I leave it in the other portion of it.

5 "In considering survival damages, you may consider" --
6 I'm sorry. I can't read my own writing. I apologize.

7 "In considering survival damages, you may consider
8 damages for the deceased's conscious pain, suffering, and
9 mental distress prior to his death."

10 And it's actually going to say, "On behalf of the
11 deceased and his estate, in considering survival damages, you
12 may consider any alleged damages for the deceased's conscious
13 pain, suffering, and mental distress prior to his death."

14 And then there was Defendant's Request to Charge Number
15 22, which I thought appropriate, which is "Pain and suffering
16 and mental distress that the deceased consciously suffered as
17 a result of the injury before he or she died are also
18 compensable in the suit brought on behalf the decedent. To
19 recover for the deceased's conscious pain and suffering,
20 there must be sufficient proof that the decedent was
21 conscious and simultaneously suffered prior to death."

22 Which might be a little redundant. I might refine that
23 a little bit.

24 And then I will give a general instruction regarding the
25 burden of proof on damages, which is --

1 MR. WILLEY: We do object.

2 THE COURT: -- the mathematical certainty language.

3 And then I will go on to comparative negligence, which
4 has been claimed by each of the defendants. And I think we
5 know the elements of comparative negligence, which is you
6 switch shoes with the plaintiff and the same safety rules and
7 statutes or otherwise apply.

8 And then I will give them a general instruction
9 regarding insurance, which they can't consider, can't be
10 referred to, can't discuss.

11 And then I will give them a general instruction
12 regarding being fair and impartial.

13 Then I will instruct them on the form of the verdict,
14 which will be in the nature of special interrogatories,
15 which is just simply questions. And then I will instruct
16 them, of course, the passion-prejudice language and the
17 unanimity of the verdict.

18 Now, as it regards the Quattlebaum Request to Charge
19 Number 1, which is spoliation, I've already addressed that.

20 As regard to the plaintiff's requested instructions,
21 which are numbered 1 through 27, the two pages are just an
22 introduction, which is not applicable.

23 Number 1, I will use my standard instruction on
24 corporations.

25 Number 2, I'll use my standard instruction on the

1 burden of proof.

2 Number 3, I'll use my standard instruction on
3 credibility of witnesses, as well as expert testimony, which
4 is Number 4. Number --

5 You know what? I'm looking at the wrong stack. I
6 apologize. These are defendant's requests, joint requests.
7 I apologize.

8 As well as Number 4, which is expert testimony.

9 Number 5 is an inappropriate comment on the facts and I
10 will not instruct it. I'll use my standard instruction
11 regarding negligence.

12 Number 6, which is the North Charleston ordinance which
13 is -- it really -- this really just talks about -- this is
14 4-13 -- when it was enacted and has the language about the 12
15 inches in diameter of the poles, which we've already
16 discussed, as well as the nonconformity. I think we've
17 already gone over that.

18 Number 7 is the national electrical code, which I said
19 I'll think about.

20 Number 8 is negligence. I'll use my standard
21 instruction.

22 Number 9, I'll use my standard instruction, as well as
23 Number 10, as well as Number 11, which is proximate cause.

24 I'll use --

25 MR. COX: Your Honor, does your standard instruction

1 include "but for" language to proximate cause?

2 THE COURT: I use my -- my standard instruction comes
3 straight from case law. Black-letter precedent. I think we
4 all know how to define proximate cause. Isn't that the one
5 you were the inquiring about?

6 MR. COX: Defendant's proposed Number 11 has the "but
7 for" language.

8 THE COURT: Yeah. Standard language on proximate cause
9 that comes straight from case law. I don't think it's
10 changed in the last -- I don't even want to guess how many
11 years.

12 Number 12, is there any objection to "intervening
13 cause"? I don't know that that would apply with the elements
14 that I'm going to instruct on comparative negligence. Do I
15 really need that?

16 MR. COOKE: That would be for Mr. McJunkin.

17 THE COURT: I'm sorry?

18 MR. COOKE: I'm sorry. That would apply to, say,
19 Mr. McJunkin as a --

20 THE COURT: Mr. McJunkin gets no charge. He has no
21 duty. He's no longer a part of this case. You can point to
22 him as an empty chair, but the Court will not instruct
23 anything about Mr. McJunkin.

24 MR. COOKE: Well, we'll come back to that in a few
25 minutes, but he would be -- even if you couldn't apportion

1 damage to him, he could be an intervening proximate cause.

2 THE COURT: I'll think about that. That's Number 12.

3 MR. WILLEY: We would object, your Honor, just for the
4 record.

5 THE COURT: Mm-hmm. I'll make a copy of 12 and 13 so I
6 can think about it.

7 Foruteen, I'll use my standard instruction on proximate
8 cause and foreseeability.

9 Number 15, I don't really know how any of this is
10 applicable, except I will be instructing speed limits. I
11 will not be instructing vehicle turning left, as Mr. McJunkin
12 has no duty in this case. I will instruct -- I might -- I
13 don't know if I included right-of-way in those statutes. I
14 think I did.

15 And intersections, this is actually not applicable in
16 this case. This is different. This is when you have a --
17 where they were at is not considered an intersection. That
18 factually is not applicable. The statute is factually not
19 applicable, which is 56-5-2330.

20 MS. WESLEY: Your Honor --

21 THE COURT: And actually, what would be applicable is
22 vehicle turning left to Mr. McJunkin, not the intersection.

23 Yes?

24 MS. WESLEY: I was just about to ask. Wouldn't that be
25 -- do you have to show that he was a cause --

1 THE COURT: You can argue it, but he's no longer a part
2 of this case. And I'm not instructing the jury that he had
3 any duty to anyone, because he doesn't.

4 MS. WESLEY: I see.

5 THE COURT: You can point to him and say he was a cause
6 of it, but he doesn't have a duty to anybody in this case.
7 And it would be contrary to the case law. He's out of it.

8 Duty to keep a proper lookout, I'm already instructing
9 that, as well as speed.

10 And stop sign I do not think would be applicable.

11 Damages, I'll use my standard instruction. Damages 21
12 I'll use my standard instruction.

13 Conscious pain and suffering, which is 22, I said I'm
14 going to think about rewording and using.

15 MR. COX: Your Honor?

16 THE COURT: Twenty-three is verdict. I'll use my
17 standard instruction, as well as -- that's 24 reflects
18 empty-chair defense. That's a matter of law. It's not
19 appropriately used for charge to a jury.

20 Unanimity, I'll use my standard instruction.

21 Twenty-six, is really confusing and I really don't know
22 what it's trying to say, but I'll instruct on the burden of
23 proof and I will not be utilizing it.

24 And Number 27 is empty chair. That's a legal matter for
25 the Court. It's not a matter for a jury to consider, not in

1 those terms. You can point to him, you can say he's the
2 cause of it, but I'm not instructing the jury about. That's
3 a legal matter for the Court, not for the jury.

4 MR. COX: Your Honor, we take exception to the ones that
5 you've elected to omit. And just for the purpose of the
6 record, we submit them to the Court.

7 THE COURT: Mm-hmm. And they're marked as Court's
8 exhibits.

9 MS. WESLEY: And we would join in with Dominion as well,
10 but you probably know by now that --

11 THE COURT: Well, it was a joint request.

12 MS. TILLMAN: Your Honor, I just want to clarify
13 something for the record. We talked about at the outset of
14 this long -- well, we tacked about the negligence charge. I
15 think it was Number 12 that you listed and you were talking
16 about what your standard negligence --

17 THE COURT: I'm going to use my standard instruction on
18 negligence.

19 MS. TILLMAN: Yes. And so I wanted for the record to
20 object if it contains any language suggesting that the
21 existence of a duty is a preponderance of the evidence,
22 because it's not -- a duty is not an evidentiary question
23 for --

24 THE COURT: According to our standard instructions
25 approved by the Supreme Court, it is and I'm going to

1 instruct that language which has been approved and which has
2 been used for over 20 years. And I'm not aware of the case
3 law changing. They still have to prove by a preponderance of
4 the evidence that there was a duty.

5 As a preliminary matter, the Court determines at
6 directed verdict and at other evidentiary stages of the
7 proceeding whether duty has been established. And it's to
8 them to prove that your clients had a duty, and they have to
9 prove it by a preponderance of the evidence. I'm not aware
10 of anything in case law that relieves them of that
11 responsibility.

12 MS. TILLMAN: And your Honor --

13 THE COURT: Otherwise, I would instruct the jury that
14 they have a duty that's conclusive and it's outside of your
15 prerogative. And I don't think you want me to instruct that,
16 do you?

17 MS. TILLMAN: Well, your Honor, actually the matter of
18 law -- duty is a matter of law for the Court.

19 THE COURT: Preliminarily at a certain stage. But they
20 still have to prove duty by a preponderance of the evidence.

21 MS. TILLMAN: Your Honor, respectfully, they have to
22 prove breach of the duty. But just for the record, Mr. Akbar
23 objects on the basis that a duty is a matter of law for the
24 Court. It is not an evidentiary question for the jury.

25 THE COURT: Noted and overruled. The case law is very

1 clear. They have to establish four elements by a
2 preponderance or greater weight of the evidence. And duty is
3 one of them. Otherwise, there would be no point. I would
4 just instruct the jury that duty exists and here it is.
5 Otherwise, I would not instruct the jury that "Here are
6 statutes, and you have to decide whether they apply and
7 whether they've been breached."

8 MS. TILLMAN: Yes, your Honor. That's correct.

9 THE COURT: As regards the Defendant Anthony Akbar's
10 requests for instruction that are numbered 1 through 5 --

11 And it's approaching 8:00, so I'm going to wind this up
12 soon because I'm tired and I don't want to make any mistakes
13 and we may have to revisit this on Monday morning.

14 The Defendant Akbar's Request Number 1 is North
15 Charleston zoning ordinance 4-13. We've covered that.

16 Akbar Request Number 2, which sort of confuses me. It
17 he requested that, why are you now objecting to it?

18 MS. TILLMAN: And you're talking about the --

19 THE COURT: This is your request for instruction. You
20 requested that 4-13 be instructed, "Visibility at
21 Intersections."

22 MS. TILLMAN: Your Honor, we requested the date of
23 the --

24 THE COURT: Well, why would I instruct the date if I
25 wasn't instructing the ordinance?

1 MS. TILLMAN: Well, because Mr. -- it's responsive to
2 Mr. Willey's request to charge. He requested the ordinance
3 itself, but without the date. And so Mr. Akbar --

4 THE COURT: I got what you're saying.

5 And then nonconformity, we've already covered that,
6 which is Number 2.

7 Number 3, is 4-5, which is really a duplicate of --
8 well, actually -- yeah, it's a duplicate. It says the same
9 thing, 3-2. So it actually says -- well, no, 3-2 and 4-5.
10 But they say the same thing, don't they?

11 MS. TILLMAN: Your Honor, one is the definition and the
12 other is the ordinance.

13 THE COURT: But I think that's already included and
14 y'all already agreed on that. I think. Or I said I was
15 going to think about it.

16 THE COURT: And 3-2, which says the same thing again.
17 Let's see.

18 (The Court read to herself.)

19 THE COURT: Why is that applicable? It's on 3 of your
20 requests. 3-2 includes the following: "Corner lot located
21 at the intersection of two or more streets, yard rear."

22 Why is yard rear even applicable?

23 MS. TILLMAN: Yes, your Honor. Because the rear yard
24 goes to the question of the height of the fence. The front
25 yard 4 feet; rear yard is 10 feet.

1 THE COURT: But isn't that in the ordinance that was
2 passed after 1998?

3 MS. TILLMAN: Yes, your Honor.

4 THE COURT: So would that even be applicable?

5 MS. TILLMAN: Well, arguably not, but again, we were
6 responding to plaintiff's theory. And so if you were going
7 to charge --

8 THE COURT: I see what you're saying.

9 MS. TILLMAN: -- any of these things, we wanted to
10 clarify -- you know, we wanted the ordinance to be complete
11 and in context rather than remove certain things.

12 THE COURT: Is there any exception to Akbar Number 5,
13 which is 4-7, "Structures, Projections into Required Yards
14 and Setback Areas"? Which includes the sight triangle.

15 And the language is as follows: "That the City of North
16 Charleston zoning ordinance section 4-7, title 'Structures
17 and Projections into Required Yards and Setback Areas,'
18 references section 4-13, titled 'Visibility at Intersection'
19 and contains illustrations of the street sight triangle, the
20 triangular area bounded by two sides by to street or railway
21 right-of-way lines, which illustrations depict the visibility
22 triangle as measuring 3 feet by 3 feet by 3 feet."

23 Even if I were to use that, it would be worded
24 completely differently.

25 MR. WILLEY: Your Honor, and we do --

1 THE COURT: "Where house faces diagonally towards" --
2 that isn't even applicable. "Where houses faces diagonally
3 towards the intersection" -- well, I don't know.

4 MS. TILLMAN: It's underneath the second --

5 THE COURT: Yeah, "Where corner faces street directly."
6 Because his house doesn't face diagonally.

7 MS. TILLMAN: That's right. It's really the second
8 picture that is --

9 THE COURT: Yeah, but it needs to describe what it says,
10 and I don't --

11 MS. TILLMAN: Yes. And so that's -- that was the first
12 part of the requested charge.

13 THE COURT: "Where a corner lot faces street directly,
14 sight-visibility triangle." If I were to even -- if I were
15 to instruct this, it would simply say, "The City of North
16 Charleston's zoning ordinance 4-7 defines the sight triangle
17 as the triangular area bounded on two sides by the street or
18 railway right-of-way lines. And the visibility triangle
19 measures 3 feet by 3 feet by 3 feet at a corner lot.

20 MS. TILLMAN: Your Honor, that would be acceptable to
21 Mr. Akbar.

22 MR. WILLEY: And your Honor, we would take exception to
23 that for a couple reasons.

24 THE COURT: I'm listening.

25 MR. WILLEY: One, this was 1998. Two, Number 2 does not

1 indicate a situation we have here. There are two streets
2 bounding these houses, so it is not a situation where it's on
3 a corner bounded by two houses on either side, which --

4 THE COURT: I don't think it has to be. I think the
5 main thing is that it's on a corner where two streets bound
6 the corner of the lot.

7 MR. WILLEY: But that -- well, I disagree because
8 actually these lots do not face Meeting Street Road, which is
9 what you would have here based on this diagram. These houses
10 actually face Walnut, and they are on Walnut. The back --

11 THE COURT: I don't think it's about the house. I think
12 it's about the lot, the way it faces.

13 MR. WILLEY: Where is -- well, it specifically says --

14 THE COURT: It says, "Where a corner lot faces street
15 directly." It doesn't talk about the positioning of the
16 house.

17 MR. WILLEY: No. If you look at Number 2, it actually
18 says "where house faces one street front directly."

19 THE COURT: That's not what it says. It says "where
20 corner lot faces street directly."

21 MR. WILLEY: And if you look just above that, before you
22 get to that --

23 THE COURT: That's not applicable.

24 MR. WILLEY: It is applicable.

25 THE COURT: That's the diagonal lot.

1 MR. WILLEY: Your Honor, the description of what it is
2 actually showing --

3 THE COURT: It says "diagonally," and that's not his
4 house is.

5 MR. WILLEY: May I approach?

6 THE COURT: No, sir. I'm looking at it. It says "where
7 corner lot house faces diagonally towards the intersection,"
8 and that is not the orientation of the house.

9 MR. WILLEY: No, that's the other diagram. So there is
10 a descriptor on each of these diagrams. And it would be
11 (f)(2) under 4-7.

12 MS. TILLMAN: He's wrong.

13 THE COURT: I'm looking at it.

14 That's exactly how this lot is oriented.

15 MR. WILLEY: No, your Honor.

16 THE COURT: "The house faces one street front directly.
17 See diagram."

18 MR. WILLEY: Right. And --

19 THE COURT: "Where corner lot faces street directly."

20 MR. WILLEY: Yeah. And this --

21 THE COURT: You can't read them in isolation.

22 MR. WILLEY: That's correct. But this house --

23 THE COURT: "Corner lot faces street directly."

24 MR. WILLEY: This house does not face either street
25 front at the intersection directly. It faces and entirely

1 different street.

2 THE COURT: What -- no.

3 MR. WILLEY: It faces Walnut.

4 THE COURT: It's on the corner.

5 MR. WILLEY: It doesn't face Hedgewood or Meeting. It
6 faces Walnut Street.

7 THE COURT: That lot faces two different streets. It's
8 the lot, not the house.

9 MR. WILLEY: No. It's the house. It says specifically
10 "where house faces."

11 THE COURT: You can't read it in isolation. It says
12 "where corner lot faces street directly."

13 MR. WILLEY: Right. And it doesn't. It faces the other
14 street, which is not at issue in this case.

15 THE COURT: The whole lot bounds two different streets
16 or it wouldn't be on the corner. It faces one on this way,
17 and it faces another on this way.

18 MR. WILLEY: So that's our second exception after the
19 date.

20 The third exception is subsection 4 under 4-7, which
21 says, "Hedges provided that that no such structure" --
22 referring back to the fences -- "or hedge shall impede
23 visibility as required by 4-13," which we've already gone
24 over. And so we would continue to object to that.

25 THE COURT: Mm-hmm. Noted.

1 Yes, ma'am, Ms. Wesley.

2 MS. WESLEY: I just wanted to make sure that -- and your
3 Honor said it, that it was a corner lot.

4 THE COURT: It is a corner lot. I think it's about the
5 orientation of the lot, not the house. But I don't that --
6 I'll have to look at the effective date of when this became
7 effective to see if it's even applicable. It says "Ordinance
8 Number 1998-85 9/24/98" is when this is applicable. And it
9 doesn't say it's retroactive, so I'm going to think about it
10 over the weekend.

11 And then that takes us to Anthony Akbar duty, which is
12 his Request Number 2. Yeah, that's confusing. I'll use my
13 standard instruction on duty. I don't think you need to
14 explain duty other than those established by either a safety
15 statute or that instruction, as the requested is very
16 confusing. It's hard for me to understand and it would tend
17 to confuse the jury.

18 Plaintiff's request for preponderance of the evidence,
19 Number 1; direct and circumstantial evidence, Number 2;
20 negligence, Number 3; concurring causes, Number 4. I think
21 we've covered -- I'll use my standard instructions.

22 We've covered Request Number 5, which is 9-42 and 4-13.

23 I don't know that Number 6 is particularly applicable or
24 factually applicable. And I also am concerned that it would
25 be an inappropriate comment on the facts.

1 MR. WILLEY: And --

2 THE COURT: You can argue that, but I'm not going to
3 instruct it.

4 MR. WILLEY: Okay. Just with respect to that, I would
5 point to Mr. Knight's testimony about what they internally
6 relied on and --

7 THE COURT: You can argue it, but I'm not making a
8 comment on the facts about what their internal policies were
9 and whether they followed them or not --

10 MR. WILLEY: Okay.

11 THE COURT: -- because I'm not aware -- what you've
12 cited as support for this instruction is dicta. It's not the
13 whole thing of this opinion.

14 MR. WILLEY: And we would simply just ask the Court that
15 another basis for finding against the defendant could be a
16 violation of internal policy, in whatever wording the Court
17 prefers.

18 THE COURT: You can argue that they violated their own
19 internal policy, but I'm not aware of any case law that
20 mandates that I would instruct this and that it would not be
21 a permissible comment on one particular set of facts in this
22 case.

23 MS. TILLMAN: And your Honor, just to make a record and
24 to make sure the Court understands, Mr. Akbar objects to the
25 plaintiff's requested charges numbers 1, 2, 3, 4 --

1 THE COURT: I've already said --

2 MS. TILLMAN: My understanding is that yes --

3 THE COURT: I'm going to use my own instructions.

4 MS. TILLMAN: And Number 6.

5 THE COURT: I'm going to uses my own instructions.

6 Yeah.

7 Number 7, successor liability really is not necessary.

8 It's superfluous. They already know Dominion bought SCE&G,
9 and it's really not an issue of fact in this case.

10 Number 8, the purpose of tort law is superfluous
11 language that really serves no purpose other than an
12 inappropriate comment on the facts.

13 Number 9, I'll use my standard instruction on insurance.

14 Number 10, I'll use my standard instruction on survival,
15 as well as Number 11, which is withdrawal death; 12, which is
16 life expectancy.

17 Thirteen, actual damages is not applicable to this case.
18 There's specific damages that are enumerated for wrongful
19 death and survival, and they're already included.

20 Mental anguish is not a separate standalone instruction.
21 It is included already in the Court's instructions. It is
22 self-explanatory. And then to take this of you context and
23 highlight it would not be appropriate. That's Number 14.

24 As well as 15, they don't get pain and suffering.

25 That's not a material element of wrongful death.

1 Loss of enjoyment likewise is not a material element of
2 wrongful death.

3 And future damages, I'll use my standard instruction,
4 which is 17.

5 And 18, which is under what I've already ruled. It's
6 not applicable factually to this case.

7 MS. WESLEY: Your Honor, just so I understand --

8 THE COURT: Yes.

9 MS. WESLEY: -- 17, future damages, there are no --

10 THE COURT: Yes. They say that they are suffering and
11 they will continue to suffer their loss of companionship of
12 their child, as well as their grief, sorrow, and wounded
13 feelings.

14 MS. WESLEY: Well, his says, "If you find the plaintiff
15 is entitled for actual damages," which we take to mean --

16 THE COURT: I've already said it's not applicable.

17 MS. WESLEY: Okay.

18 THE COURT: And I've already said I'm not instructing
19 it.

20 MS. WESLEY: Okay.

21 THE COURT: That is not applicable to what -- there are
22 specific damages in wrongful death, and I'm going to instruct
23 those. And what he submitted is not applicable.

24 They're applicable as actual damages maybe in a wreck or
25 some other form of tort, but not in wrongful death.

1 Wrongful-death damages are very specific.

2 MR. WILLEY: And your Honor, if I may, just for the
3 record, 14, 15, and 16 were not being offered under the
4 wrongful death. They were being offered under the survival.

5 THE COURT: You don't get that in survival action. The
6 only thing you get in survival is loss of conscious pain and
7 suffering. That's it.

8 MR. WILLEY: Which is what I think 15 dealt with.

9 THE COURT: Survival action in case law is very clear.
10 All you can get is conscious pain and suffering as a result
11 of the injury. That's not like the pain and suffering you
12 submitted, which is ongoing past, present, current, and
13 future, which is applicable in a normal tort. Survival is a
14 subset of tort created by statute, and it only allows for one
15 recovery: conscious pain and suffering. That's the end of
16 it.

17 Yes, ma'am?

18 MS. TILLMAN: Just for the record, Mr. Akbar objects to
19 the plaintiff's request -- to any of the plaintiff's requests
20 to charge being read verbatim to --

21 THE COURT: I'm not using any of them, so it's a non
22 issue.

23 All right. Anything else we need to talk about? I'm
24 going to think about defendant's requests Number 12 and 13
25 over the weekend when my mind is clear.

1 MR. WILLEY: Are we here at 9:30?

2 MR. COOKE: Your Honor, we do have one.

3 THE COURT: Yes.

4 MR. COOKE: You haven't mentioned the verdict form and

5 --

6 THE COURT: I'm going to go over that with you in a
7 minute.

8 MR. COOKE: Okay.

9 THE COURT: Since comparative negligence has been pled,
10 what we would use is special interrogatories for comparative
11 negligence, which would as to the wrongful death cause of
12 action. And the interrogatories would read as follows -- and
13 I'm going to let you all look at this -- "Do you find the
14 Defendant Dominion Energy of South Carolina was negligent and
15 that such negligence proximately caused the plaintiff's
16 injuries?" The options are yes or no.

17 Either way, you go to question 2, which is "Do you find
18 that the Defendant Anthony Akbar was negligent and that such
19 negligence proximately caused the plaintiff's injuries?" The
20 options are yes and no.

21 Then you go to question 3, which is, "Do you find that
22 the Defendant Paul Quattlebaum was negligent and that such
23 negligence proximately caused the plaintiff's injuries?" Yes
24 or no.

25 Then you go to question 4: "Do you find that Bronson

1 Harley Rash was negligent and that such negligence
2 proximately caused his injuries?" Options are yes or no.

3 Then you got to question 5: "If your answer to all
4 questions 1 through 3 are no, stop and deliberate no further.
5 Sign and date the verdict form," because in essence they
6 would have found no liability, therefore there is no need for
7 them to go to damages.

8 "If your answer to any of questions 1 through 4 is yes,
9 then answer this question. Taking the combined negligence
10 that proximately caused Bronson Harley Rash's injuries as 100
11 percent, what percentage of that breach is attributable to
12 Bronson Harley Rash and what percentage is attributable to
13 the defendants."

14 You answered yes to in questions 1 through 3.

15 "In this answer, do not include any party from question
16 1 through 3 where your answer was no. The percentages must
17 add up to 100 percent." And there's a line for each person,
18 which takes into consideration if they answer no, they'll
19 just skip over whomever in that analysis.

20 But there was no other way to do it because there has --
21 you have to take into account if they answer yes or no to
22 each of those questions. So theoretically, if they answer no
23 to -- like, if they answer no to 1 through 3, then they stop
24 and deliberate no further because it's a defense verdict.
25 There would not have been a finding of liability.

1 If they answered yes to any of the questions 1 through
2 3, then they need to attribute the fault of whomever they
3 answered yes to in the 100 percent, including Mr. Rash.

4 "If Bronson Harley Rash's percentage of the combined
5 negligence is greater than 50 percent, stop and deliberate no
6 further. Sign and date the verdict form.

7 "If the plaintiff's percentage of the combined
8 negligence is 50 percent or less, go to question 7."

9 Which is "Please state the total amount of damages
10 sustained by the plaintiff" -- and I might write out "the
11 Plaintiff Darleen Rash, individually and as PR of the Estate
12 of Bronson Rash." I don't know. I'm debating how that needs
13 to be worded. Because it's kind of a peculiar situation
14 because you pled comparative negligence, which would be
15 appropriate under these circumstances because they have to
16 consider -- you can't leave him off of it because he was
17 involved in the collision. But at the same time, those
18 damages are not going to him. They would go to his estate.
19 So I've got sort between that language a little bit.

20 And then it says, "If your answer to question number 6
21 was yes" -- which is the percentages -- "do not reduce the
22 plaintiff's damages above by the percentage of negligence
23 attributed to Bronson Harley Rash in question number 6 and
24 award the total amount of damages determined by the unanimous
25 consent of the jury." And then it would be signed and dated.

1 And then for the survival cause of action, it would
2 simply say "We, the jury, find by a preponderance of the
3 evidence that the deceased experienced conscious pain and
4 suffering." And there a yes or no. "And if you answered yes
5 to question 1, go to question 2. If you answered no to
6 question 1, skip question number 2 and sign and date the
7 verdict form."

8 And then question 2 is "We, the jury, award actual
9 damages for conscious pain and suffering in the amount of,"
10 and there's a line.

11 I'm open to suggestions.

12 MR. WILLEY: I have just a couple questions actually.

13 THE COURT: Mm-hmm.

14 MR. WILLEY: The question number 6, the percentages, are
15 those in the same order as the finding of negligence? So
16 Dominion, Akbar, Quattlebaum, then Rash.

17 THE COURT: I don't think it really matters.

18 MR. WILLEY: I'm just asking for purposes --

19 THE COURT: No. I put the defendants all three and then
20 I put Mr. Rash at the top, which is normally how you do it.

21 MR. WILLEY: Okay. So I would just ask that they be
22 reordered to the way that the other question is.

23 THE COURT: No. Because the last question is Mr. Rash
24 and whether he's responsible, and if they say he's 50 percent
25 or more, it's easier for them to follow the question and stop

1 and deliberate no further. But if it's otherwise, then they
2 can attribute the percentages. I think it flows better that
3 way. But I'm going to instruct them there's no --

4 MR. WILLEY: I know. But --]

5 THE COURT: -- magic to the way they're listed. It's
6 random and not to give it any weight.

7 MR. WILLEY: I would just ask that it match.

8 Then the other thing was, which question was -- was that
9 number 7, if Bronson Harley Rash is 50 percent or greater,
10 stop and --

11 THE COURT: No. Number 7 is damages. Number 5 is "If
12 your answer to questions 1 through 3 are no, stop and
13 deliberate no further. Sign and date the verdict form."

14 MR. WILLEY: What is the one about 50 percent or
15 greater.

16 THE COURT: "If your answer to any of the questions 1
17 through 4 is yes, then you go to the question of assigning
18 percentages."

19 MR. WILLEY: Right.

20 THE COURT: "In this answer" -- wait. I apologize.
21 "Taking the combined negligence that proximately caused
22 Bronson Harley Rash's injuries as 100 percent, what
23 percentage is attributable to Mr. Rash and what percentage is
24 attributable to the defendants? If you answered yes to in
25 questions 1 through 3."

1 MR. WILLEY: Okay.

2 THE COURT: And then below the percentages, because
3 that's what they need to consider --

4 MR. WILLEY: Right.

5 THE COURT: -- because if it's 50 percent or more, they
6 don't deliberate any more.

7 MR. WILLEY: Right.

8 THE COURT: If it's less than 50 percent, than they
9 award damages. So it reads "If Bronson Harley Rash's
10 percentage of the combined negligence is greater than 50
11 percent, stop and deliberate no further. Sign and" --
12 because it's 51, there's nothing to apportion.

13 MR. WILLEY: Right.

14 THE COURT: He's more --

15 MR. WILLEY: I went at 50 percent. That's what I was
16 trying to hear, what the question actually says. The
17 plaintiff wins at 50 percent.

18 THE COURT: If it's greater than 50 percent --

19 MR. WILLEY: Okay.

20 THE COURT: -- they stop and deliberate no further.

21 MR. WILLEY: Very good.

22 THE COURT: If the plaintiff's percentage of combined
23 negligence is 50 percent or less, you go to question 7, which
24 is damages.

25 Any input from you guys? I told you I'm open to

1 suggestions. Verdict forms can be peculiar things when it
2 comes -- and I always get my numbers all confused. But I was
3 trying to make it really simple. Because we have three
4 defendants, it can be very confusing. So I tried to separate
5 out.

6 MR. COOKE: It would actually be helpful if we could see
7 it at some point.

8 THE COURT: You can.

9 MR. COOKE: I've got a --

10 THE COURT: I've got it right here. It has typos in it.
11 Just ignore it. It has some extraneous markings. I don't
12 know how they got on it.

13 MR. COOKE: We do have a substantive issue, your Honor.

14 THE COURT: Yes.

15 MR. COOKE: It is our position that the settling
16 defendants need to be on the verdict form.

17 THE COURT: No, sir.

18 MR. WILLEY: I can't find it.

19 THE COURT: Everybody's going to come up here and look
20 at it.

21 That's contrary to statute. I'm not putting them on it.
22 Your remedy is setoff. I've noted that. You've argued it.
23 There's not support for it.

24 MR. COOKE: We briefed it. Could we at least hand up
25 our brief?

1 THE COURT: You can hand up the brief, but the case law
2 is very clear. And I'll note it.

3 MS. TILLMAN: And yes, your Honor, Mr. Akbar joins in
4 this. And also --

5 THE COURT: Then give me some case law that says you get
6 to apportion the people who've settled out. I'll be glad to
7 look at it.

8 MS. TILLMAN: Well, it's more specific than that.
9 Mr. Akbar has two motions at this time.

10 THE COURT: Mm-hmm.

11 MS. TILLMAN: The first is as to the plaintiff's
12 stipulation of dismissal as to SCDOT and Snyder. And
13 Mr. Akbar's motion for that --

14 THE COURT: Go ahead. I'm listening.

15 MS. TILLMAN: Mr. Akbar's motion for that is that that
16 stipulation must be without prejudice to Mr. Akbar as to his
17 rights under the Contribution Among Tortfeasors Act. And
18 here's the reason why, your Honor. That stipulation of
19 dismissal was filed, your Honor, because the plaintiff filed
20 it. And when the plaintiff filed it, they filed it pursuant
21 to Rule 41.

22 THE COURT: Yeah, but they subsequently had a settlement
23 approved when an order was signed.

24 MS. TILLMAN: Well, and I'm not sure about the timing of
25 it, but those two things did happen. However, the

1 stipulation of dismissal itself would have dismissed SCDOT
2 and Snyder --

3 THE COURT: But they could have only dismissed them with
4 orders approved in the settlement, which is what's
5 dispositive.

6 MS. TILLMAN: Well, it's more than that, your Honor.
7 But for the record, I need to get it in.

8 THE COURT: Mm-hmm.

9 MS. TILLMAN: And I will probably also probably also
10 file something along these lines. But what they did was they
11 represented on the stipulation of dismissal that it was
12 pursuant to Rule 41(a), which requires the consent of all
13 parties. And the plaintiffs filed it, and you can look at
14 it. It is not signed and nor was the consent --

15 THE COURT: 41(a) you dont need consent. They can
16 dismiss it.

17 MS. TILLMAN: But no, the rule --

18 THE COURT: Well, if an answer hadn't been filed.

19 MS. TILLMAN: No. No. Actually, and I would ask you to
20 read the rule specifically. In fact, I may be able to do
21 that in one moment. But the rule says that it is -- it
22 requires to be signed by all parties who appeared in the
23 action. That's Rule 41(a)(1)(B), which is the portion of --
24 which is what the plaintiffs represented in the stipulation
25 was the rule that they were relying on to dismiss.

1 THE COURT: Yeah, but I think those are superseded by
2 approval of settlements that were filed with the court.

3 MS. TILLMAN: And your Honor, just respectfully, I just
4 want to put this in this record that Mr. Akbar did not agree
5 to that stipulation of dismissal. And nor would he have
6 because Rule 41 also says that it is subject to the
7 provisions of any statute. Right? Rule 41 says it's subject
8 to the provisions of any statute. And your Honor,
9 Mr. Akbar's contention is that would include the Contribution
10 Among Tortfeasors Act.

11 It also says it is subject to public policy. It would
12 also be the public policy behind the South Carolina
13 Contribution Among Tortfeasors Act. And a dismissal of SCDOT
14 and Snyder from this tort action, this wrongful death tort
15 action, without Mr. Akbar's consent, which is how the
16 plaintiff sought to do it, would be very prejudicial to
17 Mr. Akbar's affirmative defenses and would run afoul of
18 public policy.

19 And so one of those public policies too, your Honor,
20 that Rule 41 says it is expressly subject to is the
21 "Plaintiffs Choose" rule. The plaintiffs gets to choose who
22 they will sue. In this instance, the plaintiffs chose to sue
23 multiple defendants, including SCDOT and Snyder, and then
24 they sought to dismiss them pursuant to Rule 41. But Rule 41
25 does not trump the public policy of the state, especially not

1 without Mr. Akbar's consent.

2 And so your Honor, our position is that stipulation of
3 dismissal purportedly dismissing SCDOT and Snyder must be
4 without prejudice to Mr. Akbar's rights under the
5 Contribution Among Tortfeasors Act, especially because it
6 would prejudice his affirmative defenses of intervening
7 superseding comparative contributory negligence and his right
8 to have SC -- all defendants in the action, which is the
9 language of the South Carolina Contribution Among Tortfeasors
10 Act.

11 On the special verdict form, that's his right under the
12 statute. Rule 41 is subject to that statute. And also, the
13 plaintiffs did it without his consent. So that's our first
14 motion that would go along with Mr. Cooke's argument about
15 having all of the defendants named on the verdict form.

16 And then our second motion has -- it's a Rule 59 motion.
17 If it's ten days from the date of your Honor's order --

18 THE COURT: You don't have any standing to challenge
19 that settlement.

20 MS. TILLMAN: Well, actually, your Honor, if you'll let
21 me argue it also for the record, we're challenging the
22 procedural manner in which the plaintiff went about obtaining
23 that settlement. And that's the basis of our --

24 THE COURT: What date were the 41(a) dismissals done?

25 MS. TILLMAN: I'm sorry. I couldn't hear you.

1 THE COURT: What date were the 41(a) dismissals done?

2 MS. TILLMAN: So the 41 dismissals were February 14,
3 2023. And if you --

4 THE COURT: So why would you have done a 41(a) dismissal
5 after you already had orders approved in these settlements
6 which effectively dismissed the parties from this case, done
7 on 2/10/23 and 3/21/23?

8 MR. WILLEY: Mr. Cobb asked me to file it, who was the
9 defendant for the other settling defendant.

10 THE COURT: But it's ineffective because they'd already
11 been dismissed by virtue of the settlement.

12 MR. WILLEY: I agree.

13 THE COURT: So it's void ab initio.

14 MR. WILLEY: He asked me --

15 MS. TILLMAN: Well, your Honor, I --

16 MR. WILLEY: -- to file it, so I did it.

17 MS. TILLMAN: I don't think -- and I'd ask you to look
18 back at that approval of the -- the order approving the
19 settlement. It does not dismiss them from the action.

20 THE COURT: Well, but it always ends it if it's done by
21 court action. Once we sign the approval of a settlement, it
22 effectively dismisses the party and they're removed out of
23 the system as a defendant.

24 MS. TILLMAN: I think -- well, they're still in the
25 system. And --

1 THE COURT: No, they're not still in the system. You
2 need to look at the form that's attached to that order, and
3 it will say "Ends this case."

4 MS. TILLMAN: And I will --

5 THE COURT: Well, and it's probably in our internal
6 notes. You might not be able to see it.

7 MS. TILLMAN: So I don't think I have seen that. And
8 Mr. Akbar's position is that the order did not actually
9 dismiss those defendants, so they would need to undergo the
10 subsequent procedural step of dismissing them from the action
11 by amending their complaint, which they have not done.
12 They've not rested their case. All evidence is --

13 THE COURT: I don't think so. I don't think that's
14 required. I think once a party settles out, they're
15 effectively out of the case.

16 MS. TILLMAN: And your Honor, we would respectfully
17 disagree and require that there be an affirmative action
18 either by the Court or by the --

19 THE COURT: There is an affirmative action by the Court
20 because when we sign an order, we end their involvement in
21 the case.

22 MS. TILLMAN: And I will go back and read their order
23 because I don't want to be wrong about it.

24 THE COURT: There's a function that we have internally
25 where we end their involvement in the case. So even though

1 they may still be reflected in our internal system, they are
2 no longer a part of the case.

3 MS. TILLMAN: And this is important because it goes into
4 my second argument and our second motion, which has to do
5 with Mr. McJunkin's settlement.

6 MR. WILLEY: May I put something on the record just with
7 that?

8 MS. TILLMAN: Sure. Yeah.

9 MR. WILLEY: Okay. So with respect to that, I would
10 also note for the record that at the settlement hearing, your
11 Honor asked of the plaintiff or I asked of the plaintiff -- I
12 can't remember which one of us did it -- "You understand this
13 ends the case as to Mr. McJunkin?" The answer was yes. You
14 indicated at the end orally that you would so end
15 Mr. McJunkin's involvement in the case and approve the
16 settlement. So that was on the record and is on the record.

17 MS. TILLMAN: And I'm glad that Mr. Willey has kind of
18 given me that segue into Mr. McJunkin's settlement, because
19 our basis -- Mr. Akbar's basis for objecting to that order
20 approving that settlement -- and this is pursuant to Rule 59
21 -- is Mr. Willey actually did not follow the necessary
22 procedural steps to obtain that settlement approval. And
23 that's important because what he just described --

24 THE COURT: No. I would have made a finding in my order
25 that he complied with the statute.

1 MS. TILLMAN: Well --

2 THE COURT: And I'm peculiar. I don't ever sign
3 anything that's submitted to me. I rewrite it, much to the
4 consternation of many lawyers --

5 MS. TILLMAN: And what --

6 THE COURT: -- to make sure that it has complied with
7 the statutes.

8 MS. TILLMAN: And I am not criticizing your Honor.

9 THE COURT: Oh, I didn't take it that way.

10 MS. TILLMAN: No, this goes to the plaintiff's actions
11 and what the plaintiff is required to do under the
12 wrongful-death settlement statute. He is required first to
13 file a petition with the Court --

14 THE COURT: Which he did.

15 MS. TILLMAN: -- requesting this, which he did not. And
16 I ask you to look at --

17 THE COURT: Look up the orders.

18 MS. TILLMAN: No, there is a petition and that's as to
19 SCDOT. There's -- he never filed a petition as to
20 Mr. McJunkin. And this is very important because not only
21 did he not file it as is required by the statute -- it's
22 required -- but then he also never served Mr. Akbar.

23 THE COURT: He doesn't have to.

24 MS. TILLMAN: Well, he actually does under Rule 5. Rule
25 5 requires all motions and petitions and any --

1 THE COURT: The withdrawal-death statute governs the
2 approval of the --

3 MS. TILLMAN: Yes.

4 THE COURT: -- settlement. And it does not require you
5 to serve anybody that's not involved in the settlement.

6 MS. TILLMAN: It does. It requires if a case is
7 ongoing, your Honor. If a case is ongoing, is when it -- it
8 -- he never filed a petition, your Honor. And I'll represent
9 to you it' not --

10 THE COURT: Did you file a petition?

11 MR. WILLEY: Your Honor, the order -- I'm actually
12 looking it up now. We submitted the petition to your office,
13 and the order says the matter came before the Court on a
14 verified petition of Darleen Rash.

15 THE COURT: Well, does it say when it was filed?

16 MS. TILLMAN: Exactly our problem, your Honor. He may
17 have --

18 THE COURT: You've got to file everything. Submitting
19 it to me does not count. I would have assumed that you filed
20 it.

21 MR. WILLEY: Yes.

22 MS. TILLMAN: And there is substantial prejudice to
23 Mr. Akbar --

24 THE COURT: But frankly, I have to fall on my sword,
25 because if my office missed it, then that's our fault because

1 I'm meticulous about things being followed by the statute.
2 And if we missed it, I'll take full responsibility for it.
3 But normally the order that I would do would specify that all
4 of the requirements of the statute have been met and the date
5 they were met.

6 MS. TILLMAN: Certainly if that is what Mr. Willey was
7 representing to the Court had been done. But here we contend
8 he deliberately did not file it. So he deliberately defied
9 these defendants of notice. And then after that --

10 THE COURT: Where does it say in the statute they have
11 to give you notice if they're settling with somebody?

12 MS. TILLMAN: The statute is read in conjunction with
13 the rules. The statute requires the filing in an ongoing
14 case of a petition --

15 THE COURT: I don't think they have --

16 MS. TILLMAN: The filing is required and --

17 THE COURT: I don't think they have to give you notice
18 they're settling with somebody.

19 MS. TILLMAN: Rule 5 requires that you file motions and
20 then --

21 THE COURT: A petition is not a motion.

22 MS. TILLMAN: Your Honor, if you read Rule 5 --

23 THE COURT: Rule 5 -- I'm a little tired, and its 8:30,
24 and I've hit my wall.

25 MS. TILLMAN: I understand.

1 THE COURT: So we're not going to talk about anything
2 else tonight. We'll deal with it on Monday morning.

3 MS. TILLMAN: May I file a motion --

4 THE COURT: You should really have filed it long before
5 now if you contemplated it.

6 MS. TILLMAN: Well, it's pursuant to Rule 59 and so
7 therefore we --

8 THE COURT: You don't have any standing to challenge
9 that settlement.

10 MS. TILLMAN: And your Honor --

11 THE COURT: You can file it.

12 MS. TILLMAN: Okay.

13 THE COURT: But it's a little late. It's been more than
14 ten days.

15 MS. TILLMAN: I wanted to preserve these arguments for
16 the record. And I ask that you respectfully agree to read it
17 because it's not just a failure to file the --

18 THE COURT: If you had not complied with Rule 59, which
19 is ten days, you're out of luck. The rule is conclusive. If
20 it isn't done in ten days, then it doesn't happen. And it's
21 been more than ten days.

22 MS. TILLMAN: No, it has not. Today is the tenth day.

23 THE COURT: I don't know if today is the tenth day. I
24 did it -- I did it the week I did the status conference.

25 MS. TILLMAN: All right. And your Honor, I will file

1 something. I am just as tired as you are. I just did not
2 want to waive this. I want to be very clear that I'm going
3 to be filing a supportive memorandum incorporating all my
4 arguments as to --

5 THE COURT: You really should have filed it before now
6 so I could have had the benefit of reading it. It's not fair
7 to expect me to do that over the weekend.

8 MS. TILLMAN: For the record, I am perfecting my
9 arguments for the record as to the impropriety of the
10 procedural mechanism in which Mr. Willey went about procuring
11 Mr. McJunkin's settlement approval, and also as to the
12 impropriety of the dismissal of SCDOT and Snyder from the
13 action. And I will file those tonight.

14 THE COURT: I don't know -- well, they really should
15 have been filed before today.

16 MR. WILLEY: And just briefly, since I was called
17 improper. The statute says "shall petition." I did
18 petition. The Court had the petition and the Court notated
19 in the order that your Honor had the petition. And your
20 Honor reviewed the petition actually during -- well, probably
21 before the hearing, but also during the hearing.

22 THE COURT: Yeah, I require a petition to be submitted
23 to my office before.

24 MR. WILLEY: Certainly we --

25 THE COURT: But sometimes people submit things without a

1 filing date, but my staff is supposed to go back and document
2 when it was filed.

3 MR. WILLEY: Right.

4 THE COURT: And I don't see that, necessarily, in that
5 order. But I'll deal with that in a separate form.

6 But I don't know that you're -- I've never had a
7 situation -- I have never interpreted the rules in that way.
8 If you're settling with somebody, you don't have to give
9 anybody notice except the parties that are affected. And
10 when you file a petition for a settlement, all you have to do
11 is file it and submit it to the Court and have it approved
12 pursuant to the wrongful-death statute as required by
13 statute. But you don't get to come to the hearing and
14 contest a settlement because the only persons that are
15 affected by the settlement are the beneficiaries of the
16 estate, and they're the only ones who get a say about whether
17 it's fair, equitable, and whether they've waiving their right
18 to a jury trial on the issues, and their understanding of the
19 finality of the settlement.

20 So I don't know that notice would have made a
21 difference.

22 Yes, sir?

23 MR. COX: For the record, your Honor, Dominion joins in
24 Akbar's motion.

25 MS. WESLEY: And of course, Mr. Quattlebaum does as

1 well.

2 THE COURT: Mm-hmm. And the Court would note for the
3 record that any memos or other other supporting documents
4 should have been filed before today. These issues did not
5 come as any surprise to you. You clearly were prepared to
6 argue them. And you've put the Court at a complete deficit,
7 expecting me now at 8:24 on Friday night to review those in
8 anticipation of closing and charging a jury on Monday
9 morning.

10 MS. TILLMAN: And very respectfully, I apologize. I've
11 been up all hours every night to --

12 THE COURT: So have I. But this case has been pending
13 for a lot of years.

14 MS. TILLMAN: Yes, but the dismissals occurred very
15 recently.

16 THE COURT: You've been contemplating this for a long
17 time, so it didn't come as a surprise to you. It should have
18 been done before now.

19 All right. Anything else before we break so we can all
20 go home and get some rest.

21 MR. FORD: What time on Monday, Judge?

22 THE COURT: 9:30. Have a good weekend.

23 But I do need to know, is there any exception to the
24 forms of the verdicts as proposed. I need to know that now
25 before we break.

1 MS. TILLMAN: Yes, your Honor.

2 MR. WILLEY: Yes, your Honor.

3 THE COURT: What are they?

4 MR. WILLEY: So --

5 THE COURT: Not what you've already told me, Mr. Willey.

6 MR. WILLEY: Okay. So the --

7 THE COURT: Ignore any scrivener's errors.

8 MR. WILLEY: No, no.

9 THE COURT: I'm going to fix all that.

10 MR. WILLEY: I'm just saying that it's inconsistent.

11 It's not a typo. It's just different. And then I would
12 ask --

13 THE COURT: What is different?

14 MR. WILLEY: Just the how the parties are named.

15 THE COURT: How they're named how?

16 MR. WILLEY: One names them as Dominion. One doesn't.

17 THE COURT: I told you it's a scrivener's error. I'm
18 going to fix it.

19 MR. WILLEY: I'm just alerting you to it.

20 THE COURT: I've caught that. I said ignore any
21 scrivener's errors.

22 MR. WILLEY: Okay.

23 THE COURT: I need to know substantively, is there any
24 issue, other than scrivener's errors, with the verdict forms?

25 MS. TILLMAN: And on behalf of Mr. Akbar, yes.

1 THE COURT: Other than what you've already argued, and
2 assuming the I'm going to deny what you ask, is there any
3 exception.

4 MS. TILLMAN: Yes. Exactly. Nothing aside from that
5 Mr. Akbar would like all defendants named on the form.

6 THE COURT: And I've noted I'm not going to do that. If
7 I change my mind on Monday morning, I'll let you know.

8 But I need to know is there any exception to the verdict
9 forms as they are written other than scrivener's errors, the
10 fact that the survival action has everything capitalized and
11 it won't be capitalized in the final version?

12 MR. WILLEY: And the ordering of the --

13 THE COURT: I've already noted that. I said anything
14 you hadn't already told me.

15 MR. COX: Your Honor, I --

16 THE COURT: Mr. Cox, you have any problem with the
17 verdict forms.

18 MR. COX: I'm sorry. We just didn't have an opportunity
19 to look at it, your Honor.

20 MS. WESLEY: Ian just --

21 MR. COX: May we give you an answer on Monday?

22 THE COURT: No, because I need to do this before I
23 leave. I need you to look at it now. Because I don't want
24 to -- I'm not going to spend a whole lot of time on matters
25 of law before we close and charge. This jury has already

1 indicated to you they're stretched for time, and I'm going to
2 try to get to it as quickly as possible.

3 Which also begs another question. How long is your
4 closing argument going to be, Mr. Willey?

5 MR. WILLEY: I have not written it yet.

6 THE COURT: I need to have an idea of how long. I
7 generally don't limit people, but I might in this instance.

8 MR. WILLEY: I would say about an hour.

9 THE COURT: Pardon me?

10 MR. WILLEY: About an hour.

11 THE COURT: How long, Mr. Cox, is your closing argument
12 to be, you think?

13 MR. JOHNSON: It's going to be me, your Honor. I
14 haven't written it yet.

15 THE COURT: How long -- but give an estimate.

16 MR. JOHNSON: Thirty minutes.

17 THE COURT: And Mr. Ford:

18 MR. FORD: Thirty minutes.

19 THE COURT: And Ms. Wesley?

20 MS. WESLEY: Same.

21 THE COURT: Or is it going to be --

22 MS. WESLEY: No more than 30. I can't even imagine.

23 THE COURT: Okay. So that's 30, 30 -- that's an hour
24 and a half, two and a half. We're looking at three hours.
25 Okay.

1 MR. WILLEY: Your Honor, are we done with arguments such
2 that I may leave?

3 THE COURT: You can. I mean --

4 MR. WILLEY: Thank you.

5 THE COURT: Well, you need to be here if they tell me
6 something about the verdict form.

7 And then on Monday I need y'all to get here early to go
8 through all the exhibits with the court reporter to make sure
9 nothing's missing, nobody accidentally took anything with
10 them, nothing's stuck in anybody's folders.

11 MS. HONEYCUTT: Your Honor?

12 THE COURT: Yes, Ms. Honeycutt.

13 MS. HONEYCUTT: I am scheduled to be out of the country
14 Tuesday. We can wait and take it up then.

15 THE COURT: Yeah, but we still got to -- do y'all demand
16 bifurcation.

17 MS. HONEYCUTT: Okay. So my substitution for Ms. Wesley
18 is not --

19 MR. WILLEY: I'm not concerned about it.

20 THE COURT: I think you can send somebody else to sit
21 with her.

22 MR. WILLEY: I'm okay. And your Honor, from the
23 plaintiff's perspective, if Ms. Wesley is by herself --

24 THE COURT: She can't do that.

25 MS. HONEYCUTT: Yeah, I'll have someone here if that

1 becomes an issue.

2 MR. WILLEY: I'm just trying to be agreeable.

3 THE COURT: You know, that's why I told the jury we've
4 got to take it a little at a time and see where we are.
5 Because if it's a defense verdict, it's a non issue.

6 MS. TILLMAN: Your Honor, can we let these people go
7 home if we do the verdict --

8 THE COURT: I need to -- no, I really need to know
9 tonight. I just need to know because I need to start -- I
10 need to think about anything --

11 MR. COOKE: We don't understand what the note means?

12 THE COURT: Huh?

13 MR. COOKE: We just don't understand what the note means
14 at the bottom.

15 THE COURT: What note?

16 MR. COOKE: The note that says "answered questions" --

17 THE COURT: That's required by the Supreme Court. It
18 means you can't try to reduce the verdict by the percentages
19 you've attributed.

20 MR. COOKE: Right.

21 THE COURT: You have to award the full amount of damages
22 and then any reduction that the Court does. That's mandated
23 language.

24 MR. WILLEY: We would just ask that the note go --

25 THE COURT: That note has to --

1 MR. WILLEY: No, I agree. About Number 7.

2 THE COURT: But I'm going to explain it to them.

3 MR. WILLEY: Right.

4 THE COURT: I explain that whole thing to them, and I
5 will explain to them that whatever amount of damages has to
6 be the total amount of damages.

7 MR. WILLEY: Correct.

8 THE COURT: They cannot reduce damages by any
9 percentages that they've attributed to the percentages.
10 That's a matter of law for the Court.

11 MS. WESLEY: I see what you're saying. It's just the
12 way it's written. It sounds like if you find him negligent,
13 you cannot reduce, and that just doesn't make sense in total
14 percentages. But what you're saying is don't --

15 THE COURT: I'll work on it.

16 MS. WESLEY: Don't reduce the damages if he's negligent.
17 You have to do the whole thing.

18 THE COURT: Don't reduce it period by any of the
19 percentaged.

20 MS. WESLEY: Right. I understand.

21 THE COURT: Because if he's 51 percent, that's the end
22 of it. There's nothing to discuss.

23 MS. WESLEY: Do y'all do 50.1 or just 51.

24 MR. WILLEY: 50.1. It's --

25 THE COURT: It's anything above 50 percent.

1 MR. WILLEY: Yeah. So we would just -- the plaintiff
2 would just ask that that note as to total damages go above
3 the damages question so that they read that before they
4 answer the damages question.

5 THE COURT: No. Supreme Court says it goes right there.
6 But I'll try and make it --

7 MS. WESLEY: Maybe just clarify a little bit.

8 MR. COX: We'd like it to stay where it is.

9 THE COURT: I'll try to make it more clear.

10 MR. WILLEY: Thank you, Judge.

11 THE COURT: You're welcome.

12 MR. FORD: Thank you, your Honor.

13 THE COURT: Have a good weekend, guys.

14 (Court recessed at 8:33 p.m., to resume at 9:30 a.m.,
15 Monday, April 3, 2023.)
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DAY 11

1 THE COURT: That's how the case law reads.

2 Any other exception to the instruction -- er, to the
3 verdict form from the plaintiff?

4 MR. WILLEY: No, your Honor.

5 THE COURT: Any exceptions from the defense other than
6 apportionment? I've already heard more than several hours of
7 that argument, and I'm going to rule on it but I'm not
8 re-entertaining it this morning.

9 MS. TILLMAN: Yes, your Honor. And just for the record,
10 we have objections on two bases, so I'm going to do it in two
11 phases.

12 THE COURT: That's fine, but I'm not rehashing what you
13 spoke for --

14 MS. TILLMAN: I am not --

15 THE COURT: -- a lengthy time on on Friday night. And
16 I'm not entertaining anything on apportionment. I read up on
17 it over the weekend. I read the memo which you basically
18 read, the joint memo that was already presented -- that was
19 presented to the Court in writing from Mr. Cooke, and I'm not
20 entertaining any further argument on.

21 MS. TILLMAN: All right. Our first objection for the
22 record is on apportionment as to --

23 THE COURT: I've been very clear.

24 MS. TILLMAN: -- as to all of the --

25 THE COURT: You've already perfected your argument on

1 apportionment, and I'm going to rule on it. Please don't
2 violate the Court's instructions. I'm not rehashing it. I'm
3 not going back into it. I'm not listening to another hour of
4 argument from you on it, Ms. Tillman.

5 MS. TILLMAN: All right. I understand that.

6 Our second basis for objection, your Honor, given that
7 you've denied our firsts on apportionment --

8 THE COURT: Actually I haven't ruled on it yet, but I
9 plan to make a very detailed ruling on it.

10 MS. TILLMAN: All right.

11 THE COURT: So I need to know if there's any objection
12 to the form of the verdict form, presuming that your motion
13 for apportionment is denied.

14 MS. TILLMAN: Yes, your Honor, there is. Our second
15 basis for objection to the verdict form is the -- it is also
16 based on the South Carolina Contribution Among Tortfeasors
17 Act.

18 THE COURT: That's still apportionment.

19 MS. TILLMAN: Your Honor, it's not. This is as for the
20 mechanism that that act provides for the jury's decision on
21 liability when there are more than one tortfeasor who may
22 potentially be negligent for a single injury. And the act
23 contains two phases. It contemplates two phases of decision.
24 The first is a simple yes or no on the question of
25 negligence. And the second phase then is the apportionment

1 phase among whichever defendants --

2 THE COURT: But you pled comparative negligence.

3 MS. TILLMAN: I'm sorry?

4 THE COURT: You pled comparative negligence, which is
5 different the way you pled. You pled comparative negligence,
6 and that the way it's being presented to the jury.

7 MS. TILLMAN: Your Honor, I'm going to pass up -- so
8 just so you can see what I'm --

9 THE COURT: I'm well aware of the different verdict
10 forms. One presumes that there's no liability on behalf of
11 contribution to the injuries provided by Mr. Rash. I'm well
12 aware of how the apportionment verdict forms are written.
13 But that is not how you presented this case. You all pled as
14 an affirmative defense comparative negligence.

15 MS. TILLMAN: We pled as an affirmative defense not only
16 comparative negligence, but also negligence of others and
17 negligence of the plaintiff and negligence of --

18 THE COURT: That goes to jury instruction, not the
19 verdict.

20 MS. TILLMAN: Yes. And that is my objection. These are
21 jury instruction objections, and I would like permission to
22 approach to pass up as a Court's exhibit and to put it into
23 the record our proposed --

24 THE COURT: Hand it to the clerk, please, and give a
25 copy to Mr. Willey.

1 Hand it to the clerk of court. She'll pass it up to me.

2 MS. TILLMAN: And your Honor, by passing up these
3 proposed instructions, the defense does not intend to waive
4 our right to have all defendants on -- listed on the verdict
5 form. However, given that your Honor has indicated that
6 she's going to deny that request, this is our request that --

7 THE COURT: I don't understand what you've just handed
8 up to me.

9 MR. COX: Your Honor, may I --

10 MR. WILLEY: May I have a copy?

11 MR. COX: May I take a stab, your Honor?

12 MS. TILLMAN: I did just give you a copy.

13 MR. WILLEY: Oh, sorry. Yeah.

14 MS. TILLMAN: It's simply a request to do it as the act
15 -- the Contribution Among Tortfeasors Act contemplates, which
16 is --

17 THE COURT: Actually, the way it's and normally the way
18 it's done, it does not eliminate damages. It's written this
19 exact same way. The only difference is that you don't have
20 the -- you would not have Mr. Rash on that form pursuant to
21 that statute. The way it's generally promulgated is it would
22 have -- it would not have him listed at all, and it would
23 still go through the percentages and it would still have the
24 damages on the form. So I'm a little confused as to what
25 you're asking.

1 MS. TILLMAN: Sure. And your Honor --

2 THE COURT: Because this does not make any sense to me,
3 especially in light of the fact that I have to instruct
4 comparative negligence and the instructions has to make sense
5 to the jury. And the way you're suggesting it would not make
6 sense.

7 MS. TILLMAN: Sure. And your Honor, it's -- the
8 procedure for it is in South Carolina Code 15-38-15. If you
9 look to section C, it contains a procedure where there is a
10 -- where the question of negligence is submitted to the jury,
11 and the procedure is a two-step procedure. And it says first
12 -- and this is section C again -- "The jury, or the Court if
13 there is not jury, shall: Number 1, specify the amount of
14 damages; and Number 2, determine the amount of fault, if any,
15 of the plaintiff and the amount of recoverable damages under
16 the applicable rules concerning" --

17 THE COURT: I understand what the statute says, but the
18 way you're suggesting you do this is very confusing to the
19 jury. And it's really a waste of time, and it doesn't make
20 any difference appreciably when it makes more sense to
21 present it -- because, frankly, they could find that Mr. Rash
22 is 51 percent, which ends the inquiry. And it doesn't make
23 -- and if they do that, if they find -- they've already -- it
24 makes no sense for them to wait to apportion. It just
25 doesn't make any sense the way you're suggesting this

1 because --

2 MS. TILLMAN: Whether or not --

3 THE COURT: -- what they would do --

4 MS. TILLMAN: -- it makes logical sense --

5 THE COURT: What they would do -- it has to make logical
6 sense. It's incumbent upon this Court to instruct the jury
7 such that it makes sense and is not confusing and does not
8 create and issue later on appeal. So I'm trying to figure
9 out logically how this makes any sense.

10 MS. TILLMAN: Yeah. And it makes logical sense because
11 it follows the statutory procedure, which has, first, the
12 determination on the issue of negligence on behalf of the
13 defendants and the amount of damages and the comparative
14 fault of the plaintiff. And then the second --

15 THE COURT: But there's no way to instruct the --
16 without instructing them on comparative negligence.

17 MS. TILLMAN: Certainly you could read the act to them.

18 THE COURT: No, ma'am. You would never read an act to a
19 jury. An act is a matter of law for the Court. It's not for
20 the jury's consideration.

21 MS. TILLMAN: Well, jury instructions do charge the law
22 and this act is the law --

23 THE COURT: They charge the law, but they do not charge
24 law that's a determination by the Court. It's not
25 appropriate.

1 MS. TILLMAN: Yes. If your Honor would take a moment to
2 look at the act, you'll see that (c)(2) -- er, I'm sorry,
3 (c)(3), which is 15-38-15(c)(3), contemplates that after the
4 initial determination by the jury, then there would be an
5 option for a motion on behalf of the defendants to submit the
6 apportionment issue to the jury. And your Honor, it goes
7 further. You can see the legislature's intent if you look at
8 (c)(3)(b). And (c)(3)(b) even allows additional oral
9 argument of statements to the jury before the apportionment
10 is --

11 THE COURT: You're just making this far more complicated
12 than it needs to be and very confusing for the jury.

13 MS. TILLMAN: It may be more complicated, your Honor,
14 but it is the statutory procedure and Mr. Akbar insists upon
15 it.

16 THE COURT: I don't see that section C requires that it
17 be done separately. It says, "Apportionment of percentages
18 of fault among defendants is to be determined as specified in
19 section C. The jury, or the Court if there is no jury, shall
20 specify the amount of damages; determine the percentage of
21 fault, if any, of plaintiff and the amount of recoverable
22 damages under the applicable rules concerning comparative
23 negligence." And that's exactly what we're doing.

24 MS. TILLMAN: Yes, your Honor.

25 THE COURT: It does not say you do them separately. And

1 I've never seen it done separately.

2 MS. TILLMAN: And then, your Honor, you have to --
3 there's a semicolon after comparative negligence, and it says
4 "and." And then you go to section 3, which contemplates a
5 motion by at least one defendant.

6 THE COURT: But you have to contemplate a verdict has
7 already taken place.

8 MS. TILLMAN: That's exactly right. That's -- and
9 that's what we're asking is -- well, it says in section 3 --

10 THE COURT: It says 1 and 2.

11 MS. TILLMAN: Right. "Where there is a verdict."

12 THE COURT: This is merely a compilation of how you do
13 comparative negligence. I don't see this as being done
14 separately. "And upon a motion by at least one" -- it
15 contemplates a verdict already taking place.

16 MS. TILLMAN: That's correct. And that's --

17 THE COURT: "Where there is a verdict" under items 1 and
18 2. It does not separate them. So it contemplates the jury
19 bringing back damages on -- bringing back a verdict on
20 elements 1 and 2, which is specifying the amount of damages
21 and a percentage of fault. It doesn't separate the two.

22 Let me hear from Mr. Willey. What is the plaintiff's
23 position?

24 And Mr. Cox and Ms. Wesley, what are your positions
25 regarding the request of Defendant Akbar?

1 MR. COX: Who do you want to hear from first, your
2 Honor?

3 THE COURT: Let me hear from you two, and then I'll let
4 Mr. Willey respond.

5 MR. COX: Thank you, your Honor.

6 THE COURT: You're welcome.

7 MR. COX: All defendants join in this request. Your
8 Honor, I think when in doubt, we better follow the statute.
9 We've been hard at this case. We're beginning our third
10 week. And --

11 THE COURT: Go ahead. I'm listening.

12 MR. COX: And like I say, your Honor, it's important
13 that we get this right. We do agree with the reading of the
14 statute that Ms. Tillman proposes to the Court. The verdict
15 form that we've handed up, your Honor --

16 THE COURT: I can listen and read at the same time.

17 MR. COX: Sure. I didn't want to talk over him. Sorry.

18 THE COURT: You weren't. He and I have private
19 conversations all the time. I can listen to both of y'all.

20 MR. COX: Okay. What we've handed up, your Honor, is
21 essentially the same language as you have given us. It's
22 just taking it in two steps, which we think the statute
23 requires.

24 THE COURT: Anything, Ms. Wesley?

25 MS. WESLEY: We just join, your Honor, with the other

1 two defendants.

2 THE COURT: Mr. Willey?

3 MR. WILLEY: Your Honor, either I'm not smart enough to
4 be in the legislature or I'm too smart. I'm not sure which
5 so I'm going to go with not smart enough. But this statute,
6 as I -- first of all, let me just say this. We had an
7 opportunity to submit proposed verdict forms last week. The
8 Court gave the opportunity. This verdict form does not look
9 anything like what was suggested or submitted to the Court,
10 so I think this issue's been waived and the motion is not
11 timely, as an initial matter.

12 As a second matter on the substance of the motion, it
13 seems to me that what the defendants are asking for is simply
14 separate arguments so they can argue among themselves, if
15 there is a verdict for the plaintiff, about who should be
16 responsible for which percentage. The verdict form that the
17 Court put together after looking at our proposals and
18 circulated, does exactly that. It allows them in the closing
19 argument to argue about those percentages.

20 And I would point out, your Honor, under the section
21 cited, (c)(3) -- I feel like whenever we get to a (c)(3)(b)
22 you know we're really down to the minutiae. But (c)(3)(b)
23 says, "Parties shall be allowed oral argument, with the
24 length of such argument subject to the discretion of the
25 trial judge." And I think what we have here is they're going

1 to be able to argue that in their closing argument, that they
2 should get a bigger percentage or who should get a smaller
3 percentage. I don't see any prejudice or any abrogation of
4 statute.

5 And I think it's been waived because we already had a
6 charge conference, we went over the verdict form, you asked
7 for motions, and this is not -- this was not even raised,
8 this issue. They were talking all about apportionment. And
9 not having prevailed on that for the moment, we now have
10 (c)(3)(b) of another statute, which is at the discretion of
11 the trial judge.

12 So that would be our position. I think we just need to
13 get on with this thing and have closing arguments.

14 MS. TILLMAN: And if I could respond briefly to
15 Mr. Willey's argument, what he just said would make section
16 (c)(3)(b) superfluous. And your Honor, it's not. And it
17 specifically says "after an initial verdict," which is the
18 first form that we passed up. After that, then there is an
19 additional argument that's kind of -- and that -- the
20 argument is at the discretion of the judge, but the phrasing
21 of the verdict is not discretionary. It's statutory.

22 MR. WILLEY: So your Honor, briefly on that, if that's
23 the sole issue, then on your verdict form, we just change
24 around 6 and 7. We just make damages before the percentage
25 and that issue is cured. I don't think that's the

1 appropriate way to do it. I've never seen it done that way.

2 But if that's what they want, then we can just put
3 damages before the percentages. They will have reached a
4 damages verdict, and then they will go into percentages. And
5 of course, at the discretion of the Court, you can limit them
6 to their initial closing to argue about those percentages,
7 which is the way it was talked about all last week and nobody
8 objected, so -- or filed a motion, made a motion, or anything
9 else, as far as I know.

10 MS. TILLMAN: And actually, Mr. Willey, Mr. Akbar did
11 object to the -- we did object to this verdict form.

12 THE COURT: You didn't object on these grounds. And I
13 stayed till 8:30 Friday night for this very purpose so that
14 we wouldn't have a new and creative argument regarding the
15 verdict form or others matters such that it would delay us
16 getting this matter to the jury.

17 I do not read the statute the same as you do. To read
18 it the way you're arguing makes no sense. It's very
19 confusing. Three is merely the how of subsections (c)(1) and
20 (2). It contemplates the jury apportioning fault under
21 comparative negligence and you being able to argue that to
22 the jury, as well as them specifying the amount of damages
23 and then the breakdown of those damages.

24 It does not contemplate a second procedure. And to read
25 it that way would be -- would not be consummate with the

1 plain and ordinary wording or meaning of the statute. So
2 your motion is denied. It's noted for the record, and I'll
3 have your request marked as a Court's exhibit.

4 It would be utterly confusing. And it would make no
5 sense and would make the statute make no sense. It says,
6 "The jury, or the Court if there be no jury, shall specify
7 the amount of damages; and two, determine the percentage of
8 fault, if any, of plaintiff and the amount of recoverable
9 damages under applicable rules concerning comparative
10 negligence."

11 To read it any other way really, frankly, would inure to
12 the detriment of the defendants because the jury could find
13 that there is no apportionment of fault. They could answer
14 no to each of the questions, which would be the end of the
15 inquiry and there would be no need to go into the second
16 portion of the statute.

17 But the way the Court has fashioned the verdict form is
18 consummate with comparative negligence. It allows the jury
19 to apportion fault and then determine damages, if any. If
20 the damages -- if the fault of Mr. Rash is 51 percent or
21 more, they don't deliberate any further and that's the end of
22 the inquiry. If it is 50 percent or less, then that still,
23 to some extent, does not end the inquiry because then the
24 Court would look at the amount of damages that the jury
25 conceivably would award and then apportion those among the

1 percentages. But as a really practical matter, depending on
2 the amount of setoff, it may end up being a zero damages
3 case.

4 So to do it any other way really makes no sense. It
5 would be utterly confusing to the jury. And the Court can
6 find no support for the defense's reading of the statute. I
7 think it's just another way to try to circumvent
8 apportionment because you all anticipate how I'm going to
9 rule on the issue of your request to leave those additional
10 defendants on the verdict form.

11 (Court's Exhibit Number 29 marked for the record.)

12 MR. WILLEY: Your Honor, may I ask for one point of
13 clarification when you have a moment?

14 THE COURT: Yeah. Give me one second.

15 Yeah this is merely a codification of comparative
16 negligence and how you apply to a comparative negligence form
17 when there are multiple defendants. I can find no wording in
18 here that requires that this be a separate proceedings other
19 than how we would normally do it.

20 All right. Now, what clarity were you asking for?

21 MR. WILLEY: Your Honor, is a part of your holding also
22 that the motion was not timely and was, therefore --

23 THE COURT: It really wasn't timely. And frankly, it
24 seems that everybody has had a challenge with the Court's
25 instructions. That's why I had a status conference. And

1 this certainly did not come as any surprise. This has always
2 been the defense's theory regarding this matter, whether it
3 be the verdict forms or how the instructions are promulgated
4 to the jury, is that they were entitled to somehow force the
5 settling defendants to remain in this case for purposes of
6 apportionment.

7 And I was very clear in my instructions. Otherwise I
8 would not have had a status conference because I wanted to be
9 able to address -- I made it very clear during the status
10 conference that the Court was not as familiar with this case
11 as you were; that I had not lived with this case as long as
12 you have; that while I had read the entire file up to that
13 point prior to having status conference, that I needed every
14 dispositive matter, including not only witness lists -- I
15 instructed you all to deal with the witnesses and otherwise,
16 but I also very clearly instructed you to submit every motion
17 that was pending by noon on Friday and any supporting
18 memoranda.

19 And I also instructed that voir dire and other matters
20 be submitted to the Court by noon on that day. I don't know
21 that those instructions were particularly followed, but I
22 know that my staff called afterward to reinforce those
23 instructions when they did not receive those submissions by
24 noon. And then things started to trickle in after noon,
25 which I had the ability to review.

1 And I know -- and I'm not being critical; I know that
2 things come up at the last moment when you're preparing for a
3 trial. But it's not -- it cannot be argued with any
4 credibility that this came as some surprise. This has always
5 been your posture, and it should have been submitted to the
6 Court well in advance of today.

7 I noticed over the weekend -- I checked my e-mail late
8 last night -- that you all had filed Rule 59 motions
9 regarding Mr. McJunkin's settlement. For the record, the
10 Court is not going to entertain any arguments regarding that
11 motion on today. It would not be appropriate. Those motions
12 have to be served on every party that is affected by the
13 settlement, which would include Mr. Cobb and Mr. Willey, and
14 they have the ability to respond in writing to those motions.
15 And it would be inappropriate for the Court to take up
16 argument.

17 In addition, I generally don't have hearings on
18 reconsiderations. I decide those on the memo -- on
19 memoranda, which is within the Court's prerogative and
20 procedurally the way it can be handled and that is generally
21 the way I do handle it. So once you all have served those
22 motions on your counsel who it affects, they will then -- my
23 staff will then contact them and make inquiry as to how long
24 they need to submit responses to your motions, after which,
25 if I need argument, I will convene a hearing. If not, I'll

1 rule on the motion based on the memoranda that has been
2 submitted.

3 Now, I did have one other question, because when I read
4 through some stuff this weekend, it seems y'all are actually
5 on the same page on some of these issues and I just needed
6 clarity.

7 But as an initial matter, I did say that I would think
8 about Plaintiff's Request to Charge Number 6, which is
9 violation of an internal policy. I will not be instructing
10 that based on my research over the weekend. It is clear that
11 the plaintiff can argue that, but it is not appropriately
12 instructed to a jury based on the case law.

13 Also, I indicated there were several other items that I
14 would think about over the weekend. And after thinking about
15 them -- and actually, I'll probably address these as I get to
16 it. I just want to go over this one more time to make sure
17 we're all on the same page and that so no one is surprised as
18 to what the Court will be instructing. And I'll give you a
19 few minutes in the event that you need to make any changes to
20 your closing arguments.

21 And also, I will need those -- you all can keep the
22 verdict forms that I gave you copies of, but I do not expect
23 anyone to argue the verdict forms in their closing arguments
24 to the jury. That is solely within the province of the Court
25 to explain the verdict forms. And I do not expect anyone to

1 go over them with the jury except the Court. I gave those to
2 you for your information so that you could know exactly what
3 the Court would be instructing regarding the forms of the
4 verdict.

5 And as we know, the defense has requested, and it has
6 been granted, that any request for punitive damages will be
7 bifurcated. And we'll cross that bridge when we come to it
8 in the event that there is an award of actual damages.

9 I will give the jury a general instruction regarding
10 what a wrongful death cause of action is, and that that is
11 the type of action that has been brought on behalf of the
12 plaintiffs in this case.

13 I will give them a general instruction that they -- that
14 the Court doesn't have any position about the facts in this
15 case, that the constitution of our state does not allow the
16 Court to have an opinion, and that they're not to construe
17 anything that the Court has said in ruling on the case or
18 ruling on any matters in the case that the Court has any
19 opinion about the facts.

20 I will then give them a general instruction regarding
21 how they're to weigh testimony and evidence in this case in
22 their fact-finding providence, which of course covers
23 consistency, inconsistency, believability of witnesses,
24 demeanor, the underlying basis for someone's opinion, whether
25 they are prejudiced or biased, and the like.

1 I will then give a general instruction on deposition
2 testimony, which is just like the motion that -- not the
3 motion, the instruction I gave prior to Mr. Knight's
4 testimony being played by deposition. And I will instruct
5 them that they will give that testimony the weight, value,
6 and effect they decide it should receive.

7 I will give them a general instruction on expert witness
8 testimony, which also includes that "The opinions of experts
9 are relied on to establish proximate cause. The expert must
10 state with reasonable certainty that in his or her
11 professional opinions, the plaintiff's injuries most probably
12 resulted from the negligence of the defendants. And it is
13 not necessary that they use the words 'most probably,' that
14 it is enough that they have stated in their professional
15 opinion that the defendant's negligence was mostly one among
16 the possible causes of the plaintiff's injuries.

17 I will give them a general instruction on direct and
18 circumstantial evidence, which I think we know but just out
19 of an abundance of caution, that "There are two types of
20 evidence, both direct and circumstantial. Direct evidence is
21 a person who claims to have actual knowledge, such as an
22 eyewitness. It is evidence which immediately establishes the
23 main fact or facts to be proven. Circumstantial evidence is
24 proof of a chain of facts and circumstances indicating the
25 existence of a fact based on inference and not on personal

1 knowledge."

2 And that "The facts and circumstances should be
3 considered in the light of ordinary experience and common
4 sense. The existence of a fact cannot be based on
5 speculation, surmise, or conjecture, that the law makes
6 absolutely no distinction between the weight or value to be
7 given to either direct or circumstantial evidence, nor is a
8 greater degree of certainty required of circumstantial
9 evidence."

10 And it includes the language from the most current
11 Supreme Court case regarding direct and circumstantial
12 evidence, which is, "However, to the extent either party
13 relies on circumstantial evidence, all circumstances must be
14 consistent with each other, and when taken together, point
15 conclusively to the fact or facts sought to be proven."

16 I'll give them a general instruction that "A corporation
17 is a person in the eyes of the law and they're to be judged
18 by the same legal standards." I will also instruct that "A
19 corporation can only act through its agents or employees.
20 Therefore, a corporation is responsible for any negligent
21 acts or omissions of its agents or employees while acting
22 within the scope of their employment which proximately caused
23 injury to another person."

24 I am not going to instruct the successor language that
25 was suggested by the plaintiffs because I don't think there's

1 any issue regarding the fact that Dominion is a successor
2 interest to SCE&G and that they bought the company.

3 I would also instruct them that they cannot set up an
4 arbitrary standard. They must follow the law as I instruct
5 it.

6 I will then give them a general instruction on burden of
7 proof, again using the traditional set of scales.

8 I will then give them a general instruction which
9 advises them that "This is a wrongful death case. And in a
10 wrongful death cause of action, there are three essential
11 elements of the plaintiff's cause of action, which are denied
12 by the defendant's answers.

13 "First, that the defendant was negligent. Second, that
14 the plaintiff's intestate" -- I'll probably use a different
15 word because most people would know what "intestate" means.
16 But "Second, that the plaintiff" -- er, "that the deceased
17 came to his untimely death as a consequence of the alleged
18 wrongful act. And third, that the defendant's negligence in
19 one or more of the specification of wrongful conduct as
20 alleged was a proximate cause of the death of the deceased."

21 I will then instruct them on negligence, which as we
22 know, "The plaintiff must prove by a preponderance or greater
23 weight of the evidence that the defendants owed the plaintiff
24 a duty of care. They must then prove that the duty was
25 breached by a negligent act or omission. And then they must

1 also prove that they suffered damages as a result. And
2 finally, they have to prove that the damages were a proximate
3 result of the breach."

4 MS. TILLMAN: Your Honor --

5 THE COURT: Please don't interrupt the Court.

6 MS. TILLMAN: I need to make an objection.

7 THE COURT: No, ma'am, you may not. I will ask for
8 objections at the end of the instructions. Please do not
9 interrupt me again. And I've already heard your argument
10 that duty is a matter for the Court, but that is -- I'm
11 instructing them exactly what the precedent and case law in
12 South Carolina requires regarding negligence. I'll note your
13 exception. It's overruled. I don't need any additional
14 argument on the issue. I've heard it at length already.

15 I will then give them an instruction on proximate cause,
16 which is, of course, causation in fact as well as
17 foreseeability. And I will also instruct on concurring
18 causes.

19 Within the body of the instruction on negligence
20 regarding the duty section of those instructions, I will
21 instruct that "Our common-law rules of the road require the
22 operator of a motor vehicle to use the same care that would
23 have been exercised by a person of ordinary reason and
24 prudence if that person were driving the same vehicle at the
25 same time and place under the same circumstance," and that

1 that standard of care includes the obligation to maintain a
2 proper lookout.

3 I will then instruct on proper lookout, which is *Yaun*
4 *versus Baldrige*, *Everett versus Window*, and *Warren versus*
5 *Watkins Motor Lines*, but I don't think there's any mystery as
6 to what the proper lookout language is as it is
7 well-established precedent.

8 I will also instruct on the common-law duty to keep a
9 vehicle under control.

10 I will then instruct the jury that in addition to
11 common-law rules, our state statutes or laws, as well as
12 ordinances, provide rules which must be followed. I will
13 instruct 56-5-580, which is right-of-way, which is
14 "Right-of-way is the right of one vehicle or pedestrian to
15 proceed in a lawful manner in preference to another vehicle
16 or pedestrian approaching under such circumstances of
17 direction, speed, and proximity as to give rise to danger or
18 collision, unless on grants precedence to the other."

19 I will also instruct on speed, which is 56-5-1520,
20 subsections (a) and (f), which deals with a person not
21 driving a vehicle at a greater speed than is reasonable, and
22 also that "a driver shall drive consistent with the
23 requirements of subsection (a) and at an appropriate reduced
24 speed when approaching and crossing an intersection or
25 railway grade crossing, or when approaching and going around

1 a curve."

2 I will also instruct 56-5-2320, which is a vehicle
3 turning left, which is "The driver of a vehicle intending to
4 turn left within an intersection or into an alley, private
5 road, or driveway shall yield the right-of-way to any vehicle
6 approaching from the opposite direction which is within the
7 intersection or so close thereto as to constitute an
8 immediate hazard."

9 I will also instruct 56-5-2330, which is stop and yield
10 signs, which is "Preferential right-of-way may be indicated
11 by stop signs" -- I'm not going to include yield signs
12 because it's not applicable -- "as authorized by the
13 Department of Transportation or local authorities."

14 And subsection (b), which is "Except when directed to
15 proceed by a police officer, every driver of a vehicle
16 approaching a stop sign shall stop at a clearly marked stop
17 line, but if none, before entering the crosswalk or the near
18 side of the intersection, or if none, then at the point
19 nearest the intersecting roadway where the driver has a view
20 of approaching traffic on the intersecting roadway before
21 entering it. After having stopped, the driver shall yield
22 the right-of-way to any vehicle in the intersection or
23 approaching on another roadway so closely as to constitute an
24 immediate hazard during the time when such driver is moving
25 across or within the intersection or junction or roadway."

1 There was a citation in the joint defendant's requests
2 for instructions that cited to intersections -- that's Number
3 16 -- but it did not cite to the correct code. Is that an
4 extrapolation of that language from 2330, or is that -- or
5 are you contending that that's the actual language from the
6 statute?

7 MS. WESLEY: I'm going to have to defer to my co-counsel
8 on that.

9 THE COURT: Because I'm instructing 2330, which is stop
10 signs and yield signs.

11 MR. COX: Your Honor, if you want a response to that?

12 THE COURT: Yes, sir.

13 MR. COX: I don't know, as I sit here, whether that's
14 lifted straight from the statute or --

15 THE COURT: It's not. I just read you 2330 and it's
16 not. So I would have to imagine it's some dicta from the
17 case with *Carter versus Beals*, *Warren versus Watkin Motors*,
18 or *Brown versus Howell*. So I would defer to instructing what
19 the statute says, not this extrapolation of language from
20 dicta.

21 I was just trying to make sure there wasn't a
22 scrivener's error in citing the statute such that I could
23 look it up.

24 MR. COX: We didn't cite the statute.

25 THE COURT: You did. At the very end it says "Source

1 56-5-2330."

2 MR. COX: Oh, I see that.

3 THE COURT: And I was trying to figure out if that was a
4 scrivener's error or if that was extrapolated, because that's
5 not language from the statute.

6 MR. COX: We're checking it right now.

7 THE COURT: I appreciate it.

8 MR. COX: Yeah. Ms. Honeycutt says this came from the
9 South Carolina Bar compilation of charges.

10 THE COURT: Then it's an extrapolation of dicta from a
11 case, and I'll instruct 56-5-2330, which is stop signs and
12 yield signs, which deals with right-of-way.

13 Are there any motor-vehicle statutes that I have not
14 covered that were requested by either the plaintiff or the
15 defense? I think I've pulled all of them out, and I'm
16 instructing all of them.

17 MR. WILLEY: No, your Honor.

18 MS. WESLEY: When you say "motor-vehicle statutes," are
19 you including the permit statute?

20 THE COURT: No, ma'am. I'm not going to instruct that
21 because that -- I did not offer that for the purpose for
22 which your instruction suggests, which is that it was illegal
23 for him to be operating his vehicle. I only allowed that
24 testimony to go to his ability to navigate the vehicle and
25 keep it under proper control.

1 MR. WILLEY: And your Honor?

2 THE COURT: Yes, sir.

3 MR. WILLEY: I'm not sure if this is the appropriate
4 time, but we just did have one objection to one statute you
5 indicated you were --

6 THE COURT: Which one?

7 MR. WILLEY: The 56-5-2320, which dealt with turning
8 left.

9 THE COURT: I'm going to leave that in because they're
10 entitled to point to the empty chair. And I thought about it
11 over the weekend, and I think the jury needs to be equipped
12 with exactly what Mr. McJunkin's duty was to Mr. Rash. So
13 out of an abundance of caution, I'm going to instruct that.
14 I don't think that it is a duty that Mr. McJunkin owed to
15 anyone else, but he did, in fact, owe that duty to Mr. Rash.
16 And to leave the jury with a misapprehension that he -- as to
17 what his responsibility was, I thought I'd inure on the side
18 of safety.

19 MR. WILLEY: I understand.

20 THE COURT: No harm, no foul. Because they do get to
21 argue that Mr. McJunkin is more at fault in this accident
22 than they are, that actually he was the cause of the -- the
23 efficient cause of the accident, which is what I'm sure --
24 which I'm assuming they're going to argue.

25 MR. WILLEY: Right. And I just didn't object to it on

1 Friday, so I just wanted to put it on the record.

2 THE COURT: Well, I didn't include it on Friday.

3 MR. WILLEY: Right.

4 THE COURT: That's why I'm going back over it now.

5 MR. WILLEY: That --

6 THE COURT: Yeah.

7 MR. WILLEY: We don't think it's proper -- er, we don't
8 think it's appropriate in this case to charge any duties that
9 a nonparty may or may not have had. So I just --

10 THE COURT: Well, I think the statute creates an
11 interesting dichotomy --

12 MR. WILLEY: It does.

13 THE COURT: -- where it -- I think what -- and I don't
14 pretend to be as wise as the legislature because I'm not.
15 I'm only charged with interpreting what they write.

16 And what I can discern from the history is that they
17 were trying to balance some rights. In other words, they
18 were trying to balance the fact that someone else might be
19 more culpable in an accident but may have settled out. And
20 to try to split the baby -- excuse the analogy to Solomon --
21 but to split the baby to allow a party to remain in a case to
22 argue that their culpability is less than somebody who may
23 not, for whatever reason -- then the jury has no way of
24 knowing why he's not in the case. For all they know, you may
25 never have sued him. For all they know, he was sue and

1 settled out.

2 But either way, it's not appropriate for their
3 consideration. But how I read the statute is that they can
4 point to the empty chair and they can say "They are more
5 responsible," and the jury can consider that even though --
6 and it really goes to whether the jury determines they have
7 any culpability or what their percentage of culpability would
8 be if they determine there is any.

9 So I'll note your exception and it's overruled.

10 That then would move us to the ordinances, which as I
11 understand -- and again, we had a very long night Friday
12 night. It is my understanding that the effective date of
13 ordinance 4-13, which is the City of North Charleston, was
14 not effective until 1998. As we know, ordinances cannot be
15 -- they have to be prospective. They cannot be retroactive
16 unless specified in the ordinance or statute. And there's
17 clearly no language in ordinance 4-13 which makes it
18 retroactive.

19 So the only portions of the ordinance that would be
20 applicable would be "Visibility at railroad and street
21 intersections shall be unobstructed. No planting shall be
22 placed or maintained" -- and I'm debating whether "placed"
23 needs to even be in there since it would be inapplicable
24 because there's no testimony that any plantings were placed
25 after 1998. My recollection of the testimony is that all the

1 plantings were in place prior to 1998, so the only applicable
2 part of that would be as to maintain a planting.

3 MR. WILLEY: No objection from the plaintiff for
4 removing "placed."

5 THE COURT: Is there any testimony that the plantings
6 were after 1998? I don't recall that there was. It's my
7 recollection of Mr. Akbar's and Mr. Quattlebaum's testimony
8 that the fences as well as the plantings were in place prior
9 to 1998. In fact, they were in place when they purposed
10 their residences, which was -- y'all have to forgive me; I
11 don't remember the exact date. I think Mr. Akbar testified
12 he bought his house in '96. And I think Mr. Quattlebaum
13 testified he purchased his sometime after that.

14 MS. TILLMAN: It was 1998 for Mr. Akbar.

15 THE COURT: Okay. So I was a couple years off.

16 So what was the exact effective date of this statute? I
17 just have -- was it June 1998?

18 MS. TILLMAN: It's September 24 of 1998.

19 THE COURT: September 24?

20 MS. TILLMAN: Yes.

21 THE COURT: 1998? Either way, I think it would not have
22 a retroactive application to Mr. Akbar or Mr. Quattlebaum
23 because they both testified that these plantings and fences
24 were in place long before they purchased their residence.
25 And so as we know, no statute or ordinance can have an ex

1 post facto effect. It has to be prospective in its
2 application.

3 So I would think that the only thing that would be
4 relevant would be "Visibility at railroad and street
5 intersections shall be unobstructed. No planting shall be
6 maintained in such a manner as to obstruct visibility at
7 intersections." And then the rest of that I think is
8 inapplicable, which is the height of any structures or
9 plantings, because it was passed after they moved into their
10 residences and there is no testimony that they did any
11 planting or constructed any structures after 1998. And I
12 think to make that applicable to them would not be
13 appropriate.

14 However, there is testimony in the record that Dominion
15 replaced poles after 1998, so the last sentence of that would
16 be "However, poles and support structures less than 12 inches
17 in diameter may be permitted in such areas."

18 And then there was -- and I think 4-13 was submitted by
19 both -- maybe this is my printed section of that. So that
20 would not be --

21 MR. WILLEY: Your Honor, would you like to hear me on
22 that now or wait until you're through?

23 THE COURT: Wait until I'm through.

24 MR. WILLEY: Yes, ma'am.

25 MS. WESLEY: Your Honor, can I ask you -- I am so sorry.

1 THE COURT: Sure. No worries.

2 MS. WESLEY: Just to repeat -- again, I just want to
3 make sure we're doing this correctly -- the language that you
4 omitted from 4-13.

5 THE COURT: I omitted everything from "and from fence,
6 building, wall, or structure," because it says "shall be
7 construed after the effective date of this ordinance," so it
8 would not be applicable.

9 MS. WESLEY: Okay.

10 THE COURT: And then I omitted from "No structure or
11 planting shall be permitted at any point between a height of
12 2 and a half feet and 10 feet above the upper face of the
13 nearest curb, or center line if no curb exists, and within
14 the triangular area bounded on two sides by the street or
15 railway crossway lines."

16 MS. WESLEY: That's what I --

17 THE COURT: But that leads into another statute --
18 ordinance that you all submitted, and I'm going to deal with
19 that in a moment.

20 MS. WESLEY: That's what I just wanted to know. I heard
21 that. But --

22 THE COURT: But that's not applicable to your client
23 because it was after 1998 and it can't be retroactive in its
24 application.

25 MS. WESLEY: I'm processing a little slower and I'm

1 trying --

2 THE COURT: That's okay. Believe me. I spent --
3 between sleeping and thinking about these ordinances, that
4 was my weekend, with a clear head and some nourishment.
5 Okay. But that's why we're going over it again because I
6 want to make sure that we're all -- I don't want you to be at
7 any detriment in your argument not knowing exactly what's
8 going to be instructed.

9 And then we have the Request Number 6, which was -- and
10 I'm referring to Defendant's Request to Charge Number 6,
11 which is on nonconforming use, in common parlance, which is
12 "The City of North Charleston zoning ordinance section 3-2
13 includes the following definition: 'Nonconformity. A
14 nonconformity is any lot of record, use, building, structure,
15 or vegetation in existence prior to the effective date of
16 this ordinance, but which fails by reason of such adoption,
17 revision, or amendment to conform to the present requirements
18 of the ordinance.'"

19 Let's see. And then it goes on to state that "The City
20 of North Charleston zoning ordinance section 4-5, titled
21 'Nonconforming Uses, Buildings, Structures, Conditions, and
22 Lots,' states to avoid undue hardship, the lawful use of any
23 such building or structure at the time of the enactment,
24 amendment, or revision or this section may be continued even
25 though such structure does not conform with the provisions of

1 this section."

2 Which deals exactly with what I'm saying, which is that
3 a person cannot be held responsible for something that was --
4 that they did prior to the passage of an ordinance. In other
5 words, it can't have a punitive retroactive effect on them.
6 But in light of the fact that I'm not instructing that, I
7 don't know that we need to have nonconforming use, but I'll
8 leave it in there for the moment until we come back around to
9 it because it could arguably apply to the poles.

10 And then we get to 4-7, which is "Structures and
11 Projections into Required Yards and Setbacks," which was
12 likewise passed in 1998. But in what year -- what timeframe
13 was that passed in 1998?

14 MR. WILLEY: Same.

15 THE COURT: Same? September 24?

16 MR. WILLEY: They were all --

17 MS. TILLMAN: September 24, 1998, your Honor.

18 THE COURT: And so my struggle with this was how would
19 it be applicable to Mr. Akbar or to Mr. Quattlebaum since
20 they testified their fences were long in place before the
21 enactment of this ordinance? And why would it be necessary
22 to instruct?

23 MS. TILLMAN: And your Honor, Mr. Akbar's reason for
24 including it is the (indiscernible) --

25 COURT REPORTER: I can't hear her.

1 THE COURT: I know the --

2 MS. TILLMAN: Yes.

3 THE COURT: -- sight triangle. But how could he be held
4 to be responsible for something that was passed after he had
5 already bought the property and it was already in place? Are
6 you saying he did something subsequently that put him in line
7 with the -- with this ordinance?

8 MS. TILLMAN: The purpose of including it is responsive
9 to Mr. Willey's argument to the jury that the
10 sight-visibility triangle extends all the way up Meeting
11 Street, and this picture very clearly contradicts that. So
12 that is Mr. Akbar's purpose in including --

13 THE COURT: Does the plaintiff have any exception to
14 instructing 4-7, "Structures and Projections into Required
15 Yards and Setback Areas"?

16 MR. WILLEY: We do, your Honor.

17 THE COURT: And tell me what the exception is.

18 MR. WILLEY: So we do not think it is applicable because
19 the only structures or projections that could be at issue are
20 the fences. As your Honor has already indicated, they were
21 in existence prior. And so all this will do is confuse the
22 issues. I am not going to argue that the sight triangle is
23 obstructed by anything. The expert testimony deals with the
24 view corridor, which is different than the sight triangle.
25 So those are two non-interchangeable and very different

1 terms.

2 So I think that, you know, Ms. Tillman's issue is
3 resolved. And in any event, it's simply not applicable here
4 because there is no evidence that any structure or projection
5 as to Mr. Akbar was erected after September of 1998.

6 THE COURT: Yeah, I'm really at a strain as to how this
7 is applicable because the ordinance very clearly says, "Every
8 building or structure hereafter erected or established" --
9 which would mean after 9/24/98 -- "shall be located within
10 the buildable areas as defined by this section, and in no
11 case shall such buildings extend beyond the buildable area
12 into the respective front, side, rear yards or other setbacks
13 required for the district in which the lot is located except
14 for the following."

15 And then it deals with fences and walls and height and
16 everything that clearly would not be applicable to your
17 client. It actually would impose a duty on him that he does
18 not have.

19 And then it goes on to section 4 dash -- well 4-7.1,
20 "Exceptions to Height Limitations" -- and I always get these
21 pages mixed up, so bear with me one second. Because that's
22 what I needed to refer to, and I apologize. That's the last
23 page I was looking at.

24 And then it goes on to "No fence shall exceed 10 feet in
25 height," which clearly would not be applicable to your

1 client. And then it goes down to "No person shall construct
2 a fence of unsafe materials," which clearly is just not
3 applicable, period.

4 And then we go into the diagrams, which are "Where house
5 is facing diagonally," which is not applicable because his
6 house is not facing diagonally. And then it goes to "Where
7 corner lot faces street directly, sight-visibility triangle,"
8 which would not be applicable to him and would impose a duty
9 on him that he doesn't have.

10 MS. TILLMAN: And your Honor, it's exactly because of
11 the duty question. And particularly, we would submit it to
12 the jury that Mr. Akbar --

13 THE COURT: But it has to applicable to him and it's
14 something he has to have done after 1998.

15 MS. TILLMAN: And that's exactly right, your Honor.
16 That's a question for the jury, your Honor, as --

17 THE COURT: Well, no. There's no testimony anything was
18 done after 1998 to make this applicable, is my question.
19 What testimony is there to support that something happened
20 after 1998 that would make -- that your client engaged in
21 that would make this portion of this ordinance applicable to
22 him? Because it doesn't have a retroactive application. And
23 by charging nonconforming use, I basically cover all of that.
24 In other words, whatever happened on this property, however
25 it existed when Mr. Akbar purchased it is basically

1 grandfathered in. And you can't hold him accountable to some
2 standard that doesn't exist.

3 MS. TILLMAN: Sure, your Honor. And that's why we don't
4 think Mr. Akbar has a duty at all in this case. But if this
5 question is going to the jury and the jury is going to have
6 to take all the tools and the evidence that it's been given
7 in this trial to evaluate Mr. Akbar's responsibilities, all
8 those things that your Honor just discussed would really be
9 questions for the jury. And --

10 THE COURT: But it has to be applicable law to him. I
11 can't impose a duty on him that didn't exist and wasn't
12 applicable to him. He didn't do anything to his property.
13 He didn't build a structure. He didn't build a fence. He
14 didn't do anything to his property that would bring it within
15 when this was passed, 9/24/98, that would make any of these
16 rules applicable to him.

17 MS. TILLMAN: I've got it. Your Honor --

18 THE COURT: Do you see what I'm saying? It doesn't have
19 a retroactive application. So in essence, you're asking me
20 to tell the jury that he had a duty he didn't have.

21 MS. TILLMAN: I do. And it is -- here's the other
22 reason it's important is because your Honor has indicated
23 that she's going to charge parts of 4-13, including the
24 maintenance part.

25 THE COURT: Only the maintenance part.

1 MS. TILLMAN: Yeah.

2 THE COURT: Not "planted."

3 MS. TILLMAN: Yes.

4 THE COURT: Because conceivably, you do have a -- it's
5 prospective.

6 MS. TILLMAN: Yes.

7 THE COURT: So the testimony is that they maintained the
8 bushes after 1998 and that they still existed. So that duty
9 would be applicable to them.

10 MS. TILLMAN: Yes.

11 THE COURT: Er, that responsibility to keep it
12 maintained and make sure it's not a sight obstruction.

13 MS. TILLMAN: And that's why 4-7, this diagram, is so
14 important because you'll see it refers to 4-13. And so it's
15 a pictorial aid to --

16 THE COURT: It refers to 4-13, but that doesn't make it
17 applicable to somebody prospectively. The only thing that
18 even makes 4 dash -- the one that we've been referring to --
19 the only thing that makes 4-13 even remotely applicable is
20 the language where they said "Plantings shall be placed or
21 maintained."

22 MS. TILLMAN: Yes.

23 THE COURT: So the -- and they didn't say "and." They
24 didn't say "planted and maintained." They said "planted or
25 maintained," which contemplates something that was already

1 there --

2 MS. TILLMAN: Right.

3 THE COURT: And the you continued to maintain. So I've
4 redacted planting -- er a "plant placed" because it's not
5 applicable.

6 MS. TILLMAN: Right.

7 THE COURT: They -- there's no testimony anything was
8 planted after 1998. However, when it says "or maintained," I
9 think it does impose prospectively that if you have a plant
10 on your property, that you have a duty to maintain it after
11 1998 in such a way that it's not a visibility obstruction.
12 But I just have not heard any testimony that would impose
13 upon them something to do something to their property that
14 they have no duty to do, because they didn't do anything
15 after 1998. They basically said, "We maintained the property
16 as we found it when we purchased it."

17 MS. TILLMAN: And that's exactly why 4-7, the picture,
18 is important because it shows there is no duty. It is a
19 visual depiction of --

20 THE COURT: I think within 4-7 you can argue they had no
21 duty because nothing was planted and -- I mean, I'm not going
22 to instruct them "planted." I'm not going to instruct them
23 about anything being constructed. I don't think they had any
24 duty to do anything other than what this ordinance says,
25 which is they had a duty to maintain what was already there.

1 I think for me then to impose upon them some other duty that
2 didn't exist is not --

3 MS. TILLMAN: We really don't want you to do that, your
4 Honor.

5 THE COURT: Well, I can't find any support in the record
6 to instruct 4-7 when it was enacted 9/24/98 and it would then
7 impose new duties on your clients that didn't exist.

8 MS. TILLMAN: Well, then we'd ask that you don't
9 instruct 4-13. Our position is that the two cannot be taken
10 without being together. They're --

11 THE COURT: I think they can be because they refer to
12 two different things. One refers to constructing buildings
13 and other impediments to vision, and they deal with fences
14 and sight triangles. The other deals with a plant you may
15 have had already on your property and your duty to maintain
16 it after 1998. You notice I have redacted the language
17 "planted" because I don't think there can be any instruction
18 about planted unless they planted it subsequent to 1998 in
19 September.

20 MS. TILLMAN: Your Honor, we object to 4-7 being left
21 out of the jury charges. We think it's important as well for
22 the jury to consider.

23 THE COURT: And I will note it. But unless you can give
24 me some support that this applies prospectively and that your
25 clients's come within the definitions prospectively, there --

1 I can only instruct what is applicable.

2 Yes, sir, Mr. Ford.

3 MR. FORD: Just so I'm clear on your Honor's order and
4 cleave to it, does that mean I cannot refer to that diagram
5 in closing?

6 THE COURT: If you want to you can, but I would not have
7 given the diagram to the jury anyway --

8 MR. FORD: But I can --

9 THE COURT: -- because I don't think that would have
10 been appropriate. I would have merely instructed that -- and
11 I'm trying to remember the exact language that you all
12 extrapolated from it, which was -- let's see here.

13 Are you all going to be arguing anything about the sight
14 triangle, Mr. Willey?

15 MR. WILLEY: No, your Honor. And for that reason we
16 don't -- we really don't think it's appropriate. There's a
17 distinct difference between a sight triangle and a view
18 corridor. The expert testimony dealt with the view corridor
19 and sight distance, which sounds the same but is not the
20 same. That deals with a three-foot area. The sight-distance
21 regulation, as testified, is 390 feet. So it's not
22 applicable.

23 MS. TILLMAN: And your Honor, it's exactly that it
24 sounds the same but it's not the same. It's a jury question,
25 and we need to give the jury the tools that it needs to

1 understand the differences between the two.

2 THE COURT: Yeah, but I have to charge what's applicable
3 to your client. The statute's not -- this ordinance is not
4 applicable.

5 MR. WILLEY: We don't want --

6 THE COURT: It was passed prospectively.

7 MR. WILLEY: We don't -- we wouldn't --

8 THE COURT: So he doesn't have any duty. I mean, under
9 this, he really -- anything that was in his yard that was
10 nonconforming is okay. That's why I'm charging the
11 nonconforming part of the statute. But I think you're asking
12 me to impose a duty on your client he doesn't have.

13 MS. TILLMAN: We're absolutely not asking your Honor to
14 do that.

15 THE COURT: Well, you are, because if I instruct that,
16 they could technically find that they violated what was in
17 the -- that's in their fact-finding province. They could
18 very easily find that it was in -- that they violated the
19 sight triangle, which in and of itself is a problem because
20 they didn't have any duty to adhere to it.

21 MS. TILLMAN: And your Honor, at this moment --

22 THE COURT: And I think Mr. Willey is correct. There is
23 a -- nobody ever argued it -- y'all brought this in about the
24 sight triangle.

25 MR. WILLEY: Correct.

1 THE COURT: Their witnesses --

2 MS. TILLMAN: In response to Mr. Willey.

3 THE COURT: Yeah, but you introduced the issue. His
4 witnesses didn't. They talked about sight lines. They
5 didn't talk about whether it was a -- I don't know.

6 Yes, Ms. Wesley. I'm listening.

7 MS. WESLEY: I, of course, am going to adopt my
8 codefendants' positions, but there's a couple of things that
9 I would like to bring to the Court's attention. Many terms
10 have been conflated here, and it is a little confusing.
11 First of all, "view corridor" is not a term of art under
12 AASHTO. That's something that his experts said. The terms
13 of art are "line of sight," "the sight distance," "the
14 intersection sight distance," "the stopping distance," and
15 the triangle. The sight triangle is important. Their
16 experts did talk about it. Our experts talked about it. And
17 North Charleston has decided the sight triangle is 3 by 3 by
18 3, hence --

19 THE COURT: Yeah, but how is that applicable to your
20 client?

21 MS. WESLEY: Here's my yardstick.

22 Well, the reason it's applicable is because sight
23 triangle, regardless of whether 4.7, which only speaks to --
24 as your Honor has interpreted, only speaks to fences and
25 shrubs --

1 THE COURT: No. I'm just looking at the plain, ordinary
2 language of the ordinance. That's what they intended for it
3 to apply --

4 MS. WESLEY: No, I'm not -- I'm not debating your Honor
5 on that. I'm just saying that it also serves another
6 purpose, especially since Mr. Quattlebaum is at the
7 intersection. His house does face the back street. That's
8 the triangle within which he cannot have either a fence or a
9 shrub, because that's the last place people can see turning
10 left. That's why they have a sight triangle where the two
11 streets meet, and they cannot obstruct that sight triangle.

12 If your Honor wants to limit 4-13 saying "Visibility at
13 Intersections shall be unobstructed," 4-7 shows for people
14 like Mr. Quattlebaum on the corner what the sight triangle
15 where those two streets converge is. Surely we can --

16 THE COURT: I can't give a diagram to a jury.

17 MS. WESLEY: But --

18 THE COURT: It's not appropriate.

19 MS. WESLEY: -- may we argue it absent --

20 THE COURT: Oh, I think you can --

21 MS. WESLEY: -- a duty --

22 THE COURT: I think you can argue anything you'd like,
23 unless they object.

24 MS. WESLEY: Okay. The other thing is, your Honor, I'm
25 concerned -- and I don't know and I don't want to bring up

1 motions and so forth since you don't want to entertain them
2 at this time, but my --

3 THE COURT: Well, no. I've entertained them for about
4 five hours on Friday. I think I was more than liberal in
5 entertaining them.

6 MS. WESLEY: This isn't an instruction motion.

7 THE COURT: Yeah.

8 MS. WESLEY: This is now --

9 THE COURT: No, no. No, it went far beyond instruction
10 motions on Friday. Yeah.

11 MS. WESLEY: I just want to clarify 4-13, though, could
12 still conceivably -- it sounds to me like we all agree that
13 the fences cannot be -- have violated any duty under --

14 THE COURT: I don't know. You can argue that. My
15 position is that -- and consistent with how the Court is -- I
16 don't have a side. I'm only required to instruct what is
17 applicable and to guide the jury's fact-finding province.
18 I'm not instructing anything to the jury that imposes a duty
19 on somebody that doesn't have a duty. And if something --
20 ordinances, statutes are always prospective in their
21 application. They're never retroactive unless the language,
22 verbiage in the document says it's retroactive. Otherwise
23 you penalize people --

24 MS. WESLEY: I agree.

25 THE COURT: -- for things they could not have been

1 responsible for adhering to.

2 MS. WESLEY: I agree.

3 THE COURT: So when I say -- when I talk about
4 applicability, I'm looking at effective dates. I'm looking
5 at whether testimony fits within effective dates because, in
6 essence, what you all are asking me to do is impose a duty on
7 your clients they don't have.

8 MS. WESLEY: No, no.

9 THE COURT: But if that's what you want me to do, I'll
10 do it.

11 MS. WESLEY: No.

12 THE COURT: And I have it on the record. No, you are,
13 because basically you're asking me to instruct them on 4-7,
14 which deals with a sight triangle, and they have no duty to
15 adhere to that at all. Their property are nonconforming
16 uses. They were in place long before any -- and the only way
17 even the other one applies is because of the language that
18 says "maintained" after 1998, which makes it prospective in
19 its application.

20 MS. WESLEY: I'm agreeing with all of this, your Honor.
21 I just want to understand so that I can argue correctly --

22 THE COURT: Mm-hmm.

23 MS. WESLEY: -- that if we are saying there is no
24 scenario under which either one of these fences could be an
25 obstruction under --

1 THE COURT: I didn't say that.

2 MS. WESLEY: Well, under either of these two ordinances.

3 THE COURT: I'm saying very simply that anything that's
4 prospective in nature is not applicable to your client
5 because I can't impose a duty on them that was stuff that
6 they didn't do after the passage of the ordinance.

7 MS. WESLEY: Well, doesn't -- well, my concern is when
8 it says, "Visibility at street intersection shall not be
9 unobstructed," that a jury could take that to mean the fence
10 even though this does not apply to the fence.

11 THE COURT: No, because I'm instructing them only as to
12 plantings maintained.

13 MS. WESLEY: All right. Okay. I guess that's what --

14 THE COURT: I redacted all of that language out of it
15 because I think it would impose a duty on them they don't
16 have.

17 MS. WESLEY: I think that clarifies my concern.

18 THE COURT: And I took out "planted" because I don't
19 think that applies to them either. It's just the only reason
20 that even remotely is applicable is because it has that
21 language "or maintained," which contemplates that you have
22 plants in your yard and if you maintained them after 1998,
23 you have a duty to keep them from being a visible
24 obstruction.

25 MS. TILLMAN: Your Honor, just for clarification, will

1 Mr. Willey be allowed to argue that any structure in their
2 yard --

3 THE COURT: I don't think --

4 MS. TILLMAN: -- impedes visibility?

5 THE COURT: -- he intends to argue that, because there's
6 no factual support for it. He has to argue what's in
7 evidence, and there's no evidence that there were any
8 structural impediments that they placed after 1998 or were
9 placed prior to 1998. According to the pictures, this is
10 clear -- I mean, you see a chain-link fence and a bush. I
11 mean, I -- a tree, a bush. It's more like a tree that's -- I
12 don't know what -- I don't want to try to guesstimate what
13 family it's in because I have no idea.

14 MR. WILLEY: Definitely deciduous.

15 THE COURT: I don't know.

16 MS. TILLMAN: All right. So Mr. Willey will not be able
17 to argue that any structure or fence --

18 THE COURT: I don't think he can argue anything that's
19 not in evidence, and if he does, I would expect y'all to make
20 an objection.

21 MS. TILLMAN: Thank you.

22 THE COURT: And I would assume, Mr. Willey, that you're
23 aware of that, that there were no structures that were placed
24 in this yard after 1998 --

25 MR. WILLEY: I didn't bring up the --

1 THE COURT: -- or that wouldn't be grandfathered in from
2 the previous ordinance.

3 MR. WILLEY: I didn't bring up the 3-by-3 sight
4 triangle. I don't think it's appropriate. First time I
5 heard about it was during opening statements. I don't think
6 it should be argued. I don't think the facts support it. I
7 don't intend to rebut or try to create a duty or they're
8 trying defend one that their client doesn't have. So I think
9 it should just be all together disregarded.

10 THE COURT: And actually, for corner lots, it's 3 by 4
11 -- well, no, it is 3 by 3. I apologize.

12 Does anybody have an extra copy of Defendant's Akbar's
13 Request Number 5 so I don't have to go make a copy?

14 MS. TILLMAN: I can probably send you one by e-mail.

15 THE COURT: I can go downstairs and make it. I was just
16 trying to not have to make another copy.

17 MS. HONEYCUTT: Your Honor, the only connection that I
18 would draw between these two is there is a reference in
19 subsection (4) to hedges to the extent the jury may look at
20 this bush as a hedge.

21 THE COURT: It's not a hedge. It's a tree.

22 MS. HONEYCUTT: Okay.

23 THE COURT: Yeah. I don't think you can interpret it
24 any other way. It's not a hedge. When you talk about a
25 hedge, you're talking about a smaller vegetation like a

1 boxwood or -- what are those? I forget what those other
2 things are called that attract snakes.

3 MS. WESLEY: Boxwood. Yeah.

4 MR. WILLEY: Larch.

5 THE COURT: I forget what it's called, but it's a little
6 more bushy. It's lower and its elevation to the ground.
7 This is clearly a tree. I don't think you could consider
8 that a hedge. And I wouldn't allow anybody to argue it's a
9 hedge. It's a tree.

10 MS. HONEYCUTT: Thank you.

11 THE COURT: You're welcome.

12 MR. WILLEY: I won't use the word "hedge."

13 THE COURT: Pardon me?

14 MR. WILLEY: I won't use the word "hedge."

15 THE COURT: I'm going to look at -- and I'm going to
16 have my clerk make a copy for me so I can revisit that in a
17 moment in the interest of time.

18 That then took us -- and that, as far as I can tell,
19 covered every request for ordinance or traffic statute. I
20 don't think I've left out any.

21 That then took us to the request from the defense,
22 Number 7.

23 MR. WILLEY: Your Honor, I have two things on
24 ordinances, if I could speak?

25 THE COURT: Mm-hmm.

1 MR. WILLEY: So the first thing is I don't think
2 nonconformity is appropriate because there's no argument
3 that as to the fence --

4 THE COURT: I think the jury could imply that they had
5 some duty they didn't, so for me it falls under the heading
6 of no harm, no foul. It clarifies for the that they can't e
7 required to adhere to something that didn't exist when they
8 bought their property. So I don't see how that inures to any
9 detriment to you because I would assume you're not going to
10 argue that.

11 MR. WILLEY: Well, I would just argue because we haven't
12 created a duty, so now we're defending them from a duty that
13 they don't have under the law of the case. And so I think --

14 THE COURT: Well, I don't know. I think that -- I don't
15 know. I haven't decided about the other one. I'm going to
16 read it again.

17 MR. WILLEY: Okay.

18 THE COURT: That's why I had my clerk go make me a copy
19 so that I could modify it if I decide to use it.

20 MR. WILLEY: Understood. So I would just ask that since
21 that was passed 9/24/98, that that one be taken out too.

22 And then the only other one was with respect to 4-1,
23 this last sentence: "However, poles and support structures
24 less than 12 inches in diameter may be permitted in such
25 areas." There's no evidence in the case that these poles

1 were permitted after 9/24/1998.

2 THE COURT: There's evidence --

3 MR. WILLEY: They were replaced.

4 THE COURT: Same thing. You've still got to -- either
5 way, I think it's applicable. There's evidence that the
6 poles were replaced, permitted, whatever. They were changed.
7 And I think it could give the jury the impression that when
8 you -- and it doesn't say "permitted." It doesn't use that
9 language.

10 MR. WILLEY: It does.

11 THE COURT: It says, "However, poles and structures" --
12 oh, "may be." I don't think that that "permitted" means
13 "given an actual permit." I think that "permitted" means you
14 can do it.

15 MR. WILLEY: And so I think it does --

16 THE COURT: That it's permissible --

17 MR. WILLEY: -- because --

18 THE COURT: -- not permitted.

19 MR. WILLEY: So all this code was passed at the same
20 time.

21 THE COURT: Mm-hmm.

22 MR. WILLEY: So anything that was there before would
23 fall under the nonconforming use --

24 THE COURT: Mm-hmm.

25 MR. WILLEY: -- which would not need this extra

1 sentence. This extra sentence is specifically so SCE&G, and
2 now Dominion, may go get poles permitted in the right-of-way
3 at intersections that are 12 inches in diameter.

4 THE COURT: I don't think -- unless it says that, it
5 could be read two different ways. It says, "may be
6 permitted," which means permiss- -- which means "could be
7 placed in that area."

8 MR. WILLEY: Right.

9 THE COURT: I don't read that language that way.

10 MR. WILLEY: I just think because they included
11 nonconforming, we have to read the statutes in conjunction
12 and assume they would not add --

13 THE COURT: I can't assume. I've got to look at the
14 plain, ordinary meaning of the word.

15 MR. WILLEY: Right. And so --

16 THE COURT: And the way it's written means "permitted"
17 means "permissible" means you could do it.

18 MR. WILLEY: Right. And we go specific over general,
19 and I think nonconforming is more specific as to the facts of
20 this case.

21 THE COURT: Well, you all can argue it.

22 Okay. Then that takes us to Defendant's Request Number
23 7, which is "Industry Standards." I have decided I am going
24 to instruct that because it is an industry standard, and no
25 one contests that this is the National Electrical Safety Code

1 that is nationally accepted regarding the placement of
2 structures, support arms -- and I don't know that all of
3 this, however, is applicable. I'm trying to figure out how
4 this permit section is applicable.

5 I'm at a little bit of a loss as to how number 3 is
6 applicable. It looks like only 1 would be applicable because
7 it deals with their location "sufficient from street side or
8 curbs to avoid contact by ordinary vehicles. Where there are
9 no curbs, supporting structures should be located a
10 sufficient distance from the roadway to avoid contact by
11 ordinary vehicles using and located on the traveled way."

12 Number 3 deals with overhead utility installations,
13 which is not factually applicable. And Number 4 deals with
14 issuing of permits and those basically taking precedence over
15 any other governmental authority, and I just don't see how
16 it's applicable.

17 MR. COX: Your Honor, we're fine with amending 3 and 4,
18 but we believe 1 and 2 need to stay.

19 THE COURT: And I've already went over 9-67 on Friday,
20 which was about nuisances and --

21 MR. WILLEY: May I be heard on the NESC before we move
22 on?

23 THE COURT: Sure.

24 MR. WILLEY: Okay. So obviously, we stand on our prior
25 objection. We don't think it should be read. But if your

1 Honor is going to read 1 and 2, we would actually ask that
2 you read 3 and --

3 THE COURT: I'm sorry. You confused me.

4 MR. WILLEY: Sorry. I'm looking at charge number 7.

5 THE COURT: Okay.

6 MR. WILLEY: And so we stand on our prior --

7 THE COURT: Why would you instruct 3 and 4 when -- -

8 MR. WILLEY: Well, because --

9 THE COURT: -- they're not factually applicable?

10 MR. WILLEY: Well, because they didn't put in all of 3.

11 And so we would ask that you charge --

12 THE COURT: What is "all of 3"?

13 MR. WILLEY: All of 3 says, "Location of overhead
14 utility installations on roads, streets, or highways with
15 narrow rights-of-way or closely abutting improvements are
16 special cases that must be resolved in a manner consistent
17 with the prevailing limitations and conditions."

18 And here we have the overhead utility installations on a
19 pole. We have narrow right-of-way, as our argument --

20 THE COURT: There's no testimony it's a narrow
21 right-of-way.

22 MR. WILLEY: We talked and the size of the right-of-way,
23 and our argument is that 20 feet is a narrow right-of-way.

24 "Or closely abutting improvements," which we also have.
25 And it says that they're --

1 THE COURT: What closely abutting improvements are
2 there?

3 MR. WILLEY: The fences, which are actually in the
4 right-of-way, as the testimony --

5 THE COURT: I don't think the facts support that
6 argument.

7 MR. WILLEY: The testimony --

8 THE COURT: Those fences --

9 MR. WILLEY: -- from Mr. Teague --

10 THE COURT: Those fences were there long before or --
11 well, the poles were there first, according to the testimony.
12 And then after the subdivision was developed, then the
13 fences. And almost every fence in the neighborhood lines up,
14 with the exception of a small section of --

15 MR. WILLEY: We just think some of that could be cured
16 by --

17 THE COURT: I think it's covered by when you talk about
18 "Where there are no curbs, supporting structures should be
19 located a sufficient distance from the roadway to avoid
20 contact by ordinary vehicles using and located on the
21 traveled way." I think that allows you to argue what you
22 just said.

23 MR. WILLEY: But that -- but "located on the traveled
24 way," that's not even -- nobody is saying that the pole is on
25 the road. We're saying that the pole is in a narrow

1 right-of-way with closely abutting improvements.

2 THE COURT: Same thing.

3 MR. WILLEY: Well --

4 THE COURT: That's what number 2 is saying.

5 MR. WILLEY: But number 3 is what actually says that.

6 THE COURT: Did you not cite all of number 3.

7 MR. WILLEY: They did not.

8 MR. COX: Mr. Willey is reading from the incorrect year.

9 MR. WILLEY: It's 1990.

10 THE COURT: What year did you utilize? This is 2006.

11 MR. WILLEY: Right.

12 THE COURT: Which is what his witness testified to.

13 MR. WILLEY: No. They used this one during trial,
14 because that's how I have it. They did. And we can look at
15 the one that's marked --

16 THE COURT: Which one did your witness testify to,
17 Mr. Cox? Was it 2006 or the 1990 version?

18 MR. COOKE: Yeah, that's what in evidence -- or that's
19 what we've marked.

20 MR. WILLEY: 1990.

21 THE COURT: So what I was submitted, though, was 2006.
22 Y'all have no exception to 3 being instructed; is that what
23 you're saying?

24 MR. COOKE: I don't think we have any objection to it.

25 THE COURT: So I need it then because I don't have it.

1 Do y'all have an extra copy of 3?

2 MR. COOKE: Yes. Can I hand it up?

3 THE COURT: Yes, sir. I'll have my clerk make a copy
4 and bring you back yours.

5 MR. COOKE: I've got an extra copy.

6 THE COURT: You sure?

7 MR. COOKE: Yeah.

8 THE COURT: Okay. So there's no exception to charging
9 3, which is location of overhead utility?

10 MR. WILLEY: Other than the exception to the entire
11 thing.

12 THE COURT: Well, I've noted your exception.

13 MR. WILLEY: Correct.

14 THE COURT: But if they agree to section 3, I don't
15 really think you can complain.

16 All right. Here's the rest of your excerpt, Mr. Cooke.
17 I apologize. Because I don't want to get them --

18 Thank you, Mr. Cox. I appreciate it.

19 Yes, sir.

20 MR. JOHNSON: Your Honor, which -- of 1, 2, 3, and 4,
21 which ones are you reading?

22 THE COURT: I'm reading 1, 2, and 3.

23 MR. JOHNSON: Okay.

24 THE COURT: And then I don't think 4 has any
25 applicability. So we would add 3, "Location of overhead

1 utility installations on roads, streets, or highways with
2 narrow rights-of-way or closely abutting improvements are
3 special cases that must be resolved in a manner consistent
4 with the prevailing limitations and conditions."

5 Okay. And then that takes us to -- and then I covered
6 9-67 on Friday, which I did not find there was any testimony
7 of grass, noxious weeds, vegetable growth, briars, brush, and
8 plants more than one -- just that portion of that statute is
9 not applicable. What we're dealing with is a tree. And I
10 think that's uncontroverted that there was a tree that the
11 plaintiffs are contesting was not kept in such a way that it
12 did not obstruct the sight corridor. So I'm not instructing
13 9-67. And I think we had a great deal of argument about that
14 on Friday.

15 Now, just sort of doubling back around to Defendant
16 Akbar's Request Number 5, which is that the City of North
17 Charleston zoning ordinance section 4-7 -- I would not
18 instruct that part of it because it's just not relevant and
19 it's confusing.

20 I would instruct that the City of North Charleston
21 zoning ordinance section 4 -- which one am I looking at? I
22 keep getting these numbers confused. 4-7 is what I need.

23 And these diagrams that you've submitted,
24 Mr. Quattlebaum's house would not be section 1. His house
25 does not diagonally face the sight triangle, does it?

1 MS. WESLEY: No, it's not. It would be 2.

2 THE COURT: Because that's what you all have listed, so
3 it's 2.

4 MS. WESLEY: No, it would be 2.

5 THE COURT: Which would be --

6 MS. WESLEY: And if we did that --

7 THE COURT: -- "where corner lot" --

8 MS. WESLEY: -- that was our mistake.

9 THE COURT: -- "faces street directly."

10 MS. WESLEY: We must have made an error.

11 THE COURT: Okay. So what I will instruct is "The City
12 of North Charleston zoning ordinance section 4-7 defines a
13 sight-visibility triangle as the triangular area bounded on
14 two sides by the street or railway right-of-way lines, which
15 defines a visibility triangle as measuring 3 feet by 3 feet
16 by 3 feet at the corner at" -- no, "3 feet by 3 feet where
17 the corner lot faces the street directly."

18 And I'll instruct that after "Visibility" and then
19 "Nonconforming" and then the national safety code. And so
20 that covers all of that.

21 So that --

22 MR. WILLEY: Your Honor, may I be heard on that?

23 THE COURT: -- will be instructed in the definitional
24 section of duty. But at the end of my instructions on
25 negligence, I would also instruct intervening negligence of a

1 third party.

2 And I would use my standard language, which is "The
3 chain of causation between the defendants' negligence and the
4 injury may be broken by the independent intervening acts or
5 omissions of another person over whom the defendant has no
6 control. In order to decide whether an intervening act
7 breaks the chain of causation, you must determine whether the
8 intervening act or omission was reasonably foreseeable by the
9 defendant" -- "by the defendants," plural.

10 "If the intervening act or omission was a probably
11 consequence of the defendants' negligence, the defendant is
12 responsible for the plaintiff's injury. If, however, you
13 find that the intervening act or omission was not
14 foreseeable, the defendant is not liable unless their actions
15 alone would have caused the plaintiff's injury even without
16 the intervening act or omission."

17 Yes, sir, Mr. Willey.

18 MR. WILLEY: Thank you. So we still don't think 4-7
19 dealing with structures and projections applies since there's
20 no evidence that the structures and projections here were
21 installed prior to the date. And after --

22 THE COURT: I've noted it and overruled it. It falls
23 under no harm, no foul. It's been argued and --

24 MR. WILLEY: So --

25 THE COURT: -- you certainly can argue that it wasn't in

1 place, and therefore, it's inappropriate.

2 MR. WILLEY: Understood. So if you were going to do
3 that, we would ask that you add 4-7(3)(g) which says this:
4 "Fences and walls provided that no fence or wall shall impede
5 visibility as required by section 4-13." So in other words,
6 if we're going to talk about the defense of the duty, I get
7 to have the duty that refers back to 4-13 in there. And
8 that --

9 THE COURT: I don't see the two circumstances as
10 analogous, nor am I going to impose on them a duty that
11 didn't exist.

12 MR. WILLEY: Well, 4-7 only deals with the structures
13 of --

14 THE COURT: And the other deals with fences that would
15 have been --

16 MR. WILLEY: But those are structures.

17 THE COURT: -- constructed after 1998. And there's no
18 evidence in the record that that happened.

19 MR. WILLEY: Which is what 4-7 deals with is just
20 structures and projections, not plantings.

21 THE COURT: I'm only doing the part that deals with the
22 visibility triangle just out of an abundance of caution to
23 help them address any confusion there might be about sight
24 triangle, sight distance, sight corridor, or otherwise. I'll
25 note your exception and it's overruled.

1 I used the -- so I've dealt with nonconformity. I've
2 dealt with -- I'm using the Request for Defendants' Joint was
3 12 and 13, which was intervening cause, which were
4 cumulative. I'm using my standard instruction on intervening
5 cause.

6 I've already dealt with right-of-way and vehicle turning
7 left.

8 Then I will give an instruction regarding that "This is
9 a wrongful death cause of action. The plaintiff, as the
10 personal representative, claims that the deceased wrongfully
11 died as a result of the negligent acts or omissions of the
12 defendants." And then "Whenever the death of a person is
13 proximately caused by the wrongful act or neglect of another
14 and the act or neglect was one which would have entitled the
15 deceased to recover damages if the deceased had not died, the
16 personal representative of the estate of the deceased may
17 bring an action for wrongful death.

18 "The personal representative has the right to recover
19 compensatory damages for the wrongful death. It is not
20 necessary to show the money value of the deceased's life
21 since direct proof of the value of human life is not
22 possible. What is reasonable compensation is left to your
23 sound discretion and judgment.

24 "The damages in an action for wrongful death include
25 mental shock and suffering; wounded feelings; grief and

1 sorrow; loss of companionship; loss of the use and comfort of
2 the deceased's society, including the loss of the deceased's
3 experience, knowledge, and judgment in managing the affairs
4 of the deceased and his beneficiaries; medical and funeral
5 expenses. It is not necessary to show the exact amount of
6 damages suffered by the beneficiaries or that the
7 beneficiaries suffered a monetary loss.

8 "In addition, the person for whose benefit the action is
9 brought does not have to be dependent on the deceased for
10 support."

11 I will then instruct that "They may also recover for
12 such future damages as it is reasonably certain will of
13 necessity result from the injuries. The principle underlying
14 compensation for future damages is that only one action can
15 be brought and, therefore, only one recovery had. It is
16 proper to include in the estimate of future damages
17 compensation for future wounded feeling, grief and sorrow,
18 loss of companionship, and mental shock and suffering."

19 And then I will instruct them that "Any future-damages
20 award must be reasonably calculated to have resulted from the
21 alleged injury of damage sustained in this case." And that
22 "Future damages, if any, must be reduced to their present-day
23 cash value."

24 I'll then give an instruction on the life expectancy
25 table. And according to the testimony and the stipulations,

1 Ms. Rash is 62 with a life expectancy of 22.47 years;

2 Mr. Rash is 64 with a life expectancy of 17.54 years.

3 I'll then instruct them that "The plaintiff has also
4 brought what is called a 'survival action.' Whenever the
5 death of a person is proximately caused by the wrongful act
6 or neglect of another and the act or neglect is one which
7 would have entitled the deceased to recover damages if the
8 deceased had not died, the personal representative of the
9 estate of the deceased may bring an action for survival
10 damages.

11 "In this action, the plaintiff has brought a survival
12 claim. The damages for a survival claim are distinct, and
13 the damages that are recoverable under the survival claim are
14 on behalf of the deceased and his estate.

15 "In considering survival damages, you may consider
16 damages for the deceased's conscious pain and suffering and
17 mental distress prior to his death. Pain and suffering and
18 mental distress the deceased consciously suffered as a result
19 of the injury before he or she died are compensable in a suit
20 brought on behalf of the deceased. To recover for the
21 decedent's conscious pain and suffering, there must be
22 sufficient proof that the decedent was conscious and
23 simultaneously suffering prior to death."

24 And that is Defendants' Request Number 22 that I'm going
25 to use on pain and suffering.

1 I'll then instruct on damages, which is that, you know,
2 general instruction on the burden of proof of damages.

3 I'll then move to comparative negligence. And in the
4 interest of time, I won't go through that entire instruction.
5 I think we know what comparative negligence is.

6 And "In deciding the percentages of negligence, you may
7 consider, among other things, the following factors: whether
8 each party's conduct was only inadvertent or whether it was
9 engaged in with an awareness of the danger involved; the
10 magnitude of the risk created by each party's conduct,
11 including the number of persons in danger and the possible
12 severity of the injury; the significance of the goal that
13 each party was trying to reach and the need to achieve the
14 goal in that manner;

15 "Each party's capabilities and abilities to realize and
16 eliminate the risk involved; the particular circumstances
17 confronting each party at the time the conduct occurred, such
18 as the existence of an emergency requiring a quick decision;
19 the relative closeness of the causal relationship of the
20 negligent conduct of the defendants and the harm to the
21 plaintiff" -- and I'm going to change that to "the deceased";
22 "whether the conduct of either party involved is a violation
23 of a safety statute or regulation."

24 And then I instruct them, of course, that they will be
25 given a special verdict form with interrogatories -- which is

1 just a legal term meaning "questions" -- and that I will go
2 through that verdict form with them prior to their
3 consideration of the verdict. And then at the end of the
4 instruction, I will go through that with them in more detail.

5 I will then give them a general instruction regarding
6 insurance, which is that they cannot consider nor discuss,
7 and the law does not permit the discussion of insurance, the
8 lack of insurance, or the amount of insurance.

9 Then I will give them a general instruction on being
10 fair and impartial. And then I will go over the verdict
11 forms with them.

12 Now, any exceptions to the instructions other than the
13 intervening negligence arguments that -- not intervening, the
14 apportionment arguments that I've already heard at length,
15 from the plaintiff? And other than those that we've already
16 considered during this colloquy.

17 MR. WILLEY: None other than I would just add we did
18 have one on trees. I forgot about that.

19 THE COURT: I already ruled on that on Friday and found
20 that it was inapplicable. The duty regarding trees is
21 separate and distinct from --

22 MR. WILLEY: But this is a tree.

23 THE COURT: Factually, it's not applicable --

24 MR. WILLEY: Okay.

25 THE COURT: -- because what they are contemplating is a

1 tree that is in such bad repair that it could fall over onto
2 someone. That's what that case deals with, and that's what
3 those line of cases normally deal with, where a tree is dead
4 and it could fall onto someone or the branches were not
5 trimmed such that they would fall onto someone.

6 MR. WILLEY: So --

7 THE COURT: I don't think that that's applicable.

8 MR. WILLEY: So then I would just ask for the second
9 sentence, if that's the Court's holding, which says, "Also"
10 -- which means "in addition to" -- "landowners have a duty of
11 reasonable care to make certain their trees are safe for
12 travelers of streets adjoining their land."

13 THE COURT: Yeah, but that's --

14 MR. WILLEY: And that's what --

15 THE COURT: That case is about when your tree actually
16 injures somebody, when it falls on somebody or it's dead and
17 the limbs have fallen off or the limbs are overgrown and you
18 have not trimmed them and they actually cause physical injury
19 to a passerby. The most recent case that I had that dealt
20 with that was where a dead tree actually fell onto someone's
21 truck while they were at a stop light and it caused them
22 significant injury.

23 MR. WILLEY: Correct. And I'm --

24 THE COURT: And that's -- and actually, that's factually
25 analogous to the case that you cited. And I'm looking for

1 it, and I apologize.

2 MR. WILLEY: I can hand up a copy.

3 THE COURT: No. I had it marked.

4 MR. WILLEY: I believe it's 11A.

5 THE COURT: Oh, it's attached to your --

6 MR. WILLEY: Request to Charge 11A.

7 THE COURT: I attached it as 18 sequentially with your
8 other requests.

9 MR. WILLEY: That was 18?

10 THE COURT: Mm-hmm.

11 MR. WILLEY: Okay.

12 THE COURT: Which is *Underwood versus Coponen* --

13 MR. WILLEY: Right.

14 THE COURT: -- which factually is not applicable to this
15 case. In both -- in those line of cases, it deals with when
16 a tree actually falls on somebody or a limb falls on somebody
17 and it creates a physical injury to them. But I'll double
18 check just to make sure my memory is accurate.

19 MR. WILLEY: That is the facts of *Underwood*, just to
20 save --

21 THE COURT: But that's --

22 MR. WILLEY: -- your Honor the time, but I think the law
23 --

24 THE COURT: Yes.

25 MR. WILLEY: -- is more broad than that.

1 THE COURT: I don't think so. I think it clearly
2 applies to those type situations. Cases are factually
3 driven. And under those circumstances, if that were in fact
4 the case, I think it would be applicable. But I don't think
5 it's applicable to these circumstances.

6 MR. WILLEY: And that's at 217.

7 THE COURT: Actually, what happened in *Underwood* -- and
8 I was thinking about another case -- is where -- and why it
9 also is not applicable in this case, she ran a stop sign and
10 said she never saw the stop sign.

11 MR. WILLEY: Correct.

12 THE COURT: It really didn't have anything to do with
13 the tree. It really was -- and then it was raised later that
14 the tree obscured her view of the stop sign, but she thought
15 she was on a whole 'nother street.

16 MR. WILLEY: Right.

17 THE COURT: So she didn't even think she was on the
18 right street. But I don't think it's factual --

19 MR. WILLEY: The other case, which is the case that the
20 defendant cited in their argument dealing with a Bradford
21 pear tree at the Burger King, that was not a tree that fell.
22 That was a tree what was blocking the line of sight.

23 THE COURT: But they found there was no duty.

24 MR. WILLEY: Well, there was no duty in that case
25 because the allegation was parking lot design and there was

1 not an expert and the plaintiff conceded they needed an
2 expert. However, the Court I believe did say that --

3 THE COURT: I don't know if it was parking --

4 MR. WILLEY: It was.

5 THE COURT: -- design because they also found that they
6 had no duty with their tree regarding passersby.

7 MR. WILLEY: Under the concessions of that case. But
8 the law specifically cited was for travelers of streets
9 adjoining their land.

10 THE COURT: Is there any exception to instructing that
11 from Mr. Cox? Or is Mr. Johnson?

12 MR. COX: We defer to Akbar's counsel.

13 MS. TILLMAN: Your Honor, we absolutely object to
14 charging *Underwood*, which, as your Honor has pointed out, is
15 not factually analogous. And not only that, Mr. Willey is
16 attempting to extrapolate something that is not beholding of
17 *Underwood*.

18 If you look to footnote 3, it's very clear what the
19 Court was thinking with *Underwood*, which is, "We further note
20 that by not imposing a duty on Mr. Taylor as regards his
21 tree, it promotes good public policy. If we extended the
22 duty to require private landowners to ensure that their trees
23 do not hinder traffic, we would be discouraging private
24 landowners from voluntarily maintaining vegetation on their
25 property which adjoins a public roadway or highway in an

1 effort to shield themselves from unwarranted liability."

2 THE COURT: And I think it also goes down a rabbit hole
3 because, in some instances, you cannot cut your trees where
4 they're on the DOT property. It just gets to be an issue
5 that really is a nonissue in this case. I think there's
6 enough case law regarding the -- well, the ordinances that
7 would be applicable to maintaining this tree.

8 MR. WILLEY: My concern is we're not giving them
9 anything from the common law. And the section that
10 Ms. Tillman just cited --

11 THE COURT: I don't think that it matters. Ordinances
12 have the same effect as the common law or a statute.

13 MR. WILLEY: The section that --

14 THE COURT: The only difference is they're passed by a
15 municipality.

16 MR. WILLEY: The section that Ms. Tillman cited is
17 correct as to rural landowners. But then the Court goes on
18 specifically to talk about urban landowners, and that's what
19 we've cited and that's what we have here is an urban
20 landowner, not *Overcash*. I believe it was Cherokee County?

21 THE COURT: Yeah, I just don't know that it's factually
22 applicable in this case.

23 MS. TILLMAN: But the property owner in *Underwood* is an
24 urban landowner, and that fits what you said applies to urban
25 landowners.

1 MR. COX: Your Honor?

2 THE COURT: Give me one second, Mr. Cox.

3 MR. COX: Sure.

4 THE COURT: I'm trying to find one thing that I just
5 realized I left out and I need to let you all know about.

6 And I would -- and I apologize. I just skipped over a
7 page. After I instruct negligence -- well, in the midst of
8 negligence, of course under duty, I would instruct all the
9 sections of statute and ordinance we've already gone over.

10 And at the conclusion of that I would instruct the jury
11 that while violation -- "Violation of any of the provisions
12 of these statutes is negligence as a matter of law." I won't
13 go into the other verbiage which talks about negligence,
14 recklessness, willfulness, wantonness, because it's -- that
15 normally is instructed in conjunction with punitive damages
16 when you start dealing with reckless, willful, and wanton
17 conduct, which really goes to consciousness of behavior.

18 Yes, sir?

19 MR. COX: Your Honor, you asked if the parties had any
20 exceptions and --

21 THE COURT: I hadn't gotten to you yet.

22 MR. COX: Oh.

23 THE COURT: Yeah, I was finishing --

24 MR. COX: I apologize.

25 THE COURT: -- with Mr. Willey.

1 MR. COX: I thought it was my turn. I'm sorry.

2 THE COURT: No worries. I'm going to get to everybody.

3 MS. WESLEY: And I don't want to interrupt. I just want
4 to make sure that Mr. Quattlebaum is also in agreement with
5 Mr. Akbar on 3.

6 THE COURT: I'm going to go all the way around.

7 MS. WESLEY: Okay.

8 THE COURT: I'm not going to leave anybody out.

9 Mr. Cox, yes, sir?

10 MR. COX: In answer to your general question do we have
11 any exceptions to the charges, we do not have any new
12 exceptions other than those already stated this morning and
13 on Friday evening.

14 THE COURT: I'm going to rule on that.

15 MR. COX: But I want to make the record clear that we do
16 join in the arguments that you've heard as to the existence
17 of duty and so forth --

18 THE COURT: Well, you don't --

19 MR. COX: -- none of which needs to be re-argued. I'm
20 just making a point that we do join.

21 THE COURT: Yeah, I think that that's a misapprehension
22 of the law. The law is very clear. The Court decides
23 preliminarily what duties may exist. It's then for the jury
24 to decide if, in fact, those duties have been breached and
25 whether they are applicable factually to these particular

1 defendants. In general, what are duties is a matter of law,
2 but the Court does not usurp the jury's responsibility to
3 determine those elements of negligence. I think that's
4 black-letter precedent.

5 MR. COX: We understand your ruling. Thank you, your
6 Honor.

7 THE COURT: And I've noted it and overruled.

8 All right. Anything else other than what we've already
9 gone over Friday?

10 Yes, ma'am? Or is it going to be Mr. Ford? Who's it
11 going to be?

12 MS. TILLMAN: Oh, we -- no. Sorry, your Honor. We have
13 -- other than what we have already hashed and rehashed, we
14 have no further objections.

15 THE COURT: All righty. Ms. Wesley?

16 MS. WESLEY: The same, your Honor. We're just adopting
17 Mr. Akbar's with respect to the tree issue. But no further
18 objections.

19 THE COURT: Yeah, I just took a few seconds to review
20 *Underwood* again, and what the Court found was that he didn't
21 really have any duty to trim the tree. But once he had
22 undertaken it, that that was -- but they still found that
23 there was no -- yeah. Therefore, his occasional trimming of
24 the tree, which actually was in the DOT right-of-way, did
25 not --

1 MR. WILLEY: Correct.

2 THE COURT: -- mean he assumed the duty.

3 MR. WILLEY: Correct. And if you look at 218 where it
4 says --

5 THE COURT: I'm not re-arguing. It's not factually --

6 MR. WILLEY: *Israel* --

7 THE COURT: That just confirms for me that it's not
8 factually analogous to this case.

9 MR. WILLEY: I mean, we would just cite to the 218, the
10 section on *Israel v. Carolina Bar-B-Que*, which deals
11 generally with defective trees on a landowner's property.

12 THE COURT: But there's no -- there's no testimony this
13 tree was defective.

14 MR. WILLEY: Well, that's the allegation.

15 THE COURT: There's no testimony the tree was defective,
16 and there's no allegation the tree was defective. Defective
17 and not trimming are two separate. "Defective" means there's
18 something wrong with the tree such that --

19 MR. WILLEY: It belongs to the people.

20 THE COURT: That is -- I don't care how you argue it.
21 That's not supported by case law.

22 Okay. Now, as it regards apportionment, we have heard
23 about that at length. I'm not going back over any more
24 arguments. We were here until almost 8:45 on Friday night
25 hearing about it. And I've read the memo that was submitted

1 regarding the position on keeping non -- the dismissed
2 defendants on the apportionment, and I've researched it over
3 the weekend. And I'm just summarizing it. I'm not going
4 into all the legal terminology.

5 But although I allowed Defendant Akbar to argue at
6 length regarding it, basically I was just being read the memo
7 that was submitted by -- jointly by all the defendants. I
8 don't have a -- it was filed 4/1 of 2023, but it is dated
9 March 30 of 2023. So when it was submitted to the Court, it
10 had not yet been filed.

11 But over the weekend I reviewed. I also reviewed the
12 case law, and I can find no support for the proposition in
13 the memo. I will, however -- I may, and I reserve the right
14 to issue a written opinion, but in the interest of time I'm
15 not going to belabor the point. If I were -- and actually, I
16 am of the firm and fixed opinion that if it were SCE&G,
17 formerly known -- er, Dominion, formerly known as SCE&G, or
18 if it were Akbar or if it were Quattlebaum, you all would be
19 arguing the exact opposite position regarding your clients
20 remaining in this case.

21 Case law is very clear, as well as that when you -- and
22 while the statute is silent, that does not mean that the
23 Court gets to write in an accommodation or provision that
24 simply does not exist. When someone has been dismissed --
25 well, when someone settles, in effect, they have been

1 dismissed from the lawsuit. They are no longer a party.

2 There has been a pointing in the memo to the fact that
3 there was a check by the Court that it did not end the case.
4 Of course, with the limitations of electronic filing, that's
5 all we could check. If I had checked "Ending the case," it
6 would close the entire case. It does not have the capacity
7 -- electronic filing does not have the capacity to eliminate
8 individual parties. If you check "End the case," it ends the
9 entire case. It wipes it all out and it would have had to
10 have been reinstated. And that's just the limitations of
11 electronic filing.

12 I would imagine as -- of course, if we could write code,
13 we probably could be in far more lucrative positions. But
14 from what they've explained to me, there are inherent
15 limitations in electronic filing. And there are things that
16 we do on a daily basis that they are simply not able to
17 accommodate for. So there will never be a situation where
18 you will be able, once somebody settles out, to end it only
19 as to that person or to remove them from the caption. It
20 simply is not going to be something that's ever going to be
21 feasible in terms of writing code and dealing with electronic
22 filing.

23 So I could imagine that it would be a misapprehension on
24 the part of those who aren't adept with electronic filing,
25 who don't deal with it every day or who haven't been trained

1 with it, when a Court checks "Ends it," that ends the entire
2 case. It wipes it completely out of the system from the
3 docket and it removes it. So if that were checked, we
4 wouldn't be here trying this case right now because the case
5 would have been ended and you would have had to have it
6 reinstated by the chief administrative judge and you would
7 have had to make a motion to reinstate it.

8 So there's no way to parcel out parties in that way
9 electronically. It simply isn't feasible for our electronic
10 filing system. But it does not change the fact that these
11 parties all three were dismissed, that being DOT, Snyder, and
12 Mr. McJunkin. There's been a great argument ardently and
13 vigorously advanced that somehow the -- although there's been
14 no argument to add Snyder or DOT back, only Mr. McJunkin.
15 And I can find absolutely no case law or statute that
16 supports that proposition.

17 While the statute -- and I'm not criticizing the
18 legislature because, again, I think what they try to do is to
19 create a situation where everyone benefits. In other words,
20 where those who have settled out and feel others may have a
21 greater responsibility, they have created the ability for you
22 to argue that by the empty-chair defense. It does not mean
23 that those who have settled out are constrained to stay
24 attached to a case where they have settled all their
25 liability and they have paid all of the sums that they have

1 agreed to to the person who has sued them.

2 Now, just as a side note, if there were counterclaims,
3 cross claims, or any other claims tied to these individual
4 defendants, my position might be different because there
5 would be other claims that tie them to this case and
6 eliminate their ability to be summarily dismissed as a result
7 of a wrongful death or any other kind of settlement. It
8 happens every day. It happens in construction cases probably
9 more often than not. And I think the legislature, in their
10 providence, found a solution to that. It means you get to
11 argue empty chair and you get a setoff.

12 For me to have done it the way it's being advocated by
13 the defense simply does not make sense. It is not a logical
14 way that the legislature ever intended, and it is completely
15 inconsistent with precedent. Because to allow a jury to do
16 it the way the defendants are advocating in effect creates an
17 advisory as well as a verdict that could never be enforced
18 because they have already paid the money that they're going
19 to pay.

20 To allow the jury the fiction to believe that these
21 parties are still involved, it affects their thought process
22 that somehow they're going to be on the hook for more
23 responsibility. And they're not. It creates a circumstance
24 where a verdict could be imposed upon them.

25 And in addition to that, it imposes another duty where

1 -- and based on my research, I could find no constraint --
2 the plaintiffs then trying to enforce an additional verdict
3 against them, which means then they would be penalized twice,
4 when the orders approving the settlements clearly absolved
5 them of any further liability. They're not covenants.
6 They're strict releases -- complete releases from any further
7 involvement in the case.

8 So I can discern no prejudice, based on my research, to
9 the defendants in this case. They are allowed to argue that
10 they are not responsible, that there was an intervening,
11 superseding cause, that being other folks' conduct that
12 caused this, whether it be DOT, whether it be Mr. McJunkin,
13 or otherwise. And they're still not prejudiced on the back
14 end of the case because whatever is attributable to them, if
15 anything, they are still entitled to setoff. And that is the
16 way our law is designed. That is the only way I've ever seen
17 it work.

18 And it just does not make sense to me, in common
19 parlance, the way it's being argued. It would have the net
20 effect of inconsistent verdicts and inconsistent results.
21 And it would defeat -- from a public policy standpoint, why
22 would people ever settle if they could still be dragged in
23 against their will to be a defendant in a case and to have
24 their liability apportioned when they have released -- when
25 the other party has released all liability to them?

1 And on a side note, even -- I've never had a situation
2 -- and I'm not saying never means never; it could happen, I
3 guess. But like I said, it would be different if there were
4 cross claims or counterclaims pending. But the purpose of
5 the wrongful-death statute and petitions or otherwise are
6 simply jurisdictional to bring the matter before the Court,
7 to give the Court the information about the settlement so it
8 can make an informed decision about whether, in fact, it is
9 in the best interests of the statutory beneficiaries of an
10 estate.

11 The only thing that is probative or important to a court
12 in approving a settlement is whether the personal
13 representative thinks it's in the best interests of the
14 estate and the statutory beneficiaries. And that is the only
15 evidentiary requirements of the Court when approving a
16 wrongful-death settlement.

17 So even if you all had been present, even if you had
18 argued that it shouldn't be approved, it would have been
19 approved. As long as the personal representative says it's
20 in the best interests of the estate and its beneficiaries,
21 that's the end of the inquiry. That's the only purpose for
22 the wrongful-death statute, as well as minor settlements
23 argued by extension and survival actions, is to make sure
24 that the statutory beneficiaries are protected, and also that
25 those who are asking for approval of the settlement

1 understand that they are waiving all claims that have been
2 brought or could be brought and that they're likewise waiving
3 their right to a jury trial against whom they are releasing.

4 So with all of that in mind -- and again, I still
5 reserve the right to issue a written order in response to
6 that, but in the interest of time I'm just trying to hit the
7 highlights because we're at 12:03. And again, some of that
8 is my -- in hindsight, I was so exhausted on Friday night. I
9 think I didn't leave here until after 9:00. We weren't
10 finished until about 8:45 in the courtroom, and I'm sure that
11 you all stayed a little bit longer than that.

12 In retrospect, I probably should have had the jury come
13 in later and anticipated that we would need additional time
14 to work through these issues. But, you know, like I said,
15 hindsight is 20/20. We are where we are. So we're going to
16 go forward with --

17 And I need to know how long is your closing argument
18 going to be initially? Which you are required to close in
19 full, Mr. Willey.

20 MR. WILLEY: About an hour.

21 THE COURT: And how --

22 MR. WILLEY: May I ask one point of clarification?

23 THE COURT: Sure.

24 MR. WILLEY: So you said this last week, and I just want
25 to make sure we get it on the record in the same place. But

1 to the extent that their Rule 59 motions do not comply with
2 the procedures set --

3 THE COURT: I'm not even addressing those because you're
4 entitled to be served with those.

5 MR. WILLEY: Okay.

6 THE COURT: The Court has to be served with those. Then
7 you have ten days to respond.

8 MR. WILLEY: I agree.

9 THE COURT: And Mr. Cobb has to respond. And it's just
10 not appropriate. It's not timely.

11 And along those same lines, really it could be argued
12 that the other motions were not timely as well --

13 MR. WILLEY: Correct.

14 THE COURT: -- because everybody knew that that was
15 their theory. And they should have been compliant with the
16 Court's instructions to have all those things filed by last
17 -- two Fridays ago, which would have been -- and I'm at a
18 loss for my dates. I apologize. We started this case on the
19 20th. I had a status conference -- deliberately so -- on
20 Thursday, which was the 16th, and I instructed that
21 everything be submitted by noon on the 17th.

22 And my staff followed up, again, because I anticipated
23 that issues of consequence would come up that required
24 thought, that required responses. And to at the 11th hour
25 raise such an issue really wasn't timely when it should have

1 been -- the Court's instructions should have been complied
2 with. Especially the fact that a written motion was filed,
3 technically Mr. Willey has ten days to respond to that after
4 you serve him.

5 So to raise it merely as an issue involving the verdict
6 form really is -- it's really not what it was. This went to
7 the crux of a very critical issue in this case, and it should
8 have been filed well in advance. It really should have been
9 filed long before the case was even set for date certain.

10 Yes, sir.

11 MR. COX: Your Honor, just on that point, I don't
12 believe that we were instructed to --

13 THE COURT: I told you to file everything that could
14 affect the case. I said witness lists. I said exhibit
15 lists. But I said every motion needs to be filed. And if I
16 didn't say it, my staff called you and told you before noon
17 on Friday.

18 MR. COX: Well, for motions in limine, it was our
19 understanding --

20 THE COURT: No. All motions. Anything that affects how
21 this case is going to flow. Otherwise, why would I have had
22 a status conference? You know, I needed to know exactly and
23 anticipate. It's not fair to the Court to give something
24 that requires that depth of thought, you know, with that --
25 it just -- especially when you knew that was the theory. And

1 it cuts both ways. I'm not criticizing you.

2 MR. COX: Well, we -- respectfully, your Honor, we
3 believed that instruction was for motions in limine. But
4 with regard to the --

5 THE COURT: I'm sorry you misapprehended the Court's
6 instructions. I said all motions.

7 MR. COX: With regard to the apportionment motion, your
8 Honor, we also don't believe that it was ripe before the --

9 THE COURT: It was ripe before because it was always
10 your theory. You should have brought it to the Court's
11 attention.

12 MR. COX: Before the close of evidence, your Honor.

13 THE COURT: No, you should have brought it to the
14 Court's attention at the beginning. It's a complex issue.
15 It's one of novel. And you should have given the Court more
16 time to think about it. There's no restriction on how long
17 it takes the Court to think about something. And to give me
18 24 hours to think about something I think is grossly unfair.

19 And that's been your theme and your theory from the
20 beginning, and y'all waited till the 11th hour to file
21 things. And again, I'm not criticizing you. I know in the
22 heat of battle, people get behind; they don't think about
23 stuff. But that's always been your theory in this case, and
24 it should have been filed way ahead of time so that they
25 could have had an opportunity to respond written -- in the

1 form of a responsive memo as well.

2 And those who are affected, including DOT and Snyder,
3 because you can't call them back in on the verdict form and
4 not have them be heard about it. It's just the reality of
5 it.

6 And I understand that sometimes things get behind and --
7 you know, but we were all here late. I didn't get home
8 before 8:00 in the last two weeks. So I'm sure you all were
9 working. I mean, everybody was working hard. But it really
10 -- you all knew that was your theory, and you knew that that
11 was something you were going to pursue and it should have
12 been filed.

13 MS. TILLMAN: And your Honor, just for the record, we
14 join in what Mr. Cox just said. And we reiterate that it has
15 always been our theory, so the ripeness for it was at the
16 time of the verdict forms and --

17 THE COURT: And I understand. But we won't continue
18 this volley once the Court has made an observation. You've
19 already made your arguments. You've already perfected your
20 record. I'm entitled to my observations as the Court. And I
21 feel they were not timely filed. You knew that was your
22 theory. You should have filed it long in advance.

23 This Court is a different expert every day of the week.
24 Once I left this case, conceivably I was supposed to be
25 trying a murder case this week, which had to be continued

1 stops at a stop bar does. If they look both ways, they don't
2 see anything, a reasonable person pulls forward into the
3 intersection. That's what he indicated he did.

4 He indicated that he did not go back to that
5 intersection before his deposition but that he had gone back
6 after his deposition. And if you'll recall his testimony, I
7 think it was pretty clear that he'd been traumatized by this
8 too, at least to me listening to it and at least to the
9 Rashes.

10 And he told you that when he went back, he saw the
11 poles, the bushes, and the fences that we've had all the
12 expert testimony that has said they are in the view corridor,
13 they are in the line of sight for this intersection. And he
14 testified very specifically to that. And so we had to
15 consider all that before bringing you this case because it
16 would not be right, and the Rashes would not want for
17 Mr. McJunkin to come in here and have to face you, if the
18 evidence showed that he did not do anything wrong.

19 And remember, we didn't bring you just Mr. McJunkin. We
20 brought you multiple engineering experts -- four engineering
21 experts that came in and testified in this case. You heard
22 from Dr. Hunt, who's an engineer. You heard from Mark
23 Teague, a transportation engineer. And you heard from Ken
24 Richardson, the mechanical engineer and accident
25 reconstructionist.

1 And they all agree it is the poles, bushes, and fence
2 that are the visibility obstructions at this intersection
3 that are the causative factors -- the causative factors for
4 this collision. And that's what the evidence has shown, by
5 the way, for years. And it wouldn't be right for the Rashes
6 because they wouldn't want to bring Mr. McJunkin in here to
7 answer to you as the representatives of this community
8 because he's a victim too.

9 So after looking through and running it by those
10 multiple engineering experts, finding out that the poles were
11 last replaced in 1999 and 2006, and then colorizing it and
12 looking at the multiple obstructions, we had before you
13 Dr. Russ Hunt, Ph.D. expert in mechanical engineering and
14 human factors. You did not hear from a human factors expert
15 for the defense. You did not hear from a mechanical engineer
16 Ph.D. expert in human factors for the defense.

17 Dr. Hunt told you he's the assistant dean of engineering
18 at Kennesaw State. He told you what his opinions are in this
19 case, and we wrote them out. And his opinions in this case
20 were that there's no clear view from the stop bar of traffic
21 on Meeting Street; that from the stop bar, Mr. McJunkin,
22 where he was legally required to stop, had no clear view. He
23 told you that the poles, bushes, and fencing blocked drivers'
24 view of vehicles.

25 By the way, the same thing Ms. Shirley told you that

1 roads were built. And these houses were marked as "future
2 platting." They weren't there yet. Right?

3 And he told you that without any of these obstructions,
4 you would have well over 300 feet line of sight. Without the
5 bushes, without the poles, you would have well over 300 feet
6 line of sight. And remember, that's more than six seconds
7 going 35 miles an hour. So now we get into the range of
8 "Okay. It's reasonable." It's realistically possible that
9 these two folks could see each other and make decisions
10 accordingly. Right?

11 And he told you the houses were built in '69 and the
12 poles were last placed in '99 and 2006.

13 And he did his own site visit first and his surveying
14 measurements, you'll remember. That's when he told you he
15 used the measuring wheel. And he went out there and he
16 wasn't going to go into the middle of the road around that
17 curve, but he estimated and he got 204 feet. And I think
18 y'all will remember that. Y'all have been taking diligent
19 notes. So just remember, if your notes don't line up, you
20 can rehear it. But I think you would have taken it down.

21 And then he told you that he used the FARO scan data --
22 that Mr. McCullough took -- subsequent to that, and he looked
23 at it again. And the poles last placed in 1999 and 2006,
24 they're in the public right-of-way. And he testified to
25 that. He told you that the fences, poles, and bushes are in

1 (Court resumed outside the presence of the jury.)

2 THE COURT: Okay. We're about to bring the jury in, so
3 I need for you all to assume your locations.

4 (The jury entered the courtroom at 5:55 p.m.)

5 THE COURT: You may be seated.

6 THE BAILIFF: All jurors are present.

7 THE COURT: Thank you.

8 Mr. Foreman and members of the jury, you have heard the
9 evidence and the arguments of both parties. I will now
10 explain to you the law which applies to this cause of action.

11 Darleen Rash, individually and as the personal
12 representative for the Estate of Bronson Harley Rash, the
13 plaintiff, claims that she has been injured by the actions of
14 Dominion Energy South Carolina, formerly known as South
15 Carolina Electric & Gas; Anthony M. Akbar; and Paul
16 Quattlebaum, the defendants. In bringing this lawsuit, the
17 plaintiff claims that the defendants should compensate her
18 for her injuries. This, ladies and gentlemen, or these
19 causes of action are commonly referred to as "wrongful death"
20 and "survival claims," which is what Ms. Rash has brought on
21 behalf of her husband as well as on behalf of the estate of
22 Bronson Harley Rash.

23 Under our constitution and code of laws, only you, the
24 jury, can make the findings of fact in this case. I am not
25 permitted to indicate how I might feel about the testimony

1 and evidence which has been presented. And throughout this
2 trial, it has been my intention to be fair and impartial
3 toward each of the parties involved, as well as their
4 counsel. The constitution of our state has declared that a
5 trial judge shall not intimate, state, comment upon, or make
6 any statement to a trial jury about the facts in a case.

7 Since you, the jury, are the sole judges of the facts in
8 this case, you are not to infer anything from what I have
9 said during the progress of this trial, in ruling upon the
10 admissibility of evidence or otherwise, or anything that I
11 now say to you during the course of this instruction that I
12 have any opinion about the facts. The law does not permit me
13 to have an opinion about the facts. This is a matter solely
14 for you, the jury, to determine.

15 As the trial judge, it is my responsibility to preside
16 over the trial of this case. And I also have the duty to
17 rule upon or pass upon the admissibility of evidence which
18 has been offered during the trial. You are to consider only
19 the competent evidence before you, and you are to disregard
20 and disabuse from your mind any testimony ordered stricken
21 from the record in this case during the progress of this
22 trial.

23 You are to consider only the testimony which has been
24 presented from the witness stand, together with any exhibits
25 which have been made part of the record in this case, and any

1 stipulations of counsel which have been made for the record.
2 And I instruct you that a stipulation is an agreement between
3 the attorneys and it requires no further proof.

4 As jurors then, it is your duty, as I have instructed,
5 to determine the effect, the value, and the weight of the
6 evidence presented during this trial. Necessarily, you must
7 assess the credibility of witnesses who have testified in
8 this case. Credibility is simply a legalistic term which
9 means believability.

10 It becomes your duty as jurors to analyze and to
11 evaluate the evidence and determine that evidence which
12 convinces you. Some of the things you may consider as you
13 decide whether or not to believe a witness's testimony about
14 a particular matter include: What was the manner and
15 appearance of the witness who testified? Was he or she
16 straightforward or hesitant in answering? Was the testimony
17 of a witness consistent or inconsistent?

18 How did the witness come to know the facts that he or
19 she testified to? Or what was his or her ability to know
20 these facts? Is there some reason a witness would want to
21 give testimony which would help or hurt one side or the
22 other? In other words, was the witness biased or prejudiced?
23 And was the testimony of a witness strengthened or weakened
24 by other testimony or evidence?

25 Ladies and gentlemen, you can believe as much or as

1 little of each witness's testimony as you think proper. And
2 of course, you do not determine the facts merely by counting
3 the number of witnesses that have been presented by each
4 side.

5 I further instruct you that in determining the question
6 of the credibility or believability of witnesses who have
7 testified, you may believe one witness as against several
8 witness or several witnesses as against one witness. You may
9 believe a part of the testimony of a witness and reject the
10 remaining part of the testimony of that same witness. If you
11 have a good and sound reason, you may believe the testimony
12 of a witness in its entirety or reject the testimony of a
13 witness in its entirety. You may consider the demeanor of a
14 witness. That is the manner and appearance of the witness
15 from the witness stand.

16 As I have instructed, ladies and gentlemen, as the
17 finders of the facts, you have but one objective: to find
18 and determine the facts and apply the law to those facts as
19 you find them.

20 Testimony has been presented to you by deposition. And
21 as I explained earlier, a deposition is a written document or
22 video containing sworn testimony given by a witness outside
23 of court in the presence of lawyers for each party who may
24 question the witness. This testimony, ladies and gentlemen,
25 is entitled to the same consideration and is to be judged as

1 to credibility and weighed by you in the same way as if the
2 witness had been present and gave the testimony. It is then
3 for you, the jury, to determine the effect, the value, and
4 the weight of the testimony given in the deposition, just
5 like any other witness.

6 Our Rules of Evidence ordinarily do not permit witnesses
7 to testify to opinions or conclusions. An exception to this
8 rule exists for witnesses we call "expert witnesses." A
9 witness who by their education, training, and experience has
10 become an expert in some art, science, or profession may give
11 an opinion as to the subject the witness claims to be an
12 expert in and may also give the reasons for the opinion. You
13 should consider any expert opinion given by a witness like
14 any other evidence. You're to give it the weight you think
15 it deserves.

16 If you decide that an expert witness's opinion is not
17 based on sufficient education, training, and experience, or
18 if you decide that the reasons given in support of the
19 opinion are not sound or that the opinion is outweighed by
20 other evidence, you may disregard the opinion entirely. An
21 expert witness's testimony is to be given no greater weight
22 than that of other witnesses simply because the witness is an
23 expert. And you do not have to accept an expert's opinion
24 even though it is uncontradicted.

25 Ladies and gentlemen, if the opinion or opinions of

1 experts are relied upon to establish proximate cause, the
2 expert must state with reasonable certainty that in his or
3 her professional opinion, the plaintiff's injuries most
4 probably resulted from the negligence of the defendant or
5 defendants. It is not necessary that the expert use the
6 words "most probably." It is enough for the expert to state
7 that it is the expert's professional opinion that the
8 defendant's negligence was most likely one among the possible
9 causes of the plaintiff's injuries.

10 There are two types of evidence which are presented
11 during a trial: direct evidence and circumstantial evidence.
12 Direct evidence is the testimony of a person who claims to
13 have actual knowledge of a fact, such as an eyewitness. It
14 is evidence which immediately establishes the main fact or
15 facts sought to be proven. Circumstantial evidence is proof
16 of a chain of facts and circumstances indicating the
17 existence of a fact. Circumstantial evidence is based on
18 inference and not on personal knowledge or observation.

19 I instruct you, ladies and gentlemen, that the facts and
20 circumstances should be considered in light of ordinary
21 experience and common sense. The existence of a fact cannot
22 be based on speculation, surmise, or conjecture. The law
23 makes absolutely no distinction between the weight or value
24 to be given to either direct or circumstantial evidence. Nor
25 is a greater degree of certainty required of circumstantial

1 evidence than of direct evidence. However, to the extent
2 that either party relies on circumstantial evidence, all of
3 the circumstances must be consistent with each other and,
4 when taken together, point conclusively to the fact or facts
5 sought to be proven.

6 In our courts, ladies and gentlemen, there's no
7 distinction made between corporations and individuals. A
8 corporation is a person in the eyes of the law. A
9 corporation is entitled to the same fair and impartial
10 consideration and to justice by the same legal standards as
11 an individual. I further instruct you that a corporation can
12 only act through its agents or employees. Therefore, a
13 corporation is responsible for any negligent acts or
14 omissions of its agents or employees while they are acting
15 within the scope of their employment which proximately caused
16 injury to another person.

17 The same constitution and laws which designate and make
18 you the finders of the facts, as I have just explained, also
19 make me the instructor of the law. You must accept the law
20 as I instruct it. If I'm wrong, there's another place and
21 time for that error to be corrected. But for this case,
22 ladies and gentlemen, you must apply the law as I instruct
23 it. And this means that you should not be concerned with
24 what you may think the law should be, but only with what I
25 instruct you the law actually is.

1 As I explained earlier, ladies and gentlemen, the
2 plaintiff has the burden of proving their case by a
3 preponderance of the -- has the burden of proving their
4 claims in this case. They must meet this burden by proving
5 their claims by the greater weight or the preponderance of
6 the evidence.

7 Again, using my earlier example, which is a traditional
8 set of scales, after all of the evidence has been presented,
9 if -- when the case begins, the scales are even. After all
10 of the evidence has been presented, if the scales should
11 remain evenly balanced or if they should tip even slightly in
12 favor of the defendants, then the plaintiff would have failed
13 to have met their burden of proof and your verdict would be
14 for the defendants. If, on the other hand, the scales should
15 tip even slightly in favor of the plaintiff, then she will
16 have met her burden of proof and your verdict would be for
17 the plaintiff.

18 A preponderance of the evidence, ladies and gentlemen,
19 means evidence which, as a whole, shows that the fact or
20 facts sought to be proven are more probable than not.

21 As I've explained, ladies and gentlemen, the plaintiff
22 has brought what is called a "wrongful-death cause of
23 action." There are three essential elements of the
24 plaintiff's cause of action, which are denied by the
25 defendants' answers. Again, those three essential elements

1 are, first, that the defendant was negligent; second, that
2 the deceased came to his or her untimely death as a
3 consequence of that alleged wrongful conduct; and third, that
4 the defendant's negligence in one or more of the
5 specifications of wrongful conduct as alleged was the
6 proximate cause of the death of the deceased.

7 Ladies and gentlemen, the plaintiff claims that the
8 defendants were negligent. In order to prove that the
9 defendants were negligent, the plaintiff must prove by a
10 preponderance or greater weight of the evidence four things.
11 First, the plaintiff must prove by a preponderance or greater
12 weight of the evidence that the defendants owed the plaintiff
13 a duty of care. Next, the plaintiff must prove by a
14 preponderance or greater weight of the evidence that the
15 defendants breached that duty by a negligent act or omission.

16 "Negligence" means that a person has done something that
17 a reasonable person would not have done, or has failed to do
18 something that a reasonable person would have done in the
19 same or similar circumstances, or both.

20 I instruct you, ladies and gentlemen, that our
21 common-law rules of the road require the operator of a motor
22 vehicle to use the same care that would have been exercised
23 by a person of ordinary reason and prudence if that person
24 were driving the same vehicle at the same time and place and
25 under the same circumstances. This standard of care includes

1 the obligation to maintain a proper lookout for other
2 vehicles which may be upon the highway.

3 I instruct you that a person operating a motor vehicle
4 on the public roads of this state owes a duty to keep a
5 proper lookout for other vehicles upon the highway. The duty
6 is not merely one of looking, but one of observation. I
7 instruct you that a motorist must look in such an intelligent
8 and careful manner as to enable him to see a vehicle or
9 person upon the highway in the exercise of ordinary care or
10 caution for the safety of himself and others.

11 I further instruct you that a motorist who fails to keep
12 a proper lookout or fails to see what a person of ordinary
13 care and prudence would have seen is guilty of negligence. I
14 further instruct you that the driver of an automobile has a
15 duty to keep the automobile under proper control so that the
16 driver is able to slow down, stop, or turn the automobile to
17 avoid colliding with other vehicles, pedestrians, and objects
18 lawfully on the road.

19 In addition to our common-law rules of the road, our
20 state statutes or laws also provide the following rules which
21 must be followed.

22 Code section 56-5-580, which is entitled "Right-of-way,"
23 "Right-of-way is the right of one vehicle or pedestrian to
24 proceed in a lawful manner in preference to another vehicle
25 or pedestrian approaching under such circumstances of

1 direction, speed, and proximity as to gave rise to danger of
2 collision unless one grants precedence over the other."

3 And 56-5-1520, "Speeding," subsection (a), "A person
4 shall not drive a vehicle on a highway at a speed greater
5 than is reasonable and prudent under the conditions, and
6 having regard to the actual and potential hazards then
7 existing. Speed must be so controlled to avoid colliding
8 with a person, vehicle, or other conveyance on or entering
9 the highway, in compliance with legal requirements and the
10 duty of a person to use care.

11 And subsection (f), "The driver of a vehicle shall
12 drive, consistent with the requirements of subsection (a), at
13 an appropriate reduced speed when approaching or crossing an
14 intersection or when approaching and going around a curve.

15 And code section 56-5-2320, "Vehicle turning left," "The
16 driver of a vehicle intending to turn left within an
17 intersection or into an alley, private road, or driveway
18 shall yield the right-of-way to any vehicle approaching from
19 the opposite direction which is within the intersection or so
20 close thereto as to constitute an immediately hazard."

21 And code section 56-5-2330, "Stop signs," subsection
22 (a), "Preferential right-of-way may be indicated by stop
23 signs as authorized by the Department of Transportation or
24 local authorities."

25 And subsection (b), "Except when directed to proceed by

1 a police officer, every driver of a vehicle approaching a
2 stop sign shall stop at a clearly marked stop line, but if
3 none, before entering the crosswalk on the near side of the
4 intersection, or if none, then at the point nearest the
5 intersecting roadway where the driver has a view of
6 approaching traffic on the intersecting roadway before
7 entering it. After having stopped, the driver shall yield
8 the right-of-way to any vehicle in the intersection or
9 approaching on another roadway so closely as to constitute an
10 immediate hazard during the time when such driver is moving
11 across or is in the intersection or junction of roadways."

12 In addition to our statutes, there's certain ordinances
13 that have also been promulgated by the City of North
14 Charleston, and those ordinances provide as follows.

15 Ordinance 4-13, "Visibility at railroad and street
16 intersections shall be unobstructed. No planting shall be
17 maintained in such a manner as to obstruct visibility at
18 intersections. However, poles and support structures less
19 than 12 inches in diameter may be permitted in such areas."

20 And the City of North Charleston zoning ordinance 4-7
21 defines a sight-visibility triangle as the triangular area
22 bounded on two sides by the street or railway right-of-way
23 lines, which defines a visibility triangle as measuring 3
24 feet by 3 feet by 3 feet, where the corner lot faces the
25 street directly.

1 I further instruct you that the City of North Charleston
2 zoning ordinance 3-2 includes the following definition:

3 "Nonconformity. A nonconformity is any lot of record, use,
4 building, structure, or vegetation in existence prior to the
5 effective date of this ordinance but which fails by reason of
6 such adoption, revision or amendment to conform to the
7 present requirements of the ordinance."

8 It further states in ordinance 4-5, titled
9 "Nonconforming uses, buildings, structures, conditions, and
10 lots," "To avoid undue hardship, the lawful use of any such
11 use, building, or structure at the time of the enactment,
12 amendment, or revision of this section may be continued even
13 though such structure does not conform with the provisions of
14 this section.

15 And ladies and gentlemen, I instruct you that ordinance
16 4-13, as well as section 4-7, their effective date was 9/24
17 of 1998.

18 I further instruct you that the National Electric Safety
19 Code provides as follows. "Where there are curbs:
20 supporting structures, support arms, anchor guys, or
21 equipment attached thereto up to 15 feet above the road
22 surface shall be located a sufficient distance from the
23 street side of the curb to avoid contact by ordinary vehicles
24 using and located on the traveled way. For a redirection
25 curb, such distance shall not be less than six inches. For

1 paved or concrete swale-type curbs, such facilities shall be
2 located behind the curb."

3 And "Where there are no curbs, supporting structures
4 should be located a sufficient distance from the roadway to
5 avoid contact by ordinary vehicles using and located on the
6 traveled way."

7 And "Location of overhead utility installations on
8 roads, streets, or highways with narrow rights-of-way or
9 closely abutting improvements are special cases that must be
10 resolved in a manner consistent with the prevailing
11 limitations and condition."

12 Ladies and gentlemen, I instruct you that while
13 violation -- that violation of any of these provisions of
14 statutes is negligence as a matter of law. This means that
15 proof of such violation is, in itself, proof of negligence so
16 that should you find such violation, your only concern would
17 be whether the violation caused the injury and damages.

18 I further instruct you, ladies and gentlemen, that the
19 plaintiff must also prove by a preponderance or greater
20 weight of the evidence that they suffered damages as a result
21 of the defendant's breach of duty.

22 Finally, the plaintiff must prove by a preponderance or
23 greater weight of the evidence that the damages were
24 proximately caused by the defendant's breach of duty.
25 Proximate cause is something that produces a natural chain of

1 events which, in the end, brings about the injury. It is the
2 direct cause of the injury.

3 To prove that the defendant's negligence proximately
4 caused the plaintiff's injury, the plaintiff must first prove
5 causation in fact. This is proven by showing that the injury
6 would not have occurred but for the defendant's negligence.

7 The plaintiff must also prove legal cause. Legal cause
8 is proven by showing that the injury was foreseeable. This
9 means that the injury occurred as a natural and probable
10 consequence of the defendant's negligence. The plaintiff
11 must prove that some injury from the defendant's negligence
12 was foreseeable, but does not have to prove that the
13 particular injury that occurred was foreseeable. However,
14 the defendants cannot be held responsible for things which
15 could not be expected to happen.

16 Proximate cause does not mean the only cause. The
17 defendant's act can be a proximate cause of the plaintiff's
18 injury if it was at least one of the direct concurring causes
19 of the injury.

20 I further instruct you that there may be more than one
21 cause of an injury and more than one person may be
22 responsible for the injury. If the negligence of two or more
23 combines to cause an injury, each person involved may be held
24 responsible as if that person alone caused the injury.
25 Causes are concurrent if the individual acts of negligence

1 combined to cause the injury.

2 If an injury occurs through the concurrent negligence of
3 two or more persons and would not have happened without the
4 negligence of either person, the negligence is the proximate
5 cause of the injury and both people are responsible. If the
6 acts happened one after the other but were not related to
7 each other, they would not be concurring causes. In that
8 case, only the person whose negligence actually caused the
9 injury would be responsible.

10 Ladies and gentlemen, I instruct you that the chain of
11 causation between the defendant's negligence and the injury
12 may be broken by the independent, intervening acts or
13 omissions of another person over whom the defendant has no
14 control. In order to decide whether an intervening act
15 breaks the chain of causation, you must determine whether the
16 intervening act or omission was reasonably foreseeable by the
17 defendants. If the intervening act or omission was a
18 probable consequence of the defendant's negligence, the
19 defendant is -- I apologize. Let me reread that.

20 You must determine whether the intervening act or
21 omission was reasonably foreseeable by the defendant. If the
22 intervening act or omission was a probable consequence of the
23 defendant's negligence, the defendant is responsible for the
24 plaintiff's injury. If, however, you find that the
25 intervening act or omission was not foreseeable, the

1 defendants are not liable unless their actions alone would
2 have caused the plaintiff's injury even without the
3 intervening act or omission.

4 Ladies and gentlemen, in this wrongful-death action, the
5 plaintiff, as the personal representative -- and actually, in
6 this wrongful death and survival action, the plaintiff, as
7 the personal representative of the deceased's estate, claims
8 that the deceased wrongfully died as a result of the
9 negligent acts or omissions of the defendants.

10 Whenever the death of a person is proximately caused by
11 the wrongful act or neglect of another and the act or neglect
12 is one which would have entitled the deceased to recover
13 damages if the deceased had not died, the personal
14 representative of the estate of the deceased may bring an
15 action for wrongful death. The personal representative has
16 the right to recover compensatory damages for the wrongful
17 death.

18 It is not necessary to show the monetary value of the
19 deceased's life since direct proof of the value of human life
20 is not possible. What is reasonable compensation, ladies and
21 gentlemen, is left to your sound discretion and judgment.

22 The damages in an action for wrongful death include:
23 mental shock and suffering; wounded feelings; grief and
24 sorrow; loss of companionship; loss of the use and comfort of
25 the deceased's society, including the loss of the deceased's

1 experience, knowledge, and judgment in making the affairs of
2 the deceased -- in managing the affairs of the deceased and
3 his beneficiaries; medical and funeral expenses.

4 It is not necessary to show the exact amount of damages
5 suffered by the beneficiaries or that the beneficiaries
6 suffered a monetary loss. In addition, the person for whose
7 benefit the action is brought does not have to have been
8 dependent on the deceased for support.

9 I instruct you that the injured party may also recover
10 for such future damages as it is reasonably certain will, of
11 necessity, result from the injuries. The principle
12 underlying compensation for future damages is that only one
13 action can be brought and, therefore, only one recovery had.

14 It is proper to include in the estimate of future
15 damages compensation for future wounded feelings, grief and
16 sorrow, loss of companionship, mental shock and suffering.
17 Any future damages, ladies and gentlemen, must be reasonably
18 calculated to have resulted from the alleged injury or damage
19 sustained in this case. Future damages must be reduced to
20 their present-day cash value.

21 Ladies and gentlemen, if you find that the plaintiffs
22 were permanently injured as a result of the defendant's
23 actions, you must then decide how, if at all, that injury
24 will affect the rest of the plaintiff's life. A person's
25 life expectancy is determined by a life-expectancy table

1 which is a part of the code of laws of this state. The
2 life-expectancy table is only an estimate of the probable
3 average remaining length of life of all persons in our state
4 of a given age.

5 The plaintiff Darleen Rash is 62 years old, with a life
6 expectancy, according to the life-expectancy table, of 22.47
7 years. Mr. Arthur Rash is a male of 64 years of age which,
8 according to the life-expectancy table, has a life expectancy
9 of 17.54 years. This fact, ladies and gentlemen, is to be
10 considered by you along with any other facts and
11 circumstances in evidence bearing on the plaintiff's life
12 expectancy -- including occupation, habits, health -- at the
13 time of the injury in deciding the amount of damages, if any,
14 to be awarded to the plaintiff.

15 The plaintiff has also brought what is called a
16 "survival action." Whenever the death of a person is
17 proximately caused by the wrongful act or neglect of another
18 and the act or neglect is one which would have entitled the
19 deceased to recover damages if the deceased had not died, the
20 personal representative of the estate of the deceased may
21 bring an action for survival damages. In this action, the
22 plaintiff has brought a survival claim.

23 The damages for a survival claim are distinct. The
24 damages that are recoverable under a survival claim are on
25 behalf of the deceased and his estate. In considering

1 survival damages, if any, you may consider any damages for
2 the deceased's conscious pain, suffering, and mental distress
3 prior to his death as alleged.

4 I further instruct you that pain and suffering and
5 mental distress the deceased consciously suffered as a result
6 of the injury before he or she died are also compensable in a
7 suit brought on behalf of the deceased. To recover for the
8 deceased's conscious pain and suffering, there must be
9 sufficient proof that the decedent was conscious and
10 simultaneously suffered prior to death.

11 Ladies and gentlemen, the plaintiff has the burden of
12 proving their damages by the greater weight of the evidence,
13 but this does not mean that they must prove them to a
14 mathematical certainty or produce evidence of the precise
15 amount of damages alleged to have been suffered. Rather, the
16 evidence put forth by the plaintiff should be such as to
17 enable you, the jury, to determine what amount of damages, if
18 any, is fair, just, and reasonable.

19 Ladies and gentlemen, the defendants in this case --
20 Dominion Energy South Carolina, Inc., formerly known as South
21 Carolina Electric & Gas Company; Anthony M. Akbar; and Paul
22 Quattlebaum -- claim that Bronson Rash's negligence
23 proximately caused his injuries. If you find that the
24 defendants were negligent, you must then decide whether
25 Bronson Rash was negligent. The defendants must prove by a

1 preponderance or greater weight of the evidence that Bronson
2 Rash breached a duty of care which proximately caused his
3 injuries.

4 The same law which I have instructed you to decide -- to
5 use in deciding whether the defendants were negligent should
6 be used in deciding whether Bronson Rash was negligent. If
7 you find that the negligence of Bronson Rash and the
8 defendants proximately caused Bronson Rash's injury, you must
9 then decide how much the negligence of Bronson Rash
10 contributed to his injuries and how much the defendants'
11 negligence contributed to Bronson Rash's injuries.

12 In deciding the percentages of negligence of Bronson
13 Rash and the defendants, you may consider, among other
14 things, the following factors: whether each party's conduct
15 was only inadvertent or whether it was engaged in with an
16 awareness of the danger involved; the magnitude of the risk
17 created by each party's conduct, including the number of
18 persons endangered and the possible severity of the injury;
19 the significance of the goal that each party was trying to
20 reach and the need to achieve the goal in that manner;

21 Each party's capabilities and abilities to realize and
22 eliminate the risk involved; the particular circumstances
23 confronting each party at the time the conduct occurred, such
24 as the existence of an emergency requiring a quick decision;
25 the relative closeness of the causal relationship of the

1 negligent conduct of the defendants and the harm to the
2 deceased; and whether the conduct of either party involved a
3 violation of a safety statute or regulation.

4 I will give you what we call "special interrogatories,"
5 which is simply a legal term meaning questions. But I will
6 go over that -- the entirety of both verdict forms with you,
7 so you don't have to try to focus on writing each of those
8 inquiries down. And again, this form will be provided to you
9 and it is self-explanatory, but I will go over it with you.

10 Ladies and gentlemen, in reaching a verdict in this
11 case, you should not consider whether any party was or was
12 not covered by insurance. The law does not allow the parties
13 to present any evidence about insurance, the lack of
14 insurance, or the amount of insurance. More importantly, I
15 instruct you that the insurance or lack of insurance has no
16 bearing on whether any party was negligent or on the amount
17 of damages, if any, a plaintiff has suffered. Insurance
18 should not be discussed in any manner whatsoever in your
19 deliberative process.

20 Ladies and gentlemen, you have been selected as fair and
21 impartial jurors, sworn to impartially try the facts of this
22 case. And when you comply with your oath to do so, then you
23 will have fully discharged your duty as jurors in this case.
24 You should not be influenced by opinions or expressions of
25 opinions, if any, which you may have heard outside the

1 evidence of this case. But you are to decide this case
2 according to the testimony that you have heard from the sworn
3 witnesses, along with the other evidence that has been
4 introduced.

5 And as I've explained, there are special interrogatories
6 that I'm going to go over with you, as well as there are also
7 questions for both causes of action, that being the wrongful
8 death and the survival cause of action. I will go over those
9 with you.

10 However, ladies and gentlemen, in advance of me
11 explaining that, I instruct you that your verdict must be
12 unanimous, which means that all 12 of you must agree in order
13 to reach a verdict in this case. In addition, your verdict
14 cannot be based on sympathy, passion, prejudice, emotion, or
15 any other consideration not found in the evidence of this
16 case.

17 Mr. Foreman, it is your responsibility to fill out the
18 verdict forms, to sign and date the forms. It is also your
19 responsibility to write out any questions the jury may have
20 during deliberations. However, any questions should never
21 designate a juror's number and it should likewise never
22 designate or denominate any numerical breakdown of the jury.
23 Any deliberations of the jury should remain with the sanctity
24 of the jury deliberation room.

25 And the options are as follows. And again, there's no

1 significance whatsoever to the order that I state these
2 potential verdicts. It is simply that one must be stated
3 first.

4 As to the survival action, the first question is "We,
5 the jury, find by a preponderance of the evidence that the
6 deceased experienced conscious pain and suffering." There
7 are two options: yes or no. If you answer yes, then you go
8 to question 2, which is "We, the jury award actual damages
9 for conscious pain and suffering in the amount of" blank
10 "dollars." And there's a place for the foreperson to sign
11 and date the form.

12 If your answer is no to question 1, then you go -- you
13 are to stop, deliberate no further, and sign and date the
14 verdict form.

15 As it regards the wrongful-death cause of action -- and
16 again, it says "special interrogatories," but that's just a
17 legal way of sayings "questions."

18 The first question is, "Do you find that the defendant
19 Dominion Energy of South Carolina was negligent and that such
20 negligence proximately caused the plaintiff's injuries?"
21 There are two options: yes and no. If you answer the
22 question yes, you go to question 2. If you answer the
23 question no, you likewise go to question 2.

24 Question 2, "Do you find that the defendant Anthony
25 Akbar was negligent and that such negligence proximately

1 caused the plaintiff's injuries?" If your answer is yes, you
2 go to question 3. If your answer is no, you go to
3 question 3.

4 Question 3, "Do you find that the defendant Paul
5 Quattlebaum was negligent and that such negligence
6 proximately caused the plaintiff's injuries?" If your answer
7 is yes, you go to question 4. If your answer is no, you go
8 to question 4.

9 Question 4, "Do you find that Bronson Harley Rash was
10 negligent and that such negligence proximately caused his
11 injuries?" If your answer is yes, you go to question 5. If
12 your answer is no, you still go to question 5.

13 "If your answer to all of the questions numbered 1
14 through 3 is no, you are to stop and deliberate no further,
15 sign and date the verdict form. If your answer to any of the
16 questions numbered 1 through 4 is yes, then you're to answer
17 question 6."

18 Which is as follows: "Taking the combined negligence
19 that proximately caused Bronson Harley Rash's injuries as 100
20 percent, what percentage of the breach is attributable to
21 Bronson Harley Rash, and what percentage is attributable to
22 the defendants only that you answered yes to in questions 1
23 through 3? In this answer, do not include any party from
24 question 1 through 3 where your answer was no. And the
25 percentages have to add up to 100 percent."

1 And there's a line for each individual: one for Bronson
2 Harley Rash with a percentage, one for defendant Dominion
3 Energy with a percentage, defendant Anthony M. Akbar, and
4 defendant Paul Quattlebaum. Again, you're only to fill out
5 percentages if you answered yes -- for any of the individuals
6 you answered yes to, but not anyone that you answered no to.

7 "If Bronson Harley Rash's percentage of the combined
8 negligence is greater than 50 percent, you're instructed that
9 you're to stop and deliberate no further, sign and date the
10 verdict form. If Bronson Harley Rash's percentage of
11 combined negligence is 50 percent or less, then you go to
12 question 7."

13 And question 7 says, "Please state the total amount of
14 damages sustained by the plaintiff, dollars, actual damages."

15 There's an additional note on page 3, an explanation:
16 "If you answered yes to any of the questions in number 6, do
17 not make any attempt to reduce any damages you will award by
18 the percentages that you award. Those percentages are a
19 matter of law for the Court."

20 So if you determine that damages are appropriate, you
21 are instructed that you are to award the total amount of
22 damages you deem appropriate in your fact-finding province.
23 And you're not to make any attempts to reduce any damage
24 award by any percentages that were awarded in question 6.

25 You are then to sign and date the verdict form and to

1 knock on the door and advise the bailiffs that the jury has
2 reached a unanimous verdict.

3 Again, ladies and gentlemen, there's absolutely no
4 significance whatsoever to the order in which the Court has
5 stated the potential verdicts. It is simply that one must be
6 stated first. And again, your verdict must be unanimous,
7 which means all 12 of you must agree in order to reach a
8 verdict. And again, I instruct you that your verdict cannot
9 be based on sympathy, passion, prejudice, emotion, or any
10 other consideration not found in the evidence.

11 I'm going to ask that you return to your jury room but
12 do not yet begin your deliberations. I have some matters of
13 law to take up with counsel that may require additional
14 instruction or clarification of an instruction. If there's
15 no further instruction, we will separate the alternates. We
16 will then send in your notepads, as well as the evidence.
17 And at that time, you will be allowed to begin your
18 deliberations.

19 We anticipate that dinner will be here at 7:00 --
20 7:00-ish. We had to change who we normally deal with and
21 we've had to send one of our dutiful deputy clerks has
22 volunteered to go take care of that for us. So we should
23 have an ETA I'm thinking right at 7:00 or a little after
24 7:00.

25 But when your dinner arrives, we'll bring it in to you

1 and you certainly are allowed to eat and deliberate. If
2 anybody needs to go to the restroom, just remember that you
3 cannot deliberate when any of your members is absent from the
4 room. If at any point you feel like you need some air,
5 please let me know.

6 And please do not feel that you're required to be at the
7 courthouse all night. You are not. If at any time you feel
8 that you'd like to take a break to go home and resume your
9 deliberations in the morning, just advise the Court and I
10 will accommodate your request.

11 Again, do not yet begin your deliberations. If you
12 would go with the bailiffs and leave your notepads in your
13 seats.

14 And Mr. Gillispie, we've made arrangements for you.
15 We've spoken with then and you shouldn't have any challenges
16 tonight.

17 JUROR: All right.

18 (The jury exited the courtroom at 6:37 p.m.)

19 (The following proceedings were had outside the presence
20 of the jury.)

21 THE COURT: You may be seated.

22 Other than the matters that we've already covered, are
23 there any other exceptions to the instructions from the
24 plaintiff?

25 MR. WILLEY: Your Honor indicated to the jury that there

1 was no significance in how you read the verdict. But I --

2 THE COURT: There's isn't. That's standard stock
3 language.

4 MR. WILLEY: But I think when the verdict form goes
5 back, it's important for the wrongful death to be on --
6 stapled on top because they have to find negligence before
7 they can find survival. I wouldn't want the jury to think on
8 the survival cause all they have to find is conscious pain
9 and suffering and that they're awarding damages if they
10 haven't found negligence on the other form.

11 THE COURT: I think maybe I can -- I that might be an
12 appropriate clarification.

13 Any exception from the defense?

14 MR. COOKE: Your Honor, it pains me to say this, but I
15 agree with Mr. Willey.

16 THE COURT: I think it's a good observation and an
17 astute one. And we need to -- and this is the time to fix
18 anything before they start deliberating.

19 MR. COOKE: Right. And that was actually one of our --
20 I had two exceptions. The first one was going to be that,
21 according to the Court's instruction, you can just find was
22 there pain and suffering, yes or no. And if the answer is
23 yes, you go right to damages without the liability part.

24 THE COURT: Well, they have to decide that. I will
25 instruct them that they have to make a decision on the

1 wrongful death first before they go to the survival. And if
2 they don't reach anything on -- if they reach -- if they are
3 instructed pursuant to the special interrogatories to stop
4 and deliberate no further, they're not to go to the survival
5 cause of action.

6 MR. COOKE: Right.

7 THE COURT: Is that acceptable to everybody?

8 MR. WILLEY: It's fine with the plaintiff.

9 THE COURT: Is that acceptable, Mr. Cooke?

10 MR. COOKE: Yes, your Honor.

11 THE COURT: Mr. Ford?

12 MR. FORD: Yes, your Honor.

13 THE COURT: Ms. Wesley?

14 MS. WESLEY: Yes, your Honor.

15 THE COURT: And I just saw -- I don't know why I just
16 kept having these extraneous marks show up on one of my
17 forms. I'm printing it again. I don't know what happened.
18 I just might have been tired. It's a plus mark, and I don't
19 know why it keeps showing up. I just need to delete it and
20 reprint the form.

21 Is there anything further, Mr. Willey?

22 MR. WILLEY: No.

23 THE COURT: Mr. Cooke, any exceptions other than what
24 we've already discussed at length in charge conference?

25 MR. COOKE: One other, your Honor.

1 MR. WILLEY: Oh, I should say -- sorry -- just for the
2 record, we do reserve our earlier objections.

3 THE COURT: I think they're all preserved --

4 MR. WILLEY: I think they are too.

5 THE COURT: -- because we had a -- that's why I have
6 charge conference, so that they can be preserved and we have
7 a record and we don't have to sort of --

8 MR. WILLEY: Right.

9 THE COURT: Yeah.

10 MR. WILLEY: But my appellate lawyer, if I don't say
11 that, he's going to --

12 MR. COOKE: Yeah, so preserving all our objections. The
13 only other thing we had is --

14 THE COURT: And I kept leaving out Mr. Akbar's middle
15 initial, and I apologize.

16 But go ahead. I'm listening.

17 MR. COOKE: I'm sure he'll appreciate that being
18 correct.

19 THE COURT: I'm going to correct that right now while
20 I'm thinking about it.

21 MR. COOKE: We would ask that the Court charge
22 Defendant's Request Number 26, which is where the cause of
23 plaintiff's injury may be as recently attributed to an act
24 for which defendant is not liable, as to one for which he is
25 liable, plaintiff has failed to carry the burden of

1 establishing that his injuries were the proximate --

2 THE COURT: Yeah, I decided I wasn't going to instruct
3 that. It's too confusing. It confuses me. And I think it's
4 already consumed with the Court's instruction on intervening
5 cause. I think it says the same thing, but mine says it more
6 plain than that. If it confused me, I know it's going to
7 confuse a layperson. I needed a flow chart to get my way
8 through that.

9 MR. COOKE: All right.

10 THE COURT: But I've already noted it, I think, when we
11 had charge conference.

12 MR. COOKE: That's all we had then. Thank you.

13 THE COURT: You're welcome.

14 Anything, Mr. Ford?

15 MR. FORD: Adopting Dominion's objections, preserving
16 all our previous ones, no more.

17 THE COURT: And it's not a trick question. That's why I
18 have charge conference, because I read all of your -- and
19 that's why I mark all of your requests as a Court's exhibit
20 so there's -- you know, it's no hiding the ball.

21 MR. FORD: My apologies for --

22 THE COURT: I'm trying to figure out, like, is there's
23 anything else that I need to correct right this moment within
24 what I've already instructed them to make sure there's no
25 misapprehension about what they're supposed to be doing.

1 MR. FORD: My appellate folks get fussy if I don't
2 preserve things.

3 THE COURT: That's okay.

4 All right. Ms. Wesley?

5 MS. WESLEY: Your Honor, may I also -- I just wanted to
6 adopt Dominion's and reassert our objections as well.

7 THE COURT: But is there anything that I need to make
8 more -- to clarify within the instructions other than what
9 Mr. Cooke and Mr. Willey agree with? And I assume y'all also
10 agree.

11 I see head shaking.

12 MR. FORD: Correct.

13 MS. WESLEY: Yes, your Honor.

14 MR. FORD: Yes, your Honor.

15 THE COURT: And I agree that -- and that's why I always
16 ask, because, you know, if there's something, we can fix it
17 now instead of later.

18 So as soon as I get those verdict forms back -- and
19 hopefully I'll remember what I said. So I'm going to tell
20 them -- and y'all tell me if this is acceptable -- that they
21 are to consider the wrong- -- all of the interrogatories on
22 the wrongful-death cause of action. And only if they reach
23 question 7 are they to then proceed to the survival cause of
24 action verdict form. Is that acceptable to everybody stated
25 in that manner?

1 Mr. Willey?

2 MR. WILLEY: Yes.

3 THE COURT: Mr. Cooke?

4 MR. COOKE: Yes, your Honor.

5 THE COURT: Mr. Ford?

6 MR. FORD: Yes, your Honor.

7 THE COURT: Ms. Wesley?

8 MS. WESLEY: Yes, your Honor.

9 THE COURT: And then there's another issue I think we
10 need to take up. Because normally what we would do is we
11 would dismiss the alternates. But here's the quandary we
12 will be in. If, in fact, they find actual damages, we'll
13 need to go to the bifurcated punitive part of this, which we
14 run the risk of losing jurors aye. So if you all agree to
15 hang onto the alternates, we can do it. If you don't agree,
16 I have to dismiss them. I just think that might not be
17 particularly wise under out -- I don't know. I'm willing to
18 hear any suggestions.

19 MR. WILLEY: The plaintiff has no opinion. I would say
20 that I think the Court is right; at the end of a three-week
21 -- er, going into a third week, it would be silly to lose a
22 juror now.

23 THE COURT: Well, the thing about it is the statute is
24 mandatory. I have to excuse them.

25 MR. WILLEY: Right.

1 THE COURT: But the beauty of agreements is that they --
2 you know, if you agree to it, then there's nobody to
3 complain. I just think that under the circumstances, you've
4 expended all of this time, and if you lose a juror, I'm going
5 to have to declare a mistrial. Unless y'all agree to go with
6 11. And I just think that's a lot of if's in that sentence.

7 MR. COOKE: We'd probably love for there to be a
8 mistrial if we've gotten punitive damages. So we would not
9 agree to go with 11.

10 THE COURT: Well, I wouldn't expect you to. I'm just
11 asking whether you want to keep the alternates around. If
12 y'all agree to that, I will. If not, I'm going to dismiss
13 them. I'm going to have them wait for their dinner and then
14 I'm going to dismiss them.

15 And what do we contemplate the punitive damages part of
16 this trial consisting of? Because I wouldn't imagine there
17 would be much more to present. Because you don't retry the
18 liability part of the claim. You only try those elements
19 that would be applicable to punitive damages.

20 How many witnesses would you be planning to call for the
21 punitive aspect of your case, Mr. Willey?

22 MR. WILLEY: No more than five, we think.

23 THE COURT: And who would those witnesses be?

24 MR. WILLEY: I can't tell you that, your Honor, without
25 my lists here.

1 THE COURT: Well, it's a very limited inquiry and very
2 limited elements.

3 How many witnesses would y'all -- because you'd have to
4 -- you'd have to introduce some proof of ability to pay --

5 MR. WILLEY: Correct.

6 THE COURT: -- from all three of these individuals on
7 punitives.

8 You look puzzled, Mr. Cox. Ability to pay is a viable
9 element.

10 MR. WILLEY: And -- and --

11 THE COURT: That's why you have presentation of evidence
12 to the jury.

13 MR. COX: I don't think we know till we know who the
14 plaintiff's witnesses are.

15 THE COURT: Yeah. I mean, how many days are we looking
16 at with that? I think that's the -- that's what y'all need
17 to consider about whether you keep your alternates or not.
18 Because from a judicial economy standpoint, I don't know that
19 you can get another jury to try your punitives aspect of your
20 case.

21 I'm just looking ahead. I don't know. It might be a
22 defense verdict. I don't know. It might be a moot issue,
23 which is the easier part of this equation to figure out. But
24 I always have to look at, you know, the worst-case scenario
25 in terms of allocation of court resources.

1 MR. COOKE: I think we've huddled and we would be all
2 right with the alternates being dismissed.

3 THE COURT: Mr. Willey?

4 MR. WILLEY: I'm sorry. What's the question?

5 THE COURT: The defendants have indicated that they want
6 the alternates dismissed. I need to know what your position
7 is.

8 MR. WILLEY: I think we should keep the alternates. I
9 would say just -- well --

10 THE COURT: I'm listening.

11 MR. WILLEY: I was just going to say --

12 THE COURT: I'm not sure the trial is over when you
13 bifurcate it.

14 MR. WILLEY: I was just going to say --

15 THE COURT: That's really the issue.

16 MR. WILLEY: Yeah, that's --

17 THE COURT: I'm not -- and I'm going to look at the
18 wording in the statute, but I'm not sure this trial is over
19 until the punitive part of it is done.

20 MR. WILLEY: I was going to say I think either way your
21 Honor could have the jury back, give them the instruction
22 about the order of the verdict forms. They can begin
23 deliberating while we sort this out. Because the alternates
24 obviously won't go into the deliberation room with the 12.
25 They might want to leave already.

1 THE COURT: That's fine. They can take a smoke break,
2 but somebody has to be with them. And they can't deliberate
3 while that person is missing.

4 (Court's Exhibit Number 30 marked for the record.)

5 MR. WILLEY: Well, they haven't deliberated yet. That's
6 just what I was saying.

7 THE COURT: Yeah, but they can't even talk when
8 somebody's not in the room.

9 MS. WESLEY: Your Honor, I'm sorry to interrupt you.
10 We're actually expecting our first grandchild, and I just
11 got --

12 THE COURT: How exciting.

13 MS. WESLEY: -- a phone call, so I would like to see if
14 this is a problem.

15 THE COURT: Mm-hmm. Go ahead.

16 Yeah, this is an interesting issue because I don't think
17 the statute really contemplates when cases are bifurcated.
18 Because when it's bifurcated, it's not final yet. So I think
19 under the statute, I have to hold onto them until it's final.
20 Because technically they get to come back in and hear the
21 punitive part of it if it goes to that. And then once it's
22 submitted for punitives, then they are dismissed. So they'll
23 stay with us. And that's 14-7-1340.

24 All right. Please bring in the jury for me so I can
25 explain -- give this curative instruction.

1 THE BAILIFF: Yes, your Honor.

2 MR. WILLEY: Does your Honor recall what she's going to
3 say?

4 THE COURT: Pardon me?

5 MR. WILLEY: Do you remember what you're going to say?

6 THE COURT: I hope so. I'm going to give a good shot at
7 it. We'll see if I remember. It will be close, we hope.

8 (The jury entered the courtroom at 6:52 p.m.)

9 THE BAILIFF: Judge, all jurors are present and seated.

10 THE COURT: You may be seated.

11 Ladies and gentlemen, as a further instruction, just out
12 of an abundance of caution to make sure that my original
13 instructions were clear, you are -- once you -- you are to
14 consider the wrongful-death cause of action special
15 interrogatories first and come to a unanimous decision
16 regarding this verdict form first. Only if you reach
17 question number 7 should you then consider the survival cause
18 of action verdict form. If you do not reach question number
19 7 and you are -- reach the question where you are instructed
20 to stop, deliberate no further, and to sign and date the
21 verdict form, then you are not to consider the survival cause
22 of action.

23 And with that additional instruction, I'm going to give
24 you the same instructions, which is to return to your jury
25 room. Do not yet begin your deliberations in case I have an

1 additional instruction or clarification. If not, we'll send
2 in your notepads, the evidence, the verdict forms, and the
3 alternates will be placed in a separate room during the
4 deliberative process.

5 All right. Thank you so much. If you would go with the
6 bailiffs.

7 (The jury exited the courtroom at 6:54 p.m.)

8 (The following proceedings were had outside the presence
9 of the jury.)

10 THE COURT: Any exception to the additional instruction
11 from the plaintiff?

12 MR. WILLEY: No.

13 THE COURT: From the defense, Mr. Cooke?

14 MR. COOKE: No, your Honor.

15 THE COURT: From the defense, Mr. Ford?

16 MR. FORD: No, your Honor.

17 THE COURT: From the defense, Ms. Wesley?

18 MS. WESLEY: No, your Honor.

19 THE COURT: All right. Can y'all just double check with
20 the court reporter as they load the evidence onto the cart --
21 as they load that evidence onto the cart, if you all could
22 double check behind them and make sure that you have all the
23 evidence.

24 MR. WILLEY: Did you already do this?

25 COURT REPORTER: Uh-huh.

1 MR. WILLEY: Oh, I was like --

2 THE COURT: Yeah, they've already organized them all and
3 checked everything off. I just need you all to make sure
4 that nothing is missing.

5 Everything accounted for from the plaintiff?

6 MR. WILLEY: Yes, your Honor.

7 THE COURT: From the defense, Mr. Cox?

8 MR. COX: Yes, your Honor.

9 THE COURT: From the defense, Ms. Wesley?

10 MS. WESLEY: No, your Honor.

11 THE COURT: You haven't had a chance to look at --

12 MS. WESLEY: Oh, i did. I mean I have nothing further.
13 Pardon me.

14 THE COURT: Okay. And Mr. Ford? I'm sorry. I didn't
15 mean to skip over you.

16 MR. FORD: Yes, your Honor.

17 THE COURT: Okay. All right. We've got a cart. And we
18 also have equipment for them to play any electronic media.

19 And if y'all have ordered anything -- and then, please,
20 have y'all put the alternates in the other room?

21 THE BAILIFF: Yes, your Honor.

22 THE COURT: Okay. Perfect. If y'all could stick close
23 for me, if you've ordered anything, because usually if you
24 get questions, they're in the first couple minutes. And if
25 you all have ordered anything, please let the deputies know

1 so that they can have those folks down at the scanner aware
2 of it to facilitate what you need done. And then you'll be
3 able to eat in the conference rooms.

4 And I would just caution you if you leave the building,
5 you probably won't be able to get back in.

6 (The jury was instructed to begin their deliberations on
7 the verdict at 6:57 p.m.)

8 (Court recessed.)

9 (Court resumed outside the presence of the jury.)

10 THE COURT: Okay. Do we have everybody that I need
11 present to address a note?

12 Can you address it without Mr. Willey, Mr. Thoensen, or
13 do you need him?

14 MR. THOENSEN: One second, your Honor.

15 (Pause in proceedings.)

16 MR. THOENSEN: We're good.

17 THE COURT: You can do it without him?

18 MR. THOENSEN: Yes, your Honor.

19 THE COURT: All right. We have a note from the jury.
20 "Your Honor, it was asked if we could get a ruler. Thank
21 you, Kyle."

22 MS. WESLEY: Like a yard stick or a ruler?

23 THE COURT: I don't know. You know, everybody was using
24 a ruler in their arguments. Is there any exception to giving
25 them a ruler?

1 MR. THOENSEN: I don't think so. I mean, they've seen
2 it multiple times.

3 THE COURT: Is there any --

4 MR. FORD: What is it?

5 THE COURT: They've asked for a ruler. Any exception
6 from the plaintiff?

7 MR. WILLEY: No.

8 THE COURT: From the defense, Mr. Cox?

9 MR. COX: No, your Honor.

10 THE COURT: From the defense, Mr. Ford?

11 MR. FORD: No, your Honor.

12 THE COURT: Ms. Wesley, y'all going to loan us one of
13 your rulers.

14 MS. WESLEY: Yes, ma'am.

15 THE COURT: Does that one work? And we'll have this
16 marked as a Court's exhibit and I'll have -- you can take
17 this to the jury.

18 (Court's Exhibit Number 31 marked for the record.)

19 (Court recessed.)

20 (Court resumed outside the presence of the jury.)

21 (Court's Exhibit Number 32 marked for the record.)

22 THE COURT: You may be seated.

23 Okay. We have a note from the jury, and I've had it
24 marked as a Court's exhibit. It reads as follows: "Your
25 Honor, can we get a copy of the statutes from SCDOT and North

1 Charleston that were read to us? Also, I started taking
2 notes where we were going to consider negligence was, 1,
3 inadvertent; 2, magnitude of misconduct," dot, dot, dot, "3,
4 ability to reduce risk, etc. Could we also get a copy of
5 this instruction?"

6 My response would be to re-instruct them. Any exception
7 from the plaintiff?

8 MR. WILLEY: Could you read the note again?

9 THE COURT: Sure. "Can we get a copy of the statutes
10 from SCDOT and North Charleston that were read to us."

11 MR. WILLEY: So there were no statutes from DOT, so --

12 THE COURT: There weren't. I think they just
13 misunderstood the statutes.

14 MR. COOKE: The traffic statutes.

15 THE COURT: The traffic statutes.

16 And then the rest of the note says, "Also, I started
17 taking notes where we were going to consider whether
18 negligence was, 1, inadvertent; 2, magnitude of misconduct,"
19 dot, dot, dot, "3, ability to reduce risk," comma, "etc. Can
20 we also get a copy of this instruction?"

21 MR. COOKE: That was comparative negligence?

22 THE COURT: Mm-hmm.

23 MS. WESLEY: Oh, that's -- okay.

24 THE COURT: Is there any exception to re-instructing the
25 jury on the applicable statutes and re-instructing on

1 comparative negligence from the plaintiff?

2 MR. WILLEY: Can you read the -- are we sure --

3 THE COURT: I'm sorry. I couldn't hear you.

4 MR. WILLEY: Oh, sorry. Will you read the comparative
5 part?

6 THE COURT: I'm not re-reading it to you. I've already
7 read it to you three times. If they've asked me to
8 re-instruct it, I will -- that's what I intend to re-instruct
9 because it's clear that's what they're asking for. Those are
10 the only elements that would be applicable. Those are the
11 factors you consider in determining comparative negligence,
12 which is whether the conduct was inadvertent, the ability to
13 reduce the risk, the magnitude of misconduct --

14 MR. WILLEY: Okay. I guess that's fine with the caveat
15 that we just ask that you tell them these are not SCDOT
16 statutes.

17 THE COURT: I'm not going to interject myself into their
18 note. I think it's clear that it's a scrivener's error in
19 what they were asking for. They're asking for the applicable
20 statutes that deal with -- that I read to them under the duty
21 portion of the negligence portion of the instructions. Then
22 it was also clear that they're asking the Court to
23 re-instruct them on comparative negligence.

24 They've asked for copies of these things, but I don't
25 give copies of the instructions, nor isolated portions of a

1 statute to a jury. I don't think it's appropriate. So I
2 would re-instruct them based on what they've asked.

3 Any exceptions from the plaintiff?

4 MR. WILLEY: Just that which we've stated. I mean, it's
5 hard to figure out why they --

6 THE COURT: It's not hard to figure out. It's clearcut
7 what they've asked.

8 MR. WILLEY: Well, I don't understand why they would
9 want the ordinances if they're asking about the comparative.
10 That's my concern.

11 THE COURT: I think it's very clear because in the
12 comparative instruction, they are required to look at the
13 rules and to apply those same statutes in comparative
14 negligence. So it's not -- I don't think the note's hard to
15 understand at all.

16 Any exception, Mr. Cox or Mr. Johnson or Mr. Cooke?

17 MR. COX: No, your Honor.

18 THE COURT: Any exception, Mr. Ford?

19 MR. FORD: No, your Honor.

20 THE COURT: Any exception, Ms. Wesley?

21 MS. WESLEY: No, your Honor.

22 THE COURT: Please bring in the jury.

23 (The jury entered the courtroom at 8:25 p.m.)

24 THE BAILIFF: All jurors are present, your Honor.

25 THE COURT: You may be seated.

1 Ladies and gentlemen, I received your note. And if I
2 understand it correctly -- and Mr. Foreman, if I'm
3 inaccurate, please correct me -- "Can we get a copy of the
4 statutes from SCDOT and North Charleston that were read to
5 us?" I assume that you are asking that I re-instruct you on
6 the common-law rules of the road, as well as the statutes
7 that the Court read to you. Is that accurate in my
8 assumption?

9 I see heads shaking. So does that mean yes?

10 JURY FOREPERSON: Yes.

11 THE COURT: And then also, "I started taking notes where
12 we were going to consider whether negligence was, 1,
13 inadvertent; 2, magnitude of misconduct; 3, ability to reduce
14 risk, etc. Can we also get a copy of this instruction?" I
15 assume you're requesting that I re-instruct you regarding the
16 elements of comparative negligence; is that accurate?

17 JURY FOREPERSON: Yes, it is.

18 THE COURT: All right. Our rules do not provide for me
19 give you a copy of these documents. They only provide for me
20 to re-instruct you regarding them.

21 JURY FOREPERSON: Okay.

22 THE COURT: So in that regard, I re-instruct you that
23 our common-law rules of the road require the operator of a
24 motor vehicle to use the same care that would have been
25 exercised by a person of ordinary reason and prudence if that

1 person were driving the same vehicle at the same time and
2 place and under the same circumstances. This standard of
3 care includes the obligation to maintain a proper lookout for
4 other vehicles which may be upon the highway.

5 I instruct you that a person operating a motor vehicle
6 on the public roads of this state owes a duty to keep a
7 proper lookout for other vehicles upon the highway. The duty
8 is not merely one of looking, but one of observation. I
9 instruct you that a motorist must look in such an intelligent
10 and careful manner as to enable him to see a vehicle or
11 person upon the highway in the exercise of ordinary care or
12 caution for the safety of himself and others.

13 I further instruct you that a motorist who fails to keep
14 a proper lookout or fails to see what a person of ordinary
15 care and prudence would have seen is guilty of negligence. I
16 further instruct you that the driver of an automobile has a
17 duty to keep the automobile under proper control so that the
18 driver is able to slow down, stop, or turn the automobile to
19 avoid colliding with other vehicles, pedestrians, and objects
20 lawfully on the road.

21 I instruct you that in addition to our common-law rules
22 of the road, our state statutes or the South Carolina code of
23 laws, as it is commonly referred to, provides the following
24 rules which must be followed.

25 Code section 56-5-580, "Right-of-way," "Right-of-way is

1 the right of one vehicle or pedestrian to proceed in a lawful
2 manner in preference to another vehicle or pedestrian
3 approaching under such circumstances of direction, speed, and
4 proximity as to give rise to danger of collision unless one
5 grants precedence to the other.

6 I further instruct you code section 56-5-1520,
7 "Speeding," subsection (a): "A person shall not drive a
8 vehicle on a highway at a speed greater than is reasonable
9 and prudent under the conditions and having regard to the
10 actual and potential hazards then existing. Speed must be so
11 controlled to avoid colliding with a person, vehicle, or
12 other conveyance on or entering the highway in compliance
13 with legal requirements and the duty of a person to use
14 care."

15 And subsection (f): "The driver of a vehicle shall
16 drive, consistent with the requirements of subsection (a), at
17 an appropriate reduced speed when approaching and crossing an
18 intersection or railway grade crossing, when approaching a
19 going around a curve."

20 And code section 56-5-2320, "Vehicle turning left."
21 "The driver of a vehicle intending to turn to the left within
22 an intersection or into an alley, private road, or driveway
23 shall yield the right-of-way to any vehicle approaching from
24 the opposite direction which is within the intersection or so
25 close thereto as to constitute an immediate hazard."

1 And code section 56=5-2330, "Stop signs." "Preferential
2 right-of-way may be indicated by stop signs as authorized by
3 the Department of Transportation or local authorities.
4 Except when directed to proceed by a police officer, every
5 driver of a vehicle approaching a stop sign shall stop at a
6 clearly marked stop line, but if none, before entering the
7 crosswalk on the near side of the intersection, or if none,
8 then at the point nearest the intersecting roadway where the
9 driver has a view of approaching traffic on the intersecting
10 roadway before entering it. After having stopped, the driver
11 shall yield the right-of-way to any vehicle in the
12 intersection or approaching on another roadway so closely as
13 to constitute an immediately hazard during the team when such
14 driver is moving across or within the intersection or
15 junction of roadways."

16 In addition to our common-law standards, as well as our
17 state statutes, there are local ordinances that also provide
18 rules which must be followed. And to that extent, I instruct
19 you ordinance 4-13 from the City of North Charleston:
20 "Visibility at railroad and street intersections shall be
21 unobstructed. No planting shall be maintained in such a
22 manner as to obstruct visibility at the intersection.
23 However, poles and support structures less than 12 inches in
24 diameter may be permitted in such areas."

25 And the effective date of this ordinance is September 24

1 of 1998.

2 As well as section 4-7, the City of North Charleston
3 zoning ordinance section 4-7 defines a sight-visibility
4 triangle as the triangular area bounded on two sides by the
5 street or railway right-of-way lines which defines a
6 visibility triangle as measuring 3 feet by 3 feet by 3 feet,
7 where the corner lot faces the street directly."

8 And North Charleston zoning ordinance 3-2 provides as
9 follows: "Nonconformity. A nonconformity is any lot of
10 record, use, building, structure, or vegetation in existence
11 prior to the effective date of this ordinance, but which
12 fails by reason of such adoption, revision, or amendment to
13 conform to the present requirements of the ordinance."

14 The City of North Charleston zoning ordinance section
15 4-5, titled "Nonconforming uses, buildings, structures,
16 conditions and lots," states, "To avoid undue hardship, the
17 lawful use of any such use, building, or structure at the
18 time of the enactment, amendment, or revision of this section
19 may be continued even though such structure does not conform
20 with the provisions of this section."

21 And the National Electric Safety Code provides as
22 follows. "Where there are curbs: supporting structures,
23 support arms, anchor guys, or equipment attached thereto up
24 to 15 feet above the road surface shall be located a
25 sufficient distance from the street side of the curbs to

1 avoid contact by ordinary vehicles using and located on the
2 traveled way. For a redirection curb, such distance shall
3 be not less than six inches for paved or concrete swale-type
4 curb. Such facilities shall be located behind the curb.
5 Where there are no curbs, supporting structures should be
6 located at a sufficient distance from the roadway to avoid
7 contact by ordinary vehicles using and located on the
8 traveled way."

9 And "Location of overhead utility installations on
10 roads, streets or highways with narrow rights-of-way or
11 closely abutting improvements are special cases that must be
12 revolved in a manner consistent with the prevailing
13 limitations and conditions."

14 And I further instruct you that the defendants in this
15 case claim that Bronson Rash's own negligence proximately
16 caused his injuries. If you find that the defendants were
17 negligent, you must then decide whether Bronson Rash was
18 negligent. The defendants must prove by a preponderance or
19 greater weight of the evidence that Bronson Rash breached a
20 duty of care which proximately caused his injuries. The same
21 law which I have instructed you to use in deciding whether
22 the defendants were negligent should be used in deciding
23 whether Bronson Rash was negligent.

24 If you find that the negligence of both Bronson Rash and
25 the defendants proximately caused Bronson Rash's injuries,

1 you must then decide how much the negligence of Bronson Rash
2 contributed to his injuries and how much defendants'
3 negligence contributed to Bronson Rash's injuries.

4 In deciding the percentages of negligence of Bronson
5 Rash and the defendants, you may consider, among other
6 things, the following factors: whether each party's conduct
7 was only inadvertent or whether it was engaged in with an
8 awareness of the danger involved; the magnitude of the risk
9 created by each party's conduct, including the number of
10 persons endangered and the possible severity of the injury;
11 the significance of the goal that each party was trying to
12 reach and the need to achieve the goal in that manner;

13 Each party's capabilities and abilities to realize and
14 eliminate the risk involved; the particular circumstances
15 confronting each party at the time the conduct occurred, such
16 as the existence of an emergency requiring a quick decision;
17 the relative closeness of the causal relationship of the
18 negligent conduct of the defendants and the harm to the
19 deceased; and whether the conduct of either party involved a
20 violation of a safety statute or regulation.

21 Ladies and gentlemen, that concludes the additional
22 instruction you've requested. If you need anything further,
23 please do not hesitate to advise the bailiffs and I will
24 accommodate your request immediately.

25 Mr. Foreman, I'm going to send each of your notes back

1 in and have you date each of those notes and then give those
2 back to the bailiff and then we'll have them put back into
3 the record.

4 JURY FOREPERSON: Certainly. Thank you.

5 THE COURT: Thank you very much. You all can resume
6 your deliberations. And if you would take the alternates
7 back into the -- yeah.

8 (The jury exited the courtroom to resume their
9 deliberations on the verdict at 8:37 p.m.)

10 (The following proceedings were had outside the presence
11 of the jury.)

12 THE COURT: You may be seated.

13 Any exception to the Court's additional instructions
14 from the plaintiff?

15 MR. WILLEY: No, your Honor.

16 THE COURT: From the defense, Mr. Cox?

17 MR. COX: No, your Honor.

18 THE COURT: From the defense, Mr. Ford?

19 MR. FORD: No, your Honor.

20 THE COURT: From the defense, Ms. Wesley?

21 MS. WESLEY: No, your Honor.

22 THE COURT: We'll await further instructions from the
23 jury.

24 All right. We'll be at ease until we get further
25 instructions from the panel.

1 (Court recessed.)

2 (Court resumed outside the presence of the jury.)

3 (Court's Exhibit Number 33 marked for the record.)

4 THE COURT: You may be seated.

5 We have a note from the jury, and it reads as follows:

6 "Your Honor, we'd like to end deliberations tonight and
7 resume in the morning, if that's acceptable."

8 And of course, that is acceptable.

9 Any exceptions from the plaintiff?

10 MR. WILLEY: No, your Honor.

11 THE COURT: From the defense, Mr. Cox?

12 MR. COX: No, your Honor.

13 THE COURT: Mr. Ford? Oh, I'm sorry. Ms. Tillman?

14 MS. TILLMAN: No, your Honor.

15 THE COURT: And Ms. Wesley?

16 MS. WESLEY: No, your Honor.

17 THE COURT: All right.

18 Please bring in -- they should be right behind me.

19 THE BAILIFF: Yes, ma'am.

20 (The jury entered the courtroom at 10:16 p.m.)

21 THE BAILIFF: All jurors are present and seated, your
22 Honor.

23 THE COURT: Thank you, Mr. Pryor.

24 You may be seated.

25 Ladies and gentlemen, we received your note, and of

1 course you are welcome to adjourn for the evening and resume
2 deliberations in the morning. During this break, please do
3 not discuss the case with anyone else, including among
4 yourselves. Please don't do any independent research of any
5 type. I'm not aware of any media accounts about this case,
6 but if there are any, do not read, watch, or listen to them.
7 Please come directly to your jury room in the morning at 9:00
8 a.m. As soon as all of you arrive, the evidence will be
9 placed back in the room, along with your notes. And as soon
10 as all 12 of you re-assemble, you'll be able to begin your
11 deliberations.

12 And of course, we'll keep the alternates again in the
13 separate room -- I'm sorry, the separate deliberation room.

14 Hope you all have a good evening. We'll see you in the
15 morning at 9:00. And if y'all need -- if anybody feels the
16 need to be escorted to their car, let the deputies know and
17 we'll have -- and we'll get somebody to take you to the
18 shelter, sir.

19 THE BAILIFF: Your Honor?

20 THE COURT: Yes.

21 THE BAILIFF: Can you get two? We have another female
22 that can't get ahold of anybody. She needs a ride home.

23 THE COURT: Okay. Let's see. We got two people.

24 THE BAILIFF: Yes.

25 THE COURT: Johnny-on-the-spot. We got you covered.

1 Y'all have a good night.

2 (The jury was released for the day and exited the
3 courtroom at 10:17 p.m.)

4 (The following proceedings were had outside the presence
5 of the jury.)

6 THE COURT: You may be seated.

7 All right. Is there anything we need to take up before
8 we adjourn for the evening from the plaintiff?

9 MR. WILLEY: We have a matter of law.

10 THE COURT: Yes, sir.

11 MR. WILLEY: I'm kidding. No, your Honor.

12 THE COURT: Oh.

13 MR. WILLEY: That was a joke. Sorry.

14 THE COURT: And I'm just following him right up, right
15 on down the path.

16 Anything further, Mr. Cox or Mr. Cooke or Mr. Johnson?

17 MR. COX: No, your Honor.

18 MR. COOKE: No, your Honor.

19 MR. JOHNSON: No, your Honor.

20 THE COURT: In unison. That was great.

21 Anything further, Mr. Ford?

22 MR. FORD: No, ma'am.

23 THE COURT: Ms. Wesley, anything further?

24 MS. WESLEY: No, your Honor.

25 THE COURT: Ms. Honeycutt, you got somebody to cover for

1 you tomorrow?

2 MS. HONEYCUTT: I do. Ms. Smith will be here tomorrow.

3 THE COURT: Perfect. Enjoy your trip. Think about us
4 while you're gone. Hope you packed this weekend.

5 MS. HONEYCUTT: I packed last night. Thank you.

6 MR. WILLEY: What time, your Honor?

7 THE COURT: 9:00.

8 MR. WILLEY: 9:00.

9 THE COURT: See y'all in the morning. Have a good
10 evening.

11 (Court recessed at 10:18 p.m., to resume at 9:00 a.m.,
12 Tuesday, April 4, 2023.)

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1 (Court resumed at 9:13 a.m., Tuesday, April 4, 2023,
2 when the jury resumed their deliberations on the verdict.)

3 (The jury indicated they had a verdict at 11:38 a.m.)

4 (Court resumed outside the presence of the jury.)

5 THE COURT: You may be seated. Good morning.

6 We now have a verdict. Is there anything before we
7 bring in the jury from the plaintiff?

8 MR. WILLEY: No, your Honor.

9 THE COURT: From the defense, Mr. Cox?

10 MR. COX: No, your Honor.

11 THE COURT: Mr. Ford?

12 MR. FORD: No, your Honor.

13 THE COURT: Ms. Wesley?

14 MS. WESLEY: No, your Honor.

15 THE COURT: Please bring in the jury.

16 THE BAILIFF: Yes, ma'am.

17 MS. WESLEY: I guess I should mention, your Honor,
18 Mr. Quattlebaum had a medical thing that he had to attend to
19 this morning.

20 THE COURT: That's fine.

21 MS. WESLEY: That's why he's not here.

22 THE COURT: Yeah, that's fine.

23 (The jury entered the courtroom at 11:54 a.m.)

24 THE BAILIFF: Jury's all present and seated, your Honor.

25 THE COURT: You may be seated.

1 Mr. Foreman, is it correct that the jury has reached a
2 verdict?

3 JURY FOREPERSON: That is correct.

4 THE COURT: If you would give the verdict forms to the
5 bailiff for me, please.

6 Madam Clerk, are you ready to publish the verdict?

7 CLERK OF THE COURT: The State of South Carolina, in the
8 Court of Common Pleas, Ninth Judicial Circuit, Case Number
9 2019-CP-10-00061, Darleen Rash, Individually and as Personal
10 Representative of the Estate of Bronson Harley Rash, versus
11 Dominion Energy of South Carolina, previously South Carolina
12 Electric & Gas Co.; Anthony M. Akbar; and Paul Quattlebaum.

13 Do you find that the defendant Dominion Energy of South
14 Carolina was negligent and that such negligence proximately
15 caused the plaintiff's injuries?

16 Answer: No.

17 Do you find that the plaintiff Anthony M. Akbar was
18 negligent and that such negligence proximately caused the
19 plaintiff's injuries?

20 Answer: No.

21 Do you find that the defendant Paul Quattlebaum was
22 negligent and that such negligence proximately caused the
23 plaintiff's injuries?

24 Answer: No.

25 Do you find that Bronson Harley Rash was negligent and

1 that such negligence proximately caused his injuries?

2 Answer: No.

3 Signed Foreperson of the Jury, dated April 4, 2023.

4 THE COURT: Verdict is entered in favor of the defense.

5 Is there any request to poll the jury from the plaintiff?

6 MR. WILLEY: Yes, your Honor.

7 THE COURT: Madam Clerk, if you would poll the jury,
8 excluding the alternates.

9 CLERK OF THE COURT: Ladies and gentlemen of the jury,
10 when I call your juror number, if you will please just raise
11 your hand. I will ask you each two questions. Please answer
12 either yes or no.

13 Juror Number 169, is this your verdict?

14 JUROR: Yes.

15 CLERK OF THE COURT: Is this still your verdict?

16 JUROR: Yes.

17 CLERK OF THE COURT: Juror Number 31, is this your
18 verdict?

19 JUROR: Yes.

20 CLERK OF THE COURT: Is this still your verdict?

21 JUROR: Yes.

22 CLERK OF THE COURT: Juror Number 288, is this your
23 verdict?

24 JUROR: Yes.

25 CLERK OF THE COURT: Is this still your verdict?

1 JUROR: Yes.

2 CLERK OF THE COURT: Juror Number 187, is this your
3 verdict?

4 JUROR: Yes.

5 CLERK OF THE COURT: Is this still your verdict?

6 JUROR: Yes.

7 CLERK OF THE COURT: Juror Number 291, is this your
8 verdict?

9 JUROR: Yes.

10 CLERK OF THE COURT: Is this still your verdict?

11 JUROR: Yes.

12 CLERK OF THE COURT: Juror Number 245, is this your
13 verdict?

14 JUROR: Yes.

15 CLERK OF THE COURT: Is this still your verdict?

16 JUROR: Yes.

17 CLERK OF THE COURT: Juror Number 5, is this your
18 verdict?

19 JUROR: Yes.

20 CLERK OF THE COURT: Is this still your verdict?

21 JUROR: Yes.

22 CLERK OF THE COURT: Juror Number 141, is this your
23 verdict?

24 JUROR: Yes.

25 CLERK OF THE COURT: Is this still your verdict?

1 JUROR: Yes.

2 CLERK OF THE COURT: Juror Number 109, is this your
3 verdict?

4 JUROR: Yes.

5 CLERK OF THE COURT: Is this still your verdict?

6 JUROR: Yes.

7 CLERK OF THE COURT: Juror Number 105, is this your
8 verdict?

9 JUROR: Yes.

10 CLERK OF THE COURT: Is this still your verdict?

11 JUROR: Yes.

12 CLERK OF THE COURT: Juror Number 132, is this your
13 verdict?

14 JUROR: Yes.

15 CLERK OF THE COURT: Is this still your verdict?

16 JUROR: Yes.

17 CLERK OF THE COURT: Juror Number 201, is this your
18 verdict?

19 JUROR: Yes.

20 CLERK OF THE COURT: Is this still your verdict?

21 JUROR: Yes.

22 CLERK OF THE COURT: Your Honor, the jury has been
23 polled and the verdict stands.

24 THE COURT: Mr. Foreman, ladies and gentlemen, we thank
25 you for your time and your attention to this case. To say