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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Appellate Case No. 2024-001749

The Honorable Donald B. Hocker, Circuit Court Judge

State of South Carolina.....Respondent,

v.

William Gray Ackerman Jr. Appellant.

RECORD ON APPEAL
VOLUME III

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(State's Exhibits

- **No. 1A, 1B, 1C, 1D - DVDs; and**
- **No. 2 - videos - are all on file with this Court.)**

1 which would correspond to the left side of his skull which
2 shows a fracture as well.

3 Q And what can cause that type of injury?

4 A So any kind of significant impact, blunt impact can cause
5 that.

6 Q And looking at his mouth area here, and we're going to get
7 to it in a minute, but was there any damage to Davis
8 McClendon's mouth and or this area?

9 A The soft tissue, yes, but it's not something you can see
10 on the x-ray.

11 Q Okay. And was his mouth bleeding when you saw him? Was
12 there blood in his mouth area?

13 A There was blood present, yes.

14 Q Alright. Okay. Have a seat back, thank you. Doctor, how
15 many, on your external evidence of injury, how many, how many
16 did you find? External evidence of injury on Davis
17 McClendon?

18 A So in terms of how I documented it, I basically create a
19 list, now, some of those listed items are actually a series of
20 more than one injury, but on the list in my report, I have 22
21 separate items under external evidence of injury.

22 Q Okay. And doctor, do you also prepare what I call body
23 diagrams?

24 A Yes.

25 Q And I want to show you what's marked State's 55

1 and State's 56. Do these, you recognize these, and do they
2 relate to what you're talking about right now?

3 A Yes.

4 Q Would these aid you in your testimony?

5 A Yes.

6 MR. MEADORS: 55, 56 without objection, Your Honor.

7 THE COURT: Without objection, Mr. Swerling?

8 MR. SWERLING: That's correct.

9 THE COURT: Okay. 55, 56 into evidence.

10 (Whereupon photos were submitted as State's Exhibit
11 Numbers 55 and 56 for identification and entered into
12 evidence.)

13 Q Can we start with your external injury?

14 A Sure.

15 Q And I would, would it help to put this on the Elmo now or
16 you want to go through your ---

17 A Personally, I think it's useful to have the visual
18 representation for people.

19 Q This is State's 55.

20 THE COURT: And you can go back to the screen if you
21 feel like you need to.

22 A Thank you.

23 Q Doctor, you're in control, so starting with your external
24 evidence of injury, can you just start with number 1 and
25 go?

1 A It would probably be better to go to the other diagram
2 that focuses on the head.

3 Q I apologize, State's 56.

4 A So I'm going to go in order of the autopsy report and then
5 I'll try to reference those as best I can on the diagram as I
6 go on.

7 Q Thank you.

8 A So we'll basically start with the large laceration, up to
9 two inch laceration with some imbedded leafy debris on the back
10 of his head, so that's the right upper corner of the diagram
11 that you're looking at on the screen. Right in the middle of
12 the back of his head, the lower part of that skin was
13 undermined or flapped. Basically, what that means is that when
14 that injury was incurred that the head struck something and it
15 slid or moved against that in order for that lower part of the
16 skin to be partially pulled away, so that's an impact and
17 sliding motion.

18 Q Was there blood, I mean, did you see blood when you
19 examined the external part of his head?

20 A Yes.

21 Q With the injury you're talking about?

22 A Yes.

23 Q Okay.

24 A And then around that and associated with that was a little
25 bit of abrasion. A little above and to the left as you look at

1 that same part of the diagram is another smaller abrasion on
2 the back of his head. I'll shift now to the front part of his
3 face which is the upper left of that diagram where there is a
4 little bit of faint periorbital hemorrhage which is around the
5 eye, so that's ---

6 Q Let me stop you. What does that mean?

7 A Periorbital is, again, just around the eyes, so it means
8 there's some bleeding that's visible there, and in this
9 particular case, that is probably a result of blood settling
10 from a skull fracture just above the eyes. We'll talk about
11 the internal fractures a little bit later.

12 Q Okay.

13 A Then on the tip of his nose was a approximately one inch
14 faint red bruise or contusion. We're going to go to the bottom
15 right of the diagram. So extending from his left eye over
16 basically above his left ear is an area of red, faint red to
17 slightly blue bruising or contusion, it's about a five by two
18 inch area. On the left cheek on the same diagram is a faint,
19 approximately three quarters by one half inch vaguely patterned
20 red bruise, it's quite faint, it's just a little bit squared
21 off so there's a little bit of a pattern to it. And then just
22 behind the left ear is an area of contusion or hemorrhage up to
23 about three inches. The injury near his eye and above his ear
24 as well as the injury on his left cheek are a result of blunt
25 impact whereas the hemorrhage behind the ear and below the ear

1 there is most likely a result of, again, the settling of blood
2 related to a skull fracture basically runs in between the
3 ears, and we'll get to the skull fractures in more detail
4 later.

5 Q And doctor, you're looking at this with your own eyes,
6 taking pictures, and then you go document it and use a body
7 diagram to help you later, like you're doing now?

8 A Correct.

9 Q Okay.

10 A Next we'll go to the front part of the face again, which
11 is the upper left part of the diagram, we're going to be
12 looking at his lips. So on the outer aspect of his upper lip
13 there's a one inch laceration into the soft tissue of the lip.
14 And then on the inside of the upper lip in the same location
15 was a corresponding approximately one inch laceration. It
16 didn't quite go all the way through, but there's a laceration
17 on both sides there. And then ---

18 Q And did that bleed?

19 A Yes, there was blood around that, yes.

20 Q Okay.

21 A On the outer aspect of the lower lip there's about a three
22 quarters inch laceration that went all the way through,
23 perforated all the way through the lip.

24 Q Perforated all the way through the lip?

25 A All the way through the lip.

1 Q And I don't want you to touch my lip, but that means it
2 just went all the way through?

3 A All the way through, yes. So you could pinch all the way
4 through. Then below that on the inside of the mouth, basically
5 the inside of the lip had partially torn away from the chin
6 bone, the mandible. So there was again, a larger laceration,
7 that's what we call an avulsion where it partially pulls away
8 from the bone itself.

9 Q Okay. So that means, was the skin separated from the
10 bone?

11 A Basically, yes. The soft tissue, the mucosa on the inside
12 of the mouth below, kind of below the gumline, but where it
13 attaches to the area, it had pulled away from the front part of
14 the chin. There was also a small chip or fracture of one of
15 the upper incisors, the upper teeth. On the front part of the
16 chin itself, there was a up to about one and a half inch faint
17 red bruise. And then if we go to the bottom middle of the
18 diagram, we can see below the chin, so under the chin is an
19 additional one and a quarter inch red bruise. And I think that
20 covers this particular diagram before we move to the next
21 diagram.

22 Q So we'll go to State's 55.

23 A So we'll start pretty much from top down. So near the
24 base of the neck where the clavicles are, as I indicate on
25 myself, either side, there was ---

1 Q I don't know if the jury saw that, your clavicles are
2 where touching you?

3 A Approximately here, there's one on each side.

4 Q Okay. I'm sorry.

5 A So it's that little bone right there. There was bruising
6 over each of those locations to about one and a half inch on
7 one side and an inch on the other side.

8 Q And based on your training and looking at Mr. McClendon,
9 what could have caused that injury?

10 A So when we start talking about how things are caused, it's
11 usually best instead of looking at individual injuries, look at
12 the constellation of injuries. So this constellation of
13 injuries, it's blunt trauma, but it's also consistent with the
14 investigative information that indicates a vehicle being
15 involved. So we have several injuries to the face and head, to
16 the clavicles, and also to the right shoulder which we'll talk
17 about that are consistent with a frontal impact at least to
18 those particular areas. But individually, each of those would
19 be considered a blunt impact.

20 Q Okay. I won't interrupt you much again, I'm sorry.

21 A No problem. Then over the middle of the chest are some
22 small bruises, up to about one inch, that's that little part
23 there. On the lower abdomen are about half inch abrasion with
24 some bruising and an additional very small red abrasion. Then
25 towards the right side of the waist, waistline area, about the

1 top part of the right hip there's a very dark, dry abrasion of
2 up to about one and a half inches. Now, we're going to go to
3 the back part of the torso, so we're going to shift over and we
4 can see on the back basically from the shoulders all the way
5 down to the upper buttock region, there's a very large area of
6 patchy extensive abrasion and it is in a pattern that is
7 consistent with what people, what can also be described as road
8 rash. Basically, how this occurs is the entire back part of
9 the body is laying on a flat, rough surface and slides along it
10 or they slide along each other. So this is a pretty typical
11 finding that we characterize commonly as road rash. Then on
12 the right buttock, there are a couple of, excuse me, or a one
13 and a half inch patchy bruise there. And now we'll move to the
14 right shoulder, so we're kind of going back over the other
15 diagram. So on his right shoulder there's a four by one and a
16 half inch area of patchy bruising, again from blunt impact. On
17 the front part of the right wrist, so down near the right hand
18 there's an additional bruise across the front of the wrist.
19 And then on the right hand and fingers are several superficial
20 abrasions up to about a quarter of an inch. That can occur
21 from lots of different things, but it can occur from basically
22 striking rough ground and partially being drug across rough
23 ground. On the left hand are three very tiny punctate, when I
24 say punctate, I just mean it's very tiny like the tip of a pen
25 or pencil abrasions. Again, likely from similar kinds of

1 impact or slight scraping against rough material. There was a
2 palpable fracture of the right femur, so the femur is the large
3 bone between the hip and the knee, so his right thigh bone had
4 been broken, that was located approximately 26 inches above
5 the, the fracture was approximately 26 inches above his heel.
6 On the outside of the lower right thigh extending below the
7 right knee to the outside of the right leg, so that's on the
8 left side of this diagram, is a large area of faint red
9 bruising and some patchy abrasion. And then on the inside of
10 the right leg, so if we move a little bit over on the diagram
11 to see the other part of the, yeah, just like that. So on the,
12 the part of the diagram on the right is back so the right side
13 is the right leg whereas on the left side of the diagram the
14 left side is the right leg. So corresponding on the inside of
15 the lower right thigh to beyond the knee to the right leg area
16 below the knee, is an additional area, fairly large area of dry
17 abrasion and some bruising. Those two areas together could
18 have occurred as part of the same process basically with
19 something pressing on the inside of the leg and creating an
20 injury there which then compressed the outside of the leg into
21 an additional surface which produced injury on the outside, so
22 you have corresponding, approximately corresponding injury on
23 the inside and the outside. The inside injury would
24 approximately correspond to the black mark that we saw on the
25 clothing if the clothing was being worn normally.

1 Q And would that be consistent with a tire on a vehicle?

2 A Yes. And then looking at the left thigh, so we'd have to
3 go up just a little bit on the diagram, there we go, towards
4 the top left part of the diagram we see two parallel marks on
5 his left thigh, that was about 28 inches above the heel and
6 that's an area of bruising with a focal area that has a little
7 bit of a horizontal pattern that we see on that part of the
8 diagram, that's again about 28, 28 and a half inches above his
9 heel.

10 Q You're talking about up here?

11 A Correct.

12 Q Okay.

13 A And then elsewhere on his right leg was a three and a half
14 inch abrasion. On the inside of his left ankle was a faint
15 bruise, and on the back of his left ankle is a very small
16 abrasion.

17 Q The injury here, is that consistent with anything in this
18 case based on your examination?

19 A It's about context, but in this context, especially given
20 that the right femur is fractured close to the same level and
21 the right femur is fractured approximately 26 inches above the
22 heel, and this faintly patterned injury on the left is about 28
23 and a half inches, so two, two and a half inches difference
24 which is, you can shift your hips to basically create that much
25 difference. It's again consistent with a very significant

1 impact that broke one side and just caused some bruising on the
2 other side. It's certainly not an unusual injury pattern or
3 injury constellation related to a vehicle impact. I think that
4 covers the external evidence of injury as it happened.

5 Q And I want to stop you, if we showed it, I apologize to
6 everybody. You just talked about the femur, this is 228, is
7 that the injury you talked about, the femur?

8 A Yes. That's a pretty obvious fracture of the right femur,
9 that's an x-ray, excuse me, an x-ray of a pretty obvious
10 fracture of the right femur.

11 Q And when I went up and pointed to it a minute ago, is what
12 you were talking about correspond with that on the other leg --
13 -

14 A Yes.

15 Q --- the injury?

16 A Yes. So the right side had the fracture, the left side
17 had the bruising that was visible on the skin surface.

18 Q I checked off 22 on your report, external evidence of
19 injury. Do you disagree with that?

20 A Pardon?

21 Q The external injury, have you gone through ---

22 A I believe I have; I believe I mentioned that as well.

23 Q Yes, sir. Okay. Dr. Kyle Shaw, after you examined Davis
24 McClendon's exterior, what do you do next generally, and what
25 did you do next with his body?

1 A So then once we've gathered everything we need to from the
2 external and taken our photographs and all those kinds of
3 things and move on to the internal part of the examination and
4 then document from there.

5 Q And I'm looking at your report which the Defense has, page
6 4 of 7. Can you start with the internal evidence of injury
7 that you, Dr. Kyle Shaw, found inside Davis McClendon?

8 A Sure. And again, we go mostly from the top down. So ---

9 Q And, I don't mean to, are you opening his body and looking
10 inside?

11 A Yes.

12 Q Okay.

13 A Yes. So there's a large incision that is made basically
14 from the shoulders to the middle of the chest and that incision
15 goes down to basically the pelvis and we open the body up and
16 look at the internal organs. For the head there's, an incision
17 is made across the top of the head, and the scalp is reflected
18 front and back, so we can see the outside part of the skull as
19 well as the underside, to the scalp. And then part of the top
20 of the skull is removed and we're able to examine the brain and
21 the inside part of the skull, what we call the base of the
22 skull. So yes, all those organs and tissues are normally
23 examined.

24 Q And really, that's the only way to do it, isn't it?

25 A It is.

1 Q Okay. Alright. So, so, and you're actually literally
2 opening him up and look at his brain and start going
3 down?

4 A Yes.

5 Q Okay. Well, let's start with number 1.

6 A So again, going in order of the autopsy report, his scalp
7 was reflected and showed about a three inch hemorrhage beneath
8 the scalp on the left side of his head, approximately,
9 underlying the area of bruising that was beside his eye and
10 above his ear. There was also about a four inch area of
11 hemorrhage on the back of his head associated with a large
12 laceration right on the back of his head. There was a small
13 amount of what we call subdural blood smearing, so just for
14 explanatory purposes, inside the skull we have different areas
15 that we describe bleeding. So subdural bleeding is blood that
16 is loose on the outer surface of the brain, so it's between the
17 skull and the brain and it can be fluid blood that kind of
18 moves around the surface of the brain.

19 Q And what causes that?

20 A In this case, that's secondary to blunt trauma. There can
21 be other causes, but in this case it's blunt trauma. There was
22 additional what we call subarachnoid hemorrhage and the
23 difference between subdural and subarachnoid hemorrhage is that
24 subarachnoid hemorrhage is stuck to the surface of the brain,
25 there's basically a fine membrane that sits on the surface of

1 the brain, and that bleeding is just below that membrane where
2 we can see it.

3 Q And again, that could be caused by?

4 A Blunt trauma. So there was fairly patchy, extensive what
5 we call subarachnoid hemorrhage on the surfaces of the brain in
6 several locations on the brain. That's related to, some of
7 it's related to fractures of the brain, the bone itself impacts
8 the brain, but during these dynamic incidents, the brain moves
9 around, and so there can be different areas of the brain that
10 get injured. There were some very minimal areas of bruising we
11 call cortical contusions, but it's bruising in the substance of
12 the brain itself. They were not extensive, but they were
13 noticeable. That included the underside of the frontal lobe as
14 well as on the outside of the left temporal lobe, again,
15 approximately where I'm indicating on myself. And there was
16 tearing or laceration of part of the brain called the
17 cerebellum in the back, back part of the head, again, roughly
18 as I'm indicating on myself back here.

19 Q Now, doctor, you love your job, don't you?

20 A Yes.

21 Q What does cortical mean?

22 A Cortical means surface in this context, we talk about the
23 cortex of the brain, we're talking about the tissue around the
24 outer surface of the brain. There were some additional small
25 hemorrhages in the brain stem extending to the basal ganglia

1 above the brain stem, again, just small areas of bruising or
2 hemorrhage inside the substance of the brain itself.
3 There was additionally bleeding, what we call
4 intraventricular hemorrhage, so that's bleeding within some of
5 the normal cavities inside the brain. So there's normal spaces
6 that are inside the brain and there was blood in
7 those.

8 Q Number 7?

9 A There were fractures of what we call, I'll explain this a
10 little bit more after I mention fractures of the anterior
11 fossa, a middle hinge, this is all part of the skull, middle
12 hinge fracture, a fracture through the back part of the skull,
13 additional fractures on the left side of the base of the skull,
14 and again, another fracture towards the back. So a, what we
15 call the anterior fossa of the base of the skull, it's that
16 part of the skull that sits right above the eyes. That part of
17 the bone of the skull is extremely thin, it's very common for
18 it to fracture even if there's an impact to the back of the
19 head, that bone just above the eyes can actually fracture.
20 What we call a middle hinge fracture is in the base of the
21 skull, basically between the ears, fractures, and so that part
22 of the skull can rotate like a hinge because it's broken. And
23 there were some additional fractures, the one substantial
24 fracture was through the back part of the skull, it went all
25 the way down to where the brain stem connects to the spinal

1 cord. Some very severe, significant skull fractures.

2 Q Alright. And what could have caused that?

3 A That would be a very substantial blunt impact, possibly
4 more than one impact, so it could be an impact, we can see
5 bruising on the scalp on the left side of the head, that's one
6 significant area of impact. We can see injury to the front
7 part of the mouth which is another area of impact, and we have
8 a very large laceration to the back of the head which is a
9 significant area of impact. So there's an impact here, there's
10 an impact here, that could be part of the same process and
11 impacting here and sliding sideways and then of course, the one
12 in the back of the head which had some leafy, soil type debris
13 in it which is consistent with impacting ground and sliding
14 across the ground. Again, moving down the internal evidence of
15 injury section, there were some hemorrhages in the tongue,
16 three hemorrhages across the tongue.

17 Q What does that mean across the tongue?

18 A Yeah. So there's bruising within the tongue itself, that
19 could be related to impacts that occurred to the front part of
20 the mouth with part of the tongue being injured as part of that
21 process, that would be the likely explanation.

22 Q Okay.

23 A There was additional hemorrhage just left of the cervical
24 spine, which is the neck part of the vertebrae, and part of the
25 spine. That hemorrhage basically went from the left side of

1 the neck all the way across the front part of the neck. There
2 was some partial separation of what's called a hyoid bone,
3 which is up here in the upper part of the neck, and there was
4 fracture of the larynx as well as part of this whole process.
5 So the larynx is kind of the voice box in the front part of the
6 neck.

7 Q So there's a fracture of that larynx?

8 A Yes. Larynx is made out of cartilage, it's a little bit
9 flexible, but it can fracture as well, if it's bent far enough
10 it'll still fracture. That hemorrhage basically extended all
11 the way down to the level of the clavicles.

12 Q I've checked off 11, number 12?

13 A I looked at the back part of the neck, again, for
14 additional injuries, a little bit of an additional examination
15 to see if there was more obvious injury to the back part of the
16 neck. There was hemorrhage that extended from the laceration
17 all the way down to the upper part, the back of the neck, but I
18 did not find a neck fracture. There was a very small amount of
19 blood in each chest cavity, about 50 milliliters on the right
20 and 25 on the left, it's a very small amount which is probably
21 just coming down from the upper injuries of the neck and kind
22 of ooze down and get in there. I did some additional
23 examination of the lower extremities because of the, of the
24 external injuries that we saw and anytime that there's a, well,
25 in certain pedestrian type cases I'll do what we call cut downs

1 of the extremities and there was some hemorrhage related to or
2 around the area of the right femur fracture and then
3 extending down to around the knee and roughly the area of,
4 the area of abrasion that we saw and described on the right
5 leg.

6 Q What if anything did that tell you as a forensic
7 pathologist, those injuries?

8 A It basically just supports what we already saw in the
9 external exam. Part of the reason we do that internally is
10 that occasionally we have cases where we don't see very much on
11 the outside, but when we do these what we call cutdowns of the
12 subcutaneous issues, sometimes there's fairly substantial
13 injury, because it doesn't involve bone that we always see on
14 the x-ray and because it doesn't visually involve skin, we
15 don't always see it during the external exam. So in certain
16 cases but not all cases we do that additional, or I would do
17 that additional examination.

18 Q This may be a terrible question, but the internal injuries
19 were consistent with the external?

20 A Yes.

21 Q Basically?

22 A Yes.

23 Q Okay. After you completed the internal exam, and in that
24 I counted 22 external evidence of injury and 14 internal
25 evidence of injury, do you disagree with that?

1 A That's how I have it documented. Again, within each line,
2 I sort of, these numbers are related to lines of descriptions,
3 so within those lines sometimes there's two or three or more
4 injury, individual injuries, so it's kind of a reference point,
5 but yes, I believe you said 22 and 14, correct.

6 Q And once you got through, and you kind of went through his
7 whole body?

8 A Yes.

9 Q Do you do any, what do you do next? Do you gather any
10 blood or what do you do?

11 A As part of the internal examination, we do collect
12 specimens, it's usually, it's various fluid specimens, so it's
13 usually, if we can get it, fluid from the eye, urine, and blood
14 for various purposes, but primarily for toxicology purposes or
15 potential toxicology analysis.

16 Q And are you familiar with the toxicology results in this
17 case?

18 A I have seen it, yes.

19 Q And what were those? Was it a point 11, basically, the
20 toxicology?

21 A That's my recollection, I don't have that report in front
22 of me, however.

23 Q Alright.

24 MR. MEADORS: And I think we've both reviewed this
25 with you earlier ---

1 MR. SWERLING: Correct.

2 MR. MEADORS: --- correct? I mean everybody's seen
3 it. Your Honor, just, I don't think there's any objection for
4 him just referring to that.

5 Q Is that the toxicology report?

6 A Yes, it is. This is the toxicology report issued by the
7 South Carolina Law Enforcement Division or SLED. And they
8 perform a lot of the postmortem toxicology for us.

9 Q So fluids come from, it's not unusual to come from an
10 autopsy to SLED, right?

11 A Correct.

12 Q Okay. And one of those findings was a point 11 in Davis
13 McClendon as far as alcohol, correct?

14 A Basically, yes. So there's some of the ocular fluid that
15 was taken from the eye was analyzed. The ethanol or alcohol
16 result from that was point 118. And then it was also performed
17 in blood that was taken and that was reported as point 110.

18 Q In addition to that, was there evidence of some prescribed
19 Adderall?

20 A Yes. So that gets reported as what's called amphetamine.
21 That's not the same as methamphetamine, methamphetamine can
22 turn into amphetamine, but normally we see them both together.
23 In this case there was just amphetamine, and that's consistent
24 with a reported history of attention deficit disorder which can
25 be treated by something called Adderall or similar medications

1 which in toxicology we see as amphetamine. The level that's
2 reported here is 120 nanograms per milliliter, and to the best
3 of my understanding that would be within prescribed ranges.

4 Q Okay. Now, doctor, going back to the injuries you've
5 described, how many autopsies have you performed on vehicle
6 pedestrians that you knew were a vehicle pedestrian, is that a
7 fair question?

8 A Sure. So just on pedestrians, I haven't calculated that
9 number, I don't know precisely, I would estimate in the
10 neighborhood of a hundred or so.

11 Q And you've described the injuries to Mr. McClendon's
12 mouth, this area, and have you seen the picture of the Ford
13 F250?

14 A I have, yes.

15 Q Okay. And I think it's 49, but I ask, Ms. Danielle Colon
16 is pulling that up.

17 MR. MEADORS: Your Honor, I misspoke, this is exhibit
18 18. Photo 814 on exhibit 18 for the record.

19 THE COURT: Okay.

20 MR. MEADORS: Sorry.

21 Q And doctor, can you see that?

22 A Yes.

23 Q And you've seen this before?

24 A Maybe not this specific picture, but a similar picture of
25 a little bit wider view, but I recognize the damage.

1 Q And based on your examination of Davis McClendon and
2 looking at this truck, are those injuries on Davis McClendon
3 consistent with injury to this truck? Did this truck cause
4 those injuries to his face?

5 A Yes, I think so.

6 Q And the injuries, the femur that's broken and the other
7 injury with the two parallel lines I pointed out up there,
8 how could those injuries been received in this case based on
9 your training and observation of Davis and the
10 evidence?

11 A So typically, when there's a leg fracture, it's usually
12 related to a bumper or something that's protruding slightly
13 from the vehicle. There can be other explanations, but that's
14 the typical way that that occurs.

15 Q And these injuries, I think you testified, were pretty
16 close inch wise?

17 A Pretty close in height from, in terms of distance from his
18 heel which is an estimate or an approximation of the standing
19 position.

20 Q And you described an injury to the back of Mr. McClendon's
21 head, trauma to the back?

22 A Yes.

23 Q Were you aware that he, where he landed? Have you seen
24 those pictures?

25 A I've seen scene photos.

1 Q And are the injuries on the back of his head consistent
2 with where he would have landed?

3 A Yes.

4 Q Did these injuries just, did they knock him out, did he go
5 unconscious?

6 A So with the injuries that involve his skull with the
7 multiple skull fractures and severe fractures, I think most
8 likely upon receiving those injuries he probably would have
9 lost, I would be surprised if he did not lose consciousness.

10 Q Okay. So in your opinion as a forensic pathologist, would
11 he have been able to speak after these ---

12 MR. SWERLING: I'm sorry, I couldn't hear, what?

13 Q Would he have been able to speak after receiving these
14 injuries, speak?

15 MR. SWERLING: Oh.

16 A In my opinion, no, not likely.

17 Q Okay. And his ultimate demise would have been how long
18 would you say?

19 A Hard to know for sure, but these injuries are significant
20 and severe. The injury to his head is likely to have impacted
21 his ability to breathe, so loss of consciousness and then loss
22 of control, even subconscious control of vital functions such
23 as breathing would be reasonably likely. So that could, death
24 could occur anywhere from a few minutes later to potentially
25 hours later. But more likely on the order of minutes depending

1 on how badly he lost function. I don't have a clear way of
2 knowing that for certain.

3 Q Would he have been able to get up and fight?

4 MR. SWERLING: I'm sorry, I can't ---

5 Q Would he have been able to get up and fight?

6 A No, not in my opinion.

7 MR. MEADORS: Beg the Court's indulgence.

8 THE COURT: Sure.

9 Q Would you please tell the ladies and gentlemen of this
10 jury, Dr. Kyle Shaw, do you have an opinion to a reasonable
11 degree of medical certainty as to the cause of death of Davis
12 McClendon?

13 A Yes. My opinion of cause of death is multiple blunt force
14 injuries due to pedestrian struck by a motor vehicle.

15 MR. MEADORS: That's all we have. Thank you, Your
16 Honor.

17 THE COURT: Mr. Swerling, any cross examination?

18 MR. SWERLING: Yes, sir, just brief. Indulge me one
19 moment?

20 THE COURT: Sure.

21 MR. SWERLING: Thank you.

22 **CROSS EXAMINATION**

23 BY MR. SWERLING:

24 Q Doctor, there really is no dispute about the fact that the
25 injuries that Mr. McClendon suffered was a result of the

1 automobile situation, about being hit by a car, correct? I
2 mean, you haven't seen anything to dispute that?

3 A I have not.

4 Q And we haven't even raised that issue, have we?

5 A Not to me.

6 Q As far as you know?

7 A (Nonverbal response).

8 Q But there were multiple injuries of blunt force trauma,
9 correct?

10 A Yes.

11 Q Okay. And you've seen, what did you say, at least 50
12 pedestrian, or was it more than that?

13 A It's probably more than that, it's probably in the
14 neighborhood of a hundred, give or take, that I've personally
15 done.

16 Q Okay. And injuries such as this are consistent with
17 pedestrians that get struck by vehicles?

18 A Correct.

19 Q Correct?

20 A Yes.

21 Q It's most unfortunate, but these are, that's what happens
22 when somebody gets hit by a car?

23 A Yes.

24 Q Multiple fractures and abrasions and the road rash and all
25 of the things that you described, correct?

1 A Yes. All those things can occur.

2 Q Okay. I believe the EMS when they got there, there was
3 no, no pattern, he appeared to be dead at that point when they
4 got there. And are you aware of that, have you may have been
5 aware of?

6 A Yes. That's to the best of my understanding; I did review
7 that EMS report although it's been a while.

8 Q Okay. So I mean basically, it appears that he may have
9 died instantly, correct?

10 A Rapidly I think would be a more accurate term, but ---

11 Q Rapidly?

12 A --- yes.

13 Q And would never, he would have been hit and not had
14 consciousness at that point ---

15 A Likely ---

16 Q --- is that correct?

17 A Likely correct, yeah.

18 Q So let me just ask you a couple of other questions. I'd
19 like to ask you some questions about the toxicology report.
20 Point 118 is, you know, close to a point 12, is that, I mean,
21 fair, pretty much from my second or third grade education?

22 A Sure, if you round up.

23 Q So let me ask you this. Are you aware of the fact that in
24 South Carolina if you drive a vehicle with a point 08, there's
25 a presumption you're under the influence, correct?

1 A That's my understanding of the legal definition, although
2 I don't ---

3 Q No, I'm not asking you to opine about it, but that's what
4 your understanding is?

5 A Yes.

6 Q So this would have been over a point 08, correct?

7 A Correct.

8 Q And you understood that he was driving to where the
9 accident happened?

10 A It is my understanding that that is how he arrived at that
11 location originally.

12 Q Okay. Somebody with a point 118, as alcohol percentages
13 increase in the body, they, people, there's a change in
14 behavior, correct? I mean as far as pathology's concerned,
15 you're aware of the fact that there's an increase in, a change
16 in behavior?

17 A In some people, yes. Every individual is different, so
18 some people with a very small amount of alcohol will display
19 changes or differences whereas someone else with a much higher
20 amount may not display those changes and differences.

21 Q Right. And there's really no way to know, but some of the
22 factors that we do know that someone at a point 118, there
23 could be a change in behavior, correct?

24 A In some, in ---

25 Q Some individuals ---

1 A --- some individuals, correct.

2 Q And so we're at that level of an individual with a point
3 118, what are the signs of someone who, again, we don't know a
4 particular individual, but one of them is losing judgement,
5 correct? That's one of the things in pathology that we know.

6 A Again, in general, but just to be clear, my interpretation
7 of toxicology, in other words, what I do for a living, part of
8 my specialty really focuses on death and how and when it
9 effects the physiological cause of death, and that depends on
10 the individual case. But my interpretation is generally that
11 the intoxication level or how an individual responds is widely
12 variable, it depends on the individual case.

13 Q Alright. And I'm not asking you to opine about it, but
14 I'm just talking about general characteristics of having looked
15 at some pathology books, there are charts dealing with alcohol
16 levels in pathology books?

17 A Yes. There are some statistical ---

18 Q Statistical, right.

19 A --- tables and charts that say, you know, at or around
20 this level this can generally happen. But again, from an
21 individual point of view, it varies.

22 Q Okay. But you would agree that alcohol content increases
23 in someone, some people have impaired judgement, correct?

24 A Some people, sure.

25 Q Some people get aggressive, correct?

1 A That may happen.

2 Q Some people really have resistance to pain as the alcohol
3 increases?

4 A Again, it's highly variable.

5 Q Yeah. And I'm not trying to pin you down, I'm just asking
6 you as a, you're an expert in, a pathologist, and I haven't
7 disputed that, but as the alcohol level increases these factors
8 become an issue, can become an issue?

9 A Can.

10 Q Okay. And aggressiveness, correct? Is another factor
11 that can be, you can show if somebody can be aggressive as the
12 alcohol level increases ---

13 A Some people ---

14 Q --- correct?

15 A --- who are actually intoxicated will be more
16 aggressive, others less. It really depends on the
17 individual.

18 Q Right. Okay. Fair enough. And I just wanted from a
19 pathology standpoint, because I, having reviewed some pathology
20 books, those charts are there and I just wanted to see if you
21 agree that as the alcohol level increases, some of these
22 characteristics can be there ---

23 A They can, sure.

24 Q --- correct?

25 A Sure.

1 Q And let me ask you, Adderall, how long had he had a
2 prescription for Adderall? And Adderall sort of, tell me what
3 the effects of Adderall are from your standpoint in pathology?

4 A Sure. And again, I don't treat people with ADD, so how
5 that effects people in a prescription sense is different from
6 what I'm looking at when I look at a case for a potential cause
7 of death point of view, so those things are a little bit
8 different. So at low levels or therapeutic levels, I probably
9 would not be the best person to indicate what therapeutic
10 levels might or might not do to an individual.

11 Q Okay. I mean, as a doctor, you would agree that someone
12 who is taking Adderall, which is used for ADHD should not be
13 drinking, correct?

14 A I can't speak to that.

15 Q Okay. Would you recommend someone drink ---

16 MR. MEADORS: Your Honor, he said he couldn't speak
17 to that.

18 THE COURT: I sustain.

19 MR. SWERLING: Okay. Alright.

20 Q And so, are you aware of in pathologies are a synergistic
21 effect between alcohol and something like Adderall?

22 A I'm not aware of a classic synergistic effect as there can
23 be some other drugs and medications that are very similar types
24 of medications, so I can't speak to that specifically.

25 Q Okay.

1 MR. SWERLING: And I don't know if this was the
2 objection that you sustained --

3 Q -- but do you know what the effect of what happens when
4 someone's taking Adderall, do you know?

5 A Again, I can't speak to that ---

6 MR. MEADORS: Your Honor ---

7 MR. SWERLING: That's fine, I didn't know if that was
8 the objection or not.

9 MR. MEADORS: Yeah.

10 THE COURT: Sustained.

11 MR. SWERLING: Okay. That's all I have.

12 THE COURT: Okay. Alright.

13 MR. MEADORS: Very briefly.

14 THE COURT: Yes, sir.

15 **REDIRECT EXAMINATION**

16 BY MR. MEADORS:

17 Q Alcohol affects people in different ways?

18 A Most definitely.

19 Q Some happy?

20 A Yes.

21 Q Some sad?

22 A Yes.

23 MR. SWERLING: Objection to the leading.

24 THE COURT: Okay.

25 MR. SWERLING: I mean, I can't testify.

1 THE COURT: Okay. Alright. Rephrase Mr. Meadors, if
2 you would.

3 Q Does alcohol affect people differently?

4 A Yes.

5 Q In what way?

6 A Well, different people respond in different ways, some
7 people go into party mode, some people get depressed, some
8 people, you know, it really depends on the individual. That's,
9 again, based on cases that I've seen leading up to a death as
10 the history that I get with it as well as personal life
11 experience. But yes, everyone acts and reacts differently and
12 sometimes it's consistent from episode to episode of drinking,
13 sometimes it varies, it all depends.

14 MR. MEADORS: Thank you, Your Honor.

15 THE COURT: Alright. Dr. Shaw, you can step down.
16 You are free to leave the Courthouse, you're more than welcome
17 to remain with us, sir.

18 DR. SHAW: Thank you.

19 THE COURT: Okay. Mr. Meadors, it's my understanding
20 that the State has one more witness to call in its case in
21 chief?

22 MR. MEADORS: Yes, sir.

23 THE COURT: Do you anticipate this witness being
24 lengthy? I was just thinking about a short break before we
25 call him.

1 MR. MEADORS: I have no idea and plus ---

2 THE COURT: I'm not going to pin you down ---

3 MR. MEADORS: --- I got to use the bathroom.

4 MR. SWERLING: Put that on the record.

5 THE COURT: Alright. Okay. I appreciate you being
6 candid with the Court. Alright. Ladies and gentlemen, we're
7 going to take a short break, go back to the jury room, we'll
8 get you back out in a few minutes.

9 (Jury exiting Courtroom.)

10 THE COURT: Okay. We'll be in short recess.

11 (Off the record.)

12 THE COURT: Alright. The State ready for the jury?

13 MR. MEADORS: Yes, sir, thank you, Judge.

14 THE COURT: Defense?

15 MR. SWERLING: Yes, sir.

16 THE COURT: Okay. Let's bring the jury in, please.

17 (Jury entering Courtroom.)

18 THE COURT: Okay. Let the record reflect the jury is
19 back in. State ready to call its next witness?

20 MR. MEADORS: May it please the Court?

21 THE COURT: Yes, sir.

22 MR. MEADORS: The State of South Carolina now calls
23 Captain Mike Murdock.

24 THE COURT: Come around, Captain Murdock.

25 MR. MEADORS: We have no clerk.

1 THE COURT: Oh, okay. Alright. Place your left hand
2 on the Bible and raise your right hand. Do you swear or affirm
3 the testimony you're about to give will be the truth?

4 MR. MURDOCK: I do.

5 THE COURT: Okay. How did I do?

6 **DIRECT EXAMINATION**

7 BY MR. MEADORS:

8 Q Good morning, Captain Murdock?

9 A Good morning.

10 Q Would you please tell the ladies and gentlemen of the jury
11 about Captain Murdock, where you're from, your background, your
12 training, and your training in law enforcement, please.

13 A Yes, sir. For the record, my name is John Michael
14 Murdock, M-u-r-d-o-c-k. I am a native of Greenwood. I began
15 my law enforcement career here in 1994 with Greenwood City
16 Police Department, uniform patrol division. Moved up from the
17 uniform patrol division into the warrant division and then into
18 investigations with the city police department obtaining the
19 rank of Lieutenant of Investigations at the city police
20 department. After a number of years there, I thought I'd
21 branch out into other areas of law enforcement, I went to the
22 state patrol for a few years. After that little bit of time
23 there, I came to the Greenwood Sheriff's Office, began again as
24 uniform patrol at Greenwood County Sheriff's Office and then
25 moved my way into investigations, Lieutenant of Investigations

1 and then about a year ago, a little over a year ago, Captain of
2 Investigations.

3 Q So you now are Captain of the Investigations Unit for
4 Sheriff Kelly?

5 A Yes, sir.

6 Q Captain, on May 6th of 2023, who was on call that
7 night?

8 A Investigator Ronny Powell.

9 Q And because of the storm, Investigator Powell's, that's
10 one of the reasons he's not here today, correct?

11 A Yes, sir.

12 Q Can you tell the ladies and gentlemen of the jury did you
13 also respond to one or both of these scenes on May 7th of 2023?

14 A Yes, sir. Investigator Powell was investigator on call,
15 so he gets called first by uniform patrol units responding,
16 they determined they needed an investigator, they called him.
17 He responded and determined that he had a homicide, so he did
18 notify me. At that time, I was the Lieutenant, I responded. I
19 know we would need additional assistance, so I called
20 Investigator Durkin, who you seen testify earlier to operate in
21 the capacity of crime scene technician, and Investigator Parker
22 to basically assist him the way he needed it. And then I
23 responded to Avid and Sawgrass because I asked Investigator
24 Powell where did he need me most, he said there were enough
25 people and he himself was tied up with the Old Abbeville

1 Highway at Mr. Ackerman's residence, so I went to Avid and
2 Sawgrass.

3 Q So Investigator Powell was at 1714 Old Abbeville?

4 A Yes, sir.

5 Q And your first response was to Avid and Sawgrass?

6 A Yes, sir.

7 Q And you instructed Durkin to take pictures?

8 A I instructed him to perform crime scene functions ---

9 MR. SWERLING: Judge, can we approach the bench,
10 please? Can we approach?

11 (Off the record.)

12 THE COURT: Alright. Mr. Meadors, you want to
13 continue, please?

14 MR. MEADORS: May it please the Court?

15 Q I think we were on after you instructed Investigator
16 Durkin to take pictures, did you interview anybody at the scene
17 of Avid and Sawgrass?

18 A Yes, sir. I spoke with Ms. McGovern, Drew Strickland, and
19 Meredith Ackerman at the time, Haynie now.

20 Q And did you conduct those interviews on the scene, so to
21 speak?

22 A Yes, sir, I did. In my vehicle using actually
23 Investigator Durkin's body cam because mine had malfunctioned
24 in the charger in the office, so I used, I talked to all three
25 of them separately in my vehicle using his body cam.

1 Q On the scene that night?

2 A Yes, sir. At Avid and Sawgrass.

3 Q And those videos have been turned over to the Defense?

4 A Yes, sir.

5 Q After you interviewed those three individuals, did you
6 have an occasion to go to, for lack of a better word, the other
7 location this night?

8 A Yes, sir. When everything seemed to be under control and
9 flowing there, I went to the Old Abbeville Highway address to
10 check, basically to check in there to see if anything was
11 needed there, I stayed there briefly. I think Investigator
12 Powell had obtained a search warrant, Investigator Durkin had
13 already responded over there to execute the search warrant and
14 perform crime scene duties there. Uniform patrol stayed on
15 Avid and Sawgrass with the BMW that had been determined to
16 belong to Mr. McClendon. I responded back to Avid and
17 Sawgrass, the tow truck had been called to tow the BMW to our
18 impound lot. I stayed with the BMW, when it was loaded on the
19 tow truck, I followed the tow truck to our impound lot.

20 Q And I think Investigator Mejia may have testified, search
21 warrants were executed at 1714 Old Abbeville Highway, correct?

22 A Yes, sir.

23 Q And at some point there the Defendant was placed under
24 arrest?

25 A Yes, sir.

1 Q On May 7th of 2023?

2 A (Nonverbal response).

3 Q How did the Defendant's vehicle, the F250 ---

4 MR. SWERLING: Sorry, I couldn't hear you.

5 Q What happened to the F250?

6 MR. SWERLING: Okay.

7 A At the conclusion of the processing, for lack of better
8 terminology, that scene, the F250 was also towed from the
9 residence to our impound lot as well.

10 Q And you say impound lot, Davis McClendon's BMW was there
11 and now Bud Ackerman's Ford F250 was there?

12 A Yes. We have a specific lot in Greenwood County that any
13 vehicles that are seized as potential evidence or other are in
14 a secure location with controlled access.

15 Q So it's locked?

16 A It's actually double locked. You got to go through
17 another gate into a shop to get into it and into another gate
18 to get into the impound lot.

19 Q Did you start canvassing the area of Avid and Sawgrass to
20 look for any potential evidence that might be there if anybody
21 had seen or heard this?

22 A That night we kind of looked around, it was still dark.
23 We did, I noticed a camera at the back of the gate, you may
24 have seen earlier the white camera with the cord. Then we went
25 back, I don't think that, we were now into Sunday morning later

1 before we got out of there, we went back if I'm not mistaken,
2 Monday, and actually done kind of like a, what we call a
3 neighborhood canvas which is where I think one investigator
4 found the one video on Avid Road and I went around the corner
5 and the first house, which I believe is Mr. Cummings', is, he
6 had a Ring doorbell camera. I spoke with him through the
7 camera because I don't think he was in town, I told him who I
8 was and what I was looking for, left my business card under his
9 doormat and he called me back a day or two later when he got
10 home.

11 Q And you were, were you able to collect that video from Mr.
12 Cummings?

13 A Yes, sir. When he returned home, he watched the timeframe
14 that I had told him, recorded the video and provided the video
15 to us.

16 Q And did somebody under your command get the video from Mr.
17 Maceda on Avid Road?

18 A Yes.

19 Q Now, you mentioned this other camera, and I think it's
20 been in the pictures of the back of Avid Road. Did you do
21 anything to see if that camera was operational?

22 A I did. It's been shown before, it didn't look
23 operational, but to make sure it wasn't operational, I found
24 out who the actual property owners or what's listed in GIS for
25 the property on the backside of the gate or in that area and

1 that was Anderson Construction Company. So I called Anderson,
2 told them the location and was told that that camera has never
3 been functioning, it had just been placed there to kind of
4 deter any activity.

5 Q Scare people off?

6 A Yes, sir.

7 Q But it was not working?

8 A No, sir, that camera at the gate was not working, has
9 never worked.

10 Q As a result of interviewing Meredith Ackerman, now Haynie,
11 and some of the other individuals, did you learn that there may
12 be some establishments that you might want to investigate?

13 A When I interviewed her, she kind of gave a background
14 where she had been, her and Mr. McClendon had been that
15 evening. I then took my information and handed it off to
16 Investigator Powell who's the lead investigator to follow up on
17 several establishments that I think they had been to that
18 evening.

19 Q And was one of those Key West?

20 A Yes, sir.

21 Q Are you familiar with Ms. Poore who's already
22 testified?

23 A I don't know her personally, but I remember her
24 testifying, yes, sir.

25 Q And have you been to Key West?

1 A I've never been in the business. I know where it's at,
2 but I myself in a professional role, a personal role, I've
3 never been in the business.

4 Q And you've reviewed the video from Key West, correct?

5 A I've seen video, yes, sir.

6 MR. MEADORS: Your Honor, for the record, the Key
7 West video is 17 A through H.

8 THE COURT: Correct.

9 MR. MEADORS: We now have a portion of that, State's
10 57, which we're offering from, contained in State's 46 A
11 through F is 57.

12 THE COURT: Alright.

13 MR. SWERLING: 57 is?

14 MR. MEADORS: 57, it's a portion of the video from
15 Key West.

16 MR. SWERLING: The other one's in evidence?

17 THE COURT: Right. The entire one's in evidence ---

18 MR. SWERLING: I'm sorry.

19 THE COURT: --- this I understand is just a portion
20 of it, so I don't need to ask of you, Mr. Swerling, whether or
21 not you object.

22 MR. MEADORS: That is 57, the portion.

23 THE COURT: If you need to step down, Mike, you can.
24 Just be sure to stand in front of that microphone on the
25 railing.

1 A Yes, sir.

2 Q Now, can you see?

3 A I'm going to step down, if I may.

4 MR. MEADORS: Judge ---

5 THE COURT: I already told him he could step down.

6 Q If you can talk in that microphone. And you recognize
7 this?

8 A It appears to be the front of the ---

9 MR. SWERLING: What does he recognize?

10 Q Do you recognize this?

11 A I do.

12 Q Okay. Have you reviewed this video?

13 A Not in its entirety, but portions of it.

14 Q And this portion have you reviewed?

15 A Yes, sir.

16 Q Okay. Go ahead and play. Now stop that, please. Who is
17 that entering Key West on May 6th I believe of 2023?

18 A That is the Defendant, Mr. Bud Ackerman, he's seated right
19 there next to Defense counsel.

20 MR. MEADORS: I'd ask the record so reflect.

21 Q There's been some testimony from Ms. Poore that because of
22 this case, she knew her clock was off. Are you familiar with
23 the Berla data that's been entered?

24 A Yes, sir.

25 Q And this time depicted on Key West is what?

1 A The time is 7:45:07 pm.

2 Q And were y'all able to determine the time difference, how
3 much it was off from real time if you will?

4 A I think during the course of the investigation they
5 determined it was off by a couple hours or more.

6 Q Two hours, 55 minutes?

7 A Yes, sir, that's sounds correct.

8 Q And let me ask you this much, do you have the Berla time
9 that's already in evidence from his infotainment center when he
10 walked inside?

11 A Yes, sir. I think the Berla did record the time.

12 Q And is that time two hours and 55 minutes different from
13 this time?

14 A That is my understanding, yes, sir.

15 Q So not to put you on the spot, but if this is two hours
16 and 55 minutes behind, what time is it then based on the
17 infotainment center ---

18 A If that is two hours behind, 7, 8, 9, so it should be
19 around 9:45, maybe 10.

20 Q So three hours would be 10:45?

21 A Yes, sir.

22 Q Okay. Minus five would be what?

23 A 9:40, I mean 10:40.

24 MR. SWERLING: It just doesn't appear he knows what
25 the answer is, I'm sorry, I just have to object.

1 THE COURT: Are you objecting as to leading?

2 MR. SWERLING: No, well, leading and he just doesn't
3 seem to have that knowledge and I just, we're just kind of
4 guessing, speculating.

5 THE COURT: Well, I think he had indicated he was
6 aware that the video was off and in comparison with the Berla
7 information, I think he was provided enough familiarity to
8 where I didn't take it as speculation. You may want to maybe
9 rephrase your question and maybe lay a little more foundation
10 then we'll see what Mr. Swerling has to say.

11 MR. SWERLING: Judge, let me just say, it's already
12 been in evidence how far it was off.

13 MR. MEADORS: I didn't think it was in dispute
14 ---

15 MR. SWERLING: Yeah.

16 MR. MEADORS: --- number one, and then second of all
17 I thought it was bad math, no disrespect.

18 THE COURT: Right. Okay.

19 Q Are you aware this is off?

20 A Yes, sir.

21 Q And based on your investigation, this investigation, was
22 it two hours and 55 minutes off?

23 A Yes, sir.

24 Q And is it behind or ahead two hours and 55 minutes?

25 A Behind.

1 Q Okay. So if we add two hours and 55 minutes to this, what
2 do we get?

3 A 10:55, somewhere in there, 10:40.

4 Q 10:40? Okay.

5 MR. MEADORS: Your Honor, record reflect he said
6 10:40.

7 THE COURT: Okay. So noted.

8 Q Alright. Keep going. Does this appear to be Bud Ackerman
9 entering Key West Bar?

10 A Yes, sir.

11 Q And what does it appear the Defendant's doing there?

12 A It appears he's paying for something.

13 Q Does he appear to have a drink in his hand?

14 A Yes, sir, it appears to be in his left hand.

15 MR. SWERLING: Objection. I have to object to the
16 leading, I'm sorry.

17 THE COURT: Okay. Rephrase, Mr. Meadors.

18 Q What does he have in his hand, if anything?

19 A He appears to have a drink in his left hand.

20 Q Okay.

21 MR. MEADORS: Your Honor, we're going to do this at
22 excessive speed to save a little time unless there's any
23 objection. We're just going to run it faster ---

24 MR. SWERLING: That's fine.

25 THE COURT: Sure. That's fine.

1 Q Captain, can you see from there?

2 A Yes, sir, I can see the video.

3 Q And did you see Bud Ackerman? Captain, if you'd like to
4 come out here and look at this video.

5 A I lost him in the crowd on that one.

6 Q Okay. Let's go back.

7 A Yes, sir. He appears to be I guess at the end of the bar
8 right behind the gentleman with the white hat on.

9 Q And does he appear to have anything in his hand to you?

10 A I could not see there. He appears to have something in
11 his hand, yes, sir, when he turned around.

12 Q Okay. Go ahead. Do you see Bud Ackerman coming back into
13 the bar area?

14 A Yes, sir.

15 Q What if anything do you observe there?

16 A He appears to have a beverage in his right hand.

17 Q Do you see Bud Ackerman in this video?

18 A Yes, sir.

19 Q Where does he appear to be going?

20 A He appears to be at the end of the bar talking to someone.

21 Q Does he appear to have anything with him there?

22 A He appears, he has a beverage in his right hand.

23 MR. SWERLING: Did you say a beverage or ---

24 A Beverage.

25 MR. SWERLING: Sorry, I couldn't hear.

1 Q Do you see Bud Ackerman here?

2 A Yes, sir. He's right there next to the gentleman in the
3 orange shirt and black shirt.

4 Q Can you read that can?

5 A No, sir, I cannot.

6 Q Stop it. What does that appear to be?

7 A He's extending his, what's visible to me is he's extending
8 his right arm.

9 Q Okay. Do you see Bud Ackerman in this portion of the
10 video?

11 A Yes, sir. He's standing next to the gentleman in the
12 white shirt and white ball cap.

13 Q That fella ain't got nothing to do with this, right?

14 A No.

15 Q Stop right there. Who is that leaving?

16 A Bud Ackerman in his white F250.

17 Q And what time is on the Key West video there?

18 A The Key West video is 9:14:20 pm.

19 Q Okay. Captain, I think you can take a seat back. I may
20 have to get you to come back down in a second. Through your
21 investigation, where did the Defendant go after this?

22 A I think the investigation is that he went to Tally Ho.

23 Q And what is Tally Ho?

24 A Tally Ho was the marital residence with him and Meredith
25 Haynie.

1 Q Okay.

2 MR. SWERLING: Your Honor, I object to that, I move
3 to strike that. What's the basis of that knowledge?

4 THE COURT: I think it's already been brought out
5 that the Tally Ho residence was the home of Meredith and Bud,
6 and that Meredith remained in that home.

7 MR. SWERLING: Correct, but ---

8 THE COURT: I think it's already been brought out,
9 has it not?

10 MR. SWERLING: But this witness testifying about it,
11 that's what I'm objecting to.

12 THE COURT: I'll overrule the objection.

13 MR. SWERLING: Okay.

14 Q Based on the information, the Berla and the other
15 information, where did the Defendant go after Key
16 West?

17 A After Key West he went to Tally Ho in the Hunter's Creek
18 subdivision.

19 Q And whose residence was that?

20 A It was the residence of Meredith, the former marital home
21 of he and Meredith.

22 Q Meredith Ackerman now Haynie?

23 A Yes, sir.

24 Q Okay. And when he got there, do you know, did his door
25 open?

1 A I don't know, I wasn't in for all of the data, so I don't
2 have firsthand knowledge of all of that.

3 Q That's fine. We prepared a map, just a map of the area.
4 This will aid in your testimony.

5 MR. SWERLING: Yeah, that's alright.

6 Q And I think this is State's 58 ---

7 MR. SWERLING: I don't have any objection to it.

8 Q --- without objection.

9 THE COURT: Sir?

10 MR. SWERLING: I have no objection to it.

11 THE COURT: Alright. 58 into evidence for the
12 State.

13 (Whereupon a map was submitted as State's Exhibit Number
14 58 for identification and entered into evidence.)

15 MR. MEADORS: Somebody's going to tell us the best
16 place to put this Judge?

17 CLERK: We have a podium.

18 THE COURT: We do have a little stand of some sort.
19 Where would it be?

20 MR. MEADORS: I apologize.

21 THE COURT: It's alright.

22 MR. SWERLING: Is that a Google overhead?

23 MR. MEADORS: Yes.

24 THE COURT: There you go. You'll need to step down
25 for this.

1 Q You mind coming down, Captain? Now, Captain, you
2 recognize this as a aerial photo of some of the locations we
3 talked about?

4 A Yes, sir.

5 Q Can you, I have these stickers, can you point out Key West
6 on here?

7 A Key West Club's going to be right around in here.

8 Q And you then testified that he then went to Tally Ho?

9 A Yes, sir.

10 Q Can you tell us where Tally Ho is?

11 A Tally Ho would be in this area.

12 Q And then where did the Defendant go after that?

13 A Then he went to based on investigations of what I've
14 learned, he went to Lake Shore Drive, which is the residence of
15 Davis McClendon, I believe on Lake Shore Drive.

16 Q And that's been testified previously, Davis McClendon
17 lived on Lake Shore Drive?

18 A Yes, sir.

19 Q Where did the Defendant go after that?

20 A He went from there, then he went, Lake Shore Drive is
21 here, then he crossed over from 72, 221 to Break on the Lake.

22 Q Now, you're familiar with Break on the Lake?

23 A Yes, sir.

24 Q I think we had a Patrick Hensarling, who put the video in
25 of Break on the Lake?

1 A I wasn't present for the testimony, but I believe there
2 was one, yes, sir.

3 Q Okay. And you are aware of the video from Break on the
4 Lake, correct?

5 A Yes, sir. I'm aware there is video from there.

6 Q Is this the parking lot of, outside of Break on the Lake?

7 A Yes, sir, it appears to be.

8 Q Would you dispute at the top it says 0037?

9 A No, sir, I wouldn't dispute it.

10 Q Whose truck is that?

11 A Bud Ackerman's.

12 Q What direction does the car appear to turn?

13 A It appeared he turned left going towards the bridge.

14 Q And based on your investigation, when it turned left to go
15 to the bridge, where did it go?

16 A Across the bridge to Port Grille what used to be The Dock
17 years ago near Laurens County.

18 Q Can you put a sticker there?

19 A Yes, sir.

20 Q What did it used to be?

21 A It used to be The Dock years ago.

22 Q The Dock.

23 A I don't know when it changed hands or why.

24 Q And based on your investigation of the infotainment center
25 in the F250 truck, where did it go next?

1 A Well, my information provided to me, it left there and
2 came back over to right here where his residence is on Old
3 Abbeville Highway.

4 Q And did he pass his residence, or did he go in his
5 residence?

6 A If I'm not mistaken on the information provided to me, as
7 Rivers Run's coming out, he passed it and then he backed up.

8 Q And where did he go after that?

9 A He eventually winds up down here at Avid and Sawgrass.

10 Q Did he go on Avid and Sawgrass once or twice?

11 MR. SWERLING: Objection.

12 MR. MEADORS: That's not leading, I'm asking ---

13 MR. SWERLING: No, not for leading, it's the source
14 of the information.

15 MR. MEADORS: I'm sorry, Judge, I didn't mean to
16 respond.

17 MR. SWERLING: My problem is is he's not being
18 accurate about it, that's my problem.

19 THE COURT: Well, I think the travel of the Defendant
20 is already into evidence through the video of yesterday,
21 whatever the amount of time it was, so that's already into
22 evidence. So I don't see a problem with Mr. Meadors asking
23 Captain Murdock these questions.

24 MR. SWERLING: And I understand it's in evidence, but
25 it's just the interpretation, that's what I'm concerned about

1 because I'm not sure that Captain Murdock really knows this
2 information. That's my problem.

3 THE COURT: Well, if he's familiar with the evidence
4 that has been put in the record, then I'm going to allow him to
5 ---

6 MR. SWERLING: Yes, sir.

7 THE COURT: Okay. You may proceed.

8 A He goes down there, to be specific, I don't know how many
9 times, but I know that he eventually ends at Avid and Sawgrass.

10 Q Okay. And his parents' house is where?

11 A His parents' house is right here.

12 Q Okay. And Avid and Sawgrass is where?

13 A Is right here, kind of after this right here.

14 Q You want to put a sticker there? And approximately, if
15 you know, it was in evidence, do you know how many miles this
16 is?

17 A No, sir.

18 Q Okay. Then you can have a seat back, thank you. Now,
19 Captain, who decided to call in MAIT, the highway patrol folks?

20 A I did, I made that decision.

21 Q And why?

22 A This incident involved vehicles, and I was familiar that
23 MAIT had advanced training and reconstruction or mapping and I
24 knew they had the ability to download what I call the black
25 box. So that's why I called them in because I knew if they

1 were able to do the mapping, they'd be able to provide you with
2 visual representation that I think you saw yesterday at the
3 scene.

4 MR. MEADORS: Beg the Court's indulgence.

5 THE COURT: Sure. You're fine, you're fine.

6 Q Captain, would you come down here, please?

7 MR. MEADORS: With the Court's permission, I'm sorry,
8 Judge.

9 THE COURT: Sure. Yeah, no problem.

10 MR. MEADORS: Thank you for everybody's indulgence,
11 we're almost there.

12 THE COURT: Sure, sure. Not a problem.

13 Q Captain?

14 A Yes, sir.

15 Q Did y'all find David McClendon's wallet on him after he
16 was killed?

17 A No, sir.

18 Q What time is on the screen, 9:43:33?

19 A Yes, sir.

20 Q You can have a seat back there. Now, Captain, you, early
21 on in our testimony, you said you talked to a Mr. Cummings?

22 A Yes, sir.

23 Q Was the crash depicted on Mr. Cummings' video?

24 A Yes, sir. In the top right hand corner you can catch a
25 glimpse of the crash.

1 Q And you also got the video from the Ring camera from Mr.
2 Maceda, is that correct?

3 A Yes, sir. It was during their investigation it was
4 obtained.

5 Q You born and raised here?

6 A Yes, sir.

7 Q And this State's 58 you told the ladies and gentlemen
8 about; you travel these roads a lot?

9 A Not a lot, but I've been down some of them.

10 Q You've been on the road some, Captain?

11 A Yes, sir.

12 Q Okay. Alright. Are some of these roads two lane roads?

13 A Yes, sir.

14 Q And at night when you're driving and late at night, early
15 morning hours you've got your headlights on?

16 A Yes, sir.

17 Q And on these two lane roads are mailboxes out in front of
18 some of the houses?

19 A Yes, sir.

20 Q Stop signs at intersections?

21 A Yes, sir.

22 MR. MEADORS: Beg the Court's indulgence.

23 THE COURT: Sure.

24 Q Hills?

25 A Yes, sir.

1 THE COURT: Mr. Meadors, if you have some, a good bit
2 more direct ---

3 MR. MEADORS: I think I can finish, well ---

4 THE COURT: Well, I don't want to rush you, I'm just
5 thinking maybe kind of stop right here, take a lunch break and
6 we can pick back up. And I don't want to rush you, nor do I
7 want to rush Mr. Swerling.

8 MR. MEADORS: Thank you, Judge.

9 THE COURT: Okay. Alright. Ladies and gentlemen,
10 we're going to take a break for lunch. And remember my
11 instructions, if you go to one of the local restaurants, keep
12 your jury badge visible. And we'll start back at 3:00, that'll
13 give you an hour and a half for lunch, and we'll see you back
14 at 3:00, have a good lunch.

15 (Jury exiting Courtroom.)

16 THE COURT: Okay. We'll be in recess until 3:00,
17 have a good lunch.

18 (Off the record.)

19 THE COURT: Thank you, have a seat. Alright. State
20 ready for the jury?

21 MR. MEADORS: Yes, sir.

22 THE COURT: Defense?

23 MR. SWERLING: Yes, sir.

24 THE COURT: Okay. Let's bring the jury out, please.

25 (Jury entering Courtroom.)

1 THE COURT: Alright. Let the record reflect the jury
2 is back in. Mr. Meadors, continue with your direct.

3 MR. MEADORS: Your Honor, we have no further
4 questions, thank you.

5 THE COURT: Okay. Alright. Mr. Swerling?

6 MR. SWERLING: No questions.

7 THE COURT: Okay. Alright. You can step down.

8 MR. MEADORS: Beg the Court's indulgence.

9 THE COURT: Sure.

10 MR. MEADORS: The State of South Carolina rests.

11 THE COURT: Okay. Thank you. Let me see the lawyers
12 for just a second, please.

13 (Off the record.)

14 THE COURT: Alright. The State has rested. We'll
15 put appropriate Defense matters on the record at a later time,
16 and Mr. Swerling, is the Defense ready?

17 MR. SWERLING: Yes, sir, yes, Your Honor.

18 THE COURT: Okay. Alright.

19 MR. SWERLING: I would call Davis Torres to the
20 stand.

21 THE COURT: Okay. He's sitting in the back.

22 MR. SWERLING: And Mr. Nelson's going to work the
23 computer.

24 THE COURT: Sure.

25 MR. SWERLING: To bring up the exhibits.

1 THE COURT: Yeah, good.

2 CLERK: If you'll raise your right hand, please, sir.
3 Do you solemnly swear the testimony you're about to give this
4 Court to be the truth, the whole truth, and nothing but the
5 truth so help you God?

6 MR. TORRES: I do.

7 CLERK: Thank you.

8 MR. SWERLING: Your Honor, this is Mr. Nelson who's
9 going to be working ---

10 THE COURT: Sure.

11 MR. SWERLING: --- the computer for the exhibits.

12 THE COURT: Sure.

13 MR. SWERLING: I want to make sure he's got
14 situated.

15 MR. NELSON: It's not recognizing this thumb drive.

16 THE COURT: Take your time.

17 (Off the record.)

18 MR. SWERLING: Okay.

19 **DIRECT EXAMINATION**

20 BY MR. SWERLING:

21 Q Would you introduce yourself to the jury, David?

22 A My name is Davis Torres, I'm from Albuquerque, New Mexico.

23 Q David, you want to go ahead and go through some of your
24 background first?

25 A Okay.

1 Q Could you tell the jury a little bit about your
2 educational background?

3 A I have a bachelor's degree in criminology, and of course,
4 I have specialized training in the fields of traffic
5 collisions, traffic accident reconstruction.

6 Q Where did you, what training specifically did you have, or
7 let me ask you this. What other, what's your other educational
8 background? Let's stick with that for one second.

9 A That pretty much summarizes my educational background.

10 Q Oh, alright. So subsequent to your education, what did
11 you, you said you had some training, and I'd like you to go
12 ahead and describe what your training has been and in what
13 areas.

14 A Okay. My training started when I was an Albuquerque
15 Police Officer. I served as a public servant police officer
16 for seven years; it started back in 1976. During that tenure,
17 I worked in specialized units and wore a number of hats,
18 accident reconstruction was one of them, and that was what I
19 excelled in and wanted to pursue a future in it. After I left
20 the Albuquerque Police Department, I started to work with the
21 State Department of Education, and I served the State
22 Department of Education in numerous capacities, but I was the
23 Assistant Director of School Transportation for the State of
24 New Mexico. I reconstructed all crashes that occurred in the
25 State of New Mexico, I was the only accident reconstructionist

1 for the department. The yellow school buses that transport
2 your children to school. During the course of those 18 years,
3 I investigated many different types of accidents but
4 specialized in pedestrian work involving children ages
5 kindergarten all the way to 12th grade. During those 18 years,
6 I was permitted to start a private accident consulting firm,
7 and I started up a business, national, operating nationally,
8 internationally, known as Crash New Mexico, so I've been at it
9 a while. And during all those years of serving and even before
10 retirement, I took many training classes in specialized areas
11 to understand how to do the work, how to be efficient, how to
12 use the most modern technology that's needed to do this kind of
13 work. That pretty much sums it up.

14 Q Could you go into some of what your, like classes you may
15 have attended and programs you may have attended?

16 A Okay.

17 Q And have you ever taught any programs?

18 A Yes, I have. I received training on how to, it was called
19 at scene investigation, that's when I first started and it was
20 sponsored by the Institute of Police Traffic Management,
21 technical accident investigation training, crash data retrieval
22 training numerous times at different years. Animations, how to
23 certify and do animation work. I also taught. I was in charge
24 of a statewide program in the State of New Mexico where I
25 certified people in the local districts and people that owned

1 buses on how to investigate crashes, how to train and certify
2 people for proper licensure in the commercial driving industry.
3 And I take classes periodically, you know, now a days there's a
4 lot of instruction being done on the web because of Covid, but
5 I read periodicals every week to stay abreast of the
6 technology. I was certified back in 2016 on how to use the
7 FARO scanner and that certification has taken me to a different
8 level of traffic accident reconstruction because it's the most
9 modern technology that a lot of police departments and a lot of
10 people that consult privately on how to document collision
11 scenes, how to document the damage profile of the vehicles and
12 then preparing the kind of diagrams that could be used to
13 explain what the causes are of crashes for those that are
14 interested in finding out what contributed to a crash.

15 Q In your career, which expands at what point now, what is
16 from, what did your earliest career start in this particular
17 field?

18 A I started in 1976 at the police academy with the
19 Albuquerque Police Department. And I retired in 2000 after 25
20 years of service of combining my service with the City of
21 Albuquerque and the State Department of Education. And I've
22 been a private consultant for over 34 years.

23 Q So total, almost, close to 50 years? You started in the
24 70s, correct?

25 A Yes.

1 Q Okay. And during that period of time, how many accidents,
2 do you have an idea as to how many accidents you may have
3 participated in the investigation of?

4 A I stopped keeping track of them, but right around 2000
5 accident investigations, 500 commercial vehicle crashes. And
6 I've never really put a number to the pedestrian crashes that
7 I've done, but I was in charge for 89 school districts. And a
8 lot of people think the yellow school buses are the safest
9 vehicles on the market, but kids, not so safe. Children
10 walking to school, children riding bicycles. So my career has
11 involved many years.

12 Q During your period of working in this particular area,
13 have you worked for, as an expert, have you consulted with the
14 government and with the defense side?

15 A Yes, I have.

16 Q Could you explain that to the jury?

17 A I had an 18 year contract with the United States
18 Attorney's Office in New Mexico. And I investigated all their
19 vehicular homicide cases that occurred on tribal lands. I'm
20 currently under contract with the federal government, the
21 federal public defender's office, I'm a vender with them in the
22 State of New Mexico. And also, the Mexico Public Defender's
23 Office, and they do defense work. And the United States
24 Attorney's Office does prosecution work. So I've had my taste
25 of what it's like to do work in both arenas, and also civilly,

1 I contracted for many defense attorneys, defense firms, and
2 plaintiff firms involving civil litigation.

3 Q So your work has not only been in the criminal area, but
4 it's also been in the civil?

5 A Yes, sir.

6 Q And you're available and have been available to government
7 agencies as well as on the defense side and plaintiff side in
8 civil cases?

9 A That's correct.

10 Q And have you ever been certified as a witness, an expert
11 witness in the courts of this country?

12 A Yes, I have.

13 Q How many, do you know about how many occasions you've been
14 qualified?

15 A I've been qualified in federal court on criminal cases
16 with the United States Attorney's Office, and also civilly,
17 somewhere in the area of maybe 10, but I worked many, many
18 crashes that don't reach that threshold where they end up going
19 to court, they either settle or who knows what happens. But
20 yes, I have.

21 Q So you have been qualified as an expert witness by judges
22 in different areas, is that correct?

23 A In the area of accident reconstruction ---

24 Q I meant geographical areas?

25 A Yes.

1 Q Okay.

2 A In the field of accident reconstruction, in the
3 specialized field of me qualifying as an expert in traffic
4 accident reconstruction and animations.

5 MR. SWERLING: Your Honor, I would offer Mr. Torres
6 as an expert in the field of accident reconstruction.

7 THE COURT: Okay. Alright. State?

8 MR. CONRAD: No objection from the State.

9 THE COURT: Alright. Without objection, Mr. Torres
10 is qualified as an expert in the area of accident
11 reconstruction. You may proceed.

12 Q David, did, at some point, were you contacted by my office
13 to look at this particular case and try to do a reconstruction
14 of the accident?

15 A Yes. I started working on this case in July of, well,
16 actually, May of 2023 where I received initial discovery from
17 the Defense. And then came to South Carolina, Greenwood to
18 actually do the field work in July of 2023.

19 Q So you actually traveled here in July to do onsite
20 investigation, is that correct?

21 A Yes, sir.

22 Q Alright. And of course, you were here last week prior to,
23 when the hurricane hit, correct?

24 A Yes, I was.

25 Q You came back this week?

1 A I was here the whole week.

2 Q So you've gotten some good miles on your airline?

3 A Yes, sir.

4 Q Could you tell the jury what tasks you performed in
5 connection with this case?

6 A Well, I'm very methodical when it comes to the work
7 assignments that are delegated to me. And when I started in
8 July, I think it was July 26th, 2023, I was already equipped
9 with a lot of the discovery materials ---

10 Q Can you explain what discovery is? I mean it ---

11 A That's where I started actually, because I always depend
12 on what first responders do to document scenes, to identify
13 physical evidence, they play a very important role in being
14 able to complete an efficient accident reconstruction. So
15 after I became knowledgeable about most of the discovery, I
16 came to Greenwood in July 26th, and the first part of my
17 inquiry involved documenting the collision site where this
18 crash occurred. And for purposes of explaining that and how
19 can you understand what a forensic scanner does is, it's
20 probably one of the most advanced technologies on the market,
21 and it in essence measures a scene. And in this particular
22 scene, I had about 117 million measurement points to lay out
23 the geometry of the collision site where this crash occurred
24 and to reproduce a lot of the physical evidence that was
25 identified by the first responders. And then the second part

1 of the inquiries involved examining the vehicles in detail.
2 And again, the forensic scanner measures longitudinal,
3 latitude, and elevation values of the collision site and the
4 vehicles involved. So when the projects are completed, I have
5 very accurate visual statements of the geometry of the
6 collision site and the surrounding terrain, and I also have
7 very accurate measurements and visual statements involving both
8 the Ford truck and the BMW that was involved in this accident.

9 Q So what you're referring to is you feed information into a
10 computer program, is that, can you elaborate a little bit more
11 about what that is you were referring to?

12 A Well, the forensic scanner is a separate piece of
13 equipment, it's about a \$50,000.00 instrument that collects
14 data, and when the data is collected, it's extracted and we use
15 different kinds of diagraming software to put together two-
16 dimensional visual statements, or three-dimensional visual
17 statements. So the computers do some of the work, but the
18 real, the additional important work that is done is the
19 reproduction, reproducing the physical evidence that was
20 identified by first responders and then putting it together in
21 diagram form so that other people can see your work and
22 understand how accurate it is.

23 Q And do you have a scanner that you're referring to?

24 A Yes, I do.

25 Q Okay. Now, do you use that in your consulting work?

1 A Yes, I do. It's called a FARO scanner X330.

2 Q And have you been trained on that?

3 A I have been trained on it. And I've been using it since
4 2016.

5 Q Okay. Now, you said you, did you visit the site?

6 A Yes, I did.

7 Q Okay. And was that of some assistance to you in coming to
8 the conclusions you ultimately came to?

9 A Absolutely. Every bit of information that was documented
10 by use of the forensic scanner and photography was used
11 to make determinations on vehicle positions, the pedestrian's
12 position based on my understanding and interpretation of the
13 physical evidence that the police had and that I also
14 collected.

15 Q Okay. Did you do any research concerning the vehicles
16 that were involved in this particular case?

17 A Well, we always do research on the makes and models of the
18 vehicles that are involved, and I did have an opportunity to
19 examine both vehicles and it was no touch examination because
20 the vehicles were, still had a police hold, and so arrangements
21 were made with counsel and with the police department to come
22 to the impound lot and forensically scan, photograph, and
23 measure the two vehicles involved.

24 Q So it was limited to an extent, but you actually had no,
25 they did not, or they cooperated with you in letting you view

1 the vehicles and do whatever imaging you needed to do and
2 whatever measurements and everything you needed to do?

3 A That's correct. But they didn't want me to alter the
4 conditions of the vehicles because it was evidence.

5 Q And you had come here earlier like in July, I believe you
6 said?

7 A July ---

8 Q Of '23.

9 A --- of 2023.

10 Q Alright. But part of your work is to go ahead and know or
11 get information about the different vehicles. Some of the
12 criteria that these vehicles may be unique with, correct?

13 A The makes and models of the vehicles, the design features,
14 the equipment that the vehicles have, they're all sort of
15 unique. So we always do adequate research and understand what
16 the vehicles are capable of achieving or not or how they
17 perform.

18 Q And that's essential to your work to know how they
19 perform?

20 A It's absolutely essential.

21 Q Did you review pedestrian technical literature that's
22 available to people in your field?

23 A I always refer to published materials that are used in the
24 industry, it's an absolute must for people that are involved in
25 this kind of work. Empirical studies are often used to support

1 some of the opinions that we make and share with people that
2 want to understand how crashes occur.

3 Q I may have asked you this, I apologize if I did, but did
4 you, do you know about how many cases you've been involved with
5 in reconstruction?

6 A Yes. I think I mentioned it ---

7 Q I think you did, I'm sorry, I apologize.

8 A --- but 2000 conventional vehicles, 500 commercial motor
9 vehicle ---

10 Q Correct.

11 A --- crashes.

12 Q I apologize, you did. Okay. And do you, did you conduct
13 an analysis and calculation of final rest position of the
14 vehicles and the pedestrian in this case?

15 A That was part of the assignment that was delegated to me
16 as an accident reconstructionist. Counsel, as a matter of
17 fact, that's where we start. We start at the approximate final
18 rest of vehicles, and in this case the pedestrian, and we
19 worked methodically backwards to analyze, evaluate, and
20 interpret physical evidence that will help us understand from
21 final rest all the way back to the approximate area of impact,
22 and also preimpact paths of travel.

23 Q Both of those positions are important in
24 calculations?

25 A Yes. In every case that we worked.

1 Q Okay. And we talk about methodology, what is the
2 methodology used to go ahead and do the reconstruction?

3 A Well, first of all, the discovery materials and the
4 identification of physical evidence, I work with physical
5 evidence more than anything else, that's so important in the
6 field of traffic accident reconstruction. So you have to know
7 what the first responders have identified as being important --
8 -

9 Q And let me just interrupt. This is information that was
10 furnished to you by or through me from the State, is that
11 correct?

12 A From the State to the Defense, yes.

13 Q Okay. Go ahead.

14 A And being familiar with what first responders consider
15 important, we then use the physical evidence to interpret it
16 and try to make determinations that help us form opinions that
17 make sense and fit the physical evidence.

18 Q You come up with mathematical answers when you do this?

19 A That's the ultimate goal is to provide mathematical
20 answers with regards to the speeds of the vehicles, where they
21 came to rest, and where they interacted with each other which
22 is often referred to as the approximate area of impact.

23 Q So it's not just subjective work, it's actually objective
24 work that corroborates these things?

25 A Yes. Checks and balances for sure.

1 Q And are you trying to determine accurate representation of
2 the collision site by using these forensic means?

3 A Yes, I am.

4 Q And do the mathematical answers explain the vehicle
5 dynamics and the pedestrian dynamics?

6 A In this case we try to do the best we can with of course
7 the physical evidence, but we also use some of the published
8 literature, empirical studies to provide some of the
9 mathematical answers that are shared with the appropriate
10 parties.

11 Q Did you come to any conclusions about the vehicle final
12 rest position using the range of information available about
13 deceleration rates and CDR download to the BMW? And did you,
14 as a result of that, did you determine the preimpact speed of
15 the Ford?

16 A I did not determine the preimpact speed of the Ford, but I
17 did ---

18 Q Okay.

19 A --- start with the Ford truck and its final rest position,
20 and many of you already know that the vehicle was not on site
21 when the police department did their documentation and
22 evaluated the collision site, but there was physical evidence
23 that was used to identify the approximate final rest position
24 of the Ford truck. There was oil fluid debris on the road, and
25 it was still present actually when I examined the collision

1 site in 2023. I also identified where the pedestrian came to
2 rest through use of photography and drone work that was
3 performed by the first responders, and all that combined with
4 being able to identify where the vehicles came to rest. And
5 then I worked backwards from where the pedestrian reached final
6 rest and also the Ford truck to determine where the approximate
7 area of impact was. And methodically when we reach the area of
8 where the BMW came to rest, that was a little bit easier to
9 identify because there was still paint marks on the roadway to
10 help us understand the position, the final rest position of the
11 BMW. Some of the physical evidence that was deposited by the
12 BMW was no longer visible, but we were able to reproduce it by
13 use of the work that was done by the first responders, and it
14 turned out to be very crucial evidence, very important evidence
15 to be able to document where the approximate area of impact
16 was. We also used the damage profile, the scaled model, the
17 actual scaled model of the BMW and the Ford truck and the
18 damage profile of the Ford truck and the height of the
19 pedestrian and interpreted some of the physical evidence that
20 first responders photographed and documented so that we could
21 be as exact as possible. There's still approximate, that's how
22 I would describe it because in the field of accident
23 reconstruction, if you weren't there, you work with ranges and
24 variables so I did the best I could to identify where I opine,
25 provide an opinion as to how the vehicles interacted with each

1 other which is the approximate area of impact, and how the Ford
2 truck collided with the pedestrian as well, and where the
3 pedestrian is positioned when the crash occurs.

4 Q These are all the things that you were trying to
5 determine, is that correct?

6 A That is the specific assignment that counsel wanted, they
7 wanted to know final rest, approximate area of impact, and the
8 speed of the Ford truck and also the BMW.

9 Q Okay. Did you, you have some photographs that you'd like
10 to refer to and explain what those photographs and how they
11 helped you in making the determination that you're ultimately
12 going to testify about?

13 A Yes, I do.

14 Q Okay. And I think they're marked 1 through 9.

15 MR. SWERLING: And we'd obviously offer those, Your
16 Honor, they've been marked.

17 MR. CONRAD: No objection.

18 Q David, do you want to come down here and stand by this mic
19 and explain what that photograph is and ---

20 THE COURT: What exhibits are these, number what?

21 MR. SWERLING: 1 through 9.

22 THE COURT: 1 through 9.

23 Q So just explain to the jury what that signifies.

24 A Okay. This is a forensic scan of the geometry of the
25 roadway, and I would add that it, there's about a hundred and

1 17 million measurement points, longitudinal points, lateral
2 points, elevation values, and the layout of the roadway is to
3 scale. The position of the vehicles, and you really can't see
4 the final rest position of the pedestrian because this is an
5 overview of the visual statement that I produced, but it's a
6 scale drawing showing the approximate area of final rest for
7 the Ford truck which is on the westbound lane facing west.

8 Q If you need to go down there and refer to it, you can do
9 that.

10 A The top ---

11 MR. SWERLING: Your Honor --

12 Q -- David, one second.

13 A I'm not tall enough.

14 THE COURT: Okay. Mr. Swerling's getting a pointer,
15 hold off just a minute, Mr. Torres, I think Mr. Swerling says
16 he may have a pointer to assist you.

17 MR. SWERLING: As usual it's not where it's supposed
18 to be.

19 Q Go ahead, David, I'm sorry.

20 A The Ford truck where the arrow is, Jonathan's pointing to
21 it, that's a scale model of the Ford truck. It's very
22 accurate, it's forensically scanned successfully, and I've
23 imported it into a scale model of the roadway. The BMW is
24 located on the bottom portion of the visual statement, and you
25 will also see documentation measurements that I prepared to

1 illustrate the final rest position of the BMW and some of the
2 physical evidence that I saw. So like I testified earlier
3 that's where I started, the final rest position of these two
4 vehicles and then the final rest position of the pedestrian on
5 the upper right hand, close to the upper right side of the
6 right front tire of the Ford truck.

7 Q This particular, is that a divided road? Is there any
8 markings dividing that road?

9 A Well ---

10 Q Do you recall?

11 A --- if you look real close to the roadway it has a crack
12 in the center, but if you get real close, there's actually
13 faded yellow paint inside the crack, so I used that as the
14 center of the roadway. So these lanes measure about nine feet
15 nine inches in width, so a little bit more narrow than a
16 typical roadway, you know how a typical roadway is usually
17 about 12 feet in either direction, but the painted markings
18 that you see on the illustration are more vivid than life
19 itself because it was just a crack. But I wanted to be able to
20 demonstrate to people that saw the visual statement that this
21 is the westbound lane and eastbound lane.

22 Q Alright. And the area in that picture, where's the gate
23 going into that other property?

24 A The gate is just west, not real visible simply because of
25 the texture of the gate and all, but it was documented where it

1 was visible, and it's about 73 feet from the area of impact
2 that I identified and reported to counsel.

3 Q Is that Avid Road where the vehicles are?

4 A I'm sorry?

5 Q Avid Road?

6 A Avid Road, yes, sir.

7 Q So there is, is there a yellow line marking the two
8 different lanes of travel?

9 A Not really real visible, but if you get up close, a driver
10 probably wouldn't recognize it, but you know, when you're there
11 doing your work, you can see it.

12 Q And if you came down, there's a corner there, is that
13 Sawgrass?

14 A This?

15 Q And you were out at the scene, correct?

16 A Yes, sir. That's Sawgrass right in this area here.

17 Q Okay. So this is Defense Exhibit Number 1. We'll go to
18 Defense Exhibit Number 2. Alright. Would you explain to the
19 jury pointing out there what is showing on that particular
20 photograph?

21 A Okay. I still show the Ford truck at final rest where
22 that stain, that oil stain is because it's going to become
23 important when I'm trying to explain the mathematical answers
24 that I presented to counsel regarding the post impact speed of
25 the Ford truck. The Ford truck in relationship to the

1 approximate area of impact is a little bit different than the
2 final rest position. But they are scaled model positions,
3 they're not exemplar vehicles and we need to understand that
4 that's different, it's not like I'm using an exemplar model
5 that some program made, it's actually forensically scanned.
6 The damage profile of the BMW at the area of approximate point
7 of impact, right here where the red dot is, that's the area
8 where the pedestrian is in front of the truck which means at
9 least the way I reported it and interpreted physical evidence,
10 the pedestrian was hit on the ellipse towards the center of the
11 road.

12 Q Can you explain that?

13 A It's approximate even though ---

14 Q You used the word ellipse.

15 A The ellipse within a few inches of the hood ---

16 Q Alright.

17 A Probably no more than a foot, but the vehicles are
18 positioned based on the damage profile of the BMW. I'm sure
19 you have seen photographs of the driver side fender and wheel
20 well area and tire area, but the BMW, when they interacted,
21 when they impacted, a distinct tire mark was deposited by the
22 BMW as it was pushed backwards about a foot and a half to two
23 feet, and also, about the same distance laterally towards the
24 south. And that, we call that a scuff mark because it's a tire
25 that is not rotating but being pushed by the forces of the

1 impact of the Ford truck. It was very important evidence
2 because that evidence, even though it wasn't visible, if you
3 look at the work that the first responders did and you use the
4 photography work that was really good photography work, you can
5 identify where the mark is and how it travels the same
6 direction that the vehicle ended up at final rest, and that
7 would be the BMW. Of course, the Ford truck is a scanned
8 model, again, forensically scanned model and it had distinct
9 damage, a distinct damage profile that has been shared with
10 you, I've heard some of it.

11 Q Why don't you testify what you understand the damage was.

12 A Well, I interpreted the damage profile of the Ford along
13 the hood area, the grille area to be the damage profile of the
14 vehicle that was deposited on this vehicle when it interacted
15 with the pedestrian. I called it a body strike, it could be a
16 head strike, you know, in that particular area of the vehicle
17 had blood spatter on it, so combined with the distinct
18 measurements, the size of measurements that I had, I was able
19 to determine the position of the pedestrian. In my opinion,
20 it's about five feet west from the front of the vehicle and
21 about three feet north.

22 Q Could you show that on what you're referring to when you
23 talk about direction?

24 A The pedestrian is in this location, and he was about three
25 feet north of the BMW and about five feet this way from the

1 front end of the vehicle when the Ford truck collides with the
2 car. And it is my opinion that they collide at the same, he
3 collides with the vehicle at the same time that he's striking
4 the pedestrian.

5 Q So your testimony is, your opinion is he was 5 feet back
6 from the car, at the front of the car, is that what I
7 understand?

8 A He's five feet from the front of the car ---

9 Q Right.

10 A --- in a westerly direction as you're looking at the
11 damage profile, and then 3 feet towards, the vehicle itself is
12 3 feet from the center of the road, and the vehicle, the Ford
13 truck is about two to three feet on the wrong side of the road.
14 I believe and it is my opinion that it's angular and ---

15 Q We can get to that in a minute if you want to, but you
16 said the pedestrian was three feet from the car north, is that
17 right? In a northernly direction?

18 A I think, yes, north, I'm sorry, yes.

19 Q So that would put, you're saying it would put him three
20 feet from the car toward the center ---

21 A Yes.

22 Q --- of the road?

23 A Yes, that's correct.

24 Q Okay. Alright. And you had mentioned something about the
25 car was pushed back how many feet, the BMW?

1 A The BMW in my opinion, based on a scuff mark and also the
2 crash data retrieval report that there was a longitudinal
3 characteristic to the dynamic which is, it's called a
4 longitudinal Delta-V, a change in velocity and moved to the
5 west about a foot and a half ---

6 Q Back?

7 A --- two feet back which the location where we identified
8 the scuff mark from the left front tire. And there was also
9 lateral movement because the crash data retrieval report was
10 successfully extracted from the police who were doing the work
11 extracted images, that means you interpret the images
12 concerning delta V and it also imaged lateral Delta-V which
13 means there was a side movement to the BMW when they were
14 interacting.

15 Q Okay. I haven't been to school in a lot of years. Could
16 you explain the words and the terms you're using?

17 A Okay. Delta-V, I apologize, sometimes I take it for
18 granted that people know what I'm talking about is the change
19 in velocity over delta time. So the vehicle was in park so the
20 tires aren't rotating, but the crash data retrieval images data
21 that's very scientific and it imaged specific data regarding
22 the dynamics of the BMW and the data there is saying it had a
23 longitudinal Delt-V change in velocity of six miles an hour and
24 a lateral Delt-V of two miles per hour give or take, a little
25 bit more time than that. But that was important for us because

1 I use that Delta-V to help me determine what the approximate
2 post collision speed of the Ford truck is.

3 Q In lay terms, the car was pushed back a certain distance,
4 I think you testified?

5 A Yes, sir.

6 Q And it was pushed laterally as well ---

7 A Yes.

8 Q --- toward the grass area there?

9 A Towards the side of the road.

10 Q The side of the road. And how many feet was it pushed
11 lateral as well?

12 A About the same amount of distance, a foot, foot and a half
13 to two feet.

14 Q Was that as a result of the impact where of course the
15 jury has seen the photos?

16 A Yes, it was.

17 Q Alright. Let's go to the next, number 3.

18 A Well, can I add ---

19 Q Oh, yeah, go ahead.

20 A --- one more thing that's very important?

21 Q Yeah.

22 A In order to provide mathematical answers to explain the
23 post collision speed of the truck I used the distance that it
24 traveled from the approximate area of the back to the front end
25 of the Ford and that was 55 feet of post collision travel. In

1 my opinion, the pedestrian was wrapped around the front end of
2 the vehicle and was carried all the way to final rest. So if
3 you use 55 feet and you like I mentioned earlier, you study a
4 little bit about dynamics, what happens to a vehicle that is
5 slowing down to reach final rest, I used deceleration rates. I
6 know it sounds like a real technical term, but basically what
7 it is is it's friction experienced by the tires traveling to
8 final rest from the approximate area of impact. And I used a
9 range because I wasn't there, I don't know, and we use a range
10 so that we can be objective and when we use basic slide to stop
11 formulas in the field of accident reconstruction, I determined
12 that the Ford truck's post collision speed to reach final rest
13 from the point of impact was 28 to 33 miles an hour. So
14 earlier, I mentioned to you the crash data report and the
15 longitudinal Delta-V that was imaged, that change in velocity
16 added to the post collision speed of 28 and 33 and I reported
17 to counsel and to you the jury that his speed is between 34 and
18 39 miles an hour, somewhere in the middle, but I felt more
19 comfortable giving a range. I always believe that a range in
20 speed is much better than, you know, you can't be exact, but
21 it's good to go into a setting and tell you and be very honest
22 that I don't know everything, but I do know that using a range
23 makes sense. So 34 to 39 miles an hour was his post collision
24 speed. And I would like to add that there was no physical
25 evidence deposited by the Ford truck that I could use on the

1 roadway. The only physical evidence that was deposited by the
2 Ford truck was the damage profile to the BMW, and you can see
3 photographs, you can see the damage profile of both vehicles,
4 and it's my opinion that the left front tire caused most of the
5 damage profile that you see on the BMW.

6 Q Is there anything else out of that picture that you would
7 like to relay to the jury?

8 A None other than I positioned the vehicle, even though I
9 think it's traveling 35 miles an hour, I converted it to 35
10 miles an hour feet per second just for a visual effect.
11 Counsel, when we were on scene and I met the threshold of what
12 he assigned me to do, wanted to know about visibility issues at
13 night, what does the human eye see at night and how do lights
14 effect a crash. And you know, I'm of the opinion that when I
15 start getting outside of my field, I tell, I told the attorney
16 just within a week or so that that would require the retention
17 hiring of an expert that had more qualifications, and it's
18 important enough depriving someone of freedom of movement, a
19 crash involving death, I told the attorney I'm not qualified to
20 do that. So that was outside the scope of my work, and he
21 retained an expert that can testify to those matters a lot
22 better than I can.

23 Q Are you ready to go onto the next ---

24 A Yes.

25 Q Okay. This is Defense Exhibit 3. Alright. What's

1 important about that particular photograph in connection with
2 your assessment?

3 A This photograph was taken by the first responders and
4 what's important are the red arrows that identify the scuff
5 mark that I was referring to that was deposited during the
6 impact between the vehicles. And if you look at the scuff
7 mark, it is moving from left backwards to the west and towards
8 the left front tire of the BMW at rest. So that helped me
9 determine, that was one of the pieces of physical evidence that
10 helped me determine how the vehicle was oriented on the roadway
11 when the Ford truck interacted with it.

12 Q Anything more with this particular photograph or do we
13 move on to Defense Exhibit 4?

14 A Well, the damage profile was really important because the
15 scuff marks being deposited, you can see the damage, but
16 sometimes we tend to overlook the tire evidence that was
17 deposited on the vehicle, and there's evidence that the left
18 front tire interacted with the vehicle. And it's my opinion
19 that this is an angular impact, and it's supported by the
20 damage profile and the movement of the vehicle using the scuff
21 mark. And also the crash data retrieval report is very
22 specific about the dynamics of the vehicle.

23 Q David, when you say angular, what are you referring to,
24 what does that mean?

25 A I mean that the vehicle wasn't parallel, the Ford

1 truck was not parallel, it was steered into the eastbound lane
2 where the BMW was parked, two and a half, two to three feet.

3 Q Okay. Next photograph or next exhibit, or are you done
4 with that?

5 A This is pretty much the same.

6 Q This is number 4, I think?

7 A And if I can explain this. There's a piece that's
8 separated from the BMW front fender. My opinion is that this
9 is induced damage, induced damage means it wasn't caused by the
10 truck hitting the front end of the BMW. It bent and the forces
11 caused that piece from the front portion of the bumper to
12 separate from its original position. And of course, it shows
13 the scuff mark as well and the damage profile of the vehicle.

14 Q Is there anything else about that exhibit number 4 that
15 you want to comment on?

16 A There is a little bit of damage on the driver door. If
17 you look, there you go, and sometimes we tend to overlook that
18 it was a part of the damage profile of the vehicle because what
19 really catches your eye is the damage by the wheel well and the
20 left front wheel. And this left front wheel was damaged to the
21 extent that it turned clockwise during the forces with the Ford
22 truck and yet, the right side tire even though it's not visible
23 on axle one, would not turn towards a clockwise position.
24 Police reported that there was some kind of undercarriage
25 damage on this vehicle. I did not see it and I couldn't really

1 get underneath the vehicle when I examined it because it was so
2 low to the ground when we looked at it. But I do know that the
3 police, the first responders did not examine this vehicle like
4 they examined the Ford truck. And that's, I'll close with
5 that.

6 Q Okay. Bring up Defense Exhibit 5. And could you comment
7 on what that signifies for you?

8 A This shows the tire turned towards the right, the front of
9 the tire and the rear of the tire is coming towards you, and
10 that was a result of the forces between the Ford truck and the
11 wheel well area of the vehicle and the wheel.

12 Q And you can go with Defense Exhibit Number 6. What was
13 important about this?

14 A The Ford truck, the police, the first responders took many
15 photographs of the Ford truck, and I couldn't see attaching
16 just all kinds of photographs to explain everything. But the
17 most important part to me was the damage profile that you see
18 by the emblem, by the UT, you can see it's about four feet,
19 four inches to four feet six inches from the ground and about,
20 even though the measurement isn't shown, about two feet from
21 the left front portion of the vehicle to the indentation. I'm
22 calling that and I'm providing an opinion that that's a body
23 strike. The pedestrian and the front end of that truck and
24 also in this area along the grille there was evidence that
25 something interacted with it and it's my opinion that the

1 pedestrian and the truck were positioned where I showed you.
2 This damage profile and where I determined the pedestrian was
3 located, this evidence was used to help me understand and
4 provide that opinion.

5 Q Defense Exhibit Number 7, I believe. Could you tell us of
6 what significance that is to you in your opinions?

7 A This was the fluid, some of the fluid train, excuse me,
8 the fluid trail, and the stain that was deposited by the Ford
9 truck when it reached final rest. And of course, on the grass
10 area further north there's debris and there's blood, clothing,
11 tennis shoes, which obviously belonged to the pedestrian in
12 this case. The fluid stains in my opinion tells me that that
13 Ford truck was stopped in a stationary position for a little
14 bit for it to get that kind of a stain. I'm not testifying
15 about how long he was stopped; I think others might, but the
16 stain was used to make approximate determinations on where the
17 Ford truck and the pedestrian were located at final rest.

18 Q Alright. And Defense Exhibit Number 8.

19 A I'm sorry?

20 Q 8, bring up number 8. That's another exhibit that you ---

21 A This is my last exhibit, I think ---

22 Q It's 8, I'm sorry, yeah, it's 8.

23 A This is my measurement log. And my measurement log may
24 appear to be simple, but it's a coordinate method of measuring
25 which to you if I explain it means what I did was I extended

1 Avid Road and Sawgrass Road, the extension of those roads where
2 they intersect. And I took measurements to determine where the
3 final rest of the vehicles were, where the final rest of the
4 pedestrian was, and where the approximate area of impact is
5 between the two vehicles, and also the impact of the
6 pedestrian. It's a coordinate method of measurement and it was
7 produced to show exactly that. These are the vehicle positions
8 and the pedestrian position, that's it.

9 Q So is that as a result of a mathematical computation?

10 A Well, it's measuring, it's just a basic measurement ---

11 Q And what does that show you?

12 A Longitude ---

13 Q What's that show the jury?

14 A Longitude and lateral measurements ---

15 Q Let me, let me interrupt you one minute just for those
16 that haven't been to school. What's longitude and latitude for
17 those of us who don't remember like me?

18 A Longitude is from east to west and lateral in this case
19 was from the line that was positioned on the south side of Avid
20 Road measuring in a northerly direction to position the tires
21 of the vehicle where the pedestrian was. And it sounds simple,
22 but it's actually very accurate. And it was done after all the
23 totality of the work that I put together to illustrate
24 measurement data.

25 Q So north is to the left of the vehicle, is that correct?

1 A Yes.

2 Q Okay. South is to the right of the vehicle?

3 A To the right left, yes.

4 Q East would be toward River Run up Avid Road?

5 A Yes. East would ---

6 Q And west would be toward the gate?

7 A West would be towards the gate.

8 Q Okay. Just so we kind of get it down. And are there any
9 numbers there that you would like to discuss in formulating
10 your opinion or is that what you've done?

11 A They reflect and support the opinion about the position of
12 final rest with the BMW and the approximate area of impact and
13 where the BMW was positioned when it was engaged by the truck.
14 And the same thing for the Ford truck, I produced longitudinal
15 measurements and lateral measurements and even elevation values
16 to demonstrate in measurement form what I'm reporting to you in
17 my opinion.

18 Q Okay. You can go ahead and take the witness stand again.
19 So Mr. Torres, do you have an opinion based upon a reasonable
20 degree of scientific certainty as to where the pedestrian was
21 standing at the time of impact?

22 A Yes, I do.

23 Q And where was that?

24 A Five feet from the front end of the BMW and three feet
25 north of the position of the BMW at the point of impact.

1 Q Okay. You've used the word parallel; you've used the word
2 angular. Let me ask you this, do you have an opinion based
3 upon a reasonable degree of scientific certainty in all the
4 calculations you've done as to whether or not the Ford truck
5 swerved into the BMW or sideswiped it parallel?

6 A I don't use the terms swerve or sideswipe ---

7 Q Okay. Use your terms then.

8 A It's my opinion that he steered left of center about two
9 and a half feet into the wrong side of the road to be able to
10 engage the BMW.

11 Q So you have him, say that again, please.

12 A He, the Ford truck ---

13 Q Yeah.

14 A --- is, excuse me, the Ford truck is about two, two and a
15 half feet south of the center line.

16 Q Okay. But it hit the BMW at an angle or a parallel?

17 A It was angular, angle.

18 Q And is that in your opinion based upon a scientific degree
19 of certainty that there was, it steered into that?

20 A Yes.

21 Q How would you describe what he did, what the driver did?

22 A He steered left ---

23 Q Steered left.

24 A --- to reach the area of impact and then steered right to
25 reach final rest at some point.

1 Q I just wanted to make sure we had the right terminology,
2 okay.

3 MR. SWERLING: Your Honor, that's all the questions I
4 have. These would be, I'll go ahead and introduce the physical
5 photographs that have been shown up there ---

6 THE COURT: Initially you said ---

7 MR. SWERLING: --- 1 through 9.

8 THE COURT: Initially you said 1 through 9, but I
9 think you just showed 8 pictures up there, did you not?

10 MR. SWERLING: I'm sorry, I'm saying 9, it's late in
11 the day ---

12 THE COURT: That's alright. So it's actually 1
13 through 8?

14 MR. SWERLING: Yes, it's 8.

15 THE COURT: Okay. Very good, for the Defense into
16 evidence.

17 (Whereupon photos were submitted as Defendant Exhibit
18 Numbers 1 through 8 for identification and entered into
19 evidence.)

20 MR. SWERLING: I don't think there's an objection.

21 MR. CONRAD: No objection to those exhibits.

22 MR. SWERLING: That's all my questions, Your
23 Honor.

24 THE COURT: Okay. Alright. Cross examination from
25 the State?

CROSS EXAMINATION

BY MR. CONRAD:

Q Good afternoon, Mr. Torres.

A Good afternoon.

Q Alright. I'm just going to ask you a few things. And we're going to go back, first of all, I'm just going to go through a few things and see if we can agree about them. And we're going to go through the exhibits, the Defense Exhibits, and this is Defense Exhibit 2, and this is a paper copy, but this is exactly what was just shown on the screen a couple minutes ago, correct?

A That's correct.

Q And would you agree with me according to your, in your opinion and your measurements and your, at the moment of impact that the Ford F250 was in the incorrect lane of travel?

A Yes.

Q And before we move on from this exhibit, I'm sorry. I think you said and let me just get clarification on this, you don't show the depiction of the victim in this case at the end of the collision, correct? And why was that again?

A He is positioned, but the trees and the overhead view of this visual statement isn't showing him at final rest

Q Alright.

A --- or approximate final rest.

1 Q Would you agree with me that the victim is essentially
2 where my finger's pointing right now?

3 A He's off the travel portion of the roadway by the grass,
4 yes.

5 Q Okay. Alright. So essentially where I'm pointing,
6 correct?

7 A Pretty close.

8 Q Okay. Alright. And going to, now we're looking at
9 Defense Exhibit 4. And this is the same picture that was just
10 shown to you by Mr. Swerling, correct?

11 A Correct.

12 Q Alright. And just a couple points here, and I guess this
13 version, it's a little harder to see and you can get down if
14 you want to look closer, but would you agree with me that just
15 in front of the tire, of the BMW tire towards the front of the
16 vehicle there's some black scuff marks on the side of the BMW
17 there?

18 A That's correct.

19 Q And would you agree with me that those were most likely
20 caused by the F250 tire? Those black scuff marks.

21 A Yes.

22 Q Okay. On the BMW. Now, you testified about as we look
23 down on the road we see a scuff mark on the road, correct?

24 A Correct.

25 Q And you testified just a few moments ago that --

1 just push it to the right, that's good, hold it right there.

2 You testified that you see that scuff mark traveling both back,
3 correct? Or back up Avid and also somewhat towards the side of
4 the road, is that correct?

5 A Yes.

6 Q Alright. Is there, do you have the ability to or were you
7 able to do any calculations that could tell you exactly how
8 much it traveled and which, how far in which direction?

9 A Not exactly. It's, I couldn't measure the scuff mark, it
10 was not visible on the date of my visit.

11 Q Okay. And would you agree with me it's somewhere maybe
12 between a foot and two feet, that scuff mark in total length,
13 would that be ---

14 A It's pretty close.

15 Q --- a rough estimate?

16 A It's within the range.

17 Q Okay. I'm going to show you Defense Exhibit 5. And
18 again, you just testified about this, but just wanted to point
19 out to the right hand side of this picture, I'm sorry, you did
20 testify there's a little bit of damage on that driver's door of
21 the BMW, correct?

22 A Based on the photographs, yes.

23 Q Okay. And is that that kind of lighter colored scuff mark
24 that's just behind the start of the door there, is that what
25 you identify as damage?

1 A Well, that is part of the damage profile that you're
2 pointing out, yes.

3 Q It's beyond that scuff mark; did you see and anything you
4 examined with the vehicle itself or any other photographs any
5 further damage further back on the driver's door?

6 A Yes, I do. But you know, it's so hard to determine if it
7 was preexisting damage or actually caused during this impact,
8 but I do document it because I see it in the police
9 photographs.

10 Q Okay. So you did see some damage, but you couldn't
11 determine if it was from this collision or not, is that your
12 testimony?

13 A I did not make a determination. If it was, I don't know
14 if it's preexisting damage.

15 Q Okay. So you just don't know, that's your testimony?

16 A (Nonverbal response).

17 Q I mean, specifically what I'm asking you about is this
18 isn't a good quality copy of this picture, and we can
19 potentially pull up the digital version if we need to, but
20 after this scuff mark here, after the vehicle, did you observe
21 any damage that you believe is related to the damage that was
22 caused to the front of the vehicle from the same collision?

23 A I don't have an opinion on it, I just ---

24 Q Okay.

25 A --- bring it to everybody's attention.

1 Q Okay. I'll move on. Now we're going to go to Defense
2 Exhibit 7. And I take it, you were present when this
3 photograph was taken, correct?

4 A Yes, that's my photograph.

5 Q Okay. And you're pointing or someone's pointing directly
6 toward, would you agree with me that whoever's hand that is is
7 pointing directly at the dent?

8 A Where the finger is and a little bit, it's an area

9 ---

10 Q Okay. Would you agree with me that the finger itself is
11 pointing to the center of that dent, roughly to the center of
12 that dent?

13 A Roughly.

14 Q Okay. And would you agree with me then that the center
15 point of that dent is to the right of the Ford emblem on that
16 truck in this picture?

17 A To the right of the left portion of the Ford truck.

18 Q The Ford symbol, this dent is to the right of this Ford
19 symbol?

20 A Oh, yes, yes, sir.

21 Q And I think you testified, and maybe I misheard you, but
22 your measurement was from the driver's edge of the truck to
23 that dent, you measured it to be about two feet, did I
24 understand that correctly?

25 A About two feet, yes, sir.

1 Q Two feet. Okay. Alright. And then, and I need you to
2 clear something up for me and I may have misheard you and if
3 so, just correct me, but did I hear you say something about
4 seeing blood spatter somewhere or did I misunderstand you?

5 A In other photographs that were taken by the first
6 responders at the house where the truck was parked ---

7 Q Okay.

8 A --- I saw what appeared to be blood spatter ---

9 Q Okay.

10 A --- and I think one of the officers or some of them may
11 have even swabbed something that appeared to be blood.

12 Q Okay. And you're aware of the results of that
13 test?

14 A I'm sorry, I didn't hear your question.

15 Q You said something about them taking a swab of what
16 appeared to be blood. Are you aware of the results of that
17 test?

18 A No, I am not.

19 Q Okay. Alright. We're going to pull up some more pictures
20 to look at. But so what I want to focus on now is you pulled,
21 and I may not understand this correctly, but you pulled some
22 impact velocity info off of the CDR, is that correct, of the
23 BMW? Or you reviewed a report that contained that data, is
24 that correct?

25 A Yes.

1 Q Okay. And again, correct me if I misunderstood you. You
2 testified that the force imparted upon the BMW was six miles an
3 hour backwards and two miles an hour to the left or towards the
4 edge of the road, did I understand that correctly?

5 A Yes.

6 Q Okay. We're going to go back to Defense Exhibit 2. And
7 I'm going to make sure we understand those two forces
8 correctly. So if I'm understanding you correctly, and look at
9 my pen, what you're testifying is that the force impact on the
10 BMW was six miles an hour in this direction, is that correct?

11 A That's correct.

12 Q Alright. And two miles an hour in that direction

13 ---

14 A Yes.

15 Q --- is that correct? Okay. And so you agree with me that
16 the force imparted by the Ford F250 on the BMW was three times
17 as strong on this axis as this axis, would you agree with me on
18 that? Am I doing my math correctly?

19 A Yes.

20 Q Okay. Now, we're going to pull up, this is State's
21 Exhibit 49, it's in evidence, and I'm going to pull up picture
22 506. And you testified that you reviewed a number of
23 photographs that were provided to you through discovery,
24 correct?

25 A That's correct.

1 Q Do you recall viewing this picture as part of your
2 investigation?

3 A There were so many photographs, I don't recall,
4 no.

5 Q Okay. So you don't remember seeing this one. Okay. And
6 I'm going to direct your attention to the center of this
7 picture where I'm circling with the mouse right now, can you
8 identify what this item is underneath, in the wheel well there?
9 From this picture.

10 A It's part of the steering features of the BMW.

11 Q Okay. Would you agree with me that that is the control
12 arm?

13 A That's what the police referred it to, control arm.

14 Q Okay. But you don't recall reviewing this picture,
15 though, correct?

16 A I don't recall.

17 Q Alright. And the control arm, if you agree with me that
18 that's what that is, you agree with me that that, it's broken,
19 it appears to be broken in that picture, correct?

20 A It appears to be displaced, yes.

21 Q You say displaced, but you would agree with me that it
22 appears, would you not agree with me that that's more of a
23 clean break right there where the end of that rod
24 is?

25 A We could use that word, yes.

1 Q Okay. And there it is zoomed in, does that help you out
2 looking at it a little better? Thank you, Ms. Colon. Would
3 you ---

4 A Yes.

5 Q --- agree with me that's more of a break in that ---

6 A Yes.

7 Q --- control arm? Okay. And generally speaking, from your
8 knowledge and training and experience, a control arm does what
9 in relation to the stability of the positioning of the tire on
10 a vehicle?

11 A It works with other components to change the steering
12 capabilities of the vehicle.

13 Q Okay. So would you agree with me, did you measure the
14 tires on the F250 as part of your investigation?

15 A I do have photographs, and I used a ruler to measure the,
16 from the ground plain to the highest point of the tire.

17 Q Would you agree with me it was 37 inches or something very
18 close to that?

19 A I can't recall.

20 Q Okay. And we're going to go back one more time to Defense
21 Exhibit, actually can you go on the digital version of Defense
22 Exhibits, do you have that?

23 MR. SWERLING: We have the hard copies over there.

24 MR. CONRAD: Yeah. The problem, Jack is ---

25 MR. SWERLING: He can bring it up if you need to.

1 MR. CONRAD: Yeah. We'll need just a minute to put
2 the digital version of Defense Exhibits up, Your Honor, thank
3 you.

4 (Off the record.)

5 Q Alright. This is, so I believe your testimony was, and
6 correct me if I'm wrong, your testimony was based off your
7 calculations from the point of impact between the truck and
8 BMW, the truck came to a stop 55 feet later, is that, did I
9 understand that correctly?

10 A Approximately 55 feet.

11 Q Okay. And you testified that there is a gate just beyond
12 that, correct?

13 A That's correct.

14 Q And your testimony, did you, in your measurements, did you
15 get or at least an estimation of the distance between point of
16 impact and that gate?

17 A I believe it was 72 feet, maybe, approximately, if I
18 recall.

19 Q Alright. And when you, you said you went out to the
20 scene, correct? And did a physical examination of the scene,
21 correct?

22 A Yes, sir.

23 Q Do you recall seeing reflective tape on that gate when you
24 did your examination of the scene?

25 A There might have been, I can't recall.

1 Q Okay. And your testimony is that, and let me make sure I
2 wrote this down correctly, the point of impact, your
3 calculations are that the truck was traveling between 28 to 33
4 miles an hour, is that correct?

5 A Yes, sir.

6 Q Okay. Or actually, that was after the impact, I'm sorry,
7 that velocity was after the impact?

8 A After, post impact.

9 Q Okay. Post impact. And what was the velocity, based off
10 of that, what velocity did you calculate from just before the
11 impact? Or did you give us a figure of that?

12 A I did not.

13 Q Okay. But after the impact, the truck was still traveling
14 28 to 33 miles an hour, correct?

15 A Correct.

16 Q Alright. And logically thinking, would you agree with me
17 that the truck was traveling somewhat faster, not going to get
18 into an exact amount, but something faster than 28 to 33 miles
19 an hour prior to the impact? Would that be a logical
20 deduction?

21 A I don't know if ---

22 Q I'm not asking you to put a figure on it, I'm just asking
23 was he traveling faster before the collision or slower than the
24 collision than this post velocity speed that you calculated?

25 A I did not calculate that.

1 Q I understand that. But logically speaking, would it be
2 higher or slower, was the vehicle sped up by the collision or
3 slowed down by the collision? I'm not asking for a figure,
4 just logically thinking.

5 A From the 28 to 34?

6 Q So your calculation is 28 to 33 post impact, correct?

7 A Post impact.

8 Q And I understand you're not going to be able to give this
9 jury a speed figure from prior to the impact, so I'm not asking
10 for a number. What I'm asking for was, is, was the velocity
11 effected by the impact of the truck effected by the impact
12 either up or down? I'm asking you do you have an opinion
13 whether the velocity of the truck was effected by the impact?
14 And again, I'm not asking for a number.

15 A Yes.

16 Q Okay. In what way? Was the truck slowed down by the
17 impact or sped up by the impact?

18 A It's probably a combination of driver input and the
19 interaction with the truck because we know he had to stop, slow
20 down, so he slowed down as a result of the crash, and input
21 from the driver.

22 Q Okay. I'm not asking about what happened after the
23 impact, I'm asking about the speed before the impact and
24 whether that speed would be more likely to be higher than the
25 post impact velocity or lower than the post impact velocity?

1 A It could be higher than the speeds you're talking about
2 right there, 28 to 33.

3 Q Alright. Could it be lower?

4 A Could it be lower? Depending ---

5 Q To a reasonable degree of scientific certainty, do you
6 have an opinion whether the truck was slowed up or sped down by
7 the impact?

8 A Not based on the deceleration ranges that I used to
9 determine the post impact speed of the truck.

10 Q Okay. I'll move on. As part of your investigation, did
11 you review any data from the infotainment center that was
12 provided in discovery of the F250?

13 A That was outside the scope of my involvement.

14 Q Okay. You did not? Okay. Did you review any videos that
15 captured the truck at or near the time of this collision that
16 were turned over?

17 A There was a Ring video that was preserved by the first
18 responders ---

19 Q Okay.

20 A --- if that's what you're referring to.

21 Q Did you review that as part of your investigation?

22 A Briefly.

23 Q Okay. Alright. So I want to talk just a little bit about
24 your measurements. In looking at the diagram which we still
25 have number 2, Defense Exhibit 2 on the screen. And I want to

1 make sure I understand your calculations correctly about where
2 the victim was standing at the point of impact. And correct me
3 if I'm wrong, but I believe you said that the victim was
4 standing five feet behind the front of the BMW, correct?

5 A Correct. To the west.

6 Q And three feet from the side of the BMW, correct?

7 A Within an ellipse, yes.

8 Q Okay. Alright. So five feet and three feet. And did
9 your measurement determine whether that five feet back, was
10 that essentially in the vicinity of the driver's door? Did you
11 do that measurement? Was it close to the driver's door at five
12 feet back?

13 A Yes.

14 Q And you're saying it's three feet from the outside door as
15 my cursor is going up, so something in that area, correct?

16 A Yes. Within an ellipse, yes.

17 Q An ellipse. Okay. Now, your testimony is that the truck
18 itself had veered two to three feet over the center line
19 towards the BMW, did I understand that correctly?

20 A Yes.

21 Q And you agree with me when we looked at the previous
22 picture, and I'm happy to put it back up, it's the Defense
23 exhibit of the front of the truck, that the, where you
24 identified the body strike, I think it's the term you used,
25 right? The body strike on the front of the truck?

1 A Yes, sir.

2 Q That was to the right of the Ford emblem on the front of
3 the truck, correct? At least that's what the picture would
4 show, towards the driver's side?

5 A Yes.

6 Q Okay. Alright. And I know you testified that you did not
7 review any infotainment data from this case, correct?

8 A That's correct.

9 Q But are you aware that that infotainment does contain
10 speed data?

11 A Yes.

12 Q Okay. And you didn't think that was important to review?

13 A It was outside the scope of my assignment, and it was
14 produced after I had already reported to counsel the post
15 collision speed of the truck based on the work that I did. And
16 it's my understanding another expert who is more qualified on
17 the infotainment system and the Berla extraction system is
18 going to be testifying on that.

19 Q Okay. Alright. And I believe I've already asked this,
20 but I'm going to ask it one more time. You would agree with me
21 as you determined that the point of impact, the truck was in
22 the wrong lane of travel, correct?

23 A That's correct.

24 Q Alright. And you've been paid for your work in this case,
25 is that correct?

1 A That's correct.

2 Q And your testimony. How much have you been paid for your
3 work in this case?

4 A I'd be guessing right now, I don't have the exact total,
5 but I was on assignment over here in Greenwood and I was doing
6 two separate crashes at the same time.

7 Q Do you get a lump sum, or do you get hourly?

8 A I get an hourly rate.

9 Q Okay. And what is the rate that you got in this case per
10 hour?

11 A My hourly rate is \$185.00 per hour for the principle, and
12 \$125.00 for the team member when we're doing field work and
13 vehicle work.

14 Q Okay. And when you say team member, that's an employee of
15 yours that you brought with you to help you?

16 A Yes.

17 Q Okay. And do you know approximately how many hours that
18 you spent on this case?

19 A I don't.

20 Q Is your rate different for Courtroom testimony?

21 A No.

22 Q Okay. Alright.

23 MR. CONRAD: Nothing further at this time.

24 THE COURT: Okay. Any redirect?

25 MR. SWERLING: Just a couple questions, Your Honor.

REDIRECT EXAMINATION

1
2 BY MR. SWERLING:

3 Q David, we've talked about preimpact, postimpact and
4 angling and where the vehicle came to rest, correct? You were
5 talking about that and Mr. Conrad asked you about that, is that
6 right?

7 A That's correct.

8 Q And Mr. McClendon was in the front of the vehicle there?

9 A Yes.

10 Q Okay. And that's where the Ford came to rest, is that
11 correct?

12 A That's the approximate area where ---

13 Q Okay. How did it get there after the impact?

14 A He decelerated and steered towards the right eventually to
15 reach that side of the road.

16 Q Okay. I wanted to clarify.

17 MR. SWERLING: That's all I have.

18 THE COURT: Okay. Any recross on that?

19 MR. CONRAD: Nothing further from the State.

20 THE COURT: You can step down, sir. You're free to
21 leave the Courthouse, you're more than welcome to remain with
22 us.

23 MR. SWERLING: Judge, can we approach a moment?

24 THE COURT: Yeah. That's what I'd like for y'all to
25 do.

1 (Off the record.)

2 THE COURT: Okay. Ladies and gentlemen, the plan is
3 to go ahead and adjourn for the day. And we'll start back
4 tomorrow and start back at 10:00 as we've normally done. So
5 get some good rest and we'll see how tomorrow goes which will
6 certainly have some bearing on whether or not we go into
7 Saturday or not, so we'll just see. These lawyers are working
8 really hard, and we'll just see how tomorrow goes. So get some
9 good rest, have a good evening and we'll see you back here at
10 10:00 in the morning. Let me just explain to you, bring them
11 back in real quick. The reason why we're adjourning when we
12 are, the next witness to be called the lawyers have indicated
13 that it may take a while, and so it would probably push us into
14 the evening and so that's why we're adjourning now, okay?
15 Thank you.

16 (Jury exiting Courtroom.)

17 THE COURT: Okay. After the State rested, of
18 course, lawyers know this, that's the time when the Defense has
19 the right to make a motion for directed verdict. I didn't want
20 to have to send the jury straight back out because they had
21 just come back in, and so we met at sidebar, and I told Mr.
22 Swerling that he could make that motion now during a break as
23 if he made the motion right after the State rested before he
24 put up any of his case. So Mr. Swerling, I turn it over to
25 you, sir.

1 MR. SWERLING: Judge, of course, at the end of the
2 State's case, we move for a directed verdict on the charge of
3 murder. Taking all the evidence in a light most favorable to
4 the State, which is what you're required to do, we submit to
5 the Court that the State has failed to prove more than
6 speculation or conjecture of the element of malice in this case
7 to sustain a murder conviction. And based on that, we ask the
8 Court to consider entering a directed verdict on that basis.

9 THE COURT: Okay. Alright.

10 MR. SWERLING: That's it.

11 THE COURT: Thank you, Mr. Swerling. Viewing the
12 evidence in a light most favorable to the State as you've just
13 alluded to in your motion, I do find that there is enough
14 direct evidence and substantial circumstantial evidence to
15 justify sending this case to the jury, and therefore, the
16 Defense motion for directed verdict is respectfully denied.
17 Alright. Start back at 10:00 in the morning, everybody have a
18 good evening.

19 (Whereupon the hearing ended at 4:56 pm.)

20 **DAY THREE OF STATE V. ACKERMAN - OCTOBER 4, 2024**

21 THE COURT: Alright. Good morning, everybody. State
22 ready for the jury?

23 MR. CONRAD: We are, Your Honor.

24 THE COURT: Defense ready?

25 MR. SWERLING: Yes, sir.

1 THE COURT: Okay. Let's bring the jury out,
2 please.

3 (Jury entering Courtroom.)

4 THE COURT: Alright. Let the record reflect the jury
5 is back in, good morning, ladies and gentlemen. I tell you; I
6 just want to commend y'all once again. Y'all are prompt every
7 morning and then after lunch you're here on time and y'all are
8 troopers, I tell you, and we appreciate that, everybody
9 appreciates that, okay? Alright. Mr. Swerling, your next
10 witness.

11 MR. SWERLING: Thank you, Your Honor. Good morning,
12 ladies and gentlemen. I call Jonathan Nelson.

13 CLERK: Raise your right hand, please. Do you
14 solemnly swear the testimony you're about to give this Court to
15 be the truth, the whole truth, and nothing but the truth so
16 help you God?

17 MR. NELSON: Yes, I do.

18 CLERK: Thank you.

19 **DIRECT EXAMINATION**

20 BY MR. SWERLING:

21 Q Introduce yourself to the jury Mr. Nelson, please.

22 A Hi. My name is John Nelson.

23 Q Okay. And where are you from?

24 A Originally from South Florida, Fort Lauderdale, and
25 then I've been from Annapolis, Maryland about 20 years

1 now.

2 Q Okay. Would you give the jury a little bit of your
3 educational background and college, high school, college, and
4 any other degrees?

5 A Sure. So K through 12 in Fort Lauderdale. My father was
6 a police officer. Based on that, I ended up going to the Naval
7 Academy in Annapolis, got a bachelor's in aeronautical
8 engineering from there, and then went to work and eventually
9 went back to school to the University of Maryland. Got my
10 masters in reliability engineering which that is kind of an
11 unknown topic, that's kind of looking at how things go wrong,
12 how things break, predicting that, preventing that, looking
13 into things that go wrong.

14 Q Okay. Did you actually serve in the Navy?

15 A Just briefly. So once I was commissioned from the
16 academy, I went in special warfare or SEALs and during training
17 I had some medical issues, ended up being discharged from the
18 Navy. So went over to Afghanistan for a couple years as a
19 civilian instead.

20 Q Okay. Alright. Could you go over with the jury your
21 experience in the area that you're prepared to testify to?

22 A Sure. So accident reconstruction and human factors,
23 that's a lot of engineering, a lot of math, a lot of physics
24 and obviously that comes from my background and my education.
25 And then, you know, both at the academy at the University of

1 Maryland and then ongoing education from that all the way
2 through now, I mean, it never stops.

3 Q What about your, let's talk about your work experience in
4 this particular area that you're going to testify about.

5 A Sure. So once I got back from Afghanistan, I started
6 doing a lot of contract work for the Coast Guard and their
7 small boat forces. So there's a lot of designer review, but
8 then there was a lot of failure investigations, occasional
9 accident investigations, looking at how people interacted with
10 their boats. And then eventually got into the forensic
11 engineering field and accident reconstruction which again is
12 very specific to this case. I've done that since 2015 and over
13 the course since then we're looking at probably up, getting up
14 towards a thousand different kinds of accidents that I've
15 investigated.

16 Q Who are you employed by now?

17 A The company's called S-E-A, Limited, it's an employee-
18 owned company based out of Columbus, I'm out of their Baltimore
19 office.

20 Q And what do they do?

21 A So various things, a lot, some research investigation, a
22 lot of it is forensic engineering, so looking into accidents
23 either on the civil sides, sometimes on the criminal side. A
24 lot of vehicle testing and things like that. We even have a
25 candle laboratory, so a lot of the things you buy from Bed Bath

1 and Beyond, they've been burning in one of our warehouses for
2 quite a while, some people of ours keep track of them. So it's
3 pretty varied, but it is a lot of forensic investigation.

4 Q Okay. And are you employed by them?

5 A Yes.

6 Q Okay. And are you being compensated for your work in this
7 particular case?

8 A Not in this particular case. I'm paid salary, so I'm
9 being paid whether I'm here, elsewhere working for you or
10 working for the DOJ, it doesn't really matter.

11 Q So the company you work for is paying, your company that
12 you work for is billing, is that correct?

13 A Billing, correct, I'm just paid no matter what I'm doing.

14 Q How many employees does the company have?

15 A I think we're getting towards 500 right now total. Off
16 the top of my head, there's probably 250 to 300 actual
17 technical staff.

18 Q Okay. Prior to that, did you have experience in this area
19 in your employment experience?

20 A Right. So working with the Coast Guard, again,
21 investigating failures, warranty issues, accidents from time to
22 time, yes.

23 Q Okay. While you were, what, during your work experience,
24 what systems have you had experience in?

25 A So a lot ---

1 Q That would qualify you as a witness in this case.

2 A Sure. So training wise, most of it has been on vehicle
3 accidents, accident investigations. So there's classes from
4 the Society of Engineers, Automotive Engineers, the Institute
5 of Police Technology and Management, Northwestern Center for
6 Public Safety. Those are a lot of vehicle based things. Crash
7 Safety and Solutions. Now, driver research has a lot of human
8 factors so how humans react with machines, with vehicles, with
9 the environment. The Illuminating Engineering Society, that's
10 more human factors because they primarily deal with issues of
11 lighting and illumination. And then so my actual field work is
12 a lot of vehicles, machines, heavy equipment, reconstructing
13 accidents and looking at how people have dealt with situations,
14 dealt with that equipment, and obviously, I specialize in
15 visibility and conspicuity when those issues arise in certain
16 cases.

17 Q While you're doing that, can you explain to the jury what
18 you mean by visibility and conspicuity?

19 A Sure. So conspicuity has a few definitions, but
20 basically, it's the ability of something to attract attention
21 to itself. It's how likely is it that somebody is going to
22 notice and perceive something that's visually in their field of
23 view. And there's a lot of factors that go into that, into
24 whether something is visible, and I'm sure we'll be getting
25 into that in detail later.

1 Q Okay. And I believe you testified that you have, you're a
2 professional member of several societies, is that correct?

3 A Sure. So the Society of Automotive Engineers, the
4 Illuminating Engineering Society. I'm a licensed professional
5 engineer, have been since 2012 or so, part of that is ongoing
6 education to remain licensed, so keeping track of that, you
7 have to do a certain number of hours annually. And I, keeping
8 track of that, looking at the actual spreadsheet, it's on the
9 order of 60 to 100 hours a year of ongoing training in my field
10 each year.

11 Q And do you, just, are you, do you have any certifications
12 in certain areas?

13 A Sure. I'm certified by the Society of Engineers,
14 Automotive Engineers in the field of accident reconstruction.

15 Q Okay. Any others that need to be, the jury needs to know
16 about as far as your qualifications are concerned?

17 A I mean, there's a few, I'd have to look at my CV, but
18 downloading of EDRs from heavy vehicles, sorry, electronic data
19 records from heavy vehicles and passenger vehicles, I'm
20 certified in that.

21 Q Have you ever published in this area?

22 A Sure. I've published ---

23 Q Published articles?

24 A Yes. I've published a peer reviewed technical paper on
25 the visibility of pedestrians at night from vehicles.

1 Q Okay. Now, have you, the training you've received other
2 than your work experience, could you just give the jury a brief
3 overview of your training as it relates to the things you're
4 going to testify to today?

5 A Sure. So again, that's 60, anywhere from 60 to 100 hours
6 every year on topics that I get to choose that are applicable
7 to my field, so accident investigation reconstruction, vehicle
8 dynamics, human factors, lighting visibility, interpreting data
9 that's downloaded from vehicles, camera matching
10 photogrammetry, forensic mapping, some of what Mr. Torres
11 talked about yesterday, that kind of spans the whole scope of
12 what we do.

13 Q Okay. And let me ask you in addition, training and like
14 classes and things that you go to and education, continuing
15 education?

16 A Sure. That can be online, that can be in person. The
17 courses I take from the Illuminating Engineering Society, those
18 were in person with two hours a week at Morgan State for 12
19 weeks and it could be three hours a week if the professor got
20 fired up. So that's 100 hours in person basically a few
21 semesters worth.

22 Q I think you talked about the IES, would you explain to the
23 jury what IES is?

24 A Sure. IES, the Illuminating Engineering Society is a
25 recognized technical and educational society and foundation

1 that publishes standards, maintains standards, does education
2 on the topics of lighting and visibility. So if somebody were
3 to take this room and want to redesign the lighting, they would
4 probably be looking to IES standards to do it right, not cause
5 issues, have the right amount of light so the people could see.
6 And they've been in business doing this since I think they're
7 coming on about 120 years right now.

8 Q Have you ever taught any programs dealing with the area
9 you're going to testify to, about today?

10 A One would be, a paper that I published was presented at a
11 technical conference and I have presented at an ongoing legal
12 seminar on the topics of lighting, visibility, and
13 investigating accidents at night.

14 Q So you've actually taught programs?

15 A Correct.

16 Q Okay.

17 MR. SWERLING: Judge, at this time I would --

18 Q By the way, have you ever been qualified as an expert
19 witness?

20 A Yes. Off the top of my head in Maryland, Pennsylvania,
21 State of Delaware, there may be others, but that's what I
22 recall.

23 Q And have you been qualified in the area that I intend to
24 ask you questions about today?

25 A Sure. Accident reconstruction and visibility.

1 Q Alright.

2 MR. SWERLING: Your Honor, at this time I would ask
3 the Court to qualify the witness in the area of accident
4 reconstruction and related human factors including visibility
5 and conspicuity, correct?

6 MR. NELSON: Right.

7 THE COURT: Okay. Alright. And what says the
8 State?

9 MR. MEADORS: A few questions, please?

10 THE COURT: Sure.

11 BY MR. MEADORS:

12 Q You say you take 60 to 100 hours of training a year and
13 you kind of choose what they are?

14 A Correct.

15 Q How many of those did you choose in visibility last
16 year?

17 A Last year was probably four to eight from IES, and IPTM, I
18 think that was another eight, that was on pedestrian accidents
19 that did cover visibility. I'd have to go to the list, it all
20 kind of blends in from year to year.

21 Q And Mr. Swerling asked you you've been an expert in
22 accident reconstruction, but that's not what you're testifying
23 here today about, correct, it's more visibility?

24 A Well, human factors as it relates to accidents and
25 reconstruction.

1 Q How many times have you been qualified an expert in just
2 that field of illumination? Have you ever been qualified as an
3 expert just in illumination?

4 A In illumination, I don't think those cases have gotten to
5 trial yet.

6 Q You actually haven't been qualified in those, have
7 you?

8 A Visibility, not visibility at night.

9 Q And you've tried to get qualified but haven't been,
10 correct?

11 A That's not correct.

12 Q Okay. But you have not been qualified as an expert in the
13 field of visibility?

14 A I testified regarding that, and those cases did not go to
15 trial.

16 Q They did not go to trial?

17 A Correct.

18 Q So when did you testify?

19 A Deposition.

20 Q So you testified in a deposition, but you've never
21 testified or been qualified in a Court of record as an expert
22 in the field of visibility?

23 A Visibility in the daytime, yes.

24 Q Excuse me?

25 A Visibility in the daytime, yes.

1 Q Okay. So visibility in the nighttime, have you ever been
2 qualified as an expert in a Court of record of this state?

3 A In the Court, no.

4 Q No?

5 A In the Court, no.

6 Q Like we're in now?

7 A That's correct.

8 Q Federal or state, correct?

9 A Correct.

10 MR. MEADORS: Your Honor, we'd object to this, he's
11 not qualified to testify.

12 THE COURT: Alright. Ladies and gentlemen, I need to
13 discuss matters with the lawyers, if you go back to the jury
14 room, it should not take long, thank you.

15 (Jury exiting Courtroom.)

16 MR. SWERLING: Your Honor, in view of his voir dire,
17 I can ask him some additional questions.

18 THE COURT: Yeah. And I want him to go back over, I
19 mean, the fact that he has not been qualified as an expert in
20 the particular area that he's here to testify on, that in and
21 of itself would not necessarily cause me to not qualify him as
22 an expert, but go back over with him his training, experience,
23 education as it relates specifically to this issue of
24 visibility illumination, okay?

25 MR. SWERLING: Yes, Your Honor.

1 THE COURT: If you'll cover that again,
2 please.

3 MR. SWERLING: I was trying to go in that
4 area.

5 Q So in the area of accident reconstruction, would you
6 elaborate some more about what your actual training is and
7 experience is with accident reconstruction? Training and
8 experience.

9 THE COURT: But let's hone it into, because he's not
10 going to testify as your expert did yesterday, is my
11 understanding. But it's going to be specifically related to
12 the area of visibility and illumination as it relates to
13 accident reconstruction, correct?

14 MR. SWERLING: Correct. It's actually accident
15 reconstruction, and that's a subpart of accident
16 reconstruction.

17 THE COURT: Okay. Alright. So let's deal with the
18 subpart then of accident reconstruction, okay? Does that make
19 sense, Mr. Nelson?

20 MR. NELSON: Yes.

21 MR. SWERLING: Do you understand what the Judge is
22 saying?

23 MR. NELSON: Yes.

24 MR. SWERLING: Okay.

25 Q So let's talk about your experience in that area

1 of visibility and related factors including visibility and
2 conspicuity. So your actual training and experience.

3 A Sure. So ---

4 Q Do you need to your CV to go through that?

5 A Not yet, not right now.

6 Q Okay.

7 A So first, second day on the job I was out in the field
8 being used as an exemplar pedestrian for a night test. The
9 reason for that is that my immediate superior had been working
10 in the field of night visibility and conspicuity, qualified in
11 jurisdictions around the country and that was his specialty. I
12 worked training under him and alongside him for the better part
13 of the last decade. That's kind of naturally how my interests
14 got into this. So I've been working on night visibility and
15 conspicuity cases, basically since I started at S-E-A. And
16 along the way, I've taken the requisite education to support
17 that work, that includes upwards of 100 hours of education from
18 IES to endorse this visibility model that I'm going to present
19 here today that includes classes from the Society of Automotive
20 Engineers. Specifically, we're going to have trouble with this
21 today, on not just investigating accidents but investigating
22 accidents at night and how to accurately test, recreate,
23 evaluate visibility. The ongoing training from the Driver
24 Research Institute that specializes in human factors, driver
25 response and specifically drivers seeing at night, whether

1 that's pedestrians, vehicles, tractor trailer, all of that. So
2 since I've started at S-E-A, I have not only been working in
3 this field and training on it with my colleagues that have been
4 doing this for decades and qualified, I've received the
5 requisite training to undergo and do it myself and I've been
6 doing it myself for upwards of five years. As was pointed out,
7 I have not testified in Court regarding these issues, I've
8 testified in depositions, and I believe those cases resolved
9 shortly thereafter.

10 Q But you have been qualified in Court as an expert in what
11 particular area?

12 A So accident reconstruction, and those cases involved
13 visibility, it was during the daytime. I've qualified as an
14 expert in a few other areas not specific to vehicle accident
15 reconstruction.

16 Q But what you are describing to the Court was your training
17 and experience in visibility and conspicuity over the last
18 decade or more?

19 A Yes. And even before that with the Coast Guard they had
20 human factors issues with lighting and illumination and those
21 were things that we investigated as well. For those boats,
22 we're, you know, applying different standards to investigate
23 those, but I've been involved with it even before the last
24 decade.

25 Q So with respect to nighttime, part of your training

1 has been specifically devoted to nighttime issues,
2 correct?

3 A Heavily focused on that, yes.

4 Q And pedestrians?

5 A Yes.

6 Q And vehicles?

7 A Yes.

8 THE COURT: Okay. Alright. Let me just ask a couple
9 questions and then, Mr. Meadors, I'll allow you to ask. How
10 many cases have you worked on regardless of whether or not
11 they've not come to Court or pending or whatever, approximately
12 how many cases have you worked on during your career that is
13 related to the case that we have today, illumination, night
14 visibility, that sort of thing, how many cases would you say
15 you've worked on?

16 MR. NELSON: Off the top of my head, easily over 100
17 ---

18 THE COURT: Okay.

19 MR. NELSON: --- towards 150 to 200.

20 THE COURT: Okay. Alright. Okay.

21 MR. SWERLING: If I could follow up on ---

22 THE COURT: Yeah. You follow up and then I'll turn
23 it over to Mr. Meadors.

24 Q Is this something that your company that you work for
25 does?

1 A Say that again, please.

2 Q Are they involved in this particular area as
3 well?

4 A Yes.

5 Q And do you work with them alongside them in respect to
6 some of these cases?

7 A Yes. The colleague I mentioned, I've worked alongside
8 with him for 10 years, and he started stepping down and I'm
9 stepping into his role as basically the lead expert on this
10 topic at
11 S-E-A.

12 Q Would you describe him as your mentor or a tutor over that
13 10 year period?

14 A Certainly. I think I've caught up with him towards the
15 end, but yes, he was definitely a mentor.

16 Q And was that in this area here that we seek to qualify you
17 in?

18 A Sure. He was nationwide qualified; he'd go all over the
19 country for cases like this.

20 Q So you worked under him and with him and alongside him in
21 this particular area that I'm seeking to qualify you?

22 A Correct. That's why I go all over the country doing that
23 now myself, too.

24 Q That's what I wanted to ask, you go around the country,
25 this is a national firm, correct?

1 A Yes. And we go not just where our offices are,
2 I think before this I've gone for a night visibility case which
3 was a train and a pedestrian, it was in the middle of North
4 Dakota.

5 Q Okay.

6 THE COURT: Even though you've not been qualified in
7 Court as an expert in this particular area that you're here to
8 testify to today, have you ever been disqualified as an expert
9 in this particular area?

10 MR. NELSON: No.

11 THE COURT: Okay. Alright. Mr. Meadors, any follow
12 up?

13 MR. MEADORS: Just very briefly.

14 THE COURT: Sure.

15 BY MR. MEADORS:

16 Q And I may have heard testimony, a lot of, you self-trained
17 with your mentor, I took a note on that that that's been a lot
18 of your training in this field?

19 A That's just natural ---

20 Q Okay. Well, just a yes or no ---

21 A Yes.

22 Q Yes, right? So you self-trained in this field, right?

23 A Trained on the job, yes, sir.

24 Q Okay. And it was, I think that question was you said you
25 heavily focused on that, in this field?

1 A Yes.

2 MR. MEADORS: Thank you.

3 THE COURT: Okay. I'm going to find that Mr. Nelson
4 is qualified as an expert in the area, and I'm not going to try
5 to pronounce that one ---

6 MR. SWERLING: Conspicuity, I've been trying, I think
7 that's right.

8 THE COURT: Right. Illumination and night
9 visibility. Even though he's not ever been qualified as an
10 expert before, I do find him an expert in that area, or those
11 areas, okay?

12 MR. SWERLING: Judge, and I'll go back through some
13 of those with the jury, specifically what he just testified to?

14 THE COURT: You can ---

15 MR. SWERLING: Briefly, briefly ---

16 THE COURT: You can do that and certainly the State's
17 objection to Mr. Nelson being qualified as an expert is on the
18 record, so I don't think you necessarily need to renew that,
19 Mr. Meadors.

20 MR. MEADORS: No, sir, but if he goes back into
21 something here, when I get on cross, if it's okay with you, I
22 can ask him ---

23 THE COURT: Oh, sure ---

24 MR. MEADORS: --- some of this was self-trained ---

25 THE COURT: Sure, yeah.

1 MR. MEADORS: Okay.

2 THE COURT: And then move for me to qualify him as an
3 expert after you go through those several ---

4 MR. SWERLING: Okay.

5 THE COURT: --- questions.

6 MR. SWERLING: Thank you, Judge.

7 THE COURT: Alright. Anybody need to take a quick
8 break? Okay. Alright. Let's bring the jury in. Let me just
9 add to the record that I find Mr. Nelson does have the
10 requisite experience, education, training to testify as an
11 expert in this area notwithstanding the fact that he's never
12 been qualified in Court as an expert before. And I do find
13 that his testimony would aid the jury in understanding the
14 issues before the Court.

15 MR. SWERLING: And I'm just going to highlight some
16 things.

17 THE COURT: Sure, yeah.

18 (Jury entering Courtroom.)

19 THE COURT: Alright. Let the record reflect the jury
20 is back in. Mr. Swerling?

21 MR. SWERLING: Okay.

22 **DIRECT EXAMINATION CONT'D**

23 BY MR. SWERLING:

24 Q Mr. Nelson, I just want to go back over a couple
25 things in a little bit more detail, okay? The degree

1 you got from the University of Maryland was in what?

2 A Reliability engineering.

3 Q Was that a bachelor's or master's degree?

4 A A master's degree.

5 Q And while you were at the United States Naval Academy,
6 what was your degree in?

7 A Aeronautical engineering.

8 Q Was that a bachelor degree in Aeronautical
9 Engineering?

10 A Yes.

11 Q Okay. You are currently working for S-E-A Limited, is
12 that correct?

13 A That's correct.

14 Q Alright. And how long have you been working there?

15 A Coming up on 10 years.

16 Q Okay. Specifically, you mentioned you worked in,
17 alongside in connection with another individual, correct?

18 A Correct. My ---

19 Q And what was his name?

20 A Fawzi Bayan.

21 Q And what was the nature of his specialty that you worked
22 alongside with him?

23 A Night visibility and conspicuity.

24 THE COURT: Would you spell his name for the Court
25 reporter's benefit?

1 MR. NELSON: It's F-a-w-z-i, first name, and B-a-y-a-
2 n is the last name.

3 THE COURT: Thank you.

4 Q So was this, would you consider him one of your
5 mentors?

6 A Yes.

7 Q Were you an understudy with him?

8 A Sure. My second day on the job, I was standing out in the
9 middle of the road at night as a exemplar pedestrian during
10 tests while he was doing many of the things I'm going to be
11 describing to you today.

12 Q Okay. And during that, was that over a 10 year period I
13 believe you said?

14 A Sure. Yes, over a 10 year period we've done many of those
15 accidents together, doing tests at night, doing analyses at
16 night, and eventually I moved from being the person down the
17 road to the person in the car with him and on my own.

18 Q Was he a nationally known expert in that area?

19 A Yes. He's qualified in jurisdictions around the country
20 and is called to go do work across the country on these areas
21 as I do now.

22 Q So let me ask you this, was it self taught or you were
23 taught by him and others?

24 A Taught by him on the job and others as a national part of
25 working together, yes.

1 Q And these, are these engineers that work with your
2 company?

3 A Yes.

4 Q And you have access to them?

5 A Yes.

6 Q And do you discuss the area that I'm seeking to qualify
7 you in with them over a period of these years you've been with
8 that company?

9 A Absolutely.

10 Q And are these experts as well in this particular area of
11 visibility and conspicuity, human factors?

12 A Yes.

13 Q Okay. And specifically, with respect to that, did you,
14 what certifications do you hold in that particular field?

15 A There's not really certifications for it, but there is
16 professional education training that you do, and that's the IES
17 training that I mentioned. Those are more Morgan State stats
18 upwards of 100 hours professional training specifically on
19 illumination and lighting, those topics, and various other
20 organizations I talked to you about, Driver Research Institute,
21 the Society of Automotive Engineers, they all cover human
22 factors, accidents at night, visibility at night and those
23 topics, yes.

24 Q Did you say it was about 100 hours a year?

25 A Yes.

1 Q Okay. And you attend those?

2 A Yes.

3 Q Okay. And the, in your other job prior to this, did you
4 work in this particular area or was it, did you start with the
5 current employer?

6 A I worked in that area, yes, with the Coast Guard, their
7 small boats. They have issues with visibility at night both on
8 their boats, working around the boats, visibility of their
9 boats, so those topics came in. So I've been involved with
10 that prior to investigating as well.

11 Q That was on the job work experience?

12 A On the job work experience, and then of course, boats are
13 built to certain standards and those standards in training I've
14 taken as well.

15 Q Okay. And let me ask you this, with respect to the
16 educational courses that you have taken, have you taken a
17 number of educational courses in this particular area?

18 A Yes. Hundreds of hours, again.

19 Q Okay. And these are online and in person?

20 A Mostly in person, since Covid, mostly online, but still
21 both, yes.

22 Q Okay. And in this particular area that we're going to
23 seek to qualify you in, have you also taught and published in
24 that area?

25 A I've given presentations and published tactical

1 peer review papers, especially or particularly on visibility of
2 pedestrians at night from vehicles.

3 Q Okay. Let me just, and I'm talking about illumination,
4 conspicuity and what other, human factors is that correct?

5 A Right. Visibility of humans at night is a human factors
6 issue.

7 Q Okay. So your training and your seminars that you've
8 taken, seminars you've taught, publications you've taught, have
9 to do with the area in which you are, or you're asking to be
10 certified to today in, and that is accident reconstruction and
11 related human factors including visibility and conspicuity?

12 A Yes.

13 Q Okay. And over the period of time, about how many cases
14 have you been involved with, not only just you yourself but in
15 consult with other engineers at your employer?

16 A So cases in general, we're looking at probably 100
17 specifically on night visibility and conspicuity, over 100,
18 could be towards 150 to 200.

19 MR. SWERLING: Your Honor, at this time I would go
20 ahead and seek to qualify Mr. Nelson in the area of accident
21 reconstruction and related human factors including visibility
22 and conspicuity.

23 THE COURT: Okay. I so find that he is an expert in
24 those areas and the position of the State has already been
25 noted on the record. You may proceed.

1 Q Mr. Nelson, at some point were you, was your company
2 employed to assist in this particular case?

3 A Yes.

4 Q And do you recall about when that was?

5 A I think we officially started in around March of 2004.

6 Q Did you have ---

7 A Excuse me, 2004.

8 Q '24. And prior to that time did you have contact with an
9 investigator from my office about this particular case?

10 A Yes. An investigator named Kyle Taylor contacted us and
11 asked if we could assist with some of the issues in this case.

12 Q Okay. Now, in preparing for your testimony today, did you
13 review discovery materials that were provided to me by the
14 State, and I provided to you?

15 A Sure. I mean, not just for preparation for testimony
16 today, as soon as we start the case, we review materials that
17 are provided for us to decide how we're going to go about
18 investigating the case.

19 Q Okay. And can you specifically tell the jury what
20 materials that you recall being provided?

21 A Sure. So there's thousands of pages of discovery as you
22 know, you know, I would just point out the scene photographs,
23 the vehicle photographs taken by the police, the MAIT Team
24 report and their diagram. You all have seen the surveillance
25 videos from the Ring cameras, the body cam footage, dash cam

1 footage, I looked at all those, the downloads from the
2 vehicles, I looked at all those. And of course, there's many
3 other things, but there's an example list.

4 Q Okay. Now, did you review preimpact vehicle and
5 pedestrian positions as reconstructive and testified to by
6 David Torres?

7 A Yes. Those would be the top-down diagrams that he showed
8 you yesterday, then towards the end you saw a table of his
9 measurements and that's what enables me to go after the facts,
10 pick out what he marked as his reference point and then just
11 mark off where things are so that I can do my investigation, my
12 testing based on his measurements.

13 Q So was his findings, or are his findings and opinions a
14 predicate for you to go ahead and lay a base for your opinions
15 in this particular case?

16 A Sure. Any time you're going to look at visibility whether
17 it's daytime or nighttime, you have to have a good
18 reconstruction first. You have to reconstruct where things
19 were and a lot of times, we'll do that ourselves or I'll do
20 that myself, and a lot of times it's a tag team effort where
21 there's already a reconstructionist, so I'll take their
22 findings and start from there.

23 Q Let me ask you something, let me slip back a little bit.
24 Have you been qualified, I believe I asked you, but have you
25 been qualified as a witness in accident reconstruction?

1 A Yes.

2 Q And at this point by courts, have you been qualified as an
3 expert witness in the area of visibility and conspicuity?

4 A Yes.

5 Q Okay. Have you given depositions in those areas?

6 A Yes.

7 Q Okay. So is this a familiar area to you?

8 A Yes.

9 Q Okay. Did you research the vehicle specifications with
10 respect to the BMW and the Ford including using something
11 similar as an exemplar to go ahead and do your accident
12 reconstruction?

13 A Yes. So when you're reconstructing an accident or you're
14 looking into issues like visibility, especially at night, you
15 may not have access to the actual vehicles, they may be gone,
16 they may be damaged, they may be impounded. So a lot of times
17 what you do is you go out and find what is an exemplar vehicle,
18 and that's basically either an exact match or as close as you
19 can to the subject vehicles involved in your incident. And
20 there's something called Sisters and Clones, so you know about
21 model years from vehicles, there may be a range of say five to
22 seven years where basically it's the same car. They may have
23 changed the stitching on the leather, but it's same dimensions,
24 same headlights, things like that. There may even be two
25 different car companies that sell under a different brand, but

1 it's the same car. So you're kind of looking in that realm to
2 find something that matches your case. So in this case, yes,
3 we went looking for a 2016 BMW 5 series and a 2019 Ford F250.
4 Another part is trying to match the exact headlights. Now,
5 they may not have a sister vehicle, but they may have, you
6 know, upgrade options, LEDs, halogens, so in this case we had
7 to match a Z9 gas projection bolts on the BMW and LED
8 headlights on the Ford F250, and through the investigator down
9 here, because it's always helpful to have boots on the ground,
10 were able to find a 2016 BMW 5 series with Z9 projectors and a
11 2023 Ford F250 with LED headlights, and we'll get into how the
12 year can make a difference. But in this case it makes any of
13 my testing that I did, it makes things more visible during my
14 testing and, than what actually it was at the time of the
15 actual accident.

16 Q Alright. Let me ask you this, you actually came to South
17 Carolina?

18 A Yes.

19 Q Did you actually go out to the area that's in question
20 here?

21 A Yes, I did it on I believe April 19th of 2024.

22 Q And were you actually with my investigator at that
23 time?

24 A Yes.

25 Q Alright. And you had talked about exemplar, so you

1 duplicated to the best that you could, I assume that's what
2 you're saying, a BMW that was involved in this particular case?

3 A Yes. We found on, Turo is a pretty neat site where you
4 can rent vehicles from anybody, and from the general population
5 you get a pretty wide array of vehicles, so that's where we
6 found the 2016 5 series. And then somebody that the
7 investigator knew already had the exemplar Ford, so it's just a
8 case of saying hey, give you a couple hundred bucks, let us
9 borrow your vehicle for the day, and that's it.

10 Q So when you perform whatever tests you're going to testify
11 to, you actually had, or did you actually have a BMW that
12 matched the vehicle in question and a Ford F250 that matched
13 the vehicle in question?

14 A Yes.

15 Q And did you do testing with those vehicles at the site?

16 A Yes, I did.

17 Q At night?

18 A Yes.

19 Q Did you review historical site aerials?

20 A Yes, I did. Utilizing Google Earth, you can actually go
21 back in time to see what things looked like over time.

22 Q Okay. And did you try to match that as close as possible
23 to the May 7th or, yeah, May 7th ---

24 A I was just looking ---

25 Q --- 2023?

1 A --- to see if the roadway changed, you know, sometimes
2 there's construction, you know, striping changes. In this
3 case, looking at the aerial of Avid Road, there is no striping
4 there and there hasn't been since at least 2012.

5 Q Okay.

6 A The dimensions looked to be the same.

7 Q As part of your task that you performed, did you also
8 research historical weather and astronomical records?

9 A Sure. So if you're going to do a lot of tests to try to
10 investigate a night accident, usually you're going to want to
11 try to match the actual weather conditions and the astronomical
12 conditions at the time. So for our subject accident, we know
13 it was give or take five hours after sunset, so that's the
14 middle of the night, so we're not concerned about the sun. And
15 the weather was clear, so maybe we're concerned about the moon,
16 so I look up the moon records, see where it was at the time of
17 the accident, it turns out it was about 27 degrees elevation,
18 so up in the air. And then as far as where it was, it was to
19 the south, southeast, so then I look at the forecast for the
20 moon and try to pick out days where one, the moon's going to
21 be, or check out what time the moon's going to be where I need
22 it to be. And then of course, you're looking at the weather
23 records, too, so at the time of the accident it was clear, so
24 I'm going to try to do that when it's clear as well. And then
25 just to circle back quickly, so at the time of the incident, I

1 told you where the moon was, it was also almost fully
2 illuminated, so the full disc of the moon. So I picked
3 conditions where I had the same thing.

4 Q So did you go, come here to South Carolina on a date in an
5 evening similar to the characteristics that were present on the
6 morning of May 7th, 2023?

7 A Sure. And as you typically do, you go out there a little
8 bit early in the daytime, get your bearings, set up, and then
9 since we're in the middle of the night, wait about an hour,
10 hour and a half after the end of sun, the twilight, you're in
11 the middle of the night for the rest of the night and then you
12 start.

13 Q So let me ask you, what testing did you perform at the
14 accident site with the exemplar vehicles and a pedestrian under
15 similar weather and astronomical conditions? And you can go
16 ahead and just discuss those tests.

17 A Sure. I can discuss them, and we can walk through notes
18 that I took if you want to as well. So first off, I usually
19 take what's called ---

20 Q Is it something you need to go to the computer for, or you
21 still can testify from where you are?

22 A It'll help to kind of show my notes and some of the
23 equipment, yeah.

24 Q Okay.

25 MR. SWERLING: Your Honor, I'd ask that the

1 witness be allowed to ---

2 THE COURT: You can step down and go wherever you
3 need to.

4 MR. SWERLING: Everything's loaded in that computer.

5 THE COURT: Okay. Sure.

6 Q Alright. When you are testifying or reviewing any of the
7 documents on the screen, would you identify what exhibit they
8 are so that we will know what exhibit you're referring to?

9 A Sure. These are all going to be exhibit 1 with the tag
10 that I get.

11 Q With subparts, exhibit 1 with subparts?

12 A Sure.

13 Q Okay.

14 MR. MEADORS: Your Honor, has this been put into
15 evidence yet?

16 THE COURT: Mr. Nelson referred to it as exhibit 1,
17 but exhibit 1 would be in that group ---

18 MR. SWERLING: Yes, it's marked ---

19 THE COURT: --- of eight pictures.

20 MR. SWERLING: --- as exhibit 1 which has been turned
21 over to the State. And we have a hard copy of the exhibits as
22 well, but the sheet that I gave the State, and the Court
23 reporter show what exhibits he's going to refer to on the
24 screen and then we can put in hard copies. So I offer that all
25 into evidence as exhibit 1.

1 THE COURT: Okay. But Defense 1 is a part of those
2 eight pictures?

3 MR. SWERLING: Yes, well, I'm sorry, Your Honor, it's
4 10.

5 THE COURT: 10?

6 MR. SWERLING: Yeah. I ---

7 THE COURT: Gotcha, okay.

8 MR. SWERLING: --- changed it the other day. Any
9 objection?

10 THE COURT: Alright. Any objection to number 10
11 going into evidence for the Defense?

12 MR. MEADORS: No, sir.

13 THE COURT: Okay. Without objection number 10 into
14 evidence for the Defense.

15 (Whereupon exhibit list was submitted as Defendant's
16 Exhibit Number 10 for identification and entered into
17 evidence.)

18 MR. SWERLING: Judge, just an explanation, it's
19 number 10, the last exhibit is number 8, there's an omission of
20 9 and that's my ---

21 THE COURT: Right. I ---

22 MR. SWERLING: --- I left something out.

23 THE COURT: --- got that. No problem.

24 MR. MEADORS: There is listed 1A which you said you
25 weren't going to offer?

1 MR. SWERLING: Not offering.

2 MR. MEADORS: So not everything on here is ---

3 MR. SWERLING: No. We're going to go ahead and mark
4 what is ---

5 MR. MEADORS: Okay. Alright.

6 MR. SWERLING: --- and he's going to put a hard copy
7 in of what that, so the jury can have that when they
8 deliberate.

9 THE COURT: Okay. You good with that, Mr. Meadors?

10 MR. MEADORS: Yes, sir.

11 THE COURT: Okay. You may proceed.

12 A Sure. Back to the inspection ---

13 Q Speak into the microphone so the jury, because they're
14 going to be looking at the screen, you're going to be talking,
15 make sure you're loud enough to, they can hear.

16 A Sure. So this is tagged 2C1, this is the moon at the time
17 of the incident. And if we move along to 2C2, the cord doesn't
18 have much room, sorry about that. This is when I started my
19 testing, this is when I finished, so that's 2C2 and 2C3. Then
20 if we move on to 2D1, this is a photograph that I actually took
21 ---

22 MR. MEADORS: What number is that? I apologize.

23 A It's tagged 2D1.

24 Q Yeah. And make sure you identify each one, each sub-
25 exhibit of 1.

1 A Sure. So this is 2 delta 1, this is taken and you can see
2 the paint from the final rest position of the BMW. This is
3 just documenting that here I am at the scene.

4 Q What direction is that facing?

5 A So this is looking east up the approach, up the
6 downhill approach of Avid Road before it levels off around
7 the intersection. And then here we have the final rest of the
8 BMW.

9 Q And is that intersection there, is that
10 Sawgrass?

11 A Yes, that is Sawgrass.

12 Q Okay. And there, is that a light pole there on the
13 corner?

14 A Yes.

15 Q Okay.

16 A In fact, if we go along to 2 delta 2, this is that light
17 pole on the corner which if you recall from the scene
18 photographs taken by the police, that light was on, so making
19 sure that was on at the time of my testing was important. I
20 had Mr. Taylor verify that this light was still functional.
21 And of course, here's the actual moon, this is earlier than
22 those charts that I just showed you, but you can see -- this is
23 2 delta 2, sir. You can see it's starting to swing it's
24 position to the south, southeast and then southeast.

25 Q Okay.

1 A And then this is just one more photograph. So besides
2 these exemplar vehicles, if you are dealing with a pedestrian
3 accident ---

4 Q What exhibit is this?

5 A Sorry, 2 delta 3. If you're dealing with a pedestrian
6 accident, you're going to need an exemplar pedestrian, and like
7 I said I've played that role myself. In this case Mr. Taylor
8 did, he was of the appropriate height, 6 foot zero and I think
9 a few pounds less than 190. We had pictures of the pants of
10 the pedestrian, so we tried to match those in color, in this
11 case a light tan or khaki. We've got similar skin tone, and
12 for now, Mr. Taylor is wearing his shirt, by the time we do the
13 testing he'll be taking it off, but I'm just using a color
14 chart here to give you a sense of the pants color and skin tone
15 there.

16 Q Next?

17 A So after that we're on to 2 echo 1, and I'll just give you
18 a wide view here. So here I'm taking notes of the kind of
19 measurements that I am actually taking. So for the first part
20 I'm just going to zoom in here. I'm using what is called a
21 spot ---

22 Q What exhibit is this?

23 A This is 2 echo 1.

24 Q Okay.

25 A All these pages are part of 2 echo 1. So these

1 are my notes from my inspection testing. So down here you have
2 what is called a spot luminance imager, and we're going to get
3 into some more not confusing but just difficult to say words
4 that sound a lot alike. So this is a luminance imager, that's
5 luminance with an L. Right next to it you have a illuminance
6 meter, and that's luminance with an I in front of it, you could
7 call that a light meter for shorthand. So the light meter ---

8 Q Are you using a, your, is there a point, oh, okay, there
9 it is, I didn't see it, okay.

10 A Yeah. I think they can make it out if I give it a good
11 shake.

12 Q Okay.

13 A So what this light meter's doing is measuring the amount
14 of illumination that is hitting a particular surface. So
15 that's light coming in and landing on a surface. This spot
16 luminance imager is looking at a surface and measuring the
17 amount of light that is coming back, so back to the meter, back
18 to the sensor or what you're measuring back to the human eye.

19 Q What is the definition of illuminance?

20 A So illuminance ---

21 Q Illuminance.

22 A --- with an I in front of it, that's the amount of light
23 reaching a surface or an object, it's typically measured in lux
24 or foot candelas, I use lux for the most part, that's what this
25 light meter's measuring. Luminance, if you drop the I, that is

1 the light that is being reflected back to you, to the observer,
2 to this meter. It is measured in units called candelas per
3 meter squared. And if you take those together, and this is,
4 part of what I'm doing in these early tests, you can calculate
5 something called reflectance. So that's for a given surface,
6 given color, given shape, if you have a certain amount of light
7 hitting that surface, you're going to get a certain amount of
8 light coming back, and the object will have a certain amount of
9 brightness. If you have something that's a higher reflectance,
10 you're going to have your light coming back to your eyeball and
11 it's going to appear brighter to you. If it's a lower
12 reflectance, vice versa, it's going to be darker to you, so if
13 it's dark enough against a background, you may not see it. So
14 in the start of what I'm doing. And this part, it's in the
15 daytime because it's really just how much light's hitting it,
16 how much light is coming back. I'm trying to determine the
17 reflectance of these surfaces. So I'm measuring the light
18 hitting it here, that's the lux, the light coming back is CD
19 per m squared for those two meters. Later on once I've got my
20 exemplar pedestrian, I'm doing the same thing to him, I'm
21 measuring the lux hitting a given surface, I'm measuring the
22 luminance, the CD per m squared coming back with those two
23 meters. And later on back at the office I can then calculate
24 the reflectance and say okay, how do you, how does the pants
25 compare to the skin, how does that compare to say white

1 clothing that I've measured lots of different times. And then
2 on that last page, the asphalt, how does asphalt compare to,
3 you know, other roadways or other background types, it just
4 gives us a sense of what we're dealing with there.

5 Q Is that Mr. Taylor standing there?

6 A Yes. That's Mr. Taylor.

7 Q Pardon?

8 A That is Mr. Taylor.

9 Q Okay. And just, lux is a unit of measurement that you
10 use?

11 A Right. It's a unit of measurement of the light reaching a
12 surface.

13 Q Okay. Go ahead.

14 A So those are the first measurements that I did and then I
15 also took some measurements of the streetlight just to get a
16 sense for how powerful it was, that's what these are here. And
17 then the real crux of the test of what we're doing is we place
18 the BMW where it is at the impact position, and I have those
19 measurements from Mr. Torres which are pretty close to the MAIT
20 diagram. We have a position of impact for the pedestrian which
21 again I have from Mr. Torres' measurements, and we have the
22 MAIT position, and actually placing this for the test I split
23 the difference between the two and put Mr. Taylor right there.

24 Q So with that image up there, with that exhibit up there,
25 you're referring to certain numbers, I guess, what are they in

1 case the jury can't see them? I mean, what do they mean? You
2 said these are your notes, right?

3 A Right. So this is going back to just making those spot
4 measurements of here's how much light is hitting these pants,
5 that's the lux, here's how much is being reflected back, so
6 then later on I can see how reflective is this color, how does
7 that compare to other things. Is it something that light needs
8 to be bright, dark, somewhere in the middle, that's what those
9 notes are there. So ---

10 MR. MEADORS: I apologize, can we get that number
11 again, the exhibit number?

12 A 2 echo 1.

13 MR. MEADORS: Thank you.

14 Q Alright. And the left hand side of the 2 echo 1 you refer
15 to some numbers there, notes?

16 A Right. So ---

17 Q And what are they? Because they're a little difficult to
18 see.

19 A Right. Writing on the iPad in the field getting all this
20 done doesn't lead to the best penmanship. These are
21 measurements of how much light is coming from that streetlight
22 at various locations. Then this left, these columns here are
23 after we have placed the BMW where it's supposed to be, the
24 pedestrian in the approximate area of impact. I'm going back
25 and I'm putting myself into the Ford F250 and I'm starting out

1 at about 50 feet from the area of impact. And from each
2 position, first I am taking that light meter that you saw
3 before and I'm holding it up to the eye position of Mr.
4 Ackerman, so about one, two inches shorter than myself ---

5 MR. MEADORS: Objection.

6 THE COURT: Okay.

7 MR. MEADORS: He said he took it up to the position
8 of Mr. Ackerman, I don't know how he could do that.

9 MR. SWERLING: Mr. Torres.

10 A The driver position of the Ford.

11 MR. MEADORS: I don't think he can testify to
12 that.

13 MR. SWERLING: Right. Mr. Torres already has.

14 THE COURT: Alright. Repeat your, did you ask a
15 question preceding that answer? You didn't. Alright. Tell me
16 what your answer that Mr. Meadors is objecting to, again.

17 A That the notations on this page among other things I am
18 measuring, I'm putting the light sensor at the driver's
19 position of the Ford, i.e., Mr. Ackerman in the Ford.

20 Q And where did you make that determination from?

21 THE COURT: Yeah. And where did you get that
22 information to do that, I guess is what we need to ask. Isn't
23 that what you're objecting to basically?

24 MR. MEADORS: Yes, sir.

25 THE COURT: Okay.

1 A And so I have his height from his driver's license, 5 foot
2 7, so I'm about 5'10, 5'11, so when I'm sitting in the seat, I
3 just put it down a little bit.

4 THE COURT: Okay.

5 A If I move it up six, down six, it doesn't really change.

6 THE COURT: Okay.

7 Q And what about the position, where did you get the
8 position from of ---

9 A Of 50 feet?

10 Q Yeah.

11 A I'm just doing fixed intervals going back ---

12 Q Different intervals?

13 A Right. It's going to go from 50 at 25 each time out to
14 300 feet.

15 THE COURT: Okay. I'll overrule the objection and
16 allow the answer to remain.

17 A So that's what this first column here is, distance from
18 the area of impact, and you can see it goes out to 300 feet and
19 then ---

20 Q Tell the jury why you're doing that.

21 A So I don't know what the results are going to be, but
22 typically when you do this, you're going to do fixed intervals
23 out to a certain distance. In this case, I'm going out to 300
24 feet, and you just keep them regularly, once you see what the
25 results are that you're looking for, any trends when things

1 start changing, and since you don't know what the results are
2 going to be until later, you plan ahead and just figure out for
3 a given scene, okay, I'm going to do this distance of
4 intervals.

5 Q So you start out at 300 feet then work inward?

6 A In this case, I started from 50 and worked out.

7 Q 50?

8 A Yes.

9 Q Okay. And worked out from numbers higher or lower?

10 A Worked out to 300 feet.

11 Q Out to 300, okay, okay. Go ahead.

12 A So the second column, I am just measuring the light
13 reaching the driver's position in the Ford F250 with that light
14 meter, so again, that's lux. And again, at each distance I'm
15 measuring that amount and just writing it down because later on
16 that will be important to determine the effect of any glare
17 that is reaching the driver's position in the Ford.

18 Q You talked about a light meter, what is that?

19 A So the light meter is what we saw on the ground right
20 here.

21 Q What kind of equipment is that?

22 A So that's a Konica Minolta T10A, it's an illuminance meter
23 with an I, and offhand, you just call it a light meter. It's
24 what's measuring lux so you can set it to foot candelas, but
25 that's light reaching a given surface or location.

1 Q And you said lux is a unit of measurement?

2 A Yes.

3 Q And that, with illumination?

4 A Correct.

5 Q Okay.

6 A Correct.

7 Q Alright.

8 A In this third column here, and I don't have a picture of
9 the actual device, but I'm using what's called an imaging
10 photometer. It's measuring the same thing that that little
11 kind of radar gun, the spot meter's measuring, it's measuring
12 the light reflected from a surface. So luminance with no I,
13 candelas per meter squared is the unit, but instead of doing
14 individual little spots, it's doing the entire scene of what it
15 can see. So it's kind of like a camera, but it's not taking
16 photographs, it's taking, actually, kind of like the 3D scanner
17 Mr. Torres talked about, it's taking millions of measurements
18 of what is in its field of view as far as brightness and
19 luminance, and that's what it's measuring and then it captures
20 that on an image so you can see it, but it's not just something
21 you're looking at, it's actual units of measurement. And I can
22 show you an example of what that looks like in a second. So in
23 summary, this pdf is 2 echo 1, these are just notes that I'm
24 making as I'm going along, and then down here at the end after
25 I've done all those measurements, eventually we just back the

1 Ford up way back over the hill back into the darkness, sit
2 there for a minute and then without sensors or anything or
3 stopping at these distances, I just drive through and make a
4 notation, mental notation as to when do I see this pedestrian
5 compared to, I've got markers on the side of the road for each
6 foot distance, so 50, 75. And then after we did that once, I
7 swapped out the pedestrian with somebody else that was with me,
8 he stood in, I had Mr. Taylor with me in the Ford then we did
9 the run again to see where he saw it and where I saw it the
10 second time. That's these notes down here at the end.

11 Q So you actually drove the exemplar vehicle down Avid
12 toward the gate area?

13 A Correct. Nonstop towards the gate area.

14 Q Alright. And then you went at different intervals, is
15 that ---

16 A We did the fixed intervals first to get the actual
17 measurements so that I could do the calculations later, and at
18 the end right before we pack everything up, we just do a couple
19 live runs to see what we see so later on we can say hey, do
20 these numbers and these calculations make sense.

21 Q And was the BMW exemplar in the position of that, what has
22 been testified to in this case?

23 A Yes, it was.

24 Q Okay. Alright. Go ahead.

25 A That's it for this exhibit as far as what I did ---

1 Q Okay.

2 A --- at the scene.

3 Q What, go on to, so these are part of your tasks?

4 A Right.

5 Q What's the next thing you do?

6 A Sure. And actually, just as a follow up I told you I'd
7 show you an example of ---

8 Q Alright. Well, let me ask you, did you obtain photometric
9 measurements at the site with an illumination meter and spot
10 luminance meter including luminance data which is light
11 reaching an object to surface illuminance data, light reflected
12 back to an observer?

13 A Yes. And that's the measurements that we went through in
14 my notes for the streetlight. For luminance and illumination
15 of the exemplar pedestrian at speed numbers here and then same
16 thing just to get a sense for the roadway surface, that's these
17 numbers here. And then the full scene measurements with the
18 imaging photometer, those are contained within these images
19 which an example of which would be 2 echo 2 here ---

20 Q Right.

21 A --- this is the imaging photometer's image at about 200
22 feet ---

23 Q Alright. Let me, let me, I just want to make sure I go
24 through this, okay?

25 A Yep.

1 Q Did you measure the illumination levels from the
2 streetlight? I believe you said you did.

3 A Yes. That's right up here.

4 Q Alright. And did you measure the illumination from the
5 BMW low beam headlights at the driver's eye position that the
6 Ford at stationary increment ---

7 MR. MEADORS: Objection to leading.

8 Q --- distances?

9 THE COURT: Okay. Try to rephrase a little bit.

10 MR. SWERLING: Okay.

11 Q What did you do concerning measuring the illumination of
12 the BMW at the driver's eye position?

13 A Sure. So I've got that light meter, that little black one
14 laying on the ground, that's this column here, measuring lux
15 reaching the driver's position of the Ford from 50 out to 300
16 feet.

17 Q Alright. And what if anything did you do with respect to
18 full scene luminate measures with an imaging photometer?

19 A Sure. So at each of these intervals, the 25 foot
20 intervals, I'm capturing the scene with the imaging photometer,
21 and that's what one of these looks like, so 2 echo 2
22 demonstrates the photometer's image from 200 feet and what you
23 see here on this column here, this is those millions of
24 measurements of luminance of candelas CD per meters squared ---

25 Q What exhibit is that?

1 A This is 2 echo 2.

2 Q 2 echo 2?

3 A Yes.

4 Q And is this the photometric calculations?

5 A It's not the calculations yet ---

6 Q Okay.

7 A --- it's the measurement of the raw data.

8 Q Alright. Go ahead.

9 A Sure. And then so just visually they give you a scale bar

10 over here, so kind of picture, remember that top-down diagram,

11 you have the scale bar that lets you take measurements. This

12 is just giving you a visual scale bar to tell you how much

13 luminance a given area has. So if you go down the scale, down

14 to here you get about 9 point 53 candelas per meters squared,

15 so ---

16 Q What does that mean? How about explaining what that

17 means.

18 A So that's the luminance, the one without the eye. So that

19 is how much light is being reflected from a surface coming back

20 to your eye. And in a basic sense, that's how bright something

21 appears to you. So if you're looking at a given object, it may

22 be brighter than its background, it may be darker than its

23 background, it may be the same as its background, in which case

24 you can't really tell or discern it from its background. So

25 that's what those measurements are for, and I'm sure we'll talk

1 about what that means in contrast later on. But from what I'm
2 capturing at the scene with the photometer, that's a set of
3 these images at given distances, and again, there's actual
4 measurements and data and visually this is what it looks like
5 on this scale. So if you go down to here, point 11, you're in
6 the dark blue towards purple, so that's going to kind of be
7 these areas here, and it's here, and it's not just measuring
8 this and giving you an image in the scale bar, once you
9 actually go back, open up the file in the software you can say
10 okay, this specific point right here, what is that measurement
11 on that pixel. If say there's a cardboard box sitting here,
12 you can circle the cardboard box, say tell me the exact, the
13 average for the values for that. This is just an overall
14 visual representation of what the measurements, what the data
15 looks like.

16 Q Okay. Alright. And what is that?

17 A The next exhibit?

18 Q Yeah.

19 A So eventually what I'm going to use all this data that I
20 collected at the scene doing these tests is to look at
21 visibility using something called a visibility model, and we'll
22 get into all the things that, you know, determine if something
23 is visibility. I just wanted to put this up and show you the
24 model that I'm using. So this was developed by a doctor named
25 Adrian back in the late 1980s, and subsequently it was adopted

1 by the IES, the Illuminating Engineering Society as part of
2 their recommended practices and it's still there in their
3 recommended practices in their latest publications to date. So
4 it's endorsed by them, it's widely used, it's been widely
5 researched, so that's why I like to use this one. It's
6 ---

7 Q So let me ask you, do you review, like there's peer
8 reviewed material and analysis ---

9 A Sure. I ---

10 Q --- of technical publications to ---

11 A Yes. This would be one of them, and then other studies
12 that have used this method and what their results are, my own
13 paper and see how it compares, yes.

14 Q Okay. What exhibit is that?

15 A So this is exhibit 2 foxtrot 1.

16 Q Okay. Continue.

17 A So this is the paper that I published basically just
18 walking through the model and it builds on earlier
19 renditions, but this is the one that's been adopted by the
20 IES, and what he's basically doing, and we'll get into
21 hopefully not too much detail on this. But he's looking
22 at all the different factors that come into play as to
23 whether something's visible or not, he's building them
24 into the model telling you the calculations as to how you carry
25 it out and eventually you get the end result and you can, you

1 know, use that to evaluate how visible something is. But this,
2 I just wanted to show the original paper by Dr. Adrian.

3 Q Is this doctor a recognized expert in this particular
4 field that you're testifying about?

5 A Yes. He was a member of the expert, subject matter expert
6 committees at the IES, and I believe he's passed since then,
7 but like I said, the IES adopted this model and still has it in
8 their practices today.

9 Q Okay. Go ahead, next.

10 A So I can keep this up, but we'll, I'm going to kind of
11 walk through the different things that's done in this paper as
12 they pertain to visibility. So ---

13 Q So let me ask, I, is this the, are you talking about the
14 Adrian visibility model?

15 A Sure. And there's other models out there and they
16 incorporate some or different factors, this one incorporates I
17 would say the most factors that affect visibility. And that's
18 a lot of different things that we can walk through briefly.

19 Q Okay.

20 MR. MEADORS: Your Honor, I, I didn't realize he was
21 going to put this in and all these exhibits. I think a lot of
22 this is hearsay, he can certainly use it ---

23 MR. SWERLING: Well, it's purely ---

24 MR. MEADORS: --- but he's now trying to publish it?

25 MR. SWERLING: I'm sorry.

1 THE COURT: Well, if it is materials that are
2 normally relied on by an expert in his particular field, then I
3 don't know if you necessarily can just publish it verbatim, but
4 certainly he can use that and portions of that that he has
5 relied on in support of his opinions.

6 MR. SWERLING: Your Honor, we'd offer, he's offering
7 I believe as an exhibit ---

8 MR. MEADORS: Yeah. And I'm objecting that it come
9 in.

10 THE COURT: I'm not going to allow that to come in --
11 -

12 MR. SWERLING: Okay.

13 THE COURT: --- so whenever this exhibit gets in, it
14 needs to be redacted in ---

15 MR. SWERLING: Yes, so he can testify.

16 THE COURT: --- some form, however, he can use that -
17 --

18 MR. SWERLING: Okay.

19 THE COURT: --- if it's customarily used by experts -
20 --

21 MR. SWERLING: Yes, sir. Thank you.

22 THE COURT: --- in his own field. So just make sure
23 that that does not come in.

24 Q And that exhibit is?

25 A That was 2 foxtrot 1.

1 Q 2 foxtrot 1. Okay.

2 A And I can walk through the various factors off the cuff.
3 So things that influence visibility, there's a whole lot, and
4 I'll try to give you some practical examples at the end. But
5 one thing is going to be is what is the size of the thing that
6 you're looking at.

7 Q You're talking about visibility now?

8 A Correct, visibility.

9 Q Okay. Go ahead.

10 A So generally speaking, the smaller something is the harder
11 that it is to detect, the larger something is it is easier.
12 Eventually, you know, big is big, you're not going to get much
13 more improvement over an elephant per se, but that size is one
14 factor. Another one is how far away is the thing that you are
15 looking at. Typically, something that is farther away is
16 harder to detect for a number of reasons, but one could be the
17 amount of light reaching it. So another factor as whether
18 something is visible is the ambient lighting, whether that's
19 from the moon, whether that's from streetlights, building
20 lights or vehicle accidents from the vehicles of, or from the
21 headlights of a given vehicle. So that's how much light is
22 reaching an object. So so far, we've got size, we've got
23 distance, we've got the amount of light reaching an object, and
24 like I talked about before, if light gets to an object, how
25 much light comes back. So that's that reflectance that I was

1 talking about where lighter color objects have higher
2 reflectance, you have more light reflected reaching your
3 eyeball that appears brighter to you. So now we've got
4 distance, size, light reaching the target, light coming back.
5 There's some other things like glare. So you've all
6 experienced glare. Say you got vehicles coming at you,
7 headlights coming at you, if you're on a pretty big highway,
8 say there's a 30 foot median, it's not really going to bother
9 you too much, you're still able to see pretty well. If you're
10 on a two lane road, one lane in each direction, the other
11 vehicle's right next to you, that's going to effect your
12 ability to perceive things, it's called veiling luminance.
13 It's basically a veil from scattered light on your retina.
14 Basically, it just makes it harder to see and detect things in
15 front of you. So we've got size, distance, light reaching an
16 object, light coming back, glare that could reduce it. And for
17 glare, it's not just the strength of the light source, again,
18 if it's way over there it doesn't matter, it's how far away
19 offset is it from you, is it way off to your side, is it right
20 in front of you. So strength and location glare. And then of
21 course, age. Just to put it frankly, people that are younger
22 have a lot better ability to perceive contrast, and that's just
23 the effect of the cornea aging and how much light gets through
24 there. If we had a 20 year old looking at something at night
25 and I'm not going to disparage Mr. Swerling, but if we put him

1 right next to it, he's going to have about one-fourth the
2 ability to perceive the exact same thing in the exact same
3 conditions. So age is another very important factor to
4 consider when you're trying to determine if something is
5 visible for a given situation. And this paper that I mentioned
6 this Adrian model, he's taking into account the size of the
7 target, the, or the distance of the target, the light reaching
8 the object, the light coming back from both the object and the
9 background, those are going to play in something called
10 contrast that I'll talk about, so it's accounting for that.
11 The model is accounting for glare, not only the amount reaching
12 the viewer's location, but the actual position, how far offset
13 is it from you, and he has incorporating the age of the
14 observer. So you could run the visibility model and get a
15 pretty good number from me, run it for somebody twice my age,
16 you're not going to get such a great result.

17 Q When you say you run the model, what are you doing and
18 running it through?

19 A So I'm basically running through these calculations that
20 you saw on paper; it's getting results for each different
21 category and then in the end it's actually evaluating the
22 contrast that you have for a given location and the given
23 situation.

24 Q Is that a computer software program or is it something
25 else?

1 A So there's people, there's some people that have written
2 kind of automated, you plug in numbers kind of like a GUI
3 graphics interface. You could do it by hand, it would take you
4 a very long time, the practices that the IES has published it
5 in, they make it a lot more digestible than this paper. What
6 we've done we, it's basically a spreadsheet, you have inputs
7 for everything measured or for things that you know like age or
8 how far away something is, you input those, and at the end you
9 get the end result which is something called a visibility level
10 which is an evaluation of contrast, which is something we can
11 talk about next.

12 Q Alright. And you had mentioned something about
13 conspicuity, is that a factor in the methodology used?

14 A Right. We're determining how conspicuous something is,
15 and that visibility level is something that tells you that. So
16 what the model is doing at the end is, essentially, it's
17 looking at, you have an object that has this luminance, it's
18 this bright, your overall background is this, what's that
19 difference. Well, that difference is called contrast and you
20 need a certain amount of contrast to be able to see something.
21 So if, just for example, if we take these tan colored panels
22 there on the wall, we've got our juror here with the black
23 shirt and a white polo shirt underneath, if he were to stand
24 there and say we take the Judge and put him next to him with
25 his black colored robes, kill the lights, and we've got say

1 somebody with an iPhone putting their flashlight on there,
2 we're going to have completely different levels of contrast
3 between all three things. That brown jacket is going to blend
4 in pretty well and have a very similar brightness to that tan
5 panel there, it's going to be pretty hard to see. That white
6 shirt is probably going to stand out pretty well in something
7 called positive contrast, it is brighter, lighter than the
8 background behind it. The Judge's robes, they're actually
9 still going to stand out because they're going to be darker,
10 which is called negative contrast, than their background. And
11 just to put the visibility model into play, you know, if
12 somebody's standing out there with their light, again, I'm
13 standing next to Mr. Swerling, I'll be able to back up quite a
14 bit further and be able to pick out okay, there's a brown
15 jacket, there's a white shirt, there's a black, Mr. Swerling
16 may not which means he's either got to get closer, reduce that
17 distance or we find somebody with a more powerful flashlight on
18 a phone. When you increase the amount of light, you increase
19 the amount of light coming back then you can see it. So again,
20 that's all these things that are going into the model, it's
21 evaluating contrast and then giving you a visibility level that
22 basically tells you how visible something is for all these
23 different conditions.

24 Q What are the primary factors in contrast? You had
25 mentioned that a couple times, contrast.

1 A Sure. So again, it's that size of the target, distance to
2 the target, all those different factors. And what it comes to
3 eventually in the end is you're going to have a difference in
4 brightness between say that white shirt ---

5 Q Okay.

6 A --- and that tan pant. And if that distance is big enough
7 compared to the background, it's going to have good contrast.
8 If it's really, really close, it's not going to have any
9 contrast and it's just going to blend in.

10 Q So is that the illumination or luminance that you're
11 referring to?

12 A Sure. That all plays into it. It's illuminance reaching
13 it and then it's luminance coming back.

14 Q Okay. Alright.

15 A It's luminance of one thing compared to another and how
16 much contrast you have.

17 Q So how does the aging visibility model you referred to,
18 how does that analyze the facts you've observed and noted?

19 A Sure. So I think this next exhibit will help, it's partly
20 a more neat version of my handwritten notes.

21 Q And what exhibit is this?

22 A It's 2 golf 1.

23 Q Okay.

24 A 2 golf 1. So here this is just a table of what you saw in
25 my handwriting, 50, 75 is those intervals going out to 300.

1 These are the files for the images taken from the photometer,
2 this full scene had the different colors and the color scale,
3 that's just the first page of this model. Then on the next
4 one, this isn't directly related to the model, but this is me
5 doing the end calculations of reflectance for the things that I
6 mentioned at the scene. So these are the typed versions of my
7 handwritten measurements right here. Again, luminance, that's
8 lights coming back to you, lux, that's light hitting the
9 surface, and you can calculate that to get the reflectance. So
10 this pavement here is a point 15, that's pretty typical for
11 asphalt, it's a little on the high side, this is pretty old, so
12 it's kind of worn off, gotten a little bit lighter, but a
13 pretty standard scene for asphalt. And then for the
14 pedestrian, we're looking at pants, skin, shoes, and they're
15 all coming in at around a point 36. So that's decent, it's not
16 great, it's not the worst as far as how reflective something
17 can be. You know, if you've got, say, white shirt, white pant,
18 white vehicle, you're looking at around a point 7 or just call
19 it 70 percent. To keep it simple if you're looking at it
20 again, you've got this pretty gray asphalt, you're looking down
21 around 15 percent, if we're looking at, you know, navy blue,
22 black sweatshirt, black vehicle, UPS van, you're going to be
23 looking at, you know, 10 percent less down in the single
24 digits. Here we're at around, we're in the 30s, so again,
25 that's not terrible, it's not the best thing, but that's going

1 to affect how much light is coming back to, you know, the
2 observer.

3 Q So this is 2 golf 1, is that correct?

4 A This is 2 golf 1.

5 Q And this is the Adrian visibility model?

6 A These are some of the calculations just from my notes
7 leading into it and I think the rest of this is going to be
8 purely model, yes. So this is, the rest of this is going to be
9 building up the model and doing the calculations that are
10 presented in the model and in the paper.

11 Q What, what are the causes, if any, of difficulty in seeing
12 a pedestrian at certain distances?

13 A It would be little contrast, so blending into the
14 background, whether that's because the target's not very
15 reflective or they just happen to be of similar brightness, if
16 it's pretty far away it's going to be difficult, if it's going
17 to be small, it could be more difficult, if you're an older
18 observer, it could be difficult, if there's just not enough
19 light reaching somewhere at a given time it's going to be
20 difficult. And if you're dealing with vehicle headlights, that
21 can certainly depend on the terrain, you know, headlights are
22 normally aimed down and to the right to kind of reduce the
23 amount of glare, but conversely, if you're going say downhill,
24 so your headlights are pointed downhill but you're looking at
25 something that's not down that same slope, your headlights are

1 actually pointing further down, they're not pointing where the
2 object that you need to see is. So headlight aim, whether
3 that's just naturally due to the vehicle or headlight aim due
4 to the terrain, that could certainly make something difficult
5 to see.

6 Q Alright. Let me ask you this, based upon everything
7 you've done so far, and your calculations, do you have an
8 opinion as to what the distance would have been for Mr.
9 Ackerman to have seen a pedestrian in the road on Avid Road?

10 A I do. So I ran calculations and got visibility ---

11 Q I'm sorry. To a reasonable degree of scientific or
12 engineering certainty?

13 A I do. So I ran the visibility model for all these
14 different factors that are applicable to this case and
15 calculated visibility levels from that 300 feet all the way to
16 50 and I believe that by around 100 feet, Mr. Ackerman would be
17 able to start detecting that there was a pedestrian ahead of
18 him.

19 Q 100 feet?

20 A Yes.

21 Q Okay. Do you have any other exhibits that you'd like to
22 go through to demonstrate that?

23 A Sure. I've got some that kind of demonstrate what existed
24 at this site on Avid Road which is namely a sloped road going
25 down to where it starts to level off. So where the headlights

1 are actually aiming changes as the vehicle travels down Avid
2 Road, gets to the intersection and starts to level off and are
3 now actually pointing towards the area that we were concerned
4 with. I think visually you can understand the concept of where
5 headlights are pointing depending on the slope of your road.
6 But I think to demonstrate it using the actual photometer
7 measurements, so this is 2 hotel 1, 2 hotel 1 is the tag, this
8 is from the position of 175 feet ---

9 Q Now, excuse me. How is that made now? That ---

10 A This is with the imaging photometer ---

11 Q Okay.

12 A --- and is measuring luminance of the entire scene in
13 front of the sensor.

14 Q At what distance is this?

15 A So this is ---

16 Q Do you have different distances?

17 A Yes. This is 175 feet.

18 Q Okay. Go ahead.

19 MR. MEADORS: This is 2 H 1? I'm sorry.

20 A Yes, 2 hotel 1. So this is at 175 feet from the
21 approximate area of impact which on Avid Road is on a more
22 downhill portion of the approach. Now we go 25 feet ahead to 2
23 hotel 2, we're now at 150 feet ---

24 Q Now, is that on the same image that's on the screen? Just
25 you're moving up feet, is that correct?

1 A Correct. So ---

2 Q And where are you doing that? Are you doing that in that
3 right hand column?

4 A No. It's the last part of the tag name at the top.

5 There's a 175, there's a 150 ---

6 Q Okay. That's what, so you're doing that on the, okay.

7 That's part of the program? Okay.

8 A So I'm jumping back and forth between 175 and 150. 150
9 you're still on the more downhill side of the approach; you're
10 still pretty far from the intersection and you really don't see
11 much effect from the headlights as far as what's out in front.
12 Now we proceed to 2 hotel 3, this is 125 feet, you're still on
13 the other side of the downhill approach, you haven't started
14 leveling out to the common slope, to the area of impact, you're
15 still not seeing much difference in luminance ---

16 Q And what distance is that? That what you were just ---

17 A At 125 feet.

18 Q Okay. Can you see a pedestrian standing in the roadway?

19 A Well, again, this isn't depicting what you can see, it's
20 showing measurements of luminance ---

21 Q Okay. Alright. Go ahead. I just want, we need to
22 explain that.

23 A Sure. Luminance ---

24 MR. MEADORS: No ---

25 THE COURT: Wait a minute.

1 MR. MEADORS: Did you just say it is not depicting
2 what you can see?

3 A Correct.

4 MR. MEADORS: Okay. Thank you.

5 A So we're at 125 feet here, we're going to get to 100 next,
6 this is 2 hotel 4. Right here we're just about before where
7 the slope starts leveling out and gets constant for the
8 remainder. So we're still on the other side on the higher
9 downhill slope, again, you're not seeing much difference in
10 luminance from anything that the headlights are pointed at. So
11 now we're going to move on to 2 hotel 4 which is going to be 75
12 feet. You're almost at the intersection; you're basically at
13 the top of the curve at Sawgrass ---

14 MR. MEADORS: And Judge, I apologize, I thought, what
15 did you say the exhibit was?

16 A The next one's going to be 2 hotel 5 ---

17 MR. MEADORS: Okay.

18 A --- this is 2 hotel 4.

19 MR. MEADORS: Okay.

20 THE COURT: You good, Mr. Meadors?

21 MR. MEADORS: Yes, sir. I'm good now.

22 THE COURT: Okay.

23 Q You were first referring to 2 hotel 1, then 2 hotel 3, and
24 now this is?

25 A It was 2 hotel 1 which is 175 feet ---

1 Q Right.

2 A --- hotel 2, 150 feet, hotel 3, 125 feet, hotel 4 which is
3 100 feet ---

4 Q Okay.

5 A --- and that's where I stopped. And now, we're about to
6 get to where the slope starts changing and that's going to be
7 75 feet. So now, all of a sudden at 175 feet, all of a
8 sudden the luminance I had at the area of impact,
9 particularly on the pedestrian and the front of the vehicle, it
10 changed.

11 Q Alright. This is 2 hotel 4?

12 A This is 2 hotel 5 ---

13 Q 5.

14 A --- 75 feet. So somewhere between 100 and 75 feet the
15 headlights all of a sudden come into play and are actually
16 pointing at what's ahead above the roadway. And that continues
17 as you get down to 50, and this is 2 hotel 6, now you're on a
18 nice constant slope for the rest of Avid Road towards the area
19 of impact. So the headlights are now in play, and you're
20 getting good differences in luminance which we see a pant leg,
21 and a pant leg in the background, background.

22 Q Go back to 2 hotel 5 for a moment.

23 A This is 2 hotel 5.

24 Q Okay. Well, go back one more time, 4.

25 A 2 hotel 4?

1 Q Yeah. Alright. With 2 hotel 4, is a person visible at
2 that distance?

3 A Based on my calculations by that point the visibility
4 levels from the model are such that you most likely had at
5 least one leg and likely the second leg visible if the
6 pedestrian is standing as I have him here, full profile, facing
7 the truck. This is again one of those factors that play into
8 its size. So here we've got the pedestrian perpendicular,
9 fully facing the truck, you've got a higher size whereas if
10 he's sideways, it's going to be lower, it'd be harder to
11 detect. I got him in the best position for visibility for the
12 purposes of this test.

13 Q Is that the visibility you're talking about of the
14 pedestrian that they see on the screen?

15 A It's the luminance ---

16 Q Luminance?

17 A --- which then goes into the model to calculate for a
18 given person of age at a distance with this glare, all those
19 other factors, what's the visibility level, how likely is it to
20 be visible.

21 Q Alright. And did you testify that you could see the leg
22 there or something?

23 A Right. By 100 feet, I think it's likely that you can see
24 both legs and ---

25 Q Okay.

1 A Yes.

2 Q Alright. And that's in 2 hotel 4?

3 MR. MEADORS: And again for the record, I'm sorry,
4 did you say likely?

5 THE COURT: Yes.

6 A At 100 feet, yes, you're likely able to perceive
7 that.

8 Q And that's 2 hotel 4?

9 A Yes.

10 Q Alright. And then you went to 2 hotel 5, and what was the
11 distance on 2 hotel 5?

12 A 75 feet.

13 Q Alright. And what do you see there? What's, what are you
14 observing there? What's the jury observing?

15 A Well, again, it's the same set up of the exemplar
16 vehicle. If I refer back to the actual calculations and go to
17 75 feet, so at 75 feet, you've got a VL of 90 that's off the
18 charts good, you've got a VL of 70, that's off the charts
19 good, you are definitely seeing both legs at this point. VL
20 of 10 is on the upper side of good, so it's likely you're
21 able to start seeing the actual torso portion there at 75
22 feet.

23 Q And what is VL?

24 A Visibility level.

25 Q Okay.

1 A It's the outfit of the model; it's a comparison to what
2 you have in your given situation against what's actually
3 necessary to see and detect something in that situation.

4 Q Alright. Well, do you have an opinion based upon a
5 reasonable degree of scientific and engineering certainty as
6 to, at what distance would the pedestrian standing in the road
7 been visible to the driver of the vehicle?

8 A Yes. It's likely around 100 feet.

9 Q 100 feet. Okay. Now, let me, excuse me one minute. Do
10 you have an opinion based upon a reasonable degree of
11 scientific and engineering certainty as to the time, I'm sorry.
12 Based upon a reasonable degree of scientific or engineering
13 certainty as to when, you said the pedestrian would be visible,
14 but let's put it in time. How much time at 100 feet do you
15 have an opinion as to when or how much time the driver of the
16 vehicle would have had to make a stop of that vehicle?

17 A From the time of detection to reaching the area of the
18 pedestrian we have a distance of 100 feet, the time is
19 dependent on speed, at say 25 miles an hour, it's going to be
20 just over two and a half seconds, I'd say 35 miles an hour,
21 that's going to be just under two seconds.

22 Q So those numbers you just gave are the time that a person
23 would have once they see the image of the pedestrian in the
24 street to go ahead and have the time to react, is that
25 correct?

1 A Correct. From about just under two to just over two and a
2 half from the range of 35 or 25 miles an hour.

3 Q How about discuss perception reaction time.

4 A Sure. So once you actually detect something, you perceive
5 it in front of you, the lightbulb goes off. You don't
6 instantaneously, your vehicle doesn't just do something, so you
7 detect it, you have to identify what it is, okay, that's a
8 pedestrian, it's in front of me, I need to do something. You
9 have to decide what are you going to do. Are you going to
10 brake, are you going to steer, are you going to steer right,
11 are you going to steer left, people often steer away from a
12 hazard, not all people do. So do you brake, do you steer, do
13 you do both, some combination, how much of each. If all you do
14 is brake, do you have time to come to a stop. Then you have to
15 actually, once you've decided, physically carry out that action
16 with your body, so that's either turning the wheel and trying
17 to steer, it's taking your foot off the gas and hitting the
18 brake and all of that is built into what's called perception
19 response time or perception reaction time, and that's an amount
20 of time after you detect something that your vehicle's actually
21 able to start some kind of maneuver to avoid. So again, it's
22 not just detect it and you're automatically into a maneuver.
23 You've got that processing time, that deciding time, and that's
24 called PRT.

25 Q Alright. The time or the distance that the

1 pedestrian would have been visible to the driver, Mr. Ackerman?
2 What distance, the earliest distance that he would have, the
3 pedestrian would have been visible you testified to?

4 A Right. So that is likely around 100 feet.

5 Q 100 feet. And the time involved that he would have had
6 reaction time, what you testified to was what?

7 A So again speed dependent, at 35 miles an hour it's just
8 under two seconds, if you go down to 25 miles an hour, you're
9 looking at just over two and a half seconds.

10 Q Alright. So let me ask you this, do you have an opinion
11 to a reasonable degree of scientific or engineering certainty
12 given the time and distance that the pedestrian was visible,
13 did Mr. Ackerman have a sufficient opportunity to avoid contact
14 or impact with the pedestrian and the vehicle?

15 MR. MEADORS: Objection.

16 THE COURT: Don't answer that yet because I've got an
17 objection.

18 MR. MEADORS: Objection. I don't think there's any
19 way he can answer that, whether he had time to stop.

20 Objection. Speculation.

21 THE COURT: Okay.

22 MR. SWERLING: I can, I won't ask Mr. Ackerman, I'll
23 just say a person. He's ---

24 MR. MEADORS: I thought he said how long did Mr.
25 Ackerman have.

1 MR. SWERLING: I'll change it.

2 THE COURT: Alright. Are you okay with the question
3 being a person?

4 MR. MEADORS: Yes, sir.

5 THE COURT: Okay.

6 MR. SWERLING: Okay.

7 Q A person. Given the time and distance that the pedestrian
8 was visible, would a person have a sufficient opportunity to
9 avoid impact with the vehicle and the pedestrian, or the
10 pedestrian?

11 A Sure. So let's build PRT into the equation here. So
12 let's take the 35 mile an hour example, you're right under two
13 seconds, let's call it two seconds. So take a typical PRT,
14 it's common to use say 1 point 5 seconds as an average, say 1
15 point 5 to 2, so we include almost everybody, and you know,
16 that's for a pretty normal situation, nothing unexpected. To
17 look at a situation like this, it's nighttime, you're dealing
18 with an object that's not very conspicuous at first, but you're
19 also dealing with two objects, you're dealing with the BMW in
20 front of you with its headlights on that may draw your
21 attention, and then all of a sudden you have a suddenly
22 appearing pedestrian in front of you at that 100 feet. So that
23 1 point 5 to 2, it's logical to even raise it to say 1 point 5
24 to 2 point 5. You're still going to have people that are very
25 fast. If you want to account for everybody, it could be up to

1 2 point 5. So if you're only detecting at 2, you may not even
2 have time to react at all, if you're reacting quickly, let's
3 say at 1 point 5, okay, you've got a half second in that
4 situation.

5 Q Alright. So do you have an opinion based upon time,
6 distance, and the PRT as to whether or not a person would have
7 little or no time to attempt to avoid impacting the
8 pedestrian?

9 A Yes. I believe that most people would have little to no
10 time to attempt to avoid impacting this pedestrian.

11 Q Taking all the factors that you've talked about into
12 consideration --

13 MR. SWERLING: Your Honor, if you could just indulge
14 me one moment.

15 THE COURT: Excuse me?

16 MR. SWERLING: Just indulge me one moment

17 ---

18 THE COURT: Oh, sure, yeah, yeah, yeah.

19 Q So do you have an opinion based upon a reasonable degree
20 of scientific or engineering certainty as to whether or not the
21 time or distance, the time and distance you've calculated that
22 the pedestrian was visible, did a person have, or would a
23 person have sufficient opportunity to avoid impact?

24 A I think it's likely that most people would have little to
25 no opportunity to begin to try to avoid.

1 Q Alright. And next, do you have an opinion based upon a
2 reasonable degree of scientific and engineering certainty that
3 it was any effort on the part of a person in this particular
4 case to attempt to avoid the impact with the pedestrian?

5 MR. MEADORS: Objection. Speculation.

6 MR. SWERLING: Alright.

7 THE COURT: I believe that's going a little bit
8 further than his area, I'm going to sustain the
9 objection.

10 Q In accident reconstruction --

11 MR. SWERLING: If I can follow up with a couple of
12 questions ---

13 THE COURT: Right. And we'll see if ---

14 Q In accident --

15 MR. SWERLING: I'm sorry, Judge.

16 THE COURT: No. I just said yeah, go ahead and we'll
17 see if we have an objection.

18 Q You are certified as an expert in accident reconstruction?

19 A Yes.

20 Q The question that I just asked you is to whether or not a
21 person attempted, the signs that a person would have attempted
22 to avoid impact, is that part of your field of expertise in
23 accident reconstruction?

24 A Yes.

25 Q So if I can at this point ask you ---

1 THE COURT: Repeat the question that Mr. Meadors
2 objected to because I think you asked it in a little bit
3 different way. But if you can remember, repeat exactly what
4 you asked Mr. Nelson when Mr. Meadors objected.

5 MR. SWERLING: Okay.

6 Q Do you have an opinion based upon a reasonable degree of
7 scientific or engineering certainty that there was evidence, in
8 your expertise as an accident reconstructionist, that Mr.
9 Ackerman in this particular case attempted to avoid impact with
10 the pedestrian?

11 THE COURT: Okay. Mr. Meadors, you still object?

12 MR. MEADORS: No. I'm good.

13 THE COURT: Okay. Alright. I think you didn't ask
14 it quite that way, Mr. Swerling ---

15 MR. SWERLING: I'm sorry, Judge.

16 THE COURT: --- but I think if he's aware of any
17 evidence that has been presented in this case, then I think
18 certainly that would be proper. I just think maybe you asked
19 it a little bit differently.

20 MR. SWERLING: Can I ---

21 THE COURT: No. You're ---

22 MR. SWERLING: Okay.

23 THE COURT: --- good ---

24 MR. SWERLING: Okay.

25 THE COURT: --- keep moving forward.

1 MR. SWERLING: I tried to repeat it exactly ---

2 THE COURT: Okay.

3 MR. SWERLING: --- the way, but ---

4 THE COURT: Alright.

5 MR. SWERLING: --- I apologize if I didn't.

6 Q Go ahead.

7 A So there is evidence that Mr. Ackerman steered left into
8 the BMW at an angle.

9 Q Okay. Do you have an opinion as to whether or not based
10 upon a reasonable degree of scientific and engineering
11 certainty whether or not it was an angular strike or a parallel
12 strike to the vehicle?

13 A It was ---

14 MR. MEADORS: Your Honor, I'm going to object because
15 I don't think that's what he did in this case.

16 THE COURT: Right. It's already been testified to --
17 -

18 MR. MEADORS: Okay. That's fine.

19 THE COURT: --- by your other expert ---

20 MR. MEADORS: Never mind.

21 THE COURT: --- that it was an angle and not
22 parallel, we've just got a difference of experts. So move on
23 to something else, please.

24 MR. SWERLING: Just he relied on what Mr. Torres said
25 ---

1 THE COURT: Move on to something else.

2 MR. SWERLING: --- so that's why I asked the
3 question.

4 THE COURT: Yeah. Move onto something else, please.

5 MR. SWERLING: Okay. Can I ask him if he agrees with
6 David Torres as far as his conclusion?

7 THE COURT: Sure.

8 A Yes, I do based, yes, what Mr. Torres did, looking at the
9 electronic data from the BMW, yes.

10 Q Let me ask you this, post impact, let me ask you this, so
11 you're basing that on, you agree with Mr. Torres, but do you
12 have independent issues that support your position that there
13 was an angular strike?

14 A Sure. The numbers right out of the BMW's CDR data, six
15 and three.

16 Q Alright. Would you explain that?

17 A Sure. So that's between Delta-V from the CDR data from
18 the BMW, so there's a longitudinal, that's front to back, and
19 there's a lateral, it's side to side. The BMW's initially
20 stopped, so it's zero in both directions. There's an impact,
21 it gets a six mile an hour change in speed front to back, it
22 gets three, not two, three from left to right, so towards the
23 curb. And when you resolve those together, that's a direction
24 of force of about 30 degrees. So if you think of zero degrees,
25 12:00, I'm going to clock this as parallel, the actual data

1 recorded by the BMW, six and three from two to one, not three
2 to one, 30 degrees, 11:00, parallel 30 degree angle.

3 Q So is it your testimony that the vehicle, you have
4 independent facts that the vehicle was pushed back?

5 A The data right off of the BMW.

6 Q Okay. And that is how many feet?

7 A I don't go to the feet, but Mr. Torres spoke to that ---

8 Q Okay.

9 A --- talking about ---

10 Q You agree with what he concluded?

11 A Yes.

12 Q And the, not only was the vehicle pushed back, but it was,
13 you said laterally ---

14 MR. MEADORS: Objection. Leading.

15 Q --- pushed to the right?

16 A I'm saying there was a lateral component to the crash
17 points. Six longitudinal front to back, three lateral, side to
18 side, and that was to the right towards the curb. So it was at
19 zero miles per hour towards the curb, after the impact it was
20 three.

21 Q Okay. Is there a reasonable explanation as to how the
22 vehicle, the Ford, wound up where it was?

23 A Eventually it received a steering input to the right, and
24 that could be intentional, that could be a response from the
25 impact. I don't know if you've ever, say, rearended somebody,

1 but you go up, you hit their bumper, your car stops, you go
2 forward. If you are stopped at a light, you get rearended,
3 your car gets pushed forward, you get pushed back in your seat.
4 If you're going one way in a vehicle and it hits something and
5 stops, you keep going that way, your hands on the steering
6 wheel could go the opposite way. That would be an expected
7 reaction to this impact.

8 Q And one of the possibilities was it would veer off?

9 A Yes. If it gets the right steering it's going to go in
10 that direction.

11 Q Okay.

12 MR. SWERLING: Your Honor, that's all I have at this
13 time.

14 THE COURT: Okay. Let's take a short break before
15 cross examination of this witness. It shouldn't be too long.
16 Wait folks, wait, wait, whoa, whoa. Remember the rule? You
17 can't get up and leave until the jury's out of the Courtroom,
18 okay? Maybe you weren't here that day, ma'am, I understand.
19 Take a short break and I'll bring you back out, thank you.

20 (Jury exiting Courtroom.)

21 THE COURT: Okay. Now you're good.

22 (Off the record.)

23 THE COURT: Okay. State ready for the jury?

24 MR. MEADORS: Yes, sir.

25 THE COURT: Thank you. Defense?

1 MR. SWERLING: Yes, sir.

2 THE COURT: Okay. Alright. Let's bring the jury
3 out, please.

4 (Jury entering Courtroom.)

5 THE COURT: Let the record reflect the jury is back
6 in. Mr. Meadors, you ready for your cross examination?

7 MR. MEADORS: May it please Your Honor?

8 **CROSS EXAMINATION**

9 BY MR. MEADORS:

10 Q Wouldn't you have loved to have been Meg
11 McGovern?

12 MR. SWERLING: What was the question?

13 A Is that a rhetorical question?

14 Q Did you say is that a rhetorical question?

15 A Wouldn't you?

16 Q Wouldn't you love to be Meg McGovern?

17 MR. SWERLING: Your Honor, that ---

18 THE COURT: Well, first ---

19 MR. SWERLING: --- it's just totally irrelevant.

20 THE COURT: I mean, it's cross examination, but maybe
21 ask Mr. Nelson first if he is aware of Megan McGovern in this
22 case.

23 MR. MEADORS: Well, Judge, I wanted that reaction,
24 that's why I asked it that way.

25 Q Do you even know who Megan McGovern is?

1 A Yes. She's the first person to arrive to the scene after
2 the incident.

3 Q And did you talk to her?

4 A I didn't talk to her, I heard what she said on the body
5 cam, I heard a bit to what she testified to.

6 Q But my question was, you're an expert in this field,
7 wouldn't you have loved to have been there if you could have
8 that night to be there that night and see it?

9 A I don't really have an opinion one way or the other.

10 Q You wouldn't rather be there when it happened that night
11 so you can say hey, this is exactly how it was?

12 A When it happened at the time of the incident, sure.

13 Q Okay. That's, you'd rather be there that night?

14 A At the time of the incident.

15 Q Yes.

16 A Yes.

17 Q And Meg McGovern drove down just a little while later ---

18 A About 20 minutes later, yes.

19 Q How old was she?

20 A Looked like teens, early 20s.

21 Q And she didn't hit the car or come close to it, did she?

22 A Of course not, she could see the car.

23 Q Okay. She could see the car?

24 A It's a car with its headlights on, you can see it for
25 thousands and thousands of feet if you have line of sight,

1 there's a crest in the hill, so as soon as you come over the
2 hill there's a vehicle with its headlights on.

3 Q And she didn't even know that car was going to be there,
4 did she?

5 A It's pretty far from the crest of the hill, but I guess, I
6 don't know what she knew.

7 Q You told Mr. Swerling you, I believe you said similar, you
8 like to get exemplar vehicles, is that correct?

9 A If you don't have access to the subject and you're trying
10 to evaluate something, yes, exemplar vehicles.

11 Q Okay. And did you do that with the BMW?

12 A Yes.

13 Q I mean, was it the same color?

14 A It was a BMW 5 series, 2016 with Z9 projectors, same
15 headlight height, same headlight spread.

16 Q But it was a different color, wasn't it?

17 A Yes.

18 Q Okay. So it's not the same clone vehicle? It was white,
19 right?

20 A For my purposes of having the same headlights, pointing
21 down the road, yes, it was.

22 Q But the color was not gray or dark gray, it was white?

23 A Correct. So it's easier to see if you're talking about
24 seeing the actual panels of the car.

25

1 Q And as far as the F250 truck, what type tires were on the
2 clone truck that you got?

3 A They looked to be stock.

4 Q Okay. What size were they?

5 A Whatever the stock size is, 37 or a little bit less than
6 37 I believe.

7 Q So you're not even sure?

8 A No.

9 Q Okay. And what size were the tires on the car when Bud
10 Ackerman ran into Davis McClendon?

11 A There's testimony about them being 37. I know he had
12 about a four inch total lift on it.

13 Q And that can make a difference, can't it?

14 A Four inch lift on headlights at the distances we're
15 talking about, no, it's about, you're talking about a tenth
16 less of lux, fractions and fractions of candelas per meters
17 square reflecting back, and again, fractions and fractions of
18 the DLs that I'm looking at, that's what four inches does at
19 the distances we're talking about, I looked at that.

20 Q And you didn't even know what size was on there or try to
21 clone the exact size, right?

22 A Right.

23 Q You took some, showed some photos and some of those were
24 provided for us. You also took some at 250 and 275, pictures,
25 right? Feet.

1 A Do you mean the photometer images?

2 Q Yes.

3 A And the distances up to 300.

4 Q Why didn't you show those?

5 A It was just an example, we can certainly show them,
6 there's ---

7 Q Would you show them to me?

8 A Sure.

9 Q And I guess let's start with L9275.

10 MR. SWERLING: I'm sorry, could you repeat, what's
11 the number?

12 MR. MEADORS: Well, I'm going to ask him to tell me -
13 --

14 MR. SWERLING: Oh, okay.

15 Q It's L9275, so it's 275 feet you took? And that's not on
16 this exhibit list, is it?

17 A Yeah, it's right there.

18 MR. MEADORS: Okay. So I guess we're entering this
19 as State's ---

20 THE COURT: 59.

21 MR. MEADORS: 59.

22 Q Is that 275?

23 A Yes.

24 Q That's farther back?

25 A Yes.

1 Q You can see the car, correct?

2 A We're not seeing anything; we're seeing luminance
3 measurements.

4 Q Okay.

5 A So you refer to the scale over here.

6 Q And let's go to 250 which is --

7 MR. MEADORS: State's 60 we'd offer without
8 objection.

9 A Correct.

10 Q Now, that's actually 25 feet closer?

11 A Yes.

12 Q But it looks like it's even worse visibility, right?

13 A Again, look at the scale, the scale is changed. We're not
14 talking about visibility; the scale is represented by those
15 colors. If we go to what you see right here and look at the
16 scale and go back to the other one, the colors are different
17 because it may have picked up something different, but the
18 values are very similar.

19 Q But the different colors make it look harder to see, don't
20 it?

21 A We're not talking about looking at anything, we're talking
22 about measured data points, luminance values.

23 Q So this is actually 50 feet closer than the one that's
24 farther away, right? Go back to the other one, 275, State's
25 59. This is actually farther back, correct?

1 A Sure. So if you look ---

2 Q Is that a yes? I'm sorry.

3 A Yes.

4 Q Okay. Go ahead.

5 MR. SWERLING: Could I ---

6 A Me go ahead?

7 MR. SWERLING: --- what number is that, I'm sorry,
8 I'm just ---

9 MR. MEADORS: That is ---

10 MR. SWERLING: --- trying to keep track.

11 MR. MEADORS: Your Honor, I think 250 is State's 59
12 and 275, well, excuse me, yes, at the distance of 250, L8250 is
13 State's 59, L9275 is State's 60.

14 A I can help explain ---

15 THE COURT: I think it may be backwards.

16 MR. MEADORS: I'm actually backwards ---

17 THE COURT: Alright.

18 MR. MEADORS: Danielle just corrected me ---

19 THE COURT: Alright.

20 MR. MEADORS: --- so 275 is 59.

21 THE COURT: Right.

22 MR. MEADORS: 250 is 60, I apologize to everyone.

23 THE COURT: Right.

24 A Right. So to help you understand what you're seeing
25 there, do you see where my pointer is right now at 250, you go

1 on the scale bar, that's going to be CD prime squared by one.
2 Again, what the sensor's seeing here, it's just at the scale
3 bar, so it'd be at the same location, you're looking at CD
4 prime squared by one.

5 Q It gives, I'm sorry, go ahead.

6 A No.

7 Q It gives the appearance, though, that it's harder to see
8 when you do these ---

9 A This is not ---

10 Q --- exhibits ---

11 A Again, this is not about hard to see or not. Yeah, I
12 could change it to some crazy scale bar and things will look
13 different. This is measured data of luminance.

14 Q Okay. Well, let me ask you in the back, what's that in
15 the back behind the car, can you see that? The gate?

16 A Yep. That's retroreflective tape, so that has a high
17 reflectance, off the charts compared to say clothing, so it's
18 standing out here. And again, you've got this scale here, so
19 we're looking at, you know, 10s, 20s, 30s because it's
20 retroreflective tape.

21 Q And how far is that?

22 A The gate, that's around ---

23 Q No, no, no. The exhibit, tell us how far you were out
24 when you took this picture.

25 A That is 2 November 3, that is 275.

1 Q So at 275 feet, you can see the gate back there, right?

2 A The gate's further than that.

3 Q Okay. Make it even better, you can see the gate ---

4 A I can't see the gate; I see retroreflective tape.

5 Q You can't see the gate?

6 A Again, we're not talking about seeing, we're talking about
7 illuminance of an object.

8 Q Well, what is that?

9 A That's retroreflective tape. You're talking about the
10 bright spots on the scale, right?

11 Q That's 275 feet?

12 A From the area of impact, yes.

13 Q That's from where that picture was taken, that's 275
14 feet?

15 A From where this photometer image, it's 275 feet from the
16 approximate area of impact.

17 Q And how, what type of camera were you using?

18 A It's not a camera, it's an ---

19 THE COURT: Hold just one second. Madame Court
20 reporter?

21 COURT REPORTER: I can't hear you when you turn your
22 back and you're just talking to him, you're not talking out.

23 MR. MEADORS: I apologize.

24 THE COURT: That's alright.

25 Q What type camera were you using?

1 A I can give you the device, it's a Westboro Photonics
2 P501u, uniform, imaging photometer.

3 Q Okay. You testified, well, I'm going to wait until you
4 get back, I'm sorry. You said you had reviewed some
5 surveillance tapes?

6 A Correct.

7 Q Have you seen the video of the Break on the Lake?

8 A I think I might have skimmed through that, I didn't look
9 at, the ones I studied was from Avid and Sawgrass.

10 Q Well, and before we show it. I mean this with all due
11 respect, I'm just trying to do my job, it's nothing personal.

12 A No. And actually, honestly, the only time I saw Break on
13 the Lake was when I was sitting here in the Courtroom.

14 Q Okay. So prior to you reaching your conclusions, and you
15 never did an official report, did you?

16 A No.

17 Q Okay. Why not?

18 A Wasn't asked to. If I'm asked to I will, if not, I don't
19 know the reason behind a report or not.

20 Q But in all your experience you've talked about, you've
21 done reports before?

22 A It depends on the jurisdiction.

23 Q Okay. Have you done a report?

24 A Oh, sorry, yes.

25 (Playing video.)

1 Q And you said, so you had not seen this video prior to
2 preparing the, this for the jury? You had not seen Break on
3 the Lake?

4 A I think I saw it existed; I don't think I looked at it
5 until now.

6 Q Can you see, or would you want to come down?

7 A I can see it.

8 Q Okay.

9 A I've seen it from out there.

10 Q Stop right there. And do you know that's Bud Ackerman's
11 truck? Evidence has shown.

12 A From watching it the other day, yes.

13 Q Okay. Can you see his headlights there?

14 A Yes.

15 Q Okay. Go ahead. Can you see them there?

16 A They're kind of getting washed out by the building lights,
17 but I can see his headlights.

18 Q You're saying they're getting washed out by the, but can
19 you see his headlights on?

20 A The physical headlights, yes.

21 Q Go ahead. Stop. Did you see the glare there projecting,
22 or the light they're projecting there?

23 A Yes, they're illuminating the ground in this video.

24 Q And they're illuminating a good distance, right?

25 A Depends on where you're looking at ---

1 Q I'm ---

2 A --- a good distance ---

3 Q --- looking at, I mean, can you see how far it's showing?

4 A I can see it on this camera, I have no idea how this
5 camera's set. You can see light on the ground. Again, whether
6 you can see something with those headlights depends on the
7 nature of that object, its reflectance. People talk about how
8 far do your headlights go, well, tell me what you're looking
9 at, tell me how reflective it is, tell me how far away it is
10 and all these other things.

11 Q I'm asking you from right there looking at that screen,
12 can you see those headlights projecting light?

13 A I see the light pattern on the ground, yes.

14 Q He hasn't hit anything in this has he?

15 A It doesn't look like it.

16 Q He avoided the median and avoided where the lights are,
17 right? He avoided it.

18 A Stuff in the parking lot, yes.

19 Q Well let me stop you here. Can you see the lights in the
20 parking lot?

21 A Red lights, yes.

22 Q And can you see the light coming out of the front of the
23 establishment, Break at the Lake, the illumination coming out
24 of the light?

25 A Yes. I can see the lighter spots on the ground.

1 Q How do you describe those lights right there?

2 A How do you mean, color, intensity, type? Which lights are
3 you talking about?

4 Q Are they bright?

5 A The headlights or the ---

6 Q I'm talking about the truck, the headlights, I'm sorry.

7 A They're on, they're on.

8 Q Now, is that, do you see the lights projecting there in
9 the truck?

10 MR. MEADORS: And I'm sorry, if I can approach,
11 Judge, briefly?

12 THE COURT: Sure.

13 Q Can you see the truck light pointing down here?

14 A I see light on the ground, yes.

15 Q From the truck?

16 A Yes.

17 Q Would that not have aided you in coming up with some of
18 these measures, looking at the actual truck that day, how his
19 lights were working and how they shown, would that not have
20 helped you?

21 A No.

22 Q Okay. How fast was the vehicle going down Avid, do you
23 know?

24 A I know we've got the impact speed, I believe Mr. Torres
25 testified 33 and, 34 to 39.

1 Q Now, you said you agreed with everything Mr. Torres said,
2 correct? Adopted it in your ---

3 A Whatever specifically I was asked by Mr. Swerling.

4 Q I'm not trying to be difficult.

5 A Okay.

6 Q And you said specifically the impact of the truck onto the
7 BMW was 6 point 3, right?

8 A In longitudinal and 3 in the lateral.

9 Q And that's wrong, did you know that? It's 6 point 2.

10 A It's 6 point 2 and 3 point 1, so I'm saying it's 6 and 3.

11 Q It's 6 and 2 which would be three times the impact ---

12 A No. It's 6 point 2 longitudinal, it is 3 point 1 lateral.

13 Q That's not what Mr. Torres testified to yesterday.

14 A Correct. He said 2, give or take. It's in the record,
15 it's in my file, it's in the MAIT report as 6 and 3.

16 Q So you're inching it to 3, he said 2?

17 A It literally says 3 in the CDR report.

18 Q But that is different from what Mr. Torres testified to
19 isn't it?

20 A Yes.

21 Q That's all.

22 MR. MEADORS: Just beg the Court's indulgence.

23 THE COURT: Yep.

24 Q You've testified from these positions coming down where
25 the Ford was and where the line of sight was. You have no idea

1 where Bud Ackerman was in the truck, if he was doing this way,
2 if he was doing that way, where his seat was, you have no idea
3 do you?

4 A No. This is where a normally sitting driver would be.

5 Q A normally sitting driver. So if he slumped down, you
6 have no idea what his line of sight would have been do you?

7 A If he slumped down, it's probably worse.

8 Q Do you have any idea?

9 A No.

10 Q Okay. And at night when you were out there coming down
11 Avid, you could see that BMW with the lights on, couldn't you?

12 A Yes. Again, it's a car with its lights on, you can see it
13 for thousands of feet.

14 Q Okay. And you could see the light post?

15 A I don't think I could see the post, I could see there was
16 a streetlight there.

17 Q That's what I meant, a streetlight.

18 A Right. You could see light, yes.

19 Q And you couldn't see the post at the bottom?

20 A The light post?

21 Q The gate, I'm sorry, with the reflectors on it, could you
22 see that?

23 A I could probably see the retroreflective tape ---

24 Q You could?

25 A --- I was making a note of that personally.

1 Q And you had never been there had you at night? This is
2 the first time you've been there?

3 A I mean, I, yes, that day, I got there in the daytime and
4 set up for night, yes.

5 Q But that's the first time you've been there at
6 night?

7 A Yes.

8 Q Okay. You saw the streetlight?

9 A I saw the light, yes. It's in my field of view, it's a
10 light.

11 Q The car?

12 A Lights.

13 Q The reflector on the gate?

14 A Probably.

15 Q Well, you said a minute ago you did.

16 A I'm sure I did; it's in front of me and it's
17 retroreflective tape.

18 Q And my question, and those questions are leading up to you
19 had testified about reaction time. And in your report, I had
20 some family members look through it, you, didn't you initially
21 at one point say visibility was between 100 and 125?

22 A Potentially.

23 Q Even on your calculations?

24 A No, 100 to 125, 125 is when I said you may start to see
25 one leg, potentially.

1 Q So at that, it would be 3 point 41 seconds reaction time,
2 wouldn't it?

3 A For that, again, one part doesn't tell me ---

4 Q These are from your notes.

5 MR. SWERLING: Judge, he needs to finish ---

6 MR. MEADORS: I'm sorry ---

7 MR. SWERLING: --- his answer.

8 MR. MEADORS: --- excuse me.

9 Q But you're saying here today 100 feet, correct?

10 A Right. That's when you get to something that tells you
11 what you're looking at.

12 Q And reaction time, tell the ladies and gentlemen about
13 this. True reaction time, people reacting to something they
14 really don't know whether it's going to come up or not, right,
15 it's just like a, somebody appearing from the side, you don't
16 know something's going to happen. That's how you measure true
17 reaction time, right?

18 A You measure reaction time from when you detect something
19 until you start carrying out, your vehicle starts responding.

20 Q But just in the general common sense world, reaction time
21 and studies, you don't know, when people are measuring this,
22 you're measuring true reaction, you're not anticipating
23 something happening, right?

24 A You're reacting to something that happens.

25 Q The unknown, right?

1 A If you're describing it that way, okay.

2 Q Okay. I am. So you agree with that?

3 A Yes. You're reacting to something that happened.

4 Q Okay. So if you knew a car was going to be there, if you
5 knew a person was going to be there, if you had arranged to
6 meet somebody down there, that would blow the reaction time
7 calculation out the window, wouldn't it?

8 A I don't know that you're knowing there could be a car
9 there or you're knowing there's a pedestrian there, I don't
10 know what you're expecting as to where the pedestrian's going
11 to be.

12 Q If you knew somebody was going to be down there, how could
13 that not change your reaction time? If you're looking for
14 somebody.

15 A I'm not sure. If you're looking for a vehicle and you see
16 a vehicle you expect a vehicle.

17 Q Yes, yes.

18 A Yes. If you're expecting a vehicle that you can see and
19 you know it's there.

20 Q And I'm almost through. The, a lot of these pictures up
21 here, were the Ford truck lights on when you were taking these
22 visibility things in yours?

23 A Yes.

24 Q Was it even on?

25 A Yes.

1 Q You couldn't see the reflection coming out
2 front?

3 A Right. It's focused on the area of, the area of impact.
4 It's looking at the car, it's looking at the pedestrian, I'm
5 using 15 millimeter lens, I could have tilted down and you'd
6 see the pattern from the ---

7 Q I wish you had. Okay. So you didn't, you don't show the
8 lights coming from the truck, do you?

9 A No. I'm showing what's out ahead of the truck.

10 Q So the illumination from the truck is not depicted in any
11 of your exhibits?

12 A The luminance on the ground from the truck, no. The
13 luminance of everything that's hitting out in front,
14 yes.

15 Q Okay. But like these are shown, you don't show the lights
16 there at Break on the Lake in your exhibits like they are here,
17 you don't see the lights coming from them in all your exhibits,
18 do you?

19 A Again, I am showing luminance, candelas per meters
20 squared, the brightness of everything out in front. Whether
21 that's brightness from the streetlight, the moon, it is
22 included in the brightness of the illumination coming from the
23 Ford's headlights, it is including that. Now, 200 feet down
24 the road, it may not be very much, but sure, you're going to
25 see it, 50 feet, yes, you do see it.

1 Q Why didn't you just get a camera and show what to do with
2 that?

3 A That, again, this, whatever this video is showing, it's
4 not what the human is seeing.

5 Q That's not what we're seeing?

6 A I have no idea if it is or not, I have to go there and
7 actually see what it actually looks like.

8 Q And the camera you took for that, you said a lens a minute
9 ago, did you use a different camera from ---

10 A No. I'm saying you have the imaging photometer, the
11 P501u, you put a lens on so that I can actually focus on what
12 it's looking at then it takes measurements from it.

13 Q Okay. Were the lights on bright or dim on the Ford when
14 you did this?

15 A They're on low beam.

16 Q They were on low beam?

17 A Yes.

18 Q What were they when the, he ran into Davis McClendon on
19 May 7th? You don't know, do you?

20 A Well, looking at the surveillance videos between when Mr.
21 Ackerman comes through in the 2019 Ford F250 with LEDs, on the
22 exact same camera compared to Ms. McGovern coming in in the
23 2010 Ford Escape with halogen bulbs, it looks like Mr. Ackerman
24 had his low beams on, Ms. McGovern had her high beams on.

25 Q And what does it got on there, do you know?

1 A I had nothing to compare it to.

2 Q And you don't know what the BMW's lights were, do
3 you?

4 A I know that they were at least on low beam, nobody seemed
5 to document that.

6 MR. MEADORS: Beg the Court's indulgence?

7 THE COURT: Sure.

8 Q And other factors like eyesight, they're just innumerable
9 factors that you can never really recreate, can you? The
10 actual event.

11 A Absolutely. So for this visibility model, this is optimal
12 conditions. If somebody has an eye defect, it could be worse,
13 you're going to want an ophthalmologist. If anybody's
14 nearsighted, etcetera, etcetera. This is best conditions for
15 visibility level, what can a person see.

16 Q And you keep, in a lot of these you say this isn't
17 measuring visibility, this isn't measuring visibility, but this
18 is all about visibility, isn't it?

19 A Measurements and images are measuring luminance. The
20 model is calculating visibility using those measurements.

21 MR. MEADORS: Just got a couple more questions, Judge

22 ---

23 THE COURT: Sure.

24 MR. MEADORS: --- I'm sorry.

25 THE COURT: It's alright.

1 Q And while she's finding this, the reason I ask you, you
2 referenced, I think it's figure 18, they actually show, you're
3 familiar with it, they show the car that's showing the picture,
4 they actually show the lights in there, you know what I'm
5 talking about? In figure 18, the book that you said you rely
6 on.

7 A I've got lots and lots of papers, I don't have that figure
8 memorized.

9 Q Well, I do. And it's right here. Do you recognize that?
10 Coming from the book Mr. Swerling asked you about.

11 A Oh, my paper, yes.

12 Q And that shows it, doesn't it, coming out, the light from
13 the subjects you're trying to, it shows the light ---

14 MR. SWERLING: What are you referring to? I'm sorry.
15 Is that an exhibit?

16 MR. MEADORS: I thought it, it's something that you
17 provided, you provided it.

18 MR. SWERLING: Well, I've provided you with whatever
19 I had, but is that an exhibit, that's what I'm asking.

20 MR. MEADORS: No, this is not. This is from the
21 ---

22 MR. SWERLING: Okay.

23 A So this appears, there's not a distance on here, you can
24 look at the paper and see the distance, this is pretty close,
25 so like I said when you get close and headlights from the

1 vehicle are illuminating, it shows brighter luminance in those
2 areas just like my images do.

3 Q Now, did you review this? You said you reviewed some, and
4 Durkine took a lot of pictures, I'll admit that, he took a lot,
5 do you remember looking at this picture?

6 A Yes.

7 Q Okay. Can you see the car, the BMW?

8 A Sure.

9 MR. SWERLING: What exhibit is this? I'm sorry. I'm
10 just trying to keep track.

11 MR. MEADORS: It's 18.

12 MR. SWERLING: Okay.

13 MR. MEADORS: I apologize for the record.

14 Q Can you see the car, the BMW?

15 A Yes.

16 Q And the car to the right, Megan McGovern?

17 A Ford Escape, yes.

18 Q Okay. And the reflective gate?

19 A I see the tape, yes.

20 Q Okay. You can see that?

21 A I'm at an angle, it's going to totally change

22 ---

23 THE COURT: Step down if you need to, Mr. Nelson.
24 Just be sure to stand in front of the microphone, okay? Thank
25 you.

1 A I'll tell you I can't see the gate, if I can't see the
2 gate, I can see what's probably wood to the left of the
3 reflective tape, I can't see actual green bars.

4 Q But you see the reflective tape?

5 A Yes.

6 Q You've been out there, so you know that's the gate, don't
7 you?

8 A I know that tape is on the gate, yes.

9 Q And you've just been out there one time?

10 A No. I drove by it last week.

11 Q Okay. Twice?

12 A Yep.

13 Q Okay. Thank you.

14 MR. MEADORS: Your Honor, for the record that was
15 exhibit 18, photo 486 out of 18.

16 THE COURT: Okay.

17 MR. MEADORS: Beg the Court's indulgence.

18 Q And I always ask this, I have to at the end. Mr. Swerling
19 was asking you after the break, and you've been qualified as an
20 expert, that's today, right, the first time in a court of
21 record was today you're an expert in this field?

22 A On conspicuity, yes.

23 Q And Mr. Swerling asked you about your company is billing
24 for your services?

25 A Yes.

1 Q Okay. How much are they billing for your services?

2 A Right now I think it's \$340.00 an hour.

3 Q Excuse me?

4 A \$340.00 an hour.

5 Q And is that \$340.00 an hour in preparation for this when
6 you came here? I mean, when you came and did all of the study
7 you did, that's \$340.00 an hour?

8 A It's \$340.00 an hour to a paying client no matter what I'm
9 doing.

10 Q Okay. Transportation, hours getting here?

11 A Yes.

12 Q And that's, where did you come from?

13 A Baltimore.

14 Q Okay. So \$340.00 an hour from Baltimore to Greenwood?

15 A Yes.

16 Q \$340.00 an hour coming to the Courthouse?

17 A Yes.

18 Q Does it go up when you take the stand?

19 A No.

20 Q Okay. Thank you.

21 MR. MEADORS: That's all.

22 THE COURT: Redirect?

23 MR. SWERLING: Just briefly, Your Honor.

24 THE COURT: Sure.

25 **REDIRECT EXAMINATION**

1 BY MR. SWERLING:

2 Q The company you work for, you get a salary, is that
3 correct?

4 A That's correct.

5 Q Alright. And is the company in the business to make some
6 money?

7 A I presume so.

8 Q Okay. But so, the fact that they get paid, you get paid a
9 salary no matter what, how much time you spend?

10 A Right. I get paid a salary no matter what I'm doing.
11 When DOJ hires us, they're paying that same \$340.00 an
12 hour.

13 Q And have you been hired by DOJ?

14 A Yes.

15 Q What is the DOJ?

16 A Department of Justice.

17 Q Okay. And have you done work for the government as
18 well?

19 A Yes. On a night visibility case.

20 Q Okay.

21 A A pretty big one.

22 Q On a night visibility case?

23 A Yep.

24 Q And that's the Department of Justice?

25 A Yes.

1 Q Okay. Let me ask you this, he asked you whether or not
2 this is the first time you've been qualified as an expert. The
3 first time you've been qualified as an expert in what?

4 A In court on night visibility and conspicuity.

5 Q Okay. But your experience that you testified to before is
6 in connection with night visibility, correct?

7 A Again, since day two being out there doing these tests.

8 Q Pardon?

9 A Since my second day of employment being out there at
10 night, working cases just like this.

11 Q And you discussed all of that on direct examination ---

12 A Yes, sir.

13 Q --- we're not going back into it.

14 A Okay.

15 Q Have you been qualified as an expert in accident
16 reconstruction before?

17 A Yes. And in visibility.

18 Q And visibility, okay. So that's not your first time, this
19 is not your first time in that area?

20 A No.

21 Q Okay. And the Court has declared you an expert in this
22 particular area, is that correct?

23 A Yes.

24 Q The issue of, about Ms. McGovern, you did see that video
25 here in Court, correct? Or before, actually.

1 A The surveillance video of Ms. McGovern's Ford Escape
2 approaching, I saw that well before this.

3 Q Right. And I believe your testimony was that the high
4 beams were on that vehicle, you could tell that.

5 MR. MEADORS: Objection. Leading.

6 MR. SWERLING: No, okay, alright.

7 THE COURT: Just rephrase a little bit, Mr. Swerling.

8 Q What was the condition of her headlights?

9 A So they, we've got the same camera now so the same
10 settings. Is it showing what it looks like in real life? You
11 can't say without checking. And now we've got two different
12 vehicles, we have a 2019 Ford F250 with LED reflectors driving
13 down the road. We see what that looks like as far as light
14 patterns on the road, then some 20 minutes later we've got a
15 2010 Ford Escape with halogen bulbs, so nine years older car,
16 halogen's, not LEDs, and you can look at the light pattern
17 that's showing on the video with the exact same settings and
18 what it's illuminating. And when Ms. McGovern's approaching,
19 the light pattern is much longer, much stronger, much more
20 hitting vertical surfaces than compared to 20 minutes earlier
21 when the F250 comes through.

22 Q Let me ask you, the images that Mr. Meadors was showing
23 you about Break on the Lake, the vehicle going around, do you
24 know whether those were high beams or low beams?

25 A No.

1 Q Okay. But your tests involved low beams, correct?

2 A Correct.

3 Q Okay. You didn't suggest that his vehicle, or did you
4 suggest his vehicle had the high beams on?

5 A Judging by comparing, again, the 2010 Ford Escape,
6 halogens, to a 2019 F250 with LEDs and comparing the headlight
7 patterns on the exact same camera, it looks like his low beams
8 are on and her high beams are on.

9 Q Okay. Mr. Meadors showed you what he introduced as
10 State's 59 and State's 60. One was an image at 275 feet, one
11 was an image at 250 feet, correct?

12 A Correct.

13 Q Okay. Let me ask you, let's clarify this, is that a
14 picture of what you can see? Those were pictures of what you
15 can see?

16 A No. It's a picture of, if you want to call it physical
17 measurements, it's a picture of light measurements, luminance
18 of everything in that scene. Same thing as if I took that spot
19 meter and I'm going to, you know, measure just this little red
20 tag right here.

21 Q So is there a suggestion that, is that what you could see,
22 the person could see at those two distances?

23 A No.

24 Q Okay.

25 A I can change the scale and the whole thing would be black.

1 Q Okay. And luminance is what, again?

2 A That is light that is reflected back to an observer
3 reaching your eye. So when I'm measuring, it's the spot meter
4 that's acting like my eye or the sensor in that
5 photometer.

6 Q And how are those images created? That you showed at
7 State's 59 and State's 60, the two showing the car, or not
8 showing, an image of the light and the reflection at that
9 point.

10 A So that's me with the photometer in the exemplar Ford F250
11 pointing down the road.

12 Q And what are you measuring when you point the photometer
13 at it?

14 A I'm measuring luminance.

15 Q Light?

16 A Light.

17 Q Not image?

18 A Right.

19 Q The Break on the Lake video, does that have anything to do
20 with your calculations in this case?

21 A No. Again, there was nothing to compare it to, not
22 knowing the settings, not seeing how it's calibrated or
23 checking it against calibration, I have no idea what it's
24 showing as far as visibility or lights. And that's what this
25 camera shows.

1 Q You were engaged to examine the scene and what happened at
2 the scene of where this incident happened, correct?

3 A Correct.

4 Q Break on the Lake, did it have anything to do with that?

5 A Correct.

6 Q Did it?

7 A It did not.

8 Q Would anything you saw, or Mr. Meadors showed you, would
9 that change your opinion or modify your opinion?

10 A No.

11 Q Did it have anything to do with changing your
12 calculations?

13 A No.

14 Q Let me, let's clarify about 6 point 2 and 3 point 1,
15 okay?

16 A Sure.

17 Q 6 point 2 is what?

18 A That's the longitudinal. So front to back change in
19 velocity of the BMW, so change in speed in the front to back
20 direction.

21 Q So at rest the vehicle is at zero, correct?

22 A Correct.

23 Q Alright. And when it's moving back, is that, let me
24 rephrase it. The 6 point 2, is that the actual speed of the
25 vehicle moving back?

1 A That's its change from zero. So once the, it's 6 point 2
2 going back.

3 Q Okay. And the 3 point 1 is what?

4 A That's the lateral component of the velocity, so that's 3
5 point 1 side to side, in this case it's left to right.

6 Q Did the vehicle clearly move laterally left to ---

7 MR. MEADORS: Objection to leading.

8 THE COURT: Rephrase.

9 Q What, in your opinion, did the vehicle move to a
10 reasonable degree of scientific and engineering certainty the
11 vehicle move laterally at 3 point 1 miles an hour?

12 A Yes.

13 Q At what distance?

14 A I didn't calculate the distance ---

15 Q You did not calculate, okay.

16 A --- I just know back and to the right.

17 Q Now, you said, did you agree with Mr. Torres' conclusions?
18 Were you in the Courtroom yesterday?

19 A Yes.

20 Q And had you and he spoken even before yesterday?

21 A Yes.

22 Q You've consulted with each other?

23 A Yes.

24 Q Are some of your calculations based upon things that he
25 did?

1 A Sure, yes.

2 Q Okay. And what did he testify to about what you, the 6
3 point 2 and the 3 point 1?

4 A He said it was about 6 longitudinal and he said about 2
5 longitudinal, and he said give or take, I don't think he had
6 the exact numbers. I verified the numbers in the MAIT report,
7 in the actual data it's 6 point 2 and 3 point 1.

8 Q Okay. And so you have verified those numbers?

9 A Yes.

10 Q Okay. Does that change anything, the variance or the
11 difference between 6 point 2, and what did you say, 2 point 1?

12 A Sure. So I mean yesterday State's second chair was that 6
13 and 2 is 6 and 2, that's a 3 to 1 ratio, it's actually a 2 to 1
14 ratio.

15 Q And how does that affect the conclusions in this case?

16 A Again, that's, again, that's going more from the 12:00
17 parallel that's actually 30 degrees, 11:00 angle.

18 Q Does that change any of your opinions?

19 A No.

20 Q The reflection on the gate, did, that he was talking
21 about, did you measure at what distance someone would have been
22 able to tell the reflection on the gate? Or whatever that ---

23 A I had the measurements to do that, I didn't calculate that
24 because I'm not, that's not an issue here.

25 Q Okay. The gate itself, was that involved in the accident?

1 A Not that I know of.

2 Q Okay. And does it, do you know, do you have an opinion to
3 a reasonable degree of scientific and engineering certainty as
4 to whether anyone could see that reflection coming down the
5 road, Avid Road?

6 A I didn't do that analysis, but you would be able to see
7 little rectangles of retroreflective tape coming down, I don't
8 know exactly where, but this retroreflective tape is pretty
9 good at being seen.

10 Q Okay. Let me ask you this, Mr. Meadors asked you about
11 the pedestrian standing in the road. Is there any evidence
12 that Mr. Ackerman would have known, that you're aware of, that
13 Mr. Ackerman would have known that the pedestrian was standing
14 in the road?

15 A I see no evidence one way or another and don't really have
16 an opinion on that.

17 Q Okay. But you're not aware of anything, any evidence in
18 the case that he would have been standing in the road at the
19 time he was coming down Avid Road?

20 A I don't know why there would be.

21 Q Okay. And at some point, based upon a reasonable degree
22 of medical certainty, I mean scientific and engineering
23 certainty you've already testified as to the distance that
24 somebody would have seen that individual, or that pedestrian?

25 A Yes.

1 Q Alright. And we've, and what was that?

2 A Around 100 feet.

3 Q Alright. To a reasonable degree of scientific and
4 engineering certainty, what would have been the timeframe that
5 someone would have had to react seeing the pedestrian?

6 A Yeah. At 25, 35 miles an hour, it would have been just
7 under two seconds to just over two and a half.

8 Q Two to two and a half seconds to react?

9 A Two to, from when you detect, to the impact.

10 MR. SWERLING: That's all I have, Judge.

11 THE COURT: Any recross?

12 MR. MEADORS: Very, very briefly.

13 THE COURT: Sure.

14 **RE CROSS EXAMINATION**

15 BY MR. MEADORS:

16 Q Where is the CDR box located on the BMW?

17 A On the BMW I'm not sure, it's a BMW. Most manufacturers
18 put it in a logical location, so in the center gravity of the
19 vehicle. BMWs kind of vary and sometimes they can even have a
20 second module. This specific one I didn't look up where
21 exactly it's located.

22 Q And this is from co-counsel that you referenced earlier,
23 are you aware that the raw data is not accurate because of the
24 position of the module? I guess you aren't if you don't know
25 where it is?

1 A I'd have to look into that.

2 Q Okay. And again, yesterday it was 6, 2, it's 6, 3 today?

3 MR. SWERLING: Has that been testified to? That it's
4 raw?

5 MR. MEADORS: I thought that came in.

6 MR. SWERLING: I move to strike, I don't think that's
7 evidence in the case that it was raw.

8 MR. MEADORS: I was responding to his question about
9 ---

10 THE COURT: Right. It's cross examination, I'll
11 allow it.

12 Q And finally, Mr. Swerling's last question about reaction
13 time, known, unknown. Would it make a difference if the person
14 who's driving down is talking on the phone to the person that's
15 in the BMW as he's coming down the hill?

16 A I have no idea. It depends what they're saying.

17 Q Thank you.

18 MR. MEADORS: That's all.

19 THE COURT: Okay. You can step down, Mr. Nelson.
20 You're free to leave the Courthouse, you're more than welcome
21 to remain with us.

22 MR. NELSON: Thank you, sir.

23 THE COURT: Okay. Let me see the lawyers for just a
24 second, please.

25 (Off the record.)

1 THE COURT: Alright. Ladies and gentlemen, 1:00,
2 it'll be a good time to break for lunch, be back at 2:30, and
3 we'll proceed forward. And I'll kind of give you an idea when
4 you get back as far as the remainder of this case and what we
5 have planned, okay? So have a good lunch and we'll see you
6 back at 2:30.

7 (Jury exiting Courtroom.)

8 THE COURT: Everybody remain in their seats for just
9 a second, we're going to do one more thing before we actually
10 break for lunch. Okay. Mr. Ackerman, if you would please
11 stand, and I need to have you sworn in.

12 CLERK: Raise your right hand please. Do you
13 solemnly swear the testimony you're about to give this Court to
14 be the truth, the whole truth, and nothing but the truth so
15 help you God?

16 MR. ACKERMAN: I do.

17 THE COURT: Okay. Mr. Ackerman, at this time I'm
18 going to explain to you certain of your rights. If you do not
19 understand anything that I say, please let me know that. If
20 you want me to explain anything in more detail, please let me
21 know that as well. Do you understand, sir?

22 MR. ACKERMAN: Yes, sir.

23 THE COURT: We've now reached the stage of the trial
24 where you may present your defense, well, you've already put up
25 a defense through two expert witnesses. You have the right to

1 claim the protection given to you by the Fifth Amendment to the
2 Constitution of the United States. This Amendment states in
3 part, no person shall be compelled in any criminal case to be a
4 witness against himself. This means that you cannot be
5 required to testify in this case, you have the right to testify
6 on your own behalf, however, no one can make you testify. This
7 is a personal right and no one can waive this right except you,
8 sir. If you decide to testify, you'll be subject to the same
9 rules that govern other witnesses, and you may be examined and
10 cross examined on any relevant issue in this case. And in
11 addition, if you have any convictions involving dishonesty or
12 false statement, or for crimes punishable by imprisonment for
13 more than one year and this Court determines that the probative
14 value of admitting this evidence outweighs any prejudicial
15 effect to you, Mr. Meadors, Mr. Conrad would be able to
16 introduce your record to attack your credibility, if you have a
17 record, I don't know. If you decide to testify, this decision
18 on your part must be freely, voluntarily, and intelligently
19 made by you with knowledge of the protections given to you by
20 the Fifth Amendment and the consequences of your decision to
21 testify. If you decide not to testify, this decision also must
22 be freely, voluntarily, and intelligently made by you. And if
23 you decide not to testify, I will specifically instruct the
24 jurors that they cannot give the fact that you did not testify
25 any consideration whatsoever and that there is to be absolutely

1 no prejudice to you because you did not testify. This decision
2 of whether or not you testify is entirely left up to you, and
3 certainly I know you, I'm sure, have talked with Mr. Swerling
4 about this, your family, friends who are here in the Courtroom,
5 but the final decision is left entirely up to you, sir. Have
6 you understood what I've explained to you?

7 MR. ACKERMAN: Yes, sir.

8 THE COURT: And do you have any questions about what
9 I've explained to you?

10 MR. ACKERMAN: No, sir.

11 THE COURT: Are you prepared to tell me now whether
12 or not you will testify in this case?

13 MR. SWERLING: Your Honor, can I consult with him for
14 one second?

15 THE COURT: Right. And you can let me know after,
16 we're going to break for lunch and if you need that additional
17 time to talk with Mr. Swerling even family members then
18 certainly you have the right to do that. So when we adjourn
19 after lunch, then I'll have you give me that answer

20 ---

21 MR. SWERLING: Thank you.

22 THE COURT: --- okay? Alright. We'll be in recess
23 until 2:30, everybody have a good lunch.

24 (Off the record.)

25 BAILIFF: All rise. Court come to order.

1 THE COURT: Thank you very much, have a seat. Okay.
2 We are back on the record. Mr. Ackerman, if you'd please
3 stand, you're still under oath.

4 MR. ACKERMAN: Yes, sir.

5 THE COURT: Have you made a decision whether or not
6 you'll testify?

7 MR. ACKERMAN: Yes, sir.

8 THE COURT: And what is that decision?

9 MR. ACKERMAN: I will.

10 THE COURT: Okay. And your decision to testify in
11 this case, is that decision freely, voluntarily, and
12 intelligently made by you, sir?

13 MR. ACKERMAN: It is.

14 THE COURT: Alright. Thank you. You can have a
15 seat.

16 MR. ACKERMAN: Thank you.

17 THE COURT: Alright. The State ready for the jury?

18 MR. MEADORS: Yes, sir.

19 THE COURT: The Defense ready for the jury?

20 MR. SWERLING: Yes, sir.

21 THE COURT: Okay. Let's bring the jury out. Hold
22 that just a second. I am going to ask, as Mr. Meadors
23 requested, just to make sure that no one has made any contact
24 with them, not that we suspect that anybody has, I'll ask them
25 that question and they also did ask one of the bailiffs, you

1 know, about going late tonight, going tomorrow, I think some of
2 them had a preference of going late tonight which we're not
3 going to do, and I'll go over that with them. So I'll do those
4 two things before Mr. Ackerman testifies, okay? Alright.
5 Now.

6 (Jury entering Courtroom.)

7 THE COURT: Let the record reflect the jury is back
8 in. Ladies and gentlemen, just a couple of matters I want to
9 discuss with you. First of all, I just want to make sure that
10 no one has made any attempt to have any contact with you. I'm
11 not suspecting that has happened, and I meant to ask this to
12 you the other day but just forgot, but I just wanted to make
13 sure that no one has made any attempt to contact you about this
14 case, has there?

15 JURORS: No.

16 THE COURT: Okay. Thank you. And secondly, I know
17 that maybe some of you have expressed some interest in going
18 late tonight and not have to come back tomorrow. In as much as
19 I would like to accommodate you on that, we will not be able to
20 because once we have to do everything we have to do and lawyers
21 make their closing arguments to you, I charge you on the law,
22 it really does put us later on. So we're going to do what we
23 can today and then come back in the morning and the lawyers
24 will make their closing arguments and I'll charge you on the
25 law. So I'd like to accommodate you, but it'll just work out

1 better all the way around to come back in the morning, okay?

2 Alright. Thank you. Alright. Mr. Swerling?

3 MR. SWERLING: Thank you, Your Honor. Your Honor, we
4 call Bud Ackerman.

5 THE COURT: Alright. Come around to the stand,
6 please, sir.

7 CLERK: Raise your right hand, please. Do you
8 solemnly swear the testimony you're about to give this Court to
9 be the truth, the whole truth, and nothing but the truth so
10 help you God?

11 MR. ACKERMAN: I do.

12 CLERK: Thank you.

13 THE COURT: You may proceed, sir.

14 MR. SWERLING: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. SWERLING:

17 Q Bud, would you introduce yourself to the jury? Your name.

18 A William Gray Ackerman, Jr. I also go by Bud, last name's
19 spelled A-c-k-e-r-m-a-n.

20 Q How old are you?

21 A 43 years old.

22 Q How long have you lived in Greenwood?

23 A My entire life.

24 Q You have family here in Greenwood?

25 A I do.

- 1 Q And what family do you have here in Greenwood?
- 2 A Mom, dad, and my brother and his family.
- 3 Q Is your dad present; your mom and dad present in the
- 4 Courtroom?
- 5 A They are.
- 6 Q Okay. And they are seated over there in the first row?
- 7 A That's right.
- 8 Q Is that correct?
- 9 A That's correct.
- 10 Q And what did they do, what was their background?
- 11 A What did they do for a living?
- 12 Q Yeah, what was their background?
- 13 A My dad was a dentist, and my mom was a teacher.
- 14 Q Do you have any other family living in the area?
- 15 A My sister lives in Charleston.
- 16 Q Okay. So did you, were you educated here in Greenwood
- 17 County as well?
- 18 A I was, I graduated from Emerald High School in 1999 and
- 19 then I went to Lander College or University and graduated there
- 20 in 2004 with a business degree.
- 21 Q What year?
- 22 A 2004.
- 23 Q 2004.
- 24 A Yes, sir.
- 25 Q And your degree was a bachelor's degree in business?

1 A Business, yes, sir.

2 Q Did you, subsequent to that after going to Lander, and
3 that was a four year degree?

4 A That's correct.

5 Q Did you have any other educational pursuits that you
6 attempted or did?

7 A Yes, sir. I went back to Lander for pre-dental for
8 approximately two years and then after that I went to
9 Piedmont Tech and attended nursing school for a semester
10 there.

11 Q So you had, you attended Lander for a dental degree?

12 A Pre-dental.

13 Q Pre-dental, that's what I meant. That was two years and
14 then you went on to nursing ---

15 A Yes, sir.

16 Q --- was that at Lander as well?

17 A Piedmont Tech.

18 Q Piedmont Tech.

19 A Yes, sir.

20 Q Okay. And did you pursue either one of those careers that
21 you had gone to school for?

22 A No. I ended up going back to, I was in the collision
23 repair industry for a number of years, and I ended up coming
24 back to that industry after, you know, pursuing the degrees I
25 was attempting to take classes for.

1 Q Okay. Now, you married, were you married to Meredith
2 Ackerman?

3 A That's correct.

4 Q And when, under what circumstances did you meet Meredith?

5 A I met her in 2006 in Greenwood at the Just Bar and Grill.

6 Q Okay. And when did you eventually get married?

7 A In February of 2012.

8 Q And so in 2012 you got married. Did you love her?

9 A I did, very much.

10 Q Even on the day of this event, May 6th, 7th of 20023, were
11 you still in love with your wife?

12 A I was.

13 Q Did you and Meredith have any children?

14 A We did, we have three children together.

15 Q Alright. Can you tell the jury what their names are and
16 their ages?

17 A There's Gray III, he's 11, there's Wells, she's 9, and
18 Courtlyn who's 7.

19 Q Did you and your family participate in activities together
20 with your family, alone, and with Meredith's family?

21 A We did.

22 Q Could you give the jury some idea of what kind of things
23 y'all did familywise?

24 A Every year we'd go on a vacation with her family ---

25 MR. SWERLING: Speak into the mic so that ---

1 A Every year we'd go on vacation to the beach with her
2 family and our family included.

3 MR. SWERLING: Your Honor, I'm going to move this a
4 little ---

5 THE COURT: Sure, sure. Yeah, yeah.

6 Q And was that with you and Meredith and the children?

7 A That's correct.

8 Q And on occasion did you have vacation with your parents?

9 A Every now and again, but they, Meredith's family lived out
10 of town, so we didn't see them very much as opposed to my
11 family who we saw a good bit, so we didn't go on vacation with
12 my family as much.

13 Q Okay. And did you go on vacation with Meredith's family?

14 A We did, yes, sir.

15 Q And where was she from?

16 A Anderson.

17 Q And what kind of activities did you do with her family if
18 you could give us kind of a short idea about that?

19 A Just went to, I mean, the beach mostly. Different places,
20 different areas, we went to Fripp Island and then to Florida
21 and to a couple other places as well.

22 Q At some point, did you and Meredith separate?

23 A We did.

24 Q And to the best of your recollection, when was that?

25 A May of 2022.

1 Q And let me ask you this, was that something that you
2 wanted?

3 A No, not particularly at the time, no, sir.

4 Q Okay. Did, what was your attitude at that point about
5 separating and what did you want to do?

6 A I wanted to try to reconcile with her. We actually went
7 to counseling for a little while that summer after we
8 separated.

9 Q So this was not an act on your part that you wanted to
10 separate?

11 A No, sir, that's correct.

12 Q Now, at some point there was a, did you have a hearing
13 sometime in, after Meredith decided she wanted to separate ---

14 A Yes, sir.

15 Q --- in the Family Court in Greenwood County?

16 A Yes, sir.

17 Q And what was the purpose of that hearing? Purpose.

18 A Kind of mediated separation.

19 Q Okay. And at that point, what was the arrangement about
20 the house?

21 A She was granted the house.

22 Q Alright. Custody?

23 A Custody, she had custody, and I had visitation.

24 Q Could you, what visitation did you have, what kind of
25 visitation?

1 A Every other weekend and every Wednesday.

2 Q After Meredith was awarded the house in mediation, where
3 did you go to live?

4 A I went and lived with my parents.

5 Q And where do they live?

6 A On 1714 Old Abbeville Highway.

7 Q And did you move into their home about that same time
8 when, after the hearing?

9 A That's correct.

10 Q What was the, your understanding of the legal status at
11 that time after the hearing?

12 A We were just separated and, for a year's separation before
13 the divorce could be finalized.

14 Q Did you still believe that you were married?

15 A I did.

16 Q Did you ever understand that there's some kind of term
17 called legal separation?

18 A I did not.

19 Q Was your understanding ---

20 MR. MEADORS: Objection to leading.

21 THE COURT: Okay. Rephrase ---

22 Q What was --

23 MR. STERLING: Yes, sir.

24 Q What was your understanding about the, at that time about
25 what your status was with Meredith?

1 A We were still married.

2 Q Let me ask you something, after that hearing, did, what is
3 your expectations about whether or not Meredith would be dating
4 or not?

5 A I didn't think that she would.

6 Q What was your expectations and your plan about your
7 dating?

8 A I did not.

9 Q Alright. Did you ever date?

10 A I did not.

11 Q I just want to go into briefly your work history, okay,
12 and what kind of work you did in the past, okay?

13 A Okay.

14 Q So what is the best, what's the first job that you recall
15 or business that you went into?

16 A Collision repair industry.

17 Q Who owned the body shop?

18 A John Alewine did at the time when I worked there.

19 Q Okay. So you worked for him?

20 A I did.

21 Q And where was that?

22 A It was on 25 across from the BI-LO here in Greenwood.

23 Q And what was your responsibilities there?

24 A A little bit of everything, I mean, I did bookkeeping,
25 secretarial work, order parts, dealing with customers, dealing

1 with insurance agencies, dealing with employees, you know,
2 pretty much everything.

3 Q Was that a pretty busy shop?

4 A It was.

5 Q And how long did you work there?

6 A I worked there initially for about seven years then I
7 left. I left and did home inspections for about a year. And
8 then when I left home inspections, that's when I went back to
9 school for a couple of years. And then I initially went back
10 to the body shop business where I took over in 2013 and ran, I
11 owned and operated it until 2020, Marc 2020.

12 Q So you said you did some home inspections?

13 A Yes, sir.

14 Q Did you receive any training for that?

15 A Yeah. They had a South Carolina Inspector's Exam, and you
16 had to take a class in order to ---

17 Q What did that involve?

18 A It's going into homes where people are purchasing houses,
19 and you go in there and do the inspection on the homes to
20 inform the customer of any defects or problems with the house.

21 Q So you did that for a period of time?

22 A Yes, sir.

23 Q Alright. And then you said you went back into the
24 business?

25 A Yes, sir.

1 Q And was it the business you had been working on or did you
2 set up your own shop?

3 A It was the same one I had been working at, but I
4 eventually bought out the owner in 2013.

5 Q So in 2013, it was your business at that point?

6 A That's correct.

7 Q And were you doing the same things in your business that
8 you had done previously, or were you doing additional things?

9 A Well, I mean, I guess I had the weight of the ownership on
10 my shoulders, but pretty much the same thing.

11 Q Did you do any body work or mechanical work?

12 A No. I mean, body work, a little bit of body work, yes,
13 sir.

14 Q But basically running the business?

15 A That's correct.

16 Q And you said you worked there or had that business until
17 2020?

18 A That's correct.

19 Q During that period of time, were your three children born?

20 A They were.

21 Q And were your three children being educated in Greenwood
22 County?

23 A That's correct. My son went to 96 Elementary for a year,
24 but that only lasted a year and then he came back to Greenwood
25 District 50.

1 Q Okay. And what about the other children? Were they also
2 being educated in Greenwood County?

3 A That's correct.

4 Q So in 2020, you got out of the auto business, that auto
5 repair business?

6 A (Nonverbal response).

7 Q And then what did you do?

8 A And then I worked in Anderson for almost a year.

9 Q And who were you working for in Anderson?

10 A Myself.

11 Q And what were you doing?

12 A Installing like boat covers and ---

13 Q I'm sorry?

14 A Boat covers and ---

15 Q Oh, Boat covers?

16 A Yeah. Boat covers and jet ski docks, and things of that
17 nature.

18 Q Okay. Were you still living in Greenwood?

19 A I was.

20 Q And what, at what address do you remember you were living
21 at during that period of time?

22 A 115 Tally Ho Drive.

23 Q And when did you move into 115 Tally Ho Drive?

24 A 2017 I believe it was.

25 Q Did you ever move to Anderson County?

- 1 A No, sir.
- 2 Q Did you commute back and forth?
- 3 A Yes, sir.
- 4 Q After 2020, were you, did you engage in any other
5 business?
- 6 A Yes, sir. I ---
- 7 Q Other than what you were talking about in Anderson.
- 8 A Yeah. What I did after that; I went to work for Anderson
9 Construction for a little over a year.
- 10 Q And who owned Anderson Construction?
- 11 A Kenny Anderson.
- 12 Q And what relation, is that a relation to Meredith?
- 13 A No.
- 14 Q Okay.
- 15 A No, sir.
- 16 Q And where was that?
- 17 A In Greenwood.
- 18 Q And what was that, what kind of work did you do there?
- 19 A Just basically maintaining vacant lots, bunch of bushhog
20 work and tree work.
- 21 Q Was it, are you saying like landscaping or something?
- 22 A Yeah. It was just kind of on a larger scale.
- 23 Q Were you working for somebody or was it your own business?
- 24 A I was working for somebody.
- 25 Q And who was that?

1 A Kenny Anderson.

2 Q Kenny, oh, that's who, okay, alright.

3 A Yes, sir.

4 Q And how long did you do that?

5 A For a little over a year.

6 Q And from there did you have any other employment?

7 A Yes, sir. I went and worked, I was currently employed at

8 Sherer Body Shop in Laurens, South Carolina back in the body

9 shop industry.

10 Q Okay. And were you working for somebody at that point or

11 was it your own business?

12 A I was working for somebody.

13 Q And what did you do there?

14 A I wrote estimates and ordered parts, and you know, kind of

15 day to day operation type things.

16 Q Was that similar to the employment you had before?

17 A Yeah. Accept I just didn't have the stress of owning the

18 business.

19 Q And that you said was in Laurens?

20 A That's in Laurens, yes, sir.

21 Q Did you commute to Laurens, or did you move to Laurens?

22 A Commute.

23 Q Were you still living at Tally Ho?

24 A Yes, sir. I wasn't, I believe I was living in my parents'

25 house at this time.

1 Q Okay. So this is after the separation?

2 A That's correct.

3 Q Okay. Did you know, well, so after the separation I think
4 you said and I don't, you tell me, you were still in love with
5 your wife?

6 A I was.

7 Q You did not want the separation?

8 A I did not.

9 Q And what were your hopes about the separation as far as
10 getting back with Meredith if any?

11 A I was hoping to reconcile initially, you know.

12 Q That was your goal?

13 A Yes, sir.

14 Q Did you communicate that to her?

15 A Yes, sir.

16 Q Were you ordered by the Family Court to go ahead and make
17 any kind of payments, child support or anything like that?

18 A Yes, sir. I had to make child support payments every
19 week.

20 Q And were you doing that?

21 A Yes, sir.

22 Q Were you complying with the Court order?

23 A I was, yes, sir.

24 Q I just want to ask you, was there anything in that Court
25 order about allowing the two of you to date?

1 A No, sir, not that I'm aware of.

2 Q Let me go to May 6th, okay? Well, let me ask you this,
3 prior to May 6th, and I think on or about April 29th, did you
4 know Davis McClendon?

5 A I did.

6 Q And what was the background of your knowledge of Davis
7 McClendon?

8 A We were just acquaintances, I mean, we've known each other
9 for a long time, I mean, I wasn't super close or super
10 friendly, but I mean we always talked to each other if we saw
11 each other out in public.

12 Q Now, was he younger than you or older than you?

13 A He was older than me.

14 Q Do you know about how much?

15 A Roughly five years.

16 Q Did you have any problem with Davis McClendon?

17 A No, sir.

18 Q Alright. And on or about April 29th, did you find out
19 that Meredith was seeing Davis McClendon?

20 A I did.

21 Q And did, you found that out from a third party
22 source?

23 A That's correct.

24 Q Did you talk to Meredith about it?

25 A I did.

1 Q What did you express when you talked to her about the fact
2 that she was seeing somebody?

3 A I mean, I just expressed that I wasn't, you know, happy
4 about it, and it was just kind of upsetting emotionally to
5 me.

6 Q Pardon?

7 A It was upsetting emotionally to me.

8 Q You still loved her?

9 A That's correct.

10 Q And did she have any comments at that point about her
11 dating anybody?

12 MR. MEADORS: Objection to hearsay.

13 MR. SWERLING: Well, she's testified already, Your
14 Honor, it wouldn't be hearsay.

15 THE COURT: I'll allow it.

16 A Can you repeat the question?

17 Q Did she have any comments about the dating issue with
18 Davis McClendon or anybody else?

19 A No, no. I'm not sure I understand the question.

20 Q Okay. What was her attitude about seeing Davis
21 McClendon?

22 A Oh, she was fine with it, she thought there was nothing
23 wrong with it.

24 Q And you specifically discussed that with her?

25 A Yes, sir.

1 Q Okay. As a result of finding out that she was seeing
2 Davis McClendon, did you call Davis McClendon on or about April
3 29th, 2023?

4 A I did, yes, sir.

5 Q Okay. And what was the purpose of that phone
6 call?

7 A Just to let him know that, you know, I didn't appreciate,
8 you know, what he was doing behind my back with my wife, and
9 that I let him know, you know, we're still legally married, you
10 know, by paper and then, you know, during the conversation he
11 agreed to stay physically away from her until ---

12 MR. MEADORS: Your Honor, I'm going to object.
13 That's hearsay.

14 MR. SWERLING: Your Honor, it goes to his state of
15 mind.

16 MR. MEADORS: From him and the evidence.

17 THE COURT: Okay. Repeat your question and then let
18 me hear that answer again, please.

19 MR. SWERLING: The question was the discussion you
20 had with Davis McClendon on or about April 29th about seeing
21 Meredith.

22 THE COURT: Alright. And you're saying what was told
23 to him, you're saying it's not hearsay, state of mind?

24 MR. SWERLING: Yeah. It's not offered for the truth
25 of the matter asserted not, and it goes to his state of mind,

1 and also Davis McClendon's state of mind. So it would be an
2 exception to the hearsay rule.

3 THE COURT: Okay. I'll allow it. Overruled.

4 MR. MEADORS: Your Honor, for my objection they were
5 both hearsay. What he's saying now is out of Court statement
6 and the truth and what he's saying, that was my objection for
7 the record.

8 THE COURT: Okay. So noted.

9 Q Go ahead.

10 THE COURT: You can repeat your answer or give an
11 answer to the question.

12 A Okay. Yes, I did call him and let him know that, you
13 know, I didn't appreciate what he was doing behind my back with
14 my wife and that we were still legally married, you know, on
15 paper. And by the end of the conversation, it was a civil
16 conversation, that he agreed that he would stay away from her
17 physically ---

18 MR. MEADORS: Objection.

19 A --- until the divorce had been ---

20 THE COURT: Okay.

21 A --- finalized.

22 THE COURT: Alright. That last statement ---

23 MR. SWERLING: Same reason, Your Honor.

24 THE COURT: --- I do find that as hearsay and strike
25 it from the record, I instruct the jury to disregard that last

1 statement as testified to by Mr. Ackerman. I think it goes
2 beyond state of mind.

3 MR. SWERLING: Your Honor, if I can for the record
4 just also state unavailable, he's an unavailable witness.

5 THE COURT: I understand that. You may proceed.

6 Q Now, so as a result of that conversation, as a result of
7 the conversation, what did you think the current situation was
8 going to be between Davis McClendon and Meredith?

9 A According to?

10 Q As a result of the conversation?

11 A I thought that they would not be interacting with each
12 other until the divorce was finalized.

13 Q Were you angry with him?

14 A No.

15 Q Was he angry with you?

16 A No, not on the phone.

17 Q Okay. Was it, you say, was it a civil conversation?

18 A Yes, sir, that is correct.

19 Q Now, let's go to, did you have any conversations with him
20 between May, April 29th and May 6th?

21 A No, sir, I did not.

22 Q On May 6th, where were you living?

23 A My parents' house.

24 Q Alright. And were the children with you that weekend?

25 A They were, yes, sir.

1 Q Alright. And they were staying at your parents' house as
2 well?

3 A That's correct.

4 Q Are they close to your parents?

5 A Yes, sir, they're real close to my parents.

6 Q Do they have their own rooms at your parents' house?

7 A Yes, sir.

8 Q So what do you recall, did you do anything with your
9 children that day?

10 A Yes, sir. We went to a little festival in Abbeville, they
11 had little rides and stuff for kids, we did that. We came back
12 from there and went to a friend's house and grilled out hot
13 dogs and ate that for dinner.

14 Q Did you, who was that person?

15 A Bobby Scott.

16 Q And so he went to Abbeville with you?

17 A That's correct.

18 Q And during the time that you were in Abbeville, did you
19 have communications with Meredith on the phone?

20 A I just texted her a picture of the kids on a ride.

21 Q Okay. No conversation, just texting her the picture, but
22 not a conversation ---

23 A That's correct.

24 Q --- is that correct?

25 A That's correct.

1 Q And do you remember about what time you left the fair and
2 went to Bobby Scott's house?

3 A I'd say around 3:00, 3:30, somewhere around there.

4 Q And what did you do at Bobby Scott's house?

5 A Well, the kids were just playing, they had a lot of
6 friends in his neighborhood right there, they were just playing
7 and riding bikes, so we ended up grilling hot dogs and eating
8 over there that evening.

9 Q Alright. Now, where did Bobby Scott live?

10 A In Hunter's Creek.

11 Q What subdivision was your home in at that time?

12 A Hunter's Creek.

13 Q Did you live near each other?

14 A No. On opposite sides of the ---

15 Q Okay.

16 A --- neighborhood.

17 Q Is Hunter's Creek the subdivision we've been talking about
18 for the last week or so?

19 A That's correct.

20 Q Okay. And is that the area where this incident happened?

21 A That's correct.

22 Q Okay. So that's Hunter's Creek subdivision?

23 A Yes, sir.

24 Q Okay. And how do you get into Hunter's Creek subdivision
25 from where your parents' home is?

1 A Turn right off of Old Abbeville Highway and turn on
2 River's Run.

3 Q Okay. And where would you go to get to your place? How
4 would you go to your place?

5 A Generally speaking, or?

6 Q Well, generally, yeah, I mean, was it close to River's Run
7 or, you don't have to go street by street, but how far was it
8 from River's Run and Avid Road?

9 A A couple miles at the most.

10 Q Okay. So it is a fairly large subdivision?

11 A That's correct.

12 Q Okay. And during that period of the day, did you have
13 anything to eat?

14 A Yes, sir.

15 Q Alright. Did you have a beer or two?

16 A Yeah. A couple of drinks.

17 Q Alright. Well, when you say drinks, was it beer or
18 liquor?

19 A Beer.

20 Q Okay. And do you recall how many beers you had during the
21 course of the day?

22 A Around two.

23 Q Two?

24 A Two.

25 Q Alright. And you also ate, you said hot dogs?

1 A Yes, sir.

2 Q About what time did you and Bobby Scott separate and then
3 where did you go?

4 A It was probably around 7:30, 7:45, something like that
5 when I went back, the kids and I went back to my parents'
6 house.

7 Q Okay. And do you recall how long you were at your
8 parents' house?

9 A I was there until, I'm not sure exact times.

10 Q Alright. If you don't know, you don't know.

11 A Yeah. I can't say for sure.

12 Q Was there, did there come a time when you left your
13 parent's house?

14 A It did, yes, sir.

15 Q And let me ask you this, were you trying to at some point
16 after your parents' house or thereafter, were you trying to
17 reach your wife?

18 A I was.

19 Q Alright. And were there a number of phone calls during
20 that evening?

21 A Yes, sir, there was.

22 Q Okay. Do you know how many?

23 A I can't tell you off hand.

24 Q Would you disagree that there were several phone calls in
25 the early evening?

1 A No, sir.

2 Q Alright. What was the purpose of the phone
3 calls?

4 A I was just trying to talk to her, she wouldn't talk to me,
5 she had tried to basically cut off all communication with me
6 and I was just upset and wanted to talk to her.

7 Q How did you feel about the fact that, her reaction to the
8 separation, was it just basically cut off communication, not
9 answer your phone calls?

10 A It was upsetting.

11 Q Pardon?

12 A It was upsetting.

13 Q And you had been married at that point, what, like 11
14 years?

15 A 10, 10 years.

16 Q 10 years. Had three children?

17 A That's correct.

18 Q And you love them?

19 A Yes, sir.

20 Q Did you ever express the fact to her during this period of
21 time that you did love her?

22 A Oh, yes.

23 Q And you did not want to separate?

24 MR. MEADORS: Your Honor, I'm going to object to
25 leading and testifying.

1 Q Did you ever express or not that you did not want to
2 separate?

3 A Yes, sir.

4 Q So that evening, did there come an occasion where you left
5 your parents' home?

6 A There did, yes, sir.

7 Q And where did you go to the best of your knowledge?

8 A I went to the gas station, Stop a Minute, and I went to
9 the Key West Club.

10 Q Okay. Had you been to the Key West Club before?

11 A Before that evening?

12 Q Yes.

13 A Yeah, I had been there before.

14 Q Okay. And how far is Key West Club from your home, or
15 your parents' home?

16 A Five, six miles, eight miles, somewhere around in there.

17 Q Okay. Do you know about what time you got to the Key West
18 Club?

19 A I'm not sure of the exact time, 10:00, 10:30, somewhere
20 around in there maybe.

21 Q Okay. Were you aware that your wife was with Davis
22 McClendon that evening?

23 A I wasn't aware, I just had suspicions about it.

24 Q But it was a suspicion, not an actual knowledge?

25 A I didn't know for sure, no, sir.

1 Q And after you got to the Key West Club, did you continue
2 to try and reach Meredith McClendon, Meredith Ackerman?

3 A I did.

4 Q Okay. And again, what was the purpose of the phone calls?

5 A I just wanted to talk to her, you know, to you know, just
6 to talk to her about us, about our relationship at the time,
7 you know.

8 Q And did she answer any of the calls?

9 A She did, she answered a couple of them.

10 Q Did she call you on occasion during that evening?

11 A No, sir.

12 Q That you can recall?

13 A No, sir.

14 Q Okay. And the nature of your conversation with her was
15 what?

16 A Just I wanted to see her, that I didn't understand why she
17 was, you know, avoiding me and doing this to me, you know,
18 basically just cutting me off of any communication to her.

19 Q To the best you can, would you describe your emotional
20 state about this?

21 A Yeah. I mean, I was emotionally upset by it, that's for
22 sure.

23 Q During that evening, did you find out whether or not she
24 was with Davis McClendon?

25 A Yeah. Later on, I did when he called me.

- 1 Q Okay. But prior to that, were you aware of that?
- 2 A No, sir.
- 3 Q And during that period of time, how long do you think that
- 4 you were at the Key West Club?
- 5 A A couple of hours.
- 6 Q Did you have a beer there?
- 7 A I did.
- 8 Q Do you know how many beers you had?
- 9 A I'm not sure, a couple.
- 10 Q At any time that evening, did you feel like you were
- 11 impaired at all?
- 12 A No, sir.
- 13 Q Did you feel like you were under the influence at all?
- 14 A No, sir.
- 15 Q Alright. And let me ask you something, you mentioned
- 16 that, did you go to any other club that night?
- 17 A I didn't go inside any other clubs that night, no, sir.
- 18 Q Okay. Now, did you try and find locally, locate where
- 19 Meredith was?
- 20 A I did, yes, sir.
- 21 Q And what did you do to try and find that out?
- 22 A I went by our, her house and then I went from her house to
- 23 Break on the Lake and then to Port Bar and Grill.
- 24 Q Did you go to Break on the Lake or the bar and grill?
- 25 A I did, yes, sir.

1 Q Did you ride around in those areas?

2 A I drove around the parking lots of Sports Break twice.

3 Q Did you see her there?

4 A I did not, it was way past closing time.

5 Q Did you call her several more times during that period of
6 time?

7 A Yes, sir.

8 Q And the purpose of looking for her and the purpose of your
9 telephone calls to her were what?

10 A Just to talk, just wanted to meet with her and talk.

11 Q And that's all you wanted to do?

12 A That's correct.

13 Q So other than going to, was the purpose in going to the
14 two places you mentioned to look for Meredith?

15 MR. MEADORS: Objection ---

16 A That's correct.

17 MR. MEADORS: --- to leading.

18 THE COURT: Rephrase.

19 MR. SWERLING: Alright.

20 Q What if any purpose did you have in going to the two bars?

21 A To look for Meredith.

22 Q And did you see her?

23 A No, sir, I did not.

24 Q And what was again the, during that period of time, what
25 was the purpose of your trying to call?

1 A Just to get in touch with her to talk to her.

2 Q At some point during the evening, sometime in the
3 neighborhood, and this is in evidence, at around 12:51, 12:51
4 and 15 seconds did you receive a call from Davis McClendon?

5 A I did.

6 Q Now, did you call him that evening?

7 A I did not.

8 Q And had you called him since April 29th?

9 A I did not.

10 Q Was this a, had you already found out that Meredith was
11 with Davis McClendon at that time?

12 A I didn't know that prior to his call.

13 Q Okay. So during the phone call that you got from Davis
14 McClendon, the records shows, that's an exhibit, that was a two
15 minute and 16 second call?

16 A (Nonverbal response).

17 Q Correct?

18 A That's correct.

19 Q As far as you know?

20 A As far as I know that's what it shows.

21 Q Are you aware of the fact that he had tried to call you
22 shortly before that as well and it was a miscall?

23 A Yes, sir.

24 Q Alright. Did you know that at that time?

25 A Yes, sir.

1 Q Did you answer the phone?

2 A I did not.

3 Q Did you answer his call?

4 A I did.

5 Q Alright. And tell the jury what the nature of this phone
6 call was.

7 A Well, he said that he was trying to be ---

8 Q He called you?

9 A That's correct. And he said he was trying ---

10 MR. MEADORS: Objection, hearsay.

11 MR. SWERLING: Well, Your Honor, it goes to
12 McClendon's state of mind, and it goes to his state of mind as
13 to what happened later in the evening ---

14 THE COURT: Okay. Alright ---

15 MR. SWERLING: --- and it's also not available
16 witness under the hearsay rule.

17 THE COURT: Okay. Well, unavailability in and of
18 itself is not an exception to hearsay. Let's do this, I want
19 to hear Mr. Ackerman completely as to this conversation and I
20 can't make a proper ruling until I hear that, therefore, I'm
21 going to have to ask the jury to go back to the jury room.
22 Hopefully it won't be long, and we'll get you back out.

23 (Jury exiting Courtroom.)

24 THE COURT: Okay. You can ask him questions and
25 let's get as specific and as detailed as we possibly can

1 concerning this conversation that you had with Davis McClendon.

2 Mr. Swerling, you may proceed.

3 Q Did he initiate that phone call?

4 A He did.

5 Q Okay. And did you accept the phone call?

6 A I did.

7 Q Is there a phone call in the record regarding that phone
8 call?

9 A There is.

10 Q Alright. And at that time, the nature of the conversation
11 was what?

12 A That he was trying to be, he called and said he was trying
13 to be patient with me and that from, I guess he was upset that
14 I was trying to call Meredith so many times that evening to
15 locate her. And then he got pretty aggressive with me on the
16 phone, said he wanted to kick my ass, and I told him, I said,
17 Davis, you know, if you want to talk about it, you can come to
18 my house, and we'll talk about it. And then there was some
19 more rhetoric, you know, from, about, you know, how he was
20 going to beat my scrawny ass and, you know, this, that, and the
21 other. But I told him if he wanted to talk, he could come to
22 my house, and we'll talk it out.

23 Q So what was your communication to him about, was it
24 talking?

25 A That's correct.

1 Q You wanted to talk?

2 A Correct. That's why I said meet at my house.

3 Q And what, was he expressing to you an aggressive tone?

4 A He was.

5 Q Alright. And did you, were you clearly able to identify
6 his voice at that time?

7 A Oh, yeah.

8 MR. SWERLING: And I believe that is in the record at
9 this point about that phone call.

10 Q Did his communication with you affect the later events
11 between yourself and him?

12 A It did.

13 Q And was that something that led to what your state of mind
14 was at this time?

15 A I'm sorry, repeat that.

16 Q Your state of mind, did it lead to what, explain what your
17 state of mind was at that time.

18 A Yes, sir.

19 Q And based upon the communication he had with you, do you
20 believe it was expressing his state of mind at that time?

21 A Oh, yeah.

22 MR. SWERLING: Judge, I would submit that that's
23 admissible under the hearsay rules. Present sense impression,
24 it was an utterance of a declarant who's not been able in
25 Court, there's additional reliability and the State has gone

1 into these particular phone calls with the idea showing that he
2 went there for purposes that they contend was to kill him.

3 THE COURT: Okay. Alright. Mr. Meadors?

4 MR. MEADORS: Your Honor, my understanding of the law
5 is that state of mind is allowed but not the reason for the
6 state of mind. He has clearly given the reason here which I
7 think State v. Weston, there's another case, it's what we
8 argued with Brandon Smith, trying to get in that state of mind
9 there when Davis was texting Brandon Smith saying hey, can you
10 call his daddy, Dr. Ackerman, he's out drunk hunting down
11 Meredith, Meredith wants to call the cops, we don't want to do
12 that, can you kind of calm him down. That was objected to by
13 the Defense, we offered that as state of mind of the victim
14 ---

15 THE COURT: And I didn't allow it in.

16 MR. MEADORS: You didn't allow it in, yes, sir.

17 MR. SWERLING: Judge, it was a little bit different,
18 though. And if I could explain?

19 THE COURT: Sure. Let Mr. Meadors finish and then
20 I'll be glad to hear from you.

21 MR. MEADORS: So we think this is the same thing.
22 He's trying to go into the details, you know, I could say as a
23 result of that phone call what did you do, but not go into the
24 details for the reason of the state or mind. We don't think
25 that's an exception. State v. Weston we would cite.

1 MR. SWERLING: The communication that you kept out
2 between him and Brandon Smith, I believe it was, was based upon
3 knowledge with, would only be available to Davis McClendon
4 through hearsay. And that was I understand the basis for
5 keeping it out because he did not have firsthand knowledge of
6 that. So that would be why State versus Weston was appropriate
7 under that particular circumstance.

8 MR. MEADORS: And I respectfully disagree. He was
9 there when the calls were coming in, and he was looking at them
10 and watching them on the video that showed her getting phone
11 calls. So if I didn't argue that before, I'm sorry, but I
12 think it's a very similar situation.

13 THE COURT: Okay. Alright. Let's take a 10 minute
14 break and I'll look at a couple things and then I'll make my
15 ruling.

16 MR. SWERLING: Judge?

17 THE COURT: Yes, sir.

18 MR. SWERLING: What we ask for you to consider in
19 this situation ---

20 THE COURT: Sure.

21 MR. SWERLING: --- it explains the course of conduct
22 and that's why I also submit it's admissible.

23 THE COURT: Alright. Thank you.

24 (Off the record.)

25 THE COURT: Alright. We're back on the record.

1 The text that I would not allow in or the testimony concerning
2 the text that I would not allow in, that was a text from Davis,
3 correct? Refresh my memory on that, Mr. Meadors, Mr. ---

4 MR. MEADORS: He was with Meredith, so a text from
5 Davis, that's correct, yes, sir.

6 THE COURT: Okay. Alright. Okay. Concerning the
7 conversation that Mr. Ackerman had with Davis under 803(3), I'm
8 going to allow it in under state of mind, emotion, mental
9 feeling of the declarant, i.e. Davis. I'm going to rescind my
10 ruling in not allowing that testimony concerning a text from
11 Davis and I'm going to allow that evidence to come in because I
12 consider both those to be very, very similar.

13 MR. MEADORS: And that would mean we'd have to call a
14 witness in reply, I guess?

15 THE COURT: Right, right.

16 MR. MEADORS: Okay. Yes, sir.

17 THE COURT: Alright. Any ---

18 MR. SWERLING: Can I just, as to that, letting that
19 in, again, I just would like to state that that was a different
20 situation, he had no firsthand knowledge of that, he was
21 relying on what Meredith was telling him and that was the, I
22 believe, the basis of the objection that it was, he did not
23 have firsthand knowledge, it was based on hearsay.

24 THE COURT: Right. I understand. But again, I think
25 it's close enough to where I'm going to rescind my ruling on

1 that and allow it in. So if everybody's ready for the jury,
2 let's bring the jury out and continue with his testimony.

3 (Jury entering Courtroom.)

4 MR. SWERLING: Judge, you're talking about the text
5 of the third party? Is that the one you're talking
6 about?

7 THE COURT: It was the text that Davis was composing
8 or had composed, correct?

9 MR. MEADORS: Yes, sir. You see him doing it on the
10 video.

11 THE COURT: Right.

12 MR. MEADORS: Yes, sir.

13 THE COURT: Okay.

14 MR. SWERLING: And Judge, so that we don't have to
15 send the jury out, we can talk about that later when they call
16 the witness, I guess?

17 THE COURT: Okay.

18 MR. SWERLING: One thing, Judge, at the end ---

19 THE COURT: Okay. Hold it just one second.

20 MR. SWERLING: It's not the ruling, but I want to
21 make sure at the end of the witness, the expert witness' case,
22 Mr. Nelson?

23 THE COURT: Right.

24 MR. SWERLING: My understanding was that those
25 exhibits that he referred to, I offered those in evidence, the

1 hard copies, and I believe they've already been given to the
2 Court reporter?

3 THE COURT: Right. They have been.

4 MR. SWERLING: And I believe that Mr. Meadors offered
5 a couple of exhibits as well and they are already in evidence.

6 THE COURT: Right. I think maybe there was one
7 related to Mr. Nelson that I don't know if you offered it into
8 evidence, you certainly questioned Mr. Nelson ---

9 MR. MEADORS: 59 and 60 that they had not offered
10 into evidence, and I then offered them as State's evidence.

11 THE COURT: Okay. Yours are in, 59 and 60's in as
12 well. Okay. Now we're ready, thank you. Sorry about that.

13 (Jury entering Courtroom.)

14 MR. MEADORS: Can we approach?

15 THE COURT: Come on up.

16 (Off the record.)

17 THE COURT: Okay. Let the record reflect the jury's
18 back in. Mr. Swerling, if you want to kind of pick up where we
19 left off.

20 **DIRECT EXAMINATION (Cont'd)**

21 BY MR. SWERLING:

22 Q I believe we were talking about the phone call that
23 you received from Davis McClendon at or about 12:51 which
24 is in evidence, correct?

25 A Yes, sir.

1 Q And would you describe the nature of the call and what was
2 said?

3 A He called me and said he was trying to be patient with me,
4 I guess referring to the amount of time that I was calling
5 Meredith that evening, and he got pretty aggravated, you know,
6 with me about it. He was being hostile and aggressive over the
7 phone, said he wanted to kick my ass, and you know, meet up
8 with me and kick my scrawny ass, and I told him that he could
9 come to my house and we can talk about it if he wanted to.

10 Q Okay. So your reaction to that phone call was what?

11 A I told him to come to my house so we could talk about it.

12 Q Alright. And that was your parents' house?

13 A That's correct.

14 Q Where your children there?

15 A That's correct.

16 Q Okay. What if any thought did you have in your mind about
17 a fight taking place?

18 A Well, I knew he was aggravated, but I wasn't planning on
19 fighting him.

20 Q How, at that time in May of '23, how tall were you?

21 A Roughly 5'7, 5'8.

22 Q And how much did you weigh?

23 A 135 pounds.

24 Q Okay. Fine, we'll just leave it at that. So that was at
25 12:51, 15 seconds. So the agreement was to be where?

- 1 A At my parents' house.
- 2 Q Okay. And about when? Was there a time given or ---
- 3 A I just told him I was on the way back home.
- 4 Q And were you in fact on your way back home?
- 5 A I was.
- 6 Q Alright. And again, I just want to go back, had you gone
7 to some locations to see if you could find Meredith?
- 8 A I did.
- 9 Q And again, the purpose of that was what?
- 10 A Just to talk to her.
- 11 Q Now, at some point, did Davis McClendon call you
12 again?
- 13 A He did.
- 14 Q And the records that are in evidence in the case indicate
15 it was at around 12:59?
- 16 A If that's what they show.
- 17 Q Do you recall that conversation?
- 18 A I do.
- 19 Q And what was the nature of that conversation?
- 20 A He wanted to, he called and asked my kids, well, first of
21 all, he wanted to know where I was at, how close I was then he
22 said are your kids at the house, then he changed the location
23 due to that to the Avid and Sawgrass location to meet.
- 24 Q So he changed the location?
- 25 A He did.

1 Q And that call indicates that it was about one minute and
2 six seconds, would you dispute that?

3 A I would not.

4 Q What was your reaction to that?

5 A I just told him that I was on the way, and I told him if
6 that's where he wanted to meet me at that was fine.

7 Q Did you anticipate at that point based on that
8 conversation any difficulty or trouble with Mr. McClendon?

9 A Not at that point, he sounded like he calmed down on the
10 phone.

11 Q And the Sawgrass and Avid Road where this incident
12 happened, how far is that from your parents' house?

13 A I'm going to say basically roughly a half mile.

14 Q Okay. Take a couple of minutes to get there?

15 A Yeah.

16 Q And did you agree to meet him there?

17 A I did.

18 Q Now, at some point did you have an occasion, and I believe
19 the records reflect that you called Davis McClendon at about
20 1:09?

21 A I did, yes, sir.

22 Q Do you recall that conversation?

23 A I do.

24 Q What did you tell Mr. McClendon in the conversation you
25 had subsequent to the call, the two calls that he had made?

1 A I told him that I wasn't coming down there to meet him,
2 that I had already come back to my house and was turning in for
3 the night.

4 Q Okay. And what was the, what was his response to that?

5 A He had a few choice words about me going back to mom and
6 daddy's house.

7 Q Okay. Did he have some curse words for you?

8 A He did.

9 Q Did he call you anything derogatory?

10 A He did.

11 Q Alright. Just tell the jury what it was.

12 A I mean, he called me a fucking pussy.

13 Q So as a result of that, did you go, head down toward Avis
14 and Sawgrass, Avid and Sawgrass?

15 A Well, not as a result of that conversation. We talked for
16 a minute longer until I got him settled down and by the end of
17 the conversation he agreed that he would just talk to me and I
18 was under the impression that he was just going to talk to me
19 when I went down there to meet him. So I agreed to meet him
20 down there.

21 Q So during that conversation, did his demeanor
22 change?

23 A It did.

24 Q And what was, what did you understand his plans were?

25 A Just to talk.

1 Q Okay. And when you went down in that direction, is that
2 what you understood you were going to do?

3 A That's correct.

4 Q Did you have any intention to hurt him?

5 A I did not.

6 Q And these phone calls, the last, at least the last phone
7 call, you were where at that time, what location?

8 A I was at my parents' house.

9 Q Let me just ask you this again, what was your sole purpose
10 in agreeing to meet Davis McClendon?

11 A To talk.

12 Q Now, when you go down out of your parents' house, do you
13 make a right turn to get to that subdivision, River Run?

14 A Yeah. You take a right out of my parents' house and then
15 take a left on River's Run.

16 Q Okay. And is River Run, or River's Run, is that the
17 entrance to the subdivision from the Old Abbeville Highway?

18 A That's correct.

19 Q And did you turn onto Avid Road?

20 A I did.

21 Q Now, Avid Road, could you describe the topography of that?
22 I mean, is it a flat road or is it a downhill road or what?

23 A It's kind of a hilly road.

24 Q Pardon? Hilly?

25 A Yeah.

1 Q Okay. Were you familiar with the area?

2 A I was.

3 Q So when you got on Avid Road and you were heading
4 toward the end of the road, did you see headlights down
5 there?

6 A I did.

7 Q Other than seeing the headlights, could you make out
8 anything, was anything else visible?

9 A No, sir, that was it.

10 Q At that point when you got on Avid Road, you were riding
11 down Avid Road, could you even identify what type of car was
12 there?

13 A No, sir, I could not.

14 Q Were you able to look or see beyond what the vehicle
15 was?

16 A No, sir.

17 Q Were the headlights on when you were proceeding down Avid
18 Road?

19 A They were.

20 Q Is Avid Road a marked road? When I say marked, is it
21 divided?

22 A No, sir, it's not.

23 Q Okay. So going down Avid Road, do you have any idea how
24 fast, what the speed was that you were going?

25 A I'm not sure.

1 Q And as you approached, tell us about how far from, well,
2 let me ask you this, how far do you think you were at the time
3 that you saw that there was somebody standing in the road?

4 A How far was I to where?

5 Q To the person when you first saw that there was an
6 individual standing outside?

7 A I was in the very front of his vehicle.

8 Q Do you know how many feet it was?

9 A I'm not sure.

10 Q Okay. So at some point, you actually saw an image of
11 somebody standing in the road?

12 A I did.

13 Q Where was he, near the car or in the middle of the road?

14 A He was out in the road.

15 Q Okay. Were you able to discern whether or not he had his
16 shirt on or not?

17 A I noticed he didn't have his shirt on.

18 Q When you saw him in the middle of the road, if you had
19 gone straight ahead ---

20 MR. MEADORS: Objection. He said in the middle; I
21 didn't hear that testimony.

22 MR. SWERLING: He just said it.

23 THE COURT: Yeah. He did just say that when he first
24 saw him, he was in the middle of the road, he just said that.

25 Q I lost my train of thought.

1 MR. MEADORS: Sorry about that.

2 Q When you recognized that there was someone standing there,
3 how, did you go straight ahead to hit the person?

4 A I did not.

5 Q How much reaction time do you think you had from the time
6 that you saw that there was somebody standing there in the
7 middle of the road until there was impact?

8 A It'd be hard to say, a couple of seconds at the most.

9 Q So you chose not to go straight ahead and hit the person -
10 --

11 MR. MEADORS: Objection to leading.

12 Q --- or did you choose not to hit the person?

13 A That's correct.

14 Q What action did you take if any to avoid hitting the
15 person?

16 A I jerked my truck as hard as I could to the left to try to
17 hit his car to stop the motion of my truck from going forward.

18 Q Now, going down, when you're going down the road, to what
19 side of the road were you on, the right or the left side?

20 A Initially I was on the right side of the road, I crossed
21 over the middle of the road to get closer to his car so I could
22 pull up beside his car to speak with him.

23 Q That's what I was going to ask you. What was your
24 intention when you got down there, to get out of the car or to
25 talk with him?

1 A I was going to pull up beside his vehicle to speak with
2 him.

3 Q Okay. So that was your intent?

4 A That's correct.

5 Q And then you saw somebody standing in the road, you've
6 already testified to that?

7 A Yes, sir.

8 Q And it was a second or two until, between that and the
9 time you had the impact on the car?

10 A That's correct.

11 Q Was there any reason for you to hit the car except to
12 avoid contact with Davis McClendon?

13 A Absolutely not.

14 Q Did you hit the car?

15 A Oh, yeah.

16 Q And after you hit the car, do you know what speed you were
17 going at that time?

18 A I'm not sure.

19 Q What happened to your vehicle after you struck the car?

20 A Really, I'm not sure, it happened so fast, but I guess I
21 lost control of the vehicle.

22 Q Did you hit the car going parallel into the car or angling
23 into the car?

24 A It's kind of like a slight angle into the vehicle.

25 Q And is that the damage done to that vehicle?

1 A That's correct.

2 Q So after the impact, do you recall how you got to where
3 you were and ended up where your car ended up?

4 A It happened so fast I couldn't, I couldn't tell you.

5 Q At that time when you veered off, was it basically, would
6 you call it veering off or being knocked off?

7 A Yeah.

8 Q Did you have control of the vehicle immediately?

9 A No, sir.

10 Q Alright. And did you know at that point that you had
11 actually hit somebody?

12 A I knew somewhere along the way that he had been struck.

13 Q Pardon?

14 A I knew somewhere along the way that he had been struck.

15 Q Okay. And did your vehicle end up, the resting place of
16 your vehicle end up as been shown in some of the pictures on
17 the right hand side?

18 A That's correct.

19 Q Okay. At the time that your vehicle came to rest, what
20 direction were you facing? Were you facing toward the gate or
21 were you facing up Avid Road?

22 A Towards the gate.

23 Q What did you do at that time?

24 A I got out the vehicle and started screaming at Davis, I
25 was hysterical, you know, I couldn't believe what happened and

1 I was trying to get a response, but he wouldn't respond to my
2 screaming at him and hollering at him, so I got down and I
3 touched his face two or three times trying to get him to come
4 to. And then I saw the blood coming out of his ears and I just
5 started panicking and freaked out.

6 Q When you went down that road, did you have any intension
7 of striking him?

8 A I did not, not whatsoever.

9 Q When you got out of your vehicle, what was your emotional
10 state as best you can describe to the jury?

11 A I mean, I felt sick to my stomach, and I was panicked, I
12 didn't know, I've never been in a situation like that before, I
13 didn't know what to do, I was just all over the place, I was
14 panicking really bad.

15 Q And were you yelling?

16 A I was yelling.

17 Q Alright. And what was the, was that a reaction to the
18 situation at hand?

19 MR. MEADORS: Objection to leading.

20 Q What if any ---

21 THE COURT: Alright. Rephrase.

22 Q --- was the reason why you were yelling?

23 A I mean, I believe I was just hysterically yelling, you
24 know, because of what happened.

25 Q So did you go over to Mr. McClendon?

1 A I did.

2 Q And did you do anything to Mr. McClendon when you went
3 over there? Did you touch him?

4 A I did, I touched his face a couple of times.

5 Q Were you yelling at him in an effort to see if he was
6 awake or not deceased?

7 A I was trying to get him to come to, yes, sir.

8 Q Did you have any success?

9 A I did not.

10 Q Did you touch him? I think I asked you that.

11 A I did.

12 Q Okay. And where did you touch him?

13 A On his face.

14 Q And the purpose of that was what?

15 A To try to get him to come to, to get him to come around.

16 Q At that point based upon what you saw, did you believe
17 that he was alive or dead?

18 A When I saw the blood coming out of his ears, I thought
19 that he was dead.

20 Q And you've testified what your reaction was, is that
21 correct?

22 A Yes, sir, that's correct.

23 Q So did you get back in your vehicle?

24 A I did.

25 Q And did you turn the vehicle around?

- 1 A I did.
- 2 Q And you've seen pictures about the oil spill?
- 3 A That's correct.
- 4 Q Do you have any dispute about that?
- 5 A No, sir, nothing.
- 6 Q The, at the point that you saw him on the side of the
7 road, did he have his shirt on?
- 8 A No, sir, his shirt was off.
- 9 Q Did you do anything to Mr. McClendon's body other than to
10 try and find out if he was alive or not?
- 11 A I did not.
- 12 Q Somebody was talking about a wallet, did you take a
13 wallet?
- 14 A I did not.
- 15 Q Let me go back again just briefly. When he was struck,
16 did you have an intent to strike him?
- 17 A I did not.
- 18 Q At the time that you saw him and where he was, was your
19 intent to hit the vehicle to stop the momentum?
- 20 A That's correct.
- 21 Q And you've testified that it was a second or two at the
22 reaction time?
- 23 A Yeah, if that.
- 24 Q Now, what did you do after you left there?
- 25 A Went back to my parents' house and woke them up.

1 Q Why did you go to your parents' house?

2 A I didn't know what to do and I just was panicking and
3 freaking out, kind of in a state of shock, I didn't have a clue
4 what to do, like I said, I've never been in a situation like
5 that before where somebody was injured that badly.

6 Q How did you feel physically?

7 A I felt nauseous and sick.

8 Q And emotionally, you've already described?

9 A Yes, sir.

10 Q So did you go to your parents' house?

11 A I did.

12 Q When you got to your parents' house, what did you do?

13 A I went into their bedroom and woke them up.

14 Q Alright. And did you tell your parents what happened?

15 A I did.

16 Q And do you remember how long you were with them in the
17 house prior to you hearing emergency vehicles?

18 A I don't, time is hard to tell when you're in a situation
19 like that.

20 Q At some point, did you call 911?

21 A No. I walked outside to, but I could hear the sirens
22 coming down the road, so I elected not to call, I knew somebody
23 had already called the first responders.

24 Q Did you and your dad exit the house at the same time?

25 A We did.

1 Q Okay. And did you, you said you heard the emergency
2 vehicles at some point?

3 A That's correct.

4 Q Do you know what the time elapse was between the impact
5 and the time that you were standing out in front hearing the
6 emergency vehicles?

7 A I'm not sure, no, sir.

8 Q Did law enforcement come to your house?

9 A They did.

10 Q Do you recall how many people, how many law enforcement
11 officers you had interaction with? And I'm just talking about
12 being around.

13 A Yeah, I'm not sure, three or four at least.

14 Q There was a number of them?

15 A That's correct.

16 Q Alright. During the period that you were there, at
17 some point did somebody place you into the, a patrol
18 car?

19 A They did.

20 Q And thereafter at some point, did someone transport you
21 down to the sheriff's department?

22 A They did, that's correct.

23 Q And at some point that morning, do you, were you arrested
24 for the charge?

25 A I was, yes, sir.

1 Q As far as the timeframe for any of that, do you have any
2 idea what the timeframe was?

3 A I have no idea.

4 Q At the time that you had this incident down on Sawgrass
5 and Avid Road, were you under the influence of any alcoholic
6 beer, or beer?

7 A I had had a few beers to drink, but physically and
8 mentally felt fine.

9 Q Were you impaired at all?

10 A No, sir.

11 Q Your mental or physical faculties impaired?

12 A No, sir.

13 Q How far did you drive from where you were at the last
14 point you were to your parents' house?

15 A Roughly 15 miles.

16 Q Okay. Did you have any difficulty driving?

17 A No, sir.

18 Q Did you have control of the vehicle?

19 A I did.

20 Q When you got to your parents' house, was that the same
21 condition you were in?

22 A Yes, sir.

23 Q After you heard the sirens, the vehicles going, were they
24 going past your house?

25 A Yeah. They were coming down Old Abbeville Highway.

1 Q They were coming from Greenwood ---

2 A That's correct.

3 Q --- is that right?

4 A Yes, sir.

5 Q Okay. Did you know at that point, or did you have an idea

6 at that point where they were going?

7 A Yes, sir. I knew somebody had called the police.

8 Q Did you stay at your parents' house until they

9 came?

10 A I did.

11 Q Did you anticipate that they were going to eventually come

12 to your parents' house?

13 A I did.

14 Q Look at the jury and tell me whether or not you ever

15 intended to have this incident happen where Mr. McClendon was

16 killed in that, down at Sawgrass and Avid Road.

17 A Absolutely not.

18 Q Did you go there with that intension?

19 A Absolutely not.

20 Q When you got there did you have that intension?

21 A I did not.

22 Q And what was your reaction when it did happen?

23 A I tried to avoid him by swerving into his vehicle.

24 Q And then what? What happened to your vehicle?

25 A I lost control of it.

1 Q And do you recall how you got to where your car was
2 resting or your vehicle, your truck?

3 A I don't.

4 Q Well, you don't dispute the diagrams and the pictures of
5 your vehicle ---

6 MR. MEADORS: Objection to leading.

7 Q Alright. Do you ---

8 THE COURT: Rephrase.

9 MR. SWERLING: I'm sorry.

10 Q Do you dispute that you turned your vehicle around?

11 A I do not.

12 Q Do you dispute that you left an oil trail?

13 A I do not.

14 Q Did you realize you were leaving an oil trail?

15 A I did.

16 Q And was there an oil trail also present at your parents'
17 house?

18 A It was.

19 Q Was there any question in your mind that eventually the
20 police were going to wind up there?

21 A None, whatsoever.

22 Q So at some point you spoke with your mom and dad, and did
23 you call a lawyer as well?

24 A I did.

25 Q And who was the lawyer?

1 A Ed McCallum.

2 Q And did Ed McCallum ---

3 MR. MEADORS: Objection.

4 Q --- represent you in the --

5 MR. SWERLING: -- I'm not asking what he
6 said.

7 THE COURT: Oh, okay. I think Mr. Meadors kind of
8 stopped and withdrew his objection or anticipated objection.

9 Q Don't go into anything that was said. I'm just asking did
10 you call?

11 A Yes, sir.

12 Q Was he your lawyer from the divorce proceeding?

13 A That's correct.

14 MR. SWERLING: That's all I have, Judge.

15 THE COURT: Okay. Thank you. Mr. Meadors, cross
16 examination?

17 MR. MEADORS: May it please the Court?

18 **CROSS EXAMINATION**

19 BY MR. MEADORS:

20 Q What time did you call your lawyer?

21 A I'm not sure.

22 Q Was it before you heard the sirens?

23 A After.

24 Q After you heard the sirens?

25 A Yeah. I believe so.

1 Q And you testified just a minute ago that you called, or
2 excuse me, you knew someone had called 911?

3 A I did.

4 Q How?

5 A I could hear the sirens coming down the road.

6 Q And law enforcement responded there, how long after you
7 ran into Davis did you hear the sirens?

8 A According to data, it was roughly 30, 40 minutes,
9 something like that.

10 Q Okay. And during that 30, 40 minutes, you didn't call
11 911?

12 A No, sir.

13 Q You didn't call an ambulance?

14 A No, sir.

15 Q You didn't stay at the scene?

16 A No, sir.

17 Q You left?

18 A That's correct.

19 Q Told your parents what happened?

20 A That's correct.

21 Q Nobody called 911?

22 A No, sir.

23 Q Nobody called for an ambulance?

24 A No, sir.

25 Q But you said you were fixing to call 911 when you

1 heard the sirens?

2 A That's correct.

3 Q Have you, you actually were fixing to dial 911 ---

4 A I was walking out the house.

5 Q Why did you decide then after waiting 30 to 40 minutes to
6 call 911 then?

7 A I didn't realize it was that long at the time.

8 Q And you said that, Mr. Swerling asked you, you were coming
9 down driving, you were just going to talk to him on the side of
10 his car?

11 A That's correct.

12 Q At 35 miles an hour you were going down there to talk to
13 him on the side of the car?

14 A I wasn't aware how fast I was going.

15 Q You don't dispute it, do you?

16 A Not from the evidence, no.

17 Q And you'd been on that road before?

18 A Yes, sir.

19 Q You knew it well?

20 A Not well, but I've been on it.

21 Q You knew where you were meeting, right?

22 A Yes, sir.

23 Q You knew there was a gate behind it?

24 A I did.

25 Q And you saw the car there, didn't you?

1 A I saw the headlights.

2 Q You knew that was Davis' car?

3 A I didn't know it was his car.

4 Q Who did you think it was?

5 A I mean, the only person would be Davis.

6 Q Because you were on the phone with him when you were
7 coming down there?

8 A Possibly.

9 Q Not possibly ---

10 MR. SWERLING: Your Honor, excuse me one second.

11 Excuse me one minute.

12 THE COURT: Yeah.

13 MR. SWERLING: Thank you.

14 THE COURT: Did you have an objection? No?

15 MR. SWERLING: Pardon?

16 THE COURT: Did you have an objection?

17 MR. SWERLING: No, Your Honor, I just started
18 coughing.

19 THE COURT: You good now?

20 MR. SWERLING: Judge, I'd just ask that Mr. Meadors,
21 I cannot hear him ---

22 THE COURT: Okay.

23 MR. SWERLING: --- so if he could maybe just get near
24 a mic.

25 THE COURT: Okay.

1 MR. SWERLING: That's all I'd ask.

2 THE COURT: Alright. Why don't you ---

3 MR. MEADORS: I'll speak louder.

4 THE COURT: Okay. If you still can't hear him, then
5 maybe he'll go to the mic.

6 MR. SWERLING: Yes, sir.

7 Q You were on the phone with Davis as you were coming down
8 Avid, weren't you?

9 A I'm not sure.

10 Q Well, think about it a minute. You're on the phone with
11 him coming down there and you're talking about where you're
12 going to meet, right?

13 A I'm not sure.

14 Q Well, didn't he tell you I'm already here?

15 A No, sir.

16 Q You're coming down, you're meeting him, you know what car
17 he's got, right?

18 A Yeah.

19 Q And you don't know how fast you were going?

20 A I do not.

21 Q What was your plan, to ride right by his door?

22 A Come up beside him, yes, sir.

23 Q Well, when were you going to slow down?

24 A When I got close to his vehicle.

25 Q You were going to slam on breaks right there?

1 A If I needed to.

2 Q You would agree that 35 miles an hour, if you were going
3 down there, that's a lot of speed going down at a dead end
4 right there. Wouldn't you agree with that?

5 A I would say so.

6 Q You would say so? I want the record to be clear, Davis
7 McClendon had nothing to do with your breakup with Meredith,
8 did he?

9 A No, sir.

10 Q Nothing?

11 A No, sir.

12 Q And I want to say it one more time, let me ask you three
13 times, nothing, did he?

14 A No, sir.

15 Q And Mr. Swerling asked you; you didn't want to break up,
16 you did no act or anything to act for the divorce, but your
17 action caused the separation, didn't it?

18 MR. SWERLING: Objection. The basis for the divorce
19 is improper to go into. Your Honor's already ---

20 THE COURT: You going to go any further in that?

21 MR. MEADORS: No, sir. He just implied that he
22 didn't want the divorce ---

23 THE COURT: Without going into any specifics, I'll
24 allow that question and then leave it at that. But I don't
25 know if we got a response. Repeat the question, Mr. Meadors.

1 Q Mr. Swerling asked you; you didn't want to get divorced;
2 you were legally separated. You took no action in the part of
3 a legal separation, but your action was the part, the reason
4 for the separation, wasn't it?

5 A It was a mix.

6 Q You found out about their relationship on or about, Davis
7 and Meredith, on or about April 28th, 29th, is that fair?

8 A Somewhere in that range.

9 Q And you said your initial conversation, he wasn't that
10 upset, you weren't that upset, right? Well, you said that you
11 weren't that upset then, initially?

12 A Not initially, no, sir.

13 Q Okay. Well, and you said that some texts back and forth,
14 she quit texting you. Actually, y'all were texting back and
15 forth right up through May 7th, you and Meredith, weren't
16 you?

17 A Yeah.

18 Q You were talking to her; it wasn't like she quit
19 communicating with you?

20 A Yeah. Over the phone, she said text only.

21 Q Okay. So that's communication, y'all were texting back
22 and forth, weren't you?

23 A Yes, sir,

24 Q Right up to this, correct?

25 A Correct.

1 Q Okay. So I thought you gave the implication you weren't
2 communicating, she cut off all communication. You got texts
3 coming right up to when Davis was killed with her, correct?

4 A Correct.

5 Q In one of them on April 28th, you called Davis a piece of
6 shit, do you remember that?

7 A I do.

8 Q You called Davis McClendon a piece of shit when you found
9 out about this, didn't you? You conveyed that to her, didn't
10 you?

11 A I did.

12 Q So you were angry about it on April 28th?

13 A I was.

14 Q And then on April 29th, is it the 29th, I don't know I
15 can't find it. I won't say his last name but it's, 29, Danny,
16 what the hell is Davis thinking, man, I mean, what the hell
17 Danny. Response, I have no clue what you're talking about, you
18 remember this?

19 A I do.

20 Q He has been f'ing Meredith, expressing your anger to
21 somebody else, correct?

22 A That's correct.

23 Q He said that's news to me. You said I had my suspicions
24 but was confirmed by her. I can't believe he would do that to
25 me.

1 A I was expressing my emotions to Danny, a mutual friend.

2 Q Okay. But you said, exactly. You couldn't believe he'd
3 do that to you. I've known him my whole life. You were angry,
4 weren't you?

5 A I wasn't angry, I mean, I wasn't happy about it either.

6 Q I don't know what to tell you Bud, damn, I don't know
7 either, it's just f'd up, that's what you said, wasn't it?

8 A That's correct.

9 Q You remember this?

10 A I remember.

11 Q And the malice train started rolling then on, didn't it?

12 A No, sir.

13 Q Well, did you get happier about it?

14 MR. SWERLING: I can't hear you.

15 Q Did you get happier about it after that?

16 A After I talked to Davis I did.

17 Q And Mr. Swerling asked you about you didn't, you weren't
18 sure of your legal separation, you weren't dating ---

19 MR. SWERLING: Your Honor, can we approach about this
20 legal separation?

21 MR. MEADORS: I'm not going anywhere else on
22 that.

23 MR. SWERLING: There is no such thing.

24 THE COURT: Well, I think that's a term that is often
25 used, and I agree that, technically, there is no such thing as

1 a legal separation. But that's a common term that people use
2 and maybe some lawyers use, too. So ---

3 MR. MEADORS: I apologize. I'll say separation.

4 THE COURT: Okay.

5 Q Mr. Swerling asked you about your separation period ---

6 A Correct.

7 Q --- fair? And you weren't dating?

8 A No, sir.

9 Q Do you remember when you checked out, what's Tender?

10 A A dating app.

11 Q Okay. Do you remember when you checked that out?

12 A I do not.

13 Q You disputing that you went to the Tender website?

14 A I'm not.

15 Q You're not disputing that?

16 A No, I'm not.

17 Q Why would you have gone there?

18 A Just to see what my options were.

19 Q To see what your options were. So is it fair to say as of
20 April 28th, April 29 you were jealous?

21 A I wasn't jealous.

22 Q How many kids does Davis have?

23 A Three.

24 Q How old are they?

25 A I'm not sure.

- 1 Q Y'all had no prior bad blood prior to this, ever?
- 2 A No, sir.
- 3 Q So just to go back briefly, when Mr. Swerling asked you
- 4 did she cut off all contact, Meredith, that's a lie because
- 5 there was contact through texts, correct?
- 6 A Well, she cut off contact, verbal contact.
- 7 Q You had the kids this weekend, didn't you?
- 8 A I did.
- 9 Q Okay. And when you got back from, I think the fair you
- 10 said or somewhere with Bobby Stuckey?
- 11 A Yes, sir.
- 12 Q You went to Key West?
- 13 A That's correct.
- 14 Q And you've seen the video of yourself on there?
- 15 A I have.
- 16 Q And you said you had a few beers?
- 17 A That's correct.
- 18 Q Did you watch yourself go to the bar?
- 19 A I did.
- 20 Q Would you dispute you had seven or eight beers?
- 21 A I would.
- 22 Q You would dispute, well, how many did you have?
- 23 A A few.
- 24 Q What's a few?
- 25 A Four.

1 Q Did you see how many times you went to the bar?

2 A I did.

3 Q Who's the person, somebody bought you one also, right?

4 A That's correct.

5 Q Who was that?

6 A Bob Thompson.

7 Q Okay. And how many beers had you had prior to that?

8 A Two.

9 Q And had you stopped at the convenience store and got a
10 traveler or anything anywhere through the process?

11 A Got what, I'm sorry?

12 Q A traveler, did you have one with you driving anytime
13 during the day?

14 A No, sir.

15 Q So how many beers did you have total that day?

16 A I don't know.

17 Q You got no idea?

18 A Yeah. I have an idea.

19 Q Just tell us.

20 A Six.

21 Q Were you under the influence during that, any point during
22 the day?

23 A No, sir.

24 MR. MEADORS: Beg the Court's indulgence.

25 THE COURT: Sure. Take your time.

- 1 Q When you left Key West, what's the first place you went?
- 2 A Tally Ho.
- 3 Q Okay. Why?
- 4 A To see if Meredith was home.
- 5 Q You had already talked to her earlier in the day, correct?
- 6 Or texted with her?
- 7 A Texted, through text.
- 8 Q So communicated with her, correct?
- 9 A Correct.
- 10 Q And one of those prior communications was she had face
- 11 timed with the kids previously, hadn't she?
- 12 A That's correct.
- 13 Q She was good with communicating with the kids, right? She
- 14 was, wasn't she?
- 15 A That's correct.
- 16 Q Okay. And did you text her why do you hate me at 8:54:43?
- 17 A I did.
- 18 Q Did you call her at 9:07?
- 19 A I did.
- 20 Q Did you call her at 9:08?
- 21 A I did.
- 22 Q She then texted you, it's in evidence, who's calling me,
- 23 right?
- 24 A That's correct.
- 25 Q And you put the kids, right?

- 1 A I did.
- 2 Q And that was a lie?
- 3 A It was.
- 4 Q And then she called back, correct?
- 5 A That's correct.
- 6 Q And you said or it's not the kids or somebody said that,
- 7 right?
- 8 A That's correct.
- 9 Q And at that point you knew she was with Davis McClendon?
- 10 A I did not.
- 11 Q She told you she was with Davis McClendon?
- 12 A No, she didn't.
- 13 Q Did you ask her?
- 14 A I did not.
- 15 Q Why did you end up going out to Break on the Lake later?
- 16 A Because I knew she was at the Break on the Lake.
- 17 Q How did you know that?
- 18 A From the video on the phone.
- 19 Q But you dispute that you were told then that she was with
- 20 Davis?
- 21 A That's correct.
- 22 Q You left Tally Ho, what specifically did you do at Tally
- 23 Ho? Because you weren't living there then, correct?
- 24 A No, sir.
- 25 Q Okay. You knew she was out?

1 A I did.

2 Q What did you do when you got there?

3 A Got out the truck and knocked on the door.

4 Q Got out, knocked on the door. Did you see her car there?

5 A I did.

6 Q So she wasn't there, her car was there, what did that tell

7 you?

8 A She was out with somebody else.

9 Q Okay. She was out with somebody else. Where did you go

10 after you left Tally Ho?

11 A Towards the lake.

12 Q Excuse me?

13 A Towards the lake.

14 Q Okay. I agree with that. Where did you go, you told Mr.

15 Swerling you went to Break at the Lake?

16 A That's correct.

17 Q Well, you left out somewhere, didn't you?

18 A Lake Shore Drive.

19 Q Yes, sir. You didn't tell him that, did you?

20 A I just, it skipped my mind.

21 Q Just skipped your mind. Well, guess who lives on Lake

22 Shore Drive, do you know?

23 A Davis McClendon.

24 Q Davis McClendon. You didn't say that a minute ago, did

25 you?

- 1 A No, sir.
- 2 Q Why did you go to Lake Shore Drive? You said you didn't
3 even know she was with him.
- 4 A I didn't.
- 5 Q Why did you go there?
- 6 A Because I was assuming that she was with him.
- 7 Q And you went to Lake Shore Drive, Mr. Ackerman, 12:38, do
8 you dispute that?
- 9 A If that's what the records show.
- 10 Q And prior to that, after the, between there and who's
11 calling me, the kids, you called Meredith at 12:16:58, do you
12 dispute that?
- 13 A If that's what it shows.
- 14 Q 12:17:46?
- 15 A If that's what it shows.
- 16 Q 12:17:59?
- 17 A (Nonverbal response).
- 18 Q Is that a yes?
- 19 A That's a yes.
- 20 Q 12:18:34?
- 21 A Yes.
- 22 Q Do you remember seeing Abbi at, Abigail Mohajer at Key
23 West?
- 24 A I do.
- 25 Q Okay. You didn't really know her, did you?

- 1 A I did not.
- 2 Q Okay. And the first thing you went up to her and said
- 3 where's your girl, right?
- 4 A Yes, sir.
- 5 Q You're talking about Meredith?
- 6 A That's correct.
- 7 Q And you saw, you're on here and you're back and forth and
- 8 she takes off kind of real quick?
- 9 A Yes, sir.
- 10 Q You bothered her, didn't you?
- 11 A About the kids.
- 12 Q You said something, she took off?
- 13 A Yeah. About my kids.
- 14 Q And you were drinking?
- 15 A Yes, sir.
- 16 Q You were upset?
- 17 A I wasn't upset.
- 18 Q Alright. Now, you're back at Lake Shore. How long did
- 19 you stay at Davis' house?
- 20 A I didn't go to Davis' house.
- 21 Q Yes, you did.
- 22 A I did not go to his house.
- 23 Q Lake Shore, who lives on Lake Shore?
- 24 A That's not his house though.
- 25 Q Well, why did you go there? You just said that's

1 where he stays.

2 A I knew he lived down there somewhere; I didn't know which
3 house he lived in.

4 Q Okay. Well, why did you go to Lake Shore?

5 A I was just driving down there to see if I saw a car.

6 Q Saw who's car?

7 A Whoever's car.

8 Q Well, what does that mean?

9 A I didn't know which house he lived in.

10 Q But you got the right street.

11 A I got the right street because my son told me that.

12 Q That he lived there?

13 A Yes, sir.

14 Q So that's why you were going to Lake Shore?

15 A That's correct.

16 Q How long did you stay at that resident you thought was
17 his?

18 A I didn't go to a residence; I turned around and backed up.

19 Q And then where'd you go?

20 A To the Break on the Lake.

21 Q Why did you go there?

22 A Just to check and make sure that nobody was there,
23 Meredith wasn't there.

24 Q Say it again.

25 A To check to make sure Meredith wasn't there.

1 Q Because Meredith told you actually, initially she was out
2 of town, didn't she?

3 A She did.

4 Q And then she told you she was out at Port Grille, didn't
5 she?

6 A She told me she was out at Port Grille, yes, sir.

7 Q And that's the direction you were going out there looking
8 for her, wasn't it?

9 A That's correct.

10 Q But you went to Lake Shore first, didn't you?

11 A I did.

12 Q And you're, actually at 12:38 after Lake Shore, you called
13 her, didn't you?

14 A If that's what it shows.

15 Q And you knew then she was with Davis, didn't you?

16 A Not at the time.

17 Q You didn't know then?

18 A No, sir.

19 Q You told her then you wanted to talk to Davis, didn't you?

20 A No, sir.

21 Q You told her at some point that night you wanted to speak
22 to Davis, didn't you?

23 A No, sir.

24 Q You wanted to see him, didn't you?

25 A No, sir.

1 Q You deny all that?

2 A I do.

3 Q You deny that you were drunk?

4 A I do.

5 Q You heard her testify, but you deny you were drunk?

6 A I do.

7 Q Now, she knows you, y'all were married, she's seen you
8 when you're drinking and seen you when you haven't, hadn't
9 she?

10 A Yes, sir.

11 Q And you've talked to her on the phone before when you were
12 drinking, hadn't you?

13 A A couple times.

14 Q You've talked to her on the phone before when you were
15 drunk, weren't you?

16 MR. SWERLING: Your Honor, I object to that. Going,
17 I mean, it's just inappropriate, it's putting character in
18 evidence, it's going beyond the scope of this particular case.
19 I just don't understand it.

20 THE COURT: Well, I mean, I think the position Mr.
21 Ackerman is taking that he was not under the influence that
22 night. I think Meredith testified differently, so I think
23 that's fair game to explore. So ---

24 MR. SWERLING: But the terminology he's using, being
25 drunk, I mean, I just have to object to that. He's testifying.

1 THE COURT: Well, I mean, being drunk is a normal
2 term. We can all relate to that, so I mean, he can use that
3 term or use under the influence. I'll overrule.

4 Q Have you been under the influence before when you talked
5 to Meredith ---

6 A I have.

7 Q --- on the phone also during the time you were dating and
8 married?

9 A I have.

10 Q Okay.

11 (Playing video.)

12 Q Can you see, sir?

13 A I can.

14 Q Would you dispute this is 12:40 or approximately there
15 around?

16 A I would not.

17 Q And you had just talked with her for a minute and 39
18 seconds at 12:38?

19 A That's correct.

20 Q And this is when you thought she was out in this area,
21 didn't you?

22 A That's correct.

23 Q Because she told you she was?

24 A That's correct.

25 Q She was trying to distance herself from you, wasn't she?

1 A She was trying to buy some time according to her
2 testimony.

3 Q She was trying to buy some time?

4 A That's correct.

5 Q But you were on, you were looking for her?

6 A I was looking for her, yes, sir.

7 Q And is this your truck going around?

8 A That is.

9 Q How many times did you circle?

10 A Twice.

11 Q Why did you circle it twice?

12 A I wanted to see what time they close on the door.

13 Q At 12:40?

14 A No. I wanted to see what time the establishment closed
15 from the hours on the door.

16 Q At 12:40, did you think it was still open?

17 A No. I wanted to see what time they close; I didn't know
18 what time they close.

19 Q Why did you want to see that?

20 A Because I just wanted to know what time it closed.

21 Q Just at 12:49 you wanted to see what time Break on the
22 Lake closed?

23 A Yeah. I mean, the second time around.

24 Q Were your lights on high or low beams?

25 A I'm not sure.

- 1 Q You're not sure?
- 2 A I'm not.
- 3 Q Okay. Do you usually drive with them on high or low beam?
- 4 A It just depends.
- 5 Q And from Key West to Tally Ho to Lake Shore to here, you
- 6 didn't hit any mailboxes on the way?
- 7 A I did not.
- 8 Q And a lot of two lane roads there, right?
- 9 A That's correct.
- 10 Q Other cars coming your way?
- 11 A Yes, sir.
- 12 Q Headlights on?
- 13 A Headlights on.
- 14 Q You didn't hit any of them, did you?
- 15 A No, sir.
- 16 MR. MEADORS: One second, Your Honor.
- 17 Q You admit those are your lights?
- 18 A That's correct.
- 19 Q And those lights help you see?
- 20 A They do.
- 21 Q And you could see what's in front of you, right?
- 22 A Yes, sir.
- 23 Q You didn't have, you didn't hit any of the medians there,
- 24 the light posts or anything?
- 25 A That's a well lit parking lot.

- 1 Q Well, so the answer's yes, you could see?
- 2 A That's correct.
- 3 Q Okay. Are those your bright lights coming on?
- 4 A I don't know.
- 5 Q You don't know if those are, okay. Backing up?
- 6 A (Nonverbal response).
- 7 Q After you had checked, what time did it close, you said
- 8 you went and checked?
- 9 A 9:00.
- 10 Q 9:00. Had you been there before?
- 11 A Once, once before.
- 12 Q One time?
- 13 A (Nonverbal response).
- 14 Q Were you planning on seeing, were you planning on going in
- 15 the future?
- 16 A No, sir.
- 17 Q Where did you go after this?
- 18 A To the Port Bar and Grill.
- 19 Q To the Port Bar and Grill. That's where Meredith had told
- 20 you she was, right?
- 21 A That's correct.
- 22 Q So you're still looking for her?
- 23 A Yes, sir.
- 24 Q Your testimony, you didn't know she was with Davis?
- 25 A That's correct.

- 1 Q So you go to Port Grill. What is Port Grille?
- 2 A It's a bar and grill.
- 3 Q What do you do there?
- 4 A You drink and eat.
- 5 Q Okay. What did you do there when you went there that
- 6 night? My mistake.
- 7 A Got out the truck and people were coming out of the door
- 8 where it was closing so I turned around and got back in the
- 9 truck.
- 10 Q Got out of your truck. Because that, your truck tells us
- 11 when you got out, you know that?
- 12 A That's what I said.
- 13 Q But back then when this happened, you didn't know that did
- 14 you?
- 15 A Didn't know what?
- 16 Q That the truck recorded everything you do.
- 17 A I mean, I ---
- 18 Q Did you know that?
- 19 A Yeah. I mean, I knew a lot about it.
- 20 Q Is that a yes or no?
- 21 A That's a yes.
- 22 Q So you knew the truck was recording everything?
- 23 A I knew it was recording a lot of information.
- 24 Q When did you learn that?
- 25 A I was in the body shop business for 17 years.

1 Q So you knew this truck was recording everything you were
2 doing?

3 A GPS and all.

4 Q When you left Port Grille, how long were you there?

5 A Roughly 30 seconds.

6 Q Would you dispute six minutes?

7 A If that's what it says.

8 Q Hold back. 12:43 to 12:49?

9 A That's what it shows.

10 Q Six minutes. What did you do between those six minutes?

11 A I guess I just sat in the truck.

12 Q Okay. And did you also call Meredith at 12:45?

13 A If that's what it shows.

14 Q 12:45:24, 12:45:11, 12:45:24, 12:48:33, sorry,
15 12:48:42?

16 A If that's what it shows.

17 Q She wasn't there so you sat in the parking lot and started
18 calling?

19 A I guess so.

20 Q And then you leave at 12:49. Do you dispute that?

21 A I do not.

22 Q Where did you go then?

23 A Back to my parents' house towards that direction.

24 Q And were you making phone calls also?

25 A Davis was calling me.

1 Q Well, before you left Port Grille, you called Meredith at
2 12:49:06?

3 A Yes, sir.

4 Q 12:49:28?

5 A Yes, sir.

6 Q This is while you're driving?

7 A Yes, sir.

8 Q Driving on the phone, didn't hit anything?

9 A (Nonverbal response).

10 Q 12:49:46?

11 A If that's what it shows.

12 Q 12:50:25? They're coming right out of the
13 records.

14 A That's right, that's what it shows.

15 Q Okay. And your testimony at this point, you still didn't
16 know she was with Davis?

17 A I did not.

18 Q Did you see his car at Lake Shore or wherever you thought
19 he was ---

20 A I didn't know what he drove.

21 Q You didn't know what he drove?

22 A I did not.

23 Q At some point, or when did you receive the call from
24 Davis?

25 A I'm not sure of the time.

1 Q And at that point, y'all initially agreed to meet at 1714,
2 right?

3 A That's correct.

4 Q Alright. But later, I think it was misstated somewhere in
5 this trial earlier, actually it was Davis who called back ---

6 A That's correct.

7 Q --- because the children were there and that's why it was
8 changed, right?

9 A That's correct.

10 Q You didn't do that?

11 A I didn't do that.

12 Q And you said he had gone from angry, now he was calm,
13 right?

14 A On which phone call?

15 Q Well, you tell me, tell me again which one?

16 A On the second phone call.

17 Q He was fine?

18 A Yes, sir.

19 Q And you agreed to talk to him?

20 A I did.

21 Q Okay. And so at that point you knew he was with Meredith?

22 A I did.

23 Q And he told you he knew she'd been, you'd been calling,
24 right?

25 A That's correct.

1 Q He was, you had been calling her all these calls we talked
2 about, right?

3 A That's correct.

4 Q And who is Brandon Smith?

5 A My cousin.

6 Q Okay. He'd actually reached out to Brandon Smith, hadn't
7 he?

8 A He did.

9 MR. SWERLING: Your Honor, just, if you'd note my
10 objection about that?

11 THE COURT: Sure. It's previously noted on the
12 record, you're protected.

13 Q But Meredith had told you she was going to call the police
14 because you were driving around drinking and she was worried
15 about you, wasn't she?

16 A I wasn't driving around and drinking.

17 Q But that's what she told you, she was going to call the
18 police, you don't remember that?

19 A She did tell me she was going to call the police.

20 Q And Davis talked her out of it?

21 MR. SWERLING: Objection. He doesn't know that.
22 How's he supposed to know that?

23 THE COURT: Okay. Well, maybe rephrase.
24 Rephrase.

25 MR. MEADORS: I'm sorry.

1 Q Were you aware of the text, were you aware of the text
2 that Davis sent Brandon ---

3 A I am.

4 Q Okay.

5 MR. SWERLING: How would he know about it that night,
6 that's misleading.

7 THE COURT: Well, he can ask him if he knew about it
8 and if so when did he learn about it.

9 A In the discovery.

10 Q The police weren't called on you, were they?

11 A They were not.

12 Q And Meredith tried to call some of your family, didn't
13 she?

14 A As far as I know now.

15 Q Okay. Your daddy?

16 A As far as I know, yes.

17 Q If they're in the records, do you dispute it?

18 A No.

19 Q Okay. Your mama?

20 A That's correct.

21 Q Wilson?

22 A That's correct.

23 Q Is that a family member?

24 A It is.

25 Q B2?

1 A That's my cousin, Brandon.

2 Q So she was reaching out to your family, right?

3 A That's correct.

4 Q And after the location had been changed, right? And at

5 that point you said, your testimony today is that his demeanor

6 changed, right?

7 A That's correct.

8 Q Where were you? I mean, in proximity to 714, where were

9 you then? In your truck, where were you?

10 A I'm not sure of the exact location.

11 Q But your truck knows where you were.

12 A My truck knows where I'm at.

13 Q And there's a phone call between you and, you go, Davis

14 calls Bud at 12:59, you don't dispute that, right?

15 A No.

16 Q And he, you then drive down River Run at 1:06, do you

17 dispute that?

18 A I didn't drive down River Run, I backed into River Run.

19 Q Okay. And that was at 1:06?

20 A That's correct.

21 Q And 1:07, you drove down Avid. Do you remember that?

22 A You talking about going to meet Davis?

23 Q No, sir. I'm talking about prior to that at 1:07

24 ---

25 A Yeah.

1 Q --- you drive down a little bit on Avid your truck shows,
2 do you remember that?

3 A Yes, sir.

4 Q Why did you do that?

5 A Because I was supposed to go meet him there.

6 Q Okay. And at 1:07 he was already down at the bottom of
7 the hill, wasn't he?

8 A Well, I don't know, I didn't see him down there, I just
9 turned around.

10 Q So you don't know if he was down there or not?

11 A I'm not sure.

12 Q Okay. Well, why did you go down there?

13 A Well, that's where we had talked about meeting.

14 Q Okay. But why didn't you keep on going down
15 there?

16 A Because I was going back to my parents' house.

17 Q What made you change your mind when you're already on Avid
18 at 1:07?

19 A Because it just wasn't worth it.

20 Q So you go down there initially, decide before you see
21 whether his car's there or not that it wasn't worth it?

22 A That's correct.

23 Q And you go back to, you just go back to your driveway and
24 sit, don't you?

25 A Go back and sit in the yard.

1 Q Just sit in the yard. You don't even pull all the way
2 down?

3 A I do not.

4 Q You're kind of watching Old Abbeville Highway, aren't you?

5 A I backed up in my parents' yard.

6 Q Yeah. But why didn't you go on inside?

7 A Because I was just sitting there just going through what I
8 was going to do, if I was going to call Davis and tell him that
9 I wasn't coming or whether I wouldn't.

10 Q Then you call him?

11 A That's correct.

12 Q He's on hold with Meredith, do you know that? He's
13 talking on the phone with Meredith.

14 A I did not know it at the time, no, sir.

15 Q Puts her on hold and talks to you at 1:09, 1:10, right?

16 A If that's what it shows.

17 Q And you're sitting back up in your parents' driveway?

18 A That's correct.

19 Q Thinking about what you're going to do?

20 A Thinking about whether I was going to call him or not.

21 Q Yeah. Well, you did.

22 A I did.

23 Q And you had already been to Avid once and you're telling
24 this jury you don't know if he was already down there then?

25 A That's correct.

- 1 Q So he, he was already down there you know now don't you?
- 2 A Yeah, I know now.
- 3 Q Based on Terry Cummings, he got there about 1:01, didn't
- 4 he?
- 5 A Yeah, that's correct.
- 6 Q Sitting down there, talking to Meredith, puts her on hold
- 7 and then you call in at 1:09? Davis gets a call from Bud; you
- 8 dispute you called him at 1:09?
- 9 A I do not.
- 10 Q And that was 1:09:10, and at 1:10 40 seconds you leave
- 11 your parents' residence? You remember that?
- 12 A I don't dispute it.
- 13 Q Okay. And then you go down into Hunter's Creek, right?
- 14 You go down to Avid. Tell these folks, you're still on the
- 15 phone with Davis when you're going down Avid Road?
- 16 A Yes, sir.
- 17 Q You know he's there?
- 18 A I know he's there now.
- 19 Q You knew he was there; you were on the phone then.
- 20 A I said I knew he was there now.
- 21 Q When we're, that night, that morning?
- 22 A That's correct.
- 23 Q Okay. And you're coming down, you see some headlights?
- 24 A I do.
- 25 Q You knew that was him, didn't you?

1 A I knew it was his vehicle, yes, sir.

2 Q And you're going down there at 35 miles an hour?

3 A Yes, sir, if that's what it shows.

4 Q That's what it shows. And you're on the phone with him,
5 right?

6 A Yeah.

7 Q And you're going to talk, right?

8 A That's correct.

9 Q And he didn't have a chance to talk or fight, did he? Did
10 he?

11 A No, sir.

12 Q 35 miles an hour, you're going down to Avid and Sawgrass
13 to talk to him by the window at 35 miles an hour?

14 A I wasn't aware of my speed.

15 Q Your foot was on that gas pedal, wasn't it?

16 A That's what it shows.

17 Q Did you say I'm here, I see you, he said okay, I see you
18 and he got out of the car and he didn't get a chance to move a
19 foot and you took him out, didn't you?

20 A No, sir.

21 Q Well, he wasn't in the middle of the road?

22 A Yes, sir, he was.

23 Q So when did you see him?

24 A When I got to the front of his BMW, to the front of his
25 car.

- 1 Q That quick?
- 2 A That quick.
- 3 Q And then, so you did see him?
- 4 A I did see him that quick.
- 5 Q And then you saw his shirt?
- 6 A I saw his body.
- 7 Q Why didn't you go right?
- 8 A I went left.
- 9 Q I know, into him.
- 10 A Into the car.
- 11 Q You went straight into him, didn't you?
- 12 A I went left into the vehicle.
- 13 Q He was still, had just, the phones were still connected,
14 weren't they?
- 15 A I'm not aware.
- 16 Q What's the last word you said to him?
- 17 A I'm not aware.
- 18 Q You don't remember the last word you said to the man that
19 you ran over?
- 20 A I'm not aware.
- 21 Q Were you mad then?
- 22 A No, sir.
- 23 Q Were you angry then?
- 24 A No, sir.
- 25 Q So when did you see him with his shirt off?

1 A Right before I struck his vehicle.

2 Q So that couldn't have made you mad then, right? If you
3 just saw it right before that?

4 A I wasn't mad.

5 Q Okay. So that didn't bother you his shirt was off, that's
6 got nothing to do with this, does it?

7 A Not really.

8 Q It doesn't, at all?

9 A No.

10 Q Okay. You didn't hit the brakes before you hit him, did
11 you?

12 A I didn't have time.

13 Q You didn't have time to hit the brakes?

14 A Not in that quick moment.

15 Q Okay. Before you got to the intersection of Sawgrass and
16 Avid where you were going to meet him, you know that wasn't far
17 back to that reflective gate, didn't you? You know that's not
18 far?

19 A Yes, sir. I'm aware of the area.

20 Q And coming down there to meet somebody at 35, that is
21 reckless, isn't it?

22 MR. SWERLING: Objection for making a
23 definition.

24 MR. MEADORS: Okay.

25 THE COURT: Rephrase the question.

1 Q Let me go back before I do that. You had moved into the
2 left lane, hadn't you?

3 A I did.

4 Q Why did you move into the left lane?

5 A So I could pull up beside him and talk to him.

6 Q Left lane, pulling up beside him at 35 miles an hour. So
7 you were in the wrong lane? Ain't no question about that, tell
8 them, you were in the wrong lane, weren't you?

9 A I changed lanes.

10 Q You were in the wrong lane?

11 A That's correct.

12 Q Heading toward him, heading toward his car, 35 miles an
13 hour, no brakes because you didn't have time, and then you hit
14 him? You don't dispute that, do you? That was you in that
15 truck that hit him?

16 A I dispute that I hit him on purpose, that's correct.

17 Q Then you slammed on brakes afterward, didn't you?

18 A I don't remember.

19 Q Your car ended up where it was, right?

20 A That's correct.

21 Q Oil leaking?

22 A (Nonverbal response).

23 Q You weren't counting on that then were you? Your oil
24 leaking.

25 A Well, I wasn't counting on any of this.

1 Q Yeah. I mean, that's a nice truck you got, I mean, it's
2 an expensive truck.

3 MR. SWERLING: Objection. It's just characterizing -
4 --

5 THE COURT: Yeah. I'll ---

6 MR. SWERLING: --- things, that's argumentative.

7 THE COURT: Okay.

8 MR. MEADORS: Your Honor, in all due respect, he
9 asked how much repairs would be on the BMW earlier in the
10 trial, and I was just trying, that's what went through my mind.

11 MR. SWERLING: A BMW's expensive.

12 THE COURT: Okay. Alright. I sustain the objection.

13 Q After you hit and killed Davis McClendon, what did you do?

14 A I got out of the truck.

15 Q Okay. And your car shows that, doesn't it?

16 A Yes, sir.

17 Q And how long were you out?

18 A By the diagram and the time, roughly a minute.

19 Q Do you remember right now that minute when you're
20 out?

21 A I do.

22 Q Can you visualize it?

23 A Unfortunately, yes.

24 Q Can you hear yourself?

25 A I can hear myself hollering.

1 Q Okay. And you went down, and you said you touched his
2 face?

3 A I did.

4 Q His face was bleeding, wasn't it?

5 A It was.

6 Q Nose, mouth, blood coming out of his ears?

7 A That's correct.

8 Q Was he gasping for breath then?

9 A No, sir.

10 Q Was he breathing at all?

11 A Not that I was aware of.

12 Q Did you think about calling 911 then?

13 A I panicked.

14 Q You panicked?

15 A (Nonverbal response).

16 Q He was more than panicked, wasn't he? He's bleeding,
17 gasping ---

18 MR. SWERLING: Judge, can Mr. Meadors move back a
19 little bit? I mean, it's just being, getting right in the
20 witness' face.

21 THE COURT: Okay.

22 MR. MEADORS: I'm sorry.

23 THE COURT: That's alright.

24 Q Bleeding, he wasn't saying anything to you, was he?

25 A No, sir.

1 Q I mean, he was out?

2 A That's correct.

3 Q Didn't call 911?

4 A No, sir.

5 Q You reached, where did you touch him on his face?

6 A Where?

7 Q Yeah.

8 A On his cheek area.

9 Q Well, show me where? So you were just patting him. Why
10 were you doing that?

11 A Trying to get him to come to.

12 Q Getting him to come to. And he didn't?

13 A That's correct.

14 Q And then you left?

15 A That's correct.

16 Q Why did you leave?

17 A I didn't know what to do, I've never been in that
18 position.

19 Q You didn't know Roderick Maceda had a Ring camera, did
20 you? On Avid Road.

21 A I did not.

22 Q You didn't know Terry Cummings had a camera, did you?

23 A I did not.

24 Q You were actually out there that night thought you were
25 all alone, didn't you?

1 A I didn't suggest that location.

2 Q I'm not suggesting that. But at this point, at this time
3 when you're out there by the car, you didn't think anybody else
4 was going to see or hear what you did, did you?

5 A I'm not aware.

6 Q Is that a no?

7 A No.

8 Q And when he had, you say now, when he had called you an
9 f'ing p earlier, that didn't make you mad?

10 A No.

11 Q You're out of your car, you've touched his face, so is
12 that how you got your blood on your pants? His blood, excuse
13 me.

14 A I'm sure.

15 Q Excuse me?

16 A I'm sure.

17 Q You're sure of that?

18 A I mean, I would say so.

19 Q Okay. Well, there was blood on the front of your hood
20 where he put, his face went in, wasn't it?

21 A I'm not sure.

22 Q Okay. Well, did you wipe that off later?

23 A I did not.

24 Q Okay. I think your expert had testified he'd seen there
25 might be blood spattered; did you see it?

1 A I did not.

2 Q So you deny cleaning off ---

3 MR. SWERLING: Objection, Your Honor. You already
4 ruled on that.

5 THE COURT: Well, I think he asked, he can ask what
6 he did even though that was an issue early on, but certainly
7 Mr. Meadors can ask him, and I think he's already denied it,
8 but ---

9 Q Did you clean off any part of your truck?

10 A I did not.

11 Q Did Davis hit the part of your hood with his face?

12 A I'm not sure.

13 Q You don't know where you hit him?

14 A I do not.

15 Q But you'd admit it's on the left side, if you're looking
16 at your Ford, it'd be the right side of the Ford, it was on
17 your side, wasn't it?

18 A It was, I guess, to the left of the Ford emblem.

19 Q And it's kind of dead behind the steering wheel, isn't
20 it?

21 A I'd have to sit in the truck to tell you that.

22 Q You'd have to sit in the truck, how were you sitting?

23 A Sitting in the truck.

24 Q Well, how were you sitting, how were you sitting?

25 A Just like I'm sitting now.

1 Q And your testimony is you saw the truck, when did you
2 first see the car?

3 A Coming down the hill.

4 Q Yes, sir.

5 A That's, when I was coming down the hill.

6 Q Okay. But where when you were coming down?

7 A On Avid.

8 Q Yes, sir, where on Avid? You see the lights a long way
9 away?

10 A I couldn't tell you.

11 Q Okay. But you saw them at some point?

12 A I saw the car.

13 Q Why didn't you just slow down and go to the right?

14 A I didn't realize I was going that fast.

15 Q But you could have easily slowed down and gone to the
16 right, couldn't you?

17 A Hindsight, I mean, you know, anything's possible.

18 Q Tell these folks when you got out what did you say to
19 Davis?

20 A I said, I'm not sure exactly what I said, I was screaming
21 a number of things.

22 Q Can you tell us what it was?

23 A I'm not sure.

24 Q You're not sure what you screamed?

25 A That's correct.

1 MR. MEADORS: Beg the Court's indulgence.

2 THE COURT: Sure.

3 Q Your headlights were on, correct? Coming down Avid?

4 A I'm sorry?

5 Q Your headlights are on?

6 A That's correct.

7 Q Were they high beams or low beams or you don't ---

8 A I'm not sure.

9 Q But you could see down the road, couldn't you?

10 A I could see two headlights of his vehicle.

11 Q Okay. And you could see the reflection of the gate in the
12 back?

13 A I'm not sure.

14 Q Not sure?

15 A That's correct.

16 Q You could see the lights?

17 A I'm not sure.

18 Q You're not sure if you could see the streetlight?

19 A I'm not sure.

20 Q How many times had you been down there before?

21 A Maybe a handful of times.

22 Q You lived in that neighborhood, right?

23 A Yes, sir.

24 Q You knew you were meeting him there?

25 A That's correct.

1 Q To talk?

2 A To talk.

3 Q Okay.

4 (Playing video.)

5 Q Can you hear it?

6 A I can hear it.

7 Q Those are your words, right?

8 A Yeah.

9 Q Go back one more time, but before you start, that's you
10 screaming?

11 A That's correct.

12 Q Okay. Would you dispute that's an angry tone?

13 A I wouldn't dispute that's an upset tone, a kind of
14 hysteria.

15 Q Hysteria?

16 A Yeah.

17 (Playing video.)

18 Q Do you hear what the fuck do you think you
19 want?

20 A I hear what the fuck.

21 Q You hear what the fuck?

22 A Yes, sir.

23 Q You don't hear what the fuck do you think ---

24 MR. SWERLING: Objection, Your Honor. He can't
25 testify as to what he thinks ---

1 THE COURT: Well, he's asking did you hear that, or
2 did you say that, and then he can give a response yes or no,
3 deny it, admit it, whatever.

4 Q So you hear the first part, what the fuck?

5 A That's correct.

6 Q You don't hear what the fuck do you think you
7 want?

8 A I don't.

9 Q Do you remember saying that?

10 A I don't.

11 MR. SWERLING: Your Honor, there's no testimony in
12 the record that's what was said, the later part of that
13 comment.

14 THE COURT: Okay.

15 MR. MEADORS: Your Honor, it's in evidence and I
16 think I can ask him if he's ---

17 THE COURT: Sure. It's in evidence and it's up to
18 the jury to make the final decision on what was said if
19 anything.

20 Q He was there to talk, wasn't he?

21 A That's correct.

22 Q You were there to talk?

23 A That's correct.

24 Q And do you remember, or do you hear it on here that
25 nothing after what the fuck and whatever else, the jury

1 decides, there's nothing to talk about, fuck it. Is that what
2 you said?

3 A I'm not sure.

4 Q You're not sure?

5 A That's correct.

6 Q So you could have said that?

7 A I could have.

8 Q There's nothing to talk about, fuck it?

9 MR. SWERLING: I still have to object to him
10 formulating what was said. There's no expert testimony about
11 it, they could have done that.

12 THE COURT: Well, I think the question was, Mr.
13 Meadors, could you have said that, and I think Mr. Ackerman
14 said he could have. So ---

15 MR. MEADORS: Thank you.

16 Q You didn't say how are you, did you? Did
17 you?

18 A No, sir.

19 Q You didn't say are you okay, did you?

20 A No, I was screaming at the top of my lungs.

21 Q And you didn't say I didn't see you, did
22 you?

23 A I was...

24 Q And then you left, right?

25 A Yes, sir.

1 Q And then you didn't call 911, you heard the sirens, you
2 were fixing to and 30 something minutes later, 40 minutes later

3 ---

4 A Yes, sir.

5 Q --- I'm not sure. And then at 11:54 something, law
6 enforcement showed up in your driveway?

7 MR. SWERLING: That's not accurate.

8 MR. MEADORS: Yes, it is.

9 MR. SWERLING: 11:54?

10 MR. MEADORS: Excuse me, thank you.

11 Q 1:54, I apologize.

12 MR. MEADORS: I apologize, thank you.

13 THE COURT: 1:54.

14 Q At 1:54 law enforcement showed up in your driveway?

15 A Yeah, I'm not sure of the time.

16 Q I'm pretty sure that's right, but the record, it's in the
17 record. So 1:11 is when you hit Davis McClendon, right?

18 A Yes, sir.

19 Q 21, 31, 41, 51. 43 minutes later law enforcement showed
20 up in your driveway?

21 A That's correct.

22 Q And between 1:11 to 1:43, you didn't call 911?

23 A I did not.

24 Q Didn't call a doctor?

25 A I did not.

1 Q You told a doctor, your mom and dad what happened ---

2 A That's correct.

3 Q --- right? And from 11, 1:11 to 1:43, you never told any
4 of this between that time frame did you? You never told
5 anybody of this between 1:11 and 1:54, did you?

6 A Told anybody what?

7 Q What happened, you never told anybody about all this?

8 A I told my parents.

9 Q And nobody called the hospital? I mean, from 1:11, and
10 I'm about through, from 1:11:34, you don't know if Davis is
11 dead, do you?

12 A He wasn't breathing when I left.

13 Q But you or anybody you told, y'all didn't reach out to get
14 anybody to go down there and see if you could save his life if
15 he had been alive?

16 A The ambulance was already on the way.

17 MR. MEADORS: I beg the Court's indulgence.

18 THE COURT: Sure.

19 MR. MEADORS: I'm sorry, Judge ---

20 THE COURT: Sure.

21 MR. MEADORS: --- I'm almost through, I'm sorry.

22 THE COURT: That's fine.

23 Q And your final divorce hearing was four weeks after this,
24 wasn't it?

25 A I'm not sure of the exact date.

1 Q Are you upset Davis is dead?

2 A I am.

3 MR. MEADORS: Thank you.

4 THE COURT: Mr. Swerling ---

5 MR. SWERLING: Your Honor, could we approach ---

6 THE COURT: --- do you have a lot of redirect? If
7 you do I'd like to take a very short break.

8 MR. SWERLING: Sure, yeah, sure.

9 THE COURT: Alright. Ladies and gentlemen, let's
10 take a short break and we'll get you back out in a few minutes.

11 (Jury exiting Courtroom.)

12 (Off the record.)

13 THE COURT: Y'all are fine, thank you. Have a seat.
14 Okay. We are back on the record. Mr. Swerling, you have some
15 redirect of your client?

16 MR. SWERLING: Yes, sir.

17 THE COURT: Okay.

18 CLERK: The jury?

19 THE COURT: Oh, yeah, we do need the jury, don't we.

20 MR. SWERLING: Yeah, I guess we do need them.

21 THE COURT: Yeah. Let's bring the jury in.

22 (Jury entering Courtroom.)

23 THE COURT: Let the record reflect the jury's back
24 in. Mr. Swerling?

25 **REDIRECT EXAMINATION**

1 BY MR. SWERLING:

2 Q Bud, was there a final divorce hearing in your case
3 several weeks after that?

4 A There was.

5 Q Okay. And the grounds for the divorce were one year legal
6 separation?

7 A That's correct.

8 Q I just want to go back over a couple of things. You don't
9 dispute the phone records in this case? You answered every
10 question Mr. Meadors asked you about the phone records,
11 correct?

12 A That's correct.

13 Q And you don't dispute, or do you dispute any of the
14 technical records that have been put in by the State or the
15 Defense as far as timing and what happened and what was going
16 on?

17 A I don't.

18 Q Okay. And did you answer those to the best of your
19 knowledge?

20 A I did.

21 Q Okay. Do you know the times of all these different
22 events?

23 A I have no idea.

24 Q Okay. And do you know what's actually, at that time,
25 did you know what was being actually recorded on the

1 systems in the car?

2 A Not actually everything but I knew it recorded a
3 lot.

4 Q You knew it recorded, but I'm talking about at the time
5 did you know what was being recorded at that time?

6 A No, sir.

7 Q Okay. That was something that was provided in the
8 discovery of the case, correct?

9 A That's correct.

10 Q The phone records were provided in discovery, correct?

11 A That's correct.

12 Q And you don't dispute those?

13 A I don't.

14 Q And we have phone records, do we have phone records from
15 you?

16 A That's correct.

17 Q Do we have phone records from Meredith Haynie?

18 A As far as I know, yes.

19 Q Do you have phone records for Davis McClendon?

20 A Yes, sir.

21 Q And you're not disputing the phone calls that were made
22 that are indicated on those phone records?

23 A No, sir.

24 Q Mr. Meadors asked you about those, correct?

25 A Yes, sir.

1 Q On that day, on May 6th, I believe you had testified on
2 direct examination that Meredith, other than the text you sent
3 her of the pictures of the kids from Abbeville, was not
4 responding to your phone calls, is that correct?

5 A That's correct.

6 Q And as a result of that, is that why you called her
7 several times, a number of times?

8 A That's correct.

9 Q And your purpose in trying to call her?

10 A Was just to talk to her.

11 Q Okay. Even at May 7th knowing that there was a final
12 hearing scheduled ---

13 MR. MEADORS: Objection to the form of the question.

14 Q --- maybe another month or whatever it was ---

15 THE COURT: Okay. Wait a minute. Nature of the
16 object?

17 MR. MEADORS: Form of the question, testifying and
18 leading.

19 THE COURT: Okay. Just rephrase.

20 Q Was there a final hearing scheduled in the case?

21 A Yes, sir.

22 Q Okay. And at the time on May 6th and May 7th, did you
23 still love your wife?

24 A I did.

25 Q Were you dating?

1 A I was not. She was.

2 Q Were you upset that she was dating?

3 A I was.

4 Q Emotionally upset?

5 A Emotionally.

6 Q Were you going to do anything about it?

7 A No, sir.

8 Q When you were talking to Davis McClendon, what was your
9 purpose to meet him?

10 A To talk.

11 Q What did you get from some of the phone calls or part of
12 the conversation to what his purpose was?

13 A To fight.

14 Q But again, your purpose was what?

15 A To talk.

16 Q And at some point during those conversations did he calm
17 down?

18 A He did.

19 Q Is that why you went to meet him?

20 A That's correct.

21 Q Did you want to meet him at your parents' house?

22 A That's correct.

23 Q Certainly, would you have done anything unlawful ---

24 MR. MEADORS: Objection to leading.

25 THE COURT: Would you ---

1 Q What if anything would you have done at your parents'
2 house to hurt Davis McClendon, at your parents' house?

3 MR. MEADORS: Your Honor, speculation, we have no
4 idea ---

5 MR. SWERLING: What could he have done?

6 THE COURT: Wait a minute. Okay. I'm going to allow
7 it, go ahead.

8 A Nothing.

9 Q That's where you were supposed to be?

10 A That's correct.

11 Q And the communications that Mr. Meadors asked you about,
12 do you deny that on, I guess it was communication, you had some
13 text messages with a friend, and I'm just laying the
14 groundwork, do you deny that you said something to the effect
15 of he's a piece of shit?

16 A I do not.

17 Q Okay. Did you feel that way at that time?

18 A I did, I felt ---

19 Q Why?

20 A Because of what he was doing behind my back with my wife.

21 Q Did you think that was wrong?

22 A I did.

23 Q Did you say at some point, I think Mr. Meadors asked you
24 something about something being said it's fucked up?

25 A That's correct.

1 Q Did you make that statement?

2 A I did.

3 Q At the time you made the statement, did you believe that?

4 A Yes, that's the way I felt.

5 Q I'm sorry?

6 A That's the way I felt.

7 Q What were you referring to?

8 A The relationship.

9 Q Mr. Meadors asked you about were you on the phone with
10 Davis McClendon when you were going down Avid Road, do you
11 remember that?

12 A I can't recall.

13 Q Okay. Based on the evidence in this case, at the time of
14 impact when the car was hit and Mr. McClendon was hit, where
15 was his phone?

16 A In his vehicle.

17 Q And is there, there's a picture of that in evidence, is
18 that right?

19 A That's correct.

20 Q Have you denied any of the locations that Mr. Meadors
21 asked you about that you went to?

22 A I have not.

23 Q And you pretty much agreed on your cross examination with
24 all the places he suggested you may have travelled to?

25 A That's correct.

1 Q And your purpose?

2 A Just to find Meredith.

3 Q When was the first time that you realized they were out
4 together?

5 A When Davis called me.

6 Q That was that first phone call where you had a
7 conversation?

8 A That's correct.

9 Q So your plan was to meet him at your parents' house?

10 A That's correct.

11 Q To have this discussion?

12 A That's correct.

13 Q And who changed it?

14 A He did.

15 Q And where did he say to meet you?

16 A At the Avid and Sawgrass location.

17 Q And did you call him back and tell him you were not going
18 to meet him there?

19 A That's correct.

20 Q And is that the conversation that you had described on
21 your direct examination about what he said to you?

22 A That's correct.

23 Q Did he calm down during that conversation?

24 A He did.

25 Q And is that the reason that you went down there?

1 A That's the reason I agreed to meet him.

2 Q When you were going down Avid Road, at some point did you
3 go into the left lane ---

4 A I did.

5 Q --- it wasn't marked, but did you go into the left side of
6 the road?

7 A I did.

8 Q You knew the car was there?

9 A That's correct.

10 Q Did you see him until the last second?

11 A I did not.

12 Q What was your purpose in going into the left lane and
13 approaching his vehicle?

14 A To talk to him.

15 Q Alright. And how were you going to do that?

16 A Pull up beside his vehicle.

17 Q Did you know how fast you were going?

18 A I did not.

19 Q Did you know how fast you were going until this trial?

20 A I did not.

21 Q Mr. Meadors asked you why you didn't steer to the right,
22 why run into the car, why?

23 A To stop the motion of the truck from moving forward.

24 Q Would you have hit his car ---

25 MR. MEADORS: Objection to leading.

1 MR. SWERLING: Okay.

2 THE COURT: Okay. Rephrase.

3 Q What if anything did you do to avoid hitting him?

4 A I hit his car.

5 Q Is there evidence of that in this case?

6 A I believe so.

7 Q Did you intentionally hit him?

8 A I did not.

9 Q Did you intentionally try killing him?

10 A I did not.

11 Q Afterwards, what was your emotional state when you
12 realized that you had hit him and he was laying in the road or
13 on the side of the road?

14 A I was in just panic, in a state of shock, felt nauseous
15 and sick, didn't know what to do.

16 Q Do you remember yelling?

17 A I do.

18 Q Do you remember admitting something to the effect of what
19 the fuck?

20 A Yes, sir.

21 Q Do you remember anything else that you said?

22 A No, sir.

23 Q What was the, why were you yelling?

24 A I couldn't believe what just happened and how we got into
25 that position and when all this transpired.

1 Q Are you sorry this happened?

2 A I'm very sorry.

3 MR. SWERLING: That's all.

4 THE COURT: Any recross Mr. Meadors?

5 MR. MEADORS: Just very briefly.

6 THE COURT: Sure.

7 **RECROSS EXAMINATION**

8 BY MR. MEADORS:

9 Q You went to talk at 35 miles per hour, correct?

10 A If that's what it shows.

11 Q Okay. And you chose to leave your house and go meet him,
12 didn't you?

13 A Per our conversation.

14 Q But you chose to drive down there from 1714 Old Abbeville,
15 go down Avid Road, that was your choice?

16 A Yes, per our conversation.

17 Q And you drove, your hand, your foot drove your car down
18 Avid Road?

19 A That's correct.

20 Q At 35 miles an hour?

21 A That's correct.

22 Q And didn't stop, go less than that until after you hit
23 him, did you?

24 A That is what it shows.

25 Q And you actually said on direct or cross, you swerved

1 hard to avoid him, didn't you?

2 A I did.

3 Q Swerved real hard?

4 A I did.

5 Q So you would have gone into that side of the vehicle and
6 knocked it off the road, it should have gone that way,
7 shouldn't it?

8 A I can't tell you what should have happened.

9 Q Mr. Swerling asked you about the records and all, you
10 don't dispute them. I want to be clear, Brandon Smith who we
11 brought out earlier who's going to be a reply witness, that's
12 not the mayor of Greenwood Brandon Smith ---

13 A That's correct.

14 Q --- it's another Brandon Smith?

15 A That's my cousin.

16 Q That's your cousin. And he asked you about the phone
17 calls. This happened at 1:11:34 and I think you said you were
18 about to call 911 but you heard the sirens, correct?

19 A That's correct.

20 Q Didn't call 911, didn't call the hospital. But you don't
21 dispute that you called Ed McCallum at 1:31, do you?

22 MR. SWERLING: Objection, Your Honor, that's not
23 recross. I didn't go into that on redirect.

24 THE COURT: I agree, sustained.

25 MR. MEADORS: Your Honor, he said all the records

1 that he agreed to, I was just, do you agree you called him.

2 THE COURT: Okay. You going to leave it at that?

3 MR. MEADORS: Oh, that's all, yeah.

4 THE COURT: Alright. Give an answer, Mr. Ackerman.

5 Q That was 20 minutes after this, right?

6 A If that's what it shows.

7 MR. MEADORS: Beg the Court's indulgence.

8 THE COURT: Sure.

9 MR. MEADORS: Thank you.

10 THE COURT: Okay. You can step down, sir. Thank
11 you. Mr. Swerling, anything else from the Defense?

12 MR. SWERLING: Your Honor, with that we rest.

13 THE COURT: Okay. Very good. And Mr. Meadors, or
14 Mr. Conrad?

15 MR. CONRAD: Yes, Your Honor. The State has one
16 reply witness.

17 THE COURT: Okay. Alright. Very good.

18 MR. MCONRAD: The State calls Lieutenant Matthew
19 Womack.

20 MR. SWERLING: Judge, for the record, would you allow
21 my, the objection I made at that time when this was offered

22 ---

23 THE COURT: Sure. Right.

24 MR. SWERLING: --- to incorporate herein for the same
25 reasons stated at that time.

1 THE COURT: Right. So noted on the record, yes, sir.
2 Alright. Madame clerk, would you swear Matthew Womack in
3 please?

4 CLERK: Do you solemnly swear the testimony you're
5 about to give this Court to be the truth, the whole truth, and
6 nothing but the truth so help you God?

7 MR. WOMACK: I do. Your Honor, I apologize for my
8 appearance.

9 THE COURT: No, you look fine.

10 **REPLY DIRECT EXAMINATION**

11 BY MR. CONRAD:

12 Q Lieutenant Womack, this won't take long. You testified in
13 this trial; it was last week now, right?

14 A I did.

15 Q And you were qualified as a forensic digital expert ---

16 A I was.

17 Q --- at that time, correct? Alright. And you have
18 examined a number of phones in this case?

19 A I did.

20 Q Including Davis McClendon's phone, is that correct?

21 A I did.

22 Q Alright. And I'm going to hand you, this has been marked
23 as State's Exhibit 30. See if you recognize that?

24 A I do.

25 Q And is that from Davis McClendon's phone?

1 A It is.

2 Q And without reading it just yet, what is it?

3 A It is a text message to Brandon from Davis.

4 Q Okay.

5 MR. CONRAD: At this time, the State would move to
6 enter exhibit 30 into evidence, Your Honor.

7 THE COURT: Subject to matters already placed on the
8 record by Defense, number 30 into evidence for the State.

9 (Whereupon a text message was submitted as State's Exhibit
10 Number 30 for identification and entered into evidence.)

11 Q Alright. This is from Davis McClendon to Brandon Smith,
12 correct?

13 A That's correct.

14 Q What date and time?

15 A It is dated May the 7th, 2023, 12:42:14 am.

16 MR. SWERLING: Judge, what additional, that is, that
17 particular document was not part of the phone records. This is
18 a, some kind of text message that was sent. So it has not been
19 identified at this point.

20 THE COURT: Okay. Mr. Conrad, I'm not exactly sure,
21 alright, not apart of any of the phone records as a result of
22 any sort of cell phone dump or?

23 MR. CONRAD: I can lay a little more
24 foundation?

25 THE COURT: If you would, if you would.

1 Q Lieutenant Womack, you examined Davis McClendon's phone --

2 -

3 A I did.

4 Q --- as part of this investigation, correct?

5 A I did.

6 Q And as part of that, you reviewed a number of things on
7 that phone, is that correct?

8 A I did.

9 Q Would that include text messages?

10 A It did.

11 Q And were there a number of text messages on Davis
12 McClendon's phone ---

13 A There were.

14 Q --- when you examined them?

15 A There were.

16 Q And is what's on State's Exhibit 30 one of those
17 text messages that you examined on Davis McClendon's
18 phone?

19 A Yes.

20 MR. CONRAD: At this time, State would move to enter
21 the ---

22 MR. SWERLING: That's 30?

23 THE COURT: 30, yes, sir.

24 MR. SWERLING: Yes, sir.

25 THE COURT: Okay. Subject to what has already

1 been placed on the record by Defense, 30 into evidence for the
2 State.

3 Q And again, what date and time?

4 A May the 7th, 2023, 12:42:14 am.

5 Q And this is a text from Davis McClendon?

6 A This is from Davis McClendon.

7 Q To?

8 A To Brandon Smith is the contact.

9 Q Alright. Read the text, please.

10 A FYI, apparently Bud is drunk and out trying to hunt
11 Meredith down, she's wanting to call the cops, I was hoping
12 maybe you could get his dad to rope him in.

13 Q Alright.

14 MR. CONRAD: Nothing further from the State.

15 THE COURT: Okay. Any cross?

16 Mr. SWERLING: I have one or two questions.

17 THE COURT: Sure.

18 **REPLY CROSS EXAMINATION**

19 BY MR. SWERLING:

20 Q How long have you been involved with law enforcement?

21 A 14 years almost.

22 Q 14 years. Did you ever do any traffic?

23 A A little bit, yeah.

24 Q Okay. Do you know what the legal limit in South Carolina
25 is for driving a vehicle?

1 A As in under the influence?

2 Q Yes.

3 A Point 08.

4 Q And after a point 08, what is the, is that a presumption
5 that you're under the influence?

6 A Presumptive in the state, yes.

7 Q Would somebody be arrested for driving with a point 08 or
8 above?

9 A It could be, yes.

10 MR. SWERLING: Thank you.

11 THE COURT: You can step down, sir, thank you.
12 Anything further in reply?

13 MR. CONRAD: Nothing further from the State, Your
14 Honor.

15 THE COURT: Okay. Alright. The evidentiary record
16 in this case is now closed. Ladies and gentlemen, you've
17 worked extremely hard today, I appreciate it. We're going to
18 go ahead and adjourn for the evening. I want you back at 10:00
19 in the morning. What we have left to do is the lawyers will
20 make their closing arguments to you and I will charge you the
21 law that you are to use based upon the facts as you find them
22 to be. You're the sole fact finders in this case and I'm the
23 sole law giver in this case. So that's what we will do
24 tomorrow. The plan is to feed you lunch once again, I hope
25 Chick-fil-A is good with everybody. They're just, they work

1 real well with the clerk's office and they're pretty fast in
2 getting the food to us, so that's why we're going to use Chick-
3 fil-A again, so plan on that. So with that said, have a good
4 evening, get some rest and we'll see you in the morning, okay?
5 10:00.

6 (Jury exiting Courtroom.)

7 THE COURT: Okay. We'll be in recess to 10:00 in the
8 morning, and in just a few minutes when you get your stuff
9 together, lawyers come back, and we can have an informal charge
10 conference.

11 (Whereupon the hearing ended at 5:27 pm.)

12 **DAY FOUR OF STATE V. ACKERMAN - OCTOBER 5, 2024**

13 THE COURT: Alright. We're back on the record. And
14 I had an informal charge conference with the lawyers yesterday
15 afternoon after we finished up, and once again this morning.
16 And let me, before the lawyers place on the record anything
17 that they want to concerning the charge, let me just kind of go
18 through what we discussed back in chambers. The Defense had
19 requested some statutory DUI language, and I allowed that with
20 just charging one sentence concerning the inference level of
21 intoxication in this state being point 08 and higher. The
22 State had requested a charge concerning voluntary intoxication
23 and I granted that and charged one line that voluntary
24 intoxication is not a defense to the crime charged. The
25 Defense requested an involuntary manslaughter charge, and I

1 have denied that. Basically, involuntary manslaughter in this
2 state there's two possible points, not necessarily points, but
3 involuntary manslaughter can be an unlawful act not tending to
4 cause death or great bodily injury. I've determined based upon
5 Mr. Ackerman's testimony and the testimony of David Torres, the
6 Defense expert, that they were driving on the wrong, or he was
7 driving on the wrong side of the road and because Avid while
8 it's a very less traveled road, it's still a public road and I
9 determined that was an unlawful act and an act that does tend
10 to cause death or great bodily injury when a vehicle crosses
11 the center line or goes over into the other lane of travel, so
12 part one of involuntary manslaughter would not apply.

13 Secondly, the other part is an unlawful act reckless disregard
14 and in this situation I have ruled as a matter of law that
15 there was an unlawful act, so I have determined that
16 involuntary manslaughter would not apply, therefore, would not
17 be charged in this case. Lastly, I am charging at the request
18 of the Defense a charge of accident. I do realize that the
19 language in the accident charge does refer to a lawful act and,
20 but I'm going to allow the jury to make the determination on
21 whether or not there was a lawful act notwithstanding the fact
22 that I have ruled as a matter of law in the involuntary
23 manslaughter request that there was an unlawful act. So that
24 is the sum and substance of our discussion back in chambers, I
25 believe I'm correct and certainly the lawyers can correct me.

1 So Mr. Meadors, I'll allow you to go first and place on the
2 record anything you feel like is necessary on behalf of the
3 State as it relates to jury charge.

4 MR. CONRAD: And Your Honor ---

5 THE COURT: Or Mr. Conrad.

6 MR. CONRAD: Sorry, Your Honor. The State would
7 object to the inference charge of the DUI. You know, this
8 jury's not here to decide a DUI and as far as the State has no
9 knowledge that even if the victim in this case, Davis
10 McClendon, was legally intoxicated, that's simply not an excuse
11 or a defense to the charge of murder, and therefore, I think
12 charging that could be needlessly confusing to the jury.

13 THE COURT: Okay. Alright. Thank you, Mr. Conrad.
14 Mr. Swerling, anything you would like to place on the record as
15 it relates to jury charge?

16 MR. SWERLING: Your Honor, I would like to, but as
17 far as what Mr. Conrad just stated, Your Honor has already
18 decided to charge ---

19 THE COURT: Right.

20 MR. SWERLING: --- it, so is there a need for me to
21 argue that?

22 THE COURT: No. You don't need to argue about that.

23 MR. SWERLING: That's all I wanted to ask. I'm going
24 to stand up here so I can have my notes in front of me ---

25 THE COURT: Sure.

1 MR. SWERLING: --- if that's alright?

2 THE COURT: Yeah.

3 MR. SWERLING: Judge, we do request the involuntary
4 manslaughter charge under 16-3-60, involuntary manslaughter,
5 the standard is whether or not it's criminal negligence,
6 reckless disregard, which is reckless disregard to the safety
7 of others which is the standard in South Carolina, and I submit
8 to the Court that that would be a jury question. And I'd like
9 to go through just a couple of cases if I can?

10 THE COURT: Sure.

11 MR. SWERLING: The Warden case which is referred to
12 on page 65 of Judge Anderson's charge book. As Your Honor
13 said, the involuntary manslaughter is the unintentional killing
14 of another without malice but while engaged in an unlawful
15 activity not naturally tending to cause death or serious bodily
16 harm, or great bodily harm, or the unintentional killing of
17 another without malice while engaged in a lawful activity with
18 reckless disregard for the safety of others. So those are the
19 two elements that involve involuntary manslaughter. And we
20 submit to the Court, or I submit to the Court that it's not
21 the, the weight of the evidence that the jury should be able to
22 consider, or the Court should consider in whether to charge it
23 or not, but the existence of any evidence, and that would make
24 it a jury question. And I'm referring to State versus Reese,
25 633 S.E.2d 898, 2006 where the Court said it must be charged if

1 there's any evidence at all of involuntary manslaughter. The
2 other case that I'd like to refer to is State versus Chapman,
3 which interestingly enough was a case that the State cited for
4 a proposition that they had with connection to the charge. And
5 again, in Casey versus State, 409 S.E.2d 391, a 1991 case
6 stands to that same proposition. State versus Rivers, 699
7 S.E.2d 157, a 2010 case, the theory of involuntary manslaughter
8 is the unintentional killing of another without malice but can
9 be engaged or while engaged in an unlawful activity not
10 naturally tending to cause death or great bodily harm which is
11 what the Court said. My concern here is this, while Your Honor
12 has determined this is a public road, I think the record
13 reflects and the evidence would show that we are talking about
14 something that happened on Avid Road and beyond Sawgrass. And
15 the BMW was parked in that location on Avid Road beyond
16 Sawgrass at the corner. That part of the road is not a
17 traveled road, it is not a through road, and therefore a person
18 should be entitled to the involuntary manslaughter charge
19 because I think you have to look at the circumstances rather
20 than just the literal language of whether or not it's an act
21 that would naturally or intend to cause death or serious bodily
22 harm. I could see if it was out on the Old Abbeville Highway
23 and someone crossed over and was in the left lane of traffic,
24 that would be a situation where it would be an unlawful act,
25 but it would also be, naturally would be something that would

1 cause death or serious bodily harm if you cross over the lane,
2 were driving in the other lane of traffic or any other traveled
3 road where there's traffic going both ways. In this particular
4 case, we're talking about a dead end, we're talking about a
5 distance from the corner of Sawgrass and Avid to, where there's
6 a gate, it's not one, it should not be considered a travel road
7 and should have under these circumstances not be considered a
8 act or his driving should not be considered an act that could
9 naturally lead to death or serious bodily harm because of the
10 location. And that's the analogy or that's what I'm arguing
11 basically, I hope I'm making myself clear.

12 THE COURT: You are, you are, very clear.

13 MR. SWERLING: Under the Cabrera-Pena case, 605
14 S.E.2d 522, 2004 and then State versus Crosby, just a couple of
15 more cases that talk about specifically what I'm referring to
16 is involuntary manslaughter but not the location. I don't want
17 the Court to think that we're talking about a situation, I had
18 a case that talks about the fact that there's a difference
19 between Avid Road until it gets to Sawgrass, or after Sawgrass
20 where it's a dead-end road and there's a gate at the end of it.
21 I'm not saying there's a case, that I have a case that cites
22 that for that proposition. But again, just of authority, State
23 versus Crosby is another involuntary manslaughter case and it
24 talks about the unintentional killing of another without
25 malice, but while engaged in an unlawful activity, naturally

1 tending to cause death or serious bodily harm. Again, the
2 location is the factor in this case that I believe would
3 warrant that there's evidence of it and it should be charged to
4 the jury, with all due respect. A Defendant is entitled to the
5 charge on involuntarily manslaughter where the evidence shows a
6 reckless disregard for the safety of others. State versus
7 Chapman which I referred to before, but I'll just go a little
8 bit further, 519 S.E.2d 100, a 1999 case, involuntary
9 manslaughter from an unlawful assault and battery if the
10 battery was not intrinsically of a level likely to cause death.
11 And so using that case, and it should be charged in that case
12 where it was not intrinsically of a local, a level likely to
13 cause death. My theory is in this case at that location down
14 there beyond Sawgrass between Sawgrass and the gate, and I
15 think the record will clearly reflect it for purposes of
16 appellate review, is a situation where that location would not
17 be a situation where it would intrinsically rise to a level
18 likely to cause death by being on the wrong side of the road.
19 And I would also like to say that Mr. Ackerman's explanation of
20 it was that the car, Mr. McClendon's car was facing him beyond
21 Sawgrass, and he was pulling up next to the car to talk with
22 him. And that is the explanation of why he may have, was on
23 the wrong side of the road. So I think that's a factor that
24 should be taken into consideration, and again, the fact is that
25 there is evidence of it and it'd be up to the jury to determine

1 the weight of the evidence. State versus Light, 610 S.E.2d
2 504, it's a Court of Appeals case, and involuntary manslaughter
3 is the unintentional killing of another without malice while a
4 person's engaged in unlawful activity that is not a felony and
5 does not naturally tend to lead to cause death or great bodily
6 harm. The language in that case is a little bit different and,
7 because we're talking about this particular situation where
8 he's on the other side of the road is not a felony, it would be
9 a misdemeanor or at most a traffic violation. And so I think
10 under that kind of argument or that analogy, involuntary
11 manslaughter should also be given because of the nature of the
12 case. Being on the wrong side of the road at that location
13 would warrant a charge on involuntary manslaughter. And I'm
14 just about done, Your Honor.

15 THE COURT: You're fine, you're fine.

16 MR. SWERLING: State versus Cribb talks about the
17 standard of criminal negligence which is a reckless disregard
18 to the safety of others, I believe that should be a jury
19 question. The DeLee versus Knight at 221 S.E.2d 844,
20 heedlessness or willfulness, the trial Judge is concerned with
21 the existence of evidence not as weight, and that would be a
22 jury factor for the jury to determine the weight of that
23 evidence, and I'm talking about under that case, the DeLee
24 versus Knight. The Court has ruled, well, I know, you've
25 already decided you're going to charge action, so I don't need

1 to argue about that. And one last thing, involuntary
2 manslaughter is the unintentional killing, has been described
3 as the unintentional killing of another while engaged in an
4 unlawful activity is not a felony and does not naturally tend
5 to cause death or great bodily harm. And again, my position
6 under this law of that law is that being where he was at the
7 location he was would not be something that would tend to
8 naturally tend to cause death or serious bodily harm or great
9 bodily harm, I'm not going into whether the, the other part of
10 involuntary manslaughter, I'm just talking about ---

11 THE COURT: Sure.

12 MR. SWERLING: --- where it's the unlawful part of
13 the involuntary manslaughter charge. And that proposition
14 stated in State versus Light at 610 S.E.2d 504, Court of
15 Appeals case in 1992 which is affirmed by the Supreme Court,
16 664 S.E.2d 465 in July of 2008. So Your Honor, based upon
17 those legal principles, I believe, I'd submit to the Court with
18 all due respect that it's not the, there is existence of the
19 evidence and the jury should determine the weight of it and I
20 ask the Court to consider charging it.

21 THE COURT: Thank you very much, Mr. Swerling. State
22 have any response?

23 MR. MEADORS: Judge, with all those cases, I know
24 State v. Crosby, Mr. Swerling and I tried that together in
25 Kershaw County, the victim was Lavaris Dunham ---

1 MR. SWERLING: We did?

2 MR. MEADORS: Yes, sir. And that was a case where he
3 armed himself in self defense. That was kind of a whole
4 different issue there with that. Other than that, I don't have
5 any other argument ---

6 THE COURT: Okay.

7 MR. MEADORS: --- we respect Your Honor's
8 ruling.

9 THE COURT: Okay. Alright. And you know, too, I
10 think it's important if the determination of unlawful act is a
11 correct determination, we in fact have a death in this case,
12 it's an unlawful act not tending to cause death or great bodily
13 injury, in this case we do have an actual death having
14 occurred. And once again, I think it's important the fact that
15 Mr. Ackerman did acknowledge in his testimony that he was on
16 the wrong side of the road. Mr. Torres, I think he used the
17 term incorrect lane of travel. So certainly, your position,
18 Mr. Swerling, is so noted on the record. Anything further
19 concerning charge before we bring the jury out?

20 MR. MEADORS: Can Your Honor just give me one minute
21 to find an exhibit?

22 MR. SWERLING: Yeah, I need an exhibit, too.

23 THE COURT: Yeah. Okay.

24 MR. SWERLING: Are you going to take a break in
25 between the argument ---

1 THE COURT: Between argument and charge, yeah. You
2 want a break between State's argument and your argument?

3 MR. SWERLING: Yes.

4 THE COURT: We can do that, too.

5 MR. SWERLING: Okay. I just need to get an exhibit,
6 too.

7 THE COURT: Sure, yeah, that's fine. Yeah, we can do
8 that.

9 (Off the record.)

10 MR. SWERLING: I'm good, Judge.

11 THE COURT: You're good? Okay. I'll take a break
12 after the State's argument. Alright. Let's bring the jury
13 out, please.

14 (Jury entering Courtroom.)

15 THE COURT: Let the record reflect the jury's back
16 in. Good morning, ladies and gentlemen. Alright. As I told
17 you yesterday, what we have left to do today, the lawyers will
18 make their closing arguments, I will charge you the law that
19 you are to use in this case, and then I'll instruct you to
20 begin your deliberations. This is the last opportunity that
21 these fine lawyers have to advocate for their respective sides,
22 so please give them your undivided attention. Mr. Meadors, you
23 ready?

24 MR. MEADORS: May it please Your Honor, Mr. Conrad,
25 Mr. Swerling. Mr. Foreman, ladies and gentlemen, good morning.

1 I want to echo his Honor that throughout last week and this
2 week I earnestly and sincerely thank you all for being here
3 this last week and I don't just say that, I mean it, thank you
4 all, it's been a stressful week for everybody, the hurricane,
5 the power down. But thank you, y'all were here through and
6 through. This is judgement day, it's verdict day. Hearts are
7 ticking, hearts are beating, this is an important day for the
8 Defendant, it's an important day for the victims, it's time,
9 now it's time for a verdict. Hearts are ticking, every heart
10 except Davis McClendon. And that's what this case is about.
11 What happened to Davis McClendon at 1:11:34 on May 7th, 2023.
12 This might as well be a drive by shooting with a gun because
13 what he had and what he was driving was a weapon, and his foot
14 was on the trigger from the time he left Key West until he got
15 back to Avid Road, he had a weapon, and he ended up using it.
16 So don't let the type of weapon used confuse you, this is a
17 murder case with a 7,000 pound weapon that he was in control
18 of. I also want to take a second, and I think y'all can tell
19 this, there's no way I could do this myself, I want to thank
20 Mr. Conrad, Ms. Danielle Colon ---

21 MR. SWERLING: I'm just going move over here.

22 MR. MEADORS: Okay. I'll try to speak up. Mr. Matt
23 Ellis, Ms. Trisha, I want to thank all of them, thank you.
24 Ladies and gentlemen, this is a murder case, what's murder.
25 His Honor's going to charge you that murder is the unlawful

1 intentional killing of another living, breathing human being
2 with malice aforethought. Malice as I said in my opening can
3 be expressed, I'm going to kill you, or it can be inferred
4 under the circumstances through evidence which we believe we've
5 got in this case, direct and inferential malice, it's a
6 meanness, a wickedness. Aforethought doesn't have to exist any
7 particular time, we don't have premeditation in this case, in
8 this state. We don't have to prove that you planned it, you
9 wanted to do it. I think it was in his mind, I think he was
10 upset since April 28th of 2023. But it's only got to exist at
11 the moment of impact while his foot's on the gas pedal, and
12 he's controlling the wheel, malice aforethought. What did he
13 want to do when he's traveling down that road not braking and
14 he says he wants to drive by him and talk to him doing 38 miles
15 an hour, I just want to talk to him. Did it exist then, the
16 malice aforethought at that moment, that's all we have to
17 prove. We submit we've proved that. That'll be up to y'all, a
18 meanness, an evilness, a wickedness. Now, we also have to
19 prove the cause of death, that's why Dr. Kyle Shaw was here,
20 y'all remember Dr. Shaw. Went through and gave 22 examples of
21 external injury of the body of Davis, 14 inside his body, died
22 of blunt force trauma. Didn't have time to defend himself,
23 didn't have time to fight, didn't have time to talk, he didn't
24 give him time, wasn't going to give him time. And we have to
25 prove, you have to believe, we have to prove beyond a

1 reasonable doubt that he killed him and then his action with
2 the car was the probable cause of his death. And that's why I
3 asked him do you have an opinion to a reasonable degree of
4 medical certainty, yes, he died from blunt force trauma from a
5 vehicle. And if you believe that, we've proved cause of death,
6 that's up to you. What's our burden? Our burden is the same
7 in this case as every other case that's tried in this wonderful
8 country, I bet you we're the only ones here on Saturday today,
9 thank you again for being here on a Saturday. And I love it,
10 he loves it, we all love it. This is my office for better or
11 worse, and in what other system do we get to come in present
12 the evidence to you folks who promise under oath to be fair, to
13 look at the evidence and then to do what's right once you
14 determine what the truth is, if the State's met its burden, it
15 doesn't get any better than that. That's why this country's so
16 great, that's why the system is so great, and you're here on a
17 Saturday. Beyond a reasonable doubt, what is that? Beyond a
18 doubt that will make a reasonable person hesitate to ask, we
19 don't believe that's here. There's no evidence here because he
20 sure didn't hesitate when he ran that truck into him, if you
21 believe, and the Judge will charge you, after you've heard all
22 the evidence, if you are firmly convinced of the Defendant's
23 guilt based on your oath, you must find him guilty. If you
24 believe there's a real possibility he's not guilty, you must
25 find him not guilty. That's up to y'all, it's up to y'all.

1 You'll have this in just a little bit, it's verdict day, no
2 more important day to the Defendant, to the victim's family
3 back here, it's time, it's time and it's going to be up to all
4 of you. Beyond a reasonable doubt, and it's not beyond all
5 doubt, you can't do that, there's no way to prove all doubt.
6 We don't want to live in a society where you wake up and you've
7 got cameras everywhere you go and everything's videotaped, you
8 don't want to do that, nobody wants that, we all want our
9 freedom. And that's the only way you can prove something
10 beyond all doubt, that's not what the law says, and the Judge
11 will charge you the State doesn't have to prove beyond all
12 doubt, just beyond a reasonable doubt. I tried a conflict case
13 years ago, I always give people credit, Solicitor Wells at that
14 time, I was trying a trial case he did, and he described
15 reasonable doubt, I've never forgotten it, sometimes in life
16 and in trials you may have questions, but just because there's
17 questions, that doesn't mean there's reasonable doubt. You
18 can't answer everything, and I don't know how else to explain
19 it. It's not beyond all doubt; it's beyond a reasonable doubt.
20 If something really bothers you, we submit there was no
21 reasonable doubt in this case, but that will be up to y'all,
22 it's got to be up to y'all. Times are changing, when we
23 started out years ago, fingerprints, there wasn't any DNA,
24 times are changing, fingerprints, DNA, then you got cell
25 phones, then you got videos that are in a lot of places and

1 thank goodness they are when crimes are committed. That's the
2 type of evidence we represented and we're going to ask you that
3 that meets our burden, but we've got something else here that
4 nobody in this country can present it better than John Conrad
5 and these officers we have, and we've got to prove to you,
6 we've got to prove you, intentional killing. You remember when
7 Dr. Shaw said he opened up Davis' head and looked through his
8 body to see if the injuries inside were consistent with the
9 ones outside? That's really the only time you can look into
10 somebody's brain. You can't do that in real life, so we can't
11 look into his brain, but I'm going to tell you something, with
12 the new evidence, not only the DNA and the video, we've got the
13 infotainment center from the Ford F250 and I'm going to bring
14 it out in a minute, that's his brain that was guided by his
15 feet, by his hands that showed where he went. So we do have
16 his intent whether he wants us to have it or not. We've got
17 his intent to show the Ford F250, yeah, he wouldn't go unless
18 he pushed it, it wouldn't stop unless you brake, he sure didn't
19 brake, sure didn't brake when he went down there until after he
20 hit him, but that shows his intent. This infotainment center
21 right here, I'm going to talk about it in a minute, that's how
22 we prove intent. What's the type of evidence, you've got
23 direct evidence, what people hear, one of their senses, you
24 feel, smell, and touch, you come in and testify, get on the
25 stand. Circumstantial evidence, proof of a chain of facts and

1 circumstances that lead to a fact or question. I could do that
2 with an ink stain, you know, I have my pen in there sometime
3 and didn't close it, you know the oil stain led from there to
4 there and we didn't see it all the way back, but we knew he
5 drove back there. Circumstantial evidence, the Judge will tell
6 you they're both equally strong, you can consider both of them,
7 direct and circumstantial evidence. Credibility,
8 believability, every case comes down to it, every case, and
9 y'all will determine that. You'll determine what the truth is,
10 you'll determine based on watching, folks, what the truth is,
11 you looked at them, you listened to them, did they answer the
12 question, watch their body language, credibility and
13 believability. I think you saw some of that when the Defendant
14 took the stand yesterday. He remembered, well, he remembered
15 what was on, he didn't dispute the records, his truck, well, he
16 can't dispute it, he can't dispute that, but some of that he
17 disputed, I'm going to get to that, he sure forgot going by
18 Lake Shore on the record. He forgot going by Lake Shore.
19 Didn't know they were together, Meredith and Davis, didn't know
20 about it, but he's on the hunt from Key West and he goes to
21 Lake Shore. What about Lake Shore, well, I didn't know where
22 he lived, well, what were you looking for, why were you on Lake
23 Shore, well, my son told me he was on Lake Shore. Really? He
24 was out looking for Davis, looking for Meredith with his foot
25 on the trigger as he's driving he was hunting. I think the

1 record is clear and I will tell y'all right now from that
2 stand, Davis McClendon had nothing to do, nothing to do with
3 the breakup of Meredith and Bud Ackerman, nothing, that's
4 clear, that's undisputed, nothing to do with it. Sometimes
5 things just don't work out and you go through the system, and
6 you move on, they just don't work out. He had nothing to do
7 with it. They began a relationship six months afterwards, they
8 started dating, no bad blood, no bad blood between Davis
9 McClendon and Bud Ackerman until April. April 28th he finds
10 out about it, but they tried to keep it private, yes, sir, yes,
11 ma'am. You know why? Because of this. I wish they'd gone in
12 a cage somewhere, yeah, they wanted to keep it away from him,
13 but he found out. And again, credibility, believability, well,
14 I wasn't that mad. Really? Bud said I wasn't that mad, and I
15 submit to you that's when he started getting mad and it got
16 worse and worse and worse up until May 7th. Well, what about
17 the text you did when you called, you texted somebody and said
18 he was, and excuse me for cussing, I'm allowed to do this when
19 evidence comes in, I apologize, he said he's a piece of shit
20 when he first calmed down, he's a piece of shit. Well, that's
21 what shows in his heart and his mind, doesn't it? You start
22 off with that. And then there's a text to Danny, I won't say
23 his last name, Danny B., what the hell is Davis thinking, man,
24 I mean, what the hell, Danny. I have no idea what you're
25 talking about, this is on 29, pass this around when you go

1 back, pass this around. He's been f'ing Meredith, that's news
2 to me, I don't keep up with anyone's business, I had my
3 suspicions, but it was confirmed by her, I can't believe he
4 would do that to me. I can't believe he'd do that to me; this
5 is four weeks away from their final divorce. He wasn't going
6 to let them be together, he wasn't going to let them, it wasn't
7 going to happen, I think he decided that in April, no, sir, no,
8 ma'am, they're not going to be together, I'll make sure of
9 that. I can't believe he would do that to me, I mean, damn,
10 I've known him my whole life, damn, I don't know, Danny texts
11 back, I don't know what to tell you, Bud, damn, I don't know
12 either, it's just f'd up. The malice meter is running, it's
13 running. It's been a long trial, you've got your mind made up,
14 we submit you heard the evidence, y'all know what you're going
15 to do, it's up to y'all. But let's go back to May 6th. May
16 6th, they're at Break on the Lake, I was going to show this,
17 but you've seen it, you'll have all these videos in. The calls
18 start, she's face timing, Meredith is, out in the parking lot,
19 see Davis go in first and then she comes in, face timing with
20 the kids. There's some calls there at Break on the Lake, then
21 there's a call again she says who is this, this is the kids,
22 well, no, sir, no, ma'am, it's not, it's Davis, it's Davis,
23 well, I'm just trying to talk to her. I'll submit to you then,
24 and Meredith said he knew, the Defendant knew she was with
25 Davis then. He denies it now, he wants to act, oh, it's the

1 last minute, it doesn't make sense with his actions, it doesn't
2 make sense, he knew then. His malice meter is running, he knew
3 then. Then he gets angry, they then leave, Meredith and Davis,
4 they go to a derby party, Abbi's at Key West, Defendant's now
5 at Key West. Credibility, believability y'all, I haven't had
6 any beers. Really? You'll have the evidence, go up there and
7 count them, count how many beers he had at Key West, I'll
8 submit it's seven or eight, you'll have it, go count them.
9 Well, I didn't have that many, well, go count them,
10 credibility, believability, he had two earlier in the day.
11 Everybody's drinking. Judge is going to charge you that point
12 08 is the limit in this state, when somebody dies, they take
13 your blood. We didn't hide, Davis had point 11. This isn't a
14 felony DUI case, he's the victim, he was out drinking. What's
15 the evidence we have, he was drinking, watch him order, watch
16 him order, watch him order, watch him order, watch him order
17 seven times, maybe eight, he's admitted to two more earlier in
18 the day when he was driving when he took his kids out to the
19 fair. And the Judge will tell you voluntary intoxication is
20 not a defense to a crime. He was drinking, liquid courage,
21 he's drinking. Don't let, Mr. Swerling said a point 11 here it
22 effects people in different ways, you heard the doctor, some
23 people get happy, some people get sad, it's a depressant, some
24 people get angry. You heard from Abbi and Meredith, he was in
25 a good mood, he was sitting there having a good time, Davis was

1 having a good time sitting there. Little did he know he was a
2 dead man walking as he left out that bar, a dead man walking.
3 There were about 15 calls, 15 calls, attempted calls from the
4 Defendant to Meredith, he wanted to talk to her, wanted to talk
5 to her. The testimony is he kept calling and he wasn't
6 jealous. Really? That's up to y'all. Was he angry she was
7 with him? 15 calls. In the bar, and you'll have it there,
8 you'll have it there, in the bar they're talking, they're
9 looking at, it shows it, I'm glad they got the video there, it
10 shows it, calls, calls, calls, look it. You want to talk about
11 intent, here it is right here, you want to talk about intent,
12 think about this. They're in the bar, he's calling, he's
13 calling, he's calling, he tells Meredith I don't, and remember
14 before they left Key West, remember the testimony, I'll see you
15 later, you remember that? That's his intent, direct evidence
16 of intent. Gets in the bar, he's calling, he's calling, she
17 tells Bud, Meredith tells Bud I'm going to call the police,
18 you're drinking, I know you, do you know if somebody's drinking
19 if you lived with them and married with them and on the phone,
20 my wife sure knows when I've had a few. And she got on the
21 phone, he's drunk, I've heard him before, I've talked to him
22 before. And now intent, think about this, she's worried about
23 him and she tells him stop it, go home, then she says I'm going
24 to call the police, I'm going to call the police. What's Davis
25 say, we can't look in his mind, did you hear what Davis said,

1 let's talk about intent, he texted a cousin of his, fyi,
2 apparently Bud is drunk and out trying to hunt Meredith down,
3 she's wanting to call the cops, I was hoping maybe you could
4 get his dad to rope him in, that's Davis McClendon, no, call
5 his dad, let's try to settle this. He's got him saying now,
6 now, now, now, well, yeah, he was cussing, he called me an
7 f'ing p, I'll get back to that, and that changed real quick,
8 his demeanor, that's him, just calm down and stop. That's at
9 12:42 am on May 7th, that's Davis McClendon, y'all rope him in.
10 What does Meredith do? She starts calling his family, think
11 about that. Tries to call his daddy, tries to call his mama,
12 tries to call his brother, tries to call his cousin, that's
13 intent of saying hey, let's stop this, that's what's going on.
14 And finally, he says no, I want to talk to Davis, I want to see
15 Davis, I want to talk to Davis, and you'll see, I don't know if
16 we'll play it or not, as Davis is walking out of Key West,
17 you'll see him walking out the back on his phone calling Bud,
18 okay, let's talk. And he is a dead man walking as he's walking
19 out the back of Key West, and he's walking. When Bud left Key
20 West, I was going to put these on, but my wife tells me I'm too
21 cute sometimes, so I won't, but this is his brain, I want to
22 put them on, I want to put them on because this is Bud's brain,
23 this is his brain, I want you to pass it around to each one of
24 you, I want you to pass it around, this is malice, you get to
25 feel it, everyone of you touch it because when he leaves Key

1 West, this is intent. Unintentional? That's up to y'all.
2 When he leaves Key West, what does he do, where does he go? He
3 goes to Tally Ho, he doesn't live there anymore, he goes to
4 Tally Ho, opens the door, all this is in evidence, this Burla
5 shows that, you can't hide from that. Burla software of the
6 infotainment center. Why does he go to Tally Ho? He knows
7 they're out; he's looking for them, he's looking for them.
8 Then where does he go, where does he go? We're looking at his
9 brain, we're looking at it. He goes to Break on the Lake, no,
10 that's where he said he went, I then went to Break on the Lake,
11 no, sir, no, sir, you didn't. Isn't it something he left out
12 Lake Shore, this is where he went, he went to Lake Shore, he
13 forgot that on direct. You went to Lake Shore, why did you go
14 there, he didn't have a good answer at first, well, Davis lives
15 there, well, I wasn't sure. Really? You're on the street,
16 you've already been by your former marital home, you then go,
17 he's looking for Davis, looking for Meredith, that's in here,
18 and that's beyond all doubt we submit. And that malice meter
19 is running. Well, I'm not sure what street it was, I'm not
20 sure what car he drives, then my son told me. Blame it on your
21 son, my son told me he lived there. Then what does he do? He
22 goes to Break on the Lake. Credibility, believability. What's
23 he say, I want to find out what time they close, I mean, I want
24 to find out what time they close. Credibility, believability.
25 Watch him as the car's going around, watch him, he's looking

1 seeing if they're there. Meredith's calling him and eventually
2 told him we're not there, then she said we're at Port Grille,
3 wants him away, trying to call the family, let's get on to the
4 next day. Davis didn't make it to the next day. Going around,
5 what's so important about that, circling, what's so important,
6 he's out there circling, that shows his intent, circling,
7 looking twice, what's so important about that? Look at the
8 headlights, could you see them illuminated? Credibility,
9 believability. Mr. Nelson, the guy, bless his heart, Mr.
10 Nelson, did you see those headlights? Well, I need to study
11 them and see if the illumination, look at the headlights, he
12 wouldn't even admit he could see the headlights in the road.
13 Credibility, believability. That's \$340.00 worth of testimony
14 is what that is. No, sir, I'm not going to even say that's a
15 light. Credibility, believability. But he circles and he
16 circles. Then where does he go? This corroborates his intent.
17 Where does he go? Well, he went where Meredith told him he was
18 to get him away, he goes to Port Grille, that's beyond all
19 doubt, we don't have to prove all doubt, we've got a reasonable
20 doubt. Why does he go to Port Grille? He's looking for them.
21 He opens the door there and closes it. What's in his mind?
22 What's in his mind? Is his foot on the trigger? And then what
23 does he do? Travels back home. And he and Davis had talked at
24 this point. They originally agree to meet at the house to
25 talk. I think Mr. Swerling said that Bud's the one that

1 changed it, no, sir, no, ma'am. Meredith changed it, she told
2 Davis no, you're not meeting there, the kids are there. So
3 they arrange another meeting, you'll see the phone calls, Davis
4 to Bud, Davis to Meredith, they change the meeting. He calls
5 Bud back and the meeting's changed. And Mr. Swerling said in
6 his questions, he may argue it, I may offend some people, if I
7 do, I'm sorry. You think something would happen if you go to
8 the house, you think something would happen at your house?
9 Yes, sir, the inference is there. You're going to leave a man
10 dying and go back to your house and not call, yeah, I think
11 something could have happened at your house, maybe he wanted to
12 get him at his house, act like he was defending his house,
13 maybe have witnesses there to back him up. I don't know, but
14 yeah, it could have happened there, maybe he wanted him there.
15 But Meredith didn't, so they changed the location, they both
16 agreed. Y'all know what the greatest power we have? Our
17 choice, and it's our choice, and he chose, and y'all are going
18 to choose soon. So they agreed they'd meet at the bottom of
19 Avid and Sawgrass and what's so important about that?
20 Everybody knows where it is, everybody. They live there, the
21 intersection they know it, they know the gates behind, okay,
22 yeah, we'll meet there. Now we go back to credibility and
23 believability. He said at first Davis did, he got angry,
24 called me an f'ing p, said I wasn't going to go then we talked
25 again, okay, he calmed down in the same conversation, okay,

1 I'll go talk to him, I'll go talk to him. After he leaves
2 Break at the Lake, after he goes to Port Grille, he starts
3 heading back down, it's 31 point 7 miles, that's what it
4 showed he drove, 31 point 7 miles at night, lights on, lights
5 coming at him, doesn't hit another car, doesn't hit a mailbox,
6 didn't have any trouble driving then, stopped at the stop sign,
7 he's speeding here, there and there, doesn't have any trouble
8 driving. Doesn't have an accident, unintentional until he gets
9 to the person that's been with his wife, and he's mad, he's
10 cussing, calls him a piece of shit, that's when the accident
11 happens, well, it's unintentional. He comes back, he drives by
12 River Run, drives by Hunter's Creek, that's what his brain says
13 through this. Comes back by, and then he goes down to Avid,
14 you remember that? And this shows that. This isn't because
15 I'm saying it, it's not because the video's saying it, he's
16 saying it through this. He actually goes down to Avid, and we
17 know through Terry Cummings' video, thank gosh for Terry
18 Cummings and Roderick Macena, that's why I love these cases,
19 think of all that came together in this case thanks to Terry
20 Cummings' video, we know Davis got down there at 1:01, y'all go
21 check, 1:01, he's down there with his lights turned around
22 waiting, waiting to talk, maybe to fight, I don't know, he
23 certainly didn't have a chance to do either one of them. He
24 wasn't going to fight, he wasn't going to talk, that's for
25 sure, at 1:01 he's down there. Shortly after that, the

1 Defendant comes down the top of Avid, at first, he didn't want
2 to admit it, I don't think, but he came down Avid, it's in
3 here, it's in the records. Did he see him then? Does he get
4 his courage up? Then he comes back and he backs up, think
5 about this, he said well, I thought I was going home, then we
6 talked again, you'll see the phone call, and here's what, you
7 talk, this is about control, too, this is about control. He
8 wasn't going to let Meredith be with Davis. And this just,
9 this hit me last night, while Davis is talking to Meredith on
10 the phone, the testimony is he put her on hold, hold on, Bud's
11 calling. So then he's talking to Bud, he's at the bottom at
12 the intersection of Avid and Sawgrass on the phone with Bud,
13 got Meredith on hold, she's leaving with Abbi, leaving with
14 Abbi, Abbi had to call Meg, remember Meg McGovern, she didn't
15 have any trouble seeing did she? Remember Meg? Driving to
16 meet somebody, he's on the phone so he's got control, he's got
17 them both right now whether he knows it or not. Got her on
18 hold, got Davis, he's talking to him. Go back and talk about
19 this, please. Why is it so important, we respectfully submit,
20 why? He knows where he's going, he's on the phone, he's
21 already been to Avid once, I submit he might have seen him
22 then, he's back at his house getting his courage up, he wasn't
23 going to fight, he's got his finger on, got his foot on the
24 trigger. And then he comes back on the phone with Davis, he's
25 on the phone with him as he comes down and starts going down

1 Avid, he starts going down Avid. Page 15, State's 15, State's
2 61, State's 14, finally he says well, I saw the car, saw the
3 lights on, he knows he's going to meet him, he knows he's going
4 to meet here, knows he's going to be there. This is reaction
5 time they talk about, all that's based on when you don't know
6 something's coming out, somebody will come out that you're not
7 anticipating. He knows he's going to be there, think about
8 that, we're planning on being there, we're planning on meeting
9 and he's flying down the road, a drive by shooting, that's
10 essentially what it is, he's driving down the road at 30
11 something miles an hour toward the end of that roadway. Does
12 that make any common sense? Why not just pull to the right?
13 Why not pull to the right? And his testimony from their
14 experts, I'm not sure where they had him, but you remember that
15 CDR box of the BMW? When he's getting out, the wheel turns.
16 Some people when you get out of your car your wheel turns.
17 He's on the phone with him, but the phone's still connected,
18 y'all. You think they weren't talking coming down Avid? He
19 can't remember the last words of the man he murdered, I bet he
20 can, I bet he does. He gets out. Why is that so important?
21 Because Davis just had a few seconds to get out, close the
22 door, bam. He didn't have time to talk, he didn't have time to
23 fight. And his testimony yesterday, based on his testimony, I
24 didn't see him until right at the end. Well, you didn't see
25 him with his shirt off? That takes that out the window,

1 doesn't it? I got right up on his car going 38 miles an hour
2 and you want to talk to him, I was going to pull up beside him.
3 Really? Your up like those 37 inch wheels, their expert didn't
4 even know what kind of wheels he had. Well, I can tell you
5 exactly, but he's going to pull up and talk to him like that,
6 does that make any common sense? Does it make any common sense
7 you're going that speed down there to talk to somebody, you're
8 going to slam on brakes, go right beside him, hey. Just like a
9 drive by shooting, and the weapon was a Ford F250. He didn't
10 have time to talk, he didn't have time to fight. He got out
11 and bam. And injuries to Davis' mouth consistent with the
12 hood, injuries to the femur, you'll have the x-rays back there,
13 a broken femur, remember the doctor said there's an injury here
14 and I think there were two lines on one of them, that's
15 consistent with this hit. You heard the MAIT, you know we have
16 highway patrol, SLED. Greenwood County Sheriff's Office has
17 done an incredible job in this case, Captain Murdock, Ronnie
18 Powell, all of them. They got together and worked together,
19 all the jurisdictions, SLED. But the doctor said right there,
20 that's consistent. And MAIT said yeah, it hit him and then
21 took him, and he landed here, landed on the side. You'll see
22 the blood stain where his head hit, you remember Andrew Kight
23 came and Arsenio Lewis, you remember those guys last week that
24 said he was dead from the impact? Before I lose my train of
25 thought, that impact on that Duty is consistent with the

1 injuries that Davis had to his mouth. Do you remember when
2 everybody talked about blood out of his mouth, blood out of the
3 ear, remember that? Talk about that when you go back there.
4 Why is that so important? Even one of their experts, seemed to
5 be blood spatter I saw, do you remember that? Why is that so
6 important? You can consider the evidence or the lack of
7 evidence. Do you remember when they got to the house, they saw
8 him, Durkin takes a lot of pictures, but he did a heck of a
9 job, Womack, all of them. The swab, thought he saw something
10 and they swabbed it, swabbed the bottom. Guess what ladies and
11 gentlemen, it wasn't there. You know why? He cleaned it,
12 there's no other explanation. There should have been blood on
13 there. He got blood on his pants, he tried to get up here
14 yesterday, got up here yesterday, he had to explain, they
15 didn't have to do anything, the burden's on the State, but he
16 said he went and touched his face, that's how he explained the
17 blood on the back of his pants. I submit to you that blood
18 came off when he was cleaning it, got on his pants, got it some
19 other way when he was at the scene. I'll get back to that.
20 Let me show you what that's about. But the Duty, let's talk
21 about that Duty, too, I have a picture here, we're going to put
22 it up I just want to talk. I just want to talk about malice
23 because that's what this is about. What else about that dent?
24 Think about it. He comes down and he's on the wrong side of
25 the road, he pulls over, does that make any sense? Judge is

1 going to charge you the defense of accident and Mr. Swerling I
2 know is going to argue it. Accident is the unintentional act
3 of the Defendant while he was acting lawfully, and reasonable
4 care was used. That's what accident is. They're 0 for 3. It
5 was intentional, there was no reasonable care used in the
6 operation of that vehicle, and he was acting unlawfully on the
7 wrong side of the road, everybody said that, everybody. He
8 even said I was on the wrong side of the road. Why not stay in
9 your lane to go down? Why did you even get over? Think about
10 it. Why did he even get over. And that little dent under the
11 Duty was right behind him, it was in the scope, he was aiming
12 for him, that's the only thing that explains it. He pulls
13 over, that's his intent and he's coming down, doesn't give him
14 a chance to fight, he gets out and bam right then. Now, the
15 experts back and forth and they even disagreed on that, said
16 well, the impact back and to the side, you know, their expert
17 says 6 2, 6 3, 6 miles an hour impact that way, too, this way.
18 MAIT, God bless MAIT, and I don't know if they're here today,
19 Bratcher and Andis, it's like a sideswipe. They didn't really
20 too much disagree with that. Their experts sat there trying to
21 get a little more left, he says no, sir, the wheel hit, the 37
22 inch wheel hit the car and then it hit Davis, the car, and
23 that's the only thing that explains it, he didn't want to mess
24 his truck up, he'll kill Davis but he ain't going to mess that
25 nice truck up. And the only thing that's funny, you know why

1 it's so important, both experts say well, it may have come a
2 little bit, but it was like a ricochet, go watch, I was going
3 to play this but I guess I won't, watch Terry Cummings' video,
4 that car's not going left, it's going back, he hits it and it
5 goes back, that's what he wanted to do, he didn't want to mess
6 his truck up, didn't mess his truck up too bad. Then he goes
7 back, straight back, and remember what he said yesterday,
8 credibility, believability, he said I swerved hard left, you
9 remember that? No, sir, no, ma'am, you didn't. And that's the
10 intent, that sums it up. He's trying at the end, well, I did
11 swerve left, no, sir, no, you didn't. That car would have been
12 off to the left and Davis would have been that way, no, sir,
13 you didn't. And that's beyond all doubt we submit. We only
14 got to prove reasonable doubt, that's up to y'all, that shows
15 his intent right there at impact and that'll be up to y'all.
16 Does anything else make sense? Hard left and evidence down
17 there, the car would have been left, Davis would have been
18 left, why not swerve right? Why not swerve right? They claim
19 Davis was in the middle of the road and now we know he was by
20 the car, couldn't have been long, he didn't have but a few
21 seconds. And here's, if he, what happens next? And you know,
22 we got the brain here, I thought about this the other day. Old
23 Robert Macena, God bless him. I think he said he works in the
24 surgery room, he's an assistant, isn't that funny, we got his
25 brain, and you got the surgical assistant that just happens to

1 have a Ring camera. Guarantee he didn't know that. And didn't
2 know Terry Cummings was out there, and thank God for a bug, he
3 didn't know a bug was going to come by and activate that thing,
4 the bug got Bud. Do you remember when Terry Cummings said it's
5 motion activated and you can actually go back and see, you can
6 even watch it and see the bug come by, thank God for the bug.
7 And that caught the wreck. But then you got Macena. Law
8 enforcement goes out, canvassing the area, law enforcement gets
9 a bad name sometimes, sometimes they deserve it, but they did
10 an incredible job, all of them working together, all of them,
11 the citizens, law enforcement. And what happened? Roderick
12 Macena. Well, I tell you, he sleeps hard, he didn't hear it,
13 it took a lot to wake him up, but when he got it, he looked at
14 it, and what did he say, y'all go back and listen to it. You
15 see him going by, watch his speed as he's going down, I submit
16 to you he's already in the left lane starting to go down there,
17 he's heading down. He's heading down, and what do we hear?

18 (Playing video.)

19 MR. MEADORS: I can't tell you to close your eyes,
20 but when you're back there, close your eyes and listen. He's
21 coming down, look at the lights coming down, look at them
22 coming down. You know what he wasn't counting on, he wasn't
23 counting on Terry Cummings, he wasn't counting on the bug, he
24 wasn't counting on Roderick Macena. Remember when I asked him
25 did you think anybody was down there? Did you think that

1 anybody would know what you were saying? Because what we
2 caught back then, it'll be up to y'all, that shows his intent.
3 This to the point of impact, the car going back, not left, and
4 it's not because John Meadors said it or Matt or Danielle or
5 John Conrad, or the video or the text messages or the Berla,
6 it's because he said it. Go back and listen. Do you want to
7 hear intent? Do you want to hear malice? Go back and play it
8 a thousand times, as much as you want, what do you hear then?
9 That's the real Bud Ackerman; that's the real Bud Ackerman.
10 Y'all are going to decide what he said, y'all are going to
11 decide what he said. I'm allowed to argue the reasonable
12 inferences of what they came from. What the fuck do you think
13 you want, ain't nothing to talk about, fuck it. That'll be up
14 to y'all, y'all decide, is that his intent, is that his intent?
15 I know one thing, he admitted it, he admitted, he said it, do
16 y'all remember that? He knows he said it. One thing he didn't
17 say I'm sorry I didn't see you, it was a mistake, oh, are you
18 okay. He didn't spend much time there tending to him, did he?
19 Left him to die. He left, it's an accident, unintentional.
20 Did you stay and help? He leaves. Consider that. Why did he
21 leave? Because they know they've done something wrong, why did
22 they clean up blood, they know they've done something wrong.
23 That'll be up to y'all. Is that his intent? I should have
24 indicted him for robbery not because of the wallet, you see it
25 back there when he paid, they don't find it on him, they don't

1 find it on him, I should have indicted him for robbery. He
2 wasn't going to let him be with Meredith, that wasn't going to
3 happen, he made his mind up, we submit that. So he stopped
4 that, that ain't going to happen. And I submit to you, watch
5 him, are you upset, I submit to you, watch him, he's not upset,
6 I think he did what he wanted, that'd be up to y'all. But I
7 should have indicted him for robbery because he robbed Davis of
8 his life, he robbed him of time with his parents, with his
9 kids, with Meredith, with the mother of his kids, he robbed
10 him, he took it all, think about it. He took it all because he
11 was jealous and he wasn't going to have this, it wasn't because
12 they were broken up, and that's your decision, that's y'all's
13 decision. Then what does he do after that? What does he do
14 after that? I'm about through, I'm sorry if I'm taking too
15 long. What's he do after that? He leaves. Does he call 911?
16 No, sir, no, ma'am. Does he call a doctor, no, sir, no, ma'am.
17 He goes home. And he wasn't counting on the oil stain. And
18 Davis, Davis came back and talked to you, he said look at the
19 blood on his pants, look at the oil stain, I was getting out of
20 my car, check my CDR and my box, I didn't have time to do
21 anything. But he goes back after 1:11, after getting out, you
22 remember? When he got out the Berla showed the door open,
23 y'all. His brain, the door opened, for a minute he's over at
24 his body yelling that, showing his intent, how angry he was,
25 you can't have a better example of intent we reasonably submit.

1 For a minute, to get his wallet? And then he gets back in that
2 truck, he doesn't have trouble backing up, he didn't even hit
3 the pole, watch the stains and then he takes off, he didn't
4 have any trouble there, didn't kill anybody on the way
5 accidentally, didn't hit a mailbox, but he accidentally hit
6 Davis, that'll be up to y'all. 1:11 he got out of his car,
7 tells his folks, Davis is still on the ground, doesn't call,
8 1:31, calls his lawyer. Did you call 911? You want to talk
9 about credibility and believability, well, I was going to, I
10 was about to call but then I heard the sirens, so I knew they
11 were there. That'll be up to y'all. Was he going to call 911?
12 Well, I heard the sirens, I knew they'd be there, that's 1:44.
13 And then the police show up at 1:54, 43 minutes after this
14 happened. No 911, no help, and he's placed under arrest. Beg
15 the Court's indulgence?

16 THE COURT: Sure.

17 MR. MEADORS: You remember Dr. Shaw? Another reason
18 I love my job. Do you love your job? I love it when people
19 love their job, and he cares. How did he say that he first saw
20 Davis? And this is so important, when he killed him and left,
21 he didn't call, oh it was just an accident, I wasn't mad. He
22 turned him, he took it all, he robbed him and turned him into a
23 number. You remember that? 31151436, 31151436, 31151436, he
24 turned Davis McClendon into a number. And that's what he
25 wanted, and that's what he became. It's verdict day, it's

1 judgement day, he made a choice, he chose to drive into Davis
2 before he had a chance to do anything. It's your greatest
3 power, your power to choose. In just a little bit, you're
4 going to go back and exercise your greatest power based on the
5 evidence you've heard, the evidence you haven't heard, the lack
6 of evidence, the blood, and you're going to decide has the
7 State met its burden of proof beyond a reasonable doubt that on
8 May 7th at 1:11:34, thanks to Terry Cummings, Roderick Macena,
9 the MAIT Team, thanks to this Berla brain, he drove into him
10 intentionally. We don't have to prove motive, gosh, it's here,
11 isn't it? And he killed him then he left. I'll agree with one
12 thing Bud Ackerman said, and don't forget what was going
13 through Davis' mind, all these conversations, don't forget
14 that, it's up to y'all, Davis can't speak now, I'm speaking for
15 Davis. I agree with one thing Bud Ackerman said and he didn't
16 dispute that, he said what the fuck do you think you want.
17 Ladies and gentlemen, there's nothing else to talk about, I
18 agree with him, we respectfully, most respectfully ask you to
19 find Bud Ackerman guilty of turning Davis McClendon into
20 3115146 and we ask you respectfully to find him guilty of
21 murder. Thank you.

22 THE COURT: Alright.

23 (Off the record.)

24 THE COURT: Ladies and gentlemen, we're going to take
25 a very short break to give an opportunity for the Defense

1 to get set up for their closing so go back to the jury room,
2 don't begin any deliberations yet, and we'll get you back out
3 in just a few minutes, okay?

4 (Jury exiting Courtroom.)

5 THE COURT: Okay. A short break to get set up Mr.
6 Swerling.

7 (Off the record.)

8 BAILIFF: Remain seated, Court come to order.

9 THE COURT: Okay. Let's bring the jury in, please.

10 (Jury entering Courtroom.)

11 THE COURT: Let the record reflect the jury's back
12 in. Mr. Swerling, you ready for your closing?

13 MR. SWERLING: Yes, sir. Please the Court?

14 THE COURT: Yes, sir.

15 MR. SWERLING: Meadors, Conrad, Danielle, good
16 morning ladies and gentlemen. I need to make three apologies
17 up front. Number one, I need to stand over here near the
18 podium, I have a little bit of a balance problem sometimes, and
19 I just want, I want to make sure, I can't run back and forth
20 like Mr. Meadors, he's a lot younger than me, so I just wanted
21 to let you know that up front. Number two, I, sometimes I have
22 to get some water because my mouth is really dry from either
23 medication or whatever it may be. But I just wanted you to
24 know that in case you say what is he doing, okay? And so I'm
25 going to stand here, and I appreciate, I have appreciated the

1 last two weeks with you folks. This has been an incredible
2 trial where we had an interruption for three days, you went
3 through, I'm from Columbia, Columbia didn't nearly get hit as
4 hard as you guys did with the power and with everything being
5 closed, we got hit, but not quite. And coming back to Court on
6 Wednesday I was most appreciative of the fact that, you did
7 that, you're here today, I apologize about you being here
8 today, but the trial got a little extended because of what we
9 all went through. And we are into our, I think it's the actual
10 eighth day of trial and it's coming to a close, it's coming to
11 an end. And I just wanted you to know how much I appreciate
12 everything that you've done and your attention and your
13 willingness to be here in sort of an involuntary way because
14 you got selected on the jury, you didn't, you won the lottery,
15 you got seated on this jury, but why did you get seated on this
16 jury? You all got seated on this jury because the Judge, Mr.
17 Meadors, myself all felt that you could be fair and impartial,
18 that you have not formulated an opinion about this case, you
19 have not expressed an opinion, that you had an open mind about
20 what happened in this particular case. And as a result of
21 that, a number of jurors were excused, but you all here are the
22 ones that we collectively agreed would be the most fair and
23 impartial jury that we could have in this case. And I still
24 feel that way, still believe that, nothing's changed that at
25 all. So I want to thank you and tell you how much I appreciate

1 it. I also want to tell you how much I appreciate everybody in
2 here involved with the Courthouse and the staff and the
3 sheriff's department, everybody has been very accommodating and
4 done everything they could possibly do to make me feel
5 comfortable during a very difficult situation over the last
6 couple of weeks. I travel around the state, this is the best
7 and I just want you to know that, you should be proud of these
8 folks, your clerk and all the staff here, deputies, it's just a
9 real treat to be here. And I've come back and forth to
10 Greenwood on a number of occasions almost for 50 years and know
11 a lot of the lawyers here, and just, I just enjoy being here
12 and thank you. Someone once told me that a preacher basically
13 loses his congregation after he talks seven to 10 minutes. And
14 you may know what I'm talking about. You try to stay, hold
15 your attention and make sure you hear everything that's being
16 said, but at some point, you kind of drift off a little bit.
17 But if it's real important, if something's being said that's
18 really important in the situation, you pay attention. And I
19 would like to speak seven to 10 minutes, but that's impossible
20 based on upon two weeks of testimony in this case, two weeks of
21 evidence. So I'm going to be speaking a little bit longer than
22 seven to 10 minutes, I can assure you, and I apologize for that
23 as well. But I need to cover some things, and I need to make
24 sure that you get the, from what we're asking you to consider
25 in the evidence that shows in this case, or the lack of

1 evidence. There's a lot of emotion in this case, absolutely a
2 lot of emotion, and Mr. Meadors, by the way, I've known him for
3 almost over 40 years. We've tried other cases together, I have
4 ultimate respect for him, he's a heck of a trial lawyer. Mr.
5 Conrad, I've known less time, but he's a great trial lawyer,
6 Danielle actually helps me sometimes when I need help up here.
7 So we know, we're not, there's no animosity between us even
8 though we may snap at each other a little bit or express
9 something once in a while, at this point, we know each other.
10 We're going to see each other in a week or two in some other
11 situation and I just don't want you to think it's personal at
12 all, it is the nature of what we do is, and obviously there is
13 emotion in it. So I just wanted you to understand that and
14 appreciate that. But ladies and gentlemen, this case cannot be
15 decided on emotion. Mr. Meadors, the lawyer he is, a great
16 lawyer he is gets emotional and, but the case is not based on
17 emotion, it's based upon facts, it's based upon evidence, and
18 it's based upon the law, and that's what you're going to have
19 to decide in this case. What are the facts of the case, what
20 is the Judge's instructions on the law and how am I going to
21 reach a verdict. That's where we are and that's where we're
22 going to be going during the course of your deliberations and
23 maybe, you know, for a while until I finish, until the State
24 gets another chance to respond until the Judge gives you what
25 the law is in the case. But this case is a tragedy, nobody

1 ever said it was not a tragedy, someone is passed away, someone
2 is dead, a family has lost their son and I just, I would never
3 say anything other than that, it is a tragedy. The, your duty
4 though, as I said is to decide the case based on the facts of
5 the case, the evidence in the case, the lack of evidence and
6 the law in the case. The Judge as you know during the course
7 of trial has decided on legal issues, that's his function in
8 the case. And he, I think once or twice he may have called Mr.
9 Meadors and I out on something, Mr. Conrad, that's what it is,
10 it gets, you know, in a situation, he has to a duty, they have
11 a duty to object, I have a duty to object, we have a, that's
12 our roles as advocates, we are advocates, and we are presenting
13 evidence, we are challenging evidence, we're cross examining
14 witnesses, that's what we're supposed to do. But it's not
15 personal, it's all part of the procedure that we follow in this
16 state and this country. It's not any different than any other
17 state, any other city, any other county anywhere in the
18 country. But you decide the facts of the case, nobody can
19 dispute what your ultimate finding is, I mean, that is,
20 whatever you decide in this case is going to be the verdict in
21 this case. Just make sure, just understand that, okay, ladies
22 and gentlemen? It's a very important, you're actually the most
23 important people in the Courtroom and no disrespect to the
24 Judge or the prosecutor, but you are the most important people.
25 The State has a burden of proving guilt beyond a reasonable

1 doubt, just not raising emotions, but proving guilt beyond a
2 reasonable doubt. And they've charged Mr. Ackerman with the
3 most serious crime known to man. From historical times until
4 now, there is nothing more serious than murder which is the
5 killing of another human being with malice aforethought as Mr.
6 Meadors has argued over and over again, it's an intentional
7 killing, and you have to have the intent to go ahead and kill
8 the person that the State has charge you with murder. There
9 are certain legal principles that you will consider about
10 whether or not, about intent, and about reasonable doubt, the
11 Judge will give you instruction on reasonable doubt. And I
12 would just submit to you that the definition of the reasonable
13 doubt that I ask you to consider or I submit to you is this, if
14 at the conclusion of this case and you go in to deliberate and
15 you have a doubt about the evidence or the lack of evidence on
16 whether or not the State has met its burden of proof beyond a
17 reasonable doubt, you must resolve that under the law in this
18 State and everywhere else in the Defendant's favor and find him
19 not guilty. I mean, it's as simple as that, that is what your
20 function is and that's what the law is, and you must find
21 someone not guilty if you have a reasonable doubt. We talked
22 about at the beginning of the case there's also another
23 principle, it's the presumption of innocence. I think Mr.
24 Meadors alluded to the fact that some of y'all know what you're
25 going to do in this case, well, the law doesn't allow you to

1 know that, the law doesn't allow you to have a judgement at
2 this point. The law says that individual over there, even at
3 this point, and until you go into the jury room is presumed to
4 be innocent. That presumption carries with him all the way
5 into the jury room and until, it's not stripped of him, it
6 doesn't go away unless 12 people who are going to deliberate in
7 this case find beyond a reasonable doubt that the State met its
8 burden of proof. That's the only time that presumption of
9 innocence would disappear. And it is not just a simple
10 proposition of law, it is the mainstay, the foundation of our
11 system of justice, the presumption of innocence. We are unique
12 in the world with that, we are unique with our burden or proof
13 that the State must meet. They can't just charge somebody,
14 they can't just make it an emotional situation, they have to
15 prove guilty beyond a reasonable doubt. Now, the Judge will
16 also tell you as to that that when he's discussing reasonable
17 doubt with you, at the, reasonable doubt also means that at the
18 conclusion of this case and when you go in to deliberate if
19 there's a real possibility that the Defendant is not guilty,
20 did not commit the crime that the State has charged, a real
21 possibility and you have that belief in your mind, you must
22 resolve that also in favor a person accused of a crime. That
23 is the beauty of our system. You as a jury sit between the
24 government, the State, and people accused of a crime. It's an
25 incredible, wonderful system and that's why I've been at it for

1 like 51 years. And I probably won't, I'll probably die in a
2 Courtroom, that's probably the way it's going to be, I don't
3 ever see retiring because as Mr. Meadors pointed out this is
4 what we enjoy doing, this is what we love to do, we love the
5 law, and we love practicing law in front of a jury. And I
6 don't disagree with what he said about that. And he and I have
7 tried a number of cases together over the years, and again, we
8 know each other pretty well. So reasonable doubt, real
9 possibility of innocence, of not being guilty, the presumption
10 of innocence, the basic tenets of our law, the foundation of
11 our system, our entire system. Now, how do you go about and do
12 that, how do you judge a case, the credibility of witnesses.
13 Credibility means basically the believability of a witness or
14 witnesses, one against several, or several against one. The
15 Judge will give you instruction on that about credibility of
16 witnesses. And basically what it means is this, when you
17 listen to a witness, you have to look at motive, interests,
18 bias, any prejudice that they may have, any inconsistency
19 they've made in the past, how their testimony matches the
20 evidence in the case or doesn't match the evidence in the case,
21 that's how you judge a credibility witness. But one thing that
22 is not part of the law is that you're looking at the witness,
23 you see the witness, you see the witness' demeanor on the
24 stand, is the witness looking at you, conveying to you
25 directly. These are the things that you will have to decide

1 during the course of the case. And you saw the witnesses on
2 the stand and based upon that with the credibility of the
3 witnesses and also having seen people on the witness stand,
4 that's how you judge credibility of the witnesses. As I said,
5 murder is the most serious crime that anybody can be charged
6 with in the history of this world. And that's what they
7 decided to charge him with. I submit to you that the State has
8 not met its burden of proof that Mr. Ackerman committed murder
9 with malice aforethought, with criminal intent to kill
10 somebody, they have not done that. I submit to you that they
11 also have the burden of disproving any claim or any evidence of
12 accident beyond a reasonable doubt. That's their burden and I
13 don't believe they've done that either. Now let me just say
14 this, the difference between murder and then you talk about
15 accident, the Judge will charge you about accident and what
16 accident is. And Mr. Meadors read it, the Defendant has raised
17 the defense of accident, an act that may be excused on the
18 ground of accident if it is shown that the act was
19 unintentional, that the Defendant was acting lawfully, and that
20 reasonable care was used by the Defendant in the operation of
21 the vehicle. The burden is on the State to prove beyond a
22 reasonable doubt that the act was not an accident, not on the
23 Defendant. That was caused by the negligence of carelessness
24 on the fact, I'm sorry, on the part of the Defendant in the
25 operation of his vehicle or by unlawful activity. So you have,

1 there's an issue here about accident, the Judge will instruct
2 you about it, I've just kind of given you a summary of it, but
3 I'm coming back to this. I submit to you that the State has
4 not proved murder, they have not proven that Mr. Ackerman
5 intentionally killed, intentionally killed with malice
6 aforethought with an evil heart as the law is, to kill Davis
7 McClendon. And based on that, we submit that Mr. Ackerman is
8 entitled as anybody would be to a verdict of not guilty. And
9 not guilty does not mean that someone didn't do anything or
10 didn't cause a problem or didn't cause an issue, didn't cause a
11 death, that doesn't mean that at all. What it means is that
12 the State has failed in the burden of proving the Defendant
13 guilty under the law, the charge that's being levied against
14 him and that charge is murder, and we submit to you they have
15 not met that burden. Y'all read the paper, you watch tv, you
16 talk about different issues, I submit to you you know what
17 murder is, I submit to you as far as what you have seen in our
18 lifetime, there are murders that are clearly murder. Somebody
19 walks into a liquor store or a Quick Stop or wherever it may
20 be, shoots the clerk, that's murder, that's murder. Someone
21 walks into a bank, shoots the teller, that's murder,
22 intentional killing, intend to kill. Someone goes into your
23 house or someone's house and kills the person in the house,
24 that's murder, that's murder committed during the commission of
25 a burglary or illegal entry into the house. Charlottesville,

1 Virginia, a couple years ago when the individual rode through a
2 crowd of people and killed the young girl, that's murder.
3 That's what he was charged with, murder. Those are the kinds
4 of things that I ask you to consider versus what's been shown
5 in this case. Again, not emotion but facts, that's what we
6 have to deal with, the facts. Bud Ackerman took the stand
7 yesterday, nervous as hell, likely so. His fate is in the
8 hands of a jury on a very serious charge, the most serious
9 charge there is. But on the witness stand he maintained his
10 composure, on the witness stand you had a chance to see him,
11 you had a chance to observe him. And I submit to you what you
12 saw on that witness stand is not a killer because that's what
13 they charged him with, being a killer, having killed somebody.
14 Somebody with no prior record sitting up there testifying, and
15 by the way, he did not have to testify. The law in South
16 Carolina and throughout the country is a Defendant never has to
17 take the witness stand in a criminal case; the burden is always
18 on the State to prove guilt beyond a reasonable doubt. And he
19 subjected himself to cross examination, and he answered the
20 questions, and he answered the questions, very little was in
21 dispute by Mr. Ackerman about the data and the Berla, the data
22 from the BMW, the phone calls, other things that have been
23 referred to in this case, where he traveled, what he did, he
24 didn't dispute any of that. He answered the questions, he
25 didn't dispute any of those texts and those messages, and most

1 of the conversations. I submit to you that was truthful
2 responses, a direct response as to you, to the questions that
3 were being asked. He's a young man, he's in his 40s, grew up
4 here, he is, has a strong work history, work ethic. Has strong
5 family ties to his family and he had a strong family tie to his
6 wife and his children. And as I've said he answered the
7 questions. The Judge would have told you if he did not take
8 the witness stand that you couldn't even consider that, that's
9 not even allowed to be considered that a person doesn't take
10 the witness stand. Under our law that cannot be in any way
11 inferred by any jury as to what they believe about the
12 Defendant in the case. But Mr. Ackerman decided to get up on
13 the witness stand, one, to testify and subject himself to cross
14 examination about a lot of questions, and I submit to you that
15 he did the best he could to answer those questions. His wife
16 testified that's no longer his wife, but on the date that this
17 incident happened, May 6th, May 7th, she was his wife. They
18 were married in 2012, they had three children, beautiful
19 children, they did a lot of things together, families together,
20 her family, his family. I submit to you they were a close nit
21 family and had strong roots in this community, the Ackermans
22 have a strong root in this community. She was the love of his
23 life and that lasted even after the separation, that didn't go
24 away, he wanted to reconcile, she didn't. And marriages
25 sometimes fail, I mean, we know that, we know that. But she

1 was the love of his life, and I'm going to get into it a little
2 bit more later on, but she decided to go ahead and ask for a
3 divorce. The divorce was granted on ultimately one year later
4 on the one year separation, I'll talk about the legal
5 separation in a minute. There is no such thing as a legal
6 separation. What the Court will do is order separate
7 maintenance, where you live, who gets the house, who pays the
8 insurance, who pays the doctors, who pays child support,
9 visitation, those kinds of things. You are not authorized at
10 that point, you're still married, you're still married legally,
11 and Meredith Ackerman was married to Bud Ackerman on May 6th
12 and May 7th. The divorce hearing was about a month, five weeks
13 away, I'm not exactly sure when it was, but she was married to
14 him. And she could not wait to go out and date, that's
15 basically what happened, she had to go out and date, couldn't
16 wait another four or five weeks, that's what was
17 going on between him and Meredith. Let's go to counseling,
18 let's reconcile, I love you. You saw some of the texts, I love
19 you, why are you doing this to me. I mean, some people just
20 have a difficult time when the spouse tells them we've got to
21 separate, I want a divorce. Does everybody just kind of give
22 up, does everybody just lose all the emotions they had, the
23 love they had when they met, and when they got married, and
24 when they had three children? No. And Bud was having a
25 difficult time with that, admittedly having a difficult time

1 about whether or not his wife loved him anymore, wanted to
2 leave him, and ultimately on April 29th finding out that she
3 was actually dating someone. So couldn't wait, couldn't wait.
4 The separation was painful to Bud, he's still in love, and you
5 have to account for people's emotions when things like that
6 happen. There's a difference between her attitude and his
7 attitude. Did Bud Ackerman go out and date? No. He's at that
8 bar, he is not with a woman, there's no evidence that he ever
9 went out and dated anybody. He was waiting, doing everything
10 he could to try and reconcile and hopefully that divorce
11 hearing would never take place in May, but that was his hope,
12 that was not her hope. And I'm not chastising her and slamming
13 her character, the fact of the matter is she decided the
14 marriage was over, he did not believe that, he believed there
15 was a possibility of reconciling. And we cannot fault someone
16 who has those kinds of emotions, who's been in love with
17 somebody and all of a sudden finds out his wife doesn't love
18 him anymore. And you read the texts that he sent. On April
19 29th, not in dispute, April 29th of '23, Bud Ackerman found out
20 from a third source, and I don't remember exactly what the
21 testimony was, but that Davis McClendon and Meredith were
22 seeing each other. And he called her, he initiated the call,
23 he had known him all of his life, they weren't great friends,
24 they didn't socialize together but they had known each other
25 all throughout his life. And he basically asked him, the

1 discussion as I recall the testimony, and by the way, I'm over
2 there trying to take notes, I'm up here, you remember the
3 testimony as you remember it not what I say or what Mr. Meadors
4 says or Mr. Conrad. But basically he was asking Davis
5 McClendon, just hold off, hold off with this situation that you
6 have with Meredith, I found out about it. And according to
7 Bud, Davis McClendon said no problem, I'll hold off out of
8 respect for you, that is what Bud Ackerman believed, that was
9 April 29th, there wasn't an argument, there were no threats,
10 there was no one coming after either person, and I agree with
11 Mr. Meadors that Davis McClendon had nothing to do with the
12 initial separation of the parties, we don't dispute that. But
13 he entered the picture sometime prior to April 29th, I don't
14 know exactly the date, but he was dating Meredith and despite
15 the conversation he had with Bud Ackerman, he couldn't wait
16 four or five weeks, and we know that because on May 6th, May
17 7th, they were together. Whether it's a man or a woman in the
18 situation that Bud Ackerman was in, there's all kinds of
19 emotion running through a person, some that we understand, some
20 we don't understand, but the one thing that if you're not the
21 moving party wanting to divorce, we at least know from human
22 nature that there's pain involved, pain. And particularly pain
23 when someone is already out while you're still married, dating
24 someone else. On May 6th Bud took his children to the fair in
25 Abbeville with one of his friends, Bobby Scott, they spent the

1 day together and at some point during the day he even sent a
2 text to Meredith with the pictures of the kids, so at that
3 point everything was fine. When he got home later on that
4 evening, and we note the times from the video, and frankly
5 ladies and gentlemen, I have no idea what they're talking about
6 the two hours and something difference between what's on the
7 video from Key West and how to go ahead and calculate that,
8 that's going to be up to you, but we do know what time he got
9 there and that's where he went. Now, first time today I submit
10 to you we heard what the State contends how many beers he had
11 at Key West, there's no evidence of that, there's no evidence,
12 nobody came into Court and testified that he had five beers,
13 six beers, seven beers, whatever Mr. Meadors referenced.
14 That's not on the video, nobody counted that on the video,
15 nobody came into Court to testify about it, that just came up
16 during closing argument. Not one person was called into this
17 Courtroom from Key West, not one person, all the people you saw
18 there came into this Courtroom and testified that Bud Ackerman
19 was drunk, not one. There is no evidence in this case about
20 how much he had to drink over there and whether he had any
21 beers during the day is from the course of time that he went to
22 Abbeville until 1:00 at night. Now, he admitted drinking some
23 beer, does he know how much? Not exactly, it's a year ago, but
24 he did not dispute that, but this is the first time we heard
25 what the State contended what was consumed there. You remember

1 Mr. Meadors or Mr. Conrad was asking Abbi about what happened
2 out there when she saw him? Abbi didn't say he was
3 intoxicated, Abbi didn't say he was drunk. She talked to him,
4 she didn't say there was any threats or his attitude toward
5 Davis McClendon was bad, she just did not think that Meredith
6 and Davis ought to come there that night while Bud was there.
7 Ladies and gentlemen, does that make sense? Sure it does, sure
8 it does. But what was interesting is I never heard her opine
9 that Bud was constantly drinking beer and was under the
10 influence and had a threatening attitude toward Davis
11 McClendon, that just didn't come out. And she was right next
12 to him talking to him and not one other person from that bar
13 came here. Also interesting in this case, I submit to you, the
14 only person, only person that said he was drunk, and I think
15 that was the word she used, he was drunk, was Meredith Haynie,
16 formerly known as Ackerman. Now, again, we talk about
17 creditability of witnesses, motive, interest, bias, prejudice,
18 she has no love for him now, especially what happened on that
19 evening, so you consider her testimony in that light. But
20 she's the only person, the only person that ever came in this
21 Courtroom and said that Bud Ackerman was under the influence
22 and drunk. Remember this, after this incident, Bud Ackerman,
23 when he was at his parents' house was surrounded by law
24 enforcement officers, he was arrested that night. Sat in the
25 patrol car transported down to the sheriff's department and

1 charged. All these experienced law enforcement officers, all
2 of them had the opportunity to take the witness stand, some
3 did, but I ask you to consider this, not one law enforcement
4 officer who was in contact with Bud Ackerman after this
5 incident ever testified that he was under the influence or
6 drunk, not one. So how do you square that between what
7 Meredith said and what we know Abbi didn't say, what no patron
8 in the bar said, and no law enforcement said. Don't you think
9 if Bud Ackerman was under the influence or drunk as the State
10 has suggested, as Meredith has suggested, that somebody would
11 have come forward and said you know, he appeared to be under
12 the influence to me. These are people who are trained in that
13 area, nobody came up here and ever testified to that. You know
14 why? Because he wasn't, that's why, and the State couldn't,
15 couldn't join that together, couldn't cross that bridge with
16 any real testimony. Now, so Bud, I mean Davis McClendon and
17 Meredith were out hitting the bars, hitting the restaurants,
18 whatever they were doing, and Bud states to you that, and
19 ladies and gentlemen, you have to judge this, the credibility
20 of the witness, whether he was making a mistake or just didn't
21 remember or he was nervous or scared or whatever, the first
22 time he heard from Davis McClendon was when he actually
23 believed they were together, actually believed it. He
24 suspected that they were together, and that was the reason why
25 he did the route that he did, the traveling that he did. He

1 did not dispute going to those different locations, he didn't
2 lie about that, he answered the questions, yeah, I went here, I
3 went to this house, I went to that house looking for them
4 because I suspected they were together, and I wanted to talk to
5 Meredith. Why did you want to talk to Meredith? Because she
6 wouldn't answer the phone. And what was going on in his heart
7 and his mind about his wife and how he was feeling, you just
8 have to go with human emotion on that, folks, I cannot tell you
9 because we all react differently on that. But he never
10 expressed a threat to Davis McClendon, there is no testimony in
11 this record that he ever expressed a threat. There is a text
12 going back sometime April 9th that he's a shit, but you know
13 what, ladies and gentlemen, when you know somebody all their
14 life and you find out that they're dating your wife, or your
15 husband, either way, what are you supposed to say? Is that
16 something that's supposed to make you happy? I submit not, I
17 submit that doesn't make anybody happy, that wouldn't make
18 anybody happy, husband or wife. But he got a call, he got the
19 call from Davis McClendon at 12:51. Now, the State has
20 introduced this text from Davis McClendon to some unnamed
21 person, and I respect the fact that they didn't bring out the
22 name, but that text was sent at 12:42. I understand that Bud
23 is drunk, he didn't know that because he had never seen him,
24 and he's out looking for, I don't remember how it was phrased
25 whether he was out looking for Meredith or bothering Meredith,

1 and see if you can get his father maybe to rope him in,
2 something to that effect. Well, that was at 12:42, and that
3 evidence is in the record, the telephone records. Now, did he
4 wait to see what Bud Ackerman was going to do? No. At 12:51,
5 he called Bud Ackerman. Now, again, who called who? He called
6 Bud Ackerman at 12:51 and said he was something to the effect
7 I'm trying to be patient, he's trying to be patient, he's
8 trying to be patient. I infer or suggest to you that it
9 probably had to do with Bud's repeated efforts to try and talk
10 to Meredith and call Meredith on the phone, but he's the one
11 trying to be patient, and he's the one that initiates contact
12 with Bud Ackerman. I'm trying to be patient; the man is going
13 out with his wife who's still legally married to him who he
14 loves and he's suffering, and he's had pain from it. And they
15 talk about meeting, talking about getting together and talk.
16 You decide what you heard on the stand and what was said and
17 what was not said, but it had to do with getting together and
18 having some kind of meeting. At some point Mr. McClendon got
19 pretty aggressive. At 12:59, eight minutes later he called him
20 again, basically, I'm going to kick your ass, this is after he
21 sends the text to try and calm Bud down, have somebody calm Bud
22 down and rope him in and at some point at 12:59 he's I'm going
23 to kick your ass. Ladies and gentlemen, that's fighting words.
24 Does anybody believe it's not fighting words? Let's meet,
25 let's meet, what did he think? He told you what he thought, he

1 thought they were going to talk which is what they did on April
2 29th without threats, without any kind of animosity, without
3 any, nothing was suggested on April 29th or by Bud Ackerman in
4 any of these phone conversations that he was threatening Davis
5 McClendon, that he was not patient with Davis McClendon or that
6 he was going to do something to Davis McClendon, nothing. He's
7 trying to be patient. And I'm not trying to do, I'm just
8 trying to lay out the facts, this is not about his character
9 because I know nothing about him other than prior to him dating
10 Meredith McClendon. He was a family man, he worked, he had a
11 business or he was working at a business, I know nothing
12 negative about him, that's not what I'm trying to suggest. I'm
13 talking about now and what was going on at that time, not
14 trying to assail his character. And I don't know much about
15 Meredith except what I've learned about their marriage and
16 through their marriage and the fact that they had children, had
17 a home, and that man was working providing for his family,
18 traveling with the different families and doing everything that
19 a family unit should. So the discussion about meeting at Bud
20 Ackerman's home, now, Mr. Meadors made light of that, but
21 ladies and gentlemen, let me ask you this, if you are intending
22 to kill somebody, if you're intending to go ahead and have a
23 fight with them and kill them, are you going to suggest you
24 meet at my parents home? No, you know that, that's just not
25 even believable, that is not something that can be believed in

1 this case. So that was what Bud said we'll meet over at the
2 home, at my home. That suggests, and I'd ask you to infer from
3 that that Bud Ackerman was just going to talk, that's all he
4 wanted to do, that's all he was saying, come to my parents'
5 house and we'll talk. At some point, and I apologize, if there
6 was a mistake about who said let's change the location, I'll
7 accept responsibility for that, but I don't disagree with Mr.
8 Meadors that Meredith was the one that suggested changing the
9 locations. And ladies and gentlemen, that's an interesting
10 fact that I ask you to consider. She is with Davis McClendon,
11 she knows he's been drinking, she knows whatever he's been
12 saying to her, which I don't know, but I would suggest to you
13 that Meredith Haynie knew around 1:00 on May 7th that it was
14 not a good idea for Davis McClendon to meet her husband at his
15 house. Why? Because of Davis McClendon's condition and things
16 he may have said, you can infer that. What may have been said
17 that Meredith changed the location, don't meet at my in-laws'
18 house, go down to Avid Road and beyond Sawgrass. She knew when
19 she told him to go ahead and change the location what his
20 condition was, what his state of mind was, what his attitude
21 was, and she went ahead and changed the plans where to meet and
22 directed them to go to that location, you consider that. What
23 was his condition at that point? We do know this, that he had
24 a, from the autopsy, he had a point 11 blood alcohol level, we
25 do know that he was also on Adderall, I'm not suggesting it was

1 illegal, it was prescription as far as I understand. But he
2 was drunk under the law. South Carolina you will hear, and I
3 believe we asked the doctor and also Captain Murdock that above
4 a point 08 there's an inference that you are under the
5 influence, can't drive, under the influence. What does that
6 mean? Y'all know what it means, y'all have seen people who are
7 intoxicated and under the influence, he had a point 11, point 3
8 one hundredths of a percent higher than a point 08 which means
9 he was drunk. Then Dr. Shaw described everything he could
10 find, but he also said this when I was asking, people who are
11 under the influence can react in different ways. One of the
12 things that's a sign that someone's under the influence is they
13 lose their judgement, they're more risk takers, they're maybe
14 more aggressive. You consider that in evaluating this whole
15 case, please. So he had a point 11, over a point 08, and he
16 was driving, folks, he was driving, and Meredith knew that was
17 the situation, but said, and that's why she said don't go to my
18 in-laws' house, go down to Avid Road and Sawgrass. By the way,
19 I tried to look for the picture there, but if you see the
20 interior when you're going back to the jury room, the interior
21 of the BMW, there's a beer can sitting in the holder there. So
22 not only was he under the influence when he drove there, not
23 only was his attitude at that point, I'm losing patience, I'm
24 trying to be patient, meet me, there's a beer can in the car
25 and you decide what that, the inference is from that. At 1:09,

1 Bud calls him back and said I'm not coming. They had already
2 decided now to go ahead down to Sawgrass and Avid Road at the
3 end which is a dead end. After Sawgrass, there is no traffic
4 there, okay? I ask you to consider that, no traffic. There's
5 a two way, there's a road, it's not a divided road, but there's
6 a lane, two lanes there that, from both from Sawgrass to the
7 gate, a very short distance, but not a traveled road. I ask
8 you to consider that when you hear the instructions on the law.
9 He's says I'm not coming. Why was he not coming? He wasn't
10 going to go ahead, he, at some point Mr. McClendon was
11 aggravated and angry and I'll kick your ass, used some
12 derogatory words about female parts of her body, called him
13 that, I'm not going to go into that. But he also agreed, we'll
14 talk, we'll talk. So when Bud Ackerman finally decides to go
15 down there after 1:09, he has been assured by Davis McClendon
16 that there's not going to be a fight and I'll tell why, one
17 reason there's never going to be a fight, a fist fight or
18 whatever it is is that Davis McClendon was six feet one and a
19 half inches, weighed 189 pounds we know from Dr. Shaw, Bud
20 Ackerman was five foot seven, and 135 pounds. Now, can you
21 imagine a person that sat on that witness stand fighting
22 somebody as big as that? Ridiculous, absolutely ridiculous.
23 So Bud called him back and said I'm not coming, he convinces
24 him to come and Bud goes down there because he believes that
25 they're going to talk, just kind of talk it out. He is upset

1 about the fact that his wife who's still his wife is dating,
2 and he's upset that Davis McClendon's dating his wife and he's
3 a long term, they didn't have a friendship, he's known him a
4 long time. So Bud heads down about a half a mile, whatever it
5 is from his parents' house to the subdivision. Now, as he
6 comes down Avid Road, Davis McClendon had already turned around
7 and was facing up Avid Road with his headlights on. Folks,
8 we've all been driving at night when oncoming headlights are at
9 you, there's glare, it's not entirely visible, whether it was
10 high beams or low beams, I'm not suggesting whether it was, but
11 there is glare, and when you're looking down the road toward
12 the, beyond Sawgrass, all you see are lights, that's what you
13 see, lights. He saw a car, he didn't see if the person was in
14 the car or out of the car, but he saw headlights. What was his
15 plan according to him? Beyond Sawgrass, he was going to pull
16 up alongside of Davis McClendon and talk to him. He had no
17 plans to get out of the car, none. He didn't know Davis
18 McClendon was getting out of the car until the very last second
19 or had gotten out of the car. That was what he testified to,
20 when I drove down there my plan was to pull parallel next to
21 him and we could talk. He wasn't going to put himself, ladies
22 and gentlemen, I suggest to you, the size of the bodies, maybe
23 the attitude and aggravation that he was going to get in any
24 kind of fight with Davis McClendon. At the last second as he's
25 approaching, and look what speed it was, people have testified

1 to what speed it was, what the speed limit is in the area, was
2 he going fast? You decide that. Was he in the other lane of
3 traffic? The Judge will instruct, that's a matter for you to
4 decide whether or not that was lawful or unlawful, but I ask
5 you to consider this, the location where this happened, this
6 incident happened was not traffic oriented, there was no
7 traffic going back and forth between the gate and Sawgrass. So
8 if he pulled over, his intention was to pull over and all he
9 knew at that point was that he was in the car and they were
10 going to talk. The State has made all these suggestions about
11 whether or not he was on the phone with him at that time,
12 ladies and gentlemen, I have no idea whether he was on the
13 phone or not. I do know this, his phone was in the car when
14 they examined the car, it wasn't on him, it was in the car.
15 And he was out of the car, is there any dispute about that?
16 There's no dispute about the fact that he was not in his car,
17 there's no dispute about the fact that he was out of the car.
18 As Mr. Ackerman is going down the road, I'm going to get into
19 it briefly a little bit, he does not see Davis McClendon
20 standing out in the road, he expects him to be in the car,
21 doesn't see a door open, doesn't see any lights in the car
22 except the headlights glaring at him, the overhead light, but
23 cannot make out anything else other than that as he's going
24 down the road at a speed that he, as he testified to, I just
25 really had no idea how fast I was going. Did he deny it? No.

1 He said I had no idea how fast I was going. At the first
2 opportunity when he saw that Davis McClendon was outside the
3 car, he did what he thought he could do, he didn't go right, he
4 didn't go straight ahead, he went left into the BMW to stop the
5 momentum of his car. And I will talk to you a little bit about
6 that as well. He crashed into the BMW, avoidance, he did what
7 he could to avoid hitting Davis McClendon. Is there any other
8 explanation hitting that car? He didn't go right, and he
9 didn't go straight ahead, he went left into the car. We do
10 know that Davis McClendon was outside of the, car whether it
11 was two feet or three feet as Mr. Torres testified, I have no
12 idea, I'm not an engineer, I'm not an expert in the area. But
13 I submit to you I do know one thing that the evidence has
14 showed that Davis McClendon was standing outside of the
15 vehicle, standing outside with his shirt off. Now, folks,
16 we've all had experiences in life and if you're having a
17 discussion with someone, and say I'm going to talk, but when
18 the person gets down to the location where you're going to
19 talk, he's standing there with his shirt off, what does that
20 suggest to you? He's going to fight, he's prepared to fight,
21 is there any other explanation why he would have his shirt off
22 standing in the road? None. But despite the fact that he
23 assured Bud Ackerman we're going to just talk, he was standing
24 there getting ready to fight, and he was drunk. Bud Ackerman
25 steered into the BMW by his own testimony, and that is

1 supported by what I'm going to suggest in a few minutes. When
2 he hit the car, somehow or another he lost control of the car,
3 and the car veered off and actually hit Davis McClendon causing
4 his tragic death. Did Bud Ackerman know right away that that's
5 what happened? I suggest he did not. I suggest to you the
6 momentum carried his vehicle to the end of the road near the
7 gate not too far from the gate and he got out to see what had
8 happened. Now, if he got out and he's there, maybe around a
9 minute or so, you recall whatever the testimony is, and he saw
10 him just laying there on the side of the road. There's no
11 dispute about the fact that that's where he was, no dispute.
12 His sock or his shoe, his shirt was somewhere distant, but it
13 had been off, and he was petrified. He was scared. What the
14 fuck happened? Now, you hear some things on that tape, I still
15 don't understand, I cannot explain to you why nobody went ahead
16 and examined, they haven't said exactly what was said. But let
17 me ask you this, do people always act rationally in an
18 irrational situation? Here you are, you've hit somebody, you
19 walk over to them, you bend down, got blood on his pants, he
20 didn't deny that, touched his face, believed he was dead and he
21 was exasperated, he was yelling, what else would you do in that
22 situation except yell, I mean, it's panic, fear, what the hell
23 happened here, what just happened, why did this happen, why are
24 you on the side of the road, why are you dead? Basically,
25 those are the kinds of things, emotions that go through

1 someone. People don't always act rationally in irrational
2 situations, they say things, they do things that cannot be
3 explained, that's human nature, absolute human nature, and no
4 one knows, no one in this Courtroom knows what they would do
5 under similar circumstances, no one can say what you would do
6 until it happened to you. Should he have been at the speed
7 that it was suggested he was at? No, no. But again, I ask you
8 to consider where it happened, why he had gone over to the left
9 lane, should he have been in that lane? No. But that is not a
10 road as I suggest to you, not a traveled road, at the end of a
11 road. Nobody's going back and forth there like it is on Old
12 Abbeville Highway. So what do you do? Well, you would do what
13 most people would do, you go to people who love you and tell
14 them what happened and hope for guidance and hope that somehow
15 or another they're going to calm the situation down, so he
16 drove over to his parents' house. And folks, was there any
17 question about who had hit Davis McClendon? No. There was a
18 trail of oil going all the way up Avid, down River Run, up the
19 Old Abbeville Highway to his parents' house which is on the
20 left side. A trail of oil because he had punctured, during the
21 incident, had punctured his oil pan according to the experts.
22 Fear, panic, crazy thoughts, irrational thoughts, behavior
23 irrational, and you go to your parents' house. Now, he doesn't
24 remember, and he testified, I don't remember how long it was
25 before I heard the emergency vehicles, he says his father told

1 him at some point during that period we need to call 911. When
2 he went to do that, he heard the sirens and obviously the
3 sirens going down in that direction means ---

4 MR. MEADORS: Your Honor, respectfully I'm going to
5 object. I don't believe that's the evidence. And I'm sorry.

6 THE COURT: Well, the jury will make that
7 determination what is in evidence and what is not and whether
8 they disagree or agree with what the lawyers say.

9 MR. SWERLING: If I misstate something, I apologize,
10 again, I'm trying the case and also trying to make notes, it's
11 recollection, not mine, not Mr. Meadors. Now, he left to go to
12 his parents' house. Now, ladies and gentlemen, to suggest that
13 Bud Ackerman took Davis McClendon's wallet is absolutely
14 absurd, that has never come up before, no one has ever
15 suggested that, but that was the argument that was made, he may
16 have taken his wallet. Why? Why? It doesn't make any sense.
17 He could have charged him with robbery? Ladies and gentlemen,
18 that is not part of this case, no one knows where that wallet
19 is, it may have been at his home, it may have been back at that
20 bar, Meredith may have had it, I have no idea. But he didn't
21 take it, he was with law enforcement, they had a search
22 warrant, they searched his car, they took his car, they went
23 into the house, is there a wallet? No. I suggest to you
24 that's just part of the emotion the State is trying to create
25 in this case. His wallet, taking his wallet? Now, should he

1 have left in that situation? Again, it's human nature what
2 someone does in those kinds of situations, and you have to
3 judge that. Do I say it's right? No. That he went to his
4 parents' house? I'm not suggesting anything like that. What
5 I'm suggesting is that people act irrationally in irrational
6 situations, and this was an irrational situation that most
7 people are never confronted with. Talk about the MAIT Team
8 very briefly. I have the ultimate respect for the highway
9 patrol, I've run into the highway patrol all over the state,
10 and they're good people, they make an honest living, they
11 enforce the laws, and they do the best they can, and I have no
12 problem at all. But they testified that they did a limited
13 investigation, a limited investigation, that was their words,
14 not mine. They didn't do any distance analysis, they didn't do
15 any time analysis, they didn't do any visibility analysis, they
16 didn't do any reaction analysis, but their conclusion was there
17 was a parallel hit, a swipe. Well, folks, you don't have to be
18 an engineer or an expert, if you can turn around just one
19 second. I don't even know how to work this, I'm sorry. This
20 is State's Exhibit 5. Does that look like a parallel swipe?
21 You don't have to be an engineer to look at that and determine
22 that is not a parallel swipe. That is an inward strike I
23 suggest to you, the wheel is turned to the right, there's
24 damage in the undercarriage, and I suggest to you that, and
25 there's evidence to the effect that that is not a parallel

1 swipe, it's an angular swipe, an angular hit. There's another
2 picture of it. Extensive damage to that car in the left,
3 right, yeah, the left front panel of the car and the tire.
4 Look at the skid mark, that was there when the police arrived,
5 they took a photograph of it. I suggest to you, ladies and
6 gentlemen, when you review the testimony of Mr. Torres and Mr.
7 Nelson, what they testified to exactly matches up with what you
8 see. And I just want to show you one more photograph, as far
9 as the, whether this is a traveled road or traffic or anything,
10 that's where the incident happened, beyond Sawgrass, the gate
11 is in the background, the headlights are on, that's all Mr.
12 Ackerman saw, he didn't see the car on the right because that's
13 when Meg McGovern showed up. But all he would have seen at a
14 distance up Avid until he was able to see Mr. McClendon in the
15 road would have been headlights, that's all he was able to see.
16 So the highway patrol came to this conclusion somehow without
17 telling you the basis of their foundation that it was a
18 sideswipe. You can look at the pictures and know better than
19 that. A sideswipe. You know why they made it a sideswipe?
20 Because they don't want you to believe that Mr. Ackerman tried
21 to avoid the crash. We called Davis Torres from New Mexico and
22 Jonathan Nelson from Baltimore. Both of these individuals were
23 qualified by the Court as experts in their field. David Torres
24 was qualified as an expert in accident reconstruction, and
25 Jonathan Nelson was qualified as an expert in accident

1 reconstruction with human factors, among them, lumination and
2 things of that nature we'll get into in a minute. But highway
3 patrol never really tried to reconstruct the accident, they
4 made no effort to go ahead and reconstruct the vehicles or
5 anything else, a limited investigation. So when someone's
6 accused of a very serious crime, you reach out for experts.
7 And David Torres is a well-known expert in his field. Jonathan
8 Nelson and his company are well-known experts in their field.
9 Highly trained, educational background, certifications,
10 classes, online and in person, teaching classes, publications,
11 can you be any more qualified than what they testified to? And
12 you heard them, you heard them. David Torres told you from the
13 numbers that he got and analyzed is this, and I'm not going to
14 go into the technical analysis because frankly, ladies and
15 gentlemen, I don't understand LV and Delta-V, and all that
16 stuff, I have no idea. But he testified that Davis McClendon
17 was standing five feet back from the front of the vehicle based
18 on the calculations he made and three feet from the car toward
19 the middle of the road, three feet to the middle of the road,
20 near the middle of the road. He also testified based upon the
21 CDR in the car, the brain of the BMW, as Mr. Meadors referred
22 to the brain of the Ford, that the car had, was moved back
23 about two feet by momentum. And this is the key, he testified
24 from the CDR that the car moved laterally to the right two feet
25 as well. Now, if you were just sideswiping a car and just

1 going parallel, a parallel swipe, how did that car move two
2 feet to the right, how did that wheel turn to the right, how
3 did you leave that scuff mark? There's only one explanation,
4 Bud Ackerman tried to avoid the collision. You have to
5 consider those things, folks, but there is backward movement
6 and there's lateral movement toward, there's no curb there, but
7 toward the grass, approximately two feet. That car was moved
8 in that direction after it was hit. Mr. Nelson, and again, I'm
9 not going to go into the technical aspects of it because I
10 frankly don't understand it and couldn't possibly explain it to
11 you, but both Mr. Torres and Mr. Nelson have both worked for
12 the government. Mr. Torres worked for the United States
13 Attorney's Office in New Mexico for 18 years investigating
14 cases, reconstructing cases, testifying in cases, 18 years.
15 Mr. Nelson's company is national, 500 engineers, they've
16 investigated many, many, numerous cases, many pedestrian cases.
17 You remember Mr. Torres saying the equipment that he had cost
18 \$50,000.00? I didn't hear MAIT testify they had that
19 equipment, Mr. Nelson's equipment we never even went into, how
20 much that costs, but he testified they had some very
21 sophisticated equipment to analyze the data that they get off
22 the cars and from the distance of what they find at the side of
23 the road and from the car. But what's interesting is Mr.
24 Torres came here, went out there to the scene, examined the CDR
25 of the BMW, made his calculations and has told you exactly

1 where or approximately where Davis McClendon was standing,
2 where the car was, how far it got pushed back and how far it
3 got pushed to the left. He said it was an angular hit, that
4 was his expert opinion testimony to a reasonable degree of
5 scientific certainty that it was an angular hit not a parallel
6 hit as suggested by the MAIT Team. Mr. Nelson did all kinds of
7 things, and again, I'm not going into it, but what Mr. Nelson
8 did, he actually recreated the accident. He went out, and they
9 got two cars that pretty much matched the Ford 250 and the BMW,
10 put them in the roadway and made several calculations as
11 someone was coming down Avid Road about illumination, distance,
12 time, he actually did that, and there are programs that analyze
13 that, that wasn't done by the MAIT Team. So he did testing and
14 he did data calculations about the time it would take, well,
15 let me start off, visibility, there were a couple images placed
16 into evidence that are blurred, but yet they're not pictures,
17 he made that very clear, they're not pictures, they're
18 illumination levels, they're not pictures of what could be seen
19 out there, they're illumination levels. So he talked about
20 visibility, he talked about distance from the point when Mr.
21 Ackerman would have seen Mr. McClendon. He talked about the
22 time that would be involved in something like that, he actually
23 did a reconstruction with exemplar vehicles, and he did it at
24 night. According to what, as I recall the testimony, and
25 again, you have to decide, but there was testimony that the BMW

1 was at zero miles per hour when it was stationary, but when it
2 was pushed back, it had got up to six miles an hour, so that
3 means it's moving back, if it's going six miles an hour that's
4 moving back. But it was also going at three miles an hour
5 lateral, which also supports their testimony that there was
6 lateral movement. And Mr. Nelson told you that the person,
7 Davis McClendon, would not have been visible to an oncoming
8 driver until he was approximately 100 feet away, 100 feet. He
9 also told you that the time that a person would have had to
10 react to that measured by the facts of the case was one and a
11 half to two seconds. So what that means is as Bud Ackerman's
12 driving along planning on pulling up alongside the BMW, at 100
13 feet he realizes that Davis McClendon was not in the car, he
14 realized because he's standing outside, that's at 100 feet.
15 And from that time when he's able to see it, at that time he
16 had one and a half to two seconds to react, think about that.
17 One, two, that's it, that's all the time that he would have had
18 to react once he saw. And what did he do? He didn't go right,
19 he thought that was dangerous, I'd ask you to defer he thought
20 it was dangerous, he didn't go straight ahead and crash into
21 Davis McClendon standing there in the middle of the road with
22 his shirt off, he went left into the vehicle with the intent to
23 stop the momentum of the vehicle and not hit, and not hit Davis
24 McClendon. Ladies and gentlemen, it's very important, the
25 State had all that evidence that you heard, I guess it was

1 yesterday, no, I guess part of it was Wednesday and part of it,
2 part of it was Thursday and part of it was yesterday. The
3 State had reply options to go ahead and reply to anything Mr.
4 Torres said or Mr. Nelson said. They called up Captain Murdock
5 I believe to talk about the text, but they could have called
6 any other expert or the expert they already had to challenge
7 any of the conclusions that Mr. Torres or Mr. Nelson submitted
8 to you. Both of them testified it was not a parallel hit, it
9 was an angular hit which means drove into it then obviously, at
10 some point lost control and veered off, we know what happened
11 then. But that car was moved, we know it was moved to the
12 left, I'm sorry, to the right because of the tire, because of
13 the speed and because of the number of feet that the experts
14 have testified, the two feet. No challenges made on the reply
15 of this. Now, folks, Mr. Meadors and I, Mr. Conrad, we've
16 tried a lot of cases around the state, and I consider them
17 friends, I mean, as I said it's not a personal issue. This
18 Judge over here I've known for many years and he's one of the
19 best there is, I hate the fact that he's retiring at some
20 point, but I have to, I don't know, but it's maybe coming at
21 that point, but he's as good as they come. What we do here in
22 this Courtroom, the Courtroom in this county and other counties
23 in the state where we try cases, it's not a game, it's not a
24 contest. Clemson's playing Florida State tonight, it's
25 supposed to be at 7:00, so maybe I'll get to see a little bit.

1 But it's not a game or a contest or one side has to win and one
2 side has to lose, Americans love a winner, and we want to see
3 the ultimate outcome in a situation like that where somebody
4 wins, and of course y'all vote for your home team. But in a
5 Courtroom, it's not about winning and losing, it's about when
6 justice is done. That's what the Judge does, that's what we
7 do, that's what a jury does, the ultimate arbiter of justice is
8 sitting right here. And it's not about winning or losing, it's
9 about justice, and if justice is done, everybody wins, society
10 wins, all the people in the community win. If justice is done,
11 we all win, if justice is not done, then we lose, and that's
12 why a jury sits between the government and citizens accused of
13 a crime. And I've chosen my career to represent people who are
14 accused of crimes, they've chosen to go ahead and prosecute
15 cases, it's not a problem at all in that, I respect them for
16 that, we just have different roles. But I suggest to you that
17 justice in this case, justice, what's the truth, the word
18 verdict means to speak the truth, you'll hear that word from
19 the Judge. Verdict, verus dictum, to speak the truth. Juries
20 are supposed to speak the truth, that's what it means, to reach
21 a verdict, to speak the truth. And really, this case requires
22 whether or not the State has proven guilt beyond a reasonable
23 doubt that he acted intentionally to kill him, whether or not
24 he acted whatever, we submit to you that they didn't prove
25 that, okay? And that's something that you have to decide. But

1 then the Judge will also tell you about accident and define
2 that to you and then you can look at the defense of accident
3 and whether or not at that point where the accident happened,
4 or when the accident happened and look and see whether or not
5 if fits the definition of accident. But I really don't want
6 you to misunderstand, we submit to you that the State has not
7 proven beyond a reasonable doubt that Mr. Ackerman acted with
8 malice or the intent, criminal intent to kill Davis McClendon.
9 Now I'm going to sit down, just a couple of thoughts in
10 passing. To me, I submit to you are some important factors in
11 this case when you are deliberating. If Mr. Ackerman intended
12 to kill Davis McClendon on that night, why was he agreeing to
13 go ahead and meet at his parents? Not very likely that was the
14 intent. Who changed the location? Meredith Ackerman. Who was
15 she with? Davis McClendon. Why did she change the location?
16 Because she had a fear that there was going to be something
17 happening, and I submit to you, she's with Davis McClendon, at
18 that house, and she didn't want that to happen at that house
19 with her children there, she knew that. I also ask you to
20 consider this, if the Defendant intended to kill him, why
21 didn't he just drive straight ahead and kill him in the road?
22 Think about that when you think about reasonable doubt. If he
23 intended to kill him, all he had to do was go straight ahead
24 and run him down. That's not what happened. We know that's
25 how it happened because you can see the evidence from the

1 crash. The third thing I ask you to consider when you
2 deliberate in this case and whether or not there's proof beyond
3 a reasonable doubt or a real possibility of innocence, not
4 guilty, if the Defendant, Bud Ackerman intended with criminal
5 intent to kill Davis McClendon, why would he crash into his
6 vehicle? What is the logical explanation that the State can
7 come up with that he would have crashed into the vehicle at an
8 angular degree? Ladies and gentlemen, when you go back there
9 and you deliberate, I submit to you these are inescapable
10 conclusions. Now, you decide what the case is, nobody invades
11 your privacy, nobody goes back there and tells you what to do
12 and what to say, that's why the Judge asked you the other day,
13 did anybody approach you, I mean, no outside influence, none,
14 not supposed to be, and you came in here with no opinions, but
15 these are the important factors in this case based, in addition
16 to what you heard from our experts. If the Defendant, Bud
17 Ackerman is charged with murder, intended to kill Davis
18 McClendon, why would he crash into the vehicle, what other
19 explanation is there except to avoid the collision? Thank you
20 for your attention.

21 THE COURT: Mr. Meadors, oh, Mr. Conrad, do you have
22 some reply argument?

23 MR. CONRAD: I do, Your Honor.

24 THE COURT: Okay.

25 MR. CONRAD: And I'll try to be brief.

1 THE COURT: Okay.

2 MR. CONRAD: May it please the Court. Ladies and
3 gentlemen, I want to take a moment, and I want to recognize
4 that we all have watched two really legal giants in these last
5 two weeks work, and I'm humbled to stand here beside them
6 before you. And I'm honored and privileged to get an
7 opportunity to stand up here, be the last person to talk to you
8 before this Judge gives you legal instructions in this case.
9 And Jack Swerling is a great attorney, he's an even better man,
10 and I respect him greatly, but I have to respectfully disagree
11 with a lot of what he just told you. We're going to go through
12 a few of those things, but I also agree with him on a couple of
13 things. One of the things Mr. Swerling told you was that when
14 Bud Ackerman came into this Courtroom, he came wrapped in a
15 robe of presumption of innocence, and even sitting right there,
16 he sits there in a robe, clothed in a robe of presumption of
17 justice. And the Judge is going to talk to you in just a few
18 minutes about this, but what this whole trial is about, what
19 everything we've been doing is here in a few minutes you're
20 going to go back into that Courtroom, you're going to take this
21 evidence with you and you're going to deliberate. And what
22 you're going to deliberate is does this evidence, is it enough
23 to prove to you beyond a reasonable doubt that the State has
24 removed that robe of presumption of justice. I submit to you
25 that we have. Mr. Meadors stands up here, and I've heard him

1 say it before, he likes to say that this is his office, and
2 that certainly is, but it's other things, too. And one of the
3 things to me that I treat with great respect is that I think
4 this is a classroom, okay? And when I bring this evidence
5 before you, one of my goals and one of the things I try to do
6 is I hope you learn a little bit about some of this stuff we
7 presented. And some of this stuff is extremely complicated,
8 the DNA science, the digital evidence, this accident
9 reconstruction, it's complicated stuff, folks, and one of my
10 goals this week was to hopefully teach and hopefully that you'd
11 learn a good deal about that. I know in every trial that I
12 try, I learn something, and that's one of our goals this week
13 is in this classroom for you to learn about some of this
14 evidence. Alright. Mr. Swerling talked fairly at length
15 about, you know, how much Davis was drinking, how much Bud was
16 drinking, what alcohol content and this and that. But ladies
17 and gentlemen, you know what? This isn't a DUI case, you're
18 not here to decide whether Davis McClendon was driving drunk or
19 not, Davis McClendon's dead, he's not charged with anything.
20 You're also quite frankly not here to decide whether Bud
21 Ackerman was drinking and driving, that's not really before you
22 either. Now, I submit to you, and I'm not going to do this
23 because I know we all want, we're all at the end of this thing,
24 but there's evidence up here of exactly how much Bud Ackerman
25 drank, and if you as a jury decides that's something you want

1 to figure out, you can go watch that video and count those
2 drinks if you want to, alright? But you don't have to and
3 here's why, because even if Bud Ackerman was stone cold sober,
4 when he pointed that truck down Avid, Avid Drive, what he did I
5 submit to you is still murder, okay? Bear with me, I'm going
6 to make sure I... Mr. Swerling also talked about, you know,
7 Meredith Ackerman being Bud Ackerman's love of his life and
8 maybe at one point that was true, but you heard Mr. Meadors ask
9 Mr. Ackerman a question, just a few days before this murder,
10 Bud Ackerman's on the hunt, he's looking for these people. I
11 don't know how far he would have gone; he didn't really tell
12 you, but one thing's really not in dispute, Bud Ackerman's
13 angry, he was angry about Davis McClendon dating his soon to be
14 ex-wife. And let's not get that twisted, they were due to be
15 divorced four weeks, within a month of when this murder
16 happened, soon to be ex-wife, Bud Ackerman just couldn't handle
17 the fact that Davis McClendon was dating his soon to be ex-
18 wife. And that's why the night in the early morning hours of
19 May 7th occurred. Now, you know, you've heard both the
20 gentlemen talk about premeditation, and the Judge is going to
21 charge you on the law in a minute, so you're going to hear it
22 from his mouth and that's the law you're to follow. But I'm
23 going to submit to you that, you know, in this case, or any
24 murder case in the State of South Carolina, the State doesn't
25 have to prove premeditation, that's not what malice is, the

1 Judge is going to define it for you in a minute, Mr. Meadors
2 defined it for you and that was the correct definition. We
3 don't have to prove that Bud Ackerman was planning this for
4 minutes, hours, days, weeks, or anything. All we have to prove
5 is when that truck hit Davis McClendon, Bud Ackerman had malice
6 in his heart, and I submit to you that he did. And I'm going
7 to cover a few of those points of what that is. But one of the
8 things that Mr. Swerling talked about was accident. Well, I'm
9 going to read it to you again, and again, the Judge is going to
10 charge the law, but an accident, in order for a defense of
11 accident to work, a Defendant has to be acting lawfully, and
12 that reasonable care was used by the Defendant in the operation
13 of his vehicle. Acting lawfully, ladies and gentlemen.
14 There's no dispute in this case from the experts, from Bud
15 Ackerman himself, that that truck was in the wrong lane in the
16 early morning at 1:11:34 on May 7th. He was not acting
17 lawfully. And also, there's really no dispute over the fact
18 that Bud Ackerman's truck was also speeding. You heard
19 Corporal Mejia at the very beginning of this trial testify that
20 the speed limit on Avid Lane was 25 miles an hour. You've
21 heard various speeds, but even the Defendant's own expert
22 testified that after the collision occurred, Bud Ackerman's
23 truck was still going between 28 and 33 miles an hour, he was
24 speeding, he was not acting lawfully when the collision
25 occurred. And so quite frankly, the State submits we have

1 proven beyond a reasonable doubt that, that this was not an
2 accident. Now, Mr. Swerling made some comment about the
3 Charlottesville incident where somebody ran a vehicle into a
4 crowd of people and said that's murder but this isn't. Well,
5 I'm sorry, but it's pretty much the same thing, it was just
6 only one person, though, and that was Davis McClendon.
7 Alright. Let's talk about a really rather confusing sequence
8 of events that Mr. Ackerman testified to yesterday where he's
9 talking to Davis on the phone and Davis is angry but then he's
10 not angry, and, oh, by the way, you know, in a series of about
11 five minutes according to Bud Ackerman, he talked Davis down
12 twice. Well, you heard Bud tell you about a number of jobs
13 he's had over the years, but apparently he missed his calling
14 as a hostage negotiator, but anyway ---

15 MR. SWERLING: What, I've, that's fine, go ahead, I'm
16 sorry.

17 MR. CONRAD: Mr. Swerling himself brought up again
18 that, you know, Davis wanted to fight. Well, you know, there's
19 no real evidence of that other than Bud Ackerman's own word,
20 and again, that's your decision how much or how little of what
21 Bud Ackerman told you. But let's just suppose for a minute,
22 maybe Davis did want to fight. Does anybody in this jury
23 really believe that when Davis McClendon stepped out of that
24 car, he wanted to fight a 7,000 pound truck? Really? Alright.
25 Now, Mr. Swerling spent quite a bit of time talking about the

1 varying versions of the experts and so on and so forth. And
2 sometimes these cases can devolve into what we lawyers call
3 battle of the experts. Whose expert's right, whose expert's
4 not right. Well, I really only want to make a few observations
5 about that. Number one, this is Defense Exhibit 2, and that's
6 kind of hard to see, can we clear that up a little bit, I'm
7 sorry. There we go, that's much better. Alright. Defense
8 Exhibit 2, and this is Bud Ackerman's own expert's version of
9 what occurred that night, alright? Now, let's pull up, give us
10 a minute, let's pull up the MAIT diagram of the same -- bear
11 with us ladies and gentlemen. Now, Mr. Swerling made a lot of
12 hay about how his expert's version was more accurate and just a
13 better version of what occurred. You know what I want to point
14 out to you, ladies and gentlemen? Is look at the angles of
15 those vehicles, and you know, by the way, I do submit in a pure
16 sideswipe when you have a 7,000 pound truck and a car that
17 weighs half as much, when that fender made contact, if it made
18 contact as MAIT suggests, it's still going to push that car to
19 the side a little bit. And you're going to get some of those
20 lateral forces regardless, okay? But be that as it may, look
21 at the angles of those vehicles. Now, switch back to the
22 Defense Exhibit 2, and by the way, this is State's, is it
23 really that different what these experts are saying? Really?
24 Well, there's actually quite a few common things, but I'm going
25 to suggest, submit to you there's actually one big commonality

1 between these two diagrams, what is standing right, and in the
2 Defense expert, it's hard to see on this version, Davis
3 McClendon's standing right in front of that truck in that
4 picture. And all the experts agree that the impact with the
5 vehicle and Davis McClendon occurred simultaneously, both MAIT
6 and Mr. Torres agree to that. And by the way, the MAIT exhibit
7 is Exhibit 48, just for the record. Let's go back to the MAIT.
8 Davis McClendon is standing right in front of that truck. And
9 one commonality, I can point out a bunch of these and if y'all
10 want to talk about it, you can go back and talk about some
11 other commonalities and differences if you see any, it's
12 y'all's decision. That truck is aimed directly at Davis
13 McClendon in both versions that you've seen in this case, aimed
14 directly. And you heard testimony the dent that Davis caused
15 on the front of Bud's truck is to the left of the center of
16 that truck, i.e., towards the driver's side, i.e., the way that
17 Davis, if Mr. Torres is correct and Bud was correct, was
18 swerving, he was swerving towards Davis McClendon. That's
19 evidence of malice, ladies and gentlemen, no matter whose
20 version of the accident reconstruction you want to go with.
21 They're really not that different, truth be told. Now, Mr.
22 Swerling talked about visibility, and his expert talked at
23 length about visibility and reacting times and so on and so
24 forth. You know, Mr. Meadors asked Mr. Nelson this question,
25 you know, when you look at reaction times and there's millions

1 of studies on reaction times, all those studies are based off
2 of what we call an unknown situation, when the driver has no
3 idea that there's something that could jump out at them, and
4 you through something out in front of them and then we see how
5 quickly they react, had no idea something was there. You've
6 heard all sorts of evidence that Bud Ackerman knew exactly what
7 was waiting for him at the bottom of Avid Road, he knew Davis
8 was there. So reaction times, that's just irrelevant. He knew
9 what was there and instead of slowing down, seeing the car,
10 instead of slowing down pulling over to the right to have a
11 conversation or a fight, whatever, what does he do? He speeds
12 up, he drives down that hill, he's over the speed limit, he's
13 in the wrong lane and he strikes and kills Davis McClendon.
14 Now, Mr. Swerling talked about, you know, Bud doesn't dispute
15 where he went that night and so on and so forth, and don't
16 forget Bud forgot he went by Davis' house, don't forget that.
17 However, you know, he went to Tally Ho, he went to Lake Shore,
18 he went to Break on the Lake, he went to Port Grille all for
19 one reason, he was looking for Davis McClendon, he was looking
20 for Meredith Ackerman, now Haynie, alright? And as John
21 Meadors explained to you that's malice, he's not looking to do
22 something good, he's not looking for friendly conversation,
23 he's looking because he's angry and he had malice in his heart.
24 Alright. And Mr. Swerling talked to you, you know, and
25 suggests to you that this was an accident and that there was no

1 malice involved when Bud Ackerman struck Davis McClendon.
2 Well, there's a lot of evidence and I'm not going to go through
3 it again, and you as a jury have every right to go through that
4 evidence before you make a decision. But there's one piece of
5 evidence that quite frankly is some of the best evidence I've
6 ever seen of malice. And we're going to play it again, but I
7 want you to think about something. You've heard in this Court
8 occasionally us attorneys we like to object to this thing
9 called hearsay, and I think everybody understands what hearsay
10 is, but generally speaking, statements that don't occur, that
11 occur outside of the Courtroom can't be brought in because the
12 law deems them unreliable, and that's why the hearsay rule
13 exists. But there's hearsay exceptions, and there's certain
14 circumstances the law recognizes where statements made out of
15 the Court are actually reliable. But one of those exceptions
16 are, it's our rule of evidence, 803(2) and what that rule says
17 statements that are excited utterance are an except to hearsay.
18 In other words, the law presumes them to be more reliable than
19 other types ---

20 MR. SWERLING: Objection. The law doesn't presume
21 that. I object. Your Honor's going to instruct them on the
22 law.

23 THE COURT: Okay. I will instruct the jury the law
24 that you are to use in this case. You may proceed, Mr.
25 Conrad.

1 MR. CONRAD: When Davis, when Bud Ackerman runs over
2 Davis McClendon and gets out of that truck, you hear that voice
3 in this video. I'm going to play it for you one more time
4 because I think it's critical evidence ---

5 MR. SWERLING: Objection that he thinks, he can
6 submit.

7 THE COURT: Well, this is closing argument, it's what
8 the lawyers think. The jury can make a determination.

9 MR. CONRAD: And yes, this is your determination, and
10 that's exactly what I was about to say is the words that Bud
11 Ackerman says, that's a factual issue in this case, that's what
12 y'all will decide about, not the Judge, not us attorneys,
13 that's y'all's decision, okay? And y'all can go back there and
14 talk and listen to this a thousand times and maybe y'all can
15 reach an agreement on the exact words that Bud Ackerman says.
16 But I want you to listen this time, not at the words, listen to
17 the tone, listen to the tone. Play it. Mr. Swerling told you
18 a few minutes ago that was a petrified tone. Y'all get to
19 decide. Is that a petrified tone or is that an angry tone?
20 The Judge is going to tell you in a minute in the legal
21 instructions that we don't have a scientific test to look into
22 someone's mind to determine malice, okay? What y'all have to
23 do is look at the Defendant's behavior before and his actions
24 before and his words before and his actions after and his
25 behavior afterwards to make the determination whether he had

1 malice at the moment or just prior to the moment that truck
2 struck Davis. And I think a strong piece of evidence of what
3 was in Bud Ackerman's mind is what he just says and what he
4 just yells. And again, if y'all can agree on whatever the
5 words are, that's y'all's prerogative, but I think, I
6 specifically ---

7 MR. SWERLING: Objection. I keep, he can't tell the
8 jury he thinks, that's just not permissible.

9 THE COURT: They will make the determination as to
10 the facts in evidence in this case.

11 MR. CONRAD: What I would submit to you is that
12 reasonable people can listen to that and agree that that is an
13 angry yell at Davis McClendon who was by that point lying,
14 bleeding and dying. And that is excellent evidence of what was
15 going through Bud Ackerman's mind just prior to running over
16 and killing Davis McClendon. I'm almost done, ladies and
17 gentlemen. Now, I've heard John Meadors say this and I'm going
18 to steal his line, but the truth of the matter is this is a
19 common sense case, okay? It's common sense, ladies and
20 gentlemen. Now, when you come in this Courtroom, the law
21 requires you to leave a lot behind. It requires you to leave
22 any biases that you have, it requires you that if you knew
23 anything about this case prior to this trial, it requires you
24 to leave that knowledge behind. But the law does not require
25 you to leave your common sense behind. And when you go back

1 into that jury room, that is one of the principal tools you
2 have to make a decision, okay? Now, that begs the question,
3 you know, what is common sense. And you know, I got curious
4 the other night and I started looking at different dictionaries
5 for definitions and surprisingly they don't all say the same
6 thing; however, I think they all mean the same thing. And I'm
7 just going to read to you two of them. One is good sense and
8 sound judgement in practical matters. Another definition is
9 the ability to think and behave in a reasonable way and to make
10 good decisions. Ladies and gentlemen, that's why you're here,
11 that's why you're going to go back in the jury room and that's
12 why you're going to deliberate. You're going to bring that
13 common sense with you and you're going to look at this
14 evidence. Now, I'm going to tell a little quick story and I'm
15 going to be done. You understand what common sense is, but
16 where does it come from, where do you get that? There's a guy
17 named Charlie Plumb, he was a Navy fighter pilot in Vietnam, he
18 got shot down and was held in a prison of war camp under
19 horrible conditions for a little over five years. Now, when he
20 got back, Mr. Plumb liked to give talks about what it took for
21 him to survive that experience. And Mr. Plumb used a metaphor
22 and it's actually a practical metaphor, but it goes beyond
23 that. And you know, when he talks about his survival, the
24 first chain in that survival was a parachute that when he
25 ejected out of his fighter jet, that saved his life before he

1 hit the ground in North Vietman. And so the first step in his
2 survival was that young sailor on the aircraft carrier who
3 packed his parachute, and that's the metaphor, packing the
4 parachute. And while he was talking about the fortitude over
5 the next five years of what it took for him to survive, the
6 reason he says he did that is because his parachute was packed
7 before he ever got in the Navy, before he ever got in that
8 situation, it was packed by his parents, by his coaches, by his
9 clergy, by his family, by his friends, so on and so forth. Now
10 the reason I bring that up is I got to thinking about it and I
11 think common sense comes from the same place. Common sense
12 comes from, you learn it from your parents, from your teachers,
13 from the clergy, from your family, from your friends, your
14 children if you have them, that's where he learned it. And
15 it's the ability to make decisions, important decisions in your
16 life and how you make them, and that's common sense and that's
17 what I'm asking you to go back in that jury room to do. I'm
18 almost done, let me check. Alright. Mr. Swerling told you
19 that what we are doing in here is justice, a hundred percent
20 agree with that, that's another thing that Mr. Swerling and I
21 can agree about. We are here, and everybody's role is to serve
22 justice. You have a decision to make now, and you really have
23 two competing things to decide. Number one, is Bud Ackerman
24 the unluckiest man in the world, the very person he was angry
25 at, that he was looking for, that he agreed to meet, he somehow

1 accidentally struck and killed him? Really? That's what Bud
2 Ackerman wants you to believe. Or Bud Ackerman turned his
3 truck onto Avid Road at 1:11 am on May 7th and put his foot on
4 that pedal, that trigger as Mr. Meadors said, and he had malice
5 in his heart that night. That's the decision you need to make.
6 And on behalf of Mr. Meadors, on behalf of our team I want to
7 thank you for your time and attention this week. It's been
8 long, or two weeks, it's been long, but you've paid attention,
9 I've noticed it, y'all care about this case. Thank you.

10 THE COURT: Alright. Ladies and gentlemen, here's
11 the plan. Lunch has been here for some time and so what I want
12 you to do is go back to the jury room and enjoy your lunch and
13 then we'll get you back out in probably about 25 minutes, maybe
14 30 at the most. And I will then charge you the law in this
15 case. So go back and enjoy your lunch, again, no discussions
16 yet and we'll see you back in a little bit.

17 (Jury exiting Courtroom.)

18 THE COURT: Okay. Before anybody leaves, I just want
19 to make one statement to the folks here in the Courtroom. This
20 has been a long trial for all of us, for all of you, and for
21 the people up here. I do thank you, both sides, everybody
22 who's been here, you've been very faithful, you've been very
23 loyal to this case. I know this case means a lot to everybody
24 and I appreciate that. But what I would encourage you to do
25 because we don't know what the outcome will be, but I would

1 encourage you sometime now until we know what the outcome will
2 be that you thank these lawyers for the hard work that they've
3 put into this case. I certainly don't know all of the hours
4 that they spent, but I know that they spent a lot of time, and
5 I've spent a lot of time with these lawyers, and they have
6 worked so, so terribly hard. And so I would encourage you when
7 you get a chance to thank these lawyers, staff for the fine
8 work and the hard work that they've put into this case.
9 Alright. We'll be in recess about 25 minutes, 30 minutes.

10 MR. SWERLING: When you come back, Judge, can I just
11 put something on the record? When you come back.

12 THE COURT: Okay, sure.

13 (Off the record.)

14 BAILIFF: All rise, Court come to order.

15 THE COURT: Okay. Back on the record. Before we
16 bring the jury out, Mr. Swerling, you indicated you wanted to
17 put something on the record.

18 MR. SWERLING: Yeah, Your Honor. I would like to
19 note my motion for a mistrial based on a couple of the comments
20 made by Mr. Conrad with all due respect to him. I do not
21 believe a lawyer can tell a jury that he believes a fact and I
22 think there's a plethora of cases about that, so based on that
23 I'd ask for a mistrial ---

24 THE COURT: Okay.

25 MR. SWERLING: --- or a cautionary instruction.

1 THE COURT: Okay. Alright. Mr. Conrad, Mr.
2 Meadors, you want to put anything on the record concerning
3 that?

4 MR. CONRAD: Your Honor, I mean, I'm not going to
5 argue back and forth. I think I did say it I believe in my
6 closing, I don't think it was in relation to a particular fact,
7 but regardless, it wasn't intentional and that wasn't my
8 intent. And I also want to point out that Mr. Swerling used
9 the words I believe at least on a couple points, not that I was
10 trying to respond to that ---

11 THE COURT: Right.

12 MR. CONRAD: --- but it was inadvertent at most,
13 which I believe his was too.

14 THE COURT: Right. Well, I mean, you know, in the
15 course of lawyers giving closing arguments, even if the word I
16 believe or I submit are not used, what lawyers are arguing, I
17 mean, it's, it kind of stands to reason that the jury's going,
18 yeah, that's what the lawyer's thinking and the lawyer's trying
19 to convince me to think the same way. Your motion's noted on
20 the record. I don't think it rises to the level of granting a
21 mistrial ---

22 MR. SWERLING: Yes, sir.

23 THE COURT: --- or even issuing any sort of curative
24 instruction ---

25 MR. SWERLING: Yes, sir.

1 THE COURT: --- but you're protected on the record,
2 Mr. Swerling. One second and we'll bring the jury out. Just
3 to add to that, too, I kind of routinely and I don't know if
4 I'm in error in doing this or not, but I routinely in my
5 statements to the jury when the lawyers give opening
6 statements, I say whatever the lawyers say is not evidence,
7 it's just what they believe the evidence is. So I think we'll
8 just stay away from it. Alright. Let's bring the jury out.
9 And I think the lawyers have the final charge, I think that was
10 provided by the clerk. And I think it was even emailed also.

11 MR. SWERLING: Yes, sir, I have it.

12 MR. MEADORS: Yes, sir, Your Honor.

13 THE COURT: So you got a hard copy and you got an
14 emailed copy.

15 (Jury entering Courtroom.)

16 THE COURT: Alright. Let the record reflect the jury
17 is back in. Ladies and gentlemen, hope you enjoyed lunch.
18 Alright. Mr. Foreman, ladies and gentlemen of the jury, I now
19 will charge you the law that applies to this case. You must
20 consider this charge as a whole and not focus on some portions
21 to the exclusion of others. The indictment charges the
22 Defendant with murder. I remind you the fact that the
23 Defendant was arrested, charged, and indicted in this case is
24 not evidence in this case and cannot be considered by you as
25 evidence of guilt in this case, nor does it create any

1 presumption or inference of guilt. This document, the
2 indictment, is simply the formal written instrument which
3 contains the charge made against the Defendant. It's the
4 formal document by which this case is brought into this Court.
5 The Defendant has pled not guilty to this indictment and that
6 plea puts the burden on the State to prove the Defendant
7 guilty. A person charged with committing a criminal offense in
8 South Carolina is never required to prove himself innocent. I
9 charge you that it is an important rule of the law that the
10 Defendant in a criminal trial no matter what the seriousness of
11 the charge may be will always be presumed to be innocent of the
12 crime for which the indictment was issued unless guilt has been
13 proven by evidence satisfying you of that guilt beyond a
14 reasonable doubt. This presumption of innocence does not end
15 when you begin your deliberations, but it accompanies the
16 Defendant throughout the trial unless you reach a verdict of
17 guilt based on evidence satisfying you of that guilt beyond a
18 reasonable doubt. The presumption of innocence is like a robe
19 of righteousness placed about the shoulders of the Defendant
20 which remains with the Defendant unless it has been stripped
21 from the Defendant by evidence satisfying you of the
22 Defendant's guilt beyond a reasonable doubt. The presumption
23 of innocence is not mere legal theory, it's not just a legal
24 phrase that we use, it is a substantial right to which every
25 Defendant is entitled unless you the jury are satisfied from

1 the evidence of the Defendant's guilt beyond a reasonable
2 doubt. Once again, the State has the burden of proving the
3 Defendant guilty beyond a reasonable doubt. Some of you may
4 have served as jurors in civil cases where you were told that
5 it is only necessary to prove that a fact is more likely true
6 than not true such as by the greater weight or preponderance of
7 the evidence. In criminal cases, the State's proof must be
8 more powerful than that, it must be beyond a reasonable doubt.
9 Proof beyond a reasonable doubt is proof that leaves you firmly
10 convinced of the Defendant's guilt. Now, there are very few
11 things in this world that we know with absolute certainty, and
12 in criminal cases the law does not require proof that overcomes
13 every possible doubt. If based on your consideration of the
14 evidence you are firmly convinced that the Defendant is guilty
15 of the crime charged, you must find the Defendant guilty. If
16 on the other hand you think there is a real possibility that
17 the Defendant is not guilty, you must give the Defendant the
18 benefit of the doubt and find him not guilty. Mr. Foreman,
19 ladies and gentlemen of the jury, I remind you once again that
20 during this trial you and I have had certain duties to perform.
21 As the trial Judge, it is my responsibility to preside over the
22 trial of this case and I also have had the duty to rule on the
23 admissibility of the evidence offered during this trial. You
24 are to consider only the competent evidence before you, if
25 there was any testimony ordered stricken from the record in

1 this case during this trial, you must disregard that testimony.
2 You are to consider only the testimony which has been presented
3 from the witness stand, any exhibits which have been made a
4 part of the record in this case, and any stipulations of
5 counsel. I have the additional duty to charge you the law that
6 applies to this case. As the presiding Judge, I am the sole
7 judge of the law of this case, and it is your duty as jurors to
8 accept and apply the law as I know state it to you. If you
9 already have any ideas of what the law is or what the law ought
10 to be and it does not agree with what I now tell you the law
11 is, you must abandon your idea because you are sworn to accept
12 the law and apply the law exactly as I state it to you. In
13 every case tried in this Court before a jury, the jury becomes
14 the sole and exclusive judge of the facts in the case. A trial
15 Judge cannot intimate, state, comment on or make any statement
16 to a trial jury about the facts in the case. Since you the
17 jury are the sole judge of the facts in this case, you are not
18 to infer from what I have said during the progress of this
19 trial in ruling upon the admissibility of evidence or otherwise
20 or anything that I say now during the course of this
21 instruction to you that I have any opinion about the facts in
22 this case. The law does not allow me to have an opinion about
23 the facts in this case. This is a matter solely for you, the
24 jury, to determine. As jurors, it is your duty to determine
25 the effect, value, and weight of the evidence presented during

1 this trial. Now, Mr. Foreman, ladies and gentlemen of the
2 jury, there are two types of evidence which are generally
3 presented during a trial, that being direct evidence and
4 circumstantial evidence. Direct evidence directly proves the
5 existence of a fact and does not require deduction. However,
6 circumstantial evidence is proof of a chain of facts and
7 circumstances indicating the existence of a fact. Crimes may
8 be proven by circumstantial evidence, and the law makes no
9 distinction between the weight or value to be given to either
10 direct or circumstantial evidence. However, to the extent the
11 State relies on circumstantial evidence, the circumstances must
12 be consistent with each other and when taken together, point
13 conclusively to the guilt of the accused beyond a reasonable
14 doubt. If these circumstances merely portray the Defendant's
15 behavior as suspicious, the proof has failed. Once again, the
16 State has the burden of proving the Defendant guilty beyond a
17 reasonable doubt and this burden rests with the State
18 regardless of whether the State relies on direct evidence,
19 circumstantial evidence, or some combination of the two. Mr.
20 Foreman, ladies and gentlemen of the jury, necessarily, you
21 must determine the credibility of witnesses who have testified
22 in this case and the evidence presented. Credibility simply
23 means believability. It becomes your duty as jurors to analyze
24 and to evaluate the witnesses and the evidence and determine
25 the credibility of the witnesses and the evidence. In

1 determining the credibility of witnesses who have testified in
2 this case, you may believe one witness over several witnesses
3 or several witnesses over one witness. You may believe a part
4 of the testimony of a witness and reject the remaining part of
5 the testimony of that same witness, you may believe the
6 testimony of a witness in its entirety or reject the testimony
7 of a witness in its entirety. You may consider whether any
8 witness has exhibited to you any interest, bias, prejudice, or
9 other motive in the case. You may also consider the appearance
10 and manner of a witness while on the witness stand. Now, Mr.
11 Foreman, ladies and gentlemen of the jury, in order to
12 establish criminal liability, criminal intent is required. For
13 example, the mental state required to be proven by the State
14 for a particular crime might be purpose, intent, knowledge,
15 recklessness, or criminal negligence. Criminal intent must be
16 proven by the State beyond a reasonable doubt. Criminal intent
17 is always a matter that must be determined by the jury from the
18 circumstances surrounding the situation. Now, there's no way
19 to prove intent to a mathematical certainty, there's no way
20 medical science can dissect a person's brain and determine what
21 the person had in mind. So the law says that criminal intent
22 may be inferred from the circumstances shown to have existed.
23 This is how you make a determination of whether or not the
24 element requiring intent was present. It's not necessary to
25 establish intent by direct and positive evidence, but intent

1 may be established by inference in the same way as any other
2 fact by taking into consideration the acts of the parties and
3 all the facts and circumstances of the case. Criminal intent
4 is a mental state, a conscious wrongdoing. It is up to you to
5 determine what the Defendant intended to do based on the
6 circumstances shown to have existed. Now, the Defendant has
7 raised the defense of accident. An act may be excused on the
8 ground of accident if it is shown that the act was
9 unintentional, that the Defendant was acting lawfully, and that
10 reasonable care was used by the Defendant in the operation of
11 his vehicle. The burden is on the State to prove beyond a
12 reasonable doubt to prove that the act was not an accident but
13 was caused by the negligence or carelessness on the part of the
14 Defendant in the operation of his vehicle or by unlawful
15 activity by the Defendant. Voluntary intoxication, voluntary
16 intoxication is not a defense to the crime charged. Driving
17 under the influence, the statutory inference level of
18 intoxication in this state is point 08 and higher. Now, as I
19 mentioned to you the other day concerning expert witnesses,
20 normally a person cannot give opinion testimony. Normally when
21 a person testifies, they must testify as to what they either
22 saw, heard, or sensed by smell or something of that nature.
23 However, there is an exception when someone is qualified
24 because of education or experience. They are permitted to give
25 their opinion in certain areas if the Court qualifies them that

1 way. This does not mean that you must accept the opinion, but
2 it is evidence for you to use in any way you see fit and give
3 it the weight and credibility you believe is appropriate. Now,
4 once again, as you know, the Defendant is charged with murder.
5 The State must prove beyond a reasonable doubt that the
6 Defendant killed another person with malice aforethought.
7 Malice is hatred, ill will or hostility towards another person.
8 It is the intentional doing of a wrongful act without just
9 cause or excuse and with an intent to inflict an injury.
10 Malice aforethought does not require that malice exist for any
11 particular time before the act is committed, but malice must
12 exist in the mind of the Defendant just before and at the time
13 of the act when the act is committed. Therefore, there must be
14 a combination of the previous evil intent and the act. Malice
15 may be shown by words, threat, conduct or act showing a total
16 disregard for human life based upon evidence from the facts and
17 circumstances in the case. Again, the State has the burden of
18 proof to prove malice beyond a reasonable doubt. Now, Mr.
19 Foreman, ladies and gentlemen of the jury, there are two
20 possible verdicts in this case, not guilty, and guilty. And
21 I'm going to come down in just one second and show you the
22 verdict form, very easy to complete. And I've shown on the
23 verdict form not guilty first and then guilty. That is of no
24 significance whatsoever, I could have very well put guilty and
25 then not guilty, okay? Now, your verdict in this case, ladies

1 and gentlemen, must be unanimous among the 12 of you. And when
2 you have reached a verdict after you have engaged in your
3 deliberations, you are to inform the bailiff, and we will bring
4 you back into the Courtroom to receive your verdict. In the
5 event, ladies and gentlemen, during your deliberations there is
6 a split in the vote, the Court does not at any time want to be
7 informed of what the actual split by number in the vote, if one
8 ever exists. Also, ladies and gentlemen, I realize what I've
9 just read to you was a lot and therefore, that is why I
10 routinely provide a copy of the jury charge to the jury for
11 your use in whatever manner that you feel like you need to use
12 it in. Now, I'm going to come down and just show you the
13 verdict form, once again, it's very easy to complete. This is
14 just what we call the caption of the case, State of South
15 Carolina versus William Gray "Bud" Ackerman, that is the
16 indictment number, and you've got one question to determine.
17 We the jury unanimously find the Defendant on the charge of
18 murder of Davis McClendon, you put your initials on what line
19 represents your verdict, okay? Now, I'm going to send all of
20 you including the alternates back to the jury room for just a
21 couple minutes, I want to check one more time with the lawyers
22 concerning my charge to make sure that I don't need to bring
23 you back out and give you an additional charge or a direction
24 charge or something of the nature. I don't anticipate that
25 I'll have to, but I want to talk to the lawyers first. If I

1 don't have to bring you back out, when all of the exhibits are
2 provided to you in the jury room, the verdict form and a copy
3 of my charge, that will be your queue for two things to happen.
4 One, the alternates need to exit the jury room and be brought
5 back into the Courtroom for further instructions and two, you
6 are to begin your deliberations. Just as a practical matter,
7 if at any time while y'all are deliberating if a juror has to
8 use the restroom, stop your deliberations because those
9 deliberations when they're ongoing has to be in the presence of
10 all 12 of you, okay? I don't know if any of you want to take a
11 smoke break, I can't remember if we have any smokers on the
12 jury or not, but if there are any breaks outside of the jury
13 room, again, no deliberations can go on, they have to be
14 engaged when all 12 are present. Go back to the jury room,
15 don't start yet, okay?

16 (Jurors exiting Courtroom.)

17 THE COURT: Other than what has already been noted on
18 the record, does the State have any exceptions to the Court's
19 charge?

20 MR. MEADORS: No, sir, thank you.

21 THE COURT: Okay. Other than what's been noted on
22 the record, does the Defense have any exceptions to the Court's
23 charge?

24 MR. SWERLING: Now, are you talking about what we
25 requested ---

1 THE COURT: Right.

2 MR. SWERLING: --- as long as that's on the record.

3 THE COURT: And we put that on the record.

4 MR. SWERLING: Okay. Alright. That's all I would
5 like to reiterate.

6 THE COURT: Okay. Alright. Thank you very much.
7 Alright. Now, we're going to go off the record and let's make
8 sure we got all the exhibits squared away before we take them
9 back to the jury.

10 (Off the record.)

11 THE COURT: Let's go back on the record. Mr.
12 Swerling?

13 MR. SWERLING: Yesterday, Your Honor, for some reason
14 I failed to go ahead make a motion for directed verdict at the
15 conclusion of our case. I would just ask the Court to go ahead
16 and incorporate a motion for directed verdict on the same
17 grounds that I made at the conclusion of the State's case.

18 THE COURT: The State has no problem with the timing
19 of this?

20 MR. CONRAD: No, Your Honor.

21 THE COURT: So noted for the record, motion denied.
22 Thank you.

23 (Off the record.)

24 THE COURT: Thank you very much, have a seat. Okay.
25 Alright. We're back on the record, ladies and gentlemen, it's

1 my understanding that the jury has reached a verdict. Ready to
2 receive the jury in the Courtroom, State?

3 MR. MEADORS: Yes, sir.

4 THE COURT: Defense?

5 MR. SWERLING: Yes, sir.

6 THE COURT: Okay. Alright. Let's bring the jury in.
7 Now, ladies and gentlemen, I know there's a lot of emotion and
8 when the verdict is announced, I can't have any outward signs
9 of emotion. If you think you may have a little difficulty
10 controlling your emotions, then I'm going to ask that you leave
11 now, okay? Because we just really cannot, we can't tolerate
12 any outward signs of emotion, okay?

13 (Jury entering Courtroom.)

14 THE COURT: Okay. Let the record reflect the jury is
15 back in. Mr. Foreman, without telling me what the verdict is,
16 have you reached a verdict in this case?

17 MR. FOREMAN: We have.

18 THE COURT: And is that verdict that you reached
19 unanimous among the 12 of you?

20 MR. FOREMAN: Yes, sir.

21 THE COURT: Okay. Would you hand the verdict form to
22 the bailiff? And madame clerk, would you publish the verdict?

23 CLERK: State of South Carolina, County of Greenwood,
24 indictment number 2023-GS-24-958, State of South Carolina
25 versus William Gray "Bud" Ackerman, we the jury unanimously

1 find the Defendant on the charge of murder of Davis McClendon,
2 guilty. Signed foreperson, Matthew Malone. Ladies and
3 gentlemen of the jury, if this is still your verdict, will you
4 please raise your right hand?

5 THE COURT: Okay. Let the record reflect 12 hands
6 have been raised. Mr. Swerling, would you like individual
7 polling of the jury?

8 MR. SWERLING: Yes, Your Honor.

9 THE COURT: Okay.

10 CLERK: Matthew Malone, is this your verdict?

11 MR. MALONE: Yes.

12 CLERK: Is it still your verdict?

13 MR. MALONE: Yes.

14 CLERK: Steven Alexander?

15 MR. ALEXANDER: Yes, ma'am.

16 CLERK: Is this your verdict?

17 MR. ALEXANDER: Yes, ma'am.

18 CLERK: Is it still your verdict?

19 MR. ALEXANDER: Yes, ma'am.

20 CLERK: Lewis Brown?

21 MR. BROWN: Yes, ma'am.

22 CLERK: Is it still your verdict?

23 MR. BROWN: Yes, ma'am.

24 CLERK: Heidi Holkstrom, is this your verdict?

25 MS. HOLKSTROM: Yes, ma'am.

1 CLERK: Is it still your verdict?

2 MS. HOLKSTROM: Yes, ma'am.

3 CLERK: Marissa Jackson, is this your verdict?

4 MS. JACKSON: Yes, ma'am.

5 CLERK: Is it still your verdict?

6 MS. JACKSON: Yes, ma'am.

7 CLERK: Douglas Jennings, is this your verdict?

8 MR. JENNINGS: Yes, ma'am.

9 CLERK: Is it still your verdict?

10 MR. JENNINGS: Yes, ma'am.

11 CLERK: Jose Ramirez Gomez, is this your verdict?

12 MR. GOMEZ: Yes.

13 CLERK: Is it still your verdict?

14 MR. GOMEZ: Yes, ma'am.

15 CLERK: Lauren Ross, is this your verdict?

16 MS. ROSS: Yes.

17 CLERK: Is it still your verdict?

18 MS. ROSS: Yes, ma'am.

19 CLERK: George Shire, is this your verdict?

20 MR. SHIRE: Yes, ma'am.

21 CLERK: Is it still your verdict?

22 MR. SHIRE: Yes.

23 CLERK: Stacey Cassandra Theodore, is this your
24 verdict?

25 MS. THEODORE: Yes, ma'am.

1 CLERK: Is it still your verdict?

2 MS. THEODORE: Yes, ma'am.

3 CLERK: Latoya Norman, is this your verdict?

4 MS. NORMAN: Yes, ma'am.

5 CLERK: Is it still your verdict?

6 MS. NORMAN: Yes, ma'am.

7 CLERK: Denise White, is this your verdict?

8 MS. WHITE: Yes, ma'am.

9 CLERK: Is it still your verdict?

10 MS. WHITE: Yes, ma'am.

11 CLERK: Thank you.

12 THE COURT: Thank you, madame clerk. Ladies and
13 gentlemen, I want to thank you for your jury service. What
14 matters the most to the Court is that my jury performs its
15 duties efficiently, conscientiously. Your verdict that you
16 reach does not matter to me, but what matters is that you
17 perform your duties as you're supposed to. As I told you on, I
18 think it was Wednesday when we came back, I was pleasantly
19 surprised that I had the majority of the, I think missing one
20 juror, that everybody else came back after incurring issues
21 with the hurricane and the one person had already had vacation
22 planned. And so that tells me that you took your role as a
23 juror conscientiously and considered it to be very important.
24 What I'd like to do is for you to go back to the jury room, and
25 what I typically do, I'd like to talk with my jury, not about

1 the case, but talk to my jury about things that you feel like
2 we do well. If you have any constructive criticism for things
3 that maybe we can improve on, we want to make sure not only in
4 Greenwood County, but throughout the entire state that we have
5 the most effective judicial system anywhere. So if you have
6 any feedback, I'd like to receive that, and again, don't want
7 to talk to you about the case, but if you'll just go back to
8 the jury room for just a minute, the clerk will be with me and
9 just talk with you for a few minutes. I know you're ready to
10 get out but just go on back and I'll see you in just a minute.

11 (Jury exiting Courtroom.)

12 THE COURT: Okay. We'll be in recess for about 15
13 minutes. I'm prepared to go into the sentencing phase of this
14 case, but we'll be at ease for about 15 minutes. You can get
15 the sentencing sheet prepared for me, okay?

16 (Off the record.)

17 THE COURT: Alright. We're on the record in the
18 sentencing phase of the State of South Carolina versus William
19 Gray Ackerman, Jr. I'll hear from the State first if it wants
20 to address the issue of sentencing, I'd be glad to hear from
21 anybody on this side of the Courtroom, and then likewise, be
22 glad to hear from the Defense. But Mr. Meadors?

23 MR. SWERLING: Procedurally, can I make a motion, put
24 a motion on the record?

25 THE COURT: Sure.

1 MR. SWERLING: At this time I'd like to go ahead and
2 ask the Court to consider a motion for a new trial ---

3 THE COURT: Okay.

4 MR. SWERLING: --- based on all the objections that
5 were made as well as motions made before trial, during the
6 course of the trial, and the Judge's charge on the presumption
7 of innocence. I don't know what the actual time was, but with
8 all the exhibits in this case that have been entered in the
9 record, it's my position that the jury did just not give
10 deliberation and regard the presumption of innocence as they
11 should have because that's stayed with him until it was
12 stripped away beyond a reasonable doubt. And I don't know
13 what, do we have the actual time recorded?

14 THE COURT: I think I was told 22 minutes.

15 MR. SWERLING: Yeah. I mean, that's, Your Honor,
16 that's, I'd just have to say that's absurd that the jury could
17 have gone through all the evidence in that case and all of the
18 law the Court gave them and render a verdict of guilty in such
19 a short period of time.

20 THE COURT: Okay. Alright.

21 MR. SWERLING: And so I don't believe they gave
22 careful deliberations of the law and the evidence in the case.

23 THE COURT: Alright. Concerning your motion for a
24 new trial, since you do have 10 days, would you want to follow
25 it up with anything? I'm not saying you have to; I'm just

1 giving that offer to you if you want to take that opportunity,
2 but you certainly don't have to.

3 MR. SWERLING: Yes, sir.

4 THE COURT: So you want that 10 days?

5 MR. SWERLING: Oh, yes. I'll go ahead, I'll take a
6 look at it ---

7 THE COURT: Okay.

8 MR. SWERLING: --- I just want to make sure it's on
9 the record, procedurally was on the record.

10 THE COURT: So I'll just take that under advisement,
11 let him give me whatever he wants to give me, certainly give
12 the State the same opportunity, okay? So ---

13 MR. MEADORS: Yes, sir.

14 THE COURT: --- we'll leave it at that, okay?
15 Alright. Now, Mr. Meadors.

16 MR. MEADORS: May it please the Court?

17 THE COURT: (Nonverbal response).

18 MR. MEADORS: Your Honor, I'd just like to publicly,
19 before we start, I'll be very brief. I, obviously, thank the
20 jury for their verdict, I want to thank Sheriff Kelly who's in
21 the back.

22 THE COURT: Part of the jury is back here.

23 MR. MEADORS: I did not know that, I want to thank
24 them for their verdict, I want to thank Sheriff Kelly and his,
25 I don't want to name them all, but, and his whole staff for

1 helping us with this. They did a fantastic job, the Greenwood
2 Sheriff's Department, not only their initial work but also
3 working with other agencies who had other specialties and we
4 couldn't have done it without all of y'all, so thank you. In
5 addition to that, I think it's okay to put on the record while
6 we're here now, Mr. Conrad, myself, Matt, and Danielle,
7 Solicitor Stumbo was a longtime, lifelong friend of Davis
8 McClendon and that's why he had a conflict ---

9 THE COURT: Sure.

10 MR. MEADORS: --- and asked the attorney general, and
11 the attorney general assigned us and I just wanted to put that
12 on the record.

13 THE COURT: Sure.

14 MR. MEADORS: And Judge, finally, I want to thank the
15 family for their patience. But again, I want to publicly thank
16 John Conrad, Danielle Colon, and Matt Ellis. I clearly, I
17 couldn't do this by myself, so I want to publicly thank them.
18 Your Honor, Trish, I was going to introduce some of the family,
19 if you'll let us?

20 THE COURT: Sure.

21 VICTIM'S ADVOCATE: Your Honor, we're going to have
22 several family members address you at this time.

23 THE COURT: Okay. And anybody who wants to address
24 the Court, I will need to have them sworn in, we can do it all
25 at one time, so ---

1 VICTIM'S ADVOCATE: That would be good. So if I
2 could get the ones that are going to speak just stand up in the
3 back as well to be sworn.

4 THE COURT: Okay. Alright. Those who wish to
5 address the Court just raise your right hand so the clerk can
6 swear you in.

7 CLERK: Do you solemnly swear the testimony you're
8 about to give this Court to be the truth, the whole truth, and
9 nothing but the truth so help you God?

10 (Nonverbal responses from people wishing to address the
11 Court.)

12 THE COURT: What I need for you to do, whoever starts
13 out first is identify yourself, and then, of course, I know who
14 several of you are, but identify yourself and I'll be glad to
15 hear from you.

16 MR. MCCLENDON: I just wanted to tell the Court; my
17 name is James McClendon.

18 THE COURT: Yes, sir.

19 MR. MCCLENDON: And Davis was my son.

20 THE COURT: Yes, sir.

21 MR. MCCLENDON: And I just wanted to tell the other
22 family that we all lost a great amount, and six children lost
23 their daddy and I'm sorry for them.

24 THE COURT: I'm sorry for your loss,
25 sir.

1 MS. MCCLENDON: Your Honor, my name is Carie
2 McClendon, I'm Davis' mother. I don't even know how a mother
3 puts into words the impact of the death of a 46 year old son
4 has on her, but it's not about me, it's not about me, it's
5 about my grandchildren have lost their father that they
6 depended on and loved and he loved them. They have a strong
7 mother who's had to be mother and father to them. Davis had
8 lots of friends who have stepped up to help Kristin and the
9 children and I'm so grateful for that, Your Honor. But this
10 shouldn't have happened, it shouldn't have happened. My
11 husband has really had a hard time. At 4:30 in the morning on
12 May 7th the coroner came to our house and woke us up and told
13 us that our son had been murdered. His health has been greatly
14 affected by the stress of our son's death and the grief that
15 he's felt, and at 79 years old, I don't know that he'll ever
16 recover from that, and this trial has just compounded that. My
17 children were very close to their brother, I have a son and a
18 daughter, they loved him very much. How do you help them? You
19 just cry with them and hug each other and try to go on, but
20 Davis was a big part of our lives. He was a great son, he was
21 a great brother, he was a great father, he wasn't perfect, I
22 know that, but he was a beautiful human being, he had a heart
23 for other people, he was empathetic, and he meant so much to us
24 and his loss is greatly felt by my family. Your Honor, I don't
25 hate Bud Ackerman, I don't. In fact, for a while I thought

1 there was a great chance that it was an accident, a possibility
2 anyway, but after the evidence that was presented in this trial
3 and seeing that, I didn't know what happened, for a long time I
4 didn't know, but after seeing the evidence and after hearing
5 Bud testify and showed no remorse, I'm convinced that the jury
6 got it right and that Bud did take my son's life. And what
7 hurts the most is he didn't try to help him; he left him laying
8 there, and his parents didn't call 911, nobody did, and that
9 hurts so much. Your Honor, I don't know what is justice,
10 that's all we want, that's what we said from the beginning, we
11 just want justice for Davis and we're relying on you to make
12 that decision.

13 THE COURT: Thank you, ma'am, and I'm sorry for your
14 loss.

15 MS. MCCLENDON: Thank you.

16 THE COURT: Yes, ma'am, your name, please?

17 MS. MITCHELL: I'm Elizabeth Mitchell.

18 THE COURT: Yes, ma'am.

19 MS. MITCHELL: I'm the baby sister of Davis
20 McClendon. Your Honor, I can never fully explain to you the
21 impact of the violent murder of my brother on me. However, I'm
22 thankful for the ability to be heard and to be allowed to be a
23 part of the Court system that will prayerfully get us the
24 justice my brother's beautiful life deserves. Davis was 12
25 when I was born and his love and constant affirmations helped

1 build my character and my confidence. I now feel the pain of
2 the impact of his death on my sense of security. My security
3 was largely wrapped up in his lifelong consistent presence at
4 every birthday party, graduation, birth of all three of my
5 children, every loss, being there for us when we built our
6 home, every holiday. He was always there no matter how big or
7 small or inconvenient. The impact of his violent murder left
8 my dad holding himself up on the doorframe of my back door as
9 he uttered through tears Davis is dead. It knocked me to my
10 knees, literally. The impact of the murder of my brother has
11 sent me to my son's room every night lying in his bed hugging
12 and kissing him imagining my mom doing the same thing to my
13 brother when he was a little boy fighting back thoughts that
14 one day my son will be murdered and taken away from me. The
15 impact of my brother's violent murder has left me in moments of
16 watching my kids laugh and play and feeling nothing but
17 complete despair. There's a giant hole in rooms that are
18 filled with family and beautiful children, and we will always
19 feel it and always long to have Davis fill it up again. The
20 impact of my brother's violent murder has overflowed to my
21 young children, their innocence was stolen as I had to explain
22 to them that their DD had been run over and killed to which my
23 five year old replied was DD not on the sidewalk. My older two
24 were each classmates with Bud's oldest two children and I
25 taught all three of his children at one time. My then 10 year

1 old was broken not only for the loss of her uncle, but twice
2 for her friends. The impact of my brother's violent murder has
3 led me to unhealthy coping, especially around this tortuous
4 trial. It has impacted me tremendously to be forced by his
5 inability to own up to the truth from the beginning to relive
6 Davis' traumatic death over and over. It has impacted me
7 tremendously to hear the outrageous lies about Davis and his
8 state of mind by the man who killed him. It has been
9 physically painful to hear the enormous sound behind the power
10 of the impact of the truck and the deafening silence of seconds
11 before he finally hits the brakes on to save himself from
12 hitting trees and a gate. Then to hear his cowardly yell at my
13 brother's tattered dead body, it will live with me all of my
14 days. I have waited 16 months to see the body cam of the
15 police that show up at his house. I imagined finding him
16 broken sitting on the front steps of his parents with his head
17 in his hands, but yet we find him stone-faced as if nothing
18 happened. I've longed to see him take the stand and give me
19 some bit of remorse for the piece of my heart, but he has shown
20 nothing until the moment that he was found guilty. Judge, the
21 only way that the Court could give justice in this case would
22 be to take Bud's freedom to be a father, son, nephew, uncle,
23 brother, cousin, friend and coworker on his terms, just as he
24 stole from my brother, Davis, and all of us.

25 THE COURT: Thank you, ma'am, and I'm sorry

1 for your loss as well. Yes, sir, your name?

2 MR. MCCLENDON: My name is Jay McClendon, James, Jr.
3 Thank you, Your Honor, I think you've done a wonderful job with
4 this case ---

5 THE COURT: Thank you.

6 MR. MCCLENDON: --- thank you to the prosecutor's
7 office, the sheriff's office and everyone that's helped with
8 this trial. There's no way to put into words the devastation
9 this cowardly act has had on my family and many, many others in
10 this community. A brother, a son, an uncle, nephew and a loyal
11 friend has been stolen from so many of us. Mr. Ackerman's
12 never shown or expressed an ounce of remorse for his heinous
13 act. From the moment he left the mangled body of my brother
14 laying on the side of the road to die alone to this day we've
15 never heard a simple sorry or see a tear in his eyes. Neither
16 he, nor his mother or father have ever in the last year and a
17 half even had the decency to offer us a sorry or simple
18 condolences. All that he could do was to try to protect
19 himself. Instead of calling 911, trying to offer my brother
20 medical assistance from his father who's a doctor a half mile
21 away, he left him to die on the side of the road and call their
22 lawyers. Davis McClendon will never get a chance to hug his
23 children, his family or friends ever again on this earth.
24 There would be no punishment that you could give him for his
25 crime to ever make up for what he stole, and I hope and pray

1 that he never walks free again, I hope and pray that one of my
2 brother's children doesn't have to walk into a restaurant or a
3 grocery store and see him standing there, that he doesn't some
4 way get to go back to a normal life while my brother's dead and
5 gone. I'm begging Your Honor to punish this poor excuse for a
6 man to the fullest extent of the law and give him life in
7 prison. Thank you.

8 THE COURT: Thank you, sir, and I'm sorry for your
9 loss.

10 VICTIMS ADVOCATE: Now Davis' children will address
11 the Court.

12 THE COURT: Sure. Are they sworn in, too, Chastity?

13 CLERK: They were.

14 THE COURT: Okay. You got the back group?

15 CLERK: Yes, sir.

16 THE COURT: Yes, ma'am.

17 MISS MCCLENDON: My name is Blair McClendon, I am 17
18 years old and a senior in high school. I am here as a daughter
19 who lost her father. I'm sorry.

20 THE COURT: It's okay.

21 MISS MCCLENDON: I never knew Bud or his wife before
22 all of this. But I did have the great pleasure of knowing
23 Davis McClendon, my dad. He was my protector and my biggest
24 supporter, and his passing left a hole in my heart that can
25 never be filled. Every day I think about my dad, the one...

1 MS. MCCLENDON: I'm the mother of Davis' three
2 children and I'm going to finish for her. He was my protector
3 and my biggest supporter, and his passing has left a hole in my
4 heart that can never be filled. Every day I think about my
5 dad, the one who would make up funny stories or come to my
6 dance recitals or call me Blair Bear. And all I can picture is
7 this man's face, what he did, the horrible way my dad had to
8 die and the fact that I'll never see him again. The man who
9 did this didn't just take my dad away, he took away every
10 moment I was supposed to have with him in the future. My
11 graduation, my wedding, and even the little things like hearing
12 his voice or making him laugh. The person my mother spent 25
13 years with is no longer here, the person my brother used to
14 talk to on the phone 24/7 will never be able to speak to him
15 again. The person who used to spoil my little sister who
16 couldn't even be here because she was so upset all week, she
17 now has trouble even talking about it. The man who did this
18 should be held responsible for what he's done because this pain
19 will never go away for me, Blair, and he shouldn't just be
20 allowed to walk free and forget about it. Please make sure he
21 faces justice for taking away someone who meant the world to me
22 and so many others.

23 THE COURT: Thank you. Give us your name.

24 MR. MCCLENDON: Frederick John McClendon, I'm a
25 freshman at Belmont University. I want to introduce myself.

1 The past few weeks I've been driving seven hours back and forth
2 to be here with my family and give my sisters and mother the
3 support that I felt they deserved during this traumatic few
4 weeks. For the past year my sisters and I have had to suffer
5 losing our father, our biggest supporter and protector at the
6 hand of the malicious murderer, Bud Ackerman. I say this not
7 to gain your sympathy, not to invoke any emotions because quite
8 simply, the people I really want to feel my family's hurt are
9 incapable of feeling these emotions. For the past year, the
10 Ackerman family has shown zero remorse, sympathy, or compassion
11 towards this terrible tragedy. I just, I, Judge, I, I have to
12 add, I'm sorry. Judge I have to add that when you watch Mr.
13 Ackerman up there on the stand, he is, has zero emotion and as
14 soon as we get to the place where he is finally for the first
15 time in his life held accountable for his actions that his
16 father has bailed him out of his entire life, this is when he
17 starts to cry, Judge Hocker, this is when he starts to cry
18 because this spoiled individual, this spoiled individual has
19 finally reaped the repercussions of what he has been his entire
20 life. No amount of money, no amount of fancy Columbia lawyers
21 with their empires of dirt that have, will ever, will ever be
22 enough to, to break what is right and what is wrong. Mr.
23 Ackerman nor his family or the four people sitting on the front
24 row have any amount of empathy, any amount of remorse for what
25 has happened. My dad meant absolutely everything to me. We

1 went to Clemson football games, we did everything together, he
2 was, he was my greatest supporter, he's my greatest protector,
3 he did everything for me, he did absolutely everything for me.
4 You know, my mom's family, my entire mom's family, my parents
5 were divorced, my entire mom's family is here today in support
6 of Davis McClendon because that's the type of man he was. My
7 mom's sister, my aunt cries, she has down syndrome, she cries
8 every night because she misses my dad, that's the type of
9 person he was. Meanwhile, Mr. Ackerman's family, Mr.
10 Ackerman's family doesn't want, and Meredith does not want him
11 out of prison because she believes that he will not only put
12 her in danger but put the kids in danger. I hope that they
13 understand, I hope that Kelly Gray and Bud understand the man
14 that they took away, and I hope Bud is held to the absolute
15 maximum, I hope that he endures the absolute maximum sentence,
16 the absolute maximum sentence. It is time for this spoiled,
17 evil individual and this spoiled evil family in Greenwood to
18 finally gain some repercussions for their actions. Thank you.

19 THE COURT: Thank you. Sorry for your loss.

20 MR. MEADORS: Judge, thank you. And I hope, I know
21 Your Honor's been around, I mean that in the nicest way to
22 understand the emotions ---

23 THE COURT: Sure, I understand.

24 MR. MEADORS: --- that have been reflected. Judge,
25 I've asked, but I don't know if anyone ---

1 THE COURT: I'd be glad to hear from anyone else.

2 MR. MEADORS: --- wants to speak, anyone from law
3 enforcement? Again, I want to thank them. That's all we have.

4 THE COURT: Alright. Thank you, Mr. Meadors. Mr.
5 Swerling, turn things over to you, sir.

6 MR. SWERLING: Thank you, Your Honor. Your Honor,
7 please, first of all, I would like to express my sympathy to
8 the entire family. It's a real tragedy, I've never said
9 anything other than the fact it is a tragedy, and it's a big
10 loss for a lot of people on Mr. McClendon's side, and also on
11 Mr. Ackerman's side now. I just would like to mention that Bud
12 has had significant remorse, and the Ackerman family has great
13 sympathy for the McClendon family as well. But you're put in a
14 particular position when your son is charged with murder and
15 he's sitting in jail, and what do you say? I mean, do you
16 contact the family, are you going to exacerbate the situation
17 in any way or are you going to make the situation better. It's
18 a very difficult choice and Your Honor's been around quite a
19 while, I've been around quite a while, that is one of the
20 biggest dilemmas that people have in these kind of situations.
21 And I've heard that before. I don't have an explanation for it
22 except to say what I'm saying. You know, people wonder whether
23 to send cards, to make a phone call or something like that to
24 express remorse. Well, when somebody's accused of a crime, all
25 of that comes into play and I think people really just shy away

1 from doing that because of the consequences. And I've been
2 involved in this business a long time and that is just what I
3 have seen. So I just, I'd like the family to know that, that
4 no one's callous about this, it's just the circumstances
5 surrounding him being charged and what to do, what's the
6 appropriate thing to do under those circumstances. Judge, you,
7 at this point, it really is, the discretion is between 30 years
8 to life, that is the punishment for murder, it's day for day,
9 there's no parole, there's no 85 percent, whatever he gets he's
10 going to have to serve. He's in his 40s, no matter what
11 happens, even if you were to sentence him to the 30 years, he's
12 going to be in his 70s before he's ever released from prison.
13 This family has suffered greatly because this is their child.
14 He has three children; they have three grandchildren. Why
15 these things happen, why people, people get divorced a lot more
16 today than they used to get divorced when I was younger and
17 people just don't stay with each other, that was never a
18 consideration in my generation, you pretty much stayed where
19 you were going to be and you raised your children. I'm not
20 criticizing anybody for that, but the raw emotion of someone
21 saying I don't love you anymore, I want to get a divorce, I
22 just don't know how you deal with that, and apparently, he just
23 did not deal with it very well. I really do not believe that
24 he intended to kill Davis McClendon that night, but that was a
25 result, he was killed, and for that there's great remorse that

1 the incident happened as it did. Whatever the jury found that
2 it was, we presented evidence as to the reasons why it may have
3 happened, that it was not deliberate, it was not intentional,
4 they rejected that, I have issues about the matter of time that
5 they deliberated, but that's all I'm going to say about
6 that.

7 THE COURT: Okay.

8 MR. SWERLING: Your Honor, he testified, you heard
9 about his background, his roots in the community, you heard
10 about his educational level, you heard about his marriage, you
11 heard about his children, you heard about his work history, and
12 the, it's just very, I would just ask the Court to take all of
13 that into consideration because a person should not be judged
14 by one event, that's the way I look at things over the course
15 of my life. When they have a good life and have had a good
16 life, all of that needs to be taken into consideration as the
17 totality of the circumstances, so a person should not be
18 punished because of an event, but all things should be
19 considered and that's what I'm asking Your Honor to consider.
20 I would ask you to consider the 30 year minimum sentence in
21 this case and that basically is, I don't want to go back
22 through the testimony or the history, Your Honor heard it, and
23 I'm satisfied Your Honor takes that into consideration. The
24 family, I don't know if anybody in the family would like to say
25 anything, but you're certainly welcome to do it, I asked them

1 before, I think they're just in shock and so I'd just ask if
2 anybody would like to come up here and say ---

3 THE COURT: I'll be glad to hear from as many people
4 on your side, Mr. Swerling, that would like to address the
5 Court, they certainly don't have to, but I'll be glad to hear
6 from them. Dr. Ackerman, I need to have you sworn in. Madame
7 clerk?

8 CLERK: Raise your right hand. Do you solemnly swear
9 the testimony you're about to give this Court to be the truth,
10 the whole truth, and nothing but the truth so help you God?

11 DR. ACKERMAN: I do.

12 CLERK: Thank you.

13 THE COURT: Yes, sir.

14 DR. ACKERMAN: My name is Gray Ackerman, Sr. And
15 I've been a dentist around this town for about 40 years. And
16 Bud's always been a special child, he's always been real
17 outgoing and done things outdoorsy and that sort of thing. And
18 we come from a, our family does a lot of hunting. And just for
19 instance, he's so tender hearted that most of us deer hunt and
20 his brother's a big deer hunter and I'm a deer hunter and I
21 thought that Bud might be a deer hunter, but he's so tender
22 hearted, I think he went maybe one time in his entire life and
23 felt so bad about it that he just couldn't inflict pain on
24 anybody or anything. He didn't want to see any person nor
25 animal suffer any kind of way, and so he kind of always shied

1 away from that aspect of hunting. You know, he's always worked
2 his whole life, one job or another he's excelled at. When he
3 was in the automobile collision repair business, people came up
4 to us all the time and said what a wonderful job, how caring he
5 was, he always made sure they had transportation while their
6 car was being repaired. And a mutual acquaintance of ours
7 carried his car up there, his truck actually, to be repaired
8 and he later told me he says well, I had a couple of issues
9 with some taillights and so I just, I don't know where to go
10 and I don't know how to fix them, so I carried it up to Bud's
11 shop and Bud comes out and he fixes my taillight. And I asked
12 him how much I owe him and he says you don't owe me anything,
13 he said well, you can't make a living like that, he says well,
14 our friendship's worth more than that, I don't try to make a
15 living off little things like that, so that's the way he's
16 always been. He's always been a caring person and I really
17 think that this deal with the divorce and all that and having
18 three children and you know, I don't know whether it was
19 brought out or not, but I think, they had been together for 16
20 years, they'd been married I think for maybe for 10, but you
21 know, he just had a hard time getting over it. And I
22 specifically, while the divorce was going on, found out about a
23 relationship going on that he didn't know. Well, he did know
24 because he told me the address where it was all going on, and I
25 followed his now ex-wife one Friday afternoon, much like our

1 last Friday afternoon when they called off school because the
2 weather was supposed to be bad or whatever day it was, Thursday
3 or Friday, I've lost count now. But I saw her going down the
4 road towards the Urgent Care of Self Memorial Hospital and
5 followed her up into a subdivision and rode around the cul-de-
6 sac where she parked the car and walked into the house. And
7 then I rode back down the road and called my wife and I said
8 what should I do, and she said you ought to take a video or
9 something just to document it which I have and I still got it.
10 And we would, she was there several hours by the way, and it
11 happened to be a teacher friend of hers, and I know they
12 weren't doing homework, and ---

13 MR. MEADORS: Your Honor, I'm going to object. I
14 apologize.

15 THE COURT: That's alright. I'm going to give
16 everybody an opportunity to tell me whatever they want to tell
17 me.

18 DR. ACKERMAN: And so we kept their kids a whole lot
19 of the time because she was never around, she wasn't available,
20 this that and the other. And supposedly teaching but be
21 teaching in McCormick or Ninety-six. And so there was a lot
22 going on, and now, we won't go there, there's no need at this
23 point to make feelings any worse. But there's some things I
24 could have done to prevent probably some of this stuff that I
25 shied away from because I didn't feel like it was my

1 involvement to get into at that point in time. But there's
2 been lots going on, and I hate it ended up this way, but I can
3 assure everybody in this Courtroom that he did not
4 intentionally hit anybody with his 7,000 pound 250 truck that's
5 been mentioned so many times, intentionally. Now, he, nobody's
6 denying that he did hit him, and he ended up killed because of
7 it, but he did not do that intentionally. And you know, a
8 lot's been said about why we didn't call 911. Well, when you
9 get woke up at 1:00 or whatever time it was in the morning and
10 you have to take medication to go to sleep like Ambien like I
11 have to take and another prescription drug that's not relevant
12 here, but it's hard to wake up at 1:00 in the morning and have
13 your senses about you and know exactly what to do except I made
14 sure that ---

15 MR. MCCLENDON: You called your lawyer.

16 DR. ACKERMAN: --- we went outside ---

17 THE COURT: Okay. Wait just a minute. I can't have
18 any comments made over here, and if you can't control yourself,
19 I'll just respectfully ask that you leave the Courtroom, okay?
20 Thank you.

21 DR. ACKERMAN: So we went out to the garage and the
22 ambulance's going down the road ---

23 MR. MCCLENDON: I can't listen to that bullshit.

24 DR. ACKERMAN: --- and you know, at that point in
25 time, you know, we saw that he was getting the medical

1 attention, and Mr. Powell I think's the investigative officer
2 that night, Ronnie Powell, when he was over at our house
3 investigating, getting his search warrants and his team
4 together and ransacked our house with his search warrants and
5 he came back and says well, we're through here, now we're going
6 to arrest your son. I said well, what's the charge, he said
7 it's going to be murder. I said murder, he said yeah, he said
8 when we got there, he had vitals, exactly the word he used in
9 front of me and my wife, he had vitals, but he died at the
10 hospital, no mention of that. That's not what was told in this
11 Courtroom, that he was dead on the scene, and that was
12 unbeknownst to any of us. So you know, Bud's a good guy and
13 he's had good friends over the years and he's a lot like Davis
14 in respect he'll do anything for anybody and you know, that's
15 the way it's been. And I respectfully ask that he has the
16 minimum sentence which is going to put him in his mid-70s by
17 the time he gets out of that, so I think that's a pretty
18 adequate sentence because he won't have much of a life to live
19 and he won't get to see his children grow up or even be a part
20 of their lives. And it's just heartbreaking to me and his
21 mother and the rest of our family that it's come to this, but
22 you know, that's really all I got to say, Your Honor, I
23 appreciate your time.

24 THE COURT: Okay. Thank you, Dr. Ackerman. Anybody
25 else on your side, Mr. Swerling?

1 MR. SWERLING: Is there anybody else? Apparently
2 not, Your Honor. Let me just sum up, I just want the Court to
3 know that Bud Ackerman, I've spent a lot of time with him over
4 the last year and a half, I guess about a year and a half, and
5 I find him to be a very caring, passive kind of individual.
6 Again, regret what happened here, no question that Davis
7 McClendon died as a result of the incident that happened down
8 on Sawgrass and Avid Road and never have disputed that. I will
9 tell you that Mr. Ackerman, back from 2019, and I've documented
10 this, I have several medical records that document, but he
11 started developing panic attacks, he started developing
12 depression and he at various times over the last, since 2019
13 until 2023, he was seeing a therapist up in Greenville, here,
14 Laurens, and having a difficult time dealing with his
15 depression and panic attacks and at various points was on
16 medication. So he was having a difficult time and that is
17 probably what contributed to the situation with him and his
18 wife as far as his reaction to it. So with that, I mean, I
19 have, I really want to wrap it up, but Your Honor, I'd just ask
20 you to consider the minimum sentence in this case, it is a long
21 time, 30 years is a tremendously long time and I'd ask you to
22 consider a 30 year sentence.

23 THE COURT: Okay. You want me to look at or consider
24 the medical records or you just ---

25 MR. SWERLING: No, it's alright, Your Honor, I

1 don't think they have anything to do with this particular
2 situation ---

3 THE COURT: Okay.

4 MR. SWERLING: --- but I did want to bring it to your
5 attention. We didn't raise it during the course of the trial
6 because it wasn't something that we wanted to get into, but it
7 was, I just wanted the Court to know ---

8 THE COURT: Sure.

9 MR. SWERLING: --- that I have it documented of
10 various people that he saw during that period of time and that
11 was the diagnosis, depression, and anxiety, and I represent
12 that to you as an officer of the Court.

13 THE COURT: Okay. Thank you, Mr. Swerling. Mr.
14 Meadors, you're standing?

15 MR. MEADORS: May it please the Court very briefly --
16 -

17 THE COURT: Sure, yeah.

18 MR. MEADORS: --- I just had one thing. I've been
19 doing this 36 years, mostly murder cases, and I want to end on
20 a positive note, I've never ever seen a family that had this
21 much support, ever, during the process, coming to Court and I
22 want to thank all those people and that speaks about the family
23 and that speaks about Davis. I just wanted to put that on the
24 record. Thank you.

25 THE COURT: Thank you, sir.

1 (Off the record.)

2 THE COURT: Alright. We're back on the record. Let
3 me just make some comments before I impose sentencing. It's
4 already been alluded to that what a tragedy, what an absolute
5 tragedy to one set of family and friends and now another set of
6 family and friends. I've never been able to understand why
7 people do what they do. And I wish, and I see Solicitor Stumbo
8 in the back, he's tried many cases with me and he's heard me
9 say this many times in sentencing, I truly wish, truly and
10 sincerely wish that I could waive a magic wand, which of course
11 I can't do, but waive a magic wand and make this all go away,
12 that it never happened, that Mr. Ackerman, and Mr. McClendon
13 were never out on that road, Avid Road on May 7th of 2023, and
14 that we would not have to be in this Courtroom. Of course, I
15 can't do it. But I can tell you this, and I'm saying this to
16 everybody in the Courtroom, family and friends of McClendon,
17 family and friends of Ackerman, before I came out here I prayed
18 for you, I prayed for you, and I pray that everybody on both
19 sides would experience some peace, some comfort, and for God's
20 strength to be with you. I can't imagine losing a child, I
21 almost lost mine a little over a year ago working with the
22 local utility company and he fell 20 feet out of a bucket and
23 broke his back. By the Grace of God, he is back working. And
24 I can't, I just can't imagine losing him in that accident, and
25 I never want to experience ever losing anybody that's close to

1 me who I dearly love like you have. And I never want to
2 experience what you are going to be experiencing having a son
3 live at the Department of Corrections. I've always had this
4 rule when a jury comes back with a verdict regardless of the
5 amount of minutes of deliberation, I accept that verdict one
6 hundred percent. I don't question it, I don't try to second
7 guess why the jury did what they did, I accept it, and I accept
8 this, and I accept their finding that you, Mr. Ackerman,
9 intentionally killed Davis McClendon with your truck. Probably
10 one of the strongest pieces of evidence in this case, I'm not,
11 I can't remember if I heard it at the bond hearing, the
12 recording of the crash and afterwards, maybe you played it Mr.
13 Meadors, maybe you alluded to it, I don't remember, but that
14 was a very egregious act that took place on May 7th of 2023.
15 I do recognize, though, that Mr. Ackerman, you don't have a
16 prior criminal record, and I typically, even in cases like
17 this, not to lessen the seriousness of this murder case, but I
18 typically do consider to some extent the fact that you do not
19 have a prior record. Whatever I do in just a moment is not
20 going to bring back Davis McClendon, whether I give him the
21 minimum of 30 years as Mr. Swerling has requested or whether I
22 give him a life sentence without parole, Davis isn't coming
23 back, and I'm so sorry, I'm so deeply sorry. Mr. Ackerman, if
24 you'd please stand, sir. Sentence of the Court is Mr.
25 Ackerman, you be committed to the State Department of

1 Corrections for a period of 45 years, and I'm giving you 518
2 days of pretrial confinement. Good luck to you. And good luck
3 to everybody in this Courtroom. Hearing is adjourned.

4 (Whereupon the hearing ended at 4:48 pm.)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
)
)
COUNTY OF GREENWOOD)

I, the undersigned Lisa G. Amick, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Greenwood, South Carolina, on the 2nd, 3rd, 4th, and 5th day of October 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 4, 2025

Lisa G. Amick

Lisa G. Amick

Court Reporter

My commission expires: June 30th, 2025