

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Charleston County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN ANDREW BIGGS,

APPELLANT

APPELLATE CASE NO. 2017-000199

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH
Assistant Attorney General
S.C. Bar No. 15608
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

ATTORNEYS FOR RESPONDENT

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Opening Statements-Remarks by Mr. Corvey
December 13, 2016

1 that night at around the same time. We don't know why
2 and we don't know what he was doing and I don't think
3 we'll ever know that. But we do know that he got up and
4 got into his son's Chevy Silverado pickup truck and made
5 the same right on Rivers Avenue and began travelling the
6 same direction that Calvin Walker had just begun to
7 travel.

8 Now a little bit of a difference between Calvin and
9 Mr. Biggs. Calvin was still being stopped up at that red
10 light. Mr. Biggs is going fast. He keeps going fast.
11 He keeps going fast and in no time at all he catches up
12 to just behind Calvin Walker at the intersection of Eagle
13 Landing Drive.

14 He's coming up on him faster, faster at speeds of
15 100 miles an hour, no brakes, no swerves. He plowed his
16 car right into the back of Calvin Walker's mustang. Now
17 unfortunately that's the end of Calvin Walker's story and
18 that was the end of his life as he died instantaneously
19 from this wreck before his car burst into flames.

20 Now ladies and gentlemen that's why we're here.
21 That's really at the end of the day what this case is
22 going to be all about. And the facts and testimony and
23 evidence you'll see we'll get into more detail about
24 that. And just by way of introductions again since I
25 know it's been since yesterday I'm Ted Corvey. I am an

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1 Assistant Solicitor in the 9th Judicial Circuit. Helping
2 me with this case will be Todd Williams. And I want to
3 take this opportunity to thank you. I understand it is
4 not the easiest thing to do to be dragged out of your
5 daily lives with your families and your jobs and the
6 other obligations you have to be come in here and tasked
7 with the task that you have. It's a valuable one. It's
8 important for your community, it's important for the
9 State and it's not one I take lightly and I appreciate
10 your time and promise I'll do everything I can to make
11 sure this process runs as smoothly as possible.

12 Now in talking about community that brings up what I
13 think is going to be an important concept for y'all to
14 keep in mind throughout the course of this trial and that
15 deals with duties. We all have different duties. We
16 have duties with our family, our jobs. All of us who at
17 least drive have the duty to obey the speeds of the road
18 and other rules.

19 Now there will also be duties as it applies to all
20 of us in this case. For example, Mr. Williams and I we
21 have the duty to zealously prosecute violations of the
22 law and likewise Mr. Kozelski and Ms. Van Pala have the
23 duty to zealously represent their client's interests and
24 Judge Nicholson he has the duty to preside over this
25 trial and interpret the law and ultimately at the end of

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1 the case provide the law as you will need to decide it to
2 you at the end. Now that brings us to you: You guys
3 have a very important duty as well. You just swore to
4 that. What you swore is to take all the facts and the
5 evidence that are entered into this case. The facts will
6 come from the witness stand sworn testimony and physical
7 evidence that will be admitted through the course of the
8 trial and you will then have to take those facts, match
9 them up with the law and come up with a decision.

10 Now the only facts you are going to be able to
11 consider are those that come from testimony, those that
12 have come from evidence. You're not going to be able to
13 listen to conjecture. You're not going to be able to
14 listen to anything that wasn't said in the course of this
15 trial. So I hope through the course of this trial and
16 the course of the day you keep that in mind.

17 Now before I sit down I do want to touch a little
18 bit about the law in this case. Mr. Biggs is charged
19 with reckless homicide, which is outlined by South
20 Carolina code section 56-5-2910. And that section
21 provides when the death of a person ensues within three
22 years of the proximate result of the injury received by
23 the driving of the vehicle in reckless disregard to the
24 safety of others the person operating the vehicle is
25 guilty of reckless homicide. That ultimately is going to

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1 be the task that you have to decide. You're going to
2 have to decide if Mr. Biggs was reckless in driving the
3 vehicle that he was behind the wheel of that night. Now
4 to do that you're going to have to find all the elements
5 of this crime beyond a reasonable doubt and that's my
6 burden to prove to you, prove each of them beyond a
7 reasonable doubt.

8 And to me this offense has four elements.
9 Unfortunately one is cut off at the top but that one is
10 that the person was driving. The second being that they
11 were in reckless disregard to the safety of others, they
12 caused an injury to another and that injury caused and
13 resulted in the death of the person within three years.

14 Now three of those elements aren't really going to
15 be in dispute in this trial. We know Mr. Biggs was
16 driving. We obviously know an injury was caused to
17 Calvin Walker as he died that night. So really that kind
18 of leaves us focusing in on the second element; in
19 reckless disregard to the safety of others.

20 Now I'm sure Mr. Kozelski will discuss recklessness
21 with you in a moment or at the very least he will
22 certainly do so in closing argument. I'll have another
23 opportunity to do so as well but through the course of
24 this trial I want you to keep careful attention to the
25 facts in evidence that get introduced that speak to

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1 reckless; speed, lack of evasive action, distance
2 that he would have travelled, and other factors that
3 through all your life experiences and common sense to you
4 speak to recklessness.

5 Now just one more brief reminder like the law
6 nothing that I say is the law that you are going to use
7 to decide this case. The same goes for Mr. Kozelski and
8 the same goes to the facts. Ultimately, you are going to
9 be the judges of the facts where Judge Nicholson is the
10 judge of the law and the law that he provides at the end
11 of the case is the one you need to listen to. Not what
12 is being said; Mr. Kozelski and I are going to be able to
13 sort of explain the law and break it down in ways that
14 make sense to us and a way to hope to inform you what our
15 viewpoints are.

16 Now I hope that you will listen to the evidence, all
17 the testimony in this case and I know you will and at the
18 end of this case I am going to come back and ask you to
19 find a guilty verdict for Mr. Biggs. Thank you.

20 THE COURT: Mr. Kozelski?

21 MR. KOZELSKI: Thank you, Your Honor. May it
22 please the court?

23 THE COURT: Yes, sir.
24
25

State v John Andrew Biggs
Opening Statements-Remarks by Mr. Kozelski
December 13, 2016

1 OPENING STATEMENTS

2 BY MR. KOZELSKI:

3 This was truly a tragic accident and there is no
4 greater suffering than the sudden loss of a loved one.
5 In an accident like this we're often times left searching
6 for answers about how it happened and why it happened.
7 And that pain and suffering wants us to assign blame.
8 Who is responsible?

9 And it can also blind us to the fact that sometimes
10 there are unavoidable forces at work that can cause
11 accidents. Accidents by definition are events that
12 happen unexpectedly and unintentionally. It's only when
13 something is done intentionally or willfully does it
14 cease to become an accident and becomes a criminal
15 charge.

16 Now you're going to hear a lot about this accident
17 throughout the course of this trial. Mr. Corvey just
18 showed you some pictures and almost all of the evidence
19 that you're going to hear is not going to be disputed.
20 You're going to hear that the truck Mr. Biggs was in was
21 travelling at a very high rate of speed. That truck
22 without any type of evasive maneuvering or any attempt at
23 breaking crashed into the back of Calvin Walker's
24 mustang. You're going to hear that Mr. Walker died as a
25 result of that crash. But what you're not going to hear

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1 is why. Something happened. Something went terribly
2 wrong and nobody in this courtroom is going to be able to
3 tell you why, what happened; not any of the witnesses,
4 not the State, not even John.

5 What I can tell you is John is not a criminal. He
6 is not a man that would have done this intentionally or
7 willfully. He is a kind man. He is a good working, hard
8 working blue collar man. He is a man who loves his
9 family -- unfortunately he doesn't remember what happened
10 during this accident because the crash caused him to lose
11 his memory as well as other severe injuries.

12 His first memory is waking up after weeks in the
13 hospital handcuffed to the bed and looking down to see
14 that his ankles are broken, his legs are broken, his ribs
15 are broken. His stomach had been cut open to repair his
16 internal organs. His face was shattered. Almost all of
17 his teeth had been broken out and he had no idea why. He
18 was frightened. He was terrified.

19 And to add to that terror he is being told that he
20 killed somebody in a drunk driving accident. This made
21 no sense to John. He knew this had to be wrong. He's
22 not a drinker, he doesn't drink alcohol. He's never done
23 drugs in his life. And sure enough he was right. The
24 blood results came back and was negative for alcohol or
25 any other type of drug. But he still is wondering what

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Opening Statements-Remarks by Mr. Kozelski
December 13, 2016

1 happened. He had never been in trouble with the law
2 before. He knows he's not a criminal but he's been stuck
3 in this nightmare of wondering what happened that night.
4 And he knows that he will have to live with the
5 repercussions both mentally and physically of what
6 happened that night for the rest of his life.

7 But one day he's going to go back to work. One day
8 he's going to drive a car. He's going to try to live
9 some semblance of a normal life. And he certainly
10 doesn't want this to happen again. He doesn't want to
11 hurt somebody or himself. He wants to remember, he tries
12 to remember but fate has left him in the dark. But he's
13 not a threat and he stands before you today as an
14 innocent man in the eyes of the law.

15 And it is not until after you hear all of the
16 evidence in this case including John's own words that you
17 can strip him of that innocence if you believe that what
18 he did on that morning was willful. If you believe that
19 he woke up that morning, got into his son's truck, put on
20 his seatbelt and then drove it as fast as he could in
21 reckless disregard of the safety of others and himself
22 until it crashed into the back of Calvin Walker's vehicle
23 then he would be guilty. But there is not going to be
24 evidence to support that in this case. There is no
25 evidence to show that John knew what he was doing when

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Opening Statements-Remarks by Mr. Kozelski
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1 this happened. And that's why at the end of this trial
2 I'm going to stand before you again and I'm going to ask
3 that you find him not guilty. I'm going to ask that you
4 set him free from this nightmare that he has been living
5 for the last year.

6 THE COURT: Call your first witness please. Before
7 we call the witnesses I understand the State's exhibits 1
8 through 66 will be admitted into evidence without
9 objection is that correct?

10 MR. KOZELSKI: Yes, Your Honor.

11 THE COURT: And defense exhibit number 1 which is a
12 SLED toxicology report will be admitted on behalf of the
13 defendant without objection is that correct?

14 MR. CORVEY: That's correct, Judge.

15 THE COURT: Those items are admitted without
16 objection by the court.

17 [Whereupon, State's exhibit numbers 1 through 66 are
18 entered into evidence by the court]

19 [Whereupon, defendant's exhibit number 1 is entered
20 into evidence by the court]

21 THE COURT: If you will, call your first witness
22 please?

23

24

25

State v John Andrew Biggs
Calvin Walker, Jr.-Direct Examination by Mr. Corvey
December 13, 2016

1 MR. CORVEY: Thank you, Your Honor. The State calls
2 Calvin Walker, Jr.

3 [Whereupon, Mr. Walker comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: For the record if you could state
7 your first and last name and spell out your last name.

8 THE WITNESS: Calvin Walker, Jr., last name W-A-L-
9 K-E-R.

10

11 CALVIN WALKER, JR.,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CORVEY:

16 Q. Good morning Calvin.

17 A. Good morning.

18 Q. I'd like you to just take a minute and introduce
19 yourself to the jury and explain your relationship to the
20 victim in this case.

21 A. Sure. My name is Calvin Walker, Jr. That was my
22 father that was killed in the accident.

23 Q. Now Calvin how old are you?

24 A. Forty years old.

25 Q. Where were you born?

State v John Andrew Biggs
Calvin Walker, Jr.-Direct Examination by Mr. Corvey
December 13, 2016

- 1 A. Boston, Massachusetts.
- 2 Q. Is that where you were raised?
- 3 A. Yes, sir.
- 4 Q. How long were you and your folks in Boston?
- 5 A. The first 28-29 years of my life. We relocated here
6 to Charleston in 2005.
- 7 Q. Are you big Boston sports fans?
- 8 A. Yes, for a lot of teams.
- 9 Q. What brought you guys down to Charleston?
- 10 A. My mother is actually from Charleston and she has
11 family here. Her mother was getting up in age and my
12 father was from Augusta, Georgia so they wanted to move
13 down south here. At that time they just decided to
14 relocate and we closer to their roots and I came down
15 with them.
- 16 Q. Okay. Let's back up a little bit. Why don't you
17 tell me what your Dad did for a living in Boston?
- 18 A. He worked for the electric company and at the time
19 it was called Boston Edison. He was there probably 30
20 plus years --
- 21 Q. Did he retire before moving down here?
- 22 A. Yes, sir.
- 23 Q. And did he start working again once he came down
24 here?
- 25 A. Yes. He had a couple of part-time jobs here and

State v John Andrew Biggs
Calvin Walker, Jr.-Direct Examination by Mr. Corvey
December 13, 2016

1 there just to keep himself busy.

2 Q. What was he doing before the accident?

3 A. He was a delivery driver for Parks Auto Parts. He
4 did that a couple days a week.

5 Q. And what about your Mom, Debra? What did she do?

6 A. She's in early childcare development. She did that
7 back in Boston and she is now working at the Sunshine
8 House in North Charleston.

9 Q. She's a teacher?

10 A. Yes.

11 Q. Now I imagine this is going to be a little bit
12 difficult but I want to talk about the night of October
13 8th, 2015. Do you remember that night?

14 A. Yes, I do.

15 Q. First, where did you and your parents live?

16 A. We live at the Hampton Oaks apartments. in North
17 Charleston. We actually both live in there. They lived
18 in one building and me and my wife lived in a separate
19 building.

20 Q. Would that be at Rivers Avenue?

21 A. Yes, sir..

22 Q. That's in North Charleston, sir?

23 A. Yes, sir.

24 Q. Now if you could please describe for the jury how I
25 guess the night of October 7th leading into the early

State v John Andrew Biggs
Calvin Walker, Jr.-Direct Examination by Mr. Corvey
December 13, 2016

1 morning hours of October 8th what happened.

2 A. That morning I picked up some extra work at my part-
3 time job so I was already up. It was about 2:30 or 3
4 o'clock in the morning I got a call from my mother that
5 Dad was having some bad stomach or abdomen pains.

6 So I just went over there and checked on them. He
7 looked alright. He wasn't like crunched over or
8 anything like that but he was going to go to the
9 emergency room and get checked out because he was feeling
10 bad for the last couple of hours.

11 We were all going to go to the emergency room but he
12 just told us to sit back and stay. He was going to go to
13 MUSC and there was a place a little bit closer, Trident,
14 so that's where he were headed. That's why he was on
15 Rivers Avenue. Once he left there that's the last time I
16 saw or talked to him.

17 Q. And Trident is just up Rivers Avenue from where you
18 guys lived at the time?

19 A. Yes, it would have been a lot closer to go there
20 than MUSC so.

21 Q. So your father leaves. What did you do after that?

22 A. I hopped in my car to go do my assignment for my
23 part-time job. So when I got to where I was at I didn't
24 get to see the local news that morning so I could see
25 what was going on. So I looked down at my phone for the

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Calvin Walker, Jr.-Direct Examination by Mr. Corvey
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1 Live Five News app to see what was going on. Something
2 came across about breaking news with an accident Eagle
3 Landing Drive and I thought about my Dad and I thought he
4 was headed that way.

5 Right after that I get a call from my Mom. She is
6 pretty much hysterical on the phone. She had to give the
7 phone to the officer to tell me what happened. Once I
8 heard even her voice I pretty much put two and two
9 together and figured out that that was him in the
10 accident.

11 Q. Now following the accident and the months following
12 did you find out anything about where the defendant
13 lived?

14 A. Yes. Actually another weird occurrence he actually
15 resided in the same complex that we did.

16 Q. Before this had happened did you know the defendant
17 at all or have any interaction with him?

18 A. No.

19 Q. No issues, no arguments or nothing like that?

20 A. [Nods negatively]

21 Q. That's all the questions I have Mr. Walker. Please
22 answer any that Mr. Kozelski has.

23 THE COURT: Cross-Examination?
24
25

State v John Andrew Biggs
Calvin Walker, Jr.-Cross-Examination by Mr. Kozelski
December 13, 2016

1 CROSS-EXAMINATION
2 BY MR. KOZELSKI:
3 Q. Thank you Mr. Walker. I'm sorry for your loss. I
4 just wanted follow up just on the question. You said you
5 never met John Biggs?
6 A. I have not. Before seeing him right now the only
7 picture I saw was the mug shot on T.V. and in the
8 newspapers.
9 Q. Okay. As far as you know your father did not know
10 Mr. Biggs?
11 A. He did not.
12 Q. So you don't know of any reason why he would want to
13 intentionally harm your father or anything like that?
14 A. I do not know, sir.
15 Q. Thank you. No further questions.
16 THE COURT: You may step down. Thank you very much
17 -- I'm sorry, any redirect?
18 MR. CORVEY: No, Your Honor.
19 THE COURT: You may step down. Thank you very
20 much.
21 [Whereupon, the witness is excused and exits the
22 witness stand]
23 THE COURT: Call your next witness.
24 MR. CORVEY: Thank you, Your Honor.
25

State v John Andrew Biggs
Christopher Singleton-Direct Examination by Mr. Corvey
December 13, 2016

1 MR. CORVEY: The State calls Christopher Singleton.

2 [Whereupon, Mr. Singleton comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: For the record please state your
6 first and last name and spell your last name please.

7 THE WITNESS: Chris Singleton, S-I-N-G-L-E-T-O-N.

8

- - - - -

9

CHRISTOPHER SINGLETON,

10

Having been first duly sworn,

11

Was examined and testified as follows:

12

DIRECT EXAMINATION

13

BY MR. CORVEY:

14

Q. Good morning, Mr. Singleton.

15

A. Good morning.

16

Q. If you could just take a minute to tell the jury a
17 little bit about yourself, where you're from, how old you
18 are, and what you do for a living.

19

A. My name is Christopher Singleton. I'm a traffic
20 signal technician and I work for --

21

THE COURT REPORTER: I'm sorry; slow down a little.

22

Tell me where you work again.

23

A. I work at Red Electric Design. We work on streets
24 lights, traffic lights and things of that sort. And I
25 live in Goose Creek.

State v John Andrew Biggs
Christopher Singleton-Direct Examination by Mr. Corvey
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1 Q. [Mr. Corvey] How long have you worked at Red
2 Electric Designs?

3 A. I've been there for about three years.

4 Q. Now I want to take you back to the night of October
5 8th, 2015 or I guess the early morning hours of October
6 8th, 2015. Do you remember that night?

7 A. Yes, I do.

8 Q. What were you doing that night?

9 A. I was on my way to work. Well, I was on the way to
10 pick up some guys to go to work. And that's what I was
11 doing.

12 Q. And at that point you remember an accident that took
13 place that night?

14 A. Yes, I do remember. Driving down Rivers Avenue
15 going towards downtown Charleston to go pick up the guys
16 and I had to stop at the traffic light right at Rivers
17 and Eagle Landing right in front of the Northwoods Mall.

18 And I had to stop at the light and then I saw
19 another car like seconds, probably like seconds, after
20 that to pull up to the stop light going the opposite
21 direction. And then shortly after that I looked down at
22 my phone ---

23 Q. --- let me stop you right there just so we can
24 clarify a few things. So you were going to pick up some
25 guys in the direction of downtown Charleston.

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1 A. Yes.

2 Q. And then you stopped at the stop light?

3 A. Yes.

4 Q. You then see a car coming from the other direction
5 so I guess towards Goose Creek?

6 A. Yes, correct.

7 Q. And did that car stop at the stop light?

8 A. That car did stop at the stop light.

9 Q. Did it come to a complete stop?

10 A. It came to a complete stop. Then I watched it come
11 to a complete stop. And then I looked down for a second.
12 I don't know if it was at my phone or at the radio then
13 all of a sudden I looked up and I saw this car coming
14 towards me and the back of it was on fire.

15 Then right behind it was a truck. The front end of
16 it was completely smashed in and then it was following
17 behind this car. Then I had to kind of move to the right
18 in order to avoid just getting hit head on.

19 And then I kind of got side swiped and then the
20 mustang bounced off me and it had stopped probably about
21 10 to 20 feet behind where I was.

22 Q. So after you see this you didn't see the collision
23 that took place?

24 A. I didn't necessarily see the collision itself.

25 Q. So by the time you looked up it had already collided

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1 and was now coming straight towards you.

2 A. By the time I looked up whatever happened happened
3 and then they were coming towards me.

4 Q. Now at any point through this did you see either of
5 the drivers of the vehicle or ---

6 A. --- well, after I had got hit I kind of like pulled
7 over I got out of my truck to go walk over to see if
8 anyone was in need of help or if I could help. And I
9 asked everyone if they -- well, I asked the driver of the
10 mustang if they were okay and then I looked at the driver
11 of the truck.

12 Then I saw that the mustang was on fire so I tried
13 the door handle and then shortly after that the officers
14 that came on the scene came up. And then one of them
15 used the extinguisher that he had and then shortly after
16 that another one came and then they used all the
17 extinguishers they had. Then they told me to back up and
18 that's when the car got engulfed in flames.

19 Q. So at any point after you jumped out to go see if
20 you could help anyone were you able to make contact with
21 either of the drivers?

22 A. I thought I saw the driver of the mustang kind of
23 like twitch but...

24 Q. But you couldn't get the door open?

25 A. No, I couldn't.

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1 Q. So after law enforcement and other emergency
2 personnel arrived did you stay on scene?

3 A. Yes, I had to because they had to take my statement
4 so I had to wait around until everybody was cleared to
5 leave.

6 Q. Thank you Mr. Singleton. Well, actually before I
7 stop let me ask one thing. Are you fairly familiar with
8 Rivers Avenue and that area?

9 A. Yes, I am.

10 Q. Could you for the jury describe what that roadway is
11 like?

12 A. It's very well lit and it's and it's a big traffic
13 light intersection and its right in front of the mall so
14 it's very well lit.

15 Q. At that time of night is there a bunch of traffic on
16 the road?

17 A. There wasn't any traffic at all.

18 Q. So as far as you can remember it was just you and
19 the mustang at the time you pulled up?

20 A. Me and the mustang at the time that I pulled up.

21 Q. Now when you're driving on Rivers Avenue I guess in
22 either direction can you see everything fairly clearly?

23 A. Yes.

24 Q. Thank you, Mr. Singleton. No further questions.

25 THE COURT: Cross-Examination?

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Christopher Singleton-Cross-Examination by Mr. Kozelski
December 13, 2016

1 CROSS-EXAMINATION

2 BY MR. KOZELSKI:

3 Q. Mr. Singleton, when you are stopped at the light you
4 are actually looking up at Rivers Avenue?

5 A. That's correct.

6 Q. And it goes uphill right at that section?

7 A. Possibly; I believe so yes.

8 Q. Up until you get about Ashley Phosphate?

9 A. Probably not that far, no.

10 Q. Okay. And you testified that you were looking down
11 at the time of the accident?

12 A. If you want to say at the time of the accident I saw
13 the mustang which I was looking to my left. It was kind
14 of like diagonal to my left and then I saw it stop and
15 then I looked down at my phone and then I looked up and
16 the two vehicles were turning right towards me.

17 Q. You looked up when you heard the crash?

18 A. I won't say that I heard it but I looked up and I
19 saw the two cars coming.

20 Q. And they had already collided and were coming
21 towards you?

22 A. Must have, yes.

23 Q. So you weren't able to see the truck actually come
24 down Rivers?

25 A. No, I didn't see it at all.

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1 Q. And you never saw the driver when he was driving it
2 down the road I take it?

3 A. I can't see the drivers in the car looking that far.

4 Q. And when you went up to the mustang after the crash
5 you said there was no response from Mr. Walker. And you
6 went to the truck to see if that person needed help?

7 A. I kind of like walked towards it and then I saw the
8 car was on fire so I went and I focused more on the
9 mustang because it was on fire.

10 Q: Could you tell whether or not Mr. Biggs was
11 conscious?

12 A. I couldn't tell but I could see him.

13 Q. Okay. Thank you. No further questions..

14 THE COURT: Any redirect?

15 MR. CORVEY: No, Your Honor.

16 THE COURT: Mr. Singleton, you may step down.

17 Thank you very much.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 THE COURT: You want to call your next witness?

21 MR. CORVEY: Thank you, Your Honor.

22

23

24

25

State v John Andrew Biggs
Robert Broadhead-Direct Examination by Mr. Corvey
December 13, 2016

1 MR. CORVEY: The State calls Brett Everidge -- I'm
2 sorry Your Honor, the State calls Robert Broadhead.

3 [Whereupon, Mr. Broadhead comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: For the record if you will state
7 your first and last name and spell your last name please.

8 THE WITNESS: Robert Broadhead, B-R-O-A-D-H-E-A-D.

9

10 ROBERT BROADHEAD,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CORVEY:

15 Q. Good morning, Mr. Broadhead. If you could, just
16 take a few moments and describe yourself to the jury and
17 where you're from and what you do for a living?

18 A. I'm from Goose Creek. I work in food and beverage.
19 I recently opened a bar in Moncks Corner, a bar and
20 restaurant called --

21 THE COURT REPORTER: What is it called again?

22 A. Tail Race Tavern. I've worked in food and beverage
23 about 18 years; born and raised in Charleston.

24 Q. [Mr. Corvey] Thank you for that. I've been to the
25 Tail Race. Great food. Now let's move back to the night

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1 of October 8th, 2015. Do you remember that night?

2 A. Yes.

3 Q. What were you doing that night?

4 A. I had gone out for some late night food. Wild Wings
5 serves until one o'clock. I got there and a couple of my
6 friends showed up and we started talking about work.

7 Q. And which friends were those?

8 A. Brett Everidge and Brandon Jones.

9 Q. And you guys stayed at the Wild Wings for a little
10 bit?

11 A. Yes, sir. And once the bar closed we sat outside
12 and just talked work and talked shop for several hours.

13 Q. Just sitting around talking and having a cigarette
14 or something like that?

15 A. Yes, sir.

16 Q. For the jury could you please describe where this
17 Wild Wings location is?

18 A. It's 7618 Rivers Avenue across from the Northwoods
19 Mall in the Best Buy parking lot.

20 Q. And it's basically; correct me if I'm wrong, almost
21 right off Rivers Avenue?

22 A. Yes, sir.

23 Q. Would the parking lot that you guys were in could
24 you see Rivers Avenue from there?

25 A. Yes, sir.

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Robert Broadhead-Direct Examination by Mr. Corvey
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- 1 Q. From where you guys were sitting?
- 2 A. Absolutely.
- 3 Q. Now had you worked at that Wild Wings previously?
- 4 A. Yes, sir. I worked there for 13 years.
- 5 Q. So you're pretty familiar with the area?
- 6 A. Yes, sir.
- 7 Q. Now you guys are out there. Just tell the jury what
8 happened next?
- 9 A. Sitting up there and I just hear a car moving at a
10 high rate of speed and we all kind of ---
- 11 Q. --- let me stop you there. When you say hearing a
12 car moving at a high rate of speed what do you mean by
13 that?
- 14 A. You could hear a motor revving, the air diffusing
15 from around it. It was a car making a lot of noise. It
16 caught our attention because it was not like every other
17 car that we had heard.
- 18 There wasn't much traffic on the road. I looked
19 left and saw a dark Silverado at a high rate of speed and
20 that was about it.
- 21 Q. So you could hear this car before you could see it?
- 22 A. Yes.
- 23 Q. And once you could see it is there anything you
24 could make out of the driver of the vehicle or anything
25 like that?

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1 A. It was going pretty fast. You couldn't really see
2 much of it.

3 Q. And you just said a high rate of speed.

4 A. It was probably every bit of 100 miles an hour.

5 Q. Needless to say you don't know that for sure?

6 A. No, but it was moving.

7 Q. Did it still sound like at that point the car was
8 still accelerating to you?

9 A. It sounded like it was maintaining speed.

10 Q. What do you mean by that?

11 A. It didn't sound like it was going any faster. It
12 sounded like it was holding whatever speed it was
13 travelling.

14 Q. So it didn't have that kind of whine of an engine
15 that ---

16 A. --- no, it sounded like it was kind of pegged out
17 like it wasn't going any faster.

18 Q. Now what happened after you saw the truck?

19 A. Probably three to five seconds later we heard a loud
20 crash. We immediately heard two horns and we started to
21 walk down that way.

22 Q. About how far down from where you guys were located
23 at Wild Wings was this accident?

24 A. A block.

25 Q. A block? Now would you recognize some photographs

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1 of that area if I showed it to you?

2 A. Yes, sir.

3 Q. I'm first going to show you a little bit snippet of
4 a map, State's exhibit 8.

5 [Whereupon, the photograph is shown]

6 Q. Now on the touch pad in front of you you can
7 actually draw on it. So if you could just for the jury
8 circle where you guys were. I guess it's obvious with it
9 printed right there.

10 A. We were right here [indicates] in the traffic circle
11 on the patio.

12 Q. Okay. And so moving this map I'm showing you
13 State's exhibit 9.

14 [Whereupon, the photograph is shown]

15 Q. Do you recognize what intersection that is?

16 A. Yes, sir.

17 Q. And what is that?

18 A. That's Rivers Avenue. If you go across the street,
19 that's Northwoods Boulevard.

20 Q. And from the vantage point at the top what is
21 immediately to their right?

22 A. Immediately to the right is the patio at Wild Wings.

23 Q. So where you and your friends were sitting?

24 A. Yes.

25 Q. And then down in the distance there do you see an

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- 1 additional set of traffic lights?
- 2 A. Yes, sir.
- 3 Q. Other than the one in the immediate foreground?
- 4 A. Yes, sir.
- 5 Q. Is that the intersection where the accident
- 6 happened?
- 7 A. Yes, sir.
- 8 Q. Do you know what road that was by any chance?
- 9 A. That's Eagle Landing.
- 10 Q. State's exhibit 11 a little panned out.
- 11 [Whereupon, the photograph is shown]
- 12 Q. And so this would have been the patio that is I
- 13 guess right behind this parking lot here [indicates]?
- 14 A. It's actually about ten feet to the right ---
- 15 Q. --- to the right ---
- 16 A. --- of where this picture is taken.
- 17 Q. And then that's Rivers Avenue right there
- 18 [indicates]?
- 19 A. Yes, sir.
- 20 Q. And so that's where you guys would have seen the
- 21 truck moving past?
- 22 A. Yes, sir.
- 23 Q. And you said you couldn't see the accident that took
- 24 place but you heard it correct?
- 25 A. Correct.

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1 Q. Is that an accurate representation of approximately
2 what you guy's view would have been from -- at least of
3 the Eagle Landing intersection?

4 A. Yes.

5 Q. So you would have those trees and some signs in your
6 way?

7 A. Absolutely.

8 Q. Now I want you to tell me a little bit about the
9 roadway at Rivers Avenue. How are the sight lines there?

10 A. It's pretty wide open. That time of morning there
11 really wasn't anybody on the road. It's well lit through
12 there.

13 Q. Being around the mall and everything?

14 A. Yes.

15 Q. I think you mentioned earlier but there wasn't much
16 traffic at that point of the night?

17 A. No, sir.

18 Q. Okay. Now I want to get back a little bit to what
19 you saw when you saw the truck. Now you said it went by
20 very quickly. Was there anything you could tell about
21 the truck other than the speed, at least your best guess
22 at speed?

23 A. It was a dark color Silverado.

24 Q. Is there anything you could tell about its driving
25 at that point?

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1 A. It didn't appear to be swerving or anything like
2 that. It was holding its line.

3 Q. In one lane holding its line.

4 A. I can only speculate in one lane but it wasn't
5 weaving or swerving.

6 Q. At least as far as your vantage point driving
7 straight.

8 A. Yes, sir.

9 Q. Any other indicators of course other than speed that
10 it was out of control in any way?

11 A. No, sir.

12 Q. So you and your friends go down to the intersection.
13 Please tell the jury what happened next.

14 A. There was a cop pretty much immediately on the
15 scene. I think he was running radar like not even a
16 block from where the accident happened. He was already
17 blocking it off when we were walking up. There was about
18 15 emergency vehicles. The heads were on the horns for
19 quite some time.

20 Q. What do you mean by that?

21 A. From the impact. Both drivers appeared to be
22 unconscious and their heads were resting on the horns.
23 The mustang was engulfed in flames. It was kind of spun
24 around. The headlights were still on. His head remained
25 on the horn for probably 15 minutes.

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1 Q. The horn kept going while it was burning?

2 A. Yes.

3 Q. Now if you could tell the jury -- describe what that
4 wreck scene was like?

5 A. It was probably the worst thing I've ever seen in my
6 life. There was not much left of either car. You could
7 smell the burning metal and like I said it was tragedy to
8 say the very least.

9 Q. Now since you testified that you could hear the
10 crash how would you describe the noise you heard?

11 A. I don't recall hearing skid marks. I just remember
12 hearing a loud crash and then like we just knew
13 immediately that something bad had happened and walked
14 down there and saw what we saw.

15 Q. No further questions. Please answer any Mr.
16 Kozelski may have.

17 THE COURT: Cross-Examination?

18

19

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21

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25

State v John Andrew Biggs
Robert Broadhead-Cross-Examination by Mr. Kozelski
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1 CROSS-EXAMINATION

2 BY MR. KOZELSKI:

3 Q. Mr. Broadhead, you said you couldn't see the man
4 that was driving the car.

5 A. No, sir.

6 Q. And you couldn't make out which lane he was in.

7 A. No, sir.

8 Q. You just knew that he wasn't swerving or driving
9 erratically.

10 A. With the exception of speed, yes sir.

11 Q. And there was no car following him or chasing him?

12 A. Not that I could see, no sir.

13 Q. And once you got out of sight you didn't hear any
14 screeching brakes or anything like that?

15 A. No, sir.

16 Q. You just heard the collision.

17 A. Yes, sir.

18 Q. And by the time you got down there you saw that both
19 parties were unconscious?

20 A. Yes, sir.

21 Q. No further questions.

22 THE COURT: Any redirect?

23 MR. CORVEY: No, Your Honor.

24 THE COURT: Thank you very much. You may step
25 down. Thank you very much.

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Robert Broadhead-Cross-Examination by Mr. Kozelski
December 13, 2016

1 THE WITNESS: Thank you.
2 [Whereupon, the witness is excused and exits the
3 witness stand]
4 THE COURT: Call your next witness.
5 MR. WILLIAMS: Thank you, Your Honor.
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State v John Andrew Biggs
Brandon Jones-Direct Examination by Mr. Williams
December 13, 2016

1 MR. WILLIAMS: The State calls Brandon Jones.
2 [Whereupon, Mr. Jones comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: For the record if you could state
6 your first and last name and spell your last name please.

7 THE WITNESS: Brandon Jones, J-O-N-E-S.

8

- - - - -

9

BRANDON JONES,

10

Having been first duly sworn,

11

Was examined and testified as follows:

12

DIRECT EXAMINATION

13

BY MR. WILLIAMS:

14

Q. Good morning, Mr. Jones. How are you today?

15

A. Good.

16

Q. Where do you live Mr. Jones?

17

A. In Hanahan.

18

Q. In Hanahan?

19

A. Un Huh.

20

Q. Are you from this area originally?

21

A. I'm from West Virginia originally but been here 32
22 years.

23

Q. How old are you?

24

A. I'm 40.

25

Q. So for most of your life you've been here?

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- 1 A. Yes, sir.
- 2 Q. Do you have family?
- 3 A. I'm single.
- 4 Q. Do you work in the area?
- 5 A. I do.
- 6 Q. What do you do?
- 7 A. I run a restaurant in Moncks Corner.
- 8 Q. What restaurant?
- 9 A. Tail Race Tavern.
- 10 Q. Do you know Robert Broadhead?
- 11 A. I do.
- 12 Q. Are y'all friends, partners?
- 13 A. Friends. We've worked together for the last seven
14 years. We've been friends for 12 years.
- 15 Q. How did y'all first meet?
- 16 A. I worked with his brother at a different restaurant
17 in '98 or '99 somewhere in that area.
- 18 Q. Do you recall being with Mr. Broadhead on the night
19 of -- excuse me the early morning of October 8th, 2015?
- 20 A. Yes, sir.
- 21 Q. Where were you that night?
- 22 A. We were outside. I had just gotten off work and
23 come by and seen his vehicle at Wild Wings Café on Rivers
24 Avenue so I pulled in and had a conversation with him at
25 the patio.

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Brandon Jones-Direct Examination by Mr. Williams
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1 Q. Okay. Let me stop you there. Had you been with
2 him at Wild Wings?

3 A. I saw his vehicle was there so I pulled in. I
4 hadn't been with him until like 3 a.m. or somewhere
5 around that time.

6 Q. Was this unusual for you to come across his vehicle?

7 A. No. He works there at least one night a week still
8 part-time. And so often times when I'm passing by
9 leaving work I'll check to see if his car is there.

10 Q. Looking out for a friend to stop by and visit?

11 A. Yes, sir.

12 Q. Now on the night of October 8th he was at Wild
13 Wings?

14 A. Yes, sir.

15 Q. And when you initially arrived at the Wild Wings
16 where was he?

17 A. He was sitting on the patio.

18 Q. Describe the scene just basically out front at Wild
19 Wings for those who aren't familiar with it.

20 A. There is a patio right outside the building which
21 has roll up windows on it. So these were all rolled up
22 so it was completely open.

23 I was -- right in front of the building is a little
24 semi-circle drive around and that's where I was parked.
25 Brett was parked and another few cars were parked there

State v John Andrew Biggs
Brandon Jones-Direct Examination by Mr. Williams
December 13, 2016

- 1 as well.
- 2 Q. Okay. It's like a turn around?
- 3 A. A turn around, yes sir.
- 4 Q. So people can drop off?
- 5 A. Yes, sir.
- 6 Q. This was in October?
- 7 A. Yes, sir.
- 8 Q. Do you recall the temperature?
- 9 A. I don't.
- 10 Q. Was it cold?
- 11 A. I don't think it was overly cold. I don't remember
12 it being overly cold.
- 13 Q. So you arrived and Mr. Broadhead was out front?
- 14 A. Yes, sir.
- 15 Q. What did you do at that point?
- 16 A. We were just having a conversation about the tavern
17 as we often do if we see each other because we kind of
18 work opposite shifts now so we were just having a
19 conversation about things that were going down at work at
20 the restaurant.
- 21 Q. Was anyone else with you?
- 22 A. Our friend --
- 23 Q. Could you say that a little clearer so she can
24 understand you?
- 25 A. Our friend Brett.

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- 1 Q. And what's Brett's last name?
- 2 A. Everidge.
- 3 Q. Thank you. Had you been to this Wild Wings before?
- 4 A. Oh absolutely. I worked there for five years.
- 5 Q. Okay. Do you travel up and down Rivers often?
- 6 A. Yes, sir.
- 7 Q. So you're familiar with the area?
- 8 A. Yes, sir.
- 9 Q. What at that point do you recall anything unusual or
10 out of the ordinary that night?
- 11 A. Well, while we were sitting there talking a vehicle
12 came by at a high rate of speed like 85 to 100 miles an
13 hour I would guess.
- 14 Q. Okay. What kind of vehicle was it?
- 15 A. It was a truck, a truck.
- 16 Q. What kind of car do you drive?
- 17 A. I have a Hyundai santé fe.
- 18 Q. Are you familiar with different makes of cars?
- 19 A. Yes, sir.
- 20 Q. And this was a truck, a pickup truck?
- 21 A. Yes, sir.
- 22 Q. You said high rate of speed. You travel up and down
23 Rivers often. Was this in excess of the speeds that you
24 travel on Rivers?
- 25 A. Yes, sir.

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1 Q. What speeds did you say?

2 A. I would guess at the time maybe 100 miles an hour.

3 Q. Was the engine going up or down or steady. Describe
4 the sound that you heard.

5 A. I don't think it was accelerating. I think it was
6 like it was all the way -- like the pedal was all the way
7 to the floor.

8 Q. You're familiar with the truck. Did this seem to be
9 a normal speed for this make and model?

10 A. No, sir.

11 Q. Were there any other cars between or around this
12 truck traveling?

13 A. It was kind of quiet at that point for Rivers on any
14 night really. There weren't a whole lot of cars going by
15 and this one made us be more noticeable because you could
16 just hear it coming down Rivers. I think it was the only
17 one I saw, the only other car I saw at that time.

18 Q. So it wasn't passing another car?

19 A. No, sir.

20 Q. When you saw this truck when it passed you how long
21 did it take for it to come and then go?

22 A. Seconds. It was in our window for just a matter of
23 seconds.

24 Q. When you saw the truck passing you was it going
25 straight, was it swerving, was it turning?

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Brandon Jones-Direct Examination by Mr. Williams
December 13, 2016

1 A. It looked straight. It didn't look like there was
2 any swerving going on. It didn't look like it was moving
3 in and out of the lane.

4 Q. And I asked you about the temperature. Was there
5 any precipitation or anything like that?

6 A. I don't remember any.

7 Q. What happened at that point after the truck went by?
8 Did you say anything to anyone?

9 A. I turned to Jeff and Brett and said he's going to
10 kill someone. And immediately after that we heard this
11 loud explosion.

12 Q. I'm asking you about you said you heard something at
13 that point. Describe what it sounded like.

14 A. It just sounded like an explosion. It sounded like
15 you know a transformer blowing up but multiplied. It
16 was just a very loud explosion. And right after that
17 there was car horns going off continuously and then the
18 smell of burning metal.

19 Q. How long after the truck passed you did you hear
20 that sound?

21 A. Less than 10 seconds. It was pretty quick.

22 Q. Were you reasonably certain what happened?

23 A. Yes.

24 Q. What did you do after you heard the crash?

25 A. Jeff, Brett and I went and ran to the scene to see

State v John Andrew Biggs
Brandon Jones-Direct Examination by Mr. Williams
December 13, 2016

1 if we could help anybody out.

2 Q. How far was the scene?

3 A. Not even a quarter mile I'd say.

4 Q. How did y'all get there?

5 A. We got in someone's car and pulled down as far as we
6 could go before the -- it was already engulfed at that
7 point.

8 Q. When you arrived what did you see?

9 A. There was both cars had flames on them.

10 Q. You said both cars?

11 A. I'm sorry, the truck and the sports car.

12 Q. Do you recall what the model the sports car was?

13 It's okay if you don't.

14 A. No, sir.

15 Q. But it was a sports car though?

16 A. Yes, sir.

17 Q. Okay. You said you arrived and saw both cars
18 there.

19 A. The police had already arrived on scene. It was
20 very quick. They were just -- it was a bad scene; just
21 metal everywhere and fire.

22 Like I said the police was already there so we
23 decided we didn't need to help out and we just left. It
24 didn't look like -- they were working on the sports car
25 first and working on the truck after that. But I just

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1 remember the horns were going off. They weren't stopping
2 and that was the thing I remember most.

3 Q. Do you know why?

4 A. I would guess there was someone leaning on them.

5 Q. Now when you arrived at the scene you said you saw a
6 truck and sports car.

7 A. Yes, sir.

8 Q. Was the truck the same truck that passed you?

9 A. Yes, sir.

10 Q. No doubt in your mind that that was the same truck?

11 A. No.

12 Q. Were you able to see either occupant or any
13 occupants of either car?

14 A. No, sir.

15 Q. How far were you from the cars -- the car and the
16 truck?

17 A. About 20 feet or so.

18 Q. So relatively close?

19 A. Relatively close.

20 Q. After this happened what did you do?

21 A. Just waited around to give our information to the
22 responders and just waited and gave my statement.

23 Q. Thank you, sir.

24 THE COURT: Cross-Examination?

25

State v John Andrew Biggs
Brandon Jones-Cross-Examination by Mr. Kozelski
December 13, 2016

1 CROSS-EXAMINATION
2 BY MR. KOZELSKI:
3 Q. Mr. Jones, this area in front of the Wild Wings, the
4 area of Rivers Avenue it's a big road correct?
5 A. Yes, sir.
6 Q. It's about six lanes across?
7 A. Yes, sir.
8 Q. And it goes downhill towards Eagle Landing?
9 A. I'm not sure to be honest with you about it going
10 downhill.
11 Q. If you're standing say on the sidewalk you'd be
12 looking down at the accident at Eagle Landing?
13 A. Yes.
14 Q. Then it goes back up towards -- if you're going
15 towards Goose Creek?
16 A. Right.
17 Q. And you said that the car drove by within a matter
18 of seconds is that correct?
19 A. Yes, sir.
20 Q. And you couldn't see the driver? Could you see
21 which lane he was in?
22 A. I don't recall.
23 Q. Okay. But he wasn't swerving or ---
24 A. --- I didn't see him swerve at all. It seemed like
25 he was headed straight.

State v John Andrew Biggs
Brandon Jones-Cross-Examination by Mr. Kozelski
December 13, 2016

1 Q. Okay. But you're not sure which lane?

2 A. No, sir.

3 Q. No further questions.

4 THE COURT: Any redirect?

5 MR. WILLIAMS: Yes, Your Honor; briefly.

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State v John Andrew Biggs
Brandon Jones-Redirect Examination by Mr. Williams
December 13, 2016

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REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Kozelski asked you if the car was travelling if it was maintaining a straight line.

A. Yes, sir.

Q. Did the truck appear to be out of control?

A. No, sir.

Q. Thank you.

THE COURT: You may step down. Thank you very much.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Call your next witness.

State v John Andrew Biggs
Benjamin Trask-Direct Examination by Mr. Corvey
December 13, 2016

1 MR. CORVEY: The State calls Officer Benjamin
2 Trask.

3 [Whereupon, Officer Trask comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: For the record if you will state
7 your first and last name and spell your last please.

8 THE WITNESS: My first name is Ben -- Benjamin and
9 my last name is Trask, T-R-A-S-K.

10 - - - - -

11 BENJAMIN TRASK,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CORVEY:

16 Q. Good morning Officer Trask.

17 A. Good morning.

18 Q. How are you today? If you could please take a
19 minute to introduce yourself to the jury, explain for
20 them your background, where you grew up, education.

21 A. I'm Officer Trask with North Charleston Police
22 Department. I've been there for -- April will be six
23 years. Before going there I went to Coastal Carolina
24 University and I have a Bachelors of Business
25 Administration. I came to Charleston and got another

State v John Andrew Biggs
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1 Bachelor's in Criminal Justice from ---

2 THE COURT REPORTER: --- I'm sorry, could you slow
3 down.

4 A. Charleston Southern Bachelor's in Criminal Justice
5 from there and then a Master's and then I joined the
6 North Charleston Police Department.

7 Q. What's your Master's in?

8 A. Criminal Justice.

9 Q. Criminal Justice? Where did you grow up?

10 A. Myrtle Beach.

11 Q. And so you said you've been with North Charleston
12 Police Department for six years?

13 A. In April six years, yes sir.

14 Q. April, six years? If you could just describe the
15 various roles and duties you have with North Charleston?

16 A. The majority of the time I am on patrol on night
17 shift working the north area which is pretty much Ashley
18 Phosphate towards Ladson 78 around towards 26. And I
19 also spend some time with some specialized units, the
20 PACE team which is a patrol unit and then on to the speed
21 team which is a street level narcotics unit for about a
22 year.

23 Q. If you could just describe some of the training
24 you've had since you've been in law enforcement with
25 North Charleston in addition to the degrees that you

State v John Andrew Biggs
Benjamin Trask-Direct Examination by Mr. Corvey
December 13, 2016

1 have?

2 A. I went to the Criminal Justice Academy back in 2011
3 and finished there. I've been through several trainings
4 and NCO last year as a training officer.

5 Q. What do you do as an NCO?

6 A. We have a field training program where we have newly
7 hired officers whether they be pre-certified or whether
8 they worked at another agency as a law enforcement
9 officer or whether they are brand new rookies.

10 We just take them and train them the way our
11 department -- or where they came from or if they've never
12 been a police officer before and try to teach them to do
13 the job to the best of their ability.

14 Q. So you're basically an on-hands trainer with the
15 rookies or your young police officers?

16 A. [Nods affirmatively]

17 Q. Sorry to interrupt you. Go ahead.

18 A. Other than that just our standard regular training
19 with some specialized classes and things of that nature.

20 Q. In relation to your jobs with the speed team. Now I
21 want to take you back to the night of October 8th. Were
22 you working that night?

23 A. I was.

24 Q. What were you doing that night?

25 A. I was working patrol in the north area. I believe I

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Benjamin Trask-Direct Examination by Mr. Corvey
December 13, 2016

1 was working zone 8, which would have been in the
2 Northwoods Mall area and Greenridge, Rivers Avenue, 78
3 was my area of responsibility.

4 Q. Did you happen to get involved in an automobile
5 collision that night?

6 A. I worked a collision. I wasn't involved in it.

7 Q. Did you happen to be involved in working a
8 collision?

9 A. Yes, sir.

10 Q. If you could just describe for the jury how you kind
11 of came upon this accident.

12 A. I believe I was travelling east bound on Rivers
13 Avenue right near the Northwoods Mall, farmers market,
14 Eagle Landing Boulevard area when I happened upon a
15 collision involving two vehicles.

16 I don't recall what time it was. It was probably
17 just after two o'clock maybe three o'clock in the
18 morning. And I just happened on it -- it wasn't
19 dispatched to me yet. I just literally pulled up on it
20 so to speak and called it in and started to assess the
21 situation.

22 Q. Did it appear that you drove up on it moments after
23 it happened?

24 A. It appeared that way. It was some vehicles that
25 stopped off on the side of the road and people were

State v John Andrew Biggs
Benjamin Trask-Direct Examination by Mr. Corvey
December 13, 2016

1 starting to walk up to assess but it hadn't been
2 dispatched yet so it had to be. It was pretty severe so
3 it would have been called in relatively quickly.

4 Q. So did you end up actually radioing it in?

5 A. I did.

6 Q. And then I assume other units dispatched very
7 quickly to your location?

8 A. I called for additional. I think my partner was
9 right behind me so we both got out at the same time but I
10 quickly asked for additional units.

11 Q. And what were your first steps once you pulled up on
12 the scene?

13 A. Once I got there I believe the first thing I did was
14 I observed the two vehicles involved, I believe it was a
15 pickup truck and a mustang. The pickup truck was facing
16 eastbound in the westbound lane of travel and the mustang
17 was in the turning lane or just in the intersection of
18 Rivers and Eagles Landing.

19 Before I got out the car I called it in and asked
20 for fire and EMS to go ahead and start heading our way
21 which normally isn't typical because they want patient
22 information, just demographics but I said go ahead and
23 start it.

24 Q. Is that because you called them right away is based
25 on what ---

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December 13, 2016

1 A. --- just based on what I could see from pulling up
2 on it. I mean the mustang was pretty much looked like it
3 was missing its back end. And I didn't see anybody moving
4 around the scene other than the cars that had just
5 stopped.

6 I walked up towards I want to say I approached the
7 truck first and looked in and pulled on the handle of the
8 passenger side door and it wouldn't open. And then I
9 went to the mustang which had an individual in it and
10 started talking to him immediately or tried talking to
11 him but he wasn't responsive.

12 I immediately noticed smoke starting to come up from
13 the back end of the mustang, which at that point I called
14 for my partner to grab his fire extinguisher and I asked
15 for anybody else who wanted to help. And once again I
16 think I asked again for fire.

17 At that point I moved back to the truck where I
18 tried speaking with the gentleman there but he was -- I
19 don't believe he was responsive either. I couldn't get
20 in any one of the vehicles. The doors were just stuck
21 shut from the impact of the collision.

22 And from that point on it wasn't much that -- we
23 tried to pry open the door on the mustang especially once
24 it really started smoking but we had to back up at one
25 point because it went up in flames.

State v John Andrew Biggs
Benjamin Trask-Direct Examination by Mr. Corvey
December 13, 2016

1 Q. Did the fire begin to get bigger?

2 A. Very quickly.

3 Q. How would you describe that fire?

4 A. It was intense. It went from -- it was quick. I
5 couldn't give you a timeframe but the flames were
6 probably 15 to 20 feet high.

7 Q. How would you -- you've kind of already given us a
8 little bit but how would you describe that accident
9 scene?

10 A. It was rough. Obviously there was someone still
11 stuck in a car. As a police officer if you're asked why
12 you do you do your job and your standard answer is always
13 that you want to help people. It's true but rare but it
14 happens you can help somebody in an absolutely critical
15 time. When you can't do that you have to sit in the car
16 --

17 THE COURT REPORTER: I'm sorry; I didn't hear the
18 very last thing you said.

19 A. We want to help somebody in their most critical
20 moment and we couldn't. He was stuck in the car and it
21 caught on fire.

22 Q. So no one was able to get him out before the car
23 caught on fire?

24 A. [Nods affirmatively]

25 Q. After the fire escalated and other personnel arrived

State v John Andrew Biggs
Benjamin Trask-Direct Examination by Mr. Corvey
December 13, 2016

1 what did you do on scene for the rest of the night?

2 A. Initially we ended up -- we realized our cruisers
3 were sitting on this crime scene essentially. So I think
4 at that point I said push people back and we started
5 taking statements from anybody that witnessed it.

6 And I ended up moving towards Rivers east bound at
7 the 52 connector to get onto 26 and I directed traffic
8 for an hour or two.

9 Q. So that night do you have a dash cam or equipment in
10 your cruiser?

11 A. I do.

12 Q. Could you explain a little bit to the jury how that
13 works.

14 A. Nearly all of our cruisers are equipped with in car
15 cameras that are mounted to the windshield. If you turn
16 on your lights it will back record for about 30 seconds.
17 If you watch the video you will see 30 seconds before
18 anything really happens in a traffic stop so you're going
19 to see the 30 seconds before that, no audio, and then it
20 will kick on after that point where you turned on your
21 equipment.

22 When you turn your lights and siren and your
23 equipment the camera automatically comes on to capture
24 whatever you do. So there is a delay in -- you're going
25 to catch 30 seconds before whatever you want to see

State v John Andrew Biggs
Benjamin Trask-Direct Examination by Mr. Corvey
December 13, 2016

1 whenever I activate that.

2 Q. Was your dash cam equipped that night?

3 A. It was.

4 Q. Did it record that?

5 A. It did.

6 Q. Did you enter that video into evidence?

7 A. I did.

8 Q. I'm now going to show you what has been entered as
9 State's exhibit 6.

10 [Whereupon, the witness is shown exhibit]

11 MR. CORVEY: Court's indulgence, Your Honor.

12 [Whereupon, Mr. Corvey prepares to play the C.D.]

13 MR. CORVEY: Another court's indulgence, Your
14 Honor. I apologize.

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State v John Andrew Biggs
Proceedings
December 13, 2016

1 THE COURT: Mr. Foreman, what we will do until they
2 can get this working we'll take a morning break. Please
3 don't discuss the case amongst yourselves. If anybody is
4 a smoker let the bailiffs know and they'll take you to
5 the appropriate place to smoke and we'll take about a 20
6 minute break. If you'll follow the bailiff to the jury
7 room.

8 [Whereupon, the jury exits at 10:55 a.m.]

9 THE COURT: Anything from the State before we take
10 a break?

11 MR. CORVEY: No, Your Honor.

12 THE COURT: Anything from the defendant?

13 MR. KOZELSKI: No, Your Honor.

14 THE COURT: All right. Officer Trask if you would
15 during the break don't discuss the case with anybody
16 please, sir.

17 THE WITNESS: Yes, sir.

18 THE COURT: Thank you. We'll take about a 20
19 minute break.

20 MR. CORVEY: Thank you, Your Honor.

21 [Whereupon, court is in recess from 10:55 a.m. until
22 11:28 a.m.]

23 THE COURT: Anything from the State before we bring
24 the jury?

25 MR. CORVEY: Nothing from the State, Your Honor.

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1 THE COURT: Anything from the defendant?
2 MR. KOZELSKI: No, Your Honor.
3 THE COURT: Bring us the jury please.
4 [Whereupon, the jury enters at 11:30 a.m.]
5 THE COURT: You can continue cross-examination.
6 MR. CORVEY: Thank you, Your Honor.
7 THE COURT: Excuse me; direct examination.
8 MR. CORVEY: Thank you, Judge.
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State v John Andrew Biggs
Benjamin Trask-Direct Examination by Mr. Corvey (resumes)
December 13, 2016

1 DIRECT EXAMINATION (resumes)
2 BY MR. CORVEY:
3 Q. Now Officer Trask we were about to show your dash
4 video from the night of October 8, 2015. Does the video
5 on the screen appear to be your dash cam?
6 A. Yes, sir.
7 [Whereupon, the video plays]
8 Q. So Officer Trask is this you arriving on the scene
9 right here?
10 A. Yes, sir.
11 Q. Now Officer Trask sometimes you have a body mic that
12 is attached to this system don't you?
13 A. Yes, sir.
14 Q. Did you activate the body mic during this?
15 A. I don't know if it's on. I think what you're
16 hearing is the audio from inside my car; the radio. I
17 believe I had a body cam on.
18 Q. You could have just forgotten to activate it.
19 A. Either it wasn't working then or -- it should have
20 automatically come on and would be synced.
21 [Whereupon, the video stops]
22 Q. Now Officer Trask if we were to continue that would
23 other emergency personnel arrive on scene?
24 A. Shortly thereafter the fire department arrived on
25 scene and I believe EMS was already on scene.

State v John Andrew Biggs
Benjamin Trask-Direct Examination by Mr. Corvey (resumes)
December 13, 2016

1 Q. And they started actively fighting the fire?

2 A. Yes, sir.

3 Q. At this point had either occupant of either vehicle
4 been able to be extracted?

5 A. No sir, they were both entrapped.

6 Q. No further questions at this time.

7 THE COURT: Cross-Examination?

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State v John Andrew Biggs
Benjamin Trask-Cross-Examination by Mr. Kozelski
December 13, 2016

1 CROSS-EXAMINATION

2 BY MR. KOZELSKI:

3 Q. Officer Trask obviously that shows you were the
4 first on scene?

5 A. Yes, sir.

6 Q. And when you arrived you immediately noticed this
7 was a serious accident?

8 A. Yes, sir.

9 Q. You're not trying to determine who was at fault;
10 you're just trying to help who is involved in the
11 accident?

12 A. Yes, sir. I arrived on scene and established the
13 scene. I didn't do any investigation.

14 Q. And your mission at that point is to try to save
15 lives?

16 A. Yes, sir.

17 Q. And in this case there was a fire?

18 A. Yes, sir.

19 Q. And that makes things exponentially worse?

20 A. Yes, sir.

21 Q. You have a certain amount of time to try to help.

22 A. Yes, sir.

23 Q. And when you arrived Mr. Walker in the Ford mustang
24 had already passed away before you got on scene?

25 A. I didn't know that at the time.

State v John Andrew Biggs
Benjamin Trask-Cross-Examination by Mr. Kozelski
December 13, 2016

- 1 Q. Right. You didn't know that at the time but you
2 found that out later?
- 3 A. Yes, sir.
- 4 Q. And after you weren't able to get him out of the car
5 you then tried to get Mr. Biggs out of his truck.
- 6 A. Yes, sir.
- 7 Q. But he was also stuck in the driver's seat.
- 8 A. Yes, sir.
- 9 Q. And he was unconscious?
- 10 A. As best I could tell, yes sir.
- 11 Q. Had his seat belt on?
- 12 A. I don't recall.
- 13 Q. But then the dash of the car was rolled over his
14 legs.
- 15 A. I believe so.
- 16 Q. They had to I guess get the jaws of life to cut him
17 out?
- 18 A. That's the firemen; I don't remember.
- 19 Q. You were there to try to help them in getting him
20 out the car.
- 21 A. Yes, sir.
- 22 Q. And it's safe to say if his car had caught on fire
23 too he might have died as well.
- 24 A. Yes. His car did catch on fire.
- 25 Q. So after he was extracted from the car he was rushed

State v John Andrew Biggs
Benjamin Trask-Cross-Examination by Mr. Kozelski
December 13, 2016

1 to the hospital?

2 A. As far as I know, yes sir.

3 Q. So you did help save John Biggs life?

4 A. I did what I could. I couldn't get to him. I
5 couldn't access him. I did what I could.

6 Q. Thank you.

7 THE COURT: Any redirect?

8 MR. CORVEY: Briefly, Your Honor.

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State v John Andrew Biggs
Benjamin Trask-Redirect Examination by Mr. Corvey
December 13, 2016

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REDIRECT EXAMINATION

BY MR. CORVEY:

Q. That intersection of Rivers Avenue at Eagles Landing
is that Charleston County?

A. Yes, sir.

Q. No further questions.

THE COURT: You may step down. Thank you very
much.

[Whereupon, the witness is excused and exits the
witness stand]

THE COURT: Call your next witness please.

MR. CORVEY: Thank you, Your Honor.

State v John Andrew Biggs
Dr. Erin Presnell-Direct Examination by Mr. Corvey
December 13, 2016

1 MR. CORVEY: The State calls Doctor Erin Presnell.

2 [Whereupon, Doctor Presnell comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: For the record state your first and
6 last name and spell out your last name please.

7 THE WITNESS: My name is Erin Presnell. The last
8 name is P-R-E-S-N-E-L-L.

9

10 DR. ERIN PRESNELL,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CORVEY:

15 Q. Good morning, Doctor Presnell.

16 A. Good morning.

17 Q. Where are you employed?

18 A. I am a forensic pathologist at the Medical
19 University of South Carolina right down the street.

20 Q. If you could briefly for the jury describe your
21 background, your education and training leading up to
22 your current position.

23 A. So I'm a forensic pathologist. Most people are
24 familiar with a forensic pathologist but I'll back up a
25 little bit and describe how I got there which is I

State v John Andrew Biggs
Dr. Erin Presnell-Direct Examination by Mr. Corvey
December 13, 2016

1 majored in Microbiology. I graduated and came to MUSC
2 and did my four years of medical school there. After
3 that I stayed at MUSC every since. But after that I
4 chose Pathology as my field of practice instead of
5 pediatrics or family medicine I chose pathology.

6 That's a five year training program and after that I
7 did a subspecialty here in forensic pathology so that was
8 an additional year after that.

9 And then I finished that and took my boards. I'm
10 board certified in general pathology and forensic
11 pathology and then stayed on at MUSC as faculty. That
12 was in 1999 when I was hired as faculty.

13 Q. And so you've been working in that position every
14 since?

15 A. I have.

16 Q. Could you please describe to the jury how you get
17 assigned a particular case by the Charleston County
18 Coroner's office; how you get involved in the cases.

19 A. South Carolina is a coroner's state. There is a
20 coroner for each county and then there are deputy
21 coroners where appropriate and they will respond to the
22 death scene and determine if that person needs a
23 postmortem exam or an autopsy.

24 If they that's what they want to do then they refer
25 them to us at MUSC, which happened in this case, and

State v John Andrew Biggs
Dr. Erin Presnell-Direct Examination by Mr. Corvey
December 13, 2016

1 we'll do the autopsy at our facility.

2 MR. CORVEY: Your Honor, at this time I'd move to
3 admit Doctor Presnell as an expert in the field of
4 forensic pathology.

5 THE COURT: Any objection?

6 MR. KOZELSKI: No objection, Your Honor.

7 THE COURT: The court finds she is a qualified as a
8 forensic pathologist. Thank you very much.

9 MR. CORVEY: Thank you, Your Honor.

10 Q. [Mr. Corvey] Now Doctor Presnell, obviously you came
11 to be involved in this case?

12 A. I did.

13 Q. If you could please describe for the jury the
14 process you took in the beginning of the autopsy in this
15 case?

16 A. Well, we pretty much follow the standard approach
17 for all of our cases and then we'll go back and kind of
18 specialize it depending on what type of case it is.

19 In this instance Mr. Walker when he came to us he
20 was -- he was burned so he -- which we knew he had been
21 in a car fire. So the fire had explained the burns.

22 There was some sparings that really involved skin
23 around the groin area and buttock area. So after we do
24 the complete external exam where we documented his
25 extensive injury of course we want to consider what other

State v John Andrew Biggs
Dr. Erin Presnell-Direct Examination by Mr. Corvey
December 13, 2016

1 questions we're trying to answer. Number one was he
2 alive during the fire and number two did the fire kill
3 him if he was alive during the fire and number three did
4 he have any other injuries that could possibly explain
5 his death.

6 So when we did the autopsy we looked inside. One of
7 the things that we try to do to see if they were alive
8 during the fire is to look to see if there was soot in
9 the airways indicating that they were breathing during
10 the fire and smoke and have sooty deposits in the
11 airways. In this case Mr. Walker had no soot in his
12 airways.

13 Continuing down multiple other types of injuries in
14 particular a fatal injury that really would explain his
15 cause of death and that was his aorta which is -- you
16 have your heart. The aorta is the great big vessel
17 leaving the heart that takes blood to the rest of your
18 entire body.

19 It was torn in half not only once but twice as it
20 came down along the length of his back. There were some
21 other injuries that were possibly consistent with a blunt
22 type trauma towards the back area including multiple rib
23 fractures on the back on both sides.

24 And then he did have some organ damage and the liver
25 was lacerated or torn as were his lungs. But the primary

State v John Andrew Biggs
Dr. Erin Presnell-Direct Examination by Mr. Corvey
December 13, 2016

1 injury really, the fatal injury which did account for his
2 death was would the aortic transection or the aorta being
3 torn apart twice.

4 Q. And so your finding or your belief was that the
5 aortic transection or the dual aortic transection would
6 have been the cause of death?

7 A. Yes.

8 Q. Would that have been caused by blunt force trauma?

9 A. Correct.

10 Q. Now just for the sake of the jury and to better
11 educate them as to what we're talking about I'm going to
12 show you a diagram.

13 If you could just kind of describe for the jury
14 where the aorta is as best you can and I have another one
15 that would more accurately show it.

16 A. Yes, sir. So here [indicates] would have been the
17 heart. The aorta comes out the top. You have blood
18 vessels going up to your head and out to your arms. Then
19 the rest of the aorta continues down and goes behind the
20 heart and down to the pelvis and split in two and goes to
21 the legs.

22 Q. Now on the secondary document could you please
23 indicate for the jury where exactly the injuries were in
24 this case?

25 A. Yes. So we now have just the aorta without any of

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1 the other structures. Here [indicates] are the arches
2 where it is coming out of the heart so the aorta was torn
3 here [indicates] and then distally in the chest cavity as
4 well so there are two locations.

5 Q. And you mentioned other injuries to the ribs, which
6 I guess we can see the back of the ribs shown there,
7 several fractures to the ribs?

8 A. Right. On the left side -- excuse me; on the right
9 side it would have been 9 through 12, which the ribs kind
10 of continue down here [indicates] too; you just can see
11 them because the diagram is curved.

12 So we would have had 12, 11, 10, and 9 on the right
13 fractured. And actually it is the left side of one
14 through 9 which would be C-1 would be up here
15 [indicates], 2, 3, 4, 5, 6, 7, 8, 9 in that area. Those
16 ribs had fractures on the left side as well.

17 Q. And if you could you mentioned some injuries to some
18 soft tissue and organs inside the body. What would you
19 mean by I think you said fracturing or tearing or?

20 A. Some lacerations.

21 Q. Lacerations.

22 A. Yes, where the tissue is torn. What was the
23 question?

24 Q. What type injuries are those? How did they occur?

25 A. Tearing from blunt trauma.

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1 Q. From blunt trauma. Now in -- you reviewed that
2 these were all from blunt force trauma. Would those
3 injuries be consistent with somebody rear-ended in a
4 crash as shown on State's exhibit 29?

5 [Whereupon, the photograph is shown]

6 A. I've seen the side view. Is that the back of the
7 car?

8 Q. Yes.

9 A. See the injuries that he had you saw that they were
10 on his back and on his left side as well where they were
11 just torn, the liver and all would certainly be
12 consistent with this description of the crash or the
13 impact from behind.

14 Q. The side view is still consistent with the cause of
15 death?

16 A. Yes, it is.

17 Q. Thank you, Doctor Presnell. No further questions.

18 THE COURT: Cross-Examination?

19 MR. KOZELSKI: No questions, Your Honor.

20 THE COURT: You may step down, Doctor. Thank you
21 so very much for being here.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 THE COURT: Call your next witness, please?

25

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1 MR. WILLIAMS: The State calls Sergeant James L.
2 Booker.

3 THE COURT: Calling who?

4 MR. WILLIAMS: Sergeant J.L. Booker.

5 THE COURT: Okay.

6 [Whereupon, Mr. Booker comes forward]

7 [Whereupon, the witness is duly sworn by the Clerk
8 of Court]

9 CLERK OF COURT: For the record if you could state
10 your first and last name and spell your last name please.

11 THE WITNESS: James Booker, B-O-O-K-E-R.

12

13

JAMES BOOKER,

14

Having been first duly sworn,

15

Was examined and testified as follows:

16

DIRECT EXAMINATION

17 BY MR. WILLIAMS:

18 Q. Thank you. Is it Sergeant Booker?

19 A. It is.

20 Q. Thank you. Sergeant, where are you employed?

21 A. I'm employed by the South Carolina Department of
22 Public Safety and more specifically the South Carolina
23 Highway Patrol.

24 Q. Is the Highway Patrol division a division of the
25 Department of Public Safety?

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- 1 A. It is.
- 2 Q. What we commonly refer to as troopers?
- 3 A. Yes.
- 4 Q. How long have you been employed there?
- 5 A. I'm on my twelfth years.
- 6 Q. Do you have any prior employment history?
- 7 A. I do. I worked for the Charleston County Aviation
8 Authority as a police officer as well for approximately a
9 year and a half.
- 10 Q. So how long have you been in law enforcement in your
11 career?
- 12 A. Fourteen years.
- 13 Q. Now did you receive any training when you began your
14 law enforcement career?
- 15 A. I did.
- 16 Q. Did you attend the South Carolina Criminal Justice
17 Academy?
- 18 A. I did.
- 19 Q. Can you tell us about that?
- 20 A. I attended the basic training that every officer
21 does at the South Carolina Criminal Justice Academy. I
22 was hired by the Charleston County Aviation Authority.
23 Then when I became a trooper I went back for additional
24 basic training as well.
- 25 Q. What is your current job at the Highway Patrol?

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1 A. I'm currently the regional commander over the
2 coastal MAIT unit. In the Charleston area we cover 12
3 counties but basically the whole southeast.

4 Q. Is that what you began doing in Highway Patrol?

5 A. No.

6 Q. Where did you begin?

7 A. I started out as a trooper trainee which is standard
8 to every trooper that starts. Upon completion of the
9 Criminal Justice Academy and basic training as well as
10 field training I became a trooper. I was what you call
11 slick sleeves; no rank.

12 Then after a year and a half of that I became a
13 trooper first class. A year and half later I became a
14 senior trooper and after a total of five years I became
15 what you call a lance corporal.

16 And then as a lance corporal I came onto MAIT in
17 2010 and continued on and then became a supervisor as a
18 corporal and what my current rank is is a sergeant, which
19 is a team leader and the regional commander.

20 Q. And how long have you been with the MAIT team?

21 A. Since 2010 so six years.

22 Q. When you joined the MAIT team did you receive any
23 additional training?

24 A. I did. I did beforehand. We have minimum
25 requirements for MAIT where we have what we call the

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1 three main courses which is accident technical and
2 reconstruction that is put on -- it's either put on by
3 the Criminal Justice Academy or is supported through the
4 Criminal Justice Academy.

5 In my case it was actually taught by MAIT members
6 who were teaching at the Criminal Justice Academy because
7 I got there prior to being in -- I received that as a
8 basic.

9 And then when I came on MAIT I actually as a
10 standard procedure we go beyond that and pretty much any
11 advanced reconstruction course that is offered be it
12 commercial or vehicle, tractor trailers or what we call
13 pedestrian bicycle collision, motorcycle; anything of
14 that nature we will go through advance training in that.
15 And then in some cases if it's offered we'll go to the
16 advanced -- courses depending --

17 THE COURT REPORTER: --- advanced -- what kind of
18 courses?

19 A. There is actually the advanced to the advanced.

20 Q. [Mr. Williams] So you received multiple levels of
21 training ---

22 A. --- correct ---

23 Q. --- related to collision ---

24 A. --- correct. I did basically a total of roughly a
25 little over 1200 hours directly related to collision

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1 reconstruction.

2 Q. Okay. And you said MAIT several times. What is
3 MAIT? Spell it so they know what we are saying in
4 shorthand.

5 A. It's M-A-I-T. It's an acronym for the
6 Multidisciplinary Accident Investigation Team.

7 Q. And just briefly what is the MAIT team? What does
8 the MAIT team do?

9 A. Just slightly it was formulated and put together in
10 1996 by the Highway Patrol as a division of the Highway
11 Patrol as a specialized unit to get more -- to allow more
12 of an advanced reconstruction of a collision or
13 investigation. And basically it's the investigative unit
14 of the Highway Patrol if you will.

15 Q. Working with the MAIT team do you have any special
16 certifications?

17 A. I do. I am certified internationally through ACTAR,
18 the Accreditation Commission for Traffic Accident
19 Reconstructions; bear with me I don't say that every day.

20 Q. I understand. Y'all use a lot of acronyms.

21 A. Yes.

22 THE COURT REPORTER: The acronym again is what?

23 A. ACTAR, A-C-T-A-R. And that is kind of if you will
24 to put it in your terms that's kind of our bar exam for
25 reconstructionists. It's an international certification

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1 so we don't take that lightly. I'm also certified
2 through Automotive Service Excellence because I'm also a
3 state mechanic for the Highway Patrol as well.

4 Q. Thank you. You said part of your job through your
5 training and your employment now is collision
6 reconstruction?

7 A. Correct.

8 Q. Am I saying that correctly?

9 A. Yes.

10 Q. And just briefly what is collision reconstruction?

11 A. It's basically an investigation of in this situation
12 a collision; a wreck if you will. It's taking the
13 totality of -- what we do is we take a totality of the
14 situation; everything.

15 We don't take one single situation or one piece of
16 data point and say this is it. We look at the evidence
17 at the scene. On the standard procedure that we will
18 deal with if this is MAIT's case from the beginning or a
19 Highway Patrol case we'll take a collision and we will
20 respond to it, look at the scene, photographs, look at
21 the scene dynamics.

22 Basically take the entire dynamics of the collision
23 what we would expect to see or not expect to see and then
24 we mathematically we calculate speeds. We will use
25 different technologies mapping scenes. We have the CDR

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1 equipment, crash data retrieval that we will retrieve if
2 the vehicle is what we call supported and we can get
3 information off of that as well. But once again it's
4 kind of like a whole totality of the entire collision put
5 together and formulated and then vetted out through our
6 process.

7 Q. Okay. Now you mentioned CDR. What is that?

8 A. It's the crash data retrieval. It's a tool that we
9 use. The basics of it is a lot of people think of it as
10 the black box of the vehicle and in some ways it is. It
11 does have parallels to like you think of a black box in
12 an airplane but it has some different characteristics.

13 For instance just one of the major ones is to my
14 limited knowledge of a black box on an aircraft it will
15 record voice information. A vehicle doesn't do that. It
16 records data from the vehicle.

17 So we buy our equipment from Bosch. Bosch has the
18 rights to require that. We buy equipment from them and
19 we are able to image or download if you will the
20 information on the vehicles.

21 Q. Is this similar to EDR?

22 A. Well, yes it's a different acronym and it can get
23 confusing. We have actually as a standard procedure in
24 MAIT we went to just categorizing EDR as being all of
25 this. But a CDR tool is different from EDR if you will

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1 because you'll hear for instance like ACM, airbag
2 controller modules. That's actually the module that
3 stores the data that we are using the CDR tool to collect
4 that data.

5 So the EDR is more of like a general term of event
6 data recorder and that's what we went to as a standard.
7 But it varies because every manufacturer has a different
8 name for what their box is if you will in a vehicle.

9 Q. Thank you.

10 MR. WILLIAMS: Your Honor, at this time we would
11 offer Sergeant Booker as an expert in collision
12 reconstruction to include CDR and EDR.

13 THE COURT: Any objection?

14 MR. KOZELSKI: No objection, Your Honor.

15 THE COURT: All right. The court so finds. Thank
16 you very much.

17 Q. [Mr. Williams] Sergeant, did you have the
18 opportunity to become involved with an investigation of a
19 collision that occurred on Rivers Avenue on October 8th
20 of 2015?

21 A. I did.

22 Q. Were you a first responder?

23 A. No.

24 Q. What was your involvement in that collision?

25 A. We were requested -- I received a call the morning

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1 of the collision several hours after the collision from
2 Officer Woodall with North Charleston Police Department
3 who contacted me.

4 And the reason why he contacted me specifically is
5 because we have a relationship. We've known each other
6 in the past for years; we've worked together through
7 different cases. So he was a point of contact so he
8 called me and said that he needed some ---

9 MR. KOZELSKI: --- objection, Your Honor. Hearsay
10 ---

11 Q. --- you can't say ---

12 THE COURT: --- overruled. Go ahead. He can tell
13 why he got on the job. Go ahead.

14 A. I apologize.

15 Q. [Mr. Williams] What did you end up doing as a result
16 of that call?

17 A. Basically all I did at that point is just say of
18 course; I'll pass it up my chain of command. But as
19 always we're willing to assist in any way we can.

20 As a general rule MAIT has stated a standard that we
21 will assist any agency that requests. You just have to
22 get permission through our chain of command.

23 Q. And so what did MAIT's role in this investigation
24 involve? What was your job to do?

25 A. We were requested specifically to assist with

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1 documentation of vehicles and specifically with the CDR,
2 the crash data retriever.

3 Q. And did you come to examine two vehicles?

4 A. We did.

5 Q. Do you recall what vehicles those were?

6 A. Yes. It was a Chevrolet pickup, a GM model pickup
7 and a Ford mustang.

8 Q. Where did you -- did you physically examine those
9 vehicles?

10 A. We did.

11 Q. And where was that?

12 A. They had been towed to the North Charleston impound
13 lot which I don't know the address but it's what their
14 new facility in North Charleston.

15 A. They were there when you arrived?

16 A. Correct.

17 Q. Do you recall when you arrived and saw those
18 vehicles?

19 A. It would have been later that morning because the
20 collision happened early morning on the 8th. I was
21 notified shortly after I came to the office probably
22 around 8ish in the morning.

23 But from what I understood from them they were still
24 clearing up from the scene and things like that and had
25 to go get search warrants and things of that nature. So

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1 I just told them to give me a call when they were ready
2 and we would go ahead and go out today and get it done.

3 Q. Okay. And get it done. What did you eventually do
4 to these vehicles?

5 A. Myself and Lance Corporal Proctor, which is another
6 investigator in the office, went -- local so we went
7 together. I went over to assist with that. First of all
8 when we got there this is a gated area and it was
9 actually inside a locked building.

10 So when we got there I forget who met us but one of
11 the North Charleston officers -- it might have been
12 Woodall that first came and I believe he couldn't let us
13 in at the time. There was somebody else specifically who
14 had the key for that and they came and let us into the
15 building.

16 The building is a large building; it's kind of like
17 a warehouse and they had both the vehicles near each
18 other and stored in a secure area. I was familiar with
19 the building because we'd actually been there to do some
20 examinations before.

21 Q. What examination did you perform on these vehicles?

22 A. What we did as a standard procedure with MAIT we
23 always take pictures of whatever we're doing. We do what
24 we call a general vehicle exam. A general vehicle exam
25 is just an examination of tire sizes, condition of

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1 vehicle, what the tire pressures are, what make model
2 year and color; whatever the basics it's just a general
3 -- we do that on every vehicle that we're involved in.
4 So we did that in this case and I did both of these.

5 The main goal, as far as we were on a limited basis
6 for this, was to get to the boxes or be able to read the
7 data off the boxes. So we were attempting at the same
8 time to kind of go into that and try to get that data
9 which we were able to on both.

10 Q. You said you were able to?

11 A. Correct.

12 Q. I believe you used the term imaging earlier.

13 A. Yes.

14 Q. What is imaging?

15 A. It's a little bit of a play on words but its
16 download if you will but what it is is we use the term
17 imaging because we're not actually taking anything.

18 Downloading is a perception of actually taking
19 something or taking something off of it. We're actually,
20 if you will, taking a picture of what we're looking at
21 and just copying it. So we don't affect any of the data.

22 Q. Very briefly how do you do this; just very briefly.

23 A. That box the CDR equipment I was talking about, the
24 crash data equipment there is a series of cables and
25 methodology that we go through that the gist of it is we

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1 will -- there is a separate laptop and interface module
2 and that will connect into the vehicle's box and then we
3 will gather that data.

4 Q. Is there an occasion -- do you have occasions
5 sometimes when there is no data on a car as a result of a
6 crash?

7 A. Yes.

8 Q. That was not the case here however.

9 A. It wasn't.

10 Q. You were able to image or copy data off of both
11 vehicles?

12 A. Yes.

13 Q. Successfully?

14 A. Correct.

15 Q. At that point what else did you do at the scene of
16 these cars?

17 A. That was generally it. We did look at the vehicles
18 just myself and Lance Corporal Proctor discussed the
19 dynamics of the wreck.

20 We discussed with Officer King as well and Officer
21 Woodall the dynamics of the wreck because what we like to
22 do is always even though we are only a limited portion in
23 this we like to know the dynamics of the wreck because
24 it's only going to make sense looking at the data if you
25 know the dynamics of the wreck and the curves and this

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1 does appear to match this data. So we did discuss the
2 dynamics of the collision, went over it. Lance Corporal
3 Proctor did an interview with Officer King. Once again
4 it's standard procedure of what we do. We have some
5 checklist if you will of what we will do with a limited
6 case is what we called this.

7 Q. Okay. You mentioned examining the vehicles. Did
8 you examine the tires on each vehicle?

9 A. I did.

10 Q. Was there anything noteworthy of the tires on the
11 mustang?

12 A. On the mustang not to my recollection.

13 Q. Okay. Was there anything noteworthy that drew your
14 attention to the tires of the Silverado pickup?

15 A. Yes. The tires were a different size than what was
16 recommended for the vehicle.

17 Q. Okay. And you mean recommended by whom?

18 A. Recommended by the manufacturer.

19 Q. And these were a different size?

20 A. Correct.

21 Q. Do you recall what size was recommended and what the
22 size actually was on the vehicle?

23 A. I'd have to look back at the paperwork. I've got a
24 copy of the paperwork of the exact size.

25 Q. If I may refresh your memory here and hand you a

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1 copy of your report.

2 [Whereupon, the witness is shown document]

3 A. Yes, that's the general vehicle exam for the
4 Chevrolet.

5 Q. Okay. What were those size tires on the vehicle?

6 A. The size currently on the vehicle were P26570-R17 --

7 THE COURT REPORTER: Say it again slower.

8 A. I'm sorry, P26570-R17.

9 Q. Okay. And do you know what the recommended tire
10 size for this vehicle is?

11 A. P24570-R17.

12 Q. So the difference there was 265 on the vehicle
13 versus 245 recommended?

14 A. Correct.

15 Q. Am I saying that correctly?

16 A. Yes.

17 Q. We're getting technical here so I wanted to be
18 clear.

19 A. No, that's fine.

20 Q. What is the difference between a 265 tire that was
21 on the vehicle and a 245 tire that was recommended to be
22 on the vehicle?

23 A. It's just a little larger tire that is actually on
24 the vehicle than was recommended.

25 Q. So it was one or two sizes up?

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1 A. Yes.

2 Q. What does that tell you about -- how did that inform
3 your investigation?

4 A. What...

5 Q. The different sizes in tires does that change
6 anything with the CDR?

7 A. Well it doesn't necessarily change anything because
8 the EDR is going to read the same way but we document
9 that because basically the size of the tire that is on
10 there is a larger size which is going to change the
11 amount of revolutions per minute that you are going to
12 have.

13 So as a general rule if you put a larger tire on
14 then the vehicle is going to be reading slower than what
15 it is. If you lower it or put a smaller size tire then
16 it is going to read faster than what you're actually
17 going. Does that make any sense?

18 Q. I believe it does. Can you see this document?

19 [Whereupon, the witness is shown document]

20 A. Yes.

21 Q. This is State's exhibit number 2. Did you prepare
22 this document?

23 A. I did.

24 Q. Okay. Tell us -- you can see it on the screen in
25 front of you?

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1 A. Yes.

2 Q. Tell us what this document is or what information we
3 can glean from this document?

4 A. This is a basic spreadsheet for one of our programs
5 that we have. It is a tire comparison and what it is is
6 we really don't have a lot of variance in this. We put
7 basic inputs. If you look at the top and the specified
8 tire on the right is -- I'm sorry the one on the left is
9 what he had on the vehicle, what the individual had on
10 the vehicle.

11 If you look at the actual tire size and then if you
12 look at specified tire that's the way it is designed to
13 have on it. If you look down at the bottom it breaks it
14 down in to some different -- the reason there are
15 different numbers on here is because you have dynamic
16 calculations and static calculations.

17 The gist of that is static is if it is sitting
18 still. Dynamic is if it is going down the road. So the
19 difference is if you look at the very bottom is 98 miles
20 per hour is what we had already; the number we already
21 had. So the difference due to the tire size at bottom it
22 goes from 98 to 101.

23 Q. Sergeant, let me interrupt you. You said 98 miles
24 per hour?

25 A. Yes.

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- 1 Q. Where did that number come from?
- 2 A. That came from the CDR equipment from the EDR.
- 3 Q. So that is the CDR located in the vehicle told you?
- 4 A. Correct.
- 5 Q. Okay. Continue.
- 6 A. I was pretty much done but that's the gist of it.
- 7 There is a marginal difference in anytime you change the
- 8 tires.
- 9 Q. So through the course of your investigation based
- 10 upon the information downloaded from the CDR in the car;
- 11 excuse me, the truck, what did you calculate the speed to
- 12 be?
- 13 A. Off of what we have it would have been -- it's
- 14 reporting 98 miles per hour but with the tire difference
- 15 it should be 101.
- 16 Q. 101 even.
- 17 A. 101.5 is what is recorded.
- 18 Q. Answer any questions Mr. Kozelski has for you.
- 19
- 20
- 21
- 22
- 23
- 24
- 25

State v John Andrew Biggs
James L. Booker-Cross-Examination by Mr. Kozelski
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1 CROSS-EXAMINATION

2 BY MR. KOZELSKI:

3 Q. Sergeant Booker just briefly, the CDR can tell you

4 how depressed the throttle is?

5 A. I'm sorry; I missed the beginning of it.

6 Q. The CDR can tell you how depressed the throttle is?

7 A. Yes. It depends on the make and model but some of

8 them will, yes.

9 Q. And this particular one showed the throttle was 100

10 percent?

11 A. Yes, it did.

12 Q. Okay. And it can also show whether or not the

13 brakes were used?

14 A. Correct.

15 Q. Okay. And in this case when you examined Mr. Biggs

16 truck there was no attempted braking?

17 A. On the report?

18 Q. Yes.

19 A. No.

20 Q. So there was no attempted breaking as far as the

21 CDR?

22 A. Correct.

23 Q. Okay. No further questions.

24 THE COURT: Any redirect?

25 MR. WILLIAMS: No sir, Your Honor.

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1 THE COURT: You may step down. Thank you so very
2 much.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: Let me see the attorneys up here just a
6 second please.

7 [Whereupon, an off the record bench conference is
8 held]

9 THE COURT: Call your next witness please.

10 MR. WILLIAMS: Thank you.

11

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Todd Proctor-Direct Examination by Mr. Williams
December 13, 2016

1 MR. WILLIAMS: At this time we'd call Trooper Todd
2 Proctor.

3 [Whereupon, Mr. Proctor comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: For the record if you will state
7 your first and last name and spell your last name please.

8 THE WITNESS: Todd Proctor, P-R-O-C-T-O-R.

9

- - - - -

10

TODD PROCTOR,

11

Having been first duly sworn,

12

Was examined and testified as follows:

13

DIRECT EXAMINATION

14 BY MR. WILLIAMS:

15 Q. Trooper Proctor, where are you employed?

16 A. South Carolina Highway Patrol.

17 Q. How long have you been employed there?

18 A. Coming up on 17 years.

19 Q. Did you have any work experience prior to that?

20 A. Yes. I was in the United States Coast Guard.

21 Q. At any point have you attended the South Carolina
22 Criminal Justice Academy?

23 A. I did.

24 Q. When did you do that?

25 A. Back in 2000.

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1 Q. When you joined or shortly thereafter?

2 A. Yes.

3 Q. Have you received any other training, law
4 enforcement training?

5 A. Yes, plenty.

6 Q. Briefly, what training have you received as it
7 relates to accident or traffic collision investigation?

8 A. The South Carolina Criminal Justice Academy has a
9 core basic classes consisting of like at scene, technical
10 reconstruction.

11 There is a bike motorcycle recon and things like
12 that for the State level; for the Academy. The Highway
13 Patrol and the MAIT team expand upon that with additional
14 training.

15 Q. What jobs have you held at Highway Patrol?

16 A. Everybody at the Highway Patrol starts out as a
17 regular road trooper; just out there working the road and
18 working basic collisions and stuff and then I
19 transitioned into the MAIT team.

20 Q. Okay. Do you hold any certifications?

21 A. Yes. I am a certified CDR analyst through CSI --

22 THE COURT REPORTER: Through who?

23 A. CSI. It's the Collision Safety Institute.

24 Q. Thank you. I know y'all use a lot of acronyms in
25 Highway Patrol but we're not always familiar with them.

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1 You are now assigned to what? What is your job now at
2 the Highway Patrol?

3 A. I am an investigator with the coastal MAIT team.

4 Q. And part of your job then is to investigate
5 collisions and determine what happened?

6 A. Correct.

7 Q. Have you ever been qualified as an expert witness
8 before?

9 A. Yes.

10 MR. WILLIAMS: Your Honor, at this point I would
11 offer Trooper Proctor as an expert in collision
12 reconstruction?

13 THE COURT: Any objection?

14 MR. KOZELSKI: No, Your Honor.

15 THE COURT: All right. The court so finds.

16 Q. [Mr. Williams] I'll try to be brief because the jury
17 just heard from -- do you work with Sergeant Booker?

18 A. I do.

19 Q. Okay. And he works in collision reconstruction?

20 A. Correct. We work out of the same office.

21 Q. Did you have the opportunity to become involved with
22 the investigation of a collision that occurred at Rivers
23 Avenue on October 8, 2015?

24 A. I did.

25 Q. Did you investigate that collision with Sergeant

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1 Booker?

2 A. Yes. We assisted North Charleston in their
3 investigation.

4 Q. Okay. Did you go to North Charleston's impound lot
5 and inspect two vehicles?

6 A. Yes.

7 Q. Do you recall what two vehicles those were?

8 A. It was a Chevrolet pickup and I believe a Ford
9 mustang.

10 Q. And those were -- to your knowledge were those
11 involved in a collision with each other?

12 A. Yes.

13 Q. Do you know if data was obtained from the CDR from
14 those two vehicles?

15 A. Yes.

16 Q. As part of the MAIT's investigation into this
17 collision did you analyze that data?

18 A. I did.

19 Q. Okay. I'm going to hand you your report to refresh
20 your memory.

21 [Whereupon, the witness is shown document]

22 Q. As part of your analysis you saw what the Chevy
23 Silverado's CDR told you?

24 A. Yes.

25 Q. Tell me what that records in terms of the speed.

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1 A. As far as vehicle speed is concerned it gives you
2 five seconds of pre-crash data going back ---

3 Q. --- is it continuous or in increments?

4 A. It's in increments. It's in one second increments.

5 Q. So it tells you what was happening what the vehicle
6 speed was five seconds before the event ---

7 A. --- correct.

8 Q. Four seconds before the event?

9 A. Yes, leading up to basically up to one second before
10 the impact which is when the airbags go off.

11 Q. And I was using the word event. Tell me the impact
12 you said?

13 A. Correct.

14 Q. And that's what the module records is the time stamp
15 so to speak?

16 A. Yes. Basically it's recording all the time and it's
17 keeping track of everything that is going on in the
18 vehicle.

19 Once you have an event where the airbags go off aka
20 collision then it says we've got a problem and it kind of
21 time stamps it right there and it gives you that five
22 seconds, on this vehicle, of that pre-crash of what was
23 going on.

24 Q. Okay. Does the -- I want to call it the black box,
25 does the CDR tell you if the seatbelt of the driver's

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- 1 seat was engaged at the time of the collision?
- 2 A. On this one it does, yes.
- 3 Q. What was the result of that on the Chevy Silverado?
- 4 A. It was buckled.
- 5 Q. It was buckled?
- 6 A. Correct.
- 7 Q. And then regarding speed before the event what was
- 8 the vehicle speed as recorded by the CDR at five seconds
- 9 before the collision?
- 10 A. 98 miles per hour.
- 11 Q. Four seconds?
- 12 A. 98 miles per hour.
- 13 Q. Three seconds?
- 14 A. 98 miles per hour.
- 15 Q. Two seconds?
- 16 A. 98 miles per hour.
- 17 Q. And one second prior to the event?
- 18 A. 98 miles per hour.
- 19 Q. Sounds like a basic question was the vehicle
- 20 maintaining, decreasing, or increasing speed?
- 21 A. Maintaining.
- 22 Q. The throttle does the CDR tell you what the throttle
- 23 was?
- 24 A. It does.
- 25 Q. Just for lay people here what is the throttle in a

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1 vehicle?

2 A. It's the -- a lot of people confuse it with the
3 accelerator pedal but it's actually the part on the motor
4 that allows the fuel to go shooting in, which basically
5 gives you your speed. It allows for the engine to run.

6 Q. So when a driver pushes the accelerator pedal down?

7 A. It opens the throttle and allows you to go faster.

8 Q. So a larger number of throttle would mean the
9 accelerator is pushed down further?

10 A. Correct.

11 Q. What percentage -- how is this -- in other words is
12 it percentage?

13 A. It's percentage wise, yes.

14 Q. What percentage was the throttle at according to the
15 CDR?

16 A. 100 percent.

17 Q. Was that continuous?

18 A. All the way through.

19 Q. So for the five seconds preceding the event the
20 throttle was wide open?

21 A. Correct.

22 Q. Does the CDR tell you the brake switch -- if the
23 brake was on at all?

24 A. It does.

25 Q. What was the result of the Chevy Silverado?

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- 1 A. It was off.
- 2 Q. It was off?
- 3 A. Correct.
- 4 Q. Meaning the brakes were not engaged?
- 5 A. Absolutely.
- 6 Q. You also examined the Ford mustang?
- 7 A. Correct.
- 8 Q. And Sergeant Booker testified that the data was
- 9 imaged from the CDR?
- 10 A. Yes.
- 11 Q. Did you analyze that data?
- 12 A. I did.
- 13 Q. I'm going to hand you a copy of a page from your
- 14 report to refresh your recollection.
- 15 [Whereupon, the witness is shown document]
- 16 Q. I'm going to go through the same series of questions
- 17 essentially. Are the measurements for the units of
- 18 measurement somewhat different between the Chevy and the
- 19 Ford?
- 20 A. They are.
- 21 Q. And why is that?
- 22 A. It's up to the manufacturer of the vehicle. There
- 23 are certain regulations that the federal government
- 24 mandates that be recorded. But each manufacturer as long
- 25 as they meet the minimum requirements can set up their

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- 1 parameters for their EDR however they choose.
- 2 Q. Okay. The Chevy Silverado what year was it do you
3 recall?
- 4 A. I don't recall off the top of my head.
- 5 Q. It measured in one second increments?
- 6 A. Correct.
- 7 Q. You just counted down?
- 8 A. Yes.
- 9 Q. The Ford mustang what increments does it measure in?
- 10 A. Every half second.
- 11 Q. Okay. Again, I'll go through basically the same
12 questions here. Does the CDR tell you if the driver's
13 seat belt was engaged or buckled?
- 14 A. It does on this Ford and I know it was; it's not
15 this sheet here.
- 16 Q. It's on the next page of your report.
- 17 [Whereupon, the witness reviews document]
- 18 A. Yes.
- 19 Q. So the seatbelt of the driver was buckled?
- 20 A. Correct.
- 21 Q. Okay. Now as to the speed of the car at five
22 seconds pre-event what was the speed of the mustang?
- 23 A. Two point five miles per hour.
- 24 Q. At four and half seconds?
- 25 A. One point nine.

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- 1 Q. Four seconds prior to event?
2 A. One point two.
3 Q. Three point five seconds prior to event?
4 A. Point six.
5 Q. Three seconds prior to event?
6 A. Zero.
7 Q. Two and half seconds?
8 A. Zero.
9 Q. One and half seconds?
10 A. Zero.
11 Q. One second?
12 A. Zero.
13 Q. And a half second?
14 A. Zero.
15 Q. And then at the time of the event?
16 A. Zero.
17 Q. So it went -- just because we went through some
18 numbers quickly there two and half, one point nine to one
19 point two, to point six, then zeroed out in the last
20 three seconds?
21 A. Yes.
22 Q. What is that consistent with to you?
23 A. The vehicle slowing to a stop.
24 Q. At a stop sign?
25 A. A stop sign, red light; whatever the case may be.

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1 Q. Does the forward CDR tell you what percentage of the
2 accelerator pedal is depressed?

3 A. Yes.

4 Q. What was that in this event?

5 A. Zero for the full five seconds.

6 Q. Was the brake on?

7 A. Yes.

8 Q. So the car went from two and half miles per hour to
9 zero with the accelerator not depressed and the brake on?

10 A. Correct.

11 Q. And again in your experience and opinion is that
12 consistent with a car either arriving or at a stop light?

13 A. Yes.

14 MR. WILLIAMS: Beg the court's indulgence.

15 [Whereupon, Mr. Corvey and Mr. Williams confer]

16 Q. [Mr. Williams] You in your career have investigated
17 any number of ways that wrecks or collisions can occur?

18 A. Correct.

19 Q. If a vehicle is traveling at a very high rate of
20 speed such as the one you just looked at and maintaining
21 a straight trajectory; it's not swerving and not turning
22 what does that tell you? Does the driver appear to be in
23 control of the vehicle or not?

24 A. Yes.

25 Q. If the driver was out of control not controlling the

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1 vehicle traveling at 98 miles per hours do you believe
2 the car would maintain a straight trajectory for an
3 extended period of time?

4 A. No.

5 Q. Thank you.

6 THE COURT: Cross-Examination?

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1 CROSS-EXAMINATION

2 BY MR. KOZELSKI:

3 Q. All the information that you gather from this CDR
4 none of that information can tell you whether the driver
5 behind the wheel of the car is conscious or not right?

6 A. Can it specifically tell you if he is conscious?

7 Q. Yes?

8 A. No.

9 Q. Awake or asleep?

10 A. No.

11 Q. And you just testified that if somebody was
12 operating a car or lost consciousness during that that it
13 would be unlikely that the car would remain going
14 straight?

15 A. Yes. I would feel safe to say if you are
16 unconscious then you're not steering the vehicle or
17 you're not pressing the accelerator or something like
18 that I would feel comfortable saying that, yes.

19 Q. What if somebody falls over and slumps over on the
20 wheel? Could it be possible that somebody could go
21 straight?

22 A. For a period of time I would think maybe for a
23 period of time.

24 Q. Say a couple hundred feet?

25 A. Probably a couple hundred feet.

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1 Q. And just in general if a person is in drive in their
2 car and they press the acceleration the car would tend to
3 go straight, right?

4 A. For a short period of time yes, depending on your
5 steering.

6 Q. And if the slope of the road is going downhill it's
7 going to follow the slope of that road, correct?

8 A. It's going to continue in the forward momentum if
9 that's what you're saying, yes.

10 Q. And it's going to go downhill?

11 A. If the road is downhill, yes.

12 Q. Okay. Thank you.

13 THE COURT: Any redirect?

14 MR. WILLIAMS: No sir, Your Honor.

15 THE COURT: You may step down. Thank you so very
16 much.

17 [Whereupon, the witness is excused and exits the
18 witness stand]

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1 MR. CORVEY: Thank you, Your Honor. The State
2 calls Sergeant Anthony King.

3 [Whereupon, Sergeant King comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: For the record state your first
7 and last name and spell your last name for the record
8 please.

9 THE WITNESS: Anthony King, K-I-N-G.

10

11

ANTHONY KING,

12

Having been first duly sworn,

13

Was examined and testified as follows:

14

DIRECT EXAMINATION

15

BY MR. CORVEY:

16

Q. Good afternoon, Sergeant King. If you could please
17 take a minute and introduce yourself to the jury, where
18 you are from, education, background; kind of lead right
19 up to your career in law enforcement.

20

A. I am Sergeant Anthony King with the North Charleston
21 Police Department. We moved here in 1998 so I got here
22 right before Hugo so I call myself a native of
23 Charleston. I went through all the schools, public
24 schools in Charleston County. I went to the College of
25 Charleston and graduated with a Bachelor's degree there.

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1 I went from there into law enforcement and I've been with
2 North Charleston for about ten years.

3 Q. So now that you've started with North Charleston can
4 you tell us a little bit about your background in North
5 Charleston; training and experiences that you've had that
6 led you to become a sergeant.

7 A. As you all have heard this morning we all go the
8 South Carolina Criminal Justice Academy. When I went it
9 was only nine weeks. Then once you graduate from the
10 Academy you come back to the department and you do
11 another eight weeks of field training where I was
12 assigned with another officer to show me the ropes.

13 Once I was free from that I spent two years on the
14 streets on patrol in various locations within the city.
15 After about two years on the road I applied and was
16 accepted to the traffic unit. They are the ones who
17 handle major accident investigations and I've been with
18 the traffic unit since then.

19 Q. And you are now a sergeant with the traffic unit?

20 A. Yes. Back in May of this year I got promoted to
21 sergeant. I did some more field training with a
22 supervisor just learning the paperwork side of things and
23 they put me right back in the traffic unit to supervise
24 the traffic unit.

25 Q. Congratulations on your promotion.

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1 A. Thank you.

2 Q. Now can you tell me a little bit about any specific
3 training you received as part of your involvement in the
4 North Charleston traffic unit?

5 A. I went back to the Academy to receive about 300
6 hours worth of traffic safety related training. In that
7 300 hours or so you go through the basic to
8 reconstruction of the scene, technical and field
9 reconstruction classes.

10 I've also started and taken two out of the three of
11 the advanced classes that they offer both motorcycle
12 construction and ---

13 THE COURT REPORTER: --- both what? Slow down and
14 tell me again.

15 A. Motorcycle reconstruction, commercial motor vehicles
16 and the other one I'm missing but they just haven't
17 offered that in a while.

18 And I've gotten all those trainings and I've logged
19 the other training for traffic safety such as radar or
20 speed measuring device instructor. I'm also a DUI
21 instructor as well.

22 Q. Now given all that I want to get into the night of
23 October 8, 2015. What were you doing that night?

24 A. October 8, 2015 I was assigned to the Pepperhill
25 neighborhood. It was right after the big flood we had

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1 last year and that neighborhood was still under water.
2 The electricity was cut off so they had an officer pretty
3 much at the main road leading into the apartments that
4 flooded to try to prevent anything happening to those
5 people's houses.

6 So that was my night that I was assigned to it so I
7 was sitting back there when I heard Officer Trask come
8 over the radio--

9 Q. And what did you do once you heard about this
10 accident and collision?

11 A. I heard about it. I had to -- I got me a
12 replacement being I was in the traffic unit at the time
13 it was only logical for me to handle it and see what was
14 going on. Once I got a replacement it was only about a
15 minute after the call came over the radio I responded up
16 there and saw what the scene was like.

17 Q. If you could, we've obviously already heard a lot
18 about it but if you could just kind of describe your
19 experience on the scene once you first got there.

20 A. I came from the Ashley Phosphate side of Rivers
21 Avenue so I came from Ashley Phosphate and made a left
22 towards the Wild Wings and Eagle Landing Drive where the
23 collision occurred.

24 So I came up and saw that fire had just put out the
25 fire in the mustang, the fire department did. I saw two

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1 vehicles. I can't remember if the driver in the pickup
2 was already transported to the hospital or not but I saw
3 that it was pretty bad.

4 Q. So once you arrived on scene what were you tasked
5 with doing?

6 A. Once I arrived on scene I was tasked, of course we
7 have to let our teammates know. Whenever we work a very
8 bad accident we don't work it solo; we work it as a team.

9 We will designate somebody to be the lead
10 investigator and everybody else just kind of help him or
11 her out because these are multifaceted, multitasking and
12 it is just too much for one person to do.

13 So I started calling my teammates and calling my
14 supervisor at the time to let him know where we're at
15 that the road is closed and to start trying to coordinate
16 what we needed to get the job -- to investigate the
17 scene.

18 Q. Now in general do you do -- we heard from the MAIT
19 team and we know what they do but you do your own
20 reconstruction of scenes?

21 A. Yes, we do.

22 Q. And you testified you received some training in
23 that?

24 A. Yes, I did.

25 Q. Did you happen to be the lead investigator on this

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1 case for the traffic team?

2 A: Yes, I was.

3 Q. And in that role probably kind of marshalling some
4 of your troops together and getting supplies ready what
5 did you do once you decided you needed to investigate
6 this wreck?

7 A. The first thing we do is we try to secure the scene.
8 In other words we don't want any cars driving through it
9 anymore. We don't want just random people stopping and
10 walking through it so we start putting up cones and tape
11 to secure it.

12 Once we get-- and getting other officers to help us
13 with traffic control because sometimes people don't know
14 another way to get from point A to point B so we try to
15 help them out as well.

16 Once we got everything secure and teammates started
17 arriving on scene we start designating who is going to do
18 what and that falls to the investigators. So what I did
19 was we sent somebody to the hospital. Also, started
20 making phone calls letting them know what we had.

21 We made sure we had our forensics crime scene in
22 there so we take photos and videos. After coordinating
23 with the fire department to make sure even -- the scene
24 was lit but we like extra lighting from like the fire
25 trucks to make sure we see everything. Make sure someone

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1 was interviewing the possible witnesses that might have
2 seen or heard things. The third vehicle that were
3 together, the truck driver that was at the red light as
4 well we made sure someone was talking to him, talking to
5 the officers that got there first like Officer Trask to
6 tell what they have to say about it and what they saw and
7 heard when they got on scene.

8 Q. And after you had done all this did you start your
9 reconstruction so to speak?

10 A. Yes. We have -- we bought a 15,000 dollar piece of
11 equipment it's called a SOKKIA total station --

12 THE COURT REPORTER: --- a what?

13 A. Sokkia, S-O-K-K-I-A and that's just the brand name,
14 a Sokkia total station. Basically it is a collision --
15 equipment software. So basically we set it up in a
16 single location under which we could just measure the
17 entire scene that we had.

18 It uses lasers and GPS coordinates to identify where
19 it's at and where the points that you're trying where the
20 evidence points stuff on the roadway that we're looking
21 at or the roadway itself that we can get everything in
22 without having to move it again until we're finished.

23 Q. And so you began using that equipment. If you could
24 just kind of describe the processes that you do to
25 calibrate the equipment or anything you do to start

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1 taking any measurement at the scene? Is there anything
2 you do first before you get to that point?

3 A. Sure. What we do is we find a location that we can
4 find parts of the roadway that won't change over time in
5 case we need to come back and reset up and re-measure
6 things so we look for what they call reference points.

7 We look for stuff like sewer covers, drainage
8 ditches. The ones like on the curb that really don't
9 change unless the curb is changed. Not the wooden
10 utility poles but the metal ones that are really hard to
11 knock over we look for stuff like that that would be
12 there a year later if we needed it to come back and re-
13 measure the scene.

14 Once we find those we set the equipment up in a
15 central location that we can get the entire road and all
16 the evidence points is what we call them that have
17 anything to do with the wreck itself.

18 When we set up the equipment we do what they call
19 the zero set which means you're zeroing it out; you're
20 telling it what direction north is, what direction south
21 is the direction of west and east.

22 That way it knows that it was facing north the day
23 we measured the scene or if it is facing south the day we
24 measured the scene. Once we do that we set up the
25 auxiliary equipment which there is three things you can

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1 do. When you shoot a scene using the equipment with just
2 a laser beam basically it's looking for anything that is
3 reflective so that it can measure the exact distance down
4 to point zero zero one if necessary of how far it is from
5 that equipment to what we're shooting; what we are
6 targeting. If it is reflective then you can just shoot
7 that without setting up any auxiliary equipment.

8 If it is not reflective or say there is something
9 blocking direct view of it we'll set up what we call our
10 prism poles which are ten feet tall poles that we have a
11 laser lighted prism at the top that it can be the
12 reflective source for it.

13 So we'll tell the equipment that we set it -- I'm
14 short. Everybody is as tall as me. So I will set the
15 prism pole at about five feet and then I'll put the
16 auxiliary feet, the five feet of location, the height
17 from the ground up into the pole station and that way it
18 knows when it shoots that target, that point that that is
19 actually five feet off the ground so it knows to lower it
20 back down to ground level.

21 The third way is targeted. Basically I have these
22 one and half inch little square targets and there are
23 actually about 60 of them. You kind of just can line
24 them up along the roadway. Usually we only use them for
25 like roadway when we've got like a straight line and

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1 measure and you can set it that everything is one and
2 half inches up and you can just go target, target, target
3 all the way down to you get one lane or curve or a line
4 in the roadway. So we do all of that. We usually shoot
5 our evidence points first; stuff that could be perishable
6 like if it rains or anything like that.

7 So we started with marks on the road, I believe we
8 moved into shooting or measuring the distance from one
9 side of the intersection to the other where the cars
10 impacted to where they came to a final rest or a final
11 stop when they stopped. And we then we shot the road
12 itself to make sure we got the actual dimensions of the
13 road itself.

14 Q. So after you've taken all these data points you
15 start making observations about the scene?

16 A. Yes.

17 Q. Or I guess intermittently -- let me show you what
18 has been marked as State's exhibit 3.

19 [Whereupon, the witness is shown exhibit]

20 Q. If you could please just describe for the jury what
21 we're looking at here.

22 A. Sure. What we do is while we are sitting up the
23 equipment we do what they call a field sketch. It's just
24 a rough drawing of what we have in front of us. So this
25 is the field sketch that I did and basically we show like

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1 this is where the -- light was based on if we had the
2 time. And we knew it was red for the Rivers Avenue side.
3 This [indicates] would have been from Mall Drive or
4 Northwoods Mall side, and this [indicates] would be Eagle
5 Landing side. And then we shoot like up here
6 [indicates] where we determine to be our best educated
7 guess as to where the impact actually occurred.

8 And then down here [indicates] was where the mustang
9 hit the truck that was stopped at the light and kind of
10 bounced off and this [indicates] is where the final rest
11 of that car -- where it finally came to rest.

12 Each unit just like on a collision report you're
13 going to get the number and the little triangle on top of
14 the number just indicates that was the front of the car,
15 or the front of the vehicle.

16 You have one, you have two, then you go down and you
17 see unit two then unit three and then we go over here
18 [indicates] and you see that one and the two came to rest
19 over here [indicates].

20 Q. So after doing these manual sketches that you talked
21 about setting up the equipment and then all of the data
22 points you get I'm now showing you State's exhibit 4.

23 [Whereupon, the witness is shown exhibit]

24 Q. Can you explain how you came to have all these and
25 what these represent?

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1 A. Yes. It takes us, of course the larger the roadway
2 and the more cars involved the longer it takes us to
3 actually gather all the information.

4 It took us about six or seven hours that night to
5 get all these data points. And when we do that we
6 download everything to separate software in the office.
7 That shows us everything color coded by what we label it
8 as to get this raw data point; the raw --

9 THE COURT REPORTER: --- I'm sorry; what was the
10 last thing you said.

11 A. The raw diagram that we have in front of us.

12 Q. [Mr. Corvey] And then taking all that information
13 are you then able to kind of come up with a better idea
14 of what happened?

15 A. Yes.

16 Q. And then does that lead you to something like this
17 in State's exhibit 5?

18 [Whereupon, the witness is shown exhibit]

19 A. Yes.

20 Q. And would this be the actual software generated
21 diagram of what happens based off your rough sketch and
22 then all the data points?

23 A. Yes.

24 Q. And after the course of your reconstruction what
25 were your conclusions about the accident?

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1 A. My conclusions were that the Ford mustang was
2 stopped at a red light when it was rear ended by the
3 Chevy Silverado. Based on my experience even when just
4 looking at the scene and the damage profiles to those
5 vehicles I know there was excessive speed involved.

6 Q. Sorry to interrupt -- would you have know there was
7 excessive speed involved before even doing any of the
8 reconstruction?

9 A. Yes.

10 Q. Just based on the magnitude of the damage?

11 A. Just on my experience in working these cases. So we
12 knew there was excessive speed involved. Doing all the
13 data points helps us to get to whatever speed it might
14 have been.

15 Then I knew that based on the evidence we had at the
16 scene where we believe that the actual impact occurred,
17 the first one, you could tell where the mustang was
18 pushed into that third truck that was stopped at the
19 light.

20 You could tell where it bounced off and then it came
21 to rest on the other side of the intersection. There
22 were skid marks also indicating where the truck spun
23 around and started facing the wrong way in traffic where
24 it came to a final rest or the final stop on the other
25 side of the intersection.

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1 Q. Now in addition to coming up with the physical
2 recreation of the scene and as best you can tell what
3 happened during the accident were you able to come up to
4 any preliminary determination in regards to speed?

5 A. Yes. What we look at -- one of the things we look
6 at is skid marks on pre-impact or before the actual first
7 impact and skid marks that occur after the impact.

8 There was no skid marks leading up to where the
9 first impact was which would indicate there was no
10 breaking. So we looked at -- I looked at the secondary
11 skid marks when both cars were spinning and where they
12 came to rest on the other side.

13 You take that information, the distance of the skid
14 marks alone, you take the actual distance -- I look at
15 the weight of the vehicles, and we come up with what we
16 call a minimum speed estimate.

17 Basically it says a minimum speed is not saying at
18 what the speed of the vehicles were going. It's the
19 minimum speed necessary to get from point A to point B.

20 So what I was calculating was the minimum speed to
21 get from one side of the intersection to the other side
22 of the intersection actually after the impact of the
23 cars. And I came up with a speed estimate that way.

24 Q. And what was your speed estimate?

25 A. Ninety-eight miles an hour.

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1 Q. And at the time you came up with that speed estimate
2 obviously we've heard some testimony that MAIT got
3 involved in this case.

4 Had the time you came up with that had they already
5 provided what their estimates were or what their report
6 was from the diagnostics they ran?

7 A. No.

8 Q. So in this case they happened to have a match?

9 A. Yes.

10 Q. Now outside of your reconstruction and the
11 conclusions that you were able to make on speed I want to
12 talk a little bit more generally about the area and then
13 go through some of the wreck itself. Are you familiar
14 with that area of Rivers Avenue and Eagle Landing?

15 A. Very familiar.

16 Q. Could you describe the roadway for the jury?

17 A. The Eagle Landing, Northwoods Boulevard, Rivers
18 Avenue section it has three lanes each direction primary
19 and has that one center turn lane if you want to go to
20 the mall or if you want to turn onto Eagle Landing.

21 Eagle Landing takes you back by the Toys R Us if
22 you're familiar with that area. Coming off the Eagle
23 Landing there is two left turn lanes. There is one that
24 goes straight across to the mall and there is one
25 dedicated right turn lane. If you were to make the right

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1 onto Eagle Landing there is two lanes initially and a
2 third lane turn lane to turn into the Toys R Us shopping
3 center. Going into the mall the other direction there
4 are two direct dedicated lanes to go into the mall; one
5 will become a right and one will become a left.

6 One will go toward the Carrabba's and the other will
7 go towards the Olive Garden. On the way out there is two
8 dedicated lanes. One will be left turns only, one will
9 be straight traffic and right turns.

10 Q. And if you could just describe the roadway. Is it
11 generally well lit and well travelled and things like
12 that?

13 A. Yes. If my recollection is correct they have just
14 finished repaving that section of Rivers Avenue so it was
15 pretty freshly paved and freshly marked. It's got a
16 traffic light of course. I believe they were recently
17 replaced so they would have been new.

18 There is a little bit of a grade, a little bit of
19 elevation there but it's clear and very visible. There
20 is not much obstructing your view from any of the four
21 directions you'd be coming from at that intersection.

22 Q. Now I want to talk a little bit about your
23 investigation and I'll show you State's exhibit 8.

24 [Whereupon, the witness is shown exhibit]

25 Q. In the course of the investigation and we've already

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1 heard from them we had some individuals at the Wild Wings
2 parking lot; it's a little cut off but the intersection
3 is obviously down near the top of the map -- excuse me;
4 the collision was down at the top of the map. About how
5 long is this distance wise from the Wild Wings to Eagle
6 Landing?

7 A. From here [indicates] to here [indicates] is about
8 five ---

9 Q. --- as best you can ---

10 A. About 500 yards I'd say.

11 Q. And in the course of your investigation were you
12 able to determine where the victim lived in this case?

13 A. Yes, sir.

14 Q. And where was that?

15 A. Rivers Avenue.

16 Q. And about how far away is that apartment complex at
17 Rivers Avenue from where the accident took place?

18 A. Roughly around two miles.

19 Q. Just around two miles? So once you've done all
20 these things at the scene you take the vehicles back to a
21 secure location?

22 A. Yes.

23 Q. What do you do with it once you get it back there?

24 A. We secure them in our Public Works facility. There
25 is actually a building separate from working cars and

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1 trash trucks and that kind of thing at our evidence
2 warehouse. It's a gate, it's got a fence and gate and
3 its password protected.

4 At the time I didn't even have access to the
5 warehouse so we have to call somebody, crime scene or
6 evidence technician; I think there is a like a total of
7 ten people that have access to this warehouse. Once they
8 get there they let us in and secure it in there pending
9 further investigation.

10 Q. Do you do any physical investigations of the
11 vehicles involved in your reconstruction or your
12 investigation of the accident?

13 A. Yes. We bring a certified mechanic from our fleet
14 maintenance shop over to look for glaring obvious
15 mechanical defects on the vehicles when one of these type
16 accidents occur.

17 Q. And obviously we've seen both vehicles were pretty
18 banged up so is it just as best you can tell trying to
19 find any defects that could have caused the accident?

20 A. That's correct.

21 Q. As it relates to the truck that Mr. Biggs was
22 driving was there any physical defects that you could
23 find with the truck?

24 A. Nothing the mechanic was able to.

25 Q. Did you check the brakes?

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1 A: Yes.

2 Q. And they were -- they appeared to be in working
3 order?

4 A. Yes.

5 Q. Now I want to talk to you a little bit about your
6 experience in investigating accidents. In your
7 experience what's the outcome if someone has a medical
8 emergency or per chance falls asleep at the wheel while
9 driving?

10 A. My experience is they don't stay on the road very
11 long; seconds at most. They always seem to veer off and
12 hit something on the shoulder.

13 Q. Why is that as best you can tell?

14 A. Because there is no person physically controlling
15 that vehicle. Every roadway is designed with a grade or
16 some elevation. A grade is pretty much a slope that it
17 goes downhill or uphill.

18 A super elevation, we call it super E is actually
19 from the crown of the middle of the road to the
20 shoulders. Every road that is designed is designed to be
21 higher in the middle than it is on the shoulders pretty
22 much for rain water to drip off.

23 So if you're not in control of that vehicle no
24 matter how well it's put together it's going to veer off
25 toward the shoulder because that's how the road is

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1 designed.

2 Q. Now in this accident I want to talk to you a little
3 bit about the type of the collision. How would you
4 describe the collision between the two vehicles in this
5 accident?

6 A. Severe.

7 Q. Was there anything about the nature of the collision
8 that stuck out to you?

9 A. It looked before we did the, before I finished the
10 investigation, it looked like almost a direct hit from
11 the rear.

12 Q. Would it fair to characterize that as almost like a
13 square impact?

14 A. Yes.

15 Q. And what, if anything, were you able to draw from
16 that?

17 A. Well, one I was able to draw that somebody probably
18 not moving at a high rate of speed got hit. You can just
19 look at the damage profiles on the two vehicles.

20 If they were moving you would expect to see damage
21 all the way down one side or you would expect to see more
22 damage on one side than the other. And the mustang
23 pretty much had center damage all the way in the back. I
24 mean it was just destroyed in the rear.

25 Q. And what about the truck? What was the damage to

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1 the front of the truck? I'm showing you State's exhibit
2 46.

3 [Whereupon, the witness is shown exhibit]

4 A. The damage to the front of the truck was pretty much
5 just the front end. There wasn't really any damage on
6 the rear or there wasn't really any damage on the sides.
7 All the damage was focused on the front. It's something
8 we call in reconstruction a PDOF, principal direction of
9 force. Basically when two cars hit the energy from the
10 cars transfers from one vehicle to the other.

11 So by looking at this damage without going through
12 this investigative process, this is just rolling up on
13 the scene kind of thing you can see that the energy was
14 transferred from the front of one vehicle to the rear of
15 the other.

16 Q. Now I'm showing you State's exhibit 43.

17 [Whereupon, the witness is shown photograph]

18 Q. Is that a good indicator of how kind of square up
19 the cars collided?

20 A. Yes.

21 Q. In an instance where say a car could be swerving or
22 out of control is it common to find them to have a square
23 collision with another vehicle?

24 A. This is the first one I've ever seen like this.

25 Q. As far as a high speed square collision like that?

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- 1 A. Correct.
- 2 Q. Now I'll show you State's exhibit 47.
- 3 [Whereupon, the witness is shown photograph]
- 4 Q. I did note that I guess on the passenger side of the
5 truck there was less damage on that side. What can you
6 tell us about that?
- 7 A. My -- maybe after the impact, the initial impact
8 part of the car was sticking off the bumper and stuff, it
9 might have when it started to spin out it spun from one
10 side to the other which kind of directed the energy away
11 from that side over there [indicates].
- 12 Q. Could that also be an explanation as to how the cars
13 ended up on the opposite side of the road?
- 14 A. Correct.
- 15 Q. Now I did want to ask you a little bit about what
16 State's exhibit 59 depicts.
- 17 [Whereupon, the photograph is shown]
- 18 A. This is where I believe the first impact occurred.
19 These [indicates] are what they call gouge marks
20 basically where a piece of the car digs into the cement.
21 It usually only occurs at what we call first impact
22 or the first place -- the first time they collide. This
23 was a pretty good indicator where the first -- the
24 accident between the truck and the mustang occurred.
- 25 Q. And those appear to be in the middle of that lane.

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- 1 And that's the middle lane of Rivers Avenue?
- 2 A. Correct.
- 3 Q. I'm showing you State's exhibit 60.
- 4 [Whereupon, the photograph is shown]
- 5 Q. Is there any way to be able to tell which vehicle
6 made which marks?
- 7 A. Not with as much damage as both the truck and the
8 mustang have it was no way for me to look and pinpoint
9 what part of the car or the vehicle hit and caused those
10 gouge marks.
- 11 Q. Based on the location of the gouge marks being
12 seemingly being pretty close to being in the center of
13 the lane what conclusions did you draw from that?
- 14 A. I believe this was a squared up straight in rear end
15 collision kind of what you see fender benders in rush
16 hour traffic except this one had excessive speed.
- 17 Q. Now also along the lines of them being in the center
18 of the road would that suggest to you at all that the
19 cars happen to be in the center of that lane or at least
20 close to the center of that lane?
- 21 A. That's what I believe, yes.
- 22 Q. Now I want to ask you about a little bit about some
23 other aspects of your investigation. I think you
24 testified that when you were getting ready to begin
25 investigating this that you had sent an officer to the

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1 hospital?

2 A. Yes.

3 Q. What was his role in this?

4 A. Part of my time being with the traffic unit before I
5 got promoted I was on the DUI taskforce so I worked a lot
6 of nights and a lot of weekends with one specific goal;
7 to try to get impaired drivers off our roads.

8 So when the wreck came out at approximately 4
9 o'clock in the morning the first thing we think was to
10 check for possible impairment. So that's why I sent
11 somebody to the hospital to check for possible
12 impairment.

13 Q. And what was the outcome of this investigation; at
14 least initially?

15 A. Initially what his feedback was he believed there
16 was enough probable cause that the driver of the pickup
17 truck was impaired so we made an arrest for that cause?

18 Q. For felony DUI?

19 A. Correct.

20 Q. What happened to that charge?

21 A. When you arrest somebody for felony DUI we take a
22 chemical sample whether it be a breath, blood, or urine
23 sample. In this case I believe we took blood. We sent
24 it off to Columbia to SLED, that's State Law Enforcement
25 Division to test it and wait for the results. They

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1 tested it and it came with the results and it showed
2 negative for alcohol.

3 Q. In fact did it show negative for anything else?

4 A. It showed negative for everything else.

5 Q. Are you aware of what happened to the DUI charge
6 that morning?

7 A. Yes. Once the results came back when we went to one
8 of the first appearances of the case and we dismissed the
9 charge.

10 Q. And then tell me a little bit about how you ended up
11 deciding on the reckless homicide charge?

12 A. What I do is once I get all the investigative stuff
13 laid out in front me and look at all the pieces of the
14 puzzle I look at the totality of the circumstances;
15 everything I see.

16 I look at the speed, the time of day, the traffic
17 conditions, the weather conditions, the location. When I
18 say location I mean was it on the Interstate or was it in
19 a neighborhood, was it is near a big business district,
20 where there are lot of cross streets.

21 Once I looked at all that information I believed
22 there was enough probable cause to make the charge for
23 reckless homicide.

24 Q. So sort of wrapping up here I want to get a little
25 bit to the speed. What's the speed limit out there?

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1 A. Forty-five miles an hour in that area.

2 Q. So Mr. Biggs was travelling more than double that
3 speed?

4 A. Correct.

5 Q. Now we know that there were some witnesses in this
6 case who were in the Wild Wings parking lot and they
7 testified I think that's maybe 400 to 500 yards away from
8 where the accident site was?

9 A. Yes, sir.

10 Q. Based on all the information that you gathered
11 through the course of your investigation and knowing
12 witnesses in that parking lot observed that car at a high
13 rate of speed at that point, understanding you can't give
14 us an exact idea but how long do you think the car was
15 driving that fast or at least at a high rate of speed
16 down Rivers Avenue?

17 A. I can't be specific but I would say maybe 600 yards
18 at most give or take.

19 Q. And that's 600 yards at 98 miles an hour?

20 A. Correct.

21 Q. But it would have taken I guess an additional time
22 to get up to that speed?

23 A. Correct.

24 Q. Now was there any sign during the course of your
25 reconstruction that Mr. Biggs hit his brakes at all?

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1 A. No.

2 Q. Is there any sign he swerved at all?

3 A. No.

4 MR. CORVEY: Beg the court's indulgence.

5 [Whereupon, Mr. Corvey and Mr. Williams confer]

6 Q. [Mr. Corvey] No further questions at this time.

7 THE COURT: Cross-Examination?

8 MR. KOZELSKI: Thank you, Your Honor.

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State v John Andrew Biggs
Anthony King-Cross-Examination by Mr. Kozelski
December 13, 2016

1 CROSS-EXAMINATION

2 BY MR. KOZELSKI:

3 Q. Sergeant King I just wanted to ask you a few
4 questions about your investigation. You started talking
5 a little bit about the grade of the road that you looked
6 at the grade of the road and that this road had a slight
7 grade to it.

8 A. Correct.

9 Q. But in fact it has a pretty decent grade. It's
10 about a one point eight percent grade.

11 A. Okay.

12 Q. And in terms of Charleston roads that's a pretty
13 steep hill, correct?

14 A. This is the Lowcountry. We don't have any hills.

15 Q. Right. So it's more steep than the average road.

16 A. I suppose.

17 Q. It drops about 18 feet in about a 1000 feet span.

18 A. Okay.

19 Q. So in your drawing -- let me bring this up for you
20 again.

21 [Whereupon, the witness is shown exhibit]

22 Q. In your drawing right here you have Mr. Biggs -- and
23 this is State's exhibit 5, you have Mr. Biggs car
24 squarely behind the mustang.

25 A. Correct.

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- 1 Q. One of the ways that you're able to tell where cars
2 are is because of where the skid marks are.
- 3 A. Correct.
- 4 Q. But there are no skid marks in this case.
- 5 A. None leading into the collision, no.
- 6 Q. Right. So you don't know where the car was before
7 based on any type of skid marks.
- 8 A. Correct.
- 9 Q. So you're not able to tell where the car was say 300
10 feet back.
- 11 A. No.
- 12 Q. You're not able to tell what lane it was in.
- 13 A. Not 300 feet from the first impact, no.
- 14 Q. Okay. You're not able to tell how far it was 500
15 feet back?
- 16 A. No.
- 17 Q. Thousand feet back?
- 18 A. No.
- 19 Q. The people at the Wild Wings parking lot couldn't
20 tell you which lane it was in.
- 21 A. Correct.
- 22 Q. So you don't know that it was travelling straight in
23 that lane.
- 24 A. No, I do not.
- 25 Q. Okay. And you would agree with me if you look at

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1 State's exhibit 43 that the driver's side of this pickup
2 is damaged more so than the passenger side.

3 [Whereupon, the witness views photograph]

4 A. Which damage are you talking because some of that
5 damage is from the fire department cutting off through
6 the car?

7 Q. Okay. We'll look at this picture. This impact
8 picture is State's exhibit 46.

9 [Whereupon, the photograph is shown]

10 Q. The driver's side is impacted more than the
11 passenger side.

12 A. I suppose.

13 Q. Okay. And I can show you State's exhibit 47 where
14 it looks as though this isn't even impacted at all.

15 [Whereupon, the photograph is shown]

16 A. Okay.

17 Q. Going back to State's exhibit 5. You talked about
18 what is that acronym you used, PDOF, principal direction
19 of force?

20 A. That's correct.

21 Q. And that's just physics, right?

22 A. Yes.

23 Q. And if you have a car and it rams directly square
24 into the back of another car you would expect that front
25 car to go forward, correct?

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1 A. Correct.

2 Q. Okay. But in this case the car actually went to
3 the left, is that right?

4 A. Yes.

5 Q. And it hit another car, bounced off that car and
6 went into the west -- this intersection [indicates] where
7 it finally ended, correct?

8 A. Correct.

9 Q. So it spun to the left until it hit another car and
10 then it ended up in the middle of the road.

11 A. That's correct.

12 Q. So that would be consistent with it hitting not
13 flush but sort of off center.

14 A. For it to hit perfectly flush? No, I wouldn't
15 expect it to hit perfectly flush, however I believe that
16 it hit square on enough that it was a direct hit in the
17 back.

18 Q. Okay ---

19 A. --- even if it was a few inches off that could
20 result in what they call rotation after the fact ---

21 Q. --- right, and -- I'm sorry I didn't mean to cut you
22 off.

23 A. A few inches wouldn't change my investigation.

24 Q. Right. But if you can't tell what direction the
25 truck was travelling before it made impact whether it be

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1 from the left side or whether it was coming from the
2 right side.

3 A. Well, I can tell it was coming from Rivers westbound
4 up to the intersection. Now can I tell if it was exactly
5 coming from a little off to the left or a little off to
6 the right? No.

7 Q. But the entire way it was going downhill, correct?

8 A. Yes, that would be the downgrade.

9 Q. You briefly explained about the process you go
10 through with SLED and finding somebody who is driving
11 under the influence.

12 A. Correct.

13 Q. And you thought this case was a DUI at first blush.

14 A. Yes.

15 Q. And so you had to go through the collection process
16 of collecting blood within a certain period of time.

17 A. Correct.

18 Q. I think you have to take blood within two hours
19 time?

20 A. Three hours.

21 Q. Three hours? Okay. And then you take that and you
22 send it off to the South Carolina Law Enforcement
23 Division?

24 A. We secure it in our evidence room as proper evidence
25 following our policies and procedures and then our

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1 evidence technician actually are transporting it to SLED
2 usually within a week.

3 Q. And then they test the blood and they send it back
4 to you?

5 A. They send us the results, yes.

6 Q. Okay. I'm going to show you what has been marked
7 defense exhibit 1.

8 [Whereupon, the witness is shown exhibit]

9 Q. That's the South Carolina Law Enforcement Division
10 toxicology report in this case?

11 A. Yes.

12 Q. And you mentioned this in direct but it's negative
13 for alcohol?

14 A. Yes. As I mentioned it is negative for everything.

15 Q. Okay. And there is about 12 drugs on there that
16 they list?

17 A. Correct.

18 Q. And those are all negative as well?

19 A. Correct.

20 MR. KOZELSKI: Beg the court's indulgence.

21 [Whereupon, Mr. Kozelski and Ms. Van Pala confer]

22 Q. [Mr. Kozelski] When you testified earlier that
23 somebody who has fallen asleep at the wheel often times
24 veers off the road?

25 A. Yes.

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1 Q. That's just a guess right?

2 A. No. Actually, I just had one not too long ago where
3 he had a heart attack and he veered directly off the
4 road.

5 Q. Okay. And that could be from somebody just pulling
6 the steering wheel?

7 A. Yes.

8 Q. Okay. But if a car in drive if nobody is touching
9 the steering wheel is meant to go straight right?

10 A. It's meant to go straight but our roads aren't
11 designed for it to go straight.

12 Q. But if it's a downhill road it's going to go
13 downhill.

14 A. Not with a super elevation. A super elevation means
15 it could go towards one side or the other.

16 Q. Okay. And you can't tell what side this truck was
17 coming from.

18 A. No.

19 Q. From the left side or the right side.

20 A. No, I cannot.

21 Q. Thank you. No further questions.

22 THE COURT: Any redirect?

23 MR. CORVEY: Briefly, Judge.

24

25

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1 wreck; a truck versus a car. Most people don't have an
2 empty truck and most people don't have an empty car. So
3 and the weight on the mustang is geared toward the front
4 of it, the engine compartment. There is really no weight
5 on the back end.

6 A truck's weight is all front end; there is also no
7 weight on the back end. So when you hit another vehicle
8 with a truck or a car, the weight transfers, the center
9 of gravity changes so there will be some spin resulting
10 from that because the center of gravity is changing as
11 the energy is transferring from car to car.

12 Q. And also let's say if Mr. Biggs was coming in from
13 the side like Mr. Kozelski hypothesized would you expect
14 the damage to the front of the truck to be as square as
15 it is?

16 A. No.

17 Q. What about from the other side?

18 A. No.

19 Q. Throughout the entire course of your investigation
20 was there any sign that you could find whatsoever that
21 Mr. Biggs was not in control of that vehicle at the time
22 of that collision?

23 A. No.

24 Q. No further questions.

25 THE COURT: You may step down. Thank you so very

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1 much.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: Do you have any additional witnesses?

5 MR. CORVEY: Just one, Your Honor, just very
6 briefly.

7 THE COURT: Okay.

8 MR. CORVEY: My investigator, Julius Alexander. I
9 don't think -- he's not on my initial witness list.

10 THE COURT: I'm sorry?

11 MR. CORVEY: My investigator Julius Alexander.
12 He's not on my initial witness list but I talked to Mr.
13 Kozelski about it and I don't think he has any objection.

14 THE COURT: That's fine. Any objection?

15 MR. KOZELSKI: No objection, Your Honor.

16 THE COURT: Pardon?

17 MR. KOZELSKI: No objection.

18 THE COURT: Okay. Thank you very much.

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State v John Andrew Biggs
Julius Alexander-Direct Examination by Mr. Corvey
December 13, 2016

- 1 [Whereupon, Mr. Alexander comes forward]
2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court]
4 CLERK OF COURT: For the record please state your
5 first and last name and spell out your last name please.
6 THE WITNESS: Julius Alexander, A-L-E-X-A-N-D-E-R.
7 - - - - -
8 JULIUS ALEXANDER,
9 Having been first duly sworn,
10 Was examined and testified as follows:
11 DIRECT EXAMINATION
12 BY MR. CORVEY:
13 Q. Good afternoon, Mr. Alexander. Where are you
14 currently employed?
15 A. At the Charleston County Solicitor's office.
16 Q. What are your roles at the Solicitor's office?
17 A. Basically I prepare cases for trial such as this.
18 Q. And you work with different attorneys.
19 A. Yes.
20 Q. Am I one of those attorneys?
21 A. Yes, you are.
22 Q. This is a new job for you, right?
23 A. Yes.
24 Q. Where did you come from before that?
25 A. Charleston County Sheriff's Office where I was a

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- 1 person's detective for about five years.
- 2 Q. And what did you do in that role?
- 3 A. Basically we respond to scenes such as armed
4 robberies, murders, attempted murders. We come out, we
5 do a full investigation, put the case together, establish
6 enough probably cause to make the arrest and send the
7 cases down here to the Solicitor's office.
- 8 Q. So you were a homicide detective for lack of a
9 better word?
- 10 A. Yes.
- 11 Q. Since you were here obviously have you had an
12 opportunity to assist me in preparing this case?
- 13 A. Yes.
- 14 Q. And through the course of those preparations did you
15 happen to serve a subpoena on a company called Concrete
16 Pipe and Precast?
- 17 A. Yes.
- 18 Q. And what was the purpose of serving that subpoena?
- 19 A. Just to obtain the work schedule for Mr. John Biggs
20 because he's employed there.
- 21 Q. Or at least was employed there prior to this
22 accident ---
- 23 A. --- or at least he was employed there.
- 24 Q. What were you able to determine after serving that
25 subpoena and the information that you received from that?

State v John Andrew Biggs
Julius Alexander-Direct Examination by Mr. Corvey
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1 A. Just his regular work schedule also from his
2 supervisor Mr. Mike --

3 THE COURT REPORTER: Mike?

4 A. Trone, T-R-O-N-E. He advised that Mr. John Biggs
5 usually worked four days out of the week from 6 a.m. in
6 the morning until 4:30 p.m. Monday through Thursday.

7 Q. And this accident occurred around 4 a.m.?

8 A. Yes.

9 Q. And Concrete Pipe and Precast that's located on
10 Azalea Drive?

11 A. Yes, sir.

12 Q. No further questions. Thank you.

13 THE COURT: Cross-Examination?

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State v John Andrew Biggs
Julius Alexander-Cross-Examination by Mr. Kozelski
December 13, 2016

1 CROSS-EXAMINATION

2 BY MR. KOZELSKI:

3 Q. You learned this information from looking at his
4 work schedule?

5 A. As well as speaking with his boss.

6 Q. Okay. And on that work schedule he showed up
7 before 6 o'clock every morning?

8 A. From -- not -- it wasn't perfect every morning or
9 whatever. But basically what his boss told me is that he
10 shows up for work. He's supposed to be at work at 6 a.m.
11 in the morning Monday through Thursday.

12 Q. Okay. And according to his work schedule you have
13 he shows up either right before six or at six every
14 morning?

15 A. If I can look at it for my recollection?

16 MR. KOZELSKI: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 [Whereupon, the witness is shown document]

19 A. You see some mornings on here he shows up at 6 a.m.,
20 some at 5:57 a.m. It's not exactly at 6 a.m. but its
21 close enough.

22 Q. [Mr. Kozelski] Okay. And then he works until 4:30
23 and he gets off?

24 A. Yes.

25 MR. KOZELSKI: No further questions, Your Honor.

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Julius Alexander-Cross-Examination by Mr. Kozelski
December 13, 2016

1 THE COURT: You may step down. Thank you very
2 much. I'm sorry; do you have any redirect?

3 MR. CORVEY: No, Your Honor.

4 THE COURT: You may step down. Thank you very
5 much.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Any further witnesses?

9 MR. CORVEY: The State rests, Your Honor.

10 THE COURT: Thank you very much.

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State v John Andrew Biggs
Proceedings
December 13, 2016

1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury I need to hear certain legal motions at this
3 time. I'd ask you to go to the jury room and after I
4 hear the motions we'll take a short break and then we'll
5 get you back very shortly after that. Please don't
6 discuss the case amongst yourselves.

7 [Whereupon, the jury exits at 3:14 p.m.]

8 THE COURT: Any motions from the State?

9 MR. CORVEY: None from the State at this time, Your
10 Honor.

11 THE COURT: Any from the defendant?

12 MR. KOZELSKI: Yes, Your Honor.
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State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Kozelski
December 13, 2016

1 MOTION FOR DIRECTED VERDICT

2 MR. KOZELSKI: At this time we would move for a
3 directed verdict on the charge of reckless homicide. I
4 think that the evidence that has been presented today is
5 most analogous to the case of In Re. Stacy A which is a
6 Supreme Court case back in 1991.

7 In that case there was an accident that occurred.
8 There were no witnesses to the actual accident and no
9 evidence that the person driving the vehicle in the
10 accident was driving it in reckless disregard for the
11 safety of others.

12 I think also there is another case that is State v
13 Rowell which is also a Supreme Court case in 1997. That
14 case actually reversed the Court of Appeals that had
15 overturned a conviction for reckless driving. And that
16 case I think is a little different from ours. There was
17 some testimony in that case that contradicted some of the
18 other evidence in the case and the testimony that was
19 given.

20 But it was a case that injured two young children
21 that were on the sidewalk. The person had driven off the
22 road, swerved, and went up onto the sidewalk and hit
23 these two young people. There was testimony that there
24 was no attempt at braking. In that case like I said the
25 Court of Appeals found that there was no evidence of

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Motion for Directed Verdict-Remarks by Mr. Kozelski
December 13, 2016

1 reckless in that case. However, the Supreme Court did
2 overturn that and said because there was an issue of the
3 facts at the trial that that should have been considered.
4 Here I don't think we have any issues of fact. I don't
5 think there has been any evidence put forth by the State
6 that Mr. Biggs was consciously aware of what was going
7 on.

8 I think the only evidence that they could put forth
9 that he would drive in a manner like this at 90 or 100
10 miles per hour into the back of a car would be that he
11 was trying to kill himself. That is the only reasonable
12 explanation as to why somebody like that would drive like
13 that. But they don't know where he was coming from ---

14 THE COURT: --- a reasonable explanation as to why
15 is not an element of the crime so what's your point?

16 MR. KOZELSKI: Well, Your Honor, I don't think ---

17 THE COURT: --- I mean why he did it is immaterial
18 as far as the elements of the crime so what's your point?

19 MR. KOZELSKI: Well, I think you have to prove that
20 there is a conscious failure to obey the laws and there
21 is ---

22 THE COURT: A conscious failure to do what?

23 MR. KOZELSKI: To obey the traffic laws, that he's
24 consciously aware of what he is doing is negligent and he
25 chooses to do it anyway. I think that's what the

State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Kozelski
December 13, 2016

1 reckless disregard for the safety of others is. Here we
2 don't have any evidence of his consciousness. I don't
3 think there is any evidence to support that he knew he
4 was going 100 miles per hour. All they have is the fact
5 that he was travelling 100 miles an hour. They can't say
6 that he was travelling straight in one lane. They can't
7 say that he was swerving. There is no other types of ---

8 THE COURT: --- I think the officer just testified
9 because of the crest in the road if he wasn't maintaining
10 control of the vehicle it would have veered off because
11 of that crest. I believe that was his testimony because
12 of the water the crest in the middle it rolls off. And
13 it wouldn't have gone straight unless he was controlling
14 it.

15 MR. KOZELSKI: Well Your Honor, he ---

16 THE COURT: --- so what's that testimony?

17 MR. KOZELSKI: He also ---

18 THE COURT: --- what's that testimony?

19 MR. KOZELSKI: I think he also testified that he
20 didn't know where the car had come from.

21 THE COURT: He didn't know where it came from? He
22 said it came down Rivers Avenue.

23 MR. KOZELSKI: Right. And it's going downhill and
24 that car would have travelled downhill ---

25 THE COURT: --- downhill doesn't affect the crest

State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Kozelski
December 13, 2016

1 of the road.

2 MR. KOZELSKI: I think it does, Your Honor.

3 THE COURT: How does downhill affect the road being
4 higher in the middle and lower on the left where if you
5 turn the steering loose it is going to veer left or it is
6 going to veer right? How does downhill affect that issue
7 because the crest is the same whether it's uphill, flat,
8 or downhill?

9 MR. KOZELSKI: Well, I think that would have to be
10 ---

11 THE COURT: --- I mean what's downhill got to do
12 with it?

13 MR. KOZELSKI: I think you have to go with some
14 sort of alignment, Your Honor. I think the testimony ---

15 THE COURT: --- how does downhill affect the crest
16 of the road is my question to you?

17 MR. KOZELSKI: I think it affects whether or not
18 the car is going down the hill and staying on the road.

19 THE COURT: But you haven't answered my question.
20 My answer is how does downhill, uphill, or straight or
21 around a curve affect the crest of the road? The
22 concrete is poured the same everywhere; or the asphalt, I
23 guess its asphalt.

24 MR. KOZELSKI: I guess I'm misunderstanding, Your
25 Honor. I -- the testimony that he gave was an educated

State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Kozelski
December 13, 2016

1 guess. It was a guess as to ---

2 THE COURT: --- well, it may be and you can argue
3 that to the weight sufficient but that was the testimony.
4 The testimony from what I understand, and you can correct
5 me if I'm wrong, that because of the crest of the road he
6 had to maintain control of the vehicle. If he had turned
7 the steering wheel loose because of the crest it would
8 have veered left or it would have veered right. Downhill
9 uphill around the curve or flat doesn't affect the crest
10 of the road.

11 MR. KOZELSKI: I think there was also ---

12 THE COURT: --- and you keep arguing about
13 downhill.

14 MR. KOZELSKI: There was also testimony, Your
15 Honor, that a car if driven in drive would drive straight
16 if it was not -- if somebody didn't ---

17 THE COURT: --- if there is no crest. If the
18 surface the car is on yes, it will go straight if the
19 wheels are lined up and the wheels are in good shape and
20 the tires are in good shape and they're not slick on one
21 side and good on the other. There are a lot of factors
22 that go into that.

23 MR. KOZELSKI: Right, Your Honor, and it wasn't
24 testified to. None of that was testified to. It was
25 just the best guess as to where the vehicle might have

State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Kozelski
December 13, 2016

1 gone.

2 THE COURT: All right. Anything else?

3 MR. KOZELSKI: Yes, Your Honor, we do have a memo
4 in support of our motion for a directed verdict. I've
5 given that to Mr. Corvey having that filed in the court.
6 And it does not give the court much time to rule on this
7 but I do think some of the case law is very much in
8 support of our position considering the weight of the
9 evidence.

10 And I think here where we only have circumstantial
11 evidence to prove what happened, and it is certainly not
12 substantiated. And according to State v Odom I think in
13 order to get past that directed verdict motion you have
14 to have substantial circumstantial evidence. I don't
15 think we have it here. We have a high rate of speed and
16 then hitting the car. I don't think there is any
17 evidence whatsoever that he was aware of driving and
18 could have avoided the ultimate consequence of what
19 happened.

20 THE COURT: I don't think that's an element that he
21 could have avoided it. You're talking about civil law
22 there but go ahead, last clear chance but that doesn't
23 have anything to do with this. Go ahead.

24 MR. KOZELSKI: Well, Your Honor, in the reckless
25 disregard for the safety of others I think that there is

State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Kozelski
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1 in fact language ---

2 THE COURT: --- well, driving 100 miles an hour on
3 Rivers Avenue is not a reckless disregard for the safety
4 of others in a congested area? I know it was 3 o'clock
5 in the morning but on Rivers Avenue doing 100 miles an
6 hour is not a reckless disregard of safety and others?

7 MR. KOZELSKI: Yes, Your Honor ---

8 THE COURT: --- if that's not please tell me what
9 is.

10 MR. KOZELSKI: Well, you have to look at the
11 subjective intent of the person ---

12 THE COURT: --- no you don't ---

13 MR. KOZELSKI: --- and that ---

14 THE COURT: --- there is no intent required for
15 this crime.

16 MR. KOZELSKI: You have to have a ---

17 THE COURT: --- you have to have a conscious
18 awareness of what is going on.

19 MR. KOZELSKI: It has to be willful, Your Honor,
20 and it has to be a conscious disregard. As I stated
21 earlier ---

22 THE COURT: --- willful in that ---

23 MR. KOZELSKI: --- he has to know what he is doing
24 and ---

25 THE COURT: --- willful in that you were operating

State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Kozelski
December 13, 2016

1 a vehicle in that manner; not the results. You don't
2 have to intend the results. Intention is not an element
3 of this particular crime.

4 MR. KOZELSKI: It is a willful, Your Honor.

5 THE COURT: Well -- anything else?

6 MR. KOZELSKI: No, Your Honor, if I could approach?

7 [Whereupon, Mr. Kozelski provides documents to the
8 court]

9 THE COURT: What I wanted to tell you is the State
10 doesn't need to prove that the defendant intended to
11 cause harm or intended to endanger others. Rather the
12 defendant must have consciously operated a vehicle
13 dangerous and in a manner that was willful and in
14 reckless disregard to the safety of others. And doing
15 100 miles an hour on Rivers Avenue if that's not a safety
16 and disregard to others I don't know what is.

17 MR. KOZELSKI: But it is a conscious disregard,
18 Your Honor. And there is no evidence that he was
19 conscious at this point. I think the only thing they had
20 was ---

21 THE COURT: --- the testimony was that the speed,
22 if I remember correctly, of 98 to 100 miles an hour was
23 at least for 600 yards. So your position is this car he
24 was unconscious and didn't know what was going on for 600
25 yards at 100 miles an hour it maintained and tracked

State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Kozelski
December 13, 2016

1 through. Is that your position?
2 MR. KOZELSKI: That is our position, Your Honor.
3 THE COURT: That's your position? And you really
4 think physically that is possible on a crested road?
5 MR. KOZELSKI: I think it is entirely possible ---
6 THE COURT: --- okay. It's up to the jury but -- I
7 understand ---
8 MR. KOZELSKI: --- this is what ---
9 THE COURT: --- all right anything else.
10 MR. KOZELSKI: Your Honor, I would just add this is
11 what the case law in In Re. Stacy A that ---
12 THE COURT: --- I'm familiar with the case law ---
13 MR. KOZELSKI: --- they called the unavoidable
14 forces ---
15 THE COURT: --- thank you so very much ---
16 MR. KOZELSKI: --- he could have been falling
17 asleep at the wheel. It could have been a heart attack,
18 a medical concern. Any of these things are possible that
19 could have happened and that is why in that case they did
20 direct a verdict.
21 THE COURT: Okay. Thank you so very much. I'll
22 be glad to hear from the State.
23 MR. CORVEY: Thank you, Your Honor. May it please
24 the court?
25 THE COURT: And I'm going to mark your memo if you

State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Kozelski
December 13, 2016

1 don't mind as State's exhibit -- excuse me, Court's
2 exhibit number 1, okay.

3 MR. KOZELSKI: Thank you, Your Honor.

4 [Whereupon, court's exhibit number 1 is marked by
5 the court reporter]

6 THE COURT: Thank you, sir. Yes, sir?

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State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Corvey
December 13, 2016

1 MOTION FOR DIRECTED VERDICT

2 MR. CORVEY: Thank you, Judge. As the court is
3 well aware a motion for directed verdict in the State can
4 deal with any evidence, any direct or circumstantial
5 evidence or any that is reasonably intended to prove the
6 defendant's guilt is the standard here. I think there
7 may be some confusion regarding consciousness versus
8 memory of the incident.

9 I don't think we needed this trial to inform the
10 court or any member of the jury that driving a car is a
11 conscious activity. Getting in a car and turning it on
12 is conscious. Taking a right on Rivers Avenue is
13 conscious. Accelerating to 100 miles an hour or any
14 speed is a conscious decision. Controlling a vehicle is
15 a conscious decision.

16 And despite the defense's contention there were
17 several witnesses that testified including some who saw
18 the vehicle that it appeared to be in control at the time
19 that they saw it just mere seconds before the collision.
20 Moreover, Officer King testified in addition to both MAIT
21 officers regarding mechanical operation of the vehicle.
22 There is nothing to suggest that mechanically there was
23 anything wrong with the car that would have caused it to
24 move straight. And in fact I think the more appropriate
25 reflection of the record in this case would be that it

State v John Andrew Biggs
Motion for Directed Verdict-Remarks by Mr. Corvey
December 13, 2016

1 would be extremely unlikely for a car to be travelling at
2 that speed and end up colliding with the victim's car in
3 the manner in which it did if it was not under control.

4 Based off that, Your Honor, I believe this is a jury
5 issue and I think it's going to be for them to determine
6 the weight of all this. For those reasons, Your Honor,
7 we'd ask that you deny the defense's motion for a
8 directed verdict.

9 THE COURT: All right. Mr. Kozelski I will be glad
10 for you to give me some rebuttal to him if you so choose.
11 I'll be glad to hear you; anything you want to say on
12 rebuttal to what the State just told the court.

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State v John Andrew Biggs
Motion for Directed Verdict-Reply by Mr. Kozelski
December 13, 2016

1 MR. KOZELSKI: Just as far as the standard for
2 directed verdict when dealing with a directed verdict
3 we're looking for -- and only in the cases where we're
4 dealing with circumstantial evidence. We don't have any
5 evidence or direct evidence in this case. We only have
6 circumstantial evidence and I think that the standard
7 here ---

8 THE COURT: --- what about the first witness. He
9 said he saw the vehicle.

10 MR. KOZELSKI: He said he saw the ---

11 THE COURT: --- he said he didn't see the impact of
12 the actual collision but he saw it immediately
13 afterwards.

14 MR. KOZELSKI: Right. And he didn't see the
15 driver.

16 THE COURT: Well he saw -- didn't he testify he saw
17 the vehicle coming down Rivers Avenue?

18 MR. KOZELSKI: He did, Your Honor. And I don't ---

19 THE COURT: --- I don't know if he said what speed
20 or how fast it was moving; I don't remember that.

21 MR. KOZELSKI: He did say it was travelling at an
22 excessive rate of speed ---

23 THE COURT: --- isn't that direct testimony from an
24 eyewitness?

25 MR. KOZELSKI: That's direct evidence of ---

1 THE COURT: --- that's not circumstantial is it?

2 MR. KOZELSKI: That a car was being -- a car was
3 going that fast. There is no testimony as to what the
4 driver behind the wheel was doing. Was he in control?
5 Was he slumped over? Was he -- he could have been passed
6 out on the side.

7 THE COURT: So your position is you think the State
8 is required to prove there was nothing physically wrong
9 with him, mentally or physically in order to be
10 successful in reckless homicide is that your position?

11 MR. KOZELSKI: I think the standard for reckless
12 disregard for the safety of others involves a conscious
13 negligence.

14 THE COURT: So you're saying the State has got to
15 prove that there was nothing wrong with him physically or
16 mentally prior to the collision. Is that what you're
17 telling the court?

18 MR. KOZELSKI: Absolutely, Your Honor. I think
19 they have to -- he has to know what he is doing and
20 chooses to do it anyway. And I think that is the
21 standard that the case law puts out there. I think that
22 is what is in most jury charges is a conscious disregard.
23 It is a willful act that he does. Just like drunk
24 driving; you choose to drink and then get behind the
25 wheel of a car. If he was -- if there was any evidence

State v John Andrew Biggs
Motion for Directed Verdict-Reply by Mr. Kozelski
December 13, 2016

1 to suggest that he was speeding to get somewhere or
2 speeding because somebody was chasing him if he knew that
3 putting the throttle down to 100 percent and he knew what
4 he was doing that would be risking the lives of other
5 people including himself then that would be sufficient
6 enough.

7 But there is no evidence to suggest that he was
8 doing that purposefully or consciously. We do think
9 something happened here something medically and it is not
10 upon us to prove to the court how that did happen. I
11 mean, this is something that in effect they are making
12 him -- they are burden shifting to make him show that he
13 wasn't conscious.

14 THE COURT: I just asked you is that what you're
15 telling the court is the State has to prove there was
16 nothing wrong with him physically or mentally prior to
17 the collision and you said yes, that's what you think the
18 State has to prove, is that correct?

19 MR. KOZELSKI: I think they have to show a
20 conscious awareness.

21 THE COURT: Okay. Anything else?

22 MR. KOZELSKI: The only other thing I would touch
23 on, Your Honor is the case law to say that speed alone is
24 not enough to show recklessness. They are not going to
25 rely on civil concepts of negligence to prove

State v John Andrew Biggs
Motion for Directed Verdict-Reply by Mr. Kozelski
December 13, 2016

1 reckless in this case. And I think that is what we
2 have here. We have a speeding car that gets in a wreck.
3 That alone I don't think gets us past a substantial
4 circumstantial evidence standard for directed verdict and
5 so I would ask the court to direct a verdict of not
6 guilty.

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State v John Andrew Biggs
Motion for Directed Verdict-Ruling by the Court
December 13, 2016

1 THE COURT: Okay. Thank you so very much. I
2 appreciate your argument. The directed verdict request
3 is denied pursuant to State v Venters, State v Edwards
4 because the testimony regarding excessive speed and
5 failure to break and stop constitutes evidence that the
6 truck was operating in reckless disregard for the safety
7 of others.

8 And the evidence as I've discussed earlier said that
9 he didn't veer off shows he was conscious and in control
10 because of the crest in the road and maintaining the
11 control of the vehicle as well as the two witnesses that
12 were approximately 4, 5, 600 yards away and said the
13 vehicle was in control coming by at a high rate of speed.
14 The motion is denied.

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State v John Andrew Biggs
John Biggs-Direct Examination by Mr. Kozelski
December 13, 2016

1 MR. KOZELSKI: Your Honor, the defense calls John
2 Biggs to the stand.

3 [Whereupon, Mr. Biggs comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: For the record if you will state
7 your first and last name and spell your last name please.

8 THE WITNESS: John Biggs, B-I-G-G-S.

9

10 JOHN BIGGS,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. KOZELSKI:

15 Q. John, can you tell the people of the jury what you
16 remember about the morning of October the 8th, 2015?

17 A. I do not have a memory.

18 Q. So you don't remember driving a truck that morning?

19 A. My memory is missing a few days prior to the
20 accident.

21 Q. Okay. You don't remember driving a truck in excess
22 upwards of 100 miles per hour?

23 A. No, I do not.

24 Q. Was this your truck that you were in?

25 A. No, it would have been my son's truck.

State v John Andrew Biggs
John Biggs-Direct Examination by Mr. Kozelski
December 13, 2016

1 Q. Have you ever driven your son's truck that fast?

2 A. No.

3 Q. Have you ever driven any car that fast?

4 A. No.

5 Q. Do you know why you don't remember?

6 A. All I know is I woke up and my body was very damaged
7 and a lot of my memory is missing. I have some common
8 things that I can remember from my past but there is a
9 lot of my memory that is gone.

10 Q. So is it short term memory loss or long term?

11 A. It's basically short term but some of the long term
12 is gone as well.

13 Q. What do you mean by that?

14 A. My son, Kyle and his wife Victoria and I have been
15 roommates off and on for about the past four years and
16 I've had a pet and I can't even remember the pet's name.

17 Q. You mentioned some other injuries. What other
18 injuries did you sustain in this wreck?

19 A. From what I can make out of my medical records and
20 from what I can see on my own body they worked on both my
21 ankles. I've got metal rods in both my legs and screws
22 and stuff.

23 They had to take my spleen out because it was
24 ruptured. They had to do oral surgery and remove most
25 all my teeth and they put metal plates in my face.

State v John Andrew Biggs
John Biggs-Direct Examination by Mr. Kozelski
December 13, 2016

1 Q. What's the first thing you remember after this
2 accident?

3 A. The first thing I can remember waking up to was a
4 doctor in a lab coat. I couldn't see very well but it
5 looked like there were a lot of doctors there and they
6 told me to wave so I waved at them.

7 Q. Do you know how long you were in the hospital for?

8 A. No, I do not.

9 Q. Was it a long time?

10 A. Roughly from what I can understand from the
11 paperwork and stuff I was there for like a month or so.

12 Q. Did you believe some of the things that you were
13 being told about driving under the influence charge?

14 A. Quite honestly it scared me. As a child I grew up
15 next to a military base and we were shown films about
16 what the end days would be like having to do with the
17 Bible.

18 And when I first became coherent I seen people in
19 uniform and I was having childhood thoughts and I thought
20 the end days were on me.

21 Q. Well, let's take you back to your childhood. Would
22 you tell the jury a little bit about where you're from?

23 A. I'm from Peru, Indiana.

24 Q. Where is that?

25 A. It's probably an hour and half two hours north of

State v John Andrew Biggs
John Biggs-Direct Examination by Mr. Kozelski
December 13, 2016

1 Indianapolis, Indiana.

2 Q. How long did you grow up in Peru, Indiana?

3 A. I spent most of my life right around that area.

4 Q. Did you have any brothers and sisters?

5 A. I have a very diverse family because I was adopted.

6 And later on I found out who my biological parents are
7 and I know that I have half brothers and sisters but I
8 haven't been in very close contact with the majority of
9 them.

10 Q. What did you do as far as work wise growing up?

11 A. I've done a lot of maintenance and building. I seem
12 to have a high mechanical aptitude and that's where I've
13 spent most of my time earning my living throughout the
14 course of my life.

15 Q. What was your first job?

16 A. I had a neighbor that made concrete yard ornaments
17 like bird baths and stuff like that. And I would go down
18 and hand mix concrete and dump it into the molds and
19 stuff like that.

20 Q. How old were you when you did this?

21 A. Somewhere in the neighborhood of 12.

22 Q. Was the money good?

23 A. I really don't remember. It was a long time ago.

24 Q. What type of jobs did you do after that growing up?

25 A. I took building trades at a vocational school so I

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1 could build houses and stuff. Probably because of my
2 religious background you know Jesus the carpenter and
3 stuff that just seemed to make an impression on me as a
4 kid and I ended up building trades later on in high
5 school.

6 Q. Did you ever get into automotive work or anything
7 like that considering where you work?

8 A. Yes, that's primarily what was in that area. But
9 with the way the times have changed across the United
10 States the automotive industry has left up in that area
11 and there's not a whole lot of that left anymore.

12 Q. So did you ever move out of Indiana?

13 A. I've been in and out of right around the Peru and
14 Kokomo area quite a bit. I tried to live in different
15 places but maybe it's because I've been adopted I have
16 the tendency to keep going back to the people that I
17 recognize as family.

18 Q. When you were growing up did you ever have any type
19 of a medical history?

20 A. I lost my eyesight just before I started the first
21 grade in my right eye.

22 Q. How did you do that?

23 A. I was following close to my dad, the man that I call
24 my dad, my adopted father and he was mowing the yard and
25 something came out from under the mower and I lost my

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- 1 eyesight.
- 2 Q. Is that just in one eye?
- 3 A. Yes.
- 4 Q. Are you able to see out of your other eye?
- 5 A. Yes, but according to the optometrist because of the
6 right eye being deficient it pulls on my other eye, which
7 I call my good eye and has made it to where I don't see
8 so well out of it so I have to wear corrective lenses or
9 a contact in my left eye.
- 10 Q. Can you see without your corrective lenses?
- 11 A. I can but not very well.
- 12 Q. Would you be able to drive without your corrective
13 lenses?
- 14 A. I wear a disposable contact lens so that I can sleep
15 in it because I don't like being without it because it
16 makes me feel abnormal.
- 17 Q. So you don't think you could drive without your
18 contacts in?
- 19 A. I wouldn't try to, no.
- 20 Q. Do you know if you had your contacts in on the
21 morning of October 8th?
- 22 A. No, I do not know.
- 23 Q. Do you have a contact in now?
- 24 A. Yes, I do.
- 25 Q. Where did that contact come from?

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- 1 A. It was given to me by the nurse at the jail and I
2 can only assume that they came from the accident because
3 it was in a vial with my name on it.
- 4 Q. So as far as you're aware you were wearing contacts
5 at the time.
- 6 A. Yes.
- 7 Q. Do you ever suffer from any type of seizures?
- 8 A. I had a panic attack, stress disorder a while back
9 but nothing current.
- 10 Q. How while back was that?
- 11 A. I really would hate to try to testify because I
12 can't put an exact date on it. It's been a number of
13 years back though.
- 14 Q. Have you ever had any type of heart attack that you
15 know of?
- 16 A. No. I was checked for that when I had the panic
17 attack. They did an EKG test on me and they kept me in
18 intensive care unit in the small community where I was at
19 overnight for observation.
- 20 Q. What about have you ever been sleep deprived?
- 21 A. I'm not sure I understand.
- 22 Q. You ever fallen asleep at the wheel?
- 23 A. No.
- 24 Q. Okay. What about sleep walking?
- 25 A. I had an incidence where I was sleep walking as a

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1 child.

2 Q. How old were you then?

3 A. It was after my accident when I lost my eyesight.

4 Q. So probably around first grade or so?

5 A. Yes, roughly.

6 Q. Have you ever heard anything about that since that
7 time?

8 A. No, I live alone; I've never married so I have no
9 one who could really tell me something like that.

10 Q. Okay. What about drinking? Do you drink alcohol
11 much?

12 A. No, not very often.

13 Q. What about drug use? Do you use drugs?

14 A. No.

15 Q. How about your mental health; have you ever suffered
16 from depression?

17 A. Not that I'm aware of.

18 Q. Have you ever been suicidal?

19 A. No.

20 Q. Never tried to take your own life?

21 A. No.

22 Q. Before you came to Charleston you said you were in
23 Kentucky, is that correct?

24 A. Yes.

25 Q. And that's where you have your driver's license?

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1 A. Yes.

2 Q. Do you have any restrictions on that driver's
3 license?

4 A. Just that I wear corrective lenses.

5 Q. Okay. Is there anything on your Kentucky driver's
6 license about speeding or any type of other accidents
7 you've ever had?

8 A. No.

9 Q. How did you get from Kentucky to South Carolina?

10 A. I came down here with my son and my daughter in law.
11 Like I stated my family life has been very jumbled up and
12 my son once he became of age I wanted to try and have
13 something to do with him but I didn't want to have to
14 deal with his mother.

15 And it's a small town community up there where we're
16 from so we thought that collectively between him and
17 myself that if we was to go somewhere where I like to
18 ride motorcycles and it's warm down here we thought that
19 maybe we could come down here and be around people who
20 didn't know us and we could make our own -- forge our own
21 way if you will you know.

22 Q. So you were developing a relationship with your son?

23 A. Yes.

24 Q. What was the last job that you had in Kentucky
25 before moving down here?

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1 A. I can't remember the name of the place. I was
2 working for a temporary agency at a place making aluminum
3 transmissions.

4 Q. And about how much money were you making per hour?

5 A. It was paying eight dollars an hour.

6 Q. So just a little about minimum wage?

7 A. Yes.

8 Q. Have you ever made more than that where you are ---

9 MR. CORVEY: --- objection, Your Honor. Relevance.

10 THE COURT: Overruled.

11 Q. [Mr. Kozelski] Have you ever made more than that at
12 any of your jobs?

13 A. Yes.

14 Q. Okay. What types of jobs?

15 A. I did UAW work for eight years up in Argos, Indiana
16 and when I left there it fell under the NAFTA agreement
17 and we all lost our jobs up there. I was making 17
18 dollars an hour then.

19 Q. So these jobs did you find much upward mobility in
20 these jobs that you had?

21 A. From what I personally can remember and everything
22 around the area where I'm from the jobs that pay decent
23 were leaving the area and the politicians were bringing
24 jobs in and stating that they were putting jobs in place
25 but they were low paying jobs just above minimum wage.

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1 Q. So were you able to secure a job here in Charleston?

2 A. Yes. I posted something out on the Internet before
3 I come down here when me and my son had discussed coming
4 down here. I put my resume on the Internet and a
5 gentleman contacted me while we were coming down here and
6 he wanted to interview me right away.

7 Q. And where was that?

8 A. That was at CP and P.

9 Q. And what does that stand for?

10 A. Concrete Pipe and -- I forgot the word. It used to
11 be called Americast [phonetic].

12 THE COURT REPORTER: Can you give me the acronym
13 again?

14 A. I'm sorry; CP and P.

15 Q. [Mr. Kozelski] So did you get the job?

16 A. Yes, I did.

17 Q. And what was sort of your plan to come down to
18 Charleston?

19 A. My idea was to come down here -- I'm at an age now
20 where I have finished paying off my child support and I'm
21 at a stage in my life that I've had to pay out so much in
22 child support I've not managed to put any money away for
23 retirement.

24 I wanted to get into a community that was larger to
25 where I could put money in the bank and start thinking

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1 about my retirement and building a relationship with my
2 son.

3 Q. Did you ever try to get more education?

4 A. Yes, sir.

5 Q. And how would you typically try to do that?

6 A. Well I worked for two different places that have
7 shut down in Indiana and fell under the NAFTA agreement.
8 I was supposed to -- by federal law I was supposed to be
9 able to go to school but the unemployment office kept
10 telling me that the money wasn't there so I did not get
11 to go to school.

12 Q. When you came down to work for CP and P how much
13 were they paying you?

14 A. They started me out at 14 dollars an hour.

15 Q. Okay. And what was your typical work week?

16 A. From what I can remember I was told that we were on
17 12 hour days and I was working Monday through Friday and
18 I was doing six hours on Saturday doing maintenance
19 because they had an elderly maintenance man that did not
20 want to work weekends so they were -- because of my
21 mechanical aptitude they were working me into his
22 position on weekends.

23 Q. So you were working as much as you could?

24 A. Yes, sir.

25 Q. What were your typical work dress? What would you

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1 wear?

2 A. Jeans and a t-shirt or military pants.

3 Q. And what about your shoes?

4 A. They were cowboy boots or steel toed. They sell
5 them at Walmart.

6 Q. Are those the shoes that you typically wear day to
7 day?

8 A. Normally I ride a motorcycle all the time so I
9 normally wear very heavy shoes to protect me while I'm
10 riding. On occasion you hit a possum or something and if
11 it hits your foot it hurts so.

12 Q. About how long had you been working at CP and P
13 before this accident?

14 A. I was close to the end of my probationary time at
15 the time of the accident. I would have had roughly I
16 think about 80 days in because my birthday was right
17 close to the same time as my probationary time was going
18 to end.

19 Q. When you say probationary time what do you mean by
20 that?

21 A. Employers put you on a temporary hire type thing and
22 call it probationary time where you have a certain amount
23 of days to come in and prove yourself.

24 Q. Had you completed that probationary time what were
25 you looking at?

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1 A. I had been told in my interview that they were going
2 to give me a three dollar an hour raise after my
3 probationary time so.

4 Q. So much more than you could possibly have made back
5 in Indiana?

6 A. Yes.

7 Q. Had you had any problems at work?

8 A. Not that I can recall.

9 Q. Had you had any problems with anybody in your family
10 or anything like that?

11 A. I really can't remember. There are some things that
12 are kind of hit and miss but I was in a coma for over a
13 month and I'm not really too sure what is current and
14 what is not.

15 Q. Let me take you back to the accident. Did you know
16 Calvin Walker?

17 A. Not to my knowledge, no.

18 Q. Did you meet very many people in the apartment
19 complex that you were in?

20 A. Just yesterday I ran into a gentleman who had lived
21 beside here as I was leaving here yesterday.

22 Q. So you did meet some people in your apartment
23 complex?

24 A. Yes.

25 Q. Okay. And you're not aware of running into Calvin

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1 Walker at all?

2 A. Not to my knowledge, no.

3 Q. Are you familiar with that area of North Charleston?

4 A. No. My son knew this area and he recommended that
5 we come down here to Charleston. I knew where we lived
6 at and how to get to where I was going to work out and
7 how to get to the place I was employed at. That's about
8 all I knew about Charleston.

9 Q. So do you know why you would have been headed in
10 that direction at 4 o'clock in the morning?

11 A. No, I do not.

12 Q. I want to ask you John what type of effect this
13 accident had on your life?

14 A. It's very life changing.

15 Q. In what way?

16 A. Well for one thing I'm accountable for taking
17 someone's life and I don't take that lightly. I haven't
18 been able to get in counseling or anything and to be
19 honest I don't even know who to talk to.

20 Q. How often do you think about what happened?

21 A. All the time.

22 MR. KOZELSKI: Beg the court's indulgence.

23 [Whereupon, Mr. Kozelski and Ms. Van Pala confer]

24 Q. [Mr. Kozelski] John, have you ever been in trouble
25 with the law?

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1 A. Once.

2 Q. What was that?

3 A. Back when I was 18 I was picked up for driving
4 without a driver's license.

5 Q. What happened?

6 A. I grew up here, there, and everywhere. Like I said
7 I was adopted and I didn't have anyone to sign for me
8 when I was a young person to get my license at 16 like
9 everybody else. And I never got my license until I was
10 ordered to get my license by the judge.

11 Q. So they ordered you to get a license?

12 A. Yes.

13 Q. So that's the only trouble you've ever had with law
14 enforcement?

15 A. Yes.

16 MR. KOZELSKI: No further questions, Your Honor.

17 THE COURT: Cross-Examination?

18 MR. CORVEY: Thank you, Your Honor.

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State v John Andrew Biggs
John Biggs-Cross-Examination by Mr. Corvey
December 13, 2016

1 CROSS-EXAMINATION

2 BY MR. CORVEY:

3 Q. Good afternoon, Mr. Biggs. Just something I wanted
4 to ask you about. You said you think about what happened
5 all the time but you can't remember what happened.

6 A. I can't but I've seen the reports, this Rule 5 thing
7 that you guys send to people that are in jail I've read
8 through that. And I've gotten some other paperwork and
9 stuff and I -- for the life of me I can't understand what
10 has happened and why I am where I am. I'm a hard working
11 person and I mind my own ---

12 Q. --- Mr. Biggs, I'm not doubting you're a hard
13 working person; none of us. That was clear from your
14 testimony. But we're here because Calvin Walker died.

15 A. I understand.

16 Q. More specifically we're here because the car you
17 were driving slammed into the back of him at 98 miles an
18 hour.

19 A. Right.

20 Q. So I want to talk a little bit about that, okay.
21 Now you mentioned that you were a Christian person.

22 A. Yes, sir.

23 Q. Given that I think you would agree good people make
24 mistakes sometimes, right?

25 A. Yes, they do.

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1 Q. Now you mentioned that you work out frequently and
2 like to stay physically fit.

3 A. Yes, sir.

4 Q. And you have no conceivable idea where you were
5 going at that time of night.

6 A. No, I don't.

7 Q. You said you knew the direction of where you work
8 was which was back the other direction, right?

9 A. Yes. I just seen the map a few days ago and found
10 out where it was. I did not know prior to that where the
11 accident had occurred.

12 Q. And that's not a direction that you would have been
13 heading to work at that time of night?

14 A. No.

15 Q. And I think you heard some testimony and you may
16 remember your work started a little bit later than 4 a.m.
17 right?

18 A. Yes.

19 Q. Now I want to talk to you a little bit about some
20 things that you found out after the accident that you
21 found out that you left your cell phone at home the night
22 of the accident, is that right?

23 A. Yes.

24 Q. Do you normally leave home without your cell phone?

25 A. No, and especially not in an area that I don't know.

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- 1 Q. You also left your cigarettes at home.
- 2 A. Yes, sir.
- 3 Q. Prior to this happening you were an avid smoker
- 4 right?
- 5 A. Yes, sir.
- 6 Q. And would it have been odd for you to leave those at
- 7 home?
- 8 A. Most definitely.
- 9 Q. But you agree that despite sort of the oddities
- 10 about your direction and what you left home you
- 11 undoubtedly were in the car.
- 12 A. I can't deny it.
- 13 Q. You would agree that to operate a car you have to
- 14 turn on the ignition.
- 15 A. Right.
- 16 Q. Use the keys to do so.
- 17 A. Right.
- 18 Q. To get onto Rivers Avenue you would have to have
- 19 taken a right out of the Hampton Oaks apartment complex,
- 20 right?
- 21 A. Yes.
- 22 Q. To get the car to move you would have had to put
- 23 your put on the accelerator to give it some throttle and
- 24 gas to move forward.
- 25 A. Yes.

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1 Q. You have obviously heard testimony that where the
2 accident took place is about two miles away from where
3 the apartments were, right?

4 A. Yes.

5 Q. I think you would agree that in order to make it
6 that two miles you had to be in somewhat control of the
7 vehicle.

8 A. I don't know.

9 Q. I'm not trying to trick you.

10 A. Yes.

11 Q. I'm not trying to trick you. I mean just to drive a
12 car every day to get from point A to point B you have to
13 generally control the vehicle, right?

14 A. Right.

15 Q. You testified that you've never gone that fast
16 before, right?

17 A. Right.

18 Q. But you did go that fast that night.

19 A. The paperwork says so.

20 Q. Well, there has been testimony too you were going
21 about 100 miles an hour.

22 A. Right.

23 Q. And it just so happens that you're a car guy. You
24 like cars; you have an interest in cars.

25 A. Yes.

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1 Q. And you I think while you were in the jail you read
2 a lot of car and driver magazine.

3 A. Yes.

4 Q. And I think you've even read a little bit about the
5 autobahn and some of the super cars they are making in
6 Germany.

7 A. Yes.

8 Q. Do you recall a particular conversation you had with
9 your brother Jeff regarding the autobahn and the cars
10 they are driving over there?

11 A. I thought it was interesting I was telling him about
12 this sign that they have over there on the autobahn it is
13 some kind of circle with some lines on it.

14 I've always thought that it was interesting because
15 I've build UAW cars and stuff and everything that is from
16 Germany and Italy seems to be high end high dollar stuff.

17 Q. So you do remember the conversation about the
18 autobahn?

19 A. Just some pieces of it, yes.

20 Q. You guys were talking about to some degree how fast
21 you can go on the autobahn, right?

22 A. I've seen videos and stuff of it, yes.

23 Q. And you in fact made a comment to your brother which
24 I found interesting that it would take tremendous
25 concentration to drive a car going that fast. Would you

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1 agree with that?

2 A. I can't agree with your statement because I don't
3 remember it but it does sound right.

4 Q. I mean even if you can't remember the statement you
5 would agree ---

6 A. --- right ---

7 Q. --- that controlling a car going that fast on the
8 autobahn it would take tremendous concentration.

9 A. I would think so, yes.

10 Q. On the autobahn they traditionally have speeds close
11 to 100 miles an hour if not more.

12 A. Right.

13 Q. And it would take tremendous concentration to drive
14 a vehicle going those speeds.

15 A. Right.

16 MR. CORVEY: Beg the court's indulgence.

17 [Whereupon, Mr. Corvey and Mr. Williams confer]

18 MR. CORVEY: No further questions, Judge.

19 THE COURT: Any redirect?

20 MR. KOZELSKI: Beg the court's indulgence.

21 THE COURT: Yes, sir.

22 [Whereupon, Mr. Kozelski reviews documents]

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25

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1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury it is twenty minutes to five. We are going to
3 break at this time and start back in the morning. Since
4 the State does not have any rebuttal testimony the only
5 thing left will be closing arguments and the charge that
6 I will give you on the law after the closing arguments.

7 So I'm going to ask you to leave the courtroom and
8 leave the courthouse. Have a good evening; what is left
9 of it. Please don't discuss the case with anyone. Don't
10 do any electronic examination of anything or any aspect
11 of this case whatsoever. I want you to base your
12 decision on what you've heard in the courtroom and I'll
13 see you in the morning at 9:30. Have a good evening.

14 [Whereupon, the jury exits at 4:40 p.m.]

15 THE COURT: Since the State said they do not have
16 any rebuttal testimony any motions from the State?

17 MR. CORVEY: None from the State, Your Honor.

18 THE COURT: Any motions from the defendant?

19 MR. KOZELSKI: Your Honor, at this time we would
20 renew our motion for a directed verdict.

21 THE COURT: Is there anything you want to add
22 additionally that is not in your memo or what you argued
23 previously? I'll be glad to hear any new information you
24 want to give me. I'll be glad to hear from your cohort
25 if she would like to add anything.

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1 MR. KOZELSKI: Your Honor, I think one of the only
2 things that I would like to add I think all the testimony
3 that you heard as far as witness statements from both
4 Officer Trask the first to arrive on the scene as well as
5 the individuals that witnessed it that the only state
6 that they saw Mr. Biggs in was in the state of
7 unconsciousness. And mind you that was after the wreck
8 but we don't know when that unconsciousness started.

9 So I would just add that to my previous argument
10 that in order to be in conscious disregard to the safety
11 of others one has to be conscious and I don't think there
12 has been any evidence certainly not substantial
13 circumstantial evidence to prove that Mr. Biggs was
14 conscious at this point in time.

15 THE COURT: Okay. Anything else? Anything the
16 State would like to put on the record on the motion for
17 directed verdict?

18 MR. CORVEY: Your Honor, I'll rest on our prior
19 arguments.

20 THE COURT: Pardon?

21 MR. CORVEY: I'll just stand with our prior
22 arguments.

23 THE COURT: Okay. Motion denied. Thank you very
24 much. If the lawyers want to come up here we'll have an
25 informal charge conference and I'll show you what I've

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1 got put together. And if y'all have any specific
2 requests I'll be glad to receive them.

3 MR. CORVEY: No specific requests from the State,
4 Your Honor.

5 [Whereupon, an off the record charge conference is
6 held]

7 [Whereupon, court adjourns at 5:20 p.m.]

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[All exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

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1 PROCEEDINGS

2 THE COURT: Is there anything from the State before
3 or are we ready for closing arguments?

4 MR. CORVEY: I am Judge and I intend to open on the
5 law.

6 THE COURT: You're going to open on the law?

7 MR. CORVEY: Yes, sir.

8 THE COURT: Okay. Is the defense ready for
9 closing?

10 MR. KOZELSKI: We are ready for closing, Your
11 Honor. I wanted to make sure that we went over the
12 charges that we discussed yesterday at the closing of
13 court.

14 THE COURT: Are you talking about the informal
15 charge conference?

16 MR. KOZELSKI: Yes, Your Honor.

17 THE COURT: If y'all want to come up here I'll tell
18 you informally. The time to make the objection to the
19 charge is after I've given it, okay.

20 MR. KOZELSKI: I understand that, Your Honor.

21 [Whereupon, an off the record charge conference is
22 held]

23 THE COURT: Anything else?

24 MR. CORVEY: Nothing from the State, Your Honor.

25 THE COURT: Anything else from the defendant?

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1 MR. KOZELSKI: Nothing from the defense, Your
2 Honor.

3 THE COURT: And I didn't show you the verdict form
4 yesterday but the verdict form is just going to basically
5 be guilty yes or no, okay. Bring us the jury please?

6 [Whereupon, the court confers with the Clerk of
7 Court]

8 THE COURT: Before we bring the jury she is going
9 to go take some lunch orders from the jury because it
10 takes them about an hour or hour and a half to get them
11 and at least we will have them here. I don't know how
12 long they will deliberate or how long the charge is going
13 to take but rather than wait until 12 o'clock to do it
14 then it would be 2 o'clock before we get them.

15 [Off the record momentarily]

16 [Whereupon, the jury enters at 10:12 a.m.]

17 THE COURT: Solicitor?

18 MR. CORVEY: Thank you, Your Honor. May it please
19 the court?

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State v John Andrew Biggs
Closing Arguments-Remarks by Mr. Corvey
December 14, 2016

1 CLOSING ARGUMENTS

2 BY MR. CORVEY:

3 Good morning ladies and gentlemen. Before I begin I
4 first want to thank you for your attention the last few
5 days. I know we talked a little about it yesterday. It
6 is an important duty that you have for your community and
7 I, for one, really appreciate it so thank you again for
8 your attention.

9 I first want to touch a little bit on the law with
10 you. I want to do what is called an opening on the law
11 and I'm going to discuss with you a little bit of the law
12 that will outline this case and may ultimately help you
13 in determining whether or not Mr. Biggs is guilty or
14 innocent. Mr. Kozelski after this will have an
15 opportunity to make his closing remarks and then
16 following that I will similarly have an opportunity to
17 give you closing remarks of my own.

18 So first as you know the defendant is charged with
19 reckless homicide. We looked at the statutory meaning of
20 it yesterday and we ended up breaking it down into four
21 elements; driving a vehicle in a reckless disregard to
22 the safety of others, causing injury to another with
23 death of the victim occurring within three years as a
24 proximate result of that injury. Like we discussed in
25 opening I think three of these we can kind of check off

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1 and I think that's even more so true now after you've
2 heard all the facts and the testimony and the evidence in
3 this case. Those three are driving a vehicle. Obviously
4 Mr. Biggs was behind the wheel of the vehicle that caused
5 the injury to Calvin Biggs. Obviously there were
6 injuries; you've heard that from Doctor Presnell of MUSC,
7 the pathologist who was worked the autopsy in this case
8 and obviously since she was involved Calvin Walker died.

9 So what we are in here focusing on is the second
10 element; that dealing with the reckless disregard to the
11 safety of others. The definition and it kind of comes
12 with the case law in South Carolina discussing that
13 defines reckless disregard as to the safety of others
14 signifies an indifference to the consequences of one's
15 acts. It denotes conscious failure to exercise due care
16 or ordinary care or a conscious indifference to the
17 rights and safety of others or a reckless disregard
18 thereof.

19 So that ultimately is what is going to guide your
20 decision making process in determining whether or not Mr.
21 Biggs was in reckless disregard in this case. What I
22 think is important to note here is a few things. One,
23 there is no burden on the State within that part of the
24 law to prove that Mr. Biggs intended the results of that
25 night. We don't have to prove to you that he wanted to

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1 kill Calvin Walker. Moreover, and I think most
2 importantly there is nothing in there about having to
3 prove why. I think there has been a lot made in this
4 case as to why something like this would happen. And
5 frankly I think in any tragedy I don't think we ever
6 really know the why. The why things happen are often
7 times a mystery and that is especially true in this case.

8 And that will remain that way at the end of this
9 case no matter what your decision is. And the why is
10 immaterial to your decision and it really isn't something
11 that you should consider mainly because we are never
12 going to be able to answer it. But more importantly that
13 it is not part of the law in this case that will have to
14 guide your decision making.

15 Now in saying all that, that reminds me of the
16 conversation that we had at the beginning of opening
17 arguments about duties. We discussed the duty that you
18 are tasked with as being sworn jurors in this case and
19 that you have to take the facts and evidence that were
20 proven in this trial, apply them with the law and then
21 render a verdict. And I want to highlight again the
22 facts in evidence. I think there has been a lot made, a
23 lot kind of left out in the open that could lead one to
24 speculate about certain results, certain outcomes. That
25 can't have any part of your decision making process. The

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1 only facts and the only evidence in this case that you
2 are going to be able to use to make your decision came
3 from this witness stand and came from all the physical
4 exhibits that were entered in the course of this trial.

5 Now I'll come back and address more of the facts
6 with you in a moment but again thank you for your time
7 and I'll see you shortly. Thank you.

8 THE COURT: Yes, sir?

9 MR. KOZELSKI: May it please the court?

10 THE COURT: Yes, sir.

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1 CLOSING ARGUMENTS

2 BY MR. KOZELSKI:

3 When you leave here today some of you will get in
4 your cars, you will drive and maybe take the Crosstown,
5 you will get onto I-26. And as you get onto I-26 there
6 will be a large electronic sign above you. It will say
7 there have been 937 deaths on South Carolina roads this
8 year. Don't drink and drive.

9 Accidents are a common occurrence in our society.
10 There are 38,000 people who die from accidents every
11 year. Four point four million people get seriously
12 injured by car accidents. As long as humans are driving
13 cars there are going to be accidents. And accidents as
14 I told you at the very beginning of this trial are events
15 that happen unexpectedly and unintentionally. It is only
16 when somebody does something intentionally does it cease
17 to become an accident.

18 In this charge -- in this case there has been no
19 evidence to suggest that Mr. Biggs willfully and
20 intentionally drove his car as fast as he could. Now
21 we're not disputing the fact that his car was going that
22 fast. You've heard the science and the black boxes that
23 the MAIT crews were able to bring out and tell you about.
24 And we're not disputing those facts. But what we are
25 disputing is that John Biggs knew what he was doing; that

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1 he intentionally drove his car like that. And we're not
2 saying that he intentionally tried to harm Calvin Walker.
3 I think that is a far reaching statement. Even his son
4 testified that they didn't know each other. He had no
5 reason to want to hurt him. You don't have to intend
6 that the act, we're not saying that, but you have to
7 intend to drive your car as fast as it can go. This is a
8 willful act ---

9 MR. CORVEY: --- objection, Your Honor. I think
10 that is a mischaracterization of the law.

11 THE COURT: Pardon?

12 MR. CORVEY: Objection, Your Honor. This is a
13 misstatement of the law.

14 THE COURT: Overruled at this point in time. I am
15 going to charge them on the law.

16 MR. KOZELSKI: This is a willful act. And the only
17 two things that the State has presented you with are the
18 speed of the car and the fact that if this was some type
19 of emergency, some type of medical emergency or if Mr.
20 Biggs was unconscious then the car couldn't have stayed
21 on the road. It would have just swerved off.

22 Now I find that hard to believe. When you look at
23 this intersection, when you look at this section of road
24 you are talking about a six lane highway. And that six
25 lane highway then turns into an eight lane highway. This

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1 is one of the biggest intersections in Charleston. You
2 would be hard pressed to find a much bigger intersection.
3 And for somebody to go unconscious or have a medical
4 emergency to not be able to stay on the road I think is
5 very unbelievable.

6 And they even admitted on the stand both the MAIT
7 guy and Sergeant King said I asked them if somebody
8 passed out on the wheel going downhill is it possible
9 they could stay on the road and they said yes. That's
10 only one possibility.

11 It makes no sense. The only witnesses that
12 testified to what they saw when Mr. Biggs was at that
13 accident was him unconscious. When they went down to the
14 scene we heard from Chris Singleton, we heard from Robert
15 Broadhead, we heard from Brandon Jones and you heard from
16 Officer Trask; all of who arrived on the scene shortly
17 after the accident. And all of them said both people in
18 the vehicles were unconscious. Mr. Biggs was unconscious
19 and unfortunately Mr. Walker was already passed away. He
20 died instantly.

21 So that's the only evidence you have of the state of
22 mind at the time of the accident. There is no other
23 explanation as to why this would happen. The State says
24 they don't have to prove what happened but they do have
25 to prove his state of mind. Now maybe he's going to tell

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1 you that well, he just probably didn't see the car.
2 Well, this is like I said a big intersection that is well
3 lit. There is a stop light, there are brake lights.
4 John testified that he assumed that he had his contact in
5 because the jail gave it to him from the hospital so he
6 had his contact in. He could see with his contact.

7 It doesn't make any sense that somebody would drive
8 their car into the back of another car without attempting
9 to swerve, without attempting to hit your brake. Basic
10 human instinct is going to cause you to seize up. Like
11 you can't; that is unless you are suicidal. If you are
12 suicidal then that is something that I could see doing
13 but then again why would you wear your seat belt.

14 And you heard John's testimony. And John didn't
15 have to come up here and talk to you. He could have sat
16 there at his table and let the facts do what he did. But
17 he wanted to come talk to you. He wanted to tell you
18 his story. And he told you; he was happy with his life
19 here.

20 He had just moved down here from a dismal situation
21 in Indiana where he was getting paid minimum wage jobs
22 and he moved. He's been working all his life since the
23 age of 12 when he was making concrete casts. He has
24 worked and worked and worked and he finally came down
25 here. He was building a relationship with his son. He

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1 was making 14 dollars an hour and he was weeks away from
2 making 17 dollars an hour which is the most he had ever
3 made in his life. He was happy living here with his son.
4 He had no reason to want to hurt himself.

5 You also heard from John that he doesn't drink. He
6 doesn't do drugs. Originally when this accident happened
7 the police thought it was a felony DUI. They were wrong.
8 They were wrong about that and they are wrong about him
9 not being able to stay on the road if he had a medical
10 emergency.

11 This is a man who has no driving record. No history
12 of speeding, no accidents. He's got no criminal record
13 to speak of. He's never been in trouble with the law.
14 His only interaction with the law is when they made him
15 get a driver's license when he was 18 years old. This is
16 a man who has been through unbelievable suffering since
17 this accident. And there is no reason as to why he would
18 willfully do this, intentionally run that truck into that
19 other car.

20 The only explanation is that it was a medical
21 emergency. Maybe as Calvin Walker was going to the
22 emergency room so was John Biggs. You heard he left his
23 cell phone, he left his cigarettes. Maybe there was a
24 pain and he had to get to the hospital. We don't know.
25 There has been no explanation. If we did know we

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1 wouldn't be here today. But it's the only reasonable
2 explanation for what could have happened. In a few
3 minutes the Judge is going to charge you on what the law
4 is and one of those is going to be reasonable doubt. And
5 reasonable doubt is that type of doubt that causes you to
6 hesitate to act.

7 If you go back in that jury room and you pause and
8 you think and just don't know if this guy did this
9 intentionally I think it's a real possibility that he
10 could have had a medical emergency and he's not guilty
11 that's what reasonable doubt is. You have to be firmly
12 convinced that John Biggs intentionally got in his car
13 and drove it as fast as he could to find him guilty.

14 And I don't think you can do that because John is
15 not a criminal. He is not a man that would do something
16 like this. He loves his life. He loves his family. He
17 loves being alive. So when you go back there I'm going
18 to ask you to return a verdict of not guilty and set him
19 free from this nightmare and let him get the help that he
20 needs.

21 THE COURT: Solicitor?

22 MR. CORVEY: Thank you, Your Honor. May it please
23 the court?

24

25

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1 CLOSING ARGUMENTS-REPLY

2 BY MR. CORVEY:

3 Now I think I would be a bit remiss if I didn't take
4 a few minutes regarding the facts and evidence in this
5 case to acknowledge what is very obvious. I think it's
6 very normal in this circumstance to feel sympathy for
7 John Biggs. I know I do.

8 I can't imagine many things more terrifying than
9 waking up under the circumstances he did in the hospital;
10 injured and unaware of what happened and being told that
11 he killed somebody in a drunken driving wreck. That's
12 scary; I understand that. And we're not here to judge
13 him as a man. We're not here to wonder about whether or
14 not he is a hard worker. I think a lot of those things
15 are clear. They were clear from his testimony yesterday.

16 And one thing that we talked about during his
17 testimony was that good people make mistakes. Good
18 people make mistakes all the time. I'm sure all of us
19 have had instances in our lives where you know somebody
20 that has done something that seems so tremendously out of
21 their character and you wonder why. And again, we don't
22 have to prove why. But that happens all the time and
23 when that does happen good people who make mistakes are
24 accountable. And ultimately in this case me asking you
25 to render a verdict of guilty is just that; it's asking

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1 that you hold John Biggs accountable for his actions on
2 the night of October 8th, 2015. Now for as sympathetic
3 as I feel for John Biggs and as sympathetic as I think we
4 all can feel for John Biggs his actions that night killed
5 Calvin Walker. There is another side to this.

6 This doesn't all occur in a vacuum. And I said I
7 can't imagine many circumstances more terrifying than
8 waking up in the manner that John Biggs did but two that
9 come to mind is Debra Walker being woken up in the middle
10 of the night by police officers knocking on her door to
11 let her know that she had just become a widow. The other
12 one is Calvin Walker, Jr. being in Myrtle Beach on work
13 getting a call from his mother who didn't even have to
14 say to him that he was now fatherless and that he was
15 going to have to forge on for the rest of his life
16 without his dad.

17 Thinking of their loss reminds me a little bit about
18 some comments that Mr. Kozelski made in his opening
19 statements. He said Mr. Biggs will drive someday. I
20 hope not in the manner in which he did on October 8th but
21 that's true. Regardless of your decision today I think
22 he will have an opportunity to drive. Mr. Kozelski also
23 said that he wants to have some semblance of a normal
24 life. Again, I think that's true as well. I think he
25 can return to some semblance of a normal life and I think

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1 that will be regardless of whatever you decide today. He
2 will be able to go back to Indiana with his family. He
3 will be able to ride motorcycles. He may even be able to
4 visit the autobahn and drive as fast as he wants there
5 like he talked about yesterday. But the reality is
6 Calvin Walker will never drive again because he's dead.
7 And Ms. Debra Walker and her son Calvin, Jr. Walker's
8 life will never, ever return to some semblance of
9 normalcy.

10 Mr. Kozelski said in opening and in closing that
11 this was a tragic accident. One thing I can agree about
12 is that it is a tragedy. Every single senseless loss of
13 life is. I don't think anyone would ever question that.
14 But what I disagree with a little bit is the way that Mr.
15 Kozelski uses the phrase accident. I think the word
16 accident is kind of the catch all that we apply to any
17 car collision. Of course I used the word accident in the
18 course of this trial, the officers used the word
19 accident, the witnesses used the word accident.

20 I think in that way it's a little bit like Kleenex
21 when referring to a tissue or a band aid when talking
22 about a bandage. But this wasn't an accident. This was
23 no fluke. This was no one off incident. This case is
24 not an accident. When John Biggs decided to get behind
25 the wheel of his car and travel 100 miles an hour down

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1 Rivers Avenue and kill Calvin Walker for whatever reason
2 which we'll never know it stopped being an accident and
3 started being reckless homicide.

4 Now a lot has been made about this doesn't make
5 sense. A lot of excuses have been given and all those
6 are is asking you to look away from that. Don't look at
7 the facts. Don't look at the evidence. Don't look at
8 what happened; speculate, conjecture. Invent something
9 in your mind what may have happened rather than what was
10 proven to happen and what we know happened through the
11 course of this trial.

12 Those sorts of excuses, those sorts of thoughts are
13 red herrings. They are designed to get you to look away
14 from what we are really talking about here. And those
15 have been a lot of those opined to you and let's just
16 take a minute and let's talk about a few. And I think
17 the most overall catch all that I've already touched on
18 is that it doesn't make sense. I agree; reckless
19 behavior rarely does.

20 That rarely makes sense and beyond that other things
21 you've heard is that nice blue collar guys don't do this.
22 I don't know why he did this but he did. We all know and
23 we've already been over that otherwise good people make
24 mistakes all the time. You've heard about in a bit of a
25 confusing manner to me about how the slight slope of this

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1 road almost acted as a funnel I guess is what Mr.
2 Kozelski was trying to argue in that since it was
3 downhill he had no other choice than to slam into the
4 back of Calvin Walker.

5 We know that's not true for a variety of reasons.
6 First and foremost roadways aren't flat. Cars aren't
7 perfectly engineered. If you take your hands off the
8 steering wheel on a downhill road you are naturally going
9 to veer to whichever side the slant of the road goes.
10 And we know that because that's how roads are designed; a
11 crown so that rain water can run off. Without
12 controlling that vehicle you are not going to hurtle down
13 and slam into the back of Calvin Walker.

14 You heard maybe he fell asleep. Maybe it was
15 theoretically possible that he fell asleep on the wheel
16 and the force of his body weight on the wheel was able to
17 keep the car going straight. Well, we also had testimony
18 that he was in his seat belt. I'm sure all of you have
19 been in a circumstance where you grabbed your seat belt
20 just a little too quickly and it jerks and it stops. So
21 I think all of you know that if you were fall asleep and
22 instantly fall forward what's going to happen? The seat
23 belt is going to catch you and you're not going to have
24 your chest against that steering wheel because that's
25 what seat belts are designed to do. Not braking, not

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1 swerving; I don't know why one -- I don't know why one
2 wouldn't break, I don't know why one wouldn't swerve. I
3 also don't know why they would be going 100 miles an
4 hour.

5 We talked a little bit about his contacts. We have
6 a man who is legally blind in one eye due to an injury as
7 a child and it is late at night travelling at an
8 extremely high rate of speed. We know he forgot his
9 phone, his cigarettes. Maybe he didn't have his
10 contacts. Maybe he didn't see Calvin Walker sitting in
11 his mustang at the red light at the intersection of Eagle
12 Landing and Rivers Avenue.

13 And also in talking about his phone, his cigarettes
14 and the speed in which he was going that's actual
15 testimony that has come out through the course of this
16 trial, not just rank speculation; it's actually things
17 that were said. And I would submit to you, you could
18 reasonably infer given that, given the fact that he was
19 obviously in a hurry since he forgot something, given his
20 speed that he must have been in a hurry that he was just
21 in a hurry and that was the why for this accident. But
22 that's a bit speculative and I'm asking you to not
23 speculate to actually base your decision on the evidence
24 and the testimony in this case and what's actually been
25 proven in this trial. Again, those red herrings were

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1 designed to get you to look away. Don't look at the
2 facts, don't look at the evidence, don't pay attention to
3 what is clearly obvious and the abundance of evidence
4 that Calvin Walker [sic] consciously drove his vehicle
5 that night and ended up taking Calvin Walker's life.

6 Now I want to talk to you a bit about the law again
7 that you will decide this case under. We've gone over
8 it, you'll be charged on it by Judge Nicholson here in a
9 moment. But I do want to take this opportunity to remind
10 you of one thing. Nothing that I say is evidence.
11 Nothing that I say about the law is the law that you are
12 going to use to decide this case. And the same goes for
13 Mr. Kozelski.

14 We sit up here and we make arguments to you in an
15 effort to try to persuade you in a certain direction.
16 But ultimately the only evidence that you are going to be
17 able to use is that that came out in this trial and that
18 was actually proven. For example, hypothesis of possible
19 medical emergencies that Mr. Biggs may have been having.

20 Now I'll be careful in saying this and I want to be
21 very clear. The burden of proof in all criminal cases
22 including this one is on the State. It is on the State
23 to prove beyond a reasonable doubt every element of the
24 crime charged. But trials don't happen in vacuums as you
25 saw in this case the defense can offer evidence. John

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1 Biggs even decided to testify; something he did not have
2 to do. If there was some sort of any evidence whatsoever
3 of a medical emergency of any kind you would have heard
4 about it. We had a doctor sitting right up here telling
5 you ---

6 MR. KOZELSKI: --- objection, Your Honor. He's
7 burden shifting.

8 THE COURT: What's your objection?

9 MR. KOZELSKI: That he is burden shifting.

10 THE COURT: Pardon?

11 MR. KOZELSKI: That he is burden shifting.

12 THE COURT: Overruled. Go ahead.

13 MR. CORVEY: Thank you, Your Honor. Now again what
14 we're all here about and what ultimately you all are
15 going to be tasked about is deciding whether or not Mr.
16 Biggs was driving in a reckless disregard for the safety
17 of others. There is the definition. That is the
18 definition you will be charged on when it comes to you
19 making your decision.

20 Mr. Kozelski said in his closing that there is only
21 two things that the State has shown. I disagree. I
22 think we've shown quite a bit more and I want to take a
23 few minutes and highlight a few of those things for you
24 so hopefully you will consider them in your deliberation
25 process. To me really there are four things that

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1 demonstrate John Biggs' consciousness that night; his
2 speed, the distance that he travelled, the square impact
3 of the collision, and the obvious control he had over the
4 vehicle.

5 Regarding the speed you've heard from several
6 people. Officer King calculated his speed at 98 miles an
7 hour. The quote unquote black box from the car has
8 indicated that the speed was 98 miles an hour. You heard
9 a little bit about tire size and I understand that might
10 have been kind of complicated and a little convoluted and
11 it could have been a little bit hard to follow; the MAIT
12 guys with some of their technical testimony.

13 But in essence all that boils down to is because he
14 had a different size tire on the car it was going a
15 little faster than the computer could even register
16 because the computer was registered to read what the
17 specifications were from the car. So we have true speed
18 at 101.5 miles per hour.

19 And we talked with John Biggs or I talked with John
20 Biggs about the conscious decisions that he knows he made
21 that night. He agreed that cars don't drive themselves;
22 you have to turn the accelerator -- excuse me, you have
23 to turn the key, hit the accelerator. He took a right on
24 Rivers Avenue and he even agreed that certainly to get
25 from point A to point B in this case which was over two

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1 miles you had to somehow be controlling that vehicle.
2 Now this [indicates] is a picture of the steep roadway,
3 the funnel that Mr. Kozelski wants you to believe led
4 John Biggs out of control car right into the back of
5 Calvin Walker's mustang. That's not steep. It may be
6 steep for Charleston but certainly not a funnel.

7 And I want to talk about something else regarding
8 speed and I think it's important. John Biggs and I
9 talked about his conversation about the autobahn that he
10 had with his brother. And in there he said that for
11 someone to be travelling 100 miles an hour it would take
12 tremendous concentration to control that vehicle because
13 of course the faster you go the harder it gets to control
14 your vehicle.

15 If that car would have made it from point A at
16 Hampton Oaks apartments at Rivers Avenue to where it
17 ended slammed into the back of Calvin Walker's mustang it
18 must have been controlled. Tremendous concentration.
19 That leads us right into the distance driven.
20 Unfortunately the title has been cut off but here
21 [indicates] you have the two maps back there which you
22 will have to look at and you have the distance between
23 the two, which is about two miles. More importantly,
24 you'll also have you know where the Wild Wings is and you
25 know where Eagle Landing is. We know that it is about

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1 give or take a quarter mile from where the witnesses
2 Brandon Jones and Robert Broadhead were sitting to where
3 the collision took place. We also know that at the time
4 that they first heard that car it hadn't reached them
5 yet. They testified that when they heard the sound of
6 that vehicle it was no longer accelerating. It was a
7 flat loud whine from a car that was I think one of them
8 said petal to the metal. And they heard that vehicle
9 before they see it. And we all know cars take time to
10 accelerate.

11 So I think Officer King testified that he was sure
12 that that vehicle was probably travelling at that speed
13 for about 600 yards. But we know we can kind of move
14 that out a bit knowing that it would have taken time for
15 the car to get up to that speed.

16 So Mr. Kozelski also wants you to believe that Mr.
17 Biggs was behind the wheel of a car going at least 100
18 miles an hour, at least accelerating up to 100 miles an
19 hour for about a half mile uncontrolled and just happened
20 to pass by the Wild Wings, happened to pass by Robert
21 Broadhead and Brandon Jones and just happened to careen
22 down that very steep, very steep road and funnel right
23 into the back of Calvin Walker. No, I submit to you that
24 is not what happened. That car had to be controlled.
25 There is no way it would have made it there. Every

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1 single expert that you heard from when it comes to
2 traffic collisions and traffic investigations told you it
3 is unlikely, it is improbable and they have never seen it
4 where a car without being controlled, without consciously
5 being driven would have been able to crash into the back
6 of Calvin Walker's mustang in the way it did.

7 Now not only do we have the distance driven. We can
8 articulate it was at least a half mile it was being
9 driven that fast, driven straight, driven in the roadway
10 without any other accidents. We also know that the
11 impact in this case was square. Now Mr. Kozelski asked a
12 lot of questions about we don't know exactly where the
13 car was prior to impact. That's true, we don't. But we
14 can make a lot from the nature of the impact.

15 Now it's true the cars weren't perfectly lined up
16 and that's clear you can see on the right side of the
17 truck that it overlapped a bit on the mustang to some
18 degree. But the portions that did line up it was a
19 completely square impact. A car that is swerving it hits
20 on an angle. It doesn't hit straight on.

21 Only cars that are being driven and controlled are
22 going to have the ability to impact something square to
23 the nature that this did. It was a straight on
24 collision. This wasn't a car that was out of control.
25 This wasn't a car that was swerving. It was being

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1 purposely driven for whatever reason. Again,
2 unfortunately cut off but the title of this slide is
3 quote unquote not out of control. Not only do we have a
4 lot of clear physical evidence of the car being not out
5 of control we have witness testimony from two people who
6 actually saw the car seconds before impact who said it
7 was driving straight; it was not out of control. It
8 appeared to be in control.

9 We know to some degree where the cars were at the
10 point of impact because of the gouge marks that were left
11 in the roadway. These gouge marks [indicates] are
12 directly in the center of that lane, directly in the
13 center of that road. For those gouge marks to be there
14 we at least know that we kind of know where the mustang
15 is for those gouge marks to be there for them to be
16 travelling in the extremely straight direction they are
17 straight into the intersection that can give you some
18 idea as to where that truck was.

19 You take that and couple it with the testimony of
20 the two eyewitnesses at the Wild Wings you know that car
21 was in control. Not only that you heard testimony from
22 Officer King who said that in the course of this
23 investigation, obviously a very thorough investigation
24 there was no evidence whatsoever that this car was out of
25 control. A car is not out of control if it is

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1 consciously being driven. Cars don't just operate
2 themselves. They can't. The why none of us know and
3 we'll never know. Mr. Kozelski talked a lot about
4 intent. I remind you as you deliberate we don't have to
5 prove what his intent was that night. We have to prove
6 that he intended to drive in a reckless manner and I
7 think that's clear from the evidence in this case. I
8 have no idea what would cause anybody especially John
9 Biggs to drive a car in that manner.

10 But ladies and gentlemen you are not tasked with the
11 easiest jobs. There is certainly no denying that but
12 again as we touched about the law this brings me back to
13 the oath that you took at the beginning of this case.
14 And you have to make your decision based on the facts and
15 evidence that has been proven. Facts and evidence that
16 point to one obvious conclusion and you can't speculate,
17 can't listen to Mr. Kozelski's guesses, his wild ideas
18 and theories that don't really make sense when you match
19 them up against the evidence in this case.

20 At the end of the day the only decision we're really
21 talking about is whether or not John Biggs was driving in
22 reckless disregard to the safety of others. And I hate
23 to be so poignant in saying this but if getting behind
24 the wheel of your car and driving 101.5 miles an hour
25 down Rivers Avenue and having this outcome happen isn't

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1 in reckless disregard for the safety of others I don't
2 really know what is. Now based on the evidence and the
3 facts in this case I ask you to return the only just
4 verdict and find John Biggs guilty of reckless homicide.
5 Thank you.

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State v John Andrew Biggs
Jury Charge
December 14, 2016

1 JURY CHARGE

2 THE COURT: Mr. Foreman, ladies and gentlemen of
3 the jury I'll give you a copy of these instructions in
4 written form. During your deliberations you may refer to
5 the instructions to guide your decision-making. You must
6 consider the instructions as a whole and not follow some
7 and ignore others. Please return the instructions to the
8 court, Mr. Foreman, after you have reached a verdict.

9 The defendant has pled not guilty to this indictment
10 which places the burden on the State to prove the
11 defendant guilty. A person charged with committing a
12 criminal offense in South Carolina is never required to
13 prove himself innocent. I charge you that it is a vital,
14 important rule of law that the defendant in a criminal
15 trial, no matter what the seriousness of the charge may
16 be, must always be presumed to be innocent until his
17 guilt has been proven beyond a reasonable doubt.

18 This presumption of innocence remains with the
19 defendant at all times from the moment he appears in this
20 court throughout the trial until you, the jury, reach a
21 verdict of guilt beyond a reasonable doubt based on the
22 testimony and evidence which has been presented. The
23 presumption of innocence is a substantial right to which
24 every defendant is entitled unless and until you reach a
25 verdict of guilty beyond a reasonable doubt. If you, the

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1 jury, do not find the defendant guilty beyond a
2 reasonable doubt it is your duty to acquit the defendant.
3 What is a reasonable doubt? A reasonable doubt is the
4 kind of doubt that would cause a reasonable person to
5 hesitate to act. The State has the burden of proving the
6 defendant guilty beyond a reasonable doubt.

7 Some of you may have served as jurors in civil cases
8 where you were told that it is only necessary to prove
9 that a fact is more likely true than not true such as by
10 the greater weight or preponderance of the evidence. In
11 criminal cases the State's proof must be more powerful
12 than that. It must be beyond a reasonable doubt.

13 Proof beyond a reasonable doubt is proof that leaves
14 you firmly convinced of the defendant's guilt. There are
15 very few things in this world that we know with absolute
16 certainty and in criminal cases the law does not require
17 proof that overcomes every possible doubt.

18 If based on your consideration of the evidence you
19 are firmly convinced that the defendant is guilty of the
20 crime charged you must find the defendant guilty. If on
21 the other hand you think there is a real possibility that
22 the defendant is not guilty you must give the defendant
23 the benefit of the doubt and find the defendant not
24 guilty. The same constitutional laws which designate
25 and make you the finders of the fact make me the sole

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1 instructor of the law. It is my duty to charge you the
2 law applicable to this case and it is your duty as jurors
3 to accept and apply the law as I now state it to you.
4 The lawyers are not the instructors of the law. You must
5 accept the law and apply the law exactly as I state it to
6 you. You must not base your decision on your idea of
7 what the law is or what you think the law should be.

8 Reckless homicide. The defendant is charged with
9 reckless homicide. The State must prove beyond a
10 reasonable doubt that the defendant drove a vehicle with
11 reckless disregard for the safety of others. Reckless
12 disregard for the safety of others means an indifference
13 to the consequences or result of one's act, a conscious
14 indifference to the rights and safety of others or a
15 conscious failure to exercise ordinary care.

16 Consciousness means awareness. Reckless disregard
17 for the safety of others is something more than a mere
18 accident, negligent or carelessness. The State does not
19 need to prove the defendant intended to cause harm and
20 intended to endanger others. Intent is not an element of
21 this crime; rather the State must prove beyond a
22 reasonable doubt that the defendant operated a vehicle in
23 a manner with a fully reckless disregard with potential
24 to cause harm. In other words the State must prove the
25 defendant consciously operated a vehicle dangerously or

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1 in a manner that did not heed the safety of others. The
2 State must also prove beyond a reasonable doubt that the
3 person was injured and died within three years of the
4 date of the injury. Finally, the State must prove beyond
5 a reasonable doubt that the injury to the defendant [sic]
6 from the defendant's reckless driving was the proximate
7 cause of the defendant's [sic] death.

8 Proximate cause is direct cause. It is the
9 immediate cause. It's the efficient cause. It is the
10 contributing cause. It is that cause without which the
11 death of the victim would not have resulted. Proximate
12 cause does not necessarily mean that it occurred
13 immediately prior to death to be the proximate cause.
14 The act of the defendant does not have to be the sole
15 cause of death and the fact that the other cause has
16 contributed to death does not relieve the defendant from
17 the responsibility.

18 Under our Constitution and code of laws only you,
19 the jury, can make findings of fact in this case. I am
20 not permitted to indicate to you how I may feel about the
21 testimony and evidence, which has been presented
22 throughout this trial. It has been my intention to be
23 fair and impartial toward each of the parties involved.
24 Necessarily, you must determine the creditability of the
25 witnesses who have testified in this case. Creditability

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1 simply means believability. It is your duty as jurors to
2 analyze and to evaluate the evidence and determine which
3 evidence convinces you of its truth.

4 As you decide whether or not to believe a witness's
5 testimony about a particular matter you may consider the
6 following: 1) The manner and appearance of the witness
7 while on the witness stand. Was he or she
8 straightforward or hesitant in answering? The testimony
9 of the witness. Was it consistent or inconsistent? How
10 the witness came to know the facts that he or she
11 testified to. Was the witness present during the
12 incident or did the witness happen on the scene after the
13 incident occurred? The reason the witness would want to
14 give testimony, which could help or hurt one side or the
15 other. Has the witness exhibited to you any interest,
16 bias, prejudice, or other motive in this case?

17 Thus you may consider whether a particular witness
18 may gain some other reward, payment, personal advantage,
19 or vindication through his or her testimony. The
20 strength of the testimony of the witness. Was the
21 testimony of the witness strengthened or weakened by
22 other testimony or evidence. The duration and length of
23 time between the incident and when it was reported.
24 Would the duration and length of time weaken or
25 strengthen the witness's memory of the incident. All

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1 prior statements. Were prior statements made by the
2 witness consistent or inconsistent with the witness's
3 testimony?

4 In determining the believability of the witnesses
5 who have testified in this case you may believe one
6 witness over several witnesses or several witnesses over
7 one witness. You may believe a part of the testimony of
8 a witness and reject the remaining part of the testimony
9 of that same witness. You may believe the testimony of a
10 witness in its entirety or reject the testimony of a
11 witness in its entirety. Of course, you do not determine
12 the truth by merely counting the number of witnesses
13 presented by each side.

14 The rules of evidence ordinarily do not permit
15 witnesses to testify to opinions or conclusions. An
16 exception to this rule exists for witnesses we call
17 expert witnesses. A witness who by education and
18 experience has become expert in some art, science,
19 profession, or calling may state an opinion as to the
20 relevant and material matter in which the witness claims
21 to be an expert, and may also state the reasons for the
22 opinion. You should consider any expert opinion received
23 in evidence in this case like any other evidence and give
24 it the weight you think it deserves. If you decide that
25 the opinion of an expert is not based on sufficient

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1 education and experience or if you conclude that the
2 reasons given in support of the opinion are not sound or
3 that the opinion is outweighed by other evidence you may
4 disregard the opinion entirely. An expert witness's
5 testimony is to be given no greater weight than that of
6 other witnesses simply because the witness is an expert.
7 Further, you are not required --

8 The evidence or lack of evidence from which you are
9 to decide the case includes the following: The sworn
10 testimony of the witnesses both on direct and cross
11 regardless of who called the witness; the exhibits that
12 have been received into evidence by the court and any
13 facts agreed to or stipulated by the lawyers.

14 The following things are not evidence and you may
15 not consider them in deciding the facts: Arguments and
16 statements by the lawyers are not evidence. The lawyers
17 are not witnesses. Their opening statements, closing
18 arguments and other statements are intended to help you
19 interpret the evidence but are no evidence.

20 If the facts as you remember them are different from
21 the lawyers statements your memory controls. Questions
22 and objections by the lawyers are not evidence. Lawyers
23 have a duty to their clients to make objections when they
24 believe a question is improper under the rules of
25 evidence. You should not allow any objections or the

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1 court's ruling on the objection to influence you.
2 Testimony that has been stricken or that you have been
3 instructed to disregard is not evidence and must not be
4 considered.

5 Anything that you may have seen on television or
6 read in the newspaper or on the Internet or heard from
7 others when court is not in session is not evidence. You
8 should base your decision solely on the sworn testimony
9 of the witnesses, the exhibits received into evidence by
10 the court, and any facts agreed or stipulated to by all
11 the lawyers.

12 The fact the defendant was arrested, charged and
13 indicted in this case is not evidence and cannot be
14 considered as evidence of guilt nor does it create any
15 presumption or inference of guilt. The indictment is
16 simply the formal written form which contains the charges
17 made against the defendant.

18 There are two types of evidence which are generally
19 presented during a trial; direct evidence and
20 circumstantial evidence. Direct evidence directly proves
21 the existence of a fact and does not require deduction.
22 Circumstantial evidence is proof of a chain of facts and
23 circumstances indicating the existence of a fact. Crimes
24 may be proven by circumstantial evidence. The law makes
25 no distinction between the weight or value to be given to

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1 either direct or circumstantial evidence. However, to
2 the extent the State relies on circumstantial evidence
3 all of the circumstances must be consistent with each
4 other and when taken together point conclusively to the
5 guilt of the accused beyond a reasonable doubt. If these
6 circumstances merely portray the defendant's behavior as
7 suspicious the proof has failed.

8 The State has the burden of proving the defendant
9 guilty beyond a reasonable doubt. This burden rests with
10 the State regardless of whether the State relies on
11 direct evidence, circumstantial evidence, or some
12 combination of the two.

13 In determining the guilt or the innocence of the
14 defendant you cannot consider any possible penalty for
15 any particular crime. The punishment for the crime is a
16 matter for me to consider and should never be considered
17 by you in any way whatsoever in arriving at an impartial
18 verdict as to the guilt or innocence of the defendant.

19 You have been selected as fair and impartial jurors
20 sworn to impartiality to try and determine the facts of
21 this case. And when you comply with your oath to do then
22 no one will have a right to criticize your verdict and
23 you will fully discharge your duty as jurors. You are to
24 decide this case according to the testimony you have
25 heard from the sworn witnesses along with other evidence

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1 introduced. I charge you that as jurors you must make
2 your decision in this case without bias, without
3 prejudice to any party. You cannot allow yourself to be
4 governed by sympathy, prejudice, passion, public opinion
5 or any other arbitrary factor. Both the State and the
6 defendant have the right to expect that each one of you
7 will carefully and impartially consider all of the
8 evidence in this case and that you will follow the law as
9 I have explained it to you.

10 Nothing that I may have said or done during the
11 course of this trial has been in any way intended to
12 express or suggest a view of this case or an opinion as
13 to the facts, the weight of the evidence, or the
14 creditability of the witnesses. If you believe any of my
15 actions or words have indicated otherwise you must
16 disregard such and form your own opinion of this case or
17 your own opinion as to the facts, the weight of the
18 evidence, and the creditability of the witnesses.

19 Mr. Foreman, I have prepared a verdict form. The
20 verdict form says the State of South Carolina versus John
21 Andrew Biggs. It has the case number and it has verdict
22 form. On the charge of reckless homicide we, the jury,
23 on the charge of reckless homicide by unanimous consent
24 find the defendant John Andrew Biggs guilty or not
25 guilty, a place for the date and a place for the

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1 Foreperson to sign. As the verdict form says your
2 verdict has to be unanimous. All 12 of you have to
3 agree. And I will tell you it is a collective reasoning
4 process on all 12 of yours part. I would ask you to
5 listen to each other's opinions, review the evidence,
6 discuss the evidence, and arrive at a fair and just
7 verdict in this particular case.

8 Now Mr. Foreman, I'm going to ask you to go to the
9 jury room but please do not begin your deliberations
10 until the bailiff brings all the exhibits that have been
11 admitted into evidence, the Charge book, and the verdict
12 form. I have to take my charge up with the attorneys and
13 I may have missed something or misquoted something and I
14 may have to bring you back and adjust the charge or add
15 to the charge or take away from the charge depending upon
16 the circumstances.

17 And I don't want you to begin your deliberations
18 until I've had an opportunity to do that. If the two
19 alternates would just please keep their seat the other 12
20 members of the jury may follow the bailiff to the jury
21 room.

22 [Whereupon, the jury exits at 11:00 a.m.]

23 THE COURT: As to the charge let me first of all
24 the defendant requested jury charge number one, which is
25 code section 56-5-6170 and I have marked that as

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1 defendant's requested charge to number 1 which the court
2 has denied. And also the defendant requested jury charge
3 number 2 that I have marked number 2 and I have denied
4 that also. I understand you take exception to the denial
5 of those two charges, is that correct?

6 MR. KOZELSKI: We do, Your Honor.

7 THE COURT: Do you have any other exceptions to the
8 charge?

9 MR. KOZELSKI: The only other exception to the
10 charge, Your Honor is the statement that was made intent
11 is not an element of the crime.

12 THE COURT: I'm sorry, what?

13 MR. KOZELSKI: Intent is not an element of this
14 crime. It's in the reckless driving statute. I believe
15 that is an incorrect statement of the law.
16 I believe the law is that in dealing with reckless
17 driving there is a willful and wanton disregard for the
18 safety of others. And willful as defined by Black's
19 dictionary is voluntary and intentional.

20 I think the case law supports the fact that
21 recklessness implies a doing of a negligent act.
22 Knowingly would be a factor would be in essence an
23 intent. An intent to knowingly do something and I think
24 that saying that an intent is not an element of this
25 crime would hearken back to the court's jurisprudence in

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1 dealing with negligence in the say way as a civil concept
2 and criminal context, which the court has disavowed.
3 They did that in State v Rowell and I believe this was
4 touched upon in In Re Stacy A. But the courts have gone
5 away with that. There is something more than mere
6 negligence which I believe is what the jury is now
7 considering if there is not an intent for the crime. So
8 I do believe it is a misstatement of the law and we do
9 take exception to that.

10 THE COURT: Okay. Anything else?

11 MR. KOZELSKI: As to the jury charges, no Your
12 Honor.

13 THE COURT: Okay. Thank you very much. Anything
14 the State would like to put on the record?

15 MR. CORVEY: Nothing from the State, Your Honor.

16 THE COURT: As far as requested charge number 1 I
17 think that statute applies to police officers not juries.
18 It's attempt to be in a civil concept is inapplicable.
19 And this criminal case charge number 2 I think the bulk
20 of that request is already covered in the charge I just
21 gave. The rest is pulled from the appellate decision in
22 State v Rowell which was overruled. The second paragraph
23 would not accurately provide the jury with the law is the
24 reason I denied a portion of number 2. I think a portion
25 of number 2 is already in the charge. And as far as the

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1 intent element I will charge that intent is not an
2 element rather the State must prove beyond a reasonable
3 doubt that the defendant operated a vehicle in a manner
4 that was willful in reckless disregard with the potential
5 to cause harm.

6 The State does not intend to prove -- does not need
7 to prove the defendant intended to cause harm. And
8 that's what the charge says as far as intent is
9 concerned. That is also denied. All right, anything
10 else before we get the jury to begin their deliberations?

11 MR. KOZELSKI: Your Honor, I would simply like to
12 go back to what Mr. Corvey said in his closing when I
13 objected. He told the jury if there was evidence of a
14 medical condition you would have heard from it. This is
15 quintessential burden shifting. He is saying if there
16 was a medical condition we would have told the jury of
17 that ---

18 THE COURT: --- well, I overruled your objection.
19 What's your motion now?

20 MR. KOZELSKI: I'd ask for a mistrial on that
21 basis.

22 THE COURT: Pardon?

23 MR. KOZELSKI: I'd ask for a mistrial on that
24 basis.

25 THE COURT: Okay. Anything the State would like

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1 to put on the record before the court rules?

2 MR. CORVEY: Yes, Your Honor. Almost the entire
3 basis of the defense's closing was speculation to include
4 medical episodes. I took great lengths I think before
5 making that comment regarding possible medical testimony
6 to make clear that it is my burden to prove the defendant
7 guilty and that he is under no burden of his own to
8 provide any evidence.

9 But they have provided evidence in this case and
10 they do have the ability to provide evidence and in fact
11 Mr. Biggs also testified. I think Mr. Kozelski opened
12 the door to me commenting regarding medical testimony by
13 offering to the jury as a reason for why this accident
14 happened from his closing arguments being some sort of
15 medical episode that had to take place.

16 THE COURT: Mr. Kozelski anything you would like to
17 say in rebuttal or reply?

18 MR. KOZELSKI: We said we don't know why this
19 happened. It could have been. For him to get up there
20 and say that if it was a medical emergency we would have
21 that information to give to the jury and it doesn't exist
22 puts the burden on us to put that information out there,
23 which we don't have. I think that is quintessential
24 burden shifting.

25 THE COURT: Your partner is trying to talk to you.

State v John Andrew Biggs
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1 [Whereupon, Mr. Kozelski and Ms. Van Pala confer]

2 MR. KOZELSKI: Your Honor, my co-counsel is saying
3 that ---

4 THE COURT: --- I'm sorry, what?

5 MR. KOZELSKI: That actually is an example that
6 comes from the In Re Stacy A case. The quintessential
7 burden shifting or shifting the burden onto the defendant
8 in order to prove his innocence as to why something like
9 this happened. If they want to say that medical evidence
10 would have been there and if it wasn't there that is
11 shifting the burden to us to show why it's not there.

12 THE COURT: Okay. Motion for mistrial is denied.
13 Anything else?

14 MR. KOZELSKI: Nothing further, Your Honor.

15 THE COURT: Mr. Bailiff, would you come get the
16 verdict form, the Charge book -- would the State and
17 defense counsel come up and make sure all the exhibits
18 are present and put on the record that they are and we'll
19 send them back to the jury room.

20 [Whereupon, counsel and the court reporter review
21 the evidence]

22 THE COURT: Have we got everything from the State?

23 MR. CORVEY: Yes, Your Honor.

24 THE COURT: Everything from the defendant?

25 MR. KOZELSKI: Yes, sir.

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1 THE COURT: If you will mark these court's exhibit
2 2 and 3 I believe.

3 [Whereupon, court's exhibit numbers 2 and 3 are
4 marked by the court reporter]

5 THE COURT: You can tell the jury they can begin
6 deliberations.

7 [Whereupon, evidence out to the jury at 11:07 a.m.]

8 THE COURT: We'll stand adjourned or in recess
9 until we get a jury verdict. If the alternates will step
10 out in the hall I'd appreciate it and I'll come out and
11 talk with you.

12 [Whereupon, the alternates are excused at 11:08
13 a.m.]

14 [Whereupon, court is in recess]

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State v John Andrew Biggs
Verdict
December 14, 2016

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VERDICT

[Whereupon, the verdict is reached at 1:10 p.m.]

THE COURT: Anything from the State before we bring the jury?

MR. CORVEY: Nothing from the State, Your Honor.

THE COURT: Anything from the defendant?

MR. KOZELSKI: Nothing from the defense, Your Honor.

THE COURT: Bring us the jury please.

[Whereupon, the jury enters at 1:22 p.m.]

THE COURT: Mr. Foreman, I understand you've reached a verdict, is that correct?

THE FOREPERSON: We have, Your Honor.

THE COURT: Would you mind handing the verdict form to the bailiff please, sir? Thank you very much.

[Whereupon, the verdict form is provided to the court]

THE COURT: Mr. Foreman, I have written on the indictment that I talked about earlier your verdict and I've dated it today 12/14/16 and a place for you to sign it. If you will Mr. Terry, I'm going to get the bailiff to bring it to you. If you will sign your name to it I would appreciate please, sir?

[Whereupon, the Foreperson complies]

THE COURT: Madame Clerk, if you will publish the

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1 verdict please?

2 CLERK OF COURT: The State of South Carolina County
3 of Charleston, indictment number 2016-GS-10-3454 on the
4 charge of reckless homicide the State of South Carolina
5 versus John Andrew Biggs we, the jury, on the charge of
6 reckless homicide by unanimous consent find the
7 defendant, John Andrew Biggs, guilty. Signed Mr.
8 Foreperson dated December 14, 2016.

9 Ladies and gentlemen of the jury if this is your
10 verdict please raise your right hand.

11 [Whereupon, all jurors raise their right hands]

12 CLERK OF COURT: Thank you. Let the record
13 reflect all jurors raised their right hands.

14 THE COURT: Thank you very much. Anything from
15 the defense as far as the jury is concerned?

16 MR. KOZELSKI: Your Honor, we would request to poll
17 the jury.

18 THE COURT: You want the jury polled?

19 MR. KOZELSKI: Yes, Your Honor.

20 THE COURT: Okay. I don't have any problem giving
21 you ten days for any post trial motion you want to file
22 if you want it unless you want me to hear it today?

23 MR. KOZELSKI: I can take that up with my client.

24 THE COURT: Pardon?

25 MR. KOZELSKI: I can take that up with my client

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Sentencing
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1 that bond. The family is -- they're from Indiana,
2 they're factory workers not making much money their own
3 selves and he couldn't make bond. That's why we were
4 sort of on the speedy trial motion throughout for this.
5 But he did have that opportunity to take a probationary
6 sentence and get out of jail and he chose to go to trial.
7 I think he wanted answers himself. He wanted to find out
8 if a jury really did think he was guilty of this because
9 he didn't remember. And I believe him that he had this
10 amnesia the entire time.

11 THE COURT: Okay. Anything else?

12 MR. KOZELSKI: No, Your Honor. I just ask ---

13 THE COURT: --- all right Mr. Biggs. I would be
14 glad to hear anything you would like to say to me.

15 MR. BIGGS: I really don't know what to say, sir.

16 Like he says I had the opportunity to go ahead and make a
17 plea early on but I did not take that opportunity to take
18 that plea because I can't plead guilty to something that
19 I have no memory of. To me that's not the way I was
20 raised. How do you admit to something you don't know
21 anything about?

22 My body is mangled but I have no memory. I've never
23 been in a situation like this before in my life and so I
24 honestly don't know what to say or what to do and I don't
25 know how to take a guilty plea ---

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1 THE COURT: --- that's why they have Alford pleas,
2 okay. I don't know why you didn't avail yourself to an
3 Alford plea. I'm sure your attorney explained it to you.
4 But go ahead; tell me what else you want to tell me.

5 MR. BIGGS: At any rate just due to my character I
6 don't have a clue as to what happened. And I testified
7 to that. And the only thing I knew to do was try to see
8 this through to try and figure out what is going on.
9 Like I said ---

10 THE COURT: --- it's real simple what was going on.
11 You were driving 100 miles an hour on Rivers Avenue and
12 ran into the back of another car and you killed somebody.
13 It's that simple.

14 MR. BIGGS: I understand that, sir.

15 THE COURT: That's the facts, the scientific facts
16 that have been presented whether you remember it or don't
17 remember it.

18 MR. BIGGS: I guess I don't understand that, sir.
19 I'm sorry.

20 THE COURT: You don't understand what? Driving 100
21 miles an hour in a 45 miles an hour speed zone right into
22 the back of another car is not reckless?

23 MR. BIGGS: I understand what you're saying, sir and
24 I understand what people had to say but I cannot see
25 myself doing that.

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1 THE COURT: Well, the fact is you did do it whether
2 you can see yourself doing it or not. And I see all kind
3 of criminal cases and they all are very apologetic and
4 they're awful sorry for what happened. I don't know why
5 it happened. You don't remember and I understand why you
6 don't remember, okay. But that's what happened. Now if
7 you want to reject that I understand; that's your
8 prerogative. Anything else you would like to tell me?

9 MR. BIGGS: I don't know what else to say, sir.

10 THE COURT: Anything else from the State or from
11 his attorneys?

12 MR. CORVEY: Nothing from the State, Your Honor.

13 THE COURT: Mr. Biggs, indictment number 3092
14 reckless homicide you are sentenced to the State
15 Department of Corrections for a period of ten years;
16 that's suspended upon the service of 36 months and
17 probation for five years. Probation is tolled while you
18 are incarcerated.

19 I'll give you credit for 432 days. That's the
20 credit from the time the accident occurred and you were
21 hospitalized and after you got out of the hospital you
22 went to jail. I'm going to give you credit for that
23 entire time even though the warrant wasn't served until
24 approximately a month after that accident. A condition
25 of probation is when you get out of jail on probation for

State v John Andrew Biggs
Sentencing
December 14, 2016

1 you to attend Voc Rehab to see if they can retrain you
2 with your physical difficulties for some type of
3 employment, do you understand. So when you get out of
4 jail you will be on probation for five years. Do you
5 understand?

6 MR. BIGGS: Yes, sir.

7 THE COURT: I'll give you the ten days to file any
8 post trial motions and if you'll talk to your client or
9 have an opportunity to talk to your client to decide if
10 you want to do that. Thank y'all so very much. I
11 appreciate it.

12 Mr. Foreman and ladies and gentlemen of the jury, if
13 y'all will go to the jury room. Thank you.

14 [Whereupon, the jury exits at 1:43 p.m.]

15 [Whereupon, the jury trial concludes at 1:43 p.m.]

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ERC/0310659
WITNESSES

DOCKET NO. 2016-GS-10-03454

North Charleston Police Department

The State of South Carolina
County of Charleston

AGENCY CASE NUMBER
2015-031519

COURT OF GENERAL SESSIONS
JUNE TERM 2016

ARREST WARRANT NUMBER
2015A1021001053

DATE OF ARREST

10/08/2015

THE STATE

ACTION OF GRAND JURY

VS.

TRUE BILL

JOHN ANDREW BIGGS
W/M DOB:

[Signature] 12/14/2016
Foreperson of Grand Jury Date:

VERDICT

Indictment for

Guilty

RECKLESS HOMICIDE

SC Code: § 56-05-2910
CDR Code: 3097

[Signature] 12/14/16
Foreperson of Petit Jury Date:

254

BAIL set by

WITNESSES

Judge Baldwin
on 11/19/15
Type and Amount: \$100,000
Name of Surety: (Signature)

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant/Attorney: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Decision: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Disposition: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

2015 NOV 25 AM 11:52
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

FILED

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

Collision Inv. A. King
OCA# 2015-031519

Personally appeared before me, a magistrate of this County, **Anthony J. King** who first being duly sworn, deposes and says that

JOHN ANDREW BIGGS

did within this County and State on the 8th day of October, 2015 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
RECKLESS HOMICIDE
56-5-2910

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On Thursday, October 8th, 2015 at approximately 3:58 am, while on Rivers Avenue/US Highway 52 and Eagle Landing Boulevard, located in the city of North Charleston, County of Charleston and the State of South Carolina the aforesaid, one **John Andrew Biggs**, did willfully and unlawfully commit the offense of **Reckless Homicide** in violation of Section 56-5-2910 of the South Carolina Code of Laws of 1976, as amended. In that the defendant was driving a 2005 Chevrolet Silverado 1500, tag (IN) , in a reckless disregard for the safety of others and was involved in a motor vehicle collision with another occupied motor vehicle that fatally injured the other driver.

Facts to establish the aforesaid are that on Thursday, October 8th, 2015 the defendant, one **John Andrew Biggs**, did within the city of North Charleston, County of Charleston, State of South Carolina, willfully and unlawfully commit the crime of Reckless Homicide in that the defendant was traveling at twice the posted speed limit, at night, and was in a business area with a lot of cross traffic. The investigation revealed that the defendant was driving at 98-99 miles per hour in a posted 45 miles per hour section of Rivers Ave/US Highway 52. The defendant then drove into a rear of a 2014 Ford Mustang, never slowing or braking. The Mustang, tag (SC) , was stopped on a red light at the intersection with Eagle Landing Boulevard. The defendant struck the other vehicle with such force that it pushed it over 200 feet to the other side of the intersection and caused the Mustang to burst into flames. The other driver was entrapped within his burning Mustang. The collision resulted in the death of the other driver, one Calvin Lavert Walker (victim). The victim died at the scene. Collision Investigators A. King, M. Woodall, B. Molina, and P. Kirkland are witnesses to prove the same. All of which is against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me *see*
this 17 day of November
2015.

John A. Duffy, III
Signature of Judge

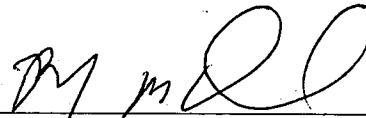
Anthony J. King
(AFFIANT)

Address: 2500 City Hall Lane
North Charleston SC, 29406
Phone: 843-554-5700

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of April, 2018.

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SC Court of Appeals