

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM HAMPTON COUNTY
Court of Common Pleas**

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2009-126526

**Willie Homer Stephens, Guardian ad Litem
for Lillian C., a minor.....Petitioner,**

v.

**CSX Transportation, Inc. and the South Carolina
Department of Transportation,.....Respondents.**

APPENDIX – Vol. II

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for Lillian C., a minor Appellant,**

v.

**CSX Transportation, Inc. and the South Carolina
Department of Transportation,.....Respondents.**

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1 MR. HARMON: And may I get the easel before I
2 start?

3 THE COURT: Murphy, can we put the lights back
4 up, sir?

5 MR. HARMON: May I get the easel before I start?

6 THE COURT: Absolutely, sir.

7 Mr. Harmon, do you need to move any of that so
8 that the jury can see that easel? or can they see
9 through it? or are you okay?

10 MR. HARMON: You know what -- thank you, Your
11 Honor. Maybe I do. I'll tell you what I'll do. I'm
12 going to need that. I'll move the easel maybe --

13 THE COURT: All right.

14 MR. HARMON: Good afternoon, Dr. Heathington.

15 THE WITNESS: Good afternoon.

16 MR. HARMON: I don't think we've officially met
17 before. My name is Jon Harmon.

18 CROSS-EXAMINATION

19 BY MR. HARMON:

20 Q. Sir, I want to ask you some questions about this
21 crossing, this accident, involving this driver. Okay?

22 A. That's fine.

23 Q. So you would agree with me that we want to avoid
24 accidents at crossings?

25 A. Absolutely.

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1 Q. And we want drivers to make safe choices?

2 A. Absolutely.

3 Q. And to make a safe choice at a passive crossing,
4 you need proper sight distance?

5 A. That's correct.

6 Q. And as you told the jury yesterday and a part of
7 today, the primary consideration at a passive crossing is
8 sight distance?

9 A. That's correct.

10 Q. And as I think you said a few moments ago, if
11 you don't have proper sight distance, it's your opinion
12 you should have -- you should compensate by having gates
13 and lights?

14 A. Or, as I said, there's a couple of other ways
15 you can do it.

16 Q. But that's one way?

17 A. That's one way, yes.

18 Q. Okay. I want to talk to you about the proper
19 sight distance at the Hill Road crossing. All right?

20 A. Uh-huh.

21 Q. You determined the proper sight distance using
22 your calculations; correct?

23 A. Correct.

24 Q. And it was based on a train going forty-nine
25 miles an hour?

1 A. That's correct.

2 Q. And with a vehicle, as Ms. Colvin was, stopped;
3 correct?

4 A. Yes. We did it on that, but we did it at the
5 regular ten mile an hour, and also if you had stopped
6 where your front bumper -- for AASHTO standards -- fifteen
7 feet from the nearest rail. So we did all of that.

8 Q. No. But I guess what I'm asking you is you did
9 proper -- you determined sight distance based upon what
10 she actually did when she stopped at the stop sign and
11 then made a second stop; correct?

12 A. Yes.

13 Q. And can you tell us again what the proper sight
14 distance should be at the Hill Road crossing?

15 A. Well, in evaluating the crossing -- just one
16 second. In evaluating the crossing, you have to use the
17 timetable speed of the trains going through there, and
18 that's forty-nine mile an hour.

19 Q. Sir, can I interrupt you? because I think I know
20 what you said. You said the proper sight distance was
21 1,176 feet; is that correct?

22 A. Let me check here. For stopped at the stop
23 sign?

24 Q. Yes. You said --

25 A. It's 1,176. Yes.

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1 Q. You said 1,176?

2 A. Yes.

3 Q. And on your direct examination, you said that's
4 approximately 1,200 feet?

5 A. That's correct. You just take nine-tenths of
6 between -- difference between the two and interpolate
7 between a forty-mile-an-hour and fifty-mile-an-hour train.

8 Q. I noticed during your testimony at various times
9 you used the word approximately?

10 A. Yes.

11 Q. It's okay to be approximate sometimes?

12 A. Oh, yeah. And when you're doing this kind of
13 work, a foot is not necessarily --

14 Q. Not a big deal; right?

15 A. Yeah. As a general rule.

16 Q. Now, sir, there is a stop line at the Hill Road
17 crossing?

18 A. That's correct.

19 Q. And you've been there before and seen it?

20 A. Yes, sir.

21 Q. And you would agree with me that a driver with
22 their front bumper stopped at the stop line can see a long
23 ways?

24 A. That's correct.

25 Q. And when you're determining where the driver is

1 going to be in relationship to their front bumper, we
2 understand that the driver is not where the front bumper
3 is?

4 A. That's correct.

5 Q. The driver is going to be farther back?

6 A. Yes.

7 Q. So in this instance the stop line was
8 approximately the back of the stop line, twelve feet from
9 the nearest rail?

10 A. The stop line was placed itself ten feet from
11 it, but it was about two foot wide, yes.

12 Q. So the back of the stop line was approximately
13 twelve feet?

14 A. Roughly that, yes. I didn't measure the width
15 of the stop line, and you can't really measure that off of
16 a plan view, because it's one inch equals sixty feet
17 scale.

18 Q. And Ms. Colvin was about seven-and-a-half feet
19 back from her front bumper; right?

20 A. That's correct?

21 Q. So if we add the seven-and-a-half feet to the
22 twelve feet, if she was stopped at the stop line she would
23 be nineteen feet from the nearest rail?

24 A. That's correct. Approximately. Nineteen and a
25 half.

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1 Q. Nineteen and a half. Thank you, sir.

2 And that would be a little bit behind the
3 cross-bucks?

4 A. Yes. Cross-buck is about seventeen feet.

5 Q. Now, you reviewed, in preparing your report, the
6 testimony of Tommy Jackson; right?

7 A. Help me with who he is --

8 Q. Sure.

9 A. -- the name.

10 Q. He was, sir, the gentleman who lived closest to
11 the crossing.

12 A. I can't remember about the closet. I reviewed
13 the one behind that was following her, and the train crew,
14 and this sort of thing. I don't -- may have done that,
15 but I can't remember exactly.

16 Q. He testified here before the jury on Monday.

17 A. Okay.

18 Q. Okay? And both in his deposition and in front
19 of this jury he said --

20 MR. PARKER: Your Honor, I would object to that.
21 That's not proper for him to say what -- if he wants to
22 get the deposition out and read his testimony about
23 what it is. He's again pitting one witness against
24 another. The testimony, I don't know what it's going
25 to be but if he wants to read the deposition question

1 and ask him about it, I think that's appropriate.

2 THE COURT: Overruled. He can ask it.

3 Q. [Mr. Harmon] Sir, in both his deposition and
4 yesterday, Monday, in front of the jury, he indicated that
5 stopped at the stop line you could see all the way to the
6 I-95 overpass. You don't have any reason to dispute that,
7 do you?

8 A. No. I measured. When you're stopped at the
9 stop line, you can do that.

10 Q. Okay. And did you review the testimony of Mr.
11 Carlos Terry?

12 A. Now, which one was he?

13 Q. All right. Well, he was the guy you were just
14 talking about, that you put up on Plaintiff's Exhibit 125,
15 who you said was in the car with Ms. Colvin.

16 A. Oh. It's been over a year, if I have reviewed
17 that one.

18 Q. All right. Well, let's --

19 A. I think I did. I don't recall.

20 Q. Let me let you see it because --

21 MR. HARMON: He's on video. Let's see Terry
22 one.

23 THE WITNESS: Okay.

24 MR. HARMON: Can you see the screen? They have
25 a screen there for you, sir.

1 THE WITNESS: Okay. Yes.

2 MR. HARMON: All right. Do we need to bring the
3 lights down?

4 Can you see that, members of the jury.

5 [Whereupon, video is played to the jury as
6 follows]

7 Q. You felt her stop the second time; right?

8 A. Yeah.

9 Q. Okay. And do you know where it was she
10 stopped the second time?

11 A. No. I don't remember.

12 Q. You don't have any idea?

13 A. No. No clue.

14 Q. Did she usually stop twice when she --

15 A. Yes.

16 Q. -- approached that crossing?

17 Where did she usually stop the second
18 time when she approached the crossing?

19 A. Like I say, where the little line is.

20 Q. And can you see far enough down the
21 tracks to see the trains coming when you stop at that
22 line?

23 A. I'm not on the driver's side at that
24 time, so I can't -- so I don't see.

25 Q. Okay. But you're on the passenger side?

1 A. Yeah.

2 Q. Okay. Well, from the passenger side,
3 when she stopped the second time, usually -- now, I
4 know you don't know where she --

5 A. Whether she can see or not, I don't know.
6 She probably couldn't see -- I don't know.

7 Q. How about you?

8 A. Can I see from the passenger side? Yeah,
9 I can --

10 Q. See all the way down to the I-95 bridge,
11 can't you?

12 A. Yeah

13 [Whereupon, video concludes]

14 MR. HARMON: All right. We can put the lights
15 back on.

16 Q. [Mr. Harmon] So according to Mr. Terry, you
17 don't dispute Mr. Terry that if you're sitting there at
18 the stop line, if you pull up to the stop line you can see
19 all the way down to the I-95 overpass?

20 A. Yeah, that's right. And you can see up at where
21 that is.

22 Q. All right. And, by the way, the picture you
23 showed the jury where you said that you asked the
24 plaintiffs to get a picture of Mr. Terry, that wasn't Mr.
25 Terry in the picture that you had --

1 A. Yes.

2 Q. -- up there?

3 A. It was sent to me as someone -- and I didn't
4 know this gentleman from anyone else -- but roughly the
5 same size and height --

6 Q. All right. So --

7 A. -- and so forth.

8 Q. -- but that was not Mr. Terry?

9 A. I don't --

10 Q. It was just --

11 A. -- know. I mean --

12 Q. -- a picture from the Internet?

13 A. I don't know. No, I didn't pull it up from the
14 Internet, no, sir. No. That was sent to us.

15 Q. Now, you know Mr. Don Crews from the plaintiff's
16 firm; right?

17 A. Oh, yes.

18 Q. He's an investigator that you've worked with
19 before?

20 A. That's correct.

21 Q. And he's an experienced investigator?

22 A. Yes.

23 Q. And you realize -- did you review his
24 deposition?

25 A. I don't know. I saw a lot of his field notes,
MIA PERRON, CCR, CVR-CM

1 had the distances that he had taken, photographs and
2 things of this nature.

3 Q. Okay. And you would have no reason to dispute
4 if you understood his testimony to be that if you stop
5 with your front bumper at the stop line, you can see to
6 the I-95 overpass?

7 A. Well, I've told you several times I measured it
8 and, yes, you can. I mean --

9 Q. Did you review the videotape that Mr. Crews did
10 shortly after this accident?

11 A. Yes. I have once.

12 MR. HARMON: All right. Let's roll D4.1,
13 please.

14 I'm going to ask if you saw this.

15 [Whereupon, excerpt of video deposition of Mr.
16 Crews is played for the jury as follows]

17 Q. [Mr. Harmon] Now, this is stopped right
18 behind the cross-bucks, Mr. Crews, on February 10,
19 2004?

20 A. That's stopped at the cross-buck. That's
21 not behind -- that's not where a driver would be.

22 [Whereupon, excerpt of video deposition of Mr.
23 Crews concludes]

24 Q. [Mr. Harmon] And tell the jury what that is
25 down there.

1 A. That's the overpass for there. But that's not
2 where a driver would be if they stopped at the cross-buck
3 signs. That's wrong. That's misleading the jury.

4 Q. No, no, no. I'm not saying they stopped --
5 excuse me.

6 A. If they stopped -- what I'm saying is if they
7 stop at the cross-buck sign, that's not what they'll see.

8 Q. No. I'm not suggesting that at all, sir.

9 A. Okay.

10 Q. I'm saying that that's the view --

11 A. That would be misleading.

12 Q. -- you would have --

13 A. That would be misleading --

14 Q. That's the view --

15 THE COURT: All right, Mr. Heathington.

16 Go ahead and ask your question, Mr. Harmon --

17 MR. HARMON: Absolutely.

18 THE COURT: -- and you may explain your answer.

19 Answer it and explain it.

20 Q. [Mr. Harmon] That's the view you would have if
21 you were stopped with your front bumper at the stop line;
22 correct?

23 A. Somewhere in that neighborhood.

24 Q. All right. So you would agree with me, sir,
25 that if you were stopped -- that overpass, by the way, is

1 about 2,000 feet away from the crossing, isn't it?

2 A. I don't know the exact distance, but it's a good
3 ways back.

4 Q. Okay. It's past the whistle post, isn't it?

5 A. That's my understanding. I can't remember.

6 Yes, 1,400-something feet --

7 Q. How far is this --

8 A. -- I think is the whistle post.

9 Q. Do you see the whistle post on this?

10 A. I don't know if you can see the whistle post. I
11 didn't look.

12 Q. Okay.

13 A. But it's on the plan view, the distances they
14 are.

15 Q. All right. So you have no dispute, sir, that
16 this I-95 overpass is approximately 2,000 feet away?

17 A. I don't -- I've never measured it, so I don't
18 know. But, I mean, I'm not disagreeing with you. I mean,
19 I don't know.

20 Q. You certainly agree that the sight distance at
21 the stop line is well over 1,200 feet away?

22 A. Yes. Now, that's assuming that the front bumper
23 is at the stop line. What you've got to understand -- and
24 you don't want to mislead people -- people don't know
25 exactly where their front bumper is. If you're about a

1 foot or so back from that stop line thinking that you're
2 at a stop line, you won't have that view there.

3 Q. It's fair to say -- I don't want to put words in
4 your mouth -- the sight distance when you're stopped at
5 the front, with your bumper at the stop line, is well over
6 1,200 feet is what you told me --

7 A. Oh, yes.

8 Q. -- right?

9 A. I would say it's certainly over that. You can
10 go -- you can see all the way to the interstate in terms
11 of up at the interstate. On the track, it's partially
12 hidden. The track is partially hidden. But you can see
13 up because of the vacancy or the opening between the trees
14 up high.

15 Q. And you wouldn't dispute Tommy Jackson who came
16 in here and said that the distance from the crossing to
17 that I-95 overpass was about half a mile --

18 A. I told you --

19 Q. -- he walked it?

20 A. -- I didn't know what it was.

21 Q. Okay. But you wouldn't dispute it? He walked
22 it?

23 A. I don't know.

24 MR. PARKER: Objection.

25 A. I mean, goodness --

1 MR. PARKER: I don't know why it would be
2 relevant if he --

3 THE COURT: Okay. He can ask the question. If
4 Dr. Heathington does not know, he can tell and state
5 that he does not know.

6 MR. HARMON: Absolutely, Your Honor.

7 Q. [Mr. Harmon] Dr. Heathington, I want to now ask
8 you some questions assuming Ms. Colvin stopped at the stop
9 line --

10 A. Okay.

11 Q. -- with her front bumper at the stop line.
12 Okay?

13 Now, did you understand that?

14 A. Yes.

15 Q. Okay. Now, let me write that up here so we're
16 clear. And I'm just going to abbreviate stop line with
17 SL. Is that all right?

18 A. It's all right with me.

19 Q. Okay. Sir, if Ms. Colvin stopped, when she
20 stopped the second time -- and I was watching your
21 animation -- you told the jury that the train was
22 approximately 600-some-odd feet away; right?

23 A. I believe that's correct. I would have to put
24 it back up to see the exact distance.

25 Q. Okay. But if Ms. Colvin stopped at the stop

1 line with her front bumper at the stop line, she would
2 have seen the train?

3 A. That's correct. And that's assuming her front
4 bumper is at the stop line, not a foot or two upstream.

5 Q. Now, you would agree with me, sir, that the
6 driver has a duty to yield to the train?

7 A. In most cases, that's correct.

8 Q. And the responsibility for avoiding a collision
9 between a train and a car generally rests with the driver?

10 A. Generally. That's correct.

11 Q. And a driver must approach all crossings with
12 extreme caution and cross the track only when they know no
13 train is coming from either direction?

14 A. That's true. But the second part of that, you
15 have to provide the information to the driver to know that
16 no train is coming. And that wasn't done here.

17 Q. But my question was you would agree with me that
18 a driver must approach all crossings with extreme caution
19 and cross the track only when they know no train is coming
20 from either direction?

21 A. Yes. And we have to give them the information
22 where they can make that correct decision. It's a two-way
23 street, sir. It's not a single -- it's not a one-way
24 street.

25 Q. If the driver sees the train and it's plainly

1 THE COURT: Mr. McLeod?

2 MR. MCLEOD: No, Your Honor.

3 THE COURT: No? All right.

4 MR. PARKER: May the witness be excused?

5 THE COURT: Any objection?

6 MR. HARMON: No, Your Honor.

7 THE COURT: All right. Why don't we go ahead
8 and give him some lights.

9 You're excused, Dr. Heathington. Thank you,
10 sir.

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

13 THE COURT: All right, sir. If you'll call your
14 next witness.

15 MR. DETRICK: Your Honor, we call Lon Hoover.

16 [Whereupon, Mr. Hoover enters the courtroom]

17 MR. DETRICK: You go right here. Right around
18 here.

19 THE COURT: Sir, I apologize.

20 MR. HOOVER: I'm sorry.

21 THE COURT: You come right over here. Thank
22 you, sir. There's the Bible. If you will raise your
23 right hand, place your left hand on the Bible.

24 [Whereupon, Mr. Hoover is duly sworn by the
25 Court]

1 THE COURT: All right, sir. Go ahead and take a
2 seat.

3 [Whereupon, the witness takes the witness stand]

4 THE COURT: Give us your full name for the
5 record.

6 And I will tell you that I need you to speak up
7 a little bit. But if you get too close you may go off,
8 as well, so we'll just play it by ear. Okay?

9 THE WITNESS: My name is Lon Alan Hoover.

10 - - - - -

11 LON A. HOOVER,

12 Having Been First Duly Sworn,
13 was Examined and Testified as Follows:

14 DIRECT EXAMINATION

15 BY MR. DETRICK:

16 Q. Mr. Hoover, where do you live?

17 A. Beaufort.

18 Q. And what kind of business are you in?

19 A. I have a landscape business.

20 Q. On February the 3rd, 2004, were you coming from
21 Yemassee toward Early Branch?

22 A. Yes, sir.

23 Q. 68?

24 A. Yes, sir.

25 Q. Is that correct?

1 A. Right.

2 Q. And tell us about -- where were you going?

3 A. I was going on a double mission. The primary
4 mission was to go on a coon-hunting trip, but I had my
5 landscaping trailer up at Eddie Nixon's in Early Branch so
6 I was headed there to check on the status of the trailer
7 first.

8 Q. Okay. And as you were driving -- are you
9 familiar with where Hill crossing -- Hill Road is, the
10 crossing?

11 A. Yes, sir.

12 Q. Okay. You are now more than --

13 A. I am now.

14 Q. -- you were before?

15 A. I am now.

16 Q. All right. Before you got to that crossing, was
17 your attention -- did you hear a train horn?

18 A. Yes, sir.

19 Q. Tell the jury about when and where you would
20 have heard the train horn, and please describe it for us.

21 A. I don't know exactly. I was somewhere between
22 the gas station that's in Yemassee and the baseball field,
23 if anybody knows where that is. In other words, it's
24 approximately a quarter of a mile before I would have
25 gotten to Hill Road on 68.

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1 Q. And could you determine where the horn was --
2 the train was when you first heard the horn?

3 A. When I first heard it, I'm pretty sure it had to
4 be somewhere up around 95, Interstate 95.

5 Q. And I believe from where you're at, because of
6 the trees along the track you weren't able to actually see
7 the train; is that correct?

8 A. That's correct.

9 Q. Okay. And kind of describe did the train --
10 when you first heard it, did it continue to blow or did it
11 stop?

12 A. No. I never heard it continuous. I heard it at
13 least two separate times: a short whatever it does, two
14 second blast, one second. I'm not sure how long it goes.
15 But I heard it twice.

16 Q. Okay. So the first time you heard it was
17 somewhere up around I-95?

18 A. Yes, sir.

19 Q. Is that correct?

20 A. Yes, sir.

21 Q. And then you heard a short time, and it stopped?

22 A. Right.

23 Q. When was the next time you heard it?

24 A. At another subsequent time. I couldn't say
25 exactly where it was, because I never could see the train

1 prior to the accident. So I'm kind of guessing.

2 Q. And did you finally come through some trees
3 where you were able to see --

4 A. Yes, sir.

5 Q. -- Hill Crossing?

6 A. Yes, sir.

7 Q. Tell the jury what you saw.

8 A. Okay. Maybe fifty to seventy-five yards on the
9 Yemassee side of Hill Road, I finally cleared the tree
10 line. As soon as I did, I saw the train. And then I saw
11 the car. The car was moving, and to me I said, it's not
12 going to make it.

13 It's like everything happened in slow motion.
14 The train did hit the car; spun the car around; ejected a
15 passenger, the front passenger; sent a tire rolling down
16 the tracks. That was pretty much it.

17 Q. When you observed the car, were you able to
18 observe the approximate speed that it was traveling?

19 A. It was not going fast. It was, to me, like the
20 whole thing went instantaneous to slow motion.

21 Q. Okay. And where did the car end up?

22 A. The car ended up in the -- on my side of the
23 tracks, the 68 side of the tracks, and spun around and
24 ended up kind of in a little ditch down there.

25 Q. And what did you do after you observed this?

1 A. I, as soon as I saw it, you know, parked just
2 the other side of Hill Road and ran back to the car. And
3 I was thinking other occupants, and thinking what if we've
4 got gas here. So I saw there was a person in the back,
5 and made a quick trip. Didn't smell any gas, didn't see
6 any gas. I said, well, the next best thing I've got to do
7 is call 911. So I ran back to my truck to -- that's where
8 my cell phone was -- to make that call.

9 Q. Okay. And then what did you do?

10 A. Well, when I started back to the car, there was
11 another person that had come between, I guess between, the
12 cars -- he didn't come off the train -- and was applying
13 first aid to the person in the back. So I just kind of
14 stood back from that point, listened, watched.

15 Q. Did you see the driver, Ms. Colvin, and notice
16 her?

17 A. I saw that it was a woman driver, and she went
18 to the person that got ejected. I saw that they got into
19 an argument, but I didn't hear any of it.

20 Q. Fair to say she was upset?

21 A. Absolutely.

22 Q. Okay. Now, as far -- now, did you give your
23 name to the investigating officers?

24 A. I did.

25 Q. Okay. And then you left the scene, I assume?

1 A. Right.

2 Q. Okay. Now, as far as -- now, your testimony was
3 that you heard the horn one time at 95, stopped, and one
4 time shortly thereafter, and it stopped --

5 A. That's, you know --

6 Q. -- is that correct?

7 A. I could not see the train. I believe it was --
8 the first time I heard it, it was at least at 95. And the
9 second time was between 95 and Hill Road, much closer to
10 Hill Road.

11 Q. Now, do you remember whether any of the windows
12 in your vehicle were down?

13 A. I do. My driver's-side window was down. I
14 remember that because I reached into the truck for the
15 cell phone. I keep it on the visor.

16 Q. Do you remember whether your radio was on or
17 off?

18 A. No, no radio.

19 Q. The radio was not on?

20 A. No, sir.

21 MR. DETRICK: Answer any questions they may
22 have. This is Mr. Harmon here.

23 MR. HARMON: Yes. How are you doing Mr. Hoover?

24 THE WITNESS: Good.

25 MR. HARMON: Your Honor, may I have a brief

1 moment to get the map --

2 THE COURT: Yes, sir.

3 MR. HARMON: -- to use?

4 CROSS-EXAMINATION

5 BY MR. HARMON:

6 Q. Mr. Hoover, we didn't -- just real briefly.

7 You're from Beaufort?

8 A. Yes, sir.

9 Q. And you own a landscaping business?

10 A. A tiny little landscape business. Yes, sir.

11 Q. Okay. And you're a former marine?

12 A. Thirty years in the Marine Corps.

13 Q. And not intended to embarrass you in any way,
14 but I understand from your service in the Marines you have
15 a little bit of hearing deficit?

16 A. Yeah, I do.

17 Q. Okay. Sir, I was wondering if you could -- you
18 were describing some things. We have a blow-up here the
19 jury has seen before. If you could step down and kind of
20 show us where you were.

21 MR. HARMON: Now, maybe you could stand over
22 this way, if you don't mind, sir, so the jury can see.

23 Q. [Mr. Harmon] This is Highway 68?

24 A. Exactly.

25 Q. All right. And can you -- this is where the

1 accident occurred?

2 A. Right.

3 Q. All right. I believe you said on your direct
4 examination you were about a quarter of a mile from the
5 crossing when you first heard the train?

6 A. I would estimate.

7 Q. Okay. And I don't know how far it is --

8 A. Okay.

9 Q. -- but can you tell the jury where, like
10 milepost markers, or what was near you, when you first
11 heard the train?

12 A. Well, there's -- I don't know of any mile
13 markers that are on 68. I think probably everybody knows
14 that -- we'll say Interstate 95 is up here. I'm coming
15 from Beaufort -- from Yemassee. This would be Hill Road
16 where it intersects 68. It was -- if this is 95 -- I have
17 no idea of the distance there, but I would guess it to be
18 a quarter of a mile. I was down this way where, if you're
19 familiar with Yemassee, there's a gas station and a
20 baseball field, a Dollar General. That's where I was,
21 down there, when I first --

22 Q. When you first heard it?

23 A. Yes.

24 Q. And I understand that it was probably more than
25 fifteen seconds before the accident when you first heard

1 the train?

2 A. I would say that's correct.

3 Q. And I think you said you didn't know if it was
4 thirty, but it was definitely more than fifteen?

5 A. Yes.

6 Q. Okay. And, now, when you approached the
7 crossing, were the train lights on?

8 A. Yes.

9 Q. Okay. And did you have any problems hearing the
10 horn that day?

11 A. No.

12 Q. Did you have any problems hearing the horn when
13 you were a quarter of a mile, approximately, from the
14 crossing?

15 A. No.

16 Q. And did you have any problems hearing the horn
17 after you got closer to the crossing?

18 A. No. I heard the horn at least two times. I
19 mean, I didn't know there was going to be a train wreck,
20 so, you know, I wasn't dialing in for the time.

21 Q. When you, sir, called 911 --

22 A. Right.

23 Q. -- had that call already been made, or were you
24 the first person?

25 A. I don't think so.

1 Q. Okay. So you were the first person that made
2 the call?

3 A. I believe so. They took a long time; you know,
4 what do you need, and where are you.

5 MR. HARMON: Okay. Thank you, sir. Those are
6 all the questions I have. I believe someone else may
7 have some questions for you.

8 THE WITNESS: Can I --

9 MR. HARMON: Thank you. Yes, you may.

10 [Whereupon, the witness re-takes the witness
11 stand]

12 MR. MCLEOD: Mr. Hoover, would you tell me --

13 MR. HARMON: Oh. Are you going to use this,
14 sir? Do you want this up?

15 Let me take this down for him.

16 MR. MCLEOD: My name is Peden McLeod. I
17 represent the Department of Transportation, the South
18 Carolina Department.

19 THE WITNESS: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. MCLEOD:

22 Q. Could you tell me: when you saw her, was she
23 already moving, or had she stopped? Was she stopped, or
24 what?

25 A. She was moving when I saw her.

1 MR. MCLEOD: Okay. Thank you.

2 THE WITNESS: Yes, sir.

3 MR. DETRICK: Just a couple of questions, Mr.
4 Hoover.

5 REDIRECT EXAMINATION

6 BY MR. DETRICK:

7 Q. I believe in this right here that Mr. Harmon was
8 showing you, it doesn't show 95 on it, does it?

9 A. No, sir.

10 Q. In other words, 95 is way away from this, or
11 away from that; is that right?

12 A. It's probably I would guess at least a quarter
13 of a mile from Hill Road to 95.

14 Q. Okay. And as far as your -- I forgot to ask
15 you. What speed were you traveling, approximately?

16 A. Forty-five.

17 Q. Forty-five.

18 So you were coming, and the train was coming,
19 and --

20 A. Yes, sir.

21 MR. DETRICK: Okay.

22 MR. HARMON: I don't have any further questions
23 for Mr. Hoover.

24 MR. DETRICK: That's all I have.

25 THE COURT: Mr. McLeod?

1 MR. MCLEOD: None, Your Honor.

2 THE COURT: Any objection to Mr. Hoover being
3 excused, gentlemen?

4 MR. DETRICK: I think he wants to go to Disney
5 World.

6 MR. HARMON: No, Your Honor.

7 THE COURT: Well, my goodness. Well, have a
8 wonderful trip, sir. You are excused.

9 THE WITNESS: Thank you, ma'am.

10 THE COURT: Thank you.

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

13 THE COURT: Thank you.

14 MR. PARKER: The plaintiff calls Jim Scott.

15 [Whereupon, Mr. Scott enters the courtroom]

16 THE COURT: All right. If you will please come
17 forward, sir, to be sworn.

18 Sir, if you will raise your right hand and place
19 your left hand on the Bible.

20 [Whereupon, Mr. Scott is duly sworn by the
21 Court]

22 THE COURT: Thank you, sir. If you will please
23 give us your full name for the record.

24 THE WITNESS: Jimmy Calvin Scott.

25 [Whereupon, the witness takes the witness stand]

CROSS-EXAMINATION

BY MR. PURCELL:

Q. Mr. Scott, I want to make sure we can reach an agreement before we start your examination today. Is that okay?

A. Sure.

Q. Can we agree that we are talking about the conduct of the crew at the Hill Road crossing on February the 3rd, 2004?

A. Yes, sir.

Q. Is that agreeable, sir?

A. Yes, sir.

Q. And can we also agree that we are talking about the condition of the crossing on February the 3rd, 2004, when the crew approached it, including the vehicle that was there? All right, sir?

A. All right.

Q. Now, based on -- you are basing your horn and braking calculations as to that first scenario that was put up there on Plaintiff's Exhibit 146.

MR. PURCELL: And maybe we ought to put it here, Bob.

MR. DETRICK: Excuse me. She can put it back up for you.

MR. PURCELL: Okay. Felicia will put it back up

1 for us.

2 Q. [Mr. Purcell] That first calculation is based
3 on the information from Chief Hagy's direct information
4 about the parking lot; right?

5 A. Yes, sir.

6 Q. That was -- in terms of the landmarks, Chief
7 Hagy indicated that the lead locomotive stopped about even
8 with the pavement, where the parking lot began at Erin's
9 Beauty Shop, going from the accident scene; right?

10 A. That's what I recall, yes, sir.

11 Q. All right, sir. So the reason that you went out
12 there to the accident scene yourself and measured off the
13 1423 feet was because that was the location that he gave,
14 wasn't it, sir?

15 A. That was one of them, yes.

16 Q. Well, that's the location in terms of a
17 location, a point, a landmark. That was the one he gave,
18 wasn't it, sir?

19 A. Oh, yes. Location? Right.

20 Q. He gave no other landmark, place, point, did he,
21 sir?

22 A. Not that I recall.

23 Q. Okay. So and he was the investigating officer
24 for this accident, wasn't he?

25 A. Yes, sir.

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1 Q. He was the only one, of all of the eyewitnesses
2 at the scene that day, who was charged with investigating
3 the incident; isn't that right, sir?

4 A. Yes.

5 Q. And you read Chief Hagy's testimony in his
6 deposition, didn't you, sir?

7 A. Yes, sir.

8 Q. And you saw that the .3 of a mile was off of his
9 odometer, wasn't it?

10 A. Yes.

11 Q. And you know from your experience in
12 investigating accidents and incidents, and even from
13 odometers on locomotives, or the equivalent, that those
14 are just estimates; isn't that right, sir?

15 A. It may be on a car. On a locomotive, it
16 wouldn't be an estimate if you've got the correct wheel
17 size. It would be accurate.

18 Q. Well, let's talk about what's involved in this
19 case: a car. And it's an estimate when it's a car, isn't
20 it, Mr. Scott?

21 A. You mean the distance is an estimate?

22 Q. Yes, sir. When you're using .3 on your
23 odometer, it's not exact to feet, is it, sir?

24 A. Well, if it's measuring correctly, it should be
25 exact. If you started at exactly zero, then of course it

1 would be right.

2 Q. All right, sir.

3 A. But if you didn't, then it would be off ever how
4 much you started.

5 Q. But you understood from Chief Hagy's testimony
6 that it was an estimate?

7 A. Yes.

8 Q. Okay. So it's an estimate.

9 The first one is exact. The second one is an
10 estimate, isn't it?

11 A. Yes.

12 Q. Okay. So if you want to be accurate to this
13 jury in applying the most precise information that you can
14 to the download, you use more exact figures than
15 estimates, don't you, sir?

16 A. Well, you use the -- you use what you got. I
17 mean, you use --

18 Q. Yes, sir. I --

19 A. -- the best you got.

20 Q. I hear you.

21 But you use more exact figures than estimates,
22 don't you, sir?

23 A. If you have them, yes.

24 Q. And using that exact figure, you're able to
25 determine that there was 1161 feet of horn-blow prior to

1 impact -- using that exact figure -- didn't you, sir?

2 A. Well, there was a one-second break in there, but
3 the distance of the horn blow covered 1161 feet.

4 Q. And there are supposed to be breaks in horn
5 blows, aren't there, Mr. Scott?

6 A. Yes, sir.

7 Q. And so including that break, it was seventeen
8 seconds from start to finish, wasn't it, sir?

9 A. I believe that's accurate. I could count them
10 for you, if you want me to.

11 Q. If you need to, yes, sir. Absolutely. This is
12 not a memory test.

13 A. You're saying from the starting of the horn
14 blow --

15 Q. Yes, sir.

16 A. -- until what point?

17 Q. Until the impact as described on your first
18 analysis there.

19 A. At the 1423-foot mark?

20 Q. Yes, sir.

21 A. Okay. And you wanted the -- I'm sorry. You
22 wanted what? the distance, or the time?

23 Q. The time, sir.

24 A. The time.

25 Q. The number of seconds.

1 [Whereupon, the witness reviews documents]

2 A. I counted eighteen.

3 Q. [Mr. Purcell] All right. Well, I appreciate
4 your generosity but I think if you'll count again, you'll
5 find that it's seventeen, just to be absolutely honest
6 with this jury.

7 And, Mr. Scott, I think we can add what you've
8 got right here up on the -- up on the analysis that's
9 already been presented before the jury, if you want to do
10 it that way, and save a little time.

11 If you -- the horn was on for five seconds, off
12 for one second, and on for eleven seconds. Can we agree
13 that's seventeen seconds before impact?

14 A. Well, it depends on where you put the impact at.
15 But, yes.

16 Q. I'm just talking about based on your first
17 analysis here, that would be seventeen seconds prior to
18 impact; isn't that right?

19 A. That's correct. And the reason I had the other
20 eighteen -- or the reason I had the other second in there,
21 is where I placed my line at on the event recorder.

22 Q. Yes, sir.

23 A. And so that's the reason I added the other
24 second.

25 Q. All right, sir. Well, we'll say seventeen or

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1 eighteen seconds. We'll say approximately seventeen --

2 A. Okay.

3 Q. -- or eighteen seconds, if that's all right,
4 sir.

5 Now, using that number, the distance of 1423
6 feet at the parking lot, the train crew threw the train
7 into -- threw the emergency brake or application two to
8 three seconds before impact; right?

9 A. Correct

10 Q. And there was no rule violation regarding
11 braking; right?

12 A. Well, it depends on what the conductor perceived
13 and where he seen it at.

14 Q. Well, there was no rule violation regarding
15 braking using that scenario, was there?

16 A. Using that scenario and the engineer putting the
17 train in emergency?

18 Q. Yes, sir.

19 A. No.

20 Q. By any member of the crew using that -- there's
21 no rule violation, was there, using that scenario?

22 A. There was, yes. I would expect the conductor to
23 react.

24 MR. PURCELL: Okay. Go to clip number 6.

25 [Whereupon, excerpt of video deposition is

1 played for the jury as follows]

2 Q. At two to three seconds prior to impact,
3 what rules would have been violated by employing the
4 emergency brake at that time.

5 A. Prior to the impact?

6 Q. Yes, sir.

7 A. That would have -- I don't think they're
8 any. I mean, what I'm saying is that, you know, that
9 that may be the first opportunity they had to see the
10 car, due to the vegetation, when it comes out from
11 behind the trees. So --

12 Q. Well, if the brake was deployed two or
13 three seconds prior to impact --

14 A. Yes.

15 Q. -- it's your opinion that they would not
16 have violated any rules with regard to stopping
17 distance?

18 A. I don't believe so.

19 [Whereupon, excerpt of video deposition
20 concludes]

21 Q. [Mr. Purcell] Okay. Mr. Scott --

22 A. Yes.

23 Q. -- under that scenario the --

24 A. Yes.

25 Q. -- horn would have been blowing up to three --

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1 two to three seconds before impact; isn't that right, sir?

2 A. Under that scenario, the horn stops one second
3 prior to impact.

4 Q. Okay. Well, all of those seventeen or eighteen
5 seconds, depending on where you mark it on the event
6 recorder download, would have been sounded immediately
7 before impact; isn't that right, sir?

8 A. Well, if you want to call back up 1100 feet
9 immediately before, then, yes. But --

10 Q. Well, as opposed to adding 400 feet onto it, or
11 any amount of footage onto the other end back there --

12 A. Yes.

13 Q. -- this would have been the eleven hundred and
14 how many feet did you say in your -- 1161 feet, pretty
15 close -- or close to the crossing. Within one or two or
16 three seconds close to the crossing. It all would have
17 been sounded during that period of time; isn't that right,
18 sir?

19 A. It all would have been sounded during --

20 Q. Yes, sir.

21 A. You mean -- you're talking about the horn
22 signal?

23 Q. Yes, sir.

24 A. Yes.

25 Q. Okay. And the horn as it was sounded at that

1 distance, even if you take the alternate scenario it would
2 have been sounded for 1,000 feet; isn't that right?

3 A. Yes.

4 Q. Okay. So you have 1,000 feet or 1161 feet --
5 prior to impact -- of horn, of a long, a short, and a
6 long, I think you said; is that right, sir?

7 A. No, that's not what I said.

8 Q. Well, you said five seconds -- the sequence was
9 five seconds, one second, eleven seconds; correct?

10 A. That's right.

11 Q. All right, sir. Now, that would be if it blew
12 -- if it -- even if it -- in that alternate scenario, the
13 one about the three-tenths of a mile, that would have been
14 a good braking right before impact, wouldn't it?

15 A. A good braking? I'm not --

16 Q. Yes, sir.

17 A. I don't understand that, a good --

18 Q. All right. Well, I think we'll go by what your
19 testimony was earlier.

20 But it would make sense to you, wouldn't it, Mr.
21 Scott, that the crew would stop blowing the horn at the
22 point of impact, wouldn't it, sir?

23 A. Well, some do and some don't. I've seen them
24 hold the horn for six, eight, ten seconds. I call it
25 panic blow. They just keep blowing until they realize,

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1 and they come to themselves, and then they let go of the
2 horn. They don't realize it's on.

3 Q. All right, sir. Now, let me ask you this. A
4 train crew cannot put the train into emergency every time
5 they see a car at a crossing, can they?

6 A. Well, it depends on where the car is at at the
7 crossing.

8 Q. Okay. Every time that you see a car at a
9 crossing at a stop line, you can't put the train into
10 emergency, can you?

11 A. It depends on what you perceive, but not -- but
12 probably not, no.

13 Q. Because if it's stopped at the cross line, you
14 don't want to put it into emergency, do you?

15 A. Not unless you see something that causes you to
16 do that, no.

17 Q. And you've already indicated that there are
18 certain things that will happen when you put a train into
19 emergency, like -- I don't think you said derailment yet.
20 But that's one of the things that could happen when you
21 put the train into emergency, isn't it, sir?

22 A. That's extremely rare.

23 Q. Well, there are other bad things that can
24 happen, as you already pointed out in your earlier direct
25 testimony; isn't that right, sir?

1 A. Other bad things?

2 Q. Yes, sir.

3 A. I don't recall what other bad things were,
4 but --

5 Q. I think you indicated it could -- risk of
6 explosions and other things. Didn't you say that? That
7 was on impact, though, wasn't it?

8 A. That was on impact. Yeah.

9 Q. Yes, sir. Well, in any event, it's something
10 that in order to do, you need to make sure you have an
11 emergency situation; isn't that right?

12 A. Well, yes.

13 Q. And if a car is just sitting there at the stop
14 line, that's not an emergency situation, is it?

15 A. If it's in the clear, no.

16 Q. And you've reviewed the testimony of three
17 eyewitnesses in this case, didn't you?

18 A. Yes.

19 Q. You reviewed the testimony of Dusty Biser?

20 A. Yes.

21 Q. The testimony of Calvin Cummings?

22 A. Yes, sir.

23 Q. The testimony of Ned Wooden?

24 A. Yes, sir.

25 Q. You reviewed the testimony of the gentleman who

1 just testified, Mr. Lon Hoover, didn't you, sir?

2 A. Yes, sir.

3 Q. Three of those four eyewitnesses -- and you also
4 reviewed the testimony of Carlos Terry, didn't you?

5 A. Yes.

6 Q. Okay. And he testified that Ms. Colvin usually
7 stopped at the stop line, didn't he?

8 A. As I recall, yes.

9 Q. Okay. And those three other eyewitnesses,
10 excepting Mr. Hoover, told you that in their testimony
11 that she was stopped at the stop line that day, didn't
12 they?

13 A. I believe that's accurate, yes.

14 Q. And stopped at the stop line, she would have
15 been clear of the crossing if she had just stayed there
16 and waited for the train to go by, wouldn't she?

17 A. At the stop line, yes, she would be clear of the
18 crossing.

19 Q. And if it happened, as you determined in
20 scenario number one -- that is, that she pulled out two or
21 three seconds -- there would be nothing the crew could do
22 to avoid the collision; isn't that right, sir?

23 A. Nothing they could do?

24 Q. Yes, sir.

25 A. Other than the short blast on the horn, place

1 the train in emergency. They could do that. If they got
2 her attention with a short blast, then perhaps she moves
3 the other way. She only got clipped on the very rear end,
4 so --

5 Q. In two to three seconds you expect them to
6 modulate and change the horn -- even though you know in
7 your analysis that there is -- in scenario number one,
8 that they stopped blowing two to three seconds before the
9 collision; isn't that right, sir? Scenario number one.

10 A. I see one second.

11 Q. All right, sir.

12 MR. PURCELL: There it is.

13 Q. [Mr. Purcell] So the emergency brake was two
14 seconds before impact. They stopped blowing some three
15 seconds before impact, according to your download, the
16 download you analyzed; isn't that right, sir?

17 A. You've lost me on that. That's not --

18 Q. Take a look at scenario number one up there on
19 the screen.

20 A. I am.

21 Q. All right, sir. If the emergency application
22 was two seconds before -- excuse me -- two seconds before
23 impact, the horn was blown within seconds of impact,
24 wasn't it, sir?

25 A. Yes.

MIA PERRON, CCR, CVR-CM

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1 Q. All right. Very good, sir.

2 I want to talk with you about your criticisms of
3 the crew. Now, you know the engineer's name in this case?

4 A. Wooden.

5 Q. Yes, sir.

6 A. Yes, sir.

7 Q. That's Mr. Wooden right over there seated at
8 counsel table.

9 A. Okay.

10 Q. Have you ever met him before?

11 A. I met so many people on the railroad, it's
12 possible. I don't recall.

13 Q. How about Mr. Cummings, Calvin Cummings, whose
14 picture the jury saw on Monday? Do you know Calvin
15 Cummings -- did you know Calvin Cummings prior to his
16 untimely death?

17 A. Again, I met a lot of people on the railroad. I
18 had a large territory, and it's hard for me to remember
19 everybody.

20 Q. Well, during your testimony -- I guess my
21 question is, Mr. Scott, you used -- you said the
22 conductor, and you said the engineer?

23 A. Yes.

24 Q. You didn't use their names, did you?

25 A. No. I usually refer to them as conductor and

1 engineer.

2 Q. All right, sir. So that was not calculated in
3 any way?

4 A. Calculated? I don't --

5 Q. Let me ask you this about the criticisms that
6 you have of Mr. Wooden and Mr. Cummings. And the fact is
7 that this download that has been put on the screen --

8 MR. PURCELL: And maybe we can put it up again.

9 MR. POSTON: The download?

10 MR. PURCELL: The download.

11 Q. [Mr. Purcell]. Is, by nature of the -- of what
12 it is, and that's just the version that is available, it
13 prints out in one-second increments; isn't that right,
14 sir?

15 A. That particular version prints out in one-second
16 increments, yes.

17 Q. And so the jury will understand: when it's
18 saying off right there for the horn --

19 A. Yes.

20 Q. -- that means that it is off for most of that
21 second, but not all of that -- not necessarily all of that
22 second; isn't that right, sir?

23 A. It depends on when the sampling took place.

24 Q. Correct. And the jury may not understand, and I
25 really don't understand, what the sampling information

1 means. But the bottom line is that this event recorder,
2 unlike some event recorders, is not divided into tenths of
3 a second; isn't that right, sir?

4 A. The horn column is not divided into tenths of a
5 second on that version of the software.

6 Q. All right, sir. So that means that there may
7 have been a break in the horn; that is, where it shows off
8 there, it may have actually been on for less than five-
9 tenths of a second. Isn't that right, sir?

10 A. Again, it depends on what the sampling took
11 place within that second.

12 Q. But that's possible, isn't it, sir?

13 A. Possible, sure.

14 Q. So it's impossible to know exactly what the
15 sequence of the horn is, if it's not in tenths of a
16 second; isn't that right, sir?

17 A. I wouldn't say impossible when you look at the
18 long-horn blows that I seen on this portion of the
19 download. There's a number of long-horn blows, for an
20 extended period of time. And I wouldn't believe that at
21 some point in time during those long, extended periods of
22 time, that it wouldn't catch that horn the way you're
23 saying there: that it was off and when it actually showed
24 on, or vice versa.

25 Q. But you really can't tell from this version of

1 the download software, can you?

2 A. Precisely, no.

3 Q. But you can't tell -- not precisely or not. You
4 can't tell from this version of the download software, can
5 you?

6 A. I said, precisely, no. I meant that you can't.

7 MR. PURCELL: Let's show clip number 19.

8 [Whereupon, excerpt of video deposition is
9 played to the jury as follows]

10 A. The emergency horn signal, I didn't see
11 anything on that. Of course, on that event recorder
12 it's hard to tell on that particular model or version
13 of the software about the emergency horn because it's
14 not broken down into one-tenth-of-a-second increments,
15 and depends on whose number you use for the stop
16 distance of a locomotive after incident.

17 Q. So it would be fair for me to say that
18 you cannot determine from this data table, that you
19 utilized in connection with your review of this case,
20 whether or not an emergency horn signal was utilized or
21 not?

22 A. It would be hard to tell from this
23 because, again, the horn is captured in one-second
24 increments --

25 Q. I see.

1 A. -- in this particular model of software.

2 Q. So this data table from the Webtech
3 machine would not allow you to determine whether or not
4 an emergency signal was utilized at this intersection
5 at that date; am I correct?

6 A. You're correct.

7 Q. All right. And --

8 [Whereupon, excerpt of video deposition
9 concludes]

10 Q. [Mr. Purcell] All right, sir. And you never
11 talked to the crew, did you?

12 A. No.

13 Q. And you contend that the crew testified they did
14 not blow an emergency pattern; isn't that right, sir?

15 A. I contend that they said -- no. They said they
16 did blow an emergency pattern. I just didn't see one.

17 Q. All right. But as we say, this software limits
18 your ability to do that, doesn't it?

19 A. That's correct. That's why I asked to see this
20 in one-tenth-of-a-second increments. I asked for it to be
21 printed using a different software, which I never got.

22 Q. All right, sir. And did you determine -- since
23 you never got it, did you find out that it's absolutely
24 impossible to do that, Mr. Scott?

25 A. No. They won't give up the software.

1 Q. Well, did you determine as a result of your
2 investigation that it was impossible to do that, with any
3 software, via an affidavit from somebody? Didn't you see
4 that affidavit?

5 A. I don't recall seeing that. If you would like
6 to show it to me, I would be happy to look at it.

7 Q. All right. So you just don't remember today
8 whether you ever saw that; is that right, sir?

9 A. That's what I say. If you would like to show it
10 to me, I would be happy to look at it.

11 Q. You didn't inspect the engine, did you, sir?

12 A. No. I wasn't there.

13 Q. Okay. And your belief that Mr. Cummings, Calvin
14 Cummings, did not violate a rule by not putting the train
15 into emergency first is based solely on the fact that he
16 was on the same side of the engine as the car came from;
17 isn't that right, sir?

18 A. Well, that's correct. Like I said, if he's
19 keeping the proper lookout, he's going to have the best
20 opportunity to see the car. It's on his side.

21 Q. And you saw that he actually tried to place the
22 train into emergency, didn't you, sir?

23 A. He stated that he did. But that was after the
24 engineer had already done so.

25 Q. Let's talk about some of the work that you did

1 not do in this case. You did not examine the driver
2 behavior at this crossing, did you, sir?

3 A. I don't do drivers; I do trains.

4 Q. I understand that. But the point is you didn't;
5 is that right, sir?

6 A. That's correct.

7 Q. You didn't actually perform any tests on this
8 locomotive, did you?

9 A. No, sir.

10 Q. You didn't perform any tests on the volume of
11 the whistle post from -- with a decibel-level meter or
12 motorist's -- from the motorist's view at the crossing,
13 did you, sir?

14 A. No, sir. That would be for someone else.

15 Q. All right. And you opined in your deposition to
16 us that you can hear that horn for two-and-a-half miles
17 out in front of it, didn't you, sir?

18 A. Out in front of it?

19 Q. Yes, sir.

20 A. I believe we were talking about behind it. We
21 were talking about flagging behind the train.

22 Q. That's right.

23 A. So if you can hear it two-and-a-half miles
24 behind it, then you certainly ought to be able to hear it
25 two-and-a-half miles in front of it.

1 Q. All right, sir. That's fine. I don't want to
2 be argumentative with you.

3 But let me ask you about that data table and
4 behind it.

5 MR. PURCELL: That reminds me of something. Can
6 we see that one more time?

7 Q. [Mr. Purcell] The indication here is -- and
8 this is not at all involved in this case, and I'm not
9 trying to mislead anybody, but the indication here is that
10 the -- excuse me one second.

11 [Whereupon, Mr. Purcell confers with counsel]

12 Q. [Mr. Purcell] I think I'm going to -- I think
13 I'm going to move on to something else, Mr. Scott.

14 The business that you have you mentioned was
15 Scott and Associates. That's you and your wife; right?

16 A. Correct.

17 Q. And you were hired in this case to look at the
18 train crew to find rule violations and infractions,
19 weren't you?

20 A. I was hired in the case to look to see if there
21 was any, yes. If I don't see any rules infraction that I
22 believe go to causation, you won't see me. I turn down
23 cases where I don't find any.

24 Q. Right. But that's why you were hired? to look
25 for train-crew rule violations and infractions; right,

1 sir?

2 A. Yes, sir.

3 Q. Now, you've been involved in other cases, for
4 plaintiffs, against railroads. As a matter of fact,
5 that's what the nature of your business is, isn't it?

6 A. Not necessarily plaintiffs. But it all --

7 Q. Well, it --

8 A. -- involves --

9 Q. I'm sorry. Go ahead.

10 A. It all involves railroads, yes.

11 Q. Yes. And --

12 A. That's what I do.

13 Q. And testifying against railroads --

14 A. Well, not --

15 Q. -- one way or another?

16 A. Not necessary against railroads. I was hired by
17 CSX, in 2003, in an FELA case. So, no.

18 Q. And your testimony is primarily ninety-five
19 percent against railroads, isn't it, Mr. Scott?

20 A. Ninety-five percent against railroads?

21 Q. Yes, sir.

22 A. Probably.

23 Q. Okay. And you charge \$200 an hour, I believe?

24 Or is it more now?

25 A. No, no. The corporation charges \$200 an hour.

1 That's correct.

2 Q. All right, sir. And you testify with Dr.
3 Heathington [different pronunciation], in tandem, many
4 times, don't you?

5 A. Dr. Heathington I do, yes.

6 Q. I beg your pardon. Dr. Heathington. I'm sorry.
7 And you testify in the same cases, you and Dr.
8 Heathington; right?

9 A. Sometimes, yes.

10 Q. And he gets you involved and you get him
11 involved in cases, don't you?

12 A. Occasionally, yes.

13 Q. All right, sir. Now, you will agree with me
14 that there are certain things the crew did right, didn't
15 they?

16 A. I would have to think about that for a while. I
17 don't think of anything.

18 Q. Well, let's see. They were positioned in the
19 right place, they had the light on, the bell was ringing
20 when the horn was sounding. We can agree on all those
21 things, can't we, Mr. Scott?

22 A. Sure.

23 Q. And if the stopping point was as pointed out by
24 Chief Hagy, you don't really have any criticism of the
25 crew, do you?

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1 A. We've already been over that. I do. We've
2 talked about the emergency brake.

3 Q. Well, we'll let -- your videotape will speak for
4 itself. Excuse me just one minute.

5 A. All right.

6 [Whereupon, Mr. Purcell and counsel confer]

7 MR. PURCELL: Your Honor, we have a matter we
8 need the Court's direction on before we decide whether
9 we are concluding our cross-examination.

10 [Whereupon, an off-the-record bench conference
11 is held]

12 THE COURT: Ladies and gentlemen of the jury, at
13 this time I need to take up a brief matter of law with
14 the attorneys. I'm going to send you back to your jury
15 room. Again, do not begin discussing this case. It
16 wouldn't be appropriate to do so at this time. We will
17 bring you back very shortly. All right? Thank you.

18 [Whereupon, the jury exits the courtroom at
19 12:23 p.m.]

20 THE COURT: All right. Yes, sir?

21 MR. PURCELL: Your Honor, at this point I guess
22 we need to know whether Mr. Parker is going to pursue
23 his claim of punitive damages, based on the violation
24 of the whistle statute and horn rule, on CSX.

25 MR. PARKER: We won't.

1 THE COURT: Thank you, sir. If you will just
2 spell your last name for the court reporter.

3 [Whereupon, the witness takes the witness stand]

4 THE WITNESS: Yes. My name is David Lipscomb,
5 L-I-P-S-C-O-M-B.

6 - - - - -
7 DAVID LIPSCOMB, Ph.D.,

8 Having Been First Duly Sworn,,
9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MR. PARKER:

12 Q. [Mr. Parker] Dr. Lipscomb, where do you live?

13 A. My home is in Stanwood, Washington.

14 Q. And what do you do for your career? What have
15 you done for your career?

16 A. I've gotten in a lot of trouble, I guess, but
17 it's been academic trouble. I taught for any number of
18 years at the University of Tennessee, almost twenty-five
19 years. And since 1988, I have served as a consultant. I
20 call it consulting audiologist, a specialist in the study
21 of the ear and hearing.

22 Q. Is that what you taught at the University of
23 Tennessee?

24 A. Yes.

25 Q. And you have a doctorate in audiology?

1 A. I do.

2 Q. And audiology is --

3 A. It's actually a doctorate in hearing science.

4 Q. And is that the study of the science of sound?

5 A. Yes. Sound, anatomy and physiology of the ear,
6 physical medicine and rehabilitation, a number of
7 different subsets that we call audiology.

8 Q. And have you studied the effectiveness of
9 locomotive horns as relates to people in automobiles?

10 A. I have for quite a while, yes.

11 Q. And have you written on that subject?

12 A. I'm sorry?

13 Q. Have you written any papers on that subject?

14 A. I have. A number.

15 Q. And how did you get your interest in audiology?

16 A. Well, I've had hearing loss all my life --
17 that's why I'll be asking you to repeat every now and then
18 -- so I guess that interest always drove me to the
19 specialty of studying the ear. And unlike a lot of
20 people, I can appreciate what individuals go through when
21 they do have a hearing impairment, and I think it makes me
22 a little bit more effective in many different ways.

23 Q. If you will just give us a brief synopsis of how
24 sound works and what your ear is doing and how we hear
25 things. I know we all know we hear things, but we may not

1 know the physics of it. If you would just give us a brief
2 description of that.

3 A. Sound is created by the generation of
4 vibrations. When I do that [indicates], the wood begins
5 to vibrate, and it translates that vibration to the
6 particles in the atmosphere. And when it travels, it
7 travels as an expanding sphere and will continue to do
8 that until it encounters an obstacle, and then it will
9 bounce off of that obstacle or be absorbed by absorbing
10 material and then ultimately will make its way to the ear.

11 Then when the sound strikes the ear, it goes
12 into the inner -- or the external canal and sets the
13 eardrum head in motion. And it, in turn, moves three tiny
14 bones, the three smallest bones and hardest bones in the
15 body. And then a piston-like motion starts with that
16 third bone, and as it rocks in and out of its place, it
17 sets fluid in motion. And there's a -- what we call a
18 pneumatic relationship between this oval-shaped driving
19 piston. And then there is a membrane so -- because this
20 is incompressible fluid in the inner ear. When that
21 pushes in, that membrane bulges out. So they go this way,
22 allowing for the stimulation of some of -- in the human,
23 16,000 sensory hair cells that are located in the inner
24 ear. They then translate that vibratory motion into a
25 neurologic signal, and the neurologic signal goes to the

1 brain. The brain gives it meaning.

2 Q. It sounds like it --

3 A. I just taught a graduate level course in just a
4 couple of minutes.

5 Q. And it sounds like that all takes a long time.
6 But it's instantaneous, almost, that that all occurs?

7 A. I'm sorry?

8 Q. I said it sounds like it takes a long time for
9 all of that to occur, but it's really in an instant?

10 A. It actually happens in virtually no time. Of
11 course, the longest duration usually is in transporting
12 the sound from the source to the ear, because sound moves
13 relative -- compared to light, moves relatively slowly; at
14 sea level, about 1,100 feet per second. That's why if
15 you're sitting in a football stadium and the punter kicks
16 the ball, you hear the thump maybe half a second or a
17 second later, because it takes that kind of time for that
18 sound to reach your ear.

19 Once its reaches your ear, it takes about a
20 thousandth of a second to go and do all of those things I
21 said the ear did in order to start a nerve action. Then
22 it may take as long as three-hundred-thousandth of a
23 ear -- of a second to get to the brain and to give it some
24 meaning.

25 Q. And we'll be talking about, in your testimony,

1 decibels. What are decibels?

2 A. A decibel is one of the units that we use in
3 acoustics. You've probably heard the term decibel. And
4 it's one-tenth of a unit, a larger unit, that was named
5 after Alexander Graham Bell. That's why we have it
6 capitalized, little d, large B.

7 And so then we -- the decibel is a descriptor of
8 the amplitude or the energy behind the sound. And then
9 the -- when we use decibels, the larger the number the
10 louder you would perceive that sound to be. So if a
11 person is speaking softly, let's say at forty decibels,
12 and then shouts at forty -- at eighty decibels, you
13 perceive that loudness change as the numbers of decibels
14 increase.

15 Q. And you also in your testimony will refer to
16 noise-to-signal ratio. Is that one of the terms you use,
17 and --

18 A. Yes.

19 Q. -- what is that?

20 A. Yes. That's ultimately what I'm trying to find
21 when I'm investigating one of these kinds of situations
22 where we want to determine at what level or at what time
23 prior to impact, for example, we would have expected an
24 individual to have heard the sound. And the requirement
25 is for the sound to be a certain amount louder than the

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1 background sound because if it's occurring at a softer
2 level, it's either not perceived or not attention-
3 grabbing. It doesn't cause the individual to be aware of
4 the presence of that sound, even though it's a warning
5 sound.

6 Q. Can you give us some examples of the masking
7 sounds and --

8 A. I'm sorry?

9 Q. Some things in our lives that we may encounter
10 whereby we experience masking.

11 A. Okay. You've all had the experience when you're
12 talking to somebody and a loud truck goes by or a bus goes
13 by or an airplane goes over and you may have to stop
14 talking until that sound passes. Then your hearing has
15 just been masked. It is the covering up of one sound by
16 yet another.

17 Q. The sound waves reaching your ear would be the
18 same from whatever you were receiving, but the -- how does
19 that work, that the brain is not able to determine the
20 difference?

21 A. Well, the ear is terrific in the way that it
22 perceives and receives ears -- sound. And it actually
23 encodes, or develops a code, in the nerve-fiber firings in
24 order to help the brain separate between a sound. So if I
25 say tree, you have a mental picture of one or more trees.

1 If I mention somebody's name, like Abraham Lincoln, then
2 you get a mental picture almost immediately, certainly
3 within a third of a second of that sound reaching your
4 ear. And if there are competing sounds, you may or may
5 not perceive what both of those sounds are. And if the
6 competing sounds have the same sound quality -- we call it
7 spectrum, or the frequency or pitch range is essentially
8 the same -- the louder sound will dominate. And that's
9 why we talk about masking in this context.

10 Q. I asked you earlier and I don't think I let you
11 answer. But I asked you if you had written any books and
12 articles on this subject. And have you?

13 A. I have.

14 Q. And how many?

15 A. I think I have five books in print and fifty or
16 more technical professional articles and sixty to seventy-
17 five nontechnical types of articles. Because noise is a
18 popular subject. I'm every now and then invited to write
19 an article for the Intelligent Layman, or for school
20 groups, or something like that. So my writings go all the
21 way from writing for my colleagues, which would be at a
22 more technical level, to individuals who are wanting to
23 learn more about noise at a less technical level.

24 Q. And I asked you in this case to look at the
25 vehicle and locomotive and circumstances of the collision

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1 of February the 3rd, 2004, to determine when the
2 passengers, and Ms. Colvin, in particular, would be able
3 to be alerted by the locomotive horn.

4 A. Yes.

5 Q. And have you done that in the past?

6 A. I have. This is probably the three-hundredth or
7 more case that I have investigated and done some range of
8 testing and/or perhaps testimony.

9 Q. And would you describe the methodology you used
10 to do that.

11 A. Yes. You need three bits of information. You
12 need to know the sound level, in decibels, of the warning
13 sound. In this case it would be a train horn. So,
14 oftentimes, sound measures are taken using our specialized
15 equipment to determine in decibels the sound level of the
16 horn from a given distance. And that would be the first
17 characteristic. The second is if you're dealing with an
18 automobile, you want to know what does the shell of that
19 vehicle do to resist the sound entering the automobile.
20 So we call that the sound attenuation, or sometimes the
21 acoustic displacement. So we have the first being a sound
22 level striking the automobile; the second the reduction of
23 the sound by the automobile. And the third factor is this
24 masking noise, because as the automobile is operating it
25 creates noise. And depending upon the speed, depending

1 upon the automobile, depending upon the characteristics of
2 that automobile, depending upon the road type and quality,
3 that competing sound may be relatively high in decibel
4 level. So each one of these characteristics is quantified
5 in decibels.

6 Q. And if you will explain the criteria that you
7 use for determining whether or not a sound will be
8 alerting.

9 A. Remember I mentioned that it's necessary for a
10 sound to be attention-grabbing. And so the signal-to-
11 noise ratio is the final bit of information that we employ
12 in our analysis. We want to know in decibels, at a
13 particular time or from a particular distance, what the
14 relationship was between the masking noise which is trying
15 to cover up the sound, the warning sound, and that warning
16 sound. Because what's happening is you have an operating
17 noise or a masking sound, and the warning sound is trying
18 to make its way through and reach a level that finally an
19 individual will say, there's a train horn, or there's a
20 siren, or there's a warning shout. It could be -- the
21 same principles are operating, regardless of what type of
22 sound or what type of warning is going on.

23 Q. Let me hand you Exhibit 155. Is this a summary
24 of the criteria levels for warning from sound?

25 A. Yes.

1 MR. PARKER: And let's put that up, if you will.

2 And if you would blow it up there, Felicia.

3 Q. [Mr. Parker] And if you would just go through
4 and explain to the jury what Exhibit 155 is.

5 THE WITNESS: Would it be all right if I --

6 MR. PARKER: Step down, sir.

7 THE WITNESS: -- stand there and I can use a
8 pointer. I have one.

9 May I, Your Honor?

10 THE COURT: Yes, sir.

11 A. There are a lot of different ideas of how much
12 it takes in order to provide an individual an appropriate
13 warning, and so what this little sheet is trying to
14 portray is the fact that there is a range of these
15 criteria. And I'll let you know what mine is so you can
16 see that it's one of the more conservative.

17 There is a group that said that most people
18 would be alerted by a fire siren if it is nine decibels
19 above the level of the competing noise. So let's -- say
20 this is nine decibels. And that is about a doubling of
21 the loudness that you perceive. It's a ten-fold increase
22 in the sound energy. It's a pretty significant amount of
23 sound. Below that level, in all likelihood an individual
24 might in retrospect say, oh, yeah, you know, I did hear
25 that, but it did not cause them to abandon visual activity

1 and pay attention to what's going on with the hearing.
2 That's the big question.

3 Another fellow, Dr. Mortimer, suggested ten to
4 twelve signal-to-noise ratio -- with the signal always
5 being higher in sound level when you have a plus in front
6 of the signal.

7 Dr. Fidel, a colleague actually of these
8 gentlemen here, in the same year, in 1978, said that
9 something greater than ten decibels was required. He also
10 pointed that it would be ten decibels higher than perfect
11 detection. Detection of sound is when you just barely
12 hear it. You don't recognize it, but you know there's a
13 sound there and then the louder the sound becomes to you,
14 the more easily recognizable it becomes. So he's really
15 saying fourteen decibel signal-to-noise ratio.

16 The International Organization of Standards --
17 you may have heard of ISO -- says for tones, fifteen
18 decibels; and for wide band, that is sound like a
19 waterfall or something like that, or a train horn, ten
20 decibels; and a real narrow band of sound, kind of like
21 what you might get with kind of a squeaky toy, it would be
22 thirteen decibels.

23 See how these numbers are kind of increasing?
24 Another group said fifteen; another man with whom I am
25 acquainted said sixteen; colleagues in Denver, Colorado,

1 said fifteen to twenty-five decibel signal-to-noise ratio
2 is the most desirable.

3 The railroads use an item called an alerter.
4 This is something to test periodically that the crew is
5 alert, awake, and paying attention to what they're doing.
6 Periodically, this equipment begins to emit a sound and it
7 gets increasingly louder until they make an appropriate
8 adjustment in their operating equipment: maybe changing
9 the throttle level or something like that. And that is at
10 a twenty decibel signal-to-noise ratio.

11 And the U.S. Department of Defense advocates a
12 twenty decibel signal-to-noise ratio. This is for cockpit
13 warnings for pilots, or for patient monitors. You may be
14 sitting in an airplane and every once in a while you'll
15 hear a bong, bong, bong, bong kind of sound or a shrill
16 squeal. And what they're doing is they are testing their
17 equipment. And it is designed to be twenty decibels
18 higher than the background sound.

19 Then there are others who, for reasons I don't
20 quite understand, feel that a negative signal-to-noise
21 ratio is appropriate. But they are way out of bounds, as
22 far as what the literature shows.

23 So that's the range, and that's the purpose to
24 show this to you. I use a more conservative level --

25 Q. [Mr. Parker] Let me ask you about the alert --

1 A. I'm sorry.

2 Q. -- while this is up here and before we go to
3 that.

4 You talked a little bit about the alert on the
5 locomotive. And if you will just explain that a little
6 more, since we have this up here.

7 A. Right. This is just simply a description. You
8 see that I've got the two asterisks. And what it's
9 intended to show is that the alerter will reach a sound
10 level in the locomotive cab of a hundred-and-ten decibels.
11 And usually the operating mechanical noise is ninety
12 decibels or less. So the hundred-and-ten to ninety is a
13 plus-twenty signal-to-noise ratio. And so that's my
14 reason for showing this, because it, too, is an
15 appropriate criterion.

16 Q. And go forward. You were talking about the
17 noise-to-signal ratio and your choice of what you use, the
18 nine to ten decibels.

19 A. I do. I use the nine- to ten-decibel
20 signal-to-noise ratio, which is actually on the two lowest
21 that are on my chart. I've used those for -- since
22 actually before 1978, but certainly since. And I think
23 that that gives me a reasonable and conservative
24 indication of individuals -- the likelihood of an
25 individual being alerted by an acoustical warning sound.

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1 This is with no -- without any necessary visual side
2 effect, only the ear and hearing.

3 Q. I'm next going to ask you to look at 155-A. And
4 is 155-A a summary of tests that you did on an Explorer to
5 determine whether or not the -- in this case the
6 locomotive horn warned or alerted the -- particularly
7 Tonya Colvin?

8 A. Yes. That -- oh. I'm sorry.

9 Q. Go ahead.

10 A. Excuse me. I interrupted you.

11 Q. Go right ahead.

12 A. That's the problem working with a southerner,
13 because you talk a little slower and I get a little bit
14 anxious I guess.

15 Q. I'll speed up.

16 A. At any rate --

17 THE WITNESS: Could we have that next -- there
18 we go.

19 A. The question was raised since we don't know
20 without contradiction or without equivocation exactly the
21 settings of the windows, our best knowledge is that the
22 passenger's window was closed and that the driver's window
23 in this Ford Explorer that was hit at the crossing, the
24 subject of our all being here today, was open about an
25 inch. That's the best information we have. But in case

1 there were slightly different settings, I was asked to
2 consider a number of different scenarios.

3 So number one was when all windows were closed,
4 the sound isolation was measured to be 26.3 decibels.
5 Don't worry about what that means; just remember that
6 that's going to be a comparative number. And I obtained
7 that by measuring the sound of a horn -- not a train horn,
8 a car horn -- that strikes the shell of a Ford Explorer,
9 and then I measure the sound level inside in decibels.
10 And the difference between the sound striking the Ford,
11 and the sound I measured inside with all windows closed is
12 then the sound isolation. And so I measured it to be 26.3
13 dBa. dBa, the a means that the equipment is set to be
14 kind of like the response of a human ear.

15 Q. [Mr. Parker] That was with all windows closed
16 first?

17 A. I'm sorry?

18 Q. First condition: all windows closed?

19 A. All windows were closed. That's what this W/C.
20 It doesn't mean water closet, if you've been in Europe.

21 A second condition, the driver's window was
22 open, the passenger's window was closed. It was almost
23 identical, even though the driver's window was open a
24 little bit. And that's probably because the sound
25 originated over to the right. That's the direction from

1 which the train was coming. So when you've got the window
2 open in your vehicle -- and a sound from the right would
3 have to come and actually back up and come into the
4 window. That's really pretty difficult, physically,
5 because as I said, sound continues to expand and it wants
6 to keep going that direction.

7 Then I left the passenger window closed, opened
8 the driver's window one-and-a-half inches, as I measured,
9 and I got about the same, 25.4. Actually, strangely a
10 little bit less transmission.

11 The fourth condition, I opened the driver's
12 window two inches and got actually more sound isolation
13 than I did when the window was opened less. Well, that's
14 a measurement variability. We know that can't happen.
15 It's just that this type of measurement is not going to be
16 one-hundred percent accurate. We need to look at and
17 consider what the ramifications are and what these
18 variabilities mean.

19 And finally I opened -- left the driver's window
20 open one-and-a-half inches, opened the passenger window a
21 quarter of an inch, and got the least sound isolation,
22 23.9.

23 So if you look at the lowest and the highest,
24 the difference is only 3.3 decibels. And that would be
25 imperceptible to most people. For most normally-hearing

1 people at these levels, the difference would have to be in
2 the range of four or five decibels in order for a person
3 to say, hey, that's louder or that's softer. So we see
4 that even though there was some variability as far as our
5 purposes are concerned it was of no import.

6 Q. [Mr. Parker] And did you use this -- these
7 measurements to determine what alerting -- whether or not
8 Ms. Tonya Colvin would have been alerted to the locomotive
9 horn on February 3rd, 2004?

10 A. I did.

11 MR. PARKER: And if you will, I'm going to put
12 up 155-B.

13 Q. [Mr. Parker] And explain what you did.

14 A. The alerting analysis simply means putting
15 together those three factors that I listed. When the
16 locomotive was a distance of a hundred feet, or the -- and
17 these were measures that were actually taken. And I took
18 a sound measure and got 101.2. The gentleman who was
19 working with the railroad took the identical measure and
20 the identical circumstances and got slightly more than a
21 decibel higher. So as I've mentioned, that's
22 inconsequential. It really isn't significant.

23 Q. Let me ask you: in this case did you use a horn
24 measurement from another locomotive and horn?

25 A. I did. I did. We did not -- because we already

1 had some sound measures on the incident locomotive, it did
2 not seem practical to go to the time and expense of re-
3 testing, knowing that that measure is going to come out
4 virtually the same as the one that I used.

5 Q. And the -- I think you said that the audiologist
6 or sound expert hired by the railroad came out virtually
7 the same thing testing the locomotive?

8 A. He did. He got -- I think he got 102.8. So
9 there's about a decibel and a half difference.

10 Q. And would that be of any significance?

11 A.. That would be inconsequential.

12 Q. All right. Go on.

13 A. So then I took the sound that was striking the
14 vehicle, subtracted the sound isolation of the vehicle
15 that came from the previous chart under the conditions
16 where the window was open one inch on the driver's side
17 and closed on the passenger's side, and then I simply took
18 that 26.4 decibels and subtracted it from the sound level
19 of the horn as it struck the car, and then I got a number
20 of 74.8 decibels.

21 Now, remember, this is from a hundred feet. And
22 the farther you get away from or the closer you get to a
23 sound source, either the softer it is going to sound or
24 the louder it's going to sound. So I got the 74.8
25 decibels, which is the sound of the horn inside the

1 vehicle at the driver's ear. And then this masking or
2 competing noise, the 64.7 decibels that I measured as a
3 Ford Explorer was accelerating to ten miles an hour, I
4 found that the difference between them was plus 10.1
5 decibel signal-to-noise.

6 And so the interpretation with the criteria I
7 used would be at that distance. A hundred feet from the
8 point of impact, or the locomotive, I would have expected
9 the driver to have been alert.

10 Q. At 200 feet how long would it take for the
11 locomotive at 100 feet to get to the crossing in seconds?

12 A. It would take a little over three seconds.

13 Q. And so the -- in your analysis, the first time
14 that Ms. Colvin could have heard the -- possibly be
15 alerted by this was approximately three seconds prior to
16 the collision? or less?

17 A. It would be less than three seconds, closer to
18 two. In fact, maybe even less than two seconds, because
19 the speed of the locomotive was forty-two miles an hour
20 and that means it's about sixty-one feet per second. So
21 that's slightly over a second and a half at which point
22 this threshold of alerting was just met.

23 So my calculations and my analysis cause me to
24 conclude that the driver of that Ford Explorer had about
25 one-and-a-half, no more than two, seconds of alerting

1 time.

2 Q. And tell us again: the sound isolation of the
3 vehicle is the amount of sound lost as the sound is coming
4 into the vehicle?

5 A. That's correct. For example, if your kids are
6 playing or your little brother is playing in the next room
7 and you can't hear your music or what you're trying to
8 listen to, then what you do is just say, Johnny, shut that
9 door. Okay. All of a sudden, what you have done is you
10 have isolated your space from that other sound-producing
11 source.

12 And so that's exactly what we're talking about
13 here where you are inside of an enclosed car and you're
14 trying to hear -- or a sound is trying to get into your
15 ear such that it's going to cause you to make some kind of
16 a response.

17 Q. And you also did an analysis at 200 feet?

18 A. I did.

19 Q. And what did you find there?

20 A. Well, I found that the criterion was not met.
21 Remember, we're using a nine- or ten-decibel signal-to-
22 noise criterion. So when the locomotive was 200 feet
23 away, from an auditory and acoustical standpoint the
24 alerting would not be expected to occur.

25 Q. And for the locomotive to travel the 200 feet

1 would take how long?

2 A. A little over three seconds. Sixty-one feet a
3 second. So that would be in three seconds it would go
4 180. And so we know it's well inside of three seconds,
5 based on the analysis I've shown you.

6 Q. And is it well known that automobiles over time
7 have become much better in being soundproofed so that
8 outside noise does not come into the vehicle?

9 A. That was a move that began around in the '1960s.
10 And you maybe remember that Ford Motor had advertisements
11 with a sound level meter in their vehicle and they
12 compared their car with a Mercedes, and they showed the
13 Mercedes was noisier. Probably ran the Mercedes on
14 gravel. But it showed this difference, anyhow. And so
15 they are -- they touted the smoother, quieter ride.

16 So automobiles are among the best acoustically-
17 sealed spaces that you will find, much better than
18 virtually all hospitals, than virtually all schools,
19 homes, or other spaces, because there is a lot of
20 opportunity for noise to bother the occupants of the
21 vehicle.

22 Q. How about temporary courthouses? Is the Ford
23 Explorer better than the temporary courthouse in keeping
24 you from hearing the train?

25 A. This is a beaut. This is not a heavily

1 constructed space, so I've noticed that numerous outside
2 sounds are being heard even with the acoustic treatment of
3 the ceiling.

4 Q. And if we're sitting in here and we can hear the
5 train horn as it's going down the track, why is that
6 different from being in a vehicle?

7 A. Well, there are two or three reasons. One is
8 that the quality of the construction and the seal, the
9 acoustic seal, for a building like this is nothing like
10 what you get with an automobile. Also, you're sitting
11 in -- except for when I'm yammering, you're sitting in a
12 relatively quiet space whereas in the automobile, there's
13 a fair amount of noise. And you know that because as
14 you're driving along, you have to speak to each other and
15 raise the voice. And as a result, then you have an
16 advantage, in a quiet space like this, in hearing some
17 kind of a sound that occurs compared to probably a thirty
18 -- twenty- to thirty-decibel louder interior of an
19 automobile.

20 Q. The automobile, the sound that was being
21 produced that you picked up, that the horn -- the inside
22 sound operating level, what was producing that sound?

23 A. What was the vision?

24 Q. No. In the operating level of sound inside the
25 Explorer you tested, what was that noise coming from?

1 A. It was coming from any of a number of different
2 -- I remember working with Mr. Damian with Ford Motor
3 Company. He was working on quieting their vehicles;
4 trucks, and so on. He said there's close to a hundred
5 noise generators in a vehicle, especially a truck. And so
6 what you do is you try and quiet some of them, and it
7 raises -- it reduces the level. So just in general, you
8 have the engine noise, you have any interior noise that's
9 occurring, conversation, fan from the heater/
10 air-conditioner, any music or entertainment systems
11 that are occurring. Then you have the noises of the
12 road, tires on the road. If you're on gravel, it's
13 especially -- that's why I made that crack about Ford
14 probably ran the Mercedes on a gravel road, because when
15 you go on a gravel road, it's much more noisier.

16 So we have all of these noises that combine to
17 raise the competing or masking noise level for the
18 individual who's riding in the car.

19 Q. Now, have you worked on cases in which the event
20 recorder is recorded in -- rather than in one-tenth of a
21 second, one-second intervals, and looked to see if you can
22 determine whether or not an emergency horn was given with
23 that type of event recorder?

24 A. I don't even know how you can find that. I
25 don't know how you can assume that unless the individual

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1 sounded the horn, beep, beep, beep, which is what really
2 is prescribed for the so-called emergency signal. And
3 then you get an on-off, on-off, on-off. But a great
4 number of the event recorders have a one-tenth of a --
5 excuse me -- yeah, a tenth --

6 MR. WRAY: Your Honor --

7 A. -- of a second.

8 MR. WRAY: Excuse me.

9 THE COURT: Hold on a second, Dr. Lipscomb.

10 Just a moment, sir.

11 MR. WRAY: I'm sorry.

12 I object to the witness talking about the event
13 recorder and trying to interpret that. He was not
14 qualified in that area, and he didn't testify about
15 that previously.

16 [Whereupon, an off-the-record bench conference
17 is held]

18 Q. [Mr. Parker] Dr. Lipscomb, do you have an
19 opinion as to whether when you're recording the event
20 recorder on a locomotive records in one-second intervals,
21 if an emergency horn signal is given, the event recorder
22 will pick that up?

23 A. Yes. With the one-tenth of a second intervals
24 measured -- that is, ten measures per second -- then it's
25 called higher resolution. For example, you remember old

1 television -- maybe you don't remember those -- but they
2 were grainy. Or you see a poor photograph that's real
3 grainy. The resolution is not good. You can't make a
4 good -- you can't get a good image. But if you have a
5 higher resolution condition, whether it's with the event
6 recorder or visual photographic evidence or whatever, you
7 get a whole lot more information and more useful
8 information.

9 You really need -- in order to determine that a
10 horn was blown in this staccato fashion, you need this
11 higher resolution. And the low resolution, one-second-at-
12 a-time measure, just simply does not pick that up. And I
13 dare say the engineer can't push the button sounding the
14 horn at the rate that would give you two soundings per
15 second.

16 Q. In other words, you would see on the recording
17 of the one second whether or not it was blown or not
18 during that second?

19 A. Yes.

20 MR. PARKER: I don't have any other questions.

21 THE WITNESS: Was this one that you wanted,
22 Mr. Parker? Did you need this?

23 MR. PARKER: Yes.

24 We would offer into evidence, Your Honor, 155,
25 155-A and B.

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1 MR. WRAY: We object, Your Honor, to the
2 demonstratives. I don't believe they are jury
3 exhibits. It's certainly appropriate to use them with
4 the witness' testimony, to illustrate it, but I don't
5 believe documents created by Dr. Lipscomb are
6 appropriate jury exhibits.

7 THE COURT: Okay. Let's go ahead and
8 cross-examine him. We'll take that up during the
9 break.

10 MR. WRAY: Good afternoon, Dr. Lipscomb.

11 THE WITNESS: Good afternoon.

12 CROSS-EXAMINATION

13 BY MR. WRAY:

14 Q. You recall that you were deposed previously in
15 this case and gave some testimony about your opinions?

16 A. I did.

17 Q. And you told us at that time that your sole and
18 only opinion in this case was that Ms. Colvin would not
19 have been alerted by the locomotive horn until about one
20 to two seconds prior to the accident; is that correct?

21 A. That's correct.

22 Q. You did not have any opinions about what caused
23 the accident?

24 A. No.

25 Q. And you didn't have any opinions that the crew,

1 Mr. Cummings, and Mr. Wooden who is here with us, did
2 anything wrong to cause the accident; correct?

3 A. That was not my role. You're correct.

4 Q. You weren't aware of any violations of state
5 law; correct?

6 A. I was not.

7 Q. And you weren't aware of any violation of
8 federal law?

9 A. I was not.

10 Q. And when you say that Ms. Colvin would not have
11 been alerted to the horn until one to two seconds before
12 impact, I think you told Mr. Parker earlier that the train
13 would have been about 120 feet from the crossing at that
14 point?

15 A. Well, it would be 100 feet. That would be about
16 one-and-a-half -- or, actually, 1.6 seconds prior to
17 impact.

18 Q. And so at any point prior to that, according to
19 you she would not have been alerted to the presence of the
20 oncoming train? Is that what --

21 A. According to --

22 Q. -- you are saying?

23 A. -- my analysis. That's correct. I'm sorry I
24 interrupted.

25 Q. That's okay.

1 So when the train was at 500 feet, she wouldn't
2 have been alerted by it?

3 A. I would not expect that.

4 Q. Obviously, not at a thousand; correct?

5 A. That's correct.

6 Q. And it stands to reason at 1500, according to
7 you she wouldn't have been alerted by it?

8 A. That was my finding. That's correct.

9 Q. And you reached that opinion without ever
10 testing the actual locomotive horn on the train involved
11 in the accident; correct?

12 A. I did not.

13 Q. And that's something you have testified in other
14 cases is important to do in doing this analysis; isn't
15 that correct?

16 A. I have.

17 Q. And you reached your opinion without ever going
18 to the crossing; correct?

19 A. I went to the crossing yesterday, but the
20 opinion I was given before that. That's correct.

21 Q. It's fair to say you had rendered your opinions
22 in this case, but you had never been there; correct?

23 A. There was no change.

24 Q. And you say that, despite the fact that all the
25 people around Ms. Colvin testified they heard the

1 locomotive horn; correct?

2 A. That's correct.

3 MR. WRAY: If we could, can you pull up the
4 demonstrative from opening.

5 A. I think you said all the people around her?
6 Sir, I'm sorry. I had to back up. You said all the
7 people around her did not hear it. Mr. Terry said he did
8 not hear it. But there were other witnesses,
9 eyewitnesses, who did hear the horn. I wanted to clarify
10 that.

11 Q. [Mr. Wray] Sure.

12 You were provided with the testimony of Mr. Lon
13 Hoover. And he, in fact, testified here this morning;
14 correct?

15 A. Yes.

16 Q. And Mr. Hoover told the jury I believe he was on
17 Highway 68, and I think he said he was a quarter of a
18 mile, which isn't even really reflected on this diagram --
19 he was a quarter of a mile from the crossing, and he heard
20 the horn; correct?

21 A. Yes.

22 Q. And you were provided the deposition testimony
23 of Ms. Patricia Griffin, and she was actually a little bit
24 above what we're showing here -- at the Family Dollar
25 store -- and she said she heard the horn?

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1 A. That's correct.

2 Q. And the children in her car had become excited
3 and a little bit agitated because it was so loud and
4 blowing so long it was bothering them; correct?

5 A. That can be, yes.

6 Q. And so, obviously, they were alerted to it;
7 correct?

8 A. That's correct.

9 Q. And you had the testimony of Mr. Dusty Biser,
10 Larry Biser, and he said a couple of things. He said,
11 first, I was down here at Dixie Poly Drive, which was
12 several hundred feet from the crossing. He said he heard
13 it there; correct?

14 A. I think --

15 MR. PARKER: I object to that.

16 A. I think he did. I don't remember that
17 carefully.

18 MR. PARKER: I object to that. That's not an
19 accurate statement out of his deposition.

20 MR. WRAY: Well, Mr. Biser's testimony will
21 speak for itself.

22 Q. [Mr. Wray] And he also said he pulled up here
23 behind Ms. Colvin at the crossing right before the
24 accident; correct?

25 A. Yes.

1 Q. And he heard the locomotive horn there --
2 positioned behind her -- correct?

3 A. That's correct.

4 Q. Now, I was curious about one thing you said
5 earlier. I believe you said on direct that the best
6 information we have is that the passenger window was
7 closed in Ms. Colvin's vehicle. Is that what you said?

8 A. Yes.

9 Q. Now, that's different than what you told us when
10 we took your deposition, isn't it?

11 A. I was under the impression that it was a
12 passenger window that was opened one inch. That's why I
13 tested it that way initially.

14 Q. That's right. And when we asked you that
15 question at your deposition, and you knew you were being
16 asked to render opinions in this case, you knew it was
17 important to determine whether any of the windows on Ms.
18 Colvin's car were open or closed, didn't you, sir?

19 A. Yes. I was confident that was the circumstance.

20 Q. And what you told us was the information you had
21 was that the passenger-side window was down about an inch;
22 correct?

23 A. That's right.

24 MR. WRAY: Would you mind putting up 155-A that
25 you-all used? I'm sorry. I'm -- is that 155-A?

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1 MS. GERRARD: That's 155-A.

2 MR. WRAY: Oh, yeah. I see.

3 Q. [Mr. Wray] Now, despite having told us that at
4 your deposition, that the best information you had was
5 that the passenger-side window was down one inch, the
6 first test you did was with no windows down at all;
7 correct? All windows closed?

8 A. On that latest test. That's correct.

9 Q. All right. The second test you did that you
10 told the jury about was the driver's window was -- was the
11 driver window down an inch and the passenger window
12 closed? Is that what that's showing?

13 A. That's correct.

14 Q. All right. Third test, passenger window still
15 closed; correct

16 A. That's correct.

17 Q. Fourth test, passenger window still closed;
18 correct?

19 A. Yes.

20 Q. And the fifth test you did crack the window, but
21 you didn't do it the inch you told us before. You cracked
22 it a quarter inch; correct?

23 A. That's correct.

24 Q. And you told the jury earlier that when you
25 cracked it a quarter inch, that's when you got your best

1 result; correct?

2 A. That's when there was the least -- that's
3 correct -- the least interference.

4 MR. WRAY: You can take it down. Thank you.

5 Q. [Mr. Wray] But you would agree with me, Dr.
6 Lipscomb, wouldn't you, that if what you say is true, that
7 she wouldn't have heard it until one or two seconds before
8 impact, then it really doesn't matter when the train horn
9 was first blown in terms of how this accident occurred;
10 correct?

11 A. In terms of this accident, that's correct. If
12 it's not blown properly, then it's still a violation. And
13 that's not my bailiwick. But in this particular
14 circumstance, the conditions just preceding impact than --
15 from farther out than 100, 120 feet, would be of no
16 consequence in this particular set of circumstances.

17 Q. In fact, according to you, it really wouldn't
18 matter if it was blown at all because she wouldn't have
19 heard it in time to do anything about it; isn't that
20 right?

21 A. I wouldn't believe that, and my reason for that
22 is that she said she heard the horn, stomped on it, and
23 may have saved their lives because she did move out and
24 she was clipped on the back instead of being T-boned.

25 Q. And it doesn't matter what pattern the horn was

1 blown in, according to you, as to whether this accident
2 would have occurred; is that correct?

3 A. I don't think I would agree with that, either.

4 MR. WRAY: If we could, could -- would you pull
5 up page 146, please, from the deposition.

6 Q. [Mr. Wray] Dr. Lipscomb, you do recall being
7 deposed previously and testifying under oath? Do you
8 recall that?

9 A. I do.

10 MR. WRAY: And if we look at line 16, please.
11 Will you blow that up, please.

12 Q. [Mr. Wray] The question was: [reading] then it
13 really doesn't matter when the horn was first blown or how
14 it was first blown or what pattern it was blown in,
15 because it's your opinion that they could not have heard
16 that horn more than two seconds prior to impact.

17 And you said: [reading] been alerted by the
18 horn.

19 Question was: [reading] been alerted to the
20 horn; is that correct.

21 Your answer was: [reading] yes. I think that's
22 a fair statement.

23 Correct?

24 A. That's what I said.

25 Q. Now, you would agree with me that a motorist at

1 a crossing has a duty to stop, look, and listen for a
2 train; correct?

3 A. Yes.

4 Q. And you've always said in other cases that the
5 driver should look both ways to make sure a train is not
6 coming?

7 A. That's correct. Yes. That's certainly what I
8 would do. I'm not an operations -- a vehicle-driver
9 expert, but I can only relate to what I do as a vehicle
10 operator.

11 Q. And you said that if the driver pulls up and she
12 can't see, she should roll the window down; correct?

13 A. That's what I do.

14 Q. And if they've got the radio on, they should
15 turn the radio off or down; correct?

16 A. That's what I do.

17 Q. And you're aware in this case Ms. Colvin's
18 boyfriend had just had a new stereo system installed in
19 their vehicle; correct?

20 A. Yes.

21 Q. Now, you've worked with Mr. Parker on a number
22 of cases, I believe?

23 A. A few, yes.

24 Q. Testified many times against CSX, in fact,
25 haven't you?

1 A. I testify at the request of my client, rather
2 than against anybody --

3 Q. Well, I'm not trying --

4 A. -- but CSX has been the defendant, yes, on some
5 of the cases.

6 Q. I'm not trying to trick you.

7 You have testified in cases where CSX was a
8 defendant; correct?

9 A. That's correct.

10 Q. And in those same cases, Mr. Scott and Mr.
11 Heathington, who we've heard from in this case, they
12 testified right along with you; correct?

13 A. Well, not right along with me, but, yes, we are
14 colleagues and we have been a part of this.

15 MR. WRAY: Thank you very much, Dr. Lipscomb.

16 THE WITNESS: Thank you.

17 REDIRECT EXAMINATION

18 BY MR. PARKER:

19 Q. Dr. Lipscomb, the deposition testimony that was
20 put up there, was that -- he led from a question: did it
21 make any difference about the emergency horn pattern. Was
22 that question asking about an emergency horn pattern?

23 MR. WRAY: Your Honor, I object to the
24 characterization of the question. If they want to put
25 it back up, they certainly can.

1 MR. PARKER: Well, if I can read it.

2 Q. [Mr. Parker] It said when the horn was first
3 blown.

4 How far away was the horn when it was first
5 blown?

6 A. It was about 1,000 feet, I believe.

7 Q. Would you be giving an emergency-horn pattern in
8 this case at 1,000 feet?

9 A. At that distance, it would not have been
10 alerting; however, it would just about double the duration
11 of time. This is something that I have worked on
12 recently. It would just about double the duration of,
13 let's call it the escape window, for an individual because
14 it takes less sound to alert a person if it's an
15 interrupted sound, just like a flashing light or a
16 vibrating buzzer like on your cell phone.

17 Q. And the closer the locomotive gets to the
18 crossing, would the more alerting it be?

19 A. It would be.

20 Q. And Mr. Wray asked you about the conditions
21 under which this collision happened and the condition of
22 the windows. You understand now that the driver's window
23 was down an inch -- from an inch to two inches, and
24 possibly the -- most probably the passenger window was
25 closed?

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1 A. That's my current understanding, yes.

2 Q. And do you understand that Dr. Manning, CSX's
3 expert, determined that the passenger window was closed?

4 A. That was one of my sources, yes.

5 Q. Now, there was -- he asked you about the other
6 witnesses that heard the train locomotive horn?

7 A. Yes.

8 Q. Were they in a similar condition as Ms. Colvin?

9 A. They were not.

10 Q. And what is the difference in why they would
11 hear it and she would not?

12 A. Well, their position, for one thing. The type
13 of vehicle they had could have been a little more leaky.
14 All the people who said they heard the -- acoustically
15 leaky. All the people who said they heard the horn had
16 their windows fully open.

17 Q. And if you have your full -- the windows fully
18 open, how much difference does that make?

19 A. Well, it can make anywhere from ten to twenty
20 decibels of difference, depending on the vehicle.

21 MR. PARKER: I don't have anything further.

22 MR. WRAY: Dr. Lipscomb, again, I don't want to
23 be confusing.

24 Can we put up page 111, please.

25

- - -

RECROSS-EXAMINATION

BY MR. WRAY:

Q. You told the jury a moment ago in response to Mr. Parker's question that all these other people that heard the horn, they were in a much different position, I think you said.

A. That's correct.

Q. And I would agree with you Mr. Hoover was in a much different position. He was a quarter mile back before the crossing. He was much farther away; correct?

A. Correct.

Q. Mr. Biser, he was right behind; correct?

A. Correct.

Q. Do you recall being asked at your deposition about what Mr. Biser said about his windows?

The question was: [reading] how far were his windows -- how far his windows were open.

Answer, you said: [reading] for the fourth time, he said his windows were open.

[Reading] Question: do you know how much they were open.

Answer: all he said is, my windows were open.

Question: okay.

Answer: I can give you his words. I think he thinks his windows were open a little.

1 Correct?

2 A. Yes.

3 Q. So when you told Mr. Parker a minute ago that he
4 said his windows were all the way down, that was
5 incorrect, wasn't it, sir?

6 A. Oh. Well, I had forgotten about that feature.
7 You're right.

8 MR. WRAY: Thank you, sir.

9 MR. PARKER: Nothing further.

10 THE COURT: All right. Can Dr. Lipscomb be
11 excused, y'all?

12 MR. PARKER: He may.

13 THE COURT: All right, sir. You may be excused.
14 Thank you, sir.

15 THE WITNESS: Thank you very much.

16 THE COURT: Thank you, sir.

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

19 THE COURT: All right. Ladies and gentlemen of
20 the jury, I think now is a good time to take a break.

21 Again, do not begin discussing this case. It
22 wouldn't be inappropriate to do so.

23 We'll be back with you shortly, ladies and
24 gentlemen. Go refresh yourselves, and we will return.

25 [Whereupon, the jury exits the courtroom at

1 Griffin.

2 THE COURT: All right. Thank you, sir.

3 [Whereupon, Ms. Griffin enters the courtroom]

4 THE COURT: Ms. Griffin, if you will please come
5 forward, ma'am, over here. Thank you. Just come right
6 up here, if you would, ma'am. You're going to end up
7 taking a seat right here next to me.

8 If you would, ma'am, raise your right hand and
9 place your left hand on the Bible for me.

10 [Whereupon, Ms. Griffin is duly sworn by the
11 Court]

12 THE COURT: Thank you, ma'am. You may go ahead
13 and take a seat.

14 [Whereupon, Ms. Griffin takes the witness stand]

15 THE COURT: If you would just give us your full
16 name for the record.

17 THE WITNESS: Patricia Ann Griffin.

18 - - - - -

19 PATRICIA A. GRIFFIN,

20 Having Been First Duly Sworn,,

21 was Examined and Testified as Follows:

22 DIRECT EXAMINATION

23 BY MR. DETRICK:

24 Q. Ms. Griffin, where do you live?

25 A. I live in Early Branch, South Carolina.

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1 Q. And as far as -- where in the Early Branch area
2 do you live?

3 A. On Ridge Cut Road. 951 Ridge Cut Road.

4 Q. Okay. And you've lived there all your life?

5 A. No, sir. I was born in Furman, South Carolina.
6 But I lived in Yemassee seventeen years, and I've been to
7 Early Branch for two-and-a-half years.

8 Q. On February the 3rd, 2004, I believe you had
9 your children with you --

10 A. Yes, sir.

11 Q. -- is that right?

12 A. Yes, sir.

13 Q. And how many children have you got?

14 A. I got four. At the time it was four.

15 Q. Okay. Were all those children with you in the
16 car that day?

17 A. My daughter was in the store; my three sons was
18 in the van with me.

19 Q. Okay. And how many sons -- so you had sons in
20 the car? Or how many?

21 A. Three.

22 Q. Three? And your daughter was in --

23 A. The store, in the Family Dollar store..

24 Q. In the Family Dollar store?

25 A. Yes, sir.

1 Q. And where is that Family Dollar store located?

2 A. It's located in Yemassee.

3 Q. And obviously -- do you know where Hill Road
4 railroad crossing is?

5 A. It's on the crossing across from the Family
6 Dollar, on the left-hand side.

7 Q. So the Family Dollar store is right almost
8 directly across from the Hill Street --

9 A. Yes, sir.

10 Q. -- crossing; is that correct?

11 A. Yes, sir.

12 Q. Okay. And on this date I believe you say your
13 daughter had gone into the store to purchase something; is
14 that correct?

15 A. Yes, sir.

16 Q. And you had three of your boys in the car with
17 you?

18 A. Yes, sir.

19 Q. What ages are they?

20 A. [No response]

21 Q. At that time.

22 A. At that time? It was far back. Okay. My son
23 is nineteen now. Okay. One is sixteen now and one is ten
24 now and one is nineteen. So that's four years ago. My
25 sons was fifteen --

1 Q. Is that right?

2 A. -- twelve, and six.

3 Q. Okay. And as you were -- and y'all were sitting
4 out there at that time. Were you -- everybody was in the
5 car? you and your sons?

6 A. Me and my boys. Yes, sir.

7 Q. Okay. Were the windows down in your vehicle
8 when --

9 A. Yes, sir.

10 Q. -- y'all were sitting out there?

11 A. Yes, sir.

12 Q. Okay. So you had the air open while you were
13 waiting on your daughter; is that correct?

14 A. Yes, sir.

15 Q. All right. And did you -- at that time, sitting
16 in the parking lot, did you hear a train?

17 A. Yes, I did.

18 Q. And I guess you heard a horn on the train; is
19 that correct?

20 A. Yes.

21 Q. All right. Now, where -- when you first heard
22 that train, do you know where the train was at,
23 approximately where it was located, when you first heard
24 the horn?

25 A. Approximately down to the BP station that's near

1 the interstate. The BP station.

2 Q. So the BP station, as I understand it, is down
3 past I-95 on the right-hand side of the road; is that
4 correct?

5 A. 95. I guess it's the left. Across the railroad
6 track. Yes, sir.

7 Q. The bottom line, it's past I-95 --

8 A. Yes, sir.

9 Q. -- is that right?

10 And did you hear the -- you heard the horn at
11 that time. Did you hear it just sound one time, or how
12 many times did you hear it? What do you -- what did you
13 hear?

14 A. I heard it from, like I said, down from the BP
15 station. It started blowing down in that area. And then
16 it came, I don't know from how many point -- from BP in
17 front of the Chevron or whatever. But it stopped at one
18 point and then when it got to the Family Dollar, it began
19 to blow again.

20 Q. Okay. So you heard it blowing down there
21 somewhere around the other side of 95 and then you heard
22 it -- it stopped at some point in time, and then heard it
23 again --

24 A. Yes.

25 Q. -- right in front of Family Dollar --

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1 A. Yes, sir.

2 Q. -- is that correct?

3 A. Yes, sir.

4 Q. Okay. And, obviously, when it's right in front
5 of Family Dollar and you have your windows down, it's
6 right there in front of you, it's pretty loud; is that
7 correct?

8 A. Very loud.

9 Q. Okay. And did you hear it blow any other than
10 that?

11 A. Not after it blew in front of the Family
12 Dollar, because that's when, you know, the accident occur.

13 Q. Okay. And sitting there in the Family Dollar,
14 did you actually see the collision between the train and
15 the vehicle?

16 A. I saw the tail-end of the train hitting the
17 vehicle. I didn't, you know, actually see the whole how
18 it begun but I saw when it hit the tail-end of it.

19 Q. And what did you see the train do when it hit
20 the tail-end of the vehicle?

21 A. It proceeded, you know, to go farther down after
22 it hit the vehicle, I guess to make a stop. And at that
23 point, I jumped out of my vehicle to run into the Family
24 Dollar to make the phone call and when I got there to use
25 the phone, they said somebody had already reported the

1 incident.

2 Q. So you were going to call 911?

3 A. Yes, sir.

4 Q. Okay. And, therefore, after that -- and you
5 went in Family Dollar to report it and found it had
6 already been reported -- what did you do?

7 A. I came back to my vehicle and I told my boys, I
8 said, don't get out of the vehicle, you know, your sister
9 will be out in a minute, and I went across the road to the
10 incident. And by the time I got over there, you know, a
11 lot of people had done gathered over there to the
12 incident. I didn't get -- you know, couldn't go but so
13 far to -- you know, to the incident.

14 Q. So about how close did you get?

15 A. I got near the railroad track, the track over --
16 you know, just before the -- right there at the point of
17 the road where the car come across.

18 Q. Okay. Did you see Ms. Colvin? Were you able --

19 A. Yes, sir.

20 Q. Okay. What was her -- how was she when you saw
21 her?

22 A. She was hysterical. What made me look, you
23 know, when the incident happened, because I heard her
24 screaming. After it hit, she jumped out of the car, out
25 of the vehicle, screaming; and I saw the gentleman trying

1 to get up off the ground; and I heard, oh, my God, oh, my
2 God. When I got over there, she was trying to get to her
3 child in the vehicle but, you know, we couldn't get too
4 close.

5 Q. Okay. And so obviously her child was in the
6 vehicle and she was upset about that?

7 A. Yes, sir.

8 Q. Did you do anything else at the scene?

9 A. While the crowd was still gathering, the
10 gentleman that was driving the train had, at that point,
11 came down. And Chief Hagy was standing there. You know,
12 I was standing over with some other people. And I heard,
13 you know, talking. So I told Chief Hagy, I said, I heard
14 the horn blowing, I heard the horn blowing. I said, I can
15 vouch that I heard the horn blowing.

16 Q. So you gave him your name?

17 A. Yes, sir.

18 Q. Okay. Now, how long -- I mean, are you familiar
19 with this crossing at Hill Street?

20 A. Yes, I am.

21 Q. And I think you've lived in that area for how
22 many years, you say?

23 A. Seventeen.

24 Q. Did you cross it on a regular basis, so to
25 speak?

1 A. Yes, sir, because I -- that's the road we will
2 take the short way to Family Dollar.

3 Q. And I'm going to show you some photographs. And
4 just if you would --

5 MR. DETRICK: Could you -- come on down here, if
6 you would, Ms. Griffin.

7 And we'll start with Exhibit Number 4.

8 Q. [Mr. Detrick] And I just want you to tell the
9 jury about this crossing, how it was, and whether it --
10 what we're talking about in these photographs is the way
11 it looked prior to and at the time of February the 3rd,
12 2004. Okay? We're directing your attention only to prior
13 to. Is this the crossing?

14 A. Yes, it is.

15 Q. And is that where the stop sign was located, and
16 the trees to the right?

17 A. Yes, sir.

18 MR. DETRICK: And if you would go to -- let's
19 start with Exhibit 6, please, Felicia.

20 Q. [Mr. Detrick] Ms. Griffin, is that how the
21 crossing was as far as where the stop sign was located
22 prior to February 3rd, 2004?

23 A. Yes, sir.

24 Q. Okay. And when you're stopped at the stop sign
25 and you look to your right, what would you see?

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1 A. Well, you have to -- I mean, you see trees and
2 stuff. You have to go a little closer to really see if
3 anything is coming.

4 Q. Okay. So from that viewpoint right there, all
5 you see is trees?

6 A. Yes, sir.

7 MR. DETRICK: And let's just go on a little bit
8 closer. Go to 7, and just stop it.

9 Q. [Mr. Detrick] And that's the same thing, pretty
10 much? Getting a little closer to the stop sign?

11 A. Yes, sir.

12 MR. DETRICK: And if you would go to 8.

13 Q. [Mr. Detrick] And, again, that's right at -- if
14 you're standing at the stop sign, is that correct --

15 A. Correct.

16 Q. -- what you -- if you would look to your right,
17 what you would see?

18 A. Yes, sir.

19 Q. And still seeing woods?

20 A. Yes, sir.

21 MR. DETRICK: And let's go a little closer,
22 Exhibit 12.

23 Q. [Mr. Detrick] Obviously, can you see it from
24 there?

25 A. You can see a little -- you know, a little bit.

1 Q. You've still got some problems with view?

2 A. Yes, sir. You still have to inch up a little
3 bit more to really, really see.

4 MR. DETRICK: Let's inch up and go to number --
5 I think it's twenty-six feet would be the next one.

6 Q. [Mr. Detrick] So you're getting closer. Do you
7 still have those trees in your way?

8 A. Not too much. I mean, you still can see, you
9 know, a little bit, but not that much.

10 Q. Not that far?

11 A. No, sir.

12 MR. DETRICK: Okay. And let's go to about
13 twenty-two feet, which I think would be Exhibit 14.
14 That's twenty-four. If you can go a little bit
15 farther.

16 Q. [Mr. Detrick] So we are getting closer; right?

17 A. Yes, sir.

18 Q. And at twenty-two feet there, that's shown in
19 that exhibit, you still have those trees in your way?

20 A. You should be still -- you should be able to see
21 a little more better, getting that close.

22 MR. DETRICK: And if you would now go to where
23 the cross-bar is, approximately, Exhibit Number -- I
24 think it would be 17.

25 Q. [Mr. Detrick] And you're familiar with the

1 cross-bucks there?

2 A. Yes, sir.

3 Q. And if you're standing on the cross-bucks, you
4 would start to be able to see a little better?

5 A. Yes, sir.

6 Q. And in doing that, and as far as when you -- are
7 you having to inch your way closer?

8 A. Yes, sir.

9 Q. Okay. Now, we've had testimony -- are you
10 familiar with that white line that's at that crossing?

11 A. Yes. It's a white line just before you get on
12 the tracks.

13 MR. DETRICK: And if you would, Felicia, go to
14 Exhibit Number 19, please. I'm sorry. Go to the one
15 that's got the white line on it. I can't remember what
16 exhibit -- no. Whoa. You're too far. There you go.
17 Right there.

18 Q. [Mr. Detrick] And you are familiar with that
19 white line?

20 A. Yes, I am.

21 Q. Would you stop there?

22 A. Yes, sir.

23 Q. And if you stopped there, how do you -- what do
24 you feel like? Tell the jury.

25 A. Once you stop there, you just kind of -- you

1 know, you just generally just go on across or --

2 Q. How about if a train was coming and you stopped
3 there?

4 A. Oh. You would get a -- if I stopped there when
5 a train was coming, you would get a great vibration from
6 the train if you stopped there.

7 Q. Does that make you feel safe sitting there?

8 A. No, sir. It's like I'm almost on the track.

9 Q. Almost on the track?

10 A. Yes, sir.

11 MR. DETRICK: Go ahead and step back up there,
12 Ms. Griffin, please.

13 THE COURT: Can we get the lights again.

14 MR. DETRICK: You can cut the lights on, please.
15 That's all the questions I have at this time.

16 MR. HARMON: Good morning, Ms. Griffin.

17 THE WITNESS: Good morning.

18 MR. HARMON: How are you today?

19 THE WITNESS: I'm fine.

20 MR. HARMON: I just have a few questions to ask
21 you, as well, ma'am.

22 Can we flash up CSX Exhibit 2.18?

23

24

25

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CROSS-EXAMINATION

BY MR. HARMON:

Q. I just want you to show the jury -- we talked about the Family Dollar store, ma'am. I just want you to show the jury a little bit where you were that day, if we can.

A. Okay.

Q. Can you see that?

MR. HARMON: Can I have the pointer?

Q. [Mr. Harmon] Can you tell us --

MR. HARMON: Can you see that? I think there is a little monitor in front of you, ma'am.

Can she touch this and she'll be able to --

MR. POSTON: No, sir.

MR. HARMON: Okay. Can you just -- I don't want you to have to stand up. Can you use this? Do you see how that points right there? Can you see the screen where you are?

THE WITNESS: No, sir.

MR. HARMON: I'm sorry. I'm going to have to ask you to step -- I'm sorry about that. If you could just come over here.

[Whereupon, the witness complies]

Q. [Mr. Harmon] I just want you to tell the jury where you were that day, ma'am.

1 A. Right there [indicates], like where that car is,
2 the first -- I was the first vehicle on that side right
3 there, is where I was.

4 [Off the record momentarily]

5 Q. [Mr. Harmon] So you were seated -- you were
6 sitted [phonetic] -- you were in your car right about
7 there?

8 A. Yes, sir.

9 Q. Were you in the driver's seat, or were you --

10 A. I was driving. I was in the driver's seat.

11 Q. Okay. And what kind of car did you have that
12 day, ma'am?

13 A. I was driving a Ford 610 passenger van.

14 Q. All right. Now, why don't you just tell the
15 jury -- once you were sitting there, just tell us in your
16 own words what happened.

17 A. I think that was their grand opening, but I'm
18 not sure. Anyway, my daughter went in and me and my boys
19 were sitting in the vehicle, and I was facing to the side.
20 And I heard the train going, like I said. And it blows so
21 loud, and I couldn't -- and my boys get excited when they
22 hear the train. And they got excited. And like I said,
23 it was blowing, and then it stopped at one point, and then
24 it began to blow again. And when it got there, it was so
25 loud. And I was telling them, I'll be glad when that

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1 train stops blowing. So I was just sitting there, waiting
2 on my daughter to come out.

3 Q. And you agree with me the horn was blowing very,
4 very loud that day?

5 A. Yes, it was.

6 Q. And you also agree it was blowing loud enough
7 and long enough for anyone to hear it that day?

8 A. Yes. Like I said, it started at the BP, then it
9 paused, stopped, and then it blew loud again in front of
10 the Family Dollar.

11 MR. HARMON: Thank you, ma'am. You can sit
12 down.

13 [Whereupon, the witness complies]

14 MR. HARMON: You can take that down.

15 Q. [Mr. Harmon] And I believe you have told us
16 before that you thought the horn blew the longest of time
17 on that day?

18 A. Yes, sir.

19 Q. And you also -- as the train was approaching,
20 you saw the train lights on?

21 A. Yes, sir.

22 Q. Okay. Now, Mr. Detrick asked you some questions
23 about your previous use of that crossing -- you had, in
24 the past, had had no problems seeing down the track if you
25 stopped and looked, before this accident; right?

1 A. Yeah, there -- there was a problem. You know,
2 the trees were there.

3 Q. But in the past -- haven't you told us under
4 oath, ma'am, that in the past you had no problem seeing
5 down the track if you stopped and looked?

6 A. Not if you get closer, like I showed them on
7 that line there was not a problem.

8 Q. Okay. So if you stopped at the stop line, you
9 had no problem seeing down the track?

10 A. Yes. You had to -- the trees were there.

11 Q. I'm sorry. Did you say if you stopped at the
12 stop line --

13 A. If you stop at the stop sign, the trees are
14 there. But if you get to that white line, there's not a
15 problem, you know, to see.

16 MR. HARMON: Thank you very much. Pass the
17 witness.

18 THE COURT: Mr. McLeod, any questions, sir?

19 MR. MCLEOD: No questions, Your Honor.

20 THE COURT: Any redirect, sir?

21 MR. DETRICK: I don't have anything further.
22 Can she be excused?

23 THE COURT: Any objection to Ms. Griffin being
24 excused?

25 MR. HARMON: No, Your Honor.

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JACK HAGY,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DETRICK:

Q. Mr. Hagy, I believe that presently you're chief of police in the town of Yemassee; is that correct?

A. Yes, sir.

Q. And how long have you been chief of police?

A. I -- just to make sure.

I worked in Hampton from '84 to '89, and I went to Yemassee in '89, came back to Hampton in 2001, and went back to Yemassee in 2003. So about fourteen years or so, somewhere --

Q. Okay. And tell us a little bit about the kind of training you've had in law enforcement.

A. I've been certified through the criminal justice academy in Columbia. You have to have that to be a certified officer.

Q. Okay. And on February 3rd, 2004, I believe you were dispatched to the scene of a train collision with an automobile?

A. Yes, sir.

Q. And about what time did you get your dispatch?

A. I'll have to look at my file.

1 Q. If you don't mind.

2 A. Yes, sir.

3 [Whereupon, the witness reviews documents]

4 A. Around 4:38, somewhere.

5 Q. Okay. And you were very close to the crossing?

6 A. Yes, sir.

7 Q. Anyone else with the City of Yemassee go to the
8 scene, too? The police department?

9 A. There was an Officer Cook was working, also. He
10 was a reserve, and he was out that day.

11 Q. Okay. And when you arrived at the scene, tell
12 the jury what you found.

13 A. It was apparent a vehicle had been involved in
14 an accident with a train. As I was going over to the
15 scene, there's some people out, a young -- a lady, a lot
16 of screaming and hollering going on, you know. A little
17 chaos going on. And at that time I understood there were
18 two -- there were two adults, the female and another male
19 involved, and I was informed by Officer Cook of a younger
20 person being in the vehicle, and at that time with him
21 being -- he's an EMS. I told him to stay with the little
22 girl.

23 Q. With the young -- with the little girl?

24 A. Yes, sir.

25 Q. Okay. And did you determine who was driving the

1 vehicle?

2 A. Yes, sir. It was apparently -- I found out that
3 it was the lady that -- I think I talked to her very
4 briefly. Like I say, she was very upset, and, you know,
5 which I could understand that. And I also talked to the
6 other passenger. I had learned that he had gotten thrown
7 out of the vehicle and so then EMS came and was treating
8 him.

9 Q. When you arrived at the scene, where was the
10 vehicle Ms. Colvin was driving?

11 A. Sir?

12 Q. Where is Ms. Colvin's vehicle?

13 A. Well, it had been hit and spun around when the
14 train -- when the train hit it, it had spun around,
15 basically, like -- sort of like the diagram on the
16 accident.

17 Q. Okay. And if we would, let's kind of go through
18 some photographs and just see --

19 MR. DETRICK: And if you would start with
20 Exhibit 27.

21 Mr. Hagy, do you want to come down here?

22 [Whereupon, the witness complies]

23 Q. [Mr. Detrick] And these are some photographs at
24 the scene, as far as the roadway. Tell the jury, if you
25 would -- when she shows you these photographs, explain

1 what they show in regard to this wreck.

2 This is 27. Is this at the scene?

3 A. Yes, sir.

4 Q. What does this -- what does this show?

5 MR. HARMON: Excuse me, Your Honor. I think
6 they -- I believe they're on the wrong side.

7 MR. DETRICK: No. We're on the right side.

8 Q. [Mr. Detrick] Is this on -- this is after -- on
9 this side of -- between 68 and the railroad?

10 A. Apparently this is on the -- yeah. This is the
11 68 side.

12 Q. In other words, the train would be going from
13 the left --

14 A. Left.

15 Q. -- to the right --

16 A. Yes, sir.

17 Q. -- and Ms. Colvin would be coming toward us in
18 these photographs?

19 A. Yes, sir.

20 MR. DETRICK: Okay. Go to Number 28, please,
21 Felicia.

22 Q. [Mr. Detrick] And does that show where the
23 vehicle was kind of -- after it hit the train -- the train
24 hit it?

25 A. Yes, sir.

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1 Q. What does it show?

2 A. It shows the skid marks of the tires. Tire
3 marks.

4 MR. DETRICK: Okay. And then Number 29, please,
5 Felicia.

6 Q. [Mr. Detrick] And what does this 29 show?

7 A. That's looking -- I believe that's looking
8 towards 68 from Hill Road; and the stop bar; and the
9 tracks --

10 Q. All right. And the --

11 A. I think.

12 Q. I think that shows --

13 A. Maybe I'm wrong.

14 Q. See the dirt?

15 A. [No response]

16 Q. Well, let's go --

17 A. Oh, okay. Okay. I see now. Yeah. We're still
18 on the same side, 68. I see the debris and some stuff
19 right there on the right.

20 MR. DETRICK: All right. And if you would,
21 number 30. Is this Exhibit 30? Go to 31.

22 Q. [Mr. Detrick] Does that show where the --

23 A. Yes. That's the area, in here [indicates],
24 where the car was.

25 Q. Where the car was?

1 A. Yes, sir.

2 Q. Kind of show where it was brushed against the
3 dirt?

4 A. Yes, sir.

5 Q. Is that where the vehicle was when you got
6 there?

7 A. Somewhere in that area, now.

8 Q. Okay. And then the 68 would be to the left of
9 there?

10 A. Yes, sir.

11 Q. And she would be coming from the right to the
12 left?

13 A. Yes, sir.

14 MR. DETRICK: Okay. And if you would go to 32.

15 Q. [Mr. Detrick] This is another shot of basically
16 the same area?

17 A. Yes, sir. That's -- in that area is with the
18 vehicle. And that's Highway 68.

19 MR. DETRICK: And if you would, Exhibit 33.

20 Q. [Mr. Detrick] Does that show the same area?

21 A. Yes, sir.

22 MR. DETRICK: All right. That's all. I just
23 wanted them to get the scene. You can go back up there
24 for right now.

25 And, Your Honor, we offer -- while she's cutting

1 the lights on -- Exhibits 27 through 33 into evidence.

2 MR. HARMON: No objection?

3 THE COURT: They are in evidence without
4 objection.

5 MR. MCLEOD: No objection.

6 THE COURT: Thank you.

7 [Whereupon, Plaintiff's Exhibit Numbers 27
8 through 33 are admitted into evidence by the Court]

9 Q. [Mr. Detrick] While you were at the scene, did
10 you determine who was operating the CSX train?

11 A. Yes, sir. I think I talked to the conductor. I
12 believe it was a Mr. Calvin Cummings.

13 Q. Okay. And while you were there, you said -- did
14 you see Tonia Colvin?

15 A. Yes, sir, very briefly. Like I say, she was
16 real upset and I didn't talk -- I don't -- I can't even
17 remember if I said much. If I did, it wasn't very much I
18 talked to her.

19 Q. Okay. But you observed her condition?

20 A. Well, like I say, she was very emotional and
21 very upset.

22 Q. Was she impaired in any way --

23 MR. HARMON: Objection.

24 Q. [Mr. Detrick] -- in your observations?

25 MR. HARMON: Objection. Lack of foundation. He

1 said he just talked to her briefly. He can't say.

2 MR. DETRICK: I said in his observations,
3 whatever they may be.

4 THE COURT: Okay. You can go ahead and answer,
5 if you can.

6 A. No.

7 Q. [Mr. Detrick] Was she impaired in any way, in
8 your observations?

9 A. Impaired?

10 Q. Yes.

11 A. No, sir. I wouldn't think so. I don't think
12 so. Like I say, I didn't -- if I had spent some more time
13 with her or, you know, something like that. But just the
14 brief moment I did, no, sir, I wouldn't say she was
15 impaired.

16 Q. Okay. Now, did you determine later of where the
17 train had stopped?

18 A. Yes, sir. About three-tenths of a mile down 68.

19 Q. How did you do that?

20 A. I measured it with my patrol vehicle.

21 Q. And when did you do that?

22 A. The same day.

23 Q. Okay. And as far as -- you just went from where
24 to where?

25 A. From the intersection to straight across from

1 the front of the locomotive on 68.

2 Q. And did you go back later, with Mr. Crews from
3 my office, to try to check on where that would have been?

4 A. Yes, sir.

5 Q. And tell us what happened as far as your
6 checking to see the measurements of where the train might
7 have -- may have stopped.

8 A. Well, like I said, it was three-tenths of a mile
9 on my speedometer, which would put it right straight
10 across from I believe then was Erin's Beauty Salon.

11 Q. Erin's Beauty Salon?

12 A. Yes, sir.

13 Q. All right. Now, and, Chief, I think you said
14 you had been chief of police for numerous years there; is
15 that correct?

16 A. Yes, sir.

17 Q. And in our area obviously for a long time.

18 Are you familiar with the crossing at Hill
19 Street?

20 A. Yes, sir.

21 Q. And if you would, let's again go through some
22 photographs.

23 MR. DETRICK: And we'll start with Exhibit
24 Number 4.

25 Q. [Mr. Detrick] And let's go through these,

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1 Chief.

2 And if you would, is this Hill Street?

3 A. That's Hill Street going into Highway 68.

4 Q. All right. And that's the way it looked

5 February the 3rd, 2004?

6 A. Yes, sir.

7 Q. And all my questions are going to be directed,
8 now, at February 3rd, 2004, and before. Okay?

9 MR. DETRICK: And if you would, Felicia, let's
10 go to Exhibit 7.

11 Q. [Mr. Detrick] Tell the jury about: is that how
12 it looked at the stop sign on that date and before?

13 A. Yes, sir, I believe it did.

14 Q. What kind of view did you have, Chief, at that
15 time from there?

16 A. Sir?

17 Q. From there.

18 A. You could see, well, the Chevron station over to
19 the left. That's just about what you could see from that
20 point right there.

21 Q. And as far as those trees, would they obstruct
22 the vision of a train coming from that -- from right to
23 left?

24 MR. HARMON: Objection, Your Honor. This is
25 their witness. They're leading him. I ask for -- so

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1 the objection is leading.

2 THE COURT: Okay. Sustained.

3 Don't lead him, Mr. Detrick.

4 Q. [Mr. Detrick] How did these trees affect your
5 vision, if it -- state whether they affect it at all.

6 A. Well, it's just like the photo shows. You know,
7 if you were stopped there you could see probably down
8 close to the Chevron, from that point --

9 Q. And that's if --

10 A. -- coming this way.

11 Q. -- if the passenger was sitting at that place?

12 A. Yes, sir.

13 Q. Okay. As you get closer, Chief, does the
14 obstruction -- or does it get a little better as you get
15 closer?

16 A. Yes, sir. The closer you get --

17 Q. Now, here the -- I think we've got it. Right
18 here, again we see the stop sign; is that correct?

19 A. Yes, sir.

20 Q. And what is -- how -- state whether or not the
21 trees in any way affect the vision.

22 A. Well, you can see the -- you can see just a
23 little bit more down the track.

24 MR. DETRICK: Okay. And if you come -- 9.

25 Q. [Mr. Detrick] I think it's getting a little --

1 still about the same? a little better?

2 A. Just a little bit there.

3 MR. DETRICK: And 10.

4 Q. [Mr. Detrick] Is that how it looked on February
5 3rd, 2004?

6 A. That's just a little better. Yes, sir.

7 Q. Those trees: state whether or not those trees
8 are still in your way of the vision looking down the
9 track.

10 A. Stopped there, yes, sir.

11 Q. And Number 11?

12 A. Not much difference.

13 Q. Not much difference? Is that still a problem?

14 A. Sir?

15 Q. Is that a problem?

16 A. Is it a problem?

17 Q. Yes..

18 MR. HARMON: Your Honor, I guess I object to the
19 question. It's the chief of police. He's not an
20 expert in sight distance. We've heard that from Dr.
21 Heathington. So I object.

22 MR. DETRICK: I'll withdraw that question.

23 Go to Number 12.

24 A. That's the -- it's getting better as you go
25 forward.

1 MR. DETRICK: And, again, let's go to -- let's
2 go to 13.

3 A. Slightly.

4 Q. [Mr. Detrick] What did you say?

5 A. Slightly better. Yes, sir.

6 Q. And at 14?

7 A. Yes, sir, it's slightly.

8 Q. Slightly again?

9 A. Yes, sir.

10 Q. Okay. And 15?

11 A. Yes, sir, that's --

12 Q. And then at 16 -- and is this where the
13 cross-bucks is? See the cross-buck?

14 A. Yes, sir. I think I see it there on the lower
15 left.

16 Q. Okay. And was that present when you
17 investigated this wreck?

18 A. Yes, sir.

19 Q. Okay. Is that approximately where you were
20 standing at that point? You were standing there or --

21 A. That's where the -- yes, sir.

22 MR. DETRICK: If you would go to Exhibit Number
23 20.

24 Q. [Mr. Detrick] And I believe that's the white
25 line that was present there?

1 A. Yes.

2 Q. Okay. And if you're standing on that white
3 line, are those trees obstructing your view there? If
4 you're standing on it, now.

5 A. No, sir.

6 Q. No? You can see where --

7 A. Yes, sir.

8 Q. -- there it is.

9 As far as the -- how close -- do you know how
10 close that white line is to the near rail?

11 A. Probably ten -- about nine or ten feet,
12 somewhere like that.

13 Q. And if you're -- do you know that if you -- how
14 would you feel if you put your car, or someone put their
15 car, on the front of that white line?

16 MR. HARMON: Objection, Your Honor.

17 THE COURT: Overruled.

18 MR. DETRICK: I didn't hear what she said. What
19 did she say?

20 MR. HARMON: Overruled.

21 THE COURT: Overruled. He can answer the
22 question.

23 MR. DETRICK: Thank you.

24 Q. [Mr. Detrick] You can answer the question.

25 A. Now, repeat the question.

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1 Q. Okay. If you parked your car on that white
2 line, how would -- as far as a motorist, and a train was
3 coming by, how would you feel? Can you describe that?

4 A. How would I feel?

5 Q. Can you describe that for the jury?

6 A. Well, if I was parked there -- you know,
7 clearly, I mean, it would depend exactly where you were,
8 you know. If you're up a little closer, your wheel's on
9 the line, I mean, you could see clear all the way back to
10 the overpass so I would feel all right in that area.

11 Q. As far as your vision?

12 A. As my vision, yes, sir.

13 Q. How would you feel as far as your safety from
14 the train?

15 A. Well, there you're getting -- a lot of people,
16 they don't like, you know, being close to a train. So,
17 you know, I'm just speaking for myself now. I mean, you
18 know, other people, they might, oh, no, that's too close,
19 I'm not going to be that close to a train. So, you know,
20 it would depend, I think a lot, on the person.

21 MR. DETRICK: All right. You can have a seat up
22 there.

23 [Whereupon, the witness re-takes the witness
24 stand]

25 MR. DETRICK: Answer any questions these

1 gentlemen may have, Chief Hagy.

2 MR. HARMON: Good afternoon, Chief Hagy.

3 THE WITNESS: How are you doing?

4 MR. HARMON: How are you today?

5 THE WITNESS: I'm fine.

6 CROSS-EXAMINATION

7 BY MR. HARMON:

8 Q. Sir, the -- you're responsible for investigating
9 accidents at different places throughout the -- throughout
10 Yemassee?

11 A. Yes, sir.

12 Q. And you've been the chief of police I think you
13 said for was it twelve years?

14 A. Give or take.

15 Q. Okay. And there has never been any accidents
16 before the one involving Ms. Colvin at this crossing; is
17 that correct?

18 A. Not at the -- not at the Hill Road section, no,
19 sir.

20 Q. And there's never been any complaints, as far as
21 you know, at the Hill Road section, either?

22 A. Not that I know of, sir.

23 MR. HARMON: Now, can we go to the -- that clip,
24 please, from Mr. Crews' video.

25 Q. [Mr. Harmon] I want to show you a clip here --

1 MR. HARMON: Don't run it yet. And hold it one
2 second.

3 Q. [Mr. Harmon] This is going to show you a clip,
4 Chief Hagy, and this is the view -- in a moment --
5 nineteen-and-a-half feet, the person's body behind the
6 stop line. Okay? Or the view if a Ford Explorer was
7 stopped with their front bumper at the stop line. Okay?

8 A. Yes, sir.

9 Q. Can you see it okay, sir?

10 A. No, sir.

11 MR. HARMON: All right. You can come on down.

12 [Whereupon, the witness complies]

13 MR. HARMON: Go ahead and roll it.

14 Q. [Mr. Harmon] This is a video taken by Mr. Crews
15 from Mr. Parker's firm. Tell the jury, in a moment here,
16 what is the bridge down there in the distance? You see
17 the cars?

18 A. That's the overpass. I-95.

19 Q. Okay. And do you have any estimate how far the
20 I-95 overpass is from the crossing?

21 A. No, sir, I don't.

22 Q. No? You don't?

23 A. I don't.

24 Q. Okay. All right.

25 MR. HARMON: All right. Thank you, sir. You

1 can sit down.

2 [Whereupon, the witness re-takes the witness
3 stand]

4 MR. HARMON: Get the light.

5 Q. [Mr. Harmon] Sir, when there is at the Hill
6 Road a stop sign followed by a stop line, where are
7 motorists supposed to stop?

8 A. Well, I call it the bar.

9 Q. Stop bar?

10 A. Stop bar.

11 Q. Okay.

12 A. Yes, sir.

13 Q. People have called it a --

14 A. Yes.

15 Q. -- white line, stop bar, stop line?

16 A. Technically, at the stop bar.

17 Q. Okay. So if there is a stop sign followed by a
18 stop bar, they're supposed to stop at the stop bar?

19 A. Yes.

20 Q. And that would be your expectation here at the
21 Hill Road crossing; right?

22 A. Yes.

23 MR. HARMON: Now, can we go back to the first
24 few exhibits y'all showed? I can't remember which ones
25 they were.

1 Q. [Mr. Harmon] I just want to make sure, and I
2 may have misunderstood --

3 MR. DETRICK: Do you want them at the stop
4 bar -- I mean, the stop line?

5 MR. HARMON: The first two --

6 MR. DETRICK: The stop line?

7 MR. HARMON: The first two exhibits you showed
8 when he first stood up. I think they were on the
9 opposite side of the tracks.

10 MR. DETRICK: Oh. Okay. 27.

11 MR. HARMON: Yeah.

12 MR. DETRICK: 27 through 33.

13 Q. [Mr. Harmon] I just want to make sure I
14 understand. You -- when you were talking to us you were
15 showing us when you came on the scene where the car ended
16 up --

17 A. Yes.

18 Q. -- correct?

19 A. Yes.

20 Q. All right. My mistake.

21 And this is the opposite side of the direction
22 Ms. Colvin was coming?

23 A. It's the same thing. I have it -- this here
24 is -- this here is going off of 68 onto Hill Road --

25 Q. Okay. So --

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1 A. -- the 68 side of it.

2 Q. So this right here, sir -- I just want to be
3 very clear, because this is the opposite side from where
4 Ms. Colvin was coming from right here.

5 A. That's not --

6 THE COURT: Chief, you're going to have to stand
7 and look.

8 A. I'm going to have --

9 MR. HARMON: I'm sorry, Chief. Come on down
10 here again.

11 THE WITNESS: Y'all have to take it off that
12 monitor, because I can't see it.

13 MR. HARMON: Just use this.

14 Q. [Mr. Harmon] Just so we're clear, the stop bar
15 that is closest to us right here --

16 MR. HARMON: You can flash that thing --

17 Q. [Mr. Harmon] That's where her vehicle ended up;
18 right?

19 A. Yes, sir.

20 Q. Okay. And so she was coming from the other
21 direction?

22 A. She was -- yes, sir. Right up here is where she
23 would have came out of Dixie Poly Drum, and she would have
24 made the left coming down to 68.

25 MR. HARMON: Thank you. Okay. Thank you,

1 Chief.

2 THE WITNESS: Yes, sir.

3 [Whereupon, the witness re-takes the witness
4 stand]

5 MR. HARMON: Yes, sir. Lights, please.

6 Q. [Mr. Harmon] And I think this is my final
7 question for you, Chief Hagy.

8 You would agree that after the accident you
9 talked very briefly, if at all, with Ms. Colvin?

10 A. Yes, sir. Yes, sir.

11 MR. HARMON: Thank you.

12 MR. MCLEOD: I have no questions, Your Honor.

13 THE COURT: Mr. Detrick?

14 MR. DETRICK: I don't have anything further.

15 THE COURT: All right. Anyone object to Chief
16 Hagy being excused?

17 MR. HARMON: No, Your Honor.

18 THE COURT: All right. Sir, you may be excused.
19 Thank you.

20 THE WITNESS: Thank you, ma'am.

21 THE COURT: Thank you.

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

24 MR. PURCELL: Your Honor, we have a matter
25 before Ms. Crews testifies.

1 THE COURT: Ladies and gentlemen, I need to take
2 up a brief matter of law with the attorneys before we
3 begin.

4 And as I told you, I don't see us going too
5 terribly much longer today, so I will tell you that.

6 Go back, refresh yourselves. We'll be back with
7 you shortly. Again, do not begin discussing this case.
8 It wouldn't be appropriate to do so at this time.
9 Thank you.

10 [Whereupon, the jury exits the courtroom at 2:42
11 p.m.]

12 THE COURT: Yes, sir?

13 MR. PURCELL: Your Honor, you may recall that
14 there was a motion in limine concerning the cutting of
15 vegetation in Hampton, South Carolina, which occurred
16 in July of 2004, some, let's see, four months, five
17 months after this accident.

18 THE COURT: Okay. Not the cutting of this
19 crossing, though?

20 MR. PURCELL: No, Your Honor.

21 It so happens that the subcontractor apparently
22 reached the Hampton crossing at the end of Lee Street,
23 I believe it is, in front of --

24 Is it Ms. Crews or Ms. Rivers who lives there?

25 MR. PARKER: Ms. Crews' house.

1 MR. PURCELL: Ms. Crews' house. She lives right
2 across the street from the railroad track. And there
3 was an ornamental garden that had been there since the
4 '50s --

5 Mr. Parker? Something like that.

6 THE COURT: Okay.

7 MR. PURCELL: And so it came a time that in
8 order to fully effect the crossing-clearing program,
9 the contractor sought to clear the vegetation according
10 to the specifications in the crossing-clearing program.
11 Well, the garden-club ladies protested, and I think
12 they even called the police around there. But
13 nonetheless, it turned out that if they did not have
14 the vegetation moved in twenty-four hours or
15 thereabouts, that it was going to get gone. So the
16 ladies --

17 THE COURT: Wait a minute. Wait a minute. I
18 didn't understand that. You say if they don't get the
19 vegetation removed within twenty-four hours?

20 MR. PURCELL: The garden-club ladies. The
21 garden club -- when I say vegetation, I mean, in this
22 instance, plants and --

23 THE COURT: So they had planted what we would
24 consider to be pretty flowers as opposed to --

25 MR. PURCELL: Ornamental.

1 THE COURT: -- noxious weeds? Okay.

2 MR. PURCELL: Correct, Your Honor.

3 THE COURT: So, okay.

4 MR. PURCELL: So whereupon there was a dispute
5 between them and eventually they moved some of the
6 plants out of the way.

7 But I think Mr. Parker seeks to present the
8 evidence to show that CSX, or its subcontractor,
9 insisted upon immediate compliance with its directive
10 that the vegetation had to be cut.

11 THE COURT: And this is how many months
12 subsequent to?

13 MR. PURCELL: Is in July of 2004, Your Honor.

14 THE COURT: Okay. So this is obviously after
15 this wreck.

16 MR. PURCELL: It's a subsequent remedial
17 measure. We began --

18 THE COURT: It sounds like you're responding to
19 what happened.

20 MR. PURCELL: We began moving immediately when
21 there was any disputes about what was to be cut.

22 And these are delightful ladies. I don't -- you
23 know, I don't mean anything by my objection about their
24 garden club and their garden or any of those kind of
25 things.

1 THE COURT: And Ms. Crews is one of these garden
2 club members? Or the president, I'm going --

3 MR. PARKER: We were going to call two of them
4 that were involved in it, Your Honor. And the purpose
5 of it is that they, of course -- here at this crossing,
6 we cleared this thing up --

7 THE COURT: Right.

8 MR. PARKER: -- but it didn't do anything, and
9 not afterwards -- whether it's afterwards or before.
10 But the testimony from CSX was, and will be, that they
11 didn't do it because they would not -- if there was a
12 landowner dispute, they would not do anything.

13 Well, in this case, when they got to Hampton
14 then what happened was that when they got there, they
15 told them that they had a short period of time to
16 remove these trees.

17 THE COURT: And this, again, was in the
18 right-of-way? These things --

19 MR. PARKER: It was on their right-of-way.

20 -- and if they didn't get it off, they were
21 going to do it anyway. And they got around there and
22 had to get somebody to -- they gave them I think
23 twenty-four hours, I think that's correct, to --

24 THE COURT: That's the sole of what she is going
25 to testify to?

1 MR. PARKER: That's the sole of it. '

2 THE COURT: All right. Hindsight being twenty-
3 twenty: Mr. Parker, that's not appropriate. That is a
4 remedial measure. They knew something had happened.
5 They, I'm assuming, were responding to it.

6 If it were the day before I would have
7 absolutely no problem, if it were five minutes before
8 this I would have no problem with it, but not
9 subsequent to it. It sounds to me like they realized
10 there may be a sight obstruction problem so we had
11 better make sure we take care of it.

12 MR. PARKER: There's no evidence whatsoever that
13 this incident had anything to do with this or in any
14 way related to this accident at Hill Road. There is
15 absolutely no evidence of that.

16 MR. PURCELL: Doesn't really matter, Judge. We
17 moved promptly, efficiently in this instance in which
18 there was no landowner dispute, period. This is a --
19 it's not even --

20 MR. PARKER: There was a landowner dispute.

21 MR. PURCELL: There was --

22 THE COURT: These women, I'm going to presume,
23 thought that they could put their things there and that
24 y'all --

25 MR. PARKER: Oh, absolutely.

1 THE COURT: -- did not have any business --

2 MR. PARKER: They came out and told them -- in
3 fact, Ms. Crews stopped them and said, this is the
4 Town's park here and that we're contesting your right
5 to do this. And they got the Town people around there.
6 Obviously, there was a dispute about it. They said, we
7 don't care; if this is not out of here by tomorrow,
8 we're cutting it.

9 So that's the purpose of it; not any subsequent
10 remedial measures.

11 THE COURT: I understand your purpose of it and
12 I said I would have no problem if this was the day
13 before, but it sounds to me that maybe they have --
14 possibly have learned, from what they were doing. And
15 I don't know how you go about and do this without it
16 being afterwards. So there's no -- I'm not going to
17 allow that.

18 MR. PARKER: Your Honor, I would like to proffer
19 this testimony very quickly.

20 THE COURT: If she is here, absolutely.

21 MR. PARKER: They're here, both of them.

22 THE COURT: Absolutely.

23 Do we have another -- well, I'll ask Mr. Parker.
24 Mr. Parker, do we have another witness to put up after
25 this proffer?

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1 MR. PARKER: We'll publish a deposition.

2 THE COURT: How long is that going to take, sir?

3 MR. PARKER: I don't -- not long.

4 THE COURT: My question is is do I need to be
5 keeping this jury around for this, or do I need to just
6 go ahead and send them home?

7 MR. PARKER: Well, the question is whether or
8 not you want to play that deposition or not.

9 THE COURT: How long is it going to take?

10 MR. PARKER: It's not long. What is it,
11 eighteen minutes?

12 MR. DETRICK: We've got, Your Honor --

13 THE COURT: Whose deposition is it?

14 MR. DETRICK: It's a doctor. It's twenty
15 minutes.

16 MR. PURCELL: How about the depositions of these
17 ladies as a proffer?

18 MR. PARKER: We can do that.

19 MR. PURCELL: Without --

20 THE COURT: Why don't we do that. Gentlemen,
21 we'll go ahead and make those Court exhibits right now
22 as a proffer for what these ladies would testify to.

23 MR. PARKER: That's fine.

24 THE COURT: Let's do that. Okay?

25 [Whereupon, Exhibit 5, deposition, is marked by

1 the court reporter]

2 [Whereupon, Exhibit 6, deposition, is marked by
3 the court reporter]

4 MR. PARKER: Ms. Crews was looking forward to
5 this. She's our local actress, having been in Forrest
6 Gump. And so they are very disappointed, Your Honor.
7 She is also a retired teacher.

8 THE COURT: Well, thank you. And I'm going to
9 come find you for some gardening tips, absolutely.

10 MS. CREWS: The gardener is coming up --

11 THE COURT: Okay. After you --

12 MS. CREWS: Not me. I'm the government teacher.

13 THE COURT: Thank you, ma'am. We appreciate you
14 being here.

15 MS. CREWS: All right.

16 THE COURT: All right. We are going to do the
17 doctor now; is that correct?

18 MR. DETRICK: Yes, ma'am. Since we're kind of
19 -- I would -- it's up to you. This doctor is twenty
20 minutes.

21 THE COURT: I'm good for twenty minutes. Not a
22 problem, y'all, as well?

23 MR. HARMON: That's fine, Your Honor.

24 THE COURT: And this one is cued up? We got
25 both the direct and the cross on this doctor? Are we

1 good to go?

2 MR. WRAY: We hope so.

3 THE COURT: Well, let's double-check. Let's let
4 our powers to be -- these are the people that know what
5 they're doing.

6 [Off the record momentarily]

7 MR. DETRICK: I didn't know whether -- Tom
8 Poston.

9 THE COURT: Sir?

10 MR. DETRICK: I didn't know whether you wanted
11 to also take up, after this, maybe, the deposition of
12 David Poston. We can read it. That's up to you. But
13 that's up to you.

14 THE COURT: How long is that going to take?

15 MR. DETRICK: To read it?

16 THE COURT: Yeah. I have no idea.

17 MR. DETRICK: Short.

18 THE COURT: I mean, how short?

19 MR. PARKER: It's very short.

20 MR. DETRICK: They also have some objections, so
21 we would have to take up that first.

22 THE COURT: We're not going to do that today,
23 then.

24 MR. DETRICK: All right. I just wanted to get
25 some direction.

1 THE COURT: I appreciate you moving this along
2 Mr. Detrick, though. I can tell you that much.

3 MR. MCLEOD: Whose deposition is coming up?

4 MR. PARKER: Dr. Peterseim.

5 THE COURT: All right. Anything else before I
6 go ahead and bring this jury in?

7 [Whereupon, there is no response]

8 THE COURT: Let's go ahead and bring them back.
9 And we're going to all just obviously break,
10 y'all. What I'm going to tell them is to come back at
11 10:30 on Monday morning. That will give us a little
12 bit of time to go through the other designations.
13 Okay? All right.

14 [Whereupon, the jury enters the courtroom at
15 2:52 p.m.]

16 THE COURT: Welcome back, ladies and gentlemen.
17 At this time it's my understanding we're going
18 to go ahead and do a video deposition.

19 Is that correct, sir?

20 MR. DETRICK: That's correct. We would like to
21 play the deposition of Dr. Millicent Peterseim.

22 THE COURT: Thank you, sir. I appreciate it.

23 All right. Let's go ahead and roll it. And if
24 we could hit the lights? If we could have someone --

25 MR. WRAY: I'll get them.

1 THE COURT: Thank you, sir.

2 [Whereupon, the video deposition of Dr.
3 Peterseim is played for the jury]

4 [Whereupon, the video deposition of Dr.
5 Peterseim is paused due to technical difficulties]

6 [Off the record momentarily]

7 MR. HARMON: May we approach and make a
8 suggestion, Your Honor?

9 THE COURT: Please.

10 [Whereupon, an off-the-record bench conference
11 is held]

12 THE COURT: All right, ladies and gentlemen.
13 There has always got to be a technical difficulty and
14 it always has to happen on Friday.

15 What we are going to do is this. It may take
16 them a little time to find it. There is a cross-
17 examination of this, and some further testimony, so
18 that's going to need to be presented to you. But we're
19 going to let them find it and figure it out this
20 afternoon. I'm going to send you-all home.

21 Before you go, though, please -- and we've said
22 this every time we've parted. Again, it's even more
23 important over the weekend, because you're going to
24 have a little bit of free time. Again, you are not to
25 discuss this case with anyone and that includes

1 anything you've heard so far this week. Again, it's
2 not appropriate to do so. The reason why is it's
3 not appropriate for you to get outside information from
4 anyone else or from the Internet or from some other
5 source.. Okay? That's why I don't want you talking
6 about it.

7 Additionally, ladies and gentlemen, y'all have
8 been so wonderful and so attentive. I appreciate that,
9 and I want you to know that. And, again, I can't
10 commend you enough, and I can't tell you how much that
11 I have spoken with other people and other judges
12 telling them what a great jury I have and what a
13 pleasure that is in a longer trial. So, again, thank
14 you for that.

15 What we're going to do is we're going to begin
16 again on Monday morning at 10:30 in the morning, and
17 that way I -- inevitably, I know there's going to be
18 something I need to do with these lawyers then. So we
19 don't want to keep y'all waiting.

20 So with that said, if anyone has any other
21 concerns about employment or anything along those
22 lines, I trust that you've either talked to Ms. Nettles
23 about it, your clerk of court, or let one of the
24 bailiffs know and they'll take care of it. But I can
25 tell you, as it looks right now, I know we're going to

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1 go through all of next week.

2 I will tell you for planning purposes, though,
3 that we are, in most likelihood, going to take Friday
4 off and that's just because there are some other things
5 that we have to get done. So for planning purposes, if
6 you've got things you need to do, we are probably, and
7 I would say most, most likely going to take Friday off.
8 If that changes, I will let you know by Monday or
9 Tuesday. Okay? So that's just for planning purposes.

10 Y'all, I will see you here bright and early,
11 again, at 10:30.

12 Lastly, again, as I told you, you're not
13 supposed to do any independent research. I don't want
14 anyone driving over the crossing or anything along
15 those lines. It would be wholly inappropriate for you
16 to do that. All right?

17 Good night, y'all. We'll see you at 10:30 on
18 Monday morning.

19 [Whereupon, the jury exits the courtroom at
20 3:08 p.m.]

21 THE COURT: So we're going to be able to figure
22 out the DVD, you think?

23 MR. PARKER: Yes. We've got a -- we also have a
24 VHS tape.

25 THE COURT: Perfect.

1 MR. PARKER: This was the original video we were
2 actually playing --

3 MR. DETRICK: DVD.

4 MR. PARKER: DVD.

5 [Off the record momentarily]

6 THE COURT: All right. Y'all --

7 MR. PARKER: We would like to file these two
8 depositions.

9 THE COURT: Absolutely. And we need to --

10 MR. PARKER: Ms. Crews and Ms. Rivers.

11 THE COURT: For a Court's exhibit.

12 And let me just be clear about this as far as
13 remedial measures. Obviously, the purpose of the rule
14 is to encourage businesses and persons in the future to
15 take appropriate action if there is any type of problem
16 that they are put on notice of. And certainly if we
17 were to use any of that evidence and their reaction --
18 what we wouldn't want is an incentive for them not to
19 react promptly and to do what believes is in the best
20 interest and safety of all persons. And so to allow it
21 to be testified now -- what I wouldn't want to happen
22 is in the next instance they didn't respond quickly and
23 didn't worry about it. And that's the whole point of
24 the rule. So with that said, y'all --

25 MR. PARKER: Your Honor, I would like for the

1 TONIA M. COLVIN,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. PARKER:

6 Q. Ms. Colvin, where do you live?

7 A. Islandton, South Carolina.

8 Q. And where did you go to high school?

9 A. Ruffin High School.

10 Q. And did you attend -- ever attend any school in
11 Hampton? Or just Ruffin?

12 A. Yes. Varnville Elementary and North District.

13 Q. And what -- you went to school over here for a
14 while and then went to Ruffin High School?

15 A. Yes.

16 Q. And you graduated over there?

17 A. Yes.

18 Q. Do you have family in Hampton County?

19 A. Yes. My mother's sisters.

20 Q. And who are they?

21 A. Delphine Johnson, Retha Mae Johnson, Thelma
22 Williams. Just a number of relatives.

23 Q. And Sarah Harrison?

24 A. Yes, Sarah.

25 Q. And any others, other than those that you can

1 think of, that live in Hampton?

2 A. Not in Hampton.

3 Q. And you were -- upon graduating from high
4 school, did you take some college courses?

5 A. Yes. I have a degree, an associates, in
6 business administration and I almost completed one in
7 accounting.

8 Q. And after that you at some point in time came to
9 be married?

10 A. Yes.

11 Q. And you've had how many children?

12 A. I have three children.

13 Q. And what are their ages?

14 A. Brian is seventeen, Lillian is sixteen, and
15 William is fifteen.

16 Q. And they are all now at home with you?

17 A. Yes.

18 Q. And where do you live in relationship to
19 Hampton?

20 A. I live in Islandton. It's on Moselle Road, the
21 road that runs directly behind Bubba's Used Cars.

22 Q. And if you turned at Bubba's Used Cars, made a
23 left and continued on, you would come to your house?

24 A. Yes.

25 Q. And does your family live there together?

1 A. Yes. My uncle is right to my right and my
2 father lives directly behind me.

3 Q. And so y'all have a little family place there
4 that y'all live together?

5 A. Yes.

6 Q. And your father is Willie Homer Stephens, which
7 is --

8 A. Yes.

9 Q. -- here with us. And is your mother deceased?

10 A. Yes.

11 Q. And her name was Lillie?

12 A. Lillie.

13 Q. And your uncle Jimmy, who has testified here
14 earlier, lives up in the area with you also?

15 A. Yes. Right beside me.

16 Q. Now, tell us about Lillian growing up, what type
17 child she was.

18 A. She was fairly normal. She was kind of a
19 tomboy-ish, active, outdoors. We fish, we hunt, we do
20 drag races, festivals, whatever.

21 Q. And did y'all do family things together,
22 William, Brian, and yourself?

23 A. Yes.

24 Q. I want to first let's look at some pictures that
25 we're going to put up.

1 MR. PARKER: And we'll put up Exhibit 136.

2 Q. [Mr. Parker] And I'm going to ask you some
3 questions about these pictures as we put them up.

4 MR. DETRICK: Lights on?

5 MR. PARKER: I think -- let me see. Put it up
6 and let's see what it looks like.

7 Let's cut the lights out, if you will, Jimmy. I
8 would appreciate it. We can see a little better.

9 Q. [Mr. Parker] You can see 136 on the screen
10 there?

11 A. Yes.

12 Q. And tell us about this photograph, picture 136.

13 A. That's Lillian and Brian with their father.
14 They were real young then.

15 Q. And at some point in time, you divorced? There
16 was a divorce --

17 A. Yes.

18 Q. -- between their father and yourself?

19 A. Yes.

20 Q. And the kids have lived with you since then?

21 A. Yes.

22 MR. PARKER: All right. Let's look at 137.

23 Q. [Mr. Parker] And this, again, is a picture of
24 them as young children?

25 A. Yes.

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1 Q. And how much older is Brian than Lillian?

2 A. It's about nine months. They both were
3 premature.

4 Q. And as kids, did they play together and happy
5 together?

6 A. Yes.

7 MR. PARKER: And 138.

8 Q. [Mr. Parker] And is this Christmas that y'all
9 were celebrating while they were young?

10 A. Yes. It's Christmas at the house.

11 Q. And it looks like Lillian, you've got her
12 dressed up pretty good there for being a tomboy.

13 A. Yeah.

14 Q. She didn't like that much?

15 A. Not really.

16 MR. PARKER: And 139.

17 Q. [Mr. Parker] Again, it's just a little -- a
18 picture of them together? Brian and Lillian.

19 A. Yes.

20 Q. And after she got her -- growing up from the
21 fact of being premature, did she develop normally after
22 she caught up from being premature?

23 A. Yes.

24 MR. PARKER: And next go to 140.

25 Q. [Mr. Parker] And this is another picture of

1 Brian and Lillian. And were they about the same size?

2 A. Yes.

3 Q. And did Brian have difficulties that -- from
4 birth with his being disabled?

5 A. Yes.

6 Q. And what caused that?

7 A. He was in NICU at Medical University. He caught
8 an infection -- I think the term is osteomyelitis or
9 something -- and the infection caused a lot of damage in
10 his left hip. He's never walked.

11 Q. He's never been able to walk? He has had to
12 ambulate with crutches --

13 A. Yes.

14 Q. -- and get about?

15 Does he do it pretty good?

16 A. Yes.

17 Q. Is Brian a bright child?

18 A. Yes.

19 Q. And was Lillian very similar to Brian growing
20 up?

21 A. Yes.

22 Q. Was she also a very bright child?

23 A. Yes.

24 MR. PARKER: Let's go look at 141.

25 Q. [Mr. Parker] And I think there she's exhibiting

1 some of that brightness. And what is that she has on
2 there?

3 A. She took her grandmother's wig and was playing
4 with it.

5 Q. Dressing up?

6 A. Yes.

7 MR. PARKER: Let's next go to 141-A.

8 Q. [Mr. Parker] And is this Lillian on her bicycle
9 I assume she got at some point in time for a present?

10 A. Oh. Yes. Yes.

11 Q. And she liked to ride a bicycle and get out and
12 do things?

13 A. Yes. Out in the yard.

14 Q. And play ball?

15 A. Yes.

16 Q. Fish?

17 A. Yes.

18 Q. She loved to fish?

19 A. Yes.

20 Q. What other kinds of things prior to her being
21 injured did she like to do?

22 A. Like I said, as they were growing up we did,
23 like, movies -- she loved that -- and all the different
24 festivals that we went to, the parades, the carnivals, the
25 vacations, she just loved all of that, the drag racing.

1 Q. Was Lillian -- before her injury, was she a shy
2 girl?

3 A. Very.

4 Q. She was very shy around others? around people?

5 A. Yes.

6 MR. PARKER: Let's go to 141-B.

7 Q. [Mr. Parker] And this is Lillian growing up?
8 And I guess you made her dress up again?

9 A. Yes.

10 MR. PARKER: Then 141-C.

11 Q. [Mr. Parker] Is this at a birthday party?

12 A. Yeah, we were at a birthday party.

13 Q. Do you know which -- was that her birthday? Or
14 do you recall?

15 A. No, I don't think it was hers. We were at
16 someone else's that day.

17 MR. PARKER: Okay. And 141-D.

18 A. That's my father with the kids on the bulldozer.

19 Q. [Mr. Parker] And did he -- at that point in
20 time, was he doing work -- did land-clearing work, that
21 type work? Heavy-equipment work? That was his job?

22 A. Yes, for Lightsey Brothers.

23 Q. And I assume they liked getting up there with
24 him and doing that sort of thing?

25 A. Yes. They loved it.

- 1 MR. PARKER: And 141-E?
- 2 Q. [Mr. Parker] That's you and Lillian at Easter?
- 3 A. Yeah. It was Easter Sunday.
- 4 Q. And you had to get her dressed up again?
- 5 A. Yes.
- 6 Q. I assume y'all had been to church that day?
- 7 A. Yes.
- 8 Q. And where did y'all attend church?
- 9 A. Toby's --
- 10 Q. Toby who?
- 11 A. -- United Methodist, right next door to me.
- 12 Q. Very close to your house?
- 13 A. Yes.
- 14 MR. PARKER: And let's look at 141-F.
- 15 Q. [Mr. Parker] And this is a trip y'all were on
- 16 somewhere at the ocean?
- 17 A. Yeah. We were at the beach.
- 18 Q. And Lillian there appears to be particularly
- 19 happy. Is she happy doing those sorts of things?
- 20 A. Yes.
- 21 MR. PARKER: And let's go to 141-G.
- 22 Q. [Mr. Parker] And in 141-G, that's all three
- 23 children?
- 24 A. Yes.
- 25 Q. And of course William, by then, has gotten

1 larger than Brian?

2 A. Yes.

3 Q. And William has grown to be a pretty-good-size
4 man, even though he's very young. How old is William now?

5 A. William is fifteen.

6 MR. PARKER: And then let's go to 141-H.

7 Q. [Mr. Parker] And this is Brian in Columbia?

8 A. Yes. We were at the -- that's the State House
9 in Columbia. He had gotten an award in school. It was
10 for citizenship and academic. I think they pick like two
11 children from each school and he won for their school.

12 Q. And he's there with Governor Hodges at the State
13 House?

14 A. Yes.

15 Q. And I'm sure you're proud of him.

16 A. Very.

17 Q. Let's -- if we will, we'll --

18 Did you also have some video clips of when --
19 that brings us more current with Lillian?

20 A. Uh-huh. Yes.

21 [Whereupon, video of Colvin family is played for
22 the jury]

23 Q. [Mr. Parker] And if you will, as we go along,
24 we're watching here, y'all are where?

25 A. We were at Carowinds.

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1 Q. And is that Lillian?

2 A. Right there. Yes.

3 Q. And the other children -- Brian is in a --

4 A. A little carrier.

5 Q. -- having to be pushed about?

6 A. Yes.

7 Q. And Lillian, was she good taking care of him?

8 A. Oh, yes. She helped out.

9 Q. Now, who is that there?

10 A. That's William.

11 Q. And he's growing up and getting big. And I
12 notice Lillian won't look at you with the camera.

13 A. Yeah.

14 Q. She wouldn't -- didn't like being on camera
15 much?

16 A. Not really.

17 Q. And that's Lillian and Brian?

18 A. That's Lillian and William.

19 Q. And William. Excuse me.

20 A. Yeah. That's William.

21 Q. And this was a trip y'all went on to Carowinds
22 together?

23 A. Yes.

24 Q. And was Lillian good taking care of Brian and
25 helping with him?

1 A. Yes, she did.

2 Q. She doesn't want to look at you again.

3 All right. Now, tell us about where this --
4 we've changed over now. Is this at a family reunion up at
5 your in-laws'?

6 A. Yes. This is my ex-husband's family.

7 Q. And that's Brian --

8 A. Yes. And --

9 Q. -- playing basketball?

10 A. Yes.

11 Q. And even though he's had to use crutches, is he
12 and Lillian here?

13 A. Yes.

14 Q. And, again, she doesn't want to look at you?

15 A. Huh-uh. [Indicates negatively]

16 Q. And Brian, with the basketball and doing things,
17 did he get out and try to do things even though he was --
18 had problems with -- he had to use his crutches to get
19 about?

20 A. Yes.

21 Q. And how has Brian done academically?

22 A. Outstanding. He has done well.

23 Q. I guess this is at one of your in-laws' houses?

24 A. Yes.

25 Q. And, there again, Lillian is wanting to go avoid

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1 looking at you and -- how long before her being injured is
2 this?

3 A. I'm not sure. It wasn't that long. I think it
4 may have been the summer before. I'm not exact.

5 Q. And here they're looking at the computer?

6 A. Yes. We were in Virginia.

7 Q. At this time it's gone to Virginia?

8 A. Yeah.

9 Q. And whose house was this? A cousin's house in
10 Virginia?

11 A. Yeah. This time we were in Virginia.

12 Q. And Lillian was looking at the computer there?

13 A. Yeah. She was in my cousin's office in the
14 basement.

15 Q. And the computer, she was there trying to learn
16 how to use it. And did y'all have a computer at that
17 time?

18 A. Yes.

19 Q. She had already known how to use the computer at
20 that time?

21 A. Yes. They were learning. They start teaching
22 them like kindergarten, first grade. They get them
23 familiar with it.

24 Q. So she was already able to use the computer?

25 A. Yes.

1 Q. Now, here Lillian is. And y'all are at a
2 cousin's in Virginia --

3 A. Yes. We're still in --

4 Q. -- swimming?

5 A. -- Virginia.

6 Q. And that's your little cousin there that's there
7 with Lillian?

8 A. Yes.

9 Q. And was this a good trip? And was Lillian good
10 with children?

11 A. Yes. She was a lot patient -- lot more patient
12 back then. She loved kids then.

13 Q. And on this trip your dad was with you?

14 A. Yes. He went with us that time.

15 [Whereupon, video of Colvin family concludes]

16 MR. PARKER: All right. Your Honor, we would
17 offer into evidence Exhibits 136 through 141-H. And
18 also the video that we just saw, which is Exhibit 142.

19 MR. HARMON: Just subject to our -- your earlier
20 ruling, sir [sic].

21 THE COURT: Yes, sir. They are in evidence
22 subject to your earlier objection.

23 [Whereupon, Exhibit Numbers 136 through 141-H
24 are admitted into evidence by the Court]

25 [Whereupon, Exhibit Number 142 is admitted into

1 evidence by the Court]

2 MR. PARKER: And, Mr. Wooten, may we have the
3 lights back? I see Murphy is right there. He can get
4 them.

5 Q. [Mr. Parker] So over in Islandton on Moselle
6 Road, that's sort of -- that's about as close to Hampton
7 as it is to -- it's closer to Hampton than it is to
8 Walterboro, isn't it?

9 A. Yes, it is.

10 Q. And so I assume you did most of your shopping
11 and things in Hampton?

12 A. Yes.

13 Q. And you also I think met and had a boyfriend,
14 Carlos Terry?

15 A. Yes.

16 Q. And Carlos is from Hampton?

17 A. Yes.

18 Q. And his family, mother and father, live in
19 Hampton?

20 A. Yes.

21 Q. And at some point in time Carlos came to
22 Islandton and lived with you?

23 A. Yes.

24 Q. And the children lived there with all of you?

25 All of you lived there together?

1 A. Yes.

2 Q. And Carlos worked where?

3 A. Dixie Poly Drum in Yemassee.

4 Q. And did you -- let me ask you, before we get
5 into that, how was Lillian in school before her injury?

6 A. Her grades were good. I really didn't have a
7 problem out of her behavior-wise. Nothing, really.

8 Q. And did she pretty well up until the sixth grade
9 make the honor roll every year?

10 A. Yes. Her grades were good.

11 Q. And no problems at school?

12 A. No.

13 Q. Ever have to stay after school or any -- have to
14 go to school or do anything that you can recall that would
15 indicate any abnormal behavior?

16 A. No.

17 Q. And now going until the winter of 2004: were
18 you having to take Carlos to work?

19 A. Yes.

20 Q. And so you would -- if you had to take him to
21 work, what time would you get up?

22 A. We would get up at 5:00 in the morning.

23 Q. And what time did he have to be at work?

24 A. He had to be to work at 6:00.

25 Q. And to get him to work from where you live, what

1 was your route?

2 A. I would leave my house, come out to 63, come
3 down, I would make the left at Miley's Crossroad, and that
4 would take me the back way to Yemassee.

5 Q. In other words, you would go down Salkehatchie
6 Road?

7 A. Yes.

8 Q. You would go across the Salkehatchie and then
9 take the first left; is that correct?

10 A. Yes. Right at the crossroads.

11 Q. And how long would it take you to get down
12 there?

13 A. About twenty to thirty minutes.

14 Q. And he had to be there at 6:00?

15 A. Yes.

16 Q. His hours were what? 6:00 to 4:00?

17 A. 6:00 to 4:30.

18 Q. 6:00 to 4:30.

19 A. Uh-huh.

20 Q. And so you would get him up. And then when --
21 what would you do during the day?

22 A. During the day, whatever I had to take care of,
23 whether it's a doctor appointment for me or the kids, or
24 household chores, cooking, cleaning. A normal day.

25 Q. All right. And at that point in time, have you

1 been on -- I know you've worked in the past as a
2 substitute teacher and in accounting and various things,
3 but have you had a disability because of your back?

4 A. Yes. I have herniated disks, and that's when I
5 got on disability.

6 Q. And does that limit what you can do, the back,
7 insofar as taking care of things and doing hard work,
8 lifting, stooping, bending?

9 A. Yes.

10 Q. And have you been on pain medication for that
11 for a number of years?

12 A. Yes.

13 Q. Okay. Now, let's go to February the 3rd, 2004.
14 Did you get up around five o'clock that morning?

15 A. Yes.

16 Q. And I guess you got dressed and then took Carlos
17 to work?

18 A. Yes.

19 Q. Went the route you described?

20 A. Yes.

21 Q. And got back home about when?

22 A. I would have gotten back home around 6:20, 6:30.

23 Q. And what time would the kids get to school, or
24 leave to go to school, at that time?

25 A. At that time it was around like maybe twenty or

1 a quarter to 7:00.

2 Q. And you would get back home and they would catch
3 the bus to go to school?

4 A. Yes.

5 Q. Now, was there an assigned place where they went
6 to catch the bus right there at the house? Did they stop
7 right at the house?

8 A. Yes, right in front of the house.

9 Q. And so after they went to school, what did you
10 do that day?

11 A. I went ahead and I started my day. I would go
12 ahead and put dinner on and let that simmer through the
13 day. I would vacuum, mop --

14 Q. Cleaned up --

15 A. -- whatever needed to be done.

16 Q. Okay. Now, going -- let's go -- that day,
17 earlier in that day, did you go pick up a child for a
18 friend of yours?

19 A. Yes. My girlfriend, Karen Dobson, called me.
20 She wanted me to pick up her daughter, Ebony, from school.
21 She was -- something came up and she couldn't get there.

22 Q. So you picked her up in Walterboro?

23 A. Yes. I left my house, I went to Walterboro,
24 picked her up from Colleton High. I took her all the way
25 back to Hampton to Holly Ridge Apartments. It's the --

1 Q. Holly Street Apartments?

2 A. Yeah. It's for the elderly people. I took her
3 there to her grandmother's house, then I came back to
4 Islandton to my house.

5 Q. All right. And do you know about what time you
6 got back? Do you know what time it was?

7 A. It was, I would estimate, between 3:30 or 4:00.

8 Q. It was in time to get back -- were the children
9 home when you got back?

10 A. Yes. They get home around right before 4:00.

11 Q. So but right in that time?

12 A. Right in that time.

13 Q. And after you got home did Lillian and Brian get
14 in a dispute?

15 A. Yes. They had a disagreement, and --

16 Q. Lillian --

17 A. -- Lillian got mad and she came with me.

18 Q. All right. So y'all left to go pick Carlos up?

19 A. Yes.

20 Q. And about what time was that?

21 A. I usually leave home around 4:00.

22 Q. And so to get there by 4:30 you get there a
23 little bit early but not a lot?

24 A. Yes.

25 Q. And when you got to Dixie Poly Drum that day --

1 to get to Dixie Poly Drum, do you go down Hill Road and
2 make a left into Dixie Poly Drum?

3 A. Yes.

4 Q. And there is a parking lot there where you could
5 wait on Carlos?

6 A. Yes.

7 Q. And did he come out that day?

8 A. Yes.

9 Q. And got in the car with you?

10 A. Yes.

11 Q. And did you hear any trains during that time?

12 A. No.

13 Q. And so he got in the car. And then what
14 happened?

15 A. We left. We pulled out from the job, then that
16 was when I made the left on -- that's Hill Road from
17 leaving the job.

18 Q. Right.

19 A. Yeah.

20 Q. And when you left Hill Road, did you -- is there
21 a stop sign you encountered?

22 A. Yes.

23 Q. And did you stop there?

24 A. Yes.

25 Q. Did you look both ways?

1 A. Yes.

2 Q. Did you see or hear a train?

3 A. No.

4 Q. Now, as you looked to your right there at Hill
5 Road when you stopped at the stop sign, could you see?

6 A. No.

7 Q. And why not?

8 A. There were trees, vegetation. I couldn't see
9 clearly, no.

10 Q. It blocked your view through there?

11 A. Yes.

12 Q. And so what did you do?

13 A. I pulled up and I stopped again.

14 Q. And did you pull up for what you thought was a
15 safe distance?

16 A. Yes.

17 Q. And when you stopped, you stopped again. And
18 did you look again?

19 A. Yes.

20 Q. Did you look to your right and look to your
21 left?

22 A. Yes.

23 Q. Did you see anything?

24 A. No.

25 Q. And what happened?

1 A. When I pulled off to cross the track, that's
2 when I heard the horn. I heard the horn right before it
3 hit.

4 Q. And was it immediately before, or did you have
5 time to press the gas?

6 A. Yeah. When I heard the horn, that was my first
7 response was to get on the gas and try to get out of the
8 way.

9 Q. And were you able to do that?

10 A. No.

11 Q. The train struck you?

12 A. Yes.

13 Q. And when the train struck the vehicle, were you
14 almost across the track?

15 A. Yes.

16 Q. And you ended up -- on which side of the track
17 did you end up on? the Hampton side or the -- let's say
18 the Family Dollar side, or did you end up on the Dixie
19 Poly Drum side?

20 A. It was on the Family Dollar side.

21 Q. And in the process of the collision, was Carlos
22 ejected from the vehicle?

23 A. Yes. He was thrown completely out.

24 Q. And you stayed in the vehicle?

25 A. I was in, still in, yeah.

1 Q. And you didn't go down the track with the train,
2 but was the -- the vehicle was spun around and ended up
3 there at the crossing on the other side of the crossing?

4 A. Yes.

5 Q. And after the collision, you got out?

6 A. Yes. I looked, and I saw Lillian. She was
7 laying right behind me. She was slumped over. And I felt
8 her. She was breathing. And I looked, and I realized
9 Carlos wasn't even in the truck. I looked around. Then I
10 got out. I looked behind me, and I saw him lying on the
11 ground beside the train. And then when I ran over to him,
12 I was calling his name. And when he moved, I knew he was
13 okay. So I went back to the truck where my daughter was,
14 because the guys from the job were already coming under
15 and around to get to him.

16 Q. And you went -- tried to go to Lillian?

17 A. Yes.

18 Q. And were you restrained from doing that?

19 A. Yes.

20 Q. And did you get hysterical about not being able
21 to get her out of the vehicle?

22 A. Yes.

23 Q. And why was that?

24 A. The train hit us in the back end of the truck.
25 No one mentioned checking for a gas leak. I was thinking

1 explosion; you know, to just get her clear from it.

2 Q. Right. And you were upset because they would
3 not allow you to do that?

4 A. Yes.

5 Q. And I think that Mr. Biser and others told you
6 that you didn't need to do that, that you --

7 A. Yes.

8 Q. -- that you should wait until the EMS got there?

9 A. Yes.

10 Q. And is that what happened? You did wait for the
11 EMS to get there?

12 A. Yes. Yes.

13 Q. Now, let's go back a little bit. At the
14 crossing there, there's the stop sign you said you stopped
15 at, you looked both ways --

16 A. Yes.

17 Q. -- correct?

18 A. Yes.

19 Q. Did you look right and then look left?

20 A. Yes.

21 Q. And then you pulled up what you thought was a
22 safe distance?

23 A. Yes.

24 Q. And when you did that, how far could you see?

25 A. I would estimate -- you're talking about the

1 first time I stopped?

2 Q. No. The second time.

3 A. The second time I stopped?

4 Q. Correct.

5 A. I would estimate maybe three- to four-hundred
6 feet.

7 Q. And did you think that was a safe distance?

8 A. Yes.

9 Q. And when you stopped, did you stop in the
10 vicinity behind the stop -- the cross-buck sign that we've
11 seen pictures of?

12 A. Yes.

13 Q. And when you stopped there, what kept you from
14 seeing more than three- or four-hundred feet?

15 A. There were trees there.

16 Q. But you thought that you had gone far enough
17 behind them to have a safe view --

18 A. Yes.

19 Q. -- of an oncoming train?

20 A. Yes.

21 Q. And when you stopped there, you looked right
22 again?

23 A. Yes.

24 Q. You looked left?

25 A. Yes.

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1 Q. And then you did what?

2 A. I proceeded -- I started to cross the track.

3 Q. And did you go at a normal rate of speed?

4 A. Yes.

5 Q. And did you -- I mean, you weren't in any hurry
6 because you didn't think there was a train coming, did
7 you?

8 MR. HARMON: Your Honor, I'm sorry.

9 A. No. We wasn't in --

10 MR. HARMON: I'm sorry. We've been leading, and
11 I would just ask him not to lead.

12 THE COURT: Sustained. Let's not lead.

13 Q. [Mr. Parker] What was your state of mind when
14 you left the crossing -- left the place you stopped behind
15 the cross-buck sign insofar as a train coming?

16 A. What was my --

17 Q. What were you thinking? Were you thinking there
18 was a train coming, or not a train coming?

19 A. No. I thought there was no train coming. I
20 thought I was safe.

21 Q. All right. And there's been questions asked in
22 the case -- you've been sitting out here -- about you
23 trying to hurry up and get across in front of the train.
24 Did you ever see that train?

25 A. No.

1 Q. Were you trying to hurry up and get across in
2 front of the train?

3 A. No.

4 Q. And the -- as you approached that crossing, were
5 you driving at what you would normally drive at? Normal
6 rate of speed?

7 A. Yes.

8 Q. And did you approach that crossing and stop that
9 day as you had done in the past?

10 A. Yes.

11 Q. And at that crossing -- you been across that
12 crossing before?

13 A. Yes, I have.

14 Q. And did you -- had you been there when a train
15 was at that crossing before?

16 A. I had -- I had seen trains, and they were
17 already on the track. Like in the process of me picking
18 him up, I have seen the train, yes.

19 Q. They would be across the track when you got
20 there?

21 A. Yes. Already on there, or coming through or
22 something.

23 Q. And you had been that way I guess -- tell us
24 about when you would use that route to go home.

25 A. The route that takes me across the track?

1 Q. Right. Sometime you would, of course, go back
2 to Islandton --

3 A. The other way --

4 Q. -- and go back Salkehatchie Road, and sometimes
5 you might go the other way as you were going this day. Do
6 you know why you were going that way this day? Do you
7 recall?

8 A. Yes. If I pick Carlos up and he needs to go to
9 the store or something, we would go that way and I would
10 let him take care of what we needed before we go home.

11 Q. Now, as you left the Dixie Poly Drum and went
12 toward the stop sign, were you listening to music?

13 A. The radio was on, yes.

14 Q. And was Carlos and Lillian talking?

15 A. Yes.

16 Q. Do you recall what they were talking about?

17 A. I don't remember specifically.

18 Q. And but they were in a conversation?

19 A. Yes.

20 Q. And anything unusual about what happened after
21 leaving Dixie Poly Drum?

22 A. No.

23 Q. As you approached the stop sign, did you hear a
24 train?

25 A. No.

1 Q. Did you see a train?

2 A. No.

3 Q. And when you looked to the right at the stop
4 sign, did you see a train?

5 A. No.

6 MR. HARMON: Objection. We've been through
7 this. Asked and answered.

8 MR. PARKER: Whatever, Your Honor.

9 THE COURT: Okay. Sustained. Let's move on to
10 something else.

11 MR. PARKER: I don't believe I did ask whether
12 she heard a train at the stop sign. I believe that's
13 the first time I have asked that, if my memory is
14 correct.

15 MR. HARMON: My objection is asked and answered,
16 Your Honor.

17 THE COURT: You can ask the question as to
18 heard.

19 Q. [Mr. Parker] Did you hear a train at the stop
20 sign?

21 A. No.

22 Q. When you got to the cross-buck sign, did you
23 hear a train?

24 A. No.

25 Q. And, of course, I asked you if you saw a train.

1 A. No.

2 Q. And, now, on the previous occasions when you had
3 come up to that crossing and seen a train, they were
4 across the track?

5 A. Yes..

6 Q. Now, after the collision, and you've described
7 about being hysterical --

8 A. Yes.

9 Q. -- the EMS eventually came?

10 A. Yes.

11 Q. And they attended to all of you?

12 A. Yes. They took Lillian first. They took her
13 and they had her in the ambulance and they were sitting
14 there for a while.

15 Q. And in the ambulance that took Lillian, did you
16 know they were taking her to fly her to MUSC? Or did you
17 know that at that time?

18 A. I'm not -- I don't remember. At that time, no.
19 When they were sitting there, they didn't say anything.
20 We didn't know what was going on inside. But then someone
21 came to us and said that they were waiting for the
22 helicopter.

23 Q. And they were going to fly her to MUSC?

24 A. They were going to fly her to Charleston..

25 Q. And eventually, after some time, the EMS people

1 came and attended to you?

2 A. Yes.

3 Q. And they put you in the ambulance?

4 A. Yes. They took Carlos and I to -- right here to
5 the hospital in Varnville.

6 Q. And when you were at the scene and the ambulance
7 attendant, the EMS attendant, was tending to you, did the
8 EMS worker ask you anything about whether or not you had
9 had anything alcoholic to drink?

10 A. Yes.

11 Q. And what did you tell her?

12 A. I told her yes. I told her exactly what I had
13 had.

14 Q. And tell us about -- now about what you had had
15 to drink earlier in that day.

16 A. While I was piddling around in the house earlier
17 that morning and cleaning, I got thirsty. I went to the
18 frig. No sodas. I just grabbed a wine cooler and kept
19 working. And I explained to her it was either one or two.

20 Q. And this was about what time that you had these?

21 A. It was earlier in the day while I was cleaning.
22 I would estimate 11:00 or 12:00.

23 Q. And after that -- did you have anything to drink
24 after that at all?

25 A. I was eating lunch and whatever and so I assume

1 I grabbed something, maybe a soda or whatever, when I left
2 out.

3 Q. And, now, you said you didn't have any sodas.

4 A. Oh. No. When I left --

5 Q. When you were at the store or something?

6 A. I grabbed one while I was out. Yeah.

7 Q. Okay. And you -- but as far as anything to
8 drink alcoholic, after you had the two wine coolers --

9 A. No.

10 Q. -- did you have anything else?

11 A. Nothing.

12 Q. And would that have been an unusual occurrence
13 for you to have wine coolers that time of the day?

14 A. I mean, sometimes. I mean, once in a while. I
15 do drink socially, yes.

16 Q. So, I mean, you -- it wasn't anything unusual
17 for you to have a wine cooler, would it have been, at that
18 point in time? Because I assume you had them in the
19 refrigerator.

20 A. Yes.

21 MR. HARMON: Your Honor, I'm sorry. We're
22 leading our own witness. He asked --

23 MR. PARKER: I'll go on.

24 THE COURT: Okay. Sustained.

25 Let's keep going. Don't lead her.

1 Q. [Mr. Parker] Now, so you told the EMS worker
2 there that she attended to -- what injuries did you have?

3 A. My bottom teeth had come through here and busted
4 this open. I have broken, shattered, bottom teeth. There
5 was something wrong with my leg. They didn't know whether
6 it was broken or not. Come to find out it wasn't. And I
7 had like bruises and gashes.

8 Q. And they transported you to the Hampton Regional
9 Hospital?

10 A. Yes.

11 Q. You and Carlos?

12 A. Yes.

13 Q. And when you got to the Hampton Regional
14 Hospital, were you seen in the emergency room?

15 A. Yes. They took us straight in.

16 Q. And when you got there, did you talk with the
17 nurse there, a nurse there at the -- that took you in?

18 A. Yes.

19 Q. And you, I presume, were with her for some time?

20 A. Yes.

21 Q. And she attended to you. And after you got
22 there, was blood drawn?

23 A. Yes. They took x-rays of my leg and they drew
24 blood. Then she came -- yes.

25 Q. And was that shortly after you got there --

1 A. Yes.

2 Q. -- that they did --

3 A. It wasn't that long.

4 Q. And did you see a doctor there?

5 A. Uh-huh. Yes.

6 Q. And did he ask you whether or not you had had
7 anything alcoholic to drink?

8 A. Yes.

9 Q. The doctor.

10 And did you tell him the truth?

11 A. Yes.

12 Q. And did you tell him the same thing that you've
13 testified to here today?

14 A. Yes.

15 Q. And eventually did someone come in and ask you
16 to sign a consent form to allow them to test your blood
17 for alcohol?

18 A. Yes, she did.

19 Q. And you signed the consent?

20 A. Yes, I did.

21 Q. And the doctor there treated you for your
22 injuries?

23 A. Yes, he did.

24 Q. And did -- I think they -- did they -- what did
25 they do with the cut on your chin?

1 A. I think they may have steri-stripped or
2 something. Yeah.

3 Q. Now, let me ask you. Back when you were picked
4 up and drove from Islandton or Moselle to Dixie Poly Drum,
5 were you under the impairment or impaired in any way in
6 your driving abilities?

7 A. No, I wasn't.

8 Q. Did the fact that you had those wine coolers
9 have any effect whatsoever on your ability to drive a
10 vehicle?

11 A. No.

12 Q. I believe that you also take some pain
13 medication?

14 A. Yes.

15 Q. And had you taken it that day?

16 A. Yes, I had.

17 Q. And what is your routine about taking your
18 medication?

19 A. Usually when I get up in the mornings, I take my
20 medicine. The pain medication helps me to do my household
21 chores, you know, to function during the day.

22 Q. Do you recall that day whether you took your
23 pain medication that morning, when you got up, or later in
24 the day?

25 A. I took it when I got back. If I recall

1 correctly, I took it when I got back from taking Carlos.

2 Q. Do you know approximately what time that would
3 be?

4 A. Around 6:30.

5 Q. And the medication you were taking at that time
6 was what?

7 A. I was taking Darvocet and I was also taking a
8 muscle relaxer. And that morning I grabbed a little cough
9 syrup because I had been coughing through the night.

10 Q. And was that children's cough syrup, or your
11 cough syrup?

12 A. No, it wasn't mine. It was some the kids had.

13 Q. And the medication you were taking, had you been
14 taking that for a long period of time?

15 A. Yes, sir. I've been on pain medication and
16 muscle relaxers for years with my back.

17 Q. And the same type medication you took that
18 morning, did it have any affect on your ability to drive?

19 A. No.

20 Q. Are there warnings that come on those bottles
21 about taking that medication and driving?

22 A. Yes.

23 Q. And they caution you against driving and taking
24 the medication?

25 A. Yes.

1 Q. And given that, did these -- did you have any of
2 the adverse consequences that they warn you about with
3 those drugs?

4 A. No. All the years I've been taking it, no
5 blurry vision, no nothing.

6 Q. Had any kind of effect on you -- in fact, did
7 you take any today?

8 A. Yes.

9 Q. And did you take the same kind of medicine, that
10 you had taken then, this morning?

11 A. Yes. Now I'm on Lortab.

12 Q. But it is a medication of the same type as
13 Darvocet?

14 A. Yes.

15 Q. I assume Lortab might be stronger?

16 A. Yes. It's for pain.

17 Q. And do you have to take this medicine to be able
18 to function?

19 A. Yes. I -- with Brian, that already entailed a
20 lot of lifting, and it did, it helped me to take care of
21 him and then Lillian, also, when it came along.

22 Q. After you -- now, we -- let's go back to the
23 hospital. You signed a consent for them to take a blood
24 -- not take a blood sample, because they had already taken
25 it --

1 A. Uh-huh.

2 Q. -- but to test it?

3 A. Yes.

4 Q. And then the doctor tended to you; is that
5 correct?

6 A. Yes.

7 Q. And were you anxious to leave out?

8 A. Yes.

9 Q. And who came and got you and took you to the
10 hospital?

11 A. When we walked out it was a combination of his
12 family, my family, friends, my cousin, Jimmy Stephens, my
13 uncle, James Stephens, his son, was out there. And I made
14 the statement, I asked, who is going to take me to
15 Charleston, and he was like, I've got you. And he took
16 me.

17 Q. And what time that day did you arrive at the
18 hospital, if you remember?

19 A. I'm not sure. I went home, I washed the blood
20 off, grabbed a suitcase. Carlos was hurt. His mother
21 took him. And we went straight to Charleston. It was
22 that night. I'm not sure of the exact time.

23 Q. And when you got in -- did you get in to see
24 Lillian when you got there?

25 A. Yeah. They kind of -- yeah. When I first got

1 there, I got to see her for a few minutes before they gave
2 her medicine to kind of calm her.

3 Q. And what was she like when you got there?

4 A. She was hooked up to all kinds of stuff. You
5 could barely even see her face. There was this huge thing
6 in her mouth that was holding it open, and there were
7 wires everywhere, and machines all around.

8 Q. And was she fighting all of that? Was she
9 flailing about, or was she calm?

10 A. No. She was calm. They didn't want to upset
11 her. They told me not to cry in front of her because they
12 said at that point she could still hear us. So what I
13 did, I was talking to her. I asked her could she hear me,
14 and I told her to hit my hand with her foot, and she said,
15 yeah. Well, she hit my hand with her foot, which meant
16 yes. And I talked to her for a couple minutes and then it
17 was like the alarms and stuff went off. I guess she got
18 agitated. And that was I guess when they induced a coma
19 or whatever.

20 Q. And for the next thirty days or so, what
21 happened in the hospital?

22 A. She was basically in a coma. I was back and
23 forth. Really, during that time there wasn't much to do
24 but sit there. She was --

25 Q. So you stayed there in the hospital with her?

1 A. Yeah. They said that they can actually hear you
2 when they're like that -- it's possible -- so I would sit
3 there and read to her. And the nurses would laugh. They
4 would be like, she hasn't answered you yet, has she. I
5 was like, no, not yet.

6 Q. And was she on a ventilator --

7 A. Yes.

8 Q. -- during that period of time?

9 A. Yes.

10 Q. And, also, time she got there or shortly
11 thereafter, did they have to -- were you aware of they had
12 to bore a hole in her skull?

13 A. Yes. They said it was swelling, brain, swelling
14 of the brain, and they had to release the pressure or
15 something.

16 Q. And this was -- which doctor was that that
17 talked with you? Was it Dr. Campbell? Or do you recall?

18 A. I think it was. Or Patel.

19 Q. You don't remember if --

20 A. Was it Campbell? It was one of them. It's been
21 so many.

22 Q. And Dr. Patel and Dr. Campbell were the
23 neurosurgeons who --

24 A. Yes.

25 Q. -- attended to Lillie? Lee-Lee, I believe you

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1 call her.

2 A. Yes.

3 Q. And as time went on, eventually she woke up?

4 A. Yes.

5 Q. And do you recall that, when she did wake up?

6 A. Yes. She opened her eyes but she still wouldn't
7 talk. She would just lay there and look dazed. I guess
8 the word is non responsive. She just laid there and
9 looked.

10 Q. All right. Now, the video that the jury saw
11 with Dr. Kolehma, was that about March 12th when that was
12 done, thereabouts? The first of March?

13 A. It should have been, yes.

14 Q. And is this -- were you the -- obviously you
15 were there and --

16 A. Yes.

17 Q. Was this when she started her physical therapy,
18 or shortly after that?

19 A. Yes. When she woke up, it was about a week
20 before she really said anything. We would go get her up.
21 But we had already started therapy as soon as, you know,
22 possible.

23 Q. As soon as she opened her eyes and got --

24 A. Yeah. They were getting -- trying to get her
25 moving. And we were getting her up for therapy. And the

1 first time she spoke, she was like uh-uh, telling us she
2 didn't want to get up.

3 Q. And they -- but in the therapy they tell you you
4 have to get up?

5 A. Yeah.

6 Q. And as we saw in the video there, they required
7 her to get up even if she didn't want to?

8 A. Yes.

9 Q. And did you assist with that?

10 A. Yes.

11 Q. And the therapy that we saw in that clip, the
12 clip that we played, did that take place the whole time
13 she was at MUSC?

14 A. Yes. They had her in therapy every day.

15 Q. And she stayed at MUSC how long?

16 A. It was two months.

17 Q. So that would be about the end of March; is that
18 correct?

19 A. Yes.

20 Q. During that time -- after we saw the video --
21 did she get somewhat better?

22 A. Yes. Little by little, yes.

23 Q. Describe her progress during that time, the days
24 after that, prior to her being released from MUSC.

25 A. Once she started, first it was small words like

1 uh-huh, huh-uh. It wasn't really clear. And on the
2 videos, as you saw, she did a lot of whining or whatever
3 instead of actually talking at that point. Then slowly,
4 when she started talking, she would talk a little. Then
5 we reached a point where she would actually say a couple
6 of words on the phone. It was just slow progress, but it
7 was a little more and more.

8 Q. And eventually it was -- by the time that she
9 got out, could she speak coherently or --

10 A. Yes.

11 Q. -- talk with you like she did beforehand?

12 A. Not like before, but she was talking.

13 Q. She was talking a lot better?

14 A. Yes. She was speaking clearly.

15 Q. And how about walking?

16 A. When she got out of the hospital in Atlanta, she
17 wasn't walking yet.

18 Q. I'm talking about MUSC now.

19 A. Oh. Medical U? No, she was not walking.

20 Q. And she left in a walker? Or was she in a
21 walker or -- a wheelchair, I presume?

22 A. A wheelchair.

23 Q. And when she left MUSC, was she feeding herself
24 by then?

25 A. Yes. She was eating, yes.

1 Q. Did you have to feed her, or could she pick up
2 the fork and --

3 A. Well, I was in the process of teaching her how
4 to.

5 Q. As part of the physical therapy, they were
6 teaching her how to eat again?

7 A. Yes. She was learning how to do a whole bunch
8 of things all over again.

9 Q. And did she also have to learn how to talk all
10 over again?

11 A. Yes.

12 And with her writing, at first when she wrote,
13 everything came out in print. She couldn't do cursive.
14 And then one day we were sitting in church and it just
15 came to her.

16 Q. She couldn't -- to start with, in the hospital
17 and all, she couldn't write longhand? She could only
18 print?

19 A. Nothing. Yeah.

20 Q. And, now, they -- did they help her with that at
21 MUSC?

22 A. Yes.

23 Q. And they helped her with the speech?

24 A. Yes. She had speech therapy, also.

25 Q. Did they help her with swallowing?

1 A. Yes.

2 Q. And did they have music therapy, also?

3 A. Yes. With music therapy, she and I sat there
4 and listened to music.

5 Q. That was part of the therapy that they
6 prescribed, the therapy -- the music. Do you know what --
7 why that was that the music helped?

8 A. I don't know.

9 Q. But that was part of what they did?

10 A. Yes. That and game therapy and stuff like that.

11 Q. And they would try to get her to play games?

12 A. Yes. I would sit there and play board games
13 with her.

14 Q. What type games?

15 A. Scrabble, checkers.

16 Q. That type thing?

17 A. Yes.

18 Q. And then -- they furnished you certain games to
19 play with her there at the hospital?

20 A. Yes, they had those at the hospital.

21 Q. And when you left MUSC, was she transported by
22 ambulance to Atlanta?

23 A. Yes.

24 Q. And went to the children's hospital there in
25 Atlanta?

1 A. Yes.

2 Q. Scottish Rite?

3 And what happened over at the hospital there in
4 Atlanta?

5 A. She was still in therapy. She was receiving
6 physical therapy, occupational therapy and also speech
7 therapy, one hour -- one hour of each.

8 Q. Were you familiar with that type therapy?

9 A. Yes. My son Brian has been in occupational
10 therapy or physical therapy for almost sixteen years, and
11 my son William had to go through speech therapy.

12 Q. So you were familiar with those therapies?

13 A. Yes.

14 Q. And is that what they did in Atlanta? give those
15 kinds of therapy?

16 A. Yes.

17 Q. And after she was there about a week, did you
18 ask if it would be all right to take Lillian home and have
19 that therapy in Walterboro at the Colleton Regional
20 Hospital?

21 A. Yes.

22 Q. And did you consult with her treating physician
23 about that?

24 A. Yes. They called Walterboro and it was
25 established they felt comfortable. The physical therapy,

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1 everything, the same thing right there.

2 Q. And did the treating doctor concur in you going
3 -- taking Lillian back to home and then having this
4 therapy in Walterboro?

5 A. Yes.

6 Q. And when Lillian -- when y'all got home, how was
7 she doing?

8 A. When she first got home she still wasn't
9 walking, she was violent, easily aggravated. She had
10 episodes with memory that -- with memory. One example,
11 Carlos was building a ramp for her wheelchair and she was
12 sitting there and she started crying and she said, I want
13 to go home. Carlos was like, you are home. She was like,
14 no, I'm not; I don't know y'all. And she was just sitting
15 there crying and then after a while, she just leveled off.

16 Q. She sort of came back?

17 A. Yeah.

18 Q. And when you say she was violent, you mean
19 physically violent? that she would get agitated?

20 A. Yeah. Her and her brothers, they are like
21 normal children, they disagree, they wrestle. But with
22 her now, her at that point, she was real mean with it.
23 William was playing with her one day and she scratched his
24 face up --

25 Q. Now, this was --

1 A. -- terribly.

2 Q. This was how long after she got home?

3 A. This is like the months -- the first four or
4 five.

5 Q. First several?

6 A. Yeah.

7 Q. And during -- well, let's go to that period.

8 For the first, say, six months, was she --

9 A. Uh-huh.

10 Q. -- could you tell there was something different
11 about Lillian?

12 A. Yes. Very.

13 Q. And prior to this, was she ever violent?

14 A. No.

15 Q. And you talked about the aggressiveness and that
16 type thing.

17 A. Yes.

18 Q. And then did she also have some hallucinations
19 during that time?

20 A. Yes. She would see -- she saw a leaf on the
21 ground and she was sitting there telling us she saw a baby
22 coon, which is a raccoon. And we were looking around
23 like, what is she looking at. And we asked her to point,
24 and she was looking at a leaf.

25 Q. During that time was she still in the wheelchair

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1 or --

2 A. Yes.

3 Q. And how long did she stay in that wheelchair?

4 A. I don't remember. It may have been like a month
5 or two.

6 Q. It was --

7 A. I'm not exact.

8 Q. You're not -- she graduated from the wheelchair
9 to what? A walker?

10 A. A walker.

11 Q. And then a walker to what?

12 A. Walking.

13 Q. Did she ever use a cane?

14 A. No.

15 Q. She went from the walker to the regular walking?

16 A. Yeah. She didn't use a cane.

17 Q. And that was -- took place over several months?

18 A. Yeah.

19 Q. Now, other than the aggressive and the violence
20 and the hallucinations, what other kind of things did you
21 notice when you got home?

22 A. I guess -- that part of us that tells us it's
23 not right to say something, I guess she didn't have that.
24 If she thought something was ugly, she didn't care who
25 said -- who heard it. She would just say it, whatever

1 came to her mind. It's like to speak without thinking.

2 Q. In other words, she didn't have the ability to
3 inhibit or keep from saying things?

4 A. Yes. She --

5 MR. HARMON: I'm sorry, Your Honor. Leading
6 again.

7 THE COURT: Sustained.

8 MR. HARMON: Let the witness testify.

9 MR. HARMON: Don't lead her, Mr. Parker.

10 A. Yeah. She would curse openly in front of us.
11 She would threaten. She said, when I get out of this
12 wheelchair, I'm going to get all of y'all. And we -- you
13 know, we kind of adjusted. We were like, okay, Lillian,
14 and just let it go. Just Completely different.

15 Q. [Mr. Parker] And over the months when she was
16 learning to walk, did all of this get better?

17 A. Yeah. As time went on, I saw improvements. The
18 bed-wetting, it finally stopped. Yeah.

19 Q. And the bed-wetting, her inability to I guess
20 function insofar as going to the bathroom, how long did
21 that last? Did that last a good while?

22 A. Yeah. She wet the bed for a while. I had to
23 buy her a new bed.

24 Q. And had she ever done that, previous to her
25 brain injury?

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1 A. No.

2 Q. And let me ask you to go back to when you were
3 at the hospital in Hampton and right afterwards. Did it
4 dawn on you, or did you have a realization, of how
5 seriously Lillian was injured?

6 A. Actually, no. At the accident itself, I just
7 thought she was knocked out. The only thing I saw was a
8 slight trickle of blood from her nose. I mean, there were
9 no bruises. I didn't really see anything to make me think
10 it was that serious.

11 Q. And when did it dawn on you how seriously she
12 was injured?

13 A. About two, three days after she was in the
14 hospital, the actual reality of what had happened finally
15 sunk in and how serious.

16 Q. Now, when -- as things went along did you have
17 people, therapists and all, coming in to help with Lillian
18 at the house?

19 A. Yes. I was --

20 You're talking about when she was taking therapy
21 when she got home?

22 Q. No. I'm talking about after she got home. Did
23 you have -- did home health send some people to help you
24 there?

25 A. Yes. They helped with cleaning her room. They

1 helped out with whatever needed to be done with her,
2 because at that point she was afraid to take showers. She
3 still won't take a shower. She still will not ride a
4 bicycle. These are things that she is still afraid of.
5 The woman would help with her baths and kind of assist
6 her. We were in the process of like teaching her to take
7 care of herself all over again, to wash properly, to brush
8 her teeth properly, because to Lillian, okay, she can do
9 all these things -- in her mind, well, I can do this --
10 but it's not done correctly.

11 Q. And they assisted you in the home. And also
12 during this period of time was Lillian being attended to
13 by physical therapists at Walterboro?

14 A. Yes.

15 Q. And did that go on for several months?

16 A. Yes.

17 Q. And regularly for several months?

18 A. Yes.

19 Q. And I believe we've heard Dr. Kolehma testify.
20 Dr. Kolehma was in charge of that?

21 A. Yes.

22 Q. And how about her walking? After she got where
23 she could get out of the wheelchair and out of the walker
24 and started walking, how was it?

25 A. She was walking fairly well. It was just the

1 drop foot, it kind of -- I guess it messed with her
2 balance, because she was easy to trip or fall.

3 Q. And did she trip or fall, I think in the fall of
4 2004, and hurt her other ankle?

5 A. Yes.

6 Q. And how did that happen?

7 A. I don't recall.

8 Q. She tripped and hurt herself and she had to get
9 further treatment?

10 A. One day she fell at school when she was trying
11 to get on the bus, and they called me at home. They said
12 it didn't appear that she was hurt that bad. But we did
13 -- that's when we ended up getting the x-ray, because she
14 kept complaining about her ankle.

15 Q. And she did go back to school? At the point in
16 time when this collision happened, February 3rd, 2004,
17 Lillian was in the sixth grade?

18 A. Yes.

19 Q. And was she able to go back to school that year?

20 A. Yes.

21 Q. Attend school in Ruffin? I'm talking about the
22 school year of '04. Did she get back into school before
23 the end of the year?

24 A. In August. Yes.

25 Q. But I'm talking about she didn't get back before

1 the end of the school year, which would have been --

2 A. Oh, no. No.

3 Q. So it would have been August when school
4 reopened?

5 A. Yeah. When it reopened, yes.

6 Q. All right. So she missed the last part of --

7 A. Yes.

8 Q. -- most of the second semester of her sixth
9 grade?

10 A. Yes.

11 Q. And then in August she went back to school?

12 A. Yes.

13 Q. And when she went back to school, did she have
14 difficulties?

15 A. Yes. And what they did, they set up the same
16 thing that my son Brian has. It's an IEP. Anything that
17 she needs to accommodate her as far as learning goes -- I
18 remember at one point they were about to get like books
19 with larger words, anything to make learning a little
20 easier. And she has like a resource class -- which Brian
21 does, also -- and in that resource class they sit there
22 and they try to give them a little one-on-one attention
23 with their work.

24 Q. Now, when Lillian got back to school, was she
25 able to perform like she was before that?

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1 A. No.

2 Q. And did she have difficulties?

3 A. Yes.

4 Q. And did her grades go down?

5 A. Yes.

6 Q. And have they continued going down?

7 A. Yes.

8 Q. And I guess as -- through the seventh grade she
9 improved somewhat?

10 A. Yeah. It would kind of fluctuate. She would do
11 well and then she would reach a point where she just fell
12 off.

13 Q. And she finished Ruffin Middle School; is that
14 correct?

15 A. Yes. She is in high school now.

16 Q. And she went to the high school in Walterboro?

17 A. Yes.

18 Q. It's called Colleton High?

19 A. Colleton High.

20 Q. And ninth, tenth grade she has completed?

21 A. Yes.

22 Q. And has she had difficulties there learning?

23 A. Yes, she has.

24 Q. And has she had difficulties with memory?

25 A. Yes.

1 Q. And how about behavioral problems?

2 A. Yes, she has. With Lillian being injured, they
3 -- if she does something, they tend to be understanding
4 and a little more lenient on her because they feel as
5 though she's not really in control of what she is doing.
6 But she does things and they'll write her up, and like a
7 tap on the hand, and let her go.

8 Q. Now, does -- beforehand I think you said Lillian
9 was shy?

10 A. Yes.

11 Q. Is she shy now?

12 A. No, not at all.

13 Q. And have you had difficulties with her with
14 boys?

15 A. Yes. Like I said, that part of her I guess that
16 tells her not to do something because it's wrong, it's not
17 working.

18 Q. And has she, in fact, crawled out the window of
19 your home to meet boys?

20 A. Yes. She has snuck out the house. I found out,
21 after the fact, when I took her to the doctor. We were at
22 the drag races one night. I went to use the restroom. I
23 came back where we were standing, and she was missing. I
24 walked all over the place looking for her. When I found
25 her, she was in the back seat of a Jeep with two guys..

1 Q. Did she know these guys?

2 A. No. She had only met these people like thirty
3 minutes prior to this.

4 Q. And has it caused you great concern about how to
5 deal with Lillian because of her brain injury?

6 A. Yes, because it's like you have to watch her.
7 You actually have to watch her. But then the problem that
8 I'm dealing with: how do I punish her or discipline her
9 for something I don't know whether she's in control of it
10 or not, whether she understands what she's doing. So how
11 do I discipline.

12 Q. It's difficult to deal with?

13 A. Yes.

14 Q. Since her injury over these last four years, has
15 she improved somewhat?

16 A. Yes, she has.

17 Q. I assume she has improved a great deal --

18 A. She has.

19 Q. -- to get where she is.

20 A. Yes.

21 Q. But as she is today, is she able to be by
22 herself for any time?

23 A. No. I don't really trust that. I mean, with
24 the -- with the decisions that she has made and these
25 things that she has done, no, I don't really trust her

1 being to herself.

2 Q. I think she has testified she likes to cook
3 fried chicken?

4 A. Yes.

5 Q. And can she do that?

6 A. Like I said, in Lillian's mind she can cook, she
7 can do this, she can do that, but -- I'm glad she's not
8 here -- but I promise you, she was the only one that ate
9 the chicken. She says she can cook, though.

10 Q. And you've got a pretty good appetite?

11 A. Yes.

12 Q. And she would not -- but she tries?

13 A. She tries.

14 Q. She wants to do?

15 A. And she wants to try. I let her try.

16 Q. And what other type things can she not do now
17 that she could do before this?

18 A. Like I said, a shower is out of the question.
19 She takes nothing but baths. She will not take a shower,
20 even if I'm in there with her. We tried to teach her to
21 ride the bike. She tried, but it just won't come back to
22 her. Now when I take her fishing, if she doesn't catch
23 something in like the first fifteen minutes, then she is
24 irritated. She starts talking, and the fish don't like
25 that, and we eventually have to leave.

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- 1 Q. Does she get along with her brothers?
- 2 A. Yes. Normal, yes.
- 3 Q. And they are still close?
- 4 A. Yes. The boys have adjusted to how she is.
- 5 Q. And do they try to take care of her and look
- 6 after her?
- 7 A. Yes, they do.
- 8 Q. Now, we talked about Brian in school. How about
- 9 William? Has he done as well in school?
- 10 A. The earlier years his grades were pretty good.
- 11 William is more an outdoors, hands-on, fixing cars,
- 12 building things. I mean, to me he is as bright as the
- 13 other two, but he's more of a hands-on person, not a book.
- 14 Q. Does he like to help his uncle work on
- 15 automobiles and that kind of thing?
- 16 A. Yes. He can actually do body work on a car,
- 17 paint, everything.
- 18 Q. And he enjoys that?
- 19 A. Yes, he does.
- 20 Q. Now, the -- Lillian has had to take medication
- 21 and takes medication every day?
- 22 A. Yes.
- 23 Q. And she is now on Topamax; is that correct?
- 24 A. Yes.
- 25 Q. And what happens if she doesn't take that

1 medication?

2 A. The first thing I notice is that she is, I mean,
3 hyper to the point where she is like bouncing off the
4 walls. She'll come to my room, hey, mom, what you doing;
5 I'm bored; we're not going anywhere. Boom, turn around,
6 she goes to Brian. Brian, what you doing, I mean, from
7 one end of the house to the other.

8 Q. And do you have to supervise her taking of the
9 medication?

10 A. Yes. I have to, yes.

11 Q. And you have to make sure she takes it daily?

12 A. Yes, because she doesn't like taking it.
13 According to her, she doesn't need it.

14 Q. And so you have to make sure she has to take her
15 medication?

16 A. Yes. It's reached the point now she has to
17 stand there, I make her open her mouth, lift her tongue to
18 make sure that she actually swallowed it.

19 Q. And how about just personal hygiene? Do you
20 have to supervise that?

21 A. Yes. Yes, as far as brushing her teeth, taking
22 a bath. She went through a period -- now she finally
23 cares a little about what her hair looks like. You know
24 how little girls will play doing hair and stuff. Now
25 she's finally coming around. She'll actually attempt to

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1 fix her hair a little and then worry about her clothes
2 like a normal little girl. She is finally coming around
3 to that part of it.

4 MR. PARKER: Your Honor, could we have a break
5 for just a few minutes?

6 THE COURT: Yes, sir. Go ahead and -- okay.

7 MR. HARMON: No objection.

8 THE COURT: Okay.

9 All right. Ladies and gentlemen of the jury, we
10 are going to go ahead and take a brief break at this
11 time. I will also tell you that we've gone ahead and
12 ordered y'all pizza for lunch, so when it is here I'll
13 let you know and we'll go ahead and break for lunch.

14 With that said, ladies and gentlemen, again, you
15 are not to discuss this case. It's not appropriate to
16 do so at this time.

17 Go back, refresh yourselves, get a Coke, and
18 we'll see you back in five minutes or so. Okay? Thank
19 you.

20 [Whereupon, the jury exits the courtroom at
21 12:25 p.m.]

22 THE COURT: All right. Anything we need to put
23 on the record, y'all, before we take a quick break?

24 MR. PARKER: Nothing, Your Honor. We just need
25 a break.

1 THE COURT: All right. Ma'am, you can step
2 down. I just will remind you that you are not to
3 discuss your testimony with anyone else --

4 THE WITNESS: Okay.

5 THE COURT: -- because you are still going to
6 come back up, I presume. Okay?

7 THE WITNESS: Okay.

8 [Whereupon, the witness exits the witness stand]

9 MR. HARMON: Judge, may I make a suggestion?

10 THE COURT: Yes, sir.

11 MR. HARMON: And I don't care either way.

12 If the pizzas are here, why don't we --

13 THE COURT: They're not here.

14 MR. HARMON: Oh. Okay.

15 THE COURT: If they were here I would take a
16 break, absolutely.

17 MR. HARMON: All right.

18 THE COURT: No. I'm just going to break
19 whenever they come. But they are not here yet, is my
20 understanding. They are expecting them around
21 1:00-ish, is what I was told. Okay?

22 MR. HARMON: All right. Very good.

23 THE COURT: All right. Thank you, y'all.

24 [Whereupon, a recess is taken from 12:26 p.m. to
25 12:35 p.m.]

1 MR. HARMON: Your Honor, are we going to go
2 straight to cross after this, Your Honor --

3 THE COURT: Okay.

4 MR. HARMON: -- or are we going to take a lunch
5 break?

6 No. I'm asking you --

7 THE COURT: Well, I don't know.

8 MR. HARMON: -- before we take a lunch break --

9 THE COURT: I can tell you that -- whatever you
10 prefer. If you would like a break, we will take --

11 MR. HARMON: I prefer to go through it and not
12 breaking it up or whatever.

13 THE COURT: Unless you go on for two hours.

14 MR. HARMON: No. I'm not going to.

15 THE COURT: Okay. Sure. Then we'll --

16 MR. HARMON: I mean, I would have no objection
17 to taking lunch beforehand, depending on how much time
18 we have, rather than breaking it up.

19 THE COURT: What I'm going to do is this. They
20 are going to tell me when the pizza is here and I'm
21 just going to say it's here. You can make the choice
22 of if you want to keep going forward -- because it'll
23 sit and it'll wait and that's fine -- if you don't
24 think it's going to be too terribly long, more than
25 twenty minutes or thirty minutes or so. Or if you

1 would rather just go ahead and break, take a break,
2 just stand up and say let's break for lunch. Okay?

3 MR. HARMON: Very good.

4 THE COURT: All right. Are you ready to go,
5 y'all?

6 Murphy, if they are ready, let's bring them in.

7 [Whereupon, the jury enters the courtroom at
8 12:37 p.m.]

9 [Whereupon, Ms. Colvin re-takes the witness
10 stand]

11 THE COURT: Welcome back, ladies and gentlemen
12 of the jury.

13 Ms. Colvin, I will remind you, ma'am, you are
14 still under oath. Okay?

15 THE WITNESS: All right.

16 THE COURT: Thank you, ma'am.

17 CONTINUED DIRECT EXAMINATION

18 Q. [Mr. Parker] Ms. Colvin, let me go back to when
19 y'all left Dixie Poly Drum. You talked about having the
20 music on. You had your radio on; is that correct?

21 A. Yes.

22 Q. And did you have the heater fan on, also?

23 A. Yes.

24 Q. And what were your windows -- were your windows
25 up at that time?

1 A. Yes. I think mine may have been cracked.

2 Q. The passenger window you believe was up?

3 A. Yes.

4 Q. And the -- insofar as where everybody was
5 seated, Carlos was seated where?

6 A. In the passenger seat. And Lillian was sitting
7 directly behind him.

8 Q. And at the scene, at the Dixie Poly Drum,
9 Lillian would have had to have gotten out of the front
10 seat and gone to the back seat?

11 A. Yes.

12 MR. PARKER: Your Honor, we would offer Exhibit
13 143, which is the MUSC video that we played with Dr.
14 Kolehma.

15 THE COURT: Subject to your prior objection?

16 MR. HARMON: Subject -- thank you, Your Honor.

17 THE COURT: Yes, sir.

18 It's in evidence subject to your prior
19 objection.

20 [Whereupon, Defendant's Exhibit Number 143 is
21 admitted into evidence by the Court]

22 Q. [Mr. Parker] I'm going to next hand you Exhibit
23 144, which are Lillian's medical bills. Would you look at
24 Exhibit 144.

25 [Whereupon, Mr. Parker proffers documents to

1 defense counsel]

2 MR. HARMON: If we could have a brief sidebar?

3 THE COURT: Sure.

4 MR. HARMON: Very brief.

5 [Whereupon, an off-the-record bench conference
6 is held]

7 Q. [Mr. Parker] Ms. Colvin, the total amount of
8 Lillian's medical bills as of now is how much?

9 A. \$271,669.06.

10 Q. Given the way Lillian is now, do you believe she
11 could live by herself?

12 A. No.

13 Q. And do you believe she'll be able to hold a job
14 and do productive work?

15 A. No.

16 MR. PARKER: Answer any questions these
17 gentlemen may have for you.

18 THE COURT: Mr. Harmon?

19 MR. HARMON: Thank you, Your Honor.

20 Good afternoon, Ms. Colvin.

21 THE WITNESS: Hi.

22 MR. HARMON: Your Honor, may I have a brief
23 moment? I'm going to use an easel, to move it, so the
24 jury can see it.

25 THE COURT: Yes, sir.

1 MR. HARMON: Ms. Colvin, I want to start off by
2 just asking you some questions I think we may be able
3 to agree upon.

4 CROSS-EXAMINATION

5 BY MR. HARMON:

6 Q. We saw some footage of your family during direct
7 examination. Do you remember that?

8 A. Yes.

9 Q. Some clips?

10 We can agree upon you have a beautiful family;
11 correct?

12 A. Thank you. Yes.

13 Q. All right. And I think we can also agree upon
14 that making an unsafe choice doesn't make you a bad
15 person. Would you agree with that?

16 A. Yes.

17 Q. All right. And would you also agree with me,
18 ma'am, that sometimes there are consequences for unsafe
19 choices?

20 MR. PARKER: Your Honor, we object to this.
21 That's not relevant.

22 THE COURT: Okay. Can y'all approach for a
23 second?

24 [Whereupon, an off-the-record bench conference
25 is held]

1 Q. [Mr. Harmon] I want to talk to you, Ms. Colvin,
2 about what you did before the accident and then I want to
3 talk to you about what happened leading up to the
4 accident. All right?

5 A. Okay.

6 Q. And then I want to talk to you about some things
7 that happened afterwards.

8 A. Yes.

9 Q. Okay? Now, there are certain drugs you get
10 without a prescription; correct?

11 A. Yes.

12 Q. All right. And there are also other drugs that
13 require a prescription?

14 A. Yes.

15 Q. On the day of the accident, you were taking
16 certain prescription drugs?

17 A. Yes.

18 Q. And you would agree with me that prescription
19 drugs can be dangerous?

20 A. Yes.

21 Q. And dangerous if the instructions are not
22 followed?

23 A. Yes.

24 Q. All right. It's very important to read the
25 instructions given with prescription drugs?

1 A. Yes.

2 Q. And it's very important to follow the
3 instructions given with prescription drugs?

4 A. Yes.

5 Q. Prescriptions drugs you were receiving came in a
6 bottle?

7 A. Yes.

8 Q. And they had a label?

9 A. Yes.

10 Q. And there was a warning?

11 A. Yes.

12 Q. And you would agree with me it's important to
13 read the warning on the bottles?

14 A. Yes.

15 Q. And it's important to follow the warnings on the
16 prescription bottles?

17 A. Yes.

18 Q. All right. You would also agree with me that
19 failing to adhere to the warnings on the bottle can cause
20 people to get hurt?

21 A. Yes.

22 Q. All right. I want to talk to you about some of
23 the prescription drugs you had taken before you got in the
24 car that day on February 3rd, 2004. Okay?

25 A. Okay.

1 Q. Darvocet is a narcotic; correct?

2 A. Yes.

3 Q. And you need a prescription --

4 A. Yes.

5 Q. -- from a doctor?

6 A. Yes.

7 Q. When you got your Darvocet, it came with
8 instructions?

9 A. Yes.

10 Q. And you realized the instructions for Darvocet
11 were important?

12 A. Yes.

13 Q. All right. Darvocet has side effects?

14 A. Yes.

15 Q. One of the side effects is blurred vision?

16 A. Yes.

17 Q. And you knew blurred vision was a side effect of
18 Darvocet at the time of the accident?

19 A. Yes.

20 Q. Another side effect of Darvocet is dizziness?

21 A. Yes.

22 Q. And you knew dizziness was a side effect of
23 Darvocet at the time of the accident?

24 A. Yes.

25 Q. Another side effect of Darvocet is drowsiness?

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1 A. Yes.

2 Q. And you knew drowsiness was a side effect of
3 Darvocet at the time of the accident?

4 A. Yes.

5 Q. All right. When you received the Darvocet, it
6 came in a bottle --

7 A. Yes.

8 Q. -- with warnings --

9 A. Yes.

10 Q. -- on the bottle?

11 A. Yes.

12 Q. And one of the warnings for Darvocet said not to
13 take it with alcohol?

14 A. Yes.

15 Q. And you knew Darvocet, on the day of this
16 accident, should not be taken with alcohol?

17 A. Yes.

18 Q. And you knew the warning for Darvocet cautioned
19 against driving while taking Darvocet?

20 A. Yes.

21 Q. At some point in time on the day of your
22 accident, you were cleaning up?

23 A. Yes.

24 Q. And while you were cleaning up, you took
25 Darvocet?

1 A. Yes. I took it that morning.

2 Q. Now, it's true you take Darvocet at least once a
3 day?

4 A. At least, yes.

5 Q. All right. And many days you take it more than
6 once a day?

7 A. It depends on the pain, yes.

8 Q. Tizanidine is a muscle relaxer?

9 A. Yes.

10 Q. And you need a prescription --

11 A. Yes.

12 Q. -- from a doctor?

13 A. Yes.

14 Q. And when you got your tizanidine, it also came
15 with certain warnings?

16 A. Yes.

17 Q. And tizanidine has certain side effects?

18 A. Yes.

19 Q. One is blurred vision?

20 A. Yes.

21 Q. You knew blurred vision was a side effect of
22 tizanidine on the day of the accident?

23 A. Yes.

24 Q. And the other side effect of tizanidine is
25 dizziness?

1 A. Yes.

2 Q. And you knew dizziness was a side effect of
3 tizanidine on the day of the accident?

4 A. Yes.

5 Q. Another side effect of tizanidine is drowsiness?

6 A. Yes.

7 Q. And you knew drowsiness was a side effect of
8 tizanidine on the day of the accident?

9 A. Yes.

10 Q. The warning for tizanidine said not to take it
11 with alcohol; correct?

12 A. Yes.

13 Q. And that warning was on the bottle that you
14 received?

15 A. Yes.

16 Q. And you knew on the day of the accident that
17 your tizanidine should not be taken with alcohol; correct?

18 A. Yes.

19 Q. And you knew that the warning on the tizanidine
20 bottle said caution when taking this while driving;
21 correct?

22 A. Yes.

23 Q. All right. While you were cleaning up that day,
24 you also took tizanidine?

25 A. Yes.

1 Q. Now, the label, the warnings or the instructions
2 for tizanidine, said it could take up to eight hours for
3 tizanidine to wear off, didn't it?

4 A. I'm not sure about that.

5 Q. All right. So you don't remember one way or the
6 other?

7 A. You're saying that it says that on the bottle?

8 Q. On the instructions you received with the
9 tizanidine.

10 A. I don't remember.

11 Q. All right. Now, before going to pick up Mr.
12 Terry on that day, I think you've told us you had some
13 alcohol?

14 A. Yes.

15 Q. And it's not your usual practice to drink
16 alcohol in the mornings?

17 A. Do I do that every day?

18 Q. No. I'm sorry. Maybe you didn't understand my
19 question.

20 My question was it's not your usual practice,
21 ma'am, to drink alcohol in the mornings?

22 A. Not a usual -- not an everyday practice.

23 Q. And the truth is you don't know how many drinks
24 you had before you went to pick up Mr. Terry?

25 A. Yes. Yes, I do. It was no more than two. It

1 wasn't more than that.

2 MR. HARMON: All right. Let's play 112, pages 9
3 to 11 of Ms. Colvin's deposition, the video clip,
4 please.

5 [Off the record momentarily]

6 MR. HARMON: Okay. Can you pull it down a
7 little bit?

8 Q. [Mr. Harmon] Do you remember giving your
9 deposition, ma'am?

10 A. Yes.

11 Q. Okay. And at your deposition you were asked the
12 question -- can you see it there on your screen?

13 A. Yes.

14 Q. [Reading] How many wine coolers did you drink?
15 One, and possibly two.

16 A. Yes.

17 Q. [Reading] I'm not sure. I don't remember.
18 That was your testimony; right?

19 A. Yes.

20 Q. And so back then in the end you didn't remember
21 how many you took; right?

22 MR. PARKER: Your Honor, I object. That's not a
23 fair characterization of that testimony.

24 MR. HARMON: It's her testimony, Your Honor.

25 MR. PARKER: She said exactly the same thing.

1 That would be an improper use of her deposition.

2 THE COURT: Y'all come here for a second.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 Q. [Mr. Harmon] Now, Ms. Colvin --

6 MR. HARMON: You can take that down.

7 Q. [Mr. Harmon] -- while you were cleaning up that
8 day, you had alcohol; correct?

9 A. Yes.

10 Q. Now, Ms. Colvin, you knew it was a very bad idea
11 to take alcohol and tizanidine at or around the same time?

12 A. Yes.

13 Q. And you knew that on the day of the accident?

14 A. Yes.

15 Q. You also knew it was a very bad idea to take
16 alcohol and Darvocet at or around the same time?

17 A. Yes.

18 Q. And you knew that on the day of the accident?

19 A. Yes.

20 Q. Now, on the time of the accident you also had a
21 prescription for hydrocodone; correct?

22 A. Yes.

23 Q. And a few weeks before this accident you had
24 gotten a new prescription for hydrocodone?

25 A. Yes.

1 Q. And hydrocodone is a narcotic?

2 A. Yes.

3 Q. And it's actually much more powerful than
4 Darvocet?

5 A. Yes.

6 Q. And it's not supposed to be taken with alcohol?

7 A. Yes.

8 Q. You're not supposed to drive with it?

9 A. Yes.

10 Q. All right. And it has the same potential side
11 effects?

12 A. Yes.

13 Q. All right. And you don't remember, you're not
14 really sure, if you took your hydrocodone on this
15 particular day?

16 A. I didn't. The hydrocodone is for days when I
17 had real -- they gave me that for severe-pain days, real
18 excruciating pain. My regular daily was the Darvocet.
19 The hydrocodone was for extreme pain.

20 Q. But it's true you don't really remember one way
21 or the other whether or not on this day you also had your
22 hydrocodone?

23 A. I didn't take that.

24 Q. Okay. Has that always been your testimony?

25 A. I took the Darvocet.

1 Q. All right. I'm going to turn now to page 161,
2 line 24, of your testimony of two weeks ago.

3 MR. HARMON: If you can pull that up, please.

4 Q. [Mr. Harmon] Okay. I'm going to read this,
5 ma'am. Can you see it on the screen?

6 A. Uh-huh.

7 Q. Tell me if I read it correctly.

8 [Reading] Okay. Is it true, ma'am, that you --
9 really, as you sit here today, you don't know for sure
10 whether you took the hydrocodone on the date of the
11 accident, as well, do you?

12 Your answer: [reading] no. I took Darvocet.
13 The hydrocodone is more -- I -- I could have.

14 My question: [reading] okay.

15 Your answer: [reading] I don't remember.

16 [Reading] Question: and you wouldn't be
17 surprised to learn that you had, within a few weeks before
18 this -- answer: uh-huh -- gotten a new prescription for
19 hydrocodone, would you. Did I get it. Question: yes.

20 Answer: yes.

21 Did I read it correctly?

22 A. Yes.

23 Q. All right. And this was your testimony as of
24 about two weeks ago?

25 A. Yes.

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1 Q. Now, is it fair to say you don't remember
2 whether you took your hydrocodone, or are you sticking
3 with your for sure now you --

4 A. It wasn't a severe-pain day because I actually
5 was functioning. I could clean up. I drove all the way
6 to Walterboro, all the way back to Hampton, back to
7 Islandton. I was functioning, so it wasn't a severe day.

8 Q. Well, I guess my question is as you sit here
9 today, unlike two weeks ago, are you saying you're a
10 hundred percent sure that you didn't take --

11 A. I'm not a hundred percent sure.

12 Q. All right.

13 A. I really feel as though I didn't.

14 Q. All right. You also took codeine cough syrup on
15 the date of this accident; right?

16 A. Yes. I grabbed the bottle of cough syrup. I
17 thought it was my prescription. But come to find out, I
18 didn't have a bottle at that time so it must have been the
19 kids' cough syrup.

20 Q. All right. Well, at least two weeks ago when
21 you were giving sworn testimony --

22 A. Yeah.

23 Q. -- you told us it was codeine cough syrup;
24 right?

25 A. Well, I thought at the time I -- it was.

1 Q. So two weeks ago you thought it was codeine
2 cough syrup, and today now you're sure it was the kids'
3 cough syrup?

4 A. No.

5 Q. All right. I guess what I want to know, ma'am,
6 is you testified two weeks ago and you told us it was
7 codeine cough syrup, didn't you?

8 A. Yeah. When I was at the hospital, I thought it
9 may have had codeine in it. I was not sure.

10 Q. No, no. I'm not asking you about the hospital.
11 I'm saying two weeks ago from today --

12 A. Okay.

13 Q. -- earlier --

14 A. I wasn't sure. Yeah.

15 Q. -- you told us it was codeine cough syrup,
16 didn't you?

17 A. Yes.

18 Q. All right. And I guess what I'm asking you is
19 are you sticking by what you told us two weeks ago, or are
20 you saying now you --

21 A. I thought it was, yes.

22 Q. All right. But was it, or was it not? You
23 don't know?

24 A. I'm not sure.

25 Q. All right. We won't --

1 Let's talk about when you were cleaning up. And
2 what I'm going to put up here is you're not sure whether
3 it was codeine cough syrup or not. Is that fair?

4 A. Fair.

5 Q. Now, I want to talk to you about when you were
6 cleaning up that day. Okay?

7 A. Uh-huh.

8 Q. I think you've told us at some point before the
9 accident you were cleaning up; right?

10 A. Yes.

11 Q. And you don't remember the exact time you were
12 cleaning up?

13 A. No. I know it was morning.

14 Q. When your children came home from school, you
15 would have something prepared for them to eat?

16 A. Yes.

17 Q. And you would have a meal ready for them?

18 A. Yes.

19 Q. And it was your usual practice to do some
20 cleaning around the house at or around the time they came
21 home?

22 A. During the day, yes.

23 Q. And your children came home between 3:30 and
24 about ten to 4:00?

25 A. Yes.

1 Q. And you left to pick up Mr. Terry at 4:00 p.m.?

2 A. Yes.

3 Q. When you got in the car on February 3rd, 2004,
4 all of these things we've talked about, the Darvocet, the
5 tizanidine and the alcohol, potentially some other things,
6 were in your system; right?

7 A. Yes.

8 Q. And you knew you were going to be going on the
9 road?

10 A. Yes.

11 Q. And you knew there would be other motorists?

12 A. Yes.

13 Q. And you knew you would be going to Dixie Poly
14 Drum?

15 A. Yes.

16 Q. And you knew you would likely be crossing the
17 railroad tracks that day?

18 A. It depend on where he needed to go.

19 Q. Now, Mr. Wooden had absolutely nothing to do
20 with your choices to put those things in your body that
21 day, did he?

22 A. No.

23 Q. Mr. Calvin Cummings had no part in you making
24 the decision to put these things [phonetic] and get in the
25 road that day, did he?

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- 1 A. No.
- 2 Q. And no one from CSX did, either?
- 3 A. No.
- 4 Q. That was your choice alone; correct?
- 5 A. Yes.
- 6 Q. And when you got in the car that day, you had
- 7 your young daughter with you; correct?
- 8 A. Yes.
- 9 Q. Now, not long before this accident your
- 10 boyfriend, Mr. Terry, installed some new speakers in
- 11 your Ford Explorer?
- 12 A. Yes.
- 13 Q. And they were in plywood boxes in the back of
- 14 the Explorer?
- 15 A. Yes.
- 16 Q. And there was a switch in the back for the
- 17 speakers?.
- 18 A. Yes. I think so.
- 19 Q. And the speakers made the stereo system louder?
- 20 A. Yes.
- 21 Q. Let's turn now and talk about that day as you're
- 22 going to the crossing. You were familiar with the Hill
- 23 Road crossing?
- 24 A. Yes.
- 25 Q. And you had crossed that track, the tracks,

1 dozens and dozens of times?

2 A. Yes.

3 Q. And you would see trains coming?

4 A. I had seen them on the track, yes.

5 Q. And there's a big x --

6 MR. HARMON: Let's go to D-2.5.

7 Q. [Mr. Harmon] There's a big x on the road as
8 you're approaching the crossing; correct?

9 A. Yes.

10 Q. And you had seen that big railroad-crossing sign
11 on the road when you've crossed the tracks before?

12 A. Yes.

13 Q. You've seen it each time you have gone that
14 direction; right?

15 A. Yes.

16 Q. And there's a stop sign --

17 MR. HARMON: Let's go to D-5. Thank you.

18 Q. [Mr. Harmon] There's a stop sign, as well?

19 A. Yes.

20 Q. And you had seen that stop sign every time
21 you've gone across the crossing in this direction?

22 A. Yes.

23 Q. And while you're approaching the stop sign, you
24 can see the stop line; right?

25 A. Yes.

1 Q. And you had seen the stop line before you even
2 get to the stop sign; right?

3 A. [No response]

4 MR. HARMON: Let's back up so she -- let's back
5 up to the picture before, please.

6 Q. [Mr. Harmon] You can see the stop line as
7 you're approaching the stop sign?

8 A. Yes.

9 Q. And you had seen that stop line when you had
10 crossed the crossing in previous times; right?

11 A. Yes.

12 Q. And --

13 MR. HARMON: We can turn it back on. Thank you.
14 I thought we had lost power for a second.

15 Q. [Mr. Harmon] Ma'am, it's true before this
16 accident you knew that that white line on the road was a
17 stop line or stop bar?

18 A. I knew it was there, yes.

19 Q. Okay. But you knew it was also a stop line or a
20 stop bar; correct?

21 A. I guess so, yes.

22 Q. All right. And you had stopped there before
23 this day of the accident at the stop line; correct?

24 A. Had I stopped there before?

25 Q. Before. The times you had crossed the crossing

1 before, you had stopped on that stop line?

2 A. I'm not sure.

3 Q. You're not sure one way or the other?

4 A. No.

5 Q. All right. Let's turn -- I want to talk about
6 what you can see as you're approaching this crossing when
7 you stop the last -- when you stop close to the crossing.

8 MR. HARMON: If we could go to 4.1.

9 Q. [Mr. Harmon] Now, this is -- we're going to
10 roll it in a second, Ms. Colvin. You've been here for
11 most of the trial; right?

12 A. Yes.

13 Q. All right. And you've seen this little video
14 and these photos before? I mean, during the trial, I'm
15 talking about.

16 A. Yes.

17 Q. Okay. We're going to go ahead and roll this.

18 MR. HARMON: And I'm going to ask you to stop it
19 as you go. Go ahead and roll it.

20 [Whereupon, video clip is played]

21 MR. HARMON: All right. Can you stop it right
22 there.

23 Q. [Mr. Harmon] All right. Prior to this
24 accident, had you seen the I-95 bridge while stopped at
25 this crossing?

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- 1 A. Had I?
- 2 Q. Yes, ma'am.
- 3 A. I don't remember.
- 4 Q. All right.. So your testimony here today is you
- 5 don't remember one way or the other whether or not you've
- 6 been stopped at this crossing and seen the --
- 7 A. And saw that far down?
- 8 Q. Yes. The I-95 bridge.
- 9 A. I don't recall.
- 10 Q. All right. Take a look at this photograph here,
- 11 ma'am. It's true that before this accident, you had
- 12 stopped in the vicinity of where this photograph is
- 13 showing; right?
- 14 A. I'm not sure. I could have.
- 15 Q. Okay. And this photograph, Ms. Colvin, shows
- 16 someone stopped with their front bumper at the stop line?
- 17 A. Yes.
- 18 Q. All right. And your Ford -- you were in a Ford
- 19 Explorer on the day of this accident; correct?
- 20 A. Yes.
- 21 Q. And you've heard the testimony -- I'm sure you
- 22 don't dispute it -- that your front bumper is about seven-
- 23 and-a-half feet behind -- I'm sorry. Your front bumper is
- 24 about seven-and-a-half feet in front of your seat?
- 25 A. Yes.

1 Q. All right.

2 MR. HARMON: Lights, please.

3 Q. [Mr. Harmon] All right. I want to turn now to
4 February 3rd. That was the day of the accident?

5 A. Yes.

6 Q. And on that afternoon, you picked up Mr. Terry?

7 A. Yes.

8 Q. And you were picking up about 4:30?

9 A. Yes.

10 Q. And he got in the car?

11 A. Yes.

12 Q. The music was playing?

13 A. Yes.

14 Q. And he wasn't saying too much?

15 A. He was talking -- well, he was talking with
16 Lillian.

17 Q. Haven't you previously testified that Mr. Terry
18 wasn't saying too much when he got in the car?

19 A. He was talking. Lillian was telling him
20 something. I don't remember exactly what.

21 Q. But you would agree with me he wasn't talking
22 much?

23 A. No. He was answering her.

24 MR. HARMON: All right. Let's turn to 7059.

25 Q. [Mr. Harmon] Okay. The question I asked you

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1 then: [reading] do you remember anything he said to you
2 before the accident. He really wasn't saying too much.
3 He had a rough day. He had just gotten off from work. I
4 don't recall.

5 That's the testimony you gave earlier; correct?

6 A. Yes.

7 Q. All right. And it's true he had had a rough
8 day?

9 A. Yeah. He was tired. He worked all day.

10 Q. All right. And Mr. Terry smoked?

11 A. Yes.

12 Q. All right. And you smoked, as well?

13 A. Yes.

14 Q. And you don't remember whether Mr. Terry was
15 smoking that day?

16 A. I don't recall.

17 Q. Now, you gave him some insurance papers when he
18 got in the car?

19 A. Yes.

20 Q. And you were planning at that point in time to
21 go to the store across the tracks?

22 A. Yes.

23 Q. And so you made a left onto Hill Road?

24 A. Yes.

25 Q. And you've been this way, as you told us, times

1 before?

2 A. Yes.

3 Q. And you were trying to get across the tracks?

4 A. Yes.

5 Q. And it was your decision that day whether or not
6 you were going to cross the tracks at that time; right?

7 A. Yes.

8 Q. Now, on the day of the accident, you stopped at
9 the stop sign?

10 A. Yes.

11 Q. And the stop sign, you could see a little;
12 right?

13 A. Very little, yes.

14 Q. All right. But it was not as far as you wanted?

15 A. Yes.

16 Q. And you didn't feel like the stop sign was a
17 safe place?

18 A. Yes.

19 Q. All right. So you moved your car forward?

20 A. Yes.

21 Q. And you stopped a second time?

22 A. Yes.

23 Q. And you move your car to a place where you could
24 see much farther?

25 A. Where I felt it was a safe distance.

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1 Q. And when you moved your car forward, you could
2 see -- as you were moving it, you could see the stop line;
3 correct?

4 A. Could I see it?

5 Q. When you moved from the stop sign --

6 A. And was moving forward?

7 Q. -- you could see the stop line, couldn't you?

8 A. I'm trying to grasp what you're saying.

9 Q. I'm sorry. Let me --

10 A. Are you focusing on the line, or at that --

11 Q. -- say it another way, if you don't understand.
12 And that's perfectly -- if you don't understand my
13 question, I'll say it another way.

14 A. Yeah. I don't want to tell you the wrong thing.

15 Q. Sure.

16 When you stopped at the stop sign --

17 A. Uh-huh.

18 Q. -- as you were driving forward to your second
19 stop, you could see the stop line?

20 A. I guess I could. My focus was more on to the
21 right of me. I was trying to see -- or get far enough to
22 see a safe distance. I wasn't exactly focused on the
23 line.

24 Q. And when you stopped the second time on the day
25 of the accident, you were satisfied that if a train had

1 been coming, you would see it?

2 A. Yes.

3 Q. And you thought if you needed -- and if you
4 thought you needed to get any closer to the track to see a
5 coming train, you would have pulled your car up closer?

6 A. Yes.

7 Q. But you didn't think you needed to do that?

8 A. No.

9 Q. When you stopped the second time, you believed
10 you were in a safe place; right?

11 A. Yes.

12 Q. Now, you stopped the first time and you looked
13 for a train?

14 A. Yes.

15 Q. And then you stopped the second time and looked
16 for a train?

17 A. Yes.

18 Q. And when you looked, you felt it was a safe
19 distance from where you were to safely get across ahead of
20 the train?

21 A. Yes.

22 Q. After the accident there were several EMTs at
23 the accident scene?

24 A. Uh-huh. [Indicates affirmatively]

25 Q. You have to say yes --

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1 A. Yes.

2 Q. All right. And you were asked if you had been
3 drinking?

4 A. Yes.

5 Q. And she said you smelled of alcohol; correct?

6 A. Yes.

7 Q. After the accident, as well, Mr. Biser came to
8 your daughter?

9 A. Yes.

10 Q. And you understood that he had been a volunteer
11 firefighter?

12 A. At the time, no.

13 Q. But you learned that later?

14 A. Yes.

15 Q. And you learned that from Mr. Terry?

16 A. Yes.

17 Q. And he was tending to your daughter?

18 A. Yes.

19 Q. And as you told us on direct, you wanted to move
20 Lillian?

21 A. Out of the car, yes.

22 Q. Right. And, again, you wanted to move her
23 because you were concerned about her.

24 A. Yes.

25 Q. And Mr. Biser told you don't move her.

1 A. Right.

2 Q. Right?

3 Because you could cause more harm than good;
4 right?

5 A. Yes.

6 Q. And he prevented you from moving your daughter,
7 because he was trying to protect her; correct?

8 A. Yes.

9 Q. All right. You understand that now?

10 A. Yes, I understand that now.

11 Q. All right. And we all understand that it was
12 very emotional at that time; right?

13 A. Yes.

14 Q. Okay. Now, you hired your lawyers a few days
15 after the accident?

16 A. Yes, I think it was.

17 Q. All right. Now, Lillian has lived with you her
18 entire life?

19 A. The majority, yes.

20 Q. And she hasn't lived with Mr. Willie Homer
21 Stephens; correct?

22 A. For -- well, I have lived with him when I left
23 my husband, so, yes.

24 Q. Okay. And I'm not -- that's not -- I'm not --
25 that's none of my business. I'm not asking that.

1 I'm just asking: Lillian, she has lived with
2 you, you've been her guardian, her whole life?

3 A. Yes.

4 Q. All right. And there's no reason why you're not
5 fit to be Lillian's guardian for this lawsuit, is there?

6 A. I don't know.

7 Q. Mr. Willie Homer Stephens is Lillian's guardian
8 for this lawsuit; right?

9 A. Yes.

10 Q. Now, you recently took Lillian to get her
11 learner's permit?

12 A. Yes.

13 Q. And you had to complete some paperwork to do
14 that?

15 A. Yes.

16 Q. All right.

17 MR. HARMON: Can we put up CSXT 28. All right.
18 Let's go to the next page.

19 Q. [Mr. Harmon] Okay. This is an application for
20 Lillian's learner's permit; right?

21 A. Yes.

22 Q. And we can all agree that it's a good thing for
23 Lillian to get her learner's permit; right?

24 A. Yes.

25 Q. All right. Now, did you fill this out, or is

1 this Lillian's handwriting?

2 A. I'm not sure.

3 Q. All right. Let's go to -- let's just make sure
4 that we have your --

5 MR. HARMON: Let's go to the second page for one
6 second.

7 Q. [Mr. Harmon] This is your -- if you go in the
8 middle -- when someone is a minor, like Lillian, they have
9 to get your -- the parent's permission before --

10 MR. HARMON: Up a little higher, please.

11 Q. [Mr. Harmon] -- before they can get their
12 permit; right?

13 A. I have to sign, yes.

14 Q. Right. So that's your signature?

15 A. Yes.

16 Q. So you were down there with her that day when
17 you-all filled this out?

18 A. Yes.

19 MR. HARMON: Okay. Let's go to the first page.

20 Q. [Mr. Harmon] Now, on the first page you have to
21 ask [sic] some questions.

22 MR. HARMON: Let's go to the bottom.

23 Q. [Mr. Harmon] And so you had to fill out here
24 that Lillian was a resident of South Carolina; correct?

25 A. Yes.

1 Q. And that she was a citizen of the United States?

2 A. Yes.

3 Q. And then down at number --

4 MR. HARMON: If we can blow up number 8, please.

5 I'm sorry. Number 11, please.

6 Q. [Mr. Harmon] Under number 11 you had to answer
7 the question do you -- and this is for Lillian -- have any
8 mental or physical condition preventing you from safely
9 operating a motor vehicle at this time. All right? And
10 your response was no; right?

11 A. Uh-huh. [Indicates affirmatively]

12 Q. Is that correct?

13 A. Yes..

14 Q. Okay. And Lillian, thankfully, got her
15 learner's permit; right?

16 A. On the third try.

17 Q. All right. And there are many people who fail
18 their learner's test, like me, the first time; right?

19 A. Yes.

20 Q. Do you know people like that?

21 A. Yes.

22 Q. Okay. And but Lillian passed it?

23 A. The third time, yes.

24 Q. All right. And she was able to learn from her
25 mistakes?

1 A. Yes.

2 Q. And that's a good thing?

3 A. Yeah.

4 Q. All right. And Lillian has been out driving
5 with you?

6 A. I take her on the road right besides my house
7 sometimes and try her a little on a back road by herself.

8 Q. Okay. And she's also been out --

9 A. Not on the main highway.

10 Q. I'm sorry. I didn't mean to interrupt you.

11 A. Not on the main highway.

12 Q. All right. And she's also --

13 A. It's just to --

14 Q. Please finish. I'm sorry.

15 A. No. It's just that when her brothers got
16 theirs, she wanted to try so I let her try.

17 Q. Good.

18 A. Now I'm letting her try to learn to drive a
19 little.

20 Q. All right. And she's also driven with one of
21 your cousins, as I understand it from her testimony.

22 A. Yes.

23 Q. All right. Now, I want to go back to the
24 questions I was going to ask you in the beginning.

25 You agree with me that sometimes there are

1 consequences for unsafe choices?

2 A. Yes.

3 Q. And you would agree with me it would be wrong to
4 blame someone else for your own unsafe choice?

5 A. Yes.

6 MR. HARMON: One moment, Your Honor.

7 [Whereupon, Mr. Harmon, Mr. Wray, and Mr.
8 Purcell confer]

9 MR. HARMON: Your Honor, I pass the witness.

10 MR. PARKER: Ms. Colvin --

11 THE COURT: Mr. McLeod, do you have any
12 questions, sir?

13 MR. MCLEOD: Thank you, Your Honor.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION

16 BY MR. PARKER:

17 Q. Ms. Colvin, did you have any choice as to
18 whether CSX cut those trees?

19 A. No.

20 Q. Did you have any input into that?

21 A. No.

22 Q. Did you know anything about sight distance and
23 time-space relationships that day when you pulled forward?

24 A. No.

25 Q. Did you pull forward to where you believed you

1 could see the train from far enough?

2 A. Yes.

3 Q. And did you have any idea that a train was
4 coming?

5 A. No.

6 Q. And there was -- Mr. Harmon asked you questions
7 about the adverse consequences of taking Darvocet, and he
8 said it causes dizziness, it may -- may cause dizziness.

9 A. Uh-huh.

10 Q. Did it ever cause you dizziness?

11 A. No.

12 Q. Did it ever cause you blurred vision?

13 A. No.

14 Q. Did it ever cause you to be drowsy?

15 A. No.

16 Q. There was a question asked of you about whether
17 or not you took cough syrup that morning and you said you
18 did. And you told the doctor at the hospital. Correct?

19 A. Yes.

20 Q. And they have subpoenaed every record that you
21 have ever had, haven't they?

22 A. Yes, they have.

23 Q. And did they -- could they find any record of
24 you having any cough syrup with codeine?

25 A. No.

1 Q. Or anybody in your family having cough syrup
2 with codeine?

3 A. No.

4 Q. And they also asked you about the muscle
5 relaxant. Did the muscle relaxant ever cause you to be
6 blurred vision?

7 A. No.

8 Q. Did it ever cause you to have drowsiness?

9 A. No.

10 Q. Did it ever cause you to have any adverse -- be
11 dizzy? They had dizzy as one of them. Did any of this
12 medicine ever affect you in any way other than it is
13 today?

14 A. No. No side effects.

15 Q. And were you having any adverse consequences on
16 the day of this wreck?

17 A. No.

18 Q. And the question was asked of you on cross-
19 examination about the safe choices and about safe choices.
20 Likewise, CSX had a choice to cut those trees, didn't
21 they?

22 A. Yes.

23 Q. Did they exercise that choice?

24 A. No.

25 Q. Did you see the documents where they committed

1 to do it?

2 A. Yes.

3 Q. Did you see the documents where they went out
4 there to do it and didn't do it?

5 A. Yes.

6 MR. HARMON: He is leading his own witness and
7 putting words in her mouth.

8 THE COURT: Sustained. Don't lead her.

9 Q. [Mr. Parker] Now, you saw the animation --

10 A. Yes.

11 Q. -- that was on the screen?

12 Is that what happened that day?

13 A. Yes. To the best of my recollection.

14 MR. PARKER: Nothing further.

15 MR. HARMON: Your Honor, may we approach?

16 THE COURT: Yes, sir.

17 MR. MCLEOD: I have one question.

18 THE COURT: All right.

19 MR. HARMON: I'm sorry.

20 [Whereupon, an off-the-record bench conference
21 is held]

22 THE COURT: Gentlemen, any chance lunch is here?
23 Not quite yet?

24 THE BAILIFF: About five minutes.

25 THE COURT: About five minutes?