

**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. III

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v.

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

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1 All right. Well, let's do this. Ladies and
2 gentlemen, at this time we're going to go ahead and
3 take your break for lunch.

4 MR. MCLEOD: Your Honor --

5 THE COURT: Yes, sir?

6 MR. MCLEOD: Could I ask -- instead of one, it's
7 really two questions.

8 MR. HARMON: I don't have any problems, Your
9 Honor, with him asking. We'll ask, after lunch, ours.

10 THE COURT: That's fine. Go ahead, Mr. McLeod.

11 MR. MCLEOD: Oh. I'm sorry. I thought you were
12 going to be through with her.

13 THE COURT: No, sir. But that's all right.

14 Mr. Parker, any objection to Mr. McLeod asking
15 his question?

16 MR. PARKER: No, Your Honor.

17 THE COURT: All right. Mr. McLeod?

18 CROSS-EXAMINATION

19 BY MR. MCLEOD:

20 Q. Ms. Colvin, did you take any medication today?

21 A. Yes.

22 Q. Have you had any wine coolers today?

23 A. No. No, sir.

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

25 THE COURT: All right.

1 MR. HARMON: We'll wait until after --

2 THE COURT: Ladies and gentlemen, again, pizza
3 should be here right about now. They're telling me
4 five minutes.

5 Again, do not begin discussing this case. It's
6 not appropriate to do so.

7 Mr. Lundy, will you please knock on the door as
8 soon as y'all are finished so we can get you back here
9 and keep going? All right. Thank you, y'all.

10 [Whereupon, the jury exits the courtroom at
11 1:19 p.m.]

12 THE COURT: All right.

13 MR. HARMON: We'll get the transcript, Your
14 Honor.

15 THE COURT: Actually, Mia, we need to read back.
16 And can you orient her to --

17 MR. HARMON: Sure. It was -- sorry, Mia. It
18 was probably one of the last five questions Mr. Parker
19 asked Ms. Colvin, where he asked her --

20 THE COURT: On redirect.

21 MR. HARMON: -- has it never or ever. That's
22 what I believe. That's what I heard.

23 MR. PARKER: I think I did ask that, but it was
24 in context of that date.

25 THE COURT: Okay. Well, you're going to have to

1 back up for me, then, probably those five or six
2 questions.

3 He didn't ask that much on redirect, so if you
4 can find his redirect. But it was towards the end of
5 it.

6 MR. PARKER: Your Honor, I will say that I don't
7 believe this would open the door to this. This would
8 be highly prejudicial. We would have to try that
9 issue. We don't agree that she ever had anything
10 happen. But they're going to contend that, that she
11 had the wrecks because of medication, again, and
12 clearly it would be highly prejudicial.

13 What is important is what happened that day,
14 whether she was impaired that day. To introduce
15 something that happened two years later, as having an
16 impact on this, would be highly prejudicial. And I'm
17 confident that it's improper. It couldn't possibly
18 have anything to do with this case and her condition on
19 that day.

20 Even if it had slight probative value insofar as
21 credibility -- because I posed the question as that
22 day. But suppose I got it a little loose on the
23 question, certainly it would have total prejudicial
24 value with no probative value in this case because the
25 evidence in this case has shown that there is not one

1 person that they've been able to bring in here that say
2 that she was in any way impaired. And now they want to
3 go back to something that happened two years later, and
4 ask her about it, as having some impact on this day,
5 and I can't see how it could possibly have any
6 probative value.

7 MR. HARMON: Well, I think --

8 THE COURT: Let's go ahead and look at the --
9 let's just look at the whole -- that whole portion, to
10 see in context.

11 MR. HARMON: Sure, Your Honor. May I respond,
12 though?

13 THE COURT: Absolutely.

14 MR. HARMON: At the sidebar, Mr. Parker said he
15 didn't ask it ever or never. He said to the Court that
16 it was in terms of what happened that day. And I
17 believe that -- I believe -- I may stand to be
18 corrected, but that he did say never or ever. And here
19 is the problem. He used that affirmatively to suggest
20 that -- because we are suggesting to the jury that the
21 mixture of alcohol and drugs would affect her driving,
22 he used that on redirect affirmatively to say has it
23 ever done it before to try to show, well, if it hasn't
24 done it before, it didn't do it that day.

25 Well, the problem is in the way he asked the

1 question. And the impression he has now given this
2 jury is that it's not true. There's other evidence
3 that would contradict what he just put on through Ms.
4 Colvin. And so the other accidents are relevant,
5 single-car accidents are relevant, to impeach what he
6 just did.

7 In other words, I agree with the Court when the
8 Court ruled that unless the door is opened, this
9 evidence can't come in. But he just opened the door by
10 suggesting directly to this jury that it's never -- the
11 use of the Darvocet has never affected your ability to
12 drive, and have never been impaired. And the evidence
13 regarding these two other accidents, single-car
14 accidents, is relevant to that issue. And by asking
15 the questions in the way he did, he's -- either it's
16 misleading the jury -- it's going to mislead the jury.

17 And that's a very, very important point in this
18 case, Your Honor. It's one of great significance to
19 Ned Wooden and CSX, because that's our theory of the
20 case. And to now suggest, to put up evidence through
21 the question of the witness, oh, it's never done that,
22 to be able to --

23 When you open the door to something that allows
24 you to impeach what the witness has said, that's just
25 basic black-letter evidence. And it's not outweighed

1 by 403 because he opened the door. And if we don't
2 allow this other evidence to come in, it's going to
3 give the wrong impression.

4 Again, let's read -- see what the testimony
5 says. But if he said -- if Mr. Parker asked the
6 question as I believe he did about it never or ever,
7 it's led the impression that, well, she's been driving
8 safely with these medications and drugs all the time so
9 they're probably just wrong about that day.

10 MR. PARKER: Your Honor, the problem with that
11 is they don't have any evidence that it affected those.
12 They're wanting to back-door in it.

13 THE COURT: Well, the problem is is unless
14 you've got something with some kind of clear finding --
15 which I can't imagine how you would do it, other than a
16 conviction of something -- that her having used any of
17 these drugs or alcohol would have caused a single-car
18 accident. I mean, just in and of itself because you
19 have a single-car accident doesn't mean you were
20 impaired. It means a deer could have jumped out in
21 front of you, too, or something else could have
22 happened.

23 But let's look at the testimony and let's see --
24 I guess what evidence do you have that two single-car
25 accidents were a result of impairment?

1 MR. HARMON: Well, Your Honor, we don't -- we
2 don't have it. There's no blood alcohol test. I would
3 admit to the Court there's none of that.

4 But the point is it's not fair. You gave a
5 ruling about the prior accidents and if Mr. Parker
6 hadn't opened the door, then we wouldn't be in this
7 predicament.

8 But you can't present one without the other. I
9 mean, the fact that she has had these things and there
10 was a refusal of medical treatment, I mean, that's --
11 Lillian was injured, there's a refusal of medical
12 treatment, now there's an explanation for it. But I
13 think that is relevant and it's probative.

14 THE COURT: Tie me the alcohol in it, though --
15 that's where I'm missing it --

16 MR. HARMON: We don't --

17 THE COURT: -- or the drugs.

18 MR. HARMON: Your Honor, we don't know. We
19 don't know. There's no --

20 THE COURT: There is nothing in the accident
21 report that said -- you know, there's a space for it in
22 South Carolina that says, you know, indication of
23 either under the influence of alcohol or anything along
24 those lines. I mean, do you have anything like that?

25 MR. HARMON: Your Honor, we don't have -- Ms.

1 Colvin did not -- there was no blood alcohol test
2 taken. All right? There was the refusal. And I would
3 submit to the Court --

4 THE COURT: Do you have an accident report on
5 either one of these?

6 MR. HARMON: We have an accident report.
7 If you'll give me the two accident reports.

8 But you see -- but you see the dilemma Mr.
9 Parker has created here by saying that never. Maybe we
10 should just listen to the testimony first.

11 THE COURT: Let's just listen. Let's find out
12 what the testimony --

13 MR. HARMON: If I'm wrong, then --

14 THE COURT: Mia, have you found it yet?

15 THE COURT REPORTER: I can go -- y'all will have
16 to stop talking.

17 THE COURT: You can find it, but you can only do
18 so much. All right. Let's --

19 THE COURT: All right. Let's do this. Y'all,
20 let's just go ahead and break. Let's go ahead and
21 break for lunch. She is going to find it over the
22 lunch.

23 And if your court reporter back there has any
24 help that you can help us, as well, find it, that would
25 be wonderful.

1 Let's go ahead and y'all take about thirty
2 minutes or so. It right now is 1:25. If y'all would
3 be back at five till, if you could, y'all.

4 MR. HARMON: All right, Your Honor.

5 THE COURT: We'll go ahead and get this taken
6 care of and take a look at it.

7 Why don't you look at your accident reports over
8 the lunch period, too, to see what there is.

9 THE WITNESS: I can --

10 THE COURT: Yes, ma'am. You may step down.
11 Absolutely.

12 [Whereupon, the witness exits the witness stand]

13 [Whereupon, a recess is taken from 1:40 p.m. to
14 2:00 p.m.]

15 THE COURT: All right. Mia played back for me
16 the portion of it. I believe what I heard was did it
17 ever cause you dizziness, did it ever cause you -- and
18 it went down the line.

19 Mr. Harmon?

20 MR. HARMON: Again, Your Honor, what I said
21 before lunch, the questions were did it ever cause you
22 dizziness. No. Did it ever cause you blurred vision.
23 No. Did it ever cause you drowsiness -- with the
24 suggestion clearly being that because it's never done
25 it, you've never had any problems ever, then you didn't

1 have any problems on this day. And all I want to be
2 able to show is that there is a possibility --
3 certainly Mr. Parker can cross-examine or bring -- or
4 redirect on the point. But to say that it's never when
5 you've had two other single-car accidents, when you
6 were taking the same medications, I think is something
7 the jury should be allowed to consider.

8 THE COURT: Mr. Harmon, let me ask you this. Is
9 there anything on those accident reports, or do you
10 have any evidence whatsoever, that she has stated say
11 to an EMS person or to a police officer that the reason
12 why she had this accident is because she was dizzy or
13 that she had blurred vision --

14 MR. HARMON: Your Honor, not only --

15 THE COURT: -- or that she took her -- or that
16 she took her prescription medication, and she thinks
17 maybe that affected her? Anything --

18 MR. HARMON: Your Honor, we --

19 THE COURT: -- along those lines?

20 MR. HARMON: Your Honor, we don't have any
21 evidence of that in this case that she -- that she has
22 ever said that that's why -- that she was dizzy on this
23 accident, the same way we don't have any evidence that
24 she said it in future accidents. All we have in the
25 future accidents, as we have in this case, is that she

1 was taking the same medications.

2 The questions are asked about the medications.
3 You asked questions about alcohol. We didn't say --
4 the questions that I elicited and the answers from her
5 dealt with the side effects of the medications she was
6 taking.

7 And Mr. Parker asked her questions about those
8 medications, because he asked her did it ever cause you
9 -- he asked her about the medication, did it ever cause
10 you to be dizzy, which is a side effect of the
11 medication. No. Did it ever cause you to be drowsy.
12 No. And so to talk about the alcohol is really not the
13 issue here. The issue here is that he has opened the
14 door that these medications on these other accidents
15 could have played a part. So you can't -- he can't --
16 you can't say -- ask did you ever cause you anything
17 relating to this medication, and not allow me to show
18 -- there's a possibility, just like in this case, that
19 it did. And the questions are simple. It's very
20 direct. And I don't think it's -- I think once the
21 door is open, I should be allowed, on a very narrow
22 front, to be able to ask questions. You know, it's
23 just a matter of impeachment.

24 MR. PARKER: Your Honor --

25 MR. HARMON: Again, we're not talking about --

1 the questions that were asked, Your Honor, were not
2 asked about alcohol. They were asked about the
3 medications that she was taking now.

4 THE COURT: I understand the difference. But
5 you're making a difference out of nothing that -- that
6 has no significance.

7 MR. PARKER: Your Honor, another big -- he's
8 changed my words, also. It says ever, did you ever,
9 meaning in language up until that time. It's not ever
10 in the -- if I had said never, like he said I said,
11 then he might -- even then it would be way out of line.
12 But with the questions as posed, clearly it was asking
13 about at that point in time did you ever.

14 THE COURT: Well, the inference that if these
15 two subsequent accidents, single-car accidents, it's
16 her fault that those -- for those accidents; therefore,
17 it's her fault for this accident. I mean, that's
18 basically what you're trying to say.

19 MR. HARMON: No. No, not at all. Not at all,
20 Your Honor. Not at all.

21 What I am trying to do -- I would have no basis
22 to argue this or bring this but for the questions that
23 Mr. Parker answered [sic] and the words ever were used.
24 And so I would have no basis for asking it. What I
25 have -- what I'm asking you is just to impeach what the

1 witness has just said.

2 It's not -- it's simply to show that if she is
3 saying it never -- did it ever cause you any -- and I'm
4 quoting it. Did it ever cause you blurred vision. No.
5 Did it ever cause you drowsiness. And I should be able
6 to show that there's some evidence that suggests that
7 ever could have -- with these two single-car accidents,
8 it could have done that.

9 I just think it's unfair for now the jury is
10 left with the impression, on a critical point -- a
11 critical point of our case, they are left with the
12 impression now, oh, well, he showed that it never -- it
13 never happened any other time so it probably didn't
14 happen on this time either. You know, they're just
15 blowing smoke when we now have evidence of these two
16 other single-car --

17 MR. PARKER: They don't have evidence.

18 MR. HARMON: I'm not finished --

19 -- of these two single-car accidents that she
20 was involved in at -- during the same period of time
21 that she's taking these medications.

22 Again, she's taking the medications on the day
23 of the accident in question and we've elicited
24 testimony to suggest that that is what caused her to
25 pull out in front of this train. And Mr. Parker came

1 up and said did you ever have any dizziness, drowsiness
2 or blurred vision, no, I never did, therefore you
3 wouldn't have had on this day. We should be able to
4 show that there are other factors that the jury should
5 at least be able to consider that would go to the
6 credibility of Ms. Colvin's testimony, because this
7 case in large part deals with her credibility. And so
8 to allow her to get up there and say no is tantamount
9 to allow her to get up there and to say, you know, no,
10 I never -- there was never any problems, I never had
11 any problems with any of these medications with driving
12 or anything else.

13 THE COURT: Mr. Harmon, let me ask you this. If
14 he had asked the question did it ever cause you to be
15 in a wreck or were you ever in a wreck as a result of
16 taking these drugs. But the question was did it ever
17 cause you dizziness, did taking this specific drug ever
18 cause you dizziness, and she is saying no.

19 I mean, I can tell you, I don't see the complete
20 connection. And I can tell you, even if you did, I
21 think the prejudicial effect way outweighs any
22 probative value. I mean, what you're trying to get to
23 this jury is to say is because she had these two
24 single-car wrecks subsequent to this accident that
25 therefore she caused this one and it's her fault for

1 this one. I mean, that's what you're trying to say.

2 MR. HARMON: Your Honor, I respectfully disagree
3 with you.

4 THE COURT: Okay.

5 MR. HARMON: I understand what you're saying,
6 but my position is not I'm trying to show that she had
7 other bad acts and therefore she acted in conformity
8 herewith on this occasion. All I'm trying to do is to
9 impeach the testimony that Mr. Parker elicited.

10 THE COURT: I understand. Because let's say you
11 had a medical record where she went into her doctor and
12 said, you know what, you're giving me this Darvocet and
13 it's making me dizzy. Okay? You could certainly use
14 that to impeach what she asked [sic]. I mean, there
15 would be no issue here. I mean, if she said something
16 like, well, you know what, I got a little light-headed
17 as a result of taking this, that I could see you could
18 use to impeach her saying, no, it never caused me to be
19 dizzy. That I would understand. But to me, there's
20 just -- your connection is not there.

21 MR. HARMON: All right. Well, Your Honor, I
22 understand when I've been overruled.

23 THE COURT: Respectfully, I appreciate it.

24 MR. HARMON: Just note my objection for the
25 record.

1 THE COURT: All right. Are we ready to keep
2 going?

3 MR. HARMON: Oh. And I guess --

4 THE COURT: She is still on cross for you;
5 correct?

6 MR. HARMON: Yes. I have some -- yes, I have
7 some cross.

8 And I guess -- I don't -- I mean, just for the
9 record, can I just give an oral proffer? We don't need
10 to put Ms. Colvin on the stand.

11 MR. PARKER: That's fine.

12 - - - - -

13 PROFFER

14 MR. HARMON: All right. Just for the record, we
15 believe the testimony would show, if we were allowed to
16 present it -- we've been prevented from doing so -- but
17 that after this accident, Ms. Colvin had two single-car
18 accidents at some -- two different dates after this
19 particular accident. We believe that evidence would be
20 relevant to impeach -- relevant to impeach the
21 testimony that Ms. Colvin just gave on the witness
22 stand regarding the effects of Darvocet, that it never
23 caused her dizziness.

24 The question was asked did it ever cause her
25 dizziness, drowsiness, or blurred vision, and she said

1 no. And we believe that those single-car accidents
2 would be relevant not to show that she had accidents
3 then and therefore she had an accident today, but to go
4 squarely to --

5 THE COURT: Her credibility of whether or not --

6 MR. HARMON: -- her credibility and to impeach
7 what she said, Your Honor.

8 THE COURT: All right. And, well, also, too,
9 you told me you have the accident reports; is that
10 correct?

11 MR. HARMON: Yes, Your Honor, we do.

12 THE COURT: Why don't you hunt those down and
13 let me look at them.

14 MR. HARMON: Sure.

15 MR. WRAY: Your Honor, while we're looking for
16 that, let me go ahead and put on the record that we
17 did have a sidebar regarding the issue of introducing
18 those -- introduction of the exhibit with the medical
19 bills. That was an issue that we had discussed at
20 length.

21 THE COURT: Y'all are going to look at that. My
22 understanding was -- was there a summary on the front
23 of it? I haven't seen it.

24 MR. PARKER: Yes, there was, Your Honor.

25 THE COURT: Okay. So my -- well, I guess my

1 first question, Mr. Wray, is is do you object to the
2 summary; and, secondly, have you had an opportunity to
3 go through each one of the bills, obviously to make
4 sure there's nothing to do with insurance issues on
5 those, or anything along those lines?

6 MR. WRAY: We still haven't seen it.

7 MR. PARKER: Excuse me. Let me hand it to him.

8 THE COURT: Let's turn it over.

9 MR. WRAY: But our objection goes beyond that
10 issue. As you recall, Your Honor, on Friday we talked
11 about the very fact about whether or not they could
12 introduce any evidence -- not just a summary or not
13 whether they're related or not, but any evidence of
14 medical bills incurred or to be incurred during
15 minority.

16 My understanding from Mr. Parker was he was
17 going to think about it and look at it over the weekend
18 and let us know whether he intended to pursue it or
19 not. We did not discuss it this morning, then during
20 the conclusion of the direct examination, the exhibit
21 was presented and the Court allowed the testimony.

22 We incorporate all of our objections that were
23 made on Friday as to the validity of admitting this
24 evidence in this case and our objections in the case
25 law that we cited and discussed on Friday. We believe

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1 it's improper. It's not part of this case. The
2 medical-bill claim belongs to Ms. Colvin, who is not a
3 plaintiff. It's an individual claim that only she can
4 pursue, and it's subject to all the defenses that we
5 discussed on Friday.

6 So we just wanted to note for the record that we
7 did renew that objection and that the Court did permit
8 the -- well, at least the reference to the total
9 amount, and perhaps is going to admit the exhibit
10 itself over our objection.

11 MR. MCLEOD: Your Honor, I had best note my
12 exception, too.

13 [Whereupon, the Court reviews documents]

14 THE COURT: All right, y'all. I have looked at
15 the accident reports on either one, and I was looking
16 for any indication whatsoever on the accident report
17 that showed that possibly she was either under the
18 influence of drugs, prescription drugs, any type of
19 drugs, or there that is any indication that there was
20 blurriness or dizziness or anything along those lines,
21 and I just don't see it on here.

22 MR. PARKER: Your Honor, what dates were those,
23 also?

24 THE COURT: One is September of '06 and one is
25 March of '07.

1 And my understanding, also, is is that -- and I
2 don't know when this -- but her drugs have been
3 changed. She now said she is taking Lortab as opposed
4 to Darvocet. I don't know at what point that occurred.
5 I don't know if it was --

6 MR. HARMON: Well, I mean, if we were allowed to
7 ask questions, we could explore that and I believe we
8 could establish that she, in fact, did change to
9 Lortab. But I believe the testimony from the hearing
10 was that she's still taking the tizanidine, I believe.

11 THE COURT: Did y'all take the deposition of the
12 officer's name, or the officer in here? I mean, I'm
13 seeing Clark.

14 MR. PARKER: No.

15 THE COURT: No? Okay.

16 MR. HARMON: The EMTs.

17 THE COURT: Okay. All right. Thank you.

18 MR. HARMON: Thank you, Your Honor.

19 THE COURT: All right. So my understanding is
20 you're going to do a little bit more cross on her and
21 then --

22 MR. HARMON: Very brief. Very brief.

23 THE COURT: All right. And then you're ready
24 with your next witness after that, Mr. Parker?

25 MR. PARKER: [No response]

1 THE COURT: All right. Let's bring them in.
2 [Whereupon, the jury enters the courtroom at
3 2:10 p.m.]

4 THE COURT: Welcome back, ladies and gentlemen
5 of the jury. I trust you all had a nice lunch.

6 My understanding is, Mr. Harmon, you've got some
7 more questions, sir?

8 MR. HARMON: Yes, Your Honor. Just very, very
9 briefly.

10 RECROSS-EXAMINATION

11 BY MR. HARMON:

12 Q. Ms. Colvin, do you remember just right before
13 lunch you were asked some questions by Mr. Parker about
14 codeine? Do you remember that?

15 A. Yes.

16 Q. And you were asked that we have subpoenaed every
17 record that you've ever had, haven't they, and there
18 wasn't any record of you ever having cough syrup with
19 codeine? Remember that? You answered yes?

20 A. Yes.

21 MR. HARMON: Could we put up Exhibit 39, the
22 record. All right. If we can blow up towards the
23 bottom, please.

24 [Off the record momentarily]

25 MR. HARMON: Okay. Can you pull up this part?

1 Q. [Mr. Harmon] And this is a medical record;
2 right?

3 MR. HARMON: Can you go back a little bit?

4 Q. [Mr. Harmon] It's hard to read. But have you
5 seen this record before?

6 A. No.

7 Q. All right. And up over here on this side it
8 says cough syrup, codeine, per patient, pt. Do you see
9 that?

10 A. Yes.

11 Q. And this is certainly a record; right?

12 A. Yes.

13 MR. HARMON: I pass the witness.

14 THE COURT: Mr. McLeod, do you have anything,
15 sir?

16 MR. MCLEOD: None, Your Honor.

17 THE COURT: Mr. Parker?

18 MR. PARKER: One follow-up.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. PARKER:

21 Q. There was no record of any prescriptions for
22 cough syrup with codeine, was it, that they discovered?

23 A. No.

24 MR. HARMON: I have no further questions.

25 THE COURT: Okay. Mr. McLeod, nothing?

1 MR. MCLEOD: None.

2 THE COURT: All right. You may step down,
3 ma'am. Thank you.

4 [Whereupon, Ms. Colvin is excused and exits the
5 witness stand]

6 THE COURT: If you'll call your next witness,
7 sir.

8 MR. DETRICK: Thank you, Your Honor. Call
9 Allison Schaffer.

10 MR. HARMON: Your Honor, I'm sorry. We move
11 into evidence Exhibit 28.

12 MR. PARKER: And what is 28?

13 MR. HARMON: That's the learner's permit, Miss
14 Lillian Colvin's learner's permit.

15 MR. PARKER: We object to it. I don't remember
16 that coming in.

17 MR. HARMON: It was the last questions I asked
18 her.

19 MR. PARKER: Oh. You're talking about the thing
20 up on the screen?

21 THE COURT: Yes, sir.

22 MR. HARMON: Yes.

23 THE COURT: It's in evidence, sir.

24 MR. HARMON: Yes. Thank you.

25 [Whereupon, Defendant's Exhibit Number 28 is

ALISON SCHAFFER,

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

DIRECT EXAMINATION:

BY MR. DETRICK:

Q. Ms. Schaffer, where do you live?

A. I live in Gray, South Carolina.

Q. Okay. And as far as employment, what do you do
for employment?

A. I'm a registered nurse.

Q. And obviously you've been educated in that field
and working in that field for a fair amount of years;
right?

A. Yes, sir.

Q. And on February the 4th, two thousand -- I mean,
February 3rd, 2004, where were you working?

A. Hampton County Hospital.

Q. And as a nurse?

A. Yes.

Q. And I believe you were -- until you actually --
we showed you the record -- I think the lawyers on the
other side showed you the record, you didn't even know you
were working that day, did you?

A. No, sir. I didn't recall.

Q. Okay. But now that you've been shown the

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1 record, you realize you worked that day.--

2 A. Yes, sir.

3 Q. -- is that right?

4 A. Yes, sir.

5 Q. Okay. Now, and you -- and as a result of
6 reviewing the record and refreshing your memory, do you
7 know what time you worked on that day?

8 A. I worked the day shift, 7:00 a.m. to 7:00 p.m.

9 Q. Okay. And have you since learned that during
10 that time, you actually were the nurse that treated Tonia
11 Colvin? Is that correct?

12 A. Yes, sir.

13 Q. And I believe we have provided you and -- the
14 records --

15 MR. DETRICK: And let me show -- this is all the
16 hospital records.

17 [Whereupon, Mr. Detrick proffers documents to
18 Mr. Wray]

19 [Whereupon, Mr. Detrick and Mr. Wray confer]

20 MR. WRAY: No objection.

21 MR. MCLEOD: No objection, Your Honor.

22 MR. DETRICK: I'm sorry. I didn't show you. We
23 don't give you no respect.

24 MR. MCLEOD: That's right.

25 [Whereupon, Mr. Detrick proffers documents to

1 Mr. McLeod]

2 [Whereupon, Mr. McLeod reviews documents]

3 Q. [Mr. Detrick] I'm handing you Exhibit Number
4 144-A. And are you able to identify that?

5 A. This is the medical record from her ER visit for
6 that day.

7 Q. Okay. And are you -- is that your -- I think
8 this is your emergency department nurse's notes; is that
9 correct?

10 A. Yes, sir.

11 Q. And did you fill out that -- this record?

12 A. Yes, sir.

13 Q. And who is it involving?

14 A. Ms. Colvin.

15 Q. And what time did you -- does that begin as far
16 as to fill out these records?

17 A. 1728.

18 Q. And if you would, I don't -- you don't -- I
19 think you've already testified at deposition you don't
20 remember Ms. Tonia Colvin --

21 A. No, sir.

22 Q. -- or anything about this, other than the
23 record; is that correct?

24 A. No, sir.

25 Q. But you do know what normal procedures you

1 follow, as a nurse, every time someone comes in that's
2 been in a trauma; is that correct?

3 A. Yes.

4 Q. And I think the part as the -- the part here
5 where we're talking about the chief complaint, is that
6 your writing there?

7 A. Yes, sir.

8 Q. What did you write?

9 A. [Reading] MVA -- which is motor vehicle accident
10 -- car versus train; this is the driver; unsure of
11 restraint status; no loss of consciousness; small
12 laceration to chin; broken tooth, bottom front; complains
13 of pain in left thigh.

14 Q. And what would be the circumstances when you ask
15 these kind of questions to patients that come in? I mean,
16 what are you trying to find out?

17 A. The reason they are there.

18 Q. Okay. And if there was any kind of suspect in
19 impairment or alcohol use, what would you do?

20 MR. WRAY: Your Honor, I object to the
21 speculation. The witness said she had no recollection
22 of this event. He is asking her what would she have
23 done.

24 MR. DETRICK: I think she testified what her
25 usual policies were, Your Honor.

1 THE COURT: I think she can. Overruled.

2 A. You just put what you observed.

3 Q. [Mr. Detrick] Okay. And what would you put,
4 like?

5 A. In what situation?

6 Q. As far as impairment with alcohol if you observe
7 anything.

8 A. You would put slurred speech, any smell, any,
9 you know, problems with movement or gait, that sort of
10 thing.

11 Q. And would you have put it in this area of the
12 emergency department nurse's notes?

13 A. Normally, yes, sir.

14 Q. Okay. And there is nothing in there; is that
15 correct?

16 A. Not in here. No, sir.

17 Q. And then the remainder of this front page, did
18 you -- I think you put in there with the blood pressure
19 and such as that. And did you also ask her whether she
20 had been -- whether she had had any pain medication that
21 day?

22 A. No, sir. I asked what her current medications
23 were, but I didn't ask her if she had had any that day.

24 Q. All right. And what was her current
25 medications?

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1 A. Darvocet as needed.

2 Q. Okay. And that was for over here, for past
3 history?

4 A. On current medication.

5 Q. All right. And what would you -- did you ask
6 her about her past history, also?

7 A. Yes.

8 Q. All right. And what was that?

9 A. A partial hysterectomy, and herniated disk.

10 Q. All right. And did you --

11 MR. DETRICK: Go ahead.

12 Q. [Mr. Detrick] If you would, now, after that,
13 you made an assessment; is that correct?

14 A. Yes, sir.

15 Q. And what do you do when you're making an
16 assessment?

17 A. You just do a quick head-to-toe assessment -- as
18 a nurse -- just to see what their main complaints are and
19 to see what's applicable or not.

20 Q. And if you would kind of go through what you --
21 let's not go through all of them, but let's go through the
22 ones over here, as far as like -- I think that says mental
23 status. Is that what that says?

24 A. Yes, sir.

25 Q. And what did you put there?

1 A. [Reading] Awake, alert; oriented to person,
2 place, and time; verbal; and complaining of pain.
3 Q. And all that would be normal; is that correct?
4 A. Except for the pain.
5 Q. Okay. And then as far as the next one below
6 that I believe is psycho-social; is that right?
7 A. Yes, sir.
8 Q. And what do you mean when you're asking those
9 kind of questions?
10 A. Just to see how they react to you and how
11 they're -- how they're acting.
12 Q. How they're acting?
13 A. Right.
14 Q. How was she acting that you noted?
15 A. Calm and cooperative.
16 Q. Calm and cooperative?
17 A. Uh-huh.
18 Q. Okay. And I believe other than that, on the
19 bottom line there, she had had a laceration; is that
20 correct?
21 A. Yes.
22 Q. And then she -- what is this over here?
23 A. Pain or discomfort is the next.
24 Q. And then musculoskeletal. What are you
25 assessing when you do that?

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1 A. As far as if their range of motion, which is the
2 way they move, if that is limited or is it completely
3 full, or if their gait is steady or unsteady, if they're
4 likely to fall.

5 Q. What kind of assessment did you make of that?

6 A. The gait was steady, the range of motion
7 limited, and the sensation was within normal limits.

8 Q. And I believe that her family doctor was Dr.
9 Dhar?

10 A. Yes, sir.

11 Q. Okay. And if you would go to the second page of
12 this exhibit. And I don't think -- I don't think -- is
13 this any -- is any of your writing on that?

14 A. The very first line.

15 Q. Okay. And what is the time and what you put?

16 A. 1728.

17 Q. All right. And if you would go to the second --
18 the third page. Who was the doctor on duty that night?

19 A. Ulysses Carrino.

20 Q. And do you know where he is now?

21 A. The last I heard, he was in San Diego.

22 Q. Okay. But here -- this is a business record
23 from the Hampton County Hospital, is it not?

24 A. Right.

25 Q. Okay. And you -- in working with Dr. Carrino,

1 were you familiar with his handwriting? And you're
2 required to read his writing on --

3 A. Yes, sir.

4 Q. -- occasions?

5 A. Yes, sir.

6 Q. Okay. And let's go to the bottom of this page.
7 I think it's the orders of the doctor; is that right?

8 A. Yes, sir.

9 Q. And in putting down his orders, what is he
10 doing?

11 A. He's putting down what he wants the nurse to do.

12 Q. And if you would kind of just tell the jury what
13 the doctor was telling at that time.

14 A. Just on additional orders?

15 Q. Please. I think it -- above that was what, as
16 far as orders?

17 A. Those are x-rays, labs, that sort of thing.

18 Q. Okay. And I believe they did do a blood alcohol
19 test; is that correct?

20 A. They did.

21 Q. And that was ordered by the doctor?

22 A. Yes.

23 Q. Okay. Unusual about doctors ordering that?

24 A. Not necessarily, no.

25 Q. All right. And, now, if you go to the bottom,

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1 tell us about -- read the doctor's orders for us, please.

2 A. [Reading] Ibuprofen, 800 milligrams, PO times
3 one; tetanus, if not up to date; assist for heme check
4 times one; clean, steri-strip chin, patient preference.
5 And then handouts: benefits of quitting smoking, head
6 injury, info sheet, wound care, sprain, strain, and back
7 pain.

8 Q. Okay. And so you hand out those smoking sheets
9 so they try to get them to quit smoking?

10 A. Uh-huh.

11 Q. And if you would, now --

12 MR. DETRICK: To the next page, please, Felicia.

13 Q. [Mr. Detrick] And is this where the doctor
14 would have done his examination and such?

15 A. Yes, sir.

16 Q. And if you would -- I believe it's got up here
17 time seen by M.D. And what time would that be?

18 A. 1850.

19 Q. And then if you would go through that with the
20 jury, as far as what the doctor --

21 MR. WRAY: Your Honor, I'm going to object. The
22 witness can certainly testify as to what she did and
23 her involvement. I don't believe she can testify to
24 what the doctor did, or try to read into the record his
25 assessment.

1 MR. DETRICK: Your Honor, this is a business
2 record, and all she's doing -- she's not going to make
3 any diagnosis or anything like that. But we're reading
4 this for the jury so the jury --

5 And they didn't object to this exhibit, also.
6 And we're just letting her, who -- she's familiar with
7 this doctor's writing, just writing [sic] what he
8 wrote. That's it.

9 THE COURT: Okay. I'm going to allow it.

10 Q. [Mr. Detrick] All right. Go ahead, if you
11 would, please, Ms. Schaffer.

12 A. Okay. The chief complaints is [reading] status
13 post MVA, car versus train; patient equals driver;
14 questionable restraint, patient not sure; no loss of
15 consciousness; positive ambulation at the scene per EMS.
16 And then it says, associated symptoms: chin laceration;
17 left-thigh pain; date of onset, today; time of onset -- I
18 don't know what it says. And then over on the side it
19 says, low-back pain, herniation history, and obesity.

20 Q. Okay. And let's go down to the physical
21 examination, please, at the bottom there.

22 A. Uh-huh.

23 [Whereupon, Mr. Detrick and Ms. Gerrard confer]

24 Q. [Mr. Detrick] Is this on her physical
25 examination of the doctor?

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1 A. At the bottom, yes.

2 Q. Okay. And I believe he does a neurological
3 exam; is that correct?

4 A. Yes.

5 Q. And what did he find?

6 A. He put -- he circled alert and oriented.

7 MR. DETRICK: Okay. Let's go to the second --
8 to the next page, please.

9 Q. [Mr. Detrick] All right. And this -- on the
10 next page is continuing with the doctor's writing; is that
11 correct?

12 A. Yes.

13 Q. And I believe he puts on there -- first goes
14 through her past medical history and then goes to the
15 social history --

16 A. Uh-huh.

17 Q. -- is that right?

18 A. Yes, sir.

19 Q. And what does he indicate there?

20 A. On the social?

21 Q. Yeah. Did he get this from the patient?

22 A. Normally, yes, sir. He circled smoker, yes,
23 half a pack per day; alcohol, yes, occasionally, today,
24 one cooler this morning.

25 Q. Okay. And if you would go down to the bottom

1 where the clinical impression that the doctor had.

2 A. Uh-huh.

3 Q. And what was his impression?

4 A. It says: [reading] post MVA car versus train.
5 Number one, head injury not otherwise specified; number
6 two, left-lower extremity strain.

7 And I don't know what else that says by it.

8 [Reading] Three, multiple abrasions; four, chin
9 laceration; five, tobacco.

10 Q. Okay. So he told her to quit smoking, and
11 treated her injuries?

12 A. Yes, sir.

13 Q. All right. And then over here did he put what
14 her condition was at the time of discharge?

15 A. Yes.

16 Q. What was it?

17 A. Improved and stable.

18 Q. All right. And that's Dr. Carrino --

19 A. Yes, sir.

20 Q. -- right? That's his name right there?

21 A. Yes, sir.

22 Q. Okay. And I believe the next --

23 MR. DETRICK: Go ahead to the next page.

24 Q. [Mr. Detrick] I believe this page right here
25 just shows the area of the abrasions and the cuts and such

1 as that; is that correct?

2 A. Yes, sir.

3 MR. DETRICK: All right. And go to the next
4 page.

5 Q. [Mr. Detrick] And I believe this continues with
6 the describing the areas of the cuts and such?

7 A. Yes, sir.

8 MR. DETRICK: Now, go to -- keep on going
9 forward, Felicia. Keep going. Whoa. Right there.

10 Q. [Mr. Detrick] Do you see that page there,
11 Allison?

12 A. Uh-huh.

13 Q. And if you would -- and what is this? What is
14 this?

15 A. This is a urine drug screen results

16 Q. All right. And then go to the bottom of that.
17 And if you would read what the doctor wrote.

18 A. [Reading] History of cough syrup with codeine,
19 per patient.

20 Q. And right here?

21 A. Yes.

22 Q. Okay. And then the narcotics?

23 A. Narcotics at home; something Dhar.

24 MR. DETRICK: Okay. Just go on I think two more
25 pages down.

1 Q. [Mr. Detrick] And now here is -- what is this?

2 A. The blood alcohol level.

3 Q. They did a blood alcohol?

4 A. Yes, sir.

5 Q. And this is the -- and the results --

6 A. Uh-huh.

7 Q. -- were .018; is that correct?

8 A. Yes, sir.

9 Q. And that interpretation is negative?

10 MR. WRAY: Objection to the leading, Your Honor.

11 Q. [Mr. Detrick] What is the -- what is the
12 interpretation below that?

13 A. .00 to .05 percent is negative.

14 Q. And that's negative blood alcohol?

15 A. Yes, sir.

16 Q. And what is the writing of the doctor down here?

17 A. [Reading] Claims one wine cooler this a.m.

18 MR. DETRICK: Okay. And if you would go to the
19 last page.

20 Q. [Mr. Detrick] And is that -- I think that's the
21 home-care instructions and discharge summary. And who
22 usually fills those out?

23 A. The doctor fills the top portion out, and then
24 the nurse gives the instruction, then signs that it was
25 given by them, with the patient's signature.

1 MR. DETRICK: And then go to the bottom of that,
2 please, Felicia. Keep on going.

3 Q. [Mr. Detrick] And then is this when she was
4 discharged?

5 A. Yes.

6 Q. And it notes that these discharge instructions
7 have been given to her?

8 A. Yes.

9 Q. And what time was she discharged?

10 A. 8:40.

11 MR. DETRICK: If you would go to the top of that
12 last page, please.

13 Q. [Mr. Detrick] And on these -- these are the
14 documents we've been talking about. These are the
15 instructions given to the patients?

16 A. Yes, sir.

17 Q. And I failed to ask you: over here, as far as
18 activity, he -- it's got on the -- what do they do, they
19 do -- they put a mark what they're not supposed to do or
20 what is applicable; is that correct?

21 A. They mark what is applicable.

22 Q. And we've got a place right here that says:
23 [reading] do not drive a vehicle for the next blank hours.
24 Did the doctor -- did he mark that?

25 A. Not on this, no.

1 Q. So in other words, she could have driven out --
2 driven home?

3 A. These instructions, yes.

4 MR. DETRICK: Thank you. Ms. Schaffer, answer
5 any questions the lawyers -- other lawyers may have,
6 please.

7 MR. WRAY: Good afternoon, Ms. Schaffer. How
8 are you?

9 THE WITNESS: Good. How are you?

10 Mr. Wray: I just have a few questions for you.

11 THE WITNESS: Okay.

12 CROSS-EXAMINATION

13 BY MR. WRAY:

14 Q. Let's be clear at the outset. You don't have
15 any recollection whatsoever of Ms. Colvin --

16 A. No, sir.

17 Q. -- correct?

18 And as far as what her condition was that night
19 or how she appeared, you don't have any memory of that
20 whatsoever; correct?

21 A. Other than my notes, no, sir.

22 Q. All right. And, in fact, I think you told us,
23 and told the jury today, that until you saw your time
24 sheet, you didn't even know you were at the hospital that
25 night; is that correct?

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1 A. That's correct.

2 Q. Now, you were asked some questions about the
3 nursing assessment you completed.

4 MR. WRAY: And I'm going to use our exhibit
5 numbers just because we've got it loaded.

6 If you'll put up 41, please.

7 [Off the record momentarily]

8 MR. WRAY: All right. If you would -- slide
9 it -- yeah. You've got it. That's fine.

10 Q. [Mr. Wray] Now, Ms. Schaffer -- you indicated
11 Ms. Colvin came in and she was non-urgent; is that
12 correct?

13 A. Right.

14 Q. And that means that if there were patients that
15 had an emergency situation, you would deal with them
16 first; correct?

17 A. Right.

18 Q. And, also, you would give more attention and
19 provide more detail to an emergent patient than you would
20 a non-urgent patient; correct?

21 A. Not necessarily; in a quicker time frame.

22 Q. All right. You don't know when the accident
23 happened, do you?

24 A. No, sir.

25 Q. All you --

- 1 A. Just that day.
- 2 Q. All you know is she got to the hospital about
3 5:28?
- 4 A. Per EMS. Yes.
- 5 Q. Now, there's nowhere on this form, is it, that
6 asks specifically whether or not she had used alcohol that
7 day; correct?
- 8 A. No, sir.
- 9 Q. There is a question --
- 10 MR. WRAY: And if you could, Bob, pull this up.
- 11 Q. [Mr. Wray] There is a question that asks about
12 current medications; correct?
- 13 A. Right.
- 14 Q. And the only thing you indicated was Darvocet;
15 correct?
- 16 A. As needed. Yes.
- 17 Q. All right. Now, Ms. Colvin told the jury
18 earlier today that she took a muscle relaxer known as
19 tizanidine.
- 20 A. Uh-huh.
- 21 Q. You didn't indicate that; correct?
- 22 A. No, sir.
- 23 Q. And she told the jury she also had a
24 prescription for hydrocodone, and you didn't indicate
25 that, did you?

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1 A. No, sir.

2 Q. And if she took some cough syrup with codeine,
3 which we saw on one of the records later --

4 A. Uh-huh.

5 Q. -- she didn't tell you that either; correct?

6 A. No, sir.

7 Q. So it's fair to say, isn't it, Ms. Schaffer,
8 that this form doesn't reflect everything that the patient
9 may have taken; correct?

10 A. Yes, sir.

11 MR. WRAY: Can we go to page 4 of that -- I'm
12 sorry -- page 4 of Exhibit 39. If we can go to 39.
13 Okay. Go back one.

14 Q. [Mr. Wray] Now, this is the physician order
15 form we looked at earlier?

16 A. Yes, sir.

17 Q. Do you recall that?

18 A. Uh-huh.

19 Q. And I think you told the jury that Dr. Carrino
20 ordered a blood alcohol test; correct?

21 A. Yes, sir.

22 Q. And it's not your testimony, is it, that every
23 person that comes to the Hampton Hospital gets a blood
24 alcohol test?

25 A. No.

1 Q. In fact, most patients do not get a blood
2 alcohol test; isn't that correct?

3 A. Only if the doctor sees that there is a need for
4 one. Exactly.

5 Q. But, likewise, Dr. Carrino ordered a urine drug
6 screen; correct?

7 A. Uh-huh.

8 Q. Is that yes?

9 A. Yes. I'm sorry.

10 Q. And the reason for that test is to determine
11 whether the patient has some drugs in their system;
12 correct?

13 A. Yes, sir.

14 Q. And like the blood alcohol test, not every
15 patient that comes to the Hampton Hospital following an
16 accident gets a urine drug-screen test, do they?

17 A. No.

18 Q. In fact, most patients don't get a urine drug-
19 screen test unless there is some reason to indicate a need
20 to do it; correct?

21 A. Most likely.

22 Q. All right. Both of them were ordered in this
23 particular case; correct?

24 A. They were.

25 MR. WRAY: Now, let's go to page 9, please, of

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1 that same exhibit. Keep going. Go ahead. That's it.
2 All right. Let's blow up this box right here.

3 Q. [Mr. Wray] Mr. Detrick asked you some
4 questions. And this is the result of the urine drug-
5 screen test; correct?

6 A. Yes.

7 Q. And Ms. Colvin's test showed positive for
8 opiates; correct?

9 A. Yes.

10 Q. And as we looked at earlier, she told the doctor
11 she had had codeine with cough syrup per patient. And
12 that's per Ms. Colvin. Correct?

13 A. Right.

14 Q. She also -- although you talked about the blood
15 alcohol result, she did show a positive result for
16 alcohol, as well; correct?

17 A. Yes. Well, she -- it showed that she had had
18 alcohol; not that it was above the legal limit.

19 Q. All right. But it showed a positive result for
20 alcohol -- correct --

21 A. Right.

22 Q. -- presence?

23 A. Right.

24 MR. WRAY: Thank you very much, Ms. Schaffer.

25 THE COURT: Mr. McLeod, do you have anything,

1 sir?

2 MR. MCLEOD: Just one question, Ms. Schaffer.

3 CROSS-EXAMINATION

4 BY MR. MCLEOD:

5 Q. The doctor wrote on the form there, quote,
6 claimed one wine cooler this a.m. Does that have any
7 significance to you the way that's phrased?

8 A. He's just saying what the patient said. He
9 can't say for sure, but that's what she's saying that she
10 had. That would be the only thing I would say.

11 MR. MCLEOD: Thank you. Nothing further.

12 THE COURT: All right. Mr. Detrick?

13 REDIRECT EXAMINATION

14 BY MR. DETRICK:

15 Q. What I was going to ask you: he was questioning
16 you about this test right here, is that right, as far as
17 the opiates?

18 A. Yes, sir.

19 Q. And it didn't say it was positive, it says
20 presumptive positive; is that correct?

21 A. Yes, sir.

22 Q. And isn't a Darvocet -- if she had taken that,
23 isn't that an opiate? Isn't that what --

24 MR. WRAY: Your Honor, I'm going to object
25 unless he is going to qualify her as a pharmacologist.

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1 THE COURT: I think she can testify whether or
2 not she knows if it is, in fact, an opiate.

3 THE WITNESS: I'm not really sure, to be honest.

4 THE COURT: Well, if you don't know, then -- if
5 you don't know, fair enough.

6 THE WITNESS: Okay.

7 A. It's a narcotic. I'm not sure which class it
8 is.

9 Q. [Mr. Detrick] In the notes here it's got --
10 looks like to me, on claims -- and it's a T with a dot
11 over it on the lab report?

12 A. Yes, sir.

13 Q. Do you know what does a T with a dot over it
14 means?

15 A. It means one.

16 Q. One?

17 A. Uh-huh.

18 MR. DETRICK: Okay. Thank you. That's all I
19 have.

20 MR. WRAY: Nothing further, Your Honor.

21 THE COURT: All right. You may step down.
22 Thank you, ma'am.

23 THE WITNESS: Where do I put this?

24 THE COURT: Leave it right there where you are.

25 THE WITNESS: Okay.

1 THE COURT: Just right there. Thank you, ma'am.
2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: If the plaintiffs will call their
5 next witness.

6 MR. HOLMES: Your Honor, the plaintiff calls
7 Deborah Manigo.

8 [Whereupon, Ms. Manigo enters the courtroom]

9 THE COURT: Okay. Ms. Manigo, if you will
10 please just come forward right around here, ma'am.
11 Right up to here. Right up here, ma'am.

12 There is a Bible laying right there. If you
13 will place your left hand on it and raise your right
14 hand for me.

15 [Off the record momentarily]

16 THE COURT: Go ahead and just raise your hand,
17 please.

18 [Whereupon, Ms. Manigo is duly sworn by the
19 Court]

20 THE COURT: All right. Thank you, ma'am. Just
21 give us your full name for the record, and take a seat.
22 All right?

23 [Whereupon, Ms. Manigo takes the witness stand]

24 THE WITNESS: Deborah Lincoln Manigo.
25

- - -

1 A. I taught the advanced class.

2 Q. And how does a student get into an advanced
3 class?

4 A. Based on test scores, teacher recommendations.

5 Q. Okay. So it's I guess what we've been referring
6 to as the PACT testing?

7 A. Yes.

8 Q. And they -- you said they also look at the
9 teacher recommendations?

10 A. Yes.

11 Q. And would that be based on their school
12 performance and grades?

13 A. Yes.

14 Q. All right. So it's a combination of the two?

15 A. Yes.

16 Q. All right. Now, in the -- this class that you
17 had, I believe it would have been your 2003-2004 school
18 year math class?

19 A. I believe so.

20 Q. Okay. Well, we know that Lillian was in her
21 collision in February of 2004.

22 A. Okay.

23 Q. Does that give you a better idea of what year it
24 was you taught her?

25 A. Yes.

1 Q. Okay. 2003-2004?

2 A. Yes.

3 Q. And how did -- this class that Lillian was in,
4 how did it compare to your other classes, the caliber of
5 the students and how they did and got along?

6 A. The students in that class were above the other
7 students in my other classes that I taught.

8 Q. And how did Lillian do as a student?

9 A. She was -- she did better work compared to the
10 other students in my other classes.

11 Q. Well, was she -- did she cooperate with you?

12 A. Yes.

13 Q. All right. Did she behave in class?

14 A. Yes.

15 Q. Did you ever have any discipline problems with
16 her or anything?

17 A. No.

18 Q. All right. Did she pay attention?

19 A. Yes.

20 Q. Was she able to concentrate?

21 A. Yes.

22 Q. And how did she do as far as her -- other than
23 just her behavior, her actual performance in your class?

24 A. She did what I assigned.

25 Q. All right. So she turned her work in on time --

1 Q. All right. And you are currently a teacher at
2 Ruffin Middle School?

3 A. That's correct.

4 Q. Can you tell us about your college?

5 A. I have a bachelors in business administration;
6 and I have a masters in arts of teaching.

7 Q. And you've recently obtained your masters, I
8 believe?

9 A. Yes.

10 Q. And when did you start teaching at Ruffin Middle
11 School?

12 A. January, 2005.

13 Q. And in January of 2005, what subject did you
14 teach?

15 A. Seventh grade math.

16 Q. And Lillian Colvin was in your --

17 A. Yes.

18 Q. -- math class?

19 All right. What level class was that?

20 A. The basic average class.

21 Q. And you started I believe halfway through the
22 school year?

23 A. Yes.

24 Q. And when you first met Lillian, did she have any
25 mobility problems?

1 A. Yes. She came in on a walker. She's walking
2 very slowly.

3 Q. And did you -- when you first met her, you did
4 not know that she had been in a collision?

5 A. No, I didn't.

6 Q. And how did you find out?

7 A. I asked another teacher.

8 Q. In your math class how did Lillian do as far as
9 processing information and organizing her thoughts?

10 A. She had some problems comprehending. She didn't
11 understand a lot of the concepts. She struggled a little
12 bit.

13 Q. And did you make any accommodations for her?

14 A. Yes. I made some minor accommodations for her.
15 I moved her to the front of the classroom for her vision;
16 I made the script bigger; I gave her a little bit more
17 one-on-one assistance; I allowed her to take work home.

18 Q. Did you ever give her extra time on tests and
19 those things?

20 A. Yes.

21 Q. All right. And why did you allow her to take
22 her work home?

23 A. Because she was struggling somewhat and she
24 missed a lot of classes, I guess due to doctors'
25 appointments or her therapy sessions -- so I allowed her

1 to take it home.

2 Q. How did she do as far as her being coherent in
3 class?

4 A. She was -- she kind of stared blankly a lot.
5 She seemed confused at times.

6 Q. Was she on the same level mentally with the
7 other students in your class?

8 A. That's hard to say. Mentally, somewhat -- I
9 would say she was kind of more below average.

10 Q. And the -- I believe you said -- you've told us
11 about her vision. Her speech: how was her speech in
12 class?

13 A. It was very slow, it was very soft. People had
14 to get very close to hear what she was saying.

15 Q. And when -- in your class, about where did she
16 rank as far as a percentile in the class?

17 A. She ranked in the below average.

18 Q. Okay. And that's a basic class?

19 A. That was a basic class.

20 Q. And so where would that put her within the
21 entire class?

22 A. Below average --

23 Q. I believe she --

24 A. -- below average, to basic.

25 MR. HOLMES: And put up the teacher's exhibit 2.

1 Q. And your grades were a little higher than she
2 had gotten the semester before?

3 A. Yes.

4 Q. And but you were -- you said earlier you were
5 more lenient with your grading?

6 A. That's correct.

7 Q. And did she respond fairly well to your
8 accommodations?

9 A. Yes, she did.

10 Q. All right. And how did she do on her next
11 cumulative semester exam?

12 A. She made a sixty-three.

13 Q. And her final average for that year?

14 A. Was a seventy-four.

15 Q. And what is a seventy-four?

16 A. That would be a C.

17 MR. HOLMES: Thank you, Ms. Franklin.

18 MR. PURCELL: Good afternoon, Ms. Franklin.

19 THE WITNESS: Good afternoon.

20 MR. PURCELL: Nice to see you again.

21 CROSS-EXAMINATION

22 BY MR. PURCELL:

23 Q. You were Lillian's seventh grade math teacher in
24 a mainstream math class; right?

25 A. That's correct.

1 Q. And another teacher had her the first semester
2 and you had her the second --

3 A. Second semester --

4 Q. -- semester?

5 A. That's correct.

6 Q. And that was when you came to the Ruffin Middle
7 School to teach; right?

8 A. Yes.

9 Q. And Lillian was a sweet girl, wasn't she?

10 A. Yes, she was.

11 Q. And you liked her?

12 A. Yes.

13 Q. She liked you?

14 A. I assume.

15 Q. And she was treated just like the other
16 students, not a special-ed --

17 A. -- ed student.

18 Q. -- student?

19 A. No.

20 Q. Isn't that right?

21 A. That's right.

22 Q. And she passed your class and she was promoted
23 to the eighth grade?

24 A. Yes, she was.

25 Q. And a quarter of her class scored below her,

1 didn't they?

2 A. That's correct.

3 Q. All right. And that was a general ed math
4 class?

5 A. General ed.

6 Q. And she was a great student with no behavior
7 problems?

8 A. No behavior problems.

9 Q. Okay. She acted appropriately; right?

10 A. Yes.

11 Q. She could concentrate?

12 A. Yes.

13 Q. And she was not hyperactive?

14 A. No.

15 Q. She didn't show nervousness?

16 A. No.

17 Q. She didn't attack folks?

18 A. No.

19 Q. Or sleep in class?

20 A. No.

21 Q. Or show apathy or poor motivation?

22 A. No.

23 Q. She wasn't overly self-conscious?

24 A. No.

25 Q. Or easily embarrassed?

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- 1 A. No.
- 2 Q. She didn't try to show off?
- 3 A. No.
- 4 Q. She wasn't too shy?
- 5 A. No.
- 6 Q. And you were able to keep her on task?
- 7 A. Yes.
- 8 Q. She didn't have temper tantrums?
- 9 A. Not at all.
- 10 Q. She didn't sulk?
- 11 A. No.
- 12 Q. She didn't seem sad?
- 13 A. No.
- 14 Q. Depressed?
- 15 A. No.
- 16 Q. Or unhappy?
- 17 A. No.
- 18 Q. And she seemed to carry out her assignments?
- 19 A. Yes.
- 20 Q. And you were able to accommodate her physical
- 21 difficulties, as well, in your class --
- 22 A. Yes.
- 23 Q. -- weren't you?
- 24 A. Yes.
- 25 MR. PURCELL: Thank you very much, Ms. Franklin.

1 THE COURT: Mr. McLeod?

2 MR. MCLEOD: No questions, Your Honor.

3 MR. HOLMES: I have no other questions for Ms.
4 Franklin. May she be excused?

5 THE COURT: All right. Any objection?

6 MR. PURCELL: No objection.

7 THE COURT: All right. You may step down.

8 THE WITNESS: Okay. Thank you.

9 THE COURT: Thank you, ma'am. You are excused.

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

12 THE COURT: The plaintiff can call your next
13 witness.

14 MR. HOLMES: Your Honor, we call Brandy Rowe.

15 THE COURT: Okay.

16 [Whereupon, Ms. Rowe enters the courtroom]

17 THE COURT: Ma'am, if you will please come
18 forward. Just keep coming down that aisle. Right down
19 there is fine. If you'll come through the middle. I
20 just need you right here.

21 [Whereupon, Ms. Rowe complies]

22 THE COURT: Thank you. Will you place your left
23 hand on the Bible and raise your right hand.

24 THE WITNESS: Yes.

25 [Whereupon, Ms. Rowe is duly sworn by the Court]

1 THE COURT: Thank you, ma'am. If you will
2 please take a seat.

3 THE WITNESS: Okay.

4 [Whereupon, Ms. Rowe takes the witness stand]

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

7 THE WITNESS: Okay. My name is Brandy Rowe.

8 - - - - -

9 BRANDY ROWE,

10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MR. HOLMES:

14 Q. Ms. Rowe, you're from Walterboro?

15 A. I am.

16 Q. And did you grow up in Walterboro?

17 A. I did.

18 Q. And what do you do for a living?

19 A. I'm employed as a school psychologist with the
20 Colleton County School District.

21 Q. And you went to the College of Charleston?

22 A. I did.

23 Q. And what did you study at the College of
24 Charleston?

25 A. I got an undergrad degree in psychology.

1 Q. And in your capacity as a school psychologist,
2 did you meet Lillian Colvin?

3 A. I did, through a referral that was made -- it
4 was parent initiated in 2005 -- and through the referral
5 from the school, from Ruffin Middle School, when she was
6 there. The referral came in through the Department of
7 Special Services, which is the department that I work in.

8 Q. And I believe they were trying to figure out
9 whether or not she needed an IEP; is that correct?

10 A. Yes. Part of what I do is -- through the
11 Department of Special Services and through the law with
12 the Individuals in Disabilities Education Act -- is we
13 look to determine if a student has a disability and if
14 that's affecting their educational performance and, if so,
15 then they meet eligibility requirements to receive special
16 education services.

17 Q. And what are the educational requirements to
18 receive those services?

19 A. Basically, it's two-pronged: one, that there
20 has to be a disability that's there, as defined by the
21 law; and, secondly, that that disability affects
22 educational performance.

23 Q. Okay. And what was your role in -- well, there
24 was a team that got together in order to --

25 A. That's right. First, when the referral comes

1 in, an evaluation is done. There is a team that gets
2 together to determine an initial assessment plan, which
3 basically means that we review the information that's come
4 in through the referral and determine what kind of
5 assessment needs to be done. And that's done through a
6 team of people. Permission is obtained to actually do the
7 evaluation and once permission is obtained, then the
8 evaluation is conducted within a time period.

9 My evaluation really was done in two ways,
10 partly through indirect assessment, in terms of doing
11 review of records, a review of grades and performance,
12 prior to Lillian's injury and then also in interviewing
13 those who knew her, as well as doing direct assessment,
14 which involved standardized testing so that there was a
15 set of standardized tests that were done to compare her to
16 other same-age peers.

17 Q. And when you say you get permission, that's from
18 the parent?

19 A. That's right.

20 Q. Okay. But in this case she had actually been
21 referred by her mother?

22 A. That's right. The referral was initiated by the
23 mother. And once the referral is made, then there's a
24 team at the school that basically reviews whether or not
25 it's a legitimate referral and, if so, there is a process

1 of collecting information so that the referral comes in
2 through a formal paperwork process.

3 Q. Okay. And what was the date that you were
4 contacted regarding Lillian?

5 A. The complete referral came in at the end of her
6 seventh-grade year, which would have been in the spring of
7 2005 -- I don't have the referral information with me --
8 but the referral would have started months prior to that
9 in terms of collecting information at the school level.

10 Q. And when did you actually get involved?

11 A. We met -- because the referral came in at the
12 end of the school year, we met at the beginning of her
13 eighth-grade year. And it was August 24th that we
14 actually met as a team to review the referral information
15 and to do the assessment plan, and then parent permission
16 was given on that date, and the actual testing that I did
17 with Lillian was done on September 7th and September 13th
18 of 2005.

19 Q. How old was Lillian when you --

20 A. She was thirteen years nine months.

21 Q. And you actually performed a psycho-educational
22 evaluation?

23 A. That's right.

24 Q. And I believe that's the process that you began
25 to tell us about a little while ago?

1 A. That's right.

2 Q. And the -- if we could go through in a little
3 bit more detail the information that you gathered.

4 A. Okay. Again, part of the information that was
5 gathered was in reviewing her pre-injury functioning. So
6 I reviewed records prior to that, so in terms of her
7 grades and her performance in school. I also got
8 information from her mother about the accident and some of
9 the medical history. And then the standardized testing
10 that was done, again, was to look basically at
11 standardized test measures that look at different skills
12 and compare those skills to other children that would be
13 the same age.

14 Q. And as far as the educational information that
15 you obtained, what did that show as far as Lillian's
16 performance in school prior to this collision?

17 A. Prior to the collision by -- through a review of
18 records and her report card grades, she was an honor-roll
19 student. There was a clear history of her being in the A-
20 B range. And so she was progressing at an average to
21 above-average rate.

22 Q. And she had been in school for I guess a year,
23 for her seventh-grade year, after the collision?

24 A. That's right.

25 Q. And those records were also available to you at

1 the time?

2 A. Those records were available.

3 Q. And how had she done in that year?

4 A. She -- the records from the seventh-grade year
5 showed that she was struggling academically. She had a
6 decline in many of her subject areas.

7 Q. Do you have a copy of your -- the psycho-
8 educational report with you?

9 A. I do.

10 Q. Okay. Feel free to refer to it --

11 A. Okay.

12 Q. -- if there is anything that you need.

13 And what level classes had Lillian been in prior
14 to the collision?

15 A. Her classes -- I believe her English language
16 arts, at the beginning of the sixth grade, she was in the
17 advanced class.

18 Q. And the seventh grade year?

19 A. The seventh grade year did not indicate that
20 there was any kind of advanced placement.

21 Q. And you also -- did you interview her teachers?

22 A. I did.

23 Q. And you said you interviewed her mother, as
24 well?

25 A. Yes.

1 Q. People that knew her?

2 A. [No response]

3 Q. And did you yourself go and observe Lillian?

4 A. I did.

5 Q. And did anyone else go and observe her in class?

6 A. Yes. The area of disability that we were
7 testing for was under the category of traumatic brain
8 injury, and part of the requirements for that are that
9 there are three different classroom observations that are
10 done by a team. And so one of the observations was done
11 by myself, one was done by another teacher, and I believe
12 that one was done by a speech-language therapist.

13 Q. And why are there -- why are they done at three
14 separate times?

15 A. Basically so you can gather information in
16 different classroom settings, and also to have input from
17 different individuals.

18 Q. And how long are those, the observation periods?

19 A. Roughly about thirty minutes.

20 Q. And could you tell us what class she was in when
21 you went and observed her?

22 A. I observed her in a pre-algebra class. Mr.
23 Youmans was the teacher at that time.

24 Q. And what were your observations about Lillian's
25 performance and her behavior in that class?

1 A. Generally, that she was cooperative. It took
2 her -- it seemed to take her longer to be able to answer
3 correctly, compared to the other students in the
4 classroom, and I believe in my notes I have noted that she
5 required some additional assistance from the teacher.

6 Q. Okay. And do you have your notes from that?

7 A. Let's see.

8 [Whereupon, the witness reviews documents]

9 A. I don't have a copy of that with me here.

10 Q. [Mr. Holmes] That's okay.

11 Now, you said you also performed tests with
12 Lillian, as well?

13 A. I did.

14 Q. And you did those personally?

15 A. I did.

16 Q. And what all tests did you perform?

17 A. Some of the standardized tests that were done
18 were an IQ test, as well as an achievement test. We also
19 did some behavior-rating scales that she completed. But
20 the actual direct assessments that I did were the IQ, the
21 achievement. And then we also did a test of visual
22 measure processing, which is basically a copying test
23 where she sees different designs and has to process the
24 information that she sees and be able to put it on paper.

25 MR. HOLMES: Go to Exhibit 1, to page 4, please.

1 Q. [Mr. Holmes] And we've heard earlier about the
2 IQ testing.

3 And are you able to see on your screen there?

4 A. I have it. Yeah. Yeah, I have it here, as
5 well..

6 Q. All right. And this is actually a page from
7 your psycho-educational evaluations?

8 A. Uh-huh.

9 Q. And this shows the IQ testing that you did?

10 A. Yes..

11 Q. Okay. And how did you test Lillian's IQ?

12 A. It's done through a standardized test, which
13 means that it's administered the same way to all students.
14 It's dependent on how old the child is, as to your
15 starting and stopping point. But, basically, IQ tests are
16 given to give information about various underlying
17 cognitive skills; so things like memory, memory for things
18 that are heard, memory for things that are seen are
19 tested, questions are asked that a child basically is
20 tested to see how they can understand what is being asked,
21 and how they can answer that information from long-term
22 memory. It also looks at things that would be new, things
23 that they've never seen before, so that you're looking at
24 problem-solving skills. And again, it's standardized, so
25 that it's administered the same way to all kids who take

1 it. And then the scores are standardized and compared to
2 other students that are the same age.

3 Q. And her score was a sixty-seven?

4 A. Her full-scale IQ was a sixty-seven.

5 This particular test looked at four different
6 areas. It looked at the verbal skills; it looked at some
7 problem-solving skills, which is in the perceptual
8 reasoning; it looked at working memory, which looks at her
9 ability to be able to listen and remember information that
10 she hears in the short term -- not for long term, but just
11 for a short amount of time; and then it looks at
12 processing speed, which looks at how quickly she can
13 process information that she sees. And all of those
14 things measure different skills that combine -- the scores
15 combine to come up with the full-scale IQ, which is the
16 FSIQ, the score at the top. An average score would be a
17 hundred. It's not the highest score that you can have.
18 Most kids will score between eighty-five and 115. You'll
19 have some kids, a percentage of kids who will score higher
20 than that, and you'll have a small percentage of kids that
21 will score lower than that. But roughly about seventy
22 percent of kids tested, seventy out of a hundred kids
23 would score between eighty-five and 115.

24 Lillian's full-scale IQ that she came out with
25 was a sixty-seven, which was at first percentile, and in

1 the extreme low range, meaning that she overall did better
2 than one out of a hundred students, when compared to other
3 students her age. But there was a lot of variability in
4 some of her index scores.

5 Q. And you also performed a Woodcock-Johnson test
6 of achievement, I believe?

7 A. Yes. The Woodcock-Johnson looks at different
8 achievement areas or different academic areas, such as
9 reading, writing, math skills. These are things that are
10 not taught on the spot -- I'm not teaching and testing --
11 but these are things that she's going to have to remember
12 and be able to do spontaneously for me, as I'm testing.
13 So it's looking at more the long-term memory of academic
14 skills.

15 Q. And I believe we're trying to pull that up --

16 MR. HOLMES: Correct?

17 Q. [Mr. Holmes] -- the test results for the
18 Woodcock-Johnson.

19 [Off the record momentarily]

20 Q. [Mr. Holmes] And could you please take us
21 through your test results.

22 A. For the achievement?

23 Q. Yes, please.

24 A. Yes. She basically -- again, the scores are
25 standardized. It's the same averages, the average being a

1 hundred. Most students, again, would score between
2 eighty-five and 115. She did best with letter-word
3 identification and basic reading skills; again, memory and
4 long-term things. She was weakest with her fluency. Some
5 of the sub-tests measure actual skills. For example, with
6 her math calculation skills, she had a score of seventy-
7 six, which was at fifth percentile, but if you look -- and
8 that would be an untimed task. But if you look farther
9 down with her math fluency. This is a timed task that was
10 looking at how quickly or how automatically she can do
11 those skills. She had a sixty-three, which was at the
12 first percentile. Again, her scores were below what I
13 would expect for a child who was performing average in the
14 A-B range prior to the injury.

15 Q. And the grade equivalent that's over in that
16 right-hand --

17 A. Uh-huh.

18 Q. -- column, what is that?

19 A. The grade equivalency does not necessarily mean
20 that was the grade level that she was performing, but
21 basically that the number of problems that she answered
22 correctly corresponded with a child who was in that grade
23 level, the number that they would have gotten correct.

24 Q. Now, you performed some other tests, as well?

25 A. Yes. There is another test, the Bender-Gestalt

1 test, which looks at visual processing. She did fine with
2 being able to copy things that she saw, but she did a lot
3 weaker -- she had a hundred, for example, things where she
4 had to do a copying test, which was in the average range.
5 There is also a memory component to this test where
6 initially she just has to draw different designs, and that
7 is scored. And then there's a memory component where she
8 has as much time as she wants to be able to draw as many
9 things as she can remember. And that score was a lot
10 weaker. She had a score of seventy-three on the memory
11 component, which was at the third percentile, in the low
12 range.

13 Q. And are those -- I mean, are those indicators of
14 her actually organizing and processing information?

15 A. Well, it was consistent with some of her scores
16 on the IQ test. When I said that there was a lot of
17 variability with her IQ: Lillian showed average
18 intelligence on the verbal comprehension component,
19 meaning that long-term memory skills were there -- she was
20 able to understand and answer questions from long-term
21 memory -- but she had a very difficult time with things
22 that involved short-term memory, as well as reasoning
23 skills and problem-solving skills for things that were new
24 for her.

25 Q. And how do you test long-term memory, as opposed

1 to testing short-term memory?

2 A. Long-term memory comes from asking questions
3 about things that all of us would be exposed to over time:
4 comprehension questions, questions related to vocabulary.
5 Short-term memory is tested by task, where she would have
6 to listen to something and repeat it back to me, listen to
7 something and have to organize it in her head and tell it
8 back to me, or see something and then have to use that
9 information in a way that she was seeing it and relying on
10 it from memory.

11 Q. And so the long-term memory is based on things
12 that she would have learned in her life prior to the
13 collision, as well?

14 A. That's right.

15 Q. And the short-term memory tests are tests that
16 are conducted there where you're giving her information,
17 and then she is asked to recall that information that
18 you've just given her?

19 A. That's right.

20 Q. And you also did a children's depression
21 inventory?

22 A. I did. Some of the things that mom had
23 reported, in terms of behavior characteristics, warranted
24 us to looking at some behavioral information. And so
25 Lillian completed a depression inventory, which asked

1 different questions about basically the way that she
2 thought and felt at the time. And her scores there, in
3 terms of her self-report about how she felt, all were
4 within the average range. So there were no concerns there
5 with depression, based on what Lillian was reporting.

6 Q. And you interviewed her mother, as well?

7 A. Yes, I did.

8 Q. And, now, based on those -- the tests that you
9 did, and your own observations, and talking with Lillian's
10 mother, did you reach an assessment as to Lillian and her
11 condition?

12 A. I did. We followed up with a team meeting and
13 as a team determined eligibility for the disability of
14 traumatic brain injury, based on all the information that
15 was reviewed, and her test results, and also with the fact
16 that she was having trouble academically. It was
17 warranted and recommended that she receive special
18 education services.

19 Q. And did you, yourself -- well, first, you talked
20 about -- when you are doing these separate tests, you're
21 looking for, I think you called it, converging evidence?

22 A. Yes. I don't want to rely on just one source,
23 so the best practice would be that you're looking for
24 information from different sources and different tests
25 that match or that come to the same conclusion.

1 Q. And that's why you also -- this IEP was done
2 over a length of time from February '05, I believe, all
3 the way into September of '05?

4 A. The IEP was developed I believe in September of
5 '05, following the testing.

6 Q. Okay. And her -- but her first -- the first
7 observation that was done of Lillian was I believe in
8 February of '05; is that correct?

9 A. Okay. Yeah. And that would have been done as
10 part of the referral. There are observations that come in
11 for all of our referrals.

12 Q. And did you make recommendations as to -- for
13 Lillian's care?

14 A. Yes, I did.

15 Q. Could you please take us through your
16 recommendations?

17 A. Uh-huh. Again, I recommended that she receive
18 special education services, under the category of
19 traumatic brain injury. And what that meant was that she
20 would have an IEP, or an Individualized Education Plan,
21 that would follow her to assist her in meeting academic
22 goals from year to year. There was a team meeting that
23 took place in which her regular ed -- some of her regular
24 ed teachers, the special ed teacher at that time, we sat
25 in and made recommendations and set up a plan for her to

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1 allow for things like letting her work be sent to the
2 resource teacher so that the resource teacher could help
3 her with any assignments that she was having difficulty
4 with; to allow her to have extended time to complete tasks
5 because her processing skills were significantly lower.
6 Things like that.

7 Q. And who all attended this meeting, the IEP
8 meeting?

9 A. The IEP team meeting, by law, has to consist of
10 a regular education teacher, which I believe Mr. Youmans
11 was the regular ed representative that sat in in that
12 meeting; the special education teacher, which at that time
13 was Ms. Lambright; myself, as the school psychologist; and
14 also sat in is the LEA, or the Legal Education Agent; and
15 then the parent; and the students. At a certain age, the
16 students are invited.

17 Q. And the mother, you said?

18 A. Uh-huh. The parent.

19 Q. And you came to this meeting, and you had your
20 own personal recommendations, and then the group gets
21 together and actually --

22 A. That's right. When we meet, initially we go
23 through the test results, which is what we've just gone
24 through with my report, and the recommendations are made.
25 And then generally, if a child is eligible, if there is a

1 disability that's evident and it's affecting their
2 educational performance, they meet eligibility
3 requirements to have an IEP, then typically that IEP is
4 proposed by the special education teacher with input from
5 the team.

6 MR..HOLMES: Could you put up Exhibit 2, please.

7 Q. [Mr. Holmes] And at the -- let me see if you
8 can see this on your screen. Are you able to --

9 A. Uh-huh.

10 Q. All right. And this is a note from the meeting
11 for the IEP --

12 A. This is --

13 Q. -- in September of '05?

14 A. Yeah. This is the cover page of the IEP that
15 was developed at that team meeting.

16 MR. HOLMES: And if you could scroll down,
17 please.

18 Q. [Mr. Holmes] And in this you're talking about
19 the actual -- her skills in math calculation, math
20 fluency, writing samples, and transition?

21 A. That's correct. The present levels of
22 performance are the areas that are addressed through goals
23 and objectives of the IEP. And so these are the present
24 levels, based on the testing that I had done that briefly
25 kind of just give an overview of where her weaknesses are.

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1 MR. HOLMES: And if you could scroll down.

2 Q. [Mr. Holmes] And you compared -- and in
3 comparing her with the rest of the students in a general
4 curriculum, where did she fall?

5 A. Again, her verbal comprehension skills were
6 average, but many of her other skills were significantly
7 below where they should be in terms of her academics, her
8 processing, and her memory skills.

9 Q. And I believe you also have a similar note that
10 talks about her range of motion, balance, and gait?

11 MR. HOLMES: Exhibit 3.

12 A. Because of some of the problems that she had
13 with her physical mobility, we also, when we developed our
14 initial assessment plan, included an evaluation for
15 physical therapy. So that was done separately by a
16 physical therapist. And she -- as part of her IEP, the
17 team determined that she was eligible to receive related
18 services -- which are not necessarily academic related --
19 but if she needs any kind of related services, any kind of
20 therapy so that she can be successful at school, then that
21 was included. And so that part of the IEP was proposed by
22 the physical therapist at the time.

23 Q. [Mr. Holmes] And she had already had a 504 in
24 place at the time you met with her?

25 A. Yes. I believe at the -- upon her reentry to

1 school, that there was a 504 accommodation plan that was
2 developed by a team of people that basically allowed for
3 some accommodations due to the mobility problems that she
4 had in terms of being able to maybe have some extended
5 time to get to classes, and that sort of thing.

6 Q. And what were the recommendations of the -- for
7 her individual IEP? Not your recommendations, but the
8 actual plan that was implemented by the group.

9 A. The plan that was proposed, when we met
10 initially, was for her to have a period of resource with a
11 resource teacher each day. By law, we try to keep
12 children, who have disabilities, in what we call the least
13 restrictive environment, or the LRE, meaning that if we
14 can give them some support services so that they can stay
15 in the general curriculum, then that's what we want to do,
16 to hopefully allow them to be able to obtain a high school
17 diploma if that is something that is attainable for them.

18 And so what was recommended at that time was
19 that she continue in the general curriculum, but that she
20 would have a period of resource, one period a day with a
21 resource teacher, to help her with her weak areas, which
22 were her math and her writing at that time; as well as I
23 believe thirty minutes a week to work individually with
24 the physical therapist.

25 Q. And have you seen or spoke with Lillian Colvin

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1 since the IEP was implemented?

2 A. No, I've not.

3 Q. And is that part of your -- that's not part of
4 your job to actually follow through with the students?

5 A. No, it's not.

6 MR. HOLMES: Thank you, Ms. Rowe.

7 THE COURT: Mr. Purcell?

8 MR. PURCELL: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. PURCELL: Good afternoon, Ms. Rowe.

11 THE WITNESS: Hello.

12 CROSS-EXAMINATION

13 BY MR. PURCELL:

14 Q. Part of your evaluation, as you've already
15 said, in connection with the referral that was made to you
16 by her mom, or at the request of her mom, more
17 appropriately --

18 A. Uh-huh.

19 Q. -- was observation of her in class; right?

20 A. That's right.

21 Q. And there were three observations, over the
22 course of your evaluation, in three different classes;
23 isn't that right?

24 A. That's right.

25 Q. And if you look at your psycho-educational

1 evaluation, which begins on page 2 --

2 MR. PURCELL: 7009 --

3 Q. [Mr. Purcell] At the bottom of the page 2, in
4 the course of your evaluation of her, she was noted to
5 take an active part in the lesson --

6 MR. PURCELL: The next page.

7 Q. [Mr. Purcell] -- to appear rested and alert, to
8 be on task, and to follow instructions. That's right,
9 isn't it?

10 A. That's right.

11 Q. And then she was observed to be cooperative at
12 the second evaluation or observation, able to follow
13 instructions, able to work independently, and able to stay
14 on task; right?

15 A. That's right.

16 Q. Now, the third evaluation, you've already told
17 us about. That was in Mr. Youmans's class; correct?

18 A. That's right.

19 Q. And he was -- she was cooperative, and she was
20 willing to follow instructions, and she was on task;
21 right?

22 A. That's right.

23 Q. All right. Let's talk, also, about the test
24 that you gave to her. You spent three-and-a-half hours,
25 over two days, testing her; right?

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1 A. That's right.
2 Q. And she --
3 MR. PURCELL: You can take that down.
4 Q. [Mr. Purcell] She was cooperative during that
5 time; correct?
6 A. She was.
7 Q. She demonstrated good attention; right?
8 A. She did.
9 Q. And she had a thoughtful response time --
10 A. That's right.
11 Q. -- response style?
12 A. Response style --
13 Q. I'm sorry.
14 A. -- meaning that she wasn't impulsive; that she
15 thought about her answers before she gave them.
16 Q. Now, the behavior issues that her mom brought
17 up --
18 A. Yes.
19 Q. -- you did not include in any IEP, did you?
20 A. I did not.
21 Q. Okay. Because you consulted with the teachers
22 who had her in class every day; right?
23 A. That's right.
24 Q. And they felt like she could be mainstreamed as
25 far as behavioral issues were concerned; right?

1 A. Right. Behavior issues were not seen as the
2 primary problem at school, the academics were, so the IEP
3 was developed to target academics.

4 Q. Okay. And in fairness, with a PT component?

5 A. Correct.

6 Q. All right. And so the issues that were reported
7 to you, by the mom, with Lillian were not issues that she
8 reported on the student's self-report; right?

9 A. That's right.

10 Q. As a matter of fact, her behavior-assessment
11 system for children self-report, all of those ratings were
12 within average limits when compared to other same-age
13 girls; correct?

14 A. That's correct.

15 Q. Now, as a result of the evaluation that you did,
16 the psycho-educational evaluation, an IEP was developed
17 with input from the mom and from her classroom teachers;
18 correct?

19 A. That's right.

20 Q. Mr. Youmans participated and Marilyn Lambright,
21 the special ed teacher, participated as well?

22 A. That's right.

23 Q. And you went over the results of your psycho-
24 educational evaluation. And the teachers who saw her
25 every day had input in the process, didn't they?

1 A. That's right.

2 Q. And you, as a result of that IEP, did not feel
3 like an alternative curriculum was necessary in that case
4 -- in her case; correct?

5 A. That's right.

6 Q. And tell the members of the jury what an
7 alternative curriculum is.

8 A. An alternative curriculum is for students who
9 are unable -- who have such a significant disability that
10 they are unable to meet the requirements of the general
11 curriculum. And so again, by law, we try to provide
12 support services in the least restrictive environment so
13 that we're giving children the opportunity to progress in
14 the general curriculum. IEPs have to be reviewed at least
15 annually, but they can be reviewed more often at the
16 request of anyone who has concerns about the
17 appropriateness of the IEP.

18 Q. Okay. So as a result of that, she was given
19 general ed curriculum with a resource period; correct?

20 A. That's correct.

21 Q. Okay. And you felt like that would be something
22 that would meet her needs at the rate at which she was
23 processing information?

24 A. That is -- that was the recommendation at the
25 time; again, to be reviewed by those who are actually

1 working with her to adjust, if needed.

2 MR. PURCELL: Can you go to 7004.

3 Q. [Mr. Purcell] The IEP, a part of which I am
4 going to show you in a minute --

5 MR. PURCELL: Go to the next page, if you would.

6 Q. [Mr. Purcell] -- up at the top there is a
7 behavioral intervention plan. If behavior had been a
8 problem, there would have been a behavioral intervention
9 plan; isn't that right?

10 A. That's right.

11 Q. However, under discipline, on the left-hand
12 column: [reading] the student will follow guidelines,
13 rules as outlined in the school student handbook; yes.

14 Right?

15 A. Yes. That's right.

16 Q. You felt like she was capable of following those
17 instructions; correct?

18 A. That's right.

19 Q. All right. Now, Ms. Rowe, you have seen these
20 IEP's successfully remediate problems with students,
21 haven't you?

22 A. I have.

23 Q. Okay. And you've seen them be -- you've seen
24 success stories from other students, haven't you?

25 A. I have.

1 Q. You've seen students read on a twelfth-grade
2 level, did you not? Isn't that right?

3 A. I don't know that I've seen students read on a
4 twelfth-grade level, because I'm primarily at the
5 elementary level. And so that's not likely. But we have
6 seen success stories with the remedial services.

7 MR. PURCELL: Very good. Thank you very much,
8 Ms. Rowe.

9 THE WITNESS: Uh-huh.

10 MR. MCLEOD: No questions, Your Honor.

11 THE COURT: Any redirect, Mr. Holmes?

12 MR. HOLMES: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. HOLMES:

15 Q. Ms. Rowe, if you could look back on page 3 of
16 your psycho-educational evaluation.

17 A. Okay.

18 Q. And you were asked about the first observation,
19 when Lillian was observed in the classroom?

20 A. Yes.

21 Q. Okay. And could you go to the last sentence of
22 the first evaluation?

23 A. Yes. It says: [reading] her teacher reported
24 that occasionally she appears tired and has difficulty
25 holding up her head but that generally she was cooperative

1 and participates.

2 MR. HOLMES: Thank you, Ms. Rowe.

3 THE COURT: Mr. Purcell?

4 MR. PURCELL: I don't have anything. I don't
5 want you to think I -- nothing. I'm tired and holding
6 up my head with my hand.

7 THE COURT: All right. Mr. McLeod, anything,
8 sir?

9 MR. MCLEOD: Nothing, Your Honor.

10 THE COURT: All right. May Ms. Rowe be excused?

11 MR. HOLMES: That's what I was going to ask you,
12 Judge.

13 THE COURT: All right. Any objection?

14 MR. PURCELL: No objection.

15 THE COURT: You are excused, Ms. Rowe. Thank
16 you.

17 THE WITNESS: Thank you.

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

20 THE COURT: Mr. Holmes, if you will call your
21 next witness, sir.

22 MR. HOLMES: Your Honor, we would call Angela
23 Nichols.

24 THE COURT: Okay. Did someone go out and get
25 her?

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1 Ladies and gentlemen of the jury, if y'all need
2 to stand up for just a stretch, feel free. It's up to
3 you.

4 [Whereupon, Ms. Nichols enters the courtroom]

5 THE COURT: Ma'am, come on forward. We are all
6 just taking a seventh-inning stretch. Come on in.
7 Come on in.

8 [Whereupon, Ms. Nichols complies]

9 THE COURT: You are going to come right up here
10 next to me, ma'am. Just come right through here in the
11 middle. Right here. And watch your step up here.

12 Ma'am, if you will raise your right hand and
13 place your left hand on the Bible.

14 [Whereupon, Ms. Nichols is duly sworn by the
15 Court]

16 THE COURT: Thank you, ma'am. I'm going to have
17 you go ahead and have a seat here. Speak into the
18 microphone.

19 [Whereupon, the witness takes the witness stand]

20 THE COURT: If you will give us your full name
21 for the record.

22 THE WITNESS: Angela Nichols.
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ANGELA NICHOLS,
Having Been First Duly Sworn,
was Examined and Testified as Follows:
DIRECT EXAMINATION
BY MR. HOLMES:
Q. Ms. Nichols, you live in Walterboro?
A. Yes, I do.
Q. And you went to USC, I believe?
A. No, sir.
Q. I'm sorry. Where --
A. Charleston Southern.
Q. Charleston Southern.
A. Yes, sir.
Q. CSU, not USC.
And you are a teacher at Ruffin Middle School?
A. Yes, sir.
Q. How long have you been in teaching?
A. Eight years.
Q. And how long have you been at Ruffin Middle
School?
A. Eight years.
Q. Okay. And you teach history?
A. Yes, sir.
Q. And what -- that is a basic-level class?
A. Basic and advanced.

1 Q. And you taught Lillian Colvin in her eighth-
2 grade year; is that correct?

3 A. Yes, I did.

4 Q. And that would have been the '05, '06 school
5 year?

6 A. Yes, sir.

7 Q. When did you first meet Lillian Colvin?

8 A. When she walked into eighth grade was the first
9 time I really met her. I saw her before then, but I had
10 never met her.

11 Q. Where is it that you saw her?

12 A. I saw her -- she came to visit, after the wreck.
13 We had a softball game, and she came. And she was in a
14 wheelchair, and I saw her from a distance. I didn't meet
15 her at that time.

16 Q. And when you -- when she came to your class in
17 the eighth grade, you were aware she had been in a
18 collision?

19 A. Yes.

20 Q. And she had an Individual Education Plan in
21 place?

22 A. Yes.

23 Q. All right. I believe it came in place during
24 that year?

25 A. It came in place during that year, yes.

1 Q. And do you -- did you communicate with the other
2 teachers and look into her how she had done -- been doing
3 before the collision?

4 A. Yes, I did. I knew she had done quite well
5 before.

6 MR. WRAY: Your Honor --

7 THE COURT: Ma'am.

8 MR. WRAY: I'm going to object to anything
9 unless it's based on her personal knowledge.

10 MR. HOLMES: I'll withdraw the question, Your
11 Honor.

12 THE COURT: Thank you, sir.

13 And, ma'am, if you don't mind, would you sit a
14 little closer to the microphone?

15 THE WITNESS: Sure.

16 THE COURT: I think Mr. McLeod is having a hard
17 time hearing you.

18 MR. MCLEOD: Wonderful.

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

20 Q. [Mr. Holmes] How did Lillian do in your class,
21 compared to her peers, in this? This was a basic-level
22 history class?

23 A. Yes, it was.

24 Q. And how did she do mentally, compared to her
25 other peers?

1 A. A little slower.

2 Q. Okay. And, well, what type things was she
3 slower in?

4 A. Comprehension.

5 Q. And did you make any special accommodations for
6 Lillian when you taught her?

7 A. She could take her tests home, and have
8 extensions to assignments that were due.

9 Q. And why did you give her the extra time on her
10 tests and on her assignments?

11 A. She would do better if she was given time, an
12 accommodation.

13 Q. Did she have difficulty completing her tasks in
14 the same amount of time as her peers?

15 A. If it was a cumulative exam, so to say, she
16 struggled. And it's obvious with her grades.

17 Q. And how was she as far as her behavior in your
18 class? Was she always --

19 A. Very well-behaved.

20 Q. Okay. Always a polite student?

21 A. Oh, yes.

22 Q. And how were her organizational skills? How was
23 she able to actually keep things organized in the class
24 and organize the -- I guess the information that you were
25 teaching her in order to get it back out in a test or a

1 quiz?

2 A. Well, that's why I gave her time at home to do
3 that, because she would -- she would struggle with it in
4 class, keeping up.

5 Q. Did you give her any more one-on-one attention
6 than any of the other children?

7 A. Not that I recall.

8 Q. Okay. Did she have a resource class at that
9 time?

10 A. Yes.

11 Q. Okay. And what do you do in a resource class?

12 A. They give them extra help where they need it.

13 MR. HOLMES: And lets take a look at her report
14 card.

15 Q. [Mr. Holmes] This is her --

16 MR. HOLMES: Do you have it there?

17 THE WITNESS: Uh-huh.

18 MR. HOLMES: It's also on the screen, if you --

19 THE WITNESS: Okay.

20 Q. [Mr. Holmes] And this is Lillian's report card
21 from her eighth-grade year?

22 A. Yes.

23 Q. And this is -- her social studies class would
24 have been the class you taught her?

25 A. Correct.

1 MR. HOLMES: And if you could zoom out, please.

2 Q. [Mr. Holmes] Now, explain to us what you meant
3 by the -- when you're talking about her actual tests and
4 being able to -- how she performed on comprehensive tests.
5 Where would that be reflected on the report card?

6 A. Your exam; semester-one exam and semester-two.

7 Q. Okay. And how did she do on her semester-one
8 exam?

9 A. A fifty-eight.

10 Q. And how did she do on her semester-two exam?

11 A. A fifty-four.

12 Q. All right. And what was her overall semester
13 average?

14 A. Altogether for the year, an eighty-three.

15 Q. And the -- she did her school work and turned
16 her assignments in; is that correct?

17 A. Correct.

18 Q. All right. And she tried hard in your class?

19 A. Yes.

20 Q. And did she get a certain amount of credit for
21 doing her assignments and her class work timely?

22 A. Yes.

23 Q. And did you -- this is not your handwriting at
24 the bottom of --

25 A. No.

1 Q. Okay. Now, you said, as far as her behavior,
2 that she was polite and well-behaved. Did you notice
3 anything about her physical limitations in her class?

4 A. Well, she -- you know, we had accommodations for
5 her to come in late. And you could tell at times she was
6 uncomfortable with her legs, especially -- like she
7 favored one of them.

8 Q. And did you notice anything, as far as her
9 physically in class, other than her leg? Did she ever
10 have problems with shaking or nervousness?

11 A. Well, I have pain in my legs, so I kind of
12 understand where she's coming from at times. It was like
13 if her leg started hurting her, it would like shake a
14 little. Now, whether that was a nervous tic or not, I do
15 not know. But there -- at times, it would move.

16 Q. Okay. And that's her leg or her --

17 A. It was one of her legs. Now, which one, I do
18 not remember.

19 Q. And did you make any sort of special
20 accommodations for her, as far as her books and how she
21 would get her books around?

22 A. She had like a book in class, and one that was
23 at home, so she wouldn't have to carry so much in her
24 backpack.

25 Q. And you said this was a basic class?

1 A. Yes.

2 Q. And how did she compare with the other students
3 in that class?

4 A. She wasn't quite where they were at times with
5 certain things. You know, like I said, she had
6 comprehension problems at times.

7 MR. HOLMES: Thank you, Ms. Nichols.

8 MR. WRAY: Hi, Ms. Nichols.

9 THE WITNESS: Hi.

10 CROSS-EXAMINATION

11 BY MR. WRAY:

12 Q. Mr. Holmes was asking you -- I think he said
13 several times this was a basic class. In fact, it was a
14 regular education class; correct?

15 A. Correct.

16 Q. There is special education at Ruffin Middle
17 School; correct?

18 A. Correct.

19 Q. And Lillian was not in that program?

20 A. No, sir.

21 Q. And you told us, I believe, and they had the
22 grades up on the screen, she had a ninety second-semester
23 average?

24 A. Second semester average was a ninety. Correct.

25 Q. You must have had some really top students if

1 she was below those with a ninety average.

2 A. Yes, sir.

3 Q. And she had a yearly average, I think you said,
4 of eighty-three?

5 A. Yes.

6 Q. And those are grades that she actually earned,
7 based on the work she did in your class; correct?

8 A. Yes, sir. With accommodations, yes.

9 Q. And, of course, as a teacher, you have certain
10 objectives that you set out at the beginning of the year
11 for your students?

12 A. Yes, we do.

13 Q. And Lillian was able to meet those objectives?

14 A. Yes, she was.

15 Q. And you promoted her on to the ninth grade?

16 A. Yes, I did.

17 Q. And you have, on occasion, recommended that
18 students in your class be placed in special education;
19 correct?

20 A. Correct.

21 Q. You did not make that recommendation with
22 Lillian?

23 A. No, sir.

24 Q. And as you told us early, she didn't act
25 inappropriately in your class?

1 A. No, sir.

2 Q. She was polite?

3 A. Yes, sir.

4 Q. She didn't get angry, or have outbursts?

5 A. No, sir.

6 Q. She didn't disrupt the other students in your
7 class?

8 A. No, sir.

9 Q. She wasn't impulsive in her behavior?

10 A. No, sir.

11 Q. And based upon the year you spent with her, you
12 saw no reason why she couldn't live independently in the
13 future; correct?

14 A. Well, I don't feel I'm qualified to say that. I
15 could --

16 Q. Well, that's -- that's what you told us at your
17 deposition. Do you remember testifying previously?

18 A. Yes.

19 MR. HOLMES: Objection, Your Honor. I don't
20 think that's a correct characterization of her
21 deposition testimony.

22 MR. WRAY: Well, we can put it up. Have you got
23 page 25 --

24 MR. POSTON: What line, please?

25 MR. WRAY: -- of the deposition?

1 MR. POSTON: Yes, sir. What line, please?

2 MR. WRAY: Lines 9 through 13, please.

3 MR. POSTON: Yes, sir.

4 [Whereupon, excerpts of video deposition of
5 Angela Nichols is played for the jury as follows]

6 Answer: [reading] I know her physical pain. I
7 know what it's like to not be able to walk a lot.

8 [Whereupon, excerpts of video deposition of
9 Angela Nichols is paused]

10 MR. WRAY: Okay. Go ahead.

11 [Whereupon, excerpts of video deposition of
12 Angela Nichols continues]

13 Question: [reading] do you see any reason why
14 she couldn't work and live independently, aside from
15 those restrictions?

16 Answer: [reading] I don't think so. I think
17 she would be okay.

18 [Whereupon, the video deposition of Angela
19 Nichols concludes]

20 MR. WRAY: Thank you.

21 THE WITNESS: All right.

22 THE COURT: Mr. McLeod?

23 MR. MCLEOD: No questions, Your Honor.

24 THE COURT: All right. Any redirect, Mr.

25 Holmes?

1 MR. HOLMES: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. HOLMES:

4 Q. Ms. Nichols, when you said that she could live
5 independently, and work with those restrictions, what
6 restrictions are you referring to?

7 A. She would need some type of help.

8 Q. Okay. And that's not living independent, is it?

9 A. No.

10 MR. WRAY: Objection, Your Honor. Leading.

11 Q. [Mr. Holmes] Is that independent, to have
12 somebody helping you?

13 A. No.

14 MR. WRAY: Same objection. He is leading the
15 witness.

16 THE COURT: I think he asked a question.

17 Go ahead. Keep going.

18 Q. [Mr. Holmes] The answer is no?

19 A. Right. No.

20 Q. And when you said she could have some sort of
21 job, what kind of job would you envision for Lillian?

22 A. I am not sure. It would have to be sitting
23 down.

24 Q. Okay. Would she need any supervision or
25 anything?

1 A. I would say a therapist, occupational therapist,
2 probably could give a better judgment on that than I
3 could.

4 MR. HOLMES: Thank you, Ms. Nichols.

5 MR. WRAY: Nothing further.

6 MR. MCLEOD: Nothing, Your Honor.

7 THE COURT: All right. Any objection to Ms.
8 Nichols being excused?

9 MR. HOLMES: No, Your Honor.

10 THE COURT: All right. You may be excused,
11 ma'am. Thank you.

12 THE WITNESS: Thank you.

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

15 MR. HOLMES: Your Honor, we call Janet
16 Strickland.

17 THE COURT: All right. Let's bring her in.

18 [Whereupon, Ms. Strickland enters the courtroom]

19 THE COURT: Ms. Strickland, if you will please
20 come forward, please.

21 [Whereupon, Ms. Strickland complies]

22 THE COURT: Just right through here. Ma'am,
23 there is a Bible right there. If you will raise your
24 right hand, and place your left hand on the Bible.

25 [Whereupon, Ms. Strickland is duly sworn by the
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1 Court]

2 THE COURT: Thank you, ma'am. If you will take
3 a seat. And I'm going to ask if you will just then
4 pull up to the microphone a little bit so everyone can
5 hear you. All right? Thank you, ma'am.

6 [Whereupon, the witness takes the witness stand]
7 - - - - -

8 JANET STRICKLAND,

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

11 DIRECT EXAMINATION

12 BY MR. HOLMES:

13 Q. Ms. Strickland, you're from Walterboro?

14 A. I'm from Ruffin, South Carolina.

15 Q. Okay. And there is a difference?

16 A. Yeah.

17 Q. And you went to USC?

18 A. The University of South Carolina.

19 Q. Okay. I made a mistake earlier and told Ms.
20 Nichols she had gone to USC.

21 How long have you been in teaching?

22 A. This will start my twenty-ninth year.

23 Q. And you have been teaching at Ruffin Middle
24 School for how long?

25 A. Twenty-six years.

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1 Q. And you taught Lillian eighth-grade science?

2 A. Right. Uh-huh.

3 Q. How did -- did you know her prior to her
4 collision?

5 A. I didn't know her prior to the collision; I just
6 knew the older brother.

7 Q. And that would be her brother Brian?

8 A. Brian. Uh-huh.

9 Q. Now, how did she do -- when she started in your
10 class in eighth grade, you were aware that she had been in
11 a collision?

12 A. Yes.

13 Q. Okay. And did you pay particular attention to
14 her?

15 A. I kind of looked out for her, making sure she
16 got, you know, to class on time, or left in time to get to
17 the next class. We had books -- a book for her, so that
18 she wouldn't have to carry it.

19 Q. All right. And how did she do in your class
20 compared to the other students?

21 A. It was a struggle. And she didn't ask a lot of
22 questions. But I would try to, you know, help her as much
23 as I could. But when it came time to take a test, I would
24 think she had it, you know, and then the test would come
25 up and kind of disappoint us.

1 Q. Well, when you say when it came time for her to
2 take a test you would be disappointed, did you -- did you
3 work with her any more than you did any of the other
4 students?

5 A. I probably did, yeah.

6 Q. And would you work with her getting her ready
7 for a test?

8 A. Uh-huh.

9 Q. And when you say that you would be disappointed
10 in how she did on a test, what did you mean by that?

11 A. Well, say we were looking at a process of a
12 volcano erupting, and we had laid out the steps, and then
13 we were working on maybe putting them in the right order
14 or being able to paraphrase it back, and I would think we
15 were successful during our preliminary work, then the
16 following day take a test, and she would -- she would
17 fail.

18 Q. And how did she do as far as her ability to, I
19 guess, paying attention in class and staying on task?

20 A. She was not a discipline problem. She didn't
21 talk too much. But sometimes I would catch her, and she
22 would look off at the wall, or she would just kind of be
23 out there, and I would say, you know, Lillian, what number
24 are we on, or, you know, can you answer that question.
25 And she would know I had caught her off guard, like, and

1 she would smile, and we would get her back on track and
2 try to keep her with us.

3 Q. And that was an intermittent problem? It wasn't
4 something that happened all the time?

5 A. No. It wasn't like five times during a class
6 period. But, you know, a couple of times a week, I would
7 say.

8 Q. More so than the other students?

9 A. Yeah.

10 Q. Now, where did she sit in your class?

11 A. She sat along the -- well, my desk is like -- if
12 this is the classroom, she would have been along the outer
13 row, so she was pretty close to my desk. About the fourth
14 one back on that row.

15 Q. Okay. And she had an IEP in place at that time?

16 A. She had resource teacher, Ms. Lambright, that
17 worked with her. But in science they don't get extra
18 help, per se, for science. But that resource teacher was
19 there, you know, to help with her lessons and things.

20 Q. So did you make any accommodations for Lillian,
21 yourself, in your class?

22 A. She got more time to finish her work. She wrote
23 very slow, and so, therefore, when everybody else would be
24 finishing up, she would usually have to take it home and
25 finish it and bring it back. So time-wise, I did help --

1 let her have some extra time to do it.

2 Q. Do you have a copy of her report card, for her
3 eighth-grade year, in front of you?

4 A. Yes.

5 MR. HOLMES: Put that up for the eighth grade..

6 MS. GERRARD: Which --

7 MR. HOLMES: The eighth grade. The last exhibit
8 that you had up.

9 Q. [Mr. Holmes] And, Ms. Strickland that science
10 eight, down under number three --

11 A. Right --

12 Q. -- that's -- could you tell --

13 A. Third period. Uh-huh.

14 Q. Okay. And when you were talking about her
15 performance on her exams, could you -- what was her
16 semester-one exam grade?

17 A. First semester, I see -- let's see. Average
18 exam was a sixty-two. That was her first-semester exam.

19 Q. And how -- what was her semester average --

20 A. For that --

21 Q. -- for her first semester?

22 A. For that first semester, a sixty-eight.

23 Q. Okay. And what grade is that?

24 A. It's not passing. Sixty-eight is not passing.

25 Q. And then her -- how did she do on her second-

1 semester exam?

2 A. Second-semester exam was -- let's see. I'm
3 looking here. It looks like a seventy-two.

4 Q. Okay. And her semester average was a seventy-
5 eight that semester?

6 A. No. It was a -- well, yeah, a seventy-eight.
7 Yearly is seventy-three.

8 Q. Okay. And was she able to do any projects, that
9 second semester, to improve her grades?

10 A. That's basically how she got her fourth -- nine-
11 weeks grade kind of boosted a little bit, because we had
12 science projects, several of them going on, and they were
13 working in groups.

14 Q. And that --

15 A. And it helped --

16 Q. -- working with that group helped her?

17 A. -- helped her average.

18 Q. Okay. And where did she fall as far as in your
19 class? What percentile of the students?

20 A. That would be in the lower twenty percent of the
21 students I taught.

22 MR. HOLMES: And scroll down. Or come back out
23 and just show the from here down to here, please.

24 Q. [Mr. Holmes] And this -- the writing at the
25 bottom of her report card, is that your handwriting?

1 A. Yes. Uh-huh.

2 Q. And what does that say?

3 A. That she must attend summer school in math.

4 Q. Okay. And did she -- how was her mobility in
5 your class? How was she doing, as far as the walking?
6 Was she still using a --

7 A. I think she started out she had a cane. But she
8 had a plastic-looking kind of brace on her leg that
9 sometimes I would see if she wore a dress or a skirt. But
10 most of the time you didn't see it. But it was stiff, and
11 she was slow. She moved slowly and -- but, you know,
12 given accommodations, she could get around.

13 MR. HOLMES: Thank you, Ms. Strickland.

14 MR. HARMON: Hi, Ms. Strickland.

15 THE WITNESS: Hello.

16 CROSS-EXAMINATION

17 BY MR. HARMON:

18 Q. You saw Lillian, as her science teacher, every
19 day?

20 A. Right.

21 Q. And you taught a mainstream science class?

22 A. Yeah.

23 Q. Okay. Can you tell us -- we've heard the term
24 mainstream. Can you tell us what that means?

25 A. Well, mainstream, in my book, is where I have

1 students of all different ability levels in one classroom
2 together and I'm trying to meet their needs.

3 Q. Okay. And do they have, for the eighth grade,
4 special ed classes for science?

5 A. No.

6 Q. Okay.

7 A. No. All --

8 Q. So you --

9 A. I teach all eighth graders that come through
10 my -- whether they're special ed or what.

11 Q. Okay. And you taught Lillian, through the
12 eighth grade, in her science class; correct?

13 A. Uh-huh.

14 Q. And she passed her class?

15 A. Yes.

16 Q. And were there people that year who failed the
17 class?

18 A. I can't think of many -- we can go back through
19 the records -- because I end up usually teaching summer
20 school, too, and I can't recall.

21 Q. If you felt like Lillian needed to be left --
22 not graduate, you would have sent her to summer school?

23 A. I wrote that she must attend in math, because
24 she failed math. And I'm the team leader. So, I mean, it
25 wasn't a problem with her not passing science. She

1 managed to pass science. Now, as far as her test scores
2 at the end of the year, we didn't get them back until the
3 following year, but --

4 Q. But I guess what I'm asking you: for science,
5 if you felt like she wasn't -- hadn't passed her class,
6 you would have kept her back?

7 A. Yes.

8 Q. And throughout her class with you, you would
9 agree with me Lillian was well-behaved?

10 A. She was well-behaved.

11 Q. And she didn't cause any problems in class?

12 A. No.

13 Q. She didn't have any outbursts, or temper
14 tantrums?

15 A. I never saw her have a temper tantrum in the
16 classroom, no.

17 Q. Okay. And you would agree with me that she was
18 pleasant?

19 A. Sure.

20 Q. And she -- you never saw her get angry?

21 A. No, I didn't.

22 Q. All right. And I think we both can agree that
23 Lillian has a lot of determination and drive that you saw
24 in the class?

25 A. I did see that.

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1 Q. Now --

2 A. She put forth a lot of effort.

3 Q. Put forth a lot of effort?

4 A. Effort.

5 Q. Now, toward the end of the year, you found out
6 Lillian had a boyfriend; right?

7 A. Yeah. She was -- well, when I saw them at the
8 dance together.

9 Q. Okay. And you thought that was pretty cute?

10 A. Yeah.

11 Q. Now, you've been teaching for I think you said
12 twenty-nine years?

13 A. Uh-huh.

14 Q. And when we took your deposition, you
15 anticipated that Lillian would graduate from high school
16 with a diploma?

17 A. I hoped.

18 Q. Okay.

19 A. I hoped that she would.

20 Q. And you also indicated you thought Lillian would
21 be able to live independently?

22 A. Well, as independently -- she is going to need a
23 support system, as far as I could see.

24 Q. But you thought she would be able to get a job?

25 A. Based on what I've seen, as far as -- I see

1 Question: [reading] so it was after January of
2 2002.

3 Answer: [reading] yes, sir. What's your best
4 estimate of when it was. As far as that particular
5 crossing, it was September. It would be 2000. Let me
6 see.

7 Question: [reading] in February.

8 Answer: [reading] February of 2003. Right.

9 Question: [reading] 2004.

10 Answer: [reading] 2004. So it would have been
11 approximately September of 2003. When they started
12 that, did you receive any complaints from landowners
13 about cutting the trees. Yes, sir, I did. Who did you
14 receive complaints from.

15 Answer: [reading] Tommy Jackson. And what did
16 Mr. Jackson tell you.

17 Answer: [reading] I got a phone call from
18 Tommy. I was on vacation that week. He had given me a
19 phone call about the complaint because he knew I was
20 the road master. And when -- I happened to be right
21 around the area when he called so I basically went to
22 the crossing and got with the supervisor of DeAngelo
23 Brothers and got his story first on what was going on,
24 and what he told me is he had gotten a complaint from
25 Tommy and that they had just quit cutting. And their

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1 stipulations were, from Jacksonville, if a landowner
2 had a complaint for them to stop cutting, you know,
3 proceed on to the next crossing or whatever. And that
4 was in September.

5 Answer: [reading] yes, sir. Now, at the
6 crossing, had they cut the crossing except for the area
7 adjoining Mr. Jackson.

8 Answer: [reading] they had cut the left side of
9 the crossing and they had cut everything except for the
10 fence line adjoining Tommy Jackson's land, and that's
11 where the dispute came in. After that, did you ever
12 come back and -- did they ever come back and complete
13 the job prior to February of 2004.

14 Answer: [reading] no, sir. Do you know why
15 they didn't come back.

16 Answer: [reading] no, sir. Did anybody ever
17 tell you why they didn't come -- didn't complete the
18 job.

19 Answer: [reading] no, sir. All right. Did
20 anyone tell you that CSX bid on the property that Mr.
21 Jackson was claiming.

22 Answer: [reading] no, sir. Did you ever find
23 out about that.

24 Answer: [reading] no, sir.

25 Question: [reading] there is a stop sign at

CARLOS TERRY,

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

DIRECT EXAMINATION

BY MR. DETRICK:

Q. Your name is Carlos Terry?

A. That's correct.

Q. Mr. Terry, where have you grown up at?

A. Right here in Hampton.

Q. Right here in Hampton County?

A. Yes, sir.

Q. And your family is a fairly large family in the
area?

A. Pretty much.

Q. Pretty much.

And since you -- the last few years of your life
here, where have you worked at?

A. Dixie Poly Drum.

Q. Dixie Poly Drum?

A. Yes.

Q. And tell the jury -- they've seen pictures and
all of the area right there of Dixie Poly Drum. What kind
of plant is that?

A. It's a plastic molding corporation. Drum plant.

Q. And what do you do there?

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1 A. I'm a machine operator.

2 Q. And how long have you done that?

3 A. Almost ten years.

4 Q. Ten years?

5 A. Yes, sir.

6 Q. Okay. And I think you were telling me yesterday
7 that right at this time of the year, though, that's a
8 rough job in there.

9 A. It's a scorcher.

10 Q. Huh?

11 A. Scorchers.

12 Q. How hot is it inside that building?

13 A. Well, the thermometer reads 105.

14 Q. 105?

15 A. 105.

16 Q. Okay. And you have to work in that during the
17 summer?

18 A. All day.

19 Q. Now, do you know Tonia Colvin?

20 A. Yes, sir.

21 Q. And you of course knew Lillian Colvin, too; is
22 that correct?

23 A. That's correct.

24 Q. And I believe at the time that -- and before
25 this, you and her, Tonia and you, were boyfriend and

1 girlfriend?

2 A. Yes, sir.

3 Q. Okay. And you had lived together?

4 A. That's correct.

5 Q. Okay. How long did y'all live together?

6 A. Almost five years, I would say.

7 Q. Okay. And I think you -- at one time y'all had
8 two cars? One, you had your car; and she had her car?

9 A. Yes.

10 Q. Is that correct?

11 A. Uh-huh.

12 Q. And did your car break down for a period of
13 time?

14 A. Yes. The transmission went out.

15 Q. The transmission went out?

16 A. Uh-huh.

17 Q. Okay. And as a result of that, during that
18 short period of time was Tonia having to take you to work?

19 A. Yes.

20 MR. HARMON: Your Honor, I'm sorry. I'm just
21 going to ask that counsel not lead his own witness.

22 THE COURT: Okay. Sustained.

23 Don't lead him, Mr. Detrick.

24 Q. [Mr. Detrick] Did you have a vehicle that broke
25 down?

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- 1 A. Yes.
- 2 Q. Okay. And as a result of that, how would you
3 have to get to work?
- 4 A. I relied on her to take me. Tonia Colvin.
- 5 Q. And she -- what kind of vehicle did she have?
- 6 A. I think Explorer. Yeah.
- 7 Q. Explorer?
- 8 A. It's been a minute.
- 9 Q. Okay. And you haven't ever testified before.
10 Are you a little nervous?
- 11 A. Not really.
- 12 Q. Well, you're better than me.
- 13 All right. The Explorer: kind of tell -- I
14 think they had asked Ms. Colvin about the sound system in
15 that Explorer. Is that -- did you put a sound system in
16 it?
- 17 A. Yes, I did.
- 18 Q. Tell the jury about that.
- 19 A. I mean, what would you like for me to tell them?
20 Pretty much everybody know what a sound system is, you
21 know: speakers, amp, basically.
- 22 Q. All right. And did that vehicle have tinted
23 windows?
- 24 A. I can't recall.
- 25 Q. You can't recall?

1 A. No.

2 Q. Okay. Now, what time -- if Tonia was having to
3 take you to work, what time would she have to take you?

4 A. Normally I have to be there at 6:00, but
5 sometimes they change the hours.

6 Q. Normally you have to be there at 6:00?

7 A. 6:00 -- from 6:00 to 4:30. But like right now,
8 we're doing 5:00 to 3:30.

9 Q. And that's because it's so hot?

10 A. Yes.

11 Q. Okay. And, now, on February the 3rd, 2004, do
12 you remember that day?

13 A. Pretty much.

14 Q. Okay. And did Tonia have to take you to work?

15 A. Yes, she did.

16 Q. And you got there at the normal time?

17 A. Yes.

18 Q. And it wasn't cold -- it wasn't hot during that
19 period of time?

20 A. Well, it wasn't hot at all.

21 Q. Did you have a -- what kind of day -- do you
22 remember what kind of day you had at work? A regular day?
23 It doesn't matter, really.

24 A. A day at work.

25 Q. A day at work.

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1 And what time would she pick you up?

2 A. 3:30. Well, she would get there like a little
3 earlier sometimes. But like I say, I knock off at 4:30,
4 so --

5 Q. You knock off at 4:30?

6 A. Yes.

7 Q. And you hoping she would be there when you got
8 out?

9 A. Don't like to wait when you get off, you know.

10 Q. I understand. And that day was she there when
11 you got out?

12 A. Yes.

13 Q. All right. And tell the jury, now, do -- did
14 she park in the parking lot and you went from your -- from
15 the plant to the vehicle, did you at that -- during that
16 period of time hear a train?

17 A. No.

18 Q. Okay. Did you get in the vehicle?

19 A. Yes, sir.

20 Q. And tell us what happened when you got in the
21 vehicle.

22 A. Well, once I got in it, you know, we talked.
23 She passed me some insurance papers that she got from her
24 parents' house, so I was reading the papers. And we
25 leaving out, you know. Gets up to the crossing. I'm not

1 paying attention because, like I say, I'm reading my
2 insurance papers. Feel her stop; going on. The next
3 thing, I heard her scream. I looked. I don't remember
4 nothing else.

5 Q. Okay. Now, let's back it up a little bit so we
6 can understand. Okay? You got in the vehicle. She
7 passed you some insurance papers; is that correct?

8 A. Yes.

9 Q. What were those insurance papers concerning?

10 A. About my tag on my vehicle. About it being
11 down, you know, so don't want to pay them late fees.

12 Q. Okay. So you were reading the insurance papers.
13 And that's the reason that you had your concentration on
14 those papers, because you were concerned about having to
15 pay more money?

16 A. Yes.

17 Q. Is that right?

18 A. Right.

19 Q. Now, do you remember whether there was any kind
20 of conversation, Lillian or anybody talking, or do you
21 know?

22 A. No.

23 Q. No? Okay.

24 Now, you said, as I remember your testimony, you
25 were reading the papers and you felt her stop?

- 1 A. Uh-huh.
- 2 Q. Would that be at the period -- approximately the
3 area where she stopped to take a left onto Hill Street?
- 4 A. I don't --
- 5 Q. Do you remember that stop?
- 6 A. [No response]
- 7 Q. You go from where she stopped there to the
8 crossing. How many stops were there between when you turn
9 onto Hill street -- she made -- until she got to the
10 crossing?
- 11 A. I'm trying -- Hill Street? I don't -- where is
12 Hill Street?
- 13 Q. Hill Road, or whatever it's called.
- 14 A. I don't go by names.
- 15 Q. What do you call it?
- 16 A. I don't go by names.
- 17 Q. All right. The road going right there off of 68
18 where you take a right to go to your plant if you're
19 coming from 68.
- 20 A. Okay. I got you now. Yeah.
- 21 Q. You got me?
- 22 A. Uh-huh.
- 23 Q. Okay. Now, when she turned onto that road, when
24 did she -- did she -- where did she first -- excuse me.
25 How many stops did she make from there to the collision?

- 1 A. I felt two stops.
- 2 Q. Two stops?
- 3 A. Yes.
- 4 Q. And do you know where -- I'm at the first stop. .
- 5 Do you know where any of the stops were?
- 6 A. No. I can't tell you that.
- 7 Q. You weren't paying attention?
- 8 A. Not then.
- 9 Q. You were just concentrating on your insurance
- 10 papers?
- 11 A. Insurance papers.
- 12 Q. And then I think you said -- when did you -- did
- 13 you ever hear anything, any horns, or any indications --
- 14 A. No.
- 15 Q. -- a train was coming?
- 16 A. I never did, no.
- 17 Q. Not at any time?
- 18 A. [Indicates negatively]
- 19 Q. And I think you said after that second stop --
- 20 tell the jury what happened.
- 21 A. I heard a scream. Like I say, when I looked, it
- 22 was over.
- 23 Q. It was over?
- 24 A. Yeah.
- 25 Q. Meaning what?

1 A. It was hit.

2 Q. Okay.

3 A. I was out.

4 Q. Now, do you remember whether y'all had the radio
5 on or the sound system on, or that?

6 A. No, I'm not sure.

7 Q. And do you remember whether you had the -- any
8 of the windows were down in the vehicle?

9 A. I'm not sure about that, either.

10 Q. Okay. And you say that -- and during -- let me
11 ask you: and during any of this time did you, yourself,
12 hear a train?

13 A. No, sir.

14 Q. Did you -- at any time during any of this did
15 you actually -- did you see a train?

16 A. Huh-uh. [Indicates negatively]

17 Q. Okay. And so the next thing you knew, you said
18 it was over?

19 A. Yeah.

20 Q. All right. What do you -- tell the jury what
21 you remember next.

22 A. Well, I remember I could feel myself rocking,
23 but I didn't know where I was. But when I opened my eyes,
24 I looked up, I could see the bottom of the train still
25 moving. That's when I realized, you know, okay, I done

1 got thrown from the vehicle. So I finally got up. I
2 heard Tonia hollering and screaming, you know, my daughter
3 -- her baby. So I stumbled over there, and I seen her
4 laying in the back of the truck, you know. I just thought
5 the worst, you know, so I was just trying to keep myself
6 together.

7 Q. And you had been thrown out?

8 A. Yeah. I was no longer in the truck.

9 Q. All right. Go on and tell the jury what
10 happened at the scene, if you remember.

11 A. Well, like I say, I remember my supervisor, him
12 jumping through the track -- the train. He come --

13 Q. Mr. Biser?

14 A. Yeah, Mr. Larry Biser.

15 Q. He's your supervisor?

16 A. Yes.

17 Q. Okay.

18 A. He comes running over, you know, asked me was I
19 okay. I told him yes. And I was like, is my girl okay.
20 I don't know. So he was over there. He told me to hold
21 Tonia so he can, you know, check her and make sure of her
22 vitals and stuff. But when I looked at him, he shook his
23 head like, you know, like she didn't have none. So that
24 kind of got to me. So I was trying to hold Tonia back,
25 you know, to let him do what he had to do, because he's a

1 firefighter.

2 Q. And you're talking about he was attending to
3 Lillian?

4 A. Yes.

5 Q. And where was Lillian at?

6 A. In the back seat, head facing out the door side
7 by the passenger seat, in the floor.

8 Q. And everybody was upset; right?

9 A. Yeah.

10 Q. And so what happened there at the scene -- if
11 anything else -- you remember?

12 A. Well, again, as to say how long it took, you
13 know, people just started stopping. You know, the crowd
14 started getting thick. EMS came there. You know, they
15 sitting there trying to get things prepped. And I can't
16 remember if it was Larry or -- I think it was Dusty. He
17 started tripping on them for them to, you know, tend to
18 me. But I told him don't worry about me, I was all right,
19 to watch, you know, the little girl. She was out cold,
20 like. And, basically, after that, a long, bumpy ride to
21 the hospital.

22 Q. A long, bumpy ride for you to the hospital?

23 A. Yeah.

24 Q. Okay. And were you there when they took Lillian
25 away?

1 A. I was still at the accident scene. They took
2 her to the softball field.

3 Q. All right. And then they took you and Tonia to
4 the Hampton hospital?

5 A. Yes.

6 Q. And tell us what happened there, if you
7 remember.

8 A. Once I got there, that I don't too much remember
9 too much of.

10 Q. Okay. They -- basically, they treated you and
11 Tonia?

12 A. Yeah.

13 Q. Is that correct?

14 A. I mean, they did released me and everything but,
15 like I say, that was a long time ago.

16 Q. I understand.

17 There has been mention in this case, and Tonia
18 has admitted, that she had some -- a wine cooler, one or
19 two wine coolers, earlier in the day. When did you learn
20 that she had had anything to drink that day?

21 A. That day?

22 Q. Yeah.

23 A. Was it at the hospital, or was it the next day?
24 I can't remember. I remember hearing somebody spoke about
25 it. But, you know, I don't -- I don't know.

1 Q. Okay. At any time -- say when you got in the
2 vehicle, or any time to the hospital or any -- did she in
3 any way act other than normal? I mean --

4 A. No.

5 Q. -- did she act impaired?

6 A. Huh-uh. Because I know when she get --

7 Q. You know how she gets?

8 A. Yeah.

9 Q. And she didn't act that way?

10 A. No.

11 Q. She wasn't impaired?

12 A. No.

13 Q. Okay. Now, and did you smell alcohol on her?

14 A. Huh-uh.

15 Q. Now, did you know that -- well, let me ask you
16 this. After that, did Tonia then go to the hospital --
17 leave to go to the hospital, to the Medical University, to
18 see about Lillian?

19 A. Yes. I think she did.

20 Q. And I think you went home and your mama took
21 care of you; is that correct?

22 A. Yes.

23 Q. Helped with your injuries?

24 A. Uh-huh.

25 Q. All right. Now, you're obviously -- were you

1 aware that Tonia needed some medication because she had a
2 back injury before this?

3 A. Uh-huh.

4 Q. Okay. And you know she took medication for
5 that? For her back --

6 A. Yes.

7 Q. -- is that right?

8 A. Uh-huh.

9 Q. And did you ever see where she acted any
10 different when she took her morning medication?

11 A. I mean, if she say she was hurting, she would
12 pop a pill, you know, she was fine.

13 Q. She would be fine?

14 A. Yeah.

15 Q. And that's something she had to do --

16 A. Yeah.

17 Q. -- in order not to be in pain

18 A. [No response]

19 Q. Is that correct?

20 A. Yes.

21 Q. Okay. Now, just to go -- and you were around
22 Lillian a fair amount before the wreck and then since
23 then; is that correct?

24 A. Yes.

25 Q. Now, tell the jury how she did when you observed

1 her when she got home from the hospital.

2 A. From the time -- before the accident, or after
3 the accident?

4 Q. Well, let's go in right after the accident, just
5 for --

6 A. Oh, man. It wasn't pretty. I'll put it that
7 way.

8 Q. It wasn't pretty?

9 A. No. I mean, it -- huh-uh. I mean, she just
10 wasn't her, not at all.

11 Q. All right. Well, then, tell us how she was
12 before.

13 A. A little tomboy. Wide open. Wide open. High
14 energetic. But like I say, after the accident -- it was a
15 long process. But, I mean, but [indicates]. No, it
16 wasn't good.

17 Q. And how is she different now?

18 A. Like I say, I'm pleased the way she's -- you
19 know, how she has improved, but she is still not the
20 little girl that I met when I first got there. Like I
21 say, comprehension, you know, not too well. You would ask
22 her things and she don't give you no true, vital answers
23 when you ask a question. So it makes me wonder, you know.
24 But other than that, I'm -- like I say, I'm pleased the
25 way she came around.

1 Q. Thank God she is alive?

2 A. Yeah.

3 Q. Okay. Now, you arrived at -- you were -- had
4 gone to that -- gone across that crossing numbers of
5 times --

6 A. Yes.

7 Q. -- when your car was working --

8 A. Uh-huh.

9 Q. -- to go to work; right?

10 A. Yes, sir.

11 Q. Okay. Tell us about driving down there, what
12 you would see and how you would -- as you approached that
13 crossing leaving from work.

14 A. Well, like I said, normally I ease up to where I
15 can see, and go ahead.

16 Q. You get where you can see and then go ahead?

17 A. Yes.

18 Q. Okay. Was there any trees to your right?

19 A. Yes.

20 Q. Did they get in your way of view?

21 A. Yeah. It was quite a few trees.

22 Q. A lot of trees?

23 A. Yes.

24 Q. Okay. But you would try to get where you could
25 see?

1 A. Yes.

2 Q. And then you would go across?

3 A. Yeah. And --

4 MR. HARMON: Your Honor, I'm sorry. He's again
5 leading, putting words in his own witness' mouth.

6 THE COURT: Okay. Sustained. Don't lead him,
7 Mr. Detrick.

8 Q. [Mr. Detrick] What would you do so you could do
9 the best you can to see?

10 A. Like I say, the stop sign was before you get to
11 the trees, so you stop there, no visual, so you had to go
12 on up by -- past the trees in order to see anything. And
13 so once you get to that point, you go on across.

14 MR. DETRICK: That's all I have at this time.
15 Thank you.

16 THE COURT: Mr. Harmon?

17 MR. HARMON: Good afternoon, Mr. Terry.

18 THE WITNESS: How are you doing?

19 MR. HARMON: Fine. How are you?

20 THE WITNESS: All right.

21 CROSS-EXAMINATION

22 BY MR. HARMON:

23 Q. Sir, you -- August of 2003, you started getting
24 serious with Ms. Colvin; correct?

25 A. I would guess. I don't know.

1 Q. Okay. Does that --

2 A. I don't keep up --

3 Q. -- sound about right?

4 A. I don't keep up with those dates. I don't know.

5 Q. Well, let me cut to the chase here. You were
6 living with her before the accident?

7 A. Yes.

8 Q. Okay. And you continued to live with her until
9 about February of 2008?

10 A. Yes.

11 Q. All right. Now, before the accident you worked
12 at Dixie and you continue to work at Dixie Poly Drum
13 plant?

14 A. Yes.

15 Q. And you've worked there I think you said for
16 about ten years now?

17 A. Uh-huh. [Indicates affirmatively]

18 Q. And the plant is near the Hill Street crossing?

19 A. Yes.

20 Q. And you typically got off work back then about
21 4:30?

22 A. I got off at 4:30.

23 Q. At 4:30?

24 A. Yes.

25 Q. Right at 4:30.

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1 And it was your usual practice when you got off
2 work to go across the tracks to get gas or to stop at the
3 store; right?

4 A. Not all the time. If I didn't have nothing to
5 pick up from the store or anything, I would get on
6 Salkehatche Road. Take you straight home.

7 Q. Okay. But if you had to go to the store, you
8 would go across the tracks --

9 A. Yes.

10 Q. -- and get gas?

11 All right. And when you did that on those
12 occasions, you would make a left on that road that comes
13 out of the plant?

14 A. Yes.

15 Q. And that's the same direction you were going in
16 on the date of this accident?

17 A. Uh-huh.

18 Q. For the purposes of the record -- I know we are
19 used to saying uh-huh or huh-uh. If you could say yes or
20 no, because she is taking it down.

21 A. Got you.

22 Q. Thank you.

23 Now, you told Mr. Detrick about a month before
24 the accident your car broke down; right?

25 A. Yes.

1 Q. And at that point in time Ms. Colvin would take
2 you to and from work?

3 A. That's correct.

4 Q. And most of the time she would do the driving?

5 A. Most all the time.

6 Q. Okay. So all the time she would do the driving?

7 A. Yes.

8 Q. And you would cross, on many occasions, this
9 crossing with Ms. Colvin in the car? When I say the
10 crossing, the railroad crossing there.

11 A. Yes.

12 Q. All right. Now, as you're approaching the
13 railroad crossing there is a stop sign?

14 A. Yes.

15 Q. And there's also a big railroad sign painted on
16 the ground?

17 A. That's farther up.

18 Q. Before you get to the stop sign?

19 A. No. That's after the stop sign.

20 Q. The railroad sign painted on the ground?

21 A. You talking about that white solid line?

22 Q. No. On the ground. The railroad sign painted
23 on the ground. Let's -- I'll tell you what. Let me pull
24 it up for you.

25 MR. HARMON: Can we pull up that one?

1 Q. [Mr. Harmon] This is what I'm talking about,
2 sir. I may have --

3 A. Okay. Yes.

4 Q. All right. So that railroad sign is before you
5 get to the stop sign; right?

6 A. Uh-huh. Yes.

7 Q. Okay. And then as you approach the stop sign --

8 MR. HARMON: If you will go to the next one. Go
9 in closer. Can you go in closer?

10 [Off the record momentarily]

11 Q. [Mr. Harmon] All right. Let me just ask you
12 the question.

13 After you get to the railroad sign on the
14 ground, there is a stop sign?

15 A. Yes.

16 Q. And Ms. Colvin usually stopped twice before
17 crossing the Hill Road crossing?

18 A. I can't answer that because I don't know what
19 she -- I know what she did that day: two stops, accident.

20 Q. I'm going to get to that day in a moment. But
21 her usual practice was to stop twice, before going to the
22 crossing, before the accident?

23 A. Her usual practice I don't know. I can't answer
24 that.

25 Q. Okay. It's been a little while; right?

1 A. No. I'm just saying who pays attention when
2 somebody else is driving continuously?

3 Q. Okay. It's been a while since --

4 A. Yes.

5 Q. -- since the accident; right?

6 And do you remember giving a deposition?

7 A. Yes.

8 Q. And you had your personal attorney there?

9 A. Uh-huh.

10 Q. And there was an attorney there also
11 representing Ms. Colvin?

12 A. Yes.

13 Q. And there was another attorney there
14 representing CSX?

15 A. I guess it was.

16 Q. And you remember you were put under oath?

17 A. Yes.

18 Q. All right. And you gave truthful answers?

19 A. Yes.

20 MR. HARMON: All right. If we could go to page
21 69, lines 1 through 3.

22 Q. [Mr. Harmon] This is your deposition. I'm just
23 going to read it to -- again, I know it's been a while --
24 to refresh your memory.

25 A. Okay.

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1 Q. [Reading] Did she usually stop twice when she
2 approached that crossing. Yes.

3 Do you see that?

4 A. Uh-huh.

5 Q. All right. So that was your testimony about
6 four years ago --

7 A. Well, usually is not --

8 MR. DETRICK: Your Honor --

9 A. -- all the time.

10 MR. DETRICK: -- could I just at this time make
11 a motion under Rule 32, because I want to make sure
12 that he is allowed, in fairness, to play portions that
13 would have --

14 MR. HARMON: May we approach --

15 MR. DETRICK: -- applicable --

16 MR. HARMON: May we approach?

17 THE COURT: Sure. Come on.

18 [Whereupon, an off-the-record bench conference
19 is held]

20 Q. [Mr. Harmon] And my next question, Mr. Terry,
21 is: Ms. Colvin usually stopped at the stop line?

22 A. If that's what I said --

23 Q. I'm just asking you, sir, before this accident
24 and the times you've been across that crossing with Ms.
25 Colvin, you know that Ms. Colvin usually stopped at the

1 stop line?

2 A. I do not remember. Like I said, paying
3 attention to someone when he's driving, where they're
4 stopping at at a stop sign, was not really none of my
5 concern at the time.

6 Q. Okay. I understand. But I'm just going to --
7 and, again, this is just -- I know it has been a while.
8 We're just going to use this to refresh your memory on
9 what you testified --

10 A. Okay.

11 Q. -- several years ago.

12 MR. HARMON: If we could roll the clip starting
13 at 69, lines 4, and play it through.

14 You can see right there in the monitor, sir.

15 [Whereupon, excerpt of video deposition of
16 Carlos Terry is played for the jury as follows]

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

18 A. Yes.

19 Q. And do you know where it was she stopped
20 the second time?

21 A. No. I don't remember.

22 Q. You don't have any idea?

23 A. Huh-uh. Not a clue.

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

25 A. Yes.

1 Q. -- approached that crossing?

2 Where did she usually stop the second
3 time when she approached the crossing?

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

5 Q. Okay. And --

6 MR. HARMON: Okay. You can stop there.

7 [Whereupon, excerpt of video deposition of
8 Carlos Terry concludes]

9 Q. [Mr. Harmon] All right. So Ms. Colvin before
10 this accident, she usually stopped at the white line;
11 right?

12 A. Yes. That's what I said.

13 Q. And, sir, you would agree with me that when you
14 stop the front of your car at that white line, you can see
15 all the way down to the I-95 bridge?

16 A. Now?

17 Q. I'm asking you at the time of the accident and
18 what you testified to in your deposition.

19 A. Let me think for a minute. That white line is
20 mighty close to that track so --

21 Q. Would seeing your testimony help you refresh
22 your memory, sir?

23 A. Yeah. Let me see it.

24 Q. Okay. Sure.

25 MR. HARMON: Let's roll -- can you run that

1 clip, the whole thing, so he can see it.

2 This is the same thing. You'll just see the --
3 your answer. Again, I know it's been a few years.

4 [Whereupon, excerpt of video deposition of
5 Carlos Terry is played for the jury as follows]

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

7 A. Yes.

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

10 A. No. I don't remember.

11 Q. You don't have any idea?

12 A. Huh-uh. Not a clue.

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

14 A. Yes.

15 Q. -- approached that crossing?

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

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

19 Q. Okay. And can you see far enough down
20 that track to see the trains coming when you stop at
21 that line --

22 A. -- I'm not on the driver side at that
23 time, so I couldn't see.

24 Q. Okay. But you were on the passenger
25 side?

1 A. Yeah.

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

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

7 Q. How about you?

8 A. Can I see down the track? Yes --

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

11 A. Yeah.

12 MR. HARMON: Okay. That's good.

13 [Whereupon, excerpt of video deposition of
14 Carlos Terry concludes]

15 MR. HARMON: All right. Before we go to the
16 next line of questioning, may we approach, Your Honor?

17 THE COURT: Yes.

18 [Whereupon, an off-the-record bench conference
19 is held]

20 THE COURT: Ladies and gentlemen of the jury, I
21 need to send you out for just a very brief moment, I
22 assure you. Again, do not begin discussing this case.
23 It's not appropriate to do so. And we will bring you
24 back immediately. Just get a Coke and come on back in.
25 Okay? Thank you.

1 [Whereupon, the jury exits the courtroom at
2 2:46 p.m.]

3 THE COURT: All right. We had a brief sidebar
4 just so I could instruct Mr. Terry.

5 Mr. Terry, I need you to listen to me for a
6 second. In cases such as these, sometimes if actions
7 are taken after the wreck it's not admissible in court.
8 So what I want to make absolutely sure is in the
9 questions you are asked you don't accidentally say
10 anything about this crossing being cut after this
11 wreck. Do you understand?

12 THE WITNESS: Okay.

13 THE COURT: Okay? I just wanted to make sure
14 because, obviously, if you work at Poly Drum, you go
15 back and forth every day, you would probably have an
16 idea and you probably know that after this wreck
17 occurred that it was gone out and this quadrant to the
18 right was cut. Okay?

19 THE WITNESS: Yes.

20 THE COURT: So what I need you to make
21 absolutely sure, as I said, is I cannot have you saying
22 that in front of a jury.

23 THE WITNESS: Oh. Okay.

24 THE COURT: Okay? Do you understand that?

25 THE WITNESS: Yes.

1 THE COURT: So if for some reason you have any
2 issue whatsoever, or if you're not even quite sure how
3 to respond, out of an abundance of caution you just
4 need to say, Judge, I need to either take something up
5 with you or ask you a question. And then if you have
6 any concern about being able to answer it -- do you
7 understand? Because I can't have you in any way saying
8 in front of this jury that however long afterwards they
9 came out and cut it and after that I could see fine.

10 THE WITNESS: Okay.

11 MR. HARMON: Your Honor, none of my questions --
12 I'm not going to ask Mr. Terry, respectfully, any
13 questions about anything after --

14 THE COURT: After the wreck.

15 MR. HARMON: Well, after the wreck at that
16 crossing. I'm not going to ask him --

17 THE COURT: Okay.

18 MR. HARMON: I'm not going to ask any questions
19 that's going to -- that are going to elicit from him
20 what they did afterwards. I have some questions
21 afterwards, but nothing --

22 THE COURT: All right.

23 MR. HARMON: Mr. Detrick represented, and I
24 take his word that he had told him already, but I was
25 just -- out of an abundance of caution.

1 THE COURT: I just want to make absolutely sure
2 you understand that.

3 THE WITNESS: Okay.

4 THE COURT: Okay? That's just -- it's a very
5 important thing. And if for some reason you did say
6 it, I would have to consider declaring a mistrial in
7 this case and that just means we would have to start
8 all over again. Okay? So we just want, out of an
9 abundance of caution, to let you know that. And I will
10 tell you this. You are about the fourth witness I have
11 told this to, so don't worry about it. Okay?

12 THE WITNESS: Okay.

13 THE COURT: All right. Anything further?

14 MR. HOLMES: Judge, could we have just a second?
15 It will keep us from breaking again --

16 THE COURT: That would be wonderful.

17 MR. HOLMES: -- later if we can go ahead and
18 load that --

19 THE COURT: Absolutely.

20 [Whereupon, a recess is taken from 2:50 p.m. to
21 2:55 p.m.]

22 THE COURT: All right. Y'all, it appears we are
23 ready to go.

24 MR. HARMON: Yes, Your Honor.

25 THE COURT: Bring the jury on in.

1 [Whereupon, the jury enters the courtroom at
2 2:55 p.m.]

3 MR. HARMON: May I proceed, Your Honor?

4 THE COURT: Yes, sir. Thank you.

5 Welcome back, ladies and gentlemen of the jury.
6 I appreciate y'all's patience with us.

7 Yes, sir.

8 Q. [Mr. Harmon] Mr. Terry, I want to now talk
9 about the day of the accident. Ms. Colvin took you to
10 work that morning?

11 A. Yes.

12 Q. And she had done that before?

13 A. Uh-huh.

14 Q. And you got off at 4:30 --

15 A. Yes.

16 Q. -- like you usually did; right?

17 A. [Indicates affirmatively]

18 Q. And Ms. Colvin was waiting for you when you got
19 off?

20 A. Yes.

21 Q. And that usually she was waiting for you?

22 A. Yes.

23 Q. And as you told us on direct, she greeted you
24 when you got in the car?

25 A. Yes.

1 Q. That's what she usually did?

2 A. Uh-huh.

3 Q. You have to say yes.

4 A. Yes, sir.

5 Q. All right. And she had music playing in the
6 car?

7 A. I don't remember saying that.

8 Q. You don't remember?

9 A. No.

10 Q. Okay. And, again, I understand it's been a few
11 years.

12 MR. HARMON: Could we just show Mr. Terry, to
13 refresh his memory, page 64, lines 24 through 65.2.
14 Okay.

15 Q. [Reading] All right. And then what was
16 Lillie doing.

17 A. I haven't the slightest idea.

18 Q. Okay. What movies were y'all listening
19 to.

20 A. That, I don't know.

21 MR. HARMON: Next page.

22 Q. [Reading] But the CD or the radio was
23 on; right?

24 A. Yes.

25 Q. [Mr. Harmon] Okay. So the radio -- when you

1 got in the car, the CD or radio was on; correct?

2 A. If that's what I said. You've got the paper.

3 Q. And, again, sir, we understand this accident was
4 in 2004; right?

5 A. Okay.

6 Q. And we are now 2008?

7 A. Yes.

8 Q. So there may be some things you just don't
9 remember because of the time of pass [phonetic]; right?

10 A. It's --

11 Q. But the time when you gave this testimony was a
12 lot closer in time?

13 A. Yes.

14 Q. All right. So once you got in the car, Ms.
15 Colvin handed you some insurance papers; right?

16 A. Yes.

17 Q. And the insurance papers were for your car?

18 A. Yes.

19 Q. And --

20 THE COURT: Mr. Terry, I need you to speak up,
21 sir, okay, if --

22 THE WITNESS: Oh. Okay.

23 THE COURT: -- you would. And make sure you say
24 yes or no. Okay?

25 THE WITNESS: Okay. Okay. Got you.

1 THE COURT: I appreciate it, sir.

2 Q. [Mr. Harmon] And the -- I think you said the
3 insurance papers were for your car?

4 A. Yes.

5 Q. And you began to read them?

6 A. That's correct.

7 Q. And then she pulled out of the Dixie Drum --
8 Dixie Poly Drum parking lot?

9 A. Yes.

10 Q. And she made a left onto the road that's in
11 front of Dixie Poly Drum?

12 A. Yes.

13 Q. And Ms. Colvin came up to a stop sign?

14 A. Yes.

15 Q. And you felt her stop?

16 A. Yes.

17 Q. Like she usually did?

18 A. Yes.

19 Q. And then she moved closer to the tracks?
20 Railroad tracks.

21 A. That I don't know, like I said.

22 Q. All right. Well, you felt her -- on the day of
23 the accident you felt her stop a second time?

24 A. Yes.

25 Q. And you've told us on direct you're not sure,

1 because you weren't looking, where she stopped --

2 A. That's correct.

3 Q. -- but you did feel her stop a second time?

4 A. That's correct.

5 Q. All right. And you believe Ms. Colvin saw the
6 train that day and should have waited for the train to
7 pass?

8 A. Run that by me again.

9 Q. Sure. You believe on the day of this accident
10 that Ms. Colvin saw the train and should have waited for
11 the train to pass?

12 A. Why wouldn't anyone wait for the train to pass?

13 Q. Sir, it's true after this accident you sued Ms.
14 Colvin?

15 A. Yes.

16 Q. And you sued CSX?

17 MR. DETRICK: Your Honor, may we approach on
18 this?

19 THE COURT: Yes.

20 MR. DETRICK: That's --

21 THE COURT: No? Okay. Mr. Harmon, continue.

22 Q. [Mr. Harmon] And in your lawsuit where you
23 named CSX, Ms. Colvin, and the South Carolina Department
24 of Transportation, you made some specific allegations
25 against Ms. Colvin, didn't you?

1 A. Like what?

2 MR. HARMON: Let's turn to Mr. Terry's lawsuit,
3 7114.

4 Q. [Mr. Harmon] All right. This is your lawsuit;
5 correct?

6 MR. HARMON: Let's go to the heading, please.
7 Heading, please.

8 Q. [Mr. Harmon] That's your lawsuit; correct?

9 A. [No response]

10 Q. That's you, Mr. Terry?

11 A. Yes.

12 MR. HARMON: All right. And if we can go to the
13 page with Ms. Colvin. Go to the third page, please.

14 All right. If you'll go down to the bottom.

15 Q. [Mr. Harmon] All right. And then you wrote in
16 here as it relates to Ms. Colvin. Now, you indicated in
17 your lawsuit that she was negligent in failing to maintain
18 a proper lookout. Do you see that?

19 A. Yes, I see it.

20 MR. HARMON: All right. And if we can go above
21 so they can see what -- keep going up, please. Keep
22 going up.

23 MR. PARKER: That's the top.

24 MR. HARMON: All right. Let's go down to Ms.
25 Colvin again, to B.

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1 Q. [Mr. Harmon] You also indicated: [reading] in
2 failing to maintain proper control of her vehicle; right?

3 A. I don't remember none of this.

4 Q. All right. This is your lawsuit; right?

5 A. I don't remember none of that there.

6 Q. All right.

7 A. Never seen it.

8 Q. [Reading] In failing to take evasive action to
9 avoid the collision.

10 That's what it says; right?

11 A. Yeah, that's what it says.

12 Q. Then next: [reading] in failing to yield the
13 right-of-way.

14 Right?

15 A. That's some bogus stuff there.

16 Q. And then the next it says: [reading] in failing
17 to obey a stop sign.

18 And what you really meant there was the stop
19 line, isn't it?

20 MR. DETRICK: I object. That isn't what that
21 says.

22 MR. HARMON: I'm asking him what he meant. He
23 can answer that.

24 THE COURT: No.

25 MR. DETRICK: Number one, he's already said he

1 didn't know about that and had never seen this before.

2 THE COURT: He can just ask him the question and
3 he -- if he doesn't know, he can say he doesn't know.

4 Q. [Mr. Harmon] Isn't it what you meant to say
5 there? because you know she stopped at the stop sign.
6 There was a second stop. You meant stop line, didn't you?

7 A. What this is, I do not know. I have no idea.

8 Q. All right. But when you filed this complaint,
9 sir, you knew that Ms. Colvin usually stopped at the stop
10 line. And you knew that at the stop line you could see
11 all the way down to the I-95 overpass, didn't you?

12 A. Everything else has down what I said, so why
13 doesn't this have down what I said?

14 Q. But my question is when you filed this lawsuit,
15 you knew Ms. Colvin usually stopped at the stop line;
16 right?

17 A. No. I said I knew that she normally stops
18 twice. Where she stops at exactly, I do not know.

19 Q. Didn't we just see testimony where you said she
20 usually --

21 A. Yeah. But that was back there. But, see, you
22 got me thrown for a loop with this. I don't know what
23 this is. I don't.

24 Q. And then the next thing says: [reading] in
25 failing to exercise a degree of care that a reasonable

1 person would have exercised under the same and similar
2 circumstances.

3 Right? That's what it says?

4 A. Yeah, that's what it says.

5 Q. Okay.

6 MR. HARMON: All right. We can bring that down.

7 Q. [Mr. Harmon] Now, after the accident you've
8 told us Mr. Dusty Biser came across the tracks; right?

9 A. Uh-huh.

10 Q. You have to say --

11 A. Yes. Yes.

12 Q. -- yes or no.

13 A. Yes. Yes. Yes.

14 Q. All right. And he went over -- eventually went
15 over to Lillian to check her pulse?

16 A. Yes.

17 Q. And Tonia, Ms. Colvin -- excuse me -- wanted to
18 move Lillian --

19 A. Yes.

20 Q. -- right? And it wasn't -- it was just because
21 she was concerned?

22 A. Yes.

23 Q. Right?

24 A. It was her daughter.

25 Q. And she was saying let's get Lillian out of the

1 truck?

2 A. That's correct.

3 Q. And you knew that Mr. Biser was a former
4 volunteer firefighter?

5 A. That's correct.

6 Q. And you had the presence of mind to say, no,
7 let's listen to Dusty --

8 A. Yes.

9 Q. -- right?

10 And so you -- Mr. Biser told you to keep Ms.
11 Colvin calm; right?

12 A. Yes.

13 Q. To keep her away from the truck --

14 A. Yes.

15 Q. -- while he tended to Lillian?

16 A. Yes.

17 Q. And he did tend to Lillian?

18 A. Yes, he did.

19 Q. And eventually Dusty stayed with Lillian until
20 the -- I mean, Mr. Biser stayed with Lillian until the EMS
21 people arrived?

22 A. Yes.

23 Q. And after the EMS people arrived, as you said on
24 direct, he was concerned about you; right?

25 A. That's correct.

1 Q. Because he told the EMS folks, look, y'all stop
2 sitting around, that he's bloody, too; go take care of
3 him. Right?

4 A. Yes.

5 Q. He was -- and I think you said in your
6 deposition he was talking stuff to them to get you some
7 attention?

8 A. Yes.

9 Q. And after that he was in the road hugging you
10 and Tonia, wasn't he?

11 A. Yes.

12 Q. He was trying to console you-all?

13 A. Yes.

14 Q. He was trying to help?

15 A. Yes.

16 Q. Now, sir, you testified -- I think you said that
17 you were not sure. I think that's what you said, you
18 weren't sure if your window was up or down.

19 A. That's correct enough.

20 Q. Okay. You previously testified that your window
21 was down; right?

22 A. I'm not sure. I don't remember.

23 Q. Okay. Would it help to just refresh your memory
24 to see what you said?

25 A. All the time.

1 MR. HARMON: Okay. Let's go to 101, line 7
2 through 15. Okay.

3 Q. [Mr. Harmon] [Reading] But the windows were
4 down. Yes. And why were the windows down. Why were they
5 down. Yes, sir. I just said eventually, somewhere down
6 the line, I was going to smoke a cigarette.

7 All right. Did that refresh your memory?

8 A. Yes.

9 Q. And it's your testimony, as well, that you never
10 heard the horn before it hit y'all?

11 A. Never heard it.

12 MR. HARMON: One moment, Your Honor.

13 THE COURT: Yes, sir.

14 MR. HARMON: Your Honor, we pass the witness.

15 THE COURT: Yes, sir. Mr. McLeod?

16 MR. MCLEOD: Just one, I think, Your Honor.

17 Maybe two.

18 CROSS-EXAMINATION

19 BY MR. MCLEOD:

20 Q. Bicardi: is that Bicardi rum?

21 A. [No response]

22 Q. Does Tonia Colvin -- does she drink alcoholic
23 beverages?

24 A. Do she?

25 Q. Does Tonia Colvin drink alcoholic beverages?

1 A. Yes. Yes.

2 Q. What is her favorite?

3 A. Well, when I first met her, she liked the
4 Bicardi.

5 Q. Huh?

6 A. When I first met her, she loved the Bicardi.

7 Q. Bicardi rum?

8 A. Yes.

9 Q. And when does she usually drink it?

10 A. At the house.

11 Q. What time of day?

12 A. If I'm at work, I wouldn't know.

13 Q. Well, if I told you -- and, again, this is from
14 your deposition. I don't have --

15 A. Okay.

16 Q. I don't have that up there [indicates].

17 But tell me -- tell me if you said this. This
18 is on page 28 of your deposition, which apparently was
19 taken January 3rd, 2005.

20 MR. WRAY: Peden, what page and line?

21 MR. MCLEOD: 28.

22 MR. WRAY: What line?

23 MR. MCLEOD: 6.

24 MR. WRAY: Okay.

25 Q. [Mr. McLeod] Okay. [Reading] Does she drink

1 alcohol.

2 Answer: [reading] yes. What kind does she
3 drink.

4 Answer: [reading] her specialty, if you ask me,
5 is Bicardi.

6 Question: [reading] Bicardi.

7 Answer: [reading] yes.

8 Question: [reading] and when does she usually
9 drink that.

10 Answer: [reading] what do you mean when does
11 she normally drink.

12 Question: [reading] what time of day.

13 Answer: [reading] it really doesn't matter.
14 Whenever she's got free time.

15 Is that what you said?

16 A. If it's on here, I said it.

17 Q. Okay. Now, what's a woffer? I mean, the
18 deposition is -- they're talking about speakers or
19 something. But what is a woffer?

20 A. Oh. It's a big subwoofer, you know. That's the
21 name of it.

22 Q. A what?

23 A. Subwoofer. A big speaker. All different sizes.

24 Q. Well, this thing --

25 A. A speaker.

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1 Q. This thing says twelve-inch woffer.

2 A. Yeah. It's a speaker.

3 Q. And this car has got two half -- two twelve-inch
4 woffers?

5 A. Yes.

6 Q. Now, where did they come from?

7 A. Oh. Let me think for a minute. New South
8 Electronics, back in the days.

9 Q. Where?

10 A. New South Electronics.

11 Q. And you had them put in, or you put them in, or
12 what?

13 A. Yeah, I had them put in.

14 Q. Where did you have them put in?

15 A. One of my home boys.

16 Q. Huh?

17 A. One of my home boys. One of my friends.

18 Q. One of your friends?

19 A. Yes.

20 Q. Do you have to buy any other parts for it?

21 A. I had everything.

22 Q. Huh?

23 A. I had everything.

24 Q. How about did you -- did you have to buy any
25 wire?

1 A. Yes.

2 Q. Have to buy any amps?

3 A. Yes.

4 Q. Tell me about it. What is an amp?

5 A. It's an amplifier.

6 Q. Oh. That's the amplifier?

7 A. Yes.

8 Q. Where did you get that?

9 A. Wal Mart.

10 Q. Where?

11 A. Walterboro.

12 Q. Walterboro? And your friend put it in?

13 A. [Indicates affirmatively]

14 Q. And let me ask you this, because I've heard some

15 loud speakers.

16 A. Okay.

17 Q. In fact, I've heard real loud speakers

18 sometimes. Are these the kind that kind of vibrate,

19 they're so loud?

20 A. Yes, it was the kind.

21 Q. Do you think those could have been on that day?

22 A. Do I think they could have been on?

23 Q. Yes, sir.

24 A. They could have been on, but not loud enough --

25 huh-uh. Not in Yemassee. No, sir.

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1 Q. Why not in Yemassee?
2 A. Go through and try it.
3 Q. Huh?
4 A. Ride through and try it. That's a fine. Noise
5 ordinance.

6 Q. But you say they could have been on?

7 A. Oh. They probably was on.

8 Q. It was on?

9 A. I would say they probably were.

10 Q. Okay. And they can be extremely loud?

11 A. If you choose to turn it up like that, yes.

12 MR. MCLEOD: I think that's all I've got, Your
13 Honor.

14 THE COURT: Okay.

15 MR. DETRICK: A few follow up. Thank you.

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. DETRICK:

19 Q. They were asking you about whether you remember
20 whether -- where Tonia would have normally stopped. Do
21 you remember that line of questioning?

22 A. Yes.

23 Q. Do you have any idea where -- when you're
24 driving along, are you looking to see where she stops?

25 A. No.

1 Q. I mean, do you look and see whether the person
2 you -- anybody, not -- Tonia or anybody, where they
3 stopped, as far as a line or anything?

4 A. No.

5 Q. And I think --

6 MR. DETRICK: We want to -- go ahead and play
7 whatever. He tried to explain that -- they didn't want
8 to hear that part. But let's play this other part.

9 MR. HARMON: Can we have a line -- a page and
10 line number? We're on page 69. What page and line?

11 MR. DETRICK: Start on Mr. Parker's --

12 MR. HARMON: So this is at the end of the
13 deposition?

14 MR. DETRICK: At the very end.

15 MR. HARMON: Okay.

16 MR. DETRICK: Go ahead.

17 [Whereupon, excerpt of video deposition of
18 Carlos Terry is played for the jury as follows]

19 Q. Mr. Terry, Mr. Purcell was showing you a
20 photograph today and you pointed out where Tonia
21 normally stopped; is that correct?

22 A. I said where I normally stop..

23 Q. All right -- there is a cross-buck there
24 in that picture. What relationship did that have to
25 where Tonia normally stopped.

1 A. Now, see, like I said, I know she stopped
2 twice. But you could see --

3 Q. I'm not talking about on that day -- I'm
4 talking about normally --

5 A. Where I would stop?

6 Q. No. Where she would stop. Could you
7 point that out to us, where she normally stopped?

8 A. -- probably have to have her to do that.

9 Q. You can't do that? Or you don't know
10 exactly?

11 A. I can't do that, because I'm not her.

12 Q. Thank you.

13 Q. [Mr. Detrick] And in that testimony you said
14 you would have to have her tell you that, wouldn't you?

15 A. Yes.

16 Q. That's because you didn't know?

17 A. There you go.

18 Q. Something you don't pay any attention to?

19 A. No.

20 Q. Okay. Now, as far as the -- you know, your
21 testimony was that you were doing -- you were looking at
22 the insurance papers --

23 A. Yes.

24 Q. -- and you do know she stopped twice?

25 A. Yes.

1 Q. Is that correct?

2 Now, is there anything unusual about her speed?
3 Does she drive a normal speed across the tracks?

4 A. Yes.

5 Q. Normal speed?

6 A. Normal speed.

7 Q. Is there any reason to believe that she saw that
8 train?

9 A. No. I don't believe she seen it.

10 Q. She didn't believe -- so you don't believe she
11 saw --

12 A. No, she --

13 Q. -- that train, do you?

14 A. -- didn't see that train.

15 Q. Okay. And, now, he cross-examined you about --
16 obviously, you got you a lawyer; right?

17 A. Yes.

18 Q. And he tried to show you some papers that's been
19 filed in court by your lawyer?

20 A. Yes.

21 Q. Have you ever seen those papers?

22 A. No.

23 Q. Know anything about what's in those papers?

24 A. No. Don't know nothing.

25 Q. Know anything about any of that?

1 A. No, sir.

2 Q. But he failed to put in what your lawyer also
3 said.

4 MR. DETRICK: Go back to that, please, the
5 pleading, mister -- was it Bob?

6 MR. PARKER: Yes.

7 MR. DETRICK: -- please. And let's go down to
8 where what --

9 MR. HARMON: Next page he wants. He wants --
10 you want the next page?

11 MR. DETRICK: Yeah.

12 Q. [Mr. Detrick] -- what your lawyer said about
13 CSX?

14 MR. HARMON: No. He wants -- yeah.. CSX.

15 [Off the record momentarily]

16 Q. [Mr. Detrick] And he put in there, [a], in
17 maintaining unreasonable hazardous and unsafe crossing.

18 Do you see that?

19 A. Yes.

20 Q. He put that in there; is that right?

21 A. Had to.

22 Q. Okay. Do you believe that's true?

23 A. No, I don't believe that.

24 Q. You didn't see that?

25 A. [Indicates negatively]

1 Q. Now, what about number 2? He put in there
2 failure to inspect the crossing for unsafe and hazardous
3 conditions; and, number 3, allowing trees and other
4 vegetation to grow near the crossing in such a manner as
5 to obstruct the traveling public's view of the train.

6 That's -- you hadn't seen that before, either,
7 have you?

8 A. No, sir.

9 Q. Okay. And, now, as far as -- and you didn't
10 even know that -- you don't -- did you even know that was
11 even filed?

12 A. No.

13 MR. DETRICK: Is there another one on there?

14 Q. [Mr. Detrick] Okay. We put some more in there.
15 Your lawyer also put in there: the failure to take steps
16 to warn the public that the view of the approaching trains
17 was obstructed; [e], in failing to maintain adequate
18 warning devices at the crossing; [f], in failing to
19 adequately sound a horn -- a bell or horn prior to
20 entering the crossing; [g], in failing to properly
21 maintain its right-of-way at this crossing when CSX
22 knew or should have known that the trees and vegetation
23 were obstructing the view of the approaching train, and
24 in violating of its own rules for maintenance of its
25 right-of-ways.

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1 That's what your lawyer -- but you put down --
2 but you've never seen that, either, have you?

3 A. Never seen it.

4 Q. And as far as that lawsuit, now, Lillian is not
5 a part of that at all, is she?

6 A. No.

7 Q. Huh?

8 A. No.

9 Q. And Lillian in this case is suing CSX and the
10 DOT; isn't that right?

11 A. That's correct.

12 Q. And that's what we are here about today; right?

13 A. Yes.

14 Q. Okay. Now, as far as he asked you about the
15 windows. And I think you testified you don't know whether
16 they were up or down; is that right?

17 A. Yes, sir.

18 Q. Do you have any knowledge that CSX's own experts
19 say that they were up?

20 MR. HARMON: Objection. Objection. There is no
21 evidence of that. He is testifying where there is no
22 evidence about what our experts have said or are going
23 to say, so I object.

24 MR. DETRICK: Do you want to provide it for us,
25 because --

1 MR. HARMON: It's improper. There has been no
2 testimony about what --

3 THE COURT: Come here, y'all.

4 MR. DETRICK: That's all. I --

5 THE COURT: Okay.

6 MR. DETRICK: I don't have any further
7 questions.

8 MR. HARMON: I have no further questions.

9 THE COURT: Mr. McLeod, anything further?

10 MR. MCLEOD: No, Your Honor.

11 THE COURT: All right. You may step down, Mr.
12 Terry. Thank you.

13 Any objection to Mr. Terry being excused?

14 MR. HARMON: No, Your Honor.

15 MR. HOLMES: May he be excused, Your Honor?

16 THE COURT: Yes. Go ahead. Mr. Terry, you are
17 excused, sir. Thank you.

18 THE WITNESS: Okay. Thank you.

19 [Whereupon, Mr. Terry is excused and exits the
20 witness stand]

21 THE COURT: All right.

22 MR. DETRICK: I call Dr. McArthur, please.

23 THE COURT: All right. Dr. McArthur, would you
24 please come forward to be sworn, sir.

25 MR. PURCELL: Your Honor, we have a short matter

1 seat.

2 [Whereupon, Mr. Williams takes the witness
3 stand]

4 THE COURT: And if you would give the jury your
5 full name, sir.

6 MR. PARKER: Please state your full name.

7 THE WITNESS: Jimmy L. Williams.

8 - - - - -

9 JIMMY L. WILLIAMS,

10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MR. PARKER:

14 Q. Mr. Williams, where do you live?

15 A. Walterboro, South Carolina.

16 Q. And by whom are you employed?

17 A. Hampton Regional Medical Center.

18 Q. And what is your job?

19 A. Medical technology, sir. Work in the
20 laboratory.

21 Q. And you do tests for the Hampton Regional
22 Medical Center?

23 A. That's correct.

24 Q. And somebody takes a blood sample, a urine
25 sample, you're the fellow that runs the machinery to test

1 it?

2 A. That's correct.

3 Q. And how long have you been at Hampton?

4 A. Nine, ten years.

5 Q. And previous to that, where did you work?

6 A. Walterboro Medical University.

7 Q. And you did the same type work?

8 A. Basically, yes.

9 Q. And you've been trained to do that work and
10 taken courses --

11 A. That's correct.

12 Q. -- and training to do it?

13 A. That's right.

14 Q. And I guess you've had a good bit of on-the-job
15 training, too, over the years?

16 A. That's correct.

17 Q. And on February 3rd, 2004, did you run some
18 specimen samples on urine and blood from Tonia Colvin?

19 A. That's correct.

20 Q. And I'm going to now put on the screen --

21 MR. PARKER: Have you got it?

22 Q. [Mr. Parker] -- what is going to be page 11, I
23 think.

24 [Off the record momentarily]

25 Q. [Mr. Parker] All right. Is this a blood

1 alcohol test that you ran on a blood sample on 2/3/04?

2 A. That's correct.

3 Q. And you know that, by some information, that's
4 on that piece of paper?

5 A. The test verification, that sort of thing. My
6 initials.

7 Q. It's got your initials on it, and that indicates
8 that you ran it?

9 A. Yes. That's correct.

10 Q. And on that it has a reading of .018?

11 A. That's correct. That's a percentage.

12 Q. And that's eighteen milligrams per deciliter?

13 A. That's correct.

14 Q. And in order to be -- in South Carolina, to be
15 under the influence or presumed to be under the influence,
16 you had to have a hundred milligrams per deciliter?

17 MR. WRAY: Your Honor, I'm going to object to
18 the leading question of the witness.

19 THE COURT: Just don't lead him, Mr. Parker.

20 MR. WRAY: I'm sorry. It asks for a legal
21 conclusion. He asked him what the law was in South
22 Carolina.

23 Q. [Mr. Parker] Let me ask you to read off the
24 report, then, if you will, what it says under -- with .10
25 percent, which would be one-hundred milligrams percent,

1 what does it say?

2 A. 0.10 percent or greater is presumed to be under
3 the influence of ethanol by the South Carolina -- state of
4 South Carolina.

5 Q. And that is the -- would be one-hundred
6 milligrams per deciliter?

7 A. That's correct.

8 Q. And she -- in fact, it was eighteen milligrams
9 per deciliter in this blood sample?

10 A. That's correct.

11 Q. Now, the test, it shows there collected at 1830
12 on the report. Do you know when that blood sample was
13 collected?

14 A. Specifically when -- it was put in the computer
15 at 1830. I received it at 1929. As the exact time it was
16 drawn, I'm not sure.

17 Q. And do you have any idea when it was drawn or by
18 whom it was drawn?

19 A. Based on this, it said it was collected in the
20 care area.

21 Q. But the specific person who drew the blood, do
22 you know who that was?

23 A. Based on this information that I'm looking at, I
24 couldn't say that. But from what I understand, the other
25 documents, it should stipulate that somebody else drew the

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1 blood.

2 Q. But as far as you knew, you don't know who drew
3 the blood?

4 A. No. I don't specifically remember drawing the
5 blood.

6 Q. All right. And there was also a --

7 MR. PARKER: Let's go to the ninth page of
8 Exhibit 144-A.

9 Q. [Mr. Parker] And on there, there is an opiates
10 presumptive positive entry on that test. And did you do
11 that test?

12 A. That's correct. I did that test, as well.

13 Q. And on that test it also -- a presumptive
14 opiate, is that something that would be caused by Darvocet
15 or that type medicine?

16 A. Very possible. Other things corresponds to this
17 other than opiate itself.

18 Q. And in that test, can you tell what the level is
19 by that test?

20 A. This particular test only says positive or
21 negative.

22 Q. And do y'all have any way of determining at the
23 hospital here in Hampton what the level is?

24 A. Not for this particular test, no.

25 Q. All right. You don't have the equipment

1 necessary to do that?

2 A. That's correct..

3 Q. And on the -- I would want to ask you --

4 MR. PARKER: On the page 10, let's put that up.

5 Q. [Mr. Parker] That is a urinalysis that was also
6 done on 2/3/04; is that correct?

7 A. That's correct..

8 Q. And it has a -- says that you received it at
9 1929?

10 A. Where is the receiving? Let's see. Verified.
11 It says that it was verified at seventeen -- or 7:13.

12 Q. All right. And then it says you received it, up
13 top, at 1929?

14 A. Received, yeah, 1929.

15 Q. And do you know why that would be that way? Is
16 there something about the equipment? Or do you know?

17 A. There was some issue that -- about this that I
18 couldn't explain based on the fact that there's a
19 discrepancy in the time fracket [phonetic].

20 Q. All right. Did you see Tonia Colvin, on 2/3/04,
21 at the hospital?

22 A. I do -- I did.

23 Q. And do you recall that?

24 A. All the specifics of it, no. But I do remember
25 the general conversation and I think that was the fact

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1 that they were grateful that nobody was seriously hurt to
2 the point where somebody died, or something of that
3 nature.

4 Q. At that point in time she was not aware of the
5 seriousness of her daughter's injury?

6 A. I'm not sure exactly what the whole ins-and-outs
7 of everything was.

8 Q. And at the time you talked with Ms. Colvin, that
9 night when you saw her, was she impaired in any way that
10 you observed?

11 A. Not that I observed anything.

12 Q. And you had known her for a period of time from
13 church?

14 A. Yeah. From another setting in Walterboro, yes.

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

16 MR. WRAY: Hi, Mr. Williams. How are you?

17 THE WITNESS: I'm okay.

18 CROSS-EXAMINATION

19 BY MR. WRAY:

20 Q. Hampton Hospital, where you work, does not do a
21 blood alcohol screen on every patient, do they?

22 A. We only do alcohols when there is an order from
23 the doctor. And that's any -- that's actually any test,
24 really, not just the alcohol.

25 Q. And the same is true with urine drug screens?

1 You don't do that on just anybody that comes to the
2 hospital?

3 A. That's correct.

4 Q. Only when the doctor requests it; correct?

5 A. That's correct.

6 Q. And before a patient's blood can be obtained to
7 do that blood alcohol test, you need to get consent from
8 the patient; correct?

9 A. Not necessarily. When a -- sometimes they do;
10 sometimes they don't.

11 Q. Let me show you Exhibit 44.

12 MR. WRAY: Can you put that up?

13 Q. [Mr. Wray] And you have seen this document
14 before, haven't you?

15 A. That's correct. I have.

16 Q. I believe it's part of the packet of exhibits
17 that Mr. Parker was just showing. And you recognize this
18 as the consent form signed by Tonia Colvin on February
19 3rd, 2004; correct?

20 A. That's correct.

21 Q. And the time shown that she put the time and
22 date is 1830; correct?

23 A. That's correct.

24 Q. That's 6:30 p.m.?

25 A. 6:30.

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1 Q. And that's the same time that it showed on the
2 analysis that you did as the sample being collected;
3 correct?

4 A. That's correct. It was put in the computer, the
5 Meditech system, at 6:30.

6 Q. And the consent form -- you told us before -- is
7 signed before the blood is drawn. Do you recall
8 testifying to that previously?

9 A. I remember saying that it was signed and it was
10 -- the person in question was Tonia, and also Eddies
11 Mufuka, who was a nurse at the hospital. And I've seen
12 this report, so exactly --

13 MR. WRAY: All right. Can you scroll down?

14 Q. [Mr. Wray] And if we look right here -- you
15 mentioned Ms. Mufuka a moment ago; correct?

16 A. Yeah.

17 Q. And you recognize that as her signature?

18 A. That's her signature.

19 Q. And she also dated it the same as Ms. Colvin and
20 put the time at 1830; correct?

21 A. That's correct.

22 Q. And Mr. Parker asked you a question earlier
23 about knowing who drew the blood. Based on this form you
24 know that Ms. Mufuka drew the blood; correct?

25 A. That's the -- when I saw this form, then I came

1 to the conclusion that it was she who drew the blood.

2 Q. And typically the blood is drawn from the
3 patient immediately after the form is signed; correct?

4 A. Typically, yes.

5 MR. WRAY: You can take that down.

6 Q. [Mr. Wray] Then after the blood is drawn it's
7 sent to the lab where you work to be tested; correct?

8 A. Yes. That's correct.

9 Q. And what you were looking for was the presence
10 of alcohol on the blood alcohol screen; correct?

11 A. That's correct.

12 Q. And the result was that there was alcohol in the
13 bloodstream; correct?

14 A. Yes.

15 Q. And you -- on the UDS screen you were looking to
16 see whether there was drugs in the blood of the patient;
17 correct?

18 A. That's correct.

19 Q. And you did detect a positive for opiates;
20 correct?

21 A. That's correct.

22 Q. And opiate is a narcotic; correct?

23 A. It is.

24 Q. Now, Mr. Parker showed you the blood alcohol
25 level. I believe you said it was .018 at the time you

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1 tested it; correct?

2 A. That's correct.

3 Q. And you know, based on your background,
4 experience, and training, that as time passes blood
5 alcohol level decreases; correct?

6 A. If the -- if the tube is open, I think it'll
7 eventually evaporate like that. But ordinarily, if the
8 tube is sealed, you know, it usually doesn't evaporate.

9 Q. I don't believe you understood my question.
10 When you test the blood alcohol, you get the
11 reading at the time you test it; correct?

12 A. That's correct.

13 Q. Not at the time the person actually drank the
14 alcohol; correct?

15 A. Well, of course, you know, we can only account
16 for what's going on once she gets to the hospital, and
17 drawing the blood, and this sort of thing.

18 Q. And did -- you said you talked to Ms. Colvin.
19 Did you understand that the accident that she was in in
20 this case occurred at 4:30 that afternoon?

21 A. I'm not familiar with that.

22 Q. All right. And you tested the blood -- you
23 did -- I think you said you verified it at 7:43 p.m.?

24 A. I believe that's what -- that --

25 Q. And that was about three hours? If the accident

1 happened at 4:30, it would be about three hours later;
2 correct?

3 A. Yes.

4 Q. And you didn't see Ms. Colvin when she first got
5 to the hospital at 5:30, did you, Mr. Williams?

6 A. No, I didn't. I don't think so.

7 Q. I think you told us that you saw her around 7:30
8 when you went by to pick up the specimens to be tested;
9 correct?

10 A. Well, I think I picked up the specimens -- what
11 was the time on the computer -- about 7:29 --

12 Q. Yes.

13 A. -- 7:30.

14 Q. Right.

15 A. Right.

16 Q. And I think you told us when you testified
17 previously that when you went to get the specimens you
18 went by to speak with her because you knew her?

19 A. Right.

20 Q. And I think you said you had known her about ten
21 years?

22 A. Not necessarily ten years, but somewhere -- I
23 knew her from Walterboro, having previously met her
24 husband and then I met her.

25 Q. And you actually went into the hospital room

1 where she was located?

2 A. In the emergency room. Yes.

3 Q. Right. I don't know how -- if it was actual
4 rooms. Is it an area with a sheet or --

5 A. Yes. There is --

6 Q. -- an enclosure of some sort?

7 A. There is some sort of sheet to separate the
8 rooms.

9 Q. And when you went in to see her she didn't
10 appear to be physically maimed in the accident as far as
11 you could tell; correct?

12 A. Personally speaking, I remember the
13 conversation. But as far as all of the details of what
14 was going on with Tonia and whoever else, I don't remember
15 those things.

16 Q. You didn't really notice anything about her
17 condition. Is that fair to say?

18 A. I remember the conversation. I think she was
19 kind of thankful about the fact that nobody was -- I think
20 we said that, you know, nobody was seriously hurt to the
21 point where nobody died or anything of that nature. But
22 as far as anything else, you know, I'm not familiar with
23 that.

24 Q. Well, I wanted to ask you about that, because I
25 found that kind of a bit unusual. Ms. Colvin's daughter

1 had been air-lifted from the scene to MUSC. Are you aware
2 of that?

3 A. No.

4 Q. You didn't know that at that time, or you don't
5 know it now?

6 A. I know it after the knowledge of all what's
7 going on with this. But at the time, no.

8 Q. And she didn't mention anything to you about
9 that when you saw her in the hospital; correct?

10 A. I don't think so.

11 Q. In fact, what you told us before and what you
12 told the jury today is she said no one had gotten
13 seriously hurt; correct?

14 A. I think we were thankful that nobody died in the
15 accident, something to that nature.

16 Q. That's not what she said to you, though, is it?
17 She said no one had gotten seriously hurt; correct?

18 A. Seriously hurt? I think for the -- I'm just
19 recalling what we kind of talked about, and what I
20 remember talking about is the fact that nobody got
21 seriously hurt to the point where nobody died. I think
22 that was basic -- the basic concern of the conversation.

23 Q. Do you recall testifying previously in this case
24 and being asked some questions?

25 A. I remember testifying, yes.

1 MR. WRAY: Let's look at page 68, if we can.
2 Actually, we need to start at 67, beginning at line 19.

3 [Whereupon, excerpt of video deposition of Jimmy
4 Williams is played for the jury as follows]

5 A. Personally speaking, I didn't notice
6 anything on her as far as any real accident, no. You
7 know, I think she was basically kind of roughed up, but
8 I don't know that she was actually physically maimed or
9 anything as far as bleeding or broken bones or anything
10 like that. I think that's what I remember. I just
11 remember talking to her. She was more kind of -- kind
12 of in shock or upset with the fact that all of this
13 happened. And they were just thankful that nobody had
14 gotten seriously hurt, according to them. That's what
15 I remember about it.

16 [Whereupon, excerpt of video deposition of Jimmy
17 Williams concludes]

18 Q. [Mr. Wray] Now, you don't know anything about
19 Ms. Colvin's condition at the time of the accident itself;
20 correct?

21 A. Personally speaking, we go into the lab and we
22 do what we do and, you know, we don't try to get too
23 caught up in the affairs that's going on with the patient;
24 first of all, because it crosses a line. I mean, there's
25 certain things that you do, and you try to do that job and

1 that's -- and that's that.

2 Q. And you wouldn't want to cross that line, as you
3 described it; correct?

4 A. Well, the point is it's just the situation where
5 you kind of have to realize what they call the -- what is
6 it called -- confidentiality issues and all of these other
7 things.

8 Q. But my question to you, Mr. Williams, was you
9 don't know anything about Ms. Colvin's condition at the
10 time of the accident because you weren't there; correct?

11 A. I wasn't at the accident, no.

12 Q. And all you know is how she appeared to you
13 three hours after the fact; correct?

14 A. Pretty much.

15 Q. And at that point in time, as we just saw, you
16 said she reported to you no one had been seriously hurt in
17 the accident; correct?

18 A. That's what I remember. I mean, that's the gist
19 of the conversation.

20 MR. WRAY: Thank you, Mr. Williams.

21 THE WITNESS: Is that it?

22 MR. MCLEOD: Only one, Your Honor.

23 THE COURT: Hold on just a second. Mr. McLeod?

24 - - -

25 - - -

CROSS-EXAMINATION

BY MR. MCLEOD:

Q. I think I heard you did a urine test which showed some drugs?

A. Yes.

Q. And a blood alcohol showed some alcohol?

A. That's correct.

Q. And I really don't know the answer to this, but is there a test that registers the reading of a mixture of the drugs and alcohol?

A. You're talking about the -- which test are you talking about?

Q. Is there a test that would measure --

A. No. They're specific. They're -- what we measure is specific for that particular thing that we are measuring for. In other words, you know, whatever it is is a specific. Like, for instance, the alcohol specifically measures the alcohol -- in this case, ethanol -- so it wouldn't be a mixture of, you know, different things.

Q. So there is no test that will measure the mixture?

A. Well, the drug screen is like it's got different tests. Like I think there's about ten different tests in a drug alcohol -- in a drug screen that you would measure

1 for. Is that what you're asking me?

2 Q. Yeah. But is there a test that you can get the
3 implications of a mixture of both --

4 A. Not that I --

5 Q. -- that you know of?

6 A. No. Not that I know of.

7 MR. MCLEOD: No further questions.

8 THE COURT: Mr. Parker?

9 MR. PARKER: Mr. Williams, just one follow up.

10 REDIRECT EXAMINATION

11 BY MR. PARKER:

12 Q. The -- at the hospital, y'all clock in when you
13 go to work --

14 A. That's correct.

15 Q. -- before you start work?

16 MR. WRAY: Your Honor, I don't believe this is
17 proper redirect.

18 MR. PARKER: Absolutely. He asked about the
19 consent form being signed at 6:30 and the records of
20 the hospital shows that Ms. Mufuka --

21 MR. WRAY: Hold on, Your Honor.

22 THE COURT: Okay. Hold on.

23 MR. WRAY: We don't need to do speaking
24 objections. We need to approach.

25 THE COURT: Okay. Come on.

1 MR. WRAY: I didn't ask about when he clocked
2 in.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 Q. [Mr. Parker] Mr. Williams, y'all clock in at
6 the hospital, don't you?

7 A. That's correct.

8 Q. And in this process have you learned that Ms.
9 Mufuka did not clock in that day until 6:51?

10 MR. WRAY: I object. There is no foundation for
11 this question of this witness.

12 THE COURT: You can ask the question. If he
13 knows, he can answer it.

14 Q. [Mr. Parker] Did you learn that she did not
15 clock in until after 6:30 when this consent form was
16 signed?

17 A. I'm not familiar with -- I mean, you're asking
18 me when did Ms. Mufuka --

19 Q. Right. Whatever the time clock showed would be
20 when she clocked in. And have you learned that she didn't
21 clock in until twenty-one minutes after this was signed?

22 MR. WRAY: I object to the leading, Your Honor.
23 And the witness already said he doesn't know.

24 THE COURT: Okay. Don't lead him, Mr. Parker.
25 Just if he can answer the question, he can answer the

1 question.

2 MR. PARKER: Right.

3 Q. [Mr. Parker] Do you know whether -- could she
4 have been there at 6:30 if she didn't clock in until 1851?

5 A. That's --

6 THE COURT: Okay. Sustained. All right. And
7 let's just move on.

8 Anything further, Mr. Wray?

9 MR. WRAY: None from us, Your Honor.

10 THE COURT: All right. Mr. McLeod?

11 MR. MCLEOD: None, Your Honor.

12 THE COURT: All right. Mr. Williams, you may
13 step down, sir.

14 Any objection to him being excused?

15 MR. HARMON: No.

16 THE COURT: You're are also excused, sir. Thank
17 you.

18 THE WITNESS: So this is over?

19 THE COURT: You can go home. You can go home.

20 THE WITNESS: Thank you.

21 THE COURT: All right.

22 THE WITNESS: Y'all have a good day.

23 THE COURT: All right. Y'all quickly --

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

1 played here in court?

2 A. That's correct.

3 Q. And in addition to that, you made numerous
4 measurements?

5 A. Yes, sir.

6 Q. And I'm going to put up Plaintiff's Exhibit 1-A
7 on the screen, and if you would look at this. And is this
8 a hand-drawn document that you did on February 5th, 2004?

9 A. Yes, sir.

10 Q. And if you would, I want to ask you about some
11 of the things on here. We've talked about some of them.
12 But the measurement you made from the Hill Street stop
13 sign to the near rail was how far?

14 A. 117 inches.

15 Q. And is that thirty-six feet?

16 A. Oh. No --

17 Q. That's to the stop sign --

18 A. Stop line.

19 Q. Stop line. I'm sorry. I said stop sign. You
20 answered stop line.

21 Stop line. I'll ask you that. 117 inches?

22 A. Yes, sir.

23 Q. And that wouldn't be thirty-six feet. But the
24 stop sign is how far?

25 A. Thirty-six feet, stop sign; and 117 inches, stop

1 you just were able to -- went over and documented that
2 there were stumps and trees cut in that quadrant?

3 A. That's right.

4 Q. And you approximated where they were; is that
5 correct?

6 A. Yes, sir.

7 Q. And you measured 1551 feet from what distance?

8 A. From the whistle post to the crossing.

9 Q. And I'm going to ask you to look at page 4 of
10 Exhibit 1-A. And did you make some other measurements of
11 trees there? And apparently this was done on 2/10/04.

12 A. That's correct.

13 Q. And if you would give us those distances.

14 A. The first tree was twenty-five feet from Hill
15 Street, and thirty-six foot four inches from the first
16 track; and the second tree was thirty-two feet from Hill
17 Street, and thirty-two feet eight inches from the first
18 track; third tree was forty-seven feet from Hill Street,
19 and thirty-one point -- thirty-one feet six inches from
20 the first track; fourth tree is eighty-one feet from Hill
21 Street, and twenty-seven feet from the first track; and
22 the fifth, brush and limbs were 195 feet from Hill Street,
23 eighteen feet from the first track.

24 Q. And you also photographed all of this and
25 documented everything with a photograph?

1 Mount, North Carolina. He's no longer a road foreman
2 of engines. No, sir. Now, he didn't train you when --
3 when he trained you, that you need to know where the
4 train stops, the locomotive stops, to be able to
5 reconstruct what happened. No, sir. You've never
6 heard of that.

7 Answer: [reading] I've never been trained or
8 instructed in that. But you know that, don't you.

9 And his answer was: [reading] no, sir.

10 And my question was: [reading] how can you tell
11 -- how -- you can't tell because you don't know where
12 the train is in relationship to the accident when it
13 went into emergency, do you? The train --

14 Answer: [reading] the train, without any doubt
15 in my mind, went into emergency at the crossing when
16 Mr. Wooden said that he placed emergency -- the train
17 in emergency. How about Mr. Cummings. He said he put
18 the train in emergency. I don't know about that. So
19 you just rely on what the engineer tells you.

20 Answer: [reading] this particular engineer is a
21 very reliable engineer. Mr. Wooden has been around for
22 thirty years. And he also said he started blowing at
23 the whistle post; correct.

24 Answer: [reading] he didn't say that. No, sir.
25 He didn't tell you that. No, sir. You didn't see in

1 the testimony where he said that.

2 Answer: [reading] no, sir. I didn't see that.
3 Well, where did he tell you he started blowing the
4 whistle. He didn't tell me. He didn't. I didn't ask
5 him. He didn't tell me in our conversation. Now, why
6 didn't you ask him where he started blowing the
7 whistle. Because when I looked -- because when I
8 downloaded the engine and I looked, I could see. I
9 could see that the whistle was -- appeared to be 1100-
10 foot whistle. But you don't know whether he blew
11 through the crossing and stopped blowing, do you.
12 He -- no, sir, I don't. In order to determine that,
13 you need to know where he stopped; correct. I
14 determined to where he put the train in emergency,
15 which is at the crossing where the accident occurred.
16 When you looked at the data, did you make any
17 determination about the accuracy of the download. No,
18 sir. I found it to be accurate. Did you see anything
19 wrong with it. No, sir. Did you see anything that
20 would indicate to you that the event recorder was
21 operating improperly. No, sir. Can you sit here today
22 and tell us where the horn was sounded, in relationship
23 through the crossing at Hill Street, on February 3rd,
24 2004. I can tell you that from gathering from the
25 data, the horn was first sounded somewhere around 1100

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1 feet before reaching the crossing at Hill Street. And
2 you're making an assumption that the emergency was put
3 on at Hill Street.

4 Answer: [reading] yes, sir. If that's not
5 correct, you are wrong.

6 Answer: [reading] yes, sir. And why wouldn't
7 you look to see whether you're right or wrong about
8 that?

9 Answer: [reading] I would -- the information
10 I've been told is that the train brakes were placed in
11 emergency just before impact at the Hill Street
12 crossing. And that's not -- that is where I would
13 gather my data from, and go backwards from there. Who
14 told you to do that.

15 Answer: [reading] no one told me to do that.
16 Well, why did you determine to do that. Because it
17 would -- it would include the data and information I
18 need in relation to this accident. Well, if you
19 determined where -- and printed out where the
20 locomotive stopped, and you knew that place, you
21 wouldn't have to depend on that, would you.

22 Answer: [reading] no, sir. And so you --
23 rather than depending upon the impartial data of the
24 event recorder, you decided to depend upon the
25 statement of the engineer; correct.

1 crossing, it would be my concern that -- if he was not
2 blowing crossings appropriately. And one way -- you
3 had the ability to do that to that? to look at the
4 data?

5 Answer: [reading] yes, sir.

6 Question: [reading] but you decided not to do
7 that. No, sir. In other words, where there have been
8 other accidents, have you looked at other crossings.
9 No, sir. Just the crossing that's involved. When you
10 do efficiency tests, have you looked at other
11 crossings.

12 Answer: [reading] with efficiency testing,
13 maybe at several crossings. And you would check
14 several crossings; correct.

15 Answer: [reading] yes, sir. And that's because
16 you want to see if there's a pattern; correct. Yes,
17 sir. Because it's important to know that.

18 Witness: [reading] in e-testing, it's important
19 to know a pattern. And that's where you've been
20 trained.

21 Answer: [reading] yes, sir. And did you decide
22 to make a determination that Mr. Wooden, on 2/3 of 04,
23 had failed to comply with the company rules.

24 His answer was: [reading] repeat that. Did you
25 make a determination that Mr. Wooden, at the time of

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1 the wreck, had failed to comply with Rule 14-L.

2 Answer: [reading] yes, sir. Now, you met with
3 Mr. Wooden. We know you met on 2/9; right.

4 Answer: [reading] yes, sir. When you met with
5 them on 2/9, did you go over the download with them.

6 Answer: [reading] no, sir, I didn't. What did
7 you do. I informed them that, according to the data of
8 the download, that it was a short whistle blow, and I
9 told him that it was approximately 1100 feet and the
10 whistle post is 1500 feet from the crossing and he did
11 not comply with Rule 14-L, which is a proper whistle
12 starting at the whistle point.

13 Question: [reading] did he disagree with that.
14 No, sir. And what did he say. I really --

15 Answer: [reading] I can't really recall. What
16 did Mr. Wooden tell you. Anything he told you that
17 day.

18 Answer: [reading] he didn't make any comments
19 to that at all. How about the question, about
20 anything, did he tell you what happened.

21 Answer: [reading] I asked him what happened and
22 he told me in his own words what he saw had happened.

23 Question: [reading] what did he tell you. He
24 told me that he was approaching the Hill Crossing and
25 he saw an automobile come up on his left-hand side and

1 Answer: [reading] that's correct. And did you
2 find -- what did you find the visibility -- how did you
3 find the visibility to be. The visibility coming in
4 the direction that the automobile was traveling that
5 was hit at the crossing, at the stop sign there was
6 foliage on the right-hand side. This was February.
7 You could see through the trees because they didn't
8 have any leaves on them or anything. And then pulling
9 up to the cross-buck, you could see down to I-95
10 interstate, which -- which, just guess, is a quarter of
11 a mile. And of course pulling up to the stop bar, you
12 could see indefinitely. And at those points where you
13 had visibility to I-95 and farther, were you a safe
14 distance from the tracks if you -- if a train had been
15 approaching.

16 Answer: [reading] yes, sir.

17 This question by me.

18 [Reading] Mr. Barton, you're not saying that
19 with the front bumper of the car at the cross-buck you
20 could see 95, are you.

21 Answer: [reading] you could see a great
22 distance, I would say, at the cross-buck on that
23 day that I went down there. You could probably see to
24 I-95. And that's with the front bumper at the cross-
25 buck.

1 Answer: [reading] I'm not sure about the front
2 bumper stopped exactly at the cross-buck. It may be
3 beyond the cross-buck. At the -- but at the cross-
4 buck, I could see 95. In other words, standing at the
5 cross-buck.

6 Answer: [reading] yes, sir. And seeing through
7 the foliage there at the stop sign, if you were stopped
8 at the stop sign -- if you -- if you were stopped at
9 the stop sign, would depend upon whether you were
10 stopped; correct.

11 Answer: [reading] yes, sir.

12 MR. PURCELL: Excuse me. Mr. Parker, could you
13 read that question one more time?

14 MR. PARKER: Sure.

15 [Reading] And the seeing through the foliage
16 there at the stop sign, if you were stopped at the stop
17 sign, would depend upon where you were stopped;
18 correct.

19 Answer: yes, sir. Because there's trees in
20 there that block your view.

21 Witness: [reading] there were trees there, yes,
22 sir. And they would block your view.

23 Answer: [reading] they wouldn't completely
24 block you. They didn't have any leaves on them. It
25 was February and you could see through the trees.

1 Question: [reading] well, that depends upon
2 where the trees are in front of you not, doesn't it.

3 Answer: [reading] yes, sir. If there's a tree
4 in front of your line of sight, you can't see through a
5 tree, can you.

6 Witness: [reading] no, sir. You couldn't see
7 through that particular tree, but you could see through
8 another one. And at the stop sign when you were lined
9 up with those -- and at the stop sign when you're lined
10 -- you are lined up with the trees, aren't you.

11 Answer: [reading] yes, sir.

12 MR. PARKER: Thank you.

13 We're going to call Brian Colvin as our next
14 witness.

15 THE COURT: Okay. If you'll please bring him
16 in.

17 [Whereupon, Mr. Brian Colvin enters the
18 courtroom]

19 THE COURT: Mr. Colvin, if you will come right
20 up here, sir.

21 [Whereupon, Mr. Brian Colvin complies]

22 THE COURT: Sir, go ahead and take a seat.

23 [Whereupon, Mr. Brian Colvin takes the witness
24 stand]

25 THE COURT: Mr. Colvin, there is a Bible right

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1 [Whereupon, Miss Lillian Colvin is duly sworn by
2 the Court]

3 THE COURT: All right. If you'll go ahead and
4 take a seat, ma'am.

5 [Whereupon, Miss Lillian Colvin takes the
6 witness stand]

7 THE COURT: I'm going to ask that you speak up.
8 And if you will give the jury your full name, please.

9 THE WITNESS: Lillian Colvin.

10 MR. PARKER: Let me move this microphone a
11 little closer to you. I think we might be able to hear
12 you better.

13 - - - - -

14 LILLIAN COLVIN,

15 Having Been First Duly Sworn,
16 was Examined and Testified as Follows:

17 DIRECT EXAMINATION

18 BY MR. PARKER:

19 Q. Lillian, you're a little bit scared?

20 A. [Indicates affirmatively]

21 Q. Yes?

22 A. Yes, sir.

23 Q. And I asked you when we were coming in were you
24 ready to testify. Are you ready to testify?

25 A. No, sir.

1 Q. And why not?

2 A. I'm scared.

3 Q. And you want to testify correctly, don't you --

4 A. Yes, sir.

5 Q. -- to the best of your ability?

6 I want to ask you some questions about your
7 school work prior to you being hurt. Do you remember the
8 first six grades until you got -- were injured? Do you
9 remember those times?

10 A. Yes, sir.

11 Q. And how were you in school prior to you getting
12 hurt?

13 A. Well, I was an honor roll student.

14 Q. You always did well?

15 A. Yes, sir.

16 Q. And you liked school?

17 A. Yes, sir.

18 Q. And before you got hurt, what did you like to
19 do?

20 A. I liked to go to my uncle's house and go help
21 him and my brother do stuff, and I like to go play
22 basketball with my little cousins.

23 Q. And that was before you got hurt?

24 A. Yes, sir.

25 Q. And did you also like to fish?

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- 1 A. Yes, sir.
- 2 Q. And did you ever catch anything?
- 3 A. Yes, sir.
- 4 Q. Any big ones?
- 5 A. Yes, sir.
- 6 Q. How big a fish did you catch? What's the
7 biggest fish you caught?
- 8 A. I don't know.
- 9 Q. You don't know?
- 10 A. No, sir.
- 11 Q. Tell me. This big?
- 12 A. I would say about that big. I don't know.
- 13 Q. That was a nice one, wasn't it?
- 14 A. Yes, sir.
- 15 Q. How old were you when you caught that fish?
- 16 A. I guess about thirteen.
- 17 Q. Now, you --
- 18 A. Twelve or thirteen.
- 19 Q. All right. Now, how old were you when you got
20 hurt?
- 21 A. Twelve.
- 22 Q. So that fish you caught after you were hurt,
23 that big one, or before?
- 24 A. Before.
- 25 Q. Okay. So you would have been less than twelve

1 when you caught that one?

2 A. Yes.

3 Q. Now, after you -- do you remember getting in the
4 collision?

5 A. No, sir.

6 Q. Do you remember anything about it?

7 A. No, sir.

8 Q. Do you remember waking up at some point in time?
9 Where were you? When's the first thing you remember?

10 A. I don't remember nothing.

11 Q. Do you remember being in the hospital at the
12 Medical University?

13 A. No, sir.

14 Q. Do you remember being in Atlanta?

15 A. No, sir.

16 Q. First thing you know after the collision you
17 were at home?

18 A. Yes, sir.

19 Q. Do you remember being in a wheelchair?

20 A. Yes, sir.

21 Q. And do you remember then having to use a walker?

22 A. Yes, sir.

23 Q. And do you remember going back to school that
24 next fall?

25 A. Yes, sir.

1 Q. And how about when you got back to school. Did
2 you have problems in school?

3 A. Yes, sir.

4 Q. And why was that?

5 A. I don't know. I just -- like I didn't
6 comprehend the work. I didn't understand it real well.

7 Q. And did you have -- did the teachers try to help
8 you there?

9 A. Yes, sir.

10 Q. And you went through the seventh grade and then
11 eighth grade. And in the eighth grade did you have a
12 resource teacher?

13 A. In the eighth grade?

14 Q. Yes.

15 A. I don't think so.

16 Q. Do you remember Ms. Lambright?

17 A. Oh. Yeah.

18 Q. Was she your resource teacher?

19 A. Yes, sir.

20 Q. And you would go there for one class a day?

21 A. Yes, sir.

22 Q. And then you got out of the eighth grade. Do
23 you remember pre-algebra in the eighth grade?

24 A. Yes, sir.

25 Q. And why do you -- why are you laughing about

1 that?

2 A. Huh?

3 Q. Why do -- you're smiling about pre-algebra. Was
4 that hard?

5 A. Yes, sir.

6 Q. And did you fail that?

7 A. Yes, sir.

8 Q. And what happened as a result of failing that?
9 What did you have to do?

10 A. I just did extra work.

11 Q. What was that? Extra work?

12 A. Yes, sir.

13 Q. Do you recall having to go to summer school
14 because of that?

15 A. I don't know.

16 Q. After the eighth grade did you have to go to
17 summer school? Or do you remember?

18 A. No, I don't think so.

19 Q. You don't think you had to go?

20 A. No, sir.

21 Q. And, now, then you got into ninth grade;
22 correct?

23 A. Yes, sir.

24 Q. And how about things in the ninth grade? How
25 were they?

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- 1 A. It was all right, I guess.
- 2 Q. I guess you liked going to high school?
- 3 A. Yes, sir.
- 4 Q. It was good to get out of middle school and get
5 into high school?
- 6 A. Yes, sir.
- 7 Q. And when you got there, did you take English?
- 8 A. Yes, sir.
- 9 Q. Do you remember who your English teacher was in
10 the ninth grade?
- 11 A. Mr. Thomas, I think.
- 12 Q. That's correct. And do you remember that you
13 had some problems in English?
- 14 A. Yes, sir.
- 15 Q. And what happened?
- 16 A. I don't know.
- 17 Q. Did you fail?
- 18 A. Yes, sir.
- 19 Q. And why do you think you weren't able to pass
20 English?
- 21 A. I don't know.
- 22 Q. You don't know why?
- 23 A. No, sir.
- 24 Q. Now, you got out of the ninth grade and you were
25 promoted to the tenth grade; correct?

1 A. Yes, sir.

2 Q. Now, tell me about the tenth grade. How has the
3 work gotten in the tenth grade?

4 A. It got harder.

5 Q. And I believe you were in ROTC?

6 A. Yes, sir.

7 Q. And tell us, what was the ROTC like? What did
8 you do in there?

9 A. We -- like we did drills and we like -- we had
10 to like stand in line and stuff like that. And then I
11 told the teacher I couldn't do stuff like that because of
12 my leg, and then he got -- he said I had to do it. And
13 then I dropped out.

14 Q. So you had to get out of the ROTC?

15 A. Yes, sir.

16 Q. In tenth grade did you also take driver
17 education?

18 A. Yes, sir.

19 Q. And I guess you wanted to drive and still want
20 to drive, don't you?

21 A. Yes, sir.

22 Q. And why do you want to drive?

23 A. So I can get my license one day.

24 Q. You can go see your friends or do whatever?

25 A. Yes, sir.

1 Q. Get out away from home a little bit?

2 A. Yes, sir.

3 Q. And tell us about what happened in driver's
4 education.

5 A. I ain't made the grade in there, and he kicked
6 me out.

7 Q. And that was because you couldn't pass the
8 written test for the driver training?

9 A. Yes, sir.

10 Q. And so you had to leave that class?

11 A. Yes, sir.

12 Q. Now, did you and your mom go to get your -- a
13 learning permit where she could try to help you drive?

14 A. Yes, sir.

15 Q. And tell us about that.

16 A. It took me three times to get it, but I got it.

17 Q. You flunked it the first two times?

18 A. Yes, sir.

19 Q. You passed the third one?

20 A. Yes, sir.

21 Q. And after that, your mom has taken you driving?

22 A. Yes, sir.

23 Q. And she's with you when you drive; is that
24 correct?

25 A. Yes, sir.

1 Q. And I think maybe a cousin has taken you to
2 drive?

3 A. Yes, sir.

4 Q. Anybody else?

5 A. No.

6 Q. And do you have your license yet?

7 A. I ain't old enough.

8 Q. When will you be old enough?

9 A. December the 1st.

10 Q. Are you looking forward to that, if you could
11 get it --

12 A. Uh-huh.

13 Q. -- to getting your license?

14 A. Yes, sir.

15 Q. Now, we've heard testimony about your fried
16 chicken. Can you fix fried chicken?

17 A. I try. My mama help me do it, though.

18 Q. And I think you also said you could cook some
19 rice sometimes?

20 A. Yes, sir.

21 Q. And how is your rice?

22 A. Oh, it be good.

23 Q. And how about your chicken?

24 A. Oh, it be good. My brother, he complained about
25 it. But it be all right, I think.

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1 Q. I noticed that William -- he must eat it, even
2 though he might complain about it.

3 And, now, I want to talk with you a little bit
4 about sneaking out of the house. Have you done that?

5 A. Yes, sir.

6 Q. Now, tell me about that.

7 A. Huh?

8 Q. Tell me about sneaking out of the house.

9 A. I snuck out of the house last year.

10 Q. You think it's last year? And that was in the
11 night?

12 A. Yeah.

13 Q. And how did you know who to meet and where to
14 go?

15 A. They text my phone.

16 Q. Gave somebody -- your boyfriend gave you a text
17 message?

18 A. Yes, sir.

19 Q. And who is your boyfriend now?

20 A. At that time?

21 Q. Yeah.

22 A. [No response]

23 Q. You don't want to tell his name?

24 A. No, sir.

25 Q. He's not your boyfriend anymore, is he?

1 A. No, sir.
2 Q. And how many times did you do that?
3 A. Twice.
4 Q. And then your mom found out about it?
5 A. Yes, sir.
6 Q. You were in big trouble?
7 A. Yes, sir.
8 Q. You know you shouldn't have done that?
9 A. Yes, sir.
10 Q. And what was your grades last year in school?
11 Do you remember?
12 A. In the tenth grade?
13 Q. Yeah. What kind of grades did you make?
14 A. I can't recall right now.
15 Q. Or what? You don't know --
16 A. I don't know.
17 Q. -- what they were?
18 A. [Indicates negatively]
19 Q. Now, I want to ask you a little bit about the
20 computer. Do you like to use the computer?
21 A. Yes, sir.
22 Q. And that's fun?
23 A. Uh-huh.
24 Q. And I believe that you go on some Web sites and
25 chat rooms; is that right?

1 A. Yes, sir.
2 Q. And is one of them Urban Chat?
3 A. Yes, sir.
4 Q. Now, when they -- Mr. Harmon there asked you
5 some questions, he asked you if you were -- had been on
6 Urban Chat. And what did you tell him?
7 A. I said no. I meant to change it, though.
8 Q. That wasn't right, was it?
9 A. Huh-uh. I meant to change it, though.
10 Q. You just happened to answer it wrong?
11 A. Yes.
12 Q. I think we could tell on there. You knew that
13 was wrong, didn't you?
14 A. Uh-huh.
15 Q. And but you asked -- you just meant to go back
16 and tell him?
17 A. Yes, sir.
18 Q. Now, do you have a lot of friends?
19 A. Yes.
20 Q. Girlfriends?
21 A. Yes, sir.
22 Q. And you've got a boyfriend?
23 A. Yes, sir.
24 Q. And what's his name?
25 A. Will. His last --

1 Q. What's your boyfriend's name?

2 A. His name's William.

3 Q. William?

4 A. Yes, sir.

5 Q. And where does he live?.

6 A. In Walterboro.

7 Q. And is he good looking?

8 A. Yeah.

9 Q. Does he think you're good looking?

10 A. Yes.

11 Q. And how long have you had this boyfriend?

12 A. We've only been talking for a couple of weeks
13 right before now.

14 Q. And have you been out on a date with him?

15 A. Not yet.

16 Q. Do you want to go out on a date with him?

17 A. Yes, sir.

18 Q. And do y'all text message each other?

19 A. Yes, sir.

20 Q. And tell me about your foot, now. Your foot,
21 how is it doing?

22 A. It's still -- I can't move it or nothing, but
23 it's all right, I think.

24 Q. Can you pick it up? Can you make your foot come
25 up if you want to? Will your right foot come up?

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1 A. Huh-uh.

2 Q. And you can't -- if you try to tell your foot to
3 move and come up, it won't do it?

4 A. No.

5 Q. And does it swell up?

6 A. Uh-huh.

7 Q. And I believe you've got a brace that you have
8 to wear on that foot?

9 A. Yes, sir.

10 Q. And you don't like to wear that brace?

11 A. No, sir. My mama said I can't put it on now
12 because it swell up and it won't go in there. And if I
13 put it in there, it hurts.

14 Q. It hurts if you put it on? Is that's why you
15 don't wear it? Or you don't like to wear it because you
16 think the boys might not like it?

17 A. I don't put it on there because it hurts.

18 Q. Because it hurts?

19 A. Yeah.

20 Q. How about your other foot? Does it hurt you,
21 too?

22 A. Sometimes -- my ankle hurts sometime.

23 Q. That's your left ankle?

24 A. Yes, sir.

25 Q. And do you read any books or anything like that?

1 A. Yes, sir.

2 Q. Do you like to read still?

3 A. Yes, sir.

4 Q. What kind of books do you read?

5 A. I got books at my house on my desk.

6 Q. Do you know the names of them?

7 A. I forgot the name of my books. I got two of
8 them, though.

9 Q. You've got two on your desk?

10 A. Yes, sir.

11 Q. And who helps you with your homework?

12 A. When I have some, either my brother or my mama
13 help me with it.

14 MR. PARKER: Answer any questions these
15 gentlemen may have for you.

16 MR. HARMON: Hi, Lillian.

17 THE WITNESS: Hey.

18 MR. HARMON: Your Honor, I don't have any
19 questions.

20 THE COURT: Mr. McLeod?

21 MR. MCLEOD: No questions, Your Honor.

22 THE COURT: All right. You may step down, Miss
23 Colvin. Thank you.

24 MR. PARKER: See? That wasn't so bad, was it?

25 THE WITNESS: [No response]

1 MR. PARKER: Oh. You're not going to answer.

2 [Whereupon, Miss Lillian Colvin is excused and
3 exits the witness stand]

4 MR. PARKER: Your Honor, at this time we would
5 like to play the video deposition of Thomas Schmidt
6 that was taken in the case of Hartley vs. CSX
7 Transportation on --

8 THE COURT: Okay. Yes.

9 MR. PARKER: -- April 25th, 2003.

10 THE COURT: Before you start that, Felicia --

11 Ladies and gentlemen, you are now going to hear
12 testimony that was given, back in April of 2000 in a
13 different case, by a man by the name of Thomas Schmidt,
14 who was an employee of CSX back at that time.

15 Ladies and gentlemen of the jury, this testimony
16 has absolutely no bearing on whether or not the
17 defendants are responsible for Lillian Colvin's
18 accident. This deposition was taken and given back in
19 2000, which was before Lillian's accident ever
20 occurred.

21 Again, this evidence is only to be considered by
22 you to determine if punitive damages are appropriate
23 and for absolutely no other purposes. All right?

24 So with that said, if you'll go ahead and cue it
25 up. Thank you.

1 THE WITNESS: Good morning.

2 - - - - -

3 LARRY W. BISER,

4 Having Been First Duly Sworn,

5 was Examined and Testified as Follows:

6 DIRECT EXAMINATION

7 BY MR. HARMON:

8 Q. Mr. Biser, did you see the accident involving
9 Ms. Colvin's Ford Explorer and the train on February 3rd,
10 2004?

11 A. Yes, sir, I did.

12 Q. And did you see where Ms. Colvin stopped before
13 attempting to cross the tracks that day?

14 A. Yes, sir, I did.

15 Q. Sir, before we go into those two issues, let's
16 talk a little bit about your background. Where do you
17 live?

18 A. 271 Yemassee Highway.

19 Q. And how long have you lived there?

20 A. About fourteen years.

21 Q. Where do you work?

22 A. Dixie Poly Drum Corporation.

23 Q. And can you tell the jury where that is?

24 A. Straight across from my house --

25 Q. Okay. And --