

**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. IV

Carl H. Jacobson
Uricchio, Howe, Krell, Jacobson,
Toporek, Theos, & Keith, P.A.
P.O. Box 399
Charleston, SC 29402-0399

-And-

John E. Parker
J. Paul Detrick
Grahame E. Holmes
Matthew V. Creech
Peters, Murdaugh, Parker,
Eltzroth & Detrick, P. A.
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PETITIONER

Thomas Vanderbloeman
Ronald K. Wray, II
Gallivan White & Boyd, PA
P.O. Box 10589
Greenville, SC 29603

J. Arthur Davison
James W. Purcell
Fulcher Haggler, LLP
P.O. Box 1477
Augusta, GA 30903

ATTORNEYS FOR CSXT

Andrew Lindemann
Peden B. McLeod
Davidson & Lindemann, P.A
P.O. Box 8568
Columbia, SC 39303-8568

ATTORNEYS FOR SCDOT

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for Lillian C., a minor Appellant,**

v.

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

RECORD ON APPEAL – VOL. IV

Ronald K. Wray, II, Esq.
Gallivan White & Boyd, PA
P.O. Box 10589
Greenville, SC 29603

-- & --

J. Arthur Davison, Esq.
James W. Purcell, Esq.
Fulcher Hagler, LLP
P.O. Box 1477
Augusta, GA 30903

ATTORNEYS FOR CSXT, INC.

Peden B. McLeod, Esq.
McLeod, Fraser, & Cone
P.O. Box 230
Walterboro, S.C. 29488

-- & --

Andrew F. Lindemann, Esq.
Davidson & Lindemann, P.A.
P.O. Box 8568
Columbia, S.C. 29202-8568

ATTORNEYS FOR SCDOT

John E. Parker
J. Paul Detrick
Grahame E. Holmes
Matthew V. Creech
Peters, Murdaugh, Parker,
Eltzroth & Detrick, P.A.
Post Office Box 457
Hampton, South Carolina 29924

-- & --

Carl H. Jacobson
Uricchio, Howe, Krell,
Jacobson, Toporek, Theos &
Keith, P.A.
Post Office Box 399
Charleston, South Carolina 29401

ATTORNEYS FOR APPELLANT

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 --

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- 1 A. -- in Yemassee.
- 2 Q. All right. How long have you lived there?
- 3 A. I've lived in Yemassee for twenty-two years.
- 4 Q. And how long have you worked at the Dixie Poly
- 5 Drum plant?
- 6 A. A little over twenty-one years.
- 7 Q. Can you tell us what your title is at the Dixie
- 8 Poly Drum plant?
- 9 A. Production manager.
- 10 Q. And what does Dixie Poly Drum plant make?
- 11 A. We manufacture plastics, rotational molding.
- 12 Q. How many people work out there?
- 13 A. We have about twenty hourly employees.
- 14 Q. Now, during the time you've been the manager out
- 15 there, have you done volunteer work in the community?
- 16 A. Yes, sir, I have.
- 17 Q. And can you tell us what that is?
- 18 A. A volunteer for Yemassee Fire Department.
- 19 Q. How long did you do that?
- 20 A. About twelve years.
- 21 Q. Have you been in the military?
- 22 A. Yes, sir, I have.
- 23 Q. How long?
- 24 A. Four years. The army.
- 25 Q. I want to talk now about the crossing. You said

1 that the crossing is how far from your house?

2 A. About 200 yards. No, it's not that far. It's
3 about 200 feet.

4 MR. HARMON: Tell you what. Can you come over
5 here, Mr. Biser, just for a second?

6 [Whereupon, the witness complies]

7 Q. [Mr. Harmon] All right. This is a map of the
8 crossing. Show the jury on the map where the plant is,
9 the Dixie Poly Drum plant.

10 A. It's right in here.

11 Q. Okay. And then near the plant is there -- or
12 connected to it, is there a parking lot there?

13 A. Yes.

14 Q. And this is Dixie Poly Drive that goes out to
15 the road?

16 A. Correct.

17 Q. Where is your house in relationship to this
18 crossing?

19 A. Probably right about here.

20 Q. Okay. Now, let me be clear. This is Highway
21 68. Are you on this side, or are you on this side?

22 A. The far side.

23 Q. Okay. How many feet from your house to where
24 this crossing is?

25 A. I would say it's about 200 feet.

1 Q. 200 feet.

2 All right. And in terms of the crossing, how
3 often have you crossed this particular crossing?

4 A. Six, seven, eight times a day every day.

5 Q. And that's been for the entire time you've lived
6 there?

7 A. Yes, sir.

8 Q. All right. During the time that you've lived
9 here, have you ever had any problems crossing this
10 particular crossing?

11 A. No, sir.

12 Q. When you've approached this crossing have you
13 ever had any problems seeing coming trains?

14 A. No, sir.

15 Q. I am talking exclusively on or before the time
16 of this accident. Were you aware of any accidents
17 occurring at this particular crossing?

18 A. No, sir.

19 MR. HARMON: All right. Thank you, sir. You
20 can have a seat.

21 [Whereupon, the witness complies]

22 Q. [Mr. Harmon] Have you ever heard of any
23 accident occurring at this crossing --

24 A. No, sir.

25 Q. -- on or before the time of this accident?

1 All right. And have you ever felt that this
2 particular crossing wasn't safe?

3 A. No, sir.

4 Q. All right. Let's talk about Mr. Terry and
5 Ms. Colvin. Do you know Mr. Carlos Terry?

6 A. Yes, sir, I do.

7 Q. And how do you know him?

8 A. He's an employee of mine.

9 Q. And on the date of this accident did you know
10 Mr. Terry?

11 A. Yes, sir.

12 Q. How about Ms. Colvin? Do you know Ms. Colvin?

13 A. I know her briefly. At the time of the accident
14 I didn't know her, but I know her a little better now.

15 Q. All right. How about, at the time of the
16 accident, were you aware that she would pick up Mr. Terry
17 from the plant?

18 A. Yes, sir.

19 Q. And how were you aware of that?

20 A. I've seen her vehicle come out there twice a day
21 and drop him off and pick him up in the evenings.

22 Q. Okay. I want to turn now, Mr. Biser, and talk
23 about the day of the accident, February 3rd, 2004. Were
24 you at work that day?

25 A. Yes, sir, I was.

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1 Q. What time would you have arrived at work?

2 A. Probably six o'clock in the morning.

3 Q. And what time do you get off of work?

4 A. 4:30 in the afternoon.

5 Q. All right. And did you get off of work around
6 4:30 that day?

7 A. Yes, sir.

8 Q. And did you get in your car?

9 A. Yes, sir. I got in my truck.

10 Q. Okay. And what kind of truck do you have?

11 A. '89 GMC.

12 Q. What happened once you got in your truck?

13 A. Just left. Everybody was knocking off at the
14 same time -- Carlos and his girlfriend was in front of
15 me -- so we went out of the driveway, come to a stop sign
16 at the end of the driveway on Hill Road, took a left.

17 Q. All right. Can you stop right there, just so
18 we're clear.

19 You said you followed -- you came in behind Mr.
20 Terry and Ms. Colvin in the green Ford Explorer?

21 A. Correct.

22 Q. And then you pulled behind them and you stopped
23 right here on Hill Road?

24 A. [No response]

25 Q. Can you see that?

1 A. Okay. Yeah. That's correct.

2 Q. So you stopped right here?

3 A. Yes, sir.

4 Q. All right. And were you behind them when they
5 stopped?

6 A. Yes, sir, I was.

7 Q. What happened after that?

8 A. They turned to the left and I turned to the
9 left.

10 Q. Okay. Tell us what happened. Tell the jury
11 what happened.

12 A. Okay. As we was approaching Highway 68, you
13 could see -- you could hear the train blowing its horn and
14 you could see the train coming through the trees briefly.
15 And she stopped at the stop sign; I stopped behind her;
16 she pulled up to the white line and she just sat there;
17 and I put my truck in park and shut it off. And next
18 thing I know her brake lights went out and across the
19 tracks she went in front of the train.

20 Q. When you were coming and following Ms. Colvin,
21 when did you first hear the horn?

22 A. Almost immediately of getting in the vehicle,
23 you could hear it.

24 Q. So you heard it along Dixie Poly Drive?

25 A. Correct.

1 Q. What happened after Ms. Colvin pulled in front
2 of the train?

3 A. Well, I didn't know whether she had made it or
4 not, because the train was blowing its horn. I mean, I
5 didn't hear no impact. And I was sitting there, and for
6 some reason I just looked down and I seen Mr. Terry laying
7 on the ground by the train tracks.

8 Q. Now, when you say you saw him laying on the
9 ground on the train tracks: on the same side of the road
10 that you were on?

11 A. No, sir. He was on the opposite side.

12 Q. Okay. And how did you see him?

13 A. Just between the wheels on the train.

14 Q. Okay. What did you do?

15 A. I got out of my truck and I rushed up to him.
16 He started moving and I started yelling his name and
17 telling him, don't move, stay there.

18 Q. Why did you do that?

19 A. I didn't want him to crawl underneath the train
20 while it was still rolling.

21 Q. Okay. What happened after that?

22 A. When the train stopped I got up, went back to
23 the crossing and I jumped through the center of the train,
24 over the top of it, not under the wheel, and I went over
25 and I helped Mr. Terry back to his vehicle.

1 Q. What happened when you got -- when you helped
2 him back to the vehicle?

3 A. Really not a whole lot. His head was bleeding.
4 His girlfriend had come around the other side. I don't
5 know how she got out of the vehicle. But she had come
6 around, and she was very upset and wanting to get her
7 daughter out of the truck.

8 Q. And what did you do?

9 A. I didn't realize the child was in there, and I
10 opened the door and I looked and I seen the child there
11 and I told her she could not move that child.

12 Q. Did you attempt to get a pulse?

13 A. Yes, sir, I did.

14 Q. And where did you get the pulse?

15 A. From her neck.

16 Q. And she obviously -- she had a pulse?

17 A. Yes, sir, she did.

18 Q. And what happened after you had attempted to get
19 the pulse?

20 A. Not a whole lot. Tonia, Ms. Tonia, she got a
21 little irate and wanted to kick my ass for not letting her
22 get her daughter out of the truck.

23 Q. And why weren't you -- why weren't you letting
24 her get her daughter out of her truck?

25 A. Because she could die or she could be paralyzed

1 from moving her, not knowing the injuries.

2 Q. So what did you do next?

3 A. I just stayed put with the child until EMS
4 arrived.

5 Q. And did EMS arrive?

6 A. Yes, sir, they did.

7 Q. And then what happened after that?

8 A. When they approached the vehicle I just -- I got
9 out of the way, because I know they know what they was
10 doing.

11 Q. Okay. And was there a request made from someone
12 else for you to get something?

13 A. Yes, sir, there was. Carlos had asked me for a
14 cell phone. And I didn't have my phone with me, so I run
15 to my house and run back with my cell phone so he could
16 call family.

17 Q. And you gave it to Mr. Terry?

18 A. Yes, sir, I did.

19 Q. I want to show you some photographs here now,
20 Mr. Biser.

21 Prior to the date of this accident had you ever
22 been stopped at the stop sign and had someone stop in
23 front of you at the stop line?

24 A. I'm sure I have.

25 Q. Okay. And you said you've gone across those

1 tracks five or six times, I think you said, a day?

2 A. Correct.

3 MR. HARMON: Can we put up CSX 2.7.

4 Q. [Mr. Harmon] All right. Can you see that? If
5 you look on the --

6 THE COURT: Or you can stand up. Which ever is
7 easier, sir.

8 THE WITNESS: I'm fine.

9 Q. [Mr. Harmon] All right. Tell the jury what
10 this is.

11 A. That's the entrance to Highway 68, off of Hill
12 Road.

13 Q. Okay. And that's going in the direction to the
14 crossing that you were going that day; correct?

15 A. That is correct.

16 Q. All right. And as you're approaching the stop
17 sign, you can see the stop line?

18 A. Yes, sir.

19 MR. HARMON: All right. Can we go to the next
20 photograph, two point -- I'm sorry. 2.8.

21 Q. [Mr. Harmon] All right. And, again, this is
22 behind the stop sign as you approach the stop line --

23 A. Correct.

24 Q. -- is that right?

25 A. Yes, sir.

1 Q. All right. And where is it that you saw
2 Ms. Colvin stop that day, sir?

3 A. It appeared that her bumper should have been
4 right at that white line, her front bumper.

5 Q. And is that where you saw her before she
6 attempted -- when she ran out in front of the train?

7 A. Yes, sir.

8 MR. HARMON: We can have the lights, please.
9 Please answer any questions Mr. Parker has for
10 you.

11 MR. PARKER: Thank you.

12 THE WITNESS: Yes, sir.

13 MR. PARKER: Mr. Biser, let me get over here a
14 little bit. I hope business is good.

15 THE WITNESS: It's booming.

16 MR. PARKER: Good. Good.

17 CROSS-EXAMINATION

18 BY MR. PARKER:

19 Q. Now, you've testified -- I think I heard you say
20 that you heard the horn as you were coming down Dixie Poly
21 Drum Drive; is that correct?

22 A. Yes, sir.

23 Q. I want to talk with you about that in a minute.
24 But you had your windows rolled down, didn't you?

25 A. Not all the way.

1 Q. You didn't remember how much you had them down,
2 did you?

3 A. No. I'm a smoker. But I know I had it down
4 some, yeah.

5 Q. You might have had it down all the way?

6 A. I may have.

7 Q. And you don't really remember that?

8 A. No, sir, I don't.

9 Q. But you know you had them down because you're a
10 smoker?

11 A. Right.

12 Q. And if you've got the windows down you can hear
13 the horn better on the train, can't you?

14 A. Well, I imagine so.

15 Q. And the horn was not constantly blowing, it was
16 on and off; correct?

17 A. At what time, sir?

18 Q. When you heard it.

19 A. Well, when I heard it, it was probably up
20 close to Main Street when I was coming out of Dixie Poly
21 Drive --

22 Q. But you heard it blowing off and on; right?

23 A. Correct.

24 Q. It was breaking?

25 A. Right.

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1 Q. And Ms. Colvin came up to the stop sign and
2 stopped; correct?

3 A. Correct.

4 Q. And when she stopped, to her right her view of
5 the train was blocked by trees; correct?

6 A. I don't know. I didn't see through her eyes.

7 Q. Well, I mean, you've been -- you testified you
8 went over there seven or eight times a day. When you stop
9 at that stop sign, you can't see through those trees, can
10 you?

11 A. I can't -- I'm not saying that she -- I can't
12 tell you what she seen. All I know is what I seen.

13 Q. Well, if you're far back -- as you're coming
14 down Dixie Poly Drum -- and a train gets close there, you
15 can see it through the trees --

16 A. Correct.

17 Q. -- correct?

18 But if you're lined up with those trees where
19 it's to your right as it's approaching, you can't see it,
20 can you?

21 A. You can still see it as far as Family Dollar.

22 Q. Well, that's about, what, 100 feet to the
23 parking lot?

24 A. Probably so.

25 Q. So you've got a view of about 100 feet from the

1 stop sign; is that correct?

2 A. From the stop sign?

3 Q. Yeah, the stop sign.

4 A. Yes, sir.

5 Q. And that's not adequate --

6 A. I mean, I don't know.

7 Q. That's not adequate sight distance, is it?

8 A. Well, I don't know. But she didn't leave from
9 the stop sign. She left from that white line.

10 Q. She did. She left from the stop sign first;
11 right?

12 A. Correct.

13 Q. She stopped at the stop sign?

14 A. Yes, sir, she did.

15 Q. Then she proceeded?

16 A. Yes, sir.

17 Q. And she moved up about ten to twelve feet;
18 correct?

19 A.. However -- wherever that line is.

20 Q. Well, you have testified or given a statement
21 previously she moved up ten to twelve feet; isn't that
22 correct?

23 A. She moved up to that white line.

24 Q. Did she move up ten to twelve feet?

25 A. She moved up to the white line.

1 Q. Did she move -- have you previously given a
2 statement that she moved up ten to twelve feet?

3 A. I don't know how far that line is.

4 Q. Have you previously --

5 A. She moved up to the line.

6 Q. Answer my question and then you can explain it.

7 A. She moved up to the line, sir. I don't know how
8 far the distance is.

9 Q. Did she -- have you given a statement that she
10 moved up ten to twelve feet?

11 A. I don't remember, sir.

12 Q. You don't remember giving a statement?

13 A. No, sir.

14 Q. Have you seen --

15 A. Not stating that.

16 Q. -- your statement? Have you seen your
17 statement?

18 A. I have a copy of it. Yes, sir.

19 Q. Well, when did the railroad give it to you?

20 A. I'm not sure.

21 Q. Do you remember when we took your deposition?

22 A. Yes, sir, I do.

23 Q. And do you remember at that time that you didn't
24 have a copy of your statement?

25 A. Yes, sir, I do.

1 Q. And do you remember that they wouldn't give me a
2 copy of the statement?

3 A. I don't know. I just know I didn't have one.

4 Q. Well, didn't I ask them for one?

5 A. I'm not sure.

6 Q. Have you read your deposition?

7 A. Yes, sir.

8 Q. And didn't -- you read that part in there where
9 I asked them for the statement, didn't you?

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

11 Q. You didn't read that part of the deposition?

12 A. I don't think I did, sir.

13 Q. Okay. I'm going to call your attention -- and
14 I'm going to hand you your deposition.

15 MR. PARKER: Let's put up page 20, line 15
16 through 24.

17 Q. [Mr. Parker] And in the deposition you
18 testified that if you stopped at the stop sign -- where
19 you can't see because of the trees; isn't that correct.
20 And you said: [reading] yes, sir. And once you stop at
21 the stop sign, you got to move forward before you can see
22 through there.

23 Answer: [reading] pretty much. And as you move
24 forward, you can see farther the farther you get toward
25 the tracks.

1 Is that correct?

2 A. Yes, sir, it is.

3 Q. Now, when you -- you said emphatically in your
4 testimony today -- I think I asked you that about five or
5 six times. And even though I didn't ask you about where
6 she stopped, you said at the stop line. And I asked you
7 about whether --

8 A. Yes, sir.

9 Q. -- you had given a statement. And your answer
10 was she stopped at the stop line.

11 A. Correct.

12 Q. Now, you weren't near as emphatic at your
13 deposition, were you, about where she stopped?

14 A. Excuse me?

15 Q. You weren't near as emphatic at your deposition
16 about where she stopped.

17 A. I don't -- I don't understand what you're trying
18 to say.

19 Q. What I'm trying to say is you weren't quite
20 certain at your deposition where she stopped.

21 A. Yes, sir, I was.

22 Q. You said you made an estimate; correct?

23 A. It was an estimate.

24 Q. Page 21, line 3 through 25. And you've got a
25 copy of it there. You can look at it.

1 MR. HARMON: Objection.

2 A. What page is that, sir?

3 THE COURT: Hold on a second, Mr. Parker.

4 Q. [Mr. Parker] Page 21, line 3 through 25.

5 THE COURT: Basis?

6 MR. HARMON: Objection. Rule of completeness.

7 He's testified various times in the deposition about
8 the stop line. He's picking out one selective spot.

9 THE COURT: Okay. This is cross-examination.
10 We're going to go ahead and allow it.

11 You've got a copy of your deposition, sir.

12 THE WITNESS: Okay.

13 THE COURT: Can you read that?

14 THE WITNESS: Yeah. I just don't know where to
15 look.

16 THE COURT: All right. Mr. Parker, just orient
17 him to the page, sir.

18 Q. [Mr. Parker] Page 21, line 3 through 25.

19 A. 3 through 25.

20 [Whereupon, the witness reviews documents]

21 A. All right.

22 Q. [Mr. Parker] And in the deposition, if you'll
23 look down there, I asked you, I said -- you said -- I'm
24 going to read the first question.

25 [Reading] Now, when Ms. Colvin stopped the

1 second time, as you've testified to and you said she
2 stopped at the stop line, since her vehicle was in front
3 of you, do you know how close she was to the stop line.

4 And you said: [reading] not exactly. I mean,
5 it looked like to me she was stopped right at the line. I
6 would say her bumper was at the line.

7 Question: [reading] that's an estimation,
8 though.

9 Answer: [reading] oh, yeah. Obviously, you are
10 looking from behind her and her vehicle would be blocking
11 your view.

12 Your answer was: [reading] correct.

13 And then I asked you: [reading] there is a
14 cross-buck there. What is the relationship of the
15 cross-buck to the white line. I'm not sure. I've never
16 paid much -- close attention to it there. Do you know if
17 she stopped behind the cross-buck the second time, or
18 right at the cross-buck. I would say she stopped right at
19 the line. Whether it's in conjunction with that
20 cross-buck, I'm not sure. That is your best estimate.

21 Answer: [reading] right.

22 Now, those were estimates, right, because you
23 could not see the white line, could you?

24 A. The white line extended past --

25 Q. You couldn't see it --

1 A. -- her vehicle.
2 Q. -- could you?
3 A. The white line extended past her vehicle, sir.
4 Q. It extended past the vehicle?
5 A. Yes, sir.
6 Q. And you saw it that day, or you remember that
7 now?
8 A. I seen it that day.
9 Q. You remember -- why were you studying the white
10 line?
11 A. Because she was stopped at it.
12 Q. And you didn't know anything was going to
13 happen, but you were there studying where she was at the
14 white line?
15 A. I didn't push her out in front of that train,
16 sir.
17 Q. Do what?
18 A. I did not push her out in front of that train.
19 Q. Oh. You think I'm accusing you of pushing her
20 in front of the train?
21 A. It sounds like that's what you're getting to.
22 Q. And how would you push her in front of the
23 train?
24 A. I don't know.
25 Q. I don't, either.

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1 A. That's what you're acting like I did.

2 Q. You'll have to explain that to me. Go ahead and
3 explain that.

4 A. I don't -- I don't need to explain it. I didn't
5 push her out in front of that train. She drove in front
6 of that train.

7 Q. Well, you thought you were pretty close to her,
8 and that's why you just said that, wasn't it? You knew
9 you were pretty close to her?

10 A. No, sir.

11 Q. Wasn't much distance, was there?

12 A. I don't know how much distance there was between
13 her vehicle and mine.

14 Q. It wasn't much, though, was it?

15 A. I was at the stop sign.

16 Q. It wasn't much, was it?

17 A. I don't know, sir.

18 Q. Was it ten feet?

19 A. Probably. I didn't say ten feet, but it may
20 have been. It may have been twenty foot.

21 Q. You don't know what it was?

22 A. No, sir, I don't. I've never measured it.

23 Q. But you can testify the relationship from behind
24 her where she was at the white line, but you don't know
25 how much distance there was between y'all's two vehicles;

1 correct?

2 A. Correct.

3 Q. Now, did you have the passenger-side window down
4 also?

5 A. No, sir.

6 Q. Are you sure of that?

7 A. Yes, sir.

8 Q. Only the driver's side?

9 A. Yes, sir. I'm not saying it was all the way
10 down.

11 Q. Because you don't know one way or the other?

12 A. No, sir.

13 Q. All right. Now, early on in this thing you met
14 with the railroad; correct?

15 A. Yes, sir, I have.

16 Q. And you've met with them a number of times since
17 then?

18 A. A couple of times, sir.

19 Q. Two times?

20 A. Three.

21 Q. Three times.

22 Three different occasions you've met with the
23 railroad?

24 A. Yes, sir.

25 Q. The first time you met with Mr. Hedden, the

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1 claim's representative; correct?

2 A. Yes, sir.

3 Q. And he came to your place of business and took a
4 statement from you?

5 A. Correct, sir.

6 Q. You didn't get a copy of the statement?

7 A. I'm not sure, sir.

8 Q. You testified at your deposition you didn't have
9 a copy.

10 A. I don't remember.

11 Q. You don't remember when you got it?

12 A. [No response]

13 Q. The second time you met with the railroad, where
14 were you?

15 A. I'm not sure, sir.

16 Q. Who did you meet with?

17 A. I met with you up there one time.

18 Q. You met me at your deposition.

19 A. I met you at Dixie Poly Drum, too.

20 Q. I came by there to talk with you.

21 A. Correct.

22 Q. And the -- when is the third time you met with
23 the railroad?

24 A. Last week.

25 Q. Get your testimony -- talk about your testimony

1 here today?

2 A. No, sir.

3 Q. They didn't talk about your testimony?

4 A. No, sir. We went over my deposition. That was
5 it.

6 Q. Okay. They just reviewed your deposition with
7 you?

8 A. Correct.

9 Q. Now, when you met with Mr. Hedden, who was there
10 other than Mr. Hedden?

11 A. I'm not sure, sir.

12 Q. Now, let me ask you: you're right there at that
13 crossing. Did you also participate in a reenactment that
14 the railroad did there?

15 A. No, sir.

16 Q. Did you go out there while they were doing the
17 reenactment?

18 A. No, sir. I know nothing about it.

19 Q. Did you give them any information for the
20 reenactment?

21 A. I know nothing about it, sir.

22 Q. You didn't have any input into that?

23 A. No, sir.

24 Q. You didn't see the train up there, where they
25 parked the train or anything?

1 A. No, sir.

2 Q. You were at work there but didn't have any
3 involvement with that?

4 A. Correct.

5 Q. Now, on page 25, line 1 through 14 of your
6 deposition, I asked you at that time about the statement
7 you had given; correct?

8 A. Correct.

9 Q. And I asked you do you remember the name of the
10 fellow you talked with, and he said that -- you said that
11 you got his card. And you got it out; correct?

12 A. Correct.

13 Q. And I asked you: [reading] do you have a copy
14 of the statement. And Mr. Davison that was there --

15 MR. HARMON: Your Honor, objection. May I
16 approach?

17 THE COURT: Sure.

18 [Whereupon, an off-the-record bench conference
19 is held]

20 Q. [Mr. Parker] Mr. Biser, at your deposition you
21 were there when I asked you if you had a copy of your
22 statement. You said, no. I asked CSX's attorney for a
23 copy of the statement, and he said he had one but it was
24 marked up and didn't give it to me. You recall that,
25 don't you?

1 A. No, I don't recall that. But I read that.

2 Q. That's what it says, doesn't it?

3 A. That's what it says.

4 Q. And did CSX advise you in your preparation, your
5 meetings with them, that we had to get a court order to
6 get your statement?

7 MR. HARMON: Objection, Your Honor.

8 THE COURT: Sustained. It's just not an
9 appropriate question, Mr. Parker.

10 Ladies and gentlemen, just disregard that last
11 question. It's not appropriate.

12 Q. [Mr. Parker] And the -- let's go to your
13 statement now. And have you reviewed it? And I'll hand
14 you a copy of it.

15 [Whereupon, Mr. Parker proffers documents to the
16 witness]

17 Q. [Mr. Parker] You've reviewed this for your
18 testimony here today, haven't you?

19 A. Sir?

20 Q. You've reviewed your statement?

21 A. I have looked at it, yes, sir.

22 Q. And in that statement there's a couple of things
23 I want to ask you about. On page 2 of it. And in the
24 statement where it says, Biser: [reading] you testified
25 earlier on direct examination you heard it going down the

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1 drive.

2 Correct?

3 A. Correct.

4 Q. And in your statement you said: [reading] as we
5 were leaving out of the driveway, I heard the train
6 blowing its horn.

7 I think it's supposed to say when we got out on
8 Hill Street. Correct?

9 A. No, sir.

10 Q. That's not correct? That's not what you told --

11 A. It says right there: [reading] as I was leaving
12 out the driveway.

13 Q. It says: [reading] the best of my knowledge --

14 A. The driveway's there at the plant.

15 Q. -- [reading] as we were leaving out of the
16 driveway, I could hear the train blow its horn, and we got
17 out on Hill Road.

18 A. That's correct. You could hear it there, too.

19 Q. So you think you heard it as you -- how far up
20 the driveway were you?

21 A. As soon as we come out of there in the parking
22 lot, it's wide open there. When I first heard that horn,
23 it was probably up around Main Street.

24 Q. And, now, you can't judge that distance?

25 A. Well, no, I can't judge that, but I -- I mean, I

1 heard the horn.

2 Q. You just heard the horn; right?

3 A. Correct.

4 Q. And then let's go to the one, two, three, fourth
5 page and the bottom of the third page. You said:
6 [reading] so they stopped at the stop sign. They came to
7 a complete stop at the stop sign.

8 That was the question asked of you. Right?

9 A. Correct.

10 Q. That's the next page.

11 And then you said: [reading] and then eased up
12 to there's a white line that I'm guessing is about ten to
13 twelve feet past that.

14 Correct?

15 A. Correct.

16 Q. So they eased up about ten to twelve feet?

17 A. They moved up to the white line, wherever that
18 is.

19 Q. Well, did they ease up ten to twelve feet?

20 A. They moved -- they eased up to the white line,
21 sir.

22 Q. All right. And you've been insistent on that, I
23 know, and so I wanted to talk with you a little bit about
24 it because you've testified that your view of the front of
25 you was blocked; correct?

1 A. No, sir, I didn't testify to that.

2 Q. You testified that the vehicle blocked it. We
3 just went over your deposition.

4 A. It's partially blocked, not totally blocked.

5 Q. All right. Well, I want to look at some
6 pictures with you.

7 MR. PARKER: I'm going to give these gentleman a
8 copy of them before we proceed.

9 [Whereupon, Mr. Parker proffers documents to
10 defense counsel]

11 MR. PARKER: I'm going to put on the screen what
12 has been marked as Exhibit 65 and ask you some
13 questions about it.

14 MR. HARMON: Your Honor, I'm sorry. May we
15 approach on these?

16 THE COURT: Sure.

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

19 THE COURT: All right. Ladies and gentlemen of
20 the jury, at this time I've got to take up a matter of
21 law with the attorneys. I'm going to go ahead and send
22 you back to your jury room. Grab a cup of coffee, and
23 we'll be back with you shortly.

24 Again, do not begin discussing this case. It
25 wouldn't be appropriate to do so at this time. We will

1 be with you shortly.

2 [Whereupon, the jury exits the courtroom at
3 11:26 a.m.]

4 THE COURT: Okay. Mr. Parker, it's my
5 understanding that you want to do this outside the
6 presence of the witness. Is that correct, sir?

7 MR. PARKER: That's correct, Your Honor.

8 MR. HARMON: And that's totally acceptable.
9 That's fine.

10 THE COURT: Okay. Mr. Biser, I need to take up
11 a matter of law with the lawyers so what I'm going to
12 ask you to do, if you would just go back and join
13 Murphy back there for just about five minutes and we'll
14 bring you back in when we're ready. Okay, sir?

15 THE WITNESS: Yes, ma'am. Thank you.

16 THE COURT: I appreciate it.

17 [Whereupon, the witness exits the courtroom at
18 11:27 a.m.]

19 MR. HARMON: Your Honor --

20 THE COURT: Why don't you show me the photos --

21 MR. HARMON: Sure.

22 THE COURT: -- someone.

23 And I understood that our topic we were getting
24 to was the stop line; correct?

25 MR. HARMON: Right.

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1 [Whereupon, Mr. Harmon proffers documents to the
2 Court]

3 MR. HARMON: The photographs are being -- are
4 used to attempt to impeach Mr. Biser. There are
5 several problems with -- first of all, the photographs
6 were taken back, on the cover there, in March of 2008.
7 We just got them right before the questions were being
8 asked of Mr. Biser. So that's issue number one.
9 They're just now being given to us.

10 Issue number two, Your Honor, is these are the
11 photographs -- we have -- there's no testimony in the
12 record to show how far Ms. Colvin's car was from the
13 side of the road. Obviously, these photographs are
14 taken in an attempt to show that if Mr. Biser was
15 behind her, that he could not see the stop line.

16 THE COURT: Right.

17 MR. HARMON: But there's no testimony -- I
18 mean, if they wanted to get an animation expert,
19 Dr. Heathington or Mr. Huett, to talk about this and to
20 show it's possible. But it's deceptive and it's unfair
21 to spring this on, when we have no basis for knowing if
22 the truck is over half a foot -- six inches over,
23 you're probably going to see the stop line. But what
24 they're trying to do is, if you look on the photographs
25 here --

1 THE COURT: I'm looking at them.

2 MR. HARMON: -- on the side, you can't -- we
3 don't know, because they've just been given to us, how
4 they situated it, how they determined where the car
5 should be, it should be closer to the middle of the
6 road, it should be closer to the side. And it's
7 unfair. It's deceptive to be able to use these
8 diagrams with this particular witness.

9 THE COURT: These aren't diagrams --

10 MR. HARMON: I mean pictures.

11 THE COURT: -- these are photographs.

12 MR. HARMON: -- photographs that we've never
13 seen before.

14 And so to be able to use them at this juncture .
15 with this witness, when they've never been shown,
16 they've never been seen -- and it's not just a matter
17 of, hey, this is a picture of something that's static.
18 These are where you have to select where you're putting
19 objects in relationship to one another. And so whoever
20 created this -- I assume it's Mr. Crews, although I
21 don't know -- you know, it's just unfair to kind of do
22 this in the closet in secrecy and now with this witness
23 -- those were taken in March -- some five months later
24 spring them on us. It's just -- it's unfair. This
25 should be something that would have been used --

1 THE COURT: What do you mean March, five months
2 later? These were all done in 2008.

3 MR. HARMON: That's what I'm saying, five months
4 before -- that they're done five months before this
5 trial.

6 MR. PARKER: Some of them were done in March,
7 Your Honor, and some in July.

8 MR. HARMON: Five months --

9 THE COURT: Right.

10 MR. HARMON: -- before this trial.

11 And I would note that this is after this
12 crossing has already been cut and cleared and so
13 it's --

14 THE COURT: But I don't think what he's showing
15 these pictures for, to show --

16 MR. HARMON: No. He's clearly --

17 THE COURT: He's trying to show that the stop
18 line, and whether or not you can see it behind a Ford
19 Explorer when you are driving a -- I'm guessing you're
20 going to ask him -- an '89 GMC.

21 MR. PARKER: Right.

22 THE COURT: That's what I would be asking.

23 MR. PARKER: Absolutely.

24 THE COURT: Mr. Harmon, let me ask you this. In
25 the other photographs that we have directly after the

1 accident, is there in some way, shape, or form you can
2 show me that the stop line is different? For instance,
3 I saw --

4 MR. PARKER: The stop line's the same.

5 THE COURT: I saw that some of the lines have
6 faded since, if that makes sense. Some of the painting
7 had faded --

8 MR. HARMON: Correct.

9 THE COURT: -- or faded in some way.

10 I mean, can you show me that the stop line was
11 any different, if it has been repainted, or shortened,
12 or anything along those lines?

13 Maybe that's a question for Mr. McLeod. That's
14 a DOT, probably, job.

15 MR. HARMON: Your Honor, I don't think there's
16 any evidence on whether or not it's been repainted. I
17 think the fair inference, given that this accident is
18 four years earlier, is that the quality of the -- you
19 know, that it has faded. And I have some pictures I
20 can show the Court of what it looked like then. But
21 that -- this goes to --

22 THE COURT: Well, show me. Show me what it
23 looked like then. I want to see one. Because I can
24 tell you right here, this one from July 22nd of '08
25 doesn't look faded at all. It just -- they're trying

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1 to point out is that it doesn't extend far enough for
2 him to see. I mean, that's his whole argument, I'm
3 sure, unless someone has pulled --

4 MR. PARKER: We took them from where you could
5 pull the vehicle all the way over to the side, where
6 you could clearly see the line, and we took some where
7 it was blocking the line.

8 And he testified in his deposition that it was
9 blocking the line. And I'm going to go back to that
10 with him, because he clearly testified to that.

11 THE COURT: Well, show me a picture, Mr. Harmon,
12 of at the time of the accident or right after the
13 accident --

14 MR. HARMON: Sure.

15 THE COURT: -- what it looked like and how far
16 that line extended.

17 MR. HARMON: Go to 2.7, 2.8.

18 MR. MCLEOD: Your Honor, I haven't been
19 furnished the pictures, but --

20 THE COURT: Here. Do you want to take a look at
21 them?

22 MR. MCLEOD: I object on the same basis.

23 THE COURT: Mr. McLeod, take a look at them
24 right here. I don't want to be the only one that's
25 seen them.

1 [Whereupon, the Court proffers documents to
2 Mr. McLeod]

3 MR. HARMON: There's one photograph, Your Honor.
4 Let's see what else we have. Go to --

5 THE COURT: That looks pretty much the same as
6 what these show. That --

7 MR. HARMON: I don't -- Your Honor, I don't --
8 certainly the stop line wasn't moved.

9 THE COURT: Okay.

10 MR. HARMON: Whether or not it was repainted, or
11 lighter, I don't know.

12 I guess our issue is it seems, given that Dr.
13 Manning -- these are documents that we really, I
14 believe, should have had. They've listed them as
15 substantive evidence. And to now use them, when
16 they've had them since March or earlier, with this
17 witness --

18 And, again, we don't have the knowledge to know
19 how did they position the car. You know, they're going
20 to ask questions. We don't have anyone to ask
21 questions, how did you position the car that was behind
22 them, how did you position the car that's up at the
23 line. And so we have these -- you know, all of these
24 issues that would be fair game --

25 THE COURT: But certainly you can ask him all

1 those questions. I mean, the first question I think I
2 would ask is isn't a GMC higher up than an Explorer, I
3 guess, and so is there any reason why he couldn't see.
4 I don't know the answer to that. Maybe it's smaller.
5 I have no idea.

6 MR. HARMON: But I guess, Your Honor, who are we
7 to ask the questions of how they developed these
8 photographs. There's nobody here -- he doesn't know.
9 He wasn't participating in this. I'm saying they're
10 going to ask him the question, but the person -- if the
11 documents had been disclosed, okay, I assume there's a
12 person we could ask to determine if they -- you know,
13 where they put the vehicles and how they did all this.

14 THE COURT: Mr. Harmon, the problem with all
15 that is what you've got is an eyewitness person
16 testifying as to the facts as he saw them in a case,
17 not a Dr. Heathington or anything. I mean, he's
18 testifying that from where he sat he could see that
19 line and that she was pulled up to that line. I mean,
20 that's his testimony. And I think -- I mean, obviously
21 what they're trying to show is is that there's no way
22 he could have seen that line.

23 MR. PARKER: Exactly, Your Honor. And we're
24 going to cross-examine him about this because his
25 testimony -- of course, and he's changed his testimony.

1 He's changed it from he didn't -- that the vehicle was
2 blocking the view and so he couldn't see the line, to
3 now he could see the line, and he could tell the
4 distance, and all that. So this is impeachment.

5 THE COURT: Oh, I can tell you the way that
6 deposition read, he said she stopped at the line, which
7 appeared to be about ten or twelve feet. I don't think
8 he changed his distance in any way.

9 MR. PARKER: Yes, he did, because I said
10 obviously you are looking from behind her and her
11 vehicle would be blocking your view. Answer: correct.

12 THE COURT: Well, I understand the blocking-
13 your-view portion of it. But he hasn't changed his
14 testimony on the ten to twelve feet.

15 MR. PARKER: No. The ten to twelve feet he
16 admitted --

17 MR. HARMON: He said --

18 MR. PARKER: -- but the ten to twelve feet and
19 at the line are contradictory, and we're entitled to
20 impeach his credibility.

21 THE COURT: He said at the line, which appeared
22 to be about ten or twelve feet.

23 MR. HARMON: He said, I was guessing, is what he
24 said.

25 THE COURT: So anyway -- that's neither here nor

1 there, though.

2 I can tell you, though, Mr. Harmon, I think this
3 is fair game, because this man is up here testifying
4 that he could clearly see the line. And, you know, if
5 he just says, you know, that that isn't how it is and
6 that -- you know, I don't know what truck this is taken
7 from.

8 MR. HARMON: But, Your Honor, do you see the
9 dilemma --

10 THE COURT: Yeah.

11 MR. HARMON: -- that this puts us in?

12 In other words, it's one thing that if there
13 were just photographs without relationship to vehicles.
14 But the impeachment point depends upon knowledge of
15 where the vehicles are placed and where they're placed
16 on the road. So it's one thing to say, hey, if you're
17 here, this is a photograph, you can't see. But then
18 they've gone out and they've placed these vehicles.
19 don't have an opportunity because they've never given
20 us the documents until just right when Mr. Biser is c
21 the stand. We don't have an opportunity to determine
22 okay, where did you place the vehicle where you took
23 this picture from. Where did you place the vehicle
24 that's in front. There's no person --

25 THE COURT: Well, why can't you on redirect

1 there, though.

2 I can tell you, though, Mr. Harmon, I think this
3 is fair game, because this man is up here testifying
4 that he could clearly see the line. And, you know, if
5 he just says, you know, that that isn't how it is and
6 that -- you know, I don't know what truck this is taken
7 from.

8 MR. HARMON: But, Your Honor, do you see the
9 dilemma --

10 THE COURT: Yeah.

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12 In other words, it's one thing that if there
13 were just photographs without relationship to vehicles.
14 But the impeachment point depends upon knowledge of
15 where the vehicles are placed and where they're placed
16 on the road. So it's one thing to say, hey, if you're
17 here, this is a photograph, you can't see. But then
18 they've gone out and they've placed these vehicles. We
19 don't have an opportunity because they've never given
20 us the documents until just right when Mr. Biser is on
21 the stand. We don't have an opportunity to determine,
22 okay, where did you place the vehicle where you took
23 this picture from. Where did you place the vehicle
24 that's in front. There's no person --

25 THE COURT: Well, why can't you on redirect ask

1 they're going to use it for impeachment, they should
2 have disclosed it to us. We asked for photographs.
3 There is a continuing obligation under the rules for
4 them to produce the things we've requested, and we
5 asked for all photographs. These photographs should
6 have been produced back in March and they weren't, and
7 the only reason they weren't was to sandbag us at this
8 point in time. And I don't believe the rules allow
9 that. Otherwise --

10 THE COURT: Someone direct me -- someone direct
11 me to the rule.

12 MR. PARKER: Your Honor, there is no rule
13 dealing with impeachment. Obviously in the federal
14 court is that you don't have to turn over in federal
15 court materials used for impeachment. But clearly we
16 don't have a rule on it. It's under Rule 26 of the
17 federal rule. We don't have a rule. But all of our
18 cases --

19 In fact, a case of Judge Anderson that -- and
20 the interesting thing about this, they claim it's so
21 unfair but they got Dr. Manning to take pictures out
22 there and they got their own pictures, they know where
23 he took them from. And he's got a number of pictures
24 that Dr. Manning took where he placed the vehicles back
25 where he says they were. And so there can be no

1 prejudice to them. And this is a --

2 MR. HARMON: They have the pictures.

3 MR. PARKER: This is Hill -- the picture itself,
4 all it is is showing evidence. And why they're
5 hollering so is it shows the truth, which they don't
6 want to come out.

7 MR. HARMON: Rule 26 of the South Carolina Rules
8 of Civil Procedure talks about supplementing discovery
9 responses, Your Honor.

10 And if what Mr. Parker suggests is the case,
11 then simply anything that we wanted to sandbag the
12 other side with, they could say give us -- give us
13 copies of photographs and we say, okay, we're going to
14 give you some but we're not going to give you the ones
15 that we want to sandbag you with because we're going to
16 use them for impeachment; even though you have a
17 discovery request, we're not going to give them to you;
18 and then we're going to spring them on you, four years
19 after the action is filed, with a witness who doesn't
20 know anything about the photographs, where you don't
21 have an opportunity prior to the witness being
22 cross-examined to determine whether or not that the
23 photographs are accurate in terms of where they place
24 vehicles.

25 Surely you can't just flaunt the rules or forgo

1 the rules of discovery and say, this is solely for
2 impeachment; yes, it's responsive to your request, but
3 I'm not going to give it to you. I mean, then you
4 could withhold -- we could withhold every single piece
5 of evidence that we thought we could sandbag somebody
6 with and say, we're using it for impeachment, we're not
7 going to give it to you, and then spring it on them at
8 trial.

9 MR. PARKER: Your Honor --

10 MR. HARMON; And that can't be the rule.

11 MR. PARKER: Your Honor, this is solely for
12 impeachment. They don't like it because it shows he
13 couldn't see what he testified to. And what they want
14 to do is get up here and paint a false picture to the
15 jury. And we can prove it. We can prove a lot of
16 things about this case and they -- we'll get into
17 things they haven't given up in accordance with the
18 court order, too, at the appropriate time when we get
19 there in this case. And Mr. Purcell knows what I'm
20 talking about.

21 And what they have done in this case is
22 orchestrated this case to be about the stop line. And
23 they have -- I don't know how, but they got Mr. Biser
24 to say that. And he said it, and we're entitled to
25 impeach that because it's not the truth. He couldn't

1 see it, and he couldn't tell where she was stopped from
2 where he was.

3 MR. HARMON: Certainly he's entitled to attack
4 and try to impeach Mr. Biser, but he's got to do it
5 within conformity of the rules that require you to
6 produce the things that you -- that we've asked for.

7 This is a document, Your Honor, that they had in
8 March, March of 2008, and because they didn't want to
9 produce it pursuant to what the rules require, they
10 withheld it. And so you can't -- you can't simply say
11 it's impeachment and withhold things that are required
12 under the rules to produce --

13 MR. PARKER: If you'll look at Judge Anderson's
14 case that -- he deals with that specifically and says
15 that, you know, for -- where you have documents solely
16 used for impeachment, that you can do that. Otherwise,
17 you could never impeach a witness because they would
18 get to go out there and coach the witness and do
19 whatever. You couldn't impeach him.

20 But this is solely for impeachment purposes,
21 solely to get at the truth, which obviously they don't
22 want to get at.

23 THE COURT: Well, I think we all can clearly
24 agree that there really is no rule that addresses it.
25 I was looking, and I'll tell y'all, just briefly at

1 Rule 607 just about who may impeach and various ways of
2 impeachment and based on bias or questioning fact. I
3 mean, clearly it doesn't apply, but I was looking at it
4 from some guidance in some way.

5 I think in this case I think what it comes down
6 to is a balancing argument under Rule 403 and whether
7 or not the prejudice outweighs the probative value.
8 And I think in this case clearly the probative value is
9 greater than any prejudice. I mean, it goes to --
10 again, we've talked about getting to the heart of this
11 case, and which is the truth. And that's one of the
12 things that we've all talked about. Again, it was one
13 of the bases for admitting the drinking evidence and
14 all of that.

15 So, respectfully, I'm going to go ahead and
16 allow him to ask the questions.

17 MR. HARMON: May I say one thing, Your Honor?

18 THE COURT: Yes, sir.

19 MR. HARMON: You looked at 403, but did the
20 Court look at Rule of Civil Procedure 26 that talks
21 about supplementation of responses? 26-E.

22 THE COURT: Give me a second.

23 MR. HARMON: Sure.

24 [Whereupon, the Court reviews documents]

25 THE COURT: All it does is talk about

1 supplementation of discovery.

2 MR. HARMON: Correct. And there's an
3 outstanding discovery request for the very information
4 Mr. Parker has just sprung on us. And I'm saying, Your
5 Honor, that this is just a direct violation. It wasn't
6 produced to us in March, it wasn't produced to us in
7 April, May, June, July. We're here now in the middle
8 of trial in August, and it's sprung on us. And this is
9 in violation --

10 THE COURT: When you say it's sprung on you, it
11 was clearly asked in the deposition. I mean, I think
12 you went through it and stated can you see it, what can
13 you see, are you telling me --

14 MR. PARKER: Absolutely.

15 THE COURT: It appeared to be covered in the
16 deposition.

17 MR. PARKER: We did this in preparation for
18 trial because it was coming up in April. And we did
19 this to impeach his testimony because we didn't believe
20 that he could see what he said he saw. And the
21 evidence clearly shows he can't see what he said he
22 saw, and we're entitled to impeach him on that, and he
23 needs to explain how he saw it.

24 MR. HARMON: Well, Your Honor, again, I just --
25 I disagree with what the rule -- what Mr. Parker

1 suggested the rule says in terms of --

2 MR. PARKER: Well, we got one last night at ten
3 o'clock from them, so I guess it's what --

4 MR. HARMON: We produced a photograph, and we
5 produced it before this witness hits the stand. It's a
6 demonstrative, which is what they --

7 MR. PARKER: At ten o'clock --

8 MR. HARMON: -- which is what they should have
9 done, which is what they should have done, to produce
10 it; not in the middle of while a witness is testifying
11 so that you can be sandbagged.

12 And, Your Honor, again, just note my objection
13 that Rule 26-E, as I read it, requires the opposite
14 sides to supplement their discovery responses under
15 rules 31, 33, 34 and 36. There's no question that we
16 had an outstanding discovery request relating to the
17 very documents that Mr. Parker is now using. There is
18 no dispute that these documents were not produced to us
19 in any of the four or five months after they were taken
20 and that now in the middle of trial they are dropped on
21 us during the middle of the witness' examination;
22 during the middle of it.

23 And, again, if there was no discovery request,
24 maybe the Court would view this differently. But there
25 is a discovery request out there, there is a rule that

1 governs this precise conduct, and the reason the rule
2 is implemented is to avoid this very situation. Full
3 discovery, full disclosure, and if we don't ask for it,
4 then it's -- hey, that's on us. But it was asked for,
5 and it has never been given to us.

6 So please note my objection for the record that
7 we are now, five months after the fact, getting these
8 documents during the middle of Mr. Larry Biser's
9 testimony, documents that should have been produced a
10 long time ago in response to discovery requests that
11 were propounded years ago.

12 MR. PARKER: Your Honor, clearly the -- number
13 one, I don't think it does apply to discovery because
14 this was -- these were documents prepared for use at
15 trial for impeachment. And these are not photographs
16 at the scene. They've got -- hundreds of photographs
17 have been turned over in this case by both parties.
18 But this was not relating to the claim, this is
19 relating to impeachment, and it does not apply in this
20 case. If it was, you would have had to give your
21 cross-examination file to opposing counsel so they
22 could prepare the witness for the cross-examination.
23 Clearly that doesn't lead to justice.

24 What leads to justice is people being
25 cross-examined under oath about sworn testimony and

1 being made to answer questions based on fair evidence. .
2 And that's what they want to block. They want to block
3 us from impeaching this witness. And I suspect we're
4 going to have it come up, and they want to block it --
5 they're going to want to block the impeachment of other
6 witnesses.

7 But in order to have a fair trial, these
8 witnesses that get on the stand have to be subjected to
9 cross-examination in a fair way. And we believe
10 clearly this evidence goes right to the heart of this
11 case. This gentleman testified under oath that his
12 view was blocked. He testified something directly
13 contrary to that today.

14 MR. HARMON: I disagree with his
15 characterizations.

16 But with respect to being fair, what is fair,
17 Your Honor, what is fair is if you're going to use
18 something like this that the another side -- again, if
19 we were just talking about an innocuous photograph,
20 okay, of a scene that's still -- but what we're talking
21 about here, for the record, is the placement of
22 vehicles. They went out and took their own vehicles
23 and placed them in certain spots to establish what they
24 want to establish.

25 THE COURT: Well, it appears that they took

1 photographs of all spots, is what it looked like.

2 MR. HARMON: But we have no -- we have no basis
3 before this witness is going to be cross-examined and
4 asked about that. We've had no opportunity to ask the
5 person who took the photograph, the person how they
6 were placed. And the fact that they may bring him up
7 later in their case doesn't cure what's happening right
8 now. So we think it's unfair to be able to use them.
9 We think, again, that it violates the South Carolina
10 Rules of Civil Procedure to allow this late evidence in
11 the middle of a witness five months after they had
12 taken the photographs.

13 MR. PARKER: Your Honor, I understand the Court
14 has ruled, and I guess there's got to be an end to the
15 argument. But clearly this is -- to not allow us to
16 impeach this witness' testimony which is on this
17 critical issue would be totally unfair. And the only
18 way to impeach this witness is to be able to test his
19 testimony from what's out there. There's not a thing
20 out -- they cannot possibly argue -- they say, well,
21 they don't know where it was taken. They cannot
22 possibly argue that this is what this picture shows and
23 this is what you would show -- see sitting behind
24 somebody. And that's what we're going to ask him
25 about.

1 MR. HARMON: Your Honor, can we just make it at
2 another time --

3 MR. PARKER: Your Honor, can I get -- this thing
4 go could go on for years because every time I say
5 something, he wants to get the last word. I want to
6 get the last word. But we've got to stop it.

7 MR. HARMON: I do, too.

8 THE COURT: That's all right.

9 Mr. Harmon, you can go ahead and talk, and I
10 assure you, I will get the last word.

11 You can go ahead, Mr. Harmon, and put whatever
12 you need to on the record.

13 MR. HARMON: Thank you, Your Honor.

14 Again, by way of illustration: if we had gone
15 out and if they had asked -- and I believe they have --
16 any videos you have showing our client doing what she
17 says she can't do or whatever, and we've gone out and
18 had video taken back in March showing whatever, showing
19 Lillian doing something they say she can't do, okay,
20 and don't produce it in April, don't produce it in May,
21 don't produce it in June, don't produce it in July,
22 Lillian gets on the stand and we ask Lillian, Lillian,
23 you know, can you do X, Y, and Z, and she says, no, I
24 can't, wham, we put up -- here, Mr. Parker, here's a
25 video of her doing it, and we want to impeach her, you

1 wouldn't let that evidence in.

2 And that's the same -- essentially the same
3 thing they're doing because what -- they would have no
4 opportunity to cross-examine anything about that. It
5 should have been produced.

6 And this, although it is not a video, given what
7 they have put on here -- it's not simply just a
8 photograph of a scene. There are vehicles. There are
9 issues with whether or not -- you know, depending upon
10 how the vehicles are placed, you can't -- you may not
11 be able to see. But in other instances you can. And
12 we've had no opportunity to be able to examine it.
13 It's a clear sandbag, and so I note -- again, I'm just
14 noting my objection for the record.

15 I think that the illustration regarding if we
16 had done that with Lillian, with some type of video, is
17 directly on point.

18 MR. PARKER: Your Honor --

19 MR. HARMON: I mean, I would ask, Your Honor, if
20 they are going to do it, why don't we have the
21 opportunity, at the very least, to confer with Mr.
22 Biser about these things, since they've never produced
23 them? I mean, that would -- that would -- I mean,
24 they've never produced these things and the whole
25 purpose was, you know, in -- in violation of the rules

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1 to do that. If they had done what they were supposed
2 to do, we would have had the opportunity to ask --

3 MR. PARKER: That's why you get to impeach
4 people -- because that's exactly what he wants to do,
5 he wants to coach the witness. That's why you don't
6 have to give impeachment evidence.

7 MR. MCLEOD: I think, Your Honor -- I don't know
8 if I adequately dittoed my objection, but if not, I
9 want to do so.

10 THE COURT: Y'all, I'm going to stand by my
11 ruling. I actually think the probative value outweighs
12 any prejudice in this case. Short of anyone pointing
13 me to a rule that I can see, again, I think it sheds
14 light on the case and goes to a hotly -- obviously
15 hotly-contested fact in this case. So I think it's
16 appropriate.

17 Y'all, why don't we, since y'all have worked so
18 hard the last fifteen minutes, take about a five-minute
19 break and then we'll bring the jury back out and we'll
20 keep going with Mr. Biser.

21 MR. PARKER: And I would like that same
22 instruction, I assume, not to talk with Mr. Biser
23 about --

24 THE COURT: Mr. Wray is an officer of the Court,
25 as is --

1 MR. PARKER: I know Mr. Wray --

2 THE COURT: -- as is Mr. Harmon and Mr. Purcell,
3 and I am not worried that they are going to do
4 anything..

5 MR. PARKER: Or anyone on their staff.

6 THE COURT: Well, obviously the lawyers are
7 responsible for anyone that works under them. So if
8 they do anything improper, it's the lawyers that are
9 going to be hung out to dry for it. And I'm sure
10 they've instructed their staff, as follows.

11 [Whereupon, a recess is taken from 11:53 a.m. to
12 12:05 p.m.]

13 THE COURT: Anything from the plaintiff?

14 MR. PARKER: Yes, Your Honor. I understand that
15 Mr. Wynn advises that someone from the defendant's
16 staff, CSX's staff, was in the room with Mr. Biser
17 after he came off the stand. I don't know that. I
18 guess we'll have to inquire about whether -- I don't
19 know what was said. I'm not making any contention of
20 anything, other than that's what I understand. I would
21 like to know if that's true.

22 MR. HARMON: Sure. Our paralegal, Lori Mussman,
23 who's been --

24 THE COURT: Dark-haired woman?

25 MR. HARMON: Dark-haired woman. She took him

1 out there. She told him, I can't talk to you, Mr.
2 Biser, and that was really the end of that. There was
3 no discussion.

4 THE COURT: Is she here?

5 MR. HARMON: She's -- go get her.

6 There was no discussion between Mr. Biser and
7 Ms. Mussman. She told me that a moment ago. So we can
8 bring her here.

9 While we're waiting for her, Your Honor, one
10 thing I wanted to make clear: that it's improper to
11 talk about discovery motions with witnesses, and Mr.
12 Parker has done that with --

13 THE COURT: Biser.

14 MR. HARMON: -- Mr. Biser. And I ask that you
15 instruct him not to suggest things haven't been turned
16 over, or we had to get a motion to compel. That's
17 wholly inappropriate. If there is something that he
18 claims he deserves, he hasn't gotten, we should bring
19 it to the Court and it should be argued. It should not
20 be posed in front of the jury, with a witness, to make
21 a suggestion that there's been something -- there's
22 been a ton of discovery, there have been tons of
23 motions filed both ways, and I don't think it's proper
24 to do that with any witness.

25 MR. PARKER: Your Honor, there's a couple things

1 I did want to bring up. There's a court order that
2 says they're supposed to turn over to us all non-
3 opinion work product. And I do know two things that
4 have not been turned over: one is a sketch, and the
5 other -- that Mr. Hedden participated in. The other
6 one is he's got a -- from Dr. Manning's deposition, he
7 sent him a letter saying that he had measurements of
8 where photographs were taken from. And we have not
9 been turned over that information, which would clearly
10 not be work -- would not be opinion work product. I'm
11 not looking for the lawyers' stuff. But Mr. Hedden
12 testified that he helped someone from Mr. Purcell's
13 office make the measurements. But the measurements are
14 not opinion work product and they have not turned that
15 over, even though the Court has ordered them to do it.
16 We would ask the Court to require it.

17 MR. HARMON: And, Your Honor, I guess my point
18 is this is the first I've heard of that, and we can
19 certainly argue -- and I can talk to Mr. Purcell and
20 find that out. I'm not saying we can't have it -- if
21 Mr. Parker believes there's something that hasn't been
22 turned over, there's an appropriate method and
23 mechanism to do that. It's not with a witness, saying
24 hasn't something not been turned over. And so we can
25 take that up, we can discuss that. But --

1 MR. PARKER: Well, I would not do that --

2 MR. HARMON: But my point is --

3 MR. PARKER: Excuse me. Go ahead.

4 MR. HARMON: But my point is we shouldn't be
5 asking the witnesses about that.

6 MR. PARKER: I will not ask the witness that
7 unless I approach -- I've got a purpose for it. I
8 think -- I thought I had one for that, because it was
9 odd to me that they would not turn over statements
10 taken. And obviously when he said ten to twelve feet
11 instead of the stop line, then I understood why -- they
12 gave two statements in this case that were taken from
13 innocuous witnesses and they produced them. The three
14 witnesses that had evidence adverse to them they didn't
15 turn over, so we had to get a court order. And we did
16 get it. Judge King gave it to us.

17 But to sort of put that thing in perspective of
18 what's going on and that's why we want that sketch and
19 we want these pictures, the log of the pictures taken
20 in this case by Mr. Hedden, which should have been
21 turned over.

22 MR. WRAY: Your Honor, during the break I
23 thought about your question about the rule and I tried
24 to think of a case or situation. The Samples case, I
25 don't know if you've looked at that, pulled it up, but

1 that was a case in which the defendant had a discovery
2 request for any photographs, plats, sketches, et
3 cetera; the standard discovery request. The defendant,
4 in response to that request, did not produce a
5 surveillance videotape that they had obtained of the
6 plaintiff showing specific activities that the
7 plaintiff denied that she could do. At trial the
8 defendant sought to use that videotape to impeach the
9 plaintiff's testimony. And, in fact, the trial court
10 allowed that to take place. I am pretty sure it's a
11 Court of Appeals case.

12 THE COURT: And it got reversed?

13 MR. WRAY: It got reversed on that very point
14 because the defendant's argument was this was a piece
15 of impeachment, it wasn't responsive to the request --
16 they argued it was a videotape, not a photograph -- and
17 the Court analyzed that issue first and said, no, a
18 videotape and photograph --

19 THE COURT: Doesn't matter.

20 MR. WRAY: -- that falls in the same camp, and
21 the mere fact that you sought to use it for impeachment
22 only does not alleviate your responsibility to produce
23 it under rule 26, which is the rule that we cited
24 earlier.

25 So I do believe there is a -- I believe there is

1 a rule that speaks to this specific circumstance, and
2 there's a case that I think says exactly what they seek
3 to do here is improper. I did not have time to print
4 out the Samples case, but --

5 MR. PARKER: That's not the correct facts, to
6 start with. It wasn't during a trial, it was during a
7 deposition. What they did was took the videotape and
8 asked the witness specific questions during the
9 deposition, Samples vs. Mitchell, and then turned it
10 over afterwards.

11 Of course, the difference being this is not the
12 client. This is a witness whose credibility is at
13 issue. This is not a surveillance video. This is --
14 all these pictures show are what's out there. There's
15 no magic about this. There's no -- it's not showing
16 somebody doing something. It's not showing anything
17 other than absolute facts that's going to contradict
18 what this guy says. I mean, there's no magic about
19 this. There's nothing that's like surveillance,
20 following somebody. I don't see how you could equate
21 these two, in any event.

22 This is more like the case that I turned over to
23 Your Honor, the Hill case, where Judge Anderson -- they
24 had an engineer testifying, Cluge, from North Carolina,
25 and he was impeached on cross-examination because he

1 had lost his license or had it suspended up in North
2 Carolina and they put it in evidence and they
3 contended, well, you should have turned that over in
4 discovery and because you didn't turn it over in
5 discovery, then it shouldn't be admissible. And Judge
6 Anderson said, well, this was for impeachment, and it
7 was totally proper.

8 I mean, obviously the defense in that case had
9 control of their witness, which obviously here there's
10 some -- you know, there's been a lot of interplay
11 between Mr. Biser and CSX in this case. And clearly,
12 the only -- this evidence clearly shows that what Mr.
13 Biser has testified to is very questionable.

14 MR. WRAY: I think you need to look at the
15 Samples case. I disagree with the characterization.
16 But I think it speaks to this issue.

17 THE COURT: Okay. Are you ready to bring the
18 jury back in? Bring them on in.

19 Hold on one second.

20 MR. PARKER: We need to inquire of Ms. Mussman.

21 THE COURT: Yes, sir. That's why I wanted to
22 stop --

23 Would you stop them very quickly? Thank you.

24 MR. PARKER: I think she's here in the
25 courtroom.

1 THE COURT: Ma'am, your last name? It's Lori;
2 right?

3 MS. MUSSMAN: Lori Mussman. Yes, ma'am.

4 THE COURT: Yes, ma'am. Ma'am, I wanted to make
5 sure that you did not in any way advise or instruct Mr.
6 Biser in regards to his testimony. I know that you --
7 after Lee took him out there and showed him his room.
8 But you didn't discuss in any way anything that we had
9 going on in here, did you?

10 MS. MUSSMAN: No, ma'am.

11 THE COURT: Okay. You're absolutely sure about
12 that?

13 MS. MUSSMAN: Yes, ma'am.

14 THE COURT: All right. Any further inquiry, Mr.
15 Parker?

16 MR. PARKER: No, Your Honor.

17 THE COURT: All right. I'm satisfied. Thank
18 you, ma'am. I appreciate it.

19 Yes, sir. You can bring them in now.

20 [Whereupon, the jury enters the courtroom at
21 12:15 p.m.]

22 THE COURT: Thank you. Welcome back, ladies and
23 gentlemen of the jury.

24 If we can go ahead and if we can bring Mr. Biser
25 back.

1 MR. WRAY: Murphy is getting him.

2 THE COURT: Thank you.

3 [Whereupon, Mr. Biser enters the courtroom]

4 THE COURT: Sir, if you'll come back, please.

5 Just back right up here.

6 [Whereupon, Mr. Biser re-takes the witness

7 stand]

8 THE COURT: Thank you, sir.

9 Sir, I will remind you you're still under oath.

10 Okay, sir?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Thank you. Mr. Parker?

13 CONTINUED CROSS-EXAMINATION

14 BY MR. PARKER:

15 Q. Mr. Biser, we were talking about the what you
16 could see and not see from where you stopped and whether
17 or not you moved ten -- they moved ten to twelve feet, or
18 were at the stop line, when we left off; correct?

19 A. I believe so.

20 Q. I'm going to get you to look at Plaintiff's
21 Exhibit 265.

22 MR. PARKER: It's going to be -- that's 9963.

23 Q. [Mr. Parker] All right. Do you see it on the
24 screen now?

25 A. Yes, sir.

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1 Q. And in that photograph that's an Explorer
2 vehicle; correct?

3 A. Yes, sir. I guess.

4 Q. And the vehicle behind it is a pickup? Might
5 be?

6 A. Might be.

7 Q. And how far is that Explorer from the white
8 line?

9 A. I have no idea, sir.

10 Q. How far is it from that cross-buck sign?

11 A. I have no idea.

12 Q. And that's what you could see that day, wasn't
13 it?

14 A. No, sir.

15 Q. And you said that you could see the white line;
16 right?

17 A. I don't know how far this truck's sitting on the
18 side.

19 Q. You don't know -- but that day you were out
20 there studying where that white line was off to the side;
21 correct?

22 A. No, sir. I was studying where that young man --

23 Q. Because you were looking --

24 THE COURT: Mr. Parker --

25 A. I was --

1 THE COURT: Mr. Parker, let him --

2 A. I was studying that young man laying by the
3 train tracks, sir.

4 Q. [Mr. Parker] Why were you looking at that white
5 line before they moved?

6 A. I was looking at that man underneath them train
7 tracks.

8 Q. No. I'm talking about when they moved. Why
9 were you looking at the white line before they moved?

10 A. I could see the white line when they left. They
11 was right there at that line, sir.

12 Q. Are you -- they were over the white line?

13 A. They were right there at the line, sir.

14 Q. Were they over the white line?

15 A. Their front bumper was right at the line, sir.

16 Q. And you couldn't see the front bumper, could
17 you?

18 A. Not from this picture I can't. No, sir.

19 Q. You couldn't see it that day, either, could you?

20 A. Not from that picture I can't.

21 Q. Could you see it that day? the front bumper?

22 A. No, I couldn't see the bumper.

23 Q. So you don't know where his bumper was since you
24 couldn't see?

25 A. But I could see the line on the road, sir.

1 Q. All right. We're going to talk about that in a
2 minute.

3 I'm going to hand you Exhibit --

4 MR. PARKER: Or just put up 261, which is 9964.

5 Q. [Mr. Parker] In 9964, can you tell me where
6 that Explorer is stopped in relationship to that white
7 line?

8 A. No, sir, I can't.

9 Q. Can you tell me where it's stopped in
10 relationship to that cross-buck sign?

11 A. Not really.

12 Q. Can you tell me the distance between the front
13 of that pickup truck and that Explorer?

14 A. No, sir, I can't.

15 MR. PARKER: I'm next going to put up 9965.
16 That's Exhibit 262.

17 Q. [Mr. Parker] Can you tell where that Explorer
18 is located?

19 A. No, sir.

20 Q. Can you tell the distance between the hood of
21 that pickup and that Explorer?

22 A. No, sir, I can't.

23 Q. Can you tell its relationship to the cross-buck
24 sign? Is it behind the cross-buck or in front of it?

25 A. I'm not sure, sir.

1 MR. PARKER: I'm going to put up Exhibit 9966.

2 MR. DETRICK: What is the number?

3 MR. PARKER: It's Exhibit 263. 9966. Is that
4 up, Felicia?

5 Q. [Mr. Parker] And this photo --

6 MR. PARKER: Was that the same photograph? It's
7 a different one.

8 Q. [Mr. Parker] And 263, can you tell us the
9 distance that Explorer is from that cross-buck?

10 A. No, sir, I can't.

11 Q. Can you tell the distance between the vehicles?

12 A. No, sir.

13 Q. Can you tell the distance it is from the white
14 line?

15 A. No, sir.

16 MR. PARKER: I'm going to next put up 9967.
17 Exhibit 264.

18 Q. [Mr. Parker] Can you tell the distance, in that
19 photograph, from the stop line the Explorer is from the
20 white line?

21 A. No, sir.

22 Q. Can you tell the distance it is from the
23 cross-buck?

24 A. No, sir.

25 Q. Can you tell the distance between the vehicle

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1 and the Explorer?

2 A. No, sir.

3 MR. PARKER: All right. We're going to put up
4 266 now, which is 2185.

5 Q. [Mr. Parker] In Exhibit 266: now, we've moved
6 this one right over to the edge. That vehicle -- the
7 Colvin vehicle wasn't like this that day, was it?

8 A. I have no idea, sir.

9 Q. You don't know where it was, do you?

10 A. I wasn't in that vehicle, sir.

11 Q. You don't know where it was parked, whether it
12 was in the center of the road or over to this edge like
13 we've got this vehicle?

14 A. I could see that white line, sir.

15 Q. Oh. So you're saying they were almost off the
16 road like this?

17 A. I didn't say they was off the road.

18 Q. How much of that white line could you see?

19 A. I have no idea, sir.

20 Q. Could you see two inches?

21 A. I have no idea.

22 Q. Three inches?

23 A. I'm sitting -- I'm not on top of that line, sir.

24 Q. So you don't know how much of that white line
25 you could see?

1 A. No, sir, I don't.

2 Q. And in 266 can you tell me how close that
3 Explorer is to that white line?

4 A. No, sir, I can't.

5 Q. Can you tell me how many feet are between that
6 white line and that Explorer? The bumper.

7 A. No, sir.

8 Q. But you could tell that day her bumper was on
9 the white line; correct?

10 A. Yes, sir, I could.

11 Q. Did you see through the vehicle?

12 A. No, sir.

13 Q. How did you judge that distance?

14 A. I go across them tracks many times a day, sir.

15 Q. How did you judge the distance on that day
16 between the front bumper of this vehicle and that white
17 line?

18 A. The same way I do it every day.

19 Q. You judge distances to the white line every day?

20 A. I don't ever judge distance. That's not my job.

21 Q. But you have come into court and testified that
22 her front bumper was at that white line that day?

23 A. Yes, sir, it was.

24 MR. PARKER: Next put up exhibit number 2186,
25 which is Exhibit 267.

1 Q. [Mr. Parker] In Exhibit 267 can you tell us in
2 that photograph how close that Explorer vehicle is to the
3 white line?

4 A. No, sir, I can't.

5 Q. Can you tell the distance between the front
6 bumper and the white line?

7 A. No, sir, I can't.

8 Q. Can you tell whether it's behind or in front of
9 the cross-buck sign?

10 A. No, sir.

11 Q. Was that much of the white line -- did you see
12 that much of the white line that day?

13 A. I have no idea, sir.

14 MR. PARKER: Next going to put up Exhibit 2187.
15 Exhibit 268.

16 Q. [Mr. Parker] And I'll ask you that -- can you
17 tell the distance between the front bumper of that
18 Explorer and the white line?

19 A. No, sir, I can't.

20 Q. Can you tell the distance between whether this
21 vehicle is behind or in front of the cross-buck sign? Is
22 that vehicle in front of the --

23 A. Oh. I don't --

24 Q. -- is it past the cross-buck or behind it?

25 A. I don't know, sir.

1 MR. PARKER: Next put up 2188. Exhibit 269.

2 Q. [Mr. Parker] And the same questions.

3 A. No, sir.

4 Q. You can't tell, can you?

5 A. No, sir.

6 MR. PARKER: Put up 270.

7 Q. [Mr. Parker] The same questions. Can you tell?

8 A. No, sir.

9 Q. But you could tell that day?

10 A. I could tell -- I knew she was at the white
11 line, sir.

12 Q. And you've been positive about that white line
13 all the time, haven't you?

14 A. I go past that white line all the time, sir.

15 Q. And you got convinced about that white line when
16 Mr. Hedden came to see you, didn't you?

17 A. No, sir.

18 Q. And Mr. Hedden asked you, he said, she was
19 stopped at the stop line, wasn't she?

20 A. No, sir.

21 Q. He didn't ask you that?

22 A. I'm not sure, sir. I was stopped at the stop
23 sign; she was stopped at the line.

24 Q. Right. I understand that.

25 But he didn't -- Mr. Hedden didn't say to you

1 that day when he met with you and took your statement, she
2 was stopped at the stop line, wasn't she?

3 A. I do not recall, sir.

4 Q. Now, I want to go back to one thing now. You've
5 testified under oath here today, and you did at your
6 deposition; right?

7 A. No problem, sir.

8 Q. And on --

9 MR. PARKER: I'm going to go to 21, page 21,
10 line 3 through 25.

11 Q. [Mr. Parker] And at that time I asked you and
12 you said: [reading] I mean, it looked like to me she was
13 stopped right at the line. I would say her bumper was at
14 the line. That's an estimation, though. Oh, yeah.
15 Obviously you were looking from behind her, and her
16 vehicle would be blocking your view.

17 And you said: [reading] correct.

18 Right?

19 A. That's what it says there, yes, sir.

20 Q. And that is correct, isn't it?

21 A. I wasn't on her bumper, sir.

22 Q. The question is was the vehicle blocking your
23 view of where she was stopped.

24 A. Parts of it, yes, sir.

25 MR. PARKER: We would offer into evidence, Your

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1 Honor, Exhibits 265 through 270.

2 THE COURT: We are going to take that up later.

3 MR. HARMON: Okay. Thank you, Your Honor.

4 MR. PARKER: That's all the questions we have.

5 THE COURT: Mr. Harmon? I'm sorry. Mr. McLeod,
6 I apologize, sir.

7 MR. MCLEOD: I didn't get copies of the
8 pictures, Your Honor, but I have looked at them
9 while we were on a break.

10 CROSS-EXAMINATION

11 BY MR. MCLEOD:

12 Q. First of all, Mr. Biser, would you agree with me
13 that a photograph is one dimension and the human eye sees
14 in three dimensions?

15 A. Yes, sir.

16 Q. Would you agree that that might affect how you
17 can judge distances?

18 A. Yes, sir.

19 Q. Now, Mr. Biser, wouldn't whether you could see
20 this white line depend entirely on where her truck was
21 parked and/or where your truck was parked?

22 A. Yes, sir.

23 Q. Are you in a position to say that her car was
24 exactly as in these pictures?

25 A. No, sir.

1 Q. Are you in a position to say that your truck was
2 exactly placed in these pictures?

3 A. No, sir.

4 Q. And one thing -- this may be nit-picking, but
5 checking my own eyesight -- would you agree that you can
6 see a little bit of the line in that --

7 A. Yes, sir.

8 Q. -- 262? .

9 A. Yes, sir.

10 Q. Would you agree that you can see just a little
11 bit of the line in this Plaintiff's Exhibit 263?

12 A. Yes, sir.

13 Q. Now, I really don't know the answer to this
14 question myself, and you might not either. But I do know
15 that this is an Eddie Bauer Explorer, which is a -- you
16 know, an expensive car, and the other Colvin vehicle
17 wasn't. I don't know whether they would -- would they be
18 identical in width, or do you know that? I don't know
19 that.

20 A. I have no idea, sir.

21 MR. MCLEOD: That's all I have, Your Honor.

22 THE COURT: Thank you, sir.

23 MR. HARMON: May I approach the easel, Your
24 Honor?

25 THE COURT: You may.

REDIRECT EXAMINATION

BY MR. HARMON:

Q. Mr. Biser, I want to ask some questions about when you've been asked about what happened there that day, from the beginning to this point in time. Okay?

A. Yes, sir.

Q. Can you see this?

A. Yes, sir.

Q. All right. Let's start from the beginning. The date of the accident was February 3rd, 2004; right?

A. Yes, sir.

Q. All right. So we're going to write February 3rd, 2004 accident. And you were there that day; right?

A. Yes, sir.

Q. And you told us what you saw?

A. Correct.

Q. By the way, do you have anything against Mr. Terry or Ms. Colvin?

A. No, sir.

Q. Are you an employee of CSX?

A. No, sir.

Q. All right. So you don't have any dog in this fight, do you?

A. No, sir.

Q. All right. And you were the person who was

1 there helping young Lillian that day; right?

2 A. Yes, sir.

3 Q. All right. So after February 3rd, 2004, there
4 have been many different people who have come and asked
5 you about where she stopped that day; right?

6 A. Yes, sir.

7 Q. And Mr. Parker was one of them, wasn't he?

8 A. Correct.

9 Q. And where did he meet you?

10 A. At -- that was at Dixie Poly Drum.

11 Q. Okay. And did you refuse to meet with Mr.
12 Parker?

13 A. No, sir.

14 Q. Okay. And was he one of the first people who
15 came and talked to you after this?

16 A. He was the very first.

17 Q. How many days after this accident did Mr. Parker
18 come and ask you about where she stopped?

19 A. I'm not sure. It was within a week's time, I'm
20 sure.

21 Q. Okay. And where did you meet with him?

22 A. At Dixie Poly Drum.

23 Q. All right. Did you have any problem meeting
24 with him?

25 A. No, sir.

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1 Q. All right. And what did you tell Mr. Parker a
2 few days after this -- or within a week, I think you said,
3 of this accident about where Ms. Colvin stopped that day?

4 A. It was what -- just what I said today. She
5 stopped at the white line, sir.

6 Q. And why did you tell him she stopped at this
7 white line when he came to see you?

8 A. Because that's the truth.

9 Q. All right. Now, Mr. Parker, was he -- did he
10 seem pleased when you told him that?

11 A. He was fine with it.

12 Q. Okay. And who was the next person you recall
13 talking -- asking you about where she stopped that day?

14 A. I'm not sure. It might have been Mr. Hedden.

15 Q. Mr. Hedden. Okay.

16 And do you recall how long after Mr. Parker came
17 on by that you talked to Mr. Hedden?

18 A. It was a long time.

19 Q. Okay. So it was a long time between Mr. Parker
20 and when Mr. Hedden came?

21 A. Yes, sir.

22 Q. All right. And what did you tell Mr. Hedden
23 about where Ms. Colvin stopped that day?

24 A. The exact same thing I told Mr. Parker.

25 Q. Why did you tell Mr. Hedden that?

1 A. Because it's the truth.

2 Q. Okay. So you've talked to Mr. Parker, you
3 talked to Mr. Hedden. And I believe you had a recorded
4 statement when you met with Mr. Hedden; right?

5 A. I'm not sure, sir.

6 Q. All right. And Mr. Parker talked about this
7 statement you gave.

8 MR. HARMON: And do we have that statement?

9 MR. POSTON: Do we have an exhibit number? Let
10 me look. I'm sorry.

11 Q. [Mr. Harmon] Well, in the statement you said
12 what you just told us, that she stopped at the stop line;
13 right?

14 A. Yes, sir.

15 Q. Okay. Now, after you talked to Mr. Parker you
16 talked to Mr. Hedden. Then you also gave a deposition,
17 didn't you?

18 A. Yes, sir.

19 Q. Okay. And the date of the deposition was June
20 22nd, 2004; right?

21 A. I imagine.

22 Q. Well, let me show it to you.

23 A. I'm not sure.

24 Q. Can you tell us -- here's a copy of your
25 deposition. What's the date on there?

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1 A. Tuesday, 22nd day of June, 2004.

2 Q. Okay. And who was present at the deposition?

3 A. I believe --

4 Q. Was Mr. Parker there?

5 A. Yes, sir.

6 Q. All right. And then there was a lawyer there
7 from CSX, as well?

8 A. Yes, sir.

9 Q. And then was Mr. McLeod there, as well?

10 A. I'm not sure.

11 Q. All right. You don't remember one way or the
12 other?

13 A. No, sir.

14 Q. Okay. Fair enough.

15 And you were asked questions. What I want to do
16 is I want to read what you testified to under oath. You
17 were asked questions about where you were stopped, weren't
18 you?

19 A. Yes, sir.

20 Q. You were asked questions by the railroad lawyer
21 from CSX; correct?

22 A. Correct.

23 Q. Mr. Parker asked you some questions, as well?

24 A. Correct.

25 MR. HARMON: All right. Could we put up his

1 deposition, please. Mr. Biser's deposition. Let's go
2 to page 8.

3 Do you want me to use the Elmo?

4 MR. POSTON: No, sir.

5 MR. HARMON: All right.

6 Q. [Mr. Harmon] Okay. Page 8. This is a copy of
7 your deposition; right?

8 THE COURT: Do you want the lights?

9 MR. HARMON: I don't think we need --

10 THE COURT: Okay.

11 MR. HARMON: Thank you, Your Honor. I don't
12 think we need -- I think we -- I think we can see.

13 Page 8. All right. If we could blow up page 8.

14 Q. [Mr. Harmon] All right. And then you were
15 asked on page 8, starting at line 20: [reading] okay, so
16 what happened after that. She pulled up to the stop sign
17 and she stopped. And of course I had to stop. And she
18 pulled up to the white line and stopped, and I was at the
19 stop sign then and I stopped. And I could see the train
20 coming through the trees so I went ahead and put my truck
21 in park. And it was blowing the horn --

22 MR. HARMON: Next page

23 Q. [Mr. Harmon] -- [reading] and the next thing I
24 know, her brake light went out. I figured she was going
25 to sit there. Right in front of the train she went.

1 That's what you said back in 2004 after being
2 asked by Mr. Parker and Mr. Hedden and now in your
3 deposition; right?

4 A. Yes, sir.

5 Q. And you were asked more questions about that,
6 weren't you?

7 A. Yes, sir.

8 Q. Look at Line -- on page 9, line 21. You were
9 asked by the attorney: [reading] looking at Exhibits 1
10 and 2, is the stop sign on the right-hand side of both
11 those photographs. Yes. And then ahead of the stop sign
12 in the roadway there is a white line in those photographs.
13 Is that the --

14 MR. HARMON: Next page

15 Q. [Mr. Harmon] -- [reading] is that the white
16 line that she also stopped as you've described? Yes, sir.

17 Was that your testimony back then?

18 A. Yes, sir.

19 Q. Then down farther, page -- line 11, you're again
20 asked: [reading] and after she did that, tell us again
21 what was the next thing she did was. She eased up to the
22 white line, so I eased up to the stop sign.

23 Was that your testimony back then?

24 A. Yes, sir.

25 Q. And were you asked at other times in your

1 deposition, again, under oath, where Ms. Colvin stopped
2 that day?

3 A. I'm sure.

4 Q. All right. Would you be surprised to learn that
5 you were asked other times?

6 A. It don't matter to me. I have nothing to gain.

7 Q. Did you tell the truth then, sir?

8 A. Yes, sir.

9 Q. All right. And then today you've come again and
10 you've testified tell us where she stopped; right?

11 A. Yes, sir.

12 MR. HARMON: Your Honor, I pass the witness.

13 MR. PARKER: Thank you.

14 THE COURT: Mr. Parker?

15 RECROSS-EXAMINATION

16 BY MR. PARKER:

17 Q. Mr. Biser, the -- what date was your statement
18 taken by the railroad?

19 A. By the railroad?

20 Q. Yeah.

21 A. I'm not sure.

22 Q. It doesn't have a date on it.

23 A. Oh. I don't know which one it is.

24 Q. There's not -- I'll tell you there's not a date
25 on it.

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1 Do you recall when Mr. Hedden -- Mr. Hedden was
2 at the scene the day after this wreck. Did he come by and
3 talk with you?

4 A. I don't believe so, sir.

5 Q. When he was down at Yemassee the day after -- on
6 the day of the wreck and then the day afterwards, he
7 didn't talk with you?

8 A. No, sir.

9 Q. Do you know when he came and talked to you?

10 A. No, sir. But it wasn't the next day. It was a
11 while later.

12 Q. It was several days later?

13 A. Yeah. But it was after you talked to me.

14 Q. You're sure of that?

15 A. Yes, sir.

16 Q. If you don't know when he talked with you, how
17 do you know the sequence?

18 A. Because I was wondering when they was going to
19 come and talk to me, because you did.

20 Q. You didn't know -- and nobody from the railroad
21 had talked with you when I talked with you?

22 A. No, sir.

23 Q. And you said two -- to Mr. Hedden you said two
24 things. You said, one, she stopped at the stop line; and
25 you said, two, that she moved up ten to twelve feet after

1 she left the stop sign. Correct?

2 A. She moved after she stopped at the stop sign.

3 Q. Yeah. That's what I'm saying.

4 A. She moved up to the stop line.

5 Q. Well, you also said she moved up ten to twelve
6 feet; correct?

7 A. Maybe I misunderstood the question.

8 Q. Well, they both can't be correct, can they?

9 A. No, sir. But she moved up from the stop sign.
10 She stopped at the stop sign at the end of our driveway,
11 she stopped at the stop sign on Hill Road, she stopped at
12 the white line, sir.

13 Q. And she stopped at the white line -- in your
14 statement you said she moved up ten to twelve feet;
15 correct?

16 A. No, I didn't say that.

17 Q. You didn't say that?

18 A. I'm not saying I said that.

19 Q. Well, let's look at it again. I thought you --
20 let's go to your statement.

21 MR. PARKER: Page 3. Actually, page 2.

22 Q. [Mr. Parker] And you said at that time:
23 [reading] so they stopped at the stop sign, they came to a
24 complete stop at the stop sign, then they eased up to --
25 there's a white line that I'm guessing is about ten to

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1 twelve feet past that.

2 Is that correct?

3 A. I don't have it in front of me, sir.

4 Q. Here. Let me show you. You can read it.

5 That's what you said, wasn't it?

6 A. Yes, sir. That's ten to twelve feet past the
7 stop sign.

8 Q. So once they left the stop sign, they moved up
9 ten to twelve feet --

10 A. Yeah, somewhere. I mean, I don't know exactly
11 how far it is. She moved up to the white line, sir.

12 MR. PARKER: Okay. No further questions.

13 MR. HARMON: One brief question.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. HARMON:

16 Q. You said you were guessing ten to twelve feet in
17 this statement?

18 A. I'm saying she moved -- she eased up to the
19 white line after the stop sign.

20 Q. Okay. And you were guessing that that was ten
21 to twelve feet but you didn't know?

22 A. Right. I had no idea how far it is.

23 MR. HARMON: Thank you. No further questions.

24 MR. MCLEOD: No questions, Your Honor.

25 THE COURT: All right. Sir, you may step down.

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

3 THE COURT: Mr. Harmon, If you will call your
4 next witness, sir.

5 MR. HARMON: Yes, Your Honor. At this time we
6 would like to call Mr. Ned Wooden.

7 THE COURT: Okay. Mr. Wooden, if you'll please
8 come forward to be sworn, sir.

9 [Whereupon, Mr. Wooden complies]

10 THE COURT: Sir, if you will place your left
11 hand on the Bible and raise your right hand.

12 [Whereupon, Mr. Wooden is duly sworn by the
13 Court]

14 THE COURT: Thank you, sir. Go ahead and take a
15 seat.

16 [Whereupon, Mr. Wooden takes the witness stand]

17 - - - - -
18 NED WOODEN,

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

21 DIRECT EXAMINATION

22 BY MR. HARMON:

23 Q. Sir, would you tell the jury your name.

24 A. Ned Wooden.

25 Q. And, Ned, who was the train engineer on the day

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1 of this accident?

2 A. I was.

3 Q. Who was the person, Ned, responsible for blowing
4 the horn as the train approached the Hill Road crossing?

5 A. I was.

6 Q. And did you see where the green Ford Explorer
7 was stopped on the day of this accident?

8 A. Yes, I did.

9 Q. Okay. Before we talk about those things, Ned, I
10 want to talk a little bit about your background. Where do
11 you live?

12 A. North Augusta.

13 Q. And how long have you lived there?

14 A. All my life.

15 Q. Are you married?

16 A. Yes, I am.

17 Q. All right. And what's your wife's name?

18 A. Dorothea.

19 Q. And how long have you and Dorothea been married?

20 A. Thirty-seven years.

21 Q. Coming up on an anniversary?

22 A. Yes. In October it'll be thirty-eight.

23 Q. Okay. Do you have any children?

24 A. Yes, I do.

25 Q. How many?

1 A. Three.

2 Q. What are their names?

3 A. Katrina, Tammy, and Dexter.

4 Q. Do you have any grandchildren?

5 A. One grandboy, and one on the way.

6 Q. All right. And when is the one on the way due?

7 A. September.

8 Q. And your grandson's name?

9 A. Nicholas.

10 Q. And how old is he?

11 A. Twelve.

12 Q. Okay. Now, before working for CSX you served in
13 the war; right?

14 A. Yes, I did.

15 Q. All right. You were in the army?

16 A. In the army.

17 Q. And where did you serve?

18 A. In Vietnam.

19 Q. What was your first job you had while you were
20 still in high school?

21 A. I was a student bus driver.

22 Q. All right. What is that?

23 A. Where was it?

24 Q. What is that.

25 A. That's driving the school bus and attending

1 school, too.

2 Q. All right. Now, at some point after you were in
3 the military you began to work with CSX; right?

4 A. After I got out of the military.

5 Q. Okay. After you got out of the military, when
6 did you begin working with CSX?

7 A. May of 1973.

8 Q. And why did you go work for CSX?

9 A. Because they paid good money and they had good
10 benefits.

11 Q. All right. What was the first position you had,
12 Ned, working for CSX?

13 A. I was a trainman.

14 Q. Can you tell the jury what a trainman does?

15 A. A trainman is the person that lines switches,
16 switch cars in the yard and make up trains, and secure
17 cars at industries, like tying hand brakes, tie the cars
18 down, and all that.

19 Q. What's a switch?

20 A. Switch?

21 Q. Yeah. You said they tie switches. What's that?

22 A. They throw switches.

23 Q. Okay. They throw switches?

24 A. Right.

25 Q. All right. And the switches deal with the

1 trains; correct?

2 A. With the -- right.

3 Q. How long were you a trainman?

4 A. Almost four years..

5 Q. What was the next position you had?

6 A. I was a locomotive engineer.

7 Q. And tell the jury what a locomotive engineer
8 does.

9 A. The engineer is the person that operates the
10 control on the engine; he start, stop, and control the
11 speed on the train; and he is equally responsible with the
12 conductor for the safety of the train.

13 Q. How long at the time of this accident had you
14 been an engineer, Ned?

15 A. I think it was something like thirty years,
16 thirty-one years, something like that.

17 Q. As an engineer, who's in charge of the train?

18 A. The conductor.

19 Q. Now, I want to show you some pictures of the
20 train.

21 MR. HARMON: Can we go to Exhibit 54, please.

22 Q. [Mr. Harmon] Can you see that, Ned?

23 A. Yes. Yes, I see.

24 MR. HARMON: And can we flash to 54-A, as well.

25 No. I'm sorry. The next -- 54. The next picture of

1 the train. There we go.

2 Q. [Mr. Harmon] All right. Ned, can you just tell
3 the members of the jury a little bit about -- first of
4 all, is this the same type of train that you were the
5 engineer on the date of this accident?

6 A. Yes. That's the -- seem like the same -- yes,
7 that is. That's the same number.

8 Q. Okay. And can you just -- if I give you a
9 pointer, can you tell the jury a little bit about this
10 train?

11 A. Yes, I can.

12 MR. HARMON: All right. Do you mind stepping
13 down, Ned?

14 THE WITNESS: No.

15 [Whereupon, the witness complies]

16 Q. [Mr. Harmon] Just tell us a little bit about
17 this.

18 A. This is the windshield. Those are windshield
19 wipers. The engineer sits on the right side; the
20 conductor sits on the left. Those are the headlights,
21 this is the door entry, those are numbers of the engine.
22 It also have number lights. These lights here are the
23 ditch lights. And this iron bar here that the man got his
24 hands on is what we call the grab iron, and he holds this
25 one on the left side and the one on the right side, and we

1 got steps and we step up on the engine room. And this
2 thing right here is what we call the cow catcher. It
3 moves all the debris that's out in front of the engine
4 that's on the track.

5 Q. Now, you said that you step up there through
6 that door. How high -- when you're on the train, Ned, how
7 high are you above the ground when you're operating the
8 train?

9 A. Somewhere like twelve or fourteen feet.

10 Q. Twelve or fourteen feet.

11 And then with respect to the inside, which we're
12 going to look at in a moment, you're on the -- point again
13 to the side you're on.

14 A. On the right.

15 Q. Okay. And then the conductor is on the opposite
16 side?

17 A. Right. Left.

18 MR. HARMON: Can we go to 54-A.

19 Q. [Mr. Harmon] Now this is inside, actually
20 inside, the vehicle; right?

21 A. Inside the car by the engine. Right.

22 Q. And is this what would be in front of you?

23 A. That's right there.

24 Q. Can you tell the jury -- just give us an
25 orientation of what's here.

1 A. The engineer sits right behind this desk right
2 here, right behind these controls. This gauge here is the
3 amp gauge. When you're pulling a train -- you see you got
4 green and you got red. Zero is right there where it's at
5 now. When you're pulling, it goes to the right,
6 clockwise. When you're dynamic braking, it goes to the
7 left, counterclockwise. This is our speedometer, this is
8 the air flow meter, this is the brake pipe or gauge, and
9 this is the main reservoir gauge --

10 Q. What are these handles that you have in the
11 middle? Can you start -- yeah. Start over there.

12 A. This handle here is the independent brake. That
13 means it put brakes on the engine and the engine alone.
14 This is the automatic brake. It put brakes on the engine
15 and the train. This is the throttle. It got nine
16 positions, start at idle to number eight. This is the
17 reverse. It got three positions, a forward, center, and
18 reverse. This little knob here is an alerter.

19 Q. What is an alerter?

20 A. If you don't do anything with these four handles
21 here, there's an alarm that would go off on the train and
22 it would stop it. So you have to reset that every time
23 the alarm go off.

24 This button right here is the bell. This button
25 right here is the -- excuse me. This button right here is

1 the horn. This button right here is the bell. This
2 button right here is the manual sound. This button right
3 here is the sound for the lead trucks on the engine. And
4 it got two positions. Once you push it on, you have to
5 push it off to stop it.

6 Q. Okay. And, again, how many years had you been
7 working as an engineer using equipment like this or
8 similar to it?

9 A. Well, at the time I had thirty-four. So we'll
10 say thirty years.

11 Q. Thirty years. And when did you retire, Ned?

12 A. October 1st of 2007.

13 Q. All right. And was that the same month that
14 Calvin passed away?

15 A. Yes, it was.

16 MR. HARMON: You can have a seat.

17 If we can have the lights?

18 All right. Can we put up the picture of Mr.
19 Cummings for just one moment.

20 Q. [Mr. Harmon] We talked about your conductor.
21 Can you tell -- can you tell the members of the jury who
22 that is?

23 A. That's Mr. Calvin Cummings.

24 Q. All right. And he was the conductor on the day
25 of this accident?

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1 A. Yes, he was.

2 Q. He was a friend of yours?

3 A. Yes, he was.

4 Q. How long had the two of you worked together?

5 A. Ever since we got hired. We got hired the same
6 year.

7 MR. HARMON: All right. You can bring that
8 down.

9 Q. [Mr. Harmon] All right. I want to talk about
10 the -- Ned, the Hill Road crossing. How many years had
11 you been going through the Hill Road crossing at the time
12 of this accident?

13 A. At the time of the accident it probably was
14 something like thirty, 'thirty-one years, or something like
15 that.

16 Q. So you had seen this particular crossing in the
17 past?

18 A. Many times.

19 Q. All right. Ned, I want to show you a
20 photograph. Can you see that, sir, from where you are?

21 A. Yes, I can.

22 MR. HARMON: Why don't you come down a little
23 bit, because I'm going to ask you a question here in a
24 moment.

25 Q. [Mr. Harmon] What is this a photograph of?

1 A. That's the Hill Road crossing and the railroad
2 track.

3 Q. All right. And the -- the day of the accident,
4 which direction were you going?

5 A. I was traveling east.

6 Q. All right. So you were going, as we're looking
7 into the picture, into the picture?

8 A. Right.

9 Q. And can you -- on this picture can you see where
10 the stop line is located?

11 A. Yes, I can.

12 Q. Can you show it to the jury?

13 A. [Indicates]

14 Q. Okay. Now, this photograph is taken on ground
15 level. When you're higher in the air, can you see more?

16 A. Yes, you can. Much better.

17 MR. HARMON: Okay. Thanks. You can sit down.

18 Q. [Mr. Harmon] All right, Ned. Let's turn and
19 talk about the day of this accident. The proper speed for
20 the Hill Road crossing is what?

21 A. Forty-nine.

22 Q. All right. And how fast were you-all going when
23 you came across the Hill Road crossing?

24 A. Somewhere between forty and forty-five.

25 Q. Now, Mr. Cummings was your conductor that day;

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1 right?

2 A. Yes, he was.

3 Q. And you were positioned on the left side of the
4 train?

5 A. I was on the right.

6 Q. I'm sorry. The right, if you're in the engine?

7 A. Right.

8 Q. And Mr. Cummings was on the left?

9 A. Right.

10 Q. So Mr. Cummings was closer to the crossing?

11 A. Correct.

12 Q. All right. Can you tell the jury what happened
13 as you approached the Hill Road crossing?

14 A. That day we was approaching the Hill Road
15 crossing and I saw this greenish Ford Explorer at the Hill
16 Road crossing ease up to the stop bar and stop. I was
17 blowing the horn, looking at her pull up and stop. Then I
18 don't know whether I was throttling down or had throttled
19 down, and started to blow again. And my conductor said,
20 she ain't -- no, excuse me -- they ain't going to make it.
21 And when he said that I started to look down again and I
22 see the car from the stop bar moving across the
23 right-of-way. And I tried to get her attention, so I
24 started what they call a panic blow. It was punch the
25 horn, punch the horn, punch the horn, to change the

1 dynamic of the sound to get her attention, and I couldn't.
2 And when I came to the conclusion that we was going to
3 hit, I put the train in emergency and --

4 Q. What happened -- after you put the train into
5 the emergency, the train and the car collided; right?

6 A. Right.

7 Q. And, now, with respect to, Ned, what happened
8 afterwards, whose responsibility is it after there is a
9 collision to go back to the scene?

10 A. The conductor's.

11 Q. All right. And what happened in this instance?

12 A. The conductor got his radio and his equipment
13 and went back to the scene.

14 Q. And then what was your responsibility?

15 A. Stay on the engine.

16 Q. And did you make any -- place any calls when you
17 did that?

18 A. Yes, I did.

19 Q. Who did you call?

20 A. The train dispatcher.

21 Q. And what did you tell them?

22 A. We had had a crossing accident and where we was
23 and we needed the paramedics and the county officials.

24 Q. Okay. Now, in terms of when you put the train
25 into emergency, did that occur at impact? Or when did

1 that occur?

2 A. I'm not -- I'm not absolutely sure. But I know
3 when I came to the conclusion that we was going to hit, I
4 put the train in emergency.

5 Q. What were you trained to do, Ned, with respect
6 to putting the train in emergency when it's dealing with
7 cars?

8 A. When you come to the conclusion that you're
9 going to make contact, put the train in emergency.

10 Q. And what were you trained, with respect to
11 putting the train in emergency, if you're dealing with
12 other things like gas trucks or log trucks? Is there a
13 difference?

14 A. There's a difference.

15 Q. What is -- what were you trained with respect to
16 that?

17 A. Don't put the train in emergency. Try to knock
18 the gas truck out of the way and try to get yourself as
19 far away from the truck as possible, then put the train in
20 emergency.

21 Q. Now, Ned, there has been some testimony in this
22 case about an event recorder. Do you know what an event
23 recorder is?

24 A. Yes, I do.

25 Q. All right. Do you know how to read it?

1 A. No, I don't.

2 Q. All right. As you're approaching certain
3 crossings like the Hill Road crossing, where are you
4 supposed to start blowing the horn?

5 A. At the whistle post.

6 Q. And did you believe that you blew the horn at
7 the whistle post?

8 A. I believe I started at the whistle post.

9 Q. But the whistle -- but the event recorder says
10 you were short; right?

11 A. Right.

12 Q. Are you here disputing what the event recorder
13 said?

14 A. No, I'm not.

15 Q. Were you blowing the horn in this instance, Ned,
16 well in advance of this crossing?

17 A. Yes, I was.

18 Q. And do you believe your blowing of the horn was
19 giving adequate warning to those who were there at the
20 crossing?

21 A. Yes, I think so.

22 Q. All right. Now, Ned, because you didn't blow
23 right at the 1500 whistle-post mark, you received a verbal
24 counseling, didn't you?

25 A. Yes, I did.

1 Q. You received a verbal counseling for giving 1100
2 feet of horn instead of what was technically required,
3 1500?

4 A. You're correct.

5 Q. Just a few more questions for you, Ned. Is this
6 case important to you?

7 A. Yes, it is.

8 Q. Why?

9 A. Because --

10 MR. PARKER: Your Honor, I would object to that.
11 That's not an appropriate question. It's irrelevant.
12 He's not a defendant in this case.

13 MR. HARMON: Your Honor, they're accusing him --

14 THE COURT: Overruled. Just go ahead and ask
15 the question.

16 Q. [Mr. Harmon] Why is it important to you, Ned?

17 A. It's important to me because I'm accused of
18 causing an accident that I didn't cause.

19 Q. Ned, once the green Ford Explorer pulled out in
20 front of you was there anything you could have done to
21 avoid hitting it?

22 A. Nothing.

23 MR. HARMON: Please answer any questions
24 Mr. Parker has for you.

25 MR. PARKER: Mr. Wooden, let me ask you a few

1 questions.

2 I want to first --

3 Are we going to take a break, Your Honor? It's
4 about one o'clock, and I don't know whether I'm going
5 to start or can I just -- if we're going to take a
6 break, I would prefer to not break up the examination.

7 THE COURT: Why don't y'all come talk to me and
8 you can tell me how long it's going to be.

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

11 THE COURT: Ladies and gentlemen of the jury,
12 it's about five minutes to 1:00 and my understanding is
13 the cross-examination is going to take a little bit so
14 I think it's time maybe for us all to go ahead and take
15 a break.

16 I want to tell you that these lawyers are
17 working very hard to move this case along, and I want
18 you all to know that because I certainly appreciate it
19 and as a jury I know you do, as well. They are working
20 very hard to finish up this case.

21 With that said, and keeping that in mind, I'm
22 asking that y'all take a short lunch, if you don't
23 mind. It's about five minutes to 1:00. If y'all could
24 be back here at two o'clock or just a few minutes
25 after.

1 Again, as y'all know, I can't start until all
2 sixteen of you are here. So nothing is going to happen
3 until you all arrive. But if y'all would be here as
4 close to two o'clock as possible. I assure you that if
5 you are here, we will be ready to go. We will take
6 you back here and we will move this case along. All
7 right?

8 Again, ladies and gentlemen, do not discuss this
9 case. It's not appropriate to do so.

10 Have a wonderful lunch, and I will see you back
11 at 2:00.

12 [Whereupon, the jury exits the courtroom at
13 12:55 p.m.]

14 THE COURT: All right, y'all. We'll go ahead
15 and we'll be at ease until about five minutes to 2:00,
16 if that suits y'all. Okay?

17 MR. HARMON: Thank you, Your Honor.

18 MR. PARKER: Thank you.

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

20 [Whereupon, a recess is taken from 12:58 p.m. to
21 2:00 p.m.]

22 THE COURT: Are you ready to go, Mr. Parker?

23 MR. PARKER: Ready.

24 THE COURT: All right. Ready to go, Mr. Harmon?

25 MR. HARMON: Yes, Your Honor.

1 THE COURT: All right. Mr. Wooden, come on back
2 up.

3 [Whereupon, Mr. Wooden re-takes the witness
4 stand]

5 THE COURT: All right. Sir, I will remind you
6 that you are still under oath.

7 Let's go ahead and bring the jury in.

8 [Whereupon, the jury enters the courtroom at
9 2:01 p.m.]

10 THE COURT: Welcome back.

11 All right. Mr. Parker, cross-examination, sir.

12 CROSS-EXAMINATION

13 BY MR. PARKER:

14 Q. Mr. Wooden, you were employed with the railroad
15 for a lot of years; right? How many was it? Thirty how
16 many?

17 A. Thirty-four, plus.

18 Q. All right. And the -- you've been retired for
19 how long? A year?

20 A. Since last October.

21 Q. So this October will be a year?

22 A. Be a year.

23 Q. And they -- who appointed you as the company
24 representative in this case?

25 A. No one.

1 Q. Well, Mr. Harmon said you were here
2 representing CSX.

3 A. He couldn't have said that, because I'm
4 representing --

5 Q. You're representing Mr. Wooden; right?

6 A. Right.

7 Q. And you've got no relationship with CSX, do you,
8 other than being retired?

9 A. Retired.

10 Q. And have you ever been asked by CSX to be the
11 company representative --

12 A. No, I haven't.

13 Q. -- in your whole career?

14 A. I never have.

15 Q. And the company representative is always a
16 company official; isn't that correct?

17 A. That's correct.

18 Q. And that would be -- a road master is a company
19 official; correct?

20 A. Right.

21 Q. A train master?

22 A. Correct.

23 Q. And go right on up the line. And then you go to
24 a road foreman of the engines?

25 A. Right.

1 Q. They're all company officials. Then you go into
2 the high management; right?

3 A. I suppose.

4 Q. Now, the road foreman of engines in this case,
5 your road foreman, was Mr. Barton; correct?

6 A. That's correct.

7 Q. And the train master was Mr. Jones; correct?

8 A. Correct.

9 Q. And I want to, when we get started here, ask you
10 a few questions. I think we can agree to some things and
11 I want to see if we can agree about --

12 MR. PARKER: Let's go to the first one.

13 Q. [Mr. Parker] And I want to see what we can
14 agree to. And I got up here on the --

15 MR. PARKER: And let's zoom in on the first
16 three things.

17 Q. [Mr. Parker] Do you -- can you see that, Mr.
18 Wooden?

19 A. Yes, I can.

20 Q. We can agree that you failed to blow the horn of
21 the locomotive for 1500 feet before the crossing as
22 required by the company rule and South Carolina law?

23 A. According to the event recorder.

24 Q. Right. According to the event recorder.

25 A. Yes.

1 Q. And you have testified previously you don't
2 contest the event recorder; correct?

3 A. I did not.

4 Q. And we can agree that you testified at your
5 deposition you were approximately three- to four-hundred
6 feet from the crossing when the Explorer first moved?

7 A. I don't think so.

8 Q. You don't think so.

9 MR. PARKER: Well, let's pull up deposition page
10 72, line 7 through 12.

11 Q. [Mr. Parker] All right. I asked you when we
12 took your testimony, I said: [reading] do you know how
13 close you were to the crossing when the car started moving
14 again. No, I don't. I said approximately. You said
15 several hundred feet, three- or four-hundred feet, several
16 hundred or something.

17 Is that correct?

18 A. That's correct.

19 Q. And I read that correct. And that is correct,
20 isn't it?

21 A. That's --

22 Q. That was the best of your memory that day, that
23 Ms. Colvin's vehicle was three- to four-hundred feet when
24 you first noticed it moving? You were that -- the train
25 was that -- the locomotive was that far from the crossing?

1 A. Yes. That's correct.

2 Q. And the next thing I think we can agree about is
3 you testified at your deposition that when she started
4 moving, you started an emergency horn blow by breaking the
5 horn blow for two to three seconds and this would be an
6 estimate. In other words, as you testified in your
7 testimony earlier, you broke the horn blow and then
8 started what you called the panic --

9 A. Panic blow.

10 Q. -- blow.

11 And that's what you're supposed to do according
12 to the rules; correct?

13 A. Correct.

14 Q. And so you would agree with that, with number 3;
15 correct?

16 A. Correct.

17 Q. Number 4, you testified at your deposition you
18 believe you started blowing the horn at the whistle post
19 and blew the crossing properly with two longs, a short,
20 and a long; is that correct?

21 A. That's -- that's not correct.

22 Q. I'm not -- I know that's not correct. But
23 that's what you testified to? That was your memory?

24 A. Right.

25 Q. According to your memory you thought you had

1 blown two longs, a short, and a long --

2 A. No --

3 Q. -- from the whistle post?

4 A. I started at the whistle post, I thought, and I
5 was in the process of blowing two longs, a short, and a
6 long.

7 Q. All right. And that's when you went into the
8 panic --

9 A. Blow.

10 Q. -- blow?

11 A. That stop the --

12 Q. Right.

13 A. -- the last part of the short and long --

14 Q. Right. You interrupted it?

15 MR. HARMON: Your Honor, I'm sorry. Can he let
16 him finish his answer, please?

17 MR. PARKER: Certainly.

18 THE COURT: Yes. Thank you.

19 You can go ahead and --

20 Q. [Mr. Parker] Go ahead.

21 THE COURT: -- finish your answer, Mr. Wooden.

22 A. After I went into the panic blow it stopped the
23 process of two longs, a short, and a long because
24 something -- an event showed up in there. So I tried to
25 do a panic blow, which eliminated the other short and

1 long. So I just --

2 Q. [Mr. Parker] But my point being that you
3 believe your memory was you started blowing the horn at
4 the whistle post.

5 A. That was my memory.

6 Q. And your memory is that you blew the horn
7 properly at all the crossings going into Yemassee; is that
8 correct?

9 A. That's correct.

10 Q. And you were blowing for the 1500 feet required
11 by law and by the company rules?

12 A. That's correct.

13 Q. And you would have blown them with two longs and
14 a short and a long for the required distance of 1500 feet,
15 each of those crossings; correct?

16 A. That's correct.

17 Q. And that was your memory?

18 A. That's correct.

19 Q. And you testified that your throttle position
20 was two or three at the time of the impact, that you had
21 the throttle in either two or three at the time of the
22 impact; is that correct?

23 A. I'm saying that's the best I could remember.

24 Q. That was your best memory?

25 A. Right.

1 Q. And you testified you were sure that the horn --
2 and I've got on there -- but on the locomotive was a pull
3 type?

4 A. Now, before -- before we -- I wasn't absolutely
5 sure. I didn't know was it a pull type or a button type,
6 because we changed engines every day and I wasn't
7 absolutely sure. Some of the table-tops are built
8 different.

9 Q. Well, didn't you testify that you were positive
10 that it was a pull type? That was your best memory?

11 A. That's what I thought it was because of the
12 number on the engine. The 7800 is the earlier, first --
13 beginning of the table top, and they got some push horns
14 and they got some pull horns. So I thought maybe that
15 would have been a pull horn. I didn't -- I wasn't
16 absolutely sure what it was.

17 Q. Let's look at your deposition.

18 MR. PARKER: Page 74, line 22, through 76, line
19 7. No. We're looking at 75, line 22. I'm sorry. We
20 need 74, line 22.

21 [Whereupon, Mr. Parker and Mr. Detrick confer]

22 MR. PARKER: We'll come back to that in a
23 minute. Before we get through, I'll come back to that.

24 Q. [Mr. Parker] But your memory was that it was a
25 pull type?

1 A. That's what I was thinking.

2 Q. And you now know that was wrong?

3 A. I now know that it was a -- according to the
4 pictures I've been presented with the engine number, that
5 it wasn't a pull type. But if you check my answer: I
6 think.

7 Q. Right. I think later on in the deposition,
8 we'll get there, you were pretty positive about it by
9 memory?

10 A. Right.

11 Q. But it turned out it's a push-type, push button,
12 wasn't it?

13 A. Push horn. Right.

14 Q. And this is what they call a Dash Eight or Dash
15 Nine type engine?

16 A. Right.

17 Q. And I think that Mr. Harmon put up a picture of
18 those controls and you testified about it being a push
19 button rather than a pull type; correct?

20 A. That's correct.

21 Q. And you testified that you placed the train in
22 emergency prior to impact, correct, at your deposition?

23 A. I placed the train in emergency when I came to
24 the conclusion that we was going to have an accident. And
25 that was about the same time we was -- the impact was

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1 happening.

2 Q. All right. But you, I think -- and let's go to
3 that so we can get straight on that.

4 MR. PARKER: Let's go to deposition 86, line 19.

5 Q. [Mr. Parker] I asked you on that page about
6 where you were. And you said you saw the car to your
7 right, and, no, the car was to my left. I said:
8 [reading] to start with, and then, but I'm talking about
9 right after impact where was it. It was moving over to
10 the far lane, the south lane, to my right.

11 MR. PARKER: And let's go to page eighty -- you
12 need to get the next page.

13 Q. [Mr. Parker] [Reading] And what happened when
14 you hit.

15 You said: [reading] it knocked the car around
16 and you see just the front of the right-front cow.

17 That's the cow catcher you call it?

18 A. Cow catcher. Right.

19 Q. [Reading] What they call the cow catcher caught
20 the rear panel of the car and spin it, like maybe she was
21 traveling south, and spin her around and had her turned
22 north. And seemed like it knocked the bumper off and
23 somehow knocked some objects looked like was laying out in
24 the road there, pieces of the car. And you already had
25 the train in emergency; right.

1 And you answered: [reading] right.

2 A. That's correct.

3 Q. And so your testimony was that you had the train
4 in emergency prior to impact; is that correct?

5 MR. HARMON: Your Honor, I'm sorry. That's
6 improper impeachment. He is misquoting. It's improper
7 impeachment.

8 MR. PARKER: I don't know what he's talking
9 about. He said that --

10 THE COURT: Okay.. Y'all, come here for a
11 second.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 Q. [Mr. Parker] So we -- you can agree that you
15 testified you placed the train in emergency prior to
16 impact?

17 A. What I'm agreeing to, Mr. Parker, is when I put
18 the train in emergency, I knew we was going to hit. Had
19 we hit then, or was going to hit, I -- what I'm testifying
20 to -- when I came to the conclusion that the accident was
21 going to happen, I placed the train in emergency.

22 Q. Okay. And so the train now started moving --
23 you saw the car moving toward the crossing at three- or
24 four-hundred feet away; correct?

25 A. I saw the car coming across, that blocked the

1 final right-of-way, when I was into my panic blow.

2 Q. Right. The car was moving from a stopped
3 position toward the track; correct?

4 A. Across the track.

5 Q. Well, yeah. But, I mean, sometime before it was
6 before the track. When you saw it first started moving,
7 it wasn't on the track.

8 A. When I first saw it moving it was on the track,
9 because my conductor said they are not going to make it.

10 Q. In other words, you didn't see it move before
11 they were on the track?

12 A. I didn't see when it -- came up to the stop bar
13 and stopped, that was it. And the next time I focused
14 back at the car, it was coming across.

15 Q. So you didn't really -- you noticed it time it
16 stopped the first time?

17 A. I noticed it when it stopped at the stop bar.

18 Q. And then you -- next time you even paid any mind
19 to it was when the conductor said, they're not going to
20 make it, or something to that effect?

21 A. Well, when they came up to the stop bar and
22 stopped, Mr. Parker, they was a safe distance. And that
23 crossing I thought was all right until the train passed
24 through. So I was focused on other things that I had to
25 do on down the road. And when my conductor say they're

1 not going to make it, I was blowing the horn for the
2 second time, and I seen the car coming across rocking --

3 Q. And the first time when you saw them pull up and
4 stop, as you said, you took notice of them and thought
5 they were safe so you then turned back to doing other
6 things; correct?

7 A. Well, focusing -- I didn't take my vision away
8 from the right-of-way. I was still looking down the
9 right-of-way.

10 Q. Right. But you weren't looking at them because
11 they were off the --

12 A. Right. Right.

13 Q. I got you.

14 And you also testified in your deposition that
15 you told the dispatcher you were traveling at forty to
16 forty-five miles an hour at the time of impact; correct?

17 A. Yes, sir. That's what I said.

18 Q. And you also testified that you don't try to
19 locate the distance of every car from the track when it's
20 stopped at the crossing?

21 A. No, I don't.

22 Q. Okay. That would be very impractical, wouldn't
23 it? I mean, because most of the time everybody is stopped
24 and you don't pay attention to exactly how close or how
25 far they are from the rail at a crossing, do you?

1 A. If the car come up to the crossing, I got to
2 have a constant lookout at the right-of-way. If it's
3 stopped on a safe distance away from the track, I'm
4 through with it.

5 Q. And you don't pay much attention to it after you
6 see they stopped at a safe distance; right?

7 A. That's correct.

8 Q. And a safe distance from the track -- what's the
9 foul zone?

10 A. I -- I --

11 Q. Doesn't CSX say that it's seven feet? that
12 anything, roadway equipment, anything closer than seven
13 feet is in danger of being hit?

14 A. Well, I don't -- I don't know.

15 Q. Well, you know that from time to time things
16 fall off the locomotive -- or not off the locomotive --
17 off the cars? Excuse me.

18 A. I imagine it does, but very seldom.

19 Q. But there's a risk of -- and things hanging off
20 every now and then?

21 A. We have dragging equipment.

22 Q. And those things, if you get too close to a
23 track, can hit you if you get up too close? if the car
24 does?

25 A. Right.

1 Q. And that's why they have a rule that you can't
2 store railway equipment closer than a certain distance.
3 You're aware of that, aren't you?

4 A. I'm aware of that.

5 Q. Do you know exactly what that distance is?

6 A. No, I don't, because any way we store a car, we
7 have a derailler. You have to put it behind the derailler,
8 so we put it behind the derailler. And how far, we don't
9 know -- I don't -- I don't know what that is.

10 Q. And you also testified that you went to Yemassee
11 the first time with Mr. Hedden. You pointed out to Mr.
12 Hedden where you saw Ms. Colvin for the first time;
13 correct?

14 A. I told him where I saw her car stop at.

15 Q. And you also testified on your direct about the
16 alerter. They've got an alerter on the locomotive, don't
17 they?

18 A. That tabletop/desktop there, it had an alerter
19 on it.

20 Q. Right. That alerter is a device that it goes
21 off -- if you don't hit something on the control panel
22 within a certain length of time, it'll go off and you have
23 to hit something to cut it off; right?

24 A. You have to -- that's a reset button.

25 Q. Or could you hit some other -- you could do the

1 throttle or the horn?

2 A. Throttle, blow the horn. Right.

3 Q. You have to engage in some task that lets you
4 know that you hadn't -- that y'all -- that the crew hadn't
5 passed out and you've got a runaway train. That's what
6 that's for, isn't it?

7 A. That's correct.

8 Q. And did the alerter go off that day?

9 A. It didn't.

10 Q. You never -- on that trip from the Augusta,
11 before the collision you never had the alerter go off?

12 A. What you -- I don't understand what you're
13 asking me.

14 Q. In other words, as you left -- you left Augusta
15 that day and you traveled and got almost to Yemassee
16 before this collision happened. Did the alerter go off
17 any time during that trip?

18 A. Probably did.

19 Q. I mean, that's a normal thing?

20 A. It probably did.

21 Q. And, now, the -- now, you -- the first person
22 you talked with about what happened in this collision was
23 Mr. Barton; correct?

24 A. The explain in details he wasn't. The first
25 person I talked to was the train dispatcher.

1 Q. Well, you asked for the I believe you said
2 paramedic and the --

3 A. Right. Right.

4 Q. -- police?

5 A. Right.

6 Q. But to talk to anything about what happened in
7 the wreck, that was Mr. Barton; correct?

8 A. Could have been. It probably was.

9 Q. And now I want to -- I'm going to put up here
10 what Mr. Barton said you told him.

11 MR. HARMON: Objection, Your Honor. Objection.
12 May we approach?

13 THE COURT: Yes.

14 [Whereupon, an off-the-record bench conference
15 is held]

16 Q. [Mr. Parker] Mr. Wooden, I'm going to put up
17 Mr. Barton's testimony. Have you been over Mr. Barton's
18 testimony?

19 A. No, I haven't.

20 Q. We asked him -- did he tell you what happened,
21 and I asked him -- and this is Mr. Barton talking.

22 [Reading] I asked him what had happened --

23 Speaking of you.

24 -- [reading] and he told me in his own words
25 what he saw had happened. And what did he tell you. He

1 told me that he was approaching Hill crossing, he saw an
2 automobile come up on his left-hand side and stop and he
3 didn't notice it anymore until the conductor had alerted
4 him to that, that the car had come on over the crossing,
5 and when he looked down he saw the car and placed the
6 brakes in emergency.

7 Is that what you told Mr. Barton?

8 A. Could have been. If that's what he say I said,
9 it could have been.

10 Q. All right. Let's see. You also talked -- now,
11 Mr. Barton, he's the road foreman of engines. He's your
12 supervisor; correct? Was your supervisor?

13 A. Correct.

14 Q. And he had a number of engineers under his
15 supervision; correct?

16 A. That's right.

17 Q. And Mr. Jones, Patrick Jones, was a train
18 master; correct?

19 A. That's correct.

20 Q. And Mr. Jones used to be a road foreman of
21 engines one time, wasn't he?

22 A. That's right.

23 Q. And Mr. Jones, his job as train master is to
24 supervise all of the conductors; correct?

25 A. And engineers.

1 Q. He's over the engineers, also?

2 A. Well, he's a train master.

3 Q. Right.

4 A. He supervise both.

5 Q. Right. But mostly your direct supervisor would
6 be Mr. Barton?

7 A. If I had some problem with engines or something
8 pertaining to the engines I would contact the road
9 foreman. But train master, he's over both of us.

10 Q. In other words, he's like the conductors over
11 the train?

12 A. He in charge of the train.

13 Q. Right.

14 And so Mr. Jones is -- he's in charge of the guy
15 that's in charge of the train?

16 A. Right.

17 Q. And here Mr. Jones states that: [reading] what
18 did he tell you happened.

19 Speaking of you.

20 [Reading] That the vehicle pulled up to the --
21 pulled up to the -- stopped short of the track and rolled
22 out in front of them and they struck it.

23 And I asked: [reading] now, who told you that.

24 And: [reading] Mr. Wooden.

25 And that's what you told Mr. Jones; correct?

1 A. That's correct.

2 Q. And that's the same thing that you had told Mr.
3 Barton; isn't that correct?

4 A. If -- I hadn't seen this nowhere, but you
5 telling me now. If that's what I said then, Mr. Parker, I
6 said it.

7 Q. Well, that's -- I'm not saying that. That's
8 what Mr. Barton said and what Mr. Jones said. And them
9 being your supervisors, you would want to be accurate with
10 them, wouldn't you?

11 A. That's right.

12 Q. Now, you also met shortly after the collision
13 with Mr. Hedden; correct? Adam Hedden.

14 A. Adam. That's correct.

15 Q. And Adam Hedden is the claims representative;
16 correct?

17 A. I don't -- I don't know his -- know his -- I
18 imagine if you say he's a claim -- I don't know.

19 Q. Well, you knew he was investigating and in
20 control of the -- defending CSX about this collision,
21 didn't you?

22 A. I knew he was a CSX official.

23 Q. And, in fact, I think that --

24 MR. PARKER: Let's put up Mr. Wooden, page 8,
25 line 19 through 25.

1 Q. [Mr. Parker] And when we were taking your
2 deposition and I asked you did you talk with Mr. Adam
3 Hedden, who is here with us, about this, answer:
4 [reading] yes, sir.

5 Question: [reading] the claims man. Yes, sir.
6 Then I asked you when you talked to him;
7 correct? Do you remember that?

8 A. Right.

9 MR. PARKER: And put up the next page.

10 Q. [Mr. Parker] And you said: [reading] I can't
11 remember the dates, but I've talked with him several
12 times.

13 And I asked you what you talked to him about.
14 And you said: [reading] I can't remember verbatim.

15 And I said: [reading] just in general.

16 And your answer was: [reading] in general,
17 things like where did I see the car at, about the
18 crossing, and what did I do, or something like that. Do
19 you remember when you first talked with him. Would it
20 have been within a day or two of the wreck.

21 Your answer was: [reading] I can't remember.

22 Question: [reading] was it shortly after the
23 wreck? Yes, sir. I imagine it was shortly after the
24 accident. And where were you when you talked with him.

25 Answer: [reading] in Yemassee. The first time

1 I talked with you was in Yemassee. It was in Yemassee.

2 And you're speaking of Mr. Hedden there;
3 correct?

4 A. Correct.

5 Q. And I said: [reading] was it the day of the
6 wreck.

7 And you said: [reading] no.

8 And so shortly after this collision you went
9 with Mr. Hedden, the claims man, to Yemassee; is that
10 correct?

11 A. I don't recall going to Yemassee with him.

12 Q. Well, I mean, wouldn't you think your testimony
13 that you gave -- and I'll get out your deposition and the
14 date of it and all, but shortly -- it was in December of
15 '04 that that would be accurate? Your deposition was
16 taken December the 14th, 2004. This was -- the accident
17 happened in February so this was -- you know, this --

18 A. But maybe I don't --

19 Q. -- I guess ten months later?

20 A. Mr. Parker, maybe I don't understand your
21 question. I'm answering that you said I went to Yemassee
22 with Mr. Hedden. I don't recall going to Yemassee with
23 Mr. Hedden.

24 Q. Well, do you recall talking to him in Yemassee?

25 A. I recall talking to him in Yemassee.

1 Q. Okay. Well, maybe I asked -- maybe I didn't ask
2 the question very well. I'll try to get a little better
3 at that.

4 But shortly after the wreck you went to Yemassee
5 and talked with Mr. Hedden. You didn't go with him; is
6 that correct?

7 A. I didn't ride with him to Yemassee.

8 Q. I got you.

9 A. I drove my own --

10 Q. Oh. You drove your own vehicle?

11 A. Right.

12 Q. And Mr. Cummings went with you; correct?

13 A. Right.

14 Q. And who was there when you got to the collision,
15 the site of the collision, at Hill Street?

16 A. I can't -- I'm not going to even try to call no
17 names.. I can't remember.

18 Q. Well, let's try to identify some people. Was
19 Mr. Purcell there?

20 A. I think he was.

21 Q. Was there other people, lawyers from his office,
22 there?

23 A. I think Mr. Davison was there.

24 Q. Mr. Davison -- he's a lawyer in Mr. Purcell's
25 office -- was there; is that correct?

1 A. That's correct.

2 Q. And there were other investigators there;
3 correct?

4 A. If they was investigators -- there was other
5 people there. If they was investigators, they were there.

6 Q. Because there were a good number of people
7 there, weren't there?

8 A. That's correct.

9 Q. And this was -- saying this was sometime in
10 early February of 2004, because that would be shortly
11 after the wreck?

12 A. That's correct.

13 Q. Okay. But you said you didn't believe it was
14 the day of the wreck; correct?

15 A. I know it was the day of the wreck.

16 Q. Know it was the day? Or wasn't?

17 A. Was not the day of the wreck.

18 Q. That's correct.

19 And when Mr. Hedden, when you were down there
20 with -- or met Mr. Hedden, Mr. Hedden took a bunch of
21 photographs, didn't he?

22 A. I can imagine. I can't swear to it. I know he
23 took some photographs.

24 Q. I mean, you saw him taking photographs; correct?

25 A. Correct.

1 Q. But you don't know how many he took? I mean, he
2 took a lot of them; correct?

3 A. I don't -- I don't know what you're referring
4 to, a lot. I know he took some photographs, now. He took
5 more than one. But if that's a lot, he took a lot of
6 photographs.

7 Q. Well, didn't you go with him and go up the track
8 and y'all take some pictures along the way where you were
9 sort of giving him some places?

10 A. I'm not absolutely sure that was Mr. Hedden,
11 now.

12 Q. Well, you were out there when he was taking
13 those photographs; correct? Mr. Hedden.

14 A. I was there.

15 Q. Okay. Well, I want to get some pictures here
16 and --

17 [Whereupon, Mr. Parker and Ms. Gerrard confer]

18 Q. [Mr. Parker] Let me show you these photographs.

19 MR. PARKER: Let's start at 165 and go to 180,
20 and then there's another set that goes from 181 to 197
21 -- excuse me -- 198, then another set from 199 to 230.

22 MR. HARMON: Your Honor --

23 MR. PARKER: These are CSX's photographs.

24 MR. HARMON: Okay. I just don't know the
25 exhibit numbers.

1 MR. PARKER: Do you want the Bates numbers?.

2 MR. HARMON: I just need to know the exhibit. I
3 don't know what --

4 THE COURT: Okay. Go ahead and show them to
5 him, please.

6 MR. HARMON: I don't think there's any problem.

7 [Whereupon, Mr. Parker and Mr. Harmon confer]

8 MR. PARKER: Your Honor, these are Exhibits 165
9 through 231, which is CSX photographs, and we would
10 introduce those without objection.

11 MR. HARMON: Yes.

12 THE COURT: Okay.

13 [Whereupon, Plaintiff's Exhibit Numbers 165
14 through 231 are admitted into evidence by the Court]

15 Q. [Mr. Parker] All right. Now, Mr. Wooden, I'm
16 going to put these up here to where if you want to refer
17 to one of them, you can do it.

18 But were you there when they took the pictures
19 of the vehicle? Did you go to the yard with them?

20 A. No, sir.

21 Q. But the scene pictures that were taken at the
22 scene, I know you don't know which ones, but you were
23 there when they took some of those; correct?

24 A. I didn't see any of the pictures that was
25 developed, but they was -- they had -- they had a camera

1 taking pictures. They showed me nothing at the scene.

2 Q. They didn't go over the pictures with you of
3 what they took?

4 A. No, sir.

5 Q. And I want to go over a few of the pictures and
6 I'll put them up on the screen so you'll be able to see
7 them.

8 MR. PARKER: Let's go to 209. The next one.

9 All right. Let's blow that up, if you would.

10 Q. [Mr. Parker] This picture, this would be the
11 whistle post going to Hill Street; is that correct? Or
12 can you tell?

13 A. From right there I can't tell. But that's a --
14 that was -- is a whistle post standing on the right over
15 there.

16 Q. All that right-of-way looks about the same,
17 doesn't it?

18 A. It look about the same.

19 Q. And if all you had to go by was a picture taken
20 like this, you couldn't identify where it was without
21 landmarks, could you?

22 A. Could not.

23 MR. PARKER: Let's go to 211. Blow that up.

24 Q. [Mr. Parker] And 211 is a picture that was
25 taken -- can you tell whether this is Hill Road or not?

1 A. I've never seen it before. I don't know where

2 --

3 Q. No idea?

4 A. [No response]

5 MR. PARKER: All right, then. Let's go next to
6 212.

7 Q. [Mr. Parker] Now, can you identify this?

8 A. Now, that look more like the Hill Road, right
9 there, from a distance.

10 Q. You've been in the courtroom during this
11 testimony. Remember the testimony was that tree right
12 there was 390 feet from the crossing? Do you remember
13 that?

14 A. If that's the same tree.

15 Q. Well, in the photograph it would be the first --
16 if that's Hill Road, that would be the first tree;
17 correct?

18 A. Right. That's on the right.

19 Q. That's right.

20 A. Yes, sir.

21 Q. It would be to your right? On your side of the
22 locomotive.

23 A. Right.

24 Q. And if you look down there -- so we know this
25 picture, because it barely got that tree in it, was taken

1 from a little greater distance than three ninety but very
2 close to 400 feet; correct?

3 A. I can't agree with you on the feet because I
4 don't -- I don't --

5 Q. Assuming that the measurement of that tree is
6 three ninety.

7 MR. HARMON: Your Honor, I'm sorry. He doesn't
8 know. He can't assume. He's not an expert. I ask
9 that -- it's not a proper question to ask him.

10 MR. PARKER: Well, I believe that's --

11 THE COURT: Mr. Wooden, if you can answer the
12 question, you can answer it. If you don't know, you
13 can say you don't know. All right, sir?

14 THE WITNESS: Okay.

15 Q. [Mr. Parker] If that tree is three ninety, then
16 this picture would be taken from about 400 feet?

17 MR. HARMON: Your Honor, again, I object.

18 Q. [Mr. Parker] If you know. If you don't know,
19 you can --

20 A. I -- I don't --

21 THE COURT: You can answer the question.

22 A. -- know.

23 Q. [Mr. Parker] Okay. Thank you.

24 The -- as we're looking here we can see Hill
25 Road; correct?

1 A. I can see Hill Road.

2 Q. And this is a grainy picture. But you can't see
3 any stop line in that photograph, can you?

4 A. I can't see no stop line in that photograph.

5 Q. And from -- if you were at this distance from
6 the crossing that day, you couldn't have seen the stop
7 line, could you? You had to get closer?

8 A. But, Mr. Parker, if I was on an engine I would
9 be way up and I have a much better view than --

10 Q. I agree with that. You would have -- you would
11 be -- if you're looking at this, you've got a -- down
12 lower you've got a different angle; correct? In other
13 words, the more the angle flattens out, the harder it is
14 to see things on the ground; isn't that correct?

15 A. I would agree with that.

16 Q. And even though you're up in the air -- and I
17 think your testimony was, or somebody said, that you --
18 how high would you be up in the air?

19 A. Some twelve or fourteen feet up.

20 Q. All right. And we'll get to it in a little bit.
21 But the engine, this Dash Eight engine, is not but
22 fifteen-and-a-half feet tall, totally, is it?

23 A. I don't know.

24 Q. Well, we'll get it out in a little while.

25 But regardless of how high you're up in the air,

1 unless you're in an airplane it would be very difficult to
2 see a white line from this location, wouldn't it?

3 A. Well, what I'm -- what I'm testifying to, this
4 picture right here I can't see that white line because
5 that's a bleary shot.

6 Q. Well, I agree with that.

7 A. But on the engine our windshields be clean and
8 we would have a better view, and I can't testify that I
9 couldn't see the white line from that distance.

10 Q. Well, you might could or might couldn't?

11 A. Might could or might couldn't.

12 Q. Okay. And as you get up around 400 feet you
13 might could or might couldn't; is that correct?

14 A. If -- you could -- you could see a white line on
15 an engine 400 feet.

16 Q. You could barely see it, couldn't you?

17 A. [No response]

18 Q. You've been -- have they taken you out since
19 this case started and put you in an engine and let you see
20 what you could see from 400 feet?

21 A. I've never done that.

22 Q. They didn't ask you to do that?

23 A. No, they didn't.

24 Q. And they didn't ask you to go to Hill Street, at
25 400 feet in the engine, and look and see if you could see

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1 the line?

2 A. No, they didn't.

3 Q. All right. Let's go -- now, when you were out
4 there that day and they were taking all those pictures,
5 Mr. Purcell was there, Mr. Davison was there, Mr. Hedden
6 was there, Mr. Cummings was there, you were there, and
7 other people were there that you don't know who they were;
8 correct?

9 A. That's correct.

10 Q. And Mr. Hedden talked with you and took down
11 certain information, did he not?

12 A. I don't remember him talking to me personally
13 with -- he had -- we was talking together.

14 Q. All right. So you were talking together, you
15 and Mr. Hedden and other people?

16 A. Cummings.

17 Q. Cummings? You and Mr. Hedden and Mr. Cummings;
18 correct?

19 A. That's right.

20 Q. And let me put up on the screen his conversation
21 with you that day, at least what he wrote down.

22 MR. PARKER: And let's blow up the top part.

23 Q. [Mr. Parker] And it says: [reading] Colvin
24 crew, engineer, ready to set up dynamics from idle.
25 Colvin pulled up and stopped.

1 Is that what you told him?

2 A. That's what I told him, if that's -- that's what
3 I told him.

4 Q. All right. And to set up the dynamics as you
5 explained, that's how you reverse the engine to slow the
6 train down; correct?

7 A. Well, I said getting ready.

8 Q. That's right.

9 A. And getting ready is if I was in number eight
10 throttle position, I got to take that throttle all the way
11 to idle and then set up --

12 Q. All right. Excuse me. Go ahead.

13 A. -- and then apply the dynamic brake.

14 Q. So to go to the dynamics you have to leave it in
15 idle for ten seconds; correct?

16 A. Supposed to.

17 Q. All right. And so at that point in time,
18 according to what you told Mr. Hedden, you had it in idle?

19 A. No, I didn't tell Mr. Hedden I had it in idle.

20 Q. You said you were getting ready to set up
21 dynamics from idle?

22 A. Well, if that's what I told him. But I --

23 Q. I don't know what you told him, Mr. Wooden.

24 A. But if that --

25 Q. That's what he wrote down.

1 A. What I'm saying, I'm not disputing. If that's
2 what I told him, that's what I told him.

3 Q. And you told him that the Colvin -- and he's
4 stricken out something -- pulled up and stopped. They did
5 not gun it. Or Mr. Cummings might have told him that,
6 also, about the car. I don't know. Did you tell him
7 that, or Mr. Cummings?

8 A. I can't remember.

9 Q. And crew was able to see the vehicle, he put.
10 And then he put a line -- and I don't know why, but put,
11 the entire vehicle.

12 Now, you could see the entire vehicle when you
13 got real close to the crossing; correct?

14 A. I could see the vehicle from way back there by
15 the whistle post in the --

16 Q. Excuse me. You saw the vehicle at the whistle
17 post?

18 A. I didn't say that, Mr. Parker. I seen back
19 after -- I didn't start to blowing the horn until the
20 engine got to the whistle post but I was blowing the horn
21 when she came up to the crossing, stop bar, and stopped.
22 I could see the car.

23 Q. Right.

24 And you saw the car for just a second or two and
25 then the car went forward; correct?

1 A. [No response]

2 Q. I don't even know. I think you said you didn't
3 pay that much attention to it after you had noticed it
4 coming up there; is that correct?

5 A. I don't know. You said after I heard it coming
6 up --

7 Q. No. No, not heard. I think what you just told
8 us is that once the car pulled up and stopped, you didn't
9 pay much attention to it.

10 A. That's correct.

11 Q. And so she was stopped for several seconds and
12 then moved forward; correct?

13 A. That's right.

14 Q. And then I believe you said that when she got to
15 three- to four-hundred feet is when Mr. Cummings said
16 they're moving, or words to that effect; is that correct?

17 A. If that -- if I said that, that's what I said.

18 Q. And at that point in time, after -- wherever
19 that point is, you started to panic blow on the horn?

20 A. But that wasn't on my first -- that wasn't the
21 first time I had saw the car, though. I started --

22 Q. I understand.

23 A. -- the panic blow after she -- after the
24 conductor said, they're not going to make it. And that
25 was on my second blow. I had saw the car come up to the

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1 stop bar and stop on the first blow.

2 Q. And you started the panic blow when they started
3 moving again?

4 A. When the conductor said, they are not going to
5 make it, and I focused at that car because -- that blocked
6 the right-of-way.

7 Q. When you, in fact, started that panic blow --
8 and I asked you the question, and the first thing we went
9 over that you agreed about was that you were approximately
10 300 to 400 feet from the crossing when the Explorer first
11 moved. And that's correct, isn't it?

12 A. That -- that's --

13 Q. Isn't that correct?

14 A. That's correct.

15 Q. And then he's taken -- for some reason taken
16 word crew, and he moved it over on -- off the page in the
17 margin. And it says: [reading] crew could not see in
18 vehicle. They say, vehicle came to a complete stop, not a
19 rolling stop. They note windows were tinted. They never
20 jammed on brakes or hit the gas.

21 Is that what you said?

22 A. Well, Mr. Parker, I don't know what you -- what
23 you're saying I said, but what I was -- what I meant was
24 that during my panic blow I could not get the driver's
25 attention so the speed they started off with when Calvin

1 say they are not going to make it, I didn't see the car
2 move from the stop bar first. Calvin saw it first. But
3 when I saw it coming across the track I started the panic
4 blow and I could not get the driver's attention because
5 they -- it never did change its speed.

6 Q. And it was just driving normally?

7 A. Just driving --

8 Q. And it was obvious to you that they never saw
9 you; is that correct?

10 A. I wouldn't -- I don't know.

11 Q. That's fair enough.

12 MR. PARKER: All right. Let's go down, scroll
13 down.

14 Q. [Mr. Parker] Now, there's a part in there --

15 MR. PARKER: Hold right there.

16 Q. [Mr. Parker] It says -- it's hard to see. But
17 it said: [reading] you can't blow the sequence for both
18 BP and the Hill Road.

19 You see he struck out that. Do you see that?

20 A. I see he scratched something out.

21 Q. It says: [reading] can't blow sequence for BP,
22 then Hill Road.

23 A. I didn't -- that -- I didn't write that. I
24 didn't --

25 Q. Well, I understand you didn't. That's what Mr.

1 Hedden wrote down --

2 A. Oh. Oh, okay.

3 Q. -- that he says you told him. Was that a
4 correct statement?

5 A. If I said it.

6 Q. I mean, there would be no reason you can't blow
7 the sequence for both the BP, then Hill Road, is it?

8 A. Now, what a -- what BP?

9 Q. The BP would be there. It used to be the
10 Teximart. Lane's. You know where -- the crossing before
11 Hill Road.

12 A. Before you get to -- the crossing before you get
13 to Hill Road, up by 95?

14 Q. Right.

15 I mean, there's no reason you couldn't blow it
16 in the correct sequence, was it?

17 A. No, it wasn't no -- wasn't no reason.

18 Q. And then if you come down -- you start out up
19 the hill, coming down that hill, coming into Yemassee, the
20 one up at the top of the hill is Ridgecut. Do you know
21 that crossing?

22 A. Right.

23 Q. And then you come on down the hill and you get
24 to the Simmons Truck Stop; right?

25 A. Right.

1 Q. And right there is a board where you have to get
2 authority to go beyond?

3 A. Right.

4 Q. And what do you call that block of track there?

5 A. A brown block.

6 Q. So the dispatcher has got to release the next
7 block to you before you can go on and proceed on; correct?

8 A. No. No, sir. That's not correct.

9 Q. Well, tell me what is. I'm asking.

10 A. Now, what are you -- what are you asking about?

11 Q. I'm asking you -- because you had already -- I
12 think in your deposition y'all had testified that about
13 Early Branch y'all had called and got the authority to go
14 from the block -- I don't know whether -- it's tart
15 [phonetic] block, or which block you were in, to the next
16 block.

17 A. We had all the blocks.

18 Q. Right. You had authority to go on into
19 Yemassee?

20 A. All the way to Yemassee.

21 Q. But if you hadn't had it, you would have had
22 to --

23 A. Stop --

24 Q. -- stop at that board?

25 A. That was where we usually stop at.

1 Q. And wait there at Simmons' Truck Stop?

2 A. That's right.

3 Q. And there's a crossing there at Simmons' Truck
4 Stop; correct?

5 A. That's right.

6 Q. And then you get down to the next crossing and
7 that's the BP or Lane's, or used to be the Teximart where
8 all the gas stations -- and y'all probably even may have
9 gotten something to eat there at Jay's restaurant.

10 A. Right.

11 Q. And that's where you're talking about about the
12 BP; right?

13 A. Right.

14 Q. And then Hill Road is the next crossing.

15 A. So, now, what's your question?

16 Q. I'm just trying to get a layout, and then I'm
17 going to go -- because my question really was about there
18 was no reason, and you had answered it, you can't blow the
19 sequence for BP, then Hill Road, that was an incorrect
20 statement.

21 A. Right.

22 MR. PARKER: And next. Let's go down. Stop
23 right there.

24 Q. [Mr. Parker] Said: [reading] the crew
25 estimates that --

1 I can't read what that is.

2 -- [reading] but forty to forty-five when threw
3 into emergency.

4 MR. PARKER: Can we scroll over? We're missing
5 the emergency off of it. No. Back up. There you go.

6 Q. [Mr. Parker] [Reading] Crew estimates I guess
7 traveling forty, forty-five when threw into emergency.

8 And that's what you've testified to; correct?

9 A. That's -- see, who wrote that? I didn't write
10 that --

11 Q. Well, I understand that.

12 A. -- so I can't testify to what he wrote.

13 Q. Well, this is Mr. Hedden, who's the claims
14 manager you said was a company official, that was taking
15 down what you and Mr. Cummings talked to him about.

16 A. Right. But what I'm saying, Mr. Parker, is if I
17 was verbally telling him what happened, I can't testify to
18 his -- what he -- I don't know what he wrote. He didn't
19 show me, let me read it. I --

20 Q. Right. Well, that's what I'm asking you. Do
21 you remember telling him that?

22 A. If he got it wrote down that he say I told him
23 that, then I told -- that's what I told him.

24 Q. It says: [reading] next, engineer states he
25 threw into emergency just after contact because that's

1 what he was taught.

2 A. If that's what I said, that's what I said. But
3 I can explain. In this situation, that -- I don't think
4 that happened. I think I was in emergency before impact.

5 Q. But then you told Mr. Hedden, said you hit the
6 emergency after the noise of the crash.

7 A. I don't remember. I don't remember that.

8 Q. There's no reason that Mr. Hedden would have
9 written this down unless you told him that, would it?

10 A. If he said I said I put it in emergency after
11 the noise of the impact, I never -- I don't recall that at
12 all.

13 MR. PARKER: Okay. Let's go on down, scroll
14 down.

15 Q. [Mr. Parker] [Reading] They had seventy-seven
16 cars.

17 And they're talking -- that's talking about your
18 train had seventy-seven cars; is that correct?

19 A. That's correct.

20 Q. And it says next, it says: [reading] stopped
21 twenty car lengths past crossing.

22 Is that correct?

23 A. If that's what I said, that's what I said.

24 Q. You know a car, a typical car, is fifty, fifty-
25 five feet?

1 A. Some of them.

2 Q. And the locomotive or the Dash Eight is how
3 long?

4 A. Approximately seventy.

5 Q. So the twenty cars times fifty would be 1,000
6 feet or so, and plus locomotive. So you would have
7 stopped at 1100 feet past the crossing, if that was
8 correct; right?

9 A. But that would be correct if all the cars are
10 forty-five feet or fifty feet. But, see, all the -- we've
11 got short car, long car, some longer than fifty feet. I
12 would say, you know, I don't -- I don't know -- I don't
13 know how -- what the car was. All of them forty feet
14 boxcars, that would be -- what you said is right.

15 Q. But what I'm getting at is that was your best
16 estimate when you talked with Mr. Hedden shortly
17 thereafter.

18 A. Okay.

19 Q. Is that correct?

20 A. That's correct.

21 MR. PARKER: All right. Then let's go scroll
22 down.

23 Q. [Mr. Parker] And there you were -- you just
24 noticed two adult were walking around and appeared okay,
25 crew did not see a railroad official at incident, crew

1 called dispatch.

2 And that was you that called; correct?

3 A. That's correct.

4 MR. PARKER: Next.

5 Q. [Mr. Parker] [Reading] Crew went to Florence
6 and dead-headed back to Augusta.

7 Correct?

8 A. Correct.

9 Q. And you did that.

10 MR. PARKER: Next.

11 Q. [Mr. Parker] [Reading] The engineer thought he
12 started at whistle post.

13 A. That's correct.

14 Q. And what he's talking about there is that you --
15 your best memory that day was that you started that
16 blowing the horn at the whistle post?

17 A. Right.

18 Q. And blew your normal sequence of two longs, a
19 short, and a long?

20 A. In the process.

21 MR. PARKER: Okay. Let's go to Plaintiff's
22 Exhibit 233 now.

23 Q. [Mr. Parker] And this is your train, correct,
24 that you had that day?

25 A. That's the engine on it.

1 Q. That's the engine, isn't it? Not the train,
2 but --

3 A. Right.

4 Q. The train, you mean all the cars --

5 A. Right.

6 Q. -- and this is the engine or locomotive?

7 A. That's the engine. That's 7837. That's it.

8 Q. All right. And if we look up at 7837 we can see
9 that there's two windshields there, correct, that you
10 pointed out in your --

11 A. Right.

12 Q. -- direct examination?

13 And then there's a partition over on the side
14 that would be on the conductor's side; right? Or what I
15 would call an A-pillar, the pillar that goes up to support
16 the roof, the solid metal; correct?

17 A. I don't --

18 MR. PARKER: Let me get a pointer and I'll point
19 it out, if I can find one.

20 Q. [Mr. Parker] There's a pillar right through
21 there; correct?

22 A. Now, where you --

23 Q. The metal. That's metal right where I've got
24 the pointer. That's a -- like in a car. The car has got
25 the same thing between the windshield and the window on

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1 the side; right?

2 A. [No response]

3 Q. Can you see that?

4 THE COURT: Mr. Wooden, if you need to step down
5 so you can better see, sir. Obviously it doesn't show
6 up on the screen here.

7 MR. PARKER: Oh. It's not showing up over
8 there?

9 THE COURT: No. It doesn't show up on the
10 screen.

11 So if you need to, sir --

12 MR. PARKER: Sure.

13 Q. [Mr. Parker] Right in here. This is a piece of
14 metal right here.

15 A. Right. Where the windows fit with.

16 Q. Right.

17 A. Right.

18 Q. And then this is a side window right here, right
19 in here and there; correct?

20 A. That's the side window.

21 Q. Right. And it's a double window. You can slide
22 one of them up forward or one of them back?

23 A. Right.

24 Q. So you could open one -- you could open either
25 way, or not open them at all, those windows right there?

1 A. Right. If that's the type that will do that,
2 though. Some of them they got a window there that one --
3 just one will slide --

4 Q. Just one will slide?

5 A. -- back on top of the another, and that's --

6 Q. Do you remember whether the Dash Eight would
7 slide one way or both ways?

8 A. That look as though the one type that the
9 windows won't slide open.

10 Q. Just one of them will --

11 A. Just one of them. It look like just one of
12 them.

13 Q. And you have to move it forward; correct?

14 A. Either -- one way or the other. Either forward
15 I -- one -- forward or backwards.

16 Q. Right. And so your view would have been out of
17 this window?

18 A. On the right side. That's correct.

19 Q. Right. And Mr. Cummings's view would have been
20 over here?

21 A. That's correct.

22 Q. On the left side?

23 A. That's correct.

24 MR. PARKER: Now, let's go to the next picture.

25 234.

1 Q. [Mr. Parker] And 234 is just another view
2 showing the same thing. And this window right here you
3 really can't -- you don't ever look out that window, do
4 you?

5 A. No.

6 Q. I mean, you're going to look -- you're looking
7 out this way, more or less checking out what's on your
8 right because you got stuff coming from both ways; right?

9 A. Well, see, when you're sitting in the engineer's
10 seat, you can see through both windshields.

11 Q. Oh, I understand that.

12 A. High. But, now just to look -- I look through
13 that windshield -- if a conductor is sitting over there,
14 when I look over there at him I'm looking -- I look
15 through the right.

16 Q. When you look at the conductor, then you look
17 through this window here.

18 A. Right.

19 Q. But most of the time you're looking out this
20 window?

21 A. Right.

22 Q. And this window has got a partition in here,
23 also?

24 A. That's correct.

25 Q. And of course the conductor, he's over here and

1 he's checking out things coming from the left, you're
2 checking out traffic coming from the right, but you both
3 can see either way; correct?

4 A. Well, see, when we're sitting -- we looking down
5 the right-of-way and you can see left and right.

6 Q. I understand.

7 A. I can see left and right and he can see left and
8 right.

9 Q. But typically the crew, I mean, it's going to be
10 more your responsibility to check out the right and more
11 his responsibility to check out the left because he's got
12 a better view to the left and you've got a better view to
13 the right?

14 A. Well, that's logical.

15 Q. That is correct, isn't it?

16 A. I would say that's correct.

17 Q. Now, when you're sitting back in this locomotive
18 you're sitting back a distance from the -- how far from
19 the windshield?

20 A. On that type engine there it's the windshield,
21 then you got the control stand, and then you got the
22 engineer's seat. It'll slide up or slide back.

23 Q. And do you sit back, or up?

24 A. Up.

25 Q. And it's also got something you can adjust it up

1 and down?

2 A. That's correct.

3 Q. And it's got a spring on it, doesn't it, to sort
4 of cushion your ride?

5 A. On --

6 Q. On the locomotive seat. It's got it so that
7 when you vibrate, it gives with you some?

8 A. On some of them. Not on all of them.

9 Q. How about on this model?

10 A. I can't -- I can't remember.

11 Q. But as we're coming down that hill from Ridgecut
12 down toward the crossing, as you're coming down the hill
13 you're getting some movement in the train, aren't you?

14 A. Well, all the slack will bunch up on you, and
15 you got to make some arrangement to maintain the speed.

16 Q. All right. When the slack bunches up on you,
17 it's jerking you, isn't it?

18 A. Well, at that particular spot it's all
19 descending --

20 Q. Right.

21 A. -- so you just -- the slack can just come in one
22 time, and you'll get one little push and that's it.

23 Q. The trains -- let's talk about operating a
24 locomotive. When you're up there in that cab and the
25 train is going forty-two, forty-five miles an hour, you're

1 getting some vibrations, aren't you? It's not like
2 driving a car, is what I'm getting at.

3 A. No, it's not like driving a car.

4 Q. You are getting movement and it's moving you.
5 And sometime the seats break from that movement, don't
6 they?

7 A. I can't recall one, but it -- Mr. Parker, they
8 ride a little better than you think they ride. They ride
9 pretty good.

10 Q. They ride a lot better than they used to, don't
11 they?

12 A. A lot better than they used to.

13 Q. But you're sitting back there and you're looking
14 out the window and you see the car come up. And when it
15 came up and stopped, you just noticed the car itself. And
16 you didn't notice the color of it, did you?

17 A. I could see -- I could see the car.

18 Q. Right.

19 A. The green Ford Explorer, I could see it ease up
20 to the stop bar and stop.

21 Q. But you didn't notice that it was an Explorer
22 then. You just noticed that it was a car; right?

23 A. It was a -- it was a, you know --

24 Q. Just another vehicle?

25 A. You could see it was a Ford SUV.

1 Q. All right. But at that distance you were when
2 they came up, you didn't take no notice of that?

3 A. Not nothing special.

4 Q. Because it was just another day, another car.
5 And you pass -- I guess between Augusta and Yemassee there
6 are, what? sixty, seventy crossings?

7 A. A lot of them.

8 Q. Bunches of them. And so you can't take note of
9 every car, can you?

10 A. Not unless something happens, or something
11 special about the car, you'll take notice.

12 Q. And when this one pulled up, there wasn't
13 nothing special about it, was it?

14 A. Nothing special.

15 Q. It wasn't nothing special about it until
16 Mr. Cummings said it was moving?

17 A. Until I focused and saw it done fouled the
18 right-of-way.

19 Q. Right. It was moving then, though; right?

20 A. Right.

21 Q. So there wasn't nothing special about this car
22 until Mr. Cummings said it was moving? I believe that's
23 what you told me, wasn't it?

24 A. If I recall correct, Mr. Cummings, he didn't
25 said it was moving. He said: they are not going to make

1 it.

2 Q. Right. Well, I mean, I guess they had to be
3 moving, then?

4 A. Well, if they wasn't going to make it, they had
5 to be moving.

6 Q. Right. But you didn't see them when they
7 started moving.

8 A. When they moved off from the stop bar, no, sir,
9 I did not see them.

10 Q. All right. I'm going to ask you a few questions
11 now about what you can see. You drive a car, don't you,
12 Mr. Wooden?

13 A. Yes, sir.

14 Q. And as you're going down the highway, you notice
15 the white lines or yellow lines in the middle of the road?

16 A. Yes, sir.

17 Q. And how far can you see a yellow line up the
18 road if you're looking forward as you're driving?

19 A. How far?

20 Q. Yeah.

21 A. That depends on several things. I mean, I
22 can't see no farther than the naked eye will allow you
23 see on a straight. But, now, roads up hills, down hills,
24 you --

25 Q. Right. Would depend on that somewhat. But on a

1 level surface, how far can you see a yellow or white line
2 in the middle of the road do you think?

3 A. I don't know. I don't know.

4 Q. It disappears on you, doesn't it? As you look
5 out, the white line or yellow line will disappear on you
6 because of the angle; correct?

7 A. Mr. Parker, you're getting me confused here,
8 now. I don't know what you're asking. I mean, if I'm
9 driving my car and I'm looking at the yellow line or the
10 double yellow line or the broken yellow line, I see them.

11 Q. Right.

12 A. But, now, does it disappear? I don't know.

13 I --

14 Q. You don't know how far you can see them from;
15 right?

16 A. How far, no.

17 Q. I want to show you a couple of photographs and
18 ask you about that, because it's going to demonstrate what
19 I want to ask you about.

20 MR. PARKER: Let's put up 235.

21 Q. [Mr. Parker] This is Plaintiff's 235. It's
22 taken at a level parking lot. Can you see that, or do you
23 need to stand up?

24 A. I see that.

25 Q. And this is taken looking down. And do you see

1 how as you get across the parking lot those lines
2 disappear?

3 A. With this -- with this -- the way this picture
4 is taken here?

5 Q. Yeah. Do you see that?

6 A. I see that.

7 Q. And what happens is because of the angle, I
8 mean, you would say if you -- if somebody asked you, and
9 you didn't know lines were all in that parking lot, you
10 would think that it didn't have any lines down there,
11 would you?

12 A. I don't know what you're -- I don't know what
13 you're saying, now.

14 Q. In other words, you can't see the lines down on
15 this end of the parking lot. You know they're there, but
16 you can't see them, can you?

17 A. Well, we must be looking at two different
18 pictures.

19 Q. Well, come up here and we'll -- maybe we --
20 See how as you go down, that line is wide;
21 right?

22 A. Right.

23 Q. That one gets a little narrower?

24 A. Right.

25 Q. That one gets a little narrower?

1 A. Right.

2 Q. That one gets a little narrower?

3 A. Right.

4 Q. That one get's a little narrower?

5 A. Right. On the distance between them.

6 Q. Right.

7 A. Okay. Yeah.

8 Q. And all of a sudden you can't see them, can you?

9 A. On that picture right there.

10 Q. Right. And what this is showing is that's
11 because you're at an angle. If you get a certain visual
12 angle, then all of a sudden you can't distinguish between
13 a line on the road and the pavement; isn't that correct?

14 A. You mean -- well, you're talking about driving
15 my car now?

16 Q. I'm just talking about this picture and what you
17 look -- and then I'm going to show you one driving your
18 car. We'll go to that one next.

19 MR. PARKER: We'll go to 236.

20 Q. [Mr. Parker] All right. And this is the same
21 thing, isn't it? Come look with me, or if you need to get
22 up.

23 A. I can see now. I don't want to stand up.

24 Q. See, really, when you're real close you can see
25 that line?

1 A. Yellow line.

2 Q. Yeah. And see how they --

3 A. Right.

4 Q. -- get smaller and smaller and --

5 A. Right.

6 Q. -- then they disappear?

7 A. Right.

8 Q. And that's obviously not a long distance, is it?

9 A. From the way this photographer took this picture
10 you can't see but a couple, three of them, four of them.

11 Q. Right. And that's about 140 to 150 feet at
12 most, isn't it?

13 A. I don't know. I don't -- I don't know how many
14 feet that is.

15 Q. All right. I'm next going to ask you about
16 Mr. Wooden and -- I mean, excuse me -- Mr. Hedden. I
17 think that the same day that we took your deposition we
18 took Mr. Hedden's deposition -- do you remember that -- up
19 in Mr. Purcell's office I believe up in Augusta?

20 A. I think Mr. Hedden was there. But the same day
21 I took my deposition -- you asking did Mr. Hedden -- did
22 you take his deposition?

23 Q. Right.

24 A. Well, I know you took mine. I don't -- I
25 wasn't -- I can't testify that you took his the same day,

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1 but I know --

2 Q. Let me make sure. My memory is we took them the
3 same time. But let me make sure.

4 [Whereupon, Mr. Parker reviews documents]

5 Q. [Mr. Parker] Yours was taken December 14th at
6 11:35, and his was taken 4:15 in the afternoon on the
7 14th.

8 A. So they was -- we was taken the same day.

9 Q. Right. And you remember in your testimony Mr.
10 Hedden was there in your deposition?

11 A. He was there.

12 Q. All right. And I want to put up testimony of
13 Mr. Hedden.

14 MR. HARMON: Your Honor, can we approach?

15 THE COURT: You may.

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

18 THE COURT: Ladies and gentlemen of the jury, at
19 this time we're going to go ahead and take a short
20 recess. Go back, refresh yourselves, get a Coke and
21 we'll be back with you shortly.

22 Again, do not begin discussing this case. It's
23 not appropriate to do so.

24 [Whereupon, the jury exits the courtroom at
25 3:15 p.m.]

1 THE COURT: Okay.

2 MR. HARMON: Your Honor, my objection is
3 certainly it is accurate that we showed deposition
4 testimony of the defendant in the plaintiff's case in
5 chief to their experts.

6 THE COURT: Right.

7 MR. HARMON: Okay? And the basis for doing that
8 is different than the lay witness because --

9 THE COURT: And it asked the question of did you
10 consider this testimony --

11 MR. HARMON: Did you consider --

12 THE COURT: -- in forming your testimony.

13 MR. HARMON: -- and that the experts are allowed
14 to form opinions. That's what makes them experts.

15 THE COURT: Right.

16 MR. HARMON: A lay witness cannot come in here
17 and form an opinion based upon other people's testimony
18 or deposition. So he can't come in here and say, well,
19 I concluded -- Mr. Wooden can't go on the stand and
20 say, you know, I concluded that they stopped at the
21 stop line because I reviewed all these people's
22 testimony. He has to testify 608 based on his
23 knowledge.

24 THE COURT: To what he saw.

25 MR. HARMON: Right.

1 And so what we're doing now -- if Mr. Wooden was
2 an expert, it would be permissible to do it. But what
3 we've been doing, and what I objected to earlier and
4 the Court overruled me, was simply putting up testimony
5 from other people in the case who have not been --
6 well, it makes no difference whether they've testified
7 in the case in chief. He is not an expert witness, and
8 to simply flash up other testimony either to impeach
9 him or to pit him against this witness so that he'll
10 say, yeah, that's what I said, that's not proper for a
11 lay witness.

12 THE COURT: Well --

13 MR. HARMON: He can ask the question -- I'm
14 sorry, Your Honor. I interrupted you.

15 THE COURT: No. Go ahead. Go ahead.

16 MR. HARMON: I apologize, Your Honor.

17 THE COURT: No. Go ahead. Go ahead.

18 MR. HARMON: He can't -- he can ask the question
19 did you tell -- say to Mr. Hedden X, Y, or Z.

20 THE COURT: Right.

21 MR. HARMON: And if his answer is yes, the
22 answer is yes; if the answer is no, it's no. He can't
23 use extrinsic evidence now to impeach him when it's not
24 his deposition and he's not an expert. And we did not.
25 I certainly impeached Ms. Colvin and Mr. Terry with

1 their depositions, which is different. But we did not,
2 we did not, with Ms. Colvin or Mr. Terry flash up,
3 well, Mr. Terry, this is -- let me flash up for you the
4 testimony of Lon Hoover, and Lon Hoover says here, look
5 at -- and then it's up there on the screen and there's
6 rendered a certain indicia of reliability that a
7 witness must conform to it. And it's not proper to
8 flash up these other folks.

9 Certainly he can ask him the question and if he
10 says contrary to what he thinks Mr. Hedden says, in his
11 rebuttal case he can bring on and read and point that
12 out. That's the proper way to do it. It's not proper
13 for him to read it and to flash it up on the screen,
14 with this witness, in an effort either to impeach him
15 or to force him to agree with what -- a deposition that
16 he wasn't there for, that he has no knowledge of. It's
17 just not fair, and it's not permissible under the
18 rules.

19 MR. PARKER: Your Honor, this is a company
20 representative that they've appointed to represent the
21 company. And, secondly, for that matter -- and Mr.
22 Wooden to me seems to be an honorable man. I don't
23 think I'm going to do anything other than get him to
24 tell the truth. And obviously that must hit a
25 sensitive area. But I'm going to ask him about

1 something Mr. Hedden said and ask him whether that's
2 accurate.

3 THE COURT: Well, when you say it's something
4 Mr. Hedden said, is it that Mr. Hedden said he said?

5 MR. PARKER: It's talking about something that
6 Mr. Hedden and Mr. Wooden did when they went to the
7 scene, and that kind of thing.

8 THE COURT: Well, Mr. Parker, the proper way of
9 doing that would be just like you use deposition
10 testimony. It would be what did you do, X, Y, and Z.
11 And if he says something other than what Mr. Hedden
12 said in his deposition, then you say, Mr. Hedden said
13 so and so; is he wrong.

14 MR. PARKER: Well, you know, Your Honor, in a
15 normal case, I would agree with you. But if you'll
16 remember, I brought up this issue about pitting the
17 witnesses.

18 THE COURT: Yes. But it was as to experts.

19 MR. PARKER: There is no difference between
20 pitting an expert and any other witness, and there's no
21 -- there's nothing in the rules that says there's any
22 difference.

23 THE COURT: The problem though, Mr. Parker, is
24 is an expert witness is supposed to take all of the
25 layperson's testimony in forming their opinion. That's

1 the difference. It's did you consider this adverse
2 testimony to you.

3 MR. PARKER: But they could have asked that.
4 They didn't do that. They put the testimony up, the
5 same thing we're doing. And, you know, what's fair for
6 the goose is fair for the gander. They did this time
7 and time again. And as I always say, what a difference
8 a day makes. And I understand lawyers taking contrary
9 views in representing their clients, and I don't think
10 that they can take that view in their case and then
11 take the opposite view in our case. And I think that
12 the truth of the matter, we can ask this witness --
13 I'll just ask him the question, then, and --

14 THE COURT: Ask him the question, then, and if
15 he can't answer it or if --

16 MR. PARKER: -- then we'll proceed that way.

17 THE COURT: I mean, that's the appropriate way
18 to do it. And the truth is, y'all both have done that.
19 I mean, you both have been flashing up testimony on the
20 board without even asking the question first.

21 MR. HARMON: But, Your Honor, again, I want to
22 be very clear, because our positions are not --

23 THE COURT: I understand. You say the
24 difference is is it's expert witnesses --

25 MR. HARMON: Right.

1 THE COURT: -- and they can base their opinion
2 on layperson's --

3 MR. HARMON: And, in fact --

4 THE COURT: -- testimony. I understand.

5 MR. HARMON: I'm sorry. I apologize to the
6 Court. I keep jumping in. I apologize, Your Honor.

7 THE COURT: That's okay.

8 MR. HARMON: But what we've done is we are
9 showing specific testimony that they've relied upon or
10 should have relied upon.

11 What they're trying to do, I believe, also, you
12 know, they're using specific instances. Rule 608(b),
13 it's not -- they can't attack his credibility using
14 extrinsic evidence. And that's really what they're
15 doing. They're using a -- some -- a document that
16 other -- I mean, obviously there's an exception for
17 hearsay if it's to impeach by a prior inconsistent
18 statement, his own. What essentially he's doing is
19 trying to impeach Mr. Wooden by using someone else's
20 deposition and getting him to conform to that.

21 So the proper method of doing this is for Mr.
22 Parker to ask him the question did you tell Mr. Hedden
23 X, Y, or Z, and then he's stuck with the answer. And
24 then in the rebuttal case or whenever, if they bring up
25 Mr. Hedden they can say -- bring him up or read or

1 whatever they're going to do, and they can point that
2 out. But you can't do that with a lay witness with
3 other people's sworn testimony. So he can ask the
4 question and if Mr. Wooden remembers, he remembers.

5 I agree a hundred percent with Mr. Parker that
6 Mr. Wooden is an honorable man. He's going to tell the
7 truth, whatever he remembers. But he can't use these
8 other things to, with this witness on the stand,
9 suggest pitting: well, Mr. Hedden said this, and
10 therefore you need -- you know, this is obviously the
11 truth, and you're not being truthful if you don't say
12 what he said.

13 So that's our objection, Your Honor. I do not
14 believe that they can simply use other people's
15 deposition testimony with a lay witness, with a lay
16 witness, which we did not do, to attack his
17 credibility.

18 MR. MCLEOD: Your Honor, I guess I best add my
19 ditto.

20 THE COURT: Okay, sir.

21 All right. Mr. Parker, what you're going to do
22 is you're just going to ask him the question. And if
23 he states in the negative, no, he did not say that and
24 Mr. Hedden, in fact, does say he says it, then you can
25 use the deposition. Okay?

1 MR. PARKER: All right. Well, I will -- I can
2 just ask him the question. That's fine.

3 THE COURT: Okay.

4 All right. Anything further before we bring the
5 jury back in?

6 MR. HARMON: Could we take just a five-minute
7 restroom break?

8 THE COURT: Sure.

9 Actually, also, too, Mr. Harmon, tell me where
10 we are schedule-wise. Obviously we're going a little
11 slower than anticipated.

12 MR. HARMON: Yes. Yes, we are, Your Honor. We
13 provided to the plaintiff a list of the witnesses we
14 have on tap -- I don't know if we're going to get to
15 all of them today -- and Dr. Manning, we have listed
16 Calvin Cummings's deposition, Charity Bryant, Patrick
17 Thomas. And that was it for today.

18 MR. PARKER: Natalie Joyner.

19 MR. HARMON: And Natalie Joyner.

20 THE COURT: Okay. Mr. McLeod, how many do you
21 have, if anyone? Sir, how many witnesses do you have,
22 if anyone?

23 MR. MCLEOD: Well, I think they've indicated
24 they were going to call initially two, which -- and
25 apparently they're going to use one of mine. And I

1 think I'll have three, which I anticipate very short.

2 THE COURT: And I'm looking scheduling-wise. Do
3 you think we'll be able to possibly finish up by
4 tomorrow? Do y'all think that that's going to be
5 possible?

6 MR. HARMON: I guess it depends on how the rest
7 of today goes.

8 THE COURT: Of course.

9 MR. HARMON: But I think it's possible.

10 And I think Mr. Purcell just reminded me we --
11 also, we have Randy Lomax.

12 THE COURT: Okay. And it's fine. Y'all, we've
13 got the week. I don't know. I've got nothing else to
14 do. I'm sure y'all have lots else to do. But, anyway,
15 it's fine. I'm just looking for scheduling purposes.
16 I just want to know how hard we need to push this jury
17 today to see if we can get where we need to be. But if
18 y'all are telling me that -- not a chance?

19 Well, then, why don't we do this. You-all let
20 me know, as the time runs, what more you want to do and
21 how hard --

22 MR. HARMON: Sure.

23 THE COURT: -- you want to push. And like I
24 said, whenever you want a break, you let me know, for
25 the day. Okay?

1 MR. HARMON: Okay. Thank you.

2 THE COURT: All right. Go ahead and take five
3 minutes, Mr. Harmon.

4 [Whereupon, a recess is taken from 3:25 p.m. to
5 3:39 p.m.]

6 THE COURT: All right. Are we ready to go, Mr.
7 Parker?

8 MR. PARKER: We are, Your Honor.

9 While we were out we looked at some photographs
10 we're going to ask Mr. Wooden about and they have
11 agreed to. It's Exhibits 238, 239, and 240.

12 MR. HARMON: Did you say 240? I don't think
13 I --

14 [Whereupon, counsel confer]

15 MR. PARKER: I figured if they agreed to them,
16 you wouldn't be any problem.

17 MR. MCLEOD: Sir?

18 MR. PARKER: I figured if they agreed to them,
19 you wouldn't be any problem.

20 MR. MCLEOD: Okay.

21 THE COURT: All right. Anything further before
22 we go ahead and --

23 MR. PARKER: Nothing, Your Honor.

24 MR. HARMON: No, Your Honor.

25 THE COURT: Let's go ahead and bring the jury

1 in.

2 MR. PARKER: And Your Honor, we would offer
3 those three exhibits into evidence.

4 THE COURT: The ones that y'all agreed to?

5 MR. PARKER: 238, 239, and 240.

6 THE COURT: And those are in without objection;
7 correct, Mr. Harmon?

8 MR. HARMON: Yeah. We don't -- assuming Mr.
9 Wooden can lay a foundation, we don't have any
10 objection. We just saw them.

11 [Whereupon, Plaintiff's Exhibit Numbers 238, 239
12 and 240 are admitted into evidence by the Court]

13 [Whereupon, the jury enters the courtroom at
14 3:41 p.m.]

15 THE COURT: Welcome back, ladies and gentlemen
16 of the jury.

17 MR. PARKER: Thank you, Your Honor.

18 CONTINUED CROSS-EXAMINATION

19 BY MR. PARKER:

20 Q. Mr. Wooden, when I left off, I asked you about
21 Mr. Hedden, Adam Hedden. And his deposition I think was
22 taken on the same day yours was taken. And I believe you
23 testified earlier that you went out to the scene, you and
24 Mr. Cummings, that y'all were transported down there
25 shortly after the wreck, with Mr. Purcell, Dr. Davidson,

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1 and others; is that correct?

2 A. That's correct.

3 Q. And while he was there that day he took a number
4 of pictures. And I think that Dr. Manning has some
5 measurements that Mr. Wooden -- I mean, excuse me, Mr.
6 Hedden took that day. Did you see him measuring things
7 that day -- Mr. Hedden -- when he took those pictures?
8 Did he have a wheel?

9 A. Yeah. Yes, sir.

10 Q. And, now, I think that you've been to Yemassee
11 several times as a result of this collision; correct?

12 A. Two.

13 Q. Well, let me ask you about -- because you went
14 first with Mr. Hedden and Mr. Purcell and Mr. Davidson;
15 correct?

16 A. As best that I can recall.

17 Q. And then according to Dr. Manning --
18 MR. PARKER: And let's put up Exhibit 237 --

19 Q. [Mr. Parker] -- he went to Yemassee on
20 8/11/04. Did you go down there with him on 8/11/04?

21 A. I can't -- I can't remember. I can't remember
22 dates. But I know I've been down there, but I can't
23 remember the date.

24 Q. All right. And then he went back on 10/6/04
25 to -- I think it says -- I can't read his writing. He

1 writes as bad as I do. But he said he went to Yemassee
2 and then --

3 MR. HARMON: Your Honor, I'm sorry. The witness
4 has never seen this. It's hearsay. I mean --

5 MR. PARKER: I thought you were going to call
6 Dr. Manning.

7 MR. HARMON: This is not proper for this
8 witness. He isn't familiar with this document, is all
9 I'm saying.

10 THE COURT: Okay. Mr. Parker, have you posed a
11 question to him?

12 MR. PARKER: Yes, I did. I asked him did he go
13 on these dates. I was trying to confirm whether or not
14 he went on 8/11/04 and 10/6/04.

15 THE COURT: Okay. Well, I guess you can ask him
16 the question and he can either state yes or no.

17 Q. [Mr. Parker] Do you remember, Mr. Wooden?

18 A. I don't remember dates.

19 Q. All right. But you do remember going out there
20 with Mr. Manning and when they brought the trains; right?
21 The train, I should say.

22 A. The train, we -- we was out there one day, but I
23 can't remember the date.

24 Q. Right. But you were out there when they brought
25 the locomotive in from Augusta and Mr. Lewis and Mr. Baker

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1 were the conductor and engineer on the train?

2 A. Yes, sir. Well, but they just didn't bring it
3 like how -- that was the local freight that run between
4 Augusta and Charleston. It was coming anyway.

5 Q. Well, they arranged for it to be there,
6 Locomotive 7837, on the date that Dr. Manning did his
7 reenactment; correct?

8 A. I don't know did they arrange it. I don't know.
9 But I know we was down there when the local came by, and
10 we -- they used the local.

11 Q. And they had you and Mr. Cummings there;
12 correct?

13 A. Correct.

14 Q. And other than -- we've got four witnesses to
15 what happened in this case, correct, insofar as where
16 Ms. Colvin was stopped?

17 A. [No response]

18 Q. Is that correct?

19 A. I'm sorry. I don't understand.

20 Q. There's four witnesses.

21 A. Oh. I don't --

22 Q. There's Mr. Biser. You heard his testimony,
23 didn't you?

24 A. I heard his.

25 Q. All right. Ms. Colvin says where she stopped;

1 correct?

2 A. I heard her. I heard it.

3 Q. Right. Mr. Cummings --

4 A. I heard him.

5 Q. -- said where they stopped; correct?

6 A. Stopped --

7 Q. You remember what he said, don't you?

8 A. Not word-for-word.

9 Q. But you remember he said that Ms. Colvin
10 stopped in the vicinity of the cross-buck?

11 A. I -- I don't remember.

12 MR. HARMON: Your Honor, I object to --

13 Mr. Cummings's testimony will be played for the
14 jury -- they can hear what he has to say -- or it will
15 be read. This is Mr. Cummings's testimony. He's
16 trying to suggest what he said, and that's not what he
17 said.

18 MR. PARKER: Well, I can -- that is what he
19 said, but we'll -- they will certainly hear it.

20 Q. [Mr. Parker] But my question to you is when
21 y'all went out there for this reenactment with Dr. Manning
22 -- and who all was present then?

23 A. I don't -- I can't remember names. I don't know
24 how many --

25 Q. Well, Mr. Purcell, was he there?

1 A. He was there one time.

2 Q. Right. And when the train was there. I'm
3 talking about Locomotive 7837.

4 A. I can't remember. I can't recall who.

5 Q. But it was a number of people?

6 A. There was some people there; a number of people
7 there.

8 Q. Right. And they asked you where the Explorer
9 was stopped; right?

10 A. [No response]

11 Q. Did they talk with you about that while you were
12 at the reenactment?

13 A. I showed them where the car was stopped at on
14 both times I believe I went out there.

15 Q. And Mr. Cummings showed them where he thought
16 they had stopped; correct?

17 A. I imagine he did.

18 Q. All right. I mean, that was the purpose of
19 y'all being down there --

20 A. Right.

21 Q. -- is to show them where the car was so they
22 could take some pictures with a train there; correct?

23 A. That's correct.

24 Q. All right. Now, let's look now at Exhibit
25 238 -- Plaintiff's Exhibit 238 has been admitted in

1 evidence -- that was taken from 400 feet. Now, that's
2 where you said you were that day. And they had a train
3 out there that day; correct? This is the date that's
4 taken the date you were out there, Mr. Manning was out
5 there, and the locomotive and the train was out there.

6 A. So, now, what's your --

7 Q. On 10/6.

8 A. What's your question?

9 Q. My question is this was taken from 400 feet. Is
10 this where -- what you saw on that day from 400 feet?

11 A. I don't think I ever boarded the train. I'm not
12 testifying to that, sir.

13 Q. Well, no. I'm not asking you about then. I'm
14 asking you -- I'll ask you some more about that. But from
15 400 feet, this photograph was taken on the date of the
16 reenactment that you were out there. What I'm asking you,
17 does this show what you saw on the day of the collision
18 from 400 feet?

19 MR. HARMON: Your Honor, I object. This assumes
20 facts not in evidence. Certainly the photograph -- but
21 the writing I don't believe is --

22 THE COURT: Okay. He can ask him the question,
23 and if he knows the answer -- I believe he stated he
24 didn't take the picture.

25 MR. HARMON: Thank you.

1 MR. PARKER: Right.

2 THE COURT: He can answer the question if he
3 knows and if he doesn't know it, he can say he doesn't
4 know.

5 Q. [Mr. Parker] Does this photograph, Plaintiff's
6 Exhibit 238, show what you saw on the date of the
7 collision on February 3rd, 2004?

8 A. I don't -- I don't know.

9 Q. All right. Do you see the cross-buck there?

10 MR. PARKER: You can come look over here, Mr.
11 Wooden.

12 [Whereupon, the witness complies]

13 Q. [Mr. Parker] Do you see the cross-buck right
14 there? Can you see that?

15 A. I can't.

16 MR. PARKER: Let's cut the lights out, if you
17 will, so that we can see a little better.

18 A. May I point to the cross-buck?

19 Q. [Mr. Parker] It's right there.

20 A. Yes, sir. Now I see the cross-buck.

21 Q. Now you see it; right?

22 A. Right.

23 Q. And Mr. Manning took this picture and it's taken
24 from 400 feet, and he's got --

25 MR. HARMON: Again, Your Honor, I object to him

1 categorizing -- assuming facts not in evidence. There
2 is no evidence as to the distance. He can ask the
3 questions, but he needs to establish it -- the
4 photograph is authentic, but he's asking questions
5 assuming certain things.

6 MR. PARKER: The photograph has been admitted
7 with agreement, Your Honor.

8 MR. HARMON: Not with his writing on it.

9 MR. PARKER: That's exactly the one I showed you
10 that you admitted to.

11 MR. HARMON: Not with his writing on it, Your
12 Honor.

13 MR. PARKER: Not with Dr. Manning's writing?

14 MR. HARMON: Not with your writing.

15 MR. PARKER: That's Dr. Manning's writing.

16 MR. HARMON: Your Honor, we object to --

17 THE COURT: All right, y'all. Come here for a
18 second.

19 [Whereupon, an off-the-record bench conference
20 is held]

21 Q. [Mr. Parker] Mr. Wooden, this picture was taken
22 -- according to Dr. Manning, you can assume it's 400 feet.
23 And this is the crossing. And when y'all were out there
24 doing that reenactment, do you recall him putting the
25 train back up here somewhere in that area?

1 A. I don't -- I can't -- I don't remember.

2 Q. All right. And is that where the train -- the
3 car was stopped on the date of the collision on February
4 3rd, 2004?

5 A. So, now, what's your question?

6 Q. My question to you: is that a picture that
7 shows where the Ford Explorer was stopped on February 3rd,
8 2004?

9 A. But, see, Mr. Parker, what I was saying is I
10 never seen that picture, and nobody placed the Ford
11 Explorer right there and went back 400 feet and took the
12 picture and brought it to me and said, see, this what it
13 looked like from four -- they never done that. I don't
14 think that's a fair question.

15 Q. Well, what I'm asking you is from your memory is
16 that what it looked like on the date of the collision.

17 A. It -- no, sir.

18 Q. All right. You think it was closer, or was it
19 farther away?

20 A. Closer.

21 Q. All right. How much closer?

22 A. I don't know.

23 Q. Two feet closer? A foot closer?

24 MR. HARMON: Objection. He said he doesn't
25 know. He's badgering him now. He said he doesn't

1 know.

2 THE COURT: Well, he can ask the question and
3 Mr. Wooden can answer it.

4 Q. [Mr. Parker] It's a foot closer?

5 A. I don't know.

6 Q. You don't know whether it's closer at all, do
7 you?

8 MR. HARMON: Objection. It mischaracterizes
9 what he just said, Your Honor.

10 THE COURT: Mr. Parker, ask the question to him.

11 MR. PARKER: Your Honor, I don't think -- I
12 asked a proper question.

13 THE COURT: Just ask the question to him.

14 Q. [Mr. Parker] You don't know whether it was a
15 foot closer or not, do you?

16 A. The question you asking me is: was what was
17 farther?

18 Q. The question I'm asking you is on February 3rd,
19 does this look like the location where the Explorer was
20 when you saw it before it first started to move after you
21 saw it and before Mr. Cummings told you that it's moving
22 and then you looked back?

23 A. Okay. Now, let me answer your question. The
24 day of the accident that I was on the train that Explorer
25 was up a little closer and it looked much plainer than

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1 that.

2 Q. It was a little bit closer but you don't know
3 how much?

4 A. In feet and inches I don't know how much.

5 Q. And it might have been a little bit, but it
6 might have been a foot?

7 A. I don't know.

8 Q. All right. But the day when you were doing the
9 reenactment there were two people there that had testimony
10 about where it was located; correct? That was you and Mr.
11 Cummings, y'all -- the two of y'all knew where to put the
12 Explorer; correct?

13 A. I'm not absolutely sure after we told them --
14 after I told them that the Explorer was stopped -- where I
15 saw it stopped was at the stop bar. I don't think it was
16 too many questions they asked of me is this the right
17 place for them to put it. If this is what you're asking
18 me -- I'm not trying to avoid answering the question, Mr.
19 Parker, but I want to answer as truthful as I can.

20 Q. Sure.

21 So you don't think they really asked you? In
22 other words, once you said stop bar, that was all they
23 needed to know?

24 A. It seemed -- I don't -- I'm not saying that's
25 all they needed to know. But they didn't ask me a whole

1 lot of questions.

2 Q. And the -- but what your testimony is today is
3 that you can't say that that Explorer wasn't a foot
4 farther in that vicinity, but you think it was a little
5 farther up than that; is that correct?

6 MR. HARMON: Excuse me, Your Honor. I'm sorry
7 to interrupt.

8 THE COURT: Sustained.

9 Mr. Parker, just put a question to him.

10 MR. PARKER: Your Honor, I think I'm entitled to
11 lead the company representative and I can -- I have the
12 right to ask a leading question.

13 THE COURT: Mr. Parker, come here for a second.
14 Both of y'all.

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

17 Q. [Mr. Parker] Mr. Wooden, let me ask you this
18 way. You're saying you think -- and I'll get to this in
19 just a minute. But you think it was closer than that the
20 day of the accident, but you don't know how much; is that
21 correct?

22 A. That's correct.

23 Q. Okay. Now, I'm going to --

24 MR. PARKER: Let's next go to Exhibit 239.

25 Q. [Mr. Parker] And that's from 500 feet. And you

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1 can see the cross-bar right there? I mean cross-buck.

2 Excuse me.

3 A. I see the cross-bucks.

4 Q. And does that look more like it was that day?

5 A. No, sir.

6 Q. Do you think it was a little closer?

7 A. Yes, sir.

8 MR. PARKER: Now I'm going to put up Exhibit
9 240.

10 Q. [Mr. Parker] And this photograph, Exhibit 240,
11 see the vehicle there?

12 A. I see two.

13 Q. Yeah. You see two: one there, and one there.
14 Did you tell them on that day, on October 6th, 2004, that
15 that's where the vehicles were located --

16 A. No, I didn't.

17 Q. -- when you first saw them?

18 A. No, I didn't.

19 Q. All right. Because that vehicle is too close
20 there, isn't it?

21 A. The one the farthest away look like -- it's two.
22 Yeah. That's right.

23 Q. And the one back here would be closer to what
24 you saw that day, wasn't it?

25 A. No, sir.

1 Q. It wouldn't be -- that wouldn't be close to what
2 you saw that day?

3 A. No, sir.

4 Q. All right. But the first one wouldn't be,
5 either. It's behind -- somewhere between the two?

6 A. Well, make sure -- let me make that sure I'm
7 answering what you're asking me, now.

8 Q. In other words, this vehicle you said was too
9 close, the one that's the lead vehicle?

10 A. Right.

11 Q. And I think you told me this one was too far
12 back?

13 A. It look -- it appears to be.

14 Q. So what I was asking you is that somewhere in
15 advance of this one, a little ways was where you saw it?
16 Toward the track?

17 A. Where I saw a green Ford Explorer was at the
18 stop bar.

19 Q. Is that first car at the stop bar?

20 A. The one farther back?

21 Q. No. The first car. That one [indicates]. Is
22 that at the stop bar?

23 A. No.

24 Q. It's too close to the track, you think?

25 A. You say -- you're calling that the first car?

1 Q. The first car. That one right there.

2 A. It's past the stop bar, it look like.

3 Q. And this one right here -- .

4 THE COURT: All right. Mr. Parker, the pointer
5 doesn't work on his so he has no idea what you're
6 referring to.

7 So Mr. Wooden, if you need to stand up so you
8 can see so we're talking about the same cars. And Mr.
9 Wooden, if you need to, if it's easier for you to step
10 all the way down to be able to see it better, you're
11 welcome to do that, as well.

12 [Whereupon, the witness complies]

13 MR. PARKER: I apologize to you. I'm thinking
14 me and you are looking at the same things, and we
15 weren't.

16 Q. [Mr. Parker] This car right here you said was
17 too close; correct?

18 A. Right.

19 Q. And this car right here you said you thought
20 might be a little too far back --

21 A. Right.

22 Q. -- correct?

23 And my question to you was it's somewhere in
24 between those two cars, approximately; correct?

25 A. Correct.

1 MR. PARKER: Okay. And you can go back and take
2 the stand.

3 [Whereupon, the witness complies]

4 Q. [Mr. Parker] And you understand that Mr.
5 Cummings -- you told them where it was located, and
6 Mr. Cummings told them where the car was located; correct?

7 A. I told them where it was -- correct. I did. I
8 did. I told them where I saw the car at.

9 Q. And you know Mr. Cummings did, too, don't you?

10 A. Right.

11 Q. And so there was two of you there during the
12 reenactment that saw it: you and Mr. Cummings. Mr.
13 Cummings -- they reenacted it one place where -- near
14 the -- behind the cross-buck, two feet behind the
15 cross-buck; right?

16 MR. HARMON: Objection. Lack of foundation.
17 This witness -- he's asking him questions and there's
18 no foundation for the questions, Your Honor. It's
19 not --

20 THE COURT: You can ask --

21 MR. PARKER: Mr. Cummings, I guess you'll have
22 to stand back up. Let's go back to the -- Mr. Wooden.
23 Excuse me.

24 Go back to the previous exhibit.

25 THE COURT: All right. Mr. Wooden --

1 MR. PARKER: You can come down.

2 [Whereupon, the witness complies]

3 THE COURT: -- why don't you step back, and see
4 if you can answer the question.

5 Q. [Mr. Parker] Mr. Wooden, right here -- somebody
6 told them that the -- take a picture of it with the
7 Explorer right here; correct?

8 A. See, Mr. Parker, my answer is when I went out
9 there during the reenactment, I told them where I saw the
10 Ford Explorer stop at --

11 Q. Right.

12 A. -- at the stop bar.

13 Now, with these pictures here, I can't testify
14 that they put a car where I said. If it ain't -- if it
15 ain't at the stop bar, they ain't put it where I said it.

16 Q. Right.

17 A. And then they didn't have Cummings and I
18 together when they asked us that. They asked me, then
19 they asked Calvin.

20 Q. Well, the only way to do a reenactment to know
21 what was happening, and to take pictures that day, was for
22 you to give them information and for Mr. Cummings to give
23 them information. And what you're telling me is you
24 didn't give them this information?

25 A. No, sir, that's not what I'm telling you.

1 Q. Okay. Well --

2 A. I'm telling you, Mr. Parker, is I told them the
3 Ford Explorer was stopped at the stop bar.

4 Q. Right. And what you're telling me is that's not
5 at the stop bar?

6 A. It don't look like to it me.

7 Q. All right. So you wouldn't have given them that
8 information?

9 A. Not that.

10 Q. And so that would leave Mr. Cummings to give
11 them that information?

12 MR. HARMON: Objection, Your Honor. Objection.
13 Lack of foundation. It's misleading the witness.

14 MR. PARKER: I don't think so at all.

15 THE COURT: Okay. It's cross-examination. He
16 can ask it.

17 Q. [Mr. Parker] The only person that could have
18 given the information as to where to put that vehicle was
19 Mr. Cummings, wasn't it, because you didn't give it to him
20 and, therefore, Mr. Cummings was the only other one,
21 because Mr. Biser said he wasn't out there.

22 A. Mr. Parker, I don't think that's correct,
23 because they -- they took our information and they put the
24 cars where they wanted to put it.

25 Q. Oh, I understand that. But they obviously

1 wanted to put them where y'all said they were, didn't
2 they?

3 A. If they -- Mr. Parker, I told them I saw the car
4 stopped at the stop bar.

5 Q. Oh, I understand that. I'm not --

6 A. But now they put -- seemed like to me they had
7 cars stopping in several places, you know. I didn't --
8 I'm not saying that's where Calvin told them to put the
9 car. I know what I told them to put it was I saw it
10 stopped at the stop bar.

11 MR. PARKER: All right. Put up --

12 A. And if you got a --

13 MR. PARKER: -- that picture.

14 Q. [Mr. Parker] Excuse me.

15 A. And if they got a photo with the car anywhere
16 other than at the stop bar, then I didn't tell them that's
17 where I saw the car.

18 Q. Right. So but my point is that if you didn't
19 tell them to put it there, then it had to be Mr. Cummings
20 because he was the only other witness that was there.

21 A. I can't testify to that. I don't know.

22 Q. Let me ask you this. Do you know of any other
23 witness that was there that day other than you and Mr.
24 Cummings?

25 A. Them the only two I know.

1 MR. PARKER: Okay. And let me put up the next
2 slide --

3 Q. [Mr. Parker] Now, Ms. Tonia Colvin gave
4 testimony in the case. She is the other witness. Now,
5 and the railroad didn't learn what she said until December
6 the 8th, 2004, after y'all were out there; correct?

7 A. I don't know.

8 Q. But they took her deposition -- December the 8th
9 is after October the 6th; correct?

10 A. I don't know, Mr. Parker.

11 MR. PARKER: Okay. And then next -- go to 241,
12 Exhibit 241.

13 Q. [Mr. Parker] And this is an UMLER report on
14 the Locomotive 7837, and it shows that it's -- that's
15 the -- you can't see that. Can you see right there where
16 it says -- I can't point to it, but stand up there. It
17 says that -- that says CSX 7837; correct?

18 A. Correct.

19 Q. And it says that the length of it, seventy feet
20 eight inches, and width ten three, and it's fifteen feet
21 and five maximum height from the rail; correct?

22 A. If that's what that means, that's correct.

23 Q. Well, I mean, that's the information we've been
24 furnished by CSX.

25 A. Oh. Okay.

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1 Q. You wouldn't -- you would agree that that's
2 about right, isn't it, just from your estimation?

3 A. That's correct.

4 MR. PARKER: And I'm going to get some
5 objections if we --

6 [Whereupon, Mr. Parker and defense counsel
7 confer]

8 MR. PARKER: We'll next go to 243.

9 Q. [Mr. Parker] All right. This is the same type
10 locomotive similar to what you were using that day? This
11 is a Dash Eight? Can you see it?

12 A. I can't see nothing but dark.

13 MR. PARKER: Stand up there and maybe you can
14 see it a little better.

15 [Whereupon, the witness complies]

16 MR. PARKER: It's a little dark, isn't it? Can
17 we brighten it up a little?

18 Q. [Mr. Parker] Is that similar to the locomotive
19 you were operating that day?

20 A. No, sir.

21 Q. What's the difference?

22 A. This locomotive here is the one that got the
23 computer.

24 Q. Well, a Dash Eight and Dash Nine has that
25 computer, doesn't it?

1 A. Well, that's what I was -- I wasn't sure about
2 the horn, because they all different --

3 Q. Right. But --

4 A. That's totally different there.

5 Q. This is -- even though it's a Dash Eight or a
6 Dash Nine, it's a different layout?

7 A. Right. It's a table top, but it's got the
8 control stand totally different.

9 Q. Well, the one -- where did -- the picture that
10 you published earlier, where did that come from?

11 A. Excuse me?

12 Q. The one that you put in evidence with Mr.
13 Harmon, is that of the locomotive in this case or do you
14 know?

15 A. I don't know.

16 Q. Do you remember whether it was like this one, or
17 like that one?

18 A. There again, I don't know.

19 Q. Don't know?

20 A. I don't know what Mr. Harmon put in.

21 Q. Right. Well, the one you identified where it
22 had the push-button horn, that was the controls -- he put
23 up a picture of the controls. Do you remember that?

24 A. Yes, sir. So, now, what's your question?

25 Q. The question is which one were you operating

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1 that day, one like this or one like you put the picture
2 up, or you don't know?

3 A. I would -- if it's -- if Engine 7837 was the one
4 that he gave -- he showed me, it was the one like that.
5 But I'm saying -- like I was saying, is we changed engines
6 every day.

7 Q. Oh, I understand that. So you don't remember
8 precisely the configuration of the desktop? You would
9 have to rely on the -- they said -- I'm not disputing it.
10 If they say that's 7837, that's fine.

11 A. I wouldn't imagine they would send you the
12 engine -- or a picture of another engine, and so if they
13 say that's the engine --

14 Q. Right. I understand.

15 A. Do you understand what I'm saying?

16 Q. Sure.

17 MR. PARKER: Let's go to the next one.

18 Q. [Mr. Parker] But the view here would be similar
19 out this windshield. This would be your view?

20 A. [No response]

21 Q. And I'm going to go around the vehicle -- I
22 mean, the locomotive. But you can look at this -- this is
23 your view, what you look at, unless you're looking, as you
24 said, over here?

25 A. That look like a double-windshield engine. But,

1 see, all them Dash Eights, some of them, they windshield
2 is totally -- it could be a three --

3 MR. PARKER: Okay. We'll go to the next one.

4 THE COURT: Mr. Parker, you need to let him
5 finish his --

6 MR. PARKER: Sure.

7 THE COURT: -- answer, sir.

8 MR. PARKER: I'm sorry. I didn't mean to
9 interrupt him.

10 We'll go to the next photograph.

11 Q. [Mr. Parker] And this would be showing out of
12 the engineer side, just the windshield?

13 A. If that on the right side of the engine. I
14 can't -- I can't tell whether that's the right side of the
15 engine or the left side.

16 MR. PARKER: All right. Well, let's go to the
17 next picture. Maybe we can pick it up here. Let's see
18 if we've got it. No. It goes to the control.

19 Q. [Mr. Parker] These are not the kind -- aren't
20 these the kind of controls that you showed earlier?

21 A. They basically are, but they're different.

22 Q. The difference would be in the computer screens?

23 A. Excuse me?

24 Q. The difference would be in the computer screens?

25 A. And the way the equipment is on the table.

1 Q. Okay. And the seat would be right here that you
2 would be sitting in?

3 A. Right.

4 MR. PARKER: All right. Let's go to the next
5 one.

6 THE WITNESS: Do you want me to stay?

7 MR. PARKER: Let's -- the next one. We'll skip
8 that one. I don't think it shows -- and the next one.

9 Q. [Mr. Parker] And those aren't -- you said you
10 didn't have those kind, you don't think.

11 A. [No response]

12 MR. PARKER: The next one.

13 Q. [Mr. Parker] And, again, now, the dynamic --
14 where do you set the dynamic with these controls?

15 A. In the throttle.

16 Q. And you have to move it to idle to set the
17 dynamic?

18 A. No, sir. The throttle. You have to move the
19 throttle. Yes, sir. I'm sorry. I'm sorry.

20 Q. That's all right.

21 A. Yes, sir. You got to move the throttle. You
22 can't --

23 Q. Right.

24 A. I'm sorry.

25 Q. And then you let it sit there for ten seconds

1 and then you can --

2 A. Right.

3 Q. -- move into the dynamic?

4 A. Right.

5 MR. PARKER: Okay. The next one.

6 Q. [Mr. Parker] And these -- I understand these
7 are dirty windshields. But was this the setup you had,
8 the console, like this partition coming around like that?

9 A. See, I can't see -- I can't --

10 Q. You can't see out of it? I understand. It's
11 kind of dirty.

12 A. I can't see the table, I can't see the handle --

13 Q. Well, we'll go to it next.

14 MR. PARKER: Next picture.

15 Q. [Mr. Parker] Other than the computer screens,
16 is this similar?

17 A. Basically the same, but it's different.

18 Q. And because rather than gauges it's got computer
19 screens?

20 A. Right. And then the table -- the way it's got
21 the equipment on the table.

22 MR. PARKER: Okay. The next one. Is that all
23 of them? No. The same --

24 Q. [Mr. Parker] That's showing out of your side
25 there; correct? The engineer side?

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1 A. If this is the right side of the engine and
2 the --

3 Q. Right. Well, you can see the window there.

4 MR. PARKER: Okay. Next one.

5 Q. [Mr. Parker] Again, this is just showing the
6 partition the way it's set up to see the engineer's seat
7 there; correct?

8 A. That's correct.

9 MR. PARKER: And the next one. Okay. That's
10 it. That's good.

11 Q. [Mr. Parker] And I believe we agreed earlier
12 that you were several hundred feet, three- to four-hundred
13 feet or something when Mr. Cummings told you that the
14 vehicle was starting to move; correct?

15 A. Several hundred.

16 Q. Now, I want to ask you: you also I believe
17 called the dispatcher and told them how fast you were
18 going?

19 A. That's right.

20 THE COURT: Do we need the lights again, Mr.
21 Parker, or do we still have --

22 MR. PARKER: I'm going to put one -- yeah, we
23 can get the lights. That will be fine. Perfect.

24 Q. [Mr. Parker] All right. And you told us, and
25 you told -- you testified it was forty to forty-five. But

1 didn't you tell the dispatcher that, in fact, you were
2 going forty-five?

3 A. I thought I told him I was going between forty
4 and forty-five, I wasn't absolutely sure. But it was
5 between forty, forty-five.

6 Q. I'm going to play you a tape, the audiotape of
7 when you called in, and I want you to make sure this is
8 right as to what you told him.

9 MR. PARKER: Let's play the audio.

10 [Whereupon, excerpt of audio tape to dispatcher
11 is played to the jury as follows]

12 Okay. It's got cross box. About how fast were
13 you going? Forty-five. Forty-five miles an hour. All
14 right.

15 [Whereupon, excerpt of audiotape to dispatcher
16 concludes]

17 Q. [Mr. Parker] Now, you recognize that as your
18 voice, don't you?

19 A. I don't not -- I need to -- I need to hear that
20 again.

21 MR. PARKER: All right. Play it again.

22 [Whereupon, excerpt of audio tape to dispatcher
23 is played to the jury as follows]

24 Okay. It's got cross box. About how fast were
25 you going? Forty-five. Forty-five miles an hour. All

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1 right.

2 [Whereupon, excerpt of audiotape to dispatcher
3 concludes]

4 A. Now, see, I'm going to have to take your word
5 that said that's the dispatcher's tape and that's my
6 voice, because my voice is different from -- it can be
7 plainly distinguished, and I'm not really distinguishing
8 that voice. But, now, if that's the tape and that's me, I
9 said forty-five, I said forty-five.

10 Q. [Mr. Parker] That was what was produced to us
11 by the railroad as being the dispatch tape. So you
12 wouldn't dispute that, would you?

13 A. No, no, not --

14 Q. Okay. Now, the -- we talked about -- earlier
15 you said that you started the panic blow and that you had
16 a gap that could have been as much as a couple of seconds,
17 and the horn blow, correct, when you saw the car moving?

18 A. Now, the couple of second gap, that's when
19 you're asking about the -- in the panic blow?

20 Q. Right.

21 A. Well --

22 Q. You said you had a break -- when you saw it
23 moving, you had a break and then started the panic blow;
24 correct?

25 A. No, sir. I don't think that's what I meant. If

1 I said that, that ain't what I meant.

2 Q. All right. Well, let me call your attention --
3 we'll put up your testimony from page 73, line 11 through
4 25. Can you see that all right?

5 A. Yes, sir.

6 Q. Says well -- and this is your answer, said:
7 [reading] well, let's put it this way. When the car came
8 up to the stop bar and stopped, I was blowing. And I may
9 have had a break. I think I had a break. And when Calvin
10 said, they are not going to make it, I know I went from a
11 normal blowing to a panic blow.

12 Is that correct?

13 A. That's correct.

14 Q. [Reading] And how much break did you have:

15 Answer: [reading] time-wise?

16 Question: [reading] time-wise.

17 Answer: [reading] I don't know.

18 Question: [reading] more than a second. It may
19 have been, I don't know, couple of --

20 MR. PARKER: Next page.

21 Q. [Mr. Parker] -- [reading] seconds. May have
22 been a couple seconds, three seconds. Could have been
23 more. Could have been more.

24 Is that correct?

25 A. That's correct.

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1 Q. So and then on page 74, line 22, you say there
2 that -- and I asked you, I said: [reading] in other
3 words, there would be some break in the horn because you
4 were letting up on it.

5 Answer: [reading] I think I was pulling it.
6 Is that correct?

7 A. That's -- well, I wasn't absolutely sure. I
8 said I was -- I think.

9 Q. Now, Mr. Barton went over the event recorder
10 with you, did he not?

11 A. Yes, sir.

12 MR. PARKER: And let's put up Exhibit 145.

13 Q. [Mr. Parker] And Exhibit 145 is 7837, the
14 locomotive; correct?

15 A. Correct.

16 Q. And the date is 2/3/04, and on there -- this is
17 what he was going over with you when he told you that you
18 had violated the rules; correct?

19 A. It -- I can't remember was it Jimmy -- it may
20 have been.

21 MR. PARKER: Okay. And let's go over to page 4.

22 Q. [Mr. Parker] All right. You see the horn is on
23 there?

24 A. That's right.

25 Q. And that's where you started blowing it. And

1 it's got a mile -- it's got a distance of thirty-four
2 fifty-three; correct?

3 A. If that's the way they -- like I testified, that
4 I didn't know how to read this.

5 Q. Oh, I understand. But I want to go over this
6 with you just a little bit, because I think everybody can
7 understand it.

8 MR. HARMON: Your Honor, I'm sorry. The witness
9 has said he doesn't know how to read this event
10 recorder, and I don't know why a question is going to
11 be asked if he doesn't understand how to read this.

12 MR. PARKER: All right. I'm going to ask him
13 some questions.

14 THE COURT: Okay. Well, he can pose questions
15 from it.

16 Q. [Mr. Parker] Mr. Wooden, it shows here thirty-
17 four fifty-three. At a distance of thirty-four fifty-
18 three, you had the horn on; correct?

19 A. [No response]

20 Q. You see it on? Every second for those seconds.

21 A. Okay.

22 Q. Do you see that? You kept it on for one, two,
23 three, four, five, six, seven, eight --

24 MR. HARMON: I'm sorry. Your Honor, he --

25 Q. [Mr. Parker] -- nine, ten, eleven seconds?

1 MR. HARMON: Mr. Wooden can't see --

2 THE COURT: All right. Mr. Wooden, you need to
3 step down --

4 MR. PARKER: Oh, I see. Sure.

5 THE COURT: -- so you can show him what you are
6 referring to.

7 [Whereupon, the witness complies]

8 MR. PARKER: I thought he could see it. I'm
9 sorry.

10 Q. [Mr. Parker] You see where you have the seconds
11 there where you had it on?

12 A. Okay.

13 Q. One, two, three, four, five, six, seven, eight,
14 nine, ten, eleven seconds; correct?

15 A. Okay. Okay.

16 Q. And then you took it off at twenty-seven fifty-
17 four. Do you see that?

18 A. Okay.

19 Q. Now, that's when you saw the vehicle move,
20 correct, because you broke --

21 MR. HARMON: Your Honor --

22 Q. [Mr. Parker] -- just like you said?

23 A. If -- okay.

24 Q. Wouldn't you agree? Because you didn't break it
25 but one time; correct? And that's when you saw the

1 vehicle move; is that correct?

2 A. But I had blowed the crossing before I got to
3 it.

4 Q- Right. I'm showing you this. That's one,
5 two --

6 A. That's my first -- that's my first blow.

7 Q. This is your first blow right --

8 A. First long blow.

9 Q. One, two, three, four, five, six, seven, eight,
10 nine, ten, eleven seconds you blew.

11 A. Okay.

12 Q. And then you broke it?

13 A. Right.

14 Q- And you broke it because that's when the car was
15 moving, and they said -- you wanted to go into the panic
16 blow --

17 A. Okay.

18 Q. -- is that correct?

19 A. If I got to -- I got to see where the second
20 horn start to blow at.

21 MR. PARKER: All right. We're going to go to
22 the previous -- the next page back. Go backwards.

23 Q. [Mr. Parker] And you see down here you were off
24 for one second.

25 A. Okay.

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1 Q. And then you put on one, two, three, four, five
2 seconds. Do you see that?

3 A. I'm looking there what you're showing me but,
4 like I said, I --

5 Q. Well, I mean, we can look over here.

6 MR. HARMON: Can he --

7 Q. [Mr. Parker] It's got --

8 MR. HARMON: Can he let him finish, please?

9 THE COURT: Mr. Parker, let him finish.

10 MR. PARKER: Sure.

11 Q. [Mr. Parker] You can look over here. The times
12 are right here --

13 A. Okay.

14 Q. -- twenty-eight, twenty-nine, thirty, thirty-
15 one, thirty-two. See that?

16 MR. HARMON: Your Honor, I'm sorry. He did not
17 finish his answer. Mr. Parker moved to another
18 question. Could he please finish what he was about to
19 say?

20 Q. [Mr. Parker] Go ahead and say whatever you
21 wanted to say.

22 A. That's on the second blow.

23 Q. That's the second blow.

24 A. Okay.

25 Q. It's five seconds: one, two, three, four, five.

1 A. Okay.

2 Q. So that break, what we know about that break is
3 that's when you saw the car moving and made the break, as
4 you testified?

5 A. Okay.

6 Q. Do you agree with that?

7 A. I agree with that.

8 Q. Okay. And we -- you also -- we can look on
9 here. That's -- about the time you quit there is where
10 you put it into emergency and the air pressure went out on
11 it. Do you see that?

12 A. Like I say --

13 Q. We could go up top there --

14 MR. HARMON: Your Honor -- I'm sorry.

15 THE COURT: Okay. Hold on a second. Mr.
16 Parker, you need to ask a question --

17 MR. HARMON: Let him finish his answer.

18 THE COURT: -- and then he can answer it. But
19 there needs to be a question out there.

20 MR. PARKER: Certainly.

21 Q. [Mr. Parker] Let's go to -- do you remember
22 the -- and we might have to come back to this.

23 MR. PARKER: But I want to put up --

24 Q. [Mr. Parker] And I'll go over the event
25 recorder with you, and I want to see if you agree with me.

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1 MR. PARKER: Let's put up plaintiff's 254.

2 Q. [Mr. Parker] And we can go back and forth to
3 the event recorder, if we need to, Mr. Wooden. I want to
4 make sure you -- the event recorder shows that it stopped
5 at mile -- it stopped at mile eight sixty-nine feet, eight
6 sixty-nine feet.

7 MR. HARMON: Your Honor, again, I apologize for
8 keep interrupting.

9 THE COURT: That's all right.

10 MR. HARMON: But I ask that the witness be given
11 the opportunity to say if he understands and knows this
12 document before he's -- it's shown and asked a
13 question. That's all my objection is.

14 [Whereupon, Mr. Parker and Ms. Gerrard confer]

15 Q. [Mr. Parker] Mr. Wooden, do you recall the
16 testimony? And we'll bring it out, because your speed
17 goes to zero at eight sixty-nine feet.

18 MR. HARMON: Can we approach?

19 THE COURT: You know, ladies and gentlemen of
20 the jury, let's take another break. Y'all go back to
21 your jury room, get yourself a Coke. It is about 4:25,
22 and I assure you this is the last break we are going to
23 take today. We're going to work through as far as we
24 can. But go get something, refresh yourselves, we'll
25 all come back.

1 Again, do not begin discussing this case. It's
2 not appropriate to do so.

3 MR. PARKER: Your Honor -- .

4 THE COURT: Just wait.

5 [Whereupon, the jury exits the courtroom at
6 4:26 p.m.]

7 THE COURT: Yes?

8 MR. HARMON: Before we make any arguments, I
9 think Mr. Parker wants Mr. Wooden to step out. And
10 that's fine. I don't have any objection to that.

11 THE COURT: Okay.

12 MR. HARMON: That's fine.

13 THE COURT: Mr. Wooden, if you don't mind, why
14 don't you go -- if you need to go refresh yourself --

15 THE WITNESS: Right. Thank you, ma'am.

16 THE COURT: -- go grab something. All right?

17 [Whereupon, Mr. Wooden exits the witness stand
18 and exits the courtroom]

19 THE COURT: All right. Before anyone says
20 anything, there is going to be a question on the floor.
21 You're not going to testify, Mr. Parker. You're going
22 to allow him an opportunity to answer the question and
23 you're going to let him finish his answer until he's
24 done.

25 Respectfully, Mr. Harmon, he can lead him all he
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1 wants to and it is incumbent on Mr. Wooden to say I
2 don't know, if he doesn't know.

3 MR. HARMON: Your Honor, I have no problem. I
4 concur a hundred percent he can lead him. The problem
5 is Mr. Wooden says I don't know, I don't understand how
6 to interpret this, and then over my objection he's
7 allowed to ask him questions to keep going on. Once he
8 says he doesn't --

9 THE COURT: And, again, he needs to keep saying,
10 I don't know; I have no basis for it.

11 MR. HARMON: But I guess, Your Honor, at that
12 point it becomes badgering. He's told us he doesn't
13 know and then he tries to say it again, and he's
14 interrupted, and then the subject is changed. And
15 now we're going into an area they're going to try to --
16 we have some expert calculation. This is -- he's got
17 to -- they've got to lay a foundation that he knows
18 this. And we've allowed him to testify about a
19 document that he doesn't know, he doesn't know how
20 to --

21 THE COURT: Well, number one, this is a
22 demonstrative exhibit, I'm assuming, that was made by
23 your expert, is that correct, or by someone for you-
24 all?

25 MR. PARKER: This is a demonstrative exhibit.

1 But what I want to ask him about comes off of -- these
2 figures all come off the event recorder.

3 THE COURT: And I'm assuming that. So if he
4 says, I don't know if that's correct, you need to then
5 show him the event recorder and say, this is where it
6 says. And if he says, I don't know and I don't have
7 any reference to it, you ask him, say, do you have any
8 reason to disagree with me as to this being the number
9 and he's going to say again, you know, no.

10 MR. PARKER: Well, Your Honor, I mean, when your
11 speed gets to zero and it's at eight sixty-nine
12 distance, I mean, that's not -- you have to know that
13 those two things match. The event recorder shows that
14 number as being the speed when he got to zero.

15 THE COURT: All right. But you need to show him
16 that. If he doesn't know that, you need to actually
17 show him the event recorder and say --

18 MR. PARKER: That's what I plan on doing.

19 THE COURT: -- look at it right here, do you not
20 see clearly right here that it says this was the speed,
21 or whatever the question is.

22 MR. PARKER: That was what I was planning to do.

23 THE COURT: Mr. Harmon, I don't understand what
24 you're objecting to, as far as this is concerned. I
25 mean, there's no difference in this as if he just --

1 after each question he decided he was going to write it
2 down on the board --

3 MR. HARMON: But I guess --

4 THE COURT: -- his is what the stopped --

5 MR. HARMON: Your Honor, I don't have a problem
6 with him writing on the board. I guess my problem is
7 when you've taken the fact that Mr. Wooden has
8 testified he doesn't know how to interpret or read the
9 event recorder, and now we've allowed Mr. Parker to
10 continue to ask him questions and to badger him and
11 confusing him and now we're going to compound that and
12 allow him to ask questions about mathematical equations
13 relating to that, I object to this lay witness -- who
14 has now been shown other depositions and is now being
15 asked to answer questions about things he doesn't
16 understand.

17 THE COURT: He's the engineer, though, Mr.
18 Harmon.

19 MR. HARMON: He's a locomotive engineer, Your
20 Honor. He doesn't understand. It's clear -- his
21 testimony was clear he does not understand how to read
22 the event recorder. And that is all based on that.

23 So my objection is we are allowing a witness to
24 testify without the foundation to show what he knows.
25 That's my objection. I understand the Court is

1 overruling me, but my objection is we've allowed Mr.
2 Wooden now to delve into areas of expert testimony when
3 he has testified clearly that he, [a], does not
4 understand how to read the event recorder. And I think
5 he said it once -- twice, clearly. The third time he
6 was interrupted and when the Court instructed Mr.
7 Parker to let him answer, he moved on to something
8 else.

9 So that's my objection. I think it's unfair to
10 allow this witness, who has said he doesn't understand
11 this event recorder, and it's not -- the Court can see,
12 looking at the document, it is not -- it is not a
13 document that's is just, you know, within the common
14 understanding. Certainly there are people who
15 understand it, but Mr. Wooden is not one of them.

16 MR. PARKER: Your Honor, Mr. Wooden testified
17 that Mr. Barton, the road foreman of engines, his
18 supervisor, went over this with him and went over the
19 information.

20 THE COURT: The event recorder with him?

21 MR. PARKER: Right. And this printout.

22 THE COURT: Okay. I think it's fair to ask him
23 the questions and if he says he doesn't understand or
24 doesn't know, he can say he doesn't understand or
25 doesn't know. I can't look at it and read it. And

1 he's said it once or twice. Obviously, if that's his
2 position he needs to continue to say that that is his
3 position.

4 I'm assuming that all these numbers are derived
5 from that printout you have of the event recorder;
6 correct?

7 MR. PARKER: All of them except this number
8 right here, which is --

9 THE COURT: Well, that doesn't help me because,
10 again, I don't have it, either.

11 MR. PARKER: The stopping distance of fifteen
12 eighty-four came from the officer saying three-tenths
13 of a mile it took him to stop.

14 If you'll recall, there was two distances. One
15 of them was fifteen eight-four that came from
16 three-tenths of a mile from the officer where it said
17 the stopping distance --

18 THE COURT: Right.

19 MR. PARKER: -- and the other one was -- that is
20 the only number that doesn't come out of the event
21 recorder itself.

22 And then we did one with the -- down at the
23 bottom where we used the other. There were two times
24 testified to. One was a measurement of fourteen
25 twenty-three to the edge of the Erin's Beauty parking

1 lot.

2 THE COURT: Okay. Well, Mr. Parker, what I'm
3 going to do is this: I'm going to let you ask the
4 question and if he knows, he knows. If he doesn't
5 know, we're just going to move on to something else.
6 And, obviously this sounds like this is more proper
7 questioning for Dr. Manning, which I'm assuming is
8 coming. Yes? No? He's your expert.

9 MR. HARMON: Dr. Manning is our expert, Your
10 Honor.

11 And I would submit that asking this witness
12 about reaction time and other things, it's just not
13 appropriate, so --

14 But I understand the Court's ruling. I'm not
15 trying to quarrel with the Court.

16 THE COURT: No. And, please, you don't need to
17 say that, Mr. Harmon. I don't think anyone -- I don't
18 worry about anyone trying to ask me to clarify or you
19 making your record. I have no problem with that and I
20 would expect you to and, quite frankly, would be very
21 disappointed if you didn't.

22 Mr. Parker, I'm just not so sure, looking at
23 this total document, whether or not this person can
24 testify, this witness can actually testify, to this. I
25 mean, I would agree with Mr. Harmon, reaction time -- I

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1 mean, I can't imagine him having any idea about a
2 reaction time.

3 MR. PARKER: Well, he was in the courtroom when
4 the testimony has been offered on that. He's been --

5 THE COURT: You mean by Dr. Heathington?

6 MR. PARKER: There was several witnesses I think
7 that talked about reaction time.

8 And I can tell you that 1.5 seconds reaction
9 time is obvious -- it -- I can -- it has to take time
10 to do anything. We all know that.

11 THE COURT: Well, no question. But you're
12 putting an exact number to it.

13 MR. PARKER: Well, you can change the number and
14 go --

15 THE COURT: I think you can ask a generic
16 question.

17 MR. PARKER: -- you can go up or go down. I
18 totally agree.

19 THE COURT: But he doesn't have any basis, I'm
20 going to assume, for understanding what 1.5. versus two
21 or three or four seconds. I have no idea.

22 But you can do is this. You can ask him some of
23 the questions on it. If it's clear that he doesn't
24 understand based on where you've taken this --

25 MR. PARKER: Sure. We'll go on to something

1 else.

2 THE COURT: -- from the event recorder, if he
3 can't testify and doesn't understand and all you're
4 doing is testifying to this information, which is what
5 it appears is going to happen, then we aren't going to
6 do that and I'm going to tell you to move on. Okay?

7 And, again, you have to more appropriately ask
8 it for Dr. Manning if he is the one that is the person
9 to ask.

10 All right. Anything further, y'all?

11 MR. HARMON: No, Your Honor.

12 THE COURT: Anything?

13 Y'all, let's just take two minutes. We're going
14 to run until we're done for the day. And, again, I
15 told Mr. Harmon we will go as long as he would like,
16 because it's his witnesses. So you tell me. I don't
17 know how much longer this cross is going to last.

18 MR. HARMON: We'll let you know. After Mr.
19 Parker finishes Mr. Wooden, we'll let you know.

20 THE COURT: Okay. If y'all do want to break,
21 come forward. And then also at that time, just what
22 time you want to start in the morning as far as
23 witnesses are concerned --

24 MR. HARMON: Yes, Your Honor.

25 THE COURT: -- and we'll go from there. Okay?

1 MR. HARMON: That sounds good.

2 THE COURT: So let's just take two minutes,
3 y'all.

4 MR. HARMON: All right.

5 MR. MCLEOD: Your Honor?

6 THE COURT: Yes, sir?

7 MR. MCLEOD: Might I ask -- because I've got
8 some from Columbia, and it appears to me that they are
9 not going to be up today. Do you think I could release
10 them?

11 THE COURT: I think you're safe. I think you
12 are more than safe. I think you can go ahead and tell
13 them to go home.

14 MR. MCLEOD: Thank you, Your Honor.

15 THE COURT: Absolutely.

16 All right, y'all. Let's just take two quick
17 minutes and then we'll be back.

18 [Whereupon, a recess is taken from 4:32 p.m. to
19 4:37 p.m.]

20 [Whereupon, the witness re-takes the witness
21 stand]

22 THE COURT: All right. Y'all, anything further
23 before I bring the jury back in?

24 MR. HARMON: No, Your Honor.

25 THE COURT: All right. Let's go.

1 [Whereupon, the jury enters the courtroom at
2 4:40 p.m.]

3 THE COURT: Okay. Welcome back, ladies and
4 gentlemen.

5 Mr. Parker, you can continue, sir.

6 MR. PARKER: Let's put the exhibit back up there
7 we were on.

8 CONTINUED CROSS-EXAMINATION

9 BY MR. PARKER:

10 Q. Mr. Wooden, we -- and I'm going to hand you a
11 copy of the event recorder, 145. Come right here and we
12 can look at it together.

13 [Whereupon, the witness complies]

14 Q. [Mr. Parker] If we look over here, do you see
15 where your speed got -- your speed there, you got to zero?

16 A. Right.

17 Q. And that's at eight sixty-nine feet?

18 A. Right.

19 Q. See the feet, eight sixty-nine?

20 And you recall that Officer Hagy said you went
21 three-tenths of a mile and then you stopped after the
22 collision? Do you recall that testimony from Mr. Hagy,
23 and also from Jim Scott, the road foreman, that that was
24 the distance, the stopping distance --

25 A. They -- he --

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1 Q. They measured it. Mr. Hagy did. And if you add
2 those two numbers together, you get that the distance, the
3 feet at the crossing, is twenty-four fifty-three. It's
4 just a mathematical thing. And then if we look down on
5 the event recorder, we go down to see where you had the
6 break. You see that, the break, where you cut the horn
7 off because they were moving?

8 A. Right.

9 Q. And if we look at that, then we can see that's
10 at twenty-seven fifty-four feet; correct?

11 A. But that's what the number say, but --

12 Q. That's what it says, isn't it?

13 A. Right. Right.

14 Q. And so if twenty-seven fifty-four is when you
15 quit blowing the horn, and the crossing is twenty-four
16 fifty-three, then it would be 301 feet to the crossing
17 from the time you activated the horn and that would locate
18 you about what you said, three- or four-hundred feet;
19 right?

20 A. Right.

21 Q. And it took you -- once -- you can't do it
22 instantly. To get the horn, it takes you some time to get
23 the horn activated -- it's called reaction time -- right?
24 It takes you a little time to perceive and to react? At
25 the time, instantly, you couldn't tell that the car is

1 moving. It took you some time, whatever it is?

2 A. Well, I -- now, see, you're talking numbers that
3 I don't understand --

4 Q. I got you.

5 A. -- whatsoever.

6 Q. But you do know it takes some time? If I'm
7 going to --

8 MR. HARMON: Your Honor, my objection, he
9 doesn't know --

10 THE COURT: All right. Sustained.

11 He doesn't know, Mr. Parker. You need to move
12 on.

13 MR. PARKER: I will.

14 Q. [Mr. Parker] But let me ask you this. Whatever
15 the time is -- and we won't talk about that. But when the
16 horn got on the event recorder, you were 301 feet from the
17 crossing if those numbers are correct --

18 MR. HARMON: Your Honor, I'm sorry.

19 Again, I thought you had ruled. Mr. Parker is
20 persisting on --

21 THE COURT: Okay. Well, that -- he can answer
22 the question.

23 MR. PARKER: I think he had already answered it.

24 Q. [Mr. Parker] Didn't you agree to that, that
25 according to the figures on the event recorder you were at

1 some distance greater than 301 feet when you saw the
2 vehicle move?

3 A. It's on the second horn --

4 Q. Right.

5 A. -- and then when I --

6 THE COURT: Let him finish, Mr. Parker. Let him
7 finish.

8 A. This is the second horn. And after my conductor
9 said they're not going to make it --

10 Q. [Mr. Parker] Right.

11 A. -- I was -- that's what you're talking about?

12 Q. That's correct.

13 A. Now you want me to agree to 300 --

14 Q. -- and one foot is what the event recorder
15 shows.

16 A. Well, I'm not arguing the event recorder.

17 Q. Right. But it coincides with your testimony of
18 you being three- to four-hundred feet; correct?

19 A. I said several. I thought I said several. I
20 said several.

21 Q. You said several hundred but then you said
22 probably about three- to four-hundred feet; is that
23 correct?

24 MR. HARMON: Same objection, Your Honor.

25 THE COURT: He can go ahead and answer it, if he

1 knows.

2 Q. [Mr. Parker] Is that correct that it coincides
3 with -- about your testimony of three- or four-hundred
4 feet?

5 A. That's correct.

6 MR. PARKER: Okay. You can -- let's stay here a
7 minute, and -- we might stay right here.

8 Let's see. Let's put up the next exhibit,
9 Exhibit 255.

10 Q. [Mr. Parker] And Exhibit 255 is a note from
11 Dr. Manning. And if we look down at the bottom, it
12 says --

13 MR. HARMON: Can we ask if he's ever seen it or
14 knows of it personally?

15 THE COURT: Does he have any basis?

16 MR. PARKER: I'm going to ask him a question
17 about it.

18 Q. [Mr. Parker] Dr. Manning says on here, the
19 train crew saw her moving -- first saw her moving --

20 MR. HARMON: Your Honor, my objection is he
21 needs to lay a foundation, before he shows this
22 document to the jury, that the witness knows and has
23 seen it. That's my objection.

24 MR. PARKER: I'm going to ask him whether he
25 told Dr. Manning what Dr. Manning has written on this

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1 document.

2 MR. HARMON: Can we take the exhibit down?

3 THE COURT: Okay. You can ask him the question
4 if those were the numbers that he relayed to Dr.
5 Manning or the information he relayed to Dr. Manning.

6 MR. PARKER: All right. Can I put the exhibit
7- up? I don't want to run afoul of the Court's ruling.

8 THE COURT: I haven't seen the whole exhibit, so
9 I don't know what it is.

10 MR. PARKER: This is Dr. Manning's notes.

11 [Whereupon, Mr. Parker proffers documents to the
12 Court]

13 [Whereupon, the Court reviews documents]

14 THE COURT: Okay. Before you put it up, you can
15 ask him the question. And just ask him the question
16 first.

17 MR. PARKER: Okay.

18 Q. [Mr. Parker] Did you tell Dr. Manning that at
19 180 to 190 feet the train crew saw her moving, first saw
20 her farther back?

21 A. I don't recall.

22 Q. I mean, we've established today that you saw her
23 moving at three- to four-hundred feet. So you wouldn't
24 have told him that, would you?

25 MR. HARMON: He said he did not recall.

1 THE COURT: Okay. He can answer the question.

2 A. I don't recall.

3 Q. [Mr. Parker] I mean, the event recorder and
4 your testimony are three- to four-hundred feet and Dr.
5 Manning says you told him 190 feet.

6 A. I don't recall telling Dr. Manning anything.

7 Q. Did you ever talk with Dr. Manning?

8 A. We talked, but we didn't talk about no feet and
9 inches and yards and miles. We didn't -- we didn't talk
10 about that.

11 Q. So he couldn't have possibly got this distance
12 from you, could he?

13 A. If it's got 1800 -- not that I can recall.

14 Q. Now, you didn't -- now, this photograph here, I
15 don't know what distance this is taken from. But this
16 photograph we have over here was -- it's certainly much
17 closer to the crossing than where you were when the car
18 first started moving, isn't it? The one Mr. Harmon put
19 up.

20 A. There again, I wasn't the first one to see the
21 car move first. I saw it stopped. But I can testify that
22 when I saw the car was foul of the right-of-way, she had
23 ample time or the car had ample time -- excuse me. If I
24 could have got their attention and they had accelerated,
25 they could have got out of the way. So I watched that car

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1 go, but I was trying to get their attention.

2 Q. But this is much closer than you were when all
3 that occurred, isn't it?

4 A. I can't testify to that. I don't --

5 Q. You don't know?

6 A. I don't know.

7 MR. PARKER: All right. I want to play the --
8 You stay down here.

9 THE WITNESS: Oh. Okay.

10 MR. PARKER: We'll need to look at this.
11 If you will, let's play the animation.

12 Q. [Mr. Parker] I want to go over the animation
13 with you.

14 MR. HARMON: Your Honor, may we approach?

15 THE COURT: Yes.

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

18 [Whereupon, Mr. Parker confers with Mr. Detrick
19 and Mr. Holmes]

20 MR. PARKER: All right. Let's play it.

21 Excuse me just a minute, Your Honor.

22 [Off the record momentarily]

23 MR. PARKER: Excuse me just a minute, Your
24 Honor. We're running into technical difficulties.

25 MR. HARMON: Can Mr. Wooden sit down while

1 they're fixing this, Your Honor? Is that all right?

2 THE COURT: Sure.

3 And, Mr. Parker, if you could possibly --

4 MR. PARKER: We've got it.

5 THE COURT: You have it?

6 MR. PARKER: Let's start with -- when I see it,
7 I'll stop you. I don't know. That's not it. That's
8 not it. Let's see. That's not it. That's not
9 correct. We just can't do it --

10 [Off the record momentarily]

11 [Whereupon, the animation is played for the
12 jury]

13 Q. [Mr. Parker] When the vehicle is stopped,
14 according to this animation the train is at 639 feet.

15 MR. PARKER: And so I want you to run this, if
16 you will, until we get to about where the train is 301
17 feet, or 300 feet.

18 Q. [Mr. Parker] Now, at that point in time you see
19 there that the front bumper to near rail would be about
20 17.51 feet. Your train is about 326 feet. Is that what
21 you recall?

22 MR. HARMON: Your Honor, I'm sorry. There is no
23 foundation. I object to lack of foundation.

24 THE COURT: Okay. Mr. Wooden, the question
25 is -- can you answer the question or not?

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1 THE WITNESS: I can't answer it.

2 THE COURT: Okay. Fair enough.

3 MR. PARKER: And let's go forward.

4 Q. [Mr. Parker] And as you said, that if she had
5 been closer than that, she would have made it; correct?

6 A. [No response]

7 Q. In other words, if she hadn't had as far to
8 travel, if she was closer to the track, she would have
9 gotten across the track faster?

10 MR. HARMON: Objection, Your Honor. That
11 mischaracterizes what he said earlier.

12 THE COURT: Overruled.

13 Answer the question, Mr. Wooden.

14 A. Are you asking me that I said?

15 Q. [Mr. Parker] Right. You said -- what I recall
16 your testimony, you said the train was between three- and
17 four-hundred feet away from the crossing when you noticed
18 that to engage the panic braking. And so if at that point
19 in time she hadn't been where she was that y'all had this
20 collision, but closer to the track, she would have gone on
21 across and y'all wouldn't have had this collision; isn't
22 that correct?

23 MR. HARMON: Objection to the -- okay.

24 A. I don't -- Mr. Parker, I don't know what you're
25 asking me.

1 Q. [Mr. Parker] But what I'm asking is, given --

2 THE COURT: Mr. Parker, you just need to move on
3 to something else.

4 MR. PARKER: Right.

5 THE COURT: He does not have any basis for this
6 animation and just does not know, and has stated twice
7 now he doesn't know, so let's go on to something else.

8 MR. PARKER: Right. I'm not going to ask him
9 about the animation.

10 You can just cut that off.

11 [Whereupon, the animation concludes]

12 MR. HARMON: Can he have a seat?

13 MR. PARKER: Yes.

14 THE COURT: Yes.

15 Mr. Wooden, you can come back and sit and --

16 [Whereupon, the witness complies]

17 THE COURT: Thank you.

18 Q. [Mr. Parker] Mr. Wooden, you testified you were
19 three- to four-hundred feet away when you started the
20 panic blow and you made the break in the horn. So they
21 were moving at that time; correct?

22 A. [No response]

23 Q. The car was moving? Mr. Cummings had told you
24 the car was moving and you made the break in your horn and
25 started the panic blow; is that correct?

1 A. If I'm understanding your question, now, you
2 said the car was moving.

3 Q. Yeah. What I understand you said, and I want to
4 be clear about this, I want to -- don't want to get you to
5 say something that's not right, or anything else. But as
6 I understand your testimony -- because you said that when
7 y'all were -- the train was three- or four-hundred feet
8 from the crossing, that you heard Mr. Cummings say
9 something that alerted you to the fact that the car was
10 moving?

11 A. Mr. Parker, I'm not trying to avoid your --
12 answering your question. But I can't recall in none of my
13 testimony saying that we was three or four hundred.
14 That's what got me confused with the numbers. I --

15 Q. Okay. Well, let's --

16 THE COURT: Let him finish, Mr. Parker.

17 MR. PARKER: Yeah. I'm sorry. I'm too quick at
18 the trigger. I apologize to you.

19 A. Well, I'm finished. I just -- I don't recall
20 saying three- to four-hundred feet.

21 Q. [Mr. Parker] Let's go over it again, because we
22 went over it when we had our points of agreement that you
23 agreed with me. And I'm going to put up your testimony of
24 your deposition, page 72, line 7 through 12.

25 Do you remember I asked you: [reading] do you

1 know how close you were to the crossing when the car
2 started moving again. No, I don't. Approximately.
3 Several hundred feet, three or four hundred, several
4 hundred or something.

5 Do you recall that testimony?

6 A. I remember using the term seven hundred --
7 several hundred feet, but I -- three- or four-hundred
8 feet, I -- well, that's my testimony, though. If I said
9 it, I said it.

10 Q. Right. In December --

11 A. When you did the deposition --

12 Q. -- of 2004 -- excuse me

13 A. When you did the deposition --

14 Q. Right.

15 A. -- in Augusta?

16 Q. Right.

17 A. Well, if I -- if that's what I said, that's what
18 I said.

19 Q. Right. And your memory of these events would
20 have been better closer to the events than it is now
21 several years later; correct?

22 A. That's what I would think.

23 Q. Okay. Now, the -- I've got a little bit more
24 and we'll finish this thing up, Mr. Wooden.

25 MR. PARKER: Let's put the last slide up, the

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1 errors in testimony slide.

2 Q. [Mr. Parker] Now, I want to ask you about a few
3 things that you may have made an error in your testimony
4 on and whether or not you will agree that your testimony
5 was in error. And one is you testified you blew the horn
6 at the whistle post; correct? That you thought you did,
7 you remembered you did.

8 A. I thought I did.

9 Q. Right. But you'll admit you were mistaken about
10 that, weren't you?

11 A. According to the event recorder, I was mistaken.

12 Q. Right. And the event recorders don't have any
13 biases or they don't want to punish Mr. Wooden or anybody.
14 They're just taking down what's recorded, aren't they?

15 A. Yes, sir. They're man-made, also.

16 Q. Well, they can make a mistake, like you can have
17 a failure. But basically this is something that's
18 measuring the revolutions of the wheel, isn't it?

19 A. [No response]

20 Q. Is that correct?

21 A. I don't know that, either. I don't know.

22 Q. Right. And the horn blow, it measures that.
23 It's got a way of doing that.

24 A. [No response]

25 Q. And you recognize as the company representative

1 that CSX has answered discovery that the event recorder is
2 accurate?

3 A. I'm not -- I'm not disputing the event recorder.
4 I mean, I'm -- I'll answer -- what's your question?

5 Q. The question is you will admit you were mistaken
6 in your memory about where you blew the whistle?

7 A. I'm mistaken in my memory and the event recorder
8 don't match.

9 Q. All right. And, two, you testified the train
10 was doing forty to forty-five at the time of the
11 collision, but the audiotape shows that you told the
12 dispatcher forty-five?

13 A. What mistake was that? I mean, that's pretty
14 good.

15 Q. Well, forty to forty-five is five miles an hour
16 potential difference?.

17 A. But what did the event recorder say?

18 Q. The event recorder says forty-two, I believe.

19 A. I thought that was pretty good.

20 Q. That's pretty close, pretty close.

21 But my question -- the reason -- the point of my
22 question is you just -- I'm not fussing with you about it.
23 But you were slightly mistaken because of when things
24 happen, it's hard to recall exactly. You weren't looking
25 at the speedometer when this happened?

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1 A. Right. I'm not -- I wasn't --

2 Q. You were making your best effort, and I'm not
3 criticizing you for it.

4 A. Okay.

5 Q. And, three, you told --

6 MR. PARKER: Let's look at that.

7 Q. [Mr. Parker] -- a claims representative,
8 Hedden, you stopped twenty car lengths past the crossing,
9 but the event recorder shows that -- and the testimony
10 shows that it was a good bit more than that, doesn't it?

11 A. I'm not -- I'm not -- well, I'm not -- I don't
12 know. If -- that's what Mr. Hedden said?

13 Q. That was in his notes that we went over. He
14 said you said it.

15 A. That's what he -- that's what I'm talking about.
16 I don't know that -- I can't remember telling him. I
17 don't know. But if I -- if he say I said it, then I said
18 it, you know.

19 Q. Right.

20 But if you did tell him that, you just made a
21 mistake; is that correct?

22 A. But, see, what I'm saying, Mr. Parker, is you're
23 asking me something I said to Mr. Hedden. I don't know
24 what Mr. Hedden -- I might have been -- I might have told
25 him fifty car lengths and he wrote down twenty.

1 Q. Right.

2 A. You know what I'm saying? So I don't know how
3 to answer this question.

4 Q. There's one other. You testified the throttle
5 position was in two or three, and according to the event
6 recorder -- and I'll give it up to you -- it was actually
7 in one --

8 [Whereupon, Mr. Parker proffers documents to the
9 witness]

10 Q. [Mr. Parker] -- if you want to look at it.
11 Let's get it where it's moving. Let's see. You see
12 throttle at one?

13 A. There again, I don't know how to read that. But
14 if that -- if I said --

15 Q. That's what it --

16 A. If I said two or three and it was in one, that's
17 what it was.

18 Q. Right. But you --

19 A. I'm not disputing it.

20 Q. -- just made a mistake about that. You weren't
21 trying to make a mistake. When you're trying to answer
22 people correctly, the fact that you're off a little bit
23 doesn't mean you're trying make a mistake, does it?

24 A. Right.

25 Q. And you testified that you blew the horn at the

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1 whistle post and blew two longs, a short, and a long, and
2 the event recorder shows that that wasn't exactly
3 accurate; correct?

4 A. But, now, Mr. Parker, that's correct. But I can
5 explain that. I mean, the two longs, the short and the
6 long is what rule 14-L required. But, now, in this case,
7 it was an event that's happening. We didn't get to 14-L.
8 We didn't get to complete that two longs, short and a
9 long. It stopped on the way.

10 Q. And you testified that you were sure it was a
11 pull horn; correct?

12 A. But, Mr. Parker, you know the day we -- I
13 took -- you knew that I didn't know exactly what it was,
14 a pull or a push. I wasn't absolutely sure. But with
15 that engine model being an early table top, I said it was
16 probably a pull. But --

17 Q. But, again, that was --

18 A. That was a mistake.

19 Q. You were doing your best.

20 But the truth of the matter is when we rely upon
21 memory of things, we can make mistakes; correct?

22 A. Now, what's the --

23 Q. When you rely upon memory of events, you can
24 make a mistake?

25 A. You can make a mistake.

1 Q. And you can make small mistakes that are
2 important; correct?

3 A. I don't know. I don't -- now you're asking me
4 something else. Now, what you saying now?

5 Q. I said that when we're relying upon memory, it's
6 easy to make a small mistake like --

7 A. I agree --

8 Q. -- forty to forty-five?

9 A. I agree with that.

10 Q. And you testified that you placed the train in
11 emergency prior to impact, and you told the claims
12 representative that you put the train in emergency after
13 impact and the event recorder shows that. So you may have
14 been slightly mistaken about that?

15 A. Okay.

16 Q. Is that correct?

17 A. After you analyzing every instances and pick
18 them out, then --

19 Q. And so when we come down to judging distances
20 from four- or five-hundred feet away, you can make a
21 mistake about those, too, can't you?

22 A. Ain't nobody -- everybody can make a mistake.
23 Anybody can make a mistake.

24 Q. Right.

25 And when you're looking at the difference

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1 between five- or six-foot distance over four- or five-
2 hundred feet, it would be very easy to get that incorrect,
3 wouldn't it?

4 A. See, there again, I'm not trying to avoid
5 answering your question, but I ain't understanding the
6 question.

7 Q. The question is if you see something, an event
8 occur, going forty-two miles an hour, twelve feet in the
9 air, and you see something for just a second or two, and
10 you could easily make a small mistake of five or six feet
11 in distances?

12 A. Maybe trying to recall it another day or six
13 months later perfectly as just how it happened. But you
14 got -- you know what happened.

15 Q. Right.

16 But you don't know exactly what happened; isn't
17 that correct?

18 A. Mr. Parker, I know -- I know what I did and how
19 I did at that crossing, and what I saw and where I saw it.
20 I know that.

21 Q. But you wouldn't want -- we don't have -- in our
22 minds we don't have cameras, do we?

23 A. No. We got memory.

24 Q. We have memories.

25 A. Right.

1 Q. And a lot of people get convicted of crimes on
2 eyewitness testimony because memories are incorrect;
3 correct?

4 A. I suppose. I don't know no case, but I --

5 Q. You've read in the paper about people who have
6 been on death row for twenty years and then DNA exonerates
7 them?

8 A. I've heard -- I've seen that.

9 Q. And that's because memory is not perfect;
10 correct?

11 A. I see what -- Mr. Parker, you want me to agree
12 on something that I just -- I absolutely, you know -- I
13 suppose you could be right, I suppose you could be wrong.
14 I don't -- I mean, what kind of answer do you want me to
15 give you? You know, I mean --

16 Q. Well, I want you to give me whatever you think
17 is the truth.

18 You could be mistaken, couldn't you?

19 A. You could be mistaken.

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

21 THE COURT: Mr. McLeod?

22 MR. MCLEOD: No questions, Your Honor.

23 MR. HARMON: Yes, Your Honor.

24 - - -

25 - - -

REDIRECT EXAMINATION

BY MR. HARMON:

Q. Mr. Wooden, briefly.

Mr. Parker asked you a lot of questions
comparing stuff you said to the event recorder; right?

A. Correct.

Q. When he showed you all these papers --

MR. HARMON: Can I see the event recorder stuff
you were using?

Q. [Mr. Harmon] When he was asking, you came up
here and he brought you up here and asked you all these
questions about the event recorder and to confirm what it
says. Do you know how to read the event recorder?

A. No, I don't.

Q. All right. So on this list he just showed you
when he was comparing what you just said and saying it was
wrong because of different things he's saying the event
recorder shows, do you know how to read that?

A. No, I don't.

Q. All right. And he asked you about your memory.
Do you know where she stopped that day, sir?

A. Yes, I do.

Q. Where did you see her stopped?

A. At the stop bar.

Q. Now, you were asked some questions about the

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1 distance you were -- how far you were from the crossing
2 when you saw her; right?

3 A. Right.

4 Q. And Mr. Parker asked you a lot of those
5 questions again and again and again in your deposition,
6 didn't he?

7 A. That's right.

8 Q. All right. Let's look at some of the answers
9 you gave the first time and as you progressed through the
10 deposition.

11 MR. HARMON: Let's put up Mr. Wooden's
12 deposition, page 36.

13 MR. POSTON: No particular line?

14 MR. HARMON: Page 36. Let's start at line 26.
15 We are going to go to page 37.

16 Q. [Mr. Harmon] All right. 36. All right. So
17 the question was asked of you, line 25: [reading] and
18 where were you located when you saw that. Where was the
19 train located when it stopped.

20 All right?

21 And then your first answer to Mr. Parker was:
22 [reading] I'm not sure.

23 That's your answer?

24 A. That's correct.

25 Q. And then he asked you again: [reading] where

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1 was the train, how far was the train, from the crossing.

2 Your answer: [reading] I can't give you no
3 exact feet, but we was several -- several -- several
4 hundred feet away, I reckon.

5 And then he continued to press you and you said:
6 [reading] that means how many feet. More than 500, less
7 than 500. I didn't measure, Mr. Parker. I just -- we was
8 several hundred feet away when I saw her stop.

9 That's your testimony?

10 A. That's correct.

11 Q. And then later on in the deposition Mr. Parker,
12 as he's shown here on the screen, convinced you to say
13 three- to four-hundred feet. Remember that?

14 MR. PARKER: Your Honor, I would object to that.
15 I didn't convince him to say it.

16 MR. HARMON: Let's turn to 72. Let's turn to
17 page 72 where he was asked the question again. 72,
18 lines 7 through 12.

19 Q. [Mr. Harmon] So you've been asked it once,
20 right, in your deposition?

21 A. Right.

22 Q. And then we return to it, and asked again.

23 Do you know how close you were to the crossing
24 when the car started moving again.

25 Answer: [reading] no. No, I don't.

1 Approximately? Several hundred feet, three, four hundred,
2 several hundred, or something.

3 That's what you said; right?

4 A. Right.

5 Q. And then later on you were asked questions from
6 Mr. Purcell; right?

7 A. Correct.

8 MR. HARMON: Let's turn to 96, page 96.

9 MR. POSTON: What line?

10 MR. HARMON: Oh. Line 18.

11 I'm sorry. Let's go to page -- is it 96? Hold
12 on one second. Yes. 96, 18. Thank you.

13 Q. [Mr. Harmon] Okay. The question: [reading]
14 Mr. Wooden, without regard to the number of seconds that
15 Mr. Parker asked you about and without regard to the
16 distances that he asked you about, when Mr. Cummings said
17 they are not going to make it or whatever the words were,
18 exact words that he used at that point, was there anything
19 you could have done to avoid the collision.

20 Answer: [reading] nothing. It was that close.
21 That close.

22 MR. HARMON: Next page.

23 Q. [Mr. Harmon] [Reading] Mr. Wooden --

24 MR. HARMON: I'm sorry. Page 97.

25 Q. [Mr. Harmon] -- [reading] how close was it. It
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1 was right there. Again, does that mean ten feet, twenty
2 feet. You know how long a locomotive, a length is, don't
3 you. How long is a locomotive. Seventy feet. Is it
4 closer than a locomotive length. Well, Mr. Parker, I'm
5 not trying to avoid answering your questions, but I want
6 to be truthful. When Mr. Cummings said they ain't going
7 the make it, after that it really just didn't matter. You
8 know what I'm saying. But what I want is your best.

9 Answer: [reading] feet-wise, we wasn't on top
10 of the car then. We wasn't on top of the crossing. We
11 could see it. We could see we was going to hit it, too.

12 MR. HARMON: Next.

13 Q. [Mr. Harmon] [Reading] Where were you. Was it
14 more than a locomotive length away. A locomotive being
15 approximately seventy feet. It may have been a
16 locomotive or more. Was it two locomotive lengths. There
17 again, I can't -- I can't give you the feet. I can't. I
18 don't know. What's your best effort at it, using a
19 locomotive length as your measure. If I say two, Mr.
20 Parker, I give you a feet and maybe I be lying myself, and
21 I can't. I'm not trying to get you -- I want you to --
22 can't tell exactly because you didn't measure it. But I'm
23 asking your best approximation.

24 Question: [reading] go ahead and answer. The
25 best I'm going to say is two locomotives, best.

1 That was your testimony; right?

2 A. That's correct.

3 Q. All right. So you were estimating how far you
4 were from the crossing when you saw the car; right?

5 A. Right.

6 Q. And you never measured it?

7 A. Never measured it.

8 Q. And you're giving your best estimation?

9 A. Gave my best.

10 Q. But did you see the car stop some place?

11 A. Yes, I did.

12 Q. And where was it?

13 A. At the stop bar.

14 Q. Now, you were asked some questions about the
15 horn. You were shown on these last series of slides that
16 you got it wrong with what type of horn it was but in the
17 deposition you weren't sure because you trade trains all
18 the time; right?

19 A. All the time.

20 MR. HARMON: Let's go to page, lastly, 84. 84,
21 line 1, and this will be it.

22 Q. [Mr. Harmon] [Reading] Okay. I mean, you
23 testified --

24 This is a question by Mr. Parker: [Reading] I
25 mean, you testified at length how you pulled it and blew

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1 it. That's why I'm pretty sure, but I can't -- we swap
2 engines, change every day. Pull, push, electric, hard to
3 remember.

4 That was your testimony; right?

5 A. Correct.

6 MR. HARMON: Your Honor, I have no further
7 questions of Mr. Wooden.

8 THE COURT: Okay. Recross, Mr. Parker?

9 MR. PARKER: Yes, just a short --

10 MR. MCLEOD: None, Your Honor.

11 THE COURT: Yes, sir.

12 RECROSS-EXAMINATION

13 BY MR. PARKER:

14 Q. Mr. Wooden, because of approximation and
15 memories, that's why they put event recorders on
16 locomotives, isn't it? Because we don't have to rely on
17 memories, we can rely on the science; isn't that correct?

18 A. That's correct.

19 MR. PARKER: Nothing further.

20 MR. HARMON: One more question.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. HARMON:

23 Q. Can the event recorder tell you what you saw
24 where she stopped that day?

25 A. No, it can't.

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1 MR. HARMON: I have no questions.

2 MR. PARKER: One follow up.

3 FURTHER RECROSS-EXAMINATION

4 BY MR. PARKER:

5 Q. But it can tell you where you made the break in
6 the horn, can't it, when you saw the car, the car was
7 moving, when you were over 300 feet away; isn't that
8 correct?

9 A. Mr. Parker, do you mind asking the question
10 again?

11 Q. The event recorder can tell us when you made the
12 break in the horn because it's -- all it's doing is -- it
13 says where the horn was blown, it give us where it was
14 activated at, and we know how many feet from the crossing
15 that was. So we don't have to rely on memory for that.
16 We know that distance, don't we?

17 A. Correct.

18 MR. HARMON: I have no further questions.

19 THE COURT: Okay.

20 MR. MCLEOD: None, Your Honor.

21 THE COURT: All right. You may step down, sir.

22 Thank you.

23 MR. PARKER: I do have one other question. One
24 more.

25 Q. [Mr. Parker] Mr. Wooden, you're not a defendant

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1 in this case, are you?

2 A. I don't understand what you're asking.

3 Q. You're not a party? You haven't been -- a
4 lawsuit hasn't been brought against you in this case?

5 A. No, it haven't.

6 MR. PARKER: Thank you.

7 FURTHER REDIRECT EXAMINATION

8 BY MR. HARMON:

9 Q. Mr. Wooden, who are they accusing of improperly
10 blowing the horn and doing other things to cause this
11 accident?

12 A. Ned Wooden.

13 MR. HARMON: Thank you, Your Honor.

14 THE COURT: Okay. Now you may step down, sir.

15 THE WITNESS: Thank you.

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

18 MR. PURCELL: Your Honor, we're going to call a
19 live witness, as I guess our final witness of the day,
20 and we're getting him here. We've changed from reading
21 a deposition to a live witness, so it'll be just one
22 minute and he'll be here.

23 THE COURT: Okay. All right.

24 MR. PARKER: And who are you calling?

25 MR. HARMON: Randy Lomax.

RANDY D. LOMAX,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. PURCELL:

Q. Mr. Lomax, how are you employed, please?

MR. MCLEOD: Can you pull the speaker -- the
microphone up a little closer, please?

Q. [Mr. Purcell] How are you employed, please, Mr.
Lomax?

A. With South Carolina DOT.

Q. How long have you been with the DOT?

A. Twenty-three years.

Q. And what is your present job with the South
Carolina DOT?

A. I am a geodetic technician associate, which
involves -- I'm a railroad crossing inspector.

Q. Okay. And how long have you been a railroad
crossing inspector?

A. About twelve years.

Q. Prior to being a railroad crossing inspector,
what were you at the DOT? What was your job?

A. I've done six-and-a-half years of bridge
inspection and about three, four years of actual
construction.

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