

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2018-001423
Case No. 2017-CP-39-0428

RECEIVED
DEC 10 2019
SC Court of Appeals

John M. Burgess Appellant,

v.

Katherine C. Hunter, ... Respondent.

RECORD ON APPEAL

VOLUME I

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP3900428

John Burgess

JUL -2 A 9

Matherine Hunter

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case. Verdict Form

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Edward Miller
Circuit Court Judge Edward Miller

Judge Code 2130

6/29/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter April Herron

Cheryl Watson - Deputy
Harold P Welborn, Jr. - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

John Burgess

Plaintiff,

vs.

Katherine Hunter

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2017-CP-39-0428

VERDICT FORM

VERDICT

We the Jury, unanimously find as follows:

1. Was the Defendant Negligent?

☒ YES – Go to Question 2

☐ NO – Stop deliberations

2. Was the Defendant's negligence a proximate Cause of the Plaintiff's injuries?

☒ YES – Go to Question 3

☐ NO – Stop deliberations

3. Was the Plaintiff negligent?

☒ YES – Go to Question 4

☐ NO – Go to Question 7

4. Was the Plaintiff's negligence a proximate cause of the Plaintiff's injuries?

☒ YES – Go to Question 5

☐ NO – Go to Question 7

5. Using the combined negligence that proximately caused the Plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendant?

Plaintiff	<u>51</u>	%
Defendant	<u>49</u>	%
Total	<u>100</u>	%

✓ YES – Stop deliberations

Actual Damages \$ _____


Foreperson Kati D. Atkins
June 28, 2018

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

John M. Burgess,

Plaintiff,

v.

Katherine C. Hunter,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE No.: 2017-CP-39-00428

**PLAINTIFF'S AMENDED
MOTION FOR NEW TRIAL**

TO: THE HONORABLE EDWARD W. MILLER

COMES NOW Plaintiff, by and through undersigned counsel, and pursuant to South Carolina Rule of Civil Procedure 59, and respectfully submits this, his Amended Motion for New Trial:

1. This matter was set for trial in the Circuit Court for Pickens County, South Carolina on the June 25, 2018 term of court and the trial moved forward therewith.
2. At the close of the first day of Trial and upon adjournment, Plaintiff's counsel was alerted by his staff, the Plaintiff, and other individuals in the courtroom that throughout the *entire* line of questioning of Defendant and Plaintiff by Plaintiff's counsel, the Presiding Judge made numerous and continuous overt facial expressions and gestures; upon learning of same, Plaintiff's counsel had immediate cause for concern.
3. Upon arriving in the courtroom on Day 2 of trial, Plaintiff's counsel immediately requested a meeting with the Presiding Judge and Defendant's counsel in the Judge's chambers to discuss the concerns; it was the Plaintiff's counsel's intention to attempt to cure any actions that may have biased or unduly influenced the jury while at the same time doing so in the least confrontational and in the most deferential manner possible—put another way, the

Plaintiff's counsel felt the need to bring the concern to the attention of the Presiding Judge without offending the Presiding Judge.

4. The meeting in chambers did not go well.
5. Upon return to the courtroom, the Presiding Judge stated that Plaintiff's counsel had something to put on the record.
6. Plaintiff's counsel stated his objection to the facial expressions, gestures, and other actions emanating from the bench and his concern regarding their potential to bias or influence the jury; Plaintiff's counsel also cited Canon 3 of Rule 501, SCACR.
7. Plaintiff's counsel was promptly cutoff during his noting of objection on the record and accused of threatening the Presiding Judge; Plaintiff's counsel was not afforded an opportunity to state his motion for mistrial, motion for recusal, or further develop his objection on the record.
8. No curative measures were taken by the Presiding Judge upon the Jury returning to the courtroom.
9. Plaintiff's counsel believed any further attempts to object on the various issues would have been futile considering the manner in which it was received by the Presiding Judge.
10. On Day Five of trial, the jury rendered its verdict, finding that both Plaintiff and Defendant were negligent, but assigning 51% liability to Plaintiff.
11. Plaintiff's counsel made a post-trial Motion for New Trial alleging "on the same basis as what was alleged on Tuesday", a reference to the previously stated objection regarding potential undue influence and bias of the Jury.
12. Again, Plaintiff's counsel was cutoff by the Presiding Judge, who ultimately denied the Motion for New Trial.

13. Within two hours of the verdict being rendered, Plaintiff's counsel received an unsolicited email from a Juror; in the email the Juror expressed appreciation for the way the Plaintiff presented his case, but also stated that the Jury was biased and did not listen to the facts in reaching their decision. Other than during the Trial, Plaintiff's counsel had no previous contact with this Juror.
14. Plaintiff's counsel responded to Juror almost immediately via email inviting the Juror to call Plaintiff's counsel and offer some insight into what the Plaintiff's counsel could have done to better connect with the Jury; at this time, Plaintiff's counsel was unaware as to what bias on the part of the Jury that the Juror referred, but assumed it was bias towards the Plaintiff's counsel or towards the Plaintiff.
15. The Juror contacted the Plaintiff's counsel by telephone immediately; as Plaintiff's counsel and the Juror were conversing, it came to the Plaintiff's counsel's attention that the bias to which the Juror referred in his initial email was perceived bias of the Presiding Judge consistent with the bias and undue influence which gave rise to the aforementioned objection(s) stated at the start of Day 2 of Trial.
16. Being somewhat unfamiliar with the extent to which counsel could discuss the case with a juror following trial, Plaintiff's counsel abruptly ended the conversation with the Juror once the issue of jury bias and/or undue influence arose; Plaintiff's counsel asked the Juror to allow him an opportunity to research the extent to which he could discuss the matter with the Juror.
17. After researching the matter and feeling comfortable with the extent of permitted communications with the Juror following trial, Plaintiff's counsel reached out to the Juror once again via email, one day removed from the verdict, and asked the juror to contact him;

the Juror again contacted the Plaintiff's counsel almost immediately.

18. During the conversation between the Juror and Plaintiff's counsel, the Juror went into detail regarding the Presiding Judge's actions and the effect it had on the Jury; again, Plaintiff's counsel abruptly ended the conversation and asked the Juror to reduce his account of potential Jury influence and bias to writing.
19. Two days removed from trial, the Juror sent an email to Plaintiff's counsel that included an attached Letter which depicted in detail (1) the Presiding Judge's actions and (2) their effect on the Jury.
20. Upon receipt of the Letter from the Juror, Plaintiff's counsel prepared an affidavit which, if signed by the Juror, would adopt the Letter as his sworn statement; the Affidavit was signed on July 3, 2018 and has been attached hereto as Exhibit A.
21. Plaintiff now renews his Motion for New Trial and presents to the Presiding Judge newly discovered evidence of jury bias and undue influence stemming from the actions of the Presiding Judge and in direct contradiction to Canon 3 of Rule 501, SCACR.
22. Plaintiff was not afforded a fair trial and was not afforded a fair and impartial jury.

WHEREFORE, Plaintiff prays for the granting of a new trial absolute and for any further relief the Court deems just and proper.

Garcia Law, LLC

By: /s / Stephen N. Garcia
 Stephen N. Garcia, SC Bar No. 76191
 604 Pettigru Street
 Greenville, SC 29601
 Dial: (864) 271-7335
 Fax: (864) 271-7336
For Plaintiff

Pickens, South Carolina
 July 9, 2018

DISCUSSION

Appropriateness of Motion for New Trial and Timing of Motion

Rule 59(a) permits the Court to grant a new jury trial “for any of the reasons for which have heretofore been granted in actions at law in the courts of the State.” New trials have been granted when an allegation is made that extraneous information may have improperly influenced the jurors. The relevant factors to be considered are: 1) the number of jurors exposed; 2) the weight of the evidence properly before the jury; and 3) the likelihood that curative measures were effective in reducing the prejudice. *State v. Galbreath*, 359 S.C. 398, 402, 597 S.E.2d 845, 847 (Ct. App. 2004); *State v. Kelly*, 331 S.C. 132, 141-142, 502 S.E.2d 99, 104 (1998); *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186 (1994)(new trial granted where judge’s comments deprived defendant of fair trial). Generally, the determination of whether extraneous information received by a juror during the course of the trial is prejudicial is a matter for determination by the trial judge. *State v Galbreath*, 359 S.C. at 402, 597 S.E.2d at 847 (Ct. App. 2004).

External influence on a jury involves situations where jurors receive information or influence from some outside source. *State v. Zeigler*, 364 S.C. 94, 110, 610 S.E. 2d 859, 867 (Ct. App. 2005), *cert. denied*, (Jan. 31, 2007); *State v. Cameron*, 311 S.C. 204, 208 (private communications between a court official and jurors warrant a unless it is clear that the subject matter of the communication was harmless and could not have affected the verdict). Internal influences involve information coming from the jurors themselves. *Zeigler*, 364 S.C.at 110, 610 S.E.2d at 867. Juror testimony regarding even internal jury deliberations is competent in cases involving internal misconduct where necessary to ensure fundamental fairness. *Galbreath*, 359 S.C. at 405, 597 S.E.2d at 848; *Zeigler*, 364 S.C. at 110, 610 S.E.2d at 867. Juror testimony or

affidavits are generally admissible in the case of an “extraneous influence.” *State v. Aldret*, 333 S.C. 307, 310, 509 S.E.2d 811, 812 (1999); *see also* S.C. Rules of Evidence, Rule 606.

The newly discovered evidence, the Affidavit alleging juror bias and extraneous undue influence, was discovered by Plaintiff’s counsel after his Motion for New Trial following dismissal of the Jury was denied. In *Gray v. Bryant*, 298 S.C. 285, 379 S.E.2d 894 (1989), the Supreme Court held that amendment of a motion for new trial based upon newly discovered evidence is permissible if made within a reasonable time following discovery of new evidence even if made *after* the 10-day period allowed in S.C. Rules of Civil Procedure, Rule 59. This Amended Motion for New Trial is made within the 10-day period allotted by Rule 59 and within 10 days of the signing of the attached Affidavit.

Whether the Actions Complained of Can Potentially Influence or Tend to Bias Jury

Whether overt facial expressions and gestures have the potential to create bias or unduly influence a jury cannot be denied. Canon 3 of Rule 501, SCACR reads in pertinent part (emphasis added):

B. Adjudicative Responsibilities.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require * similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. **A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.**

Canon 3 of Rule 501, SCACR specifically warns that a judge who manifest bias on any basis in a proceeding impairs the fairness therewith, and further, that facial expressions and body language, in addition to oral communications can give jurors an appearance of judicial bias. It is well settled that a trial judge must act with absolute impartiality in the performance of judicial duties. *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186 (1994). Motions for a new trial have been granted where the remarks of a trial judge tended to impugn the credibility of counsel and to diminish her in the eyes of the jury. *Id.* A judge *must* be alert to avoid behavior that may be perceived as prejudicial. The oral communications, facial expressions and gestures, and body language in the instant matter were all of a nature that had the potential to give an appearance of judicial bias.

Whether the Actions Complained of Indeed Influenced or Biased Jury

If taken as true, the Affidavit attached hereto depicts undue influence exerted upon the
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Jury and the bias that ultimately ensued to the extent that Plaintiff was not afforded a fair and impartial trial. The Affidavit highlights undue influence and bias that permeated throughout the Jury from Day One of trial and continuing throughout trial. The Affidavit also lends credibility to Plaintiff's concerns as stated on the record on Day Two of trial. The actions complained of and objected to at the start of Day Two of trial indeed influenced and biased the jury.

Whether the Actions Complained of Were Prejudicial In Nature

The case was decided narrowly—51% liability to the Plaintiff and 49% to the Defendant. A 1% difference drastically changes the outcome of this case. If the margins were not so narrow, the argument might stand that even though the Presiding Judge's actions unduly influenced the jury and created bias within the jury, the actions were ultimately not prejudicial and had no bearing on the outcome. Plaintiff rejects even *that* argument, however, that argument is not available in the instant action. Even the slightest undue influence or biasing of the Jury by the Presiding Judge had the potential to have a drastic effect on the outcome of this case. The actions complained of were prejudicial in nature.

CONCLUSION

Whether the facial expressions, gestures, body language, and oral communications were intentionally calculated to create bias or to influence the Jury has no bearing on the granting of a new trial, and Plaintiff's counsel is stopping short of alleging the Presiding Judge intentionally influenced or biased the Jury—Plaintiff's counsel's Motion is not intended to embarrass, harass, castigate or threaten. Rather, the intention is to zealously represent the Plaintiff and do everything within the undersigned's abilities to see that the Plaintiff is afforded an opportunity

for a fair trial. It is the undersigned counsel's belief that after receipt of the Affidavit of the Juror, it is his ethical obligation to pursue the instant Amended Motion for New Trial. Based on the above, the Jury was biased and unduly influenced from Day One, the actions objected to continued beyond Day One of Trial, and that it was all to the detriment of and prejudicial towards the Plaintiff.

Plaintiff's Amended Motion for New Trial must be granted.

Garcia Law, LLC

By: /s / Stephen N. Garcia
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Greenville, SC 29601
Dial: (864) 271-7335
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For Plaintiff

Pickens, South Carolina
July 10, 2018

AFFIDAVIT OF CHRISTOPHER O. LEE

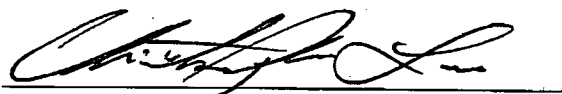
STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

BEFORE ME, the undersigned, appeared Christopher O. Lee who after being duly cautioned and sworn states as follows:

1. My name is Christopher O. Lee and my address is 136 Bufflehead Circle, Liberty, SC 29657.
2. I make this Affidavit from my own personal knowledge.
3. I was Juror No. 68 for the June 25, 2018 term of court in Pickens Court of Common Pleas.
4. I was not coerced or influenced in any way to make this statement.
5. In fact, I reached out to Garcia Law on my own accord, via email, within just a few hours after being dismissed from jury duty by the Presiding Judge.
6. I fully adopt the attached Letter dated July 1, 2018 as my sworn statement.
7. The Letter attached hereto is true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

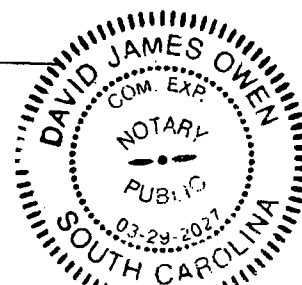

Christopher O. Lee, Juror No. 68

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, personally appeared Christopher O. Lee, who has identified himself with SC Driver's License Number 011672530 and who has taken an oath that the facts set forth in the Affidavit and the attached Letter are true and correct.

WITNESS my hand and official seal in the County and State last aforesaid on this 3rd day of July 2018.

My commission expires: 3-29-2027


NOTARY PUBLIC
State of South Carolina



Chris Lee
07/1/2018

To whom it may concern,

I'm writing this letter because I was part of the jury on the case of Mr. Burgess and Mrs. Hunter. It was heavy on my conscience that Mr. Burgess did not get a fair ruling in this case. I believe that the jury was biased in their decision. I believe that the judge played a part in causing a bias. It started on the first day of the trial, when the judge made gestures/facial expressions that made him appear disinterested. Some of these gestures were rubbing his head in frustration when Mr. Garcia was questioning Mrs Hunter, glancing up at the clock, and it appeared he rolled his eyes in frustration a few times. Mr. Garcia was rushed during his first set of questioning with his first witness, Mrs. Hunter. After the defense lawyer objected to a question, the Judge told Mr. Garcia to, "move the questioning along." He said this in a manner that was perceived as being annoyed with the length of his questions. I believe that started a bias with the jury. We did not discuss the case, but each time we went into the jury break room, I heard things such as, "Even the judge is ready for this case to be over." Other jurors also said, "You can tell the judge doesn't like Mr. Garcia.

These types of gestures continued on day two. He was always on his laptop and was clearly upset anytime he had to handle an objection against Mr. Garcia's questioning. The gestures on day two were the same as day one. Day three was a shorter day, due to illness, which still consisted of these same types of facial gestures and expressions. I know that others jurors picked up on these same gestures and expressions based on the comments made in the jury break room. "The judge is hoping we don't have to comeback Thursday, because he's tired of listening to Mr. Garcia," was a comment I recall from that day. Day four was much of the same. Nothing seemed to change in his perceived attitude by the jury. Looking at the clock and rubbing the forehead in annoyance were still prevalent by the judge. There was not a day that a comment about the Judge's body language was not brought up in the jury room. On the final day, we only had the closing arguments by both sides. After the defendant's lawyer made his argument, Mr. Garcia followed up one more time with the jury. The Judge rubbing his head in frustration made a comment, "make it brief," before he approached the jury again. The jury perceived Mr. Garcia as long winded and talking in circles. Part of that was because of a comment the judge made on one of the days of the trial. He said something along the lines of, " get to the point Mr. Garcia, you keep talking in circles." I am not sure of the day this happened, but there was also an objection made by the Defendant's lawyer. The judge said he did not hear what Mr. Garcia said. He was so distracted by what he was doing on his laptop, that he did not pay attention to what Mr. Garcia was saying. This was followed up with comments in the jury room, such as, "the judge doesn't want to listen to Mr. Garcia anymore, neither," and "the judge is ready for this to be over."

I don't know for sure why we started late some days, but if it was because of the timeliness of the judge, that would also line up with his disinterest in the case. I believe all the gestures/facial expressions, looking at the clock, and telling Mr. Garcia to make things quick/brief put a bias on the jury. I don't believe Mr. Burgess got a fair shot just because of this.

I believe that if the judge were more interested and did not portray his annoyance towards Mr. Garcia, Mr. Burgess would have had a fair shot. From day one, the jury had the opinion they didn't trust Mr. Garcia. Based on the comments made throughout the trial in the jury room, I feel confident that the judge caused their bias from day one. The way the judge reacted to Mr. Garcia throughout the trial enhanced the bias.

During deliberation there was no question the judges actions caused a bias. I remember a comment about the judge being glad the trial is over now, and a comment about how he wanted it to end on day one. They saw his disinterest and interpreted it as him believing the trial was not important. I believe they dismissed the possibility of the plaintiff's case being true, based in part on the judges bias he established early in the trial.

I only wrote this letter because my conscience would not let me ignore the bias I saw in the jury. I felt very bad for the unfairness that Mr. Burgess was unknowingly subject to. I know that if I were in his shoes, I would want a fair trial. I don't believe he had a fair trial. I could not go on with my life and just ignore my conscience. Thank you for your time.

Regards,
Chris Lee

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

) IN THE COURT OF COMMON PLEAS
)
) Docket No.: 2017-CP-39-00428

JOHN M. BURGESS,

Plaintiff,

v.

KATHERINE C. HUNTER,

Defendant.

**DEFENDANT'S BRIEF IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR NEW TRIAL**

Plaintiff, through his attorney, has moved that the court grant him a new trial based upon the allegedly inappropriate facial expressions and gestures of the trial judge during trial. This Defendant would note that although Plaintiff's counsel raised the issue on the second day of trial, he never moved to have the judge recuse himself or to curatively instruct the jury. He did make a motion for new trial but only after a verdict was returned for the Defendant.

Prior to opening statements and the beginning of testimony, the judge gave prehearing instructions to the jury. Included within those instructions was a direction that the jury was to act as judges of the fact and that the trial judge had no input on their factual deliberations. (Counsel does not have access to the trial transcript but recalls the judge also directing the jury not to take ques from him regarding his thoughts on the testimony. Counsel's memory could be faulty, however.)

Plaintiff contends that during the examination of the Defendant (called as the first witness) and himself that the judge would make facial expressions and roll

his eyes. A statement from one of the juror's seems to agree with this, although the juror makes it clear that it appeared that the judge was exasperated by the overly long presentation by Plaintiff's counsel. On Tuesday morning, Plaintiff's counsel confronted the judge about the situation in chambers, but was directed to place his position on the record. Plaintiff's counsel did so but failed to make a motion for new trial or recusal by the judge. He also failed to request that the jury be given curative instructions similar to those given in the court's preliminary statement.

By failing to move for mistrial or recusal or requesting a curative instruction, Plaintiff has waived any error, failing to give the court the opportunity to cure or correct any perceived error. Adams v. Orr, 260 SC 90, 194 SE2d 232 (1973). Moreover, even attempting to make a motion for new trial after the verdict is rendered comes too late to avoid a waiver of the alleged error. State v. Penland, 275 SC 537, 278 SE2d 765 (1981).

Plaintiff has attempted to avoid his potential problems with waiver by relying upon the affidavit and statement of Chris Lee, one of the jurors. In his statement, Chris Lee indicates that he felt the jury was biased against the Plaintiff due to comments and gestures by the judge as well as his apparent disinterest in the trial itself. It should first be noted that the comment that the jury as a whole was biased is without foundation and speculative. Comments allegedly made by other jurors reflect an apparent impatience with Plaintiff's counsel being long winded and talking in circles. Under Rule 611 of the South Carolina Rules of Evidence, the judge is required to exercise control over the mode of interrogating

witnesses so as, among other factors, to avoid the needless consumption of time. Given the fact that the Defendant had little memory of the accident, her examination in excess of an hour certainly could be perceived as overly long. Under those circumstances, the judge was only doing his job. Moreover the statement of Chris Lee did not reach the conclusion that the alleged comments and gestures of the judge necessarily impacted the ultimate verdict, only that the jury perceived the judge as being impatient with the manner in which Plaintiff's counsel was presenting his case. Without a showing of prejudice from the alleged improper conduct of the judge, Plaintiff has no basis for overturning the jury verdict. See, State v. Galbreath, 359 SC 398, 597 SE2d 845 (Ct. Apps. 2004).

It should also be noted that the statement of Chris Lee does not raise a new issue for the court's consideration but only rehashes the issue raised previously during trial. Even with this statement, there is no showing that the jury's verdict was the result of any acts on the part of the judge. Instead, it is clear from the response to the polling of the jury following the rendering of the verdict that all jurors agreed with the resolution. If Chris Lee or any other juror felt differently at that time, it was their responsibility to say so. It should also be noted that Plaintiff's counsel did not request that the individual jurors be polled to separately indicate their individual position or any problems.

Plaintiff's request for a new trial simply reveals his disgruntlement with the verdict rendered. He is requesting a second bite of the apple for a trial which lasted five days and required a great deal of effort on the part of not only the parties and

their attorneys but also the members of the jury and court officials. He should not be granted a new trial simply based upon speculative evidence about how the jury might have reached its verdict and his dissatisfaction with the result.

Respectfully submitted,

TURNER PADGET

s/ David L. Moore, Jr.

David L. Moore, Jr., SC Bar No.: 4050

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Greenville, South Carolina

July 12, 2018

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

John M. Burgess,

Plaintiff,

v.

Katherine C. Hunter,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE No.: 2017-CP-39-00428

**PLAINTIFF'S RESPONSE
TO DEFENDANT'S
BRIEF IN OPPOSITION TO
MOTION FOR NEW TRIAL**

Defendant cites *Adams v. Orr*, 260 SC 90, 194 SE2d 232 (1973), for the proposition that by failing to move for mistrial or recusal or requesting a curative instruction, Plaintiff has waived any error, failing to give the court the opportunity to cure or correct any perceived error. Defendant further cites *State v. Penland*, 275 SC 537, 278 SE2d 765 (1981) for the proposition that even attempting to make a motion for new trial after the verdict is rendered comes too late to avoid a waiver of the alleged error. However, Defendant has *failed* to cite *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186.

In *State v. Pace*, the trial judge's comments to the jury regarding a lady defense counsel's age and gender were deemed to have deprived the defendant of a fair trial, where the remarks of the court tended to impugn the credibility of counsel and diminish her in the eyes of the jury. In camera, the judge "chastised" defense counsel that a broad question she asked amounted to a fishing expedition. The defense counsel in *State v. Pace* did *not* state a *single* objection on the record and did not make a motion for new trial at any point. In addressing the defense counsel's failure to state an objection or to make a motion for a new trial, the Supreme Court of South Carolina stated, "As to counsel's failure to raise an objection, the tone and tenor of the trial judge's remarks concerning her gender and conduct were such that any objection would have

been futile. Accordingly, we find no waiver of this issue” (citing *Dunn v. Charleston Coca-Cola Bottling*, 426 S.E.2d 756 (1993). *Id.* at 74, 187.

The facts in *State v. Pace* bear stark resemblance to the instant matter—except far more egregious in nature. The Presiding Judge’s overt facial expressions, gestures, and other actions diminished Plaintiff’s counsel in the eyes of the jury and deprived the Plaintiff of a fair trial. The Affidavit of Chris Lee highlights the effect alleged actions had on the jury. In chambers, Plaintiff’s counsel attempted to discuss his concerns regarding the facial expressions, gestures, and other actions brought to his attention during adjournment and the undersigned’s effort was met with great hostility.¹ Unlike the defense counsel in *State v. Pace*, the undersigned, immediately upon returning to the courtroom, stated his objection on the record in a tone that could only be characterized as a demonstration of deference and discomfort with the position in which he had been placed. When the undersigned rose to state his objection, he stepped out from behind his desk to address the Court, and, with a shout, was told to get back behind his desk. The undersigned was again accused of threatening the Presiding Judge in making his objection and was chastised.² After being accused a second time of threatening the Presiding Judge, the undersigned, noticing that a motion for new trial and/or recusal was appropriate, stated, “Your Honor—may I respond.” The Presiding Judge responded with an emphatic, “No!” The undersigned was not allowed to state any further objection or motion at that time. The

¹ The undersigned has made a concerted effort to avoid offending the Presiding Judge. However, the ethical obligation of zealous representation of the Plaintiff requires at least some discussion of the facts surrounding the meeting in chambers. Defendant, in his Brief in Opposition, grossly misrepresents the nature of the meeting. In chambers, the Presiding Judge, within fifteen seconds and before the undersigned could complete his thought, began shouting at the undersigned, accused the undersigned of threatening him, and shouted at him to get out of chambers—even after the undersigned pleaded with him to allow him to explain his position. The shouting was heard by various individuals in the courtroom. Undersigned is not exaggerating the encounter. It was easily the most unprofessional and contentious encounter that the undersigned has experienced in any facet of his legal career.

² It is worth noting that rather than denying the use of facial expressions and gestures, the Presiding Judge instead chastised the undersigned for “not knowing what [his] facial expressions and gestures mean.” While the undersigned concedes that point, the undersigned also highlights that if *he* does not know what the Presiding Judge’s facial expressions and gestures mean, then certainly the same can be said for the jury.

undersigned, being keenly aware of *State v. Pace*, believed any further discussion of the matter or any discussion of any further alleged impropriety on the part of the Presiding Judge would have been futile, and that the issues would not be waived in a subsequent motion for new trial or on appeal. Regardless, at the close of trial, the undersigned renewed his motion for a new trial citing the same grounds as his prior objection.

The judge in *State v. Pace* “chastised” defense counsel in camera, made an attempted curative statement to the jury in which he referred to defense counsel as a “nice girl”, and defense counsel failed to make any objection on the record. The Supreme Court found that defense counsel did not waive her issue on appeal as any attempt to state an objection would have been futile. In the instant matter, the Presiding Judge shouted at and accused the undersigned of threatening him in camera, again accused the undersigned of threatening him on the record, cut counsel off and did not allow him to respond or state any further objection, did not make immediate curative statements to the jury, and the undersigned, nonetheless, renewed his motion for new trial following dismissal of the jury. Plaintiff has not waived his right to a new trial nor has he waived the issue on appeal.

Continuing, Defendant’s position that the Affidavit of Chris O. Lee does not allege bias or a showing of bias upon the jury is dubious at best. The undersigned would point the Defendant and Presiding Judge to the Affidavit of Christopher O. Lee. The Affidavit speaks for itself.

The Defendant further argues that the Presiding Judge was “simply doing his job” in moving the case along. The Canon 3 of Rule 501, SCACR reads, in pertinent part:

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

In disposing of matters promptly, efficiently and fairly, **a judge must demonstrate due regard for the rights of the parties to be heard** and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts. (Emphasis added.)

Defendant alleges that this was a 5-day Trial. In fact, it was not. The trial started late on Day One after a morning delay, included a morning time adjournment on Day Three following illness of the Defendant, and ended mid-day on Friday. Although the trial spanned five days, it was not continuously tried during that five-day period. This was a three-and-one-half day trial—arguably even a three-day trial. Before trial began, Plaintiff’s counsel approached the Presiding Judge with Defendant’s counsel and expressed his concern regarding the designation of trial lasting only two-and-a-half days. Moreover, the undersigned made numerous attempts with Defendant’s counsel to narrow the issues that needed to be put in front of the jury and the attempts were met with little or no response. The undersigned filed his motions in limine four weeks before trial. Plaintiff’s counsel contacted the Presiding Judge’s office in an attempt to resolve the pending motions in limine prior to trial at the Presiding Judge’s discretion. Plaintiff’s counsel made every attempt to be efficient with the Court’s and the jury’s time short of truncating and/or glossing over the necessary elements of liability, causation, and damages.

Neither Plaintiff nor the undersigned were responsible for the late start times on Day 1 and 2 of trial. Neither Plaintiff nor the undersigned were responsible for the illness that caused adjournment of trial early on Day 3. Defense counsel’s cross-examination of the neurosurgeon

took longer than the Plaintiff's examination of Defendant on direct. The suggestion that the undersigned is responsible for the amount of days it required to complete trial is false and unwarranted. The length of trial could not possibly be alleged as a basis for the actions of the Presiding Judge. The alleged actions of the Presiding Judge began *on Day One and on witness number one*. Regardless, overt facial expressions, gestures, shouting and accusations of threats are rarely—if ever—an appropriate response to concerns regarding the time or length of trial and precisely because of the prejudicial effect they may have. The amount of time that a jury must endure is *always* a sensitive issue and it is the undersigned's position that countless, overt facial expressions, gestures and other acts of frustration suggesting that one party is responsible for the length of a trial versus another is *highly* prejudicial and does not accurately reflect the years of communications, multiple mediations, time and effort spent prior to trial that failed to effectuate resolution. In the undersigned's experience, the need for trial and the length of trial can nearly always be attributed to *both* parties to a case, and this case was no different. If the Defendant's position is that trial simply took too long because of Plaintiff or the undersigned, that position fails on its face. Delay did not stem from Plaintiff—certainly not on Day One of trial.

Finally, Defendant's counsel characterizes the undersigned as disgruntled with the verdict rendered. This is a dubious allegation. Instead, the undersigned is only concerned with the right of Plaintiff to receive a fair trial, one without extraneous influence or bias predicated by the Presiding Judge.

Based on the above, Plaintiff maintains—even more forcefully now upon further review—that his Amended Motion for New Trial must be granted as Plaintiff was deprived of a fair trial.

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Pickens, South Carolina
July 17, 2018

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2017-CP-39-00428

JOHN M. BURGESS,

PLAINTIFF

vs.

KATHERINE C. HUNTER

DEFENDANT.

MEMORANDUM OPINION

This case was called before the Court on June 25, 2018 for a Jury Trial. The trial lasted the entire week and terminated with a jury verdict on June 29, 2018. The jury found in favor of Defendant Hunter. After the jury returned its verdict, Mr. Garcia, counsel for the plaintiff, made a motion for a new trial based on complaints he had made on June 26, 2018 concerning the conduct of the Court. On June 26, 2018, Mr. Garcia did not make a motion for a mistrial, did not make a motion for recusal of the trial court judge, and did not request curative instructions. Mr. Garcia's post-verdict new trial motion was based solely on his June 26, 2018 complaint. Mr. Garcia did not offer any evidence and did not request individual polling of the jurors. This Court denied his motion. Mr. Garcia did not make any other motions nor did he ask for any additional time, pursuant to Rule 59(b), to file a renewed motion for a new trial. On July 10, 2018, eleven days after the jury returned the verdict, Mr. Garcia filed an Amended Motion for a New Trial.

According to Rule 59(b), "the motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter." Mr. Garcia made an unsubstantiated Motion for New Trial in court, did not ask for additional time to file a

renewed motion, and filed his amended motion for a new trial 11 days after the Jury returned its verdict. The discretionary ten-day extension time limit included in Rule 59(b) is an absolute deadline and not subject to any additional extension. *Overland v. Nance*, No. 27800 (S.C. May 23, 2018) (finding that according to Rule 6(b) the “time for taking any action under Rules 50(b), 59, and 60(b) may not be extended.”) “A trial court judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.” *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006). Therefore, this Court does not have jurisdiction to rule on this motion because it is improvidently filed and improperly before the Court.

While the Court does not have jurisdiction over the motion, the Court notes that it strongly disagrees with Mr. Garcia’s improper and extraordinary exaggerations as to the Court’s conduct at trial. The allegations that Mr. Garcia raises were unsubstantiated at trial and he now attempts to substantiate them through a letter and an affidavit from a juror. Not only do the letter and affidavit appear to be written by Mr. Garcia, but Mr. Garcia also fails to recognize that it is improper for this juror to testify regarding the validity of the verdict. According to Rule 606(b),

[u]pon an inquiry into the validity of a verdict or indictment, a juror a may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon that or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processing in connection therewith.

See State v. Pittman, 373 S.C. 527, 553-55, 647 S.E.2d 144, 158-57 (S.C. 2007) (“[g]enerally, juror testimony is not allowed regarding the deliberations of the jury or internal influences. . . and may not be the basis for impeaching a jury verdict.”) The only time this rule is relaxed is when there are allegations of external influence on the jurors and the case law treats this exception narrowly. “External influence on a jury involves situations where jurors receive information during deliberations from some outside source.” *State v. Galbreath*, 359 S.C. 398,

405, 597 S.E.2d 845, 848 (S.C. 2004). None of Mr. Garcia's allegations fall within this exception to the rule.

The Court notes that in both its opening and closing charge on the law to the jury, the Court instructed the jury that the jury is the sole judge of the facts and for the jury not to assume from anything the Court said or did that the Court had an opinion about the facts. Therefore, while the Court does not have jurisdiction to rule on this motion, the Court is concerned that this motion merely amounts to gratuitous mudslinging on the part of Mr. Garcia. Further, Defense counsel references Mr. Garcia's circuitous and long winded examination of witnesses and the Court concurs with that assessment. Throughout the trial, the Court afforded Mr. Garcia wide latitude in examining witnesses.

The Court has decided to issue this Memorandum Opinion because of Mr. Garcia's lack of understanding of the rules and to signal to him that his successive, untimely and improper motion does not stay the time to file an appeal.



Pickens Common Pleas

Case Caption: John Burgess VS Katherine Hunter

Case Number: 2017CP3900428

Type: Order/Other

So Ordered

s/ Edward W. Miller

Electronically signed on 2018-07-19 09:22:17 page 4 of 4

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JOHN BURGESS

PLAINTIFF)

vs.

KATHERINE HUNTER

DEFENDANT)

) COURT OF COMMON PLEAS
) 2017-CP-39-00428
)
)
)
)

ORIGINAL

) TRANSCRIPT OF RECORD
)
)

June 25-29, 2018
Pickens, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge; and a
jury.

A P P E A R A N C E S:

STEPHEN N. GARCIA, ESQ.
Attorney for the Plaintiff

DAVID L. MOORE, JR., ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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1 June 25, 2018

2 THE COURT: All right, ladies and gentlemen,
3 thank you for your patience. I do want to tell you
4 that you all are qualified to serve this week,
5 generally. Now, we must qualify you to serve
6 specifically for the first trial of the week. And in
7 order for us to do that, I need to introduce this
8 case to you.

9 This is The State of South Carolina, County of
10 Pickens, John M. Burgess, Plaintiff, vs. Katherine C.
11 Hunter, Defendant. And this case involves a motor
12 vehicle accident, which occurred on or about the 10th
13 day of December 2013 as the Plaintiff was traveling
14 southbound on South Carolina 253 on a moped at the
15 same time the -- and they claim that they have been
16 injured as a result of that and the Defendant is
17 responsible. And the Defendant has denied a
18 responsibility for the injuries and the accident.

19 So, ladies and gentlemen, keep that in mind as
20 we go through the questions with respect to
21 qualification. Before I do that, I will ask the
22 attorneys to stand and introduce themselves and their
23 client.

24 MR. GARCIA: Good morning, my name is Stephen
25 Garcia. I work out of Greenville, South Carolina.

1 Of course, I'm the attorney over there at the Garcia
2 Law Firm. Here's my client, Mr. John Burgess.

3 THE COURT: All right, thank you very much.

4 MR. MOORE: My name is David Moore, I work at
5 Turner Padget Graham & Laney in Greenville. I
6 represent Ms. Katherine Hunter in this particular
7 case.

8 THE COURT: All right, thank you very much.

9 Ladies and gentlemen, is there any member of the
10 jury panel who is related by blood or marriage or who
11 has a business, personal or social relationship with
12 any of the attorneys involved in this case or any
13 member of their law firm? If so, please stand.

14 All right, sir, your name and number?

15 PROSPECTIVE JUROR: Twenty-four, Travis Bryant.

16 THE COURT: Okay. Who is it that you're --

17 PROSPECTIVE JUROR: My wife is represented by
18 Mr. Garcia.

19 THE COURT: All right, thank you very much.

20 Is there any member of the jury panel who is
21 related to either the Plaintiff, Mr. John Burgess, or
22 the Defendant, Katherine C. Hunter, in a business,
23 personal or social relationship? If so, please
24 stand.

25 (There was no response.)

1 THE COURT: Okay. I'm going to read a list of
2 potential witnesses in this case and I'll need to
3 know the same about these potential witnesses.
4 Pelham Matt Simms, Dr. James J. Brennan, Dr. Eric
5 Loudermilk, Mr. Glenn Scott, Mr. Joel Leonard,
6 Ms. Sarah Lustig, Ms. Tabitha Burgess. Too much
7 paper up here, sorry. Ms. Debra Morehead and Mr. Dan
8 Olson.

9 Is there any member of the jury panel who is
10 related by blood or marriage or who has a business,
11 personal or social relationship with any of those
12 potential witnesses whose names I have just read? If
13 so, please stand.

14 Yes, ma'am, your name and number?

15 PROSPECTIVE JUROR: Sally Turnbull, 116.
16 Dr. Glenn Scott is a social acquaintance of mine.

17 THE COURT: Social acquaintance?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: All right. Okay. All right.

20 Mr. Bryant and Ms. Turnbull, the fact that you
21 know those people, would it limit your ability to be
22 fair and impartial to either the Plaintiff or the
23 Defendant? By that I mean, could you sit on a jury,
24 listen to the evidence and just this case based
25 solely on the merits of the evidence presented in the

1 courtroom and the law as I would give it to you? If
2 you cannot do that, please stand.

3 (There was no response.)

4 THE COURT: All right, thank you very much.

5 Is there any member of the jury panel who is
6 aware or familiar with any of the allegations that
7 are alleged in the complaint? If so, please stand.

8 (There was no response.)

9 THE COURT: Is there any member of the jury
10 panel who has formed an opinion involving any of the
11 persons or the accident involved in the case? If so,
12 please stand.

13 (There was no response.)

14 THE COURT: Does any member of the jury panel
15 have any knowledge of the facts, circumstances or
16 issues involved in the case? If so, please stand.

17 (There was no response.)

18 THE COURT: Is there any member of the jury
19 panel or family member who has ever been a plaintiff
20 or a defendant in a motor vehicle accident lawsuit?
21 If so, please stand.

22 (There was no response.)

23 THE COURT: Is there any member of the jury
24 panel that's been involved in a collision that
25 rear-ended another vehicle? If so, please stand.

1 Okay. And you're -- wow. Okay. Let me start
2 right here in the front. Ma'am, your name and
3 number?

4 PROSPECTIVE JUROR: Susannah Peters, 91.

5 THE COURT: All right. And you, sir, your name
6 and number?

7 PROSPECTIVE JUROR: Matthew Petty, 93.

8 THE COURT: Okay. Ma'am, behind?

9 PROSPECTIVE JUROR: Kati Atkins, No. 6.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR: Kenneth Bradley, 17.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: Eddy Crowe, 34.

14 THE COURT: Okay. Yes, sir.

15 PROSPECTIVE JUROR: Trenton Rider, 103.

16 THE COURT: Yes, sir.

17 PROSPECTIVE JUROR: Michael James, 58.

18 THE COURT: Yes, ma'am.

19 PROSPECTIVE JUROR: Dana Albertson, 3.

20 THE COURT: Yes, ma'am.

21 PROSPECTIVE JUROR: Yauntese Irby, 57.

22 THE COURT: Okay. Let me ask each of you, the
23 fact that you've been involved in a motor vehicle
24 accident as described, would that limit your ability
25 to be fair and impartial to anybody involved in this

1 lawsuit? And could you judge it based solely on the
2 merits of the evidence presented in this case and the
3 law as I would give it to you? If you cannot do
4 that, remain standing. Otherwise, please have a
5 seat.

6 (WHEREUPON, everyone took their seats.)

7 THE COURT: All right, thank you very much.

8 Is there any member of the jury panel that has
9 been involved in a collision with a moped? Please
10 stand.

11 (There was no response.)

12 THE COURT: All right. Gentleman, let me talk
13 to the lawyers for one second up here, please.

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury but out of the hearing of
16 the jury.)

17 THE COURT: All right. Is there any member of
18 the jury or immediate family member who has ever
19 utilized a moped for purposes of transportation? If
20 so, please stand.

21 All right. Okay. Your name and number again?
22 We take everything down.

23 PROSPECTIVE JUROR: Ever use a moped?

24 THE COURT: Let me read it again. Any jury
25 member or member of your immediate family ever

1 utilized a moped for the purposes of transportation?

2 Okay. Yes, ma'am, your name and number?

3 PROSPECTIVE JUROR: Susannah Peters, 91.

4 THE COURT: Yes, sir.

5 PROSPECTIVE JUROR: Matthew Petty, 93.

6 THE COURT: All right. In the back?

7 PROSPECTIVE JUROR: Jake Newton, 82.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: Ken Bradley, 17.

10 THE COURT: Okay. And?

11 PROSPECTIVE JUROR: Travis Bryant, 24.

12 THE COURT: Okay. Would the fact that -- the
13 fact that you have utilized a moped or family member
14 utilized a moped for purposes of transportation,
15 would it limit your ability to be fair and impartial
16 in this case to either the Plaintiff or the Defendant
17 and could you judge this case based solely on the
18 merits of the evidence presented here in this
19 courtroom and the law as I would give it to you? If
20 you cannot do that, please, remain standing.

21 (WHEREUPON, everyone took their seats.)

22 Great. All right. Then I have one last
23 question. Is there any member of the jury panel that
24 has a strong like or dislike for the use of mopeds on
25 highways or drivers of mopeds? Anyone have a strong

1 opinion about that?

2 Okay. All right. Yes, ma'am, your name and
3 number?

4 PROSPECTIVE JUROR: Dana Albertson, 3.

5 THE COURT: Would the fact that you have an
6 opinion about the use of mopeds, would that limit
7 your ability to be fair and impartial to either the
8 Plaintiff or the Defendant in this case and could you
9 judge this case based solely on the merits of the
10 evidence presented in this courtroom and the law as I
11 would give it to you?

12 PROSPECTIVE JUROR: Yes, sir, I can.

13 THE COURT: Yes, sir, you could not do that?

14 PROSPECTIVE JUROR: No, I could.

15 THE COURT: Okay. Thank you very much.

16 All right. Anything else?

17 MR. MOORE: No, sir.

18 MR. GARCIA: No, sir.

19 THE COURT: All right. Let me talk to y'all
20 again one more time.

21 (WHEREUPON, a bench conference was held in the
22 presence of the jury but out of the hearing of
23 the jury.)

24 THE COURT: All right, ladies and gentlemen,
25 this is when I have an opportunity to entertain you

1 with my standup comedy routine. What's going on
2 right now is we are randomly selecting a pool from
3 the large pool from which the attorneys will select a
4 jury of 12 with two alternates. And so, that's
5 what's going on.

6 When I started practicing law, we had a bingo
7 wheel. And everybody's name was typed out and put in
8 a little container like that, a screw top. There's,
9 actually, somebody's name in there. And the clerk
10 would then spin it, pull it out, unscrew the top,
11 pull the piece of paper out, read the name. That's
12 how we selected juries.

13 And so we -- like everything else, we've tried
14 to modernize in the court system and so now, your
15 name, if any of you feel a little dizzy right now,
16 you're spinning around in cyberspace. Your name's on
17 a program approved by court administration are being
18 randomly listed on the list. When the attorneys do
19 begin the selection, you will hear them -- a number
20 called, but it will not be the number on your name
21 placard. It doesn't correspond with that. So you
22 all won't even know if you've been struck from
23 service. But you will know if you've been selected.
24 So, that's kind of what we're doing. It takes a
25 little bit of time to get it organized and up and

1 running.

2 So, then I tell you about the history of this
3 courtroom. And if you look up on this wall, you can
4 see a crack that runs kind of down above the clock
5 over there. And that, when I started practicing law,
6 was a balcony. You could -- and the family court
7 used to be in offices up on the third floor. It
8 wasn't a real family courtroom at that time. And
9 when I started, it was Judge Joseph Board, who was an
10 outstanding judge in family court. So, we would --
11 if you came over for family court, you had to wait in
12 line. We used to come through a glass door and sit
13 and watch the proceedings down here in circuit court.
14 So, it was kind of neat. So, we now have dedicated
15 family courtrooms. They closed off the balcony. I'm
16 not even sure if you can get into it anymore or if
17 the seats are even there.

18 The other thing we did back in about 2008 was
19 the courtroom used to be a lot more compressed. And
20 there were one or two more rows, I guess you'd call
21 it a pew and everything was compressed. The lawyers
22 were all -- their tables were up this way. There
23 were 18 chairs over here for the grand jury, which
24 hasn't been used as a grand jury -- in the grand jury
25 process for years. And then this box was somewhat

1 different. I can't remember exactly how it was
2 configured, but it was so tight when you would have
3 more than one party or more than one lawyer, it was
4 very hard to move around. So, I believe it was in
5 2008, we took out, at least, one row of pews and
6 expanded this area up here so we could accommodate
7 all the various parties and lawyers.

8 I've about got the story down perfectly because
9 I think we got the list ready. That way y'all don't
10 have to listen to any of my jokes. But I will say
11 this, this is, in my opinion, the best courtroom in
12 the 13th circuit. Greenville used to have an
13 enormous courtroom, but in 1996, they renovated the
14 courthouse and got rid of this -- it was bigger than
15 this courtroom. Beautiful, I guess, wood stained
16 paneling and all that went by the wayside. So, now
17 we've got a very sufficient secured courthouse over
18 in Greenville County that reminds me of, I don't mean
19 to offend anybody, of a Holiday Inn.

20 All right, ladies and gentlemen, we're going to
21 give the attorneys time to go through their lists.
22 So, what we're going to do is take a break. You all
23 are free to stay, leave, whatever you'd like to do.
24 We'd ask you to be back in say about 15 minutes.

25 Okay. Great. Thank you.

1 (WHEREUPON, a short break was taken.)
2 THE COURT: Are y'all ready to go?
3 MR. GARCIA: Yes, sir.
4 MR. MOORE: Yes, sir.
5 THE CLERK: Plaintiff's first strike?
6 MR. GARCIA: Eighteen.
7 MR. MOORE: Defense's strike No. 12.
8 THE CLERK: Hold on.
9 Defense's first strike?
10 MR. MOORE: No. 12, please.
11 THE CLERK: Plaintiff's second strike?
12 MR. GARCIA: Eleven.
13 THE CLERK: Defense's second strike?
14 MR. MOORE: Nineteen.
15 THE CLERK: Plaintiff's third strike?
16 MR. GARCIA: Twenty.
17 THE CLERK: Defense's third strike?
18 MR. MOORE: No. 9.
19 THE CLERK: Plaintiff's fourth strike?
20 MR. GARCIA: Eight.
21 THE CLERK: Defense's fourth strike?
22 MR. MOORE: No. 10.
23 THE CLERK: And for the alternate, Plaintiff?
24 MR. GARCIA: Twenty-four.
25 THE CLERK: And Defense?

1 MR. MOORE: Twenty-two.

2 THE CLERK: For the Plaintiff, I have 18, 11, 20
3 and 8.

4 MR. GARCIA: That's correct.

5 THE CLERK: And for the alternate is No. 24.

6 MR. GARCIA: That's correct. Thank you.

7 THE CLERK: And for the Defense, I have 12, 19,
8 9, 10, and for the alternate, 23.

9 MR. MOORE: No. 22.

10 THE CLERK: Twenty-two. Excuse me. Twenty-two.
11 Is that correct on that now?

12 MR. MOORE: Yes, sir.

13 THE CLERK: As I call your names, if you would,
14 please, come have a seat in the jury box. Juror No.
15 23, Maddison Bryant, Juror No. 64, Tammy King, Juror
16 No. 59, Ingrid Jenssen, Juror No. 120, Pamela White,
17 Juror No. 119, Leslie Waugh, Juror No. 4, Ashley
18 Anderson, Juror No. 122, Jason Wilson, Juror No. 6,
19 Kati Atkins, Juror No. 58, Michael James, Juror No.
20 31, Cason Collins, Juror No. 68, Christopher Lee,
21 Juror No. 103, Trenton Rider, Juror No. 37, Shane
22 Dosser.

23 THE COURT: All right, ladies and gentlemen, got
24 two groups in here. One of you think you won the
25 lottery and one thinks they lost. And I will tell

1 you right now I think the group that was selected are
2 the winners. It's just a rare event to be called up
3 to sit in a jury pool and much rarer to be selected
4 to serve. And it's a great privilege and great
5 responsibility to do that. I hope you all will get
6 that opportunity sometime later this week and, if
7 not, sometime in the future.

8 But right now, I would tell y'all that you're
9 excused for the day. We do ask that you call back on
10 the call back number after 6:00 o'clock to find out
11 when you next need to call or report. Thank y'all
12 very much.

13 (WHEREUPON, the jury venire was excused at
14 approximately 11:44 a.m.)

15 THE COURT: Okay, ladies and gentlemen, I'm
16 quite sincere about believing that you are the
17 fortunate ones. It's not something that you might
18 reach out for, it's not that you would, perhaps,
19 volunteer for. It is -- it's a sacrifice, we know
20 that, but it is probably also something that you will
21 not get another opportunity to do in all likelihood,
22 just statistically the probability of it. But it is
23 one of the prices that we all pay to live in this
24 wonderful country. So, I want to thank you very much
25 for your service.

1 I will tell you that we have a dispute about the
2 facts in this case which can't be resolved in any
3 other fashion except to ask for a jury to come up and
4 listen to the evidence presented in this courtroom
5 and the law as I will give it to you and come to a
6 decision that will resolve this dispute between your
7 fellow citizens. And we greatly appreciate the
8 efforts and the energy that you will give us to do
9 that.

10 I will tell you that in civil court, and this is
11 a court of common pleas or what is referred to as
12 civil court, the burden of proof always rests on the
13 moving party. And in this case, the moving party is
14 the Plaintiff. And their burden of proof is by a
15 preponderance of the evidence. That simply means the
16 greater weight of the evidence. Many of us can think
17 of the blind lady of justice holding the scale.
18 Right now, as we start this case, those scales are
19 dead even. And that's why we go through all the
20 questioning to get a fair and impartial jury. And
21 they're dead even.

22 So, you all are to judge this case and come to a
23 decision based on the evidence and the law. At the
24 end of the case, if the scales remain even, then the
25 Plaintiff will have failed to meet their burden and

1 would not be entitled to a verdict. It would be a
2 verdict for the Defendant. If, however, they have
3 tipped the scales whether by the weight of an anvil
4 or weight of a feather, then they would have met
5 their burden and they would be entitled to a verdict.
6 So, that is the scale by which you all judge this
7 case. It's different from criminal court where the
8 prove must be beyond a reasonable doubt. So, this is
9 the greater weight of the evidence.

10 I will tell you that I divide a trial into five
11 parts so you have a procedural road map about where
12 you are and where you'll be next. And we are in or
13 about to start what I call the first phase, which are
14 the opening statements to you. I make a few brief
15 comments to give you some ground rules, I guess, then
16 the lawyers will get an opportunity to make their
17 opening statements to you. They are generally
18 speaking brief and non-argumentative statements about
19 the case.

20 The second part of the case is the meat and
21 potatoes of each and every case, that is the
22 presentation of the testimony and the evidence. And
23 the evidence will come to you generally in one of
24 three ways. The most commonly thought of way, at
25 least, in my mind, is through oral testimony from the

1 witness stand. The second most common way is through
2 the introduction of tangible documents or items. And
3 the third common way is through the introduction of
4 evidence as a way of stipulation, where the parties
5 agree that some fact is so beyond dispute that you
6 should accept it as true. I don't know what
7 combination that the facts will come to you in, but,
8 generally, they'll come to you one of those three
9 ways.

10 Now, with respect to the oral testimony, often,
11 and I think it is true in this case, there are -- you
12 may get some oral testimony by way of a video
13 deposition. And you to judge that, those video
14 depositions the same weight, the same way as you
15 would judge live testimony. I'm not sure about that,
16 but I think you may well -- that may well be part of
17 the evidence in this case.

18 Then the third part of the trial will be at the
19 conclusion of all the evidence, after you've had the
20 evidence presented to you, the attorneys get up and
21 make their closing arguments. So, it's an opening
22 statement, brief non-argumentative and a closing
23 argument where the attorneys advocate their position
24 and urge you to resolve the dispute in their favor or
25 their client's favor.

1 The fourth part of the trial will be when I give
2 you the law on the case, charge you the law, as we
3 say. And the fifth part of the trial will be when
4 you all retire to the jury room to deliberate. Go
5 through the evidence, the law, and come to a decision
6 that will resolve the dispute.

7 So, the parts are not of equal length.
8 Generally, and I'm sure in this case it's going to be
9 true as well, the second part, the presentation of
10 the evidence is the longest part.

11 I'll ask you to do a number of things throughout
12 the course of the trial. And the first thing I ask
13 you to do is to keep an open mind. Don't come to a
14 decision or conclusion before you hear all the
15 evidence. Listen to everything. That's why we go
16 through the questioning to get a fair and impartial
17 jury that's going to listen to all the evidence and
18 make a decision based on the merits and the evidence.

19 The second thing I ask you to do, and this
20 sometimes is difficult, is to pay attention. If you
21 were to let your mind wander off during the testimony
22 of a witness, you might miss the answer to a question
23 or you might miss the way a witness responded to a
24 question, which we call a witness' demeanor. And
25 they might become important in your deliberations and

1 you would be at a disadvantage if you missed that
2 when that testimony was presented.

3 The third thing I'll ask you to do is to not
4 discuss this case with anyone. I'm quite sure it's
5 going to go through lunch and I anticipate it will
6 probably last longer than a day. So, when you go to
7 lunch or you go home tonight, people are going to
8 want to know, the people you see, your family, your
9 friends, they're going to want to talk to you about
10 it. They're going to want to know. And I will tell
11 you that you can't talk about it, the facts of this
12 case with those people. Because even an innocent
13 comment from someone who you like and trust might
14 have an impact on your state of mind in this case.
15 And that would not be fair to the parties involved in
16 this case. It wouldn't be fair to your fellow jurors
17 and it would not be fair to yourself to allow someone
18 who is not making the sacrifices that each of you are
19 making to have any input in the outcome of this case.
20 So, don't talk about the case. And that would
21 include not going on the internet to do research.
22 Don't get on some social media site and discuss it.
23 Everything you need to hear will be in this courtroom
24 and subject to constitutional protection and
25 scrutiny. That's why we instruct you not to discuss

1 the case or do independent research.

2 So, I will tell you that you are the sole judges
3 of the facts in this case. And the trial judge is
4 not by law allowed to have an opinion about the facts
5 in the case. It is up to you to decide what to
6 believe, what not to believe, what you think is true
7 and correct and what you think is not true and
8 correct. So, don't think by anything I say or do
9 throughout the course of the trial that I have an
10 opinion, I do not. You all are the sole judges of
11 the facts.

12 Now, the same law that makes you the sole judges
13 of the facts makes me the sole judge of the law. So,
14 if you think you have some opinion or idea as to what
15 the law is or should be and it disagrees with what I
16 tell you the law is throughout the course of the
17 trial and at the conclusion of the trial, then you're
18 going to swear an oath in just a second to set aside
19 your own opinion and apply the law precisely as I
20 state it to you. And that ensures that everyone
21 tried up in this courtroom is tried under the same
22 law and that's why we do that.

23 There may be -- a couple other things I want to
24 tell you. There might be times when you see me ask
25 the lawyers to come up and speak with me. And that

1 may go on throughout the course of the trial. I may
2 excuse y'all to go to your jury room so we can
3 discuss some legal issue. We're going to do that in
4 just a minute. And I will tell you that we're not
5 trying to deceive you in any way, but we may be
6 trying to keep something from you. And that is if
7 there is a disputed piece of evidence that should not
8 be admitted, then I think you can understand why you
9 shouldn't hear it. That's generally what we're
10 doing. Often, we discuss logistical matters about
11 how long a witness is going to take so we can try to
12 judge when to break and those sort of things. So,
13 that's what we're doing in these what we call bench
14 conferences or when you all are excused, we call it
15 an in-camera hearing. So, that's what's going on.

16 And I'm sure there are a couple other things
17 I'll think of in a minute. But we're going to right
18 now ask y'all to stand and ask you to take the oath,
19 then we're going to excuse you to your jury room.
20 And I want to see if you all can decide who you'd
21 like to be your foreperson in this trial. I can pick
22 one for you, but I always like to give juries an
23 opportunity to select their own foreperson. And the
24 foreperson is simply the moderator of the discussions
25 at the conclusion of the trial and the jury's

1 spokesperson in the courtroom if that were to become
2 necessary. So, if y'all can decide on that, great.
3 If you want to wait and do it a little later, we can
4 do that, but y'all start thinking about that when we
5 excuse you in a minute.

6 Right now, I'm going to ask you to stand and let
7 Ms. Watson swear you in.

8 THE CLERK: Please raise your right hand. After
9 the oath, please say, I will.

10 (WHEREUPON, the jury was sworn.)

11 THE CLERK: Thank you.

12 THE COURT: Great. I'm going to excuse y'all to
13 go back here and see if you can select a jury
14 foreperson, then we'll get right back with you..

15 (WHEREUPON, the jury left open court at
16 approximately 12:00 p.m.)

17 THE COURT: All right. Is there anything y'all
18 need to discuss before we --

19 MR. GARCIA: Yeah, we have a couple of motions,
20 Your Honor.

21 THE COURT: Okay.

22 MR. GARCIA: One is to exclude the testimony of
23 the Defendant's accident reconstruction expert. And
24 then the other is to exclude really any reference at
25 all to this private investigative video that was

1 conducted of the Plaintiff sometime, I think it was
2 November of 2015. It's a video that was taken over a
3 series of two days for a total of three hours of
4 surveillance and 24 minutes of video during that
5 time.

6 THE COURT: Okay. Based on?

7 MR. GARCIA: Oh, let me ask you this, would you
8 like me to address the first motion in limine or do
9 you want me to talk about -- I think the video might
10 be a little bit easier to be honest with you, so I'm
11 just going to address the video first, if I may.

12 THE COURT: All right, good.

13 MR. GARCIA: There's a number of issues that I
14 have with the video. And I filed a motion in limine
15 about six weeks ago, maybe five weeks ago. But some
16 things happened since then, so I don't think that I
17 should address first my motion in limine. I think I
18 should address what's happened over the last few
19 days.

20 My concern with the motion in limine initially
21 was -- or that video was, it's a very limiting video,
22 it only shows 24 minutes over a three-hour period.
23 And at the time, my understanding was it was being
24 offered to show the limited nature of the Plaintiff's
25 injuries, or, actually, no injury at all. And at the

1 time, the private investigator was going to be
2 offered as a witness to testify on that issue. So,
3 of course, my first objection was we can't have a
4 private investigator sitting on the witness stand
5 talking about what he observes from the video and how
6 he observed an absence of injury or very limited
7 injury.

8 I think since then, if I'm correct on that
9 Mr. Moore, that Mr. Moore has stated to me that he
10 didn't intend to offer that witness for that purpose.
11 I still believe that the witness needed to be here to
12 authenticate that video so that I can ask questions
13 about how it is that he conducted the video. My
14 major concern with the way the video is, Your Honor,
15 is that there are portions of the video where the
16 Plaintiff is still in frame and the video is just
17 stopped, then it restarts again at other portions.

18 So, the same way I would object to a video being
19 offered because it was edited, I think there's
20 selective editing going on there at the same time.
21 He's picking and choosing, essentially, what he wants
22 to film. Now, the report that was submitted in
23 conjunction with that video suggested that there were
24 moments where the Plaintiff goes out of frame and
25 then comes back into frame and that's why he shut it

1 off, but that's not consistent with what you actually
2 see in the video. In fact, there's one portion where
3 the Plaintiff is right about to sit into his vehicle
4 and it shut off right when he goes to sit down. I
5 mean, the door opens, goes to sit down, it shuts off,
6 then it comes back on 20 seconds later once he's in
7 the vehicle.

8 So, my position was I needed him here to be able
9 to ask him questions about what it is that he was
10 doing, what his purpose was, if there's any bias
11 associated with the work that he did, what he was
12 instructed to do. So, I have an authentication issue
13 first.

14 Since then -- now, just for your understanding,
15 the name of the private investigator, as I understood
16 it, was Marcus Bell. And I have understood that from
17 the date that the video was submitted to me, up until
18 Thursday. Then I was told that the name of the
19 individual that shot the video was actually somebody
20 else. And that -- the significance of that for me is
21 this, we're going to do a little bit of a background
22 check on this private investigator. We want to know
23 who he is. We want to know if there's any kind of
24 history of wrongdoing on his part. For instance, if
25 he had an application that was denied in North

1 Carolina as a private investigator, who was denied in
2 North Carolina, we want to know why. For instance,
3 if in North Carolina, he -- maybe I shouldn't say
4 falsified an application, but failed to disclose
5 certain firings and whatnot in North Carolina, I want
6 to know that. Additionally, if part of the things he
7 failed to disclose was that his license in Florida
8 was revoked at some point for falsifying an
9 investigative report, I'd want to know that as well.
10 Those scenarios that I just handed to you or stated
11 to you, Your Honor, are the exact scenarios of the
12 individual that -- the new name I was given on
13 Thursday, essentially.

14 So, I've had very little time to research that
15 individual. But in the very limited time that I had,
16 there are major questions that pop up about that
17 individual's bias and maybe even credibility. My
18 understanding as well is that that individual is not
19 available. I don't know why he's not available. I
20 was just simply told he wouldn't be able to be here.
21 I'm not alleging that there was anything intentional
22 on the part of Mr. Moore for not disclosing that name
23 to me or anything along those lines, that's really
24 not my position. But I don't think it really matters
25 whether it was intentional or unintentional, I wasn't

1 given the opportunity to speak to this individual
2 about what it is that he's done and research him and
3 kind of vet where it is that he's coming from.

4 The other issue that I have with that is at the
5 time we conducted one of the video depositions that
6 we'll play here at some point in trial, I was still
7 under the impression that it was Marcus Bell who shot
8 that private investigator video. It was actually
9 this other individual. So, if I would have known
10 that at the time, that certainly would have changed
11 my approach to the video that was shown to one of
12 those physicians that will testify here today -- or
13 excuse me, later on in trial. And I wasn't given
14 that benefit. Instead, I'm being told, essentially,
15 three or four days before trial that the video was
16 shot by someone else. And I didn't really have an
17 opportunity to properly address that, so that gets in
18 front of Dr. Scott at that time.

19 So, part of that concern that I have with that
20 private investigative video is that we should exclude
21 that portion of the video deposition as well. I'll
22 admit that in that video deposition, I did not make a
23 contemporaneous objection at that time. I understand
24 that we would still have an opportunity to
25 authenticate that video. And I understand

1 something -- really, a set of facts that are entirely
2 different from how it is that video was presented to
3 Dr. Scott. That's all I really have on the video
4 itself.

5 THE COURT: Go ahead, David.

6 MR. MOORE: Judge, there is video that was taken
7 in November of 2015, I believe. The information we
8 had, just to clarify this, was Marcus Bell had taken
9 the video. We have a disc. It has Marcus Bell's
10 name on it. We have a report that ha Marcus Bell's
11 name on it. When I sent request for admission out to
12 him, he, basically, insisted that I have somebody to
13 authenticate the video that had been taken. So we,
14 at that point, contacted Marcus Bell down in Columbia
15 and sent a subpoena down to him, come on up here,
16 you've got to authenticate the video that you've
17 taken.

18 After we had contacted him, actually, after we
19 sent the subpoena down, we were told no, someone
20 else, I forget the guy's name, who is no longer with
21 the firm, had actually taken the video, which was
22 brand new news to me. I'm not actually sure that's
23 the case, but I immediately told Stephen what was
24 going on. Now, I then tried to subpoena that guy,
25 he's still in the area, but he's on vacation this

1 week. And I couldn't get him to, you know, with the
2 subpoena or anything else at that particular point in
3 time.

4 Now, that gives you a background as to what's
5 going on. The video is what it is. The
6 authentication is simply to say hey, I took the video
7 and it's showing the Plaintiff doing certain acts.
8 The acts that the video shows the Plaintiff
9 undertaking are he's riding a riding lawn mower that
10 cuts grass, that he's operating a car, that's he's
11 going out shopping without the assistance of a cane,
12 that he's walking steadily on his feet. None of
13 which actually have any -- what he's arguing has no
14 impact on what that video actually shows.

15 Now, if he wanted to try to impeach this guy and
16 say well, you cut it off when something else is going
17 to be shown, obviously, that could be addressed by
18 his own client say, listen, I have problems getting
19 in the car, or I might be steady on my feet at other
20 times, but then I have problems at other junctures.
21 So, the video itself is not improper. What he's
22 arguing about is the person who actually took the
23 video saying that he has a background that he would
24 want to explore a little bit and try to argue for
25 purposes of limiting the effect of that video that he

1 cut off when something else might have been shown.
2 Doesn't mean what it showed was improper, just that
3 it didn't go far enough. So, under those
4 circumstances, I'm not real sure that doesn't come
5 in.

6 Now, the problem, of course, is he's insisting
7 that I authenticate it and I can't get the guy in
8 here who took the video. So, what I had advised
9 Stephen was I did not intend to introduce this video
10 as direct evidence during the course of this trial
11 because I can't get the guy here. However, I think
12 this is the crux of what we're arguing about --

13 THE COURT: Impeachment.

14 MR. MOORE: I'm sorry?

15 THE COURT: Impeachment?

16 MR. MOORE: Yeah, impeachment purposes. So,
17 that if he denies these acts, you know, could he ride
18 a riding lawnmower, if he denies that, I'm going to
19 put it in. If he says I can't drive a car, which I
20 know he's going to say he can, I'm going to put it
21 in. If he's saying unsteady on his feet and didn't
22 walk without a cane at some point in time, I'm going
23 to want to put it in for impeachment purposes only.

24 Then the last part we need to address is
25 Dr. Scott's deposition testimony. Because what

1 occurred during the course of that deposition was I
2 let Dr. Scott review it. It is not part of the
3 testimony itself, in other words, it's not showing up
4 during the course of it, but he reviewed it before.
5 Then I asked him questions after he had reviewed it
6 regarding what he saw on that video. Again, the
7 video shows him driving a car, riding a riding lawn
8 mower, being steady on his feet, not walking without
9 a cane. He can certainly testify on his own saying,
10 look, that may have been true on that video, but hey,
11 I had limitations. I can only drive so far because
12 my back might hurt. You know, there were times when
13 I could walk fine, but there were times I had to use
14 a cane. I think that can all come in through direct
15 testimony from the Plaintiff himself.

16 THE COURT: Let me ask you this, the doctor
17 you're talking about is being offered as the expert?

18 MR. MOORE: Expert for the Plaintiff.

19 THE COURT: Okay.

20 MR. MOORE: And he testified after watching
21 that, that yes, the video did show yeah, he's riding
22 a riding lawn mower and he's driving a car, he's
23 walking steady on his feet, he's not using a cane.
24 No objection was made at that time as to that
25 testimony. So, I think that particular aspect has

1 been waived at this particular point in time. With
2 regard to the rest of the video, it probably won't
3 come into play because I'm pretty sure what he's
4 going to testify to, I don't even think I'm going to
5 have to use it for impeachment purposes.

6 So, I think this particular issue really has to
7 do with only what Dr. Scott was testifying to, and as
8 I indicated, no objection was made at that time, so I
9 think that's waived.

10 THE COURT: Okay. When did you show him the
11 video?

12 MR. MOORE: Whenever we took his deposition, the
13 day of. Actually, I've shown it to him twice. We
14 took a discovery deposition, I showed it to him at
15 that point in time and then we took a de bene esse
16 deposition or whatever they call it these days, later
17 on down the road, which was not that far apart.

18 MR. GARCIA: I don't believe he saw the video on
19 the first deposition.

20 MR. MOORE: He did. I'm pretty sure. Because
21 we did the same thing, I stopped it and let him look
22 at it.

23 MR. GARCIA: Understand.

24 MR. MOORE: You can check me on this.

25 MR. GARCIA: Sure.

1 MR. MOORE: But in this situation, he's already
2 seen the video. My memory is he said the same thing
3 during discovery. But during the de bene esse
4 deposition, he agreed that here's what it shows. I
5 don't think the video is tainted by what he's talking
6 about. What he's arguing is he ought to be able to
7 go into further aspects of this guy's background.

8 THE COURT: Okay.

9 MR. GARCIA: May I respond to that? How can it
10 not be tainted? He says he was under surveillance --
11 the private investigator said that my client was
12 under surveillance for a three-hour period. He
13 shoots only 24 minutes in those three hours. Then he
14 offers his selectively chosen 24 minutes.

15 THE COURT: Here's where we are as far as I can
16 tell. He's not going to offer it for his direct
17 evidence.

18 MR. GARCIA: Sure.

19 THE COURT: Your client has certainly been
20 alerted to what's on there and --

21 MR. GARCIA: Absolutely.

22 THE COURT: -- I would suspect his testimony
23 would not --

24 MR. GARCIA: Give rise to impeachment.

25 THE COURT: Give rise to this form of

1 impeachment. And with respect to the doctor, I think
2 he's being offered as an expert and, certainly, he
3 viewed it, no contemporaneous objection is part of
4 it, but he viewed it and that helped form the basis
5 of his opinion. So, I'm going to -- although, well
6 stated and preserved for the record, I'm going to
7 deny your motion.

8 MR. GARCIA: It's preserved for the record at
9 this point, do I need to bring it up at any point
10 thereafter?

11 THE COURT: As far as I'm concerned, you don't
12 have to.

13 MR. GARCIA: Fair enough. Thank you.

14 THE COURT: I mean, if it comes to impeachment,
15 I don't know how that's going to -- we'll just have
16 to see how that plays out.

17 MR. GARCIA: I get the sense it's not going to
18 be an issue.

19 THE COURT: I don't think so. It doesn't sound
20 like it.

21 MR. GARCIA: I suppose I still need to discuss
22 the motion in limine for his accident reconstruction
23 expert?

24 THE COURT: Yeah, I don't know anything about
25 that.

1 MR. GARCIA: Yeah. In short, there's no
2 testimony regarding -- from any party, really, from
3 anywhere at all, Your Honor, regarding the
4 Plaintiff's movement from right to left in front of
5 the Defendant at any point, his moped moving in front
6 of the SUV. There's no testimony as to that. If the
7 testimony remains consistent, the testimony will be I
8 looked in front and he was right in front of me,
9 there he was. So, there's no -- and I didn't see
10 where he came from would be the testimony if it's
11 consistent today. So, there's no testimony in the
12 record whatsoever that the Plaintiff was making some
13 kind of crossing maneuver in front of the SUV before
14 the accident or before the collision.

15 However, Mr. Daniel Olson, the expert that's
16 being offered has, from my perspective, made an
17 assumption about the resting location of the moped
18 and that that is an indication that the Plaintiff
19 must have been crossing in front of the Defendant
20 right before the collision or near the collision in
21 such a manner that the Defendant could not have
22 reacted. I believe that's the crux of the argument.
23 I think it was restated even in the denial on
24 requests for admissions and it was also, I believe,
25 restated in the memo in opposition to my motion in

1 limine to exclude that testimony.

2 Now, in his deposition -- and look, he's an
3 expert. He certainly has the right to reach his
4 conclusions and state them. However, when I asked
5 for an explanation as to how he reaches that
6 conclusion so that I can properly cross-examine him
7 on that issue, in my opinion, Your Honor, I didn't
8 get a response from him. Some counterarguments that
9 have been offered to you in the Defendant's
10 memorandum and opposition to the motion in limine.
11 And one of those things that's offered is well,
12 Mr. Olson, the expert, goes into some explanation
13 about the lack of friction up near the bumper. And
14 there's a citation in the memo.

15 THE COURT: Well, why shouldn't I let it? I
16 mean, you're talking about the analysis of the
17 quality of the weight of it as opposed to the
18 admissibility, why shouldn't it be admitted?

19 MR. GARCIA: The basis for not admitting it
20 would be that I didn't get an opportunity to
21 cross-examine his theories and how it is that he
22 derived at it. He just simply didn't explain them to
23 me. So, my position would be that I'm entitled to
24 some kind of explanation as to what it is that he's
25 bringing in as an expert from a scientific

1 standpoint, from a technical standpoint, from an
2 experience standpoint that he brings in to reach that
3 conclusion. Instead, he just says well, this is an
4 assumption it must be because he ended over here.
5 And I'm not given an opportunity to really
6 cross-examine that at all. In fact, at one point, I
7 was told, Your Honor, that I should take his word for
8 it. Just simply take his word for it.

9 At another point, I was told that even a high
10 school -- a juror that's in high school would be able
11 to understand those theories, which suggests it's not
12 really a technical -- his testimony isn't really
13 technical or scientific at all, at least, regarding
14 the issue of crossing in front of a particular SUV.
15 So, if he's not offering any kind of special
16 knowledge or any -- excuse me, if he's not testifying
17 to anything that requires scientific knowledge or
18 technical knowledge or training at all, he's simply
19 getting up there and saying the jury needs to take my
20 word for it on this. He doesn't have any personal
21 knowledge of moving from right to left as well.
22 That's my basis, Your Honor.

23 THE COURT: Okay. Anything?

24 MR. MOORE: Your Honor, just by way of
25 background here, obviously, what we have is both of

1 these vehicles are moving in the same direction on
2 Blue Ridge Highway. The moped, at some point in
3 time, we know he's at what's called the Hot Spot gas
4 station. He comes out of that gas station. There's
5 some issue with regard to when he gets over into the
6 left-hand lane, the fast lane. We know from his
7 testimony that, basically, he's saying he is in the
8 middle of the left-hand lane and he's hit from the
9 rear. But his moped ends up in the median,
10 obviously, going to the left.

11 So, the question is what's propelling his moped
12 to the left? What Mr. Olson is going to be
13 testifying to is really twofold. One is based on
14 just standard physics, using the three laws of
15 physics. If you got a vehicle going straight and it
16 goes left, something's got to push it that way. It's
17 either got to be hit by the vehicle and pushed that
18 that way or he's actually moving that way to cause
19 him to end up in the median. Otherwise, if he's hit
20 from the rear, it just goes straight. Or if he's hit
21 from the rear and it catches -- you know, there's a
22 turn there, then it will spin. All of which
23 Mr. Olson has testified to.

24 So, he has a basis for what he's talked about
25 and he's talking about basic standard physics. The

1 deposition got kind of hot and that's why he's
2 talking about high school students and that type of
3 thing. But, basically, what he's testifying to, I
4 took a course in physics in high school, we did go
5 over that in high school. So -- but he has a basis
6 for what he's saying happened.

7 THE COURT: Y'all are talking about the weight
8 of the evidence.

9 MR. MOORE: Yeah, yeah. He has his expert, I
10 have my expert. They got to weigh it out.

11 THE COURT: Yeah. If they don't -- you know, if
12 they're not qualified as experts, then we can discuss
13 that. But I'm not -- you're asking me to make a
14 factual determination and I don't do that. I leave
15 that up to the jury.

16 MR. GARCIA: I would only add to that, if I may,
17 Your Honor, that the other -- it's a finer point than
18 simply the weight of the evidence. It's that he --
19 he's making an assumption, he's offering it to the
20 jury as if it's clouded or as if it is certified by
21 some kind of scientific evidence, but the scientific
22 evidence was never offered to me. He doesn't have
23 any greater knowledge by his own admission than the
24 jury does. By his own admission, he doesn't have any
25 greater knowledge on that subject than the jury

1 would, but he's sitting up there as an expert saying
2 take my word for it on this. That would be the
3 distinction I have on that.

4 THE COURT: I'll have to hear that when it
5 comes, okay.

6 All right, anything else before we get this
7 jury? I guess what we'll do is make opening
8 statements and break for lunch.

9 MR. GARCIA: That's fine.

10 THE COURT: And you all heard what I told the
11 jury about opening statements being brief and
12 non-argumentative. I know y'all heard that.

13 MR. GARCIA: I slashed out a portion of my
14 opening after I heard that.

15 THE COURT: I'll never forget, Judge Pyle used
16 to -- when I was a young public defender, start the
17 case, give the instructions to the jury, and then
18 he'd go, call your first witness. You'd go, Judge.

19 MR. MOORE: Well, I had one with Judge Pyle one
20 time, this was actually the closing, and we finished
21 the testimony up and everything and he said okay,
22 let's get started. And he started charging the jury
23 before we argued. And we were kind of looking like
24 what the hell are we going to say. Finally, the
25 clerk turned around -- thank God for clerks. Turns,

1 Judge, you didn't let them argue. And he said, I'm
2 embarrassed, you know. Had to start all over again.
3 But he didn't put up with much. He was short and
4 sweet.

5 THE COURT: Okay. Yeah, y'all get ready to go.

6 MR. MOORE: Judge, we discussed this and I
7 wanted to give you a heads up. He's going to be
8 using some photographs that we both agreed are going
9 to be introduced into evidence at some point. So, I
10 don't have any problem with him using those in his
11 opening.

12 THE COURT: Okay. All right. Here we go.

13 (WHEREUPON, the jury came into open court at
14 approximately 12:23 p.m.)

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury but out of the hearing of
17 the jury.)

18 THE COURT: All right, Ms. Atkins, I want to
19 thank you for agreeing to serve as the foreperson.

20 At this time, we're ready to commence the trial
21 and I turn it over to the attorneys for their opening
22 statements.

23 Mr. Garcia.

24 OPENING STATEMENT

25 MR. GARCIA: May it please the Court?

1 THE COURT: Yes, sir.

2 MR. GARCIA: Mr. Moore.

3 MR. MOORE: Yes, sir.

4 MR. GARCIA: So, good afternoon. I thought I
5 would be saying good morning, but we carried over to
6 the afternoon here.

7 You've already heard this is an auto accident
8 case, it's a collision. And you've probably already
9 figured out that one of the parties was on a moped
10 and that's my client, Mr. Burgess. The other vehicle
11 is an SUV. And that -- you have a couple of
12 pictures -- we're trying to get this to scale for
13 you. A couple pictures of the vehicles up here and,
14 really, the aftermath of the vehicles.

15 This case a centered on the collision. All
16 right. But that collision only takes place for just
17 a very few moments, maybe a second, maybe a couple of
18 seconds, maybe even a fraction of a second. That's
19 what this case is centered on, right. We're going to
20 ask you to go back before that, maybe as far as three
21 years, four years and we start talking about
22 Ms. Burgess, the Plaintiff's history, his work
23 history and all that. We'll ask you to go three
24 months before that at times. And we'll talk about
25 the Plaintiff's work history, that he was working

1 full time, and what he was doing, the kind of work
2 that he was doing. We'll ask you to go 10 minutes
3 before the collision itself. And what the -- where
4 the parties were coming from, where they were going,
5 where they intended to go. We'll ask you to consider
6 30 seconds before. When the Defendant first turns
7 onto -- from West Bramlett onto this road, West Blue
8 Ridge Drive.

9 If you can put that up there briefly.

10 This is an image I think that both parties are
11 going to refer to often. We might have slight
12 variations in how it is that we -- or what it is that
13 we refer to, but when I say five -- say, 30 seconds
14 before, what I'm referring to is at some point, the
15 Defendant turns out of here, West Bramlett, and at
16 some point, the Plaintiff turns out of here where it
17 says Hot Spot here. They are both traveling in this
18 direction. And before Whitehorse Road here, the
19 collision occurs.

20 Now, I'll keep you in suspense about exactly
21 where it occurs when we get to that. And I think
22 there's a little bit of a dispute about where that
23 might have occurred. Or, at least, maybe we'll say
24 some inconsistencies and whatnot and we'll try to
25 straight that out for you.

1 So, I got you at 30 seconds before. We're even
2 going to ask you to consider two seconds before.
3 What we may even ask you to consider less than a
4 second before this collision. Then, of course, we'll
5 have the collision. Like I said, the collision
6 only -- the snippet of time that we're looking at
7 really only covers maybe a second, maybe less than
8 that.

9 Then we'll ask you to consider or to listen to
10 what happens immediately after that collision, where
11 the vehicles go, both the moped and the SUV. We'll
12 ask you to consider where the Plaintiff goes
13 following that collision. We'll ask you to consider
14 what happens for the five or ten minutes or so when
15 we're waiting for EMS to get over there, right. Then
16 we'll also ask you to consider what happens for the
17 next several months of treatment. All right. From
18 the seven days in the emergency room -- or excuse me,
19 the seven days in the hospital, the visit to the
20 emergency room, the transfer to other physicians that
21 had been refereed by the hospital. We'll ask you to
22 consider some of the diagnoses or whatnot that are
23 received about that time period.

24 And at some point, we're going to get to the
25 point in time where Mr. Burgess has surgery to repair

1 some fractures to his face. This collision occurs in
2 December of 2013. And we have already surgery to his
3 face in January of 2014. I'll ask you to consider
4 the treatment from that January point until the
5 surgery sometime, I believe it was August 2014 to
6 Mr. Burgess' spine. Then once the surgery is done,
7 I'll ask you to consider when he -- when Mr. Burgess
8 has a spinal cord stimulator trial and the results of
9 that. At that point, we're more than a year away
10 from the collision itself. And I'll run you all the
11 way up through present day. All right.

12 Then I'm going to ask you to look in the future.
13 We're going to have a discussion about how this
14 affects Mr. Burgess moving forward both from a
15 vocational standpoint, whether he can work. I'll ask
16 you to consider what future medical treatment he may
17 need as a result of this collision. I didn't mention
18 this prior, but looking backwards or maybe before we
19 get to present day, I'll ask you to consider what it
20 is that Mr. Burgess couldn't earn during that time
21 period of the collision until we reach present day.

22 We have to show you -- and you've already heard
23 this from the Honorable Judge Miller, we have to show
24 you that the Defendant was responsible for this
25 collision. That's our obligation. And I believe we

1 can. We also have to show you that there's a
2 relationship between the medical treatment that
3 Mr. Burgess has already received and the collision
4 itself. We also have to show you that the medical
5 treatment that we're alleging he's going to need in
6 the future is related to this collision as well.
7 Some of them I believe are somewhat obvious,
8 fractures to the face, surgery, the issues associated
9 with that fracture resolving rather quickly. I say
10 rather quickly, I don't mean to be insensitive to my
11 client, it's rather quickly for us that are looking
12 at it from this standpoint. Probably didn't feel
13 very quickly to him.

14 So, I'm going to ask you to consider all this
15 rather lengthy timeline that stands at this point,
16 really, from three years before this collision to the
17 end of Mr. Burgess' life, essentially. Again, we
18 talked about the things we needed to show you today.
19 I believe we can. I look forward to working with
20 each and every one of you and thank you for your
21 attention.

22 OPENING STATEMENT

23 MR. MOORE: May it please the Court?

24 THE COURT: Yep.

25 MR. MOORE: It's got to be afternoon. Good

1 afternoon. My name is David Moore. I'm here on
2 behalf of Katie Hunter in this lawsuit where she is
3 being sued for damages, for money with regard to a
4 vehicular accident that occurred back in 2013,
5 specifically, December 10, 2013. On that date, she
6 was -- had left work from her job as a teacher and
7 had come down Bramlett Road, turned left onto the
8 road where this accident occurred.

9 Now, this particular road is a highway. It has
10 two lanes going each way with a median in between.
11 Speed limit of 45 miles per hour. While she was
12 traveling down that road going towards Whitehorse
13 Road, a collision occurred between the moped the
14 Plaintiff was operating and her vehicle. Of course,
15 the Plaintiff was injured as a result of that
16 accident.

17 But you're going to be asked three things and
18 this is typical of any case like this. Three general
19 aspects of the case that you've got to pay particular
20 attention to. First is, who's at fault in causing
21 the accident? Secondly, you know, what injuries or
22 damages does the Plaintiff have? Thirdly, have to
23 connect those two aspects up to determine what
24 injuries and damages were proximately caused by the
25 accident. If you determine liability in favor of my

1 client, then you don't have to go any further than
2 that. On the other hand, if you find that both are
3 at fault or my client is solely at fault, then you
4 have to go through the other two aspects as to what
5 injuries and damages were proximately caused to be
6 determined by the incident itself.

7 You're going to be, as the judge indicated to
8 you, the judges of the facts. You may have noticed
9 that the attorneys stand for you when you walk into
10 and from your jury room. That's because for the time
11 period of this particular case, you are judges. And
12 we have high respect for you. You're going to be
13 making decisions that affect both parties that is
14 very important to both parties. You may say well,
15 the pay stinks, and it does. But it is important
16 that y'all listen very carefully to the evidence
17 which is to be presented in this case and make
18 decisions which are going to affect both parties.

19 We feel that the facts are going to show number
20 one, that Katie Hunter turned left onto Blue Ridge
21 Highway. That she got into the left lane, which is
22 the fast lane, and that she was traveling down that
23 highway, that the Plaintiff's vehicle, a moped, came
24 out from a gas station and pulled in front of her in
25 such a fashion that it did not give her time to react

1 to avoid by hitting the breaks and stopping or
2 swerving quick enough to avoid colliding with his
3 vehicle.

4 Now, a moped is a unique vehicle in South
5 Carolina in that it has it's own speed limit.
6 Normally, you have a speed limit for a particular
7 highway. In this case, the Blue Ridge Highway has a
8 45 miles per hour speed limit. The moped has a speed
9 limit of 25, 25 miles per hour. So, you see there is
10 a 20-mile-per-hour disconnect between the two speeds.
11 The law provides that the slower moving vehicle is to
12 stay out of the left-hand lane, the fast lane until
13 such time he's going in to make a left turn, cross
14 over another road or whatever, but he has to do so in
15 such a fashion as to not cause a problem to the
16 faster moving vehicles on that road.

17 In this situation, the Plaintiff did not do
18 that. Our position is that he pulled in front of our
19 car in such a fashion that she only had about two
20 seconds worth of time to respond to it. That she
21 tried to swerve to the left, but she couldn't avoid
22 colliding with the rear of his vehicle and that
23 caused his vehicle to -- because he was moving from
24 right to left, his vehicle ended up in the median of
25 the road, the highway.

1 There will be experts who will testify with
2 regards to how this accident happened. These are
3 accident reconstructions and there will be experts on
4 both sides. There will be medical doctors who will
5 testify as to his injuries. There will be other
6 experts regarding what costs and lost income he might
7 have. You need to listen very carefully to all this
8 testimony. It will probably last two or three days.
9 Listen carefully to all the testimony that's going to
10 be presented to you. Then have the judge give you
11 the law and you apply that law to the facts as you
12 determine them to be to come up with a verdict.

13 All we ask is that you be fair and that you
14 render justice in this case. And I think you can do
15 that, given the fact that you are now judges of the
16 facts. You will be presented with ample testimony
17 and the law to be applied to render a verdict that's
18 fair. Thank you.

19 THE COURT: All right, ladies and gentlemen, now
20 is probably a pretty good time to break for lunch.
21 It's about 20 till 1:00. So, I would ask y'all to be
22 back at a quarter of 2:00. That should give you a
23 little bit over an hour to have lunch. And remember,
24 don't discuss the case. We'll see you back at
25 quarter of 2:00. Great. Thank you.

1 (WHEREUPON, the jury left open court at
2 approximately 12:38 p.m.)

3 THE COURT: All right, anything before we break?

4 MR. MOORE: No, sir.

5 THE COURT: All right. Okay, see y'all in an
6 hour.

7 MR. GARCIA: Thank you.

8 MR. MOORE: Thanks.

9 (WHEREUPON, a lunch break was taken.)

10 MR. GARCIA: Your Honor.

11 THE COURT: Yeah.

12 MR. GARCIA: Sorry to bombard you the moment you
13 walk in. I believe, no matter what we do here, that
14 the second witness I call is we likely won't be done
15 with that second witness, even on direct by the end
16 of day.

17 THE COURT: What witness?

18 MR. MOORE: His client.

19 MR. GARCIA: It would be my client, the second
20 witness, which is probably the most lengthy. And we
21 discussed dividing it up into parts on direct and we
22 can run until --

23 MR. MOORE: I don't have a problem with that.

24 THE COURT: Okay. We'll just roll it.

25 MR. GARCIA: Okay. Thank you.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 (WHEREUPON, the jury came into open court at
2 approximately 2:00 p.m.)

3 (WHEREUPON, Court's Exhibit No. 1 was marked for
4 identification only.)

5 THE COURT: All right. Welcome back, ladies and
6 gentlemen, we're going to start the testimony. Call
7 your first witness.

8 MR. GARCIA: Your Honor, I'm calling the
9 Defendant, Katherine Hunter .

10 THE CLERK: Place your left hand on the Bible
11 raise your right hand.

12 Katherine Hunter, after being duly sworn,
13 testified as follows:

14 THE CLERK: State your full name for the record.

15 THE WITNESS: Katherine Hunter.

16 THE CLERK: Please be seated.

17 DIRECT EXAMINATION

18 BY MR. GARCIA:

19 Q Good afternoon, Ms. Hunter.

20 A Hi.

21 Q What's your date of birth?

22 A 11/27/69.

23 Q Are you married?

24 A I am.

25 Q Are you here with your husband today?

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 A Yes, I am.

2 Q Is he sitting at your table with you?

3 A Yes.

4 Q Okay. The collision that we're here about
5 occurred on December 10th, 2013, does that sound about
6 right to you?

7 A Yes.

8 Q And were you working close by where this
9 collision occurred, Ms. Hunter?

10 A Yes, I was.

11 Q Okay. Do you remember what time of day you
12 left?

13 A I would say it was around 5:30 to maybe 5:40,
14 something like that.

15 Q Okay. As you're leaving work, my understanding
16 is you get into your SUV; is that correct?

17 A Yes.

18 Q Do you remember the year, make and model of the
19 SUV?

20 A I do.

21 Q Can you state it for me, please?

22 A It's 2013 BMW X5.

23 Q Do you still have that vehicle?

24 A Yes, I do.

25 Q I want to run you through leaving work, right,

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 and -- well, of course, up to the collision at some point,
2 okay. As you leave your work, do you turn onto West
3 Bramlett Road?

4 A I work on West Bramlett, so, yes.

5 Q Fair enough. This might make more sense when we
6 get the image up here on the overhead. And we'll go
7 through that as well, okay. Again, my understanding is
8 that you ride West Bramlett Road up until you get to a
9 stop sign at West Blue Ridge Drive; is that correct?

10 A I believe, yes, that's true.

11 Q Do you know it by another name, maybe like 253?

12 A I mean, this was like five years ago and I
13 haven't worked there in a few years.

14 Q Fair enough. When you get to West Blue Ridge
15 Drive, do you turn left?

16 A Yes.

17 Q Okay. Now, before you turn out, what was the
18 traffic like that day?

19 A It's a fairly high traveled road, so it can
20 often be pretty busy. It was not, as I recall. But I
21 always anticipate that it could be.

22 Q Okay. It wasn't that day?

23 A I don't remember exactly to be honest with you.
24 I don't recall it being super busy, but.

25 Q Okay. I'll ask you this, any prior statement

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 that you gave, you stated that the --

2 MR. MOORE: Your Honor, if he's going to do
3 this, let's have page and line number.

4 MR. GARCIA: I will.

5 BY MR. GARCIA:

6 Q I believe this statement was given two days
7 after the collision; is that correct, Ms. Hunter?

8 A Yes. Whatever it says is probably the most
9 accurate.

10 Q Does say on Line 104 what the traffic was like
11 that day?

12 A It says, I remember thinking there wasn't quite
13 as much traffic as usual.

14 Q Okay. Now, you turn onto West Bramlett -- or
15 excuse me, you turn out off West Bramlett and onto West
16 Blue Ridge Drive, correct?

17 A Uh-huh.

18 Q Is that a yes?

19 A Yes.

20 Q Thank you. Take me through the sequence of
21 events from there, please.

22 A I took a left and, basically, it was just like
23 he -- I don't know if he pulled out or what happened, but
24 I did not see him and, all of a sudden, he was like there.
25 There was no way to avoid him.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 Q Okay. Did you see him at any point?

2 A Not that I recall.

3 Q Did you see him before colliding with him?

4 A I mean, I saw him and I tried to avoid him, but
5 it was like there was hardly any time to react. He was
6 just immediately in front of me almost.

7 Q Let's make sure we're clear on that. The
8 individual that you saw that I continue to refer to, is
9 that the Plaintiff that you see sitting here today?

10 A I believe it was, yes.

11 Q Was he riding a moped?

12 A Yes, he was.

13 Q Okay. As you're merging into the left lane -- I
14 assume you're merging at some point. When you turn onto
15 West Bramlett, do you turn directly into the left lane or
16 is there a point where you're merging over into that left
17 lane?

18 A There is a middle lane that you can merge into
19 the left lane off of. It depends on the traffic. I don't
20 recall exactly now, it's been so long.

21 Q So, you don't know exactly when you merged?

22 A Whatever I said on that day, I'm sure is what
23 happened. Because that was when it was fresh in my mind.

24 Q Okay. As you're merging, are you distracted by
25 anything?

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 A No.

2 Q Are you looking at your phone?

3 A No, I'm not.

4 Q Are you looking at your vanity mirror?

5 A No.

6 Q As you're merging into the left lane, did you
7 bleed over into the right lane at some point?

8 A Like I said, this is like five years ago.
9 Whatever I said, this was the most accurate I can give
10 you. I don't recall now exactly how I merged.

11 Q Okay, we'll put it up then. Okay.

12 The question is, Tell me about the
13 accident.

14 And your response is, I was pulling out
15 from a side street.

16 I'm assuming that side street is West
17 Bramlett that we already discussed; is that correct?

18 A Yes.

19 Q And I was making a left hand turn and I, you
20 know, both ways -- and I remember thinking there wasn't
21 quite as much traffic as usual.

22 Now, when you say both ways, do you mean to
23 say you were looking both ways before you turned out of
24 West Bramlett?

25 A I guess I did. I mean I meant to say what I

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 said.

2 Q Okay. I don't want you to guess and I
3 understand you may not remember. If you don't remember,
4 just tell me.

5 A Right, I did. I said I don't recall exactly
6 because it's been so long.

7 Q Have you traveled this road often?

8 A When I was teaching at that school, yes.

9 Q How long were you teaching at that school?

10 A For three years.

11 Q For three years. And that's a road you travel
12 every day when you leave work?

13 A Yes.

14 Q Yes, okay. I'll continue reading through this.

15 I pulled out making a left-hand turn. I'm
16 looking around and I -- it was like it came out of
17 nowhere. I looked in front of me and I pulled into the
18 far left-hand lane he was just like there. And I swerved
19 to the left to try to miss him and I guess I just kind of
20 hit him with the right-hand front side of my car. And I
21 stopped immediately, I was pretty frantic. He walked up
22 to my car and I called for help.

23 I'll stop there. Is that an accurate
24 representation of what it is that transpired that day,
25 Ms. Hunter?

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 A To the best of my recollection, yes, it is. I
2 mean, there may have -- yeah, that's about it. That's the
3 best of my recollection.

4 Q Is there anything we need to add to that
5 description?

6 A I mean, other than I -- no. I mean, I don't
7 want to add to anything that didn't happen. That's how I
8 remember it happening. It was all blur now. It was
9 upsetting at the time.

10 Q At this time, you don't mention as you merge
11 into the left lane that you bleed over into the right
12 lane; is that correct?

13 A I don't see that there.

14 Q Do you remember bleeding over in the right lane?
15 Are you positive you stayed in the left lane as you merged
16 into the left lane?

17 A I don't recall. I just don't recall right now.

18 Q Okay. Now, as soon as you're finished merging,
19 did you look forward?

20 A I assume so, yes. Yes, I did.

21 Q Okay. As you finished merging and you looked
22 forward, is that when you saw Mr. Burgess, the Plaintiff,
23 in front of you?

24 A He was just suddenly there. I'm not sure where
25 he came from, but he was just suddenly there. I never saw

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 him until it was -- I tried to hit the brakes, I swerved
2 and yet, it just was no time to miss him all the way.

3 Q In what direction did you swerve?

4 A I don't actually recall. I think to the left.

5 Q Okay.

6 A I believe that's what I said at the time and I
7 think that's what happened.

8 Q Now, I want to go back to that question that I
9 asked you because you didn't answer it. You were very
10 close to answering it, though. When you finished merging
11 and you looked forward and you say -- I think your
12 testimony was that he was just right there. Was he right
13 there at that point or is there a period of time where
14 you're on the road for an extended period of time and then
15 you see him?

16 A I was not very far down the road. And it was --
17 it's all such a blur. It was just very traumatic when it
18 happened. I certainly never saw him and he was just
19 suddenly right there in front of me.

20 Q Okay.

21 A By the time I saw him, he was right -- I mean, I
22 was looking right ahead and there he was just suddenly
23 right in front of me.

24 Q You don't remember the time that passed between
25 when you got onto West Blue Ridge Drive and finished

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 merging, the amount of time before you see Mr. Burgess?
2 What I'm looking for from you is it immediately thereafter
3 once you merge into the lane that you made contact with --
4 you look forward and you see him right in front of you and
5 you make contact with him?

6 A It -- honestly, it's such a blur because it was
7 so long ago and the circumstances, it was just a very
8 frantic situation and it's been such a long time. I don't
9 remember exactly.

10 Q I'm going to turn your attention to Line 182
11 here. Now, I'll start at Line 181.

12 You were asked, Did you notice if it
13 knocked him off his moped?

14 And your response is, I'm sure it did. I
15 mean, I hardly saw it even happen.

16 Which I think is consistent what you stated
17 already.

18 Then it says, It was like a flash because,
19 I mean, as soon as I looked forward, it was like he was
20 right there.

21 A Yes, that's what happened.

22 Q Okay. Now, in fact, I'll back up just a little
23 bit to Line 152.

24 It says again, As soon as I looked up in
25 front of me from the turn, he like -- I was just -- he was

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 right in front of me.

2 Is that correct?

3 A I believe that's correct.

4 Q Okay. Did you review this before -- did you
5 review this recorded statement here before testifying
6 today?

7 A Not today. I read through it last night
8 quickly.

9 Q Okay. Is it your testimony that the moment you
10 turn out onto West Bramlett and finish merging onto West
11 Blue Ridge Drive that at that point, you look forward?

12 A If that's what I said at the time, yes, because
13 it's hard to really recall actually it happening now.

14 Q Okay. And your testimony -- or excuse me, your
15 statements here that we are publishing, essentially, to
16 the jury, would that be consistent with the moment you
17 finished merging, you looked forward and there he was?

18 MR. MOORE: Your Honor, this is his witness.

19 He's leading an awful lot here. He needs to ask
20 open-ended questioning rather than testifying, so I'm
21 going to object to the leading.

22 THE COURT: Yeah, try not to lead so much.

23 MR. GARCIA: Okay.

24 BY MR. GARCIA:

25 Q So, I'll turn your attention to Line 266,

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 Ms. Hunter. Again, these are statements you made two days
2 after the collision. Now, if you'll allow me, I'll just
3 start at 266. Actually, I'll back up a little, I'll go to
4 264.

5 It says, There's a little median, you know,
6 that's how people kind of pull out into the median and
7 kind of look and wait for traffic to clear. It was
8 fair -- I thought I had a fairly clean path, but I was
9 still kind of looking to make sure, you know, cars
10 weren't -- and it says it's inaudible there. Then I
11 had -- they were -- it says anything like that, so I was
12 looking around making sure everything was clear. Then I
13 looked in front of me and then it was like he was right
14 there.

15 Is your testimony different today?

16 A No. I mean, that's, basically, it.

17 Q Okay. I'm going to turn your attention to Line
18 300 as well.

19 You were asked, When did you first see the
20 moped driver? That starts at Line 298.

21 And again, it states, I mean, I didn't see
22 him until I pulled out into that left-hand lane and looked
23 in front of me and there he was. It was like he came out
24 of nowhere.

25 Again, is that your testimony today?

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 A Yes.

2 Q Okay. Do you remember when I took your
3 deposition?

4 A I do.

5 Q Do you remember the questions from the
6 deposition?

7 A I read through them quickly last night, but I
8 don't remember them in detail. I did not memorize them.

9 Q Okay. Okay. I asked you -- well, I'll ask you
10 like this. And I think you've already responded, but I'm
11 just making sure I'm laying a proper foundation here
12 before I just start referencing your deposition, okay. I
13 asked you in your deposition how far down the road you
14 were when you hit him or something along those lines.
15 That's deposition Page 21, Lines 14 through 19.

16 Now, starting at -- now, on Page 21, we'll
17 start at Line 11, Ms. Hunter and ask you did you stop and
18 kind of look around and see what had happened or did you
19 just drive right by it? I think my question was, Had you
20 been at some point around that area since the collision?

21 And your response, starting at Line 14 is,
22 Well, I drove and I looked to see, but I just can't recall
23 exactly. It was not far down the road I didn't think.

24 Is that consistent with your testimony
25 today, Ms. Hunter?

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 A I don't recall this question. But yes, I would
2 think so, yes.

3 Q Okay. If you read a little bit further, it
4 says -- In fact, I simply say okay to you.

5 And your response was, Because I had just
6 gotten into that lane.

7 Is that again consistent with your
8 testimony today?

9 A Yes, that's what I said.

10 Q Now, do you remember where you made contact with
11 Mr. Burgess?

12 A No, not exactly. I don't believe it was very
13 far down the road at all.

14 MR. MOORE: Where in the road or where on the
15 vehicles?

16 MR. GARCIA: Thank you for the distinction.

17 BY MR. GARCIA:

18 Q When I say where, in what location on the road
19 you made contact with Mr. Burgess, do you remember that?

20 A It wasn't very far down after I pulled out. Is
21 that what you mean?

22 Q Yes, ma'am, it is. Do you remember if it was
23 near the gas station?

24 A Not exactly, but yes, I would assume it was not
25 far from there.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 Q Do you know if it was before the gas station or
2 after?

3 A I cannot recall now.

4 Q Okay. I'll turn your attention to Page 17, Line
5 1 through 12 of your deposition, Ms. Hunter.

6 MR. MOORE: I'm sorry, what lines? What lines?

7 MR. GARCIA: That would be 1 through 12.

8 BY MR. GARCIA:

9 Q And I ask you, There's a Hot Spot there,
10 correct?

11 And your response was, Yes.

12 Then I ask you, Do you remember if you were
13 beyond the Hot Spot?

14 Your response was, I cannot recall exactly.

15 I say to you, Okay, fair enough.

16 And your response was, It was around that,
17 yes.

18 And I said, Okay, again.

19 Then you responded, It was probably around
20 the Hot Spot.

21 Again, is that consistent with your
22 testimony today?

23 A That was the best of my recollection at the
24 time.

25 Q Okay. I'm done with the deposition. Having

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 refreshed your memory with some of the statements you made
2 immediately -- or I say maybe two days after the collision
3 and then again just going over some of your responses in
4 your deposition, I'm going to ask you this question again,
5 okay. As you merge into the left lane, heading down West
6 Blue Ridge Drive, do you continue to merge and bleed into
7 the right lane?

8 MR. MOORE: Your Honor, he's gone over this
9 territory several times now.

10 MR. GARCIA: That question was before we
11 refreshed her memory with some of the statements she
12 previously made, Your Honor.

13 THE WITNESS: I feel like you keep asking me the
14 same question.

15 THE COURT: Wait a minute, ma'am.

16 Ask once more, but let's move along.

17 MR. GARCIA: Okay.

18 BY MR. GARCIA:

19 Q I'll ask you again, Ms. Hunter, as you merged
20 into the left lane, did you continue to merge and bleed
21 into the right lane?

22 A I did what I testified to. I feel like you've
23 asked me a lot of times. I don't recall exactly, but at
24 the time, my memory was much fresher, so what I said at
25 the time would be what happened to the best of my

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 recollection.

2 Q Are you traveling down West Blue Ridge Drive in
3 the left lane only immediately before the collision
4 occurs? Are you in the middle of your lane?

5 A I would assume I was, yes. I don't recall
6 exactly now. I know he just came out of nowhere once I
7 was over there. That's the best I recall.

8 Q What speed are you traveling at this point?

9 A I could not have been doing very fast because it
10 was not far down the road. I don't recall exactly. I
11 think the speed limit is 45. I'm pretty sure I was not
12 going that speed at the time.

13 Q Would you say you were going somewhere between
14 40 and 45 miles per hour?

15 A It's possible, I don't recall.

16 Q Okay. I'll turn your attention to deposition
17 Page 22, Line 22 through 24.

18 MR. MOORE: Your Honor, he's going to be asking
19 the same question yet again by virtue of this. So,
20 I'm going to object to repeating the same question
21 over and over again.

22 THE COURT: Right. The other thing is, ask her
23 the question, if she doesn't respond the way she has
24 in the past, then you can impeach her with the
25 deposition. Let's don't go through the whole

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 deposition again.

2 MR. GARCIA: Fair enough.

3 THE COURT: Okay.

4 BY MR. GARCIA:

5 Q You testified just earlier that you traveled
6 this road very often; is that correct?

7 A Yes, back then, I did.

8 Q If your testimony is that you were traveling
9 somewhere between 40 and 45 miles per hour, can we trust
10 you on that? Do you know what 40 or 45 miles per hour
11 looks like?

12 A Yes, I absolutely do. But as I said, that whole
13 incident is a blur to me because it was a very traumatic
14 thing when it happened. I was extremely upset about it.
15 My recollection of it is all kind of a blur. My best
16 recollection was right after it happened -- it's nothing I
17 try to think about often because it's very upsetting to
18 me. I certainly tried to avoid hitting him. I don't know
19 where he came from.

20 Q Okay.

21 A And I was -- I don't recall exactly at this
22 moment how fast I was going. I'm trying to remember to
23 the best of my recollection. I believe that's possible I
24 could have been going that fast. I don't believe I was
25 going very fast because I wasn't that far down the road.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 Q Did you previously testify that you were
2 traveling somewhere between 40 and 45 miles per hour?

3 A I believe I said that was possible in there.

4 Q When you turned and looked forward and see
5 Mr. Burgess, can you tell me about how far in front of you
6 Mr. Burgess is?

7 A Not exactly. It was like he was pretty close
8 and I tried to avoid him and.

9 Q When we say pretty close, can you give me your
10 definition of what pretty close is?

11 A I don't recall exactly how close he was to me.
12 He was pretty close to me, but I can't give you feet,
13 inches, I'm not sure exactly.

14 Q Well, I'm simply asking for your definition of
15 what pretty close is. Is pretty close outside of this
16 courtroom? Can you tell me that?

17 A It depends what you're referencing, what the
18 context is, but he was not -- you know, I don't recall
19 exactly how far away. It just seems like he came upon me
20 like boom.

21 Q Well, we know the context, right, because I'm
22 asking you about this particular --

23 A No, that would be -- he was closer than that.

24 Q Would it be where I am right now?

25 A I don't recall exactly.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 Q Are you positive it's closer than the edge of
2 this courtroom?

3 A I think so.

4 Q Is there somewhere in between that you can put
5 me there?

6 A No.

7 Q So, at a maximum, you're at the edge of this
8 courtroom?

9 A I don't recall.

10 Q Okay.

11 A I mean, I don't recall.

12 Q I thought that was just your testimony, that the
13 maximum would have been -- you were closer than the edge
14 of this courtroom, is that not correct?

15 MR. MOORE: Your Honor, he's rephrasing old
16 ground. She's answered the question.

17 THE COURT: She just said she couldn't recall.
18 So, there you are.

19 MR. GARCIA: Your Honor, I believe the testimony
20 before that was that it was closer than the edge of
21 the courtroom.

22 THE COURT: Mr. Garcia, time to move on with
23 this.

24 MR. GARCIA: Okay.
25

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 BY MR. GARCIA:

2 Q Do you know how much time you had to react from
3 the moment you saw him?

4 A Not much.

5 Q How much time between when you saw him and the
6 collision occurred?

7 A I can't tell you exactly.

8 Q Okay. Can you tell a second?

9 A I don't know exactly because it all happened so
10 fast. Like I said, it's kind of all a blur. It was like
11 it just sort of happened in slow motion and I -- it's just
12 a blur.

13 Q Okay. And you can't -- so you don't know how
14 much time passed --

15 A Not much, not much. It was probably seconds.

16 Q Seconds. Okay. I want to clarify that. Is it
17 seconds between the moment you see him and the collision
18 or the moment you see him and you react?

19 A I don't know how to answer that. I mean, I'm
20 not sure. Like I said, it's all a blur.

21 Q Okay. Now, the time you see him, you're right
22 on top of him; is that fair?

23 A It was -- there wasn't enough time to avoid him,
24 I tried to.

25 Q Okay. Do you have anything wrong with your

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 vision, Ms. Hunter?

2 A No, I've never been in an accident like this
3 ever. I do not. Other than distance a little bit,
4 stigmatism, which has gotten worse since then.

5 Q If you were staring at the edge of this
6 courtroom, can you still see this wall over here from your
7 peripheral vision?

8 A Yes.

9 Q How about that wall over there, same thing?

10 A Yes.

11 Q Okay. And were you required to wear glasses?

12 A No, at the time, I was not.

13 Q Are you now?

14 A No.

15 Q Now, at this point, you're still focused on the
16 road. You're not distracted by your phone, are you?

17 A No, I'm not.

18 Q What direction is Mr. Burgess traveling when you
19 see him?

20 A I was believe he was going the same way.

21 Q Straight?

22 A I believe so.

23 Q Okay.

24 A He was in front -- somehow got in front of me.

25 Q Okay.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 MR. GARCIA: Now, Your Honor, if I may publish
2 an admission to the jury at this time? May I just
3 simply post an admission?

4 MR. MOORE: He has a request for an admission, I
5 think he wants to publish it and I don't object to
6 that.

7 THE COURT: Okay.

8 MR. GARCIA: Is that fine?

9 BY MR. GARCIA:

10 Q Now, this is an admission. I simply ask you to
11 admit or deny that Defendant -- or you swerved your
12 vehicle to the left immediately before making contact with
13 Mr. Burgess and it's admitted; is that correct?

14 A To the best of my recollection, yes, I think so.

15 Q Okay. What part of your SUV makes contact with
16 Mr. Burgess?

17 A Well, I mean, the right front end it looks like
18 because you had pictures up early.

19 Q Okay. We'll put those pictures up now of the
20 BMW.

21 MR. GARCIA: Your Honor, I'd like to move these
22 three pictures into evidence.

23 MR. MOORE: No objection.

24 THE COURT: All right, without objection.
25

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 (WHEREUPON, Plaintiff's Exhibits Nos. 1-3 were
2 marked for identification and received into
3 evidence.)

4 BY MR. GARCIA:

5 Q Now, Ms. Hunter, I'm going to show these images
6 on the screen up there. I'll put these here for your
7 benefit as well. Are those photos an accurate
8 representation of what your BMW looked like following this
9 collision?

10 A Yes.

11 Q Now, after making contact with Mr. Burgess, do
12 you remember -- I'm assuming, at some point, you came to a
13 stop?

14 A Yes.

15 Q Okay. Do you remember what direction your
16 vehicle is facing? Is it still facing the same direction
17 you're traveling in?

18 A I believe it was, yes.

19 Q It wasn't facing any other direction?

20 A No.

21 Q Okay. Was Mr. Burgess knocked off his moped?

22 A I did not see him. I assume he was. But when I
23 jumped out the car and started running to help him or just
24 see if I could help him, he was already up walking towards
25 me.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 Q Okay. You were asked, Did you see him laying on
2 ground?

3 Your response is, I never saw him hit the
4 ground. I mean, I'm assuming, certainly, he must have
5 been at some point because it knocked him off his bike.

6 Is that consistent with your testimony
7 today?

8 A Sounds right, yeah.

9 Q Okay. What did he do next?

10 A He walked towards me and asked me if I would
11 call 911 and I told him I had. And then, he sat in my
12 car. He made a phone call to, I don't know if it was his
13 wife or somebody. I, again, called 911 to see where they
14 were. And they spoke with him, I believe, over my
15 bluetooth in my car. And maybe they had me ask him
16 questions, I can't recall exactly.

17 Q Okay. So, when you called 911?

18 A That was the second -- I called them again.

19 Q Okay. And 911 --

20 A When he was in the car to see where they were
21 at.

22 Q And 911 may have been asking him questions
23 directly?

24 A I can't recall if they asked me to ask him or
25 they were speaking to him. Because he was also talking to

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 somebody else on the phone at some point.

2 Q Okay. Did he have blood on his face?

3 A He had some blood on his, if I recall right,
4 maybe above his eye or something. Not a tremendous amount
5 at that time.

6 Q Okay. Okay.

7 MR. GARCIA: Your Honor, I'd like to move these
8 into evidence, please.

9 MR. MOORE: No objection.

10 THE COURT: Without objection.

11 (WHEREUPON, Plaintiff's Exhibits Nos. 4-5 were
12 marked for identification and received into
13 evidence.)

14 BY MR. GARCIA:

15 Q Ms. Hunter, these are two exhibits that we've
16 marked as P4 and 5. These are pictures of Mr. Burgess'
17 face. Is that consistent with how Mr. Burgess looked at
18 the time he's approaching your vehicle?

19 A No, he did not look quite this bad at the time.
20 I don't recall him looking like that at all. But maybe
21 he -- this looks like it was sometime after.

22 Q Okay. We'll put those up. Did you let him sit
23 in the back of your vehicle?

24 A I did.

25 Q Do you know if he was sitting or lying down?

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 A I believe he was sitting.

2 Q Okay.

3 A He was sitting.

4 Q How long did he stay in your vehicle?

5 A Until the ambulance got there.

6 Q Okay. How long did that take?

7 A I can't recall exactly.

8 Q Do you know if the fire department and police
9 department arrived first?

10 A I do not remember now. It's just a blur.

11 Q Okay. You don't know who tended to him first,
12 whether it was EMS, or whether it was the fire department
13 or anything along those lines?

14 A I remember them putting him in the ambulance. I
15 was just very upset at the time and just wanted to know if
16 he was going to be okay. I was just really kind of in
17 shock.

18 Q Okay. This is the ambulance report for the
19 collision that we're here about.

20 A I remember the ambulance taking him.

21 Q You'll see right under where it says, scene
22 information. Says, Arrived on scene and found 43-year-old
23 male driver of moped conscious and breathing being secured
24 with a long spine board. Also says, Other agencies fire
25 and law.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 Would you agree based on what it says right
2 here, Ms. Hunter, that the fire department and the police
3 officers arrived before the ambulance had arrived?

4 A That's certainly possible. I just don't really
5 recall exactly when and who was there.

6 Q Okay. When the emergency vehicles had arrived,
7 had you moved your vehicle from its resting location?

8 A I did not move my vehicle until the highway
9 patrol officer got there. And he arrived, I believe after
10 Mr. Burgess was already left in the ambulance.

11 Q Okay. At that point, is the moped still where
12 it landed?

13 A It was still out there. I don't know if that's
14 exactly where it landed. I assume it was, I really don't
15 know, though, for sure.

16 Q Did you see anybody move the moped?

17 A No, but I was pretty frantic and the police were
18 talking to me and trying to calm me down and trying to
19 find out what happened. It was a pretty chaotic
20 situation.

21 Q Okay. If I asked you if you remember where the
22 police officer or fire department parked their vehicles,
23 would you be able to give me a response?

24 A Which ones? There were a lot of them.

25 Q Were there any parked in front of you, in front

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 of where your vehicle was?

2 A I don't remember. I would assume so just to
3 kind of alert traffic to the accident, but I don't
4 remember exactly where they were. They were just all
5 around.

6 Q There were many vehicles around?

7 A Several, at least.

8 Q Okay. Now, your testimony I believe earlier is
9 that your vehicle is still facing in the same direction
10 you were traveling when the collision occurred?

11 A I believe it was, yes.

12 Q Okay. Do you know where the ambulance that
13 transported Mr. Burgess parked?

14 A Not exactly. Somewhere around where it
15 happened, I suppose.

16 Q Do you know if it was parked in front of you or
17 behind you?

18 A I really can't recall.

19 Q Okay. I am going to put this overhead shot on
20 the board here.

21 MR. GARCIA: And I'm also going to move this
22 into evidence at this time, Your Honor.

23 MR. MOORE: No objection.

24 THE COURT: Without objection.
25

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 (WHEREUPON, Plaintiff's Exhibits Nos. 6 was
2 marked for identification and received into
3 evidence.)

4 BY MR. GARCIA:

5 Q Ms. Hunter, if it's easier for you to see this
6 board versus what's on the screen over there, let me know
7 and I will turn this into your direction as well, okay?

8 A Okay.

9 Q Is this an accurate representation of just kind
10 of an overhead shot of the scene of the collision?

11 A I suppose.

12 Q Okay. I'm going to try to point out some spots
13 here for you. It says West Bramlett Road?

14 A I see where that is, yes.

15 Q Is this where the Hot Spot would be? I know
16 it's marked Hot Spot.

17 A I don't think the accident was quite that far
18 up, though.

19 Q Okay.

20 A Is that where you're saying it happened?

21 Q No. That's a fair question. I'm simply asking
22 you if this is, indeed, the Hot Spot?

23 A It looks like it, yes.

24 Q Okay. And if you continue traveling this road,
25 that I believe we've already established you're very

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 familiar with, was there a Family Dollar somewhere over
2 here before you get to where it says Whitehorse Road here?

3 A I mean, when you say I'm very familiar, yes, I
4 did travel that path daily, but it's been several years
5 ago that I taught at that school. And I didn't ever stop
6 at any of those places. I was pretty much -- it's not
7 somewhere I lived and really was there very often and it's
8 hard to recall if there was a Family Dollar there. I
9 think there was, that sounds right.

10 Q Do you remember if there was a Goodwill here?

11 A That sounds right. When you say that, that
12 sounds familiar. It probably was.

13 Q Do you remember if there was a Bi-Lo over here?

14 A I don't recall that. That sounds familiar, too,
15 though. I do believe it was probably was. I never
16 shopped there.

17 Q I don't think it's a Bi-Lo anymore, but at the
18 time it may have been a Bi-Lo; is that correct?

19 A I don't recall for sure. I don't want to say
20 when I'm not 100 percent positive it was a Bi-Lo. But if
21 you say so and that's what it was, that's what it is.

22 Q Okay. I'm going to go ahead and mark this board
23 here. And while I'm doing that, I want to put a video up
24 on the screen for you, Ms. Hunter.

25 Okay, what I want to do first, Ms. Hunter,

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 is just play you through the video, just let you watch it
2 from start to finish.

3 THE COURT: Is this in evidence?

4 MR. GARCIA: I would like to move it into
5 evidence, yes. I was going to have her authenticate
6 it first.

7 MR. MOORE: It's okay. I don't have any
8 objection to it. He's just simply showing the route.

9 THE COURT: Okay. You object to it being
10 admitted as evidence?

11 MR. MOORE: No, no.

12 THE COURT: Okay. All right. We'll mark it
13 later. Go ahead, play it.

14 MR. GARCIA: Thank you.

15 Go ahead and play that video.

16 (WHEREUPON, the video was published.)

17 BY MR. GARCIA:

18 Q Now, is this West Bramlett?

19 A Looks like it.

20 Q Okay. Now, this video appears to stop right
21 before we get to Whitehorse Road; is that correct,
22 Ms. Hunter?

23 A Yes. It happened way before that point.

24 Q I simply want to establish if this is an
25 accurate representation of --

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 A Yes.

2 Q Is it?

3 A It looks like the road.

4 Q Is there anything different about this -- and
5 when I say different, I mean the lighting. Is it
6 brighter, is it darker at the time of the collision?

7 A It may have been a little bit, but it was still
8 daylight.

9 Q Okay.

10 A It was beginning to get a little dark, but it
11 was still light.

12 Q But it was still light?

13 A By the time the highway patrol got there, it was
14 dark, but it was light when everything happened.

15 Q Okay. Were the roads wet at the time of the
16 collision?

17 A Not that I recall. I don't believe so.

18 Q Okay. What about the traffic? Was the traffic
19 similar, the traffic you were dealing with that particular
20 day?

21 MR. MOORE: Your Honor, again, he's treading old
22 ground, like we talked about the traffic before.

23 THE COURT: All right. Don't repeat yourself,
24 please.

25

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 BY MR. GARCIA:

2 Q I'm going to back it up again for you,
3 Ms. Hunter, just from the very beginning. And what I'm
4 going to do is I want to press play once you turn out
5 here. And I'd like for you to tell me or stop me at the
6 point where you completed merging?

7 A I don't recall that. That's going to be hard
8 for me to do to tell you exactly. I made that trip a lot
9 and --

10 Q Okay.

11 A That whole thing was just a blur to me. I was,
12 like I said, kind of in shock and disbelief.

13 Q Okay, we'll try this then. Let's play the video
14 and we'll turn out onto West Bramlett. And before there's
15 any merging, I'll have the video paused for a moment.

16 (WHEREUPON, video was published.)

17 Q Now, do you normally merge around this spot
18 right here?

19 A I guess so. It's been several years since I
20 made that journey.

21 Q I simply want to ask you whether you merged --
22 if you can tell me at the point in which you merged here?

23 A I can't tell you exactly --

24 MR. MOORE: He's going over and over again --

25 THE COURT: Wait, wait.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 He's objecting this is asked and answered.

2 Is that what you're saying?

3 MR. MOORE: Yes, sir.

4 THE COURT: I'll let one time on this, then
5 we're going to move on from this issue.

6 MR. GARCIA: Okay.

7 BY MR. GARCIA:

8 Q So, I'll ask you again, do you remember where it
9 is that you merged here?

10 A I don't recall exactly and I really don't want
11 to try to guess because I want to be accurate.

12 Q Okay. There you go. - Okay. Press play again.

13 (WHEREUPON, video was continued.)

14 Q Now, I believe you testified earlier as you were
15 looking at this video that it happened way before this
16 point?

17 A I mean way before the end of it.

18 Q Can you tell me where the collision occurs? Can
19 you stop me at that point?

20 A No. I mean, somewhere around there.

21 Q Somewhere around where it's paused right now?

22 A I think so, but, I mean, I can't be 100 percent
23 sure.

24 Q Okay.

25 A It could have been further, it could have been

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 less. I really just don't recall. I don't want to guess
2 and not be accurate.

3 Q Well, I believe you testified earlier that the
4 moment you turned after merging, the moment you looked
5 forward after merging --

6 THE COURT: We've plowed this ground, let's move
7 on. This is going to -- we're wasting time.

8 BY MR. GARCIA:

9 Q Did the collision happen near the Hot Spot,
10 Ms. Hunter?

11 MR. MOORE: Your Honor, again, this has been
12 gone over time and time again.

13 THE COURT: Mr. Garcia, she's already responded
14 to this. She doesn't remember. She's not sure.

15 MR. GARCIA: Your Honor, I need to be able to
16 lay a proper foundation to what it is that she's
17 testified previously. If she responds that no, it
18 didn't happen near the Hot Spot, then I have prior
19 testimony of hers that suggest that it does.

20 THE COURT: Well, you're not testifying, okay.
21 If you have prior testimony with respect to where the
22 accident occurred, you've laid the foundation.

23 MR. GARCIA: Okay.

24 BY MR. GARCIA:

25 Q I'll turn your attention Ms. Hunter to your

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 deposition, Page 17, Lines 1 through 12.

2 MR. MOORE: You're starting with an answer.

3 Don't you want to start with the question, previous
4 page?

5 BY MR. GARCIA:

6 Q Sure, we'll start on Page 16, Line 23. And you
7 were asked, Do you remember at what point on West Blue
8 Ridge Drive you made contact with my client's moped?

9 A And I said, Not exactly.

10 Q Okay. If we continue, I ask you, There's a Hot
11 Spot there; is that correct?

12 Your response was, Yes.

13 Correct?

14 A Okay.

15 Q Then I ask you again, Do you remember if you
16 were beyond the Hot Spot.

17 Your response was?

18 A I don't -- I can't recall.

19 Q Then I asked -- I said, Okay, fair enough.

20 What's your response after that?

21 A Okay. It was around that, okay.

22 Q And then you reply again after I say okay, what
23 is your response there?

24 A Probably around the Hot Spot. But I mean, I
25 don't believe I answered you with certainly and I'm still

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 not certain, but it could have been.

2 Q Okay. Do you know where you were parked when
3 you dialed -- when you called 911?

4 A Wherever I stopped the car.

5 Q Okay. Can you point that -- would you be able
6 to point that out for me if I put a map up for you?

7 A No, not with certainty.

8 Q Okay. Can you tell me anywhere -- I believe
9 you've answered this, but I want to make sure I give you
10 the benefit of being able to see this image. Can you
11 point to the location of where the collision occurred,
12 Ms. Hunter?

13 MR. MOORE: Your Honor, she's already said she
14 doesn't know.

15 THE WITNESS: No.

16 BY MR. GARCIA:

17 Q So, I will -- I'd like to play for you the 911
18 calls if I can, okay?

19 A Sure, go for it.

20 (WHEREUPON, 911 call was published.)

21 Q There's one other 911 call, but let me ask you
22 some questions about this 911 call. Did you mention that
23 the collision was near the Hot Spot?

24 A I don't -- did I? I mean, I said before the
25 Bi-Lo, so.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 Q Okay.

2 A I guess that's where it happened if that's what
3 I said at the time. But I know I misspoke, it wasn't
4 Whitehorse Road. I was just frantic at the time. I guess
5 that's why I said that.

6 Q Did you mention the Family Dollar and the
7 Goodwill?

8 A I said before the Bi-Lo and the Family Dollar,
9 right, yeah.

10 Q Okay.

11 A So, it was likely somewhere around the Hot Spot.

12 Q And that's clearly your voice on those 911
13 recordings?

14 A Yes.

15 Q Okay. This is the second call to 911.

16 (WHEREUPON, 911 call was published.)

17 BY MR. GARCIA:

18 Q You initially said in both of the calls
19 Whitehorse Road?

20 A Yeah, I confused the roads.

21 Q Okay. On that second call, I'll ask you again,
22 did you say you were near the Family Dollar and Bi-Lo?

23 A I said I was near there.

24 Q Did you mention the Hot Spot?

25 A I don't know. I don't remember. It was hard to

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 listen to it.

2 Q Okay. Now, I want to show you this EMS note
3 again, Ms. Hunter. There's a spot here that says location
4 of the vehicle. Location of EMS where it stopped. The
5 location is 3204 West Blue Ridge Drive in Greenville,
6 South Carolina.

7 A Okay.

8 Q Do you know where 3204 is?

9 A Not exactly off the top of my head. It's
10 somewhere along there, I'm assuming, that's why you're
11 showing it.

12 Q Fair enough. Can we agree it's on West Blue
13 Ridge Drive?

14 A Yes. I had the Whitehorse confused with it.

15 Q I understand. If I told you that 3204 West Blue
16 Ridge Drive was right here, would you agree with me on
17 that?

18 A I mean, I assume you're telling the truth about
19 that, so okay.

20 MR. GARCIA: Mr. Moore, can we agree that 3204
21 West Blue Ridge Drive is right here?

22 MR. MOORE: Yes.

23 MR. GARCIA: Where that dot is?

24 MR. MOORE: Yes, sir.

25 MR. GARCIA: Yes, sir.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 THE COURT: Okay.

2 MR. GARCIA: Now, Your Honor, I'd like to play
3 the audio of a 911 call made by an individual who was
4 not -- she's unidentified.

5 MR. MOORE: We have a problem with that. We
6 probably need to take this up outside the jury.

7 THE COURT: Okay.

8 Ladies and gentlemen, it's probably a good time
9 for an afternoon break. We'll get back with you in
10 just a few minutes.

11 (WHEREUPON, the jury left open court at
12 approximately 3:00 p.m.)

13 THE COURT: I tell you what, I'm going to tell
14 the jury I have instructed you not to stand up when
15 they come in and out, okay. Do you a favor.

16 MR. GARCIA: Thank you.

17 MR. MOORE: The information he's trying to put
18 in now is another 911 tape, but this is not from a
19 party. This is from an outside, actually, an unknown
20 lady. We have a first name, that's it. She is going
21 to give some information that is substantive so that,
22 number one, it's an outside court statement, which is
23 being introduced for the truth of the matter
24 asserted, hearsay. So, we object on that ground.

25 Now, I think anticipating what he's going to

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 say, there's an exception to the hearsay rule with
2 regard to somebody's immediate impression. But that
3 rule only goes so far to where they don't have time
4 to think about what they're saying. Obviously, this
5 lady is thinking about what she's saying when she
6 gives information about what the accident is and that
7 type thing.

8 So again, we feel like it's hearsay and it's
9 inadmissible.

10 MR. GARCIA: I appreciate the anticipation,
11 that's one of the exceptions. The other is that the
12 witness isn't available at all. There's no way of
13 identifying her. It's certainly relevant because the
14 witness, essentially, states that she standing on
15 Leome. She's called 911, I'm standing on Leome and I
16 see a collision or an injury or -- I don't remember
17 exactly how she described it. Essentially, she says
18 she's looking in this direction and she sees what is
19 happening at that moment and simply describes it to
20 911 and asking for someone to get out.

21 Now, I suggest that there isn't anybody there
22 yet, that there aren't any emergency vehicles there
23 yet. So, essentially, she's describing at that
24 moment what it is that she sees.

25 MR. MOORE: And again --

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1 THE COURT: How is that an exception? How do
2 you get it in through this witness? She's got
3 nothing to do with the other phone call. You know,
4 you have the 911 person who's subpoenaed to testify
5 to authenticate it?

6 MR. GARCIA: There's no issue with
7 authentication because the authenticity of the
8 recordings were already admitted via prior admission.
9 So, there aren't any --

10 MR. MOORE: Authenticity is admitted.

11 THE COURT: Okay. Well --

12 MR. MOORE: It still doesn't address my issue
13 with that in that it is hearsay. I don't think these
14 hearsay exceptions he's citing really apply here.

15 MR. GARCIA: I think you asked me how it is I
16 get it in through this witness. While the witness
17 doesn't remember where the collision occurred, I've
18 gone painstakingly through that.

19 THE COURT: Yeah, we've noticed that. So,
20 you're going to try to impeach her with somebody
21 else's testimony?

22 MR. GARCIA: No, I wouldn't say it's
23 impeachment, I'm simply publishing to the jury a
24 witness that we don't have available to us. And
25 it's, essentially, describing where it is that it

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 occurred. Now, whether that refreshes Ms. Hunter's
2 memory or not, I don't know. We won't know until we
3 play it.

4 MR. MOORE: Judge, I think that exception to the
5 hearsay rule with regard to the unavailable witness
6 is for a witness you know. They either passed away
7 or they're more than a hundred miles away or
8 something to that effect, which doesn't apply because
9 we don't have a clue who this lady is. There's no
10 way for us to have examined her. So, we can't
11 protect ourself with regard to what she says.

12 MR. GARCIA: Again, Your Honor, the authenticity
13 of the recording isn't a problem.

14 THE COURT: He's knowledgeable it's authentic. So,
15 that's not an issue.

16 MR. GARCIA: Rule 803, Your Honor, states that
17 the following are not excluded by the hearsay rule
18 even though the declarant is available as a witness.
19 Even if the declarant was available as a witness, we
20 have, number one, a statement describing or
21 explaining an event or condition made while the
22 declarant was perceiving the event or condition or
23 immediately thereafter.

24 THE COURT: You're looking at 803(1) or 803(2)?
25 What are you looking at?

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 MR. GARCIA: 803(1).

2 THE COURT: Let me just ask you, what is the
3 importance of where this happened? Why is this such
4 a big issue?

5 MR. GARCIA: I know that may not seem like an
6 issue to you right now, Your Honor, but if you allow
7 me to establish, there's been some discussion about
8 the collision occurring all the way back here. In
9 fact, today, you even heard that there's -- arguably,
10 that Mr. Hunter [verbatim] turned out of the Hot Spot
11 directly in front of Ms. Hunter. That Mr. Burgess
12 turned out of the Hot Spot directly in front of
13 Ms. Hunter. But if we have a witness standing on
14 Leome all the way over here and she's looking toward
15 Whitehorse Road, that puts us way down the road. And
16 that's going to be an issue that we have to address
17 with our expert. We have to address with their
18 accident reconstruction expert. That is a very
19 significant issue.

20 And I can understand why it's not obvious at the
21 onset, but it will be obvious as this case develops.
22 And I will remind you this is the first witness I've
23 called. I just haven't had the chance to establish
24 that. The location of this collision is extremely
25 important, especially when we're talking about an

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 individual coming out of a Hot Spot and making
2 contact with -- that there wasn't time to react, that
3 it happened shortly after she turned out of West
4 Bramlett Road and merged on. So, maybe it's all
5 coalescing at this point that we have all these
6 issues that we're trying to establish where it is
7 that the collision occurred when Ms. Hunter's prior
8 statement was that she turned forward and there it
9 was, but we kind of need to know where it is that she
10 merged to be able to establish that. Then we need to
11 talk about where it is that the collision actual
12 occurred. Extremely important.

13 MR. MOORE: Judge.

14 THE COURT: Yeah.

15 MR. MOORE: Of course, I don't agree with him as
16 to the importance, but I understand his theory on it,
17 so. It still doesn't address this particular issue,
18 though. This is someone -- we don't know who it is.
19 We don't know what the circumstances are as to why
20 she's saying it. It's just pure hearsay.

21 THE COURT: There's no doubt about that.

22 MR. GARCIA: I don't deny that it's hearsay,
23 Your Honor.

24 THE COURT: And there is no opportunity for
25 cross-examination. There is no opportunity to

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 determine the condition of the witness at the time
2 she was presenting this. No way to examine the
3 reliability of the statement. And you are -- there's
4 no doubt that you're putting it in for the truth of
5 the matter asserted in the statement.

6 MR. GARCIA: No doubt about that at all.

7 THE COURT: So, it's --

8 MR. GARCIA: Can I respond to that, Your Honor?
9 Just regarding the reliability of the statement
10 itself?

11 THE COURT: Yeah, you can respond.

12 MR. GARCIA: Isn't that the purpose of 803 and
13 exception to the hearsay rule, that it's clouded --
14 or, at least, that there's a sense of reliability of
15 the statement itself? That's precisely why it is an
16 exception.

17 THE COURT: You're talking about presence sense
18 impression?

19 MR. GARCIA: Absolutely.

20 THE COURT: Or excited utterance?

21 MR. GARCIA: No, presence sense impression.
22 Essentially, that's the concern. I understand that
23 we don't -- the witness isn't available, she can't be
24 cross-examined. I agree with you on all those issues
25 because well, it's clearly hearsay. But the issues

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 that we seem to be concerned about --

2 THE COURT: What is the time of the phone call?

3 MR. GARCIA: The time of the phone call?

4 MR. MOORE: Are we beating a dead horse here?

5 THE COURT: It feels like it.

6 MR. MOORE: I've already conceded it's where
7 that little box is. And all this is is duplicating,
8 to some extent, that testimony.

9 MR. GARCIA: Well --

10 MR. MOORE: Why get into this effort when it's
11 questionable as to the testimony when you've already
12 got it in evidence?

13 MR. GARCIA: I would concede to this issue, Your
14 Honor, if we can also agree that experts that
15 typically rely on 911 calls can rely on this
16 particular 911 call as well.

17 THE COURT: I -- don't ask me to come to an
18 agreement about something. I'm going to make the
19 ruling on this.

20 MR. GARCIA: No, no, I'm not -- okay.

21 THE COURT: What was the time of the phone call?
22 911 has a time. What is it in relation to the phone
23 call by Ms. Hunter?

24 MR. GARCIA: If I'm being perfectly honest with
25 you, Your Honor, the phone call is time stamped at a

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 time that's even before the call that Ms. Hunter
2 made. The time stamp is 17:40:56.

3 THE COURT: Okay. And when is the call that
4 Ms. Hunter made?

5 MR. GARCIA: 17:41:48.

6 THE COURT: The first one was what?

7 MR. GARCIA: 17:40:56.

8 THE COURT: So, it's within a minute?

9 MR. GARCIA: Yes, sir, it's within a minute.

10 THE COURT: Well, play it out of the presence of
11 the jury so I can hear it. Let me hear what it says.

12 (WHEREUPON, a 911 call was published.)

13 THE COURT: Well, the 403 analysis, I'm going to
14 let it in for what it's worth.

15 Remember where that comes from, right?

16 MR. MOORE: Yeah.

17 THE COURT: Judge Eppes.

18 Okay.

19 MR. MOORE: That's fine.

20 THE COURT: Anybody need a short break?

21 How much longer are we going to go? You're
22 taking way too long on these witnesses. You're
23 beating a dead horse.

24 MR. GARCIA: Well --

25 THE COURT: I'm just telling you, I'm not asking

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 for a response. You need to speed this up.

2 Does anybody need a break?

3 MR. GARCIA: I'm fine.

4 MR. MOORE: Katherine, you okay?

5 THE COURT: Okay, let's go.

6 Bring the jury.

7 (WHEREUPON, the jury came into open court at

8 approximately 3:13 p.m.)

9 THE COURT: All right, go ahead.

10 BY MR. GARCIA:

11 Q Okay. I'm simply going to play for you a 911
12 recording of an unknown individual who called 911 just
13 slightly before you had called 911, okay?

14 (WHEREUPON, a 911 call was published.)

15 BY MR. GARCIA:

16 Q Ms. Hunter, do you see Leome right here?

17 A Yes.

18 Q Okay. You hear that recording?

19 MR. MOORE: Your Honor, the recording speaks for
20 itself. Now, he's trying to get her to interpret it.

21 THE COURT: Right.

22 This is juror argument.

23 MR. GARCIA: Fair enough.

24 THE COURT: Ask her the questions.

25 MR. GARCIA: Okay.

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 BY MR. GARCIA:

2 Q Does that recording refresh your memory at all
3 about where it is this collision occurred?

4 A It doesn't. But that seems pretty consistent.
5 It's just past the Hot Spot, right?

6 Q Okay.

7 A I mean, it was frantic at that time. So, I
8 cannot recall exactly, but that sounds about -- I guess
9 that could be right. I can't say for sure from my
10 recollection, but it could be.

11 Q Okay. I'd like to put your recorded statement
12 back up.

13 A Right, I said it was around there, as I recall,
14 around that Hot Spot.

15 Q Okay. I just want to turn your attention here
16 to Line 161. I believe you have a copy up there as well,
17 Ms. Hunter. And you were asked by the individual you were
18 speaking to?

19 A Uh-huh.

20 Q When you turned from Bramlett Road to Whitehorse
21 Road, how far along were you on that road? About how many
22 feet before you hit him?

23 Can you read your response?

24 A Yes.

25 At the time, I said, I don't know. I'm not

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 sure exactly. I mean, it was kind of all -- it was less
2 than -- I don't know. I don't know, it's hard to say. I
3 guess about a quarter of a mile up to not that far. I
4 wasn't sure.

5 MR. GARCIA: Your Honor, at this time, I'd like
6 to move that recorded statement into evidence as
7 well.

8 THE COURT: The 911?

9 MR. MOORE: No, the recorded statement that's
10 been taken of her. It's not a signed statement. It
11 shouldn't be coming into evidence.

12 MR. GARCIA: This --

13 THE COURT: Hold up.

14 Ladies and gentlemen, we'll get right back to
15 you. Y'all step on out.

16 (WHEREUPON, the jury left open court at
17 approximately 3:18 p.m.)

18 THE COURT: What statement is it?

19 MR. MOORE: It's redacted -- it's actually an
20 insurance statement where they called her up and they
21 interviewed her a few days after the accident. By
22 statute, unless she signs that, that can't come into
23 evidence. That's, I guess, the basis for it, but the
24 real basis is all you're doing is emphasizing this
25 particular type testimony when she's been on the

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 stand now for over an hour, hour and a half almost.

2 THE COURT: Yep.

3 MR. MOORE: And this is -- this testimony
4 shouldn't be emphasized any more than any other
5 witness' testimony.

6 THE COURT: Why do you think that this ought to
7 be admitted?

8 MR. GARCIA: Your Honor, I'm going to withdraw
9 my attempt to admit.

10 THE COURT: Okay. All right.

11 Bring them back.

12 (WHEREUPON, the jury came into open court at
13 approximately 3:21 p.m.)

14 THE COURT: Okay.

15 BY MR. GARCIA:

16 Q Is it still your position, Ms. Hunter, that this
17 collision occurred beyond the Hot Spot?

18 A I'm going to answer you again. You can keep
19 asking me, but I can't be that precise. You're asking me
20 to be so exactly precise, when that moment, you know, it's
21 blurred to me.

22 Q Okay. So, you don't have a position from here
23 to West Bramlett, all the way till you get over here to
24 Whitehorse Road the general area of where it is this
25 collision occurred?

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 A It was around there somewhere.

2 Q Around there?

3 A Around that area that you're pointing out. I'm
4 not sure. I cannot recall.

5 Q Okay. I understand. So, anywhere between West
6 Bramlett when you first turned on and over here on
7 Whitehorse Road?

8 A I think it was around the Hot Spot. You're
9 saying it was there, maybe it was. I don't remember.

10 Q Okay.

11 A It was somewhere around there.

12 Q Okay. Thank you. My question for you is this
13 Ms. Hunter, if you merged onto West Blue Ridge Drive and
14 we have -- we have an EMS report that places the EMS
15 vehicle over here and we have a witness calling that
16 places the collision somewhere in this direction?

17 A You just sort of highlighted that whole area. I
18 can't --

19 Q No, I'll highlight for you more carefully if I
20 can. We have Leome Avenue right here. We have a witness
21 standing on Leome saying they're looking down towards
22 Whitehorse?

23 A Did she say that? I guess she said that. I'm
24 not sure.

25 Q What I'm asking you is, your statement earlier

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 was you turned out onto West Blue Ridge Drive, when you
2 finished merging, you looked forward in front of you and
3 there he was?

4 A That's possible. I don't remember exactly now
5 five years later.

6 Q Are you normally merging still over when you get
7 to this spot right here, Ms. Hunter?

8 A No, I wouldn't think so. I don't remember it
9 being there. I mean, I just remember exactly. It was
10 five years ago. It was a very traumatic situation. If
11 you say that's it, I guess that's it. I don't remember,
12 though.

13 Q Okay.

14 A Best of my recollection was somewhere around the
15 Hot Spot, I believe that's what I've said a few times.
16 Could have been just past it, I'm not sure. I'm just not.

17 Q Okay. That's a fair point. You said it could
18 have been just past it. Do you know if it was just past
19 it or just before or was it right at the Hot Spot?

20 A Well, you're saying it's past it, so maybe
21 that's why I'm saying maybe it was just past it. I don't
22 recall exactly.

23 Q Okay. Ms. Hunter, were you keeping a proper
24 lookout when you turned onto West Blue Ridge Drive here up
25 until the point where you made a collision with -- where

KATHERINE HUNTER-DIRECT BY MR. GARCIA

1 you collided with Mr. Burgess?

2 A Yes, I was not -- I was paying attention, yes.

3 Q Okay.

4 A I was -- I don't know where he came from.

5 Suddenly, he was there.

6 MR. GARCIA: I don't have any further questions.

7 Thank you, Ms. Hunter.

8 MR. MOORE: Your Honor, this is my client, so
9 I'm going to reserve the right to examine her in my
10 part of the case.

11 THE COURT: Okay.

12 MR. MOORE: I'm not going to ask her questions.

13 THE COURT: All right. Ma'am, you may step
14 down. Thank you very much.

15 Okay, call your next witness.

16 (WHEREUPON, Court's Exhibit No. 2 was marked for
17 identification only.)

18 MR. GARCIA: I call Mr. Burgess, Your Honor.

19 THE CLERK: Place your left hand on the Bible
20 raise your right hand.

21 John Burgess, after being duly sworn, testified
22 as follows:

23 THE CLERK: State your full name for the record.

24 THE WITNESS: John Burgess.

25 THE CLERK: Please be seated.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 MR. GARCIA: Your Honor, I apologize for doing
2 this, but it's me who needs a break at this point.

3 THE COURT: Okay. All right, ladies and
4 gentlemen, take a short break. Don't discuss the
5 case. Get back with you in just a minute.

6 (WHEREUPON, the jury left open court at
7 approximately 3:26 p.m.)

8 THE BAILIFF: Jury is secured, Your Honor.

9 THE COURT: All right, let's take about five or
10 ten minutes.

11 (WHEREUPON, Plaintiff's Exhibits Nos. 8-9 were
12 marked for identification and received into
13 evidence.)

14 (WHEREUPON, a short break was taken.)

15 (WHEREUPON, the jury came into open court at
16 approximately 3:38 p.m.)

17 THE COURT: Okay. Direct.

18 MR. GARCIA: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. GARCIA:

21 Q Mr. Burgess, what's your date of birth?

22 A 7/11/70.

23 Q Okay. Where were you born?

24 A Pickens County.

25 Q Okay. Are you married?

JOHN BURGESS-DIRECT BY MR. GARCIA

- 1 A Yes.
- 2 Q Okay. How long have you been married?
- 3 A About nine years.
- 4 Q Do you have any minor children?
- 5 A Yes, one.
- 6 Q Does the child live with you?
- 7 A Yes.
- 8 Q What's the age of the child?
- 9 A Eleven.
- 10 Q Okay. Where did you attend high school,
- 11 Mr. Burgess?
- 12 A Liberty High School.
- 13 Q Did you graduate high school?
- 14 A No, sir, I didn't.
- 15 Q Until what grade did you complete?
- 16 A Completed tenth grade.
- 17 Q Why did you not graduate high school?
- 18 A Just me making bad grades and it just wasn't for
- 19 me.
- 20 Q Do you have any technical certificate or
- 21 training or licenses, like a CDL?
- 22 A No, sir.
- 23 Q Okay. Have you lived in South Carolina all your
- 24 life?
- 25 A Yes, sir.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Have you lived in Pickens all your life?

2 A Pickens County, yes, sir.

3 Q Okay. Mr. Burgess, were you employed when this
4 collision occurred?

5 A Yes, sir, I was.

6 Q Where were you working?

7 A ESS Resin Technology.

8 Q Did you start working at ESS sometime in May of
9 2013?

10 A Yes, sir.

11 Q Now, the collision that we're here about today,
12 did it occur in December of 2013?

13 A Yes, sir.

14 Q Do you remember the exact date?

15 A December 10th.

16 Q Okay. Did you continue working after this
17 collision?

18 A No, sir, I didn't.

19 Q Why not?

20 A Wasn't able to.

21 Q Why were you not able to?

22 A Too much pain and suffering.

23 Q Okay. Did your employment with ESS last about
24 seven months?

25 A It did.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Did your employment end following the collision?

2 A It did.

3 Q You have not returned to work with ESS at this
4 point?

5 A No, sir.

6 Q Okay. Now, at the time of this collision, were
7 you working full time at ESS?

8 A Yes, sir.

9 Q What was your job title there?

10 A Laborer.

11 Q Can you give us an idea of what your day-to-day
12 actives were while working with ESS?

13 A Cleaning floor, laying floor, on the floor with
14 hands and knees taping them, scraping them.

15 Q Did your work with ESS require lifting?

16 A Yes, it did.

17 Q What was the maximum you would have to lift at
18 any point?

19 A Sometimes maybe up to 75 pounds.

20 Q What would you lift that was 75 pounds?

21 A Maybe a bag of concrete with one hand while I
22 was carrying a bucket of water to mop in the other hand.

23 Q Now, throughout your entire seven-month tenure
24 at ESS, were you working full time throughout that entire
25 period or were there periods of time of nonwork or maybe

JOHN BURGESS-DIRECT BY MR. GARCIA

1 even part-time capacity?

2 A Some of it was part-time.

3 Q Okay. Now, how long did you work for ESS in a
4 full-time capacity?

5 A I'm going to say approximately the last three
6 months maybe I worked there.

7 Q Okay. Now, I'm going to put up an admission
8 here, Mr. Burgess, that at the time of the collision here
9 that's made subject by this action that you were working
10 full time and earning approximately \$400 per week.

11 The response is, This Defendant would admit
12 that the Plaintiff was earning \$10 per hour at the job
13 held when the accident in question occurred and this would
14 equate approximately to \$400 per week in gross income not
15 reduced taxes or other reductions.

16 Now, where did you work before ESS,
17 Mr. Burgess?

18 A At a convenience store called the Farmer's
19 Market.

20 Q How long did you work at that Farmer's Market?

21 A About a year and a half, maybe two years.

22 Q Can you tell me what you would do on a
23 day-to-day basis at that Farmer's Market?

24 A Cashier, stock cooler, sweep and mop floors,
25 stayed on my feet all day.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Can you tell me some of the physical
2 requirements of that job? Did you have to lift?

3 A Yes. Drinks and the beer to stock the cooler I
4 did, yes, sir.

5 Q Can you tell me the maximum amount of weight you
6 would have to lift on any given day at that job?

7 A Probably about 30, 40 pounds.

8 Q And what did you earn? What was your hourly
9 wage at this Farmer's Market?

10 A Seven fifty an hour.

11 Q And how many hours per week were you working at
12 the Farmer's Market?

13 A Thirty-two to forty a week?

14 Q Why did you leave that job?

15 A Actually, they were -- had poker machines in
16 there. I didn't feel comfortable with doing payouts on
17 those.

18 Q Okay. Where did you work before working at
19 Farmer's Market?

20 A Family Dollar.

21 Q How long did you work at the Family Dollar?

22 A I think about a year and a half.

23 Q Can you tell me what you would do on a
24 day-to-day basis at the Family Dollar?

25 A Assistant manager, cashier, unloading trucks,

JOHN BURGESS-DIRECT BY MR. GARCIA

1 again, sweeping, mopping, stocking shelves.

2 Q Can you tell me some of the physical
3 requirements for that job, Mr. Burgess?

4 A Unloading trucks, stacking the shelves.

5 Q Did it require lifting?

6 A It did.

7 Q What's the maximum you would have to lift?

8 A Fifty pounds.

9 Q Okay. How much were you earning at the Family
10 Dollar? What was your hourly wage?

11 A Ten dollars an hour.

12 Q How many hours per week were you working
13 approximately?

14 A About the same, 32, 40 hours a week.

15 Q Now, we're discussing some of your past, let's
16 discuss all of it. Why did you leave that job at Family
17 Dollar?

18 A I caught a breach of trust charge.

19 Q You were charged with breach of trust at some
20 point?

21 A Yes, sir.

22 Q It was in connection with your employment at
23 Family Dollar?

24 A Yes, sir.

25 Q Was that sometime in 2010?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A It was.

2 Q Give me an idea of what this charge was about.

3 What happened in that incident, Mr. Burgess?

4 A I was going through hard times. I'm not really
5 proud to talk about it. I was going through hard times.

6 And one of my requirements was to take the deposits from
7 Family Dollar to take to the bank to deposit in the bank.

8 And this one particular day, I didn't make it to the bank
9 with the deposit.

10 Q Did you keep the money?

11 A I did.

12 Q What was the amount you were accused of
13 misappropriating?

14 A Right around 2,000.

15 Q What was the final outcome of that case?

16 A Excuse me?

17 Q What was the final outcome of that case?

18 A Probation two years, pay fines, restitution.

19 Q Did it take you the full two years to pay the
20 money back?

21 A No, sir, it didn't.

22 Q How long did it take you approximately?

23 A About year and a half, I had that paid back.

24 Q Have you had any other run-ins with the law
25 since then?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A No, sir.

2 Q Okay. Was this event a turning point in your
3 life, Mr. Burgess?

4 A It was, yes, sir.

5 Q Okay. How so?

6 A See what I wanted to look for to in a job. Got
7 me in church. Made me a little closer to my family.

8 Q I want to turn your attention now to the
9 collision itself, Mr. Burgess. Were you employed --
10 you've answered that, I'm sorry. Just for clarification,
11 is ESS the epoxy flooring employer you mentioned
12 previously?

13 A Yes.

14 Q And were you employed by ESS at the time of the
15 collision?

16 A I was, yes, sir.

17 Q Okay. About what time did this collision occur,
18 Mr. Burgess?

19 A Approximately around 5:30 in the afternoon.

20 Q Are you leaving work about that time?

21 A Yes, sir, I am.

22 Q What kind of vehicle are you operating when
23 you're leaving work?

24 A A moped.

25 Q A moped?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A Yes, sir.

2 Q Okay. I want to show you this overhead image,
3 it's one that we've referenced already today, Mr. Burgess.
4 You have one closer to you right there. Whichever one is
5 easier for you to reference is fine. When you left work,
6 Mr. Burgess, did you know where you were going?

7 A Not exactly where I was going, no, sir.

8 Q Okay.

9 A One of two places I would have been going.

10 Q Okay. On this overhead image, is work back in
11 this direction here?

12 A Yeah, back in there where I work at, yes, sir.

13 Q Are you riding down West Blue Ridge Drive in
14 this direction here, a southwest pattern?

15 A I am.

16 Q And that's -- the moment you hit this point,
17 you're moving in this direction; is that correct?

18 A That's correct.

19 Q Now, when you reach this point right here, right
20 where the West Blue Ridge Drive starts on the screen, let
21 me ask you this, what lane are you in?

22 A At that point in time, I'm in the right-hand
23 lane.

24 Q Okay. And what -- tell me what happens next.
25 Once you get to this point, what happens next,

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Mr. Burgess?

2 A Right after work, I pull over into the Hot Spot
3 parking lot to make a phone call.

4 Q Okay. When you say the Hot Spot, is it the Hot
5 Spot we see right here?

6 A Yes, sir, it is.

7 Q Why did you stop at this Hot Spot?

8 A To call my ex-wife.

9 Q Why were you calling your ex-wife?

10 A My daughter had been in the hospital previous
11 that day. If she was still in the hospital, I was going
12 to see her. If she wasn't in the hospital, she had
13 already been discharged, I was going home.

14 Q Did you have your cell phone with you?

15 A I did.

16 Q Did you use your cell phone to make that call at
17 that Hot Spot?

18 A I did.

19 Q Okay. Were you able to get in touch with your
20 ex-wife.

21 A I was able to get in touch with her, but I
22 didn't get an answer. She wasn't for sure if she was
23 still in the hospital or she had been discharged or not.

24 Q Okay. How much time did you spend at the Hot
25 Spot?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A Maybe five, seven minutes.

2 Q Okay. Now, at some point, you leave the Hot
3 Spot; is that correct?

4 A Yes, sir.

5 Q What direction do you travel when you leave the
6 Hot Spot?

7 A I leave the Hot Spot and go back towards 25.

8 Q So, essentially, back towards Whitehorse Road in
9 this direction?

10 A That's correct.

11 Q So, still a southwest travel pattern?

12 A Correct.

13 Q Okay. What was traffic like?

14 A I'd say pretty light.

15 Q Okay. Now, when you turn out of this Hot Spot
16 here, how soon do you get over into -- well, let me ask
17 you this, when you turn out of the Hot Spot, do you turn
18 into the right lane?

19 A No, sir.

20 Q Or do you turn into the left lane?

21 A I turn out into the left-hand lane.

22 Q How soon after your turn out of that Hot Spot
23 did you get over to the left lane of travel here?

24 A I turn out into the left-hand lane.

25 Q All right. So again, Mr. Burgess, is that the

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Hot Spot?

2 A Yes, sir, it is.

3 Q And you turn out immediately from the Hot Spot
4 into the left lane?

5 A Yes, sir.

6 Q Do you see where the dot is?

7 A Yes, sir.

8 Q Are you already in the left lane by this point?

9 A Yes, sir.

10 Q Okay. Now, a similar question to what I asked
11 you earlier. Do you know where you're going when you turn
12 out of the Hot Spot?

13 A Yes, sir, I do.

14 Q Okay. When you turn out, do you see an SUV to
15 your left?

16 A No, sir.

17 Q Where were you going when you turned out of the
18 Hot Spot?

19 A Up there in the Goodwill parking lot, there's a
20 little check cash and phone company right there close to
21 Blue Ridge Road.

22 Q If I gave you a pointer, would you be able to
23 point out where it is that you were heading?

24 A Yes, sir.

25 Q Okay. Where is it that you were headed?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A Right here.

2 Q Why did you pick that spot to stop?

3 A That's, actually, the last place I could have
4 stopped before making a decision if I was going to turn on
5 25, turn left on 25 to go back to the hospital. If she
6 had already been discharged, I would have went straight
7 across 25 and stayed on West Blue Ridge till I hit 124.

8 Q Just for clarification here, is this the last
9 point where you have to decide whether you're going home
10 or you're going to the hospital?

11 A Right.

12 Q And again, you're going to the hospital to meet
13 with your --

14 A Daughter.

15 Q -- daughter? Okay. And your understanding was
16 that your daughter was already in the hospital?

17 A Yes, sir.

18 Q Okay. Did you make it to this spot right here,
19 Mr. Burgess?

20 A No, sir, I didn't.

21 Q Why not?

22 A I had got hit previous to that by the SUV.

23 Q Okay. Was that SUV driven by Ms. Hunter?

24 A Yes, sir.

25 Q Now, Mr. Burgess, what speed are you traveling

JOHN BURGESS-DIRECT BY MR. GARCIA

1 before this collision occurs?

2 A Approximately 30 miles an hour.

3 Q Okay. Did you see Ms. Hunter at all before she
4 collided with your moped?

5 A No, sir, I didn't.

6 Q Why not?

7 A I was looking front forward, got hit from
8 behind.

9 Q Had you begun to slow to make your turn into
10 this area here before the collision occurred?

11 A No, sir.

12 Q Okay. Can you point to where the collision
13 occurred?

14 A Yes, sir.

15 Q Where did the collision occur, Mr. Burgess?

16 A Right in here. Right around that street sign
17 where I actually got hit at.

18 Q Okay. What did you feel when the collision
19 occurred?

20 A A big impact from behind or back. And that kind
21 of knocked me out for a minute, a few seconds.

22 Q Okay. Once you come to, I'm assuming you came
23 to at some point. Once you come to, what do you see?

24 A Actually, going down toward the ground. I was
25 fixing to hit the ground.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q What part of your body made contact with the
2 ground?

3 A First my leg and then my head.

4 Q Okay. Do you remember if the moped rotated one
5 direction or another the moment you were hit?

6 A No.

7 Q Okay. Were you knocked off your moped?

8 A I was.

9 Q Were you able to get up on your own?

10 A After a couple of minutes until I come around, I
11 mean, gather myself up, I was, yes, sir.

12 Q Do you know how much time passed between when
13 you were knocked out?

14 A No, I don't.

15 Q No. Did you end up next to your moped once you
16 came to rest?

17 A The moped was up a little bit further than I
18 was.

19 Q Would you be able to point here where the moped
20 was approximately?

21 A I really couldn't tell you.

22 Q Okay. That's fine. Now, what did you do once
23 you get up?

24 A I got up, I turned and faced toward Ms. Hunter's
25 SUV and seen her. And as she was walking toward me, I met

JOHN BURGESS-DIRECT BY MR. GARCIA

1 her halfway between her SUV and where I had got up at.

2 Q Okay. You met Ms. Hunter somewhere between your
3 moped and the SUV?

4 A Actually, from where I actually landed and her
5 SUV?

6 Q Got you. So, you met somewhere between where
7 you landed and the SUV?

8 A Right.

9 Q Okay. What direction is Ms. Hunter's SUV
10 facing?

11 A Facing back down toward the Hot Spot area.

12 Q Okay. Do you remember where Ms. Hunter's SUV
13 was parked? Could you point that to me?

14 A It was approximately right in here. When I
15 landed, I was probably right here when I landed on the
16 ground. Her SUV was right in here.

17 Q Okay. I want to come back to this. What -- is
18 Ms. Hunter's SUV facing in this direction now towards the
19 Hot Spot?

20 A It is.

21 Q Okay. Once you meet Ms. Hunter in the middle of
22 where you landed and where the SUV is, what happens next?

23 A She walks me back toward her SUV and allowed me
24 to lay down in her back seat.

25 Q Okay. Was there a 911 call that was made?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A There was.

2 Q Who made the 911 call?

3 A Ms. Hunter did.

4 Q Okay. How long did it take for emergency
5 responders to arrive?

6 A Seemed like very quickly. I mean, maybe even
7 while she was still on the phone with 911. I mean, it was
8 very quick first responders got there.

9 Q Okay. What is your first encounter with
10 emergency responders?

11 A Them putting me on a back board in the back seat
12 of her car.

13 Q Were you strapped onto that back board while
14 you're still in the SUV?

15 A Yes.

16 Q Are you still laying in the SUV?

17 A Yes, sir.

18 Q What happens next?

19 A First responders on both sides of the car
20 working to get me out of the car. They put me on a
21 stretcher and took me to the ambulance.

22 Q Okay. Now, do you remember about where the
23 ambulance was parked?

24 A If I remember correctly, it was right over in
25 this area right in here.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Okay. Now, while you're being rolled to the
2 ambulance from the SUV, do you see any vehicles between
3 the SUV and the ambulance?

4 A Yes, sir, I do.

5 Q Okay. How many?

6 A Two.

7 Q What vehicles were they?

8 A A police car and a fire truck.

9 Q Okay. Is that the ambulance that eventually
10 drives you to the hospital?

11 A It is.

12 Q Okay. You're transported to the hospital. Are
13 you still on a spine board during that transport,
14 Mr. Burgess?

15 A I am.

16 Q Do you remember hearing sirens?

17 A I do.

18 Q Can you describe what it is you're feeling while
19 you're being transported?

20 A Traumatic. I mean, scared.

21 Q Okay. Are the emergency responders talking to
22 you?

23 A They are.

24 Q What are they saying?

25 A Just asking how I -- where I'm in pain and

JOHN BURGESS-DIRECT BY MR. GARCIA

1 asking what all is hurting. In the meantime, cut my
2 clothes off with scissors and check me out.

3 Q Has this moment when you're in the ambulance had
4 a lasting effect on you, Mr. Burgess?

5 A It has, yeah.

6 Q Okay. How so?

7 A Every time I hear a siren, I mean, it brings
8 back memories of it.

9 Q While you're being transported, did you complain
10 of pain?

11 A Yes, sir, I did.

12 Q What part of your body did you complain of?

13 A Pretty much all over my face, face, legs, back,
14 all over. Generally, all over.

15 Q Do you -- okay. What's your pain level at this
16 time, Mr. Burgess? On a scale of one to ten, with one
17 being minimal to no pain and ten being just absolutely the
18 worse pain, what's your pain level at that time?

19 A The time in the ambulance, probably about a five
20 or six.

21 Q Now, did you finally arrive at the hospital?

22 A Yes, sir.

23 Q Okay. Now, from admission to discharge, about
24 how long were you in the hospital?

25 A Approximately six, seven days.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Where did you feel pain, Mr. Burgess, when you
2 first arrived at the hospital?

3 A I'm sorry?

4 Q Where did you feel pain when you first arrived
5 at the hospital?

6 A Pretty much, like I said, all over.

7 Q Are there any specific body parts that you felt
8 more pain in than others?

9 A My leg.

10 Q Okay. Did you have issues with your vision?

11 A I was seeing double on everything.

12 Q Now, did you arrive at the trauma unit of the
13 ER?

14 A I did.

15 Q What is your pain level now when you arrive at
16 the ER?

17 A At that time, about an eight, nine.

18 Q Okay.

19 A Pain setting in by then.

20 Q Do you know what seem to be primary area or
21 areas of focus from a medical standpoint that particular
22 day?

23 A Really, just checked me out thoroughly, make sure
24 I didn't have any kind of internal injuries. Some of that
25 was their main concern from my understanding.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Would you be able to tell me from a medical
2 standpoint day by day what it was that you went through?

3 A No.

4 Q Why not? Why not?

5 A I'm sorry, would you repeat it?

6 Q Sure, I asked you would you be able to tell me
7 just day by day what is it that you were going through
8 from a medical standpoint and all the procedures that they
9 did?

10 A There was so much I was going through, I mean,
11 there's no way I can tell you.

12 Q Okay. Did you take part in several procedures?

13 A Yes, sir.

14 Q Were there several diagnostic tests that were
15 performed?

16 A MRI, CAT scan, x-rays.

17 Q Would you be able to tell me day by day
18 specifically what your pain level was?

19 A I couldn't tell you what it was day by day. I
20 could tell you, I mean, the lowest it ever got was maybe a
21 seven and the highest it was, maybe a nine.

22 Q Okay. Throughout the whole time that you were
23 at the hospital over this six-to-seven-day period, which
24 body parts did you continue to have pain?

25 A My face, my leg, my back. My back really

JOHN BURGESS-DIRECT BY MR. GARCIA

1 started hurting probably after the third day when I
2 started moving around a little bit and sitting up in bed a
3 little bit, that's when the pain in my back was really
4 bad.

5 Q Did you have any headaches?

6 A I did have headaches.

7 Q Did you still have double vision?

8 A Yes, sir.

9 Q Did you have that double vision by the time you
10 leave the hospital?

11 A I did.

12 Q Okay. Now, you may have already answered this,
13 although I haven't asked it. Did you get up at any point
14 for those first couple of days you were in the hospital or
15 were you bedridden?

16 A First couple days, I was bedridden pretty much.

17 Q Were you on pain medication at that time?

18 A Yes.

19 Q Now, what happens on day two or three, as you
20 mentioned, when you start to move around?

21 A That back pain kind of set in with me when I
22 started to move around a little bit and move my back a
23 little bit.

24 Q Was there any change in your leg pain at this
25 point?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A It still hurt dramatically.

2 Q Were you encouraged to move around?

3 A At that point, yes, sir.

4 Q Were you encouraged to move around for the first
5 two days?

6 A Not the first two days, I wasn't.

7 Q So -- okay. By day three or so, are you able to
8 get out of the bed?

9 A With help.

10 Q Did you need help walking?

11 A Yes, sir.

12 Q Okay. Why did you need help walking?

13 A The pain in my leg was, I mean, unbearable.

14 Q Okay. Did you get a chance to see your face at
15 some point?

16 A Yes, sir, I seen it in the mirror.

17 Q Okay. I want to put these images here in front
18 of you, Mr. Burgess, of your face that we previously put
19 in front of Ms. Hunter. We have just 4 and 5 here,
20 Mr. Burgess. Is that what you see on about day two or so?

21 A It is.

22 Q Okay. Did you take these pictures?

23 A No, I didn't.

24 Q Who did?

25 A My mother.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Do you know why she did?

2 A No, I really don't know.

3 Q Okay. While you were in the hospital, did you
4 have difficulty getting to the bathroom?

5 A Yes, sir.

6 Q Okay. How did you get to the bathroom once you
7 started moving around a bit?

8 A With a walker and help of my wife.

9 Q For how long did you have that difficulty
10 walking to the extent that you still required assistance
11 from another person?

12 A Probably couple months.

13 Q So, even after you left the hospital?

14 A Yes, sir.

15 Q Okay. Now, while you're in the hospital, did
16 you take part in any therapy to help you get back to
17 walking?

18 A I did.

19 Q When did that start? Do you remember what day?

20 A Probably around the second or third day, I would
21 say.

22 Q Okay. Was that difficult?

23 A Very difficult.

24 Q Why?

25 A The pain in my back and leg. I mean, just

JOHN BURGESS-DIRECT BY MR. GARCIA

1 unbearable.

2 Q Okay. In the seven days that you were in the
3 hospital, Mr. Burgess, did you complain of back pain?

4 A Yes, I did.

5 Q Did you have an MRI of your spine at some point
6 while you were in the hospital?

7 A Yes, I did.

8 Q How do you remember that?

9 A Kind of funny. I'm very claustrophobic. But
10 ask me to do an MRI on me and I had asked for something
11 for my nerves to settle me down before they could do an
12 MRI on me. And me and the nurse kind of got in an
13 argument because of it.

14 Q Okay. What was your understanding of why the
15 MRI was requested?

16 A From my understanding, the leg pain I was
17 having, they wanted to see if it had anything to do with
18 --

19 MR. MOORE: Your Honor, he's trying to, I guess,
20 read the mind of the doctor as to why they undertook
21 the MRI.

22 THE COURT: Sustained.

23 MR. GARCIA: Okay. Your Honor, I asked him what
24 his understanding was. I simply want to note that
25 for the record. I didn't ask him what the doctor

JOHN BURGESS-DIRECT BY MR. GARCIA

1 said, I simply asked him what was his understanding
2 of what was transpiring at that time.

3 THE COURT: You can ask that, but you can't get
4 into what the doctors told him.

5 MR. GARCIA: I didn't.

6 THE COURT: Fine, ask that question.

7 MR. GARCIA: Okay.

8 BY MR. GARCIA:

9 Q Again, Mr. Burgess, what was your understanding
10 of why was it the MRI was requested?

11 MR. MOORE: Your Honor, again --

12 MR. GARCIA: It's the same question --

13 THE COURT: Wait, let him make his objection.
14 Go ahead.

15 MR. MOORE: He's not going to know this unless
16 the doctors tell him while they're taking the MRI.
17 What he's asking is for him to repeat what the
18 doctors told him. That's hearsay.

19 THE COURT: Okay. He can't do that.

20 MR. GARCIA: Well, I haven't asked him to repeat
21 what the doctors told him. I'm simply asking him
22 what his understanding is of why it is that the MRI
23 was being --

24 THE COURT: He doesn't have any independent
25 knowledge of what they were doing. So, I'll sustain

JOHN BURGESS-DIRECT BY MR. GARCIA

1 the objection.

2 MR. GARCIA: Okay. Thank you.

3 BY MR. GARCIA:

4 Q Were you set up to see a neurosurgeon while
5 you're in the hospital, Mr. Burgess?

6 A Yes, sir, I was.

7 Q Do you remember the name of that surgeon?

8 A Not right off. I can't remember right off.

9 Q Okay. Did you see a lot of doctors --

10 A I did.

11 Q -- while you were in the hospital? Okay. Did
12 you have any weakness in your leg, Mr. Burgess, when you
13 left the hospital?

14 A Yes, I did.

15 Q Did you continue to have pain in your leg when
16 you left the hospital?

17 A Yes, I did.

18 Q Now, I'm just going to change gears just a
19 little bit here, Mr. Burgess. Had you ever complained of
20 the back pain that you had while you were in the hospital
21 before this collision?

22 A Not the same type of pain, no.

23 Q Had you ever complained of back pain before?

24 A I may have said something to my daughter about
25 having back pain with the construction job that I had, but

JOHN BURGESS-DIRECT BY MR. GARCIA

1 nothing compared to what I was having at this point in
2 time.

3 Q Had you ever complained of leg pain before the
4 collision that we're here about today?

5 A No.

6 Q You did complain of back pain at some point
7 before this collision and you also complained of back pain
8 afterward. You responded that they weren't the same. How
9 were they different?

10 A Maybe before the collision, I'd say more like --
11 like I said, I was doing construction work. More like a
12 muscle pain, I would say. This, I mean, after the
13 accident, it was more like a stabbing, jabbing pain.

14 Q Have you ever complained of neck pain in the
15 past?

16 A Yes, I have.

17 Q Are you alleging any kind of neck pain as a
18 result of the collision we're here about today?

19 A No.

20 Q Had you taken part in an MRI of your neck before
21 this collision?

22 A Yes.

23 Q Are you claiming at all today that that
24 collision caused any problems with your neck?

25 A No.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Did the neck pain that you had before this
2 collision prevent you from working?

3 A No.

4 Q Now, was there ever a discussion with your
5 doctor before this collision about pain management or the
6 potential for pain management?

7 A Yes.

8 Q What body part was the pain management meant to
9 address?

10 A My neck.

11 Q Did you ever take part in pain management?

12 A No, I didn't.

13 Q Why not?

14 A It really wasn't severe enough to go to pain
15 management. I figured I could deal with it on my own.

16 Q I want to go back to the emergency room. You
17 were finally sent home; is that correct, Mr. Burgess?

18 A Yes, sir.

19 Q And were you sent home with a prescription for a
20 walker?

21 A I was.

22 Q Could you afford a walker at the time?

23 A No.

24 Q Did you have to borrow a walker from a friend?

25 A I did.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q It may seem like an obvious question, but for
2 the jury's benefit, why did you need the walker?

3 A To help support myself and walk with. I mean, I
4 couldn't walk on my left leg at all.

5 Q By the time you're leaving the hospital, did you
6 still have any bruising or scrapes?

7 A Yes, sir, on my leg, bruise still on the left
8 side and face still pretty much messed up.

9 Q What's your pain level on a scale of one to ten
10 when you leave the hospital?

11 A I still say about an eight when I left the
12 hospital.

13 Q How long did that last?

14 A A few weeks.

15 Q Okay. After those few weeks, did you continue
16 to have pain?

17 A Yes.

18 Q What was the pain level at that point?

19 A Probably still about a seven, I mean.

20 Q Okay. Are you on any pain medication right now,
21 Mr. Burgess?

22 A I had took some this morning before I came, but
23 I know I had to keep a clear mind, so I haven't done it
24 since earlier this morning.

25 Q Okay. What's your pain level right now as you

JOHN BURGESS-DIRECT BY MR. GARCIA

1 sit there, Mr. Burgess?

2 A Probably about a six and a half.

3 Q Okay. When you leave the hospital, what medical
4 issues are you still dealing with that are related to this
5 accident?

6 A Pretty much all the same, still on my face, my
7 back, my leg, my double vision. Pretty much all of them I
8 had while I was in the hospital.

9 Q Okay. What's still going on with your face at
10 that point?

11 A Still all scraped up, banged up. Pretty much
12 same what you saw in the picture.

13 Q What's still going on with your leg?

14 A Significant amount of pain and throbbing,
15 pressure.

16 Q Is there weakness?

17 A Weakness, yes, sir.

18 Q Okay. Now, what's still going on with your eye?

19 A Double vision, hurting in the eye socket itself.

20 Q Now, what's going on with your back at this
21 point?

22 A Still having some a lot of pain. Like I said,
23 stabbing pain, jabbing pain.

24 Q Did you have headache when you leave the
25 hospital?

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1 A I do.

2 Q Okay. Mr. Burgess, have you received medical
3 bills related to this emergency room stay?

4 A I have.

5 Q Okay. Now, once you leave the hospital, did you
6 continue with treatment?

7 A I did.

8 Q Okay. The first physician office I have you
9 visiting is Medical Center of Easley; is that correct,
10 Mr. Burgess?

11 A Yes.

12 Q Okay. Who are you seeing at Medical Center of
13 Easley?

14 A Dr. Bolinger.

15 Q Who is Dr. Bolinger?

16 A At the time, he was my primary physician.

17 Q Okay. Did you go to see Dr. Bolinger only for
18 issues you had with the collision?

19 A No.

20 Q Did some of the discussion you had with
21 Dr. Bolinger involve the issues you had with the
22 collision?

23 A It could have been brought up, yes, sir.

24 Q Okay. Are you alleging today that the bills you
25 had with Medical Center of Easley are related to this

JOHN BURGESS-DIRECT BY MR. GARCIA

1 collision?

2 A No.

3 Q Okay. Now, on January 2nd, 2014, did you visit
4 Palmetto Baptist Hospital?

5 A I did.

6 Q Is that the emergency room that you visited?

7 A It was.

8 Q Why did you visit that emergency room?

9 A Really, a lot of pain that I was in,
10 uncontrollable pain that I was in.

11 Q It's January 2nd, so we're about three weeks
12 away from the collision?

13 A Yes, sir.

14 Q Okay. Had you had this kind of pain that you're
15 visiting the ER for before the collision?

16 A No, sir.

17 Q What did they do for you at the emergency room,
18 Mr. Burgess?

19 A Really not a whole lot. Give me medicine for
20 pain, but other than that, that's really about it.

21 Q Pain that you went into the emergency room, is
22 it your allegation that that pain was related to this
23 collision we're here about today?

24 A Yes.

25 Q Did you have medical bills related to this visit

JOHN BURGESS-DIRECT BY MR. GARCIA

1 to the emergency room?

2 A Yes.

3 Q I also have on January 4th of 2014, a couple of
4 days after that Palmetto Baptist Emergency Room, you
5 visited Clemson Eye Group; is that correct?

6 A That's correct.

7 Q How did you make your way to Clemson Eye Group,
8 were you referred there?

9 A I was referred by Greenville Hospital.

10 Q Okay. What were you complaining of when you
11 made your way to Clemson Eye Group?

12 A The double vision and the pain in my eye socket
13 on the left side.

14 Q Had you had this kind of issue before the
15 collision?

16 A No.

17 Q What did they do for you at Clemson Eye Group?

18 A Scheduled me to have surgery on my eye.

19 Q Okay. Were you referred to a surgeon?

20 A I was.

21 Q Was that surgeon Dr. Siddens at UMG Plastic
22 Surgery?

23 A It was.

24 Q Okay. It is your allegation, Mr. Burgess, that
25 the issues you presented with to Clemson Eye Group are

JOHN BURGESS-DIRECT BY MR. GARCIA

1 related to the collision we're here about today?

2 A Yes.

3 Q Okay. Do you have medical bills related to this
4 visit?

5 A Yes.

6 Q Did you only visit one time?

7 A Yes.

8 Q Okay. Now, you testified that you were referred
9 to UMG Plastic Surgery. And I believe that was by Clemson
10 Eye Group; is that correct?

11 A Right.

12 Q Now, did you visit UMG Plastic Surgery somewhere
13 around January 9th, 2014?

14 A That's correct.

15 Q Okay. Is that where you met your eventual
16 surgeon, Dr. Siddens?

17 A It was.

18 Q What were you complaining of when you made your
19 way to UMG Plastic Surgery?

20 A Same thing, double vision and the hurting in the
21 eye socket.

22 Q Had you had those issues before the collision?

23 A No, sir.

24 Q Okay. Now, what did they do for you at UMG
25 Plastic Surgery?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A Performed surgery on my eye and what they call
2 [indiscernible] surgery.

3 Q Did that surgery take place in January?

4 A It did.

5 Q Was it somewhere around January 17th, 2014?

6 A It was.

7 Q Did the surgery help?

8 A After a couple of months, it did.

9 Q Did the double vision resolve?

10 A It did.

11 Q How long did it take to resolve, was it two
12 months?

13 A A couple months.

14 Q Okay. Did the pain get better?

15 A It did.

16 Q How long did it take for the pain to get better?

17 A Like I said, a couple months.

18 Q Were the issues you presented to UMG Plastic
19 Surgery with -- as you allege, related to the collision
20 we're here about today?

21 A Yes.

22 Q Okay. Do you have medical bills related to that
23 treatment with Dr. Siddens and the surgery?

24 A Yes, I do.

25 Q Okay. And those bills, did they include the

JOHN BURGESS-DIRECT BY MR. GARCIA

1 surgery and hospital fee?

2 A True. Correct.

3 Q Okay. Now, I have from February of 2014 until
4 some time in March of 2014, still only about two to three
5 months removed from this collision, did you attend Proaxis
6 Physical Therapy?

7 A I did.

8 Q Who sent you to Proaxis Physical Therapy?

9 A Dr. Booker.

10 Q Okay. Who is Dr. Booker?

11 A My primary care physician.

12 Q Okay. Do you have any medical bills for this
13 therapy? Do you have any medical bills for this therapy?

14 A I do.

15 Q Are you alleging today that that therapy was
16 related to the collision we're here about today?

17 A Yes.

18 Q Okay. Now, during this same time period, where
19 you're attending physical therapy, did you make your way
20 to Upstate Bone and Joint?

21 A Yes.

22 Q Okay. Did the hospital refer you to Upstate
23 Bone and Joint?

24 A They did.

25 Q Okay. Did you see a Dr. Boyer at Upstate Bone

JOHN BURGESS-DIRECT BY MR. GARCIA

1 and Joint?

2 A I did.

3 Q The dates that you saw him, was it sometime
4 between January 30th, 2014 and about April 4th, 2014?

5 A That's correct.

6 Q Okay. So now, we're about one month or maybe a
7 little more than a month to month and a half removed where
8 you start, then you finish some point in April, so about
9 four to five months after, does that sound right to you?

10 A Yes.

11 Q Is Dr. Boyer an orthopedic doctor?

12 A He is.

13 Q And what did Dr. Boyer attempt to address for
14 you?

15 A The pain that was in my leg, that I was having
16 in my leg.

17 Q Did Dr. Boyer try injections for your leg and
18 hip area?

19 A He did.

20 Q Did the injections help you?

21 A No, they didn't.

22 Q Were the leg pain -- was the leg pain you
23 presented to Upstate Bone and Joint with related to the
24 collision we're here about today?

25 A Yes, it was.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Did you have hip pain when you presented to
2 Dr. Boyer? Did you complain of any hip pain?

3 A Not hip pain, leg pain.

4 Q Okay. This leg pain, did you have that leg pain
5 before the collision?

6 A No.

7 Q Did you have medical bills related to these
8 visits with Dr. Boyer at Upstate Bone and Joint?

9 A Yes.

10 Q After these several months of treatment with
11 Dr. Boyer, were you seeing any improvement at all?

12 A No.

13 Q Again, did the injections help?

14 A No.

15 Q Were there a series of injections or just one
16 round of injections?

17 A Just one round of them.

18 Q Now, two days before your last visit with
19 Dr. Boyer, did you see a Dr. Sherrill in Clemson
20 Neurology?

21 A I did.

22 Q Okay. Now, it was two days before your last
23 visit, when you returned to Dr. Boyer two days later after
24 first seeing Dr. Sherrill, did Dr. Boyer turn over the
25 medical decision making to Dr. Sherrill at that time?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A He did.

2 Q Okay. We're going to get to Dr. Sherrill in a
3 second. So this point, we're about five months away from
4 the collision. Are you still having leg pain?

5 A I am.

6 Q Have you -- any treatment that you've received
7 up to this point helped your leg pain?

8 A No, sir.

9 Q Let's talk about Dr. Sherrill. Did Dr. Sherrill
10 change the course of your treatment?

11 A I went to him -- the reason I had went to him
12 was because of headaches I had.

13 Q Did you see Dr. Sherrill at Clemson Neurology
14 sometime between April 22nd of 2014 and March 5th of 2015?

15 A Yes.

16 Q Okay. So, if I told you the start date for
17 Dr. Sherrill was about April 22nd, 2014, does that sound
18 about right to you?

19 A Yes.

20 Q Okay. And the last date you visit Dr. Sherrill
21 is some time in March of 2015, does that sound about right
22 to you?

23 A That sounds about right.

24 Q Okay. I think you've answered this partially,
25 but what issue or issues was Dr. Sherrill attempting to

JOHN BURGESS-DIRECT BY MR. GARCIA

1 address?

2 A My headaches.

3 Q Okay. Did you get relief from headaches?

4 A Eventually, I did, yes.

5 Q How long did that take to resolve?

6 A Maybe about a year or so.

7 Q Did you still have headaches?

8 A Not now, I don't, no.

9 Q Were the headaches that you presented to
10 Dr. Sherrill with, as you allege, related to the collision
11 we're here about today?

12 A Yes.

13 Q Have the headaches that you presented to
14 Dr. Sherrill with ever occurred before this collision?

15 A No.

16 Q Did Dr. Sherrill conduct any other kind of
17 diagnostic testing on any other parts of your body,
18 Mr. Burgess?

19 A He did do another test on me.

20 Q Would you happen to know the name of that test?

21 A I know there's one where I got shocked and
22 poked.

23 Q Was it a nerve conduction study?

24 A There you go, yes.

25 Q What was that test like? What did you feel?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A A lot of pain.

2 Q Okay. Do you have any idea what that test is
3 supposed to reveal, Mr. Burgess?

4 MR. MOORE: Your Honor, that's beyond his
5 knowledge.

6 THE COURT: Yeah, you're asking him to come up;
7 with a medical -- his opinion about a medical test.

8 MR. GARCIA: I believe his response was going to
9 be no, but I understand, Your Honor. I don't think
10 he knows either.

11 BY MR. GARCIA:

12 Q After this test, Mr. Burgess, were you referred
13 to a neurosurgeon?

14 A I was.

15 Q Okay. Is that neurosurgeon that Dr. Sherrill
16 referred you to a doctor by the name of Dr. Brennan?

17 A It is.

18 Q Okay. We'll get to Dr. Brennan in a moment. In
19 fact, he's going to testify via video deposition at some
20 point in this trial. Did you continue to see Dr. Sherrill
21 for several months after the referral to the neurosurgeon?

22 A Yes.

23 Q Now, during these months, what is Dr. Sherrill
24 still addressing for you?

25 A Still my headaches and back and leg.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Okay. Do you have medical bills related to
2 these visits with Dr. Sherrill?

3 A Yes.

4 Q Okay. Let's talk about Dr. Brennan, the
5 neurosurgeon you were referred to by Dr. Sherrill. Did
6 you see Dr. Brennan from Florence Neuro and Spine from
7 August 11th, 2014, until about February 4th, 2015?

8 A That sounds about right, yes.

9 Q What did you complain of when you arrived at
10 Dr. Brennan?

11 A Leg pain and weakness and back pain.

12 Q Did you consent to allow Dr. Brennan to perform
13 surgery?

14 A Yes.

15 Q Was that discussion that you had regarding
16 surgery had at the very first visit?

17 A It was.

18 Q Did Dr. Brennan review the results of that test
19 you had performed by Dr. Sherrill?

20 A He did.

21 Q Okay. Did you consent to the surgery because
22 you believed it would help your pain?

23 A I did.

24 Q What pain did you believe it would help?

25 A The back pain I was having and the weakness and

JOHN BURGESS-DIRECT BY MR. GARCIA

1 pain I was having in my leg.

2 Q Did Dr. Brennan perform this surgery to your
3 spine on August 18th, 2014?

4 A He did.

5 Q Was the surgery performed at Carolina Hospital
6 System in Florence?

7 A Yes.

8 Q Was there an MRI performed on the day of the
9 surgery?

10 A There were.

11 Q Was that MRI of your low back?

12 A It was.

13 Q Were you hospitalized after surgery?

14 A Over night.

15 Q Do you know what procedure was performed,
16 Mr. Burgess?

17 A From what I understand, there was a partial or
18 part of a disk took out.

19 MR. MOORE: Again, this is stuff he's been told
20 by the doctor. It's not even personal knowledge.

21 THE COURT: I confess I didn't hear the
22 question, what was the question?

23 MR. GARCIA: I simply asked him, Your Honor --

24 MR. MOORE: Lose your place?

25 MR. GARCIA: Yeah, I did.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 I simply asked him what his understanding was of
2 the purpose of this -- or, actually, the name of the
3 procedure is all I asked him, what the name of the
4 procedure was, not why it was done.

5 THE COURT: Okay. Ask him --

6 MR. MOORE: I misunderstood the question, I'm
7 sorry.

8 BY MR. GARCIA:

9 Q It's okay if you don't, Mr. Burgess, do you know
10 the exact name of the procedure that was performed?

11 A Not the exact name, I don't.

12 Q Okay. Okay. I believe you testified you
13 were -- were you held overnight following the surgery?

14 A I was.

15 Q Was it just one night?

16 A One night.

17 Q Can you tell me what kind of pain you had to
18 deal with as a result of the surgical procedure?

19 A A lot of sharp pain and uncomfortable.

20 Q You had a fairly long drive home, did you not?

21 A Yes.

22 Q Was the drive home difficult?

23 A Miserable.

24 Q Did you have difficulty walking still?

25 A Yes, sir, I did.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Did you have difficulty sleeping?

2 A I did.

3 Q Where did you feel this pain that we're still
4 referencing after the surgery?

5 A In my left leg and my lower back.

6 Q Did you get any relief from the surgery,
7 Mr. Burgess?

8 A I got some relief, not what I had expected to.
9 I want to say maybe a 10, 15 percent relief is all.

10 Q Was this relief of your pain? The relief that
11 we're referencing, was it relief of your pain?

12 A It was.

13 Q Okay.

14 A But still a significant amount of pain I'm in.

15 Q Did you follow up with Dr. Brennan, your
16 surgeon, following surgery?

17 A I did.

18 Q Was there another MRI performed after the
19 surgery?

20 A There were.

21 Q Did your relationship with Dr. Brennan end when
22 he referred you to Dr. Loudermilk at Piedmont
23 Comprehensive Pain Management?

24 A Yes, sir, it did.

25 Q Now, I know Dr. Brennan is, I'm assuming, in

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Florence; is that correct?

2 A That's right, Florence.

3 Q And now we're talking about Dr. Loudermilk at
4 Piedmont Comprehensive Pain Management, are you seeing
5 Dr. Loudermilk here locally now?

6 A He's in Greenville.

7 Q Okay. Did you have bills for your treatment
8 with Dr. Brennan and for the hospital where the surgery
9 was performed?

10 A Yes.

11 Q Are you alleging today that the bills for
12 treatment and for the surgery are related to the collision
13 we're here about?

14 A Yes.

15 Q Okay. Let's talk about Dr. Loudermilk at
16 Piedmont Comprehensive Pain Management. Is that the
17 doctor you were referred to by Dr. Brennan?

18 A Yes, it was.

19 Q What was the purpose of your visit with
20 Dr. Loudermilk at Piedmont Comprehensive Pain Management?

21 A Trying to get me on a spinal cord stimulator.

22 Q Did you see Dr. Loudermilk from about August
23 28th, 2015, to September 18, 2015?

24 A That's correct.

25 Q Did you undergo a trial of a spinal cord

JOHN BURGESS-DIRECT BY MR. GARCIA

1 stimulator at some point?

2 A I did.

3 Q Was there a surgical procedure you had to take
4 part in for this trial of a spinal cord stimulator?

5 A I did.

6 Q Did you go home the same day of the surgery
7 after that spinal -- the trial of the -- or the implant of
8 that trial?

9 A I did.

10 Q Did you have a lead implanted in your back with
11 a battery on the outside of your body?

12 A That's correct.

13 Q How long did that trial last?

14 A Seven days.

15 Q Did the stimulator help with your pain?

16 A It did.

17 Q How much did it help?

18 A I'd say 50, 60 percent.

19 Q Okay. Did you have a permanent spinal cord
20 stimulator implanted? Do you have one as you sit here
21 today?

22 A No, sir, I don't.

23 Q Do you want a permanent spinal cord stimulator
24 implanted?

25 A Any kind of help, I'd take.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Why haven't you undergone permanent placement of
2 a stimulator if you want it, Mr. Burgess?

3 A Can't afford it.

4 Q Do you have medical bills related to this
5 procedure, this spinal cord stimulator trial procedure?

6 A Yes.

7 Q Do you allege that those medical bills and that
8 procedure are related to the collision that we're here
9 about today?

10 A Yes.

11 Q Do you still see a doctor today, Mr. Burgess?

12 A Dr. Booker, I do.

13 Q Does Dr. Booker treat you for some things that
14 are related to the accident and some things that aren't?

15 A True, that's correct.

16 Q What is she treating for you at this point,
17 Mr. Burgess, that you allege is related to this collision?

18 A Pain.

19 Q How is she helping you with that, with pain?

20 A Medication.

21 Q Okay. I want to put up for you, Mr. Burgess, a
22 medical billing index, if you will, of the treatment
23 you've received up to this point. Is this index you see
24 here today, Mr. Burgess, consistent with the medical bills
25 and treatment that we just ran through?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 A Yes, sir, it does.

2 Q Okay.

3 MR. GARCIA: Your Honor, I'm going to move to
4 have this marked as a Plaintiff's Exhibit.

5 MR. MOORE: No objection.

6 THE COURT: Without objection.

7 (WHEREUPON, Plaintiff's Exhibit No. 10 was
8 marked for identification and received into
9 evidence.)

10 BY MR. GARCIA:

11 Q That total bill dollar amount \$206,000, is that
12 consistent again with the medical bills?

13 A Yes, sir.

14 Q Are you still in pain today, Mr. Burgess?

15 A Excuse me?

16 Q Are you still in pain today?

17 A Yes, sir.

18 Q Okay. Where do you feel pain?

19 A Left leg, back.

20 Q Does the pain affect your ability to sleep?

21 A It does.

22 Q Does it affect your ability to focus and
23 concentrate?

24 A It does.

25 Q Does the pain medication you're still taking

JOHN BURGESS-DIRECT BY MR. GARCIA

1 today affect your ability to focus and concentrate?

2 A It does.

3 Q How often do you have to take pain medication?

4 A Four times a day.

5 Q What do you take -- or what kind of medication
6 do you take? Do you know the name of the drugs you take?

7 A Narco, Gabapentin.

8 Q Now, have you -- I want to ask you about your
9 current working condition right now. Have you an
10 opportunity to return to work?

11 A No, sir, I haven't.

12 Q Of the jobs you've done in the past, are there
13 any jobs you can return to in your current condition?

14 A No, sir.

15 Q Have you looked for work?

16 A I have. I mean, as far as like classified ads,
17 looking online ads and things like that, I have.

18 Q Have you been able to find any work?

19 A No. I'm very limited to things I can do.

20 Q Do you want to work right now?

21 A Yes, sir.

22 Q How has this injury to your leg and back
23 affected your day-to-day life, Mr. Burgess?

24 A Can't go out there and play -- I've got an 11
25 year old and I can't go out and play ball with him. I've

JOHN BURGESS-DIRECT BY MR. GARCIA

1 got five grandkids and I can't even pick them up. That
2 hurt me very bad because of that. Just my family, I mean,
3 nothing I can really do with them.

4 Q Have you missed any family gatherings for
5 holidays?

6 A I have missed some, yes, sir, because of pain I
7 have been in.

8 Q Has this affected your relationship with your
9 family?

10 A It has.

11 Q Are there moments of embarrassment as a result
12 of this injury?

13 A There are.

14 Q Is there suffering as a result of this injury to
15 your leg and back, Mr. Burgess?

16 A I'm sorry?

17 Q I'll repeat that. Is there suffering as a
18 result of this injury to your leg and back?

19 A Yes.

20 Q Does the pain prevent you from doing things you
21 want to do outside of work?

22 A Yes.

23 Q What does it prevent you from doing?

24 A Pretty much anything. I'm limited to anything
25 that I do. I mean -- I say, I mean, any kind of hobbies,

JOHN BURGESS-DIRECT BY MR. GARCIA

1 anything, I say that. I mean, my family. My family is my
2 hobbies. I can't do any of those. I can't -- nothing I
3 really can do and enjoy with them.

4 Q Do you use a cane all the time, Mr. Burgess?

5 A Pretty much all the time. There have been times
6 that I haven't used a cane, but, I mean, majority of the
7 time, I do.

8 Q Okay.

9 A If I go just run into a grocery store and right
10 back out, I may go in there without it.

11 Q Can you do chores around the house?

12 A There were times I have been able to cut the
13 grass with a riding lawn mower. But doing that, I can
14 only do a little bit of the front yard. I have to go in
15 the house and rest, take pain medication and wait two
16 hours and go back out there to do the rest of the front
17 yard. Then the next day, I will do the backyard the same
18 way.

19 Q Do you need help -- the time that you've used a
20 riding mower, have you needed help to complete the work?

21 A Sure. My wife has to pick the limbs up. If
22 grass gets wire up on the bottom of the deck of the lawn
23 mower, she'll have to come out there and dig all of it out
24 for me. Basically, all I do is sit there and ride around
25 the yard and get the grass cut.

JOHN BURGESS-DIRECT BY MR. GARCIA

1 Q Who comes out and picks grass for you?

2 A My wife.

3 Q Okay. Are you able to mow at the speed you want
4 to mow at?

5 A I have to go very slow. I hit bumps, I mean, it
6 hurts so bad.

7 Q Is there anything you believe that you could
8 have done to avoid this collision, Mr. Burgess?

9 A No, sir. I was going down the road straight and
10 looking forward and got hit from behind. There's no way I
11 could have prevented it.

12 MR. GARCIA: That's all I have for you now.
13 Please answer any questions that Mr. Moore may have
14 for you.

15 MR. MOORE: Go forward?

16 THE COURT: Y'all approach for a second.

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury but out of the hearing of
19 the jury.)

20 THE COURT: All right, Madam Forelady, ladies
21 and gentlemen of the jury, we're going to break for
22 the evening, it's a quarter of 5:00. And I want to
23 let y'all head for home before the rush hour in
24 downtown Pickens.

25 Please remember what I told you about not

JOHN BURGESS-DIRECT BY MR. GARCIA

1 discussing the case. It's got to be tempting and
2 it's human nature to want to talk about it. But you
3 sworn an oath to not do that. And the importance is,
4 as I've told you before, you don't want somebody
5 who's not making the sacrifices that each of you are
6 making to have any input in the outcome of this case.
7 They're not in here listening to the testimony or
8 participating in any way. So, don't let them have an
9 effect on the outcome of this. Don't go visit the
10 scene, don't go on the internet. Y'all have a
11 pleasant night and we'll see you back at, let's say,
12 10:00. Is that good with everybody?

13 Okay. All right. See you then.

14 (WHEREUPON, the jury came into open court at
15 approximately 4:45 p.m.)

16 THE COURT: All right, Mr. Burgess, I'm not
17 going to make you sit in that chair all night.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: But you can't discuss your testimony
20 with anybody.

21 THE WITNESS: Yes, sir, I understand.

22 THE COURT: See you in the morning.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Okay. All right.

25

JOHN BURGESS-DIRECT BY MR. GARCIA

(WHEREUPON, the proceedings were concluded for
the day to be reconvened on Tuesday, June 26,
2018.)

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JOHN BURGESS-DIRECT BY MR. GARCIA

1 June 26, 2018

2 THE COURT: Mr. Garcia, I think he has something
3 he wants to put on the record.

4 MR. GARCIA: That's right, Your Honor. It's
5 somewhat regretful on my part, but I need to do this.
6 I feel the need to do it. Your Honor, I don't
7 believe that it's consistent with the Rules of
8 Judicial Conduct, Canon No. 3, that there are facial
9 expressions being made by the Judge himself while I'm
10 addressing my own witness, while I'm addressing other
11 witnesses. I made an attempt to speak to you about
12 this in chambers, rather than putting this on the
13 record over here right now. It was not met with any
14 kind of understanding or with the intention of just
15 talking about the issue in and of itself.

16 Unfortunately, it left me with no real position
17 other than to come out here and put it on the record.
18 And I'm trying to talk about it the first opportunity
19 that I get to talk about it after really recessing
20 from trial yesterday, that's all I have.

21 I'll state as well, Your Honor, I'm not
22 necessarily asking for any recusal or anything along
23 those lines. But if it's something that continues to
24 happen, I'll have to--

25 THE COURT: Are you threatening me, Mr. Garcia?

JOHN BURGESS-DIRECT BY MR. GARCIA

1 MR. GARCIA: It's not a threat at all, Your
2 Honor.

3 THE COURT: Let me put this on the record. This
4 is the first trial I've ever had with you. You stay
5 at the counsel table.

6 MR. GARCIA: Okay.

7 THE COURT: You have never been in trial with me
8 before.

9 MR. GARCIA: You're right.

10 THE COURT: You have no idea what my facial
11 expressions are.

12 MR. GARCIA: That's correct.

13 THE COURT: You have no idea what's going
14 through my mind. And I caution you to be careful
15 about what you accuse the Court of because I take it
16 extraordinarily seriously. Am I clear about that?

17 MR. GARCIA: You are. May I respond?

18 THE COURT: No, sir.

19 Are you ready to go?

20 Anything else before we bring the jury?

21 MR. GARCIA: No, sir.

22 THE COURT: Mr. Moore, you had an --

23 MR. MOORE: One thing I did bring up in
24 chambers, Your Honor, there was a request yesterday
25 to introduce the recorded statement from Ms. Hunter,

JOHN BURGESS-DIRECT BY MR. GARCIA

1 I objected to that, you agreed with me. However,
2 going home yesterday, I had remembered that I told
3 Mr. Garcia that I would allow it in where we redacted
4 it out, he's done that. So, I think -- I'll be
5 honest with you, I need to withdraw my objection and
6 allow it to come in.

7 THE COURT: All right, granted.

8 (WHEREUPON, Plaintiff's Exhibit No. 11 was
9 marked for identification and received into
10 evidence.)

11 THE COURT: All right, Mr. Burgess, you may
12 return to the witness stand. You're still under
13 oath.

14 Okay, anything else?

15 MR. MOORE: No, sir, ready to go.

16 THE COURT: All right.

17 Yes, sir, Mr. Teal.

18 (WHEREUPON, the jury came into open court at
19 approximately 10:15 a.m.)

20 THE COURT: All right, ladies and gentlemen,
21 welcome back. I hope y'all had a pleasant evening.
22 I presume y'all have nothing to report to me. So,
23 we're ready to start right now.

24 All right, cross-examination, Mr. Moore.

25 MR. MOORE: May it please the Court.

JOHN BURGESS-CROSS BY MR. MOORE

CROSS-EXAMINATION

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BY MR. MOORE:

Q Good morning, Mr. Burgess.

A Good morning.

Q My understanding, based upon your testimony is that on December 10th, 2013, you were operating a moped on Blue Ridge Highway; am I correct?

A Yes, sir.

Q And you had operated that moped on Blue Ridge Highway on several occasions going from your home to your place of business and back; am I right?

A Yes.

Q Okay. And as a result, you were familiar with that highway?

A Yes.

Q Okay. That highway, as I understand it, and I think we saw some photographs of this yesterday, is a four-lane highway with two lanes going each way; am I right?

A That's correct.

Q And there's a median in the middle of the highway, it's an asphalt median, but there's a median there in the middle of the highway, correct?

A Yeah.

Q Now, on the day this accident happened, you were

JOHN BURGESS-CROSS BY MR. MOORE

1 operating a moped; am I right?

2 A Yes.

3 Q And that moped has a speed limit, I believe
4 you're aware, of 25 miles per hour. Were you aware of
5 that?

6 A Yes.

7 Q Correct?

8 A Yes.

9 Q Okay. Now, in contrast, the Blue Ridge Highway,
10 as you're aware because you're familiar with it, has a
11 speed limit of 45 miles per hour; am I right?

12 A That's correct.

13 Q Okay. Now, your testimony is that you had
14 pulled into the Hot Spot, a gas station along Blue Ridge
15 Highway, shortly before this accident happened; am I
16 right?

17 A Yes.

18 Q You were making a telephone call, I believe?

19 A Right.

20 Q When you finished that telephone call, you got
21 back on the highway to go down the road about a quarter of
22 a mile or so, correct?

23 A Correct.

24 Q Okay. Now, when you did that, you got into the
25 left lane, did you not?

JOHN BURGESS-CROSS BY MR. MOORE

1 A I did.

2 Q Okay. You're aware, of course, the left lane is
3 considered to be the fast lane on that highway; am I
4 right?

5 A Yes.

6 Q Okay. And are you also aware that you are not
7 supposed to get your moped into that lane until you're
8 about to make a left-hand turn?

9 A I was going to be turning left.

10 Q But you were going to be turning left some
11 quarter of a mile or more down the road; am I right?

12 A Well, time I got out, I mean, that's the only
13 chance I really had of getting over in the left-hand lane
14 before traffic been coming.

15 Q You could have made a switch in lanes a quarter
16 of mile down the road just before you were going to make
17 that turn, couldn't you?

18 A Well, at that intersection right there coming up,
19 it's always congested right there.

20 Q I'm sorry?

21 A Right there with an intersection coming up close
22 to the intersection at 25, it's always really congested,
23 so it's really hard to get over at that point.

24 Q But you've already indicated it was fairly light
25 traffic that day as well, haven't you?

JOHN BURGESS-CROSS BY MR. MOORE

1 A At that point right there. But as I said, you
2 get up there towards 25, it gets really congested up
3 there.

4 Q Is it your position that you had to get over
5 when there was light traffic over in the left-hand lane in
6 order to make a left-hand turn a quarter of a mile down
7 the road?

8 A Yes.

9 Q Okay. Not withstanding the statute that says you
10 stay in that right-hand lane until it's necessary for you
11 to make your left-hand turn?

12 MR. GARCIA: Objection, Your Honor. If he's
13 going to cite the statute, I believe he should be
14 showing Mr. Burgess the statute and citing it exactly
15 how it is as he says it.

16 THE COURT: Mr. Garcia, we're going to stop with
17 the speaking objections.

18 Okay. Go ahead and show him the statute.

19 MR. MOORE: I'll get to it later. I've got it
20 in my research. I don't want to take the time up.

21 THE COURT: Okay.

22 BY MR. MOORE:

23 Q Okay. Now, when you got in the left lane, your
24 testimony is you were in the center of that lane; am I
25 right?

JOHN BURGESS-CROSS BY MR. MOORE

1 A Yes, sir.

2 Q Okay. And as you traveled down that road,
3 you're going 25, 20, 25, 30 miles per hour, right?

4 A Probably about 30 miles per hour.

5 Q Okay. Now, after this accident, you spoke to
6 the EMTs or the guys who was handling the ambulance about
7 this accident; did you not?

8 A I'm sorry?

9 Q Did you talk to the ambulance attendants after
10 the accident when they came to --

11 A As they were working on me, I guess so, yeah.

12 Q Did you tell them you were going 20 miles per
13 hour?

14 A I don't recall telling them that.

15 Q Okay. I'm going to show you a copy of this
16 report. It's the second page of the ambulance report
17 here. If you look at the top paragraph there.

18 A Okay. I don't have my glasses with me today.

19 Q Okay, I'll point out to you, patient states he
20 was traveling approximately 20 miles per hour. Do you see
21 that?

22 A Okay.

23 Q Okay. Is that what you said at the time?

24 A It may have been. Like I said, I don't recall
25 saying that.

JOHN BURGESS-CROSS BY MR. MOORE

1 Q All right. It's been a while. So, you're going
2 about 20 miles per hour on a 45-mile-per-hour road and you
3 say you're in the middle of the left lane; am I right?

4 A I was in the middle lane, yes.

5 Q All right. Now, you didn't see the vehicle
6 being operated by Katie Hunter; am I right?

7 A No, I didn't.

8 Q You don't know how fast she was going, you don't
9 know what she did before the collision occurred?

10 A No, I was looking forward.

11 Q I'm sorry?

12 A I was looking forward and I didn't see her.

13 Q All right. And when the collision took place,
14 her vehicle hit the rear of your moped, right?

15 A Yes.

16 Q Didn't hit it on the right, didn't hit it on the
17 left?

18 A Right.

19 Q And if we look at photographs of your moped
20 following this accident, the damage is to the rear of the
21 moped and there's some damage to the left; am I right?

22 A It's totaled, pretty much totaled the moped all
23 over.

24 Q I understand that, but the damage to the moped
25 is to the rear of the moped where the collision took place

JOHN BURGESS-CROSS BY MR. MOORE

1 and also to the left-hand side of the moped where it fell
2 down when you --

3 A Yes.

4 Q When the accident happened. Okay. Now, the
5 moped ended up in the median of the highway; did it not?

6 A Yes.

7 Q Okay. In other words, you were traveling
8 straight down the road and it ended up to the left-hand
9 side of the road, correct?

10 A Correct.

11 Q Left-hand -- the middle of the road to your
12 left, correct?

13 A Right.

14 Q Okay. Following the accident -- let me back up
15 just a second. When the accident happened, obviously, you
16 hit the left side of your face, correct? We've seen those
17 photographs and it's all on the left side of your face,
18 right?

19 A Right.

20 Q Okay. You also had a broken orbit there, I
21 believe, on the left side of your face?

22 A Okay.

23 Q Okay. You also injured your left knee; am I
24 right?

25 A Not my knee, the upper part of my leg.

JOHN BURGESS-CROSS BY MR. MOORE

1 Q Let me show you again the EMT report and I'll
2 read it for you since you don't have your glasses. It
3 says left knee pain; does it not?

4 A Where are you seeing that?

5 Q Right here.

6 A I said as far as knee pain, the pain I was
7 having was right up here on my leg.

8 Q When you say right up here, the jury can't see
9 that, but it's right above your left knee?

10 A Right.

11 Q Okay. After the accident, you got up; am I
12 right?

13 A Right. After a couple minutes of trying to
14 gather myself up, yeah, I gathered myself.

15 Q You got up and you walked over towards
16 Ms. Hunter's vehicle?

17 A Right. I seen her, then she walked over my way
18 and I walked over and met her halfway between the point
19 where I had landed and her vehicle.

20 Q You met her about halfway and then she took you
21 back to her car; is that right?

22 A That's right.

23 Q She called 911 while you were in the car?

24 A Right.

25 Q And while she's on the phone with 911, either

JOHN BURGESS-CROSS BY MR. MOORE

1 you talked to her or you spoke to the 911 operator; am I
2 right?

3 A I talked to her, yes, sir.

4 Q But you provided information about your
5 wellbeing at that point in time; am I right?

6 A Right.

7 Q Okay. All right. Now, after 911 was called,
8 obviously, the ambulance came to the scene; am I right?

9 A The fire department and --

10 Q The fire department, police department and the
11 ambulance all came to the scene?

12 A Right.

13 Q Okay. The EMTs or the ambulance attendants
14 asked you about various parts of your body; did they not,
15 about whether there was an injury there or not?

16 A Uh-huh.

17 Q Correct?

18 A Correct.

19 Q And they asked you about your back; did they
20 not?

21 A I mean, they asked me how -- where the pain was
22 and I told them I was hurting pretty much all over.

23 Q Okay. Well, let's take a look again at the
24 ambulance report here. Did you not, when they asked about
25 the lumbar or the low back, indicate you denied any pain

JOHN BURGESS-CROSS BY MR. MOORE

1 there?

2 A Can you finish reading that sentence, please?

3 Q To explain it to you?

4 A Can you finish reading what it says down here as
5 well?

6 Q Okay. Lumbar, midline findings, denies pain to
7 further assessment due to patient secured to long spine
8 board prior to our arrival. But you told them you didn't
9 have any pain in your lumbar area, correct?

10 A At the time, I was on the spine board.

11 Q But they asked you about your low back and you
12 said you didn't have any problems there; am I right?

13 A They said -- from my understanding, they
14 deferred it because I was on a spine board.

15 Q Well, that has to do with their assessment.
16 What I'm asking you about is your response to their
17 question about your low back?

18 A I told them I was hurting all over. I mean, I
19 didn't give any specific parts, I was just telling them I
20 was hurting all over.

21 Q So, you would deny that this document is correct
22 with regard to you saying you didn't have any pain in your
23 low back?

24 A No, I said I had pain all over.

25 Q They took you to the emergency room; am I right?

JOHN BURGESS-CROSS BY MR. MOORE

1 A Yes, sir.

2 Q Okay. And while you were in the emergency room,
3 did you initially, that first day, complain about your low
4 back?

5 A Once again, I mean, I complained about hurting
6 all over.

7 Q Okay. Now, ultimately, they did, I believe, a
8 CT scan or MRI of your low back?

9 A I know they did some x-rays and MRI and all,
10 yes.

11 Q And they asked you when they came back about the
12 findings of the MRI or whatever it was, and you indicated
13 to them at that time that you didn't have any back pain
14 whatsoever. That you didn't have any radicular pain. Do
15 you recall that?

16 A I don't recall that.

17 Q Okay. Let me show you the medical record just
18 to refresh your memory. And this is probably on
19 December 13th, it looks like. It indicates here, patient
20 notes that he has a history of low back pain in the past.
21 That's correct, isn't it? You've had low back pain
22 before?

23 A As far as muscle pain because I was doing
24 construction work. Not as far as the pain I was having,
25 you know, from this, no, nowhere near that kind of pain.

JOHN BURGESS-CROSS BY MR. MOORE

1 Q Well, let's talk about that. Before this
2 accident, had you not been going to the doctor about low
3 back pain?

4 A I'm sorry?

5 Q Before this accident occurred, had you not been
6 going to the doctor about low back pain?

7 A No, sir, I hadn't.

8 Q Okay. Did you go to the Medical Center of
9 Easley for treatment?

10 A I did.

11 Q And I'm assuming you saw various doctors there
12 at that office?

13 A Right.

14 Q Did they not indicate to you that you were going
15 to be referred over to the pain clinic?

16 A That's correct.

17 Q Okay. And you were referred because you had
18 chronic pain in your cervical or your neck region and also
19 in your lower back region; am I right?

20 A Because of my neck.

21 Q Also, because of your back; am I right?

22 A No, sir.

23 Q Okay. Did you have low back problems before
24 this accident happened?

25 A Like I said, like muscle pain in my back because

JOHN BURGESS-CROSS BY MR. MOORE

1 I was doing construction work, just regular back pain.

2 Q Okay. Now, you deny, if I understand it
3 correctly, that you told the physician who was attending
4 you in the hospital that you didn't have any back pain
5 whatsoever; am I correct?

6 A Like I said, I said I was hurting, had pain all
7 over.

8 Q And you denied having any radicular pain or pain
9 going down from your low back into your leg, did you deny
10 that?

11 A No, sir. I was having a lot of pain in my leg.

12 Q Well, let's followup up on that. I understand
13 what you're saying. When this accident happened, you hit
14 the left side. You, obviously, hit it with your face, but
15 you also hit it with your left leg, correct?

16 A I'm sorry?

17 Q When the accident happened, when you hit the
18 ground, you hit the ground with your face, the left side
19 of your face and your left leg; am I right?

20 A Left leg and with my face.

21 Q Okay. And the pain you're having in your left
22 leg, you indicated before, is right above your knee; am I
23 right?

24 A Yes, sir, above my knee.

25 Q Kind of in the thigh area, correct? Hip and

JOHN BURGESS-CROSS BY MR. MOORE

1 thigh area?

2 A It's not really my hip. I mean, down -- a
3 little bit down below my hip.

4 Q But it's, basically, if you can see me, in this
5 area here on your leg?

6 A Right.

7 Q That's where you hit the ground, basically?

8 A Right.

9 Q And you're having pain there because you hit the
10 ground there, right?

11 A Right.

12 Q Okay. Now, my question is a little bit
13 different. With regard to your low back, you're
14 indicating you had pain there. Is pain going from your
15 low back into your leg or is it just simply that you have
16 leg pain because that's where you hit the ground?

17 A At the time, I didn't really know it was from my
18 back, I mean.

19 Q Okay.

20 A I know I was having a lot of pain there in that
21 area.

22 Q In fact, when you were released from the
23 hospital, you followed up with some orthopedists and they
24 treated you for your hip and thigh pain; did they not?

25 A Right, yeah.

JOHN BURGESS-CROSS BY MR. MOORE

1 Q Okay. And that's what they thought the problem
2 was in your hip and thigh area?

3 A Uh-huh.

4 Q Correct?

5 A Correct.

6 Q All right. Now, eventually, those orthopedists
7 referred you over to a neurologist; am I right?

8 A That's correct.

9 Q Okay. Who, in turn, referred you over to a
10 doctor in Florence; am I correct on that?

11 A A surgeon in Florence.

12 Q A neurosurgeon over in Florence. Now, a
13 neurosurgeon in Greenville had seen you; am I right?

14 A That's correct.

15 Q And that neurosurgeon opted not to undertake
16 surgery of your low back; am I right?

17 A Right.

18 Q Okay. So, you went over to Florence to have
19 that surgery?

20 A Uh-huh.

21 Q Is that right?

22 A Yes, sir.

23 Q Okay. And when you undertook that surgery, your
24 understanding was the purpose was to help you with your
25 low back pain and whatever pain was going down into your

JOHN BURGESS-CROSS BY MR. MOORE

1 leg, correct?

2 A That's correct.

3 Q The surgery didn't work, did it?

4 A It helped some, maybe 10, 15 percent, but it
5 didn't help what I thought it would help.

6 Q You were having problems before with your low
7 back and pain in your leg and hip; am I correct?

8 A Not before the accident, no.

9 Q No, no, I'm sorry. Before you had the surgery?

10 A Right.

11 Q Okay. You were having pain in your low back and
12 pain in your hip and your thigh area that we've been
13 talking about, correct?

14 A Yes.

15 Q Following this surgery, you still have pain in
16 your low back?

17 A Yes.

18 Q Still have pain in your hip and thigh?

19 A Right.

20 Q So the surgery didn't work, did it?

21 A Like I said, it helped some, but not what I
22 thought it would.

23 Q Now, in addition, to the hip and thigh or low
24 back problems, you also injured your orbit; am I right?

25 A Right.

JOHN BURGESS-CROSS BY MR. MOORE

1 Q When we talk the orbit, it's that bone beneath
2 your eye?

3 A Right.

4 Q Correct? And you had a fracture there that
5 caused some double vision for a while?

6 A Right.

7 Q And you had surgery with regard to that
8 particular problem in January, correct?

9 A Yes, sir.

10 Q Little bit less than two months after the
11 accident happened?

12 A Right.

13 Q And that resolved that particular problem; did
14 it not?

15 A Right.

16 Q You don't have double vision anymore?

17 A No.

18 Q In fact, at the end of January, first part of
19 February, you were able to go back and get your driver's
20 license; were you not?

21 A Toward the end of February.

22 Q Okay. Toward the end of February, you went back
23 and got your driver's license. You didn't have anymore
24 double vision, correct?

25 A Right.

JOHN BURGESS-CROSS BY MR. MOORE

1 Q And you were physically able to drive a car at
2 that time; am I right?

3 A Yeah.

4 Q In fact, you got to the point where you could
5 not only drive a car, but you could use a lawn mower,
6 riding lawn mower on your property; am I right?

7 A On over in the summer.

8 Q Okay. And you also got to the point where you
9 could walk without a cane; am I right?

10 A Very, very little.

11 Q But you could walk without a cane and you could
12 walk steadily without a cane; am I right?

13 A Yes, very little.

14 Q Then when you had the surgery, it kind of
15 regressed; did it not?

16 A I'm sorry?

17 Q Did it go backwards, in other words?

18 A Uh-huh.

19 Q Is that right?

20 A Right.

21 Q Now, since this surgery didn't work, the thought
22 was that you might want to have a spinal cord stimulator;
23 am I right?

24 A Correct.

25 Q And you went to see Dr. Loudermilk over in

JOHN BURGESS-CROSS BY MR. MOORE

1 Anderson regarding that?

2 A Right.

3 Q And he ran a test on you; am I right?

4 A Uh-huh.

5 Q Is that correct?

6 A Yes.

7 Q And he indicated that that might be a benefit to
8 you; am I right?

9 A That's right.

10 Q Okay. The indication there was it was to help
11 you with regard to your low back pain and your leg pain,
12 to help you overcome that, right?

13 A Right.

14 Q Okay. And also, the indication was that it
15 would be such that it cut down on your medication and also
16 possibly allow you to get back to work. Was that your
17 understanding?

18 A Uh-huh.

19 Q Is that correct?

20 A Yes.

21 Q Okay. But you haven't had that surgery done; am
22 I right?

23 A Correct.

24 Q So, if you had that surgery undertaken, you
25 could cut down on whatever medications you're having now

JOHN BURGESS-CROSS BY MR. MOORE

1 and you could possibly get back to work?

2 MR. GARCIA: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. GARCIA: He's asking him to speculate on
5 what would occur if he had that surgery. He doesn't
6 know that answer.

7 THE COURT: Okay. Don't ask him to speculate.

8 MR. MOORE: That's fine.

9 BY MR. MOORE:

10 Q Now, at the time of this accident, you were
11 working at ESS Resin; am I right?

12 A Yes, sir.

13 Q And you made about \$7,331 during the course of
14 the year?

15 A Yes.

16 Q About seven months worth of work?

17 A Right.

18 Q Little bit more than a thousand dollars per
19 month?

20 A Right.

21 Q So, if you worked there for a full year, it
22 would be about \$12,000?

23 A As I stated before, the whole time I was there,
24 I wasn't full time.

25 Q I understand that, but just assuming you did

JOHN BURGESS-CROSS BY MR. MOORE

1 that type of work continuously, you would be making about
2 \$12,000 a year, right?

3 A Right.

4 Q Okay. Before that time, you worked at the
5 Farmer's Market over in Easley?

6 A Right.

7 Q And in between the Farmer's Market and working
8 at ESS Resin, were you unemployed for a while?

9 A I was.

10 Q Then before the Farmer's Market, I believe you
11 worked at the Family Dollar.

12 A That's correct.

13 Q Was there a time period where you were
14 unemployed between the Family Dollar and working at the
15 Farmer's Market?

16 A A couple months, yes.

17 Q Now, you lost your job at the Family Dollar
18 because you were convicted of breach of trust; is that
19 right?

20 A Yes.

21 Q Okay. In other words, you took money from your
22 employer, about \$2,000 worth?

23 A Right.

24 Q That's a felony; is it not?

25 A Yes.

JOHN BURGESS-CROSS BY MR. MOORE

1 Q All right. You've also had some other
2 positions, I understand, as a night auditor at a job or a
3 security job at a particular business; am I right?

4 A Yes.

5 Q But each time you worked there for a little
6 while and then there's a time period where you're
7 unemployed; am I right? Is that correct?

8 A Well, from one to the other, I just left from
9 one and went to the other without being out of work, I
10 mean.

11 Q But you're not consistently working during this
12 time period. In other words, you will be working, for
13 example, the Family Dollar, get fired because you're
14 stealing money from there and there's a time period where
15 you're not working, correct?

16 A Yes, a time period, yes, sir.

17 Q Then, you know, there's a time period where
18 you're working at the Farmer's Market, but there's a gap
19 there between the Farmer's Market and ESS Resin because
20 you're unemployed during that time period?

21 A About two months.

22 Q So, there are time periods during the course of
23 your work life history where you're just simply not
24 working; am I right?

25 A In that timeframe.

JOHN BURGESS-CROSS BY MR. MOORE

1 Q Okay. Now, with regard to your work background,
2 in addition to these physical problems we've been talking
3 about with your low back, your cervical -- you've had
4 problems with your cervical, you agree with me on that,
5 correct?

6 A Yes.

7 Q You've also had problems with regard to your
8 heart; am I right?

9 A Yes.

10 Q You've had problems with depression?

11 A Yes, sir.

12 Q Anxiety?

13 A Yes, sir.

14 Q Obsessive compulsive disorder?

15 A Yes.

16 Q Okay. Other problems that you might have had
17 physically or menially; am I right?

18 A Yes.

19 Q And all of these, you agree with me, will affect
20 your ability to get a job and hold a job, right?

21 A No. I was able to work with those conditions.

22 Q You've worked at various positions, but it was
23 never for a long-term period, for several years; am I
24 right.

25 A There have been times that I have been working

JOHN BURGESS-CROSS BY MR. MOORE

1 several years at a place, yes, sir.

2 Q And you agree if you, for example, had a problem
3 ongoing with your heart, which is unrelated to this
4 accident, that would keep you out of work; would it not?

5 A I was able to work with my heart condition that
6 I had.

7 Q I understand that, but what I'm saying is if it
8 worsened.

9 MR. GARCIA: Objection.

10 THE COURT: Basis?

11 MR. GARCIA: Same objection. He's asking him to
12 speculate whether a medical condition will affect him
13 some time in the future.

14 MR. MOORE: I'm asking, for example, he has a
15 heart attack whether that would affect his ability to
16 work.

17 THE COURT: I'm going to allow him to ask that
18 question.

19 Go ahead.

20 BY MR. MOORE:

21 Q All right. Mr. Burgess, my understanding is
22 that you, obviously, had planned to retire, am I right, at
23 some point?

24 A At some point, everybody does, yes.

25 Q Sixty-five years of age?

JOHN BURGESS-REDIRECT BY MR. GARCIA

1 A Well, I guess if I'm not able to retire, it will
2 probably be older than that.

3 Q You don't know, though?

4 A I can't say that, no.

5 MR. MOORE: Thank you, Mr. Burgess.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION.

8 BY MR. GARCIA:

9 Q Mr. Burgess, while I'm trying to get this
10 projector up to show you a medical record here, I want to
11 ask you again about that surgery that you had with
12 Dr. Brennan in Florence.

13 A Right.

14 Q Did that surgery help you?

15 A It helped some, yeah.

16 Q And can you just restate the percentage it
17 helped of your pain?

18 A Probably about 10, 15 percent.

19 Q Was that enough to get you back to work?

20 A No, sir, it wasn't.

21 Q Okay. Mr. Burgess, you were asked about a
22 statute that requires you to not move into the left lane,
23 okay. And I wanted to give you an opportunity to see the
24 entire statute up until the very last portion of it. I
25 believe -- if you'll bear with me here, I believe we're

JOHN BURGESS-REDIRECT BY MR. GARCIA

1 looking at 4(b).

2 And, actually, the title of this section,
3 it's 56-5-1810, and it says: Drive on the right side of
4 roadways; exceptions to driving on the right side of the
5 roadways.

6 When you get down here, just bear with me,
7 Mr. Burgess, I'm going to try to read this all in for you.

8 It says: Upon all roadways, any vehicle
9 proceeding at less than the normal speed of traffic at the
10 time and place and under the conditions then existing
11 shall be driven in the right-hand lane then available for
12 traffic, or as close as practicable to the right-hand curb
13 or edge of the roadway.

14 Now, here's the word I want you to pay
15 attention to, Mr. Burgess.

16 Except when overtaking and passing another
17 vehicle, proceeding in the same direction or when
18 preparing for a left turn at an intersection or into a
19 private road or driveway.

20 Mr. Burgess, when you left the Hot Spot,
21 did you know that you were going to be turning left at
22 some point coming up the road?

23 A Yes, sir, I did.

24 Q Okay. Were you going to turn left into a
25 driveway?

JOHN BURGESS-RECROSS BY MR. MOORE

1 A Yes.

2 Q Okay. Mr. Burgess, now, I'm just going to put
3 an EMS note up for you. This is a note that was
4 referenced on cross-examination. And I'll be done with
5 you here. All right. I want to turn your attention to
6 this spot right here that says chief complaint, okay. The
7 category is traumatic injury, all right.

8 Now, it also says the chief complaint is a
9 forehead contusion due to moped versus car. But it also
10 says right here, under still the chief complaint category,
11 anatomic location of your chief complaint. Can you read
12 what it says there, Mr. Burgess?

13 A General local.

14 Q Did you complain of pain all over?

15 A Yes, I did.

16 MR. GARCIA: I don't have any further questions.

17 Answer any questions Mr. Moore may have.

18 THE COURT: Briefly.

19 RECROSS-EXAMINATION

20 BY MR. MOORE:

21 Q Mr. Burgess, when you left the Hot Spot, were
22 you at that point in time preparing for a left-hand turn?

23 A Yes, sir, I knew I was going to make a left-hand
24 turn, yes.

25 Q Not my question. Were you preparing to make a

JOHN BURGESS-RECROSS BY MR. MOORE

1 left-hand turn? For example, were you slowing your speed
2 down to make that left-hand turn?

3 A No.

4 Q Did you have your turn signal on to make that
5 left-hand turn?

6 A I don't think I had my turn signal on at that
7 time.

8 Q So, you had to travel a good quarter of a mile
9 plus down the road before you were going to make that
10 left-hand turn; am I right?

11 A Maybe a quarter of a mile.

12 Q And you had not slowed down at the time this
13 accident occurred; am I right?

14 A Right.

15 Q And you had not made your turn signal?

16 A It's a possibility. I'm not 100 percent sure
17 about the turn signal. It's a possibility I could have
18 had it on, but I know I hadn't slowed down at that time.

19 Q You don't remember?

20 A (There was no response.)

21 Q You don't remember whether you had your turn
22 signal or not?

23 A No, but I hadn't slow down at that time.

24 MR. MOORE: Thank you.

25 MR. GARCIA: Mr. Burgess --

MATT SIMS-DIRECT BY MR. GARCIA

1 MR. MOORE: Your Honor.

2 THE COURT: We're not -- what is it you want to
3 ask him?

4 MR. GARCIA: I'm just talking about that statute
5 once again, the questions regarding whether he was
6 going to turn left or not.

7 THE COURT: Well, you've had your opportunity,
8 we're going to move forward.

9 Go ahead. You may step down. Thank you. You
10 may step down. Thank you, sir.

11 All right, call your next witness.

12 MR. GARCIA: My next witness is Mr. Matt Sims.

13 THE CLERK: Place your left hand on the Bible,
14 raise your right hand, please.

15 Matt Sims, after being duly sworn, testified as
16 follows:

17 THE CLERK: State your full name for the record.

18 THE WITNESS: My full name is Pelham Matthew
19 Sims.

20 DIRECT EXAMINATION

21 BY MR. GARCIA:

22 Q Mr. Sims, thank you for being here today. What
23 is the name of your company, Mr. Sims?

24 A Reedy Consulting and Investigations.

25 Q Can you tell me when that company was

MATT SIMS-DIRECT BY MR. GARCIA

1 established?

2 A 2012.

3 Q Okay. Prior to establishing Reedy Consulting
4 and Investigations, where did you work?

5 A I was employed with the highway patrol for the
6 prior 25 years. Actually, the only public job I ever had.

7 Q Okay. What did you do for the highway patrol in
8 your 25 years?

9 A Well, when I joined the highway patrol in the
10 beginning of the year in 1988. I, obviously, started
11 patrol school, completed patrol school and then worked as
12 a road trooper for nine years, carrying out the normal
13 duties of a road trooper, which are trafficking
14 enforcement and accident investigations.

15 Q Okay.

16 A Later, later, after nine years, a new unit was
17 developed called MAIT. It's actually the
18 Multi-disciplinary Accident Investigation Team. I was
19 selected after a testing process and chosen to be part of
20 MAIT, received countless hours of training over, actually,
21 the next 16 years. But received a lot of training,
22 probably a couple hundred hours of training in 1995. Then
23 the MAIT unit, actually, went online in 1996. I was
24 selected for the full time unit to be a MAIT investigator,
25 which investigated the most serious traffic collisions

MATT SIMS-DIRECT BY MR. GARCIA

1 involving deaths and serious criminal charges, such as
2 reckless homicide, DUIs, those type charges.

3 Q What rank did you achieve before finally
4 retiring?

5 A I was promoted a few times over the years. I
6 was very fortunate and retired at the rank of lieutenant.
7 At that time, I was supervisor of investigations
8 statewide.

9 Q Did you -- just to clarify that, did you such
10 advise the entire MAIT team statewide?

11 A Yes.

12 Q Okay. For those that don't know, what is the
13 significance of rank of lieutenant, if you will?

14 A Well, lieutenant, when you start on highway
15 patrol, you're actually in patrol school, you're trooper
16 trainee. Then when you get out on the road, you're still
17 in training, basically, but you're a trooper. Then -- and
18 during those days, rank structures have changed some over
19 the years, but during those days, you would become after
20 18 months, trooper first class. And after five years, if
21 you checked all the blocks and were a good employee, you
22 became lance corporal. Then the first actual supervisory
23 position would be corporal, which two stripes on the
24 sleeve. And then a unit leader would be a sergeant, which
25 would be three stripes. I was able to make sergeant with

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1 MAIT. I was over the upstate team based out of
2 Greenville. Then later on, I was fortunate enough to be
3 promoted to lieutenant and I was lieutenant probably nine
4 or ten years before I retired.

5 Q I have two questions for you here and I'll let
6 you decide how you want to answer them, okay? I wanted to
7 ask you first, what is the criteria for initiating a MAIT
8 investigation, but I also wanted to ask you what does MAIT
9 actually do? I'll let you kind of figure out which one
10 might be easier to explain first so that it makes sense,
11 then you can go to the other one?

12 A Okay. MAIT, as I said, MAIT was formed -- it
13 was -- there was a need by the -- actually, the
14 prosecution had a lot to do with it in those days. The
15 solicitors needed more in-depth investigations to
16 prosecute serious criminal cases. And highway patrol felt
17 that pressure, that need to select a group of troopers
18 that would receive that in-depth training and accident
19 reconstruction to be able to testify as experts. So MAIT,
20 actually, had to train and qualify in court to testify as
21 an expert in accident reconstruction. That's, basically,
22 what MAIT did. In doing that, you have to go out to the
23 collision scene, the actual scene and gather all the
24 evidence, document evidence, take measurements, maybe
25 perform calculations in the process and then prepare for

MATT SIMS-DIRECT BY MR. GARCIA

1 court. That's what MAIT did or does.

2 And your other question?

3 Q I'll come back to a little bit more of that, but
4 I want to ask you this, what's the criteria for initiating
5 a MAIT -- before you answer, I'm assuming that you
6 don't -- you don't initiate a MAIT investigation for every
7 single collision?

8 A That's correct.

9 Q So, when I say what's the criteria for
10 initiating a MAIT investigation, what kind of collision
11 cases does the MAIT team head out for?

12 A Okay. In the beginning -- like I said, this has
13 changed over the years somewhat. There were only 12
14 members of MAIT statewide in the beginning. I was a part
15 of it from the beginning. So, at one time, we had four
16 troopers in the upstate that covered 15 counties, so you
17 can't work all accidents. You can't even work all serious
18 accidents. We only worked at that time the most serious,
19 usually involving fatalities and chargeable fatalities at
20 that point. It changed somewhat over the years, but the
21 criteria pretty much always followed fatalities or
22 fatalities with commercial motor vehicles or serious
23 accidents where mechanical failures is suspected maybe or
24 there was kind of a catchall that the true captain, the
25 district captain, if he had an accident that he had

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1 questions about, he could request as well. So, that's
2 pretty much the criteria and it's pretty much followed
3 that over the years.

4 Q Was the investigation meant to at some point be
5 used at trial?

6 A Yes. If need be, yes.

7 Q Was it -- at least, initially, before it kind of
8 evolved into what it is today, if you will, initially, was
9 it reserved for criminal trials?

10 A Yes. All of our investigations were done
11 looking toward criminal prosecution. And then, obviously,
12 on some instances, we may have gotten involved in a civil
13 action because of our criminal investigation or as a
14 result of it. But normally, a civil action may follow and
15 civil attorneys would use our materials as well.

16 Q When your materials were used, were you there to
17 testify as well?

18 A If need be, yes, sir.

19 Q Okay. Other than being with the highway patrol
20 for 25 years and your own consulting company, have you had
21 any other positions of employment in the last 30 years?

22 A No, sir. I was in college before highway
23 patrol. And my dad had his own business, I worked with
24 him some between college and highway patrol, but that's
25 it.

MATT SIMS-DIRECT BY MR. GARCIA

1 Q Okay. Can you state, Mr. Sims, the training you
2 have received on the issue of accident reconstruction?

3 A Yes, sir, I can. As I said, 'we started in 1995
4 training with accident reconstruction, specific training.
5 We were fortunate during those times, good budget years I
6 like to say for department of public safety. We got all
7 the training we could get training nationwide. We were
8 trained by Texas A&M Engineering. We were trained by
9 University of North Florida. IPTM, Institute of Police
10 Technology and Management. This is all accident
11 reconstruction. Northwestern, we received training from
12 them. A lot of other private vendors along the way on
13 equipment and so forth, too. And this training evolved
14 over the years, but to date, I have received over 3,000
15 hours of accident reconstruction specific training.

16 Q Is there real life experience in research
17 outside of the classroom, Mr. Sims, that contributes to
18 your knowledge on the issue of accident reconstruction?

19 A Yes, sir, there is. Obviously, a lot of years
20 on active collision scenes. Twenty-five years, even as a
21 road trooper, nine years being on collision scenes and
22 seeing the debris or the evidence after a collision.
23 There's also testing. Testing has been done in a lot of
24 those classes over the years, but we actually went out and
25 conducted crash tests. And for, I guess lack of a better

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1 term, you verified the industry-accepted standards that
2 they did work by, actually, performing crash tests
3 ourselves and verified those procedures and techniques.

4 Q Would you consider the actual investigations
5 themselves as contributing to your knowledge of accident
6 reconstruction?

7 A Yes, sir, obviously.

8 Q This isn't a trick question. What's the goal of
9 a MAIT investigation?

10 A The goal is to determine what happened and how
11 it happened and, basically, what caused it to happen so
12 that it can possibly be prevented in the future.

13 Q Are some of those things that you consider in
14 determining what it is that happened human factors?

15 A Yes. Yes.

16 Q Would human factors also include whether a
17 individual was keeping a proper lookout or not?

18 A It could, yes.

19 Q Is there always a clear conclusion?

20 A Not always, no, sir. You can usually tell what
21 happens. You might not always be able to determine why it
22 happened.

23 Q How many accidents in total have you
24 investigated over your career in the highway patrol as
25 well as your reconstruction?

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1 A Somewhere between 2 and 3,300 probably, 2500
2 maybe.

3 Q What percentage of those involved motorcycles
4 and/or mopeds?

5 A Probably, I would say, maybe 10, 15 percent, 20
6 at the most possibly.

7 Q Let me ask you this, are there any specific
8 degrees, licensings or certifications you possess?

9 A Yes, sir. I'm -- one thing I'm pretty proud of
10 is I'm ACTAR certified, ACTAR accredited, which ACTAR is
11 an acronym the Accreditation Commission for Traffic
12 Accident Reconstructionists. And it's a worldwide
13 accreditation process that the applicants have to apply to
14 take -- basically, to take an examination after you
15 receive a certain amount of training. So, you can't just
16 train or education, you can't just walk in and say you
17 want to take the test. You have to qualify to actually
18 take the test. And it's a day-long examination with a
19 theory part, practical part. I took that in 1998 -- I
20 have my CV here, I can look it up. I think it was 1998
21 after a couple of years of training. We were trained
22 pretty consistently during those times, so I was able to
23 pass that examination for ACTAR accreditation number 923.
24 And that's -- that's an accreditation that a lot of
25 accident reconstructionists get, both engineers and police

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1 officers. At the time, we were the only law enforcement
2 in the state that had that accreditation.

3 Q Have you ever been qualified by a court to
4 testify as an expert in the field of accident
5 reconstruction before this trial today?

6 A Yes, sir, I have, several times.

7 Q Do you know how many approximately?

8 A Fifteen to 20.

9 Q Have you ever not been qualified as an expert?

10 A No, sir.

11 Q You may have covered some of this in your
12 explanation for what you would do with MAIT, but it's a
13 slightly different question I'm going to ask you here.
14 Can you briefly explain what accident reconstruction is
15 for the jury, Mr. Sims?

16 A Okay. Accident reconstruction is -- I like to
17 simplify everything as much as possible. But it's simply
18 going out after an accident occurred and trying to gather
19 evidence that is left, and just what the term says, using
20 that with science and mathematics sometimes, and
21 techniques of evidence and training that you receive to
22 try to not necessarily recreate, but put back together the
23 events of the collision.

24 Q Okay.

25 A The chain of events that may have occurred.

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1 Q Are all investigating officers qualified to be
2 an accident reconstructionists?

3 A No, sir.

4 Q Why not?

5 A Well, the accident reconstructionist, as I've
6 said earlier, is a higher level of training. We MAIT
7 guys, when I was with MAIT, had to go and take all this
8 additional training. This 3,000 hours of training is
9 above what I had as a road trooper, basically.

10 MR. GARCIA: At this time, Your Honor, I move to
11 have Mr. Sims -- I offer Mr. Sims as an expert in the
12 field of accident reconstruction.

13 MR. MOORE: No objection.

14 THE COURT: Okay.

15 BY MR. GARCIA:

16 Q Now, again, a slight distinction to this
17 question. Is the ultimate goal of an accident
18 reconstructionist to explain how an accident occurred to a
19 reasonable degree of certainty?

20 A Yes.

21 Q Of the times you have testified as an expert in
22 private practice, can you tell me what percentage for a
23 plaintiff in a civil case and what percentage for a
24 defendant in a civil case?

25 A Plaintiff is, basically, 75, 80 percent.

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1 Defense would be the remainder.

2 Q Okay. When you testified as an expert while you
3 were still employed, in those instance, again, you were
4 still the plaintiff, but that's a little unique here, are
5 you testifying, essentially, for the State?

6 A Yes, sir, on the job, I was testifying for the
7 State and prosecution, yes, sir.

8 Q You mentioned on the job. You may have touched
9 on this already. Were there instances where you're,
10 actually, called into civil court?

11 A I was trying to remember as I was saying that.
12 I know I've been deposed several times. I don't remember
13 if I ever actually went to court during my law enforcement
14 time in civil, in civil court. Obviously, in criminal
15 court. But I don't remember any case that -- most of them
16 settled that we got involved in.

17 Q Understood. How were you notified about this
18 collision?

19 A I was notified by -- I don't remember if it was
20 directly you or your office that there was a case that you
21 wanted to hire my services on.

22 Q Okay. Were you told to reach any specific
23 conclusion?

24 A No, sir.

25 Q Were you told to simply state your opinion as to

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1 what is that happened?

2 A Yes, sir, that's what I always try to do.

3 Q Did you receive a file on this collision?

4 A I did. I received a lot of different materials
5 over a period of time, yes, sir.

6 Q After receiving those materials, did your
7 investigation stop there?

8 A No, sir.

9 Q Has it continued?

10 A It has, yes, sir.

11 Q When is the stopping point for your
12 investigation? At least, this particular investigation?

13 A Well, probably now that I'm on to stand, yes,
14 sir. I mean, you know, I don't ever stop listening or
15 trying to take material into account. And even yesterday,
16 I heard some things from the stand.

17 Q Okay. I'm going to run through a list of things
18 that an expert may normally rely on. When I say expert,
19 of course, accident reconstruction expert may normally
20 rely on forming their opinions about a particular
21 collision. Do experts ordinarily rely on recorded
22 statements of the parties involved in a collision?

23 A Yes, sir.

24 Q Did you have that available in this case?

25 A I did.

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1 Q Do experts typically rely on deposition
2 testimony of the parties involved?

3 A Yes.

4 Q Did you have that available in this case?

5 A I did.

6 Q Okay. Do experts typically rely on audio
7 recordings of 911 calls pertaining to the collision?

8 A Yes.

9 Q Again, did you have that available in this case?

10 A Did.

11 Q Do you remember how many?

12 A Three, I think.

13 Q Do you remember how many individuals were on
14 that 911 call?

15 A Two different ones.

16 Q Okay. Did you have -- let me ask you this, do
17 experts ordinarily rely on images of the vehicles involved
18 in the collision?

19 A Yes, sir. Hopefully, yes, sir.

20 Q Did you have that available in this case?

21 A I did, yes.

22 Q Okay. How about videos of the collision site?

23 A Yes.

24 Q When I say videos of the collision site, you
25 didn't have a video of the collision actually occurring?

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1 A No, sir.

2 Q What I mean is, are there instances where you
3 take video of the collision site and analyze that video?

4 A Yes.

5 Q Did you have that available in this case?

6 A I did.

7 Q Okay. Did you shoot some of that video
8 yourself?

9 A I did, yes.

10 Q Do you rely on personal observations as you
11 visit the collision site?

12 A Yes.

13 Q Have you done that in this case?

14 A I have, yes, sir.

15 Q Do you rely on publications and treatises for
16 friction values and things of that nature?

17 A Yes, sir, that's always a part of training and
18 so forth, but yes, sir.

19 Q Did you have some of those treatises and
20 publications available to you in this case?

21 A I did.

22 Q Did you rely on emergency vehicle reports?

23 A Yes.

24 Q Okay. Did you have that available to you in
25 this case?

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1 A I did.

2 Q Did you rely on -- excuse me, do you normally
3 rely on accident and police reports?

4 A Yes, sir, I do.

5 Q I shouldn't say and, I should say accident,
6 slash, police reports?

7 A Yes, sir.

8 Q Did you have that available in this case?

9 A I did.

10 Q Do you rely on testimony of the parties that you
11 hear at trial?

12 A Yes, sir, sometimes. I mean, it's -- you know,
13 you want to -- your opinions may already be formed, but
14 you want to hear everything.

15 Q Okay. I'll ask you this, did you have the
16 benefit of knowing the exact, just precise location of the
17 vehicles involved in this collision, Mr. Sims?

18 A I'm sorry, say that again.

19 Q Yeah, I mean, did you have the benefit of
20 knowing the exact and precise location of where the
21 vehicles were located or if you have an opinion on
22 location, is it a general area, if you will?

23 A Yes, sir, I didn't have the ability to know the
24 exact location. But I have an opinion as to a general
25 area, yes.

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1 Q Okay. Did you have the benefit of analyzing,
2 for instance, skid marks or scratches on the road or
3 anything like that following this collision?

4 A No, sir. There was none of that visible when I
5 became involved.

6 Q Okay. Very obvious question, why didn't you
7 have those available to you?

8 A I became involved at a later time, later date.
9 None of that evidence was still available.

10 Q Okay. Even though you did not have some of the
11 items that might have helped you reach a conclusion in
12 this particular collision, did you still have sufficient
13 information and data available to you to reach a
14 conclusion to a reasonable degree of certainty in the
15 field of your expertise?

16 A Yes, sir, I did.

17 Q What is your opinion, Mr. Sims, regarding how
18 this collision we're here about today occurred?

19 A This collision was, basically, as we've heard,
20 we've heard some testimony of, Mr. Burgess was traveling
21 down West Blue Ridge, also known as S.C. 253, in the
22 inside lane, lane nearest the median and he was struck
23 from the rear by the BMW SUV driven by Ms. Hunter.

24 Q Is this the most complex reconstruction case you
25 have ever undertaken?

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1 A No, sir, it's not.

2 Q On a scale of one to ten with, of course, one
3 being very easy and ten being the most complex, where
4 would you rate this undertakings?

5 A Probably a three, maybe a four. But not really
6 complicated, no, sir.

7 Q Okay. All right. Let me ask you this, do you
8 have an opinion, stated to a reasonable degree of
9 certainty for an expert in your field, regarding where or
10 at what point on the West Blue Ridge Drive that collision
11 occurred, Mr. Sims?

12 A I do, yes, sir, an area of -- an area of impact
13 location.

14 Q I'll give you a pointer.

15 A Yes, sir.

16 Q We have this image up on the screen. It's
17 already been previously admitted into evidence. It was
18 Plaintiff's Exhibit 6. Can you tell me where that
19 collision occurred?

20 A Yes, sir. In this area.

21 Q Okay.

22 A And that's based on all the information when
23 I -- when I was able to obtain all the documents and all
24 the -- all the information to date that I've been able to
25 review.

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1 Q Now, did you rely on the 911 calls that you
2 heard to reach that conclusion?

3 A Yes, sir, they were a part of that.

4 Q Did you rely on the 911 call from the witness
5 that was standing on Leome Avenue?

6 A Yes, that was one of the -- that was one of the
7 pieces as well, one of the calls.

8 Q How about the EMS report, was that helpful in
9 determining the location of the collision?

10 A It was. It actually -- the EMS report actually
11 had GPS coordinates and an address on the form. And then
12 that, together with Ms. Hunter's statement in the call, in
13 the 911 call as well as the unidentified witness who --
14 the unidentified witness said she was standing here at
15 Leome looking towards Whitehorse and traffic was backed up
16 in the area. So, that would -- I mean, it would have to
17 put the collision in this area.

18 Q Okay. The EMS report said 3204 West Blue Ridge
19 Drive?

20 A Yes.

21 Q Okay. Do you know where that is?

22 A This area.

23 Q Okay. And you heard Mr. Burgess' testimony that
24 as he's being rolled back to the ambulance, that there are
25 vehicles between where the ambulance was and where his

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1 roll towards the ambulance was located?

2 A That's correct.

3 Q Would that put Mr. Burgess, or, at least, the
4 collision site a bit in front of where that spot is or
5 that dot is that you pointed out?

6 A It's possible, yes, sir. It could actually be
7 in this area. The ambulance was here. I probably don't
8 need to perform surgery today, I've got the shakes.

9 Q Is there any doubt at all as to where this
10 collision occurred?

11 A Not in my mind, not at this time, no, sir.

12 Q Where there any statements made by Ms. Hunter
13 that conflict with your opinion as to where it is that
14 this collision occurred?

15 A Yes. Yes, sir.

16 Q Okay. I want to turn your attention to this
17 recorded statement here at Line 104.. You can see why I
18 brought somebody else to handle this.

19 A Yes.

20 Q All right. We'll start at Line 104. All right.

21 I was pulling out from a side street. I
22 was making a left-hand turn, looking, you know, both ways
23 and I remember thinking there wasn't quite as much
24 traffic. I pulled out making a left-hand turn. I'm
25 looking around and it was like it came out of nowhere. I